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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–108–1]

Pine Shoot Beetle; Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations to add 28 counties in Illinois, New York, Ohio, Pennsylvania, Maryland, and West Virginia to the list of quarantined areas. We are also adding raw pine materials for pine wreaths and garlands and finished pine wreaths and garlands to the list of regulated articles. This action is necessary to prevent the spread of the pine shoot beetle, a highly destructive pest of pine products, into noninfested areas of the United States.

DATES: Interim rule effective October 27, 1995. Consideration will be given only to comments received on or before January 2, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–108–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–108–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Knight, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–7935.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States.

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. During the "maturation feeding," the young beetles bore up the center of pine shoots (usually of the current year's growth) causing stunted and distorted growth in the host trees. The pine shoot beetle is also a vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances. This pest damages urban trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

Pine shoot beetle hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of the pine shoot beetle. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of the pine shoot beetle.

Surveys recently conducted by State and Federal inspectors revealed additional areas infested with the pine shoot beetle in four States that were previously known to contain infested areas (Illinois, New York, Ohio, and Pennsylvania) and in two States not previously known to be infested (Maryland and West Virginia). Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found.

In accordance with these criteria, we are designating Champaign, Grundy, Vermilion, and Winnebago Counties, IL; Allegany County, MD; Stuben County, NY; Carroll, Columbiana, Crawford, Fulton, Holmes, Lucas, Ottawa, Sandusky, Seneca, Tuscarawas, Williams, Wood, and Wyandot Counties, OH; Armstrong, Cameron, Clearfield, Elk, Forest, Jefferson, McKean, and Westmoreland Counties, PA; and Hancock County, WV, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

We are also adding raw pine materials for pine wreaths and garlands and finished pine wreaths and garlands to the list of regulated articles under § 301.50–2. The pine shoot beetle quarantine does not currently regulate the movement of pine wreaths and garlands. However, a pest risk analysis determined that pine wreaths and garlands are hosts of the pine shoot beetle; their unregulated sale and transport would contribute to the spread of the pine shoot beetle.

We are also adding pine wreaths and garlands and raw pine materials for pine wreaths and garlands to the lists of regulated articles authorized for cold treatment and fumigation as specified in §§ 301.50–10(b) and (c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are

received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The pine shoot beetle regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States. This rule amends these regulations by adding 28 counties to the list of quarantined areas. We are also adding raw pine materials for pine wreaths and garlands and finished pine wreaths and garlands to the list of regulated articles. This action is necessary to prevent the spread of the pine shoot beetle, a highly destructive pest of pine products, into noninfested areas of the United States.

Nurseries, Christmas tree producers, and logging operations in most of the 28 newly regulated counties will not be notably affected by this rule, either because pine species comprise a very minor share of their products or because they serve largely local populations. Counties included in this group are Champaign, Vermilion, Winnebago, and Grundy Counties, IL; Allegany County, MD; Stuben County, NY; Columbiana, Crawford, Fulton, Holmes, Lucas, Ottawa, Sandusky, Seneca, Williams, Wood, and Wyandot Counties, OH; Cameron, Clearfield, Elk, Forest, McKean, and Westmoreland Counties, PA; and Hancock County, WV. The four remaining counties (Carroll and Tuscarawas Counties, OH, and Armstrong and Jefferson Counties, PA) contain nurseries and Christmas tree plantations that have extensive stands of pine and whose owners rely mainly on out-of-county and out-of-State markets.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits, or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of the pine shoot beetle.

Extending the regulation to pine wreaths and garlands is important for the effectiveness of the quarantine. Should the producers decide to treat wreaths and garlands with methyl bromide, the low costs of treatment will not have a significant economic effect on small producers. Nurseries and other producers earn an average of 4 percent of their revenue from wreaths and garlands. Methyl bromide treatment of wreaths and garlands should cost approximately 1 percent of this revenue. Estimated treatment costs for small Christmas tree growers are $15–$20 per year, and estimated treatment costs for small nurseries are $50–$100 per year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of pine wreaths and garlands, under the conditions specified in this rule, will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.50–2, paragraph (a) is revised to read as follows:

§ 301.50–2 Regulated articles.

* * * * *

(a) Pine products (*Pinus* spp.), as follows: Bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; pine wreaths and garlands; raw pine materials for pine wreaths and garlands; and stumps.

* * * * *

§ 301.50–3 [Amended]

3. Section 301.50–3 is amended as follows:

a. Paragraph (c) is amended by adding, in alphabetical order, under Illinois, New York, Ohio, and Pennsylvania, new counties to read as set forth below.

b. In paragraph (c), new entries for Maryland and West Virginia are added in alphabetical order to read as set forth below.

c. Paragraph (d) is revised to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

ILLINOIS

Champaign County. The entire county.

* * * * *

Grundy County. The entire county.

* * * * *

Vermilion County. The entire county.

* * * * *

Winnebago County. The entire county.

* * * * *

MARYLAND

Allegany County. The entire county.

* * * * *

NEW YORK

* * * * *

Stuben County. The entire county.

* * * * *

OHIO

* * * * *

Carroll County. The entire county.

Columbiana County. The entire county.

Crawford County. The entire county.

* * * * *

Fulton County. The entire county.

* * * * *

Holmes County. The entire county.

* * * * *

Lucas County. The entire county.

* * * * *

Ottawa County. The entire county.

* * * * *

Sandusky County. The entire county.

Seneca County. The entire county.

* * * * *

Tuscarawas County. The entire county.

* * * * *

Williams County. The entire county.

Wood County. The entire county.

Wyandot County. The entire county.

PENNSYLVANIA

* * * * *

Armstrong County. The entire county.

* * * * *

Cameron County. The entire county.

* * * * *

Clearfield County. The entire county.

* * * * *

Elk County. The entire county.

* * * * *

Forest County. The entire county.

Jefferson County. The entire county.

* * * * *

McKean County. The entire county.

* * * * *

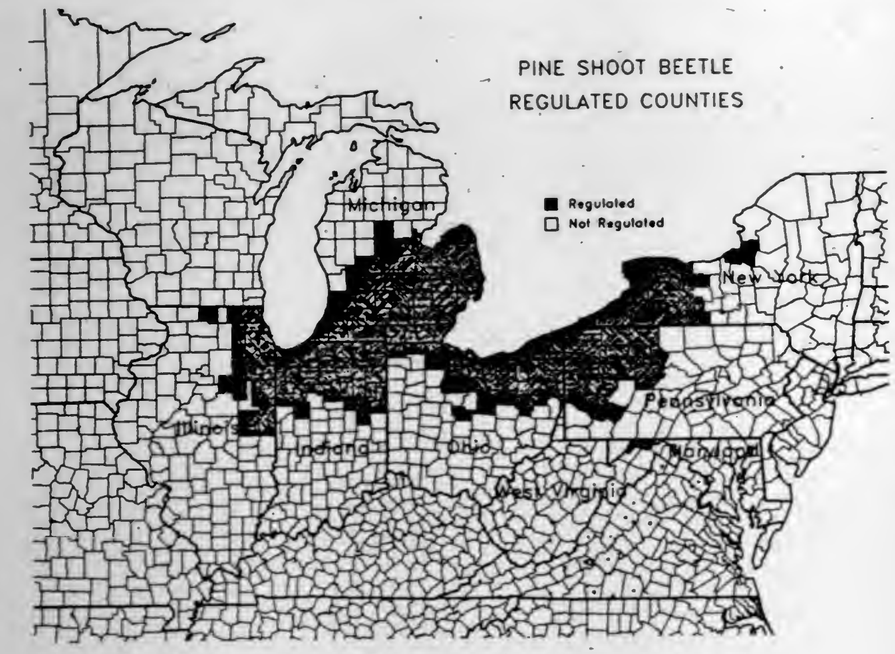
Westmoreland County. The entire county.

WEST VIRGINIA

Hancock County. The entire county.

(d) A map of the quarantined areas follows:

BILLING CODE 3410–34–P



BILLING CODE 3410-34-C

4. In § 301.50–10, paragraph (b) is amended by removing "cut pine Christmas trees and pine nursery stock" and adding in its place "cut pine Christmas trees, pine nursery stock, pine wreaths and garlands, and raw pine materials for pine wreaths and garlands".

5. In § 301.50–10, paragraph (c), the introductory text is revised to read as follows:

§ 301.50–10 Treatments.

* * * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees, pine wreaths and garlands, and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees, pine wreaths and garlands, and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows:

* * * * *

Done in Washington, DC, this 27th day of October 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–27284 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 443

RIN 0563–AA78

Hybrid Seed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure hybrid seed effective for the 1994 and succeeding crop years. The intended effect of this action is to incorporate the late and prevented planting coverage into the hybrid seed crop insurance policy.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, Suite 500, 2101 L Street, N.W., Washington, D.C., 20037. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1997.

This rule has been determined to be "exempt" for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget ("OMB").

The provisions set forth in this rule do not impose burdensome information collection requirements that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies and the procedures therein will not increase from the amount required to deliver previous policies. This action, in fact, reduces the paperwork burden on the insured farmer and insurance providers. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are retroactively effective as of November 30, 1993, and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. No. 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, December 22, 1993, FCIC published an interim rule in the **Federal Register** at 58 FR 67644, to amend the Hybrid Seed Crop Insurance Regulations (7 CFR part 443) by incorporating late and prevented planting provisions into that policy, effective for the 1994 and succeeding crop years. Because this rule benefited the insured by improving coverage for policyholders, good cause was found to make the interim rule retroactively effective as of November 30, 1993.

Following publication of the interim rule, the public was afforded 60 days to submit written comments, data and opinions, but none were received. Therefore, the interim rule as published on December 22, 1993, at 58 FR 67644 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 443

Crop insurance, Hybrid seed.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby adopts as a final rule, the interim rule as published at 58 FR 67644 on December 22, 1993.

Done in Washington, D.C., on October 25, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–27334 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–31; Amendment 39–9408; AD 95–22–01]

Airworthiness Directives; Aerospace Lighting Corporation Power Units and Power Supplies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospace Lighting Corporation (ALC) lamp connectors and fluorescent lamps, that currently requires an inspection, and adjustment or replacement of improperly installed, damaged, or improperly configured lamp connectors and fluorescent lamps used in cabin fluorescent lighting

systems. This amendment adds an optional replacement of certain power units and power supplies with new technology parts as terminating action to the repetitive inspections. This amendment is prompted by the availability of new technology components. The actions specified by this AD are intended to prevent smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft.

DATES: Effective December 4, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospace Lighting Corporation, 101–8 Colin Drive, Holbrook, NY 11741; telephone (516) 563–6400, fax (516) 563–8781. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bradford Chin, Electronics Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Third Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7507, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–14–06, Amendment 39–6640 (55 FR 27457, July 3, 1990), which is applicable to Aerospace Lighting Corporation (ALC) lamp connectors, Part Number (P/N) 31.85.1.A, and Series 66 fluorescent lamps, was published in the **Federal Register** on January 4, 1995 (60 FR 382). That action proposed to continue to require an inspection, and adjustment or replacement of improperly installed, damaged, or improperly configured lamp connectors and fluorescent lamps used in cabin fluorescent lighting systems in accordance with ALC Information Bulletin No. IB 90–001, dated August 15, 1992. That AD also proposed to add an optional replacement of power units, and power supplies and dimmers, with new technology protected power units, and protected power supplies, as applicable. Installation of these protected power units and protected power supplies constitutes terminating action to the repetitive inspections. The actions required by that proposed AD would be required to be accomplished in accordance with the following ALC Installation Instructions (II): AL–11023M, Revision A, dated May 20, 1994; AL–11024M, dated March 15, 1992; and AL–11025M, dated March 15, 1992. These II's describe procedures for installing improved design protected power units, and protected power supplies, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters support the rule as proposed.

One commenter suggests that the real problem lies with Series "66" lamps, which have spring tension split rings that cause arcing as the lamps wear. The commenter suggests that a terminating action need only require replacing all Series "66" lamps with Series "AL–12" lamps. The FAA does not concur. While the FAA agrees that replacing the Series "66" lamps will eliminate the lamp connection as a possible arcing site, the rest of the lamp output loop contains the same arcing potential as the lamp connector. The FAA has determined that replacing the Series "66" lamps is not a satisfactory terminating action as it does not completely prevent arcing in the aircraft from fluorescent lighting high voltage.

The manufacturer states that the economic analysis work hours and parts should be lowered to better reflect field practice. The FAA concurs and the economic analysis has been revised accordingly.

The manufacturer also states that the list of aircraft installations in the applicability should be revised to delete a Beech model and add certain Raytheon Corporate Jets, Inc. and Bombardier Inc. Canadair models. The FAA concurs and this final rule has been revised accordingly.

The manufacturer also commented that the ALC part numbers listed in paragraphs (d)(3) and (d)(4) of the proposed rule represented the same unit. The manufacturer suggests that paragraphs (d)(3) and (d)(4) can be combined into a single paragraph. The FAA concurs. The part number for ALC P/N 18–95D was changed in January 1991 to P/N AL–0598, and P/N 22–311 to P/N AL–0542. These old and new part number units are functionally and physically identical. ALC has integrated the dimmer functions of P/N 22–311 and P/N AL–0542 into power units P/N AL–5118 and P/N AL–5130. Because of these changes, the FAA has revised paragraphs (d)(3) and (d)(4) by combining them into a single paragraph (d)(3) in the final rule.

The manufacturer also states that the word "removal" should be deleted from paragraph (a)(2). The FAA does not concur. Operators are required to remove unserviceable parts and then replace those parts with serviceable parts. The FAA has, however, reworded paragraph (a)(2) for clarity and to update the referenced service information.

Lastly, the manufacturer states that paragraph (d)(2) should provide that the optional replacement actions constitute alternative methods of compliance with the AD. The FAA does not concur. The replacement actions in paragraph (d)(2) work to end an operator's obligation to continue repetitive inspections, and, therefore, compliance with those inspection requirements of the AD. The FAA views those actions as an end to the AD for that operator rather than as an alternate method of complying with the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that it will take approximately 1 work hour per power unit or power supply to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $400 per power unit or $900 per power supply. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $460 per power unit or $960 per power supply.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6640 (55 FR 27457, July 3, 1990) and by adding a new airworthiness directive, Amendment 39–9408, to read as follows:

95–22–01 Aerospace Lighting Corporation: Amendment 39-9408. Docket 94–ANE–31. Supersedes AD 90–14–06, Amendment 39–6640.

Applicability: Aerospace Lighting Corporation (ALC) lamp connectors, Part Number (P/N) 31.85.1.A; Series 66 fluorescent lamps; power units, P/N's TR–991, TR–992, AL–0546, and AL–0514; and power supplies, P/N's 1895D and AL–0598. These products are utilized in cabin fluorescent lighting systems, and are installed on, but not limited to, the following aircraft: Airbus Industrie Model A310; Avion Marcel Dassault Breguet Aviation Model Falcon 10; Boeing Airplane Company Models 727, 737, 747, and 757; Raytheon Corporate Jets, Inc. (formerly British Aerospace) Model HS. 125–600A, –700A, –800A, and –1000A; Bombardier Inc. Canadair Ltd. Models CL–600–1A11, CL–600–2A12, CL–600–2B16, CL–600–2B19, CL–601, CL–601–3A, CL–601–3R; Cessna Aircraft Company Models 550 and 560; Dassault Aviation Models Mystere-Falcon 20 and 50; Empresa Brasileira de Aeronautica S/A Model Embraer EMB–120; Gulfstream Aerospace Corporation Models G–159, G–1159, G–1159A, and G–IV; Israel Aircraft Industrie, Ltd. Models 1124 and 1125; Jetstream Aircraft, Ltd. Jetstream Model 310; Learjet Corporation Models Learjet 35 and 36; Saab Aircraft AB Model Saab 340A; and Sikorsky Aircraft Division Model S–76A.

Note: This airworthiness directive (AD) applies to each product identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For products that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any product from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft, accomplish the following:

(a) Within 30 calendar days of the effective date of this airworthiness directive (AD), accomplish the following:

(1) Inspect the cabin fluorescent lighting system in accordance with ALC Information Bulletin No. IB 90–001, dated August 15, 1992, paragraph IV. "Fluorescent Lighting System Components Identification and Inspection Procedure," subparagraphs B.1, 2., 3., 5., 6., and 7.

(2) After completing the inspection above in paragraph (a)(1) of this AD, remove and replace any part(s) found to be damaged or improperly configured in accordance with paragraph IV. B.4, 8., and 9., as required, of ALC Information Bulletin No. IB 90–001, dated August 15, 1992.

(b) Within 5 flights or 10 flight hours, whichever occurs first, of a cabin fluorescent lighting system components failure, repeat the removal and replacement procedures of paragraph (a)(2) of this AD.

(c) An alternative method of compliance with paragraphs (a)(1), (a)(2), and (b) of this AD would be to turn the fluorescent lighting system off and to placard the system to prevent unintentional activation.

(d) Replacement of the following ALC parts, in accordance with the following instructions, constitutes terminating action to the inspections required by paragraph (b) of this AD. These actions are:

(1) Remove power units, P/N TR–991 or AL–0546, and replace with protected power units, P/N AL–5117, in accordance with ALC Installation Instruction (II) No. AL–11025M, dated March 15, 1992.

(2) Remove power units, P/N TR–992 or AL–0514, and replace with protected power unit, P/N AL–5112, in accordance with ALC II No. AL–11024M, dated March 15, 1992.

(3) Remove power supplies, P/N 18–95D or AL–0598 and dimmer, P/N 22–311 or AL–0542, and replace with protected power supply, P/N AL–5118 or AL–5130, in accordance with ALC II No. AL–11023M, Revision A, dated May 20, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
ALC II AL–11023M	1–18	A	May 20, 1994.
Total pages: 18			
ALC II AL–11024M	1–9	Original	March 15, 1992.
Total pages: 9			
ALC II AL–11025M	1–9	Original	March 15, 1992.
Total pages: 9			
ALC No. IB90–001	1	Revision	August 15, 1992.
	2–8	Original	March 30, 1990.
	9	Revision	August 15, 1992.
	10–13	Original	March 30, 1990.
Total pages: 13			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospace Lighting Corporation, 101–8 Colin Drive, Holbrook, NY 11741; telephone (516) 563–6400, fax (516) 563–8781. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 4, 1995.

Issued in Burlington, Massachusetts, on October 11, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–26723 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–195–AD; Amendment 39–9418; AD 95–22–10]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes. This action requires replacement of the rear pintle pin of both main landing gears (MLG) with an improved pintle pin assembly. This amendment is prompted by the results of fatigue testing, which demonstrated that fatigue cracking can occur in the heads of these pintle pins. The actions specified in this AD are intended to prevent the initiation and propagation of such fatigue cracking, which could lead to the failure of the pintle pins and consequent collapse of the MLG.

DATES: Effective November 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during full-scale fatigue testing conducted by the manufacturer, fatigue cracks were found in the heads of the pintle pins of the main landing gears (MLG) of test airplanes at 118,700 simulated flights. Such fatigue cracking, if not corrected, could result in failure of the pintle pins and consequent collapse of the MLG.

Airbus has issued Service Bulletin A320–32–1024, dated January 29, 1990, which describes procedures for replacing the pintle pin assembly with an improved assembly. The pintle pins of the improved assembly have thicker heads and walls, making them less susceptible to fatigue cracking. This assembly also includes installation of an anti-rotation plate. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 940240–061(B), dated November 9, 1994, in order to assure the continued airworthiness of these airplanes in France. This replacement has been accomplished during production on airplanes having manufacturer's serial numbers (MSN) 022 and subsequent.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent initiation and propagation of fatigue cracking in the pintle pins of the MLG. This AD requires replacement of the rear pintle pin of both MLG's with an improved pintle pin assembly. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model A320 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 21 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would cost approximately $12,636 per airplane. Based on these figures, the total cost impact of this AD would be $13,896 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–195–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–22–10 Airbus: Amendment 39–9418. Docket 95–NM–195–AD.

Applicability: Model A320 airplanes; as listed in Airbus Service Bulletin A320–32–1024, dated January 29, 1990; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the initiation and propagation of fatigue cracking in the pintle pins of the main landing gear (MLG), which could lead to the failure of the pintle pins and consequent collapse of the MLG, accomplish the following:

(a) Prior to the accumulation of 20,000 total landings, or at the next overhaul of the main landing gear, whichever occurs first, replace the rear pintle pin of both MLG with an improved pintle pin assembly in accordance with Airbus Service Bulletin A320–32–1024, dated January 29, 1990.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Airbus Service Bulletin A320–32–1024, January 29, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 20, 1995.

Issued in Renton, Washington, on October 24, 1995.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–26870 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–205–AD; Amendment 39–9421; AD 95–22–13]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires an inspection to determine proper clamping and to detect damage of a wire bundle in the avionics compartment, and repair, if necessary. This amendment is prompted by a report of smoke and fire in the avionics compartment floor area that was caused by electrical arcing that occurred as the result of chafed wiring. The actions specified in this AD are intended to prevent smoke and fire in the avionics compartment due to such electrical arcing in the wire bundle; that condition could pose a hazard to the continued safe flight of the airplane.

DATES: Effective November 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–205–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Recently, an operator of a McDonnell Douglas Model MD–11 series airplane reported that chafing and subsequent electrical arcing of wires in the avionics compartment floor area caused damage to wiring, insulation blankets, and equipment rack structure. The arcing also caused fire and smoke in the avionics compartment. Investigation revealed that the wire bundle was outside of the wire clamp, which was the result of improper clamping during manufacturing. This condition allowed the wiring to chafe against the clamp hardware and equipment rack structure. Chafing and subsequent electrical arcing of the wire bundle, if not corrected, could result in fire and smoke in the avionics compartment area. This condition could pose a hazard to the continued safe flight of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A094, dated October 12, 1995, which describes procedures for a visual inspection of the wire bundle in the avionics compartment for improper clamping or damage to the wiring. The service bulletin also contains procedures for repositioning of improperly clamped wire assemblies; and either splicing and replacing, or repairing damaged wiring. The alert service bulletin recommends that these actions be accomplished within six months.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas MD–11 series airplanes of the same type design, this AD is being issued to prevent fire and/or smoke due to chafing and arcing of the wire bundle in the avionics compartment area. This AD requires a one-time visual inspection of the wire bundle in the avionics compartment to determine proper clamping of the wire bundle and to detect any damage of the wiring. Improperly clamped wire bundles must be properly repositioned. Damaged wiring must be repaired. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Operators should note that, although the alert service bulletin recommends accomplishing the visual inspection within six months (after the release of the service bulletin), the FAA has determined that an interval of six months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than one hour). In light of all of these factors, the FAA finds 30 days to be an appropriate compliance time for initiating the required actions in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

This AD also requires that operators report positive and negative results of the inspection to the FAA.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–205–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–22–13 McDonnell Douglas: Amendment 39–9421. Docket 95–NM–205–AD.

Applicability: Model MD–11 series airplanes having manufacturer's fuselage numbers 0447 through 0527, inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and fire in the avionics compartment due to electrical arcing that results from chafing damage to wires, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection of the wire bundle in the avionics compartment for improper clamping and/or damage of the wiring, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A094, dated October 12, 1995.

(1) If the wire bundle is properly clamped and no damage is detected, no further action is required by this AD.

(2) If the wire bundle is improperly clamped, prior to further flight, reposition the wire in the clamp in accordance with the alert service bulletin.

(3) If any wiring is damaged, prior to further flight, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD, as applicable:

(i) For wires (Loop A and B) having damage to any one fire detector controller (engines 1, 2, 3, and APU): Prior to further flight, splice one loop and replace the wire for the other loop in accordance with the alert service bulletin.

(ii) For wiring having damage other than that identified in paragraph (a)(3)(i) of this AD: Prior to further flight, repair the wiring in accordance with the alert service bulletin.

(b) Within 15 days after accomplishing the visual inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5200; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A094, dated October 12, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 20, 1995.

Issued in Renton, Washington, on October 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27075 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AWP–28]

Establishment of VOR Federal Airway V–514; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Federal Airway V–514 from the Mission Bay, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Boulder City, NV, VORTAC. Pilots are presently issued several airway segments between the Mission Bay, CA, VORTAC and the Boulder City, NV, VORTAC. The establishment of this airway will provide pilots with one airway segment between these two points. This action will improve traffic flow and reduce pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On April 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Federal Airway V–514 from the Mission Bay, CA, VORTAC to the Boulder City, NV, VORTAC (60 FR 19190).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Federal Airway V–514 from the Mission Bay, CA, VORTAC to the Boulder City, NV, VORTAC. This action will improve

traffic flow and reduce pilot/controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–514 [New]

From Mission Bay, CA; INT Mission Bay 091° and Julian, CA, 185° radials; Julian; Thermal, CA; Twentynine Palms, CA; INT Twentynine Palms 043° and Goffs, CA 200° radials; Goffs, INT Goffs 033° and Boulder City, NV, 165° radials; Boulder City.

* * * * *

Issued in Washington, DC, on October 24, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–27349 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 83G–0277]

α-Amylase Enzyme Preparation; Affirmation of GRAS Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that α-amylase enzyme preparation derived from *Bacillus stearothermophilus* is generally recognized as safe (GRAS) for use in the processing of starch to make maltodextrins and nutritive carbohydrate sweeteners. This action is based on a petition requesting such affirmation.

DATES: Effective November 3, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR part 184, effective November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Vincent E. Zenger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3105.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of September 21, 1983 (48 FR 43096), FDA announced that a petition (GRASP 3G0284) had been filed by CPC International, Inc., International Plaza, Englewood Cliffs, NJ 07632, requesting that α-amylase enzyme from *B. stearothermophilus* used in the production of sweeteners from starch be affirmed as GRAS as a direct human food ingredient.

In a tentative final rule published in the **Federal Register** of December 5, 1994 (59 FR 62366), FDA announced its tentative decision to affirm as GRAS the use of this enzyme preparation to produce maltodextrins, as well as nutritive carbohydrate sweeteners from starch. The agency published a tentative final rule before proceeding to final action because the end products of the α-amylase hydrolysis of starch are maltodextrins, which are not sweet and are not used as sweeteners in food, as well as nutritive carbohydrate sweeteners. Maltodextrins may be used as a food ingredient or used as a raw material in the manufacture of nutritive carbohydrate sweeteners, for example, glucose syrups. Therefore, FDA found that the phrase "production of maltodextrins and nutritive carbohydrate sweeteners from starch" was a more accurate description of the petitioned use of the α-amylase enzyme preparation. FDA published the tentative final rule to afford interested persons the opportunity to comment on this change. FDA did not receive any comments in response to this tentative final rule. Therefore, the agency concludes that the tentative final rule should be issued as a final rule.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because no current activity is prohibited by this final rule, the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this final rule, total costs are also zero. Potential benefits include the wider use of this enzyme because of reduced uncertainty concerning its GRAS status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this enzyme for this use. Thus the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IV. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1012 is added to subpart B to read as follows:

§ 184.1012 α-Amylase enzyme preparation from Bacillus stearothermophilus.

(a) α-Amylase enzyme preparation is obtained from the culture filtrate that results from a pure culture fermentation of a nonpathogenic and nontoxicogenic strain of *Bacillus stearothermophilus*. Its characterizing enzyme activity is α-amylase (1,4 α-D glucan glucanohydrolase (E.C. 3.2.1.1)).

(b) The ingredient meets the general and additional requirements for enzyme preparations in the "Food Chemicals Codex," 3d ed. (1981), pp. 107–110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1110 Vermont Ave. NW., suite 1200, Washington, DC, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practices. The affirmation of this ingredient as GRAS as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme, as defined in § 170.3(o)(9) of this chapter, in the hydrolysis of edible starch to produce maltodextrins and nutritive carbohydrate sweeteners.

(2) The ingredient is used at levels not to exceed current good manufacturing practices.

Dated: October 19, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–27240 Filed 11–2–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter I and Parts 1, 7, 9, 14, 20 and 64

RIN 1024–AC37

General Provisions, Definitions: Change in Organizational Title From Regional Director to Field Director

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is amending the General Provisions Definition of "Regional Director" to reflect a new organizational structure. With the recent reorganization of the NPS eliminating existing geographic regions (effective May 15, 1995), the term Regional Director is no longer an agency job position. The duties and responsibilities of these positions have been assumed by Field Directors. This amendment to the definition will replace the term Regional Director with Field Director wherever it appears in 36 CFR parts 1–199, as well as eliminate all reference to the former geographic regions.

This change is necessary because the terms Region and Regional Director are no longer recognized in the NPS reorganizational structure. Certain responsibilities and delegations of authority associated with the former Regional Directors are now assumed by the positions identified by the term Field Director. Publication of this change is also a requirement of the Federal Register Act (44 U.S.C. Chapter 15).

EFFECTIVE DATE: This rule is effective November 3, 1995.

ADDRESSES: Comments should be addressed to: Dennis Burnett, National Park Service, Ranger Activities Division, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, at the above address. Telephone (202) 208–4874.

SUPPLEMENTARY INFORMATION:

Background

The National Park System of the United States comprises 368 areas covering over 80 million acres in 49 States, the District of Columbia, American Samoa, Guam, Puerto Rico, Saipan and the Virgin Islands. These areas of national significance justify special recognition and protection in accordance with various acts of Congress.

In an Act signed on August 25, 1916, Congress established in the Department of the Interior the National Park Service to provide cohesive administration of those federal parklands under the Department of the Interior's jurisdiction. This new agency assumed the responsibility for the management of 29 park units that had previously been designated by Congress. An Executive Order in 1933 transferred 63 national monuments and military sites from the Forest Service and the War Department to the NPS. With this rapid increase in the number of units entering the system, the NPS determined that an expanded management system was necessary to properly administer the parks.

In August of 1937, the NPS initiated the geographical concept of Regional Offices administered by Regional Directors by establishing four (4) Regional Offices: Region One in Richmond, VA; Region Two in Omaha, NE; Region Three in Santa Fe, NM; and Region Four in San Francisco. These four original regional offices provided assistance in the management and administration of the parks in their regions from 1937 until 1955 when Region Five was established in Philadelphia, PA. National Capital Parks became Region Six on January 22, 1962. Also in 1962, Region One was renamed Southeast Region and on January 9, 1972, the headquarters moved from Richmond to Atlanta, GA. A seventh regional office, Northwest Region, was added on December 30, 1969, in Seattle, WA. Region Eight, North Atlantic Region, was established on January 6, 1974, in Boston, MA. Region Nine, Rocky Mountain Region, was established on November 30, 1973, in Denver, CO. The tenth and final region,

Alaska Region, was added on December 2, 1980, in Anchorage, AK.

As a result of: (1) The NPS's own assessment of a need to change how it accomplished its essential work with increasing constraints; (2) the National Performance Review (NPR) which directed Federal agencies to cut red tape, put customers first, empower employees to get results and reduce layers in organizations; and (3) The Federal Workforce Restructuring Act of 1994 (P.L. 103–226), a government-wide workforce reduction, the NPS implemented a Servicewide restructuring of the organization. The reorganization effort drastically reduces central office staffs. The 10 NPS Regional Directors have been replaced by 7 Field Directors, who provide direction, oversight, budget formulation and assistance in media relations for the parks and support offices in their geographical field areas. With the change and revision of the regional concept, all national park units are now grouped into clusters to act collaboratively in sharing limited resources. A network of 16 system support offices provide services and support to the parks by cluster.

The President of the United States, through the Secretary of the Interior and the Director of the NPS allowed the Regional Directors of the ten Regional Offices certain delegated authorities in the management of the park units. 36 CFR Parts 1–199 contains many of these authorities. Because the term Regional Director is codified in the CFR, the definition of Regional Director must be replaced to reflect the new authorities now found in Field Directors as a result of the reorganization. Many of these authorities have the enforcement powers of law.

The NPS is adopting this final rule pursuant to the "agency organization" exception of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) from general notice and comment rulemaking. The NPS believes that this exception from rulemaking procedures is warranted because it is merely a change in agency organizational structure. The NPS finds that notice and comment are unnecessary and contrary to the public interest for this final rule.

The NPS has also determined, in accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), that the publishing of this final rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay would be contrary to the public interest and the interest of the agency. Therefore, under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this rulemaking is excepted from the 30-day delay in the effective date and shall therefore become effective on the date published in the **Federal Register**.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rule to the address noted at the beginning of this rulemaking.

Drafting Information. The primary author of this rule is Dennis Burnett of the Washington Office of Ranger Activities.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The economic effects of this rulemaking are negligible.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) conflict with adjacent ownership or land uses; or

(d) cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) and by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Reporting and recordkeeping requirements.

36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

36 CFR Part 9

Environmental protection, Mines, National parks, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way.

36 CFR Part 14

Electric power, Highways and roads, National parks, Public lands—rights-of-way.

36 CFR Part 20

Isle Royale National Park, Commercial fishing.

36 CFR Part 64

Grants and allocations for recreations and conservation use of abandoned railroad—rights-of-way.

In consideration of the foregoing, and under the authority at 18 U.S.C. 1 and 3, 36 CFR Chapter I is amended as follows:

1. 36 CFR Chapter I is amended by removing the term "Regional Director" and inserting the term "Field Director" in it place each time it appears.

PART 1—GENERAL PROVISIONS

2. The authority citation for part 1 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460 l-6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

3. Section 1.4 is amended in paragraph (a) by removing the definition of "Regional Director" and adding a new definition of "Field Director", in alphabetical order, to read as follows:

§ 1.4 Definitions.

* * * * *

(a) * * *

Field Director means the official in charge of a geographic area of the National Park Service.

* * * * *

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

4. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 80–137 (1981) and D.C. Code 40–721 (1981).

5. The Alphabetical listing of the national park units in part 7 is amended in the entry for § 7.96 by removing the words "Region Parks" and adding the word "Area" in its place.

§ 7.3 [Amended]

6. Section 7.3(b)(6) is amended by removing the words "Midwest Region," in the first sentence.

§ 7.16 [Amended]

7. Section 7.16(h)(5) is amended by removing the words "Region Four" in the first sentence, and;

8. Section 7.16(j)(4) is amended by removing the words "Western Region," in the second sentence.

§ 7.22 [Amended]

9. Section 7.22(c)(10) is amended by removing the words "Region Two" in the first sentence.

§ 7.63 [Amended]

10. Section 7.63(b)(10) is amended by removing the words "Region Two" in the first sentence.

§ 7.96 [Amended]

11. Section 7.96 is amended by changing the word "Region" in the section heading to "Area" and removing the word "parks", and;

12. Section 7.96(a) is amended by changing the word "Region" to "Area" in the first sentence, and;

13. Section 7.96(g)(1)(iii) is amended by changing the word "Region" to "Area" in the first sentence, and;

14. Section 7.96(g)(1)(viii) is amended by changing the word "Region" to "Area" in the first sentence, and;

15. Section 7.96(g)(1)(ix) is amended by changing the word "Region" to "Area" in the first sentence, and;

16. Section 7.96(g)(3) introductory text is amended by changing the word "Region" to "Area" in the first sentence, and;

17. Section 7.96(g)(5)(vi)(A) is amended by changing the word "Region" to "Area" in the first sentence, and;

18. Section 7.96(g)(5)(vi)(D) is amended by changing the word "Region" to "Area" and removing the word "areas" in the first sentence, and;

19. Section 7.96(g)(5)(xiv) is amended by changing the word "Region" to "Area" in the first sentence.

PART 9—MINERALS MANAGEMENT

20. The authority citation for part 9 continues to read as follows:

Authority: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 *et seq.*); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 et seq.); Act of September 28, 1976; 90 Stat. 1342 (16 U.S.C. 1901 *et seq.*).

§ 9.2 [Amended]

21. Section 9.2(l) is amended by changing the word "region" to "area" in the first sentence, and;

§ 9.31 [Amended]

22. Section 9.31(j) is amended by changing the word "region" to "area" in the first sentence, and;

§ 9.82 [Amended]

23. Section 9.82(d) is amended by changing the word "Regional" to "Area" in the first sentence.

PART 14—RIGHTS-OF-WAY

24. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 5, 79; 23 U.S.C. 317.

§ 14.2 [Amended]

25. Section 14.2 is amended by removing paragraph (c) and redesignating paragraphs (d) through (i) as paragraphs (c) through (h).

PART 20—ISLE ROYALE NATIONAL PARK; COMMERCIAL FISHING

26. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 1–3, 39 Stat. 535, as amended, sec. 3,58 Stat. 133, secs 1, 2, 67 Stat. 495; 16 U.S.C. 1, 1b, 1c 2, 3, 408(k).

§ 20.1 [Amended]

27. Section 20.1(c) is amended by replacing the words "Region Two" with the words "of the area" and adding the words "where the unit is located" after "National Park Service", in the first sentence.

PART 64—GRANTS AND ALLOCATIONS FOR RECREATION AND CONSERVATION USE OF ABANDONED RAILROAD RIGHTS-OF-WAY

28. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 809(B) (2) and (3), 90 Stat. 145, Pub. L. 94–210; Sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262).

§ 64.7 [Amended]

29. Section 64.7(c) is amended by removing the words "Bureau of Outdoor Recreation" in the first sentence.

Dated: September 12, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–27148 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH10

Determinations of Incompetency and Competency

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning determinations of mental incompetency to make clear that only rating boards are authorized to make determinations of incompetency for purposes of VA benefits and VA insurance.

EFFECTIVE DATE: This amendment is effective November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On May 4, 1995, VA published in the **Federal Register** (60 FR 22016) a proposed rule intended to clarify that rating agencies have sole authority to make determinations of competency and incompetency for purposes of insurance and payment of VA benefits. Interested parties were invited to submit written comments on or before July 3, 1995. We received no comments.

Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted as a final rule with nonsubstantive changes to paragraph (b)(1) of § 3.353. These changes clarify that VA determinations of competency or incompetency affect only VA benefits, i.e., insurance, discontinuance and payment of amounts withheld because of an estate in excess of $1,500, and disbursement of benefits. This will ensure that this paragraph would not be interpreted to concern such things as the ability of the veteran to provide informed consent for medical treatment, or the ability of VA physicians and other VA medical professionals to determine a patient's mental capacity in support of guardianship and conservatorship petitions in state courts.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will directly affect VA beneficiaries but

will not affect small businesses. Therefore, pursuant to 5 U.S.C. 606(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: October 26, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.353 is amended by revising paragraph (b) to read as follows:

§ 3.353 Determinations of incompetency and competency.

* * * * *

(b) *Authority.* (1) Rating agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance (38 U.S.C. 1922), the discontinuance and payment of amounts withheld because of an estate in excess of $1,500 (§ 3.557(b)), and, subject to § 13.56 of this chapter, disbursement of benefits. Such determinations are final and binding on field stations for these purposes.

(2) Where the beneficiary is rated incompetent the Adjudication Officer will inform the Veterans Services Officer of jurisdiction of that fact. The Veterans Services Officer will develop information as to the beneficiary's social, economic and industrial adjustment and appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter, select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in § 13.57 of this chapter. The Adjudication Officer will authorize disbursement of the benefit in the manner selected by the Veterans Services Officer.

(3) If in the course of fulfilling the responsibilities assigned in paragraph (b)(2) the Veterans Services Officer develops evidence indicating that the beneficiary may be capable of administering the funds payable without limitation, he or she will refer that evidence to the rating agency with a statement as to his or her findings. The rating agency will consider this evidence, together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect. Reexamination may be requested as provided in § 3.327(a) if necessary to properly evaluate the beneficiary's mental capacity to contract or manage his or her own affairs.

* * * * *

[FR Doc. 95–27278 Filed 11–2–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 66–1–7113; A–1–FRL–5323–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Pertaining to the RACT Approval for Panther Creek Partners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 8, 1995, EPA published approval of a State Implementation Plan (SIP) revision submitted by Pennsylvania (60 FR 46768). This revision would have approved requirements to establish reasonably available control technology (RACT) for Panther Creek Partners, located in Carbon County. The intended effect of the action was to approve nitrogen oxide (NO_X) RACT for this major NO_X source located in Pennsylvania. Because EPA received adverse comment, EPA is amending the September 8, 1995 final action, only as it pertains to Panther Creek Partners.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337.

SUPPLEMENTARY INFORMATION: EPA approved this direct final rule without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (60 FR 46768). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 46802). The final rulemaking action would be withdrawn by publishing a document announcing withdrawal of this action. In this action, EPA is not withdrawing the final rule; but amending the final rule as it pertains to Panther Creek.

Adverse comments pertaining to Panther Creek Partners were submitted to EPA within the prescribed comment period. Therefore, EPA is amending the September 8, 1995 final rulemaking action, only as it pertains to Panther Creek Partners. All other RACT approvals contained in the September 8, 1995 are approved as described in that document. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 23, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

§ 52.2020 [Amended]

2. In § 52.2020, paragraph (c)(102)(i)(B)(*8*) is removed and reserved.

[FR Doc. 95–27290 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[MT32–1–7117a, ND6–2–7081a, UT21–1–6915a, WY7–1–7042a; FRL–5303–1]

Clean Air Act Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes; Montana, North Dakota, South Dakota, Utah, and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving revisions to the prevention of significant deterioration (PSD) permitting regulations which were submitted as revisions to the State Implementation Plans (SIPs) for Montana, North Dakota, Utah, and Wyoming. The revisions were submitted mainly to address the replacement of the total suspended particulate (TSP) increments with increments for PM–10 (particulate matter 10 micrometers or less in diameter). Also, North Dakota and Wyoming submitted PSD program revisions to incorporate changes in the Federal PSD regulations for utility pollution control projects. All of the States except Montana made other minor revisions to their PSD programs. EPA is approving the SIP revisions because they are consistent with the corresponding Federal regulations. EPA is also removing the TSP area designation tables and revising and/or adding PM–10 area designation tables in 40 CFR part 81 for these States as well as for the State of South Dakota (which has been delegated authority to implement the Federal PSD regulations in 40 CFR 52.21). With the PM–10 increments becoming effective in these areas, the TSP area designations no longer serve any useful purpose relative to PSD.

DATES: This action is effective on January 2, 1996 unless adverse or critical comments are received by December 4, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the States' submittals and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Montana Air Quality Division, Department of Health and Environmental Sciences, 836 Front Street, P.O. Box 200901, Helena, Montana 59620–0901; North Dakota Division of Environmental Engineering, State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, North Dakota 58502–5520; Utah Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah, 84114–4820; Wyoming Air Quality Bureau, Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

In this document, EPA is acting on revisions to the PSD permitting programs for the States of Montana, North Dakota, Utah, and Wyoming. The revisions were generally made to address the following changes in the Federal PSD permitting requirements in 40 CFR 51.166:

A. The replacement of the TSP increments with increments for PM–10, which were promulgated by EPA on June 3, 1993 (58 FR 31622–31638); and

B. The promulgation of revisions to the Federal PSD permitting requirements regarding utility pollution control projects that States could voluntarily adopt into their PSD regulations, which were promulgated by EPA on July 21, 1992 (57 FR 32314–32339).

Specifically, the following submittals were made:

The Governor of Montana submitted revisions to the Administrative Rules of Montana (ARM), rules 16.8.945, 16.8.947, 16.8.953, and 16.8.960, on May 22, 1995 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

The Governor of North Dakota submitted revisions to Chapter 33–15–15 of the North Dakota Air Pollution Control Rules on April 29, 1994 to incorporate changes in the Federal PSD permitting regulations for utility pollution control projects and PM–10 increments. Also, the State incorporated the significance levels for the three municipal waste combustor pollutants, which EPA promulgated on February 11, 1991 (56 FR 5506). The April 1994 submittal also included other revisions to the North Dakota Air Pollution Control Rules, which EPA will act on separately.

The Governor of Utah submitted revisions to R307–1–1 and R307–1–3 of the Utah Air Conservation Regulations (UACR) on February 1, 1995 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments. The State also made some nonsubstantive changes to its PSD rules.

The Governor of Wyoming submitted revisions to Section 24 of the Wyoming Air Quality Standards and Regulations (WAQSR) on March 14, 1995 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments and utility pollution control projects. The State also revised the minor source baseline date definition relative to particulate matter, which was previously required by State rule to be triggered no later than January 1, 1996 if not triggered earlier by the first complete PSD permit application, so that it now will be triggered no later than January 1, 2001. The State's March 14, 1995 submittal also included two new sections to address EPA's general and transportation conformity requirements, which EPA will be acting on separately.

This document evaluates the States' submittals for conformity with the corresponding Federal regulations and the requirements of the Act. In addition, this document provides justification regarding the removal of the TSP designation tables in 40 CFR part 81 for Montana, North Dakota, Utah, and Wyoming, as well as for the State of South Dakota which has been delegated authority to implement the Federal PSD permitting regulations in 40 CFR 52.21.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

Public hearings to entertain public comment on the initial PSD SIP revisions were held by Montana on September 16 and November 9, 1994; by North Dakota on September 28, 1993; by Utah on August 30, 1994; and by Wyoming on December 15, 1994. After these respective public hearings, the rule revisions were adopted by each State. The rule revisions were formally

submitted to EPA for approval on May 22, 1995 from Montana, April 29, 1994 from North Dakota, February 1, 1995 from Utah, and March 14, 1995 from Wyoming. Each SIP revision was reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and letters dated June 26, 1995, June 22, 1994, March 22, 1995, and May 26, 1995 were forwarded, respectively, to Montana, North Dakota, Utah, and Wyoming indicating the completeness of each submittal and the next steps to be taken in the processing of each SIP submittal.

2. Evaluation of States' Submittals

a. PM–10 Increment Revisions. As discussed above, EPA promulgated increments for PM–10 on June 3, 1993 (see 58 FR 31622–31638). EPA promulgated revisions to the Federal PSD permitting regulations in 40 CFR 52.21, as well as the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166. EPA or its delegated State programs were required to begin implementation of the increments by June 3, 1994, while the implementation date for States with SIP-approved PSD permitting programs (including Montana, North Dakota, Utah, and Wyoming) will be the date on which EPA approves each revised State PSD program containing the PM–10 increments. In accordance with 40 CFR 51.166(a)(6)(i), each State with SIP-approved PSD programs was required to adopt the PM–10 increment requirements within nine months of the effective date (or by March 3, 1995). For further background regarding the PM–10 increments, see the June 3, 1993 **Federal Register** document.

(1) Montana's Submittal. In order to address the PM–10 increments, the State of Montana revised the following sections of its PSD permitting regulations in the Administrative Rules of Montana (ARM): 16.8.945(3)(c), 16.8.945(21)(d), 16.8.945(24)(d), 16.8.947(1), 16.8.953(7)(a)(iii), and 16.8.960(4). EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993. Note that the State elected not to adopt 40 CFR 51.166(i)(12), which provides an exemption from addressing the new PM–10 increments for sources who have submitted a PSD permit application which the State has determined to be complete before the PM–10 increments take effect. Montana's rules do not contain this grandfathering clause, which is acceptable.

(2) North Dakota's Submittal. In order to address the PM–10 increments, the State of North Dakota revised the following sections of its PSD permitting regulations in Chapter 33–15–15–01 of the North Dakota Air Pollution Control Rules: Sections 1.c., 1.e.(4), 1.aa.(2)(c), 2.b., 4.d.(3)(a), and 4.j.(4)(b). EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993. Note that the State elected not to adopt 40 CFR 51.166(i)(12), which provides an exemption from addressing the new PM–10 increments for sources who have submitted a PSD permit application which the State has determined to be complete before the PM–10 increments take effect. North Dakota's rules did not include this grandfathering clause, which is acceptable.

(3) Utah's Submittal. In order to address the PM–10 increments, the State of Utah revised the following sections of its PSD permitting regulations: the definition of "net emissions increase" in UACR R307–1–1 and Sections 3.6.3.A., 3.6.3.B., 3.6.3.D.(2) and (3), 3.6.4.C.(2), 3.6.4.D., 3.6.5.E.(2), and 3.6.5.F.(2) in UACR R307–1–3. EPA has reviewed these revisions and has found that the revisions adequately address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993.

(4) Wyoming's Submittal. In order to address the PM–10 increments, the State of Wyoming revised the following sections of its PSD permitting rules in Section 24 of the State's regulations: Subsections (a)(ix)(B)(III), (a)(xii)(D), (a)(xv)(B), (b)(i)(A)(I), (b)(i)(E)(VI)(1)(k), (b)(viii), and (b)(xii)(I). EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993. Note that the State elected not to adopt the provision of 40 CFR 51.166(b)(14)(iv) which allows a State to rescind a minor source baseline date if it can be shown that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM–10 emissions. The State is thus being more stringent than the Federal regulations regarding this issue, which is acceptable.

EPA consequently finds that the revised PSD regulations for Montana, North Dakota, Utah, and Wyoming adequately address all of the required revisions of the June 3, 1993 **Federal Register** document for PM–10 increments. For further details, see the Technical Support Document (TSD) accompanying this action.

b. TSP Area Deletions. Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, the EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as "section 107 areas"), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments).

EPA revised the primary and secondary NAAQS for particular matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM–10 indicator. However, EPA did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM–10 promulgated at that time.[1] States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM–10 increments replaced the TSP increments. With the State adoption and implementation of the PM–10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM–10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, i.e., "PSD areas," and to provide the geographic

[1] The EPA did not promulgate new PM–10 increments simultaneously with the promulgation of the PM–10 NAAQS. Under section 166(b) of the Act, EPA is authorized to promulgate new increments "not more than 2 years after the date of promulgation of * * * standards." Consequently, EPA temporarily retained the TSP increments, as well as the section 107 areas for TSP.

link necessary for implementation of the PM–10 increments.[2]

Thus, in the June 3, 1993 **Federal Register** document in which EPA promulgated the PM–10 increments, EPA stated that, for States with SIP-approved PSD programs, EPA would delete the TSP area designations at the same time EPA approves the revision to a State's plan incorporating the PM–10 increments. For delegated PSD programs or in States where EPA administers the PSD program, the TSP area designations were to be deleted after the PM–10 increments became effective in those States (i.e., June 3, 1994). In deleting any State's TSP area designations, EPA must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM–10 NAAQS.

(1) Montana's TSP Areas. Montana has four areas listed in 40 CFR part 81 as nonattainment for the TSP standards but which are not designated nonattainment for PM–10: the Colstrip area, the Billings area, the Great Falls area, and the East Helena area were all designated nonattainment for the secondary TSP standard. EPA has reviewed the existing approved particulate matter control strategies for these areas and has determined that the deletion of the TSP nonattainment status for these areas will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP designations for these areas. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for these areas, it must submit a SIP revision to EPA for approval that must meet all applicable requirements of the Act. EPA will retain for PM–10 these four section 107 areas listed in the current TSP table for Montana, consistent with the June 3, 1993 **Federal Register** document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 51.166.

Montana has three areas in the State designated nonattainment for TSP which are also included in nonattainment designations for PM–10: the City of Missoula and the Missoula area (the City is designated nonattainment for the primary TSP standard and the Missoula area is designated nonattainment for the secondary TSP standard), the Butte area, and the City of Columbia Falls. The State has adopted PM–10 SIPs for all of these areas, and these plans have all been approved by EPA. (See 59 FR 2537–2540, January 18, 1994, for Missoula; 59 FR 11550–11554, March 11, 1994, for Butte; and 59 FR 17700–17703, April 14, 1994, for Columbia Falls.) Thus, EPA believes it is appropriate at this time to delete the TSP area designations for these areas. However, there are some discrepancies in the boundaries between the TSP nonattainment designations and the PM–10 nonattainment designations for the areas of Missoula and Butte. Specifically, the PM–10 nonattainment boundaries for the Missoula and Butte areas do not encompass the TSP nonattainment boundaries for those same areas. Thus, the area in between the TSP nonattainment boundary and the PM–10 nonattainment boundaries for these areas could be considered separate section 107 areas for PM–10. However, after discussing this issue with the State, it has been mutually agreed upon that these "in-between" areas would be incorporated into the "rest of State" section 107 designation.

As stated above, the State has adopted adequate provisions in its PSD program for the implementation of the PM–10 increments. Therefore, EPA is deleting the State's existing TSP designation table in 40 CFR 81.327.

(2) North Dakota's TSP Areas. As stated above, North Dakota has adopted and submitted adequate PSD revisions for PM–10 increments. In addition, North Dakota had no TSP areas designated as nonattainment. Thus, deletion of the TSP area designations will not result in relaxation of any TSP controls that would impact the PM–10 NAAQS. Since North Dakota also has no PM–10 nonattainment areas designated in the State, there is no PM–10 designation table currently in 40 CFR part 81 for North Dakota. Therefore, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table in 40 CFR 81.335. EPA will retain for PM–10 the two section 107 areas listed in the current TSP table for North Dakota, consistent with the June 3, 1993 **Federal Register** document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 51.166.

(3) Utah's TSP Areas. As stated above, Utah has adopted and submitted adequate PSD revisions for PM–10 increments. In addition, Utah has in place EPA-approved PM–10 SIPs for the two areas in the State which were previously designated nonattainment for TSP and which are currently designated nonattainment for PM–10: Salt Lake County and Davis County. See the July 8, 1994 **Federal Register** document for further details on EPA's approval of the PM–10 SIPs for those areas (59 FR 35036). Since the State has adopted, and EPA has approved, PM–10 SIPs for the State's two areas that were designated nonattainment for TSP, EPA believes it is appropriate at this time to delete the TSP area designations. Therefore, EPA is deleting the State's existing TSP designation table in 40 CFR 81.345.

(4) Wyoming's TSP Areas. As stated above, Wyoming has adopted and submitted adequate PSD revisions for PM–10 increments. Wyoming has one area listed in 40 CFR part 81 as nonattainment for the TSP secondary standards: the Trona Industrial Area. However, this area was not subsequently designated nonattainment for PM–10. EPA has reviewed the existing approved particulate matter control strategy for the Trona Industrial Area and has determined that the deletion of the TSP nonattainment status for that area will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP area designations for Wyoming. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for the Trona Industrial Area, it must submit a SIP revision to EPA meeting all applicable requirements of the Act.

As discussed further in the TSD, EPA established at the State's request three new separate areas under section 107 of the Act for particulate matter on January 14, 1993 (see 58 FR 4348), and a fourth area was designated under section 107 of the Act on September 12, 1995. Since the June 3, 1993 **Federal Register** document requires retention of the TSP baseline areas for PM–10 (unless revised by the State in accordance with 40 CFR 51.166), EPA will incorporate those areas, as well as the Trona Industrial area, into the existing table for Wyoming PM–10 area designations in 40 CFR 81.351.

(5) South Dakota's TSP Areas. The State of South Dakota was delegated authority to implement and enforce the Federal PSD permitting regulations in 40 CFR 52.21 on July 6, 1994 (see 59 FR 47260, September 15, 1994). As

[2] It should be noted that 40 CFR part 81 does not presently list all section 107 areas for PM–10. Only those areas designated "nonattainment" appear in the State listings. This is because under the listings published by EPA in the **Federal Register** on November 6, 1991, EPA's primary objective was to identify nonattainment areas designated as such by operation of law upon enactment of the 1990 Amendments. For States having no PM–10 nonattainment areas designated by operation of law, EPA did not include a new PM–10 listing. Nevertheless, section 107(d)(4)(B)(iii) mandates that all areas not designated nonattainment for PM–10 by operation of law, are designated unclassifiable. The PM–10 increments apply in any area designated unclassifiable for PM–10.

discussed above, the PM–10 increments were thus effective in South Dakota on June 3, 1994. Therefore, it is appropriate at this time for EPA to delete the TSP area designations in 40 CFR part 81 for South Dakota. South Dakota has one area listed in 40 CFR part 81 as nonattainment for the TSP primary standard: the Rapid City Area. However, this area was not subsequently designated nonattainment for PM–10. EPA has reviewed the existing approved particulate matter control strategy for the Rapid City Area and has determined that the deletion of the TSP nonattainment status for that area will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP area designations for South Dakota. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for the Rapid City Area, it must submit a SIP revision to EPA meeting all applicable requirements of the Act.

Since South Dakota also has no PM–10 nonattainment areas designated in the State, there is no PM–10 designation table currently in 40 CFR part 81 for South Dakota. Therefore, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table in 40 CFR 81.342. EPA will retain for PM–10 the two section 107 areas listed in the current TSP table for South Dakota, consistent with the June 3, 1993 **Federal Register** document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 52.21.

c. Utility Pollution Control Projects. On July 21, 1992, EPA promulgated revisions to Federal PSD and nonattainment new source review (NSR) permitting requirements, as well as to the Federal new source performance standard (NSPS) requirements in 40 CFR part 60, regarding utility pollution control projects (57 FR 32314–32339). Specifically, EPA made changes to the definition of "major modification" in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement, or use at existing utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to a less polluted fuel where the primary purpose of the switch will be the reduction of air pollutants) will or will not subject the source to preconstruction review. Refer to the July 21, 1992 **Federal Register** document for further information. States were not required to adopt revisions to implement these changes regarding utility pollution control projects, although these changes are in effect in areas where the Federal PSD permitting regulations apply. Both North Dakota and Wyoming opted to adopt revisions to their PSD programs implementing the July 21, 1992 **Federal Register** document.

(1) North Dakota's Submittal. In order to address the new provisions for utility pollution control projects, the State revised the following sections of its PSD permitting regulations in Chapter 33–15–15–01 of the North Dakota Air Pollution Control Rules: Sections 1.a.(3) and (4), 1.h., 1.i., 1.m., 1.x.(2)(h)–(k), 1.bb., 1.dd., 1.ee., and 1.ff. EPA has reviewed these revisions and has found that the revisions address all of the regulatory revisions for utility pollution control projects promulgated by EPA on July 21, 1992. However, there are two definitions in which the State used the term "administrator of EPA" when, in fact, EPA's PSD regulations allow the State to have authority for those decisions. Therefore, EPA is delegating the State authority for the following decisions:

(a) In the definition of "major modification" in 33–15–15–01.1.x.(2)(h)(1) and (2), the State will have authority (rather than EPA as stated in North Dakota's rule) to determine whether the addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit can be excluded from being considered a physical change or change in the method of operation; and

(b) In the definition of "repowering" in 33–15–15–01.1.ff.(2), the State will be the authority (rather than EPA as stated in the State's rule) to give expedited consideration to permit applications for any source that satisfies the "repowering" requirements and is granted an extension under section 409 of the Act.

(2) Wyoming's Submittal. In order to address the new provisions for utility pollution control projects, the State revised the following sections of its PSD permitting regulations in Section 24 of the State's rules: Subsections (a)(x)(H)–(K), (a)(xix) (D) and (E), (a)(xxviii), (a)(xxix), (a)(xxx), (a)(xxxi), (a)(xxxii), (a)(xxxiii), (a)(xxxiv), and (a)(xxxv). EPA has reviewed these revisions and has found that the revisions adequately address all of the regulatory revisions for utility pollution control projects promulgated by EPA on July 21, 1992.

Consequently, EPA is approving the PSD revisions regarding utility pollution control projects submitted by North Dakota and Wyoming.

d. Other PSD SIP Revisions. (1) North Dakota's Submittal. In order to address the PSD provisions for municipal waste combustors promulgated by EPA on February 11, 1991 (see 56 FR 5506), the State of North Dakota revised the definition of "significant" in Section 33–15–15–01.1.hh. of the State's rules. EPA has reviewed the revision and has found it consistent with the municipal waste combustor pollutant significance levels in 40 CFR 51.166(b)(23). Therefore, EPA is approving this revision.

(2) Utah's Submittal. The State of Utah also made minor administrative revisions in its PSD program to the definitions of "baseline date," "baseline area," and "significant" in UACR R307–1–1 and Sections 3.6.2.B., 3.6.2.D., 3.6.2.E., 3.6.4.A.(1), 3.6.4.C.(1) and (2), 3.6.5.A., 3.6.5.B.(1)(a), 3.6.5.C., 3.6.5.D., 3.6.5.E.(1), 3.6.5.F.(1), and 3.6.6 of UACR R307–1–3. EPA has reviewed these minor changes and finds the changes approvable.

(3) Wyoming's Submittal. In Wyoming's March 14, 1995 SIP submittal, the State revised the definition of "minor source baseline date" so that it will be triggered no later than January 1, 2001. The State had previously set the minor source baseline date to be triggered no later than January 1, 1996. In any case, the State is not required by EPA to set a mandatory minor source baseline date. The State is only required to have the minor source baseline date be triggered by the first complete PSD permit application for a major stationary source or major modification locating in or significantly impacting an attainment/unclassifiable area designated under section 107 of the Act, and the State's definition of "minor source baseline date" meets that requirement. Thus, since the State definition is more stringent than the Federal definition, it is approvable.

III. Final Action

Based on the review and justification provided in this document, EPA is approving the SIP revisions regarding PSD permitting submitted by the States of Montana, North Dakota, Utah, and Wyoming on May 22, 1995, April 29, 1994, February 1, 1995, and March 14, 1995, respectively.

In addition, EPA is deleting the TSP area designation tables and/or revising the PM–10 area designation tables in 40 CFR part 81 as follows:

A. For Montana, EPA is deleting the TSP area designation table and is adding the Colstrip area, the Billings area, the Great Falls area, and the East Helena area to the existing PM–10 area designation table as unclassifiable for PM–10 in 40 CFR 81.327.[3] In addition, EPA is incorporating the area in between the TSP nonattainment boundary and the PM–10 nonattainment boundary for the Missoula and Butte areas into the "rest of State" section 107 designation.

B. For North Dakota, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table listing the "Metropolitan Fargo-Moorhead (Minn.), AQCR 130" area and the "Rest of State, AQCR 172" area as unclassifiable for PM–10 in 40 CFR 81.335.[4]

C. For Utah, EPA is deleting the TSP area designation table in 40 CFR 81.345.

D. For Wyoming, EPA is deleting the TSP area designation table and is adding the "Powder River Basin" area, the "Pacific Power and Light" area, the "Hampshire Energy" area, the "Kennecott/Puron PSD Baseline Area," and the "Trona Industrial" area to the existing PM–10 area designation table as unclassifiable for PM–10 in 40 CFR 81.351.[5]

E. For South Dakota, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table listing the "Rapid City" area and the "Rest of State" area as unclassifiable for PM–10 in 40 CFR 81.342.[6]

In all of these State's PM–10 area designation tables, EPA is clarifying that the "Rest of State" areas denote a single area designation for PSD baseline area purposes. In addition, EPA is revising the headings of all of the PM–10 area designation tables in 40 CFR part 81 to read as follows: "[Name of State]—PM–10."

EPA is pu shing this action without prior proposa because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective January 2, 1996 unless, by December 4, 1995, adverse or critical comments are received.

[3] EPA is designating the PM–10 areas as unclassifiable, rather than attainment, at this time to be consistent with section 107(d)(4)(B) of the Act which stated that any area which was not initially designated as nonattainment for PM–10 shall be designated unclassifiable. EPA will consider redesignating these areas to "attainment" status at a later date. Both "unclassifiable" and "attainment" areas have the same status for PSD purposes.

[4] See footnote number 4.

[5] See footnote number 4.

[6] See footnote number 4.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 2, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 19, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1320 is amended by adding paragraph (c)(42) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(42) On May 22, 1995, the Governor of Montana submitted revisions to the prevention of significant deterioration regulations in the Administrative Rules of Montana to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

(i) Incorporation by reference.

(A) Revisions to Administrative Rules of Montana (ARM), rules 16.8.945(3)(c), 16.8.945(21)(d), 16.8.945(24)(d), 16.8.947(1), 16.8.953(7)(a), and 16.8.960(4), effective 10/28/94.

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Subpart JJ—North Dakota

3. Section 52.1820 is amended by adding paragraph (c)(27) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(27) On April 29, 1994, the Governor of North Dakota submitted revisions to the prevention of significant deterioration regulations in chapter 33–15–15 of the North Dakota Air Pollution Control Rules to incorporate changes in the Federal PSD permitting regulations for utility pollution control projects, PM–10 increments, and municipal waste combustors.

(i) Incorporation by reference.

(A) Revisions to Chapter 33–15–15 of the North Dakota Air Pollution Control Rules, Section 33–15–15–01, Subsections 1.a.(3) and (4), 1.c, 1.e.(4), 1.h, 1.i, 1.m, 1.x.(2)(h)–(k), 1.aa.(2)(c), 1.bb, 1.dd, 1.ee, 1.ff, 1.hh, 2.b, 4.d.(3)(a), and 4.j.(4)(b), effective 3/1/94.

Subpart TT—Utah

4. Section 52.2320 is amended by adding paragraph (c)(31) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(31) On February 1, 1995, the Governor of Utah submitted revisions to the prevention of significant deterioration permitting regulations in R307–1–1 and R307–1–3 of the Utah Air Conservation Regulations to incorporate changes in the Federal PSD permitting regulations for PM–10 increments and to make other minor, administrative changes.

(i) Incorporation by reference.

(A) Revisions to the Utah Air Conservation Regulations, R307–1–1, the definitions of "baseline area," "baseline date," "net emissions increase," and "significant," effective 9/22/94, printed 10/24/94.

(B) Revisions to the Utah Air Conservation Regulations, R307–1–3, Sections 3.6.2.B, 3.6.2.D, 3.6.2.E, 3.6.3.A, 3.6.3.B, 3.6.3.D.(2) and (3), 3.6.4.A.(1), 3.6.4.C, 3.6.4.D, 3.6.5.A, 3.6.5.B.(1)(a), 3.6.5.C, 3.6.5.D, 3.6.5.E, 3.6.5.F, and 3.6.6, effective 10/1/94, printed 10/24/94.

Subpart ZZ—Wyoming

5. Section 52.2620 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(26) On March 14, 1995, the Governor of Wyoming submitted revisions to the prevention of significant deterioration permitting regulations in Section 24 of the Wyoming Air Quality Standards to incorporate changes in the Federal PSD permitting regulations for utility pollution control projects, PM–10 increments, and to make other minor changes.

(i) Incorporation by reference.

(A) Revisions to Section 24 of the Wyoming Air Quality Standards, subsections (a)(ix)(B), (a)(x)(H)–(K), (a)(xii)(D), (a)(xv), (a)(xix)(D) and (E), (a)(xxviii)–(xxxv), (b)(i)(A)(I), (b)(i)(E)(VI)(1), (b)(viii), and (b)(xii)(I), effective 2/13/95.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§§ 81.302, 81.303, 81.305, 81.306, 81.307, 81.313, 81.314, 81.315, 81.320, 81.323, 81.327, 81.329, 81.332, 81.336, 81.338, 81.339, 81.344, 81.345, 81.348, 81.349, 81.351 and 81.355 [Amended]

2. In each of the following sections, in the heading of the table for PM–10 nonattainment areas, the words "Nonattainment Areas" are removed: §§ 81.302, 81.303, 81.305, 81.306, 81.307, 81.313, 81.314, 81.315, 81.320, 81.323, 81.327, 81.329, 81.332, 81.336, 81.338, 81.339, 81.344, 81.345, 81.348, 81.349, 81.351 and 81.355.

§§ 81. 327, 81. 335, 81.342, 81.345 and 81.351 [Amended]

3. Sections 81.327, 81.335, 81.342, 81.345, and 81.351 are further amended as follows:

3–1. By removing the table in each section for TSP;

3–2. In §§ 81.327, 81.345, and 81.351 by revising the newly renamed table for PM–10 to read as set forth below;

3–3. In §§ 81.335 and 81.342 by adding a new table for PM–10 to read as set forth below.

§ 81.327 Montana.

* * * * *

MONTANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Cascade County, Great Falls area	11/15/90	Unclassifiable		
Flathead County:				

MONTANA—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
The area bounded by lines from Universal Transmercator (UTM) coordinate 700000mE, 5347000mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5338000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN.	11/15/90	Nonattainment	11/15/90	Moderate.
Columbia Falls and vicinity	11/15/90	Nonattainment	11/15/90	Moderate.
Township T30N, R20W—Sections 7, 8, 9, 16, 17, and 18				
The City of Whitefish and surrounding vicinity bounded by lines from Universal Transmercator (UTM) coordinates 695000 mE, 5370000 mN, east to 699000 mE, 5370000 mN, south to 699000 mE, 5361000 mN, west to 695000 mN, 5361000 mN, and north to 695000 mE, 5370000 mN.	11/18/93	Nonattainment	11/18/93	Moderate.
Lake County, Ronan, Polson	11/15/90	Nonattainment	11/15/90	Moderate.
Lincoln County, Libby and vicinity	11/15/90	Nonattainment	11/15/90	Moderate.
T30N, R31W—Sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 23, 26, 35, and west ½ of Section 24, west ½ of Section 25, and west ½ of Section 36; plus T31N, R31W—Sections 26, 27, 29, 32, 33, 34, 35 and the east ½ of Section 30.				
Lewis and Clark County, East Helena area	11/15/90	Unclassifiable		
Missoula County, Missoula and vicinity including the following sections:	11/15/90	Nonattainment	11/15/90	Moderate.
T13N, R19W—2, 8, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, and 34; T12N, R19W—Sections 4, 5, 6, 7; T13N, R20W—Sections 23, 24, 25, 26, 35, and 36.				
Rosebud County:				
Lame Deer	11/15/90	Nonattainment	11/15/90	Moderate.
Colstrip area	11/15/90	Unclassifiable		
Sanders County (part)	1/20/94	Nonattainment	1/20/94	Moderate.
Thompson Falls and vicinity: Including the following Sections: R29W, T21N—Sections 5, 6, 7, 8, 9, 10, 15, and 16.				
Silver Bow County, Butte	11/15/90	Nonattainment	11/15/90	Moderate.
The following area of Butte-Silver Bow excluding the territorial limits of the City of Walkerville: Beginning at the Northwest corner of Section 2, T.3N., R.8W., thence Easterly to Northeast corner Section 5, T.3N., R.7W.; then Southerly to Northwest corner Section 9, T.3N., R.7W.; thence Easterly to Northeast corner Section 10, T.3N., R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R 8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence Northerly to the point of beginning.				
Yellowstone County, Billings area	11/15/90	Unclassifiable		
Rest of State[1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for PSD baseline area purposes.

* * * * *

§ 81.335 North Dakota.

* * * * *

NORTH DAKOTA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Metropolitan Fargo-Moorhead (Minn.), AQCR 130	11/15/90	Unclassifiable		
Rest of State, AQCR 172[1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for PSD baseline area purposes.

* * * * *

§ 81.342 South Dakota.

SOUTH DAKOTA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Rapid City Area	11/15/90	Unclassifiable		
Rest of State [1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for PSD baseline area purposes.

§ 81.345 Utah.

UTAH—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Salt Lake County	11/15/90	Nonattainment	11/15/90	Moderate.
Utah County	11/15/90	Nonattainment	11/15/90	Moderate.
Ogden Area Weber County (part) City of Ogden	9/26/95	Nonattainment	9/26/95	Moderate.
Rest of State [1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for PSD baseline area purposes.

§ 81.351 Wyoming.

WYOMING—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Sheridan County:				
City of Sheridan	11/15/90	Nonattainment	11/15/90	Moderate.
Trona Industrial Area	11/15/90	Unclassifiable		
Campbell County (part)				
Converse County (part), That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the areas defined as the Pacific Power and Light attainment area and the Hampshire Energy attainment area.—Powder River Basin.	11/15/90	Unclassifiable		
Campbell County (part), That area bounded by NW1/4 of Section 27, T50N, R71W, Campbell County, Wyoming.—Pacific Power and Light Area.	11/15/90	Unclassifiable		
Campbell County (part), That area bounded by Section 6 excluding the SW¼; E½ Section 7; Section 17 excluding the SW¼; Section 14 excluding the SE¼; Sections 2, 3, 4, 5, 8, 9, 10, 11, 15, 16 of T48N, R70W and Section 26 excluding the NE¼; SW¼ Section 23; Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 of T49N, R70W.—Hampshire Energy Area.	11/15/90	Unclassifiable		
Campbell County (part), That area described by the W½SW¼ Section 18, W½NW¼, NW¼SW¼ Section 19, T47N, R70W, S½ Section 13, N½, N½SW¼, N½SE¼ Section 24, T47N, R71W.—Kennecott/Puron PSD Baseline Area.	11/15/90	Unclassifiable		
Rest of State [1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for baseline area purposes.

[FR Doc. 95–27062 Filed 11–2–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 414–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, adopted October 6, 1995, and released October 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2–3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 257C3 and adding Channel 257C2 at Central Valley.

4. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 296A and adding Channel 296C at Caldwell.

5. Section73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 240C2 and adding Channel 240C3 at Estherville and by removing Channel 255A and adding Channel 255C3 at Jefferson.

6. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 269C2 and adding Channel 269A at Emporia and by removing Channel 240C2 and adding Channel 240C3 at Winfield.

7. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 291A and adding Channel 291C3 at Tawas City.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 237C and adding Channel 237C1 at Grand Marais.

9. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 224A and adding Channel 225C3 at Malden.

10. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 296C and adding Channel 296C2 at Armijo.

11. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 246C1 and adding Channel 246C2 at Hatteras.

12. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 300A and adding Channel 300C3 at Altus.

13. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 228C3 and adding Channel 228C2 at Lakeview.

14. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 256C1 and adding Channel 256A at Huron.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27261 Filed 11–2–95; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

48 CFR Parts 1215, 1252 and 1253

[Docket OST–95–776]

RIN 2105–AC–32

Revision of Department of Transportation Acquisition Regulation

AGENCY: Transportation.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department is revising the Transportation Acquisition Regulation (TAR) to make minor editorial or administrative corrections including changes to the TAR Matrix to adhere to the Federal Acquisition Regulation (FAR) guidance for incorporating provisions and clauses in solicitations and contracts by reference to the maximum practical extent.

DATES: This rule is effective November 3, 1995. Written and signed comments must be received on or before December 4, 1995.

ADDRESSES: Interested parties should submit written comments, preferably in triplicate, to Docket Clerk, Docket No. OST–95–776, Department of Transportation, 400 Seventh Street, S.W., Room 4107, Washington, D.C., 20590. Please cite TAR administrative revisions in all correspondence concerning this rule.

FOR FURTHER INFORMATION CONTACT: Elaine Wheeler, Office of Acquisition and Grant Management, M–61, 400 Seventh Street, S.W., Washington, D.C., 20590: (202) 366–4272.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation (DOT) 1994 edition of the TAR was effective on October 1, 1994. Use of this document has indicated that some editorial corrections and administrative changes are necessary including a change to the TAR Matrix to reflect the FAR guidance to incorporate provisions and clauses by reference to the maximum practical extent.

B. Regulatory Flexibility Act

This interim final rule will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged and only editorial corrections or administrative changes are being made.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the TAR do not impose additional

recordkeeping or information collection requirements, or additional collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

D. Justification To Issue Interim Final Rule

As stated above, this rule essentially adopts current FAR guidance and provides editorial and administrative changes. Therefore, a notice of proposed rulemaking would not result in comments that could have a significant impact on the content of the rule. Such an effort would be impractical, unnecessary, and contrary to the public interest.

List of Subjects in 48 CFR Parts 1215, 1252 and 1253

Government procurement.

This Interim Final Rule is issued under delegated authority under 49 CFR part 1.59(q). This authority has been redelegated to the Senior Procurement Executive.

Issued this 26th day of October 1995, at Washington, D.C.

David J. Litman,

Senior Procurement Executive.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR chapter 12 is amended as set forth below:

1. The authority citation for 48 CFR chapter 12 Parts 1215, 1252, and 1253 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); and 48 CFR 3.1.

PART 1215—CONTRACTING BY NEGOTIATION

2. and 3. Section 1215.413–2 is amended by revising paragraph (f) to read as follows:

1215.413–2 Alternate II.

* * * * *

(f) Proposals may be released outside of the Government if it is necessary to receive competent technical and/or management evaluation as long as the requirements of (FAR) 48 CFR 15.413–2(f) are met.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1252.217–81 is amended by revising paragraph (b) of the clause to read as follows:

1252.217–81 Guarantee.

* * * * *

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

* * * * *

PART 1253—FORMS

5. In the appendix to subpart 12533, the TAR Matrix is revised to read as follows:

Appendix to Subpart 1253.3

* * * * *

TAR MATRIX

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.209–70 Disclosure of Conflicts of Interest.	1209.507	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210–70 Brand Name or Equal.	1210.011	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210–71 Index for Specifications.	1210.011	C	Yes	I	A	A	A				A	A			A		A	A			A	
1252.215–70 Key Personnel and/or Facilities.	1215.106	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.216–70 Evaluation of Offers Subject to an Economic Price Adjustment Clause.	1216.203–470	P	Yes	M	A		A		A		A		A	A	A	A	A	A	A	A		A
1252.216–71 Determination of Award Fee.	1216.405(a)	C	No	I			A		A		A		A	A	A	A			A	A		
1252.216–72 Performance Evaluation Plan.	1216.405(b)	C	No	I			A		A		A		A	A	A	A			A	A		
1252.216–73 Distribution of Award Fee.	1216.405(c)	C	Yes	I			A		A		A		A	A	A	A			A	A		
1252.216–74 Settlement of Letter Contract.	1216.603–4	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.217–71 Delivery and Shifting of Vessel.	1217.7000(b) and (c).	C	Yes	I					A													
1252.217–72 Performance.	1217.7000(b) and (c).	C	Yes	I					A													
1252.217–73 Inspection and Manner of Doing Work.	1217.7000(b) and (c).	C	Yes	I					A													
1252.217–74 Subcontracts.	1217.7000 (b) and (c).	C	Yes	I					A													
12542.217–75 Lay Days.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–76 Liability and Insurance.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–77 Title.	1217.7000 (b) and (c).	C	Yes	I					A													

TAR MATRIX—Continued

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.217–78 Discharge of Liens.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–79 Delays.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–80 Department of Labor Safety and Health Regulations for Ship Repair.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–81 Guarantee.	1217.7000(d)	C	Yes	I					A													
1252.219–70 Small Business and Small Disadvantaged Business Subcontracting Report.	1219.708–70	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.222–70 Strikes or Picketing Affecting Timely Completion of the Contract Work.	1222.101–71(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.222–71 Strikes or Picketing Affecting Access to a DOT Facility.	1222.101–71(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223–70 Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits.	1223.303	C	No	K					A	A	A	A	A				A		A		A	
1252.223–71 Accident and Fire Reporting.	1223.7000(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223–72 Protection of Human Subjects.	1223.7000(b)	C	Yes	I	A	A	A	A	A	A			A						A		A	
1252.226–70 Loss of or Damage to Leased Aircraft.	1228.306–70 (a) and (b).	C	Yes	I					A	A			A								A	
1252.226–71 Fair Market Value of Aircraft.	1228.306–70 (a) and (c).	C	No	I					A	A			A								A	
1252.228–72 Risk and Indemnities.	128.306–70 (a) and (d).	C	Yes	I					A	A			A								A	
1252.231–70 Date of Incurrence of Costs.	1231.205–32	C	No	I			A		A		A											
1252.236–70 Special Precautions for Work at Operating Airports.	1236.570	C	Yes	I								A	A	A			A	A	A		A	A
1252.237–70 Qualifications of Employees.	1237.110	C	Yes	I					A	A					A						A	
1252.242–70 Dissemination of Information—Education Institutions.	1242.203–70(a)	C	Yes	I				A	A													
1252.242–71 Contractor Testimony.	1242.203–70(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242–72 Dissemination of Contract Information.	1242.203–70(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.242–73 Contracting Officers Technical Representative.	1242.7000	C	Yes	I	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	
1252.245–70 Government Property Reports.	1245.505–70	C	Yes	I	A	A	A	A	A	A	A	A			A	A	A	A	A	A	A	
1252.247–1 Acceptable Service at Reduced Rates.	1247.104–370	C	Yes	I			A				A											

TAR MATRIX—Continued

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.247–2 F.O.B. Origin Information.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–3 F.O.B. Origin Only.	1247.307–70	P	Yes	L	A									A					A		A	
1252.247–4 F.O.B. Destination Only.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–5 Shipments to Ports and Air Terminals.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–6 F.O.B. Designated Air Carrier's Terminal, Port of Exportation.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–7 Nomination of Additional Ports.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–8 Supply Movement in the Defense Transportation System.	1247.305–71	C	Yes	F	A									A					A		A	
FAA 1252.225–90 Buy American Certificate-Steel and Manufactured Products.	FAA 1225.9005	P	No	I	A	A	A	A			A	A						A				
FAA 1252.225–91 Buy American Steel and Manufactured Products.	FAA 1225.9005	C	Yes	I	A	A	A	A			A	A						A				
USCG 1252.210–90 Bar Coding Requirement.	USCG 1210.011–90 and 1213.507–90.	C	Yes	I	A	A													A		A	
USCG 1252.213–90 Evaluation Factor for Coast Guard Performance of Bar Coding Requirement.	USCG 1213.107–90.	P	No	M																	A	
USCG 1252.220–90 Local Hire.	USCG 1220.9001	C	Yes	I					A	A	A	A			A		A		A			A
USCG 1252.228–90 Notification of Miller Act Payment Bond Protection.	USCG 1228.9000	C	No	I							A	A										
USCG 1252.237–90 Requirements.	USCG 1237.9000	C	No	I					A	A									A			
USCG 1252.237–91 Area of Performance.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–92 Performance and Delivery.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–93 Subcontracting.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–94 Termination for Default.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–95 Group Interment.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–96 Permits.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–97 Facility Requirements.	USCG 1237.9000	C	Yes	I					A	A									A		A	

TAR MATRIX—Continued

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
USCG 1252.237–98 Preparation History.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–99 Award to Single Offeror.	USCG 1237.9000	P	Yes	I					A	A									A		A	

Key
P or C=Provision or Clause.
IBR=Is Incorporation By Reference authorized?
UCF=Uniform Contract Format Section, when applicable.
Principle type and/or purpose of contract
R=Required.
A=Required-When-Applicable.
O=Optional.
X=Revision.
FP SUP=Fixed-Price Supply.
CR SUP=Cost-Reimbursement Supply.
FP R&D=Fixed-Price Research and Development.
CR R&D=Cost-Reimbursement Research and Development.
FP SVC=Fixed-Price Service.
CR SVC=Cost Reimbursement Service.
FP CON=Fixed-Price construction.
CR CON=Cost Reimbursement Construction.
T&M LH=Time & Material/Labor Hours.
LMV=Leasing of Motor Vehicles.
COM SVC=Communication Services.
DDR=Dismantling, Demolition, or Removal of Improvements.
A–E=Architect-Engineering.
FAC=Facilities.
IND DEL=Indefinite Delivery.
TRN=Transportation.
SP=Small Purchases.
UTL SVC=Utility Services.

[FR Doc. 95–27249 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 94113–4354; I.D. 103095C]

Reef Fish Fishery of the Gulf of Mexico; Red Snapper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of a fishery.

SUMMARY: NMFS announces the period during which the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico is reopened. Reopening of the fishery is necessary, because the 1995 annual commercial quota for red snapper has not been taken. The fishery is reopened for a period of 36 hours.

EFFECTIVE DATE: Reopening of the commercial red snapper fishery is effective at 12:01 a.m., local time, November 1, 1995, through 12, noon, local time, November 2, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Sadler or Michael Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On October 31, 1995, NMFS published an announcement proposing that the commercial fishery for red snapper in the EEZ of the Gulf of Mexico be reopened for a period of 36 hours, because the annual commercial quota for red snapper had not been taken. The background and rationale for this action and the basis for the selection of the specific dates of the reopening were contained in that announcement and are not repeated here.

Based on projected weather conditions, the Southeast Region, NMFS, selected October 30 and 31, 1995, for the reopened period, and an announcement of those dates was filed with the Office of the Federal Register on October 27, 1995. However, weather conditions in much of the Gulf of Mexico deteriorated significantly on October 29. The U.S. Coast Guard advised NMFS that Gulf weather conditions as of October 30 were unsafe for fishing operations, and recommended a 48 hour delay in the fishery reopening. Accordingly, the reopening of the commercial fishery for red snapper has been postponed for 48 hours for vessel safety reasons. The commercial fishery for red snapper in the EEZ of the Gulf of Mexico is reopened for the period specified (see **EFFECTIVE DATE**).

During the reopening, a vessel with a red snapper endorsement on its reef fish permit may not land in any day red snapper in excess of 2,000 lb (907 kg) and other permitted vessels may not land in any day red snapper in excess of 200 lb (91 kg).

Classification

This action is taken under 50 CFR 641.26 and is exempt from review under E.O. 12866.

Dated: October 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27327 Filed 10–31–95; 12:53 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 103095E]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Bering Sea

subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Pacific ocean perch in the Bering Sea subarea be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Pacific ocean perch total allowable catch (TAC) in the BSAI has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 31, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20 (a)(7)(ii), the Pacific ocean perch TAC for the Bering Sea subarea was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8479, February 14, 1995), and increased by an apportionment from the reserve (60 FR 32278, June 21, 1995) to 1,850 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Pacific ocean perch in the Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Bering Sea subarea be treated as prohibited species in accordance with § 675.20(c).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27345 Filed 10–31–95; 2:55 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 103095D]

Groundfish of the Bering Sea and Aleutian Islands Area; Rockfish by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1995 prohibited species bycatch mortality allowance of Pacific halibut specified for the trawl rockfish fishery in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 31, 1995, until 12 midnight, December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 bycatch mortality allowance of Pacific halibut for the BSAI trawl rockfish fishery, which is defined at § 675.21(b)(1)(iii)(D), was established as 110 metric tons (mt) by the Final 1995 Harvest Specifications of Groundfish (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the 1995 apportionment of the Pacific halibut bycatch mortality allowance for the trawl rockfish fishery has been caught. Therefore, NMFS is prohibiting directed fishing for rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(b).

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27344 Filed 10–31–95; 2:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 213
Friday, November 3, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AE28

Extension of Maturing 1994 and Subsequent Crop Year Wheat and Feed Grain Price Support Loans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations with respect to the price support loan programs for wheat and feed grains, which are administered by the Commodity Credit Corporation (CCC) in accordance with the Agricultural Act of 1949, as amended (the 1949 Act), and other acts. Implementation of the changes made by this proposed rule will provide CCC authority to allow producers to extend maturing wheat, corn, grain sorghum, barley, oat, and rye loans during times of abnormal marketing conditions.

DATES: Comments must be received on or before December 4, 1995, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Grady Bilberry, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture, room 3628, South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 7:30 a.m. to 5:00 p.m., Monday through Friday, in room 3628, South Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Wright, CFSA, USDA, room 3627, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–8481.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendments to 7 CFR part 1421 set forth in this proposed rule do not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB and assigned OMB Control Numbers 0560–0087 and 0560–0129.

Comments

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Discussion

Producers with regular 9-month nonrecourse wheat and feed grain price support loans currently are authorized extension of the loan maturity date to such date as CCC determines necessary to participate in the farmer-owned reserve (FOR) program conducted in accordance with §§ 1421.200 through 1421.217.

CCC allows producers with outstanding wheat and feed grain CCC price support loans that mature during times of natural disasters to request an extension of the original maturity date of such loans until marketing and movement of commodities return to normal levels.

Although extensions are available to producers to allow participation in the FOR program or during times of natural disasters, producer's options are limited at maturity when these conditions do not exist. Giving CCC the authority to extend loans during times of abnormal marketing conditions to a date that will allow affected producers to market such commodities in a normal manner may prevent a significant number of loan forfeitures, strengthen markets, and increase economic opportunities for affected producers.

This proposed rule would amend 7 CFR part 1421 to provide CCC authority to allow producers to extend maturing wheat, corn, grain sorghum, barley, oat, and rye loans when CCC has determined abnormal marketing conditions are present.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is proposed to be amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c. Subpart—Rice Marketing Certificate Program is also issued under authority of 7 U.S.C. 1441–2; 15 U.S.C. 714b and 714c.

2. Section 1421.6 is amended by revising paragraph (e) to read as follows:

§ 1421.6 Maturity and expiration dates.

* * * * *

(e) Notwithstanding any other provision of this section, CCC may allow producers with wheat, corn, grain sorghum, barley, oat, and rye loans maturing during times of abnormal marketing conditions, as determined by CCC, to extend such loans beyond the maturity date specified in paragraph (a) of this section. If CCC determines that the commodity pledged as collateral for such loans cannot be marketed because of such abnormal marketing conditions, CCC may authorize such loans to be extended to a date that will allow affected producers to market such commodity in a normal manner.

Signed in Washington, DC, on October 26, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–27283 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Workshop on the Regulation of Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Meeting notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public workshop on the method for improving NRC's regulation of fuel cycle facilities under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material." The workshop is open to the public; however, for efficient conduct of the workshop, participation will be in the format of a roundtable discussion among invited representatives from affected interested parties. The NRC has prepared a workshop agenda and documents that identify regulatory issues of concern in the regulation of NRC-licensed fuel cycle facilities. These documents are available for review prior to the workshop, and interested parties are encouraged to review this information. The NRC will accept and consider written comments from interested parties on these regulatory issues.

DATES: The workshop will be held on November 30, 1995, from 9 am to 5 pm. The workshop will continue, if necessary, on December 1, 1995, from 8:30 am to 12 noon. Comments on these regulatory issues should be received no later than December 11, 1995.

ADDRESSES: The workshop will be held at the U.S. Nuclear Regulatory Commission Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. (Note: The NRC is accessible to the White Flint Metro Station; visitor parking around the NRC building is limited.) Written comments can be provided at the workshop or by December 11, 1995, to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the agenda and related documents can be obtained from the NRC's Public Document Room, 2120 L Street NW., Washington, D.C. 20037; Phone: 202–634–3273; FAX: 202–634–3343.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Mail Stop O–15 B18, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Phone: 301–415–1642; FAX: 301–415–3200; INTERNET:FXC@NRC.GOV.

SUPPLEMENTARY INFORMATION: The occurrence of several serious incidents at NRC-licensed fuel cycle facilities led the NRC to conclude that improvements in regulating these facilities were needed. Accordingly, the NRC is currently reviewing its regulatory requirements for licensing the possession and use of special nuclear material, including general requirements for the content of license applications, in 10 CFR Part 70. The Commission has directed the staff to continue a dialogue with affected interested parties with the goal of improving the regulation of fuel cycle facilities. This workshop will focus on a number of issues related to the NRC's effort to establish a firm regulatory base for fuel cycle facility licensing and inspection activities and to ensure the adequacy of licensee performance.

The workshop will be an information exchange between the NRC and a diverse group of individuals who might be affected by subsequent changes to the method in which the NRC regulates fuel cycle facilities licensed under Part 70. This exchange should provide the NRC and workshop participants an opportunity to express their concerns and views on the method for improving NRC's regulation of fuel cycle facilities, how specific goals and objectives of improving NRC's safety regulations can be met, and the level of risk that is considered adequate for the protection of the public health and safety.

For efficient conduct of the workshop, the meeting format will be a roundtable discussion among invited representatives from affected interests, e.g., fuel cycle industry, other Federal and state government agencies, and citizen groups. The workshop will be open to the public, and the public will be provided opportunities throughout the workshop to comment on the issues presented for discussion.

Dated at Rockville, Maryland, this 30th day of October, 1995.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Director, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 95–27291 Filed 11–2–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 114

Policies of General Application

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize the entire Part 114 covering administrative claims under the Federal Tort Claims Act to make it more clear and easier to use. It would also amend the Part to streamline the review and adjustment of claims and provide for the use of alternative dispute resolution in appropriate cases.

DATES: Written comments must be submitted on or before December 4, 1995.

ADDRESSES: Written comments may be sent to David R. Kohler, Regulatory Reform Team Leader (114), Small Business Administration, 409 3rd Street S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Jeff Lane, Office of General Counsel, at (202) 205–6879.

SUPPLEMENTARY INFORMATION: Part 114 of chapter 1, 13 CFR contains policies governing the presentment, review and handling of administrative claims brought against the Federal Government for money damages for injuries or death arising from the negligent or wrongful act or omission of any employee of the Small Business Administration. The rule would reorganize the entire Part 114 to make it more clear and easier to use and amend it to create a more efficient administrative process. It would eliminate from the process the various boards of survey that now investigate and review claims, and give Field District Counsel authority to review and adjust claims of $5,000 or less and use alternative dispute resolution in appropriate cases. (Boards of Survey would retain all other existing responsibilities.)

Specifically, the rule would amend:

1. Section 114.100 by deleting definitions of the various boards of survey that would be eliminated under the proposed rule.

2. Section 114.102, which sets forth the rule for when and where a claim should be presented, by clarifying that claims must be presented at the SBA office nearest to where the incident occurred and within the same state in which the incident occurred. The proposed section also specifies the statutory deadline.

The rule would reorganize:

1. Section 114.104 relating to SBA's investigatory powers under new subsection 114.105(a).

2. Section 114.105, which states what evidence and information claims should include, as section 114.104.

3. Sections 114.106, 114.106–1, 114.107 and 114.108 relating to SBA's procedure for investigating and processing claims under new sections 114.105 through 114.109. These proposed sections also eliminate the boards of surveys and create a streamlined process for review. Field Counsel would have authority to review and adjust claims of $5,000 or less and to use alternative dispute resolution mechanisms in appropriate cases. The proposed section specifies the General Counsel as the Administrator's designee for purposes of determining claims in excess of $5,000. The rule would still require SBA to seek written consent from the Department of Justice before it approves claims in excess of $25,000 and to consult with the Department of Justice in certain other circumstances.

4. Section 114.109 relating to SBA's authority to ask another Federal agency to conduct physical exams of claimants under proposed section 114.105, which describes generally SBA's investigatory authority.

5. Section 114.110 relating to SBA's denial of claims as new section 114.109. The proposed section informs claimants of their right to sue SBA not later than six months after SBA mails the notification of denial.

6. Section 114.111 relating to the approval of claims as new section . 114.108.

7. Section 114.112 relating to indemnification and representation of SBA employees as new section 114.110. It would add a paragraph—§ 114.110(a)(3)—that specifically states SBA may pay for, or request that the Department of Justice provide, representation for SBA employees.

8. Section 114.113 relating to attorney-client privilege as new section 114.111.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 114

Claims.

Accordingly, pursuant to the authority set forth in sections 5 (b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634 (b)(1) and (b)(6), 28 U.S.C. 2672, and 28 CFR 14.11 (31 FR 16616), SBA hereby proposes to revise part 114 of Title 13, Code of Federal Regulations (CFR), to read as follows:

PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND REPRESENTATION AND INDEMNIFICATION OF SBA EMPLOYEES

Subpart A—Administrative Tort Claims

Sec.

§ 114.100 Definitions.
§ 114.101 What do these regulations cover?
§ 114.102 When and where do I present a claim?
§ 114.103 Who may file a claim?
§ 114.104 What evidence and information may SBA require relating to my claim?
§ 114.105 Who investigates and considers my claim?
§ 114.106 What if my claim exceeds $5,000?
§ 114.107 What if my claim exceeds $25,000 or has other special features?
§ 114.108 What if my claim is approved?
§ 114.109 What if my claim is denied?

Subpart B—Representation and Indemnification of SBA Employees

§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?
§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

Authority: 15 U.S.C. 634 (b)(1), (b)(6); 28 U.S.C. 2672; 28 CFR 14.11.

Subpart A—Administrative Tort Claims

§ 114.100 Definitions.

As used throughout this part 114, "date of accrual" means the date you know or reasonably should have known of your injury. The date of accrual will depend on the facts of each case. "Site" means the geographic location where the incident giving rise to your claim occurred.

§ 114.101 What do these regulations cover?

This part applies only to monetary claims you assert under the Federal Tort Claims Act, 28 U.S.C. 2671, *et. seq.*, for injury to or loss of property, personal injury, or death arising from the negligent or wrongful act or omission of any employee of the Small Business Administration (SBA) while acting within the scope of his or her employment.

§ 114.102 When and where do I present a claim?

You must present your claim within two years of the date of accrual at the SBA office nearest to the site and within the same state as the site. You must use Standard Form 95 (which may be obtained from SBA) or give other written notice of your claim, stating the specific amount of your alleged damages and providing enough information to enable SBA to investigate your claim. Your claim will be considered presented when SBA receives this information.

§ 114.103 Who may file a claim?

(a) If a claim is based on factors listed in the first column, then it may be presented by persons listed in the second column.

Claim factors	*Claim presenters*
Injury to or loss of property.	the owner of the property, his or her duly authorized agent, or legal representative.
Personal injury	the injured person, his or her duly authorized agent, or legal representative.
Death	the executor or administrator of the decedent's estate, or any other person entitled to assert the claim under applicable state law.
Loss wholly compensated by an insurer with rights as a subrogee.	the parties individually as their interests appear, or jointly.

(b) An agent or legal representative may present your claim in your name, but must sign the claim, state his or her title or legal capacity, and include documentation of authority to present the claim on your behalf.

§ 114.104 What evidence and information may SBA require relating to my claim?

(a) For a claim based on injury to or loss of property:

(1) Proof you own the property.

(2) A specific statement of the damage you claim with respect to each item of property.

(3) Itemized receipts for payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Full information about potential insurance coverage and any insurance claims or payments relating to your claim.

(6) Any other information that may be relevant to the government's alleged liability or the damages you claim.

(b) For a claim based on personal injury, including pain and suffering:

(1) A written report from your health care provider stating the nature and extent of your injury and treatment, the degree of your temporary or permanent disability, your prognosis, period of hospitalization, and any diminished earning capacity.

(2) A written report following a physical, dental or mental examination of you by a physician employed by SBA or another Federal Agency. If you want a copy of this report, you must request it in writing, furnish SBA with the written report of your health care provider, if SBA requests it, and make or agree to make available to SBA any other medical reports relevant to your claim.

(3) Itemized bills for medical, dental and hospital expenses you have incurred, or itemized receipts of payment for these expenses.

(4) Your health care provider's written statement of the expected expenses related to any necessary future treatment.

(5) A statement from your employer showing actual time lost from employment, whether you are a full or part-time employee, and the wages or salary you actually lost.

(6) Documentary evidence showing the amount of earnings you actually lost if you are self-employed.

(7) Information about the existence of insurance coverage and any insurance claims or payments relating to the claim in question.

(8) Any other information that may be relevant to the government's alleged liability or the damages you claim.

(c) For a claim based on death:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Evidence of decedent's employment or occupation at the time of death, including monthly or yearly salary or earnings, and the duration of such employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent upon the decedent for support at the time of his or her death.

(4) Evidence of the support provided by the decedent to each dependent survivor at the time of his or her death.

(5) A summary of the decedent's general physical and mental condition before death.

(6) Itemized bills or receipts for payments for medical and burial expenses.

(7) For pain and suffering damage claims, a physician's detailed statement specifying the injuries suffered, the duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other information that may be relevant to the government's alleged liability or the damages claimed.

§ 114.105 Who investigates and considers my claim?

(a) SBA may investigate, or ask another Federal agency to investigate, your claim. SBA also may request any Federal agency to conduct a physical examination of you and provide a report to SBA. SBA will reimburse the Federal agency for the costs of that examination when authorized or required by statute or regulation.

(b) In those cases in which SBA investigates your claim, the SBA District Counsel with jurisdiction over the site will conduct an investigation and make recommendations or a determination with respect to your claim. The District Counsel may negotiate with you and is authorized to use alternative dispute resolution mechanisms when they may promote the prompt, fair and efficient resolution of your claim.

(c) The District Counsel may approve or deny an award, compromise, or settlement of any claim for $5,000 or less. If your claim is for $5,000 or less, the District Counsel may deny the claim, or may recommend approval, compromise, or settlement of the claim to a Senior Area Counsel who may take final action. The District Counsel first must refer the claim to SBA's General Counsel for review if SBA should consult with the Department of Justice before approving the claim, as required under §114.107.

§ 114.106 What if my claim exceeds $5,000?

The District Counsel must review and investigate your claim and forward it with a report and recommendation to the General Counsel, who may approve or deny an award, compromise, or settlement of claims in excess of $5,000, but not exceeding $25,000. The General Counsel will handle claims in excess of $25,000 as required by § 114.107.

§ 114.107 What if my claim exceeds $25,000 or has other special features?

(a) The U.S. Attorney General (or designee) must approve in writing any award, compromise, or settlement of a claim in excess of $25,000. For this purpose, a principal claim and any derivative or subrogated claim are considered a single claim.

(b) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever the General Counsel determines:

(1) The claim involves a new precedent or a new point of law; or

(2) The claim involves or may involve a question of policy; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and SBA is unable to adjust the third party claim; or

(4) Approval of a claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever SBA learns that the United States, or any of its employees, agents, or cost-plus contractors, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) SBA, acting through its General Counsel, must make any referrals to the Department of Justice for approval or consultation by transmitting them in writing to the Assistant Attorney General, Civil Division.

(1) The referral must contain a short and concise statement of the facts and the reason for the request or referral, copies of the relevant portions of the claim file, and SBA's views and recommendations.

(2) SBA may make this referral at any time after a claim is presented.

§ 114.108 What if my claim is approved?

SBA will notify you in writing if it approves your claim. The District Counsel will forward to you or your agent or legal representative the forms necessary to indicate satisfaction of your claim and your acceptance of the payment. Acceptance by you, your agent or your legal representative, of any award, compromise or settlement of your claim is final and conclusive under the Federal Tort Claims Act. It binds you, your agent or your legal representative, and any other person on whose behalf or for whose benefit the claim was presented. It also constitutes a complete release of your claim against the United States and its employees. If you are represented by counsel, SBA will designate you and your counsel as joint payees and will deliver the check to your counsel. Payment is contingent upon the waiver of your claim and is subject to the availability of appropriated funds.

§ 114.109 What if my claim is denied?

SBA will notify you or your agent or legal representative in writing by certified or registered mail if it denies your claim. You have a right to file suit in an appropriate U.S. District Court not later than six months after the date the notification was mailed.

Subpart B—Representation And Indemnification of SBA Employees

§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?

(a) If an SBA employee engages in conduct, within the scope of his or her employment, which gives rise to a claim, and the SBA Administrator (or designee) determines that any of the following actions relating to the claim are in SBA's interest, SBA may:

(1) Indemnify the employee after a verdict, judgment, or other monetary award is rendered personally against the employee in any civil suit in state or federal court or any arbitration proceeding.

(2) Settle or compromise the claim.

(3) Pay for, or request that the Department of Justice provide, legal representation to the employee once personally named in such a suit.

(b) If you are an SBA employee, you may ask SBA to settle or compromise your claim, provide you with legal representation, or provide you with indemnification for a verdict, judgment or award entered against you in a suit. To do so, you must submit a timely, written request to the General Counsel, with appropriate documentation, including copies of any pleadings, verdict, judgment, award, or settlement proposal. The General Counsel will decide all requests for representation or settlement, and will forward to the Administrator, with the accompanying documentation and a recommendation, any requests for indemnification.

(c) Any payments by SBA under this section will be contingent upon the availability of appropriated funds.

§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

When attorneys employed by SBA participate in any process in which SBA seeks to determine whether SBA should request the Department of Justice to provide representation to an SBA employee sued, subpoenaed, or charged in his or her individual capacity, or whether attorneys employed by SBA should provide representational assistance for such an employee, those attorneys undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. If representation is authorized, SBA attorneys who assist in the representation of an SBA employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Unless authorized by the employee, the attorney must not disclose to anyone other than attorneys also responsible for the employee's representation adverse information communicated to the attorney by the client-employee during the course of the attorney-client relationship. The attorney-client privilege will continue with respect to that information whether or not representation is provided, and even if the employee's representation is denied or discontinued.

Dated: October 19, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–26669 Filed 11–2–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–90–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require an inspection to detect moisture and migrated bushings of the guide fittings of the safety locking pins of the passenger doors, removal of any moisture, application of grease, and reinstallation of any migrated bushing. This proposal also would require installation of a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors. This proposal is prompted by reports of difficulty opening the passenger doors due to jamming of the locking pin. The actions specified by the proposed AD are intended to prevent such jamming of the locking pin, which could result in inability to open the passenger door. This condition, if not corrected, could impede or delay passengers from exiting the airplane during an emergency.

DATES: Comments must be received by December 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–90–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that it has received reports indicating that operators of Model A320 series airplanes have experienced difficulty opening the passenger doors due to freezing of the locking mechanism during cold weather conditions. Investigation revealed that moisture and water accumulates and freezes between the upper bushings of the vertical guide fitting of the doors. This condition causes expansion of the bushings and compromises the tolerances of the guide. Consequently, the safety locking pin that fits in the guide can become jammed, which can result in inability to open the passenger door. This condition, if not corrected, could impede or delay passengers from exiting the airplane during an emergency.

Airbus Industrie has issued All Operators Telex (AOT) 52–06, dated February 4, 1994, which describes procedures for a one-time inspection to detect moisture and migrated bushings of the guide fittings of the upper safety locking pins of the passenger doors, removal of any moisture that may have accumulated between the bushings, application of low temperature grease, and reinstallation of any migrated bushing.

Airbus Industrie has issued Service Bulletin No. A320–52–1057, dated July 26, 1994, which describes procedures for installing a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors. Accomplishment of the installation will prevent jamming of the locking pin.

The DGAC classified the AOT and the service bulletin as mandatory and issued French airworthiness directive 94–239–060(B), dated November 9, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect moisture and migrated bushings of the guide fittings of the upper safety locking pins of the passenger doors, removal of any moisture, application of grease, and reinstallation of any migrated bushing. The proposed AD also would require installation of a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors. The actions would be required to be accomplished in accordance with the AOT and the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane (1 work hour per door; 4 doors per airplane) to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $25,920, or $240 per airplane.

The FAA estimates that it would take approximately 40 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $259,200, or $2,400 per airplane.

Based on these figures, the total cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $285,120, or $2,640 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–90–AD.

Applicability: Model A320 series airplanes on which Airbus Industrie Modification No. 24369 (Airbus Industrie Service Bulletin No. A320–52–1057, dated July 26, 1994) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the upper safety locking pin on the passenger door, which could result in inability to open the passenger door and, subsequently, could impede or delay passengers from exiting the airplane during an emergency, accomplish the following:

(a) Prior to the accumulation of 450 hours time-in-service after one year from the delivery date of the airplane, or within 450 hours time-in-service after the effective date of this AD, whichever occurs later: Perform an inspection to detect moisture or migrated bushings of the guide fittings of the upper safety locking pins on each passenger door, in accordance with Airbus Industrie All Operators Telex (AOT) 52–06, dated February 4, 1994.

(1) If any moisture is found in the guide fitting, prior to further flight, remove the moisture, dry the guide fitting, fill it with low temperature grease, and reinstall the guide fitting with bolts, washers, and nuts in accordance with the AOT.

(2) If any migrated bushing is found, prior to further flight, reinstall the bushing using Loctite 672 in accordance with the AOT. If the bushing cannot be reinstalled prior to further flight, the airplane may be operated without the upper locking pin for an additional 50 hours time-in-service or three days after accomplishing the inspection, whichever occurs first, provided that the requirements specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD are accomplished. This compliance time applies to each passenger door.

(i) The connecting rod to the locking shaft shall be removed.

(ii) The guide fitting shall remain installed.

(iii) The cavity in the guide fitting (which results from the removal of the upper locking pin) shall be covered with high speed tape to prevent moisture ingress.

(b) Within 15 months after the effective date of this AD, install a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors in accordance with Airbus Industrie Service Bulletin No. A320–52–1057, dated July 26, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27306 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–36]

Proposed Amendment of Class E Airspace; Page, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Page, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 15 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Page Municipal Airport, Page, AZ.

DATES: Comments must be received on or before December 13, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–36, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–

AWP–36." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Page, AZ. The development of a GPS SIAP at Page Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 15 SIAP at Page Municipal Airport, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP AZ E5 Page, AZ [Revised]

Page Municipal Airport, AZ
(Lat. 36°55'34" N, long. 111°26'54" W)
Page VOR/DME
(Lat. 36°55'41" N, long. 111°27'02" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Page Municipal Airport; and within 3-miles either side of the Page VOR 340° radial, extending from the 6.5-mile radius to 10 miles northwest of the Page VOR/DME. That airspace extending upward from 1,200 feet above the surface within 6.5 miles northeast and 10 miles southwest of the Page VOR/DME 340° radial and 160° radial, extending from the 18-miles northwest to 8-miles southeast of the Page VOR/DME and that airspace bounded by a line beginning at lat. 37°11'00" N, long. 111°41'00" W; to lat. 37°22'00" N, long. 111°46'00" W; to lat. 37°26'00" N, long. 111°35'00" W; to lat. 37°19'30" N, long. 111°20'30" W; to lat. 37°10'30" N, long. 111°25'00" W; to lat. 37°15'00" N, long. 111°27'00" W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 36°56'00" N, long. 111°18'00" W; to lat. 36°35'00" N, long. 111°09'30" W; to lat. 36°35'00" N, long. 111°30'00" W; to lat. 36°41'00" N, long. 111°32'00" W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on October 23, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–27348 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–3]

Proposed Amendment to Class E Airspace; Fremont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Fremont, NE. A new standard instrument approach procedure (SIAP) is being developed to Runway 13 at Fremont Municipal Airport, Fremont, NE, utilizing the Scribner VOR, which would provide pilots additional controlled airspace at Fremont, NE.

DATES: Comments must be received on or before December 4, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95-ACE-4, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE-530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-ACE-3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Fremont Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE NE E5 Fremont, NE [Revised]

Fremont Municipal Airport, NE.
(Lat. 41°26'49"N, long. 96°31'03"W)
Fremont NDB
(Lat. 41°27'01"N, long. 96°31'05"W)
Scribner VOR
(Lat. 41°36'19"N, long. 96°37'44"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Fremont Municipal Airport and within 2.6 miles each side of the 306° bearing from the Fremont NDB extending from the 6.4-mile radius to 7 miles northwest of the airport, and within 2 miles each side of the Scribner VOR 153° radial extending from the Scribner VOR to the 6.4-mile radius of the Fremont Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 4, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–27347 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 764 and 942

Receipt of a Petition To Designate Lands Unsuitable for Mining and To Prepare a Petition Evaluation Document and Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare a combined petition evaluation document/environmental impact statement, and notice of scoping meeting and scoping comment period for the petition.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) intends to prepare a combined petition evaluation document/environmental impact statement (PED/EIS) for the decision on a petition to designate certain lands within the watershed and viewshed of Fall Creek Falls State Park and Natural Area in Van Buren and Bledsoe Counties, Tennessee, as unsuitable for surface coal mining and reclamation operations in accordance with Section 522 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. OSM has identified four alternatives that the combined PED/EIS would evaluate as described in the supplementary information of this notice. OSM requests that other Federal and state agencies and the public submit written comments or statements on the need for an EIS on the petition and the scope of the issues which should be analyzed in the combined document.

DATES: Written comments must be received by 5 p.m. (est), December 18, 1995. Oral comments may be presented at the scoping meeting to be held on Thursday, November 16, 1995, at 7 p.m. (CST).

ADDRESSES: Written comments must be mailed or hand delivered to the Office

of Surface Mining, Permitting Team, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902, Attn. Willis Gainer. Copies of the petition are available upon request from the Office of Surface Mining at the above address. The public record on the petition is available for review during normal working hours (8 a.m. to 4:30 p.m.) at the OSM office listed above. The November 16 scoping meeting will be held at the Fall Creek Falls State Park Inn, Rt. 3, Pikeville, Tennessee.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, at the OSM office listed above (telephone: 615–545–4065).

SUPPLEMENTARY INFORMATION: On July 14, 1995, 49 citizens, Save Our Cumberland Mountains, and Tennessee Citizens for Wilderness Planning petitioned OSM to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area in Van Buren and Bledsoe Counties, Tennessee, as unsuitable for surface coal mining operations pursuant to SMCRA. The petition was amended on August 18 and September 5, 1995, and determined administratively complete and accepted for processing on October 5, 1995. The petition as accepted is an 80 page document with 55 exhibits and amendments. The Federal Program for Tennessee, as administered by OSM, applies to all surface coal mining operations in Tennessee including the processing of lands unsuitable for mining petitions (49 FR 38874, October 1, 1984).

The petition area covers approximately 83,740 acres of the watershed and viewshed in Van Buren and Bledsoe Counties. The petition boundary is as follows: beginning at the Park boundary due north of Bradden Knob lookout tower, roughly paralleling Highway 30 northwesterly to a point on Cane Creek just south of the Highway 30 crossing, then extending due west with the boundary of the Park's new addition and extending westward to a point approximately at the city limits of the town of Spencer, from that point southward roughly following the path of Highway 111 to Pine Grove school, then south-southwest to the community of Welchland, then southeast to the peak of Smartt Mountain, then extending southeasterly following the Tennessee Valley Divide, and following the Divide as it curves back to the northeast to a point approximately 2 miles north of Basin Mountain, then following a divide between Flat Creek and Pole Bridge Creek in a northwesterly direction to the beginning.

The major allegations of the petition can be summarized as follows:

1. Surface coal mining operations would affect fragile or historic lands, in which such operations could result in significant damage to important historic, cultural, scientific, or esthetic values.
2. Surface coal mining operations would affect renewable resource lands in which the operations could result in a substantial loss or reduction in the long-range productivity of water supply or of food or fiber products.
3. Surface coal mining operations would affect natural hazard lands in which such operations could substantially endanger life and property.
4. Surface coal mining operations would be incompatible with existing state and local land use plans or programs.
5. Reclamation is not technologically and economically feasible.

OSM has identified four possible alternatives that the combined PED/EIS would evaluate:

Alternative 1—Designate the entire petition area as unsuitable for surface coal mining operations if OSM determines that reclamation is not technologically and economically feasible.

Alternative 2—Not designate any of the area as unsuitable for surface coal mining operations.

Alternative 3—Designate parts of the petition area as unsuitable for all surface coal mining operations:

A. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would affect fragile or historic lands and result in significant damage to important historic, cultural, scientific, or esthetic values.

B. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would result in a substantial loss or a reduction in the long-range productivity of water supply or food or fiber products.

C. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would affect natural hazard lands and could substantially endanger life and property.

D. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would be incompatible with existing local land use plans and programs.

Alternative 4—Designate the entire petition area as unsuitable for surface coal mining but allow underground mining with or without certain restrictions.

A scoping comment period is intended to raise the relevant issues to be addressed by the combined document. OSM seeks public comments in relation to the scope of issues to be addressed by the impact evaluation, including impacts and alternatives that should be addressed. Written comments should be specific and confined to issues pertinent to the petition. The public comments received during the scoping period will assist OSM in making decisions on the petition evaluation and in preparing the PED/EIS. OSM believes that the proposed action is a major Federal action that may significantly affect the quality of the human environment and may require the preparation of an EIS. OSM additionally gives notice here that should information or analysis show that the proposed action does not require an EIS, it will terminate the environmental impact statement process through an appropriate notice in the Federal Register, prepare an environmental assessment, and continue processing of the petition under 30 CFR Part 764 and 942 regulations.

Dated: October 31, 1995.

Mary Josie Blanchard,

Director, Program Support.

[FR Doc. 95–27338 Filed 11–2–95; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

[USAARMC Reg 210–1]

Control of Firearms and Weapons on the Installation of Fort Knox, KY

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: This action establishes 32 CFR Part 552, Subpart O, Control of Firearms and Weapons, and authenticates Fort Knox regulation, USAARMC Reg 210–1. This subpart establishes weapons authorized, prohibited, and restricted on the Fort Knox military reservation, and the conditions applicable to the use, possession, sale, purchase, loss, registration, storage, and disposal of weapons authorized on the reservation. This regulation is applicable to all personnel assigned, residing, working, or visiting on the Fort Knox reservation.

DATES: Comments must be received by December 4, 1995.

ADDRESSES: Commander, U.S. Army Armor Center and Fort Knox, Office of the Staff Judge Advocate, Fort Knox, Kentucky 40121.

FOR FURTHER INFORMATION CONTACT: William G. Lacey, Operations Officer, telephone: (502) 624–4335 or 1776.

SUPPLEMENTARY INFORMATION: Supplementation of this subpart by subordinate units is prohibited.

Executive Order 12291

This proposed rule is not affected by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 552

Arms and munitions, Federal buildings and facilities, Government employees, Military personnel.

It is proposed to add Subpart O to 32 CFR Part 552 as set forth below:

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

32 CFR Part 552 is amended by adding a new Subpart O as follows:

Subpart O—Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

Sec.

552.192 Purpose
552.193 Applicability
552.194 Definitions
552.195 Prohibitions
552.196 Requirements for possession, storage, transportation, and registration
552.197 Requirements for carrying and use
552.198 Disposal and disposition of confiscated/ seized or surrendered weapons.

Appendix A to Subpart O—Partial List of Publications Applicable to the Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

Authority: 10 U.S.C. Ch. 47.

Subpart O—Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

§ 552.192 Purpose.

This subpart establishes the criteria for possessing, carrying, transporting, and disposing of firearms and/or other deadly or dangerous weapons and instruments on the Fort Knox installation.

§ 552.193 Applicability.

(a) The provisions of this subpart apply to all Department of Defense (DoD) military; civilian personnel; U.S. Army Reserve/National Guard (USAR/NG) personnel on post for active duty training or inactive training; military family members; and civilians employed on, visiting, or traveling through or on the Fort Knox installation.

(b) This subpart will not become void in its entirety merely because one part or portion thereof is declared unconstitutional or void.

(c) This subpart is punitive. Military violators of the regulations in this subpart may be prosecuted under the Uniform Code of Military Justice, applicable Federal law, other regulations, and/or administrative action. Civilian visitors may be barred from the installation of Fort Knox and prosecuted under appropriate Federal or State laws.

§ 552.194 Definitions.

(a) *Ammunition.* Projectiles together with their fuses, propelling charges, and primers that are designed to be expelled from a firearm. This includes any type of military and commercial ammunition (ball, tracer, incendiary, blank, shotgun, black powder, and shot). Items shall only be considered as ammunition when loaded into a cartridge with its bullets, powder, and primer.

(b) *BB and pellet guns.* Any type rifle, pistol, or other instrument designed or redesigned, made or remade, modified or remodified to expel BBs or pellets by springs, compressed air, CO_2, or any other compressed gas cartridge.

(c) *Cantonment area.* The central portion of the Fort Knox Reservation excluding field training sites, firing ranges and hunting areas, which includes commercial and government facilities and activities, installation and unit headquarters, troop billets, and family housing.

(d) *Dangerous instruments.* Any device which is designed or redesigned, made or remade, modified or remodified to be used as an offensive or defensive weapon. Devices of this type include but are not limited to:

(1) "Constant companion" or any similar weapon designed or redesigned, made or remade, modified or remodified to be worn as a belt buckle, brass knuckles, "Knucklers," and "Knucks."

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Black jacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes/weapons.

(4) "Nanchaku" (num-chucks), two or more sticks connected by rope, cord or chain, and normally used as a martial arts weapon. "Shuriken," a disc or any geometrical object designed to be thrown as a weapon. "Manrikigusari" or "Kusari," a rope or cord joined to a weight at each end and designed to be used as a weapon.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) All prohibited firearms.

(e) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas (to include chemical mace) or smoke bomb, grenade, rocket, missile, mine, blasting cap, "dummy" and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottle rockets, and star clusters.

(f) *Firearms.* Any type of weapon which is designed or redesigned, made or remade, modified or remodified to expel a projectile by action of any explosion, and the frame or receiver of any such weapon. This does not include antique firearms, antique replicas, and those modern firearms which have been rendered permanently incapable of being fired.

(g) *Handgun.* Any pistol or revolver originally designed to be fired by the use of a single hand, or any other firearm originally designed to be fired by the use of a single hand.

(h) *Knives, sabers, swords, and machetes.* Any instrument having a sharp blade which is fastened to a handle, or made with a handle. Measurement of the blade will be from the tip of the blade to the point where the blade meets the handle. This includes folding knives, switchblades, gravity knives, stilettos, lock blade knives, swords, sabers, and machetes.

(i) *Minor.* A person who has not reached the full legal adult age of 18.

(j) *Machine gun and automatic weapon.* A weapon designed or redesigned, made or remade, modified or remodified to automatically fire more than one shot by single pull of the trigger.

(k) *Rifle.* A firearm with a rifled bore designed to be fired from the shoulder.

(l) *Shotgun.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder,

and designed or redesigned, made or remade, to use the energy or the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(m) *Sawed-off or shortened shotgun.* A shotgun or any weapon made from a shotgun whether by alteration, modification, or otherwise having one or more barrels less than 18 inches in length or if such weapon as modified has an overall length of less than 20 inches.

(n) *Sawed-off rifle.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only as a single projectile through a rifle bore for each single pull of the trigger, and which has a barrel or barrels of less than 16 inches or has an overall length of less than 26 inches.

(o) *Silencer.* Any device used for suppressing or diminishing the report of any firearm.

(p) *Weapon.* Any instrument used in a offensive or defensive manner.

(q) *Workplace.* Any building, room, or establishment or part thereof, owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing official duties.

§ 552.195 Prohibitions.

(a) Prohibited items. It is prohibited to possess, carry, conceal, transport, store, transfer, or sell any of the following weapons or devices on, through, or within the confines of the installation unless specifically allowed elsewhere in this subpart:

(1) Sawed off/shortened barrel shotguns, which are not generally recognized as suitable for lawful purposes.

(2) Sawed off/shortened barrel rifle.

(3) Machine gun and automatic weapons (unless properly permitted under federal law).

(4) Silencers.

(5) Dangerous instruments as defined in § 552.194.

(6) Explosives, incendiary, gas, and pyrotechnic devices, as defined in § 552.194.

(7) Knives with automatic blade openers (i.e., switch blades, gravity knives, stilettos) of any blade length.

(8) Any object which carries an electrical current of sufficient wattage to deliver a shock to a person, such as cattle prods, "taser," or "public defenders."

(b) *Carrying a concealed weapon.* A person commits the offense of carrying a concealed weapon when they knowingly have or carry about their person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, or knife designed for the purpose of offense and defense, or any other dangerous or deadly weapon or instrument of like character outside their home.

(c) *Possession of a firearm in a posted Federal workplace.*

(1) Per the provisions of 18 U.S.C. Section 930a, firearms are prohibited in all Federal workplaces when such notice is posted at each entrance. The sign at USAARMC Regulation 210–1, appendix B, when posted at each public entrance to a facility or activity, will serve as notice required by 18 U.S.C. Section 930a. Any person entering such a posted facility, in possession of a firearm, will be in violation of 18 U.S.C. 930a, and subject to apprehension.

(2) All buildings and structures on Fort Knox, which provide a customer service function will display the notice sign at USAARMC Regulation 210–1, appendix B. Commanders and building managers may post notice at other buildings as they deem appropriate. Other buildings may include, but are not limited to, command and headquarters, and mission essential facilities not having customer service orientation.

(3) The provisions of this paragraph do not apply to firearms carried by law enforcement and security personnel while performing official duties.

(d) Prohibited possession and storage. It is prohibited for a person, military or civilian, to possess or store ammunition, firearms, knives with blades more than 3½ inches long, bows and arrows, crossbows, and BB and pellet guns in locations other than those locations specified in § 552.196 except under conditions specified in § 552.197. Prohibited locations for these items include but are not limited to, living spaces and common areas of billets, squad rooms, exterior storage sheds, camper trailers, and offices. Commanders will designate an arms room and times for weapons turn-in. During periods when arms rooms are closed, unit staff duty personnel, i.e., Staff Duty Officer (SDO), Charge of Quarters (CQ), etc., will ensure the weapon is properly secured. A receipt will be given for each weapon received, reflecting the weapon's make, serial number, identity of owner and other data deemed appropriate. Unless otherwise authorized, weapons may NOT be stored in vehicles.

(e) *Exemptions.* Nothing in this subpart shall prohibit:

(1) Soldiers or DoD civilian employees from possessing or using military weapons, military ammunition or explosives, or military devices in a lawful manner while in the performance of their military duties or for training or other authorized purposes, as prescribed by applicable Army Regulations.

(2) Military and DoD civilian personnel, while in the performance of official law enforcement duties, from possessing or using government ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(3) Federal, state, county, or local law enforcement personnel, while in the performance of official law enforcement duties, from possessing or using government or privately-owned weapons, ammunition, explosives, or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(4) Government contractors, while in performance of their contract from possessing or using weapons, ammunition, explosives or devices, per the provisions of their contract and as determined by the Contracting Officer.

(5) Individuals with Federal Firearms Licenses from possessing, carrying, and transporting weapons per Federal regulations; however, they are prohibited from concealing such weapons.

§ 552.196 Requirements for possession, storage, transportation, and registration.

(a) *Possession, transportation, and registration.* DoD military and civilian personnel, their family members, USAR/NG personnel and civilians employed on, visiting, or traveling through this installation may possess privately-owned firearms, ammunition, BB and pellet guns, knives, bows and arrows, and crossbows (excluding prohibited items) under the following conditions:

(1) Privately owned firearms, crossbows, BB and pellet guns possessed or stored on the installation must be registered within at the installation Provost Marshal's Office within 3 working days after arrival on the installation, or after obtaining the weapon, except:

(i) Firearms legally brought onto the installation for the purpose of hunting or firing at an approved firing range, and only for the period of time the person possessing the firearms is hunting or firing on the range.

(ii) Firearms carried by Federal, state, county, or local law enforcement personnel when in the performance of official law enforcement duties.

(iii) Firearms carried or transported, in full compliance with Kentucky State Laws, by personnel traveling through the installation.

(2) Minors may not purchase, register, or have in their possession any weapon, including a firearm, other than an ordinary pocket knife. Persons under 21 years of age shall not possess a privately-owned handgun, except:

(i) Soldiers, older than 18 years of age, but under the age of 21, with written approval and certification of the unit commander may, for the purpose of participating in official hunting or target shooting activities in an authorized area register, transport, possess, and use a firearm to include a handgun. The commander's certification/approval must be presented at the time the firearm is registered, and be available upon demand at any time the firearm is carried, used or transported on the installation.

(ii) Persons under the age of 18 while hunting or target shooting on the installation must be accompanied by a person over the age of 21 who will be responsible for compliance with the requirements of this subpart.

(b) *Storage.* Personnel residing in family housing, Bachelor Officer/Enlisted Quarters and guest housing, may store authorized ammunition, knives with a blade measuring more than 3½ inches, bows and arrows, registered crossbows, registered BB and pellet guns, and registered firearms within their quarters. Firearms should be stored in a locked container or otherwise secured by a locking device that immobolizes the trigger and/or action.

(1) Personnel residing in troop billets may store authorized ammunition, knives and blades measuring more that 3½ inches, bows and arrows, registered crossbows, registered BB and pellet guns, and registered firearms in unit arms rooms. The unit arms room should utilize a standard weapons card and log book to document storage, removal, and return.

(2) Persons must be in compliance with Federal and state law regarding possession (i.e., age, criminal record restrictions, etc.).

(3) Storage, accountability, and registration procedures will be per Army Regulation 190–11 and supplements.

§ 552.197 Requirements for carrying and use.

(a) *Carrying and use.* Persons legally authorized to possess firearms, ammunition, knives (with blades longer than 3 ½ inches), bows and arrows, and crossbows, may carry or transport weapons under the following conditions:

(1) For the purposes of hunting: From quarters, on or off the installation, by the most direct route to hunting area or Pass and Permit Office and return. Individuals must have in their possession a weapon registration (if applicable), valid state hunting license, valid Fort Knox hunting permit, and an area access pass (if applicable).

(2) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Individuals must have in their possession at all times their registration (if applicable).

(i) When carried, weapons will be carried in an open manner or in a case designed by the manufacturer to specifically store a firearm (not concealed). Firearms will be unloaded when carried (i.e., projectiles physically separated from the firearms, not just removed from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned knife with a blade over 3½ inches to field duty, provided it is carried fully exposed to view in a sheath/scabbard. The Provost Marshal may authorize the carrying of a privately owned, sheathed, lock blade knife on military and DoD police officers' pistol belts.

(ii) When transported in a vehicle, weapons will be in plain view in the passenger area of the vehicle or secured (locked) in the trunk or other rear compartment of the vehicle, not readily accessible from the passenger area (i.e. locked tool box secured to bed of truck). Firearms will be unloaded and the ammunition physically separated from the firearms. The glove compartment of a vehicle is NOT an authorized compartment for storing or transporting pistols on the installation.

(iii) Firearms, bows and arrows, crossbows, BB and pellet guns will not be loaded, fired or used within the cantonment areas of the installation; within 50 yards of any public highway, street, or Fort Knox numbered road or across same; within 100 yards of any designated recreation area, managed waters, building, or similar structures; any aircraft landing facility (to include currently used landing or stage fields); any ammunition storage area (except on approved firing range when properly authorized).

(b) *Kentucky Revised Statute 527.020—Carrying concealed deadly weapon.* Persons not affiliated with DoD or this installation when carrying or transporting weapons through the installation must be in full compliance with Kentucky State Law governing possession, use, and transportation of said weapons which mandates the following:

(1) A person is guilty of carrying a concealed weapon when he carries concealed a firearm or other deadly weapon on or about his person.

(2) Peace officers, when necessary for their protection in the discharge of their official duties; United States mail carriers when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed weapons on or about their persons.

(3) Policemen directly employed by state, county, city, or urban-county governments may carry concealed deadly weapons on or about their person at all times within the Commonwealth of Kentucky, when expressly authorized to do so by the government employing the officer.

(4) A deadly weapon shall not be deemed concealed on or about the person if it is located in a glove compartment, regularly installed in a motor vehicle by its manufacturer regardless of whether said compartment is locked, unlocked, or does not have a locking mechanism.

(5) Carrying a concealed weapon is a Class A misdemeanor unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used or displayed in which case it is a Class D felony.

§ 552.198 Disposal and disposition of confiscated/seized or surrendered weapons.

(a) *Disposal.* Any person may dispose of unwanted firearms by relinquishing the weapon in person to the on-duty Military Police Desk Sergeant located at Building 204, Fort Knox. Any firearm, to include dangerous instruments or prohibited items, may be disposed of anonymously by placing the weapon or item in the amnesty container located adjacent to the front entrance of Building 1384, One-Stop Processing Center. All personnel are encouraged to safely dispose of any unwanted or undesired firearm/weapon by either of the methods in this paragraph.

(b) *Disposition of weapons and ammunition.* All weapons, ammunition, explosives, or other devices defined in this subpart, that are confiscated

pursuant to the commission of a crime, violation of this or other regulation, voluntarily surrendered or found unsecured/unattended on the installation, will be immediately turned over to the Military Police, U.S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI) for investigation, retention as evidence, or other lawful disposition. When retention for investigation or evidence is no longer required by Military Police, USACIDC, or other law enforcement or judicial agencies, the items will be disposed of under the provisions of AR 195–5, Evidence Procedures.

(c) *Forfeiture.* Upon conviction of any person for the violation of any law or statute in which a weapon was used, displayed, or unlawfully possessed by such person, the court of competent jurisdiction may order the weapon to be forfeited and destroyed according to law.

Appendix A to Subpart O—Partial List of Publications Applicable to the Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

1. Control of Firearms and Weapons, USAARMC Regulation 210–1.
2. Physical Security of Arms, Ammunition, and Explosives, Army Regulation 190–11 and supplements.
3. Evidence Procedures, Army Regulation 195–5.

These publications are available for inspection at the Office of the Staff Judge Advocate, Fort Knox, Kentucky 40121.

[FR Doc. 95–27297 Filed 11–2–95; 8:45 am]
BILLING CODE 3710–08–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT32–1–7117b, ND6–2–7081b, UT21–1–6915b, WY7–1–7042b; FRL–5303–2]

Clean Air Act Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes; Montana, North Dakota, South Dakota, Utah, and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing approval of revisions to the State Implementation Plans (SIPs) submitted by the States of Montana, North Dakota, Utah, and Wyoming. The submittals included revisions to the prevention of significant deterioration (PSD) permitting rules of these States mainly to address the replacement of the total suspended particulate (TSP) increments with increments for PM–10 (particulate matter 10 micrometers or less in diameter), but also to address other changes in the Federal PSD permitting regulations and to make other minor revisions. EPA is also proposing to delete the TSP area designation tables and to revise and/or create PM–10 area designation tables in 40 CFR part 81 for these States as well as for the State of South Dakota (which has been delegated authority to implement the Federal PSD regulations in 40 CFR 52.21). In the final rules section of this **Federal Register**, the EPA is acting on the States' SIP submittals in a direct final rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this documents should do so at this time.

DATES: Comments on this proposed action must be received in writing by December 4, 1995.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART–AP, at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; Montana Air Quality Division, Department of Health and Environmental Sciences, 836 Front Street, P.O. Box 200901, Helena, Montana 59620–0901; North Dakota Division of Environmental Engineering, State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, North Dakota 58502–5520; Utah Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah, 84114–4820; and Wyoming Air Quality Bureau, Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules Section of this **Federal Register**.

Dated: September 19, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–27063 Filed 11–2–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–160; RM–8710]

Radio Broadcasting Services; Kewanee, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Virden Broadcasting Corporation proposing the substitution of Channel 230A for Channel 221A at Kewanee, Illinois, and the modification of Station WJRE(FM)'s license accordingly. Channel 230A can be allotted to Kewanee in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.8 kilometers (0.5 miles) west at petitioner's requested site. The coordinates for Channel 230A at Kewanee are North Latitude 41–14–15 and West Longitude 89–56–15.

DATES: Comments must be filed on or before December 21, 1995 and reply comments on or before January 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20554 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–160, adopted October 16, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27260 Filed 11–2–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–161, RM–8709]

Radio Broadcasting Services; Las Vegas, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by William R. Sims seeking the allotment of Channel 244A to Las Vegas, NM, as the community's third local commercial FM service. Channel 244A can be allotted to Las Vegas in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–36–00 North Latitude and 105–13–00 West Longitude.

DATES: Comments must be filed on or before December 21, 1995, and reply comments on or before January 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry D. Wood, Esq., Jones, Waldo, Holbrook & McDonough, P.C., 2300 M Street, NW., Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 95–161, adopted October 13, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27257 Filed 11–2–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–162, RM–8714]

Radio Broadcasting Services; Wellsville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Erin Communications, Inc., seeking the substitution of Channel 278A for Channel 228A at Wellsville, NY, and the modification of Station WJQZ(FM)'s license accordingly. The substitution of channels could enable Station WJQZ(FM) to operate with full Class A facilities of 6 kW instead of its present 3 kW. Channel 278A can be allotted to Wellsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) southwest, at coordinates 42–13–24 NL; 78-00-34 WL. Canadian concurrence in the allotment is required since Wellsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border. The Commission will not accept competing expressions of interest in use of Channel 278A at Wellsville since the procedures set forth in 1.420(g) of the Commission's Rules do not apply in this case as the Commission generally considers channels of the same class to be equivalent.

DATES: Comments must be filed on or before December 21, 1995, and reply comments on or before January 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., Three Bethesda Metro Center, Suite 640, Bethesda, MD 20814–5330 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–162, adopted September 18, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27259 Filed 11–2–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–159; RM–8711]

Radio Broadcasting Services; Laramie, WY

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Rule Communications proposing the allotment of Channel 244A at Laramie, Wyoming, as the community's fifth local commercial FM transmission service. Channel 244A can be allotted to Laramie in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 244A at Laramie are North Latitude 41–18–42 and West Longitude 105–35–06.

DATES: Comments must be filed on or before December 21, 1995 and reply comments on or before January 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20554 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–159, adopted October 16, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A. Karousos
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27258 Filed 11–2–95; 8:45 am]
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47 CFR Part 100

[IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–443]

Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rulemaking that proposes a number of new rules for the Direct Broadcast Satellite ("DBS") service, including the use of competitive bidding to resolve mutually exclusive applications for DBS resources. The Commission seeks comment on all of its tentative conclusions and proposed rules.

As part of its decision in *Advanced Communications Corporation*, FCC 95–428 (released October 18, 1995), the Commission reclaimed for the public 51 channels of DBS spectrum at two orbital locations (27 channels at 110° W.L. and 24 channels at 148° W.L.) that had previously been assigned to Advanced Communications Corporation ("ACC"). The Commission proposes to revise rules and policies in the DBS service in order to update the current "interim" rules and to reassign, by auction or other means, channels at orbital locations previously assigned to ACC.

DATES: Comments must be submitted on or before November 20, 1995; reply comments must be submitted on or before November 30, 1995. Written comments by the public on the proposed and/or modified information collections are due November 20, 1995. Written comments must be submitted by the Office of Management and Budget ("OMB") on the proposed and/or modified information collections on or before January 2, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street NW., Washington, DC 20503 or via the Internet to faint@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Bill Wiltshire or Suzanne Hutchings, International Bureau, (202) 418–0420; or Diane Conley, Wireless Telecommunications Bureau, (202) 418–0660. For additional information concerning the information collections, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–443, adopted October 27, 1995 and released October 30, 1995. The complete text of this Notice of Proposed Rulemaking (*Notice*) is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

This *Notice* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104–13. It has been submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Synopsis of the Notice of Proposed Rule Making

I. Introduction

1. Over six years ago, in *Continental Satellite Corporation*, 4 FCC Rcd 6292 (1989), the Commission stated that

existing DBS permittees would have first right to additional channel assignments upon surrender or cancellation of a DBS construction permit. the *Notice* tentatively concludes that this reassignment policy, adopted in an era before Congress explicitly authorized the Commission's use of auctions and well before any DBS system actually went into operation, no longer serves the public interest, and therefore should be abandoned.

2. Accordingly, the Notice proposes new rules for reassigning DBS resources. In the Notice, the Commission tentatively concludes that it has the statutory authority to auction DBS construction permits if the Commission receives mutually exclusive applications, and that the objectives of Section 309(j) of the Communications Act, 47 U.S.C. 309(j), would be served by doing so. Specifically, the Notice proposes to auction two DBS construction permits: one for all 28 channels now available at the 110° orbital location (27 channels from ACC plus 1 channel that was never assigned), and another for all 24 channels now available at the 148° orbital location. The Commission tentatively concludes that these two permits should be awarded through a sequential, oral outcry auction. The Notice seeks comment on both the proposed use of auctions in the DBS service and the proposed auction rules.

3. The *Notice* also proposes new rules for the DBS service. In particular, the proposed rules would: (1) Establish additional performance criteria for new permittees; (2) guard against potential anticompetitive conduct by DBS providers; and (3) ensure timely DBS service to Alaska and Hawaii. The *Notice* also requests comment on existing Commission policy governing the extent to which DBS resources may be put to alternative uses. These rules are proposed in order to foster swift utilization of DBS orbital/channel assignments, and to ensure that the public reaps the full benefit of DBS spectrum resources. The *Notice* seeks comment on these proposed service rules as well.

II. Proposed Service Rules

A. Due Diligence Milestones

4. The Notice tentatively concludes that combining existing due diligence requirements with additional milestones for construction and operation of DBS systems by new permittees will prevent unnecessary delays in the commencement of service. Accordingly, the Notice proposes rules to add two additional performance criteria for those receiving DBS construction permits after the effective date of the proposed rule: (1) Completion of construction of the first satellite in a DBS system within four years of authorization; and (2) launch and operation of all satellites in a DBS system within six years of authorization.

B. Use of DBS Capacity

5. The Notice requests comment on the Commission's existing policy for non-conforming uses of DBS resources. That policy requires each DBS licensee to begin DBS operations before the end of its first license term, but allows otherwise unrestricted use during that term. After expiration of the first term, a DBS operator may continue to provide non-DBS service only on those transponders on which it also provides DBS service, and only up to half of the use of each transponder each day. As an example of the comments sought, the *Notice* suggests that the existing restrictions on each DBS transponder could be restated in terms of capacity rather than time, so as to accomplish the same goals without unduly restricting decisions as to satellite configuration and operation, and further invites comment on whether and how to formulate a rule to better account for the flexibility of digital transmission and compression.

6. The Notice also refers to the possibility that, as a result of a separate proceeding, operators using DBS channels and orbital locations may be permitted to provide both domestic and international service. In light of that possibility, and the discussion of the permissible non-standard uses of DBS channels, the Notice requests comment on whether the U.S. has the authority to auction permits which may include the provision of international service.

C. Pro-Competitive Rules and Policies

Spectrum Aggregation Limitations

7. In order to promote competition and prevent undue concentration of limited DBS resources, the Notice tentatively concludes that it may now be prudent and appropriate to adopt rules designed to further those goals, especially when DBS resources are controlled by the provider of a competing, non-DBS service. The analysis begins by tentatively concluding that the market in which multichannel video programming distributors ("MVPDs") compete—the market for the delivery of multichannel video programming—is an appropriate "product market" in which to determine the competitive effect of having DBS resources under the control of the provider of another type of multichannel video distribution service. The Notice also tentatively concludes that (1) DBS service rules should address competitive issues relating to the use of DBS spectrum to provide the wholesale distribution of DBS services to cable operators and other MVPDs; (2) the effect of DBS competition in the broader MVPD market will principally be felt in essentially local markets; and (3) cross-ownership between DBS operators and other MVPDs may present opportunities for anticompetitive strategic conduct that potentially has adverse effects at the firm or national level.

8. Accordingly, the Notice proposes that any DBS licensee or operator affiliated with another MVPD be permitted to control or use DBS channel assignments at only one of the four orbital locations capable of serving the entire contiguous United States ("full-CONUS"), and seeks comment on whether the proposed spectrum limitations should be related to the size of the MVPD involved and whether such limitations should differentiate between cable operators and other MVPDs. The Notice also proposes that aggregation of DBS channel assignments by any DBS permittee or licensee be limited to a total of 32 channels at any combination of full-CONUS orbital locations, and further seeks comment on whether the Commission should impose a limitation on an operator owning a significant number of channels at each of multiple full-CONUS orbital locations—e.g., prohibiting a DBS permittee or licensee holding more than 16 channels at one full-CONUS orbital location from holding channels at any other full-CONUS location.

9. The Notice proposes that any permittee or licensee that acquires control over channels in excess of the proposed spectrum limitations be given ninety days from the date of Commission approval of such acquisition in which to either surrender to the Commission its excess channels, or file with the Commission a transfer or assignment application in order to divest sufficient channels to bring the applicant into compliance with all applicable spectrum limitations.

10. For purposes of implementing the proposed spectrum aggregation limitations, the Notice proposes to consider four orbital locations—61.5° W.L., 101° W.L., 110° W.L., and 119° W.L.—to be capable of full-CONUS service. The Notice tentatively concludes that applying the spectrum cap to these four orbital locations will ensure that there is sufficient channel capacity for a minimum of four full-CONUS DBS providers. It also

concludes that channels at the other four DBS orbital locations, which are not capable of full-CONUS service, probably cannot match the economies of scale in domestic service achieved by full-CONUS operators, and thus should be exempt from the proposed spectrum limitations.

11. In order to maintain the integrity of the channel aggregation limitations, the Notice tentatively concludes that it is necessary to count against the spectrum limitations all channels held by DBS operators that share some level of common ownership or control. Because of concerns that entities could engage in anticompetitive conduct not only through control of DBS channels, but also through use of such channels, the Notice concludes that it is appropriate to apply spectrum limits not only to DBS permittees and licensees, but also to DBS operators, defined as any person or group of persons who provide services using DBS channels and directly or through one or more affiliates own an attributable interest in such satellite system; or who otherwise control or are responsible for, through any arrangement, the management and operation of such a satellite system. For purposes of implementing the spectrum aggregation limitations, the Notice proposes to attribute both controlling interests and any interest of five percent or more in a DBS permittee, licensee, or operator. The Notice proposes to rely on existing case law for making control determinations where such issues arise. Specifically, the Notice proposes to adopt rules that attribute to the holder any interest of five percent or more, whether voting or nonvoting, and all partnership interests, whether general or limited. In addition, the Notice proposes to adopt attribution rules that (1) attribute any interest of ten percent or more held by an institutional investor or investment company, rather than a five percent interest; (2) employ a multiplier for determining attribution of interests held through intervening entities; (3) provide for attribution of interests held in trust; (4) attribute the positional interests of officers and directors; (5) attribute limited partner interests based not only upon equity but also upon percentages of distributions of profits and losses; and (6) provide for attribution based upon certain management agreements and joint marketing agreements. For purposes of the spectrum limitations, the Notice also proposes to identify any individual or entity as an affiliate of a licensee, permittee, or operator, or of a person holding an attributable interest in a licensee, permittee, or operator, if such individual or entity: (i) Directly or indirectly controls or has the power to control the licensee, permittee, or operator; (ii) is directly or indirectly controlled by the licensee, permittee, or operator; or (iii) is directly or indirectly controlled by a third party or parties that also has the power to control the licensee, permittee, or operator. The Notice also seeks comment on whether the definition of an affiliate should also include individuals or entities that have an identity of interest with the licensee, permittee, or operator.

Conduct Rules To Protect Competition

12. In addition to the structural solutions designed to promote competition by preventing the potential for undue concentration of DBS and MVPD resources, the Notice also proposes conduct limitations on the use of DBS channels and orbital locations to encourage, to the maximum extent possible, rivalry among MVPDs. Specifically, the Notice further proposes to (1) extend the conditions placed on Tempo Satellite, an existing DBS permittee that is wholly owned by a cable operator, to all MVPD providers that own DBS resources, such that they cannot offer DBS service primarily as an ancillary service to their own programming distribution services, or provide DBS service to subscribers of their non-DBS systems under different terms than are being offered to non-subscribers; and (2) prevent a DBS operator from selling, leasing, or otherwise providing transponder capacity to any entity that enters into an agreement with an MVPD granting that MVPD the exclusive right to distribute DBS services within, or adjacent to, its service area. The Notice also requests comment on whether existing program access and program carriage rules adequately address vertical integration concerns arising from common ownership among DBS operators, other MVPDs, and program vendors, especially in connection with "headend in the sky" wholesale distribution from DBS satellites.

Other Concerns

13. The Notice observes that in the *Advanced Communications Corporation* proceeding, commenters raised a number of other concerns about potential strategic conduct that could arise from cable-affiliated ownership of full-CONUS DBS spectrum. Those commenters argued that cable-affiliated ownership of full-CONUS DBS spectrum should be prohibited, or in the alternative, that several remedial conditions should be imposed. The Notice seeks comment on the extent to which those and related concerns are implicated by the proposed auction of DBS construction permits, and if so, whether additional DBS service rules might be appropriate to address those concerns.

East/West Paired Assignments

14. The Notice tentatively concludes that progress in the DBS service since *Continental* was issued has rendered unnecessary the policy, developed in that decision, of assigning DBS channels only in east/west pairs, with eastern half-CONUS service permitted only from the four eastern orbital locations and western half-CONUS service permitted only from the four western orbital locations.

D. Service to Alaska and Hawaii

15. The Notice proposes: (1) To require that all new permittees must provide service to Alaska and Hawaii if such service is technically feasible from their orbital locations; and (2) to condition the retention of channels assigned to current permittees at western orbital locations on provision of such service, from either or both of their assigned orbital locations.

E. License Term

16. The Notice proposes to increase the term of a non-broadcast DBS license from 5 years to 10 years, the maximum allowed under the Communications Act, which better reflects the useful life of a DBS satellite and is consistent with the current proposal for extending the term of satellite licenses in other services.

III. Proposed Auctioning of DBS Permits

A. Authority To Conduct Auctions

17. The Notice tentatively concludes that the Commission has authority under Section 309(j) to use competitive bidding to award construction permits for the DBS spectrum reclaimed from ACC as well as other available DBS spectrum. The Notice tentatively concludes that construction permits available for reclaimed DBS spectrum are "initial" within the meaning of Section 309(j). The Notice also tentatively concludes that it is likely that mutual exclusivity will exist among applications for the DBS channels reclaimed from ACC as well as other DBS channels that may become available in the future. The Notice further tentatively concludes that there are no means of avoiding mutual exclusivity in the DBS service that are consistent with the objectives of Section 309(j). The Notice proposes to consider mutual exclusivity to occur only when the number of DBS channels sought at a given orbital location exceeds the number available there, and it asks for possible alternative criteria for identifying mutually exclusive applications. The Notice also tentatively concludes that the "principal use" requirement of Section 309(j) is satisfied because DBS is likely to be primarily a subscription-based service, and that using competitive bidding to award DBS authorizations would promote the objectives of Section 309(j).

B. Competitive Bidding Design

18. The Notice explains that the Commission has previously concluded that the objectives of Section 309(j) will generally best be achieved by auctions designed to award authorizations to the parties that value them most highly. Such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.

19. The Notice proposes that available channel assignments be auctioned sequentially in two blocks: one block of 28 channels at 110°, including the 27 channels reclaimed from ACC and one channel that has never been assigned; and one block of 24 channels at 148°, which were reclaimed from ACC. The Notice tentatively decides not to divide the available blocks into smaller parcels because it appears from the configuration of current DBS systems that channels are most effectively utilized when they are available in a substantial quantity at a given orbital location. The Notice also tentatively concludes that there would be little to gain by conducting simultaneous auctions of the DBS channels reclaimed from ACC because the channels at 110° and those at 148° are not likely to be close substitutes in the near term and there is no evidence of synergies between the channels at the two orbital locations. If sequential auctioning is used, the Notice proposes to auction the channels at 110° first because all of the information available indicates that the channels at 110° have the highest value of those currently available. The Notice asks whether the channels at 110° and at 148° should be offered in a different configuration, and whether there are foreseeable circumstances in which simultaneous auctions of DBS permits would be more appropriate than sequential auctions. The Notice also seeks comment on any general principles that may be used to determine the sequence of future DBS auctions that may be held if construction permits are auctioned sequentially.

20. The Notice tentatively concludes that multiple round bidding would be the best method of auctioning the channels reclaimed from ACC, because the value of the construction permits is likely to be very high and at the same time may be somewhat uncertain. Single round sealed bidding would be a simple method of awarding DBS construction permits, but bidders would have to guess about the value that other bidders place on the permits and there is a substantial risk that the party that values a permit most highly may not submit the winning bid. The Notice requests comment on the advantages and disadvantages of both single round, sealed bidding and multiple round bidding as a method of auctioning DBS permits in the future.

21. The Notice also tentatively concludes that oral outcry would be the best method of submitting bids in the case of DBS, and that this method should be used for the channels reclaimed from ACC. An oral outcry auction has the advantage of being simple and rapid, and it avoids the additional complications associated with electronic filing. The Notice seeks comment on whether an oral outcry auction could pose problems for bidders that need time between bidding rounds to arrange for additional financing if bidding goes higher than anticipated. The Notice also seeks comments on whether a combined sealed bid-oral outcry auction may be appropriate for the channels available at 110° and 148° to help reduce the risk of collusion while retaining the benefits of a multiple round auction.

C. Bidding Procedures

22. In the event multiple round auctions are used, imposing a minimum bid increment would speed the progress of the auction and help to ensure that the auction concludes within a reasonable period. If oral outcry is used, the Notice tentatively concludes that the auctioneer should have discretion to establish bid increments—and raise or lower them in the course of an auction—consistent with directions provided by the Commission. The Notice also asks for suggestions as to how bid increments should be determined if bids are submitted electronically. The *Notice* also proposes to establish a minimum opening bid for the 28 channels available at 110°, both to help ensure that the auction proceeds quickly and to increase the likelihood that the public receives fair market value for the spectrum. The Notice asks interested parties to suggest the appropriate level of a minimum opening bid for the channels at 110°, and it seeks comment on whether and how a minimum bid should be established for the channels at 148° and other channels that may become available in the future.

D. Procedural and Payment Issues

23. The *Notice* proposes to apply its general procedural and payment rules for auctions to the DBS service, along with certain modifications discussed below. In keeping with previous practice, the *Notice* also proposes that the Commission retain discretion to implement or modify certain procedures that would be announced by Public Notice prior to particular auctions, including rules governing the timing of application and payment requirements and any activity and stopping rules that may be appropriate.

24. Under the procedures proposed the Notice, applicants for DBS auctions would file a short-term application, FCC Form 175, with the Commission prior to the auction in which they wish to participate. The *Notice* also tentatively concludes that it would be appropriate to allow only for manual filing of these forms for the proposed auction of spectrum available at 110° and 148°, because a small number of participants is anticipated.

25. The Notice proposes that entities that would exceed proposed spectrum caps as a result of successful bidding in the proposed auctions should be given 90 days following the date of grant of a construction permit won through an auction to either surrender to the Commission their excess channels or file an application that would result in divestiture of the excess channels.

26. The Notice proposes to require an upfront payment in all DBS auctions to help ensure that only serious, qualified bidders participate. The Notices seeks comment on how the size of an upfront payment should be determined and asks whether it would be appropriate to establish an upfront payment of five percent of the spectrum's estimated value. The Notice further asks how the value of spectrum should be estimated. The Notice also asks whether a single upfront payment should qualify parties to bid on both the 110° and 148° channel blocks, and, if not, what the appropriate amount of an upfront payment would be for each of the two channel blocks. The Notice further asks if only the winner of the first permit should be required to submit an additional upfront payment if it wishes to bid on the second permit. With respect to the collection of upfront payments, the Notice proposes that prospective bidders deposit their payments in the Commission's lock-box bank by a date certain that would allow the Commission sufficient time to verify the availability of the funds before the

auction. The Notice tentatively concludes that such a procedure would minimize the risk of defaults that could force the reauctioning of spectrum and asks for comment on alternative collection methods.

27. The Notice also proposes that every DBS auction winner should be required to submit to the Commission an amount sufficient to bring its total deposit up to 20 percent of its winning bid within 10 business days of the announcement of winning bidders. By the same deadline, winning bidders would be required to file information in conformance with Part 100 of the Commission's Rules and a signed statement describing their efforts to date and future plans to come into compliance with the proposed spectrum caps. In addition, the Notice proposes that winning bidders be required to submit the balance of their winning bid within five business days of an announcement that the Commission had dismissed or denied any and all petitions to deny. Under this proposal, if a winning bidder failed to submit the balance of the winning bid or the permit was otherwise denied, a default payment would be assessed.

28. If oral outcry auctions are used, the Notice proposes to rely on default payments to deter insincere bidding and provide an incentive for bidders wishing to withdraw their bids to do so before bidding ceases. Under this proposal, a default payment would be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The Notice proposes that the amount of such a default payment should be equal to the difference between the defaulting auction winner's "winning" bid and the amount of the winning bid the next time the license is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner would be required to submit a payment of three percent of the subsequent winning bid or three percent of its own "winning" bid, whichever is less.

29. If single round, sealed bid auctions for DBS used, the item proposes to require no payments for withdrawing a bid (1) before the bids are opened, or (2) after bids are opened but before the high bidder has been notified. However, a payment equal to the difference between the high bid and the next highest bid would be required of any party that defaults after being notified that it has submitted the high bid in a sealed bid DBS auction.

E. Regulatory Safeguards

30. The Notice proposes that any entity that acquires a DBS authorization through competitive bidding, and seeks to transfer that authorization within six years of the initial license grant, would be required to file, together with its application for FCC consent, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its authorization.

31. The Notice tentatively concludes that the performance requirements proposed as part of the DBS service rules are sufficient to achieve the statutory goals of ensuring prompt delivery of service to rural areas, preventing the stockpiling of spectrum, and promoting investment in and rapid deployment of new services, and that it is unnecessary to adopt any further performance rules in connection with the proposed auction procedures.

32. Consistent with the Commission's general practice, the Notice proposes that bidders be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders also would be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

33. The Notice further proposes to require winning bidders to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. After short-form applications are filed, and prior to the time the winning bidder has submitted its lump-sum payment of the balance of its bid, all applicants would be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids of bidding strategies with other applicants for licenses serving the same or overlapping geographical areas, unless such bidders were members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. Applicants would nonetheless be allowed to (1) modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes would not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses for channels that may be used to cover the same or overlapping geographical areas; and (2) make agreements to bid jointly for licenses after the filing of short-form applications, provided that the parties to the agreement have not applied for licenses that may be used to serve the same or overlapping geographical areas. Under the proposal, the holder of a non-controlling attributable interest in an entity submitting a short-form application would be allowed to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses that may be used to serve the same or overlapping geographical areas after the filing of short-form applications, provided that (1) the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses that may be used to serve the same or overlapping geographical areas, and (2) the arrangements do not result in any change in control of an applicant.

F. Designated Entities

34. Because of the extremely high implementation costs associated with satellite-based services, the Notice tentatively concludes that no special provisions should be made for designated entities for the channels currently available at 110° and 148°. The Notice seeks comment on whether special provisions should be made for designated entities in future DBS auctions, and requests comment on whether future auctions of smaller blocks of DBS spectrum or technological advances in the delivery of DBS service might reduce capital requirement barriers for designated entities.

Paperwork Reduction Act

This Notice contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget ("OMB") to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from date of publication of this Notice in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

47 CFR Part 100

OMB Approval Number: None.
Title: Direct Broadcast Satellite Service.
Form No.: None.
Type of Review: Approval of existing collection.
Respondents: Businesses or other for profit.
Number of Respondents: 8.
Estimated Time Per Response: 400 hours.
Total Annual Burden: 3200 hours.
Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting DBS authorizations, and in determining the technical, legal, and financial qualifications of a satellite applicant, permittee or licensee. Existing information collection requirements are set forth in Part 100 of the Commission's Rules and in Commission orders. *See e.g., Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference.* 90 FCC 2d 676 (1982), *recon. denied*, 53 RR 2d 1637 (1983); *CBS, Inc.*, 98 FCC 2d 1056 (1983); *Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986), *United States Satellite Broadcasting Co.*, 3 FCC Rcd 6858, 6861–62 (1988).

Under the existing information collection requirements in the Commission's Rules, an entity awarded a DBS Authorization would be required to submit the information required pursuant to 47 CFR 100.13, 100.19, 100.21, 100.51. The Commission proposed to require that DBS auction winners submit: (1) Ownership information to determine compliance with Parts 1 and 100 of the Commission's Rules; (2) a statement describing their efforts to comply with the proposed spectrum aggregation limitations; (3) an explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership, or other agreement or arrangement they enter into relating to the competitive bidding process prior to the close of bidding; and (4) any agreements or contracts pertaining to the transfer of the DBS authorization acquired through auction during the six years following grant of the authorization.

Ordering Clauses

Accordingly, *It is Ordered* that, pursuant to Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, and 309(j), *Notice is Hereby Given* of the proposed amendments to Part 100 of the Commission's Rules, 47 CFR Part 100, in accordance with the proposals in this Notice of Proposed Rulemaking, and that *Comment is Sought* regarding such proposals.

It is Further Ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

Administrative Matters

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 20, 1995 and reply comments on or before November 30, 1995. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, NW. Washington, DC 20554. For further information concerning this rulemaking contact Paula Ford at (202)739–0733.

Initial Regulatory Flexibility Act Statement

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the Notice and is not published in the **Federal Register**. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 100

Radio, Satellites.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–27346 Filed 11–2–95; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

48 CFR Parts 1213, 1237 and 1252

[Docket OST–95–775; Notice 95–13]

RIN 2105–AC–30

Revision of Department of Transportation Acquisition Regulation

AGENCY: Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The proposed rule implements a Department of Transportation Office of the Inspector General recommendation resulting from a review on the acquisition of commercial training services. The Department is proposing to amend the Transportation Acquisition Regulation (TAR) to: Require all offerors to certify that the data provided concerning company qualifications, background, etc. is current, accurate and complete; and prohibit contractors from soliciting or advertising private, non-Government training while under contract to the Department.

DATES: Comments must be received on or before December 4, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments, preferably in triplicate, to Docket Clerk, Docket No. OST–95–775, Department of Transportation, 400 Seventh Street, S.W., Room 4107, Washington, D.C. 20590. Please cite TAR revision in all correspondence concerning this proposal.

FOR FURTHER INFORMATION CONTACT: Barbara Perreault Weakley, Office of Acquisition and Grant Management, M–61, 400 Seventh Street, S.W., Washington, D.C. 20590: (202) 366–4967.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the proposed approach (obtaining certification of data submitted with offers, bids or proposals), including suggested alternative approaches to obtaining the required information from industry. In particular, the Department is exploring ways to reduce paperwork burden on small businesses. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

A. Background

It is the policy of the Department of Transportation to require prospective training service contractors (educational institutions, large and small businesses) to certify the data provided concerning qualifications, background statements, etc., are current, accurate, and complete at the time of submitting a quotation or an offer. In addition, DOT considers inappropriate the soliciting, advertising or marketing of related or unrelated training during the conduct of training (i.e., courses, seminars, classes) while under contract to DOT. Solicitation provisions and a contract clause will be incorporated into the TAR requiring offeror certification and prohibiting the marketing of an institution's or vendor's training resources while conducting training under contract to DOT.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

B. Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department Regulatory Policies and Procedures. The Department does not believe that there would be sufficient Federalism implications to warrant the preparation of a Federalism assessment. This rule will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

C. Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. Chapter 35 under OMB No. 2105–AC–30; Administration: Office of the Secretary of Transportation; Title: Amendment to Transportation Acquisition Regulation; Need for Information: To require certification of capability statements and background data submitted per the requirements of the solicitation or request for quotation; Proposed Use of Information: To verify accuracy and completeness of offerors' capability statements and data submitted per the requirements of the solicitation or request for quotation; Frequency: On occasion; Burden Estimate: 792 hours; Forms: None; Average Burden Hours Per Respondent: 1 hour, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the certification requirements. Comments on the proposed information collection requirement should be sent to the DOT rulemaking docket for this proposed action and comments may also be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Department of Transportation.

This proposal revises record keeping and information collection requirements and require approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1213, 1237 and 1252

Government procurement.

This NPRM is issued under the delegated authority of 49 CFR Part 1.59(q). This authority has been redelegated to the Senior Procurement Executive. Issued this 26th day of October 1995, at Washington, D.C.

David J. Litman,

Senior Procurement Executive.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR Chapter 12 is proposed to be amended as set forth below:

1. The authority citation for 48 CFR chapter 12, Parts 1213, 1237, and 1252 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

PART 1213—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

2. Part 1213 is amended by adding subpart 1213.71, Department of Transportation Procedures for Acquiring Training Services as follows:

Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

1213.7100 Applicability.

(a) DOT policy at (TAR) 48 CFR 1237.7000 also applies to the Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by the Government purchase/credit card. The Government purchase/credit card can only be used to acquire training services valued at $2,500 or less.

(b) As reflected in (TAR) 48 CFR 1237.7002, this policy does not apply to training attended by DOT employees which is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one week course at a university or other private entity, the policy does not apply. DOT does not control this course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course; therefore, no soliciting or advertising of private, non-Government training while conducting the contracted-for training is permitted.

1213.7101 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in all solicitations and requests for quotations, and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (e.g., purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1237—SERVICE CONTRACTING

3. Subpart 1237.70, Department of Transportation Procedures for Acquiring Training Services, is added as follows:

SUBPART 1237.70—DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES

1237.7000 Policy.

When training services are provided under contract to DOT, it is the policy of DOT that all prospective contractors:

(a) Certify that the data provided concerning company qualifications, background statements, etc., is current, accurate, and complete; and

(b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

1237.7001 Certification of data.

Towards fulfilling DOT's policy at (TAR) 48 CFR 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

1237.7002 Applicability.

The policy at (TAR) 48 CFR 1237.7000 applies to all DOT contracts as defined in FAR 2.101 for training services when DOT controls the content and/or the presentation of the course. This policy does not apply to courses attended by DOT employees which are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation. (See (TAR) 48 CFR 1213.7100 for examples.)

1237.7003 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in solicitations and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1252 is amended to add sections 1252.237–71 and 1252.237–72 to read as follows:

1252.237–71 Certification of data.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following provision:

CERTIFICATION OF DATA (OCT 1995)

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (e.g., company profile, qualifications, background statements, brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 and 49 CFR Part 31 and/or; (3) termination for default under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors.

Signature: _____

Date: _____

Typed Name and Title _____

Company Name _____

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

1252.237–72 Prohibition on advertising.

As prescribed in (TAR) 48 CFR 1213.7001 and 1237.7003, insert the following clause:

PROHIBITION ON ADVERTISING (OCT 1995)

The contractor or its representatives (including training instructors) shall not advertise or solicit business for private, non-Government training while conducting training services under this contract. This prohibition extends to oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes regarding non-Government training opportunities.

The contractor agrees to insert this clause in its sub-contracts.

(End of clause)

5. In the appendix to subpart 1253.3, the TAR Matrix is amended by adding 1252.237–71, Certification of Data, and 1252.237–72, Prohibition on Advertising, immediately following 1252.237–70, Qualifications of Employees, as follows:

Appendix To Subpart 1253.3

* * * * *

TAR MATRIX

Provision or clause	Prescribed In	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.237–71 Certification of Data.	1237.7003	P	No	K					A	A					A				A		A	
1252.237–72 Prohibition on Advertising.	1237.7003	C	No	I					A	A					A				A		A	

* * * * *

[FR Doc. 95–27248 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–62–P

Notices

Federal Register
Vol. 60, No. 213
Friday, November 3, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Province Advisory Committee will meet on November 15 and 16, 1995, for a field trip and meeting. The field trip portion of the meeting will start at 10:00 a.m. November 15, at the Forest Service Ranger District Office, on Forest Road off Highway 89, McCloud, California. The focus of the field trip will be: (1) An overview on Ecological Unit Inventory process; (2) Late Successional Reserve Assessment; (3) Watershed Analysis process; (4) Plantation conditions, (5) Matrix land management; and (6) Market conditions. The field trip will return to the Ranger District Office in McCloud, CA between 4:30 p.m. and 5:30 p.m. The meeting on November 16, 1995 will begin at 8:00 a.m. at the conference room in the Tree House Best Western, near the intersection of I–5 and Lake Street, Mt. Shasta, CA. Agenda topics include: (1) Subcommittee work group time on key issues; (2) PAC subcommittee report on the joint meeting with S–CERT and PIEC; (3) Klamath Resource Information System; (4) Update on current resource management research; (5) Technical/financial assistance briefings; (6) Update on interfacing with other PAC's; (8) Public participation to be available between 3:20 p.m. and 3:50 p.m.; (9) Agenda for next meeting. All Northwest Sacramento Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to David E. Howell, Designated Federal Official Northwest Sacramento Province, USDI, Bureau of Land Management, 2550 North State Street, Ukiah, CA 95482–3023, (707–468–4000), or Duane Lyon, Province Coordinator, USDA, Shasta Trinity National Forests, 2400 Washington, Redding, CA, 96001 (916–246–5499).

Dated: October 24, 1995.

David E. Howell,

Designated Federal Official, Northwest Sacramento Province.

[FR Doc. 95–27311 Filed 11–3–95; 8:45 am]

BILLING CODE 9410–FK–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on November 29 1995 at the Hal Holmes Conference Center, 201 N. Ruby, Ellensburg, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This meeting will include wrap-up discussion of the recreation impacts in riparian areas topic, and detailed information on the forest health in dry eastern Cascades forests topic. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National forest, P.O. Box 811, Wenatchee, Washington. 98807, 509–662–4335.

Dated: October 25, 1995.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 95–27339 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyard Administration

North American Export Association Inc., Grades and Weights Committee; Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of participation in public meeting.

The Grain Inspection Packers and Stockyards Administration (GIPSA) will attend and participate in the North American Export Grain Association Incorporated (NAEGA) Grades and Weights Committee Meeting to be held on November 29, 1995, at 1 p.m. at the Vista International Hotel, 1400 "M" Street NW., Washington, DC 20050. GIPSA will attend this meeting for the purpose of providing information and answering questions regarding "Regulatory Guidelines For Automated Supervisory Weighing Systems," "Automated Cu-sum Ship Loading Plans," and proposed plans for the introduction of the Metric System for official weighing at export port locations. The emphasis will be on GIPSA's regulatory needs and expectations in the design, installation, and operating characteristics of these systems. GIPSA will also gather information on the grain industries needs for real time official inspection and the state of technology that may be applicable to real time inspection.

This portion of the NAEGA Grades and Weights Committee meeting is open to any and all interested parties, contractors, hardware and software vendors, and companies that may be interested in the topics on the agenda.

ADDITIONAL INFORMATION: Questions regarding GIPSA attendance and presentations at this meeting should be addressed to Richard Pforr, USDA, GIPSA, FGIS, FMD, WEB, Room 1640–S, P.O. Box 96454, Washington, DC 20090–6454; Telephone (202) 720–0262. General questions regarding the meeting and intention of attendance should be directed to: W. Kirk Miller, North American Export Grain Association Incorporated, 1300 "L" Street NW., Suite 900, Washington, DC 20005; Telephone (202) 682–4030; Telefax (202) 682–4033.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 30, 1995.

James R. Baker,

Administrator.

[FR Doc. 95–27326 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Louis Akhtab Haneef, Also Known as Louis Sinclair Coleman; Order Denying Permission To Apply for or use Export Licenses

On December 12, 1991, Louis Akhtab Haneef, also known as Louis Sinclair Coleman (Haneef), was convicted in the United States District Court for the Southern District of Florida of violating section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990)) (the AECA) and the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 and Supp. 1995)) (the Act),[1] among other crimes. Specifically, Haneef was convicted on one count of knowingly and willfully exporting and causing to be exported from the United States to Port of Spain, Republic on Trinidad and Tobago, firearms and ammunition, without obtaining the required license or written approval from the Department of State; and one count of knowingly and willfully exporting and causing to be exported from the United States to the Republic of Trinidad and Tobago, shotguns, without having obtained the required validated export license from the U.S. Department of Commerce.

Section 11(h) of the Act provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA or the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA or the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Haneef's conviction for violating the AECA and the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Haneef permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 12, 2001. I have also decided to revoke all export licenses issued pursuant to the Act in which Haneef had an interest at the time of his conviction.

Accordingly, it is hereby Ordered

I. All outstanding individual validated licenses in which Haneef appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Haneef's privileges of participating, in any manner or capacity, in any special licensing procedures, including, but not limited to, distribution licenses, are hereby revoked.

II. Until December 12, 2001, Louis Akhtab Haneef, also known as Louis Sinclair Coleman, 2431 N.W. 7th Street, Pompano Beach, Florida 33069, and currently incarcerated at Federal Correctional Facility, Register Number 28899–004, Post Office Box 888, Ashland, Kentucky 41105–0888, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Haneef by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until December 12, 2001.

VI. A copy of this Order shall be delivered to Haneef. This Order shall be published in the **Federal Register**.

Dated: October 24, 1995.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 95–27214 Filed 11–2–95; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994), extended by Presidential Notice of August 15, 1995 (60 FR 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C.A. 1701–1706 (1991 and Supp. 1994).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter Services."

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From Korea: Notice of Final Court Decision and Amended Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final determination.

SUMMARY: On August 11, 1995, in the case of *Laclede Steel Co.* v. *United States*, Cons. Ct. No. 92–12–00784, Slip Op. 95–144 ("*Laclede*"), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) results of redetermination on remand of the final determination of sales at less than fair value of circular welded non-alloy steel pipe from Korea. As there is now a final and conclusive court decision in this action, we are amending our final determination in this matter and will instruct the U.S. Customs Service to change cash deposit rates accordingly.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–0922.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1992, the Department published its final determination of sales at less-than-fair-value. Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 57 FR 42942 (Sept. 17, 1992). On November 2, 1992, the Department published its amendment to the final determination of sales at less-than-fair-value. Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 57 FR 49453 (Nov. 2, 1992).

Subsequent to the Department's final determination, petitioners and three of the investigated companies filed lawsuits with the Court challenging this determination. Thereafter, the Court issued an Order and Opinion dated October 12, 1994, in *Laclede Steel Co.* v. *United States*, Cons. Ct. No. 92–12–00784, Slip Op. 94–160, remanding three issues to the Department. The Court instructed the Department to (1) reconsider its original determination that certain overrun pipe sales were within the ordinary course of trade; (2) grant duty drawback adjustments on all U.S. sales, including those compared to constructed value; and (3) conduct a correlation test, utilizing only the price factor, to determine whether there was a correlation between price and levels of trade for the subject merchandise.

The Department filed its remand results on March 3, 1995. On March 9, 1995, the Department filed amended results to correct certain typographical errors. In the remand results, the Department found the overrun pipe sales at issue to be outside the ordinary course of trade. In accordance with the Court's instructions, the Department granted adjustments for duty drawback for all U.S. sales. Additionally, as the results of the correlation test were inconclusive, the Department calculated foreign market value without regard to level of trade.

On August 11, 1995, the Court sustained the Department's remand results. *See Laclede Steel Co.* v. *United States*, Cons. Ct. No. 92–12–00784, Slip Op. 95–144 (CIT Aug. 11, 1995).

On September 1, 1995, the Department published a notice of court decision pursuant to 19 U.S.C. 1516a(e). Court Decision and Suspension of Liquidation: Circular Welded Non-Alloy Steel Pipe From Korea, 60 FR 45700 (Sept. 1, 1995). In that notice, we stated that we would suspend liquidation until there was a "conclusive" decision in the action. Since publication of that notice, the domestic industry has filed an appeal challenging the Court's order granting intervention to two Korean producers of the subject merchandise. No other appeal was filed. Since the domestic industry's appeal challenges a decision of the Court which is not a decision "not in harmony" with the agency's decision, there is now a "conclusive" decision in this action.

Amendment to Final Determination

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final determination in circular welded non-alloy steel pipe from Korea.

The recalculated weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percentage)
Hyundai Steel Pipe Co., Ltd	4.62
Korea Steel Pipe Co., Ltd	4.08
Masan Steel Tube Co.	11.63
Pusan Steel Pipe Co., Ltd	5.35
All others	4.80

The Department will instruct the U.S. Customs Service to change the cash deposit requirements in accordance with the above rates.

Dated: October 30, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration

[FR Doc. 95–27354 Filed 11–2–95; 8:45 am]

BILLING CODE 3510–DS–P

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of open meeting. Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council public teleconference will be held on Monday, November 20, 1995 from 2:00 p.m. until 5:00 p.m.

ADDRESSES: The NII Advisory Council teleconference meeting will take place in the Forum 2 Conference Room, 1320 North Courthouse Road., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and

Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–501–6360; E-mail: nii@ntia.doc.gov.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

Agenda

To discuss and approve KickStart, a document the Council is preparing for local leaders who want to connect their communities to the Information Superhighway.

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Elizabeth Lyle at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, NW.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–27335 Filed 11–2–95; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION ON IMMIGRATION REFORM

Announcement of Commission Roundtables

AGENCY: U.S. Commission on Immigration Reform.

This notice announces three roundtables to be held by the U.S. Commission on Immigration Reform in San Francisco and Fresno, California on November 15–16, 1995. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. Interim reports, U.S. Immigration Policy: Restoring Credibility, and U.S. Immigration Policy: Setting Priorities, were issued on September 30, 1994 and August 25, 1995 respectively; the Commission's final report is due at the end of fiscal 1997.

The roundtable participants will include the Commissioners, researchers, government officials, representatives of local organizations, and other experts. The November 15 San Francisco roundtable will focus on the impact, adaption and integration of immigrants in the San Francisco community, with particular attention on housing, education and language issues.

The November 15 roundtable in Fresno will examine the effects of immigration on Fresno, including agricultural worker issues. The discussion will include participation of both industry and labor representatives, as well as the perspective of government officials.

The November 16 San Francisco roundtable will focus on the non-immigrant visa issues. The particular needs the circumstances of the health care and computer industries, including both hardware and software manufacturers, will be discussed.

Wednesday, November 15, 1995

9 am–12 pm—Roundtable on Effects of Immigration on Fresno, including Agricultural Worker Issues, Fresno Hilton, Sierra Nevada Room, 1055 Van Ness Avenue, Fresno, CA 93271

9 am–12:30 pm—Roundtable on Effects of Immigration in San Francisco, McClaren Room 252, 2130 Fulton Street, San Francisco, CA 94117

Thursday, November 16

9 am–12 pm—Roundtable on Non-Immigration Visa Programs, University of San Francisco, McClaren Room 252, 2130 Fulton Street, San Francisco, CA 94117.

FOR FURTHER INFORMATION CONTACT: Paul Donnelly, (202) 776–8642.

Dated: October 23, 1995.

Susan Martin,

Executive Director.

FR Doc. 95–27280 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–97–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 4, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 18, 25 and September 8, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 43126, 44320 and 46820) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Case, Flag
8345–00–178–8492

Case, Flag
8345–00–178–8495

Cap, Water Canteen
8465–00–930–2077

Service

Janitorial/Custodial, Morgantown U.S. Army Reserve Center, Route 19 South, Comfort Inn Drive, Morgantown, West Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27342 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, a military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 4, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Cord Assembly, Elastic
4020–01–072–4557
NPA: Alpha Opportunities, Inc., Jamestown, North Dakota

Gloves, Patient Examining
6515–01–364–8553
NPA: Bosma Industries for the Blind, Inc., Indianapolis, Indiana

Sign Kit, Contaminate
9905–01–363–0871
9905–01–363–0874
9905–01–363–0878
9905–01–363–0879
9905–01–363–0880
9905–01–363–0881
9905–01–363–0882
NPA: Ability Building Center, Inc., Rochester, Minnesota

Military Resale Commodity

Pad, Scouring
M.R. 561
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Services

Data Entry/Data Base Management
General Services Administration
National Capital Area, Federal Supply Service Bureau
Washington, DC
NPA: Virginia Industries for the Blind, Richmond, Virginia

Janitorial/Custodial
for the following Springfield, Illinois locations:
Paul Findley Federal Building, 600 E. Monroe Street
Sarah Cook House, 508 S. 8th Street
Henson Robinson House, 520 S. 8th Street
NPA: Challenge Unlimited, Inc., Alton, Illinois

Storage/Distribution of Clothing & Other Items
Corporation for National Service
Americorps
Washington, DC
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Switchboard Operation
Samuel S. Stratton Veterans Affairs Medical Center
Albany, New York
NPA: Central Association for the Blind & Visually Impaired, Utica, New York

Toner Cartridge Remanufacturing
Naval Training Center
Great Lakes, Illinois
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired Chicago, Illinois.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27343 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Patents Available for Licensing

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Patent No.	Title	Issue date
5,411,653	Separated Electrode System in Electrolytically Setting or Hardening Reactive Cement Pastes	05/02/95
5,414,197	Method of Containing and Isolating Toxic or Hazardous Wastes	05/09/95
5,415,493	Snow Plow Compatible Speed Bumps	05/16/95
5,419,652	Snow Plow Compatible Speed Bumps	05/30/95
5,422,164	Shallow Arch Cover for Fighting Position	06/06/95
5,423,142	Weather-Proof, Vandal-Proof, Changeable Display Sign	06/13/95
5,436,385	Method of Performing Land Reclamation at a Hazardous Wastework	07/25/95
5,441,362	Concrete Armor Unit For Protecting Coastal and Hydraulic Structures and Shorelines	08/15/95
5,446,448	River Ice Motion Detector	08/29/95
5,447,065	High-Fidelity Particle Velocity Gauge for Measuring Strong Motions in a Solid Medium	09/05/95
5,450,302	Exterior High Intensity Discharge Illumination System and Method For Use	09/12/95

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until 90 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland or Alease J. Berry, (703) 355–2160.

SUPPLEMENTARY INFORMATION: USP 5,411,653 is a moulding apparatus for hardening, finishing, and shaping reactive cement paste by utilizing electrolysis and electrophoresis without contact between the paste and the electrodes and prevents the gases generated in the electrolysis process from distorting the surface of the paste.

USP 5,414,197 is a method of containing and isolating toxic or hazardous wastes by forming an aggregate of the waste in asphalt or other polymers and subsequently incorporating the aggregate in a cementitious matrix.

USP 5,415,493 is self-explanatory.

USP 5,419,652 is self-explanatory.

USP 5,422,164 is a lightweight foxhole cover which can withstand mortar fire and is capable of withstanding dead load of at least 18 inches of soil.

USP 5,423,142 is an improved display sign which is protected against inclement weather and vandalism, and which provides for easy servicing of internal lighting and changing of the message.

USP 5,436,385 is a method for performing land reclamation at a hazardous waste work site without the escape of the hazardous waste into the environment utilizing a reusable, movable dome structure.

USP 5,441,362 is an improved erosion protection module for protecting coastal and hydraulic structures and shorelines that is configured to provide a high degree of interlocking while minimizing the internal stress levels within each module.

USP 5,446,448 is an automated system for detecting river ice run conditions in order to warn downstream communities of possible flooding from ice jams.

USP 5,447,065 is a particle velocity gauge for measuring particle velocities in solids, such as soil, natural rock, or concrete and is capable of operating at medium normal stresses to 90,000 psi and at accelerations exceeding 50,000 g's.

USP 5,450,302 is a high intensity discharge illumination system containing a microprocessor based dimming/photocontrol unit responsive to changes in time of day and in ambient light.

Applications for an exclusive or partially exclusive license should contain the information set forth in 37 CFR 404.8.

Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) Manufacturing and marketing capability; (3) Time required to bring technology to market and production rate; (4) Royalties; (5) Technical capabilities; and, (6) Small Business status.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–27333 Filed 11–2–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 4, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and

frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 30, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Statewide Family Literacy Program.
Frequency: One Time.
Affected Public: State, Local, or Tribal Governments.
Annual Reporting and Recordkeeping Burden:
Responses: 50.
Burden Hours: 400.
Abstract: State and local government to plan and implement statewide family literacy initiatives to coordinate and integrate existing Federal, State, and local resources.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Migrant Education Program State Performance Report.
Frequency: One Time.
Affected Public: State, Local, or Tribal Governments.
Annual Reporting and Recordkeeping Burden:
Responses: 51.
Burden Hours: 4080.
Abstract: Information will be develop estimates for funding purposes of the number of migratory children resident in each State, and to assess and report on the effectiveness of the Migrant Education Program on an ongoing basis.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Part B Complaint Procedures.
Frequency: Weekly.
Affected Public: State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Burden:
Responses: 1,137.
Burden Hours: 4,548.
Abstract: States are required to implement complaint procedures to process any complaints regarding a state (grantee) or a subgrant that is participating in the program funded under Part B of the Individuals with disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Vocation Rehabilitation Program/Cost Report.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Annual Reporting and Recordkeeping Burden:
Responses: 84.
Burden Hours: 395.
Abstract: State vocational rehabilitation agencies provide data from the Department on the Annual Vocational Rehabilitation Program/Cost Report. The Department uses this information to management and administer the Basic Support Program and Title VI.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Supported Employment Augmentation to VR Longitudinal Study.
Frequency: Annually.
Affected Public: Individuals or households; Not for Profit institutions; State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 1.
Burden Hours: 260.
Abstract: This augmentation to the VR Longitudinal Study will evaluate the effects of supported employment (SE) services on the economic and noneconomic outcomes of SE consumer, through interviews with a sample of SE consumers and extended services providers.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Part B Complaint Procedures.
Frequency: One Time.
Affected Public: State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden
Responses: 1,079.
Burden Hours: 14,027.
Abstract: States are required to implement complaint procedures to process any complaints regarding a State (grantee) or a subgrantee that is participating in the program funded under Part B of the Individuals with Disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: LEA Application Under Part B of the Individuals with Disabilities Education Act.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 15,376.
Burden Hours: 445,904.
Abstract: State must require local educational agencies to submit an approvable LEA application for a subgrant in order to distribute funds under Part B of the Individuals with Disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: LEA Application under Part B of the Individuals with Disabilities Act.
Frequency: Annually.
Affected Public: State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Burden:
Responses: 15,434.
Burden Hours: 432,152.
Abstract: States must require local educational agencies to submit an approval LEA application for a subgrant in order to distribute funds under Part B of the Individuals with Disabilities Education.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Financial Status Report for State-Administered Vocational Education Programs.
Frequency: Annually.
Affected Public: Federal Government; State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 53.
Burden Hours: 4,729.5.
Abstract: This State Financial Status Report is needed to assist in determining each State's compliance with the enabling statute, to close out each year's grant and to provide information for the Secretaries Report to Congress on the status of Vocational Education. The respondents are the State Educational agencies.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Final Performance Report for LSCA Title VI.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 233.
Burden Hours: 1,165.
Abstract: This report form is needed to obtain information on expenditures of grant funds and to evaluate project performance of grantees under the

Library Literacy Program (Title VI of the Library Services and Construction Act).

Office of Educational Research and Improvement

Type of Review: New.

Title: Assessment of the Role of School and Public Libraries in Support of the National Education Goals.

Frequency: Pretest.

Affected Public: Not for Profit institutions; State, Local or Tribal Government.

Annual Reporting and Recordkeeping Burden:

Response: 400.

Burden Hours: 279.

Abstract: The library and education communities need to know more about the role of libraries in supporting education in order to plan for and direct resources. This data collection effort is the field test of the survey instruments. The respondents are librarians in public libraries and public and private schools.

Office of Bilingual Education and Minority Language Affairs

Type of Review: New.

Title: A Descriptive Study of ESEA Title VIII Educational Services for Secondary School Limited English Proficiency Students (LEP).

Frequency: One Time.

Affected Public: State, Local or Tribal Governments.

Annual Reporting and Recordkeeping Burden:

Responses: 100.

Burden Hours: 65.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This study consists of a literature review and a survey of a sample of 100 Title VII grantees having 10 or more LEP secondary school students in grades 9–12. The survey will consist of a mail survey and a follow up telephone interview to verify, correct or add information available in the grantee applications monitoring reports and evaluation reports. This effort will help in future policy development and demographic knowledge.

[FR Doc. 95–27263 Filed 11–2–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–1–84–001]

Caprock Pipeline Company; Notice of Tariff Filing

October 30, 1995.

Take notice that on October 25, 1995, Caprock Pipeline Company (Caprock) tendered for filing Substitute Third Revised Sheet No. 5 to its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the Commission's October 18, 1995 Letter Order. The tendered sheet corrects a reference to interruptible service effective October 1, 1995.

Caprock states that copies of the filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–27271 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–22–000]

Granite State Gas Transmission, Inc.; Notice of Refund Report

October 30, 1995.

Take notice that on October 25, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing a report of the disposition of refunds received from the Gas Research Institute (GRI) for overcollections of the GRI surcharge during 1994.

According to Granite State, it received a total refund of $113,306.00 from GRI on September 29, 1995, which Granite State allocated between its firm transportation customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). According to Granite State, these customers' proportionate shares were credited to their invoices rendered October 10, 1995. Granite State further states that Bay State and Northern Utilities are its only firm transportation customers.

According to Granite State, its filing has been served on Bay State and Northern Utilities and the regulatory agencies of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions to intervene or protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27272 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–032]

Great Lakes Gas Transmission Limited Partnership; Notice of Update to Compliance Filing

October 30, 1995.

Take notice than on October 19, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes), filed with the Commission on Update to its Preliminary Refund/Surcharge Plan, in compliance with the Commission's July 26, 1995, Order on Remand in Docket No RP91–143–027.

Great Lakes stated in its filing that the Preliminary Refund/Surcharge Plan originally filed on August 25, 1995, did not include August and September, 1995, data. That data has now become available and Great Lakes has recalculated the schedules in Volumes 3 and 4 to include August and September, 1995, services. Great Lakes states that the tariff sheets in Volume 1, which reflect prospective rolled-in rates, have not been recalculated and therefore Volume 1 has not been reproduced in the Update. Great Lakes also states that only those sheets requiring revision have been reproduced from Volume 2. Great Lakes further states that the end of period adjustment for Transporter's

Use gas on a rolled-in basis has been included in this submission. Great Lakes has requested confidentiality of the Update Volumes 3 and 4 to protect data concerning individual customers' proprietary information.

All parties to the proceedings in Docket No. RP95–422–000, *et al.* are automatically parties to this proceeding. Any other person desiring to make any protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection in the public inspection room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27273 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–37–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

October 30, 1995.

Take notice that on October 25, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP96–37–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to abandon delivery point facilities and construct and operate replacement facilities in Douglas County, Oregon, to accommodate deliveries of natural gas to the Washington Water Power Company (WWP), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to modify its existing Winston-Dillard Meter Station by replacing 2 obsolete 2-inch regulators to better accommodate deliveries to WWP and to increase the capacity of the meter station. It is stated that construction of the meter station was authorized by the Commission in Docket No. CP62–265. The cost of the proposed modification of facilities is estimated at $1,959, including both removal and construction. It is asserted that Northwest is authorized to provide a firm transportation service for WWP under the terms of its Rate Schedule TF–1, with maximum daily delivery obligations for up to 1,070 dt equivalent of gas per day. It is explained that the replacement regulators would increase the capacity of the meter station from 2,633 dt equivalent per day to 3,438 dt equivalent per day. It is asserted that no significant impact on Northwest's peak day or annual deliveries will result from the proposed modification of the Winston-Dillard Meter Station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27268 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–21–000]

Texas Eastern Transmission Corporation; Notice of Refund Report

October 30, 1995

Take notice that on October 25, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a refund report of 1994 GRI amounts credited to customers' on October 10, 1995 invoices, as well as GRI amounts refunded for discounted capacity release transactions.

Texas Eastern states that copies of the filing were served on Texas Eastern's affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure. All such motions or protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27269 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–18–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 30, 1995.

Take notice that on October 26, 1995, in compliance with the Stipulation and Agreement filed by Texas Eastern Transmission Corporation (Texas Eastern) in the above-captioned docket (Settlement),[1] and Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, Texas Eastern submitted for filing certain tariff sheets as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. Such tariff sheets reflect a decrease in the PCB component of Texas Eastern's currently effective rates.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.*, (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

[1] The Settlement was filed on December 17, 1991, and approved without modification by the Commission on March 18, 1992.

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27270 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–391–018 and RP93–162–004]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Reporting

October 30, 1995.

Take notice that on October 13, 1995, Transcontinental Gas Pipe Line Corporation (Transco) filed its report of cash-out purchases for the annual period August 1, 1994 through July 31, 1995. Transco states that the report is being filed in accordance with the Commission's June 19, 1991 "Order Approving Settlements as Modified and Issuing Certificates" in Docket No. CP88–391–004, *et al.*, and the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Pursuant to the requirements of the Commission's order issued December 3, 1993 in Docket No. RP93–162–002, Transco also submitted a summary of activity showing the volumes and amounts paid under each Pipeline Interconnect Balancing Agreement (PIBA) during the above period.

In addition Transco filed a report comparing Transco's cash-out and PIBA revenues received with costs incurred for the same period. Transco states that the report shows that for the annual period ended July 31, 1995, Transco incurred costs of $3,081,390 in excess of revenues received. Transco states that in accordance with Section 15, it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Ssection 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27266 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–32–000]

Viking Gas Transmission Company; Notice of Application

October 30, 1995.

Take notice that on October 24, 1995, Viking Gas Transmission Company (Applicant), 825 Rice Street, St. Paul Minnesota 55117–5485 has filed under Section 7(c) of the Natural Gas Act (NGA), and Section 157.7 of the Commission's Regulations for a certification of Public Convenience and Necessity authorizing the following:

(1) Construct, own, and operate 9.1 miles of 24-inch pipeline loop, in Kittson County, Minnesota, extending from milepost 2201 – 2 + 0.00, to milepost 2201 – 2 + 9.08;

(2) Construct own and operate 4.4 miles of 24-inch pipeline loop, in Norman County, Minnesota, extending from milepost 2207 – 2 + 0.00, to milepost 2207 – 2 + 4.43;

Applicant also requests that an Order contain the following statements by the Commission:

(3) that the proposed facilities will be eligible for rolled-in treatment at the time Applicant files its next Section 4 general rate case;

(4) that the proposed facilities will not be subject to an at-risk certificate condition; and

(5) that the Commission will not suspend the effective date of the limited Section 4 filing the Applicant will make to establish rates for the proposed expansion service.

The proposed looping would be used to provide additional firm transportation capacity from the Emerson Interconnection for the following shippers:

Customer	Delivery point	Dth/Day
City of Perham, Minnesota.	Perham	250
American Crystal Sugar.	E Grand Forks, MN.	4,680
	Crookston, MN	3,120
	Moorhead, MN	3,120
City of Randall, Minnesota.		507
ProGold LLC	Fergus Falls, MN.	7,500
Unsubscribed		243
Total		19,420

Applicant holds precedent agreements with each of these prospective shippers. Applicant states that this project will also provide greater reliability and additional operating flexibility for existing system customers. The estimated cost of the facilities is $8.4 million.

Any person desiring to be heard or to make any protest with regard to this application should on or before November 20, 1995, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27267 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: U.S. Department of Energy.

ACTION: Correction.

SUMMARY: In document #95–26592, published on October 17, 1995, page 53770, third column, replace the first sentence with the following:

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

Issued in Washington, D.C. on October 30, 1995.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–27328 Filed 11–2–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–5230–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 16, 1995 Through October 20, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–SCS–K36113–HI Rating EO2, Lower Hamakua Ditch Watershed, Agricultural Water Management Plan, Funding and COE Section 404 Permit Issuance, Hawaii County, HI.

Summary: EPA expressed environmental objection with the project's potential impacts to groundwater and fish and wildlife. EPA requested that these issues be more fully discussed in the final EIS.

ERP No. D–TVA–E09801–00 Rating EC2, Programmatic EIS—Energy Vision 2020, Integrated Resource Plan, Implementation of Long-Term Plan and Short-Term Action, TN, AL, KY, GA, MS, NC and VA.

Summary: EPA expressed environmental concern regarding potential long term impacts because of the uncertainty of predicting energy sources and impacts through the year 2020 and has requested some additional information.

ERP No. D–USN–K11064–CA Rating EC2, Mare Island Naval Shipyard Disposal and Reuse, Implementation, City of Valley, Solano County, CA.

Summary: EPA expressed environmental concerns regarding wetlands dredging, submerged hazardous waste, air quality information, and cumulative impacts.

ERP No. DS–COE–K36100–CA Rating EU2, American River Watershed Flood Plain Protection Project, Construction, Operation and Maintenance, Updated and Additional Information, Sacramento, Placer and Sutter Counties, CA.

Summary: EPA believed that the Dry Detention Dam alternative is environmentally unsatisfactory due to significant unacceptable impacts to water quality and unique natural resources. The other alternatives are less damaging and appear to be practicable. While these two alternatives may cause degradation to sensitive habitats and fisheries, mitigation measures are available.

ERP No. DS–NIH–D81023–MD Rating LO, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Implementation, Montgomery County, MD.

Summary: EPA had no objection to the action as proposed.

Final EISs

ERP No. F–COE–K36111–CA Santa Paula Creek Flood Control Project, Improvements, Ventura County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–E22000–SC Savannah River Site Waste Management Facilities, Implementation, Aiken, Allendale and Barnwell Counties, SC.

Summary: EPA comments on the draft EIS were adequately addressed in the final document.

ERP No. F–USN–K11028–CA Long Beach Naval Hospital Base Disposal and Reuse, Implementation and NPDES Permit, City of Long Beach, CA.

Summary: EPA expressed environmental concern over the selection of the Retail Alternative due to its implications on the South Coast Air Quality Management District's SIP attainment.

Dated: October 30, 1995

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–27352 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5230–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed October 23, 1995 Through October 27, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950490, Final EIS, FHW, WI–13 Marshfield Regional Mobility Study for Transportation Improvements, Funding and COE Section 404 Permit, City of Marshfield, Wood and Marathon Counties, WI, Due: December 8, 1995, Contact: Richard C. Madrzak (608) 264–5968.

EIS No. 950491, Draft EIS, AFS, ID, Beaver/Cedar Land Change Project, Implementation, Clearwater National Forest, North Fork and Palause Ranger Districts, Clearwater and Latah Counties, ID, Due: December 18, 1995, Contact: Bill Jones (208) 476–4541.

EIS No. 950492, Final EIS, FHW, VA, Madison Heights Bypass/US 29 Construction, US 50 south of the City of Lynchburg to US 29 south of the Town of Amherst, Funding and COE Permit, Amherst and Campbell Counties, VA, Due: December 4, 1995, Contact: Roberto Fonseca-Martinez (804) 281–5100.

EIS No. 950493, Draft EIS, USN, CA, Camp Pendleton Marine Corps Air Stations (MCAS) Tustin and EL Toro Marine Corps Base (MCB) Realignment, Implementation, COE Section 404 Permit, San Diego County, CA, Due: December 18, 1995, Contact: Harry Roberts (714) 726–3383.

EIS No. 950494, Draft EIS, FHW, UT, US 89 Corridor Transportation Improvements, I–15/Farmington to Harrison Boulevard/South Ogden, Funding, COE Section 404 and NPDES Permits, Davis, Weber, Morgan and Salt Lake Counties, UT, Due: December 19, 1995, Contact: William R. Gedris (801) 963–0183.

EIS No. 950495, Final EIS, AFS, AZ, NM, Southwestern Region Amendment of Forest Plans, Implementation, Standard and Guidelines for Northern Goshawk and

Mexican Spotted Owl, AZ and NM, Due: December 4, 1995, Contact: Arthur S. Briggs (505) 842–3212.
EIS No. 950496, Draft EIS, AFS, ID, Salmon River Corridor, Implementation, Sawtooth National Recreation Area (SNRA), Sawtooth Forest Land and Resource Management Plan (FLRMP), Custer County, ID, Due: December 18, 1995, Contact: Lisa Stoeffer (208) 774–3681.
EIS No. 950497, Final EIS, GSA, OH, Cleveland United States Courthouse, Site Selection, Construction and Operation, Cuyahoga County, OH, Due: December 4, 1995, Contact: Jennifer Enyart (312) 886–5544.
EIS No. 950498, Final EIS, NPS, FL, Timucuan Ecological and Historic Preserve, General Management Plan and Development Concept Plans, Implementation, Fort Caroline National Memorial Area, Duval County, FL, Due: December 4, 1995, Contact: Suzanne Lewis (904) 221–5568.
EIS No. 950499, Draft EIS, COE, DE, Delaware Coast from Cape Henlopen to Fenwick Island Feasbility Study, Rehoboth Beach and Dewey Beach Project, Storm Damage Reduction, Sussex County, DE, Due: December 18, 1995, Contact: Steve Allen (215) 656–6555.
EIS No. 950500, Draft EIS, FHW, FL, Miami International Airport (MIA) Landside Terminal Construction, FL–112 on the North, FL–836 on the South; NW 27th Avenue on the East, along FL–836 that extends West to NW 57th Avenue, Dade County, FL, Due: December 18, 1995, Contact: J.R. Skinner (904) 942–9579.
EIS No. 950501, Draft EIS, AFS, AK, Control Lake Timber Sale, Implementation, Prince of Wales Island, Tongass National Forest, AK, Due: December 26, 1995, Contact: Dave Arrasmith (907) 225–3101.
EIS No. 950502, Final EIS, COE, TX, Gulf Intracoastal Waterway (Section 216 Study), Bank Protection and a Spill Containment Feature, Implementation, Aransas National Wildlife Refuge, Galvestion District, Aransas, Calhoun and Refugio Counties, TX, Due: December 04, 1995, Contact: Richard Medina (409) 766–3044.
EIS No. 950503, Draft EIS, DOE, WA, Northwest Regional Power Facility (NRPF), Construction and Operation of a 838 Megawatt (MW) Gas-fired Combustion Turbine Facility, Approval of Permits, Located near the Town of Creston, WA, Due: December 18, 1995, Contact: Nancy Wittpen (503) 230–3297.
EIS No. 950504, Draft EIS, FHW, FL, East-West Multimodal Corridor Transportation Improvements, Begining at the Tamiami Campus of Florida International University (FIU) extending the length of FL 836, Port of Miami, Dade County, FL, Due: December 18, 1995, Contact: J.R. Skinner (904) 681–7223.
EIS No. 950505, Final EIS, FTA, PR, Tren Urbano Transit Project, Improvement, San Juan Metropolitan Area, Funding, NPDES Permit, US Coast Guard Bridge Permit and COE Section 10 and 404 Permits, PR, Due: December 06, 1995, Contact: Alex McNell (404) 347–7875.

Amended Notices

EIS No. 950485, Draft EIS, COE, LA, Programmatic EIS—Marsh Management Project, Hydrologic Manipulation, COE Section 10 and 404 Permit Issuance, Coastal Wetland of Louisiana a part of the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) River Basins, LA, Due: January 02, 1996, Contact: Robert Bonsenberg (504) 862–2522. Published FR 10–27–95—Review period extended.

Dated: October 30, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–27353 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5325–2]

CSI Auto Manufacturing Sector Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Open Public Advisory Meeting: Common Sense Initiative Council, Auto Manufacturing Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council (CSIC) will meet on the date and time described below. All times noted are Central Time. All meetings are open to the public. Seating at meetings will be on a first-come basis. For further information concerning the specific meeting, please contact the individuals listed with the Sector Subcommittee announcement below. The Environmental Protection Agency is currently operating under a continuing resolution that expires November 13, 1995. The status of agency funding past this date may affect a change in the meeting schedule. Please contact the Designated Federal Officer listed below for further information after November 13, 1995.

Automobile Manufacturing Sector Subcommittee—November 16, 1995

The Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC-AMS) is convening an open meeting on November 16, 1995. The meeting will begin at approximately 9:30 a.m. EST and run until about 3:30 p.m. The meeting will be held at the Lake Huron Conference Room, 12 floor, 77 West Jackson Boulevard, Ralph Metcalfe Federal Building, Chicago, Illinois.

The following action items will be covered at this meeting.

- The community technical assistance and alternative sector regulatory system groups will present their merged work plan to the Subcommittee.
- Each project team chair will present what deliverables their group can put together for the last meeting before the end of the calendar year.
- The community technical assistance work group should present a summary of the draft data they have collected.

Seating may be limited, therefore, advance registration is recommended. Agendas will be available November 9, 1995. Any person or organization interested in attending the meeting should contact Ms. Carol Kemker, Designated Federal Official, no later than November 13, 1995, at (404) 347–3555 extension 4222. Limited time will be provided for persons wishing to make oral comments at the meeting. In general, each individual or group making any oral presentations will be limited to a total of three minutes. For further meeting information contact Carol Kemker, DFO on (404) 347–3555 extension 4222, or Keith Mason, Alternate DFO, on (202) 260–1360.

Further Information and Inspection of CSIC Documents: Documents relating to the above Sector Subcommittee announcements will be publicly available at the meetings. Thereafter, these documents, together with official minutes for the meetings, will be available for public inspection in Room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, SW., Washington, D.C. 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: October 30, 1995.

Keith Mason,

Designated Federal Officer.

[FR Doc. 95–27329 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5324–3]

Vermont: Final Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for the State of Vermont's Municipal Solid Waste Landfill Permitting Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The State of Vermont applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA New England reviewed Vermont's MSWLF permit program adequacy application and made a determination that all portions of Vermont's MSWLF permit program are adequate to assure compliance with the revised Federal MSWLF Criteria. The decision to tenatively approve the State of Vermont's Municipal Solid Waste Landfill Permitting Program was published in the **Federal Register** on July 26, 1995 for public comment (see 60 FR 38327). There were no comments received within the public comment period; therefore, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of Vermont shall be effective on November 3, 1995.

FOR FURTHER INFORMATION CONTACT: EPA New England, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Mr. John F. Hackler, Chief, Solid Waste and Geographic Information Section, mail code HER–CAN 6, telephone (617) 573–9670.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C) that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Vermont

On August 23, 1993, EPA New England received Vermont's final MSWLF permit program application for adequacy determination. On July 26, 1995, EPA published in the **Federal Register** the tentative determination of adequacy for all portions of Vermont's program. Further background on the tentative determination of adequacy appears at 60 *FR* 38327 (July 26, 1995).

Along with the tentative determination, EPA announced the availability of the application for public comment. In addition, a public hearing was tentatively scheduled. However, there were no requests for such and as a result the hearing was not held.

C. Public Comment

EPA received no written comments on the tentative determination of adequacy for Vermont's MSWLF permit program within the public comment period. Minor typographical errors in the Vermont application have been corrected.

D. Decision

After evaluating Vermont's program, EPA New England concludes that the State of Vermont's MSWLF Permitting Program meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of Vermont is granted a determination of adequacy for all portions of its municipal solid waste permit program.

The Vermont MSWLF Permitting Program is technically comparable to, no less stringent than, and equally as effective as the revised Federal Criteria. Vermont will implement its MSWLF permit program through enforceable permit conditions. To ensure compliance with the Federal Criteria, Vermont has revised its current permit requirements through the creation of procedures. These revisions occur in the following areas:

1. The adoption of the following definitions as required by the revised Federal Criteria, 40 CFR 258.2: active life, active portion, composite liner, earthen daily cover, existing MSWLF unit, final cover system for lined landfills, final cover system for unlined landfills, lateral expansion, municipal solid waste landfill unit, new MSWLF unit, 100-year flood, and washout.

2. Compliance with the new location restrictions of 40 CFR 258.10, 258.14, and 258.15, which pertain to airport safety, seismic impact zones, and unstable areas.

3. Compliance with the new operating criteria of 40 CFR 258.20, 258.23, 258.26, 258.28, and 258.29 which pertain to procedures for excluding the receipt of hazardous waste, explosive gases control, run-on/run-off control systems, liquids restrictions, and recordkeeping requirements.

4. Compliance with the design criteria of 40 CFR 258.40.

5. Compliance with the requirements of 40 CFR 258.50, 258.51, 258.53, 258.54, and 258.55 which pertain to ground-water monitoring and the requirements of 40 CFR 258.56, 258.57, and 258.58 which pertain to corrective action.

6. Compliance with the closure and post-closure criteria of 258.60 and 258.61.

7. Compliance with the financial assurance criteria of 40 CFR 258.73, which pertain to financial assurance for corrective action.

The Vermont Department of Environmental Conservation will update the permits of existing municipal solid waste landfills scheduled to remain open after the effective date of 40 CFR part 258, to assure compliance with current state requirements. The State of Vermont is not asserting jurisdiction over Tribal land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR part 258.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a) provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972 to enforce the Federal MSWLF Criteria set forth in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after the publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of state law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912, 6945 and 6949a(c-c).

Dated: October 3, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–27289 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Injury Prevention and Control Advisory Committee Meeting

The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC) will convene the following meeting cosponsored by the American College of Emergency Physicians, American Health Information Management Association, American Hospital Association, Emergency Nurses Association, National Association of EMS Physicians, Society for Academic Emergency Medicine, Agency for Health Care Policy and Research, CDC, Health Resources and Services Administration, and the National Highway Traffic Safety Administration.

Name: National Workshop on Emergency Department Data.

Times and Dates: 3 p.m.–5 p.m., January 22, 1996, Registration; 7:30 a.m.–8:30 a.m., January 23, 1996, Registration; 8:30 a.m.–5:30 p.m., January 23, 1996; 8:30 a.m.–5:30 p.m., January 24, 1996; 8 a.m.–1 p.m., January 25, 1996.

Place: Holiday Inn Conference Center Decatur, 130 Clairmont Road, Decatur, Georgia, telephone 404/371–0204.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 150 people. All interested persons are invited to participate in the workshop.

Purpose: The Workshop will provide a forum to review and refine a uniform Emergency Department (ED) data set that is being drafted by representatives of the organizations and agencies cosponsoring the workshop. The Workshop cosponsors seek to develop a uniform ED data set that will be recommended for routine use in creating a record of each ED patient encounter, meet the essential data needs of multiple ED data users, and be compatible with existing or emerging national standards for health data. Workshop deliberations will focus on ways to improve the draft uniform ED data set. Data elements will be considered in separate, concurrent sessions, each of which will review one of six discrete groups of data elements: Demographic and identifying data, administrative data, illness/injury incident data, ED arrival and initial assessment data, ED procedure and results data, and ED diagnosis and outcome data. Each breakout group will present a summary of its work in a plenary session. The recommendations that emerge from the Workshop and additional recommendations solicited after the meeting will be used by the workshop cosponsors to complete the data set. Further Workshops will be needed to incorporate lessons learned from practical experience, research findings, and other advances in health data systems.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Paul Burlack, Public Health Advisor, Division of Acute Care, Rehabilitation Research, and Disability Prevention, NCIPC, CDC, 4770 Buford Highway NE., M/S F–41, Atlanta, Georgia 30341–3724, telephone 770/488–4031.

Dated: October 27, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27310 Filed 11–2–95; 8:45 am]

BILLING CODE 4163–18–M

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Times and Dates: 1 p.m.–5 p.m., November 20, 1995; 9 a.m.–12 noon, November 21, 1995.

Place: The Washington Court Hotel, Ballroom East, 525 New Jersey Avenue NW., Washington, DC 20001.

Status: Open—1 p.m.–5 p.m., November 20, 1995; Closed—9 a.m.–9:20 a.m., November 21, 1995; Open—9:20 a.m.–12 noon, November 21, 1995.

Purpose: The Board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH, an update on the National Occupational Research Agenda, NIOSH Agriculture Program, a legislative report, a report on workplace violence, a report from the National Foundation for the Centers for Disease Control and Prevention, Inc., an evaluation of the construction program, and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard A. Lemen, Ph.D., Executive Secretary, BSC, NIOSH, and Deputy Director, NIOSH, CDC, 1600 Clifton Road NE., Mailstop D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: October 30, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27309 Filed 11–2–95; 8:45 am]

BILLING CODE 4163–19–M

National Institutes of Health

Proposed Data Collection Available for Public Comment

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects. To request more information on the proposed project, call Jeffery P. Struewing, M.D., Senior Research Investigator, at (301) 496–4375.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Jeffery P. Struewing, M.D. National Cancer Institute, Building EPN, Room 439, 6130 Executive Blvd MSC 7372, Bethesda, MD 20892–7372. Written comments should be received by January 2, 1996.

Proposed Project: Familial Cancer and the BRCA1 gene—NEW—This research study will determine how common a particular alteration in the BRCA1 gene occurs in Jewish individuals, and what the risk of cancer is in individuals who carry this alteration. With the assistance of Jewish community leaders in the Washington, D.C. area, Jewish volunteers will be recruited for the study. In order to determine how representative the volunteers are, a random sample will also be obtained from the Washington area. Jewish individuals and a portion of non-Jewish individuals will be asked to complete the questionnaire. The questionnaire will include a brief personal medical history, and a detailed family history of cancer. Participants will be notified of the overall study results, which may include recommendations about genetic testing and the availability of testing programs.

Number of respondents	Number of responses per individual	Average burden (hours)
7700	1	.33

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 95–27173 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Division of Intramural Research; Proposed Data Collection Available for Public Comment and Recommendation

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NIEHS Project Clearance Liaison, at (919) 541–5047.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Effects of Chronic Occupational Exposure to Pesticides on Neurological Function in Farm workers—New—A cross-sectional study will be conducted of 147 farmworkers exposed to pesticides and 179 unexposed control subjects with other jobs. Pesticide exposure will be evaluated with a questionnaire that collects information on general work history, work with pesticides, and work practices. Neurological function will be assessed with a neurobehavioral test battery and with quantitative tests of somatosensory function, equilibrium, and tremor. The data collected in this study will elucidate the association between chronic occupational exposure to pesticides and neurological dysfunction. Burden estimates are as follows:

Number of respondents	Number of responses per respondent	Average burden per response (hours)
147 farmworkers	1.92	1.14
179 control subjects	1.92	1.14

Send written comments to Jane Lambert, Project Clearance Liaison, NIEHS, PO Box 12233, A3/05, Research

Triangle Park, NC 27709–12233. Written comments must be received within 60 days of this notice.

Dated: October 25, 1995.

Charles Leasure,

Associate Director for Management, NIEHS.

[FR Doc. 95–27324 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

International Cancer Information Center; Office of the Director; National Cancer Institute; Journal

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Advertisement.

Opportunity for a Cooperative Research and Development Agreement (CRADA) for the development within the private sector of the capability of producing a rapid turn-around multi-disciplinary cancer journal that satisfies the need of the National Cancer Program for the dissemination of high quality peer-reviewed, research that bears on the etiology, biology, detection, prevention, and treatment of cancer. The journal must also provide high quality scientific peer-reviewed articles, reviews, editorials, commentaries and news.

SUMMARY: The International Cancer Information Center of the National Cancer Institute, NIH is seeking a Collaborator with an international reputation in the biomedical research and clinical practice communities, as demonstrated by:

- The quality of its information products, particularly its biomedical journals;
- Its commitment to the advancement of science and medical practice, as evidenced by indicators of a high level of satisfaction by health professionals with products and services, the range of products and services offered, and the impact of its journal(s) as measured by the Institute for Scientific Information (ISI) impact factors.

The Collaborator must be able to collaborate with NCI staff to produce high quality information products. The Collaborator must have a demonstrated record of success in privately producing biomedical and clinical information resources.

The term of the CRADA will be five (5) years.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to William Joseph Cotreau (Tel.# 301–496–0477, FAX# 301–402–2117), Office of Technology Development, National Cancer Institute, Building 31, Room 4A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

DATES: Interested parties should notify this office in writing no later than sixty (60) days from the date of this announcement in the **Federal Register**. Respondents will then be given an additional sixty (60) days for filing a formal proposal.

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987. Under the present proposal, the goal of the CRADA will be the development of the following technology.

A rapid turn around multi disciplinary cancer journal (Journal of the National Cancer Institute—JNCI) that satisfies the need of the National Cancer Program for disseminating:

- High quality scientific peer-reviewed research that bears on the etiology, biology, detection, prevention, and treatment of cancer
- High quality scientific peer-reviewed articles, reviews, editorials and commentaries
- News
- Electronic and new media cancer information sources.

All necessary existing rights and assets currently held by NCI for the production of the JNCI will be licensed as needed to the Collaborator.

The Journal produced under the CRADA will operate in conformance with the Guidelines of the International Committee of Biomedical Journal Editors among other guidelines. These guidelines establish the editorial freedom of the editor-in-chief and maintain the integrity of the Journal. Editorial control and overall intellectual oversight will therefore be the province of the editor-in-chief. The editor-in-chief will be appointed by the NCI and approved by the Collaborator. NCI and Collaborator staff will contribute to achieving the intellectual goals determined by the editor-in-chief. The Collaborator will also contribute the business and marketing expertise and the technical, management, and R&D expertise required for the maintenance and dissemination of a derivative electronic journal or information product.

Party Contributions

The role of the NCI includes the following:

(1) Cooperate with Collaborator to jointly produce the Journal of the National Cancer Institute and related information products;

(2) Provide the Editor-in-Chief for the JNCI and related information products;

(3) Provide all line staff functions for the publication of the JNCI and related information products until the Collaborator is able to provide the same to the satisfaction of the Editor-in-Chief, including assistance with maintainence of the mailing list;

(4) Evaluate the work product of Collaborator to ensure progress toward meeting the CRADA goals;

(5) Provide work space and equipment for production of the JNCI and related information products until the Collaborator is able to provide the same to the satisfaction of the Editor-in-Chief.

The role of the successful Collaborator will include the following:

(1) Transition to independently produce the JNCI and related information products;

(2) Provide funding, as necessary, in support of production and dissemination of information products;

(3) Provide expertise in production and marketing of biomedical information products;

(4) Provide resources to market biomedical information products;

(5) Cooperate with Editor-in-Chief in all aspects of meeting information needs of the National Cancer Program;

(6) Invoice accounts and receive, process, and disburse funds for NCI;

(7) Maintain mailing list electronically in a database of the NCI's choice.

Selection Criteria

Proposals submitted for consideration should fully address each of the following qualifications:

1. Expertise:

A. Demonstrated expertise in developing and producing high quality biomedical print journals (and spin off print and electronic biomedical information products);

B. Demonstrated expertise in overseeing all aspects of product development;

C. Demonstrated intellectual ability to guide development of product line which addresses the requirements of the National Cancer Program;

D. Demonstrated expertise in conducting rapid peer and editorial review of biomedical information products;

E. Demonstrated expertise in techniques of fast production of publications and information materials;

F. Demonstrated expertise in marketing of biomedical information products;

G. Demonstrated expertise in subscription management, advertising, fulfilment and customer service;

H. Knowledge of basic and clinical research, including but not limited to:

Research in the biology, treatment, detection, and prevention of disease;

I. Experience in publishing biomedical research;

J. Demonstrated proficiency in serving a large membership base.

2. Reputation:

The successful Collaborator must be recognized in the biomedical research and clinical practice communities for:

A. The quality of its information products, particularly its biomedical journals;

B. Its commitment to the advancement of science and medical practice;

C. Indications of high levels of satisfaction by health professionals with the information products and services;

D. The range of products and services;

E. The impact of its journal(s) as measured by the Institute for Scientific Information (ISI).

3. Physical Resources:

A. An established headquarters with offices, space and equipment;

B. Personal access to the organization during business hours;

C. Access to the organization during business hours by telephone, mail, e-mail, the Internet and other evolving technologies;

D. Sufficient financial resources to support, at a minimum, the current activities of the JNCI to meet the needs of the National Cancer Program.

Dated: October 26, 1995.

Thomas Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 95–27322 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–P

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application and/or the issued patent referenced below may be obtained by contacting the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Monoclonal Antibodies for Binding HTLV–III (HIV–1) Proteins, and Cell Lines for Their Production

Sarngadharan, M., Veronese, F., Gallo, R. (NCI)
Serial No. 06/816,573
Patent Issued 27 June 89
U.S. Patent No. 4,843,011
Licensing Contact: Steven Ferguson, 301/496–7735 ext 266

Monoclonal antibodies and hybridoma cell lines for their production are disclosed for three specific proteins that characterize HIV–1, the virus that has been identified with AIDS. This invention relates to all monoclonal antibodies that demonstrate immune reactivity with specific antigens that identify the HIV–1 virus: p41, a transmembrane envelope glycoprotein; p24, a major core protein; and p17. These antibodies provide a means for directly detecting the virus in the sera, blood or blood products of AIDS patients or HIV–1 carriers. Such methods are an important advance over the indirect antibody detection methods presently used. Methods based on antibody detection give false negatives if no antibodies have yet been produced. These antibodies are believed to provide a positive indication of the presence of the virus at any stage of the disease in a patient or in a healthy carrier of virus.

Sterile-Lyophilization Tube

Kidd, G.L. (NEI)
Filed 22 Sep 95
DHHS Reference No.: E–015–95/0
Licensing Contact: David Sadowski, 301/496–7735 ext. 288

Problem Addressed by This Invention: Many compounds, such as drugs, growth factors, etc., must be kept sterile and must be aliquotted for storage. Usually, these aliquots are best stored lyophilized. Yet, researchers have never had a way to keep aliquots sterile through the lyophilization process. Consequently, each aliquot has had to be filter-sterilized when reconstituted for use. This process has the disadvantages of consuming excessive filters, syringes, sterile, receptacles, and time and results in serious loss of precious sample due to absorption by the filters (especially with small aliquots less than 1 ml). Alternatively, researchers have had to forego lyophilization and store their solutions in the less-stable frozen form.

Solution Offered by This Invention: Sterile-lyophilization tubes having a 0.22 micron filter built into the cap. This unique feature allows a sterile solution to remain sterile throughout lyophilization, even after the vacuum is released and air reenters the tube. Thus, a starting solution is simply filter-sterilized while in a relatively large volume, using a single filter and therefore suffering minimal loss and consuming little time. It is then aliquotted into sterile-lyophilization tubes and lyophilized. The tubes can then be transferred directly to the freezer, if desired. The compound is reconstituted when needed, and may then be used immediately without further filtration.

Potential Applications of This Invention: All researchers worldwide who utilize sterile, labile compounds will have an interest in this product, including governmental, university, institutional, and drug company laboratories. Most notably in need are investigators involved in drug-testing, which is normally done either in cell cultures, laboratory animals, or humans, and which requires sterility of many aliquots of many drugs. Additionally, this product will have a large market relating to basic research utilizing microbial, plant, or animal cell or organ cultures, to which sterile compounds such as growth factors are commonly added. Research in drugs, growth factors, etc., is expanding ever more rapidly, and generally requires a cell culture system in which to study such compounds. Most of these compounds are quite expensive. Loss of potency during storage and loss of material during filtration are widespread problems which may be overcome with this invention. Therefore, there exists a tremendous need, and immense market for, this sterile-lyophilization vessel.

Stage of Development: Development is complete and invention has been successfully tested. Prototypes are available.

Dated: October 26, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–27321 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–P

Notice of the Meeting of the National Eye Institute Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute (NEI), December 4 and 5, 1995 in the NEI Conference Room, Building

31, Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 4 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Program, NEI, on matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 4 from approximately 4 p.m. until recess and on December 5 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Mechanisms of Ocular Diseases and the Laboratory of Ocular Therapeutics. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Marie Watkins, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Watkins in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27250 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: AIDS-Related Training Grants, Conference Grants, Clinical Investigator and Independent Scientist Applications.

Date: November 13, 1995.

Time: 8 a.m.

Place: NIH, Natcher Bldg. 45, Conference Room A, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Peter Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892–7610, (301) 496–8426.

Purpose/Agenda: To review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27251 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: November 20, 1995, November 21, 1995.

Time: 6:30 p.m.

Ploce: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

Contact Person: Theresa Lo, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Room 5AS–25U, Bethesda, Maryland 20892–6500, (301) 594–4952.

Purpose/Agenda: To review and evaluate research grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, project grants in arthritis, musculoskeletal and skin diseases research], National Institutes of Health, HHS)

Date: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 95–27253 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Pub. L. 92–463, notice is hereby given to the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 1, 1995, in Building 31, Room 2A52.

This meeting will be open to the public from 8:00 a.m. to 12 noon on December 1 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 1 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892–2425, Area Code 301, 496–2133, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. O'Connor in advance of the meeting.

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27317 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of a Meeting of the Ad Hoc Clearinghouse Subcommittee of the National Deafness and Other Communication Disorders (NDCD) Advisory Council

Notice is hereby given of the meeting of the Ad Hoc Clearinghouse Subcommittee of the NDCD Advisory Council on November 16, 1995. The meeting will take place from 1 to 3 p.m. and will be conducted as a telephone conference call originating in Room 3C05, Building 31, 9000 Rockville Pike, Bethesda, Maryland.

The meeting, which is open to the public, will be held to discuss the operations of the NIDCD Clearinghouse. Attendance by the public is limited to space available.

Summaries of the meeting and a roster of members may be obtained from Dr. Earleen Elkins, Acting Director, Division of Extramural Activities, NIDCD, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, Maryland 20892, 301–496–8693, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Elkins in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27252 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Request for Comments on the Draft Report on Validation and Regulatory Acceptance of Toxicological Test Methods; Announcement of the National Toxicology Program (NTP) Workshop on Validation and Regulatory Acceptance of Alternative Toxicological Test Methods

The draft report on Validation and Regulatory Acceptance of Toxicological Test Methods is available and public review and comment are encouraged. Registration is open for an NTP Workshop scheduled for December 11–12, 1995, that will provide the opportunity to participate in the review of this Report and to comment on the recommendations generated at the Workshop.

Background on the Report

One of the over-arching goals of the NTP is developing and validating improved alternative toxicological test methods. Consistent with the goal, the NIH Revitalization Act of 1993 (P.L. 103–43, sec. 1301) stated that the National Institute of Environmental Health Sciences (NIEHS), the primary component of the NTP, would: (a) Establish criteria for the validation and regulatory acceptance of alternative testing methods; and (b) recommend a process through which scientifically validated alternative methods can be accepted for regulatory use.

An *ad hoc* Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) was established by NIEHS to develop a report recommending criteria and processes for validation and regulatory acceptance of toxicological testing methods. Fifteen Federal regulatory and research agencies have participated in this effort, including:

- Agency for Toxic Substances and Disease Registry (ATSDR).
- Consumer Product Safety Commission (CPSC).
- Department of Agriculture (USDA).
- Department of Defense (DOD).
- Department of Energy (DOE).
- Department of the Interior (DOI).
- Department of Transportation (DOT).
- Environmental Protection Agency (EPA).
- Food and Drug Administration (FDA).
- National Institute for Occupational Safety and Health (NIOSH).
- National Institutes of Health (NIH).
- National Cancer Institute (NCI).
- National Institute of Environmental Health Sciences (NIEHS).
- National Library of Medicine (NLM).
- Occupational Safety and Health Administration (OSHA).

The draft Report is applicable to all proposed toxicological testing methods for health and ecological endpoints, including those termed "alternatives." Alternative test methods are those that incorporate some aspect of reduction, refinement, and replacement of animal use. Such methods: result in the reduction of the total number of animals required; incorporate refinements of procedures to lessen or eliminate pain or distress to animals and enhance animal well-being; or provide for the partial or total replacement of animals with non-animal systems, or the replacement of an animal species with a phylogenetically lower species (e.g., a mammalian species replaced by an invertebrate species).

The ICCVAM determined that the goals of the Report are to:

- Communicate the criteria and processes that Federal agencies should employ in considering new and revised test methods;
- Encourage the development of new methods and improvement of existing test methods;
- Provide more effective guidance for scientists for the validation and evaluation of new and revised test methods;
- Contribute to the increased likelihood of regulatory acceptance of scientifically valid new and revised test methods;
- Encourage, when scientifically feasible, the reduction and refinement of animal use in testing, and the replacement of animals with non-animal methods and phylogenetically lower species;
- Encourage the use of validated and accepted new and revised test methods.

Comments on the Report

Public review of the draft Report is critical to its completion and is encouraged. To receive a copy of the Report, please contact the NTP Liaison Office at NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709, or by FAX to: (919) 541–0295. Written comments received by November 20, 1995, will be distributed for consideration during the workshop. Written comments submitted after November 20 but before January 2, 1996, will be considered by the Committee in preparing a final Report. Submit comments to Dr. William Stokes, NIEHS, P.O. Box 12233, MD B2–04, Research Triangle Park, NC 27709, or by FAX to (919) 541–0719. For further information about the Report, please contact one of the ICCVAM co-chairs—Dr. William Stokes, NIEHS, or Dr. Richard Hill, EPA, Mail Code 7101, 401 M Street, S.W., Washington, DC 20460, or FAX (202) 260–1847.

Background on the Workshop

A workshop on Validation and Regulatory Acceptance of Alternative Toxicological Test Methods will be held on December 11–12, 1995, in Arlington, Virginia, to receive comments from the public and invited review panels on the draft Report. The Workshop meeting structure will include opening and closing Plenary Sessions and three Breakout Groups that will address: (1) Validation Criteria; (2) Regulatory Acceptance Criteria and Processes; and (3) Proposals for Future Directions.

Specific goals of the Workshop:

• To obtain comments and recommendations and strengthen the usefulness of the Report for the scientific community.

• To discuss comments received in response to this notice and other announcements.

• To obtain comments and recommendations relevant to the effective implementation of the processes described in the Report.

Comments and recommendations from the Workshop will be considered by the ICCVAM in preparing a final Report.

Registration for the Workshop

Registration materials for the workshop can be obtained by contacting the NTP Liaison Office at NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709, or by FAX to: (919) 541–0295. Please indicate on the registration form if you wish to speak. Oral presentations from participants requesting time during the closing plenary session will be limited to five minutes in length to allow for a maximum number of presentations. Written comments accompanying the oral statements are encouraged and should be received by close of business on November 20, 1995, to ensure consideration by the workshop breakout groups.

Dated: October 26, 1995.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 95–27323 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–61]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its' inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice/ Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnson at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in.this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 205405; (202) 501–2059; (This is not a toll-free nubmer).

Dated: October 27, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/03/95

Unsuitable Properties

Buildings (by State)

California

Cape Mendocino Lighthouse
Capetown Co: Humboldt CA
Landholding Agency: GSA
Proeprty Number: 549540004
Status: Excess
Reason: Other, Secured Area
Comment: Structural; deficiencies GSA Number: 9–U–CA–622–B

[FR Doc. 95–27172 Filed 11–2–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–1310–00 1A]

Green River Basin Advisory Committee; Notice of Intent to Establish and Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Establish Green River Basin Advisory Committee and Call for Nominations.

SUMMARY: This notice is published to announce the Secretary of the Interior's intention to establish the Green River Basin Advisory Committee (Committee) in accordance with the provisions of the Federal Advisory Committee Act of 1972 (Public Law 92–463). The public is also being requested to submit nominations for membership on the Committee and to identify additional issues that could be addressed by the Committee.

DATES: Nominations and recommendations should be submitted to either address listed below no later than December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Bennett, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone number (307) 775–6148; or Frank Salwerowicz, Bureau of Land Management, 2850 Youngfield Str., Lakewood, CO 80215, telephone number (303) 239- 3745.

SUPPLEMENTARY INFORMATION: The purpose of the Committee will be to advise the Secretary of the Interior and the Bureau of Land Management (BLM) Director on matters pertinent to the BLM's Oil and Gas Program responsibilities and activities in the greater Green River Basin, principally in regard to the management of the natural resources, both surface and subsurface, and other resources as defined in the Federal Land Policy and Management Act. The Committee will provide advice on issues derived from the discussion of data compiled in Phase I of the Southwest Wyoming Resource Evaluation Project and options/ recommendations or agency implementation that would ensure continued reasonable development of the oil and gas resources underlying Federal public lands while protecting environmental values.

Committee members will be appointed by the Secretary of the Interior. Membership will be composed of individuals who have expertise, through education or practical experience, in oil and gas activities, natural resources management/ conservation, or similar disciplines. The BLM is seeking nominations from all sources for membership in the Committee. The BLM is also soliciting recommendations for additional issues that could be addressed by the Committee. It is anticipated that the Committee will convene its initial meeting in Rock Springs, Wyoming, in January 1996, and complete its activities over the next 12 months.

Date Signed: October 31, 1995.

Mat Millenbach,

Acting Director, Bureau of Land Management.

[FR Doc. 95–27441 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–84–P

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: December 6–7, 1995, at 8 a.m.

ADDRESSES: First floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include a review of current and planned restoration activities and recommendations for the fiscal year 1996 restoration work plan.

Dated October 30, 1995.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–27330 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

[MT–910–1820–00]

Resource Advisory Council Meetings, Montana Councils and Dakotas Council; Montana, North Dakota and South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Department of the Interior, Bureau of Land Management (BLM), has established four Resource Advisory Councils for the States of Montana, North Dakota and South Dakota.

The Montana Councils are: Butte Resource Advisory Council, Lewistown Resource Advisory Council and Miles City Resource Advisory Council; North Dakota and South Dakota: Dakotas Resource Advisory Council.

These Councils provide representative counsel and advice to the BLM on the planning and management of the public lands. Members of these Councils were appointed by the Secretary of the Interior.

The Montana and Dakotas Councils will convene jointly at 8 a.m. December 11, 1995, for required rangeland ecosystem management instruction. December 12, the Councils will reconvene separately. The four Councils will meet at the Holiday Inn Billings Plaza Hotel and Trade Center, 5500 Midland Road, Billings, Montana. The agendas for the Council meetings are as follows:

Butte Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8 a.m. The Council will reconvene at 8 a.m. Tuesday, December 12, for a full day and again at 8 a.m. Wednesday, December 13, for as much of the day as needed. Agenda items include the Beaverhead County cooperative weed program; a discussion of potential effects of rangeland standards and guidelines on the ranching industry and public land resources; development of a process to identify standards and guidelines for rangeland resources in the Butte District; the present condition of riparian resources on public land in the Butte District; further work on developing a consensus process for decision making; and normal housekeeping items and any other new business the Council wishes to review.

Public comment period will begin at 4 p.m. December 12.

Lewistown Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8 a.m. The Council will reconvene at 8 a.m. Tuesday, December 12. Agenda items include a review of the Council charter; election of Council officers; updates on Lonesome Lake, Sweetgrass Hills and mining at Zortman; review of questions and answers from the September 21, 1995, RAC teleconference; discussion of the Mixed Grass Prairie and Little Rocky Mountain ACEC nominations; a meeting evaluation; and normal housekeeping items and any other new business the Council wishes to review. Public comment period will begin at 11:15 a.m. December 12.

Miles City Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8 a.m. The Council will reconvene at 8 a.m. Tuesday, December 12, for a full day and again at 8 a.m. Wednesday, December 13, for as much of the day as needed. Agenda items include a field trip to Pompey's Pillar and possibly other sites in the Billings Resource Area (weather permitting); prioritizing issues; discussion and decision on the need for subgroups; a decision on the need for formal officers (with an election possible); and normal housekeeping items and any other new business the Council wishes to review. Public comment period will begin at 8 a.m. December 13.

Dakotas Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8:00 a.m. The Council will reconvene at 8:30 a.m., Tuesday, December 12, and, if needed to conclude its business, again at 8:30 a.m. on Wednesday, December 13. Agenda items include Council orientation; election of Council officers and decisions on other Council operational issues; prioritization of new business for consideration; discussion of new business including standards and guidelines, land exchanges, and subgroups; a meeting evaluation; and normal housekeeping items and any other new business the Council wishes to review. Public comment period will begin at 11 a.m., December 12.

All meetings are open to the public. The public may present written comments to any Council. Each Council meeting will also have time allocated for hearing public comments. The public comment period for each meeting is listed above. Depending on the number of persons wishing to comment and the time available, the time for individual comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Montana State Office, External Affairs, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800, telephone 406–255–2913. Seating at the meetings will be on a first-come basis.

FOR FURTHER INFORMATION CONTACT: Greg Albright, Public Affairs Specialist, Office of External Affairs, Montana State Office, Bureau of Land Management, 222 N. 32nd Street, P.O. Box 36800, Billings, MT 59107, telephone (406) 255–2913.

SUPPLEMENTARY INFORMATION: The purpose of the Councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Councils' responsibilities include providing advice to BLM regarding the preparation, amendment and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State or regional standards for ecological health and guidelines for grazing.

Council members represent various industries and interests concerned with the management, protection and utilization of the public lands. These include (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, rights-of-way interests, off-road vehicle use and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups; and (c) representatives of State and local government, Native American tribes, academia involved in the natural sciences, and the public at large.

Membership includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the respective Councils.

Dated: October 30, 1995.

Larry E. Hamilton,

State Director.

[FR Doc. 95–27308 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–DN–P

[WY–920–41–5700; WYW121117]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

October 20, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW121117 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW121117 effective August 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 95–27338 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Notice of Availability of Final Environmental Impact Statement on the Establishment of the Silvio O. Conte National Fish and Wildlife Refuge Within the Four-State Connecticut River Watershed of New England

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) on establishing the Silvio O. Conte National Fish and Wildlife Refuge (refuge) in the Connecticut River watershed of Connecticut, Massachusetts, Vermont and New Hampshire is available. The U.S. Fish and Wildlife Service (Service) proposes to work with private landowners, state or local agencies and private organizations through the existing Partners for Wildlife and Challenge Cost Share Programs. The Service's major thrust through the year 2010 would focus on the use of voluntary efforts, developing partnerships, providing technical assistance, and administering a cost-sharing grants program to help other conservation interests carry out their land protection programs. The Service would also initiate its own land protection program—using a combination of easements, cooperative management agreement and fee title acquisition—with emphasis on endangered, threatened, rare and uncommon species and communities. Educational efforts would be carried out in cooperation with the watershed's many environmental education providers. This proposal would result in the establishment of a special watershed-wide cooperative management and education program. This notice is being furnished pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR parts 1500–1508).

DATES: A Record of Decision can be approved after December 4, 1995.

ADDRESSES: A limited number of copies of either the complete FEIS, or a summary of the FEIS, are available upon request from Larry Bandolin, Project Leader, U.S. Fish and Wildlife Service, 38 Avenue A, Turners Falls, Massachusetts 01376.

FOR FURTHER INFORMATION CONTACT: Larry Bandolin, Project Leader, Telephone (413) 863–0209 or Fax (413) 863–3070.

SUPPLEMENTARY INFORMATION: The FEIS was prepared to fulfill the requirements of the Silvio O. Conte National Fish and Wildlife Refuge Act of 1991 (Act), Section 105. The Act's long-term purposes for establishing a new refuge in the Connecticut River watershed are to: (1) Conserve, protect, and enhance the Connecticut River watershed populations of Atlantic salmon, American shad, river herring, shortnose sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish, and wildlife; (2) conserve, protect, and enhance the natural diversity and abundance of plant, fish, and wildlife species and the ecosystems upon which these species depend within the refuge; (3) protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973, as amended; (4) restore and maintain the chemical, physical, and biological integrity of wetlands and other waters within the refuge; (5) fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands; and (6) provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section. The FEIS describes five alternative ways to fulfill these purposes. It also discusses the process used to develop them and the environmental consequences of implementing each one. The first alternative (No Action) would involve no new conservation efforts in the watershed on the part of the Service. A second alternative (Private Lands Work and Education) relies on the voluntary restoration and enhancement of private lands through the Service's Partners for Wildlife Program. A third alternative (Private Lands Work, Education and Partnerships) relies on the voluntary restoration and enhancement of private lands, developing partnerships, providing technical assistance and establishing a cost-sharing grants program—through the Service's Challenge Cost Share Program—to help other conservation interests carry out their land protection programs. A fourth alternative (Private Lands Work, Education, Partnerships and Land Protection—The Service's Revised Proposed Action) is similar to the third alternative, except that the Service would also acquire lands to protect threatened or endangered, rare and uncommon species and communities. Under the fifth alternative (Private Lands Work, Education and Land Protection) the Service would establish a more traditional national fish and wildlife refuge. All issues an concerns identified by the public during scoping were considered and the most significant analyzed in detail. The potential effects of each alternative on agriculture and forestry, biological resources, local economies, environmental education, public use and access, and water use and quality are also described.

During the public review and comment period on the Draft Environmental Impact Statement (DEIS), a series of afternoon walk-in informational sessions and evening public meetings and hearings were held in 16 different locations throughout the four-state Connecticut River watershed. Meetings were held in four locations in Massachusetts; four in Connecticut; four in Vermont; and four in New Hampshire in June, 1995. During the public review and comment period the Service received 348 written comments and seven petitions containing 897 signatures. Over 290 people attended the afternoon walk-in sessions and over 700 attended the evening public meetings and hearings, including 94 who testified. All comments received, both written and verbal, were taken into consideration during the preparation of the FEIS—to make corrections or revisions—and have become part of the official record for the project. The FEIS contains the Service's responses to comments made by 150 federal or state agencies, private organizations and individuals. Copies of the FEIS have been sent to all agencies and individuals who commented on the DEIS and to all others who have already requested copies, as well as all libraries within the watershed. A summary of the FEIS has been sent to all other organizations and individuals on the project mailing list.

Cathleen I. Short,

Acting Regional Director, Region 5, Hadley, Massachusetts.

[FR Doc. 95–27195 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32683]

Canadian Pacific Limited and CP Containers (Canada) Inc.—Control Exemption—Cast North America (Trucking) Limited and Cast Transport, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 the acquisition of control by Canadian Pacific Limited (CPL) and CP Containers (Canada) Inc. of two Commission-regulated motor carriers: Cast North America (Trucking) Limited and Cast Transport, Inc. CPL presently controls two rail carriers: Soo Line Railroad Company and the Delaware and Hudson Railway Company, Inc. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on December 3, 1995. Petitions to stay must be filed by November 13, 1995 and petitions to reopen must be filed November 24, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32683 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioners' representative: Terence M. Hynes, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660.

[TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Ave., NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: October 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald. Commissioner McDonald did not participate in the disposition of this proceeding.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27301 Filed 11–2–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32767]

Westmoreland County Industrial Development Corporation—Acquisition Exemption—Southwest Pennsylvania Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition by Westmoreland County Industrial Development Corporation of 28.35 miles of interconnected rail lines of the Southwest Pennsylvania Railway Company known as the Greensburg Cluster, subject to the labor protective conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). The Cluster consists of (a) The Greensburg Industrial Track between mileposts 0.05± and 2.50±, (b) the Southwest Secondary Track between mileposts 2.50± and 17.54±, together with segments of the Sewickley and Tarr Branches, (c) the Southwest Branch/Southwest Secondary Track between mileposts 17.54± and 23.80±, (d) the Long Siding between mileposts 0.1± and 1.04±, (e) the Southwest (Radebaugh) Secondary Track and the Long Siding between mileposts 1.04± and 2.50±, and (f) the Yukon Industrial Track between mileposts 0.00± and 3.00± in Westmoreland and Fayette Counties, PA.

DATES: This exemption will be effective on November 13, 1995, unless stayed. Petitions for stay and petitions to reopen must be filed by November 8, 1995.

ADDRESSES: An original and 10 copies of any comments, referring to Finance Docket No. 32767, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, one copy must be served on Keith G. O'Brien, REA, CROSS & AUCHINCLOSS, Suite 420, 1920 N St., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: October 26, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27303 Filed 11–2–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 157X)]

Southern Pacific Transportation Company—Discontinuance of Service Exemption—in Imperial County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the discontinuance of service by Southern Pacific Transportation Company over a 9.38-mile segment of rail line known as the Sandia Branch, which consists of 8.64 track-miles between milepost 711.90 near El Centro, CA, and the end of the track at milepost 703.26, in Holtville, CA, and a .74-mile line segment from milepost 703.46 to milepost 702.72, in Holtville, Imperial County, CA, subject to environmental and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 4, 1995. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by November 13, 1995. Petitions to stay must be filed by November 20, 1995. Petitions for reopening must be filed by November 28, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 157X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representatives: John MacDonald Smith and Gary A. Laakso, Southern Pacific Transportation Company, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: October 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald. Commissioner McDonald did not participate in the disposition of this proceeding.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27302 Filed 11–2–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission Open and Closed Meeting

Summary: Pursuant to section 10(a) of FACA, this is to announce that the teleconference meeting of the Glass Ceiling Commission which was to have taken place on October 25th and November 1, 1995 have been rescheduled to Thursday, November 9, 1995.

The Commission will meet in closed session in order to discuss commercial characteristics of applicants for the Frances Perkins-Elizabeth Hanford Dole National Award For Diversity and Excellence in American Executive Management. The closing of this meeting is authorized by section 10(d) of the Federal Advisory Committee Act and Section (c)(4) of the Government in the Sunshine Act (5 U.S.C. 552b(c)(4)). This closing allows the Commission to discuss matters which if disclosed in an open meeting would reveal information that would not customarily be released to the public by the applicants.

The Open portion of the teleconference meeting will follow immediately after the closed portion.

The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

The purpose of this open meeting is to conduct a full Commission vote on the Recommendations Report that will be submitted to the President and Select Committees of Congress.

Time and Place: The Closed portion of the teleconference meeting will be held on Thursday, November 9, 1995 from 2 p.m. to 2:30 p.m. (EST). The Open teleconference meeting will be held from 2:35–3:35 p.m. (EST) in room C2313 at the Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis (202) 219–7342 if special accommodations are needed.

For further Information Contact: Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 31st day of October, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–27341 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–23–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Bureau of Labor Statistics

Proposal to Revise Method for Estimation of Monthly Labor Force Statistics for Certain Subnational Areas

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Request for comments on proposed action.

SUMMARY: The Department of Labor, through the Bureau of Labor Statistics, is responsible for the development and publication of local area labor force statistics. This program includes the issuance of monthly estimates of the labor force, employment, unemployment, and the unemployment rate for each State and labor market area in the nation. For 11 large States (California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas) and two large areas (New York City, and the Los Angeles Metropolitan Area), the Current Population Survey (CPS) sample is sufficiently large to meet the BLS standard for direct use and the monthly estimates are taken directly from the survey. Historically, concern has been expressed over the volatility of monthly CPS estimates in these large States and areas.

Under anticipated lower funding levels, BLS plans to reduce the number of households in the CPS. One result will be that the 11 large States and two large areas no longer will be estimated directly from the monthly household survey. The BLS proposes to continue publishing monthly estimates for these subnational areas based on the time series modeling approach currently used in the other 39 States and the District of Columbia beginning in January 1996.

DATES: Comments are due by December 1, 1995.

ADDRESSES: Send comments to Sharon P. Brown, Chief, Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, Suite 4675, 2 Massachusetts Ave., NE., Washington, DC 20212.

FOR FURTHER INFORMATION CONTACT: Sharon P. Brown, Chief, Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, telephone 202–606–6390.

SUPPLEMENTARY INFORMATION: The Bureau of Labor Statistics (BLS) has been responsible for the Local Area Unemployment Statistics (LAUS) program since 1972. In 1978, the BLS broadened the use of data from the Current Population Survey (CPS) in the LAUS program by extending the annual reliability criterion to monthly data. This action was within the context of a budget proposal to expand the CPS to yield monthly employment and unemployment data for all States by June 1981. Under the expanded criterion, monthly CPS levels were used directly for the 10 largest States, two sub-State areas, and the respective balance-of-State areas. The use of annual average CPS data continued for the other 40 States and the District of Columbia. Ultimately, the budget proposal which initiated the direct use of monthly State CPS data was rejected as too costly. Based on population ranking, the State of North Carolina joined the group of direct-use States in 1985, bringing that group to its current total size of 11 States. Also in 1985, sample redesign and other efficiencies improved the reliability of CPS data at the State level, resulting in the current criterion on monthly and annual average data of an 8 percent coefficient of variation on the level of unemployment when the unemployment rate is 6 percent.

Especially in regard to the monthly direct use of State CPS data, concern has been expressed as to the volatility of the statistics. In the typical direct-use State, a month-to-month change in the unemployment rate must exceed 0.7 percentage point to be considered statistically significant. Often, States experience consecutive, offsetting large movements in the unemployment rate.

For the other 39 States and the District of Columbia, after extensive research and simulation, variable coefficient time series models for monthly estimation of State employment and unemployment were introduced in 1989. Further improvement was effected with the implementation of signal-plus-noise models in 1994. These models rely heavily on monthly CPS data, as well as current wage and salary employment and unemployment insurance statistics. At the end of each year, the monthly model estimates are rebenchmarked so that the annual averages for each State match the annual averages derived directly from the CPS.

Because of the budget reductions that the Bureau anticipates, the CPS sample may not be of sufficient size to provide monthly data directly for the 11 large States, New York City, and the Los Angeles Metropolitan Area. Monthly estimates will continue to be produced, based on the time series modeling method currently used for the other States and the District of Columbia. Data for the current direct-use States and

areas would no longer be released by the BLS at the same time as the monthly national labor force statistics, but would be published about four weeks later in the State and Metropolitan Area Employment and Unemployment news release. States that are able to do so will have the option of releasing these data earlier, perhaps even simultaneously with the release of national data. Monthly data for these States also will become subject to end-of-year benchmarking.

The impact of the CPS sample cut on the national statistics would be to increase the variability of most national estimates by about 5 percent. For example, under the reduced sample, a month-to-month change of 0.19 percentage points in the national unemployment rate would represent a statistically significant change at the 90-percent confidence level; the corresponding change under the current design is 0.18 percent.

Detailed descriptions of the estimating methods are available at the above address.

Signed at Washington, DC, this 30th day of October, 1995.

Thomas J. Plewes,

Associate Commissioner for Employment and Unemployment Statistics, Bureau of Labor Statistics.

[FR Doc. 95–27285 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume IV:

Michigan
MI950030 (Nov. 3, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut
CT950001 (Feb. 10, 1995)
CT950003 (Feb. 10, 1995)
CT950004 (Feb. 10, 1995)
CT950008 (Feb. 10, 1995)
Massachusetts
MA950007 (Feb. 10, 1995)
MA950021 (Feb. 10, 1995)

Volume II:

Pennsylvania
PA950042 (Feb. 10, 1995)

Volume III:

None

Volume IV:

Michigan
MI950001 (Feb. 10, 1995)
Minnesota
MN950007 (Feb. 10, 1995)
MN950017 (Feb. 10, 1995)
MN950058 (Feb. 10, 1995)
MN950059 (Feb. 10, 1995)

Volume V:

Nebraska
NE950001 (Feb. 10, 1995)
NE950003 (Feb. 10, 1995)
NE950010 (Feb. 10, 1995)
NE950011 (Feb. 10, 1995)
NE950059 (Feb. 10, 1995)
Texas
TX950002 (Feb. 10, 1995)
TX950014 (Feb. 10, 1995)
TX950051 (Feb. 10, 1995)

Volume VI:

Utah
UT950024 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Region Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 27th day of October 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–27121 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–10027, et al.]

Proposed Exemptions; Concord Hospital Capital Region

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement Plan for Employees of Concord Hospital Capital Region Healthcare Corp. (the Plan) Located in Concord, New Hampshire

[Application No. D–10027]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the July 7, July 13, July 18, August 19, and August 22, 1994, transfers (the Transfers) to the Plan of $7,376,039 of publicly-traded securities from non-ERISA accounts (the Accounts) of Concord Hospital, Inc. (the Employer) and its parent corporation, Capital Region Health Care Corporation (Capital; collectively, the Applicant); (2) the transfer of $3,761,319 of publicly-traded securities from the Plan to the Accounts in August of 1994 (the August, 1994 Distributions); and (3) the proposed transfer of approximately $3.6 million from the Plan to the Accounts (the Proposed Corrective Distribution), provided the following conditions are satisfied: (a) the decision for the Plan to enter the subject transactions was made at the recommendation of the Plan's independent investment advisor; (b) the Plan has not paid and will not pay commissions or other fees in connection with the subject transactions; (c) the transactions involve publicly-traded securities, the fair market values of which were based upon published prices on established markets; and (d) the Plan's independent fiduciary has reviewed the transactions and has determined that the transactions were in the best interest of the Plan and protective of the rights of the participants and beneficiaries of the Plan.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 7, 1994.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which has approximately

1,400 participants and beneficiaries and assets with an approximate fair market value of $20 million. The Applicant is a community-service hospital which is exempt from federal income tax under section 501(c)(3) of the Code. The Accounts from which the Transfers were made are commingled accounts consisting of assets belonging to the Employer and Capital. The Accounts of Capital are endowment accounts, and the Accounts of the Employer are funded depreciation reserves and operating reserves.

2. Effective June 1, 1993, the Applicant hired an investment consulting firm, Prime Buchholz & Associates, Inc. (PB) to provide advice concerning the investment of the assets of the Plan and of the Accounts. The equity categories that were reviewed included large capitalization U.S. equities, medium capitalization U.S. equities, small capitalization U.S. equities, international equities, and fixed-income U.S. and international securities.

3. After a year of study, PB recommended that the Plan investments be diversified from the then principally large capitalization U.S. equities and intermediate term U.S. fixed- income securities to a broader spectrum of investments in large, medium and small capitalization U.S. equities, international equities and intermediate term U.S. fixed-income and global fixed-income securities. A corresponding decision was made to diversify the investments of the Accounts from principally medium capitalization U.S. equities and intermediate fixed-income securities to include holdings in large, medium and small capitalization U.S. equities and international equities, and intermediate term U.S. fixed-income and global fixed-income securities.

4. In order to eliminate significant transaction costs which would arise from sales of existing securities and the purchase of other securities for the Plan, the decision was made, at PB's recommendation, to enter into an equivalent like-kind exchange of assets between the Plan and the Accounts. The intent of PB and of the Applicant was to produce this exchange at an exactly equivalent value, determined by third party valuation sources. The practical impact was a substantial cost saving to the Plan in sales brokerage commissions, as well as the purchase of certain medium capitalization and small capitalization U.S. equities recommended for the Plan's portfolio.

5. The first set of transactions consisted of the Transfers, an in-kind transfer of $7,376,039 of publicly-traded securities from the Accounts into the Plan, completed on July 7, July 13, July 18, August 19, and August 22, 1994. The second set of transactions was to be a reciprocal in-kind transfer of $7,376,039 of Plan assets into the Accounts, scheduled for completion in early August, 1994. A portion ($3,761,319) of this second transaction was completed on August 18–19, and August 29–31, 1994 prior to the realization by the Applicant that a prohibited transaction may have taken place.[1] The Applicant immediately suspended further transfers between the Plan and the Accounts, and commenced discussions with PB and its counsel as to whether a prohibited transaction may have occurred and whether any corrective action could be taken. The Applicant then engaged outside counsel to review the situation, to make recommendations concerning corrective action and, subsequently, to request a prohibited transaction exemption from the Department.

6. The Plan's independent asset managers, Keystone Institutional Company, Inc. (Keystone) and Boston represent that they were fiduciaries to the Plan at the time of the subject transactions, and that they were responsible for the selection of the securities.[2] Boston represents that because the transfer value was slightly more than one-half of the value of the account it managed for the Plan, it first selected for transfer one-half of the shares of each equity security held by the account. Then, Boston identified certain securities in the account which had been classified as near-term sell candidates through the firm's investment research process. Boston selected the balance of the securities to be transferred from those designated near-term sell candidates. With regard to its security selection for assets to be transferred to the Plan, Keystone represents that it agreed to transfer securities where possible to fund the pension accounts while avoiding unnecessary transaction costs. Keystone also represents that it undertook all security transfers to have the Plan's portfolio be in line with other similar portfolios that it managed.

7. With respect to the Transfers and the August, 1994 Distributions, the Plan's independent custodian, U.S. Trust Company (UST) represents that all the securities transferred were publicly-traded securities. Each security was valued as of the date of its Transfer to or Distribution from the Plan. UST represents that it relied on Interactive Data Corporation and Merrill Lynch Securities to provide independent valuations of the investment assets transferred. The values of the common stocks were established by Interactive Data Corporation, based upon closing prices, if available. If they were not available, then the bid quotation was used. The values of the bonds were established by Merrill Lynch, a market maker, based on closing prices. The money market assets were valued at the $1.00 per share stated value.

8. Keystone and Boston represent that the transactions were not all accomplished on the same date for several reasons. First, the instructions from PB were sent to the two asset managers in two separate fax transmissions, separated by approximately a month. In addition, Boston states that the distributions out of the Plan were delayed because there were multiple accounts, there were questions about the mechanics of the transactions, and because UST had recently become the custodian of the Plan's accounts and it was necessary that UST's records be reconciled.

9. The Applicant has retained an independent investment management firm, R.M. Davis & Company (Davis) of Portland, Maine, as an independent fiduciary to evaluate the initial transactions and to recommend the procedure to be followed in making the Proposed Corrective Distribution from the Plan to protect the interests of the Plan and of its participants and beneficiaries. The Applicant instructed Davis that the Proposed Corrective Distribution must be accomplished in such a manner that the Plan will not suffer any loss due to the transaction, and that an appropriate dollar amount will be retained by the Plan to reflect interest, dividends and capital appreciation, if necessary, to put the Plan in at least as good a position as it would have been in had none of the transfers taken place. In this regard, it should be noted that the Plan held assets with a value of approximately $7,361,664 for slightly less than one month (between the Transfers made in July, 1994 and the August, 1994 Distributions), and that it will also have held $3,614,720 in assets from August 22, 1994 until the completion of the Proposed Corrective Distribution.[3]

Keystone represents that the assets transferred into the Plan have appreciated in value to $10,997,547 as of September 13, 1995, an increase of $2,942,305 from August 22, 1994. That appreciation, plus any interest and dividends, will be retained by the Plan so that the maximum Proposed Corrective Distribution will be no greater than $3,614,720, which was the difference in value between the assets transferred into the Plan in July and August, 1994, and distributed out of the Plan in August, 1994. It is intended that the Proposed Corrective Distribution will consist of short-term fixed income securities managed by Boston. The Applicant represents that Boston will select the securities to be transferred out of the Plan, and these securities will be valued by UST as of the date of transfer, with the values being verified by Davis.

10. Davis has reviewed the past and proposed transactions and has determined that PB's general recommendation was prudently arrived at and was in accordance with a policy of diversifying Plan assets. PB's specific recommendation to adjust portfolio balances through a direct exchange between the Plan and the Accounts was also prudently arrived at and was consistent with the best interest of Plan participants and beneficiaries. The methods employed for determining fair market values of the securities were consistent with industry practices, and the transactions have been carried out in a manner protective of the participants and beneficiaries of the Plan.

11. In summary, the Applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The decision to enter into the transactions was made at the recommendation of PB, the Plan's independent investment advisor; (b) the Plan paid no commissions or other fees in connection with the transactions; (c) the transactions, which have all involved publicly-traded securities, have been at fair market value as evidenced by published quotations; (d) Boston and Keystone, independent asset managers of the Plan, selected the securities that were involved in the transactions; (e) the Applicant, upon discovery of the prohibited nature of the transactions, suspended the transactions and promptly applied for an exemption; and (f) Davis, the Plan's independent fiduciary, has reviewed all aspects of the transactions and determined that they were in the best interest of the Plan and of its participants and beneficiaries, and protective of their rights.

[1] The Applicant represents that The Boston Company (Boston), one of the independent investment money managers hired to manage the assets of the Plan, had an internal transaction review process which identified the subject transactions as being prohibited transactions under the Act.

[2] Keystone represents that none of the assets that were transferred from the Plan to the Accounts were subject to its management.

[3] Boston represents that the Plan has earned $314,736.50 in interest on this money as of August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Industrial Bank of Japan, Limited, New York Branch (IBJ) Located in New York, New York

[Application Nos. D–10065 and D–10066]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) The proposed granting to IBJ, as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in the Tiger Real Estate Fund, L.P. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

Summary of Facts and Representations

1. The Partnership is a Delaware limited partnership which is organized under an agreement (the Agreement) dated January 31, 1995 for a term expiring on February 1, 2005. The general partner of the Partnership is Tiger Real Estate Partners Management, L.L.C., (the General Partner), a Delaware limited liability company, the managing member of which is Tiger Real Estate Partners, L.L.C., also a Delaware limited liability company. The Partnership has been organized to make investments in a broad range of real estate related assets, portfolios, and companies. Proceeds from the sale or refinancing of properties generally will not be reinvested, but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

2. After execution of the Agreement, the General Partner sought capital commitments through private placement and has obtained, as a result, irrevocable, unconditional capital commitments of at least $500,000,000 from 48 purchasers of limited partnership units (the Limited Partners). The Agreement requires Limited Partners to make capital contributions upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make a call for cash contributions, also known as a "drawdown," up to the total amount of the Limited Partner's capital commitment upon 15 days' notice, subject to certain limitations. The Partners' capital commitments are structured as irrevocable, unconditional, and binding commitments to contribute equity when capital calls are made by the General Partner. The obligation of each Limited Partner to contribute the full amount of its capital commitment is secured by a grant to the Partnership of a security interest in the Limited Partner's partnership interest.

3. In the ordinary course of its business operations, it is contemplated that the Partnership will incur indebtedness in connection with many of its investments. This on-going need for credit is to be provided by the Facility, a 45-month arrangement for $200 million in revolving credit. The Facility will enable the Partnership to consummate investments quickly without the delay of having to finalize the debt/equity structure for an investment or of having to arrange for interim or permanent financing prior to making an investment. IBJ is the administrative agent for a group of Lenders funding the Facility, as well as a participating Lender. The Facility is, for the Partnership, a non-recourse obligation which matures December 30, 1998. The repayment of this obligation is secured by the Partnership's assignment to the Facility of a security interest in each Limited Partner's partnership interest, capital commitment, and the General Partner's right to make drawdowns. As additional security, the Facility will require each Limited Partner to execute a separate agreement (the Security Agreement) granting to IBJ, for the benefit of the Lenders, a security interest and lien in the Limited Partner's partnership interest, and covenanting with IBJ for the benefit of the Lenders, that such Limited Partner will unconditionally honor any drawdown made by IBJ in lieu of the General Partner in accordance with the Agreement to the

full extent of the Limited Partner's unfunded capital commitment.

4. The trusts which hold assets of the Plans (the Trusts) are Limited Partners in the Partnership and therefore own limited partnership interests. Some of the Lenders are parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provision of fiduciary services to such Plans. These fiduciary services are provided with respect to Trust assets other than the Partnership interests.

IBJ is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Trusts with the largest interests in the Partnership and the extent of their respective capital commitments to the Partnership are described as follows:

(a) *The AT&T Master Pension Trust (the AT&T Trust), Located in New York, New York; State Street Bank and Trust Company, Trustee.* This Trust holds the assets of two defined benefit pension plans sponsored by AT&T—the AT&T Pension Plan and the AT&T Management Pension Plan. The AT&T Trust also holds the assets of some smaller plans sponsored by AT&T affiliates. As of December 31, 1995, the AT&T Trust had a total of 442,240 participants and aggregate assets of $38.25 billion. The AT&T Trust has undertaken a total capital commitment of $100,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the AT&T Trust is David Feldman, Corporate Vice President, of AT&T's Investment Management Organization.

(b) *The Honeywell Master Pension Trust (the Honeywell Trust), Located in Medford, Massachusetts; Boston Safe Deposit and Trust Company, Trustee.* This Trust holds the assets of four defined benefit pension plans. These Plans are the Durham Pension Plan, the Honeywell Retirement Benefit Plan, the Honeywell Protection Services Pension Plan, and the Honeywell Pension Plan for Certain Hourly Employees. As of February 28, 1995, the Honeywell Trust had a total of 82,850 participants and aggregate assets of $2.33 billion. The Honeywell Trust has undertaken a total capital commitment of $20,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the Honeywell Trust is the Honeywell Pension and Retirement Committee.

(c) *The BP America Inc. Retirement Trust (the BP Trust), Located in Cleveland, Ohio; Bankers Trust Company, Trustee.* This Trust holds the assets of two defined benefit pension plans sponsored by BP. These Plans are the BP America Master Hourly Plan for Represented Employees and the BP America Retirement Accumulation Plan. As of December 31, 1993, these Plans had a total of 39,619 participants. The BP Trust also holds the assets of some smaller plans sponsored by BP affiliates. As of December 31, 1993, the BP Trust had aggregate assets of $1.4 billion. The BP Trust has undertaken a total capital commitment of $10,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the BP Trust is Howard H. Harpster, Director, of Pension Investments.

(d) *The IBM Retirement Plan (the IBM Plan), Located in New York, New York.* This Plan is a defined benefit pension plan having 285,951 participants and total assets of $26.7 billion as of February 28, 1995. Assets of the IBM Plan are held in the IBM Retirement Plan Trust (the IBM Trust), of which the Chase Manhattan Bank is the directed trustee. The IBM Trust has undertaken a total capital commitment of $50,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the IBM Trust is the IBM Investment Committee.

(e) *The United States Steel Corporation Plan for Employee Pension Benefits (the USS Plan), Located in New York, New York.* This Plan is a defined benefit pension plan having 148,985 participants and total assets of $8.3 billion as of December 31, 1993. Assets of the USS Plan are held in the USS Special Investments Group Trust (the USS Trust), of which the United States Steel and Carnegie Pension Fund is trustee. The USS Trust has undertaken a total capital commitment of $20,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the USS Trust is the United States Steel and Carnegie Pension Fund.

(f) *The Retirement Plan of Marathon Oil Company (the Marathon Plan), Located in New York.* This is a defined benefit pension plan having 11,969 participants and total assets of $863,677,625 as of December 31, 1993. Assets of the Marathon Plan are held in the MRO USS Special Investments Group Trust (the MRO Trust), of which the United States Steel and Carnegie Pension Fund is trustee. The MRO Trust has undertaken a total capital commitment of $5,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the MRO Trust is the United States Steel and Carnegie Pension Fund.

(g) *The Walt Disney Company Retirement Plan Master Trust (the Disney Trust), Located in Burbank, California; Bankers Trust Company, Trustee.* This trust holds the assets of five defined benefit pension plans. These Plans are the Walt Disney Productions and Associated Companies' Retirement Plan, the Disneyland and Associated Companies' Retirement Plan, the Disney Associated Companies' Retirement Plan, the Walt Disney World Co. and Associated Companies' Retirement Plan, and the Disney Salaried Retirement Plan. As of February 28, 1995, the Disney Trust had a total of 40,000 participants and aggregate assets of $637,000,000. The Disney Trust has undertaken a total capital commitment of $10,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the Disney Trust is the Investment and Administrative Committee of the Walt Disney Company Sponsored Qualified Benefit Plans and Key Employees Deferred Compensation and Retirement Plan.

(h) *The General Mills, Inc. Master Trust (the General Mills Trust), Located in Minneapolis, Minnesota; State Street Bank and Trust Company, Trustee.* This Trust holds assets of eleven defined benefit and deferred compensation pension plans. The Plans in the General Mills Trust are the Retirement Income Plan, the Grain Millers Plan, the Multiple Group Plan, The Restaurant Hourly Plan, the Restaurant Salaried Plan, the Vroman's Bargaining Plan, the Yoplait Hourly Plan, the Yoplait #386 Plan, the Voluntary Investment Plan, the Profit Sharing and Savings Plan, and the Retirement Savings Plan. As of December 31, 1994, the General Mills Trust had a total of 130,000 participants and aggregate assets of $1.42 billion. The General Mills Trust has undertaken a total capital commitment of $5,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the General Mills Trust is the Benefit Finance Committee of General Mills, Inc.

(i) *The Central States, Southeast and Southwest Areas Pension Fund (the Fund), Located in Rosemont, Illinois.* This Plan is a defined benefit plan having 483,794 participants and total assets of $12.16 billion as of December 31, 1994. The Fund has undertaken a total capital commitment of $75,000,000. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the Fund is LaSalle Advisors.

(j) In addition, it is possible that one or more other Plans may become Limited Partners at some future time. Therefore, this proposed exemption is intended to cover any such Plan so long as the Plan meets the terms and conditions described herein.

(k) Limited Partners which are not Plans include:

(1) Allstate Insurance Company, which has undertaken a total capital commitment of $25,000,000.

(2) Allstate Life Insurance Company, which has undertaken a total capital commitment of $10,000,000.

(3) Columbia University, which has undertaken a total capital commitment of $10,000,000.

(4) Cornell University, which has undertaken a total capital commitment of $10,000,000.

(5) The Ministers and Missionaries Benefit Board of the American Baptist Churches, which has undertaken a total capital commitment of $20,000,000.

(6) The New York State Common Retirement Fund, which has undertaken a total capital commitment of $75,000,000.

(7) The Commonwealth of Pennsylvania Public School Employes' Retirement System, which has undertaken a total capital commitment of $50,000,000.

(8) Puma, which has undertaken a total capital commitment of $13,500,000.

(9) NC/TREIT, which has undertaken a total capital commitment of $20,000,000.

(10) Endowment Realty Investors II, Inc., which has undertaken a total capital commitment of $25,000,000.

(11) The Oregon Public Employees' Retirement Fund, which has undertaken a total capital commitment of $75,000,000.

(12) Tiger, which has undertaken a total capital commitment of $38,250,000.

5. IBJ represents that the Partnership has obtained an opinion of counsel that the Partnership will constitute an "operating company" under the Department's plan asset regulations [29 CFR 2510.3–101(c)] if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.[4]

[4] The Department expresses no opinion herein as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3–101.

6. IBJ represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. IBJ also represents that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. IBJ represents that the only direct relationship between any of the Limited Partners and any of the Lenders will be in the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Facility, are exclusively between the Lenders and the Partnership. IBJ represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Limited Partners to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

7. IBJ represents that neither it nor any Lender will act in any fiduciary capacity with respect to any Trust's investment in the Partnership and that IBJ is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to IBJ and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (b) none of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (c) the Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Larson Distributing Co. Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Application No. D–10083]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of credit to the Plan (the Loan) by Larson Distributing Co., Inc. (the Employer), the sponsor of the Plan, with respect to the Plan's investments in annuity accounts maintained with USG Annuity and Life Co. and All American Life Insurance Company (the Annuities), and (2) the Plan's potential repayment of the Loan (the Repayments); provided the following conditions are satisfied:

(A) The Plan does not pay any interest or incur any expenses with respect to the Loan;

(B) The Repayments are restricted solely to the amounts recovered by the Employer on behalf of the Plan (the Recovery Amounts) in litigation concerning the Annuities; and

(C) To the extent the Loan exceeds the total Recovery Amounts, the Repayments shall be waived.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 47 participants and total assets of $446,784 as of October 31, 1994. The Employer is a Colorado closely-held corporation engaged in the wholesale distribution of floor coverings and building materials, with its principal place of business in Denver, Colorado. The trustees of the Plan are John L. Larson, Sr. and Allen W. Kliewer (the Trustees), each of whom is an officer and director of the Employer.

2. The Plan provides for individual participant accounts and participant-directed investment of the accounts among investment options (the Funds) selected by the Trustees. Commencing October 1987, the Trustees engaged the services of Moore Resources Group, Inc. (MRGI) as a third party administrator of the Plan. MRGI's duties included responsibility for receiving all Plan contributions for distribution and deposit among the Funds in accordance with participant directions. Among the Funds under MRGI's responsibility was the Money Market Annuity Fund, the assets of which included annuity accounts with USG Annuity and Life Co. (USG) and All American Life Insurance Company (All American; together, the Insurers).

3. The Employer represents that from October 1991 through December 1993, MRGI fraudulently deposited into its own account at Norwest Bank in Denver, Colorado, a total of $150,595.24 generated by forging checks and fraudulently surrendering annuities with respect to the Plan's accounts with the Insurers. The Employer details the allegations of fraud and forgery as follows: Twenty one checks, totalling $78,472.71, in Plan contributions payable to USG were deposited into MRGI's account at Norwest Bank and were never paid to USG. Nineteen checks totalling $51,203.52 issued by USG as surrendered annuities, pursuant to forged surrender applications submitted by MRGI, were endorsed by forgery and deposited by MRGI into its account at Norwest Bank. Twelve checks totalling $20,919.01 issued by All American as surrendered annuities, pursuant to forged surrender applications submitted by MRGI, were endorsed by forgery and deposited by MRGI into its account at Norwest Bank. Previously, on May 14, 1991, according to the Employer, MRGI's chief executive officer had forged the signature of one of the Trustees on a letter to USG requesting that all correspondence regarding the Plan be forwarded to MRGI. Furthermore, the Employer states that the Form 5500's for the Plan which were prepared by MRGI and sent to the Employer for review and signature contained false entries with respect to the amount of contributions to the Insurers and the balances of the participant accounts invested with the Insurers. In addition, the Employer represents that the year-end statements sent to Plan participants by MRGI reflected not the actual balances of the individual accounts but an approximation of the amounts which would have been in the participant accounts without the forgeries.

4. The Employer is initiating litigation on behalf of the Plan against MRGI, USG, All American, and Norwest Bank to recover the amounts fraudulently diverted from the Plan as described above (the Litigation). The Employer is paying all court costs and attorneys fees in initiating and pursuing the Litigation. Meanwhile, the Employer wishes to restore to the Plan the amounts of the forged checks and fraudulently surrendered annuities, plus interest, in the form of a loan to the Plan (the Loan). The Employer represents that by making a special contribution to the Plan in the form of the Loan the Plan will be able to recover immediately the amounts sought in the Litigation, and to prevent further lost earnings on the amounts which have been diverted by MRGI. Accordingly, the Employer is requesting an exemption for the Loan, including its potential repayment by the Plan (the Repayments), as described herein.

5. The Employer proposes to execute a written agreement (the Agreement) under which the Employer undertakes the obligation to make a special cash contribution to the Plan (the Special Contribution), which will constitute the Loan principal. The Agreement provides that the Special Contribution is to be made to the Plan only after the grant of the exemption proposed herein, if granted. The amount of the Special Contribution is defined in the Agreement as the amount of the forged checks for contributions and fraudulently surrendered annuity contracts plus an amount to reflect earnings that would have accumulated under the contracts with the Insurers absent the fraud, as determined on the basis of rate information provided by the Insurers. The Agreement requires that the Special Contribution be allocated to the Plan participants in the proportion that their accounts were affected by the fraud and forgery.

With respect to repayment of the Loan (the Repayment), the Agreement provides that the Special Contribution is to be repaid to the Employer only if the Litigation is successful in recovering monetary amounts on behalf of the Plan either through a final judgment or settlement of the Litigation. If the Litigation does not result in any monetary recovery, the Plan shall not reimburse the Employer for any of the Special Contribution. Upon the entry of a final judgment or upon settlement of the Litigation, the Plan shall repay the Special Contribution to the Company in the amount of the lesser of (a) the amount of the Special Contribution plus Litigation costs and attorneys' fees, or (b) the amount actually recovered in the Litigation. If the amount of such recovery is greater than the amount of the Special Contribution plus costs of the Litigation and attorneys fees, the excess recovery shall enure to the benefit of the Plan. If the amount of such recovery is less than the amount of the Special Contribution plus costs of the Litigation and attorneys fees, repayment of the difference will be waived and the Employer will have no further right of reimbursement with respect to the Special Contribution.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Loan will enable the Plan to recover immediately the amounts allegedly diverted, including interest on such amounts as determined by the Insurers, and to prevent further loss of earnings on such amounts; (b) The Plan will not pay any interest or incur any expenses with respect to the Loan; (c) Repayment of the Loan will be restricted to the proceeds, if any, recovered in the Litigation; and (d) To the extent the Loan exceeds the amount recovered in the Litigation, the Repayments will be waived.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Retirement Savings Plan and Trust for Employees of the J.H. Heafner Company, Inc. (the Plan), Located in Lincolnton, North Carolina

[Application No. D–10125]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,

shall not apply to the proposed sale by to the Plan of certain limited partnership units (the Units) in two limited partnerships to the J.H. Heafner Company, Inc. (Heafner), provided the following conditions are satisfied: a) the sale is a one-time transaction for cash; b) the Plan pays no commissions or other expenses in connection with the transaction; and c) the Plan receives no less than the greater of: (1) its cost for the Units; or (2) the fair market value of the Units on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan established by Heafner under the provisions of section 401(k) of the Code. The Plan currently has 392 participants, and had assets of $5,728,370 as of June 30, 1995. Heafner is a North Carolina corporation which has 30 distribution centers throughout the Southeast involved in the wholesale distribution of tires and automotive equipment and wheels.

2. Among the assets in the Plan are the Units, which are interests in two limited partnerships, which are unrelated to Heafner. Heafner has no interests in either of the partnerships. One partnership is Realty Parking Properties L.P. (RPP), and the second is Atlantic Income Properties (Atlantic). The Plan purchased 1,600 Units in RPP on June 2, 1989 for a purchase price of $40,000. The Plan purchased 5,000 Units in Atlantic on April 5, 1989 for a purchase price of $100,000. The Plan's investment broker, Interstate Johnson Lane, purchased the Units in both partnerships on behalf of the Plan on the open market. There are a total of 1,909,087 units of RPP as of June 30, 1995, so the Plan's Units represent approximately .08% of the total units. There are a total of 508,844 units of Atlantic outstanding, so the Plan's Units represent approximately .98% of the total units. The applicant represents that the Units are non-liquid in nature with no ready market for their sale.

3. The Plan now proposes to sell the Units to Heafner. The applicant represents that the Units are the only non-liquid assets contained in the Plan, except for those invested in the NCNB Real Estate Fund, which the North Carolina National Bank is moving to liquidate itself. Currently, the Plan's trustees have frozen these fixed asset accounts to preserve the principal base for all participants who have money invested in these assets. Due to the non-liquid nature of the assets, there are no allowable distributions currently until the liquidity improves. The applicant represents that the presence of these assets has made Plan administration difficult and that the current freeze is unfair to participants. The applicant represents that before considering a sale to Heafner, the Plan's trustees investigated the possibility of selling the Units on the open market and found that there was no market.

4. The sale price will be the higher of the Plan's cost for the Units or their fair market value as of the date of the sale. Any costs that will be incurred in the proposed transaction will be borne by Heafner. Ms. Denise Liekfet of RPP has represented that as of December 31, 1994, the Units of RPP had an appraised fair market value of $22.50 per Unit, or a total value of $36,000. Since the Plan's cost for these Units was $40,000, Heafner proposes to pay $40,000 to the Plan. Ms. Tammy L. Stempler of ISC Realty Corporation, General Partner of Atlantic has represented that as of March 30, 1995 the Units in Atlantic had an appraised fair market value of $13 per Unit, or a total value of $65,000. Since the Plan's cost for these units was $100,000, Heafner proposes to pay $100,000 to the Plan.[5]

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: a) the sale is a one-time transaction for cash; b) the Plan will pay no commissions or other expenses in connection with the transaction; and c) the sale price will be the higher of the Plan's cost of the Units or the current fair market value of the Units as determined by independent appraisal.

Tax Consequences of the Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 31st day of October, 1995.

U.S. Department of Labor.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration.

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[5] Heafner represents that should the Plan receive greater than the fair market value of the Units, the excess, if treated as a contribution to the Plan, would not cause the Plan to violate sections 401(a)(4), 404 or 415 of the Code.

[Prohibited Transaction Exemption 95–100; Exemption Application No. D–9500 , et al.]

Grant of Individual Exemptions; Fidelity Management Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Fidelity Management Trust Company (FMTC) and its Affiliates (collectively, Fidelity) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–100; Application No. D–9500]

Section I—Exemption for Payment of Certain Fees to Fidelity

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of certain performance fees (the Performance Fee) to Fidelity by employee benefit plans for which Fidelity provides investment management or discretionary trustee services (the Client Plans) pursuant to an investment management or trust agreement (the Agreement) entered into between Fidelity and the Client Plans either individually, through the establishment of a single client separate account (Single Client Account), or collectively as participants in a multiple client commingled account (Multiple Client Account), provided that the conditions set forth below in Section III are satisfied. (Single Client Accounts and Multiple Client Accounts are collectively referred to herein as Accounts.)

Section II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by Fidelity, provided that the conditions set forth below in Section III are satisfied.

Section III—General Conditions

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Performance Fee, shall be approved in writing by a fiduciary of a Client Plan which is independent of Fidelity (the Independent Fiduciary). Notwithstanding the foregoing, Fidelity may authorize the transfer of cash from a Single Client Account to a Multiple Client Account provided that: (1) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (2) the Agreement governing the Single Client Account authorizes Fidelity to invest in a Multiple Client Account; (3) Fidelity receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account; (4) a binding commitment to make the transfer to the Multiple Client Account occurs within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event Fidelity's binding commitment to make the transfer occurs more than six months after such fiduciary's decision, Fidelity obtains an additional authorization from the Independent Fiduciary; and (5) each transfer of assets from the Single Client Account to the Multiple Client Account occurs within sixty (60) days of the actual transfer of such assets to the Single Client Account.

(b) The terms of any investment in an Account and of any Performance Fee shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan shall have total net assets with a value in excess of $50 million or, alternatively, be represented by an Independent Fiduciary that is responsible for the investment of at least $50 million in "plan assets" subject to the provisions of the Act; and

(2) No Client Plan shall invest, in the aggregate, more than five percent (5%) of its total assets in any Account or more than ten percent (10%) of its assets in all Accounts established by Fidelity.

(d) Prior to making an investment in any Account, the Independent Fiduciary of each Client Plan investing in an Account shall receive offering materials from Fidelity which disclose all material facts concerning the purpose, structure, and operation of the Account, including any fee arrangements.

(e) With respect to its ongoing participation in an Account, the Independent Fiduciary of each Client Plan shall receive the following written information from Fidelity:

(1) Audited financial statements of the Account prepared by independent public accountants selected by Fidelity no later than ninety (90) days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by Fidelity relating to the overall financial position of the Account and, in the case of a Multiple Client Account, the value of such Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to Fidelity during the period covered by such report;

(3) Annual reports indicating the fair market value of the Account's assets

determined using market sources and valuation methodologies acceptable to the Independent Fiduciary of the Client Plan for a Single Client Account or the responsible independent fiduciaries of Client Plans and other authorized persons acting for investors in a Multiple Client Account (the Responsible Independent Fiduciaries, as defined in Section IV(c) below), or if market sources are not available, values determined by a qualified appraiser independent of Fidelity which has been approved by the Independent Fiduciary or Responsible Independent Fiduciaries. However, no independent appraisals shall be required unless such appraisals are necessary for purposes of determining any compensation due to Fidelity based on the value of the assets in the Account for that period; and

(4) In the case of any Multiple Client Account, a list of all other investors in the Account.

(f) The total fees paid to Fidelity shall constitute no more than reasonable compensation.

(g) The Performance Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount), except that in the case of Fidelity's removal or resignation, Fidelity shall be entitled to receive a Performance Fee payable either at the time of removal, or in the event of Fidelity's resignation, on the scheduled termination date of the Account, subject to the requirements of paragraph (j) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with market sources or independent appraisals as described in paragraph (k) below), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of Fidelity's removal or resignation. Both the Threshold Amount and the amount of the Performance Fee, expressed as a percentage of the amount distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan.

(h) The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Section IV(d). The Independent Fiduciary acting for a Client Plan shall specifically agree in writing with Fidelity, prior to any investment in the Account, that it would be appropriate for the minimum rate of return applicable to the Account to be based upon the rate of change in the consumer price index (CPI) during the period specified in the Agreement, as described in Section IV(d).

(i) For any sale of an asset in an Account which shall give rise to the payment of a Performance Fee to Fidelity prior to the termination of the Account, the sale price of the asset shall be at least equal to a target amount (the Target Amount), as defined in Section IV(e), in order for Fidelity to sell the asset and receive its Performance Fee without further approvals. If the proposed sale price of the asset is less than the Target Amount, the proposed sale shall be disclosed to and approved by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, in which event Fidelity will be entitled to sell the asset and receive its Performance Fee. If the proposed sale price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, Fidelity shall still have the authority to sell the asset, if the Agreement provides Fidelity with complete investment discretion for the Account, provided that the Performance Fee that would have been payable to Fidelity by reason of the sale of the asset is paid only at the termination of the Account.

(j) In the event Fidelity resigns as investment manager or trustee of an Account, the Performance Fee shall be calculated at the time of resignation based upon a deemed distribution of the assets of the Account at their fair market value (determined using market sources or independent appraisals as described in paragraph (k) below). The amount arrived at by this calculation shall be multiplied by a fraction, the numerator of which shall be the sum of the disposition proceeds of all assets in the Account received prior to the termination date plus the fair market value of the assets remaining in the Account on the termination date and the denominator of which shall be the aggregate value of the assets in the Account used in determining the amount of the Performance Fee as of the date of resignation, provided that this fraction shall never exceed 1.0. The resulting amount shall be the Performance Fee payable to Fidelity on the scheduled termination date of the Account.

(k) With respect to the valuation of the assets in an Account for purposes of determining any Performance Fee based on a deemed distribution of such assets, Fidelity shall establish the fair market value for the assets using market sources and valuation methodologies disclosed to, and approved in writing by, the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account. In the event market sources are not available for the valuation of assets in the Account, the fair market value of such assets shall be determined by an independent qualified appraiser approved by either the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account prior to any valuation of the assets. If a new appraiser for an asset is chosen by Fidelity, the appraiser shall be approved by such Fiduciaries prior to any valuation of the asset. In any event, the fair market value of all assets involved in any deemed distribution shall be based on the current market value of such assets as of the date of the transactions giving rise to the payment of the Performance Fee.

(l) Fidelity shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (m) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest, other than Fidelity, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (l) of this Section III shall be unconditionally available at their customary location for examination during normal business by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to any Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of any Client Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (m)(1) (ii)–(iv) shall be authorized to examine the trade secrets of Fidelity or any commercial or financial information which is privileged or confidential.

Section IV—Definitions

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Responsible Independent Fiduciaries" means with respect to a Multiple Client Account the Independent Fiduciary of Client Plans invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of the Act (such as governmental plans, university endowment funds, etc.) that are independent of Fidelity and that collectively hold at least 50% of the interests in the Account.

(d) The term "Threshold Amount" means with respect to any Performance Fee an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is at least equal to the rate of change in the CPI during the period from the deposit of the Client Plan's assets in the Account until distributions of the Client Plan's assets from the Account equal or exceed the Threshold Amount; or

(2) A fixed rate which is at least equal to the average annual rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(e) The term "Target Amount" means a value assigned to each asset in the Account established by Fidelity either (1) at the time the asset is acquired, by mutual agreement between Fidelity and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or (2) pursuant to an objective formula approved by such fiduciaries at the time the Account is established. However, in no event will such value be less than the acquisition price of the asset.

(f) The term "Account" means any Single Client Account or Multiple Client Account established with Fidelity, under a written investment management or trust agreement, that is invested primarily (i.e. more than 50%) in securities or other assets which are not publicly-traded equity securities or publicly-traded, investment grade debt securities, pursuant to written instructions and guidelines established and approved by an Independent Fiduciary for the Client Plan prior to any investment by the Client Plan in the Account. For purposes of an "Account" meeting the 50% test for assets which are not "publicly-traded equity securities" or "publicly-traded, investment grade debt securities", any private market securities held by the Account that become publicly-traded securities shall not be considered as such for a period of thirty (30) months following the date such securities become publicly-traded so as to allow Fidelity sufficient time to dispose of such securities in order for the Account to remain primarily invested in assets which are not publicly-traded securities, including for such purposes any publicly-traded debt securities which are not investment grade.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on June 15, 1995, at 60 FR 31501.

Written Comments and Modifications

The Department received one comment letter from interested persons regarding the Proposal. The comment letter was from Russell L. Olson, Director, Pension Investment, Worldwide, Eastman Kodak Company in Rochester, New York (the Commenter).

The Commenter made two recommendations regarding the conditions contained in the Proposal.

First, the Commenter notes that Section III(c)(1) of the Proposal requires that each Client Plan must have total net assets with a value in excess of $50 million. The Commenter states that the Proposal's language would foreclose the use of such a Fidelity performance-fee based Account to a small pension fund whose named fiduciary is the same as that which is named fiduciary of a multi-billion dollar pension fund, but with which the smaller pension fund is not commingled. The Commenter believes that such an Account may be equally as appropriate for the small pension fund as for the large, provided that the smaller pension fund is represented by a sophisticated fiduciary. Thus, the Commenter recommends that Section III(c)(1) be revised to require only that each Client Plan be represented by an Independent Fiduciary that is responsible for the investment of more than $50 million of "plan assets" subject to the provisions of the Act.[1]

Second, the Commenter notes that Section III(i) of the Proposal requires, in pertinent part, that

> "* * * If the proposed sale price of an asset is less than the Target Amount, the proposed sale shall be disclosed to and approved by the Independent Fiduciary * * * or [if the] Independent Fiduciary's * * * approval is not obtained, Fidelity shall still have the authority to sell the asset, if the Agreement provides Fidelity with complete investment discretion for the Account, provided that the Performance Fee that would have been payable to Fidelity by reason of the sale of the asset is paid only at the termination of the Account."

The Commenter recommends that this provision be eliminated. In this regard, the Commenter states that this condition would make it more cumbersome for Fidelity to sell a less successful investment. The Commenter represents that, as an investor, it would view any such impediment as counter to the best interest of plan participants.

By letter dated August 16, 1995, Fidelity responded to the comments made by the Commenter. Fidelity expressed support for the Commenter's suggested revisions to the Proposal to the extent the Department would be willing to adopt such changes. However, Fidelity noted that it would also be willing to accept an exemption as proposed on these issues to avoid any material delay in the processing of a final exemption.

With respect to the first recommendation made by the Commenter, and Fidelity's response thereto, the Department believes that a Client Plan's interests in connection with the proposed payment of Performance Fees to Fidelity should be represented by an Independent Fiduciary which has sufficient knowledge, experience and expertise to enable such fiduciary to adequately protect the interests of the Client Plan.[2] Thus, the Department believes that the Commenter's recommendations have merit as long as the Client Plan's interests are protected by a sophisticated fiduciary that is thoroughly familiar with the Performance Fee arrangement and monitors such arrangement for the Client Plan. In this regard, the Department expects that a particular sophisticated fiduciary which initially acts for a Client Plan as an Independent Fiduciary for the Plan's approval of a Performance Fee for Fidelity should continue to serve in that role throughout the duration of such Plan's participation in the Account.

Therefore, the Department has determined to modify the language of Section III(c)(1) as follows:

> "* * * Each Client Plan shall have total net assets with a value in excess of $50 million or, alternatively, be represented by an Independent Fiduciary that is responsible for the investment of at least $50 million in "plan assets" subject to the provisions of the Act. [emphasis added]

With respect to the second recommendation made by the Commenter, and Fidelity's response thereto, the Department does not believe that elimination of requirements in Section III(i) of the Proposal is warranted. In general, the Department views the payment of a Performance Fee as a reward for superior investment performance for assets acquired by an Account. The "Target Amount" concept (as defined in Section IV(e) of the Proposal) ensures that Fidelity will only receive a Performance Fee if each particular asset has at least reached its intended or "targeted" value at the time of sale. Thus, the Department believes that after the Threshold Amount (as defined in Section IV(d) of the Proposal) has been reached, the sale of any asset by an Account at a price which is less than the Target Amount established for such asset should not entitle Fidelity to the receipt of a Performance Fee at the time of sale unless an Independent Fiduciary is made aware of, and specifically approves, the sale at that time. Accordingly, the Department has determined not to adopt the Commenter's recommendations with respect to the provisions of Section III(i) of the Proposal.

In addition to the issues raised by the Commenter, the applicant (i.e. Fidelity) submitted the following comments and/or requests for modifications regarding the Proposal.

First, Fidelity states that Section III(e)(3) of the Proposal requires, in pertinent part, that no independent appraisals will be required for assets acquired for an Account within the twelve (12) months preceding the end of the period covered by the report, unless such appraisals are necessary for purposes of determining any compensation due to Fidelity based on the value of the assets in the Account for that period. Fidelity notes that this condition seems to suggest that independent appraisals will be required for assets after the twelve (12) month period mentioned therein, even where Fidelity's fees are not based on the value of the assets in the Account. In this regard, Fidelity states that in certain instances it's Base Fee for an Account may be based on the amount of capital invested in the Account, rather than on the value of the assets in the Account [see Footnote 7 in Paragraph 5 of the Summary of Facts and Representations (the Summary) in the Proposal]. Thus, Fidelity requests that the words "* * *" for assets acquired for the Account within the twelve (12) months preceding the end of the period covered by the report * * *" in Section III(e)(3) of the Proposal be deleted in order to clarify that no appraisals will be required for assets held in an Account *at any time* unless compensation payable to Fidelity is based on the "value" of the assets in the Account.

The Department concurs with Fidelity's requested clarification and has so modified the language of the Proposal.

Second, with respect to the condition set forth in Section III(j) dealing with the calculation and payment of any Performance Fee in the event Fidelity resigns as investment manager or trustee of an Account, Fidelity states that there is a fraction which is used to reduce the amount of the Performance Fee calculated at the time of resignation to reflect the ultimate value realized by the Account for the assets held in the Account at the time of resignation. The numerator of this fraction equals the sum of the disposition proceeds of all assets in the Account received prior to the termination date of the Account plus the fair market value of the assets remaining in the Account on the termination date. In this regard, Fidelity wishes to clarify for the record that the disposition proceeds which would be included in the numerator of this fraction are disposition proceeds which are received on and after the date of resignation and which arise from the disposition of assets which were included in the Account on the resignation date. However, Fidelity does not believe that any change is required to the language of Section III(j) of the Proposal.

The Department notes the applicant's clarification.

Third, Fidelity states that the first sentence in Footnote 6 in Paragraph 4 of the Summary requires a minor clarification. Footnote 6 states that an Account will not invest in or use any swap transactions (including caps, floors, collars, or options relating thereto), forward contracts, exchanged-traded futures transactions, or options (other than covered call options). Fidelity's comment letter reaffirms its previous representation regarding the exclusion of swap transactions, forward contracts, and exchanged-traded futures transactions. However, Fidelity states that the exclusion with respect to the use of all "options" (which do not relate to swap transactions), as stated in Footnote 6, is too broad. In this regard, Fidelity represents that an Account may need to either: (i) Purchase an option to permit the Account to acquire an asset from, or sell an asset to, a third party at a later date, or (ii) sell an option which permits a third party to acquire an asset owned by the Account at a later date (i.e. so-called "covered" call options). In addition, Fidelity represents that an Account may need to enter into certain contracts which require the Account to acquire or sell, and a third party to sell or acquire, an asset owned or to be acquired by the Account at a later date. Specifically, Fidelity states that an Account may use such options, or enter into such contracts, to acquire or sell the following: (i) Real estate; (ii) mortgages; (iii) interests in real estate; (iv) partnership interests; (v) joint venture interests; (vi) securities which are not publicly-traded at the time of purchase; or (vii) loans or other debt instruments (whether or not considered "securities") which are not rated as investment grade. Fidelity states further that an Account will not use any "exchange-traded" options or options which relate to either publicly-traded equity securities or publicly-traded investment grade debt securities. Finally, Fidelity states that in no event will an Account engage in the sale of any "naked" options.

The Department notes the applicant's clarification.

No other comments on the Proposal, and no requests for a hearing, were received by the Department during the comment period.

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[1] See 29 CFR 2510.3–101 for the Department's regulations defining "plan assets" that are subject to Title I of the Act.

[2] As noted in Footnote 3 of Paragraph 3 in the Summary of Facts and Representations in the Proposal, the Department expects a plan fiduciary, prior to entering into any performance-based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide oversight of the investment manager during the course of the arrangement.

Accordingly, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Michael Elkin Individual Retirement Account (the IRA) Located in New York, New York

[Prohibited Transaction Exemption 95–101; Application No. D–10022]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase for cash of a certain limited partnership interest in the Medallion Fund (the Interest) by the IRA from Michael Elkin, a disqualified person with respect to the IRA,[3] provided the following conditions are met:

(a) The purchase is a one-time transaction for cash;

(b) The terms and conditions of the purchase are at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party;

(c) The IRA pays no more than the fair market value of the Interest, as established by an independent qualified appraiser at the time of the transaction;

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the transaction; and

(e) The fair market value of the Interest is based on an independent valuation of the total net asset value of the Fund and does not represent more than 25% of the total assets of the IRA at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption Notice published on September 21, 1995, 60 FR 49022.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

The Age-Based Profit Sharing Plan and Trust of Carolina OB–GYN Care, P.A. (the Plan) Located in Spartanburg, South Carolina

[Prohibited Transaction Exemption 95–102; [Application No. D–10061]

[3] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the individual account (the Account) in the Plan of James C. Montgomery, M.D., of a parcel of real property (the Property) to Dr. Montgomery, a party in interest with respect to the Plan, and the assumption by Dr. Montgomery of the Account's current indebtedness with respect to the Property, provided that the following conditions are satisfied: (a) The purchase price is the greater of $120,000 or the fair market value of the Property as of the date of the sale; (b) the fair market value of the Property is determined by a qualified, independent appraiser as of the date of the sale; and (c) the Account pays no commissions or other expenses relating to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 25, 1995 at 60 FR 49425.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 31st day of October, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–27296 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–096]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Subcommittee on Propulsion Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

DATES: November 30, 1995, 8:30 a.m. to 5 p.m.; and December 1, 1995, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 215, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. James Afarin, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–6753.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Aeronautics Program Overview
—NASA Aeropropulsion Program Overview and Status

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: October 30, 1995.

Phillip I. Chait,

GAO/OIG Audit Team Leader, Management Controls Office.

[FR Doc. 95–27312 Filed 11–2–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–097]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

DATES: December 5, 1995, 8:30 a.m. to 4:30 p.m.; December 6, 1995, 8:30 a.m. to 4:30 p.m.; and December 7, 1995, 8:30 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—NASA Actions on Committee's Previous Recommendations
—NASA Aeronautics Program Overview
—NASA Human Factors Overview
—Updates on Ames Research Center and Langley Research Center Programs
  • Human Factors R&T Base
  • Human Factors of Focused Programs

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 31, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–27313 Filed 11–2–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and section 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning December 19, 1995. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal or constitutional right or privilege which would prevent or limit access to these materials should notify the Archivist of the United States in writing of the claimed right or privilege before December 11, 1995.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 8601 Adelphi Road, College Park, Maryland.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Supervisory Archivist, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 28 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the twelfth of a series of openings of Central Files: the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; February 19, 1992; July 24, 1992; May 17, 1993; July 15, 1993; and January 12, 1995.

Some of the materials designated for opening on December 19, 1995, are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumeric file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files that will be made available to the public on December 19, 1995.

Subject category	Volume (cubic feet)
Federal Government (FG)	23.4
FG 76 Appalachian Regional Commission	
FG 77 Atlantic—Pacific Interoceanic Canal Study Commission	
FG 78 Atomic Energy Commission	
FG 80 Board of Actuaries	
FG 81 Board of Examiners for the Foreign Service	
FG 82 Board of Foreign Scholarships	
FG 83 Board of Foreign Service	
FG 84 Board of Geographic Names	
FG 85 Business Council	
FG 86 Cabinet Committee on Balance of Payment (Also known as: Balance of Payment Advisory Committee)	
FG 87 Canal Zone Government	
FG 89 Coastal Plains Regional Commission	
FG 100 Committee for the Preservation of the White House	
FG 101 Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped	
FG 102 Communication Satellite Corporation	
FG 103 Corporation for Public Broadcasting	
FG 104 Delaware River Basin Commission	
FG 105 Distinguished Civilian Service Awards Board	
FG 115 Federal Advisory Council on Regional Economic Development	
FG 116 Federal Coal Mine Safety Board of Review	
FG 117 Federal Committee on Pest Control	
FG 120 Federal Deposit Insurance Corporation	

Subject category	Volume (cubic feet)
FG 121 Federal Election Campaign Fund Advisory Board	
FG 122 Federal Executive Boards	
FG 123 Federal Fire Council	
FG 124 Federal Home Loan Bank Board	
FG 125 Federal Interagency Committee on Education (FICE)	
FG 126 Federal Maritime Commission	
FG 127 Federal Mediation and Conciliation Service	
FG 128 Federal Mortgage Association	
FG 129 Federal Power Commission	
FG 130 Federal Radiation Council	
FG 132 Federal Safety Council	
FG 133 Federal Trade Commission	
FG 148 Interdepartmental Highway Safety Board	
FG 149 Interdepartmental Committee for Voluntary Payroll Savings Plan for the Purchase of United States Savings Bonds	

Nine files designated for opening on December 19, 1995, are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files are usually filed by subject in the Subject Files. Name Files relating to nine individuals will be opened on December 19, 1995:

	Volume (cubic feet)
White House Central Files:	
Alpha Name Files	2.7
Lamar Alexander	
Patrick J. Buchanan	
Robert J. Dole	
John Kasich	
Frank W. Lecjaks	
Richard G. Lugar	
H. Ross Perot	
Colin L. Powell	
Laurance S. Rockefeller	

A number of documents which were previously withheld from public access have been re-reviewed for release and/or declassified under the Mandatory Review provisions of Executive Order 12356 and will be made available to the public on December 19, 1995.

	Volume (cubic feet)
Previously restricted materials.	1.5

Public access to some of the items in the file segments will be restricted in accordance with 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: October 25, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–26996 Filed 11–2–95; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL EDUCATION GOALS PANEL

National Education Goals Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES: November 9, 1995 from 9:30 a.m.–11 a.m.

ADDRESSES: Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue, N.W., Washington, D.C. 20001. All entrances to the hotel are accessible for persons with disabilities.

FOR FURTHER INFORMATION CONTACT: William C. Noxon, Public Information Officer, 1255—22nd Street, N.W., Suite 502, Washington, DC 20037, Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel, a bipartisan panel of governors, members of the Administration, members of Congress and state legislators, was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes: a discussion of the impact of the National Education Goals on American education; a review of the 1995 Goals Panel Report to the nation; the creation of a resource group for benchmarking academic standards; a strategic plan for data collection; a legislative update; and, the announcement of the 1995–96 initiatives of the incoming Chair. The new Chair for 1995–96 will be announce.

Records are kept of all proceedings and are available for inspection at the Goals Panel office, 1255—22nd Street, N.W., Suite 502, Washington, D.C. 20037.

Dated: October 27, 1995.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 95–27286 Filed 11–2–95; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary) Publishing: Assistance to Literary Magazines Section) to the National Council on the Arts will be held on November 29–30, 1995. The panel will meet from 9 a.m. to 6:30 p.m. on November 29 and from 9 a.m. to 5 p.m. on November 30. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5 p.m. on November 30, for a policy discussion and guidelines review.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on November 29 and from 9 a.m. to 3:30 p.m. on November 30 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Office of AccessAbility National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yuonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: October 30, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–27331 Filed 11–2–95; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on November 13–14, 1995, from 9 a.m. to 5 p.m. This meeting will be held in Room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility National Endowment for the Arts, 1100 Pennsylvania NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: October 30, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–27332 Filed 11–2–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Correction To Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration

On October 25, 1995, the **Federal Register** published the BiWeekly Notice of Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations. On page 54718, Column 1, Duke Power Company, McGuire Nuclear Station, under *Description of amendment request*, midway thru the first paragraph, the line "* * * into section 6.9.2 of the Oconee TS." should read "* * * into Section 6.9.1.9 of the McGuire TS."

Dated at Rockville, Maryland, this 27th day of October 1995.

For The Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27292 Filed 11–2–95; 8:45 am]

BILLING CODE 7590–01–P

National Institutes of Health; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated October 10, 1995, Dr. Maryann Wenli Ma and Dr. Bill Wenling Zheng (Petitioners) have requested that the NRC take immediate action with regard to the National Institutes of Health (NIH). The Petitioners request that materials license No. 19–00296–10 held by NIH be suspended or revoked pending resolution of the issues raised in the Petition, and that other appropriate enforcement action be taken against NIH.

As a basis for their request, the Petitioners assert that NIH has willfully, recklessly, or deliberately committed numerous violations of 10 CFR Part 20. Broadly stated, the Petitioners assert that, as a result of NIH's failure to control and secure radioactive materials, maintain an effective bioassay program and otherwise adhere to the requirements of 10 CFR Part 20, Dr. Ma was contaminated with phosphorous-32 (P–32) resulting in both her and her unborn fetus receiving intakes of radioactive material significantly in excess of regulatory limits; that additional NIH employees also were internally contaminated with P–32; and that NIH failed to take proper actions to assess accurately the level of Dr. Ma's internal contamination or provide appropriate medical care and follow-up treatment.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. By letter dated October 30, 1995, the Petitioners' request that license No. 19–00296–10 held by NIH be suspended or revoked pending resolution of the issues discussed in the Petition was denied. Action will be taken on the remaining aspects of the petition, pursuant to Section 2.206, within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555.

Dated at Rockville, Maryland this 30th day of October 1995.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–27293 Filed 11–2–95; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

COMMENTS ARE INVITED ON: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

TITLE AND PURPOSE OF INFORMATION COLLECTION: Railroad Separation Allowance or Severance Pay Report. Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward

retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. In order to provide these payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9 on a quarterly basis, to obtain information from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. All reports contain a one-line entry for each such payment or adjustment. Minor editorial changes are being proposed to Form BA–9.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual re-sponses	Time (min)	Burden (hrs)
BA–9	7,500	75	9,375

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Office at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–27281 Filed 11–2–95; 8:45 am]

BILLING CODE 7905–01–M

Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs; Notification to individuals who are beneficiaries under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, civil service benefit and payment information obtained from the Office of Personnel Management (OPM).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from OPM by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of participating agencies: Office of Personnel Management and Railroad Retirement Board.

Purpose of the match: The purpose of the match is to enable the RRB to (1) identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately. Presently the RRB relies on the affected annuitant to report adjustments in the amounts of such public pension benefits.

Authority for conducting the match: Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as Public Service Pension offset. Section 224 of the Social Security Act provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

Categories of records and individuals covered: The records to be used in the match and the roles of the matching participants are described as follows: OPM will provide RRB twice a year with a magnetic tape file extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Records designation is OPM/Central-1. The following information from this OPM Privacy Act System of Records will be transmitted to RRB for the approximately 2.3 million records in the system: name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against the same fields in its Master Benefit Files. The Privacy Act System of Records designations for these files are: RRB–25, "Research Master Record for Survivor Beneficiaries Under the Railroad Retirement Act," and RRB–26, "Research Master Record for Retired Railroad Employees and Their Dependents." For records that are matched, the RRB will extract the civil service payment information.

Inclusive dates of the matching program: The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: October 27, 1995.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–27282 Filed 11–2–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36432; File No. SR–CHX–95–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Agency Crosses Between the Disseminated Exchange Market

October 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 11, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 17, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend interpretation and policy .01 to Rule 23 of Article XX of the Exchange's Rules relating to agency crosses between the disseminated Exchange market. The text of the proposed rule change is as follows [deleted text is bracketed]:

Article XX, Rule 23

Rule 23. No Change.

* * * Interpretations and Polices

.01 A specialist must refrain from interfering at the cross price with an agency cross [of 10,000 shares or greater] which is to be effected at a price between the disseminated Exchange market in existence at the time the broker arrives at the post; provided, the broker has not previously solicited the specialist's assistance in consummating any part of the trade. However, the specialist may participate if he or she is willing to better one side of the cross.

A specialist who has a disseminated bid or offer at the cross price shall be allowed to participate at the cross price in a size greater then specialist is disseminating.

In no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 3, 1994, the Commission approved a proposed rule change submitted by the Exchange relating to the execution of agency cross transactions at a price between the disseminated Exchange market.[2] Specifically, that rule required a CHX specialist to refrain from interfering with a floor-brokered agency cross of 10,000 shares or more at a cross price *between* the disseminated Exchange market.

The purpose of this proposed rule change is to require a CHX specialist to refrain from interfering with all floor-brokered agency crosses *regardless of size*, at a cross price between the disseminated Exchange market. As before, the specialist is obligated to satisfy all orders on the book with priority at the cross price. In addition, as before the specialist can participate if he or she has a *disseminated* bid or offer *at* the cross price, regardless of the size of the quote, and a specialist can participate if he or she is willing to provide one side of the cross with a better price.

The proposed rule change will increase the possibility of immediate execution for agency crosses on the Exchange. This, in turn, will improve the Exchange's ability to compete for order flow and will enhance the depth and liquidity of the Exchange market.

In terms of auction market principles, the proposed rule change strikes an appropriate balance between the competing needs of various customer orders represented for execution on the Exchange and the proprietary trading operations of Exchange members and member organizations, including specialists.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so funding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[1] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Team Leader, SEC, dated October 13, 1995. Amendment No. 1 corrects the text of Exhibit A to the filing, which sets forth the text of the proposed rule change, by adding a sentence that had been inadvertently omitted from Exhibit A as initially filed.

[2] *See* Securities Exchange Act Release No. 33708 (Mar. 3, 1994), 59 FR 11339 (File No. SR–MSE–93–05).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–24 and should be submitted by November 24, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27275 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36429; File No. SR–PHLX–95–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Routing and Delivery of Broker-Dealer Orders in USTOP 100 Index Options Through the Automated Options Market System

October 27, 1995.

On May 22, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to amend its rules to allow the orders of PHLX member and non-member broker-dealers in USTOP 100 Index ("TPX") options to be routed and delivered through the Exchange's Automated Options Market ("AUTOM") system and executed manually. The broker-dealer TPX option orders will not be eligible for AUTO–X, the automatic execution feature of AUTOM.

Notice of the proposal appeared in the **Federal Register** on July 11, 1995.[3] No comments were received on the proposed rule change.[4]

Currently, only public customer orders for up to 500 options contracts are eligible for AUTOM[5] and public customer orders for up to 25 contracts, in general, are eligible for AUTO–X,[6] the automatic execution feature of AUTOM.[7] AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[8] is an on-line system that allows electronic Delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

The purpose of the proposal is to permit TPX orders for the accounts of broker-dealers to be delivered through AUTOM. Although broker-dealer TPX option orders will be delivered through AUTOM, they will not be eligible for AUTO–X.

The PHLX believes that extending AUTOM to broker-dealer TPX option orders will allow additional orders to benefit from AUTOM's prompt and efficient electronic order delivery and reporting. This, in turn, should add liquidity to the PHLX's marketplace for TPX options buy encouraging broker-dealer orders who seek such automated order routing treatment. As noted above, AUTO–X will not be available for broker-dealer TPX Orders; all such broker-dealer TPX orders will be handled manually by the specialist.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.[9] Specifically, the Commission believes that allowing broker-dealers to use AUTOM for TPX options orders will facilitate the efficient handling and reporting of broker-dealer orders in TPX options, thereby improving TPX order processing and turnaround time. In addition, by providing increased order routing efficiencies for broker-dealer TPX orders, the proposal may help to attract broker-dealer TPX orders, and thus help to improve the depth and liquidity of the market for TPX options.

Under the proposal, broker-dealer TPX orders will not be eligible for AUTO–X; thus, only public customer orders will continue to receive the benefits of AUTO–X, including immediate executions at the displayed market quote and nearly instantaneous confirmations. The Commission notes that limiting AUTO–X to public customer orders is consistent with the Exchange's current practice.

In addition, based upon representations by the PHLX, the Commission believes that the AUTOM system has sufficient capacity to handle broker-dealer TPX orders and, therefore, that the proposal will not expose the PHLX's options markets to the risk of failure or operational break-down.[10]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–95–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27277 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35925 (June 30, 1995), 60 FR 35771.

[4] On September 26, 1995, the PHLX represented that the Exchange's AUTOM system has sufficient capacity to accommodate the additional message traffic that will result from routing broker-dealer TPX orders through AUTOM. *See* Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Office of Market Supervision, Commission, dated September 26, 1995 ("September 26 Letter").

[5] *See* Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 30136 (File No. SR–PHLX–95–30).

[6] Recently, the Commission approved a proposal increasing the maximum number of public customer orders in USTOP 100 Index options that are eligible for AUTO–X from 25 to 50 contracts. *See* Securities Exchange Act Release No. 35781 (May 30, 1995) (order approving File No. SR–PHLX–95–29).

[7] The Commission has approved a PHLX proposal to codify the use of AUTOM and AUTO–X for index options. *See* Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR–PHLX–94–40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO–X. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR–PHLX–95–18).

See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 58 FR 12050 (order approving File No. SR–PHLX–90–34), extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR–PHLX–91–33, permitting AUTO–X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994).

[9] 15 U.S.C. 78f and 78k–1 (1988).

[10] *See* September 26 Letter, *supra* note 4.

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 35–26401; 70–8411]

Allegheny Power System, Inc., Supplemental Order Authorizing Acquisition of Nonutility Subsidiaries; Issuance of Securities; and Provision of Services to Associates

October 27, 1995.

Allegheny Power System, Inc. ("APS"), a registered holding company, AYP Capital, Inc. ("AYP"), a nonutility subsidiary company of APS, and Allegheny Power Service Corporation ("APSC"), all of New York, New York, have filed a post-effective amendment to an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 45, 53, 87, 90 and 91 thereunder. The Commission issued a notice of the filing of the post-effective amendment on July 7, 1995 (HCAR No. 26327).

By order dated July 14, 1994 (HCAR No. 26085), APS was authorized to organize and finance AYP to invest in: (i) Companies engaged in new technologies related to the core utility business of APS and (ii) companies for the acquisition and ownership of exempt wholesale generators ("EWGs").

By order dated February 3, 1995 (HCAR No. 26229), AYP was authorized to engage in the development, acquisition, construction, ownership and operation of EWGs and in development activities with respect to: (i) Qualifying cogeneration facilities and small power production facilities ("SPPs"); (ii) nonqualifying cogeneration facilities, nonqualifying SPPs and independent power production facilities ("IPPs") located within the service territories of APS public utility subsidiary companies; (iii) EWGs; (iv) companies involved in new technologies related to the core business of APS; and (v) foreign utility companies ("FUCOs"). AYP was also authorized to consult for nonaffiliate companies. APS was authorized to increase its investment in AYP from $500,000 to $3 million.

The post-effective amendment, as amended, seeks Commission authorization to allow APS and AYP to engage in several activities. A total of $300 million in financing also is sought.

First, the post-effective amendment seeks Commission authorization to allow AYP or a special-purpose subsidiary ("NEWCO") to provide energy management services ("EMS") and demand side management ("DSM") services to nonassociates at market prices and to associate companies at cost. The amended application states that the EMS would include: (i) Identification of energy cost reduction and efficiency opportunities; (ii) design of facility and process modifications to realize such efficiencies; (iii) management of or the direct construction or installation of energy conservation equipment; (iv) training of client personnel in operation of equipment; (v) maintenance of energy systems; (vi) design, management, construction and installation of energy management systems and structures; (vii) performance contracts; (viii) identifying energy conservation or efficiency programs; (ix) system commissioning; (x) reporting system results; and (xi) other similar or related energy management activities.

The DSM services would include: (i) Design of energy conservation programs; (ii) implementation of energy conservation programs; (iii) performance contracts for DSM work; (iv) monitoring and evaluating DSM programs; and (v) other similar or related DSM activities.

With respect to EMS and DSM services, AYP and the NEWCO would finance, either through direct loans or leases of EMS and DSM facilities and equipment purchased by AYP and the NEWCO, EMS and DSM equipment provided to EMS and DSM customers. AYP and the NEWCO might retain title to the EMS and DSM facilities and equipment. Loans would enable customers to purchase goods and services from third parties on their own terms and conditions. Loans would be evidenced by promissory notes.

The Commission previously has authorized registered holding companies to form and finance special-purpose subsidiaries to engage in EMS and DSM services.[1] For example, the Commission authorized in December 1992 the formation by Entergy Corporation of a non-utility subsidiary to acquire an interest in Systems and Service International, Inc. for $6.4 million and to engage in DSM in Arkansas, Louisiana, and Mississippi.[2] The Commission also previously has authorized such subsidiaries to engage in construction activities relative to EMS and DSM services.[3] Finally, it previously has authorized loans from special-purpose subsidiaries to EMS and DSM customers for EMS and DSM services.[4] Specifically, it has authorized Southern Development and Investment Group, Inc. ("Development") to invest up to "$40 million to finance the costs of equipment or provide customer financing of equipment in connection with energy management and efficiency services provided by Development."[5]

Although the Commission previously has imposed limitations on EMS and DSM services offered by special-purpose subsidiaries, it has recently departed from this practice in appropriate cases.[6]

Second, the post-effective amendment seeks Commission authorization to allow AYP to engage in activities related to the development, acquisition, ownership, construction and operation of FUCOs and to invest in FUCOs through various types of investment vehicles, including limited partnerships or other types of funds, the sole objective of which is to make investments in one or more FUCOs.

The Commission previously has authorized investments in FUCOs through various types of investment vehicles. For example, the Commission has authorized TriStar Ventures Corporation ("TriStar"), a nonutility subsidiary company of Columbia Gas System, to form, acquire, finance and own securities or interests in FUCOs directly or indirectly through special-purpose domestic corporations, foreign corporations, partnerships, limited liability companies, and joint ventures.[7]

[1] EUA Cogenex Corp., Holding Co. Act Release No. 25697 (Dec. 9, 1992) (acquisition of New England Sun Control, Inc.); Northeast Utilities, Holding Co. Act Release No. 25114–A (July 27, 1990) (acquisition of HEC Energy Corp.); Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (acquisition of Citizens Heat and Power Corp.); Central and South West Corp., Holding Co. Act Release No. 23818 (Sept. 4, 1985) (joint venture with Time Energy Management System Southwest, Inc.).

[2] Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992).

[3] HEC, Inc., Holding Co. Act Release No. 26108 (Aug. 19, 1994).

[4] Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995).

[5] *See also* Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

[6] Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995); Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

[7] Columbia Gas System, Holding Co. Act Release No. 26209 (Dec. 29, 1994). *See also* Southern Co., Holding Co. Act Release No. 26069 (Aug. 3, 1994)

Continued

Third, the post-effective amendment seeks Commission authorization to allow APS and AYP to acquire the securities of NEWCOs that own FUCOs or EWGs ("Project NEWCOs"). Project NEWCOs might be organized to facilitate bids or proposals to acquire interests in FUCOs and EWGs, after awards of bid proposals to facilitate closing on the purchases, or subsequent to acquisitions of interests to effect adjustments in the ownership interests of unaffiliated co-investors, to facilitate partial sales of interests, to comply with applicable laws of foreign jurisdictions, or to limit exposure to U.S. and foreign taxes as part of tax planning.[8]

Fourth, the post-effective amendment seeks Commission authorization to factor the accounts receivable of associate companies and of nonassociate companies whose primary revenues are derived from the sale of electric power.

AYP (or one NEWCO engaged in this activity) will limit the acquisition of receivables from nonassociate companies so that the trailing twelve-month average amount of nonassociate company receivables held as of the end of any calendar month will be less than the trailing twelve-month average amount of receivables acquired from APS associate companies and held as of the end of such calendar month.

AYP or the NEWCO will purchase accounts receivable from associate or nonassociate companies on the day that such accounts receivable become due and payable. Purchases from utility subsidiary companies of APS will be made at discounts which are competitive to those of other entities providing comparable factoring services. Accounts receivable will be assigned to AYP or the NEWCO on a nonrecourse basis, except to the extent that such receivable is invalid, in which instances AYP or the NEWCO will bear the risk of the uncollectability of the account. Each company from which accounts receivable are purchased is expected to be appointed to act as collection agent in respect of such account receivables.

The Commission previously has authorized the factoring of accounts receivable of both associate and nonassociate companies.[9] The Commission, in July 1986, authorized CSW Credit, a special-purpose subsidiary of a registered holding company, to process the accounts receivable of nonassociate companies. As in this application, fifty percent of the accounts receivable processed by CSW Credit were required to be from associate companies. In March 1994, the Commission affirmed the "fifty-percent" limitation in a denial of an application for approval to exceed the standard.[10]

Fifth, and finally, the post-effective amendment seeks Commission authorization to allow AYP or a NEWCO, as agent for APS system companies, to manage the real estate portfolio of APS and its associate companies, to market excess or unwanted real estate, and to facilitate the exploitation of resources contained on or in real estate. No real estate will be purchased by AYP in connection with these activities. In addition, the net proceeds realized from any sale of real estate or from the exploitation of resources thereon, which resources include timber, oil, gas, and coal, will be credited to the company that owns the subject asset.

The Commission previously has authorized excess or unwanted real estate to be leased.[11] The Commission also has authorized holding companies to form and finance special-purpose subsidiaries to act as agent for associate public utilities for purposes of, for example, fuel procurement. For example, in 1978, the Commission authorized the formulation of Central and South West Fuels, Inc. to engage in fuel exploration and development "as agent for" four electric public utilities in the Central and south West system.[12]

APS proposes to invest in AYP and AYP proposes to invest in NEWCOs and in Project NEWCOs up to an aggregate of $100 million through December 31, 1999 through loans to finance the activities relative to EMS and DSM services, accounts receivable, real estate, FUCOs and EWGs. In addition, AYP, the NEWCOs, and the Project NEWCOs propose to obtain loans from banks or issue other recourse obligations which could be guaranteed by APS or AYP. Such third-party borrowings by AYP, the NEWCOs, and the Project NEWCOs that are guaranteed by APS or AYP would be subject to the $100 million investment authority. APS and AYP, through December 31, 1999, would guarantee or act as surety on bonds, indebtedness and performance and other obligations issued or undertaken by AYP, the NEWCOs, or the Project NEWCOs subject to the $100 million investment authority.

Loans from APS would mature by December 31, 2004 and would bear a fixed interest rate equal to a rate not above the prime rate in effect on the date of the loan at a bank designated by APS. Loans from third parties would mature by December 31, 2004 and would bear a fixed interest rate not above 3% over the prime rate at a U.S. money center bank to be designated by APS. Notes sold to such parties could be guaranteed by APS.

In addition to the $100 million in financing requested, APS and AYP Commission authorization for Project NEWCOs to issue partnership interests or trust certificates through December 31, 1999 to third parties to finance EWGs and FUCOs. Such equity interests will not exceed $200 million.[13]

AYP anticipates that NEWCOs and Project NEWCOs might not have paid employees, in which case personnel employed by APSC, a wholly owned subsidiary of APS, would provide a wide range of services to such NEWCOs and Project NEWCOs pursuant to a service agreement. Under these service agreements, NEWCOs and Project NEWCOs would reimburse APSC for the cost of services provided.

All services rendered by AYP, NEWCOs, or Project NEWCOs to nonaffiliates will be based upon the fair market value thereof. AYP, NEWCOs, and Project NEWCOs also propose to provide such services and sell goods at fair market prices to any associate EWG, FUCO or qualifying facility,[14] and to NEWCOs which are any of the foregoing, and request an exemption pursuant to Section 13(b) from the requirements of Rules 90 and 91, as applicable to such transactions, if: (i) such associate entity is a FUCO, or is an EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States; (ii) such associate entity is an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or the appropriate state public utility commission, provided that the purchaser of such electricity is not an associate company of AYP within the APS System; (iii) such associate entity is a qualifying facility that sells electricity exclusively at rates negotiated at arms' length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale or to an electric utility company, other than any associate company of AYP within the APS System, at "avoided cost" as determined in accordance with FERC regulations; or (iv) such associate entity is an EWG or qualifying facility that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity is not an associate company of AYP within the APS System.

Fees and expenses in the estimated amount of $75,000 are anticipated in connection with the proposed transactions. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the post-effective amendment has been given in the manner prescribed in Rule 23 promulgated under the Act, and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied, and that no adverse findings are necessary.

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, that the application-declaration, as amended, be, and it hereby is granted and permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act, except that:

AYP shall provide, not later than 60 days following the end of each calendar quarter and 120 days after the end of each calendar year, a certificate of notification pursuant to Rule 24 that includes: (i) An unaudited balance sheet and income statement for AYP and one for each NEWCO, when established;

(ii) a narrative description of activities during the quarter just ended and a total of expenses organized by segment and, within each segment, a narrative description of services rendered by project, and new developments and updates by project type;

(iii) amounts and forms of guarantees of, and similar provisions and arrangements concerning, performance and undertaking of other obligations by AYP, or any subsidiary of AYP, which APS has granted and are currently effective, as well as indemnifications of and with respect to persons acting as sureties on bonds or other obligations on behalf of AYP, or any subsidiary of AYP, which APS has granted and are currently effective;

(iv) a description of services provided to associate companies which identifies the recipient company, the service, the charge to the associate and, with respect to FUCOs and EWGs, whether the charge was computed at cost, market or pursuant to another method, which method shall be specified; and

(v) in connection with its factoring activities, a balance sheet as of the end of the year, statement of income for the twelve months then ended and notes to the financial statements, a listing of principal amount of borrowings of AYP and each NEWCO outstanding at the end of each year, which will contain the terms of each obligation, name of lending institution and effective cost of borrowing, outstanding accounts receivable as of the end of each month, separated by associate and nonassociate companies with each nonassociate company listed separately, a detailed calculation of the annual discount for associate companies and the methodology used to arrive at that calculation, and a calculation by month of consolidated earnings coverage.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27315 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

(authorization for acquisition of capital shares, partnership interests, or trust certificates in NEWCOs that own FUCOs or EWGs).

[8] The Commission previously has authorized the formation of NEWCOs for these purposes. Southern Co., Holding Co. Act Release No. 26069 (Aug. 3, 1994).

[9] Central and South West Corp., Holding Co. Act Release No. 23767 (July 19, 1985) (associate companies); CSW Credit, Inc., Holding Co. Act Release No. 24157 (July 31, 1986) (nonassociate companies).

[10] CSW Credit, Inc., Holding Co. Act Release No. 25995 (March 2, 1994).

[11] *See, e.g.*, Pennsylvania Electric Co., Holding Co. Act Release No. 24716 (Sept. 15, 1988).

[12] Central and South West Corp., Holding Co. Act Release No. 20658 (Aug. 2, 1978).

[13] APS and AYP also intend to issue capital stock and nonrecourse debt securities to finance FUCOs and EWGs. Such financing is exempt pursuant to rule 52(b).

[14] Neither APS nor AYP will acquire any interest in any qualifying facility without further specific Commission authorization.

[Investment Company Act Release No. 21458; 812–8868]

ESC Strategic Funds, Inc. and Equitable Securities Corporation; Notice of Application

October 27, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the Act).

APPLICANTS: ESC Strategic Funds, Inc. (the "Company") and Equitable Securities Corporation (the "Adviser").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from the provisions of section 15(a) and rule 18f–2; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"); items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A; item 3 of Form N–14; item 48 of Form N–SAR; and sections 6–07.2(a), (b), and (c) of Regulations S–X.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting sub-advisers (the "Managers") approved by the Company's board of directors to serve as portfolio managers for the Company's series without obtaining shareholder approval of the agreements with the Managers, and permitting the Company to disclose only aggregate sub-advisory fees for each series in its prospectuses and other reports.

FILING DATES: The application was filed on March 3, 1994, and amended on August 3, 1995, and October 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 800 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219–1743 (Attention: W. Howard Cammack, Jr.).

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney at (202) 942–0579, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a registered open-end management investment company incorporated under Maryland law. The Company offers five separate investment portfolios (each a "Fund," and together, the "Funds"), each with distinct investment objectives, policies, and restrictions. These Funds are: ESC Strategic Appreciation Fund, ESC Strategic Global Equity Fund, ESC Strategic Small Cap Fund, ESC Strategic Income Fund, and ESC Strategic Asset

Preservation Fund.[1] Shares of the Funds are offered to individuals, institutions, corporations, and fiduciaries.

2. The Adviser is a registered investment adviser and broker-dealer that provides overall investment management for the Funds pursuant to an investment advisory agreement ("Investment Advisory Agreement").

3. The specific investment decisions for each Fund are made by one or more Managers, each of whom has discretionary authority to invest all or a portion of the assets of a particular Fund, subject to general supervision by the Adviser and the board of directors of the Company. Each Manager has been recommended by the Adviser, and selected and approved by the board of directors of the Company, including a majority of the Company's directors who are not interested persons of the Company, the Adviser, or the Manager, as well as by the initial sole shareholder of each Fund. Each Manager performs services pursuant to a written portfolio management agreement ("Portfolio Management Agreement"). Applicants currently do not anticipate that the number of Managers for any Fund will be reduced. The number of Managers may be increased, however, if the Company or one or more Funds experience a significant increase in total assets over time.

4. One of the Managers, Equitable Asset Management ("EAM"), is an affiliated person (as defined in section 2(a)(3) of the Act) of the Adviser. EAM is one of three Managers of ESC Strategic Appreciation Fund, and is the sole Manager of ESC Strategic Small Cap Fund and ESC Strategic Asset Preservation Fund.

5. The Adviser is responsible for recommending to the Company's board of directors the retention of one or more Managers for each Fund, for allocating and reallocating assets among Managers of Funds with multiple Managers, and for recommending the termination of a Manager when deemed advisable. The Adviser selects Managers based on the continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style. The Adviser monitors continually the performance of Managers as well as management firm staffs and organizations to assess overall competence. For the advisory services the Adviser provides the Funds, each Fund pays an investment advisory fee to the Adviser. The Adviser, out of these fees, pays the Managers' fees at no additional cost to the Funds.

6. For three of the Funds, the Adviser seeks to enhance performance and reduce market risk by allocating a Fund's assets among multiple "specialist" Managers (the "Multiple Manager Strategy"). Under this strategy, the Adviser allocates portions of a Fund's assets among multiple Managers with dissimilar investment styles and security selection disciplines. The Adviser monitors the performance of both the total Fund portfolio and of each Manager. The Adviser, to the extent it deems appropriate to achieve the overall objectives of the particular Fund, will reallocate Fund assets among individual Managers or recommend to the Company's board of directors that it employ or terminate particular Managers. As a result of this strategy, the Adviser believes the Funds with multiple Managers may achieve a better rate of return with lower volatility than typically would be expected of any one management style.

7. Applicants request an order permitting the Company to enter into new or materially amended Portfolio Management Agreements with the Managers without obtaining shareholder approval. Without the requested relief, the Company would be prohibited from entering promptly into a new Portfolio Management Agreement or amending materially an existing Portfolio Management Agreement, and would be prohibited from continuing relations with an existing Manager whose contract has been assigned as a result of a change of control, unless the particular Fund involved were to incur the expense of convening a special shareholder meeting. Although shareholders will not vote on a new Manager or a materially amended Portfolio Management Agreement, applicants will furnish shareholders an information statement within sixty days that includes all the information that would have been provided in a proxy statement. Moreover, applicants will not enter into a Portfolio Management Agreement with any Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Company or the Adviser other than by reason of serving as a Manager to one or more of the Funds (an "Affiliated Manager") without such agreements being approved by the shareholders of the applicable Fund. The Investment Advisory Agreement between the Adviser and the Fund would in all cases continue to be subject to the shareholder voting requirements of the Act.

8. Applicants request an exemption from the various disclosure provisions that may require applicants or others to disclose the fees paid by the Adviser to individual Managers. Applicants propose to disclose (both as a dollar amount and as a percentage of a Fund's net assets) in the Funds' registration statements and other public documents only the aggregate amount of fees paid by the Adviser to the Managers of each Fund ("Limited Fee Disclosure"). Limited Fee Disclosure means: (a) Fees paid to the Adviser by each Fund, in dollar amount and as a percentage of each Fund's assets; (b) aggregate fees paid by the Adviser to Managers of each Fund; (c) net advisory fees retained by the Adviser with respect to each Fund after payment of Managers' fees; and (d) fees paid by a Fund to any Affiliated Manager.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which precisely describes all compensation to be paid thereunder and which has been approved by a majority of the investment company's outstanding securities. Rule 18f-2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants state that the Company's structure is different from that of traditional investment companies. In addition to its Adviser/Manager structure for all Funds, the Company offers the Multiple Manager strategy of portfolio management to investors with certain investment objectives. Applicants state that shareholders receive the benefit of the Adviser's constant supervision of these Managers, so that the proportion of their assets subject to particular Manager styles can be reallocated (or new Managers introduced) in response to changing market conditions or Manager performance, in an attempt to improve the Fund's overall performance.

3. Applicants assert that, by investing in a Fund, investors are effectively electing to have the Adviser select one or more Managers best suited to achieve that Fund's investment objectives. Applicants argue that, because the Managers are concerned only with selection of portfolio investments in accordance with a Fund's investment objectives and policies, the role of the Managers is comparable to that of individual portfolio managers employed by other investment firms. Applicants contend, therefore, that it is the Adviser, not the Managers, on whom the Company's investors rely for investment management services.

4. Applicants state that the Company's prospectuses and statements of additional information have continuously disclosed that applicants were seeking exemptive relief from the requirement for shareholders to approve the retention of new Managers. Applicants assert that, without exemptive relief, the Company would be required to call a shareholders meeting whenever it decides to employ new or additional Managers, or to approve a new Portfolio Management Agreement after an assignment or due to a material change in terms. Applicants argue that, given the nature of the Company's operations and investors' reasons for investing in the Funds, requiring shareholder approval of the Portfolio Management Agreements would merely increase the Funds' expenses and delay the prompt implementation of actions deemed advisable by the Adviser and the Company's board of directors.

5. Form N-1A is the registration statement used by open-end management investment companies to register under the Act and register their securities under the Securities Act of 1933 (the "Securities Act"). Items 2, 5(b)(iii), and 16(a)(iii) of Form N-1A require the Company to disclose in its prospectus the investment adviser's compensation and the method of computing the advisory fee.

6. Item 3 of Form N-14, the registration form for business combinations involving mutual funds, requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed" in item 2 of Form N-1A.

7. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Item 22 of Schedule 14A sets forth the requirements concerning the information that must be included in a proxy statement. Item 22(a)(3)(iv) requires a proxy statement for a shareholder meeting at wnich a new fee will be established or an existing fee increased to include a table of the current and pro forma fees using the format prescribed in item 2 of Form N-1A. Items 22(c)(1)(ii), 22(c)(1)(ii), 22(c)(8), and 22(c)(9), taken together, require that a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," the "terms of the contract to be acted upon," and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to the advisers, including the Managers.

8. Form N-SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N-SAR provides that the Funds must disclose the rate schedule for fees paid to their investment advisers, including the Managers.

9. Regulation S-X sets forth the requirements for financial statements required to be included as part of the registration statements and shareholder reports filed with the SEC under the Act and under the Securities Act. Items 6-07(2) (a), (b), and (c) of Regulation S-X require that the Funds' financial statements contain information concerning fees paid to the Managers by the Adviser.

10. Applicants state that all shareholders of the Funds will be fully advised of the fees charged by the Adviser for its investment advisory services because these fees will be disclosed in the Company's prospectuses and statements of additional information. Thus, each investor will know in advance the rate of investment advisory fees that each Fund will bear. Applicants argue that each investor, therefore, will be able to determine whether its cost for investment advisory services, including the selection and supervision of Managers and the reallocation of assets among multiple Managers from time to time, is competitive with the services and costs that the investor could obtain elsewhere. Under these circumstances, applicants assert that the particular fees of the Managers are not relevant to the investor.

11. Applicants believe that it is desirable for the Adviser to have maximum flexibility in negotiating fees with Managers. Applicants argue that some organizations will be unwilling to serve as Managers at any fee rate other than their "posted" fee rates unless the rates negotiated for the Funds are not publicly disclosed. Therefore, to force disclosure of a Manager's fees would tend to deprive the Adviser of its bargaining power while producing no benefit to shareholders. Applicants assert that the Adviser's ability to secure the services of Managers for the Funds at rates lower than their posted rates benefits both the Funds and their shareholders. If the Adviser were to lose negotiating flexibility through forced disclosure of a Manager's fees, applicants state that the Adviser might be forced to seek an increase in its own fees or to back off from its expense cap commitment. Further, they argue that opportunities for future reductions as Fund assets increase might be diminished. Thus, applicants believe that forced disclosure of Managers' fees could have negative repercussions for the Funds' shareholders.

12. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants assert that their request satisfies these standards.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The Company will disclose in its registration statement the Limited Fee Disclosure.

2. The Adviser will not enter into a Portfolio Management Agreement with any Affiliated Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund

3. At all times, a majority of the Company's directors will be persons each of whom is not an "interested person" of the Company as defined in section 2(a)(19) of the Act ("Independent Directors"), and the nomination of new or additional Independent Directors will be placed with the discretion of the then existing Independent Directors.

4. Independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors of the Company. The selection of such counsel will be placed within the discretion of the then existing Independent Directors.

5. The Adviser will provide the board of directors of the Company, no less frequently than quarterly, information about the Adviser's profitability on a per-Fund basis. Such information will reflect the impact on profitability of the hiring or termination of any Managers during the applicable quarter.

6. Whenever a Manager is hired or terminated, the Adviser will provide the board of directors of the Company information showing the expected impact on the Adviser's profitability.

[1] Applicants also request relief with respect to any edditional Fund organized in the future and for any open-end, management investment company advised by the Adviser, or a person controlling, controlled by or under common control with the Adviser, in the future, provided that such investment company operates in substantially the same manner as the Funds and complies with the conditions to the requested order ("Future Company").

7. When a Manager change is proposed for a fund with a Affiliated Manager, the Company's directors, including a majority of the Independent Directors, will make a separate finding, reflected in the Company's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Manager derives an inappropriate advantage.

8. The Adviser will provide general management services to the Company and the Funds and, subject to review and approval by the Company's board of directors will: (a) set the Funds' overall investment strategies; (b) select Managers; (c) allocate and, when appropriate, reallocate a Fund's assets among Managers; (d) monitor and evaluate the performance of Managers; and (e) ensure that the Managers comply with the Funds; investment objectives, policies, and restrictions.

9. Within 60 days of the hiring of any new Manager or the implementation of any proposed material change in a Portfolio Management Agreement, shareholders will be furnished all information about a new Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager or any proposed material change in a Portfolio Management Agreement. The Adviser will meet this condition by providing shareholders, within 60 days of the hiring of a Manager or the implementation of any material change to the terms of a Portfolio Management Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement will also meet the requirements of Schedule 14A, except as modified by the order to permit Limited Fee Disclosure.

10. The Company will disclosure in its prospectuses the existence, substance, and effect of any other granted pursuant to the application.

11. Before a Future Company that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the Adviser/Manager structure before such Future Company offers its shares to the public.

12. No director or officer of the Company or the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Manager except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt to a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27316 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26402]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

October 27, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested person wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 20, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Incorporated (70–6971)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a fuel supply subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 6(a), 7, 9(a) and 10 of the Act.

By order dated August 16, 1984 (HCAR No. 23397), NEEI was authorized to enter into interest payment exchange contracts ("Swap Agreement(s)") with one or more parties, on or before December 31, 1985, covering a total principal amount of up to $150 million of its outstanding debt ("Covered Amounts"). The Swap Agreements could have a term or terms ranging between three and seven years. The Covered Amounts represent borrowings last authorized for NEEI under a credit agreement ("Credit Agreement") with certain banks in total amounts outstanding at any one time of up $400 million, through December 31, 1998 (HCAR No. 24847, March 29, 1989) ("Borrowings"). The Borrowings may be made at NEEI's option under any one of four interest rates.

By order dated March 7, 1986 (HCAR No. 24046), this authority was extended through December 31, 1987 and the Covered Amounts could be increased up to $200 million. Subsequently, by order dated December 17, 1987 (HCAR No. 24531), NEEI was authorized to enter into additional Swap Agreements and other types of interest rate protection mechanisms, up to the same principal amount, on or before December 31, 1989. Finally, by orders dated December 29, 1989, September 19, 1991 and December 1, 1993 (HCAR Nos. 25015, 25378 and 25935, respectively), all such authority was extended through December 31, 1995, under all of the same terms and conditions.

Subsequently, by order dated April 7, 1995 (HCAR No. 26268), NEEI was authorized to enter into a new credit agreement ("New Credit Agreement") with a group of banks headed by Credit Suisse to replace the Credit Agreement. The New Credit Agreement initially provides for borrowings in outstanding amounts of up to $225 million. Available amounts under the credit facility reduce incrementally according to a schedule through April 7, 2002. Total borrowings by NEEI at September 30, 1995 were $180 million.

Currently, NEEI is a party to two Swap Agreements with a combined notional amount of $75 million. On October 21, 1993, NEEI entered into a three year Swap Agreement with Merrill Lynch Capital Services, Inc. for a notional amount of $50 million. On June 7, 1995, NEEI entered into a three year Swap Agreement with Citibank, N.A. for a notional amount of $25 million.

NEEI now seeks to extend, through December 31, 1998, its authority to enter into Swap Agreements and other types of interest rate protection mechanisms, as approved by the prior orders, except that Covered Amounts will be the lesser of $175 million or the amount available under the New Credit Agreement.

PSI Energy, Inc. (70–8727)

PSI Energy, Inc. ("PSI Energy"), 1000 East Main Street, Plainfield, Indiana 46168, an electric utility subsidiary of Cinergy Corp. ("Cinergy"), a registered holding company, has filed an application under sections 9(a) and 10 and rule 54 thereunder.

PSI Energy seeks authorization, through December 31, 1996, to enter into a business venture with H. H. Gregg ("Gregg"), a retail vendor of household electronic appliances and related consumer goods, involving an appliance sales program. PSI Energy believes that the venture with Gregg will facilitate the eventual marketing to customers of other energy-related and demand side management products, more fully utilize existing employees and offices to hold down costs, and strengthen ties to customers.

Under the proposed program, PSI Energy would market Gregg's electronic goods and appliances at retail, on a best efforts, consignment basis to PSI Energy's customers at a limited number of its local offices. When sales are made, Gregg would deliver the product to the customer and bill PSI Energy the wholesale price paid by Gregg for the product. In connection with the program, PSI Energy will also sell extended service warranties covering any items purchased. PSI Energy would either purchase such warranties from Gregg at a wholesale price and resell them to customers, or sell its own warranty and contract with Gregg to provide any of the related warranty work. PSI Energy also intends to arrange for customer financing through a bank or other financial institution, for which PSI Energy would receive a fee of up to 2% of the purchase price financed.

The current proposal involves a pilot program extending from November 24, 1995 through December 31, 1996. PSI Energy estimates that the pilot program will result in total sales revenues of approximately $2.6 million (of which approximately $2.3 million would accrue to Gregg), will utilize the full-time employee equivalent of three or four employees, and will involve approximately $320,000 of expenditures (consisting primarily of advertising and sales expenses, expenses associated with the use of local offices and related facilities, and expenses associated with employees' time). PSI Energy (or another Cinergy system company) may seek to extend this authorization, depending on the success of the pilot program.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27276 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Senior Executive Service Performance Review Board; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's Senior Executive Service Performance Review Boards.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. John T. Spotila, General Counsel
2. Martin Teckler, Deputy General Counsel
3. Antonella Pianalto, Associate Deputy Administrator for Management and Administration
4. Mary K. Swedin, Assistant Administrator for Congressional and Legislative Affairs
5. William F. Combs, Associate Administrator for Communications and Public Liaison
6. Carolyn J. Smith, Assistant Administrator for Human Resources
7. Herbert Mitchell, Deputy Associate Administrator for Disaster Assistance
8. Francisco A. Marrero, District Director, Newark
9. Erline Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance
10. John R. Cox, Associate Administrator for Financial Assistance
11. Jeanne Sclater, Acting Deputy to the Associate Deputy Administrator for Economic Development
12. Wilfredo Gonzalez, District Director, Washington
13. Calvin Jenkins, Associate Administrator for Minority Small Business and Capital Ownership Development
14. Aubrey Rogers, District Director, New York

Dated: October 30, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–27356 Filed 11–2–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2275]

United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T), Study Group D; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T), Study Group D will meet on Monday, January 8, 1996, Room 1205, at 9 a.m. at the Department of State, 2201 C Street NW, Washington, DC 20520.

The agenda for Study Group D will include consideration of contributions for upcoming meetings of Study Groups 8 and 14, and the April '96 meeting of Study Group 7 and a review of the October meeting of Study Group 14 Working Parties. Any other matters within the competence of Study Group D may be raised at this meeting.

Persons presenting contributions to Study Group D should bring 20 copies of such contributions to the meeting.

Please Note: Persons intending to attend the January 8, 1996 U.S. Study Group D meeting must announce this not later than 48 hours before the meeting to the Department of State by sending a fax to 202–647–7407. The announcement must include name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: October 23, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunications Standardization Sector.

[FR Doc. 95–27279 Filed 11–2–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Criteria and Application Process for the Secretarial Award for Excellence in Transportation Technology Research and Development

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of request for nominations.

SUMMARY: The Department of Transportation (DOT) announces procedures for nominating individuals and organizations for the Secretarial Award for Excellence in Transportation Technology Research and Development. Awards are made annually by the Secretary of Transportation to recognize research and development contributions advancing the performance of U.S. transportation systems and the ability of U.S. transportation industries to create domestic jobs and compete in the global marketplace.

DATES: Nominations must be postmarked no later than November 30, 1995.

ADDRESSES: An original and three copies of the nomination should be sent to: Noah Rifkin, Director of Technology Deployment, Office of the Secretary, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, room 10200. One additional copy should be sent to the contact listed below.

FOR FURTHER INFORMATION CONTACT: Keving Green, Volpe National Transportation Systems Center, Kendall Square, DTS–24, Cambridge, MA 02142. Telephone: (617)–494–2106. Internet: green@volpel.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

This notice solicits nominations for the Secretarial Award for Excellence in Transportation Technology Research and Development and provides relevant information on the nomination and selection process. The award is an honorary recognition by the Secretary of Transportation. Last year, one award was made, and it was granted to QUALCOMM Incorporated of San Diego, in recognition of its OmniTRACS mobile communications and vehicle tracking system.

Purpose

DOT is committed to promoting a safe and efficient transportation system that enhances the U.S. economy and contributes to a secure and healthy environment. In fulfilling this mission, the Department intends to accelerate the development and application of advanced transportation technologies. The Secretary of Transportation has therefore established the Secretarial Award for Excellence in Transportation Technology Research and Development to recognize significant achievement that expand the transportation technology knowledge base, that promote timely deployment of those transportation technologies which will best meet the nation's needs, and that enhance the ability of the U.S. transportation industries to compete internationally.

Evaluation Criteria

Nominations will be evaluated based on the following criteria:

- Quality and innovative nature of the technology developed and/or deployed;
- How the technology improves the safety, efficiency, and/or environmental performance of transportation systems;
- How the technology has enhanced industry competitiveness, both domestically and internationally;
- Significance of individual or organization nominated to the success of the development and/or deployment effort;
- Entrepreneurial nature of research effort (nature of collaboration);
- Potential for positive economic benefits to the U.S. or specific region; and
- Applicability to more than one mode of transportation.

The qualifying work may be a singular accomplishment or a series of accomplishments that have had a substantial effect over time. However, significant weight will be given to achievements developed or demonstrated within the past twelve months.

Examples of achievements that may be recognized include, but are not limited to:

- Safety Improvements—Technology that reduces the likelihood of transportation-related accidents or the likelihood of serious injury when such accidents do occur or otherwise improves the chances of post-accident survival/recovery of accident victims. This could include research and development of instrumentation equipment, human factors, or biomechanics.
- Energy Savings—Technology that reduces the energy intensity of transportation systems through research in materials, alternative fuels, engine and propulsion modifications, aerodynamic modeling and drag reduction, combustion research, and transportation system modeling and design.
- Environmental Quality—Technology that reduces the impact of transportation on air quality, water quality, solid waste volume and toxicity, noise, the global climate, and biological diversity. This could include research and development of products, processes, models, systems, or measurement instrumentation.
- International Industrial Competitiveness—Technology that helps U.S. transportation industries to create jobs for U.S. citizens and to compete in the global marketplace for transportation vehicles and equipment and for freight and passenger transportation services.
- Economic Performance—Transportation technology that improves the economic efficiency of domestic and international freight and passenger transportation systems. Such improvements could result from, for example: reduced travel time, reduced life-cycle costs of vehicles and infrastructure, and more cost-efficient design and utilization of transportation systems.

Evaluation Process

The DOT Research and Technology Coordinating Council, chaired by the Director of Technology Deployment will appoint an Evaluation Committee to evaluate nominations under the prescribed criteria and to recommend recipients.

Recommendations of the Evaluation Committee will be reviewed by a Selection Committee made up of members of the Research and Technology Steering Committee. Final selections will be made by the Secretary of Transportation.

Nominating Procedures

Nominees can be individuals or organizations. For purposes of this award, organizations include but are not limited to: domestic corporations, including nonprofit corporations; partnerships; professional associations; institutions of higher education; Federal, State, or local government; and professional teams assembled for the specific projects. Nominations should be in the form of a letter and must demonstrate how the nominee meets the evaluation criteria. Nominations, which must be signed and should be no more than 10 pages in length, must include the following:

- Name and address of the individual or organization being nominated;
- Name, address, and telephone number of the point of contact at the nominating organization;
- A description of the accomplishments focusing on the evaluation criteria identified above;
- Recognition of accomplishments by peers, as indicated by awards, patents, etc.; and
- If the nominee is an organization, documentation that the nominee is a domestic concern (i.e., as the term "domestic" is defined in 26 U.S.C. 7701(a)(4)).

Nominations must be postmarked by November 30, 1995, and should be sent to: Noah Rifkin, Director of Technology Deployment, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 10200.

Issued this 24th day of October 1995, in Washington, DC.

Noah Rifkin,

Director of Technology Deployment.

[FR Doc. 95–27351 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–40]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), the notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 24, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 30, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28358
Petitioner: Mr. Frank S. Mills
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Mills to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Dispositons of Petitions

Docket No.: 25345
Petitioner: National Business Aircraft Association, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5127, as amended, which permits National Business Aircraft Association, Inc., members to operate in certain specified areas of the Western Atlantic, the Caribbean, and the Gulf of Mexico with a single long-range navigation device. *GRANT, October 13, 1995, Exemption No. 5127C.*

Docket No.: 26006
Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 47.69(b)
Descripton of Relief Sought/Disposition: To extend Exemption No. 5125, as amended, which allows Beech Aircraft Corporation to conduct flights outside the United States. *GRANT, October 18, 1995, Exemption No. 5125C.*

Docket No.: 27690
Petitioner: Atlas Air, Inc.
Sections of the FAR Affected: 14 CFR appendix H, part 121
Descriptionof Relief Sought/Disposition: To amend Exemption No. 5888, as amended, which permits Atlas Air, Inc., (AAI) to provide initial or upgrade training and checking in a Phase II (Level C) simulator and allows certain experienced pilots and flight engineers who have received training in a Phase II (Level C) simulator to be Boeing 747 (B–747) seconds-in-command (SIC) in accordance with the training and checking provisions permitted under Phase III (Level D) of appendix H, part 121. The amendment permits initial training in a Phase II (Level C) simulator of AAI pilots-in-command (PIC) approved by the Principal Operations Inspector (POI). *GRANT, September 20, 1995, Exemption No. 5888B.*

Docket No.: 28309
Petitioner: Eastern Air Transport, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To permit Eastern Air Transport, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its Cessna C–337 aircraft (Registration No. N24135, Serial No. 337–0713) operating under the provisions of part 135 for a period of 1 year. *GRANT, October 11, 1995, Exemption No. 6187.*

[FR Doc. 95–27350 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Advisory Committee to the National Center for State, Local, and International Law Enforcement Training; Meeting

AGENCY: Advisory Committee to the National Center for State, Local, and International Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes the introduction of new special quests; remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-chairs; and reports on the International Law Enforcement Academy, Critical Incident Response Group, Leadership Model, Community Policing, International Training, and STAR series.

DATES: October 31, 1995.

ADDRESSES: FBI Training Academy, Quantico, Virginia 22135.

FOR FURTHER INFORMATION CONTACT: Hobert M. Henson, National Center for State, Local, and International Training Federal Law Enforcement Training Center, Glynco, Georgia 31524.

Dated: October 20, 1995.

Hobart M. Henson,

Director, National Center for State, Local, and International Training.

[FR Doc. 95–27337 Filed 11–2–95; 8:45 am]

BILLING CODE 4810–32–M

Office of Thrift Supervision

[AC–53; OTS No. 7934]

Amsterdam Savings Bank, FSB, Amsterdam, New York; Approval of Conversion Application

Notice is hereby given that on October 27, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Amsterdam Savings Bank, FSB, Amsterdam, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: October 30, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–27265 Filed 11–2–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–52; OTS No. 6759]

Joachim Federal Savings and Loan Association, De Soto, Missouri; Approval of Conversion Application

Notice is hereby given that on October 27, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Joachim Federal Savings and Loan Association, De Soto, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: October 30, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–27264 Filed 11–2–95; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 213

Friday, November 3, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BROADCASTING BOARD OF GOVERNORS

DATE AND TIME: November 8, 1995; 9:00 a.m.

PLACE: Cohen Building, 330 Independence Avenue, SW., Room 3317, Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural issues, as well as sensitive foreign policy and personnel issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel rules and practices, and personnel, of the BBG, the International Broadcasting Bureau, and USIA. (5 U.S.C. 552b.(c) (2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Barbara Floyd at (202) 401–3736.

Dated: November 1, 1995.

David W. Burke,

Chairman.

[FR Doc. 95–27440 Filed 11–1–95; 2:17 pm]

BILLING CODE 6155–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATES: 10 a.m. Wednesday, November 8, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Technical Amendments to the Community Support Regulation.
- Request for Federal Housing Finance Board Approval of Statewide Homeownership Set-Aside Program.
- Financing Corporation 1995 Budget Amendment.
- 1996 Strategic Plan for Examinations of the FHLBanks.
- Final Rule to Amend Section 943.6 to Eliminate Finance Board Approval of Prices for Item Processing and Other Services.

MATTER TO BE CONSIDERED DURING PORTIONS CLOSED TO THE PUBLIC:

- FHLBank of San Francisco Affordable Housing Subsidies on Guaranteed Rate Advances.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–27405 Filed 11–1–95; 10:48 am]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 8, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Eligibility criteria for selection of Federal Reserve Bank directors. (This item was originally announced for a closed meeting on October 18, 1995.)
2. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on November 6, 1995.)
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27410 Filed 11–1–95; 10:49 am]

BILLING CODE 6210–01–P

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: November 15, 1995, 11:30 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open except for the portion specified as closed session as provided in 22 CFR Part 1004.4(b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the July 25, 1995, Board Meeting.
2. President's Report.
3. Board Audit Committee Report.
4. Discussion on Future of the Foundation.
5. Executive Session on Personnel Implications in Fiscal Year 1996 (closed session).

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: November 1, 1995.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 95–27450 Filed 11–1–95; 8:45 am]

BILLING CODE 7025–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 54408, October 23, 1995].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 23, 1995.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Wednesday, October 25, 1995, at 10:00 a.m., has been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: October 31, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–27423 Filed 11–1–95; 2:16 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 213
Friday, November 3, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

Correction

In notice document 95–26532 appearing on page 54839 in the issue of Thursday, October 26, 1995, make the following corrections:

1. In the first column, under **SUMMARY**, in the third line, "Science" should read "Service".

2. In the same column, under **DATES**, "November 27, 1995" should read "December 25, 1995".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-1430-01; NMNM 94904]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

Correction

In notice document 95–26443 appearing on page 54704 in the issue of Wednesday, October 25, 1995, make the following correction:

Under the heading **DATES**, "January 23, 1995" should read "January 23, 1996".

BILLING CODE 1505–01–D

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federal register

Friday
November 3, 1995

Part II

Department of Transportation

Coast Guard

33 CFR Part 164

Navigation Safety Equipment for Towing Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 94–020]

RIN 2115–AE91

Navigation Safety Equipment for Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that towing vessels carry and properly use equipment such as radars, compasses, marine charts or maps, and publications and that they choose, inspect, and maintain towlines. This rule is necessary as part of a comprehensive initiative to improve navigational safety for towing vessels. If it becomes final, it will help prevent another catastrophic train-wreck such as that of the Sunset Limited in Alabama during September, 1993, and another spill such as that off Puerto Rico during January, 1994.

DATES: Comments must be received on or before February 1, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) (CGD 94–020), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in Incorporation by Reference of this preamble is available for inspection at room B–726, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Edward LaRue, Vessel Traffic Services Division (G–NVT), Office of Navigation Safety and Waterway Services, (202) 267–0416, or LCDR Suzanne Englebert, Project Development Branch (G–MES–2), Office of Marine Safety, Security and Environmental Protection, (202) 267–6490.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 94–020] and the specific section of this proposed rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public meetings. Persons may request a public meeting by writing to the Marine Safety Council at the first address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for additional oral presentations will aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later document in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Edward LaRue, Project Manager, Vessel Traffic Services Division (G–NVT), LCDR Suzanne Englebert, Project Manager, Project Development Branch (G–MES–2), Office of Marine Safety, Security and Environmental Protection, and Pat Murray, Project Counsel, Office of Chief Counsel.

Background and Purpose

This proposed rule, if it becomes final, will constitute part of a comprehensive initiative by the Coast Guard to improve navigational safety for towing vessels. While other regulatory efforts are concentrating on reporting of casualties, on licensing, and on training on radar, this rule would help ensure that the mariner piloting a towing vessel has adequate equipment to safely navigate the waters being transited. It would impose the following: (1) Requirements for carriage of radars, searchlights, radios, compasses, swing-meters, echo depth-sounding devices, electronic position-fixing devices, marine charts or maps, and publications; (2) requirements for proper use of this navigational equipment; (3) requirements for maintenance, inspection, and serviceability of towlines, towing gear, and terminal gear; and (4) general requirements for navigational safety.

Review of Marine-Safety Issues Related to Uninspected Towing Vessels

Soon after the fatal accident on September 22, 1993, near Mobile, Alabama, in which a barge collided with a railroad bridge and caused the Sunset Limited to plunge into a bayou, the Secretary of Transportation directed that the Coast Guard and the Federal Railroad Administration review the circumstances of the accident and undertake initiatives to minimize the risk of any similar tragedy in the future. Later, on March 2, 1994, the Coast Guard published (59 FR 10031) a notice of meeting and availability of study that announced both the availability of a study prepared by the Coast Guard, "Review of Marine Safety Issues Related to Uninspected Towing Vessels," and a meeting to review the study and to seek public comment on the recommendations made in the study.

The study examined marine-casualty statistics over a 12-year period (1980–1991). The Coast Guard made 19 recommendations: on the reporting of marine casualties and hazardous conditions; on bridge-fendering systems and navigational lighting; on the adequacy of the Aids to Navigation System for marking the approaches to bridges over navigable waterways; on the training and licensing of operators of uninspected towing vessels (OUTVs); and on—the subject of this proposed rule—the adequacy of navigational equipment for uninspected towing vessels (UTVs).

The public meeting announced [59 FR 10031] on March 2, 1994, was held on May 4, 1994, to discuss regulatory initiatives of the Coast Guard stemming from the derailment of the Sunset Limited. This meeting was well attended by the public, representing a wide range of towing and other interests. Right afterward, the Towing Safety Advisory Committee (TSAC) formed a working group of towing experts from the industry (TSAC working group) to help the Coast Guard formulate standards. A meeting of the TSAC working group was announced (59 FR 13353) on March 21, 1994, and held on April 5, 1994; and the group made recommendations to the full TSAC at its public meeting on May 6, 1994.

In the notice of March 2, 1994, the Coast Guard had specifically sought comments on a proposal to require radar and marine charts or maps and publications aboard towing vessels and—the subject of a separate rulemaking—to require that the operator of the radar system be a qualified radar observer. The Coast Guard received a total of 23 comments in response to the notice. A summary of them appears in the following section, Discussion of Proposed Rules.

During the public meeting, the Coast Guard also recognized the significant impact of improper towlines and related towing gear on navigational safety. The need to regulate these lines and gear, within any comprehensive navigational-safety proposal, had been made manifest by the tragic spill along the coast of Puerto Rico near San Juan, in January 1994. The T/B MORRIS J. BERMAN lost about 750,000 gallons of #6 fuel oil when the towing vessel's towline parted and the vessel was unable to recover the barge before it went aground. Groundings, delays of shipping, collisions, and allisions with bridges are all by-products of the improper use of towing gear. Ensuring that the towing vessel has sufficient navigational equipment to fix its position will make little sense unless the vessel is made fast to its tow.

Discussion of Proposed Rules

1. Scope of application and exemptions. This proposed rule would apply to all towing vessels 8 meters (26.25 feet) or more in length operating in the navigable waters of the United States, except for certain yard craft used in restricted service and for assistance towing vessels.

The applicability of these requirements was discussed at length in both the public meeting and the meeting of the TSAC working group, which recommended that towing vessels less than 8 meters (26.25 feet) in length not pushing barges, and towing vessels under 15 meters (around 50 feet) used only for towing disabled vessels, be exempt from these requirements. One attendee at the public meeting questioned whether these requirements would unduly burden small towing vessels primarily engaged in rescuing recreational boats. Several attendees urged the exemption of yard craft or fleeting boats operating only within a limited geographic area from these requirements. Others pointed out, however, that, on the lower Mississippi, fleeting boats are generally equipped with radar, to operate in restricted visibility and monitor their fleets for break-away barges.

The Coast Guard has proposed a general criterion of 8 meters (26.25 feet) in length because this excludes most of the small craft that neither tow barges nor operate offshore in heavy weather. Also, this length is consistent with the rules of the Vessel Bridge-to-Bridge Radiotelephone Act (codified as 33 U.S.C., Chapter 24) and with the Vessel Traffic Service regulations.

Proposed § 164.01(b)(1) would exempt most yard and fleeting craft from the requirements in proposed § 164.72. It would exempt those yard and fleeting craft used solely for making up or breaking up tows or other work in and around piers or fleeting areas. While the navigational equipment in the latter section may be valuable for many yard craft, it may not be for others. To prevent abuse of this provision, this rule would give wide discretion to Captains of the Port (COTPs) to determine whether particular vessels should be exempt and to allow sufficient time for those that should not to be brought into compliance. There may be areas where fleeting boats routinely cross busy navigable channels or operate in crowded harbors. In such areas, this exemption would be inappropriate. Owners, operators, or masters of vessels could ask COTPs to declare in advance whether certain vessels are exempt.

Further, proposed § 164.01(b)(2) would exempt towing vessels engaged solely in rescue and assistance from the requirements in proposed § 164.72. An entire industry catering to the towing of disabled recreational boaters has developed in recent years. These rescue-and-assistance towing vessels are usually small and are generally recognized by their local Coast Guard search-and-rescue stations as alternative-assistance vessels. The mariners operating these vessels also satisfy licensing requirements more stringent than their counterparts aboard typical small vessels. Because of their limited operating nature, § 164.01(b)(2) proposes an exemption from § 164.72; however, if any of them also engages in salvage work or commercial towing of barges, vessels, or objects not in distress, many of the proposed requirements would be appropriate. An exemption from the proposed requirements of § 164.72 should be based on the entire scope of work an owner, master, or operator of a vessel declares. With the help of TSAC, the Coast Guard is developing criteria to assess whether a size or type of commercial towing operation should also be exempt from the requirements in § 164.72. The Coast Guard solicits comments on this matter.

2. Definitions. Based on the recommendations of TSAC on current operating practices within the towing industry, this proposed rule would divide areas of operation into rivers, Western rivers, U.S. navigable waters other than rivers and Western rivers, and waters seaward of U.S. navigable waters or, for vessels operating on the Great Lakes, waters over three nautical miles from shore. The definitions proposed in § 164.70 distinguish the areas of operation and are consistent with the International Regulations for Preventing Collisions at Sea, 1972 (codified as 33 U.S.C., Chapter 30); the Inland Navigational Rules Act of 1980 (codified as 33 U.S.C., Chapter 34); and 33 CFR part 2.

3a. Radar. A marine radar is an essential piece of navigational-safety equipment. Radar not only provides a means of detecting and avoiding other vessels at great distances and in restricted visibility, but allows the operator or master of the vessel to navigate safely on constricted waters in reduced visibility. During the public meeting and in meetings with the TSAC working group, members of the industry strongly endorsed a requirement for radar on board towing vessels and indicated that most towing vessels already, voluntarily, carry radar.

The Coast Guard considered specifications for radar equipment for navigational safety and, after considerable deliberation and consultation with industry, would require in § 164.72(a)(1) a radar meeting minimum marine specifications. Basic features necessary for safe navigation by radar come with almost every modern radar set: bearing-lines, ship's-heading marker, range rings, variable range-scales, and variable pulse-width. Other features, which are desirable, come only with higher-quality commercial radars: higher power, which permits detection at longer range and better detection of small targets at closer range; interference rejection, which prevents interference from other radars operating on similar frequencies; and track histories, which allow display of relative motion of other vessels. Into § 164.03(b) performance standards for marine radar, developed by the Radio Technical Commission for Maritime Services (RTCM), would be incorporated by reference. This approach would ensure the installation of an appropriate radar for the marine environment, yet would allow for the rapid changes in electronic technology and the inability of any regulatory regime to keep up with them. Furthermore, because this rule would apply broadly, while covered vessels differ widely, requiring features instead of standards might make equipping

smaller vessels with radar impracticable and cost-prohibitive.

The Coast Guard recognizes that owners or operators of vessels would need to assess their radar needs and local radar availability. Therefore, the Coast Guard is proposing in § 164.72(a)(1) that the radar requirement become effective 1 year after the effective date of the final rule. It is imperative that radars be of marine quality and meet minimum standards; therefore, instead of giving an indefinite grandfather clause to those vessels with existing radars of unknown quality, the Coast Guard has proposed in § 164.72(a)(1)(iv) a longer phase-in period for vessels with existing radars that do not meet performance standards of RTCM for marine radar.

3b. Public comments on radar. The Coast Guard received 11 comments on the recommendation by the study that towing vessels of 8 meters (26.25 feet) or more in length carry radar. Of these, 5 generally supported the recommendation. Of these, one urged that the requirements regard size, service, trade, and location of vessels. Another urged that they regard at least size and operating-area. A third suggested rulemaking under the Ports and Waterways Safety Act (33 U.S.C. 1221, *et seq.*), which would require UTVs to carry surface-navigation radar. A fourth supported upgrading the radar already aboard towing vessels. A fifth, while generally supporting the use of radar aboard those vessels, argued that this use should not be mandatory and that, if it became so, the rule should consider both spatial limits and operational needs. Again, the approach of this proposed rule is to avoid features and to favor standards, which address these matters.

Of the other six comments, one urged the Coast Guard to require that all towing vessels, not just those of 8 meters (26.25 feet) or more in length, carry radar. Contrary to this, another comment urged the Coast Guard not to require that all such vessels of 8 meters (26.25 feet) or more in length carry radar and that lower tonnage or horsepower or smaller tows should relieve such vessels of the burden. A third urged the Coast Guard to require that every towing vessel carry two surface-navigation radars. A fourth urged the Coast Guard to require that every such vessel carry two commercial radars of which at least one must be working. A fifth urged the Coast Guard to address not the carriage of radar at large but the use of it in certain areas.

The Coast Guard has determined that 8 meters (26.25 feet) is an appropriate minimal length. It also considered towing vessels' operating areas by exempting fleeting tugs, by requiring minimal performance standards for vessels operating within three nautical miles of shore, and by ensuring that radar of vessels on voyages offshore meet higher performance standards for the more severe weather and sea conditions. The performance standards of the RTCM for marine radar already take account of vessel sizes and routes of vessels by addressing capability of radar units, yet they do not dictate sizes of radar screens and scanners for vessels operating within three nautical miles of shore. The Coast Guard also recognizes the advantages of redundancy and of some preference to have both "S" band and "X" band radar capability. Two radars are not proposed in § 164.72(a)(1), because this rulemaking seeks only to require minimal requirements; it does not preclude installing added equipment if owners, operators, or masters of vessels determine that it is needed, and it assumes that, once a radar is installed, it operates correctly.

The sixth comment asked whether an inoperable radar would constitute a "hazardous condition" as defined by 33 CFR 160.203. This proposed rule would allow for continued operation of the towing vessel with an inoperable radar, though it would also call in § 164.82 for the reporting of inoperable navigational equipment.

4. Searchlight. The Coast Guard is proposing in § 164.72(a)(2) that towing vessels be equipped with searchlights. A properly operating searchlight is an essential tool for the towing vessel. It is useful not only in navigating within restricted waterways but also in checking conditions of tows and warning other vessels of the presence of towlines. The TSAC working group specifically recommended that every towing vessel carry a commercial searchlight that could be directed by the vessel's operator or master. For a small vessel with an open steering station, a hand-held spotlight would suffice. For a typical towing vessel navigating with a one-person watch—in which the sole qualified operator or master acts as lookout, helmsman, and navigator—the controls of the searchlight must be accessible from the main steering station. For a large vessel, remote controls may be necessary. The Coast Guard has found that searchlights with remote control are common in the towing industry and are available at relatively low cost.

A searchlight is not a navigation light, for which uniform specifications are essential. The Coast Guard proposes in § 164.72(a)(2) to ensure that the searchlight is an adequate tool. (The Coast Guard suggests, though it does not require, that the searchlight be housed in a weatherproof fitting, be designed for marine use, project a focused beam, and provide a minimum of 200,000 candle-power.)

5. VHF–FM Radio. VHF–FM radios are required by the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201–1208), the Communications Act of 1934 as amended (47 U.S.C. 151 *et seq.*), and the Agreement Between the United States of America and Canada for the Promotion of Safety on the Great Lakes by Means of Radio, 1973. Section 164.72(a)(3) reiterates these requirements.

The Coast Guard may require within this section a source of power to the radio in an emergency. This second source would ensure that at least one installed radiotelephone could function if the vessel lost power. The Coast Guard is soliciting comments on whether to require that the VHF–FM radio on a towing vessel have an emergency or back-up source of power.

6. Compass. The compass is a piece of navigational equipment essential in many places. This proposed rule would require in § 164.72(a)(4) an illuminated magnetic compass aboard every towing vessel, except one operating solely on rivers and Western rivers as defined by this rule.

To navigate safely, a vessel operating in open waters must know its heading. A compass provides this—through dead reckoning (in restricted visibility or out of sight of landmarks); through fixes (in good visibility or within sight of landmarks); through checks on the effects of current or wind on course made good; and through indications of rate of turn for a tow.

The TSAC working group recommended a marine compass that should (1) operate satisfactorily and remain usable under the operational and environmental conditions likely to be experienced; (2) have a compass card that is readable both during the day and at night; (3) be installed on, or as close as possible to, the vessel's centerline; (4) be installed so that, from its position, the view is as nearly uninterrupted as possible for the taking of bearings; (5) be clearly readable by the helmsman at the main steering station; (6) be installed as far as possible from any magnetic material; (7) have the compass card suspended in gimbals so that it cannot be dislodged and remains readable in any sea or weather; and (8) not be a fluxgate compass unless it can operate reliably on steel-hulled tugs without constant adjustment, particularly when the tugs are picking up and dropping off different configurations of steel-barge tows. The Coast Guard recognizes the recommendations of the TSAC working group as fitting guidelines for the magnetic compass. It does not propose the use of a fluxgate magnetic compass in § 164.72(a)(4), because of the reliance of this type of compass on external power.

The Coast Guard also considered and rejected an absolute requirement that every towing vessel carry a magnetic compass. It decided to provide towing vessels operating solely on rivers with a swing-meter exemption from this requirement, for the following reasons: (1) On rivers traffic essentially flows up or down the rivers. (2) On rivers masters or other operators are continually changing course so as to account for currents, eddies, and bends, without reference to magnetic headings. (3) While most nautical charts or maps display a compass rose, most river maps display just a "north marker." And (4), although a magnetic compass would furnish some information on the swing of a vessel, a purpose-built swing-meter furnishes more.

7. Swing-Meter. During both the public meeting and the meeting of the TSAC working group, the Coast Guard heard repeated testimony that on winding rivers a magnetic compass was less useful than a swing-meter (rate-of-turn indicator). The TSAC working group ultimately advised against a requirement of swing-meters, but even it acknowledged that they are often of immense value to vessels pushing barges ahead on rivers and inland waters.

To accommodate areas where a swing-meter may be of more navigational use than a magnetic compass, § 164.72(a)(4)(i) would allow a towing vessel to have either a swing-meter or a magnetic compass if operating solely on rivers and Western rivers. It would not allow this for every towing vessel operating within these waters. A vessel that also operates in or crosses large port areas where its heading is needed to navigate and where charts or maps are available with compass roses should carry a magnetic compass. The COTP can clarify in advance whether a specific towing vessel may substitute a swing-meter for a magnetic compass.

8. Echo depth-sounding device (depth-sounder). Proposed § 164.72(a)(5) would require a depth-sounder aboard every towing vessel on any waters except rivers and Western rivers. The Coast Guard considers a depth-sounder a valuable navigational tool on any waters, including rivers. It can not only provide immediate information on depth but also assist in fixing position.

On rivers where depth fluctuates with the gauge, a depth-sounder furnishes useful information for the return trip and, when the mariner annotates a chart or map as he or she goes, lets him or her correlate gauges with depths. Nevertheless, on rivers the actual use—as distinct from the abstract utility—of a depth-sounder can prove problematic. A portable depth-sounder may make more sense aboard a lead barge than an installed one makes aboard a towing vessel itself; yet aboard a lead barge a depth-sounder runs the greatest risk of damage from ice or flotsam. Therefore, on rivers, both whether and where to deploy a depth-sounder would remain within the discretion of the owner, operator, or master of the towing vessel.

Proposed § 164.72(a)(5) would exempt a towing vessel operating solely on rivers and Western rivers from the requirement for a depth-sounder. This exemption is not meant to include every towing vessel operating within these waters. A vessel that also operates in or crosses large port areas where water depth helps to fix the vessel's position should carry a depth-sounder. The COTP can clarify in advance whether a specific towing vessel must carry a depth-sounder.

The Coast Guard recognizes that owners or operators of vessels would need to research depth-sounders' availability. Installation is also generally completed during a vessel's drydock period. Therefore, proposed § 164.72(a)(5) would require the depth-sounder 5 years after the effective date of the final rule.

9. Electronic position-fixing device. This proposed rule would require in § 164.72(a)(6) an electronic position-fixing device aboard each towing vessel operating seaward of the navigable waters of the U.S. or over three nautical miles from shore on the Great Lakes. Such devices—usually, receivers for either LORAN–C or a Global-Positioning System (GPS)—have become essential pieces of navigational equipment aboard vessels operating out of sight of land. Most if not all offshore towing vessels already, voluntarily, carry these devices. The TSAC working group recommended carriage of these devices. The cost of receivers from LORAN–C and GPS continues to decline; reliability continues to improve.

The Coast Guard considered requiring the carriage of electronic position-fixing devices by all towing vessels, but decided against it. First, fixes stated in latitude and longitude on inland waterways are now of little use to the mariner, because few charts and maps of rivers give latitude and longitude. Second, although Electronic Chart Display and Information System (ECDIS) may someday display real-time fixes on charts or maps generated electronically, requiring ECDIS would be premature until standards for the devices are adopted by the International Maritime Organization (IMO) and the devices are shown to be accurate and reliable. (Because differential GPS, or dGPS, already affords great accuracy and reliability, the Coast Guard recommends that anyone in the market for a new device consider a receiver that either picks up a dGPS signal by itself or works with a differential receiver.)

10a. Charts or maps and publications. Charts or maps. Proposed § 164.72(b)(1) would require that every towing vessel carry charts or their equivalent for the areas it transits. The TSAC working group, as well as individual participants in the public meeting, thought carriage of such charts or maps a sound idea.

The Coast Guard recognizes that, on many of the Western rivers and other inland waters, the National Ocean Service does not provide charts or maps. There, the rule specifically allows the use of maps from the Army Corps of Engineer or other river authority. One chart or map would suffice on towing vessels transiting rivers where only one is available.

The charts or maps would have to employ a suitable scale and contain suitable detail for safe navigation. (1) General charts or maps, scaled from 1:600,000 down to 1:150,000, would be suitable only for plotting a course well offshore; they contain too little detail for a towing vessel approaching shore. (2) Coastal charts or maps, scaled from 1:150,000 down to 1:50,000, are suitable for navigating inside offshore reefs and shoals, entering bays and harbors of appreciable size, and plying certain inland waterways. (3) Harbor charts or maps, scaled from 1:50,000 down, furnish details of harbors, anchorages, and small waterways. (4) Small-craft charts or maps furnish details of particular use to smaller craft; they are usually produced in strip format, which makes them useful on inland waterways.

This proposed rule would also require the chart or map to be "currently corrected" or be the "current edition." These terms refer both to the edition of the chart or map and to corrections to it. Coast Guard Navigation and Vessel Inspection Circular (NVIC) No. 7–86 entitled "Information on the Adequacy and Currency of Nautical Charts" addresses in detail the need for current nautical charts or maps on ships, and much of its commentary applies to towing vessels as well. Specifically, a

new edition of a chart or map often shows data such as new survey information, new structures, or a change in the chart's or map's datum that would not appear in a Notice to Mariners. Therefore, even a corrected chart or map, if superseded, may pose a risk to mariners. The Coast Guard recognizes that current editions of charts or maps are not always reasonably available. Where they are not, the Coast Guard would allow the use of a currently corrected edition.

Members of the public questioned the need for the most current editions of charts or maps on rivers, noting that owners, operators, or masters of towing vessels often extensively annotate their charts or maps with information on shoaling, currents, and so forth. While this annotation enhances the usefulness of superseded charts or maps, most charts or maps published by the National Ocean Service are updated when the number of corrections reach a predetermined threshold. River maps published by the Army Corps of Engineers are updated every few years. The Coast Guard has determined that the burden of transferring personal annotations to a new edition of a chart or map on such an occasional basis is far outweighed by the increase in accuracy and reliability of a current chart or map. Therefore, for vessels that operate solely in U.S. navigable waters and on routes that are frequent, short, and generally limited to a few well-annotated charts or maps, § 164.72(b)(1)(ii)(A) would require the carriage of current editions of charts or maps on board.

"Currently corrected" refers to the incorporation of corrective notices to a current edition of a chart or map that appear in Notices to Mariners. These notices, published by the Coast Guard and the Defense Mapping Agency (the Army Corps of Engineers also publishes Notices to Navigation), provide essential navigational information about specific waterways, weekly, including information on the location of dredging, obstructions in waterways, and changes in location of aids to navigation. Many towing companies indicated that they routinely use facsimile machines to transmit these notices to their vessels. However, during the public meeting there was some concern that the most recent Notices to Mariners might not always arrive on time. The Coast Guard is addressing this concern and is exploring the possibility of an electronic-bulletin-board system. Therefore, for vessels that operate seaward of U.S. navigable waters, and three nautical miles or more from shore on the Great Lakes, and on routes offshore, and for vessels that generally rely on several corrected charts or maps, § 164.72(b)(1)(ii)(B) would require the carriage of corrected charts or maps on board. To limit the administrative burden on operators or masters, this rule would require the entry only of those changes applicable to the vessel's transit and reasonably available to the operators or masters. For example, a towing vessel with a 3-meter draft would not have to update depths in a shallow creek used by recreational boaters.

Publications. Every towing vessel would have to carry appropriate navigational-safety publications for the areas where it operated. These publications provide crucial information beyond that found on charts or maps: bridges' clearances and terms of openings; channels for use on radio; local limits on speed or other activities; currents; and timely advice on hazards to navigation. The publications required by proposed § 164.72(b)(2) for the most part follow those recommended by the TSAC working group. For these publications as for charts or maps, "currently corrected" implies recency and relevance. The act of shifting information from notices to publications would cost each mariner around 20 minutes a week, and this slight expenditure of time would bring two big benefits. It would force the mariner into the notices, and it would leave him or her with accurate publications for ready reference.

10b. Public comment on marine charts or maps and publications. Six comments addressed the recommendation of the study by the Coast Guard, that charts (including maps) and publications be carried aboard towing vessels. Three of these six supported this recommendation for charts or maps. Two more of these six also supported this recommendation for current or corrected publications, and one of these two further contended that a requirement of this nature would enhance the safety of personnel and the environment. The other also suggested that the Coast Guard consider size of vessel and area of operation while developing these requirements.

Proposed § 164.72(b) would require charts or maps and publications that cover a vessel's operational area. It does not, however, take account of a vessel's size, except as it distinguishes by applicability between vessels of 8 or more meters in length and other vessels.

One comment opposed using river charts or maps for navigation. It contended that these charts or maps are unreliable because constant changes in the river make them outdated and because few show sets, depths, drafts, or accurate sailing lines. It added that the information on the charts or maps is often overly condensed, readable only by use of a magnifying glass.

The Coast Guard, recognizing the limits of some river charts or maps, believes charts or maps a necessary navigational tool. Individual annotation of river charts or maps adds to their utility.

One comment argued that charts or maps and publications aboard towing vessels on rivers should comprise charts or maps from the Army Corps of Engineers, Light Lists, Notices to Mariners with changes to charts or maps, and notices of regattas. (a) One comment urged that the Coast Guard accept charts or maps with changes added by hand, as well as recent charts or maps, in fulfillment of any requirement for charts or maps. (b) The same comment argued that updating publications daily is unnecessary—and a requirement of it unjustified—and suggested that the Coast Guard implement a system of looseleaf binders into which recently corrected pages could be inserted. This comment also urged that, because broadcasts to mariners by the Coast Guard are too infrequent and often are hard to understand, the Coast Guard develop a system of electronic Notices to Mariners under which current information could reach mariners at once but which, once printed, could be preserved for future reference.

The Coast Guard has allowed for the use of river charts or maps from the Army Corps of Engineers in appropriate areas. It understands the value of charts or maps with changes added by hand, but it does not regard out-of-date charts or maps, even ones annotated with care, as equivalent to current charts or maps. The Coast Guard is addressing the system of Notice to Mariners in a separate initiative and has included the issue of electronic updating within its scope rather than dealing with it piecemeal here.

11. Towline and terminal gear. Proposed §§ 164.74 and 164.76 would establish standards of minimal adequacy for towing hawsers, wire-rope towing cable, and associated gear and for their inspection and serviceability. Several participants in the public meeting noted that, unlike a conventional vessel, a towing vessel cannot navigate at all without taking account of another vessel or the equivalent: its tow. So an essential part of the overall navigation of a towing vessel is the gear making that vessel fast to its tow. Towlines and associated gear must be appropriate and must remain

intact throughout a voyage to ensure the safety of all mariners and of the environment.

Towing astern. To reflect current standards of industry, this proposed rule would codify guidelines developed by TSAC as set out by the Coast Guard in its NVIC 5–92, "Guidelines for Wire Rope Towing Hawsers." But, for a vessel towing astern, this rule would go beyond NVIC 5–92 in two respects. It would require adherence to specific standards for inspection and serviceability. And, to ensure that these governed a towline wherever used, it would require that both an initial purchaser and any subsequent purchaser become aware of a towline's load-carrying capacity.

First, strength is of the essence. Towing vessels are the prime movers and sole providers of navigation for the barges, vessels, and objects they are towing. Towlines and associated gear enable them to transmit the forces necessary to maneuver their tows, and they can operate only within the limits of their gear. Undersize (understrength) towlines may break or, at best, reduce their—and therefore their tows'—ability to maneuver.

Proposed § 164.74(a) would require the owner, operator, or master of a vessel engaged in towing astern to ensure that towlines used to tow a barge, vessel, or other object meet certain minimum standards. The sizing ratio between a towing vessel's bollard-pull capability and the towline is crucial. Manufacturers, classification societies, and organizations such as the Cordage Institute provide extensive sizing guidelines listed by a towing vessel's bollard-pull capability, its horsepower rating, or a towline's working-load limit. The Coast Guard would have the mariner evaluate the intended use of the towline, the capabilities of the towing vessel, and other conditions as detailed in § 164.74(a)(1) to determine the appropriate towline size rather than setting specific ratios. This approach should keep the requirements flexible and accommodate technological advances in towline materials.

Second, strength must be readily ascertainable by any user. Towlines often pass among owners of towing vessels. Judging a used towline by the manufacturer's data (or the original tensile test) may lead to a false sense of its minimum breaking strength. A new owner, operator, or master should know the strength of the used towline before counting on the towline. This proposed rule would require a new owner to ascertain that strength.

Third, marlinspike seamanship, winches, and chafing gear affect towline strength. This proposed rule would require freedom from knots and, except in specified circumstances, from terminations in wire clips. It would also require winches that evenly spool and tightly wind towlines. These would extend the life of the towlines by reducing the dangers of crushing, kinking, and rusting.

Fourth, proper maintenance carried out according to regular inspections preserves strength. Plain fatigue may weaken towlines. Sections 164.74(a)(3)(iii) and (iv) propose visual inspections of towlines and assessments of their suitability by people who know what they are looking at; can do something to correct any problems found with it; and would inspect it at a frequency appropriate for the deterioration rate or at least appropriate for the important role the towline plays in navigation safety. Recognizing towline deterioration is not an easy task. Material, environment, and many other factors can affect the deterioration rate of a towline. Manufacturers' guides, training manuals, text books, and other guidelines are available for most materials used to construct towlines. By keeping the requirements general, the proposed rule would accommodate technological advances in towline materials and lets the owner, master, or operator tailor a towline-replacement schedule to specific towline use. The proposed requirement to record the inspections would ensure that personnel are aware of the towline's history.

Fifth, safety for the towing vessel and its tow is imperative. Safety of both the vessel and in some instances the barge is addressed by § 164.74(b)(4), which would require an emergency means to disconnect the towline from the vessel. Section 164.74(b)(7) would also require a winch brake capable of controlling the towline as it pays out, even if power to the winch is lost.

Pushing ahead or alongside. The Coast Guard and the TSAC working group also discussed towing vessels pushing ahead or alongside. Their gear is very different from conventional towlines, and general guidelines have not been developed. This proposed rule would recognize this, and in § 164.76 would require that owners, masters, or operators assess their gear for suitability. However, it does not detail requirements for size, maintenance, or serviceability. Further research and assessment of this type of gear is being done by a TSAC working group to determine whether additional guidance is necessary. The Coast Guard is soliciting comments on any guidance that would be appropriate to improve the safety of pushing ahead or towing alongside.

12. Navigation underway: towing vessels. This proposed rule would also require in § 164.78 that towing vessels operate under a regulatory regime similar to the navigational-safety regulations for self-propelled vessels of 1,600 or more gross tons when underway on the navigable waters of the United States [compare 33 CFR 164.11). After all, towing vessels resemble these vessels in many relevant respects. They may handle barges, vessels, or other objects quite as large, various, and hard to control as are these vessels and so may demand equivalent expertise at maneuvering, especially in the various conditions of weather and current that often prevail on the rivers. This regime would apply regardless of the tows' configurations and of those conditions. It would govern both navigational equipment and operation. It would require that, before the towing of barges, vessels, or objects, the owners, operators, or masters of the towing vessels confirm the presence aboard in working order of the necessary gear and check and consider the weather and aids to and other means of navigation while they determine appropriate speed, lights, lookouts, and maneuvering.

13. Tests and inspections. Proposed § 164.80 would require that towing vessels test their navigational and control navigational equipment under a regulatory regime similar to the navigational-safety regulations for self-propelled vessels of 1,600 GT or more, detailed in 33 CFR 164.25. Verification of the navigational equipment to be used for maneuvering is essential and can prevent emergencies from arising during crucial transits. In addition, a basic inspection of the navigational equipment used to control the towing vessel, including the towline and terminal gear, would ensure that these essential systems are ready for use. The Coast Guard views the proposed tests and inspections as the least necessary to ascertain whether the vessel is prepared to safely navigate.

14. Maintenance, failure, and reporting. Proposed § 164.82 would require that owners, masters, and operators maintain navigational equipment in effective working order. Degraded, poorly maintained equipment can give them a false sense of security and prove more dangerous than inoperative equipment. Modern commercial-grade navigational equipment needs little maintenance and adjustment, but even this equipment may suffer damage by power surges or

improper installation. Older equipment needs appreciably more maintenance and adjustment; for example, slow degradation of radar performance over time may go unnoticed unless dealer-prescribed maintenance and checks take place.

Logs of inoperative equipment reflect the working order of a vessel's equipment to the owner, master, or operator. This proposed rule would require that owners, masters, or operators record inoperative equipment when it fails. This requirement would be similar to though less burdensome than the requirement for ships (compare 33 CFR 164.55). It is based on recommendations from the TSAC working group. Several people attending the public meeting suggested that the rule require only that the operator or master use due diligence to repair inoperative equipment in a timely way. The prompt recording of "down" equipment would certify the time of failure and would emphasize to the owners, masters, and operators the impact of inoperative equipment on the seaworthiness of towing vessels. For instance, where a vessel's only radar set fails during a voyage, the operator must enter the failure in the log and reckon his or her reduced capabilities (the vessel may continue the voyage if the dictates of good seamanship applied to the weather and other circumstances suggest the safety of continuing the voyage.). Even then, however, the operator must use due diligence to arrange for repairs.

Reporting inoperative equipment serves to notify the Coast Guard of the state of that equipment. The Coast Guard needs to know this when a vessel enters a traffic-dense area, such as a Vessel Traffic Service Area, or when the failure of a certain piece of equipment could severely hamper safe navigation. Under § 164.82(d), an owner, master, or operator would have to ask permission to deviate from the rules if he or she wanted to continue to operate his or her vessel with an inoperative radar 96 hours after it had failed. The Coast Guard expects that this permissive "deviation" from normal requirements would be invoked seldom. For radar sets, technical representatives and spare parts are available within 96 hours except in extraordinary cases.

Incorporation by Reference

The following material would be incorporated by reference in § 164.03: API Specification 9A, Section 3, "Properties and Tests for Wire and Wire Rope"; ASTM D4268–93, "Standard Methods of Testing Fiber Ropes"; CIA–3, "Standard Test Methods including Required Terminations"; RTCM Paper 71–95/SC112–STD, "RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1"; and RTCM Paper 191–93/SC112–STD, "RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.3." Copies of the material are available from the sources listed in § 164.03. Copies of the material are available, for inspection only, where indicated under **ADDRESSES.**

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 (February 26, 1979)).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary follows.

This rule would apply to all towing vessels greater than 8 meters (26.25 feet) in length operating in U.S. waters. These vessels would have to retain manufacturing specifications on towlines and regularly maintain and inspect them. They would have to carry updated charts or maps and publications, marine radar, and searchlights. Some (depending on service) would also have to carry magnetic compasses or swing-meters, depth-sounders, and electronic position-fixing devices.

Summary of Benefits

The principal benefits of this proposed rule would be to enhance safety of navigation and reduce the risk of collisions, allisions, and groundings.

The allision in September, 1993, of a tow with a fixed railroad bridge near Mobile, Alabama, established the necessity of navigational-safety equipment for towing vessels. These requirements would reduce damage to the environment by increasing the number of tools at the disposal of a vessel operator, thereby decreasing the likelihood of an accident.

The preliminary findings of studies prepared after the derailment of the Sunset Limited indicate that many owners and operators of towing vessels voluntarily equip their vessels with much of the proposed gear. Review of the kind and amount of equipment voluntarily installed suggests the desirability of the industry's taking these proposed navigational-safety measures. In addition, reliability and performance of modern navigational equipment has improved, which also suggests that mariners are being provided with valued, accurate information. The benefits of each piece of gear being proposed are as follows:

A marine surface-navigation radar is an essential piece of navigational-safety equipment. Not only does it aid in detecting and avoiding other vessels; it helps in constricted waterways and during periods of decreased visibility.

A searchlight also helps in restricted waterways. And it is essential in checking the condition of tows and warning other vessels of the presence of towlines.

A magnetic compass indicates headings, which are critical to safe navigation of vessels in open waters. It allows dead-reckoning in restricted visibility, enables the vessel to fix its position, helps the vessel to determine the effect of winds and currents, and tells the rate of turn for the tow.

A swing-meter, or rate-of-turn indicator, tells the rate of turn for the towing vessel itself, which is valuable for every vessel pushing ahead and is critical for any large, multiple-barge tow pushing ahead. TSAC has indicated the considerable value of this device to a vessel pushing ahead.

A depth-sounder decreases the risk of grounding. It provides immediate information on depth, and also helps fix the vessel's position.

An electronic position-fixing device has become a basic navigational tool on board both offshore and coastal vessels. It supplants plotting by traditional means, for which few towing vessels have either the time or the personnel.

Updated charts or maps and publications have always been a basic navigational tool. They give detailed, recent information on obstructions, routes, bridge clearances, communication channels, river currents, and hazards to navigation.

Finally, owners' and operators' retention of manufacturers' data on the breaking strength of towlines, together with minimal standards of inspection and serviceability, would help to ensure that towlines remain intact throughout transits and are of the appropriate sizes or configurations. The desirability of keeping tugs made up to their barges appears self-evident.

All of these requirements essentially serve the same purpose: to increase navigational safety for towing vessels and barges on U.S. waters. Although the Coast Guard recognizes that many prudent operators already satisfy them, this rule would codify them, provide basic performance standards for the gear, and compel compliance for vessels not conforming to the sound practices of the majority of the industry.

The benefits from these proposed requirements are significant. But the Coast Guard cannot quantify them from available data.

Summary of Costs

The present value of the costs to the towing industry of installing the proposed navigational equipment is, on a very conservative estimate, just under $31.5 million. This estimate is based on Coast Guard research. It assumes that a high proportion of vessels do not already carry the proposed equipment, and does not factor in the difference in requirements for the difference in routes. Therefore, although it does not include costs for maintenance and repair, the Coast Guard expects that the actual value of the costs to the industry will run significantly lower than $31.5 million.

The estimated cost for towing vessels 20 meters (65.62 feet) or more in length totals $9.9 million; this comes to about $4,600 a vessel. That for those between 8 and 20 meters totals $21.5 million; this comes to about $7,000 a vessel. The average cost for smaller vessels, paradoxically, is higher than that for larger ones because the Coast Guard's estimating methodology assumes that a larger proportion of smaller vessels do not already carry the proposed navigational-safety equipment.

This proposed rule would impose recurring costs in following years. There would be three annual components of recurring costs: updates, deviations, and towline testing. (a) Estimated cost of updates would be $520,000 a year for the purchase of new editions of charts or maps and publications as necessary. (b) Estimated costs of deviations would be about $50,000 a year, assuming 1,237 of them a year. This number is low because the rule would allow 96 hours to make any necessary repairs. This is to decrease the burden on industry, especially on small entities. (c) Finally, estimated cost of towline testing would be about $300 a test. At 1,041 tests a year (20 percent of vessels), this component would be $312,000 a year. These three annual components of recurring costs would total $882,000.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

This proposed rule would require towing vessels to carry and properly use certain navigational-safety equipment and to meet requirements for serviceability and inspection of towlines. It would apply to all towing vessels 8 meters (26.25 feet) or more in length operating on the navigable waters of the United States, except for certain yard and fleeting craft used in restricted service and for towing vessels engaged solely in rescue and assistance.

Voluntary carriage of the navigational-safety equipment addressed in this proposed rule is standard in the industry, and those vessels without equipment, charts or maps, and publications are the exception. The costs of this rule would consist of those incurred by enterprises, marginal in a legal if not an economic sense, to achieve compliance. For those owners, masters, or operators required to purchase equipment, charts or maps, and publications, the costs would be low in comparison with the value of their towing vessel, and in comparison with the damage that could be caused by an accident or a spill.

This proposed rule would provide a 1-year phase-in period for new radar, a 2-year phase-in period for extant radar, and a 5-year phase-in period for depth-sounders. The phase-in periods would let affected entities schedule conversions during normal downtime periods, and would permit small entities sufficient time to explore the market, line up capital, and arrange contracts in advance with retailers. Many suppliers are carrying excess capacity, and bargaining power should favor the small operators with the foresight to take advantage of the grace conferred by phase-in periods.

Because this proposed rule would exempt towing vessels of less than 8 meters in length, certain yard and fleeting craft, and assistance-towing vessels, because of the large number of vessels already in compliance, and because of the phase-in periods for several provisions, the Coast Guard certifies that this rule would not result in a significant economic impact on a substantial number of small entities.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule would have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule would economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposed rule contains collection-of-information requirements in the following sections: 164.72(b), 164.74(a), 164.78(b), and 164.82(b) through 164.82(d). The following particulars apply:

DOT No.: 2115.
OMB Control No.: 2115–AE91
Administration: U.S. Coast Guard.
Title: Navigational-Safety Equipment for Towing Vessels
Need for Information: This proposed rule would require the mariner to log or otherwise record information necessary for the safe operation of the vessel. These recordkeeping requirements are largely consistent with good commercial practices and the dictates of good seamanship for safe navigation and maintenance of critical navigational-safety equipment. The following is a section-by-section justification of the collection requirements.

Proposed § 164.72(b) would require towing vessels to have on board and maintain navigational charts or maps, and publications. Carriage and proper updating of these charts or maps is essential for safe navigation and is consistent with the dictates of good seamanship.

Proposed § 164.74(a) would require owners, masters, or operators to obtain written verification of towline strength and to maintain this verification either on board the vessel or in company records. It would also require monthly records of towline inspection. Recording of this information is necessary to ensure that the mariner knows the minimum breaking strength of the towline, and is aware of any unusual stress on or wear to the line.

Proposed § 164.78(b) would require a log entry or other onboard documentation of tests and inspections of equipment. Recording is necessary to provide inspectors of the Coast Guard or the company a written record ensuring performance of the required tests and inspections.

Proposed §§ 164.82(b)–(d) would require a record of inoperative navigational-safety equipment and a request for a deviation from these proposed rules if the radar is inoperative for 96 hours or more. This information is necessary because it lets towing vessels continue to operate when extraordinary circumstances make repair of inoperative navigational-safety equipment impracticable and there is no degradation of navigation safety in the vessels' continued operation.

Proposed Use of Information: The primary use of this information would be to ensure that the mariner records information necessary for the safe operation and maintenance of the vessel. The secondary use would be to help Coast Guard inspectors to determine whether a vessel is in compliance or, in the case of a casualty, whether failure to meet this proposed rule contributed to the casualty. The Coast Guard has no specific plan to collect these data for statistical analysis.

Frequency of Response: The various information called for by this proposed rule would be recorded at different intervals. Updates of charts or maps and publications under proposed § 164.72(b) would be recorded weekly. Towline verification would require, for each towline, recording (though not submittal) of initial manufacturing data once and retainment indefinitely. Entries in inspection logs or other documentation for towlines under proposed § 164.74(a) would require recording at least monthly. The recording under proposed § 164.78(b) of tests and inspections of equipment would be frequent, and consistent with the underway schedule of the vessel. Finally, the recording of inoperative equipment and the submittal of requests for deviations under proposed §§ 164.82(b) through (d) would occur infrequently, when certain navigational-safety equipment fails at all or certain other equipment is inoperative for greater than 96 hours.

Burden Estimate: 336,102.08 hours.

Respondents: 5,203 owners, masters, or operators of towing vessels.

Average Burden Hours A Respondent: 64.6 annual hours a respondent.

The Coast Guard has submitted the requirements to OMB for review under sub-§ 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under paragraphs 2.B.2e(34) (d) and (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns only equipment approval. Approved equipment should contribute to the reduction of the occurrences of ship-generated oil spills in the marine environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 164 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. The citation of authority for Part 164 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

2. In § 164.01, paragraph (b) is added to read as follows:

§ 164.01 Applicability.

* * * * *

(b) Sections 164.70 through 164.82 of this part apply to each towing vessel of 8 meters (26.25 feet) or more in length operating in the navigable waters of the United States other than the St. Lawrence Seaway; except that a towing vessel is exempt from the requirements of § 164.72 if it is used solely—

(1) Within a limited geographic area, such as a particular fleeting-area for barges or commercial facility, and used solely for restricted service, such as making up or breaking up larger tows; or

(2) For assistance towing as defined by 46 CFR 10.103.

3. Section 164.03 is amended by revising paragraph (b) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part and the sections affected are as follows:

American Petroleum Institute (API):
1220 L Street, Northwest, Washington, DC 20005, API Specification 9A, Section 3, Properties and Tests for Wire and Wire rope, 1984 ..... 164.74
American Society for Testing and Materials (ASTM):
1916 Race Street, Philadelphia, PA 19103. ASTM D4268–93, Standard Methods of Testing Fiber Ropes, 1993 ..... 164.74
Cordage Institute:
350 Lincoln Street, Hingham, MA 02043, CIA–3, Standard Test Methods including Required Terminations, 6/80 ..... 164.74
International Maritime Organization (IMO):
4 Albert Embankment, London SE1 7SR, U.K., IMO Resolution A342(IX), Recommendation on Performance Standards for Automatic Pilots, adopted November 12, 1975 ..... 164.13
International Telecommunication Union Radiocommunication Bureau (ITU–R):
Place de Nations CH–1211 Geneva 20 Switzerland:
(1) ITU–R Recommendation M.821, Optional Expansion of the Digital Selective-Calling System for use in the Maritime Mobile Service, 1992 ..... 164.43
(2) ITU–R Recommendation M.825, Characteristics of a Transponder System using Digital Selective-Calling Techniques for use with Vessel Traffic Services and Ship-to-Ship Identification, 1992 ..... 164.43
Radio Technical Commission for Maritime Services:
655 Fifteenth St., N.W., Suite 300, Washington, DC 20005:
(1) [Paper 12–78/DO–100], Minimum Performance Standards, Loran C Receiving Equipment, 12/20/77 ..... 164.41
(2) [Paper 194–93/SC104–STD], RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.1, 1994 ..... 164.43

(3) [Paper 71–95/SC112–STD], RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1, 1995 ..... 164.72
(4) [Paper 191–93/SC112–STD], RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.3, 1993 ..... 164.72

4. Sections 164.70, 164.72, 164.74, 164.76, 164.78, 164.80, and 164.82 are added to read as follows:

§ 164.70 Definitions.

For the purposes of §§ 164.72 through 164.82, the term—

Current edition means the most recent published version of a publication, chart, or map required by § 164.72.

Currently corrected means a current or previous edition of a publication required by § 164.72, corrected with changes that come from Notices to Mariners or Notices to Navigation reasonably available and that apply to the vessel's transit.

Departing from port means departing from an anchorage or facility for a transit beyond U.S. navigable waters as established in 33 CFR 2.05–25.

Great Lakes means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between miles 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between miles 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

River means any river, canal, or other, similar body of water designated by the Officer in Charge, Marine Inspection.

Swing-meter means an electronic or electric device that indicates the rate of turn of the vessel on board which it is installed.

Towing vessel means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

Western rivers means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational-demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen—Morgan City Alternative Route, and that part of the Atchafalaya River above its junction with the Port Allen—Morgan City Alternative Route including the Old River and the Red River and those waters specified by 33 CFR 89.25.

§ 164.72 Navigational-safety equipment, charts or maps, and publications required on towing vessels.

(a) Except as provided by § 164.01(b)(1) and (2), each towing vessel must be equipped with the following navigational-safety equipment:

(1) *Marine radar.* By [*date 1 year after the effective date of the final rule.*], a marine radar that meets the following applicable requirements:

(i) For a vessel of less than 300 gross tons that engages in towing on navigable waters of the U.S., including rivers and Western rivers, the radar must meet—

(A) The requirements of the Federal Communications Commission (FCC) specified by 47 CFR Part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category II and stabilization Category Bravo.

(ii) For a vessel of less than 300 gross tons that engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes, the radar must meet—

(A) The requirements of the FCC specified by 47 CFR Part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category I and stabilization Category Alpha.

(iii) For a vessel of 300 gross tons or more that engages in towing, the radar must meet RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.3, RTCM Paper 191–93/SC112–STD.

(iv) A towing vessel with an existing radar must meet the applicable requirements of paragraphs (a)(1) (i) through (iii) of this section by [*date 2 years after effective date of the final rule.*]; except that a towing vessel with an existing radar must meet the display and stabilization requirements of paragraph (a)(1)(ii)(B) of this section by [*date 5 years after effective date of the final rule.*].

(2) *Searchlight.* A searchlight, directable from the vessel's main steering station and intense enough to help aid in navigation, docking, and checking the condition of the tow.

(3) *VHF–FM radio.* An installation or multiple installations of VHF–FM radios as prescribed by Part 26 of this chapter and 47 CFR Part 80, to maintain a continuous listening watch on the designated calling channel, VHF–FM Channel 13 (except on portions of the Lower Mississippi River, where VHF–FM Channel 67 is the designated calling channel), and to separately monitor the International Distress and Calling Channel, VHF–FM Channel 16, except when transmitting or receiving traffic on other VHF–FM channels or when participating in a Vessel Traffic Service (VTS) or monitoring a channel of a VTS. (Each U.S. towing vessel of 26 feet (about 8 meters) or more in length, except a public vessel, must hold a ship-radio station license for radio transmitters (including radar and EPIRBS), and each operator must hold a restricted operator's licence or higher. To get an application for either license, call (800) 418–FORM or (202) 418–FORM, or write to the FCC; Wireless Bureau, Licensing Division; 1270 Fairfield Road; Gettysburg, PA 17325–7245.)

(4) *Magnetic compass.* Either—

(i) An illuminated swing-meter or card-type magnetic steering compass readable from the vessel's main steering station, if the vessel engages in towing exclusively on rivers or Western rivers; or

(ii) An illuminated card-type magnetic steering compass readable from the vessel's main steering station.

(5) *Echo depth-sounding device.* By [*date 5 years after the effective date of the final rule.*], an echo depth-sounding device readable from the vessel's main steering station, unless the vessel engages in towing exclusively on rivers or Western rivers.

(6) *Electronic position-fixing device.* An electronic position-fixing device, either a LORAN–C receiver or a satellite navigational system such as the Global Positioning System (GPS) as required by § 164.41, if the vessel engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(b) Each towing vessel must carry on board and maintain the following:

(1) *Charts or maps.* Marine charts or maps of the area to be transited, published by the National Ocean Service, the Army Corps of Engineers, or a river authority that are—

(i) Of a large enough scale and have enough detail to make safe navigation of the area possible; and

(ii) Either—

(A) The current edition, if the vessel engages in towing exclusively on navigable waters of the U.S., including rivers and Western rivers; or

(B) Currently corrected, if the vessel engages in towing seaward of navigable

waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(2) *General publications.* A currently corrected edition of, or an applicable currently corrected extract from, each of the following publications for the area to be transited:

(i) If the towing vessel is engaged in towing exclusively on rivers and Western rivers—

(A) U.S. Coast Guard Light List;

(B) Applicable Notice to Navigation published by the U.S. Army Corps of Engineers, or Local Notice to Mariners published by the Coast Guard, for the area to be transited, when available; and

(C) River-current tables published by the Army Corps of Engineers or a river authority, if available.

(ii) If the vessel is engaged other than in towing exclusively on rivers and Western rivers—

(A) Coast Guard Light List;

(B) Coast Guard Local Notice to Mariners;

(C) Tidal-current tables published by the National Ocean Service, or river-current tables published by the Army Corps of Engineers or a river authority;

(D) Tide tables published by the National Ocean Service; and

(E) U.S. Coast Pilot.

(3) *Inland Navigation Rules.* The owner, master, or operator of each self-propelled vessel of 12 meters (39.38 feet) or more in length shall carry on board and maintain for ready reference a current edition of the Inland Navigation Rules as required by 33 CFR 88.05.

(c) Table 164.72, following, summarizes the navigational-safety equipment, charts or maps, and publications required for towing vessels of 8 meters or more in length engaged in towing:

TABLE 164.72.—EQUIPMENT, CHARTS, AND PUBLICATIONS FOR TOWING VESSELS OF 8 METERS OR MORE IN LENGTH

	Rivers and western rivers	U.S. navigable waters other than rivers or western rivers	Waters seaward of U.S. navigable waters and 3 NM or more from shore on the Great Lakes
Marine Radar:			
(1) Towing Vessels of Less than 300 GT.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category I[2] Stabilization Category ALPHA.
(2) Towing Vessels of 300 GT or More.	RTCM Paper 191–93/SC112–STD Version 1.3.	RTCM Paper 191–93/SC112–STD Version 1.3.	RTCM Paper 191–93/SC112–STD Version 1.3.
Searchlight	X	X	X
VHF–FM Radios	X	X	X
Magnetic Compass	X[3]	X	
Swing-Meter	X[3]		
Echo Depth—Sounding Device		X	X
Electronic Position—Fixing Device			X
Charts or Maps	(1) Large enough scale (2) Current edition	(1) Large enough scale (2) Current edition	(1) Large enough scale. (2) Currently corrected.
General Publications	(1) U.S. Coast Guard Light List (2) Notice to Navigator or Local Notice to Mariners. (3) River Current Tables	(1) U.S. Coast Guard Light List (2) Local Notice to Mariners (3) Tidal Current Tables (4) Tide Tables (5) U.S. Coast Pilot	(1) U.S. Coast Guard Light List. (2) Local Notice to Mariners. (3) Tidal Current Tables. (4) Tide Tables. (5) U.S. Coast Pilot.
Inland Navigation Rules (if the vessel is of 12 meters or more in length).	X	X	X

Notes:
[1] Towing vessels with existing radar must meet this requirement by [Date 2 years after effective date of the rule.]
[2] Towing vessels with existing radar must meet display and stablization requirements by [Date 5 years after effective date of the rule.]
[3] Towing vessels may carry either a swing—meter or a magnetic compass.

§ 164.74 Towline and terminal gear for towing astern.

(a) *Towline.* The owner, master, or operator of each vessel towing astern shall ensure that the strength of each towline is adequate for its intended service, considering at least the following factors:

(1) The size and material of each towline must be—

(i) Appropriate for the horsepower or bollard pull of the vessel;

(ii) Appropriate for the static loads and dynamic loads expected during the intended service;

(iii) Appropriate for the sea conditions expected during the intended service;

(iv) Appropriate for the temperatures of normal stowage and service on board the vessel;

(v) Compatible with associated navigational-safety equipment;

(vi) Appropriate for the likelihood of mechanical damage; and

(vii) Appropriate for exposure to the marine environment and to any chemicals used or carried on board the vessel.

(2) Each towline as rigged must—

(i) Be free of knots;

(ii) Be spliced with a thimble, or have a poured socket at its end; and

(iii) Be free of wire clips except for temporary repair. In the case of temporary repair, the towline must have a thimble and either five wire clips or as many wire clips as the manufacturer specifies for the nominal diameter and construction of the towline, whichever is more.

(3) The condition of each towline must be monitored through the—

(i) Keeping on board the towing vessel or in company files of a record of the towline's initial minimum breaking strength as determined by the manufacturer, by a recognized classification society, or by a tensile test that meets API Specification 9A, Section 3; ASTM D4268–93; or Cordage Institute CIA 3, Standard Test Methods;

(ii) Keeping on board the towing vessel or in company files of a record of each retest of the towline's minimum breaking strength as determined by a recognized classification society or by a tensile test that meets API Specification 9A, Section 3; ASTM D4268–93; or Cordage Institute CIA 3, Standard Test Methods, if the towline is purchased from another owner, master, or operator of a towing vessel with the intent to use it as a towline or if the towline is retested for any reason;

(iii) Conducting of visual inspections of the towline in accordance with the manufacturer's recommendations, or at least monthly, and whenever the serviceability of the towline is in doubt (the inspections must be conducted by the owner, master, or operator, or by a person on whom the owner, master, or operator confers the responsibility to take corrective measures appropriate for the use of the towline);

(iv) Evaluating of the serviceability of the whole towline or any part of the towline, and removing the whole or part from service either as recommended by the manufacturer or a recognized classification society or in accordance with a replacement schedule developed by the owner, master, or operator that accounts for at least the—

(A) Sea miles or time in service of the towline;

(B) Operating conditions experienced by the towline;

(C) History of loading, including any shock loading, of the towline;

(D) Surface condition, including corrosion and discoloration, of the towline;

(E) Amount of visible damage to the towline;

(F) Amount of material deterioration indicated by measurements of diameter and, if applicable, of lay extension of the towline; and

(G) Point at which a tensile test proves the minimum breaking strength of the towline inadequate by the standards of paragraph (a)(1) of this section; and

(v) Keeping on board the towing vessel or in company files of a record of the material condition of the towline when inspected under paragraph (a)(3)(iii) of this section. Once this record lapses for three months or more, except for a vessel that is laid up or out of service or has not deployed its towline, the owner, master, or operator shall retest the towline or remove it from service.

(b) *Terminal gear.* The owner, master, or operator of each vessel towing astern shall ensure that the gear used to control, protect, and connect each towline meets the following criteria:

(1) The material and size of the terminal gear are appropriate for the strength and anticipated loading of the towline and for the environment;

(2) Each connection is secured by at least one nut with at least one cotter pin or other means of preventing its failure;

(3) The lead of the towline is appropriate to prevent sharp bends in the towline from fairlead blocks, chocks, or tackle;

(4) There is provided a method, whether mechanical or non-mechanical, of emergency release for the towline that does not endanger operating personnel;

(5) The towline is protected from abrasion or chafing by chafing gear, lagging, or other means;

(6) Except on board a vessel towing in ice on Western rivers or one using a towline of synthetic or natural fiber, there is fitted a winch that evenly spools and tightly winds the towline; and

(7) If a winch is fitted, there is attached to the main drum a brake that has a holding power appropriate for the horsepower or bollard pull of the towing vessel and can be operated without power to the winch.

§ 164.76 Towline and terminal gear for towing alongside and pushing ahead.

The owner, master, or operator of each vessel towing alongside or pushing ahead shall ensure that the face wires, spring lines, and push gear used are appropriate for the vessel's horsepower, are appropriate for the arrangement of the tow, are frequently inspected, and remain serviceable.

§ 164.78 Navigation underway: towing vessels.

(a) The owner, master, or operator of each vessel towing shall ensure that each person directing and controlling the movement of the vessel—

(1) Understands the arrangement of the tow and the effects of maneuvering on the towing vessel and on the vessel, barge, or object being towed;

(2) Can fix the position of the vessel using installed navigational equipment, external fixed aids to navigation, geographic reference-points, and hydrographic contours;

(3) Does not fix the position of the vessel using buoys alone (Buoys are aids to navigation placed in approximate positions either to alert mariners to hazards to navigation or to indicate the orientation of a channel. They may not maintain exact charted positions, because strong or varying currents, heavy seas, ice, and collisions with vessels can move or sink them or set them adrift. Although they may corroborate a position fixed by other means, they cannot fix a position; however, if no other aids are available, buoys alone may establish an estimated position.);

(4) Evaluates the danger of each closing visual or radar contact;

(5) Knows and applies the variation and deviation where a magnetic compass is fitted and where charts or maps have enough detail to enable this type of correction;

(6) Knows the current speed, current direction, set, drift, and tidal state for the area to be transited; and

(7) Proceeds at a speed prudent for the weather, visibility, traffic density, tow draft, possibility of wake damage, current speed, and local speed-limits.

(b) The owner, master, or operator of each vessel towing shall ensure that the tests and inspections required by § 164.80 are conducted and that the results are entered in the log or other record carried on board.

§ 164.80 Tests and inspections.

(a) The owner, master, or operator of each towing vessel of less than 1600 GT shall ensure that tests and inspections of gear occur before departing from port or at least weekly, to include—

(1) *Steering-systems.* A test of the steering-gear-control system; a test of the main steering gear from the alternative power supply, if installed; a verification of the rudder-angle indicator relative to the actual position of the rudder; and a visual inspection of the steering gear and its linkage;

(2) *Communications.* Operation of all internal vessel-control communications and vessel-control alarms, if installed;

(3) *Lights.* Operation of navigational lights and all searchlights;

(4) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of winch-brake mechanism, if installed; and

(5) *Propulsion systems.* Visual inspection of the spaces for main propulsion machinery, of machinery, and of devices for monitoring machinery.

(b) The owner, master, or operator of each towing vessel of 1600 GT or more shall ensure that tests of equipment occur at the frequency required by § 164.25 and that inspections of gear occur before departing from port or at least weekly, to include—

(1) *Navigational equipment.* Tests of onboard equipment as required by § 164.25; and

(2) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of the winch-brake mechanism, if installed.

§ 164.82 Maintenance, failure, and reporting.

(a) *Maintenance.* The owner, master, or operator of each towing vessel shall

maintain operative, the navigational-safety equipment required by § 164.72.

(b) *Failure.* If any of the navigational-safety equipment required by § 164.72 fails during a voyage, the owner, master, or operator of the towing vessel shall exercise due diligence to repair it at the earliest practicable time. He or she shall enter its failure in the log or other record carried on board. The failure of equipment, in itself, does not constitute a violation of this rule; nor does it constitute unseaworthiness per se; nor does it obligate an owner, master, or operator to moor or anchor the vessel. However, the owner, master, or operator shall consider the state of the equipment—along with such factors as weather, visibility, traffic, and the dictates of good seamanship—in deciding whether it is safe for the vessel to proceed.

(c) *Reporting.* The owner, master, or operator of each towing vessel whose equipment is inoperative or otherwise impaired while the vessel is operating within a Vessel Traffic Service Area shall report the fact as required by 33 CFR 161.124.

(d) *Deviation.* The owner, master, or operator of each towing vessel unable to repair within 96 hours an inoperative marine radar required by § 164.72(a) shall seek from the Captain of the Port both deviation from the requirements of this section and authorization for continued operation in the area to be transited. Failure of redundant navigational-safety equipment, including but not limited to failure of one of two installed radars, where both satisfy § 164.72(a), does not necessitate either deviation or authorization.

(1) The request for deviation must be written, must explain why immediate repair is impracticable, and must state when and by whom the repairs will be made.

(2) The Captain of the Port, upon written request, may, in writing, authorize a deviation from any of the provisions of §§ 164.70 through 164.82 for a specified, limited time if he or she decides that the deviation would not impair the safe navigation of the vessel under anticipated conditions.

Dated: September 26, 1995.

J.A. Creech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

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Friday
November 3, 1995

Part III

Department of Transportation

Coast Guard

33 CFR Part 157
46 CFR Parts 31 and 35
Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

46 CFR Parts 31 and 35

[CGD 91-045]

RIN 2115-AE01

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations that would require the owners, masters, or operators of tank vessels of 5,000 gross tons (GT) or more that do not have double hulls and that carry oil in bulk as cargo to comply with certain operational measures. The proposed regulations contain requirements for bridge resource management training, rest hour minimums, enhanced surveys, maneuvering performance capability requirements, and other measures aimed at reducing the likelihood of an oil discharge from these vessels. Additionally, the Coast Guard proposes to amend requirements for the carriage of onboard emergency lightering equipment. These proposed regulations represent the second step in the Coast Guard's three-step effort to establish structural and operational measures for tank vessels without double hulls as required by the Oil Pollution Act of 1990 (OPA 90).

DATES: Comments must be received on or before February 1, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-045), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble and references for this preamble are available for inspection at room 1312, U.S. Coast Guard Headquarters and have also been included in the public docket.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Standards Evaluation and Development Division, at (202) 267-6490. This number is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-045) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

On January 20, 1994, the Coast Guard held a public meeting on structural and operational measures for tank vessels. The Coast Guard plans no additional public meetings. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If it determines that an additional opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Drafting Information. The principal persons involved in drafting this document are LCDR Suzanne Englebert, Project Manager, and Jacqueline Sullivan, Project Counsel, Office of Chief Counsel.

Regulatory History

Section 4115(b) of the Oil Pollution Act of 1990 (OPA 90) (which appears as a statutory note following 46 U.S.C. 3703a) directs the Coast Guard to develop structural or operational requirements for tank vessels of 5,000 gross tons or more without double hulls to serve as regulations until 2015, when all tank vessels operating in U.S. waters are required to have double hulls under section 4115(a) of OPA 90 (46 U.S.C. 3703a). Regulations issued under the authority of section 4115(b) must provide as substantial protection to the environment as is economically and technologically feasible.

On November 1, 1991, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) (56 FR 56284) which discussed structural and operational measures intended to meet the requirements of section 4115(b) of OPA 90. The ANPRM included a request for data on the technical and economic feasibility of those measures for use on vessels covered by section 4115(b). Eighty-eight comments were received by the close of the extended comment period, which ended on January 30, 1992 (57 FR 1243).

After reviewing the comments, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Structural and Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls" (Existing Vessels) on October 22, 1993 (58 FR 54870). The Coast Guard issued two subsequent correction notices on November 19, 1993 (58 FR 61143), and December 14, 1993 (58 FR 65298), which made technical corrections to the NPRM. In response to several comments received on the NPRM, the Coast Guard published on December 16, 1993, a notice of public meeting and extension of comment period (58 FR 65683).

The Coast Guard held a public meeting on January 20, 1994, to obtain information from the public on the proposed regulations. Topics addressed by speakers included applicability, differences between tank barges and tankships, exemptions, and economic and technical feasibility of the proposed regulations. Some of the basic assumptions of the proposed regulations related to certain structural measures were also discussed, particularly their reliance on Regulation 13G of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Information on the public meeting is available for public review at the address under **ADDRESSES**.

In light of the comments received at the public meeting and in response to the written comments received on the NPRM, the Coast Guard is reviewing the proposed requirements for structural measures. To expedite the implementation of section 4115(b) of OPA 90, the Coast Guard developed a three-pronged approach which

encompassed three separate rulemaking projects. First, the Coast Guard issued a final rule on August 5, 1994, requiring the carriage of emergency lightering equipment and the inclusion of the vessel's International Maritime Organization (IMO) number in the advance notice of arrival report (59 FR 40186); second, it is issuing this supplemental notice of proposed rulemaking (SNPRM) regarding additional operational measures; and third, it is reviewing comments on the NPRM for major structural measures and revising the Regulatory Assessment (RA) before issuing an SNPRM regarding structural requirements for tank vessels. Structural measures that will be addressed in this third step include hydrostatic loading requirements, structural refit of existing hull areas, emergency cargo off-loading capabilities and other structural adaptations or major cargo carrying adjustments.

Background and Purpose

Section 4115 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) mandates regulations to provide improved protection from oil spills from tank vessels in waters subject to the jurisdiction of the United States due to collisions and groundings. This section applies to tank vessels that are constructed or adapted to carry, or that carry oil in bulk as cargo or cargo residue.

The Coast Guard has determined that the applicability of these proposed regulations would reflect section 4115(a) of OPA 90 which requires certain existing tank vessels without double hulls to be phased out of operation by 2015. The Coast Guard rulemaking implementing section 4115(a) entitled "Double Hull Standards for Vessels Carrying Oil in Bulk" (CGD 90-051) (57 FR 36222) added 33 CFR 157.10(d), which establishes the applicability of the regulations. The regulations also apply to certain tank vessels carrying oil in bulk as cargo operating in U.S. waters, including vessels unloading oil as cargo at deepwater ports, lightering in established lightering zones, or lightering more than 60 miles from the territorial sea baseline; they also apply to non-dedicated oil spill response vessels (OSRVs). The Navigation and Inspection Circular (NVIC) 10-94, "Guidance for Determination and Documentation of the Oil Pollution Act of 1990 (OPA 90) Phaseout Schedule for Existing Single Hull Vessel Carrying Oil in Bulk," provides a detailed explanation of the applicability of section 4115(a).

In the preamble to the Existing Tank Vessels NPRM, the Coast Guard proposed to limit the applicability of the rule to "oil tankers" as defined in 33 CFR 157.03(oo) rather than tank vessels as defined in 33 CFR 157.03(v). The NPRM specifically excluded vessels carrying only animal fats and vegetable oils because the proposed structural requirements were believed to be too costly for vessels carrying only non-petroleum oils. Additionally, the exemption was proposed in an effort to be consistent with the international standards of MARPOL 73/78, which also establishes structural measures for certain existing vessels. The Coast Guard has determined that the operational requirements proposed in this SNPRM would be applied to all existing tank vessels, including vessels which carry only non-petroleum oils. The Coast Guard has long contended that a discharge of non-petroleum oils can be as damaging to the environment as a discharge of petroleum oil, especially if spilled in bulk. In 1992, an IMO study entitled "Harmful Effects on Birds of Floating Lipophilic Substances Discharge from Ships On the Plumage of Birds" was published by the Netherlands Institute for Sea Research. This study gives numerous examples of lethal contamination of seabirds by certain non-petroleum oils spilled from ships. This study is available for public inspection at the address under **ADDRESSES**. The Coast Guard also researched the number of tank vessels potentially affected by this proposal and found no tank vessels which are certificated to carry only non-petroleum oils. The Coast Guard requests comments on the impact of this proposed rulemaking on vessels that carry only non-petroleum oils. Comments on the impact of the proposed rulemaking on areas that could be adversely affected by a non-petroleum spill are also requested.

The Coast Guard proposes to revise the applicability of § 157.400 of the Existing Tank Vessels final rule issued on August 5, 1994 (59 FR 40186), which requires oil tankers to carry emergency lightering equipment and report the vessel's IMO number in the advance notice of arrival report. The SNPRM proposes to apply the lightering equipment requirement to all tank vessels. A separate rulemaking proposes to change the reporting requirements of a vessel's IMO number to include vessels 300 gross tons (GT) or more.

To clarify how each of these regulations, both existing and proposed, apply to foreign flag vessels, the Coast Guard proposes to amend the applicability section of 33 CFR part 157. The proposed change would ensure that, to be consistent with international law, the regulations do not apply to foreign flag vessels in innocent passage in U.S. navigable waters, including the territorial sea of the United States, or while operating in the Exclusive Economic Zone (EEZ) unless they are engaging in lightering operations or off-loading oil in bulk at a deepwater port.

This proposal would also require a barge owner to assume additional responsibility for the actions of the towing vessel. Barge operations for loading cargo are generally handled by company representatives or facility personnel. However, navigational control of the tank barge has historically been the responsibility of the towing vessel. Although section 4115(b) of OPA 90 did not specifically recognize the towing vessel's shared role in tank barge operations, the towing vessel's role in the navigation and control of the tank barge must be addressed to reduce accident risk from tank barges. The proposed regulations require the tank barge owner or operator to ensure the towing vessel meets certain standards comparable to those proposed for tankships.

This additional level of control should have a minimal effect on tank barge companies because most tank barge owners or operators also own the towing vessels and employ their crews. For those tank barge companies that rely on leased towing vessels to move their tank barges, these proposed requirements could result in some additional contractual arrangements, additional oversight of the towing vessel companies, or hiring criteria that incorporate these requirements. These measures would ensure that tank barge owners exercise direct control over the manner in which their cargo is transported. This direct oversight is prudent for tank barge owners because in most cases, under section 1002 of OPA 90, tank barge owners are held financially responsible for any removal costs and damages for discharged oil. The Coast Guard is soliciting comments on the extension of certain towing vessel requirements to the tank barge industry.

Discussion of Comments and Changes

Background information on proposals for structural measures for existing vessels without double hulls is provided in the preambles to the ANPRM and the NPRM. Operational measures were discussed in both the ANPRM and the NPRM; however, the NPRM focused on measures to reduce oil outflow after collisions and groundings, not on the mishap risk reduction for these vessels.

The Coast Guard has issued many requirements that could be considered operational in nature. Other regulations mandated by OPA 90 affect the marine industry, especially the tank vessel fleet. To address the most common hazardous operational deficiencies on tank vessels today, the Coast Guard has conducted a qualitative evaluation of the tank vessel operating system. Previous studies of this type include (1) "Research Needs to Reduce Maritime Collisions, Rammings, and Groundings" by the Maritime Transportation Research Board (1981); (2) "Development and Assessment of Measures to Reduce Accidental Oil Outflow from Tank Ships" by the Coast Guard (May 1989); and (3) "Human Error in Merchant Marine Safety" by the Maritime Transportation Research Board (1976). These studies along with other risk analysis literature formed the baseline for the "fault trees" depicted in the following figures:

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Figure 1: Operational Measures — Overall Analysis Methodology

Figure 2: Coarse Qualitative Model of Existing System

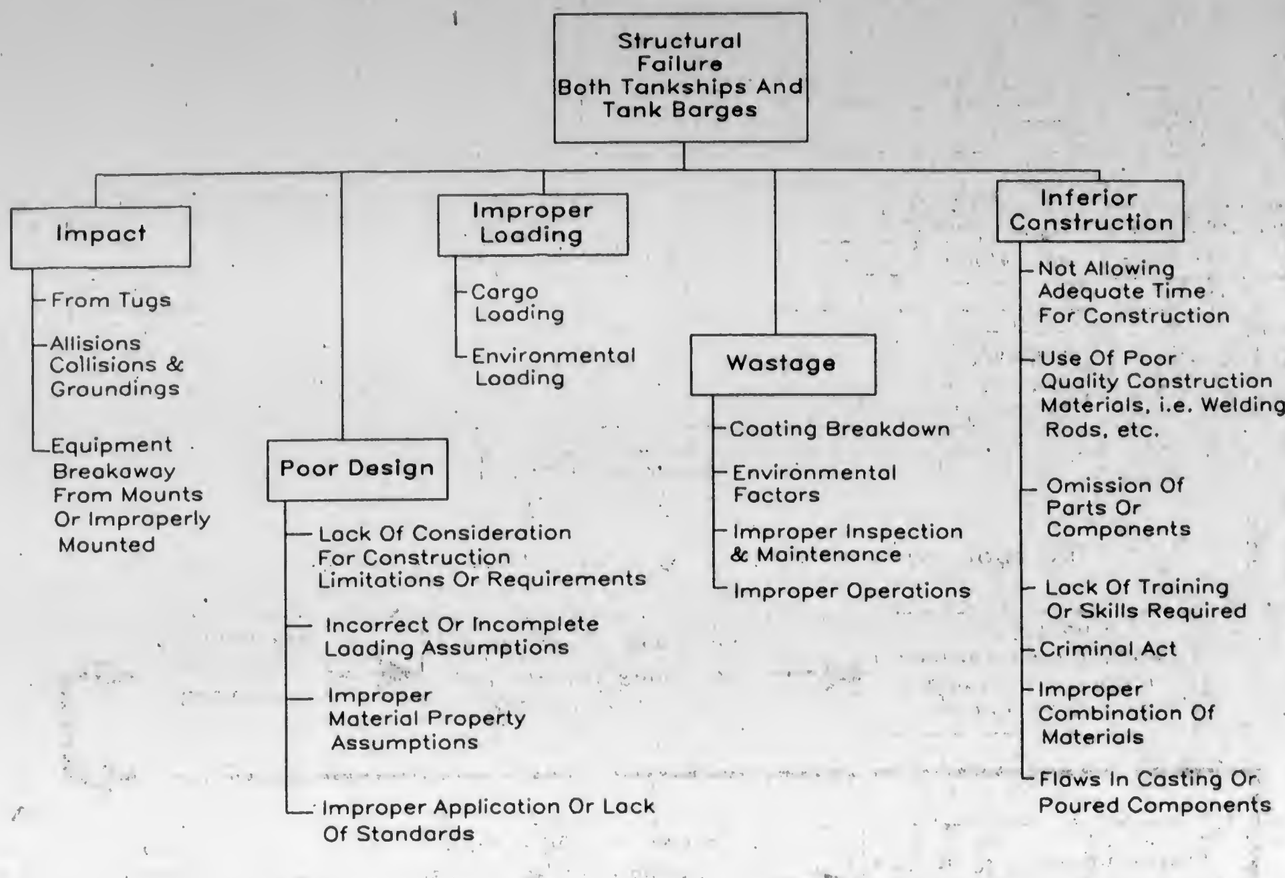


Figure 3: Structural Qualitative Model With Components

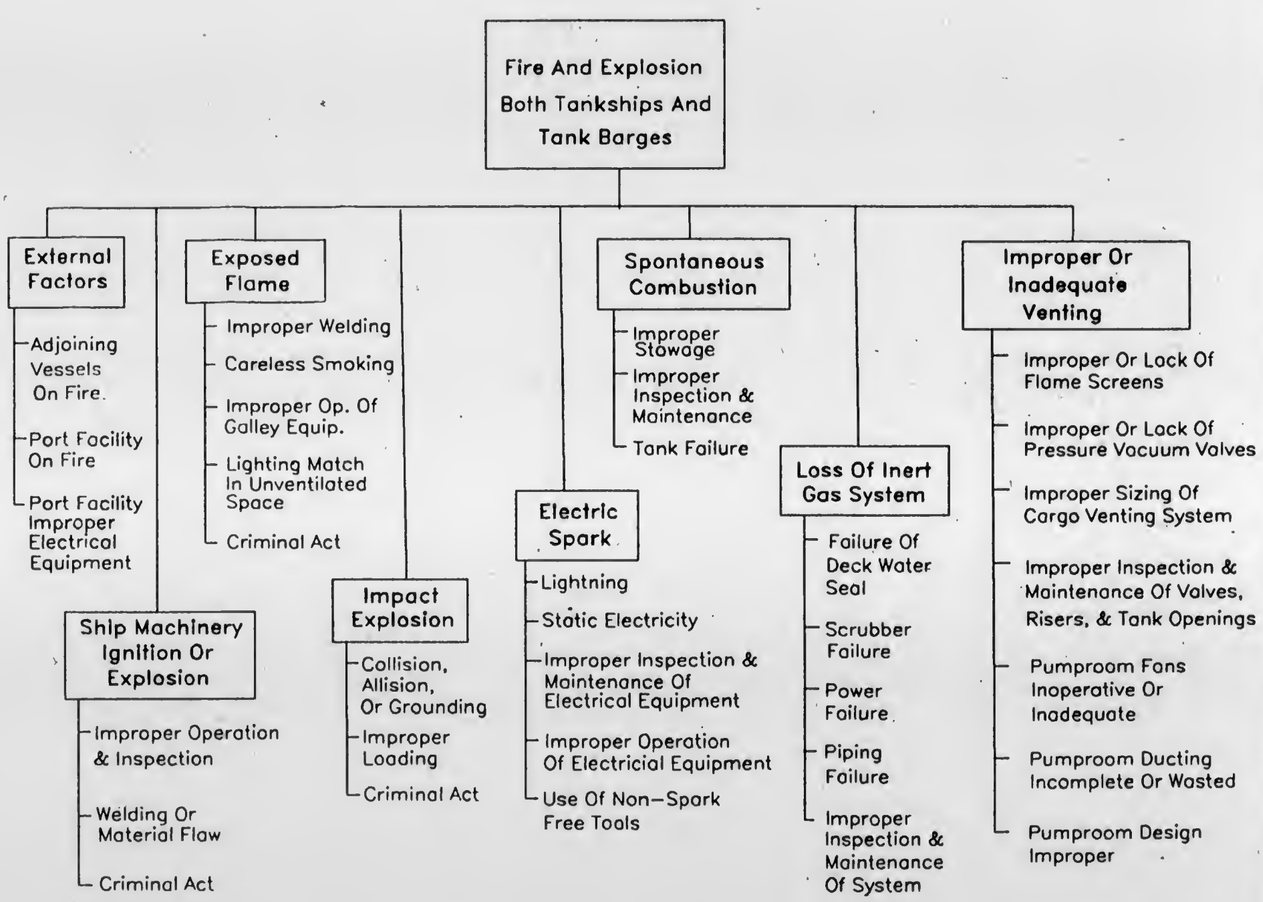


Figure 4: Fire And Explosion Qualitative Model With Components

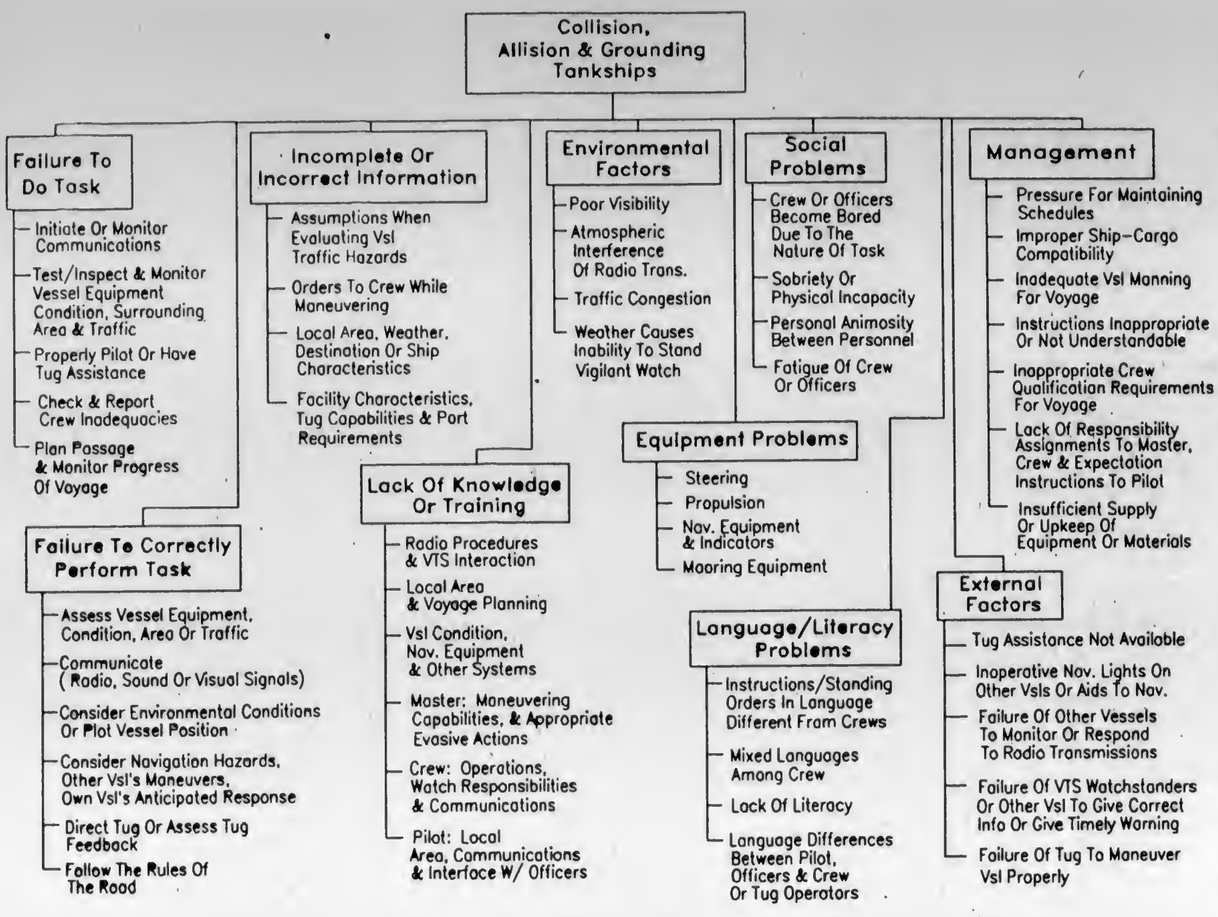


Figure 5: Tankship Qualitative Model With Components

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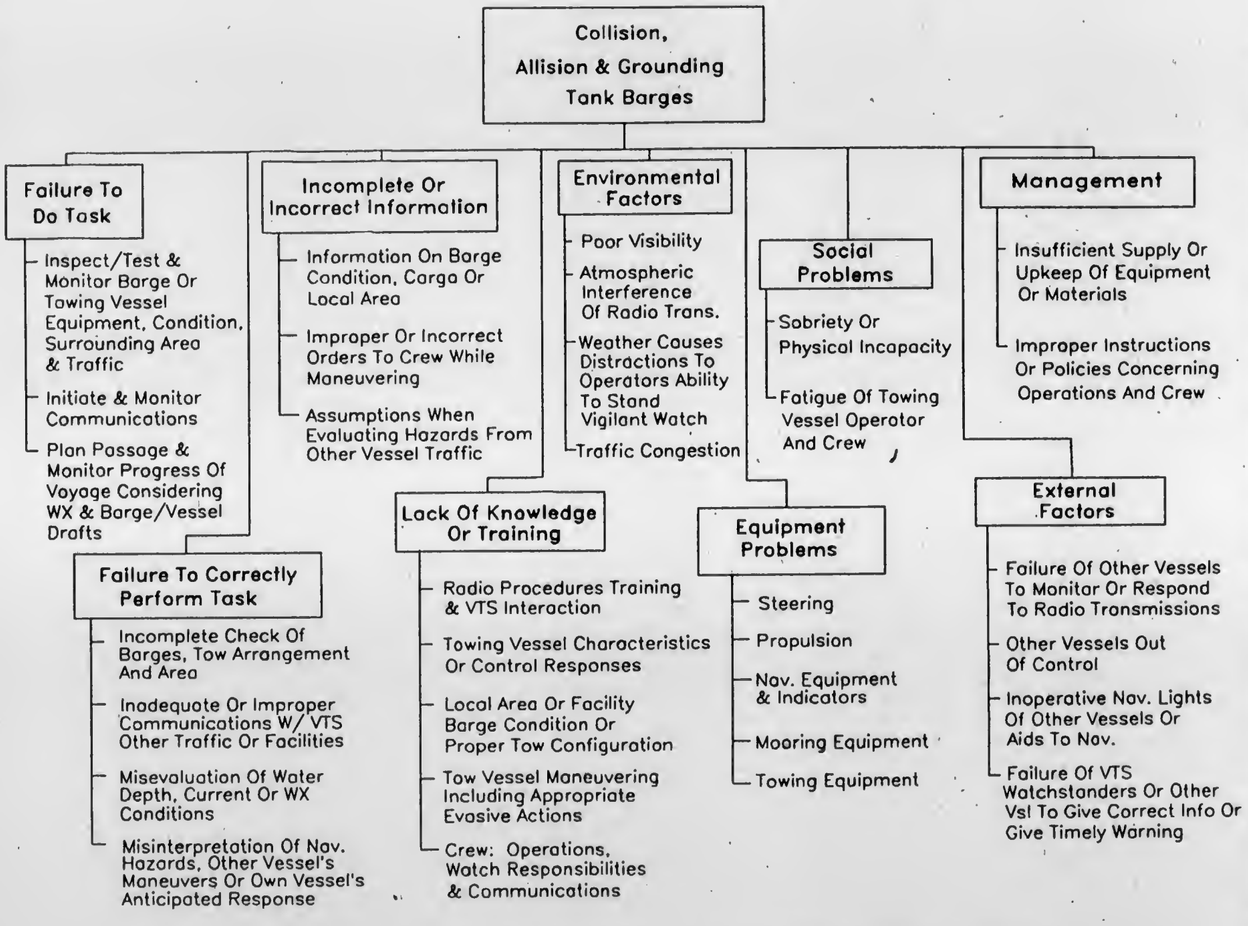


Figure 6: Tank Barge Qualitative Model With Components

Figure 1 shows how a qualitative evaluation of a marine system can identify effective improvements for existing or proposed regulations. Figure 2 identifies the general pollution hazard created by tank vessels. The scope of this analysis was further narrowed to those areas where a tank vessel without a double hull may pose a higher risk than other vessels or to areas where inconsistencies exist between requirements for U.S. domestic vessels and foreign certificated vessels. The Coast Guard developed detailed qualitative models for structural and fire or explosion accidents because the majority of the existing tank vessel fleet is older and not required to conform to many of the recent safety regulations. Collisions, allisions, and groundings were considered because of the oil spill potential of these incidents. The operational spill segment of the fault tree in Figure 2 and the terminal operations portion are only included in this analysis in areas where present regulations do not hold U.S. and foreign vessels to comparable standards. Figures 3 through 6 display the detailed qualitative models and associated high risk components within each identified hazard.

This type of analysis contains a subjective element. The Coast Guard has drawn from the knowledge of its experienced inspectors and licensed mariners to develop the fault trees identified in Figures 3–6. These fault trees are not meant to be comprehensive, instead they are used to clarify further discussion within this proposed regulation by identifying major operational causes of oil discharges and the measures that could potentially mitigate these causes from a tank vessel without a double hull.

As an example of this process, 33 CFR 164.35(g) requires all ships of 1,600 GT or more to post a list in the wheelhouse which identifies the vessel's general maneuvering characteristics. This requirement mitigates problems arising from "lack of knowledge" which may cause a collision, allision, or grounding as identified in Figure 5. In analyzing this requirement's effectiveness to mitigate this "lack of knowledge" component, it becomes clear that the requirement may not be as effective as it could be. A discussion of this issue can be found in a recent "Marine Technology" paper entitled "Maneuvering Information for the Pilot/Navigator: Its Source Value and Limitations," written by Mr. Thomas G. Knierim (Vol 31, No. 2, April 1994, pp. 123–144).

The Coast Guard received a total of 132 comments on the Existing Vessel NPRM. Thirty of these comments discussed over 70 issues relating to operational measures. The following discussion is divided into seven categories: (1) General comments which address broad issues and the general content of the NPRM; (2) comments on proposed revisions to emergency lightering equipment requirements in 33 CFR 157.410; (3) comments on personnel training and information (see the fault-tree components of Figures 5 and 6 which address failure to perform a task, failure to correctly perform a task, and lack of knowledge or training); (4) comments on vessel maintenance surveys (see the components of Figures 3 through 6 for equipment failure, hull structural failure, or failure due to explosion); (5) comments on navigation and maneuverability (see the components of Figures 5 and 6 involving a lack of knowledge, training, or the use of incorrect information); (6) comments on requirements for the control and movement of tank barges (see the components of Figure 6 related to towing vessel operations and equipment); (7) comments on operational measures that are not addressed elsewhere in this SNPRM.

1. General

Several comments expressed concern that the proposed regulations do not reflect congressional intent. The comments stated that the NPRM improperly emphasized structural measures without adequate regard for operational measures which could have an equal or greater benefit for the environment at less cost. They also stated that the failure to assess significant regulatory alternatives violates the statutory mandate of OPA 90 and the requirements of Executive Order 12866. This SNPRM proposes operational measures that meet both the statutory mandate of OPA 90 and the mandate of the Executive Order.

Some of the comments stated that the requirements proposed in the NPRM would not satisfy the statutory mandate to provide "as substantial protection to the environment as is economically and technologically feasible" as required by section 4115(b) of OPA 90. One comment stated that operational measures would do more to protect the environment because 80 percent of all oil pollution is caused by human error, not by structural malfunctions. Several comments indicated that the operational measures could be implemented more quickly than structural measures. Many comments stressed the need for operational measures to prevent collisions or groundings, rather than structural requirements to reduce oil outflow after a vessel collision or grounding.

This SNPRM proposes operational measures for both foreign and U.S. vessels that should improve the overall quality of tank vessel operations. Rulemakings complementing this effort propose navigation equipment for towing vessels and towing vessel operating license changes.

One comment suggested that vessel owners should be able to choose from a list of measures that, when used together, would equal a specified level of protection. This would require that each operational measure be assigned a credit based upon additional prevention or decreased oil outflow.

The Coast Guard considered various ways of allotting credits and developing a minimum level of protection. This concept did not address the different objectives of each proposed requirement. For example, how could a requirement for the pilot to plan a passage, intended to reduce the risk of a collision, allision, or grounding (Figure 5), be quantified in relation to a maintenance program intended to reduce the risk of a structural failure (Figure 3)? Blurring the lines between failure modes and risk components would not achieve equitable risk reduction among affected tank vessels. An "a la carte" idea was also researched to compare each failure mode with a list of possible risk reduction measures. Equivalencies between each measure could not be determined because, even among the components, an accurate quantitative assessment method was not available.

Instead, the Coast Guard evaluated these operational measures in terms of the failure mode which they address, whether vessel personnel, navigation, or maintenance practices. The Coast Guard is proposing minimum training requirements to address vessel personnel, information requirements and minimum equipment and tests to address navigation and maneuvering problems, and survey and physical prevention measures to address the integrity of the vessel's structure. Where the same risk component is addressed, within each measure, some equivalency determinations are provided to allow individual companies or vessels to tailor requirements to their operational needs. The proposed measures consider both the technical and economical feasibility mandates of the statute.

Other comments recommended that the Coast Guard strictly enforce its current pollution prevention regulations. The Coast Guard enforces the requirements of both international and domestic law. Additional

enforcement measures have been established and implemented that include the increased scrutiny of certain vessels that consistently violate laws or have a history of casualties. Until the effectiveness of these recent enforcement measures has been assessed, the Coast Guard does not intend to propose additional measures.

One comment requested that Canadian or other foreign flag vessels passing through the St. Lawrence Seaway in route to a Canadian port be exempt from these proposals. The comment estimated that the true cost of the proposals would be four to five times those quoted by the Coast Guard. Another comment requested that tankers calling at deepwater ports, where there are already various operational measures in effect, be exempted. One comment requested exemption for vessels which lighter 60 miles offshore and for those that call at the Louisiana. Offshore Oil Port (LOOP) because section 3703a of title 46 of the United States Code does not apply to them. As previously discussed, these vessels do have phaseout requirements and are subject to the provisions in section 4115(b). The Coast Guard has determined that the proposed operational measures are appropriate and do not conflict with St. Lawrence Seaway or LOOP operations.

One company requested that asphalt carriers be exempted from the proposed rule; the Coast Guard does not agree. Asphalt is a petroleum-based cargo and the requirements contained in this portion of the rulemaking present no unique difficulties for an asphalt carrier.

Two comments requested that vessels transporting oil to American Samoa be exempted because of the remoteness of the islands and the fragility of the economy. Both comments stated that vessels calling there satisfy international requirements and will have no incentive to incur the additional cost these rules would impose. One of these comments contended that if this regulation were applied to these vessels, the supply of crude oil and petroleum products to American Samoa would be in jeopardy and the cost of fuel would rise. The other comment specifically requested that vessels transporting oil to the Pacific Islands be exempt from the requirements of the proposed rule that exceed the requirements of Regulation 13G of MARPOL 73/78. This would include the Hawaiian Islands, American Samoa, Guam, the commonwealth of the Northern Mariana Islands, and other U.S. possessions in the Western Pacific. The comment stated that the small number of foreign tanker operators willing to comply with the regulation, coupled with the limited U.S. flag product tanker fleet, will severely limit the supply of essential petroleum products to the Pacific Islands.

The Coast Guard believes that the operational requirements contained in this rulemaking are economically feasible for vessels transporting oil to all of these areas. Equivalency provisions offer flexibility in compliance with certain requirements. Incorporated international standards accommodate both the foreign and domestic industry. The Coast Guard requests comments on the impact of this proposed rulemaking on vessels transporting oil to specific remote geographic areas like American Samoa and other Pacific Islands. Comments on the impact of the proposed rulemaking on areas that are economically dependent on tourism or fishing are also requested.

2. Emergency Lightering Requirements

The Coast Guard is proposing revisions to requirements for emergency lightering equipment published in a final rule on August 5, 1994, (59 FR 40186) entitled "Emergency Ligthering Equipment and Advanced Notice of Arrival Requirements for Existing Tank Vessels Without Double Hulls." Section 157.410(c) of the final rule referenced the requirements of 46 CFR part 56.25 for cast iron and malleable iron fittings and flanges. Cast iron and malleable iron have very high failure rates in cargo piping systems due to their low cycle fatigue susceptibility and tendency to weaken when subjected to high temperatures. To ensure that these fittings are not installed in piping lines carrying flammable or combustible fluids near open flame, or any parts reaching temperatures above 260°C (500°F), this SNPRM proposes to amend § 157.410(c) to specifically prohibit the use of such valves or fittings.

3. Personnel Training and Information

Data attributes 80 percent of marine accidents to some form of human error. Human factors are broadly defined as a scientific and engineering discipline concerned with analysis, research, design development, and evaluation of human/human, human/machine, human/information and human/environment interfaces. Human factors issues include any condition or circumstance which affects the quality of human performance required to accomplish a complex task or series of tasks safely and effectively. As related to vessel navigation, this applies to four general subjects: error trapping or human intervention, task or mission coordination, team communication, and vessel integration. Error trapping or human intervention is responsible for "near misses" as discussed in the report entitled "The Role of Human Error in Design, Construction, and Reliability of Marine Structures" published by the Ship Structure Committee (SSC–378, November 1994). Error trapping occurs when humans intervene to interrupt potentially catastrophic combinations of actions and events to bring systems back to within safe operating conditions. This SNPRM emphasizes human factors issues which would reduce the risk of accidents caused by ship personnel: failing to perform tasks, incorrectly performing tasks, lacking knowledge or training to perform assigned tasks, using incomplete or incorrect information, and failing to identify or correct social or managerial problems.

Because the prevention of accidents through improving the people involved in the system is an effective way to reduce risk within the marine industry, the Coast Guard established a task group on January 13, 1995 (60 FR 3289), formed by the Chief, Office of Marine Safety, Security and Environmental Protection to develop a long-term strategy to focus prevention efforts on casualties caused by human error. The Coast Guard's Prevention Through People (PTP) initiative has established a framework by which the Coast Guard, other government agencies, and the maritime industry, nationally and internationally, can work together outside of the regulatory process to manage maritime risks systematically. The task force report entitled "Prevention Through People" stresses the use of risk management tools to identify root causes and cost effective preventive measures; the employment of proactive action to detect, assess, and prevent human errors that affect safety; and improvement of investigative methods, data collection, analyses, and feedback. This report is available for public inspection at the address under **ADDRESSES.**

Training. The Coast Guard received several comments on improving personnel training. Six comments stated that additional personnel training was needed to ensure the competency of the crew. One of these comments urged the Coast Guard to require specific in-house training. Another of these comments suggested that drug and alcohol testing and awareness training be required.

Proposed §§ 157.415 and 157.420 include training requirements and performance standards to ensure the development and retention of certain skills. Drug and alcohol testing program requirements already exist and are applicable to the crews of tank vessels. For this SNPRM, existing drug and

alcohol requirements were considered. The Coast Guard has determined that additional requirements are not needed for drug and alcohol testing or awareness training at this time. The Coast Guard, however, commends companies with programs that exceed Federal requirements.

Three comments stated that bridge management training, including simulator training, would improve the competency of the crew. They recommended that vessels carry a bridge management manual which codifies the company's standards, practices, policies, and procedures.

Two different risk reduction solutions were proposed by the comments. The first solution addressed additional training requirements for improving crew navigational skills or development of management skills for the bridge crew. The second solution pertained to developing extensive operational procedures for various shipboard operations and navigational situations. Both risk reduction solutions address the lack of knowledge and the management components noted in Figure 5.

Company management generally develops various operational procedures in the form of bridge reference material. The crew is then expected to review the material and refer to it, if time permits, prior to acting in an emergency or a unique situation. Several sections of OPA 90 contain extensive planning requirements for emergency situations (i.e., the Vessel Response Plan requirement in 33 CFR part 155.) In contrast to these written procedures, recently developed team training techniques focus on the operation of the bridge team during both normal and emergency situations. This type of training is an example of reducing the risk of a marine casualty through improving the response of the people directly involved with the system.

The Coast Guard has proposed general bridge management training requirements to the Standards of Training and Watchkeeping (STW) Subcommittee of the International Maritime Organization (IMO) since 1991. However, the STW Subcommittee has not yet developed a training standard. The Coast Guard consider such training desirable for the crews of all vessels. This rulemaking may serve as the precedent for future regulations addressing the reduction of accident risk due to human error through team management training programs.

The bridge resource management (BRM) training proposed in § 157.415 of this SNPRM is similar to the techniques and practices that have been used in the aviation field. BRM is not intended to teach the more "traditional" aspects of bridge watchstanding (i.e., navigation, shiphandling, and collision avoidance); rather, it focuses on integrating "traditional" technical skills with human factors skills to reduce the risk of human error-related accidents. These concepts reflect an emphasis on effective communication among watchstanders; the proper delegation of tasks and responsibilities; the importance of using all available resources (equipment, information, and personnel); and the need for watchstanders to understand the way stress and fatigue affect their performance.

The Coast Guard seeks uniform curriculum requirements for both U.S. and foreign licensed officers, and is presently working within IMO to develop these requirements. If IMO develops and adopts a resolution or other instrument that includes BRM skills and course curriculum, the Coast Guard intends to substitute, incorporate by reference or propose rules which reflect these international standards. In the interim, a general course curriculum was developed based on review of various existing courses used to train pilots, masters, mates, and military personnel. The Coast Guard proposes this general curriculum to ensure that the training courses emphasize open team communications, task coordination, and the integration of operations. Specific course length and a requirement for simulator training have not been included. The following references were used to develop the general course curriculum proposed in this rulemaking:

(1) IMO Guidelines "Human Relationships, 1.21" and "Ship Simulator and Bridge Teamwork, 1.22";

(2) American Petroleum Institute's "Guidelines for Developing Bridge Management Teams";

(3) U.S. proposal papers for both the Standards, Training and Watchkeeping Subcommittee (STW 25/3/14, STW 26/4/13) and the Safety of Navigation Subcommittee (NAV 38/13);

(4) Presentation on "Bridge Resource Management" by Mr. Richard T. Johnson, et al. (Society of Naval Architects and Marine Engineers Panel 0–44), to the International Conference on Marine Simulation and Ship Manoeuvrability (MARSIM 93), Saint John, Newfoundland, Canada, September 1993;

(5) SAS Flight Academy's course curriculum for its "Bridge Resource Management" course;

(6) ARCO Marine's Bridge Team Management Training course curriculum utilizing SimShip and the Star 360° simulator; and

(7) The Coast Guard's student handbook for its course on "Team Coordination Training."

The training proposed in § 157.415 would be required for designated officers in charge of a navigational watch serving on either tankships and towing vessels. The Towing Safety Advisory Committee (TSAC) recommended that this type of training be required for towing vessel personnel as well as tankship personnel because it is an effective means of preventing accidents. Thus, an example of the personnel affected by § 157.415 would be the master, chief mate, one second mate, and the two third mates (a typical tankship officer complement) or the master and two mates (a towing vessel's officer complement). These individuals would be required to attend the initial BRM training and refresher training no less than once every 5 years. Initial course completion including a series of performance standards and course completion documentation is proposed in § 157.415 to verify that a vessel's officers have been adequately trained. The 5-year refresher training would coincide with present license renewal requirements. For U.S. licensed individuals, a rulemaking to propose requirements for this training and provisions for an endorsement directly onto the license is under development.

The Coast Guard recognizes that vessel owners, masters, or operators would be required to research course availability and to establish training programs to comply with the proposed bridge resource management training requirements. Therefore, in § 157.415(a) the Coast Guard is proposing that compliance with these requirements would not be required until 1 year after the effective date of the final rule. In addition, the Coast Guard recognizes that a substantial pool of merchant mariners already have received comparable BRM training and is proposing that these individuals be credited for the completion of this training if it has occurred within 3 years of the effective date of the final rule.

A more aggressive measure to address the entire crew and their interaction with the vessel operations is "Vessel Resource Management" training. This training course would apply to engine room personnel as well as other personnel assigned to the vessel. The integration of support services, bridge functions, engine room functions, maintenance, and communications with facilities or company management would be covered by this training. The Coast Guard recognizes the value of this training and solicits comments on whether this type of comprehensive training should be required or recommended.

Training of unlicensed watchstanding personnel is also imperative. The Coast Guard is proposing vessel specific watch training for those watchstanding personnel who assist the officer in charge of a navigational watch. TSAC also recommended that this training requirement be applied to towing vessel personnel. This training would ensure that unlicensed watchstanders receive training tailored to management expectations and the equipment on board either the tankship or the primary towing vessel, prior to taking on watchstanding duties. General subjects for training are listed in § 157.420(a) to ensure watchstanders receive instruction on essential items that would enable them to provide accurate and useful information to the officer in charge of a navigational watch or other senior personnel. To ensure this training remains current and to account for personnel changes or equipment upgrades, an annual refresher of this watchstanding training is proposed.

The Coast Guard has included a proposed definition for the term "officer in charge of a navigational watch" to clarify which personnel would be required to complete the bridge resource management training. This term would also provide consistency with the terminology of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). The proposed definitions for "primary towing vessel" and for "fleeting or assist towing vessel" would clarify that personnel on the towing vessel responsible for the navigation and control of the tank barge during most of the voyage would be required to have bridge resource management training, vessel specific watch training, and certain other requirements proposed in this rulemaking. This distinction is made because (1) during assist towing operations, the towing vessel personnel that made the transit with the barge (the primary towing vessel) generally stay on site and direct the mooring or anchoring operation; (2) in most cases, the tank barge company has management control over the primary towing vessel and its personnel because they directly own the vessel and employ its crew; and (3) this would ensure integrated tug barge operations are included in the rulemaking.

Pilot Licensing Programs. Three comments suggested improvements to the pilot licensing process. One comment recommended more aggressive pilot licensing and revocation procedures and the adoption of more rigorous penalty standards. Another comment recommended a comprehensive review of mariner licensing standards and more rigorous enforcement of current regulations such as background checks; one recommended checking the National Drivers Register (NDR) before issuing a license.

A separate NPRM published on March 13, 1995 (60 FR 13570), proposed the incorporation of an NDR check prior to issuing a license. A licensing study is underway and revisions to current requirements are anticipated. In conjunction with the licensing study, a 1994 National Research Council Committee on Advances in Navigation and Piloting report entitled "Minding the Helm" (ISBN 0–309–04829–X) discusses and recommends several actions that could be taken by the Coast Guard to improve marine navigation and piloting. The Coast Guard is presently reviewing this report and anticipates future rulemakings to implement some of the recommendations.

Minimum Rest Hour Requirement. Another component of the accident hazards, shown in Figures 4, 5, and 6, deals with fatigue. Current work hour restrictions and rest hour requirements attempt to mitigate the risk of accidents. The Coast Guard evaluated existing requirements and proposes to expand the rest hour requirement for both foreign and U.S. crew members with duties directly related to vessel safety and oil transfer operations.

Proposed § 157.425 would require the owner, master, or operator of each tank vessel to ensure crew members involved in navigation, engineering, or oil transfer operations are provided a minimum of 6 continuous hours of rest within 12 hours prior to departing port or prior to cargo transfer operations. Because the operation and safe navigation of the tank barge hinges on the actions of the towing vessel personnel, tank barge owners would have to ensure that the towing vessel master or operator, any crew member assigned to helm or lookout tasks, as well as any personnel assigned tankerman duties for the barge cargo complied with these requirements. For tank barge companies that do not directly own the towing vessel or employ its crew, this requirement could be met by management oversight of the towing vessel company, a contractual agreement, or by towing vessel hiring practices.

A definition for "rest hour" is proposed to be added to § 157.03. This term is borrowed from STCW. Watchstanding, assigned clerical duties, assigned painting, maintenance, or housekeeping duties all fall within a crewman's typical daily work load. A rest hour is that period during which a crew member has no assigned tasks. A rest hour, however, does include the time spent on drills or during an emergency situation. The Coast Guard also recognizes travel to a work site is not addressed in this proposal. The intention of this proposal is to ensure that well rested individuals are assigned to tasks that are important to vessel operations. Travel can have a negative effect on an individual's alertness; however, some commute time to the job site is standard for every profession. The Coast Guard is soliciting comments on when and how travel time should be factored into a rest hour requirement.

The Coast Guard recognizes the benefit of adequate rest for all mariners and is working within the IMO framework to establish an international standard. If IMO develops and adopts a resolution or other instrument that includes provisions for rest, the Coast Guard intends to substitute, incorporate by reference, or propose rules which reflect these international standards. The Coast Guard is also considering the incorporation of the more stringent work hour and rest hour requirements found in section 4114 of OPA 90 to include foreign tankships and other tank vessels. These work hour requirements have been included in the Designation of Lightering Zones Final Rule published on August 29, 1995 (60 FR 45006). The Coast Guard is soliciting comments on the feasibility of expanding application of the work hour and rest hour restrictions of section 4114 or the adoption of similar IMO provisions, under the authority of section 4115(b) of OPA 90.

4. Vessel Maintenance Surveys

Figure 3 depicts the qualitative evaluation of a structural failure hazard to a tank vessel. These types of hazards have been reduced in the past through drydock examinations, classification society requirements, and construction requirements such as the welding qualifications of 46 CFR part 57. The Coast Guard analyzed past requirements addressing structural failures and equipment failures as indicated in Figures 5 and 6. More significantly, because these vessels have been scheduled for a mandatory phase-out, it is suspected that the human factors issues related to management's reluctance to sufficiently supply or upkeep the vessel, and the vessel operator's failure to inspect or test the

tank vessel equipment may become more frequent. Vessel owners or operators may begin to weigh the maintenance investment against the short-lived return and could down-scale vessel upkeep accordingly. The Coast Guard recognizes this possibility and has evaluated existing requirements that would ensure vessel structure and equipment remain in safe operating condition. This analysis indicated that some additional measures could reduce the risk of a structural or equipment failure, and the risk of a collision, allision, or grounding due to equipment or upkeep problems.

The Coast Guard received several comments on improved maintenance aboard vessels. Three comments suggested that the Coast Guard require internal audits of vessel operations, equipment, and personnel for compliance with all applicable regulations and company standards. One comment recommended preventive maintenance programs on ships; another suggested formal in-house ship inspection programs.

In §§ 157.430 and 157.435, the Coast Guard is proposing a two-step approach to ensuring existing tank vessels are maintained at a level that will reduce the risk of a structural or equipment failure. Under this proposal, tankships, integrated tug barges, and tank barges would be required to (1) have an enhanced survey or an enhanced survey equivalent, and (2) conduct frequent vital system surveys.

Enhanced Surveys. Proposed § 157.430(a) would require an enhanced survey for all tank vessels of 5,000 GT or more as detailed in IMO Resolution A.744(18), entitled "Guidelines on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers." To prevent the need for additional drydockings, the requirement would reflect either the frequency of the U.S. scheduled drydock exam requirements in 46 CFR part 31 or that of a foreign vessel's flag administration. This requirement already exists under the International Convention for the Prevention of Pollution from Ships, 1973 and the related amendment to Annex I of MARPOL 73/78; however, the U.S. has expanded the scope of this requirement to include tank vessels of 5,000 GT or more that do not have double hulls. This survey requires detailed visual inspection as well as specific gauging. This survey should reduce the risk of both a global and local structural failure by closely recording and inspecting the hull prior to the vessel's phaseout date. It would also ensure that a detailed survey of the cargo piping and hull are available for Coast Guard examination. This would enable the Coast Guard to affirm that vessel upkeep is adequate for safe operation.

Alternate Enhanced Surveys. To allow companies flexibility and credit for existing in-house survey programs, tankships not required to meet Annex I of MARPOL 73/78 and all tank barges would have the option of meeting an equivalent standard. This provision is proposed in § 157.430(b) and would allow companies with established in-house survey programs to simply upgrade them slightly and include oversight provisions.

The Coast Guard anticipates that many tank barge owners and small tankship owners already have preventive maintenance programs that include routine hull gaugings, pipe gaugings, and inspections beyond current Coast Guard requirements. These programs provide company management personnel with material condition documentation necessary for long-range company planning of vessel replacement or overhaul scheduling. Proposed § 157.430(b) would permit the company to follow its own program rather than start an entirely new process if the company can document that the present survey process is comparable in scope and recordkeeping to the IMO requirements. In addition, this section would require oversight of these programs to ensure that the vessel is adequately surveyed until it is phased out of service. Review of the gauging and inspection analysis would provide clear assessment of the vessel's structural soundness. The enhanced survey or preventive maintenance program reports would be required to be retained on board or made available within 24 hours to enable Coast Guard personnel to readily assess the vessel's suitability for service and also to assist in any emergency cargo transfer operations or emergency repairs.

Vital Systems Surveys. While an enhanced survey reduces the risk of both catastrophic and local hull failure, it does not directly address risk of equipment failure or the risk of a fire or an explosion. Figures 3 through 6 indicate certain mechanical or equipment failures which may contribute to or cause these types of accidents. The Coast Guard researched the present inspection and regulatory requirements in effect for each system. Many of these systems are inspected annually by either flag or port administrations. However, while 33 CFR 164.25 requires some tests and inspections, it does not detail some of the systems unique to tank vessels. While most companies already have routine equipment maintenance and inspection programs, several systems are overlooked or not included in these programs.

In § 157.435, the Coast Guard is proposing more frequent surveys of systems deemed vital to the safe transfer of cargo, fire and explosion risk reduction, and maintaining navigational control. To ensure these systems get the maintenance they need to remain safe, these inspections would be conducted by vessel personnel, company personnel, or company designated representatives that are knowledgeable of the equipment's safe operating parameters and that have the authority, capability, and responsibility to initiate corrective action when equipment is not functioning properly. Because tank barge systems require similar vigilance to ensure they remain safe, tank barge owners, masters, or operators would be included in this requirement and would have a responsibility to ensure the barge systems outlined in proposed § 157.435 are surveyed by the appropriate personnel.

Those systems related to vessel control, such as steering and navigational equipment, are presently required to be tested and inspected as specified in 33 CFR part 164 if the vessel is 1,600 GT or more. For towing vessels, the Coast Guard recently proposed similar control and navigational equipment checks. However, the inspection of the emergency towing equipment required in the IFR published December 22, 1993 (58 FR 67988), is not covered in 33 CFR part 164. This emergency towing equipment is generally located on the vessel's deck and is required to be rigged for ready use. This towing equipment along with mooring lines and similar equipment are included as a vital system survey because of their exposure to prolonged adverse environmental conditions and their infrequent use. The Coast Guard solicits comments on these vital systems survey requirements. The Coast Guard specifically requests comment on whether additional systems should be surveyed to prevent equipment failure, which could lead to an oil spill, fire, or an explosion during cargo transfer operations, and whether specific emergency systems should be inspected more frequently than proposed or required.

This proposal also would require the inspection findings to be logged in the Oil Record Book required by 33 CFR 151, in the vessel's log, or other similar onboard documentation to ensure that the master or operator is aware of the condition of these vital systems.

No reporting requirements are proposed in § 157.435; however, there are existing port specific reporting requirements or port entry restrictions that would remain in effect if this proposal became a final rule. The Coast Guard solicits comments on reporting requirements for the failure of specific components within the proposed vital systems.

5. Navigation and Maneuverability

Improved navigation equipment and maneuvering systems would mitigate the risk of a collision, allision, or grounding attributable to lack of knowledge or reliance on incomplete or incorrect data. These two components within Figure 5 and 6 can be effectively addressed in various ways. Present regulations reflect highly technical navigation equipment requirements for tank vessels in 33 CFR part 164. This navigation equipment is being improved almost daily as computing systems and programming capabilities increase. Human error in reading the equipment or interpreting the data is also addressed within present requirements through radar operator endorsement requirements and other licensing requirements. The risk of an accident due to navigation equipment failure is also mitigated by the reporting requirements of 33 CFR parts 160 (Ports and Waterways Safety) and 164 (Navigation). Maneuvering systems are addressed in present requirements for information about the vessel's maneuvering characteristics and reliability of the vessel's control systems.

Autopilot Alarm. One comment stated that vessels should be equipped with an alarm that sounds when the helm is turned more than 5° from amidships while the autopilot is engaged.

The Coast Guard agrees with this practical and simple alarm requirement and in § 157.440(a) is proposing a requirement for an additional alarm on all tankships with installed autopilot equipment. As recommended by TSAC, a tank barge owner or operator would be required to ensure that the towing vessel has a means to indicate to the towing vessel operator that the autopilot is engaged and manual rudder commands would not be effective unless the autopilot is shut off. Because a towing vessel wheelhouse is generally arranged for a single operator and the autopilot system is simplistic, a physical indicator to remind the master or operator that the autopilot is engaged would serve as adequate warning. On tankships, there are multiple watchstanders, frequent duty rotations, and complex autopilot systems that make it easier to lose track of the autopilot status. An alarm requirement on a tankship would ensure both the officer in charge of a navigational watch and the helmsman are aware of the autopilot status.

Accident data indicates that there have been incidents when bridge crew personnel were unaware of the autopilot status and attempted to manually steer the vessel while the autopilot was engaged. In some instances their actions did not result in the desired change to the ship's heading or rudder angle due to the autopilot settings. The requirements proposed under § 157.440 would be in addition to requirements in 33 CFR 164.13 which restrict the use of an autopilot on tank vessels of 1,600 GT or more in certain areas and under certain conditions. These two requirements would not conflict because 33 CFR part 164 restricts the use of the autopilot, while this proposal would alert the tankship officer in charge of a navigational watch and the helmsman if the helm is turned manually while the autopilot is engaged. The Coast Guard is soliciting comments on the inclusion of a requirement for primary towing vessels to have a restriction on the use of the autopilot similar to 33 CFR 164.13(d).

Maneuvering Performance Capability. Proposed § 157.445 addresses both the lack of knowledge component and the use of incorrect or incomplete information component in Figure 5. Maneuvering performance capability is directly related to the vessel's design and can easily be established. The standards for ship maneuverability outlined in IMO Resolution A.751(18) use conventional trial maneuvers to evaluate vital maneuverability characteristics. IMO has deliberated ship maneuvering issues since 1968. Resolution A.601(15), entitled "Provision and Display of Maneuvering Information On Board Ships," was adopted in 1987. Resolution A.751(18) was adopted in November 1993, and is based on the premise that vessel maneuvering characteristics can be assessed from the results of typical sea trials. It differs from the present posting requirements of 33 CFR part 164 in two fundamental ways: (1) It scales maneuvering test results against minimum criteria; and (2) it requires zigzag maneuvers to establish first and second overshoot angles.

This performance standard serves to highlight those vessels with poor control capabilities due to design, or vessels that experience dynamic instability during some maneuvers. Under proposed § 157.445(b), the owner, master, or operator must inform the COTP if the vessel fails to meet the IMO minimum criteria in any of the seven test areas. This provides the port state a guideline for recognizing the capabilities of approaching vessels and for taking appropriate action to reduce the risk of a grounding, allision, or collision. Providing advance notice to the Captain of the Port (COTP) that a vessel does not meet this performance standard mitigates the external factor component of Figure 5.

The Coast Guard also recognizes the twofold potential for these test results to assist a pilot: (1) They provide overshoot angle information; and (2) they provide the maneuvering information in relationship to the ship's length. This type of information is not contained within IMO's Resolution A.601(15) maneuvering wheelhouse poster nor in the existing 33 CFR part 164 wheelhouse maneuvering characteristic requirement. Posting of the test results of this performance standard would provide pilots with nondimensional maneuvering information. In addition, a thorough knowledge of this performance standard and its development would enable the pilot to compare the test results among vessels. It provides a benchmark for quantifying how well the vessel can be expected to respond under general conditions.

The Coast Guard has considered the applicability of these performance standards. The IMO resolution applies only to vessels of 100 meters or more in length constructed on or after July 1, 1994. The Coast Guard proposes to apply these requirements to all tankships of 5,000 GT or more that do not have double hulls. The IMO performance criteria was based on a study of 600 existing vessel designs and reflects simple, practical changes to current ship maneuverability trials. For those vessels which do not meet this standard, the proposed regulation does not bar them from port entry. Proposed § 157.445(b) would allow vessels which do not meet the standard to continue port entry; however, a vessel would be required to comply with a mandatory reporting requirement to ensure that the COTP is alerted to the inferior maneuvering performance of the vessel.

The Coast Guard recognizes that vessel owners and operators would require adequate time to perform the maneuverability tests required by this proposed requirement; therefore, under proposed § 157.445(a), the Coast Guard intends to delay the implementation of this proposed measure until 1 year after the final rule is published in the **Federal Register**.

Maneuvering and Vessel Status Information. Section 157.450 proposes to incorporate by reference an IMO resolution with three specific requirements: (1) standardizing the presentation of the maneuvering information required by 33 CFR part 164; (2) requiring the use of a pilot card; and (3) requiring a maneuvering booklet to be available to the master on board the vessel. The maneuvering poster required by this resolution incorporates all of the information that is required to be displayed by a vessel of 1,600 GT or more under 33 CFR part 164. This proposed requirement would ensure that every tankship presents this maneuvering data in the same format so the pilot can quickly assess the maneuvering characteristics of the vessel. The pilot card provides a "snapshot" of the vessel's current equipment status and maneuvering information unique to the transit. The maneuvering booklet gives detailed information on the specific maneuvering capabilities at various drafts and in various hydrodynamic situations. These details, along with squat characteristics, are essential for difficult transits through constricted channels and for damage control situations in the event of a marine casualty.

All three of these requirements have been recommended by the Coast Guard since 1989 through NVIC 7–89, "Maneuvering Information." Use of standardized forms to help prevent omission of important information is a common theme within bridge resource management philosophy. The Coast Guard also solicits comments on whether the pilot card should have additional information.

Minimum Under-keel Clearance. Three comments favored the implementation of minimum under-keel clearance requirements to prevent groundings. The Coast Guard agrees and in § 157.455 is proposing regulations which would establish a minimum under-keel clearance requirement for all tank vessels departing or entering a port. This proposed regulation is intended for both tankships and tank barges. The tank barge company would be required to ensure the tank barge meets this minimum under-keel clearance requirement either through establishing and enforcing company policy, through a contractual agreement with the towing vessel company, through hiring practices, or through direct company oversight of the tank barge's under-keel clearance calculations prior to port entry or departing port.

This requirement has been suggested in several forms over the past 10 years. The Coast Guard, with the aid of the Navigation Safety Advisory Council (NAVSAC), considered a draft for similar requirements in 1991. After much debate, it decided not to pursue a federally-mandated clearance requirement. The difference between the current proposal and past proposals is fundamental. Past proposals considered "real-time" or actual under-keel depth and minimum under-keel depth throughout a transit. Problems with this type of requirement were substantial. The accuracy of the onboard depth sounder, the number of depth sounders and their hull placement, and the inconsistencies between published data and actual water depth, all complicated the task of regulating actual under-keel depth.

The proposed requirements in § 157.455 are based on anticipated under-keel depth and represent a fundamental passage planning requirement. IMO has provided guidance on general under-keel clearance considerations since 1978 in its "Guide to the Planning and Conduct of Passages" (SN/Circ. 92, 23 October 1978). As a passage planning requirement, this proposal would reduce human error by ensuring the hazard components (shown in Figures 5 and 6) related to failure to do a task, failure to correctly perform a task, incomplete or incorrect information, and lack of knowledge or training are addressed on those tank vessels presenting a higher oil spill risk, due to design, if a grounding occurs. Conscientious operators already carefully calculate the deepest draft of the vessel and then review the intended route to ensure there is adequate depth underneath the keel. Several companies already have policies dictating this planning requirement and several U.S. ports, such as the ports of Long Beach and Los Angeles, already have established guidance for minimum under-keel clearances. NAVSAC recommended that an adequate depth for transit determination be made by a joint agreement between the local Captain of the Port (COTP) and the port and harbor safety authority or association or other similar group. This recommendation would be appropriate if the safe navigation of a particular port indicates that it is necessary to establish permanent under-keel clearance requirements. The Coast Guard recognizes that some local COTP and port and harbor safety authorities presently have or may wish to establish clearance requirements. This proposal would not preempt present or future local standards. The proposal establishes an anticipated minimum under-keel clearance of at least .5 meters (2 feet) for all ports. If a local standard is less than the proposed .5 meter clearance, the proposed notification requirement enables the COTP to positively control the local policy. It is anticipated that a local under-keel clearance requirement that is more stringent than the .5 meter clearance would be enforced through a joint COTP and harbor safety authority agreement. This proposed clearance reflects general industry standards and provides an added cushion of safety for vessels while operating in areas where charted depths may not have been updated by surveying agencies for sometime. Tank vessels fitted with double bottoms would be exempt from this under-keep clearance requirement because within the risk framework developed for this rulemaking, the double bottoms provide protection from oil spills that may be caused by this type of accidental or non-emergency intentional grounding.

A vessel's log or similar onboard documentation should indicate that the master or operator has considered the factors that may affect a vessel's draft and has reviewed the appropriate scaled charts, tide tables, and other applicable publications to calculate the anticipated controlling depth. Charts and publications may contain conflicting water depth information. Some of these variances are due to different survey periods, survey techniques, or recording purposes. The most conservative depth should be used to calculate the anticipated depth.

This preventive measure would require all affected vessels to carefully plan port transits. Grounding would not indicate a violation of the requirements in proposed § 157.455 if the owner, master, or operator has properly logged or documented the proposed planning requirements and can recreate the calculations done prior to port entry or departure. Satisfying the planning requirements, however, does not relieve the owner, master, or operator of ensuring that other navigational requirements and practices are followed.

Intentional grounding during a transit, unless done to reduce the risk of a collision or allision, or during a similar type of emergency, would violate the regulation if done with without the express approval of the COTP. This proposed restriction on intentional grounding is not intended to unconditionally prohibit this practice rather, it focuses on ensuring that the local COTP understands the vessel's operation and agrees to the practice. In areas where port bottom conditions are known and do not pose a threat to the integrity of the hull, approval for certain vessels to load cargo by intentionally grounding would be acceptable. An anticipated caveat to a vessel being allowed to routinely ground for loading operations is a specific shell plate and weld condition survey or some other type of structural review provision to ensure the vessel remains structurally fit for the additional loading stresses.

Pilotage Passage Plans. One comment recommended that the Coast Guard require pilot passage plans. This would require the pilot to prepare a written passage plan prior to boarding a vessel, provide copies of the plan to the bridge team, and discuss the plan with the bridge team prior to beginning the passage. Guidance on this issue has been developed by IMO and is entitled, "Guide to the Planning and Conduct of Passages" (SN/Circ. 92, 23 October 1978).

Although many pilots already prepare plans for passage through a port, the vessel's crew also needs to actively communicate with the pilot prior to a port transit. This proposed rulemaking addresses only the vessel's responsibility to accurately inform the pilot of the vessel's status and to monitor the pilot during a transit by incorporation of pilot cards and bridge resource management training. The Coast Guard and IMO are undertaking a separate initiative to address the pilot's responsibilities to the vessel.

Navigation Equipment. Several comments stressed the need for improved navigation equipment and suggested requiring state-of-the-art navigation equipment such as a Global Positioning System (GPS) Receiver and collision avoidance radar. Other suggestions included electronic charts, advanced sonar systems and a speed log.

Within both the international community and among U.S. vessel operators, a significant amount of discussion has centered on the value of navigational information versus the training of navigators. While equipment with additional capabilities is extremely useful, navigational safety also depends on the officer using this information. The Coast Guard has determined that the present automatic radar plotting aid (ARPA) requirements and the electronic positioning device required in 33 CFR part 164 set an adequate minimum standard. The proposed bridge resource management training would give the officers responsible for vessel navigation the tools they need to interpret and use all the information gathering systems at their disposal. The Coast Guard is considering future proposals for Electronic Chart Display and Information System (ECDIS) or differential GPS (DGPS) capabilities on vessels. While ECDIS may indicate the ship's actual position on an electronically generated chart, any requirement for electronic positioning devices is premature until standards for equipment have been developed and DGPS signals can provide an accurate, high integrity signal throughout the United States. However, owners purchasing new units should consider a GPS unit capable of receiving a DGPS signal or interfacing with a differential receiver.

VEssel Traffic Service Systems. Several comments stated that the Coast Guard needs to develop stronger rules for Vessel Traffic Service Systems (VTS). Three comments stated that the Coast Guard should require a vessel's mandatory participation in a harbor's active VTS. Other comments stated that more ports were in need of VTS. One comment stated that the VTS existing in Valdez, AK, San Francisco, CA, New Orleans, LA, and New York, NY, have deficiencies including inadequate funding. lack of maintenance and poor training. Most comments stated that VTS are an obvious measure to reduce oil pollution which should be improved and extended to more ports.

Section 4107(b)(1)(B) of OPA requires the Secretary to study the need for new, expanded or improved VTS. The 1991 Port Needs Study (Vessel Traffic Service Benefits) documents the benefits and costs of Coast Guard VTS in 23 selected ports on the Atlantic, Gulf, and Pacific coasts. The study employs a comprehensive cost-benefit model that considers the far-reaching consequences of marine accidents based on navigational risk. The results are being used by the Coast Guard to make capital investment decisions for the entire VTS program. One change is the establishment of requirements and procedures which simplify previous VTS regulations and mandate participation in all VTS (59 FR 36316; July 15, 1994). Other VTS developments are being proposed in separate documents and are not within the ambit of this rulemaking.

Voyage Data Recorder (Black Box). Another comment suggested installation of a comprehensive event recorder (black box) to allow investigators to reconstruct the events leading to a near-miss or marine casualty.

As indicated in Figures 3 through 6, a black box would not directly reduce the risk of an accident. Present regulations require recording capabilities on depth sounding devices and logging requirements for various other navigation indicators. This information has been used in the past to reconstruct accident events. A comprehensive recording system such as a black box could improve investigation quality and reduce the time needed to reconstruct accident events. Additionally, it might be a factor in reducing the risk of future casualties if used as a management oversight tool to heighten management's awareness of vessel operations. In addition, use of the black box could provide information on near-misses which could be used to assess regulatory effectiveness and pinpoint potential areas of traffic or operational concern.

Other types of recorders that include active warning systems (linked into existing VTS or capable of alarming a vessel automatically in a potential collision situation) are in use on some offshore oil platforms. These early warning systems work in conjunction with DGPS and ECDIS. Because of their dependence on DGPS and ECDIS, the Coast Guard believes that it is premature to require active warning systems. While voyage data recorders and early warning systems are both technologically feasible, they are costly. A general requirement for an automatic, tamper proof voyage recording system that would record voice, radar, position information, engine, and course data would impose significant costs. This SNPRM solicits comments on a voyage data recorder requirement, inclusion of an early warning capability in a recording device, and recommended provisions for near miss data collection.

Escort Vessels

Several comments pointed out the value of escort vessels. One comment also recommended requiring bow thrusters for tankers without tug escorts. The escort vessel issue is being addressed in a separate regulatory project. This proposed rule considers escorts as a possible alternative when the vessel does not meet certain maneuverability performance standards. The Coast Guard has determined that the proposed requirements for emergency steering capabilities combined with maneuvering performance standards would reduce the risk of a collision, allision, or grounding due to poor maneuverability and mitigates some of the equipment failure components in Figure 5. Comments on possible requirements for bow thrusters are solicited in this proposed rulemaking.

Routing Restrictions.

Several comments suggested various route restrictions to increase safety.

Four comments recommended more stringent pilotage requirements. Five comments recommended limitation of vessel movement. Two other comments recommended voluntary routing. One comment recommended mandatory speed limits. One comment suggested that the Coast Guard identify those ports with rocky bottoms and prohibit entry by tankers without double bottoms. Such provisions directly correlate with the risks of structural failure (Figure 3) from impact.

Although the Coast Guard recognizes that groundings and collisions could be reduced through routing restrictions, it does not have the authority at this time to enforce mandatory routing restrictions or exclusionary transit zones on foreign vessels outside of U.S. navigable waters. At the sixty-fifth session of the Marine Safety Committee (MSC), in May of 1995, the Committee adopted amendments to the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, which would permit the establishment of mandatory routing measures through IMO. This MSC resolution, MSC 46(65), becomes effective January 1, 1997.

Present routing practices off the coast of California are voluntary and were developed after extensive research. Diverse weather patterns, vessel traffic, marine life considerations, and other factors pose safety problems in some geographic areas. Because of the unique nature of each port and offshore area, the Coast Guard has traditionally left speed limit, safety zone and other restrictions to the local COTP. As required by section 4111(b) of OPA 90, the Coast Guard is currently studying tanker routing and solicits comments on establishing routing restriction requirements.

6. Additional Operational Requirements for Tank Barges

Several comments suggested improvements to towing vessels. One comment stated that the Coast Guard should require navigation equipment on towing vessels. Another comment stated that independent emergency steering capability should be required on towing vessels. One comment recommended restrictions on tandem towing when loaded, requiring twin screw tugs, and requiring towing vessel horsepower to barge deadweight ratios. One comment recommended that the Navigational Safety requirements of 33 CFR part 164 be extended to towing vessels. One comment suggested two independent propulsion systems.

The Coast Guard has issued several rulemakings affecting the entire commercial towing industry. The recent proposed rulemaking entitled "Navigation Safety Equipment for Towing Vessels" (60 FR XXXX) contains several of the requirements mentioned above. It proposes requirements for vessels engaged in towing that are 8 meters or more in length. These requirements include certain navigational equipment, such as radar; searchlights; and electronic position fixing devices, depending on the vessel's area of operation; general navigation safety requirements; and towline inspections for vessels engaged in towing astern. Further requirements on licensing for towing vessel operators also may be proposed.

Emergency Steering Capability. In § 157.460(a), the Coast Guard is proposing that the owner or operator of a tank barge would be responsible for ensuring the primary towing vessel has either twin screws with independent power or a backup steering system. Twin propulsion designs with separate engine controls, dual shafts, and propellers certainly would meet the intent of this requirement and are allowed under this proposal. To reduce the impact of this regulation and to allow vessel owners time to schedule shipyard facilities, the Coast Guard proposes a 1-year delayed implementation of this requirement.

This requirement was proposed after review of the risks of equipment failure and loss of steering as shown in Figures 5 and 6. Loss of steering for tankships is addressed by 33 CFR 164.39, 46 CFR 58.25, and the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, with amendments, Chapter II–1, Part C, regulation 29. Therefore, this SNPRM does not propose additional steering requirements for tankships.

Fendering Systems. The qualitative evaluation of the structural failure hazard (Figure 3) revealed that structural fractures due to the stress on local hull areas of a tank barge, where a towing vessel or a pier routinely comes in contact with the barge, have not been addressed and could contribute to the cause of some oil spills. While this type of fracturing may be identified by the enhanced survey requirements proposed in § 157.430 of this SNPRM, a more fundamental and cost effective solution is adequate fendering. Because fendering on a barge would be very costly, would decrease structure accessibility under the fendering system, and may increase the rate of local structural deterioration surrounding the fendering system, the Coast Guard is proposing that the owner or operator of a tank barge would be responsible for ensuring the primary towing vessel and any other assist or fleeting towing vessels have adequate fendering systems. This proposal would require vessel owners and operators to ensure towing vessel fendering systems are assessed through management policy, on-site inspection or oversight, contractual arrangements, or hiring practices as an important protective measure for their barge's structural integrity. Fleeting and assist towing vessels are included in this proposal because during docking operations, the forces they exert on the barge hull also contribute to the fracture problem. Although there are no international or domestic guidelines for appropriate fender technical specifications, § 157.460(b) proposes a performance guidelines for preventing metal to metal contact of the towing vessel and the tank barge.

7. Other Operational Measures

Many of the comments proposed improvements through other operational measures, including planning improvements. Two comments recommended cargo loading and casualty planning. The comments stated that the risk of pollution could be reduced significantly through a strategic cargo loading plan which included criteria for loading a partial cargo or discharging at several ports. For example, if cargo is retained after discharging at the first port of call, cargo can be retained in center tanks instead of wing tanks. One comment stated that effective casualty planning would reduce the likelihood of a pollution incident; these plans are not currently required.

Hydrostatic balanced loading minimizes the accidental oil outflow by strategically loading cargo tanks to take advantage of the hydrostatic balance between the cargo and sea water. This concept is presently being studied and will be considered in the Existing Vessel Structural Measures rulemaking. Casualty planning requirements are addressed in "Shipboard Oil Pollution Emergency Plans" (59 FR 51332; October 7, 1994).

Three comments were received regarding emergency transfer systems (ETS). Two of these comments supported the implementation of ETS while one comment stated that ETS was unproven and not likely to prevent pollution. These systems generally require additional cargo piping and pump refit or installation. It should also be noted that the Coast Guard has completed a report to Congress entitled, "The Feasibility of Using Segregated Ballast Tanks (SBT) for Emergency Transfer of Cargo and Storage of Recovered Oil," 1995. In this study, it was found that in the event of a vessel casualty, such as a collision or grounding, there are often fundamental changes in the vessel's stability condition which make it potentially unsafe and inadvisable to use SBT for emergency transfer of cargo. The regulatory assessment study for the third portion of this project will address these systems and any special considerations in their use.

Three comments recommended that wing tanks be kept empty. One stated that empty wing tanks would reduce the likelihood of oil outflow in collisions by 100 percent and in groundings by at least 50 percent, compared to estimates of 30 percent and 15 percent provided in the Existing Tank Vessels NPRM. This comment specifically suggested that the wing tanks remain empty rather than ballasted with water or other non-petroleum cargo. Significant structural refit to reinforce bulkheads between empty wing tanks and cargo tanks, possible piping refit, and substantial stability reassessment may be required. The Coast Guard is soliciting comments on the economic and technical feasibility of this proposal.

One comment recommended emergency retrieval equipment or emergency towing pendants similar to those provided for in Washington State regulations. Four comments stated that tow wire maintenance and inspection should be required. An interim final rule (IFR) requiring emergency towing equipment was published in the **Federal Register** on December 22, 1993, entitled, "Discharge Removal Equipment for Vessels Carrying Oil" (58 FR 67988). This required the majority of existing tank vessels to have an emergency towing wire meeting an IMO standard. This IMO standard has been revised to incorporate a requirement that the equipment can be deployed automatically and by a limited number of crew. The Coast Guard supported these changes at IMO and intends to implement these new requirements in a future rulemaking. In addition, an NPRM entitled, "Navigation Safety Equipment for Towing Vessels" published elsewhere in this issue of the **Federal Register** proposes minimum tow wire standards and inspection requirements.

Amendments to 46 CFR Part 31

To ensure cross reference to the proposed enhanced survey requirements, tables (a) and (b) in 46 CFR 31.10–21 would be revised to direct individuals using 46 CFR part 31 to § 157.430(a); however, it does not change existing drydock requirements.

Amendment to 46 CFR Part 35

To ensure cross reference to part 157, § 35.01–40(c) of title 46 of the CFR is revised to refer individuals using 46 CFR part 35 to the applicable pollution prevention requirements.

Incorporation by Reference

The following material, in part, would be incorporated by reference in § 157.02: IMO Assembly Resolution A.601(15) with Appendices 1–3, "Provision and Display of Manoeuvring Information on Board Ships"; IMO Assembly Resolution A.744(18) Annex B, "Guidelines on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers"; IMO Assembly Resolution A.751(18) with Explanatory Notices in MSC/Circ.644, "Interim Standards for Ship Manoeuvrability"; and Oil Companies International Marine Forum (OCIMF) "International Safety Guide for Oil Tankers and Terminals" (Second Edition). Copies of the materials are available for inspection where indicated under **ADDRESSES.** Copies of the material are available for the sources listed in § 157.02.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

This proposal is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A draft Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Assessment is summarized as follows.

This rulemaking would apply to all existing vessels of 5,000 GT or more that do not have double hulls and that carry oil, including non-petroleum oil, in bulk as cargo. An estimated 1359 existing tank vessels (190 U.S. tankships, 1080 foreign tankships, 86 U.S. tank barges and 3 foreign tank barges) currently operating on the U.S. navigable waters would be affected by this proposed rulemaking.

Industry Cost

Some of the proposed operational measures require actions prior to each port transit or cargo transfer. As a result, vessels on coastwise or frequent transit schedules would incur higher expenses than vessels with a lower frequency of port calls. In contrast, the decrease in fleet size as vessels arrive at their phaseout date results in a downward trend in estimated annual costs from 1996 through 2014.

First year compliance cost of this SNPRM would total about $183.8 million. Annual costs of the proposal would trend downward, leveling out at $5.8 million during 2012–2014, the final years that the proposal would be in effect. The present value of this proposal is discounted at 7 percent throughout this assessment in accordance with current Office of Management and Budget guidance to reflect the costs or benefits as they would have been in the year OPA 90 was enacted. The present value of this proposal, discounted at 7 percent, would total $443.6 million. U.S. tankships and tank barges would together account for an estimated one-third of total costs, and foreign tank vessels and barges would account for the remainder. A discussion of costs for each proposed requirement follows.

The costs associated with the operational measures proposed in this SNPRM were developed based on vessel type, vessel use, and average vessel size. The cost analysis was applied to tankships and tank barges. Cost analysis calculations were based upon the following assumptions:

(1) The proposed rulemaking would come into effect in 1996;

(2) The recurring cost of this rulemaking would reflect the future vessel population decrease as required by the phaseout schedule in section 4115(a) of OPA 90 and shown in NVIC 10–94;

(3) Both costs and benefits developed for this rulemaking are discounted at 7 percent back to 1990; and

(4) All recurring costs are calculated for the year 2001.

Emergency Lightering Equipment. Lightering equipment costs were based on the costs used in the Emergency Lightering Equipment and Advanced Notice of Arrival Requirements for Existing Tank Vessels Without Double Hulls Final Rule (59 FR 40186). This SNPRM proposes to expand the applicability of these emergency lightering requirements from oil tankers to all tank vessels. No U.S. tank vessels with exclusive non-petroleum oil cargo carriage authority are in operation.

There would be no costs to U.S. tankships or tank barges. An estimated 114 foreign tankships and 2 foreign tank barges carry non-petroleum cargo and may be affected by this change. The onetime costs for this proposed requirement for foreign tankships is estimated to be $456,000–$1.1 million and for foreign tank barges would be $8,000–$19,000. Based on the average onetime cost for foreign tankships and tank barges, the present value of point-estimate costs for emergency lightering discounted at 7 percent to 1990 would be $530,000.

Bridge Resource Management Training. The cost of proposed § 157.415 would vary based on crew complement, crew salary, and estimated existing training programs. Based on typical crew compliments and accounting for personnel turnovers, seven tankship officers were assumed to require this training per tankship while six officers were used to estimate the cost to each tank barge. Crew daily wages were estimated based on American Institute of Merchant Shipping (AIMS) data, Tanker Advisory Report statistics, and American Waterways Operators (AWO) information. Although simulator training is not proposed as a required element of the BRM training course, past completion of an existing Coast Guard approved bridge resource management course would meet the proposed requirements. An estimated 60 percent of U.S. tankships and tank barge companies have already met this training requirement for their deck officers through commercial bridge management courses. An estimated 30 percent of the foreign vessels operating on routes within U.S. waters have trained their officers in management-type curriculum. The commercial bridge management course fees, approximately $5,000 per person (for a 5-day course), were used to estimate the cost of this proposal. The refresher training course offered by commercial vendors was estimated to be $500 per person.

Total cost of the proposed BRM training requirement to industry for U.S. tankships would be $3.7 million. Foreign tankship total initial estimated cost would be $33.0 million. The U.S. tank barge total initial estimated cost would be $2.0 million. The total cost to the foreign tank barge industry would be $79,000. The present value of the costs of BRM training discounted at 7 percent to 1990 would total $35.1 million.

Vessel Specific Watch Training. The Coast Guard estimates the additional cost incurred by proposed § 157.420 would be negligible. The cost attributed to time loss due to this training is negligible because this type of training falls within the scope of a master's present responsibility to ensure the crew is "fit for duty." Recordkeeping requirements are addressed in the "Collection of Information" section.

Minimum Rest Hour Requirement. To meet proposed § 157.425, shoreside augmentation of the vessel crew to allow the vessel officers and crew members time to rest, is estimated to include one officer (assume average second mate salary) and two tankerman (assume average third mate salary) for each port visit on a tankship and one tankerman (assume average mate salary) for a tank barge. On U.S. vessels, one officer was not included because under 46 U.S.C. 8104(a), the master is presently required to meet this rest hour minimum. Shoreside augmentation requirements would vary based on the number of port visits per vessel correlated with an estimate on average visit length. Careful crew scheduling and time management could reduce the amount of augmentation required prior to departing port. It is estimated that U.S. tankships would require shoreside augmentation prior to 60 percent of their port departures, foreign tankships would require augmentation prior to 40 percent of their port departures, and tank barges (both foreign and U.S.) would require 80 percent augmentation to meet this proposal. If shoreside augmentation would be required prior to a port departure, a full day's wage for the estimated number of personnel required for augmentation was used. The cost for posting a notice to crew members on the rest hour minimums was not calculated because it is minimal.

The 1-year cost for augmented shoreside manning on U.S. tankships would be $2.2 million and for foreign tankships would be $1.5 million. The 1-year cost for augmented shoreside manning on U.S. tank barges would be $991,000. The 1-year cost for augmented manning for foreign tank barges would be $6,500. By 2001, the total cost of this proposed requirement to the U.S. tankship industry would be $1.55 million, and to foreign tankships, $1.03 million. Eor the tank barge industry, this recurring augmentation cost would be $714,000 for the U.S. industry and slightly less than $4,000 for the foreign industry. The present value of the costs of rest hour minimums discounted at 7 percent to 1990 would total $19.7 million.

Enhanced Survey and Alternate for Enhanced Survey. Those tankships regulated by flag administrations signatory to MARPOL 73/78 and having adopted Regulation 13G of Annex I are presently required to complete the proposed enhanced survey of § 157.430(a) starting in 1995. For this proposed rulemaking, no cost is associated to this group of vessels for the enhanced survey requirement. U.S. tankships presently are not required to meet Regulation 13G of Annex I of MARPOL 73/78. Under this proposal, they would be required to conduct enhanced surveys and incur the cost associated with these surveys.

The cost of an enhanced survey for a vessel classed by a recognized classification society is estimated to be 25 percent higher than the cost of the special survey currently performed by the class societies. This cost includes the fee for the surveyor's time and required documentation. For a 21,000 GT tankship, the increased cost for a surveyor and a final report is estimated to be $11,000. Additional costs to the industry for this proposed requirement would include making approximately two tank interiors accessible to the surveyor through the use of scaffolding, ladders, lines, or other arrangements and additional gauging requirements (approximately 30 percent more than present classification society requirements). Some additional repair costs could also be incurred after a review of the survey is completed. Cost estimates do not include the cost to drydock the vessel, gas free it for inspection, or keep it in the drydock. These costs are already incurred with present drydocking requirements.

It is estimated that 64 tankships are either not classed or are classed by classification societies not recognized by the Coast Guard. These vessels would incur additional costs associated with a design review and a condition survey for reclassification by a recognized society. Classification costs or enhanced survey costs for vessels already required to drydock, but never classed or not classed by a recognized classification society, would be $514,000.

Tank barges are not required to meet Regulation 13G of Annex I of MARPOL 73/78. Proposed § 157.430(b) allows tank barges and vessels smaller than the MARPOL cutoff to substitute comparable company programs for the enhanced survey requirements. Because the company program clause assumes the owner has an established survey program and would not need to conduct extensive additional repairs, the cost of these company programs would be less than the cost of a classification survey.

The cost estimates associated with proposed § 157.430 (a) and (b) were amortized to reflect a 12-month period. First year cost averages would be $14.9 million for U.S. tankships; $23.0 million for foreign tankships; $2.3 million for U.S. tank barges; and $80,000 for foreign tank barges. Because the cost estimates have been averaged and it has been assumed that the vessels affected by this rulemaking would be in service for at least two drydock enhanced surveys prior to their phaseout, recurring cost would be the same as the first year costs listed above. The Coast Guard recognizes this recurring cost estimate is conservative; however, as the fleet population diminishes the average cost of an enhanced survey may increase due to the age and possible repair requirements of the remaining tank vessels subjected to the survey. The present value of the costs of the enhanced survey discounted at 7 percent to 1990 would total $67.38 million.

Vital Systems Surveys. The cost of proposed § 157.435 would vary based on port departure frequency, crew salary, and the estimated time required for each survey. A survey would be required before a tank vessel begins cargo transfer operations or prior to a vessel departing port. An estimate of port departures was calculated based on 1993 Coast Guard data and reflects an average departure frequency of 28 for U.S. tankships, 32 for U.S. tank barges, 6 for foreign tankships, and 7 for foreign tank barges. Three surveys were estimated for each port departure.

Crew members affected by this proposed requirement would be senior personnel. For tank barge surveys, an average towing vessel master's wage was used for cost evaluation. For tankship surveys, an average chief mate's wage and a chief engineer's wage were used for cost evaluation. Survey time was estimated at 1 hour on a tankship (½ hour each for both the chief mate and the chief engineer) and approximately 48 minutes for the master of a primary towing vessel or a senior tank barge representative.

The vital systems survey cost for U.S. tankships would be $660,000 with a recurring cost (for year 2001) of $472,000. The cost to foreign tankships would be $465,000 with a recurring cost (for year 2001) of $322,000. The survey cost to U.S. tank barges would be $289,000 with a recurring cost (for year 2001) of $206,000. The survey cost to foreign tank barges would be $2,500 with a recurring cost (for year 2001) of $1,500. The present value of the costs of vital systems discounted at 7 percent to 1990 would total $6.0 million.

Autopilot Alarm or Indicator. The cost for the alarm or indicator proposed in § 157.440 was calculated based on the assumption that 10 percent of the U.S. tankships presently meet this requirement, none of the foreign tankships presently have this capability, and 3 towing vessels would require an indicator for every 2 tank barges affected by this rulemaking. It was also assumed that the tank barge company owned the towing vessel and would incur the cost of this requirement. The estimated installation cost of a visual and audible autopilot alarm is $5,000 on electronic tankship steering systems and the estimated autopilot indicator cost is $100. The cost attributed to the testing of this alarm would be negligible based on the short amount of time required to test the device and the preexisting requirement to do so under 33 CFR 164.25. This proposal would have a onetime estimated cost to U.S. tankships of $855,000; to foreign tankships, $5,400,000; to U.S. tank barges, $12,900; and to foreign tank barges, $500. The present value of autopilot alarm costs discounted at 7 percent to 1990 would total $4.2 million.

Maneuvering Performance Capability. To meet proposed § 157.445, tankships would require additional maneuvering tests and also recalculation or confirmation of previous maneuvering characteristics presently required by 33 CFR 164.35(g). Additional tests are proposed primarily to evaluate overshoot angles and time to check yaw. Computer simulations of these performance tests would not be accepted. A cost of $18,500 was based on an independent subcontractor coming on board a tankship to conduct the tests and provide the documentation required. This estimate reflects industry cost for test preparation, equipment, personnel, transportation, vessel operational delay, data processing, and final report collation. It was assumed that the tests required to meet this performance standard proposal have not been completed by any of the tankships affected by this SNPRM. The total onetime cost to the U.S. tankship industry would be $3.5 million and the cost to the foreign tankship industry would be $20.0 million. The present value of maneuvering performance capability costs discounted at 7 percent to 1990 would total $15.7 million.

Maneuvering and Vessel Status Information. No additional maneuvering tests would be required for proposed § 157.450, however, some recalculation of data from the original tests used to develop the wheelhouse poster of 33 CFR 164.35(g) may be required. To compile a maneuvering booklet, additional calculations and documentation also may be required. A cost estimate of $1,000 was developed for this proposal and reflects an average U.S. licensed naval architect fee for 4 hours spent to recalculate wheelhouse poster data and 16 hours spent to assemble the maneuvering booklet. Vessel population estimates indicated that 75 percent of both foreign and U.S. tankships presently meet the wheelhouse poster requirement and 20 percent presently meet the maneuvering booklet requirement. The cost attributed to the pilot card requirement would be negligible because the cost of the pilot cards themselves would be minimal while the time spent to complete them would be incorporated into the scope of an officer in charge of a navigational watch's normal duties.

Proposed § 157.450 has a onetime cost attributed to the wheelhouse poster and the maneuvering booklet. The estimated onetime cost of this proposal would be $142,000 for the 190 U.S. tankships and $805,000 for the 1,080 foreign tankships. The present value of maneuvering and vessel status information costs discounted at 7 percent to 1990 would total $631,000.

Minimum Under-keel Clearance. The cost estimate for proposed § 157.455 assumed that tankships presently entering or departing U.S. navigable waters operate with an under-keel clearance range of 0.15 meters to 2.00 meters and an average anticipated under-keel clearance of 0.6 meters (2 feet). Present tank barge under-keel clearances were estimated to be much less than tankship averages. An estimate of the number of port entries and departures was made for each vessel type. Tank barges were estimated to be affected by this proposal during each port entry and each port departure. U.S. tankships were estimated to be affected by this proposal during each port entry and during 35 percent of the port departures. Foreign tankships were estimated to be affected by this proposal during each port entry and during 20 percent of the port departures.

The cost of the proposal was estimated to be a 3 percent loss of cargo carrying capacity for each .3 meters needed to decrease the tank vessel's draft. An estimate of required draft decrease or cargo loss due to this proposal was made for each vessel type. It was estimated that 30 percent of the affected tank barge (10,000 GT average size) population would not lose cargo carrying capacity due to this proposal, 50 percent of the population would lose 3 percent of their cargo carrying capacity, and 20 percent would lose 6 percent of their cargo carrying capacity. It was estimated that 75 percent of the affected U.S. tankship (33,300 GT average size) and foreign tankship (50,000 GT average size) population

would not lose cargo carrying capacity due to this proposal, 20 percent of the tankship population would lose 3 percent of their cargo carrying capacity, and 5 percent of the tankship population would lose 6 percent of their cargo carrying capacity. The cost attributed to the proposed recording requirement would be negligible because the time spent completing the vessel log entry or other similar documentation would be incorporated into the scope of the officer of a navigational watch's normal duties.

As a result of the reduced cargo capacity, the first year cost of proposed § 157.455 for a U.S. tankship would be $18 million. Foreign tankship costs would be $35.1 million. U.S. tank barge costs would be $12.4 million and foreign tank barge costs would be $142,000. By 2001, the total cost of proposed § 157.455 to the U.S. tankship industry would decrease to $13 million, and the cost to foreign tankships would decrease to $27.3 million. For the tank barge industry, the recurring cost of under-keel clearance would be $13.3 million for the U.S. industry and $142,000 for the foreign industry. The present value of the costs of under-keel clearance discounted at 7 percent to 1990 would total $292.6 million.

Emergency Steering Capability. Proposed § 157.460(a) applies to the primary towing vessels engaged in towing tank barges of 5,000 GT or more without a double hull. An estimated total of 134 towing vessels would be affected by this proposal. Of these vessels, research indicates 80 percent presently meet this proposed requirement. It was assumed that the towing vessels that do not meet this proposed requirement are owned by the tank barge company. The cost to reconfigure the towing vessel's steering gear would be $25,000 based on an independent subcontractor installing additional piping and tankage on an existing hydraulic steering system.

The onetime emergency steering requirement cost would be $645,000 for U.S. tank barge companies; and $25,000 for foreign tank barge owners or operators. The present value of emergency steering capability costs discounted at 7 percent to 1990 would total $446,000.

Fendering System. Proposed § 157.460(b) applies to the primary towing vessels and the fleeting or assist towing vessels engaged in maneuvering tank barges of 5,000 GT or more without double hulls. A total of 312 towing vessels would be affected by this proposal. Of these vessels, research indicates 80 percent presently have adequate fendering systems. It was assumed that those towing vessels that do not meet this proposed requirement are owned by the tank barge company or the tank barge company would realize a cost increase in the leasing of an adequately fendered towing vessel. The cost to add or reconfigure the towing vessel's fendering system would be $1,320 based on a towing vessel's personnel installing an additional 8 linear feet of commercial fenders during a routine maintenance period.

Proposed § 157.460(b) would have an estimated initial cost to U.S. tank barges of $79,500; and to foreign tank barges of $3,000. Recurring costs, reflecting the diminishment of the tank barge fleet by 2001, would be $57,000 for U.S. tank barges and $2,000 for foreign tank barges. The present value of the cost of fendering systems discounted at 7 percent of 1990 would total $329,000.

Government Cost

Federal Government cost would include Coast Guard personnel time and resources to review survey records and documentation required by this proposed SNPRM during annual tank vessel examinations (foreign vessels) or annual inspections (U.S. vessels). The length of time added to a typical examination or inspection would vary based on the type of service in which the vessel engages. The Coast Guard is estimating that these requirements would increase the time of examination or inspection by an average of 0.5 hours for any given requirement. The various requirements range from 0.25 hours to inspect log entries or records to 8 hours to review documentation of an enhanced survey on a U.S. tankship or tank barge.

Government costs attributable to implementation of this rule are based on twelve proposed requirements. The Coast Guard examination or inspection would evaluate relevant documentation on BRM training, vessel specific training, minimum rest hours, enhanced surveys, vital systems surveys, maneuvering performance capability information, maneuvering information, and minimum under-keel clearance. During an annual examination or inspection the Coast Guard inspector would also ensure the emergency lightening equipment, the autopilot alarm or indicator, the emergency steering gear and the fendering systems on the towing vessels meet the proposed requirements.

The proposed maneuvering performance test requirement, specified in § 157.445(b), instructs tankships that do not meet the IMO criteria to report their maneuvering capability to the COTP 24 hours prior to port entry. Requests of this nature are not anticipated to be frequent. For this cost estimate, 10 percent of the existing tankship population was assumed to require some deviation from the IMO criteria. To review a vessel request for port entry and determine appropriate operational restrictions would take Coast Guard personnel an average of 4 hours.

Therefore, the government cost analysis assumes the increased annual inspection time would average 6.95 hours for U.S. tank vessels and 4.75 hours for foreign tank vessels. In addition, deviation requests from U.S. tankships for the proposed maneuvering performance standard would be 76 hours while requests from foreign tankships would average 432 hours. Based on a $35.00 per hour wage estimate for a Coast Guard inspector, the Coast Guard expects the 1,188 additional man-hours of inspection and deviation request evaluation time would cost $39,801 annually.

Cost-Benefit Evaluation

Costs. Cost estimates were based on the forecast 19-year life for this proposed rulemaking. For all proposed requirements, the undiscounted costs of compliance are projected to be $897.6 million. The present value of the costs of this proposed regulation discounted at 7 percent to 1990 would total $443.6 million.

Benefits. Pollution mitigation benefits from the proposed operational measures would accrue mainly in areas around loading terminals, narrow channels, and in open waters during lightering operations.

A review of casualty and spill data was conducted in an attempt to pinpoint past accident frequency as related to each proposed operational measures. However, the complex cumulative effect of human error and equipment failure made it difficult to quantify the benefits of each measure. For example, the grounding of the foreign tankship WORLD PRODIGY off Brenton Reef in Rhode Island Sound was caused by a combination of fatigue, poor bridge resource management, and insufficient passage planning (especially under-keel clearance) which lead to this 1989 oil spill. The major explosion aboard the U.S. tankship MT SURF CITY was caused by poor tank entry precautions and undetected bulkhead deterioration between a cargo tank and a ballast tank. Because of the interrelationship between the proposed requirements that focus on a reduction in human error along with the proposed requirements for improved equipment inspections and capabilities, the Coast Guard chose to quantify the benefits using a gross estimate of benefits for this SNPRM regulatory assessment.

A preliminary estimate of the anticipated benefits and resultant cost-benefit for each measure was conducted and is described in detail within the regulatory assessment. This preliminary estimate included a review of certain tank vessel casualties from 1989 through 1994, the resultant oil spill or potential for an oil spill, vessel damage, and loss of life. Benefits were estimated for each proposed measure by reviewing the casualty report, analyzing each casualty's root causes, and estimating a percentage of the recorded or estimated spillage associated with each root cause. The actual and potential amounts of oil spilled were then broken down from these estimated root cause percentages and accredited to each of the proposed measures, if applicable.

Using Figures 3 through 6 of this SNPRM, a risk effectiveness factor was developed that estimated the percentage of causal factors leading to an accident that would be eliminated if each proposed measure was established. A range of total anticipated benefits over the 19-year span of this rulemaking was estimated for each proposed measure by annualizing the per-vessel benefits resulting from the actual and potential spill data, extrapolating this into a cumulative present value of oil spills avoided based on the number of vessels remaining in service each year, and multiplying this cumulation by the measure's effectiveness factor. The Coast Guard intends to include an estimate or qualitative discussion of the benefits of each proposed measure in the final rule. Relevant comments are requested on the methodology used for the preliminary benefit analysis as well as each measure's anticipated benefits and its economic feasibility.

The gross estimate of benefits for this rulemaking was conducted and involved an assessment of casualty data over the past 20 years. The Coast Guard estimates that the proposed measures would avert at least one major spill of about 300,000 barrels over the next 19 years. This is equivalent to a spill resulting from a collision between two 70,000 GT tankships, with cargo loss from at least two tanks on each tank vessel. Alternatively, this would be equivalent to a grounding that results in a complete loss of cargo from a small (21,000 GT) tankship.

The monetary benefits of the proposed regulation would include the avoided costs of spill cleanup, third-party compensation (lost earnings to fishermen, etc.), and natural resource damages. Historically, casualty reports have either not addressed these avoided costs, or their results have been widely disputed. There are many reasons for this. For example, there are numerous factors affecting the possible impact associated with an oil spill, such as type of product, environment, time of year, location, and weather conditions. Therefore, the assessment of damage and associated costs were subjective and in some cases, even in large spills, they were never confirmed. Accordingly, the Coast Guard uses the unspilled oil quantity in barrels as the benefit value, discounted at 7 percent back to 1990. If the averted 300,000-barrel spill were to occur in 1996, when the final rule is scheduled to take effect, the discounted benefit would be the value of avoiding a 213,896 barrel spill in 1990. If the averted 300,000-barrel spill were to occur in 2014, the discounted benefit would be the value of avoiding a 77,526 barrel spill in 1990.

Cost-Benefit. The benefit of this proposed rule would range from the value of avoiding a 77,526 barrel spill in 1990 to the value of avoiding a 213,896 barrel spill in 1990, depending on when the averted spill is assumed to occur. The net present value of the cost of this proposed rulemaking would range from $2,075 to $5,700 per barrel of unspilled oil, when a mean present value of $3,900 per barrel of unspilled oil. This compares with, for example, $13,000 per barrel of unspilled oil for the "Discharge Removal Equipment for Vessels Carrying Oil" IFR (58 FR 67988); $12,500 per barrel of unspilled oil for the "Vessel Response Plans" IFR (58 FR 7376); $7,000 per barrel of unspilled oil for the "Overfill Devices" IFR (59 FR 53286); and $1,300 per barrel of unspilled oil for the "Response Plans for Marine Transportation-Related Facilities" IFR (58 FR 7330).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities," may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rulemaking considered small business impact for vessels privately held by independent companies with an estimated capital investment value of less than $500 million or companies that have less than 500 employees. State and local governments, which altogether own less than a dozen tank vessels, will not be significantly affected. Not-for-profit organizations do not engage in the transportation of oil in bulk by water.

There are a number of companies meeting the definition of small business operating in each segment of industry (tankship, tank barge, and towing vessel). Of the 190 U.S. tankships affected by this proposed rulemaking, 16 are owned by 6 small businesses. Many of these company's tankships are over 30 years old, have less cargo carrying capacity than their competition, and are laid up due to market or company financial conditions. Six small businesses own or operate 32 of the affected U.S. tank barge population. No foreign small businesses own or operate foreign tank vessels that would be affected by this proposed rulemaking. Tank barge companies are required under this proposal to enlist towing vessels with certain capabilities and trained personnel. Indirectly, some towing vessel companies may also be affected by these proposed requirements; however, the Coast Guard has determined that most tank barge owners also own their towing vessels or regularly contract with a limited number of towing companies.

An economic impact is unavoidable, as the statute clearly targets existing vessels of 5,000 GT or more than carry oil in bulk as cargo and that do not have double hulls. The present value of the total cost to the industry of this proposal discounted at 7 percent to 1990 would total $443.6 million. However, the Coast Guard has proposed several measures within this rulemaking to accommodate small business needs and provide flexibility to small entities affected by this rulemaking.

The proposed training requirements include allowances for comparable company training courses and a 1-year compliance delay. In-house training by smaller businesses would be accepted as long as the curriculum and demonstration of skill provisions could be met. Company programs are anticipated to cost a fraction of commercial training and should provide smaller businesses with a means to train personnel at a lower cost than the present commercial courses.

Additionally, the proposed rulemaking acknowledges past course completion; thus, personnel would be given a longer time to meet this requirement if they have completed similar courses, either company-sponsored or commercial, within 3 years of the effective date of the rule. Maritime schools and many commercial courses have been offering this type of curriculum since 1991. Allowing for the

delayed compliance date and past course completion, the training course phase-in period would be 4 years. This longer phase-in period should assist smaller companies in setting up a suitable in-house or commercial course program. It also recognizes that a substantial number of merchant mariners in the industry are already trained. The 4-year phase-in is also intended to ease the competitive burden of obtaining commercial course slots, should entities choose to use commercial training facilities.

Small business needs are accommodated in the proposed enhanced survey requirement by allowing companies owning tank barges or tank vessels less than 30,000 dwts to conduct their own surveys and to choose among various organizations for program oversight.

To accommodate small businesses in the tank barge industry, the cost of reconfiguring a towing vessel owned by the tank barge company was minimized by requiring the proposed autopilot alarm to be an indicator; a simple sign placed on the wheel would suffice. This gives a comparable warning in the small confines of the one-man towing vessel wheelhouse as would an alarm for the larger, multiple-person, complex bridge of a tankship. The proposed emergency steering capability requirement accommodates a range of designs by allowing for either a secondary steering system or twin propulsion capability. This allows the majority of tank barge companies to continue using their vessels or the vessels they typically lease; however, it also ensures that the master or operator would have some maneuvering capability in an electrical, hydraulic or engine failure, which would be a benefit to all operators.

Smaller tankship companies should have the capability to conduct the maneuvering performance standard tests of IMO Resolution A.751(18). While the assessment cost of this item is for a commercial company to conduct the maneuvering tests, this proposed rulemaking in no way prohibits a company from conducting the tests in-house. The guidelines and technical details of the tests are well documented and are within the capabilities of a licensed master or pilot. The equipment needed for these types of maneuvering tests, such as a DGPS, is available on the commercial market at low cost.

The proposed operational measures would affect several small businesses within the maritime industry until 2015, a period of about 19 years. Through the design of this proposal's measures as described in the preceding paragraphs, the Coast Guard believes that the flexibility in this proposed rulemaking balances the requirements on tank barges and tankships and provides equitable treatment of U.S. and foreign flag vessels.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Unfunded Mandate

Under the Unfunded Mandates Reform Act (Pub. L. 104–4), the Coast Guard must consider whether this proposal, if adopted, will result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million (adjusted annually for inflation). That Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule.

The cost analysis completed for this SNPRM estimates first year compliance costs to be 183.8 million. Annual costs of the proposal would trend downward, leveling out at $5.8 million during 2012–2014, the final years that the proposal would be in effect. The only time this proposal would result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector would be in its first year of implementation. State, local, and tribal governments, which altogether own less than a dozen tank vessels, would account for less than 2 percent of the estimated first-year costs. Therefore, the private sector would be most impacted by first-year costs. The preliminary cost-benefit analysis done for this SNPRM addresses expected cost-effectiveness for each proposed measure. For those measures that were estimated to be the most costly, alternative requirements, extended implementation periods, or provisions for a COTP to determine appropriate implementation on a case-by-case basis were proposed in this SNPRM.

If you think that your business or organization falls under the provisions of the Act and this proposal will have an annual impact on your business or organization that meets the parameters, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following sections: §§ 157.415, 157.420, 157.425, 157.430, 157.435, 157.445, 157.450, and 157.455. The following particulars apply:

Dot No: 2115.

Administration: U.S. Coast Guard.

Title: Operational Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls.

Need for Information: Without adequate operational measures on tank vessels, the potential for spills as a result of human error is greatly increased. This proposal requires the mariner to record, post, keep documentation or provide notification that is necessary for the safe operation of the vessel including: (1) Documentation for company management and the Coast Guard to ensure personnel are trained and systems are being surveyed both frequently and thoroughly; (2) information to ensure the crew is informed of rest hour requirements; (3) certain vessel specific maneuvering characteristics so that personnel navigating the vessel have a quick reference to critical information; (4) documentation of a vessel's command and control status to ensure a pilot receives accurate information prior to maneuvering evolutions. These requirements are consistent with good commercial practice and the dictates of good seamanship for safe navigation and maintenance of vital equipment. Additionally, a vessel owners, master, or operator would be required to notify the COTP if the vessel did not have certain maneuvering capabilities so that safe port entry provisions can be made.

Proposed Use of Information: The primary use of this information would be for Coast Guard inspectors to determine if a vessel is in compliance or, in the case of a casualty, whether failure to meet these proposed regulations contributed to the casualty. The Coast Guard has no specific plan to collect this data for statistical analysis.

Frequency of Response: Owners, masters, or operators of tank vessels subject to this proposed regulation would be required to record, post, keep documentation, or provide notification of the following: (1) Under § 157.415(d), annual completion of bridge resource management training for each officer of the navigational watch; (2) under § 157.420(d), completion of annual training by letter or vessel log entry, by each crew member assigned to a navigational or engineering watch; (3) under § 157.425(b), permanent posting of the minimum rest hour requirement in crew lounge areas and work spaces; (4) under § 157.430 (a) and (b), completion of an enhanced survey during each drydock examination (this information must also be provided to the Coast Guard upon its request); (5) under § 157.435, by vessel log entry or similar means on board the vessel, completion of each required vital systems survey; (6) under § 157.445(b), notification of a maneuvering capability that is less than the IMO criteria; (7) under § 157.445(c), permanent posting of test results for maneuvering performance capability; (8) under § 157.450, permanent posting of standardized IMO maneuvering information in the wheelhouse, completion of a pilot card before entering the port or place of destination and prior to departing port, and maintenance of an onboard maneuvering booklet; (9) under § 157.455(a)(3), by vessel log entry or similar means on board the vessel, calculations of under-keel clearance before entering the port or place of destination and prior to departing port.

Burden Estimate: 76,913 hours.

Respondents: 1404.

Average Burden Hours per Respondent: 55.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both the OMB and to the Coast Guard as indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES.** The additional training, survey, and operational considerations required by this rule would enhance navigation safety and thereby reduce the likelihood of an oil spill or other environmental damage.

List of Subjects

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seaman.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 157, 46 CFR part 31, and 46 CFR part 35 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subpart G also is issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520.

2. In § 157.01, paragraph (a)(2) is revised to read as follows:

§ 157.01 Applicability.

(a) * * *

(2) Any other vessel that enters or operates in the navigable waters of the United States, or that operates, conducts lightering under 46 U.S.C. 3715, or receives cargo from or transfers cargo to a deepwater port under 33 U.S.C. 1501 *et seq.*, in the United States Exclusive Economic Zone, as defined in 33 U.S.C. 2701(8).

* * * * *

3. Section 157.02 is added to read as follows:

§ 157.02 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR, England.

IMO Assembly Resolution A.601(15), Provision and Display of Manoeuvring Information on Board Ships, Annex sections 1, 2.3, and 3 with appendices 157.440

IMO Assembly Resolution A.744(18), Guidelines on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, Annex B sections 1.1.3–1.1.4, 1.2–1.3, 2.1, 2.3–2.6, 3–8, and Annexes 1–10 with appendices 157.430

IMO Assembly Resolution A.751(18), Interim Standards for Ship Manoeuvrability, Annex sections 1.2.2, 2.2–2.4, 3–5 with Explanatory Notes in MSC/Circ.644 .....157.440

Oil Companies International Marine Forum (OCIMF)

6th Floor, Portland House, Stag Place, London SWIE 5BH, England.

International Safety Guide for Oil Tankers and Terminals, Second Edition, Chapters 6, 7, and 9.....157.430

4. In § 157.03, paragraphs (pp) through (tt) are added to read as follows:

§ 157.03 Definitions.

* * * * *

(pp) *Departing port* means departing from an anchorage or facility for a transit beyond the navigable waters of the United States as established in 33 CFR 2.05–25(b) or, for a vessel on the Great Lakes, a transit beyond the breakwater of harbor entrance.

(qq) *Fleeting or assist towing vessel* means any commercial vessel engaged in towing astern, alongside, or pushing ahead, used solely within a limited

geographic area, such as a particular barge fleeting area or commercial facility, and used solely for restricted service, such as making up or breaking up larger tows.

(rr) *Officer in charge of a navigational watch* means any officer employed or engaged to be responsible for navigating or maneuvering the vessel and for maintaining a continuous vigilant watch during his or her periods of duty and following guidance set out by the master, international or national regulations, and company policies.

(ss) *Primary towing vessel* means any vessel engaged in towing astern, alongside, or pushing ahead and includes the tug in an integrated tug barge. It does not include fleeting or assist towing vessels.

(tt) *Rest hour* means an off-duty period of 1 hour during which no tasks are assigned to the crew member and the crew member is not scheduled to perform any duty. A rest hour may include response to drills or emergencies.

SUBPART G—STRUCTURAL AND OPERATIONAL MEASURES FOR CERTAIN TANK VESSELS WITHOUT DOUBLE HULLS

5. Section 157.400 is revised to read as follows:

§ 157.400 Applicability.

This subpart applies to each tank vessel of 5,000 gross tons or more that—

(a) Carries oil in bulk as cargo or cargo residue;

(b) Enters or operates in the navigable waters of the United States or that operates, conducts lightering under 46 U.S.C. 3715, or receives cargo from or transfers cargo to a deepwater port under 33 U.S.C. 1501 *et seq.*, in the United States Exclusive Economic Zone (EEZ), as defined in 33 U.S.C. 2701(8); and

(c) Is not currently equipped with a double hull meeting § 157.10d of this part, or an equivalent to the requirements of § 157.10d, but required to be equipped with a double hull at a date set forth in 46 U.S.C. 3703a(b)(3) and (c)(3).

6. In § 157.410, paragraph (c) is revised to read as follows:

§ 157.410 Emergency lightering requirements for tank vessels.

* * * * *

(c) Reducers, bolts, and gaskets must meet the requirements of 46 CFR subpart 56.25. Cast iron and malleable iron shall not be used for valves or fittings in lines carrying flammable or combustible fluids which are directly connected to, or in the proximity of, equipment or other lines having open flames, or any parts operating at temperatures above 260°C (500°F).

7. Section 157.415 is added to read as follows:

§ 157.415 Bridge resource management training.

(a) After [12 months after the effective date of the final rule.], a tank vessel owner, master, or operator shall not assign a person to duties as an officer in charge of a navigational watch unless that person has satisfactorily completed a course that includes the following:

(1) Instruction in the following areas:

(i) Communications: effective management of the flow of information, including but not limited to, the exchange of information between the master and the pilot, the master and the crew members, and the officer in charge of a navigational watch and crew members.

(ii) Voyage planning: the planning of both ocean and pilotage water transits to account for navigational hazards, weather, vessel traffic, operational restrictions, facility and port requirements, and compliance with local and international regulations.

(iii) Error trapping: identifying and verifying elements in a sequence of events that could lead to an accident.

(iv) Situational awareness: accurate perception of any factors and conditions that affect a vessel over time.

(v) Pilot and bridge team integration: the effective flow of knowledge between the vessel's crew and the pilot to incorporate knowledge of the local port area and ensure cooperation in the development of the vessel's navigation plan.

(vi) Watch team training: method for training watchstanding personnel to efficiently and effectively stand a watch.

(vii) Emergency situation procedures: development and use of procedures, including communications between crew and shoreside personnel and use of onboard safety equipment, for successful emergency response.

(2) Practical demonstration of the following skills:

(i) Ability to recognize potential hazards to navigation, incorporate these considerations into a voyage plan, and communicate these hazards to subordinates, senior watchstanding personnel, and a pilot during a voyage.

(ii) Ability to recognize subordinate limitations and take appropriate action to ensure the subordinates are attentive and provide accurate feedback on their assigned tasks during a voyage.

(iii) Ability to recognize and initiate communications with other vessels, subordinates, and senior watchstanding personnel to prevent miscommunication or an inappropriate action.

(iv) Ability to work with and, at the same time, monitor a pilot to ensure consistency with vessel operating characteristics and the voyage passage plan.

(v) Ability to use all available bridge equipment to perform their assigned duties, and to display knowledge of the appropriate action(s) to take in the event of an equipment malfunction.

(b) Tank vessel owner, master, or operator shall not assign a person to duties as an officer in charge of a navigational watch unless that person has demonstrated knowledge of company and vessel standard operating procedures including allowed variations, watch augmentation provisions, relationship of the officer in charge of a navigational watch to the master or pilot when both are on the bridge, and emergency navigation procedures.

(c) The training identified in paragraph (a) of this section must be completed at least once every 5 years.

(d) Satisfactory completion of a commercial or company course approved by the Coast Guard or, for an individual holding a foreign license, the appropriate flag administration, that contains elements comparable to those required in paragraphs (a)(1) and (a)(2) of this section meets the initial training requirement if completed after [36 months prior to the effective date of the final rule.].

(e) Course completion must be documented by a certificate, license endorsement, or a letter confirming that each officer in charge of a navigational watch has satisfactorily completed the training requirements. Copies of each officer's certificate, endorsement, or letter confirming their completion must be retained on board the vessel or otherwise be made readily available to the Coast Guard for examination upon request.

(f) A tank barge owner or operator shall ensure that those individuals assigned to duties on the primary towing vessel that are similar to the duties of the officer in charge of a navigational watch also complete bridge resource management training as specified in paragraphs (a) through (e) of this section.

8. Section 157.420 is added to read as follows:

§ 157.420 Vessel specific watch training.

(a) The owner, master, or operator of a tank vessel shall not assign duties to an individual assigned lookout, helmsman, or engineering watch duties unless that person has successfully completed a course that includes academic instruction in the following areas, as applicable to the individual's job responsibilities:

(1) Communications: effective flow of information between personnel, including the importance of feedback and timeliness.

(2) Error trapping: identifying and verifying elements in a sequence of events that could lead to an accident.

(3) Equipment: employing correct use and monitoring requirements of the equipment necessary to perform assigned duties, including the appropriate action(s) to take in the event of an equipment malfunction.

(4) Watch team integration: the effective flow of information among the vessel's crew to ensure the person in charge of vessel navigation is kept aware of events pertaining to equipment operation and personnel effectiveness.

(b) Each individual must complete initial training that meets the requirements of paragraph (a) of this section prior to assignment of watchkeeping duties.

(c) Each individual must complete annual training that meets the requirements of paragraph (a) of this section.

(d) Completion of training must be documented by a certificate, vessel log entry, or a letter confirming that each individual has satisfactorily completed the training requirements. Copies of the certificate or letter confirming completion must be retained on board the vessel or otherwise made readily available to the Coast Guard for examination upon request.

(e) A tank barge owner or operator shall ensure that those individuals assigned to duties on the primary towing vessel that are similar to lookout, helmsman, or engineering watch duties also complete vessel specific watch training as specified in paragraphs (a) through (d) of this section.

9. Section 157.425 is added to read as follows:

§ 157.425 Minimum rest hour requirement.

(a) A tankship owner, master, or operator shall ensure each person is provided a minimum of 6 continuous rest hours within the 12 hours prior to departing port or prior to cargo transfer operations before assuming the following duties:

(1) Officer in charge of a navigational watch, lookout, helmsman, engineer officer in charge of a manned engine room on a tankship, member of an engineering watch on a tankship, and the operator or master of the vessel, if scheduled as a member of the duty rotation for officer in charge of a navigational watch.

(2) Person in charge of cargo transfer operations.

(b) A tank barge owner or operator shall ensure that the individuals on the primary towing vessel having duties similar to those listed in paragraphs (a)(1) and (a)(2) of this section are provided a minimum of 6 continuous rest hours within the 12 hours before assuming his or her duties prior to departing port or prior to cargo transfer operations.

(c) If a crew member's rest hours have been interrupted by drills or emergencies, the operator or master shall assess the crew member's fitness for duty before assigning him or her to any of the duties described in this section.

(d) Minimum rest hour requirements must be posted on tank vessels in crew lounge areas and work spaces.

10. Section 157.430 is added to read as follows:

§ 157.430 Enhanced survey requirements.

(a) *Enhanced survey.* The tank vessel owner, master, or operator shall ensure an enhanced survey is conducted during each regularly scheduled drydock examination required under 46 CFR part 31 or at a frequency specified by the vessel's flag administration. Survey scope and recordkeeping requirements must comply with the standards of IMO Resolution A.744(18), Annex B sections 1.1.3–1.1.4, 1.2–1.3, 2.1, 2.3–2.6, 3–8, and Annexes 1–10 with appendices.

(b) *Alternate enhanced survey.* For a tankship of less than 20,000 deadweight tons (dwt) carrying crude oil, a tankship of less than 30,000 dwt carrying product, or a tank barge, one of the following may be substituted for the enhanced survey requirements in paragraph (a) of this section:

(1) An enhanced survey performed by a recognized classification society.

(2) An enhanced survey performed by the company with oversight by the Coast Guard or the vessel's flag administration, a recognized classification society, or an independent auditing authority approved by the Coast Guard if—

(i) The frequency of survey is no less than that required by 46 CFR part 31 or as specified by the vessel's flag administration;

(ii) Program plans establishing comparable standards with the requirements in paragraph (a) of this section are approved by the Commandant (G–MVI) and contain the following information:

(A) The scope of the inspection program.

(B) Permanent recordkeeping requirements.

(C) An implementation plan outlining a continuous survey program and identifying by job title those individuals whom the company will assign to conduct the surveys.

(D) Confirmation from the administration, a recognized classification society, or an independent auditing authority approved by the Coast Guard that the oversight implementation plan is feasible.

(c) A copy of the most recent survey must be retained onboard the vessel or, upon request by the Coast Guard, made available within 24 hours for examination.

11. Section 157.435 is added to read as follows:

§ 157.435 Vital systems surveys.

(a) A tank vessel owner, master, or operator shall survey the following systems:

(1) *Cargo systems.* The survey must include the examination and testing of the items listed in Chapters 6, 7, and 9 of the International Safety Guide for Oil Tankers and Terminals, if applicable, prior to cargo transfer operations.

(2) *Mooring systems.* The survey must include a visual examination of the emergency towline, the anchor releasing mechanism, and mooring lines prior to departing port.

(b) Surveys must be conducted by company management personnel, company designated individuals, or vessel senior officers knowledgeable about the equipment operating parameters and having the authority, capability, and responsibility to initiate corrective action when the equipment is not functioning properly.

(c) The material condition of each system identified in paragraph (a) of this section must be recorded in the vessel's Oil Record Book, Part I or Part II, as applicable, the vessel's log, or other onboard documentation.

12. Section 157.440 is added to read as follows:

§ 157.440 Autopilot alarm or indicator.

(a) A tankship owner, master, or operator shall ensure that each installed autopilot unit without automatic manual override has an audible and visual alarm, which is distinct from other required bridge alarms, that will activate if the helm is manually moved while the autopilot is engaged.

(b) A tank barge owner or operator shall ensure that each autopilot unit without automatic manual override installed on the primary towing vessel has a means to clearly indicate the autopilot status and warns personnel of

the requirement to disengage the autopilot if positive rudder control is needed.

13. Section 157.445 is added to read as follows:

§ 157.445 Maneuvering performance capability.

(a) A tankship owner, master, or operator shall ensure that maneuvering tests in accordance with IMO Resolution A.751(18), sections 1.2.2, 2.3–2.4, and 3–5 (with Explanatory Notes in MSC/Circ.644) have been conducted by *[12 months after the effective date of the final rule]*. Satisfactory completion of maneuvering performance tests must be shown by—

(1) For a foreign flag tankship, a letter from the flag administration or a recognized classification society stating the requirements in paragraph (a) of this section have been met; or

(2) For a U.S. flag tankship, test results from the vessel owner confirming the completion of sea trial maneuvers or a letter from a recognized classification society stating the requirements in paragraph (a) of this section have been met.

(b) If a vessel undergoes a major conversion or alteration affecting the control systems, control surfaces, propulsion system, or other areas which may be expected to alter maneuvering performance, the tankship owner, master, or operator shall ensure that maneuvering tests are conducted as required by paragraph (a) of this section.

(c) If a vessel does not meet the performance standards of IMO Resolution A.751(18), the owner, master, or operator must inform the Captain of the Port (COTP) by message, letter, or radio contact, at least 24 hours before entering the port of place of destination. Upon notification, the COTP will determine if additional operational restrictions for port entry should be imposed on the vessel. These may include, but are not limited to—

(1) Requiring a tug escort or augmentation of existing escorts;

(2) Restricting transit times;

(3) Restricting vessel speed;

(4) Requiring the vessel to follow a specified route and make specified reports;

(5) Barring entry into port; or

(6) Imposing other measure(s) appropriate for local conditions.

(d) Performance test results, recorded in the format of Appendix 6 of the Explanatory Notes in MSC/Circ.644, must be prominently displayed in the wheelhouse.

14. Section 157.450 is added to read as follows:

§ 157.450 Maneuvering and vessel status information.

A tankship owner, master or operator shall comply with IMO Resolution A.601(15), Annex sections 1, 2.3, and 3 with appendices.

15. Section 157.455 is added to read as follows:

§ 157.455 Minimum under-keel clearance.

(a) For a tank vessel that is not fitted with a double bottom that covers the entire cargo tank length, a vessel owner, master, or operator shall meet the following requirements prior to entering the port or place of destination and prior to departing port:

(1) The tank vessel's deepest navigational draft must be calculated including the following factors—

(i) The mean draft;

(ii) The trim and list characteristics; and

(iii) The intended transit speed and the corresponding squat characteristics, if known.

(2) The anticipated controlling depth must be calculated including the following factors—

(i) Tide and current conditions;

(ii) Present sea state conditions;

(iii) Past weather impact on water depth;

(iv) The depth at the facility or anchorage; and

(v) The depth of the transit area found in the publication and chart materials required to be on board the vessel by 33 CFR part 164.

(3) The anticipated under-keel clearance must be calculated by subtracting the tank vessel's deepest navigational draft from the anticipated controlling depth. The vessel's calculated deepest navigational draft, anticipated controlling depth, and the calculated anticipated under-keel clearance must be recorded in the vessel's log or in other onboard documentation.

(4) The vessel shall not proceed without the approval of the local COTP if the anticipated under-keel clearance is less than .5 meter (2 feet).

(b) For a tank barge that is not fitted with a double bottom that covers the entire cargo tank length, the tank barge owner or operator shall ensure that the primary towing vessel owner, master, or operator meets the requirements specified in paragraphs (a) (1) through (4) of this section.

16. Section 157.460 is added to read as follows:

§ 157.460 Additional operational requirements for tank barges.

(a) *Emergency steering capability.* The owner or operator of each tank barge shall ensure that by *[12 months after effective date of the final rule]* the primary towing vessel has—

(1) A steering gear system with a main power unit, an alternative power unit, and two remote steering gear control systems, except that separate steering wheels or steering levers are not required. The steering gear control systems shall be arranged so that if the system in operation fails, the other system can be brought into immediate operation from a position on the navigating bridge; or

(2) Twin screw propulsion with separate control systems for each propeller.

(b) *Fendering system.* An owner or operator of a tank barge shall ensure the primary towing vessel and any fleeting or assist towing vessels have a fendering system that is of substantial size and composition to prevent metal to metal contact between the towing vessel and the barge during maneuvering operations.

PART 31—INSPECTION AND CERTIFICATION

17. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46; Section 31.10–21a also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

18. In § 31.10–21, Table (a) is revised to read as follows:

TABLE 31.10.—21 (a) SALT WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Ship and single hull barge [9]	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3 9]	Wood hull ship and barge	Ship and single hull barge grade D and E cargoes only [4 9]	Double hull barge grade D and E cargoes only [5]	Single hull asphalt barge [6 9]	Double hull asphalt barge [7]
Drydock	2.5	5.0	5.0	5.0	2.5	2.5	5.0	2.5	5.0
Internal structural	2.5	2.5	2.5	2.5	5.0	5.0	2.5	10.0	2.5
Cargo tank internal	[8] 2.5	[8] 5.0	[8] 10.0	[8] 10.0	[8] 2.5	5.0	10.0	10.0	15.0

Notes:
[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms, and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to single hull tankships and tank barges certificated for the carriage of grade D and E cargoes only.
[5] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of grade D and E cargoes only.
[6] Applicable to single hull tank barges certificated for the carriage of asphalt only.
[7] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.
[8] Or as specified in part 38 or 151 as applicable.
[9] Enhanced survey requirements apply as specified in 33 CFR part 157.

19. In § 31.10–21, Table (b) is revised to read as follows:

TABLE 31.10.—21(B) FRESH WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Ship and single hull barge [9]	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3, 9]	Wood hull ship and barge	Ship and single hull barge grade D and E cargoes only [4, 9]	Double hull barge grade D an E cargoes only [5]	Single hull asphalt barge [6, 9]	Double hull asphalt barge [7]
Drydock	5.0	10.0	10.0	10.0	2.5	5.0	10.0	5.0	10.0
Internal structural	5.0	5.0	5.0	5.0	5.0	5.0	5.0	10.0	5.0
Cargo tank internal	[8] 5.0	[8] 5.0	[8] 10.0	[8] 10.0	[8] 2.5	5.0	10.0	10.0	15.0

Notes:
[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms, and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to single hull tank ships and tank barges certificated for the carriage of grade D and E cargoes only.
[5] Applicable to double hull tank barges (double sides, ends and bottoms) certificated for the carriage of grade D and E cargoes only.
[6] Applicable to single hull tank barges certificated for the carriage of asphalt only.
[7] Applicable to double hull tank barges (double sides, ends and bottoms) certificated for the carriage of asphalt only.
[8] Or as specified in part 38 or 151 as applicable.
[9] Enhanced survey requirements apply as specified in 33 CFR part 157.

PART 35—OPERATIONS

20. The Authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. In § 35.01–40, paragraph (c) is revised to read as follows:

§ 35.01–40 Prevention of oil pollution–TB/ALL.

* * * * *

(c) 33 CFR parts 151, 155, 156, 157 and 164.

Dated: October 27, 1995.

A.E. Henn,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 95–27185 Filed 10–31–95; 8:45 am]

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Friday
November 3, 1995

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888
Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. FR–3952–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revised contract rent annual adjustment factors.

SUMMARY: The United States Housing Act of 1937 requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This document announces revised Annual Adjustment Factors (AAFs) for assistance contract anniversaries from October 1, 1995. The factors are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) and the HUD Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477 (TDD) or (202) 708–0850 (voice)], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Barbara Hunter, Program Management Division, Office of Multifamily Asset Management and Disposition [(202) 708–3944 (TDD) or (202) 708–4594 (voice)], for questions relating to all other Section 8 programs; for technical information regarding the development of the schedules for specific areas or the method used for calculating the AAFs, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0577 (TDD) or (202) 708–0770 (voice)]. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (The above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The fiscal year 1995 Department of Housing and Urban Development Appropriations Act (Pub. L. 103–327, approved September 28, 1994) contained special requirements for adjustment of Section 8 contract rents. Congress stipulated that,

> For any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0.

Under the terms of the fiscal year 1995 appropriation, these amendments modified requirements for adjustment of Section 8 contract rents (under Section 8(c)(2)(A) of the United States Housing Act of 1937, 42 U.S.C. 1437f(c)(2)(A)) in fiscal year 1995 (i.e., until September 30, 1995). Thus these amendments sunset at the end of fiscal year 1995. At this time, the Congress has not yet enacted the regular HUD appropriation for fiscal year 1996. However, the Congress has enacted a continuing resolution to provide temporary funding for continuation of government activities carried out during fiscal year 1996 (until November 13 or enactment of a regular appropriation).

During the period of the continuing resolution, funds must be used in accordance with the same "authority and conditions" provided in the HUD appropriation act for fiscal year 1995.

Since the special rent adjustment requirements were contained in HUD's fiscal year 1995 appropriation act, and affect the use of available funds under the continuing resolution, the adjustment requirements are extended during the period of the continuing resolution. The legislative history of the fiscal year 1996 continuing resolution specifically confirms that the fiscal year 1995 adjustment requirements apply during the period of the fiscal year 1996 continuing resolution. (Colloquy of Senators Feinstein and Hatfield at Congressional Record, p. S 14638, September 29, 1995.)

For all Section 8 programs other than the Section 8 certificate program, HUD expects that the fiscal year 1996 appropriation, when enacted, will probably include the same Section 8 rent adjustment requirements in fiscal year 1996 that applied in fiscal year 1995 (and which were extended during the period of the fiscal year 1996 continuing resolution). For the Section 8 certificate program (both the tenant-based certificate program (24 CFR Part 982) and the project-based certificate program (24 CFR Part 983)), adjustment requirements may be amended to provide that:

> In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor may not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the same market area.

(Section 204(b) of H.R. 2099 as passed by the Senate, September 27, 1995.)

During the continuing resolution period, rents will be adjusted by applying the fiscal year 1996 AAFs published in this notice. However, contract rents will be adjusted under the same procedures that were used in fiscal year 1995 under the terms of the fiscal year 1995 appropriation act. These procedures will be used for HAP contract anniversaries that fall during the period of the fiscal year 1996 continuing resolution—the period of fiscal year 1996 before enactment of the regular appropriation. For contract anniversaries that fall after enactment of the regular HUD appropriation for fiscal year 1996, contract rents will be adjusted in accordance with requirements of the appropriation as enacted.

In fiscal year 1995 HUD published two separate AAF tables. In this AAF notice for fiscal year 1996, HUD is again publishing two separate AAF tables. The AAFs for fiscal year 1996 are contained in Schedule C, tables 1 and 2 of this notice. Each AAF in table 2 is computed by subtracting 0.01 from the amount of the annual adjustment factors in table 1.

Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for Section 8 Housing Assistance Payments Program units. However, the specific application of the AAFs should be determined by reference to the HAP contract and to appropriate program regulations or requirements.

AAFs are not used for the Section 8 voucher program. Contract rents for some projects receiving Section 8 subsidies under the loan management provisions of 24 CFR part 886, subpart A, and for projects receiving Section 8 subsidies under the property disposition provisions of 24 CFR part 886, subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19(e).

Under the Section 8 moderate rehabilitation program, the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

Adjustment Procedures Under Fiscal Year 1996 Appropriation

This section briefly summarizes procedures for contract rent adjustment:

(1) During the period of the fiscal year 1996 continuing resolution, and

(2) Under the appropriation for fiscal year 1996, when enacted.

The discussion of adjustment under the fiscal year 1996 appropriation assumes that:

—Except for the certificate program, the fiscal year 1996 appropriation will extend to fiscal year 1996 the same adjustment requirements that were contained in the fiscal year 95 appropriations (108 Stat. 2315).

—For the Section 8 certificate program, the fiscal year 96 appropriation will enact the special certificate program adjustment requirements as quoted above (from the Senate-passed appropriation bill).

If the enacted appropriation differs from these assumptions, contract rent adjustments will be made in accordance with requirements of the law as enacted.

The discussion in this **Federal Register** notice is intended to provide a broad orientation on procedures for adjustment under the fiscal year 1996 appropriations. Technical details and requirements will be described in HUD notices (by the HUD office of housing and the HUD office of public and Indian housing).

Because of statutory and structural distinctions between the various Section 8 programs, there are separate procedures for three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

For category 1 programs, comparability applies if the pre-adjustment gross rent is above the published FMR. The Table 1 AAF factor is applied before determining comparability (rent reasonableness). If the comparable rent level (plus any initial difference) is lower than the adjusted contract rent amount (by application of the table 1 AAF), the comparable rent level (plus any initial difference) will be applied. (However, the pre-adjustment contract rent will not be decreased by application of comparability.)

In all other cases (i.e., unless contract rent is reduced by comparability):

—The table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The table 2 AAF is used for a unit occupied by the same family since the last annual anniversary.

Category 2: The Loan Management Program (Part 886, Subpart A) or Property Disposition Program (Part 886 Subpart C), Where Rents Are Adjusted by Applying the AAF

At this time, rent adjustment in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The table 2 AAF is used for a unit occupied by the same family since the last annual anniversary.

Category 3: Section 8 Certificate Program

3.A Adjustment During Period of Continuing Resolution: Tenant-Based Certificate Program (Part 982)

In the tenant-based certificate program:

—Comparability always applies, and

—The unit is always occupied by the same family since the last annual anniversary of the HAP contract (since a separate HAP contract is executed for each family).

In the tenant-based certificate program, the following procedures are used for adjustment of contract rents for anniversaries that fall during the period of the continuing resolution:

—The table 1 AAF factor is applied before determining comparability (rent reasonableness). If the comparable rent level is lower than the adjusted amount (by application of the table 1 AAF), the comparable rent level will be applied.

—The table 2 AAF is used in all other cases (i.e., unless contract rent is reduced by comparability).

3.B Adjustment During Period of Continuing Resolution: Project-Based Certificate Program

During the period of the continuing resolution, use same adjustment procedures as Category 2.

3.C Adjustment After Enactment of Regular Appropriation Tenant-Based and Project-Based Certificate Programs

After the enactment of the regular appropriation, the same adjustment procedure is used for rent adjustment in the tenant-based and project-based certificate programs. The following procedures are used:

—The table 2 AAF factor is *always* applied before determining comparability (rent reasonableness).

—Comparability *always* applies.

If the comparable rent level is lower than the adjusted amount (by application of the table 2 AAF), the comparable rent level will be applied.

AAF Tables

The AAFs for fiscal year 1996 are contained in Schedule C, tables 1 and 2 of this notice.

AAF Areas

Each AAF applies to a specified geographical area and to units of all bedroom sizes. AAFs are provided:

(1) for the metropolitan parts of the ten HUD regions exclusive of CPI areas;

(2) for the nonmetropolitan parts of these regions, and

(3) for 102 separate metropolitan AAF areas for which local CPI survey data are available.

With the several exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for large metropolitan areas, where HUD considers the area covered by the OMB definitions to be larger than appropriate for use as a housing market area definition. HUD therefore modified the definitions for these areas by deleting some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan Area—Deleted Counties

Atlanta, GA—Carroll, Pickens, and Walton Counties.

Chicago, IL—DeKalb, Grundy and Kendall Counties.

Cincinnati–Hamilton, OH–KY–IN—Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.

Dallas, TX—Henderson County.

Flagstaff, AZ–UT—Kane County, UT.

New Orleans, LA—St. James Parish.

Washington, DC–VA–MD–WV—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk

(*) next to the area name. The asterisk denotes that there is a difference between the OMB metropolitan area and the HUD AAF area definitions for those areas.

Program participants should refer to the area definitions section at the end of Schedule C to make certain that they are using the correct AAFs. Units located in metropolitan areas with a local CPI survey must use the corresponding AAFs listed separately for those metropolitan areas. Units that are located in areas without a local CPI survey must use the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All CPI defined areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the CPI defined areas (in those states that have such areas) are the metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the table as STATE: Hawaii, which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey. All other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

The AAFs in this publication identified as "Highest Cost Utility Excluded" are to be used to adjust manufactured home space contract rents. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

How Factors Are Calculated

AAF Formula

AAFs for each area were calculated as follows:

For Areas With CPI Surveys:

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data;

(2) The shelter rent factor was calculated by eliminating the effect of heating costs that are included in the rent of some of the units included in the CPI surveys; and

(3) The gross rent factors were calculated by weighing the rent and utility components with the 1990 Census corresponding components.

For Areas Without CPI Surveys:

(1) HUD used RDD regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) the change in gross rent was calculated using the most recent RDD survey median gross rent for the respective metropolitan or nonmetropolitan parts of the HUD region; and

(3) the change in shelter rent was calculated by subtracting median value of utilities costs from the median gross rent. The median cost of utilities was determined from the units in the RDD sample reporting that all utilities were paid by the tenant.

Other Matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(l).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following tables:

Dated: September 21, 1995.

Henry Cisneros,

Secretary.

BILLING CODE 4210-32-P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.007	1.004
New York/New Jersey Metropolitan	1.030	1.034
Mid-Atlantic Metropolitan	1.031	1.033
Southeast Metropolitan	1.033	1.040
Midwest Metropolitan	1.023	1.033
Southwest Metropolitan	1.021	1.026
Great Plains Metropolitan	1.027	1.040
Rocky Mountain Metropolitan	1.071	1.080
Pacific/Hawaii Metropolitan	1.022	1.024
Northwest/Alaska Metropolitan	1.045	1.046
STATE Hawaii	1.025	1.025
MSA Anchorage, AK	1.027	1.035
*Atlanta, GA	1.028	1.031
PMSA Baltimore, MD	1.013	1.013
*COUNTY Berkeley, WV	1.017	1.018
PMSA Boulder-Longmont, CO	1.053	1.055
PMSA Bremerton, WA	1.027	1.021
PMSA Brockton, MA	1.009	1.006
PMSA Buffalo-Niagara Falls, NY	1.020	1.014
*Chicago, IL	1.024	1.039
*COUNTY Clarke, VA	1.017	1.018
*COUNTY Carroll, GA	1.025	1.014
*Cincinnati, OH-KY-IN	1.026	1.024
PMSA Cleveland-Lorain-Elyria, OH	1.018	1.017
PMSA Akron, OH	1.018	1.017
PMSA Ann Arbor, MI	1.017	1.020
PMSA Atlantic-Cape May, NJ	1.014	1.013
PMSA Bergen-Passaic, NJ	1.024	1.026
PMSA Boston, MA-NH	1.008	1.006
PMSA Brazoria, TX	1.025	1.030
PMSA Bridgeport, CT	1.024	1.027
*COUNTY Brown, OH	1.028	1.023
*COUNTY Carroll, GA	1.025	1.031
*Cincinnati, OH-KY-IN	1.026	1.024
PMSA Cleveland-Lorain-Elyria, OH	1.018	1.017

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS — PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Culpeper, VA	1.017	1.018	*Dallas, TX	1.038	1.038
PMSA Danbury, CT	1.024	1.026	*COUNTY De Kalb, IL	1.021	1.042
PMSA Denver, CO	1.053	1.055	PMSA Detroit, MI	1.016	1.020
PMSA Dutchess County, NY	1.024	1.026	PMSA Fitchburg-Leominster, MA	1.009	1.006
PMSA Flint, MI	1.016	1.020	PMSA Fort Lauderdale, FL	1.046	1.054
PMSA Fort Worth-Arlington, TX	1.037	1.038	*COUNTY Gallatin, KY	1.028	1.023
PMSA Galveston-Texas City, TX	1.025	1.030	PMSA Gary, IN	1.017	1.046
*COUNTY Grant, KY	1.028	1.023	PMSA Greeley, CO	1.053	1.055
*COUNTY Grundy, IL	1.018	1.045	PMSA Hagerstown, MD	1.017	1.018
PMSA Hamilton-Middletown, OH	1.026	1.024	*COUNTY Henderson, TX	1.037	1.038
PMSA Houston, TX	1.026	1.030	*COUNTY Jefferson, WV	1.017	1.018
PMSA Jersey City, NJ	1.024	1.026	PMSA Kankakee, IL	1.016	1.047
MSA Kansas City, MO-KS	1.018	1.015	*COUNTY Kendall, IL	1.022	1.041
PMSA Kenosha, WI	1.021	1.042	*COUNTY King George, VA	1.017	1.018
PMSA Lawrence, MA-NH	1.009	1.006	PMSA Los Angeles-Long Beach, CA	1.003	1.002
PMSA Lowell, MA-NH	1.008	1.006	PMSA Manchester, NH	1.009	1.006
PMSA Miami, FL	1.046	1.054	PMSA Middlesex-Somerset-Hunterdon, NJ	1.024	1.026
PMSA Milwaukee-Waukesha, WI	1.028	1.038	MSA Minneapolis-St. Paul, MN-WI	1.015	1.018
PMSA Monmouth-Ocean, NJ	1.024	1.026	PMSA Nashua, NH	1.008	1.006
PMSA Nassau-Suffolk, NY	1.024	1.026	PMSA New Bedford, MA	1.009	1.006
PMSA New Haven-Meriden, CT	1.024	1.026	*New Orleans, LA	1.010	1.015

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS — PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.024	1.026	*COUNTY Westchester, NY	1.024	1.025
PMSA Newark, NJ	1.024	1.026	PMSA Newburgh, NY-PA	1.024	1.026
PMSA Oakland, CA	1.018	1.019	*COUNTY Ohio, IN	1.027	1.023
PMSA Olympia, WA	1.028	1.021	PMSA Orange County, CA	1.003	1.002
*COUNTY Pendleton, KY	1.028	1.023	PMSA Philadelphia, PA-NJ	1.014	1.013
*COUNTY Pickens, GA	1.025	1.031	PMSA Pittsburgh, PA	1.027	1.027
PMSA Portland-Vancouver, OR-WA	1.047	1.047	PMSA Portsmouth-Rochester, NH-ME	1.009	1.006
PMSA Racine, WI	1.028	1.038	PMSA Riverside-San Bernardino, CA	1.003	1.002
*COUNTY St. James Parish, LA	1.008	1.015	MSA St. Louis, MO-IL	1.030	1.035
PMSA Salem, OR	1.047	1.047	MSA San Diego, CA	1.000	1.000
PMSA San Francisco, CA	1.018	1.019	PMSA San Jose, CA	1.018	1.019
PMSA Santa Cruz-Watsonville, CA	1.018	1.019	PMSA Santa Rosa, CA	1.018	1.019
PMSA Seattle-Bellevue-Everett, WA	1.025	1.021	PMSA Stamford-Norwalk, CT	1.024	1.026
PMSA Tacoma, WA	1.027	1.021	MSA Tampa-St. Petersburg-Clearwater, FL	1.034	1.035
PMSA Trenton, NJ	1.024	1.026	PMSA Vallejo-Fairfield-Napa, CA	1.018	1.019
PMSA Ventura, CA	1.003	1.002	PMSA Vineland-Millville-Bridgeton, NJ	1.014	1.013
*COUNTY Walton, GA	1.025	1.031	*COUNTY Warren, VA	1.017	1.018
*Washington, DC-MD-VA	1.017	1.018	PMSA Waterbury, CT	1.024	1.026
PMSA Wilmington-Newark, DE-MD	1.014	1.013	PMSA Worcester, MA-CT	1.009	1.006

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS — PREPARED ON 072195

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
New England Metropolitan	1.000	1.000	New England Nonmetropolitan	1.000	1.000
New York/New Jersey Metropolitan	1.020	1.024	New York/New Jersey Nonmetropolitan	1.004	1.004
Mid-Atlantic Metropolitan	1.022	1.023	Mid-Atlantic Nonmetropolitan	1.018	1.013
Southeast Metropolitan	1.023	1.030	Southeast Nonmetropolitan	1.005	1.010
Midwest Metropolitan	1.013	1.023	Midwest Nonmetropolitan	1.000	1.005
Southwest Metropolitan	1.011	1.016	Southwest Nonmetropolitan	1.019	1.032
Great Plains Metropolitan	1.017	1.030	Great Plains Nonmetropolitan	1.000	1.012
Rocky Mountain Metropolitan	1.061	1.070	Rocky Mountain Nonmetropolitan	1.009	1.010
Pacific/Hawaii Metropolitan	1.012	1.014	Pacific/Hawaii Nonmetropolitan	1.018	1.024
Northwest/Alaska Metropolitan	1.035	1.036	Northwest/Alaska Nonmetropolitan	1.018	1.020
STATE Hawaii	1.015	1.015	PMSA Akron, OH	1.008	1.007
MSA Anchorage, AK	1.017	1.025	PMSA Ann Arbor, MI	1.007	1.010
*Atlanta, GA	1.018	1.021	PMSA Atlantic-Cape May, NJ	1.004	1.003
PMSA Baltimore, MD	1.003	1.003	PMSA Bergen-Passaic, NJ	1.014	1.016
*COUNTY Berkeley, WV	1.007	1.008	PMSA Boston, MA-NH	1.000	1.000
PMSA Boulder-Longmont, CO	1.043	1.045	PMSA Brazoria, TX	1.015	1.020
PMSA Bremerton, WA	1.017	1.011	PMSA Bridgeport, CT	1.014	1.017
PMSA Brockton, MA	1.000	1.000	*COUNTY Brown, OH	1.018	1.013
PMSA Buffalo-Niagara Falls, NY	1.010	1.004	*COUNTY Carroll, GA	1.016	1.021
*Chicago, IL	1.014	1.020	*Cincinnati, OH-KY-IN	1.016	1.014
*COUNTY Clarke, VA	1.007	1.008	PMSA Cleveland-Lorain-Elyria, OH	1.008	1.007

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS — PREPARED ON 072195

	HIGHEST COST INCLUDED	UTILITY EXCLUDED		HIGHEST COST INCLUDED	UTILITY EXCLUDED
*COUNTY Culpeper, VA	1.007	1.008	*Dallas, TX	1.028	1.028
PMSA Danbury, CT	1.014	1.016	*COUNTY De Kalb, IL	1.011	1.032
PMSA Denver, CO	1.043	1.045	PMSA Detroit, MI	1.006	1.010
PMSA Dutchess County, NY	1.014	1.016	PMSA Fitchburg-Leominster, MA	1.000	1.000
PMSA Flint, MI	1.006	1.010	PMSA Fort Lauderdale, FL	1.036	1.044
PMSA Fort Worth-Arlington, TX	1.028	1.028	*COUNTY Gallatin, KY	1.018	1.013
PMSA Galveston-Texas City, TX	1.015	1.020	PMSA Gary, IN	1.007	1.036
*COUNTY Grant, KY	1.018	1.013	PMSA Greeley, CO	1.043	1.045
*COUNTY Grundy, IL	1.008	1.035	PMSA Hagerstown, MD	1.007	1.008
PMSA Hamilton-Middletown, OH	1.016	1.014	*COUNTY Henderson, TX	1.027	1.028
PMSA Houston, TX	1.016	1.020	*COUNTY Jefferson, WV	1.007	1.008
PMSA Jersey City, NJ	1.014	1.016	PMSA Kankakee, IL	1.006	1.037
MSA Kansas City, MO-KS	1.008	1.005	*COUNTY Kendall, Il	1.012	1.031
PMSA Kenosha, WI	1.011	1.032	*COUNTY King George, VA	1.007	1.008
PMSA Lawrence, MA-NH	1.000	1.000	PMSA Los Angeles-Long Beach, CA	1.000	1.000
PMSA Lowell, MA-NH	1.000	1.000	PMSA Manchester, NH	1.000	1.000
PMSA Miami, FL	1.036	1.044	PMSA Middlesex-Somerset-Hunterdon, NJ	1.014	1.016
PMSA Milwaukee-Waukesha, WI	1.018	1.028	MSA Minneapolis-St. Paul, MN-WI	1.005	1.008
PMSA Monmouth-Ocean, NJ	1.014	1.016	PMSA Nashua, NH	1.000	1.000
PMSA Nassau-Suffolk, NY	1.014	1.016	PMSA New Bedford, MA	1.000	1.000
PMSA New Haven-Meriden, CT	1.014	1.016	*New Orleans, LA	1.000	1.005

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER. SECTION 8 HAP PROGRAMS

PREPARED ON 072195

		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA	New York, NY	1.014	1.016
PMSA	Newark, NJ	1.014	1.016
PMSA	Oakland, CA	1.008	1.009
PMSA	Olympia, WA	1.018	1.011
*COUNTY	Pendleton, KY	1.018	1.013
*COUNTY	Pickens, GA	1.015	1.021
PMSA	Portland-Vancouver, OR-WA	1.037	1.037
PMSA	Racine, WI	1.018	1.028
*COUNTY	St. James Parish, LA	1.000	1.005
PMSA	Salem, OR	1.037	1.037
PMSA	San Francisco, CA	1.008	1.009
PMSA	Santa Cruz-Watsonville, CA	1.008	1.009
PMSA	Seattle-Bellevue-Everett, WA	1.016	1.011
PMSA	Tacoma, WA	1.017	1.011
PMSA	Trenton, NJ	1.014	1.016
PMSA	Ventura, CA	1.000	1.000
*COUNTY	Walton, GA	1.015	1.021
*Washington,	DC-MD-VA	1.007	1.008
PMSA	Wilmington-Newark, DE-MD	1.004	1.003
PMSA	Westchester, NY	1.014	1.016
PMSA	Newburgh, NY-PA	1.014	1.016
*COUNTY	Ohio, IN	1.017	1.013
PMSA	Orange County, CA	1.000	1.000
PMSA	Philadelphia, PA-NJ	1.004	1.003
PMSA	Pittsburgh, PA	1.017	1.017
PMSA	Portsmouth-Rochester, NH-ME	1.000	1.000
PMSA	Riverside-San Bernardino, CA	1.000	1.000
MSA	St. Louis, MO-IL	1.020	1.025
MSA	San Diego, CA	1.000	1.000
PMSA	San Jose, CA	1.008	1.009
PMSA	Santa Rosa, CA	1.008	1.009
PMSA	Stamford-Norwalk, CT	1.014	1.016
MSA	Tampa-St. Petersburg-Clearwater, FL	1.024	1.025
PMSA	Vallejo-Fairfield-Napa, CA	1.008	1.009
PMSA	Vineland-Millville-Bridgeton, NJ	1.004	1.003
*COUNTY	Warren, VA	1.007	1.008
PMSA	Waterbury, CT	1.014	1.016
PMSA	Worcester, MA-CT	1.000	1.000

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
MSA Anchorage, AK: Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr.Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton Ouachite, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sherp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
PMSA Los Angeles-Long Beach, CA: Los Angeles
PMSA Oakland, CA: Alameda, Contra Costa
PMSA Orange County, CA: Orange
PMSA Riverside-San Bernardino, CA: Riverside, San Bernardino
MSA San Diego, CA: San Diego
PMSA San Francisco, CA: Marin, San Francisco, San Mateo
PMSA San Jose, CA: Santa Clara
PMSA Santa Cruz-Watsonville, CA: Santa Cruz
PMSA Santa Rosa, CA: Sonoma
PMSA Vallejo-Fairfield-Napa, CA: Napa, Solano
PMSA Ventura, CA: Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES
PMSA Boulder-Longmont, CO: Boulder

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO: Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Bridgeport, CT
Fairfield County part: Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
New Haven County part: Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town

PMSA Danbury, CT
Fairfield County part: Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT
Middlesex County part: Clinton town, Killingworth town
New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT
Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT
Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part: Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town

PMSA Worcester, MA-CT
Windham County part: Thompson town

METROPOLITAN COUNTIES
Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town, Old Saybrook town
New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town Salem town, Sprague town, Stonington town, Waterford town Colchester town, Lebanon town
Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part: Ashford town, Chaplin town, Windham town, Canterbury town, Plainfield town

NONMETROPOLITAN COUNTIES
Hartford County part: Hartland town
Litchfield County part: Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town,

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part: Chester town, Deep River town, Essex town, Westbrook town
New London County part: Lyme town, Voluntown town, Tolland County part: Union town
Windham County part: Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Wilmington-Newark, DE-MD: New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES
PMSA Fort Lauderdale, FL: Broward
PMSA Miami, FL: Dade
MSA Tampa-St. Petersburg-Clearwater, FL: Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES
*Atlanta, GA: Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding
*COUNTY Carroll County, GA
*COUNTY Pickens County, GA
*COUNTY Walton County, GA

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early
Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock
Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
STATE Hawaii: Hawaii, Honolulu, Kauai, Maui

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES
*Chicago, IL: Cook, Dupage, Kane, Lake, Mchenry, Will
*COUNTY De Kalb, IL: Dekalb
*COUNTY Grundy, IL: Grundy
PMSA Kankakee, IL: Kankakee
*COUNTY Kendall, Il: Kendall
MSA St. Louis, MO-IL: Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson
Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White
Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Dearborn
PMSA Gary, IN: Lake, Porter
*COUNTY Ohio, IN: Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida
Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa
abette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, orris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, att, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, herman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee
Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

PI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Boone, Campbell, Kenton
*COUNTY Gallatin, KY: Gallatin
*COUNTY Grant, KY: Grant
*COUNTY Pendleton, KY: Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue
Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg
Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

CPI AREAS: COUNTIES
*New Orleans, LA: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
*COUNTY St. James Parish, LA: St. James

METROPOLITAN COUNTIES
Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St. Landry, St. Martin, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES
Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon
Washington, West Carroll, West Feliciana, Winn

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Portsmouth-Rochester, NH-ME
York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

NONMETROPOLITAN COUNTIES
- Aroostook
- Franklin
- Hancock
- Kennebec
- Knox
- Lincoln
- Oxford
- Piscataquis
- Sagadahoc
- Somerset
- Washington
- Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
- Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
- Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation Whitney unorg., Winn town, Woodville town
- Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
- York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES
- PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
- PMSA Hagerstown, MD: Washington
- *Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's
- PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES
- Allegany

NONMETROPOLITAN COUNTIES
- Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES
- PMSA Boston, MA-NH
- Bristol County part: Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
- Essex County part: Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
- Middlesex County part: Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

- Norfolk County part: Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
- Plymouth County part: Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
- Suffolk county part: Boston city, Chelsea city, Revere city, Winthrop town
- Worcester County part: Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
- PMSA Brockton, MA
- Bristol County part: Easton town, Raynham town
- Norfolk County part: Avon town
- Plymouth County part: Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town
- PMSA Fitchburg-Leominster, MA
- Middlesex County part: Ashby town
- Worcester County part: Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
- PMSA Lawrence, MA-NH
- Essex County part: Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town
- PMSA Lowell, MA-NH
- Middlesex County part: Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
- PMSA New Bedford, MA
- Bristol County part: Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
- Plymouth County part: Marion town, Mattapoisett town, Rochester town
- PMSA Worcester, MA-CT
- Hampden County part: Holland town
- Worcester County part: Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westboroughtown, West Boylston town, West Brookfield town, Worcester city

METROPOLITAN COUNTIES
- Barnstable County part: Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
- Berkshire County part: Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
- Bristol County part: Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
- Franklin County part: Sunderland town
- Hampden County part: Agawam town, Chicopee city, East Longmeadow to, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
- Hampshire County part: Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES
- Dukes
- Nantucket
- Barnstable County part: Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
- Berkshire County part: Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
- Franklin County part: Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

town, New Salem town, Northfield town, Orange town, Rowe town
Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part: Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part: Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part: Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Ann Arbor, MI: Lenawee, Livingston, Washtenaw
PMSA Detroit, MI: Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI: Genesee

METROPOLITAN COUNTIES
Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES
Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella
Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES
MSA Minneapolis-St. Paul, MN-WI: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES
Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
PMSA Lowell, MA-NH
Hillsborough county part: Pelham town
PMSA Manchester, NH
Hillsborough county part: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town
PMSA Nashua, NH
Hillsborough county part: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer
PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero
Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES
PMSA Buffalo-Niagara Falls, NY: Erie, Niagara
PMSA Dutchess County, NY : Dutchess
PMSA Nassau-Suffolk, NY: Nassau, Suffolk
PMSA New York, NY: Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY: Westchester
PMSA Newburgh, NY-PA: Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario
Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender
Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill
Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES
PMSA Akron, OH: Portage, Summit
*COUNTY Brown, OH: Brown
*Cincinnati, OH-KY-IN: Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH: Butler

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne
Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata
Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Portland-Vancouver, OR-WA: Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR: Marion, Polk

METROPOLITAN COUNTIES
Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Benton, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Newburgh, NY-PA: Pike
PMSA Philadelphia, PA-NJ: Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA: Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES
Bristol County part: Barrington town, Bristol town, Warren town
Kent County part: Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Providence County part: Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Newport County part: Jamestown town, Little Compton town, Tiverton town
Washington County part: Charlestown town, Exeter town, Narragansett town, North Kingstown to, Richmond town, South Kingstown town
Washington County part: Hopkinton town, Westerly town

NONMETROPOLITAN COUNTIES
Newport County part: Middletown town, Newport city, Portsmouth town
Washington County part: New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES
PMSA Brazoria, TX: Brazoria
*Dallas, TX: Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX: Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX: Galveston
*COUNTY Henderson, TX: Henderson
PMSA Houston, TX: Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES
Chittenden County part: Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part: Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part: Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor
Chittenden County part: Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part: Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part: Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Clarke, VA: Clarke
*COUNTY Culpeper, VA: Culpeper
*COUNTY King George, VA: King George
*COUNTY Warren, VA: Warren

CPI AREAS: COUNTIES
*Washington, DC-MD-VA: Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Bremerton, WA: Kitsap
PMSA Olympia, WA: Thurston
PMSA Portland-Vancouver, OR-WA: Clark
PMSA Seattle-Bellevue-Everett, WA: Island, King, Snohomish
PMSA Tacoma, WA: Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Berkeley, WV: Berkeley
*COUNTY Jefferson, WV: Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Kenosha, WI: Kenosha
PMSA Milwaukee-Waukesha, WI: Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI: Pierce, St. Croix
PMSA Racine, WI: Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
Pacific Islands

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grand, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

[FR Doc. 95-27262 Filed 11-2-95; 8:45 am]
BILLING CODE 4210-32-C

federal register

Friday
November 3, 1995

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9
Federal Acquisition Regulation (FAR); Responsibility Determinations; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAR Case 95–007]

RIN 9000–AG66

Federal Acquisition Regulation; Responsibility Determinations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to emphasize the use of commercial sources of information in determining the responsibility of prospective contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before January 2, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite FAR case 95–007 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 95–007.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule revises FAR Subpart 9.1, Responsible Prospective Contractors, to state that contracting officers should use commercial sources of supplier information in making determinations of responsibility, and to clarify that preaward surveys should be requested only if sufficient relevant information from other sources, including commercial sources, is unavailable.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule merely clarifies that commercial sources of information should be used in determining the responsibility of prospective contractors. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 95–007), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: October 30, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 9 be amended as set forth below:

1. The authority citation for 48 CFR Part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.105–1 is amended in the introductory text of paragraph (c) by removing the parenthetical "(See 48 CFR Part 42, Subpart 42.15)"; by redesignating paragraphs (c)(4) through (c)(6) as (c)(5) through (c)(7), and adding a new paragraph (c)(4).

9.105–1 Obtaining information.

* * * * *

(c) * * *

(4) Commercial sources of supplier information of a type offered to buyers in the private sector (for example, supplier performance and evaluation reports by Dun & Bradstreet Information Services, Standard & Poors, Moody Industrials, or similar sources).

* * * * *

3. Section 9.106–1 is amended by revising paragraph (a) to read as follows:

9.106–1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated contract (1) will be for $25,000 or less or (2) will have a fixed price of less than $100,000 and will involve commercial products (see 11.001) only, the contracting officer should not request a preaward survey unless circumstances justify its cost.

* * * * *

[FR Doc. 95–27294 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Friday
November 3, 1995

Part VI

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 318, et al.

Poultry Products Produced by Mechanical Separation and Products In Which Such Poultry Products Are Used; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318, 319, and 381

[Docket No. 93–008F]

RIN 0583–AB68

Poultry Products Produced by Mechanical Separation and Products In Which Such Poultry Products Are Used

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations to prescribe: a definition and standard of identity and composition for the poultry product that results from the mechanical separation and removal of most of the bone from skeletal muscle and other tissues of poultry carcasses and parts of carcasses ("Mechanically Separated (Kind of Poultry)"—hereafter referred to generically as "Mechanically Separated Poultry" ("MSP")), including requirements for bone solids content (measured as calcium content) and bone particle size; certain limitations for the use of MSP; and labeling requirements for MSP, and for poultry products and meat food products containing MSP as an ingredient. This action establishes the requirement that products containing MSP as an ingredient disclose that fact by identifying it in the ingredients declaration as, in the case of MSP derived from chicken carcasses, "mechanically separated chicken," rather than "chicken." This action will help ensure that meat and poultry products distributed to consumers are not labeled in a false or misleading manner and are not misbranded.

EFFECTIVE DATE: November 4, 1996.

FOR FURTHER INFORMATION CONTACT: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Purpose of the Final Rule

This final rule amends the regulatory requirements for the poultry product with a paste-like form and batter-like consistency that results from the mechanical separation and removal of most of the bone from attached skeletal muscle and other edible tissues of poultry carcasses and parts of carcasses, and for the finished poultry products and meat food products in which this product is used as an ingredient. FSIS first conducted a rulemaking regarding this product in 1969. Over the years, the amount of such product being manufactured, and the number and range of poultry products and meat food products in which it is used as an ingredient, has increased significantly.

FSIS has gained a great deal of knowledge from its rulemakings regarding the livestock product resulting from a similar mechanical separation and removal process which is called "mechanically separated beef" or "mechanically separated pork" (or any other species derived from livestock, such as beef, and lamb), which will be referred to generically in this document as mechanically separated meat (MSM). MSM is a livestock product with a paste-like form and batter-like consistency that results from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5. MSM is subject to regulatory requirements which include a standard of identity and composition that defines this product, limits for bone solids content and bone particle size, and a name that differentiates it from meat. It is also required to be separately identified in the ingredients statement of products in which it is used, and is subject to certain restrictions in its use.

More recently, in a lawsuit, *Bob Evans Farms, Inc. et al., v. Mike Espy, Secretary of Agriculture (D.D.C. Civil Action No. 93–0104)*, several red meat sausage manufacturers alleged that, without a regulatory definition and standard for poultry products produced by mechanical separation, a disparate situation exists between labeling MSP, and MSM for which a regulatory definition and standard exist. The red meat sausage manufacturers have alleged that the disparate labeling situation poses an unfair advantage for the manufacturers of mechanically separated poultry products.

In view of these developments, and taking into account the information and experience acquired since 1969 and current regulatory policies, the Agency has reviewed and reevaluated the existing regulations for MSP, particularly in regard to labeling issues about this product. As a result of its review and reevaluation, the Agency has concluded that regulatory action to more clearly identify MSP on product labels, is necessary to prevent the preparation and distribution in commerce of poultry products and meat food products which are misbranded or not properly marked, labeled, or packaged. See sections 4(h) and 8 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) and sections 1(n) and 7 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*); 21 U.S.C. 453(h), 457 and 601(n), 607. The primary reasons for this action are as follows:

(1) The method of deriving poultry products by the mechanical separation process results in a product whose physical form and texture differ materially from those of other boneless poultry products produced by hand deboning techniques, i.e., hand-held knives.

The process of manufacturing MSP begins with starting materials that include backs, and whole and half carcasses and parts of carcasses from which most of the muscle and other tissues have been removed by hand, leaving bits and pieces of tissue adhering to skeletal frames and carcass "shells." These starting materials may be raw or cooked, may contain varying amounts of muscle and/or skin (with or without attached fat), and may contain kidneys, except when product is made from mature chickens or turkeys. (Kidneys of mature chickens or turkeys may not be used as human food according to 9 CFR 381.65(d)). The nature of these starting materials is such that the muscle and other tissue that remains on the bones cannot be efficiently or effectively removed using hand-deboning techniques. This is because (1) the bony structure of the materials limits the accessibility of knives and obstructs precise hand removal of edible tissue, (2) hand-removal of the tissues is too time consuming to make it practical, and (3) the physical movements necessary to remove the bits and pieces of tissues adhering to bones have been associated with cumulative trauma disorders (also referred to as repetitive motion disorders), e.g., Carpal Tunnel Syndrome. Mechanical separation of the bits and pieces of muscle and other tissues from the bones to which they are adhering is, however, easily accomplished using mechanical deboning machines.

Typically, the starting materials have undergone an initial bone breaking process to enable the machines to operate efficiently. The starting materials are fed into a mechanical deboning (i.e., separation) machine which operates on the differing resistance of bone and tissue to passage through small holes (i.e., apertures), whether it employs sieves, screens, or other devices. The starting materials are pushed under high pressure through the part of the equipment with apertures. Most of the bone is separated and

removed. However, the apertures allow a small amount of powdered bone to pass through with the edible tissues, which, under the high pressure applied by the machine, become a homogeneous soft tissue mass. The minute amount of powdered bone (particles much smaller than the size of pepper and limited to no more than one percent) is also dispersed throughout the soft tissue mass. The remaining bony residue that has been separated from the paste-like muscle and other tissues exits from a separate place on the equipment. Thus, such machines mechanically separate and remove most of the bone from the starting materials, resulting in a product with a paste-like form which is comparable in consistency to a cake batter. The process of manufacturing mechanically separated poultry results in a product whose form and texture differ materially from those of other boneless poultry products produced by traditional hand-deboning. Despite these differences, current FSIS regulations do not distinguish between poultry products produced by mechanical separation and poultry products produced by traditional deboning techniques, i.e., hand-deboning, in terms of product identity and composition or use. Both are declared on product labels as "chicken," "turkey," or the names of other kinds of poultry.

(2) Mechanically separated poultry is produced by essentially the same technology and has characteristics (i.e., physical form and textural consistency) similar to those of the livestock product, MSM, which is required to be declared on labels as mechanically separated beef (or pork or other species of livestock).

(3) The mechanical process from which mechanically separated poultry is derived makes its form and consistency materially different from that of poultry derived by traditional hand-deboning methods, yet it is not currently identified in the ingredients statement of a product in which it is used by a name that distinguishes it from traditionally deboned poultry. Mechanically separated poultry should be declared in the ingredients statements of the products in which it is used by the distinctive term "mechanically separated (kind of poultry)," e.g., "mechanically separated turkey," "mechanically separated chicken."

The product resulting from mechanical separation has certain textural attributes that are different than hand-deboned poultry, even if the hand-deboned poultry is further processed through a grinder to result in ground poultry. The product that directly results from the mechanical process is paste-like in form and similar to a cake batter in consistency, and is not the same as chicken or turkey removed from carcasses or parts of carcasses by hand. Chicken or turkey that results from hand-deboning is easily recognized as muscle, skin, and other edible tissues and parts because it retains its natural physical form and consistency; it has not been subjected to the rigors of crushing bones and separating bone from muscle and other tissue under high pressure in separation machinery. The rigors of the mechanical separation process alter the structure of the muscle fibers, skin, fat, and other tissues that adhere to the skeletal frames, shells, and other starting materials so that they become blended and amorphous, and are no longer recognizable as "chicken" and "turkey." These machines are not available to consumers and, therefore, consumers are not likely to have the expectation of the resulting batter-like material as "chicken" or "turkey." Thus, a separate identity is necessary for the product that results.

The term "mechanically separated" is recognized internationally by the Codex Alimentarius Commission [1] of the United Nations and by individual countries that trade with the United States, has been upheld in Court decisions as being appropriate to distinguish the livestock product derived by mechanical separation machinery [2], and appropriately distinguishes the product from hand-deboned poultry as one that is derived by a strictly mechanical means. As such, similar terminology should be applied to poultry products resulting from the process of mechanical separation and recovery of crushed bone from muscle and other edible tissues that results in a product with a paste-like form and cake batter-like consistency.

Therefore, FSIS is amending the poultry products inspection regulations (9 CFR Part 381) to revise and supplement the requirements for the manufacture, characteristics, and labeling of poultry products produced by mechanical separation and the labeling of products in which they are used as ingredients that result in a product with a paste-like form and cake batter-like consistency. Under this final rule, mechanically separated product derived from chicken or turkey would be labeled as "mechanically separated chicken," or "mechanically separated turkey," as the case may be, and would be separately identified by this name in the ingredients statement of products in which it is used.

[1] Food and Agriculture Organization of the United Nations, World Health Organization, Codex Alimentarius Commission, Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Volume 10, Code of Practice for Mechanically Separated Meat and Poultry, pp. 71–72 (1994) is available for review in the FSIS Docket Clerk's office.

[2] A copy of the Courts' decisions in *Community Nutrition Institute (CNI) et al. v. Block*, No. 82–2009 (D.D.C. Dec. 1, 1982), aff'd 749 F.2nd 50 (D.C. Cir 1984) is available at the FSIS Docket Clerk's office for review.

The Purpose of An Extended Effective Date

Various commenters suggested that industry should be given a sufficient amount of time to use most of their already printed labels, before the final rule's new labeling requirements must be carried out. FSIS agrees that such a time period should be granted in regard to all of the new requirements of the final rule. Therefore, an effective date of one year from the date of publication has been provided for in this final rule. This time period is intended to allow ample time for an orderly transition to the new requirements, including the labeling requirements, and to assure that manufacturers of poultry products produced by mechanical separation, and of poultry and meat food products in which the product is used as an ingredient, have ample time to exhaust current label stock. In this regard, manufacturers will not be required to dispose of label inventories that were printed or ordered for printing prior to publication of the rule if they have made a good faith effort to exhaust current stocks before the effective date. Requests for use of current labels beyond the effective date will be considered on a case-by-case basis.

Background

I. Introduction

The technology to mechanically separate and remove most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses began in the late 1950's or early 1960's. The technology is grounded in the desire of poultry manufacturers to salvage edible, wholesome muscle and other tissue from carcasses and parts of carcasses (such as skeletal frames and carcass shells) that cannot be efficiently or effectively removed by hand in order to provide a source of low-cost protein that is safe and essentially nutritionally the same as the muscle and other tissue removed from poultry carcasses and parts of carcasses by hand deboning methods. In terms of functionality, mechanically separated poultry has the same functions as hand-deboned chicken or turkey with the added

benefit of being able to easily form emulsions and bind to other proteins readily. This is because the muscle and other edible tissues no longer possess their original tissue structure and the cake-batter consistency eases blending with other ingredients.

The Agency's initial reaction was to consider the resulting product adulterated because of the amount of powdered bone present and the physical size of the bone particles. By the mid-1960's, the industry had modified and improved the equipment used to produce poultry product by mechanical separation such that the product contained 1 percent or less bone solids with an extremely small bone particle size. This prompted the Agency to reevaluate its position. Widespread commercial production of products containing mechanically separated poultry began in the early 1970's. By 1975, poultry product produced by mechanical separation was being used as an ingredient in poultry and meat food products such as franks, bologna, salami, and poultry rolls.

Today, the technology for producing poultry products by mechanical deboning is accepted as a valuable and practical means for salvaging edible tissue from poultry parts and carcasses from which most of the muscle and other tissues have been removed by hand. In the current market, poultry products made with mechanically deboned poultry include cooked poultry sausages (such as chicken frankfurters, turkey salami, and turkey bologna), poultry patties and nuggets (such as chicken patties and nuggets), formed and whole poultry roasts (e.g., oven-cooked turkey breast), and poultry baby foods. The level at which it is used has depended in part on technological capabilities. For example, the level of use has reached 100 percent of the poultry product portion of a number of cooked poultry sausage products (such as chicken franks) and greater than 15 percent of the poultry product portion of whole muscle products, e.g., cooked turkey breast, where it serves the purpose of binding whole muscle pieces together to make the product. Poultry product produced by mechanical means is also used at up to 49 percent of the formulations of certain meat food products, e.g., beef and turkey chili, provided that it is identified in the product name as "turkey" or "chicken," and used in meat food products including cooked sausages, such as frankfurters and bologna, at a level of up to 15 percent of the total ingredients, excluding water (9 CFR 319.180) without being identified in the product name.

Over the years, the poultry and meat food industries have also referred to poultry products produced by mechanical means as "comminuted (i.e., ground) poultry." Terminology such as "finely comminuted," "finely ground," "mechanically deboned," and "mechanically separated" have also been used to describe the product according to 9 CFR 381.117(d). The terms "finely ground," "ground," "finely comminuted," and "comminuted" have been applied to poultry produced by mechanical deboning as well as to poultry products produced using hand-deboning methods as a means of being in accord with 9 CFR 381.117(d).

Poultry products produced by mechanical means are currently subject to 9 CFR 381.117(d) which relates generically to boneless poultry products. This regulation requires boneless poultry products to be labeled in a manner that accurately describes their actual form and composition. The product name must indicate the form of the product, e.g., emulsified or finely chopped, and the kind name of the poultry from which it is derived, e.g., chicken, turkey, etc.. If the product does not consist of natural proportions of skin and fat, as they occur in the whole poultry carcass, the product name must also include terminology that describes the actual composition. If the product is cooked, it must be so labeled. Section 381.117(d) also limits the bone solids content of boneless poultry products to 1 percent.

Existing regulations do not distinguish between boneless poultry products produced by mechanical separation and poultry products produced by traditional methods, e.g., hand-deboning. As a matter of practice, poultry product produced by mechanical separation is currently declared in the ingredients statement of a product in which it is used, along with any other boneless poultry product used, as "chicken" or "turkey" where skin and fat are included but not in excess of their natural proportions, or as "chicken meat" or "turkey meat" when skin with attached fat is not included.

II. Report on Health and Safety of Mechanically Deboned Poultry

In 1976, FSIS initiated an analytical program to obtain data on a number of nutrients and substances of potential health concern in poultry products produced by mechanical separation. Data were also gathered from scientific literature, industry, other government agencies, and university scientists. Details of the analytical program and a resulting evaluation were published in a June 1979 report entitled "Health and Safety Aspects of the Use of Mechanically Deboned Poultry" (hereafter referred to as the 1979 Report). An errata supplement correcting certain items in the report was prepared and published on August 14, 1979 (44 FR 47576). (The 1979 Report and the errata supplement are available for public inspection in the FSIS Docket Clerk's office.) On June 29, 1979, the Agency announced the availability of this report and encouraged interested members of the public to comment on its content.

The 1979 Report evaluated the effects on health and safety of use of mechanically separated poultry and, in particular, examined the heavy metal, trace element, bone particle, chlorinated hydrocarbon, cholesterol, fat, essential amino acid, total protein, and purine contents of MSP, as well its microbiology. The 1979 Report recommended that (1) potential health risks associated with cadmium in kidneys from mature chickens would be avoided by not allowing kidneys from mature chickens in MSP, (2) potential risks to children associated with fluoride in MSP from fowl could be avoided by not allowing MSP from fowl in baby foods, (3) MSP should be labeled to show the presence of cholesterol and calcium for the benefit of people who needed to restrict their intake of these substances, and (4) mandatory handling and storage of starting materials used for making MSP should be considered.

In the same June 29, 1979, announcement on the availability of the 1979 Report, FSIS also notified the public that it was particularly interested in receiving comments regarding the proper labeling of products containing poultry product produced by mechanical separation and what means, if any, should be taken to implement the labeling recommendations with regard to calcium and cholesterol in the report (44 FR 37965).

FSIS received 221 comments, most of which were general reactions to the labeling issues raised in the notice, and health, safety, or economic concerns. The majority of the commenters expressed a general opinion on the adequacy of regulations concerning mechanically separated poultry products and were supportive of the rules at that time. Some commenters stated that the regulations have effectively controlled the use of mechanically separated poultry products over many years with a wide base of consumer acceptance, that such product is not significantly different from product produced by hand-deboning, that these regulations provide truthful labeling, and/or that the report and scientific literature support the adequacy of current regulations. Other commenters indicated that mechanically separated poultry should be regulated the same as mechanically separated meat (then named mechanically processed (species) product).

III. GAO Report on Mechanically Separated Products

In 1983, the General Accounting Office (GAO) issued a report recommending that the Secretary of Agriculture direct the Administrator of FSIS to establish specific standards on poultry products produced by mechanical separation, and labeling requirements on products made with such poultry products, as had been done for MSM and products made with MSM.

IV. Improvements in Machinery for Poultry Products Produced by Mechanical Separation

The Agency has monitored the advances in the technology for mechanically separating poultry over the last decade. There have been improvements in the efficiency of the mechanical separation and removal of most of the bone from attached skeletal muscle and tissue of poultry carcasses and parts of poultry carcasses. Today, industry figures estimate that roughly 1 billion pounds of raw poultry materials are used to manufacture 700 million pounds of mechanically separated poultry, which is used, in turn, to formulate approximately 400 million pounds of poultry sausages (including franks, bologna, and salami), and 300 million pounds of poultry nuggets and poultry patties.[3] There have been major advances in mechanical separation machinery in terms of the effectiveness of removing the bone which is incorporated by the process of separation into the skeletal muscle and other tissues of poultry carcasses and parts of carcasses. This has been accomplished through enhancements and modifications of the bone-removal devices that are part of the mechanical deboning machines. There have been continued refinements of certain operational parameters of the machinery, e.g., the ability for operators to adjust the pressure needed to force crushed poultry bones with adhering muscle and other tissues through screens to separate muscle and other tissues from bone, and the size of the apertures in the screens and sieves through which the crushed bones, muscle, and other tissues are pushed under high pressure. These improvements have resulted in the ability to easily achieve bone content limits or decrease the bone solids that are a result of the mechanical separation process to less than the one percent reflected in the current poultry products regulations (9 CFR 381.117(d)).

In 1969, the Agency amended the regulations for poultry and poultry products inspection to, among other things, provide labeling requirements for boneless poultry products, as well as a prescribed bone solids content of not more than 1 percent (34 FR 13991). This limit was based on an evaluation conducted by FSIS of the operating results in a series of poultry establishments that used mechanical deboning equipment. Analyses were made of 485 samples of raw, mechanically deboned product from nine commercial operations that used the three types of machines most often used in the process. The analyses showed that the equipment, at that time, could be operated under commercial conditions to produce boneless poultry that contained no more than 1 percent bone solids, on a raw weight basis, and FSIS concluded that it was demonstrated that it was practical to limit the bone content in deboned poultry to 1 percent. Moreover, it was deemed that the one percent maximum bone solids content represents good manufacturing practices and reflects mechanical separation processes that are in control.

In light of the improvements that have occurred with regard to the machinery used to mechanically separate and remove most of the bone from the muscle and other tissues of poultry carcasses and parts of carcasses, FSIS recently conducted a study of the bone solids content of MSP.[4] The percentage of bone solids content (determined by calcium analysis) in boneless poultry products produced by mechanical separation processes was collected from approximately 50 establishments during August 1993, and represented a sampling of over 2000 products. The data indicate that the mean bone solids content of the samples of these products was approximately 0.6 percent; generally, half of the samples were above 0.6 percent (but below 1 percent) and half were below 0.6 percent.

V. RTI Study

In response to complaints from industry, some of them longstanding, that the Agency is "not regulating meat and poultry equitably," FSIS contracted out to the Research Triangle Institute (RTI) a comparison of the meat and poultry inspection regulations. RTI found many differences in the two sets of regulations and narrowed down to 12 the areas of the regulations where significant differences exist.[5] FSIS has studied these areas to determine whether, in the actual conduct of inspection, they result in an inequitable application of the inspection laws, and, if so, what might be done to mitigate the inequities.

Among the areas identified in the RTI study is mechanically separated product. It notes that regulations exist on the use of MSM, but not on the use of mechanically separated poultry. The RTI study concluded that, in general, "the regulations covering meat and poultry have been designed with the same intent—to protect 'the health and welfare of consumers by assuring that meat and meat food products [or poultry products] are wholesome, not adulterated, and properly marked, labeled, and packaged' (21 U.S.C. 602 and 451). Although the intent of the regulations remains the same, the actual requirements are quite different." The study further concludes that the bases for no comparable regulation for mechanically separated poultry are "unfavorable consumer perceptions and court decisions resulting in label and use restrictions for MSM; poultry has no definitional requirements (e.g., it can be defined as 'chicken' or 'turkey')."

Mechanically separated meat (i.e., beef or pork) product became the subject of consumer criticism in the mid-1970's after USDA proposed to allow its use as ingredients in meat products and to allow it to be labeled as meat (i.e., "beef" or "pork"). USDA also issued an interim rule that included standards for the use of mechanically separated red meat product. A lawsuit soon followed in which the Court found that this product is not "meat" as traditionally defined in the Federal Meat Inspection Act regulations. The Court further found that USDA had not considered adequately the health and safety effects of the mechanically separated red meat product.

To respond to questions on health and safety raised by the Court, a panel of government scientists was convened to examine the questions. The panel found that scientific studies established no unique health risks associated with mechanically separated red meat product, but that the product is

[3] Information provided by industry is available for public inspection at the FSIS Docket Clerk's Office.

[4] Data available for public inspection at the FSIS Docket Clerk's Office.

[5] A copy of the RTI study is available for public inspection in the FSIS Docket Clerk's office.

sufficiently different from muscle tissue meat in composition to require separate labeling. The panel recommended, among other things, that usage limitations be placed on this product.[6]

The panel reports, among other things, led FSIS to issue final regulations on June 20, 1978, that established preparation, composition, usage, and labeling requirements for mechanically separated red meat product, which was named mechanically processed species product (MP(S)P) and required that it be produced only under a quality control program approved by the Agency (43 FR 26416). This rule established a definition and standard of identity for this product that necessitated it being listed separately from meat in the ingredients statement of a product in which it was used. In 1981, the Agency proposed that this product be distinctly identified as "mechanically separated (species) (MS(S))" (where "species" refers to beef, pork, or other species of livestock) based on data, information, and arguments accumulated by and submitted to FSIS since the regulations for the product were originally promulgated on June 20, 1978 (46 FR 39274). FSIS proposed to amend the definition and standard for MP(S)P by deleting the term "product" from the product name and by considering terminology such as "mechanically separated," "mechanically deboned," and "mechanically recovered" as an alternative to "mechanically processed" to continue distinguishing the product from "meat." Comments on the proposal indicated that the term "mechanically separated" was more descriptive of the product than the other terms listed in the proposal, that it was favored because of its use in other countries and adoption by the Codex Alimentarius Committee on Processed Meat and Poultry Products (1978), and that it did not have negative connotations associated with the other terms. Some commenters on the proposal stated that the term was truthful and understandable. Additional rulemaking on June 29, 1982 (47 FR 28214), reaffirmed the Agency's position that the product is not "meat" as traditionally defined, and that "mechanically separated (species) (MS(S))" is the name that will provide a more meaningful and concise description of the product's characteristics than "mechanically processed (species) product."

During this same period, mechanically separated poultry underwent product development separately from mechanically separated red meat product without similar FSIS regulations. Early distinctions in regulatory treatment were largely due to historical differences in how the two industries used these products and the way in which they came to public attention. One significant difference is that mechanically separated red meat product was being considered for use in products that had previously contained muscle meat. The use of mechanically separated poultry in poultry hot-dogs created less controversy because poultry hot-dogs, bologna, and similar products did not exist before they were made with mechanically separated poultry. Thus, consumers had no prior expectations about the formulation.

Differences in regulatory treatment of MSM and mechanically separated poultry have continued since that time. The meat industry claims that the effect of those differences has been a reluctance on the part of processors to use MSM, while MSP use has expanded. In response to the early rulemakings on MSM, the meat industry claimed that consumers would not buy products if "mechanically separated beef (or pork, or other livestock species)" is listed on the label. Similarly, in responding to the March 1994 advance notice of proposed rulemaking (ANPR) on MSP (discussed later in this document), the poultry industry claimed that, if they had to label MSP as a poultry ingredient, consumers would be misled into thinking that they are purchasing products inferior to what they have historically purchased or that the product has changed.

The Agency's regulation on the use of MSM and the absence of regulation on the use of mechanically separated poultry have raised two major policy issues. The first is whether current regulations are adequately protecting consumers. The second is whether different regulatory treatment for these similar products is justified. FSIS is not promulgating this regulation merely because of the current differences in the regulatory treatment of mechanically separated poultry and MSM, but rather because one of the basic statutory missions of the Federal Meat Inspection Act, under which MSM, such as "mechanically separated beef (or pork)," is regulated, and of the Poultry Products Inspection Act (PPIA), under which MSP is regulated, is to assure that products bear labeling that is truthful and not misleading. Here, for MSP, as FSIS did for MSM, FSIS has determined that a standard of identity and composition is needed for this product, along with an ingredient labeling requirement, and other requirements in order to carry out one of the statutory missions of the PPIA, as has been done in regard to the FMIA for MSM, by assuring that consumers are accurately informed about the ingredients of products they purchase, which in this case is an ingredient whose form and consistency materially differ from those of other boneless poultry products produced by hand-deboning.

VI. Advance Notices of Proposed Rulemaking

On June 15, 1993, FSIS published an advance notice of proposed rulemaking (ANPR) (58 FR 33040) soliciting comments, information, scientific data, and recommendations regarding the need for labeling of poultry product produced by mechanical separation and products in which such poultry product is used. FSIS received 2744 comments in response to the ANPR, most of which were general reactions to labeling issues. The majority of commenters responded to whether there was a need to identify mechanically separated poultry in the ingredients statement on the labels of meat and poultry products in which it is used as an ingredient. Roughly half the commenters supported identifying mechanically separated poultry in the ingredients statement because, the commenters stated that, among other things, consumers have "a right to know" it is an ingredient. The majority of the other commenters did not support identifying mechanically separated poultry in the ingredients statement, citing, in part, their belief that current policies are satisfactory and that labeling MSP would mislead consumers into thinking that they are purchasing products that are inferior or different than the product they have historically purchased. FSIS concluded that there is a "truth-in-labeling" issue that is founded in the mandate under which the Agency operates, viz., protecting consumers from misbranded poultry and meat products.

Subsequently, on March 3, 1994, FSIS published another ANPR (59 FR 10230), which solicited comments and information from the meat and poultry industries and industry-related organizations, the scientific community, academia, consumers and consumer groups, and other interested parties. FSIS sought comments on its tentative positions regarding defining and standardizing, or establishing other

[6] The panel's conclusions and recommendations were published in reports titled "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume I—Final Report and Recommendations, Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II—Background Materials and Details of Data." These reports are available for public review in the FSIS Docket Clerk's office.

requirements for poultry products produced by mechanical separation, including possible provisions for the composition, characteristics, and use of such products, and requirements for manufacturing and labeling such products. In the March 1994 ANPR, FSIS considered, among other things, that certain poultry products produced by mechanical separation, i.e., those with greater than 0.6 percent bone solids content, but no more than 1 percent bone solids content, be separately identified on the labels of products in which they are used as ingredients by a distinct name. However, because of the improvements that were previously discussed in separating and removing the bone from skeletal muscle and other edible tissues of poultry carcasses and parts of carcasses, FSIS considered that some poultry products derived from mechanical separation machinery, i.e., those with 0.6 percent or less bone solids, be identified on the label of products in which they are used as poultry or poultry meat, e.g., "chicken" and "turkey meat."

FSIS received 106 comments in response to the March 1994 ANPR. The majority of the comments did not support the ANPR. The commenters strongly disagreed with the tentative position that only product with 0.6 percent or less bone solids content could be labeled "(Kind)" or "(Kind) meat," without the reference to "mechanically separated." The commenters also disagreed with the need for handling requirements, protein quality requirements, and quality control for boneless poultry products produced by mechanical separation. Further, commenters disagreed with establishing a minimum protein content and a maximum fat content requirement for poultry product produced by mechanical separation with greater than 0.6 percent bone solids content. They also disagreed with restricting the bone particle size to a maximum of less than 1.5 millimeter (mm) in the greatest dimension and limiting the use of mechanically separated poultry when used as an ingredient in other products. Many commenters stated that FSIS should continue allowing the declaration of mechanically separated poultry on product labeling as "(Kind)" or "(Kind) meat" (i.e., "chicken," "chicken meat," "turkey," and "turkey meat") when it is used as an ingredient in poultry or meat food products.

FSIS generally agreed with the commenters with regard to protein quality, and protein and fat contents, and concluded that the tentative positions on protein quality, and minimum protein and maximum fat contents were unnecessary. Protein quality is not a health issue today, and information regarding protein and fat contents is generally available on the Nutrition Facts panel on most processed foods where mechanically separated poultry might be used as an ingredient. Furthermore, it was decided that the positions on quality control and handling requirements would be better addressed as part of larger regulatory efforts that were planned to consider ways of reducing the potential for situations that would render any poultry or meat food product adulterated, unwholesome, and/or misbranded. Therefore, the Agency concluded that it was premature to address the need for mandatory quality control or handling requirements for this one distinct category of poultry product. However, the Agency was not in agreement with the commenters on the other issues raised in the ANPR.

The Agency maintained that a bone solids content requirement is necessary because one of the characteristics that distinguishes mechanically separated poultry from hand-deboned poultry is the method of mechanical processing that results in a product which is safe in terms of composition, but one in which there is greater potential for the incorporation of powdered bone. The bone solids content of MSP is a direct result of the manufacturing process which involves the crushing of starting materials which consist of skeletal frames and carcass shells on which bits and pieces of muscle and other edible tissue remain after most of the muscle and other tissues have been removed by hand. Thus, there is the need for controlling the process of incorporating powdered bone into MSP so that it does not exceed the level of one percent which is considered a "good manufacturing practice." The other distinguishing features that make mechanically separated poultry different than hand-deboned poultry are physical form and consistency. Informing consumers of such differences by a distinct and separate labeling of the presence of mechanically separated poultry in products in which it is used, is supported by the statutory responsibility of FSIS to assure that all labels on poultry and meat food products are accurate and not false or misleading.

The Agency did agree that its tentative labeling approach to identifying two types of mechanically separated poultry, based on the level of bone solids, i.e., above or below 0.6 percent, which was suggested in its March 1994 ANPR, appear to be in conflict. The mechanical separation process results in a product that is materially different than hand-deboned poultry in terms of its paste-like form and batter-like consistency, regardless of the level of bone solids present. The Agency tentatively concluded, after further review of the approach presented in the March 1994 ANPR and the comments received in response to it (and the prior June 15, 1993, ANPR), that continuation of the present labeling policy, even for those finished products with mechanically separated poultry that has a bone solids content of less than 0.6 percent, does not inform the consumer that these products contain the distinct ingredient mechanically separated poultry and that this may result in misleading labeling. The Agency also maintained that there is a need for bone particle size restrictions to augment the measurement of bone solids content as an assurance that mechanical separation processes are operating under good manufacturing practices that prevent the inclusion of unacceptable large fragments in mechanically separated poultry. The Agency also believed that in order to show that the process of manufacturing MSP was in control, i.e., operating under good manufacturing practices, records should be kept.

The Agency disagreed with commenters' objections to the tentative positions taken in the March 1994 ANPR on restricting the uses of mechanically separated poultry as an ingredient in certain products, e.g., in baby foods where there was a potential health effect associated with fluoride in mechanically separated poultry made from fowl, and where the textural characteristics of mechanically separated poultry altered the basic nature of the product to which it may be added, such as products represented as being composed of whole muscle. FSIS maintained the position that such restrictions were necessary for health reasons (in the case of the fluoride issue) or to protect the consumer from misleading labeling.

The Agency's positions on these major issues led to the publication of the December 6, 1994 proposed rule.

VII. Proposed Rule

On December 6, 1994, FSIS published a proposed rule to amend the Federal meat and poultry products inspection regulations to define and standardize, and establish other requirements for poultry products produced by mechanical separation, including provisions for the composition and use of such products, and requirements for manufacturing and labeling such

products (59 FR 62629). The proposal prescribed a definition and standard of identity for poultry products produced by mechanical separation with 1 percent or less bone solids content, that required compliance with certain criteria, e.g., bone solids content (measured as calcium content) and bone particle size. The proposal also provided recordkeeping and labeling requirements, and limitations on use of poultry products produced by mechanical separation.

A. Product Definition and Standard

FSIS proposed to prescribe a definition and standard of identity and composition for the poultry product with a paste-like form and batter-like consistency that results from the mechanical separation of and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses which has a bone solids content of 1 percent or less. This product is commonly known in the poultry industry as mechanically separated or deboned poultry.

FSIS proposed that the boneless poultry products regulations described in 9 CFR 381.117(d) no longer apply to MSP. FSIS indicated that the current restriction on bone solids content in this regulation, as enforced by limiting calcium content, would be included with other compositional requirements in an MSP standard. Moreover, as a standardized product, MSP would be differentiated from other poultry product ingredients and it would be designated in the ingredients statements on finished product labels by the name specified in its definition and standard, in accordance with 9 CFR 317.2(c)(2) and (f)(1) and 381.118(a). Product failing to meet the bone solids content or bone particle size restrictions of the standard must be labeled as "Mechanically Separated (Kind) For Further Processing" and may only be used in producing poultry extractives, including fats, stocks, and broths because the manufacturing process completely removes the bone solids and bone particles.

1. *Product name.* FSIS proposed to define the standardized product that results from the mechanical separation and removal of most of the bone from poultry carcasses and parts of carcasses by a distinctive name. FSIS proposed that such product be called "mechanically separated chicken" or "mechanically separated turkey," for example. FSIS indicated that this product differs significantly from boneless poultry products produced by traditional hand-deboning techniques in its spread-like form and consistency such that it should be regulated as a separate, standardized ingredient. FSIS indicated that it would welcome comments on other names that accurately reflected the process from which this product was derived, as well as its form and consistency.

2. *Bone solids content.* FSIS proposed that the definition and standard for MSP incorporate the existing restriction on the bone solids content of mechanically separated poultry products of not more than 1 percent (9 CFR 381.117(d)). FSIS also proposed that the definition and standard include maximum calcium content levels of not more than 0.235 percent in product made from turkeys or mature chickens or 0.175 percent in product made from other poultry, as a measure of bone solids content based on the weight of product that has not been heat treated.

3. *Bone particle size.* FSIS proposed that at least 98 percent of the bone particles present in MSP be restricted to a maximum size no greater than 1.5 millimeters (mm) in their greatest dimension and that no bone particles could be larger than 2.0 millimeters in their greatest dimension.

4. *Recordkeeping.* FSIS also proposed that establishments that manufactured MSP maintain records of bone solids content and bone particle size as a measure of process control. These records had to be made available to the inspector and any other duly authorized representative of the Secretary upon request.

B. Limitations on Use

FSIS proposed certain limitations with respect to the use of MSP in the formulation of poultry and meat food products. FSIS proposed such restrictions based on the potential fluoride contribution of MSP made from fowl (i.e., mature female chickens) and the characteristics of MSP, including the kind of poultry from which it is made and its form and consistency. FSIS also proposed that MSP may be used, except in certain cases, in any product defined by regulatory standards or Agency policies whereby "(Kind)" or "(Kind) Meat" (e.g., "turkey," "turkey meat") are being used, provided that it is identified as "Mechanically Separated (Kind)" and conforms to requirements regarding the presence of skin within natural proportions (9 CFR 381.117(d)).

1. *Kind of product limitation.* FSIS proposed that when a poultry product is required to be prepared from a particular kind or kinds of poultry, (e.g., chicken), use of MSP of any other kind (e.g., mechanically separated turkey), would not be permitted. This provision assures that the kind of MSP used in a poultry product, such as mechanically separated chicken, is the same kind as is represented in the product name or other labeling. For example, product named "chicken bologna" could not be composed of mechanically separated turkey because such action could, among other things, result in false or misleading labeling by implying that the bologna was made with a chicken ingredient, when, in fact, it contained a turkey ingredient.

2. *Limitations on product made from fowl.* FSIS proposed that the use of mechanically separated chicken made, in whole or in part, from fowl (i.e., mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) not be permitted in baby, junior, or toddler foods. The Agency based these restrictions on the potential fluoride contribution of product made from fowl to dietary intakes of young children.

The Agency noted that this position was supported by the 1979 Report, which was the best data available. FSIS recognized, however, that views on fluoride consumption have changed in the last few years, and in particular, recent views on the benefits of fluoride in the diet, including the diets of children. Comments were invited on this issue that would have an impact on the current validity of the proposed restriction on use of MSP from fowl .

3. *Poultry product limitations.* FSIS proposed that MSP not be allowed in poultry products that are composed of whole poultry muscle, and expected to be as such by consumers, except that it may be used for binding purposes at a level that is sufficient for purpose. However, FSIS would allow MSP in the sauce portion or any dressing of poultry products.

FSIS also proposed that MSP not be permitted in poultry products that have been processed only to the extent of cutting or grinding because it considers its use to be inconsistent with the basic whole-muscle character associated with such products. The Agency also would not permit MSP to be used in poultry products that are processed, convenience versions of ready-to-cook poultry or cuts or solid pieces of poultry or poultry meat for the reason stated above.

FSIS proposed no restrictions on the amount of MSP that can be used in poultry products, or meat food products, in which it is a permitted ingredient. However, prevailing standards of identity and composition for particular products may contain quantitative limits (e.g., a limit on the amount of poultry product ingredients permitted in cooked sausages such as frankfurters and bologna (9 CFR 319.180)) or other restrictions on the quantity of various poultry product ingredients.

C. Labeling

FSIS proposed special provisions for the labels of MSP. If adopted, these provisions would supplement other, more general requirements for such labels (see 9 CFR parts 317 and 381, subpart N). The provisions are discussed below.

1. *The product.* FSIS proposed the following labeling provisions for MSP: (1) the name of the product (e.g., "Mechanically Separated (Kind)" (where "kind" refers to chicken, turkey, or other poultry) must be followed immediately by the phrase(s) "made from fowl" unless it is not made, in whole or part, from mature female chickens, and "with excess skin" unless it is made from poultry product that does not include skin in excess of the natural proportion present on the whole carcass; and (2) there must be appropriate descriptive terminology in the labeling of MSP if heat treatment has been used in the preparation of such product, e.g., "cooked." Because the characteristics described in (1) and (2) above are ones which would affect the use of MSP, FSIS proposed that, in order to assure compliance with regulatory requirements and thereby prevent the adulteration and misbranding of finished poultry products and meat food products, such characteristics had to be clearly identified on the label of MSP when MSP left the establishment at which it was manufactured.

2. *Finished poultry products and meat food products.* FSIS proposed that the standardized paste-like product that results from the mechanical separation and removal of most of the bone from the skeletal muscle and other edible tissue of poultry carcasses and parts of carcasses be defined by its own name, e.g., "Mechanically Separated (Kind)," which would be declared in the ingredients statements on finished product labels by the name specified in its definition and standard.

VIII. Discussion of Comments

FSIS received 2420 comments in response to its December 6, 1994, proposed rule. The majority of the comments (over 95 percent) were submitted by individuals and food manufacturers and distributors; a few (less than 5 percent) were submitted by trade associations, consumer advocate organizations, academia, developers of machinery, food retailers, food consultants, law firms, an agency of the Federal government, and a foreign government. The majority of the comments related to product name. The comments are summarized below.

A. Product Definition and Standard Product Name

Nearly all of the comments were in response to the proposed requirement regarding the product name for MSP which established a distinct name for this product, mechanically separated (kind), where "kind" represents the kind of poultry, such as chicken or turkey, from which the product was made. Of these, roughly one-quarter agreed with defining the product by the distinctive name of "Mechanically Separated (Kind) (MS(K))." Most of the commenters supporting the proposal stated that MSP is different from hand-deboned poultry and the product label should inform consumers of which type product they are getting. Further, the commenters asserted that "they have a right to know" if mechanically separated poultry is being used because mechanically separated poultry "has more bone particles, calcium, and cholesterol" (than hand-deboned poultry) because of the way it is processed. The commenters said that if the name is not changed to MSP, i.e., mechanically separated (kind), consumers might think that they are getting a product that has no bone particles and is identical to hand-deboned poultry. Several commenters also suggested that it is unfair for FSIS to treat mechanically separated poultry differently than mechanically separated meat with regard to its labeling and that this proposed rule will create parity between the poultry and red meat industries.

The majority of the other commenters disagreed with the proposed position to define the product by the name MSP. The commenters stated that: (1) Poultry that is mechanically deboned is the same as any other poultry and should be treated and labeled like any other poultry, i.e., hand-deboned; (2) current labeling is truthful and accurate, unlike the term "mechanically separated," which suggests it is different because mechanical equipment is used; (3) labeling MSP differently than it is currently labeled will confuse and mislead consumers into believing that the product has undergone a change and is somehow different; (4) the proposed labeling terminology will force manufacturers to undertake numerous unnecessary product reformulations and promote new labeling nomenclature that is both unappealing and unnatural in context; (5) the common or usual name of finely ground turkey or chicken is "turkey or chicken," by virtue of consistent, widespread and long-term usage of the term by the industry; (6) the addition of the words "mechanically separated" to the ingredients statement unnecessarily contributes to the general cluttering of limited label space; (7) ingredient labeling should be based upon product characteristics not on the manufacturing method, because most, if not all, ingredients in all food products are mechanically processed at some point, e.g., "pitted cherries are mechanically pitted but do not require mechanically pitted on the label" or "orange juice squeezed by a machine is not required to be labeled as mechanically squeezed orange juice;" and (8) the term will frustrate technological innovation by establishing a false dichotomy between mechanical and "natural" processes.

Commenters also suggested that any further regulation or change of ingredient declaration for this product is unnecessary and not based on consumer expectations or scientific determination. Commenters stated that there is no adequate justification for setting a new standard of identity for this product. They stated that FSIS has not provided any research, consumer studies, or marketing data to support the need for this labeling change and that no new evidence has been presented by FSIS to refute that mechanically separated poultry is materially the same as poultry derived from hand-deboning. Commenters also questioned placing additional requirements on a product that is already accepted by consumers. Another commenter stated that the only reason FSIS was initiating a change to the name for MSP was because of the lawsuit by the red meat sausage manufacturers (i.e., *Bob Evans Farm, Inc. et al.*, v. *Espy*).

Further, one commenter alleged that the reason given by FSIS for proposing this rule, which is to prevent mislabeling of products and misleading consumers, is invalid. This commenter was the only one to offer consumer data [7] regarding consumer reactions to labeling MSP. The commenter contracted out a consumer study to measure consumers' preferences for the terms "chicken," "turkey," "mechanically separated chicken or turkey," and "finely ground chicken or turkey." The commenter concluded that the consumer research shows that "the majority of consumers consistently report no preference to change from current labeling practices." According to the commenter, "less than 2 in 10

[7] Comment submitted by the National Turkey Federation is available for public review at the FSIS Docket Clerk's office.

consumers in their study expressed the opinion that 'mechanically separated' is an appropriate labeling term for comminuted poultry," and that, if a change is made to current policies, "finely ground" would be a more preferred term. The commenter concluded that the results of the research were applicable to consumers in general. Several other commenters cited the consumer research presented by this commenter and also asserted that, if any change is made with respect to the product name, "finely ground (Kind)" is much more informative than "MSP." Other commenters suggested other names such as "ground," "finely textured," and "finely comminuted" poultry.

FSIS has concluded that the name mechanically separated poultry, i.e., "mechanically separated (kind of poultry) (MSP)" (e.g., mechanically separated chicken) should be adopted as the product name and that a separate standard of identity should be established for this product to reflect its name and set forth appropriate parameters for the product. FSIS has determined that the name "mechanically separated (kind of poultry)" is an appropriate, nonmisleading name for this product based on comments received in this rulemaking, an examination of the process by which MSP is made, the distinct paste-like form and batter-like consistency of MSP, the need to distinguish MSP's differences from hand-deboned poultry on labeling to comply with FSIS' statutory consumer protection responsibilities to assure that labels of meat and poultry products are accurate, and a review of product name issues raised in the rulemaking for mechanically separated meat, a red meat product produced in a mechanical manner similar to MSP.

As will be discussed more fully below, FSIS does not agree with various assertions of some commenters that establishing the name MSP for this product is unnecessary and unjustified. The name mechanically separated (kind of poultry)" clearly and precisely describes the manner by which the product is made. The process by which MSP is made along with the type of starting materials used to make it, which contain only bits and pieces of muscle tissue and other edible tissues, such as skin and fat, are what causes this product to be different from hand-deboned poultry. Consumers will be misled if they are not informed that this product is materially different from hand-deboned poultry, and the appropriate way to inform them of this difference is to establish a name for MSP that distinguishes it from hand-deboned poultry. As FSIS recognized in its rulemaking on MSM, the ability of any name to convey in only a few words the nature of a product is limited. However, FSIS has determined that the term MSP will appropriately notify consumers that the product they are purchasing contains a distinct ingredient that results from the mechanical separation process.

FSIS received various comments that suggested alternative names for the product, if it was concluded that more descriptive labeling was necessary, such as "ground (kind of poultry)," "finely ground (kind of poultry)," "comminuted (kind of poultry)," and "finely textured (kind of poultry)." FSIS has concluded that these names do not provide a concise and accurate description of the product because the usage of the terms is not unique to MSP, and these terms convey the impression that the product has the same form and consistency as product with defined particles of meat, skin, and fat, rather than, as here, one that has a paste and batter-like consistency. FSIS has concluded here, as it did for its previous rulemaking on MSM (47 FR 28214, 28224), a similar product produced by a mechanical separation process that has a paste and batter-like consistency, that the name of the product should include the term "mechanically" to indicate the nature of the process used in making the product. When FSIS adopted the name "mechanically separated" in its 1982 rulemaking on MSM to describe mechanically separated livestock product such as "beef" or "pork," the adoption of this name was challenged in a lawsuit. The name was upheld by the Courts in *Community Nutrition Institute (CNI)* v. *Block*, No. 82–2009 (D.D.C. Dec. 1, 1982), aff'd 749 F.2nd 50 (D.C. Cir. 1984). As also has been previously noted, the term "mechanically separated" is recognized internationally by the Codex Alimentarius Commission of the United Nations and by individual countries that trade with the United States.

In its proposed rule, FSIS proposed the term "Mechanically Separated" (Kind) for MSP. As a point of clarification, FSIS would like to make it clear that "kind" refers to the "kind of poultry," such as chicken, turkey, etc., used in a product. FSIS feels that the name for this ingredient should be clear about this fact, and, therefore, has clarified its regulations to reflect this fact.

FSIS also wishes to clarify the scope of its definition and standard for MSP. As with FSIS' definition and standard for MSM, the standard and definition for MSP are intended to only cover the product with a paste-like form and batter-like consistency manufactured by machinery that operates on the differing resistance of hard bone and soft tissue to pass through small openings, whether it employs sieves, screens, or other devices or whether or not bones are pre-broken before being fed into such equipment. This regulation, however, is not intended to cover whole pieces of muscles that are mechanically separated from poultry carcasses or parts of carcasses. FSIS has clarified its regulation in this regard by indicating that the product that FSIS is regulating is the one that results from the mechanical separation process that has a paste-like form.

In response to the commenters who suggested that there is no difference between MSP and hand-deboned poultry and, that therefore, they should be labeled the same, FSIS disagrees with this comment. The method of obtaining poultry products by the mechanical separation process results in a product whose form and consistency materially differ from that of poultry derived by traditional hand-deboning methods.

MSP is a poultry product that results from the mechanical separation and removal of most of the bone from the skeletal muscle and other edible tissues, such as skin with attached fat, of poultry carcasses and parts of carcasses. The process of manufacturing MSP begins with starting materials from which most of the muscle and other tissue has already been removed by hand, on which only bits and pieces of tissue remain. The process involves the crushing of the bones (i.e., the starting material) with adhering tissue and the removal of the bone using high pressure which forces the mass of tissue through holes in the equipment, allowing a small amount of powdered bone to pass along with the edible tissue. This results in a product with a paste-like form and cake batter-like consistency, that no longer resembles "chicken" or "turkey." The rigors of the mechanical separation process alter the structure of the muscle fibers, skin, fat, and other tissues of the starting materials so that they become a blended and amorphous paste-like mass that is no longer recognizable as "chicken" or "turkey." On the other hand, "hand-deboned poultry" is a boneless poultry product that is a result of removing whole muscle and other edible tissue (e.g., skin with attached fat) from poultry carcasses and parts of carcasses, using hand-deboning methods, e.g., hand-held knives. Such product is easily recognized as the kind of boneless muscle and tissue that would be gotten by a person who used a knife in their own kitchen to cut off pieces from a poultry carcass or parts of poultry, such as drumsticks, thighs, and breasts, because there is not a substantial disruption of the physical form of the product by hand-deboning. With hand-deboning, the muscle fibers are visible and maintain much of their original configuration. Understandably, hand-deboned muscle and other tissue may be subsequently processed through a grinder, flaking machine, or dicer to yield poultry in ground, flaked, or diced form, but such product still exhibits a physical character associated with "chicken" and "turkey," rather than a cake batter. This is because the rigors of these processes which occur after hand-removal of muscle and other tissue do not alter the physical nature of the tissues to the degree that mechanical separation does.

In response to the comments regarding consumers being confused or misled by labeling MSP differently than is currently labeled, i.e., as "chicken" or "turkey," the Agency is not aware of reliable or conclusive data that support the assertion that consumers will be confused or will believe that the products in which MSP has been used are different from the products they purchase after the final rule is effective. The Agency does not agree with one commenter's assertion, the American Meat Institute, that a report of a study it submitted [3] on an evaluation of mechanically separated red meat issues support its view that the required labeling for MSP has "a great affirmative potential to mislead." The report cannot be relied upon as support for this conclusion for a number of reasons, including the following discussed here. The report indicates it used focus group sessions to, among other things, explore consumer reaction to and understanding of the term "mechanically separated meat." As noted previously, MSM is a red meat product produced by a mechanical separation process similar to that by which MSP is made. However, very little of this product has been made and used in products with which consumers are familiar, and it is not surprising that consumers might not be aware of the product the term "mechanically separated meat" represented. Therefore, reactions to labels for products containing mechanically separated meat would not necessarily be applicable to the labels for mechanically separated poultry. Furthermore, as the study itself states, the focus group method used does not "produce precise, absolute measures," "its findings must be seen as hypotheses," and "findings from focus group sessions are not projectable to a larger population." Moreover, the study also sought consumers' reactions to other labeling issues and the multiplicity of issues raised could bias the responses made to the mechanically separated meat labeling issue and, in turn, the validity of applying the finding to labeling of mechanically separated poultry.

In the Agency's opinion, the declaration of MSP as "chicken" or "turkey," rather than by a distinctive name in the ingredients statement of a product in which it used, is misleading. "Chicken" and "turkey" are terms associated with boneless poultry products derived by hand from starting materials that consist of whole and half carcasses, and parts of carcasses, on which whole muscle and other edible tissues substantially exist. FSIS believes that MSP differs significantly from boneless poultry produced by hand-deboning techniques because of its paste-like form and batter-like consistency. The form and consistency of MSP is a direct result of the mechanical machinery (i.e., process) from which it is derived which involves the removal of bits and pieces of muscle tissue and other edible tissues from boned-out materials, i.e., skeletal frames and carcass shells. Therefore, FSIS has concluded that MSP should be regulated as a separate, standardized ingredient, and that the characteristics of this ingredient are sufficiently different from the characteristics of hand-deboned poultry that it should be identified on product labels in a way that distinguishes it from hand-deboned ingredients. Such labeling will help further inform consumers about the content of the products they are purchasing. FSIS believes that such a labeling requirement is necessary in order to fulfill its statutory responsibility under the FMIA and PPIA to protect consumers by assuring that the labels of poultry and meat food products are accurate and not false or misleading.

If the commenters believe that consumers will be misled into thinking that they are purchasing products that are different from what they have historically purchased or that the product has changed, the industry would have a full year before the rule becomes effective, to educate consumers that the products they will be purchasing that reflect the name MSP in the ingredients statement are what they have historically purchased. FSIS, itself, also believes it is important to inform consumers about this product. Therefore, it intends to review its public information program and incorporate into it appropriate explanatory material on the process used to make MSP, its characteristics, its wholesomeness, its safety, and its nutritional qualities. The Agency believes that consumers will be misled if mechanically separated poultry is not separately and distinctly listed as an ingredient, because of the differences previously discussed between it and hand-deboned poultry. The Agency's responsibility under its consumer protection mission is to assure that labeling information is accurate and helps consumers make informed food purchasing decisions.

In response to the comments that asserted that the requirement for labeling "MSP" will result in a need for manufacturers to reformulate products that currently contain MSP, and "promote new labeling nomenclature that is both unappealing and unnatural in context," the Agency is not certain as to why such changes will be necessary. There were no reliable or conclusive data submitted in support of these comments that show a potential negative impact on poultry or meat food product formulations. It is the Agency's belief that MSP continues to be a wholesome and safe, low-cost source of protein, with nutritional attributes comparable to "chicken" and "turkey." The paste-like form and batter-like consistency of MSP that results from the mechanical separation process provide unique functional characteristics that are a key benefit for its use in the variety of poultry and meat food products (especially emulsion-type products like hot dogs) in which it is currently used. This benefit seems likely to ensure continued use of the ingredient in products that are meeting the demands of consumers who purchase the products.

Further, in response to comments about a negative impact labeling will have on consumers' acceptance of products labeled with "MSP," there were no persuasive arguments made that support this as an outcome. The majority of the comments that disagreed with the proposed identity of the products as "MSP" did not provide data, but offered opinions on the consumers' view of the proposed name. The data that were presented by the one commenter that pursued consumer research were not compelling because of shortcomings in the study design.

The report of consumer research submitted by the commenter tested consumer preferences for the terms "mechanically separated," "finely ground," and "chicken" and "turkey,"

[3] A copy of the comment and the report are available for review in the FSIS Docket Clerk's office.

as names for MSP. The report concluded that the majority of consumers, if given the choice between names such as "mechanically separated chicken or turkey," and "turkey" or "chicken," preferred labeling to stay as it is, "turkey" or "chicken." If, however, a change in the name is made, the report concluded that "finely ground" is overwhelmingly preferred to "mechanically separated." The commenter concluded that the data show that a labeling change to "mechanically separated" is unjustified and that consumers gain no salient information from the use of such a term. They indicated that the data were gathered from consumers who were informed as to the Agency's concerns regarding the presence of "powdered bone" and a change in texture of finely comminuted poultry.

The survey data's conclusions were based upon 300 interviews of people in five states, who were given a questionnaire, after reading an informational handout. The commenter indicated that the survey participants had used cold cuts, luncheon meats, hot dogs, or smoked sausage, in the past three months, and were heads of households and primary or co-primary food purchasers between the ages of 21–69, 80% who were female and 20% who were men.

The Agency has reviewed the survey conducted by the commenter and has determined that the survey's findings are not reliable. The informational handout given to survey participants to read before they answered the survey questions did not tell those interviewed the following information which they needed to have in order to make informed responses to the questions posed to them: (1) a description of the difference between the form and consistency of MSP and hand deboned poultry; (2) descriptions of how the mechanical separation process works and what the product is like that comes from it; (3) a description of the difference in the nature of the starting materials for hand-deboned poultry and MSP, and (4) a clear idea of the types of products in which MSP is used. Further, the interviewees were not shown any samples of MSP and hand-deboned poultry and, thus, did not view these products and see the differences in form and consistency between the products.

Moreover, the content of the handout was slanted in the sense that it described only certain aspects of MSP and used confusing names for MSP which obscured the difference between MSP and hand deboned poultry, thus making any considered labeling change appear to be unnecessary. For example, the informational handout indicates that the way MSP is made is that "new machinery was invented that could separate poultry meat from bone without the need of hand deboning." This, however, is only a partial description and is, thus, misleading. As has been previously stated in this docket, the new machinery does not completely separate meat from bone. Rather a small amount of powdered bone that results from the fact that the machines crush the bone of the starting materials from which the MSP is made, becomes mixed together with the other material, such as muscle tissue and skin removed from the starting materials. Another example is that the handout states that "in either case," referring to MSP and hand deboned poultry, "the original form of the poultry is changed when it is used as an ingredient in making hot dogs, bologna, and other processed meat." This is misleading because, as has been previously noted, MSP is an amorphous and paste-like mass that is not recognizable as bits and pieces of chicken and turkey, and even if hand-deboned chicken or turkey was further processed by grinding, it would still exhibit a physical character associated with chicken or turkey.

Moreover, the handout indicated that both mechanically separated and hand deboned poultry may contain up to 1% bone, and that the powdered bone in MSP "provides nutritionally available calcium." However, whether the powdered bone in MSP provides a nutrient that consumers want has nothing to do with the issue of what the name should be of this product. Many types of products provide calcium but they are appropriately described by different names because they are distinct types of products. The handout also stated that "in its raw, fresh form, consumers are familiar with ground turkey which may be made using the same equipment." This statement is misleading because the important aspect of the way the machinery operates to produce a product with a paste-like form and batter-like consistency is not presented.

Moreover, it is misleading to conclude that switching to the term "mechanically separated" would likely result in substantial decrease in consumption of this products, when the interviewees were not told that it was the distinct character of this product, rather than a question of the wholesomeness of the product, that was a basis for FSIS' proposed labeling change. Further, the interviewees also were not told that product made without MSP could possibly cost more to purchase than one made with MSP.

The conclusions reached by the commenter from the research are also not valid because the study design did not account for possible errors that may make the information gathered unreliable. The study used a mall intercept survey approach and involved soliciting reactions on the terms from 300 shoppers in shopping malls. The sample is not statistically representative of a national population because of the way the participants were selected. Although the commenter claimed that they have data from "true consumers," the participants represent a population who happened to be able to shop in the mall, and on the day of the survey. A concern with the usefulness of the results stems from the non-probability, quota sampling approach. Non-probability samples do not permit an estimate of sampling error. With smaller samples, the range any reported percentage can take can be relatively large. Since a sample of 300 respondents is smaller than most national level consumer surveys, comparisons which look different may not be statistically different when inferred to the population of primary food buyers. For example, the difference between the 10 percent of respondents reporting they will probably buy more product labeled as "finely ground" versus the 6 percent that reported they will probably buy less could be due to sampling error. Additionally, the approach to sampling tends to under-represent persons who are difficult to contact or reluctant to participate. In this case, under representation of certain persons with different views is likely to yield underestimates of respondents who report that the issue is of no importance to them.

In response to the comments that stated that the term "mechanically separated" is misleading because it suggests the product is different because mechanical equipment is used, FSIS believes that the use of mechanical equipment is, in fact, the very reason MSP differs from hand-deboned poultry. The process of removing bits and pieces of edible muscle and other tissues from starting materials consisting of skeletal frames and shells is far different than the process of removing muscle and other tissue from bone by hand. The process of manufacturing MSP results in a paste-like product which no longer resembles the consumer's expectation of "chicken" or "turkey." The examples provided by the commenter of other products that are "mechanically" processed, and which do not reflect this in their names, are not comparable

because the form and consistency of the products mentioned would not differ significantly whether the products were processed by hand or machine.

Therefore, the Agency believes that MSP accurately and concisely describes the poultry product produced by mechanical deboning, indicating the nature of the process by which and the kind of poultry from which it is made, and distinguishing it from poultry product ingredients produced by traditional hand-deboning techniques. The name includes "(Kind of poultry)" rather than "poultry" to make it clear that the kind of poultry (9 CFR 381.1(b)(40)) from which the product is made must be specified (e.g., "Mechanically Separated Chicken").

In response to comments that suggested the term "mechanically separated" will frustrate technological innovation by creating a false dichotomy between mechanical and "natural" processes, the Agency stresses that the mere application of the mechanical means of separating bone from muscle and other tissues does result in a materially different product than that which is derived by hand. The action of mechanical separation of bone from poultry tissue involves crushing bones on which bits and pieces of meat, skin, and fat remain after hand removal of the majority of edible tissue. The bones with adhering tissue are forced under high pressure through screens or sieves in the machinery to result in a paste-like and batter-like composite of tissues that had been adhering to the bones, that also contains a minute amount of powdered bone. The physical action of the mechanical process cannot be duplicated by hand-deboning methods to result in a similar product.

MSP has been referred to as "Mechanically Separated" Poultry within the meat and poultry industries to specify the form and derivation of the product. FSIS is aware that other descriptions have been associated with poultry product produced by mechanical separation, such as "mechanically deboned" poultry, "finely ground" poultry, and "finely comminuted" poultry. There are reasons why these other terms do not appropriately convey the identity of MSP.

FSIS believes that where a primary distinguishing characteristic of a standardized product is its bone content, it would be inappropriate to define it by a name that includes the term "deboned" and use of this term in labeling might mislead consumers by implying that such product contains no bone. This was also concluded in the final rule that defined and standardized MSM (47 FR 28214). Although consumer focus group research reported in the MSM proposed rule (46 FR 39274) suggested that consumers thought that "mechanically deboned" is a term that is more acceptable than "mechanically processed," "mechanically separated," and "mechanically recovered," the Agency in its final rule for MSM rejected the term "mechanically deboned" in lieu of "mechanically separated." The basis was that it was believed that "mechanically deboned" would incorrectly represent to consumers that the product does not contain bone.

With regard to other terms that refer to the form or consistency of poultry products, e.g., "finely comminuted," "comminuted," "finely ground," "ground," and "finely textured," the Agency does not view such terms as truly reflective of the form and consistency of MSP. MSP is paste-like in form and like a cake-batter in consistency. When it emerges from the mechanical separation machinery, it is an amorphous blend of the tissues removed from the skeletal frames and shells that were the starting materials. The process uses high pressure and incorporates a minute amount of powdered bone into the product in the operation of removing bone from the tissue. Terms such as those mentioned are used to reflect products with a more defined particulate size and would be perceived that way by consumers, e.g., as products with a form and consistency comparable to ground beef. Additionally, terms such as "comminuted" are not readily understood by many consumers and only have a common usage and understanding among those involved in the meat and poultry industry. Terms such as "finely ground" and "comminuted" have also been used by industry interchangeably to describe ground poultry, i.e., poultry with defined muscle particles. Moreover, the terms cited above have been used indiscriminately to refer to MSP, and although they relate to form and consistency, do not sufficiently inform consumers that MSP is an ingredient in the products they purchase. Therefore, these terms are limited in their ability to effectively meet the Agency's communication objective of conveying distinctly the presence of MSP on the labels of products. Furthermore, there were not any comments received that offered other, novel terms that could be applied to MSP.

Regarding the comments that cited the long-term use of the terms "chicken," "turkey," etc., to refer to mechanically separated poultry, as the reason for not changing the name of MSP, the Agency has taken into account the information and experience acquired since the first regulatory action on MSP in 1969 and current regulatory policies, and has reviewed and reevaluated the existing regulations, particularly in light of the labeling issues. As a result of its review and reevaluation, the Agency has concluded that the distinct declaration of "MSP" is necessary after a careful review of (1) the process of manufacturing MSP which results in a product with a paste-like form and cake-batter-like consistency, (2) the characteristics (i.e., form and consistency) of MSP which are significantly different from those expected of "chicken," "turkey," etc., which are derived by hand-deboning, (3) the issues raised in rulemakings and court decisions that resulted in the distinct identity of the livestock product similar to MSP as "MS(S)," because (in part) of the form and consistency of that product, and (4) the statutory responsibilities to protect the public and prevent the preparation and distribution in commerce of poultry products and meat food products which are misbranded or not properly marked, labeled, or packaged.

Bone Solids Content

FSIS stated in the proposed rule that the definition and standard for MSP would incorporate the existing restriction on the bone solids content of mechanically separated poultry products of not more than 1 percent. All of the 26 commenters responding to this issue expressed strong support for restricting the bone solids content to no greater than 1 percent. After evaluating data on substances of potential concern that may tend to concentrate in bone, the 1979 report on health and safety aspects of the use of mechanically separated poultry did not recommend any change in the existing bone solids limit. FSIS continues to believe that the requirement of no more than one percent bone solids content is reflective of good manufacturing practices that result in wholesome and safe boneless poultry products.

Therefore, this final rule will restrict the bone solids content to no greater than 1 percent, as represented by calcium content to a maximum level of not more than 0.235 percent in product made from turkeys or mature chickens or 0.175 percent in product made from other poultry, as a measure of bone solids content based on the weight of uncooked product (i.e., product that has not been heat treated). The differences in the calcium value between turkeys and mature chickens, and the value for

other poultry, are attributable to the higher level of calcium found in turkey bones which are typically larger than other poultry bones, and due to more calcium being deposited over the lifetime of older chickens.

Bone Particle Size

Twenty-six commenters responded to the proposed bone particle size requirement which restricts at least 98 percent of bone particles to a maximum size no greater than 1.5 millimeters (mm) in their greatest dimension and allows no bone particles to be larger than 2.0 millimeters in their greatest dimension. About half of the 26 commenters supported the restriction of bone particle size. One of the commenters stated that the bone particle requirement provides consumers with sufficient protection from any hard bone particles and also, from any constituents which might not normally be found in items manufactured from muscle tissue using the traditional hand-deboning process.

The other half of the commenters opposed setting limits on bone particle size stating that for more than 20 years of use of MSP, bone particles have not been a significant problem. The commenters believe that the nature of the separation process itself, with the comminution of product which is pushed through screens under pressure, minimizes the likelihood of large bone particles. Furthermore, the relative softness of poultry bones due to their age and size make them unlikely to present a physical hazard. One commenter stated that the American Dental Association Health Foundation found no health problems associated with poultry bone particles and that the Michigan State University has reported no digestibility problems of issue. Other commenters cited the 1979 Report's conclusion that "bone particles in MSP will not present any health hazard because of size or hardness, provided that bone particle size is controlled." Commenters also suggested that requiring standardized bone particle limitations will result in increased analytical costs to the processor without improving or otherwise positively effecting food safety. Other commenters pointed out that the proposed rule did not suggest a method by which bone particle testing can be conducted.

FSIS believes that a bone particle size limitation augments the bone solids content restriction and is a meaningful indicator of a mechanical separation operation that effectively removes bone from muscle and other tissue. The mechanical separation process involves bone crushing and screening out bone from soft tissue, thereby providing a mechanism for limiting the amount of bone in the product. The mechanism of separating bone from tissue does not necessarily make the remaining bone particles uniform in size. Bone is an unexpected ingredient and the process of mechanical separation should be operated to avoid the likelihood of large bone particles occurring. If bone were present in such a particle size as to be readily apparent to the taste or touch, it would be identifiable as bone and might be reason to consider the product adulterated. The 1979 Report recommended that bone particle size be controlled to ensure that equipment type or processing does not result in unacceptably large bone fragments in mechanically separated poultry. There were no new data submitted by commenters that refute the data in the 1979 Report and, thus, they appear to indicate the reasonable limits, i.e., good manufacturing practices, by which manufacturers are operating. FSIS agrees with the recommendation in the 1979 Report and is, therefore, requiring that at least 98 percent of the bone particles present in mechanically separated poultry have a maximum size no greater than 1.5 mm in their greatest dimension and that no bone particles be greater than 2.0 mm in their greatest dimension.

Recordkeeping of Calcium and Bone Particle Size

The proposed recordkeeping requirements required that manufacturers of MSP maintain records to support the fact that the MSP met the proposed bone solids content requirement for MSP and the proposed bone particle size requirement for this product. The majority of the comments received in response to this requirement supported the requirement. The commenters believed that establishments should maintain records of bone solids content and bone particle size because it assists in compliance and provides an incentive for good process control. A number of commenters argued that mandatory recordkeeping for bone particles would have operational costs associated with it, which are proven to be unnecessary, particularly in light of the fact that there is no food safety issue of concern.

FSIS has reconsidered the need for establishments' keeping records on bone solids content (measured as calcium) and bone particle size in light of the comments that stated that a recordkeeping requirement was unnecessary. The Agency wishes to be cooperative to ease burdens on industry, in appropriate situations, and allow flexibility in the manner in which requirements can be carried out, where it can do so and still carry out its statutory missions to prevent the distribution of adulterated and misbranded meat and poultry products. Consistent with this effort, the Agency in its proposal for MSP did not require the industry to either carry out any prescribed tests for bone solids content or bone particle size of the MSP produced, or to carry out any type or amount of sampling of the MSP produced. The agency has now concluded that removal of the recordkeeping requirement for bone solids content and bone particle size will appropriately allow producers even more flexibility in meeting these requirements. FSIS, of course, expects producers of MSP to comply with the bone solids content and bone particle size requirements, and it will implement spot checks in order to verify that such compliance is occurring by producers of MSP. If during these spot checks, or during any other inspection or compliance review, FSIS finds a problem, it believes, however, that any records producers have maintained in regard to compliance with these requirements, will be helpful to FSIS and, in turn, to the industry, in evaluating the company's control of bone solids content and bone particle size.

B. Use Limitations and Restrictions

Most of the commenters responding to the issue regarding limitations on the use of MSP disagreed with the Agency's position that limitations of use in products composed of whole muscle or of MSP made from fowl are needed. The commenters believe that there should be no limitations on use because there are no safety or health concerns regarding MSP. They also believe that use levels of MSP should not be restricted because the marketplace is a better judge of the quality of poultry products that are composed of MSP than FSIS. However, two commenters agreed in part with the proposed limitations. The two commenters agreed that where a poultry product is required to be prepared from a particular Kind or Kinds of poultry (e.g., chicken), use of MSP of any other kind (e.g., mechanically separated turkey) should not be permitted.

FSIS also received 11 comments regarding the fluoride content of MSP made from fowl and the use of MSP made from fowl in baby food. All of the commenters disagreed with the proposed limitation on the use of product made from fowl in baby foods because of potential health implications associated with over-consumption of fluoride in infants' diets. One commenter stated that based on discussions with baby food companies, a local children's dentist, experts from Duke University Medical Center, the University of North Carolina School of Dentistry, and the American Academy of Pediatrics, there is not one known documented or suspected case of fluoride problems related to chicken in baby food. Furthermore, the commenter stated that these people had very encouraging remarks for the positive effects that fluoride from all food sources has had on the overall dental health of the children in our country.

FSIS continues to believe that the use of MSP should be limited in certain poultry products. In response to the commenters that said where a poultry product is required to be prepared from a particular kind or kinds of poultry (e.g., chicken), use of MSP of any other kind (e.g., mechanically separated turkey) should not be permitted, FSIS agrees. This provision assures that MSP made from a certain kind of poultry is not used in a poultry product represented as containing ingredients from a different kind or kinds of poultry, thus avoiding situations of misbranding.

The Agency however, agrees with comments on the proposed use restrictions of MSP in processed products composed of whole poultry muscle that suggested a restriction was unnecessary because the use of MSP in a product formulation is an issue of product quality. The Agency recognizes the increasing market popularity of convenient, ready-to-cook or ready-to-eat products that are composed of whole poultry muscle to which a portion of MSP is added. MSP benefits the manufacture of such products because it is batter-like and can be molded to form a desired product shape, and fill voids or spaces to make product shapes uniform. The level of use of MSP that is associated with these products exceeds the level that is used for strictly binding muscle pieces together—an allowance that was acknowledged in the proposal. The presence of MSP will be declared in the ingredients statement according to the requirements in this final rule. Therefore, regardless of the level of MSP used, consumers will have the information necessary to make an informed purchase decision.

The Agency is also keenly aware that with the allowance for the addition of MSP (and other highly comminuted boneless poultry products) to products composed of whole poultry muscle there is presented an issue regarding truthful and non-misleading product names. The names for these products should also convey to the consumer that the product is not composed of entirely intact, whole muscle, perhaps through the use of a qualifying statement. It is expected that the names for products composed of whole poultry muscle and portions of MSP, or other boneless, comminuted poultry, would reflect this fact in their names to make them truthful and accurate. The Agency will be assessing for possible future policy development the broad issue of the appropriate naming of products composed of MSP or other boneless poultry to convey to consumers that they are not composed of intact, whole muscle, as may be expected.

FSIS agrees with the commenters views that there is no need for a requirement that would impose restrictions based on the potential fluoride contribution of MSP made from fowl (i.e., mature female chickens). In the proposed rule, FSIS proposed restricting the use of MSP made from fowl in baby, junior, and toddler foods, citing its concern for the potential effect of fluorosis in the susceptible population of babies, infants, and toddlers. MSP made from fowl has higher amounts of fluoride because the bones of older female chickens contain more fluoride than younger chickens. In the proposal, the Agency cited the conclusions of the 1993 National Academy of Science's (NAS) Subcommittee on Health Effects of Ingested Fluoride (NAS Fluoride Report) [9] which indicated that the most effective approach to controlling the prevalence of dental fluorosis, without jeopardizing the benefits of fluoride to oral health, is likely to come from more judicious control of fluoride in foods, especially those items used by young children. The Agency requested that commenters provide any information that would either reaffirm or contradict the conclusions reached in the 1979 health and safety report regarding fluoride.

After reviewing the information submitted by commenters, and reevaluating the findings of the NAS Fluoride Report, FSIS no longer has a concern regarding the potential effect of fluorosis. Most noteworthy among the information FSIS considered in withdrawing the proposed limitation on MSP from fowl are reports of the changing sources of fluoride ingestion, the positive effects of increased fluoride intake on reduction of dental caries in the 1990's, and the decrease in the ingestion of fluoride from infant formulas since 1979. Therefore, FSIS will not impose a restriction on the use of MSP from fowl in baby, junior, or toddler foods. Because the Agency has concluded that MSP made from fowl should not be restricted in baby foods, there is no longer a need to require the labeling of MSP from fowl, as "mechanically separated chicken, made from fowl," as proposed.

In addition, in response to comments seeking clarification on the uses of MSP, FSIS will not prohibit the use of MSP in cooked sausage products, such as frankfurters, franks, furter, hot dogs, vienna, bologna, garlic bologna, knockwurst, and similar products. The Agency will permit MSP to be used alone or in combination with poultry meat in cooked sausage products identified in 9 CFR 319.180, however, not in excess of 15 percent of the total ingredients, not including water. FSIS is amending 9 CFR 319.180 to allow for such use. FSIS inadvertently omitted such a provision in the proposed regulations.

C. Labeling

Commenters had varying opinions regarding the labeling of poultry product produced by mechanical separation as "MSP." Of the 14 commenters responding to this issue, three stated that poultry product produced by mechanical separation should be labeled as "mechanically separated (chicken, turkey, or other kind of poultry) with skin," because consumers have a "right-to-know" that skin and other "by-products" are present. Two stated that MSP should be listed in the ingredients statement on a product's label. Other commenters also suggested that there should be full disclosure of all "ingredients" resulting from the mechanical deboning process, including bone particles, marrow, kidneys, sex glands and lungs. Another commenter disagreed with the Agency's proposed requirement to label MSP from fowl as such.

In response to comments that stated that MSP should be labeled to reflect the presence of skin, skin is a naturally existing edible component of poultry. Consumers have historically accepted and purchased whole poultry carcasses (e.g., "basted young turkey") and parts of carcasses (e.g., "chicken drumsticks") with skin, as well as cooked poultry products, e.g., fried chicken, without the presence of skin being specifically reflected on the product's label. FSIS believes that the presence of skin should be labeled only when it is present in excess of natural proportions because this would be a condition in conflict with what a consumer expects poultry to be. If skin is added to a product and

[9] This report is available for public review in the FSIS Docket Clerk's office.

is present in an amount that exceeds that found naturally on the carcass or the part of a carcass according to the figures presented in the regulations (9 CFR 381.117(d)), the label must reflect the presence of skin. FSIS has determined that the name of the product (e.g., "Mechanically Separated (Kind of Poultry) (MSP))" must be followed immediately by the phrase "with excess skin" unless it is made from poultry product that does not include skin in excess of the natural proportion present on the whole carcass, as presented in the regulations.

Furthermore, there must be appropriate descriptive terminology on the labeling of MSP (with or without skin in excess of natural proportions) if heat treatment has been used in the preparation of such product, e.g., "cooked mechanically separated (kind of poultry)." Because cooking would affect the use of MSP, FSIS is requiring that such characteristic be clearly identified on the label when MSP leaves the establishment at which it is manufactured. The poultry products inspection regulations already require that information on use, including deviations from the natural whole carcass proportion of skin as well as the fact of cooking, appear on the label of boneless poultry products produced by mechanical separation (9 CFR 381.117 (d)). The presence of skin or its presence in excess of the natural whole carcass proportion would continue to affect product use if the regulations are amended. The use of heat treatment in the preparation of the product also would be of continuing relevance (9 CFR 381.157(a)). FSIS is requiring the labeling for excess skin in MSP and for heat treatment of MSP in order to assure consistency with regulatory requirements in 9 CFR 381.117 (d) for boneless poultry products and, thereby, to prevent the adulteration and misbranding of finished poultry products and meat food products.

In response to other comments on the need for disclosure of the potential constituents of the starting materials from which MSP results (i.e., bones with muscle tissue and other edible tissue, with or without skin), FSIS has certain regulatory requirements in this final rule or currently in the regulations that address bone particles, kidneys, sex glands, and lungs that negate the need for specific labeling of these constituents.

This final rule will continue the current limit of 1 percent bone solids (measured as calcium) that has been applied to all boneless poultry products since 1969. The size of bone particles has been limited by this final rule as a process control criterion to ensure that the process of mechanical separation is operating in accord with good manufacturing practices. There are no health or safety issues concerning the bone content or bone particle size criteria being established by this rule. Furthermore, the requirement that processed poultry (and meat food) products bear nutrition labeling that includes a calcium declaration in the Nutrition Facts panel will provide meaningful information to consumers who wish to monitor their calcium intake and will reflect the calcium contributed to a product from bone. For these reasons, specific labeling that addresses the presence of bone and bone particles is not necessary.

In regard to the comments on the need to label the presence of bone marrow, no factual basis was provided that would justify such labeling. As explained below, the Agency believes such labeling is unnecessary due to the extremely small amount of marrow that is potentially present, the composition of marrow, the lack of any health or safety concerns about bone marrow from poultry bones, and the role of nutritional labeling in disclosing any potential nutritional impact from the presence of bone marrow in a product. Discussions with poultry scientists, physiologists and geneticists at a variety of universities and research organizations support this conclusion. Based on the limited available data and the discussions with these experts, the following response to the comments on the need for labeling bone marrow in MSP is offered.

Most of the ready-to-cook poultry marketed today are raw, uncooked young poultry carcasses. The bones with attached edible tissue of this class of poultry represent the bulk of the starting materials from which MSP is produced. Young chickens, i.e., broilers, are typically less than 7 weeks of age (although the poultry products inspection regulations, 9 CFR 381.170, define them as being under 13 weeks). Young turkeys are typically less than 8 months of age according to the poultry products inspection regulations (9 CFR 381.170). The young age at which these birds are marketed does not provide time for the production of substantial bone content and, thus, bones from such poultry would not contain much marrow. Moreover, the physiology of poultry is such that, in order for the birds to fly, their bones cannot be dense with tissue and most of the bones could be categorized as being composed mostly of air with minimal tissue (marrow) content. In fact, references [10] indicate that the bones of most birds are porous; many are filled with air, not marrow, and are connected to the respiratory organs. The bones with some marrow are mostly the larger ones, e.g., the leg bones, and are involved in blood production, the function of "marrow." In actuality, the bone marrow represents part of the bird's vascular system.

Information on the actual amount of marrow in poultry bones is lacking. According to the 1979 report entitled "Health and Safety Aspects of the Use of Mechanically Deboned Poultry," marrow content varies in amount with age of the bird, and varies between different bones from the same bird. Determining the actual amount of marrow is difficult because it is difficult to separate marrow from the inner surfaces of bones, and to determine what proportion of the separated tissue is actually "marrow." Moreover, because bone marrow is composed of fat, heme pigments, blood cells, and other constituents normally found in the edible tissue of poultry, it would be difficult to distinguish it from the other edible tissue comprising MSP to determine the minimal amount that may actually be contributed to MSP.

However, with regard to the minimal contribution of bone marrow to MSP that may be possible, it has not been reported to be a health or safety concern. The 1979 Report, the most comprehensive review of MSP to-date, is reliable today as an information source because the basic composition of poultry that would be the starting materials for MSP has not changed since the report was prepared. The 1979 Report made no recommendations regarding the presence of marrow and the need for specifically labeling bone marrow.

Therefore, because it has been estimated that there would be an extremely small marrow constituent in MSP, so small and so similar in composition to other components of MSP that it would be difficult to quantify it, and that there are no known health or safety issues with regard to bone marrow, there is no basis for the specific labeling of bone marrow in MSP. If data on the quantity of bone marrow in MSP become available at some point in the future that would present a basis to reconsider this position, the Agency would certainly reconsider it.

[10] Terres, J.K., 1991. The Audubon Society Encyclopedia of North American Birds, Wings Books, New York. A copy of this reference is available for review in the FSIS Docket Clerk's office.

The 1979 Report did, however, suggest that bone marrow is a potential source of cholesterol in MSP, in addition to that contributed by skin and muscle tissue. The 1979 Report recommended that because of the potential contribution of cholesterol in MSP to foods, which may be of importance to people who have the hereditary condition known as hypercholesterolemia, it is desirable to identify products that contain MSP. This final rule requires that the MSP in a product be labeled and, thus, the recommendation of the 1979 Report has been accepted. More importantly, recent regulations on nutrition labeling address the issue of the potential contribution of cholesterol to the diet from any food. Thus, the potential minimal contribution of marrow to the cholesterol content of a product would be reflected in the mandatory labeling of cholesterol, which is reflected in the Nutrition Facts panel of a product's labeling.

As noted, raw, uncooked young poultry carcasses make up the majority of the ready-to-cook poultry marketed today. Young poultry carcasses are currently sold with kidneys and have been historically sold in this manner. The presence of kidneys in young poultry does not pose a health or safety concern because there are no constituents, e.g., heavy metals, known to be present in these kidneys that are of potential concern. Kidneys from young poultry can be present in the poultry purchased at the supermarket and in the poultry products consumed at retail fast food outlets.

FSIS does, however, require the removal of kidneys of mature turkeys and chickens from their carcasses before completion of the eviscerating operations during the slaughtering process (9 CFR 381.65(d)). Kidneys of mature poultry pose a potential health concern because of the possibility of the presence of certain constituents in these organs, e.g., heavy metals, such as cadmium, which are deposited in the kidneys of older birds over time.

Since kidneys of young poultry pose no health or safety concern and have been historically accepted in ready-to-cook poultry, there is no basis to require specific labeling of these on a product's label. Furthermore, since kidneys from mature poultry must be removed, there is no basis for requiring labeling of kidneys from mature poultry.

In response to comments on the presence of sex glands in MSP, mature reproductive organs (or sex glands) are precluded from being present in ready-to-cook poultry, i.e., poultry subsequent to the slaughtering process, by the poultry products inspection regulations (9 CFR 381.1(b)(44)). Therefore, mature sex glands cannot be present as part of the carcasses or parts of carcasses that are the starting materials from which MSP is made. Mature male sex glands are, however, marketed as an edible poultry product known as "chicken or turkey fries" in various regions of the United States.

There are no prohibitions on the presence of immature sex glands, however, in poultry carcasses or parts of carcasses sold to the consumer, or in ready-to-cook poultry used as starting materials for MSP. Immature sex glands have historically been present in these products because they are considered to be an indistinguishable part of the edible tissue of poultry. The young age at which most chickens and turkeys are marketed (as previously noted) does not provide ample time for the development of reproductive organs, e.g., in chickens, sexual maturity of the testes and ova does not begin until about 20 weeks of age. At 6 or 7 weeks of age, the age at which most broilers (the source of most starting materials for MSP) are marketed, the sex glands are merely a thin membrane covering over undefined tissue which is no different in biological or chemical function than other, edible tissue of the carcass. At 6 or 7 weeks, the weight of the barely distinguishable, inert tissue that will later become the sex glands has been estimated to be less than a tenth of a percent of the weight of the raw, uncooked broiler. There are no health or safety concerns related to immature sex glands. Thus, because the tissue of immature sex glands is virtually indistinguishable from other edible poultry tissue and there are no health or safety concerns related to immature sex glands, there is no need to require specific labeling of their presence in a product.

With regard to poultry lungs, poultry lungs must be removed during the processing of ready-to-cook poultry. Lungs are not defined as part of the edible portion of ready-to-cook poultry and must be removed according to the poultry products inspection regulations (9 CFR 381.1(b)(44)). Therefore, specific labeling regarding the presence of lungs is not needed, since lungs are removed before the starting materials used for MSP are obtained.

As noted, a comment was received on the need for the proposed labeling requirement for MSP made from fowl. Because FSIS is not restricting the use of MSP made from fowl, it is eliminating the proposed labeling requirement which requires products made with mechanically separated chicken from fowl to contain on the label the phrase "made from fowl" after the product name (e.g., "mechanically separated chicken (made from fowl))."

D. Nutrition

Although FSIS did not propose any specific requirements that addressed nutrition, the Agency did receive several comments related to "Nutrition Facts" and cholesterol. Fifteen commenters stated that the "Nutrition Facts" on product labels is a reflection of the product formula that will satisfy consumers concerning poultry product produced by mechanical separation. Three other commenters stated that cholesterol is not an issue in poultry product produced by mechanical separation.

FSIS recognizes that a recommendation in the 1979 Report was to label products containing MSP with cholesterol content information. This recommendation was based on the evaluation of cholesterol contents of different MSP products that showed they were nearly double the contents in hand-deboned poultry. However, it was stated that, based on consumption estimates, daily increases in cholesterol consumption from use of MSP would be negligible on a per capita basis, and would not pose a health hazard for the general public. It was noted that, for a small segment of the population which must limit their intake of cholesterol for health reasons, foods containing MSP should be specifically labeled to show its presence. However, specifically labeling cholesterol on products containing MSP is not an issue because the provisions of the nutrition labeling regulations (58 FR 632) published by FSIS, which were effective July 6, 1994, would be a means of educating consumers regarding certain nutrients and other components of processed meat and poultry products produced by mechanical deboning, including cholesterol.

E. Safety Concern Regarding Poultry Products Produced by Mechanical Separation

FSIS received 1426 comments regarding the safety of poultry product produced by mechanical separation. Fourteen hundred and twenty commenters stated that there are no safety concerns regarding the use of poultry product produced by mechanical separation. Some of the commenters stated that there are no bone particles of a size that would pose a health concern. Five of the commenters believe that Hazard Analysis and Critical Control Point (HACCP) addresses the needs for process controls that would be related to

poultry product produced by mechanical separation. One commenter suggested that the proposed rule has no conceivable relationship with health or safety, and is a timely example of unnecessary regulation.

In addition, one commenter stated that there are microbiological concerns specific to poultry product produced by mechanical separation. The commenter pointed out that the skin of poultry, including pin feathers, feather particles, and hair are sources of potential microbiological contamination.

FSIS agrees with the commenters that there are no unique safety or health concerns regarding the use of poultry products produced by mechanical separation. Although the data reviewed in the 1979 Report indicate that poultry products produced by mechanical separation generally are acceptable from a microbiological standpoint, the data also show that, where bacterial loads tend to be higher, it can be attributed to the starting material used. This is not unique to poultry products produced by mechanical separation; it can be applied to other finely comminuted and comminuted products as well. FSIS is currently developing a separate rulemaking on HACCP and pathogen reduction efforts that will deal with this issue more fully for all poultry and meat products, including poultry products produced by mechanical separation, and the material from which they are manufactured.

F. Economic and Market Impact

FSIS received 1720 comments on the economic and market impact of the proposed rule on industry. The comments fell into four general categories: (1) The Agency's economic analysis was not sufficient; (2) the new labeling requirement would reduce the demand for products containing MSP; (3) the labeling costs are underestimated; and, (4) the meat industry has been hurt by a similar labeling requirement. These comments are presented and responded to below.

Adequacy of the Agency's Analysis on Economic Impacts

The Small Business Administration (SBA), citing many of the industry objections to the proposed rule, advises that it does not concur in the Administrator's conclusion that the proposed rule will not have a "significant economic impact on a substantial number of small entities," and that, therefore, under the Regulatory Flexibility Act, a more substantial economic analysis is required to support continued rulemaking in this matter. SBA states its belief that further analysis would reveal significant additional costs to industry and disproportionate impacts on small entities, and would disclose other, less burdensome regulatory options.

Others made comments similar to those of the SBA, namely, that the economic analysis of the proposed rule was inadequate and that the proposal constitutes a major rule requiring a far more detailed economic analysis prior to final rulemaking.

Neither the SBA comment nor any other comment received provides data or other evidence that would cause the Agency to alter its estimate of the impacts outlined in the proposal or the economic assumptions upon which they are based. No new evidence has been provided that suggests that this rule will have a disproportionate, or even a significant, economic impact on a substantial number of small entities. Moreover, FSIS believes that the 12-month period prior to implementation of the final rule and its requirements, including the labeling requirements, will render the attendant costs to manufacturers, including small businesses, negligible.

Proposed Requirement Would Reduce Demand for Product

Several commenters believe that the effect of the labeling requirements will be a significant economic and market impact on manufacturers of MSP and that the impact has not been adequately considered by the Agency. It is their belief that this impact would come from the fact that the new label would be unappealing to consumers and would lead commenters to believe that the product is inferior to what they are used to buying, or that something new has been added to the product, or that the product has undergone other changes. This confusion would, they believe, adversely affect demand for products containing MSP.

One commenter indicated that many manufacturers may choose to avoid the misleading connotations of the proposed labeling and reformulate their products with other, more costly ingredients. The commenter further stated that if only 25 percent of the usage of this ingredient were curtailed on this basis, net costs to consumers from such manufacturing decisions would exceed $134 million dollars per year.

Another commenter provided the information that the current market price quotes for raw comminuted turkey meat (frozen, 20% skin) are less than current price quotes for hand-deboned breast and scapula trim meat and boneless, skinless thighs by about $0.50/lb. to $1.00/lb., in order to illustrate that reduced purchases due to the proposed labeling would force industry to use higher cost ingredients such as hand-deboned and boneless meats and that such costs would be directly passed on to the consumer.

Another commenter raised the same issue, indicating that companies that are apprehensive about the labeling change and that fear that their brands will be damaged by the potential negative connotation will reformulate products with higher cost materials. According to this commenter, reformulation will have the effect of increasing the cost of raw materials for both poultry and red meat, ultimately raising the consumer's cost to purchase these products. The commenter stated that the proposal did not address the cost of replacement raw materials and the effect on the raw materials market and believes that if these factors were included in the economic impact, the cost would be between $150 and $200 million.

FSIS has not acquired any reliable data to support the assertion that this rule's labeling requirements will adversely affect the demand for products containing MSP. FSIS believes, however, that if the rule's labeling requirements do reduce demand to some extent for the product or products containing MSP, then it is difficult to draw any conclusion other than that the consumer has been misled by the absence of such labeling.

The primary objective of the Agency's labeling authority is to facilitate informed purchasing decisions. If, as a result of labeling requirements, some consumers will not want the products such evidence would strongly suggest that such labeling is needed. It is the responsibility of FSIS to help ensure that labeling is not deceptive or misleading, and it would be contrary to the Agency's statutory objectives to permit misleading labeling.

The Agency does not believe, however, that it is likely that consumers will face less choice in the market and be forced to buy similar products with higher-cost ingredients because of this rule. In an industry as competitive as the poultry industry, the products demanded by the consumer will be produced. Price is an important factor in selling products, and consumers are unlikely to abandon a popularly-priced, high-quality product which they have found to be satisfactory simply because it has a more informative label. Further, if some consumers shift to their purchases to higher-priced products, it is difficult to see why this would not be a favorable outcome for both the consumer and the industry. The Agency believes that the poultry industry is a mature and sophisticated industry that is capable of producing and marketing any array of products for which there is a demand, and that this rule will not restrict or hamper the industry's ability to meet the needs and desires of its customers.

The Red Meat Experience With Similar Labeling

One commenter stated that the meat industry's experience in a comparable regulatory situation strongly, if not conclusively, suggests that assumptions made in the economic analysis are invalid.

The Agency assumes this commenter is referring to the widely held belief that product labeled as "Mechanically Separated (Species)," here referred to as MSM, has not been a highly profitable undertaking for the red meat industry. The Agency has no data to confirm or refute this proposition. It does believe, however, that the red meat and the poultry situations are not comparable from an economic point of view.

The red meat industry never had an established market for MSM, and it would be difficult to attribute the asserted lack of success to the required label rather than to the decision not to try and build that market. Further, it is not obvious that the MSM label is solely responsible for the decision not to try to build the market. Numerous other factors, particularly the marketing expense of launching new products with an unknown demand, could have been a determining factor in the decision not to try to build a new market for MSM products.

The poultry industry, on the other hand, has established markets and satisfied consumers for products that have always been made with MSP. Its position is, therefore, not comparable to that of the red meat industry which would have to take a chance on new products with an unknown consumer reception.

Labeling Costs

One commenter stated that his company would have more than 250 labels affected by this rule. The company believes that it will cost a minimum of $1,000 for each label change, which includes internal management time, printing costs, and obsolete label inventory.

The cost of labeling changes can be significantly reduced by allowing companies to use up their old stocks, which the rule has provided for by making the rule not effective until one year from its publication date.

G. Finished Poultry Products and Meat Food Products

Several commenters disagreed with the Agency's proposed position to regulate MSP as a distinctive ingredient with standardized characteristics that is defined by its own name, e.g., "Mechanically Separated (Kind of Poultry)" which must be declared in the ingredients statement of finished product labels. One commenter noted that the Agency has provided no evidence of salient differences between what they refer to as "finely ground poultry" and hand-deboned poultry to suggest that mechanically separated poultry should be regulated as proposed. The commenter further stated that the Agency has provided no legitimate reasons for treating mechanically separated poultry and MSM similarly and for regulating the final products based on the process used to make them. The commenter noted that the poultry industry uses raw materials containing greater proportions of meat and produces a product much lower in bone content, which is analytically similar to whole muscle cuts from the same species.

In addition, another commenter suggested that since calcium and cholesterol nutrition information is fully disclosed in the Nutrition Facts panel, which is a reflection of the product formula, the term "mechanically separated" is not needed in the ingredients statement.

FSIS believes that such a labeling requirement is necessary to fulfill its statutory responsibility to protect consumers by assuring that the labels of finished poultry products and meat food products are accurate. MSP is materially different in form and texture as compared to hand-deboned poultry, and this is a direct result of the mechanical separation process and the types of starting materials used to make MSP. MSM is a similar red meat product, resulting from a similar process. FSIS has concluded that MSP should be defined by its own name, i.e., "Mechanically Separated (Kind of Poultry)," and should be declared in the ingredients statements on finished product labels.

The starting materials used to make MSP may vary in the amount of edible tissue remaining on the poultry bones after hand-deboning, but the variance is minimal because a substantial portion of the muscle and other edible tissues has already been removed by hand-deboning methods. That a significant amount of muscle remains on the bones is not likely because the process of mechanical separation for both poultry and livestock has been designed to salvage the tissue left on the bones to produce a wholesome, low-cost, and functional poultry product. The comparison made by a commenter regarding the amount of tissue on starting materials for making MSP and materials used to make MSM is irrelevant. It is the fact that the process starts with bones on which a minimal amount of tissue remains and that both processes are designed to salvage muscle and other edible tissues, and both processes result in a paste-like and batter-like product in terms of form and consistency, that warrant their distinct declaration.

H. Ergonomic Impact

FSIS received several comments regarding the ergonomic impact of this rule. According to the commenters, mechanical deboning systems have substantially lowered the risk of cumulative trauma disorders (CTD) resulting from repetitive hand, arm, and wrist motions. However, the commenters indicated that industry may be forced to use more hand-deboned products in lieu of this wholesome mechanically separated product due to this rule. The commenters believe the rule negatively impacts the industry's ability to use mechanical deboning and other "mechanical" means in harvesting meat from turkey and chicken parts and carcasses. They indicated this is because the labeling requirements will diminish sales and production of products containing MSP and make the industry revert to using hand-deboned poultry.

FSIS agrees that it is likely that mechanical separation systems have substantially lowered the risk of cumulative trauma disorders, although there were no data supplied to document this conclusion. However, FSIS does not agree with the assertion that this rule will force industry to use more hand-deboned products, in lieu of mechanically separated product, because of the requirement that use of MSP in a product be separately reflected in a product's ingredients statement. This assertion appears to be based on the assumption that it would be economically feasible to hand debone the materials from which MSP is made. However, FSIS does not believe that it would be economically feasible for the industry to hand debone, as opposed to mechanically separate, the bits and pieces of poultry that remain on poultry carcasses, and parts of carcasses from which mechanically separated product is obtained.

I. Miscellaneous

FSIS received other miscellaneous comments which addressed the following issues: (1) use of MSP in the manufacture of a flavoring should not require a separate and distinct listing of MSP as an ingredient of the flavoring in the ingredients statement of the product in which it is used, (2) an extension of the comment period for 30 days should be granted, and (3) industry should be given sufficient time to use up most of its printed labels before the final rule's new labeling requirements become effective.

FSIS is familiar with the issue raised by the commenters that MSP is frequently used as a protein source for "reaction" (or process) flavors produced under the jurisdiction of the Food and Drug Administration (FDA) and may currently be labeled as "(kind) flavor" according to the guidelines on reaction flavors established by the Agency. FSIS does not intend to change these policies because the chemical reactions involved in manufacturing process flavors involves the removal of the soluble flavoring components of the poultry ingredients and does not include the solid portion of the poultry ingredients.

At the request of commenters, FSIS extended the comment period for the proposed rule an additional 30 days to March 6, 1995. FSIS considered these requests to have additional time to study and develop information relating to the proposal to be reasonable. Also, as discussed previously, FSIS has made its final rule effective one year from its date of publication, which should allow ample time to use up label stocks.

Executive Order 12866

This final rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Total federally inspected broiler and turkey meat production in the United States in 1993 was about 27 billion pounds on a ready-to-cook basis (i.e., subsequent to the slaughtering step in processing). (Broilers represent the majority of chickens grown and slaughtered in the U.S.) Broiler production was 22.2 billion pounds and turkey 4.8 billion pounds. Continued growth in poultry production has resulted in large increases in the volume of poultry meat going into further processed products such as bologna, hot dogs, fritters, patties, and luncheon meats, many of which use MSP. FSIS has estimated that 1 billion pounds of poultry product is processed annually into MSP, with a yield of 70%, or 700 million pounds of MSP product for human use. (Industry sources suggest that a larger amount of MSP product is produced annually.) FSIS estimated that 400 million pounds are used in sausage products and 300 million pounds in patties and nuggets. In any case, size of the market does not directly affect the cost of this rule (see below).

The Broiler Council estimates that broiler meat is produced in about 200 establishments, of which 50 are further processing establishments. MSP is produced in about 108 establishments. About 25–30 of these establishments with MSP equipment produce hot dogs. The product from the other 75–80 establishments is sold to establishments that further process poultry or to red meat processors. Industry sources indicate that some small firms specialize in MSP production, buying carcasses from poultry slaughter establishments for further processing.

Based on inspection task records, FSIS estimated that 108 establishments produce (or are capable of producing) MSP. An assessment of MSP production by establishment size is not available. However, total further processed product production by size of establishments shows 7 establishments with production less than 10,000 pounds of MSP annually. The average production of the 108 establishments is 51 million pounds of all further processed products.

Under this rule, products containing mechanically separated poultry are required to separately label "Mechanically Separated (Kind of Poultry)" in the list of ingredients. There is no precise information on the total number of products that currently contain MSP because MSP may appear simply as "chicken" or "turkey" in product formulations in which it is an ingredient. However, an estimate of the number of products containing MSP can be made by estimating the number of labels for MSP and for categories of products to which it is frequently added. These estimates were made by using the database of label information that is maintained by FSIS' Food Labeling Division, as part of the Agency's prior label approval system. There are 602,000 approved labels for poultry and meat, not all of which are necessarily in use. These include 529 labels for MSP itself. There is also an unknown number of labels for products containing MSP, such as frankfurters, chili, bologna, poultry baby foods, chicken nuggets or patties. FSIS estimates that, in total, about 5,000 products would require relabeling. There is no currently available data on the size breakdown of the establishments producing products containing MSP.

Costs and Benefits of the Rule

Analysis of the economic impact of a rule requires consideration of all significant costs and benefits.

Benefits

The benefits are the values consumers place on the ability to make a more informed purchase based on more accurate labeling. Informed purchases, which in this case result from accurate labeling, are an essential principle of the free market in which meat and poultry products trade and one of the principal justifications for the regulation of labels. FSIS has a statutory mandate to avoid false and misleading labeling. Therefore, if, as the Agency has determined here, a label is misleading or false, the Agency has a responsibility to correct that situation.

As discussed earlier in the preamble to this rule, several commenters suggested that the labeling requirements of the rule would adversely affect demand for products made with MSP. FSIS has not acquired any data that can be used to estimate the impact this rule will have on the demand for MSP. However, the Agency's experience is that consumers do distinguish between muscle meat and more finely comminuted product. It is also apparent that there are texture differences in these two types of products. The public comments on this action have reinforced this belief. Many commenters have stated that they believe consumers will not buy the product if it is labeled under the new requirement. Further, the producers of a similar red meat product, which already requires labeling of the type promulgated by this rule, claim that the required labeling keeps the public from buying their product. The Agency has not quantified the magnitude of change in consumer demand under the present rule, but it does recognize that these comments demonstrate there is widespread recognition that comminuted product could be viewed less favorably than muscle meat by the consumer.

Furthermore, as also discussed earlier in the preamble to this rule, the Agency has concluded that use of the term "mechanically separated" truthfully describes the nature of the product and that purchases of MSP using this label will accurately reflect the real value placed on it by consumers.

As a result of the current labeling practices, consumers are being misled and are possibly consuming more MSP than they otherwise would if they had better information. The extent to which consumers reduce their demand for this product as a result of the labeling change will reflect the level to which consumers have been misled. The increased value placed by consumers on inaccurately labeled MSP products represents a welfare loss to consumers and society. The misdirected purchasing power placed on inaccurately labeled MSP products could be used to purchase other products of higher value to consumers. The greater the change value placed on this product by consumers, the greater the benefits of the rule. Revenue losses producers experience due to this shift in consumer demand are not social welfare losses, but instead represent resources misallocated toward the excess production of products containing MSP. To the extent that market prices for products containing MSP decline in response to shifts in consumer demand, losses experienced by producers represent gains to consumers and, thus, are in fact transfer payments from producers to consumers.

Taking into account consumer experience with MSP leads the Agency to believe that any change in consumer behavior will be negligible, and FSIS has not acquired any data to show any negative impact on poultry or poultry products made with MSP. The Agency also believes that MSP should continue to be a wholesome and safe low-cost source of protein with nutritional attributes comparable to "chicken" or "turkey." As discussed earlier, MSP has certain desirable attributes that will ensure its continued use as an ingredient in many products.

Costs

The Agency recognizes that it has a responsibility to keep the cost impact of this rule to a minimum to keep the burden of regulation as low as possible on the industry. It has done this by giving sufficient time for most businesses to use up their inventory of labels, thus substantially reducing the cost associated with the rule.

Possible sources of costs associated with the rule include the following items:

A. Labeling Changes and Inventory

Under the final rule, finished products containing mechanically separated poultry are required to have ingredient statement labeling of the mechanically separated poultry as "Mechanically Separated (Kind of Poultry)." As reported in the proposed rule, estimated range from $200 to $3,000 per product for a simple product ingredient statement label change depending on the type of label. Comments in response to the March 1994 ANPR indicate that changes to the ingredients statement of most labels to which the final rule will apply would fall in the lower end of this range (about $600). FSIS previously reported in the proposal that, assuming an average cost of $1,000 per product, the cost of relabeling would be $5 million ($1,000 times 5,000 products). These estimated costs that were reported in the proposed rule assumed a typical 30-day effective date for implementation of the final rule and its requirements.

However, by establishing the one-year period from publication to the effective date for implementation of the final rule, labeling costs would be substantially reduced. The cost of relabeling would be negligible because the mandated MSP label changes can be coordinated with other label changes planned or required during the year-long period prior to the effective date of the MSP rule. Many firms routinely make label changes for existing products. For example, about 50% of the 180,000 labels submitted to FSIS each year for approval are for label changes on existing products. These label changes are made for various reasons that reflect the kinetic nature of the food industry and, in particular, the fast-paced research and development of new and modified meat and poultry products, e.g., changes to incorporate less costly, new, or more effective ingredients that extend shelf-life, improve taste or texture, or replace fat; changes to add recipes or consumer purchase incentives to labeling; changes to make new or different claims about a product's nutrient content or performance; changes to alter features such as net weight or logos; or changes to modify the color or size of print. These new MSP labeling requirements, therefore, can be worked in with other routine label changes. The modest costs associated with the MSP labeling change are nonetheless necessary to assure that consumers receive meat and poultry products with informative and nonmisleading ingredients statements.

Some firms may discard non-compliant labels when the final rule goes into effect. A survey of meat and poultry companies for the nutritional labeling rule indicated that firms carry an average label inventory of 5 to 6 months. Knowing this, FSIS established a 12-month period to allow ample time for an orderly transition to the new requirements of the rule, including the labeling requirements, and to assure that manufacturers of MSP, and of poultry and meat food products in which MSP is used as an ingredient, have ample time to exhaust current label stock. Therefore, it is not anticipated that manufacturers will have to dispose of label inventories that were printed or ordered for printing prior to publication of the rule. Thus, with the 12-month compliance period, inventory losses, if any, would be minor.

B. Bone Particle Size

A new requirement limits maximum bone particle size. FSIS believes bone particle size will not have a significant effect on actual production and is a measure that augments the current requirement of one percent or less bone solids to show that the process of separating bone from meat is operating effectively. As previously stated, FSIS did not in its proposal, nor is it in this final rule, requirement testing or sampling for bone particle size in MSP. The Agency has concluded that manufacturers should have the flexibility to decide how best to assure compliance with the bone particle size requirement.

Furthermore, the Agency agreed with commenters, as stated previously, that the requirements for keeping records on bone particle size (and bone solids) should not be mandated and, in this respect, will permit flexibility in meeting the rule's requirements. Thus, additional potential costs have been eliminated.

C. Other Costs

The Agency does not agree with the view presented by many commenters that any reduction in income from the reduction of consumption of MSP product labeled under the new requirement should be considered a cost of this rule. To the extent that purchasers reduce their consumption of MSP products because of the new labeling, the revenue received by the industry from such purchases is really revenue derived rom an inaccurate and misleading label, and are not properly considered as costs attributable to this rule given the statutory mandate.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing with respect to the premises, facilities, and operations of federally inspected establishments any requirements that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, impose recordkeeping and other requirements within the scope of section 202 of the

FMIA and section 11 of the PPIA, if consistent therewith, with respect to any such federally inspected establishment. States and local jurisdictions are also preempted under the FMIA and the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this final rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge to the provisions of this final rule, if the challenge involves any decision of a program official. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Because the implementation date for this final rule provides ample time for transition to the new requirements, including the labeling requirements, producers with smaller lot size than large producers will not have higher compliance costs per pound of product because of relabeling costs attributable to the rule. By establishing the one-year effective date for implementation of the final rule, new labeling costs will be substantially reduced. The cost of relabeling would be negligible because the mandated MSP label changes can be coordinated with other label changes planned or required during the year-long period prior to the effective date and implementation of this rule.

Paperwork Requirements

This final rule will allow establishments to voluntarily maintain records of bone solids content and bone particle size as a measure of process control. FSIS will allow manufacturers flexibility to determine the best methods for compliance with these requirements, provided such procedures and methods are in accord with good manufacturing practices.

This final rule will also require labels of poultry products produced by mechanical separation (i.e., products currently termed mechanically deboned poultry or MDP) or products containing this ingredient to be revised to include in the ingredients statements the term "Mechanically Separated (Kind of Poultry)" and be submitted to FSIS for approval. However, by providing a one-year period between publication of this rule and the effective date for implementation, labeling costs will be substantially reduced. The cost of relabeling would be negligible because the mandated MSP label changes can be coordinated with other label changes planned or required to meet other regulatory tenets during the year-long period of promulgation of the MSP rule and its enforcement.

The paperwork requirements contained in this final rule have been approved by the Office of Management and Budget under control number 0583–0101.

List of Subjects

9 CFR Part 318

Meat inspection.

9 CFR Part 319

Meat inspection, Standards of identity

9 CFR Part 381

Food labeling, Poultry and poultry products, Standards of identity.

Final Rule

For the reasons set forth in the preamble, FSIS is amending 9 CFR parts 318, 319, and 381 of the Federal meat and poultry inspection regulations as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 318.6 is amended by adding a new paragraph (b)(13) to read as follows:

§ 318.6 Requirements concerning ingredients and other articles used in preparation of products.

* * * * *

(b) * * *

(13) Use of "Mechanically Separated (Kind of Poultry)," as defined in § 381.173 of this chapter, in the preparation of meat food products shall accord with § 381.174 and all other applicable provisions of this subchapter.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 319.180 is amended by revising the sixth sentence of paragraph (a) and the seventh sentence of paragraph (b).

§ 319.180 Frankfurter, frank, furter, hot dog, weiner, vienna, bologna, garlic bologna, knockwurst, and similar products.

(a) * * *. Such products may contain raw or cooked poultry meat and/or Mechanically Separated (Kind of Poultry) without skin and without kidneys and sex glands used in accordance with § 381.174, not in excess of 15 percent of the total ingredients, excluding water, in the sausage, and Mechanically Separated (Species) used in accordance with § 319.6. * * *

(b) * * *. These sausage products may contain poultry products and/or Mechanically Separated (Kind of Poultry) used in accordance with § 381.174, individually or in combination, not in excess of 15 percent of the total ingredients, excluding water, in the sausage, and may contain Mechanically Separated (Species) used in accordance with § 319.6. * * *.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138F; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

4. Section 381.15 is amended by revising paragraphs (a)(1), (a)(2), (b)(2), and (c)(1) to read as follows:

§ 381.15 Exemption from definition of "poultry product" of certain human food products containing poultry.

* * * * *

(a) * * *

(1) It contains less than 2 percent cooked poultry meat (deboned white or dark poultry meat, or both) and/or

"Mechanically Separated (Kind of Poultry)" as defined in § 381.173;

(2) It contains less than 10 percent of cooked poultry skins, giblets, or fat, separately, and less than 10 percent of cooked poultry skins, giblets, fat, and meat (as meat is limited in paragraph (a)(1) of this section) or "Mechanically Separated (Kind of Poultry)" as defined in § 381.173, in any combination;

* * * * *

(b) * * *

(2) It contains less than 15 percent cooked poultry meat (deboned white or dark poultry meat or both) and/or "Mechanically Separated (Kind of Poultry) " as defined in § 381.173, computed on the basis of the moist deboned, cooked poultry meat and/or "Mechanically Separated (Kind of Poultry)" in such product; and

(3) * * *

(c) * * *

(1) They contain poultry meat and/or "Mechanically Separated (Kind of Poultry) " as defined in § 381.173 or poultry fat only in condimental quantities;

* * * * *

5. Section 381.117 is amended by revising the section title and adding a new paragraph (e) to read as follows:

§ 381.117 Name of product and other labeling.

* * * * *

(e) On the label of any "Mechanically Separated (Kind of Poultry) " described in § 381.173, the name of such product shall be followed immediately by the phrase: "with excess skin" unless such product is made from poultry product that does not include skin in excess of the natural proportion of skin present on the whole carcass, as specified in paragraph (d) of this section. Appropriate terminology on the label shall indicate if heat treatment has been used in the preparation of the product. The labeling information described in this paragraph shall be identified on the label before the product leaves the establishment at which it is manufactured.

6. Subpart P is amended by adding new §§ 381.173, and 381.174 to read as follows:

§ 381.173 Mechanically Separated (Kind of Poultry) .

(a) "Mechanically Separated (Kind of Poultry)" is any product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses that has a paste-like form and consistency, that may or may not contain skin with attached fat and meeting the other provisions of this section. Examples of such product are "Mechanically Separated Chicken" and "Mechanically Separated Turkey."

(b) "Mechanically Separated (Kind of Poultry)" shall not have a bone solids content of more than 1 percent. At least 98 percent of the bone particles present in "Mechanically Separated (Kind of Poultry) " shall have a maximum size no greater than 1.5 mm (millimeter) in their greatest dimension and there shall be no bone particles larger than 2.0 mm in their greatest dimension.

(c) "Mechanically Separated (Kind of Poultry)" shall not have a calcium content exceeding 0.235 percent when made from mature chickens or from turkeys as defined in § 381.170(a)(l)(vi) and (vii) and (a)(2), respectively, or 0.175 percent when made from other poultry, based on the weight of product that has not been heat treated, as a measure of a bone solids content of not more than 1 percent.

(d) "Mechanically Separated (Kind of Poultry)" may be used in the formulation of poultry products in accordance with § 381.174 and meat food products in accordance with subchapter A of this chapter.

(e) Product resulting from the mechanical separation process that fails to meet the bone particle size or calcium content requirements for "Mechanically Separated (Kind of Poultry)" shall be used only in producing poultry extractives, including fats, stocks, and broths and labeled as "Mechanically Separated (Kind of Poultry) for Further Processing."

§ 381.174 Limitations with respect to use of Mechanically Separated (Kind of Poultry).

(a) A poultry product required to be prepared from a particular kind of poultry (e.g., chicken) shall not contain "Mechanically Separated (Kind of Poultry)" described in § 381.173, that is made from any other kind of poultry (e.g., Mechanically Separated Turkey).

(b) "Mechanically Separated (Kind of Poultry)" described in § 381.173 may be used in the formulation of any poultry or meat food product, provided such use conforms with any applicable requirements of the definitions and standards of identity or composition in this subchapter or part 319 of this chapter, and provided that it is identified as "Mechanically Separated (Kind of Poultry)."

Done at Washington, DC, on: October 30, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–27305 Filed 11–1–95; 8:45 am]

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Friday
November 3, 1995

Part VII

The President

Proclamation 6846—National Adoption Month, 1995

Federal Register
Vol. 60, No. 213
Friday, November 3, 1995

Presidential Documents

Title 3—

The President

Proclamation 6846 of November 1, 1995

National Adoption Month, 1995

By the President of the United States of America

A Proclamation

For many people across the United States, adoption provides a means for building and strengthening families. It places children into loving, permanent homes where they can flourish and grow up to become happy, healthy, productive members of our national community. Adoption also enables adults to experience the unique joys of parenthood.

As many as 70,000 children in America's foster care system may need adoptive families in the next few years—young people of all ages and backgrounds who, for whatever reason, cannot return to their original homes. Many, but not all, are children with special needs. These young people long for the same affection, security, and stability that most of us take for granted, yet too many have waited—and will continue to wait—for years to be adopted.

My Administration has taken important actions to encourage adoption and to support the wonderful families that choose to open their hearts and homes to waiting children. The Multiethnic Placement Act, which I signed into law in October 1994, helps to facilitate adoption for all children and families, regardless of their race or ethnic origin. We will continue to champion and improve programs that break down barriers to adoption through aggressive recruitment of families, financial aid to support placements, and technical assistance to agencies committed to special needs adoption.

As we observe National Adoption Month, we celebrate these achievements and recognize the rewards of adoption, but we must also remember that much work remains to be done. Citizens from all communities and organizations from the public and private sectors must join together to renew our commitment to finding permanent homes for each one of America's children.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1995, as National Adoption Month. I urge the people of the United States to observe this month with appropriate activities and programs and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

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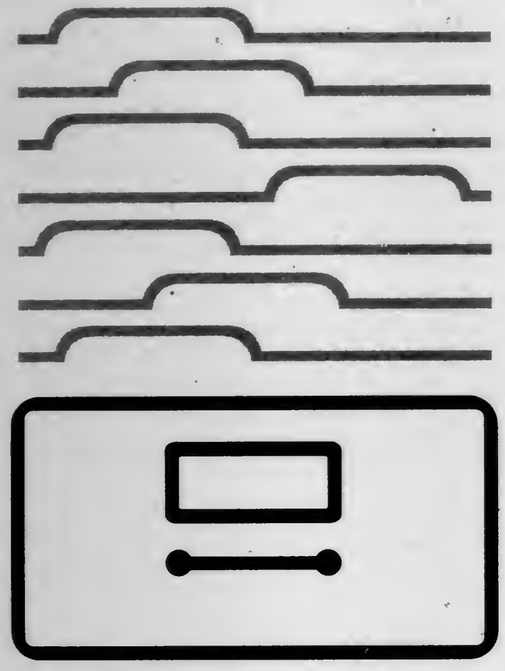
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CFR Corrections

In title 7 of the Code of Federal Regulations, parts 300 to 399, revised as of January 1, 1995, on page 288, the text of § 322.1(c) appearing in the second column is corrected to read:

§ 322.1 Importation of honeybees and honeybee semen.

* * * * *

(c) Honeybee semen from any country listed below is designated as a restricted article and may be imported * * *.

* * * * *

In title 9 of the Code of Federal Regulations, parts 1 to 199, revised as of January 1, 1995, on page 253, in § 80.4, a portion of paragraph (a), paragraph (b) designation and a portion of text was inadvertently omitted. As corrected paragraphs (a) and (b) should read as follows:

§ 80.4 Movement of paratuberculosis reactors.

* * * * *

(a) Cattle which have reacted to such a test shall be marked for identification by branding the letter "T" on the left jaw in letters not less than 2 nor more than 3 inches high, and attaching to the left ear a metal tag bearing a serial number and the inscription "U.S.B.A.I. Reacted," or "U.S. Reacted," or a similar State reactor tag. Such a metal tag, affixed to the left ear, shall be sufficient identification for reactors other than cattle.

(b) The reactors shall be accompanied to destination, in accordance with § 80.9, by a certificate issued by a Federal or State inspector or an accredited veterinarian showing: (1) That the animals have reacted to a test recognized by the Secretary of Agriculture for paratuberculosis; (2) the reactor tag number for each animal and the name of the owner of such animal when is was tested for paratuberculosis; (3) that the animals may be moved interstate; (4) the destination to which they are to be moved; and (5) the purpose for which they are moved.

BILLING CODE 1505-01-D

Agricultural Marketing Service

7 CFR Part 1131

[Docket No. AO-271-A32; DA-92-24]

Milk in the Central Arizona Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes the "associated producer" provisions and revises the producer-handler definition in the Central Arizona Federal milk order. The amendments, which were approved by two-thirds of the producers in the market, are based on proposals presented at a public hearing held in February 1992.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12278, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued December 21, 1992; published December 30, 1992 (57 FR 62241).

Recommended Decision: Issued December 15, 1993; published December 22, 1993 (57 FR 67703).

Extension of Time for Filing Exceptions: Issued February 4, 1994; published February 14, 1994 (59 FR 6916).

Revised Recommended Decision: Issued November 4, 1994; published November 14, 1994 (59 FR 56414).

Final Decision: Issued September 19, 1995; published September 28, 1995 (60 FR 50139).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Central Arizona order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Central Arizona order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arizona marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Central Arizona order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Central Arizona order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Central Arizona order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Central Arizona order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central Arizona marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 reads as follows:

Authority: 7 U.S.C. 601–674.

2. In § 1131.10, paragraph (a)(3) is redesignated as (a)(4), a new paragraph (a)(3) is added, and paragraph (a)(1)(ii) is revised to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(1) * * *

(ii) Fluid milk products obtained by transfer or diversion from pool plants, other order plants, or from a handler described in § 1131.9(b), in an amount not to exceed 5 percent of its fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) * * *

(3) Does not distribute fluid milk products to a wholesale customer who also is serviced by a handler described in § 1131.9 (a) or (d) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

* * * * *

§ 1131.13 [Amended]

3. In § 1131.13 paragraphs (a)(2) and (b)(1), the words "that is not a producer-handler plant," are removed.

§§ 1131.21 and 1131.22 [Removed]

4. Sections 1131.21 and 1131.22 are removed.

5. In § 1131.30, paragraph (d) is redesignated as paragraph (e), in newly designated (e) the words "(a) through (c)" are revised to read "(a) through (d)", and a new paragraph (d) is added to read as follows:

§ 1131.30 Reports of receipts and utilization.

* * * * *

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1131.9(b);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

* * * * *

§ 1131.33 [Removed]

6. Section 1131.33 is removed.

7. In § 1131.42 paragraph (d)(2)(vi), the words "pursuant to § 1131.22 or" are removed, and the introductory text of paragraph (c) and paragraph (c)(1) are revised to read as follows:

§ 1131.42 Classification of transfers and diversions.

* * * * *

(c) Transfers and diversions to producer-handlers. Skim milk or butterfat transferred or diverted from a pool plant or diverted from a handler described in § 1131.9(b) to a producer-handler under this or any other order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

* * * * *

§ 1131.44 [Amended]

8. In § 1131.44(a)(4), the word ".ilk" is revised to read "milk".

9. In § 1131.50, paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

10. In § 1131.61, paragraph (b) is removed, paragraphs (c) through (f) are redesignated as paragraphs (b) through (e), and newly redesignated paragraph (d) is amended by removing paragraph (d)(3) and revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1131.61 Computation of uniform price.

* * * * *

(d) * * *

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f).

* * * * *

§ 1131.72 [Amended]

11. In § 1131.72, the word "for" is revised to read "from" in the section heading, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

§ 1131.77 [Amended]

12. In § 1131.77, the last sentence is removed.

§ 1131.85 [Amended]

13. In § 1131.85, paragraph (b) is removed and reserved.

Dated: October 31, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–27392 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1755

Telecommunications Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding a number of outdated bulletins. These bulletins are incorporated by reference in RUS telecommunications regulations and thus are regulatory in nature.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Richard J. Peterson, Deputy Director, Telecommunications Standards Division, Rural Utilities Service, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–8663.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule streamlines and updates RUS requirements for telephone borrowers by rescinding obsolete standards and specifications. Borrowers unable to use products meeting only the specifications being eliminated may experience increased short-term costs. However, RUS believes borrowers will benefit from reduced overall costs due to the greater durability and lower maintenance costs over time. These bulletins no longer meet industry standards.

Information Collection and Recordkeeping Requirements

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851; Rural Telephone Loans and Loan Guarantees, and 10.582, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

RUS issues publications titled "bulletins" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for the construction of telephone facilities financed with RUS loan funds. After review of RUS's bulletin and specification issuances, RUS has decided to rescind the outdated RUS bulletins listed below. These bulletins are incorporated by reference at 7 CFR 1755.97.

LIST OF RUS BULLETINS FOR RESCISSION

RUS bulletin No.	Specification No.	Date last issued	Title of standard or specification
345–13	PE–22	Jan. 1983	RUS Specification for Aerial and Underground Telephone Cable.
345–29	PE–38	Feb. 1982	RUS Specification for Self-Supporting Cable.
345–75	PE–65	Jan. 1977	RUS Specification for Electronic Trunk Circuits.
345–168	Form 538	Oct. 1977	RUS Specification for Equipment for Direct Distance Dialing.

RUS Bulletins 345–13, RUS Specification for Aerial and Underground Telephone Cable, PE–22 and 345–29, RUS Specification for Self-Supporting Cable, PE–38 specify the technical requirements for air core cables that are primarily used in aerial plant installations. With the development of filled cables having 80 degree Centigrade filling compounds, filled cables, which are primarily used for direct buried and underground plant

installations, can now be used for aerial plant installations. Since filled cables provide greater service reliability than air core cables, filled cables for aerial plant installations have increased on RUS borrower construction projects. This increasing use of filled cables for aerial installations has resulted in a decline of air core cables for aerial plant construction projects. Since the use of air core cables in aerial plant construction is declining on RUS borrower projects, RUS is rescinding both bulletins because of obsolescence.

RUS Bulletin 345–75, RUS Specification for Electronic Trunk Circuits, PE–65, is being rescinded because RUS trunk circuits are now digitally derived making RUS Bulletin 345–75 obsolete.

RUS Bulletin 345–168, RUS Specification for Equipment for Direct Distance Dialing, Form 538, specified the technical requirements for equipment use in direct distance dialing. Since the equipment requirements for direct distance dialing are now specified in RUS 7 CFR 1755.522, RUS General Specification for Digital, Stored Program Controlled Central Office Equipment, RUS Bulletin 345–168 is no longer required therefore making the document obsolete.

Comments

On January 5, 1995, RUS published a proposed rule (60 FR 1758) to rescind RUS Bulletin 345–13, RUS Specification for Aerial and Underground Telephone Cable, PE–22; RUS Bulletin 345–29, RUS Specification for Self-Supporting Cable, PE–38; RUS Bulletin 345–75, RUS Specification for Electronic Trunk Circuits, PE–65; and RUS Bulletin 345–168, RUS Specification for Equipment for Direct Distance Dialing, Form 538, because of obsolescence. Comments on this proposed rule were due by February 6, 1995. Comments and recommendations were received from four organizations by this due date. The comments, recommendations, and responses are summarized as follows:

All four organizations commented that they agreed with RUS's decision to rescind all four of the outdated bulletins.

Response: Since all four organizations agreed with RUS's decision to rescind the outdated bulletins, RUS will rescind the outdated bulletins.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Rural areas, Telephone.

For reasons set out in the preamble, RUS amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing from the table the entries for bulletins 345–13, 345–29, 345–75, and 345–168.

Dated: October 30, 1995.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–27394 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

Issued October 31, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201 May 14, 1987). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent scheduie of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1995, through September 30, 1996, the fees in this notice will become effective October 1, 1995. The fees will apply to fiscal year 1996 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT:

Diane E. Bernier, Financial Services Division, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 219–2886.

SUPPLEMENTARY INFORMATION: In accordance with Section 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register**. In addition, the Commission provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in the Public Reference Room at the Commission's Headquarters, 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located at 888 First Street, NE., Washington, DC 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1995, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In Part 11, Appendix A is revised to read as follows:

Appendix A to Part II

FEE SCHEDULE FOR FY 1996

State and county	Rate per acre
Alabama All counties	$23.37
Arkansas: All counties	17.54
Arizona:	
Apache	5.84
Cochise	
Gila	
Graham	
La Paz	
Mohave	
Navajo	
Pima	
Yavapai	
Yuma	
Coconino north of Colorado River	
Coconino south of Colorado River	23.37
Greenlee	
Maricopa	
Pinal	
Santa Cruz	
California:	
Imperial	11.68
Inyo	
Lassen	
Modoc	
Riverside	
San Bernardino	
Siskiyou	17.54
Ameda	29.22
Alpine	
Amador	
Butte	
Calaveras	
Colusa	
Contra Costa	
Del Norte	
El Dorado	
Fresno	
Glenn	
Humboldt	
Kern	
Kings	
Lake	
Madera	
Mariposa	
Mendocino	
Merced	
Mono	
Napa	
Nevada	
Placer	
Plumas	
Sacramento	
San Benito	
San Joaquin	
Santa Clara	
Shasta	
Sierra	
Solano	
Sonoma	
Stanislaus	
Sutter	
Tehama	
Trinity	
Tulare	
Tuolumne	
Yolo	
Yuba	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Los Angeles	35.07
Marin	
Monterey	
Orange	
San Diego	
San Francisco	
San Luis OBISPO	
San Mateo	
Santa Barbara	
Santa Cruz	
Ventura	
Colorado:	
Adams	5.84
Arapahoe	
Bent	
Cheyenne	
Crowley	
Elbert	
El Paso	
Huerfano	
Kiowa	
Kit Carson	
Lincoln	
Logan	
Moffat	
Montezuma	
Morgan	
Pueblo	
Sedgwick	
Washington	
Weld	
Yuma	
Baca	11.68
Dolores	
Garfield	
Las Animas	
Mesa	
Montrose	
Otero	
Prowers	
Rio Blanco	
Routt	
San Miguel	
Alamosa	23.37
Archuleta	
Boulder	
Chaffee	
Clear Creek	
Conejos	
Costilla	
Custer	
Denver	
Delta	
Douglas	
Eagle	
Fremont	
Gilpin	
Grand	
Gunnison	
Hinsdale	
Jackson	
Jefferson	
Lake	
La Plata	
Larimer	
Mineral	
Ouray	
Park	
Pitkin	
Rio Grande	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Saguache	
San Juan	
Summit	
Teller	
Connecticut: All counties	5.84
Florida:	
Baker	35.07
Bay	
Bradford	
Calhoun	
Clay	
Columbia	
Dixie	
Duval	
Escambia	
Franklin	
Gadsden	
Gilchrist	
Gulf	
Hamilton	
Holmes	
Jackson	
Jefferson	
Lafayette	
Leon	
Liberty	
Madison	
Nassau	
Okaloossa	
Santa Rosa	
Suwannee	
Taylor	
Union	
Wakulla	
Walton	
Washington	
All other counties	58.44
Georgia: All counties	35.07
Idaho:	
Cassia	5.84
Gooding	
Jerome	
Lincoln	
Minidoka	
Oneida	
Owyhee	
Power	
Twin Falls	
Ada	17.54
Adams	
Bannock	
Bear Lake	
Benewah	
Bingham	
Blaine	
Boise	
Bonner	
Bonneville	
Boundary	
Butte	
Camas	
Canyon	
Caribou	
Clark	
Clearwater	
Custer	
Elmore	
Franklin	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Fremont	
Gem	
Idaho	
Jefferson	
Kootenai	
Latah	
Lemhi	
Lewis	
Madison	
Nez Perce	
Payette	
AShosone	
Teton	
Valley	
Washington	
Kansas:	
All other counties	5.84
Morton	11.68
Illinois: All counties	17.54
Indiana: All counties	29.22
Kentucky: All counties	17.54
Louisana: All counties	35.07
Maine: All counties	17.54
Michigan:	
Alger	17.54
Baraga	
Chippewa	
Dickinson	
Delta	
Gogebic	
Houghton	
Iron	
Keweenaw	
Luce	
Mackinac	
Marquette	
Menominee	
Ontonagon	
Schoolcraft	
All other counties	23.37
Minnesota: All counties	17.54
Mississippi: All counties	23.37
Missouri: All counties	17.54
Montana:	
Big Horn	5.84
Blaine	
Carter	
Cascade	
Chouteau	
Custer	
Daniels	
McCone	
Meager	
Dawson	
Fallon	
Fergus	
Garfield	
Glacier	
Golden Valley	
Hill	
Judith Basin	
Liberty	
Musselshell	
Petroleum	
Phillips	
Pondera	
Powder River	
Prairie	
Richland	
Roosevelt	
Rosebud	
Sheridan	
Teton	
Toole	
Treasure	
Valley	
Wheatland	
Wibaux	
Yellowstone	
Beaverhead	17.54
Broadwater	
Carbon	
Deer Lodge	
Flathead	
Gallatin	
Granite	
Jefferson	
Lake	
Lewis & Clark	
Lincoln	
Madison	
Mineral	
Missoula	
Park	
Powell	
Ravalli	
Sanders	
Silver Bow	
Stillwater	
Sweet Grass	
Nebraska: All counties	5.84
Nevada:	
Churchill	2.92
Clark	
Elko	
Esmeralda	
Eureka	
Humboldt	
Lander	
Lincoln	
Lyon	
Mineral	
Nye	
Pershing	
Washoe	
White Pine	
Carson City	29.22
Douglas	
Storey	
New Hampshire: All counties	17.54
New Mexico:	
Chaves	5.84
Curry	
De Baca	
Dona Ana	
Eddy	
Grant	
Guadelupe	
Harding	
Hidalgo	
Lea	
Luna	
McKinley	
Otero	
Quay	
Roosevelt	
San Juan	
Socorro	
Torrance	
Rio Arriba	11.68
Sandoual	
Union	
Bernalillo	23.37
Catron	
Cibola	
Colfax	
Lincoln	
Los Alamos	
Mora	
San Miguel	
Santa Fe	
Sierra	
Taos	
Valencia	
New York: All counties	23.37
North Carolina: All counties	35.07
North Dakota: All counties	5.84
Ohio: All counties	23.37
Oklahoma:	
All other counties	5.84
Beaver	11.68
Cimarron	
Roger Mills	
Texas	
Le Flore	17.54
McCurtain	
Oregon:	
Harney	5.84
Lake	
Malheur	
Baker	11.68
Crook	
Deschutes	
Gilliam	
Grant	
Jefferson	
Klamath	
Morrow	
Sherman	
Umatilla	
Union	
Wallowa	
Wasco	
Wheeler	
Coos	17.54
Curry	
Douglas	
Jackson	
Josephine	
Benton	23.37
Clackamas	
Clatsop	
Columbia	
Hood River	
Lane	
Lincoln	
Linn	
Marion	
Multnomah	
Polk	
Tillamock	
Washington	
Yamhill	
Pennsylvania: All counties	23.37
Puerto Rico: All	35.07
South Dakota:.	
Butte	17.54
Custer	
Fall River	
Lawrence	
Mead	
Pennington	
All other counties	5.84
South Carolina: All counties	35.07
Tennessee: All counties	23.37
Texas:	
Culberson	5.84
El Paso	
Hudspeth	
All other counties	35.07
Utah:	
Beaver	5.84
Box Elder	
Carbon	
Duchesne	
Emery	
Garfield	
Grand	
Iron	
Jaub	
Kane	
Millard	
San Juan	
Tooele	
Uintah	
Wayne	
Washington	11.68
Cache	17.54
Daggett	
Davis	
Morgan	
Piute	
Rich	
Salt Lake	
Sanpete	
Sevier	
Summit	
Utah	
Wasatch	
Weber	
Vermont: All counties	23.37
Virginia: All counties	23.37
Washington:	
Adams	11.68
Asotin	
Benton	
Chelan	
Columbia	
Douglas	
Franklin	
Garfield	
Grant	
Kittitas	
Klickitat	
Lincoln	
Okanagan	
Spokane	
Walla Walla	
Whitman	
Yakima	
Ferry	17.54
Pend Oreille	
Stevens	
Callam	23.37
Clark	
Cowlitz	
Grays Harbor	
Island	
Jefferson	
King	
Kitsap	
Lewis	
Mason	
Pacific	
Pierce	
San Juan	
Skagit	
Skamania	
Snohomish	
Thurston	
Wahkiakum	
Whatcom	
West Virginia: All counties	23.37
Wisconsin: All counties	17.54
Wyoming:	
Albany	5.84
Campbell	
Cargon	
Converse	
Goshen	
Hot Springs	
Johnson	
Laramie	
Lincoln	
Natrona	
Niobrara	
Platte	
Sheridan	
Sweetwater	
Fremont	
Sublette	
Uinta	
Washakie	
Big Horn	17.54
Crook	
Park	
Teton	
Weston	
All other zones:	5.69

[FR Doc. 95–27383 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102 and 178

[T.D. 95–69]

RIN 1515–AB71

Rules of Origin for Textile and Apparel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; corrections.

SUMMARY: This document corrects a final rule document which amended the Customs Regulations to set forth provisions governing the determination of the country of origin of textile and apparel products for purposes of laws enforced by the Customs Service. The corrections involve two erroneous regulatory text citations.

EFFECTIVE DATE: These corrections are effective October 5, 1995.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1995, Customs published T.D. 95–69 in the **Federal Register** (60 FR 46188) containing final amendments to the Customs Regulations to set forth standards governing the determination of the country of origin of textile and apparel products for purposes of laws enforced by Customs. The regulatory amendments primarily implemented the provisions of section 334 of the Uruguay Round Agreements Act (Pub. L. 103–465, 108 Stat. 4809) and included a new § 102.21 covering the majority of the section 334 provisions as well as new §§ 10.25 and 10.195(d) which concerned duty treatment accorded to imported articles incorporating textile components cut to shape in the United States. This document corrects the texts of §§ 10.25 and 10.195(d) which each contained an erroneous cross-reference to the definition of "textile or apparel product" in § 102.21.

Corrections of Publication

The document published in the **Federal Register** as T.D. 95–69 on September 5, 1995 (60 FR 46188) is corrected as set forth below.

1. On page 46196, in the third column, in § 10.25(a), the reference "§ 102.21(b)(4)" is corrected to read "§ 102.21(b)(5)".

2. On page 46197, in the second column, in § 10.195(d), the reference "§ 102.21(b)(4)" in the last sentence is corrected to read "§ 102.21(b)(5)".

Dated: October 31, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–27437 Filed 11–3–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 21

RIN 2900–AG56

Veterans Training Under the Service Members Occupational Conversion and Training Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule and correcting amendment.

SUMMARY: This document adopts as a final rule with changes an interim rule which established regulations to provide benefits relating to job training programs for recently discharged veterans under the Service Members Occupational Conversion and Training Act of 1992.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: On January 31, 1995, VA published in the **Federal Register** (60 FR 5848) an interim final rule with request for comments. This interim final rule implemented those responsibilities with respect to the Service Members Occupational Conversion and Training Act that the Secretary of Defense delegated to the Secretary of Veterans Affairs.

The public was given 62 days to submit comments. VA received no comments.

In reviewing the interim rule, VA noted that a small amount of material was inadvertently omitted from paragraph (c) of § 21.4832. Even so, the substance of paragraph (c) was evident from the interim rule document since this paragraph was fully discussed in the **SUPPLEMENTARY INFORMATION** section of the interim rule (60 FR 5851).

Based on the rationale set forth in the interim rule document, we are adopting the provisions of the interim rule as a final rule with the addition of the material that was inadvertently omitted from § 21.4832(c). This final rule also affirms the information in the interim rule document concerning the Regulatory Flexibility Act.

No Catalog of Federal Domestic Assistance number has been assigned to the program affected by these regulations.

List of Subjects

38 CFR Part 2

Authority delegation (Government agencies). Veterans Affairs Department.

38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 11, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim rule amending 38 CFR parts 2 and 21 published at 60 FR 5848 on January 31, 1995 is adopted as a final rule with the following change:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. The authority citation for part 21 continues to read as follows:

Authority: 38 U.S.C. 501.

2. Section 21.4832, is amended by correctly adding the paragraph designation (c) and paragraph (c) introductory text to precede the second paragraph currently designated (1) under paragraph (b) to read as follows:

§ 21.4832 Payments to Employers.

* * * * *

(c) *Payments for tools and other work-related materials.* VA may reimburse the employer a maximum of $500 for the costs of tools and other work-related materials required for training upon receipt of:

* * * * *

[FR Doc. 95–27373 Filed 11–3–95; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 11 and 73

[FO Docket Nos. 91–171/91–301; FCC 95–420]

Emergency Broadcast/Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Memorandum Opinion and Order* addresses petitions for reconsideration of the Federal Communications Commission's (FCC) Emergency alert System rules (EAS). These rules were approved by the FCC in 1994 to replace the Emergency Broadcast System (EBS). The purpose of EAS is to improve emergency warnings and information using broadcast stations and cable systems. The *Memorandum Opinion and Order* makes some changes requested by the petitions and denies others, and amends a number of the EAS rules.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: EAS Staff, Compliance and Information Bureau, (202) 418–1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in FO Dockets 91–171/91–301, adopted October 4, 1995, and released October 23, 1995.

The full text of this Commission *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, NW., Washington DC 20554. The complete text of the *Memorandum Opinion and Order* may also be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of Memorandum Opinion and Order

The Federal Communications Commission (FCC) adopted a *Memorandum Opinion and Order*. addressing petitions for reconsideration of its Emergency Alert System (EAS) rules. 47 CFR part 11. These rules were approved by the Commission on November 10, 1994, in a *Report and Order* which replaced the Emergency Broadcast System (EBS) with EAS. 59 FR 67090 (Dec. 28, 1994). The purpose of EAS is to use various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. EAS, compared to EBS, includes more sources capable of alerting the public and specifies new equipment standards and procedures to improve alerting capabilities.

Petitions for reconsideration were submitted by Data Broadcasting Corporation, Sage Alerting Systems, Inc., Federal Signal Corporation, Delco Electronics Corporation, and the national Association of Broadcasters. Also received were comments, oppositions to the petitions for reconsideration, and replies to the oppositions.

The petition for reconsideration raised three major issues. The first involved the Radio Broadcast Data System (RBDS). RBDS may be used to send emergency warnings on the subcarrier of FM broadcast stations. The Commission in its 1994 EAS *Report and Order* encouraged the use of RBDS, but did not require it. Several petitions for reconsideration requested that the FCC adopt rules specifying technical standards for RBDS. The Commission in its *Memorandum Opinion and Order* declined to establish standards since the use of RBDS is voluntary and mandated standards would impede technological advances and innovation.

The second major issue concerned the present EAS requirement that cable systems provide video interruption and an audio EAS message on all channels. The National Association of Broadcasters claimed in its petition for reconsideration that this violated the Copyright Act and the Commission's "must carry" rules since they prohibit cable systems from altering broadcast programming retransmitted on their systems. The Commission responded that there was no conflict, and the EAS requirement was permissible. The Commission further pointed out that the Cable TV Act of 1992 requires cable systems to provide emergency information.

The National Association of Broadcasters also requested that the Commission postpone its deadline for broadcasters to install EAS equipment from July 1, 1996, to July 1, 1997. The Commission agreed to delay implementation until January 1, 1997.

The petitions for reconsideration and related comments also requested a number of minor changes and clarifications in the EAS rules. The Commission agreed to many, but not all, of the requested changes. The rules that were changed in Part 11 (47 CFR Part 11) of the FCC's rules are as follows:

—Section 11.33(a)(9). To avoid dead air during automated operation, EAS decoders, after receive in an EAS header code, are required to reset automatically if an End of Message (EOM) code is not received. Reset time may not be less than two minutes.

—Section 11.33(a)(5). Clarifies the requirement that EAS decoders are required to have a distinct and separate aural or visible means to indicate when one of three listed conditions occurs such as the receipt of a valid EAS header code.

—Section 11.34(c). Specifies that the required FCC equipment authorization for combined EAS encoder/decoder devices is certification instead of notification.

—Sections 11.51(1) (redesignated as Section 11.51(j) in the amendments) and 11.52(e) are clarified, but not amended, by the *Memorandum Opinion and Order* to reflect that EAS encoders and decoders must be preprogrammed to transmit and accept eight event/originator codes automatically with any possible combination of location codes that are pertinent to the receiving station's coverage area or cable system's community.

The mandatory event codes are EAN (Emergency Action Notification), EAT (Emergency Action Termination), RMT (Required Monthly Test) and RWT (Required Weekly Test). The mandatory originator codes are EAN (Emergency Action Notification Network) and CIV (Civil Authorities) for EAN and EAT event codes, and EAS (Broadcast Station or Cable System) and CIV for the RMT and RWT event codes.

—Section 11.11. A note is added to this Section to make it clear that FM translators are not required to have EAS equipment.

—Section 11.21. Because of concern that state and local officials might misuse EAS, Section 11.21 of the rules is clarified so that only procedures in state and local plans will be followed in EAS, and these plans must be approved by the FCC's Compliance and Information Bureau. The FCC will monitor the operation of EAS and publish a report before July, 1 1998.

In addition, the FCC agreed to discuss with the Federal Emergency Management Agency (FEMA) the possibility of financial assistance to participants in implementing EAS.

The Commission declined to make several other requested rule changes. The Commission, though, on its own made some minor revisions and clarifications of its rules.

The amended rules become effective December 6, 1995. Furthermore, the Commission will begin to accept applications from manufacturers of EAS devices for FCC equipment authorization, namely, certification, fourteen days after the amended EAS rules are released.

Rule Clarifications

The Commission has received numerous informal questions and requests for clarification or correction of the rules. We will provide interpretations and clarifications to the extent that the issues raised do not go beyond the scope of the Report and Order or make substantive changes to the decisions embodied in the Report and Order:

—Section 0.311(g) states that the zip code is 20054. This is amended to be 20554.

—Section 11.11(b) states class D non-commercial FM and LPTV stations are not required to comply with Section 11.32. This is amended to state that they are not required to have or operate encoders which are defined in Section 11.32.

—Section 11.31(a)(1) states that EAS characters are seven-bit ASCII. This is amended to state that an eighth null bit is included for transmission of a full eight-bit byte.

—Section 11.31(b) states that call signs that use a dash must instead use a backslash in the EAS header code. This is amended to specify that ASCII character 47 is the proper character for the backlash.

—Section 11.31(c) gives an example of the EAS protocol that has a minor typographical error as printed in the **Federal Register**. This is corrected to replace a "+" sign with a "−" sign.

—Section 11.33(a)(3)(i) states that decoders must provide a means to record and store at least two minutes of audio or text messages. This is clarified to state that the audio or text storage can be internal or external to the decoder device. If no internal means for recording and storing is manufactured internal to the decoder, then some means to couple to an external device, such as an audio or digital jack connection, must be supplied on the decoder.

—Section 11.33(a)(3)(ii) states that decoders must provide a means to store a minimum of 10 preselected header codes. We clarify this rule to specify that the decoder must store ten preselected event and originator code combinations in addition to the eight mandatory code combinations of tests and national activations. Also, we specify that the decoder must store location codes pertaining to the broadcast station coverage areas or the cable system's community in addition to event and originator codes.

—Section 11.33(a)(11) states that header codes with an EAN Event code that is received by the two decoder audio inputs must be able to override all other EAS messages. This is amended to state that EAN Event codes received by any of the decoder audio inputs must override all other EAS messages, as it is possible that manufacturers may create decoders with more than two audio inputs.

—Section 11.33(b)(2) states that the tolerance of the two-tone frequencies in the decoder are 0.5 Hz above or below nominal. This is corrected to state the tolerance is 5 Hz.

—Section 11.51(b) states that broadcast stations may transmit only the EAS header and end-of-messages codes without the Attention Signal. This is amended by adding a sentence stating that no Attention Signal is warranted if the EAS message does not contain audio programming, such as a Required Weekly Test.

—Section 73.1250(h) refers to Section 11.51 of the EAS rules. This is amended to the more specific reference, Section 11.51(b).

Legal Basis

The *Memorandum Opinion and Order* is issued under the authority contained in Sections 1, 4 (i) and (o), 303(r), 624(g), and 706 of the Communications Act of 1934, as amended. 47 U.S.C. Sections 151, 154 (i) and (o), 303(r), 544(g), and 606.

List of Subjects

47 CFR Part 0

Delegation of authority, Organization and functions (Government agencies).

47 CFR Part 11

Emergency Alert System.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Amendments

Parts 0, 11, and 73 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155.

2. Section 0.311 is amended by revising paragraph (g) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(g) The Chief, Compliance and Information Bureau is delegated authority to grant waivers of the requirements of Part 11 of this chapter to participants required to install, operate or test Emergency Alert System (EAS) equipment. The Chief, Compliance and Information Bureau is further authorized to delegate this authority. Waiver requests must made in writing and forwarded to the FCC's EAS office 1919 M Street NW., Washington, DC 20554. Such requests must state the reason why the waiver is necessary and provide sufficient information such as, statements of fact regarding the financial status of the broadcast station, the number of other broadcast stations providing coverage in its service area or the likelihood of hazardous risks to justify a grant of the waiver.

* * * * *

PART 11—EMERGENCY ALERT SYSTEM (EAS)

3. The authority citation for Part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

4. Section 11.11 is amended by revising paragraphs (a) and (b) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels. It requires that at a minimum all participants use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates in the following tables:

TIMETABLE.—BROADCAST STATIONS

Requirement	Until 7/1/95	7/1/95	1/1/97	1/1/98
Two-tone/encoder timing	20–25 seconds	8–25 seconds	8–25 seconds	8–25 seconds.[1]
Two-tone decode timing	8–16 seconds required. 3–4 seconds optional.	All decoders at 3–4 seconds.	3–4 seconds	Two-tone decoder no longer used.
Digital decoder and encoder	Use is optional	Use is optional	Use is required	Use is required.

CABLE SYSTEMS

Requirement	Until 7/1/97	7/1/97[2]
Two-tone signal from storage device.[1]	Use is optional, 8–25 seconds	Use is required, 8–25 seconds.
Digital decoder and encoder	Use is optional	Use is required.[2]

[1] Two-tone singal used only to provide audio alert to audience before EAS emergency messages and required monthly test.

[2] On this date, subject cable systems shall provide: (1) a video message on all channels or other alerting techniques to hearing impaired and deaf subscribers, (2) an audio message and video interruption on all channels, and (3) a video message on at least one channel to all subscribers.

NOTE: Class D FM and low power TV stations are not required to have two-tone or digital encoders. LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment. FM translator stations are exempt from the requirement to have EAS equipment.

EAS TIMETABLE AND REQUIREMENTS BROADCAST STATIONS

Requirement	AM	FM	FM Class D	TV	LPTV[1]
Two-tone decoder (until 1/1/98)	Y	Y	Y	Y	Y
Two-tone encoder	Y	Y	N	Y	N
Digital decoder (1/1/97)	Y	Y	Y	Y	Y
Digital encoder (1/1/97)	Y	Y	N	Y	N
Audio message (1/1/97)		Y	Y	Y	YY
Video message (1/1/97)					YY

CABLE SYSTEMS

Requirement	
Two-tone decoder	N
Two-tone encoder	N
Digital decoder (7/1/97)	Y
Digital encoder (7/1/97)	Y
Audio message on all channels (7/1/97).	Y[2]
Video interruption on all channels, video message on one channel (7/1/97).	Y[3]

[1] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.

[2] Shall transmit two-tone signal, but it may be from a storage device.

[3] Shall provide video on all channels or other alerting techniques to certified hearing impaired and deaf subscribers.

(b) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter and LPTV stations as defined in § 74.701(f) of this chapter are not required to have or operate EAS encoders as defined in § 11.32. LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter are not required to comply with the requirements of this part. FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part.

* * * * *

5. Section 11.12 is revised to read as follows:

§ 11.12 Two-tone Attention Signal encoder and decoder.

Existing two-tone Attention Signal encoder and decoder equipment type accepted for use as Emergency Broadcast System equipment under Part 73 of this chapter may be used by broadcast stations until January 1, 1998, provided that such equipment meets the requirements of § 11.32(a)(9) and 11.33(b). Effective January 1, 1998, the two-tone Attention Signal decoder will no longer be required and the two-tone Attention Signal will be used to provide an audio alert.

6. Section 11.21 is amended by revising the introductory text to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by broadcast personnel, emergency officials and NWS personnel to activate the EAS. The plans include the EAS header code and messages that will be transmitted by key EAS sources (NP, LP, SP, and SR). State and local plans may contain unique methods of EAS message distribution such as the use of RBDS. The plans must be reviewed and approved by the Chief, Compliance and Information Bureau prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

* * * * *

7. Section 11.31 is amended by revising paragraphs (a)(1), (b) and (c) to read as follows:

§ 11.31 EAS protocol.

(a) * * *

(1) The Preamble and EAS Codes must use Audio Frequency Shift Keying at a rate of 520.83 bits per second to transmit the codes. Mark frequency is 2083.3 Hz and space frequency is 1562.5 Hz. Mark and space time must be 1.92 milliseconds. Characters are ASCII seven bit characters as defined in ANSI X3.4–1977 ending with an eighth null bit (either 0 or 1) to constitute a full eight-bit byte.

* * * * *

(b) The ASCII dash and plus symbols are required and may not be used for any other purpose. Unused characters must be ASCII space characters. FM or TV call signs must use a backslash ASCII character number 47 (/) in lieu of a dash.

(c) The EAS protocol, including any codes, must not be amended, extended or abridged without FCC authorization. The EAS protocol and message format are specified in the following representation. Examples are also provided in the EAS Operating Handbook.

[PREAMBLE] ZCZC–ORG–EEE–PSSCCC+TTTT–JJJHHMM–LLLLLLLL– (one second pause)
[PREAMBLE] ZCZC–ORG–EEE–PSSCCC+TTTT–JJJHHMM–LLLLLLLL– (one second pause)
[PREAMBLE] ZCZC–ORG–EEE–PSSCCC+TTTT–JJJHHMM–LLLLLLLL– (at least a one second pause)
(transmission of 8 to 25 seconds of Attention Signal)
(transmission of audio, video or text messages)
(at least a one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(at least one second pause)

* * * * *

8. Section 11.33 is amended by revising paragraphs (a)(3)(i), (a)(3)(ii), (a)(5) introductory text, (a)(5)(ii), (a)(9), (a)(11) and paragraph (b)(2) to read as follows:

§ 11.33 EAS Decoder.

(a) * * *

(3) * * *

(i) Record and store, either internally or externally, at least two minutes of audio or text messages. A decoder manufactured without an internal means to record and store audio or text must be equipped with a means (such as an audio or digital jack connection) to couple to an external recording and storing device.

(ii) Store at least 10 preselected event and originator header codes, in addition to the eight mandatory event/originator codes for tests and national activations, and store any preselected location codes for comparison with incoming header codes. A non-preselected header code that is manually transmitted must be stored for comparison with later incoming header codes. The header codes of the last ten received valid messages which still have valid time periods must be stored for comparison with the incoming valid header codes of later messages. These last received header codes will be deleted from storage as their valid time periods expire.

* * * * *

(5) Indicators. EAS decoders must have a distinct and separate aural or visible means to indicate when any of the following conditions occurs:

(i) * * *

(ii) Preprogrammed header codes, such as those selected in accordance with § 11.52(d)(2) are received.

* * * * *

(9) Reset. There shall be a method to automatically or manually reset the decoder to the normal monitoring condition. Operators shall be able to select a time interval, not less than two minutes, in which the decoder would automatically reset if it received an EAS header code but not an end-of-message (EOM) code. Messages received with the EAN Event codes shall disable the reset function so that lengthy audio messages can be handled. The last message received with valid header codes shall be displayed as required by paragraph (a)(4) of this section before the decoder is reset.

* * * * *

(11) A header code with the EAN Event code specified in § 11.31(c) that is received through any of the audio inputs must override all other messages.

(b) * * *

(2) Operation Bandwidth. The decoder circuitry shall not respond to tones which vary more than ±5 Hz from each of the frequencies, 853 Hz and 960 Hz.

* * * * *

9. Section 11.34 is amended by revising paragraph (c) to read as follows:

§ 11.34 Acceptability of the equipment.

* * * * *

(c) The functions of the EAS decoder, Attention Signal generator and receiver, and the EAS encoder specified in §§ 11.31, 11.32 and 11.33 may be combined and Certified as a single unit provided that the unit complies with all specifications in this rule section.

* * * * *

10. A new Section 11.47 is added to read as follows:

§ 11.47 Optional use of other communications methods and systems.

(a) Broadcast stations may additionally transmit EAS messages through other communications means than the main audio channel. For example, on a voluntary basis, FM stations may use subcarriers to transmit the EAS codes including 57 kHz using the RBDS standard produced by the National Radio Systems Committee (NRSC) and television stations may use subsidiary communications services.

(b) Other technologies and public service providers, such as DBS, low earth orbiting satellites, etc., that wish to participate in the EAS may contact the FCC's EAS office or their State Emergency Communication Committee for information and guidance.

* * * * *

11. Section 11.51 is amended by revising the third sentence of paragraph (a), adding a new sentence at the end of paragraph (b), revising paragraph (c), removing paragraphs (f) and (i), and redesignating the remaining paragraphs in alphabetical order to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

(a) * * * After January 1, 1998, the shortened Attention Signal may only be used as an audio alert signal and the EAS codes will become the minimum signalling requirement for National level messages and tests.

(b) * * * No Attention Signal is warranted for EAS messages that do not contain audio programming, such as a Required Weekly Test.

(c) Effective January 1, 1997, all radio and television stations shall transmit EAS messages in the main audio channel.

* * * * *

12. Section 11.52 is amended by revising paragraph (a) to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) Before January 1, 1998, broadcast stations must be capable to receiving the Attention Signal required by § 11.32(a)(9) and emergency messages of other broadcast stations during their hours of operation. Effective January 1, 1997, all broadcast stations must install and operate during their hours of operation, equipment capable of receiving and decoding, either automatically or manually, the EAS header codes, emergency messages and EOM code. The effective date for subject cable systems is July 1, 1997.

Note to paragraph (a). After January 1, 1998, the two-tone Attention Signal will not be used to actuate two-tone decoders but will be used as an aural alert signal.

* * * * *

13. Section 11.61 is amended by revising paragraphs (a)(1)(i), (a)(2)(i), and (a)(2)(ii)(A) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(1) * * *

(i) Effective January 1, 1997, AM, FM and TV stations.

* * * * *

(2) * * *

(i) Attention Signal. Until January 1, 1997, broadcast stations must conduct tests of the Attention Signal and Test Script at least once a week at random days and times between 8:30 a.m. and local sunset. Class D non-commercial educational FM and LPTV stations do not need to transmit the Attention Signal. Script content can be in the primary language of the station.

(ii) * * *

(A) Effective January 1, 1997, AM, FM and TV stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times.

* * * * *

PART 73—BROADCAST RADIO SERVICES

14. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

15. Section 73.900 is amended by revising the third sentence to read as follows:

§ 73.900 Cross references.

* * * Equipment type accepted for EBS use under the old Subpart G rules may continue to be used at broadcast stations until January 1, 1998, provided that it meets all applicable requirements of Part 11 of this chapter.

* * * * *

16. Section 73.1250 is amended by revising the last sentence of paragraph (h) to read as follows:

§ 73.1250 Broadcasting emergency information.

* * * * *

(h) * * * However, when an emergency operation is being conducted under a national, State or Local Area Emergency Alert System (EAS) plan, emergency information shall be transmitted both aurally and visually unless only the EAS codes are transmitted as specified in § 11.51(b) of this chapter.

[FR Doc. 95–27201 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–125; RM–8670]

Radio Broadcasting Services; Saint Joseph, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Saint Joseph, Minnesota, in response to a petition filed by Saint John's University. *See* 60 FR 40813, August 10, 1995. The coordinates for Channel 260A are 45–31–24 and 94–18–48. There is a site restriction 4.6 kilometers (2.9 miles) south of the community. With this action, this proceeding is terminated.

DATES: Effective December 15, 1995. The window period for filing applications will open on December 15, 1995, and close on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95–125, adopted October 16, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 260A at Saint Joseph.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27366 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–130; RM–8674]

Radio Broadcasting Services; Taylorville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Miller Communications, Inc., allots Channel 247A at Taylorville, Illinois, as the community's third local FM transmission service *See* 60 FR 40813, August 10, 1995. Channel 247A can be allotted to Taylorville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers (4.9 miles) south to avoid short-spacings to the licensed sites of Station WFYR(FM), Channel 247B1, Elmwood, Illinois, and Station WHMS–FM, Channel 248B, Champaign, Illinois. The coordinates for Channel 247A at Taylorville are North Latitude 39–28–44 and West Longitude 89–18–36. With this action, this proceeding is terminated.

DATES: Effective December 15, 1995. The window period for filing applications will open on December 15, 1995 and close on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–130, adopted October 18, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 247A at Taylorville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27363 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–128; RM–8672]

Radio Broadcasting Services; Carthage, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sharon K. Bryan, allots Channel 230A at Carthage, Illinois, as the community's second local FM transmission service. *See* 60 FR 40812, August 10, 1995. Channel 230A can be allotted to Carthage in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 230A at Carthage are North Latitude 40–24–48 and West Longitude 91–08–00. With this action, this proceeding is terminated.

DATES: Effective December 15, 1995. The window period for filing applications will open on December 15, 1995 and close on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–128, adopted October 18, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 230A at Carthage.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27364 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 103095A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation; modification of a closure.

SUMMARY: NMFS is reallocating the unused amount of Pacific cod total allowable catch (TAC) from vessels using trawl gear to vessels using hook-and-line or pot gear and is opening

directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to utilize the TAC specified for Pacific cod in the BSAI and promote the goals and objectives of the North Pacific Fishery Management Council (Council).

EFFECTIVE DATES: For the reallocation of the unused amount of Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear: 12 noon, Alaska local time (A.l.t.,) November 3, 1995, until 12 midnight, A.l.t., December 31, 1995. For the opening of directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the BSAI: 12 noon, A.l.t., November 17, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery for Pacific cod by vessels using hook-and-line and pot gear in the BSAI was closed on October 16, 1995, to prevent exceeding the 1995 apportionment of the Pacific cod TAC allocated to vessels using hook-and-line or pot gear in the BSAI (October 19, 1995, 60 FR 54046).

The Director, Alaska Region, NMFS, has determined that vessels using trawl gear will not be able to harvest 10,000 metric tons (mt) of Pacific cod allocated to those vessels under § 675.20(a)(2)(iv)(A). In accordance with § 675.20(a)(2)(iv)(B), NMFS is reallocating the unused amount of Pacific cod to vessels using hook-and-line or pot gear. The allocation to vessels using hook-and-line or pot gear will increase to 121,800 mt, of which 10,287 mt remained unharvested as of October 14, 1995.

NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels using hook-and-line and pot gear in the BSAI.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27442 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 214

Monday, November 6, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV95–928–1–PR; Amendment 1]

Papayas Grown in Hawaii; Reduction of Expenses and Assessment Rate for 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the expenses and assessment rate previously established under Marketing Order No. 928 for the 1995–96 fiscal year. This proposal would reduce the budget of expenses and rate which papaya handlers may be assessed for funding expenses by the Papaya Administrative Committee (Committee) that are reasonable and necessary to administer the program.

DATES: Comments must be received by December 6, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, or Fax # (209) 487–5906; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S. P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5331, or Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 928 (7 CFR part 928), regulating the handling of papayas grown in Hawaii; hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable papayas handled during the 1995–96 fiscal year, which began on July 1, 1995, and ends June 30, 1996. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 producers of papayas in Hawaii, and approximately 60 handlers regulated under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these producers and handlers may be classified as small entities.

The papaya marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable papayas handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Hawaiian papayas. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of papayas. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. In recommending an assessment rate, the Committee also considered funds available in a monetary reserve that could be used to pay expenses.

The Committee met on April 28, 1995, and unanimously recommended expenses totaling $562,044 for its 1995–96 budget. The Committee met again on July 20, 1995, and unanimously recommended a new budget because the original budget contained inaccuracies. The revised recommendation contained expenses totaling $465,800 for the 1995–96 budget. This was a $123,400 reduction in expenses compared to the 1994–95 budget of $589,200.

The Committee also unanimously recommended an assessment rate of $.0089 per pound for the 1995–96 fiscal year, which was the same as was recommended for the 1994–95 fiscal year.

An interim final rule implementing these recommendations was published in the **Federal Register** [60 FR 43351, August 21, 1995] and provided a 30-day comment period for interested persons. No comments were received. A final rule was published in the **Federal Register** on September 28, 1995 [60 FR 50078].

The Committee met again on September 28, 1995, and recommended revising the budget to reduce expenses to $435,800, and the assessment rate to $.0059 per pound for the 1995–96 fiscal year, which is $.0030 less than was recommended for the 1994–95 fiscal year. The Committee recommended reducing their expenses for research and development by $30,000, and reducing the reserve carryover for the following year to $26,597. There was some concern expressed at the meeting as to whether the Committee would have enough income to meet expenses. Ultimately, by a vote of eight to three with one abstention, the Committee recommended the reduced expenses of $435,800 and an assessment rate of $.0059.

The assessment rate, when applied to anticipated shipments of 33 million pounds, would yield $194,700 in assessment income. Other sources of program income include $40,000 from the Hawaii Department of Agriculture, $57,000 from the USDA's Foreign Agricultural Service, $7,800 from the Japanese Inspection Program, $3,000 in interest income, and $4,766 from the County of Hawaii. Thus, total income would be expected to be $307,266. The Committee plans on using money from its reserve to meet its estimated expenses for the year.

Major expense categories for the 1995 fiscal year include $165,500 for the market expansion program, $115,000 for research and development, and $67,000 for salaries. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $26,597, would be within the maximum permitted by the order of one fiscal year's expenses.

This action would reduce the assessment obligation imposed on handlers. The assessments would be uniform for all handlers. The assessment costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. Comments received within 30 days of publication of this proposed rule in the **Federal Register** will be considered prior to any final action being taken.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is proposed to be amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.225 is proposed to be revised as follows:

§ 928.225 Expenses and assessment rate.

Expenses of $435,800 by the Papaya Administrative Committee are authorized and an assessment rate of $.0059 per pound of assessable papayas is established for the fiscal year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: October 31, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–27391 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 710 Through 740

[FHWA Docket No. 95–18]

RIN 2125–AC17

Right-of-Way Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA requests comments concerning a comprehensive revision of the regulations affecting the administration of its highway right-of-way programs. One purpose of the revision is to update general policies and make programmatic changes to more effectively implement the Intermodal Surface Transportation Efficiency Act of 1991 [ISTEA] and the Surface Transportation and Uniform Relocation Assistance Act of 1987 [STURAA]. The effect of the legislation and the FHWA's own review of its regulations indicates that a complete revision of the regulations should be considered. The FHWA requests comments on the issues identified in this advance notice and any other issues the reader believes relevant to current administration of right-of-way programs. Following a review of comments received in response to this notice, a notice of proposed rulemaking will be prepared.

DATES: Comments in response to this notice must be submitted on or before January 5, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–18, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Johnson, (202) 366–2020, or Mr. Marshall Schy, (202) 366–2035, ANPRM Analysis Group, Office of Real Estate Services, HRW–11, or Mr. Reid Alsop, Attorney, Office of Chief Counsel, HCC–31, (202) 366–1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA provides funds to States to reimburse them for the costs of constructing highways and related activities. One of these activities involves the costs of acquiring necessary right-of-way. In carrying out the right-of-way program, the FHWA has issued regulations at 23 CFR concerning right-of-way activities for federally assisted highway projects. Recent transportation legislation (the STURAA in 1987, Pub. L. 100–17, 101 Stat. 132, and the ISTEA in 1991, Pub. L. 102–240, 105 Stat. 1914) amended and added programs affecting right-of-way procedures. Program funding that supported the Interstate, Primary, Urban, and Secondary highway systems was replaced by new funding categories that support a Surface Transportation Program (STP) and, after congressional approval, a National Highway System (NHS). In addition, the FHWA is seeking ways to improve and simplify regulatory content. Outdated items are to be removed, or updated with a focus on results, not process.

As part of its efforts at regulatory reform and to address statutory changes, the FHWA believes that a comprehensive review is needed of all 23 CFR sections that affect right-of-way program administration and property management issues. In addition, the relationship of those sections to government-wide rules, such as 49 CFR Part 18 (containing administrative requirements for contracting and for real property disposal) and 49 CFR Part 24 (containing rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91- 646, Stat. 1894, as amended) must also be considered. The intent of the review would be to consolidate the FHWA right- of-way program requirements and eliminate unneeded elements. The possible addition of new provisions to address current program needs will also be part of the review process.

Many of the existing regulations were issued to provide project-level oversight during the construction of the Federal Interstate System through a series of approvals and authorizations. Under a final rule published at 59 FR 25326 on May 16, 1994, the FHWA eliminated several of these Federal approval actions that were no longer necessary. This proposed review would take a more extensive look at the controls required and seek appropriate methods to manage right-of-way related activities and programs for NHS and STP related projects.

An update of the right-of-way regulations could be approached several ways. Initially, a decision on the basic structure of the regulations would be required. One option would be to completely restructure Parts 710 through 740 of title 23, CFR. An alternate course would retain the existing structure and make appropriate rescissions and additions. Comments concerning how best to structure updated right-of-way regulations for maximum usefulness are requested. Any major restructuring would have to specifically address the administrative, funding, acquisition, and property management provisions needed for current programs.

In addition to the structure of the regulations, the consolidation and cross-referencing of regulatory materials will be considered. Currently, right-of-way related regulations are interspersed throughout 23 CFR. Within 23 CFR, right-of-way administrative requirements on land management for withdrawn Interstate segments (Part 480), right-of-way certification requirements prior to construction authorization (§ 635.309), land relinquishments for abandoned facilities (Part 620, subpart B) probably could be consolidated. Under a comprehensive review, each right-of-way requirement could be evaluated for relevance to current operations, and that those found still to be valid could be placed within the regulatory structure at a location consistent with their individual purpose.

Alternative methods to achieve program objectives will be explored during development of new regulations. For example, the certification requirements in § 635.309 are intended to assure that coordination between right-of-way acquisition and construction contracting occurs before the bidding process begins. While these provisions lessen the chance for controversy over the availability of right-of-way for construction, they are primarily intended to protect the rights of property owners and relocatees. Rather than retain the certification requirement and FHWA's direct involvement on NHS projects, the State manual requirements under § 710.205 could be modified to require an element that would describe how the coordination process and needed protections would be accomplished within the State.

Other examples of regulations that may no longer be required in their present form to meet current program objectives are mentioned below. Comments are requested concerning all program requirements that should be considered for recision or modification. The examples listed are to stimulate comments and are not a complete list of areas where change might be appropriate. Comments are also requested in response to the specific questions set forth below.

1. Current reimbursement policies are outlined in § 710.304. This section contains many limitations regarding Federal participation in costs incurred by States or local governments. Changes in State litigation procedures, the advent of alternative forms of dispute resolution, and other programmatic developments indicate that many of these limitations may no longer be necessary. Comments on which reimbursement limitations remain appropriate for use in current programs are requested. Alternative ways to address reimbursement policy will also be considered.

2. One reimbursement limitation that deserves special attention involves the requirement in § 710.304(h) limiting participation in damages to those considered "generally compensable in eminent domain." With the changes that have occurred in program funding and the various funding options available through the NHS and STP, is this limitation still valid or should some change be considered, e.g., basing Federal reimbursement solely on what each State is legally obligated to pay under its own laws?

3. Provisions in § 710.305 on support for right-of-way claims need to be conformed with current practice. Changes in technology have altered the billing process relating to progress and final claims. Accountability and documentation requirements that support reimbursement claims for right-of-way expenditures should also be modified. Comments on acceptable alternatives are invited.

4. The provisions in § 712.204 concerning project procedures need to be updated. Some of these provisions, such as the general provision requiring State Highway Departments to make requests in writing, are being made obsolete by technological changes. Also, for the STP, project level activity in many States is no longer subject to detailed FHWA oversight. The section should be revised to reflect current fiscal practices, and project level requirements simplified.

5. In the same section, the restriction applied to hardship acquisitions, preventing acquisition of § 4(f) (49 U.S.C. 303) or historic properties, should be re-evaluated. While entirely appropriate as a restriction on protective purchases, the practice may in a hardship situation adversely impact the property owner.

6. Subpart D of Part 712 dealing with documentation requirements necessary to support administrative, legal, and court awards may no longer be necessary. Administrative settlement issues are addressed in 49 CFR 24.102(j). Other provisions are dependent on State eminent domain practices and are potentially unneeded based on current programs and funding practices. Issues relating to noncompensable items may impose more administrative burdens on the

program than is warranted, and would become unnecessary if the limitation mentioned under Item 2 above is removed. Is there still a need to limit the interest paid on deficiency for the amount of awards in excess of court deposits? Can alternative means be used to promote prompt deposit, and disposition of filed eminent domain cases? Comments on which elements in this section should be retained are requested.

7. Subpart F of Part 712 covers FHWA participation in the functional replacement of publicly-owned property. What requirements or provisions could be changed to reduce the administrative overhead included within this program? Can reimbursement be based on anticipated costs needed to replace a public facility using current codes and building practices rather than actual costs? Would it serve the public interest to provide a cash payment and not require replacement of the public facility affected?

8. Part 713 contains provisions relating to property management of lands acquired for Federal projects. Section 18.31 of 49 CFR contains the DOT version of government-wide uniform grant regulations that relate to management and disposal of right-of-way. The STURAA added 23 U.S.C. 156, relating to airspace utilization, which contains provisions concerning airspace income that differ from the regulatory provisions contained in 49 CFR Part 18. Under 49 CFR, net sale income from a disposal of excess land is, with certain exceptions, to be credited to Federal funds. Under 23 U.S.C., income based on the sale or lease of airspace requires only that the funds received be applied to projects that are or would be eligible for assistance under title 23, U.S.C. These differing accounting procedures may create unnecessary administrative overhead and not yield appropriate benefits for protecting the Federal interest. Both section 156 and Part 18 supersede some portions of 23 CFR Part 713. Comments are requested on ways to handle property management income generated after completion of a transportation improvement and whether the existing dual standard presents any practical problems that could be resolved through revised regulations.

9. Part 720, Appraisal, and Part 740, Relocation Assistance, contain basic contracting procedures. Since 49 CFR 18.36 also contains provisions relating to contracting, much of the content in these two parts may no longer be necessary. Comments are requested as to which provisions within these two parts should be retained, and the basis for such retention.

In addition to changes and modifications in existing regulations, additions to address changes made by the ISTEA also should be considered. Several of these changes are discussed below.

A. The ISTEA emphasized preservation of right-of-way corridors. Preservation is one of the factors to be considered during the metropolitan and Statewide planning processes, and the preservation of abandoned railway corridors is one of the "transportation enhancement activities" included in the STP. Section 1017(c) of the ISTEA also required completion of a study assessing appropriate ways to preserve vital transportation corridors. These provisions, along with actions taken by several States to better coordinate land development and transportation needs, have extended the scope of preservation beyond the actions covered by existing "protective purchase" regulations. Land use controls have the potential to provide enhanced opportunities for maintaining and developing transportation resources without affecting community growth or encroaching on environmentally sensitive areas. Even with better use of land use controls, early and selective acquisitions of key parcels of land may still be required. What specific changes in right-of-way regulations at the Federal level are needed to support State and local preservation activities?

B. Under the STP there are 10 categories of transportation enhancement activities (defined in 23 U.S.C. 101(a)), several of which could involve acquisition of real property interests. Many of these activities are locally based initiatives. Land requirements are site-specific and are often acquired in the name of a local government or even a non-profit organization. Is regulatory flexibility and separate guidance necessary on such projects, or should conventional right-of-way acquisition policies be applied? Are the acquisition and management practices used to support the right-of-way program appropriate for transportation enhancement activities? What latitude is appropriate if differing standards are to be applied? Why?

C. The ISTEA added a provision to 23 U.S.C. 108(d) that under certain conditions would allow retroactive reimbursement of acquisition expenditures incurred by a State before a property has been incorporated within a federally-financed project. Comments are sought on ways to better implement the provisions of this section.

D. The ISTEA contains provisions for wetlands banking. The use of land banking is also referred to in regard to corridor preservation. What administrative and property management issues need to be addressed to accommodate these special forms of land acquisition?

E. Consideration will be given to developing performance standards for State administration of the right- of-way function. These standards, similar to the measurement tools used by established management systems, could be used to assess State performance in lieu of other forms of Federal oversight. Comments on measurement tools that could be used as part of such an approach are requested.

All of the above issues will receive careful review. Comments are requested on the various policy concerns and issues which are briefly outlined above, as well as any other relevant concerns or issues that should be addressed. Our intent is to develop regulations that complement the new transportation development process, allow flexibility for users of Federal financial assistance, yet provide for an appropriate level of stewardship of right-of-way expenditures, and address issues of compliance with other related Federal law and regulation.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. When a proposed rule is developed following evaluation of comments received from this advance notice, further consideration will be given to the impact of any action planned.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA will provide an evaluation of the effects on small entities of any proposed rule developed following receipt of comments from this action.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Parts 710 Through 740

Grant programs—transportation, Highways and roads, Real property acquisition, Relocation assistance, Rights-of-way.

(23 U.S.C. 101(a), 103, 107, 108, 111, 114, 142(g), 156, 204, 210, 308, 317, 323; 49 U.S.C. 303, 2000, 4633, 4651–4655; 49 CFR 1.48(b), 18, 21 and 24; 23 CFR 1.32)

Issued on: October 27, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–27446 Filed 11–3–95; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, and 211

RIN 1010 AC02

Amendments to Gas Valuation Regulations for Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing amendments to regulations governing the valuation for royalty purposes of natural gas produced from Federal leases. These changes would add several alternative valuation methods to the existing regulations. The proposed rules represent the consensus decisions reached by MMS' Federal Gas Valuation Negotiated Rulemaking Committee (Committee).

DATES: Comments must be submitted on or before January 5, 1996.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed amendment to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165. MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231–3432, FAX (303) 231–3194. Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Lawrence E. Cobb of MMS, John L. Price of MMS, and Peter Schaumberg of the Office of the Solicitor. Members of the Federal Gas Valuation Negotiated Rulemaking Committee also participated in the preparation of this proposed rule.

I. Introduction

On June 2, 1994, the Secretary of the Interior chartered the Committee to advise MMS on a rulemaking to address: (1) The valuation of gas produced from approved Federal unit and communitization agreements (agreements) (particularly when lessees take less than their entitled share of production); and (2) the benchmark valuation system for valuing gas sold under non-arm's-length contracts (59 FR 32944, June 27, 1994). The Committee's scope was limited to examining values for gas produced from Federal leases and its original charter did not include the valuation of gas sold under arm's-length contracts. However, the Committee was faced with a new gas marketing environment which has resulted from deregulation of natural gas production and open access, particularly with the issuance of Federal Energy Regulatory Commission (FERC) Order No. 636 (Order No. 636) (57 FR 13267, April 16, 1992). To simplify valuation for all types of Federal gas sales impacted by today's gas market, MMS concurred with the Committee's recommendation to expand its charter to include the valuation of Federal gas production under both arm's-length and non-arm's-length sales contracts.

Members of the Committee included representatives from the American Petroleum Institute (API), the Council of Petroleum Accountants Societies (COPAS), the Rocky Mountain Oil and Gas Association (RMOGA), the Independent Petroleum Association of America (IPAA)/Independent Petroleum Association of Mountain States (IPAMS), the Natural Gas Supply Association (NGSA), an independent marketer, representatives of large independent producers, MMS, and personnel from the States of Utah, North Dakota, Montana, and New Mexico representing the State and Tribal Royalty Audit Committee (STRAC).

The Committee agreed to operate based on consensus decision making. MMS committed to publish as a proposed rulemaking all consensus decisions. The Committee further agreed that its final report and the resulting proposed rule would not prohibit any Committee member or his/her constituents from commenting on this proposed rule or challenging the final rule, or any order issued under the rule.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. All of the sessions of the Committee were announced in the **Federal Register**, were open to the public, and provided for an opportunity for public input. In addition, any interested persons may submit written comments, suggestions, or objections regarding this

proposed rule to the location identified in the ADDRESS section of this preamble.

The rulemaking process has necessarily required that the Committee's consensus be incorporated into the existing regulations as well as in new regulations. In some instances, various participants on the Committee may have longstanding differences of opinion with MMS on the meaning and interpretation of existing regulations, some of which may be under administrative or judicial appeal. The incorporation of the Committee's consensus as expressed in the report into the existing regulatory framework should not be interpreted or infer that consensus was also reached on these differences or that they have been waived or withdrawn.

MMS commends the Committee's ability to compromise and develop a proposal that would simplify royalty payments on natural gas produced from Federal leases, while reducing administrative costs, decreasing litigation costs, and maintaining revenue neutrality.

II. Purpose and Background

In March 1995, the Committee published its final report ("Committee Report"), which summarizes the consensus decisions of the 20-member Committee. This report forms the basis for the proposals in this rulemaking and is an essential part of the regulatory history for this proposed rulemaking. For each recommendation, the report provides background as to why the Committee considered a regulatory change, the alternatives discussed, any related negotiation, the final recommendation, and, if necessary, further explanation of the recommendation, including examples. You may obtain the report by contacting the MMS Valuation and Standards Division at (303) 275–7201 or –7234, or by facsimile at (303) 275–7227.

III. Description of Regulatory Proposals

This proposed rulemaking would accomplish two principal purposes. The first principal purpose is to establish a procedure to value, and to report and pay royalties on, production for operating rights owners of Federal leases that are part of mixed agreements, *i.e.*, Federally-approved agreements that include other than only Federal leases with the same royalty rate and fund distribution. The second principal purpose is to provide lessees with alternative methods to value gas production from Federal leases that would supplement the valuation procedures in the existing regulations in 30 CFR part 206. However, as explained later in this preamble, not all leases would qualify for the alternative valuation methods.

These alternative valuation methods would *not* apply to Indian leases. Therefore, as part of this rulemaking, MMS would have to restructure 30 CFR parts 202 and 206. Basically, the existing provisions of subpart D of parts 202 and 206 currently applicable to both Federal and Indian gas would be retained, but would be applicable only to Indian gas. All references to Federal gas, and those valuation provisions unique to Federal gas, would be removed. In addition, new subparts would be created in both parts 202 and 206 for Federal gas. These new subparts would retain most of the provisions of the existing regulations applicable to Federal gas (of course, with references to Indian gas removed). In addition, these new subparts would include the proposed alternative valuation methods the Committee developed, including simplified procedures to determine applicable transportation allowances.

It should be noted that there is a negotiated rulemaking committee that is considering changes to the procedures for valuing gas production from Indian leases (60 FR 7152, February 7, 1995). However, any regulatory changes resulting from that process would affect only Indian leases and would not directly impact this rulemaking.

A description of the major regulatory changes proposed in this rulemaking as a result of the Committee's recommendations follows:

Part 202

MMS is proposing a new subpart J for 30 CFR part 202 that would be applicable only to Federal gas. MMS correspondingly would amend existing subpart D of part 202 to remove references to Federal gas, but would preserve all the provisions for valuing Indian gas under that subpart.

The new subpart J for Federal gas would retain many of the basic provisions of existing subpart D. Also, based on the Committee's recommendations, several new provisions related to valuing production from, or allocable to, Federal leases in agreements would be included in subpart J.

In new § 202.450(d), MMS is proposing that royalty would be due on the full share of production allocated to a Federal lease under the terms of the agreement at the royalty rate specified in the lease. This would not be a change from the existing rules. The primary proposal is that for each operating rights owner in the lease, royalty would be due on its entitled share of production allocable to the lease based on its percentage ownership. (See the recommendation under section II.D. of the Committee Report and the definition of "entitlements" under new § 206.451.) Therefore, for an operating rights owner who owns 25 percent of the operating rights for a Federal lease in the agreement, if 100 MMBtu of gas production are allocable to the lease, royalty is due on 25 MMBtu.

Notwithstanding that royalties are due from each operating rights owner based on its entitled share, the operating rights owner may be able to report and pay royalties on a different basis as will be discussed later in the preamble with respect to changes to part 211.

Further, for mixed agreements, that is, agreements comprised of leases with different lessors, royalty rates, and/or funds distributions, to provide some relief to small operating rights owners (defined below) who cannot market their entitled share of production each and every month, MMS is proposing an exception whereby royalties could be paid monthly on takes (defined under new § 206.451), subject to an annual adjustment to entitlements. This issue is addressed in detail in section II.D of the Committee Report (example on page 68).

New § 202.450(d) also would include procedures to value the portion of any production to which an operating rights owner is entitled but does not take. This provision is important because the operating rights owner must pay royalty on the non-taken portion. In most cases, value would be based on the weighted average value of the gas that was taken from the lease. This issue also is addressed in section II.D of the Committee Report.

Part 206

MMS is proposing a new subpart J for 30 CFR Part 206 that would be applicable only to valuation of Federal gas. Like part 202, MMS would amend existing subpart D to remove references to Federal gas, but would preserve all the provisions for valuing Indian gas under that subpart. Therefore, Indian gas valuation would not be affected by this rulemaking.

The new subpart J for Federal gas basically would retain the valuation provisions of existing subpart D applicable to Federal gas. In fact, for some gas production from Federal leases, the valuation rules would not change at all. However, to simplify the rules and to provide new valuation mechanisms responsive to changes in the gas market, MMS is proposing alternative valuation rules that would determine gas values based on published indices. Transportation allowance procedures also would be simplified for all producers. Several of the more important changes are described below.

Section 206.451 Definitions

MMS would retain almost all of the definitions in existing § 206.151. However, § 206.451 also would include many new definitions for terms used in the alternative valuation sections and other new sections of the rules. These definitions are contained in attachment 5 to the Committee Report. Most of these definitions are self-explanatory and are best understood when explained below in the context in which they are used.

MMS is proposing a modified definition for "gathering" to assist in distinguishing that function from transportation. Under this proposed definition, some movement of gas which is now gathering would fall within the definition of transportation. This change would be a fundamental change in existing regulations. Under current regulations, transportation constitutes movement of gas to a remote market away from the lease, and gathering constitutes movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS Outer Continental Shelf (OCS) operations personnel for onshore and OCS leases, respectively. The change reflected in the proposed rule's definition is one element of overall negotiated concessions by all parties involved in the Committee proceedings. The basis for the proposed change is addressed in section II.E. of the Committee Report.

A new definition also is proposed for "small operating rights owner." These persons would be granted an exception from the obligation to report and pay royalties on their entitled share of production each month, and could pay based on their takes subject to an annual adjustment to entitlements. This is addressed in § 202.450 and in § 211.18. A small operating rights owner would be defined as a person who produces less than 6,000 Mcf/day total U.S. gas production *and* less than 1,000 bbls/day total U.S. oil production. This includes production from all domestic properties, Federal and non-Federal. (See page 67 of the Committee Report.)

Section 206.452 Valuation Standards—Unprocessed Gas

In most respects this section is the same as existing § 206.152. Therefore, for Federal gas production that is not processed and does not qualify for the proposed alternative valuation methods, discussed below, valuation would occur under this section. The valuation procedures essentially would be the same as under the existing rules in § 206.152.

However, there are a few changes in this proposed rule. Section 206.452(a)(3) would provide that gas which is sold or otherwise transferred to the lessee's marketing affiliate (a defined term) would be valued based upon the sale by the marketing affiliate. Thus, the applicable valuation procedure would depend on the marketing affiliate's sale. That sale would determine whether one of the new alternative valuation methods applies. Therefore, as explained further below, if the marketing affiliate sells unprocessed gas under an arm's-length dedicated contract, it could *not* use the alternative valuation methods. Other types of gas disposition by the marketing affiliate might qualify for the alternative valuation methods. Page 15 of the Committee Report provides a complete explanation of how such gas may be valued.

Under § 206.452(b), the valuation provisions applicable to gas sold under arm's-length contracts, value would be determined the same as under the existing rules, *i.e.*, based on the lessee's gross proceeds. However, if gas is sold under an arm's-length contract that is *not* dedicated (a dedicated contract is a contract where gas is sold from a specific source—see the definition in § 206.451), and if the gas production qualifies for valuation under the alternative valuation methods in § 206.454, then the lessee may *elect* to use those alternative valuation methods instead of the arm's-length valuation procedures in § 206.452(b). What gas qualifies for valuation under § 206.454 is discussed below in the preamble for that section. This issue is covered in detail in section II.A. of the Committee Report.

Paragraph (c) of § 206.452 applies to gas that is not sold under an arm's-length contract. It would provide that the lessee first must determine whether the gas qualifies for valuation under the new alternative valuation methods in § 206.454. Those qualification standards are discussed later in this preamble with respect to § 206.454. If the gas qualifies for valuation under § 206.454, the lessee would be *required* to use that section. (See recommendation on page 15 of the Committee Report.) If the gas does not qualify for valuation under § 206.454, then the benchmark valuation procedures under § 206.452(c) for non-arm's-length dispositions would apply. These procedures are the same as those under existing § 206.152. This issue is also discussed in detail in section II.A. of the Committee Report.

Of all the issues the Committee addressed, only one issue remains outstanding—improved benchmarks for valuing Federal gas sold under non-arm's-length contracts (*i.e.*, §§ 206.452(c) (1), (2) and (3)) when the gas is not subject to valuation under the new provisions of § 206.454. This issue, representing a small portion of overall Federal gas production, is the only issue on which the Committee did not reach consensus. (See section II.B. of the Committee Report.) MMS plans to issue a separate rulemaking that will improve the existing benchmarks. For that rulemaking, MMS will take under consideration the deliberations of the committee and invites any interested party to submit suggestions for improvements to the benchmarks with comments submitted on this proposed rulemaking.

Paragraph (g) of § 206.452 is the provision that corresponds to existing § 206.152(i). The existing provision states that "Notwithstanding any other provision of this section," value cannot be less than the gross proceeds accruing to the lessee for lease production.

MMS is proposing to amend this section to eliminate the above-quoted introductory clause and to expressly exclude gas valued under an index-based method under § 206.454. This change is necessary to make it clear that if a provision of § 206.452 permits a lessee to value gas using an index-based method under the new alternative valuation methods in § 206.454, it would not be required to compare that index-based value to its gross proceeds.

Paragraph (i) of § 206.452, which corresponds to existing § 206.152(j), also would be amended to exclude gas valued using an index-based method under § 206.454. The diligence standard addressed in this paragraph is inapplicable to index-based valuation.

Section 206.453 Valuation Standards—Processed Gas

This section applies to the valuation of gas that is processed by the lessee. The changes proposed to modify this section from existing § 206.153 basically parallel the changes discussed in the previous section regarding the modifications in proposed § 206.452 from existing § 206.152. However, because this section addresses valuation of residue gas and gas plant products, there are some additional differences.

Under § 206.453(b), the valuation provision applicable to residue gas and gas plant products sold under arm's-

length contracts, value would be determined the same as under the existing rules; *i.e.*, based on the lessee's gross proceeds.

However, if residue gas is sold under an arm's-length contract that is *not* dedicated (see the definition of "dedicated" in § 206.451), and if the gas production qualifies for valuation under the alternative valuation methods under § 206.454, then the lessee could *elect* to apply those provisions instead of the arm's-length valuation procedures in § 206.453(b). This issue is discussed with unprocessed gas in section II.A. of the Committee Report. Likewise, for NGL's, elemental sulfur and drip condensate associated with such residue gas, the lessee may *elect* to apply § 206.454 to value those products. The alternative valuation methods in § 206.454 would not be applicable to carbon dioxide, nitrogen or other non-Btu gas plant products. Section II.C. of the Committee Report provides a more complete explanation of this issue.

Under § 206.453(c), for residue gas or gas plant products not sold under an arm's-length contract, the lessee first must determine whether the residue gas or gas plant product is subject to valuation under § 206.454. For residue gas that is subject to § 206.454, the lessee would be *required* to use that section. (This proposal is explained on page 15 of the Committee Report.) Otherwise, valuation under this section would be the same as under existing § 206.153.

The proposed changes to the remaining paragraphs of § 206.453 are the same as those discussed above for § 206.452. Some additional changes applicable to both unprocessed gas and processed gas (both new §§ 206.452 and 206.453) not previously discussed are:

—MMS would delete all references in this new subpart to FERC maximum lawful prices because of deregulation.
—All references to warranty contracts would be eliminated because MMS does not believe there are any still in effect.
—The provisions of § 206.155 of the existing rules requiring dual accounting for certain Federal gas production (not Indian gas production) are not included in proposed subpart J based on the Committee's recommendation under section II.H. of the Committee Report.

Section 206.454 Alternative Valuation Standards for Unprocessed Gas and Processed Gas

This section is the principal new section for this proposed rule. It would add alternative gas valuation methods to the existing rules using published index prices and other criteria that should facilitate valuation in many circumstances.

However, this alternative valuation section would not be applicable to all gas. First, it would not apply at all to unprocessed gas or residue gas sold under a dedicated arm's-length contract, defined in proposed § 206.451 as a contractual commitment to deliver gas from a specific lease or well. For a discussion of why the Committee excluded gas sold under arm's-length dedicated contracts see section II.A.3 of the Committee Report.

Second, this alternative gas valuation section is applicable only to gas production from certain leases. Those leases must be in a zone (MMS-defined geographic area containing blocks or fields as defined in proposed § 206.452) with an active spot market and published indices, or be deepwater OCS leases. A complete discussion of these zones begins on page 48 of the Committee Report.

An active spot market is defined in proposed § 206.451 as a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first-of-the-month prices) for at least one index pricing point in the zone. An index pricing point, or IPP, also is a defined term in § 206.451. Page 19 of the Committee Report includes diagrams of IPP's for various connection situations.

If the production does not qualify for valuation under this section because the lease is not in a zone with an active spot market with published indices, then the lessee would be required to value the production under §§ 206.452 or 206.453, as applicable. It also should be noted that this section would not apply to carbon dioxide, nitrogen, or other non-Btu gas plant products because all the alternative valuation methods are Btu-based.

If the production qualifies for valuation under this section, then the lessee would have a series of elections and choices for valuation based on how the production is sold.

1. For *unprocessed* gas sold under an arm's-length non-dedicated contract, the lessee could elect to use either an index-based method under this section (described below) or the gross proceeds valuation provision of § 206.452(b)(1).

2. For *unprocessed gas* sold non-arm's-length, the lessee must value the gas under this section using either an index-based method or, if the gas is sold to the lessee's affiliated purchaser (who is not a marketing affiliate) and if that affiliate sells the gas under an arm's-length contract, then the affiliate's gross proceeds (determined under § 206.452) are the value. Sales to marketing affiliates would be excluded here because, as provided in § 206.452(a)(3), valuation would be required on the basis of the marketing affiliate's sale.

3. For *residue gas* sold under an arm's-length non-dedicated contract, the lessee could elect to use either an index-based method under this section or the gross proceeds valuation procedure of § 206.453(b)(1).

4. For *residue gas* sold non-arm's-length, the procedure is the same as for unprocessed gas sold non-arm's length in paragraph 2 above.

5. If the lessee values residue gas using an index-based method, then the lessee has a choice on how to value the *NGL's, elemental sulfur and drip condensate* associated with that residue gas. It could either use the same index-based price per MMBtu used to value the associated residue gas, or it could use the procedures in §§ 206.453 (b) or (c) depending on whether the products are sold arm's-length or non-arm's-length.

6. If the lessee values the residue gas under an arm's-length non-dedicated contract using § 206.453(b), or if the lessee uses its affiliate's arm's-length gross proceeds under this section (§ 206.454(a)(2)(ii)(B)), then the lessee also has a choice on how to value the *NGL's, elemental sulfur and drip condensate*. It could use the same price per MMBtu used to value the associated residue gas. Alternatively, it could use §§ 206.453 (b) or (c), depending on whether the products are sold arm's-length or non-arm's-length.

Elections 1 and 2 are explained in section II.A.3.b. of the Committee Report. Elections 3, 4, 5, and 6 are explained in section II.C. of the Committee Report.

Paragraph (a)(3) of § 206.454 would provide four conditions to using the alternative valuation methods just described. First, there must be an active spot market for the gas subject to the valuation. As explained above, active spot market is defined in § 206.451.

Second, the gas must actually flow, or be capable of flowing, through at least one pipeline with at least one published index applicable to the zone.

Third, for all leases in a zone:

1. All unprocessed gas and residue gas sold under an arm's-length non-dedicated contract must be valued the same under this section. Therefore, for all such gas in the zone the lessee must make the same election to use either an index-based method or §§ 206.452(b) or 206.453(b), as applicable.

2. All unprocessed gas and residue gas produced from leases in the zone not sold under an arm's-length contract must be valued using the same method where the lessee has an election. Therefore, if for one lease the lessee's affiliate sells the gas arm's-length and the lessee elects to use that value instead of an index-based value, for every other lease in the zone where the affiliate sells arm's-length the lessee must use the affiliate's arm's-length gross proceeds for valuation. If there are other leases in the same zone where, for example, the lessee's affiliate did *not* sell the gas under an arm's-length contract, under paragraphs (a)(1)(ii) or (a)(2)(ii) of § 206.454 there is no election for those leases and the lessee would be required to use index for those situations.

3. For all residue gas from leases in the zone valued under paragraphs (a)(2)(i) or (ii) of § 206.454 using the index-based method, the lessee must value all the NGL's, elemental sulfur and drip condensate associated with that residue gas using the same method. Thus, the lessee must use either an index-based method to value all such products in the zone or it must use §§ 206.453 (b) or (c), as applicable.

4. For all residue gas from leases in the zone valued under paragraphs (a)(2)(i) or (a)(2)(ii)(B) of § 206.454 using a gross proceeds method, the lessee must value all the NGL's, elemental sulfur and drip condensate associated with that residue gas using the same method. Therefore, the lessee must use either the price per MMBtu of the associated residue gas to value all such products in the zone or it must use §§ 206.453 (b) or (c), as applicable.

Fourth, the lessee's elections for valuation in each zone must be made for a period of 2 calendar years. If the lessee adds production from leases in the zone during that 2-year period, or acquires new leases in the zone, that production would be valued under the same election.

If the lessee does not satisfy all of the four above-described criteria, then it must value production under §§ 206.452 and 206.453. These criteria are listed on page 16 of the Committee Report.

Paragraph (a)(6) of § 206.454 would address an issue that the Committee did not consider. It involves situations where a lessee entered into a gas contract settlement prior to the effective date of a final rule in this matter, and actually receives the settlement payment before or after the effective date of the final rule. Under current MMS interpretation of the gross proceeds requirements, the payment the lessee receives under that gas contract settlement may be attributable in whole or in part to production that occurs after the effective date of this rule. This paragraph would provide that any portion of the gas contract settlement payment attributable to that production would be subject to royalty in addition to any index-based or other value established under § 206.454.

By way of illustration, assume that the lessee entered into a gas contract settlement and received a lump-sum payment in January 1995 for a gas sales contract for lease production that would have been in effect until June 1997. Assume further that under MMS' current royalty valuation procedures, MMS would consider the lump-sum payment to be attributable pro rata to the production that occurs from the lease until June 1997 at the rate of $0.10 per MMBtu. Under paragraph (a)(6) of § 206.454, if the index-based value determined for production for May 1996 were $2.00, the lessee would be required to pay royalty on $2.10.

Paragraph (a)(6) of § 206.454, as proposed, does not require that royalty be paid on any amounts attributable to gas contract settlements entered into after the effective date of the rule where the lessee uses an index-based or other value under § 206.454. (Of course, MMS does consider certain of such payments to be subject to royalty for lessees using gross proceeds to value production, which is not addressed in this paragraph.) MMS specifically requests comment on whether amounts for gas contract settlements entered into after the rule's effective date should be subject to royalty for lessees who use index-based or other values under § 206.454.

Paragraph (b) of § 206.454 would explain how to determine the index value for gas production when the lessee must use, or elects to use, an index-based method. Determination of the index value depends on whether the gas flows or could flow through a single connect, a split connect or a multiple connection. This determination must be made for each well on a lease because different wells may have different connections. A discussion of determining index values begins on page 18 of the Committee Report under *Index Pricing Points.*

For a single connect, the index value is the index price for the first index pricing point (IPP). For that IPP, the lessee will have selected a publication from the MMS-acceptable list in accordance with § 206.454(d). The price published in that publication for that month for that IPP would be used to value all production from the well that month.

If the well has a split connect or a multiple connection, the lessee would be required to elect one of two methods to calculate the index value:

1. Weighted-average index value. This index would be calculated by first multiplying the volume of gas from the well *actually* flowing to each IPP by the applicable index price for that IPP (using the publication the lessee selected under paragraph (d) of § 206.454).

(Example: IPP1—10,000 MMBtu × $1.20/MMBtu = $12,000; IPP2—20,000 MMBtu × $1.30/MMBtu = $26,000; IPP3—10,000 MMBtu × $1.20/MMBtu = $12,000). The numbers for each IPP are then added, equaling a total of $50,000. That sum is divided by the total volume (40,000 MMBtu) and the resulting quotient ($1.25/MMBtu) is the index value. The amount of gas actually flowing to each IPP is determined by using the nominations confirmed at the first of the month or the total nominations confirmed during the month, applied consistently for the two-year election period. If the actual flow of the gas during the month is different from the flow determined by the confirmed nominations used to calculate the value under this paragraph, the weighted average index value will not be recalculated using the actual flow volume. This index value would apply to all production from the well no matter which IPP the gas actually flowed through.

2. Fixed index value. First, for each IPP through which gas from the well flows *or could flow*, determine the average of the applicable monthly index prices for the *previous* calendar year using the publication selected for that year. Array the average prices determined for each IPP from highest at the top to lowest at the bottom. If there are only two IPP's, select the IPP associated with the highest average price. If there are three or more IPP's, select the IPP associated with the second highest average price. For whichever IPP is selected, go to the publication selected for that IPP for the current year (which could be a different publication than the one used the previous year). The index price for the current month for the IPP in that publication is the index value for all gas production from the well that month no matter where the gas actually flows. Example: Last year's 12-month average and this month's index price for each IPP through which the lessee's gas flows or could flow are:

	Last year's average	Current month
IPP2	$1.89/MMBtu	$2.05/MMBtu.

	Last year's average	Current month
IPP3	$1.86/MMBtu	$2.00/MMBtu.
IPP1	$1.85/MMBtu	$2.10/MMBtu.

The second IPP in the array, IPP3, is used to value production in the current year. For this month, the index price in the publication selected for IPP 3 is $2.00/MMBtu. This index value is used to value all production from the well.

If the result of the calculation is that the selected average index price (either the highest or second highest, as applicable) is identical to another average index price, then the calculation of the average index prices for the previous year would have to be redone to eight decimal places, and the process would then proceed the same.

The lessee would be required to elect to use either the weighted average index method or the fixed index method for the two-calendar-year election period. The lessee also would have to apply the same elected method to all wells connected to the same split connect or multiple connection. But the lessee could use the weighted average index method for one split connect in a zone and the fixed index method for another split connect in the same zone. For the Committee's discussion of this issue, see pages 20–23 of the Committee Report.

Paragraph (c) of § 206.454 would provide that the lessee would be entitled to deduct an applicable transportation allowance from the index value to determine the value for royalty purposes. Transportation allowances are addressed later in this preamble.

Paragraph (d) of § 206.454 would explain how a lessee selects an acceptable publication for the index price from a list of acceptable publications that MMS periodically will publish in the **Federal Register**. (See Committee Report discussion under *Choice of Index Publication*, beginning on page 29.)

Paragraph (e) of proposed § 206.454 relates to determination of the final safety net median value. In summary, as is explained in substantial detail at pages 33 to 45 of the Committee Report, the lessee would be required to compare its alternative value determined under this section to the final safety net median value for each zone. If its alternative value is lower than the final safety net median value (which would be based on arm's-length gross proceeds valuation information reported to MMS on Form MMS–2014 and other sources), then the lessee would be required to pay additional royalty and, in some cases, late payment interest.

Paragraphs (e)(1) through (e)(3) of § 206.454 would explain in substantial detail what reported information and other data MMS would use to calculate the final safety net median value.

Paragraph (e)(4) of § 206.454 would explain that the final safety net median value for a zone would be calculated by arraying the prices per MMBtu derived from the collected data from highest to lowest (at the bottom). The final safety net median value would be that price at which 50 percent plus 1 MMBtu of the production (starting from the bottom) is sold. This value would apply for a calendar year.

The proposed rules would provide in paragraph (e)(7) of § 206.454 that a lessee could request a technical procedural review of the final safety net median value from the Associate Director for Royalty Management. The Associate Director's decision following that review would be a final Departmental decision not subject to further administrative review.

Paragraphs (e)(8) through (e)(10) of § 206.454 would explain how the lessee must determine whether it owes additional royalty based on the difference between the annual weighted average value of its production determined under this section and the final safety net median value for each zone. If its annual weighted-average value is lower than the final safety net median value, this proposed rule explains in detail what percentage of the difference the lessee must pay as additional royalty. That percentage depends upon what product is being valued (e.g. unprocessed gas, residue gas, or plant products) and which alternative valuation method is used. If the lessee's annual weighted average value is higher than the final safety net median value, it would owe no additional royalty and would not receive any credit or refund.

Under paragraph (e)(11) of § 206.454, for leases on certain OCS deepwater blocks that MMS specifies, the additional royalty calculations under paragraphs (e)(8), (e)(9), and (e)(10) would be made using adjusted transportation allowances because of the unusual distances involved. MMS also would use the final safety net median value for the closest zone where production flows or could flow.

Paragraph (e)(6) of § 206.454 would require that MMS publish the final safety net median value within 2 years after the end of the relevant calendar year. The Committee did not address the consequences of MMS not publishing the final safety net median value within two years. MMS requests comments on the appropriate consequences in this event. Options could include: (1) Using the initial safety net median value; or (2) having no additional royalties due; or (3) suspending interest until the final safety net median value is published.

Paragraph (e)(12) of § 206.454 would provide that MMS will endeavor to publish an *initial* safety net median value within 6 months following the end of the calendar year to give lessees an up-front approximation of the safety net median value. The lessee could then pay any additional royalty that may be due. If the lessee made an estimated payment following publication of the initial safety net median value and if the final safety net median value is lower than the initial safety net median value, then the lessee would receive a credit or refund of its overpayment.

This paragraph also would provide that the lessee could report any additional royalty payments using a one-line entry on Form MMS–2014 for each zone. If the lessee reports an estimated payment following the initial safety net median value, then following publication of the final safety net median value it must file an amended Form MMS–2014 adjusting any payments for each zone, if necessary. On this amended report, the lessee may recoup any overpayment by filing a credit adjustment. This *first* credit adjustment would not be subject to section 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339, for the same reasons that adjustment of an estimated transportation or processing allowance from estimated to actual is not subject to section 10. See 30 CFR 230.461(f). However, if the lessee makes a second adjustment to that line for any zone, it would be subject to all of section 10's provisions including the 2-year limit and the approval requirements.

Finally, under this section, late payment interest would not accrue on any additional royalty owed until the date MMS publishes the *initial* safety net value. Therefore, for example, for calendar 1997, if the initial safety net value is published June 30, 1998, and if the lessee makes an estimated payment July 31, 1998, it would owe only 1-month's interest. If it did not pay any additional royalty until the final safety net median value is published, or if its estimated payment were deficient, interest would run from June 30, 1998, until the deficient royalty payments were made. The issue of interest is explained on pages 42–43 of the Committee Report.

These proposed rules would require in paragraph (e)(5) of § 206.454 that the final safety net median value must be based on a representative sample of data

reflecting gross proceeds sales. Paragraph (f) of § 206.454 would explain how that representative sample would be determined. (See *Representative Sample* discussion beginning on page 44 of the Committee Report.)

Paragraph (g) of § 206.454 would provide that MMS would publish in the **Federal Register** the zones with an active spot market and published indices that are eligible for an index-based valuation method. MMS would consider such criteria as common markets served, common pipeline systems, simplification and easy identification, such as an offshore block or an onshore county. Under paragraph (h) of § 206.454, MMS would hold a technical conference if necessary and publish notice in the **Federal Register** that a zone is disqualified for the following calendar year. That notice would be published by September 1 of the preceding year.

Section 206.456 Transportation Allowances—General

If a lessee values gas at a point off the lease, this section would authorize a transportation allowance for the reasonable costs of transporting identifiable, measurable gas to that point. This section would also provide for an exception whereby MMS could approve an allowance for the transportation of bulk deepwater production upon request of the lessee. No allowance would be authorized for gathering costs. The basis for this proposal is contained in section II.E. of the Committee Report. The Committee Report used the term "location differential," but this proposed rule uses the term "transportation allowance" for the same purpose. The transportation allowance would be applicable to unprocessed gas, residue gas and gas plant products, and would be available both in situations where production is valued under §§ 206.452 and 206.453, as well as under the new alternative valuation methods in § 206.454.

If gas flows (or, for some alternative valuation methods, gas *could* flow) through more than one pipeline segment to the point where value is determined, the applicable transportation allowance would be based on the total allowance for each segment determined under § 206.457. Therefore, if the gas flows through a jurisdictional pipeline and then a non-jurisdictional pipeline before it gets to the point where value is determined, the allowance would be based on the total for both segments.

MMS would add a new provision in § 206.456(a)(2) providing that the lessee's costs of compression downstream of the facility measurement point (FMP), incurred either by the payment of such cost under a contract or by performance of the compression by the lessee, is allowable as a transportation cost. Also, under this new provision, costs of boosting or compressing residue gas after processing would be part of the lessee's transportation allowance for residue gas. This issue is addressed in section II.F. of the Committee Report.

The remaining provisions are the same as in existing § 206.156, including limitations on the allowances.

Section 206.457 Determination of Transportation Allowances

This section would be organized differently from existing § 206.157. In addition to determining whether the transportation cost is arm's-length or non-arm's-length, the lessee would have to differentiate in some cases between jurisdictional pipelines (defined in § 206.451 as a pipeline with a rate regulated by FERC or a state agency) and non-jurisdictional pipelines (not FERC or state-agency regulated). This distinction is based on the Committee's recommendations for classifying pipeline systems on pages 23–24 of the Committee Report.

Paragraph (a) of § 206.457 would explain that if the lessee uses gross proceeds to value its gas, then the transportation allowance would be determined under paragraphs (b) or (c) of § 206.457, depending upon whether the pipeline is jurisdictional or non-jurisdictional and whether or not the transportation arrangement is arm's-length. If the lessee elects an index-based method to value its gas, then, as provided in paragraph (d) of § 206.457, the transportation allowance would also be determined under paragraphs (b) or (c) of § 206.457, if the lessee actually transports some gas to the IPP used for value. If the lessee elects an index-based method but *does not* flow any gas to the IPP used for value, then the transportation allowance would be determined under paragraph (d)(5) of § 206.457.

Paragraph (b) of § 206.457 would apply if the lessee determines value under § 206.452 or 206.453, or under the provisions applicable to arm's-length sales of gas by the lessee's affiliate (§§ 206.454(a)(1)(ii)(B) and 206.454(a)(2)(ii)(B)). If the value is determined under those sections and if the lessee transports either unprocessed gas, residue gas, gas plant products, or drip condensate through a *jurisdictional* pipeline, the transportation allowance would be based on the reasonable, actual contract rate paid. (See Committee recommendation on page 23 of the Committee Report.) This would apply to both arm's-length and non-arm's-length situations. Similarly, if the lessee values under those sections and transports production though a *non-jurisdictional* pipeline under an *arm's-length contract*, the transportation allowance also would be based on the reasonable, actual contract rate paid. (See Committee recommendation on page 24 of the Committee Report.)

The remaining provisions of paragraph (b) are essentially the same as the arm's-length contract rate provisions in existing § 206.157.

Paragraph (c) of § 206.457 would apply in situations where value is determined under §§ 206.452 and 206.453 and transportation is through a *non-jurisdictional* pipeline under a *non-arm's-length contract* or no contract situations (see page 24 of the Committee Report). The transportation allowance provision that would apply would depend upon how much gas is transported through that pipeline under arm's-length transportation contracts.

If 30 percent or less of the gas in the pipeline flows under arm's-length transportation contracts, the allowance would be based on either:

(1) The lessee's reasonable actual costs determined under paragraph (c)(2) of § 206.457, which contains basically the same cost calculations as under the existing regulations; or

(2) A rate of $0.02/MMBtu for OCS leases or a *de minimis* rate for onshore leases not to exceed $0.09/MMBtu. MMS would periodically determine the onshore rate based upon available transportation cost data and publish it in the **Federal Register**. The rate would be applicable for 1 calendar year.

If more than 30 percent of the gas is transported under arm's-length contracts, the lessee could use either:

(1) Its reasonable actual costs for transportation; or

(2) A rate determined by arraying all of the arm's-length rates for the pipeline from highest at the top to the lowest at the bottom. The applicable rate would be the one closest to the 25th percentile from the bottom. An example is provided on page 26 of the Committee Report.

As noted above, the provisions of § 206.457(c)(2) used to determine reasonable actual costs are essentially the same as under existing § 206.157(b)(2). A new provision would be added to paragraph (c)(2)(iv)(A) of § 206.457 related to depreciation for purchased systems. This issue is discussed on pages 28 and 29 of the Committee Report.

Paragraph (d) of § 206.457 would apply to determine transportation

allowances each month for gas valued under the new *index-based* valuation methods in § 206.454(b). The transportation allowance would be determined by the type of connection to the well (*i.e.*, single connect, split connect or multiple connection) and the type of index valuation method used. This issue is discussed under section II.A. of the Committee Report under *Location Differential (LD)*.

Under § 206.457(d)(2), for a single connect, the transportation allowance for volumes actually transported to the IPP where value is determined would be determined under § 206.457 (b) or (c), as applicable. Thus, for example, if it is a jurisdictional pipeline or a non-jurisdictional pipeline with an arm's-length contract, § 206.457(b) would apply and the allowance would be based on the lessee's contract rate. By contrast, if it is a non-jurisdictional pipeline and the lessee has a non-arm's-length transportation contract, the allowance would be determined under § 206.457(c) based on the lessee's actual costs or one of the other alternatives in that paragraph. These proposals are listed on pages 23–24 of the Committee Report.

If the lessee's gas does not actually flow to the IPP, then the transportation allowance for that pipeline would be determined under § 206.457(d)(5) discussed below.

Paragraph (d)(3) of § 206.457 applies to situations where the lessee's gas production from a well with a split connect or multiple connection is valued using the weighted average index method under § 206.454(b)(2)(i). The lessee first would be required to determine the applicable transportation allowance, using either paragraph (b) or (c) of § 206.457, as applicable, for gas volumes actually transported to each IPP used in the calculation to value the lessee's gas from the well. Thus, if there are five IPP's used in the weighted average calculation, five allowances must be calculated. The lessee then must determine the volume weighted average transportation allowance per MMBtu for those five pipelines. That rate per MMBtu could then be deducted as the transportation allowance against the weighted average index value per MMBtu for all the lessee's production from the well. Page 25 of the Committee Report provides an example of calculating the weighted average transportation allowance.

Finally, paragraph (d)(4) of § 206.457 applies where the lessee's gas production from a well with a split connect or multiple connection is valued using the fixed index value method under § 206.454(b)(2)(ii) and where some of the lessee's gas actually flows to the IPP selected for value. In that situation, the transportation allowance for all the lessee's gas from the well would be determined based on the lessee's transportation allowance rate per MMBtu, determined under § 206.457 (b) or (c), as applicable, to transport gas to that IPP. Therefore, if IPP5 is the selected IPP for valuation purposes, and 20 percent of the lessee's gas from the well actually flows to that IPP, the transportation allowance rate per MMBtu for the pipeline to IPP5 also would be applied to the other 80 percent of the lessee's gas from the same well. If none of the lessee's gas actually flows to that IPP, then the lessee must use § 206.457(d)(5) to determine the allowance.

As noted above, there may be situations where gas does not actually flow to an IPP that is used to determine value. However, a transportation allowance rate must be determined for the pipeline or pipelines, to that IPP. Under § 206.457(d)(5), if it is a jurisdictional pipeline, the rate would be the maximum interruptible transportation (IT) rate for the pipeline that month (see page 23 of the Committee Report).

If the pipeline is a non-jurisdictional pipeline and the lessee is not affiliated with the owners of that pipeline, the rate would be based on either:

(1) A rate MMS would calculate for the lessee for a fee to cover MMS administrative costs; or

(2) A rate determined by the lessee based on such factors as rates paid under arm's-length contracts for that pipeline, the pipeline's published rates, and rates the lessee actually pays to the pipeline (see page 24 of the Committee Report).

If it is a non-jurisdictional pipeline and the lessee *is* affiliated with the owners of that pipeline, the applicable transportation allowance rate would be determined under the cost-based provisions of § 206.457(c) applicable to other non-arm's-length or no contract situations (see page 24 of the Committee Report).

Paragraph (e) of § 206.457 would require that the transportation allowance must be reported as a separate line item on the Form MMS–2014 unless MMS approves a different procedure (see page 23 of the Committee Report). However, all gas transportation allowance forms would be eliminated to make reporting simple. See section II.G. of the Committee Report for the Committee's recommendation on this issue.

The other paragraphs relating to interest assessments, adjustments, and actual or theoretical losses are essentially the same as under the existing rules. Certain changes would be made to account for the reduction in the reporting procedures.

Section 206.458 Processing Allowances—General

This section, which would allow a deduction for the reasonable actual costs of processing when value is determined under § 206.453, is the same as existing § 206.158. Therefore, the same limitations on allowances would apply as under the existing rules. No processing allowance would be applicable to gas plant products valued under § 206.454.

Section 206.459 Determination of Processing Allowances

This section would explain how the processing allowance is determined based on whether the lessee has an arm's-length or non-arm's-length (or no contract) processing agreement. This section is the same as existing § 206.159 with a few changes. Under § 206.459(b)(2)(iv)(A), which is part of the actual cost calculation for non-arm's-length or no contract processing situations, a new provision would be added regarding depreciation for newly acquired facilities. The issue regarding depreciation is discussed on page 24 of the Committee Report.

The most significant change would be in paragraph (c) of § 206.459. As with transportation allowances, the reporting requirements would be simplified by eliminating all processing allowance forms. The lessee only would be required to report the processing allowance as a separate line on the Form MMS–2014 unless MMS approves a different reporting procedure. (See section II.G. of the Committee Report.) Of course, all allowances are subject to audit, and the interest assessment and adjustment provisions in §§ 206.459 (d) and (e) would apply.

Part 211

In a separate rulemaking, MMS has proposed regulations regarding who is liable for royalty and other payments due on Federal and Indian leases (60 FR 30492, June 9, 1995). That rulemaking also explains who is required to report and pay royalties. MMS does not address in that other rulemaking the reporting requirements for mixed agreements and, instead, is proposing those rules in this rulemaking. Therefore, MMS is proposing here paragraph (c) of what would be a new § 211.18 regarding who is required to report and pay royalties.

The Committee was requested to consider payment and reporting for agreements which contain only Federal leases with the same royalty rate and funds distribution. The Committee concurred with an MMS draft proposal that payment should be made on a takes basis with an exception to seek approval for payment on an entitlements basis. (See pages 63–64 of Committee report.) Because this subject was beyond the Committee's charge, MMS included it in that separate rulemaking (60 FR 30492, June 9, 1995).

This new paragraph would explain royalty reporting requirements for leases in mixed agreements. The basic requirement is that an operating rights owner in a Federal lease in a mixed agreement must report and pay royalties each month based on its entitled share of production. This issue is described in section II.D. of the Committee Report.

However, in a provision parallel to what is proposed in this rulemaking for § 202.450(d), discussed above, an operating rights owner who meets the definition of small operating rights owner in § 206.451 could report and pay royalties each month based on its takes. Then, within 6 months after the end of the calendar year, it would have to adjust its reports and pay based on its entitled share if it is greater than the takes.

This proposed rule would allow a credit for overtaken volumes for the calendar year. MMS specifically requests comments on how this credit should be processed.

Under § 211.18(c)(2)(iii), if the volume of production the small operating rights owner reported and paid on for the calendar year is equal to or greater than its entitled share of production for the year, no interest would be assessed for any individual months where volumes were underreported. However, MMS would assess interest for any volumes reported on takes but where the value of those volumes is underpaid. For example, assume that the entitled share of production is 10 MMBtu of production each month. For the year, the small operating rights owner reported and paid on 120 MMBtu. However, in July, only 5 MMBtu with a value of $1.00 per MMBtu was reported. The correct value should have been $2.00 per MMBtu. No interest is owed for the underreported 5 MMBtu that month. However, for the 5 MMBtu that were reported, interest is owed on the $1.00 of underreported value.

If the total volume the small operating rights owner reported and paid on for the calendar year is less than its entitled share for that year, it would be required to pay interest on all underreported volumes and any associated underpaid royalties.

The rule would provide an exemption from the basic requirement that all operating rights owners must report pay based on entitlements if they agree among themselves to use an alternative method. The only condition is that royalties must be reported and paid on the full volume of production for the lease and the agreement.

Finally, under many of the proposals contained in this rulemaking, additional reporting on the Report of Sales and Royalty Remittance (Form MMS–2014) would be necessary to implement the proposals. For example, where a small operating rights owner pays on its takes, MMS would need to be alerted via the Form MMS–2014 that it may not receive royalties on the full share of production allocable to the lease during the calendar year. Lessees using index-based methods, as well as lessees using alternative methods to value the gas plant products, would need to notify MMS on the Form MMS–2014 in order for MMS to apply the safety net median value procedure. Also, lessees paying on gross proceeds in zones with an active spot market would need to alert MMS on the Form MMS–2014 whether or not those gross proceeds are based on arm's-length or non-arm's-length contracts. MMS requests input on how to best accommodate this supplementary reporting.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule will amend regulations governing the valuation for royalty purposes of natural gas produced from Federal leases. These changes would add several alternative valuation methods to the existing regulations.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This rule is significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

The Committee's many objectives for improving the process included simplicity, administrative cost savings, and revenue neutrality for both lessees and lessors.

A key component of the Committee's recommendations, the "safety net," assured MMS and the States that index-based values would not result in substantially lower revenues than those received under the current method of gross proceeds. The "safety net" allows MMS the ability to monitor the revenue impact of index-based valuation by comparing index values to the median value of all gross proceeds in the area.

The Committee was not able to demonstrate empirically the revenue neutrality of this proposed rule for a number of reasons. Although revenue neutrality could not be documented, the Committee anticipated that the use of published indices may ultimately reduce MMS' and industry's administrative costs related to royalty payments.

The benefits of the proposed rule to both MMS and its constituents are numerous. Benefits to independent producers include: (1) The ability to continue to pay royalties on gross proceeds received under dedicated arm's-length contracts and (2) an option to eliminate administrative costs associated with natural gas liquid royalty payments by paying on a wellhead value for non-dedicated arm's-length contracts.

Benefits to all producers include: (1) An option to value production from arm's-length non-dedicated contracts on published indices in areas with active spot markets; (2) elimination of the requirement to submit transportation and processing forms for Federal gas leases; (3) elimination of dual accounting for gas produced from Federal leases; and (4) greatly simplified definitions of gathering and compression.

MMS and State governments realize administrative cost savings through: (1) Reduction in audit, enforcement, and litigation costs associated with determining the proper value of federal gas sold in the FERC Order 636 environment; (2) reduction in retroactive adjustments made to royalty reports to account for sales adjustments made from gas pools and market

centers; and (3) elimination of resources necessary to collect and verify all forms related to transportation and processing allowances.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget. The proposed amendments to the gas valuation regulations would reduce reporting requirements by not requiring the following forms to be filed for gas production from Federal onshore and offshore mineral leases:

MMS–4109—Gas Processing Allowance Summary Report (OMB No. 1010–0075)

MMS–4295—Gas Transportation Allowance Report (OMB No. 1010–0075)

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Parts 202 and 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 211

Coal, Continental shelf, Geothermal energy, Indians-lands, Mineral resources, Mineral royalties, Natural gas, Oil, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 4, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, parts 202, 206, and 211 of title 30 of the Code of Federal Regulations are proposed to be amended as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart B—Oil, Gas, OCS Sulfur, General

2. Section 202.51 is amended by revising paragraph (b) to read as follows:

§ 202.51 Scope and definitions.

* * * * *

(b) The definitions in subparts C, D, I, and J of part 206 of this title are applicable to subparts B, C, D, I, and J of this part.

3. The heading of subpart D is revised to read "Indian Gas."

4. Section 202.150 is amended by adding a new sentence at the beginning of paragraph (a) as set forth below and by removing the words ", except helium produced from Federal leases," in the first sentence of paragraph (a); removing the words "a Federal or" from paragraph (b)(1), paragraph (e)(2), and paragraph (f), and substituting the word "an" in their place; removing the words "or if MMS determines that gas was unavoidably lost or wasted from an OCS lease," in paragraph (c); removing the words "Federal or" from the first and third sentences of paragraph (e)(1); and by removing the words "Federal and" from paragraph (f) introductory text.

§ 202.150 Royalty on gas.

(a) This subpart applies only to Indian leases. * * *

* * * * *

5. Section 202.151 is amended by removing the phrase "Federal and" in the second sentence of paragraph (a).

6. Section 202.152 is amended by removing the words ", except that for OCS leases in the Gulf of Mexico, gas volumes and BTU heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F," from the second sentence of paragraph (a)(1).

7. A new subpart J is added as follows:

Subpart J—Federal Gas

Sec.

202.450 Royalty on gas.
202.451 Royalty on processed gas.
202.452 Standards for reporting and paying royalties on gas.

Subpart J—Federal Gas

§ 202.450 Royalty on gas.

(a) *Royalty rate.* Royalties due on gas production from leases subject to the requirements of this subpart must be at the rate established by the terms of the lease. Royalty must be paid in value unless MMS requires payment in kind. When paid in value, the royalty due must be the value, for royalty purposes, determined under 30 CFR part 206 multiplied by the royalty rate in the lease.

(b) *Gas subject to royalty.* (1) All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by MMS or BLM, as appropriate) produced from a Federal lease to which this subpart applies is subject to royalty. However, except as provided in § 202.451(b), in no instances will any gas be approved for use royalty free downstream of the facility measurement point approved for the gas.

(2) When gas is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of MMS or BLM, as appropriate, or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty free.

(3) Where the terms of any lease are inconsistent with this subpart, the lease terms will govern to the extent of that inconsistency.

(c) *Avoidably lost and wasted gas and compensatory royalty.* (1) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that gas was avoidably lost or wasted from an OCS lease, then the value of that gas must be determined in accordance with 30 CFR part 206.

(2) If a lessee receives insurance compensation for unavoidably lost gas, royalties are due on the amount of that compensation. This paragraph does not apply to compensation through self-insurance.

(d) *Agreements.* (1) Royalties are due on production allocated to Federal leases under the terms of an agreement in accordance with the following requirements:

(i) Royalty rate—Royalties are due based on the royalty rate specified in the lease (or as modified by the agreement).

(ii) Volume—Royalties are due each month on the full share of production allocated to the lease under the terms of the agreement. For each operating rights owner (working interest owner) in the lease, royalties are due on its entitled share of production allocable to the lease; *provided that,* for production allocable to a small operating rights owner (defined in § 206.451) of a lease committed to a mixed agreement (also defined in § 206.451), royalties may be reported and paid on a monthly basis on takes volumes, even if the total volume reported and paid for that lease for the month is less than the total volume of production allocable to the lease under the agreement; *provided further,* for each calendar year in which royalties are paid by or on behalf of a small operating rights owner based on its takes volumes, within 6 months after the end of that calendar year the operating rights owner must compare its total entitled volumes of production for the calendar year to its total takes volume for that calendar year and pay additional royalties on any portion of its annual entitled volumes not taken during the calendar year based on the value determined under paragraph (d)(1)(iii)(D) of this section. If the small operating rights owner has taken more than its entitled share of production for the calendar year and has paid royalty on that taken volume, the small operating rights owner will be entitled to a credit for the over-taken volumes.

(iii) Value—The value of production that an operating rights owner in a Federal lease takes must be determined under 30 CFR part 206. However, if an operating rights owner in a Federal lease in a mixed agreement takes more than its entitled share of production for any month, the value of its entitled share must be the weighted-average value of the production, determined under 30 CFR part 206, that the operating rights owner takes during that month based on the acceptable method.

(iv) Value for mixed agreements—untaken volumes—For mixed agreements, the value of production that an operating rights owner in a Federal lease is entitled to but does not take for any month must be determined as follows:

(A) Where the operating rights owner takes a portion of its entitled share of production from a lease, value for the untaken volumes must be based on the weighted average of the value of the production taken by that owner for that month from the same lease in the agreement as determined under 30 CFR part 206.

(B) If the operating rights owner takes none of its entitled share and that production would have been valued using an index-based method under § 206.454 had it been taken, then the value of production not taken for that month must be determined under § 206.454(b) as if it had been taken. If the operating rights owner uses a weighted-average index value under § 206.454(b)(2)(i), the most recent prior month's confirmed nominations must be used in calculating the weighted-average index value.

(C) If the operating rights owner takes none of its entitled share of production from a lease and that production cannot be valued under paragraph (B) above, then the value of production not taken for that month must be determined based on the first applicable of the following methods:

(*1*) The weighted average of the operating rights owner's gross proceeds under arm's-length contracts during the previous three months for production from or attributable to the same lease in the agreement;

(*2*) The weighted average of the operating rights owner's gross proceeds under arm's-length contracts during the previous three months for production from or attributable to other leases in the agreement;

(*3*) The weighted average of the operating rights owner's gross proceeds under arm's-length contracts for that month in the field or area.

(*4*) An index-based value for that month determined under § 206.454 if the lease is in a zone with an active spot market and acceptable published indices and the gas production flows or could flow to an IPP.

(*5*) A value determined for that month under §§ 206.452(c) or 206.453(c), as applicable.

(D) For a small operating rights owner of a Federal lease who elects to pay royalties on takes under paragraph (d)(1)(ii) of this section, the value of any portion of its entitled share not taken during the calendar year must be based on the first applicable of the following methods:

(*1*) The weighted-average value of the production the operating rights owner takes from the same lease in the agreement during the calendar year;

(*2*) The weighted-average value of the production the operating rights owner takes from other leases in the agreement during the calendar year;

(*3*) A value determined under §§ 206.452(c) or 206.453(c), as applicable.

(v) Reporting and payment—Royalties must be reported and paid as provided in part 211 of this title.

(2) If a lessee takes less than its entitled share of agreement production for any month, but royalties are paid on the full volume of its entitled share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods at the time the lessee subsequently takes more than its entitled share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(3) If a Federal lessee takes less than its entitled share of agreement production, upon request of the lessee MMS may authorize a royalty valuation method different from that required by paragraph (d)(1) of this section, but consistent with the purpose of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(e) *Exception for all agreement production.* For production from Federal leases which are committed to agreements, upon request of a lessee MMS may establish the value of production under a method other than the method required by the regulations in this title if: (1) the proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms and agreement terms; (2) to the extent practical, persons with an interest in the agreement, including royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

§ 202.451 Royalty on processed gas.

(a) A royalty, as provided in the lease, must be paid on the value of: (1) any drip condensate; and (2) residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this part. MMS will authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal leases. Processing allowances must be determined in accordance with Subpart J of 30 CFR Part 206.

(b) A reasonable amount of residue gas will be allowed royalty free for operation of the processing plant, but no allowance will be made for expenses incidental to marketing, except as provided in 30 CFR part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of each lease's residue gas necessary for the operation of the processing plant will be allowed royalty free.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

§ 202.452 Standards for reporting and paying royalties on gas.

(a)(1) Gas volumes and Btu heating values, if applicable, must be determined under the same degree of water saturation. Gas volumes must be reported in units of one thousand cubic feet (Mcf), and Btu heating value must be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 psia and a standard temperature base of 60°F, except that for OCS leases in the Gulf of Mexico, gas volumes and Btu heating values must be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60°F. Gas volumes and Btu heating values must be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed in the lessee's gas sales contract.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract must be used to determine Btu heating values for reporting purposes. However, the lessee must measure the Btu value at least semiannually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b)(1) Residue gas and gas plant product volumes must be reported as specified in this paragraph.

(2) Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any other gas marketed as a separate product must be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL's) must be reported in standard U.S. gallons (231 cubic inches) at 60°F, except for zones with an active spot market and valid published indices. In those zones, NGL's must be reported based on its heating value in accordance with the MMS Oil and Gas Payor Handbook.

(4) Sulfur (S) volumes must be reported in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

8. The authority citation for part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*.

Subpart D [Revised]

9. The heading of subpart D is revised to read "Indian Gas."

§ 206.150 [Amended]

10. Section 206.150 is amended by removing the words "Federal and" from paragraph (a); removing paragraph (e)(1); redesignating paragraph (e)(2) as paragraph (e)(1); redesignating paragraph (e)(3) as paragraph (e)(2); and by removing paragraph (e)(4).

11. Section 206.151 is amended by removing the words "Federal and" from the definition of *Audit*; removing the third sentence from the definition of *Field*; removing the words "Federal or" from the fourth sentence of the definition of *Gross proceeds*; removing the words "Outer Continental Shelf or onshore Federal or" from the definition of *Lease products;* removing the words "Federal and" from the definition of *Net profit share*; removing the definitions of *Outer Continental Shelf (OCS)* and *Section 6 lease*; and by adding two new sentences at the end of the definition of *Lease* as set forth below.

§ 206.151 Definitions.

* * * * *

Lease * * * For purposes of this subpart, this definition excludes Federal leases. However, where the term *lease* is used in reference to an agreement, this term may refer to non-Indian leases (e.g., Federal leases, State leases, or fee leases) where the context requires.

§ 206.152 [Amended]

12. Section 206.152 is amended by removing the words "Federal or" from paragraph (e)(2).

§ 206.153 [Amended]

13. Section 206.153 is amended by removing the words "Federal or" from paragraph (e)(2).

§ 206.154 [Amended]

14. Section 206.154 is amended by removing the words "or MMS for onshore and OCS leases, respectively" from paragraph (a)(1); and by removing the words "Federal and" from the second sentence of paragraph (c)(4).

§ 206.157 [Amended]

15. Section 206.157 is amended by removing the words "(for both Federal and Indian leases)" and "or a State regulatory agency (for Federal leases)" from the second sentence in paragraph (b)(5); removing the words "For lessees transporting production from onshore Federal and Indian leases," from paragraph (e)(2); and by removing paragraph (e)(3).

§ 206.159 [Amended]

16. Section 206.159 is amended by removing the words "For lessees processing production from onshore Federal and Indian leases," from paragraph (e)(2); and by removing paragraph (e)(3).

17. A new Subpart J is added as follows:

Subpart J—Federal Gas

Sec.
206.450 Purpose and scope.
206.451 Definitions.
206.452 Valuation standards—unprocessed gas.
206.453 Valuation standards—processed gas.
206.454 Alternative valuation standards for unprocessed gas and processed gas.
206.455 Determination of quantities and qualities for computing royalties.
206.456 Transportation allowances—general.
206.457 Determination of transportation allowances.
206.458 Processing allowances—general.
206.459 Determination of processing allowances.

Subpart J—Federal Gas

§ 206.450 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal oil and gas leases. The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms. This subpart does not apply to Indian leases.

(b) If the specific provisions of any statute, settlement agreement resulting from any administrative or judicial proceeding, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the lease, statute, or settlement agreement will govern to the extent of that inconsistency.

(c) All royalty payments made to MMS are subject to audit and adjustment.

§ 206.451 Definitions.

For purposes of this subpart:

Active spot market means a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first of the month prices) for at least one index pricing point in the zone.

Agreement means a federally-approved unit or communitization agreement.

Allowance means a deduction in determining value for royalty purposes. *Processing allowance* means an allowance for the reasonable costs for processing gas determined under this subpart. *Transportation allowance* means an allowance for the cost of moving royalty bearing substances (identifiable, measurable oil and gas, including gas that is not in need of initial separation) from the point at which it is first identifiable and measurable to the sales point or other point where value is established under this subpart.

Area means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract.

(1) For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 10 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

(2) Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Compression means raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Dedicated means a contractual commitment to deliver gas production (or a specified portion of production) from a lease or well when that production is specified in a sales contract *and* that production must be sold pursuant to that contract to the extent that production occurs from that lease or well.

Drip condensate means any condensate recovered downstream of the facility measurement point without resorting to processing. Drip condensate includes condensate recovered as a result of its becoming a liquid during the transportation of the gas removed from the lease or recovered at the inlet of a gas processing plant by mechanical means, often referred to as scrubber condensate.

Entitlement (or entitled share) means, for leases in an agreement, the gas production allocable to lease acreage under the agreement terms, multiplied by the operating rights owner's percentage of interest ownership in that acreage.

Facility measurement point (or point of royalty settlement) means the point at which the measurement device is located that was approved by MMS or BLM for determining the volume of gas removed from the lease.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

Gathering means the movement of an unseparated, bulk production stream to a point, on or off the lease, where the production stream undergoes initial separation into identifiable oil, gas, or free water.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Index means the calculated composite price ($/MMBtu) of spot market sales published by a publication that meets MMS-established criteria for acceptability at the index pricing point.

Index pricing point (IPP) means the first point on any pipeline connected to a well which is a single connect or split connect for which there is an index. For a multiple connection, it means the first point on each pipeline segment after the pipeline connected to the well splits for which there is an index.

Jurisdictional pipeline means a pipeline with a rate regulated and approved by the Federal Energy Regulatory Commission (FERC) or a state agency.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context. For purposes of this subpart, this definition excludes Indian leases. However, where the term "lease" is used in reference to an agreement, the term may refer to non-Federal leases (e.g. Indian leases, State leases, or fee leases) where the context requires.

Lease products means any leased minerals attributable to, originating from, or allocated to a lease.

Lessee means any person to whom the United States issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

Marketing affiliate means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

Minimum royalty means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

Mixed agreement means an agreement that includes leases other than only Federal leases with the same royalty rate and fund distribution.

Multiple connection means a situation where one pipeline is connected to the well, platform, central delivery point, or plant, but that pipeline splits prior to an IPP or IPP's.

Natural gas liquids (NGL's) means those gas plant products consisting of a mixture of ethane, propane, butane, and/or heavier liquid hydrocarbons.

Net-back method (or work-back method) means a method for calculating market value of gas at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, or from the value of the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

Net output means the quantity of residue gas and each gas plant product that a processing plant produces.

Net profit share means the specified share of the net profit from production of oil and gas as provided in the agreement.

Non-jurisdictional pipeline means a pipeline with no rates regulated or approved by Federal Energy Regulatory Commission (FERC) or a state agency.

Operating rights owner (working interest owner) means a person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title. (See BLM regulations at 43 CFR 3100.0–5(d) and MMS regulations at 30 CFR 256.62).

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. § 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Percentage-of-proceeds contract means a contract for the sale of gas prior to processing which provides for the consideration to be determined based upon a percentage of the purchaser's proceeds resulting from processing and selling the gas and the gas plant products.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Posted price means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Section 6 lease means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

Single connect means a situation where only one pipeline is connected to the well, platform, central delivery point, or plant, and that pipeline does not split prior to an IPP.

Small operating rights owner is a person who produces less than 6,000 Mcf/day total U.S. gas production at 14.73 pounds per square inch absolute (psia) at 60 °F *and* less than 1,000 bbls/day total U.S. oil production at 60 °F.

Split connect means a situation where more than one pipeline connects to the well, platform, central delivery point, or plant prior to or at the IPP or IPP's.

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

Takes means when the operating rights owner sells or removes production from, or allocated to, the lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Zone means a geographic area containing blocks or fields as defined by MMS.

§ 206.452 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of gas that is not processed and gas that is processed but is sold or otherwise disposed of by the lessee under an arm's-length contract prior to processing (including gas sold under an arm's-length percentage-of-proceeds contract). Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 206.453 of this subpart will apply instead of this section.

(2) The value of production, for royalty purposes, is the value of gas determined under this section less applicable allowances determined under this subpart.

(3) For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate must be valued depending on how the marketing affiliate resells the gas.

(b)(1)(i) The value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (iii) of this section, and except as provided in § 206.454 of this subpart to the extent that section applies to gas sold under an arm's-length contract that is not dedicated. The lessee will have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. Also, for arm's-length percentage-of-proceeds contracts, the value of production, for royalty purposes, must never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

(ii) In conducting reviews and audits for gas valued based upon gross proceeds under this paragraph, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas. If the contract does not reflect the total consideration, then MMS may require that the gas sold under that contract be valued in accordance with paragraphs (c) (2) or (3) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If MMS determines for gas valued under this paragraph that the gross proceeds accruing to the lessee under an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS will require that the gas production be valued under paragraphs (c) (2) or (3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.

(c) If gas is not sold under an arm's-length contract, the lessee must first determine whether the gas is subject to valuation under § 206.454. If that section is applicable, the lessee must use it to value the production. For gas not subject to valuation under that section and for other gas that must be valued under this paragraph, the value of gas must be the first applicable of the following:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of the gas; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Where the value is determined under paragraph (c) of this section, the lessee must retain all data relevant to the determination of royalty value. Such data will be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized MMS or state representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e) If MMS determines that a lessee has not properly determined value, the lessee must pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee must also pay interest on that difference computed under 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee must propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee must submit all available data relevant to its proposal. MMS will expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination MMS may use any of the valuation criteria authorized by this subpart. That determination will remain effective for the period stated therein. After MMS issues its determination, the lessee must make the adjustments in accordance with paragraph (e) of this section.

(g) For gas valued under this section (but not for any gas valued using an index-based method under § 206.454), under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined under this subpart.

(h) The lessee is required to place gas in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement. Where the value established under this section is determined by a lessee's gross proceeds, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(i) For gas valued under this section (but not for any gas valued using an index-based method under § 206.454), value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph may not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a

redetermination by MMS of value under this section will be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

§ 206.453 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of gas that is processed by the lessee (including gas where the lessee has an agreement with a gas processing plant that provides for the retention of the gas plant products by the plant owner and for the payment, in kind or in value, to the lessee for the plant thermal reduction). This section also applies to any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.452 of this subpart, including situations where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right.

(2) The value of production, for royalty purposes, is the combined value of the residue gas and all gas plant products determined under this section, plus the value of any drip condensate determined under this part, less applicable transportation allowances and processing allowances determined under this part. No processing allowance is applicable to any gas plant products valued under § 206.454.

(3) For purposes of this section, residue gas or any gas plant product which is sold or otherwise transferred to the lessee's marketing affiliate must be valued depending on how the marketing affiliate resells the gas.

(b)(1)(i) The value of residue gas or any gas plant product sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1) (ii) and (iii) of this section, and except as provided in § 206.454 of this subpart to the extent that section applies. The lessee will have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting these reviews and audits for gas valued based upon gross proceeds under this paragraph, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product. If the contract does not reflect the total consideration, then MMS may require that the residue gas or gas plant product sold under that contract be valued in accordance with paragraph (c) (2) or (3) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If MMS determines for gas valued under this paragraph that the gross proceeds accruing to the lessee under an arm's-length contract do not reflect the reasonable value of the residue gas or gas plant product because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS will require that the residue gas or gas plant product be valued under paragraph (c) (2) or (3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.

(c) If residue gas or any gas plant product is not sold under an arm's-length contract, the lessee must first determine whether the residue gas or gas plant product is subject to valuation under § 206.454. For residue gas subject to valuation under § 206.454, the lessee must use that section to value the residue gas. For residue gas or any gas plant product not subject to valuation under that section and for other residue gas and gas plant products that must be valued under this paragraph, the value must be the first applicable of the following:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like quality residue gas or gas plant products from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant products;

(2) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such residue gas or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Where the value is determined under paragraph (c) of this section, the lessee must retain all data relevant to the determination of royalty value. Such data will be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized MMS or state representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(e) If MMS determines that a lessee has not properly determined value, the lessee must pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee must also pay interest computed on that difference under 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee must propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee must submit all available data relevant to its proposal. MMS will expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination will remain effective for the period stated therein. After MMS issues its determination, the lessee must make the adjustments in accordance with paragraph (g) of this section.

(g) For residue gas and gas plant products valued under this section (but not for residue gas or gas plant products valued under §§ 206.454(a)(2)(i), (ii)(A), (iii) or (iv)), under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined under this subpart.

(h) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement. Where the value established under this section is determined by a lessee's gross proceeds, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(i) For residue gas and gas plant products valued under this section (but not for any residue gas or gas plant product valued using an index-based method under § 206.454), value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph may not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section will be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

§ 206.454 Alternative valuation standards for unprocessed gas and processed gas.

(a) *Applicability.* This section provides an alternative method to value for royalty purposes unprocessed gas and processed gas produced from Federal leases. However, it does not apply to unprocessed gas or residue gas sold under a dedicated arm's-length contract. It also does not establish value for carbon dioxide, nitrogen, or other non-Btu components of the gas stream. This section applies only to gas production from leases that are in zones with an active spot market and published indices acceptable to MMS under paragraph (d) of this section and to deepwater OCS leases whether or not in a zone. If the production does not qualify for valuation under this section, then the lessee must value its production under §§ 206.452 or 206.453, as applicable.

(1)(i) For unprocessed gas subject to this section that is sold under an arm's-length contract that is not dedicated, the lessee may elect to value the gas using an index-based method under this section. If the lessee does not elect to use this section, then the requirements of § 206.452(b)(1) apply.

(ii) For unprocessed gas subject to this section not sold under an arm's-length contract, the lessee must value the gas using either:

(A) an index-based method under this section; or

(B) the gross proceeds (determined under § 206.452) accruing to the lessee's affiliated purchaser, but only if the affiliated purchaser is not a marketing affiliate and it sells the gas under an arm's-length contract.

(2)(i) For residue gas subject to this section that is sold under an arm's-length contract that is not dedicated, the lessee may elect to value the gas using an index-based method under this section. If the lessee does not elect to use this section, then the requirements under § 206.453(b)(1) apply.

(ii) For residue gas subject to this section that is not sold under an arm's-length contract, the lessee must value the gas under this section using either:

(A) an index-based value under this section; or

(B) the gross proceeds (determined under § 206.453) accruing to the lessee's affiliated purchaser, but only if the affiliated purchaser is not a marketing affiliate and it sells the residue gas under an arm's-length contract.

(iii) If the lessee values residue gas under paragraph (a)(2) of this section using an index-based method, then the lessee may elect to value the NGL's, elemental sulfur, and drip condensate associated with that residue gas using the same index-based value per MMBtu used to value the associated residue gas, including any transportation allowance under § 206.457 applicable to the residue gas. If the lessee does not elect to use the index-based method, the provisions of §§ 206.453(b) or (c), as applicable, apply to value those products.

(iv) If the lessee values the residue gas under an arm's-length contract that is not dedicated using § 206.453(b), or if it values the residue gas using its affiliated purchaser's arm's-length gross proceeds under paragraph (a)(2)(ii)(B) of this section, then the lessee may elect to value the NGL's, elemental sulfur, and drip condensate associated with that residue gas using the same price per MMBtu used to value the associated residue gas, including any transportation allowance under § 206.457 applicable to the residue gas. If the lessee does not elect to use this alternative value, the provisions of §§ 206.453(b) or (c), as applicable, apply.

(3) A lessee may use the alternative valuation methods provided under paragraphs (a)(1) and (a)(2) of this section only if:

(i) There is an active spot market for the gas to be valued; and

(ii) The gas flows or could flow through at least one pipeline with at least one published index price in the zone; and

(iii) For all leases in a zone or each OCS deepwater lease:

(A) all unprocessed gas and residue gas subject to this section that is sold under an arm's-length contract that is not dedicated is valued using the same valuation method under this section; and

(B) all unprocessed gas and residue gas subject to this section that is not sold under an arm's-length contract is valued using the same valuation method under this section where the lessee has an election; and

(C) all NGL's, elemental sulfur, and drip condensate associated with residue gas valued under paragraph (a)(2) of this section using an index-based method is valued using the same valuation method; and

(D) all NGL's, elemental sulfur, and drip condensate associated with residue gas valued under paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section using a gross proceeds based method is valued using the same valuation method; and

(iv) The lessee uses the valuation method elected for at least 2 calendar years.

(v) Any alternative value election under paragraphs (a)(1) and (a)(2) of this section is subject to adjustment as provided in paragraph (e) of this section.

(4) If the lessee does not satisfy all the criteria under paragraph (a)(3) of this section, the value of the unprocessed gas or processed gas must be determined under §§ 206.452 or 206.453 of this subpart, as applicable.

(5) Any production in the zone that the lessee adds during the two year election period must be valued for the remainder of the period using the same method as for the lessee's other production in the zone sold under similar circumstances.

(6) If the lessee receives or received any revenue in connection with the reformation or termination of any gas purchase contract that occurred prior to effective date of this rule associated with production from a Federal lease, those revenues may be subject to royalty in accordance with the Department's existing precedents at the time a part of such revenue is attributed to later production. If so, royalty will be due on the increment of revenue attributed to future production in addition to any index-based or other value established under this section.

(b) *Index-based valuation.* The value of gas from a well on a lease for any month determined by using an index-based method under this section is the index value. Calculation of the index value depends upon whether the gas flows or could flow through a single connect, a split connect; or multiple connection as follows:

(1) For a single connect, the index value is the index price for the first IPP. The index value must be used for that month to value the gas production from the well.

(2) For a split connect or a multiple connection, the lessee must elect one of the two following options to determine the index value. The index value so determined must be used for that month to value the gas production from the well.

(i) *Weighted-Average Index Value.* The weighted-average index value for the month is calculated by:

(A)(*1*) multiplying the volume of the lessee's gas actually flowing from a well to each IPP by the applicable index price for that IPP determined using the publication selected under paragraph (d) of this section;

(*2*) adding the numbers for each IPP determined under paragraph (b)(2)(i)(A)(*1*) of this section; and

(*3*) dividing that sum by the total volume of the lessee's gas actually flowing to all IPP's. The resulting quotient is the index value for gas production from the well for that month.

(B) For purposes of paragraph (b)(2)(i) of this section, the amount of gas actually flowing to each IPP is determined by using the nominations confirmed at the first of the month or the total nominations confirmed during the month, applied consistently for the two-year election period. If the actual flow of the gas during the month is different from the flow determined by the confirmed nominations used to calculate the value under this paragraph, the weighted average index value will not be recalculated using the actual flow volume.

(ii) *Fixed Index Value.* (A) The fixed index value for the month is determined as follows: for each of the IPP's through which gas from a well flows or could flow, determine the average of the applicable monthly index prices for the previous calendar year published in the publication selected for each of those IPP's under paragraph (d) of this section. List the average price determined for each IPP from highest at the top to lowest at the bottom. If there are only two IPP's, select the IPP associated with the first average index price starting from the top of the list. The selected IPP will be used for the entire calendar year. The index price for the current month in the current year's publication selected for that IPP is the index value for all gas production from the well for that month. If there are three or more IPP's, select the IPP associated with the second average index price starting from the top of the list. The selected IPP will be used for the entire calendar year. The index price for the current month in the current year's publication selected for that IPP is the index value for all gas production from the well for that month.

(B) The result of the calculation in preceding paragraph (A) may be that the selected average index price (either the highest average index price if there are only two IPP's, or the second highest if there are more than two IPP's) is identical to another index price in the array. In that event, the lessee must recalculate the average of the applicable monthly index prices for the previous calendar year for each IPP to eight decimal points and redetermine the selected average index price and the corresponding publication in accordance with preceding paragraph (b)(2)(ii)(A) of this section. If the selected average index price still is identical to another average index price, the lessee may choose either one.

(C) The transportation allowance provided under § 206.457 may not be included in the calculation under either preceding paragraphs (b)(2)(ii) (A) or (B) of this section.

(iii) *Election.* To determine the index value for a split connect or multiple connection situation, the lessee must elect to use the weighted-average index value or the fixed index value for the same two year period as elected under paragraph (a)(3)(iv) of this section. The elected method must be applied to all of the lessee's gas subject to valuation under this section produced from wells that are connected for the same split connect or multiple connection. Therefore, for example, within the same zone, the lessee may elect the weighted-average index value for production from wells connected to one multiple connection, and the fixed index value for production from wells connected to a different multiple connection. The election to use either the weighted-average index value or the fixed index value must be made at the same time the lessee elects to use an index-based method under paragraph (a) of this section.

(c) *Transportation allowance.* As provided under § 206.456, a transportation allowance may be deducted from the index-based value determined under this section for the costs that are, or would be, incurred to transport the gas to the IPP(s).

(d) *Acceptable publications.* At the beginning of each calendar year for which the lessee elects to use an index-based method to value production from a well under paragraph (a) of this section, the lessee must select a publication that meets MMS-established criteria for acceptability for each applicable IPP to determine the associated index price. If more than one publication publishes an index price at an applicable IPP, the lessee must select one of the acceptable publications to use during that calendar year.

(1) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including, but not limited to:

(i) Publications frequently used by buyers and sellers,

(ii) Publications frequently referenced in purchase or sales contracts,

(iii) Publications which use adequate survey techniques, including the gathering of information from a substantial number of sales, and

(iv) Publications independent from lessees and MMS.

(2) Any publication may petition MMS to be added to the list of acceptable publications provided the publication meets the criteria under paragraph (d)(1) of this section.

(3) MMS will reference which tables in the publications must be used for determining IPP's and associated index prices.

(4) MMS will publish the IPP's that it considers common among acceptable publications.

(5) For single connects:

(i) If an acceptable publication publishes a new IPP that qualifies as the first IPP, the lessee must use that IPP beginning with the first day of the month the new IPP is published;

(ii) If the lessee's selected publication eliminates the IPP the lessee is using, the lessee must select another publication for that IPP beginning with the first day of the month the IPP is eliminated;

(iii) If the IPP the lessee is using is eliminated from all acceptable publications, the lessee must determine a new IPP at the first pipeline interconnect to which the gas flows or could flow beginning with the first day of the month the original IPP is eliminated.

(6) For a split connect or a multiple connection where the lessee elects to use the weighted-average index value:

(i) If an acceptable publication adds a new IPP to which the lessee's gas flows, the lessee must begin using the new IPP beginning with the first day of the month the new IPP is added;

(ii) If any of the lessee's selected publications eliminates an IPP to which the lessee's gas flows, the lessee must select another acceptable publication for that IPP beginning with the first day of the month the IPP is eliminated;

(iii) If an IPP to which the lessee's gas flows is eliminated from all acceptable publications, the lessee may not use that volume in the weighted-average index value calculation beginning with the first day of the month the IPP is eliminated, unless another IPP is downstream of the original IPP.

(7) For a split connect or a multiple connection where the lessee elects to use the fixed index value:

(i) If an acceptable publication adds a new IPP, that IPP must not be used in determining the fixed index value until the following calendar year;

(ii) If the lessee's selected publication eliminates an IPP the lessee was using, the lessee must select another acceptable publication for that IPP beginning with the first day of the month the IPP is eliminated.

(iii) If the IPP the lessee was using is eliminated from all acceptable publications, the lessee must exclude that IPP and determine a new IPP under paragraph (b)(2)(ii) of this section beginning with the first day of the month the original IPP is eliminated.

(e) *Additional royalty obligations.* Under paragraphs (e)(8), (e)(9), and (e)(10) of this section, the weighted average of the alternative values determined under this section by the lessee in a zone for the calendar year, less applicable transportation allowances, must be compared to the final safety net median value calculated for the zone under this paragraph. If the lessee's weighted-average value is less than the final safety net median value, the lessee must pay additional royalties under paragraphs (e)(8), (e)(9), or (e)(10) of this section, as applicable. If the lessee's weighted-average value for the zones less applicable transportation allowances under § 206.457 equals or exceeds the final safety net median value, royalty will be based on the lessee's weighted-average value for the zone.

(1) MMS will use, to the extent possible, the following information reported on Form MMS–2014 for leases in a zone for the calendar year to calculate the final safety net median value. The lines of information from the Form MMS–2014 described in the following paragraphs (e)(1)(i)–(iv) of this section are the final reported transactions existing at the time the final safety net median value is calculated 2 years following the end of the calendar year:

(i) Lines reporting royalty due (Transaction Code 01 or 06) for unprocessed gas (Product Code 04) and residue gas (Product Code 03) where the sales value represents values based on gross proceeds under the following sales transactions:

(A) Arm's-length dedicated sales;

(B) Arm's-length non-dedicated sales, but only if the associated gas plant products are valued under § 206.453;

(C) Arm's-length resales by the lessee's affiliated purchaser, but only if the associated gas plant products are valued under § 206.453;

(D) Federal royalty-in-kind gas sales for the applicable zone.

(ii) Lines reporting royalty due (Transaction Code 01) for drip condensate (Product Code 05), natural gas liquids (Product Code 07), and elemental sulfur (Product Code 19) associated with the residue gas reported on the lines in paragraph (e)(1)(i) of this section.

(iii) Lines reporting transportation allowances (Transaction Code 11) associated with any product reported on the lines in paragraphs (e)(1)(i) and (ii) of this section.

(iv) Lines reporting processing allowances (Transaction Code 15) associated with NGL's and sulfur reported on the lines in paragraph (e)(1)(ii) of this section.

(2) MMS will also use the following information related to the calendar year's production to calculate the final safety net median value:

(i) Unappealed orders for additional royalties;

(ii) Unappealed MMS Director's decisions involving orders for additional royalties;

(iii) Refunds from requests under Section 10 of the OCS Lands Act of 1953, 43 U.S.C. § 1339; and

(iv) Amounts from MMS Director's decisions pending in administrative or judicial actions.

(v) If any monetary amounts under paragraphs (e)(1)(i)–(iv) of this section are not reported on a Form MMS–2014, MMS will convert the amounts to an appropriate rate per MMBtu for use under paragraph (e)(1) of this section.

(3) The final safety net median value will not include:

(i) Lines reporting royalties paid on pipeline buyout or buydown settlement amounts (Transaction Code 31);

(ii) Unpaid issue letters (preliminary determination letters); or

(iii) Appealed orders not yet decided by the MMS Director.

(4) The final safety net median value for a zone is calculated by arraying the

prices per MMBtu derived from the information under paragraphs (e)(1) and (2) of this section from highest to lowest (at the bottom). The final safety net median value is that price at which 50 percent plus 1 MMBtu of the production (starting from the bottom) is sold.

(5) The final safety net median value must be based on a representative sample as provided in paragraph (f) of this section.

(6) MMS will publish in the **Federal Register** the final safety net median value within two years following the end of the calendar year.

(7) A lessee may request a technical procedural review from the Associate Director for Royalty Management of the final safety net median value after it is published. All affected parties will be given an opportunity to participate in the review process. Following the technical procedural review, the Associate Director may modify the final safety net median value. The Associate Director's decision following the technical procedural review will be completed in an expeditious manner and will be a final Departmental decision not subject to further administrative review.

(8) This paragraph applies to a lessee's unprocessed gas and residue gas produced from leases in a zone which is valued using an index-based method under this section, but only for that residue gas where the associated gas plant products are valued under § 206.453 and not under this section. The lessee must determine the weighted-average index-based value for unprocessed gas and residue gas in the zone by summing the index-based values determined under this section, less applicable transportation allowances under § 206.457, and dividing that sum by the total quantity of MMBtu's of unprocessed gas and residue gas in the zone. If that weighted-average index-based value is less than the final safety net median value for the zone, the lessee must pay additional royalties, plus interest, as follows:

(i) For the first calendar year this section is in effect, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Determine the lesser of the final safety net median value or 105 percent of the lessee's weighted-average index-based value determined in preceding paragraph (e)(8);

(B) Subtract the weighted-average index-based value from the lesser value under preceding paragraph (e)(8)(i)(A) of this section;

(C) Multiply the difference by the lessee's royalty quantity for all unprocessed gas and residue gas in the zone subject to this paragraph, converted to MMBtu's.

(ii) For subsequent calendar years, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Subtract the lessee's weighted-average index-based value determined under preceding paragraph (e)(8) from the final safety net median value;

(B) Multiply the difference by 50 percent;

(C) Multiply the result by the lessee's royalty quantity for all unprocessed gas and residue gas in the zone subject to this paragraph, converted to MMBtu's.

(iii) Late payment interest will accrue on any underpaid royalties in accordance with paragraph (e)(12) of this section.

(9) This paragraph applies to a lessee's residue gas, NGL's, elemental sulfur, and drip condensate produced from leases in a zone which are valued using an index-based value determined under this section. The lessee must determine the weighted-average index-based value of that residue gas and associated products in the zone by summing the index-based values determined under this section, less applicable transportation allowances under § 206.457, and dividing that sum by the total quantity of MMBtu's of that residue gas and associated products in the zone. If that weighted-average index-based value is less than the final safety net median value for the zone, the lessee must pay additional royalties, plus interest, as follows:

(i) For the first calendar year this section is in effect, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Determine the lesser of the final safety net median value or 105 percent of the lessee's weighted-average index-based value determined under preceding paragraph (e)(9);

(B) Subtract the weighted-average index-based value from the lesser value under preceding paragraph (e)(9)(i)(A) of this section;

(C) Multiply the difference by the lessee's royalty quantity for all residue gas and associated products in the zone subject to this paragraph, converted to MMBtu's.

(ii) For subsequent calendar years, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Subtract the lessee's weighted-average index-based value determined under preceding paragraph (e)(9) from the final safety net median value;

(B) Multiply the difference by 50 percent;

(C) Multiply the result by the lessee's royalty quantity for all residue gas and associated products in the zone subject to this paragraph, converted to MMBtu's.

(iii) Late payment interest will accrue on any underpaid royalties in accordance with paragraph (e)(12) of this section.

(10) This paragraph applies to a lessee's residue gas, NGL's, elemental sulfur, and drip condensate produced from leases in a zone which are valued using the lessee's or the lessee's affiliated purchaser's gross proceeds for residue gas determined under §§ 206.453(b) or 206.454(a)(2)(ii)(B) of this subpart, as applicable. The lessee must determine the weighted-average value of that residue gas and associated products in the zone by summing the gross proceeds-based values determined under §§ 206.453(b) or 206.454(a)(2)(ii)(B), less applicable transportation allowances under § 206.457, and dividing that sum by the total quantity of MMBtu's of that residue gas and associated products in the zone. If the resulting weighted-average gross proceeds-based value is less than the final safety net median value for the zone, the lessee must pay additional royalties, plus interest, as follows:

(i) For the first calendar year this section is in effect, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Determine the lesser of the final safety net median value or 105 percent of the lessee's weighted-average gross proceeds-based value determined under preceding paragraph (e)(10);

(B) Subtract the weighted-average gross proceeds-based value from the lesser value under preceding paragraph (e)(10)(i)(A) of this section;

(C) Multiply the difference by the lessee's royalty quantity for all residue gas and associated products in the zone subject to this paragraph, converted to MMBtu's.

(ii) For subsequent calendar years, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Subtract the lessee's weighted-average gross proceeds-based value determined under preceding paragraph (e)(10) from the final safety net median value;

(B) Multiply the difference by 50 percent;

(C) Multiply the result by the lessee's royalty quantity for all residue gas and associated products in the zone subject to this paragraph, converted to MMBtu's.

(iii) Late payment interest will accrue on any underpaid royalties in accordance with paragraph (e)(12) of this section.

(11) For each deepwater lease on the Outer Continental Shelf, the additional royalty due under paragraphs (e)(8), (e)(9), and (e)(10) of this section will be calculated by deducting from the applicable safety net median value the appropriate transportation allowance to the first point within a zone to which production from that lease flows.

(12)(i) As soon as possible following the end of each calendar year (preferably within 6 months), MMS will publish an initial safety net median value for each zone. The initial safety net median value will be calculated using the methodology in paragraph (e)(4) of this section and using the information listed in paragraph (e)(1) of this section available at the time of its calculation, even if that information is not final.

(ii) The lessee may submit an estimated payment for any additional royalty it determines is due because of the difference between the lessee's weighted-average value determined under this section and the initial safety net median value. If the final safety net median value published under paragraph (e)(6) of this section is lower than the initial safety net median value, the lessee is entitled to a credit or refund of all or a portion of its estimated payment without interest under paragraph (e)(12)(iii) of this section.

(iii) After publication of the initial safety net median value or the final safety net median value, the lessee may report additional royalty payments using a one-line entry on Form MMS–2014 for each zone. If the lessee files a Form MMS–2014 and makes an estimated payment of additional royalty after publication of the initial safety net median value, then following publication of the final safety net median value it must file an amended Form MMS–2014 adjusting any payments for each zone, if necessary. On this amended Form MMS–2014, the lessee may recoup any overpayment by filing a credit adjustment. This first credit adjustment is not subject to the requirements of section 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1339. Any subsequent credit adjustment for a zone is subject to section 10.

(iv) Late payment interest will not accrue on any additional royalty owed under paragraphs (e)(8), (e)(9), or (e)(10) of this section until the date MMS publishes the initial safety net value.

(f) *Representative sample.* The final safety net median value must be based on a representative sample, which, for purposes of this section, means at least ten percent of the MMBtu of production reported to MMS on Form MMS–2014 for leases in a zone under paragraphs (e)(1) (i) and (ii) of this section, or at least twenty percent of the lines reported to MMS on Form MMS–2014 for leases in a zone under paragraphs (e)(1) (i) and (ii) of this section. If a representative sample meeting these criteria is not available at the time MMS is required to calculate the initial safety net median value under paragraph (e)(12) of this section, MMS will use the following procedures to obtain an appropriate sample:

(1) Among lessees in the zone using an index-based method to value production under this section, MMS will ask for volunteers to provide access to their records (including records regarding affiliated purchasers' resale values) to obtain arm's-length gross proceeds volume and value information. MMS will take a stratified sample of this information to be added to the information reported on Form MMS–2014 based on arm's-length gross proceeds under paragraphs (e)(1) (i) and (ii) of this section to determine the final safety net median value for the zone.

(2) If there are no volunteers in the zone, or not enough information from the volunteers to fulfill the requirements of a representative sample, MMS will establish the final safety net median value. Actions that MMS will take to determine the final safety net median value will include, but not be limited to, issuing orders to lessees within the zone necessary to obtain sufficient gross proceeds data to develop the final safety net median value for the zone.

(3) Lessees that volunteer to provide access to their records under this paragraph will have any additional royalty obligation determined under paragraphs (e)(8), (e)(9), or (e)(10) of this section based upon the lesser of a negotiated value or a calculation under those paragraphs using the final safety net median value reduced by $0.005/MMBtu.

(g) *Zone determination.* (1) MMS will publish in the **Federal Register** the zones with an active spot market and published indices that are eligible for an index-based valuation method. MMS will use the following factors and conditions in determining eligible zones:

(i) Common markets served;

(ii) Common pipeline systems;

(iii) Simplification; and

(iv) Easy identification in MMS' system, such as offshore blocks, offshore areas, or onshore counties.

(2) Deepwater leases in the OCS will not be included in a zone that includes non-deepwater leases.

(3) MMS will monitor the market activity in the zones and, if necessary, hold a technical conference to add or modify a particular zone. Any change to the zones will be published in the **Federal Register**.

(h) *Zone disqualification.* If market conditions change so that an index-based method for determining value is no longer an appropriate measure of market value for a zone, MMS will hold a technical conference to consider disqualification of a zone. MMS will publish notice in the **Federal Register** of a zone disqualification. However, MMS will not disqualify a zone prior to the end of the calendar year. MMS will notify lessees by September 1 of the year prior to disqualification.

§ 206.455 Determination of quantities and qualities for computing royalties.

(a)(1) Royalties must be computed on the basis of the quantity and quality of unprocessed gas at the facility measurement point approved by BLM or MMS for onshore and OCS leases, respectively.

(2) If the value of gas determined under § 206.452 of this subpart is based upon a quantity and/or quality that is different from the quantity and/or quality at the facility measurement point, as approved by BLM or MMS, that value must be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined under § 206.453 of this subpart is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this section, that value must be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease must be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease must be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal leases that is processed in the same plant.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the facility measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and 30 CFR 202.451(c) of this part, royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this subpart, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.456 Transportation allowances—general.

(a)(1) Where the value of gas has been determined under this subpart at a point off the lease (*e.g.*, sales point, IPP, or other point of value determination), the lessee may deduct from value a transportation allowance to reflect the value, for royalty purposes, at the lease. For residue gas and gas plant products, the lessee may deduct a transportation allowance representing the reasonable costs of transporting the residue gas and gas plant products to a gas processing plant off the lease and from the plant to a point away from the plant. If gas flows or could flow through more than one pipeline segment to the point where value is determined, the transportation allowance will be based on the total allowances for each segment determined under § 206.457.

(2) For the purposes of this subpart, the lessee's costs of compression downstream of the facility measurement point incurred either by the payment of such cost under a contract or the performance of that function may be a part of the lessee's transportation allowance determined under § 206.457 of this subpart. However, under no circumstances may any costs of compression occurring prior to the facility measurement point be deductible. The lessee's costs of boosting or compressing residue gas after processing are part of the transportation allowance for residue gas.

(b) Transportation costs must be allocated among all products produced and transported as provided in § 206.457 of this subpart.

(c)(1) Except as provided in paragraph (c)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement must not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant products determined under § 206.452, § 206.453, or § 206.454 of this subpart, as applicable. For purposes of this section, NGL's must be considered one product.

(2) Upon request of a lessee, MMS may approve an exception for a transportation allowance deduction in excess of the limitations prescribed by paragraph (c)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraph (c)(1) of this section were reasonable and necessary. An application for exception must contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances may the value for royalty purposes under any selling arrangement be reduced to zero.

(3) Notwithstanding any other provision of this subpart, MMS may approve, upon request of the lessee, a transportation allowance for the movement of gas from deepwater OCS leases, even if the production from the lease has not been initially separated.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee must pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or will be entitled to a credit, without interest.

§ 206.457 Determination of transportation allowances.

(a) *Introduction.* This section explains how to determine the applicable transportation allowance. If the lessee uses gross proceeds to value its production, then the transportation allowance is based on the transportation costs under paragraphs (b) or (c) of this section, depending upon whether the pipeline is jurisdictional or non-jurisdictional, and whether the transportation contract is arm's-length. If the lessee uses an index-based method to value its production, *and if* a portion of the lessee's gas flows to the IPP used for value, then, as provided in paragraph (d) of this section, the transportation allowance is based on the transportation costs under paragraphs (b) or (c) of this section, as applicable. If the lessee uses an index-based method to value its production, but *none* of its gas flows to the IPP used for value, the transportation allowance is determined under paragraph (d)(5) of this section.

(b) *Jurisdictional pipelines and arm's-length transportation contracts for non-jurisdictional pipelines.* (1)(i) For all value determinations under § 206.452, § 206.453, § 206.454(a)(1)(ii)(B), or § 206.454(a)(2)(ii)(B) of this subpart, where the lessee or its affiliate actually transports unprocessed gas, residue gas, gas plant products, or drip condensate through a jurisdictional pipeline, the transportation allowance must be based on the reasonable, actual contract rate paid in accordance with this paragraph.

(ii) For all value determinations under § 206.452, § 206.453, § 206.454(a)(1)(ii)(B), or § 206.454(a)(2)(ii)(B) of this subpart, where the lessee or its affiliate actually transports unprocessed gas, residue gas, gas plant products, or drip condensate through a non-jurisdictional pipeline under an arm's-length transportation contract, the transportation allowance must be based on the reasonable, actual contract rate paid in accordance with this paragraph.

(2)(i) In conducting reviews and audits, MMS will examine whether or not the actual contract rate paid reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract rate paid reflects more than the total consideration, then MMS may require that the transportation allowance be determined in accordance with paragraph (c)(2) of this section.

(ii) If MMS determines that the actual contract rate paid does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS will require that the transportation allowance be determined in accordance with paragraph (c)(2) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(3)(i) If a transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs must be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product to the volume of all products in the gaseous phase. No allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (b)(3)(i) of this section, the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) If a transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee must propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee must submit all relevant data to support its proposal. MMS will then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(5) Where the lessee's payments for transportation under a contract are not based on a dollar per unit, the lessee must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(6) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's (or affiliate's, as the case may be) gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(7) MMS may require that a lessee submit transportation contracts, production agreements, operating agreements, and related documents. Documents must be submitted within a reasonable time as determined by MMS.

(c) *Non-jurisdictional pipelines—non-arm's-length transportation.* (1) For all value determinations under § 206.452, § 206.453, § 206.454(a)(1)(ii)(B), or § 206.454(a)(2)(ii)(B) of this subpart, the transportation allowance for a non-jurisdictional pipeline under either a non-arm's-length transportation contract or no contract must be determined as follows:

(i) If 30 percent or less of the gas in the pipeline is transported under arm's-length transportation contracts, the transportation allowance for a calendar year must be based on either:

(A) The lessee's reasonable, actual costs as provided under paragraph (c)(2) of this section; or

(B) A rate of $0.02/MMBtu for leases on the Outer Continental Shelf; for onshore leases a *de minimis* rate determined by MMS for onshore leases not to exceed $0.09/MMBtu, including pipeline fuel consideration. MMS periodically will establish the rate based upon available transportation cost data and will publish the applicable rate in the **Federal Register**.

(ii) If more than 30 percent of the gas in the pipeline is transported under arm's-length transportation contracts, the transportation allowance for a calendar year must be based on either:

(A) The lessee's reasonable, actual costs as provided under paragraph (c)(2) of this section; or

(B) A rate determined by arraying all of the arm's-length contract rates for the pipeline from highest at the top to lowest at the bottom and starting from the bottom, choosing the rate closest to the 25th percentile from the bottom. If two of the contract rates are equidistant from the 25th percentile, use the average of the two rates.

(2) This paragraph applies to non-arm's-length and no contract transportation situations where the lessee elects to determine its transportation allowance based upon its actual costs. Under this paragraph, the lessee's reasonable, actual costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (c)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (c)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the

reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system will not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. However, for transportation systems purchased by the lessee or the lessee's affiliate that do not have a previously claimed MMS depreciation schedule, the lessee may treat the transportation system as a newly installed facility for depreciation purposes. With or without a change in ownership, a transportation system must be depreciated only once. Equipment may not be depreciated below a reasonable salvage value.

(B) MMS will allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative may apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(vi) The deduction for transportation costs must be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported must be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product to the volume of all products in the gaseous phase. The lessee may not take an allowance for transporting a product which is not royalty bearing without MMS approval.

(vii) Notwithstanding the requirements of paragraph (c)(2)(vi) of this section, the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(viii) Where both gaseous and liquid products are transported through the same transportation system, the lessee must propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee must submit all relevant data to support its proposal. MMS will then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(ix) Upon request by MMS, the lessee must submit all data used to determine its transportation allowance. The data must be provided within a reasonable period of time, as determined by MMS.

(d) *All pipelines—index-based valuation methods.* (1) This paragraph applies to determine transportation allowances each month for gas valued under the index-based valuation methods in § 206.454(b) of this subpart.

(2) Where the lessee's gas production from a well with a single connect is valued using an index-based method under § 206.454(b)(1), *and* a portion of the lessee's gas actually flows to the IPP used for value, the applicable transportation allowance must be determined under either paragraphs (b) or (c) of this section, as applicable. If the lessee's gas does not actually flow to the IPP, the transportation allowance for that pipeline must be determined under paragraph (d)(5) of this section.

(3) Where the lessee's gas production from a well with a split connect or multiple connection is valued using a weighted-average index value under § 206.454(b)(2)(i) of this subpart, the lessee first must determine the applicable transportation allowance under either paragraphs (b) or (c) of this section, as applicable, for gas volumes actually transported to each IPP used in the calculation to value the lessee's gas from the well. The volume weighted-average transportation allowance per MMBtu for all of the lessee's gas transported to each IPP used for valuation is the applicable transportation allowance for all of the lessee's gas from the well.

(4) Where the lessee's gas production from a well with a split connect or multiple connection is valued using the fixed-index value method under § 206.454(b)(2)(ii) of this subpart, and if some of the lessee's gas actually flows to the IPP selected for value, then the transportation allowance for all the lessee's gas from the well is determined based upon the lessee's transportation allowances per MMBtu, determined under paragraphs (b) or (c) of this section, as applicable, to transport gas to that IPP. If none of the lessee's gas actually flows to the IPP selected for value, the transportation allowance must be determined under paragraph (d)(5) of this section.

(5) A transportation allowance for a pipeline, or pipeline segment, through which a lessee's gas does not actually flow must be determined as follows:

(i) If it is a jurisdictional pipeline, the applicable transportation allowance rate is the maximum interruptible transportation (IT) rate for the pipeline for the month.

(ii) If it is a non-jurisdictional pipeline and the lessee is not affiliated with the owners of the pipeline, the applicable transportation allowance is determined based on either:

(A) A rate calculated by MMS at the lessee's request for a fee paid to MMS based on MMS' administrative costs of calculating that rate; or

(B) A rate determined by the lessee based on documentation supporting the non-jurisdictional pipeline's rate, including but not limited to any one of the following:

(*1*) an arm's-length contract;

(*2*) the pipeline's published rate; or

(*3*) the rate applicable to the lessee's actual transportation through the pipeline for any 30 days (not necessarily consecutive) in the previous 12 months.

(iii) If it is a non-jurisdictional pipeline and the lessee is affiliated with the owners of the pipeline, the applicable transportation allowance is determined under § 206.457(c).

(e) *Reporting.* Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(f) *Interest assessments.* (1) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest must be paid on the amount of that underpayment.

(2) Interest required to be paid by this section must be determined in accordance with 30 CFR 218.54.

(g) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014, the lessee will be required to pay additional royalties due plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014, the lessee will be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated transportation allowance is less than the allowance based on actual costs, the refund procedure will be specified by MMS.

(h) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost will be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or state regulatory agency-approved tariff.

(i) *Other transportation cost determinations.* The provisions of this section will apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.458 Processing allowances—general.

(a) Where the value of any gas plant product is determined under § 206.453 of this subpart, a deduction will be allowed for the reasonable actual costs of processing. No processing allowance is applicable to any gas plant product valued under § 206.454.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) must be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance may not be applied against the value of the residue gas. Where there is no residue gas MMS may designate an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product must not exceed 66⅔ percent of the value of each gas plant product determined in accordance with § 206.453 of this subpart (such value to be reduced first for any transportation allowances related to postprocessing transportation authorized by § 206.456 of this subpart).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception must contain all relevant and supporting documentation for MMS to make a determination. Under no circumstances may the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction will be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression upstream of the facility measurement point, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as 'sweetening,' no processing cost deduction will be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee will be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing lease production which is not royalty bearing.

(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which will be in addition to any other processing allowance to which the lessee is entitled under this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee must pay additional royalties, plus interest determined in accordance with 30 CFR 218.54, or will be entitled to a credit, without interest.

§ 206.459 Determination of processing allowances.

(a) *Arm's-length processing contracts.* (1)(i) For processing costs incurred by a lessee under an arm's-length contract, the processing allowance must be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee will have the burden of demonstrating that its contract is arm's-length.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the processor for the processing. If the contract reflects more than the total consideration, then MMS may require that the processing allowance be determined in accordance with paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and lessor, then MMS will require that the processing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product must be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty-bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee must propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee must submit all relevant data to support its proposal. MMS will then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee's payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) MMS may require that a lessee submit arm's-length processing agreements and related documents. Documents must be submitted within a reasonable time, determined by MMS.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations must be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant will not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. However, for processing plants purchased by the lessee or the lessee's affiliate that do not have a previously claimed MMS depreciation schedule, the lessee may treat the processing plant as a newly installed facility for depreciation purposes. With or without a change in ownership, a processing plant may be depreciated only once. Equipment may not be depreciated below a reasonable salvage value.

(B) MMS will allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to plants first placed in service after March 1, 1988.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) The processing allowance for each gas plant product must be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product must be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. MMS may grant the exception only if: (i) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed under arm's-length processing contracts; if MMS grants the exception, the lessee must use as its processing allowance the volume weighted average prices charged other persons under arm's-length contracts for processing at the same plant.

(5) Upon request by MMS, the lessee must submit all data used by the lessee to determine its processing allowance. The data must be provided within a reasonable period of time, as determined by MMS.

(c) *Reporting.* Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments.* (1) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest must be paid on the amount of that underpayment.

(2) Interest required to be paid by this section must be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual gas processing allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee will be required to pay additional royalties due plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance period, the lessee will be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by MMS.

(f) *Other processing cost determinations.* The provisions of this section will apply to determine processing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of processing costs.

PART 211—LIABILITY FOR ROYALTY DUE ON FEDERAL AND INDIAN LEASES AND RESPONSIBILITY TO REPORT ROYALTY AND OTHER PAYMENTS

18. The authority citation for part 211 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart C—Reporting and Paying Royalties

19. In section 211.18 as proposed to be added at 60 FR 30500 (June 19, 1995) a new paragraph (c) is added to read as follows:

§ 211.18 Who is required to report and pay royalties?

* * * * *

(c) *Persons who take production allocable to Federal or Indian leases in all other approved Federal or Indian agreements.* This paragraph provides requirements and instructions for reporting and paying royalties and other payments for Federal leases in approved Federal agreements comprised of leases with differing lessors, royalty rates, or fund distributions.

(1) Except as provided in paragraphs (c) (2) and (3) and (d) of this section, if you are an operating rights owner in a Federal lease in an agreement under this paragraph, you must report and pay royalties on your entitled share of production under the terms of the agreement. You must:

(i) File a PIF with MMS as specified in Part 210 of this title and the MMS Payor Handbooks;

(ii) Report the royalties owed for that production on a Form MMS–2014 and follow the instructions provided in Part 210 of this title and the MMS Payor Handbooks; and

(iii) Pay royalties on that production as specified in Part 218 of this title and the MMS Payor Handbooks.

(2) If you are an operating rights owner who meets the definition of a small operating rights owner in § 206.451 of this title, you may report and pay royalties each month on the volume of production you actually take subject to the following criteria:

(i) You must report your takes on Form MMS–2014 using a special code.

(ii) Within 6 months after the end of each calendar year in which you report based on takes, you must pay any additional royalties that may be due on the difference between your entitled share and the volume of production on which you reported and paid royalties in accordance with 30 CFR § 202.450(d)(1)(iv)(D).

(iii) If the volume of the production on which you reported and paid royalties for the calendar year is equal to or greater than the volume of your entitled share of production for that calendar year, you will not be assessed late payment interest for any sales month during the calendar year in which you underreported volume. However, MMS will assess interest for any reported volumes based on takes if the royalty value for those volumes was not properly reported and paid. MMS will allow a credit for any overtaken volumes in accordance with applicable procedures.

(iv) If the volume of the production on which you report and paid royalties for the calendar year is less than the volume of your entitled share of production for the calendar year, you must:

(A) Report and pay royalties on the difference between the volume of your entitled share of the production for the calendar year and the volume of the production on which you reported and paid under the takes basis; and

(B) Pay interest in accordance with MMS regulations and procedures on any underpaid royalties.

(3) You are not required to report and pay royalties on your entitled share of production under paragraph (c)(1) of this section if all operating rights owners in the agreement agree to assign reporting and payment responsibilities among themselves in an alternative manner that ensures that royalties are reported and paid properly each month on the full volume of production from or attributable to each Federal lease in the agreement.

[FR Doc. 95–27079 Filed 11–3–95; 8:45 am]
BILLING CODE 4310–MR–P

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30 CFR Part 211

RIN 1010–AB45

Liability for Royalty Due on Federal and Indian Leases; Paying and Reporting Royalty and Other Payments

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of meeting change and further extension of comment period.

SUMMARY: The Minerals Management Service (MMS) is rescheduling a public meeting in Houston, Texas, and extending the comment period for a proposed rulemaking regarding the liability for payments due on Federal and Indian leases and the responsibility to pay and report royalty and other payments (60 FR 54321, October 23, 1995).

The proposal was published in the **Federal Register** on June 9, 1995 (60 FR 30492). That notice proposes to establish and clarify which persons may be held liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian mineral leases. The proposed rule also would establish who is required to report and pay royalties on production from leases not in approved Federal or Indian agreements or leases in approved Federal or Indian agreements containing 100 percent Federal or Indian tribal leases with the same lessor, the same royalty rate, and the same royalty distribution. MMS is further extending the comment period for this rule to January 26, 1996, from January 8, 1996 (60 FR 38533, July 27, 1995, and 60 FR 45112, August 30, 1995). Also, MMS is rescheduling the public meeting announced in the **Federal Register** (60 FR 54321, October 23, 1995) from November 29 and 30, 1995, to January 10 and 11, 1996. The meeting is to allow all interested parties an opportunity to discuss the proposed rulemaking. Interested parties are invited to attend and participate at this meeting. The meeting has been rescheduled as shown below.

DATES: A public meeting will be held on Wednesday January 10, and if necessary Thursday, January 11, 1996, from 9:00 a.m. until 5:00 p.m. Comments must be received on or before January 26, 1996.

ADDRESSES: The meeting will be held in Room 104, first floor, at the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas, 77032. Comments should be sent to: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David_Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David_Guzy@smtp.mms.gov. Please contact Betty Casey at the Houston Compliance Division Office at telephone (713) 987–6802, fax (713) 987–6804

prior to December 21 if you will be attending this meeting.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and are encouraged to file written statements for consideration.

Dated: October 31, 1995.

Donald T. Sant,

Deputy Associate Director for Valuation and Operations.

[FR Doc. 95–27419 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

36 CFR Part 7

Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (5 U.S.C., Appendix), that a meeting of the Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee will be held on Thursday and Friday, November 16 and 17, 1995.

DATES: The meetings will be held at 9 a.m. on November 16 and 17, 1995.

ADDRESSES: The meetings will be held at the Sheraton Eastham, Route 6, Eastham, MA.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, 508–349–3785 EXT 203.

SUPPLEMENTARY INFORMATION: The Committee members will meet for the third of three, two-day meetings which will be held for the following reasons:

November 16, 1995—Thursday

1. Discussion of Proposed Agenda
2. Review and Discussion of Proposed Draft Rule
3. Public Participation Period
4. Adjournment

November 17, 1995—Friday

1. Review and Discussion of Proposed Draft Rule
2. Public Participation Period
3. Adjournment

The meeting is open to the public. It is expected that 75 persons will be able to attend the meeting in addition to the Committee members.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Cape Cod National Seashore.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Such presentations may be made to the Committee during the Public Participation Period the day of the meeting, or in writing to the Park Superintendent at least seven days prior to the meeting.

Dated: October 27, 1995.

Chrysandra L. Walter,

Deputy Field Director, Northeast Area.

[FR Doc. 95–27387 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–164, RM–8716]

Radio Broadcasting Services; Cornell, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Flambeau Broadcasting Co., proposing the allotment of Channel 260C3 to Cornell, Wisconsin, as that community's first local service. Canadian concurrence will be requested for the allotment of Channel 260C3 at Cornell at coordinates 45–10–56 and 91–12–20. There is a site restriction 4.9 kilometers (3 miles) west of the community.

DATES: Comments must be filed on or before December 22, 1995, and reply comments on or before January 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Gary Johnson, Flambeau Broadcasting, P.O. Box 351, ladysmith, Wisconsin 54858.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–164, adopted October 20, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27361 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–163; RM–8715]

Radio Broadcasting Services; Wilson Creek, WA, and Pendleton, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wilson Creek Communications, LLC, proposing the substitution of Channel 278C1 for Channel 277C3 at Wilson Creek, Washington, and the modification of Station KVYF(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 279C1 for Channel 278C1 at Pendleton, Oregon, and the modification of Station KWHT(FM)'s license accordingly. Channel 278C1 can be allotted to Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) south to avoid a short-spacing to the proposed allotment for Channel 279B, Rock Creek, British Columbia. The coordinates for Channel 278C1 at Wilson Creek are North Latitude 47–24–49 and West Longitude 119–07–15. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before December 22, 1995 and reply comments on or before January 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: Peter Tennenwald, Esq., Irwin, Campbell & Tennenwald, P.C., 1320 18th Street, NW., Suite 400, Washington, DC 20036–1811 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making and Order to Show Cause*, MM Docket No. 95–163, adopted October 20, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Additionally, Channel 279C1 can be allotted to Pendleton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at Station KWHT(FM)'s presently licensed site. The coordinates for Channel 279C1 at Pendleton are North Latitude 45–47–51 and West Longitude 118–22–17. Since Wilson Creek is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall propose to modify the license of Station KVYF(FM) without entertaining competing expressions of interest in the use of Channel 278C1 at Wilson Creek, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27365 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 95–008]

RIN 9000–AG67

Federal Acquisition Regulation; Competitive Range

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) guidance on competitive range determinations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Comment Due Date:* Comments should be submitted on or before January 5, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR case 95–008 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–008.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule amends FAR 15.609 to delete the statement that a proposal should be included in the competitive range for the purpose of conducting discussions, if there is doubt as to whether the proposal is in the competitive range.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule retains the Government's policy of including in the competitive range, all proposals which have a reasonable chance of being selected for award. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR case 95–008 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: October 31, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

15.609 [Amended]

2. Section 15.609 is amended in paragraph (a) by removing the last sentence.

[FR Doc. 95–27404 Filed 11–3–95; 8:45 am]

BILLING CODE 6820–EP–M

Notices

Federal Register

Vol. 60, No. 214

Monday, November 6, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Executive Resources and Services Division, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Ahalt, J. Dawson
Aldaya, George W.
Allen, Richard Dean
Alspach, David B.
Amontree, Thomas S.
Andre, Pamela Q.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, John M.
Ashworth, Warren R.
Atienza, Mary E.
Baker, James Robert
Bange, Gerald A.
Barrett, Jr., Fred S.
Bartuska, Ann M.
Bauer, III, Henry A.
Bay, Donald M.
Beauchamp, Craig L.
Beck, Richard H.
Berg, Joel S.
Berry, Robert M.
Betschart, Antoinette A.
Billy, Thomas J.
Blackburn, Wilbert H.
Booth, Jerry J.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Bristow, II, William M.
Buisch, William W.
Buntain, Bonnie J.
Buntrock, Grant B.
Burns, Denver P.
Bruse, Sr., Luther
Burt, John P.
Callstrom, Raymond C.
Calvert, Patricia
Campbell, Arthur C.
Carey, Ann E.
Carey, Priscilla B.
Carnevale, Richard A.
Carpenter, Barry L.
Cartwright, Jr., Charles W.
Chambliss, Mary T.
Cherry, John P.
Clark, Cynthia Z.F.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Connelly, Kathleen H.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Coulter, Kyle Jane
David, Irwin T.
Deloach, John R.
Dewhurst, Stephen B.
Dittrich, Suzette M.
Dooms, Elnora C.
Drazek, Paul A.
Duesterhaus, Richard L.
Duncan, Charles N.
Duncan, III, John P.
Dunkle, Richard L.
Dunn, Michael V.
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Fawbush, Wayne H.
Fishman, Michael E.
Franco, Robert
Franks, Jr., William Jesse
Frazier, Gregory
Galvin, Timothy J.
Gardner, Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gerloff, Eldean D.
Giles, Jane L.
Gillam, Bertha C.
Gillum, Charles R.
Gippert, Michael J.
Glavin, Margaret Agnes
Glotfelty, Charles H.
Golden, John
Golodner, Adam M.
Greene, Frank C.
Greenshields, Bruce L.
Grundeman, Arnold James
Gugulis, Katherine C.
Hadlock, Earl C.
Hagy, III, William P.
Hall, David C.
Hall, John W.
Hamilton, Thomas E.
Hardy, Jr., Leonard
Hardy, Jr., Leonard
Harrington, Jr., Rube
Harris, Sharron L.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Hebert, Thomas R.
Hefferan, Colien J.
Henneberry, Thomas J.
Hessel, David L.
Hicks, Vicki J.
Hill, Ronald W.
Hobbie, Mary Kyle
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Hollingsworth, Jill M.
Holman, Pred Dwight
Horn, Floyd P.
Houser, Norman D.
Hudnall, Jr., William J.
Husnik, Donald F.
Jackson, Ruthie F.
Jackson, Yvette S.
Jacobs, Robert T.
Jakub, Lawrence M.
Janik, Philip J.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Paul Wesley
Johnson, Phyllis E.
Jordan, John P.
Joslin, Robert C.
Kaiser, Jr., Harold F.
Kaplan, Dennis L.
Keefee, Mary Ann
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Michael W.
Kennedy, Eileen T.
Kennedy, Maureen Ann
King, Janet C.
King, Lonnie J.
King, R. Alan

King, Jr., Edgar G.
Kling, Lou Anne
Knipling, Edward B.
Kronenberger, Jr., Donald R.
Laster, Danny B.
Laverty, Jr., Robert L.
Lavin, Mary Jo
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Levinson, Sharon
Lewis, David N.
Lewis, Sherman L.
Lewis, Jr., Robert
Lilja, Janice Grassmuck
Linden, Ralph A.
Long, Richard D.
Lowe, John E.
Luchsinger, Donald W.
Ludwig, William E.
Lugo, Ariel E.
Luken, Bonnie L.
Mackie, Philip L.
Mejkowski, Hollace L.
Maloney, Kathryn P.
Manning, Amanda Dew
Margheim, Gary A.
Marita, Floyd J.
Marten, Gordon C.
Martin, Christopher J.
Martinez, Wilda H.
Matz, Deborah
McCleese, William L.
McCutcheon, John W.
McDonald, Stephen E.
McDougle, Janice H.
McKee, Richard M.
Medley, Terry L.
Mengeling, William L.
Mezainis, Valdis E.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Montoya, David F.
Moon, Harley W.
Moreland, Donald E.
Murrell, Kenneth D.
Nelson, Robert D.
Nervig, Robert M.
Newman, Richard Odell
Newsom, Conrad Merlain
Norcross, Marvin A.
Nordstrom, Gary R.
Novak, Jon E.
Nuri, K. R.
O'Brien, Patrick Michael
Oberlander, Herbert
Ohler, Barry A.
Okay, John L.
Oltjen, Robert R.
Oneil, Barbara T.
Oneth, Harry W.
Onstad, Charles A.
Osgood, Barbara T.
Otto, Ralph A.
Parry, Jr., Richard M.
Payton, Floy E.
Peer, Wilbur T.
Perry, James P.
Peters, Robert
Peterson, John W.
Peterson, Kenneth R.
Potts, Janet S.
Power, James F.
Powers, Joseph A.
Powers, Judy M.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Radloff, David L.
Radzikowski, John S.
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Reed, Anne F.T.
Reed, Craig A.
Reed, Pearlie S.
Reginato, Robert J.
Reimers, Mark A.
Reynolds, Gray F.
Reynolds, James R.
Rhoades, James D.
Riley, Jr., William J.
Risbrudt, Christopher D.
Robertson, George S.
Robinson, Bobby H.
Rothbart, Herbert L.
Roussopoulos, Peter J.
Salwasser, Harold James
Satterfield, Steven E.
Schipper, Jr., Arthur L.
Schnoor, Kim E.
Schroeder, James W.
Schroeter, Richard B.
Schumacher, Jr., August
Schwalbe, Charles P.
Schwindaman, Dale F.
Segal, Judith A.
Sesco, Jerry A.
Seymour, Carol M.
Shackelford, Parks D.
Shands, Henry L.
Shaw, Robert R.
Shearer, P. Scott
Shipman, David R.
Simmons, Robert M.
Skeen, David
Small, Gordon H.
Smith, Dallas R.
Smith, Peter Francis
Smythe, Richard V.
Sommers, William T.
Space, James C.
Spence, Joseph
Spencer, Dorothy E.
Spory, Gene P.
Sprague, G. Lynn
Squellati, Clarence P.
St. John, Judith B.
Steele, W. Scott
Stencel, III, John
Stewart, James L.
Stewart, Ronald E.
Stockton, Jr., Blaine D.
Stolfa, Patricia F.
Stommes, Eileen S.
Strating, Alfred
Stuber, Charles W.
Tanner, Steven N.
Tatum, James E.
Taylor, Michael R.
Tharrington, Ronnie O.
Thiermann, Alejandro B.
Thomas, Irving W.
Thomas, Jack W.
Thompson, Clyde
Tidd, Peter M.
Torgerson, Randall E.
Turner, James R.
Unger, David G.
Vail, Kenneth H.
Valsing, D. Charles
Van Schilfgaarde, Jan
Vogel, Frederic A.
Vogel, Ronald J.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wagner, Lynnett M.
Walker, Larry A.
Walsh, Thomas M.
Walton, Thomas E.
Watkins, Calvin W.
Watkins, Dayton J.
Watkins, Shirley R.
Webb, Aileen
Weber, Barbara C.
Weber, Bruce R.
Weber, Thomas A.
White, Evelyn M.
Whiteman, Glenn D.
Whitmore, Charles
Wilcox, Sterling J.
Wilds, Jr., Jetie B.
Williams, John W.
Williams, Robert W.
Williamson, Robert L.
Wilson, Edward M.
Witt, Timothy Blaine
Woods, Monroe
Wright, Lloyd E.
York, Phyllis B.
Young, Jr., Robert W.
Zellers, Phillip

Dated: October 30, 1995.

Richard E. Rominger,

Deputy Secretary.

[FR Doc. 95–27393 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–96–M

Animal and Plant Health Inspection Service

[Docket No. 95–047–1]

General Conference Committee of the National Poultry Improvement Plan; Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of renewal.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the General Conference Committee of the National Poultry Improvement Plan for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, Suite A 102, 1500 Klondike Road, Conyers, Georgia 30207–5115, (404) 922–3496.

SUPPLEMENTARY INFORMATION: The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the

Committee from among its members. There are seven members on the Committee with 4-year staggered terms. This Committee differs somewhat from other advisory committees in the selection process and composition of its membership. The poultry industry elects the members to the Committee. The members represent six geographic areas with one member-at-large. The membership is not subject to the U.S. Department of Agriculture's review, and a formal request for nominations for membership is not published in the **Federal Register**.

Done in Washington, DC, this 26th day of October 1995.

Anne F. Thomson Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 95–27390 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–34–P

Rural Utilities Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Rural Utilities Service's (RUS) intentions to request an extension for and revision to currently approved information collection.

DATES: Comments on this notice must be received by January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Dawn D. Wolfgang, Management Analyst, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1533. Telephone: (202) 720–0812. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Prospective Large Power Service.

OMB Control Number: 0572–0001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). RUS electric borrowers often enter into special contracts with commercial and industrial consumers for the retail sale of electricity. These contracts typically require extensions to the borrower's electric system which may be financed with RUS loan funds, debt financing from another source, the borrower's own funds, sometimes called general funds, and/or funds provided by the consumer.

RUS review of these contracts is intended to protect the interests of the government as a secured lender and to foster the purposes of the RE Act. RUS Form 170, Prospective Large Power Service, provides RUS with information needed for this review. RUS is considering comments on a proposed rule published July 20, 1995, at 60 FR 36904, that would significantly reduce the number of retail contracts that require RUS approval. RUS is currently reexamining its policies and procedures for review of these contracts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Small businesses or organizations.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Support Staff, at (202) 720–0812.

Comments: Send comments regarding this burden estimate, including suggestions for reducing this burden through the use of automated collection techniques or other information technology, to: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 30, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–27389 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–15–P

ARMS CONTROL AND DISARMAMENT AGENCY

The President's Scientific and Policy Advisory Committee; Notice of Closed Meeting

October 27, 1995.

In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1988), the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: Scientific and Policy Advisory Committee (SPAC).

Date: November 20, 1995.

Time: 8:30 a.m.

Place: State Department Building, 320 21st Street, N.W., Room 4930, Washington, D.C.

Type of Meeting: Closed.

Contact: Robert Sherman, Executive Director, Scientific and Policy Advisory Committee, Room 4930, Washington, D.C. 20451, (202) 647–4622.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meeting: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Comprehensive Test Ban Treaty and the Conventional Weapons Convention. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. The entire meeting will be held in Executive Session.

Reason for Closing: The SPAC members will be reviewing and discussing matters specifically authorized by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated October 31, 1995, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. App.).

Cathleen Lawrence,

Director of Administration.

Determination To Close Meeting of the Scientific and Policy Advisory Committee

The Scientific and Policy Advisory Committee (SPAC) will hold a meeting in Washington, D.C., on November 20, 1995. The Arms Control and Disarmament Act, as amended (22 U.S.C. sec. 2566) provides for the SPAC to advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

The entire agenda of this meeting will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), it has been determined that discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. sec. 552(c)(1). Materials to be discussed at the meeting have been properly classified and are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), I have determined that, because of the need to protect the confidentiality of such national security matters, this meeting should be closed to the public.

Dated: October 31, 1995.

John D. Holum,

Director.

[FR Doc. 95–27586 Filed 11–2–95; 4:31 pm]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Open Meeting. Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council public teleconference will be held on Monday, November 20, 1995 from 2:00 p.m. until 5:00 p.m.

ADDRESSES: The NII Advisory Council teleconference meeting will take place in the Forum 2 Conference Room, 1320 North Courthouse Road, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–501–6360; E-mail: nii@ntia.doc.gov.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

AGENDA: To discuss and approve KickStart, a document the Council is preparing for local leaders who want to connect their communities to the Information Superhighway.

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Elizabeth Lyle at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–27368 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–60–M

Bureau of Export Administration

[Docket Number AB1–95]

Stair Cargo Services, Inc.; Final Decision and Order Affirming Order of the Administrative Law Judge

Before me for decision is the appeal of Respondent, Stair Cargo Services, Inc. (Stair Cargo), from the decision and order of the Administrative Law Judge (ALJ). The ALJ found that Stair Cargo violated Sections 769.2(d)(1)(iv) and 769.6 of the Export Administration Regulations (15 CFR 769.2(d)(1)(iv) and 769.6) (the "Regulations") when it submitted information for the Kuwait boycott office about one of the manufacturers in a shipment that Stair Cargo was forwarding to Kuwait. For violating § 769.2(d)(1)(iv), the ALJ assessed a penalty of $8,000 and for violating § 769.6, Stair Cargo was assessed a penalty of $2,000, both pursuant to § 788.3(4) of the Regulations.

I. Introduction

On December 17, 1993, the Office of Antiboycott Compliance (OAC) issued a charging letter alleging that, during December of 1988, Stair Cargo committed one violation of § 769.2(d)(1)(iv) and one violation of § 769.6 of the Regulations, issued pursuant to the Export Administration Act of 1979, as amended (hereinafter referred to as the "Act") (currently codified at 50 U.S.C. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994).[1] Specifically, the charging letter alleged that Stair Cargo intentionally complied with an unsanctioned foreign boycott in connection with activities involving the sale or transfer of goods (including information) between the United States and Kuwait and that these activities occurred in the foreign commerce of the United States.

Section 769.2(d)(1)(iv) provides that "(1) No United States Person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships—(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country."

Section 769.6(a)(1) provides that "(1) A United States person who receives a request to take any action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person must report such request to the Department of Commerce in accordance with the requirements of this section."

OAC and Stair Cargo, on March 10, 1995 and March 16, 1995, respectively, requested that issues raised by the charges be resolved on the written record, without an oral hearing. OAC filed a reply on March 31, 1995 and Stair Cargo filed one on April 3, 1995. On April 24, 1995, Stair Cargo filed a motion for an oral argument which was denied by the ALJ.

[1] The Export Administration Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. app. 1701–1706 (1991)).

II. Facts

The ALJ made Findings of Fact in his Initial Decision, and the parties entered into a Stipulation of Facts (see Exhibit 16 of the Record) dated February 22, 1995, both of which essentially set forth the following facts.

At the time of the violations alleged in the charging letter, Stair Cargo was a California-based branch of Stair Cargo Services, Inc., a Florida company engaged in freight-forwarding services, including international freight forwarding. In 1988, Stair Cargo was to forward U.S. origin goods to Palms Agro-Production (Palms Agro) in Safat, Kuwait, on behalf of Spears Manufacturing company. To finance the purchase of the goods from Spears Manufacturing, Palms Agro, on October 13, 1988, asked the National Bank of Kuwait to establish an irrevocable letter of credit in favor of Spears Manufacturing. Among the requirements set forth in the letter of credit was the following:

> Available by draft(s) without recourse at sight on you for 100 percent of the invoice value and accompanied by the following documents marked (X) below:
>
> * * * * *
>
> (X) Certificate of origin in duplicate * * * (Please see special instructions) Invoices and certificates of origin must evidence that goods have been manufactured/produced by: M/S Spear [sic] Manufacturing Co., U.S.A.

Paragraph 1 of the "SPECIAL INSTRUCTIONS" prescribed that the name and nationality of the manufacturing/producing company appear on the certificate of origin.

However, Spears Manufacturing was not the sole manufacturer of the goods to be shipped to Kuwait. Rather, I.P.S. Corporation of Gardena, California, produced some of the items to be sent to Palms Agro. As the terms of the letter of credit required information regarding each manufacturer or producer of goods, Stair Cargo drafted an amendment to the letter of credit, reflecting the name and nationality/origin of both Spears Manufacturing and I.P.S. Corporation. On December 19, 1988, Stair Cargo sent the amendment by fax transmission to Spears Manufacturing. The amendment provided in pertinent part:

> Credit amended to read signed invoices in triplicate showing the name and nationality/origin of manufacturers or producers of each item of manufactured or produced goods as follows:
>
> Nationality: U.S.A. origin * * * Manufactured/produced I.P.S. Corp. 17109 S. Main St. Gardena, CA 90247 U.S.A. All remaining items manufactured/produced by M/S Spears Manufacturing Co 15853 Olden St. Sylmar, CA 91342 U.S.A.

That same day, Spears Manufacturing sent the amendment to Palms Agro so that the Kuwaiti firm could have the letter of credit amended.

Shortly thereafter, on December 22, 1988, Palms Agro sent a fax transmission to Spears Manufacturing, requesting the full name of the company that, in addition to Spears Manufacturing, was supplying products to fill Palms Agro's order. Palms Agro explained that the initials of I.P.S. Corp. were not acceptable to the boycott office and that, until the full name was provided, the National Bank of Kuwait could not clear I.P.S. Corp. with the boycott authorities. The request stated:

> Please provide complete name of M/S/ I.P.S. Corp. as abrivated [sic] names are not acceptable to local boycott office, as before adding to L/C our bank will get the name cleared from boycott authorities.
>
> Please ensure that after receiving the amendment your bank will send the documents by DHL (not on our cost) to our bank because carrying vessel is due on 28/ 12/88.
>
> Appreciate your reply by return.

This fax was subsequently transmitted to Stair Cargo. By fax dated December 22, 1988, Stair Cargo responded directly to Palms Agro. The fax transmission stated:

> The complete name of M/S I.P.S. Corp. is as follows: Industrial Polychemical Services, Inc.

This fax transmission became the basis for the ALJ's finding that Stair Cargo "furnished information concerning its or another person's past, present, or proposed business relationships with known or believed to be restricted from having any business relationship with or in a boycotting country," in violation of § 769.2(d)(1)(iv).

III. Analysis of Appeal[2]

A. Deference To Be Accorded to ALJ's Decision

As a threshold matter, Stair Cargo argues that the Under Secretary is not bound by, nor is there any deference due to, the findings of the initial decision of the ALJ, citing 5 U.S.C. 557(b). This provision provides:

> On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except on notice or by rule.

I agree that the initial decision of the ALJ is not absolutely binding on me. *Town & Country Plastics, Inc.*, Docket Number AB1–89, May 11, 1995. However, while deference to a decision may be at its strongest where credibility is at issue, I still believe that there is sufficient reason to accord great weight to the AJL's decision in a case decided on cross motions for summary judgment.

B. Denial of Stair Cargo's Request for a Hearing Was Appropriate

Stair Cargo argues that it was entitled to a hearing on questions of law and controverted material issues of fact, citing 11(c)(2)(B) of the Act, 50 U.S.C. app. 2410(c)(2)(B), which provides that an administrative sanction imposed under the antiboycott provisions "may be imposed only after notice and opportunity for an agency hearing on the record in accordance with [the Administrative Procedure Act]." Stair Cargo also argues that Rule 56 of the Federal Rules of Civil Procedure (FRCP) is applicable in this case because the procedures which govern enforcement proceedings do not provide for summary disposition. Accordingly, because summary judgment, as provided for in Rule 56, is a drastic measure and available only when there are no genuine issues of material fact, Stair Cargo asserts that a resolution of this case is not proper without a hearing with respect to the genuine issues that exist. Finally, Stair Cargo argues that it did not waive its right to a hearing during the course of the proceeding.

Contrary to Stair Cargo's assertions, it is clear that the FRCP do not apply to proceedings under the Act, which are, in fact, governed by the Regulations. See § 788.1. Although the Regulations do not specifically authorize motions for judgment on the pleadings, such motions fall within the discretion of the ALJ pursuant to § 788.12 of the Regulations, which grants ample discretion to dispose of matters in the most expeditious manner, provided that all other procedural requirements are followed.[3]

In addition, Stair Cargo cites *Town & Country Plastics, Inc.*, Docket Number AB1–89, May 11, 1995, for the proposition that in the absence of a specific rule under the Regulations, the FRCP "govern." However, while *Town & Country Plastics* held that "the procedural rules relating to antiboycott appeals should be construed in conjunction with the Federal Rules of Civil Procedure," the case did not hold that the FRCP "govern" or are binding. Rather, *Town & Country Plastics* should be read to mean that the FRCP can provide guidance or solutions on a case-by-case basis when necessary to cover a situation not specifically dealt with by the Regulations.[4] Accordingly, Rule 56 of the FRPC is not applicable to this case and therefore does not dictate that Stair Cargo was entitled to a hearing.[5]

With regard to Stair Cargo's argument that it did not waive its right to a hearing, a review of the record in this case indicates otherwise. Although Stair Cargo did request a hearing in its Answer (Exhibit 4 of the Record), circumstances changed as the litigation progressed, and, as set forth in its Motion for Summary Initial Decision (Exhibit 22 of the Record), Stair Cargo waived its right to a full blown hearing. Stair Cargo clearly stated in its motion that "counsel for the parties have by agreement pursued this avenue of resolution in order to obviate the need for a hearing" and that "it is appropriate to note that motions for summary judgment are appropriate when there are no questions of material facts." There was obviously no mention of a desire for a hearing.

It was, moreover, agreed at a pre-hearing conference in Washington, DC, on February 22, 1995, that the essential facts were not at issue and that, because the only issues that remained to be resolved were those of a legal nature, the case could be disposed of on cross-motions for summary judgment. In fact, at the pre-hearing conference, Stair Cargo answered in the affirmative when the ALJ asked if the stipulation of facts were comprehensive enough so that he could reference it in resolving the legal issues to be presented in the parties' motions. Exhibit 24 of the Record, Transcript of Prehearing Conference, at 20.

It was not until after receiving OAC's response to its motion for summary initial decision that Stair Cargo moved to set a date for oral argument, submitting that oral argument could "provide better exposition of the complex legal issues raised by each party in their respective memoranda and replies." Stair Cargo, however, did not contend that controverted facts remained. In sum, the ALJ appropriately denied the request for a hearing.

C. The ALJ Ruled Correctly That OAC Did Not Have To Present Evidence That Kuwait Maintains an Unsanctioned Boycott Against Israel or That Kuwait Maintains a Blacklist or Restrictions on Persons Because of the Boycott

In its appeal, Stair Cargo argues that the ALJ's decision is inconsistent with OAC's burden of proof when he found that it violated § 769.2(d)(1)(iv) without requiring OAC to present evidence establishing that Kuwait maintained a blacklist and further, that the ALJ was not entitled to take official notice of alleged Kuwait boycott practices, without giving notice to Stair Cargo pursuant to Section 556(e) of the Administrative Procedure Act (APA). More specifically, Stair Cargo claims that OAC failed to sustain its burden of proof by failing to establish or to provide any contemporaneous legal authorities as to Kuwait's actual boycott laws, regulations, or practices. Stair Cargo alleges that proof of a violation of § 769.2(d)(1)(iv) requires that OAC prove that Kuwait does in fact maintain and enforce a secondary or tertiary boycott by blacklisting non-Israeli firms from doing business in Kuwait because of their relations with Israel or other blacklisted firms.

The ALJ found that OAC was not required to establish that the particular request was related to an unsanctioned foreign boycott of Israel by Kuwait, nor prove that Kuwait maintains a blacklist or restrictions on persons because of the boycott. The ALJ stated:

> These are both underlying assumptions that led Congress to enact section 8(a) of the Export Administration Act which prohibits providing information under the circumstances presented here. The agency does not have to justify the statue or properly promulgated rules under which it acts when it seeks to enforce them.

Initial Decision, at 9, n. 5.

I agree with the Initial Decision. Neither the Act nor the implementing Regulations requires that OAC present evidence that Kuwait participated in blacklisting activities. Regardless of the information provided by Stair Cargo with respect to the lack of adherence by some of the countries of the Arab League to certain aspects of the boycott, the statute is unambiguous and does not provide for exceptions in instances where a country does not strictly adhere to an acknowledged boycott. It merely states that a "United States person may [not] furnish * * * information concerning his or any other person's * * * relationships * * * with any person who is * * * believed to be restricted from having any business relationship with or in a boycotting country."

Moreover, it is an irrefutable fact that, at the time of the violations at issue, Kuwait was a member of the Arab League which maintained an unsanctioned foreign boycott of Israel. Congressional action with respect to the Act was motivated by and responded to this very issue.[6] Congress enacted the Act as "necessary to prevent a boycotting country from using United States persons to supply information necessary to boycott enforcement." *Report of the Committee on Banking, Housing and Urban Affairs*, S. Rep. No. 95–104, 95th Cong., 1st Sess. 25 (1977). Thus, Congress sought to terminate the flow of information which was commonly used for boycott enforcement purposes by making it increasingly difficult for the participating Arab states to gather such information.

Accordingly, in my view, anytime information is requested by a boycott office of a member of the Arab League, a presumption arises that such information is to be used in furtherance of the Arab League boycott. Whether Kuwait does or does not strictly enforce the voluntary provisions of the secondary and tertiary boycotts is irrelevant; the more pertinent question is whether providing the full name of the I.P.S. Corporation supplied the boycott office with information with which it could further the intent of the boycott. Until the Arab League boycott no longer exists or unless Kuwait withdraws from the Arab League, Kuwait should be presumed to be a participant and a beneficiary of the terms of the boycott.[7] Therefore, OAC does not have to establish that Kuwait itself maintained an unsanctioned boycott against Israel or that Kuwait maintains a blacklist or actively

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[2] Arguments raised by Stair Cargo not discussed have been considered and rejected as being without merit or as being immaterial to the final decision. The conclusions reached are based on consideration of the record as a whole.

[3] § 788.12 provides in pertinent part:

(a) The Administrative Law Judge, on his own motion or on the request of a party, may direct the parties to attend a pre-hearing conference to consider:

(1) simplification of issues;

(2) the necessity or desirability of amendments to pleadings;

(3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) such other matters as may expedite the disposition of the proceedings * * *

[4] In *Town & Country Plastics*, Rule 6 of the FRCP provided guidance and resolution of an issue concerning a filing day which fell on Sunday, allowing an appeal to be timely filed on the next applicable business day, when there was nothing in the Regulations explicitly extending the time for filing documents when the last day falls on a Sunday.

[5] Moreover, as will become apparent from the subsequent discussion on waiver, there was no genuine issue of disputed material fact that would alter the current disposition of this case even if Rule 56 of the FRCP were, in fact, to apply.

[6] For an excellent discussion of the history concerning the formation of the Arab League boycott of Israel and the response of the United States Congress in enacting the antiboycott provisions of the Export Administration Act, see *Briggs & Stratton Corp.* v. *Baldridge*, 539 F. Supp. 1307, 1309 (ED Wis. 1982), *affirmed* 728 F.2d 915 (7th Cir. 1984) (adopting the district court's opinion at 916), *cert denied* 469 U.S. 826 (1984).

[7] According to information compiled by the OAC, the following Arab countries currently participate in one or more aspects of the Arab boycott of Israel: Bahrain, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Yemen Arab Republic. Egypt terminated its participation in the boycott after signing a peace agreement with Israel.

participated in secondary or tertiary boycotts.[8]

D. The ALJ Found Correctly That Stair Cargo Furnished Business Relationship Information in Violation of Section 769.2(d)(1)(iv)

In its appeal, Stair Cargo argues that OAC must prove that I.P.S. Corporation was, in fact, blacklisted, or that Stair Cargo knew or believed that I.P.S. Corporation was, in fact, blacklisted. Stair Cargo's argument misconstrues both the meaning and intent of § 769.2(d)(1)(iv). Under the Act and implementing Regulations, in order to establish a violation, OAC is required to show that the information sought and subsequently furnished was information about a U.S. person's business relationship(s), or lack thereof, with someone who may be blacklisted for boycott reasons. The ALJ found that OAC had met its burden of proof.

The information that Palms Agro sought and Stair Cargo furnished was information about Stair Cargo's and/or Spears' business relationships, or lack thereof, with I.P.S. Corporation, a person that may be blacklisted for boycott reasons. Whether or not Stair Cargo or OAC knew or believed that I.P.S. Corporation was restricted within the meaning of the Regulations is irrelevant. The "belief" requirement is not one that either party must have; rather, it is the document in question which provides the requisite "belief" by the requesting party that I.P.S. Corporation may be a blacklisted person. The question thereafter is whether a reasonable person would conclude that the information being requested or subsequently furnished was for the purpose of ascertaining whether or not I.P.S. Corporation was on a blacklist.

This interpretation is supported by § 8(a)(1)(D) of the Act which provides in pertinent part:

[f]urnishing information about whether any person has, has had or proposes to have any business relationship * * * with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country.

This section of the Act does not support Stair Cargo's proposition that it must know or believe that the person about whom it is providing the prohibited information is restricted. Rather, the wording is passive in nature; Congress was silent with regard to the source of the knowledge or belief and opted, instead, for a broad interpretation, in that the knowledge or belief had to be about someone "known or believed" to be blacklisted without specifying who had to have that knowledge or belief. Accordingly, this interpretation is consistent with the lack of specificity in the statute, neither expanding nor contracting its plain language and intent.[9]

Similarly, § 769.2(d)(1)(iv) specifies neither that Stair Cargo nor OAC must know or believe that the person about whom it is providing information is restricted from having a business relationship with or in a boycotting country. The Regulation is as broad as the Act that it implements. In addition, examples (x) and (xviii), which provide guidelines and illustrate the manner in which the Regulations are interpreted, do not support Stair Cargo's argument that there is a specific knowledge requirement.

Example (x) provides:

U.S. Company A, in the course of negotiating a sale of its goods to a buyer in boycotting country Y, is asked to certify that its supplier is not on Y's blacklist.

A may not furnish the information about its supplier's blacklist status, because this is information about A's business relationships with another person who is believed to be restricted from having any business relationships with or in boycotting country.

The rationable whereby A is prohibited from furnishing the requested information in the example has nothing to do with any knowledge or belief that A has. Rather, an answer to the request is prohibited because the information is about A's business relationships with a person that may be blacklisted, whether or not this belief or knowledge actually exists. Moreover, a reasonable person analysis is consistent with this application of the statute.

Example (xviii), likewise, supports the interpretation of this decision. It provides:

U.S. company, A is asked by boycotting country Y to certify that it is not * * * in any way affiliated with any blacklisted company.

A may not furnish such a certification because it is information about whether A has a business relationship with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

As with the previous example, example (xviii) does not specify that A must know or believe that it is not affiliated with a blacklisted company. On the contrary, the implication suggests otherwise—it would be impossible for A to have any such knowledge or belief without knowing who was on any one of a number of blacklists. Given the "negative basket" wording of the request, it is clear that A need not have knowledge or belief about the blacklist status of any specific company. Rather, the prohibition applies because, in the context of which the information is sought, it is clear that the requesting party is seeking information about A's business relationships with anyone who may be blacklisted for boycott reasons.

Stair Cargo also claims that proof that Kuwait has blacklisted or otherwise restricted I.P.S. Corporation is essential to OAC's case and disputes the rationale that it would be too difficult to prove who is actually blacklisted. However, to require what Stair Cargo suggests would be contrary to Congressional intent in enacting the antiboycott provisions of the Act, and would make it virtually impossible to establish a violation of § 769.2(d)(1)(iv). Stair Cargo's interpretation would require that OAC establish that it had a basis for knowing or believing I.P.S. Corporation's blacklisted status. Such a showing would require an excessive level of proof and would be difficult, given that blacklists are not publicly available and are not constantly being reviewed and updated. See *Report of the Committee on International Relations*, H.R. Rep. No. 95–190, 95th Cong., 1st Sess. 49(1977). As the Arab countries participating in the boycott of Israel prepare and individually use their own blacklists, each may contain names of different persons. As the ALJ appropriately noted in his decision, "it is difficult to actually know who is restricted by the boycott because of the complex, pervasive, and often unpredictable, system for maintaining the boycott." Initial Decision, at 7, n.3. This view was recognized by the court in *Briggs & Stratton Corp. v. Baldrige, supra*, at 1309. In that case, the court found that "[d]ecisions to blacklist a company are made haphazardly" and that sometimes the boycott countries continue to trade with a company despite activity that could be deemed inconsistent with boycott principles.

Morever, the OAC has no statutory or regulatory responsibility to maintain copies of the numerous blacklists in use by Arab countries participating in the boycott of Israel. In fact, it would be contrary to the policy of the United States, as set forth in § 3(5) of the Act, for OAC to promulgate or maintain any document purporting to be a blacklist.

Accordingly, the fact that OAC may or may not have access to the boycott lists of any one country is not relevant and, in the event such access were to exist, would not necessitate that it be exploited for purposes of these types of proceedings. Where access to information of certain countries is available, the same cannot be said of others. Violations and enforcement of regulations obviously must be done on a uniform basis, and an interpretation of the statute requiring a level of proof suggested by Stair Cargo is impractical.

Given the foregoing analysis, the ALJ found that the information sought by Palms Agro and furnished by Stair Cargo was information about Speaker Manufacturing's and/or Stair Cargo's business relationships with I.P.S. Corporation, a person "known or believed" to be blacklisted. The only reasonable interpretation of the request suggests that there was uncertainty as to the blacklist status of I.P.S. Corporation.

The request stated, in relevant part:

Please provide complete name of M/S/ I.P.S. Corp. as abrivated[sic] names are not acceptable to local boycott office as before adding to L/C our bank will get the name cleared from boycott authorities.

If it were known that I.P.S. Corporation was not blacklisted, no reason would exist to request its complete name for submission to and clearance by the boycott authorities. The sole reason stated for the request was for the purpose of getting the name "I.P.S. Corp." cleared by the boycott authorities; there was no reference to any other requirement, whether it be a customs, import, or shipping requirement, to which the request pertained.[10] Thus, the request demonstrates quite conclusively that, contrary to Stair Cargo's arguments at the time of the communication, the only reason the company's full name was desired was so that it could be used for boycott purposes.[11]

Finally, Stair Cargo argues in its appeal that the decision in *Town & Country Plastics, Inc.*, AB1–89, September 21, 1990, should serve as persuasive authority in this case, although in my Final Decision and Order Affirming in Part Order of the Administrative Law Judge, AB1–89, May 11, 1995, I specifically held that the *Town & Country Plastics case* would not serve as precedent regarding the knowledge element. In *Town & Country Plastics*, the ALJ found that OAC had failed to establish that the information provided in response to a name clarification request for the Saudi Arabian Customs Office was boycott-related. Accordingly, the ALJ found that OAC had failed to establish that the company, about whom clarification was sought, was known or believed to be restricted from having any business relationships with or in a boycotting country. I do not find the *Town & Country Plastics* decision to be persuasive authority for the case at hand because the two cases are clearly distinguishable on the facts. The request in the former was for the Saudi Arabian Customs Office and contained no reference to a boycott of Israel which would raise a reasonable belief that the request was boycott-related. The request was reasonably perceived as a routine name clarification. While in this case, there was no doubt that the request was boycott-related and the information was sought for Kuwait's boycott authorities. Thus, Stair Cargo clearly knew or believed, from the context of the communications on December 22, 1988, that they related to boycott matters.

E. The ALJ Found Correctly That Section 769.3 Does Not Apply to Stair Cargo's Prohibited Furnishing of Business Relationship Information[12]

Section 769.3(b) of the Regulations provides that a United States person, in shipping goods to a boycotting country, may comply or agree to comply with the import and shipping document requirements of that country, with respect to (1) the country of origin of the goods; (2) the name of the carrier; (3) the route of the shipment; (4) the name of the supplier of the shipment; and (5) the name of the provider of other services. The only qualification that appears in the text of the Regulations is that "all such information must be stated in positive, non-blacklisting, non-exclusionary terms." § 769.3(b)(2).

Arguing that the entire commercial context should be taken into account, Stair Cargo alleges that the furnishing of the complete name of a supplier of goods, regardless of boycott intent, in order to comply with the import or shipping requirements of the importing country, falls within the parameters of § 769.3(b).

However, regardless of the extent to which Stair Cargo protests that the motivation behind the supplying of the information was not boycott-related, the facts and the documentation show otherwise. It is not required that intent to comply with the boycott be the sole reason that Stair Cargo complied with the request. As long as it was one of the motivating factors, then Stair Cargo was found appropriately to have violated § 769.2(d)(1)(iv). The Regulations provide in pertinent part:

(2) A United States person has the intent to comply with, further, or support an unsanctioned boycott when such a boycott is at least one of the reasons for that person's decision to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.

[8] In response to Stair Cargo's argument concerning official notice, whether and to what extent Kuwait actually enforces the boycott policy of the Arab League are not material facts relevant to this proceeding, since the policy or goal of the Arab League members is to maintain such a boycott, and Kuwait remains a member of the Arab League. There is no dispute as to the existence of the boycott. OAC thus is no resting on official notice of a material fact for purposes of APA Section 556(e), and accordingly, OAC does not have to give notice with respect to the unsanctioned boycott.

[9] Stair Cargo argues that to read § 769.2(d)(1)(iv) as not requiring proof that the subject of the communication is restricted renders much of the subsection as surplusage, which is contrary to accepted principles of statutory construction. However, contrary to Stair Cargo's claim, the interpretation established in this opinion would not render the subsection meaningless. Specifically, the prohibition in subsection (iv) must be read in context with the other three sections. These subsections prevent a United States person from furnishing or agreeing to furnish information about past, present, or future relationships (i) with or in a boycotted country; (ii) with any business concern organized under the laws of a boycotted country; or (iii) with any national or resident of a boycotted country. It is self-evident that these pertain to related, but separate, violations from those under (iv). The first three are more "direct" violations in that the relationships are between the parties. Subsection (iv) is a broader prohibition that prevents the party in question from divulging information about any other person who may be restricted from having a relationship with or in a boycotting country, and does not affect or encroach upon the prohibitions set forth in subsections (i), (ii), and (iii).

[10] Stair Cargo in its Rebuttal to OAC's Reply to its Appeal argues that, looking at the entire commercial transaction, the requirement for the full name of "I.P.S. Corp." was a pure simple technical clerical requirement without reference to any implied blacklist status. However, the context of the critical communications of December 22, 1988 belie that argument.

[11] See also § 769.2(d)(4) which provides that no information about business relationships with blacklisted persons may be furnished in response to a boycott request, even if the information is publicly available. Requests for such information from a boycott office will be presumed to be boycott-based.

[12] Stair Cargo argues in its appeal that the decision of the ALJ should be reversed because he "failed to determine respondent's defense that the response was excepted from the prohibitions" under § 769.3(b). Contrary to Stair Cargo's allegation that the ALJ did not respond to its arguments, the ALJ did discuss compliance with Kuwait shipping document requirements on page 5 of his Initial Decision and makes specific reference to Stair Cargo's underlying argument with respect to § 769.3(b) on pages five and six. The lack of a specific reference to § 769.3(b) does not translate into a determination that the ALJ did not consider the argument.

§ 769.1(e). Viewing the entire context of the commercial transaction does not change that result. Legislative history is quite illustrative on this point:

> Intent to comply with a boycott could be presumed, subject to rebuttal, where from all the circumstances it is reasonably clear that the information is sought for boycott enforcement purposes * * * On the other hand, where the information is sought in a context which does not make it reasonably clear that the purpose is boycott related, no illegal intent should be presumed.

S. Rep. No. 95–104, 95th Cong., 1st Sess. 40 (1977), *quoted in Briggs & Stratton* v. *Baldrige, supra*, 539 F. Supp. at 1313–14. It is clear from the nature and purpose of the request in this case that at least one of Stair Cargo's reasons for furnishing the complete name of the I.P.S. Corporation was to comply with Kuwait boycott enforcement procedures. The name was given in order to be cleared by the boycott authorities prior to being added to the letter of credit, and not to comply with Kuwait import and shipping requirements.[13] Stair Cargo, as an experienced freight forwarder participating in international trade was, or should have been, aware of the nature of the request and, therefore, was on notice with regard to the purpose for which the complete name was to be utilized.

F. The ALJ Found Correctly That Stair Cargo Failed To Report to the Department of Commerce Its Receipt of a Boycott-Related Request in Violation of Section 769.6

Stair Cargo argues that § 769.6(a)(5) sets out certain exceptions to the reporting requirements that apply regardless of whether or not the requests are boycott-related. Pursuant to § 769.6(a)(5)(iv), an exception exists where there is:

> (iv) a request to supply an affirmative statement or certificate regarding the name of the supplier or manufacturer of the goods shipped or the name of the provider of services.

According to Stair Cargo, since the request in this case was for an affirmative statement of the full name of I.P.S. Corporation, the manufacturer of goods which had already been shipped, the request from Palms Agro fits squarely within the exception set forth above.

However, Stair Cargo's attempt to latch on to the exception set forth in § 769.6(a)(5)(iv) misinterprets the language and proper application of this regulation, particularly the part preceding the listing of specific requests that are not reportable under the Regulations. The preambular language indicates that the specific exceptions to the reporting requirements came about for three reasons, one of which was that certain terms were used for boycott and non-boycott purposes. The language recognizes that certain terms, depending on their context, would in some circumstances be seen as boycott-related, while in other circumstances, they would not be. In the instant case, there are no ambiguous terms in the request from Palms Agro. It is abundantly clear that the request sought to procure the complete name of the I.P.S. Corporation for submission to the Kuwait boycott office for boycott clearance. Accordingly, Stair Cargo misconstrues the exceptions of § 769.6(a)(5) when it argues that information can be furnished regardless of whether the request is boycott-related.

G. The ALJ properly assessed the penalty

In its appeal, Stair Cargo argues that assessment of a penalty in this case is "arbitrary, capricious and an abuse of discretion * * * [given that) FRCP Rule 56 contemplates that motions for summary judgment may be entered with respect to the liability issues only, while leaving questions relating to damages to subsequent proceedings." Stair Cargo further contends that it did not waive its right to a hearing and that "the consideration of aggravating and mitigating factors, are questions of material fact with respect to which the parties have a right to a hearing under § 788.13. The denial of Respondent's request for a hearing was therefore arbitrary and capricious."

As explained in section III.B. of this Final Decision, I have already determined that a review of the record in this case indicates that Stair Cargo did, in fact, waiver its right to a hearing. As further explained in section III.B., the FRCP are inapplicable to administrative proceedings under the Regulations, which do not provide for a separate hearing in order to determine the nature and extent of damages. Nothing in § 788.13 of the Regulations contemplates any sort of bifurcated procedure as suggested by Stair Cargo. On the contrary, § 788.16 provides that, if the ALJ finds that one or more violations have occurred, he shall order an appropriate disposition of the case and "may issue an order imposing administrative sanctions, including civil penalties as provided in § 788.3, or take such other action as he deems appropriate." § 788.16(b)(1).

Addressing the aggravating and mitigating factors which it claims are disputed issues of material fact, Stair Cargo had the opportunity to include such arguments in its motion or its response to OAC's motion for summary judgment. Stair Cargo was aware that the case was going to be disposed of on the pleadings and should have taken the opportunity to make every relevant argument at that time. Stair Cargo, however, presented no mitigating factors addressing OAC's request for the imposition of a $10,000 civil penalty in its motions.

Finally, Stair Cargo argues that too much weight was given to the fact that it is a freight forwarder and that the penalty was excessive. However, my review indicates that OAC could have sought the imposition of both a $20,000 civil penalty and other administrative sanctions, the denial of Stair Cargo's export privileges and/or excluding its employees from practice before the Department of Commerce. Instead, OAC sought no more than a civil penalty commensurate with the circumstances of the violations, both as an appropriate penalty and as a deterrent to ensure future compliance with the Export Administration Act and the Regulations. After consideration of all the factors in this case, OAC did not even seek the maximum amount allowed. Thus, the ALJ properly imposed a civil penalty of $8,000 for the violation of § 769.2(d)(1)(iv), and a $2,000 penalty for the violation of § 769.6. Such penalties are not excessive.[14]

[13] It is doubtful that § 769.3(b) would be triggered by the facts of this case, as a letter of credit is neither an import document nor a shipping document. Specifically, a letter of credit does not reflect a movement of goods, as do shipping documents, but, rather, is a contract which embodies a bank's obligation to a beneficiary. It is "an original undertaking by one party to substitute his financial strength for that of another, with that undertaking to be conditioned on the presentation of a draft or a demand for payment, and most often, other documents. John F. Dolan, *The Law of Letters of Credit*, § 2.02 (2d Ed. 1991), at 2–4. As set forth in the definition, there is a distinction between the letter of credit itself and the "other documents" called for in the letter of credit that may be required to satisfy it. Such documents, called "transport documents" in the Uniform Customs and Practices for Documentary Credits (1983 Revision), those which indicate loading on board, dispatch, or taking charge of the goods, are synonymous with the term "shipping documents." However, as described in the preceding body of text, Stair Cargo furnished the full name of the I.P.S. Corporation in order to have it cleared by Kuwait boycott authorities prior to amending the letter of credit, and even if this was done to also comply with shipping requirements, as argued by Stair Cargo, § 769.1(e) would dictate that it was also done to comply with a boycott-related request in violation of § 769.2(d)(1)(iv).

[14] Guidelines for settlement negotiations have indicated that OAC would be willing to accept $4,000 for a simple furnishing of information. However, when a name is furnished, the settlement penalty is increased to $10,000. After weighing several factors, OAC opted not to seek the full $10,000 penalty for Stair Cargo's violation of § 769.2(d)(1)(iv) of the Regulations. See United States Department Of Commerce Reply To Respondent's Appeal From Administrative Law Judge's Order, p. 31, n. 16.

IV. Decision and Order

Based on review of the administrative record and for the reasons stated above, the order of the ALJ granting summary decision on the written record; assessing a civil penalty of $8,000 for violating § 769.2(d)(1)(iv) and a civil penalty of $2,000 for violating § 769.6 against Stair Cargo Services, Inc.; and denying Stair Cargo's request to dismiss the charges and to present oral argument and submit additional evidence is hereby AFFIRMED.

Dated: October 30, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–27377 Filed 11–3–95; 8:45 am]
BILLING CODE 3510–DT–M

International Trade Administration

[A–570–840]

Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4198 or (202) 482–1778.

Final Determination

We determine that manganese metal from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930 ("the Act"), as amended. The estimated sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Case History

Since the preliminary determination (60 FR 31282, June 14, 1995), the following events have occurred. The Department published an amended preliminary determination correcting a ministerial error (60 FR 37875, July 24, 1995). We conducted verification of the questionnaire responses in the PRC between July 24, 1995 and August 11, 1995, of the following respondents: China National Electronics Import & Export Hunan Company (CEIEC), China Hunan International Economic Development Corp. (HIED), China Metallurgical Import & Export Hunan Corporation (CMIECHN/CNIECHN), Minmetals Precious & Rare Minerals Import & Export Co. (Minmetals), and Great Wall Industry Import and Export Corporation (GWIIEC). Case and rebuttal briefs were filed by petitioners and respondents on October 2, 1995, and October 4, 1995, respectively. On October 6, 1995, the Department held a public hearing.

Scope of the Investigation

The subject merchandise in this investigation is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1994.

Best Information Available

We have based the PRC-wide rate on best information available (BIA). In administrative proceedings involving merchandise from nonmarket economy countries, the Department's consistent practice has been to treat all exporters as part of the government and assign to them the single government rate, known as the country-wide rate, unless an exporter affirmatively demonstrates that it is separate from the government and entitled to its own rate. If a non-market economy exporter does not respond to the Department's request for information, the Department has no basis to treat that exporter separately from the government and, as a result, the government (which includes the exporter) receives a margin based on best information available because one of its entities failed to respond.

In this case, the evidence on the record indicates that the respondents identified during the investigation do not account for all of the exports of the subject merchandise to the United States. As a result, it is reasonable for the Department to conclude that it did not receive responses from all exporters. In the absence of responses from all exporters, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine* (61 FR 16433, March 30, 1995)).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium* (58 FR 37083, July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

In this investigation, we are assigning to any PRC company, other than those specifically identified in the "suspension of liquidation" section the PRC-Wide deposit rate of 143.32 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the initiation (*see Initiation of Antidumping Duty Investigation: Manganese Metal from the People's Republic of China* 59 FR 61869 (December 2, 1994)).

GWIIEC

The Department has decided to disregard the sales made by GWIIEC to the United States during the POI (*see* Comment 2 below for interested party comments on this issue). The Court of International Trade has stated the if evidence demonstrates to the Department that a respondent has

"artificially orchestrated an export scheme involving artificially set prices," the agency has the discretion to disregard the U.S. sales as not resulting from a bona fide transactions. *Chang Tieh Industry Co., Ltd.* v. *U.S.*, 840 F. Supp. 141, 146 (CIT 1993). The timing of these sales relative to the filing of the petition coupled with the fact that the prices were significantly higher than the world market price of this commodity and prices observed in the United States at the time of the sale, led the Department to gather additional information from the U.S. purchaser to determine whether the sales were bona fide transactions. Certain facts asserted by parties to these transactions during this subsequent inquiry did not verify. *See* the October 27, 1995, Confidential Memorandum to File Re: Bona Fide Sales. Based on the totality of the circumstances, viewed in light of the discrepancies found, the Department determines, based on substantial evidence on the record (much of which is proprietary), that these were not bona fide sales for commercial purposes and, therefore, would not provide an appropriate basis for determining GWIIEC's pricing behavior for sales to the United States. Therefore, these sales have been disregarded.

Separate Rates

CEIEC, HIED, CMIECHN, and Minmetals have requested separate antidumping duty rates. In cases involving nonmarket economies, the Department's policy is to assign a rate, separate from the country-wide rate, only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is the manipulation of dumping margins.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department uses criteria that were developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*) and in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

The business licenses of all respondents being considered for separate rates indicate that they are owned "by all the people." As stated in *Silicon Carbide*, "ownership of a company by all the people does not require the application of a single rate." Accordingly, these respondents are eligible to be considered for a separate rate.

De Jure Control

The respondents submitted a number of documents to demonstrate the absence of *de jure* control of their business activities by the PRC central government. The documents include the following:

- *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (April 13, 1988) This law granted autonomy to state-owned enterprises by separating ownership and control (Article 2). It also granted enterprises the right to set prices and the right to decide what type of commodity to produce (Article 22–26).
- *Excerpts from PRC's State Council Decree: Provisions on Changing the System of Business Operation for States Owned Enterprises* (December 31, 1992) This decree superseded the April 13, 1988 law and codified existing practice. It also gave state-owned enterprises the right to establish "production, management, and operational policies" and the right to set prices, sell products, purchase production inputs, make investment decisions, and dispose of profits and assets. These rights apply specifically to an enterprise's import and export activities (Provision 12).
- *Order from MOFERT, No. 4, 1992* and *Temporary Provision for Administration of Export Commodities* (*Export Provisions*) (December 21, 1992) The *Export Provisions* indicate those products subject to direct government control. Electrolytic manganese metal does not appear on the *Export Provisions* list and, hence, the subject merchandise under investigation is not subject to export constraints. We note that the *Emergent Notice on Changes in Issuing Authority for Export Licenses Regarding Public Bidding Quota for Certain Commodities* (MOFTEC #140) (Effective April 1994) canceled previous export licenses for certain commodities. Manganese metal was not among these commodities.

In addition to the above laws and regulations, respondents provided the following documents:

- *PRC's Enterprise Legal Person Registration Administrative Regulations* (June 13, 1988) This regulation sets forth the procedure for registering enterprises as legal persons.
- *Law of the People's Republic of China on Enterprise Bankruptcy* (December 2, 1986) This law sets forth bankruptcy procedures for state-owned enterprises.
- *GATT Document Concerning Transparency of China's Foreign Trade Regime* (February 12, 1992) This document listed the PRC central government's response to questions by a GATT committee regarding the PRC's foreign trade regime.

Consistent with *Silicon Carbide*, we determine that the existence of the above-referenced laws and regulations demonstrates that CEIEC, HIED, CMIECHN, and Minmetals are not subject to *de jure* central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions within the PRC (*see* "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China—93–133 (July 14, 1993)). As such, the Department has determined that a *de facto* analysis is necessary to determine whether the respondent companies are subject to central government control over export sales and pricing decisions.

De Facto Control

During verification, our examination of correspondence and sales documentation revealed no evidence that the export prices of respondents being considered for separate rates are set, or subject to approval, by any governmental authority. It was evident from our examination of correspondence and written agreements and contracts that these respondents have the authority to negotiate and sign contracts and other agreements

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

independent of any government authority. We also noted that the respondents retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices). Finally, we have determined that these respondents have autonomy from the central government in making decisions regarding the selection of management, based on our examination of internal management selection documents.

Conclusion

Given that the record of this investigation demonstrates a *de jure* and *de facto* absence of governmental control over the export functions of all respondents being considered for separate rates, we determine that these respondents should receive a separate rate.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economies that (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise.

The Department has determined that India is the most suitable surrogate for purposes of this investigation (*see* Comment 1). Based on available statistical information, India is at a level of economic development comparable to that of the PRC, and is a significant producer of comparable merchandise.

Fair Value Comparisons

To determine whether sales of manganese metal from the PRC by CEIEC, HIED, CMIECHN, and Minmetals were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the United States Price and Foreign Market Value sections of this notice.

United States Price

For CEIEC, HIED, CMIECHN, and Minmetals, we based USP on purchase price, in accordance with section 772(b) of the Act, because manganese metal was sold directly to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances.

Where appropriate, we calculated purchase price based on packed, C&F and CIF prices to unrelated purchasers in the United States. We made deductions to these prices for foreign inland freight, foreign inland insurance, brokerage and handling expenses, ocean freight, and marine insurance, as appropriate (*see* Comment 13). Generally, costs for these items were valued in the surrogate country. However, where transportation services were purchased from market economy suppliers and paid for in a market economy currency, we used the cost actually incurred by the exporter.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on the factors of production reported by the factories in the PRC which produced the subject merchandise for the four exporters analyzed in this determination. The factors used to produce manganese metal include materials, labor and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values.

In determining which surrogate value to use for each factor of production, we selected, where possible, an average non-export value which was representative of a range of prices within the POI, or most contemporaneous with the POI, specific to the input in question, and tax-exclusive.

We first note that because business proprietary treatment was requested by respondents for certain factor inputs, we have named these inputs ("A" through "F"). A key to these letter assignments is provided in the attachments to the October 27, 1995 calculation memorandum.)

With the exception of Factor F, we obtained surrogate values from the following Indian sources: *Chemical Weekly* (September–November 1994), the *Monthly Trade Statistics of Foreign Trade of India*, Volume II—Imports, August 1994, (*Indian Import Statistics*); and the *Indian Minerals Yearbook: 1993* (*see* Comments 4 through 6). For Factor F, we relied upon information submitted by the petitioners (taken from the June–October 1994 *Chemical Marketing Reporter*) for a similar input (*see* Comment 7). We are no longer using the surrogate value for manganese ore which was used at the preliminary determination. We are using a surrogate value for manganese ore from the Indian Minerals Yearbook 1993 because this ore has a manganese content that is comparable to the ore used by the PRC producers and also represents a domestic price in India. We adjusted the value of the manganese ore to reflect a delivered price (*see* Comment 4).

For the reasons outlined in the June 6, 1995 preliminary determination concurrence memorandum, we are using the April 1992 through March 1993 average tax-exclusive price for industrial electricity in India, as provided by the World Bank, to value electricity (*see* Comments 9 and 10). To value PRC labor costs, we used data on Indian wage rates from the *Yearbook of Labor Statistics* (*see* Comment 8). Because indirect labor was not reported by respondents and was not included in the surrogate value for manufacturing overhead, we have added an amount for indirect labor (*see* Comment 9).

We adjusted the factor values, when necessary, to the POI using wholesale price indices (WPI's) published by the International Monetary Fund (IMF). Labor rates have been adjusted using consumer prices indices (CPI's).

To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of material, labor, and energy for industries involved in "Processing and Manufacture—Metals, Chemicals and products thereof," as reported in the September 1994 Reserve Bank of India Bulletin's (RBI Bulletin) (*see* Comment 11). This same source was used to calculate selling, general and administrative (SG&A) expenses as a percentage of cost of manufacturing. Because the calculated SG&A percentage from the RBI was greater than the minimum 10 percent required by the statute, we used the SG&A percentage from the RBI Bulletin for each company (*see* Comment 12). With respect to profit, we used the statutory minimum of eight percent of materials, labor, energy, overhead, and SG&A costs calculated for each factory.

At the verification of certain producers, we learned that there were multiple suppliers of raw materials. In order to calculate the inland freight cost for these inputs, we derived the relative percentages obtained from each source and then, assuming that the input was consumed in these same proportions, used the distances from each of the sources to compute the cost per unit of output.

Interested Party Comments

As discussed above, the Department has not analyzed GWIIEC's sales for this investigation. Therefore, comments specifically related to GWIIEC have not been addressed in this notice.

Comment 1: Cometals, an interested party, argues that based on the criteria set forth in 773(c)(4), India should not be considered the surrogate country in this investigation. First, India is not at

the same level of economic development as China, as reflected in India—s lower per capita gross domestic product measured in terms of purchasing power parity. Second, India should not be considered a market economy given its protected markets and centralized control of economic activity. Third, since a surrogate country must be disqualified if the comparable merchandise is being subsidized, the Department should reject India because —the Indian economy is characterized by heavily protected markets and regulated prices of essential products including energy and industrial inputs." Finally, since ferromanganese (one of two products considered by the Department to be comparable to the subject merchandise) uses high grade ore, in contrast to the subject merchandise which can use lower grade ore, and also is made pursuant to a different production process, it should not be considered comparable to the subject merchandise. According to Cometals, South Africa does fit the Department's criteria pursuant to 773(c)(4) (i.e., it is at a level of economic development similar to the PRC, it is a market economy, and it produces subject merchandise without subsidies); therefore, it should be considered the surrogate country in this investigation.

DOC Position: It is the Department's longstanding practice in selecting surrogate countries to rely on market-exchange-rate-based per capita income figures as a rough indicator of economic development. While some arguments can be made for relying, instead, on purchasing power parity (PPP) per capita income figures, Cometals has not provided information which demonstrates why this measure would be preferable to the data normally relied on by the Department. Therefore, the Department continues to rely primarily on exchange-rate-based per capita income figures and continues to find India (with a per capita income of approximately US$300 in 1993) at a level of economic development comparable to that of China (with a per capita income of approximately US$500 in 1993). The Department also finds on the basis of exchange-rate-based income figures that South Africa (with a per capita income of approximately US$3,000 in 1993) is not at a level of economic development comparable to that of China.

With regard to government involvement in the Indian economy, it has been and remains our longstanding practice to treat India as a market economy under the antidumping law. In antidumping cases involving Indian products, we have accepted Indian prices and costs as market determined. We do not find Cometal's arguments concerning government involvement in India's economy sufficient grounds to reject India as and appropriate surrogate market economy.

With respect to the allegation that the comparable merchandise in India is subsidized, we note that any subsidies which may be provided on the final product generally would be of concern to the Department only if foreign market value is based on export prices of the final product from the surrogate country. Here, foreign market value is not based on exports from India of the final product but rather on domestic input prices in India. There is no evidence on the record indicating that the input prices in the instant investigation are subsidized.

Finally, regarding the comparability of manganese metal and ferromanganese, the Department analyzes the comparability in terms of following four criteria: (1) Manufacturing process, (2) production inputs (3) intensity of input usage and (4) normal end-uses and applications. As noted in a May 5, 1995 Memorandum to Dave Mueller, Director of the Office of Policy, we found that ferromanganese is comparable to manganese metal based on several of the above criteria. This finding of comparability does not mean that the two products are identical in terms of the four criteria. It means that the two products are sufficiently similar that the Department can reasonably assume that commercial production of the merchandise under investigation can occur in the surrogate. Therefore, we do not agree that the possible dissimilarities between manganese metal and ferromanganese described by Cometals are sufficient to render the products non-comparable. Furthermore, the decision to select India as a surrogate country was based on its production of both ferromanganese and electrolytic manganese dioxide (EMD), the latter of which we consider to be another comparable product.

Comment 2: Petitioners contend that GWIIEC's U.S. sales are not bona-fide and should be excluded from the antidumping calculations. Petitioners argue that GWIIEC's accounting system inhibited the Department from verifying the legitimacy of the suspect terms surrounding GWIIEC's U.S. sales. Also, according to petitioners, *Chang Tieh Industry Co.* v. *United States,* 840 F. Supp 141, 146 (1993) demonstrates that the Department should disregard sales as not resulting from a bona fide transaction if evidence demonstrates that a respondent "orchestrated an export scheme involving artificially set prices for purposes of dumping after the investigative period."

GWIIEC argues that the Department verified the terms of its U.S. sales characteristics of the product sold. GWIIEC also argues that petitioners by conceding that Bureau of the Census import data showed imports of manganese metal in February 1995 from the PRC at a volume and average value consistent with that it reported, confirmed GWIIEC's U.S. sales.

According to respondent, the precedent cited by petitioners in *Chang Tieh* is misstated and actually supports using GWIIEC's U.S. sales. Furthermore, GWIIEC points to the U.S. International Trade Commission preliminary determination which found that "substantial volumes of manganese metal are purchased for non-price reasons, end-users face difficulties in maintaining supplies, atypical transactions are significant in the marketplace, and prices are subject to sharp changes."

DOC Position: As stated above, we have decided to disregard the sales made by GWIIEC (*see*, the *GWIIEC* section of this notice).

Comment 3: With respect to all respondents, petitioners argue that the record on *de facto* control remains deficient because the Department's separate rates questionnaire addressed to the central and provincial governments remains unanswered. Petitioners add that this deficiency is important in light of the National People's Congress' mandate to MOFTEC to "take charge of the foreign trade work in the whole country," and in light of other administrative practices such as foreign exchange targets set by the central or local government.

Respondents CEIEC, HIED, CMIECHN, and Minmetals state that the laws placed on the record establish that the responsibility for managing the business activities of "owned by all the people" companies has been transferred from the central and provincial governments to the companies themselves; *i.e.*, there is an absence of *de jure* control by the central or provincial governments. Additionally, respondents contend that during the course of verification it was demonstrated that the activities of CEIEC, HIED, CMIECHN, and Minmetals "are not subject to governmental control nor direction." Respondents also note that the Department confirmed at verification that they are allowed "to borrow freely, to make independent business decisions regarding the disposition of profit or losses, and have autonomy from the central or provincial government in making decisions regarding the selection of management."

Finally, these respondents disagree with petitioners— claim that the responses to the government portion of the separate rates questionnaire do not reflect the totality of government knowledge. Respondents note that Department personnel met with PRC government officials and that the Department could have obtained additional information.

DOC Position: We first note that, CEIEC, HIED, CMIECHN, and Minmetals, provided certifications from both MOFTEC and the appropriate municipal authorities stating that the responses to the separate rates questionnaire were accurate. Moreover, based on the test described in *Silicon Carbide*, we have sufficient information on the record to award separate rates to the four analyzed companies.

Notwithstanding MOFTEC's mandate with respect to foreign trade work and the other administrative practices alleged by petitioners, we found no evidence of MOFTEC's or other government agencies' involvement in the export operations of these companies. While statements such as that quoted by petitioners may serve to support a presumption that a single rate should be applied to all exporters in the PRC, the specific evidence in this case rebuts that presumption for the four exporters in question.

Comment 4: The petitioners state that the Department should include an amount for freight between the PRC manganese metal producers and their ore suppliers. According to petitioners, the surrogate value for manganese ore should be viewed as an ex-mine price because there is no factual information in the record that establishes the location of the Goan mine (the Indian mine from which the surrogate value for manganese ore was derived) or its distance from the port. Petitioners also argue that for every other price quote of Indian ore, "FOB" meant FOB plant, which by definition, excludes freight.

Respondents claim that petitioners' argument that the surrogate value is an ex-mine price is not supported by the record. According to respondents, the manganese ore in question was shipped via a "berth," which means the buyer took possession of the goods at the port, not at the plant. Accordingly, the price quoted is FOB port, as opposed to FOB plant. Therefore, the Department would be double counting freight if it were to include the distance between the PRC producers and their suppliers.

DOC Position: We have not used the same source to derive the surrogate value for manganese ore as the one used for the preliminary determination (*see Foreign Market Value* section above). Therefore, the cite by respondents stating that the surrogate value included freight is not relevant. For the reasons stated in the October 18, 1995 Memorandum from team to Susan G. Esserman, we have used a domestic price quote in India taken from the *Indian Mineral Yearbook 1993*. This publication, at page 497, states that price is quoted on a "Free On Rail Mine Siding" basis. Therefore, the Department is adding a freight expense to the surrogate value of manganese ore.

Comment 5: Respondents claim that the Department should use a particular form of Factor B for the surrogate value instead of the form used in the preliminary determination. Respondents argue that the form of Factor B used at the preliminary determination is incorrect because it is not the form used by the PRC producers. Further, respondents note that there is a significant price differential between the two forms of Factor B. Even if the Department uses the correct form of Factor B, respondents claim that it is still necessary to adjust the surrogate value to reflect the content levels of Factor B used by the PRC producers. Respondent suggest that the Department employ the same adjustment methodology it applied to manganese ore in the preliminary determination.

DOC Position: We agree with respondents. We verified that the input actually used by the respondents was a particular form of Factor B. Accordingly, we have used a surrogate value for this particular form. We have also adjusted the surrogate value for this factor to reflect the producer-specific content levels.

Comment 6: Respondents argue that the surrogate values for certain chemicals (Factors C and D) which were based on prices reported in a 1993 *Chemical Weekly* publication and *Indian Import Statistics*, respectively, do not comport with economic reality and, therefore, should not be used in the final determination. Furthermore, respondents note that these values are higher than the delivered factor values in the *Chemical Marketing Reporter*, as submitted by petitioners and should, therefore, be considered aberrational. Respondents suggest that the Department use the values considered reasonable by petitioners, as obtained from the *Chemical Marketing Reporter*.

Petitioners argue that respondents did not provide any information to indicate what "economic reality" is with respect to these surrogate values. Regarding Factor C, petitioners argue that respondents did not correct the reported *Chemical Marketing Reporter* value for content, thereby invalidating their comparison to the *Chemical Weekly*. As regards Factor *D*, petitioners assert that the form of Factor D from the *Chemical Marketing Reporter* cited by respondents is not comparable to the Factor *D* used by the Department, as obtained from *Indian Import Statistics*. Additionally, petitioners note that respondents failed to provide publicly available published information (PAPI) information, which is preferred by the Department for valuing factors, and that the *Chemical Marketing Reporter* represents U.S. prices, as opposed to PAPI from the surrogate country. Finally, petitioners argue that respondents are drawing an unfair comparison between non-delivered prices from the *Chemical Marketing Reporter* and the delivered prices from the *Chemical Weekly* and *Indian Import Statistics*.

Petitioners also argue that the Department incorrectly adjusted the input cost for Factor C for HIED in the preliminary determination.

DOC Position: We do not agree with respondents' claim that the Indian values for Factor C and D are aberrational and do not comport with economic reality. After adjusting the *Chemical Weekly* price for Factor C to account for Indian taxes, it is very close to the price reported in the *Chemical Marketing Reporter*. With respect to Factor D, the *Chemical Marketing Reporter* price suggested by respondents is not for the form used by respondents in the production of subject merchandise, as noted by petitioners. Therefore, we have used the data from the *Chemical Weekly* and the *India Import Statistics* to value these factors.

Finally, we agree with petitioners that we did not correctly adjust HIED's input cost for Factor C in the preliminary determination. We are making the correct adjustment for HIED's specific content level for Factor C, as verified by the Department.

Comment 7: According to respondents, the price of a chemical submitted by petitioners and used by the Department as a substitute for a PRC Factor of production was not properly adjusted at the preliminary determination. Respondents note that petitioners, as producers of subject merchandise, know what prices are reasonable for their industry and cannot be biased in favor of the respondents. Therefore, according to respondents, the adjusted price submitted by petitioners should be used by the Department in the final determination.

Petitioners argue that they did not provide a value for the chemical used by

respondents because this input was never specified. Petitioners assert that the Department should not adjust the price that they submitted because the figures used in their calculations were based on chemicals used in their production process. Accordingly, these values are not applicable to the PRC production process.

DOC Position: Because we have been unable to develop valuation information for the actual chemical used by PRC respondents, we are continuing to use a substitute chemical based on information provided by petitioners. Further, we agree with respondents and have made the necessary adjustments to the price of this substitute chemical to reflect the appropriate concentration level.

Comment 8: Respondents challenge the Department's valuation of skilled labor. Specifically, they argue that the surrogate value for skilled labor should be based on the upper range of the "skilled worker" category instead of being based on the upper range of the "industrial worker" category. Respondents state that "given the fact that the lower range of the industrial category chosen by the Department for unskilled labor corresponds to the lowest monthly wage for the unskilled worker category, it would be logical and fair for the Department to use the lower range of the skilled worker category for determining the average monthly wage for skilled labor." Finally, they state that the Department's decision to use the upper range of the "industrial worker" category is not supported by the record.

Petitioners argue that the "industrial worker" rate should continue to be used by the Department because the production of subject merchandise is an industrial process and "skilled workers" represents a category which includes workers who are not engaged in an industrial process.

DOC Position: As noted in the Foreign Market Value section above, the Department is using Indian labor wages from the *Yearbook of Labor Statistics* to value PRC labor costs (*see* October 17, 1995 memorandum from David R. Boyland, Import Compliance Specialist, to case file). Therefore, because the comments above are concerned with information from a source the Department is no longer using, these comments are moot.

Comment 9: Petitioners argue that respondents incorrectly classified skilled and supervisory labor as indirect labor and did not report indirect labor hours needed to produce the merchandise. Petitioners argue that skilled, supervisory and clerical labor should be considered direct labor because they are directly related to the manufacturing operations. Petitioners support their claim by referring to *Plant Design and Economics for Chemical Engineers (Plant Design)*, and note that according to this source, the cost of direct supervisory and clerical labor should be 15 percent of the cost of unskilled and skilled operating labor.

Additionally, petitioners argue that all respondents, except GWIIEC, under-reported their labor usage. Petitioners state that the respondents' production process is less automated than that of petitioners' and, hence, should reflect higher labor intensiveness. Petitioners suggest that the Department correct for this by using GWIIEC's labor hours for the other respondents.

Respondents argue that for one of the producers, the Department verified that certain workers were not involved in direct labor activities and, hence, only a part of their labor cost should be used to calculate FMV. Further, respondents argue that the skilled and unskilled labor hours were verified by the Department and, as such, should be used in the final determination. According to respondents, *Plant Design* classifies costs based on the fixed or variable nature of a particular expense, with the result that these costs are treated as direct costs. However, a cost accounting approach would define items such as "maintenance and repairs" and supervisory labor as a part of factory overhead. Respondents urge the Department to follow the cost accounting approach. In support of this position, respondents point out that the Department's standard cost of production questionnaire for market economies treats supervisory labor as part of factory overhead.

DOC Position: Because there is no indirect labor component in the Department—s factory overhead surrogate, we reject respondents' argument that only a portion of verified indirect labor hours be included in the FMV. With the exception of GWIIEC, all respondents, as requested by the Department in its questionnaire, reported direct labor hours, as opposed to direct and indirect labor hours. Pursuant to information gathered at verification, the Department was able to quantify some of the indirect labor hours incurred by respondents, as well as identify other indirect labor functions performed. Because we do not have complete indirect labor information for respondents and, as noted above, our factory overhead surrogate does not include a component for indirect labor, we have estimated the amount of indirect labor that was not quantified by the Department and have used this value to calculate FMV (*see* October 27, 1995 calculation memorandum).

While petitioners have argued that total labor is under-reported based on their own experience, we have not rejected the labor component of CEIEC's, HIED's, CMIECHN's and Minmetals' responses in favor of GWIIEC's data. Instead, we have relied on these companies' verified amounts of labor usage adjusted for indirect labor as discussed above in our final determination.

Comment 10: Petitioners argue that electricity consumption for the majority of respondents is unrealistically low. Petitioners claim that the use of certain inputs (*i.e.*, Factor A) does not explain respondents' low electricity consumption and that respondents' electricity consumption should not be less than the minimal amounts indicated as being necessary to produce manganese metal based on the *Kirk-Othmer Encyclopedia of Chemical Technology (2nd Edition) (Kirk-Othmer)*. Additionally, according to petitioners, respondents' less efficient economies of scale should result in higher electricity consumption. Given that the production process employed and the raw materials consumed by each of the respondents are basically the same, petitioners also argue that the wide range of electricity usage rates reported by these respondents indicates that the reported electricity consumption is suspect for all of them. Petitioners contend that the Department should use the electricity consumption reported by GWIIEC's producer for all producers in this investigation since GWIIEC's manganese metal producer reported electricity consumption within minimum operational requirements. Respondents, argue that the electricity consumption extrapolated from *Kirk Othmer* by petitioners is based on the electricity consumption in 1967 of two companies no longer producing manganese metal and should be considered outdated. Therefore, the verified electricity usage of the individual producers should be used by the Department in its final determination.

DOC Position: While the domestic and PRC production processes are fundamentally the same, there are some important differences between the two. For example, the PRC producers use a certain input (Factor A) which improves electricity current efficiencies; *i.e.*, all things being equal, the electrolysis stage of the process requires relatively less electricity in the presence of Factor A.

Given the large number of variables (*e.g.*, different production processes and inputs), it is unknown whether the use of Factor A can fully explain the difference in the electricity consumption reported by producers and the levels submitted by petitioners. However, based on information supplied by the U.S. Bureau of Mines, we have determined that the electricity usage reported by respondents is not outside the range that would be expected for a producer using Factor A (*see* the October 16, 1995 memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). Therefore, the Department has used the verified amounts of electricity consumption.

Comment 11: Respondents argue that indirect material costs were double counted by the Department when it valued minor process chemicals and also included the "stores and spares consumed" category from the RBI Bulletin as a component of factory overhead. Respondents argue that either the "stores and spares consumed" component should be eliminated from the surrogate factory overhead or the Department should avoid directly valuing process chemicals. Respondents also argue that inputs that are considered as "consumables" in the accounting systems of the producers should be treated as indirect materials.

Respondents also disagree with petitioners' interpretation of the term "stores and spares consumed" listed in the RBI Bulletin, arguing that the Department can reasonably assume that the "stores and spares consumed" category includes an element for indirect materials. They point out that the reference to *Plant Design* cited by petitioners distinguishes between "raw materials," which are direct materials, and "catalysts and solvents, which are not direct materials." The chemicals in question, according to respondents, are "catalysts and solvents." Respondents also note that the Department's recognition of variable overhead in market economy cases contradicts petitioners' assertion that all variable inputs must be direct materials. Finally, since the chemicals in question are not physically incorporated into the finished goods or are used in very small quantities (*i.e.*, the antithesis of the cost accounting definition of direct materials), these chemicals should be considered indirect materials which are included in factory overhead.

Petitioners argue that the "stores and spares consumed" line item in the RBI Bulletin should be considered "operating supplies," as the term is used in *Plant Design; i.e.*, "miscellaneous supplies * * * needed to keep the process functioning." Petitioners note that *Plant Design* states that "[r]aw materials are all items that must be supplied in the manufacturing process for each unit of product produced." According to petitioners, to the extent that process chemicals are variable inputs, they must be considered "raw materials" for which surrogate values must be attributed. Therefore, petitioners state that because these items are not included in the surrogate factory overhead in the "stores and spares consumed" line item, the Department should value these chemicals separately from overhead.

DOC Position: Both petitioners and respondents have attempted to explain what the RBI "stores and spares consumed" category contains, but neither side has persuaded us. Based upon our own analysis, we have concluded that only those chemicals used after the metal has been produced or those chemicals used for cleaning purposes unrelated to the actual production process should be included in factory overhead (*see* October 16, 1995 Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). With respect to the other chemicals in question, while respondents' accounting systems may treat them as an element of factory overhead, these materials are more appropriately considered direct materials because they are required for a particular segment of the production process. Based on this analysis, we have treated certain of the so-called "process chemicals" as indirect materials which are covered by the surrogate value for factory overhead and the remainder have been valued as direct materials.

Comment 12: Petitioners argue that the Department omitted certain expense categories (*i.e*, "selling commission," "rates and taxes," "other provisions," and "financing interest") which should have been included in the surrogate SG&A value. Additionally, if the Department continues to exclude "financing interest" from the SG&A value, it should use "gross operating profit" instead of "operating profit." Finally, according to petitioners, regardless of how PRC producers categorize certain items, costs cannot be assigned to factory overhead or SG&A categories unless the above-referenced RBI Bulletin table attributes the cost to factory overhead or SG&A.

Respondents argue that the Department should not include "rates and taxes" in SG&A because the surrogate input values are exclusive of internal taxes or duties. Also, according to respondents, because the Department does not normally adjust for credit expenses in NME cases, it should not include a value for credit expenses ("financing costs"). Moreover, since the cost of producing manganese metal is determined at the producer level, "selling commissions" should not be included as the producer does not sell the merchandise, only the exporter does. Generally with respect to SG&A, respondents claim that because the Indian surrogate information is for a broad group of industries and India has no manganese metal industry, the Department should include in its surrogate SG&A only those expenses incurred by the PRC producers. As an alternative to determining what should be included in the surrogate SG&A value, respondents suggest that the Department use the statutory minimum of 10 percent. With respect to profit, respondents argue that the Department's normal practice is to use operating profits.

DOC Position: We agree with petitioners that we incorrectly omitted certain SG&A expense categories listed in the RBI table. We have included these amounts in our final determination.

We disagree with respondents that financing costs should be removed from the SG&A. The Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make the adjustment. However, the lack of an adjustment does not mean that these costs should be excluded from FMV. We also disagree with respondents regarding selling commissions. Section 773(c)(1) clearly requires the Department to include an amount for general expenses in the FMV. Therefore, regardless of whether the FMV is being constructed at the producer or exporter level, it is appropriate to add an amount for selling expenses.

Further, we disagree with respondents' argument that we should use only those elements of the surrogate SG&A that correspond to expenses incurred by the PRC producers. It is the Department's consistent practice to use a surrogate amount for the entirety of SG&A as calculated using the RBI Bulletin, as opposed to basing the surrogate SG&A percentage on actual expenses incurred by respondents.

Finally, following our normal practice, we considered operating rather than gross profit. Because this amount was less than 8 percent of COM and SG&A, we used the statutory minimum.

Comment 13: Respondents claim that the Department verified that certain charges deducted in the preliminary determination were not incurred by respondents. Therefore, these amounts should not be deducted for the final determination. Moreover, respondents reject petitioners' claim that it is

common practice in the PRC to include insurance as part of inland freight.

Specifically, for CEIEC, respondents claim that the Department verified that foreign brokerage charges were included in ocean freight and hence, this expense should not be valued separately. Regarding CEIEC's ocean freight, the charges were incurred in U.S. dollars. Therefore, respondents argue that CEIEC's actual shipping should be used.

For HIED, respondents claim that the Department verified that foreign inspection charges were not incurred. Hence, no deduction should be made for this expense in the final determination.

Finally, for Minmetals' ocean freight, respondents ask the Department to take the average amount Minmetals paid in U.S. dollars for shipping on most of its U.S. sales on market carriers and use that amount to value the shipping for its remaining sale.

Petitioners argue that an amount for insurance should be added to foreign inland freight because the Department found numerous situations where insurance was included as part of the freight charges paid by the respondents. Regarding the specific exporters, petitioners generally refute respondents' claims. Much of their discussion is proprietary in nature. Hence, the details are not presented here.

DOC Position: We have made deductions for all expenses incurred in shipping the merchandise to the United States (*see* CFR 353.41(d)(2)(i)). If an expense was not incurred, no deduction was made. With respect to insurance for foreign inland freight, we have made deduction only where we verified that insurance was included in the inland freight charge.

We have not used CEIEC's actual freight because an NME carrier was used. We have made the adjustment by using a surrogate ocean freight which includes brokerage and handling. No additional deduction for brokerage and handling was made. Thus, there is no double counting of brokerage and handling.

For HIED, we disagree that we made any deduction for inspection charges at the preliminary determination. As stated in Comment 12, the Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make an adjustment. Thus, for the final determination, the Department has continued not to make a deduction for this expense for any respondent.

Finally, for Minmetals, we used the shipping rate proposed by respondents for the single U.S. sale where shipping was paid in RMB.

Comment 14: Respondents argue that a type of packing material identified by the Department in its verification report of CMIECHN/CNIECHN's supplier should not be used to calculate FMV because this packing material was not used for POI sales.

DOC Position: The sales in question were not found to be outside the POI, as respondents claim. Therefore, we have calculated the FMV for these sales using the estimated weight of the packing material used for these sales.

Comment 15: According to respondents, both the statute and the Department's regulations require that internal taxes remitted or refunded upon export are to be excluded from the calculation of the constructed value. Further, these respondents argue that the Department verified that the value added tax (VAT) paid by the exporters to the manganese metal producers is reimbursed by the PRC government upon exportation of the merchandise. Therefore, according to respondents, the Department should deduct VAT from all direct material inputs used to determine the cost of manufacture and which were refunded by the PRC government when subject merchandise was exported. The respondents also submit an alternative suggestion for a VAT adjustment in which the Department increases the export price by the amount of the VAT they receive from the PRC government upon exportation of the merchandise.

The petitioners claim that the PRC government does not refund VAT on material inputs, rather, the refund is on the final product. Additionally, the VAT is not incorporated in the FMV calculation, because the inputs are valued using Indian surrogate values which do not incorporate a VAT. Petitioners claim that respondents' alternative to increase the U.S. price is without merit, and that the Department correctly excluded VAT from the U.S. price-to-FMV comparison.

DOC Position: The Department's factors of production calculation uses Indian surrogate values which are exclusive of Indian taxes. Because the FMV is net of taxes, neither a downward adjustment to FMV nor the alternative upward adjustment to USP suggested by respondents is necessary.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to suspend liquidation of all entries of manganese metal from the PRC, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
CEIEC	10.27
CMIECHN/CNIECHN	0.86
HIED	3.72
Minmetals	4.36
PRC-wide Rate	143.32

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an Antidumping Duty Order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–27369 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Special shift previously applied to the 1995 limit for Category 361 is being reduced. As a result the limit for Category 360 is increased.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 9014, published on February 16, 1995; and 60 FR 52898, published on October 11, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on October 31, 1995, you are directed to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
360	1,630,063 numbers.
361	3,315,821 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–27409 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Option Contracts on Permian Basin Natural Gas Futures and Palo Verde and California/Oregon Border Electricity Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity options contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in Permian Basin natural gas futures options, Palo Verde electricity futures options, and California/Oregon Border electricity futures options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 6, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the NYMEX Permian Basin natural gas option contract or the Palo Verde and California/Oregon Border electricity option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581, telephone 202–418–5275.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 31, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–27374 Filed 11–3–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: November 16, 1995, from 1:30 p.m. to 4:30 p.m.

ADDRESS: Hyatt Regency Washington on Capitol Hill, Columbia Ballroom, 400 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Update the membership on the strategic planning process; and (2) discuss issues related to Champus and the Individuals with Disabilities Education Act.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Huemann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–27447 Filed 11–3–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Inertial Confinement Fusion Advisory Committee/Defense Programs; Notice of Partially Closed Meeting

AGENCY: Department of Energy.

ACTION: Notice of partially closed meeting.

Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following meeting:

Name: Inertial Confinement Fusion Advisory Committee/Defense Programs.

Date and Time: Agenda is subject to revision.

Tuesday, November 14, 1995, 7:30 a.m.–10:45 a.m.—Open
Tuesday, November 14, 1995, 10:45 a.m.–1:00 p.m.—Closed
Tuesday, November 14, 1995, 1:00 p.m.–2:30 p.m.—Break
Tuesday, November 14, 1995, 2:30 p.m.–6:30 p.m.—Closed
Wednesday, November 15, 1995, 8:00 a.m.–10:50 a.m.—Closed
Wednesday, November 15, 1995, 10:50 a.m.–1:00 p.m.—Open

Place: General Atomics, San Diego (La Jolla), California.

For Further Information Contact: Marshall M. Sluyter, Designated Federal Officer, Office of Research and Inertial Fusion (DP–11), Defense Programs, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903–5491. Persons wishing to attend the meeting should submit their names to David A. Steinman mailing address: General Atomics, P.O. Box 85608, San Diego, CA 92186–9784 or by telephone at: (619) 455–2879 on or before November 9, 1995, to obtain a visitor pass and/or escort to the meeting room(s).

Supplementary Information: Purpose of the Committee: To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion (ICF) program.

Purpose of the Meeting: To evaluate the progress of the target physics program and the target fabrication program with respect to their technical contracts and their capability to support the Nation's Science-Based Stockpile Stewardship Program, the National Ignition Facility (NIF) program, the Omega Upgrade program, and the KrF laser program. To be informed about the recently revised ICF Five Year Program Plan.

Tentative Agenda: subject to revision.

November 14, 1995

7:30 a.m. Opening
8:15 a.m. General Atomics Welcoming Remarks
8:30 a.m. Summary of Recent Events; Stockpile Stewardship; ICF Program Mission, Priorities, and Objectives
9:10 a.m. Omega Upgrade Status
9:25 a.m. Nike Laser Status
9:40 a.m. NIF Program Office Remarks
9:55 a.m. ICF Program Wrap-Up and Review of ICF 5–Year Program Plan
10:45 a.m. Closed Meeting (10:45 a.m.–6:30 p.m.)

November 15, 1995

8:00 a.m. Closed Meeting (8:00 a.m.–10:50 a.m.)
11:05 a.m. Opportunity for Public Comment
12:05 p.m. Committee Discussions, Wrap-Up
1:00 p.m. Adjournment

Open to the Public: On November 14, 1995, from 7:30 a.m. to 10:45 a.m., and on November 15, 1995, from 10:50 a.m. until adjournment, the meeting is open to the public. The chairman of the committee is empowered to guide the meeting in a manner that will, in the chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number shown above. Requests must be received before 3:00 p.m. (eastern standard time) Thursday, November 9, 1995. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3:00 p.m. (eastern standard time) Thursday, November 9, 1995, to assure they are considered by the committee during the meeting.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (title 5, United States Code, App. 2), section 7234(b), title 42, United States Code, and section 552b(c)(1), title 5, United States Code, the portions of the meeting from10:45 a.m. until 1:00 p.m. and from 2:30 p.m. until 6:30 p.m. on November 14, 1995; and from 8:00 a.m. until 10:50 a.m. on November 15, 1995 will be closed to the public in the interest of national security.

This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes of the open portions of the meeting will be available to the public to view and for copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C., 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 1, 1995.

Jo Anne C. Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–27551 Filed 11–2–95; 2:20 pm]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–7–000, et al.]

Indeck Pepperell Power Associates, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 30, 1995.

Take notice that the following filings have been made with the Commission:

1. Indeck Pepperell Power Associates, Inc.

[Docket No. EG96–7–000]

On October 18, 1995, Indeck Pepperell Power Associates, Inc., a corporation organized and existing under the laws of the State of Delaware, with its address at 1130 Lake Cook Road, Suite 300, Buffalo Grove, Illinois 60089 (the "Applicant"), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's Regulations.

The Applicant will be engaged directly in owning an eligible facility located in Pepperell, Massachusetts (the "Pepperell Plant"). The Pepperell Plant consists of a nominal 38 MW combined-cycle cogeneration facility utilizing natural gas as its primary fuel and No. 2 fuel oil as a backup fuel.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy and accuracy of the application.

2. Compania Samalayuca II, S.A. de C.V.

[Docket No. EG96–8–000]

On October 19, 1995, Compania Samalayuca II, S.A. de C.V. ("Applicant"), whose address is c/o Ritch, Heather y Mueller, S.C., Amberes No. 5, Apdo. Postal No. 6–798, 06600 Mexico, D.F., filed with the Federal Energy Regulatory Commission an Application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant, a Mexican limited liability company, states that it will be engaged directly, or indirectly through one or more affiliates within the meaning of Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning all or part of Samalayuca II, a 700 MW thermoelectric gas-fired generating facility to be located in Samalayuca, Chihuahua, Mexico, and selling electric energy at wholesale, as that term has been interpreted by the Commission. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy and accuracy of the application.

3. Brooklyn Navy Yard Cogeneration Partners, L.P.

[Docket No. EG96–9–000]

On October 19, 1995, Brooklyn Navy Yard Cogeneration Partners, L.P., 366 Madison Avenue, Suite 1103, New York, New York 10017, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that will be engaged directly and exclusively in owning and operating an eligible facility under construction in Brooklyn, New York. The facility will consist of a 315 MW (net) topping-cycle cogeneration facility fueled primarily by natural gas. The facility will include such interconnection components as are necessary to interconnect the facility with the facilities of the applicant's wholesale customers. Applicant has previously been found to be an exempt wholesale generator. This filing requests a new determination of status, in light of new financing arrangements for the eligible facility.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy and accuracy of the application.

4. PECO Energy Company

[Docket No. ER95–207–001]

Take notice that on October 11, 1995, PECO Energy Company (PECO) filed a compliance filing in connection with the Order Granting Intervention, Accepting for Filing Proposed Rates, As Modified, and Granting Waiver, issued September 19, 1995.

Copies of the filing have been sent to all parties to this proceeding, the Pennsylvania Public Utility Commission and the Maryland Public Service Commission.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. U.S. Power & Light, Inc.

[Docket No. ER96–105–000]

Take notice that on October 17, 1995, U.S. Power & Light Company tendered for filing an application for blanket authorizations, certain waivers, and order approving rate schedule.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER96–106–000]

Take notice that on October 17, 1995, Maine Public Service Company (Maine Public) filed an executed Service Agreement with the Coastal Electric Service Company.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER96–107–000]

Take notice that on October 17, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Duke/Louis Dreyfus L.L.C.

[Docket No. ER96–108–000]

Take notice that Duke/Louis Dreyfus L.L.C. on October 17, 1995, tendered for filing its FERC Electric Rate Schedule No. 1 to be effective November 8, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of obligations or liabilities. DLD requests expedited treatment calling for a filing date of five business

days for interventions and protests from the day noticed, with those filings due to DLD's hands the same day filed. Responses to interventions or protests. DLD seeks an effective date of November 8, 1995 for FERC Electric Rate Schedule No. 1, but not to exceed 60 days from October 17, 1995.

DLD was formed by Duke Energy Marketing Corp., a third-tier subsidiary of Duke Power Company, and Louis Dreyfus Electric Power Inc.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Marketing Corp.

[Docket No. ER96–109–000]

Take notice that on October 17, 1995, Duke Energy Marketing Corp. (DEMC) refiled its FERC Electric Rate Schedule No. 1 to be effective November 8, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of liabilities. DEMC is a subsidiary of Duke Power Company. DEMC seeks an effective date of November 8, 1995 for FERC Electric Rate Schedule No. 1, but not to exceed 60 days from October 17, 1995.

Copies of this filing were served on the parties of record in Docket No. ER95–755–000 by hand-delivery and/or overnight delivery.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27421 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11512–000]

John H. Bigelow; Notice of Intent to Conduct Environmental Scoping Meetings and Site Visit

October 31, 1995.

The Federal Energy Regulatory Commission (FERC) has received an application for a license for the existing operating McKenzie Project, Project No. 11512–000. The McKenzie Project is located on the McKenzie River in Lane County, Oregon.

The FERC staff intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act.

In the EA, we will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic and engineering analysis.

The draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meeting

Staff will hold a scoping meeting on Tuesday, November 28, 1995, at 1:00 PM, at the U.S. Forest Service, McKenzie Bridge Ranger District, Fire Ready Room, 57600 McKenzie Highway, McKenzie Bridge, Oregon.

Interested individuals, organizations, and agencies are invited to attend the meeting and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meeting, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meeting.

Objectives

At the scoping meeting the FERC staff will: (1) Identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The scoping meeting will be recorded by a court reporter and all statements (oral and written) will become part of the formal record of the Commission proceedings on the McKenzie Project. Individuals presenting statements at the meeting will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meeting, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments (original and 8 copies) may be submitted with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426, by December 28, 1995.

All written correspondence should clearly show the following caption on the first page: McKenzie Project, FERC Project No. 11512–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

A site visit to the McKenzie Project is planned for November 28, 1995. Those who wish to attend should plan to meet at the U.S. Forest Service, McKenzie Bridge Ranger District, Fire Ready Room, 57600 McKenzie Highway, McKenzie Bridge, Oregon at 9:00 AM, and shortly thereafter, leave for the project site located about 5 miles away. For more details, contact Mr. Phil Raab at (503) 822–338.

Any questions regarding this notice may be directed to Héctor M. Pérez, Environmental Coordinator at FERC, (202) 219–2843.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27420 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10934–003, New Hampshire]

William B. Ruger, Jr.; Notice of Availability of Draft Environmental Assessment

October 31, 1995.

A draft environmental assessment (DEA) is available for public review. The DEA reviewed the application for amendment for the Sugar River II Project (FERC No. 10934). The application proposes to shorten the bypass reach of the Sugar River by 650 feet by relocating the proposed dam in a downstream direction and replacing an open canal with a seven-foot-diameter buried steel penstock. The DEA finds that approval of the amendment application would not constitute a major federal action significantly affecting the quality of the human environment. The Sugar River II Project is located on the Sugar River, in Sullivan County, in Newport, New Hampshire.

The DEA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20406. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20406. Please denote "Comments: Project No. 10934–003" on all comments. For more information, please contact the project manager, Joseph C. Adamson, at (202) 219–1040.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27382 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–7–000]

Edison Sault Electric Company; Notice of Application

October 31, 1995.

Take notice that on October 24, 1995, Edison Sault Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue unsecured short-term notes, from time to time, in an aggregate amount not more than $10 million principal amount outstanding at any one time, during the period on or before December 31, 1997, with final maturities not later than December 31, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27380 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–8–000]

New York State Electric & Gas Corporation; Notice of Application

October 31, 1995.

Take notice that on October 27, 1995, New York State Electric & Gas Corporation filed an application under § 204 of the Federal Power Act seeking authorization to issue notes and commercial paper, from time to time, in an aggregate principal amount not to exceed $275 million outstanding at any one time, prior to January 1, 1998, with a maturity of one year or less.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–27381 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–36–000]

NorAm Gas Transmission Company; Notice of Application

October 31, 1995.

Take notice that on October 25, 1995, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–36–000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's Regulations for permission and approval to retire and abandon one of five compressor units at its Hobbs Compressor Station, specifically the 340 Caterpillar powered engine (Hobbs #5), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NorAm states that Hobbs #5 is located on Line B–55 in Sebastian County, Arkansas in a 19 foot by 25 foot building on a concrete foundation. NorAm asserts that the compressor cylinders, associated piping and the building will be junked at no value. NorAm claims Hobbs #5 has not operated since 1982 due to an internal mechanical failure; however, operation of Hobbs #5 in no longer necessary. NorAm notes that during the time this compressor has been shut down, the operation of the four remaining engines has effectively allowed NorAm to receive and transport the existing upstream production, and no production will be interrupted or abandoned as a result of the retirement of this compressor engine. NorAm states that the proposed abandonment will not adversely affect its ability to continue to render certificated transportation service to its customers. Additionally, NorAm does not foresee an increase in the current production from this field, nor a reason that would justify the cost to replace Hobbs #5.

NorAm asserts that the proposed abandonment does not involve a significant environmental impact and granting the requested authorization will not constitute a major federal action

significantly affecting the quality of the human environment. NorAm states that all ground disturbance will occur within the fenced graveled lot, where the compressor is located, which exists on previously disturbed land and right-of-way. NorAm states that the building and yard piping to the compressor will be removed and the concrete foundation will remain in place. NorAm notes that upon retiring the facilities, it will revegetate any disturbed rights-of-way and will monitor the area involved to insure adequate sprouting and coverage. Further, NorAm claims that it will use its existing erosion control program originally filed with the Commission in Docket No. CP87–544–000 to insure complete revegetation and stability of the soils affected by the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 21, 1995, file with the Federal Energy Regulatory Commission (888 First Street, N.E., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its on review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NorAm to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27379 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–31–000]

Northern Natural Gas Company; Notice of Application

October 31, 1995.

Take notice that on October 24, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–31–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a compressor station, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to abandon a compressor station in Kearny County, Kansas, since it is no longer required and would not result in any abandonment of service to any customers of Northern.

Any person desiring to be heard or to protest with reference to said application should on or before November 21, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27378 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names on the Performance Review Board.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT:

James M. Cheskawich, Director, Personnel Division, Federal Labor Relations Authority (FLRA), 607 14th Street, NW., Washington, DC 20424–0001, (202) 482–6630, extension 440.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Marjorie K. Thompson, Office of the General Counsel, FLRA

Patricia C. Johnson, Equal Employment Opportunity Commission

Gloria Joseph, National Labor Relations Board

Mary L. Jennings, Merit Systems Protection Board

James M. Cheskawich,

Director, Personnel and EEO Division.

[FR Doc. 95–27325 Filed 11–3–95; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Anthem World Transport, Inc., Metro Office Park, ST. 1 #2, Ste. 304, Guaynabo, Puerto Rico 00968–1705, Officers: Anthony Emposimato, President, Leopoldo Melendez, Vice President

Caribwrap Inc. dba Five Star Forwarding, 8359 N.W. 68th Street, Miami, FL 33166–2663, Officer: George Carter Gaulding, President

Aerospan Cargo International, 3785 N.W. 82nd Ave., #403, Miami, FL 33166, Officers: Mordechai Boazia, President, Dennis Ryan, Vice President

Dated: October 31, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–27376 Filed 11–3–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Final Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Disney Cruise Line, Inc., 210 Celebration Place, Celebration, Florida 34747

Vessels: DISNEY VESSEL #1 and DISNEY VESSEL #2

Dated: October 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–27375 Filed 11–3–95; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Performance Review Boards for Small Client Agencies Serviced by the General Services Administration, Names of Members

Sec. 4314 (C) (1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive. The Performance Review Board also shall make recommendations as to whether the career executive should be recertified, conditionally recertified, or not recertified.

As provided under Section 601 of the Economy Act of 1932, amended 31 U.S.C. 1525, the General Services Administration through its Agency Liaison Division, provides various personnel management services to a number of diverse Presidential commissions, committees, boards and other agencies through reimbursable administrative support agreements. This notice is proceeded on behalf of the client agencies, and it supersedes all other notices in the **Federal Register** on the subject.

Because of their small size, a Performance Review Board register has been established in which SES members from the client agencies participate. The Board is composed of SES members from various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve a particular client agency.

The members whose names appear on the Performance Review Board standing roster to serve client agencies are:

Barry M. Goldwater Scholarship and Excellence in Education Foundation

Gerald J. Smith, Executive Secretary

Committee for Purchase From People Who Are Blind or Severely Disabled

Beverly L. Milkman, Executive Director

Federal Retirement Thrift Investment Board

David L. Black, Director of Accounting
Stratos D. Valakis, Director of Contracts and Administration
John W. Witters, Director of Automated Systems
Alisone M. Clark, Director of Benefits and Program Analysis
Vera D. Charron, Director of Communications
Thomas J. Trabucco, Director of Internal Affairs
Peter B. Mackey, Director of Investments
John J. Omeara, General Counsel
James B. Petrick, Deputy General Counsel
Elizabeth S. Woodruff, Associate General Counsel

Defense Nuclear Facilities Safety Board

Kenneth M. Pusateria, General Manager
Joseph R. Neubeiser, Deputy General Manager
Robert M. Anderson, General Counsel
Richard A. Azzaro, Deputy General Counsel for Policy and Litigation
George W. Cunningham, General Engineer
Joyce P. Davis, Chief, Health Physics Branch
Wallace R. Kornack, Assistant Director for Engineering
Steven L. Krahn, Assistant Director for Weapon Programs
Lester A. Ettlinger, Assistant Director for Standards

Harry S Truman Scholarship Foundation

Louis H. Blair, Executive Secretary

Japan-United States Friendship Commission

Eric J. Gangloff, Executive Director

Office of Navajo and Hopi Indian Relocation

Christopher J. Bavasi, Executive Director
Michael J. McAlister, Deputy Executive Director

Artic Research Commission

Garrett W. Brass, Executive Director

National Mediation Board

Ronald M. Etters, General Counsel
Stephen E. Crable, Chief of Staff

Calvin R. Snowden,

Director.

[FR Doc. 95–27415 Filed 11–3–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families Statement of Organization, Function, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human

Services, Administration for Children and Families (ACF) as follows: Chapter KB, Administration on Children, Youth and Families (ACYF) (60 FR 2766), as last amended January 11, 1995. This Notice announces the new organizational structure and assignment of responsibilities for the Children's Bureau. The Children's Bureau will be restructured with two divisions: the Policy Division and the Program Operations Division to administer the child welfare policy and operational functions presently administered within ACYF.

Amend Chapter KB as follows:

a. KB.10 Organization. Delete in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KBA)
Division of Program Evaluation (KBB)
Head Start Bureau (KBC)
Program Operations Division (KBC 1)
Program Support Division (KBC 2)
Children's Bureau (KBD)
Policy Division (KBD 1)
Program Operations Division (KBD 2)
Family and Youth Services Bureau (KBE)
Program Operations Division (KBE 1)
Program Support Division (KBE 2)
National Center on Child Abuse and Neglect (KBF)
Program Policy and Planning Division (KBF 1)
Clearinghouse Division (KBF 2)
Child Care Bureau (KBG)
Program Operations Division (KBG 1)
Policy Division (KBG 2)

b. Delete paragraph D in its entirety and replace with the following.

D. The Children's Bureau advises the Commissioner on child welfare, foster care, adoption, family preservation and family support matters. It recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research and demonstration activities; represents ACYF in initiating and implementing inter-agency activities and projects affecting children; and provides leadership and coordination for the programs, activities, and subordinate units of the Bureau. The Bureau manages the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the Statewide Automated Child Welfare Information System (SACWIS).

1. The Policy Division manages, coordinates and provides direction and leadership in policy development and interpretation, and program development and innovation under titles IV–B and IV–E of the Social Security Act. It provides expert national leadership and direction on child welfare, foster care, adoption assistance, family preservation, family support, court improvement, and independent living matters, and direction and guidance on joint planning between regions and States. It administers the discretionary grant programs in adoption opportunities, abandoned infants, crisis nurseries, respite care, and child welfare research and demonstration.

2. The Program Operations Division manages, coordinates and provides direction and leadership in the program operation, monitoring and compliance review activities included under titles IV–B and IV–E of the Social Security Act; the Division provides advice, guidance and assistance to Regions and States on the implementation, operation, and review of programs under titles IV–B and IV–E. It is responsible for the development, implementation and oversight of corrective action plans and the provision of training and technical assistance, either directly or through Resource Centers. The Division works with appropriate other agencies and organizations on the implementation and oversight of relevant sections of the Indian Child Welfare Act.

Dated: November 1, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–27439 Filed 11–3–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Setting a National Occupational Research Agenda.

Time and Date: 9:30 a.m.–5:00 p.m., November 30, 1995.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available. The room accommodates approximately 100 people.

Purpose: NIOSH seeks input into the development of a national agenda for occupational safety and health research for the next decade. The agenda will assist NIOSH and other organizations and individual scientists in the public and private sectors to coordinate research activities and target the highest scientific priorities for preventing work injuries and illnesses in the United States.

The tentative agenda of the meeting includes: (1) An initial discussion list of possible items for the national research agenda; (2) proposed criteria for establishing research priorities; and, (3) the proposed public process for developing the research agenda. The remainder of the meeting will provide interested parties with the opportunity to comment and make recommendations on research priorities, criteria, and the process. Research priorities for consideration include health effects, hazardous exposures, work environments, industries, occupations, and populations associated with significant occupational disease, injury, disability, fatalities, or topics of growing importance in the future.

Persons interested in presenting oral comments during the meeting will be limited to five minutes to allow a maximum number of presentations. Presenters are encouraged to provide written comments to accompany their oral presentations. Participants as well as persons who cannot attend are encouraged to send written comments as indicated below.

Matters to be Discussed: As the lead federal health agency for research into the causes and prevention of work injuries and diseases, NIOSH has a responsibility to continually assess the state of existing knowledge and define future research needs and priorities. The development of a national research agenda will assist NIOSH and the occupational safety and health research community in establishing priorities and targeting some of the scientific needs of the next decade that offer the greatest potential for advancing the safety and health of workers. Establishing these priorities is especially important in light of increasing fiscal constraints on occupational safety and health research in both the public and private sectors. The agenda is intended to serve decision-makers and scientists working throughout the field, employed in government, corporate, labor, university, and private research programs.

NIOSH has developed a discussion list of possible items for the national research agenda. A small group of scientists reviewed a wide array of information ranging from the scope of occupational safety and health problems to future employment projections. The results of a scientific agenda-setting process recently completed in the United Kingdom were also considered. In addition, the group agreed on the scope of agenda items it would propose. For example, it decided that a category such as "occupational lung diseases" would be too inclusive to serve as a research priority, that items of this breadth would result in an agenda encompassing the field rether than providing decision-makers and scientists with focussed direction to meet some of the greatest needs and opportunities for prevention. The group ultimately listed approximately 50 items:

Health response	Exposure
Traumatic Injury	Chemical Mixtures (Including Hazardous Waste).
Eye Injury	Pesticides.
Electrocutions	Solvents.
Falls	Oils and related derivatives (e.g., Cutting Fluids, Diesel).
Neck, Shoulder and Other Upper Extremity Disorders	Indoor Environment.
Low Back Disorders	Thermal stresses.
Fertility and Pregnancy Outcomes	Mineral and Synthetic Fiber.
Occupational Asthma	Metals and Related Compounds.
Pneumoconioses	Hormonally Active Substances.
Inhalation Injury	Violence/Assaults.
Hypersensitivity lung disease	Motor Vehicles.
Occupational Chronic Diseases (Selected)	Heavy Machinery.
Chronic Obstructive Lung Disease	Hand Tools.
Chronic Renal Disease	Mechanical Stressors.
Ischemic Heart Disease	Noise.
Neurodegenerative Disease (Cognitive and Movement Disorders)	Electric and Magnetic Fields.
Occupational Infectious Diseases	Behavioral Risk Factors.
Depression and Anxiety	
Immune Dysfunction	
Neuroimmune Function	
Hearing Loss	
Contact Dermatitis	
Sector—work environment—workforce	**Research process**
Construction	Intervention and Prevention.
Agriculture	Effectiveness Research.
Small Businesses	Engineering and Technologic Solutions.
Work Organization (Changing Economy and Workforce)	Exposure Assessment Methods Development.
Emerging Technologies	Hazard Surveillance.
Vulnerable Populations	Disease Surveillance.
Service Workers	Injury Surveillance.
	Risk Assessment Methodology.
	Identification of Molecular Correlates of Cancer and other Chronic Diseases.
	Occupational Health Services Research (e.g., Manpower Needs; Clinical Outcomes Research).

From this list and additional items that are recommended, NIOSH anticipates producing a final agenda of 15–25 of the highest scientific priorities for advancing safety and health. The following criteria were used in developing this initial discussion list and are proposed for the development of the research agenda:

(1) the seriousness of the hazard in terms of death, injury, disease, disability, and economic impact;

(2) the number of workers exposed or the magnitude of the risk;

(3) the potential for risk reduction;

(4) the expected trend in the importance of the subject; and,

(5) the need for research (the sufficiency of existing research) for improving worker protection.

NIOSH will be seeking input over the next five months to assure that the final agenda includes input from the broadest base of occupational safety and health expertise. The process will include the following elements:

(1) Corporate and worker liaison committees and a broader-based stakeholders outreach committee will assist NIOSH in obtaining involvement and input from employers, employees, health officials, health professionals, scientists, and public health, advocacy, scientific, industry and labor organizations;

(2) The November 30 public meeting, described in this notice, to obtain early input on the research priorities, criteria for selection of priorities, and the process for developing the agenda;

(3) Three work groups comprising researchers, health professionals, and representatives of stakeholder organizations will meet in public sessions in December and January to provide individual input and recommendations based on the communities they represent; time will be reserved to allow observers the opportunity to comment;

(4) Regional public meetings will be held in increase the opportunities for input from employers, employees, scientists, and other public stakeholders across the United States;

(5) A final public meeting in March 1996 to present a preliminary research agenda and provide the opportunity for public review and comment; and

(6) Public input throughout the process; the public is encouraged to provide oral comments at the public meetings and written comments through March 6, 1996.

(7) The final agenda will be presented at a scientific symposium commemoreting the 25th anniversary of the Occupational Safety and Health Act on April 29, 1996.

NIOSH encourages the public to provide recommendations on research priorities, criteria for determining priorities, and the process of developing the research agenda as early in the process as possible. To register to attend, to register to speak, or to receive additional information on the November 30 meeting, please contact Ms. Sandy Lange as indicated below. On-site registration will be available; however, to assist in planning for the meeting, advance registration is requested.

Addresses: Comments should be mailed to Ms. Diane Manning, NIOSH, CDC, Robert A. Taft Laboretories, NIOSH, CDC, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Person for Additional Information: Ms. Sandy Lange, NIOSH, CDC, 200 Independence Avenue, Room 317B, Washington, DC 20201, telephone 202/401–0721.

Dated: October 31, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27400 Filed 11–3–95; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR-3921-N-02]

Announcement of Funding Awards for Technical Assistance and Training for Public Housing Crime Prevention Through Environmental Design

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1995 Technical Assistance and Training for Public Housing Crime Prevention Through Environmental Design. The purpose of this document is to announce the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1995 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $10 million.

III. Grant Award

On July 25, 1995, HUD published a Notice of Funding Availability (NOFA) announcing the availability of $500,000 in FY 1995 funds for Technical Assistance and Training for Public and Indian Housing Crime Prevention Through Environmental Design (60 FR 38214). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipient of the funding award, as follows:

Grant Recipient: SPARTA Consulting Corporation Recipient contact Person: Severin Sorensen Address: P.O. Box 34469, Bethesda, Maryland, 20827. Telephone Number: (301) 656–6600 Amount Awarded: $500,000.00

General Objectives

The United States Department of Housing and Urban Development (HUD) and the SPARTA Consulting Corporation (grantee) have entered into a grant agreement for $500,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) develop a technical assistance (TA) and training program to improve the capacity of public housing staff and residents in their plans for physical changes to enhance security, and (2) to provide the TA and training in a variety of formats.

This is a cost-reimbursable grant for $500,000.00 for a 2-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: October 31, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–27407 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR-3889-N-03]

Announcement of Funding Awards for Training and Technical Assistance for the Prevention of Youth Violence in Public Housing—Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1995 Technical Assistance and Training for Public Housing Crime Prevention Through Environmental Design. The purpose of this document is to announce the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION, CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1995 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $10 million.

III. Grant Award

On June 2, 1995, HUD published a Notice of Funding Availability (NOFA) announcing the availability of $550,000 in FY 1995 funds for Training and Technical Assistance for the Prevention of Youth Violence in Public (60 FR 29456). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipient of the funding award, as follows:

Grant Recipient: Research Triangle Institute Recipient Contact Person: John W. Rintoul Address: 3040 Cornwallis Road, Research Triangle Park, NC, 27709 Telephone Number: (919) 541–6452 Amount Awarded: $550,000.00

General Objectives

The United States Department of Housing and Urban Development (HUD) and the Research Triangle Institute (grantee) have entered into a grant agreement for $550,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) Develop a technical assistance (TA) and training program to improve the capacity of public housing staff and residents in their plans for developing and administering a youth violence program, and (2) to provide the TA and training in a variety of formats.

This is a cost-reimbursable grant for $550,000.00 for a 2-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: October 31, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–27406 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR-3920-N-02]

Announcement of Funding Awards for Training and Technical Assistance for Public Housing Resident Patrols Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1995 Technical Assistance and Training for Resident Patrols in Public Housing. The purpose of this document is to announce the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1995 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995 (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $10 million.

III. Grant Award

On July 25, 1995, HUD published a Notice of Funding Availability (NOFA) announcing the availability of $500,000.00 in FY 1995 funds for Technical Assistance to Public Housing Authorities and Public Housing Police Departments (60 FR 38208). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipient of the funding award, as follows:

Grant Recipient: Virginia Crime Prevention Association Recipient Contact Person: Harold Wright Address: 4914 Radford Ave., #306, Richmond, VA, 23230 Telephone Number: (804) 359–8120 Amount Awarded: $500,000.00.

General Objectives: The United States Department of Housing and Urban Development (HUD) and the Virginia Crime Prevention Association (grantee) have entered into a grant agreement for $500,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) Develop a training program to train teams of public housing residents and staff in the development and administration of resident patrols, and (2) to provide the training in a variety of venues.

This is a cost-reimbursable grant for $500,000.00 for a 2-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: October 31, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–27408 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-0500–06–1610–00; 1792]

Arizona: Intent To Prepare a Resource Management Plan Amendment (Lands) and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a resource management plan amendment/environmental assessment and invitation to participate in the identification of issues; Yuma District, Arizona.

SUMMARY: The Bureau of Land Management, Yuma District (BLM), is preparing an Amendment/Environmental Assessment to the Yuma District Resource Management Plan (RMP). The Yuma District RMP currently states that public lands within the District will be retained in Federal ownership unless specifically identified

for disposal. Acquisitions are also restricted to lands specifically identified, except when an exchange is involved. These limitations have hindered our ability to respond timely to proposals to accept donations, purchase, exchange, or dispose of lands. The proposed Amendment would provide more flexibility to consider requests for disposals and acquisitions involving parcels that have not previously been specifically identified in the RMP, providing certain criteria are met.

DATES: Written comments related to the identification of issues will be accepted on or before December 6, 1995. Due to the noncontroversial nature of the proposal, no public meetings are scheduled.

ADDRESSES: Send comments to: Bureau of Land Management, Yuma District Office, Attn: Brenda Smith, 3150 Winsor Avenue, Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Brenda Smith, Renewable Resources Advisor, Yuma District Office, Yuma, Arizona. Telephone (520) 726–6300.

SUPPLEMENTARY INFORMATION: Proposed criteria for land disposals or acquisitions have been identified. Disposal lands would serve the following purposes: (1) Community expansion and economic development; (2) local governmental needs; or (3) to facilitate Federal land management and minimize BLM administrative costs. Lands acquired would serve to: (1) Facilitate access to public lands and resources; (2) provide resource protection; (3) facilitate implementation of the RMP; (4) provide for a more manageable Federal land ownership pattern; or (5) maintain or enhance public uses and values.

Possible issues would be addressed in site-specific environmental assessments that would be completed for each land tenure adjustment. BLM anticipates that the possible loss of Federal protection for cultural resources and wildlife habitat due to land disposals may be an issue. Possible adverse socioeconomic impacts to County governments from the loss of tax revenues as a result of land acquisitions may be another issue.

Complete records of all phases of the planning process will be available for public review at the Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona.

This notice is published under the authority found in 43 CFR 1610.2(c).

Dated: October 30, 1995.

Judith I. Reed,

District Manager.

[FR Doc. 95–27416 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the San Diego Gas & Electric Subregional Natural Community Conservation Plan in Southern California.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: San Diego Gas and Electric (SDG&E) has applied for an incidental take permit from the Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The application includes an implementing agreement (IA) and a habitat conservation plan/subregional natural community conservation plan (HCP/NCCP) covering the SDG&E service area in southern California. The proposed taking of threatened and endangered species would be incidental to the installation, maintenance, and operation of SDG&E facilities.

The proposed permit would authorize take of 11 animal species listed as endangered and 2 animal species listed as threatened for a period of 25 years with options for renewal. SDG&E has requested the issuance of permits (immediately or when a species is listed) under section 10(a) of the Act that would authorize incidental take, in accordance with the terms of the HCP/NCCP, of the 110 sensitive species listed in the HCP/NCCP. The Service proposes to finalize covered species agreements and offer assurances for 13 listed animal species, 5 listed plants, and 92 unlisted plants and animals, including 7 plants and 2 animals proposed for Federal listing as endangered or threatened and 7 plants that are category 1 candidates for Federal listing.

SDG&E requests coverage for impacts on up to 400 acres of natural areas containing covered species. However, based on data from past projects, SDG&E estimates a total of 124 acres of both temporary and permanent grading disturbances over the next 25 years.

To avoid or minimize potential impacts, SDG&E has developed operational protocols for workers in the field. To compensate for unavoidable impacts, SDG&E would: (1) Provide certain fee-owned rights-of-way to be available for use by wildlife, (2) establish a conservation bank of approximately 240 acres that may be replenished as needed, and (3) develop restoration protocols for temporary impacts.

The HCP/NCCP and associated Environmental Assessment (EA) are programmatic in scope. Site-specific impacts of new construction projects would be reviewed in the future per requirements of the National Environmental Policy Act (NEPA) and California Environmental Quality Act.

This notice advises the public of the availability of the permit application, HCP/NCCP, IA, and programmatic EA. Comments are requested on these documents which were prepared by the permit applicant and their consultants. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If it is determined that the requirements are met, an incidental take permit will be issued.

DATES: Written comments should be received on or before December 6, 1995.

ADDRESSES: Comments should be addressed to Gail C. Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Sherry Barrett, Endangered Species Division Chief, or Jacalyn Fleming, Fish and Wildlife Biologist, at the above address, (619–431–9440).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Persons may obtain copies of the HCP/NCCP, IA, and EA by calling the above telephone number. These documents will be available for public inspection, by appointment, during normal business hours (8 am to 5 pm, Monday through Friday) at the above address.

Background

Under section 9 of the Act, and implementing regulations, taking of federally listed threatened or endangered species is prohibited.

Taking, in part, is defined as harm or harassment of federally listed species, including under certain circumstances, the destruction of habitat. Under limited circumstances, the Service may issue section 10(a)(1)(B) permits to take listed species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for listed species are found at Title 50 Code of Federal Regulations 17.22 and 17.32.

SDG&E has applied for a 25-year permit, with options for renewal, to authorize incidental take associated with the installation, maintenance and operation of its facilities which are or will be necessary to provide natural gas, electricity and other services to its customers. These actions include the installation of overhead and underground facilities, substations, and regulator stations, including other ground disturbance such as building and maintaining access roads, geotechnical testing, emergency repairs, and clearing for fire control. SDG&E operations and facilities cross city and county jurisdictional boundaries in San Diego, Riverside, and Orange Counties, California. The HCP/NCCP details specific project actions that may lead to incidental take of species and specific actions that will mitigate those takings. These impacts and mitigation measures are further addressed in the HCP/NCCP, IA, and EA.

The alternatives under consideration include: (1) The proposed action, (2) no action, and (3) compliance with local jurisdiction's subarea plans. Only the proposed action conserves both listed and unlisted species, restricts the use and development of certain SDG&E fee-owned rights-of-way for wildlife and preservation, and addresses all SDG&E activities over the entire service area.

All agencies and individuals are urged to provide comments and suggestions regarding the EA, IA, and the consistency of the SDG&E HCP/NCCP with regional conservation planning efforts. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial.

Dated: October 30, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–27418 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–55–P

Letters of Authorization To Take Marine Mammals

AGENCY: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that a Letter of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration activities has been issued to the following company:

Company	Activity	Date issued
BP Exploration (Alaska) Inc.	Exploration ...	Sept. 20, 1995.

BP Exploration (Alaska) Inc., is authorized to take polar bears and Pacific walruses incidental to appraisal operations in the Badami Development Unit on the North Slope of Alaska. This authorization expires on July 31, 1996, and a monitoring report is due by November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. David McGillivary or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: This letter of Authorization was issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities" (58 FR 60402; November 16, 1993, amended 60 FR 42805; August 17, 1995).

Dated: October 25, 1995.

David B. Allen,

Regional Director.

[FR Doc. 95–27340 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Assessment and Management Committee, a Committee of the Aquatic Nuisance Species Task Force. The Committee meeting will focus on the following: the development of the pathway evaluation process for nonindigenous species introduction; finalize the Risk Assessment Process for presentation to the Aquatic Nuisance Species Task Force; and, prepare the black carp risk assessment process for outside review.

DATES: The Risk Assessment and Management Committee will meet from 9:00 a.m. to 3:00 p.m. on Wednesday, December 13, 1995, and from 9:00 a.m. to 12:00 noon on Thursday, December 14, 1995.

ADDRESSES: The Risk Assessment and Management Committee meeting will be held at the U.S. Fish and Wildlife Building, Room 800, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 117, Riverdale, MD 20737, (301) 734–8939.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Identification and Assessment Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 117, Riverdale, MD 20737 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 30, 1995.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 95–27443 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Solicitation for Comments

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service is soliciting comments on an information collection,

Net Profit Share Payments for Outer Continental Shelf Oil and Gas Leases, 30 CFR 220 (OMB Approval Number 1010–0073).

DATES: Written comments should be received on or before January 5, 1996.

SEND COMMENTS TO: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Mail Stop 3101, Building 85, Denver Federal Center, P.O. Box 25165, Denver, Colorado 80225; fax number is (303) 231–3194.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Minerals Management Service, Mail Stop 3101, Building 85, Denver Federal Center, P.O. Box 25165, Denver, Colorado 80225; telephone number is (303) 231–3046.

SUPPLEMENTARY INFORMATION: In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning collection of information in order to solicit comment to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

To encourage exploration and development of oil and gas leases on submerged lands of the Outer Continental Shelf (OCS), regulations were promulgated at 30 CFR 260.110(4) implementing a net profit share bidding system. The net profit share lease (NPSL) bidding system was established to properly balance a fair market return to the Federal Government for the lease of its lands, with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development, and provides for a sharing of the risks by the lessee and the Government. The bidding system incorporates a fixed capital recovery system as the means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

Lessees are required (30 CFR 220.010) to maintain an NPSL capital account and to provide annual or monthly reports using data taken from the capital account (30 CFR 220.031). This collection of information is necessary in order to determine when royalty payments are due and to determine the proper amount of payment. No unique information is required by MMS. Only a minimal recordkeeping burden is imposed annually by this collection of information. MMS uses the data submitted in the annual and monthly reports to verify costs claimed, revenues earned, and profit share (royalty) payments due. No royalties are paid until lessees recover their exploration and development expenses.

When companies enter into NPSL agreements, they agree to submit the reports required by 30 CFR 220.031. Information required to complete these reports comes from records maintained by the companies for their own use. There are no reporting forms required, but the lessees must submit updates containing specific information. Before production begins, reports are required on an annual basis. These reports must document costs incurred, credits received, and the balance in the NPSL capital account. Once production begins, monthly reports are required that include the amount and disposition of oil and gas saved, removed, or sold; the amount of production revenue; the amount and description of costs and credits to the NPSL capital account; the balance in the capital account; the net profit share base and net profit share payment due the Government; and the lessee's monthly profit share.

MMS estimates that approximately 16 hours are required per report to extract the data required by 30 CFR 220.031 from company records. One additional hour for recordkeeping is required as companies set up files for each lease. A $25 hourly rate estimate is used in the calculation of the annual cost to industry.

Dated: October 31, 1995.

Donald T. Sant,

Deputy Associate Director for Valuation and Operations.

[FR Doc. 95–27417 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–MR–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 29)]

Intrastate Rail Rate Authority—South Carolina

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of South Carolina to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will become effective on December 6, 1995 and will expire on December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: October 30, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27432 Filed 11–3–95; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–099]

National Environmental Policy Act; Shuttle Laser Altimeter

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 3), NASA has made a finding of no significant impact (FONSI) with respect to the proposed Shuttle Laser Altimeter (SLA) to be constructed at the Goddard Space Flight Center, in Greenbelt, Maryland. SLA involves the precise global measurement of the topography of the distance from the Earth's surface with respect to the Space Shuttle.

DATES: Comments in response to this notice must be provided in writing to NASA on or before December 6, 1995.

ADDRESSES: Comments should be addressed to Dr. Jack L. Bufton, Associate Chief for Sensor Physics, Laboratory for Terrestrial Physics, Code 920, NASA Goddard Space Flight Center, Greenbelt, MD 20771. The Environmental Assessment (EA) prepared for the proposed SLA which supports this FONSI may be reviewed at:

(a) Prince George's County Memorial Library System—Bowie Branch, 15210 Annapolis Rd., Bowie, Maryland.
(b) NASA Headquarters Information Center, Room 1H23, 300 E. Street S.W., Washington, DC.
(c) NASA, Ames Research Center, Moffet Field, CA 94035 (415–604–4191).
(d) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).
(e) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–7216).
(f) Jet Propulsion Laboratory, Visitors Lobby, Building 49, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5011).
(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).
(h) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).
(i) NASA, Kennedy Space Center, FL 32899 (407–867–2622).
(j) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (215–433–2902).
(k) NASA, Marshall Space Flight Center, AL 35812 (205–544–5252).
(l) NASA, Stennis Space Center, MS 39529 (601–688–2164).

A limited number of copies of the EA are available by contacting Jack L. Bufton, NASA Goddard Space Flight Center, Greenbelt, MD 20771, telephone 301–286–8591.

FOR FURTHER INFORMATION CONTACT: Dr. Jack L. Bufton, 301–286–8591.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the proposed SLA and has determined that it represents an accurate and adequate analysis of the scope and level of its associated environmental impacts. The EA, including the "Shuttle Laser Altimeter Ground Observer Eye Safety Analysis", is incorporated by reference in this FONSI.

NASA is proposing to test a low power laser altimeter instrument in space as a pathfinder instrument for global measurement of the topography of the Earth's land surface. Laser altimeter instruments have been in use for several decades from airborne instrument platforms for the purpose of terrain mapping and previous laser altimeters have flown in space. Research results from these earlier programs indicate the advantages of a spacebased global observations of Earth land surface topography using the high spatial resolution and vertical precision offered by the laser altimeter technique. Accurate topographic information on the Earth's landforms is essential in a wide variety of Earth science disciplines, agriculture, land-use studies, and natural disaster (e.g., floods, erosion, landslides, volcanoes, earth quakes, etc.) mitigation.

The principal components of a laser altimeter system are the laser transmitter, optical receiver, and data system. The laser transmitter sends a low powered pulsed laser bean of 1064 nano meter wavelength radiation throughout the Earth's atmosphere toward the Earth's surface. Each laser pulse has a temporal duration of 10 nano seconds and forms a spot of approximately 100 meters (m) in diameter on the Earth's surface. Reflection of laser radiation from this spot is detected at the laser altimeter instrument by the combination of an optical telescope and detector that constitute the optical receiver package and covert the optical pulse into an electronic pulse. The laser pulse time-of-flight for the round-trip from the laser altimeter instrument to the Earth's surface and return is measured. This data then is used to compute distance between the instrument and the Earth's surface. The data system performs the computation of distance from pulse tinie-of-flight and communicates the altimeter data to external systems and on-board data recorders.

For laser altimeter operations, the instrument must be pointed perpendicular to the Earth's surface in order to make accurate distance measurements. The optical receiver is quite sensitive, since most of the pulse laser radiation is scattered in the reflection of light from the spot on the Earth's surface or scattered and absorbed in the Earth's atmosphere. By using pulsed laser energy to make a series of distance measurements (profiles) along the ground track of a spacecraft, laser altimeter instrument can build up a global grid of accurate surface topography.

The proposed SLA experiment will entail flying a laser altimeter instrument as a small attached payload on the Space Shuttle. The first flight is scheduled for November 1995 and will be a 9-day mission to gain experience in operating a laser altimeter in space environment, and to evaluate the sensitivity of the laser altimeter instrument for performing the surface elevation measurement mission. The current flight plan calls for seven operational periods of approximately 10 to 15 hours duration each during which the SLA will continuously profile the Earth and ocean surface topography along the ground track (nadir track) of the Shuttle. The SLA instrument operates continuously at 10 pulses per second (pps) during each period. This results in a continuous profile of 120 m diameter optical spots (i.e., altimeter sensor footprints) that are separated by approximately 740 m along the ground-track of the Space Shuttle. At least one SLA operational period is scheduled on each Shuttle flight day after flight day 2. The planned orbit for these SLA operations is a 300 kilometer (160 nautical miles) circular orbit at 28.5° inclination. Thus the SLA measurements will be conducted between 28.5° North latitude and 28.5° South latitude. Among the land masses crossed will be Africa, most of Latin America, Southland Southeast Asia, and much of Australia. Consequently, no SLA operations will be conducted over the continental US north of Cape Canaveral, Florida.

The proposed action and the no-action alternative were considered in this Environmental Assessment (EA). The no-action alternative will not fulfill the objective of advancing the Nation's topographic measurement capability. Under the No-Action alternative, it will not be possible to fully develop or space test the laser altimeter instrument technology for an operational space-based topography system. It will then be necessary to rely on existing photogrammetric and radar mapping instruments which have limitations in accuracy and in interpretation of topography data.

A review by the North American Defense Command and United States Space Command SPADOC Laser Clearinghouse found that the SLA laser transmitter does not produce sufficient laser energy to exceed their damage threshold and, therefore, does not require clearinghouse screening.

The only potential source of environmental impact from the proposed action is the portion of the laser pulse energy which will pass through the Earth's atmosphere and reach the surface. The SLA laser energy is negligible compared to natural sources of optical radiation. A ground observer safety analysis was performed for the SLA experiment and found no substantial risk of human eye or skin injury from operation of the SLA instrument within the range of possible Shuttle orbital altitudes.

No other environmental impacts have been identified as a result of the EA. On the basis of the SLA EA and underlying reference documents, NASA has determined that the environmental impacts associated with this project will not individually or cumulatively have a significant effect on the quality of the environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Dated: November 1, 1995.

William F. Townsend,

Deputy Associate Administrator for Mission to Planet Earth.

[FR Doc. 95–27449 Filed 11–3–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–098]

Notice of Prospective Patent License

SUMMARY: NASA hereby gives notice that Estee Lauder Companies of Melville, New York 11747, has requested a partially exclusive license to practice the invention protected by U.S. Patent No. 4,902,769, entitled "Low Dielectric Fluorinated Poly (Phenylene Ether Ketone) film and coating," which was issued on February 20, 1990, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this Notice must be received by January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, NSAS Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (804) 864–3521.

Dated: October 27, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–27448 Filed 11–3–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Communications Between the NRC and Licensees; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This policy statement presents the Nuclear Regulatory Commission (NRC) policy that informs both the nuclear industry and the NRC staff of the Commission's expectations regarding communications, including the reporting of perceived inappropriate regulatory actions by the NRC staff. The Commission encourages and expects open communications at all levels between its employees and those it regulates. Licensees should feel unconstrained in communicating with the NRC. Additionally, the NRC will not tolerate inappropriate regulatory actions by the NRC staff, nor will it tolerate retaliation or the threat of retaliation against those licensees who communicate concerns to the agency.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Carpenter, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone: (301) 415-1733.

SUPPLEMENTARY INFORMATION:

Background

COMSECY–95–008, dated February 21, 1995, forwarded to the Commission a draft NRC policy that would inform both the nuclear industry and the NRC staff of the Commission's expectations regarding communications, including the reporting of perceived inappropriate regulatory actions by the NRC staff. COMSECY–95–008 also forwarded a proposed procedure for handling such concerns within the Office of the Executive Director for Operations (OEDO) if reported by a senior power reactor manager (licensee official).

In a Staff Requirements Memorandum dated March 21, 1995; the Commission directed the NRC staff to discuss the concepts in COMSECY–95–008 with the Agency Labor-Management Partnership (ALMP) and to meet with the Nuclear Energy Institute (NEI) to discuss communication issues. In addition, the Commission provided items for further NRC staff consideration in its evaluation of the proposed policy and guidance documents.

The NRC staff discussed the proposed NRC policy and the draft procedure for handling perceived inappropriate regulatory actions during the Regional Labor-Management Partnership Subcommittee (Partnership) meeting on March 29, 1995, and at the ALMP meeting on April 21, 1995. There was consensus within the Partnership that the procedure was necessary. The Partnership also provided several suggested wording changes to clarify the procedure.

On May 11, 1995, the NRC staff met with NEI representatives regarding the NRC staff's actions in response to the Towers Perrin Nuclear Regulatory Review Study and to discuss communications between the NRC and the nuclear industry. NEI believed that the NRC's initiatives would enhance the effectiveness of communications between NRC and the nuclear industry and encourage the NRC staff to communicate this policy and procedure to the industry.

SECY–95–149, dated June 8, 1995, forwarded to the Commission the revised NRC policy that would inform both the nuclear industry and the NRC staff of the Commission's expectations regarding communications, including the reporting of perceived inappropriate regulatory actions by the NRC staff. As recommended by the Commission, the procedure was expanded to address the broad range of communications between the NRC and licensees. The NRC staff clarified the definition of inappropriate regulatory actions, including changes recommended by the Partnership. The procedural steps were also reordered as recommended by the Commission.

In a Staff Requirements Memorandum dated June 28, 1995, the Commission did not object to issuance of the policy regarding communications between the NRC and industry.

Statement of Policy

In 1991, the Commission established the "NRC Principles of Good Regulation," a copy of which is presented as Appendix A to this document. The Commission believes that good regulation must be transacted publicly and candidly and that open communications must be maintained with Congress, other Government agencies, licensees, and the public.

The Commission encourages and expects open communications at all levels between its employees and those it regulates. Licensees should feel unconstrained in communicating with the NRC. The Commission also expects the NRC staff to exercise initiative in maintaining open lines of communication and to ensure that its regulatory activities are appropriate and consistent. The Commission recognizes that honest, well-intentioned differences in opinions between the NRC staff and the licensee will occasionally occur. Therefore, the Commission encourages open communications to foster an environment where such differences receive constructive and prompt resolution.

Open communication also extends to the reporting of perceived inappropriate regulatory actions by the NRC staff when dealing with licensees. The Commission encourages licensees to provide specific information regarding such concerns.

The NRC will not tolerate inappropriate regulatory actions [1] by the NRC staff, nor will it tolerate retaliation or the threat of retaliation against those licensees who communicate concerns to the agency. NRC staff whose actions are found to be contrary to this policy could be subject to disciplinary actions in accordance with the NRC Management Directive 10.99, "Discipline, Adverse Actions and Separations" (formerly Manual Chapter 4171), or in accordance with the Collective Bargaining Agreement Between the U.S. Nuclear Regulatory Commission and National Treasury Employees Union.

[1] Inappropriate regulatory actions include activities that exceed the agency's regulatory authority, involve improper application of agency requirements, or adversely affect the agency's regulatory functions. Examples of inappropriate regulatory actions include, but are not limited to, unjustified inconsistent application of regulations and guidance by NRC staff or management that significantly affect licensee activities and inappropriate action on the part of NRC staff and management that disrupts effective communications with the licensee.

Dated at Rockville, Maryland, this 31st day of October 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

Appendix A to This Document—NRC Principles of Good Regulation

NRC Principles of Good Regulation

Independent. Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.

Open. Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.

Efficient. The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required, and must be a constant agency goal. NRC must establish means to evaluate and continuelly upgrade its regulatory capabilities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay.

Clear. Regulations should be coherent, logical, and practical. There should be a clear nexus between regulations and agency goals and objectives where explicitly or implicitly stated. Agency positions should be readily understood and easily applied.

Reliable. Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.

[FR Doc. 95–27411 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

Knowledge and Abilities Catalog Revision; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: NUREG–1122, "Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized Water Reactors," and NUREG–1123, "Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Boiling Water Reactors," were developed in 1985 to assist operator licensing examiners in the development of content valid written and operating examinations to administer to reactor plant operators and senior operators.

The Knowledge and Abilities (K/A) catalogs have been revised to resolve inconsistencies between the two catalogs and inconsistencies in content within the K/A catalogs. The revision also incorporates evolutionary changes in the operator licensing program and revised definition of operator's tasks within facility licensee's organizations. NRC will fully integrate NUREG–1122, Revision 1 and NUREG–1123, Revision 1 into the operator licensing program with the next revision of the Examiner Standards (NUREG–1021, Revision 8) in the fall of 1996.

Copies of NUREG–1122, Revision 1 and NUREG–1123, Revision 1 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room. Copies of NUREG–1122, Revision 1 and NUREG 1123, Revision 1 are available on the Tech Specs Plus BBS, the data line number is 1–800–679–5784. The files are also available in the NRC-PDR library at FedWorld through November 30, 1995. FedWorld is accessible via internet (http://www.fedworld.gov) as well as pc/modem (1–800–303–9672). The filenames are: NREG1122.ZIP and NREG1123.ZIP. Both files are compressed using PKzip.

FOR FURTHER INFORMATION CONTACT: Frank Collins, Mail Stop 010–D22, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415–3173.

Dated at Rockville, Maryland, this 30th day of October, 1995.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Chief, Operator Licensing Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27412 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–366]

Georgia Power Company, et al. (Edwin I. Hatch Nuclear Plant, Unit 2); Exemption

I.

Georgia Power Company, et al. (GPC or the licensee), is the holder of Facility Operating License No. NPF–5, which authorizes operation of the Hatch Nuclear Plant, Unit 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect. The facility consists of one boiling water reactor located in Appling County, Georgia.

II.

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components that penetrate the containment. Sections II.H.4 and III.C.2 of Appendix J to 10 CFR Part 50 require leak rate testing of the Main Steam Isolation Valves (MSIVs) at the calculated peak containment pressure related to the design- basis accident, and Sections III.A.5, III.B.3, and III.C.3 require that the measured leak rates be included in the combined leak rate test results.

By letter dated June 20, 1995, the licensee requested an exemption from the Commission's regulations. The subject exemption is from the requirements of 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," Sections III.A.5(b)(1), III.A.5(b)(2), III.B.3, and III.C.3 to exclude the MSIV leakage from

the combined local leak rate test results. This request was needed after the MSIV leakage rate was increased by the issuance of Amendment No. 132 on March 17, 1994. In addition, the Commission is granting another exemption from the requirements of Section III.C.2(a) to account for a previously granted exemption, stated in the Hatch Unit 2 Technical Specifications (TS), which allows the leak rate testing at a reduced pressure.

The licensee's June 20, 1995, request stated that a plant-specific radiological analysis of a postulated design-basis loss-of-coolant accident (LOCA) has been performed, and is documented in Section 15.1.39 of the Hatch Unit 2 Final Safety Analysis Report (FSAR). The radiological analysis calculated the effect of the maximum leakage rate from the containment volume in terms of onsite and offsite doses, which were evaluated against the dose limits of 10 CFR 50, Appendix A, General Design Criterion (GDC) 19 and 10 CFR Part 100, respectively. The analysis accounted for the radiological effect from MSIV increased leakage and other containment leakages following a postulated LOCA in terms of the doses that could be received by personnel in the technical support center (TSC), the main control room (MCR), and at the site boundary. The analysis results demonstrated that the dose from all the leakage, including the MSIV leakage rate limit of 100 standard cubic feet per hour (scfh) per MSIV not to exceed 250 scfh for all four main steam lines, results in an acceptable value when evaluated against the regulatory limits for the off-site doses, TSC and MCR doses contained in 10 CFR Part 100, and 10 CFR Part 50, Appendix A, GDC–19, respectively.

The staff concluded that the exemption requested is acceptable based on: the method of MSIV testing (i.e., 28.8 psig test pressure when applied between MSIVs on a single steam line); a radiological analysis that assumes a 100 scfh per MSIV leak rate not to exceed 250 scfh for all four steam lines; and the requirement that the MSIVs would be periodically tested to ensure the validity of the radiological analysis (i.e., verify that the MSIV leakage rate during testing is accounted for separately in the radiological analysis of the site).

For the reasons set forth above, the NRC staff concludes that there is reasonable assurance that: the current MSIV leak testing method (i.e., test pressure of 28.8 psig when applied between MSIVs) is an acceptable method; and the calculated doses obtained by performing radiological analysis (calculated using an MSIV leakage rate limit of 100 scfh per MSIV, not to exceed 250 scfh for all four main steam lines), are within the limits of 10 CFR Part 100 and GDC–19. The staff finds it acceptable to continue to exclude the measured MSIV leakage rate from the combined leak rate test results, since the leakage is accounted for separately and continues to meet the underlying purpose of the rule. Therefore, the staff finds that the requested exemption presented in the licensee's June 20, 1995, submittal is acceptable.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The underlying purpose of the rule is to assure that leakage through systems and components penetrating the primary containment should not exceed allowable leakage rates, so that the dose due to the total leakage, including that due to the MSIVs, is within the limits of 10 CFR Part 100 and GDC–19. The licensee's analysis has demonstrated that an adequate margin can be maintained even if leakage from the MSIVs is considered separately and subject to a leakage restriction of 100 scfh per MSIV, not to exceed a total of 250 scfh for all four main steam lines.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety, and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2). An exemption is hereby granted from the requirements of Sections III.A.5(b)(1), III.A.5(b)(2), III.B.3, III.C.2(a), and III.C.3 of Appendix J to 10 CFR Part 50. The exemption allows (1) leakage testing of the MSIVs, after deletion of the LCS, using a test pressure of 28.8 psig applied between MSIVs, and (2) exclusion of the measured MSIV leakage rate from the combined local leak rate test results.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 54709).

This exemption is effective upon issuance and will be implemented prior to startup of Cycle 13 for Hatch, Unit 2.

For the Nuclear Regulatory Commission

Dated at Rockville, Maryland this 1st day of November 1995.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 95–27414 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Number 40–0299]

UMETCO Minerals Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Application from Umetco Minerals Corporation to change a site-reclamation milestone in Condition 59 of Source Material License SUA–648 for the Gas Hills, Wyoming Uranium Mill site Notice of Opportunity for a Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 11, 1995, an application from Umetco Minerals Corporation (Umetco) to amend License Condition (LC) 59 A.(3) of Source Material License No. SUA–648 for the Gas Hills Wyoming uranium mill site. The license amendment application proposes to modify LC 59 A.(3) to change the completion date for a site-reclamation milestone. The new date proposed by Umetco would extend completion of placement of final radon barrier on the Heap Leach Impoundment by two years.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: The portion of LC 59 A.(3) with the proposed change would read as follows:

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background:

For the Heap Leach Impoundment—December 31, 1997.

Umetco's application to amend LC 59 A.(3) of Source Material License SUA–648, which describes the proposed change to the license condition and the reason for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Umetco Minerals Corporation, P.O. Box 1029, Grand Junction, Colorado 81502, Attention: Pat Lyons; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 30th day of October 1995.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–27413 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, November 16, 1995, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: October 30, 1995.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–27396 Filed 11–3–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36434; File Nos. SR–Amex–95–41; SR–CBOE–95–32; SR–NYSE–95–30; SR–PHLX–95–65; and SR–PSE–95–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Inc., the New York Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange, Inc. and Amendment No. 1 to the Pacific Stock Exchange's Proposal, Relating to the Listing and Maintenance Criteria for Options on American Depository Receipts

October 30, 1995.

I. Introduction

On July 12, 1995, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to amend interpretation and Policy .03 to CBOE Rule 5.3, "Criteria for Underlying Securities," and Interpretation and Policy .09 to CBOE Rule 5.4, "Withdrawal of Approval of Underlying Securities," to revise the listing and maintenance criteria for options on American Depository Receipts ("ADRs").

Notice of the proposed rule change appeared in the **Federal Register** on August 8, 1995.[3] No comments were received on the proposed rule change.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36049 (August 2, 1995), 60 FR 40401. The CBOE amended the proposed maintenance criteria to provide that if an ADR was initially deemed appropriate for options trading on the grounds that 50% or more of the worldwide trading volume in the ADR and other related ADRs and securities takes place in U.S. markets or in markets with which the CBOE has an effective surveillance sharing agreement, or if an ADR was initially deemed appropriate for options trading based on the daily trading volume in U.S. markets, as provided in the proposal, then the CBOE may not open for trading additional series of options on that ADR unless the percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which the CBOE has in place surveillance sharing agreements for any consecutive three month period is either (1) at least 30% without regard to the average daily trading volume in the ADR, or (2) at least 15% when the average

Continued

The Commission thereafter received identical proposals from the American Stock Exchange, Inc. ("Amex"),[4] the New York Stock Exchange, Inc. ("NYSE"),[5] the Philadelphia Stock Exchange, Inc. ("PHLX"),[6] and the Pacific Stock Exchange, Inc. ("PSE"),[7] (hereafter referred to collectively with the CBOE as the "Exchanges" and each individually referred to as an "Exchange").

II. Description of the Proposals

Listing Criteria for Options on ADRs

Currently, the Exchanges' rules allow the Exchanges to list options on an ADR that meets or exceeds the Exchanges' established uniform options listing standards if the ADR also satisfies any of the following conditions: (1) The Exchange has in place an effective surveillance agreement[8] with the primary exchange in the home country where the security underlying the ADR is traded; (2) the combined trading volume of the ADR, the security underlying the ADR, other classes of common stock related to the security underlying the ADR, and ADRs overlying such other classes of common stock (collectively, "other related ADRs and securities") occurring in the U.S. ADR market[9] represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading ("50% Test"); or (3) the Commission otherwise authorizes the listing.[10]

The Exchanges propose to amend their ADR listing criteria by (1) revising the manner in which the applicable percentage of world-wide trading volume is calculated under the 50% Test; and (2) adding new criteria for the listing of options on ADRs, based on daily trading in the U.S. Specifically, the Exchanges proposes to revise the 50% Test so that trading in ADRs and other related ADRs and securities in any market with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement will be added to U.S. ADR market volume for the purpose of determining whether the 50% test has been met. Currently, only trading in the U.S. ADR market counts towards satisfying the 50% Test.

In addition, the Exchanges propose to add a fourth alternative set of criteria under which the Exchanges may list options on ADRs. The new standard (the "Daily Trading Volume Standard") will permit the Exchanges to list options on ADRs if each of the following three conditions is satisfied: (1) The combined trading volume for the ADR and other related ADRs and securities occurring in the U.S. ADR market or in any market with which the Exchange has in place a comprehensive/effective surveillance agreement represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading; (2) the average trading volume for the ADR in the U.S. ADR market over the three months preceding the date of selection of the ADR for options trading is at least 100,000 shares per day; and (3) the trading volume for the ADR in the U.S. ADR market is at least 60,000 shares per day for a majority of the trading days for the three months preceding the date of selection of the ADR for options trading.

The Exchanges note that, like the 50% Test, the Daily Trading Volume Standard will allow the listing of options on ADRs in the absence of a comprehensive/effective surveillance sharing agreement between the applicable Exchange and the home country where the security underlying the ADR is traded. The Exchanges believe that the Daily Trading Volume Standard is justified because it will enable the Exchanges to list options on ADRs that are widely followed by U.S. investors but that do not meet the 50% Test. The Exchanges note that although the Daily Trading Volume Standard reduces from 50% to 20% the percentage of world-wide trading that must occur in the U.S. ADR market and in markets with which an Exchange has a comprehensive/effective surveillance sharing agreement, it also requires the ADRs to have trading volume in the U.S. ADR market. The Exchanges believe that the Daily Trading Volume Standard's requirement of observable, high trading volume should ameliorate regulatory concerns regarding investor protection.

Maintenance Criteria for Options on ADRs

The proposals also revise the maintenance criteria for listing additional series of options on ADRs. Currently, the Exchanges' rules prohibit the Exchanges from opening trading on any additional series of options on an ADR that was listed initially under the 50% Test if the U.S. trading volume over a subsequent three month period is less than 30% of worldwide trading volume, unless either (1) the Exchange has in place a comprehensive/effective surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded, or (2) the Commission has otherwise authorized the listing.

The Exchanges propose to amend the maintenance criteria to prohibit an Exchange from opening trading in any additional series of options on an ADR that was listed initially pursuant to the 50% test or the Daily Trading Volume standard unless the percentage of worldwide trading volume in the ADR and other related securities takes place in U.S. markets and in markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreements for any consecutive three month period is either (1) at least 30% without regard to the average daily trading volume in the ADR, or (2) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000 shares.[11] The Exchanges believe that the proposed 15% requirement, together with the significant average daily trading volume requirement (70,000 shares) should be adequate to address concerns regarding the Exchanges' ability to investigate possible options manipulation involving the underlying ADRs without being so high as to unduly interfere with the continued trading of option products that have become established on an Exchange.

The Exchanges believe that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5), in particular, in that they are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by enabling the Exchanges to list options on widely followed ADRs without compromising investor protection concerns.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] The Commission believes, as it has concluded previously,[13] that the listing of options on ADRs, among other things, provides investors with a better means to hedge their positions in the underlying ADRs, as well as enhanced market timing opportunities.[14] Further, the pricing of the ADRs underlying ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[15] In sum, options on ADRs likely engender the same benefits to investors and the marketplace that exist with respect to options on common stock.[16]

The Commission believes that the proposed amendments to the listing and maintenance standards for options on ADRs will benefit investors by effectively increasing the number of available options-eligible ADRs. At the same time, the proposals provide safeguards designed to prevent manipulations and other abusive trading strategies in connection with the trading of ADR options and their underlying securities. Accordingly, the Commission believes that the proposals will extend the benefits associated with ADR options to additional ADRs and provide market participants with opportunities to trade a greater number of ADR options without compromising the effectiveness of the Exchanges' listing and maintenance standards for options on ADRs.

Currently, the 50% Test allows an Exchange to list options on an ADR in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the security underlying the ADR trades if the combined trading volume of the ADR and other related ADRs occurring in the U.S. ADR market during the three month period preceding the selection of the ADR for options trading represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR and other related ADRs.

In its orders approving the 50% Test, the Commission concluded that the 50% Test helped to ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the market where the security underlying the ADR trades. In such cases, the Commission found that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulations or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. Because the U.S. self-regulatory organizations which comprise the U.S. ADR market are members of the ISG, the Commission concluded that there exists an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.[17]

The Exchanges propose to modify the 50% Test to include in the U.S. ADR market volume calculation the trading volume in ADRs and other related securities that occurs in any market with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement. The Commission believes that this proposed modification of the 50% Test is consistent with the Act and with the Commission's approach in the 1994 ADR Approval Orders because it will continue to ensure that the majority of world-wide trading volume in the ADR and other related ADRs and securities occurs in trading markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement. The existence of such agreements should function as a deterrent in preventing manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the ADR markets underlying the Exchanges' options. As a result, the Exchanges should continue to be able to adequately investigate any potential manipulations of ADR options or their underlying securities.

In addition, the Commission finds that the proposed Daily Trading Volume Standard is consistent with the Act and with the 1994 ADR Approval Orders. As noted above, the Daily Trading Volume Standard will allow the Exchanges to list options on an ADR if, over the three month period preceding the date of selection of the ADR for options trading (1) the combined trading volume of the ADR and other related ADRs and securities occurring in the U.S. ADR market, and in markets where the applicable Exchange has in place a comprehensive/effective surveillance agreement, represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the ADR and other related ADRs and securities; (2) the average daily trading volume for the security in U.S. markets is 100,000 or more shares; and (3) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of the trading days.

The Commission believes that these requirements present a reasonable

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U.S. daily trading volume in the ADR for the previous three months is at least 70,000 shares. *See* Letter from Timothy Thompson, CBOE, to Jim McHale, Division of Market Regulation ("Division"), Commission, dated September 7, 1995 ("Amendment No. 1").

[4] *See* File No. SR–Amex–95–41, submitted on October 11, 1995.

[5] *See* File No. SR–NYSE–95–30, submitted on September 28, 1995.

[6] *See* File No. SR–PHLX–95–65, submitted on September 19, 1995.

[7] *See* File No. SR–PSE–95–21, submitted on September 7, 1995. The PSE amended its proposal to conform its maintenance standards to the maintenance standards proposed by the CBOE. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, to Yvonne Fraticelli, Attorney, Office of Market Supervision, Division, Commission, dated October 13, 1995 ("Amendment No. 1").

[8] The Commission defines an effective (*i.e.*, comprehensive) surveillance agreement as one pursuant to which the Exchange can obtain relevant surveillance information, including, among other things, the identity of the customers of securities transactions. The term "effective" surveillance sharing agreement is interchangeable with "comprehensive" surveillance sharing agreement.

[9] The U.S. ADR market includes the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group ("ISG") and whose members are linked together by the Intermarket Trading System ("ITS"). The ISG, which is comprised of the Amex, the Boston Stock Exchange, Inc., the CBOE, the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. ("NASD"), the NYSE, the PSE, and the PHLX, was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. *See* Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994), (order approving File No. SR–CBOE–93–61).

[10] The Commission generally would only provide such authorization in the context of approving a rule filing submitted under Section 19 of the Act and Rule 19b–4 thereunder.

[11] Consistent with the proposed amendments to the listing standards, the Exchanges propose to modify the calculation of world-wide trading volume in the maintenance standards to include the trading of the ADR and other related ADRs and securities in markets with which the applicable Exchange has in place an effective surveillance sharing agreement.

[12] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

[13] *See* Securities Exchange Act Release Nos. 33555 (January 31, 1994), 59 FR 5619 (February 7, 1994) (order approving File No. SR–Amex–95–38); 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994) (order approving File No. SR–CBOE–93–38); 33552 (January 31, 1994), 59 FR 5626 (February 7, 1994), (order approving File No. SR–NYSE–93–43); 33553 (January 31, 1994), 59 FR 5634 (February 7, 1994) (order approving File No. SR–PHLX–93–54); and 33551 (January 31, 1994), 59 FR 5631 (February 7, 1994) (order approving File No. SR–PSE–93–33) ("1994 ADR Approval Orders").

[14] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[15] *See e.g.*, Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[16] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the market, and other valid regulatory concerns.

[17] *See* 1994 ADR Approval Orders, *supra* note 14.

alternative to the 50% Test by limiting the listing of options on ADRs to only those ADRs that have both (1) a significant amount of U.S. market trading volume and (2) a substantial (albeit not majority) volume of trading covered by a comprehensive/effective surveillance sharing agreement. This will ensure that, if a majority of trading volume in the ADR occurs in markets with a comprehensive/effective surveillance agreement, the U.S. ADR market is sufficiently active to serve as a relevant pricing market for the ADR.

Accordingly, the Daily Trading Volume Standard should help to ensure that the U.S. markets (and the markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement) serve a significant role in the price discovery of the applicable ADR and are generally deep, liquid markets.

The Commission also believes that the proposed maintenance criteria (which will apply to an ADR option regardless of whether the option was listed under the 50% Test or the Daily Trading Volume Standard) will provide for continued trading of ADR options that have become established on an Exchange while ensuring that the U.S. markets (and the markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement) remain a significant price discovery market for options on the ADRs.

The Commission also notes that the existing ADR option listing requirements related to the protection of investors will continue to apply. Specifically, the ADRs underlying the options must meet the Exchanges' uniform options listing standards, including initial and maintenance criteria, in all respects.[18] These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

In addition, the Exchanges are required to make a reasonable inquiry to evaluate foreign securities underlying the ADR options to ensure that these securities are generally consistent with the requirements set forth in each Exchange's options listing standards.[19] In the ADR Approval Orders, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet those standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the Exchange's standard. The Commission continues to believe, however, that requiring the Exchanges to review the foreign securities underlying the ADR options to ensure that they are generally consistent with the Exchanges' options listing standards, along with other market safeguards, will adequately protect investors from the possibility that the ADR options will be listed on illiquid or narrowly held securities.[20]

IV. Conclusion

The Commission notes that the Exchanges have not reported any problems associated with the trading of options on ADRs. Based on the Exchanges' experience trading ADR options, on the safeguards provided in the proposals, and on the requirement that ADR options comply with the Exchanges' uniform options listing standards, the Commission believes that the proposed amendments to the listing and maintenance standards for options on ADRs will allow the Exchanges to list options on widely followed ADRs while providing adequate mechanisms to ensure investor protection.

The Commission finds good cause for approving Amendment No. 1 to the CBOE's proposal and Amendment No. 1 to the PSE's proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. CBOE Amendment No. 1 and PSE Amendment No. 1 strengthens the Exchange's proposals by providing a single maintenance standard that applies to ADR options listed under both the 50% Test and the Daily Trading Volume Standard. The Commission believes that it is reasonable for the Exchanges to apply this maintenance standard to ADR options listed under either the 50% Test or Daily Trading Volume Standard.

In addition, the Commission finds good cause for approving the proposals submitted by the Amex, the NYSE, the PSE, and the PHLX prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because their proposals are consistent with the CBOE's proposal, which, with the exception of Amendment No. 1, was subject to the full notice and comment period. As noted above, the Commission received no comment letters concerning the CBOE's proposal. Accordingly, the Commission finds that it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act[21] to approve Amendment No. 1 to the CBOE's proposal, and the proposals submitted by the Amex, the NYSE, the PHLX, and the PSE, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the CBOE's proposal and Amendment No. 1 to the PSE's proposal and concerning the proposals by the Amex, the NYSE, the PHLX, and the PSE. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 27, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule changes (File Nos. SR-Amex-95-41; SR-CBOE-95-32; SR-NYSE-95-30; SR-PHLX-95-65; and SR-PSE-95-21) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

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[18] The Exchanges' initial listing standards require, among other things, that the ADRs underlying the Exchange-listed options are registered securities, have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. The Exchanges' maintenance criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period.

[19] *See* Securities Exchange Act Release Nos. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992) (order approving File No. SR-Amex-91-26); 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992) (order approving File No. SR-CBOE-91-34); 31528 (November 27, 1992), 57 FR 57256 (December 3, 1992) (order approving File No. SR-NYSE-92-25); 31532 (November 27, 1992), 57 FR 57264 (December 3, 1992) (order approving File No. SR-PHLX-91-40); and 31530 (November 27, 1992), 57 FR 57282 (December 3, 1992) (order approving File No. SR-PSE-91-33) ("ADR Approval Orders"). *See also* 1994 ADR Approval Orders, *supra* note 14.

[20] For example, the Commission would expect the exchanges to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns. *See* ADR Approval Orders, *supra* note 20.

[21] 15 U.S.C. 78s(b)(2) and 78f(b)(5) (1988).

[22] 15 U.S.C. § 78s(b)(2) (1982).

[23] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-36439; File No. SR-CBOE-95-56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Narrow-Based Index Options

October 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 10, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 24.4A, "Position Limits for Industry Index Options," and 24.5, "Exercise Limits," to increase the position and exercise limits[2] for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts[3] to 6,000, 9,000, or 12,000 contracts. The Commission recently approved an identical proposal by the Philadelphia Stock Exchange, Inc. ("PHLX").[4]

The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 24.4A and 24.5 to increase the position and exercise limits for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts. The CBOE notes that the Commission recently approved an identical proposal by the PHLX.[5]

Currently, CBOE Rule 24.4A establishes 5,500, 7,500, and 10,500 contract levels as position limits for industry index options. The CBOE proposes to increase these limits to 6,000, 9,000, and 12,000 contracts, respectively. If the Commission approves the proposed increase in position limits for industry index options, the exercise limits set forth in CBOE Rule 24.5 for industry index options will increase correspondingly since they reference CBOE Rule 24.4A.

The CBOE trades options on the following narrow-based indexes, with limits as shown:

(1) S&P Banking Index—10,500 contracts;
(2) S&P Chemical Index—5,500 contracts;
(3) S&P Health Care Index—7,500 contracts;
(4) S&P Insurance Index—7,500 contracts;
(5) S&P Retail Index—5,500 contracts;
(6) S&P Transportation Index—7,500 contracts;
(7) CBOE Software Index—7,500 contracts;
(8) CBOE Environmental Index—7,500 contracts;
(9) CBOE Gaming Index—7,500 contracts;
(10) CBOE Global Telecommunications Index—10,500 contracts;
(11) CBOE Israel Index—7,500 contracts;
(12) CBOE Mexico Index—10,500 contracts;
(13) CBOE REIT Index—10,500 contracts;
(14) CBOE Telecommunications Index—10,500 contracts;
(15) CBOE Biotech Index—10,500 contracts;
(16) CBOE Latin 15 Index—10,500 contracts;
(17) CBOE High Technology Index—10,500 contracts.

The CBOE notes that the current levels have been in place since 1993.[6] The CBOE believes that the proposed limits of 6,000, 9,000, and 12,000 contracts will increase the depth and liquidity of the market for industry index options without causing any market disruption. The Exchange represents that it will continue to surveil for manipulation. In addition, the Exchange states that it has not opened any manipulation inquiries to date as a result of any increase in position and exercise limits.

The Exchange believes that the proposal to increase narrow-based index option position limits is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it will allow investors to utilize industry index options more fully as part of their investment portfolios, provide uniform limits among the exchanges listing such options and increase the depth and

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[3] Under CBOE Rule 24.4A, the current position limits for industry index options are as follows: (1) 5,500 contracts if the CBOE determines in its semi-annual review that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 30% or more of the index value during the 30-day period immediately preceding the review; (2) 7,500 contracts if the Exchange determines in its semi-annual review that any single underlying stock accounted, on average, for more than 20% of the index value or that any five underlying stocks accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or (3) 10,500 contracts if the CBOE determines that the conditions requiring the establishment of a lower limit have not occurred.

[4] *See* Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (September 13, 1995) (order approving File No. SR-PHLX-95-16) ("PHLX Approval Order").

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR-CBOE-93-43).

liquidity of the market, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. As noted above, the Commission has previously approved an identical proposal submitted by the PHLX.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[8] Specifically, the Commission finds that the proposed position and exercise limits for narrow-based index options should accommodate the needs of investors and market participants and should increase the potential depth and liquidity of the options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities.

As noted above, the Commission believes that although the position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. In this regard, the CBOE has stated that it believes that the proposal will increase the depth and liquidity of the market for industry index options without causing any market disruption. In addition, the CBOE represents that it will continue to conduct surveillance for manipulation, and that the Exchange has not opened any manipulation inquiries to date as a result of an increase in position and exercise limits.

The Commission notes that the proposal, while increasing the applicable position limits for narrow-based index options, continues to reflect the unique characteristics of each index option and maintains the structure of the current three-tiered system. Specifically, the lowest proposed limit, 6,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. A position limit of 9,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 12,000-contract limit will apply only if the Exchange determines that the conditions requiring either the 6,000-contract limit or the 9,000-contract limit have not occurred. Accordingly, the proposal allows the Exchange to avoid placing unnecessary restraints on those narrow-based index options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, may be the greatest.

The Commission believes that the proposed increases for the three tiers of 9%, 20%, and 15%, for lowest to highest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the modest increases proposed by the Exchange are warranted. The Commission recognizes that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. However, based upon the absence of discernible manipulation or disruption problems under current limits, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the liberalization of existing position and exercise limits for narrow-based index options is now appropriate.[9]

The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based stock index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increase in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the CBOE has indicated that it will continue to conduct surveillance for manipulation. The Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.

For the foregoing reasons, the Commission finds that the proposal to increase the position and exercise limits for narrow-based index options to 6,000, 9,000, or 12,000 contracts, depending on the percentage stock concentrations within the index, is consistent with the requirements of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** As noted above, the Commission has previously approved an identical proposal submitted by the PHLX.[10] The PHLX's proposal was published for the full notice and comment period and the Commission received no comments on the PHLX's proposal. The CBOE's proposal raises no new regulatory issues. Accordingly, the Commission

[7] *See* PHLX Approval Order, *supra* note 4.

[8] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[9] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[10] *See* PHLX Approval Order, *supra* note 4.

believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 27, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–95–56) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[11] 15 U.S.C. § 78f(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36441; File No. SR–CBOE–95–64]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated and Amendment Nos. 1 and 2 to the Proposed Rule Change, Relating to Position Limits on the S&P 500/Barra Growth Index and the S&P 500/Barra Value Index

October 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 1995 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange submitted to the Commission Amendment Nos. 1 and 2 to the proposal on October 26, 1995.[3] The Commission is approving this proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the positions limits applicable to the S&P 500/Barra Growth Index and the S&P 500/Barra Value Index.[4] (The S&P 500/Barra Growth Index is sometimes hereinafter referred to as the "Growth Index," the S&P/500 Barra Value Index is sometimes hereinafter referred to as the "Value Index," and the Growth Index and the Value Index are sometimes hereinafter collectively referred to as the "Indexes.") The position limits are being revised to account for the rebasing of the Indexes. The text of the proposed rule change is available at the Office of the Secretary of CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the contract position limits for the Indexes consistent with the recent rebasing of the Indexes by Standard & Poor's ("S&P"). The Indexes are maintained by Barra, Inc. ("Barra") pursuant to an agreement between Barra and Standards & Poor's ("S&P"). The Value Index and Growth Index represent a partition of the S&P 500 Stock Index and, like options on the S&P 500 ("SPX options"), Value options and Growth options are cash-settled, European-style and A.M.-settled. The Indexes are described in more detail in File No. SR–CBOE–93–36 and in the Commission order approving the Indexes for options trading on the Exchange.[5] The Exchange represents that it intends to begin trading options on both Indexes on or about November 7, 1995.

Rebasing of the Indexes. On July 20, 1995, Standard & Poor's announced that the S&P 500/Barra Growth Index and the S&P 500/Barra Value Index will be rebased effective Friday, July 28, 1995. The Indexes were set at a base value of 10 for December 31, 1974. The new base value for the Indexes will be 35 and all historical values of the Indexes will be adjusted accordingly by a factor of 3.5. The rebasing serves to bring the value of the combined Indexes into line with the value of the S&P 500, the index from which the Indexes are derived.

As an example, the Growth Index and the Value Index closed at 78.64 and 84.59, respectively, on Tuesday, July 25, 1995. On an adjusted basis those levels are 275.24 and 296.07. The sum of those values is 571.31, as compared to the closing level of the S&P 500 on that date of 561.10.

Position Limits. Currently, under CBOE Rule 24.4(a), position limits for Growth options and position limits for Value options are 125,000 contracts on the same side of the market, with no more than 75,000 contracts in the series with the nearest expiration date. Positions in both classes of options must be aggregated, pursuant to the Rule, in determining compliance with the position limits. In addition, currently under Interpretation .01 to Rule 24.4, the maximum combined position in the Indexes may not exceed 225,000 same-side of the market option contracts

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange submitted Amendment No. 1 to its proposed rule change to reduce the position limits originally proposed in this filing to position limits consistent with the rebasing of the Growth Index and Value Index. The Exchange proposes to amend the contract position limits for the Indexes: (1) From 40,000 contracts on the same side of the market as originally proposed to 36,000 contracts; (2) from 25,000 contracts in the nearest expiration series as originally proposed to 21,500 contracts; and (3) from a 75,000 contract hedge exemption limit as originally proposed to 65,000 contracts. Additionally, Amendment No. 2 changes the name of each Index from S&P/Barra Growth and S&P/Barra Value to S&P 500/Barra Growth and S&P 500/Barra Value, respectively. See Letter from Timothy Thompson, Attorney, CBOE, to John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated October 26, 1995.

[4] Exercise limits will be set at the same level as position limits. See CBOE Rule 24.5.

[5] See Securities Exchange Act Release No. 34124 (May 27, 1994), 59 FR 29310 (June 6, 1994).

under CBOE's hedge exemption rule provisions.

The rebasing of the Growth Index and the Value Index now makes it necessary to reduce the contract position limits to maintain the appropriate same maximum dollar value afforded under the originally approved limits. In order to reflect the same dollar value as that originally approved, the current position limits would need to be divided by 3.5. Dividing the current level of 125,000 contracts on the same side of the market by 3.5 would yield 35,714 contracts. However, in order to establish position limits of a round number for ease of administration and compliance, the Exchange is proposing an aggregate position limit of 36,000 contracts on the same side of the market for the Growth and Value Indexes. In addition, the Exchange is proposing to similarly reduce the amount of contracts in the series that may be in the nearest expiration date from 75,000 contracts to 21,500 contracts.[6]

The Exchange is also proposing to revise the 225,000 hedge exemption limit under Interpretation .01, as this amount was also designed to have a numerical relationship to the general position limits. The Exchange is proposing that this limit be reduced to 65,000 contracts. The 65,000 contract position limit is 1.805 times the new proposed position limit of 36,000 contracts. Similarly, under the current rule, the 225,000 contract hedge exemption position limit is 1.8 times the 125,000 contract position limit.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will promote just and equitable principles of trade by revising position limits in light of the recent rebasing of the two Indexes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[6] This new proposed nearest expiration date limit of 21,500 contracts is slightly less than 60% of the new proposed 36,000 contract limit, just as the current nearest expiration date restriction of 75,000 contracts is 60% of the current position limit of 125,000 contracts.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change, as amended, be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act to accommodate for the trading of Index options on or about November 7, 1995. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of section 6(b)(5) thereunder. Specifically, the Commission believes that the CBOE proposal to reduce the contract position and exercise limits applicable to the Indexes should enhance investor protection and protect the public interest by helping to ensure that market participants cannot control unduly large positions in the Indexes in light of the Indexes' adjusted base values which, otherwise, would increase the manipulation potential of trading options thereon.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the Commission has approved the Value Index and the Growth Index for options trading, and the Exchange intends to list each Index for options trading on or about November 7, 1995. By accelerating approval, the proposed rule change, as amended, can become effective before the Exchange begins trading the applicable Index options and provide market participants adequate notice of the applicable position and exercise limits. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve this proposed rule change on an accelerated basis.

For the same reasons, the Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. Specifically, Amendment No. 1 proposes to reduce the position limits as originally proposed in this filing to position limits more in line with the rebasing of the Growth Index and Value Index.[7] The Commission believes that these position limits are appropriate in light of the rebasing of the Indexes by a factor of 3.5. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the CBOE proposal on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. Specifically, Amendment No. 2 proposes to change the name of each Index from S&P/Barra Growth and S&P/Barra Value to S&P 500/Barra Growth and S&P 500/Barra Value, respectively. The Commission notes that changing the name of each Index does not raise any new regulatory issues. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the CBOE proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposal including Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–64 and should be submitted by November 27, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of Act,[8] that the proposed rule change (File No. SR–CBOE–95–64), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27425 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[7] See supra note 3.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[Release No. 34–36436; File No. SR–DTC–95–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking Depository Eligibility of Fractional Shares and Cent-Denominated Securities

October 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 4, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–14) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to make fractional shares and cent-denominated securities eligible for book-entry delivery and other DTC services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make cent-denominated securities and fractional shares eligible for book-entry delivery and other DTC services. The proposal is being made in response to numerous requests made by DTC participants.[3] This proposal anticipates the accelerated securities processing environment that will be triggered by the conversion of DTC's money settlement system to an entirely same-day funds settlement ("SDFS") system. DTC is proposing to implement the eligibility of fractional shares on a voluntary basis.[4]

1. Cent-Denominated Securities

DTC estimates that approximately 6,000 cent-denominated issues exist for which DTC eligibility will become possible if the Commission approves DTC's proposed rule change. Of those 6,000 issues, DTC estimates that 350 are treasury receipts.[5]

Under the proposed rule change, participants will deposit cent-denominated securities at DTC by using DTC's Deposit Automation Management ("DAM") service. DTC will in turn submit such securities to the appropriate transfer agent. However, the cents portion of the aggregate dollar figure for the deposited securities will be "truncated" (*i.e.*, cut off). Having eliminated the cents portion from the position, DTC only will reflect the whole dollar amount of deposits in the participant's account at DTC. For example, if a participant deposits ten certificates at $1.15, $11.00 will credited to the participant's DTC account, and the remaining fifty cents will be truncated. All related services and transactions thereafter will be effected in whole dollar increments, including principal and income payments.

The truncated amounts will be collected in an internal DTC account. The sum is not expected to be significant at first and therefore will not warrant the expense of developing a complex system to credit the truncated cents to each respective depositing participant as the amounts accumulate. Instead, the cents and any income derived therefrom will become part of DTC's general revenues. Because DTC refunds revenues in excess of its costs to its participants, DTC in effect will pass along the value of the truncated cents to participants as part of DTC's general refund when and if refunds of excess revenues are distributed.[6] Participants also will forfeit any voting rights on truncated cents. In time, depending on the size of the accumulated truncated amounts, DTC may reconsider developing a tacking mechanism to credit these amounts to the accounts of depositing participants.

DTC believes that the actual financial effect on its participants of the cent truncation will be negligible and well within industry practice for reconciling de minimis differences in such things as deliveries and deposits. DTC estimates that if all cent-denominated certificates held by its participants were deposited at DTC, the scale of the financial impact of the cent truncation would be as set forth below.

According to a 1992 survey, thirty-one DTC participants held cent-denominated securities represented by 57,114 certificates and more than 8,000 CUSIP numbers. The value of these positions in 1992 was approximately $37 million. Distributed among the DTC's entire participant base, the total value of the truncated cents is estimated to be less than $22,000. This figure is the result of three calculations:

(i) The average number of certificates for a DTC registered deposit is four; therefore, assuming that an average of four certificates is included in each deposit, the estimated number of deposits for the surveyed participants would be 14,278 (57,114 certificates ÷ 4 certificates per deposit).

(ii) Assuming that the average truncation for each deposit is fifty cents,[7] the aggregate value of the cents portion would be $7,139 for the surveyed participants ($.50 × 14,278).

(iii) The surveyed participants represent approximately thirty-three percent of DTC's monthly billing total. Extrapolating from this percentage for all DTC participants depositing cent-denominated securities into their DTC accounts, the estimated total truncated portion of cents would be $21,631 ($7,139 × 3.03 [mathematical inverse of thirty-three percent] = $21,631).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] In 1992, the results of a survey of DTC participants showed that most responding participants wished to have certain types of issues not then eligible for depository services made DTC-eligible including cent-denominated securities and fractional shares.

[4] *Infra* note 13.

[5] This estimate is based on information compiled by a DTC participant. Treasury receipts are proprietary products of broker-dealers created by stripping the coupons from U.S. Treasury securities ("Treasuries") with the resulting instrument representing an interest in the stripped coupons or in the remaining principal (*i.e.*, zero coupon products). Subsequently, the U.S. Treasury began issuing STRIPS (Separate Trading of Registered Interest and Principle of Securities) bonds which essentially replaced the Treasury receipt in function. The Treasury issues STRIPS in a form that allows dealers to sell them immediately as zero-coupon products and do not require the repackaging steps that are necessary to transform straight Treasuries into zero-coupon instruments. Other newly eligible issues will include church bonds and various other securities types. Church bonds are securities issued by a religious organization to finance building or renovation projects. These securities typically are issued in small dollar amounts within a confined geographical area.

[6] Any refunds from the truncation program will be distributed to all DTC participants not only those participants depositing cent-denominated securities.

[7] This is the median between the lowest possible truncation amount (zero cents) and the highest possible truncation amount (99 cents).

If the $21,631 were distributed equally among all DTC participants as part of a general refund, the following distributions can be projected. DTC's last excess revenue refund to its participants was $8,000,000, and the largest portion returned to a participant was $372,876, which represented 4.7 percent of the total refund. The smallest portion returned was $8, which represented .0001 percent of the total refund. Using these percentages, the largest possible refund would be $1,016 (4.7 percent of $21,631); the smallest possible refund would be two cents (.0001 percent of $21,631); and the average refund would be approximately $49 ($21,631 ÷ 441 direct participants = $49.05).[8]

2. Fractional Shares

DTC also wishes to make securities denominated in fractional shares eligible for deposit.[9] DTC proposes to carry the fractional portions under a contra-CUSIP number, with full shares being reflected in the primary CUSIP. Delivery orders and pledges will not initially be permitted to be denominated in fractional shares.[10] However, DTC participants will have the option as the fractional shares accumulate to full shares under the contra-CUSIP to add them to the preliminary CUSIP where they will be eligible for all activities.[11] Alternatively, the fractional shares can be left in the contra-CUSIP. DTC also will provide enhanced physical processing so that deposits and withdrawals-by-transfer containing both whole and fractional shares can be combined, and DTC will handle the process of separating the whole shares to the primary CUSIP and the fractional shares to the contra-CUSIP.

DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)[12] of the Act and the rules and regulations thereunder applicable to DTC in that it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Responses to DTC's current proposal were generally favorable. Participants that commented were pleased to learn of DTC's initiative to extend depository services to fractional shares and cent-denominated securities and indicated that the effort will be beneficial to their individual firms as well as to the securities industry overall. They indicated that they viewed the initiative as being consistent with the industry's long-term goal of achieving a centralized processing environment for physical securities, particularly with the goals of DTC's DAM Program and the Vision 2000 Committee's recommendations.[13]

In August 1994, a memorandum detailing DTC's proposal for handling cent-denominated securities was issued for participant comment. Responding participants generally agreed with the proposal. Participants attending a forum on this subject on August 18, 1994, were also largely in agreement.

The current contra-CUSIP approach for fractional shares is a realistic near-term improvement on the status quo.[14] It enables DTC to accommodate those participants that wish to reduce or eliminate their vault holdings and permits DTC to provide at least limited services for fractional shares. At the same time, participants choosing not to use the service will not be obliged to make the substantial system changes necessitated by the inauguration of a book-entry delivery capability for these securities.[15]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–14 and should be submitted by November 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

[8] Participants will also garner the benefit of administrative efficiencies that will attend the elimination of pennies. Specifically, fewer keystrokes will be required to enter penny amounts, and less record surveillance will be required to account for and reconcile penny amounts.

[9] A fractional share is a unit of stock less than one full share.

[10] DTC is also investigating the possibility of developing and providing a limited delivery capability that would require receiver authorization prior to a delivery being made.

[11] DTC participants will also have the ability to break up full shares under the primary CUSIP into fractional shares under the contra-CUSIP although the resulting fractional shares will not be initially eligible for deliver orders or for pledging purposes.

[12] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[13] The Vision 2000 Committee is comprised of representatives from the Boards of Directors of DTC and the National Securities Clearing Corporation. Its focus is on the elimination of inefficiencies and redundancies, the maximization of technology, and the reduction in costs in the clearance and settlement industry both within and without the United States. The Vision 2000 Committee's recommendations are discussed in the Report of the Vision 2000 Committee (September, 1994).

[14] DTC's initial proposal for handling fractional shares, communicated to participants in August 1994, did not contemplate implementing the contra-CUSIP approach on a voluntary basis. Participants responding at that time expressed reservations about anticipated difficulties in reconciliation as well as in providing programming resources given that such resources were seen as already fully committed to the upcoming change to a same-day funds settlement system and to a T+3 settlement cycle. To address its participants' concerns, DTC devised the current proposal that provides for voluntary implementation. This newer, more flexible approach was described to participants in a notice dated December 14, 1994.

[15] Offering DTC participants the ability to make book-entry deliveries of fractional shares will be the first step in the development of processing capabilities for fractional shares. DTC will continue to monitor its participants' need for book-entry delivery as experience with this service is gained. The use of a single, primary CUSIP for entire positions will also be explored.

[16] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–27426 Filed 11–3–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36437; File No. SR–DTC–95–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Processing Securities With Indexed Principal Features Through the Receiver Authorized Delivery Facility

October 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 23, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–15) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to require transactions in securities issued under a Money Market Instrument ("MMI") program having an indexed principal[2] feature and settling in DTC's Same Day Funds Settlement ("SDFS") system to be directed to DTC's Receiver Authorized Delivery facility ("RAD").[3] RAD requires the receiver to authorize the transaction prior to it being processed by DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to ensure that DTC participants receiving a valued delivery of MMI securities with an indexed principal feature will receive complete and accurate information about whether or not such securities have an indexed principal feature. The value of MMI securities with an indexed principal feature may change dramatically in a short period of time; therefore, DTC's participants have asked DTC to develop controls to ensure that participants have accurate information about this feature before accepting delivery of such a security. DTC has responded to these concerns by developing procedural changes that will reduce the likelihood that a DTC participant will purchase this type of security without full knowledge of its indexed principal feature.

Under the proposal, DTC will require mandatory authorization from receivers of securities having an indexed principal feature before DTC will process the transaction. DTC participants will transmit such authorization via DTC's RAD facility.[5] In addition, DTC will revise its twenty and forty-eight character CUSIP descriptions to include a unique identifier that will indicate that an issue has an indexed principal feature.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In June 1995, DTC released a memorandum to its participants about DTC's efforts to provide more complete information regarding the indexed principal feature of MMI securities. Written comments from DTC participants or others have not been solicited on the proposed change; however, State Street Bank and Trust Company ("State Street") submitted a comment letter to DTC expressing two concerns regarding the proposed rule change. First, State Street wrote that it currently uses DTC's Main Frame Dual Host System ("MDH") for daily settlement purposes rather than DTC's Participant Terminal System ("PTS"). State Street explained that because the new RAD authorization function only is available on PTS and not MDH, it would be forced to process the new RAD authorizations manually. DTC responded to State Street's concern by agreeing to enable them to process the new RAD authorizations through MDH.

Secondly, State Street commented that DTC should be able to provide accurate and complete issuance information without the need for an additional RAD control. DTC responded in its letter to State Street that DTC participants and the Public Securities Association ("PSA") asked DTC to develop a method of identifying securities with an indexed principal feature and a procedure to affirmatively notify participants when they take delivery of securities having such a feature. DTC participants and the PSA requested the development of these procedures to ensure that DTC participants know before taking delivery that a particular security has an indexed principal feature. DTC believes that the proposed rule change effectively addresses these requests.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] An "indexed principal" is principal directly derived by reference to a currency, composite currency, commodity, or other financial index.

[3] For a description of DTC's RAD facility, refer to Securities Exchange Act Release Nos. 25886 (July 8, 1988), 53 FR 26698 [File No. SR–DTC–88–07] (notice of filing and immediate effectiveness of the RAD facility) and 35720 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–07] (order granting accelerated approval of a $15 million per transaction minimum threshold to utilize the RAD facility for approval or cancellation of deliveries).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] The transactions will be directed to DTC's existing RAD facility; however, they will be subject to a separate approval and reporting process.

[6] 15 U.S.C. 78q–1 (1988).

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–15 and should be submitted by November 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27427 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 36435; File No. SR–GSCC–95–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Modifying GSCC's By-laws to Provide Indemnification Protection for Members of Committees

October 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 25, 1995, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–95–04) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend GSCC's by-laws to provide indemnification protection for members of committees established by GSCC's Board of Directors who are not officers or directors of GSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed filing seeks to amend GSCC's by-laws to provide indemnification protection for members of committees established by GSCC's Board of Directors who are not officers or directors of GSCC. Article IV, Section 4.1, of GSCC's by-laws currently requires, among other things, that GSCC indemnify to the full extent permitted by law a present or past director or officer of GSCC who is made a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person is or was a director or officer of GSCC.

The indemnification obligation does not extend to members of committees established by GSCC's Board of Directors if the members of the committees are not directors or officers of GSCC. Thus, for example, the indemnification protection in GSCC's by-laws does not cover most of the members of GSCC's Risk Management Committee who are senior credit officers of GSCC member firms.

In order to ensure that GSCC can obtain the services of qualified individuals on committees established by its Board of Directors and to ensure that such individuals freely are able to provide guidance to GSCC's Board of Directors and to GSCC management, GSCC believes it appropriate to provide members of such Board-established committees with indemnification protection comparable to the protection currently given to GSCC's directors and officers. This indemnification will facilitate GSCC's ability to obtain directors and officers liability insurance that covers committee members who are not GSCC directors or officers.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will help ensure that GSCC obtains the services of qualified individuals on its Board-established committees.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited. GSCC members will be notified of the rule filing and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or;

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–95–04 and should be submitted by November 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27386 Filed 11–3–95; 8:45 am]

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[7] 17 CFR 200.30–3(a) (12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36440; File No. SR–CHX–95–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change Relating to the Chicago Match

October 31, 1995.

I. Introduction

On July 27, 1995, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XXXVII of the Exchange's Rules to increase the number of daily matches in the Chicago Match to two. On August 22, 1995, the CHX submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 36139 (August 23, 1995), 60 FR 45196 (August 30, 1995). No comments were received on the proposal.

II. Background and Description of the Proposal

On November 30, 1994, the Commission approved a proposed rule of the Exchange that created the Chicago Match, an institutional trading system that integrates an electronic order match system with a facility for brokering trades.[4] The Chicago Match electronically crosses orders entered by users during regular trading hours for securities that are listed on the CHX or for which the CHX has unlisted trading privileges.[5] Orders that are matched electronically will be priced at the market price, which is equal to the mid-point between the Consolidated Best Bid and Offer, at a random time within a pre-determined ten minute period and will be executed at that time. Currently, the Chicago Match rules permit only one match to occur per trading day.[6]

The proposed rule change amends the Chicago Match rules to accommodate two matches per trading day.[7] As before, the matches will occur mid-day during the Exchange's primary trading session.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public.

The Commission historically has encouraged the creation of new electronic trading systems such as the Chicago Match that may contribute to increased execution alternatives available to investors. At the same time, the Commission requires that these exchange trading systems be consistent with the investor protection and fair and orderly market standards contained in the Act. In the Original Approval Order, the Commission found that the Chicago Match was consistent with these objectives. Nevertheless, in the Original Approval Order, the Commission raised concerns over the issue of non-member access to the Exchange. The Commission, however, found that several factors, including the fact that CHX matches will occur only once a day, served to assure sufficient control by CHX members over the activities of non-members to satisfy the requirements of the Act. The Commission also noted that any proposal increasing the number of matches would have to be considered and approved by the Commission.

After careful review, the Commission believes that the amended Chicago Match is consistent with the investor protection and fair and orderly market standards contained in the Act for the same reasons that are set forth in the Original Approval Order. The limited increase to two matches per trading day will continue to assure that CHX members have adequate controls over non-members to satisfy the requirements of the Act.[9] At the same time, the Commission believes that the additional match each day will benefit investors by providing them with an additional execution opportunity. In this context, the additional match will provide more flexibility to investors and allow them to utilize the Chicago Match one more time during the trading day in response to changing market conditions.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CHX–95–19),

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[1] U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Elisa Metzger, Attorney, SEC, dated August 22, 1995. In Amendment No. 1 to the proposed rule change, the Exchange clarifies that there will be two matches per day, which will occur midday during the Exchange's primary trading session. Moreover, the Exchange defines the term "Cross Window" to mean up to two ten minute intervals during the Primary Trading Session.

[4] Securities Exchange Act Release No. 35030 (November 30, 1994), 59 FR 63141 ("Original Approval Order").

[5] Users may be CHX members or non-members. When a non-member, however, is given access to Chicago match, it must enter into several agreements to ensure that a member has responsibility and control over the non-member's activities.

[6] *See* Securities Exchange Act Release No. 35923 (June 30, 1995), 60 FR 35756 (approving an amendment to the Chicago Match that lowered the disclosure threshold for display of orders from 10,000, 5,000 or 2,000 shares depending on the security involved to 500 shares so that more orders in the Chicago Match would be displayed).

[7] There will be two announced ten minute periods for matching of orders. Orders that are entered by users prior to the first ten-minute period will participate in the first match of the day and orders that are entered by users after the first ten-minute period, but before the second ten-minute period will participate in the second match of the day. Orders that are not matched during the first match of the day will not automatically participate in the second match. Conversation between David Rusoff, Foley, & Lardner, and Jennifer S. Choi, Division of Market Regulation, SEC, on October 31, 1995.

[8] 15 U.S.C. 78f(b).

[9] The CHX has indicated that it may wish to add more matches, upon Commission approval. The CHX would have to submit a proposal pursuant to Section 19(b)(2) of the Act to add additional matches during the trading day.

[10] 15 U.S.C. 78s(b)(2).

including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27428 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36442; File No. SR–Phlx–95–32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Broker-Dealer Orders on PACE

October 31, 1995.

I. Introduction

On June 12, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 229 to allow non-agency orders on the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system[3] under certain circumstances. On September 19, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 36263 (Sept. 21, 1995), 60 FR 50226 (Sept. 28, 1995). No comments were received on the proposal. On October 25, 1995, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[5]

This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

II. Description of Proposal

Currently, the PACE system only accepts agency orders.[6] The orders accepted under the system may be executed on a fully automated or manual basis in accordance with Rule 229.

The Exchange proposes to amend Supplementary Material .02 to Phlx Rule 229 to permit specialists to accept non-agency orders through PACE under certain circumstances. To do so, Phlx specialists must file with the Exchange a Specialist Agreement, which is an Exchange form signed by a Phlx equity specialist who has agreed to accept non-agency orders through PACE. The Specialist Agreement must identify the member firm that is interested in submitting orders through the PACE system and set forth the order size parameters applicable to such orders.[7]

Under the proposed rule change, the specialist may agree to execute non-agency orders accepted under the PACE system on an automatic or manual basis. Specialists that choose to execute non-agency orders automatically through PACE must provide the same PACE executions to non-agency orders as they provide to agency orders.[8] Specialists that choose to execute non-agency orders manually must do so in accordance with existing Exchange rules governing orders not on the system.

Moreover, the proposed rule change provides that any specialist who has agreed to facilitate broker-dealer orders on PACE must provide all broker-dealers with the opportunity to submit non-agency orders for execution through PACE on equal terms. As a result, a specialist may not provide a certain order size guarantee to one broker-dealer and then refuse to provide an equal size guarantee to another broker-dealer. Similarly, a specialist may not agree to provide automatic execution for one broker-dealer but not for another. Finally, under the proposed rule change, the Exchange will utilize the "P" order designator on the PACE system to indicate when an order is for the account of a broker-dealer.

The Exchange states that the purpose of permitting non-agency orders onto PACE is to extend the benefits of PACE to Phlx member firms for the proprietary as well as customer orders.

The Exchange believes that allowing such orders onto PACE should serve the important function of adding liquidity and trading opportunities to the Phlx marketplace. Moreover, the Exchange believes that PACE provides efficiencies to the Exchange's marketplace, which reduces costs incurred through the handling of orders on a more manual basis. The Exchange believes that such savings can now be realized for proprietary as well as customer orders.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Under new Supplementary Material .02 of Rule 229, non-agency orders may be routed through the PACE system for an automatic or manual execution. The Commission believes that the proposed rule change will be beneficial because it will allow broker-dealers to take advantage of the increased speed and reduced costs associated with the use of the Phlx's PACE system. Moreover, the Commission believes that the Exchange's proposal is consistent with the Act in that it does not discriminate between broker-dealers: all broker-dealer orders in a particular stock will receive the same treatment once a specialist has agreed to accept non-agency orders through PACE.

The Commission finds good cause for approving Amendment No. 2 to the rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the **Federal Register** for the full statutory period and no comments were received. In addition to clarifying and codifying the execution options of non-agency orders routed through PACE as originally proposed, Amendment No. 2 further restricts the scope of the proposed rule change by prohibiting specialists from providing greater order size guarantees to non-agency orders than to agency orders.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–95–32 and should be submitted by November 27, 1995.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–95–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27429 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9222]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Response Technologies, Inc., Common Stock, $.002 Par Value)

October 31, 1995.

Response Technologies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors of the Company unanimously approved a resolution on August 30, 1995 to withdraw the Security from listing on the Amex. Various investment bankers advised the Company of advantages and potentially improved valuations by listing the Security on another marketplace. On October 26, 1995, trading in the Security began on the Nasdaq National Market System.

Any interested person may, on or before November 21, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–27384 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by no later than January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street SW., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629. Copies of this collection can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Request for Eligibility Reconsideration.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: 8(a) applicants seeking eligibility reconsideration.

Annual Responses: 600.

Annual Burden: 2,400.

Comments: Send all comments regarding this information collection to Krupakar Revanna, Office of Minority Enterprise Development, 409 3rd Street, S. W., Suite 8000, Washington, D. C. 20416. Phone Number: 202–205–6416. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–27438 Filed 11–3–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 10/28/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–763

Date filed: October 24, 1995

Parties: Members of the International Air Transport Association

Subject: TC23 Reso/P 0711 dated September 22, 1995, Europe-Southeast Asia Resos r–1 to r–24, Intended effective date: April 1, 1996, necessary government action Date: No later than February 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–27445 Filed 11–3–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 28, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth

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[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's system for the automatic delivery and execution of orders on the Phlx equity floor.

[4] See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated September 7, 1995.

[5] See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Jennifer S. Choi, Division of Market Regulation, SEC, dated October 25, 1995.

[6] For purposes of the PACE system, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See Supplementary Material. 02 to Phlx Rule 229.

[7] Pursuant to Amendment No. 2, a specialist may agree to order size parameters for non-agency orders that are equal to or smaller than the order size parameters provided for agency orders.

[8] Provided that, in accordance with Amendment No. 2, a specialist may agree to order size parameters of non-agency orders that are smaller than the order size parameters provided to agency orders.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–766
Date filed: October 24, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 21, 1995
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q, applies for renewal of authority to serve Barcelona, Spain and Austria on segment 3 of its certificate for Route 602, issued in the American/TWA Route Transfer by Order 91–4–47, April 25, 1991.

Docket Number: OST–95–771
Date filed: October 26, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 24, 1995
Description: Application of Laker Airways Inc., pursuant to 49 U.S.C. Sections 41101(a) and 41102(a)(b), and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for Scheduled Interstate and Overseas air transportation of passengers, cargo and mail and Worldwide Charter Authority

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 95–27444 Filed 11–3–95; 8:45 am]
BILLING CODE 4910–62–P

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that Commercial National Bank in Shreveport, with offices at 333 Texas Street, Shreveport, Louisiana 71101, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: October 31, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,
Acting Secretary.
[FR Doc. 95–27401 Filed 11–3–95; 8:45 am]
BILLING CODE 4910–81–P

Notice of Approval of Applicant as Trustee

Notice is hereby given that Norwest Bank Minnesota, N.A., with offices at Norwest Center, Sixth and Marquette, Minneapolis, Minnesota 55479–0069, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: October 31, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,
Acting Secretary.
[FR Doc. 95–27402 Filed 11–3–95; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Environmental Information and Supplemental Information on Water Quality Considerations.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to David W. Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Environmental Information and Supplemental Information on Water Quality Considerations.
OMB Number: 1512–0100.
Form Number: ATF F 1740.1 and ATF F 1740.2.
Abstract: The environmental forms are necessary in order to comply with the provisions of the National Environmental Policy Act, 42 U.S.C. 4332 (ATF F 1740.1) and the Clean Water Act, 33 U.S.C. 1341(a) (ATF 1740.2).

Information regarding solid and liquid waste, air pollution, noise, etc. as collected on ATF F 1740.1 is evaluated to determine if a formal environmental impact statement or an environmental permit is necessary for a proposed operation. This environmental type information is collected from manufacturers, namely distilled spirits plants, wineries breweries and tobacco products factories. ATF F 1740.2 is also submitted by manufacturers but only those who discharge a solid or liquid effluent into navigable waters.

Applicants are required to describe any biological, chemical thermal or other characteristic of the discharge as well as any methods or equipment used to monitor the condition of the discharge. Based upon this data, ATF makes a determination as to whether a certification or waiver by the applicable state water quality agency is required. Should a manufacturer be required to submit both forms (ATF F 1740.1 and 1740.2) he may incorporate by reference any redundant information especially regarding solid and waste.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 8,000.
Estimated Time Per Respondent: 30 minutes.
Estimated Total Annual Burden Hours: 4,400.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,
Acting Director.
[FR Doc. 95–27357 Filed 11–3–95; 8:45 am]
BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Wine Premises Operations.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202)927–8202.

SUPPLEMENTARY INFORMATION:

Title: Report of Wine Premises Operations.
OMB Number: 1512–0216.
Form Number: ATF F 5120.17.
Abstract: ATF collects this information in order to monitor activities at bonded wine premises. Information on production, removals and raw materials used is analyzed to ensure compliance with tax and consumer protection laws enforced by ATF. ATF then uses the same information to compile and publish statistics for use of the wine industry and the public.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,722 (1,022 annual and 700 monthly).
Estimated Time Per Respondent: One hour and six minutes.
Estimated Total Annual Burden Hours: 10,364.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,
Acting Director.
[FR Doc. 95–27358 Filed 11–3–95; 8:45 am]
BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Importer's and/or Wholesaler's Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Timothy DeVanney, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Application for Importer's and/or Wholesaler's Basic Permit Under the Federal Alcohol Administration Act.
OMB Number: 1512–0220.
Form Number: ATF F 5170.4.
Abstract: ATF F 5170.4 is completed by persons intending to engage in the business of importing and/or wholesaling alcohol beverages. The information provided allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1300.
Estimated Time Per Respondent: 3 hours.
Estimated Total Annual Burden Hours: 3900.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,
Acting Director.
[FR Doc. 95–27359 Filed 11–3–95; 8:45 am]
BILLING CODE 4810–31–P

Proposed Agency Information Collections Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Consent of Surety.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Consent of Surety.

OMB Number: 1512–0078.

Form Number: ATF F 1533 (5000.18).

Abstract: The Consent of Surety form is executed by both the bonding company and proprietor and acts as a binding legal agreement between the two parties to entend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The Consent of Surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–27360 Filed 11–3–95; 8:45 am]

BILLING CODE 4810–31–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Pakistan; Internationally Recognized Worker Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Administration has decided to suspend some of Pakistan's GSP benefits because of insufficient progress on internationally recognized worker rights. This notice invites public comments on whether the Administration should suspend GSP benefits for sporting goods, surgical instruments and/or certain hand-knotted and woven carpets.

DATES: Comments are due Wednesday, December 6, 1995.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. The GSP Program

The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The program is authorized by Title V of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 *et seq.*). The GSP program expired on July 31, 1995. A bill to renew the program is pending in Congress. This notice solicits public comments, but the Administration cannot take any action unless and until the GSP program is reauthorized.

To qualify for GSP privileges, each beneficiary country must comply with a number of eligibility requirements. One such requirement is that the beneficiary country must be "taking steps" (i.e., *making progress*) to provide "internationally recognized worker rights" (19 U.S.C. 2462(b)(7) and (c)(7)).

The GSP statute defines "internationally recognized worker rights" as: (1) The right of association; (2) the right to organize and bargain collectively; (3) a prohibition against any form of forced or compulsory labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health (19 U.S.C. 2462(a)(4)).

Each year, the Administration conducts a public review process in which a beneficiary's compliance with the eligibility requirements can be reviewed.

II. Worker Rights in Pakistan

In June 1993, the Administration received three petitions that requested a review of labor law and practice in Pakistan under the auspices of the GSP program. In October 1993, the Administration announced that the petitions were being accepted for review (see USTR Press Release 93–63). Since that time, the United States Government and the Government of Pakistan have been working cooperatively to seek improved labor law and practice in Pakistan. The principal issues have concerned the exemption of the Karachi export processing zone from the labor law of Pakistan, the application of the Essential Services Act and child and bonded labor.

In July 1994, the Administration acknowledged the commitment of the Government of Pakistan, and the review was continued (see USTR Press Release 94–39 and Pakistan Worker Rights Review Summary (July 1994), available from USTR). Since that time, consultations have continued and the Government of Pakistan has considered a number of actions to bring its labor rights regime into closer compliance with international labor norms.

In July 1995, the Administration announced that the review would be continued until October to give the Government of Pakistan time to fulfill our expectations and understanding that they would take actions that would improve labor law and practice in Pakistan (see USTR Press Release 95–54).

Notwithstanding our constructive dialogue with the Government of Pakistan and their evident commitment to improve labor law and practice in Pakistan, the Administration has now decided to suspend some of Pakistan's GSP benefits because of insufficient progress on internationally recognized worker rights. Specifically, the Administration is considering whether to suspend GSP benefits for sporting goods, surgical instruments and/or certain hand-knotted and woven carpets, sectors in which child labor is reportedly used.

III. Public Comments

This notice solicits public comments on which benefits should be suspended because Pakistan has made insufficient progress on improving labor law and practice. All written comments should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. All submissions must be in English and should conform to the information requirements of 15 CFR 2007. Each submission should indicate the relevant subheading of the Harmonized Tariff Schedule of the United States, if any. A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Wednesday, December 6, 1995. Comments received after the deadline will not be accepted.

If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–27435 Filed 11–3–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 214

Monday, November 6, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: November 8, 1995, 10:00 a.m.

PLACE: 888 First Street, N.E., Room 2C, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 640th Meeting—November 8, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Docket # P–1494, 108, Grand River Dam Authority
CAH–2.
Docket # P–2360, 026, Minnesota Power & Light Company
Other #S P–2360, 027, Minnesota Power & Light Company
CAH–3.
Docket # P–2376, 012, Appalachian Power Company
CAH–4.
Docket # P–9709, 044, Trafalgar Power Limited Partnership
CAH–5.
Docket # P–2471, 002, Wisconsin Electric Power Company
Other #S P–2471, 003, Wisconsin Electric Power Company
CAH–6.
Docket # P–10661, 013, Indiana Michigan Power Company
Other #S P–10661, 012, Indiana Michigan Power Company
CAH–7.
Docket # P–11076, 002, City of Tacoma, Washington
Other #S P–2016, 025, City of Tacoma, Washington
CAH–8.
Docket # P–11471, 002, South Fork Irrigation District and Hot Springs Valley Irrigation District
CAH–9.
Docket # RM90–4, 000, Petition to Amend Rule 11.2
CAH–10.
Docket # RM96–2, 000, Correction of Annual Charges Formula

Consent Agenda—Electric

CAE–1.
Docket # ER95–1782, 000, New England Power Pool
CAE–2.
Docket # ER95–1514, 000, Astra Power, Inc.
CAE–3.
Docket # ER95–1775, 000, Tampa Electric Company
CAE–4.
Docket # FA91–65, 001, Kentucky Utilities Company
CAE–5.
Docket # ER95–1383, 001, Virginia Electric and Power Company
CAE–6.
Docket # EL95–35, 001, Kootenai Electric Cooperative, Inc., et al v. Public Utility District No. 2 of Grant County, Washington
CAE–7.
Docket # ER95–1561, 001, Montaup Electric Company
CAE–8.
Docket # EG95–94, 000, Coastal Wuxi Power Ltd.
CAE–9.
Docket # EG95–95, 000, PCI Queensland Corporation
CAE–10.
Docket # EG95–96, 000, Queensland Unit 1 Generating Trust I
CAE–11.
Docket # EG95–97, 000, Queensland Unit 1 Generating Trust II
CAE–12.
Docket # EG95–98, 000, Queensland Unit 1 Generating Trust III
CAE–13.
Docket # EG95–99, 000, Queensland Unit 2 Generating Trust I
CAE–14.
Docket # EG95–100, 000, Queensland Unit 2 Generating Trust II
CAE–15.
Docket # EG95–101, 000, Queensland Unit 2 Generating Trust III
CAE–16.
Docket # EG95–92, 000, The New World Village Power Company
CAE–17.
Docket # EG95–93, 000, UCH Power Limited

Consent Agenda—Gas And Oil

CAG–1.
Docket # RP95–206, 002, Tennessee Gas Pipeline Company
Other #S RP95–206, 003, Tennessee Gas Pipeline Company
CAG–2.
Docket # RP95–432, 001, Columbia Gas Transmission Corporation
CAG–3.
Docket # RP96–10, 000, ANR Pipeline Company
CAG–4.
Docket # RP96–11, 000, Transcontinental Gas Pipe Line Corporation
CAG–5.
Docket # TM96–2–20, 000, Algonquin Gas Transmission Company
CAG–6.
Docket # RP96–7, 000, Northwest Pipeline Corporation
Other #S RP96–8, 000, Northwest Pipeline Corporation
CAG–7.
Docket # PR94–2, 000, Enron Storage Company
CAG–8.
Docket # PR95–8, 000, Arkansas Western Gas Company
Other #S PR95–8, 001, Arkansas Western Gas Company
CAG–9.
Docket # RP95–380, 000, Tennessee Gas Pipeline Company
CAG–10.
Docket # TM96–4–23, 000, Eastern Shore Natural Gas Company
Other #S TM96–4–23, 001, Eastern Shore Natural Gas Company
TM96–4–23, 002, Eastern Shore Natural Gas Company
CAG–11.
Docket # RP95–446, 000, Northwest Pipeline Corporation
CAG–12.
Docket # RP95–460, 000, Northwest Pipeline Corporation
CAG–13.
Docket # RP95–422, 002, Great Lakes Gas Transmission Limited Partnership
CAG–14.
Docket # RP95–98, 002, Columbia Gas Transmission Corporation
Other #S CP95–186, 002, Tennessee Gas Pipeline Company
CP95–231, 002, Ozark Gas Transmission System
CP95–232, 002, Ozark Gas Transmission System
RP95–144, 002, Tennessee Gas Pipeline Company
CAG–15.
Docket # RP94–425, 001, Tennessee Gas Pipeline Company
CAG–16.
Docket # RP95–173, 006, Koch Gateway Pipeline Company
Other #S RP95–173, 005, Koch Gateway Pipeline Company
CAG–17.

Docket # IS90–11, 000, Amerada Hess Pipeline Corporation
Other #S IS90–12, 000, Arco Transportation Alaska, Inc.
IS90–13, 000, BP Pipelines (Alaska) Inc.
IS90–14, 000, Exxon Pipeline Company
IS90–15, 000, Mobil Alaska Pipeline Company
IS90–16, 000, Phillips Alaska Pipeline Corporation
IS90–17, 000, Unocal Pipeline Company
IS91–6, 000, Amerada Hess Pipeline Corporation
IS91–7, 000, Arco Pipe Line Company
IS91–8, 000, BP Pipeline (Alaska) Inc.
IS91–9, 000, Exxon Pipeline Company
IS91–10, 000, Mobil Alaska Pipeline Corporation
IS91–11, 000, Phillips Alaska Pipeline Corporation
IS91–12, 000, Unocal Pipeline Company
IS93–6, 001, Amerada Hess Pipeline Corporation
IS93–7, 001, Arco Transportation Alaska, Inc.
IS93–8, 001, BP Pipelines (Alaska) Inc.
IS93–9, 001, Exxon Pipeline Company
IS93–10, 001, Mobil Alaska Pipeline Company
IS93–11, 001, Phillips Alaska Pipeline Corporation
IS93–12, 001, Unocal Pipeline Company
IS93–38, 001, Mobil Alaska Pipeline Company
IS94–3, 001, Mobil Alaska Pipeline Company
IS94–10, 001, Amerada Hess Pipeline Corporation
IS94–31, 001, Unocal Pipeline Company
IS94–34, 001, Arco Transportation Alaska, Inc.
IS95–13, 000, Amerada Hess Pipeline Corporation
IS95–14, 000, Arco Transportation Alaska, Inc.
IS95–15, 000, BP Pipelines (Aleska) Inc.
IS95–16, 000, Exxon Pipeline Company
IS95–17, 000, Mobil Alaska Pipeline Company
IS95–18, 000, Phillips Alaska Pipeline Corporation
IS95–19, 000, Unocal Pipeline Company
CAG–18.
Docket # MG94–4, 004, Alabama-Tennessee Natural Gas Company
CAG–19.
Docket # CP94–183, 002, El Paso Natural Gas Company
CAG–20.
Docket # CP95–118, 001, East Tennessee Natural Gas Company
CAG–21.
Docket # CP95–284, 001, National Fuel Gas Supply Corporation
CAG–22.
Docket # CP95–304, 001, Shell Western E&P Inc.
CAG–23.
Docket # CP95–341, 000, Texas Gas Transmission Corporation
CAG–24.
Docket # CP94–771, 000, Ashland Exploration, Inc.
Other #S CP94–757, 000, CNG Transmission Corporation
CP94–757, 001, CNG Transmission Corporation
RP96–9, 000, CNG Transmission Corporation
CAG–25.
Omitted
CAG–26.
Docket # RP95–182, 000, ANR Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: November 1, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27523 Filed 11–2–95; 11:25 am]

BILLING CODE 6717–01–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Wednesday, November 8, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: A notice was served on October 26, 1995, scheduling a Voting Conference to be held on November 7, 1995. This Conference has been rescheduled and will now be held on November 8, 1995.

The Commission will meet to discuss among themselves the agenda items listed below. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 28905 (Sub-No. 27), *CSX Transportation, Inc.—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc., et al., (Arbitration Review).*
Finance Docket No. 32240, *Bradford Industrial Rail, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation, et al.*[2]
Docket No. 40294, *Amtrol, Inc.* v. *American Freight System, Inc.*
Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings.*

[2] Because they are releted by subject matter, the Commission also will handle Finance Docket No. 32241, *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Bradford Industrial Rail, Inc.* and Finance Docket No. 32256, *Consolidated Rail Corporation—Control and Operation Exemption—Clearfield and Mahoning Railway Company.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27557 Filed 11–2–95; 2:26 pm]

BILLING CODE 7035–01–P

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on November 17–18, 1995. The meeting will begin at 10:00 a.m. on November 17, 1995. It is possible the Committee will conclude its deliberations on November 17, 1995. Should this not occur, however, the Committee will reconvene on November 18, 1995, at 9:00 a.m.

PLACE: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 8–9, 1995, Joint Meeting of the Operations and Regulations Committee and the Provision for the Delivery of Legal Services Committee.
3. Consider proposed regulation restricting representation in certain eviction proceedings and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
4. Consider proposed regulation requiring timekeeping by LSC grantees and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
5. Consider proposed regulation governing competitive bidding of grants and contracts and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
5. Consider for publication as a Proposed Rule revisions to 45 C.F.R. Part 1617, the Corporation's regulation on class actions.
7. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante at (202) 336–8800.

Dated: November 2, 1995.
Victor M. Fortuno,
General Counsel.
[FR Doc. 95–27536 Filed 11–2–95; 1:00 pm]
BILLING CODE 7060–01–P

Corrections

Federal Register
Vol. 60, No. 214
Monday, November 6, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 36

Section 4(c) Contract Market Transactions

Correction

In rule document 95–23940 beginning on page 51323, in the issue of Monday, October 2, 1995, make the following correction:

On page 51336, in the 2d column, under the heading c. Combination Transactions, in the 1st paragraph, in the 13th line insert the following line "that "it is inappropriate, in the case where transactions can occur both in pit and off the floor, to not require a potential trade to be exposed to the pi ".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36407; File No. SR-NYSE-95-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Additions to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

Correction

In notice document 95 6895 beginning on page 55403 in the issue of Tuesday, October 31, 1995, make the following correction:

On page 55404, in the third column, insert the following signature before the FR Doc. line:

Margaret H. McFarland,
Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36385; File No. SR-OCC-95-10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Enhance Saturday Expiration Date Processing Procedures

Correction

In notice document 95–26285 beginning on page 54557 in the issue of Tuesday, October 24, 1995, make the following correction:

On page 54558, in the second column, insert the following signature before the FR Doc. line:

Margaret H. McFarland,
Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21439; 811-4365]

Dreyfus Target Maturities Fund; Notice of Application

October 23, 1995.

Correction

In notice document 95–26835 appearing on page 55291 in the issue of Monday, October 30, 1995, the date should read as set forth above.

BILLING CODE 1505–01–D

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federal register

Monday
November 6, 1995

Part II

Department of Housing and Urban Development

Interest Rate for the Section 235(r) Mortgage Insurance Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3724–N–04]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Interest Rate for the Section 235(r) Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in interest rate.

SUMMARY: This notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the **Federal Register**. Mortgage market conditions now dictate that the Secretary decrease the section 235(r) maximum rate from 8.50 percent to 8.00 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met. Therefore, the maximum for the premium section 235(r) interest rate will be 9.50 percent (8.00 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Program Evaluation Division, Room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755–7470, Ext. 117; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance existing mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted under section 235 in order that the assistance payments the Department pays on behalf of mortgagors may be reduced. The regulations implementing the program are contained in subpart H of 24 CFR part 235—refinancing of mortgages under section 235(r).

The interest rate for these loans is set by the Secretary and published in the **Federal Register** as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 8.50 percent was published in the **Federal Register** on July 5, 1995 (60 FR 35040). The Department has determined that market conditions dictate a change in the section 235(r) interest rate. The change will take effect on the date of publication of this notice.

The most recent HUD survey of Mortgage Market conditions (i. e., Secondary Market Prices and Yields), an OMB-designated Principal Federal Indicator, found that the dominant national FHA rate being quoted to potential homebuyers for "lock-in" commitments of 90 days or more was 8.00 on August 1, 1995, with an average of .33 points, and an effective interest rate of 8.05 percent.

Most FHA mortgages are funded in the GNMA mortgage-backed securities market. There is a 50 basis point spread between FHA contract interest rates and GNMA coupon rates (this covers the GNMA guarantee fee and servicing cost). On August 24, 1995, the GNMA 7.50 percent coupon securities (8.00 percent FHA loans) were priced in the two month forward market at less than a 1 point discount. On the other hand, the 8.00 percent GNMA coupons (8.50 percent FHA mortgages) traded at between 1 and 2 points over par (i.e., premium), while the 7.00 percent GNMA coupons (7.50 percent FHA mortgages) traded at about 3 points below par.

Adjusting the section 235(r) rate to 8.00 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 8.00 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 24 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

Dated: September 11, 1995.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–27403 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–27–P

federal register

Monday
November 6, 1995

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1996; Solicitation of Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1996; Solicitation of Proposals

Purpose

Proposals are invited for competitive grant awards under the Special Research Grants Program—Pest Management Alternatives Research (the "Program") for fiscal year (FY) 1996. The purpose of this Program is to develop alternatives for critical needs to ensure that farmers, foresters, ranchers and urban pest management specialists and other users have reliable methods of managing pest problems. Emphasis is placed on current and potential loss of select pesticides due to increased worker and food safety and environmental concerns leading to regulator review and actions, and the loss of pest management practices due to performance failures such as those caused by genetic changes in pests.

Authority

The authority for the Program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). Under this program, subject to the availability of funds, the Secretary may make grants, for periods not to exceed five years, to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

Proposals from scientists at non-United States organizations are not eligible for funding nor are scientists who are directly or indirectly engaged in the registration of pesticides for profit; however, their collaboration with funded projects is encouraged.

Available Funding

Subject to the availability of funds, the anticipated amount available for support of the program in FY 1996 is $1,584,000. Proposals should be for no more than a two-year period.

It is expected that Congress, in the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), will prohibit CSREES from using the funds available for FY 1996 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

In addition, it is expected that, pursuant to the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), in the case of any equipment or product that may be authorized to be purchased with the funds provided under this Program, entities will be encouraged to use such funds to purchase only American-made equipment or products.

Program Description

This program implements the Memorandum of Understanding (MOU) between the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (USEPA) signed August 15, 1994, that establishes a coordinated framework for collaborative efforts to develop, implement, and make available pest management alternatives and practices. In this MOU, the USDA and USEPA agreed to: (1) Cooperate in providing for agricultural pest management that is conducted in the most environmentally-sound manner possible, with sufficient pest management alternatives to reduce risks to human health and the environment, to reduce the incidence of pest resistance to pesticides, and to ensure economical agricultural production; and (2) cooperate in establishing a process to conduct the research, technology transfer and registration activities necessary to ensure adequate pest management alternatives are available to agricultural users to meet important agricultural needs for situations in which regulatory action would result in pest management problems.

Applicable Regulations

This Program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR part 3400 (56 FR 58147, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under the Program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 3015, as amended—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations implementing OMB Circular A–110;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—CSREES implementation of the National Environmental Policy Act;

29 U.S.C. 794 section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs;

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Research Categories for FY 1996

The following priority areas have been identified by USDA and USEPA through interaction with State agricultural experiment station research and extension faculty via the National Pesticide Impact Assessment Program and state and regional Integrated Pest Management program. In addition, commodity groups and producers of affected crops were involved in the identification of project areas. Needs were identified to address replacement technologies for pesticides under current and potential regulatory review for which producers and other users do not have effective alternatives or where regulatory actions trigger pest resistance problems that limit Integrated Pest Management options. Replacements for methyl bromide or pesticide registrations under regulatory consideration because of the Delaney clause are not addressed by this request for proposals. The identified priority areas for FY 1996 projects are:

Commodity	Pest
Alfalfa	Alfalfa weevil.
Artichokes	Aphids.
	Lygus bugs.
Banana/plaintain	Banana root borer.
Carrots	Nematodes.
Celery	Aphids.
	Leafminer.
Chinese vegetables	Aphids.
Cole crops	Aphids.
Cucurbits	Cucumber beetle.
	Bacterial wilt.
Eggplant	Verticillium wilt.
Ginger	Nematodes.
Grapes	Grape phylloxera.
	Mealybugs.
Leafy vegetables	Aphids
Lettuce	Aphids.
	Downey mildew.
Mushrooms	Phoridae and sciaridae flies.
Parsley	Aphids.
Pecans	Pecan scab.
Rice	Rice water weevils.
Sorghum	Chinch bug.
Spinach	Aphids.
	Grasshoppers.
	Webworm.
Sugar beets	White grubs.
	Cercospora leaf spot.
Sugar cane	Weeds.
Sweetpotatoes	Nematodes.
Tropical fruits	Weeds.
Turf	Weeds.
Wheat	Grasshoppers.

Mite management in alfalfa seed production, apples, apricots, beans-green, beans-dry, citrus, clover seed production, cranberry, figs, grapes, hops, mint, nectarines, peaches, peanut, potatoes, plums, prunes, strawberries in some locations.

Projects dealing with other crops and pest combinations will be considered. The critical need of the alternative based on current or potential regulatory status or pest resistance will have to be clearly documented and justified for all proposals.

The proposal should address:

(1) Identification, estimation of economic value, and documentation of the pest management problem and losses associated with the pest(s).

(2) Analysis of the availability of options and their applicability as possible solutions including their compatibility with integrated management systems.

(3) Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns which make the present management options impractical.

(4) A summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s).

(5) A detailed plan for the research, education and technology transfer to achieve the alternative development and field implementation with identified milestones.

(6) An analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution.

(7) Demonstrated growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups.

(8) An overview of the availability of natural controls (biological, cultural, and host resistance) as solutions or partial solutions to the pest management problem and compatibility with IPM or crop management systems. This Program will not support basic plant breeding or other tactics where significant progress toward implementation cannot be accomplished within two years. However, this program will support research on the incorporation of pest resistant cultivars into a production system.

(9) Where registrations of new management options by state and Federal agencies are required, the proposal should describe the collaborative actions being taken with regulators which leads toward registration and use of Good Laboratory Practices (GLP).

(10) Demonstrate appropriate budget and collaborative funding to accomplish the proposed project.

All projects that involve a new registration of a product or expanded labelling, must be done in compliance with GLP Standards (40 CFR part 160). IR–4 coordinators are available in every state to advise or assist with GLP and registration requirements. Projects involving collaborative registration and funding are encouraged.

Proposal Evaluation

Proposals will be evaluated by the Administrator of CSREES assisted by a peer panel with Integrated Pest Management expertise. CSREES seeks proposals which address the following issues: (1) Significant reduction of risk to human health or the environment would result; (2) no viable alternatives presently exist and significant potential losses can be documented; (3) there is significant producer involvement; (4) natural controls are included as partial or effective solutions to pest management problems; and (5) solutions can rapidly be brought to bear on critical problems. Registration considerations must be addressed where they are required for solution implementation.

1. Executive Summary—10 points
   (An evaluation of how well the proposal summary can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff and the general public)
2. Appropriateness of the Budget—5 points
   (An evaluation of appropriate and detailed budget request and collaborative funding to accomplish the proposed project; collaborative arrangements clearly document)
3. Problem Statement, Background and Rationale—15 points
   (Includes the evaluation of significant reduction of risk to human health or the environment; no viable alternatives presently exist; and significant potential losses would occur without the alternative(s) being developed under this proposal)
4. Research, Education & Technology Transfer Plan—40 points
   (In addition to the evaluation of a detailed plan for research, education, and technology transfer and summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s), includes the evaluation of whether the proposed solutions could rapidly be brought to bear on critical problems and registration considerations are addressed where they are required for solution implementation)

5. Producer Involvement—15 points
(Evaluation includes growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups)
6. Professional Competence of the Project Team—5 points
7. Integration of Natural Control Solutions—10 points
(Includes the evaluation that natural controls are included as partial or effective solutions to the pest management problems being addressed and an analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution)

Programmatic Contact

For additional information on the Program, please contact: Dr. Barry Jacobsen, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2220, Washington, DC 20250–2220, Telephone: (202) 401–6627.

How To Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR part 3400), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1996 Special Research Grants Program—Pest Management Alternatives Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

Members of review committees and the staff expect each project description to be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements deviate from these contained in section 3400.4(c). The provisions of this solicitation shall apply.

Proposals submitted to the Program should address the described criteria. Each proposal should provide a detailed plan for the research, education and technology transfer required to implement the alternative solution in the field. Involvement of growers or other users in the project is essential and should be clearly identified.

Proposals should adhere to the following format: items 3–6 should not exceed 12 single spaced/single-sided pages altogether, using 12 point (10 cpi) letter quality type with 1 inch margins. The pages should be numbered.

(1) *Application for Funding (Form CSREES–661).* All full proposals submitted by eligible applicants should contain an Application for Funding, Form CSREES–661, which must be singed by the proposed principal investigator(s) and endorsed by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Investigators who do not sign the full proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed projected, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(2) *Executive Summary.* Describe the project in terms that can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff and the general public. This should be no more than one page in length.

(3) *Problem Statement.* Identify the pest management problem addressed, its significance and options for solution. Define the production area addressed by the proposed solution and the potential applicability to other production regions.

(4) *Rationale and Significance.* Provide information on the basis and rationale for the proposed project. Compatibility with current Integrated Pest Management and crop production practices, technologic economic feasibility and potential durability should be addressed. Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns that make present management options impractical.

(5) *Research, Education and Technology Transfer Plan.* Provide a detailed plan with milestones identified.

(6) *Producer Involvement.* Provide information on producer or other user involvement in identification of the proposed solution and involvement in implementing the proposed solution.

(7) *Facilities and Equipment.* All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(8) *Collaborative Arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such collaborative arrangement(s) has the potential for conflict(s) of interest.

(9) *Personnel Support.* To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) *Curriculum vitae.* The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages each in length, excluding the publication lists. The Department reserves the option of not forwarding for further consideration a proposal in which each vitae exceeds the two-page limit; and

(iii) *Publication List(s).* A chronological list of all publications in referred journals during the past five years, including those in press, must be provided for each professional project

member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(10) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, Form CSREES–55, along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(11) *Research Involving Special Considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) *Recombinant DNA and RNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Application Kit contains a form which is suitable for such certification of compliance (Form CSREES–622).

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit contains a form which is suitable for such certification (Form CSREES–662).

(iii) *Experimental vertebrate animal care.* The responsibility for the human care and treatment of any experimental vertebrate animal, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing organization. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The application Kit contains a form which is suitable for such certification (Form CSREES–662).

(12) *Current and Pending Support.* All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit contains a form which is suitable for listing current and pending support (Form CSREES–663).

(13) *Additions to Project Description.* Each project description is expected by the Administrator, the members of peer review groups, and the relevant program staff to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

(14) *Organizational Management Information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant for this Program if such information has not been provided previously under this or another program for which the sponsoring agency is repsonsible. The Department will contact an applicant to request organizational management information once a proposal has been recommended for funding.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the CSREES regulations implementing NEPA), environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one or more of the exclusions.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES Categorical Exclusions (7 CFR 3407.6)

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of human environment:

(i) The following categories of research programs or projects limited size and magnitude with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions listed above.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause a project to have a significant environmental effect.

Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When To Submit

Proposals must be received by 4:30 p.m. Eastern Standard Time on December 12, 1995. Proposals sent by First Class mail must be sent to the following address: Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Proposals that are delivered by Express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Proposal Services Branch, Awards Management Division, Cooperative State Research, Education and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street SW., Washington, D.C. 20024, Telephone: (202) 401–4048.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance Under No. 10.200. For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Action of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 31st day of October 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–27436 Filed 11–2–95; 8:45 am]

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Monday
November 6, 1995

Part IV

Department of Housing and Urban Development

24 CFR Part 570

Community Development Work Study Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

24 CFR Part 570

[Docket No. FR–3902–P–01]

RIN 2528–AA05

Community Development Work Study Program; Proposed Amendments

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations governing the Community Development Work Study Program (CDWSP). Under the CDWSP, HUD awards grants to institutions of higher education, either directly or through areawide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a community development work study program while enrolled in a full-time graduate or undergraduate Community Development Academic Program. This rule proposes to make several revisions to the CDWSP so that it can more effectively and efficiently meet its program objectives. Among other changes, this proposed rule would limit the number of students assisted under CDWSP to 5 students per participating institution of higher education, limit the CDWSP to graduate-level programs, and permit institutions of higher learning to apply individually or through APOs.

DATES: Comments Due Date: January 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title and to the specific sections of the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Hartung, Office of University Partnerships, Department of Housing and Urban Development, Room 8130, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708–1537. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0770, or 1–800–877–8399 (Federal Information Relay Service TDD). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The public reporting burden is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information in instances where such action would be necessary. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, D.C., 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, D.C. 20503.

II. Background

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) added a new section 107(c) to the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), authorizing the Community Development Work Study Program (CDWSP). Under the CDWSP, HUD is authorized to award grants to institutions of higher education, either directly or through areawide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a community development work study program while enrolled in a full-time graduate or undergraduate Community Development Academic Program.

On June 27, 1989 (54 FR 27128), HUD published a final rule implementing section 107(c) at 24 CFR 570.415. Since that date, HUD has published Notices of Funding Availability (NOFAs) for the purpose of soliciting applications for CDWSP grant awards. Based on its experience in administering the CDWSP, HUD is proposing to make several amendments to 24 CFR 570.415 so that the CDWSP can more effectively and efficiently meet its program objectives.

A. CDWSP Limited to Graduate Programs

The Secretary of HUD is authorized by 24 CFR 570.415(a) to fund both graduate and undergraduate students through CDWSP. However, experience has convinced HUD that graduate-level programs are better suited to CDWSP. Graduate programs in community and economic development and related fields almost always include an internship or related component that introduces most of the program's students to professional work experience.

Moreover, the master's degree has become the accepted credential for professional positions in community and economic development and related fields. Graduate-level CDWSP students are, therefore, qualified to immediately assume positions enabling substantial contributions in these fields. Accordingly, HUD has determined that CDWSP funds can be utilized more effectively by limiting CDWSP to graduate-level programs. HUD proposes to amend § 570.415 to limit CDWSP to provide opportunities for relevant graduate-level study.

B. Proposed Amendments to 24 CFR 570.415(b)

Paragraph (b) of § 570.415 sets forth the program's definitions. This proposed rule would clarify the definition of "areawide planning organization". Language in the current definition of that term referencing the "metropolitan or nonmetropolitan area" served by an APO was confusing inasmuch as no specific "nonmetropolitan" areas are delineated for census purposes. The definition would be amended to make clear that the relevant geographic area for purposes of the APO is the area defined by the State law or interlocal agreement creating it.

Amendments to 24 CFR 570.415(b) would also clarify HUD's interpretation of the statutory phrase "community and economic development, community planning or community management" with reference to the types of employment opportunities and academic programs the CDWSP addresses. Specifically, the term "community building" would be added and would be defined to include all the disciplines the statutory phrase "community and economic development, community planning or community management" was meant to encompass. The term "community building academic program" would replace "community development academic program" and would be defined to encompass academic programs whose purpose and focus is to prepare students for careers in community building. Finally, the definition of the term "Institution of higher education" would be amended to reference "community building academic program" rather than "community development academic program."

C. Proposed Amendments to 24 CFR 570.415(c)

Several changes to 24 CFR 570.415(c) are proposed. First, 24 CFR 570.415(c)(1)(A) would be amended to specify that the student's hourly rate should be sufficiently high to permit the student to earn the full stipend by working no more than 20 hours per week during the school year and 40 hours per week in the summer. HUD's experience suggests that some CDWSP students have worked at hourly rates which make it difficult to exhaust the stipend. HUD, however, intends that students be able to earn the full stipend if the specified hours are worked.

Furthermore, 24 CFR 570.415(c)(2) would be amended to limit the number of students assisted under the CDWSP to five students per participating institution of higher education. HUD is interested in funding economically disadvantaged and minority students who show strong potential for academic and professional success in community development and related fields. Given the large number of institutions of higher education interested in the CDWSP, HUD's experience suggests that the strongest overall group of CDWSP students would be recruited by having numerous institutions of higher education select their few most qualified economically disadvantaged and minority students, rather than channeling the funds so that any single institution of higher education distributes up to ten awards. The minimum number of students to be assisted by a grant would remain unchanged, so that the students earn adequate funds to pursue their degree.

D. Proposed Amendments to 24 CFR 570.415(d)

This proposed rule would amend 24 CFR 570.415(d)(1) to permit each eligible institution of higher education to choose whether to apply individually or participate in an APO or State's CDWSP application. Through this approach, a State or an APO could apply with some participating institutions of higher education at the same time that other institutions of higher education in the area or State submit separate applications. The current rule prohibits institutions of higher education from applying individually if they are located within the jurisdiction of an APO or State that is applying.

HUD has found that many institutions of higher education are pleased to participate in the application of an APO. However, HUD also recognizes that some institutions of higher education might submit stronger applications and administer a program as well or better than their area APO. HUD's experience suggests that such institutions of higher education should be permitted to determine whether it is to their advantage to apply separately or to participate in the application of an APO or State. HUD, however, does not intend to permit an institution of higher education to apply both separately and as part of an APO or State's application during a single funding cycle. The proposed rule would amend § 570.415(d)(1)(iii) to set forth the procedure for disregarding an application under such circumstances.

Without this amendment, an institution of higher education that might be an excellent candidate for CDWSP funding could be denied an opportunity for funding simply because its APO or State unsuccessfully applies. Giving institutions this option would also strongly encourage APOs to develop or maintain excellent work study programs which are capable of attracting the participation of the area's institutions of higher education.

Paragraph (d)(2)(i)(D) of § 570.415 sets forth a requirement of periodic seminars. HUD continues to believe that seminars can often be a useful means of relating CDWSP work experience to the student's academic program. Nevertheless, HUD is proposing that CDWSP seminars no longer be mandatory, for several reasons. First, many graduate programs in community building have a professional practice seminar as a requirement of the graduate program itself. Second, the experience of many students in CDWSP involves ongoing, informal mentoring and work-related counseling from the program director and other faculty. Discussions with CDWSP recipients and students have convinced HUD that the recipients are best positioned to determine how administrative funds can be used most effectively to further the program's objectives.

Paragraph (d)(2)(i)(F) of § 570.415 would be amended to state that the recipient must encourage participating students to seek post-graduation employment with specified types of employers engaged in community building. The current regulation requires that students be encouraged to seek employment with specified types of employers receiving community development funds. This proposed change recognizes that a CDWSP student's post-graduation employment in community building comports with CDWSP objectives even if his or her particular employer is not receiving community development funds.

E. Elimination of the Repayment Requirements in 24 CFR 570.415(g) and 24 CFR 570.415(k)

The repayment requirements in paragraphs (g)(3)(i) and (k)(3)(ii) of § 570.415 would be eliminated. Currently, 24 CFR 570.415(g)(3)(i) states that students who are terminated from CDWSP participation without having completed their academic program must repay to the recipient any tuition and non-stipend assistance received through CDWSP. Paragraph (k)(3)(ii) of § 570.415, in turn, requires that the recipient repay to the Federal Government the tuition and other non-stipend assistance the student has received, and imposes this requirement *regardless* of whether the recipient collects the funds from the student.

Based on experience and discussions with recipients, HUD has determined that these repayment requirements should be eliminated, for several reasons. First, HUD believes that a repayment requirement is unnecessary as an incentive to select highly motivated students. Recipients already have a strong incentive to select highly motivated students since their CDWSP funding in any funding cycle depends in significant part on the graduation rate of students to whom the recipient provided CDWSP or similar funding.

Moreover, as noted above, the program is to be revised to further limit the number of students funded per institution of higher education. The increased selectivity that institutions of higher education will necessarily exercise suggests that the academic potential and motivation of CDWSP students can be expected to be even higher than in the past. Furthermore, the requirement may discourage students from seeking to participate in CDWSP since the financial risk of failure to complete the program may appear substantial.

HUD further notes that the repayment requirements also impose a substantial cost (administrative burden and repayment costs) to recipients who attempt to collect funds for academic credit hours and other support the student has already been provided. Because a CDWSP student is *necessarily* economically disadvantaged, the student cannot generally repay the debt other than in small payments over a long period of time involving considerable administrative burden to the recipient. HUD is aware of occasions in which institutions of higher education have had to either "write off" the debt as uncollectible or collect small periodic payments.

F. Proposed Amendments to 24 CFR 570.415(i)

Paragraph (i) of § 570.415 would be amended in several respects. The initial sentence in 24 CFR 570.415(i)(2) would be amended to clarify that a threshold review for applicant eligibility occurs *before* applications are rated and placed in priority funding order.

Paragraph (i)(5) of § 570.415, concerning the ranking of otherwise eligible applicants, would be amended to clarify the selection criteria, eliminate duplication of issues among criteria, and make the criteria consistent with other proposed changes. Paragraph (i)(2)(i) of § 570.415, which establishes the quality of the academic program as a ranking factor, would be clarified so as to set forth a non-exhaustive list of academic program quality indicators. The issue of the graduation rate among the applicant's past CDWSP students, which is currently part of the academic quality factor, would be set forth as a separate factor to reflect that factor's independent significance.

A new factor would be added as 24 CFR 570.415(i)(2)(iii), dealing with the recipient's commitment to meeting the needs of CDWSP-funded students. This consideration is already partially encompassed in 24 CFR 570.415(i)(2)(vi), dealing with the applicant's "relative commitment to meeting the needs of minority economically disadvantaged students." However, 24 CFR 570.415(i)(2)(vi) has lacked clarity, and applicants have responded to it in varying and inconsistent ways, with some applicants referring to their indirect costs, others referring to additional tuition support, and still others simply restating information used in responding to other ranking factors.

HUD intends to have this new, separate factor address the institution of higher education's commitment to help the CDWSP student see his or her way through the program financially. HUD is aware, from communications with recipients and students, that the CDWSP award leaves many CDWSP-funded students significantly short of funds to pursue their degree, even though they are working twenty hours per week. HUD believes a student's ability to pursue the academic program without undue financial stress is of great importance to the student's success.

Proposed 24 CFR 570.415(i)(2)(v) would address the likelihood that an applicant's program will lead students to permanent employment in community building, a consideration currently addressed in 24 CFR 570.415(i)(2)(iv). HUD would clarify this factor by setting forth several primary determinants of how well the factor is met. Proposed 24 CFR 570.415(i)(2)(vi) would be identical to the current 24 CFR 570.415(i)(2)(v).

Proposed 24 CFR 570.415(i)(2)(vii) would address the applicant's commitment to meeting the needs of economically disadvantaged and minority students. This factor, a modification of the present 24 CFR 570.415(i)(2)(vi), would clarify that the program is intended to address the needs of both minority and nonminority economically disadvantaged students.

III. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

B. Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule only affects applicants and participants in HUD's Community Development Work Study Program, and will not have any meaningful economic impact on any entity.

C. Public Reporting Burden

This rule does not propose to add to the overall information collection requirements of the Community Development Work Study Program. Nevertheless, because the proposed rule would alter the specific information requirements for applying for the program, the information collection requirements of this program, as amended, are being submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

ANNUAL REPORTING BURDEN—24 CFR 570.415, COMMUNITY DEVELOPMENT WORK STUDY

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	75	75	20	1,500
Annual reports	30	30	6	180
Final reports	30	30	8	240
Recordkeeping	30	30	5	150
				2,070

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are directed toward applicants and participants in HUD's Community Development Work Study Program (CDWSP). It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with CDWSP.

E. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have the potential for significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. No significant changes in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

F. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

The Catalog of Federal Domestic Assistance program number is 14.234.

Accordingly, 24 CFR part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

Subpart E—Special Purpose Grants

2. Section 570.415 is amended by:
a. Revising paragraph (a);
b. Revising paragraph (b);
c. Revising paragraphs (c)(1)(i) (A), (B), and (C), and (c)(2);
d. Revising paragraphs (d)(1)(i) (A) and (B), (d)(1)(ii), and (d)(1)(iii);
e. Revising paragraph (d)(2)(i)(A);
f. Removing paragraph (d)(2)(i)(D) and redesignating paragraphs (d)(2)(i) (E) through (I) as paragraphs (d)(2)(i) (D) through (H), respectively;
g. Revising newly designated (d)(2)(i)(E);
h. Revising paragraphs (f)(1) and (f)(2)(i);
i. Revising paragraphs (g)(1) (ii) and (iii), (g)(2)(ii), and (g)(3) (i) and (ii);
j. Revising paragraphs (i)(1)(iii) and (i)(2);
k. Revising paragraph (k)(3)(ii); and
l. Removing paragraph (k)(3)(iii) and redesignating paragraph (k)(3)(iv) as paragraph (k)(3)(iii), to read as follows:

§ 570.415 Community Development Work Study Program.

(a) *Applicability and objectives.* HUD makes grants under CDWSP to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time graduate programs in community and economic development, community planning, and community management. The primary objectives of the program are to attract economically disadvantaged and minority students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement and administer local community development programs.

(b) *Definitions.* The following definitions apply to CDWSP:

Applicant means an institution of higher education, a State, or an areawide planning organization that submits an application for assistance under CDWSP.

Areawide planning organization (APO) means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a particular geographic area.

CDWSP means the Community Development Work Study Program.

Community building means community and economic development, community planning, community management, land use and housing activities.

Community building academic program or academic program means a graduate degree program whose purpose and focus is to educate students in community building. "Community building academic program" or "academic program" includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and urban planning. "Community building academic program" or "academic program" excludes social and humanistic fields such as law, economics (except for urban economics), education and history. "Community building academic program" or "academic program" excludes joint degree programs except where both joint-degree fields have the purpose and focus of educating students in community building.

Economically disadvantaged and minority students means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, or Asian/Pacific Island, and including students with disabilities.

Institution of higher education means a public or private educational institution that offers a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR part 602.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a student enrolled in an eligible full-time academic program. He/she must be a first-year student in a two-year graduate program. Students enrolled in Ph.D. programs are ineligible.

Student with disabilities means a student who meets the definition of "person with disabilities" in the Americans with Disabilities Act of 1990.

(c) * * *
(1) * * *
(i) * * *

(A) *Student stipend.* The amount of the student stipend is based upon the prevailing hourly rate for initial entry positions in community building and the number of hours worked by the student at the work placement assignment, except that the hourly rate used should be sufficiently high to allow a student to earn the full stipend without working over 20 hours per week during the school year and 40 hours per week during the summer. The amount of the stipend the student receives may not exceed the actual amount earned, up to $9,000 per year.

(B) *Tuition support.* The amount of the tuition support may not exceed the tuition charged at the participating institution of higher education up to a maximum of $3,500 per year.

(C) *Additional support.* The amount of additional support may not exceed the actual costs incurred, up to a maximum of $1,500 per year. The recipient may provide additional support for:

(*1*) Books;

(*2*) Travel related to the academic program, work placement assignment, or attendance at conferences sponsored by professional organizations in community building; and

(*3*) Costs associated with reasonable accommodations for students with disabilities including, but not limited to, interpreters for the deaf/hard of hearing, special equipment, and braille materials.

* * * * *

(2) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. If an APO or State receives assistance for a program that is conducted by two or more institutions of higher education, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is five students per participating institution of higher education.

(d) * * *

(1) * * *

(i) * * *

(A) *Institutions of higher education.* Institutions of higher education offering a community building academic program are eligible for assistance under CDWSP.

(B) *Areawide planning organizations and States.* An APO or a State may apply for assistance for a program to be conducted by two or more institutions of higher education. Institutions participating in an APO program must be located within the particular area that is served by the APO and is identified by the State law or interlocal agreement creating the APO. Institutions of higher education participating in a State program must be located within the State.

(ii) To be eligible in future funding competitions for CDWSP, recipients are required to maintain a 50-percent rate of graduation from a CDWSP-funded academic program.

(iii) If an institution of higher education that submits an individual application is also included in the application of an APO or State, then the separate individual application of the institution of higher education will be disregarded. Additionally, if an institution of higher education is included in the application of *both* an APO and a State, then the references to the institution in the application of the State will be stricken. The State's application will then be ineligible if fewer than two institutions of higher education remain as participants in the State's application.

(2) * * *

(i) * * *

(A) Recruit and select students for participation in CDWSP. The recipient shall establish recruitment procedures that identify economically disadvantaged and minority students pursuing careers in community building, and make such students aware of the availability of assistance opportunities. Students must be selected before the beginning of the semester for which funding has been provided.

* * * * *

(E) Encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit organization engaged in community building.

* * * * *

(f) *Work placement agencies eligibility and responsibilities* (1) *Eligibility.* To be eligible to participate in the CDWSP, the work placement agencies must be involved in community building and must be an agency of a State or unit of local government, an APO, an Indian tribe, or a nonprofit organization.

(2) * * *

(i) Provide practical experience and training in community building.

* * * * *

(g) * * *

(1) * * *

(ii) Must be a full-time student enrolled in the first year of graduate study in a community building academic program at the participating institution of higher education. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community building academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

* * * * *

(2) * * *

(ii) An interest in, and commitment to, a professional career in community building.

* * * * *

(3) * * *

(i) Enroll in a two-year program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A satisfactory level of academic performance consists of maintaining a B average. A student's participation in CDWSP shall be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student is ineligible for further CDWSP assistance.

(ii) Agree to make a good-faith effort to obtain employment in community building with a unit of State or local government, an Indian tribe, or a nonprofit organization. The term of employment should be for at least two consecutive years following graduation from the academic program. If the student does not obtain such employment, the student is not required to repay the assistance received.

* * * * *

(i) * * *

(1) * * *

(iii) The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community building work study program to carry out its activities under CDWSP.

(2) *Rating.* All applications that meet the threshold requirements for applicant eligibility will be rated based on the following selection criteria:

(i) *Quality of Academic Program.* The quality of the academic program offered by the institution of higher education, including without limitation the:

(A) Quality of course offerings;

(B) Appropriateness of course offerings for preparing students for careers in community building; and

(C) Qualifications of faculty and percentage of their time devoted to teaching and research in community building.

(ii) *Rates of Graduation.* The rates of graduation of students previously enrolled in a community building academic program at the institution of higher education, specifically including (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs.

(iii) *Extent of Financial Commitment.* The commitment and ability of the institution of higher education to assure that CDWSP students will receive sufficient financial assistance (including loans, where necessary) above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours per week during the school year.

(iv) *Quality of Work Placement Assignments.* The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building.

(v) *Likelihood of Fostering Students' Permanent Employment in Community Building.* The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by, without limitation:

(A) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates where applicable) in permanent employment in community building; and

(B) The amount of faculty and staff time and institutional resources devoted to assisting students (particularly students in CDWSP-funded and similar programs where applicable) in finding permanent employment in community building.

(vi) *Effectiveness of Program Administration.* The degree to which an applicant will be able effectively to coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following considerations set forth in paragraphs (i)(2)(vi)(A), (B), and (C) of this section. Except that the maximum points available under this criterion will be allocated equally between the considerations set forth in paragraphs (i)(2)(vi)(A) and (B) of this section only where the applicant has not previously administered a CDWSP-funded program.

(A) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(B) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so; and

(C) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements).

(vii) *Commitment to Meeting Economically Disadvantaged and Minority Students' Needs.* The applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by policies and plans regarding, and past effort and success in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, then HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will then also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

* * * * *

(k) * * *

(3) * * *

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient may substitute another student to complete the two-year term of a student whose participation has terminated. The substituted student must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

* * * * *

Dated: June 8, 1995.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 95–27431 Filed 11–3–95; 8:45 am]

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federal register

Monday
November 6, 1995

Part V

The President

Proclamation 6847—National American Indian Heritage Month, 1995

Federal Register
Vol. 60, No. 214
Monday, November 6, 1995

Presidential Documents

Title 3—

The President

Proclamation 6847 of November 2, 1995

National American Indian Heritage Month, 1995

By the President of the United States of America

A Proclamation

November is traditionally the season for thanksgiving in America, the time when we reflect on the abundance with which we have been blessed. It is especially fitting, then, that we set aside this month to pause and reflect on the many gifts bestowed on our land and our heritage by American Indians and Alaska Natives.

American Indians have a great reverence for the earth and its bounty, and they generously shared their knowledge and their food with the early European settlers in our country. We still enjoy that harvest today, with an agricultural industry that supports America and the world with the corn, potatoes, beans, cotton, and countless other crops first cultivated on this continent by American Indians.

A second and equally precious gift is that of courage. American Indians and Alaska Natives have fought and died for the United States of America in time of war, answering the call to service to defend our freedoms. The Navajo, Lakota, and Dakota Codetalkers were crucial to our victory in the Pacific during World War II, and it was a Pima Indian, Ira Hayes, who helped to raise the American flag on Iwo Jima. They and so many others have endured separation, hardship, and sacrifice so that the world might know peace.

The gift of wisdom is one that our society has struggled to learn. Living in harmony with nature instead of seeking domination, American Indians have shown us how to be responsible for our environment, to treasure the beauty and resources of the land and water for which we are stewards, and to preserve them for the generations who will come after us. They have taught us as well the value of sharing, of recognizing that there must be room at America's table for all her peoples.

American Indians and Alaska Natives have made invaluable contributions to our common heritage; in every field of human endeavor, from the arts, sciences, and humanities to politics, religion, and public service, they have added immeasurably to the strength of our civilization.

As we celebrate National American Indian Heritage Month, we give thanks for these contributions and acknowledge the special legal relationship that exists between the tribes and the Government of the United States of America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1995 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95-27594
Filed 11-2-95; 4:36 pm]
Billing code 3195-01-P

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LIST OF PUBLIC LAWS

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H.R. 402/P.L. 104–42

To amend the Alaska Native Claims Settlement Act, and for other purposes. (Nov. 2, 1995; 109 Stat. 353)

Last List November 3, 1995

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	Jan. 1, 1995
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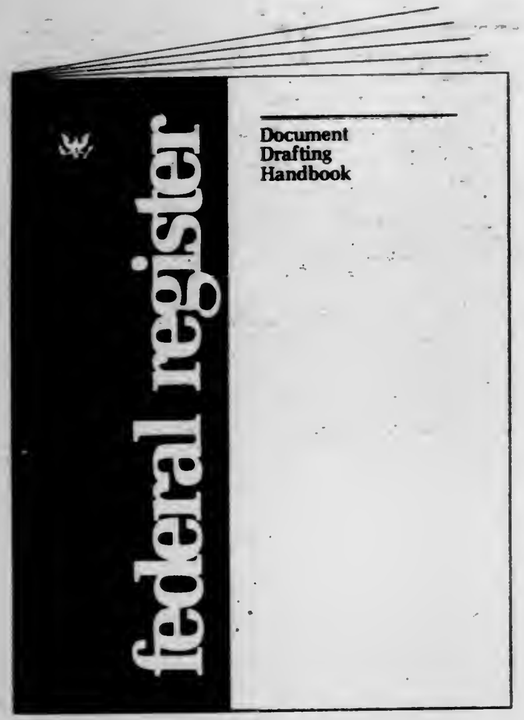
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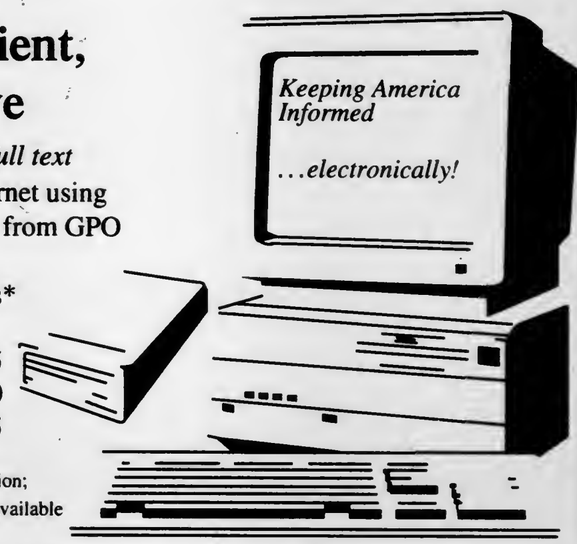
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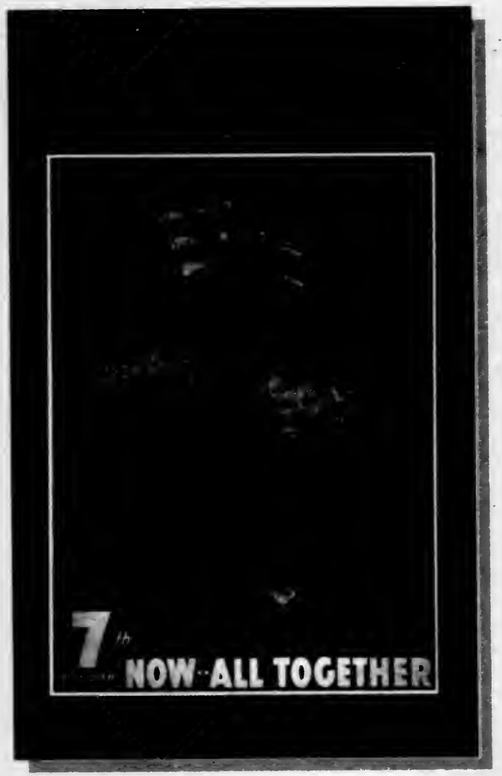
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–196–AD; Amendment 39–9422; AD 95–23–01]

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires inspections to detect cracking, corrosion, and free play in the spherical washers located in certain assemblies where the aft flap track attaches to the wing trailing edge, and replacement of the washers, if necessary. This amendment is prompted by reports indicating that these washers can break under load. The actions specified in this AD are intended to prevent breakage of these washers, which could result in structural damage to the attachment assembly and eventually lead to separation of the flap from the airplane.

DATES: Effective November 22, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–196–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that there has been a report of a broken spherical washer found in the rear flap track-to-wing attachment assembly at track 4 on a production Model A330 series airplane prior to delivery. The cause of the breakage has been attributed to stress fracture when the washer was under load. If the washer breaks, the load is transferred to two fail-safe bolts. Although the flaps are still operable in this condition, the fail-safe bolts are able to withstand the load only for a limited period of time. Failure of these two bolts could result in the separation of the affected flap from the airplane. This condition, if not corrected, could adversely affect the controllability of the airplane. Additionally, the departing flap could pose a hazard to people and/or property on the ground.

The spherical washers that are subject to breakage are installed on Model A330 and A340 series airplanes at the rear flap track-to-wing trailing edge attachment assemblies on tracks 2 to 5 (left-hand and right-hand).

Airbus has issued Service Bulletin A330–57–3016 (for Model A330 series airplanes), and Service Bulletin A340–57–4033 (for Model A340 series airplanes), both dated April 26, 1995. These service bulletins describe procedures for conducting repetitive visual inspections to detect cracking, corrosion, or free play in the spherical washer installed at the aft flap track-to-wing trailing edge attachment assemblies at tracks 2 to 5 (left-hand and right-hand). If any of these discrepancies are found, the washer must be replaced prior to further flight. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives (CN) 95–129–013(B) applicable to Model A330 series airplanes, and CN 95–130–024(B) applicable to Model A340 series airplanes, both dated July 1, 1995, in order to assure the continued airworthiness of these airplanes in France.

Airbus has also issued Service Bulletin A330–57–3016 (for Model A330 series airplanes) and Service Bulletin A340–57–4021 (for Model A340 series airplanes), both dated April 26, 1995. These service bulletins describe procedures for replacing the spherical washers installed at the aft flap track-to-wing trailing edge attachment assemblies with new spherical washers. These new washers are manufactured from a different material having modified tolerances, and will provide improved strength so as to minimize the risk of stress cracking. The DGAC classified these service bulletins as "recommended."

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent breakage of the spherical washers installed at the aft flap track-to-wing trailing edge attachment assembly, which could result in structural damage to the attachment and eventually lead to separation of the flap from the airplane. This AD requires repetitive visual inspections to detect cracking, corrosion, or free play in the spherical washer installed at the aft flap track-to-

wing trailing edge attachment assemblies at tracks 2 to 5 (left-hand and right-hand), and replacement of washers showing any of these discrepancies. This AD also provides for an optional terminating action for the repetitive inspections, consisting of replacement of all of the washers with improved washers. The actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Model A330 or A340 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 36 work hours to accomplish the required inspections, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $2,160 per airplane per inspection.

Should an operator elect to accomplish the optional terminating action (replacement of washers), it would require approximately 38 work hours to accomplish, at an average labor charge of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the optional terminating action would be $2,280 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–196–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–23–01 Airbus: Amendment 39–9422. Docket 95–NM–196–AD.

Applicability: Model A330–301 series airplanes, having manufacturer's serial numbers (MSN) 0030, 0037, 0045, 0054, 0055, 0059, and 0070, on which Airbus Modification 43222D40126 has not been installed; Model A340–211, –212, –311, and –312 series airplanes, having MSN 0005 through 0009 inclusive, 0011, 0012 through 0016 inclusive, 0018 through 0029 inclusive, 0031 through 0033 inclusive, 0056 through 0058 inclusive, 0063, and 0074 through 0076 inclusive, on which Airbus Modification 43222D40126 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spherical washers installed at the aft flap track attachment to the wing trailing edges, which could result in structural damage to the attachment and eventually lead to separation of the flap from the airplane, accomplish the following:

(a) Prior to the accumulation of 3,500 total flight cycles, or within 7 days after the effective date of this AD, whichever occurs later, conduct a visual inspection to detect cracking, corrosion, or free play in the spherical washer located at the aft flap track-to-wing trailing edge attachment assemblies at tracks 2 through 5 (left-hand and right-hand), in accordance with Airbus Service Bulletin A330–57–3029, dated, April 26, 1995, for Model A330 series airplanes; or Airbus Service Bulletin A340–57–4033, dated April 26, 1995, for Model A340 series airplanes; as applicable.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles.

(2) If any discrepancy is detected, prior to further flight, replace the spherical washer with a serviceable spherical washer in accordance with the applicable service bulletin. Thereafter, repeat the inspection at intervals not to exceed 3,500 flight cycles.

(b) Terminating action for the requirements of this AD consists of the replacement of all spherical washers located at the aft flap track-to-wing trailing edge attachment assemblies at tracks 2 through 5 (left-hand and right-hand) with improved spherical washers, in accordance with Airbus Service Bulletin A330–57–3016, dated April 26, 1995, for Model A330 series airplanes; or Airbus Service Bulletin A340–57–4021, dated April 26, 1995, for Model A340 series airplanes.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with Airbus Service Bulletin A330–57–3029, dated, April 26, 1995, for Model A330 series airplanes; or Airbus Service Bulletin A340–57–4033, dated April 26, 1995, for Model A340 series airplanes; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 1995.

Issued in Renton, Washington, on October 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27307 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

[T.D. 95–96]

Annual User Fee for Customs Broker Permit; General Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of due date for broker user fee.

SUMMARY: This is to advise Customs brokers that for 1996 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 16, 1996. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Rosenthal, Entry (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Section 111.96, Customs Regulations, provides that the fee is payable for each calendar year in each Broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the **Federal Register**, Volume 60, No. 187, Wednesday, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub.L. 99–514), provides that notices of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. This document notifies brokers that for 1996, the due date for payment of the user fee is January 16, 1996. It is expected that annual user fees for brokers for subsequent years will be due on or about the third of January of each year.

Dated: November 1, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–27529 Filed 11–6–95; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Part 1

[TD 8627]

RIN 1545–AN87

Limitation on Use of Deconsolidation To Avoid Foreign Tax Credit Limitations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain limitations on the amount of the foreign tax credit under section 904(i). The final regulations will affect the sourcing and foreign tax credit separate limitation character of income for purposes of the calculation of the foreign tax credit by certain related domestic corporations. The final regulations are necessary to prevent avoidance of the foreign tax credit limitations.

DATES: These regulations are effective January 1, 1994.

For dates of applicability, see § 1.904(i)–1(e) of these regulations.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison, 202–622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 904 of the Internal Revenue Code.

On May 17, 1994, a notice of proposed rulemaking (INTL–0006–90) relating to the foreign tax credit limitation imposed under section 904(i) was published in the **Federal Register** (59 FR 25584) (1994–1 C.B. 816).

Written comments responding to this notice were received. A public hearing was requested and held on October 17, 1994. After consideration of all the comments, the proposed regulations under section 904(i) are adopted as revised by this Treasury decision. The final regulations are substantially as proposed. The preamble to the proposed regulations contains a discussion of the provisions.

Explanation of Revisions and Summary of Comments

Common Parent of an Extended Affiliated Group

Section 1.904(i)–1(b)(1)(i)(B)(1) of the proposed regulations defined affiliates to include certain domestic corporations ultimately owned 80 percent or more by entities that are not includible

corporations. The final regulations are modified to require that the domestic corporations be ultimately owned by a common parent that is a corporation.

Commentators suggested that Congress did not intend to apply the rules of this section to domestic subsidiaries of a common foreign parent. However, section 904(i)(1) states that domestic corporations are affiliates under section 904(i) if those corporations would be affiliates under section 1504(a) without the exclusions contained in section 1504(b). Without the exclusion of foreign corporations under section 1504(b)(3), multiple chains of domestic corporations owned 80% or more by a foreign common parent would be affiliates under section 1504(a). Thus, it is clear that Congress intended broad application of this provision to structures such as those with foreign common parents. The examples in the legislative history using domestic common parents are merely illustrative. Therefore, no change to § 1.904(i)–1(b)(1)(i)(B)(1) was made in the final regulations in response to this comment.

Commentators suggested that the final regulations should be effective only for taxable years beginning after May 17, 1994, the publication date of the proposed regulations, for structures with a foreign common parent. Commentators also suggested that final regulations should not be applied to foreign common parent structures in existence prior to the enactment of section 904(i). The statute provides authority to address all structures, including foreign common parent structures. Therefore, no change in the effective date was made and no grandfather clause added with respect to such foreign common parent structures.

Determination of Taxable Income

Commentators requested clarification whether provisions such as §§ 1.861–11T and 1.861–14T, as well as the consolidated return provisions, apply to determine the taxable income of an affiliate in a separate category.

Section 1.904(i)–1(a)(1)(i) of the final regulations provides that each affiliate must determine its net taxable income or loss in each separate category, as defined in § 1.904–5(a)(1) and treating U.S. source income or loss as a separate category. In general, an affiliate may not use the consolidated return regulations in computing net taxable income or loss in each separate category. However, a consolidated group is treated as one affiliate, and such affiliate must use the consolidated return regulations (without regard to sections 904(f) and 907(c)(4)) in computing the affiliate's net taxable income or loss in each separate category. To the extent applicable in the absence of section 904(i) and these regulations, other provisions of the Code and regulations will be used in the determination of an affiliate's net taxable income or loss in a separate category under § 1.904(i)–1(a)(1)(i).

Section 1.904(i)–1(a)(1)(ii) of the final regulations states that each affiliate's net income in a separate category will be combined with net income of all other affiliates in the same separate category. However, net losses in a separate category are combined with other affiliates' income or loss in the same category, under § 1.904(i)–1(a)(1)(ii), only to the extent that the affiliate's net loss in the separate category offsets taxable income, whether U.S. or foreign source, of the affiliate with the net loss. The consolidated return provisions dealing with sections 904(f) and 907(c)(4) are then applied to the combined amounts in each separate category as if all affiliates were members of a single consolidated group.

Allocation Methods

The proposed regulations required that allocation be accomplished under "any consistently applied reasonable method." Several commentators raised questions about the appropriateness of certain allocation methods. The final regulations adopt the proposed standard but have been clarified to provide that the determination of the reasonableness of a method is based on all of the facts and circumstances.

Section 1.904(i)–1(a) of the proposed regulations required consistent application of the allocation method chosen. Commentators requested clarification as to whether this consistency rule requires the same allocation method to be used by each affiliate or whether, instead, the rule requires consistency in the choice of an allocation method from year to year. The final regulations clarify that a method is consistently applied only if used by all affiliates from year to year. Once chosen, an allocation method may be changed only with the consent of the Commissioner.

Deemed Distributions

One comment noted that if a domestic corporation, affiliated by virtue of section 904(i) with another domestic corporation, makes a payment to that other domestic corporation in order to compensate the other corporation for an increase in its U.S. income tax as a result of the application of section 904(i), the payment may be a constructive dividend to a foreign parent, followed by a contribution to capital to the other domestic corporation. It was suggested that the rules of § 1.1502–33(d) be applied by the section 904(i) regulations to allow affiliates that have altered tax liabilities due to the effect of section 904(i) to allocate that liability among the expanded affiliated group without triggering a constructive dividend. The final regulations clarify that the consolidated return regulations, including § 1.1502–33(d), generally are not applicable to the extended affiliated group.

Consistency in Choice of Taxable Year

One commentator questioned whether year-to-year consistency in the choice of the base taxable year for the extended affiliated group is required under § 1.904(i)–1(c) of the proposed regulations, and whether the taxpayer must secure the permission of the Service to alter that choice. Failure to require consistency would permit the matching of affiliates' taxable years in the most advantageous manner each year and allow an expanded group to delay the affiliation of each newly acquired corporation, under § 1.904(i)–1(b)(1)(iii), for the maximum period of time. The final regulations clarify that the taxable year chosen must be used consistently from year to year, and may be changed only with the Commissioner's consent.

Consolidated Group Considered a Single Affiliate

The final regulations, in § 1.904(i)–1(b)(1)(ii), clarify that a consolidated group, the members of which are affiliates under this section, will be treated as a single affiliate for purposes of this section. Thus, for example, the computations under § 1.904(i)–1(a)(1)(i) by a consolidated group of affiliates will produce one set of calculations with respect to each separate category of foreign source taxable income or loss for the consolidated group.

Exception for Newly Acquired Affiliates

Section 1.904(i)–1(b)(1)(ii) of the proposed regulations stated that "[a]n includible corporation will not be considered an affiliate of another includible corporation during *its* taxable year beginning before the date on which the first includible corporation first becomes an affiliate with respect to that other includible corporation."[emphasis added]. A commentator questioned the identity of the corporation referenced by the emphasized "its". The final regulations, in renumbered § 1.904(i)–1(b)(1)(iii)(A), clarify that the reference is to the new affiliate.

Because of this ambiguity in § 1.904(i)–1(b)(1)(ii) of the proposed regulations, taxpayers may have lacked sufficient notice of the Service's interpretation of that provision. For this reason, includible corporations acquired from unrelated third parties prior to the thirty-first day after the publication of the regulations will be considered an affiliate on a date that is consistent with any reasonable interpretation of § 1.904(i)–1(b)(1)(ii) of the proposed regulations. Therefore, § 1.904(i)–1(b)(1)(iii)(A) will only apply to acquisitions of affiliates after December 7, 1995. With respect to acquisitions on or before December 7, 1995, § 1.904(i)–1(b)(1)(iii)(B) will apply.

It has also been clarified that the exception only applies to acquisitions from unrelated third parties and does not apply where the acquisition of the new affiliate is used to avoid the application of section 904(i). Both of these clarifications apply to any acquisition of an includible corporation after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These regulations affect related domestic corporations not electing to file a consolidated return, or ineligible to file a consolidated return for all of the domestic corporations because of the existence of nonincludible entities. It is assumed that a substantial number of small entities do not operate in such structures. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Need for Final Regulations

This regulation, when adopted, would apply to taxable years of affiliates beginning after December 31, 1993. The final regulations will clarify the law in this area and will provide taxpayers with needed immediate guidance. The effective date is also necessary to prevent avoidance of tax. This regulation is not being issued subject to the effective date limitation of section 553(d) of 5 U.S.C.

Drafting Information

The principal author of these regulations is Kenneth D. Allison of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.904(i)–1 also issued under 26 U.S.C. 904(i). * * *

Par. 2. Section 1.904–0 is amended by:

1. Revising the introductory text.
2. Adding an entry for § 1.904(i)–1.

The revision and addition read as follows:

§ 1.904–0 Outline of regulation provisions for section 904.

This section lists the regulations under section 904 of the Internal Revenue Code of 1986.

* * * * *

§ 1.904(i)–1 Limitation on use of deconsolidation to avoid foreign tax credit limitations.

(a) General rule.
(1) Determination of taxable income.
(2) Allocation.
(b) Definitions and special rules.
(1) Affiliate.
(i) Generally.
(ii) Rules for consolidated groups.
(iii) Exception for newly acquired affiliates.
(2) Includible corporation.
(c) Taxable years.
(d) Consistent treatment of foreign taxes paid.
(e) Effective date.

Par. 3. Section 1.904(i)–1 is added to read as follows:

§ 1.904(i)–1 Limitation on use of deconsolidation to avoid foreign tax credit limitations.

(a) *General rule.* If two or more includible corporations are affiliates, within the meaning of paragraph (b)(1) of this section, at any time during their taxable years, then, solely for purposes of applying the foreign tax credit provisions of section 59(a), sections 901 through 908, and section 960, the rules of this section will apply.

(1) *Determination of taxable income*—(i) Each affiliate must compute its net taxable income or loss in each separate category (as defined in § 1.904–5(a)(1), and treating U.S. source income or loss as a separate category) without regard to sections 904(f) and 907(c)(4). Only affiliates that are members of the same consolidated group use the consolidated return regulations (other than those under sections 904(f) and 907(c)(4)) in computing such net taxable income or loss. To the extent otherwise applicable, other provisions of the Code and regulations must be used in the determination of an affiliate's net taxable income or loss in a separate category.

(ii) The net taxable income amounts in each separate category determined under paragraph (a)(1)(i) of this section are combined for all affiliates to determine one amount for the group of affiliates in each separate category. However, a net loss of an affiliate (first affiliate) in a separate category determined under paragraph (a)(1)(i) of this section will be combined under this paragraph (a) with net income or loss amounts of other affiliates in the same category only if, and to the extent that, the net loss offsets taxable income, whether U.S. or foreign source, of the first affiliate. The consolidated return regulations that apply the principles of sections 904(f) and 907(c)(4) to consolidated groups will then be applied to the combined amounts in each separate category as if all affiliates were members of a single consolidated group.

(2) *Allocation.* Any net taxable income in a separate category calculated under paragraph (a)(1)(ii) of this section for purposes of the foreign tax credit provisions must then be allocated among the affiliates under any consistently applied reasonable method, taking into account all of the facts and circumstances. A method is consistently applied if used by all affiliates from year to year. Once chosen, an allocation method may be changed only with the consent of the Commissioner. This allocation will only affect the source and foreign tax credit separate limitation character of the income for purposes of the foreign tax credit separate limitation of each affiliate, and will not otherwise affect an affiliate's total net income or loss. This section applies whether the federal income tax consequences of its application favor, or are adverse to, the taxpayer.

(b) *Definitions and special rules*—For purposes of this section only, the following terms will have the meanings specified.

(1) *Affiliate*—(i) *Generally.* Affiliates are includible corporations—

(A) That are members of the same affiliated group, as defined in section 1504(a); or

(B) That would be members of the same affiliated group, as defined in section 1504(a) if—

(*1*) Any non-includible corporation meeting the ownership test of section 1504(a)(2) with respect to any such includible corporation was itself an includible corporation; or

(*2*) The constructive ownership rules of section 1563(e) were applied for purposes of section 1504(a).

(ii) *Rules for consolidated groups.* Affiliates that are members of the same consolidated group are treated as a single affiliate for purposes of this section. The provisions of paragraph (a) of this section shall not apply if the only affiliates under this definition are already members of the same consolidated group without operation of this section.

(iii) *Exception for newly acquired affiliates*—(A) With respect to acquisitions after December 7, 1995, an includible corporation acquired from unrelated third parties (First Corporation) will not be considered an affiliate of another includible corporation (Second Corporation) during the taxable year of the First Corporation beginning before the date on which the First Corporation originally becomes an affiliate with respect to the Second Corporation.

(B) With respect to acquisitions on or before December 7, 1995, an includible corporation acquired from unrelated third parties will not be considered an affiliate of another includible corporation during its taxable year beginning before the date on which the first includible corporation first becomes an affiliate with respect to that other includible corporation.

(C) This exception does not apply where the acquisition of an includible corporation is used to avoid the application of this section.

(2) *Includible corporation.* The term *includible corporation* has the same meaning it has in section 1504(b).

(c) *Taxable years.* If all of the affiliates use the same U.S. taxable year, then that taxable year must be used for purposes of applying this section. If, however, the affiliates use more than one U.S. taxable year, then an appropriate taxable year must be used for applying this section. The determination whether a taxable year is appropriate must take into account all of the relevant facts and circumstances, including the U.S. taxable years used by the affiliates for general U.S. income tax purposes. The taxable year chosen by the affiliates for purposes of applying this section must be used consistently from year to year. The taxable year may be changed only with the prior consent of the Commissioner. Those affiliates that do not use the year determined under this paragraph (c) as their U.S. taxable year for general U.S. income tax purposes must, for purposes of this section, use their U.S. taxable year or years ending within the taxable year determined under this paragraph (c). If, however, the stock of an affiliate is disposed of so that it ceases to be an affiliate, then the taxable year of that affiliate will be considered to end on the disposition date for purposes of this section.

(d) *Consistent treatment of foreign taxes paid.* All affiliates must consistently either elect under section 901(a) to claim a credit for foreign income taxes paid or accrued, or deemed paid or accrued, or deduct foreign taxes paid or accrued under section 164. See also § 1.1502–4(a); § 1.905–1(a).

(e) *Effective date.* Except as provided in paragraph (b)(1)(iii) of this section (relating to newly acquired affiliates), this section is effective for taxable years of affiliates beginning after December 31, 1993.

Approved: September 27, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–27563 Filed 11–6–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Navy, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PELICAN (MHC 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PELICAN (MHC 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations, and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six (6) degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2, certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605, is amended by adding the following ship to Table Four, paragraph 18:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four.

* * * * *

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
PELICAN	MHC 53	59.5° to 78.3°.	281.7° to 300.5°.

Dated: 24 July 1995.

Approved:

K.P. McMahon,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–27474 Filed 11–6–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. To improve the competitiveness of the Seaway, the Corporation and the Authority have established that the Tariff charges for the 1995 season under the Tariff Schedule are the same as for the 1994 season. In addition, the Corporation and the Authority have continued, for competitive purposes, the Incentive Tolls Program and revised the volume rebate to broaden the base years and clarify the reporting requirements for the volume rebate.

EFFECTIVE DATE: November 7, 1995.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: In an effort to improve the Seaway's competitiveness, the section 402.8, the Schedule of Tolls, charges are continued for the 1995 at the 1994 season levels. Accordingly, no change is required to the Schedule as it now appears. The Corporation and the Authority also are continuing and revising, for competitive purposes, the Incentive Tolls Program. In section 402.9, the discount for new business, subsection (a) is amended to reflect its applicability to the 1995 navigation season and subsection (c) is amended in part to change the base years for calculating the discount from 1991 through 1993 to 1992 through 1994. In section 402.11, volume rebates, subsection (a) are amended to reflect its applicability to the 1995 navigation season and subsections (b) and (c) are amended to change the base years for calculating the rebate from three years, 1991 through 1993, to four years, 1991 through 1994. The base years for the subsection (c) proviso on mergers or take-overs are also changed from 1991 through 1994 to 1991 through 1995. Finally, subsection (d) is amended to change the submission date for the traffic history description for the purposes of calculating the rebate to the end of the 1995 season and to clarify what specific information is required, *i.e.*, the shipper's or receiver's Seaway traffic history for 1991, 1992, 1993, 1994, and 1995 by port, vessel name, transit date, commodity description, and tonnage.

An exchange of diplomatic notes between Canada and the United States approving this amendment occurred on October 18, 1995.

Regulatory Evaluation

This final rule involves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this final rule under the principles and criteria in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends Part 402—Tariff of Tolls (33 CFR Part 402) as follows:

PART 402—[AMENDED]

1. The authority citation for 33 CFR Part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990.

2. Section 402.9 is amended by revising paragraph (a) and the first sentence of paragraph (c) introductory text as follows:

§ 402.9 Incentive tolls.

(a) Notwithstanding anything contained in this Tariff, the portion of the composite toll related to charges per metric ton of cargo charged on new business shall be reduced by fifty percent for a Seaway transit beginning and ending during the 1995 navigation year.

* * * * *

(c) For the purposes of this section, "new business" means cargo that has not moved through a Seaway lock between an origin and a destination as defined in this paragraph (c) during the navigation seasons of 1992, 1993, and 1994 or cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic between an origin and a destination during the navigation seasons of 1992, 1993, and 1994. * * *

* * * * *

3. Section 402.11 is amended by revising the first sentence of paragraph (a) and paragraphs (b), (c), and (d) as follows:

§ 402.11 Volume discount.

(a) A volume rebate shall be granted to a shipper of downbound cargo or to a receiver of upbound cargo at the end of the 1995 navigation season after

payment of the full toll specified in the schedule under the tariff in § 402.8 of this part if shipments of a particular commodity during 1995 exceed by a minimum of 25,000 tons the shipper's or receiver's highest tonnage for that particular commodity during 1991, 1992, 1993, or 1994 in the Seaway.

* * *

(b) Volume rebates shall be granted only with respect to commodities whose shipper and receiver have shipped or received the subject commodity in the years 1991, 1992, 1993, and 1994 and have not been subject of a merger or take-over during 1991, 1992, 1993, 1994, or 1995.

(c) The volume rebate shall be equal to a 50 percent reduction of the portion of the composite toll related to charges per metric ton of cargo paid for the shipments that surpass the shippers or receiver's highest tonnage for that commodity during 1991, 1992, 1993, or 1994. Payment of rebates will be made directly to the qualified receiver or shipper.

(d) A description of the shipper's or receiver's Seaway traffic history for 1991, 1992, 1993, 1994, and 1995 by port, vessel name, transit date, commodity description, and tonnage shall be submitted by the shipper or receiver prior to the end of 1995 and shall be subject to audit by the Authority.

* * * * *

Issued at Washington, D.C. on October 27, 1995.

Saint Lawrence Seaway Development Corporation.

David G. Sanders,

Acting Administrator.

[FR Doc. 95–27482 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–61–P

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 95–13]

Automated Tariff Filing and Information System

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule amends the requirements of the Federal Maritime Commission ("Commission" or "FMC") pertaining to the Automated Tariff Filing and Information System ("ATFI") to clarify that no individual may file or retrieve ATFI data until he or she submits a User Registration Form and supporting documents, together with the proper fee, to the Commission and receives a logon ID and password. The rule also makes it clear that this requirement cannot be circumvented by sharing, loaning or using logon IDs or passwords assigned to others. In addition, the rule permits the on-line downloading of daily subscriber data. Subscribers may request daily updates on tape provided by them in those instances where on-line downloading is not cost-effective. Full database tapes, weekly update tapes, and monthly update tapes will no longer be provided.

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Doris J. Spencer, Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street NW., Washington, D.C. 20573, (202) 523–5835.

SUPPLEMENTARY INFORMATION: The Commission's tariff filing rules at 46 CFR 514.8(f)(1) provide that the ATFI logon IDs and passwords are issued to individual users. Despite this provision, there have been numerous instances of logon IDs or passwords being shared with, loaned to or used by others. The Commission therefore issued a Notice of Proposed Rulemaking ("NPR") to amend § 514.8 to clarify that no individual may file or retrieve AFTI data until he or she submits a User Registration Form, supporting documents, and the proper fee, to the Commission and receives a logon ID and password. (60 FR 45126, Aug. 30, 1995).

Additionally, given the Commission's reduced level of funding, it is no longer feasible for the Commission to provide full database tapes, weekly update tapes and monthly update tapes. As an alternative, the Commission proposed to implement the capability for on-line downloading of daily subscriber data.

Four parties filed comments in response to the NPR: Rijnhaave Information Services, Inc. ("RIS"), D.X.I. Incorporated ("DXI"), Pacific Coast Tariff Bureau ("PCTB") and Effective Tariff Management Corporation ("ETM").

The only comment addressing the proposed password and user ID rule revision was filed by RIS. It is RIS's contention that user IDs and passwords are issued to the tariff publisher and not to a single individual within the tariff publisher's organization. In support of its position RIS cites 46 CFR 514.2 which states that: "Publisher (tariff) means an organization authorized to file or amend tariff information." RIS also refers to Commission News Release 93–11, Assignment of ATFI Access Privileges and Further Batch Filing Certification, August 4, 1993. The News Release states that if the carrier authorizes the tariff publisher to maintain the carrier's organizational record, the publisher, not the carrier, will be the owner of the logon ID and password.

RIS's argument fails to distinguish between the authority to file and amend tariffs and the authority to amend the organizational record of the carrier. A tariff publisher may have authority to file and amend tariffs on behalf of a carrier without having a logon ID and password to access the carrier's organizational record. News Release 93–11 leaves no doubt that logon IDs and passwords are issued to individuals within an organization and not to the organization itself. The News Release states:

> Each organization may identify only one person authorized to update the Organization Record, which is an ATFI component that reflects information about the organization. This person's Login ID has the authority to change information in the Organizational Record.
>
> On the registration form ("form"), the person listed in block 8 will be the owner of the Login ID and password.

The portion of the News Release relied upon by RIS simply points out that, if a carrier authorizes the tariff publisher to maintain the carrier's organizational record, the carrier will not be issued a logon ID and password. That discussion does not contradict the statement quoted above which appears in the same news release. Accordingly, the Commission rejects RIS's comment and will adopt the proposed clarification of its rules pertaining to logon IDs and passwords.

All parties express a desire for the continuation of full database tapes subscriber data. Full database tapes are said to be necessary to audit and add new tariffs to their systems. ETM also opposes the elimination of the weekly subscriber tapes based on (1) the cost of daily data versus weekly update tapes, (2) the cost of higher speed communications equipment, and (3) prolonged on-line downloading time requiring additional lines and equipment to avoid work flow disruptions.

Due to reduced appropriations, the Commission has been forced to curtail purchases of equipment and services pursuant to its ATFI contract. As part of the Commission's efforts to reduce expenses, the position previously responsible for, among other things, developing weekly, monthly and full data base tapes has been eliminated from the contract. The Commission could not avoid cuts in the ATFI program by increasing user fees. User fees are payable to the U.S. Treasury and cannot be retained by the Commission to defray the cost of ATFI.

The Commission is sympathetic to those who want the Commission to continue to provide weekly, monthly and full data base tapes, and understands that the elimination of this service may have the effect of increasing a tariff publisher's cost of doing business. However, the Commission simply lacks the funds to continue providing weekly, monthly and full data base tapes.

The change will not deprive the industry of ATFI subscriber data that it would otherwise receive. All data contained on a full data base tape has been previously made available as daily subscriber data. While the Commission has an obligation to make ATFI subscriber data available, the Commission does not have an obligation to make the data available in a particular format.

The Commission will make certain modifications to the fees for ATFI data in order to ameliorate the effects of the elimination of weekly, monthly and full data base tapes. Persons requesting download of daily updates will not be required to pay $61 as stated in the NPR, but only 46 cents per minute as now required by § 514.21(g)(1). Persons requesting daily updates on tape must supply the tapes and return postage, and pay $43 per daily update as opposed to the $61 specified in the NPR. The charge of $43 reflects the average downloading time, at 46 cents a minute, and associated labor costs. Although these charges are based on the Commission's costs, the Commission cannot retain the charges to defray the cost of providing the service, as explained above.[1]

The Commission plans a transition period during which users may receive daily subscriber data either on tape or through on-line download. This will allow subscribers to thoroughly test the data download functionality and compare the results with tape data. The transition period will also provide an opportunity for batch retrievers and batch filers to access the system using higher speed modems and/or improved file transfer software. After this period, firms desiring to receive daily data on tape will be required to furnish their own tapes.

The Commission will install 28.8 Kbps modems and make available the Zmodem file transfer protocol on the ATFI system. Batch retrievers and batch filers may wish to upgrade their modem speed to decrease file transfer time. The Zmodem file transfer protocol includes a crash recovery capability that allows a data download file transfer to restart at the point where it was disrupted.

Several parties proposed other changes. RIS suggests that the certification process formerly required by 46 CFR 514.21(m) be retained. PCTB requests an ATFI enhancement that would provide the capability to download a single tariff and daily data for a single tariff. PCTB also suggests that the Commission enter into a leased line arrangement to facilitate the transmission of very large filings. RIS seeks to use dedicated lines for daily updates and batch filing sessions. All these proposals are beyond the scope of the NPR and cannot be addressed in this proceeding.

The Commission certifies pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions. The Commission recognizes that these proposed revisions may have some impact on the shipping industry, but not of the magnitude that would be contrary to the requirements of the Regulatory Flexibility Act.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

List of Subjects in 46 CFR Part 514

Freight, Harbors, Maritime carriers, and Reporting and recordkeeping requirements.

Part 514 of Title 46 of the Code of Federal Regulations is amended as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

Subpart C—Form, Content and Use of Tariff Data

2. In § 514.8, paragraph (f) is revised to read as follows:

§ 514.8 Electronic Filing.

* * * * *

(f) *Password and User ID.* (1) System Identifications ("IDs") for either filing or retrieval logon and initial password assignments are obtained by submitting the User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part, to BTCL. A separate User Registration Form is required for each individual that will access ATFI.

(2) Logon IDs and passwords may not be shared with or loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any logon ID that is shared with, loaned to or used by parties other than the registrant.

(3) Authority for organizational maintenance, filing or retrieval can be transferred by submitting an amended registration form requesting the assignment of a new logon ID and password (see § 514.(4)(d)). The original logon ID will be canceled when a replacement logon ID is issued.

* * * * *

3. In § 514.20, paragraph (d) is revised to read as follows:

§ 514.20 Retrieval.

* * * * *

(d) *Batch retrieval through data base files.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily basis. The ATFI System Administrator will create a daily subscriber data update file which will be accessible to subscribers. The daily updates subscriber will access the ATFI system to on-line download the tariff updates received during the previous workday and any intervening weekend/holidays, as well as any tariff updates created by the Commission (e.g., suspensions, rejections, etc.). Subscribers may request that daily updates be forwarded on tape (either 9 track, 6250 bpi or 8 mm cartridge, Exabyte 8500 compatible) when the file size indicates that the on-line download option is not cost-effective. Subscriber responsibility and charges for use of this option are specified in § 514.21(j)(2). The Commission may also send selected daily updates by first class mail (or as directed by subscribers at subscriber's expense) or make updates available at the ATFI computer center when the magnitude of the file size indicates that downloads would degrade ATFI access for other ATFI user functions. The charge specified in § 514.21(j)(2) will apply, but subscribers will not be required to provide tapes. Subscribers requesting update data on tape are responsible for insuring that the Commission has received sufficient pre-paid monies before the last business day of the preceding month in order to subscribe to the next month's filings.

[1] Section 514.20(d) was also modified to clarify the application of § 514.21(j)(2).

The Commission will terminate the download capability of any accounts in arrears.

* * * * *

4. In § 514.21, paragraph (j) is revised to read as follows:

§ 514.21 User charges.

* * * * *

(j) *Daily Subscriber Data (§ 514.20(d)).* (1) Persons requesting download of daily updates must pay 46 cents per minute as provided by § 514.21(g)(1).

(2) Persons requesting daily updates on tape must supply the tapes and return postage, and pay $43 per daily update.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

FR Doc. 95–27489 Filed 11–6–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[DA 95–2196]

Independent Data Communications Manufacturers Association (IDCMA) and AT&T Corp. Petitions Regarding Frame Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; declaratory ruling.

SUMMARY: This order grants separate Petitions for declaratory ruling concluding that: AT&T's InterSpan Frame Relay Service incorporates a basic service that must be offered pursuant to tariff; and all facilities-based IXCs offering basic frame relay service must also tariff the service. The intended effect of this order is that all facilities-based IXCs offering basic frame relay service must file tariffs within sixty (60) days of the effective date of this order.

EFFECTIVE DATE: December 7, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Kupinsky at (202) 418–1587 or Rose Crellin at (202) 418–1581, Policy and Program Planning Division, Common Carrier Bureau (202) 418–1580.

SUPPLEMENTARY INFORMATION: On November 28, 1994, the Independent Data Communications Manufacturers Association, Inc. (IDCMA) filed a petition for declaratory ruling that AT&T's InterSpan Frame Relay Service (InterSpan) is a basic transmission service subject to the tariffing and other requirements of Title II of the Communications Act of 1934, as amended (Act). Thereafter, on December 5, 1994, AT&T filed a separate petition for declaratory ruling that the Commission's decision regarding InterSpan should apply to all other interexchange carrier's (IXSs) frame relay services.

IDCMA's petition requested that the Commission declare AT&T's InterSpan service to be a basic service that AT&T must offer under tariff. Thus, the issue before the Commission was whether AT&T and certain other carriers must offer frame relay service as a regulated telecommunications service in accordance with the requirements of Title II of the Act and the Commission's Computer II, 45 FR 31319, May 13, 1980, and Computer III, 51 FR 24350, July 3, 1986, proceedings.

Frame relay is a high-speed packet-switching technology used to communicate data between, among other things, disperse local area computer networks (LANs). Digital data is divided into individual "packets"—each with its own destination information—that are transmitted separately. When all the packets of data arrive at this destination, they are reassembled into their original form.

Frame relay technology also serves as the intermediary format for data traveling between and among computer systems employing different communications protocols. AT&T's InterSpan Service, for example, provides a variety of protocol conversion functions permitting communication with its frame relay network. That is, a customer may provide data to the network in an original protocol, the network converts the data into frame relay protocol, transmits the data across the network, and then converts the data back to the original protocol or a different protocol before delivering the data out of the network.

The regulatory treatment of data communications services is governed by the basic-enhanced services framework established in the Commission's Computer II proceeding. Computer II Final Order, 77 FCC2d 384 (1980), 45 FR 31319, May 13, 1980. Basic services are regulated under Title II of the Act and Commission Rules. Common carriers must file tariffs for such services. The Commission has previously determined that packet-switching networks may provide a basic service.

In contrast, section 64.702(a) of the Commission's Rules defines enhanced services in pertinent part as "services * * * which employ computer processing applications that act on the * * * protocol or similar aspects of the subscriber's transmitted information; [or] provide the subscriber additional, different, or restructured information." Thus, the Commission has traditionally treated carrier provision of protocol conversion, except in some limited cases, as an enhanced service. Enhanced services are not regulated under the Commission's Rules.

For the reasons set forth in the full Order, the Common Carrier Bureau (Bureau) concludes that frame relay service is a basic service. The Bureau finds that frame relay service offers a transmission capability that is virtually transparent in terms of its interaction with customer-supplied data. The service is already provided pursuant to tariff as a basic service by all but one of the Bell Operating companies (BOCs). Accordingly, the Bureau declines to conclude that frame relay is an enhanced service.

The Bureau rejects AT&T's argument that frame relay is an enhanced service because modifications to the frame header that occur during network transmission—such as changes in discard eligibility or location code—render the customer data that is delivered to the terminating customer through its frame relay service "different" from the data transmitted by the originating customer. The Bureau also rejects the argument of AT&T and others that the customer receives "different" or "restructured" information within the meaning of Section 64.702 if the network discards eligible frames in frame relay networks.

The Bureau also concludes that AT&T's InterSpan service in particular incorporates a basic frame relay service that AT&T must unbundle from its enhanced offering and offer under tariff.

AT&T requested in its petition that if the Commission finds that AT&T frame relay service is a basic service subject to tariff, that the ruling be made applicable to the frame relay services offered by all other IXCs.

Having applied Commission Rules and found that frame relay service is a basic service, the Bureau concludes that, pursuant to the Computer II decision, all facilities-based common carriers providing enhanced services in conjunction with basic frame relay service must file tariffs for the underlying frame relay service. This requirement applies independently of any additional requirements under the Computer III proceedings. Further, all facilities-based common carriers providing basic frame relay service must file tariffs within sixty (60) days of the effective date of this order.

Federal Communications Commission.

Kathleen M.H. Wallman,

Chief, Common Carrier Bureau.

[FR Doc. 95–27470 Filed 11–6–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–180; RM–7698, RM–7818, RM–7819]

Radio Broadcasting Services; Seabrook, Huntsville, Bryan, Victoria, Kenedy, and George West, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: This document denies an Application for Review filed by Helen Maryse Casey directed against the *Report and Order* in this proceeding. *See* 58 FR 12903, March 8, 1993. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 7, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau,(202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 91–180, adopted July 31, 1995, and released August 29, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

List of Subjects in Part 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27469 Filed 11–6–95; 8:45 am]

BILLING CODE 6712–01–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1815

Acquisition Regulation; Cost or Pricing Data; Correction

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule which was published October 18, 1995 (60 FR 53878) The final rule revised NASA policies on cost or pricing data in order to make the policies consistent with recently revised Federal-wide policies.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: William T. Childs, (202) 358–0454.

SUPPLEMENTARY INFORMATION:

Background

The Federal Acquisition Streamlining Act of 1994 (FASA) revised policy on cost or pricing data under the Truth in Negotiations Act (TINA), among other things. The TINA changes have been implemented in the Federal Acquisition Regulation (FAR) at 48 CFR chapter 1, and those changes necessitate corresponding revisions of the NASA FAR Supplement (NFS).

Need for Correction

Two section headings were incorrectly published. In section 1815.804–1, paragraph (a)(1) is removed because it is adequately covered by FAR 15.804–1, two citations are corrected, and the term "exemption" is revised to read "exception", which is the term used by the FAR. Paragraph (b) was inadvertently omitted from § 1815.804–2. The paragraph provides guidance that the agreed date under FAR 15.804–2(b)(2) should generally be within two weeks of the date of price agreement.

Correction of Publication

Accordingly, the publication on October 18, 1995 of the final rule which was the subject of FR Doc. 95–25858, is corrected as follows:

1815.804 [Corrected]

Paragraph 2. on page 53879, in the first column, is corrected by revising the heading of § 1815.804 to read as follows:

1815.804 Cost or pricing data and information other than cost or pricing data.

1815.804–1 [Corrected]

Paragraph 3. on page 53879, in the first column, is corrected by revising the heading and paragraphs (a), (b), and (c) of section 1815.804–1 to read as follows:

1815.804–1 Prohibition on obtaining cost or pricing data.

(a)(1) When the adequate price competition exception will be used in a single-offer situation, the exception shall be approved by the head of the contracting activity. The exception document shall cite the authority of 10 U.S.C. 2306(b)(1)(B), and the procedure in paragraph (d) of this section shall be used.

(2) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type procurements.

(i) The use of this exception for a cost-reimbursement procurement requires the careful exercise of judgment on the part of the contracting officer based on the application of the guidance in FAR 15.804–1(b)(1)(i)(A) and the regulations of this chapter to the facts of each procurement. The instances when its use under cost-reimbursement procurements would be appropriate should be limited. One reason is that, unlike fixed-price type contracts, where the final cost to the Government is set at the negotiated contract amount, in cost-reimbursement contracts, the contract amount is only an estimate of the Government's final cost. As a consequence, the failure to obtain cost or pricing data could result in a competing contractor intentionally underestimating its costs for the purpose of winning the award, which could then cause the actual contract costs to significantly exceed those proposed.

(ii) If and when negotiations conducted with a successful offeror after receipt of Best and Final Offers result in a substantial change in that offeror's price, the validity of any adequate price competition exception which previously applied could be nullified, regardless of contract type.

(3) When the decision is made to apply the adequate price competition exception, that decision shall be documented in the contract file. In addition, for cost-reimbursement procurements, that document shall be signed by the procurement officer and a copy provided to the Analysis Division, Code HC.

(b) When an exception is granted under FAR 15.804–1(c)(4) for repetitive submissions of catalog items, Government approval of the exception request shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a

question as to the exception's continuation.

(c) When excepting submission under FAR 15.804–1(b)(2)(iii), the contracting officer shall document the reasons for the exception. It is generally appropriate to include a description of the similarities and differences from a commercial item, along with a discussion of the actual sales prices of the commercial item and an explanation of the value of the differences from that item. If the fact of substantial sales to the general public is well known, information addressing the quantity of sales is not required.

* * * * *

1815.804–2 [Corrected]

Paragraph 4. on page 53879, in the third column, is corrected by adding paragraph (b) to read as follows:

1815.804–2 Requiring cost or pricing data.

* * * * *

(b) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of price agreement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

[FR Doc. 95–27515 Filed 11–6–95; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register

Vol. 60, No. 215

Tuesday, November 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H–049]

RIN 1218–0099

Respiratory Protection

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reopening the record for comments on a report by M. Nicas.

SUMMARY: OSHA is reopening the record for the Respiratory Protection standard for the purpose of receiving public comment on the Nicas Report. Several specific areas for comment have been identified.

DATES: Written comments must be postmarked on or before January 8, 1996.

ADDRESSES: Comments must be submitted in quadruplicate or 1 original (hardcopy) and 1 disk (5¼ or 3½ inch) in WordPerfect 5.0, 5.1, 6.0, 6.1, or ASCII to: Docket Office, Docket H–049, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone: (202) 219–7894. Any information not contained on disk (e.g., studies, articles) must be submitted in quadruplicate. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046, provided that the original and 3 copies are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: Ms. Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 219–8148. A copy of the referenced report is available for inspection and copying in the Docket Office and will be mailed to persons who request a copy by telephoning Mr. John Steelnack at (202) 219–7151. For an electronic copy of the **Federal Register** notice, contact the Labor News Bulletin Board (202) 219–4748; or OSHA's WebPage on the Internet at http://www.OSHA.gov/. For news releases, fact sheets and other short documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1994, OSHA published proposed revisions to 29 CFR 1910.134, the Respiratory Protection standard (59 FR 58884). After announcing an extended comment period on the proposal, OSHA held public hearings on the proposal from June 6–20, 1995 (60 FR 15263). One of the issues discussed extensively during this rulemaking is setting assigned protection factors (APFs) for the various respirator classes. To assist OSHA and the public in evaluating the record on this issue, OSHA contracted with Dr. Mark Nicas to prepare recommendations for evaluating protection factor studies and combining information across studies for use in setting APF values. Dr. Nicas submitted a report titled "The Analysis of Workplace Protection Factor Data and the Derivation of Assigned Protection Factors" (hereafter, the "Nicas Report") which was timely entered as a post-hearing comment into the Respiratory Protection Docket H–049 as Exhibit #156. OSHA is contemplating using the recommendations presented in the Nicas Report as an aid in setting APFs for the final Respiratory Protection standard.

Request for Review and Comments

The post-hearing briefing period recently ended on October 20, 1995. OSHA is interested in giving the public an additional opportunity to comment on the Nicas Report. Accordingly, OSHA is reopening the record for the Respiratory Protection standard solely to provide a further opportunity to review the Nicas Report and to submit such comments on the recommendations proposed. The Nicas Report recommends approaches to resolving key science-policy issues related to setting APFs. These issues include deciding which workplace protection factor studies should be evaluated; accounting for particle size effects, respiratory deposition, and below-detection-limit values; and requiring specific statistical analyses to account for between-wearer variability in respirator performance, within-wearer variability, between-study variations, and parameter uncertainty.

OSHA requests that reviewers comment on the appropriateness and completeness of the issues identified, the statistical methodology recommended, and the solutions offered for the other issues. OSHA also would appreciate any additional opinions or information that reviewers may want to submit regarding statistical methodologies and evaluation criteria for APF studies.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

Signed at Washington, D.C. this 1st day of November, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–27498 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC79–1–9606; FRL–5326–1]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the Raleigh/Durham Carbon Monoxide (CO) Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the North Carolina CO Maintenance plan for the Raleigh/Durham area. On October 18, 1995, the State of North Carolina submitted a revision to the Raleigh/Durham CO Maintenance plan, and requested EPA to parallel process the above referenced

revision. This revision changes the projected emission inventory previously published in the **Federal Register** by EPA on August 2, 1995. Because the revised projections show the oxygenated fuels regulation is not needed for maintenance of the CO standard, North Carolina is in the process of removing regulations that require the use of oxygenated fuels in the Raleigh/Durham area. The State has scheduled a public hearing on November 20, 1995.

DATES: Comments on this proposed action must be received in writing by December 7, 1995.

ADDRESSES: Written comments on this action should be addressed to Benjamin Franco, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Interested persons wanting to examine documents relative to this action should make an appointment with the Region 4 Air Programs Branch at least 24 hours before the visiting day. To schedule the appointment or to request additional information, contact Benjamin Franco, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, EPA Region 4, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4211. Reference file NC79–1–9606.

SUPPLEMENTARY INFORMATION: Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable National Ambient Air Quality Standard (NAAQS) for at least ten years after the Administrator approves a redesignation to attainment. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

On October 7, 1994, the North Carolina Department of Environmental Management (NCDEM) submitted a redesignation request and maintenance plan for the Raleigh/Durham CO nonattainment area. On August 2, 1995, EPA published in the **Federal Register** a final rule making effective on September 18, 1995, a maintenance plan and redesignation of Raleigh/Durham to attainment for CO. The above approved maintenance required the use of a 2.0% oxygenated fuel program.

Subsequently, on October 18, 1995, NCDEM submitted a request to parallel process a proposed revision to the Raleigh/Durham CO maintenance plan. This revision requested the removal of the Oxygenated Fuel program from the maintenance plan. Due to a change in the methodology used to calculate this projection, NCDEM has revised their projected vehicle miles travelled (VMT) in Wake and Durham Counties. The conclusion that oxygenated fuel was necessary to maintain the CO standard was based on a VMT projection methodology that segregated the road types into rural and urban categories. This methodology resulted in an annual growth rate for urban road types of 5.5 to 6.5 percent in Wake and Durham Counties. A major concern with this methodology, not recognized at the time the original maintenance plan was developed, was the reassignment of rural roads to urban roads. During the six year window of VMT data, a significant amount of rural road mileage was reassigned by the North Carolina Department of Transportation to urban road mileage as the urban boundaries of Raleigh and Durham were expanded. The result from this analysis was an apparent higher urban VMT growth rate than was actually occurring.

A revised analysis has been performed using a projection methodology that projects VMT on a county total basis. The resulting annual VMT growth rate for both counties is approximately 3.5 percent. Due to lower projected highway mobile CO emissions, the CO standard can be maintained without the continued use of oxygenated gasoline in the Raleigh/Durham area. Therefore, EPA is allowing the removal of the Oxygenated Fuel program starting in the 95–96 winter season. The State has moved the program to the contingency plan. In addition, NCDEM made changes to the contingency plan requiring an analysis of necessary control measures prior to implementation of any pre-adopted control measures.

Demonstration of Maintenance—Projected Inventories

Total CO emissions were projected from 1991 out to 2005 for the Raleigh/Durham area. These projected inventories were prepared in accordance with EPA guidance. In this notice, EPA is proposing to approve the revised emission budget. This budget is based on the best available information, and shows attainment for 10 years.

RALEIGH/DURHAM NONATTAINMENT AREA, CO EMISSIONS SUMMARY

[Tons per day]

Year	Area	Nonroad	Mobile	Point	Total
1991	57.12	5.22	569.82	1.00	633.16
1993*	57.60	5.58	434.87	1.01	499.06
1996	60.01	6.25	538.09	1.08	605.43
1999	63.45	7.18	522.31	1.13	594.07
2002	65.90	8.08	526.55	1.16	601.69
2005	67.87	8.98	543.84	1.20	621.89

*Oxygenated Fuel program in place (2.7% Oxygen by weight).

Proposed Action

In this document, EPA is proposing approval of revisions to the State of North Carolina's CO maintenance plan for the Raleigh/Durham area.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities, and in fact is expected to decrease compliance costs and decrease costs to consumers in the affected areas. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being proposed for approval by this action would impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 27, 1995.

Michael V. Payton,

Acting Regional Administrator.

[FR Doc. 95-[illegible]566 Filed 11–6–95; 8:45 am]

BILLING CODE [illegible]-50-P

40 CFR Part 52

[WA9–1–5540, WA28–1–6613, WA34–1–6937; FRL–5326–3]

Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes limited approval and limited disapproval of the State Implementation Plan (SIP) submitted by the State of Washington for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The implementation plan was submitted by the State to satisfy certain Federal requirements for a moderate nonattainment area PM_{10} SIP for Yakima, Washington.

DATES: Comments must be postmarked on or before December 7, 1995.

ADDRESSES: Written comments should by addressed to: Montel Livingston, EPA, Office of Air (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information are available for inspection during normal business hours at the following locations: EPA, Office of Air, Docket #'s WA9–1–5540 WA28–1–6613 and WA34–1–6937, 1200 Sixth Avenue (AT–082), Seattle, WA 98101, and the Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504.

FOR FURTHER INFORMATION CONTACT: Kelly Huynh, Office of Air (AT–082), EPA, Seattle, Washington 98101, (206) 553–1059.

SUPPLEMENTARY INFORMATION:

I. Background

The Yakima, Washington area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA) upon enactment of the Amendments of 1990 on November 15, 1990. This Yakima nonattainment designation was announced in a March 15, 1990 **Federal Register** notice (See 56 FR 11101). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of Title I of the CAA. EPA has issued a "General Preamble" describing EPA's views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements [See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Yakima, Washington moderate PM_{10} SIP, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the CAA.

States with initial moderate PM_{10} nonattainment areas were also required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–44.

II. This Action

Section 110(k) of the CAA sets out provisions governing EPA's review of SIP submittals (See 57 FR 13565–66). In this action, EPA is proposing to grant limited approval of the Yakima PM_{10} nonattainment plan as submitted on March 24, 1989; May 1, 1992; August 19, 1992; February 3, 1994; March 1, 1995; March 10, 1995; June 27, 1995; and August 17, 1995. EPA may grant a limited approval of this nonattainment plan under section 110(k)(3) of the CAA, in light of EPA's authority under section 301(a) of the CAA to adopt regulations necessary to further air quality by strengthening the SIP. EPA is proposing a limited approval because the nonattainment plan serves the purpose of improving air quality within the Yakima area and is providing Reasonable Further Progress (RFP)

toward attainment. The proposed approval of this implementation is limited, however, in that EPA is not proposing that this plan satisfies the specific requirements of section 172(c)(1) and 189(a)(1)(C) of the CAA to implement RACM, including RACT, in moderate nonattainment areas. EPA also is not proposing that this plan satisfies the specific requirements of section 189(c) of the CAA to show quantitative milestones which demonstrate attainment until the area is redesignated as well as the 1994 attainment demonstration. EPA believes, however, that the control measures adopted and submitted as of this date will achieve PM_{10} emission reductions in the Yakima nonattainment area. The submittals as a whole contain inseparable portions the cannot be approved. Thus, EPA is proposing to approve the control measures of the complete SIP for the limited purpose of strengthening the SIP and making them enforceable.

However, because the Washington Department of Ecology (WDOE) and Yakima County Clean Air Authority (YCCAA) have not yet adopted into the SIP and submitted to EPA certain control measures necessary for full approval of the SIP, EPA is proposing to disapprove the RACM (including RACT) element. In addition, because the attainment demonstration for 1994 was not submitted as well as the maintenance demonstration, which demonstrates attainment until the area is redesignated, EPA is proposing to disapprove these elements of the SIP. Detailed discussions of the plan deficiencies are included below and are further discussed in the Technical Support Document (TSD). If this proposed disapproval becomes final, it will begin the period for the imposition of discretionary sanctions under section 110(m) of the CAA and the 18-month sanctions clock for the imposition of mandatory sanctions under section 179 of the CAA. If finalized, this disapproval will also authorize EPA to issue a Federal implementation plan as provided in section 110(c)(1) of the CAA.

If, however, prior to EPA's final action on this proposal the State submits a plan to EPA that adequately addresses the outstanding deficiencies, EPA will withdraw this limited approval/disapproval and will instead finalize a full approval of the PM_{10} plan for Yakima. EPA invites public comment on this proposed action.

A. Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (See section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The WDOE held a public hearing on the original plan on December 7, 1988. When this was superceeded by the May 1992 supplement and the August 1992 supplement additional public hearings were held on November 30, and December 9, 1991 to entertain public comment on the Yakima implementation plan. Adequate public hearings were also held for the Yakima contingency measures (submitted on February 3, 1994) and the Yakima County Clean Air Authority (YCCAA) regulations (submitted on February 21, 1995). Following the public hearings the submittals were adopted by the State and signed by the Governor's designee as a proposed revision to the SIP.

The SIP revisions were reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittals were found to be complete, and letters were forwarded to the WDOE indicating the completeness of the submittals and the next steps to be taken in the review process.

2. Accurate Emissions Inventory

It is a requirement that each nonattainment plan include a comprehensive, accurate, current inventory of allowable emissions from major point sources and actual emissions from all other sources of the relevant pollutant (PM_{10}) in the area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (See 57 FR 13539).

Yakima originally submitted an emissions inventory for a 1985 base year with the inventory projected out to 1991. When the area did not attain the PM_{10} NAAQS by 1991, the base year was replaced by 1990 in the August 1992 submittal and a new emissions inventory was submitted. These emissions were again projected out, this time to the attainment year (1994). The 1990 inventory identified residential wood combustion as the primary nonattainment source, contributing approximately 57% of the total area emissions. Additional contributing sources included resuspended road dust at 17.2%, point sources at 9.8%, vehicle exhaust at 7% and other area sources at 9%. However, the emissions inventory did not include allowable point source emissions and thus supplements were needed to provide a sufficient basis for determining the adequacy of the attainment demonstration for the area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the CAA.[2]

The Yakima emissions inventory became comprehensive, and EPA approvable, in terms of allowable point source emissions when WDOE submitted a March 10, 1995 and August 17, 1995 supplement. Further details are found in the TSD on the emissions inventory.

3. RACM (Including RACT)

As noted, the initial moderate PM_{10} nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 [See sections 172(c)(1) and 189(a)(1)(C)]. The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61).

Residential wood combustion emissions were identified as the main contributing source to the PM_{10} nonattainment problem in Yakima and are being controlled through a mandatory woodsmoke curtailment program as the area's sole control measure. The original submittal indicates that a mandatory woodsmoke curtailment program was to have been implemented by the 1988–1989 heating season. It turns out the curtailment program was not fully functioning until the 1991–1992 heating season. The SIP indicates that the control of indoor solid fuel burning devices are expected to result in an emission reduction of 66.5% of woodstove PM_{10} emissions in the area. A more detailed discussion of the individual source contributions and their associated control measures (including available control technology) can be found in the TSD. EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Washington's PM_{10} nonattainment plan control strategy has resulted in attainment of the PM_{10} NAAQS by December 31, 1994, and thus is approved.

4. Demonstration

As noted, the initial moderate PM_{10} nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the CAA). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. WDOE and YCCAA conducted attainment demonstrations using Regional Air Modeling (RAM), a dispersion modeling program, for the Yakima area. However, WDOE and YCCAA have not submitted a demonstration that indicates the 24 hour NAAQS for PM_{10} will be attained by 1994 in the Yakima area with the new allowable major source emissions. The 24-hour PM_{10} NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR section 50.6). The annual PM_{10} NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$. A quantitative milestone demonstration has not yet been submitted showing that the PM_{10} NAAQS will be maintained for the three years following the attainment date (December 31, 1997) and thus a limited disapproval action is being taken for the plan. The control strategy used to attain the PM_{10} standard is summarized in the section titled "RACM (including RACT)". A more detailed description of the attainment demonstration and the control strategy used can be found in the TSD.

5. PM_{10} Precursors

The control requirements which are applicable to major stationary sources of PM_{10}, also apply to major stationary sources of PM_{10} precursors unless EPA determines such sources do not contribute significantly to PM_{10} levels in excess of the NAAQS in that area (see section 189(e) of the CAA). Even if precursors are controlled, available data showing the contribution of precursors should be provided by the State and placed in the SIP rulemaking record in the event that sources of precursors assert that they should be granted an exclusion from control under section 189(e).

An analysis of air quality and emissions data for the Yakima nonattainment area indicates that exceedances of the NAAQS are attributed chiefly to particulate matter emissions from solid fuel combustion and that sources of particulate matter precursor emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) contribute an insignificant amount. Even with WDOE assuming worst case conditions, the Yakima area precursor sources would only total 7.9% of the emissions inventory. The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that while EPA is making a general finding of approval for this area, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM_{10} nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated to attainment and which demonstrate Reasonable Further Progress (RFP), as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the CAA). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In implementing RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM_{10} NAAQS by December 31, 1994 (see section 171(1)). The Yakima PM_{10} SIP does not adequately demonstrate attainment for 1994 and does not contain a 1997 quantitative milestone report to demonstrate the area's maintenance of air quality until redesignation to attainment is granted. For full approval, WDOE and YCCAA must submit a plan which demonstrates RFP towards attainment through December 31, 1997.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (See section 110(a)(2)(C)).

Yakima's SIP control measure is addressed above under the section headed "RACM (including RACT)." The control measure applies to curtailing residential woodsmoke activities during impaired air quality conditions. The SIP provides that all non-certified solid fuel burning devices are subject to curtailment under Stage I calls, and all woodheating devices are banned during a Stage II call. The curtailment calls are not applicable to those residences that have no other source of heat available.

The attached TSD contains further information on enforceability requirements including enforceable emission limitations, a description of the rules contained in the SIP and the source types subject to them, test methods with averaging times, malfunction provisions, correctly cited references of incorporated methods/rules, and reporting and recordkeeping requirements.

Because YCCAA is authorized by WDOE to enforce the woodsmoke curtailment program, as well as the other RACM measures contained within

[1] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the Act.

the SIP such as source emission limitations and 20% opacity restrictions, the YCCAA regulations must be enforceable in order to approve the Yakima nonattainment plan. Under section 110(a)(2)(E)(iii) of the CAA the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of plan provisions. WDOE would have responsibility where, for example, they have the authority and resources to implement provisions where the local entity fails to do so. State law requires local agency regulation to be as stringent or more stringent than the state's regulations. At this time several of the YCCAA regulations are less stringent than the state's regulations and thus are not legally enforceable, and need to be corrected before full plan approval. Details describing the YCCAA regulation deficiencies are contained in the TSD supporting this notice.

8. Contingency Measures

As provided in section 172(c)(9) of the CAA, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (See generally 57 FR 13543–13544). These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM_{10} NAAQS by the applicable statutory deadline. The Yakima SIP contains a Woodstove Buy Back Program (WSBBP) as its primary contingency measure. The WSBBP is being implemented as a 100% overcontrol measure. The program has been in effect since July 1, 1993, when EPA funding was secured, and has replaced approximately 70 uncertified woodstoves to cleaner forms of heat such as certified woodstoves, electricity, or gas. The WSBBP provides overcontrol for the area by creating a reduction in overall emissions regardless of whether a PM_{10} NAAQS violation occurs, and thus is being approved as Yakima's contingency measure.

III. Implications of This Action

EPA is proposing limited approval and limited disapproval of the plan revisions submitted to EPA for the Yakima nonattainment area on March 24, 1989; May 1, 1992; August 19, 1992; February 3, 1994; and March 1, 1995.

In order to fully approve the Yakima moderate PM_{10} nonattainment SIP submitted by the WDOE and the YCCAA, some corrections and supplements need to be submitted to and approved by EPA. The plan deficiencies are described above and more completely in the TSD. Several YCCAA regulations need to be corrected to become at least as stringent as WDOE's corresponding regulations, a new 1994 attainment demonstration needs to be submitted using worst case allowable emissions, and a quantitative milestone report needs to be submitted demonstrating attainment of the area until December 31, 1997. If finalized without correcting these deficiencies, this limited approval/disapproval would constitute a disapproval under section 179(a)(2) of the CAA (See generally 57 FR 13566–67). As provided under section 179(a) of the CAA, the State of Washington would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 24 months after the disapproval, EPA must impose the second sanction. Any sanction EPA imposes must remain in place until EPA determines that the State has corrected these deficiencies. If EPA ultimately disapproves the SIP submittal for the Yakima nonattainment area and the State of Washington fails to correct the deficiencies within 18 months of such disapprovals, EPA anticipates that the first sanction it would impose would be the two-to-one offset requirement. Note also that any final disapproval would trigger the requirement for EPA to impose a federal implementation plan as provided under section 110(c)(1) of the CAA.

IV. Request for Public Comments

EPA is requesting comments on all aspects of this proposal. As indicated at the beginning of this notice, EPA will consider any comments postmarked by December 7, 1995.

V. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2224), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 24, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–27567 Filed 11–6–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[FRL–5325–6]

RIN 2060–AD93

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: Today's action provided in this document proposes to amend the rule, "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"), promulgated on December 14, 1994. The proposal would amend the initial compliance date for the equipment leak provisions applicable to existing sources from no later than December 14, 1995 to no later than December 15, 1997, and would amend the date by which an existing facility must provide an initial notification to December 16, 1996 or 1 year after a facility becomes subject to the Gasoline Distribution NESHAP, whichever is later. These modifications are being proposed because the compliance date for these provisions is approaching and the EPA believes that, under current circumstances, additional time will allow sources a better opportunity to establish major or area source status without foregoing quantifiable emissions reductions. The EPA is requesting comments for the next 30 days only on the proposed changes discussed in this document.

DATES: *Comments.* Comments must be received on or before December 7, 1995 unless a hearing is requested by November 17, 1995. If a hearing is requested, written comments must be received by December 22, 1995.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than November 21, 1995. If a hearing is held, it will take place on November 21, 1995, beginning at 9:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket (6102), Attention Docket Number A–92–38 (see docket section below), room M1500, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5671.

Docket. Docket No. A–92–38, Categories VI Reconsideration and VII Amendments, contains information considered by the EPA in developing this proposal document and is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the Gasoline Distribution NESHAP.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shedd at telephone number (919) 541–5397 or at facsimile number (919) 541–3470, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1994 (59 FR 64303), the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"). The Gasoline Distribution NESHAP regulates all hazardous air pollutants (HAP) emitted from new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of HAP emissions or are located at sites that are major sources of HAP emissions. Among the promulgated requirements for existing sources under this rule are the requirements that sources institute an equipment leak prevention program and provide an initial notification of regulatory status no later than December 14, 1995 (40 CFR §§ 63.424(e) and 63.428(a)).

Whether a bulk gasoline terminal or pipeline breakout station is a major source or at a site that is a major source is determined by a site's "potential to emit considering controls" (Act 112(a), 42 U.S.C. 7412(a)). In the Gasoline Distribution NESHAP, the EPA promulgated two mechanisms for determining major source status that are specific to this rule: first, the NESHAP included screening equations for determining potential emissions from terminals and breakout stations based on the HAP content of gasoline, gasoline throughput, and emission rates from equipment used to handle gasoline; and second, the NESHAP allowed for case-by-case review or "emissions inventory" of a site's emissions (40 CFR § 63.420). The equations could be used only by bulk terminals and pipeline breakout stations that were at sites that had no other sources of HAP. Other sources would be able to establish potential to emit either by an emissions inventory or by using other means (outside the rule) that are generally available to sources under Subpart A of part 63, the General Provisions, and related guidance.

When the EPA promulgated the Gasoline Distribution NESHAP, the EPA anticipated that about 75 percent of all gasoline bulk terminals and pipeline breakout stations would be able to establish area source status. However, the EPA recognizes that several developments since promulgation of the rule have affected the number of sources that will establish area source status.

First, through a petition for reconsideration filed by the American Petroleum Institute (API), the EPA has learned that virtually all bulk terminals and pipeline breakout stations have HAP containing fluids such as distillates (e.g., diesel fuel and heating fuel oil) that are handled in equipment outside of the source category. According to API, this limits the utility of the emissions screening equation as a method for establishing potential to emit.

Second, the EPA has issued two guidance memoranda on options for and timing of establishing potential to emit limits. See memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement, "Options for Limiting the Potential to Emit (PTE) of

a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)" (January 25, 1995); and memorandum from John S. Seitz, "Potential to Emit for MACT Standards—Guidance on Timing Issues" (May 16, 1995). These memoranda are available in the docket (see **ADDRESSES** section). The first memorandum identified a number of ways States and sources could establish federally enforceable limits for potential to emit. In addition, the memorandum created a 2-year transition period (until January 1997) under which sources could be treated as area sources if (1) the source actually emits less than 50 percent of the major source threshold and keeps adequate records, or (2) the source emits between 50 and 100 percent of the major source threshold, and is limited to this level by State limitations that are enforceable as a practical matter.

The second memorandum addressed timing issues related to the applicability of NESHAP that affect only major sources. Major sources can reduce their potential emissions by obtaining federally enforceable limitations on their potential to emit, and as a result can achieve area source status. Before the memorandum was released, it was not clear whether there was a deadline for achieving area source status, and whether a source that reduced its potential emissions after the deadline could avoid being subject to the standard. The memorandum explained that, in the absence of rulemaking, the best reading of section 112 would require area source status to be achieved by the first substantive compliance date of a NESHAP. Additionally, the memorandum explained that unless area source status is achieved by this deadline, it will be permanently treated as a major source for purposes of that NESHAP.

Applying these two guidances to the Gasoline Distribution NESHAP would mean that, in order to avoid being permanently treated as a major source subject to the NESHAP, gasoline distribution facilities would need to achieve area source status before December 15, 1995, the compliance date for the equipment leaks provision. Industry reports there are a number of sources emitting less than the major source threshold that do not have what the EPA believes are practicably enforceable limitations on their potential to emit. Under the transition policy discussed above, sources emitting more than 50 percent of major source threshold and lacking practicably enforceable limits, are currently treated as major sources. The mechanisms for establishing practicably enforceable limitations on "throughput" (the amount of gasoline, distillate, and other HAP emitting liquids handled at the terminal or breakout station) generally exist. Those mechanisms, however, require time to process to put into place for sources. Given the proximity of the date of the May 16 policy guidance to the December 15, 1995 deadline, the EPA believes that some sources emitting more than 50 percent of the major source threshold may not have a reasonable time period to establish practical limitations on their potential to emit.

II. Summary of and Rationale for the Amendments

Because the developments since promulgation of the Gasoline Distribution NESHAP have led the EPA to believe that fewer sources will be able to achieve area source status than had been anticipated, the EPA has considered ways to modify policy or rule provisions so that the applicability of the NESHAP will reflect the EPA's intent at the time of promulgation. After considering revising one or both of the guidances as they would apply to this source category, and after considering the amendment of the emissions screening equation, the EPA believes the most appropriate way to allow sources a better opportunity to establish major or area source status without foregoing quantifiable emission reductions would be to defer the compliance date for the equipment leak provisions for existing sources until December 15, 1997. Furthermore, for the reasons discussed below, the EPA proposes amending the initial notification provisions so that notice is not required until December 16, 1996.

Deferral of the existing source compliance dates for equipment leak programs and initial notifications is consistent with the deadlines for compliance under the Act section 112(i), which requires existing major sources to be in compliance with a rule within 3 years of promulgation. The deferral of the equipment leak provisions will give facilities significant additional time to obtain appropriate limits on potential to emit hazardous air pollutants. The deferral of the initial notification for existing sources will give cargo truck operators more accurate notice of the regulatory status of the terminals that they use and provide adequate lead time for any necessary truck vapor tightness testing to be performed during normal testing schedules. Additionally, the notices will provide Federal, State, and local air pollution control agencies an opportunity to plan for the implementation of this rule prior to the first compliance date for existing sources. The initial notifications will be considered non-binding in the case of sources that are major sources on December 16, 1996, but become area sources prior to December 15, 1997. Sources that cannot limit their potential to emit before December 15, 1997, must comply with the requirements for major sources under the Gasoline Distribution NESHAP by that date.

Emissions of HAP associated with equipment leaks at bulk terminals and pipeline breakout stations were estimated to be less than 2 percent of baseline HAP emissions for the source category. An industry survey indicated that 80 percent of bulk terminals were already performing some type of periodic visual leak detection program; therefore, deferring the compliance date of the Gasoline Distribution NESHAP provisions on leak detection would not forego significant emission reductions.

Deferring the compliance date for the equipment leak provisions for existing sources is preferable to the other available options. The other options are: (1) to deem the January 25 or May 16 guidance memoranda inapplicable to the Gasoline Distribution NESHAP; (2) to adopt a temporary certification scheme similar to that adopted for the Hazardous Organic NESHAP (HON); and (3) to modify the emission screening equations based on data currently before the EPA. While the guidances do not have the legal status of a rule, the EPA continues to believe that the analysis expressed in the timing guidance is the best reading of the Act section 112. Addressing the timing issues by allowing a site to temporarily be a major source and then subsequently an area source would mean that many sources would be temporarily subject to the equipment leak provisions. Not only would this pose difficulties in assuring compliance but it would also produce little, if any, emission reduction benefits.

If the EPA were to allow an owner or operator of a source to make a temporary certification that the source is not at a major source, in a manner similar to the HON amendments promulgated on April 10, 1995 (60 FR 18020), then potentially hundreds of temporary certifications would be required. Unlike the source category subject to the HON, which is estimated to have 20 to 40 eligible plant sites, air pollution control agencies would have little practical opportunity for oversight of these numerous temporary certifications. Therefore, because of the temporary nature of the HON certifications and the vast difference in the numbers of potential certifications, the EPA is not proposing to condition an extension of the compliance date on the filing of a certification that actual emissions are below major source levels.

At this time, the EPA does not have sufficient analyzed data and information to propose modification to the emission screening equation in the rule. The EPA is considering data submitted by the API as part of its petition for reconsideration (available in the docket) and may propose modification of the equation and request comment at a later date. The EPA is not requesting comments at this time on the petition for reconsideration or potential changes to the emission screening equation.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0325) may be obtained from Ms. Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M St., S.W. (mail code 2136), Washington, D.C. 20460, or by calling (202) 260–2740.

Today's proposed changes to the Gasoline Distribution NESHAP have no impact on the information collection burden estimates made previously. No additional certifications or filings are proposed. Therefore, the ICR has not been revised.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) Is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Is likely to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Is likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Gasoline Distribution NESHAP promulgated on December 14, 1994, was treated as a "significant regulatory action" within the meaning of the Executive Order. An estimate of the cost and benefits of the NESHAP was prepared at proposal as part of the Background Information Document (BID) and was updated in the BID for the final rule to reflect comments and changes to the final rule. The amendments proposed today would have no impact on the estimates in the BID. The EPA's earlier estimates of costs and emission reductions were based on the Gasoline Distribution NESHAP affecting only major sources and did not quantify the emissions reductions associated with the visual equipment leak detection program; in any event, these emission reductions are small relative to the total reduction for the source category.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is a "non-significant regulatory action" within the meaning of the Executive Order. As such, this action was not submitted to OMB for review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of regulations on small business entities. The Act specifically requires the preparation of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. When the EPA promulgated the Gasoline Distribution NESHAP, it analyzed the potential impacts on small businesses, discussed the results of this analysis in the **Federal Register**, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. Because today's proposal imposes no additional impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Petroleum bulk stations and terminals, Reporting and recordkeeping requirements.

Dated: November 1, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.424 is amended by revising paragraph (e) to read as follows:

§ 63.424 Standards: Equipment leaks.

* * * * *

(e) Initial compliance with the requirements in paragraphs (a) through (d) of this section shall be achieved by existing sources as expeditiously as practicable, but no later than December 15, 1997. For new sources, initial compliance shall be achieved upon startup.

* * * * *

3. Section 63.428 is amended by revising paragraphs (a) and the first sentence of paragraph (f)(1) to read as follows:

§ 63.428 Reporting and recordkeeping.

(a) The initial notifications required for existing affected sources under

§ 63.9(b)(2) shall be submitted by 1 year after an affected source becomes subject to the provisions of this subpart or by December 16, 1996, whichever is later. Affected sources that are major sources on December 16, 1996 and plan to be area sources by December 15, 1997 shall include in this notification a brief, non-binding description of and schedule for the action(s) that are planned to achieve area source status.

* * * * *

(f) * * *

(1) In the case of an existing source or a new source that has an initial startup date before the effective date, the report shall be submitted with the notification of compliance status required under § 63.9(h), unless an extension of compliance is granted under § 63.6(i).

* * *

* * * * *

4. Table 1 to subpart R is amended by revising the entry "63.9(b)(2)" to read as follows:

* * * * *

TABLE 1 TO SUBPART R.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
.	.	.
63.9(b)(2)	Yes	Subpart R allows addition time for existing sources to submit initial notification. § 63.428(a) specifies submittal by 1-year after being subject to rule or December 16, 1997, whichever is later.
.	.	.

[FR Doc. 95–27568 Filed 11–6–95; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 215
Tuesday, November 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Collection Requirements Submitted for Public Comment and Recommendations: Evaluation of the Team Nutrition Pilot Implementation Communities

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB review of the Evaluation of the Team Nutrition Pilot Implementation Communities.

DATES: Comments on this notice must be received by January 8, 1996.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3103 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the Team Nutrition Pilot Implementation Communities.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: Team Nutrition is a multi-dimensional nutrition education program delivered through the media, homes, schools and other community partners. It also includes training and technical assistance to support school efforts to implement the Dietary Guidelines for Americans in their food services. The major objectives of this study are to (1) describe and compare school and community strategies to implement the Team Nutrition approach to improving children's food choices, and (2) assess the outcomes of Team Nutrition activities on students, their parents, teachers, school staff and administrators, as well as school food service practices.

The evaluation will focus on seven volunteer school districts in which 30 elementary and seven middle schools will implement Team Nutrition activities during the 1996 Spring and 1996 Fall semesters. Four of these districts have also volunteered to participate in the outcome evaluation. In these districts, 24 elementary and 12 middle schools will serve as treatment or comparison sites over the same time period.

The evaluation includes seven data collection protocols: (1) Activity logs maintained by teachers, staff and administrators describing nutrition promotion events; (2) a classroom survey of all students, in two different grades, at treatment and comparison schools; (3) observations of food choice and plate waste behavior in school cafeterias among subsamples of the same students; (4) in person interviews with subsamples of surveyed students; (5) a telephone survey with a parent of each student surveyed; (6) a self-administered survey of teachers who deliver nutrition education; (7) personal interviews with key administrators and staff who make and implement food service policy.

Estimate of Burden: The public reporting burden associated with one application of each protocol described above is estimated to average 2 minutes for each activity log entry, 15 minutes for the classroom survey of students, 0 burden for cafeteria observations, 30 minutes for the student interviews, 25 minutes for the parent survey, 20 minutes for the teacher survey, and 35 minutes for administrator and staff interviews.

Respondents: The kind of respondents associated with each data collection protocol is described above.

Estimated Number of Respondents: Surveys will be conducted with approximately 7800 students. Cafeteria observations will be made of about 5150 of these same students. 600 of these students will also participate in interviews. Approximately 7800 parents will be surveyed. 145 teachers will compete self-administered questionnaires, and 150 school administrators and food service staff will participate in interviews. The same teachers, administrators and staff will maintain activity logs of nutrition promotion events.

Estimated Number of Responses per Respondent: Most data collection protocols will be administered twice per respondent, before and after treatment in both school semesters referenced above. The only exception is for teachers, food service staff and administrators from participating elementary schools who will respond to appropriate protocol—questionnaries for teachers and interviews for others—a total of four times (twice in each of two semesters). Administrators, teachers and staff are expected make an average of 200 entries on the activity logs.

Estimated Total Burden on Respondents: 13,365 hours. Copies of this information collection can be obtained from Carol Olander, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Dated: November 1, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–27573 Filed 11–6–95; 8:45 am]

BILLING CODE 3410–30–M

Collection Requirements Submitted for Public Comment: Nutrition Education and Training Program: Program Funding

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this proposed notice is intended to elicit public comment on our request to the Office of Management and Budget (OMB) for approval of information collection for the Nutrition Education

and Training Program. This notice seeks to renew approval previously granted for collection of information via the FCS–665, Supplement to financial Status Report, Nutrition Education and Training Program.

DATES: Comments must be received on or before January 8, 1996, in order to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection information to: Lou Pastura, Acting Director, Grants Management Divison, Food and Consumer Service, 3101 Park Center Drive, Alexandria, VA 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, VA, Room 412.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposed notice should be addressed to Mr. Pastura at the above address or by telephone at (703) 305–2048.

SUPPLEMENTARY INFORMATION:

Title: FCS–665, Supplement to Financial Status Report, Nutrition Education and Training Program.

OMB Number: 0584–0383.

Expiration Date of Approval: October 31, 1995.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of The Nutrition Education and Training (NET) Program is to encourage effective dissemination of scientifically valid information to children participating in the school lunch and related child nutrition programs by establishing a system of grants to State educational agencies for the development of comprehensive nutrition information and education programs. The NET Program currently has 53 State agencies participating. Since section 19 of the Child Nutrition Act (42 U.S.C. 1788) since establishes two statutory conditions relating to the use of these funds, certain reporting requirements must be in place. The two conditions are: (1) No more than 15 percent of the NET grant may be used for administrative purposes; and (2) The State must match each Federal dollar so applied with one dollar from State sources. To ensure compliance with these conditions, it is necessary to identify the amount of both Federal grant funds and State matching funds that the State agency has applied to NET Program administrative costs. While each State agency uses the SF–269 for total program outlays, this form does not provide a means for capturing subdivisions of total program outlays. Thus, form FCS–665 has been developed to serve that purpose with respect to the NET Program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: State governments.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 66.25 hours.

Dated: October 30, 1995.

William E. Ludwig,

Administrator.

[FR Doc. 95–27499 Filed 11–6–95; 8:45 am]

BILLING CODE 3410–30–M

Grain Inspection, Packers and Stockyards Administration

Designation of Quanta for the South Texas Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Quanta Lab (Quanta), main office located in Selma, Texas, to provide official inspection services under the United States Grain Standards Act, as amended (Act), for 1 year. Initially, Quanta will be providing aflatoxin testing services. Quanta will phase in other official services as soon as they are ready.

EFFECTIVE DATE: January 1, 1996.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202– 720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 1995, **Federal Register** (60 FR 11952), GIPSA asked persons interested in providing official services in South Texas under a pilot program allowing more than one official agency to provide service in a single geographic area to submit an application for designation. There were two applicants: Quanta, main office located in Selma, Texas; and Saybolt-South Texas Inspection Service, Inc. (Saybolt), main office located in Galena Park, Texas. Quanta applied for the Texas Counties of: Atascosa, Bexar, Dimmit, Duval, Frio, Kinney, La Salle, Maverick, McMullen, Medina, Uvalde, Val Verde, Webb, and Zavala. Quanta subsequently amended their application to include all the counties announced in the March 3, 1995, **Federal Register**. Saybolt applied for all Counties announced in the March 3, 1995, **Federal Register**.

GIPSA, in the March 3, 1995, **Federal Register**, also asked for comments on the need for official services in the South Texas region. Comments were due by March 21, 1995. GIPSA received 10 comments by the deadline. All but one of the comments indicated that there is no need for an official inspection service in South Texas because of the service provided by the Corpus Christi Grain Exchange. The Corpus Christi Grain Exchange is an unofficial agency not designated by GIPSA under authority of the Act. The other comment was of the view that the proposal was unworkable due to competitive factors, the level of demand for official services in the pilot area, and the size of the pilot area.

GIPSA requested comments on the applicants in the June 1, 1995, **Federal Register** (60 FR 28572). Comments were due by July 15, 1995. GIPSA received no comments by the deadline.

GIPSA visited both applicants and attended a trade association meeting in South Texas. Based on information from these and other sources, GIPSA believes there is sufficient need for official service.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act, and determined that Saybolt is not qualified due to its providing unofficial inspection services resulting in a conflict of interest. GIPSA also evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Quanta is able to provide official services in the South Texas area. Since there is only one qualified applicant, GIPSA can not run a pilot program in South Texas. Since Quanta is able, GIPSA is designating Quanta to provide official services in South Texas effective January 1, 1996.

Effective January 1, 1996, and ending December 31, 1996, Quanta is designated to provide official inspection services in the Texas Counties of: Atascosa, Bexar, Brooks, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, La Salle, Live Oak, Maverick, McMullen, Medina, Nueces, San Patricio, Starr, Uvalde, Val Verda, Webb, Willacy, Zapata, and Zavala, excluding those export port locations served by GIPSA. Initially, Quanta will be providing official aflatoxin services. Quanta will phase in other official services as soon as they have the required equipment and expertise.

Interested persons may obtain official aflatoxin testing services by contacting Quanta at 210–651–5799.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71*et seq.*)

Dated: October 30, 1995

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 95–27500 Filed 11–6–95; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Information Systems Technical Advisory Committee will be held November 30, 1995, 9 a.m., room 1617M–2, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenue, NW., Washington, DC. This Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

Agenda

Closed Session—9 a.m.–9:30 p.m.

1. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

General Session—9:30 a.m.–12 p.m.

2. Welcome and Introductions.
3. Nominations and Election of Chairmen.
4. Presentations and Comments from the Public.
5. Recent Announcements and Changes Affecting Commodities under the Purview of the Committee.
6. Effect of Export Controls on Information Security Products.
7. Using Composite Theoretical Performance (CTP) to Measure the Performance of Networks.

Closed Session—1 p.m.–5 p.m.

8. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meeting or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: November 1, 1995.

Lee Ann Carpenter,

Director, Technicol Advisory Committee Unit.

[FR Doc. 95–27471 Filed 11–6–95; 8:45 am]

BILLING CODE 3510–DT–M

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comments on the potential market impact of proposed disposals of excess commodities from the National Defense Stockpile. This action concerns the Department of Defense proposed disposal plans under Fiscal Year (FY) 1997 Annual Materials Plan (AMP) and revisions to the FY 1996 AMP.

SUMMARY: This notice is to advise the public that the interagency National Defense Stockpile Market Impact Committee is seeking public comment on the market impact of proposed disposals of excess materials currently held in the National Defense Stockpile.

DATES: Comments must be received by December 7, 1995.

ADDRESSES: Written comments (10 copies) should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3878, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen G. Brundage, Office of International Energy and Commodities Policy, U.S. Department of State, (202) 647–2871; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (as National Defense Stockpile Manager) maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *." The Committee includes representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The NDAA for Fiscal Year 1993 directs the Committee to "consult from time to time with representatives of producers, processors

and consumers of the types of materials stored in the stockpile."

The Department of Defense, Defense National Stockpile Center (DNSC), has submitted to the Committee for its consideration and recommendations the proposed FY 1997 Annual Materials Plan (AMP) and revisions to the FY 1996 AMP for the disposal of the listed Stockpile materials. These AMP documents are reprinted below.

Following Committee review, the AMP documents with Committee recommendations are submitted to the Congress by DNSC for approval.

Included in the proposed FY 1997 and revisions to the FY 1996 AMP below, are the proposed maximum disposal quantities for each listed material. Please note that these quantities are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each material that can be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of material approved for disposal by the Congress.

PROPOSED FISCAL YEAR 1997 AMP

Material	Units	Current FY 1996 quantity	Proposed FY 1997 quantity
Aluminum Oxide, Abrasive	ST	6,000	12,000
Aluminum Oxide, Fused Crude	ST	15,000	30,000
Analgesics	AMALB	2,500	2,500
Antimony	ST	3,000	3,000
Asbestos (all types)	ST	20,000	20,000
Bauxite, Metallurgical (Jamaican)	LDT	600,000	600,000
Bauxite, Metallurgical (Surinam)	LDT	300,000	300,000
Bauxite, Refractory	LCT	80,000	63,000
Beryl Ore	ST	2,000	2,000
Bismuth	LB	300,000	300,000
Cadmium	LB	750,000	1,200,000
Celestite	SDT	3,600	3,600
Chromite, Chemical	SDT	50,000	100,000
Chromite, Metallurgical	SDT	350,000	250,000
Chromite, Refractory	SDT	100,000	100,000
Chromium, Ferro	ST	25,000	50,000
Cobalt	LBCO	4,000,000	6,000,000
Diamond, Bort	CT	1,000,000	1,000,000
Diamond Stone	CT	2,000,000	1,000,000
Fluorspar, Acid	SDT	200,000	200,000
Fluorspar, Metallurgical	SDT	40,000	80,000
Graphite, Natural Malagasy	ST	1,220	1,220
Iodine	LB	1,000,000	1,000,000
Jewel Bearings	PC	0	31,000,000
Kyanite	SDT	0	1,200
Lead	ST	60,000	60,000
Manganese, Battery Grade Natural	SDT	60,000	60,000
Manganese, Battery Grade Synthetic	SDT	0	3,011
Manganese, Chemical Grade	SDT	40,000	40,000
Manganese, Ferro Alloys	ST	0	50,000
Manganese, Metal Electrolytic	ST	2,000	2,000
Manganese, Metallurgical Grade	SDT	400,000	400,000
Mercury	FL	20,000	20,000
Mica, Muscovite Block	LB	750,000	750,000
Mica, Muscovite Film	LB	500,000	500,000
Mica, Muscovite Splittings	LB	500,000	500,000
Mica, Phlogopite Splittings	LB	500,000	500,000
Nickel	ST	10,000	9,686
Quartz Crystals, Nat.	LB	300,000	0
Quinidine	Av Oz	200,000	200,000
Quinine	Av Oz	200,000	200,000
Sapphire and Ruby	CT	10,000,000	6,300,000
Sebacic Acid	LB	350,000	1,000,000
Silicon Carbide	ST	4,500	4,500
Silver (for coinage)	Tr Oz	9,000,000	9,000,000
Talc	ST	1,200	1,000
Thorium Nitrate	LB	1,000,000	1,000,000
Tin	MT	12,000	12,000
Vegetable Tannin Extract, Chestnut	LT	2,000	2,000
Vegetable Tannin Extract, Quebrac	LT	5,000	5,000
Vegetable Tannin Extract, Wattle	LT	5,000	5,000
Zinc	ST	50,000	50,000

PROPOSED REVISIONS TO FISCAL YEAR 1996 AMP

Material	Units	Quantity
Aluminum Oxide, Abrasive	ST	12,000
Aluminum Oxide, Fused Crude	ST	30,000
Cadmium	LB	1,200,000
Chromium, Ferro	SDT	50,000
Cobalt	LBCO	6,000,000
Diamond, Bort	CT	1,000,000
Fluorspar, Metallurgical	SDT	80,000
Jewel Bearings	PC	51,778,337
Kyanite	SDT	1,200
Manganese, B.G. Synthetic	SDT	3,011
Sebacic Acid	LB	4,508,697
Vanadium Pentoxide	ST V	333

The following list of new materials is presently under consideration by the Congress for disposal authority in both FY 96 and FY 97. The Committee is seeking public comment on the potential market impact of the sale of these materials in the event that Congress does grant such disposal authority.

PROPOSED NEW MATERIAL DISPOSAL AUTHORITY FOR FY 1996 AND FY 1997

Material	Units	FY 1996 quantity	FY 1997 quantity
Aluminum	ST	62,881	0
Chromium, Electrolytic	ST	500	500
Cobalt	LBCO	6,000,000	6,000,000
Columium, Carbide	LBCB	2,000	2,000
Columium, Ferro	LBCB	60,000	60,000
Germanium	KG	2,000	2,000
Indium	TROZ	50,205	0
Mica, Phlogopite Block	LB	10,000	10,000
Palladium	TROZ	100,000	100,000
Platinum	TROZ	50,000	50,000
Rubber	LT	125,138	60,000
Tantalum Carbide Powder	LBTA	1,000	1,000
Tantalum Minerals	LBTA	75,000	75,000
Tantalum Oxide	LBTA	20,000	20,000
Titanium Sponge	ST	2,000	2,000
Tungsten Ores and Concent	LB W	2,000,000	2,000,000
Tungsten Carbide Powder	LB W	10,000	10,000
Tungsten Metal	LB W	10,000	10,000
Tungsten, Ferro	LB W	10,000	10,000

The Committee requests that interested parties provide written comments, data, documentation, or any relevant information on the potential market impact of the sale of any commodity in the above three lists. Although comments in response to this Notice must be received by December 7, 1995 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Market Impact Committee AMP review process.

Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential information will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: November 2, 1995.

John A. Richards,

Deputy Assistant Secretary for Strategic Industries and Economic Security.

[FR Doc. 95–27538 Filed 11–6–95; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

Antidumping Duty Administrative Reviews; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for certain antidumping duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for preliminary and final determinations in certain administrative reviews of various antidumping duty orders and findings, pursuant to the Uruguay Round Agreements Act (URAA).

EFFECTIVE DATE: November 7, 1995.

FOR FURTHER INFORMATION CONTACT: John Kugleman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–0649.

SUPPLEMENTARY INFORMATION:

Background

Commerce has delayed conducting administrative reviews of the following orders and findings, pending the development of new questionnaire that accord with the URAA.

Since it is not practicable to complete the following reviews within the time limits mandated by the URAA (245 days from the last day of the anniversary month for preliminary determinations, 120 additional days for final determinations), pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department is extending the time limits as follows:

Product	Country	Review period	Initiation date	Prelim. due date	Final due date
Brass Sheet & Strip (A–122–601).	Canada	1/12/94	2/15/95	1/31/96	7/29/96
Anhydrous Sodium Metasilicate (A–427–098).	France	1/12/94	2/15/95	1/31/96	7/29/96
Stainless Steel Wire Rods (A–427–811).	France	1/12/94	2/15/95	1/31/96	7/29/96
Stainless Steel Cooking Ware (A–580–601).	Republic of Korea	1/12/94	2/15/95	1/31/96	7/29/96
Forged Stainless Steel Flanges (A–533–809).	India	2/9/94–1/21/95	3/15/95	2/28/96	8/26/96
Mechanical Transfer Presses (A–588–810).	Japan	2/94–1/95	3/15/95	2/28/96	8/26/96
Axes/Adzes; Bars/Wedges; Hammers/Sledges; Picks/Mattocks (A–570–803).	People's Republic of China (PRC).	2/94–1/95	3/15/95	2/28/96	8/26/96
Natural Bristle Paint Brushes (A–570–501).	PRC	2/94–1/95	3/15/95	2/28/96	8/26/96
Shop Towels (A–538–802)	Bangladesh	3/94–2/95	4/14/95	4/1/96	9/25/96
Ferrosilicon (A–533–806)	Brazil	3/94–2/95	4/14/95	4/1/96	9/25/96
Stainless Steel Butt-Weld Pipe and Tube Fittings (A–588–702).	Japan	3/94–2/95	4/14/95	4/1/96	9/25/96
Steel Wire Rope (A–580–811)	Korea	3/94–2/95	4/14/95	4/1/96	9/25/96
Circular Welded Pipe & Tube (A–549–502).	Thailand	3/94–2/95	4/14/95	4/1/96	9/25/96
Sulfanilic Acid (A–412–810)	PRC	3/94–2/95	4/14/95	4/1/96	9/25/96
Color Television Receivers (A–580–008).	Korea	3/94–2/95	4/14/95	4/1/96	9/25/96
Lead & Bismuth Carbon Steel (A–412–810).	United Kingdom	3/94–2/95	4/14/95	4/1/96	9/25/96
Roller Chain, Other than Bicycle (A–588–028).	Japan	4/94–3/95	5/15/95	4/30/96	10/28/96
Certain Fresh Cut Flowers (A–201–601).	Mexico	4/94–3/95	5/15/95	4/30/96	10/28/96

Interested parties must submit applications disclosure under administrative protective order in accordance with 19 CFR 353.34(b).

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)).

Dated: October 25, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–27559 Filed 11–6–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–803]

Certain Small Business Telephone Systems from Korea; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On June 15, 1995, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain small business telephone systems (SBTS) from Korea covering the period February 1, 1994, through January 31, 1995. We are now terminating that review.

EFFECTIVE DATE: November 7, 1995.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1994, TT Systems, an importer of SBTS from Korea, requested that the Department conduct an administrative review of the antidumping duty order on SBTS from Korea with respect to one manufacturer/exporter, Ssangbangwool Electronics. The review period is February 1, 1994, through January 31, 1995.

On June 15, 1995, the Department published in the **Federal Register** (60 FR 31447) a notice of initiation of an administrative review of the order with respect to Ssangbangwool and the period February 1, 1994, through January 31, 1995.

On August 28, 1995, TT Systems Corp. requested that it be allowed to withdraw its request for a review and that the review be terminated.

The Department's regulations at 19 CFR 353.22(a)(5) (1994) state that "the Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request no later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." Because no significant work has yet been done, we have determined that it is reasonable to extend the 90-day time limit and to allow TT Systems to withdraw its request for review. See *Steel Wire Rope From Japan; Partial Termination of Antidumping Duty Administrative Reviews*, 56 FR 41118 (August 19, 1991). Accordingly, the Department is terminating this review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: October 30, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–27558 Filed 11–6–95; 8:45 am]

BILLING CODE 3510–DS–P

University of South Carolina, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–036. *Applicant:* University of South Carolina, Columbia, SC 29208. *Instrument:* ICP Mass Spectrometer, Model ELEMENT. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* See notice at 60 FR 29827, June 6, 1995. *Reasons:* The foreign instrument provides: High resolution to 0.02 AMU to provide (1) separation of Fe Isotopes from ArO interferences and (2) resolution of interferences from Polatomic Species such as $^{40}Ar^{16}O$. *Advice Received From:* National Institutes of Health, September 13, 1995.

Docket Number: 95–037. *Applicant:* University of Miami, Coral Gables, FL 33145. *Instrument:* L-B Film Deposition Apparatus with Ellipsometric Microscope. *Manufacturer:* Nippon Laser & Electronics Lab., Japan. *Intended Use:* See notice at 60 FR 29827, June 6, 1995. *Reasons:* The foreign instrument provides a moving-wall though design and an ellipsometric microscope using polarizers working at the Brewster angle for study of the morphology of monolayer surfactants. *Advice Received From:* National Institutes of Health, September 13, 1995.

Docket Number: 95–038. *Applicant:* University of California, Berkeley, CA 94720-3140. *Instrument:* Mass Spectrometer. *Manufacturer:* Europa Scientific Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 31144, June 13, 1995. *Reasons:* The foreign instrument provides: (1) 120° extended geometry magnetic sector analyzer (2) external precision of 0.1 per mil for 13C and 0.3 per mil for 15N and (3) simultaneous measurement of CO_2 and N_2. *Advice Received From:* National Institutes of Health, September 13, 1995.

Docket Number: 95–045. *Applicant:* The Scripps Research Institute, La Jolla, CA 92037. *Instrument:* Mass Spectrometer System, Model API 100. *Manufacturer:* PE Sciex, Canada. *Intended Use:* See notice at 60 FR 33190, June 27, 1995. *Reasons:* The foreign instrument provides: (1) curtain gas to reduce sample contamination, (2) mass range to 3000 m/z and (3) operation of the care system at room temperature. *Advice Received From:* National Institutes of Health, September 14, 1995.

National Institutes of Health that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–27560 Filed 11–6–95; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Tuesday, November 28, 1995, from 8:30 a.m. to 4 p.m. The Board of Overseers consists of nine members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meting on November 28, 1995, will be for the Board of Overseers to receive and then discuss reports from the National Institute of Standards and Technology with the chairman of the Judges Panel of the Malcolm Baldrige National Quality Award. These reports will cover the following topics: Overview of the 1995 award program; report by the contractor, American Society for Quality Control; discussion of program status and plans for 1995; develop recommendations and report same to the Director of the National Institute of Standards and Technology.

DATES: The meeting will convene November 28, 1995 at 8:30 a.m., and adjourn at 4 p.m. on November 28, 1994.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

Dated: November 1, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–27561 Filed 11–6–95; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

November 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 1, 1995, you are directed to amend further the January 24, 1995 directive to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	399,546 dozen.
331	943,828 dozen pairs.
334	133,792 dozen.
335	144,772 dozen.
336/636	378,453 dozen.
342/642	327,604 dozen.
347/348	1,843,587 dozen.
369–S [2]	1,171,007 kilograms.
634	384,226 dozen.
635	235,375 dozen.
641	490,263 dozen.
638/639	1,198,962 dozen.
645/646	279,211 dozen.
647/648	1,322,319 dozen.
847	456,945 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–27472 Filed 11–6–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Availability of the Tritium Supply and Recycling Final Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Tritium Supply and Recycling Final Programmatic Environmental Impact Statement (PEIS), DOE/EIS–0161. The Tritium Supply and Recycling PEIS evaluates alternatives for an assured, long-term supply of tritium, a radioactive gas which is a necessary component of every weapon in the Nation's nuclear weapons stockpile.

DATES: The Final PEIS was approved by the Department on October 13, 1995. The Environmental Protection Agency published its Notice of Availability regarding this Final PEIS on October 27, 1995. DOE intends to issue a Record of Decision on the Tritium Supply and Recycling PEIS; the decision may be issued no sooner than 30 days from the publication date of the Environmental Protection Agency Notice of Availability in the **Federal Register**.

ADDRESSES AND FURTHER INFORMATION: A copy of the Final PEIS, its Executive Summary, or both may be obtained by calling 1–800–776–2765, or writing to: Office of Reconfiguration, DP–25, U.S. Department of Energy, P.O. Box 3417, Alexandria, Virginia 22302.

Requests for copies of the Final PEIS can also be made electronically via computer as follows: Federal Information Exchange Bulletin Board, InterNet Address: FEDIX.FIECOM, Modem Toll-Free: 1–800–783–3349, DC Metro Modem: 301–258–0953.

For general information on the DOE NEPA review process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Tritium Supply and Recycling Final PEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508) and the DOE NEPA regulations (10 CFR Part 1021). In the PEIS, the Department proposes to acquire a long-term, assured capability for tritium supply and recycling. Tritium, a radioactive gas with a relatively short radioactive half-life of 12.3 years, is a necessary component of every weapon in the Nation's nuclear weapons stockpile and must be replenished periodically in nuclear weapons to ensure that they function as designed. Currently, the Department does not have the capability to produce the quantity of tritium that is expected to be required to maintain the readiness of the nuclear weapons stockpile.

The Tritium Supply and Recycling PEIS evaluates alternatives for providing long-term, assured tritium supply and recycling. Four technologies for new tritium supply facilities are assessed in the PEIS: Heavy Water Reactor, Modular High-Temperature Gas-Cooled Reactor, Advanced Light Water Reactor, and Accelerator Production of Tritium. Five sites for new tritium supply facilities and tritium recycling facilities are assessed: the Idaho National Engineering Laboratory (near Idaho Falls, Idaho); the Nevada Test Site (near Las Vegas, Nevada); the Oak Ridge Reservation (Oak Ridge, Tennessee); the Pantex Plant (Amarillo, Texas); and the Savannah River Site (Aiken, South Carolina). Additionally, the PEIS evaluates the alternative of producing tritium in existing commercial light water reactors via the purchase of an existing reactor or irradiation services. The PEIS also evaluates the environmental impacts associated with the use of an Advanced Light Water Reactor, Modular High Temperature Gas-Cooled Reactor or Commercial Light Water Reactor for the purpose of plutonium disposition in addition to the tritium mission (the so-called multipurpose reactor.) Two options for tritium recycling are evaluated: the upgrade of existing tritium recycling facilities at the Savannah River Site, or the collocation of a new tritium recycling facility with the tritium supply facility at one of the other sites.

The Tritium Supply and Recycling PEIS compares the environmental impacts that would be expected to occur from the tritium supply and recycling alternatives. The No Action alternative of not acquiring new long-term, assured tritium supply, and continuing to operate the existing tritium recycling facilities is also evaluated. The Tritium Supply and Recycling PEIS has a classified Appendix that provides additional information and analysis.

DOE issued a Tritium Supply and Recycling Draft PEIS on March 1, 1995 and invited comments on the adequacy and accuracy of the draft analysis. Almost 2000 comments were provided. The Final PEIS reflects changes made by DOE in response to public comments received and to provide additional information. Key revisions to the PEIS included additional discussion and analysis in the following areas: severe accidents and design-basis accidents for all tritium supply technologies; site-specific environmental impacts of a dedicated power plant for an accelerator; water resource sections; site-specific analysis of a multi-purpose reactor that could produce tritium, burn plutonium as fuel, and produce electricity; the addition of the use of a commercial reactor as a reasonable alternative; and the environmental impacts of providing tritium at an earlier date to support a higher stockpile level.

The Final PEIS also identifies the Department's preferred alternative. The preferred strategy is to begin work on the two most promising tritium production alternatives: (1) purchase an existing light water reactor or irradiation services with an option to purchase the reactor for conversion to a defense facility, and (2) design, build, and test critical components of an accelerator system for tritium production. Within a three-year period, the Department would select one of the alternatives to serve as the primary source of tritium. The other alternative, if feasible, would be developed as a back-up tritium source. The Savannah River Site was designated as the preferred site for an accelerator, should one be built. The preferred alternative for tritium recycling and extraction activities is to remain at the Savannah River Site with appropriate consolidation and upgrading of current recycling facilities and a new extraction facility.

DOE has distributed copies of the Tritium Supply and Recycling Final PEIS to interested individuals and organizations. Additional copies of the Final PEIS are available to any other interested persons and can be requested as described above. DOE expects to issue a Record of Decision on the Tritium Supply and Recycling PEIS in late November 1995.

Signed in Washington, D.C. this 31st day of October, 1995, for the United States Department of Energy.

Everet Beckner,

Principal Deputy Assistant Secretary for Defense Programs.

[FR Doc. 95–27549 Filed 11–6–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–41–000]

Colorado Interstate Gas Co.; Notice of Application

November 1, 1995.

Take notice that on October 31, 1995, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed an application in Docket No. CP96–41–000, pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon by transfer to CIG Field Services Company (Field Services), its affiliate, certain certificated and non-certificated facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to spin down to Field Services facilities located in the states of Wyoming, Utah, Colorado, Kansas, New Mexico and Oklahoma that will be involved in the gathering and processing of natural gas. It is stated that CIG and Field Services would enter into an agreement for the transfer of the facilities at net book value at the time of transfer. CIG indicates that the net book value of the proposed spin down facilities was $36,111,594 as of December 31, 1994. CIG avers that the transfer of facilities consist of (1) approximately 2,194 miles of pipeline ranging from 2 to 24 inches in diameter, with approximately 2,186 wells attached, (2) approximately 77,710 horsepower of compression, (3) processing facilities, and (4) appurtenant facilities.

CIG proposes to change the accounting classification of certain facilities that are that are currently on its accounting records in the gathering function to the transmission function. CIG avers that the spindown would not adversely affect customers as Field Services will step in to provide the services that CIG previously provided.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20406, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (19 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the issuance of certificate authorization and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion

for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27490 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–27–000]

Colorado Interstate Gas Co.; Notice of Filing of Refund Report

November 1, 1995.

Take notice that on October 27, 1995, Colorado Interstate Gas Company (CIG) filed a refund report in compliance with the Commission's Order Approving Refund Methodology for 1994 Overcollections dated February 22, 1995, issued to GAS Research Institute in Docket No. RP95–124–000. CIG states that refunds were paid by CIG on October 13, 1995.

CIG states that the report summarizes refunds made by CIG to its customers for the period January 1, 1994 through December 31, 1994 pursuant to the Commission's February 22, 1995 Order.

CIG states that copies of CIG's filing have been served on CIG's transportation customers, interested state commissions, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27493 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–20–000]

Columbia Gas Transmission Co.; Notice of Refund Report

November 1, 1995.

Take notice that on October 25, 1995, Columbia Gas Transmission Company (Columbia Gas) tendered for filing a Report of Gas Research Institute (GRI) Refund. Columbia Gas states that the refund report is being made in accordance with Ordering Paragraph C of the Commission's February 22, 1995, Order Approving Refund Methodology for 1994 Overcollections in GRI's Docket No. RP95–124–000.

Columbia Gas states it has credited its share of the GRI refund to its eligible firm customers, as a credit to invoices issued on or around September 10, 1995. Columbia Gas states that the refund totalling $1,014,961 represented GRI's overcollection of GRI surcharges for the period January 1, 1994 through December 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27491 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA94–23–000]

Connecticut Yankee Atomic Power Company; Order Establishing Hearing Procedures

November 2, 1995.

On July 21, 1995, the Deputy Chief Accountant issued a letter under delegated authority noting Connecticut Yankee Atomic Power Company's (CY) disagreement with respect to certain recommendations of the Division of Audits.[1] CY was requested to advise whether it would agree to the disposition of the contested matters under the shortened procedures provided for by Part 41 of the Commission's Regulations. 18 CFR Part 41.

By letter dated August 18, 19915, CY responded that it did not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set the matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206, and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedures (18 CFR Chapter I), a public hearing shall be held concerning the appropriateness of CY's practices as referred to above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, Washington, D.C. 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 95–27521 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–003]

MIGC, Inc.; Notice of Compliance Filing

November 1, 1995.

Take notice that on October 27, 1995, MIGC, Inc. (MIGC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Sub First Revised Sheet No. 4
Sub Second Revised Sheet No. 4
Sub Third Revised Sheet No. 4

MIGC states that the above-listed tariff sheets are submitted in compliance with Article II of the Settlement approved in the above-captioned docket by Commission order dated September 15, 1995. MIGC further states that a copy of its filing has been served on all parties in this docket.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27495 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER95–1286–000, ER95–1287–000, ER95–1288–000, ER95–1289–000, ER95–1290–000, and EL96–6–000; ER95–1319–000]

Public Service Electric and Gas Company and Atlantic City Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

November 2, 1995.

Take notice that on October 27, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL96–6–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL96–6–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 95–27522 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR92–2–001]

Seagas Pipeline Co.; Notice of Abandonment of Section 311 Service and Request for Waiver of Rate Filing Requirement

November 1, 1995.

Take notice that on October 11, 1995, Seagas Pipeline Company (Seagas) filed a notification that it is terminating service under Section 311 of the Natural Gas Policy Act and that it is exercising its right of pregranted abandonment of transportation services, pursuant to Section 284.224(f) of the Commission's Regulations. It also requests waiver of the terms of the stipulation approved by the Commission on June 22, 1992, which required Seagas to make a new rate filing on or before November 1, 1994.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before November 16, 1995. The notice and request is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27494 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–19–000]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

November 1, 1995.

Take notice that on October 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to become effective November 1, 1995:

Ninth Revised Sheet No. 42A

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued October 11, 1995 in Docket No. CP95–681–000.

Texas Eastern states that pursuant to Section 4 of the Natural Gas Act and in compliance with Ordering Paragraphs (A) and (D) of the Commission's October 11, 1995 Order, Texas Eastern is submitting a Limited Section 4 filing to revise and restate its Rate Schedule LLFT and LLIT maximum rates as more fully set out in the filing.

Texas Eastern respectfully requests that the Commission waive all necessary rules and regulations to permit the above referenced tariff sheet to become effective on November 1, 1995, the date that facilities authorized in the October 11, 1995 order will be placed into service.

Texas Eastern states that copies of the filing were served on the firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27496 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–24–000]

Texas Gas Transmission Corp.; Notice of Filing of Refund Report

November 1, 1995.

Take notice that on October 26, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing the pro rata refund to its eligible firm customers of an October 13, 1995, Gas Research Institute (GRI) refund of $560.470.00.

Texas Gas states that this refund report is being made to comply with Commission Order issued February 22, 1995, in Docket No. RP95–24–000 requiring each pipeline to file a refund report with the Commission within fifteen (15) days of making the refunds.

Texas Gas states that copies of the refund report were included with the refunds made on October 13, 1995, and served upon Texas Gas' jurisdictional customers receiving refunds.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations.

[1] 72 FERC ¶ 62,060. The contested matters are discussed in Part I of the letter order.

All such protests or motions should be filed on or before November 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27492 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–119–003]

Young Gas Storage Company, Ltd.; Notice of Refund Report

November 1, 1995.

Take notice that on October 26, 1995, Young Gas Storage Company, Ltd. (Young) filed a refund report in Docket No. TM96–1–119–003. Young states that the filing and refunds were made in compliance with the Commission's Order of September 12, 1995 in the referenced Docket.

Young states that the report summarizes Young's refund of all Annual Charges Adjustment (ACA) surcharges previously collected from its customers. Young states that cash refunds were made by Young to each customer on October 4, 1995, with appropriate interest as provided in the Order.

Young further states that copies of Young's refund report filing have been served on Young's customers, the Colorado Public Utilities Commission, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies for this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27497 Filed 11–6–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. EA–100–A]

Application to Amend Electricity Export Authorization, San Diego Gas and Electric Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: San Diego Gas & Electric Company (SDG&E) has applied for renewal of its authority to transmit electric energy from the United States to Canada.

DATES: Comments, protests or requests to intervene must be submitted on or before December 7, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Mike Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electric energy from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On April 19, 1994, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized SDG&E to transmit electric energy from the United States to the British Columbia Hydro and Power Authority on a non-firm basis at a maximum rate of transmission of 400 megawatts (FE Order No. EA–100). The term of the authorization was for a period of two years. On September 22, 1995, SDG&E filed an application with FE for renewal of this authority which expires on April 19, 1996. The exported energy would be delivered to Canada over transmission facilities owned by or under the control of members of the Western Systems Power Pool, of which SDG&E is a member.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–100. Consequently, DOE proposes to use the electric reliability review prepared in FE Docket EA–100 in satisfaction of the statutory requirements of section 202(e) of the Federal Power Act. Similarly, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–100 proceeding.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: James F. Walsh, San Diego Gas & Electric Company, P.O. Box 1831, San Diego, CA 92112 AND Betty Cash Hunter, Power Contracts Administrator, San Diego Gas & Electric Company, P.O. Box 1831, San Diego, CA 92112.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 1, 1995.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–27550 Filed 11–6–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5325–7]

Agency Information Collection Activities Up for Review; Measures of Success for Compliance Assistance Reporting Form

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 2501 et seq.), this notice announces that the Information Collection Request (ICR) listed below is coming up for review. Before submitting the review package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before January 8, 1996.

ADDRESSES: Office of Enforcement and Compliance Assurance, US. EPA, 401 M St. MC 2201, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Lynn Vendinello, 202–260–2842 or 202–260–0500 (fax).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are those which provide compliance assistance through state programs.

Title: Measures of Success for Compliance Assistance Reporting Form. EPA ICR 1758.02. OMB Control Number XXX-XXX.

Abstract: This will be a voluntary collection of program information on the accomplishments of state and regional compliance assistance programs other than those operating under Section 507 of the Clean Air Act (CAA), which will be reporting the same information as part of a larger information collection request being conducted by EPA's Small Business Ombudsman Office pursuant to the requirement of that statute. The information will be collected so that EPA can better understand the effectiveness of compliance assistance programs vis a vis enforcement programs and so that success stories can be shared between state programs. This is a voluntary information collection request. The information will be used by EPA's Office of Enforcement and Compliance Assurance (OECA) in order to evaluate the effectiveness of regional and state compliance assistance programs as a supplementary tool to traditional enforcement methods. EPA regions and state programs will also use the information to learn about other compliance assistance programs. This information collection request will require a burden for third-parties; namely, the small businesses receiving the compliance assistance. States will be asking them about their increased knowledge of regulatory obligations and behavioral changes that result from the compliance assistance offered.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The number of state respondents is estimated to be 106 and they will be responding annually. The total annual recordkeeping burden for states is estimated to be 212 hours. The total annual reporting burden for states is estimated to be 2,438 hours. The average estimated total burden hours per state respondent is 25 hours. The number of third party respondents is expected to be 3,180. The total burden hours for third-parties is expected to be 3,180. The overall total burden hours is 5,618. The average estimated total burden hours per respondent is 1.7 hours. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: October 30, 1995.

Lynn Vendinello,

Special Assistant, Office of Enforcement and Compliance Assurance.

[FR Doc. 95–27565 Filed 11–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5326–4]

Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Masonite Corporation (EPA Project Number NC 92–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on October 20, 1995 the Environmental Protection Agency issued a permit under EPA's federal Prevention of Significant Deterioration (PSD) regulations to the applicant named above. The PSD permit grants approval to Masonite Corporation to construct and operate the Molded Products Line at the existing Masonite facility located in Ukiah, California.

DATES: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address the request to: Lisa Penaska (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1261.

SUPPLEMENTARY INFORMATION: The PSD permit requires the application of Best Available Control Technology (BACT) for VOC's. In addition, the permit is subject to certain conditions, including allowable emission rates as follows: VOC, 141.9 tpy; NO_x, 43.8 tpy; CO, 88.5 tpy; particulate matter (PM–10), 6.2 tpy; SO_x, 0.2 tpy.

Dated: October 23, 1995.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 95–27569 Filed 11–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5325–9]

Announcement of Availability of Academic Fellowships Sponsored by U.S. Environmental Protection Agency

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of academic fellowships.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is offering Graduate Education Fellowships for masters and doctoral level students in environmentally related fields of study. Subject to availability of funding, the Agency plans to award approximately 100 new fellowships this year. Fellowships cover a period of 9–12 months for each fellowship year. Masters level students may receive support for up to two years. Doctoral students may be supported for a maximum of three years. The fellowship program provides up to $34,000 per year of support. This amount covers stipend, tuition, and expenses as described in the program announcement.

DATES: The deadline for receipt of pre-applications is December 15, 1995.

ADDRESSES: The full announcement and pre-application instructions are available by accessing the EPA Home Page on the Internet. The World Wide Web address is: http://www.epa.gov/oer/fellows. EPA can also be accessed on Gopher. If Internet access is not available, a hard copy may be obtained by writing to: ORD Fellowships, NCERQA (8701), U.S. EPA, Waterside Mall, Room 2426, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Fellowship Help Line, 202/260–3837.

SUPPLEMENTARY INFORMATION: Pre-applications may be submitted via electronic mail, fax, or express mail. To submit by e-mail, send to: "feloship@pamail.epa.gov".

To submit by fax, send to: 202/260–2039.

To submit by express mail, send to the address above.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–27571 Filed 11–6–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5326–2]

Risk Assessment and Risk Management Commission; Revision of Earlier Notice of Public Meetings—1995

November 17—Meeting Location Changed

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Risk Assessment and Risk Management Commission, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will meet on November 17 at One Washington Circle Hotel located at one Washington Circle, phone number 202–872–1680 from 8 am until 3 pm in Washington, D.C. Due to the increasing amount of public interest in our activities, the previously scheduled hotel conference room was not large enough to accommodate our space needs.

If the Federal Government shuts down during this timeframe, please call the hotel to ascertain whether the meeting has been cancelled due to budget constraints.

This amends an earlier notice published in the **Federal Register** on September 20, 1995 at (60 FR 48711) and dated September 13, 1995.

Dated: October 27, 1995.

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 95–27570 Filed 11–6–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2110]

Petition for Reconsideration of Actions in Rulemaking Proceedings

November 2, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed on or before November 22, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Wickenburg and Lake Havasu City, AZ) (MM Docket No. 90–468, RM–7380.)

Number of Petitions filed: 1.

Subject: Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation. (CC Docket No. 91–35.)

Number of Petitions filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Esperanza, PR.)

Number of Petitions filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27468 Filed 11–6–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1069–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1069–DR), dated October 4, 1995, and related determinations.

EFFECTIVE DATE: October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 4, 1995:

Wakulla County for Individual Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–27532 Filed 11–6–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1074–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1074–DR), dated October 27, 1995, and related determinations.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 27, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms and flooding on October 13, 1995 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

The counties of Martin and Palm Beach for Individual Assistance; the counties of Martin and St. Lucie for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–27533 Filed 11–6–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1074–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1074–DR), dated October 27, 1995, and related determinations.

EFFECTIVE DATE: October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 27, 1995:

The County of Palm Beach for Hazard Mitigation Assistance. (Already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–27534 Filed 11–6–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1073–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1073–DR), dated October 23, 1995, and related determinations.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 23, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from a severe storm, high winds and flooding on October 4–6, 1995 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation Assistance in the designated areas. Individual Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

The counties of Ashe, Avery, Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain, Transylvania, Watauga, Wilkes and Yancey Counties, and the Eastern Band of the Cherokee Indian Reservation for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–27535 Filed 11–6–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

North Fork Bank, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 1, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. North Fork Bank, Mattituck, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Extebank, Stony Brook, New York. Immediately upon consummation, Extebank will merge into North Fork Bank.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCNB Bancorp, Inc., Fayetteville, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Fayette County National Bank of Fayetteville, Fayetteville, West Virginia. Comments on this application must be received by November 20, 1995.

2. FCFT, Inc., Princeton, West Virginia; to acquire 100 percent of the voting shares of First Community Bank of Mercer County, Inc., Princeton, West Virginia, which will acquire the assets and assume the liabilities of the Mercer

County branch of First Community Bank, Inc., Princeton, West Virginia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Security National Corporation, Sioux City, Iowa; to acquire 100 percent of the voting shares of Sheldon Security Bancorporation, Inc., Sheldon, Iowa, and thereby indirectly acquire at least 80 percent of the voting shares of Sheldon Security Financial Corporation, Sheldon, Iowa, and thereby control Security State Bank, Sheldon, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Eastern National Bank, Miami, Florida.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Irene Bancorporation, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire Farmers State Bank, Viborg, South Dakota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Stine Family Partnership, and United Nebraska Financial Co., both of Grand Island, Nebraska; to acquire 100 percent of the voting shares of Lexington Bancshares, Inc., Lexington, Nebraska, and thereby indirectly acquire Lexington State Bank and Trust Company, Lexington, Nebraska.

Board of Governors of the Federal Reserve System, November 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27544 Filed 11–6–95; 8:45 am]

BILLING CODE 6210–01–F

Stichting Prioriteit ABN AMRO Holding, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Stichting Prioriteit ABN AMRO Holding; Stichting Adminstratiekantoor ABM AMRO Holding; ABN AMRO Holding, N.V.; and ABN AMRO BANK N.V., all of Amsterdam, The Netherlands; to acquire through their wholly-owned subsidiaries, Lease Plan (N.V.) Amersterdam, The Netherlands, and Lease Plan (U.S.A.), Inc., Atlanta, Georgia, Neville Leasing, Inc., Atlanta, Georgia, and thereby engage in motor vehicle leasing, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27545 Filed 11–6–95; 8:45 am]

BILLING CODE 6210–01–F

U.S. Trust Corporation, New York, New York; Notice to Engage in Certain Nonbanking Activities

U.S. Trust Corporation, New York, New York (Applicant), has applied pursuant to Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23) to permit U.S. Trust Company of New Jersey, Princeton, New Jersey (Company) to engage in personal, residential mortgage, and small business lending activities. Company is a trust company operating pursuant to § 225.25(b)(3) of Regulation Y. Section 225.25(b)(3) does not permit a company performing trust company functions or activities to make loans of the kind proposed to be made by Company.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant asserts that the proposed lending activities should be permissible because bank holding companies are authorized to engage directly in, or to establish subsidiaries to engage in, lending activities under § 225.25(b)(1) of Regulation Y. Applicant argues that the restrictions against lending by trust companies are no longer justified in light of the applicability of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (1994). Moreover, Applicant maintains that Company would not become a "bank" for purposes of the BHC Act, because Company is not an FDIC-insured institution, and it does not accept demand deposits. *See* 12 U.S.C. 1841(c)(1).

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by enabling Applicant to provide a broader range of services to its customers and thereby enhance Applicant's ability to compete among local lending institutions.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 21, 1995. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27546 Filed 11–6–95; 8:45 am]

BILLING CODE 6210–01–F

Vernon Haley Warren, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Vernon Haley Warren, Albany, Georgia; to retain a total of 12.67 percent of the voting shares of First State Corporation, Albany, Georgia, and thereby indirectly retain First State Bank & Trust Company, Albany, Georgia, and First State Bank & Trust Company, Cordele, Georgia.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Donald Grobowsky, Temple, Texas; to acquire an additional 16.7 percent, for a total of 26.6 percent, of the voting shares of Central Community Corporation, Temple, Texas, and thereby indirectly acquire First State Bank, Temple, Texas.

2. Jack H. Hart, Amarillo, Texas; to acquire an additional .21 percent, for a total of 10.20 percent, of the voting shares of Spearman Bancshares, Spearman, Texas, and thereby indirectly acquire Spearman Financial Corporation, Wilmington, Delaware, and thereby indirectly acquire First National Bank, Spearman, Texas.

Board of Governors of the Federal Reserve System, November 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27547 Filed 11–6–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 951–0140]

The Upjohn Company and Pharmacia Aktiebolag; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require The Upjohn Company and Pharmacia Aktiebolag to divest Pharmacia's assets in "9–AC," a topoisomerase I inhibitor drug for the treatment of colorectal cancer, to a Commission-approved buyer who will ensure that research and development will continue in competition with the merged company's product "CPT–11," a topoisomerase I inhibitor drug developed by Upjohn.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester, Bureau of Competition, Federal Trade Commission, S–2308, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2682.

Claudia Higgins, Bureau of Competition, Federal Trade Commission, S–2308, 6th Street & Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of The Upjohn Company, a corporation, and Pharmacia Aktiebolag, a corporation.

File No. 951–0140

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the merger of The Upjohn Company ("Upjohn") and Pharmacia Aktiebolag ("Pharmacia"), and it now appearing that Upjohn and Pharmacia, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into an Agreement Containing Consent Order to (i) divest certain assets, (ii) cease and desist from certain acts, and (iii) provide for certain other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed Respondent Upjohn is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 7000 Portage Road, Kalamazoo, Michigan 49001.

2. Proposed Respondent Pharmacia is a corporation organized, existing, and doing business under and by virtue of

the laws of Sweden, with its principal place of business located at Frösundaviks allé 15, S–171 97 Stockholm, Sweden.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Pharmacia's counsel, Steven Sunshine, Esquire, of Shearman & Sterling at 801 Pennsylvania Avenue, NW., Washington, DC 20004–2604, and Upjohn's counsel, Stuart Meiklejohn, Esquire, of Sullivan & Cromwell at 125 Broad Street, New York, New York 10004, shall constitute service. Proposed Respondents waive any rights they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final. By signing this Agreement, Proposed Respondents represent that the relief contemplated by this Agreement can be accomplished.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. *Upjohn* means The Upjohn Company, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Upjohn; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

B. *Pharmacia* means Pharmacia Aktiebolag, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Pharmacia; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

C. *Respondents* means Upjohn and Pharmacia.

D. *Commission* means The Federal Trade Commission.

E. *Merger* means the combination of Upjohn and Pharmacia pursuant to a Combination Agreement dated August 20, 1995.

G. *9–AC* or *9-amino-20 (S)-camptothecin* means the semisynthetic compound which refers to the compound 1-pyrano [3',4':6,7] indolizino [1,2-b] quinoline-3,14 (4H,12H)-dione, 10-amino-4-ethyl-4-hydrozy-(S) in respect of its therapeutic indication for the treatment of cancer.

H. *CPT–11* or *irinotecan hydrochloride trihydrate* means the chemical compound which refers to the compound (+)-(4S)-4, 11-diethyl-4-hydrozy-9-[(4-piperidinopiperidino) carbonyl-oxyl]-1H-pyrano [3',4':6,7] indolizino [1,2-b] quinoline-3,14 (4H, 12H)-dione hydrochloride trihydrate.

I. *Pharmacia's 9–AC Assets* means an exclusive license to all Pharmacia's assets relating to the research and development of 9-AC for sale in the United States that are not part of Pharmacia's physical facilities or other tangible assets. "Pharmacia's 9–AC Assets" includes, but is not limited to, all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, testing and quality control data, research data, technical information, stored on management information systems (and specifications sufficient for the Acquirer to use such information), proprietary software used in connection with Pharmacia's 9–AC, and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States for Pharmacia's 9–AC. "Pharmacia's 9–AC Assets" also includes the assignment of all rights of Pharmacia to NCI patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, testing and quality control data, research materials, technical information, stored on management information systems (and specifications sufficient for the Acquirer to use such information), proprietary software used in connection with Pharmacia's 9–AC and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States for Pharmacai 9–AC.

J. *Acquirer* means the entity to whom the Respondents shall divest Pharmacia's 9–AC Assets pursuant to this Order.

K. *Cost* means Pharmacia's actual per unit cost of manufacturing Pharmacia's 9–AC, which may be adjusted once annually to reflect any increases in Pharmacia's actual cost, provided, however, that for any year, the total rate of such adjustment with respect to all components of cost other than material and labor shall not exceed the rate of increases in the Consumer Price Index for such year.

II

It is further ordered that:

A. Respondents shall divest, absolutely and in good faith, within twelve (12) months of the date this Order becomes final, Pharmacia's 9–AC Assets.

B. Respondents shall divest Pharmacia's 9–AC Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. Respondents shall obtain all necessary approvals and releases for such divestiture from NCI as a condition of the Commission's prior approval. The purpose of the divestiture of Pharmacia's 9–AC Assets is to ensure continued research and development of Pharmacia's 9–AC, in the same manner in which Pharmacia's 9–AC would be researched and developed absent the proposed Merger, and to remedy the lessening of competition resulting from the proposed Merger as alleged ion the Commission's Complaint.

C. At the Acquirer's option, Respondents shall enter into a supply agreement with the Acquirer. Such agreement, if entered into, shall be provided to the Commission as part of Respondents' application to the Commission for approval of the divestiture. This supply agreement shall include the following and Respondents shall commit to satisfy the following:

1. Respondents shall manufacture and deliver to the Acquirer in a timely manner the Acquirer's requirements for 9–AC at Respondents' Cost for a period not to exceed three (3) years from the date the divestiture is approved. This supply agreement can be cancelled at the request of the Acquirer.

2. Respondents shall make representations and warranties to the Acquirer that the 9–AC manufactured by Respondents for the Acquirer meets the United States Food and Drug Administration approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. § 321, *et seq.* Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the 9–AC manufactured for the Acquirer by Respondents to meet FDA specifications. This obligation shall be contingent upon the Acquirer giving Respondents prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Respondents to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer.

3. During the term of the supply agreement, upon reasonable request by the Acquirer, Respondents shall make available to the Acquirer all records kept in the normal course of business that relate to the cost of manufacturing 9–AC.

D. The time period for divestiture pursuant to Paragraph II. of this Order shall be tolled if and when Respondents:

1. Provide to the Commission objective evidence, including, but not limited to, results of clinical trials indicating that, based on 9–AC's or CPT–11's medical profile, and through no fault of Respondents, either Pharmacia's 9–AC or Upjohn's CPT–11 is not medically safe or efficacious for use in the treatment of colorectal cancer; and

2. Petition the Commission to modify this Order, pursuant to section 5(b) of the FTC Act and Section 2.51 of the Commission's Rules of Practice, based on the circumstances described in Subparagraph II.D.1. of this Order.

This tolling of the time period for divestiture shall end when the Commission rules on Respondents' petition to modify this Order.

III

It is further ordered that:

A. If Upjohn and Pharmacia have not divested, absolutely and in good faith and with the Commission's prior approval, Pharmacia's 9–AC Assets within the time required by Paragraph II.A., of this Order, the Commission may appoint a trustee to divest, at Pharmacia's option, either (1) an exclusive United States license and a nonexclusive worldwide (excluding the United States) license in perpetuity, and in good faith, to all Pharmacia's assets relating to the research and development of 9–AC for sale throughout the world or (2) an exclusive worldwide license, in perpetuity, and in good faith, to all Pharmacia's assets relating to the research and development of 9–AC for sale throughout the world. The trustee shall obtain all necessary approvals and releases for the applicable license from NCI. Neither the decision of the Commission to direct the trustee nor the decision of the Commission not to direct the trustee to divest a license shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If the trustee is directed under Subparagraph A. of this Paragraph to divest, at Phamacia's option, either (1) an exclusive United States license and a nonexclusive worldwide (excluding the United States) license or (2) an exclusive worldwide license, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest, at Pharmacia's option, either (1) an exclusive United States license and a nonexclusive worldwide (excluding the United States) license or (2) an exclusive worldwide license.

3. Within ten (10) days after the appointment of the trustee, Respondents shall execute a trust agreement that subject to the prior approval of the Commission, and in the case of a court-appointed trustee, of the court, transfers to the trustee all the rights and powers necessary to permit the trustee to assure Respondents' compliance with the terms of this Order. As part of the trustee agreement, the trustee shall execute confidentiality agreement(s) with Respondents.

4. The trustee shall have twelve (12) months from the date the Commission approves the appointment of the trustee to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court;

provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to Pharmacia's 9–AC, or to any other relevant information, as the trustee may reasonably request, including but not limited to all records kept in the normal course of business that relate to research and development of, and the cost of manufacturing, Pharmacia's 9–AC. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the Acquirer as set out in Paragraphs II and III of this order, as appropriate; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission. If requested by the trustee or Acquirer, Respondents shall provide the Acquirer with the assistance required by Paragraph IV. of this Order.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents. The trustee's compensation shall be based at least in significant part on a Commission arrangement based on a percentage of the selling price of the assets divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

12. if a divestiture application filed pursuant to this Paragraph III. is pending before the Commission, and Respondents petition the Commission to modify this Order based on the conditions in Paragraph II.D., then the Commission shall not approve the divestiture application until it rules on the petition to modify.

IV

It is further ordered that:

A. Upon reasonable notice and request from the Acquirer to Respondents, Respondents shall provide information, technical assistance and advice to the Acquirer with respect to Pharmacia's 9–AC Assets such that the Acquirer will be capable of continuing the current research and development. Such assistance shall include reasonable consultation with knowledgeable employees of Respondents and training at the Acquirer's facility for a period of time sufficient to satisfy the Acquirer's management that its personnel are adequately knowledgeable about Pharmacia's 9–AC Assets. however, Respondents shall not be required to continue providing such assistance for more than one (1) year after divestiture of Pharmacia's 9–AC Assets. Respondents may require reimbursement from the Acquirer for all of their own direct costs incurred in providing the services required by this Paragraph. Direct costs, as used in this Paragraph, means all actual costs incurred exclusive of overhead costs.

B. Upon reasonable notice and request from the Acquirer, Respondents shall provide information, technical assistance and advice sufficient to assist the Acquirer in obtaining all necessary FDA approvals to manufacture 9–AC for use in clinical trials in the United States. Upon reasonable notice and request from the Acquirer, Respondents shall also provide consultation with knowledgeable employees of Respondents and training at the Acquirer's facility for a period of time, not to exceed one (1) year, sufficient to satisfy the Acquirer's management that its personnel are adequately trained in the manufacture of 9–AC. Respondents may require reimbursement from the Acquirer for all of their own direct costs incurred in providing the services required by this Paragraph. Direct costs, as used in this Paragraph, means all actual costs incurred exclusive of overhead costs.

V

It is further ordered that Respondents shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in Paragraphs II., III. and IV. of this Order are complied with or until such other time as is stated in said Interim Agreement.

VI

It is further ordered that if, following approval of the divestiture required by Paragraph II. of this Order, disputes arise between Respondents and the Acquirer regarding: (1) fulfillment of the terms of the supply agreement described in Paragraph II.C of this Order; (2) the continuation of the clinical trials for the testing of 9–AC described in Attachment A to Appendix I of this Order; or (3) the continuation of the defense of existing patents and the pursuit of the filing of new patents relating to Pharmacia's 9–AC, the Acquirer may elect to cause the issue to be submitted to outside, independent, binding arbitration in the District of Columbia. In the event the Acquirer so elects, Respondents shall agree to submit to such arbitration, and the issue shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and AAA's Supplementary Procedures for International Commercial Arbitration or any successor rules thereto. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The decision of the arbitrator, after confirmation by the court pursuant to 9 U.S.C. 9, or succeeding statutory provisions, shall be final and binding upon the parties, and the failure of the Respondents thereafter to abide by the arbitrator's award shall be a violation of this Order.

VII

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II.A. and II.B. or III. of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II., III., IV. and V. of this Order, including a description of all substantive contacts or negotiations for accomplishing the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually on the anniversary of the date this Order becomes final, and at all other times as the Commission may require, until Respondents have fully complied with Paragraphs II.C., IV. and V., Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraphs II.C., IV. and V. of this Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, Respondents shall permit nay duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondents, and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present regarding such matters.

IX

It is further ordered that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in Respondents such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out this Order.

Appendix I

In the Matter of the Upjohn Company, a corporation, and Pharmacia Aktiebolag, a corporation.

File No. 951–0140

Interim Agreement To Maintain Research and Development

This Interim Agreement to Maintain Research and Development ("Interim Agreement") is by and among Pharmacia Aktiebolag ("Pharmacia"), a corporation organized, existing, and doing business under and by virtue of the laws of Sweden, with its office and principal place of business at Frösundaviks allè 15, S–171 97 Stockholm, Sweden, The Upjohn Company ("Upjohn"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 7000 Portage Road, Kalamazoo, Michigan 49001 and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq. (collectively, the "Parties").

Premises

Whereas, on August 20, 1995, Pharmacia entered into a Combination Agreement with Upjohn providing for the combination of Pharmacia and Upjohn (hereinafter "Merger"); and

Whereas, Pharmacia is involved in, among other things, the research and development of 9-Amino-20(S)-camptothecin ("9–AC"), a topoisomerase I inhibitor; and

Whereas, Upjohn is involved in, among other things, the research and development of Camptosar ("CPT–11"), a topoisomerase I inhibitor; and

Whereas, the Commission is now investigating the Merger to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the ongoing and future research of Pharmacia's 9–AC, as defined in Paragraph I of the Consent Order, during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public comment period) and until the divestiture required by Paragraphs II or III of the Consent Order has been accompanied may not be possible and divestiture resulting from any proceeding challenging the legality of the Merger might not be possible, or might be less than an effective remedy; and

Whereas, the purpose of the Interim Agreement and the Consent Order is:

1. To ensure continued research and development of Pharmacia's 9-Ac in the same manner in which Pharmacia's 9-AC would be researched and developed absent the Merger; and

2. To preserve the Commission's ability to remedy any anticompetitive effects of the Merger; and

Whereas, Pharmacia's and Upjohn's entering into this Interim Agreement shall in no way be construed as an admission by Pharmacia and Upjohn that the Merger is illegal; and

Whereas, Pharmacia and Upjohn understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement;

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Merger will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Pharmacia and Upjohn agree to execute and be bound by the Consent Order.

2. Pharmacia agrees that from the date this Interim Agreement is accepted until the earliest of the time listed in subparagraphs 2.a.–2.b., it will comply with the provisions of Paragraph 4 of this Interim Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules;

b. The time that the divestiture obligations required by the Consent Order are completed.

3. Pharmacia and Upjohn agree to take such actions as are necessary to prevent the destruction, removal, wasting, deterioration or impairment of Pharmacia's 9–AC Assets, except for ordinary wear and tear.

4. With respect to the continued research and development of Pharmacia's 9–AC, Pharmacia agrees:

a. To continue to pursue its obligations under the Cooperative Research and Development Agreement with the National Cancer Institute and the previously determined 9–AC research and development plan, as set forth in confidential Attachment A to this Interim Agreement; and

b. To fund the research and development of Pharmacia's 9–AC at levels no less than those contained in the budget for 1995, as set forth in confidential Attachment B to this Interim Agreement; and

c. To use its best efforts to support and defend Pharmacia's rights relating to 9–AC in U.S. Patent # 5,106742 dated April 21, 1992 (Camptothecin Analogs as Potent Inhibitors of Topoisomerase I), U.S. Patent # 5,225,404 dated July 6, 1993 (Methods of Treating Colon Tumors with Tumor-Inhibiting Camptothecin Compounds), and U.S. Serial # 08/323081 filed October 14, 1994 (pending patent application for Lyophilizate of Lipid Complex of Water Insoluble Camptothecins); and

d. To use its best efforts to obtain all necessary approvals and releases from the National Cancer Institute to accomplish the requirements of Paragraphs II and III of the Consent Order; and

e. Within thirty days of acceptance of this Interim Agreement by the Commission, to have available for clinical trials at least sufficient inventory of Pharmacia's 9–AC sufficient to supply the clinical trials set forth in confidential Attachment A to this Interim Agreement that are likely to be initiated through November 1996.

5. Upjohn agrees to allow Pharmacia to fulfill its obligations under paragraphs 2 and 4 of this Interim Agreement, without restraint or interference from Upjohn.

6. Should the Commission seek in any proceeding to compel Pharmacia to divest itself of the Pharmacia 9–AC Assets, as provided in the Consent Order, or seek any other equitable relief relating to Pharmacia's 9–AC Assets, Pharmacia and Upjohn shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Merger. Pharmacia and Upjohn shall also waive all rights to contest the validity of this Interim Agreement.

7. Should the Commission, pursuant to Paragraph II.D of the Consent Order, act on a petition from Pharmacia and Upjohn to modify the Consent Order based on the circumstances described in Subparagraph II.D.1, this Interim Agreement shall be automatically modified to reflect any changes made by the Commission.

8. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Pharmacia and Upjohn made to its General Counsel, Pharmacia and Upjohn shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Pharmacia and Upjohn and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondent, memoranda, and other records and documents in the possession or under the control of Pharmacia and Upjohn relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to Pharmacia and Upjohn, and without restraint or interference from it, to interview officers or employees of Pharmacia and Upjohn, who may have counsel present, regarding any such matters.

9. This Interim Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order from The Upjohn Company ("Upjohn") and Pharmacia Aktiebolag ("Pharmacia"), under which Upjohn and Pharmacia will be required to divest U.S. assets relating to the research and development of a chemotherapeutic drug for the treatment of colorectal cancer ("Pharmacia's 9–AC Assets") to a Commission approved purchaser. In addition, the Commission has accepted an Interim Agreement to Maintain Research and Development, under which Pharmacia and Upjohn will be required to continue fulfilling the previously established 9–AC research and development plan and its obligations to the National Cancer Institute.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to an agreement dated August 20, 1995, Upjohn and Pharmacia propose to merge their respective businesses in a transaction valued at approximately $13.9 billion. Based on 1994 sales, the combined company would rank among the top ten pharmaceutical manufacturers worldwide, and it would be the fifth largest drug company in the United States.

The proposed complaint alleges that the merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for the research, development, manufacturer and sale of topoisomerase I inhibitors for the treatment of colorectal cancer in the United States. Topoisomerase I inhibitors are a specific class of chemotherapeutic drugs that inhibit the multiplication of cancer cells inside the body. By curtailing cancer cell growth, topoisomerase I inhibitors may aid in the treatment of colorectal cancer, a form of cancer that does not respond well to currently available chemotherapy agents.

While no topoisomerase I inhibitor has yet been approved for sale in the United States, it is anticipated that sales of all topoisomerase I inhibitors for the treatment of colorectal cancer will exceed $100 million by 2002. Approximately 443,000 people in the United States are diagnosed with colorectal cancer each year. For most solid tumors, the first method of treatment is surgery, with radiation therapy and chemotherapy typically used as adjuncts to the surgery.

Current protocols for colorectal cancer suggest that patients be treated with the chemotherapy agents 5-fluorouracil ("5FU") and either leucovorin or levamisole. For those patients whose cancer recurs, the survival rate is only fifteen percent. Topisomerase I inhibitors are expected to increase the rate of survival for colorectal cancer patients.

The proposed Consent Order would remedy the alleged violation by replacing the lost competition that would result in the U.S. from the merger. Presently, only a very small number of companies worldwide are developing topoisomerase I inhibitors. Upjohn has the U.S. rights for CPT–11, a topoisomerase I inhibitor developed in Japan by Yakult Honsha and Daiichi. Pharmacia has the worldwide rights for 9–AC under a Cooperative Research and Development Agreement with the National Cancer Institute. Upjohn's and Pharmacia's products may be effective treatments for colorectal cancer. Because the information obtained during the Commission's investigation about the status of pharmaceutical research projects is highly confidential, the Commission cannot disclose publicly what, if any, other research projects are currently underway on topoisomerase I inhibitors.

Under the proposed Consent Order, Pharmacia and Upjohn are required to divest 9–AC assets relating to the research and development of 9–AC for sale in the United States. As a result, two independent pharmaceutical companies will continue to research and develop their respective topoisomerase I inhibitors in the United States following the proposed merger.

The proposed Order requires that if Upjohn and Pharmacia fail to divest the product within 12 months, a trustee will be appointed to divest Pharmacia's 9–AC Assets in the U.S. as well as either a worldwide exclusive or a nonexclusive worldwide (excluding the U.S.) license for 9–AC. The Order also requires Upjohn and Pharmacia to provide technical assistance and advice to ensure that the acquirer is capable of continuing present research and development and to produce 9–AC if needed by the Acquirer for its clinical trials.

An Interim Agreement is incorporated into the proposed Order to protect the ongoing research and development of 9–AC. In the Interim Agreement, Pharmacia and Upjohn commit to continue the planned research and development of 9–AC pending the divestiture required under the Order. The Interim Agreement remains in effect until Pharmacia has divested its 9–AC Assets pursuant to the Order.

Under the provisions of the order, Upjohn and Pharmacia are also required to provide the Commission a report of compliance with the divestiture provisions of the Order within sixty (60) days following the date the Order becomes final, and every sixty (60) days thereafter until Upjohn and Pharmacia have completed the required divestiture.

The purpose of this analysis is to facilitate the public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–27552 Filed 11–6–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home and Community-Based Services Waiver Requests; *Form No.:* HCFA–8003; *Use:* Under a Secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation and cost and utilization estimates which are reviewed, approved and maintained for the purpose of identifying/verifying States' compliance with such statutory and regulatory requirements; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 50; *Total Annual Responses:* 140; *Total Annual Hours Requested:* 12,600.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collection should be sent within 60 days of this notice direct to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 26, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–27476 Filed 11–6–95; 8:45 am]

BILLING CODE 4120–03–P

Indian Health Service

[0917–ZA00]

Notice of Redesignation of Contract Health Service Delivery Area

AGENCY: Indian Health Service, HHS.

ACTION: Notice with request for comments.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes to redesignate the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Confederated Tribes of the Chehalis Reservation, Washington ("the Tribes"). The Chehalis CHSDA currently is comprised of Grays Harbor and Thurston Counties in the State of Washington. These counties were designated as the Tribes' CHSDA in the **Federal Register** of January 10, 1984 (49 CFR 1291). It is proposed that Lewis County, Washington, be added to the existing CHSDA. This notice is issued under authority of 43 FR 34654, August 4, 1978.

DATES: Comments must be received on or before December 7, 1995.

ADDRESSES: Comments may be mailed to Betty J. Penn, Regulations Officer, Indian Health Service, Suite 450, 12300 Twinbrook Parkway, Rockville,

Maryland 20852. Comments will be made available for public inspection at this address from 8:30 a.m. to 5:00 p.m. Monday-Friday, beginning approximately 2 weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Deputy Director, Division of Legislation and Regulations, Office of Planning, Evaluation and Legislation, Indian Health Service, Suite 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852, Telephone 301/443–1116 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services (CHS) and for the designation of CHSDAs (43 FR 34654, codified at 42 CFR 36.22, last published in the 1986 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the new eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus the IHS CHS program continues to be governed by the regulations contained in the 1986 edition of the Code of Federal Regulations in effect on September 15, 1987. See 43 CFR 36.21 *et seq.* (1986).

As applicable to the Tribes, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 36.22(a)(6) (1986)). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, we are publishing this proposal and requesting public comment.

The request of the Confederated Tribes of Chehalis Reservation to expand their CHSDA was presented in their Tribal Resolution 1994–38, dated August 17, 1994. The Tribes' request will expand their current CHSDA, which incorporates Grays Harbor and Thurston Counties in the State of Washington, to include Lewis County, Washington.

Under 42 CFR 36.23 those otherwise eligible Indians who do not reside on a reservation but reside within a CHSDA must be either members of the tribe or maintain close economic and social ties with the tribe. In this case, the tribe estimates that the current eligible CHS population will be increased by 25 individuals consisting of 13 enrolled Chehalis tribal members and 12 non-Chehalis members not currently covered because these individuals have no close economic and social ties with the Yakama but do with the Chehalis.

In applying the aforementioned CHSDA redesignation criteria required by operative regulations (43 FR 35654), the following findings are made:

1. Lewis County is contiguous with Thurston County. Both counties are within the State of Washington.

2. Lewis County is part of the Tribes' traditional territory and many tribal members retain ownership of public domain allotments there.

3. The Tribes share co-management responsibility with the State of Washington for 2,600 square miles of rivers and streams in the Chehalis River Basin, which includes Lewis County. Lands adjacent to the Chehalis River have historically been considered in defining the original tribal homeland.

4. The majority of potential new CHS users who reside in Lewis County are within 15 miles of the Tribes limited direct care facility and depend on the Tribes for their health care requirements.

5. The nearest IHS comprehensive health center available to provide care for these beneficiaries is located in Toppenish, Washington, which is 150 miles away.

6. The current CHS patient care resources available to the tribes total $331,364 for 392 users. Per capita combined workload units (CWUs) are estimated at 5.7. The estimated costs associated with this request are $21,090 and are calculated as follows:

392 current users × 5.7 CWUs=2,234 CWUs

$331,364 (current funding)/2,234 CWUs=$148 per CWU

$148 × 25 (new users) × 5.7 CWUs=$21,090

7. The financial resources required to meet the immediate needs of potential Lewis County users will not be substantial and will be absorbed by that tribe's total health care program within available resources.

Since CHS is a critical component of the Tribes' overall health care system for its members, the Tribes feels that the members living in Lewis County, Washington, should be included within the CHSDA for the Tribes.

Accordingly, after considering the Tribes' request in light of the criteria specified in the regulations, I am proposing to redesignate the CHSDA of the Tribes to consist of Grays Harbor, Thurston, and Lewis counties of the State of Washington.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Dated: October 31, 1995.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 95–27564 Filed 11–6–95; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Committee Name: National Institute of General Medical Sciences Special Emphasis Panel—Genetics.

Date: November 6.

Time: 8:30 a.m.—adjournment.

Place: National Institutes of Health, 45 Center Drive, Natcher Building, Room F2, Bethesda, MD 20892–6200.

Contact Person: Dr. Arthur Zachary, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892–6200.

Purpose: To review and evaluate grant applications.

Committee Name: National Institute of General Medical Sciences Special Emphasis Panel—Cellular and Molecular Basis of Disease.

Date: November 6–7.

Time: 8:30 a.m.—adjournment.

Place: National Institutes of Health, 45 Center Drive, Natcher Building, Room F2 Bethesda, MD 20892–6200.

Contact Person: Dr. Carole Latker, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13K, Bethesda, MD 20892–6200.

Purpose: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to these meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: October 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27638 Filed 11–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 13, 1995.

Time: 11 a.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn Building, Room 9C–26, 5600 Fishers Land, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 17, 1995.

Time: 11:30 a.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 17, 1995.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 29, 1995.

Time: 2 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–4843.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This meeting is being published less than fifteen days prior to the first three meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 1, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27637 Filed 11–6–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3917–N–28]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: January 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assignment regulations require approved mortgagees to record mortgage assignments under 24 CFR section 203.350 and section 221.770.

OMB Control Number: 2502–0413.

Description of the need for the information and the proposed use: HUD regulations require that the mortgagees record the assignment of the mortgage to HUD within 30 days after the date of the Field Office's letter authorizing the assignment and submit claim forms and support documentation on the date the assignment is filed for record (24 CFR, section 203.250(a), Assignment of Defaulted Mortgages).

Agency form numbers: Not applicable.

Members of affected public: Mortgagees.

An estimation of the total numbers of hours needed to prepare the information collection is 8,989, number of respondents is 17,978 frequency

response is monthly and the hours of response is .5 of an hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 27, 1995.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–27519 Filed 11–6–95; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–29]

Office of the Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: January 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing & Urban Development, 451—7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available documents: Mary Douglas, 202–708–6304 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

In Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Supportive Housing Program Renewal Application.

OMB Control Number, if applicable: 2506–0134.

Description of the need for the information and proposed use: The information is needed to assist HUD in determining at what level existing programs receiving funds under the Supportive Housing Program (SHP), Supportive Housing Demonstration Program (SHDP) and the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) Program should receive renewal grants as stipulated in the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11301 *et seq.* and section 583.235 of the program rules.

Agency form numbers, if applicable: HUD–40109.

Members of affected public: State and local governments, nonprofit organizations, Indian Tribes.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Number of respondents—215; frequency of response—once; hours per response—20.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 1, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–27520 Filed 11–6–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–6979–D]

Alaska Native Claims Selection; Notice

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Shaan-Seet, Incorporated for 43.42 acres. The lands involved are in the vicinity of Craig, Alaska.

Copper River Meridian, Alaska

T. 74 S., R. 82 E.,
Secs. 11, 16 and 27.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 7, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–27509 Filed 11–6–95; 8:45 am]

BILLING CODE 4310–JA–P

[UT–920–06–1320–00]

Public Hearing and Call for Public Comment on Fair Market Value and Maximum Economic Recovery

AGENCY: Bureau of Land Management, Utah.

ACTION: Notice of public hearing and call for public comment on fair market value and maximum economic recovery; coal lease application UTU–67939.

SUMMARY: The Bureau of Land Management announces a public hearing on a proposed coal lease sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale. The lands included in coal lease application UTU–67939 are located in Carbon County, Utah, approximately 3 miles west of Scofield, Utah, within the Manti-La Sal National Forest and are described as follows:

T. 12 S., R. 6 E., SLM
Section 20, S½SE¼, SE¼SW¼;
Section 34, lots 1–4, S½NE¼, SE¼NW¼, E½SW¼NE¼, N½S½;
Section 35, all.
T. 13 S., R. 6 E., SLM
Section 2, all;
Section 3, all;
Section 10, lots 1–2, NE¼, E½NW¼;
Section 11, N½, N½S½.

Containing 3,291 acres, more or less.

Two economically minable coal beds, the Lower O'Connor and Upper O'Connor are found in this tract. The Lower O'Connor seam averages 9.1 feet in thickness and the Upper O'Connor seam averages 6.3 feet in thickness. This tract contains an estimated 22 to 28 million tons of recoverable high-volatile C bituminous coal. The range of coal quality in the seams on an as received basis is as follows: 12,627–12,756 BTU/lb., 5.95–7.5 percent moisture, .44–.53 percent sulfur, 4.02–4.63 percent ash, 44.69–45.81 percent fixed carbon, and 42.68–44.73 percent volatile matter. The public is invited to the hearing to make public or written comments on the proposal to lease and also to submit comments on the fair market value and the maximum economic recovery of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. Not less than 30 days prior to the publication of the notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (8:00 a.m. to 4:00 p.m.) Monday through Friday.

Comments on fair market value and maximum economic recover should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.
2. The mining method or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production.
3. The quantity of coal.
4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value.
5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).
6. The configuration of any larger mining unit of which the tract may be a part.
7. Restrictions to mining which may affect coal recovery.
8. The price that the mined coal would bring when sold.
9. Costs, including mining and reclamation, of producing the coal and the time of production.
10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.
11. Depreciation and other tax accounting factors.
12. The value of any surface estate where held privately
13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.
14. Any comparable sales data of similar coal lands.

Coal values developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

DATES: The public hearing will be held at the Carbon County Courthouse, Commission Chamber, 120 East Main, Price, Utah, at 7:00 p.m. on December 6, 1995. Comments on fair market value and maximum economic recovery must be received at the Bureau of Land Management, Utah State Office, by January 15, 1996.

FOR FURTHER INFORMATION CONTACT: Max Nielson, 801–539–4038, Bureau of Land Management, Utah State Office, Division of Mineral Resources, P.O. Box 45155, Salt Lake City, Utah, 84145–0155.

Dated: October 31, 1995.

G. William Lamb,

Acting State Director.

[FR Doc. 95–27540 Filed 11–6–95; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–942–06–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION: 1. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 19, 1995:

The plat, in two sheets, representing the dependent resurvey of a portion of the south boundary of Township 30 North, Range 58 East; and the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the survey of a portion of the south boundary, a portion of the subdivisional lines, and the subdivision of certain sections, Township 29 North, Range 58 East, Mount Diablo Meridian, Nevada, under Group No. 737, was accepted October 19, 1995. This survey was executed to meet certain administrative needs of the U.S. Forest Service.

2. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, those lands listed under item 1 are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to December 19, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. The above-listed survey is now the basic record for describing the lands for all authorized purposes. This survey has been placed in the open files in the BLM Nevada State Office and is available to the public as a matter of information. Copies of the survey and related field

notes may be furnished to the public upon payment of the appropriate fees.

Dated: October 26, 1995.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 95–27477 Filed 11–6–95; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

Availability of Plan of Operations and Environmental Assessment for Continuing Operations or 2 Gas Wells (Cecil #1 and Cecil #2) Devon Energy Corporation, Lake Meredith National Recreation Area, Hutchinson County, Texas

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Devon Energy Corporation a Plan of Operations for continuing operations of 2 gas wells within Lake Meredith National Recreation Area, Hutchinson County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, 419 East Broadway, Fritch, Texas; and the Southwest Support Office, National Park Service, 1220 South St. Francis Drive, Room 211, Santa Fe, New Mexico. Copies are available from the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1460, Fritch, Texas 79036, and will be sent upon request.

Dated: October 13, 1995.

Patrick McCrary,

Superintendent, Lake Meredith National Recreation Area.

[FR Doc. 95–27513 Filed 11–6–95; 8:45 am]

BILLING CODE 4310–70–M

Availability of Plan of Operations and Environmental Assessment for Continuing Operations or 40 Oil and Gas Wells; Mustang Oil and Gas Corporation, Lake Meredith National Recreation Area, Hutchinson County, Texas

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Mustang Oil and Gas Corporation a Plan of Operations for continuing operations of 40 oil and gas wells within Lake Meredith National Recreation Area, Hutchinson County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, 419 East Broadway, Fritch, Texas; and the Southwest Support Office, National Park Service, 1220 South St. Francis Drive, Room 211, Santa Fe, New Mexico. Copies are available from the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1460, Fritch, Texas 79032, and will be sent upon request.

Dated: October 13, 1995.

Patrick McCrary,

Superintendent, Lake Meredith National Recreation Area.

[FR Doc. 95–27514 Filed 11–6–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 28, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 22, 1995.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

San Francisco County

Matson Building and Annex, 215 Market St., San Francisco, 95001384

Pacific Gas and Electric Company General Office Building and Annex, 245 Market St., San Francisco, 95001385

MICHIGAN

Charlevoix County

Chicago and West Michigan Railroad Charlevoix Station, Chicago Ave., Charlevoix, 95001393

Loeb Farms Barn Complex, 05052 M–66 Hwy. N., SE of Charlevoix, Marion Township, Charlevoix vicinity, 95001392

Dickinson County

Graved Rock Site, Address Restricted, Kingsford vicinity, 95001389

Menominee River Park Archaeological District, Address Restricted, Kingsford vicinity, 95001388

Up Stream Put-In Site, Address Restricted, Kingsford vicinity, 95001390

Saginaw County

State Street Bridge, State St. (Fort Rd.) over the Cass R., Bridgeport, 95001391

Tuscola County

Millington Bank Building, 8534 State St., Millington, 95001387

Washtenaw County

Delta Upsilon Fraternity House, 1331 Hill St., Ann Arbor, 95001394

Stone School, 2600 Packard Rd., Ann Arbor, 95001386

NORTH CAROLINA

Gaston County

US Post Office, Former, 115 N. Main St., Belmont, 95001401

Hertford County

Harrellsville Historic District, Roughly, E. and W. Main St., Quebec St. and Tar Landing Rd., Harrellsville, 95001398

Lee County

Sanford High School, Former (Lee County MPS) 507 N. Steele St., Sanford, 95001400

Martin County

Sunny Side Inn, 1102 Washington St., Williamston, 95001396

Mecklenburg County

Wesley Heights Historic District, Bounded by W. Morehead St., Woodruff Pl., Lela Ave., CSX RR tracks, Tuckaseegee Rd., W. Trade St. and S. Summit Ave., Charlotte, 95001397

Vance County

Library and Laboratory Building—Henderson Institute, Rock Spring St., Henderson, 95001399

TEXAS

Bastrop County

Smithville Residential Historic District, Roughly bounded by Cleveland, First, Mills, N. 9th, Burleson, Colorado, and the Colorado R., Smithville, 95001395

[FR Doc. 95–27506 Filed 11–6–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed amended consent decree ("Amended Decree") in *United States* v. *Government of the Virgin Islands*, Civil Action No. 84–104, as well as a Stipulated Modifications of Consent Decree ("Stipulation"), were lodged on October 11, 1995 with the United States District Court for the Virgin Islands.

In March 1984, the United States filed a complaint against the Government of the Virgin Islands ("VI") alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the "Act"). In September 1985, the United States and the VI entered into a consent decree ("Original Decree") to resolve the claims in the complaint. In March 1991, the United States filed a motion seeking to hold the VI in contempt for certain violations of the Original Decree. The Amended Decree and Stipulation are a resolution of this motion for contempt.

Pursuant to the Amended Decree and the Stipulation, the VI will pay a penalty of $375,000 for violations of the Original Decree. The VI has also agreed, *inter alia*, to (1) construct a new wastewater treatment plant on St. Thomas, known as the Mangrove Lagoon Regional Wastewater Treatment Plant, pursuant to a revised timetable, (2) construct a new wastewater treatment plant on St. John, known as the Cruz Bay Regional Wastewater Treatment Plant, (3) place $2 million into a corrective action trust fund over a period of two years to fund certain specific operational improvements at nine wastewater treatment plants operated by the VI (these plants include Charlotte Amalie, Donoe, Old Tutu, New Tutu, Nadir, Bordeaux, Brassview, Vessup Bay, and St. Croix), and (4) meet interim effluent limits for a certain period of time, after which final Territorial Pollution Discharge Elimination System permit limits would be met, at the nine wastewater treatment plants listed above, as well as at the Brassview and George Simmonds plants.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amended Decree and Stipulation. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Government of the Virgin Islands*, DOJ. No. 90–5–1–1–1911A.

The proposed Amended Decree and Stipulation may be examined at the Region 2 Office of the Environmental Protection Agency, 290 Broadway, New York, NY, at the U.S. Attorney's Office, Federal Building and U.S. Courthouse, 5500 Veterans Drive, Suite 260, St. Thomas 00802–6424, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Amended Decree and Stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the proposed Amended Decree and Stipulation please refer to the referenced case and enclose a check in the amount of $16.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–27479 Filed 11–6–95; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 111–95]

Privacy Act of 1974; Notice of Modified System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published November 4, 1994 (59 FR 55292):

The Immigration and Naturalization Service (INS) Alien File (A–File) and Central Index System (CIS), Justice/INS–001A.

Specifically, INS has added a new routine use disclosure identified as routine use P. Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the proposal.

Therefore, please submit any comments on or before December 7, 1995. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: October 25, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–001A

SYSTEM NAME:

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS).

SYSTEM LOCATION:

Headquarters, Regional, District, and other INS file control offices in the United States and foreign countries as detailed in JUSTICE/INS–999. Remote access terminals will also be located in other components of the Department of Justice and in the Department of State on a limited basis.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act of the United States.

B. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive Orders, and Presidential proclamations administered by INS, and witnesses and informants having knowledge of such violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The computerized indexing system contains personal identification data such as A-File number, name, date and place of birth, date and port of entry, as well as the location of each official hardcopy paper file known as the "A-file." Microfilm records contain naturalization certificates and any supporting documentation prior to April 1, 1956; however, after that date, this type of information is maintained in the "A-File" which is described in B below.

B. The hard copy A-file (prior to 1940 were called Citizenship File (C-File)) contains all the individual's official record material such as naturalization certificates; various forms, applications and petitions for benefits under the immigration and nationality laws; reports of investigations; statements; reports; correspondence; and memorandums on each individual for whom INS has created a record under the Immigration and Nationality Act.

AUTHORITY FOR MAINTENANCE OF RECORDS:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 8 U.S.C. 1360), and the regulations pursuant thereto.

PURPOSE:

The system is used primarily by INS and other Department of Justice employees to administer and enforce the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and the referral of such violations for prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws, including treaties and reciprocal agreements.

C. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

D. To a Federal, State, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, and/or charged with investigating, prosecuting, enforcing or implementing civil and/or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

E. A record, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which INS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS to be arguably relevant to the litigation: (i.) INS, or any subdivision thereof, or (ii.) any employee of INS in his or her official capacity, or (iii.) any employee of INS in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv.) the United States, where INS determines that the litigation is likely to affect it or any of its subdivisions.

F. To a Federal, State, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

G. To a Federal, State, local or foreign government agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of INS concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

H. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

I. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

J. To an applicant, petitioner or respondent or to his or her attorney or representative as defined in 8 CFR 1.1(j) in connection with any proceeding before INS.

K. To a Federal, State, or local government agency to assist such agencies in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to them or to the United States government, and/or to obtain information that may assist INS in collecting debts owed to the United States Government; to a foreign government to assist such government in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to it provided that the foreign government in question (1) provides sufficient documentation to establish the validity of the stated purpose of its request, and (2) provides similar information to the United States upon request.

L. To student volunteers whose services are accepted pursuant to 5 U.S.C. 3111 or to students enrolled in a college work study program pursuant to 42 U.S.C. 2751 et seq.

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of a personal privacy.

N. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

O. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

P. To an obligor, any information which may aid the obligor in locating an individual who has failed to appear at a deportation hearing, exclusion or other similar proceeding, and for whom the obligor had posted an immigration bond in an effort to secure such appearance by such individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most A-file and C-file records are paper documents and are stored in file folders. Some microfilm and other records are stored in manually operated machines, file drawers, and filing cabinets. Those index records which can be accessed electronically are stored in a data base on magnetic disk and tape.

RETRIEVABILITY:

These records are indexed and retrieved by A-file or C-file number, name, and/or date of birth.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked during non-duty office hours. Many records are stored in cabinets or machines which are also locked during non-duty office hours. Access to automated records is controlled by passwords and name identifications.

RETENTION AND DISPOSAL:

A-file records are retained for 75 years from the closing date or date of last action and then destroyed. C-file records are to be destroyed 100 years from March 31, 1956. Automated index records are retained only as long as they serve a useful purpose and then they are deleted from the system disk and/or tape.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the *Assistant Commissioner, Office of Records, Office of Examinations,* Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, the nearest INS office, or the INS office maintaining desired records, if known, by using the list of principal offices of the Immigration and Naturalization Service Appendix: JUSTICE/INS–999, published in the **Federal Register.**

RECORD ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at one of the addresses identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, date and place of birth, and notarized signature of the individual who is the subject of the record, and any other information which may assist in identifying and locating the record, and a return address. For convenience, INS Form G–639, FOIA/PA Request, may be obtained from the nearest INS office and used to submit a request for access.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelop "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information contained in INS records is supplied by individuals on Department of State and INS applications and forms. Other information comes from inquiries and/or complaints from members of the general public and members of congress; referrals of inquiries and/or complaints directed to the White House or Attorney General; INS reports to investigations, sworn statements, correspondence and memorandums; official reports, memorandums, and written referrals from other entities, including Federal, State, and local governments, various courts and regulatory agencies, foreign government agencies and international organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e) (1), (2), and (3); (e)(4)(G) and (H); (e)(5) and (8); and (g) of the Privacy Act. These exemptions apply to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552 (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register** and codified as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 95–27480 Filed 11–6–95; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 112–95]

Privacy Act of 1974 as Amended by the Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (5 U.S.C. 552a(e)(12)). The Department of Justice (DOJ) proposes to participate with the United States Postal Service (USPS) in a computer matching program. The matching activity will enable the DOJ to determine whether a delinquent debtor whose debt has been referred to the DOJ for enforced collection action is also a current or former USPS employee whose salary or other federal benefit is subject to offset to satisfy the delinquent debt.

Legal authority for conducting the matching program is supplied by the following statutes and regulations, applicable to the parties, which authorize agencies to collect, or refer to other agencies for collection, delinquent debts owed to the United States and/or which specifically authorize collection by salary or other administrative offset to satisfy such debts: The Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 3711 Collection and Compromise, 3716 Administrative Offset, 5 U.S.C. 5514(a) and note (Installment Deduction for Indebtedness (Salary Offset)); 4 CFR ch. II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); and Office of Management and Budget (OMB) Circular No. A–129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables," 58 FR 5776 (January 22, 1993), directing agencies to make arrangements for annual matching of their delinquent debtor files against federal employment rosters.

The records to be used in the match (including the Privacy Act systems of records) and the roles of the matching participants are described as follows:

1. The DOJ will use records from its system, "Debt Collection Offset Payment System, Justice/JMD–009," which contains records of about 50,000 delinquent debtors. Routine use (b) of that system which was last published at 59 FR 17,111, on April 11, 1994, permits the disclosure.

2. The USPS will use records from its system "Finance Records—Payroll System, USPS 050.020," containing records of about 800,000 employees. Routine use 24 of USPS 050.020, which last appeared at 57 FR 57515 on December 4, 1992, covers the disclosure.

The USPS, the source agency in this match, will compare against its data base of employee records a data extract provided by the DOJ on magnetic tape and containing the name and SSN of each delinquent debtor. For each "hit" (individual common to both files, based on matching SSN's), USPS will provide to the DOJ, the recipient agency in the match, the name, SSN, date of birth, home address, place of work and employee type (e.g. permanent or temporary). After independent verification of the matched data and appropriate notice to the matching subjects, the DOJ will request that USPS offset the salary of individuals verified as being both USPS employees and delinquent debtors not in a repay status.

Matching activity will be effective on the expiration of 30 days after publication of this notice of the proposed matching activity in the **Federal Register** or 40 days after the Congress and OMB have been notified of the program, whichever is later, and will continue for a period of 18 months from the effective data, unless extended by the Data Integrity Boards of the respective agencies.

The matching agreement and the required report have been provided to OMB and the Congress in accordance with 5 U.S.C. 552a(o)(2)(A) and (r). Inquiries may be addressed to Patricia E. Neely, Program Analyst, Systems Policy Staff, Justice Management Division, Department of Justice, Room 850, Washington Center Bldg., Washington, DC 20530.

Dated: October 30, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 95–27541 Filed 11–6–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Interstate Bakeries Corp. and Continental Baking Company

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (c)–(h), the United States publishes below the comment received on the proposed final Judgment in *United States* v. *Interstate Bakeries Corp. and Continental Baking Company*, Civil Action No. 95C 4194, filed in the United States District Court for the Northern District of Illinois, Eastern Division, together with the United States' response to that comment.

Copies of the comment and response to comment are available for inspection and copying in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2481), and at the office of the Clerk of the United States District Court for the Northern District of Illinois Eastern Division, 219 S. Dearborn, 20th Floor, Chicago, Illinois, 60604. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

September 29, 1995.

Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division,
United States Department of Justice
1401 H Street, NW., Suite 4000,
Washington, DC 20530.

Dear Mr. Nanni and associates: Thank you for the opportunity to comment on the Proposed Final Judgment and Competitive Impact Statement in U.S. v. Interstate Bakeries Corp. and Continental Baking Company. From 1978 until 1992 I was an employee of Continental Baking Company ("Continental") and became intimately familiar with its bakeries, distribution, and marketing. I continue to follow the company and the wholesale baking industry in general, and produce an independent newsletter for employees and investors of Continental and now Interstate Baking Corp. ("Interstate"). I will draw upon this experience in my comments.

I. Competitive Impact of the Merger of Interstate and Continental

The Antitrust division has well documented the near monopoly Interstate now holds in the Chicago, Milwaukee, central Illinois, Los Angeles, and San Diego markets for branded While Pan Bread. The merger has also given Interstate a virtual monopoly in the Oxnard and Mohave, California, southern Idaho, western Colorado, and Casper and Rock Springs, Wyoming markets; left it with only one substantial competitor in the San Luis Opisbo, Carbondale, Illinois, and central Missouri markets; and only two substantial competitors in the eastern Virginia, Raleigh, North Carolina, Kansas City, Bakersfield, Cincinnati, southeast Kansas, southwest Missouri, and western Montana markets. A quick bit of mathematics shows that a merger which restricts a market to only, two, or even three substantial competitors produces a HHI which easily exceeds the Antitrust Division's standards for challenge of said merger.

II. Remedy

The Antitrust division in its wisdom has included in the stipulation a requirement that sufficient assets of the merged company be divested to allow the new competitor(s) to "remain a viable competitor in the White Pan Break market". Creating viable competitor(s) in this market will require the divestment of the following assets:

1. To realize the economies of scale needed in advertising and promotion the obvious choice for divestment is the only single cohesive brand available over the several markets targeted for divestment, Wonder. To allow cost effective purchase of advertising the areas of divestment must be expanded to more closely conform with established newspaper circulation and broadcast reception areas. This will require expansion of the area of divestment to include the central California, Colorado, southern Idaho, southern Illinois, Iowa, eastern Kansas, Missouri, western Montana, eastern North Carolina, southwest Ohio, eastern Virginia, Utah, and Wyoming market areas.

2. As the new competitor(s) created by the divestment will need to maintain continuity in the production of the divested bakeries, and in fact much of Continentals production and distribution system is custom built for it's Wonder and other brands and ill suited for other products, it is essential that the divestment include Continental bakeries only. This will require the divestment of the Davenport, Denver, Indianapolis, Kansas City, Ogden, Pomona, Richmond, St. Louis, Salt Lake City, Spokane, Tulsa, and Waterloo bakeries.

3. The new competitor(s) will need an in house laboratory and experimental bakery to allow confidential quality control and new product development. This will require the divestment of the St. Louis General Office facility in which these operations are located.

4. To allow the new competitor(s) to bring new products from the experimental bakery to full scale production will require the divestment of the Kansas City bakery which contains the Continental's Market Development Unit.

5. The new competitor(s) will require a central office with an experienced staff and ready access to the experimental bakery and lab. This will require the divestment of The St. Louis General Office facility.

6. To keep the new competitor(s) up to date in bakery engineering and design will require the divestment of the East Brunswick bakery with it's Engineering, Research, and Development unit.

7. The new competitor(s) will need bakeries located as close as possible to their markets to control transportation costs which can easily devour the low profit margins common in the wholesale White Pan Bread industry. This will require the divestment of the Denver, Indianapolis, Kansas City, Ogden, Pomona, Richmond, St. Louis, Salt Lake City, and Tulsa bakeries.

8. As divestment of only the Wonder brand of bread products would provide the new competitor(s) with only 20 to 30 percent of their current sales volume with virtually no reduction in overhead costs it is essential to the viability of these competitor(s) that they be given the full line of Continental products including the Hostess line. Continental bakeries tend to be highly specialized dedicated facilities optimized to produce a small number of products, importing the rest from other Continental bakeries which they in turn supply with their specialties. In fact, there is probably no Continental bakery which is capable of producing even the full line of Wonder label products. To provide the new competitor(s) with the full range of Continental products they will need to be viable in the marketplace will require the divestment of every Continental bakery and related assets except possibly the Anchorage bakery.

III. Conclusion

The merger of Interstate and Continental has resulted in a reduction in competition in many areas of this country which violates our antitrust laws and grossly offends the public interest. Unfortunately no surgically precise divestment of assets in these geographical areas is possible—so interdependent are Continental bakeries that they developed one of our county's largest private fleets of transport trucks largely to exchange products between them. While Hodgkins and Pomona specialize in high speed production of white bread by the truckload, Waterloo and San Pedro slowly produce smaller batches of variety breads, and Indianapolis is Continental's sole source of Mini Muffins and Brownie Bites. On Continentals loading docks, in its transports, and within its depots and thrift stores these products of myriad bakeries are brought together to produce a profitable mix. Given the thin profit margins of the wholesale baking industry, attempting to divide Continental with even surgical precision would be fatal. The Antitrust Division and the court have no alternative but to insist on a total divestment of Continental Baking Company.

Respectively Submitted,

Diana Slyter.

October 23, 1995.

Ms. Diana Slyter,
728 East 16th Street, Minneapolis, MN 55404.

Re: *U.S.* v. *Interstate Bakeries Corp. and Continental Baking Co.; Civil Action No.: 95C 4194 (N.D. Illinois July 20, 1995.*

Dear Ms. Slyter: This letter responds to your letter dated September 29, 1995 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Continental Baking Company ("Continental") by Interstate Bakeries Corporation ("Interstate"). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because its effects may be substantially to lessen competition in the sale of white pan bread in five markets (Chicago, Milwaukee, central Illinois (Springfield, Peoria, Champaign/Urbana), San Diego, and Los Angeles). Under the proposed Final Judgment, the defendants are required to divest such brand names and possibly other assets as are necessary to create a new competitor in the sale of white pan bread in each of the five markets.

In your letter, you expressed concern that the proposed Final Judgment does not address competitive concerns in a number of additional geographic areas (Oxnard and Mohave, California; southern Idaho; western Colorado; Casper and Rock Springs, Wyoming; San Luis Obispo, California; Carondale, Illinois; central Missouri; eastern Virginia; Raleigh, North Carolina; Kansas City; Bakersfield, California; Cincinnati; southeast Kansas; southwest Missouri; and western Montana).

The analytical process used by the Antitrust Division in determining in which markets to challenge this acquisition required us to assess a number of factors such as market concentration, potential adverse competitive effects, entry, and efficiency gains. These factors must be evaluated in an economically meaningful product and geographic market. This analysis is aimed at allowing the Division to answer the ultimate inquiry: whether the acquisition is likely to create or enhance market power or facilitate the exercise of market power in each such market. After a thorough investigation which included the geographic areas mentioned in your letter, the Antitrust Division concluded that the product and geographic markets in which Interstate's acquisition of Continental might most significantly create or enhance market power or facilitate the exercise of market power are the sale of white pan bread in the Chicago, Milwaukee, central Illinois, Los Angeles and San Diego markets.

Your letter also outlines a number of assets that you believe should be divested as part of the proposed Final Judgment in order to create a viable competitor in the sale of white pan bread. You conclude, essentially, that all of Continental's assets should be divested (i.e., that the acquisition should be prevented in its entirety).

Paragraph IV.A. of the proposed Final Judgment states that the defendants must divest themselves of the certain brand names as well as any Bread Assets (as defined by the proposed Final Judgment) as are reasonably necessary in order for the acquirer of each divested brand "to remain a viable competitor in the White Pan Bread Market in each of the Relevant Territories."

Furthermore, paragraph IV.D. of the proposed Final Judgment provides that any divestiture must be accomplished in such a way to satisfy the United States that the brands "can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of White Pan Bread at wholesale to retail grocery stores and other customers." Thus, the defendants would be obligated to divest as many or as few of the defined Bread Assets as were necessary to insure the buyer would be a viable competitor in the sale of white pan bread.

The United States, in evaluating any potential divestiture packages, would take into consideration many of the issues raised in your letter to insure the viability of any purchaser. This determination will be made on a case-by-case basis, depending on many factors including the existing assets and financial condition of any potential purchaser and the stated asset needs of that purchaser. Moreover, we have to assume that any potential purchaser will consider these facts, and others, before purchasing any assets.

We appreciate you bringing your concerns to our attention and hope that this information will help to alleviate them. While we understand your position, we believe that the proposed Final Judgment would adequately alleviate the competitive concerns created by Interstate's acquisition of Continental. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

Thank you for your interest in the enforcement of the antitrust laws.

Sincerely yours,

Anthony V. Nanni,

Chief, Litigation I Section.

[FR Doc. 95–27481 Filed 11–6–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than November 17, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 16th day of October, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 10/16/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,530	Anitec Image Corp (ICWU)	Binghamton, NY	10/06/95	Photographic & Graphic Arts Film & Paper.
31,531	Allegheny Ludlum Corp (USWA)	Brackenridge, PA	10/04/95	Silcon Steel.
31,532	UniMark Foods, Inc. (Wkrs)	Hidalgo, TX	09/18/95	Guacamole.
31,533	EIS Brake Parts (UAW)	Berlin, CT	09/18/95	Automobile Brake Master Cylinders.
31,534	Amphenol Corp. (Wkrs)	Roselle, IL	10/04/95	Electric Connectors (Sales Only).
31,535	Ohio Power Co. (UWUA)	Brilliant, OH	09/29/95	Electricity.
31,536	General Electric (Wkrs)	Erie, PA	10/01/95	Locomotive Parts.
31,537	Sero Co., Inc. (The) (Co)	Cordele, GA	10/06/95	Men's Dress Shirts.
31,538	McInnes Steel Co. (Wkrs)	Corry, PA	10/02/95	Steel Forgings.
31,539	B & C Well Service (Wkrs)	Borger, TX	10/02/95	Oil Well Services.

APPENDIX—Continued
[Petitions Instituted on 10/16/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,540	American Banknote Co (Wkrs)	Bedford Park, IL	10/04/95	Printed Documents.
31,541	Mud Systems, Inc. (Co)	Wichita, KS	10/04/95	Technical Support for Petroleum Industry.
31,542	OshKosh B'Gosh, Inc. (Co)	McEwen, TN	10/03/95	Children's Overalls.
31,543	OshKosh B'Gosh (Co)	Hermitage Sprgs. TN	10/11/95	Children's Overalls.

[FR Doc. 95–27455 Filed 11–6–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,219]

Atlas Ballistic Products, Odessa, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Atlas Ballistic Products, Odessa, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–30,219; Atla Ballistic Products, Odessa, Texas (October 26, 1995)

Signed at Washington, DC, this 26th day of October, 1995.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27465 Filed 11–6–95; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 23rd day of October, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions instituted on 10/23/95]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,544	Chadco, Inc. (Wkrs)	Corinth, MS	09/29/95	Men's, Boys', Children's Knit Shirts.
31,545	Circle Jewelry Products (Wkrs)	New York, NY	10/05/95	Costume Jewelry.
31,546	Bethlehem Steel Corp. (BBF)	Port Arthur, TX	10/11/95	Repair Offshore Drilling Rigs/Ships.
31,547	Columbian Cutlery Co. (USWA)	Reading, PA	10/05/95	Lawn & Garden Tools.
31,548	General Electric (UE)	Erie, PA	10/05/95	Locomotives & Related Equipment.
31,549	Johnston America Corp. (USWA)	Johnstown, PA	10/06/95	Railroad Cars, Kits & Car Parts.
31,550	Lawler Hosiery (Wkrs)	Carrollton, GA	10/05/95	Men's, Women's, Children's Socks.
31,551	Gleasons Sales & Service (Wkrs)	Lansing, MI	10/05/95	Radiator Repair.
31,552	Paxar Corp., Woven Label (Co.)	Paterson, NJ	10/04/95	Woven Labels for Apparel.
31,553	Stratus Computer (Wkrs)	Marlboro, MA	10/04/95	Mfg Mainframe, Fault Tolerent Computer.
31,554	Wondermaid, Inc. (UNITE)	Washington, MO	10/12/95	Ladies' Lingerie.
31,555	Woodville Apparel Co. (Wkrs)	Woodville, MS	10/10/95	Apparel (T-Shirts).
31,556	Milday Brassiere & Corset (ILGWU)	New York, NY	10/12/95	Ladies' Swimsuits.
31,557	Rienzi Manufacturing, Inc (Wkrs)	Rienzi, MS	10/09/95	Men's Athletic Apparel.
31,558	Hill-Phoenix Refrig. (Wkrs)	New Braunfels, TX	10/09/95	Refrigeration Systems—Supermarkets.
31,559	Hettich International (IBT)	Harrionville, MO	10/11/95	Drawer Slides & Hardware for Furniture.
31,560	Unocal Corporation (Co.)	Bakersfield, CA	10/10/95	Crude Oil, Natural Gas.
31,561	Unocal Corporation (Co.)	Ventura, CA	10/10/95	Crude Oil, Natural Gas.

APPENDIX—Continued
[Petitions instituted on 10/23/95]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,562	Unocal Corporation (Co.)	Orcutt, CA	10/10/95	Crude Oil, Natural Gas.
31,563	Unocal Corporation (Co.)	Santa Fe Sprgs, CA	10/10/95	Crude Oil, Natural Gas.
31,564	W.R. Grace & Company (Co.)	West Chicago, IL	10/12/95	Fireproofing Materials.
31,565	Eastland Woolen Mill (Co.)	Corinna, ME	10/09/95	Woolen Yarn and Fabric.
31,566	Striar Textile Mill (Co.)	Orono, ME	10/09/95	Woolen Fiber.
31,567	Bass Shoe Outlet #302 (Wkrs)	Lebanon, MO	10/11/95	Shoes & Leather Goods.
31,568	Fruit of The Loom (Co.)	Greensburg, KY	10/09/95	T-Shirts.
31,569	Mapa Pioneer (URW)	Willard, OH	10/10/95	Rubber Gloves.
31,570	Mapa Pioneer (URW)	Attica, OH	10/10/95	Rubber Gloves.
31,571	Carl E. Smith, Inc. (Co.)	Sandyville, WV	10/07/95	Install Gas Pipelines.
31,572	Reidbord Brothers Co. (Wkrs)	Elkins, WV	09/28/95	Men's Casual Pants.
31,573	Reidbord Brothers Co. (Wkrs)	Philippi, WV	09/28/95	Men's Casual Pants.
31,574	Reidbord Brothers Co. (Wkrs)	Buckhannon, WV	09/28/95	Men's Casual Pants.

[FR Doc. 95–27463 Filed 11–6–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–31,351; TA–W–31,351A]

Consolidated Natural Gas Transmission, Clarksburg, WV and Hope Gas, Inc., Clarksburg, WV; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 26, 1995, applicable to all workers at Consolidated Natural Gas Transmission located in Clarksburg, West Virginia. The notice was published in the **Federal Register** on October 5, 1995 (60 FR 52213).

At the request of the company and State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that Hope Gas, Inc., also located in Clarksburg, West Virginia, is a subsidiary of Consolidated Natural Gas Company. The company reports worker separations have occurred at Hope Gas, Inc. The Department is amending the certification to include these workers.

The intent of the Department's certification is to include all workers of Consolidated Natural Gas Transmission adversely affected by increased imports of natural gas.

The amended notice applicable to TA–W–31,351 is hereby issued as follows:

All workers of Consolidated Natural Gas Transmission (TA–W–31,351) and Hope Gas, Inc. (TA–W–31,351A), Clarksburg, West Virginia, who became totally or partially separated from employment on or after August 9, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27457 Filed 11–6–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–31,246]

Fina Oil and Chemical Company Exploration and Production Group West Texas Division Operating at Various Locations in Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 25, 1995, applicable to all workers of the West Texas Division of Fina Oil and Chemical Company operating at locations in Texas and Louisiana. The notice was published in the **Federal Register** September 19, 1995 (60 FR 48526).

At the request of the company, the Department is amending the certification to include workers of American Petrofina Pipeline, which is a wholly-owned subsidiary of the subject firm. The workers, located at various sites in Texas, are engaged in employment related to the production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of Fina who were adversely affected by imports. The Department's review of the certification shows that when the certification was issued, Louisiana should have been identified as a separate location. Therefore, the certification is also amended to separately identify the Fina Oil operations in Louisiana as TA–W–31,246A.

All workers of Fina Oil and Chemical Company with locations in Texas (TA–W–31,246) and Louisiana (TA–W–31,246A), and American Petrofina Pipeline operating at various locations in Texas (TA–W–31,246B) who became totally or partially separated from employment on or after October 8, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 20th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 95–27452 Filed 11–6–95; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,880 and 880A]

G.E. Power Systems Including Corporate Research and Development and G.E. Computer Services, Schenectady, NY, and G.E. Power Systems, Fitchburg, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 1995, applicable to all workers of G.E. Power Systems, Schenectady, New York. The certification was amended June 9, 1995, and September 21, 1995 to include other divisions of the firm. The amended notices were published in the **Federal Register** on June 21, 1995 (60 FR 32347), and October 2, 1995 (60 FR 51,500), respectively.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at G.E. Power Systems in Fitchburg, Massachusetts. The workers are engaged in employment related to the production of steam turbines and generators.

The intent of the Department's certification is to include all workers of G.E. Power Systems adversely affected by imports.

The amended notice applicable to TA–W–30,880 is hereby issued as follows:

"All workers of G.E. Power Systems, including Corporate Research and Development, and workers of G.E. Capital Computer Services providing support services related to the production of steam turbines and generators at G.E. Power Systems, Schenectady, New York (TA–W–30,880); and G.E. Power Systems, Fitchburg, Massachusetts (TA–W–30,880A) who became totally or partially separated from employment on or after November 19, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 20th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27454 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,676; TA–W–30,676M]

Hasbro, Inc., Pawtucket, Rhode Island; Playskool Baby, Orangeburg, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 31, 1995, applicable to all workers at Hasbro, Inc., located in Pawtucket, Rhode Island. The notice was published in the **Federal Register** on February 14, 1995 (60 FR 8415).

At the request of the company, the Department is amending the certification to include workers of the subject firm operating as Playskool Baby, located in Orangeburg, New York.

The intent of the Department's certification is to include all workers of Harsbro adversely affected by imports.

The amended notice applicable to TA–W–30,676 is hereby issued as follows:

"All workers of Hasbro, Inc., Pawtucket, Rhode Island (TA–W–30,676) and Playskool Baby, Orangeburg, New York (TA–W–30,676M) engaged in employment related to the production of toys and games who became totally or partially separated from employment on or after October 24, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 20th day of October 1995.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27461 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,197; TA–W–31,197A]

H.H. Cutler Co. Reidsville, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 25, 1995, applicable to all workers at H.H. Cutler Co. located in Statesboro, Georgia. The notice was published in the **Federal Register** on September 19, 1995 (60 FR 48526).

At the request of petitioners, the Department reviewed the subject certification. New findings show worker separations occurred at the Reidsville, Georgia plant of H.H. Cutler. The workers produced children's apparel.

The intent of the Department's certification is to include all workers of H.H. Cutler adversely affected by imports.

The amended notice applicable to TA–W–31,197 is hereby issued as follows:

"All workers of H.H. Cutler Company, Statesboro, Georgia (TA–W–31,197) and Reidsville, Georgia (TA–W–31,197A) who became totally or partially separated from employment on or after June 1, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 24th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27467 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,356]

Jeld-Wen of Bend/Bend Millwork Including Pozzi Window and Bend Door Co., Bend, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 21, 1995, applicable to all workers at Jeld-Wen of Bend/Bend Millwork, located in Bend, Oregon. The notice was published in the **Federal Register** on October 5, 1995 (60 FR 52213).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that workers of Pozzi Window and Bend Door Co. were inadvertently omitted from the certification. All manufacturing operations of Pozzi Window and Bend Door Co. are performed at the Jeld-Wen production facility in Bend, Oregon.

The intent of the Department's certification is to include all workers of Jeld-Wen adversely affected by imports.

The amended notice applicable to TA–W–31,356 is hereby issued as follows:

"All workers of Jeld-Wen of Bend/Bend Millwork, Pozzi Window and Bend Door Company, Bend Oregon who became totally or partially separated from employment on or after August 9, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 24th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27458 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,268]

Maxus Energy Corp. A/K/A Maxus Corporate, Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 8, 1995, applicable to workers of Maxus Energy Corporation located in Dallas, Texas. The notice was published in the **Federal Register** on August 24, 1995 (60 FR 44079).

New information received from the company shows that some of the workers at Maxus Energy Corporation had their unemployment insurance (UI) taxes paid to Maxus Corporate.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Maxus who were affected by increased imports of crude oil and natural gas. The amended notice applicable to TA–W–31,268 is hereby issued as follows:

"All workers of Maxus Energy Corporation, a/k/a Maxus Corporate, Dallas, Texas who become totally or partially separated from employment on or after June 30, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 24th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27460 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,120]

Mobil Exploration and Producing U.S., Incorporated (MEPUS) A/K/A Mobil Administrative Service Company Inc. (MASCI) Headquartered in Dallas, Texas, etc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 30, 1994, applicable to all workers of Mobil Exploration and Producing U.S., Incorporated (MEPUS), headquartered in Dallas, Texas and operating at various locations in the United States. The notice was published in the **Federal Register** on October 21, 1994 (59 FR 53211).

At the request of the company, the Department reviewed the subject certification. New information received from the company shows that a worker unit within MEPUS was inadvertently excluded from the certification. Accordingly, the Department is amending the certification to include workers of Mobil Administrative Service Company Inc.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,120 is hereby issued as follows:

"All workers of Mobile Exploration and Producing U.S., Incorporated (MEPUS), a/k/a Mobile Administrative Service Company, Inc. (MASCI) headquartered in Dallas, Texas (TA–W–30,120) and operating out of various locations as listed below engaged in activities related to exploration and production of crude oil and natural gas who became totally or partially separated from employment on or after April 30, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–30,120A—Mepus, Dallas, Affiliate, A/K/A Mobile Administrative Service Company Inc. (MASCI), headquartered in Dallas, Texas and operating at other sites in the following states:
TA–W–30,120B Alabama
TA–W–30,120C California
TA–W–30,120D Colorado
TA–W–30,120E Kansas
TA–W–30,120F Louisiana
TA–W–30,120G Oklahoma
TA–W–30,120H Texas

TA–W–30,120I—Mepus, Bakersfield Division, A/K/A Mobile Administrative Service Company Inc. (MASCI), headquartered in Bakersville, California and operating at other sites in the following states:
TA–W–30,120J California
TA–W–30,120K Colorado
TA–W–30,120L Texas
TA–W–30,120M Wyoming

TA–W–30,120N—Mepus, Houston Division, A/K/A Mobile Administrative Service Company Inc. (MASCI), headquartered in Houston, Texas and operating at other sites in the following states:
TA–W–30,120O California
TA–W–30,120P Louisiana
TA–W–30,120Q New Mexico
TA–W–30,120R Oklahoma
TA–W–30,120S Texas

TA–W–30,120T—Mepus, Liberal Division, A/K/A Mobile Administrative Service Company Inc. (MASCI), headquartered in Liberal, Kansas and operating at other sites in the following states:
TA–W–30,120U Colorado
TA–W–30,120V Kansas
TA–W–30,120W Oklahoma

TA–W–30,120X—Mepus, Midland Division, A/K/A Mobile Administrative Service Company Inc. (MASCI), headquartered in Midland, Texas and operating at other sites in the following states:
TA–W–30,120Y Colorado
TA–W–30,120Z New Mexico
TA–W–30,120AA Texas
TA–W–30,120BB Utah

TA–W–30,120CC—Mepus, New Orleans Division, A/K/A Mobile Administrative Service Company Inc. (MASCI), headquartered in New Orleans, Louisiana and operating at other sites in the following states:
TA–W–30,120DD Alabama
TA–W–30,120EE Arkansas
TA–W–30,120FF Florida
TA–W–31,120GG Georgia
TA–W–30,120HH Louisiana
TA–W–30,120II Mississippi
TA–W–30,120JJ New Mexico
TA–W–30,120KK Oklahoma
TA–W–30,120LL Texas

Signed at Washington, D.C. this 20th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27462 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,239]

Nu Quaker Dyeing, Incorporated, Easton, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Nu Quaker Dyeing, Incorporated, Easton, Pennsylvania. The review indicated that the application contained no new substantial information which could bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,239; NU Quaker Dyeing, Incorporated, Easton, Pennsylvania (October 26, 1995)

Signed at Washington, D.C. this 26th day of October, 1995.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27464 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,552]

Paxar Corp., Woven Label Group Paterson, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 23, 1995, in response to a worker petition which was filed on October 23, 1995, on behalf of

workers at Paxar Corporation, Woven Label Group, Paterson, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 29th day of October, 1995

Russell Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27541 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,359]

Pendleton Woolen Mills, Inc. Milwaukie, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 13, 1995, applicable to all workers of Pendleton Woolen Mills, Inc., Milwaukie, Oregon. The notice was published in the **Federal Register** on September 26, 1995 (60 FR 49635).

At the request of the union, the Department reviewed the certification for workers at the subject firm. New information provided by the company reveals that worker separations at the subject facility are not limited to those workers producing ladies' blouses. New findings show employment declines have occurred for workers producing men's shirts at the Milwaukie, Oregon plant.

The intent of the Department's certification is to include all workers of Pendleton Woolen Mills adversely affected by increased imports of apparel. Accordingly, the Department is amending the certification to expand coverage to all workers of the subject firm in Milwaukie, Oregon.

The amend notice applicable to TA–W–31,359 is hereby issued as follows:

"All workers of Pendleton Woolen Mills, Inc., Milwaukie, Oregon who became totally or partially separated from employment on or after August 9, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 25th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27456 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,061 & 061A]

Strand Lighting, Incorporated Rancho Dominguez, California and Strand Lighting, Incorporated Field Offices in the State of New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 19, 1995, applicable to all workers at Strand Lighting Incorporated located in Rancho Dominguez, California. The notice was published in the **Federal Register** on August 9, 1995 (60 FR 40613).

At the request of the State Agency the Department reviewed the certification. New information received from the subject firm shows that worker separations have occurred in the State of New Jersey. The workers in New Jersey are engaged in employment related to field service repair for Strand Lighting.

The intent of the Department's certification is to include all workers of Strand Lighting adversely affected by imports.

The amended notice applicable to TA–W–31,061 is hereby issued as follows:

"All workers of Strand Lighting, Incorporated, Rancho Dominguez, California (TA–W–31,061); and in the State of New Jersey (TA–W–31,061A) who became totally or partially separated from employment on or after May 12, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 20th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27453 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,119; TA–W–31,119C]

Wirekraft Industries, Incorporated, Burcliff Industries Division, Cardington, Ohio; Wirekraft Industries, Incorporated, Burcliff Industries Division, Corning, Iowa; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 9, 1995, applicable to all workers of Wirekraft Industries, Incorporated, Burcliff Industries Division, located in Cardington, Ohio. The notice was published in the **Federal Register** on August 24, 1995 (60 FR 44079).

The certification was subsequently amended to cover other subject firm locations.

New information received from the company shows that worker separations will occur at Wirekraft Industries, Incorporated, Burcliff Industries Division in Corning, Iowa. The workers produce electrical wire harness for appliances.

The intent of the Department's certification is to include all workers of Wirekraft Industries adversely affected by imports.

The amended notice applicable to TA–W–31,119 is hereby issued as follows:

"All workers of the Burcliff Industries Division of Wirekraft Industries, Incorporated, Cardington, Ohio (TA–W–31,119), and Corning, Iowa (TA–W–31,119C) who became totally or partially separated from employment on or after May 26, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 25th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27459 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program: Certifications Under the Federal Unemployment Tax Act of 1995

On October 31, 1995, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

October 31, 1995.

The Honorable Robert Rubin,

Secretary of the Treasury, Washington, D.C. 20220

Dear Secretary Rubin: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 1995. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986, and the other is required with respect to additional tax credit by Section 3303 of the Code. Both certifications list all 53 jurisdictions.

Sincerely,

Robert B. Reich.

Enclosures

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1995, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, D.C., on October 31, 1995.

Robert B. Reich,

Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1995:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, D.C., on October 31, 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–27548 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00490; NAFTA–00490A]

H.H. Cutler Co., Statesboro, Georgia and H.H. Cutler Co., Reidsville, Georgia; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on July 21, 1995, applicable to all workers at the subject firm.

The Department reviewed the certification for workers of the subject firm. New findings show worker separations occurred at the Reidsville, Georgia plant of H.H. Cutler. The workers produced children's apparel.

The intent of the Department's certification is to include all workers of H.H. Cutler adversely affected by imports.

The amended notice applicable to NAFTA–00490 is hereby issued as follows:

"All workers of H.H. Cutler Company, Statesboro, Georgia (NAFTA–00490) and Reidsville, Georgia (NAFTA–00490A) who became totally or partially separated from employment on or after June 16, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC, this 24th day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27466 Filed 11–6–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the national Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Special and Regional Archives.

DATES: December 4, 1995, from 9:00 a.m. to 10:30 a.m.

ADDRESSES: United States Capitol Building, LBJ Room (S–211).

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

AGENDA

Updated Report on Five-Year Plan
Task Force on Videotaped Floor Proceedings
Task Force on Legislative Support Agencies
(a) OTA Records
(b) C.R.S. Records
(c) GAO Pilot Appraisal Project

The meeting is open to the public.

Dated: October 31, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–27539 Filed 11–6–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 79th meeting on November 15 and 16, 1995, in Room T–2B3 at 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance. The agenda for this meeting shall be as follows:

Wednesday, November 15, 1995—8:30 A.M. until 6:00 P.M.

Thursday, November 16, 1995—8:30 A.M. until 6:00 P.M.

During this meeting the Committee plans to consider the following:

A. *Key Technical Issues*—The Committee will discuss the development of Key Technical Issues (KTIs) with the NRC staff and how these issues will be used to solve licensing questions.

B. *Meeting with the Commission*—The Committee will meet with the Commissioners to discuss items of mutual interest.

C. *Reviewing NRC's Programmatic Approach to Low-Level Waste Management*—The Committee will continue to review alternatives to the future course of NRC's Low-Level Radioactive Waste Disposal Program. Members of the NRC staff will participate, as well as representatives from other organizations.

D. *Preparation of ACNW Reports*—The Committee will discuss proposed reports, including comments on the NRC staff's low-level waste alternatives paper and the NRC staff's vertical slice approach and KTIs program.

E. *Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will discuss items of current interest related to the Division of Waste Management programs.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will also discuss ACNW-related activities of individual members.

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49924). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Major if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "**NRC MAIN MENU.**" Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

The ACNW meeting dates for Calendar Year 1996 are provided below:

ACNW meeting No.	1996 ACNW meeting dates
81	January 24–26, 1996.
82	March 27–29, 1996.
83	May 2–4 or May 15–17, 1996.
84	June 26–28, 1996.
85	August 21–23, 1996.
86	September 25–27, 1996.
87	October 22–23, 1996.
88	December 10–12, 1996.

Dated: November 1, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–27510 Filed 11–6–95; 8:45 am]

BILLING CODE 7590–01–P

[IA 95–055]

James L. Shelton; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

James L. Shelton is President and Radiation Safety Officer (RSO) of TESTCO, Inc. (TESTCO or Licensee) located in Greensboro, North Carolina. TESTCO holds byproduct materials License No. 041–0894–1 issued by the State of North Carolina under an agreement with the Nuclear Regulatory Commission (NRC or Commission) or the Atomic Energy Commission pursuant to subsection 274b of the Atomic Energy Act, as amended. The license authorizes the possession and use of byproduct material for industrial radiography activities in accordance with the conditions specified therein. Mr. Shelton, in addition to being President and RSO, has served as a radiographer from June 1990 to the present.

II

On September 9, 1992, while conducting an inspection of another NRC licensee, an NRC inspector obtained information which indicated that TESTCO had performed radiographic activities in areas under NRC jurisdiction. A review of NRC records revealed that TESTCO did not possess an NRC specific license

pursuant to 10 CFR 30.3, nor had TESTCO notified the NRC of this activity by filing a NRC Form-241 as required by 10 CFR 150.20(b)(1).

The requirement that an Agreement State licensee must file Form-241 before conducting a licensed activity in a non-Agreement State allows NRC to be informed of the location and duration of the activity and permits NRC to inspect it as appropriate. Since August 9, 1991, NRC has required a fee for the initial filing of Form-241, as well as for subsequent revisions to the Form-241.

Between November 16, 1992 and April 25, 1995, an investigation was conducted by the NRC Office of Investigations (OI) to determine if the failure to make the required notification to the NRC was the result of deliberate misconduct. Based on the investigative findings, the NRC staff concludes that on numerous occasions between August 9, 1991, and August 31, 1994, TESTCO conducted radiography using iridium-192, a licensed material, in Virginia, a non-Agreement state (*i.e.*, a State under NRC jurisdiction), without a specific NRC license; and Mr. Shelton deliberately failed to assure that Form-241 was filed with the NRC as required by the general license granted to TESTCO pursuant to 10 CFR 150.20.

A transcribed predecisional enforcement conference between the NRC and Mr. Shelton, representing himself and TESTCO, was held on July 27, 1995. Mr. Shelton indicated during this conference that he had delegated the submission of the NRC Form-241's to his former wife, who was TESTCO's office manager.

The conclusion that Mr. Shelton deliberately failed to assure that the Form-241's were filed is based on the following facts when taken together: (1) Mr. Shelton acknowledged that he was aware of the requirement to file Form-241's; (2) a Form-241 was filed on February 11, 1991, for work conducted in the State of Virginia on February 13, and that form bears Mr. Shelton's signature rather than that of the office manager; (3) Mr. Shelton provided OI with copies of two other Form-241's that he claims to have filed in July 1990 and August 1991 which also bear his signature rather than that of the office manager; (4) no Form-241's were filed between August 9, 1991, the effective date of the rule change requiring a fee for the filing of Form-241, and August 31, 1994, when an NRC inspection of TESTCO focused on the Form-241 issue, and OI determined that TESTCO performed work in Virginia on numerous occasions during that time period; [1] (5) according to sworn testimony from an individual interviewed by OI who was knowledgeable concerning TESTCO's licensed activities, Mr. Shelton stated that he would not make the notifications to the NRC if he had to pay a fee; and (6) Mr. Shelton admitted during the predecisional enforcement conference that, on a number of occasions, he became aware after the fact that his wife had failed to file Form-241, but he took no action as the TESTCO President and RSO to prevent recurrence.

As President and RSO, Mr. Shelton assigned and conducted the radiographic operations and he was responsible for complying with NRC requirements. When he determined that the Form-241's were not being filed with the NRC, he should have resumed the practice of filing the forms himself, discontinued operations in NRC jurisdiction, notified the NRC, or taken other action to assure compliance.

III

Based on the above, the staff concludes that Mr. Shelton engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 30.3 and 10 CFR 150.20 for the failure to have a specific NRC license or else file Form-241 with the NRC as required by the general license granted pursuant to 10 CFR 150.20. As RSO and President of TESTCO, Mr. Shelton was responsible for radiation safety and compliance with NRC requirements, specifically in this case, the notification of the NRC through the submittal of the NRC Form-241. Failure of the licensee to notify the NRC denied the NRC the opportunity to inspect the activities and ensure that the health and safety of the public was being protected.

The NRC must be able to rely on the licensee and its employees to comply with NRC requirements. The deliberate violation of 10 CFR 30.3 and 10 CFR 150.20 by Mr. Shelton, as discussed above, raises serious doubts as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Shelton were permitted at this time to exercise control over, or engage in, NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Shelton be prohibited from controlling or engaging in NRC-licensed activities for a period of three years from the date of this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, That:

A. For a period of three years from the date of this Order, Mr. James L. Shelton is prohibited from engaging in, or exercising any control over, NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) Using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) assigning, supervising, directing, assisting, or serving as radiation safety officer for, licensed activities conducted within the jurisdiction of the NRC.

B. Following the three year prohibition in Section IV.A. above, at least five days prior to the first time that Mr. Shelton engages in, or exercises control over, NRC-licensed activities, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that Mr. Shelton is committed to compliance with NRC requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Shelton of good cause.

V

In accordance with 10 CFR 2.202, James L. Shelton must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this

[1] Mr. Shelton provided OI with a copy of two Form-241's that he claims to have filed on August 23, 1991, and July 1, 1992. NRC has no record of receiving these Form-241's, and NRC fee records do not show any receipt of the fees that would have accompanied them.

Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which James L. Shelton or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, NW, Atlanta, Georgia 30323, and to James L. Shelton, if the answer or hearing request is by a person other than James L. Shelton. If a person other than James L. Shelton requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by James L. Shelton or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), James L. Shelton, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the same time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV of this Order shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 31st day of October 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95–27511 Filed 11–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company (Surry Power Station Units 1 and 2); Exemption

I

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–32 and DPR–37, which authorize operation of the Surry Power Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors, Surry Power Station, Units 1 and 2, at the licensee's site located in Surry County, Virginia.

II

In its letter dated June 8, 1995, the licensee requested an exemption from the Commission's regulations. Title 10 of the Code of Federal Regulations, Part 50, Section 60 (10 CFR 50.60), "Acceptance Criteria for Fracture Prevention Measures for Light-water Nuclear Power Reactors for Normal Operation," states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

The licensee has requested the use of Code Case N–514, "Low Temperature Overpressure Protection," which allows exceedance of the Appendix G safety limits by 10%. Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514 has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. In order to utilize Code Case N–514 and to permit LTOP events to exceed the Appendix G safety limits, the licensee has requested an exemption to 10 CFR 50.60 in a letter dated June 8, 1995.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *".

The underlying purpose of 10 CFR 50.60, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Surry reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (60 FR 54710).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27512 Filed 11–6–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of changes to the membership of the OPM SES Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mark D. Reinhold, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–1882.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

James B. King,

Director.

The following changes to the membership of the OPM Performance Review Board are announced:

Additions

Allan Heuerman, Associate Director for Human Resources Systems

Deletions

Patricia W. Lattimore, former Associate Director for Investigations
Barbara Fiss, former Associate Director for Personnel Systems and Oversight
Steven R. Cohen, former Chicago Regional Director.

[FR Doc. 95–27478 Filed 11–6–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7238; 34–36451; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes will meet on November 21, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 12:30 p.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the Committee will meet on November 21, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning

12:30 p.m. The meeting will be open to the public.

The Committee was formed in February 1995, and its responsibilities include advising the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets.

The purpose of this meeting will be to discuss the progress of the Committee's work, to discuss elements for a company registration system and preparation of the Committee's report, as well as to discuss general organizational matters.

Dated: November 2, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–27537 Filed 11–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36448; File No. SR–Amex–95–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc., Relating to Uniform Listing and Trading Guidelines for Narrow-Based Stock Index Warrants

November 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on September 29, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On October 31, 1995, the Amex submitted Amendment No. 1 ("Amendment No. 1") to the proposal to establish a maintenance requirement with respect to the minimum number of securities that must comprise an index underlying a warrant issuance and to clarify issues relating to settlement values for both narrow-based and broad-based index warrants.[1] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rules 462, 1100 and 1107 to establish uniform listing and training guidelines applicable to narrow-based stock index warrants. The text of the proposed rule change and Amendment No. 1 thereto is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In view of the recent approval of the regulatory framework for stock index warrants on broad-based stock indexes,[2] the Exchange now proposes to establish uniform listing and trading guidelines for warrants based on narrow-based indexes. To accommodate the trading of warrants on narrow-based indexes, the Exchange proposes to modify the recently approved regulatory framework for broad-based index warrants.[3] Thus, the Exchange proposes to conform the rules applicable to warrants on narrow-based indexes to those applicable to options on narrow-based indexes.

The Commission approved the trading of options on narrow-based indexes in 1982 and it approved the trading of stock index warrants in 1988.[4] The Exchange represents that it has had experience with respect to the trading of these derivative products, and it believes that the trading of warrants on narrow-based stock indexes presents no novel regulatory issues and should be permitted on the same basis as warrants overlying broad-based indexes.

To conform the trading of warrants on narrow-based indexes to the rules applicable to options on narrow-based indexes, the Exchange proposes that the same margin requirements applicable to short sales of narrow-based index options apply to warrants overlying the same index. In addition, the Exchange proposes to apply a position limit structure similar to that which is applicable to narrow-based index options. Accordingly, the Exchange proposes to establish position limits for narrow-based index warrants at three separate, fixed-tier amounts (4,875,000, 6,750,000, and 9,000,000), the applicable level being determined by the level of index component concentration. These levels are equivalent to 75% of the position limits applicable to narrow-based index options. Because broad-based index warrant position limit levels were established at approximately 75% of the corresponding levels for broad-based index options, the Exchange believes it is appropriate to establish narrow-based index warrant position limits at the corresponding level applicable to narrow-based index options.[5]

Also consistent with the existing regulatory framework for broad-based warrants, the issuer may elect to use closing prices for the securities underlying the index to determine settlement values at all times other than the day on which the final settlement valued is to be determined ("valuation date"), as well as during the two business days preceding valuation date.[6] Finally, the Exchange represents that it will not list a warrant on an index consisting of fewer then nine stocks unless the SEC separately approves such index for warrant trading. In addition, the Amex will impose a maintenance standard that requires an index to have at least nine stocks at all times, unless separately approved by the SEC.[7]

In all other respects, the Exchange represents that the rules applicable to the trading of broad-based and narrow-based index options are the same. Accordingly, it proposes that all other rules applicable to broad-based index warrants apply equally to warrants on narrow-based indexes. Finally, the Exchange represents that it will surveil trading in narrow-based index warrants in a similar manner to the surveillance of trading in broad-based index warrants.

Upon approval of this filing, the Exchange proposes that additional Commission review of a specific narrow-based warrant issuance will be required only for warrants overlying narrow-based indexes that have not previously been approved by the SEC for option or warrant trading. Thus, upon approval of this filing, the Exchange proposes it be permitted to list a warrant on any narrow-based index that the SEC has already approved for option trading.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will reduce or eliminate a burden on competition by allowing the listing of warrants on narrow-based indexes in the same manner as options on narrow-based indexes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–39 and should be submitted by November 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27517 Filed 11–6–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] Letter from William Floyd-Jones, Assistant General Counsel, Amex, to Michael Walinskas, SEC, dated October 31, 1995.

[2] *See* Securities Exchange Act Release No. 36168 (Aug. 29, 1995).

[3] The Exchange notes that a substantially similar regulatory scheme generally applies to broad-based index options and warrants.

[4] *See* Securities Exchange Act Release Nos. 19264 (Nov. 22, 1982) and 26152 (Oct. 3, 1988).

[5] The position limit tiers have been established at 75% of the levels recently approved by the SEC in connection with a Philadelphia Stock Exchange proposal to increase position limits for narrow-based index options. *See* Securities Exchange Act Release No. 36194 (Sept. 6, 1995). Accordingly, the Exchange proposes that position limits for narrow-based index warrants be set at roughly 75% of the 6,000, 9,000 and 12,000 position limit levels.

[6] *See* Amendment No. 1. The Commission notes that although the recently approved regulatory framework for broad-based index warrants establishes uniform settlement provisions for all exchanges, the Amex in this filing proposes to amend Section 106(e) to clarify its rule language.

[7] *See* Amendment No. 1.

[8] In order to expedite SEC review of a particular warrant issuance, the Exchange may file for approval of the index underlying the proposed warrants pursuant to the procedures and criteria set forth in Commentary .02 to Rule 901C. These criteria establish streamlined procedures for listing options on stock industry groups (*i.e.*, narrow-based). Accordingly, the Exchange proposes that the same criteria apply to subsequent proposals to establish narrow-based indexes which underlie proposed warrant issuances.

[9] 17 CFR 200.30–3(a)(12) (1994).

[Investment Company Act Release No. 21463; 811–1657]

Rochester Tax Managed Fund, Inc.; Notice of Application for Deregistration

November 1, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Rochester Tax Managed Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on September 28, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 27, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 350 Linden Oaks, Rochester, New York 14625.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered open-end investment company, incorporated in the state of New York on September 7, 1967. On May 31, 1968, applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–8B–1 pursuant to section 8(b) of the Act. Also on that date, applicant filed a registration statement on Form S–5 pursuant to the Securities Act of 1933. The registration statement was declared effective on December 2, 1968, and applicant commenced its initial public offering on or about that date.

2. On April 12, 1995, applicant's board of directors approved an Agreement and Plan or Reorganization (the "Agreement") between the Rochester Fund Series—The Bond Fund For Growth ("The Bond Fund For Growth") and applicant. Applicant entered into the Agreement with The Bond Fund For Growth on April 26, 1995. Pursuant to the Agreement, The Bond Fund For Growth would acquire all of applicant's assets in exchange for shares of beneficial interest of The Bond Fund for Growth. In determining whether to recommend approval of the Agreement, applicant's board considered a number of factors

including, but not limited to: (a) the relative past growth or decline in assets and performance of each fund; (b) the future prospects for growth and performance of each fund, whether or not they are reorganized; (c) the compatibility of the funds' respective investment objectives, policies, restrictions, and portfolios; (d) the shareholder services of each fund; and (e) the relative expense ratios of each fund and the likely effect of the reorganization on the expense ratio of each fund.

3. On April 28, 1995, applicant filed a Form N–14 with the SEC that contained preliminary copies of proxy materials. On June 1, 1995, applicant distributed proxy materials to its shareholders. On June 2, 1995, definitive proxy materials were filed with the SEC. At a meeting held on June 26, 1995, applicant's shareholders approved the reorganization.

4. As of June 28, 1995 (the "Closing Date"), applicant has 760,094 shares of beneficial interest outstanding with an aggregate and per share net asset value of $9,039,350 and $11.89, respectively. On the Closing Date, applicant transferred all of its assets and liabilities to The Bond Fund For Growth in exchange for a *pro rata* distribution of shares of beneficial interest of The Bond Fund For Growth.

5. Each of applicant's shareholders received, in exchange for his or her shares in applicant, shares of beneficial interest of The Bond Fund For Growth having a net asset value equal to the aggregate net asset value of his or her shares in applicant as of the Closing Date.

6. Applicant will bear certain expenses of the reorganization such as printing, mailing and proxy solicitation expenses, legal fees, and audit and tax consulting fees in an amount up to $16,150. Any expenses beyond this amount will be borne by Fielding Management Company, Inc., applicant's investment adviser.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant will terminate its existence as a New York corporation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27484 Filed 11–6–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues, current rulemaking actions, and future activities and plans.

DATES: The meeting will be held on November 14, 1995, 1 p.m.–5 p.m. Arrange for oral presentations by November 9, 1995.

ADDRESSES: The meeting will be held at Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314–2818.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Office of Rulemaking, Aircraft & Airport Rules Division. ARM–200, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3498.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II). The agenda will include.

1. Remarks by the Chair of the Aviation Rulemaking (ARAC) Advisory Committee.
2. Presentation of the status report on the final rules resulting from the ARAC recommendations on "Occupant Protection" Notice of Proposed Rulemaking (NPRM) 94–8 (59 FR 17156) and "Rotorcraft Regulatory Changes Based on European Joint Airworthiness Requirements" NPRM 94–36 (59 FR 67068).
3. Presentation of the status report on each of the tasks listed below and presentation of the "Work Plan" and the "Concept Brief" for the pertinent tasks for approval:
   a. Harmonization of Miscellaneous Rotorcraft Regulations.
   b. Critical parts.
   c. Performance and Handling Qualities Requirements.
   1d. Normal Category Gross Weight & Passenger Issues
4. Presentation of the rulemaking recommendation of the Class D External Load Working Group for approval.

Copies of the documents relating to item 3 (pertinent "Work Plans" and "Concept Briefs") and item 4 above will be available in the conference room at 9 a.m. on the date of the meeting for review.

Attendance is open to the public but will be limited to the space available. The public must make arrangements by November 9, 1995, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 17, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–27572 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 7, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Col. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: City of St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of St. Louis Airport Authority, Lambert-St. Louis International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Coordinator, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 24, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of St. Louis Airport Authority, St. Louis, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 28, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: April, 1996

Proposed charge expiration date: June, 1998

Total estimated PFC revenue: $80,645,538

Brief description of proposed project(s): Airport Noise Land Acquisition/Relocation Program (Phase II); Obstruction Removal—Washington Park Cemetery (Phase II); East Terminal Expansion (Phase II); High Speed Exits off Runway 12L/30R; Differential Global Positioning System for Nonprecision Approaches; Main Terminal Restroom Rehabilitation; Family Assistance Center at Gate 63; Fire Alarm System Upgrade; Asbuilt Drawings for Fire Protection System; Air Handler Unit Phase Protection Installation; Air Traffic Control Tower Airfield Lighting Controls Installation; Terminal Seismic Risk Reduction Study; Installation of Canopies for Exits 6 and 14; Traffic Distribution Modification—Main Terminal; Installation of 800 MHz Radio Communication System (Phases II, III and IV); Construct Taxiway Connector from Runway 12R/30L to Taxiway P; "C" Taxiway Connector Construction; Security Card Access System Installation; East Apron II–B and Glycol Recovery System Construction; Construct West Apron at Taxiway D; Concourse B & C Connector Construction; Federal Inspection Services Vertical Transportation Installation; Airport Flight Information Display Signage System Installation in the Gate Area.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri on October 24, 1995.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 95–27555 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. MC–89–10]

Inspection, Repair, and Maintenance; Periodic Inspection of Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to motor carriers on State periodic inspection programs.

SUMMARY: This notice adds the periodic inspection (PI) program of the State of Connecticut to the list of programs which are comparable to, or as effective as, the PI requirements contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The FHWA has published a list of such programs in the **Federal Register**, and this list has been revised occasionally. Including Connecticut, there are 22 States, the Alabama Liquefied Petroleum Gas Board, the District of Columbia, 10 Canadian Provinces, and one Canadian Territory that have PI programs which the FHWA has determined to be comparable to, or as effective as, the Federal PI requirements.

DATES: This docket will remain open until further notice.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–89–10, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–4009; or Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) (the Act) requires the Secretary of Transportation to prescribe standards for annual or more frequent inspection of commercial motor vehicles (CMVs) unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection. On December 7, 1988, in response to the Act, the FHWA published a final rule amending part 396 of the Federal Motor Carrier Safety Regulations, entitled Inspection, Repair, and Maintenance (53 FR 49402). That final rule requires that CMVs operating in interstate commerce be inspected at least once a year. The inspection is to be based on Federal inspection standards, or a State inspection program determined by the FHWA to be comparable to, or as effective as, the Federal standards. Accordingly, if the FHWA determines that a State's PI program is comparable to, or as effective as, the requirements of part 396, then a motor carrier must ensure that any of its CMVs which are required by that State to be inspected through the State's inspection program are so inspected. If a State does not have such a program, the motor carrier is responsible for ensuring that its CMVs are inspected using one of the alternatives included in the final rule.

On March 16, 1989, the FHWA published a notice in the **Federal Register** which requested States and other interested parties to identify and provide information on the CMV inspection programs in their States (54 FR 11020). Upon review of the information submitted, the FHWA published a list of State inspection programs which were determined to be comparable to the Federal PI requirements (54 FR 50726, December 8, 1989). This initial list included 15 States and the District of Columbia. The list was revised on September 23, 1991, to include the inspection programs of the Alabama Liquefied Petroleum Gas (LPG) Board, California, Hawaii, Louisiana, Minnesota, all of the

Canadian Provinces, and the Yukon Territory (56 FR 47983). On November 27, 1992, the list was revised to include the Wisconsin bus inspection program (57 FR 56400). The list was most recently revised on April 14, 1994, to include the Texas CMV inspection program (59 FR 17829).

Determination: State of Connecticut Bus Inspection Program

On July 1, 1995, the State of Connecticut (the State) implemented a new inspection program for buses. The State requires buses with a seating capacity of more than 16 passengers (including the driver) or a gross vehicle weight rating (GVWR) of 11,794 kilograms (kg) (26,001 pounds) or more to be inspected every 6 months. State officials conduct the inspections during the months of December and January while inspections by authorized or licensed inspection stations are performed during the months of June and July. The State has adopted Appendix G to Subchapter B of title 49, Code of Federal Regulations, as part of its inspection criteria. Certain vehicle components and systems specific to buses (e.g., interior lights, passenger seat anchors and upholstery, emergency exits, etc.) are also covered under the State's inspection program.

The FHWA has determined that the Connecticut bus inspection program in effect as of July 1, 1995, is comparable to or as effective as the Federal PI requirements. Therefore, motor carriers operating buses which are subject to the State's program and which are subject to the FMCSRs must use the State's program to satisfy the Federal PI requirements. Motor carriers operating buses that fall below the passenger-carrying and/or weight threshold for the Connecticut program, but which meet the FHWA's definition of a CMV may continue to use alternative means to satisfy the Federal PI requirements (e.g., self-inspection, the use of a commercial garage or similar facility, or passage of a roadside inspection that meets the requirements of 49 CFR 396.17).

It should be noted that in accepting the State's PI program, the FHWA also accepts the recordkeeping requirements associated with the inspection program. Both the State officials and the authorized inspection facilities issue decals as well as copies of the inspection report. The State inspection decal is considered by the FHWA as satisfying the Federal requirement for proof of inspection on the CMV.

The FHWA also notes that the inspection decals issued by the State government inspectors differ from the decals issued by the licensed inspection facilities. Both decals, however, provide sufficient information for State officials in other jurisdictions to make inquiries about the validity of the decal and request copies of the inspection reports.

States With Equivalent Periodic Inspection Programs

The following is a complete list of States with inspection programs which the FHWA has determined are comparable to, or as effective as, the Federal PI requirements.

Alabama (LPG Board)
Arkansas
California
Connecticut
District of Columbia
Hawaii
Illinois
Louisiana
Maine
Maryland
Michigan
Minnesota
New Hampshire
New Jersey
New York
Oklahoma
Pennsylvania
Rhode Island
Texas
Utah
Vermont
Virginia
West Virginia
Wisconsin

In addition to the States listed above, the FHWA has determined that the inspection programs of the 10 Canadian Provinces and the Yukon Territory are comparable to, or as effective as, the Federal PI requirements. All other States either have no PI programs for CMVs or their PI programs have not been determined by the FHWA to be comparable to, or as effective as, the Federal PI requirements. Should any of these States wish to establish a program or modify their programs in order to make them comparable to the Federal requirements, the State should contact the appropriate FHWA regional office listed in 49 CFR part 390.

Authority: 49 U.S.C. 31132, 31136, 31142, 31502, and 31504; 49 CFR 1.48.

Issued on: October 27, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–27503 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–22–P

Maritime Administration

[Docket S–926]

American President Lines, Ltd.; Notice of Application

American President Lines, Ltd. (APL), by application of October 23, 1995, requests approval to permit the planned sale by APL to Matson Navigation Company, Inc. (Matson), and the subsequent interim bareboat charter by APL from Matson, of six vessels that are currently included as subsidized vessels in APL's Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–417 and that are subject to Construction-Differential Subsidy Agreements to which APL is a party or under which APL has assumed obligations. The six vessels are the PRESIDENTS LINCOLN, WASHINGTON, MONROE, HOOVER, GRANT, and TYLER.

The sale and interim bareboat charters are integral parts of a broader agreement between APL and Matson pursuant to which Matson will operate four of the six named vessels on transPacific voyages on which APL will charter slots for the carriage of U.S. foreign commerce cargo. In brief, APL and Matson have entered into an agreement, pursuant to which the six above-named vessels will be sold to Matson on or about January 2, 1996, the vessels will be immediately bareboat chartered back to APL for continued operation under APL's ODSA for interim periods of several months or less and following termination of the interim bareboat charters, Matson will operate four of the six vessels (plus a fifth vessel currently owned by Matson) in a weekly, U.S.-flag transPacific service calling Hawaii, Guam and foreign ports in the Far East. Under the agreement, Matson will operate this weekly service, on which APL will charter slots for the carriage of U.S.-foreign commerce cargo, for a period of ten years.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on November 17, 1995. Publication of this notice should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator/Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Date: November 2, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 95–27531 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–81–P

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to exchange views on proposals submitted to the eleventh session of the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods and to report on the progress of the International Civil Aviation Organization's (ICAO) Dangerous Panel (DGP) fifteenth meeting which was held in Montreal, Canada on October 17–26, 1995.

DATES: November 29, 1995 at 9:30 a.m.

ADDRESSES: Room 9230, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the eleventh session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held December 4 to 15, 1995 in Geneva, Switzerland. During this public meeting U.S. positions on proposals submitted to the eleventh session of the Sub-Committee will be discussed. Topics to be covered include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of intermodal tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, infectious substances and international harmonization of classification criteria.

A second purpose for the meeting will be to review the results of the fifteenth session (October 17–26, 1995, in Montreal, Canada) of the ICAO Dangerous Goods Panel. Agreed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air will be discussed.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the eleventh session of the UN Sub-Committee meeting may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time. The HMIX may also be accessed via the Internet at hmix.dis.anl.gov.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council, Suite 301, 1101 Vermont Avenue NW., Washington, DC 20005; telephone number (202) 289–4550.

Issued in Washington, DC, on November 2, 1995.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–27556 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

DATES: Written comments should be received on or before January 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Harry McCabe, Chief, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8136.

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

OMB Number: 1512–0418.

Form Number: ATF F 5000.12.

Abstract: Application For Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms is necessary so that the Bureau may evaluate the applicants in order to assure only competent, reputable persons are authorized to represent claimants.

Current Actions: There are no new changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: November 1, 1995.
Daniel R. Black,
Acting Director.
[FR Doc. 95–27507 Filed 11–6–95; 8:45 am]
BILLING CODE 4810–31–P

Customs Service

[T.D. 95–84]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury
ACTION: General notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Customs Bulletin.

Gulshan Kala—10188

License 10188, issued in the Houston-Galveston port, remains a valid license.

Dated: November 1, 1995.
Philip Metzger,
Director, Trade Compliance.
[FR Doc. 95–27527 Filed 11–6–95; 8:45 am]
BILLING CODE 4820–02–P

[T.D. 95–92]

License Cancellation

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker license has been cancelled due to the death of the broker. This license was issued in the Los Angeles district.

John G. Leitch—license No. 10757.

Dated: October 19, 1995.
Philip Metzger,
Director, Trade Compliance.
[FR Doc. 95–27525 Filed 11–6–95; 8:45 am]
BILLING CODE 4820–02–P

[T.D. 95–85]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Customs Bulletin.

Robert Powers—13319

License 13319, issued in the Port of Savannah, remains a valid license.

Dated: November 1, 1995.
Philip Metzger,
Director, Trade Compliance.
[FR Doc. 95–27528 Filed 11–6–95; 8:45 am]
BILLING CODE 4820–02–P

[T.D. 95–83]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Customs Bulletin.

Edward Pluemer—7652

License 7652, issued in the Port of Chicago, remains a valid license.

Dated: November 1, 1995.
Philip Metzger,
Director, Trade Compliance.
[FR Doc. 95–27526 Filed 11–6–95; 8:45 am]
BILLING CODE 4820–02–P

[T.D. 95–91]

License Cancellation

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker license has been cancelled due to the death of the broker. This license was issued in the Norfolk port.

James A. Ryan—license No. 10114

Dated: October 19, 1995
Philip Metzger,
Director, Trade Compliance.
[FR Doc. 95–27524 Filed 11–6–95; 8:45 am]
BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under Office of Management and Budget (OMB) Review

AGENCY: United States Information Agency.
ACTION: Notice of reporting requirements submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), federal agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency will make such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a revision and three-year extension of an information collection entitled "College and University Affiliation Program", under OMB control number 3116–0179 which expires December 31, 1995. Estimated burden hours per response is thirty hours. Respondents will be required to respond only one time.

DATE: Comments are due on or before January 8, 1996.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619–4408; and OMB review: Mr. Jefferson Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, DC 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0179) is estimated to average thirty hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. As part of its continuing effort to reduce the paperwork burden, USIA invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Title: "College and University Affiliations Program".

Form Numbers: None.

Abstract: Under the College and University Affiliations Program, USIA offers grants-in-aid to support the development or enhancement of institutional partnerships between U.S. and foreign colleges and universities. The program promotes mutual understanding, strengthens research and teaching capabilities, and improves the academic curricula.

Proposed Frequency of Responses:
No. of Respondents—130
Recordkeeping Hours—30
Total Annual Burden—3,900

Dated: November 2, 1995.
Cathy Brown,
Alternate Federal Register Liaison.
[FR Doc. 95–27530 Filed 11–6–95; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Public Law 92–463, that the subcommittee for Small Investigator-Initiated Research (S–IIR) will hold a meeting at the Boston VA Medical Center HSR&D Conference Room, 150 S. Huntington Avenue, Boston, MA, on November 16, 1995. The meeting is scheduled to begin at 8:00 a.m. and end at 5:00 p.m. The purpose of the meeting is to review research and development applications (with budgets less than $100,000) concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding their funding are prepared for the Associate Chief Medical Director for Research and Development.

This meeting will be open to the public (to the seating capacity of the room) for approximately one hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by the subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Bill Judy, Review Program Manager (12B3), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW, (Techworld), Washington, DC 20420 (phone: 202.565.7425) at least five days before the meeting.

Dated: October 30, 1995.
By Direction of the Secretary.
Heyward Bannister,
Committee Management Officer.
[FR Doc. 95–27485 Filed 11–6–95; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 215
Tuesday, November 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

DATE: November 13–14, 1995.
PLACE: ARRB, 600 E STREET, NW, WASHINGTON, DC.
STATUS: Closed.
MATTERS TO BE CONSIDERED: November 13–14, 9:00 a.m.

1. Review and Accept Minutes of October 23–24 Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

Thomas Samoluk,
Associate Director for Communications.
[FR Doc. 95–27593 Filed 11–2–95; 4:18 pm]
BILLING CODE 6118–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:15 p.m. on Wednesday, November 1, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: November 2, 1995.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 95–27651 Filed 11–3–95; 2:32 pm]
BILLING CODE 6714–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: November 13, 1995 at 2:30 p.m.
PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–739 (Preliminary) (Clad Steel Plate from Japan)—briefing and vote.
5. Outstanding action jackets:
   1. CO69–95–001: Proposal on delegation of budget authority.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 2, 1995.
By order of the Commission:
Donna R. Koehnke,
Secretary.
[FR Doc. 95–27684 Filed 11–3–95; 2:33 pm]
BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Special Litigation Committee Meeting

TIME AND DATE: The Special Litigation Committee of the Legal Services Corporation's Board of Directors will meet by telephone on November 13, 1995. The meeting will begin at 10 a.m.
PLACE: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.
STATUS OF MEETING: Closed. In accordance with a vote of the majority of the Board of Directors to hold an executive session, the Committee will discuss with counsel, consider and act on issues involved in pending civil litigation to which the Corporation is a party. The closing is authorized by the relevant section of the Government in the Sunshine Act [5 U.S.C. § 552b(c)(10)] and the Legal Services Corporation's regulation on public access to its meetings [45 CFR § 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, 750 First Street NE, Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.
MATTERS TO BE CONSIDERED:
Closed Session:

1. Consider and act on issues involved in civil litigation to which the Corporation is a party.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Dated: November 3, 1995.
Victor M. Fortuno,
General Counsel.
[FR Doc. 95–27710 Filed 11–3–95; 2:36 pm]
BILLING CODE 7050–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, November 14, 1995.
PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza SW., Washington, D.C. 20594.
STATUS: Open.
MATTERS TO BE CONSIDERED:

6479A—Highway Accident Report: Propane Truck Collision with Bridge Column and Fire, White Plains, New York, July 27, 1994.
6628—Marine Accident Report: Fire On Board the U.S. Small Passenger Vessel ARGO COMMODORE, San Francisco Bay, California, December 3, 1994.
6631—Railroad Accident Briefs: Three Railroad Accident Briefs Produced by Railroad Investigators Based in Los Angeles, Chicago and Washington, D.C.:
- Borah, Idaho, Feburary 15, 1995
- Argonna, Wisconsin, April 6, 1995
- Pittsburgh, Pennsylvania, July 25, 1995

NEWS MEDIA CONTACT: Telephone: (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: November 3, 1995.
Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 95–27662 Filed 11–3–95; 2:32 pm]
BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 6, 13, 20, and 27, 1995.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Public.
MATTERS TO BE CONSIDERED:

Week of November 6

Monday, November 6

9:30 a.m.
Briefing on Risk Harmonization Recommendations (Public Meeting)
(Contact: Mike Weber, 301–415–7297)

Thursday, November 9

2:00 p.m.
Briefing on Browns Ferry 3 Restart (Public Meeting)
(Contact: William Russell, 301–415–1270)

Week of November 13—Tentative

Wednesday, November 15

10:00 a.m.
Briefing on Accident Sequence Precursor Program (Public Meeting)
(Contact: Patrick O'Reilly, 301–415–7570)
2:00 p.m.
Briefing on Measures to Ensure Integrity of Research Data (Public Meeting)
(Contact: Owen Gormley, 301–415–6793)

Thursday, November 16

10:00 a.m.
Briefing by Commonwealth Edison (Public Meeting)
2:00 p.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

Week of November 20—Tentative

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

There are no meetings scheduled for the Week of November 27.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: November 2, 1995.
William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.
[FR Doc. 95–27701 Filed 11–3–95; 2:34 pm]
BILLING CODE 7590–01–M

federal register

Tuesday
November 7, 1995

Part II

Department of Education

Office of Special Education and Rehabilitative Services; Proposed Priorities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Proposed Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes priorities for eight programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. The proposed priorities are intended to ensure wide and effective use of program funds.

DATES: Comments must be received on or before January 8, 1996 for the Research in Education of Individuals with Disabilities Program; February 5, 1996 for the Special Studies Program; and December 7, 1996 for all remaining programs.

ADDRESSES: All comments concerning proposed priorities under the Research in Education of Individuals with Disabilities Program, the Special Studies Program, and Program for Children and Youth with Serious Emotional Disturbance, should be addressed to: Linda Glidewell, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3524, Switzer Building, Washington, D.C. 20202–2641. All comments concerning proposed priorities under the Early Education Program for Children with Disabilities; the Educational Media Research, Production, Distribution, and Training Program; the Postsecondary Education Program for Individuals with Disabilities; the Program for Children with Severe Disabilities; and the Secondary and Transitional Services for Youth with Disabilities Program should be addressed to Joseph Clair, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4622, Switzer Building, Washington D.C. 20202–2644.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific proposed priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains thirteen proposed priorities under eight programs authorized by the Individuals with Disabilities Education Act, as follows: Research in Education of Individuals with Disabilities Program (one proposed priority); Early Education Program for Children with Disabilities (four proposed priorities); Educational Media Research, Production, Distribution, and Training Program (one proposed priority); Postsecondary Education Program for Individuals with Disabilities (one proposed priority); Program for Children with Severe Disabilities (one proposed priority); Secondary and Transitional Services for Youth with Disabilities Program (two proposed priorities); Special Studies Program (two proposed priorities); and Program for Children and Youth with Serious Emotional Disturbance (one proposed priority). The purpose of each program is stated separately under the title of that program.

These proposed priorities would support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, and the quality of the applications received. Further, priorities could be affected by enactment of legislation reauthorizing these programs. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. Notices inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notices of final priorities.

Research in Education of Individuals With Disabilities Program

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under these competitions only applications that meet this absolute priority:

Proposed Absolute Priority—Initial Career Awards

Background: There is need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children and youth with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in 34 CFR 324.1.

Priority: The Secretary proposes to establish an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individuals career is considered to be the first three years after completing a doctoral program and graduating (e.g., for fiscal year 1996 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1991–92 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to effectively pursue the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

A project must include in the budget funds to attend the two-day Research Project Directors' meeting to be held in Washington, D.C. each year of the project.

For Further Information Contact: Doris Andres, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8125. FAX: (202) 205–8105. Internet: Doris_Andres@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Early Education Program for Children With Disabilities Program

Purpose of Program: To support activities that are designed (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet any one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet any one of these absolute priorities:

Proposed Absolute Priority 1—National Early Childhood Technical Assistance Center

Background: This proposed priority would support a national early childhood technical assistance center that will provide technical assistance to all States, outlying areas and the Bureau of Indian Affairs, in order to (1) assist each entity in implementing comprehensive and quality early intervention services under Part H for children ages birth through two and their families, and educational and related services for young children with disabilities (ages three through five) including minority children and children with limited English proficiency, and (2) help entities respond to needs identified through their self-assessment and State monitoring activities. The center will also provide technical assistance to early childhood projects funded by the Office of Special Education Programs (OSEP) under the IDEA. Utilizing State technical assistance systems, national organizations and their State divisions, other technical assistance and clearinghouse projects, the center will provide mechanisms to link professionals who are involved in producing new knowledge and products with program administrators and service providers.

Priority: The Secretary proposes to establish an absolute priority to support a national early childhood technical assistance center. The center must:

(a) Provide technical assistance to all States, outlying areas, and the Bureau of Indian Affairs as they implement early intervention services under Part H, and educational and related services for young children with disabilities. At a minimum, the center must (1) conduct annual needs assessments; (2) develop technical assistance agreements for each entity; (3) provide technical assistance, training, and on-going consultation based on the technical assistance agreements; (4) conduct annual meetings for Part H clients and for Section 619 clients; and (5) assist States in coordinating early intervention services and preschool services with IDEA school-age programs.

(b) Provide technical assistance to all early childhood projects funded by OSEP. At a minimum, the center must (1) conduct annual needs assessments; (2) develop technical assistance agreements for each project; (3) provide technical assistance, training, and on-going consultation based on the technical assistance agreements; and (4) conduct an annual meeting for directors of early childhood discretionary projects funded by OSEP;

(c) Establish an advisory group of persons with complementary expertise in the content and provision of technical assistance, e.g., State issues, project issues, family issues, parenting, evaluation, and needs of underrepresented children and families; to advise the center on its technical assistance activities;

(d) Link entities and OSEP-funded early childhood projects with national experts knowledgeable about best practice for young children with disabilities and their families, including children and families from cultural and linguistic minority groups;

(e) Develop informational exchanges between the center and State technical assistance systems; and among States with technical assistance systems;

(f) Develop an information system, current in content and technological accessibility, that contains data and materials to meet the technical assistance needs of the center's clients;

(g) Conduct at least two national forums that identify persistent problems, propose solutions, and respond to emerging issues and trends in early intervention and preschool;

(h) Facilitate exchanges of information among federal and State programs regarding funding and policy practices and implications for young children with disabilities and their families;

(i) Provide logistical and technical support to the Federal Interagency Coordinating Council;

(j) Compile and disseminate information about (1) early childhood projects funded by OSERS, (2) effective practices for early intervention and preschool programs, (3) major State activities related to implementing Section 619—Preschool Grants Program, (4) major State activities related to implementing the Infant and Toddler Program—Part H program, and (5) successful linkage activities and practices;

(k) Coordinate with other technical assistance networks to sponsor a forum that addresses model practices for national and State technical assistance provision;

(l) Evaluate the impact of the center's technical assistance system and its components relative to (1) the assessed needs of States, jurisdictions and early childhood projects; and (2) the national needs of young children with disabilities and their families.

The Secretary anticipates funding one cooperative agreement for a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the center for the fourth and fifth years of the project period, in addition to applying the requirements of 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the center, are to be performed during the

last half of the center's second year and must be included in that year's evaluation required under 34 CFR 75.590. Funds to cover the costs of the review team must be included in the center's budget for year two. These costs are estimated to be approximately $4000.

The Secretary particularly encourages applicants for this cooperative agreement to incorporate technologically innovative approaches in all aspects of center activities, to improve their efficiency and impact.

Selection Criteria for Evaluating Applications. The Secretary proposes to use the following criteria to evaluate an application under the national early childhood technical assistance center competition. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) The quality of the activities proposed to accomplish the goals and objectives;

(iii) The adequacy of proposed timelines for accomplishing those activities; and

(iv) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(3) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Assistant Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) To determine personnel qualifications under (b)(2)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary considers—

(i) The extent to which the applicant's methods of evaluation are appropriate to the project; and

(ii) To the degree possible, the extent to which the applicant's methods of evaluation are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application to assess whether the need for the proposed technical assistance has been adequately justified.

(2) The Secretary determines the extent to which the application—

(i) Describes the technical assistance needs to be addressed by the project;

(ii) Describes how the applicant identified those needs;

(iii) Describes how those needs will be met by the project; and

(iv) Describes the benefits to be gained by meeting those needs.

(g) *Project design.* (40 points)

(1) The Secretary reviews each application to evaluate the quality of the proposed technical assistance project design.

(2) The Secretary determines the extent to which—

(i) The technical assistance objectives are designed to meet the identified needs and are clearly defined, measurable, and achievable;

(ii) The content of the proposed technical assistance is appropriate for all clients.

(3) The Secretary determines the extent to which each application provides for—

(i) Use of current research findings and information on model practices in providing the technical assistance.

(ii) Methods for linking all clients in need of technical assistance;

(iii) Innovative procedures for disseminating information and imparting skills to all clients; and

(iv) Innovative procedures for collaborating and coordinating with other entities that are involved with broader technical assistance efforts.

For Further Information Contact: Peggy Cvach, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4609, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9807. FAX: (202) 205–8971. Internet: Peggy_Cvach@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Proposed Absolute Priority 2—Model Demonstration Projects for Young Children With Disabilities

Background: This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving young children with disabilities (infants, toddlers, and children ages birth through eight) and their families, including minority children and children with limited English proficiency. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects funded under the Individuals with Disabilities Education Act.

The Secretary anticipates funding projects for a project period of up to 60 months. Projects supported for an initial three-year period may be eligible for an additional two years of funding to field test the viability of their models at other site locations. In determining whether to continue funding for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit, are to be performed during a project's third year and may be included in that year's annual evaluation. The three-plus-two-year funding period is expected to determine whether models yielding positive results at an original site can be successfully replicated at other locations.

Priority: A model demonstration project must—

(a) Develop and implement programs that address a service problem or issue in the most natural or least restrictive environment;

(b) Develop and implement programs with specific components or strategies that are based on theory, research, or evaluation data;

(c) Produce detailed procedures and materials that enable others to replicate the model as implemented at the original site; and,

(d) Evaluate the model at the original model development site and—if approved for funding beyond the initial three years of the project period—at other sites to determine whether the model can be adopted by other sites and yield similar positive results. In its evaluation, a project must use multiple outcome measures to determine the effectiveness of the model and its components or strategies, including measures of multiple, functional child and family outcomes, other indicators of the effects of the model, and cost data associated with implementing the model.

In determining whether to continue a project for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The degree to which the model developed by the project is, or would be by the end of year three, viable and replicable by other agencies, and provides state-of-the-art interventions.

(b) The extent to which dissemination of the model would meet a significant or unique service need in other geographic locations.

(c) Compelling, quantifiable evidence of the effectiveness of the model as implemented at the original development site.

(d) Availability of funding for the model from sources other than discretionary grants under the Individuals with Disabilities Education Act to support the operation of the model at the original development site during years four and five.

(e) Evidence of the commitment of other agencies not affiliated with the original project to adopt its model and participate in evaluation of the model during years four and five of the project period.

(f) The extent to which the project has sound plans for aiding in replication and for evaluating its model at replication sites during years four and five of the project period.

A project that applies for funding for the fourth and fifth years must set aside in its budget for the third year funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the third year. These funds are estimated to be approximately $4,000.

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Proposed Absolute Priority 3—Outreach Projects for Young Children With Disabilities

Background: This priority supports projects that assist educational and other agencies in implementing proven models, components of models, and other exemplary practices, to improve services for young children with disabilities (infants, toddlers, and children ages birth through eight) and their families, including minority children and children with limited English proficiency. To accomplish this goal, State agencies and local service agencies need information about and assistance in accessing the range of available, successful practices, curricula, and products.

The models, components of models, or exemplary practices selected for outreach need not have been developed through the Early Childhood Education Program under the Individuals with Disabilities Education Act (IDEA), or by the applicant.

To increase the impact of outreach activities, projects are encouraged to select sites in multiple States. The Department of Education funds an Early Childhood Technical Assistance Center under IDEA to assist outreach projects in addressing the needs of States. This Center will help projects match their resources to identified States' needs for years two and three. Therefore, the plan of operation for projects planning to conduct outreach activities in multiple States should include plans concerning specific sites and activities for the initial year only.

Priority: An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve services for young children with disabilities and their families in the most natural or least restrictive environment;

(b) Coordinate its dissemination and replication activities with the lead agency for Part H of the IDEA for early intervention services or the State educational agency for special education, as well as with technical assistance, information, and personnel development networks within the State;

(c) Involve families in the design, implementation, and evaluation of project activities;

(d) Ensure interagency coordination if multiple agencies are involved in the provision of services;

(e) Ensure that the model, components of models, or exemplary practices are consistent with Part B and Part H of IDEA, are state-of-the-art, match the needs of the proposed sites, and have evaluation data supporting their effectiveness;

(f) Include public awareness, product development and dissemination, training, and technical assistance activities, and written plans for site development;

(g) Describe criteria for selecting implementation sites and, for potential users, the expected costs, needed personnel, staff training, equipment, and sequence of implementation activities; and

(h) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at the site where models were adopted or adapted, child progress and family satisfaction, and changes in the model or practice made by sites.

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Proposed Absolute Priority 4—Early Childhood Research Institutes

Background: The purpose of this priority is to support three early childhood research institutes, each of which will carry out research, development, evaluation and dissemination activities to improve early intervention and preschool services for children with disabilities and their families. One award will be made in each of the following three areas:

(1) Early Childhood Research Institute on Culturally and Linguistically Competent Services. This institute's program of research will focus on creating a resource bank of validated,

culturally and linguistically appropriate materials and documented strategies (including child find and child instructional materials, personnel training manuals, family services materials) that can be used by service providers to work effectively with infants, toddlers, and preschool age children with disabilities and their families who have special needs because of their cultural or linguistic backgrounds. In addition to developing and field testing new materials and documented strategies to fill gaps, the institute will collect and catalog already existing materials, conduct reviews and field testing of selected materials, and broadly disseminate information about how to access materials collected or created by the institute.

(2) Early Childhood Research Institute on Increasing Learning Opportunities for Children through Families. The purpose of this institute is to identify, develop and evaluate strategies that will increase the number and intensity of planned learning activities that parents, and other caregivers can implement in structured and unstructured settings for infants, toddlers, and preschool age children with disabilities to prepare these children to enter school ready to learn, including those who are members of racial minority groups and individuals with limited English proficiency. These strategies (such as incidental teaching, use of educational games and toys, technology applications, evening and weekend activities) must be designed in a way that will complement services that are specified on Individualized Family Service Plans and Individual Education Programs and promote further skill acquisition, generalization and child growth and development. The institute will conduct a series of investigations to determine the effects and costs of various strategies that are developed in each of the following areas of child development: cognitive development, communication development, physical development, and social and emotional development. The institute's dissemination efforts will include the preparation of manuals for professionals, parents, and other caregivers that describe (1) procedures to determine additional learning opportunities for individual children, and (2) how to implement the strategies in a variety of settings and in a manner that complements other early intervention and preschool services.

(3) Early Childhood Research Institute on Program Performance Measures. The purpose of this institute is to develop, evaluate, and disseminate a program performance measurement system for early intervention, preschool, and primary-grade programs serving children with disabilities (birth through eight years) and their families. The performance measurement system will consist of child and family outcomes for different child ages within the early childhood age range as well as indicators and sources of data corresponding to each outcome. These child and family outcomes, indicators, and sources of data must be useful for tracking the progress of a broad range of children and families with different disabilities and characteristics and for measuring the impact and effectiveness of early childhood programs. For the performance measurement system to be useful at federal, State, and local levels, it will include child and family outcomes of a general nature (i.e., outcomes appropriate for tracking the progress of all young children with disabilities and their families, including those who are members of cultural, linguistic, or racial minority groups) as well as sets of more specific outcomes. Each of the sets of more specific outcomes should correspond with a particular subgroup of children and families (e.g., children who are visually-impaired; families with incomes below the poverty level) that have characteristics unique to that subgroup, and that are appropriately separated from other subgroups for more precise and relevant measurement purposes.

In carrying out the developmental work, which will include consensus development activities based on input from a variety of professionals and parents, the institute will build upon other relevant efforts, including the work of the National Center on Educational Outcomes and the National Goals Panel on School Readiness. Once the initial developmental work is complete, the institute will conduct research activities to determine the feasibility, usefulness and appropriateness of the outcomes, indicators, and data sources in a variety of programs serving young children with disabilities and their families. The results of the research will include a system for measuring child and family attainment of outcomes, indicators of outcomes that are written in operational terms, and instruments and other data sources for each outcome. The measurement system must be designed in a manner that captures partial attainment or progress toward attainment of each outcome, and a method of using the results of the measurement system for program improvement.

Priority: Each institute considered for funding under this priority must—

(a) Conduct a program of research and development that addresses one of the issues identified above;

(b) Identify specific strategies and procedures that will be investigated;

(c) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies and procedures to be studied, the research methods and instrumentation that will be used, and the specific target populations and settings that will be studied;

(d) Collect, analyze, and report a variety of data, including (1) information on the settings, the service providers, the children and families targeted by the institute (e.g., age, disability, level of functioning and membership in a special population, if appropriate), (2) outcome data from multiple measures for the children and families who are the focus of the strategies and procedures; and (3) implementation data from the service providers, administrators and others involved in the research;

(e) Conduct the research with a broad range of children with disabilities and their families who are receiving early intervention and preschool services in typical service delivery settings;

(f) Conduct the research using methodological procedures that are designed to produce unambiguous findings regarding the effects of the strategies and procedures, as well as any findings on interaction effects between particular strategies and particular characteristics of participants or settings. These findings will be obtained through appropriate sample selection and adequate sample size to permit use of the findings in policy analyses;

(g) Design research activities that lead to improved services for children with disabilities and their families;

(h) Develop and field test products that can be used for training and technical assistance activities with policy makers, administrators, school board members, parents, and service providers that are likely to facilitate the implementation of the institute's findings and products in a variety of early intervention and preschool settings;

(i) Coordinate the research activities with other relevant efforts sponsored by the U.S. Department of Education, including other research institutes, technical assistance entities, and information clearinghouses;

(j) Provide training and research opportunities for a limited number of graduate students.

The Secretary anticipates funding three cooperative agreements with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue an institute for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), will consider the following:

(1) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the Institute, are to be performed during the last half of the Institute's second year and must be included in that year's evaluation required under 34 CFR 75.590. In its budget for the second year, the Institute must set aside funds to cover the costs of the review team. These funds are estimated to be approximately $4,000; (2) the timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and (3) the degree to which the Institute's research designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

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Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Program Authority: 20 U.S.C. 1423.

Educational Media Research, Production, Distribution, and Training Program

Purpose of Program: To promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Closed-Captioned Television Programs

Background: This priority supports cooperative agreements to provide closed-captioning of television programs in a variety of areas: (1) National news and public information programs; (2) movies, mini-series, special programs, and other programs broadcast during prime-time; (3) children's programs; and (4) syndicated television programs.

National News and Public Information. This activity will continue and expand closed-captioned national news, public information programs, and emergency programming, so that persons with hearing impairments can have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information. In making awards the Secretary will consider the extent to which programs on each major national commercial and public broadcast network continue to be captioned. For news and public information programs that have previously been captioned, funds provided under this category may be used to support no more than one-half of the captioning costs. Funds provided under this category also may be used to support the captioning of emergency programming.

Movies, Mini-Series, and Special Programs. This activity will continue and expand the closed-captioning of movies, mini-series, and special programs available on major national broadcast networks or basic cable networks. In making awards the Secretary will consider the extent to which prime-time movies and other programs on each major national commercial broadcast network continue to be closed-captioned. Funds provided under this category may be used to support no more than one-half of the captioning costs for movies, mini-series, and special programs.

Children's Programs. This activity will provide closed-captioning of children's programs shown on national commercial and public broadcast networks, as well as syndicated and basic cable programs shown nationally, so that children who are deaf or hard of hearing will have access to popular children's programs. In making awards the Secretary will consider the extent to which children's programs on each major national commercial and public broadcast network, syndicated, and basic cable children's programs continue to be captioned.

Syndicated Television Programming. This activity will provide closed-captioning of syndicated television programs, thereby making a variety of programs available at different times, depending on local distribution. Syndicated programming includes both evergreen programming (popular previously-broadcast programs or series), and new programs distributed for showing on individual stations. In making awards, the Secretary considers the anticipated shelf-life and the range of distribution of the captioned programs possible without further costs to the project beyond the initial captioning costs, as well as the extent to which programs currently captioned may continue to be captioned.

Priority: Under this competition, the Secretary intends to make one or more awards in each of the four areas of activity identified above. Each application may address only one of the areas of activity.

Projects must—

(a) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, and cultural experiences of individuals with hearing impairments;

(b) Provide a flexible plan to assure closed-captioning of television programs without interruption, while accommodating last-minute program substitutions and new programs;

(c) Identify the total number of hours and the projected cost per hour for each of the programs to be captioned;

(d) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(e) Identify the methods of captioning to be used for each program—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and the projected cost per hour for each method used;

(f) For national news and public information, provide and maintain back-up systems that will ensure successful, timely captioning service, despite national or regional emergency situations;

(g) Demonstrate the willingness of each major network or providers of syndicated programs included in the project to permit captioning of their programs;

(h) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations; and

(i) Identify the anticipated shelf-life, and the range of distribution of the programs captioned without further costs to the project beyond the initial captioning costs. (Syndicated programs only).

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Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 330, 331, and 332.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Program Authority: 20 U.S.C. 1451, 1452.

Postsecondary Education Programs for Individuals With Disabilities Program

Purpose of Program: To provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals With Disabilities

Background: This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving the needs of students with disabilities in postsecondary settings. Projects supported under this priority are expected to be major contributors of models or components of models for service providers in the field and for outreach projects funded under the Individuals With Disabilities Education Act.

Although institutions of higher education have implemented measures to accommodate students with disabilities since the 1970's, longitudinal and follow-up studies of students exiting from secondary schools consistently show that proportionately fewer students with disabilities receive any type of postsecondary education than students without disabilities. Further, those students with disabilities who do attend postsecondary institutions are significantly less likely to complete their studies or to be employed following their postsecondary experience. To change these outcomes, a number of specific barriers must be addressed, including the following:

Improving student potential for successful postsecondary experiences. Some students with disabilities and their families may be unaware of the range of available postsecondary opportunities. Other students may be aware of these options but may not be prepared to benefit from postsecondary education. To increase the number of students with disabilities entering and successfully completing postsecondary education, there is a need to develop strategies for outreach activities to inform secondary special education teachers and counselors in secondary schools about the range of postsecondary opportunities available and how to work with students and families to understand and access these opportunities. Further, there is a need to develop or adapt programs such as Upward Bound and Talent Search that assist potential candidates to access postsecondary education.

Accommodating diverse learning styles in a range of academic settings. As the number and range of students with disabilities entering postsecondary institutions increase, there will be a continuing need for an institution's administration to accommodate or modify instructional strategies and classroom environments to promote improved participation and performance for these students. Thus, postsecondary institutions will have to work with individual faculty members and staff to implement the accommodations needed by particular students. This is likely to require institutional strategies (1) to understand state-of-the-art practice in accommodating the full range of students with disabilities in traditional and emerging learning environments, and (2) to provide training on an on-going, as well as student-specific, basis to faculty or staff.

Transferring of student accommodations to the employment setting. Students with disabilities who require classroom accommodations and adaptations to improve academic performance may require similar types of accommodations or adaptations on the job. In addition, specific jobs or professions may need additional accommodations or adaptations to successfully employ particular students with disabilities. Thus, there is a need to develop strategies for helping students, placement specialists, and employers determine the accommodations or adaptations that would be required for professions or employment settings of interest to the student, and for transferring or arranging for those accommodations. This is likely to require cooperative efforts among representatives of the services responsible for successful vocational placements for people with disabilities.

These collaborative efforts must include extensive involvement of representatives from an institution's program that provides support services to students with disabilities, the institution's career placement office, the State vocational rehabilitation (VR) agency (for VR-sponsored students), and business and industry.

Priority: A model demonstration project must—

(a) Develop and implement programs that address at least one of the three specific service issues described in the background of this proposed priority;

(b) Develop and implement programs with specific components or strategies that are based on theory, research, or evaluation data;

(c) Produce detailed procedures and materials that enable others to replicate the model as implemented in the original site; and,

(d) Evaluate the model by using multiple outcome measures to determine the effectiveness of the model and its components or strategies, including measures of multiple, functional student outcomes, other indicators of the effects of the model, and cost data associated with implementing the model.

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Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Program Authority: 20 U.S.C. 1424a.

Program for Children With Severe Disabilities

Purpose of Program: To provide Federal assistance to address the special needs of infants, toddlers, children, and youth with severe disabilities—including children with deaf-blindness—and their families.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Absolute Priority—Outreach Projects: Serving Children With Severe Disabilities in General Education and Community Settings

Background: This priority supports projects that assist educational and other agencies in implementing proven models, components of models, and exemplary practices to improve services for children and youth with severe disabilities and their families. State and local education agencies are engaged in systemic educational reform efforts emphasizing development of teaching and learning standards, student assessment, mobilizing community and parental support, technology, and school to work initiatives for all students. To support these efforts, State agencies and local service agencies need information on successful practices, curricula, and products that have proven effective in including students with severe disabilities in social and academic settings and activities.

The models, components of models, or exemplary practices selected for outreach activities need not have been developed through the Program for Children with Severe Disabilities under the Individuals with Disabilities Education Act, or by the applicant.

The practices to be implemented during the outreach activities may focus on, but are not limited to, transition from school to adult life, behavior management, coordination of services, or strategies that facilitate the inclusion of children with severe disabilities into their neighborhood schools and local communities. To increase their visibility and to enhance the impact of outreach activities, projects are encouraged to establish adoption sites in multiple States.

Priority: An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve services for children with severe disabilities and their families in general education and community settings;

(b) Coordinate its dissemination and replication activities with the lead agency for Part H of the IDEA for early intervention services or the State educational agency for special education, as well as technical assistance, information, and personnel development networks within the State;

(c) Involve children, as appropriate, and their families in the design, implementation, and evaluation of project activities;

(d) Ensure interagency coordination if multiple agencies are involved in the provision of services;

(e) Ensure that the models, components of models, or exemplary practices are consistent with Parts B and H of the IDEA, are state-of-the-art, match the needs of the proposed sites, and have evaluation data supporting their effectiveness;

(f) Include public awareness, product development and dissemination, training, and technical assistance activities, and written plans for site development;

(g) Describe criteria for selecting implementation sites and, for potential users, the expected costs, needed personnel, staff training, equipment, and the sequence of implementation activities;

(h) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at the site where models or practices were adopted or adapted, child progress and family satisfaction, and changes in the model or practices made by sites.

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Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 315.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Program Authority: 20 U.S.C. 1424.

Secondary Education and Transitional Services for Youth With Disabilities Program

Purpose of Program: To (1) assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and (2) ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet any one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet any one of these absolute priorities:

Proposed Absolute Priority 1—Outreach Projects for Services for Youth With Disabilities

Background: This priority supports projects that assist educational and other agencies in implementing proven models, components of models, or other exemplary practices to improve secondary education and transitional services for youth with disabilities in areas such as continuing education, self-determination, vocational education and training, supported competitive employment, leisure and recreation, and independent living.

Data from the National Longitudinal Transition Study (NLTS) indicated that secondary education students with disabilities averaged 70% of their time in regular education settings. The study also suggests that 38% of students with disabilities drop out before their completion, with repeated course failure a strong predictor of dropping out. Many of these students were in regular education classes without the help of academic support services (e.g., tutors, study skills and test-taking preparation classes, learning labs). The provision of these services and enrollment in vocational training courses had significant "holding power" for those students who had the potential for dropping out. The NLTS also found that youth who belonged to school or community groups did better in school, were less likely to drop out, and experienced a higher probability of entering postsecondary education. Thus, there is a critical need for secondary schools to accommodate or modify

instructional strategies and classroom environments to promote improved participation and performance of students with disabilities.

The Individuals with Disabilities Education Act (IDEA) requires that a statement of needed transition services be included in the individualized education program (IEP) for each student beginning no later than age 16, and at a younger age, if determined appropriate, and that the services be updated on an annual basis (20 U.S.C. 1401(A)(20)(D)). To effectively meet this requirement, State agencies and local service agencies need information on successful practices, curricula, and products.

The models, components of models, or exemplary practices selected for outreach need not have been developed through the Secondary and Transitional Services Program under the IDEA, or by the applicant. To increase the impact of outreach activities, projects are encouraged to select sites in multiple regions or States.

Priority: An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve secondary and transitional services for students with disabilities in community-based settings or the least restrictive environment, as appropriate;

(b) Coordinate its dissemination and replication activities with relevant State and local educational agencies, consumer organizations, administrative entities established in the service delivery area under the Job Training Partnership Act, and, if appropriate, other systems for transitional services for youth with disabilities as well as with technical assistance, information, and personnel development networks within the State;

(c) Involve students and adults with disabilities in the design, implementation, and evaluation of project activities;

(d) Ensure coordination with schools, vocational rehabilitation agencies, adult service providers, and potential employers, if appropriate;

(e) Ensure that the model, components of models, or exemplary practices are consistent with Part B of the IDEA, are state-of-the-art, match the needs of proposed sites, and have evaluation data supporting their effectiveness;

(f) Include public awareness, product development and dissemination, training, and technical assistance activities, and written plans for site development;

(g) Describe criteria for selecting implementation sites and, for potential users, the expected costs, needed personnel, staff training, equipment, and the sequence of implementation activities;

(h) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of youth and families served at the site where models were adopted or adapted, youth progress and satisfaction, and changes in the model or practice made by sites.

For Further Information Contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4624, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8163. Fax: (202) 205–8971. Internet: Michael__Ward@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Proposed Absolute Priority 2—Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education Services for Students With Disabilities

Background: This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving the needs of students with disabilities in secondary school settings. Projects must coordinate their activities with State and local partnerships developed under the School-to-Work Opportunities Act to prepare all students for high-skill, high-wage jobs or further education and training. In particular, the school-based learning activities must be tied to occupational skills standards and challenging academic standards. Projects supported under this priority are expected to be major contributors of models or components of models for secondary school services providers in the field and for outreach projects funded under the Individuals with Disabilities Education Act.

Data from the National Longitudinal Transition Study (NLTS) indicated that secondary education students with disabilities averaged 70% of their time in regular education settings. The study also suggests that 38% of students with disabilities drop out before their completion, with repeated course failure a strong predictor of dropping out. Many of these students were in regular education classes without the help of academic support services (e.g., tutors, study skills and test-taking preparation classes, learning labs). The provision of these services and enrollment in vocational training courses had significant "holding power" for those students who had the potential for dropping out. The NLTS also found that youth who belonged to school or community groups did better in school, were less likely to drop out, and experienced a higher probability of entering postsecondary education. Thus, there is a critical need for secondary schools to accommodate or modify instructional strategies and classroom environments to promote improved participation and performance for students with disabilities.

In order to meet the needs of students with disabilities in secondary settings, a number of service issues need to be addressed: (a) Providing counseling, tutoring, assistive technology and other support strategies to prevent course failure among students with disabilities; (b) restructuring academic and/or vocational course offerings (e.g., content, instructional procedures, and sequencing) to accommodate students with disabilities with diverse learning needs and styles; (c) revising academic courses in a manner that directly complements skills taught in vocational education programs and in other courses; and (d) developing extracurricular activities for students with disabilities that promote the retention and generalization of academic and vocational skills in a variety of settings.

In order to implement the accommodations needed by particular students, it is important that strategies be developed in coordination with individual teachers and related services personnel. These linkages are likely to result from institutional strategies that (1) are based on an understanding of state-of-the-art practice in accommodating the full range of students with disabilities in traditional and emerging learning environments, and (2) provide training on an on-going, as well as student-specific, basis to teachers and other personnel.

Priority: A model demonstration project must—

(1) Develop and implement programs that address at least one of the specific service issues described in the background of this proposed priority;

(2) Develop and implement programs with specific components or strategies that are based on theory, research, or evaluation data;

(3) Produce detailed procedures and materials that would enable others to replicate the model as implemented in the original site; and,

(4) Evaluate the model by using multiple outcome measures to determine the effectiveness of the model and its components or strategies, including measures of multiple, functional student and family outcomes, other indicators of the effects of the model, and cost data associated with implementing the model.

For Further Information Contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4624, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8163. Fax: (202) 205–8971. Internet: Michael__Ward@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 326.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Program Authority: 20 U.S.C. 1425.

Special Studies Program

Purpose of Program: To support studies to evaluate the impact of the Individuals with Disabilities Education Act (IDEA), including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet any one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet any one of these absolute priorities:

Proposed Absolute Priority 1—Testing the Use of An Instrument to Measure Student Progress

Background: The Office of Special Education Programs funded the development and testing of the PASS (Performance Assessment for Self-Sufficiency) system to respond to the needs of local, State, and federal agencies for information on the post-school services required by students with disabilities as they make the transition to adult service delivery systems. The field test of PASS indicated that the system also had great potential for use in measuring student outcomes. The findings from the field test on the utility of the PASS system indicate that PASS may be useful for a wide range of purposes including:

- Developing a systematic method of estimating the post-school needs of exiting students with disabilities.
- Developing a transition planning tool that would be used to develop and monitor individualized education/transition plans (IEPs/ITPs), to track student progress, and to be used for follow-up purposes after exiting school.
- Documenting outcomes, identifying programs and curriculum needs, and for evaluating programs.
- Improving interagency coordination and teamwork.
- Providing a common database for use at local, State and national levels.

The results of the field test lead the Office of Special Education Programs to conclude that deployment of the PASS at this time is premature and an investigation of the feasibility and utility of the PASS system as a tool for transition planning, and for measuring student outcomes, is in order.

The PASS System. The PASS system has two main components: The PASS Instrument, and the PASS Expert System. The PASS instrument obtains teachers' assessments of four major competency areas related to functional performance skills demanded by adult life. First, teachers complete the PASS instrument which provides ratings of students for a broad array of functional performance indicators in four general domains: Daily Living, Personal and Social Development, Employment, and Educational Performance. The specific skills and behaviors targeted on the PASS instrument are ones that are typically required for adult life and that have service implications. For example, very low performance ratings on several specific indicators—such as "moves self about in immediate neighborhood (E.G., walking, bicycling), "uses public transportation if available (e.g., bus, taxi), "uses maps and bus schedules when appropriate", etc.—suggest differing needs for assistance with mobility and transportation aspects of daily living. The PASS also provides information about the student's training, education, and employment, as well as major problem behaviors. No special assessment is required: teachers complete the PASS based on what they already know about the student from direct observation or input from colleagues who work with the student. The instrument was developed in collaboration with well-known transition experts, and involved considerable interaction with State and local administrators and practitioners in both special education and adult services. It has been produced in a machine-scanable format.

The second component is the PASS expert system which is a micro-computer-based program that converts the PASS data into projected service estimates for individuals and groups based on data from the PASS questionnaire. The prototype expert system, which incorporates the knowledge and expertise of more than 30 special education and adult services practitioners across the country, was field tested in over 100 school districts in 10 States to test the feasibility of administrative procedures for collecting PASS data from schools and to guide refinement of the PASS instrument and expert system prototype.

The American Institutes for Research (AIR) developed the rudimentary prototype PASS system and tested its administrative feasibility. AIR developed the following deliverables, which are available from the Office of Special Education Programs: Evaluation of the Utility of the PASS System; Technical Documentation for the PASS Expert System; Technical Manual for the PASS Instrument; USER Guide to the PASS Expert System; Report on the Administrative Feasibility of the PASS System; Technical Documentation for the PASS Expert System; Recommendations and Rationales for Revisions to the PASS Instrument and Instructions.

Priority: The Assistant Secretary proposes to establish an absolute priority for a project, through a cooperative agreement, to assist the Office of Special Education Programs in evaluating the feasibility and utility of the PASS system: (a) As a tool for transition planning, across all disability categories and levels of severity; and (b) as a tool for measuring student outcomes, across all disability categories and levels of severity. Additionally, the project will validate the expert system's decision rules.

The project must:

(a) Develop the conceptual framework for the study;

(b) Establish a Stakeholder group that will advise the project on the study design;

(c) Develop data collection methods and instruments;

(d) Develop methods of data analysis;

(e) Carryout a field test;

(f) Provide guidance and support to States participating in the field test;

(g) Analyze the results of the field test and prepare a final report on the findings of the study; and

(h) Budget for two trips to Washington, D.C. each year. One trip to meet with the OSEP Project Officer and

one trip to attend the annual Project Director's Meeting.

For Further Information Contact: Susan Sanchez, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3524, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8998. FAX: (202) 205–8105. Internet: Susan_Sanchez@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–2641.

Proposed Absolute Priority 2—State-Federal Administrative Information Exchange

Background: Information for decisionmaking and policy development to ensure appropriate and effective education and early intervention for all infants, toddlers, children and youth with disabilities is critically important. State and Federal decision-makers responsible for the implementation of the Individuals with Disabilities Education Act (IDEA) must have access to valid statistics, research findings, and policy options, as well as current information on trends in providing of special education and related services.

The Office of Special Education Programs (OSEP) within the U.S. Department of Education has the responsibility for Federal administration of the IDEA. State Education Agencies (SEAs), or other designated State agencies under Part H of the Act, oversee the administration of the Act at State and local levels. This project will facilitate the access and analysis of administrative and policy information to and from the States and help other jurisdictions, and to ensure the flow of communication between the Federal Government and administrators of IDEA at State and local levels.

Priority: The Secretary proposes to establish a priority to facilitate communication between the U.S. Department of Education and State and local administrators of IDEA, and to synthesize national program information that will improve the management, administration, delivery and effectiveness of programs and services provided under the Act. The cooperative agreement funded under this priority will provide a mechanism and resources to the Department for analyzing policies and emerging issues that are of significant national concern.

The project must—

(1) Identify national and State program improvement information that is needed to obtain better results in education and providing early intervention services for infants, toddlers, children, and youth with disabilities;

(2) Organize, synthesize, interpret, integrate, and facilitate dissemination of information needed for program improvement;

(3) Analyze emerging policy or program issues regarding the administration of special education, early intervention, and related services at the Federal, State and local levels;

(4) Facilitate the use of information at Federal, State and local levels for program improvement for infants, toddlers, children, and youth with disabilities.

The project must organize, coordinate, and maintain a data base of laws, policies, and regulations that govern special education within the States and other jurisdictions; communicate, on a regular basis, with State educational agencies to identify emerging policy issues; obtain, analyze and synthesize information relative to the emerging issues; and convene experts, special education administrators, and others to review, plan, and provide leadership in recommending multi-level actions that respond to the emerging issues. The project must communicate regularly with the Office of Special Education Programs to ensure the continuing flow and development of information that may be required at the Federal level to facilitate the improvement and efficiency of administration of the IDEA by the U.S. Department of Education.

Upon request of the OSEP project officer, the project should meet with other funded projects of OSEP for purposes of cross-project collaboration and information exchange. The project must also budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer.

For Further Information Contact: Jane C. Williams, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3529, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9039. FAX: (202) 205–8105. Internet: Jane_Williams@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 327.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Program Authority: 20 U.S.C. 1418.

Program for Children and Youth With Serious Emotional Disturbance

Purpose of Program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under these competitions only applications that meet this absolute priority:

Proposed Absolute Priority—Developing Effective Secondary School-Based Practices for Youth With Serious Emotional Disturbance

Background: Recent nationwide research on secondary school experiences and post-school outcomes for students with disabilities finds that youth with serious emotional disturbance (SED) are at particularly high risk for school failure and for poor post-school outcomes. While the majority of secondary age students with SED attend regular high schools, most of these students receive special education and related services outside the regular classroom for a substantial part, or all, of their school day. SED students attending regular secondary schools tend, as a group: to display erratic school attendance patterns; to achieve low levels of academic success despite generally normal-and-above ability levels; to be minimally involved in the social milieu of their schools; and to drop out of school at alarming rates. Fifty percent drop out of school, most by the tenth grade.

Poor adjustment and behavioral concerns are common during and beyond high school among these students. Data from the National Longitudinal Transition Study show that only one in ten students with serious emotional disturbance have behavior management plans. They tend to be under- or un-employed, are rarely involved in post-secondary education, and are at high risk for engaging in activities and behaviors outside the bounds of the law.

While fairly substantial recent and current efforts are focusing on improving results for younger students with SED, little attention is being directed toward their secondary-age counterparts. This priority is intended to address this critical need.

Priority: The Secretary proposes to establish an absolute priority for projects to develop, implement, test the efficacy of, and disseminate practices for improving academic, vocational, personal, social, and behavioral results for students with SED in regular high schools, including consideration of the most appropriate and least restrictive placements.

Under this priority, projects must—

(1) Develop practices with sound conceptual bases that are designed to improve critical academic, vocational, personal, social, and behavioral outcomes for SED students;

(2) Apply rigorous research standards in testing the efficacy of practices developed;

(3) Develop products that include clear, comprehensive descriptions of tested practices, test site contexts, and target student characteristics, and disseminate these products to appropriate research institutes, clearinghouses, and technical assistance providers.

A project must budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer and with other relevant OSEP funded projects.

For Further Information Contact: Helen Thornton, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3520, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5910. Fax: (202) 205–8105. Internet: Helen_Thornton@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 328.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Program Authority: 20 U.S.C. 1423.

Intergovernmental Review

Except for the Research in Education of Individuals with Disabilities Program (84.023) and the Special Studies Program (84.159), all other programs included in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3524, 300 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Dated: September 14, 1995.

Howard R. Moses,

Acting Assistant for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023; Early Education Program for Children with Disabilities, 84.024; Media Research, Production, Distribution, and Training Program, 84.026; Postsecondary Education Program for Individuals with Disabilities Program, 84.078; Program for Children with Severe Disabilities, 84.086; Secondary Education and Transitional Services Program for Youth with Disabilities, 84.158; Special Studies Program, 84.159; and Program for Children and Youth with Serious Emotional Disturbance, 84.237)

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federal register

Tuesday
November 7, 1995

Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 24

Revision of Rules of Procedure, Agriculture Board of Contract Appeals; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 24

Revision of Rules of Procedure, Agriculture Board of Contract Appeals

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Agriculture Board of Contract Appeals ("AGBCA") hereby revises its Rules of Procedure, 7 CFR Part 24, by making minor modifications to implement the requirements of the Federal Acquisition Streamlining Act of 1994 regarding amounts in controversy for use of expedited and accelerated procedures; to describe the Board's jurisdiction in conformance with current Departmental regulations; to eliminate the Rules of Procedure for "nonstatutory" appeals contained in 7 CFR 24.21 Appendix B (used primarily for pre-Contract Disputes Act ("CDA") appeals); and to make minor technical corrections to the rules of procedure to streamline conduct of appeals and conform to current AGBCA practice. The intended effect of these changes is to provide one streamlined set of rules of procedure applicable to all appeals within the AGBCA's jurisdiction.

DATES: This rule is effective November 7, 1995.

FOR FURTHER INFORMATION CONTACT: M.C. Shager, Chief Counsel, Board of Contract Appeals, U.S. Department of Agriculture, 2912 South Building, Washington, D.C. 20250. Telephone (202) 720–7023.

SUPPLEMENTARY INFORMATION: These changes have been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. These changes constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

These changes have been determined to be "not significant" for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore have not been reviewed by the Office of Management and Budget ("OMB").

These changes do not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 501 *et seq.*).

It has been determined under section 6(a) of Executive Order 12612, Federalism, that these changes do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in these changes will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under the Regulatory Flexibility Act (5 U.S.C. 605), these changes will not have a significant impact on a substantial number of small entities. These changes do not increase the paperwork burden on contractors filing appeals with the AGBCA because these changes only conform the Board's jurisdiction to existing USDA regulations and change the thresholds for accelerated and expedited appeals consistent with the Federal Acquisition Streamlining Act of 1994 (Pub. L. No. 103–355) ("FASA"). Therefore, these changes are determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

The Office of the General Counsel has determined that these changes meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778, Civil Justice Reform.

These changes are not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

These changes contain modifications to implement the requirements of the FASA regarding amounts in controversy for use of expedited and accelerated procedures; to describe the Board's jurisdiction in conformance with current Departmental regulations; to eliminate the Rules of Procedure for "nonstatutory" appeals contained in 7 CFR 24.21 Appendix B; and to make minor technical corrections to the rules of procedure to streamline the conduct of appeals and conform to current AGBCA practice. The intended effect of these changes is to provide one streamlined set of rules of procedure applicable to all appeals within the AGBCA's jurisdiction.

These changes relate to internal agency management and rules of procedure and practice in formal adjudicatory proceedings. The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking (5 U.S.C. 553) do not apply to the promulgation of agency rules of practice. For this reason these changes are made effective upon publication in the **Federal Register**.

For ease of reading, the AGBCA's entire Rules of Procedure are included, including republished or revised sections. The major revisions are summarized here:

§ 24.2 Composition of the Board. The rule allows the AGBCA's Vice Chair to act for the Chair upon request or absence of the Chair.

§ 24.4 Jurisdiction. In accordance with other USDA regulations, jurisdiction over appeals from certain Federal Crop Insurance Corporation final administrative decisions regarding reinsurance agreements has been added, and the AGBCA's jurisdiction over appeals of debarments and suspensions has been clarified to conform to AGBCA decisions and Departmental practice that the AGBCA's decisions are final within the Department. The title of the Contract Work Hours and Safety Standards Act has been corrected and the AGBCA's jurisdiction has been clarified in accordance with statutory language. The distinction between "statutory" and "nonstatutory" jurisdiction has been eliminated.

§ 24.5 Time for Filing Notice of Appeal. The time limits have been clarified for each type of AGBCA jurisdiction.

§ 24.6 Board Location and Address. The AGBCA's telephone and facsimile numbers have been added.

§ 24.9 Definitions. The unnecessary definition of contracting officer of the Forest Service has been eliminated. The definition of "days" has been added to this section.

§ 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA. The definition of "days" has been removed from this section and added to the definitions section.

Rule 1(b) & (c). In accordance with section 2351(b) of FASA, the threshold for certification, decision, and notification has been raised from $50,000 to $100,000. These rules have been modified to reflect this change.

Rule 3 now indicates that the AGBCA will provide appellants with a copy of the notice on Alternative Dispute Resolution with the notice of docketing.

Rules 4(a) & (b), 6(a) & (b) now require that, except for the Complaint, the parties should serve documents on the opposing party rather than filing all copies with the AGBCA.

Rule 12.1(a). In accordance with section 2351(d) of FASA, the maximum for applicability of the small claims (expedited) procedures has been raised from $10,000 to $50,000.

Rule 12.1(b). In accordance with section 2351(c) of FASA, the maximum for applicability of the accelerated procedures has been raised from $50,000 to $100,000. Rule 12.3(c) has a similar change.

Rule 16(a) now conforms to the AGBCA's current practice of requiring parties to file the Complaint directly with the Board but to serve copies of other documents directly on the opposing party, and to use certified mail, return receipt requested, for serving papers.

Rule 16(b) now allows use of facsimile transmissions, specifies that receipt occurs upon receipt by facsimile of the entire document, and cautions parties that time limits will not be extended merely because of facsimile equipment failures.

Rule 20 now clarifies that Administrative Judges may issue subpoenas only in CDA appeals.

Rule 21.1. New rule 21.1 provide that the Chair has authority to request the appropriate United States Attorney to apply for subpoenas in non-CDA appeals.

Rule 30 now provides that the AGBCA may specify a time shorter than three years within which parties must act to reinstate appeals dismissed without prejudice.

Rule 34. Former Rule 34 described the application of the AGBCA's Rules of Procedure to various contracts. Because this information is contained in § 24.4, this rule is eliminated. New Rule 34 notifies parties of the availability of methods of Alternative Dispute Resolution.

Rule 35. New rule 35 notifies parties of the USDA's rules regarding applications for attorneys' fees and expenses under the Equal Access to Justice Act, 5 U.S.C. 504.

The Rules of Procedure for "nonstatutory" appeals contained in 7 CFR 24.21 Appendix B are eliminated.

List of Subjects in 7 CFR Part 24

Administrative practice and procedure; Agriculture; Government contracts; Organization and functions (Government agencies).

For the reasons set forth in the Preamble, and under the Secretary's authority, 5 U.S.C. 301, part 24, title 7, Code of Federal Regulations is revised to read as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

Subpart A—Organization and Functions

Sec.

24.1 General.
24.2 Composition of the Board.
24.3 Presiding Administrative Judge.
24.4 Jurisdiction.
24.5 Time for filing notice of appeal.
24.6 Board location and address.
24.7 Public information.
24.8 Rules of procedure.
24.9 Definitions.

Subpart B—Rules of Procedure

24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

Authority: 5 U.S.C. 301; 15 U.S.C. 714b, 714g, and 714h; 16 U.S.C. 551; 40 U.S.C. 486(c); 41 U.S.C. 601–613.

Subpart A—Organization and Functions

§ 24.1 General.

The Board of Contract Appeals, United States Department of Agriculture (referred to as the "Board") is an agency of the Department established by the Secretary of Agriculture in accordance with the requirements of the Contract Disputes Act of 1978 (41 U.S.C. 601–613). The provisions of 5 U.S.C. 551–559 (Administrative Procedure Act) are not applicable to proceedings before the Board except for the requirements under 5 U.S.C. 552 respecting public information, agency rules, opinions, orders, and records.

§ 24.2 Composition of the Board.

The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. The Board members are designated Administrative Judges. The Chair shall manage the business and operations of the Board, assign cases to members, and establish panels for cases. Except as provided in Rule 12.2, the Small Claims (Expedited) Procedure, and Rule 12.3, the Accelerated procedure, decisions of the Board will be rendered by a panel of three Administrative Judges, and the decision of the majority of the panel will constitute the decision of the Board. The Vice Chair shall perform the functions of the Chair upon request of the Chair or in the event of absence or unavailability of the Chair to act.

§ 24.3 Presiding Administrative Judge.

The Chair acts as presiding Administrative Judge, or designates a member of the Board or an examiner to so act, in each proceeding. The Presiding Administrative Judge or the examiner has power to:

(a) Rule upon motions and request;

(b) Adjourn the hearing from time to time and change the time and place of hearing;

(c) Administer oaths and affirmations and take affidavits;

(d) Receive evidence;

(e) Order the taking of depositions;

(f) Admit or exclude evidence;

(g) Hear oral argument on facts or law;

(h) Consolidate appeals filed by two or more appellants; and

(i) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

In cases considered by the Board under § 24.4(b), (c), and (d) the Chair is hereby delegated authority to request subpoenas pursuant to 5 U.S.C. 304.

§ 24.4 Jurisdiction.

(a) *Contract Disputes Act.* Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613), the Board shall consider and determine appeals from decisions of contracting officers relating to contracts entered into on or after March 1, 1979, and, at the contractor's election, contracts entered into prior to March 1, 1979, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter. For purposes of this paragraph (a) the term "contracts" shall mean express or implied contracts made by the Department of Agriculture, agencies of the Department, or by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, for:

(1) The procurement of property, other than real property in being;

(2) The procurement of services;

(3) The procurement of construction, alternation, repair, or maintenance of real property; or

(4) The disposal of personal property.

(b) *Federal Crop Insurance Corporation.* The Board shall have jurisdiction of appeals of final administrative determinations of the Corporation pertaining to standard reinsurance agreements under 7 CFR 400.169(d). Decisions of the Board shall be final within the Corporation and the Department.

(c) *Suspension and debarment.* (1) The Board shall have jurisdiction to hear and determine the issue of suspension or debarment, and the period thereof, on an appeal by a person suspended or debarred by:

(i) An authorized official of the Department of Agriculture under 48 CFR 409.470; or

(ii) An authorized official of the Commodity Credit Corporation under 7 CFR part 1407.

(2) In addition, the Board shall have jurisdiction to hear and determine the issue of debarment, and the period thereof, on an appeal by a timber purchaser debarred by an authorized official of the Forest Service under 36 CFR 223.138.

(3) Decisions of the Board shall be final within the Department.

(d) *Contract Work Hours and Safety Standards Act.* The Board shall have jurisdiction to act for the head of the agency in appeals of the administrative determinations of liquidated damages under the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), 40 U.S.C. 330.

§ 24.5 Time for filing notice of appeal.

A notice of appeal under § 24.4(a), (c)(1)(i), or (c)(1)(ii) shall be filed within 90 days from the date of receipt of a contracting officer's or suspending or debarring official's decision. A notice of appeal under § 24.4(b) shall be filed within 90 days from the date of receipt of the Corporation's final determination. A notice of appeal under § 24.4(c)(2) shall be filed within 30 days from the date of receipt of the debarring official's decision. A notice of appeal under § 24.4(d) shall be filed within 60 days from the date of withholding of liquidated damages. The time for filing a notice of appeal shall not be extended by the Board.

§ 24.6 Board location and address.

The Board of Contract Appeals is located in Washington, DC. All correspondence and all documents to be filed with the Board should be addressed to the Board of Contract Appeals, United States Department of Agriculture, Washington, DC 20250–0600. The Board's telephone number is 202–720–7023; the Board's facsimile number is 202–720–3059.

§ 24.7 Public information.

(a) The records of the Board are open to the public for inspection and copying at the Office of the Board. Decisions and rulings of the Board shall be published from time to time and copies made available to the public upon request at cost of duplication except that the Board shall, in its discretion, have authority to make copies of decisions and rulings available at no charge in accordance with Department policy, appendix A to 7 CFR part 1, subpart A. Hearings before the Board shall be open to the public.

(b) Information that is to be made available for public inspection and copying under provisions of 5 U.S.C. 552(a)(2) and 7 CFR 1.5 may be obtained at the office of the Board. The address of the Board is set forth in § 24.6. Except for such information as is generally available to the public, requests should be in writing and submitted in accordance with 7 CFR 1.6 and paragraphs (c) and (d) of this § 24.7.

(c) Facilities for copying are available at the office of the Board.

(d) Facilities for inspection and copying are available during established office hours for the Board, usually 8:30 a.m. to 5:00 p.m. Monday through Friday. The Department of Agriculture has established a schedule of fees for copies of information. The Board charges for copies of records in accordance with the Department fee schedule, appendix A to 7 CFR part 1, subpart A.

(e) The Vice Chair is authorized to receive requests for records submitted in accordance with 7 CFR 1.6(a), and to make determinations regarding whether to grant or deny requests for records exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b). This official is authorized to

(1) Extend the ten-day administrative deadline for reply pursuant to 7 CFR 1.14,

(2) Make discretionary releeses pursuant to 7 CFR 1.17(b) of records except from mandatory disclosure, and

(3) Make determinations regarding the charging of fees.

(f) Appeals from denials of request submitted under paragraph (e) of this section shall be submitted in accordance with 7 CFR 1.6(e) to the Chair, Board of Contract Appeals, United States Department of Agriculture, Washington, DC 20250–0600. The Chair shall determine whether to grant or deny the appeal and shall also make all necessary determinations relating to an extension of the twenty-day administrative deadline for reply pursuant to 7 CFR 1.14, discretionary release pursuant to 7 CFR 1.17(b) of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and the charging of appropriate fees.

§ 24.8 Rules of procedure.

The Chair of the Board shall prescribe its Rules of Procedure and publish such Rules in subpart B of this part 24 and may prescribe and so publish amendments from time to time. The Rules of Procedure and any amendments thereto shall be consistent with this subpart.

§ 24.9 Definitions.

Board means the Board of Contract Appeals established under this subpart.

Contract means any agreement entered into by the Department or its agencies or authorized officials with any person having the legal effect of a contract between the Department and such person.

Contracting officer means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto and includes the authorized representative of the contracting officer, acting within the limits of his/her authority.

Days means calendar days. Except as otherwise provided by law, in computing any period of time prescribed by the rules in this part or any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which even the period shall run to the end of the next business day. If mailing is required, the date of the postmark shall be treated as the date action was taken.

Department means the United States Department of Agriculture.

Government attorney means the attorney of the Department designated to handle a particular appeal on behalf of the contracting officer.

Person means any individual, partnership, public or private corporation, association, agency or other legal entity.

Subpart B—Rules of Procedure

§ 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

(a) *Preface to Rules. Time, computation and extensions.* All time limitations specified for various procedural actions are computed as maximums and are not to be fully exhausted if the action described can be accomplished in a lesser period. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time by either party shall be in writing and state good cause for the requested extension. The Board may grant such extensions on good cause shown except that the Board shall not extend the time prescribed under § 24.5 for taking an appeal.

(b) *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communication concerning the Board's administrative functions or procedures.

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Rules—Preliminary Procedures

Rule 1. Appeals, How and When Token

(a) *Notice of Appeal—90 days.* Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy of the notice of appeal shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) *Failure to Issue CO Decision—60 days—$100,000 or less.* Where the contractor has submitted a claim of $100,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure of the contracting officer to issue a decision.

(c) *Failure to Issue CO Decision—Reasonable Time—More than $100,000.* Where the contractor has submitted a certified claim in excess of $100,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure to issue a decision.

(d) *Stay Pending Final CO Decision.* Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this Rule 1, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

Rule 2. Notice of Appeal. Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The Complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a Complaint.

Rule 3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant, with a copy of these rules and information on Alternative Dispute Resolution. Notice in writing shall be given also to the contracting officer and to the Office of the General Counsel.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer.* Within 30 days of receipt of a letter from the Board transmitting the Complaint, the contracting officer shall assemble and transmit to the Board through agency channels and appeal file, and shall transmit copies thereof to the appellant and the Government attorney. The appeal file shall consist of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal; including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

(b) *Duties of the Appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which the appellant considers relevant to the appeal, and shall transmit copies of such documents to the Government attorney and the contracting officer.

(c) *Organization of Appeal File.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted such party shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing, or if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence either prior to hearing or prior to closing the record if there is no hearing, in accordance with Rules 13 and 20.

(f) *Lispensing with Appeal File Requirements.* Notwithstanding the foregoing, the filing of the Rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Dismissal for Lack of Jurisdiction

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right to any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

Rule 6. Pleadings

(a) *Appellant—Complaint.* Except as provided in Rule 12.2(b) and Rule 12.3(b), within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a Complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a Complaint, although no

particular form is required. Upon receipt of the Complaint, the Board shall serve a copy of it upon the Government and the contracting officer. Should the Complaint not be filed within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its Complaint and the Government shall be so notified.

(b) *Government—Answer.* Within 30 days from receipt of the Complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and one copy of an Answer thereto. The Answer shall set forth simple, concise, and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available, and shall be served on the appellant and the contracting officer. Should the Answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

Rule 7. Amendments of Pleadings or Record

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the Complaint or Answer, or to reply to an Answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

Rule 8. Hearing Election

After filing of the Government's Answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

Rule 9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

Rule 10. Prehearing or Presubmission Conference

(a) *Conference.* Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board of a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) *Written Results of Conference.* The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not receive the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answer to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

Notwithstanding any other provisions of these Rules of Procedure, the SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures shall be available solely at the election of the appellant.

Rule 12.1. Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) *SMALL CLAIMS (EXPEDITED)—$50,000 or less.* In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.2.

(b) *ACCELERATED—$100,000 or less.* In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.3.

(c) *Time for Election.* The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) *Board Determines Amount in Dispute.* In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

Rule 12.2. The SMALL CLAIMS (EXPEDITED) Procedure

(a) *Time Periods for Proceedings.* In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefore; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) *Decisions—120 Days).* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Form of Decisions.* Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) *No Precedent—Not Appealable.* A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

Rule 12.3. The ACCELERATED Procedure

(a) *Time Periods for Proceedings.* In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, any may reserve 30 days for preparation of the decision.

(b) *Decisions—180 Days.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Form of Decisions.* Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $50,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

Rule 12.4. Motions for Reconsideration in Rule 12 Cases

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

Rule 13. Settling the Record

(a) *Components of the Record.* The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearings exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) *Closing Dates for Inclusion of Material.* Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight Given to Evidence.* The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. Discovery—Depositions

(a) *General Policy and Protective Orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted.* After an appeal has been docketed and Complaint filed, the parties may mutually agree, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and Complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts and the authenticity of any documents, to be answered or objected to within 30 days after service (the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request); and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders and of Rule 33 with respect to sanctions.

Rule 16. Service of Papers Other Than Subpoenas

(a) *Service of Papers.* Papers shall be served personally or by certified mail, return receipt requested, addressed to the Board or to the party upon whom service is to be made. Parties shall furnish three copies of Complaints directly to the Board. Parties shall furnish two copies of Answers and briefs directly with the Board, with one copy being served on the opposing party and the Board's copies containing a notation to that effect. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

(b) *Facsimle Transmissions.* Facsimile transmissions to the Board and the parties are permitted. Parties are expected to submit their facsimile machine numbers with their

filings. The Board's facsimile number is (202) 720–3059. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire printed submission. Parties are specifically cautioned that deadlines for the filing of appeals will not be extended merely because the Board's facsimile machine is busy or otherwise unavailable at the time the filing is due. A document submitted by facsimile should be followed by a copy of the document sent by U.S. Postal Service or other delivery method.

Hearings

Rule 17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request on motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

Rule 18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduled hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay.

Rule 19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 20. Hearings: Nature; Examination of Witnesses

(a) *Nature of Hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

Rule 21. Subpoenas for CDA Appeals

(a) *General.* For appeals under § 24.4(a), upon written request of either party filed with the recorder, or on the initiative of the Administrative Judge to whom a case is assigned, or who is otherwise designated by the Chair, such Administrative Judge may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where such witness resides or is employed or transacts business in person, or at another location convenient for such witness that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers—in addition to (1) or (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas.*

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance.*

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in the Judge's discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.*

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 21.1. Subpoenas for Non-CDA Appeals

For appeals under §§ 24.4(b), (c), and (d), the Chair has authority by delegation from the Secretary to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

Rule 22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

Rule 23. Posthearing Briefs

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts or copies of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing.

Rule 25. Withdrawal of Exhibits

After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

Rule 26. The Appellant

An individual appellant may appear before the Board in person; a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Miscellaneous

Rule 28. Decisions

Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Rule 29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Rule 30. Dismissal Without Prejudice

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause for suspension has been removed. Unless either party or the Board acts within three years, or such shorter time as ordered by the Board, to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

Rule 31. Dismissal for Failure to Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices of correspondence from the Board, comply with orders of the Board or otherwise indicates an intention not to continue the prosecution of defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action.

Rule 32. Remand From Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and tie limitations permit, such orders shall conform to these rules.

Rule 33. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Rule 34. Alternative Dispute Resolution

Upon joint motion or with the consent of both parties, the Board may permit the use of methods of Alternative Dispute Resolution (ADR). The Board shall notify parties of the availability of ADR methods by transmitting information with its notice of docketing (Rule 3).

Rule 35. Application for Attorneys' Fees and Expenses Under the Equal Access to Justice Act

The Equal Access to Justice Act (EAJA), 5 U.S.C. 504, allows payment of attorneys' fees and expenses to certain prevailing parties in administrative adjudications with the Government unless the Government's position was substantially justified. Rules governing applications for fees and expenses under EAJA can be found in 7 CFR 1.180 *et seq.*

Done in Washington, D.C., on October 30, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–27501 Filed 11–6–95; 8:45 a.m.]

BILLING CODE 3410–25–M

federal register

Tuesday
November 7, 1995

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Employee Stock Ownership Plans; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 92-24]

RIN 9000-AG53

Federal Acquisition Regulation; Employee Stock Ownership Plans

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to the cost principles in the Federal Acquisition Regulation (FAR) to address employee stock ownership plans (ESOPs). The purpose is to ensure uniform treatment on the allowability of costs of all ESOP's irrespective of whether the ESOP is structured as a pension plan or as deferred compensation, including making the interest costs of leveraged ESOPs expressly unallowable. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before January 8, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR case 92-24 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 92-24.

SUPPLEMENTARY INFORMATION:

A. Background

By moving the current language on ESOP's from FAR 31.205-6(j)(8) to a new 31.205-6(p), the proposed rule recognizes that ESOPs may be governed by either the cost principle at 31.205-6(j), Pension plans, or 31.205-6(k), deferred compensation. The rule also makes the interest costs on borrowings of leveraged ESOP's expressly unallowable in accordance with FAR 31.205-20, thus placing leveraged ESOP's on the same basis as non-leveraged ESOP's; limits the allowability of noncash contributions to the Employee Stock Ownership Trust (ESOT) to the fair market value on the date that the contractor effectively loses control of the asset to the ESOT or pledges the asset to lender as loan collateral; and proposes a ceiling of 15 percent on payroll-related contributions, which is in consonance with limits on similar supplemental retirement plans under the Internal Revenue Code.

B. Regulatory Flexibility Act

This proposed rule broadens a condition of allowability of costs upon contractors who wish to be reimbursed under Government contracts. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies, but the rule is not expected to have a significant economic impact on a substantial number of small entities because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR case 92-24 in correspondence.

C. Paperwork Reduction Act

This proposed rule is a broader application of an existing cost principle but does not affect how contractors account for costs of ESOPs. The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: October 26, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205-6 is amended by removing paragraph (j)(8) and adding paragraph (p) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(p) *Employee stock ownership plans (ESOPs).* An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to a trust of an ESOP may be in the form of cash, stock, or noncash assets. In addition to specifically applicable pension and deferred compensation cost principles in paragraphs (j) and (k), respectively, of this subsection, ESOP costs are allowable subject to the following provisions:

(1) Any portion of an ESOP cost assigned to a year which is not paid to the Employee Stock Ownership Trust (ESOT) by the time set for filing of the Federal income tax return for that year, or any extension thereof, shall not be allowable.

(2) The contractor shall provide the contracting officer or designated representative access to the books and records of the ESOT and to any independent analysis of the fair market value of the stock in the ESOT made for purposes of the ESOP. This includes analyses made either for the ESOT or for the contractor.

(3) The contractor shall furnish evidence satisfactory to the contracting officer demonstrating that acquisitions of stock or noncash assets by the ESOT are made at the stock's or noncash asset's fair market value. Any amount in excess of the fair market value is unallowable.

(i) For purposes of applying the allowability criteria under paragraph (p)(6) of this subsection, the fair market value of the stock or noncash assets shall be determined as of the close of business on the next business day after the transaction date.

(ii) For contractor contributions of stock or noncash assets, the transaction date is the date on which the contractor sells, assigns, or otherwise transfers control of the stock or noncash asset to the ESOT or to a financial institution.

(4) When the stock used by the ESOT to satisfy the plan requirements of an ESOP is not publicly traded or the contracting officer determines that the stock was not publicly traded in sufficient quantities to establish the fair market value, the fair market value of the stock in paragraph (p)(3) of this subsection shall be determined on a case-by-case basis by the contracting officer, taking into consideration the guidelines for valuation used by the IRS.

There is no presumption of allowability for the valuations claimed by the contractor for such stock. Any amount determined to be attributable to excess stock valuations is unallowable.

(5) Contractor contributions to an ESOT are unallowable to the extent they are used by the ESOT to pay interest on borrowings, however represented.

(6) the allowable amount of ESOP cost for a given year shall not exceed the lesser of—

(i) The fair market value, as determined in paragraphs (p)(3) and (p)(4) of this subsection, of stock shares credited to the accounts of individual ESOP participants during that year reduced by—

(A) The fair market value of any forfeitures that are reallocated to plan participants; and

(B) Dividends applicable to shares credited to plan participants; or

(ii) 15 percent of the salaries and wages of the employees participating in the ESOP for that year.

(7) In addition to paragraph (p)(6) of this subsection, the costs to administer an ESOP are allowable, if reasonable in amount. These allowable costs do not include costs which are otherwise unallowable under part 31.

(8) Any increased costs resulting from conversion of the ESOP from a pension to a non-pension plan or from a non-pension to a pension plan are unallowable.

[FR Doc. 95-27554 Filed 11-6-95; 8:45 am]

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federal register

Tuesday
November 7, 1995

Part V

The President

Proclamation 6848—Death of Yitzhak Rabin

Federal Register
Vol. 60, No. 215
Tuesday, November 7, 1995

Presidential Documents

Title 3—

The President

Proclamation 6848 of November 4, 1995

Death of Yitzhak Rabin

By the President of the United States of America

A Proclamation

Today a senseless act of violence has robbed the United States of a close friend and robbed the world of a statesman and courageous champion of peace.

Yitzhak Rabin was a brave man who defended his country for half a century and whose vision and tenacity brought the world closer to peace.

He was a man of hope, a man of wisdom, a man who sought to improve the lives of all those he touched.

The peace process that he began will be his legacy. The people of the United States and the peace-loving people of the world are determined that the peace process will go forward.

As a mark of respect for the memory of Yitzhak Rabin and America's support for peace in the Middle East, I hereby order that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until his interment. I also direct that the flag shall be flown at half-staff for the same length of time at all United States Embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–27780
Filed 11–6–95; 11:26 am]
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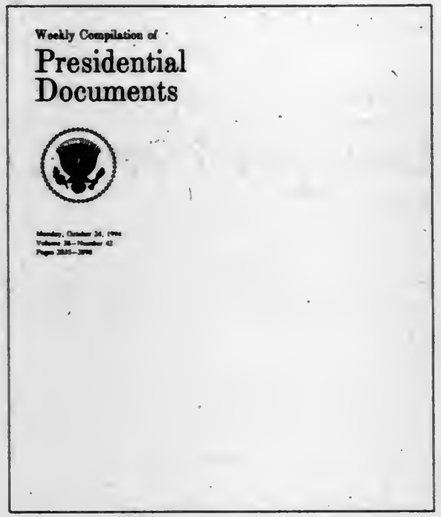
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federal register

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November 8, 1995

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Three Sessions]

WHEN: November 14 at 9:00 am
November 28 at 9:00 am
December 5 at 9:00 am

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–119, Special Conditions No. 25–ANM–109]

Special Conditions: Bombardier Inc., Canadair Challenger CL–600–2B16 (CL–604 Variant), High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Canadair Challenger CL–600–2B16 (CL–604 Variant) airplane. This airplane will utilize new avionic/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 31, 1995. Comments must be received on or before December 26, 1995.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–119, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–119, Comments may be inspected in the Rule Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gregory L. Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, (206) 227–2799.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exits for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must be submitted with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–119." The postcard will be date stamped and returned to the commenter.

Background

On June 14, 1993, Bombardier Inc., Candor, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, applied to Transport Canada for a type design change to their Type Certificate A21EA in the transport airplane category for the Model CL–600–2B16 (CL–604 Variant) airplane. The CL–604 Variant is a low swept wing, business jet airplane powered by two GE CF 34–3B turbofan engines mounted on pylons extending from the aft fuselage. The airplane has a seating capacity of up to nineteen passengers, and a maximum ramp weight of 48,300 pounds.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Canadair must show, except as provided in § 25.2, that the Model CL–600–2B16 (CL–604 Variant) meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–78. In addition, the proposed certification basis for the Model CL–600–2B16 (CL–604 Variant) includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. The special conditions incorporated herein form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the CL–600–2B16 (CL–604 Variant) because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 1128 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel of Unusual Design Features

The Model CL–600–2B16 incorporates new avionic/electronic installations, including a digital Electronic Flight Instrument System (EFIS) and a limited Engine Indication and Crew Alerting System (EICAS). These systems may be

vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for Canadair CL-600-2B16 (CL-604 Variant) which require that new technology electrical and electronic systems, such as the EFIS and EICAS, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of eletromagnetics energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions would be applicable initially to the Model CL-600-2B16 (CL-604 Variant). Should Canadair apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Bombardier Inc., Canadair Challenger CL-600-2B16 (CL-604 Variant) is imminent, the FAA finds that good cause exists for making these special conditions effective upon issuance.

Conclusion

This action affects certain design features only on the Canadair CL-600-2B16 (CL-604 Variant) airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Bombardier Inc., Canadair Model CL-600-2B16 (CL-604 Variant) airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 95-27705 Filed 11-7-95; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 95-ANE-32; Amendment 39-9420; AD 95-22-12]

Airworthiness Directives; Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, that currently requires initial and repetitive inspections of the propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth for wear, and replacement, if necessary, of PCU servo BIS assemblies. This amendment increases the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 hours time in service (TIS) for propellers that have a ballscrew quill damper installed. In addition, the FAA has reevaluated the optional installation of the Secondary Drive Quill (SDQ), and has added a new compliance end-date of June 30, 1998, for the installation of the SDQ. This AD will also require initial and repetitive torque check inspections of the primary ballscrew quill once the SDQ is installed. This amendment is prompted by field service and laboratory test data that indicate that the repetitive inspection interval can be safely increased, and by the development and availability of the SDQ. The actions specified by this AD are intended to prevent inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly.

DATES: Effective November 24, 1995 as to all compliance paragraphs except paragraph (b) of this AD.

Effective May 6, 1996 as to compliance paragraph (b) of this AD.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1995.

Comments on the requirements of compliance paragraph (b) of this AD for inclusion in the Rules Docket must be received on or before January 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-ANE-32, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096-1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7158, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA recently issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 94-22-12, Amendment 39-9062 (59 FR 55199, November 4, 1994), which is applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers. This notice of proposed rulemaking (NPRM) was published in the **Federal Register** on June 6, 1995 (60 FR 29797). That action proposed to require increasing the repetitive propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth inspection interval from 1,500 to 2,500 hours time in service (TIS) for propellers that have a ballscrew quill damper installed. In addition, that action proposed to add an optional terminating action to the repetitive PCU servo BIS teeth inspections by installing a Secondary Drive Quill (SDQ). With the SDQ installed, that action proposed to require an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter repetitive torque check inspections at intervals not to exceed 5,000 hours TIS since last inspection.

Since issuance of the NPRM, the FAA has been advised by the manufacturer that the logistics (parts, special tools, personnel, shop capability, and aircraft availability), required for the installation of the SDQ for all operators can support installation by June 30, 1998. Based on this factor, the FAA has re-evaluated the installation of the SDQ as an optional requirement, and has changed the compliance section of the AD to provide a requirement that the SDQ must be installed by June 30, 1998. The FAA determined that publication of this compliance end-date in this rule, rather than in a separate rulemaking, will benefit those operators who may wish to install the SDQ at an earlier, more convenient maintenance opportunity than otherwise might have been the case without the notice of the compliance end-date. The FAA recognizes, however, that the compliance end-date is a new requirement, and, therefore, has provided for a comment period and a separate effective date for the compliance end-date provision of this AD. Installation of an SDQ will constitute terminating action for the initial and repetitive inspections required by paragraph (a) of this AD.

The FAA did receive comments on the NPRM and addressees those comments in this rule.

The actions would be required to be accomplished in accordance with the following Hamilton Standard Alert Service Bulletins (ASB's), all dated May 5, 1995: No. 14SF-61-A59, Revision 6; No. 14RF-9-61-A53, Revision 7; No. 14RF-19-61-A25, Revision 6; No. 14RF-21-61-A38, Revision 6; No. 247F-61-A3, Revision 5; and No. 6/5500/F-61-A11, Revision 6. These ASB's enable affected propellers with a ballscrew quill damper installed in production or in accordance with the following Hamilton Standard Service Bulletins (SB's), all dated September 27, 1994, to extend the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 hours TIS since last inspection: No. 14SF-61-67, Revision 2; No. 14RF-9-61-61, Revision 1; No. 14RF-19-61-29, Revision 2; No. 14RF-21-61-48, Revision 2; No. 247F-61-6, Revision 2; and No. 6/5500/F-61-19, Revision 2.

In addition, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 2, all dated June 22, 1995: No. 14SF-61-82; No. 14RF-9-61-76; No. 14RF-19-61-43; No. 14RF-21-61-62; No. 247F-61-13; and No. 6/5500/F-61-33. These SB's describe procedures for installing the SDQ.

Also, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 1, dated May 17, 1995; No. 14SF-61-81; No. 14RF-9-61-75; No. 14RF-19-61-41; No. 14RF-21-61-60; No. 247F-61-12; and No. 6/5500/F-61-32. These SB's describe procedures for initial and repetitive torque check inspections of the primary ballscrew quill if the SDQ is installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter (the manufacturer) states that due to an arithmetic error, the total cost impact of the current AD per year on US operators should be estimated to be $138,000, and therefore the approximate yearly savings to US operators would be $55,200 instead of $51,570, a 6.7% increase in savings. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states that the number of work hours required for installation of the SDQ should be three, as stated in the SB's. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states that the number of work hours required for accomplishment of the torque check should be 0.25, assuming the spinner and transfer tube are removed, as stated in the SB's. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states the approximate yearly inspection cost should be $6 per propeller per year. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states that the correct SB number referenced in the compliance section should be 6/5500/F-61-32. The FAA concurs and has revised this final rule accordingly.

One commenter presents comments similar to those previously submitted to the FAA concerning AD 92-22-12, which increased the BIS inspection interval from 500 to 1,500 hours TIS. The commenter states that the specific cause of wear has not been identified by the manufacturer and that the modifications proposed in the NPRM do not correct the inherent wear characteristics associated with BIS tooth wear. In addition, all causes for PCU wear should be positively identified

before the inspection interval is increased.

The FAA does not concur. The FAA has reviewed data from numerous tests and investigations and has determined the cause of extreme wear when it occurs on a very small number of splines in service. These tests and investigations have revealed that spline joint wear factors include:

Magnitude and direction of vibratory environment.

How well the spline joint is lubricated.

Motion of elements within the joint due to stack up of clearances.

Thickness of chrome plating on spline teeth.

The FAA has therefore determined that there is no single factor for wear of this complex joint. However, the major contributors to these wear factors are lack of lubrication and axial motion. Laboratory tests and controlled field service data have proven the damper reduces all of these wear factors by over 20 times the rate that was experienced before the damper installation.

The commenter also states that modifications to the PCU should be made so that wear-induced failure cannot cause catastrophic consequences. The FAA concurs and has determined that the addition of the primary quill damper reduces the probability of wear occurring. In addition, installation of the newly designed SDQ assembly hardware provides a redundant load path.

The commenter also states that the field data used to justify the increased inspection interval is being collected from only a small percentage of units in operation. The FAA does not concur. The field data includes a small controlled in-service usage program in addition to many thousands of reports submitted to the FAA for each BIS inspection, as required by AD 94–22–12.

This commenter also questions the criteria for determining the 2,500 hours TIS inspection interval for the BIS. In addition, the commenter finds the 5,000 hours TIS torque check interval to be arbitrary and unfounded, and believes that the torque check should be conducted during routine maintenance actions. The FAA does not concur. The FAA has phased in the inspection intervals for the BIS with the damper installed by intervals of 500, 1,500, and 2,500 hours TIS based on field service reports of a controlled population, continued fleet-wide reports of many thousands of inspections required by AD 94–22–12, and by certification test data that has revealed that installation of the ballscrew damper resulted in a spline life improvement factor of 20 times the original 500 hours TIS inspection interval, thereby justifying by test data at least a 10,000 hours TIS inspection interval for the BIS with the damper installed.

The FAA established torque check intervals for the SDQ based on test data on many test specimens for the equivalent of three times the proposed 5,000 hours TIS torque check interval. The interval of 5,000 hours TIS also coincides with a number of other propeller maintenance activities occurring at that time. The FAA is not mandating the SDQ interval at earlier, opportune times coinciding with routine maintenance, but believes that operators may be able to take advantage of propeller disassembly and conduct the SDQ inspection at that time.

The commenter also states that if the positive torque transmitting capability of the BIS fails and the SDQ becomes operational, the PCU has reverted to a single load path and the redundant feature is no longer available. The FAA concurs that reversion to a single load path would make use of the stated redundancy only after the primary path had failed. However, the torque check is designed to detect failure of the primary path and therefore provides a positive indication that the PCU is utilizing the secondary path and that replacement of the PCU is necessary.

Several commenters state that the AD's required torque checks of the primary ballscrew after an SDQ is installed, in paragraph (d) of the AD, are repetitious of the same torque check requirements found in the Airworthiness Limitations Section of the Manufacturer's Maintenance Manual (MMM). The commenters suggest that the FAA should, therefore, delete paragraph (d) from the AD because it represents a check redundant to one already required. The FAA does not agree. While the FAA views as mandatory the inspections contained in the Airworthiness Section of the MMM, these particular inspections were not part of the MMM at the time of type certification. In order to insure that all operators have constructive notice of the inspections contained in paragraph (d) of the AD, the FAA has determined that it is necessary to publish those requirements in this AD. While changes to the Airworthiness Limitations Section of an MMM normally follow an AD making those changes, the fact that the MMM already contains the inspections of paragraph (d) does not obviate the need to include those requirements in an AD. The MMM, then, merely reflects the inspections not present at the time of type certification and later made mandatory by this AD. Operators do not, of course, have to perform two inspections; one inspection would satisfy both requirements. Therefore, the presence of the same inspection in an AD and in the MMM does not increase the maintenance burden on any operator.

There are approximately 2,506 propellers of the affected design in the worldwide fleet. The FAA estimates that 1,150 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per propeller to accomplish the PCU servo BIS teeth inspections, and that the average labor rate is $60 per work hour. Based on these figures, and on the average utilization rate of 2,000 hours TIS per year equating to 1.33 inspections per year, the total cost impact of the current AD per year on U.S. operators is estimated to be $138,000. However, this superseding AD would require only 0.8 inspections per year, resulting in an approximate yearly inspection cost of $82,800, which would provide an approximate yearly savings to U.S. operators of $55,200.

The terminating action will require 3 work hours to install the SDQ, and required parts will cost approximately $5,500 per propeller. With the SDQ installed, the AD will require initial and repetitive torque check inspections of the primary ballscrew quill. The torque check inspection will take 0.25 work hours to perform the required actions, and with an average utilization rate of 2,000 hours TIS per year equating to 0.4 inspections per year, resulting in an approximate yearly inspection cost of $6 per propeller.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, the requirement to install a Secondary Drive Quill (SDQ) was not preceded by notice and an opportunity for public comment, therefore, comments are specifically invited on the installation requirement described in compliance paragraph (b) of this AD. Interested persons are invited to comment on this requirement of this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSEES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–ANE–34." The postcard will be date stamped and returned to the commenter.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9062 (59 FR 55199, November 4, 1994, and by adding a new airworthiness directive, Amendment 39–9420, to read as follows:

95–22–12 Hamilton Standard: Amendment 39–9420. Docket 95–ANE–32. Supersedes AD 94–22–12, Amendment 39–9062.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14RF–23; 247F–1; 14SF–5, 14SF–7, 14SF–11, 14SFL11, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120RT; SAAB–SCANIA SF340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72, ATR72–210; DeHavilland DHC–8–100 series, DHC–8–300; Construcciones Aeronauticas SA (CASA) CN–235 and CN–235–100; Canadair CL215T and CL415; and British Aerospace ATP airplanes.

Note: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to control the propeller blade angle due to tooth wear in the propeller control unit (PCU) servo ballscrew internal spline (BIS) assembly, accomplish the following:

(a) Inspect the PCU servo BIS assembly for tooth wear in accordance with the Accomplishment Instructions of the following Hamilton Standard Alert Service Bulletins (ASB), all dated May 5, 1995, as applicable: No. 14RF–9–61–A53, Revision 7; No. 14RF–19–61–A25, Revision 6; No. 14RF–21–61–A38, Revision 6; No. 247F–61–A3, Revision 5; No. 14SF–61–A59, Revision 6; and No. 6/5500/F–61–A11, Revision 6; as follows:

(1) For a PCU with unknown time in service (TIS), and unknown TIS since the last inspection, on the effective date of this AD, and that does not have a ballscrew quill damper installed, inspect within 200 hours TIS after the effective date of this AD.

(2) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and either has not been inspected, or has been inspected more than 500 hours prior to the effective date of this AD, in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD; and that does not have a ballscrew quill damper installed; inspect within 200 hours TIS after the effective date of this AD.

(3) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and that has been inspected within the previous 500 hours TIS in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, and that does not have a ballscrew quill damper installed, inspect within 500 hours TIS since the last inspection in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD.

(4) For a PCU with less than 1,800 hours TIS on the effective date of this AD, and that does not have a ballscrew quill damper installed, inspect prior to accumulating 1,800 hours TIS, or within 300 hours TIS after the effective date of this AD, whichever occurs later.

(5) For a PCU that has a ballscrew quill damper installed in production or in accordance with the following applicable Hamilton Standard Service Bulletins (SB), all dated September 27, 1994, or previous revisions: No. 14SF–61–67, Revision 2; No. 14RF–9–61–61, Revision 1; No. 14RF–19–61–29, Revision 2; No. 14RF–21–61–48, Revision 2; No. 247F–61–6, Revision 2; and No. 6/5500/F–61–19, Revision 2; inspect within 2,500 hours TIS since installation of the ballscrew quill damper.

(6) Thereafter, inspect at intervals described as follows:

(i) For propellers that have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, or previous revisions, inspect at intervals not to exceed 2,500 hours TIS since the last inspection required by this AD.

(ii) For propellers that do not have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, inspect at intervals not to exceed 500 hours TIS since the last inspection required by this AD.

(7) If PCU servo BIS teeth are worn beyond the limits specified in the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, prior to further flight, replace the PCU with a serviceable assembly in accordance with the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, and thereafter inspect in accordance with paragraphs (a)(5) and (a)(6) of this AD.

(b) Prior to June 30, 1998, install a Secondary Drive Quill (SDQ) in accordance with the Accomplishment Instructions of the following applicable Hamilton Standard SB's, all Revision 1, all dated May 17, 1995: No. 14SF–61–82; No. 14RF–9–61–76; No. 14RF–19–61–43; No. 14RF–21–61–62; No. 247F–61–13; and No. 6/5500/F–61–33.

(c) Installation of an SDQ in accordance with applicable SB's listed in paragraph (b) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a) of this AD.

(d) With an SDQ installed, perform an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter at intervals not to exceed 5,000 hours TIS since

last inspection, and remove from service and replace with a serviceable part, if necessary, in accordance with the following applicable Hamilton Standard SB's, all Revision 2, dated June 22, 1995: No. 14SF–61–81; No. 14RF–9–61–75; No. 14RF–19–61–41; No. 14RF–21–61–60; No. 247F–61–12; and No. 6/5500/F–61–32.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following Hamilton Standard service documents:

Document No.	Pages	Revision	Date
ASB No. 14SF–61–A59	1	6	May 5, 1995.
	2	5	December 30, 1994.
	3–6	6	May 5, 1995.
	7	3	March 1, 1994.
	8	2	July 28, 1993.
	9–10	4	April 7, 1994.
	11–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
ASB No. 14RF–9–61–A53	1–6	7	May 5, 1995.
	7	6	December 30, 1994.
	8	3	July 28, 1993.
	9–10	6	December 30, 1994.
	11–12	4	March 1, 1994.
	13	5	April 7, 1994.
	14–20	4	March 1, 1994.
	21	5	April 7, 1994.
Total pages: 21			
ASB No. 14RF–19–61–A25	1–6	6	May 5, 1995.
	7	5	December 30, 1994.
	8	2	July 28, 1993.
	9	4	April 7, 1994.
	10	3	March 1, 1994.
	11	4	April 7, 1994.
	12–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
ASB No. 14RF–21–61–A38	1	6	May 5, 1995.
	2	5	December 30, 1994.
	3–6	6	May 5, 1995.
	7	5	December 30, 1994.
	8	2	July 28, 1993.
	9–10	4	April 7, 1994.
	11–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
ASB No. 247F–61–A3	1	5	May 5, 1995.
	2	4	December 30, 1994.
	3–6	5	May 5, 1995.
	7	4	March 1, 1994.
	8	1	July 28, 1993.
	9–10	3	April 7, 1994.
	11–19	2	March 1, 1994.
	20	3	April 7, 1994.
Total pages: 20			
ASB No. 6/5500/F–61–A11	1	6	May 5, 1995.
	2	5	December 30, 1994.
	3–6	6	May 5, 1995.
	7	5	December 30, 1994.
	8	3	March 1, 1994.
	9	5	December 30, 1994.
	10–11	4	April 7, 1994.
	12	2	July 28, 1993.
	13	3	March 1, 1994.
	14	2	July 28, 1993.
	15–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
SB No. 14SF–61–67	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–9	Original	December 9, 1993.
	10	1	May 6, 1994.

Document No.	Pages	Revision	Date
	11	Original	December 9, 1993.
	12	2	September 27, 1994.
	13–15	Original	December 9, 1993.
	16	1	May 6, 1994.
Total pages: 16			
SB No. 14RF–9–61–61	1–2	1	September 27, 1994.
	3–10	Original	December 9, 1993.
	11	1	September 27, 1994.
	12–14	Original	December 9, 1993.
Total pages: 14			
SB No. 14RF–19–61–29	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
	14	1	May 6, 1994.
Total pages: 14			
SB No. 14RF–21–61–48	1–4	2	September 27, 1994.
	5–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
	14	1	May 6, 1994.
Total pages: 14			
SB No. 247F–61–6	1–4	2	September 27, 1994.
	5–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
	14	1	May 6, 1994.
Total pages: 14			
SB No. 6/5500/F–61–19	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–10	Original	December 6, 1993.
	11	2	September 27, 1994.
	12	Original	December 6, 1993.
	13–14	1	May 6, 1994.
Total pages: 14			
SB No. 14SF–61–82	1–36	1	May 17, 1995.
Total pages: 36			
SB No. 14RF–9–61–76	1–33	1	May 17, 1995.
Total pages: 33.			
SB No. 14RF–19–61–43	1–34	1	May 17, 1995.
Total pages: 34			
SB No. 14RF–21–61–62	1–33	1	May 17, 1995.
Total pages: 33			
SB No. 247F–61–13	1–34	1	May 17, 1995.
Total pages: 34			
SB No. 6/5500/F–61–33	1–33	1	May 17, 1995.
Total pages: 33			
SB No. 14SF–61–81	1–12	2	June 22, 1995.
Total pages: 12			
SB No. 14RF–9–61–75	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 14RF–19–61–41	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 14RF–21–61–60	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 247F–61–12	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 6/5500/F–61–32	1–11	2	June 22, 1995.
Total pages: 11			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 24, 1995 as to all compliance paragraphs except paragraph (b) of this AD.

(i) This amendment becomes effective on May 6, 1996 as to compliance paragraph (b) of this AD.

Issued in Burlington, Massachusetts, on October 30, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–27641 Filed 11–6–95; 10:42 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 259

Guide Concerning Fuel Economy Advertising of New Automobiles

AGENCY: Federal Trade Commission.

ACTION: Final Amendment of the Guide.

SUMMARY: The Federal Trade Commission (FTC) is amending the "Guide Concerning Fuel Economy Advertising for New Automobiles" to conform to the Environmental Protection Agency's (EPA) rule regarding fuel economy labeling of new automobiles. In particular, the amendments are intended to conform the Guide to those portions of EPA's rule that now require disclosure of certain fuel economy information, including adjusted city and adjusted highway miles-per-gallon (mpg) numbers, rather than the one "estimated mpg" number previously required.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Brinley H. Williams, Attorney, or Gerald C. Zeman, Attorney, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520–A, Cleveland, Ohio 44114. Telephone (216) 522–4210.

SUPPLEMENTARY INFORMATION:

I. Background

The FTC's "Guide Concerning Fuel Economy Advertising for New Automobiles" was first promulgated in 1975.[1] The Guide was issued in response to a dramatic increase in advertising fuel economy claims based on a proliferation of different test procedures. The record of that proceeding showed both the importance of fuel economy to consumers in their automobile purchasing decisions and the need for meaningful fuel economy information based on a standard testing procedure. The original Guide adopted in 1975 by the Commission stated that fuel economy representations in advertising should be accompanied by disclosure of estimated city and highway mpg figures based on EPA test procedures.

In 1978 the FTC Guide was amended to make advertising disclosures consistent with changed EPA requirements for fuel economy labels on new automobiles.[2] At that time, the EPA mandated disclosure of a single number, designated "estimated mpg," and the FTC Guide was amended to require that fuel economy advertising representations be accompanied by disclosure of this figure.

Subsequently, in 1984, the EPA again amended its rule to require that adjusted city and highway mpg estimates, as well as certain other fuel economy information, appear on labels for new automobiles. By Federal Register notice of March 21, 1985 (50 FR 11378) (comment period reopened November 7, 1985, 50 FR 46300), the FTC proposed amendments to conform its Guide to the revised EPA rule. In publishing its request for comments, the Commission stated that because the revised EPA rule was already in effect, automobile manufacturers and dealers could make fuel economy claims consistent with the proposal pending final amendment of the Guide. Thus, the proposal has been in effect informally since its date of original publication. The Commission now takes the final step of formally adopting the changes to its advertising Guide.

II. Public Comments

In the preamble to the 1985 **Federal Register** notice, the FTC discussed the history of the Guide and the changes in the EPA fuel economy labeling rule which led to the proposed changes in the advertising Guide. The preamble also described the changes to the Guide that the FTC proposed to make based on the changes to the EPA rule and the FTC's own experience with the advertising Guide. Additionally, in the preamble, the FTC requested comments regarding the cost of providing the information, the effect the Guide has on fuel economy advertising, and the utility of the information to consumers.

Comments were received from: the American Automobile Association; CBS, Inc.; the Center for Auto Safety; Dancer Fitzgerald Sample; the Department of Energy; the Environmental Protection Agency; General Motors Corporation; the Leo Burnett Advertising Agency; the National Association of Broadcasters; and the National Automobiles Dealers Association. Three comments were also received from individuals: Arthur and Louise Britton; Ralph Williams; and Walt and Cathy Zimmerman.

A. General Comments

Some comments received from the automobile industry, the broadcasting industry, and one advertising agency either opposed retention of fuel economy disclosure requirements, or proposed that the disclosure requirements be limited to specific circumstances, such as advertisements making quantitative or comparative fuel economy claims. The comments opposing retention contended that the requirements are burdensome, costly, and do not provide useful information to consumers. On the other hand, comments from individuals, public interest groups, the Department of Energy, EPA, and another advertising agency generally favored retention of the disclosure requirements. These comments contended that disclosure of the EPA mpg figures provides consumers with useful comparative fuel economy information, while adding little to advertising costs. One comment contended that elimination of these requirements would precipitate a variety of confusing fuel economy claims.

The FTC continues to believe that disclosure of EPA mpg numbers provides to consumers useful and understandable comparative fuel economy information. (See 40 FR 42003, September 10, 1975.) While there is undoubtedly a cost to providing this information, the FTC believes that the cost is relatively small[3] and is more than offset by the value of the information, which enables consumers to judge the relative fuel economy of comparative automobile models. Moreover, the 1985 proposed amendments to the Guide substantially shortened the disclosures that must accompany advertised EPA estimates, thereby reducing costs. Furthermore, as discussed below, the FTC is allowing certain fuel economy advertisements to disclose only one EPA estimate—either the highway estimate or the city estimate—without simultaneous disclosure of the other number. Thus, advertisers now have both a shorter disclosure requirement and more flexibility when advertising fuel economy of new automobiles than was the case under the previously existing Guide.

B. EPA Estimates

Some commenters contended that both the city and highway estimates should be disclosed in all fuel economy advertisements in order to maintain consistency with the EPA labeling rule. Other comments suggested that disclosure of the EPA estimate should be required only when explicit mileage claims are made.

The FTC has determined to adhere to the 1985 proposal, requiring disclosure of the EPA number corresponding to the claim that is made. For example, if only a highway mileage claim is made in the ad, then only the EPA highway estimate must be disclosed. If a general (i.e., nonspecific) mileage claim is made, only the city estimate must be disclosed. However, if the advertising claim addresses both city and highway driving, then both figures must be disclosed.

The FTC is adopting these disclosure requirements because the current EPA city and highway numbers more accurately predict actual in-use mileage. As a result, the FTC believes that disclosure of the city estimate may not be necessary in advertisements directed *only* to highway driving. Of course, advertisers are always free to disclose both city and highway numbers in their advertising.

Based on the reliability of the EPA city and highway numbers, the FTC's 1985 proposal did not include the lengthy disclosure, required under the previous Guide, warning that the consumer's actual mileage probably will be less and will depend upon factors such as weather conditions and driving speed.

The FTC, however, continues to believe that it is important that the EPA estimate accompany implicit as well as explicit mileage claims. *Any* mileage claim inherently involves a comparison to other vehicles. The EPA estimates provide consumers with a meaningful method of comparing competing claims.

The 1985 proposal, which has been in effect informally during the intervening years, is now time-tested. It appears that the proposal has worked well, and the Commission has not seen evidence of deceptive or misleading claims because of the changed disclosures. Therefore, formal adoption of the proposed Guide is warranted.

C. Non-EPA Test Results

The greatest number of comments addressed use of non-EPA test results. The comments ranged from advocating a prohibition on the use of such test results to espousing elimination of all disclosure of EPA estimates in ads using non-EPA results. Some comments also objected to the specific proposal that would allow the EPA estimates to be disclosed in "equal prominence" to the non-EPA results, in the audio portion of broadcast ads, instead of requiring "greater prominence" than the non-EPA results.

The FTC believes that if a non-EPA test is advertised, the appropriate EPA estimate should be disclosed with greater prominence, except in audio portions of advertisements. In the prior version of the Guide, the requirement had been that the EPA estimate had to be given before and after the non-EPA estimate in audio broadcast ads. As a result, advertisers had less flexibility in developing broadcast ads than they did print ads. Unlike a printed disclosure, which may not be seen among other textual material unless it is more prominently displayed, however, an audio disclosure of the EPA estimate will be as likely to be heard as the non-EPA estimate. Accordingly, the FTC believes that adopting an "equal prominence" provision for audio portions of advertisements will reasonably ensure that the EPA estimates are conveyed to the listener without unduly burdening the advertiser.

List of Subjects in 16 CFR Part 259

Advertising, Fuel economy, Trade practices.

For the reasons set forth in the preamble, 16 CFR Part 259 is amended to read as follows:

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.

259.1 Definitions.
259.2 Advertising disclosures.

Authority: 15 U.S.C. 41–58.

§ 259.1 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *New automobile.* Any passenger automobile or light truck for which a fuel economy label is required under the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) or rules promulgated thereunder, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term "dealer" shall mean any person, resident or located in the United States or any territory thereof, engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term "ultimate purchaser" means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *Estimated city mpg.* The gasoline consumption or mileage of new automobiles as determined in accordance with the city test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(c) *Estimated highway mpg.* The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(d) *Vehicle configuration.* The unique combination of automobile features, as defined in 40 CFR 600.002–85(24).

(e) *Estimated in-use fuel economy range.* The estimated range of city and highway fuel economy of the particular new automobile on which the label is affixed, as determined in accordance with procedures employed by the U.S. Environmental Protection Agency as described in 40 CFR 600.311 (for the appropriate model year), and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported or accepted by the U.S. Environment Protection Agency.

(f) *Range of estimated fuel economy values for the class of new automobiles.* The estimated city and highway fuel economy values of the class of automobile (*e.g.*, compact) as determined by the U.S. Environmental Protection Agency pursuant to 40 CFR 600.315 (for the appropriate model year) and expressed in miles-per-gallon, to the nearest whole mile-per-gallon.

§ 259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile [1] unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) If the advertisement makes:

(i) Both a city and a highway fuel economy representation, both the

[1] 40 FR 42003 (September 10, 1975).

[2] 43 FR 55757 (November 29, 1978).

[3] General Motors was the only commenting party to submit specific cost data. Its figures were disputed by the Center for Auto Safety. Dancer Fitzgerald Sample, an advertising agency, stated that it believed the cost of providing EPA estimates in fuel economy advertising to be minimal.

[1] The Commission will regard as an express or implied fuel economy representation one which a reasonable consumer, upon considering the representation in the context of the entire advertisement, would understand as referring to the fuel economy performance of the vehicle or vehicles advertised.

"estimated city mpg" and the "estimated highway mpg" of such new automobile,[2] must be disclosed;

(ii) A representation regarding only city or only highway fuel economy, only the corresponding EPA estimate must be disclosed;[3]

(iii) A general fuel economy claim without reference to either city or highway, or if the representation refers to any combined fuel economy number, the "estimated city mpg" must be disclosed;[4] and

(2) That the U.S. Environmental Protection Agency is the source of the "estimated city mpg" and "estimated highway mpg" and that the numbers are estimates.[5]

(b) If an advertisement for a new automobile cites:

(1) The "estimated in-use fuel economy range," the advertisement must state with equal prominence both the upper and lower number of the range, an explanation of the meaning of the numbers (*i.e.*, city mpg range or highway mpg range or both), and that the U.S. Environmental Protection Agency is the source of the figures.

(2) The "range of estimated fuel economy values for the class of new automobiles" as a basis for comparing the fuel economy of two or more automobiles, such comparison must be made to the same type of range (*i.e.*, city or highway).[6]

(c) Fuel economy estimates derived from a non-EPA test may be disclosed provided that:

(1) The advertisement also discloses the "estimated city mpg" and/or the "estimated highway mpg," as required by § 259.2(a), and the disclosure required by § 259.2(a), and gives the "estimated city mpg" and/or the "estimated highway mpg" figure(s) substantially more prominence than any other estimate;[7] provided, however, for radio and television advertisements in which any other estimate is used only in the audio, equal prominence must be given the "estimated city mpg" and/or the "estimated highway mpg" figure(s);[8]

(2) The source of the non-EPA test is clearly and conspicuously identified;

(3) The driving conditions and variables simulated by the test which differ from those used to measure the "estimated city mpg" and/or the "estimated highway mpg," and which result in a change in fuel economy, are clearly and conspicuously disclosed.[9] Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, and temperature; and

(4) The advertisement clearly and conspicuously discloses any distinctions in "vehicle configuration" and other equipment affecting mileage performance (*e.g.*, design or equipment differences which distinguish subconfigurations as defined by EPA) between the automobiles tested in the non-EPA test and the EPA tests.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga, New Automobile Mileage Guide, Matter No. P844508

Today, the Commission issues amendments to the Fuel Economy Advertising Guide. I join the Commission in issuing the amended Guide because the amendments are needed to conform the Guide to the Environmental Protection Agency's rules concerning fuel economy and because the amendments otherwise appear to be improvements. The Commission proposed these amendments to the Guide and received comments on them in 1985. Given that the record on which the amendments are based closed a decade ago, I would have preferred, before finalizing the amendments, to reopen the comment period for thirty days to ascertain whether the amendments should be issued as is or should be revised to reflect any new information.[1]

When the proposed amendments were published for comment, the Commission stated that it would not consider advertising that complied with the amendments to violate Section 5 of the FTC Act. It is my understanding that most fuel economy advertising since 1985 has been consistent with the proposed amendments to the Guide. It is also my understanding that fuel economy advertising has become less prevalent since 1985. The decrease in fuel economy advertising may be due to changes in the relative importance that consumers attach to fuel economy information when making a new automobile purchase. In the alternative, fuel economy advertising may have become less prevalent because the standards contained in the amended Guide are overly regulatory and have deterred truthful as well as deceptive advertising. The record supporting the amendments, having closed a decade ago, sheds no light on why fuel economy advertising has decreased during the ensuing years. Given the potential value of truthful fuel economy advertising, it would have been worthwhile to seek public comment again before issuing the amended Guide to ensure that it not only helps to prevent deception but also does not deter truthful advertising.

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[2] For purposes of § 259.2(a), the "estimated city mpg" and the "estimated highway mpg" must be those applicable to the specific nameplate being advertised. Fuel economy estimates assigned to "unique nameplates" (see 40 CFR 600.207–86(a)(2)) apply only to such unique car lines. For example, if a manufacturer has a model named the "XZA" that has fuel economy estimates assigned to it and a derivative model named the "Econo-XZA" that has separate, higher fuel economy estimates assigned to it, these higher numbers assigned to the "Econo-XZA" cannot be used in advertisements for the "XZA."

[3] For example, if the representation clearly refers only to highway fuel economy, only the "estimated highway mpg" need be disclosed.

[4] Nothing in this section should be construed as prohibiting disclosure of both the city and highway estimates.

[5] The Commission will regard the following as the minimum disclosure necessary to comply with § 259.2(a)(2), regardless of the media in which the advertisement appears: "EPA estimate(s)."

For television, if the estimated mpg appears in the video, the disclosure must appear in the video; if the estimated mpg is audio, the disclosure must be audio.

[6] For example, an advertisement could not state that "according to EPA estimates new automobiles in this class get as little as X mpg (citing a figure from the city range) while EPA estimates that this automobile gets X + mpg (citing the EPA highway estimates or a number from the EPA estimated in-use fuel economy highway range for the automobile).

[7] The Commission will regard the following as constituting "substantially more prominence:"

For television only: If the estimated city and/or highway mpg and any other mileage estimate(s) appear only in the visual portion, the estimated city and/or highway mpg must appear in numbers twice as large as those used for any other estimate, and must remain on the screen at least as long as any other estimate. If the estimated city and highway mpg appear in the audio portion, visual broadcast of any other estimate must be accompanied by the simultaneous, at least equally prominent, visual broadcast of the estimated city and/or highway mpg. Each visual estimated city and highway mpg must be broadcast against a solid color background that contrasts easily with the color used for the numbers when viewed on both color and black and white television.

For print only: The estimated city and/or highway mpg must appear in clearly legible type at least twice as large as that used for any other estimate. Alternatively, if the estimated city and highway mpg appear in type of the same size as such other estimate, they must be clearly legible and conspicuously circled. The estimated city and highway mpg must appear against a solid color, contrasting background. They may not appear in a footnote unless all references to fuel economy appear in a footnote.

[8] The Commission will regard the following as constituting equal prominence. For radio and television when any other estimate is used in the audio: The estimated city and/or highway mpg must be stated, either before or after each disclosure of such other estimate at least as audibly as such other estimate.

[9] For dynamometer tests any difference between the EPA and non-EPA tests must be disclosed. For in-use tests, the Commission realizes that it is impossible to duplicate the EPA test conditions, and that in-use tests may be designed to simulate a particular driving situation. It must be clear from the context of the advertisement what driving situation is being simulated (e.g., cold weather driving, highway driving, heavy load conditions). Furthermore, any driving or vehicle condition must be disclosed if it is significantly different from that which an appreciable number of consumers (whose driving condition is being simulated) would expect to encounter.

[1] Reopening the comment period would have been consistent with the Commission's ongoing regulatory review program under which its rules and guides are reviewed at least once every ten years.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

AGENCY: National Labor Relations Board.

ACTION: Final rules.

SUMMARY: The National Labor Relations Board is revising in several respects its rules that govern filing and service of papers. The principal revisions include permitting parties to file unfair labor practice charges, petitions in representation proceedings, and objections to elections by facsimile transmission, to permit the Board to serve certain documents by regular mail, rather than by other more expensive means, and generally to reorganize and modify certain portions of the rules pertaining to filing and service. The revisions are being adopted in order to expand the use of facsimile technology to the service of charges, representation petitions, and election objections, to reduce the cost to the agency of the prior requirements that certain documents be served by certified or registered mail, and to update certain other procedural aspects of the filing and service requirements. The intended effect of the revisions is to permit parties and the Board to take greater advantage of facsimile technology, to reduce the cost of serving certain documents, and to update the rules in other respects.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, 1099 14th Street, N.W., Room 11602, Washington, D.C. 20570–0001; Telephone: (202) 273–1934.

SUPPLEMENTARY INFORMATION: In 1990, the National Labor Relations Board recognized that the use of facsimile systems was becoming more prevalent in both the private and public sectors by modifying § 102.114 of its rules to permit certain documents to be served by facsimile transmission. The Board's approach at that time was to move cautiously into this new technological arena, taking into account the limited number of facsimile machines then available throughout the Agency. Thus, the rule permitted facsimile transmissions of requests for extensions of time, prohibited facsimile transmissions of most other formal documents, and permitted facsimile transmissions of all other documents subject to advance approval, in each instance, by the receiving office. At that time, the Board contemplated that the subject of facsimile transmissions would be revisited periodically and reevaluated based on experience, technological improvements, and current costs.

Having had several years of experience under this rule, the Board now has determined that it would be appropriate to permit unfair labor practice charges, petitions in representation proceedings, and objections to elections to be filed by facsimile transmission. These documents tend to be short, usually only one or a few pages in length, so their permitted transmission would not interfere with the Agency's use of its machines for its own purposes. Moreover, filing of unfair labor practice charges sometimes is time-sensitive, particularly in statutory priority cases since a Region needs to have a charge before it can begin its investigation. Modifying the rules to permit these three types of documents to be filed by facsimile transmission will have the salutary effect of according parties faster means of access to the Board's processes.

Additionally, the Board recently has been studying means by which it can reduce the cost of the services it renders without reducing the quality of those services. One means of accomplishing this objective is to utilize regular mail, rather than certified or registered mail, in appropriate circumstances. Sending a piece of correspondence by certified mail costs $1.00 in addition to the regular first class postage. The U.S. Postal Service charges $1.10 for a return receipt in addition to the certified and first class postage costs. In Fiscal Year 1992 the Agency spent approximately $321,304 for the use of certified mail, of which approximately $145,546 was attributable to return receipt expenses. In an era of diminishing resources, a reduction in these costs was quickly identified as a goal to be pursued.

The National Labor Relations Act, 29 U.S.C. 161(4), provides that:

> Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.

This section of the Act never has been understood to require that every piece of paper that the Board issues be served by one of these methods. Nevertheless, under the Board's present rules certain documents, such as unfair labor practice charges, traditionally have been served by certified mail even though the statute does not require it. The new rules change this by more clearly delineating the circumstances under which various formal or informal methods of service are to be utilized.

In drawing distinctions between the types of documents required to be served by the formal methods required by the statute and documents that may be served by less formal methods, the Board has been guided by the dictates of due process. Accordingly, the rules will continue to require use of the statutorily prescribed methods to serve: complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, upon all parties (§ 102.113(a)); final orders of the Board in unfair labor practice cases, and administrative law judges' decisions, upon all parties (§ 102.113(b)); and subpoenas upon the recipient (§ 102.113(c)). All other documents, including unfair labor practice charges (see § 102.14), may be served by other methods, including regular mail (§ 102.113(d)).

Finally, during the course of preparing the foregoing revisions, the Board identified several other areas in which the filing and service requirements should be updated. These are discussed under the specific sections in which the changes are included.

Section 102.14, dealing with service of unfair labor practice charges, is being divided into three subsections. New § 102.14(a) continues, without change, the requirement that it is the responsibility of the charging party to timely serve a copy of the charge upon the person against whom the charge is made. To this provision is added a sentence detailing the means by which a charge can be served. This provision, formerly contained in § 102.114(a), is moved here in an effort to keep provisions relating to the service of charges in a single section. At the same time, the means by which a charge may be served are expanded to include regular mail and, with the permission of the charged party, facsimile transmission or any other means.

New § 102.14(b) is taken from the second sentence in former § 102.14. That provision is modified to make perfectly clear that service of a copy of the unfair labor practice charge by the Regional Director is a matter of courtesy, rather than of right, and to add a provision allowing the Regional Director to serve this copy of the charge by facsimile transmission.

New § 102.14(c) incorporates provisions from § 102.112 with respect to the date of service of a document. Like the new § 102.112, this provision addresses the use of private delivery

services or facsimile transmission, as well as personal service or service by mail.

Section 102.112, dealing with dates of service and dates of filing, is modified to include references to service by private delivery service or facsimile transmission. When documents are served by private delivery service the date of service is, like with the use of United States mail, the date of deposit with the delivery service. When service is by facsimile transmission, the date of service is the date on which the transmission is received.

Section 102.113 is modified in several respects. Former § 102.113(a) is divided into five parts, renumbered as §§ 102.113(a) through 102.113(e). The new §§ 102.113(a) through 102.113(d) demarcate the situations in which service is or is not required to be made by registered or certified mail, telegraph, or personal service. While the former § 102.113(a) set forth the means by which the Agency would serve unfair labor practice charges, that provision now has been moved to § 102.14, where other provisions relating to service of unfair labor practice charges were and still are contained. Further, as noted above, that provision is modified so that unfair labor practice charges may be served by various means, including regular mail.

The new § 102.113(e) carries forward provisions formerly contained in § 102.113(a) relating to methods for proving service. In addition, this new subsection now makes clear that these methods are not exclusive, and that "any sufficient proof may be relied upon to establish service."

The new § 102.113(f) carries forward the provisions of former § 102.113(b) regarding service by the Agency upon the attorneys or other representatives of a party. The language is revised to make clear that service by the Board on such attorneys or other representatives "may be accomplished by any means of service permitted by these rules, including regular mail."

Section 102.114 is modified in several respects. Subsection 102.114(a) is modified to delete the provision for other means of service provided for "in a civil action by the law of the State . . ." In its place, the new rule provides for service by regular mail or private delivery service and, with the permission of the person receiving the service, any other means including facsimile transmission. With regard to the methods of service when filing is done by hand, the new rule omits the provision that service be by mail or telegraph and substitutes a requirement that service be by a means that would ensure receipt by the next business day. Finally, the new rule makes clear that once a complaint issues the General Counsel, as a party to the proceeding, is subject to the same service requirements as any other party, except to the extent that §§ 102.113(a) and 102.113(c) provide otherwise. As noted under the discussion of § 102.113, above, the Agency is required, in certain circumstances, to utilize more formal means of service than is permitted for other parties.

The new § 102.114(b) carries forward provisions from the former § 102.114(a) with respect to means for proving service, modified in light of changes in the methods of service that are permitted under the new rules. In addition, this new subsection now makes clear that these methods are not exclusive, and that "any sufficient proof may be relied upon to establish service."

The new § 102.114(c) was formerly part of § 102.114(a). It is now moved to its own subsection, but without any substantive changes.

Former §§ 102.114(b) and 102.114(c) are renumbered to become new §§ 102.114(d) and 102.114(e), respectively. They are not changed in any other respect.

Former § 102.114(d) is renumbered to become new § 102.114(f). This subsection is amended to provide that unfair labor practice charges, petitions in representation cases, and objections to elections may be filed by facsimile transmission as a matter of right. Formerly, facsimile filings of these documents were prohibited. The section further provides that filing of these documents by facsimile is effective on the date of receipt by the agency. Finally, a provision is added admonishing persons attempting to file by facsimile transmission that a "failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason."

Former § 102.114(e) is renumbered to become new § 102.114(g). This subsection is amended to delete the current prohibition on filing unfair labor practice charges, representation petitions, or objections to elections by facsimile transmission.

Former § 102.114(f) is renumbered to become new § 102.114(h). This subsection is amended to conform to the new provisions in § 102.114(a) under which parties may, under certain circumstances, refuse to accept facsimile transmissions.

Further changes related to the filing by facsimile of charges, representation petitions, and election objections are being made to §§ 102.11, 102.60, and 102.69. These sections currently require that unfair labor practice charges, representation petitions, and election objections, respectively, must be in writing and signed, and that an original and four copies be filed (five copies in the case of election objections under § 102.69). These sections are being modified so that when someone files an unfair labor practice charge, a representation petition, or election objections by facsimile transmission, they "shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper." The extra copies, still required when filing is accomplished by other means, need not be filed when filing is by facsimile transmission. Sections 102.11 and 102.60 also are being amended to delete the general reference to declarations made "under the penalties of the Criminal Code," and to substitute therefor a specific reference to declarations pursuant to 28 U.S.C. 1746.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that this rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

Accordingly, 29 CFR Part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.11 is revised to read as follows:

§ 102.11 Forms; jurat; or declaration.

Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28 U.S.C. 1746). An original and four copies of such charge shall be filed together with one copy for each additional charged party named. A party filing a charge by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f).

3. Section 102.14 is revised to read as follows:

§ 102.14 Service of charge.

(a) *Charging party's obligation to serve; methods of service.* Upon the filing of a charge, the charging party shall be responsible for the timely and proper service of a copy thereof upon the person against whom such charge is made. Service may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the charge, service may be made by facsimile transmission or by any other agreed-upon method.

(b) *Service as courtesy by Regional Director.* The Regional Director will, as a matter of courtesy, cause a copy of such charge to be served by regular mail on the person against whom the charge is made. Such charges may, with the permission of the person receiving the charge, be served by the Regional Director by facsimile transmission. In this event the receipt printed upon the Agency's copy by the Agency's own facsimile machine, showing the phone number to which the charge was transmitted and the date and time of receipt shall be proof of service of the same. However, whether serving by facsimile, by regular mail, or otherwise, the Regional Director shall not be deemed to assume responsibility for such service.

(c) *Date of service of charge.* In the case of service of a charge by mail or private delivery service, the date of service is the date of deposit with the post office or other carrier. In the case of service by other methods, including hand delivery or facsimile transmission, the date of service is the date of receipt.

4. In § 102.60, paragraph (a) is revised to read as follows:

§ 102.60 Petitions.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal.* A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. 1746). An original and four copies of the petition shall be filed. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f). Except as provided in § 102.72, such petitions shall be filed with the Regional Director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Regional Director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

* * * * *

5. In § 102.69, paragraph (a) is revised to read as follows:

§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the Regional Director in whose Region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the Regional Director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the Regional Director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of its own selection, subject to such limitations as the Regional Director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the tally of ballots has been prepared, any party may file with the Regional Director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A person filing objections by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f). The Regional Director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

* * * * *

6. Section 102.112 is revised to read as follows:

§ 102.112 Date of service; date of filing.

The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person, as the case may be. Where service is made by facsimile transmission, the date of service shall be the date on which

transmission is received. The date of filing shall be the day when the matter is required to be received by the Board as provided by § 102.111.

7. Section 102.113 is revised to read as follows:

§ 102.113 Methods of service of process and papers by the Agency; proof of service.

(a) *Service of complaints and compliance specifications.* Complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(b) *Service of final orders and decisions.* Final orders of the Board in unfair labor practice cases and administrative law judges' decisions shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(c) *Service of subpoenas.* Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(d) *Service of other documents.* Other documents may be served by the Agency by any of the foregoing methods as well as regular mail or private delivery service. Such other documents may be served by facsimile transmission with the permission of the person receiving the document.

(e) *Proof of service.* In the case of personal service, or delivery to a principal office or place of business, the verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same. In the case of service by mail or telegraph, the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed shall be proof of service of the same. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(f) *Service upon representatives of parties.* Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement. Service by the Board or its agents of any documents upon any such attorney or other representative may be accomplished by any means of service permitted by these rules, including regular mail.

8. Section 102.114 is revised to read as follows:

§ 102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service.

(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. Service of papers by a party on other parties by any other means, including facsimile transmission, is permitted only with the consent of the party being served. Unless otherwise specified elsewhere in these rules, service on all parties shall be made in the same manner as that utilized in filing the paper with the Board, or in a more expeditious manner; however, when filing with the Board is done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day. The provisions of this section apply to the General Counsel after a complaint has issued, just as they do to any other party, except to the extent that the provisions of §§ 102.113(a) or 102.113(c) provide otherwise.

(b) When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made by a private delivery service, the receipt from that service showing delivery shall be proof of service. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(c) Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either:

(1) A rejection of the document; or

(2) Withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

(d) Papers filed with the Board, General Counsel, Regional Director, Administrative Law Judge, or Hearing Officer shall be typewritten or otherwise legibly duplicated on 8½ by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced). Carbon copies shall not be filed and will not be accepted. Nonconforming papers may, at the Agency's discretion, be rejected.

(e) The person or party serving the papers or process on other parties in conformance with § 102.113 and paragraph (a) of this section shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in paragraph (a) of this section shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

(f) Unfair labor practice charges, petitions in representation proceedings, objections to elections, and requests for extensions of time for filing documents will be accepted by the Agency if transmitted to the facsimile machine of the appropriate office. Other documents, except those specifically prohibited in paragraph (g) of this section, will be accepted by the Agency if transmitted to the facsimile machine of the office designated to receive them only with advance permission from the receiving office which may be obtained by telephone. Advance permission must be obtained for each such filing. At the discretion of the receiving office, the person submitting a document by facsimile may be required simultaneously to serve the original and any required copies on the office by overnight delivery service. When filing a charge, a petition in a representation proceeding, or election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.

(g) Facsimile transmissions of the following documents will not be accepted for filing: Showing of Interest in Support of Representation Petitions, including Decertification Petitions; Answers to Complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Settlements; EAJA Applications; Motions for Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

(h) Documents and other papers filed through facsimile transmission shall be served on all parties in the same way as used to serve the office where filed, or in a more expeditious manner, in conformance with paragraph (a) of this section. Thus, facsimile transmission shall be used for this purpose whenever possible. When a party cannot be served by this method, or chooses not to accept service by facsimile as provided for in paragraph (a) of this section, the party shall be notified personally or by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service or overnight delivery service.

Dated, Washington, DC, November 2, 1995.

By direction of the Board.

John J. Toner,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 95–27627 Filed 11–7–95; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 24 July 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the following entry as set forth below:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS JOHN S. McCAIN	DDG 56	X	X	X	19.6

Dated: July 24, 1995.

Approved:

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–27483 Filed 11–7–95; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL113–1–6760a; FRL–5324–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On May 5, 1995, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for lithographic printing operations as part of the State's 15 percent (%) Reasonable Further Progress (RFP) plan control measures for Volatile Organic Matter (VOM) emissions. VOM, as defined by the State of Illinois, is identical to "volatile organic compounds" (VOC), as defined by USEPA. VOC is one of the air pollutants which combine on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. RFP plans are intended to bring areas which have been exceeding the public health based Federal ozone air quality standard closer toward the goal of reaching and maintaining attainment with this standard. The control measures specified in this lithographic printing parts SIP revision are expected by Illinois to reduce VOC (VOM) emissions by 4.05 tons per day in the Chicago area. No reductions are expected in the Metro-East (East St. Louis) area because there are no sources large enough to satisfy the applicability criteria.

DATES: The "direct final" approval is effective on January 8, 1996, unless USEPA receives adverse or critical comments by December 8, 1995. If the effective date is delayed, EPA will publish timely notice in the **Federal Register.**

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone David Pohlman at (312) 886–3299 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman at (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15 percent reduction of 1990 emissions of volatile organic material by 1996. In Illinois, the Chicago area is classified as "Severe" nonattainment for ozone, while the Metro-East area is classified as "Moderate" nonattainment. As such, these areas are subject to the 15 percent Rate of Progress (RFP) requirement.

The Illinois Environmental Protection Agency (IEPA) held public hearings on the proposed Lithographic printing rules on December 15, 1994, and January 9, 1995, and on April 20, 1995, the Board adopted a Final Opinion and Order for the proposed amendments. The rules became effective on May 9, 1995, and they were published in the Illinois Register on May 19, 1995. The IEPA formally submitted the Lithographic Printing rules to USEPA on May 5, 1995, and May 31, 1995, as a revision to the Illinois SIP for ozone. In doing so, IEPA believes that these control measures will reduce VOM emissions to help meet the 15% RFP requirement. The submittal amends 35 Ill. Adm. Code Parts 211, 218 and 219, to include control measures for lithographic printing.

The submittal includes the following new or revised rules:

Part 211: Definitions and General Provisions

Subpart B: Definitions

211.474 Alcohol
211.560 As-Applied Fountain Solution
211.2850 Heatset Web Offset Lithographic Printing Line
211.4065 Non-Heatset
211.5980 Sheet-Fed

Part 218: Organic Materiol Emission Standards and Limitations for the Chicago Area

Subpart H: Printing and Publishing

218.405 Lithographic Printing: Applicability
218.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996
218.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996
218.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996
218.409 Testing for Lithographic Printing On and After March 15, 1996
218.410 Monitoring Requirements for Lithographic Printing
218.411 Recordkeeping and Reporting for Lithographic Printing

Part 219: Organic Material Emission Standards and Limitations for the Metro East Area

Subpart H: Printing and Publishing

219.405 Lithographic Printing: Applicability
219.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996
219.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996
219.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996
219.409 Testing for Lithographic Printing On and After March 15, 1996
219.410 Monitoring Requirements for Lithographic Printing
219.411 Recordkeeping and Reporting for Lithographic Printing

The lithographic printing rules contained in Part 218 are identical to those in Part 219 except for the areas of applicability. Part 218 applies to the Chicago Area, while Part 219 applies to the Metro East Area. The following is a description of the State rules.

Applicability (218/219.405)

Section 218/219.405 states that sources with heatset web offset lithographic printing lines are subject to the requirements of 218/219.406 until March 15, 1996, and Sections 218/219.407 through 218/219.411 on and after March 15, 1996. All such sources are subject unless total maximum theoretical emissions of VOM never exceed 100 tons per calendar year before the application of controls, or Federally enforceable permit conditions limit production such that emissions are less than 100 tons per year.

This rule also states that all heatset web offset, non-heatset web offset, and sheet-fed offset lithographic printing lines will be subject to Sections 218/219.407 through 218/219.411 on and after March 15, 1996, unless VOM emissions from all lines at a source never exceed 100 pounds per day before the application of controls.

Exempt sources are subject to recordkeeping requirements of Section 418.406 before March 15, 1996, and Section 418.411 on and after March 15, 1996.

Provisions Which Apply Before March 15, 1996 (218/219.406)

Section 218/219.406 contains provisions which apply to Heatset Web Offset Lithographic Printing Prior to March 15, 1996. This section requires heatset web offset printing lines to install and operate afterburner systems that reduce 90 percent of the VOM emissions (excluding methane and ethane) from the dryer exhaust. Alternatively, a condensation recovery system that removes at least 75 percent of the non-isopropyl alcohol organic materials from the dryer exhaust may be used if the fountain solution contains no more than 8 percent, by weight, of VOM, and the control device is equipped with monitoring equipment. This section also contains an equation for calculating total maximum theoretical emissions of VOM from heatset web offset lithographic printing lines.

This section also includes recordkeeping requirements for exempt sources before March 31, 1996. Such sources must record the VOM content and the volume of each fountain solution and ink as applied each year on each printing line. Non-exempt sources are required to keep daily records of the VOM content of the fountain solution, as well as information on operation and maintenance of the control device.

Emission Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996 (218/219.407)

This rule requires heatset web offset lithographic printers to limit the VOM content in the as-applied fountain solution to 1.6 percent by volume. Alternately, the VOM content may be up to 3 percent by volume if the fountain solution is maintained below 15.6°C (60°F), or 5 percent by volume if the fountain solution contains no alcohol. There are also requirements that the air pressure in the dryer be maintained lower than that of the press room, and that an afterburner (or other equivalent control device if approved by the State and USEPA) be installed and operated so that VOM emissions (excluding methane and ethane) from the press dryer exhaust are reduced by 90 percent.

Non-heatset web offset lithographic printers must limit the VOM content in the as-applied fountain solution to 5 percent or less, and the solution must contain no alcohol.

Sheet-fed offset lithographic printing lines are required to limit the VOM content of the as-applied fountain solution to 5 percent or less by volume, or 8.5 percent if the temperature of the fountain solution is maintained below 15.6°C (60°F).

The cleaning solution used on any lithographic printing line must have a VOM content of no more than 30 percent by weight, or alternatively, the VOM composite partial vapor pressure of the as-used cleaning solution must be less than 10 millimeters of mercury at 20°C (68°C). Cleaning materials, including used towels must be kept in closed containers.

Compliance Schedule for Lithographic Printing On and After March 15, 1996 (218/219.408)

This section requires lithographic printing lines to comply with other applicable sections of the lithographic printing rules after March 15, 1996.

Testing for Lithographic Printing On and After March 15, 1996 (218/219.409)

This section sets the test methods to be used in determining compliance. Method 1 and 1A are to be used, as appropriate, to select sampling sites, Methods 2, 2A, 2C, and 2D are to be used to determine volumetric flow rates of exhaust streams, and Methods 25 and 25A are to be used to determine the VOM concentrations of the exhaust streams. An air flow direction indicating device, such as a smoke stick, is to be used to demonstrate 100 percent emissions capture efficiency for the dryer. The applicable test methods and procedures contained in sections 218/219.105 and 218/219.110 are also to be used in determining compliance.

Monitoring Requirements for Lithographic Printing (218/219.410)

This section requires fountain solution temperature monitors for lithographic printing lines which rely on temperature to demonstrate compliance. Also, each batch of as-applied fountain solution must be sampled and tested for compliance with the VOM content limit using a refractometer or hydrometer. A conductivity meter may also be used if it is demonstrated that a refractometer and hydrometer can not be used to determine compliance. For heatset web offset lithographic printing lines, this section requires temperature monitors on afterburners.

This section also requires that automatic cleaning solution mixing equipment be properly maintained and set so that the VOM content of the as-applied cleaning solution is in compliance with the limit in 218/219.407. There are recordkeeping requirements for cleaning solutions which are not prepared with automatic feed equipment, and for cleaning solutions which are to comply using vapor pressure.

Recordkeeping and Reporting for Lithographic Printing (218/219.411)

This section contains recordkeeping requirements for both exempt and non-exempt sources. Exempt sources must record the name, identification, VOM content, and volume of each fountain solution additive, lithographic ink, and cleaning solvent used on any lithographic printing line each month. Exempt sources are also required to record whether a line was in operation each day, and total monthly VOM emissions.

Lithographic printing lines which are subject to control requirements must keep logs detailing monitoring data, operating time, maintenance for the afterburner or other control device. Such sources must record the name, identification, date and time of preparation, volume, and VOM content for each batch of fountain solution. The rule also requires sources to record the name, identification, VOM content of each cleaning solvent, proportion of each cleaning solvent and water, and as-applied VOM content for each batch of cleaning solution. If the source relies on vapor pressure to show compliance, records of the molecular weight, density, and VOM composite partial vapor pressure of each cleaning solvent must also be kept. All records must be maintained at the source for a minimum of 3 years.

II. Analysis of State Submittal

The limits in the Illinois rule match those discussed in the September 1993, draft Control Technology Guideline and/or the June 1994, Alternative Control Techniques Document for offset lithographic printing.

The Illinois rules apply control requirements to sources with total theoretical emissions of more than 100 tons per year or actual emissions of more than 100 pounds per day. In addition, sections 218/219.411(a)(1)(B)(I) state that the actual daily emissions are to be determined by dividing monthly emissions by the number of days in the month. Because of this monthly averaging provision, the cutoff is effectively 3000 pounds per

month of actual emissions. For sources for which a CTG has not been issued, the statutory requirements are that RACT be applied to major stationary sources in moderate and worse ozone nonattainment areas. The USEPA believes that the cutoffs in the Illinois rules will ensure that the rules apply to major stationary sources (sources with the potential to emit 25 tons per year or more), therefore Illinois' cutoffs are acceptable.

III. Final Rulemaking Action

The USEPA has undertaken its analysis of the SIP revision request based on a review of the materials presented by IEPA and has determined that this SIP revision request is approvable.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on January 8, 1996, unless USEPA receives adverse or critical comments by December 8, 1995. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on January 8, 1996.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator, Office of Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Volatile organic compounds.

Dated: October 11, 1995.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows: Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(117) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(117) On May 31, 1995, the State submitted amended lithographic printing rules which consisted of revised definitions, and revisions to the Ozone Control Plan for the Chicago and Metro-East St. Louis areas.

(i) Incorporation by reference.

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B: Definitions, Sections 211.474 Alcohol, 211.560 As-Applied Fountain Solution, 211.2850 Heatset Web Offset Lithographic Printing Line, 211.4065 Non-Heatset, 211.5980 Sheet-Fed added at 19 Ill. Reg. 6823, effective May 9, 1995.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart H; Printing and Publishing, Sections 218.405 Lithographic Printing: Applicability, 218.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996, 218.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996, 218.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996, 218.409 Testing for Lithographic Printing On and After March 15, 1996, 218.410 Monitoring Requirements for Lithographic Printing, 218.411 Recordkeeping and Reporting for Lithographic Printing added at 19 Ill. Reg. 6848, effective May 9, 1995.

(C) Part 219: Organic Material Emissions Standards and Limitations for the Metro-East Area, Subpart H; Printing and Publishing, Sections 219.405 Lithographic Printing: Applicability, 219.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996, 219.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996, 219.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996, 219.409 Testing for Lithographic Printing On and After March 15, 1996, 219.410 Monitoring Requirements for Lithographic Printing, 219.411 Recordkeeping and Reporting for Lithographic Printing added at 19 Ill. Reg. 6848, effective May 9, 1995.

[FR Doc. 95–27609 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–27–1–7208a; FRL–5322–6]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves a revision to the New Mexico State Implementation Plan (SIP) for the Albuquerque/Bernalillo County nonattainment area that contains transportation conformity rules. The transportation conformity SIP revision enables the Albuquerque/Bernalillo County Air Quality Control Board to implement and enforce the Federal transportation conformity requirements at the local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The final approval action is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revision submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate document. The EPA is approving this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the approval action and other information are provided in this document.

DATES: This action is effective on January 8, 1996, unless notice is postmarked by December 8, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the CAA amendments of 1977 (Public Law 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to a SIP. The EPA published the final transportation conformity rules in the November 24, 1993, **Federal Register** and codified them at 40 CFR Part 51 Subpart T - Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. All other Federal actions (actions other than those under Title 23 U.S.C. or the Federal Transit Act) were addressed in a separate **Federal Register** notice. The conformity rules require the States and local agencies to adopt and submit a transportation conformity SIP revision to the EPA not later than November 24, 1994. This notice does not address the conformity requirements of general Federal actions (40 CFR Part 51 Subpart W), and EPA will take action on these SIPs in a separate notice.

II. Evaluation of State's Submission

In response to the **Federal Register** notice of November 24, 1993, the Governor of New Mexico submitted a SIP revision which included the transportation conformity rules adopted by the Albuquerque/Bernalillo County Air Quality Control Board. Currently, the Albuquerque/Bernalillo area is a nonattainment for carbon monoxide and has requested redesignation to attainment; however, the transportation conformity SIP revision is applicable to all nonattainment and maintenance classifications under the CAA. It must be noted that the final transportation conformity rule requires that the majority of the Federal rules be incorporated in verbatim form with a few exceptions, however, the State rules can not be more stringent than the Federal rules. The consultation section of the rule (40 CFR 51.402) is among these exceptions and the State and local (where applicable) air quality agencies are required to develop their own consultation rules. The following paragraphs present EPA's review and evaluation of the Albuquerque/Bernalillo County nonattainment area SIP revision.

A. Development of Consultation Rules

The Federal rules require the SIP's to include processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts in accordance with the criteria set forth in 40 CFR Part 51 Section 51.402. Specifically, to implement the requirements of Section 51.402, the SIP revisions must include processes and procedures to be undertaken by Metropolitan Planning Organizations (MPO), State Department of Transportation, and the U.S. Department of Transportation (USDOT) with State and local air quality agencies and EPA before making conformity determinations, and by State and local air quality agencies and EPA with MPO's, State Departments of Transportation, and USDOT in developing applicable SIPs.

In order to satisfy these requirements, Albuquerque/Bernalillo County, the Albuquerque Environmental Health Department (air agency), established an ad hoc multi-agency committee which included representatives from the State air quality agency, State DOT, USDOT, MPO's, EPA, the local air quality agency, local transportation agencies, and local transit operators. The Albuquerque Environmental Health Department served as the lead agency in coordinating the multi-agency efforts for developing the consultation rules. The committee met approximately on a biweekly basis and drafted consultation rules by using the requirements of 40 CFR 51.402 and 23 CFR 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the Albuquerque/Bernalillo County nonattainment area. The Albuquerque/Bernalillo County SIP revision has adequately addressed all provisions of 40 CFR 51.402 and has met the EPA SIP requirements.

B. Transition From the Interim Period to the Control Strategy Period; 40 CFR 51.448

The EPA promulgated an interim final rule on February 8, 1995, that amended certain provisions of 40 CFR 51.448 in the Federal transportation conformity rules. The interim final rule aligned the timing of certain transportation conformity consequences with the imposition of the CAA highway sanctions for a six-month period. The amendment delays the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete control strategy implementation plan. Since the States were required to submit transportation conformity SIPs not later than November 24, 1994, the State's (Albuquerque/Bernalillo County's) SIP revision does not include the amendment of February 8, 1995. Lack of amended sections of 40 CFR 51.448 in the Albuquerque/Bernalillo County's rules makes the local rules more stringent than the Federal rules. However, the EPA believes that the Albuquerque Environmental Health Department has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. The agency in no way intentionally adopted more stringent rules than the Federal rules in developing its transportation conformity SIP. Therefore, it would be unreasonable to discredit the agency's good faith effort in submitting the transportation conformity SIP on time and disapprove this portion of the State's SIP. Since the Albuquerque Environmental Health Department will be required to submit a SIP revision in the near future to incorporate the amended portions of the Federal transportation conformity rules, the EPA believes that it would be reasonable to exclude the section of the local rules which correspond to 40 CFR 51.448, from this SIP approval action. As a result, the EPA is not taking any action on section 42.11 of the Albuquerque/Bernalillo County rules.

C. Evaluation of Albuquerque/Bernalillo County Rules

The Albuquerque Environmental Health Department (AEHD) is the lead air agency for SIP development, adoption, and enforcement in the Bernalillo County carbon monoxide nonattainment area. The New Mexico Air Quality Control Act (NMAQCA) allows, by ordinance, "A" class counties (as defined in the New Mexico statute) and any municipality within an "A" class county to create a municipal, county, or joint air quality board to administer and enforce the provisions of the NMAQCA. The City of Albuquerque and Bernalillo County have jointly established such a board, Albuquerque/Bernalillo County Air Quality Control Board, for administration and enforcement of NMAQCA because Bernalillo County is an "A" class county. The AEHD is the regulatory and administrative agency for implementing and enforcing the air quality control regulations of the Board in the Bernalillo County nonattainment area.

On December 19, 1994, the Governor of New Mexico submitted a SIP revision on behalf of Albuquerque/Bernalillo County in compliance with 40 CFR Part 51 Subpart T that contained the transportation conformity and its consultation rule. The SIP revision was adopted by the Albuquerque/Bernalillo County Air Quality Control Board on November 9, 1994, after appropriate public participation and interagency consultation. The AEHD has adopted the Federal transportation conformity rules in verbatim form except for the interagency consultation rule which has been developed in the manner described earlier in this notice. The AEHD has made limited changes and has added additional definitions, where necessary, to create consistency with the local processes, procedures, and area-specific terms or names. These minor modifications and additional clarifications do not in any way alter the effect, implementation and enforcement of the conformity rules in the Bernalillo County nonattainment area. The EPA has determined that AEHD's transportation conformity rule meets the Federal requirements except as provided in section II(B) of this notice, and EPA is approving this SIP revision.

III. Final Approval Action

The EPA is approving the transportation conformity SIP revision for the Albuquerque/Bernalillo County nonattainment area except for section 42.11. The EPA is not taking any action on section 42.11 of the Albuquerque/Bernalillo County rules as discussed in detail in section II(B) of this notice. The EPA has evaluated this SIP revision and has determined that the Albuquerque/Bernalillo County Air Quality Control Board has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR Part 51 Subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of the rules by the Albuquerque Environmental Health Department at the local level.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on January 8, 1996, unless adverse or critical comments are received by December 8, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective January 8, 1996.

The EPA has reviewed this transportation conformity SIP for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

IV. Administrative Requirements

A. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

B. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

C. Procedural Information

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Ms. Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

D. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

Title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(59) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(59) A revision to the New Mexico State Implementation Plan for Transportation Conformity: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) No. 42 "Transportation Conformity" as adopted on November 9, 1994 and filed with the State Records and Archives Center on December 16, 1994, was submitted by the Governor on December 19, 1994. No action is taken on AQCR No. 42 Section 11.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) No. 42 "Transportation Conformity" as adopted on November 9, 1994 and filed with the State Records and Archives Center on December 16, 1994. No action is taken on AQCR No. 42 Section 11.

(ii) Additional material. None.

[FR Doc. 95–27682 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–56–1–7209a; FRL–5322–4]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves a revision to the Texas State Implementation Plan (SIP) that contains transportation conformity rules. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The final approval is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revisions submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate notice. The EPA is approving this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the final approval action and other information are provided in this document.

DATES: This action is effective on January 8, 1996, unless notice is postmarked by December 8, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1943.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the CAA amendments of 1977 (Public Law 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to a SIP. The EPA published the final transportation conformity rules in the November 24, 1993, **Federal Register** and codified them at 40 CFR part 51 subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. All other Federal actions (actions other than those under Title 23 U.S.C. or the Federal Transit Act) were addressed in a separate **Federal Register** notice. The conformity rules require the States and local agencies to adopt and submit a transportation conformity SIP revision to the EPA not later than November 24, 1994. This notice does not address the conformity requirements of general Federal actions (40 CFR part 51 subpart W), and EPA will take action on these SIPs in a separate notice.

II. Evaluation of State's Submission

In response to the **Federal Register** notice of November 24, 1993, the State of Texas submitted a SIP revision which included adoption of the transportation conformity rules and other required documents. The transportation conformity SIP revision is applicable to the nonattainment or maintenance areas. It must be noted that the final transportation conformity rule requires that the majority of the Federal rules be incorporated in verbatim form with a few exceptions, however, the State rules can not be more stringent than the Federal rules. The consultation section of the rule (40 CFR 51.402) is among these exceptions and the State and local (where applicable) air quality agencies are required to develop their own consultation rules. The following paragraphs present EPA's review and evaluation of this SIP revision.

A. Development of Consultation Rules

The Federal rules require the SIP's to include processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts in accordance with the criteria set forth in 40 CFR part 51 § 51.402. Specifically, to implement the requirements of Section 51.402, the SIP revisions must include processes and procedures to be undertaken by Metropolitan Planning Organizations (MPO), State Department of Transportation, and the U. S. Department of Transportation (USDOT) with State and local air quality agencies and EPA before making conformity determinations, and by State and local air quality agencies and EPA with MPO's, State Departments of Transportation, and USDOT in developing applicable SIPs.

In order to satisfy these requirements, the State established an ad hoc multi-agency committee which included representatives from the State air quality agency, State DOT, USDOT, MPO's, EPA, the local air quality agency, local transportation agencies, and local transit operators. The State air quality agency served as the lead agency in coordinating the multi-agency efforts for developing the consultation rules. The committee met approximately on a biweekly basis and drafted consultation rules by using the requirements of 40 CFR 51.402 and 23 CFR 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the State of Texas. The State has adequately addressed all provisions of 40 CFR 51.402 and has met the EPA SIP requirements.

B. Transition From the Interim Period to the Control Strategy Period; 40 CFR 51.448

The EPA promulgated an interim final rule on February 8, 1995, that amended certain provisions of 40 CFR 51.448 in the Federal transportation conformity rules. The interim final rule aligned the timing of certain transportation conformity consequences with the imposition of the CAA highway sanctions for a six-month period. The amendment delays the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete control strategy implementation plan. Since the States were required to submit transportation conformity SIPs not later than November 24, 1994, the State's SIP revision does not include the amendment of February 8, 1995. Lack of amended sections of 40 CFR 51.448 in the State's rules makes the State's rules more stringent than the Federal rules. However, the EPA believes that the State has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. The State in no way intentionally adopted more stringent rules than the Federal rules in developing its transportation conformity SIP. Therefore, it would be unreasonable to discredit the State's good faith effort in submitting the transportation conformity SIP on time and disapprove this portion of the State's SIP. Since the State will be required to submit a SIP revision in the near future to incorporate the amended portions of the Federal transportation conformity rules, the EPA believes that it would be reasonable to exclude the section of the State's rules which corresponds to 40 CFR 51.448, from this SIP approval action. As a result, the EPA is not taking any action on a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules.

C. Evaluation of the State Rules

On November 6, 1994, the Governor of Texas submitted a SIP revision in compliance with 40 CFR Part 51 Subpart T that contained the State's transportation conformity and its consultation rule. The SIP revision was adopted by the Texas Natural Resource Conservation Commission (TNRCC) on October 19, 1994, after appropriate public participation and interagency consultation. The TNRCC has adopted the Federal rules by "incorporation by reference" except for the interagency consultation rule which has been developed in the manner described earlier in this notice. The TNRCC transportation conformity rules are identical to the Federal rules and the State has made no additional changes or modifications. The EPA has determined that the TNRCC's transportation conformity rule meets the Federal requirements except as provided in section II(B) of this notice, and EPA is approving this SIP revision.

III. Final Approval Action

The EPA is approving the transportation conformity SIP revision for the State of Texas except for a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules. The EPA is not taking any action on a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules, as discussed in detail in section II(B) of this notice. The EPA has evaluated this SIP revision and has determined that Texas has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR Part 51 Subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of these rules by the TNRRC at the local level.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on January 8, 1996, unless adverse or critical comments are received by December 8, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective January 8, 1996.

The EPA has reviewed this transportation conformity SIP revision for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

IV. Administrative Requirements

A. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due

to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

B. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

C. Procedural Information

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from May Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

D. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

Title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(96) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(96) A revision to the Texas State Implementation Plan for Transportation Conformity: Regulation 30 TAC Chapter 114 "Control of Air Pollution from Motor Vehicles", Section 114.27 "Transportation Conformity" as adopted by the Texas Natural Resource Conservation Commission (TNRCC) on October 19, 1994, was submitted by the Governor on November 6, 1994. No action is taken on a portion of 30 TAC 114.27(c) that contains provisions of 40 CFR 51.448.

(i) Incorporation by reference.

(A) The TNRRC 30 TAC Chapter 114 "Control of Air Pollution from Motor Vehicles", 114.27 "Transportation Conformity" as adopted by the TNRCC on October 19, 1994. No action is taken on a portion of 30 TAC 114.27(c) that contains provisions of 40 CFR 51.448.

(B) TNRCC order No. 94–40 as passed and approved on October 12, 1994.

(ii) Additional material. None.

[FR Doc. 95–27680 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

[FPMR Amendment G–110]

RIN 3090–AF53

Use of Cash To Procure Official Passenger Transportation Services

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations (FPMR) to grant agency heads or their designated representatives authority to approve all cash purchases of passenger transportation services. Although agency heads or their designated representatives currently have permanent authority to approve emergency cash purchases, their authority to approve nonemergency cash purchases of transportation services in excess of $100 was temporary and expired on July 31, 1995 (see FPMR Temporary Regulation G–57, Supp. 1). This amendment gives agencies permanent authority to approve all cash purchases of passenger transportation services.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Policy, Procedures, and Liaison Branch, Office of Transportation Audits (202–219–3164).

SUPPLEMENTARY INFORMATION: FPMR Temporary Regulation G–57, published in the **Federal Register** on July 26, 1993 (58 FR 39664), invited agency comments through December 31, 1993, concerning the revised cash policy. Comments were

received from one Federal agency which asked that GSA clarify the policy in §§ 101–41.203–1 and 101–41.203–2(d) by indicating the limitations to be applied against a traveler for purchasing transportation tickets from other than a carrier or Travel Management Center (TMC) under GSA contract. This agency also suggested that the cash limit be raised from $100 to $300.

The Federal Travel Regulation contains in 41 CFR Part 301–15 the general policy regarding use of travel agents and TMC's by Federal executive agencies and specifies in § 301–3.4 when a one-time exception may be granted, the reimbursement amount allowed, and when reimbursement denial is appropriate. We believe incorporation of this policy by reference in § 101–41.203–1 is sufficient and that verbatim repetition is not needed.

Additionally, we are concerned that raising the cash limit would increase the likelihood of more travelers using cash to avoid use of contract fares, make audit of passenger transportation costs impracticable, and conflict with the Government's overall policy of reducing the use of cash. For these reasons, we have determined that it would not be prudent to raise the cash limit. Agencies should be mindful that a cash purchase which exceeds the established limit should be the occasional exception and not the standard.

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, it is determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and Subpart 201–45.6 of this title.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Maritime carriers, Passenger services, Railroads, Transportation.

For the reasons set out in the preamble, 41 CFR Part 101–41 is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for Part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

Subpart 101–41.2—Passenger Transportation Services Furnished for the Account of the United States

2. Section 101–41.203–1 is amended by revising the heading and paragraph (a) to read as follows:

§ 101–41.203–1 Procurement from carriers.

(a) All passenger transportation services shall be procured with a GTR, Government contractor-issued charge card, or centrally billed account unless otherwise provided in § 101–41.203–2 of this subpart. Agency heads or their designees may specify which of these Government-provided methods of payment, or combination thereof, travelers will use to procure official passenger transportation services. Such services, regardless of the procurement method specified by the agency, must be procured directly from either a carrier or a travel agent. A travel agent may be used only as prescribed in the Federal Travel Regulation (FTR), 41 CFR chapters 301–304 or applicable regulations of the Department of Defense (DOD).

* * * * *

3. Section 101–41.203–2 is revised to read as follows:

§ 101–41.203–2 Use of cash.

(a) A GTR or Government excess baggage authorization ticket (GEBAT) shall not be used to procure passenger transportation services costing $10 or less, exclusive of Federal transportation tax, and to pay air excess baggage charges of $15 or less for each leg of a trip (see § 101–41.203–6), unless special circumstances justify their use. The contractor-issued charge card or centrally billed account shall be used for these purchases when practical. When not practical, use of cash may be authorized or approved. To procure passenger transportation services costing more than $10 but not more than $100, exclusive of Federal transportation tax, the GTR, Government contractor-issued charge card, or centrally billed account shall be used. Cash may be used for these purchases only when none of the other procurement methods is practical. For passenger transportation services costing more than $100, excluding Federal transportation tax, only a GTR, Government contractor-issued charge card, or centrally billed account may be used unless otherwise exempted in this subpart.

(1) When the use of cash is authorized to purchase the services set forth in paragraph (a) of this section, cash payment may be made with a travel advance in accordance with provisions of the FTR (41 CFR 301–10.3).

(2) Any credit card, other than the Government contractor-issued charge card, and all travelers checks shall be considered the equivalent of cash and subject to the $100 limitation provided in paragraph (a) of this section.

(**Note**—To protect the integrity of the Government charge card program designed for payment of allowable travel and transportation expenses incurred in connection with official travel, travelers shall be discouraged from using personal credit cards.)

(3) Procurement of passenger transportation services under the group or charter provisions of the FTR (41 CFR 301–3.4(b)(2)) is not subject to the provisions of this subpart.

(4) Authorization under paragraph (b) of this section to use cash in excess of $100 should be obtained prior to travel. In the absence of advance written authorization or approval, passenger transportation services exceeding $100 shall be purchased in accordance with policies and procedures prescribed in applicable Government travel regulations. It is a traveler's responsibility to know that use of a GTR, Government contractor-issued charge card, or centrally billed account may be required to obtain certain discount fares and to comply with the mandatory provisions of the FTR governing the use of contract airline service. Cash shall not be used to circumvent the regulations governing airline contracts.

(b) Cash purchases of transportation services in excess of $100 shall be discouraged and each agency shall establish procedures to encourage Federal travelers to use a Government contractor-issued charge card, centrally billed account, or GTR instead of cash to purchase passenger transportation services. Agencies shall monitor and control cash purchases of transportation services in a manner that will ensure such purchases are kept to a minimum.

(1) When a Federal traveler does not use a GTR, Government contractor-issued charge card, or centrally billed account, heads of agencies, or their designated representatives, may in limited instances authorize travelers to exceed the $100 limitation when procuring passenger transportation services.

(i) Each agency shall establish guidelines for approval of cash purchases in excess of $100 and determine if the use of cash is due to:

(A) emergency circumstances (where use of a GTR, Government contractor-issued charge card, or centrally billed account was not possible); or

(B) agency failure to advise a new employee and/or invited or infrequent traveler of proper procedures for purchasing transportation services.

(ii) If a cash purchase is determined to have been made under a nonemergency circumstance, reimbursement shall not exceed the cost which would have been properly chargeable to the Government if the transportation services had been procured using one of the Government-provided methods of procurement. Should a Federal employee make cash purchases without just cause or deliberately attempt to circumvent use of GSA air or rail service programs for personal convenience or some other reason not consistent with sound travel management practices, the agency may, as provided in 31 U.S.C. 3702, send all documents related to the travel to the Comptroller General, General Accounting Office, Claims Section, Washington, DC 20548, for a decision on the traveler's right to reimbursement.

(2) Delegation of authority for authorizing and approving the use of cash in excess of $100 for the procurement of transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances. Any such delegation shall be made in writing and copies shall be retained to permit monitoring of the system. The agency shall make delegation of authority records available for examination by GSA auditors.

(3) To justify the use of cash in excess of $100 when procuring passenger transportation services, both the agency head, or the designated representative, and the traveler shall certify on the travel voucher the necessity for such use.

(4) After a traveler has been reimbursed for a cash purchase, copies of travel authorizations, ticket coupons, and any ticket refund applications, or SF's 1170, Redemption of Unused Tickets, shall be forwarded for audit to the General Services Administration, Transportation Audit Division (FWA), Attention: Code E, Washington, DC 20405.

(5) The agency shall maintain travel vouchers and make them available for site audit by GSA auditors. General Records Schedule 9, Travel and Transportation Records (see 36 CFR 1228.22), provides instructions for the disposal of travel vouchers.

(c) GSA (FWA) will report to the appropriate military or civilian agency travel manager for appropriate action suspected travel management errors and/or misroutings which result in higher travel costs to the Government.

(d) A traveler who uses cash to purchase individual passenger transportation services shall procure such services directly from the carrier or from a travel agent under GSA or DOD contract (see § 101–41.203–1), and shall account for those expenses on their travel vouchers, furnishing passenger coupons or other evidence as appropriate in support thereof. Moreover, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment must be preprinted or otherwise annotated on the travel voucher and shall be initialed by the traveler.

(e) Travelers using cash to procure passenger transportation services shall be made aware by their employing agencies of the provisions of § 101–41.209–4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space. Also, travelers using cash shall adhere to the regulations of the General Accounting Office (4 CFR 52.2) regarding the use of U.S.-flag vessels and air carriers (see § 101–41.203–1(b)).

Appendix to Subchapter G [Amended]

4. The appendix to subchapter G is amended by removing FPMR Temp. Reg. G–57 and G–57 Supp. 1.

Dated: October 26, 1995.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 95–27475 Filed 11–7–95; 8:45 am]

BILLING CODE 6820–24–M

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41 CFR Part 201–39

RIN 3090–AF57

Amendment of FIRMR Provisions to Provide For Multi-Agency Use of Contracts For Federal Information Processing (FIP) Resources

AGENCY: Information Technology Service, GSA.

ACTION: Final rule.

SUMMARY: This document amends Federal Information Resources Management Regulation (FIRMR) provisions to provide for multi-agency use of contracts for FIP resources, and address the applicability of Federal Acquisition Regulation (FAR) subpart 17.5 when one agency acquires FIP resources through another agency's contract which has been awarded pursuant to a delegation of procurement authority from GSA under the Brooks Act.

DATES: This rule is effective December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Steele, GSA/KAR at (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking (NPR) was published in the **Federal Register** on December 7, 1993, clarifying requirements when one agency acquires FIP resources through another agency's contract. All comments were considered, and, where possible, incorporated into the final rule.

(2) A significant concern of some commenters was that the proposed rule did not sufficiently address the relationship of the Economy Act to the Brooks Act when an agency acquires FIP resources through another agency's contract and transfers associated funds. When one agency uses another agency's contract, statutory authority must exist for use of the contract and for a related transfer of funds. One authority is the Economy Act (31 U.S.C. 1535). If the Economy Act is used, agencies must comply with implementing provisions in FAR subpart 17.5. Agencies may use the Brooks Act (40 U.S.C. 759) as the statutory authority for Federal interagency agreements for goods and services within the scope of the Brooks Act. The Brooks Act provides GSA authority independent of the Economy Act to procure, lease or transfer FIP resources for Federal agencies. By its terms, GSA's procurement authority under the Brooks Act can be delegated to other agencies. If the Brooks Act applies, the Economy Act provisions under 31 U.S.C. 1535 do not apply. When agencies comply with the policies and procedures established in this amendment in acquiring FIP resources, they are acting under GSA's delegated Brooks Act authority. Therefore, a related transfer of funds when using contracts that are made available by GSA for use on a Governmentwide basis may be made without regard to the Economy Act. However, the timing of obligations is governed by various authorities, the terms of the appropriating act itself, legislation authorizing the appropriation, the organic or enabling legislation which prescribes a function or creates a program with the appropriated funds, statutory provisions that allow or prohibit use of appropriated funds, and general rules that have been developed through the Comptroller General and the courts. If an agency uses the Brooks Act as authority for a transfer of funds for FIP resources, a binding agreement between the agency providing the funds and the agency that will issue an order against a contract would normally constitute an obligation of funds by the agency providing the funds, absent any prohibition or condition on an agency's expenditure of the funds involved. The revised amendment clarifies that the Brooks Act is the appropriate authority when agencies use contracts that have been awarded pursuant to a delegation of procurement authority from GSA under 40 U.S.C. 759. The revised amendment also consolidates the procedures presented in the NPR for the use of such contracts.

(3) Section 201–39.1702 is added to permit agencies to make new indefinite-delivery/indefinite-quantity type contracts for commercial FIP products and services available for use by all agencies, and to clarify that FAR subpart 17.5 does not apply when agencies use another agency's contract that has been awarded pursuant to a delegation of authority from GSA under 40 U.S.C. 759.

(4) GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866. It is certified that this rule will not have a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.).

List of Subjects in 41 CFR Part 201–39

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–39.1700 is revised to read as follows:

§ 201–39.1700 Scope of subpart.

This subpart prescribes policies and procedures for using options and contracts available to Federal agencies for FIP resources.

3. Sections 201–39.1702, 201–39.1702–1 and 201–39.1702–2 are added to read as follows:

§ 201–39.1702 Interagency Acquisitions.

§ 201–39.1702–1 Policy.

FAR subpart 17.5 concerning interagency acquisitions does not apply when acquiring or providing FIP resources under a contract which has been awarded pursuant to a delegation of procurement authority from GSA under 40 U.S.C. 759. Agencies should cite 40 U.S.C. 759 as their contracting authority.

§ 201–39.1702–2 Procedures.

(a) Agencies are encouraged to make new indefinite-delivery/indefinite-quantity (IDIQ) contracts for commercial FIP products and services available for use by other agencies.

(1) Contracts must be awarded using full and open competition.

(2) Contract provisions should allow other Federal agencies to use the contracting agency's contract to satisfy requirements that are within the scope of products and services available under the contract until the total contract dollars are expended, subject to ordering limitations imposed by the contracting agency. At the contracting agency's discretion, other agencies may use portions of the contract not needed by the contracting agency.

(3) In addition, contract requirements for products and services may be increased up to twenty percent beyond the contracting agency's requirements in anticipation of overall greater use by the government without conducting additional studies to determine the anticipated needs of other agencies that may place orders under the contract. Use of the contract by other agencies should not be limited to the percent contract requirements are increased. Other agencies should have priority for use of the percent that the contract requirements are increased.

(b) There are no specific limitations on agencies combining similar requirements under a single consolidated contract when the requirements of individual agencies are determined in accordance with FIRMR subpart 201–20.1.

Dated: October 27, 1995.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 95–27582 Filed 11–7–95; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7160]

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria

required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino	City of Flagstaff	September 21, 1995, September 28, 1995, Arizona Daily Sun.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	August 16, 1995	040020
Arizona: Coconino	City of Flagstaff	September 22, 1995, September 29, 1995, Arizona Daily Sun.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	August 17, 1995	040020
Arizona: Maricopa .	City of Glendale	August 31, 1995, September 7, 1995, Arizona Republic.	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	August 7, 1995	040045
Arizona: Maricopa .	Unincorporated Areas.	August 31, 1995, September 7, 1995, Arizona Republic.	The Honorable Tom Rawles, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, Phoenix, Arizona 85003.	August 7, 1995	040037
Arizona: Maricopa .	City of Peoria	August 31, 1995, September 7, 1995, Arizona Republic.	The Honorable Ken C. Forgia, Mayor, City of Peoria 8401 West Monroe, Peoria, Arizona 85345.	August 7, 1995	040050
California: Santa Clara.	City of Gilroy	September 22, 1995, September 29, 1995, Dispatch.	The Honorable Don F. Gage, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	August 31, 1995	060340
California: Santa Clara.	Unincorporated Areas.	September 22, 1995, September 29, 1995, San Jose Mercury News.	The Honorable Mike M. Honda, Chairman, Santa Clara County Board of Supervisors, County Government Center 70 West Hedding Street, East Wing, Tenth Floor, San Jose, California 95110.	August 31, 1995	060337
Colorado: Adams, Boulder, and Jefferson.	City of Broomfield .	August 31, 1995, September 7, 1995, Daily Camera.	The Honorable Bill Berens, Mayor, City of Broomfield, P.O. Box 1415, Broomfield, Colorado 80038–1415.	August 2, 1995	085073
Hawaii: Maui	Unincorporated Areas.	September 20, 1995, September 27, 1995, Maui News.	The Honorable Linda Crockett Lingle, Mayor, Maui County, 250 South High Street, Wailuku, Maui, Hawaii 96793.	August 17, 1995	150003
Iowa: Polk	Unincorporated Areas.	September 22, 1995, September 29, 1995, The Des Moines Register.	The Honorable Jack Bishop, Chairman, Polk County Board of Supervisors, 111 Court Avenue, Room 300, Des Moines, Iowa 50309.	August 14, 1995	190901
Texas: Tarrant	City of Forest Hill ..	August 31, 1995, September 7, 1995, Forest Hill News.	The Honorable Esterlene Griffin, Mayor, City of Forest Hill, 6800 Forest Hill Drive, Forest Hill, Texas 76140–1299.	July 28, 1995	480595

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Gregg and Rusk.	City of Kilgore	September 22, 1995, September 29, 1995, Kilgore News Herald.	The Honorable Bill Wilson, Mayor, City of Kilgore, P.O. Box 1125, Kilgore, Texas 75663.	August 23, 1995	480263
Texas: Tarrant	City of North Richland Hills.	September 21, 1995, September 28, 1995, Mid-Cities News.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	August 17, 1995	480607
Texas: Bexar	City of San Antonio	September 19, 1995, September 26, 1995, San Antonio Express News.	The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	August 14, 1995	480045

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27661 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

[Docket No. FEMA–7158]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: New Haven.	Town of Guilford ...	September 5, 1995, September 12, 1995, *Shoreline Times.*	Mr. Edward Lynch, First Selectman of the Town of Guilford, Guilford Town Hall, 31 Park Street, Guilford, Connecticut 06437.	August 30, 1995	090077 B
Connecticut: Fairfield.	City of Norwalk	October 4, 1995, October 11, 1995, *Norwalk Hour.*	The Honorable Frank J. Esposito, Mayor of the City of Norwalk, City Hall, 125 East Avenue, Norwalk, Connecticut 06851.	October 12, 1995	090012 D
Georgia: Cobb	Unincorporated areas.	September 21, 1995, September 28, 1995, *Marietta Daily Journal.*	Mr. William Byrne, Chairman of the Cobb County Board of Commissioners, 100 Cherokee Street, Suite 300, Marietta, Georgia 06851.	September 11, 1995 ...	130052
Illinois: DuPage	Village of Glendale Heights.	September 28, 1995, October 5, 1995, *Glendale Heights Press.*	Mr. Ben Fajardo, Glendale Heights Village President, 300 East Civic Center Plaza, Glendale Heights, Illinois 60139.	September 18, 1995 ...	170206 C
Illinois: Cook	Village of Orland Park.	September 28, 1995, October 5, 1995, *The Star and The Daily Southtown Economist.*	The Honorable Daniel McLaughlin, Major of the Village of Orland Park, 14700 South Ravinia Drive, Orland Park, Illinois 60462.	September 21, 1995 ...	170140 B
Massachusetts: Middlesex.	City of Lowell	October 3, 1995, October 10, 1995, *The Sun.*	Mr. Richard Johnson, Manager of the City of Lowell, 375 Merrimack Street, Lowell, Massachusetts 01852.	January 8, 1996	250201 C
Ohio: Montgomery	City of Trotwood ...	October 10, 1995, October 17, 1995, *Daily Court Reporter.*	Mr. Michael Ratcliff, City of Trotwood Manager, 35 North Olive Road, Trotwood, Ohio 45426.	September 19, 1995 ...	390417
Pennsylvania: Centre.	Township of Spring	September 15, 1995, September 22, 1995, *Centre Daily Times.*	The Honorable John H. Auman, Chairman of the Township of Spring Board of Supervisors, 1309 Blanchard Street, Bellefonte, Pennsylvania 16823–8625.	August 24, 1995	420269 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27660 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: Winnebago (FEMA Docket No. 7137).	Village of Machesney Park.	May 10, 1995, May 17, 1995, *The Park Journal.*	Mr. Steve Kuhn, President of the Village of Machesney Park, 300 Machesney Road, Machesney Park, Illinois 61111.	May 1, 1995	171009 A
New York: Monroe (FEMA Docket No. 7137).	Town of Greece	April 27, 1995, May 4, 1995, *The Greece Post.*	Mr. Roger Boily, Supervisor of the Town of Greece, 2505 West Ridge Road, Rochester, New York 14626.	April 21, 1995	360417 E

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27658 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of

ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12812, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
St. Cloud (City), Osceola County (FEMA Docket No. 7138)	
East Lake Tohopekaliga:	
In the vicinity of the intersection of Montana Avenue and Second Avenue	*58
Approximately 1,400 feet east of the intersection of Cypress Street and Oregon Avenue	*62
Maps available for inspection at the St. Cloud Planning Department, 2901 17th Street, St. Cloud, Florida.	
GEORGIA	
Cook County (unincorporated areas) (FEMA Docket No. 7138)	
Bear Creek:	
Approximately 1.1 miles downstream of East Sixth Street in the City of Adel	*214
At a point approximately 1,000 feet upstream of the confluence of Giddens Mill Creek	*230
Giddens Mill Creek:	
At confluence with Bear Creek	*230
Approximately 325 feet upstream of Elm Street	*231
Maps available for inspection at the County Commissioner's Office, 212 North Parrish Street, Adel, Georgia.	
Fayette County (unincorporated areas) (FEMA Docket No. 7138)	
Morning Creek:	
Approximately 0.72 mile upstream of the confluence with Flint River	*788
Approximately 250 feet upstream of the County boundary	*843
Broadnax Creek:	
At the confluence with Morning Creek	*841
Approximately 1,300 feet upstream of the upstream County boundary	*841
Tar Creek:	
At the confluence with Whitewater Creek	*846
Approximately 0.66 mile upstream of Rivers Road	*926
Sandy Creek:	
At the confluence with Whitewater Creek	*808
Approximately 150 feet upstream of Adams Road	*882
Sandy Creek Tributary:	
At the confluence with Sandy Creek	*824
At a point approximately 0.33 mile upstream of the confluence with Sandy Creek	*824
Flat Creek:	
At a point approximately 0.53 mile upstream of Smoke Rise Terrace	*856
At a point approximately 0.24 mile downstream of Pendleton Trail	*910
Line Creek:	
Approximately 0.9 mile downstream of Rockaway Road	*746
Approximately 0.48 mile downstream of Rockaway Road	*750
Approximately 300 feet upstream of the confluence of Trickum Creek	*872
Approximately 500 feet upstream of Johnson Road	*894
Trickum Creek:	
Approximately 200 feet upstream of the confluence with Line Creek	*872
Approximately 200 feet upstream of County boundary	*919
Ginger Cake Creek:	
At the confluence with Whitewater Creek	*793
Approximately 0.44 mile upstream of Brogdon Road	*889
Perry Creek:	
At the confluence with Whitewater Creek	*780
At State Route 92 (Lee Street)	*876
Whitewater Creek:	
At a point approximately 350 feet downstream of State Route 85	*750
Approximately 500 feet downstream of confluence of Whitewater Creek Tributary	*873
South Camp Creek:	
At confluence with Whitewater Creek	*759
Approximately 0.73 mile upstream of the confluence with Whitewater Creek	*759
Maps available for inspection at the Fayette County Engineering Department, 140 Stonewall Avenue West, Fayetteville, Georgia.	
Fayetteville (city), Fayette County (FEMA Docket No. 7138)	
Ginger Cake Creek:	
At Lanier Avenue	*813
Approximately 50 feet downstream of Fayetteville Waterworks dam	*821
Perry Creek:	
At upstream side of State Route 92 (Lee Street)	*878
Approximately 100 feet upstream of State Route 92 (Lee Street)	*878
Maps available for inspection at the Fayetteville Engineering Department, 240 East Lanier Avenue, Fayetteville, Georgia.	
Peachtree City (city), Fayette County (FEMA Docket No. 7138)	
Flat Creek:	
Approximately 250 feet downstream of Lake Kedron Dam	*808
Approximately .53 mile upstream of Smoke Rise Terrace	*856
Gin Branch:	
At the confluence with Flat Creek	*841
Approximately 400 feet downstream of Peachtree Parkway	*841
South Camp Creek:	
Approximately 1,100 feet upstream of E.A. Brown Dam	*787
Approximately 100 feet upstream of Spear Road	*847
Maps available for inspection at the Peachtree City Engineering Department, 151 Willow Bend Road, Peachtree City, Georgia.	
Tyrone (town), Fayette County (FEMA Docket No. 7138)	
Trickum Creek:	
Approximately 1,300 feet upstream of the confluence with Line Creek	*876
Approximately 0.52 mile downstream of Kirkley Road	*895
Flat Creek:	
Approximately 0.40 mile upstream of Dogwood Trace	*878
Approximately 125 feet upstream of Swanson Drive	*927
Maps available for inspection at the Building Official's Office, 881 Senoia Road, Tyrone, Georgia.	
ILLINOIS	
Central City (village), Marion County (FEMA Docket No. 7130)	
Crooked Creek:	
Approximately 1,400 feet downstream of Illinois Central Railroad	*465
Approximately 2,700 feet upstream of new U.S. Route 51	*469
Maps available for inspection at the Village Hall, 141 North Harrison, Centralia, Illinois.	
MINNESOTA	
Alvarado (city), Marshall County (FEMA Docket No. 7140)	
Snake River:	
At downstream corporate limits (State Route 1)	*811
At upstream corporate limits (approximately 0.6 mile upstream of State Route 1)	*813
Maps available for inspection at the Alvarado City Hall, Marshall Street, Alvarado, Minnesota.	
PENNSYLVANIA	
German (township), Fayette County (FEMA Docket No. 7149)	
Monongahela Rive	
At confluence of ram Run	*789
At upstream corporate limits	*798
Maps available for inspection at the German Township Building, R.D. #1, Box 287, McClellandtown, Pennsylvania.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27659 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–129; RM–8673]

Radio Broadcasting Services; Colchester, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sharon K. Bryan, allots Channel 281A at Colchester, Illinois, as the community's first local aural transmission service. *See* 60 FR 40812, August 10, 1995. Channel 281A can be allotted to Colchester in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) northwest to avoid a short-spacing to the licensed site of Station WMOS(FM), Channel 280A, Quincy, Illinois. The coordinates for Channel 281A at Colchester are North Latitude 40–31–26 and West Longitude 90–51–08. With this action, this proceeding is terminated.

DATES: Effective December 18, 1995. The window period for filing applications will open on December 18, 1995 and close on January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–129, adopted October 23, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Colchester, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27575 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 110195A]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for Pacific cod in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 7, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Central Regulatory Area of the GOA was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 41,085 metric tons (mt). The directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory

Area of the GOA was closed under § 672.20(c)(2)(ii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 53714, October 17, 1995). NMFS has determined that as of October 21, 1995, 650 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for Pacific cod in the Central Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. All other closures remain in full force and effect.

This action opens the directed fishery for Pacific cod by vessels catching Pacific cod with jig or pot gear for processing by the inshore component in the Central Regulatory Area of the GOA. Directed fishing for groundfish with hook-and-line and trawl gear is currently prohibited (60 FR 26694, May 18, 1995; 60 FR 37600, July 21, 1995; 60 FR 54818, October 26, 1995).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27579 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 216
Wednesday, November 8, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401, 443, and 457

RIN 0563–AB43

General Crop Insurance Regulations, Various Endorsements; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby proposes to amend the General Crop Insurance Regulations, Hybrid Sorghum Seed and Rice Endorsements; the Hybrid Seed Crop Insurance Regulations; and the Common Crop Insurance Regulations, Small Grains, Cotton, Extra Long Staple Cotton, Sunflower Seed and Coarse Grains Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates after the effective date of this rule, by revising prevented planting coverage. The intended effect of this regulation is to expand prevented planting benefits available under the various policies being amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted by the close of business November 20, 1995 to be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to 2101 L Street, N.W., Suite 500, Washington D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis and Regulatory Flexibility Analysis to the General Crop Insurance Regulations; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations for prevented planting provisions, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for small grains is July 1, 1998; coarse grains, cotton, Extra Long Staple cotton and Sunflower Seed is March 1, 1999; Hybrid Seed is October 1, 1997; Hybrid Sorghum Seed is May 1, 2000; and Rice is August 29, 1998.

This rule has been determined to be "economically significant" for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget ("OMB").

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected Treasury costs of these changes are expected to range between $2.1 and $20.8 million. Added costs are due to higher reimbursements to reinsured companies and for premium subsidies for producers. The estimates assume the majority of farmers will decline the coverage for the substitute crop, opting instead for a reduced premium on the intended crop. Nationwide, premium rates will increase 6 to 7 percent for the added coverage. As examples of monetary impacts, this means average increases in the farmer paid premium of 20–25 cents per acre for wheat in the Northern Plains; 30 cents for corn in Iowa; and 60–90 cents per acre for upland cotton. However, the premium rate increases will not be uniform. Instead, the highest risk areas (such as lowlands along rivers and similar conditions) can expect greater increases in premium to cover the added risk. Producers who farm such lands are expected to be the primary group that will retain this added coverage and elect to pay the additional premium. The changes to the prevented planting rules are expected to provide farmers with added assistance in extreme weather conditions, but do so in a manner that maintains the actuarial integrity of the Federal crop insurance program.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations have been submitted to OMB for their approval under section 3507(d) of the Paperwork Reduction Act of 1995. These requirements were previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms cleared under the above-referenced docket.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Hybrid Seed Crop Insurance Regulations and Common Crop Insurance Regulations." The information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically transmitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting insurance options that apply to specific crops or specific areas in which a crop is produced. Potential respondents to this information collection are growers of crops that are eligible for Federal Crop Insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine the correct parties to the agreement, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,750,015 respondents. The total annual burden on the public for this

information collection is 2,668,750 hours. The total annual burden has increased from the 1995 requirements to reflect the paperwork burden on the reinsured companies.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C 20503 and to Bonnie Hart, Information Management Branch, Consolidated Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

The amount of work required of the insurance companies and CFSA offices delivering the policies and the procedures therein may increase significantly from the amount of work currently required to deliver previous policies to which this regulation applies. Therefore, this action has been reviewed under the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and a Regulatory Flexibility Analysis is available to interested persons at the address listed above.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. No. 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Current regulations do not allow an insured producer to obtain a prevented planting guarantee for one crop and plant a substitute crop intended for harvest in the same crop year on the same land. By this rule, an insured who purchases limited or additional coverage beginning with the 1996 crop year for spring crops with contract change dates after the effective date of this rule, will be eligible to: (1) receive a prevented planting guarantee equal to 25 percent of the guarantee for timely planted acreage (20 percent for hybrid seed and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop and, as applicable, a 0/92 or 50/92 program benefit; (2) exclude eligibility for prevented planting coverage when a substitute crop is planted in return for a reduction in the premium; and (3) receive prevented planting coverage on double cropped acreage (except for ELS cotton) if the producer can provide proof that planting of a second crop (double crop) following the harvest of an initial crop in the same crop year is a farming practice normally followed by that producer. By this rule, the prevented planting provisions also: (1) allow all insured producers to receive a 0/92 or 50/92 program benefit, as applicable, and a crop insurance prevented planting guarantee equal to 50 percent of the guarantee for timely planted acreage (40 percent for hybrid seed and 35 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is not planted to a substitute crop; (2) eliminate the provisions that require acreage eligible for a prevented planting guarantee to be prorated to all units that could have been planted in the crop year; (3) change the date that notice of loss is required, from 3 days after the final planting date or the date the producer discovers that planting will not be possible within the late planting period, to the acreage reporting date; and (4) allow prevented planted acreage planted with a conserving use cover crop to be hayed and grazed without limitation.

This rule defines prevented planting as "Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting." This definition was designed to accommodate extremely varied production areas and farming practices; including those in which growers do not plant after the final planting date and those in which growers often do plant a crop within the late planting period. Some farming areas have relatively short growing seasons which make the prospect of a successful crop doubtful if planted much beyond the final planting date. Other areas have much longer growing seasons and often allow a successful crop to be grown even if planted well after the final planting date. In both long and short growing areas some farming practices, such as the production of silage, allow a grower to plant after the final planting date and still produce an acceptable crop. FCIC is specifically requesting comments and recommendations regarding this definition.

List of Subjects

7 CFR Part 401

Crop insurance, Hybrid sorghum seed, Rice.

7 CFR Part 443

Crop insurance, hybrid seed.

7 CFR Part 457

Crop insurance, small grains, cotton, ELS cotton, sunflower seed and coarse grains.

Proposed Rule

In this document, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the General Crop Insurance Regulations (7 CFR part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Policy (7 CFR 443.7(d)); and the Common Crop Insurance Regulations (7 CFR part 457) by amending the Small Grains (§ 457.101), Cotton (§ 457.104), Extra Long Staple Cotton (§ 457.105), Sunflower Seed (§ 457.108), and Coarse Grains (§ 457.113) Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates after the effective date of the final rule. Accordingly, 7 CFR parts 401, 443, and 457 are proposed to be amended as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

2. Section 401.109 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) of the Hybrid Sorghum Seed Endorsement to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 13(o)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be fifty percent (50%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 100 dollars per acre (200 dollars multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 8b through e; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the amount of insurance for such acreage will be twenty-five percent (25%) of the amount of insurance for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 50 dollars per acre (200 dollars multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based may be required.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid sorghum seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid sorghum seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop for previous years for which you have continuous records of planted acreage.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you

were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

§ 401.109 [Amended]

3. Section 401.109 is amended by revising paragraph 13(o) to read as follows:

* * * * *

13. Meaning of Terms

* * * * *

(o) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

4. Section 401.120 is amended by revising paragraphs 10(a)(3), 10(b), and 10(d) of the Rice Endorsement to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 10(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting rice (see subsection 11(h)), you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 10(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 700 pounds per acre (2000 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 7 b and c; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 350 pounds per acre (2000 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for rice in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a rice crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the rice coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to rice during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to rice during the crop years that you certified to determine your yield.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received.

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres of rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

5. Section 401.120 is amended by revising paragraph 11(h) to read as follows:

* * * * *

11. Meaning of Terms

* * * * *

(h) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

PART 443—[AMENDED]

6. The authority citation for 7 CFR part 443 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

7. Section 443.7(d) is amended by revising paragraphs 17(a)(3), 17(b), and 17(d) of the Hybrid Seed Crop Insurance Policy to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

17. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Forty percent (0.40) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty percent (0.20) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 17(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting the insured crop (see subsection 18(w)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 17(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be forty percent (40%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 80 dollars per acre (200 dollars multiplied by 0.40). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsection 9e.; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the amount of insurance for such acreage will be twenty percent (20%) of the amount of insurance for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 40 dollars per acre (200 dollars multiplied by 0.20). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage.

All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based may be required.

(3) In addition to the provisions of section 7 (Insurance Period), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. if the hybrid seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop for previous years for which you have continuous records of planted acreage.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (acreage that is less than 20 acres or 20 percent (20%) of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted on the adjoining acreage, unless you can show that you had the inputs available to plant and produce another insured crop on the acreage before the final planting date);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for such acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four crop years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on such acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section; or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) Insured under the Catastrophic Risk Protection Endorsement if you:

(1) Have already received a prevented planting indemnity, guarantee or amount of insurance for such acreage in the same crop year, even if the acreage has a history of double-cropping; or

(2) Plant any other crop on the acreage for harvest, haying or grazing in the same crop year (other than a cover crop as specified in paragraph (a)(3)(i) of this section), even if such crop fails;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, Type and Practice), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

8. Section 443.7(d) is amended by revising paragraph 18(w) to read as follows:

* * * * *

18. Meaning of Terms

* * * * *

(w) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

PART 457—[AMENDED]

9. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

10. Section 457.101 is amended by revising paragraph 1(p) of the Small Grains Crop Provisions to read as follows:

§ 457.101 Small Grains Crop Insurance.

* * * * *

1. Definitions

* * * * *

(p) *Prevented planting*—Inability to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

11. Section 457.101 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(p)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designate a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be twenty-five percent (25%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for wheat for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the wheat coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop that are timely planted and late planted, if the late planting period is applicable. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60

acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

12. Section 457.104 is amended by revising paragraph 1(n) of the Cotton Crop Provisions to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

13. Section 457.104 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting cotton (see subsection 1(n)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 245 pounds per acre (700 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11 (c) and (d); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the cotton crop in the county. If the cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed to another crop, if applicable;

(B) The number of acres planted to cotton during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. if you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverege, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

14. Section 457.105 is amended by revising paragraph 1(l) of the ELS Cotton Crop Provisions to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

15. Section 457.105 is amended by revising paragraphs 12(a)(2) and 12(b) through (h) to read as follows:

* * * * *

12. Prevented Planting

(a) * * *

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 12(b)(2))).

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subsection 1(l)), you may elect:

(1) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the final planting date. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be 210 pounds per acre (600 pounds multiplied by 0.35). If you elect to plant the insured crop after the final planting date, production to count for such acreage will be determined in accordance with subsections 11(c) through (f); or

(2) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(c) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(d) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(1) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(2) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase an ELS cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the ELS cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(e) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(f) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(1) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(2) If you do not participate in any program administered by the United States

Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(i) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(ii) The number of acres planted to ELS cotton during the previous crop year; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that you certified to determine your yield.

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(4) Prevented planting coverage will not be provided for any acreage:

(i) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(ii) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(iii) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(iv) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year;

(v) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year;

(vi) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(vii) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(5) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(g) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(h) Late planting provisions are not available under these crop provisions.

16. Section 457.108 is amended by revising paragraph 1(l) of the Sunflower Seed Crop Provisions to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

17. Section 457.108 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting sunflowers (see subsection 1(l)), you may elect:

(i) To plant sunflower seed during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 450 pounds per acre (900 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be twenty-five percent (25%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 225 pounds per acre (900 pounds multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a sunflower seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the sunflower seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to sunflower seed during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to sunflower seed during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sunflower acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sunflower seed on one optional unit and 40 acres of sunflower seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

18. Section 457.113 is amended by revising paragraph 1(n) of the Coarse Grains Crop Insurance Provisions to read as follows:

§ 457.113 Coarse Grains Crop Insurance Provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

19. Section 457.113 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(n)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For

example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (g); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be twenty-five percent (25%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for corn for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for corn in the county. If the corn coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero [i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero].

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

Done in Washington, D.C., November 3, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–27711 Filed 11–3–95; 4:27 pm]

BILLING CODE 3410-FA-P

FEDERAL ELECTION COMMISSION

11 CFR Part 9002

[Notice 1995–17]

Electoral College Expenditures

AGENCY: Federal Election Commission.

ACTION: Notice of Disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on November 18, 1994, by Anthony F. Essaye and William Josephson. The petition addressed treatment of a presidential candidate's receipts or disbursements regarding the Electoral College process and the process of electing the President and Vice President by the United States House of Representatives. The Commission has decided not to initiate a rulemaking on this topic at this time.

DATES: November 8, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On November 18, Anthony F. Essaye and William Josephson filed a petition for rulemaking seeking to clarify whether a presidential candidate's receipts or disbursements regarding the Electoral College process and the process of electing the President and Vice President by the United States House of Representatives are governed by the Federal Election Campaign Act ["FECA"], 2 U.S.C. 431 *et seq.*, or the Presidential Election Campaign Fund Act ["the Fund Act"], 26 U.S.C. 9001 *et seq.* The particular question raised was whether such disbursements count against publicly funded presidential candidates' general election expenditure limits established at 2 U.S.C. 441a(b)(1) and (c).

The Commission published a Notice of Availability ["NOA"] on Dec. 8, 1994. 59 F.R. 63274. The Commission received comments from the Internal Revenue Service and the Republican National Committee in response to the NOA.

The NOA stated that the Commission might incorporate the issues addressed in the rulemaking petition into a larger, then-ongoing rulemaking regarding the public funding of presidential primary and general election campaigns. However, the Commission subsequently decided to address these issues in a separate rulemaking document. 60 F.R. 31854 (June 16, 1995).

One commenter argued that the Commission does not have jurisdiction over the Electoral College and, therefore, neither the FECA nor the Fund Act applies to these expenditures. However, the Commission has the authority, and responsibility, to oversee a publicly funded candidate's qualified campaign expenses. This includes the responsibility to insure that any expenditures made to further a candidate's campaign for election, including those made in connection with the meeting of the Electoral College, are properly categorized and reported.

Commission regulations at 11 CFR 100.2(a) define "election" as "the process by which individuals . . . seek nomination for election, or election, to Federal office." Under U.S. Const. art. II, sec. 1 and amend. XII, the meeting of the Electoral College, as well as any subsequent action by the House of Representatives that might become necessary to decide a presidential election, are part of that process. Similarly, under the Fund Act "qualified campaign expense" is defined for purposes of the general election as any expenditure "[i]ncurred by the candidate of a political party for the office of President to further his election to such office." 26 U.S.C. 9002(11)(A), 11 CFR 9002.11(a). The Commission believes that many expenditures incurred in connection with the meeting of the Electoral College and/or subsequent action by the House of Representatives fall within these definitions.

The petition cites the exclusions from the definitions of "contribution" and "expenditure" at 11 CFR 100.7(b)(20) and 100.8(b)(20) of those disbursements made in connection with election contests and recounts as one basis for treating Electoral College expenses as outside the scope of both the FECA and the Fund Act. However, these exemptions refer to election contests and recounts, i.e., procedures that may be necessary to determine which candidate received the greatest number of votes in that state, not to Electoral College activity.

The petition also argues that, since the Electoral College always meets more than 30 days after the November general election, the end of the general election "expenditure report period" established at 26 U.S.C. 9002(12), the Fund Act does not apply to expenses incurred in connection with the Electoral College vote. The Electoral College meets on the first Monday after the second Wednesday in December, 3 U.S.C. 7; while the November general election is held on the Tuesday after the first Monday in November, 3 U.S.C. 1.

In response to this argument, the Commission notes that in most instances a strategy for dealing with Electoral College concerns will likely be developed well before the general election, if it appears a close contest is in the offing, and almost certainly before the end of the expenditure report period. The Commission believes that many of these expenses may appropriately be considered qualified campaign expenses for purposes of the Fund Act.

Also, the fact that an expense occurs more than 30 days after the November general election does not in and of itself mean that it is not covered by the Fund Act. For example, the Commission's regulations at 11 CFR 9004.4(a)(4)(i) permit a candidate to make disbursements for the purpose of defraying winding down costs for a potentially lengthy period after the general election.

On the other hand, the Commission recognizes that a potentially close Electoral College vote and/or subsequent action by the House of Representatives may generate unanticipated expenses at a time when campaigns will likely have already spent or budgeted nearly all of their available general election funds.

This situation has not arisen since the enactment of the FECA and the Fund Act. It is difficult to anticipate all the potential issues that should be addressed in a rulemaking of this nature. The Commission believes the better approach is to deal with these issues on a case by case basis when and if they arise, rather than trying to promulgate general rules that may or may not prove appropriate in dealing with particular circumstances. Therefore, at its open meeting of November 2, 1995, the Commission voted not to initiate a rulemaking at this time on treatment of a presidential candidate's receipts or disbursements regarding the Electoral College process and the process of electing the President and Vice President by the United States House of Representatives.

Dated: November 3, 1995.

Lee Ann Elliott,

Vice Chairman.

[FR Doc. 95–27640 Filed 11–7–95; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–3]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to EPA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the

public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petitions or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received January 8, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on November 2, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 28301.
Petitioner: Mr. David W. Galvin.
Regulations Affected: 14 CFR 135.293(a) (6) and (7).
Description of Rulechonge Sought: To amend the requirements for initial and recurrent pilot testing in the area of meteorological knowledge, including procedures for recognizing and avoiding severe weather situations.
Petitioner's Reason for the Request: The petitioner feels that subject testing would be better directed based on exact cause information stemming from recent tests concerning data recovered from weather-related accidents.

Docket No.: 28347.
Petitioner: King Schools, Inc.
Sections of the FAR Affected: 14 CFR SFAR 51–1.
Description of Rulechange Sought: To permit turbojet aircraft to operate under visual flight rules in the Los Angeles Special Flight Rules Area.
Petitioner's Reason for the Request: The petitioner feels that such an amendment would result in enhanced safety and reduced cost for turbojet operators, reduce pollution, and conserve resources.

[FR Doc. 95–27703 Filed 11–7–95; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–NM–89–AD]

Airworthiness Directives; Airbus Model A320–231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–231 series airplanes. This proposal would require modification of the fire wall of each engine. This proposal is prompted by a report of a fire in the engine of an in-service airplane due to the fire wall being improperly sealed during production. The actions specified by the proposed AD are intended to prevent propagation of a fire through a gap (opening) in the fire wall in the event of an engine fire, as a result of improperly sealed fire wall.

DATES: Comments must be received by December 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589, fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–89–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–231 series airplanes. The DGAC advises that it has received a report of a fire in the engine of an in-service airplane. Investigation revealed that, during production, the fire wall was improperly sealed, which resulted in a gap (opening) in the fire wall. This condition, if not corrected, could result in propagation of a fire through the fire wall in the event of an engine fire.

Airbus has issued A320–78–1009, dated October 14, 1993, which describes procedures for modification of the fire wall of each engine. The modification entails installation of a seal assembly (consisting of a bracket and bulb seal)

on the end of the pylon heat shield. This modification will seal the gap (opening) in the fire wall between the areas in zone 1 and zone 2, thus creating a fire barrier for both engines. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 94–167–057 (B), dated July 20, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the fire wall of each engine. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,960, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–89–AD.

Applicability: Model A320–231 series airplanes on which Airbus Modification 23929 (reference Airbus Service Bulletin A320–78–1009) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent propagation of a fire through a gap (opening) in the fire wall as a result of an improperly sealed fire wall in the event of an engine fire, accomplish the following:

(a) Within 9 months after the effective date of this AD, modify the fire wall of each engine in accordance with Airbus Service Bulletin A320–78–1009, dated October 13, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27647 Filed 11–7–95; 8:45 am]
BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–66–AD]

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that currently requires inspections to detect cracks in the area of the shock absorber attachment at the top of the barrel at the main landing gear (MLG), a measurement of the gap between the barrel and the shock absorber attachment; and corrective action, if necessary. That AD was prompted by a report of the rupture of the aft hinge arm of the left MLG barrel. This action would require a measurement of the gap between the washer and barrel of the MLG, eddy current inspections to detect cracking of the MLG barrel, correction of any discrepancy, and accomplishment

of certain other follow-on actions. Terminating actions would also be provided by this proposal. The actions specified by the proposed AD are intended to prevent collapse of the MLG.

DATES: Comments must be received by December 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; and Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–66–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 3, 1991, the FAA issued AD 91–22–52, amendment 39–8119 (57 FR 5372, February 14, 1992), applicable to all Airbus Model A310 series airplanes. That AD requires repetitive inspections of the main landing gear (MLG) to detect cracks in the area of the shock absorber attachment at the top of the barrel, and repair, if necessary; and a measurement of the gap between the barrel and the shock absorber attachment, and corrective action, if necessary. That action was prompted by a report of the rupture of the aft hinge arm of the left MLG barrel. The requirements of that AD are intended to prevent the collapse of the MLG.

Description of New Service Information

Since the issuance of that AD, Messier Bugatti has issued Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994. This service bulletin describes procedures for:

1. Performing a measurement of the gap between the washer and barrel of the MLG;
2. Coating the MLG barrel and shock absorber connecting rod nut with a rubber sealant, for certain airplanes;
3. Performing a gap recovery procedure, and visual inspections to detect cracks of the MLG barrel, if the gap is equal to or greater than 1 mm (0.04 in.);
4. Replacing the barrel with a modified barrel, if any crack is detected, which eliminates the need for further inspections;
5. Removing the rubber sealant;
6. Performing an eddy current inspection to detect cracks of the MLG barrel; and
7. Performing repetitive gap measurements, repetitive eddy current and visual inspections; or installing a new bushing and replacement of the bronze washer, if no cracks are detected following accomplishment of the eddy current inspection, which terminates the need for repetitive inspections.

Accomplishment of the installation of a new bushing and replacement of the bronze washer, or the replacement of the barrel with a modified barrel will positively address the unsafe condition identified as the collapse of the MLG.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, as mandatory and issued French airworthiness directive (CN) 91–234–127(B)R2, dated December 22, 1993, in order to assure the continued airworthiness of these airplanes in France.

Description of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91–22–52 to completely revise the required actions.

Paragraph (a) of the proposed AD would require a measurement of the gap between the washer and barrel of the main landing gear (MLG).

Paragraph (b) of the proposed AD specifies actions that would be required if the gap measurement is within certain limits. These actions entail either no action, for certain airplanes; or coating the MLG barrel and shock absorber connecting rod nut with a rubber sealant, for other airplanes.

Paragraph (c) of the proposed AD specifies actions that would be required if the gap measurement is outside of certain limits. These actions entail performing a gap recovery procedure and conducting repetitive visual inspections to detect cracks of the MLG barrel.

Paragraph (d) of the proposed AD would require eddy current inspections to detect cracking of the MLG barrel. If no cracking is detected, operators would be required to perform various follow-on actions, which include repetitive gap measurements, eddy current inspections, and visual inspections; installation of a new bushing and replacement of the bronze washer with a stainless steel washer would terminate these actions. If cracking is detected, the barrel would be required to be replaced with a modified barrel, which would terminate any further action required by the AD.

The proposed actions would be required to be accomplished in accordance with the Messier Bugatti Airbus A310 service bulletin described previously.

Differences Between the Proposed AD and Referenced Service Bulletin

The FAA has determined that installation of a new bushing on crack-free barrel having no oxidation of the cadmium plating may not ensure that the cadmium plating would not degrade and allow stress corrosion to occur. Table No. 3 of the referenced Messier Bugatti Airbus A310 service bulletin recommends that these new bushing be installed at the next overhaul. However, the FAA finds that, since overhaul schedules vary from operator to operator, the next overhaul for some operators may not occur for several years. Therefore, operators should note that the requirements of paragraph (d) of the proposed AD would differ from the recommendation of the service bulletin in that, in lieu of that bushing installation, it would require either repetitive gap measurements and eddy current inspections at intervals not to exceed 2 years, or installation of a new bushing and replacement of the bronze washer at the upper part of the MLG barrel with a stainless steel washer (which would terminate further inspections).

Economic Impact

The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD.

To accomplish the proposed gap measurements, visual inspections, and other follow-on actions would require approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of these proposed actions on U.S. operators is estimated to be $5,400, or $300 per airplane, per cycle.

To accomplish the proposed eddy current inspections would requireapproximately 8 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of these proposed inspections on U.S. operators is estimated to be $8,640, or $480 per airplane, per inspection cycle.

Based on the figures discussed above, the total cost impact of this AD on U.S. operators is estimated to be $14,040, or $780 per airplane, per cycle. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8119 (57 FR 5372, February 14, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 95–NM–66–AD. Supersedes AD 91–22–52, Amendment 39–8119.

Applicability: Model A310 series airplanes on which Airbus Modification 1033 (reference Airbus Service Bulletin A310–32–2066, Revision 1, dated January 30, 1992) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the main landing gear (MLG), accomplish the following:

(a) Perform a measurement of the gap between the washer and barrel at the times specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994.

(1) For airplanes equipped with MLG barrels applicable to Table No. 1 of the service bulletin: Perform the measurement within 8 days after the effective date of this AD.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Perform the measurement within 3 months after the effective date of this AD.

(b) If the gap measurement is less than 1 mm (0.04 in.): Accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes equipped with MLG barrels applicable to Table No. 1 of the service bulletin: No further action is required by this paragraph for those airplanes.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Prior to further flight, coat the MLG barrel and shock absorber connecting rod nut with a rubber sealant in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994.

(c) If the gap is equal to or greater than 1 mm (0.04 in.): Accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994.

(1) For all airplanes: Within 15 days after accomplishing the measurement required by paragraph (a) of this AD, perform a gap recovery procedure in accordance with paragraph 2.B.(5) of the Accomplishment Instructions of the service bulletin.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Prior to further flight after accomplishing the gap recovery procedure required by paragraph (c)(1) of this AD, coat the MLG barrel and connecting rod nut with a rubber sealant in accordance with the service bulletin.

(3) For all airplanes: Within 15 days after accomplishing the measurement required by paragraph (a) of this AD, perform a visual inspection to detect cracks of the MLG barrel, in accordance with paragraph 2.B.1 of the Accomplishment Instructions of the service bulletin.

(i) If no crack is detected: Repeat the visual inspection thereafter at intervals not to exceed 7 days until the eddy current inspection required by paragraph (d) of this AD is accomplished.

(ii) If any crack is detected: Prior to further flight, replace the MLG barrel with a barrel that has been modified in accordance with Messier Bugatti Service Bulletin 470–32–640, dated July 11, 1988, and Messier Bugatti Service Bulletin 470–32–763, dated February 28, 1994. Accomplishment of this replacement shall be done in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994. After accomplishment of this replacement, no further action is required by this AD.

(d) Except as provided by paragraph (c)(3)(ii) of this AD (MLG barrel replacement): Following accomplishment of either paragraph (b) or (c) of this AD, and at the applicable times specified in Table No. 1 and Table No. 2 of Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994, remove the rubber sealant and perform an eddy current inspection to detect cracks of the MLG barrel in accordance with Table No. 3 of that service bulletin.

(1) If no crack is detected: At the times specified in Table No. 3 of the service bulletin, perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include repetitive gap measurements, repetitive eddy current and visual inspections, installation of a new bushing, and replacement of the bronze washer with a stainless steel washer.)

(i) However, in lieu of installing a new bushing on crack-free barrels having no oxidation of the cadmium plating at the next overhaul, as specified in the service bulletin, operators must either repeat the gap measurement and eddy current inspection at intervals not to exceed 2 years, or install a new bushing and replace the bronze washer at the upper part of the MLG barrel with a stainless steel washer, in accordance with the service bulletin.

(ii) After accomplishment of the installation of a new bushing (reference Messier Bugatti Service Bulletin 470–32–640) and the replacement of the bronze washer (reference Messier Bugatti Service Bulletin 470–32–763), no further action is required by this AD.

(2) If any crack is detected: Prior to further flight, replace the barrel with a barrel that has been modified in accordance with Messier Bugatti Service Bulletin 470–32–640, dated July 11, 1988, and Messier Bugatti Service Bulletin 470–32–763, dated February 28, 1994. Accomplishment of this replacement shall be done in accordance with the Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994. After accomplishment of this replacement, no further action is required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27648 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–79–AD]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require repetitive operational tests of the valve limit switch of the propeller brake. This proposal also provides for an optional terminating action for the repetitive tests. This proposal is prompted by a report that when the propeller brake was not properly engaged the crew did not receive a "PROP BRAKE" warning due to a faulty valve limit switch. The actions specified by the proposed AD are intended to prevent a valve limit switch from failing to send input to the warning system; absence of a "PROP BRAKE" warning could result in the crew being unaware that the propeller brake is not properly engaged and the propeller may turn without warning.

DATES: Comments must be received by December 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it has received a report indicating that the flightcrew of one airplane did not receive a "PROP BRAKE" warning when the propeller brake was not properly engaged. The "PROP BRAKE" warning indicates that there is insufficient [below 2,350 pounds per square inch (psi)] hydraulic pressure to engage the propeller brake. Investigation revealed that this failure was caused by a failure mode in the valve limit switch of the propeller brake system. If a valve limit switch is faulty, no input would be sent the warning system; this situation could result in the flightcrew being unaware that the propeller brake is not properly engaged and the propeller may turn without warning.

Saab has issued Service Bulletin SAAB 340–61–032, Revision 1, dated June 30, 1995, which describes procedures for repetitive operational tests of the valve limit switch of the propeller brake. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–064, Revision 1, effective date March 24, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

Saab has also issued Service Bulletin SAAB 340–61–033, dated March 6, 1995, which describes procedures for replacement of the propeller brake control unit having part number (P/N) HP1410100–3, –5, or –7 with a new propeller brake control unit having P/N HP1410100–10, and an operational test. Accomplishment of this replacement eliminates the need for the repetitive operational tests. The new propeller brake control unit has an improved low pressure valve limit switch installed in it to ensure that its inputs are received by the warning system. The LFV approved the technical content of this service bulletin.

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive operational tests of the valve limit switch of the propeller brake. The proposed AD also provides for the optional replacement of certain propeller brake control units with a new unit, which would constitute terminating action for the repetitive test requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed operational tests, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the actions that would be required by this AD on U.S. operators is estimated to be $1,380, or $60 per airplane, per test cycle. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 95–NM–79–AD.

Applicability: Model SAAB SF340A series airplanes, having serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, having serial numbers 160 through 369 inclusive; on which the propeller brake system is connected; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a valve limit switch from failing to send input to the "PROP BRAKE" warning system, which could result in the crew being

unaware that the propeller brake is not properly engaged and the propeller may turn without warning, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, perform an operational test of the valve limit switch of the propeller brake in accordance with Saab Service Bulletin SAAB 340–61–032, Revision 1, dated June 30, 1995. Repeat the test thereafter at intervals not to exceed 100 flight hours.

(b) Replacement of a propeller brake control unit having part number (P/N) HP1410100–3, –5, or –7 with a new propeller brake control unit having P/N HP1410100–10, and performance of an operational test, in accordance with SAAB Service Bulletin SAAB 340–61–033, dated March 6, 1995. constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a propeller brake control unit having P/N HP1410100–3; or any unit having P/N HP1410100–5 or –7 unless that unit has been modified in accordance with SAAB Service Bulletin SAAB 340–61–033, dated March 6, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27646 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–37]

Proposed Amendment of Class E Airspace; Alturas, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Alturas, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Alturas Municipal Airport, Alturas, CA.

DATES: Comments must be received on or before December 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–37, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–37." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Alturas, CA. The development of a GPS SIAP at Alturas Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 31 SIAP at Alturas Municipal Airport, Alturas, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

AWP CA E5 Alturas, CA [Revised]

Alturas Municipal Airport, CA
(Lat. 41°28'59" N, long. 120°33'55" W)

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34'00" N, long. 120°46'24" W; to lat. 41°36'50" N, long. 120°30'19" W; to late.41°14'20" N, long. 120°23'49"W; to lat. 41°11'35" N, long. 120°39'34" W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface beginning at lat. 41°22'10" N, long. 120°58'04" W; to lat. 41°28'13" N, long. 120°44'38" W; to lat. 41°19'03" N, long. 120°41'50" W; to lat. 41°15'00" N, long. 120°51'04" W, thence along the east edge of V–452 to the point of beginning and that airspace beginning at lat. 41°33'17" N, long. 120°29'19" W; to lat. 41°34'30" N, long. 120°20'04" W; to lat. 41°25'50" N, long. 120°18'34" W; to lat. 41°24'46" N, long. 120°26'46" W, thence to the point of beginning and that airspace beginning at lat. 41°22'30" N, long. 120°58'00" W; to lat. 41°41'00" N, long. 120°41'00" W, to lat. 41°41'00" N, long. 120°21'00" W; to lat. 41°14'00" N, long. 120°16'00" W; to lat. 41°02'00" N, long. 120°38'30" W, thence to the point of beginning.

Issued in Los Angeles, California, on October 27, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–27708 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–34]

Proposed Amendment of Class E Airspace; Winnemucca, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Winnemucca, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 14/32 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Winnemucca Municipal Airport, Winnemucca, NV.

DATES: Comments must be received on or before December 18, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–34, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AWP–34." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Winnemucca, NV. The development of a GPS SIAP at Winnemucca Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 14/32 SIAP at Winnemucca Municipal Airport, Winnemucca NV. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the

earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

AWP NV E5 Winnemucca, NV [Revised]

Winnemucca Municipal Airport, NV
(Lat. 40°53'47" N, long. 117°48'21" W)
Winnemucca NDB
(Lat. 40°57'48" N, long. 117°50'29" W)
Battle Mountain VORTAC
(Lat. 40°34'09" N, long. 116°55'17" W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Winnemucca Municipal Airport and within 7.8 miles northwest and 4.3 miles east of the Winnemucca NDB 342° and 162° bearings, extended from 4.3 miles south to 8.7 miles north of the NDB. That airspace extending upward from 1,200 feet above the surface within 4.3 miles northeast and 9.6 miles southwest of the Winnemucca NDB 342° and 162° bearings, extending from the southeast edge of V–113 to 9.6 miles southeast of the NDB and within 4.3 miles each of the 162° bearing from the Winnemucca NDB, extending from the 9.6 miles southeast of the NDB to the north edge of V–32 and within 4.3 miles each side of the Battle Mountain VORTAC 296° radial extending from 10.4 miles to 43.4 miles northwest of the Battle Mountain VORTAC and that airspace bounded by a line beginning at lat. 40°33'00" N, long. 117°52'00" W; to lat. 40°37'30" N, long. 117°47'00" W; to lat. 40°34'00" N, long. 117°46'00" W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 41°05'00" N, long. 118°12'30" W to lat. 41°10'00" N, long. 118°08'30" W, to let. 41°03'00" N, long. 118°06'00" W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 40°46'00" N, long. 117°39'00" W, to lat. 40°37'00" N, long. 117°35'00" W, to lat. 40°34'30" N, long. 117°34'30" W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on October 27, 1995.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 95–27709 Filed 11–07–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM95–16–000]

Regulations for the Relicensing of Hydroelectric Projects

October 31, 1995.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Petition for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is issuing notification that, on July 10, 1995, the National Hydropower Association filed a petition for rulemaking that proposes revisions in the Commission's procedures for processing applications for new licenses (relicensing) of hydroelectric projects, the licenses for which are expiring. The Commission invites all interested persons to file comments on the petition as well as the potential applicability and usefulness in this proceeding of negotiated rulemaking procedures or other means of reaching consensual resolution of the issues presented by this filing.

DATES: Comments are due on or before January 5, 1996; reply comments are due on or before February 2, 1996.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, (202) 208–1269.

SUPPLEMENTARY INFORMATION: On July 10, 1995, the National Hydropower Association (NHA) filed a petition for rulemaking in the above-captioned docket. The petition proposes revisions in the Commission's procedures for processing applications for new licenses (relicensing) of hydroelectric projects, the licenses for which are expiring. NHA states that, in preparing the petition, it consulted extensively with the Hydropower Reform Coalition and numerous governmental and private entities.

The Commission invites all interested persons to file comments on the petition. The comments may address any and all substantive and procedural aspects of NHA's proposal. In addition, the Commission would welcome comment from NHA, the Hydropower Reform Coalition; governmental agencies, and all other interested persons with respect to the potential applicability to and usefulness in this proceeding of negotiated rulemaking procedures [1] or other means of reaching consensual resolution of the issues presented by this filing.[2]

Copies of NHA's petition are available for review in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments on the petition must be filed no later than January 5, 1996. Reply comments responsive to the initial comments may be filed no later than February 2, 1996. An original and 14 copies of comments should be filed with Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should refer to Docket No. RM95–16–000. For further information, contact Barry Smoler at (202) 208–1269.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27595 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* the Negotiated Rulemaking Act of 1900, 5 U.S.C. § 561 *et seq.*

[2] *See e.g.*, Advance Notice of Proposed Rulemaking, Standards for Business Practices of Interstate Natural Gas Pipelines, Docket No. RM96–1–000, 73 FERC ¶ 61,104 (October 25, 1995).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). Notice is also given of the location of the meeting. This meeting will be open to the public.

DATES: The meeting is scheduled for November 27–December 1, 1995. The meeting will begin at 1:30 p.m. on November 27th.

ADDRESSES: U.S. Department of Labor, DOL Academy, Room C–5320, Seminar Room 6, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) (59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking on Steel Erection. Appointees to the Committee include representatives from labor, industry, public interests and government agencies.

SENRAC began negotiations in mid June, 1994, and has met nine times since. Initial meetings dealt with procedural matters, including schedules, agendas and the establishment of workgroups. The Committee established workgroups to address issues on Fall Protection, Construction Specifications and Scope. During subsequent meetings, foundations for negotiations were established and additional workgroups were formed to address more specific issues and develop a draft revision of subpart R.

The Committee last met on June 27–29, 1995, where consensus was expected to be reached on a proposed revision of subpart R. The Committee did reach agreement on major issues and most of the elements of the draft revision, however, after much deliberation, they could not come to an agreement on fall protection. OSHA determined that since the Committee made significant progress on the fall protection issue and agreed to other very important improvements to the existing standard, it would allow the Committee to convene a workgroup to resolve the fall protection issue. On July 26, 1995, a workgroup met in Philadelphia and developed recommended fall protection requirements for steel erection. Also, on September 19–21, 1995, workgroups met to address Slippery Surfaces, Scope, Training and Site-Specific Erection Plans. These workgroup recommendations will be presented to the full SENRAC Committee at the November meeting where it is expected that consensus will be reached on the complete draft proposal and an agreement in principle will be signed by each member. OSHA will then complete the preamble and prepare the document in the proper **Federal Register** format for publication as a proposed rule.

All interested parties are invited to attend the Committee meetings at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Persons with disabilities, who need special accommodations, should contact the Facilitator by November 20, 1995. During the meeting, members of the general public may informally request permission to address the Committee.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 219–7894. Copies of these materials may be obtained by sending a written request to the Facilitator.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, N.W., Washington, D.C. 20037; telephone (202) 887–1033, FAX (202) 887–1036.

For an electronic copy of this **Federal Register** notice, contact the Labor News Bulletin Board, (202) 219–4784 (callers must pay any toll-call charges. 300, 1200, 2400, 9600 or 14,400 BAUD; Parity: None; Data Bits=8; Stop Bit=1 Voice phone (202) 219–8831); or OSHA's Webpage on Internet at http://www.osha.gov/ and http://www.osha-slc.gov/. For news releases, fact sheets, and other documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 2 day of November, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–27700 Filed 11–7–95; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL113–1–6760b; FRL–5324–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On May 5, 1995, and May 31, 1995, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for lithographic printing as part of the State's 15 percent (%) Rate of Progress Plan control measures for Volatile Organic Matter (VOM) emissions. The USEPA proposes to approve Illinois' request. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule

will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before December 8, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: October 11, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–27610 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NM–27–1–7208b; FRL–5322–7]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve a revision to the New Mexico State Implementation Plan (SIP) for the Albuquerque/Bernalillo County nonattainment area that contains transportation conformity rules. The transportation conformity SIP revision will enable the Albuquerque/Bernalillo County Air Quality Control Board to implement and enforce the Federal transportation conformity requirements at the local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The proposed approval is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revision submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate notice. The EPA is proposing to approve this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the proposed approval and other information are provided in the Final Rules Section of this **Federal Register**.

In the Final Rules Section of this **Federal Register**, the EPA is approving this transportation SIP revision as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by December 8, 1995.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

[FR Doc. 95–27683 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–56–1–7209b; FRL–5322–5]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve a revision to the Texas State Implementation Plan (SIP) that contains transportation conformity rules. The transportation conformity SIP revision will enable the State to implement and enforce the Federal transportation conformity requirements at the State level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The proposed approval is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revision submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate notice. The EPA is proposing to approve this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the proposed approval and other information are provided in the Final Rules Section of this **Federal Register**.

In the Final Rules Section of this **Federal Register**, the EPA is approving this transportation SIP revision as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by December 8, 1995.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1943.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

[FR Doc. 95–27681 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[TN–KNOX–95–01; FRL–5327–9]

Clean Air Act Proposed Full Approval, or in the Alternative, Proposed Interim Approval of Operating Permits Program: Knox County Department of Air Pollution Control, Knox County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval, or proposed interim approval in the alternative.

SUMMARY: The EPA proposes full approval of the operating permits program submitted by the Department of Air Pollution Control located in the geographic area of Knox County, Tennessee. Alternatively, EPA proposes to grant interim approval if specified changes are not adopted prior to final promulgation of this rulemaking. Knox County's program was submitted for the purpose of complying with Federal requirements which mandate that states and local agencies develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by December 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of the Knox County submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Title V Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4150.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act ("the Act") as amended by the 1990 Clean Air Act Amendments, EPA has promulgated rules on July 21, 1992 (57 FR 32250) which define the minimum elements of an approvable State/Local operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state or local agency operating permits programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that states or authorized local agencies develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that States or authorized local agencies develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within 1 year after receiving the submittal. If the State or local agency submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. Knox County provided EPA with additional materials in supplemental submittals dated August 24, 1994, January 6, 1995, January 19, 1995, February 6, 1995, May 23, 1995, and September 18 and 25, 1995. Because these supplements materially changed the County's submittal, EPA has extended the one-year review period.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permits program for that State or local agency.

II. Proposed Action and Implications

A. Analysis of Knox County's Submission

The Department of Air Pollution Control has requested full approval of its title V operating permits program, which covers the geographic area of Knox County within the State of Tennessee. EPA has concluded that the operating permits program submitted by the Tennessee Department of Environment and Conservation (TDEC) on behalf of the Knox County Department of Air Pollution Control ("Knox County" or "the County") meets the requirements of title V and part 70, and proposes to grant full/interim approval to the program. For detailed information on the analysis of the Knox County submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Program Support Materials

Pursuant to section 502(d) of the Act, each state or local agency must develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. On November 12, 1993, the TDEC requested, under the signature of the Tennessee Governor's designee, approval of the Knox County operating permit program with full authority to administer the program in all areas of the County. The County has

delegated authority to implement part 70 under Tennessee law (Tennessee Code Annotated (TCA), section 68–25–115). The TDEC supplemented the program submittal on August 24, 1994, January 6 and 19, 1995, February 6, 1995, and May 23, 1995.

The Knox County submittal addresses, in section II entitled "Complete Program Description," the requirements of 40 CFR 70.4(b)(1) by describing how the County intends to carry out its responsibilities under the part 70 regulations. EPA has deemed the program description to be sufficient for meeting the requirements of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), each state or local authority is required to submit a legal opinion from the Attorney General (or the attorney for the state or local air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of the title V operating permits program. The Knox County Law Director submitted a Legal Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms, and relevant guidance to assist in the County's implementation of its permit program. Section V of the Knox County submittal includes the permit application forms, permit forms, and relevant guidance that the County intends to use for the implementation of its permit program. EPA has determined that the application forms meet the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

Knox County developed section 25.70 of the Knox County Air Pollution Control (K.C.A.P.C.) Regulations for the implementation of the substantive requirements of 40 CFR part 70. The County also incorporated K.C.A.P.C. sections 25.8, 30.0, 35.3, and 49.0 to implement other part 70 requirements. These rules, and several other rules and statutes providing for the County's permitting and administrative actions, were submitted by Knox County with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

The Knox County program, in K.C.A.P.C. section 25.70.3, meets the requirements of 40 CFR 70.2 and 70.3 with regard to applicability. K.C.A.P.C. sections 25.70.4, 25.70.5, and 25.70.6, substantially meet the requirements of 40 CFR 70.4, 70.5, and 70.6 for permit content (including operational flexibility) and complete permit application forms. In addition, the County's program provides for off-permit changes as described in 40 CFR 70.4(b)(14) in K.C.A.P.C. section 20.70.15. However, K.C.A.P.C. sections 25.70.5(c)(7) and 25.70.7(e)(2) do not reference emissions trading as required by 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). As a condition of full approval, Knox County has committed to rectify this lack of flexibility on emissions trading procedures. In a letter dated September 25, 1995, the County has proposed to incorporate the following language in K.C.A.P.C. section 25.70.7(e)(2)(i)(B): "Notwithstanding paragraphs (e)(2)(i)(A) and (e)(3)(i) of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. The Department may establish additional requirements for such permit conditions."

Section 70.4(b)(2) requires States and local agencies to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state or local agency must request and EPA may approve as part of that state's or local agency's program any activities or emission levels that they wish to consider insignificant. Part 70, however, does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAP, as reasonable.

The regulations addressing the insignificant activities list of Knox County can be found in K.C.A.P.C. section 25.70.12. This section provides for the exemption of certain emissions units, or pollutant-emitting activities from the title V permitting process. As required by 40 CFR 70.5(c), the County included language in this section to ensure that information needed to determine the applicability of, or to impose any applicable requirement, or to collect any permit fees is not excluded from the application.

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define "prompt" for purposes of administrative efficiency and clarity, an acceptable alternative is to define "prompt" in each individual permit. EPA believes that "prompt" should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. Knox County has not defined "prompt" in its program with respect to the reporting of deviations. The contents of K.C.A.P.C. section 25.70.6(a)(3)(iii)(B) requires "prompt reporting of deviations from permit requirements . . .", but does not specify what will be considered as prompt reporting. In a letter dated September 25, 1995, Knox County. committed to include the following sentence in K.C.A.P.C. section 25.70.6(a)(3)(iii)(B): "The term "prompt", in relation to the degree and type of permit deviations likely to occur, will be defined within each permit according to an EPA approved protocol, such as the EPA/Local Implementation Agreement."

Knox County has the authority to issue variances from requirements imposed by State law under K.C.A.P.C. section 28.0. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of State law. EPA has no authority to approve provisions of state law, such as the variance provision referred to, that are inconsistent with title V. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

Knox County's program, in K.C.A.P.C. section 25.70.7, meets the permit processing requirements (including public participation and minor permit modifications) of 40 CFR 70.7. The permit review by EPA and affected States requirements of 40 CFR 70.8 are addressed in K.C.A.P.C. section 25.70.8.

In K.C.A.P.C. section 30.0, and in T.C.A. sections 68–210–112 and 68–210–116, the County substantially addresses the requirements of 40 CFR 70.11 with respect to enforcement authority. In response to the comments made by EPA during its substantial review of the County's program, on September 18, 1995, Knox County proposed revisions to the enforcement portion of its program submittal. Such changes are outline below.

In the area of civil penalty assessment, K.C.A.P.C. section 30.1(D) describes that the Director has the authority to assess civil penalties against any person. However, this item does not specify that the maximum fine shall be no less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3). Knox County has proposed a revision to K.C.A.P.C. section 30.1(D) to specify that the maximum fine shall be no less than $10,000 per day per violation.

Knox County does not have authority to restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare of the environment. The County has proposed to incorporate in section 30.1(G) the appropriate authority to satisfy the requirements of 40 C.F.R. 70.11(a)(1). Specifically, the provision will read as follows: "The Director has the authority to restrain or enjoin immediately and effectively any person, by order or by suit in court, from engaging in any activity in violation of a permit or the Knox County Air Pollution Control Regulations that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment."

The contents of K.C.A.P.C. section 30.1(F) give the Director in Knox County authority to "cause to be instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any regulation promulgated by the Board or any order duly issued by the Director . . .". It is not clear whether this can be done "without the necessity of a prior revocation of a permit" as required by 40 CFR 70.11(a)(2). As a condition of full approval, Knox County has committed to incorporate in section 30.1(F) the following statement: "Such actions may be taken by the Director without the necessity of a prior revocation of any permit."

EPA has determined that the proposed provisions submitted by Knox County on September 18 and 25, 1995, are acceptable. As condition of full approval, the County plans to expeditiously adopt the proposed change prior to EPA's final action on the County's program.

The aforementioned TSD contains the detailed analysis of the Knox County program and describes the manner in which the County's program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum."

Knox County will collect permit and emission-based fees that are projected at $29.26 per ton of pollutant in 1995. Fees will be adjusted annually by the Consumer Price Index beginning in 1996. The fee demonstration showed that the fees collected will adequately cover the anticipated costs of the operating permit program for the years 1995 through 1999.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation. In its program submittal, Knox County demonstrates adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in K.C.A.P.C. section 35.0, and in section 25.70.2 where the term "applicable requirements" is defined. EPA has determined that this legal authority is sufficient to allow the local agency to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Knox County is able to carry out all section 112 activities with respect to part 70 and non-part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states or local agencies time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Knox County must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing local regulations.

EPA is aware that Knox County lacks a program designed specifically to implement section 112(g). However, the County does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow the County to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these

measures into a Federally enforceable preconstruction permit. For this reason, EPA proposes to approve the use of Knox County's preconstruction review program found in K.C.A.P.C. section 25.1, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of local air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until local regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the County to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a state or local program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the County's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Knox County's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal rules as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Knox County has informed EPA that it intends to accept the delegation of future section 112 standards using the mechanism of adoption-by-reference. The details of the County's use of its delegation mechanism are set forth in a letter dated January 19, 1995, submitted by Knox County as a title V program addendum.

d. Commitment to Implement Title IV of the Act. Knox County adopted and incorporated by reference the provisions of 40 CFR part 72. On March 29, 1995, EPA published a **Federal Register** notice (60 FR 16127) notifying affected sources that the County's acid rain regulation was acceptable for purposes of administering an acid rain program and that the Knox County acid rain portion of the County's title V program has been established. Knox County has committed to incorporate by reference any new or revised provisions following promulgation by EPA.

B. Proposed Actions

1. Full Approval

The EPA is proposing full approval of the operating permits program submitted by Knox County on November 12, 1993, as supplemented on August 24, 1994, January 6 and 19, 1995, February 6, 1995, May 23, 1995, and September 18 and 25, 1995, if appropriate revisions to the County's program are adopted prior to final promulgation of this rulemaking. Knox County must make the following changes to receive full approval:

1. Knox County must revise the contents of K.C.A.P.C. section 25.70.7(e)(2)(i)(B) to provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). These requirements allow the permitting authority, if requested by permit applicants, to issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in permitted facilities.

2. Knox County must revise K.C.A.P.C. section 30.1(D) to specify that the maximum fine shall be no less than $10,000 per day per violation.

3. The County must revise K.C.A.P.C. section 30.1(G) to incorporate the requirements of 40 CFR 70.11(a)(1), with respect to the County's authority to restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare of the environment.

4. Knox County must revise K.C.A.P.C. section 30.1(F) to include the requirements of 40 CFR 70.11(a)(2) with respect to the authority "to seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of a permit."

EPA has determined that the Knox County program is otherwise adequate to meet the minimum elements of an approvable operating permits program as specified in 40 CFR part 70.

2. Interim Approval

Alternatively, EPA is proposing to grant interim approval under 40 CFR 70.4(d) to the Knox County operating permits program if the changes required for full approval, as described above, are not made prior to final promulgation of this rulemaking. EPA can grant interim approval because Knox County's program substantially meets the requirements of part 70 as discussed in section II(A) of this notice. The interim approval issues noted above will not prevent the County from issuing permits that are consistent with the part 70 program.

If EPA grants interim approval to the Knox County program, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Knox County would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for Knox County. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if Knox County fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If Knox County then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Knox County has corrected the deficiency by submitting a complete corrective program.

3. Other Actions

As discussed previously in section II.A.4.b., EPA proposes to approve Knox County's preconstruction review program found in K.C.A.P.C. section 25.1, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations.

In addition, as discussed in section II.A.4.c., EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to the County's program for receiving delegation of future section 112 standards and programs that are unchanged from Federal rules as promulgated. EPA also proposes to delegate all existing standards under 40 CFR parts 61 and 63 for both part 70 and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the Knox County submittal and other information relied upon for the proposed full/interim approval are contained in docket number TN–KNOX–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received December 8, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 31, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–27697 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[TN–CHAT–95–01; FRL–5328–1]

Clean Air Act Proposed Approval or, In the Alternative, Proposed Interim Approval of Operating Permits Program; Hamilton County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: EPA proposes full approval of the operating permit program submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Bureau ("CHCAPCB" or "the County") if certain changes are made prior to final EPA action on this program. Alternatively EPA proposes to grant interim approval if the necessary changes are not made. CHCAPCB's operating permit program was submitted for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources in the state.

DATES: Comments on this proposed action must be received in writing by December 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of CHCAPCB's submittal and other supporting information used in developing the proposed full/interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, third floor, 345 Courtland Street NE, Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Kelly Fortin, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act ("the Act") as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250) that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state and local operating permit programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires states to develop and submit these programs to EPA by November 15, 1993, and EPA to approve to disapprove each program within one year after receiving the submittal. If the state's submission is materially changed

during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials.

EPA reviews state operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Board substantially meets the requirements of title V and part 70, and proposes to grant interim approval to the program or, in the alternative, to grant full approval to the program if specified changes are made, as will be discussed below. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Act, each state must develop and submit to the Administrator an operating permit program under state or local law or under an interstate compact meeting the requirements of title V of the Act. On November 22, 1993, EPA received the title V operating permit program submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Board. The State of Tennessee Department of Environment and Conservation requested, under signature of the Tennessee Governor's designee, approval of the CHCAPCB's operating permit program. The State supplemented the program submittal, on behalf of the County, on January 23, 1995, February 24, 1995, and October 13, 1995.

The program submittal includes a legal opinion from independent legal council for the Chattanooga-Hamilton County Air Pollution Control Board demonstrating adequate legal authority for the implementation and enforcement of the local part 70 program. The program submittal contains a description of how the CHCAPCB intends to implement the program consistent with the requirements of the Clean Air Act Amendments of 1990 (42 U.S.C. 7401–7671q) and 40 CFR part 70. The program submittal also includes supporting documentation, such as evidence of the procedurally correct adoption of the permitting rules, permit application forms, and a detailed enforcement agreement with EPA. The submittal was determined to be administratively complete on January 24, 1995.

2. Regulations and Program Implementation

The Chattanooga-Hamilton County Air Pollution Control Board, operating under a certificate of exemption pursuant to Tennessee Code Annotated, Section 68–201–115, has authority to administer the operating permits program in all areas of Hamilton County, Tennessee, with the exception of Indian reservations and tribal lands. The CHCAPCB operating permits program is implemented and enforced through: (1) the Chattanooga Air Pollution Control Ordinance (within the incorporated municipality of the City of Chattanooga, Tennessee); (2) the Hamilton County Air Pollution Control regulation (in the unincorporated areas of Hamilton County, Tennessee); and (3) air pollution control ordinances prepared for and enacted in the incorporated municipalities of East Ridge, Red Bank, Soddy-Daisy, Signal Mountain, Lakesite, Walden, Collegedale, Lookout Mountain, and Ridgeside.

EPA has determined that the above regulations, constituting the Chattanooga-Hamilton County operating permits program, substantially meet the requirements of 40 CFR 70.2 and 70.3 for applicability; 40 CFR 70.4, 70.5, and 70.6 for permit content (including operational flexibility); 40 CFR 70.7 and 70.8 for permit processing requirements (including public participation and permit modifications); and 40 CFR 70.11 for requirements for enforcement authority. The CHCAPCB's operating permit program closely follows the federal part 70 regulations. The TSD contains a detailed analysis of CHCAPCB's program and references the sections of the applicable local regulations that meet the required elements of an approvable program under 40 CFR part 70.

Under part 70, a state must request approval of, and EPA may approve as part of that state or local program, any activities or emission levels that the state wishes to consider insignificant. Part 70, however, does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for hazardous air pollutants, as reasonable.

Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts.

Section 7(c)(11) of the Hamilton County Regulation (section 4–56.11 of the Chattanooga Code) lists certain units or activities that, due to de minimis emission levels, need not be included in a part 70 permit application. CHCAPCB believes that these activities generally have a potential to emit below 5 tons per year of criteria or regulated hazardous air pollutants without size or production rate limitations. Section 7(c)(12) of the Hamilton County Regulation (section 4–56.12 of the Chattanooga Code) lists activities that are deemed to be insignificant due to size and production rate and that must be listed in a part 70 permit application but need not have emissions related information reported. CHCAPCB believes these activities have a potential to emit of less that 5 tons per year of any criteria or regulated hazardous air pollutant. CHCAPCB's regulations specify that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required.

CHCAPCB specified that the listed insignificant activities are expected to have emissions below five tons per year of criteria and regulated hazardous air pollutants. As stated above, EPA has accepted emissions thresholds of the lesser of 1000 pounds per year or section 112(g) de minimis levels for hazardous air pollutants. In addition, while CHCAPCB specified the 5 ton per year threshold as the criteria used to develop the insignificant activities list, no emission thresholds were specified in the regulations. The submittal also did not include any information on the estimated level of emissions from activities, nor a demonstration that these activities are not likely to be subject to an applicable requirement.

EPA has reviewed CHCAPCB's significant activities lists and is concerned that several of the activities may conflict with applicable requirements and may not have emissions levels that are sufficiently below the applicability thresholds to assure that no unit potentially subject to an applicable requirement is left off a title V application, especially with respect to emissions of hazardous air pollutants. EPA has identified these activities of concern in the technical support document available in the docket for this rulemaking.

As a condition of full approval, CHCAPCB must remove, clarify, or limit the activities in question and/or document that they are not potentially subject to an applicable requirement. In revising the insignificant activities lists, CHCAPCB must consider emissions of all regulated air pollutants, not just criteria and hazardous air pollutants. In addition, CHCAPCB must establish emission threshold criteria that will not conflict with section 112(g) de minimis levels for hazardous air pollutants. As stated above, EPA has accepted emissions thresholds of the lesser of 1000 pounds per year or section 112(g) de minimis levels, as reasonable.

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the applicable requirements and type of deviation likely to occur. Although the permit program regulations should define "prompt" for purposes of administrative efficiency and clarity, an acceptable alternative is to define "prompt" in each individual permit. EPA believes that "prompt" should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. CHCAPCB has not defined "prompt" in its program, but rather intends to require the prompt reporting of deviations in the individual permits.

The Chattanooga-Hamilton County Air Pollution Control Board has the authority to issue variances from requirements imposed by local law. Section 4–21 of the Chattanooga ordinance, and the corresponding chapters of the Hamilton County and local municipalities' regulations, allow CHCAPCB discretion to grant relief from compliance with local requirements for up to one year. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of the local program.

EPA has no authority to approve provisions of local law, such as the variance provision referred to, that are inconsistent with title V. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum."

The Chattanooga-Hamilton County Air Pollution Control Board has elected to adopt a presumptive minimum fee of $29.32 per ton for each annual accounting period (adjusted by the CPI as required). The fee demonstration showed that the fees collected will adequately cover the anticipated costs of the operating permit program. The program activities that will constitute CHCAPCB's title V operating permit program are consistent with the activities described in 40 CFR 70.9(b)(1). Section 4–60 of the Chattanooga Code provides that an annual accounting of the operating permit program will be performed to ascertain whether the annual fees collected are sufficient to support the direct and indirect costs of the title V program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation. In its program submittal, Chattanooga-Hamilton County demonstrates adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in regulatory provisions defining "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. In addition, this definition includes language that clarifies that in the period after federal adoption, and before local adoption, the part 70 permit will specify that the source is subject to the cited federal standard. EPA is interpreting the above legal authority to mean that Chattanooga-Hamilton County is able to carry out all section 112 activities with respect to part 70. For further discussion, please refer to TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Chattanooga-Hamilton County must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the

Federal section 112(g) rule and adoption of implementing local regulations.

EPA is aware that Chattanooga-Hamilton County lacks a program designed specifically to implement section 112(g). However, Chattanooga-Hamilton County does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow the County to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Chattanooga-Hamilton County's preconstruction review programs found in Section 4–8 of the Chattanooga Code, and the corresponding sections of the Hamilton County and local municipalities' regulations, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state and local air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until local regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for Chattanooga, Hamilton County, and the affected municipalities to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(1)(5) requirements for approval of a state program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(1)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(1)(5) and 40 CFR 63.91, of Chattanooga-Hamilton County's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated and to delegate existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources. This program for delegation applies to both existing and future standards, and to part 70 and non-part 70 sources. CHCAPCB has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference. The details of the CHCAPCB's delegation mechanism is set forth in a letter to EPA, dated October 19, 1995, and is contained in the docket for this action

d. Commitment to Implement Title IV of the Act. On March 29, 1995, EPA published a **Federal Register** Notice (60 FR 16127) notifying affected sources that the CHCAPCB's acid rain program had been established and that CHCAPCB's regulations are acceptable for the purposes of administering an acid rain program. Chattanooga-Hamilton County has committed to incorporate by reference, following promulgation by EPA, any new or revised provision of 40 CFR part 72 or provisions implementing sections 407 and 410 of the Act.

B. Proposed Actions

1. Full Approval

The EPA proposes to fully approve the operating permits program submitted to the EPA by the State of Tennessee of behalf of the Chattanooga-Hamilton County Air Pollution Control Board on November 22, 1995, if certain changes are made to the program and submitted to EPA prior to EPA's final action on this proposal. As a condition of full approval, CHCAPCB must remove, clarify, or limit certain insignificant activities and/or document that they are not potentially subject to an applicable requirement. EPA has determined that the program is otherwise adequate to meet the minimum elements of a local operating permits program as specified in 40 CFR part 70.

2. Interim Approval

EPA is proposing to grant interim approval to the operating permits program under 40 CFR 70.4(d) if the changes required for full approval, as described above, are not made prior to final promulgation of this rulemaking. EPA can grant interim approval because CHCAPCB's permit program substantially meets the approval process and requirements of part 70, as discussed in section II(A) of this notice. The problems noted above will not prevent CHCAPCB for issuing permits that are consistent with part 70 on an interim basis.

If EPA grants interim approval to CHCAPCB, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Hamilton County would not be subject to sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal operating permit program for the County. Permits issued under a program with interim approval are fully effective with respect to part 70 and the three-year time period for processing the initial permit applications will begin upon the effective date of final interim approval.

Following the granting of final interim approval, if the Chattanooga-Hamilton County Air Pollution Control Board fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If the Chattanooga-Hamilton County Air Pollution Control Board then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the Chattanooga-Hamilton County Air Pollution Control Board has corrected the deficiency by submitting a complete corrective program.

3. Program for Straight Delegation of Section 112 Standards

As discussed previously in section II.A.4.b., EPA proposes to approve Chattanooga-Hamilton County's preconstruction review program, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations.

In addition, as discussed in section II.A.4.c., EPA proposes to grant approval under section 112(1)(5) and 40 CFR 63.91 to CHCAPCB for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. EPA also proposes to delegate all existing standards under 40 CFR part 61 and 63 both part 70 and non-part 70 sources.

4. Other Implications

The scope of Chattanooga-Hamilton County's part 70 program that EPA proposes to approve, or interimly approve in the alternative, in this notice would apply to all part 70 sources (as defined in the approved program) within Hamilton County, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 24, 1994); 58 FR 54364 (Oct. 21, 1993).

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed full/interim approval. Copies of CHCAPCB's submittal and other information relied upon for the proposed alternatives of full approval and interim approval are contained in docket number TN–CHAT–95–01, maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full/interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) to serve as the record in case of judicial review. EPA will consider any comments received by December 8, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 31, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–27698 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0905–AE52

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table—II

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of proposed rulemaking; findings.

SUMMARY: The Secretary has made findings as to certain illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table (Table) by regulation under section 313 of the National Childhood Vaccine Injury Act of 1986 and section 2114 (c) and (e) of the Public Health Service Act (the Act).

These proposed regulations would have effect only for petitions for compensation under the National Vaccine Injury Compensation Program (VICP) filed after the new regulations become effective.

DATES: Comments must be submitted on or before May 6, 1996. A public hearing on this proposed rule will be held before the end of the public comment period. A separate notice will be published in the **Federal Register** to provide the details of this hearing.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Research and Planning, BHPr, Room 8–67, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Chief Medical Officer, Division of Vaccine Injury Compensation, BHPr, (301) 443–4198 or David Benor, Senior Attorney, Office of the General Counsel, (301) 443–2006.

SUPPLEMENTARY INFORMATION: On August 14, 1992, the Secretary published in the **Federal Register** (57 FR 36878) findings as to the illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary proposed to amend the Vaccine Injury Table (Table) by regulation pursuant to section 312 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Public Health Service Act (the Act). After consideration of comments on the proposed rule, the Secretary published a final rule in the **Federal Register** on February 8, 1995 (60 FR 7678). The Secretary indicated in the preamble to that rule that further modifications to

the Vaccine Injury Table would be made as new scientific evidence became available regarding the causal relationship between certain vaccines and various adverse events. Pursuant to section 313 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Act, the Secretary arranged for a second study, again to be conducted by the Institute of Medicine (IOM) of the National Academy of Sciences. This study, entitled Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality, covers those vaccines not addressed in the IOM's section 312 Report. (Institute of Medicine. Stratton KR, Howe CJ, Johnston RB, eds. Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality. Washington, D.C. National Academy Press; 1994) This Notice of Proposed Rulemaking (NPRM) addresses modifications to the Vaccine Injury Table as a result of this latest IOM report.

The National Childhood Vaccine Injury Act of 1986, title III of Pub. L. 99–660 (42 U.S.C. 300aa–10 et seq.), established a Federal compensation program for persons thought to be injured by vaccines. Petitions for compensation under this Program are filed with the United States Court of Federal Claims, with a copy served on the Secretary, who is denominated the "Respondent." The Court, acting through Special Master, makes findings as to eligibility for, and amount of, compensation.

In order to gain an award under this program, the petitioner must establish a vaccine-related injury or death, either by showing an event which is presumed to be caused by a vaccine or by proving causation in fact. In some cases, the petitioner may simply demonstrate the occurrence of what has been referred to as a "Table injury." That is, it may be shown that the vaccine recipient suffered an injury of the type enumerated in section 2114(a) of the Act (42 U.S.C. 300aa–14(a))—the "Vaccine Injury Table"—corresponding to the vaccination in question, and that the *onset* of such injury took place within a time period from the vaccination also specified in the Table. If so, the Table injury was in effect presumed to have been caused by the vaccination, and the petitioner was automatically entitled to compensation (assuming that various jurisdictional requirements were satisfied), *unless* it was affirmatively shown that the injury was caused by some factor other than the vaccination (see secs. 2111(c)(1)(C)(i), 2113(a)(1)(B)), and 2114(a) of the Act). Congress recognized that the Table initially set forth in the statute inevitably would compensate some individuals whose injuries were not actually caused by the vaccine. Congress was willing to accept some such inaccuracy for simplicity's sake, and in order to ensure compensation of most persons actually injured by the enumerated vaccines.

The legislative history states:

"The Committee recognizes that there is public debate over the incidence of illnesses that coincidentally occur within a short time of vaccination. The Committee further recognizes that the deeming of vaccine-relatedness adopted here may provide compensation to some children whose illness is not, in fact, vaccine-related. The Committee anticipates that the research on vaccine injury and vaccine safety now ongoing and mandated by this legislation will soon provide more definitive information about the incidence of vaccine injury and that, when such information is available, the Secretary or the Advisory Commission on Childhood Vaccines * * * may propose to revise the Table, as provided below in Section 2114 [Initial Table]. Until such time, however, the Committee has chosen to provide compensation to all persons whose injuries meet the requirements of the petition and the Table and whose injuries cannot be demonstrated to be caused by other factors." [H.R. Rept. 99–908, Part 1, September 26, 1986, page 18 (or as found in 1986 U.S. Code Cong. and Admin. News, Vol. 6, page 6359)].

Since the enactment of the statute, there have been serious concerns about the degree to which the assumptions underlying the Vaccine Injury Table were founded in science, and concerns that substantial numbers of petitions were being compensated inappropriately because they are being compensated for non-vaccine-related injuries. Indeed, when it first enacted the statute creating this Program, Congress mandated reviews to be undertaken by the IOM with the express purpose of providing a better scientific rationale for any presumptions of vaccine causation. Under section 312 of Pub. L. 99–660, Congress mandated that the IOM review the scientific literature and other information on specific adverse consequences of pertussis and rubella vaccines. The 312 Report is discussed extensively in the Final Rule published on February 8, 1995 (60 FR 7678). Under section 313 of Pub. L. 99–660, Congress mandated that the IOM conduct a similar review regarding the risks associated with those pediatric vaccines not covered by the 312 Report.

Section 313 Report

The Institute of Medicine conducted this second review, and released its report in late 1993 (hereinafter "313 Report"). The committee charged with undertaking this review consisted of fourteen members with expertise in the following fields: immunology, pediatrics, internal medicine, infectious diseases, neurology, virology, microbiology, epidemiology, and public health. The committee met six times over the course of 18 months, and reviewed more than 7,000 abstracts of scientific and medical studies. They read over 2,000 published books and articles, analyzed information from the U.S. Public Health Service Vaccine Adverse Events Reporting System, and considered additional material submitted by interested parties. The committee did not perform any original research. *See* 313 Report, Executive summary, pp. 3–4.

The IOM Committee undertook the task of judging whether, based on available evidence, a causal relationship exists between each adverse event examined and exposure to vaccines against the following diseases: diphthteria, measles, mumps, poliomyelitis, tetanus, hepatitis B, and hemophilus influenzae type b (Hib). Vaccines for hepatitis B and hemophilus influenzae type b (Hib) were not mandated by Congress to be part of the section 313 study; however, because these vaccines are now mandated for inclusion in the Vaccine Injury Compensation Program, the Secretary asked the IOM to address these vaccines as well. See section 2114(e) of the Act, as added by section 13632(a)(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Pub. L. 103–66, which is discussed fully below.)

As with the 312 Report, the IOM used a classification system to categorize their conclusions about the strength of a causal association. These categories are as follows:

1. No evidence bearing on a causal relation.
2. The evidence is inadequate to accept or reject a causal relation.
3. The evidence favors rejection of a causal relation.
4. The evidence favors acceptance of a causal relation.
5. The evidence establishes a causal relation.

After release of the IOM 313 Report in December 1993, the Advisory Commission on Childhood Vaccines (ACCV) recommended that the Secretary convene a task force of experts to review the conclusions of the IOM committee and to consider appropriate changes to the Vaccine Injury Table. Accordingly, on March 15, 1994, an ad hoc subcommittee of the National Vaccine Advisory Committee (NVAC) (see section 2105 of the Act) met to review the 313 Report. This subcommittee meeting included members of the NVAC, representatives from the Advisory Committee on Immunization (ACIP), the ACCV, the Food and Drug Administration's Vaccine Related Biological Products Advisory Committee, the Academy of Pediatrics Committee on Infectious Diseases (the "Redbook" committee), and appropriate Public Health Services (PHS) staff. Where appropriate, the subcommittee also solicited the views of experts in the area of childhood vaccines. The subcommittee concurred with the IOM's conclusions in almost all cases. The subcommittee did not agree with the IOM's conclusions in six specific areas which will be discussed, as appropriate, in the individual vaccine sections below.

Following the NVAC Subcommittee's review, the ACCV, whose membership, by statutory directive, reflects a variety of views relating to childhood immunizations (section 2119 of the Act), considered the proposed changes to the Vaccine Injury Table at its September and December 1994 meetings. The ACCV deliberations included public policy considerations, whereas the NVAC charge was to consider only the scientific issues raised by the existing Table, the recent IOM report, and other scientific information.

The Secretary has examined the recommendations of the NVAC Subcommittee, and of the ACCV, and proposes that the Table set forth at 42 CFR 100.3 be revised as described below. As described above, the process for developing proposals for changing the Table in response to the 313 report is very similar to that undertaken with respect to the 312 Report. In both cases, the Department solicited the views of the two key advisory committees that are charged with making recommendations to the Department regarding vaccine safety and the vaccine compensation program. Making recommendations to change the Table involves the difficult task of balancing scientific concerns and public policy concerns. The Department's overall goal, consistent with Congress' intent in enacting the VICP, is to provide just and fair compensation to those individuals who experience adverse events that can reasonably be determined to have been caused by the covered vaccines. The Department views its role as requiring consideration of public policy concerns, as well as the purely scientific data, in translating these determinations into decisions to change the Table. Another important consideration in proposing changes to the Table is the need to make the Table as easy to understand and as clear as possible. With this goal in mind, the Department is proposing to revise the Qualifications and Aids to Interpretation which may be used by the Special Masters in understanding when a particular set of symptoms is consistent with a particular Table injury. The Department welcomes comments regarding the clarity of the proposed Qualifications and Aids to Interpretation. As provided in section 2114(c)(4), the new table will apply only to petitions filed under the Program after the effective date of the final regulation.

In addition, this NPRM includes changes to the Table based on the requirements of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, which required, in part, that the Secretary amend the Table to include additional vaccines which have been recommended for routine administration to children. Specifically, this Act added a new section 2114(e) to the National Childhood Vaccine Injury Act of 1986. This section now reads as follows:

(e) ADDITIONAL VACCINES—

(1) VACCINES RECOMMENDED BEFORE AUGUST 1, 1993—

By August 1, 1995, the Secretary shall revise the Vaccine Injury Table included in subsection (a) to include—

(A) vaccines which are recommended to the Secretary by the Centers for Disease Control and Prevention (CDC) before August 1, 1993, for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(2) VACCINES RECOMMENDED AFTER AUGUST 1, 1993—When after August 1, 1993, the Centers for Disease Control and Prevention (CDC) recommends a vaccine to the Secretary for routine administration to children, the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table included in subsection (a) to include—

(A) vaccines which were recommended for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

Based on the requirements of this section, the Department proposes to add to the Table hepatitis B and Hib vaccines. In addition, in order to create an efficient and streamlined method of adding additional vaccines to the Table, as required by section 2114(e)(2) above, the Department proposes to add to the Table now a general category for any new vaccine that in the future is recommended by CDC for routine administration to children, upon indication to the Secretary that a particular vaccine has been recommended. Accordingly, once Congress enacts an excise tax to cover that vaccine, the vaccine will be covered under the VICP. Until specified injuries are added to the Table through the rulemaking process, individuals who receive newly recommended vaccines will not receive a presumption of causation, but will instead be eligible to receive compensation upon proving causation in fact. Consistent with the general process for amending the Table, once the Department determines that specific adverse events have been associated with newly recommended vaccines, the Department will propose further changes to the Vaccine Injury Table in order to confer the appropriate presumption of causation.

Based on the requirements of the Administrative Procedure Act, the Department publishes a Notice of Proposed Rulemaking in the **Federal Register** before a regulation is promulgated. The public is invited to submit comments on this proposed rule. In addition, a public hearing will be held for this proposed rule. After the public comment period has expired, the Department will publish the final rule in the **Federal Register**. The Comments received on the proposed rule and the Department's responses to the comments will be addressed in the preamble to the final regulation.

Guidelines

Section 313 requires that the Secretary establish guidelines based on the results of the 313 Report "respecting the administration" of the vaccines that were reviewed, which guidelines shall include:

"(i) the circumstances under which any such vaccine should not be administered,

(ii) the circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

(iii) the groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients."

The establishment of these guidelines will be undertaken as a separate activity from this rulemaking.

Findings

Section 313, unlike section 312, does not require that the Secretary make specific findings as to the "illnesses or conditions * * * that can reasonably

be determined in some circumstances to be caused or significantly aggravated" by the vaccines under review, or "the circumstances under which such causation or aggravation can reasonably be determined to occur." Nevertheless, the Department has concluded that these determinations are the appropriate framework for making changes to the Table as a result of the 313 Report. Accordingly, the findings below and the proposed Table that follows are based on these determinations. For some Table changes, the "circumstances under which * * * causation or aggravation can reasonably be determined to occur" are reflected in the terms of the Table itself (e.g., vaccine strain polio infection in immunodeficient individuals); for others, the circumstances are reflected in the Qualifications and Aids to Interpretation that accompany the Table (e.g., thrombocytopenic purpura for vaccines to prevent measles).

The Secretary makes the following findings:

1. The scientific evidence favors acceptance of a causal relationship between vaccines containing tetanus toxoid and brachial neuritis.

2. The scientific evidence is insufficient to accept or reject a causal relationship between vaccines containing tetanus toxoid and Guillain Barre Syndrome (GBS). While there may be a causal relationship in extremely rare cases, the Secretary is unable to identify the circumstances in which the vaccine causes the condition.

3. The scientific evidence favors rejection of a causal relationship between vaccines containing tetanus toxoid and encephalopathy.

4. The scientific evidence is insufficient to accept or reject a causal relationship between vaccines containing tetanus toxoid and residual seizure disorder.

5. The scientific evidence indicates a causal relationship between vaccines to prevent measles and (a) thrombocytopenic purpura and (b) measles vaccine-strain viral infection in immunodeficient individuals.

6. The scientific evidence is insufficient to accept or reject a causal relationship between vaccines to prevent measles and residual seizure disorder.

7. The scientific evidence is insufficient to accept or reject a causal relationship between polio live virus (OPV) and Guillain-Barre Syndrome (GBS).

8. The scientific evidence indicates a causal relationship between OPV and vaccine-strain polio viral infection.

9. The scientific evidence indicates a causal relationship between hepatitis B vaccine and anaphylaxis.

10. The scientific evidence favors acceptance of a causal relationship between Hib vaccine (unconjugated, polyribosylribitol phosphate (PRP) vaccine only) and early-onset Hib disease.

Discussion of Proposed Table Changes

The following proposed revision of the Table and the related Qualifications and Aids to Interpretation takes into account the recommendations of the ACCV and the NVAC Subcommittee. These two outside reviewing bodies have based their recommendations primarily on the IOM Report as well as other relevant scientific information. Set forth below is a discussion of each proposed change to the Table, including an explanation of the rationale for the change. Where the Department proposes to amend the Table in a manner inconsistent with the recommendations of the ACCV, there is specific discussion of the basis for such proposal; for all other proposed changes, the ACCV concurred with the proposals.

The Department notes that the removal of a condition from the Table, or the inclusion of a revised definition thereof, will not necessarily result in compensation being denied where it would previously have been awarded. Rather, the result will be that a presumption of causation will no longer apply. Petitioners may still prevail by providing proof of causation in fact.

The Department is proposing to use different categories for the Table itself from those set forth in the initial statutory Table or in the revised Table set forth in the regulations at 42 CFR 100.3. Rather than combine different vaccines, such as DTP and DT in the same category, the Department is proposing to identify groups of vaccines by a primary antigen. Thus, one category will be vaccines to prevent pertussis, which would include P, DTP, DTaP, and other combination vaccines one of whose components is pertussis. Similarly, vaccines to prevent rubella would include MMR, MR, and R.

I. Tetanus Toxoid-Containing Vaccines

A. Guillain-Barre Syndrome

Guillain-Barre syndrome, or acute inflammatory demyelinating polyneuropathy, is a well-described neurologic disorder marked by an initially progressive motor paralysis. While the illness may be life-threatening, recovery is usually complete after weeks or months. Based on a great deal of data gathered since the entity was clearly delineated 75 years ago, it is thought that this disorder is immune-mediated and targets peripheral nerves.

Over half of all patients with GBS have a history of a preceding acute infectious illness, either respiratory or gastrointestinal, in the 1 to 4 weeks prior to the onset of neuropathic symptoms. Several infectious agents, including both bacterial (e.g., Campylobacter jejuni and Mycoplasma pneumoniae) and viral [e.g., Epstein-Barr virus, human immunodeficiency virus (HIV), and cytomegalovirus] ones, are associated with GBS.

Vaccinations in general are infrequent antecedent events in patients with GBS, probably occurring in less than 1 to 5 percent of all cases. GBS is known to occur following the administration of rabies vaccine produced from the nervous tissue of infected animals, and there were more than expected GBS cases in this country following the massive effort in 1976–77 to immunize the populace against a threatened pandemic of swine influenza. While the experience with rabies and swine influenza vaccines is well-documented, a causal relation, if one exists, between tetanus toxoid and GBS is not so self-evident. The Institute of Medicine did conclude that the evidence favors a causal relation between tetanus toxoid and GBS, and by extension that it favors a causal relation between vaccines containing tetanus toxoid, DT, Td, DTP and DTaP. A subcommittee of the National Vaccine Advisory Committee was divided on the question of causality, voting by only a 6 to 5 margin to concur with the IOM's conclusion as to causality between tetanus toxoid-containing vaccines and GBS; the subcommittee recommended unanimously that GBS not be added to the Vaccine Injury Table.

The IOM based its Category 4 conclusion ("The Evidence Favors Acceptance of a Causal Relation") on an assessment of biologic plausibility and on case reports. One case in particular, that of a 42-year-old man who experienced three separate bouts of a GBS-like illness after tetanus immunizations and later had further relapses without antecedent immunizations of any sort, was relied on very heavily as evidence that there was more than a theoretical possibility of GBS brought on by tetanus immunizations (Pollard JD, Selby G. Relapsing neuropathy due to tetanus toxoid: report of a case. Journal of Neurological Science 1976;37:113–125). The significance of this case and other evidence was debated by the NVAC Subcommittee before it made its recommendations.

CDC presented data to the NVAC Subcommittee from epidemiologic studies on this issue available since the IOM review. These large population studies showed that there was no increased risk of GBS after tetanus toxoid-containing vaccines in either adults or children. These findings suggest that while certain individuals may have a predilection for GBS after various triggers (including vaccination), such individuals are extremely rare.

The ACCV recommended by a 5 to 4 vote to add GBS to the Table as a recognized Table injury for tetanus toxoid-containing vaccines and that the Aids to Interpretation be designed to exclude from the presumption of causation cases which are not vaccine-related. There are no biologic markers or other means, however, to distinguish the very rare cases of vaccine-related GBS from the far more common cases of GBS due to other causes. As noted above, the one case primarily relied upon by the IOM was one which, due to the multiple occurrences of GBS following vaccination, could be found compensable under the causation in fact standard. Indeed, the VICP has compensated one individual for GBS following receipt of tetanus toxoid vaccine based on this causation in fact approach.

The Department has evaluated the comments of the NVAC Subcommittee and of the ACCV and has determined not to propose the addition of GBS to the Table. While the isolated cases of GBS following tetanus toxoid-containing vaccines do indicate biologic plausibility for causation, the results of CDC studies demonstrate that there is no measurable increase in risk of this condition following vaccination. (Chen R, Kent J, Rhodes P, Simon P, Schonberger L. Investigation of a possible association between influenza vaccination and Guillain-Barre syndrome in the United States, 1990–1991 (abstract); Post Marketing Surveillance 1992; 6:5–6.) Indeed, the IOM noted that "no estimate of incidence or relative risk is available. It would seem to be low." (IOM Report, p. 89.) Thus, to add this condition to the Table would almost certainly result in compensating an inordinate number of non-vaccine-related cases for the extremely rate vaccine-related case. The Department has concluded that the condition should not be given a presumption of causation but should be addressed instead under the causation in fact standard.

B. Brachial Neuritis

Brachial neuritis, alternatively known as brachial plexus neuropathy and by other names, such as neuralgic amyotrophy, was first linked to vaccination or administration of antiserum a half century ago. It has also been reported after various infections and concurrent with other diseases, as well as after trauma, but in the majority of cases there is no history of antecedent illness or immunization. This acute onset peripheral nerve disorder usually begins with a deep, often severe aching pain in the shoulder and upper arm. The pain is followed in days or weeks by weakness and atrophy in upper extremity muscle groups. Sensory loss may accompany the motor deficits, but is generally a less notable clinical feature. Recovery is complete in most cases, though it may require more than a year for full return of function. The IOM concluded that while the evidence is inadequate to accept or reject a causal relation between tetanus toxoid, DT, or Td and peripheral neuropathy (other than those caused by direct intraneural injection), there is biologic plausibility that vaccines could cause brachial neuritis. Taking into account biologic plausibility along with published case reports and uncontrolled observational studies (Tsairis P, Dyck PJ, Mulder DW. Natural history of brachial plexus neuropathy: report on 99 patients. Archives of Neurology 1972; 27:109–117) (Beghi E, Kurland LT, Mulder DW, Nicolosi A. Brachial plexus neuropathy in the population of Rochester, Minnesota, 1970–1981. Annals of Neurology 1985; 18:320–323) of brachial neuritis after receipt of tetanus toxoid, from which a relative risk on the order of 5 to 10 was estimated, the IOM viewed the evidence as favoring acceptance of a causal relation between all tetanus toxoid-containing vaccines and brachial neuritis.

A subcommittee of the National Vaccine Advisory Committee concurred with the IOM conclusion as to causality and recommended the addition of this condition to the Vaccine Injury Table. Citing the rarity of brachial neuritis in children, this panel left open the possibility of including an age-range qualifier to its recommendation that the condition be added to the Table.

The series reported in 1972 by Tsairis and colleagues included a case of brachial neuritis in a 3-month-old infant 3 days after a DTP immunization; and in 1973, Martin and Weintraub reported a case of brachial neuritis in a 5-month-old boy 2 days after he received in the thigh his first does of DTP, with resolution of the neuritis within 48 hours. (Martin GI, Weintraub MI. Brachial neuritis and seventh nerve palsy: a rare hazard of DPT vaccination. Clinical Pediatrics 1973; 12:506–507.) In view of these reported cases of brachial plexopathy in infants after receipt of tetanus toxoid-contatning vaccines (DTP), and a paucity of data about incidence according to age, the Department has decided to add brachial plexopathy to the Vaccine Injury Table without any age-range qualifier.

Based on the published literature and case reports, the Department is proposing a time of onset between 2 and 28 days. The proposed Qualifications and Aids to Interpretation are designed to define this condition under new paragraph (b)(7) and to rule out other conditions for which there has been no finding of a causal relation to the vaccine.

C. Encephalopathy

The IOM concluded that the evidence favors rejection of a causal relation between DT, Td, or tetanus toxoid and either acute or chronic encephalopathy. A subcommittee of the National Vaccine Advisory Committee concurred with the IOM conclusion as to causality and recommended the removal of this condition from the Vaccine Injury Table. The ACCV concurred. Accordingly, the Department proposes to delete this condition from the Table.

D. Residual Seizure Disorder

The Department has already taken regulatory action, based on the section 312 review, to delete the condition of residual seizure disorder (RSD) from the Table for vaccines containing tetanus toxoid. See 42 CFR 100.3, as amended at 60 FR 7694. The additional findings from the section 313 Report provide further support for this action. Accordingly, the Department is setting forth a discussion of the additional findings from the IOM that are relevant to this decision.

The Institute of Medicine concluded that the evidence favors rejection of a causal relation between DT and infantile spasms, and is inadequate to accept or reject a causal relation between DT and residual seizure disorder other than infantile spasms. The IOM also viewed the evidence as inadequate to accept or reject a causal relation between tetanus toxoid or Td and residual seizure disorder. These conclusions paralleled its earlier conclusions about infantile spasms ("favors rejection of a causal relation") and residual seizure disorder ("inadequate to accept or reject a causal relation") for DTP.

While the IOM may not have felt that it had adequate evidence to reject a

causal relationship between tetanus toxoid, DT, or Td and residual seizure disorder, except in the special case of infantile spasms, it cited no evidence suggestive of a causal relationship. Indeed, the evidence adduced, which included data from three uncontrolled observational studies, could reasonably be interpreted as favoring rejection of a causal relationship. (Pollock TM, Morris J. A 7-year survey of disorders attributed to vaccination in North West Thames region. Lancet 1983; 1:753–757) (Pollock TM, Miller E, Mortimer, JY, Smith G. Symptoms after primary immunization with DTP and with DT vaccine. Lancet 1984; 2:146–149) (Pollock TM, Miller E, Mortimer JY, Smith G. Post-vaccination symptoms following DTP and DT vaccination. Developments in biological standardization. 1985; 61:407–410) (Hirtz DG, Nelson KB, Ellenberg JH. Seizures following childhood immunizations. Journal of Pediatrics 1983; 102:14–18)

All three studies reported on relatively large numbers of children (>200,000 in all) and did identify some who did experience seizures sometime after primary or booster DT immunizations. Of those who experienced seizures, almost all their seizures either: (1) Were isolated events (i.e., did not experience further seizures before observational period ended); (2) occurred in the face of fever or intercurrent illness and were without manifest neurologic residua; (3) occurred well after the receipt of vaccine (e.g., two individuals with convulsions at 22- and 24-days post-immunization, respectively); (4) happened in the face of a significant prior neurologic history (e.g., "several months earlier he had sustained a skull fracture in a car accident and had been in a coma but had apparently recovered"); or (5) took place under some combination of these special circumstances. Of the Hertfordshire experience reported by Pollock et al. (1984 and 1985), the IOM said, "That study did not show any evidence for residual seizure disorder de novo following receipt of DT."

Clearly, whether the evidence is interpreted as inadequate to decide for or against a causal relation between these tetanus toxoid-containing vaccines (i.e., T, DT, and Td) and residual seizure disorders, or as sufficient to favor rejection, there is no support for a claim that there is a causal relationship, or that one is at all likely. The Department has therefore determined that residual seizure disorder cannot reasonably be determined in some circumstances to be caused or significantly aggravated by tetanus toxoid-containing vaccines.

II. Vaccines to Prevent Rubella

In the final rule recently issued after consideration of the section 312 IOM report, the Department added chronic arthritis as a Table injury for vaccines against rubella. (60 FR 7694–7695.) The Department also promulgated in the Qualifications and Aids to Interpretation criteria for determining when chronic arthritis would be given a presumption that the vaccine caused the condition.

Faced with petitions filed under the Program alleging that arthritis was caused in fact by the rubella vaccine, the Court of Federal Claims developed criteria for determining when to compensate such petitions. In an order dated January 11, 1993, a Special Master of the Court set forth criteria for such a determination. The Special Master did so after hearing expert testimony from witnesses representing the fields of rheumatology, virology and infectious disease.

The Department concludes that it is appropriate to reconcile the Special Master's criteria with the criteria in the final rule, to the extent possible. Accordingly, the Department has undertaken to evaluate the Special Master's criteria for possible use in revised Qualifications and Aids to Interpretation, as well as in the time period for onset of the symptoms of arthritis set forth in the Table of Injuries.

The Special Master's criteria are quoted below:

"1. The petitioner in fact had a rubella vaccination, at a time when the petitioner was 18 years or older.

"2. The petitioner had a history, over a period of at least three years prior to the vaccination, of freedom from any sort of persistent or recurring polyarticular joint symptoms.

"3. The petitioner has developed an antibody response to the rubella virus.

"4. The petitioner experienced the *onset* of polyarticular arthropathic symptoms during the period between one and six weeks after the vaccination.

"5. Polyarticular arthropathic symptoms continued for at least six months after the onset; or, if symptoms remitted after the acute stage, polyarticular arthropathic symptoms recurred within one year of such remission.

"6. There is an absence of another good explanation for the arthropathy; the petitioner has not received a confirmed diagnosis of rheumatoid arthritis, nor a diagnosis of any of a number of other specified conditions."

The Department has decided to propose incorporating into the Table and Aids to Interpretation elements of criteria 2, 3, and 4. That portion of criterion 2 that refers to a 3-year period without symptoms prior to vaccination is accepted and is proposed to be added in introductory paragraph (b)(6)(i); the portion of criteria 2 and 4 referring to polyarticular joint symptoms is not accepted, as the Department believes that objective signs of arthropathy (joint disease) are necessary. The Department does not agree with criterion 1, the age qualifier, as it would establish an arbitrary age of onset which is not supported by the current medical literature. Criterion 4 specifies a time of onset after vaccination from between 1 and 6 weeks. The final rule pursuant to the section 312 report specified a time of onset from 0–42 days. On review of the relevant medical literature and expert testimony, the Department believes that the evidence would not support a finding of causation with onset before the seventh day after rubella vaccination. Accordingly, the Department proposes to change the period for the first symptom or manifestation of onset of chronic arthritis in the Table itself to be between 7–42 days as reflected in revised paragraph (b)(6)(i)(A).

For the most part, criteria 5 and 6 are already part of the rule adopted pursuant to the section 312 report. No further changes are proposed in this rege d.

The Department does not agree, however, with the Court's inclusion of arthralgia (joint pain) as evidence of arthropathic symptoms. Based on medical expert testimony and other related scientific information, the Department continues to believe that arthralgia alone, in the absence of objective signs of arthritis, should not be viewed as evidence of rubella vaccine-related chronic arthritis. Furthermore, the Department is proposing to add paragraph (b)(6)(i)(C) that "medical documentation of an antibody response to the rubella virus" is required.

Although criterion 6 does not list fibromyalgia as an alternative diagnosis for purposes of determining eligibility for compensation, a recent Court decision (Johnson v. Secretary, HHS, No. 92–478V), concluded that fibromyalgia is a condition unrelated to rubella vaccination. Accordingly, the Department proposes to add fibromyalgia in paragraph (b)(6)(ii) to the list of conditions which will not be given a presumption of vaccine causation.

III. Vaccines to Prevent Measles

A. Thrombocytopenic Purpura

In children, most cases of immune (idiopathic) thrombocytopenia purpura (ITP) are self-limited disorders that follow a viral infection, most commonly a nonspecific respiratory infection. Viral antigen is thought to trigger synthesis of antibody that reacts with virus antigen, and then the antibody-antigen complex is bound to receptors on the platelet surface. Immune thrombocytopenic purpura often produces petechiae, purpura, and mucosal bleeding. The associated symptoms of petechiae, purpura and mucosal bleeding are generally only seen when the platelet counts are less than 50,000/mm^3 (thrombocytopenia is defined as a platelet count less than 150,000/mm^3). Red and white blood cells are normal in ITP. Acute thrombocytopenia in children rarely becomes chronic, that is, lasting more than 6 months. Chronic thrombocytopenic purpura is thought to be related to an underlying autoimmune disorder and not to be the result of a viral vaccination or viral infection.

The Institute of Medicine (IOM) concluded that the evidence establishes a causal relation between MMR and immune thrombocytopenia and a causal relation between MMR and death from complications associated with severe thrombocytopenia. The conclusions of the IOM were based on biologic plausibility, case series, uncontrolled observational studies (e.g., Nieminen U, Peltola H, Syrjala MT, Makipernaa A, Kekomaki R. Acute thrombocytopenic purpura following measles, mumps and rubella vaccination: a report on 23 patients. Acta Paediatrica 1993; 82:267–270) and the controlled observational study by Oski and Naiman (Oski FA, Naiman JL. Effect of live measles vaccine on the platelet count. New England Journal of Medicine 1996; 275:352–356). The study by Oski and Naiman reported on the occurrence of immune thrombocytopenia after the administration of the Edmonston B measles vaccine, a vaccine which is no longer used in the United States. In this controlled observational study, the maximum depression of the platelet count was noted at 1 week post-immunization (although a decrease in platelet count could be seen by 3 days post-immunization), and platelet counts return to preimmunization levels generally by 3 weeks post-immunization. In the study by Nieminen and colleagues, 23 of approximately 700,000 children immunized over an 8-year period were found to have thrombocytopenia after immunization with MMR vaccine. The platelet count reached its nadir at 21 days (median) post-immunization, with purpura appearing at 17 days (median) post-immunization. The IOM thought that it was biologically plausible that the MMR vaccine could cause immune thrombocytopenia. The NVAC Subcommittee concurred with the IOM conclusion, but because the ITP that was observed after vaccination with MMR was relatively benign with complete recovery in less than 6 months, recommended against the addition of this disease to the Vaccine Injury Table. While cases with full recovery is less than 6 months will not be eligible for compensation (see section 2111(c)(1)(D)(i) of the Act), the rare case with continuing complications should be eligible for a presumption of causation. Thus, the Department proposes that thrombocytopenic purpura be added to the Vaccine Injury Table.

The Department's proposal is based on the IOM conclusion of biologic plausibility of immune thrombocytopenia occurring after MMR vaccination, the possible risk to injury from that thrombocytopenia, and the necessity to clarify the clinical aspects of thrombocytopenia that should be compensable. Conditions that can cause thrombocytopenia or are associated with thrombocytopenia, but are not related to immune thrombocytopenia associated with MMR vaccination, are listed in the Qualifications and Aids to Interpretation as noncompensable conditions. This list of conditions is not exhaustive. A 7- to 30-day timeframe of onset is proposed as the period for a Table injury. This timeframe is largely based on the 1993 uncontrolled study by Nieminen and colleagues.

The ACCV voted to concur with the proposal to add thrombocytopenic purpura to the Table but requested some clarification and changes to the proposed Qualifications and Aids to Interpretation. The reference to a bone marrow examination now includes the phrase "if performed" in response to concerns from ACCV members that this test may not have been used in rare cases. Some ACCV members were concerned about the reference to "viral infections" and suggested that examples of viruses that cause immune thrombocytopenia be listed. The Department has accepted this suggestion but notes that while some examples are listed, it would not be practical to list all viral etiologies of immune thrombocytopenia. Thrombocytopenic purpura is proposed to be added under paragraph (b)(8).

B. Residual Seizure Disorder

The IOM placed Residual Seizure Disorder (RSD) in Category #2 ("insufficient evidence") for monovalent measles, and multivalent measles and mumps vaccines, and Category #1 ("no evidence") for mumps vaccine alone. Information from case reports, case series, and uncontrolled observational studies, seems to indicate that most seizures following measles immunization are "febrile seizures" and, therefore, are not expected to lead to recurrent seizures or epilepsy. There were no controlled studies identified by the IOM. Unlike encephalopathy following measles immunization, there is no apparent biologic plausibility for RSD. Furthermore, there is no apparent biologic plausibility for RSD. Furthermore, there is little evidence that seizures, in the absence of acute encephalopathy, can lead to chronic encephalopathy or any clinical manifestation such as RSD.

Both the 1991 and 1994 NVAC Ad Hoc Subcommittees commented on this issue. The former endorsed the removal of RSD, noting the lack of research or clinical data supporting this as a Table condition. Since its removal went significantly beyond the scope of the changes proposed by the PHS Task Force on the Vaccine Injury Compensation Program based on the section 312 IOM Report, the Secretary decided to defer removal awaiting publication of the section 313 IOM Report. Three years later, similar viewpoints were expressed by the NVAC Subcommittee. The Subcommittee unanimously recommended removal of any condition now present on the Table that was placed in Category #2 by the section 313 IOM. Residual Seizure Disorder fits this criterion, and therefore, the legal presumption of causation is proposed to be removed from the Table.

The ACCV voted 5 to 4 to retain RSD as a Table injury for MMR (and components thereof) vaccines. Some members felt that the IOM did not cite evidence strong enough to delete from the Table an injury that Congress had placed thereon. Some felt that there would be potential disruption of the Program if new data emerge showing that there is a causal relation for this condition. One member raised a concern about the number of cases now pending under the Program citing this Table injury. Furthermore, a member expressed concern that the U.S. Court of Federal Claims would make it more difficult for a petitioner to prove causation in fact for this condition if it is removed from the Table. Another

member felt it would be unwise to remove the condition prior to publication of the final Qualifications and Aids to Interpretation for "encephalopathy" under the section 312 rule.

The Department has given careful consideration to the issues raised by the ACCV. As indicated above, the evidence is insufficient for the Secretary to conclude that the condition can reasonably be determined in some cases to be caused or aggravated by the MMR vaccine. This is true regardless of the inclusion of the condition on the initial statutory Table of Injuries and regardless of the number of cases filed under the initial Table.

As to the possibility of having to include this condition again on the Table should new scientific data support such an action, the Department would of course be willing to consider such action should there be reliable data for doing so. Under section 2116(b) of the Act, should the condition be reintroduced to the Table, petitioners would have 2 years to file a petition based on injuries occurring at any time during the 8-year period prior to such reintroduction.

As to the increased difficulty of proving causation in fact, it is of course the case that this burden was not imposed on petitioners while there was a Table injury of this sort. The Court of Federal Claims will be faced with determining causation in fact under the statutory preponderance of the evidence standard. The IOM's conclusions and the data underlying it will be, in the Department's opinion, relevant to that inquiry.

Finally, with regard to the definition of "encephalopathy" in the section 312 rule, the Department notes that seizures alone are not defined as constituting an encephalopathy, but that certain serious seizure events with demonstrated sequelae can do so. (See 42 CFR § 100.3(b)(2), as added at 60 FR 7694).

For the foregoing reasons, the Department is proposing the removal of the condition RSD for MMR (or components thereof) vaccines from the Table.

C. Vaccine Strain Measles Viral Infection in an Immunodeficient Recipient

The Institute of Medicine study concluded that the evidence establishes a causal relation between vaccine-strain measles virus infection in immunocompromised individuals and death. This conclusion is based on a few case reports of death following the administration of live attenuated measles virus vaccine in children with severe combined immunodeficiency syndrome, leukemia, or dysgammaglobulinemia (Monafo WJ, Haslam DB, Roberts RL, Zaki SR, Bellini WJ, and Coffin CM. Disseminated measles infection after vaccination in a child with a congenital immunodeficiency. J of Pediatrics 1994; 124(2):273–276) (Hong R, Gilbert EF, Opitz JM. Omenn disease: termination in lymphoma. Pediatric Pathology 1985; 3:143–154) (Mihartsch MJ, Ohnacker H, Just M, Nars PW. Lethal measles giant cell pneumonia after live measles vaccination in a case of thymic alymphophasia Gitlin. Helvetica Paediatrica Acta 1972; 27(2):143–146) (Mawhinney H, Allen IV, Beare JM, Bridges JM, Connolly HH, Haire, et al. Dysgammaglobulinaemia complicated by disseminated measles. British Medical Journal 1971; 2:380–381) (Mitus A, Holloway A, Evans AE, Enders JF. Attenuated measles vaccine in children with acute leukemia. American Journal of Disease of Children 1962; 103:243–248). Measles and, to a much lesser extent, measles vaccine infection in severely immunocompromised individuals may result in an overwhelming infection and death. The NVAC Subcommittee concurred with the IOM conclusion, but recommended that compensation for this condition be provided under the causation in fact standard of the statute, rather than through the presumption given by the Vaccine Injury Table.

The Department has decided to propose adding disseminated vaccine-strain measles virus infection in immunocompromised recipients to the Table. This decision is based on the recently published report by Monafo et al. of a 15-month-old immunodeficient male who received measles vaccine and died 3 months later of a molecularly-confirmed vaccine-strain measles virus infection (Monafo WJ, Haslam DB, Roberts RL, Zaki SR, Bellini WJ, and Coffin CM. Disseminated measles infection after vaccination in a child with a congenital immunodeficiency. Journal of Pediatrics 1994; 124(2):273–276). The time for onset is proposed to be 6 months, as is the case in the statutory Table for immunocompromised individuals and polio vaccines. Death as a sequela to this condition would also be covered by the Table. The Qualifications and Aids to Interpretation, under proposed paragraph (b)(9), provides that the measles virus should be determined to be the vaccine-strain by vaccine-specific monoclonal antibody or polymerase chain reaction sequencing, in order to eliminate cases of injury based on endemic measles.

IV. Oral Polio Vaccine

A. Guillain-Barre Syndrome (GBS)

The Institute of Medicine study concluded that the evidence favored the acceptance of a causal relation between oral poliovirus vaccine (OPV) and Guillain-Barre syndrome (GBS). The conclusion was based on an increased incidence of GBS in a 6-year surveillance study for GBS in a southern province of Finland (Uusimaa) reported by Kinnunen et al. in 1989 (Kinnunen E, Farkkila M, Hovi T, Juntunen J, Weckstrom P. Incidence of Guillain-Barre syndrome during a nationwide oral poliovirus vaccine campaign. Neurology 1989; 39:1034–1036). Ten cases of poliomyelitis due to wild poliovirus occurred between August 1984 and January 1985 at a time when inactivated polio vaccine (IPV) was generally used, and a mass immunization program with OPV immunized 94 percent of the Finnish population between 2/10/85 and 3/15/85. Ten cases of GBS occurred in OPV recipients within 10 weeks after immunization, and the relative risk calculated by the IOM committee among adult OPV recipients in a population previously immunized with IPV was statistically significant when calculated on calendar quarters. However, the discussion of the report by Kinnunen et al. states that "if we add the 4 cases in the 4th quarter of 1985 (sic—data actually refer to 1984), there are 7 cases before OPV and 7 cases after OPV in this 6-month period." Thus, OPV in this population could not be the only explanation for the GBS cases, since the analysis by calendar quarters was inconsistent with the analysis of GBS cases based on the periods before and after the administration of OPV or if the quarters were constructed in another way.

Since the publication of the IOM report in 1993, Rantala et al. failed to show a temporal association between GBS and OPV after studying 93 cases of GBS identified in children less than 15 years of age from 22 hospitals over 6 years (Rantala H, Cherry JD, Shields WD, Uhari M. Journal of Pediatrics 1994; 124(2):220–3). On the basis of the available information, the presumption that OPV causes GBS within any time period should not be granted. Based on the most recent data, which had not been available to the IOM committee, the NVAC Subcommittee unanimously concurred with this proposal. The ACCV voted to concur with the proposal not to add GBS to the Table. Those not voting in favor voiced reservations over their unfamiliarity with the Rantala study, and the fact that its conclusions differed from the IOM's findings.

The Department has evaluated the comments of the NVAC Subcommittee and of the ACCV and has decided not to propose the addition to GBS to the Table. While it is true that the IOM felt the evidence was sufficient to determine that GBS was casually related to OPV, new data published since the IOM study and the NVAC Subcommittee conclusions have persuaded the Department that a presumption of causation should not be provided. Petitioners, however, may use the IOM report to pursue a causation in fact theory before the U.S. Court of Federal Claims.

B. Vaccine-Strain Poliovirus Infection and Death

The Institute of Medicine study concluded that the evidence establishes a causal relation between oral poliovirus vaccine (OPV) and vaccine-strain infection and death, including infection that results in paralytic poliomyelitis. This conclusion is based on case reports of deaths with poliovirus infections among non-immunodeficient and immunodeficient vaccine recipients. (IOM Report, pages 296–299) Since September 1994, the eradication of indigenous wild type poliovirus in the United States has been certified.

Death and vaccine-associated paralytic poliomyelitis within 30 days in non-immunodeficient individuals, and within 6 months in immunodeficient individuals, are already covered in the Vaccine Injury Table, and poliovirus myocarditis and death in a 3-month-old non-immunodeficient male has been compensated by a preponderance of the medical evidence. Based on case reports, the Department has concluded that vaccine-strain poliovirus infection determined by the isolation of poliovirus from the affected tissue that occurs within 30 days after administration or contact in non-immunodeficient individuals, and within 6 months after administration or contact in immunodeficient individuals, should be added to the Table.

A subcommittee of the National Vaccine Advisory Committee concurred with the IOM conclusions and accepted the original Department proposal not to add it to the Table. Since the NVAC meeting, the Department has decided to provide a legal presumption of causation for vaccine-strain polioviral infection within 30 days in non-immunodeficient individuals, and within 6 months in immunodeficient individuals. The ACCV voted unanimously in favor of this proposal.

The Qualifications and Aids to Interpretation, under proposed paragraph (b)(10), contains standards for determining whether a case is due to the vaccine strain of the virus. The identification of poliovirus is necessary to eliminate an enterovirus other than vaccine-strain poliovirus that can cause similar overwhelming infection and death. Isolation of poliovirus from the stool is not sufficient to establish a specific tissue infection or disease caused by vaccine-strain poliovirus, because viral shedding from the gastrointestinal tract occurs in the absence of other tissue infection or disease. The poliovirus should be determined to be vaccine-strain by oligonucleotide or polymerase chain reaction tests.

V. Hepatitis B Vaccine

A. Anaphylaxis or Anaphylactic Shock

In 1981, a plasma-derived hepatitis B vaccine was licensed for the first time in the United States. In 1986, the first recombinant hepatitis B vaccine produced by genetic engineering was licensed and is the form currently used in the United States. In 1991, the Advisory Committee on Immunization Practices recommended that hepatitis B vaccine be administered to all infants in the United States.

The Institute of Medicine concluded that the evidence establishes a causal relation between hepatitis B vaccine and anaphylaxis (313 Report, p. 230). The conclusion was based on biologic plausibility, the temporal sequence of observed events following vaccination, and the observation of a spectrum of clinical reactions from mild hypersensitivity to anaphylaxis in the host after exposure to hepatitis B vaccine.

The Department proposes to add hepatitis B vaccine to the Table. Anaphylaxis and anaphylactic shock with onset within 4 hours following the administration of the vaccine is proposed as a Table injury. Both the NVAC Subcommittee and ACCV voted unanimously in favor of this proposal.

VI. Hemophilus influenzae type b (Hib) Vaccine [polyribosylribitol phosphate (PRP) only]

A. Early Onset Invasive Hib Disease

The unconjugated Hemophilus influenzae type b polysaccharide or PRP vaccine was first licensed in April 1985. Since December 1987, when the first polysaccaharide-protein conjugate vaccine was licensed, the PRP has not been routinely administered. It is no longer available for general use.

Surveillance, serologic, and experimental data have demonstrated a transient decrease in protective antibody levels following immunization with the unconjugated PRP vaccine. Analysis of the data suggests that children over 18 months of age who received their first Hib immunization with the unconjugated PRP vaccine had an increased risk of Hemophilus disease in the 7-day interval following the immunization. The Institute of Medicine found that the evidence favored acceptance of a causal relation between unconjugated PRP vaccine and early onset (i.e. onset within 7 days) invasive Hib disease in children over 18 months of age who received their first Hib immunization with the unconjugated PRP vaccine (IOM report, p. 260). However, "the evidence favors rejection of a causal relation between immunization with Hib conjugate vaccines and early-onset Hib disease" (IOM report, p. 261). The NVAC Subcommittee concurred with these conclusions. Thus, the statutory presumption of causation should be extended to cases of invasive Hib disease that meet the standards proposed in the Qualifications and Aids to Interpretation. Early-onset Hib disease is proposed to be added under paragraph (b)(11).

VII. Hib Vaccine (Conjugate)

The Hib conjugate vaccines are proposed to be added to the Table with no condition specified. While the Hib conjugate vaccines appear to be capable of causing a transient decline in serum antibody levels following immunization, prospective observational studies have not demonstrated that immunization with the conjugate vaccines increases the risk of early-onset Hib disease. The Institute of Medicine found "the evidence favors rejection of a causal relation between immunization with Hib conjugate vaccines and early-onset Hib disease" (IOM report, p. 261). The NVAC Subcommittee concurred with this conclusion. One member of the ACCV expressed the view that the information upon which the IOM based its conclusion was unreliable. A motion to include early onset Hib disease as a Table injury for Hib conjugate vaccines did not pass. The ACCV voted to accept the Department's recommendation by an 8 to 1 vote.

VIII. New Vaccines Recommended for Routine Administration by CDC

The Department proposes to add to the Table any new vaccine that is

recommended by the Centers for Disease Control and Prevention (CDC) for routine administration to children, upon indication to the Secretary that the vaccine has been so recommended. Accordingly, once Congress enacts an excise tax to cover that vaccine, the vaccine will be covered under the VICP. Until specified injuries are added to the Table through the rulemaking process, individuals who receive newly recommended vaccines will not receive a presumption of causation, but will instead be required to prove causation in fact. Of course, consistent with the general process for amending the Table, once the Department determines that specific adverse events have been associated with newly recommended vaccines, the Department will propose further changes to the Vaccine Injury Table in order to confer the appropriate presumption of causation.

The Food and Drug Administration licensed hepatitis A virus vaccine on February 22, 1995, and licensed varicella virus vaccine on March 17, 1995. Vaccines licensed after August 10, 1993, and recommended by the CDC for "routine administration" to children are mandated by OBRA of 1993 to be included in the National Vaccine Injury Compensation Program. Recommendations on hepatitis A and varicella vaccine usage by CDC are pending. Furthermore, based on information from clinical trials, there are no specific injuries for either vaccine identified by the Secretary at this time that would warrant inclusion on the Vaccine Injury Table. Further guidance in these areas will be forthcoming during the NPRM's publication and public comment period.

Economic Impact

The Secretary certifies that this proposed rule will not have a significant impact on a substantial number of small businesses, because it will have only small effects, and those primarily on individuals. The effects will be primarily on the ability of certain individuals to obtain compensation without having a burden of proving causation in fact. Attorneys who represent such individuals will be affected only to the extent that they may have a harder or easier burden of proof with respect to the petitions filed. However, under section 2115(e) of the Act, in almost all cases, attorneys' reasonable fees and costs are reimbursed from the Vaccine Injury Compensation Trust Fund.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

As stated above, this proposed rule would modify the Vaccine Injury Table based on legal authority, and under that authority the Court will award such fees and costs as appropriate under the law. As such, the regulation would have little direct effect on the economy or on Federal or State expenditures.

Effect of the New Rule

The proposed rule will have an effect for individuals who were not eligible to file petitions based on the earlier versions of the Vaccine Injury Table, but who may be eligible to file petitions based on the revised Table. The Act permits such individuals to file a petition for such compensation not later than 2 years after the effective date of the revision if the injury or death occurred no more than 8 years before the effective date of the revision of the Table. *See* 42 U.S.C. 300aa–16(b). As part of the Omnibus Budget Reconciliation Act of 1993, Congress amended this section to permit individuals to file claims within this 2-year period, even if they had already filed a claim involving a particular vaccine, but only if the Table revision will "significantly increase the likelihood of obtaining compensation." *See* Pub. L. 103–66, sec. 13632(a)(1), August 10, 1993. For example, this amendment would permit an individual whose claim alleging MMR vaccine-related thrombocytopenic purpura had been dismissed by the Claims Court to file a new claim for the same vaccine-related injury, if the individual can show that the addition of thrombocytopenic purpura to the Table as a MMR vaccine-related condition has significantly increased the likelihood of obtaining compensation. This rule will also affect potential claims for individuals whose conditions are proposed to be removed from the Table. Although these individuals will be able to pursue their claims under the "causation in fact" standard, they will not be entitled to a presumption of causation that is granted by having a condition on the Vaccine Injury Table.

Possible Effect on Other Legislation

This rule will not have an effect on the Vaccines for Children program, implemented by the Centers for Disease Control and Prevention under section 1928 of the Social Security Act, as enacted by section 13631 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, August 10, 1993). This section provides for the establishment of a program to distribute free vaccines to all vaccine-eligible children, as defined by this section. The proposed rule would modify the existing Vaccine Injury Table, a mechanism by which compensation is awarded to individuals who have been found to have suffered from vaccine-related injuries. Because the two authorities are not related, the publication of this rule should not have any impact on the Vaccines for Children Program.

Paperwork Reduction Act of 1980

This proposed rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, Immunization.

Dated: June 2, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Approved: August 22, 1995.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR Part 100 is proposed to be amended as set forth below.

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as amended (42 U.S.C. 300aa–15); § 100.3, Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note) and sec. 2114 (c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14 (c) and (e)).

2. Section 100.3 is amended by revising the Vaccine Injury Table in paragraph (a); by setting out the introductory text in paragraph (b); by revising paragraph (b)(6); by adding paragraphs (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11); and by revising paragraph (c) to read as follows:

§ 100.3 Vaccine injury table.

(a) * * *

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. Vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Td, or TT):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Brachial Neuritis	2–28 days.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II. Vaccines containing whole cell pertussis bacteria, extracted or partial cell pertussis bacteria, or specific pertussis antigen(s) (e.g., DTP, DTaP, P, DTP-Hib):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	72 hours.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
III. Measles, mumps, and rubella vaccine or any of its components (e.g., MMR, MR, M, R):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days).
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Vaccines containing rubella virus (e.g., MMR, MR, R):	
A. Chronic arthritis	7–42 days.
B. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
V. Vaccines containing measles virus (e.g., MMR, MR, M):	
A. Thrombocytopenic purpura	7–30 days.
B. Vaccine-Strain Measles Viral Infection in an immunodeficient recipient	6 months.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VI. Vaccines containing polio live virus (OPV):	
A. Paralytic Polio	
—in a non-immunodeficient recipient	30 days.
—in an immunodeficient recipient	6 months.
—in a vaccine associated community case	Not applicable.
B. Vaccine-Strain Polio Viral Infection	
—in a non-immunodeficient recipient	30 days.
—in an immunodeficient recipient	6 months.
—in a vaccine associated community case	Not applicable.
C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VII. Vaccines containing polio inactivated virus (e.g., IPV):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VIII. Hepatitis B. vaccines:	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IX. Hemophilus influenzae type b polysaccharide vaccines (unconjugated, PRP vaccines):	
A. Early-onset Hib disease	7 days.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
X. Hemophilus influenzae type b polysaccharide conjugate vaccines: No Condition Specified	
XI. Any new vaccine recommended by the Centers for Disease Control and Prevention for routine administration to children, after publication by the Secretary of a notice of coverage: No Condition Specified	

(b) *Qualifications and aids to interpretation.* The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table to paragraph (a) of this section:

* * * * *

(6) *Chronic Arthritis.* (i) For purposes of paragraph (a) of this section, chronic arthritis may be found in a person with no history in the 3 years prior to vaccination of arthropathy (joint disease) on the basis of:

(A) Medical documentation, recorded within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred between 7 and 42 days after a rubella vaccination;

(B) Medical documentation (recorded within 3 years after the onset of acute arthritis) of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination; and

(C) Medical documentation of an antibody response to the rubella virus.

(ii) For purposes of paragraph (a) of this section, the following shall not be considered as chronic arthritis: Musculoskeletal disorders such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile

rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polymyositis/dermatomyositis, fibromyalgia, necrotizing vasculitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction), metabolic and endocrine diseases, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reither's syndrome, or blood disorders.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as chronic arthritis for purposes of paragraph (a) of this section.

(7) *Brachial neuritis.* (i) This term is defined as dysfunction limited to the upper extremity nerve plexus (i.e., its trunks, divisions, or cords) without involvement of other peripheral (e.g., nerve roots or a single peripheral nerve) or central (e.g., spinal cord) nervous system structures. A deep, steady, often severe aching pain in the shoulder and upper arm usually heralds onset of the condition. The pain is followed in days or weeks by weakness and atrophy in upper extremity muscle groups. Sensory loss may accompany the motor deficits, but is generally a less notable clinical feature. The neuritis, or plexopathy, may be present on the same side as or the opposite side of the injection; it is sometimes bilateral, affecting both upper extremities.

(ii) Weakness is required before the diagnosis can be made. Motor, sensory, and reflex findings on physical examination and the results of nerve conduction and electromyographic studies must be consistent in confirming that dysfunction is attributable to the brachial plexus. The condition should thereby be distinguishable from conditions that may give rise to dysfunction of nerve roots (i.e., radiculopathies) and peripheral nerves (i.e., including multiple mononeuropathies), as well as other peripheral and central nervous system structures (e.g., cranial neuropathies and myelopathies).

(8) *Thrombocytopenic purpura.* This term is defined by a serum platelet count less than 50,000/mm^3. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with other causes such as hypersplenism, autoimmune disorders (including alloantibodies from previous transfusions) myelodysplasias, lymphoproliferative disorders, congenital thrombocytopenia or hemolytic uremic syndrome. This does not include cases of immune (formerly called idiopathic) thrombocytopenic purpura (ITP) that are mediated, for example, by viral or fungal infections, toxins or drugs. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with disseminated intravascular coagulation, as observed with bacterial and viral infections. Viral infections include, for example, those infections secondary to Epstein Barr virus, cytomegalovirus, hepatitis A and B, rhinovirus, human immunodeficiency virus (HIV), adenovirus, and dengue virus. An antecedent viral infection may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing. Bone marrow examination, if performed, must reveal a normal or an increased number of megakaryocytes in an otherwise normal marrow.

(9) *Vaccine-strain measles viral infection.* This term is defined as a disease caused by the vaccine-strain that should be determined by vaccine-specific monoclonal antibody or polymerase chain reaction tests.

(10) *Vaccine-strain polio viral infection.* This term is defined as a disease caused by poliovirus that is isolated from the affected tissue and should be determined to be the vaccine-strain by oligonucleotide or polymerase chain reaction. Isolation of poliovirus from the stool is not sufficient to establish a tissue specific infection or disease caused by vaccine-strain poliovirus.

(11) *Early-onset Hib disease.* This term is defined as invasive bacterial illness associated with the presence of Hib organism on culture of normally sterile body fluids or tissue, or clinical findings consistent with the diagnosis of epiglottitis. Hib pneumonia qualifies as invasive Hib disease when radiographic findings consistent with the diagnosis of pneumonitis are accompanied by a blood culture positive for the Hib organism. Otitis media, in the absence of the above findings, does not qualify as invasive bacterial disease. A child is considered to have suffered this injury only if the vaccine was the first Hib immunization received by the child.

(c) *Effective data provisions.* The revised Table of Injuries set forth in paragraph (a) of this section and the Qualifications and Aids to Interpretation set forth in paragraph (b) of this section apply to petitions for compensation under the Program filed with the United States Court of Federal Claims on or after [the effective date of the **Federal Register** document which adopts these revisions as a final rule). Petitions for compensation filed before [such effective date] shall be governed by section 2114 (a) and (b) of the Public Health Service Act as in effect on January 1, 1995, or by § 100.3 as in effect on March 10, 1995 (see 60 FR 7678, *et seq.*, February 8, 1995) as applicable.

[FR Doc. 95–27562 Filed 11–7–95; 8:45 am]
BILLING CODE 4160–15–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7161]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria

required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Perryville (city) Perry County.	Fourche La Fave River	Approximately 3,100 feet downstream of State Highway 10, at the City of Perryville corporate limits.	None	*279
			Just downstream of State Highway 10	None	*281
			Approximately 4,500 feet upstream of State Highway 10, at the City of Perryville corporate limits.	None	*283
			Appoximately 2.8 miles upstream of State Highway 10, at the City of Perryville corporate limits.	None	*286
			Approximately 3.2 miles upstream of State Highway 10.	None	*287
		Cedar Creek	At confluence with Fourche La Fave River.	None	*282
			Just upstream of Cedar Street	None	*286
			Just upstream of Alpin Street State Highway 60).	None	*324
			Approximately 3,600 feet upstream of Alpin Street (State Highway 60), at the City of Perryville corporate limits.	None	*345
Maps are available for inspection at the City of Perryville Water Department, Corner of B and Pine Streets, Perryville, Arkansas. Send comments to The Honorable Charles Roland, Jr., Mayor, City of Perryville, P.O. Box 116, Perryville, Arkansas 72126.					
Arkansas	Pulaski County (unincorporated areas).	Little Maumelle River	At confluence of Nowlin Creek	*268	*269
			Approximately 120 feet upstream of State Highway 10.	*293	*295
			Just downstream of Ferndale Cutoff Road.	*360	*358
			Just upstream of Grimmett Lane	*478	*476
			Just upstream Brush Mountain Trail	*566	*564
		Kinley Creek	Approximately 1,000 feet upstream of confluence with Nowlin Creek.	*292	*295
			Approximately 150 feet upstream of State Highway 10.	*309	*310
			Just upstream of Garrison Road	*394	*396
			Just upstream of Copper Creek Lane	*429	*428
		Nowlin Creek	Approximately 1,700 feet above mouth	*268	*270

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 150 feet downstream of Barrett Road.	*282	*281
			Just downstream of Goodson Road	*330	*330
			Approximately 100 feet upstream of County Road.	None	*400
			At upstream Limits of Detailed Study located at a County Road.	None	*500
		McHenry Creek	Approximately 1,150 feet upstream of Lawson Road.	*363	*359
			Approximately 200 feet upstream of Lawson Road.	None	*406
			Approximately 150 feet upstream of Green Bear Road.	None	*489
			Just upstream of Colonel Glenn Road	None	*546

Maps are available for inspection at the Planning Department, Pulaski County, 501 West Markham Street, Suite A, Little Rock, Arkansas.

Send comments to The Honorable Floyd G. Villines, Pulaski County Judge, County Courthouse, 201 South Broadway, Little Rock, Arkansas 72201.

California	Cloverday (city) Sonoma County.	Cloverdale Creek	At confluence with the Russian River	*302	*302
			Just upstream of the Southern Pacific Railroad bridge.	None	*315
			Just upstream of Third Street	None	*338
			Appoximately 200 feet upstream of Cloverdale Boulevard.	None	*374
			Approximately 100 feet upstream of Portofino Way.	None	*385

Maps are available for inspection at the City of Cloverdale, Department of Public Works, 124 North Cloverdale Boulevard, Cloverdale, California.

Send comments to The Honorable Carol Chase, Mayor, City of Cloverdale, P.O. Box 217, Cloverdale, California 95425.

California	Coalinga (city) Fresno County.	Warthan Creek	At confluence with Los Gatos Creek	None	*643
			Approximately 200 feet downstream of Jayne Avenue (both levees intact).	None	*658
			Approximately 200 feet downstream of Jayne Avenue (right levee failed).	None	*657
			Approximately 200 feet downstream of Jayne Avenue (left levee failed).	None	*656
			Approximately 5,000 feet upstream of Jayne Avenue.	None	*675
		Los Gatos Creek	Approximately 3,150 feet downstream of confluence with Warthan Creek (levee intact).	None	*633
			Approximately 3,150 feet downstream of confluence with Warthan Creek (right levee failed).	None	*638
			Just downstream of Southern Pacific Railroad (abandoned railroad).	None	*652
			Approximately 1,600 feet upstream of confluence with Coalmine Canyon Creek.	None	*683

Maps are available for inspection at the Planning Department, 155 West Durin Street, Coalinga, California.

Send comments to The Honorable Jim Allen, Mayor, City of Coalinga, 155 West Durin Street, Coalinga, California 93210.

California	Fresno County (unincorporated areas).	Warthan Creek	Approximately 1,200 feet upstream of confluence with Los Gatos Creek.	*646	*648
			Approximately 5,000 feet upstream of Jayne Avenue.	*678	*675
			Approximately 5,900 feet upstream of Alcalde Road.	*739	*739
		Los Gatos Creek	Approximately 9,000 feet downstream of Southern Pacific Railroad.	None	*618
			Approximately 3,200 feet downstream of Southern Pacific Railroad.	*641	*641
			Approximately 3,000 feet upstream of State Highway 198.	*691	*683

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At Gayle Avenue	*760	*760

Maps are available for inspection at the Fresno County Library, Fresno, California.

Send comments to The Honorable William H. Randolph, County Administrative Officer, 2281 Tulare Street, Fresno, California 93721.

California	Solano County (unincorporated areas).	Alamo Creek	At Leisure Town Road	*84	*86
			Approximately 550 feet upstream of Vanden Road.	*96	*96
			Approximately 4,700 feet upstream of Pleasant Valley Road.	*232	*232
			At Pleasant Valley Road	*256	*256
		Ulatis Creek	Approximately 12,400 feet upstream of Leisure Town Road.	*129	*125
			Approximately 14,650 feet upstream of Leisure Town Road.	*145	*139
			Just downstream of Fruitvale Road	*192	*193
			Approximately 4,600 feet upstream of Fruitvale Road.	*226	*224
		Bucktown Creek	At confluence with Ulatis Creek	*224	*222
			Approximately 1,000 feet upstream of confluence with Ulatis Creek.	*224	*224
		Encinosa Creek	Approximately 450 feet downstream of Pleasant Valley Road.	*238	*231
			At Pleasant Valley Road (upstream crossing).	*248	*241
		Laguna Creek	Approximately 100 feet upstream of Highway 80.	*198	*202
			Approximately 450 feet downstream of Cherry Glen Road.	*214	*213

Maps are available for inspection at Solano Department of Environmental Management, 601 Texas Street, Fairfield, California.

Send comments to The Honorable William Carroll, Chairman, Solano County Board of Supervisors, 580 Texas Street, Fairfield, California 94533.

Iowa	Elkader (city) Clayton County.	Turkey River	Approximately 1.0 mile downstream of Iowa 13.	*720	*718
			Just upstream of Iowa 13	*726	*722
			Just upstream of the dam	*735	*735
			At Corporate Limit	*739	*738

Maps are available for inspection at 207 North Main Street, Elkader, Iowa.

Send comments to The Honorable Tom Diers, Mayor, City of Elkader, 207 North Main Street, Elkader, Iowa 52043–0427.

New Mexico	Sandoval County and incorporated areas.	Arkansas Channel	At confluence with West Branch of Black's Arroyo.	None	*5,499
			Approximately 30 feet upstream of Lisbon Avenue.	None	*5,508
			20 feet upstream of Comanche Road	None	*5,529
			Approximately 500 feet upstream of Comanche Road (Limit of Detailed Study).	None	*5,546
		Arroyo D	At confluence with Tributary B	None	*5,286
			Approximately 20 feet upstream of 23rd Street.	None	*5,289
			Approximately 500 feet upstream of 23rd Street (Limit of Detailed Study).	None	*5,299
		Arroyo de los Lomitas Negras.	At the inlet to the Dulcelina Curtis Channel.	None	*5,098
			Approximately 1,000 feet upstream of the inlet to the Dulcelina Curtis Channel.	None	*5,100
			Approximately 100 feet downstream of State Highway 528 (Limit of Detailed Study).	None	*5,121
		Arroyo de los Montoyas	At the inlet to the Harvey Jones Channel	*5,075	*5,079
			Approximately 2,500 feet upstream of the inlet to the Harvey Jones Channel.	*5,098	*5,100
			At the Village of Corrales/City of Rio rancho Corporate Limits.	*5,135	*5,135

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately feet upstream of the inlet to the Harvey Jones Channel (Limit of Detailed Study).	None	*5,140
		East Branch of Black's Arroyo.	Approximately 120 feet upstream of the Sandoval/Bernalillo County Line.	None	*5,178
			Approximately 100 feet upstream of 19th Street.	None	*5,240
			Approximately 120 feet upstream of 18th Street.	None	*5,255
			Approximately 40 feet upstream of Southern Boulevard.	None	*5,355
			Approximately 40 feet upstream of Western Hills Drive.	None	*5,432
			Approximately 600 feet upstream of Lema road (Limit of Detailed Study).	None	*5,459
		West Branch of Black's Arroyo.	At the Sandoval/Bernalillo County Line	None	*5,200
			Approximately 100 feet upstream of 19th Avenue.	None	*5,266
			Approximately 70 feet upstream of Southern Boulevard.	None	*5,433
			Approximately 20 feet upstream of Tarpon Avenue.	None	*5,531
			Approximately 4,200 feet upstream of Tarpon Avenue (Limit of Detailed Study).	None	*5,561
		Jemez River	Approximately 250 feet downstream of the Jemez Indian Reservation Boundary.	None	*5,602
			At confluence with the Rio Guadalupe	None	*5,656
			At the Village of Jemez Springs downstream corporate limits.	None	*5,984
			Approximately 10,560 feet upstream of the Jemez Springs downstream corporate limits.	None	*6,145
			Approximately 100 feet upstream of the Jemez Springs upstream corporate limits.	None	*6,305
			Approximately 1,200 feet upstream of confluence with San Antonio Creek (Limit of Detailed Study).	None	*6,801
		Nicklaus Channel	At confluence with the East Branch of Black's Arroyo.	None	*5,367
			Approximately 60 feet upstream of Fairway Loop.	None	*5,393
			Approximately 900 feet upstream of Lema Road (Limit of Detailed Study).	None	*5,418
		Player Channel	At confluence with the East Branch of Black's Arroyo.	None	*5,355
			Approximately 20 feet upstream of Trevino Drive.	None	*5,375
			Approximately 500 feet upstream of Trevino Drive (Limit of Detailed Study).	None	*5,380
		San Antonio Creek	At confluence with the Jemez River	None	*6,765
			Approximately 10,000 feet upstream of confluence with the Jemez River.	None	*7,156
			At confluence of Sulphur Creek	None	*7,616
			Approximately 8,300 feet upstream of confluence of Sulphur Creek (Limit of Detailed Study)..	None	*7,719
		Spur Channel	At confluence with the West Branch of Black's Arroyo.	None	*5,375
			Approximately 40 feet upstream of Southern Boulevard.	None	*5,462
			Approximately 1,100 feet upstream of Spur Road (Limit of Detailed Flooding).	None	*5,508
		Sugar Channel	At confluence with the West Branch of Black's Arroyo.	None	*5,520
			Approximately 20 feet upstream of Montego Drive.	None	*5,551

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 400 feet upstream of Montego Drive (Limit of Detailed Study).	None	*5,561
		Tributary A	At confluence with the West Branch of Black's Arroyo.	None	*5,275
			Approximately 100 feet upstream of 15th Street.	None	*5,362
			Approximately 1,000 feet upstream of Villa Road (Limit of Detailed Study).	None	*5,520
		Tributary B	At confluence with the East Branch of Black's Arroyo.	None	*5,200
			Approximately 120 feet upstream of 18th Avenue.	None	*5,259
			Approximately 200 feet upstream of 14th Avenue.	None	*5,312
			Approximately 800 feet upstream of 22nd Street (Limit of Detailed Study).	None	*5,355
		Zone AH	Shallow flooding east of the Dulcelina Curtis Channel.	*5,038	*5,033

Maps are available for inspection at 711 Camino Del Pueblo, Bernalillo, New Mexico. Send comments to The Honorable Debbie Hayes, Sandoval County Manager, P.O. Box 40, Bernalillo, New Mexico 87004.

Maps are available for inspection at Highway 4, Village Hall, Jemez Springs, New Mexico. Send comments to the Honorable David Sanchez, Mayor, Village of Jennez Springs, P.O. Box 87, Jemez Springs, New Mexico 87025.

Maps are available for inspection at 4324 Corrales Road, Corrales, New Mexico. Send comments to The Honorable Gary Kanin, Mayor, Village of Corrales, P.O. Box 707, Corrales, New Mexico 87048.

Maps are available for inspection at 3900 Southern Boulevard, Rio Rancho, New Mexico. Send comments to The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, P.O. Box 15550, Rio Rancho, New Mexico 87125–0550.

New Mexico	Sierra County (unincorporated areas), Williamsburg (Village), Truth or Consequences (city).	Rio Grande	Approximately 1,500 feet downstream of the Village of Williamsburg corporate limits (Limit of Detailed Study).	None	*4,231
			Village of Williamsburg downstream corporate limits.	None	*4,231
			Village of Williamsburg upstream corporate limits.	None	*4,233
			City of Truth or Consequences downstream corporate limits.	None	*4,233
			Approximately 20,600 feet upstream of the Limit of Detailed Study (Magnolia Street).	None	*4,244
			City of Truth or Consequences upstream corporate limits.	None	*4,257
			Approximately 6,500 feet upstream of Highway 51 (Limit of Detailed Study).	None	*4,257

Sierra County maps are available for inspection at 300 Date Street, Truth or Consequences, New Mexico. Send comments to Mr. Tony Chance, County Manager, Sierra County, 300 Date Street, Truth or Consequences, New Mexico 87901.

City of Truth or Consequences maps are available for inspection at 505 Sims Street, Truth or Consequences, New Mexico. Send comments to The Honorable Trey Campbell, Mayor, City of Truth or Consequences, 505 Sims Street, Truth or Consequences, New Mexico 87901.

Village of Williamsburg maps are available for inspection at Village Hall, Williamsburg, New Mexico. Send comments to The Honorable Victor Bertramson, Mayor, Village of Williamsburg, P.O. Box 150, Williamsburg, New Mexico 87942.

Oklahoma	Chandler (city) Lincoln County.	Bellcow Creek	Approximately 1,350 feet downstream of U.S. Highway 66.	*834	*831
			Just upstream of U.S. Highway 66	*838	*834
			Approximately 100 feet upstream of First Street.	*848	*845
			At Lake Road	*860	*855
		Bellcalf Creek	Approximately 700 feet downsteam of Lake Road.	*857	*855
			Approximately 100 feet upstream of Lake Road.	*859	*857
			Approximately 3,750 feet upstream of Lake Road.	*867	*867
		Chigger Creek	Approximately 70 feet upstream of Park Road.	*840	*838
			Just upstream of First Street	*853	*852

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 90 feet upstream of Chigger Road.	*868	*868
		Indian Creek	Approximately 100 feet upstream of Iowa Avenue.	*852	*853
			Just upstream of Eighth Street	*892	*892
			Approximately 900 feet upstream of Eighth Street.	*898	*898

Maps are available for inspection at 220 South Cleveland, Chandler, Oklahoma.
Send comments to The Honorable Keith Schroeder, Mayor, City of Chandler, City Hall, 1001 Steele Avenue, Chandler, Oklahoma 74834.

Oklahoma	Lincoln County (unincorporated areas).	Bellcow Creek	Approximately 4,500 feet downstream of confluence of Indian Creek.	*824	*823
			Just downstream of U.S. Highway 66	*835	*833
			Just downstream of Interstate Highway 44.	*853	*850
			Approximately 2,100 feet upstream of Lake Road.	*864	*856
		Bellcalf Creek	Approximately 700 feet downstream of Lake Road.	*857	*855
			Just downstream of Lake Road	*859	*856
			Approximately 3,450 feet upstream of Lake Road.	*866	*866
		Indian Creek	Just upstream of State Highway 18	*830	*829
			Just downstream of Iowa Avenue	*849	*850

Maps are available for inspection at the Lincoln County Courthouse, Chandler, Oklahoma.
Send comments to The Honorable Riley Miller, Jr., Chairman, Lincoln County Board of Commissioners, 810 Manvel, Chandler, Oklahoma 74834.

Oregon	Washington County (unincorporated areas).	Johnson Creek	At confluence with Cedar Mill Creek	*186	*186
			Just upstream of Southwest Walker Road	None	*188
			Approximately 50 feet upstream of Southwest Butner Road.	None	*192
			Just upstream of Southwest Barnes Road	None	*218
			Approximately 500 feet upstream of Cedar Hills Boulevard.	None	*260

Maps are available for inspection at 155 North First Avenue, Suite 300, Hillsboro, Oregon.
Send comments to The Honorable Linda Peters, Chairperson, Washington County Board of Commissioners, 155 North First Avenue, Suite 300, Hillsboro, Oregon 97124.

Utah	Wendover (town) Tooele County.	Drainage Along North Side of Interstate Highway 80..	Approximately 2,700 feet north of Interstate Highway 80 adjacent to corporate limits..	None	#2
			Approximately 2,000 feet north of Interstate Highway 80 adjacent to corporate limits.	None	#1
			Approximately 1,000 feet north of Interstate Highway 80 adjacent to corporate limits.	None	#2
			Approximately 500 feet north of Interstate Highway 80 adjacent to corporate limits.	None	#1
			Approximately 100 feet north of Interstate Highway 80 and 300 feet due east of corporate limits.	None	*4,349
			Approximately 100 feet north of Interstate Highway 80 1,300 feet due east of corporate limits.	None	*4,344
			Approximately 100 feet north of Interstate Highway 80 and 2,800 feet due east of corporate limits.	None	*4,339
		Drainage Along South Side of Interstate Highway 80.	Approximately 100 feet south of Interstate Highway 80 and 200 feet due east of corporate limits.	None	#3
			Approximately 700 feet south of Interstate Highway 80 and 450 feet east of corporate limits.	None	#2

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,500 feet south of Interstate Highway 80 and 1,000 feet due east of corporate limits.	None	#1
			Approximately 100 feet north of Union Pacific Railroad and 3,000 feet due east of corporate limits.	None	*4,245

Maps are available for inspection at 195 South First Street, Wendover, Utah.
Send comments to The Honorable Brenda Morgan, Mayor, Town of Wendover, P.O. Box 326, Wendover, Utah 84083–0326.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27657 Filed 11–07–95; 8:45 am]
BILLING CODE 67[illegible]-04–P

44 CFR Part 67

[Docket No. FEMA–7159]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
(Name of community)	
Whitewater Creek:	
At a point approximately 350 feet downstream of State Route 85	*750
Approximately 500 feet downstream of confluence of Whitewater Creek	*873
South Camp Creek:	
At confluence with Whitewater Creek	*759

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.73 mile upstream of the confluence with Whitewater Creek	*759
Maps available for inspection at the Fayette County Engineering Department, 140 Stonewall Avenue West, Fayetteville, Georgia.	

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Indiana	Seymour (city) Jackson County.	Heddy Run, Von Fange Ditch.	Approximately 0.78 mile downstream of Chessie System at the extraterritorial limits.	*560	*561
			Approximately 70 feet upstream of Eighth Street.	None	*571
Maps available for inspection at the City Hall, 301 North Chestnut, Seymour, Indiana.					
Send comments to The Honorable John Burkhart, Mayor of the City of Seymour, City Hall, 301 North Chestnut, Seymour, Indiana 47274.					
Minnesota	Red Wing (City) Goodhue County.	Mississippi River	At downstream corporate limits	None	*682
			At upstream corporate limits	None	*687
		Spring Creek	At Chicago and Northwestern Railway	None	*693
			Approximately 0.8 mile upstream of Spring Creek Avenue.	None	*799
		Trout Brook	At confluence with Hay Creek	*700	*699
			Approximately 50 feet upstream of Pioneer Trail.	*719	*720
		Hay Creek	Chicago, Milwaukee, St. Paul, and Pacific Railroad.	*688	*686
			Approximately 350 feet downstream of Pioneer Trail.	*704	*705
Maps available for inspection at the Building Department, 315 East Fourth Street, Red Wing, Minnesota.					
Send comments to The Honorable Romeo Cyr, Mayor of the City of Red Wing, Red Wing City Hall, P.O. Box 34, Red Wing, Minnesota 55066.					
Mississippi	DeSoto County (unincorporated Areas).	Horn Lake Creek	At upstream side of State Line Road	*235	*236
			At downstream side of Getwell Road	None	*364
		Cow Pen Creek	At confluence with Horn Lake Creek	*254	*255
			At downstream side of Illinois Central Railroad.	None	*308
		Rocky Creek	Approximately 500 feet upstream of Swinnea Road.	None	*314
			Approximately 0.4 mile upstream of Plum Point Road.	None	*366
		Pigeon Roost Creek	Approximately 1,580 feet downstream of Ingrams Mill Road.	None	*277
			Approximately 3.9 miles upstream of Ingrams Mill Road.	None	*295
		Lateral D	Approximately 0.5 mile upstream of Church Road.	None	*307
			At downstream side of Swinnea Road	None	*328
		Red Banks Creek	At confluence with Pigeon Roost Creek	None	*281
			Approximately 0.8 mile upstream of Red Banks Road.	None	*299
		Southaven Creek	At confluence with Horn Lake Creek	*254	*255
			Approximately 1,500 feet upstream of confluence with Horn Lake Creek.	*254	*255

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the DeSoto County Planning Department, DeSoto County Courthouse, 2535 Highway 51 South, Hernando, Mississippi.					
Send comments to Mr. Clouis B. Reed, Jr., DeSoto County Administrator, 2535 Highway 51 South, DeSoto County Courthouse, Hernando, Mississippi 38632.					
Mississippi	Horn Lake (city) DeSoto County.	Horn Lake Creek	Approximately 1.3 mile downstream of Illinois Central Railroad.	*253	*254
			Approximately 0.9 mile upstream of U.S. Route 51.	*273	*274
		Rocky Creek	At confluence with Horn Lake Creek	*268	*270
			Approximately 0.7 mile downstream of Interstate Route 55.	*273	*275
		Cow Pen Creek	Approximately 0.6 mile downstream of Goodman Road.	*287	*290
			At downstream side of Church Road	*287	*290
Maps available for inspection at the City Horn Lake Planning Department, City Hall, 2285 Goodman Road, Horn Lake, Mississippi.					
Send comments to The Honorable Mike mas, Mayor of the City of Horn Lake, 2285 Goodman Road, Horn Lake, Mississippi 38637.					
Mississippi	Southaven (city) DeSoto County.	orn Lake Creek	At upstream side of State Line Road	*235	*234
			Approximately 0.9 mile upstream of Elmore Road.	None	*306
		Lateral D	At confluence with Horn Lake Creek	None	*284
			Approximately 0.5 mile upstream of Church Road.	None	*307
		Lateral E	At confluence with Horn Lake Creek	*294	*292
			At downstream side of Tchulahoma Road	None	*339
		Southaven Creek	Approximately 1,800 feet upstream of confluence with Horn Lake Creek.	*254	*255
			Approximately 0.2 mile downstream of Illinois Central Railroad.	*254	*255
		Rocky Creek	At confluence with Horn Lake Creek	*268	*270
			Approximately 0.78 mile upstream of Swinnea Road.	None	*328
Maps available for inspection at the City of Southaven Planning Department, City Hall, 8625 Highway 51, Southaven, Mississippi.					
Send comments to The Honorable J. A. Cates, Mayor of the City of Southaven, P.O. Box 425, Southaven, Mississippi 38671.					
New York	Bolton (town) Warren County.	Lake George	Entire shoreline within community	None	*321
Maps available for inspection at the Town of Bolton Zoning Office, Lakeshore Drive, Bolton, New York.					
Send comments to Mr. Frank Dagles, Bolton Town Supervisor, P.O. Box 698, Bolton, New York 12814.					
New York	Lake George (town) Warren County.	Lake George	Entire shoreline within community	None	*321
Maps available for inspection at the Lake George Town Center, Old Post Road, Lake George, New York.					
Send comments to Mr. Louis Tessier, Lake George Town Supervisor, Town Center, Old Post Road, Lake George, New York 12845.					
New York	Putnam (town) Washington County.	Lake George	Entire shoreline within community	None	*321
Maps available for inspection at the Putnam Town Clerk's Office, Route 22, Putnam Station, New York.					
Send comments to Mr. John Lapointe, Supervisor of the Town of Putnam, Box 125, Lower Road, Putnam Station, New York 12861.					
New York	Queensbury (town) Warren County.	Glen Lake	Along entire shoreline	None	*404
		Lake George	Entire shoreline within community	None	*321
		Rush Pond	Entire shoreline	None	*404
		Unnamed Ponding Area	Area near I–87	None	*404
Maps available for inspection at the Office of the Town Clerk, 742 Bay Road, Queensbury, New York.					
Send comments to Mr. Fred Champagne, Queensbury Town Supervisor, 742 Bay Road, Queensbury, New York 12804.					
New York	Ticonderoga (town) Essex County.	Lake George	Entire shoreline within community of Deland Point Road.	None	*321

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Ticonderoga Town Hall, 324 Champlain Avenue, Ticonderoga, New York. Send comments to Mr. Michael J. Connery, Ticonderoga Town Supervisor, P.O. Box 471, Ticonderoga, New York 12883.					
North Carolina	Cary (town) Wake County.	Pine Lake	Entire shoreline of Pine Lake	*384	*383
		ISwift Creek Tributary No. 7 (Basin 20, Stream 24) (Currently shown as Pine Lake).	Approximately 550 feet downstream of Lake Pine Drive.	*387	*383
			Approximately 1,275 feet downstream of Lake Pine Drive.	*384	*383
Maps available for inspection at the Engineering Department, 318 North Academy, Cary, North Carolina. Send comments to Mr. Bill Coleman, Town Manager of the Town of Cary, P.O. Box 8005, Cary, North Carolina 27512–8005.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27656 Filed 11–07–95; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–165; RM–8703]

Radio Broadcasting Services; Elberton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Chase Communications seeking the allotment of Channel 286A to Elberton, GA, as the community's second local FM service. Channel 286A can be allotted to Elberton in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) north, at coordinates 33–59–59 North Latitude and 82–51–36 West Longitude, to avoid short-spacings to Stations WCCP-FM, Channel 285A, Clemson, SC, and WHEL, Channel 286A, Helen, GA.

DATES: Comments must be filed on or before December 26 , 1995, and reply comments on or before January 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gordon K. Van Mol, Chase Communications, 804 Alcovy Way, Lawrenceville, GA 30243 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–165, adopted October 13, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27574 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–68; RM–8629]

Radio Broadcasting Services; Berlin, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This action dismisses a petition for rule making filed by John P. Gillen requesting the allotment of Channel 235A at Berlin, Maryland. *See* 60 FR 27471, May 24, 1995. The proposal for Berlin, Maryland, was found to be technically defective as the only site meeting the Commission's spacing requirements is located in the Chinocoteague Bay. Since there is no usable site on land that also meets the Commission's spacing requirements for Channel 235A at Berlin, we are dismissing the *Notice* in this proceeding. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95–68, adopted October 25, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27576 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 216
Wednesday, November 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Final Listing of Recommendations and Statements Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: Final listing of Recommendations and Statements issued by the Administrative Conference of the United States (ACUS) between 1968 and 1995.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States, an independent advisory agency in the executive branch, has been issuing recommendations and statements on the improvement of the federal administrative process since 1968. Recommendations have been made to the President, agencies, Congress and the Judicial Conference, and are aimed at making the administrative process more efficient and more fair. Statements are more generalized positions on issues of federal administrative procedure. Over the years, the text of most of these recommendations and statements have been published in the **Federal Register** and, between 1973 and 1993, in the Code of Federal Regulations at 1 CFR Parts 305 and 310. In recent years, budget limitations have prevented the Administrative Conference from publishing the text of its recommendations and statements in the CFR.

The Administrative Conference is closing its doors on October 31, 1995, because Congress has not appropriated funds for the agency. As a service to the public who may wish to find the text of the over 200 recommendations and statements ACUS has issued over the past 27 years, we are publishing a list containing the **Federal Register** citations for all of the recommendations and statements that have been published there in the past. The text of all ACUS recommendations and statements, including those never published in the **Federal Register**, can be found in the Conference's annual reports and the published volumes of Administrative Conference Recommendations and Reports, which are available at the Regional Federal Depository Libraries located in each state, the Library of Congress or its Law Library, and at the library of the Washington College of Law at The American University in Washington, DC. Similarly, the reports that served as a basis for the recommendations and statements are published in the ACUS Recommendations and Reports described above.

The Administrative Conference was a statutory advisory committee, a majority of whose members were from federal agencies; the others were from the private sector and academia. Administrative Conference recommendations and statements were developed through a process that involved preparation of a study on a particular topic of administrative law or procedure. Typically, a committee of the Administrative Conference considered the study, and with assistance of contract consultants and staff from the Office of the Chairman, developed proposed recommendations and statements. Those recommendations and statements were debated by the full membership of the Administrative Conference at its Plenary Sessions, which normally occurred twice a year. The adopted text became a formal Administrative Conference recommendation or statement.

Of the approximately 200 recommendations and statements adopted by the Administrative Conference during its history, over two-thirds were implemented in whole or in part. A digest describing the implementation of ACUS recommendations will be available at the Library of Congress or its Law Library and at the library of the Washington College of Law at The American University in Washington, DC.

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE

68–1	Adequate Hearing Facilities	Not published.
68–2	U.S. Government Organization Manual	Not published.
68–3	Parallel Table of Statutory Authority and Rules (2 CFR Ch. I)	Not published.
68–4	Consumer Bulletin	Not published.
68–5	Representation of the Poor in Agency Rulemaking of Direct Consequence to Them	38 FR 19782 (July 23, 1973).
68–6	Delegation of Final Decisional Authority Subject to Discretionary Review by the Agency	38 FR 19782 (July 23, 1973).
68–7	Elimination of Jurisdictional Amount Requirement in Judicial Review	Not published.
68–8	Judicial Review of Interstate Commerce Commission Orders	Not published.
69–1	Statutory Reform of the Sovereign Immunity Doctrine	Not published.
69–2	Judicial Enforcement of Orders of the National Labor Relations Board	Not published.
69–3	Publication of a "Guide to Federal Reporting Requirements"	Not published.
69–4	Analytical Subject-Indexes to Selected Volumes of the Code of Federal Regulations	Not published.
69–5	Elimination of Duplicative Hearings in FAA Safety De-certification Cases	Not published.
69–6	Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies	38 FR 19782 (July 23, 1973).
69–7	Consideration of Alternatives in Licensing Procedures	38 FR 19782 (July 23, 1973).
69–8	Elimination of Certain Exemptions from the APA Rulemaking Requirements	38 FR 19782 (July 23, 1973).
69–9	Recruitment and Selection of Hearing Examiners; Continuing Training for Government Attorneys and Hearing Examiners; Creation of a Center for Continuing Legal Education.	38 FR 19782 (July 23, 1973).
70–1	Parties Defendant	Not published.
70–2	SEC No-Action Letters Under Section 4 of the Securities Act of 1933	Not published.
70–3	Summary Decision in Agency Adjudication	38 FR 19782 (July 23, 1973).

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE—Continued

70–4	Discovery in Agency Adjudication	38 FR 19782 (July 23, 1973).
70–5	Practices and Procedures under the Renegotiation Act of 1951	Not published.
71–1	Interlocutory Appeal Procedures	38 FR 19782 (July 23, 1973).
71–2	Principles and Guidelines for Implementation of the Freedom of Information Act	38 FR 19782 (July 23, 1973).
71–3	Articulation of Agency Policies	38 FR 19782 (July 23, 1973).
71–4	Minimum Procedures for Agencies Administering Discretionary Grant Programs	38 FR 19782 (July 23, 1973).
71–5	Procedure of the Immigration and Naturalization Service in Respect to Change-of-Status Applications.	Not published.
71–6	Public Participation in Administrative Hearings	38 FR 19782 (July 23, 1973).
71–7	Rulemaking on a Record by the Food and Drug Administration	Not published.
71–8	Modification and Dissolution of Orders and Injunctions	38 FR 19782 (July 23, 1973).
71–9	Enforcement of Standards in Federal Grant-In-Aid Programs	38 FR 19782 (July 23, 1973).
72–1	Broadcast of Agency Proceedings	38 FR 19782 (July 23, 1973).
72–2	Conflict-Of-Interest Problems in Dealing with Natural Resources of Indian Tribes	Not published.
72–3	Procedures of the United States Board of Parole	Not published.
72–4	Suspension and Negotiation of Rate Proposals by Federal Regulatory Agencies	38 FR 19782 (July 23, 1973).
72–5	Procedures for the Adoption of Rules of General Applicability	38 FR 19782 (July 23, 1973).
72–6	Civil Money Penalties as a Sanction	38 FR 19782 (July 23, 1973).
72–7	Pre-induction Review of Selective Service Classification Orders and Related Procedural Matters	Not published.
72–8	Adverse Actions against Federal Employees	38 FR 19782 (July 23, 1973).
73–1	Adverse Agency Publicity	38 FR 16839 (June 27, 1973).
73–2	Labor Certification of Immigrant Aliens	38 FR 16840 (June 27, 1973).
73–3	Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation.	38 FR 16840 (June 27, 1973).
73–4	Administration of Antidumping Law by the Department of the Treasury	39 FR 4846 (Feb. 7, 1974).
73–5	Elimination of the "Military or Foreign Affairs Function" Exemption From APA Rulemaking Requirements.	39 FR 4847 (Feb. 7, 1974).
73–6	Procedures for Resolution of Environmental Issues in Licensing Proceedings	39 FR 4848 (Feb. 7, 1974).
74–1	Subpena Power in Formal Rulemaking and Formal Adjudication	39 FR 23041 (June 26, 1974).
74–2	Procedures for Discretionary Distribution of Federal Assistance	39 FR 23041 (June 26, 1974).
74–3	Procedures for the Department of the Interior with Respect to Mining Claims on Public Lands	39 FR 23043 (June 26, 1974).
74–4	Preenforcement Judicial Review of Rules of General Applicability	39 FR 23044 (June 26, 1974).
75–1	Licensing Decisions of the Federal Banking Agencies	40 FR 27925 (July 2, 1975).
75–2	Affirmative Action for Equal Employment Opportunity in Nonconstruction Employment	40 FR 27926 (July 2, 1975).
75–3	The Choice of Forum for Judicial Review of Administrative Action	40 FR 27926 (July 2, 1975).
75–4	Procedures to Ensure Compliance by Federal Facilities with Environmental Quality Standards	40 FR 27928 (July 2, 1975).
75–5	Internal Revenue Service Procedures: The Audit and Settlement Processes	41 FR 3982 (Jan. 27, 1976).
75–6	Internal Revenue Service Procedures: Collection of Delinquent Taxes	41 FR 3982 (Jan. 27, 1976).
75–7	Internal Revenue Service Procedures: Civil Penalties	41 FR 3984 (Jan. 27, 1976).
75–8	Internal Revenue Service Procedures: Tax Return Confidentiality	41 FR 3985 (Jan. 27, 1976).
75–9	Internal Revenue Service Procedures: Taxpayer Services and Complaints	41 FR 3986 (Jan. 27, 1976).
75–10	Internal Revenue Service Procedures: The IRS Summons Power	41 FR 3987 (Jan. 27, 1976).
76–1	The Exception from Mandatory Retirement Exception for Certain Presidential Appointees	41 FR 29653 (July 19, 1976) and 41 FR 30319 (July 23, 1976).
76–2	Strengthening Informational and Notice-Giving Functions of the "Federal Register"	41 FR 29653 (July 19, 1976).
76–3	Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking	41 FR 29654 (July 19, 1976).
76–4	Judicial Review under the Clean Air Act and Federal Water Pollution Control Acts	41 FR 56757 (Dec. 30, 1976).
76–5	Interpretive Rules of General Applicability and Statements of General Policy	41 FR 56769 (Dec. 30, 1976).
77–1	Legislative Veto of Administrative Regulations	42 FR 54251 (Oct. 5, 1977).
77–2	Judicial Review of Customs Service Actions	42 FR 54251 (Oct. 5, 1977).
77–3	Ex Parte Communications in Informal Rulemaking Proceedings	42 FR 54253 (Oct. 5, 1977).
78–1	Reduction of Delay in Ratemaking Cases	43 FR 27507 (June 26, 1978).
78–2	Procedures for Determining Social Security Disability Claims	43 FR 27058 (June 26, 1978).
78–3	Time Limits on Agency Actions	43 FR 27509 (June 26, 1978).
78–4	Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulation.	44 FR 1357 (Jan. 5, 1979).
79–1	Hybrid Rulemaking Procedures of the Federal Trade Commission	44 FR 38817 (July 3, 1979).
79–2	Disputes Respecting Federal-State Agreements for Administration of the Supplemental Social Security Income Program.	44 FR 38823 (July 3, 1979).
79–3	Agency Assessment and Mitigation of Civil Money Penalties	44 FR (38824 (July 3, 1979).
79–4	Public Disclosure Concerning the Use of Cost-Benefit and Similar Analyses in Regulation	44 FR 38826 (July 3, 1979), and FR 7755 (Aug. 14, 1979)
79–5	Hybrid Rulemaking Procedures of the Federal Trade Commission: Administration of the Program to Reimburse Participants' Expenses.	45 FR 2307 (Jan. 11, 1980).
79–6	Elimination of the Presumption of Validity of Agency Rules and Regulations in Judicial Review, as Exemplified by the Bumpers Amendment.	45 FR 2308 (Jan. 11, 1980).
79–7	Appropriate Restrictions on Participation of a Former Agency Official in Matters Involving the Agency.	45 FR 2309 (Jan. 11, 1980).
80–1	Trade Regulation Rulemaking Under Magnuson-Moss Warranty-Federal Trade Commission Improvement Act.	45 FR 46772 (July 11, 1980).
80–2	Enforcement of Petroleum Price Regulations	45 FR 46774 (July 11, 1980).
80–3	Interpretation and Implementation of the Federal Advisory Committee Act	45 FR 46774 (July 11, 1980).
80–4	Decisional Officials' Participation In Rulemaking Proceedings	45 FR 46776 (July 11, 1980).

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE—Continued

80–5	Eliminating or Simplifying the "Race to the Courthouse" in Appeals from Agency Action	45 FR 84954 (Dec. 24, 1980).
80–6	Intragovernmental Communications in Informal Rulemaking Proceedings	45 FR 86407 (Dec. 31, 1980).
81–1	Procedures for Assessing and Collecting Freedom of Information Act Fees	46 FR 62806 (Dec. 29, 1981).
81–2	Current Versions of the Bumpers Amendment	46 FR 62806 (Dec. 29, 1981).
82–1	Exemption (b)(4) of the Freedom of Information Act	47 FR 30702 (July 15, 1982).
82–2	Resolving Disputes under Federal Grant Programs	47 FR 30704 (July 15, 1982).
82–3	Federal Venue Provisions Applicable to Suits Against the Federal Government	47 FR 30706 (July 15, 1982).
82–4	Procedures for Negotiating Proposed Regulations	47 FR 30708 (July 15, 1982).
82–5	Federal Regulation of Cancer-causing Chemicals	47 FR 30710 (July 15, 1982).
82–6	Federal Officials' Liability for Constitutional Violations	47 FR 58208 (Dec. 30, 1982).
82–7	Judicial Review of Rules in Enforcement Proceedings	47 FR 58208 (Dec. 30, 1982).
83–1	The Certification Requirement in the Contract Disputes Act	48 FR 31179 (July 7, 1983).
83–2	The "Good Cause" Exemption from APA Rulemaking Requirements	48 FR 31180 (July 7, 1983).
83–3	Agency Structure for Review of Decisions of Presiding Officers Under the Administrative Procedure Act.	48 FR 57461 (Dec. 30, 1983).
83–4	Use of the Freedom of Information Act for Discovery Purposes	48 FR 57463 (Dec. 30, 1983).
84–1	Public Regulation of Siting of Industry Development Projects	49 FR 29938 (July 25, 1984).
84–2	Procedures for Product Recalls	49 FR 29940 (July 25, 1984).
84–3	Improvements in the Administration of the Government in the Sunshine Act	49 FR 29942 (July 25, 1984).
84–4	Negotiated Cleanup of Hazardous Waste Sites Under CERCLA	49 FR 29942 (July 25, 1984).
84–5	Preemption of State Regulation by Federal Agencies	49 FR 49838 (Dec. 24, 1984).
84–6	Disclosure of Confidential Information Under Protective Order in International Trade Commission Proceedings.	49 FR 49838 (Dec. 24, 1984).
84–7	Administrative Settlement of Tort and Other Monetary Claims Against the Government	49 FR 49840 (Dec. 24, 1984).
85–1	Legislative Preclusion of Cost/Benefit Analysis	50 FR 28363 (July 12, 1985).
85–2	Agency Procedures for Performing Regulatory Analysis of Rules	50 FR 28364 (July 12, 1985).
85–3	Coordination of Public and Private Enforcement of Environmental Laws	50 FR 28366 (July 12, 1985).
85–4	Administrative Review in Immigration Proceedings	50 FR 52894 (Dec. 27, 1985).
85–5	Procedures for Negotiating Proposed Regulations	50 FR 52895 (Dec. 27, 1985).
86–1	Nonlawyer Assistance and Representation	51 FR 25641 (July 16, 1986).
86–2	Use of the Federal Rules of Evidence in Federal Agency Adjudications	51 FR 25642 (July 16, 1986).
86–3	Agencies' Use of Alternative Means of Dispute Resolution	51 FR 25643 (July 16, 1986).
86–4	The Split-Enforcement Model for Agency Adjudication	51 FR 46986 (Dec. 30, 1986).
86–5	Medicare Appeals	51 FR 46987 (Dec. 30, 1986).
86–6	Petitions for Rulemaking	51 FR 46988 (Dec. 30, 1986).
86–7	Case Management as a Tool for Improving Agency Adjudication	51 FR 46989 (Dec. 30, 1986).
86–8	Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution	51 FR 46990 (Dec. 30, 1986).
87–1	Priority Setting and Management of Rulemaking by the Occupational Safety and Health Administration.	52 FR 23629 (June 24, 1987).
87–2	Federal Protection of Private Sector Health and Safety Whistleblowers	52 FR 23631 (June 24, 1987).
87–3	Agency Hiring of Private Attorneys	52 FR 23632 (June 24, 1987).
87–4	User Fees	52 FR 23634 (June 24, 1987).
87–5	Arbitration in Federal Programs	52 FR 23635 (June 24, 1987).
87–6	State-Level Determinations in Social Security Disability Cases	52 FR 49142 (Dec. 30, 1987).
87–7	A New Role for the Social Security Appeals Council	52 FR 49143 (Dec. 30, 1987).
87–8	National Coverage Determinations under the Medicare Program	52 FR 49144 (Dec. 30, 1987).
87–9	Dispute Procedures in Federal Debt Collection	52 FR 49146 (Dec. 30, 1987).
87–10	Regulation by the Occupational Safety and Health Administration	52 FR 49147 (Dec. 30, 1987).
87–11	Alternatives for Resolving Government Contract Disputes	52 FR 49148 (Dec. 30, 1987).
87–12	Adjudication Practices and Procedures by the Federal Bank Regulatory Agencies	52 FR 49151 (Dec. 30, 1987).
88–1	Presidential Transition Workers' Code of Ethical Conduct	53 FR 26026 (July 11, 1988).
88–2	Federal Government Indemnification of Government Contractors	53 FR 26027 (July 11, 1988).
88–3	Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act	53 FR 26028 (July 11, 1988).
88–4	Deferred Taxation for Conflict-of-Interest Divestitures	53 FR 26029 (July 11, 1988).
88–5	Agency Use of Settlement Judges	53 FR 26030 (July 11, 1988).
88–6	Judicial Review of Preliminary Challenges to Agency Action	53 FR 39585 (Oct. 11, 1988).
88–7	Valuation of Human Life in Regulatory Decisionmaking	53 FR 39586 (Oct. 11, 1988).
88–8	Resolution of Claims Against Savings Receiverships	53 FR 39587 (Oct. 11, 1988).
88–9	Presidential Review of Agency Rulemaking	54 FR 5207 (Feb. 2, 1989).
88–10	Federal Agency Use of Computers in Acquiring and Releasing Information	54 FR 5209 (Feb. 2, 1989).
88–11	Encouraging Settlements by Protecting Mediator Confidentiality	54 FR 5211 (Feb. 2, 1989).
89–1	Peer Review and Sanctions in the Medicare Program	54 FR 28965 (July 10, 1989).
89–2	Contracting Officers' Management of Disputes	54 FR 28967 (July 10, 1989).
89–3	Conflict-of-Interest Requirements for Federal Advisory Committees	54 FR 28969 (July 10, 1989).
89–4	Asylum Adjudication Procedures	54 FR 28972 (July 10, 1989).
89–5	Achieving Judicial Acceptance of Agency Statutory Interpretations	54 FR 28973 (July 10, 1989).
89–6	Public Financial Disclosure by Executive Branch Officials	54 FR 28973 (July 10, 1989).
89–7	Federal Regulation of Biotechnology	54 FR 53494 (Dec. 29, 1988).
89–8	Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions.	54 FR 53495 (Dec. 29, 1988).
89–9	Processing and Review of Visa Denials	54 FR 53496 (Dec. 29, 1988).
89–10	Improved Use of Medical Personnel in Social Security Disability Determinations	54 FR 53496 (Dec. 29, 1988).
90–1	Civil Money Penalties for Federal Aviation Violations	55 FR 34209 (Aug. 22, 1990).

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE—Continued

90–2	The Ombudsman in Federal Agencies	55 FR 34211 (Aug. 22, 1990).
90–3	Use of Risk Communication by Regulatory Agencies in Protecting Health, Safety and the Environment.	55 FR 34212 (Aug. 22, 1990).
90–4	Social Security Disability Program Appeals Process: Supplementary Recommendation	55 FR 34213 (Aug. 22, 1990).
90–5	Federal Agency Electronic Records Management and Archives	55 FR 53270 (Dec. 28, 1990).
90–6	Use of Simplified Proceedings in Enforcement Actions Before the Occupational Safety and Health Review Commission.	55 FR 53271 (Dec. 28, 1990).
90–7	Administrative Responses to Congressional Demands for Sensitive Information	55 FR 53272 (Dec. 28, 1990).
90–8	Rulemaking and Policymaking in the Medicaid Program	55 FR 53273 (Dec. 28, 1990).
91–1	Federal Agency Cooperation with Foreign Government Regulators	56 FR 33842 (July 24, 1991).
91–2	Fair Administrative Procedure and Judicial Review in Commerce Department Export Control Proceedings.	56 FR 33844 (July 24, 1991).
91–3	The Social Security Representative Payee Program	56 FR 33847 (July 24, 1991).
91–4	The National Vaccine Injury Compensation Program	56 FR 33850 (July 24, 1991).
91–5	Facilitating the Use of Rulemaking by the National Labor Relations Board	56 FR 33851 (July 24, 1991).
91–6	Improving the Supervision of Safety and Soundness of Government-Sponsored Enterprises	56 FR 33852 (July 24, 1991).
91–7	Implementation of Farmer-Lender Mediation by the Farmers Home Administration	56 FR 67140 (Dec. 30, 1991).
91–8	Adjudication of Civil Penalties Under the Federal Aviation Act.	56 FR 67141 (Dec. 30, 1991).
91–9	Specialized Review of Administrative Action	56 FR 67143 (Dec. 30, 1991).
91–10	Administrative Procedures in Antidumping and Countervailing Duty Cases	56 FR 67144 (Dec. 30, 1991).
92–1	The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements.	57 FR 30102 (July 8, 1992).
92–2	Agency Policy Statements	57 FR 30103 (July 8, 1992).
92–3	Enforcement Procedures under the Fair Housing Act	57 FR 30104 (July 8, 1992).
92–4	Coordination of Migrant and Seasonal Farmworker Service Programs	57 FR 30106 (July 8, 1992).
92–5	Streamlining Attorney's Fee Litigation under the Equal Access to Justice Act	57 FR 30108 (July 8, 1992).
92–6	Implementation of the Noise Control Act	57 FR 30110 (July 8, 1992).
92–7	The Federal Administrative Judiciary	57 FR 61760 (Dec. 29, 1992).
92–8	Administration of the Office Juvenile Justice and Delinquency Prevention's Formula Grant Program.	57 FR 61765 (Dec. 29, 1992).
92–9	De Minimis Settlements Under Superfund	57 FR 61766 (Dec. 29, 1992).
93–1	Use of APA Formal Procedures in Civil Money Penalty Proceedings	58 FR 45409 (Aug. 30, 1993).
93–2	Review of Prompt Corrective Action Decisions by Banking Regulators	58 FR 45410 (Aug. 30, 1993).
93–3	Peer Review in the Award of Discretionary Grants	58 FR 45412 (Aug. 30, 1993).
93–4	Improving the Environment for Agency Rulemaking	58 FR 4670 (Feb. 1, 1994).
93–5	Procedures for Regulation of Pesticides	58 FR 4675 (Feb. 1, 1994).
94–1	Use of Audited Self-Regulation as a Regulatory Technique	59 FR 44701 (Aug. 30, 1994).
94–2	Reforming the Government's Procedure for Civil Forfeiture	59 FR 44703 (Aug. 30, 1994).
95–1	Application and Modifications of FOIA Exemption 8	60 FR 13692 (Mar. 14, 1995).
95–2	Debarment and Suspension from Federal Programs	60 FR 13695 (Mar. 14, 1995).
95–3	Review of Existing Agency Regulations	60 FR 43109 (Aug. 18, 1995).
95–4	Procedures for Noncontroversial and Expedited Rulemaking	60 FR 43110 (Aug. 18, 1995).
95–5	Government Contract Bid Protests	60 FR 43113 (Aug. 18, 1995).
95–6	ADR Confidentiality and the Freedom of Information Act	60 FR 43115 (Aug. 18, 1995).
95–7	Use of Mediation under the Americans with Disabilities	60 FR 43115 (Aug. 18, 1995).

STATEMENTS

1.	Views of the Administrative Conference on the "Report on Selected Independent Regulatory Agencies" of the President's Advisory Council on Executive Organization.	Not published.
2	Statement of the Administrative Conference on the ABA Proposals to amend the Administrative Procedure Act.	38 FR 16841 (June 27, 1973) as amended at 39 FR 23045 (June 26, 1974).
3	Statement of the Administrative Conference on ABA Resolution No. 1 to Amend the Definition of a Rule in the Administrative Procedure Act.	39 FR 4849 (Feb. 7, 1974).
4	Strengthening Regulatory Agency Management Through Seminars for Agency Officials	40 FR 27928 (July 2, 1975).
5	Statement on Procedures to Deal with Emergency Shortages of Natural Gas	41 FR 56770 (Dec. 30, 1976).
6	Resolution Concerning Congressional Termination of Pending Administrative Proceedings at the Federal Trade Commission.	45 FR 2310 (Jan. 11, 1980).
7	Views of the Administrative Conference Proposals Pending in Congress to Amend the Information Rulemaking Provisions of the Administrative Procedure Act.	47 FR 30715 (July 15, 1982).
8	Statement of the Administrative Conference on Discipline of Attorneys Practicing before Federal Agencies.	47 FR 58210 (Dec. 30, 1982).
9	Statement on Guidelines for Agency Policy Articulation	48 FR 31181 (July 7, 1983).
10	Statement on Agency Use of an Exceptions Process to Formulate Policy	48 FR 57464 (Dec. 30, 1983).
11	Statement on Hearing Procedures for the Resolution of Scientific Issues	50 FR 52896 (Dec. 27, 1985).
12	Statement on Resolution of Freedom of Information Act Disputes	52 FR 23636 (June 24, 1987).
13	Statement on Dispute Resolution Procedure in Reparations and Similar Cases	53 FR 26032 (July 11, 1988).
14	Statement on Mass Decisionmaking Programs: The Alien Legalization Experience	54 FR 28975 (July 10, 1989).
15	Procedures for Resolving Federal Personnel Disputes	54 FR 53498 (Dec. 29, 1989).

STATEMENTS—Continued

16	Right to Consult with Agency Counsel in Agency Investigations	59 FR 4677 (Feb. 1, 1994).
17	Comments on SSA's Reengineering of the Disability Process	59 FR 44704 (Aug. 30, 1994).

Dated: October 31, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–27473 Filed 11–7–95; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Market Promotion Program, Fiscal Year 1996

AGENCY: Commodity Credit Corporation. USDA.

ACTION: Notice.

SUMMARY: This notice announces the Market Promotion Program for Fiscal Year 1996.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, Washington, D.C. 20250–1042, Telephone: (202) 720–5521.

SUPPLEMENTARY INFORMATION: Section 203 of the Agricultural Trade Act of 1978, as amended, directs the Commodity Credit Corporation (CCC) to "carry out a program to encourage the development, maintenance and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations that implement a foreign market development program." Assistance under this program may be provided in the form of funds of, or commodities owned by, the CCC, as determined appropriate by the Secretary.

The Market Promotion Program (MPP) will be implemented in accordance with the regulations set forth in 7 C.F.R. part 1485, February 1, 1995. The Administrator of the Foreign Agricultural Service (FAS), who is Vice President of CCC, is authorized to enter into agreements with nonprofit agricultural trade organizations, nonprofit state regional trade groups, agricultural cooperatives, state agencies and U.S. commercial entities to share the costs of approved overseas marketing and promotion activities that are intended to develop, maintain or expand commercial export markets for U.S. agricultural commodities and products. CCC will enter into agreements only where the eligible agricultural commodity is comprised of at least 50 percent U.S. origin by weight, exclusive of added water. CCC may provide assistance for brand promotion activities.

Eligible entities desiring to participate in the MPP must submit an application (an original and two copies) containing information required by the MPP regulations.

All applications (an original and two copies) must be either hand delivered or sent by postal delivery and must be received by 5:00 p.m. eastern time, Tuesday, January 16, 1996, at the following address:

Hand Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1042

Postal Delivery: U.S. Department of Agriculture, Marketing Operations Staff, Ag Box 1042, Washington, D.C. 20250–1042.

For more detailed information regarding the application process or other terms and requirements of the MPP, contact the Marketing Operations Staff, FAS, USDA at the address above or telephone (202) 720–5521. Comments regarding the conduct of the MPP may be directed to either address as applicable.

Signed at Washington, DC, on October 23, 1995.

August Schumacher,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 95–27671 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–10–M

Foreign Agricultural Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension of and revision to a currently approved information collection procedure. This information is contained in a petition which may be filed with the Department of Agriculture (USDA) requesting emergency relief from increased, injurious imports of certain perishable products entering the United States duty-free from beneficiary countries under the Andean Trade Preference Act.

DATES: Comments on this notice must be received on or before January 8, 1996.

ADDRESSES: Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG Box 1021, South Building, 14th and Independence Ave., S.W., Washington, D.C. 20205.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader for Import Policies, Import Policies and Programs Division, U.S. Department of Agriculture, Washington, D.C. 20250; Telephone: (202) 720–1330.

SUPPLEMENTARY INFORMATION:

Title: Emergency Relief from Duty-Free Imports of Perishable Products from Andean Countries.

OMB Number: 0551–0033.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension of and revision to a currently approved information collection:

Abstract: The Andean Trade Preference Act (P.L. 102–182, 105 Stat. 1236 (19 U.S.C. 2101–3216) (the "Act"), authorized the President to proclaim duty-free treatment for imports from Bolivia, Colombia, Ecuador, and Peru, except for certain specifically excluded products. Section 204(e) of the Act provides, in part, that if a petition is filed with the United States International Trade Commission pursuant to provision of section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251), regarding a perishable product and alleging injury from imports from beneficiary countries, then a petition may also be filed with the Secretary of Agriculture requesting that emergency relief be granted by the President.

Under 7 CFR 1540.43, an entity seeking emergency relief may submit a request to the administrator, FAS, providing appropriate information and data to permit the Secretary of Agriculture to make a determination whether to recommend to the President to take emergency action. The request should contain a description of the imported perishable product concerned and the country of origin; data showing that increased imports of such perishable product are the substantial cause of serious injury, or the threat of serious injury, to the domestic industry producing a perishable product like or directly competitive with the imported product; and provide a statement indicating why emergency action would be warranted. The information collected is used by FAS to prepare an assessment that will assist the Secretary in making his determination.

Estimate of Burden: Public reporting burden for this collection of information is estimated $3,932.

Respondents: Non-profit institutions, businesses, or farms.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 120 hours.

Copies of the information collection can be obtained from Pamela Hopkins, Agency Collection Coordinator, at (202) 720–6713.

REQUESTS FOR COMMENTS: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on October 23, 1995.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–27672 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on November 21, 1995 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until about 4:00 p.m. Agenda items to be covered include: (1) process, methods and criteria to establish priorities among major river basins in the province for management and restoration work; (2) review and discussion of the tentative watershed restoration program for the Mt. Baker-Snoqualmie National Forest in fiscal year 1996; (3) additional discussion of the proposed alternatives for management of the Snoqualmie Pass Adaptive Management Area and of the draft Plum Creek Timber Company Habitat Conservation Plan; (4) update on issues related to Section 2001 of P.L. 103–327 (Rescission Bill); (5) issues for the Advisory Committee to consider during the first half of 1996; (6) Access and Travel Management subcommittee report; (7) other topics as appropriate; and, (8) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3276.

Dated: November 2, 1995.

Daniel T. Harkenrider,

Acting Forest Supervisor.

[FR Doc. 95–27645 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–11–M

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, December 7, 1995. The meeting will be in the North McKenzie Conference Room, at the Valley River Inn; Eugene, Oregon; phone (503) 687–0123; located in the Valley River Center. The meeting is scheduled to begin at 9:00 a.m. and conclude at approximately 4:00 p.m. Topics tentatively scheduled on the agenda include: (1) Watershed Restoration and Jobs-in-the-Woods Coordination/Review Process; (2) District/Forest Decision Authority Issue; (3) Presentation on Central Cascades Adaptive Management Area activities.

The meeting is open to the public and opportunity will be available to address the Advisory Committee during a public forum. The public forum will follow the agenda topics mentioned above and will occur in the afternoon. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Neal Forrester, Designated Federal Official; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon; 503–465–6924.

Dated: November 2, 1995.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 95–27643 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–11–M

Forest Service

Outfitting and Guiding Permit Administration and Fees

AGENCY: Forest Service, USDA.

ACTION: Correction of final policy.

SUMMARY: The Forest Service is making technical corrections to the final policy published June 12, 1995 (60 FR 30830), governing issuance and administration of permits and assessment of fees for outfitting and guiding activities on National Forest System lands.

EFFECTIVE DATE: This corrected policy is effective November 8, 1995.

FOR FURTHER INFORMATION CONTACT: John Shilling, (202) 205–1426, Recreation, Heritage, and Wilderness Resources Management Staff (2340), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

SUPPLEMENTARY INFORMATION: The final policy published June 12, 1995 (60 FR 30830), on outfitting and guiding permit administration and fees on National Forest System lands contained a few technical errors that must be corrected: (1) To clarify that the minimum fee for outfitting and guiding is set every three years, beginning in 1993; and (2) to ensure consistency with the requirements of the Wilderness Act (16 U.S.C. 1131 *et seq.*) as interpreted in applicable court decisions with respect to caches in wilderness and to development, improvements, and installations in wilderness.

The corrected policy is being issued by amendment to chapters 30 and 40 of Forest Service Handbook 2709.11, Special Uses Handbook. The corrected policy reads as follows:

1. *Chapter 30, Fee Determination, Section 37.05, Definition for "Revenue Additions," paragraph 2:* "The value of

gratuities, which are goods, services, or privileges that are not available to the general public and that are donated or provided without charge to organizations; individuals; the holder's employees, owners, or officers; or immediate family members of the holder's employees, owners, or officers."

The agency has removed the words "or at a discount" from this definition because goods, services, or privileges provided at a discount are not gratuities, but rather are a form of revenue. The value of goods, services, or privileges provided at a discount is subsumed in gross revenue for the purpose of fee calculation.

2. *Chapter 30, Fee Determination, Section 37.21a:* "The minimum fee for outfitting and guiding on National Forest System lands is $70 annually per permit for 1993–1995. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management shall adjust the minimum fee every three years based on the Gross Domestic Product-Implicit Price Deflator Index."

Formerly, the time period specified in the supplementary information and policy was 1993–1996, which spans four years. Because the agency's intent was to establish a minimum fee every three years, the time period has been changed accordingly to 1993–1995. The policy, which previously stated that the Director "adjusts" the minimum fee every three years, also has been revised to use "shall adjust" to convey mandatory action by the Director.

3. *Chapter 40, Special Uses Administration, Section 41.53b, paragraph 2:* "Do not authorize any development or permanent improvements in non-wilderness on the National Forest System for outfitting and guiding services, except for structures, improvements, or installations with negligible value that have minimal impact on forest resources, such as hitching posts, corrals, tent frames, and shelters."

The agency has added "in non-wilderness" to distinguish the policy in this paragraph on development and permanent improvements in non-wilderness, from the policy in the following paragraph 3 on development and permanent improvements in wilderness. The agency has removed "temporary," which formerly modified "structures or improvements or installations," because it was inconsistent with the reference to "development or permanent improvements" at the beginning of this paragraph. For consistency in wording, the agency has substituted a comma for the word "or" between "structures" and "improvements" and added a comma after "improvements." The agency has added "that have minimal impact on forest resources" to further clarify when development or permanent improvements may be authorized in non-wilderness.

4. *Chapter 40, Special Uses Administration, Section 41.53b, paragraph 3:* "Do not authorize any development, improvements, or installations in wilderness on the National Forest System for the purpose of convenience to the holder or the holder's clients. Do not authorize any caches in wilderness. The authorized officer may not authorize permanent structures, improvements, or installations in wilderness unless they are necessary to meet minimum requirements for administration of the area for the purposes of the Wilderness Act (16 U.S.C. 1133c)."

For consistency in wording with related direction on non-wilderness in the preceding paragraph 2 of this section, the agency has added an "s" to "improvement" and "installation" and also has added "on the National Forest System" after "in wilderness" in the first sentence of paragraph 3. To ensure consistency with the requirements of the Wilderness Act as interpreted in applicable court decisions, the agency has added a prohibition on authorizing caches in wilderness and has changed "temporary" to "permanent" as a modifier for "structures, improvements, or installations in wilderness" in the last sentence. The agency also has corrected the citation in the last sentence from 16 U.S.C. 1121 (note) to 16 U.S.C. 1133c.

Dated: November 2, 1995.

Mark A. Reimers,

Acting Chief.

[FR Doc. 95–27617 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950911228–5258–02]

The American Community Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182 and 225, I have determined that data from The American Community Survey are needed to evaluate a design to collect timely data for small areas and small subpopulations on a continual basis rather than every ten years. Government agencies use these data to distribute funding for various programs. The American Community Survey will also provide data for agencies to evaluate the performance of programs. The general public uses the data to examine information like housing quality, commuting patterns, and regional age distributions for planning purposes. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Lawrence S. McGinn, Chief, Continuous Measurement Office, on (301) 763–8327.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major census authorized by Title 13, United States Code. The data from this survey will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade for small areas and small subpopulations. Currently, the decennial census is the only source of data available for small area levels and, therefore, these data are collected only once every ten years. A continuous measurement system also would provide a mechanism for identifying and sampling subpopulation groups for future surveys which will be of great benefit to the Federal Statistical System and provide data needed by other agencies.

This survey will be a full-scale implementation of continuous measurement in six test sites. The survey will also include a national sample to test response rates and the Census Bureau's ability to obtain telephone numbers for nonresponse households. The data collected in this survey will be within the general scope and nature of those inquiries covered in the decennial census every ten years.

The Census Bureau will select the housing units for the survey from a sample of six sites selected to test full continuous measurement operations and a sample from designated areas around the country to obtain mail response rates. The Bureau will mail questionnaires to the households covered by this survey and require the submission as soon as possible after receipt. Participation of the selected households will be mandatory in accordance with the provisions of Title 13.

This survey was approved by the Office of Management and Budget (OMB) for public use, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was given OMB approval number 0607–0810. A Notice of Consideration was published in the **Federal Register** on September 18, 1995, Volume 60, Number 180, page 48097, informing the public of our intent to conduct this survey and inviting public comment. No comments on the Notice of Consideration were received. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based upon the foregoing, I have directed that a test be conducted for the purpose of collecting these data for evaluation of the procedures related to a continuous measurement operation.

Dated November 1, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–27670 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 103095F]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on November 28–30, 1995.

ADDRESSES: Both meetings will be held at the Conference Room of Joyuda Beach Resort, Rd. 102, Km. 11.7, Joyuda, Cabo Rojo, PR.

Council Address: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 87th regular public meeting to discuss the Third Amendment to the Reef Fish Fishery Management Plan and the Marine Conservation Districts, among other topics.

The Council will convene on November 29, 1995, from 9:00 a.m. until 5:00 p.m., and on November 30, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on November 28, from 2:00 p.m. until 5:00 p.m., to discuss administrative matters regarding Council operations.

The meetings are open to the public, and will be conducted in English. However, simultaneous interpretation (Spanish-English) will be available during the Council meeting (November 29–30, 1995). Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 1, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27580 Filed 11–07–95; 8:45 am]

BILLING CODE 3510–22–F

Notice of the National Ocean Service's Discontinuation of the Production and Distribution of the Ocean Features Analysis (OFA), Sea Surface Temperature (SST) Analysis, and Surface Feature Tracking (SFT) Analysis as NOS Products

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration's National Ocean Service is announcing that, effective immediately, NOS is no longer producing and distributing the Ocean Features Analysis (OFA), Sea Surface Temperature (SST) Analysis, and Surface Feature Tracking (SFT) Analysis products.

FOR FURTHER INFORMATION CONTACT: Richard Barazotto, NOAA/Office of Ocean and Earth Sciences, Silver Spring, MD (301) 713–2981.

SUPPLEMENTARY INFORMATION: Since 1975, NOAA/NOS has produced the OFA for area covering the East Coast of the U.S. and Gulf of Mexico. The graphical analyses were produced five times per week and distributed via radio facsimile, subscription facsimile, and autopolling facsimile.

Since 1993, NOAA/NOS has produced high resolution SST analyses for an area covering the East Coast of the U.S. The analyses were produced twice per week and distributed via radiofacsimile and autopolling facsimile.

Since 1994, NOAA/NOS has produced SFT analyses for areas covering the East Coast of the U.S. and Gulf of Mexico. The analyses were produced once per week and distributed via autopolling facsimile. The OFA, SST and SFT products were also available via NOS' Ocean Product Branch's (OPB) Homepage on the World Wide Web of the Internet.

Over the past several years, there has been a gradual decrease in the funds available to support activities such as the OFA. In FY 1996, the budget line item that provides the source of revenue to support the production of the OFA and related products will sustain a 33% reduction in available funds. Consequently, NOS has terminated the production and distribution of OFA, SST and SFT products, effective October 1, 1995. In addition to the termination of this product line, the office that produces these products, OPB, was disestablished. The termination of the OFA and OPB are only two of several painful consequences resulting from FY 1995 and FY 1996 budget reductions.

The primary reason that NOS decided to terminate this suite of products, in response to its budget reductions, is that there are several government-produced oceanographic analyses, produced for different missions, that can be made available to the public as replacements for the OPB's products. For example, the Naval Oceanographic Office produces an OFA to satisfy its warfighting mission needs, and the National Hurricane Center produces both OFA and SST analyses to satisfy its life and property hurricane warning and forecast mission. A secondary consideration was the concern expressed by private sector organizations that these analysis products competed with value-added services and products that are produced and distributed for profit.

Although NOS will terminate this product line, Attachment 1 lists those government offices that currently either produce or distribute similar or related products. In addition, there are several private sector value-added companies that have related products and/or services. Attachment 2 lists private sector companies known to NOS that provide oceanographic value-added services and/or products.

NOS is publishing this notice consistent with section 8a(6)(j) of Office

of Management and Budget Circular A–130. Anyone with questions or comments regarding the above subject or private printers and distributors wishing more information should write, fax or e-mail to: NOAA, National Ocean Service Attn: Office of Ocean and Earth Sciences, N/OES, 1305 East-West Highway Silver Spring, MD 20910, fax 301–713–4392.

Dated: October 31, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Attachment (1)—Known Alternative Government Sources of Ocean Analysis Information

1. Sea Surface Temperature—global, regional, local at various resolutions depending on location (14km, 50km, and 100km)
   NOAA/NESDIS, 4401 Suitland Road, Room 2039, Suitland Federal Center, FOB #4, Suitland, MD 20233–0001, Point of Contact: Mr. John Sapper (301) 457–5195
   National Hurricane Center, 11691 S.W. 17th Street, Miami, FL 33165–2149, Point of Contact: Dr. Steven Baig (305) 229–9901
   Weather Service Forecast Office, 21 Grace Hopper Avenue, Stop 5, Monterey, CA 93943–5505, Point of Contact: Mr. Ernest Daghir (408) 656–1716
2. Ocean Thermal Structure Analysis (Ocean Features Analysis) for various areas such as Gulf of Mexico, Gulf Stream, etc.
   Naval Atlantic Meteorology and Oceanography Center, 9141 Third Avenue, Naval Air Station, Norfolk, VA 23511–2394, Point of Contact: Mr. Chuck Weigand (804) 444–4913, (Product available via radio facsimile)
   Naval Oceanographic Office (Code N2211), 1002 Balch Boulevard, Stennis Space Center, MS 39522, Point of Contact: Mr. Tom Sandidge (601) 688–4401
   National Hurricane Center, 11691 S.W. 17th Street, Miami, FL 33165, Point of Contact: Dr. Steven Baig (305) 229–9901, Fax (305) 229–9901
3. Retrospective Ocean Thermal Structure Analysis and Sea Surface Temperature Analysis for various areas and resolutions globally, regionally, and locally.
   NOAA/NESDIS, National Climatic Data Center, Federal Building, Asheville, NC 28801, Point of Contact: Mr. Tom Ross (704) 271–4994 ext 181

Attachment (2)—Value-Added Companies Known to NOS That Provide Oceanographic Products

(Should NOS become aware of additional sources, they will be identified in future announcements)

1. Weather and Marine USA Limited, 5049 Garfield Street N.W., Washington, DC 20016–3450, Attn: Dr. Lee Houchins (202) 966–5009
2. Weather Services Incorporated, 131A The Great Road, P.O. Box 890, Bedford, MA 01730, Attn: Mr. Ken Campbell (617) 275–8860
3. Bob Rice's Weather Window, 842 Sterling Road, Lancaster, MA 01523, Attn: Mr. Bob Rice (508) 365–3800
4. Offshore Services, 339 Herbertville Road, Bricktown, NJ 08724, Attn: Mr. Lenny Belcaro (908) 840–4900
5. Ocean Imaging, 201 Lomas Sante Fe Drive, Suite 370, Solana Beach, CA 92075, Attn: Mr. Mark Hess (619) 792–8529
6. Sea Space, 9240 Trade Place, Suite 100, San Diego, CA 92126, Attn: Dr. Robert Bernstein (619) 450–9542
7. ROFFS Ocean Fishing, 2871 S.W. 69th Court, Miami, FL 33155, Attn: Dr. Mitch Roffer (305) 262–8336 or (800) 677–7633
8. Gulf Weather Corporation, MTTC Building 1103, Stennis Space Center, MS 39529, Attn: Mr. Frank Schatzle (601) 688–3397

[FR Doc. 95–27653 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Dissemination of Patent Information

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The Patent and Trademark Office (PTO) will hold a public meeting to gain input into how it can maximize the potential of its information dissemination program. In view of technology changes, revisions to the Office of Management and Budget (OMB) Circular A–130, and the Paperwork Reduction Act of 1995 (Public Law 104–13), the PTO will review existing policies, and will use input from this announced meeting to prepare a comprehensive information dissemination plan.

DATES: A meeting will be held on December 15, 1995, at 9:00 a.m.

Written comments must be submitted on or before December 31, 1995.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Attention: Wesley H. Gewehr, Administrator for Information Dissemination, Crystal Park 3, Suite 451, Washington, D.C. 20231, or fax to (703) 306–2737, or e-mail to larson@uspto.gov.

The meeting will be held in Suite 819 of Crystal Park 1, located at 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jane S. Myers, Office of Electronic Information Products by telephone at (703) 306–2600, by fax at (703) 306–2737, by e-mail to larson@uspto.gov, or by mail to U. S. Patent and Trademark Office, Office of Electronic Information Products, Crystal Park 3, Suite 441, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Within thirty days following the meeting, copies of the minutes of the meeting may be obtained from the PTO Home Page (http://www.uspto.gov/), from the PTO bulletin board service (PTO BBS) at (703) 305–8950, or from the PTO, Office of Electronic Information Products, in Suite 441, Crystal Park 3, Arlington, Virginia.

The PTO last published final guidelines related to information dissemination in the **Federal Register** on Wednesday, May 3, 1989, and in the Official Gazette of the United States Patent and Trademark Office on Tuesday, May 30, 1989. The PTO also published a proposed Electronic Information Dissemination Policy for public comment in the Official Gazette of the United States Patent and Trademark Office on Tuesday, December 1, 1992. The final guidelines and the proposed policy are reprinted below, followed by a description of PTO's information dissemination activities.

Electronic Data Dissemination Policies and Guidelines (as published in the **Federal Register** on Wednesday, May 3, 1989, and in the Official Gazette of the United States Patent and Trademark Office on Tuesday, May 30, 1989)

Dissemination in Government Public Search Facilities and Depository Libraries

It is the goal of the PTO to achieve effective, widespread dissemination of information concerning patents and Federally registered trademarks to all segments of the U.S. public.

A. The dissemination goal will be accomplished directly by the PTO by providing electronic search and retrieval services to the public in search facilities located in the PTO, in other facilities which may be established by the Government and in Patent and Trademark Depository Libraries (PTDLs). PTDLs are Federal, State and local government, university or non-profit organization libraries designated by the PTO to offer public access to patent collections.

B. To the extent funding is authorized and appropriated, search and retrieval services will be provided in the PTO's search facilities and PTDLs either:

(1) by the PTO, using its own data bases, computers, communications equipment, and software, and/or

(2) by PTO contractors.

C. Access to commercial data bases that are available to the PTO's examiners, for example industry-specific data bases, will be furnished either through an APS workstation or a terminal furnished by data base vendors in the PTO public search facilities at commercial rates, provided the user has established a commercial account with the data base vendor.

The PTO will not act as an agent for any data base vendor in providing training for, assisting in, or collecting fees for the use of such commercial data bases.

D. Services furnished in the PTO public search facilities and in PTDLs will be at no cost to the public for access to paper and microform records. The costs of accessing PTO owned electronic data bases and systems will be recouped from user fees set to recover the marginal costs of such services.

E. The type of service for public search and retrieval, either PTO or commercial services, will be chosen based on the method and criteria established by the 1983 revision to OMB Circular A–76, entitled "Performance of Commercial Activities."

Distribution of PTO Data for Commercial Dissemination

F. In addition to B and C above, the PTO will pursue its dissemination goal indirectly by encouraging the private sector firms in providing such services to the public outside the PTO search facilities and PTDLs.

G. Fees charged for bulk data developed by the PTO will be based on the marginal cost of providing such distribution services.

H. Arrangements will be non-exclusive. Bulk resale of PTO data will be permitted subject to the terms of each bulk data sales agreement.

I. Fees charged to the public for U.S. patent and trademark data products will be based on the marginal cost of providing such products.

J. The PTO will receive non-U.S. electronic patent data through exchange agreements with other patent offices and international intergovernmental organizations. In general, the PTO will not distribute such data, except in conjunction with services that may be provided by the PTO or its contractors in the PTO public search facilities and PTDLs. Rather, it will seek to have contractual arrangements established directly between the organization and the commercial data base vendor and will not act as a service agent or representative unless there is a special need that cannot be met otherwise.

Information Dissemination: General Statement of Principles (as published in the Official Gazette of the United States Patent and Trademark Office on Tuesday, December 1, 1992)

The overall mission goal of the United States Patent and Trademark Office (PTO) with respect to the issuance of patents derives from Article 1, Section 8, Clause 8, of the U.S. Constitution which states that Congress shall have the power "To promote the Progress of Science and useful Arts, by securing for limited Times to * * * Inventors the exclusive Right to their * * * Discoveries". The PTO's mission goal with respect to the granting of trademark registrations derives from Article 1, Section 8, Clause 3, of the Constitution which states that Congress shall have power "To regulate Commerce with foreign Nations, and among the several States * * *".

As an integral part of its mission, PTO is responsible for assuring that patent and trademark information is available to all sectors of society that have a need for, and can make use of, the information. Through dissemination of such information, PTO provides the means to: (1) foster the competent preparation of patent and trademark applications; (2) avoid infringement of patent and trademarks; and (3) understand the current state of the art as a basis for developing new technology.

As an important part of its information dissemination efforts, PTO will strive to have relevant information resources made generally available in the United States in the most useful form and at a reasonable price. This will include not only its own internal information resources but also, to the extent possible, those of other industrial property offices throughout the world.

The private sector has considerable experience in the packaging and distribution of information products and services. The PTO will continue to work through these private sector firms by facilitating their access to PTO's internal information resources and purchasing, where appropriate, finished products and services for the PTO's own internal use.

The PTO will continue to rely on the nationwide network of Patent and Trademark Depository Libraries as a significant means of providing broad public access to its information products and services. PTO will work with these libraries to take advantage of the advances in information technology.

Generally, PTO will provide products and services directly to end-users in those circumstances where: (1) a significant need exists; and either (2) a. access to existing internal PTO information resources permit major economics in the preparation and distribution of specific information products and services through the avoidance of large scale duplication of equipment or processing; or b. PTO is in a unique position, because of its governmental functions, to provide information that is sufficiently timely, accurate, or comprehensive.

In all cases, PTO will offer its information products and services at a price sufficient to recover the marginal costs of its information dissemination activities.

PTO will also work toward standardization and compatibility among various patent and trademark related information products and services available in the marketplace to enhance their overall usefulness to both the intellectual property and research and development communities.

Current PTO Information Dissemination Activities

As part of its mission, the PTO is required to disseminate the information in the patents it grants and in the trademarks it registers. The PTO carries out this mission by making information available in its public search facilities located in Arlington, VA and in PTDLs located throughout the country. The PTO provides a variety of information products and services, including on-line access to data bases, data on magnetic tapes, CD–ROM products, and copies of patents, trademarks and related documents.

PTDLs and local search facilities provide public access to PTO information using paper and microform products, and through on-line access to internal data bases. The Patent Search Room offers access to the Automated Patent System's Text Search (APS-Text) and to Classified Search and Image Retrieval (APS–CSIR). PTDLs, who subscribe to the automated system, provide APS-Text to their patrons. Patrons of the Trademark Search Library have access to the Automated Trademark System's X-Search and to the Trademark Reporting and Monitoring (TRAM) System.

In order to expand the range of products and services offered at PTDLs, the PTO has established a business partnership with libraries located in Sunnyvale, California, and Detroit, Michigan. These partner PTDLs offer the following expanded products and services: (1) on-line access to APS-Text and APS–CSIR, (2) Video Conferencing capability between patent examiners at USPTO and current and potential applicants, (3) electronic ordering of patent documents.

The PTO maintains the PTO BBS and a World Wide Web site on the Internet to provide information about products, services and current activities. Internet access to the PTO BBS is available

through FedWorld (National Technical Information Service). The PTO BBS contains current patent bibliographic data, searchable for the most recent thirteen weeks. The Web site contains the images and searchable text for patents relating to AIDS research.

PTO offers electronic information products on various media, including magnetic tape and Compact Disc-Read Only Memory (CD–ROM). The PTO makes available machine-readable copies (on magnetic tape) of its patent and trademark data bases to customers who pay a fee based on the cost of preparing and distributing the tapes. The customers who purchase the data are primarily large-scale retailers of on-line data base services who in turn provide this data to thousands of customers.

The PTO makes extensive use of CD–ROM technology to disseminate its information. Products are available for use, free of charge, in PTO search facilities and at all PTDLs, and may be purchased by the public. Four patent text products and three trademark text products, sold as annual subscriptions, are updated bimonthly or quarterly. USAPat, sold as an annual subscription and provided as two or three CD–ROMs per week, contains the images of all patents as they issue weekly.

Another important way of disseminating patent and trademark information to customers is through the Patent and Trademark Copy Sales (PTCS) system. Using this system, the PTO can fulfill requests for paper copies of patents and trademarks in a timely fashion.

Beginning in November 1995, PTO will make additional patent information available on the Internet at no charge to the public. This new service will be available via the PTO home page (http://www.uspto.gov/), and will offer approximately twenty years of searchable patent bibliographic text data (1.68 million documents covering 1976 through 1995). All information contained on the front page of a patent, excluding drawings, will be searchable and retrievable.

Conclusion

Using the input gathered from the announced meeting and the written comments, the PTO will analyze the existing information dissemination program in light of the new and existing technologies, the Paperwork Reduction Act of 1995, and OMB Circular A–130. The PTO will then redraft its policy and publish it for comment prior to finalizing it.

Dated: November 2, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–27690 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Information Collection Available for Public Comment

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

U.S. Military Academy (USMA) programs and curricula undergo periodic review for accreditation by the Accreditation Board of Engineering and Technology (ABET). As input to an upcoming review, perceptions of graduates about the effectiveness of their USMA education are required. The Superintendent delegates responsibility to the Director of Institutional Research for performing special institutional research projects such as program evaluations.

Title: West Point Graduates Survey 1996.

Needs and Uses: The perceptions of graduates on the effectiveness of the U.S. Military Academy programs and curricula are needed for periodic accreditation by the Accreditation Board of Engineering and Technology (ABET). ABET considers graduate feedback essential to the program. The information collected will be used to evaluate programs/curricula and make changes deemed advisable.

Affected Public: Individuals or households.

Annual Burden Hours: 1,059.

Number of Respondents: 1,826.

Responses Per Respondents: 1.

Average Burden Per Response: 35 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the below address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to United States Military Academy, Institutional Research and Analysis Branch, ATTN: MAOR–R, (DR. W. BURKE), BLDG. 2101, West Point, New York 10996. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–27613 Filed 11–7–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare an Environmental Impact Statement (EIS) for the Real Estate Acquisition for, and the Construction of, a U.S. Food and Drug Administration Mega-Laboratory

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of Intent.

SUMMARY: The Los Angeles District intends to prepare an EIS to support the FDA proposal to acquire ten (10) acres of land on the University of California Irvine Campus, and construct a 7,950 square meter (85,560 square foot) mega-laboratory. The purpose of the proposal is to allow the FDA to consolidate its current regional laboratories into a total of five (5) Mega-Laboratory facilities. The proposed project alternatives would include other sites in Orange County, as well as no action alternative. The EIS will analyze potential impacts on the environment of a range of alternatives, including the recommended plan. Scoping: The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

The public scoping meeting will be held on the UCI Campus in late November, 1995. The location, date, and time of the public scoping meeting will be announced in the local news media. A separate notice of this meeting will be sent to all parties on the project mailing list.

Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft EIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 2711, Los Angeles CA 90053.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Bulick, U.S. Army Corps of Engineers, Los Angeles District, Project Management Division at (213) 894–0956.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers intends to prepare an EIS to assess the environmental effects associated with the land acquisition for, and the construction of, an FDA mega-laboratory. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

AVAILABILITY OF THE DRAFT EIS: The Draft EIS is expected to be published and circulated in February 1996, and a public hearing to receive comments on the Draft EIS will be held after it is published.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–27612 Filed 11–7–95; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 2, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Application for Grants Under the Library Literacy Program.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Reporting Burden:

Responses: 500.

Burden Hours: 8,500.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by state and local public libraries to apply for funds under Title VI of the "Library Services and Construction Act" (P.L. 98–480) for planning and coordinating library literacy programs, training librarians and volunteers to carry out such programs, and acquiring necessary materials. Secretary on which applications should be funded.

[FR Doc. 95–27581 Filed 11–7–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia); Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, November 15, 1995: 7:30 pm–9:30 pm (Mountain Standard Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th St. NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda.

7:30 pm Public Comment Period
7:35 pm Meeting Overview
7:40 pm Approval of Agenda
7:45 pm By-laws Committee Report
8:20 pm Budget & Planning Committee Report
8:50 pm Break
8:55 pm Corrective Action Management Unit Report
9:05 pm Approval of 10/18/95 Minutes
9:10 pm Discussion of Minutes
9:20 pm New Business
9:25 pm Public Comment
9:30 pm Adjourn

A final agenda will be available at the meeting Wednesday, November 15, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on November 3, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–27691 Filed 11–7–95; 8:45 am]

BILLING CODE 6450–01–P

CTM Tech, Inc.; Notice of Intent to Grant Exclusive Patent License

SUMMARY: Notice is hereby given of an intent to grant to CTM Tech Inc., of Florence South Carolina, an exclusive license to practice the invention described in U.S. Patent Application S.N. 843,027, entitled "Method and Device for Disinfecting a Toilet Bowl." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. government, and other terms and conditions to be negotiated.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than January 8, 1996.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585; telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 C.F.R. 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

CTM Tech Inc., of Florence, South Carolina, has applied for an exclusive license to practice the invention embodied in U.S. Patent Application S.N. 843,027, and has a plan for commercialization of the invention. A copy of the specification of the patent application can be obtained from the National Technical Information Service (NTIS), Springfield, Virginia 22152.

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a royalty and other terms and conditions to be negotiated. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on November 3, 1995.

Agnes P. Dover,

Deputy General Counsel.

[FR Doc. 95–27692 Filed 11–7–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL96–8–000, et al.]

Alabama Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 1, 1995.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. EL96–8–000]

Take notice that on October 20, 1995, Alabama Power Company (APCo), tendered for filing a petition for waiver of Commission's fuel adjustment clause regulations to permit the recovery from its full and partial requirements wholesale customers of an appropriate share of the cost of a three-month (150,000 ton) buyout under a long-term coal supply agreement. APCo states that its purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the buyout costs that it proposes to recover as fuel costs through the fuel cost recovery mechanisms applicable to these customers. The waiver is proposed to be made effective October 20, 1995, which will enable APCo to purchase the lower cost replacement coal as soon as possible.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Eastex Power Marketing, Inc.

[Docket No. ER96–118–000]

Take notice that on October 18, 1995, Eastex Power Marketing, Inc. (EPMI), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

EPMI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where EPMI sells electric energy, its proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. EPMI is not in the business of generating, transmitting, or distributing electric power.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Greenwich Energy Partners, L.P.

[Docket No. ER96–116–000]

Take notice that on October 18, 1995, Greenwich Energy Partners, L.P. (Applicant) tendered for filing a petition for waivers and blanket approvals under various Commission regulations and for an order accepting its FERC Electric Rate Schedule No. 1.

Applicant intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Applicant sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Applicant nor any of its affiliates are in the business of generating, transmitting, or distributing electric power. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER96–124–000]

Take notice that on October 19, 1995, Cinergy Services, Inc. (Cinergy), tendered for filing service agreements under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Heartland Energy Services, Inc.

Cinergy is requesting an effective date of October 16, 1995.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER96–125–000]

Take notice that on October 20, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, and Central Illinois Public Service Company, tendered for filing with the Commission an Index of Customers and six signed Service Agreements Under the Coordination Sales Tariff approved on April 25, 1995.

Copies of the filing were served on the applicable customers and the Illinois Commerce Commission.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER96–126–000]

Take notice that on October 20, 1995, PECO Energy Company (PECO), filed a Service Agreement dated October 12, 1995, with New York Power Authority (NYPA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NYPA as a customer under the Tariff.

PECO requests an effective date of October 12, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to NYPA and to the Pennsylvania Public Utility Commission.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Nordic Electric, L.L.C.

[Docket No. ER96–127–000]

Take notice that on October 20, 1995, Nordic Electric, L.L.C. (Nordic Electric), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective upon acceptance by the Commission for filing.

Nordic Electric intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Nordic Electric sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Nordic Electric is not in the business of generating, transmitting, or distributing electric power.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27663 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–493–003, et al.]

Milford Power Associates, et al.; Electric Rate and Corporate Regulation Filings

November 2, 1995.

Take notice that the following filings have been made with the Commission:

1. Milford Power Associates

[Docket No. ER93–493–003]

Take notice that on September 26, 1995, Milford Power Associates filed certain information as required by the Commission's order dated September 17, 1993 in Docket No. ER93–493–000. Copies of Milford Power Associates' informational filing are on file with the Commission and are available for public inspection.

2. Energy Resource Marketing, Inc.

[Docket No. ER94–1580–004]

Take notice that on October 25, 1995, Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994,

order in Docket No. ER94–1580–000. Copies of the Energy Resource Marketing, Inc. informational filing are on file with the Commission and are available for public inspection.

3. Associated Power Services, Inc.

[Docket No. ER95–7–004]

Take notice that on September 29, 1995, Associated Power Services, Inc. filed certain information as required by the Commission's December 16, 1994, order in Docket No. ER95–7–000. Copies of Associated Power Services, Inc.'s informational filing are on file with the Commission and are available for public inspection.

4. The Electric Exchange

[Docket No. ER95–111–004]

Take notice that on October 18, 1995, The Electric Exchange filed certain information as required by the Commission's May 3, 1995, order in Docket No. ER95–111–000. Copies of The Electric Exchange's informational filing are on file with the Commission and are available for public inspection.

5. Petroleum Source & Systems Group, Inc.

[Docket No. ER95–266–003]

Take notice that on October 11, 1995, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000. Copies of Petroleum Source & Systems Group's informational filing are on file with the Commission and are available for public inspection.

6. Tennessee Power Company

[Docket No. ER95–581–002]

Take notice that on October 5, 1995, Tennessee Power Company filed certain information as required by the Commission's April 28, 1995, order in Docket No. ER95–581–000. Copies of Tennessee Power Company's informational filing are on file with the Commission and are available for public inspection.

7. Pacific Gas and Electric Company

[Docket No. ER95–1341–000]

Take notice that on October 25, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing a second amendment to its July 6, 1995, filing in this docket of a rate change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

PG&E's initial filing in this docket submitted cost based rates for truing up previous billing made for capacity and energy sales from Energy Account No. 2 during 1993, which were made using rates based on estimated costs. PG&E amended its filing to include a calculation of certain refunds, including interest, resulting from this rate change on August 25, 1995. This second amendment submits a revision of the refund calculation in which adjustments have been made in interest computations.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Otter Tail Power Company

[Docket No. ER95–1687–000]

Take notice that on October 24, 1995, Otter Tail Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER96–113–000]

Take notice that on October 18, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter of Agreement SAO No. 95–SAO–00071 (Letter Agreement) with the Western Area Power Administration (Western). The Letter Agreement conforms the following Contract No. 14–06–200–2948A (Contract 2948A), Contract No. 93–SOA–18003, Settlement Agreement Between Pacific Gas and Electric Company and Western Area Power Administration (PDC Settlement Agreement), and the February 7, 1992 PG&E-Western area Energy Account No. 2 and Capacity Account Repurchase Rate Letter Agreement (February 7 Letter Agreement) in order to allow for a reduction in PG&E's capacity rate to Western.

The Letter Agreement reduces the price PG&E charges Western for capacity from a rate specified by formula to $5.875 per kilowatt per month from June 1, 1996 through December 31, 1999. Prices for capacity from January 1, 2000 through the end of Contract 2948A are determined by indexing the price at December 31, 1999. The Letter Agreement also modifies certain sections of other agreements which effect how charges under Contract 2948A are calculated.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER96–114–000]

Take notice that on October 18, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company (NSP–W) jointly tender and request the Commission to accept a Transmission Service Agreement which provides for Reserved Transmission Service to Wisconsin Power and Light Company beginning September 18, 1995, through November 30, 1996. Specifically the Agreement provides for 40 MW of Reserved Transmission Service from September 18, 1995, through January 31, 1996, 60 MW of Reserved Transmission Service from February 1, 1996, through May 31, 1996, 40 MW of Reserved Transmission Service from June 1, 1996, through August 31, 1996, and 60 MW of Reserved Transmission Service from September 1, 1996, through November 30, 1996. The source party is Basin Electric Power Cooperative and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of September 18, 1995. NSP requests a waiver of the Commission's notice requirements so the Agreement may be accepted for filing effective on the date requested.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Power, Inc.

[Docket No. ER96–115–000]

Take notice that Entergy Power, Inc. (EPI) on October 18, 1995, tendered for filing a Purchase and Sale Agreement with Sonat Power Marketing Inc.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission's notice requirements.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER96–137–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on October 23, 1995, tendered for filing as an initial rate schedule, an agreement with National Fuel Resources, Inc. (NFR). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to NFR and NFR will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 24, 1995, so that the parties, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and NFR.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Energy Online, Inc.

[Docket No. ER96–138–000]

Take notice that on October 24, 1995, EnergyOnline, Inc., tendered for filing a petition requesting waivers, blanket approvals, disclaimer of jurisdiction and order accepting rate schedule.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service Company

[Docket No. ER96–139–000]

Take notice that on October 23, 1995, Southwestern Public Service Company tendered for filing a Notice of Cancellation of Supplement No. 1 to Supplement No. 6 to Rate Schedule FERC No. 104.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ES96–9–000]

Take notice that on October 30, 1995, Illinois Power Company filed an application under § 204 of the Federal Power Act seeking authorization to issue short-term notes, from time to time, in an aggregate principal amount not to exceed $500 million outstanding at any one time, on or before December 31, 1997, with final maturities no later than December 31, 1998.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER95–1716–000]

Take notice that on October 27, 1995, Southern California Edison Company tendered for filing a supplement to its initial filing in the above docket.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27664 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1572–000]

Boyd Rosene & Associates, Inc.; Notice of Issuance of Order

November 3, 1995.

On August 17, 1995, Boyd Rosene & Associates, Inc. (Boyd Rosene) submitted for filing a rate schedule under which Boyd Rosene will engage in wholesale electric power and energy transactions as a marketer. Boyd Rosene also requested waiver of various Commission regulations. In particular, Boyd Rosene requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Boyd Rosene.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Boyd Rosene should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Boyd Rosene is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Boyd Rosene's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27665 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–23–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

November 2, 1995.

Take notice that on October 26, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 25, 1995:

Second Revised Sheet No. 2
Second Revised Sheet No. 657

Columbia states these tariff sheets are being filed to cancel the Index of Entitlements tariff sheets in their entirety, which were previously required pursuant to Section 282.204(b)(2).

Columbia states that as of August 1, 1995, Columbia does not have any firm sales customers to which Section 32.1(f) (Seasonal Curtailment) of Columbia's FERC Gas Tariff would apply. Therefore, there is no longer a need for the indicated tariff sheets.

Columbia states that copies of its filing have been mailed to all holders of Columbia's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27596 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1751–000]

ConAgra Energy Service; Notice of Issuance of Order

November 3, 1995.

On September 14, 1995, ConAgra Energy Services (ConAgra) submitted for filing a rate schedule under which ConAgra will engage in wholesale electric power and energy transactions as a marketer. ConAgra also requested waiver of various Commission regulations. In particular, ConAgra requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ConAgra.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ConAgra should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ConAgra is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ConAgra's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27666 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–30–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 2, 1995.

Take notice that on October 19, 1995, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP96–30–000 pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a bi-directional interconnect, authorized in blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso seeks authorization to construct and operate a bi-directional interconnect with the facilities of PNM Gas Services, a division of Public Service Company of New Mexico ("PNM Gas Services") in Lea County, New Mexico. The proposed interconnection would permit PNM Gas Services to serve residential, commercial and industrial customers. El Paso has reported that they would construct and operate the proposed interconnect at its own expense which they report to be an estimated cost of $268,200.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27597 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1752–000]

Enpower, Inc.; Notice of Issuance of Order

November 3, 1995.

On September 14, 1995, Enpower, Inc. (Enpower) submitted for filing a rate schedule under which Enpower will engage in wholesale electric power and energy transactions as a marketer. Enpower also requested waiver of various Commission regulations. In particular, Enpower requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Enpower.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Enpower should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Enpower is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Enpower's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27667 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–001]

Equitrans, Inc.; Notice of Refund Report

November 2, 1995.

Take notice that on October 30, 1995, Equitrans, Inc. (Equitrans) tendered for filing a Report of Refunds Issued on September 29, 1995.

Pursuant to Article VII, Section 1 of the Stipulation and Agreement filed in these proceedings on January 19, 1995 and the Commission's Orders approving the Stipulation and Agreement, Equitrans made refunds to its customers on September 29, 1995 for all amounts collected in excess of the settlement rates which were subject to refund for the period from September 1, 1993 through June 30, 1995.

Equitrans states that included in the refund amount was interest through September 28, 1995 computed in accordance with Section 154.67(c)(2) of the Commission's regulations. Equitrans states that it refunded to its jurisdictional customers the principal amount of $12,312,054, plus interest thereon to the date of distribution of $1,058,971, for a total of $13,371,025.

Equitrans states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to protest this application should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27598 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–22–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 31, 1995, Iroquois Gas Transmission, System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Second Revised Sheet No. 10
Second Revised Sheet No. 11
Original Sheet No. 11A
Original Sheet No. 11B
Second Revised Sheet No. 27
Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 55
Third Revised Sheet No. 57
Third Revised Sheet No. 58
Second Revised Sheet No. 59
First Revised Sheet No. 60
First Revised Sheet No. 96
First Revised Sheet No. 98
First Revised Sheet No. 101
First Revised Sheet No. 102
First Revised Sheet No. 114
First Revised Sheet No. 117
First Revised Sheet No. 141
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
First Revised Sheet No. 149
First Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 153
Original Sheet No. 158A
First Revised Sheet No. 162
First Revised Sheet No. 164
First Revised Sheet No. 170
Second Revised Sheet No. 181
Second Revised Sheet No. 183

The proposed effective date of the above tariff sheets is December 1, 1995.

Iroquois states that proposed changes are intended: (1) To implement a best bid process for allocating existing capacity on the Iroquois system when it becomes available (other than through capacity release or right of first refusal), (2) to revise the allocation procedure so that interruptible service will be allocated on the basis of the price paid, (3) to clarify the time nominations are due and explain that nominations can occur through pipeline segments, and (4) to make a number of minor ministerial changes to, for example, eliminate redundant language and indicate the person to whom requests should be made.

Iroquois states that copies of this filing were served upon all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27599 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–30–006]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 30, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1995

1st Rev Second Revised Sheet No. 3904

Effective November 1, 1995

Substitute Third Revised Sheet No. 3904
Substitute Second Revised Sheet No. 3905

Koch Gateway states that the above referenced tariff sheets reflect revisions to its tariff in compliance with the September 29, 1995, Federal Energy Regulatory Commission ("Commission") Order. Pursuant to the Commission's order, Koch Gateway revised the above referenced tariff sheets to (1) provide for a recovery period of two years from the effective date of each Account No. 858 surcharge, (2) annually adjust its Account No. 858 surcharges, and (3) refund any overrecovery of Account No. 858 costs. Accordingly, Koch Gateway has revised the above referenced tariff sheets to reflect the necessary changes.

Additionally, Koch Gateway states that, as a result of overlapping

proceedings, it is filing Substitute Third Revised Sheet No. 3904 and 3905 to reflect the tariff revisions that will be effective November 1, 1995.

Koch Gateway also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27600 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–23–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 31, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 22, to be effective December 1, 1995.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the fifth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in the filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit the tariff sheet to become effective December 1, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27601 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–25–000]

North Penn Gas Company; Notice of Filing

November 2, 1995.

Take notice that on October 30, 1995, North Penn Gas Company (North Penn) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Sheet No. 3A.

According to North Penn, the purpose of the filing is to fulfill the obligation, set forth in section 17.4 of the General Terms and Conditions of North Penn's tariff, to refund past overrecoveries of Take-or-Pay (TOP) costs to North Penn's FERC-jurisdictional customers, Transcontinental Gas Pipe Line Corporation and New York State Electric and Gas Corporation. By order dated June 29, 1995 in *North Penn Gas Co.*, Docket No. RP95–304, the Commission required North Penn to submit a tariff filing by October 31, 1995 to distribute such refunds as of December 29, 1995. North Penn states that the instant filing is also in satisfaction of that order.

North Penn requests waiver of any of the Commission's Rules and Regulations that may be required so that the tendered tariff sheet can be made effective as North Penn requests.

North Penn states that copies of the letter of transmittal and all enclosures are being mailed to each of North Penn's affected customers and State Commissions shown on the service list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 214). All such motions or protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27604 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–24–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

November 2, 1995.

Take notice that on October 30, 1995, Northern Border Pipeline Company (Northern Border) petitioned the Commission for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to extend the time period to May 31, 1996 in which firm shippers have to discharge the Tender Deficiencies accumulated during a planned pipeline outage on Foothills Pipe Lines Ltd.'s system.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, DC 20426 a motion to intervene or protest in accordance with Sections 385.211 and 385.214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 9, 1995. Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27602 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–009]

Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

November 2, 1995.

Take notice that on October 31, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of November 1, 1995:

Third Revised Volume No. 1

Second Revised Sixth Revised Sheet No. 5
First Revised Fifth Revised Sheet No. 5–A
Second Revised Fifth Revised Sheet No. 8

Original Volume No. 2

Second Revised Twentieth Revised Sheet No. 2
First Revised Fifteenth Revised Sheet No. 2.1
First Revised Nineteenth Revised Sheet No. 2–A

Northwest states that the purpose of this filing is to place into effect a $1,000,000 rate reduction pending final resolution of the general rate proceeding in this docket. The rate reduction is being made in conjunction with the filing of a Joint Offer of Settlement ("Settlement") that is proposed to resolve, or put in place procedures to resolve, all issues in this docket. Northwest anticipates filing the Settlement with the Presiding Administrative Law Judge on or around November 6, 1995. As a part of the Settlement, Northwest is classifying $3,000,000 annually to the commodity charge component of its transportation rates for the period of November 1, 1995 through January 31, 1996. The effect of the cost classification is to increase the commodity charges and decrease the reservation charges for Northwest's transportation rates. The instant filing reflects the changes that result from the classification change and reduces the overall cost of service underlying Northwest's transportation rates as set forth above. Other rate changes contemplated by the Settlement will not be put into place until a final order approving the Settlement has been issued.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP94–220.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27603 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–28–000]

Pacific Gas Transmission Company; Notice of Refund Report

November 2, 1995.

Take notice that on October 31, 1995, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance a refund report documenting refunds paid July 20 and October 17, 1995 pursuant to Commission Orders issued February 22 and May 3, 1995 in Gas Research Institute ("GRI") Docket Nos. RP95–124–000, *et al.*

PGT states the refund report documents its payment to customers of $388,254.83 and $838,491.00 on July 20 and October 17, 1995, respectively. These payments represent refunds of 1994 overcollections of GRI surcharges as discussed in the above orders.

PGT further states that a copy of the refund report has been served on each of its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27605 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1747–000]

Superior Electric Power Corporation; Notice of Issuance of Order

November 3, 1995.

On September 13, 1995, Superior Electric Power Corporation (Superior) submitted for filing a rate schedule under which Superior will engage in wholesale electric power and energy transactions as a marketer. Superior also requested waiver of various Commission regulations. In particular, Superior requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Superior.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Superior should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Superior is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Superior's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline of filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public

Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27668 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–119–003]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 26, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 1995:

Twelfth Revised Sheet No. 10
Ninth Revised Sheet No. 11
Fourth Revised Sheet No. 11A
Fourteenth Revised Sheet No. 12
First Revised Sheet No. 227
First Revised Sheet No. 228
Sixth Revised Sheet No. 229
Third Revised Sheet No. 230
Third Revised Sheet No. 231
Third Revised Sheet No. 231A
Original Sheet No. 231A01

Texas Gas states that the revised tariff sheets are being filed to comply with Article V of Texas Gas's Stipulation and Agreement of Settlement (Settlement) filed on July 12, 1995, which requires the sheets be filed within fifteen (15) days of the effective date of the Settlement. The Settlement which is intended to resolve all issues related to Texas Gas's recovery of gas supply realignment (GSR) costs was approved by Commission Order on September 18, 1995, without modification or condition.

Texas Gas states that the revised tariff sheets are identical to the pro forma sheets contained in Appendix C of Texas Gas's Settlement and revise Section 33.3 "Gas Supply Realignment Costs" of the General Terms and Conditions of the tariff consistent with the Settlement. Texas Gas seeks an effective date of November 1, 1995, as provided for by the Settlement.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers, interested state commissions, and those who are parties on the official service lists of the referenced dockets listed above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–27606 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–121–001]

WestGas InterState, Inc.; Notice of Compliance Filing

November 2, 1995.

Take notice that on October 26, 1995, WestGas InterState, Inc. (WGI) tendered for filing revised tariff sheets to its FERC Gas Tariff as identified on the Appendix A attached to its filing.

WGI states that it is filing these tariff sheets in compliance with the Letter Order issued October 6, 1995 in Docket No. TM96–1–121–000, by Kevin P. Madden, Director, Office of Pipeline Regulation. In the October 6, 1995, Letter Order, the Director directed WGI to file revised tariff sheets deleting the Annual Charge Adjustment surcharge reflected in its tariff prior to October 1, 1994 and maintaining the ACA surcharge in effect as of October 1, 1994. WGI states that the revised tariff sheets: (1) reflect the deletion of the ACA surcharge under WGI's FERC Gas Tariff prior to October 1, 1994; (2) places the applicable ACA surcharge of $0.0024 per dth into effect on October 1, 1994; and (3) corrects the pagination of the tariff sheet originally filed in this proceeding which changes due to the filing of the aforementioned tariff sheets.

WGI states that a copy of its filing was served on each of its jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20406, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27607 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–136–000]

Williams Natural Gas Company; Notice of Informal Settlement Conference

November 2, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, November 15, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27608 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1614–000]

Vantus Energy Corporation; Notice of Issuance of Order

November 3, 1995.

On August 23, 1995, Vantus Energy Corporation (Vantus) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Vantus requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Vantus. On October 20, 1995, the Commission issued an Order Accepting In Part Market-Based Rates For Filing, And Granting Waivers And Authorizations (Order), in the above-docketed proceeding.

The Commission's October 20, 1995 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Vantus should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Vantus is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Vantus' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 20, 1995.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27669 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5327–6]

Comprehensive Environmental Response, Compensation, and Liability Act; Superfund Docket & Documents Center: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and of closing of Superfund Docket during the move.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act Docket will move from the 12th floor to the 1st floor of the Crystal Gateway 1 building, 1235 Jefferson Davis Highway, Arlington, VA, 22202. The Superfund Docket will be closed from November 17, 1995, through November 21, 1995. Closing the Docket during this move will facilitate the moving of the Docket's collection and ensure the integrity of the regulatory dockets. This move will allow the Docket to provide improved services to its patrons.

As of October 24, 1995, we identified that the following actions will be undergoing the public comment period during the time of the Docket's closing:

NPL–U19 National Oil and Hazardous Substance Pollution Contingency Plan; The National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Rule—12/1/95

102RQ–RN–2 Reportable Quantity Adjustments; Administrative Reporting Exemptions for Certain Radionuclide Releases; Supplementary Proposed Rule—12/4/95

The Docket staff will receive written comments during this time; however, the dockets will not be available for viewing.

FOR FURTHER INFORMATION CONTACT: Superfund Docket & Documents Center (5201G), 401 M Street, S.W., Washington, D.C. 20460 ((703) 603–8917). Beginning November 20, 1995, the phone number will be (703) 603–9232.

Dated: October 27, 1995.

Elaine Davies,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 95–27695 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66218; FRL 4984–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by February 6, 1996, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 21 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00590	Bicep 4.51	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00638	Dual 25G Granular Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00716	Cycle Herbicide	Cyanazine 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00748	Bicep DF Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylpheny')acetamid
000100–NC–90–0005	Subdue 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000239–02531	Grass-B-Gon Grass Killer	Butyl 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate
000334–00187	Fyte 7 Bacteriostat	Paraformaldehyde Paradichlorobenzene Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14},40%C_{12}, 10%C_{16})
000352–00447	Dupont Benlate 50 DF Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
001769–00344	Fen-Two	(1-Cyclohexene-1,2-dicarboximido)methyt2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
002393–00460	Mylone 99G Soil Fumigant NC	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
008120–00052	Amercoat 70 ESP Copper-Ablative Antifoulant	Copper (metallic)
008329–UT–93–0005		Gas cartidge (as a device for burrowing animal control)
010182–00114	ICI Spot Weed & Grass Control	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182–OR–92–0017	Karate Insecticide	(*RS*)-alpha-Cyano-3-phenoxybenzyl (1*RS*)-cis-3-(*Z*)-2-chloro-3,3,3-
010370–00239	Ford's Yard-X	4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
010900–00088	851 Wasp and Hornet Killer	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
034704–00442	Clean Crop Crabgrass Preventer Plus Turf Food Containing	3,5-Dinitro-*N*4,*N*4-dipropylsulfanilamide
034704–00568	Hopkins Mylone 50D Easy To Use Soil Fumigant	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
034704–00569	Hopkins Mylone 85W	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
045087–00045	Zema Home and Carpet Spray	*N*-Octyl bicycloheptene dicarboximide Pyrethrins 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
050932–00001	Sabadilla Pest Control	Veratrine (mixture, Cevadine + Veratridine, with other alkaloids)

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000239	The Solaris Group of Monsanto Co., Box 5006, San Ramon, CA 94583.
000334	Hysan Corp., 3000 W. 139th St., Blue Island, IL 60406.
000352	E. I. DuPont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
002393	Haco, Inc., Box 7190, Madison, WI 53707.
008120	Ameron Protective Coastings Division, 201 North Berry St., Brea, CA 92621.
008329	Clarke Mosquito Control Products Inc., 159 N. Garden Ave, Roselle, IL 60172.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010900	Specialty Division, Div of The Sherwin-Williams Co., Agent For: Spray on Products Inc., 31500 Solon Rd., Solon, OH 44139.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
045087	Zema Corp., Box 12803, Research Triangle Park, NC 27709.
050932	Necessary Organics Inc., One Nature's Way, New Castle, VA 24127.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, 1 pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
69806–50–4	Fluazifop-butyl	000239

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before February 6, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: October 25, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–27433 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5328–2]

Proposed Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA"), Region II, announces a proposed administrative settlement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), relating to the Aluminum Company of America Superfund Site ("Site"). The Site is located in the Town of Massena, St. Lawrence County, New York. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent ("Order") between EPA and the Aluminum Company of America ("ALCOA"). This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to the proposed settlement. Under the Order, ALCOA will be obligated to pay an aggregate of $300,957.49 to the Hazardous Substance Superfund in reimbursement of all of EPA's response costs relating to the Site through November 30, 1993, including accrued interest.

DATES: Comments must be provided on or before December 8, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866 and should refer to: "Aluminum Company of America Superfund Site, U.S. EPA Index No. II CERCLA–95–0210". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Douglas L. Fischer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: (212) 637–3180.

Dated: September 27, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–27696 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5328–3]

Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Denune/Westfall Site

AGENCY: U.S. Environmental Protection Agency ("U.S. EPA").

ACTION: Proposal of CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Denune/Westfall Site.

SUMMARY: U.S. EPA proposes to address the potential liability of Mr. Harry C. Denune and Dixie Distributing Company (the "Settling Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99–499, for past costs incurred in connection with a federal fund lead removal action conducted at the Denune/Westfall Site ("the Site") located in Columbus, Ohio. The U.S. EPA proposes to address the potential liability of the Settling Parties by execution of a CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement ("AOC") prepared pursuant to 42 U.S.C. 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) the Settling Parties agree to pay U.S. EPA $70,000.00 in satisfaction of claims for past costs incurred at the Site in connection with site sampling and analyses and the removal and disposal of 13 drums of PCB-contaminated oil, 1 drum of PCB-contaminated capacitors and 4 transformer carcasses; (2) the Settling Parties agree to waive all claims against the United States that arise out of response activities conducted at the Site; and (3) U.S. EPA affords the Settling Parties a convenant not to sue for past costs incurred during the removal action and contribution protection as provided by CERCLA Sections 113(f)(2) and 122(h)(4) upon satisfactory completion of obligations under the Settlement. However, U.S. EPA is free to pursue any other necessary and appropriate judicial and administrative relief against the Settling Parties. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time. Because the total response costs that were incurred at the Site are less than $500,000, approval of the settlement by the Attorney General is not required.

DATES: Comments on the proposed AOC must be received by U.S. EPA on or before December 8, 1995.

ADDRESSES: A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Mike Anastasio at (312) 886–7951, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Mike Anastasio, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS–29A), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio at (312) 886–7951, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

Barry C. DeGraff,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 95–27694 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

November 1, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 8, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0433.

Title: Basic Signal Leakage Performance Report Section 76.615.

Form No.: FCC 320.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 32,000.

Estimated Time Per Response: 20 hours.

Total Annual Burden: 640,000.

Needs and Uses: Cable television system operators who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a cumulative signal leakage index (CLI) derived under Section 76.611(a)(1) or the results of airsace measurements derived uncer Section 76.611(a)(2). This filing must include a description of the method by which complaince with basic signal leakage criteria is achieved and the method of calibrathing the measurement equipment. The yearly filing is done in accordance with Section 76.615. The FCC staff used the data to ensure the safe operation of aeronautical and marine radio services, and to monitor compliance of cable aeronautical usage which will minimize future interference of these safety of life services.

OMB Approval No.: New Collection.

Title: Section 63.16 Construction of Stand-Alone Cable System by a Carrier in its Exchange Telephone Service Area (CC Docket No. 87–266).

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 50 hours.

Needs and Uses: The Commission finds that the public interest would be served by providing for reduced or "streamlined" Section 214 Authorization to local exchange telephone companies (LECs) agains whom it is not enforcing the cable television/telephone company cross-ownership ban, who propose to construct a cable system in their service area if the LEC is willing to certify to three facts pursuant to 47 CFR 63.16. The information provided by applicants for streamlined treatment will first be placed on public notice for public comment. If comments are filed challenging the veracity of the applicants certification the Commission will attempt to assess the veracity of the application.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27649 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

November 1, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 8, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0475.

Title: Section 90.713 Entry Criteria.

Form No.: N/A.

Type of Review: Reinstatement, without change of a previously approved collection.

Respondents: Individuals or households; Businesses or other for-profit.

Number of Respondents: 33.

stimated Time Per Response: 25.5.

Total Annual Burden: 842.

Needs and Uses: Section 90.713 requires applications for nationwide systems in the 220–222 MHz band to certify that they have an actual presence neccessitating internal communications capacity in the 70 or more markets identified in the application. The data will be used to determine the eligibility of the applicant to hold a radio station authorization. Commission licensing personnelwill use the data for ruling making proceedings and field engineers will use the data for enforcement purposes.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27650 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Arkansas National Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 1, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arkansas National Bancshares, Inc., Bentonville, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Arkansas National Bank, Bentonville, Arkansas.

2. Campbellsville Bancorp, Inc., Campbellsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Campbellsville National Bank, Campbellsville, Kentucky.

3. First National Security Company, DeQueen, Arkansas; to acquire 100 percent of the voting shares of American State Bancshares, Inc., Broken Bow, Oklahoma, and thereby indirectly acquire 90.6 percent of the voting shares of American State Bank, Broken Bow, Oklahoma.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American National Corporation, Omaha, Nebraska; to acquire 100

percent of the voting shares of Fairbury State Bank, Fairbury, Nebraska.

2. Grandview Bankshares, Inc., Tahlequah, Oklahoma; to acquire 100 percent of the voting shares of Cherokee County Banshares, Inc., Hulbert, Oklahoma, and thereby indirectly acquire First State Bank, Hulbert, Oklahoma.

Board of Governors of the Federal Reserve System, November 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27629 Filed 11–07–95; 8:45 am]

BILLING CODE 6210–01–F

Peter Mahurin; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Peter Mahurin, Cecilia, Kentucky; to acquire 26.92 percent of the voting shares of First Cecilian Bancorp, Inc., Cecilia, Kentucky, and thereby indirectly acquire Cecilian Bank, Cecilia, Kentucky.

Board of Governors of the Federal Reserve System, November 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27630 Filed 11–07–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 951 0086]

The Stop & Shop Companies, Inc., and SSC Associates, L.P.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: This consent agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition arising from Stop & Shop and SSC Associates' acquisition of the supermarkets owned by Purity Supreme, Inc. Under the terms of the proposed order contained in the consent agreement, Stop & Shop and SSC Associates, among other things, must divest 17 supermarkets within nine months to a purchaser or purchasers approved by the Commission. Seven of the 17 supermarkets to be divested are located on Cape Cod, and all seven must be divested to one acquirer who shall own and operate them as supermarkets. If Stop & Shop and SSC Associates are unable to divest all seven stores on Cape Cod to a single acqurier who shall own and operate them as supermarkets, Stop & Shop and SSC Associates may divest the stores to no more than two acquriers. If Stop & Shop and SSC Associates fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. For a period of ten years, the proposed order also would prohibit Stop & Shop and SSC Associates from acquiring, without prior notice to the Commission, supermarket assets located in—or any interest (such as stock) in any entity that owns or operates a supermarket located in—Eastern Massachusetts, which includes the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein. This provision would not prevent Stop & Shop and SSC Associates from constructing new supermarket facilities on their own; nor would it prevent Stop & Shop and SSC Associates from leasing facilities not operated as supermarkets within the previous six months. Under the terms of an attached Asset Maintenance Agreement—from the time Stop & Shop and SSC Associates acquire the assets of Purity that must be divested, until the point at which the divestitures required by the proposed order have been completed—Stop & Shop and SSC Associates must maintain their viability, competitiveness and marketability; must not cause their wasting or deterioration; and cannot sell, transfer, or otherwise impair their marketability or viability.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW,, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S–2602, Washington, DC 20580 (202) 326–2610; or James A. Fishkin, FTC/S–2610, Washington, DC 20580 (202) 326–2663.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of Purity Supreme, Inc. ("Purity") by The Stop & Shop Companies, Inc. ("Stop & Shop") and SSC Associates, L.P., and it now appearing that Stop & Shop and SSC Associates, L.P., hereinafter sometimes referred to as "proposed respondents," are willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and among proposed respondents, their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Stop & Shop Companies, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1385 Hancock Street, Quincy, MA 02169.

2. Proposed respondent SSC Associates, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York 10019.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders, The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file verified written reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "Stop & Shop" means The Stop & Shop Companies, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by The Stop & Shop Companies, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "Respondent" or "SSC Associates, L.P." means SSC Associates, L.P., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by SSC Associates, L.P., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. "Assets to be divested" means the supermarket assets described in Paragraph II.A. of this Order.

D. "Commission" means the Federal Trade Commission.

E. "Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

F. The term "Eastern Massachusetts" means the area in Massachusetts consisting of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein.

II

It is further ordered that:

A. Respondents shall divest, absolutely and in good faith, within nine (9) months from the date this Order becomes final:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod) to one acquirer who shall own and operate them:

a. Purity store no. 67 located at 137 Main St. (Route 28—Falmouth Mall), Falmouth, MA 02540;

b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151—Mashpee Commons Shopping Center), Mashpee, MA 02649;

c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;

d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;

e. Purity store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;

f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and

g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

If respondents are unable to divest all of the supermarkets listed to one acquirer who shall own and operate them, respondents may divest all of the supermarkets listed to no more than two acquirers who shall own and operate them.

2. The following supermarkets located in Plymouth County, Massachusetts:

a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53—Kingsbury Square Shopping Center), Kingston, MA 02364;

b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A—Webster Square), Marshfield, MA 02050; and

c Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;

b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and

c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and

b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

The assets to be divested shall include the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at the locations listed above, but shall not include those assets consisting of or pertaining to Stop & Shop or Purity trade names, trade dress, trade marks, service marks, and such other intangible assets that respondents also utilize in their business at locations other than those listed above.

B. Respondents shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested as ongoing viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition alleged in the Commission's complaint.

C. Pending divestiture of the assets to be divested, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested to comply with Paragraphs II. and III. of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all assets to be divested have been divested as required by this Order.

III

It is further ordered that:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested within nine (9) months from the date this Order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be delivered.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II. of this Order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in Eastern Massachusetts.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any supermarket or owned any interest in or operated any supermarket within six (6) months of such proposed acquisition in Eastern Massachusetts.

Provided, however, that advance written notification shall not apply to the construction of new facilities by respondents or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of respondents' offer to purchase or lease.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V

It is further ordered that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)) that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if such supermarket was formerly owned or operated by Purity in Eastern Massachusetts, or was owned or operated by respondents either in Barnstable County, Massachusetts (a/k/a Cape Cod) or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. *Provided, however,* respondents shall not be prevented from entering into or enforcing any agreement (1) requiring their approval of any sublease, assignment, or change in occupancy, which approval shall not be unreasonably withheld; provided further that use of a site for the operation of a supermarket shall not be a basis for withholding such approval; or (2) affecting any existing supermarket owned or operated by respondents and located not more than one mile from a replacement supermarket owned or operated by respondents and opened within six months of the date of such agreement.

B. Respondents shall not remove any equipment from a supermarket owned or operated by respondents in Eastern Massachusetts prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondents in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of Paragraphs II. or III. of this Order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the Order, including a description of all substantive contracts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date of this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment, sale resulting in the emergency of a successor

corporation, or the creation or dissolution of subsidiaries or any other change in respondents that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, respondents shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to respondents, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this Order; and

B. Upon five days' written notice to respondents and without restraint or interference from respondents, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between The Stop & Shop Companies, Inc. ("Stop & Shop"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1385 Hancock Street, Quincy, MA 02169 11420; SSC Associates, L.P. ("SSC Associates"), a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York 10019; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively "the Parties").

Premises

Whereas, Stop & Shop and SSC Associates, pursuant to an agreement dated April 21, 1995, agreed to acquire all of Purity Supreme, Inc. (hereinafter "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II.A. of the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestitures, when those Assets will be in the hands of Stop & Shop and SSC Associates, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Stop & Shop and SSC Associates entering into this Agreement shall in no way be construed as an admission by Stop & Shop and SSC Associates that the Acquisition is illegal; and

Whereas, Stop & Shop and SSC Associates understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

Terms of Agreement

1. Stop & Shop and SSC Associates agree to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Stop & Shop and SSC Associates will be free to close the Acquisition after 3:00 p.m., October 31, 1995.

3. Stop & Shop and SSC Associates agree that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 3.a-3.b, they will comply with the provisions of this Agreement:

a. three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. on the day the divestiture set out in the Consent Order has been completed.

4. From the time Stop & Shop and SSC Associates acquire the Assets until the divestiture set out in the Consent Order has been completed, Stop & Shop and SSC Associates shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall they sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Stop & Shop and SSC Associates to divest themselves of the Assets or to seek any other injunctive or equitable relief, Stop & Shop and SSC Associates shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Stop & Shop and SSC Associates also waive all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Stop & Shop and SSC Associates and to their principal offices, Stop & Shop and SSC Associates shall permit any duly authorized representative or representatives of the Commission:

a. access during the office hours of Stop & Shop and SSC Associates, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Stop & Shop and SSC Associates relating to compliance with this Agreement; and

b. upon five (5) days' notice to Stop & Shop and SSC Associates and without restraint or interference from them, to interview officers or employees of Stop & Shop and SSC Associates, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from The Stop & Shop Companies, Inc. ("Stop & Shop") and SSC Associates, L.P. ("SSC Associates") an agreement containing a proposed consent order. The agreement is designed to remedy anticompetitive effects stemming from Stop & Shop and SSC Associates' acquisition of the supermarkets owned by Purity Supreme, Inc. ("Purity").

The agreement has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's draft complaint charges that on or about April 21, 1995, Stop & Shop and SSC Associates agreed to acquire all of the supermarkets owned by Purity. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

According to the draft complaint, Stop & Shop and Purity are direct competitors for the retail sale of food and grocery items in supermarkets, or narrower product markets contained therein. Stores other than supermarkets do not have a significant price-constraining effect on food and grocery products sold at supermarkets. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets. In addition, supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not typically change their food and grocery prices in response to prices at other types of stores. Food stores other than supermarkets, such as convenience stores, "mom & pop" stores, and specialty food stores (*e.g.*, seafood markets, bakeries, etc.), typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of upscale food stores emphasizing organically grown fruits and vegetables, hormone-free meat and poultry products, and other more expensive food products, and club stores that offer only a limited number of food and grocery products in bulk sizes, do not have a significant effect on market concentration.

According to the draft complaint, the relevant sections of the country in which to analyze the acquisition of Purity are the following:

a. Barnstable County, Massachusetts (a/k/a Cape Cod), and narrower markets contained therein, including Falmouth, Mashpee, Hyannis, Yarmouth, Harwich, and Orleans;

b. the South Shore area of Massachusetts, which consists of parts of Suffolk and Plymouth counties and narrower markets contained therein, including Marshfield and Kingston;

c. the Boston, Massachusetts metropolitan area, which consists of the city of Boston and parts of Essex, Middlesex, Norfolk, and Suffolk counties, and narrower markets contained therein, including Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth;

d. Brockton, Massachusetts; and

e. Bedford, Massachusetts.

According to the draft complaint, these markets are highly concentrated. The post-acquisition Herfindahl-Hirschman Index ("HHI"), a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants, in Barnstable County, Massachusetts (a/k/a Cape Cod) would increase by approximately 2,778 points, from approximately 3,541 to approximately 6,319. The post-acquisition HHI in Falmouth, Mashpee, and Hyannis would increase to 10,000 or near 10,000 in each of these markets. The post-acquisition HHI in Yarmouth, Harwich, and Orleans would significantly increase already highly concentrated markets.

The post-acquisition HHI in the South Shore area of Massachusetts would increase by approximately 3,866 points, from approximately 3,930 to approximately 7,795. The post-acquisition HHI in Marshfield and Kingston would increase to 10,000 or near 10,000 in each of these markets.

The post-acquisition HHI in the Boston, Massachusetts metropolitan area would increase by approximately 512 points, from approximately 1,381 to approximately 1,893. The post-acquisition HHI exceeds 2,000 when club stores and upscale food stores are not included in the market. The post-acquisition HHI in Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth would significantly increase already highly-concentrated markets.

The post-acquisition HHI in Bedford, Massachusetts would increase by approximately 4,702 points, from approximately 5,298 to approximately 10,000.

The post-acquisition HHI in Brockton, Massachusetts would increase by approximately 497 points, from approximately 5,162 to approximately 5,659.

According to the draft complaint, entry into the retail sale of food and grocery products in supermarkets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country. Entry that would prevent the anticompetitive effects in the relevant sections of the country is generally difficult because there are few available sites suitable for supermarkets and the time necessary to receive state and local regulatory approval for a new supermarket is typically quite long.

Stop & Shop and SSC Associates' acquisition of Purity may reduce competition in these markets by eliminating the direct competition between Stop & Shop and Purity, by increasing the likelihood that Stop & Shop will become a dominant firm, and by increasing the likelihood of collusive behavior among the remaining competitors. The Agreement Containing Consent Order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order Stop & Shop and SSC Associates must divest 17 supermarkets within nine months to a purchaser or purchasers approved by the Commission. Seven of the 17 supermarkets to be divested are located on Cape Cod, and all seven must be divested to one acquirer who shall own and operate them as supermarkets. If Stop & Shop and SSC Associates are unable to divest all seven stores on Cape Cod to a single acquirer who shall own

and operate them as supermarkets, Stop & Shop and SSC Associates may divest the stores to no more than two acquirers. If Stop & Shop and SSC Associates fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. The 17 supermarkets to be divested are:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod):

a. Purity store no. 67 located at 137 Main St. (Route 28—Falmouth Mall), Falmouth, MA 02540;

b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151—Mashpee Commons Shopping Center), Mashpee, MA 02649;

c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;

d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;

e. Purity Store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;

f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and

g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

2. The following supermarkets located in Plymouth County, Massachusetts:

a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53—Kingsbury Square Shopping Center), Kingston, MA 02364;

b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A—Webster Square), Marshfield, MA 02050; and

c. Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;

b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and

c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and

b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

For a period of ten years from the date the order becomes final, the order also prohibits Stop & Shop and SSC Associates from acquiring, without prior notice to the Commission, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in Eastern Massachusetts. Eastern Massachusetts consists of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein. This provision does not prevent Stop & Shop and SSC Associates from constructing new supermarket facilities on their own; nor does it prevent Stop & Shop and SSC Associates from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the order prohibits Stop & Shop and SSC Associates from entering into or enforcing any agreement that restricts the ability of any person acquiring any location used as a supermarket, or interest in any location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if that site was a former Purity store in Eastern Massachusetts, and any supermarket owned or operated by any Stop & Shop and SSC Associates either in Cape Cod or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. There is an exception for agreements that impose restrictions on supermarkets that are located no more than one mile from a new replacement supermarket owned and operated by Stop & Shop or SSC Associates when the restrictions are entered into within six months of the opening of the new replacement store. In addition, Stop & Shop and SSC Associates may not remove any equipment from a supermarket they own or operate prior to a sale, sublease, assignment, or change in occupancy, except in the ordinary course of business or certain other circumstances.

Stop & Shop and SSC Associates are required to provide to the Commission a report of compliance with the order within sixty (60) days following the date the order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

Stop & Shop and SSC Associates also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Stop & Shop and SSC Associates acquire the assets of Purity that must be divested until the divestitures set out in the attached consent agreement have been completed, Stop & Shop and SSC Associates must maintain their viability, competitiveness and marketability, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability.

The purpose of this analysis is to invite public comment on the proposed consent order to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed consent order, nor is it intended to modify the terms of the agreement and proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in The Stop & Shop Companies, Inc., File No. 951–0088

I concur in the Commission's decision to accept a proposed consent order for public comment to the extent that the order requires divestiture of supermarkets on Cape Cod and the South Shore, but dissent to the extent that the order requires divestiture of stores in the Boston metropolitan area. Although serious questions can be raised about some of the allegations in the complaint that relate to the product market, I find reason to believe that the law has been violated even if the product market includes sales of food and groceries in stores other than traditional supermarkets. Assuming either the product market alleged in the complaint or a broader product market, I concur in the decision to accept the order as to Cape Cod and South Shore. I dissent from the decision to require divestiture of stores in the Boston metropolitan area. Although a small geographic market theoretically may exist within a broad metropolitan area, at this time the record before the Commission does not contain sufficient evidence to support a finding of reason to believe that the communities of Saugus, Medford, Brookline, Roslindale, Watertown, Weymouth, Brockton and Bedford, Massachusetts are relevant antitrust markets.

[FR Doc. 95–27685 Filed 11–7–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Proposed Data Collections Available for Public Comment and Recommendations

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 619–1053.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. 42 CFR 50 Subpart B: Sterilization of Persons in Federally Assisted Family Planning Projects—0937–0166—Extension no Change—These regulations and informed consent procedures are associated with Federally-funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance with regulations and the protection of the rights of individuals undergoing sterilization. Burden Estimate for Consent Form—Annual Responses: 40,000; Burden per Response: one hour; Total Burden for Consent Form: 40,000 hours—Burden Estimate for Recordkeeping Requirement—Number of Recordkeepers: 4,000; Average Burden per Recordkeeper: 2.5 hours; Total Burden for Recordkeeping: 10,000 hours. Total Burden: 50,000 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: October 31, 1995.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 95–27614 Filed 11–7–95; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committee Meetings; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Action.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. The meeting was announced in the **Federal Register** of October 20, 1995 (60 FR 54233). The amendment is being made to remove probucol, new drug application (NDA) 17–535 (Lorelco®, Hoechst Marion Roussel) for a lipid altering indication from the agenda, and change the time schedule. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 20, 1995, FDA announced that a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on November 16 and 17, 1995.

On page 54233, in the first column, the "*Date, time, and place*" and the "*Type of meeting and contact person*" portions of this meeting are amended, and in the second column, the "*Open committee discussion*" portion of the meeting is amended to read as follows:

Date, time, and place. November 16, 1995, 1 p.m., and November 17, 1995, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, November 16, 1995, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. and 6 p.m.; open public hearing, November 17, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 2 p.m.; Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, FAX 301–443–0699, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

Open committee discussion. On November 16, 1995, the committee will hear presentations and discuss data submitted regarding the safety and efficacy of dexfenfluramine hydrochloride, NDA 20–344 (Redux®, Interneuron Pharmaceuticals, Inc.), for an obesity indication, as followup to the meeting of September 28, 1995. On November 17, 1995, the committee will hear presentations and discuss data submitted regarding the safety and efficacy of sodium fluoride USP, NDA 19–975 (Slow Fluoride®, Texas Southwest Medical Center), for an osteoporosis indication.

Dated: November 2, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–27616 Filed 11–7–95; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Notice of Meeting; AIDS Research Program Evaluation Working Group

Notice is hereby given of the meeting of the NIH AIDS Research Program Evaluation Working Group Area Review Panel on Drug Discovery on November 29–30, 1995 at the Doubletree Hotel at Lincoln Center, 5410 LBJ Freeway, Dallas, Texas 75240. The meeting will be open to the public from 9:00 am to 12:00 pm on November 29, and the closed portion will be from 1:00 pm to 6:00 pm on November 29, and 7:00 a.m. to 10:30 am on November 30.

The NIH Revitalization Act of 1993 authorizes the Office of AIDS Research (OAR) to evaluate the AIDS research activities of NIH. The NIH AIDS Research Program Evaluation Working Group was established by the OAR to carry out this major evaluation initiative, reviewing and assessing each of the components of the NIH AIDS research endeavor to determine whether those components are appropriately designed and coordinated to answer the critical scientific questions to lead to better treatments, preventions, and a cure for AIDS. Six Area Review Panels were also established to address the following research areas: Natural History and Epidemiology; Etiology and

Pathogenesis; Clinical Trials; Drug Discovery; Vaccines; and Behavioral and Social Sciences Research.

The purpose of the meeting is to seek input from individuals and organizations interested in the evaluation of AIDS research in the areas of therapeutics research as it pertains to drug discovery. Examples of areas under consideration by the panel include basic and applied research in HIV and opportunistic diseases, molecular and structural research, targeted drug discovery programs and animal models. The NIH AIDS Research Program Evaluation Working Group will develop recommendations to be made to the Office of AIDS Research Advisory Council that address the overall NIH AIDS research initiatives, both intramural and extramural, and identify long-range goals in the relevant areas of science. These recommendations will provide the framework for future planning and budget development of the NIH AIDS research program.

There will be a closed session from 1:00 pm to 6:00 pm on November 29, and 7:00 a.m. to 10:30 am on November 30, to update the Panel members on privileged information on institute and center grant and contract portfolios.

The open session from 9:00 am to 12:00 pm will begin with a brief overview of panel activities by members of the panel. The remainder of the meeting will be devoted to presentations from individuals and organizations. The session is open to the public; however, attendance may be limited by seat availability.

Comments should be confined to statements related to the current status NIH AIDS research in the areas of drug discovery for HIV–1 and its associated sequelae and recommendations for consideration by the panel in assessing and reviewing the relevant research in these areas.

Only one representative of an organization may present oral comments. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations must submit a letter of intent to present comments and three (3) typewritten copies of the presentation, along with a brief description of the organization represented, to the attention of Dr. Judith Feinberg, Office of AIDS Research, NIH, 31 Center Drive, MSC 2340, Building 31, Room 5C08, Bethesda, MD 20892–2340, (301) 496–0358, FAX: (301) 402–8638. Letters of intent and copies of presentations must be received no later than 5:00 pm on Wednesday, November 22.

Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make a brief oral presentation at the conclusion of the meeting, if time permits, and at the discretion of the Chairperson.

Individuals wishing to provide only written statements should send three (3) typewritten copies of their comments, including a brief description of their organization, to the above address no later than 5 pm on November 22. Statements submitted after that date will be accepted. They may not, however, be made available to the Area Review Panel prior to the meeting, though they will be provided subsequently as written testimony.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Feinberg in advance of the meeting.

Dated: November 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27636 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the closed meetings of the National Cancer Institute Special Emphasis Panel (SEP) of the National Cancer Institute scheduled for November 13 and 15, 1995, which was published in the Federal Register on October 25 (60 FR 54696).

The meetings were canceled due to administrative complications.

Dated: November 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27633 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings of the National Cancer Advisory Board and Its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on November 27–29, 1995. The meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: Subcommittee on Cancer Centers.

Contact Person: Dr. Brian Kimes, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, room 300, 6130 Executive Blvd., Bethesda, MD 20892–7094; (301) 496–8537.

Date of Meeting: November 27, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Open: 7 pm to 8 pm.

Agenda: To discuss the cancer centers.

Name of Committee: Subcommittee on Clinical Investigations.

Contact Person: Dr. Robert E. Wittes, Acting Executive Secretary, National Cancer Institute, NIH, Building 31, room 3A52, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–4291.

Date of Meeting: November 27, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Open: 8 pm to 9 pm.

Agenda: To discuss cancer clinical investigation issues.

Name of Committee: National Cancer Advisory Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, room 600A, 6130 Executive Blvd., Bethesda, MD 20892–7045; (301) 496–5147.

Date of Meeting: November 28–29, 1995.

Place of Meeting: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: November 28—8 am to approximately 12 noon; November 28—2:30 pm to approximately 5:30 pm; November 29—8 am to approximately 4 pm.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Legislative Update; New Business; Strategic Planning and the Bypass Budget; Division of Basic Sciences Overview; Role of Intramural Board of Scientific Counselors; Division of Clinical Sciences Overview; Division of Cancer Epidemiology and Genetics Overview; Discussion of Intramural Program Integration; Scientific Highlights; Division of Cancer Treatment, Diagnosis and Centers Overview; Division of Cancer Biology Overview; Frederick Cancer Research and Development Center Overview; Grant Application Information and Format of Review Presentations; Subcommittee Reports; Division of Cancer Prevention and Control Overview; and Role of the Extramural Advisory Board.

Name of Committee: Subcommittee on Planning and Budget.

Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, NIH, Building 31, room 11A19, Bethesda, MD 20892; (301) 496–5515.

Date of Meeting: November 28, 1995.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 12:15 pm to 1:30 pm.

Agenda: To discuss the NCI budget and various planning issues.

Name of Committee: Subcommittee for Special Priorities.

Contact Person: Ms. Iris Schneider, Executive Secretary, National Cancer Institute, NIH, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534.

Date of Meeting: November 28, 1995.

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 1:30 pm to 2:30 pm.

Agenda: To discuss issues related to special priorities.

Name of Committee: Subcommittee on Information and Cancer Control.

Contact Person: Mr. Paul Van Nevel, Executive Secretary, National Cancer Institute, NIH, Building 31, room 10A31, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–6631.

Date of Meeting: November 28, 1995.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 5:30 pm to 6:30 pm.

Agenda: To discuss information and cancer control issues.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: November 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27635 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given to the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 11–13, 1995. The meeting will be held in the 11th Floor Solarium, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public on December 11 from 9:45 a.m. to 12:30 p.m. On December 12 the meeting will be open from 9:30 a.m. until 12:15 p.m. During the open sessions, the permanent staff of the Laboratory of Immunology will present and discuss their immediate, past and present research activities.

In accordance with the provisions set forth in Sec. 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 11 from 8:30 a.m. until 9:45 a.m., and from 12:30 p.m. until recess; on December 12 from 8:30 a.m. until 9:30 a.m., and from 12:15 p.m. until recess; and on December 13 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Thomas J. Kindt, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 4A31, telephone 301–496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27632 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 28, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 30, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Multidisciplinary Sciences.

Date: December 3–5, 1995.

Time: 8:00 p.m.

Place: Tarrytown Hilton Inn, Tarrytown, New York.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 4, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 5, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Biological and Physiological Sciences.

Date: December 28, 1995.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, room 4152, Bethesda, Maryland 20892, (301) 435–1720.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878,

93.892, 93.893, National Institutes of Health, HHS)

Dated: November 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27634 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December 1995.

The meeting of the CMHS National Advisory Council will include a discussion of the mission and programs of the Center, administrative announcements and program developments. It will focus on effective models of delivering quality mental health services in managed care, the most effective models in preventing homelessness among adults with Severe Mental Illness (SMI) and a determination of the effectiveness of early intervention services for children. The Council will also be performing a review of individual contract proposals; therefore, portions of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and/or a roster of Council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 11C–26, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council.

Meeting Dates: December 7–8, 1995.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Chevy Chase, Maryland 20814.

Closed: December 7, 9:00 a.m.–10:00 a.m.

Open: December 7, 10:00 a.m.–5:00 p.m.

Open: December 8, 9:00 a.m.–adjournment

Contact: Anne Mathews-Younes, Ed.D., Room 11C–26, Parklawn Building, Telephone: (301) 443–3606.

Dated: November 2, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–27615 Filed 11–7–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3937–N–02]

Notice of Extension of Due Date for Notice of Funding Availability for FY 1995 Historically Black Colleges and Universities Program Community Development Corporations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Extension of Due Date for Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This notice extends to January 11, 1996 the application due date for the FY 1995 Historically Black Colleges and Universities (HBCU) Program Community Development Corporations NOFA published on September 29, 1995.

DATES: This notice extends the application due date from November 28, 1995 to January 11, 1996. No applications will be accepted after 4:30 PM on January 11, 1996. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. *Applications may not be submitted by facsimile (FAX).*

ADDRESSES: FOR AN APPLICATION KIT CONTACT: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU CDC Program. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is 1–800–877–8339. (This is a toll-free number.) When requesting an application kit, please refer to document FR–3937 and provide your name, address (including zip code), and telephone number (including area code). Requests for HBCU CDC application kits should be made immediately. HUD will distribute application kits as soon as they become available.

APPLICATION SUBMISSION: An original and three copies of the completed application must be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU CDC Program.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7216, Washington, D.C. 20410. Telephone Number: (202) 401–7912. This is not a toll free number. Access to this information is available to the hearing impaired through the Federal Information Relay Service at 1–800–877–8339. This is a toll-free number.

SUPPLEMENTARY INFORMATION: On September 29, 1995 (60 FR 50700), HUD published a FY 1995 HBCU NOFA announcing the availability of up to $2.5 million of Fiscal Year 1995 funds for ten Historically Black Colleges and Universities to form Community Development Corporations (CDCs) to undertake eligible activities. The application due date given in that publication is November 28, 1995. In order to provide more time for the preparation of applications under the NOFA, which differed in its focus from previous HBCU NOFAs, this notice extends the application due date to January 11, 1996.

Dated: November 2, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–27590 Filed 11–7–95; 8:45 am]

BILLING CODE 4210–29–P

[Docket No. FR–3945–N–02]

Office of the Assistant Secretary for Community Planning and Development; Notice of Clarifications and Extension of Due Date for Notice of Funding Availability for FY 1995 Historically Black Colleges and Universities Program Projects With Units of General Local Government

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Extension of Due Date and Clarifications to Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This notice extends to January 12, 1996 the application due date for the FY 1995 Historically Black Colleges and Universities (HBCU) Program Units of General Local Government NOFA published on September 29, 1995, and provides clarification of some terms used in that NOFA.

DATES: No applications will be accepted after 4:30 PM on January 12, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. *Applications may not be submitted by facsimile (FAX).*

ADDRESSES: FOR AN APPLICATION KIT CONTACT: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU UGLG Program. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is 1–800–877–8339. (This is a toll-free number.) When requesting an application kit, please refer to document FR–3945 and provide your name, address (including zip code), and telephone number (including area code). Requests for HBCU UGLG application kits should be made immediately. HUD will distribute application kits as soon as they become available.

APPLICATION SUBMISSION: An original and three copies of the completed application must be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU UGLG Program.

FOR FURTHER INFORMATION CONTACT: Dr. James Turk, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7253, Washington, D.C. 20410. Telephone Number: (202) 708–3176. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On September 29, 1995 (60 FR 50694), HUD published a FY 1995 HBCU NOFA announcing up to $1.5 million of FY 1995 funding for Historically Black Colleges and Universities (HBCU) to undertake jointly funded Community Development Block Grant (CDBG) projects with units of general local government (UGLG). The application due date given in that publication is November 28, 1995. In order to provide more time for the preparation of applications under the NOFA, which differed in its focus from previous HBCU NOFAs, this notice extends the application due date to January 12, 1996.

In response to inquiries concerning the HBCU UGLG NOFA published on September 29, 1995, HUD in this notice is also providing the following clarification of terms used in that NOFA:

The joint program efforts to be undertaken by HBCUs with units of general local governments to establish multiple use community services facilities on HBCU campuses are joint *new construction or major reconstruction* projects. This clarification, emphasizes, and is consistent with, the statement in the third column on p. 50694 of the NOFA: "Those applicants planning to use funds for the provision of public services are bound by the statutory requirement that not more than 15% of the total grant amount be used for public service activities."

Additional clarification is provided with respect to the definition of "campus." As used in the NOFA, "campus" means the grounds and buildings of a university or college.

Dated: November 2, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–27591 Filed 11–7–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–06–1100–03]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to Rescind Proposed Plan Amendment.

SUMMARY: Notice is hereby given that the Proposed Plan Amendment/Environmental Assessment for the Book Cliffs Resource Management Plan has been rescinded.

DATES: None.

ADDRESSES: Questions regarding the rescinding of the proposed plan amendment should be addressed to Paul Andrews, Area Manager, Vernal District Office, 170 South 500 East, Vernal, Utah, 84078. Phone: (801) 781–4400.

FOR FURTHER INFORMATION CONTACT: Paul M. Andrews, Area Manager, Book Cliffs Resource Area, at 170 South 500 East, Vernal, Utah 84078; Phone: (801) 781–4400.

SUPPLEMENTARY INFORMATION: Previously unidentified concerns have surfaced regarding the recently submitted Book Cliffs Divide Forage Reallocation and Public Road Access Resource Management Plan Amendment. As these concerns may have merit, the proposed plan amendment is hereby withdrawn until these concerns have been reviewed and any necessary actions taken to resolve them, if possible. In accordance with 43 CFR 1610.5–2, the protest process for the Proposed Plan Amendment will then be reinitiated.

Dated: November 1, 1995.

G. William Lamb,

State Director.

[FR Doc. 95–27654 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–DQ–P

[Colorado; CO–930–06–1020–00]

Notice of Intent To Modify Resource Management Plans and To Prepare an Environmental Impact Statement to Adopt Standards for Rangeland Health and Guidelines for Grazing Management in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Intent to modify Resource Management Plans within Colorado and to prepare an Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) in Colorado intends to modify all existing Resource Management Plans (RMP) in the State and to prepare appropriate National Environmental Policy Act (NEPA) analysis for the adoption of Standards for Rangeland Health and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100). Two additional RMPs that are currently being developed will also be modified as a result of this effort. Public comment is sought on the issues and alternatives to be considered, and on suggested standards and guidelines.

DATES: Comments will be accepted throughout the process of modifying plans and preparation of NEPA analysis. However, comments received after January 2, 1996, may not be reflected in the alternatives considered in the draft environmental impact statement or other NEPA analysis.

FOR FURTHER INFORMATION CONTACT: Jim Sazama, Team Leader, Bureau of Land Management, 2505 South Townsend, Montrose, CO 81401; phone 970–249–6047.

SUPPLEMENTARY INFORMATION: The BLM's new grazing administration regulations (43 CFR Part 4100), which became effective August 21, 1995, provide for the development of Standards for Rangeland Health and Guidelines for Grazing Administration. In Colorado, BLM intends to develop these standards and guidelines through the BLM's planning process. Incorporating standards and guidelines into existing plans will require some form of plan modification, ranging from simple plan maintenance to plan amendment. Resource Management Plans to be modified are: Glenwood Springs, Grand Junction, Gunnison, Kremmling, Little Snake, Northeast, San Juan/San Miguel, San Luis, and Uncompahgre Basin RMPs. Two other RMPs that are currently being completed, the Royal Gorge RMP and White River RMP, will also be modified, as appropriate. Modifying all of Colorado BLM's RMPs at the same time is intended to streamline efforts and to provide for a broader view of rangeland ecosystems.

At this point, it is uncertain what level of plan modification will be needed, plan maintenance or plan amendment. Similarly, the level of environmental analysis appropriate under the Council on Environmental Quality's regulations implementing NEPA (40 CFR Part 1500) may vary. Should it be determined that no environmental impact statement is needed, NEPA analysis will be accomplished via an environmental assessment.

Public input on standards and guidelines for Colorado was received at a series of workshops conducted in early September 1995. Input has also been received from Colorado BLM's Front Range, Southwest and Northwest Resource Advisory Councils.

This notice invites additional public comment on the proposal to develop standards and guidelines and to modify the affected Resource Management Plans. Public comment is invited on the issues to be addressed and alternatives to be considered in the Environmental Impact Statement or other NEPA analysis.

Issues preliminarily identified include: the effect that adoption of the standards will have on uses of public land, the effect that adoption of the proposed guidelines will have on grazing management and livestock operations, and the need for flexibility in standards and guidelines.

Three preliminary alternatives have been identified: the continuation of current management as provided for in existing land use plans, the application of the fallback standards and guidelines contained in the regulations (No Action), and the adoption of standards and guidelines developed locally and in consultation with Colorado BLM's three Resource Advisory Councils.

The NEPA analysis will be conducted using an interdisciplinary team that includes persons trained in archaeology, economics, plant ecology, hydrology, soil science, range management, and wildlife management.

Dated: October 26, 1995.

Donald R. Glaser,

State Director, Colorado.

[FR Doc. 95–27583 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–JB–P

Bureau of Reclamation

Southern Nevada Water Authority Treatment and Transmission Facility, Clark County, Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft environmental impact statement and notice of public hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation, and the Southern Nevada Water Authority (SNWA) have prepared a draft environmental impact statement (DEIS) on a new water treatment and transmission facility (TTF) proposed by SNWA. The SNWA proposes to construct an intake structure, water treatment facility and associated transmission pipelines to treat and convey Colorado River water from Lake Mead to the Las Vegas Valley. The DEIS describes and presents the environmental effects of six alternatives, including no action, associated with the construction and operation of the proposed TTF. The Federal Actions would be the issuance of permits, rights-of-way, and modification of existing water delivery contracts.

DATES AND LOCATIONS: There will be five public hearings at the following locations:

- Boulder City Hall, City Council Chambers, 401 California Avenue, Boulder City, NV.
- Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- North Las Vegas City Library, Community Room, 2300 Civic Center Drive, North Las Vegas, NV.
- Henderson Convention Center, 200 South Water Street, Henderson, NV.

Dates and times of the hearings will be announced in the local media. A 90-day public review period commences with the publication of this notice. Written comments will be accepted by Reclamation at the address noted below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas H. Shrader, Manager, Environmental Compliance Group, Bureau of Reclamation, Attention: Mr. James P. Green LC–2206, P.O. Box 61470, Boulder City, Nevada 89006–1470, Telephone. (702) 293–8519; or Mr. David Connally, EIS Manager, Southern Nevada Water Authority, 1850 East Flamingo Road, Suite 234, Las Vegas, Nevada 89119, Telephone: (702) 732–1982. Copies of the DEIS are available for inspection at the above addresses and at libraries in the project vicinity.

SUPPLEMENTARY INFORMATION: The DEIS evaluates the effects of the construction and operation of a new water TTF to divert existing State of Nevada allocation of Colorado River water from Lake Mead, treat it, and convey it to the Las Vegas Valley, Nevada. Three issues are related to water facility infrastructure in the Las Vegas Valley. First, the Valley is dependent on a single water treatment and delivery facility for 85 percent of its water. Second, the capacity of the existing facility to deliver Colorado River water will be insufficient to meet projected water demands by the year 1997, and third, the existing water facility infrastructure cannot provide full access to Nevada's Colorado River water allocation under the current pattern of seasonal water use. With these considerations in mind, the SNWA conceived of the TTF as an independent facility for the treatment and transmission of Colorado River water to the Valley. The goal of the proposed SNWA–TTF project is:

To develop a reliable and demand-responsive municipal water system that will supplement the existing Southern Nevada Water System during periods of curtailed production or system failure, and provide the State of Nevada full access to its Colorado River water allocation.

Results of supply and demand projections for the SNWA service area suggest that summer shortages due to insufficient facility capacity could occur as soon as the summer of 1997 unless system improvements are made. Current improvements to the existing Southern Nevada Water System may prolong the ability of the SNWA purveyors to provide adequate water supplies to the year 2000.

Six alternatives, including no action, are considered in the DEIS. Three alternatives propose a new intake structure at Saddle Island, with pumping stations, buried pipelines, construction of a new tunnel or use of an existing tunnel, a new water treatment facility (WTF), and a distribution system in Las Vegas Valley. Two other alternatives propose tapping into existing piping in underground chambers in the west wall of Black Canyon below Hoover Dam, an underground pumping station, tunnels, buried pipelines, a new WTF, and a distribution system in the Valley. The two alternative families share common elements. The preferred alternative proposes a new intake structure at Saddle Island, pumping stations, buried pipelines, use of an existing tunnel, a new WTF, and a distribution system in the Las Vegas Valley.

Environmental consequences that would result from the alternatives, but could be mitigated to a level of insignificance by implementation of mitigation measures, include: biological resources, cultural resources, noise and vibration, recreation, traffic, and water resources. Environmental consequences that would remain significant after implementation of mitigation measures include: aesthetics, air quality, and land use and socio-economics. There would be beneficial impacts to land use and socio-economics, associated with provision of water to lightly-developed areas, obviating the need for water wells, and provision of water supplies for potential economic diversification in the project area.

Those wishing to schedule time, in advance, to make oral comments at a particular hearing should contact the Bureau of Reclamation and indicate at which session the speaker wishes to appear. Speakers will be called in order of their requests. Requests to speak may be made at each session and will be called after advance requests. Oral comments will be limited to 10 minutes per individual.

Dated: October 24, 1995.

William E. Rinne,

Director Resource Management and Technical Services.

[FR Doc. 95–27699 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–94–P

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Carlos Diez, University of Central Florida, Orlando, FL PRT–808254

The applicant requests a permit to export carapacial scute samples from hawksbill sea turtle (*Eretmochelys imbircata*) to Dr. Ohtaishi, Hokkaido University, Sapporo, Japan for use in age determination research. This notice covers activities conducted by the applicant for a five year period.

Applicant: The Hawthorn Corporation, Grayslake, IL, PRT–722075

The applicant requests a permit to reexport and reimport tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Florida Museum of Natural History, Gainesville, FL, PRT–677336

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research.

Applicant: Svend & Lilli Kristensen, Brandon, FL, PRT–703702

The applicant requests a permit to reexport and reimport captive-born leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 3, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–27628 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Endangered Smith's Blue Butterfly and Other Species of Special Concern on the North of Playa Project, Sand City, California

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of Availability.

SUMMARY: D.B.O. Development Company of Pacific Grove, California, (applicant) has applied to the Fish and Wildlife Service (Service) for a 5-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue an incidental take permit and provide assurances for the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), endangered sand gilia (*Gilia tenuiflora* ssp. *arenaria*), threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*), proposed endangered black legless lizard (*Anniella pulchra nigra*), and candidate sandmat manzanita (*Arctostaphylos pumilla*) and Monterey ceanothus (*Ceanothus rigidus*) on the proposed 33-acre North of Playa Redevelopment project site in Sand City, Monterey County, California. The proposed permit would be effective upon issuance for species currently listed under the Act. For unlisted covered species, the permit would become effective upon their listing under the Act. Plants would be covered to the extent that take is prohibited by the Act.

This notice opens the comment period on the joint Environmental Assessment (EA) and permit application package, which includes the Habitat Conservation Plan (HCP) and Implementation Agreement (IA). All

comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments on the HCP, EA, and IA should be received on or before December 8, 1995.

ADDRESSES: Comments should be addressed to Ms. Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958. Please refer to permit no. PRT–808240 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McCalvin, Fish and Wildlife Biologist, at the above address (805–644–1766).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Ventura Field Office at the above referenced address and telephone. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background

D.B.O. Development Company proposes to develop a 33-acre site known as the North of Playa Redevelopment project site in Sand City, Monterey County, California. This site is known to support populations of the endangered Smith's blue butterfly, the endangered sand gilia, and the threatened Monterey spineflower. The site also supports populations of the black legless lizard, proposed for listing as an endangered species, and the sandmat manzanita and Monterey ceanothus, candidates for listing.

Listed animal species are protected pursuant to section 9 of the Act against take; that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. Although no incidental take authorization is required for listed plant species, impacts to these species must be addressed in the intra-Service consultation required pursuant to section 7(a) of the Act.

The EA considers the environmental consequences of four alternatives: proposed action, no action, reduced intensity development, and no development. The reduced intensity and no development alternatives were found infeasible because they are inconsistent with Sand City's development goals and because they would not substantially benefit the species discussed above.

The proposed action would result in the loss of approximately 6 acres of coastal dune scrub habitat and ruderal vegetation. This action could directly and indirectly affect the species described above. The Service would issue an incidental take permit to the applicant for the take of the endangered Smith's blue butterfly. In addition, the applicant seeks Federal assurances that no additional land restrictions or financial compensation would be required for species adequately covered by the HCP. To accomplish this, all species covered in the HCP would be included in the incidental take permit on the condition that avoidance, minimization, and reserve management measures identified for these species in the HCP are implemented.

The proposed Federal action would authorize the incidental take of all Smith's blue butterflies on approximately five clusters of host plants (*Eriogonum parvifolium* and *E. latifolium*) on approximately 0.5 acre that historically supported varying numbers of the Smith's blue butterfly. Issuance of the permit would also result in the loss of 6 acres of relatively low quality habitat for the black legless lizard. Between 10 and 59 individual black legless lizards could occur in this portion of the site. In addition, three of the four existing colonies of sand gilia documented on the site, and all Monterey spineflowers would be removed. In 1995, approximately 1,000 and 1,200 individuals, respectively, of these annual species were detected on-site. Issuance of the permit would result in the removal of all of the sandmat manzanita (approximately 262 plants) and Monterey ceanothus (approximately 203 plants) currently identified on the project site.

The proposed action would establish and provide management for a mitigation area of approximately 4.6 acres where coastal dune scrub vegetation and associated special status species would be restored, enhanced, and protected in perpetuity. Included in this mitigation area would be approximately 1.5 acres of existing Smith's blue butterfly habitat which is proposed to be expanded through establishment of additional buckwheat foodplants and removal of non-native invasive vegetation. The black legless lizard and special status plant species would be salvaged from the project site and relocated to the mitigation site. Funds for relocation, restoration, and monitoring for 5 years would be provided by the applicant. Long-term maintenance of the area would be the responsibility of Sand City, which would receive and administer annual project-assessment fees specifically for maintenance of the habitat area.

The no action or no permit alternative would result in buildout of the project site as approved by Sand City with avoidance of and setbacks from the Smith's blue butterfly foodplants. Approximately 600 sand gilia plants would be removed under this alternative. Impacts to the other species would be similar to the proposed action alternative. However, none of the mitigation measures proposed under the proposed action alternative for these species, including restoration and protection of the mitigation area, would occur.

This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If the Service determines that the requirements are met, an incidental take permit will be issued for covered species. The final NEPA and permit determinations will be made no sooner than 30 days from the date of this notice.

Dated: November 1, 1995.

David L. McMullen,

Acting Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–27644 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–738 (Preliminary)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury[2] by reason of imports from the United Kingdom of foam extruded PVC and polystyrene framing stock,[3] provided for in subheadings 3924.90.20, 3926.90.90, 3926.90.95, and 3926.90.98 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On September 8, 1995, a petition was filed with the Commission and the Department of Commerce by Marley Mouldings, Inc., Marion, VA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of foam extruded PVC and polystyrene framing stock from the United Kingdom. Accordingly, effective September 8, 1995, the Commission instituted antidumping investigation No. 731–TA–738 (Preliminary). The petition in this investigation was filed subsequent to the effective date of the Uruguay Round Agreements Act ("URRA"). This investigation, thus, is subject to the substantive and procedural rules of the law as modified by the URAA. *See* Public Law 103–465, approved Dec. 8, 1994, Stat 4809, at § 291.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 18, 1995 (60 F.R. 48167). The conference was held in Washington, DC, on September 29, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 23, 1995. The views of the Commission are contained in USITC Publication 2930 (October 1995), entitled "Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom: Investigation No. 731–TA–738 (Preliminary)."

Issued: October 25, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–27689 Filed 11–7–95; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Carol T. Crawford and Commissioner Lynn M. Bragg find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the United Kingdom of foam extruded PVC and polystyrene framing stock that are alleged to be sold in the United States at LTFV.

[3] For purposes of this investigation, the subject product consists of all extruded PVC and polystyrene framing stock regardless of color, finish, width or length. Finished frames assembled from foam extruded PVC and polystyrene framing stock are excluded.

[Investigation No. 337–TA–371]

Certain Memory Devices With Increased Capacitance and Products Containing Same; Notice

Notice is hereby given that the prehearing conference and hearing in this matter scheduled to commence at 10:00 a.m. on November 6, 1995, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., is cancelled.

The Secretary shall publish this notice in the **Federal Register**.

Issued: November 2, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–27688 Filed 11–7–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 753–TA–33]

Roses From Israel; Import Investigation

Determination

Pursuant to section 753(b)(4) of the Tariff Act of 1930 (19 U.S.C. § 1675b(b)(4)) (the Act), the Commission hereby determines that an industry in the United States is not likely to be materially injured by reason of imports from Israel of roses if the countervailing duty order on such merchandise were to be revoked.

Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request the Commission to initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Further, section 753(a)(3) requires that such requests must be filed with the Commission within 6 months of the date on which the country from which the subject merchandise originates became a signatory to the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), as referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

On May 26, 1995, the Department of Commerce (Commerce) published in the **Federal Register** notice of opportunity to request injury investigation(s) under section 753 of the Act (60 F.R. 27963, May 26, 1995). In that notice, Commerce stated that, for those countries becoming signatories to the Subsidies Agreement on January 1, 1995, requests for injury investigations must be filed with the Commission no later than June 30, 1995. In addition, Commerce noted that in the case of Israel, that country became a signatory to the Subsidies Agreement on April 21, 1995.

Section 753(b)(4) of the Act provides that, if a request for an injury investigation is not made within 6 months of the time the country of origin of the subject merchandise became a signatory to the Subsidies Agreement, the Commission shall notify the administering authority that it has made a negative determination with regard to the question of the likelihood of material injury by reason of imports of the subject merchandise if the order is revoked. As of October 23, 1995, the Commission had not received a request for investigation under section 753(a) with regard to the outstanding countervailing duty order on roses from Israel. Accordingly, pursuant to section 753(b)(4) of the Act, the Commission hereby notifies Commerce of its negative injury determination with regard to the outstanding countervailing duty order on roses from Israel.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810.

Authority

This determination is being made under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 30, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–27687 Filed 11–7–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32547]

Kansas City Southern Railway Company—Construction and Operation Exemption—to Exxon Corporation's Plastics Plant Near Baton Rouge and Baker, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of conditional exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10901 Kansas City Southern Railway Company's (KCS) construction and operation of a line of railroad. The proposed line would be about .375 miles long, beginning at KCS milepost 40 + 07.2 on the KCS Stupp lead, located near the intersection of U.S. Highway 61 and Thomas Road (LA Hwy 423), near Baker, LA, and connecting with the industry track facilities of the Exxon Corporation's Baton Rouge Plastics Plant located south of Thomas Road (LA Hwy 423) near Baker, LA. (milepost 17 + 99.8 of the Stupp lead).

DATES: Petitions to reopen must be filed by November 28, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32547 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: John R. Molm, Troutman Sanders, 601 Pennsylvania Avenue, N.W., Suite 640, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: October 30, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27677 Filed 11–7–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 22, 1995, Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance levorphanol (9220).

The firm plans to manufacture finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 8, 1996.

Dated: October 24, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–27675 Filed 11–7–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–27]

Hugh I. Schade, M.D.; Denial of Application

On February 25, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Hugh I. Schade, M.D., (Respondent) of San Jose, California, notifying him of an opportunity to show cause as to why DEA should not deny his pending application, executed on August 28, 1992, for registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that: (1) In September and October 1987 a DEA inspection of the Respondent's registered location revealed discrepancies in his recordkeeping and security, including the storage of controlled substances at an unregistered location, and an audit revealed overages and shortages of controlled substances, including a shortage of 4,193 dosage units of Diazepam, a Schedule IV controlled substance; (2) during the DEA audit, the Respondent and his wife admitted to personally using acetaminophen with codeine products and Anexsia, a Schedule III controlled substance, out of office stock, since 1985, without recording the usage; (3) on September 12, 1989, the Respondent was arrested on thirty-one counts of violating the California Health and Safety Code by prescribing controlled substances without a legitimate medical purpose and not in the usual course of professional practice; (4) on December 18, 1991, the Respondent was convicted in the Superior Court of California, Santa Clara County, of thirteen felony counts of issuing controlled substance prescriptions without medical cause and one count of manslaughter, arising out of a patient's drug overdose death.

On March 1, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Francisco, California, on October 26 and 27, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On January 12, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's application for registration be denied, and also writing that "the Respondent is encouraged to reapply in about one year from the effective date of any final decision in this case." Neither party filed exceptions to his decision, and on February 15, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the parties have stipulated to the following: (1) That Anexsia, a brand name for a product containing hydrocodone, is a Schedule III narcotic controlled substance pursuant to 21 CFR 1308.13(e); (2) that codeine is a Schedule III narcotic controlled substance pursuant to 21 CFR 1308.13(e); (3) that Tylenol No. 3, Tylenol No. 4, and Empirin with codeine, brand names for products containing codeine, are Schedule III narcotic controlled substances pursuant to 21 CFR 1308.13(e); and (4) that Diazepam is a Schedule IV narcotic controlled substance pursuant to 21 CFR 1308.14(c).

In October 1986, an investigation was opened by the DEA after a Diversion Investigator received information that the Respondent had purchased controlled substances containing codeine and dihydrocodeinone in quantities in excess of average U.S. and California practitioners. An administrative inspection warrant was served on the Respondent's Los Gatos Boulevard location in September 1987. Prior to serving the warrant, the investigators determined that the Respondent had only one valid DEA registration, which was for his Los Gatos Boulevard office. However, investigators discovered that the Respondent was storing controlled substances at unregistered locations, to include his medical office on Crown Boulevard in San Jose, and his Almaden Valley residence. The investigators also discovered that the Respondent had failed to take a beginning inventory, to conduct a biennial inventory, and to properly complete DEA Form 222 for Schedule II controlled substances.

An audit was conducted, and the Respondent was unable to account for approximately 3,000 dosage units of acetaminophen with codeine. Although he maintained that he did not know what happened to these dosage units, the Respondent admitted to the investigator that he and his wife had personally used this substance out of office stock without recording the usage. There were also overages and shortages of other controlled substances. Police reports reflected that in late 1983 and early 1984, controlled substances were stolen from the Respondent's office, but such thefts had not been reported to DEA, as required. However, the Respondent had a theft and loss of controlled substances in 1976 and reported that loss to both the local police and the DEA. Also, he testified that he was aware of the requirement to report such incidents to the DEA.

The investigators also examined the physical security provided for the storage of controlled substances, noting that the storage room door was left ajar more than once, and since no staff members controlled access to the area, patients could enter and leave the room undetected. Investigators also learned from the Respondent that storage cabinets containing controlled substances were accessible to drug company representatives as well as patients, without staff supervision.

Following the investigation, the Respondent was charged and convicted in a California Superior Court of involuntary manslaughter and 13 counts of unlawfully prescribing controlled substances. The Respondent appealed the conviction, and the appellate court affirmed the involuntary manslaughter conviction, and, with one judge dissenting, reversed the conviction for unlawfully prescribing controlled substances, finding that the trial court's failure to instruct *sua sponte* on the definition of the term "addict" was reversible error. See *People* versus *Schade*, 25 Cal. App. 4th 1605 (Cal. Ct. App. 1994).

The manslaughter conviction stemmed from the Respondent's treatment of John Barker from December 11, 1985, until his suicide by means of an overdose of Tylenol and Darvon on September 17, 1987. The Report of the Respondent's Probation Officer, made of record, contained factual details concerning the manslaughter conviction. Specifically, in treating Mr. Barker, the Respondent prescribed codeine and depressants such as Restoril, Soridol, Soma, and Ativan. On September 9, 1986, the Respondent began prescribing Darvon or Darvocet to Mr. Barker, as well as Dalmane and Halcion. The Physicians' Desk Reference indicates a warning that Darvon should be prescribed with caution when the patient is also taking tranquilizers such as Halcion, Restoril, or Ativan.

On August 21, 1987, Mr. Barker was hospitalized after a suicide attempt in which he took an overdose of multiple medications. The Respondent noted on Mr. Barker's record on August 24, 1987, that he was extremely depressed and had stated that he did intend to take his own life. On September 3, 1987, the Respondent prescribed a depressant, Xanax, and on September 11, 1987, the Respondent prescribed 100 tablets of Darvocet. After Mr. Barker's suicide attempt, relatives confronted the Respondent regarding the prescribed medications and their fear that Mr. Barker again would attempt suicide. The relatives were also concerned that the Respondent had released Mr. Barker too soon after his admission for the suicide attempt, for he was released from the hospital in less than 24 hours after his admission. On September 17, 1987, Mr. Barker was found in his car with the engine running, and the initial impression of the coroner was death by carbon monoxide poisoning. However, results of an autopsy indicated a blood-alcohol level of 0.13 percent and toxic levels of Darvocet, while his carbon monoxide level was a low two percent.

At the trial, Dr. Drottar, an emergency room physician, testified, among other observations, that the Respondent's dispensing of 100 Darvocet tablets three days after a serious suicide attempt was criminal negligence. Psychiatrist Dr. Keins, who evaluated Mr. Barker at the Emergency Psychiatric Services on September 4, 1987, testified that giving Mr. Barker 100 Darvocet tablets at that time would be "like handing him a loaded gun," given his mental status and his depression.

At the hearing before Judge Tenney, the Respondent testified that he had given no specific warnings to Mr. Barker concerning the use of Darvocet with alcohol. He also testified that at the time of his last visit with Mr. Barker, he did not seem depressed and was not threatening suicide. However, the Respondent also testified that, at that time, he did not know about the earlier emergency room overdose treatment.

The Respondent has practiced medicine since 1962 and has a current California license to practice medicine. There are no current actions pending against him before the Medical Board of California. Several of the Respondent's patients testified on his behalf, recounting their friendship with him and his skill as a physician. The Respondent also testified, stating the corrective actions taken after DEA investigators informed him of the need for a DEA Certificate of Registration for each location where he dispensed controlled substances.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether an application for registration should be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, all five factors are relevant. As to factor one, the Respondent has a current California license to practice medicine, and there are no current actions pending before the State medical board. Regarding factors two, "experience in dispensing * * * controlled substances," and four, "compliance with applicable State, Federal, or local laws," 21 U.S.C. 827(a)(3) and 21 CFR 1304.21 and 1304.24 require a registrant who dispenses a controlled substance to maintain a current, complete, and accurate record of every such dispensing of the substance. Also sections 1304.11 to 1304.13, and 1305.06 of the Code of Federal Regulations establish requirements for inventory procedures and for completing DEA Form 222. Yet, the record contains evidence that the Respondent failed to conduct required inventories, was unable to account for about 3,000 dosage units of acetaminophen with codeine, incurred other shortages and overages of controlled substances relegated to his care, and failed to completely and accurately fill out the DEA Form 222. Additionally, both the Respondent and his wife personally used acetaminophen with codeine out of the office supply without recording their personal usage. Such disregard of recordkeeping requirements exemplify the basis for concern about potential diversion of controlled substances resulting from such improper accountability; concerns properly addressed under factors two and four.

Also, 21 CFR 1301.23 requires a separate registration for each location in which controlled substances are to be dispensed, and 21 CFR 1301.71 establish security requirements. Yet the Respondent stored controlled substances at his Crown Boulevard location and at his home, despite the lack of a valid DEA registration for either of those locations. Such actions demonstrate a disregard for these regulatory requirements. Further, the lax security procedures resulting in patients and drug company representatives having access to drug storage areas further demonstrate a disregard for security regulations.

Finally, concerning factor five, the Respondent was convicted in State court of one count of involuntary manslaughter arising out of a patient's drug-overdose death in September 1987. The conviction was affirmed upon appeal. The Deputy Administrator assigns substantial weight to the pattern of behavior exhibited by the Respondent in his prescribing practices to this patient. The threat to the public health and safety of such practices directly impacts upon the public interest.

Although the Deputy Administrator has taken into account the length of time the Respondent has practiced medicine, the lack of prior convictions or adverse State board action, and the testimony of the Respondent's witnesses concerning his contribution to his community and their opinion of his professional care, he also notes the lack of any evidence which provides assurances that the Respondent's future practice will include closer monitoring of patient symptoms and treatment, as well as compliance with Federal and State laws and regulations concerning the dispensing and storage of controlled substances. Such lack of mitigating evidence, coupled with the severity of the circumstances surrounding the involuntary manslaughter death of Mr. Barker, result in a conclusion that the granting of the Respondent's application for a DEA Certificate of Registration at this time would be inconsistent with the "public interest" under 21 U.S.C. 823(f). Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application for a DEA Certificate of Registration. If the Respondent reapplies and submits evidence showing corrective actions taken to bring his practice into conformance with DEA regulations, his application may receive more favorable consideration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 21 CFR 0.100(b) and 0.104, hereby orders that the Respondent's Application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective December 8, 1995.

Dated: November 2, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–27676 Filed 11–7–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission Open Meeting

SUMMARY: Pursuant to section 10(a) of FACA, this is to announce that the open teleconference meeting of the Glass Ceiling Commission which was to have taken place on Thursday, November 9, 1995 has been rescheduled to Thursday, November 14, 1995.

The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisonmaking positions.

The purpose of this open meeting is to conduct a full Commission vote on the Recommendations Report that will be submitted to the President and Select Committees of Congress.

TIME AND PLACE: The meeting will be held from 2:00 to 3:00 p.m. (EST) in Room C2313 at the Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis at (202) 219–7342 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT:

Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC, this 3rd day of November, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–27735 Filed 11–7–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Advisory Council on Unemployment Compensation; Notice of Final Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The meeting will be held from 1:00 p.m. to 5:00 p.m. on December 13, 1995 at The Madison Hotel, 15th & M Streets, N.W., Washington, D.C.

AGENDA: The agenda for the meeting is as follows:

(1) Discussion of administrative financing within the unemployment insurance system;

(2) Discussion of performance measurement within the unemployment insurance system;

(3) Discussion of data needs in the unemployment system; and

(4) Discussion of the Council's findings and recommendations.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, D.C. 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, D.C., this 1st day of November 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 95–27674 Filed 11–7–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

November 1, 1995.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on November 16–17, 1995.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on November 16–17, 1995, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 16, 1995, will be as follows:

8:30–9:00 a.m.
Continental Breakfast for Council Members—Room 527

Committee Meetings

(Open to the Public) Policy Discussion

9:00–10:00 a.m.
Education Programs—Room M–14
Public Programs—Room 415
Research Programs—Room M07
Preservation and Access & Challenge Grants—Room 315
Federal-State Partnership—Room 507

10:00 a.m. until Adjourned
(Closed to the Public) Discussion of specific grant applications before the Council

The morning session on November 17, 1995, will convene at 10:30 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Staff of The National Endowment for the Humanities will be served from 10:00–10:30 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. National Conversation
C. Budget Reports
D. Legislative Report-Reauthorization
E. Committee Reports on Policy and General Matters
1. Overview
2. Education Programs
3. Public Programs
4. Research Programs
5. Preservation and Access & Challenge Grants
6. Federal-State Partnership
7. Jefferson Lecture Committee

(The meeting will be closed to the public at this point.)

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Ms. Sharon I. Block, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Sharon I. Block,

Advisory Committee Management Officer.

[FR Doc. 95–27592 Filed 11–7–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Units No. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Provisional Operating License (POL) No. DPR–5 and Facility Operating License DPR–26, issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit Nos. 1 and 2, located in Westchester County, New York. The operating authority of POL DPR–5 for Indian Point Nuclear Generating Unit No. 1 was revoked by Commission Order dated June 19, 1980.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated August 10, 1995, for exemption from

certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system for site access control such that combined picture badges/keycards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), "Access Requirements," specifies that "licensee shall control all points of personnel and vehicle access into a protected area." Paragraph (5) of 10 CFR 73.55(d) specifies that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Paragraph (5) of 10 CFR 73.55(d) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

Currently, employee and contractor combined identification badges/keycards are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Indian Point Nuclear Generating Unit Nos. 1 and 2 site. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at the Indian Point site since the operating license was issued. Security personnel retain each identification badge/keycard, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued an individual picture identification card/keycard which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment and by the issuing security officer. Having received the badge/keycard, the individual proceeds to the access portal, inserts the badge/keycard into the card reader and passes through the turnstile which unlocks if the badge/keycard is valid.

This present procedure is labor intensive since security personnel are required to verify badge/keycard issuance, ensure badge/keycard retrieval, and maintain the badges/keycards in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge/keycard number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge/keycard, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge/keycard issuance, ensuring badge/keycard retrieval, and maintaining badges/keycards, could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the combined photograph identification badge/keycard, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their badge/keycard into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge/keycard and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge/keycard by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges/keycards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges/keycards will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at the site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not effect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Indian Point Nuclear Generating Unit No. 2.

Agencies and Persons Consulted

In accordance with its stated policy, on September 26, 1995, the staff consulted with the New York State official, Heidi Voelk of the Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 10, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, NY 10610.

Dated at Rockville, Maryland, this 31st day of October 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27622 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

Proposed Generic Communication; Boraflex Degradation In Spent Fuel Pool Storage Racks (M91447)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning Boraflex degradation in spent fuel pool storage racks. The purpose of the proposed generic letter is to request that licensees who use Boraflex as a neutron absorber in their spent fuel storage racks (1) assess the capability of the boraflex to maintain a 5 percent subcriticality margin and (2) submit a plan of action if this subcriticality margin cannot be maintained by the Boraflex material because of current or projected degradation. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading.

The proposed generic letter was endorsed by the Committee to Review Generic Requirements (CRGR) on September 26, 1995. The relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires December 8, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Laurence I. Kopp (301) 415–2879.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 95–XX: Boraflex Degradation in Spent Fuel Pool Storage Racks (M91447)

Addressees

All holders of operating licenses for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to request that each addressee that uses Boraflex as a neutron absorber in its spent fuel storage racks (1) assess the capability of the Boraflex to maintain a 5 percent subcriticality margin and (2) submit to the NRC a plan describing its proposed actions if this subcriticality margin cannot be maintained by Boraflex material because of current or projected future Boraflex degradation.

Background

Degradation of Boraflex has been previously addressed by the NRC in Information Notice (IN) 87–43, "Gaps in Neutron-Absorbing Material in High-Density Spent Fuel Storage Racks," September 8, 1987, IN 93–70, "Degradation of Boraflex Neutron Absorber Coupons," September 10, 1993, and IN 95–38, "Degradation of Boraflex Neutron Absorber in Spent Fuel Storage Racks." The Electric Power Research Institute (EPRI) has been studying the phenomenon of Boraflex degradation for several years and recently issued EPRI TR–103300, "Guidelines for Boraflex Use in Spent-Fuel Storage Racks," December 1993, identifying two issues with respect to using Boraflex in spent fuel storage racks. The first issue related to gamma radiation-induced shrinkage of Boraflex and the potential to develop tears or gaps in the material. This phenomenon is typically accounted for in criticality analyses of spent fuel storage racks. The second issue concerned long-term Boraflex performance throughout the intended service life of the racks as a result of gamma irradiation and exposure to the wet pool environment.

Description of Circumstances

Palisades Nuclear Power Station

During the removal of several Boraflex surveillance coupons from the Palisades spent fuel pool in August 1993, a loss of as much as 90 percent of the Boraflex was observed and has been attributed to exposure to high-level gamma radiation in conjunction with interaction with the pool water. The Boraflex in these coupons was sandwiched and bolted between two stainless steel strips, allowing a relatively large area of Boraflex to be exposed to the pool water environment and flow. Neutron attenuation testing (blackness tests) of the actual Palisades storage racks indicated that because of the relatively watertight Boraflex panel enclosures, there was no similar degradation.

South Texas Project

The results of blackness tests performed in August 1994 at South Texas indicated that the Boraflex was degraded, as evidenced by gaps and/or localized washout of the boron content in 20 of the 37 storage cells tested. Of the eight cells that had been designated to receive an accelerated gamma dose, five cells exhibited substantial degradation (0.91 to 1.37 m [3 to 4.5 ft]). The licensee postulated that the degradation mechanism was washout-accelerated dissolution of the Boraflex caused by pool water flow through the panel enclosures. As a justification for continued operation, the licensee has placed restrictions on the use of the

degraded storage cells to ensure compliance with the required subcriticality margin. In addition, a long-term neutron absorption panel management plan is being developed, as well as a dose-to-degradation correlation that will aid in establishing restrictions for the use of the spent fuel racks.

Fort Calhoun Station

As part of the Fort Calhoun Station rerack project, the old spent fuel storage racks containing Boraflex were removed and disassembled in December 1994 to determine the condition of the Boraflex. The new storage racks do not contain Boraflex. The licensee inspected two cells from the removed Boraflex racks which had experienced the highest gamma flux since 1983. Only 40 percent of the Boraflex remained in one of the panels from these cells while another panel in the same cell exhibited no loss of Boraflex. An adjacent cell had a panel which had some Boraflex loss but subsequent attenuation and density tests confirmed that the average boron-10 areal density still exceeded the material minimum certifications. No other storage cells exhibited as significant a loss of Boraflex. The licensee has determined that there was sufficient Boraflex in the walls of each cell to meet the minimum requirements in the design-basis criticality analysis.

Discussion

Experimental data from test programs, including blackness tests performed at various boiling-water reactor (BWR) and pressurized-water reactor (PWR) spent fuel storage pools, confirmed that when Boraflex is exposed to gamma radiation, the material may shrink by as much as 3 to 4 percent. Shrinkage saturates at an integrated gamma exposure of about 1 to 2×10^{10} cGy (1 to 2×10^{10} rad). The application of realistic assumptions based on these tests has demonstrated that the reactivity effects of Boraflex shrinkage and gaps are very small and can generally be accommodated within the existing design basis of most storage racks (EPRI TR–101986, "Boraflex Test Results and Evaluation," February 1993).

Data from laboratory tests and spent fuel pool silica measurements have identified a second factor that could affect storage rack service life: the potential gradual release of silica from Boraflex following gamma irradiation and long-term exposure to the wet pool environment. When Boraflex is subjected to gamma radiation in the pool's aqueous environment, the silicon polymer matrix becomes degraded and silica filler and boron carbide are released. Since irradiated Boraflex typically contains 46 percent of silica, 4 percent of polydimethyl siloxane polymer and 50 percent of boron carbide by weight, the presence of silica in the pool indicates depletion of boron carbide from Boraflex. The loss of boron carbide from Boraflex is characterized by slow dissolution of the silicon polymer from the surface of the Boraflex and a gradual thinning of the material. In a typical spent fuel pool, the irradiated Boraflex represents a significant source of silica (several thousand kilograms) and is the most likely source of pool silica contamination. The boron carbide loss, of course, can result in a significant increase in the reactivity of the storage racks. An additional consideration is the potential for silica transfer through the fuel transfer canal into the reactor core during refueling operations and its effect on the fuel clad heat transfer capability.

EPRI TR–103300 has identified several factors that influence the rate of silica release from Boraflex. The access of water to and around the Boraflex panels is perhaps the most significant factor influencing the rate of silica dissolution from Boraflex. Because of the different rack designs, this water access will vary from plant to plant. The rate of dissolution also increases with higher pool temperature and gamma exposure, suggesting that pool temperatures be maintained as low as practical and that freshly discharged fuel assemblies should not be placed in the same storage cells at each refueling outage. Once silica reaches an equilibrium value, the rate of dissolution essentially stops. However, when water purification systems are used to remove silica from the pool water, the solubility equilibrium becomes unbalanced and panel dissolution resumes.

Because Boraflex is used in spent fuel storage racks for nonproductive absorption of neutrons, a reduction in the amount of Boraflex could result in an increase in the reactivity of the spent fuel pool configuration, which may approach, or even exceed, the current NRC acceptance criterion of k_{eff} no greater than 0.95. The NRC has established this 5 percent subcriticality margin to comply with General Design Criterion (GDC) 62 of Appendix A to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), which requires the prevention of criticality in fuel storage and handling. Those plants that have installed storage racks containing Boraflex have the 5 percent subcriticality margin included in the plant technical specifications and/or a written commitment to meet this subcriticality margin, as reflected in the plant updated final safety analysis report (FSAR). The technical specifications for most other operating power reactors also include this 5 percent subcriticality requirement.

Safety Assessment

On the basis of test and surveillance information from plants that have detected areas of Boraflex degradation, no safety concern exists that warrants immediate action. Boraflex dissolution appears to be a gradual and localized effect forewarned by relatively high silica levels in the pool water. Because of the safety margin present in spent fuel storage pools, compliance with the required subcriticality margin (or conformance with the same margin to which licensees have committed in their updated FSARs) can be expected to be maintained during the initial stage of Boraflex degradation. This safety margin is due to the 5 percent subcriticality margin assumed in the analysis, the generally lower reactivity of stored fuel than that assumed in the safety analysis, and, in the case of PWRs, the presence of borated water in the pool. However, to verify compliance with both the regulatory requirements of GDC 62 and the 5 percent subcriticality margins, either contained in the technical specifications or committed to in the updated FSARs, and to maintain an appropriate degree of defense-in-depth measures, the NRC staff has concluded that it is appropriate for licensees to submit the following information.

Requested Information

All licensees of power reactors with spent fuel pool storage racks containing the neutron absorber Boraflex are requested to provide a description of the physical condition of the Boraflex, including any deterioration, on the basis of current as well as future projected accumulated gamma exposure and possible water ingress to the Boraflex and state whether a subcritical margin of 5 percent can be maintained for the life of the racks in unborated water. All licensees are further requested to submit to the NRC a description of any proposed actions to monitor or confirm that this 5 percent subcriticality margin can be maintained for the lifetime of the storage racks and describe what corrective actions will be taken in the event it cannot be maintained. Licensees should describe the results from any previous blackness tests and state whether blackness testing will be periodically performed. Any abnormal pool silica levels should also be described. All licensees are requested to submit the information to the NRC to ensure that the onsite storage of spent fuel is in compliance with GDC 62 for the prevention of criticality in fuel storage and handling and with the 5 percent subcriticality margin position of the NRC staff to assure compliance with GDC 62.

Required Response

All addressees are required to submit a written response to the information requested above within 120 days of the date of this generic letter. If an addressee chooses not to respond to specific questions, an explanation of the reason and a description of any proposed alternative course of action should be provided, as well as the schedule for completing the alternative course of action (if applicable), and the safety basis for determining the acceptability of the planned alternative course of action.

Address the required written reports to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, under oath or affirmation under the provisions of Section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, submit a copy to the appropriate regional administrator.

Backfit Discussion

This generic letter only requires information from the addresses under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). Therefore, the staff has not performed a backfit analysis. The information requested will enable the NRC staff to determine whether licensees are complying with the current licensing basis for the facility with respect to GDC 62 for the prevention of criticality in fuel storage and handling and 5 percent subcriticality margins either contained in the technical specifications, or committed to in the updated FSARs, of plants containing Boraflex in the spent fuel storage racks. The staff is not establishing a new position for such compliance in this generic letter. Therefore, this generic letter does not constitute a backfit and no documented evaluation or backfit analysis need be prepared.

Federal Register Notification

(To be completed after the public comment period.)

Paperwork Reduction Act Statement

The information collections contained in this request are covered by the Office of Management and Budget clearance number 3150–0011, which expires July 31, 1997. The public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch, (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Dated at Rockville, Maryland, this 2nd day of November, 1995.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27624 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

Issuance of Urgent Bulletin; NRC Bulletin 95–02, Unexpected Clogging of a Residual Heat Removal (RHR) Pump Strainer While Operating in Suppression Pool Cooling Mode

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin 95–02 to request certain remedial actions and associated reporting by holders of boiling water reactor (BWR) licenses and construction permits as a result of the unexpected clogging of a residual heat removal pump strainer at a boiling water reactor facility while operating in the suppression pool cooling mode. This bulletin is available in the NRC Public Document Room under accession number 9510040059. This bulletin was issued as an urgent generic communication under NRC procedures for issues that the staff considers urgent. This bulletin is discussed in Commission information paper SECY–95–255 which is also available in the NRC Public Document Room.

DATES: The bulletin was issued on October 17, 1995.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Robert B. Elliott, (301) 415–1397 or Robert M. Latta, (301) 415–1314.

SUPPLEMENTARY INFORMATION: The NRC issued this bulletin to accomplish the following:

(1) Alert BWR owners to complications experienced during a recent event in which a licensee initiated suppression pool cooling in response to a stuck-open safety relief valve (SRV) and subsequently experienced clogging of one RHR pump suction strainer.

(2) Request BWR owners to review the operability of their emergency core cooling system (ECCS) and other pumps which draw suction from the suppression pool while performing their safety function. The evaluation should be based on suppression pool cleanliness, suction strainer cleanliness, and the effectiveness of foreign material exclusion (FME) practices. In addition, BWR owners are requested to implement appropriate procedural modifications and other actions (e.g., suppression pool cleaning), as necessary, to minimize foreign material in the suppression pool, drywell and containment. BWR owners are requested to verify their operability evaluation through appropriate testing and inspection.

(3) Require that BWR owners report to the NRC whether and to what extent they have complied with the requested actions. In addition, require a second report indicating completion of confirmatory test(s) and inspection(s) and providing the test results by BWR owners that have not complied with the requested actions, or indicating completion of any proposed alternative course of action by BWR owners that have not complied with the requested actions.

Dated at Rockville, Maryland, this 2nd day of November, 1995.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 95–27625 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is

publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 14, 1995, through October 27, 1995. The last biweekly notice was published on Wednesday, October 25, 1995 (60 FR 54714).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 8, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 2 and 3, Maricopa County, Arizona

Date of amendments request: October 3, 1995

Description of amendments request: The amendment would delete the provisions relating to certain previous sale and leaseback transactions that were by added by Amendment No. 3 for NPF-51 and Amendment No. 1 for NPF-74.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde, specifically authorizing sale and leaseback transactions. The proposed change does not affect the assumptions used in the accident analyses, nor does the proposed change result in changes to the physical configuration of the facility, design parameters, technical specifications, or operation and maintenance of the facility. Therefore, the amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed because the proposed change is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde Units 2 and 3, specifically authorizing sale and leaseback transitions. The proposed change does not involve modifications to any of the existing equipment nor does the change affect operation or maintenance of the facility. Therefore, the amendment request does not create the possibility of a new or different kind of accident not previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

This amendment request does not involve a significant reduction in a margin of safety because it is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Section 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde, specifically authorizing the sale and leaseback transactions. The proposed change does not involve changes to any existing plant equipment or accident analyses that provide for or establish margins of safety. There is no change to the operation or maintenance of the facility and the existing margins of safety are not changed by the proposed change. Therefore, the amendment request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: October 2, 1995

Description of amendment request: The proposed amendment would revise the Calvert Cliffs Nuclear Power Plant, Unit No. 2, Technical Specifications on a one-time basis by increasing the 7 day allowed outage time (AOT) of the control room emergency ventilation system (CREVS) to an AOT of 30 days. This requested one-time increase in the AOT is applicable only for the loss of the emergency power supply to one train of the CREVS during the Unit No. 1 spring 1996 refueling outage.

The requested extension in the AOT is necessary to allow the licensee to perform modifications to the electrical distribution system during the upcoming Unit 1 refueling outage while Unit No. 2 continues to operate. The modifications include connecting a fourth safety-related (SR) emergency diesel generator (EDG) to engineered safety features (ESF) Bus No. 11. The work related to this effort will require that the bus be deenergized for several days isolating it from its normal and

emergency EDG power supplies. One train of the CREVS is connected to ESF Bus No. 11 and will not have its power supplies available for a period of time. The normal (offsite) power is expected to be restored in about 3 days, but the emergency power (onsite EDG) may take up to 30 days.

The licensee is taking additional actions to assure the availability of the normal offsite power source and is also adding a nonsafety-related (NSR) EDG as an alternate onsite power source during the period that the SR EDG is not available. The licensee expects that the tie-in of the NSR EDG will take about 8 days. Thus, even if the normal offsite power source is lost, the temporary onsite NSR EDG will be available to provide power to the affected train of the CREVS.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Control Room Emergency Ventilation System (CREVS) is used to mitigate the consequences of an accident. It is designed so that the Control Room remains habitable for operators and to maintain the environment needed for continued equipment operation. The system is redundant (two 100% capacity trains) and is powered from both normal (offsite) and emergency (emergency diesel generators) power sources. We [the licensee] are proposing an amendment which would allow the emergency power to be removed from one of the redundant CREVS for an additional 23 days (beyond the 7 days allowed by the Technical Specifications). Other than the removal of the emergency electrical power source, we are not affecting or modifying the operation of the CREVS. The CREVS is not an accident initiator for any previously evaluated accident. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The CREVS is designed to mitigate the consequences of design basis accidents. For that purpose, redundant trains are provided to protect against a single failure. During the Technical Specification seven day Allowed Outage Time (AOT), an operating unit is allowed by the Technical Specifications to remove one of the CREVS trains from service, thereby eliminating this single failure protection. The consequences of a design basis accident coincident with a failure of the redundant CREVS train during the additional 23-day period are the same as those during the 7-day AOT. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The CREVS is not being modified by this proposed change nor will any unusual operator actions be required. The system will continue to operate in the same manner. The CREVS is not an initiator to any accident, but is designed to respond should an accident occur.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The operability of the CREVS during Modes 1 through 4 ensures that the Control Room will remain habitable for operators and to maintain the environment needed for continued equipment operation under all plant conditions. The proposed change does not affect the function of the CREVS. During the period of the Technical Specifications AOT when one CREVS train is inoperable, the margin of safety is reduced. This time period is a temporary relaxation of the single failure criteria, which, consistent with overall system reliability considerations, provides a limited time to maintain or repair the equipment and conduct testing. We are requesting an extension of this limited time. The proposed change will allow one train of the CREVS to be without an emergency power supply for an additional 23 days beyond the 7-day AOT (total of 30 days). This train of CREVS will be functional and will have the normal power supply available for all but approximately three days to allow work and necessary testing on the bus. The other train of the CREVS will have both its normal and emergency power supplies during this period.

To provide additional assurance that all reasonable steps have been taken to prevent the loss of the normal power supply to the CREVS, we will restrict maintenance activities on three of the four offsite transmission lines. This restriction will cover the period we are in the Action Statement for the CREVS (Action Statement 3.7.6.1.a and b). To provide an alternative power source during the majority of this period, we will connect the Alternate AC power source (No. 0C Diesel Generator) to ESF Bus No. 11 and confirm its availability as soon as possible after the work on ESF Bus No. 11 begins (we [the licensee] expect that to take about eight days). This power source is independent from the offsite power supplies. In addition, we will restrict planned maintenance on the No. 12 CREVS during the period we are in the Action Statement to ensure that the No. 12 CREVS is not removed from service.

We believe that the reduction in the margin of safety represented by this one-time extension of the AOT is not significant based on our management of plant risk, the reliability of the normal CREVS power supply, the availability of the redundant CREVS with both its normal and emergency power, and the mitigating features described above. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ledyard B. Marsh

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 23, 1995

Description of amendments request: The amendments would delete the applicability of the primary coolant water chemistry limits when the primary system is being chemically decontaminated and the reactor vessel is defueled.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes will allow the reactor coolant system conductivity and chlorides to exceed the limits specified in Technical Specification Table 3.4.4-1 in support of performing chemical decontamination activities. The reactor coolant system water chemistry limits have been established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. Upon concluding the chemical decontamination activities, reactor coolant system conductivity and chloride values would be restored to within the limits specified in Technical Specification Table 3.4.4-1. Existing regulatory requirements, specifically a review in accordance with 10 CFR 50.59 to determine whether an activity involves an unreviewed safety question, provide adequate assurance that solvents selected for use in a chemical decontamination activity will not degrade the structural integrity of the reactor coolant system. Therefore, since the structural integrity of the reactor coolant system will not be adversely impacted by the chemical decontamination activities, the proposed amendments do not involve a significant increase in the probability of an accident previously evaluated.

As discussed above, the reactor coolant system water chemistry limits have been established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. The solvents being used for a chemical decontamination activity are selected to ensure their effectiveness and to ensure that damage will not occur to the structural materials comprising the reactor coolant pressure boundary. As such, the operation of safety equipment used to mitigate a design basis accident or transient will not be affected by the proposed change of the reactor coolant system water chemistry limits during performance of chemical decontamination activities. Therefore, the proposed revision to the reactor coolant system chemistry limits will not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change will allow the reactor coolant system conductivity and chlorides to exceed the limits specified in Technical Specification Table 3.4.4-1 in order to perform chemical decontamination activities. The reactor coolant system water chemistry limits have been established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. Even though the solvents used for chemical decontaminations may result in reactor coolant system conductivity and chloride measurement values in excess of the limits specified in the Technical Specifications, the existing regulatory requirements of 10 CFR 50.59 will continue to ensure that solvents being used for performing chemical decontamination have been properly evaluated and that these solvents do not adversely affect the material properties or structural integrity of the reactor coolant system. Therefore, the proposed amendments revising the reactor coolant system water chemistry limits during performance of chemical decontamination activities will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The reactor coolant system water chemistry limits have been established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. The solvents used for chemical decontaminations result in reactor coolant system conductivity and chloride measurement values in excess of the limits specified in the Technical Specifications; however, the solvents being used of performing chemical decontamination have been properly evaluated to ensure they will not significantly affect the material properties of the reactor coolant system piping (i.e., corrosion) nor will they significantly affect the structural integrity (i.e., wall thinning) of the reactor coolant system piping. Therefore, the proposed license amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: David B. Matthews

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 2, 1994, as supplemented on January 4, 1995

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to make editorial changes, delete portions of the TSs that have become unnecessary due to previously approved amendments, change managerial titles, update references and reporting requirements, revise the Station Nuclear Safety Committee (SNSC) composition to specify disciplines rather than specific job titles, modify the record keeping requirements of the Nuclear Facilities Safety Committee, implement changes referenced in Generic Letter 93-07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans," and to correct the shift manning requirements table.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. There is no significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature. They involve making editorial changes, deleting portions of the Technical Specifications that have become unnecessary due to previously approved amendments, changing managerial titles, updating references and reporting requirements, revising the SNSC composition to specify disciplines rather than specific job titles, implementing changes referenced in Generic Letter 93-07, and revising shift manning to conform with the requirements of 10 CFR 50.54. These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed changes to the subject Technical Specifications would not increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

As stated above, the proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed changes would not initiate any new or different kind of accident.

3. There has been no significant reduction in the margin of safety.

The proposed changes are administrative in nature. Since there are no changes to the physical design or operation of the facility, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes would not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Ledyard B. Marsh

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 29, 1995

Description of amendment request: The proposed amendment would revise Technical Specification Sections 3.1.F and 4.13 to provide for appropriate inservice inspection for any steam generator tubes containing sleeves and to provide for reduced allowable primary-to-secondary leakage rates for steam generators containing sleeves. The proposed changes are in response to commitments made by Consolidated Edison by letter dated April 5, 1995, during the review of an amendment which permitted the use of laser welded steam generator tube sleeves as a method of tube repair.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification Amendment No. 183 allowed sleeving as an acceptable alternate tube repair method for Indian Point Unit No. 2. The steam generator sleeve approved for installation is the Westinghouse process (laser welded sleeve). The sleeve configuration was designed and analyzed in accordance with the criteria of Regulatory Guide (RG) 1.121 and the design requirements of Section III of the American Society of Mechanical Engineers (ASME) Code. Fatigue and stress analyses of the sleeved tube assembly produced acceptable results as documented in the Westinghouse topical report submitted in the original sleeving package. Mechanical testing has shown that the structural strength of the sleeves under normal, faulted, and upset conditions is within acceptable limits. Leakage rate testing for the tube sleeves has demonstrated that primary-to-secondary leakage is not expected during all plant conditions.

Any leakage through the sleeved region of the tube is fully bounded by the leak-before-break considerations and, ultimately, the existing steam generator tube rupture analysis included in the Updated Final Safety Analysis Report (UFSAR).

The reduction in TS leakage rate requirements from 0.3 gpm [gallons per minute] (432 gpd (gallons per day)) allowable per SG to 150 gpd per steam generator containing sleeves further ensures that SG tube integrity is maintained in the event of a main steam line break (MSLB) or under Loss Of Coolant Accident (LOCA) conditions. The RG 1.121 criteria for establishing operational leakage rate limits require a plant shutdown based upon a leak-before-break consideration to detect a free span crack before a potential tube rupture. The 150 gpd limit will continue to allow for early leakage detection and require a plant shutdown in the event of tube leakage that exceeds the revised Technical Specification limit.

The sleeve sample size has been increased to a minimum of twenty (20) percent of the inservice sleeves. Increasing the sample size of the sleeves to be inspected will increase the monitoring of tubes using sleeves for any further degradation while they remain inservice. If the sample identifies a sleeve with an imperfection of greater than 23 percent depth an additional 20 percent of the sleeves shall be inspected. The sleeves that have identified imperfections of greater than 23 percent shall be evaluated and removed from service.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed amendment will not introduce significant or adverse changes to the plant design basis. The proposed changes do not involve plant modification or changes to equipment, and consist of reducing the allowable steam generator leakage limits for steam generators containing sleeves and defining the sample size of the steam generator tube sleeve inspection.

The reduction in TS leakage rate requirements from 0.3 gpm (432 gpd) allowable per SG to 150 gpd per SG containing sleeves further ensures that SG tube integrity is maintained in the event of a MSLB or under LOCA conditions. The 150 gpd limit is designed to provide for leakage detection and a plant shutdown in the event of the concurrence of excessive tube leakage. The limit provides for early detection and a plant shutdown prior to a postulated defect reaching critical magnitudes for Main Steam Line Break conditions.

Formalizing the sample size of sleeved tubes inspected during each scheduled inservice inspection will ensure increased monitoring of these tubes for any further degradation. The improved monitoring and evaluation of the tube and the sleeves assures tube structural integrity is maintained or the tube is removed from service.

With these actions the possibility of a new or different type of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

Implementation of the proposed changes will not reduce the margin of safety. This amendment involves the reduction of sleeved steam generator tube leakage limit and a formalized inservice inspection program for sleeved tubes. These actions will help ensure steam generator tube integrity.

Reduction of the leakage rate requirement from 0.3 gpm (432 gpd) to 150 gallons per day (gpd) per sleeved steam generator will continue to ensure steam generator tube integrity is maintained in the event of main steam line break or under LOCA conditions. Reducing this limit will not result in a reduction in the margin of safety.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary will be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirement of Regulatory Guide 1.83. The portion of the tube bridged by the sleeve joints is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The sleeve enhances the safety of the plant by increasing the protective boundaries of the steam generator. Keeping the tube in service with the use of a sleeve, instead of plugging the tube and removing it from service, increases the heat transfer efficiency of the steam generator. Monitoring for any increased degradation of a repaired steam generator tube shall be implemented by sampling twenty (20) percent of the sleeves inservice. During each scheduled inservice inspection, any sampled sleeve evaluated and found to have unacceptable degradation shall be removed from service.

Based on the preceding analysis it is concluded that operation of Indian Point Unit No. 2 in accordance with the proposed amendment does not increase the probability of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, nor reduce any margin of plant safety. Therefore, the license amendment does not involve a Significant Hazards Consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Ledyard B. Marsh

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 30, 1994, as supplemented by letter dated September 19, 1995

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) related to the replacement of the steam generators at McGuire, Units 1 and 2. Currently, the steam generators in place at the McGuire units are Westinghouse Model "D" type preheat steam generators. The tube degradation levels in the generators has affected the reliability of the units. Therefore, these generators are scheduled to be replaced with feedring steam generators designed by Babcock and Wilcox International.

In the licensee's September 19, 1995, supplement, proposed changes were made to TS Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints," to change the programmed T_{AVG} from 588.2 °F to 585.1 °F. This temperature was chosen based on returning the secondary side steam pressure to the original value after replacement of the steam generators. The licensee stated that 585.1 °F was the assumed value for nominal full power T_{AVG} in all applicable safety analyses related to replacement of the steam generators.

The licensee also requested that the steam line safety valve lift settings in Table 3.7-3, which was requested in the September 30, 1994, application, be withdrawn. The licensee determined that these changes are no longer needed.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of McGuire Nuclear Station in accordance with the proposed changes to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated. The low-low steam generator water level reactor trip setpoint, the high-high steam generator water level setpoint for turbine trip and feedwater isolation, and the low-low steam generator water level setpoint for auxiliary feedwater initiation are changing to support operation with the replacement steam generators. These setpoints were chosen both to optimize plant operation, and ensure that all applicable acceptance criteria are met for licensing basis safety analysis. These setpoints do not contribute to the initiation of any accident evaluated in the McGuire FSAR [Final Safety Analysis Report] and have no adverse impect on system operation, therefore it can be concluded that these changes will not significantly increase the probability or consequences of an accident evaluated in the FSAR.

The reduction in the primary to secondary leakage rate for McGuire will not increase the probability of an accident evaluated in the FSAR. This lower limit will require corrective action more quickly than is currently required in the event that there is a steam generator tube leak. This change will not significantly affect the consequences of an accident previously evaluated. The allowable leakage is being lowered because this leakage has a major impact on the results of the offsite dose calculation for the locked rotor, single uncontrolled rod withdrawal, and rod ejection events. The taller tube bundle in the replacement steam generators will potentially result in a longer period of tube bundle uncovery during the above transients. The revised allowable leakages of 0.27 gpm through all steam generators and 135 gallons per day through any one generator ensure that the dose analysis results are within the applicable fraction 10 CFR 100 limits.

The increase in Reactor Coolant System volume due to the replacement steam generators will not increase the probability or consequences of an accident previously evaluated. The increase in volume has no effect on the probability of occurrence of any accident evaluated in the FSAR. The mass and energy release due to postulated loss of coolant accidents inside containment has been analyzed to ensure that the peak containment pressure limit is not exceeded. All Chapter 15 reanalysis which was required due to the replacement steam generators assumed the new Reactor Coolant System volume. Since the results of these analyses show the applicable acceptance criteria continue to be met, it can be concluded that the consequences of an accident previously evaluated are not significantly increased due to this change.

* * * *

Operation of McGuire Nuclear Station in accordance with the proposed changes to the Technical Specification will not create the possibility of a new or different accident from any accident previously evaluated. The proposed changes to revise the low-low steam generator water level reactor trip setpoint, high-high steam generator water level setpoint for turbine trip and feedwater isolation, and low-low steam generator water level setpoint for auxiliary feedwater initiation ensure that the appropriate acceptance criteria for FSAR Chapter 15 transients which rely on these functions are met for operation with the replacement steam generators. The proposed change to lower primary to secondary leakage for operation with the replacement steam generators will require that corrective action be taken more quickly in the event that steam generator tube leakage is experienced during operation. As discussed in the technical justification, this will cause the dose results for transients affected by tube bundle uncovery to be within acceptable limits. .... The increase in Reactor Coolant System volume is taken into account in the analysis of the mass and energy release due to a postulated loss of coolant inside containment and Chapter 15 events which have been reanalyzed due to replacement of the steam generators. As discussed above, the proposed changes will not introduce the possibility of a new or different accident from any previously evaluated; they will ensure that transients that take credit for these functions and dose analyses meet applicable acceptance criteria for operation with the replacement steam generators.

Operation of McGuire Nuclear Station in accordance with the proposed changes to the Technical Specifications will not involve a significant reduction in a margin of safety. The proposed changes are being made to ensure that transients that rely on low-low steam generator water level reactor trip setpoint, high-high steam generator water level setpoint for turbine trip and feedwater isolation, and low-low steam generator water level setpoint for auxiliary feedwater actuation meet applicable acceptance criteria. The reduction in allowable primary to secondary leak rate will ensure that transients with dose analyses which are affected by the replacement steam generators meet the current acceptable limits. .... The proposed change in the Reactor Coolant System volume will not involve a significant reduction in a margin of safety. The increased volume affects the mass and energy release due to a postulated loss of coolant accident inside containment and the other Chapter 15 events which were reanalyzed due to replacement of the steam generators. These events have been analyzed and the results are within current acceptable limits. As discussed above, the acceptance criteria for FSAR transients which are affected by these proposed changes continue to be met, therefore there is no significant reduction in the margin of safety.

Changes to the steam generator surveillance requirements will simply delete inspection requirements and repair methods which are no longer applicable after installation of the replacement steam generators. The only exception to this is Surveillance Requirement 4.4.5.4.a.9. This requirement is modified to clarify that the manufacturer will perform the hydrostatic test for the replacement steam generators. This change will not affect the probability or consequences of an accident previously evaluated, the purpose of the preservice inspection is to establish the baseline condition of the tubing. The baseline condition of the tubing in the replacement steam generators will be established prior to installation. The possibility of a new or different accident from any previously evaluated will not be created. No new accident initiation mechanisms will be introduced by this change, and the intent of the requirement, to establish the baseline condition of the tubing, will be met. Since the baseline condition of the tubing will be obtained for use in the monitoring of tubing degradation, as is currently required by the surveillance requirement, there will not be a significant reduction in the margin of safety.

The changes to Technical Specification 6.9.1.9 are administrative in nature. These changes are being made to reflect the most recent revisions of DPC-NE-3002 and DPC-NE-3000, which include changes associated with the replacement steam generators. These topical reports revisions will be reviewed and approved for use regarding Catawba and McGuire Nuclear Stations. Since these changes are administrative in nature, no significant hazards considerations are involved.

Proposed revision to TS Table 2.2-1, Reactor Trip System Instrumentation Trip Setpoints:

proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated. Changing the value for T_{AVG} in Notes 1 and 2 of Table 2.2-1 will update the value to agree with the T_{AVG} assumed in the applicable safety analyses for replacement of the steam generators. Acceptable results were obtained for all required reanalyses. The probability of an accident will not be significantly affected by operation with the new T_{AVG} value, because all equipment will be operated within acceptable design limits. The consequences of previously evaluated accidents which are affected by this change have been evaluated, and have been determined to be within acceptable limits.

This proposed change will not create the possibility of a new or different kind of accident from any previously evaluated. This change does not change the physical configuration of the plant, and all analyses which are affected by replacement of the steam generators have been determined to have acceptable results assuming this value for T_{AVG}.

This proposed change to the Technical Specifications will not involve a significant reduction in the margin of safety. All safety analyses which were affected by replacement of the steam generators assumed this value for T_{AVG} and the results were determined to be within previously acceptable limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: September 4, 1993, as supplemented on February 16, 1994, and August 4, 1995.

Description of amendment request: The proposed amendment would revise the Arkansas Nuclear One Industrial Security Plan.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The accident mitigation features of the plant are not affected by the proposed compensatory measures for protecting the site during periods when security systems are degraded and therefore no decrease occurs in the effectiveness of the security program to protect against radiological sabotage or increased risk to the public health and safety. This is due to continued compliance with existing regulatory requirements and other commitments within the security plan. These changes have no impact on the design basis security threat and accordingly do not create the possibility of a new or different kind of accident. New systems, modes of equipment operation, failure modes or other plan situations are not introduced by these changes. The proposed changes allow flexibility for the use of compensatory measures and do not change any safety limits, LCOs, or surveillance requirements on equipment to operate the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 24, 1995, as supplemented or supercedes letters dated May 30, and June 20, 1995

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) on containment systems to reflect the adoption of requirements of 10 CFR Part 50, Appendix J, Option B, and implementation of a performance-based containment leak rate testing program at River Bend Station. The licensee letters dated May 20, and June 20, 1995, requested an exemption to Appendix J which subsequently became Option B to the appendix. Those letters were noticed in the Federal Register on July 5, 1995 (60 FR 35079).

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the containment structure designed to mitigate the consequences of a loss-of coolant accident (LOCA). The function of the containment is to maintain functional integrity during and following the peak transient pressures and temperatures which result from any loss-of-coolant accident (LOCA)[LOCA]. The containment is designed to limit fission product leakage following the design basis LOCA. Because the proposed change does not alter the plant design, only the frequency of measuring Type B and C leakage, the proposed change does not directly result in an increase in containment leakage. However, decreasing the test frequency can increase the probability that a large increase in containment leakage could go undetected for an extended period of time. Based upon the results of the periodic containment Type A or Integrated Leak Rate Tests (ILRTs) and Type B and C or Local Leak Rate Tests (LLRTs) surveillance tests, this is not expected during the remaining life of the plant. The risk resulting from the proposed changes is as follows:

Type A Testing

NUREG/CR-4330 (NRC86) found that the effect of containment leakage on overall accident risk is small since risk is dominated by accident sequences that result in failure or bypass of the containment. It also determined that on an expected individual dose basis, the effect of containment leakage is small.

Industry wide, ILRTs have only found a small fraction of the leaks that exceed current acceptance criteria. Only three percent of all leaks have a potential for remaining undetected for longer periods of time. In addition, when leakage has been detected by ILRTs, the leakage rate has been only about two times the allowable leakage rate.

NUREG-1493 found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, show that reducing the Type A leakage test frequency would have a minimal impact on public risk.

Type B and C Testing

NUREG-1493 found that while Type B and C tests can identify the vast majority (greater than 95 percent) of all potential leakage paths, performance-based alternatives to current local leakage-testing requirements are feasible without significant risk impacts. The risk model used in NUREG-1493 suggests hat the number of components tested would be reduced by about 60 percent with less than a three-fold increase in the incremental risk due to containment leakage. Since, under existing requirements, leakage contributes less than 0.1 percent of overall accident risk, the overall impact is very small. NUREG-1493 found that while the extended testing intervals for Type B and C tests led to minor increases in potential offsite [off-site] dose consequences, the actual increase in on-site (worker) doses exceeded (by at least an order of magnitude) the potential off-site dose consequences.

EPRI Research Project Report TR-104285, "Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals," also concluded that a relaxation of the test intervals for Type B and C penetrations results in a negligible increase in total plant risk.

Based on the above EOI [Entergy Operation, Inc.] has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. This change involves the reduction in Type B and C test frequency. The methods of performing the tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending the test frequency has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed.

3. The request does not involve a significant reduction in a margin to safety.

The proposed change only affects the frequency of Type A, B, and C testing and does not change the methodology for performance of the testing. However, the proposed change can increase the probability that a large increase in leakage could go undetected for an extended period of time. Operational experience has shown that the leak tightness of the containment has been maintained significantly below the allowable leakage limit. In addition, NUREG-1493 has determined that, under several different accident scenarios, the risk of radioactivity release from containment is negligible with the implementation of these proposed changes.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite [off-site] dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to L_a which is defined by the RBS Technical Specifications to be 0.26 percent by weight of the containment air per 24 hours at 7.6 psig (P_a). The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (P_a) or 7.6 psig. The margin to safety for the offsite [off-site] dose consequences of postulated accidents directly related to the containment leakage rate in maintained by meeting the 1.0 L_a

No change in the method of testing is being proposed. The Type B and C tests will continue to be done at full pressure (P_a) or greater. Other programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

As a result, EOI had concluded that the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 28, 1995

Description of amendment request: The proposed change modifies Technical Specification 3/4.8.1.2, "Electrical Power Sources - Shutdown." The surveillance requirement 4.8.1.2 is clarified by a Note to identify those surveillances which are required to be performed during Modes 5 and 6.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No component modification, system realignment, or change in operations will occur which could affect the probability of any accident or transient. The proposed addition of a Note will provide guidance on which surveillances are required to be performed in Modes 5 and 6. The Note will preclude rendering operable DGs inoperable, and/or preclude de-energizing a required ESF bus or disconnecting a required offsite circuit during the performance of the surveillance requirement. Proposed changes do not eliminate any testing requirements, they simply clarify which tests will be performed in Modes 5 and 6, and which are required to be performed prior to entry into Mode 4. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

No component modification, system realignment, or change in operating procedure is required to implement the proposed change. The proposed change reduces the possibility of a single event impacting the operability of an ESF bus or its DG simultaneously. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed change will not alter any assumptions, initial conditions, or results of any accident analyses. The Class 1E equipment assumed available in the accident analyses and their designed capability to mitigate the consequences of any postulated accidents will not be changed. The addition of a Note to clarify the surveillance requirements will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 28, 1995

Description of amendment request: The proposed changes relocate "Reactor Coolant System - Chemistry" Technical Specification 3/4.4.7 (Salem Unit 1) and 3/4.4.8 (Salem Unit 2) and their associated Bases to the Salem Updated Final Safety Analysis Report (UFSAR) and the Surveillance Requirements and Limiting Conditions for Operation to applicable plant procedures controlled by the 10 CFR 50.59 process. Also, the applicability will be changed from "At all times" to "Modes 1, 2, 3, 4, 5 and 6."

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. Specifically, changing the Applicability from "At all times" to "Modes 1, 2, 3, 4, 5 and 6" by this submittal will not alter established chemistry for chlorides, fluorides and dissolved oxygen of the Reactor Coolant System. The relocation of this Surveillance Requirement/LCOs and Bases to plant procedures and the UFSAR respectively, will continue to ensure that the chemistry analysis of the Reactor Coolant System water is monitored and controlled. Changing the Applicability from "At all times" to "Modes 1,2,3,4,5 and 6" represent changes that do not affect plant safety and do not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the location of the descriptive information and surveillance requirements for Reactor Coolant System Chemistry. Removing these specifications from the Technical Specifications and

placing them in the UFSAR and plant procedures will not alter the maintenance of the Reactor Coolant System Chemistry or the ability to monitor its intended functions. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes relocate the Reactor Coolant System Chemistry Requirements/ LCOs from the Technical Specifications to the UFSAR and plant procedures in accordance with guidance provided by the NRC Final Policy Statement (58 FR 39132) regarding the improvement of Technical Specifications. The requirements that will reside in the UFSAR and plant procedures for the Reactor Coolant System Chemistry will ensure that the ability to determine chloride, fluoride and dissolved oxygen concentrations in the Reactor Coolant System is properly maintained and that the maintenance of the Reactor Coolant System Chemistry will be commensurate with its safety significance. Therefore, the proposed changes will not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: September 26, 1995

Description of amendments request: The amendments would revise Technical Specification (TS) Section 4.6.1.3 to incorporate improvements to containment air lock testing referenced in Chapter 3.6, "Containment Systems," of NUREG-1431, "Standard Technical Specifications, WestinghousePlants."

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. Containment leakage is an assumption in the safety analysis of the loss of coolant accident and the rod ejection accident. Changes to the containment air lock door seal test acceptance criteria will have no impact on the radiological consequences of these accidents since the plant safety analysis is based on the assumption that the containment leaks at its design leak rate of 0.15 percent per day for the first 24 hours and 0.075 percent per day thereafter for each of these accidents. The change to the surveillance requirement meets the intent of the guidance in NUREG-1431. Primary containment integrity ensures that the release of radioactive materials from the containment atmosphere will be restricted to those leakage paths and associated leak rates assumed in the accident analysis. The limitations on closure and leak rate for the containment air locks are required to meet these restrictions on containment integrity. These changes do not increase the probability that the 10 CFR [Part] 100 limits will be exceeded. The change to the surveillance requirement does not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change involves a revision to the Technical Specifications to meet the intent of the guidance of NUREG-1431, and does not necessitate a physical alteration of the plant or change in parameters governing normal plant operation. The change has not effect on the plant's compliance with the requirements of Appendix J. The revision of the acceptance criteria for the air lock door seal test will improve the FNP [Farley Nuclear Plant] current testing criteria while maintaining an acceptable level of safety. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety. The revision of the acceptance criteria of the air lock door seal test will decrease the overall test burden without decreasing the margin of safety. The overall leakage rate of the air lock continues as less than or equal to 0.05L_a and the plant safety analysis continues to be based ont he assumption that the containment leaks at its design leak rate of 0.15 percent per day for the first 24 hours and 0.075 percent per day thereafter for each of these accidents. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment would clarify the limiting condition for operation for TS 3.8.1.1 and 3.8.1.2 from "independent" circuit to "qualified" circuit; explain in the Bases the requirements for operability of an offsite circuit; delete the STAGGERED TEST BASIS scheduling requirement to perform emergency diesel generatorsurveillances; explain in the Bases an acceptable method for verification of Emergency Diesel Generator speed for surveillance requirements (SR) 4.8.1.1.2.e.4 and 4.8.1.1.2.c.4; remove a surveillance test extension that has expired for SR 4.8.1.1.1.b; add an exception for SR 4.8.1.1.2.c.5 and 4.8.1.1.2.c.7 to SR 4.8.1.2; and revise Bases 3.0.5 to reflect the clarification from "independent" circuit to "qualified" circuit.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation ofthe Davis-Besse Nuclear Power Station, Unit No. 1 in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not make a change to any accident initiator, initiating condition or assumption. The proposed changes do not involve a significant change to the plant design or operation. The proposed changes do not affect the safety function of the offsite circuits or the emergency diesel generators (EDGs).

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate assumptions used in evaluating the radiological consequences of

an accident, do not alter the source term or containment isolation and do not provide a new radiation release path or alter potential radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in a margin of safety because the proposed changes do not reduce the margin to safety which exists in the present Technical Specifications [TS] or Updated Safety Analysis Report. The operability requirements of the TS are consistent with the initial condition assumptions of the safety analyses. Further, the proposed changes do not affect the Action statement requirements for the various levels of degradation in the offsite [power] circuits or EDGs.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 29, 1995

Description of amendment request: The proposed amendment would increase the minimum available borated water volume requirement for the boric acid addition system, the minimum and maximum boron concentration requirements for the borated water storage tank, the minimum boron concentration requirement for the core flood tanks; modify the surveillance requirements for trisodium phosphate dodecahydrate; and modify the refueling boron concentration and the associated Action statement. These proposed changes will affect the following Technical Specification sections: 3/4.1.2.8, Reactivity Control Systems - Borated Water Sources - Shutdown; 3/4.1.2.9, Reactivity Control Systems - Operat . .; 3/4.5.1, Emergency Core Cooling Systems (ECCS) - Core Flooding Tanks; 3/4.5.2, Emergency Core Cooling Systems - ECCS Subsystems - Tavg [plus or minus] 280 °F; 3/4.5.4, ECCS - Borated Water Storage Tank; 3/4.9.1, Refueling Operations - Boron Concentration; Bases 3/4.1.2, Boration Systems; Bases 3/4.5.2 and 3/4.5.3, ECCS Subsystems; and Bases 3/4.9.1 Boron Concantration.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are significantly affected by the proposed changes.

The proposed changes to the Technical Specifications and their Bases increase the minimum volume of the Boric Acid Addition System (BAAS), the minimum boron concentration of the Borated Water Storage Tank (BWST) and Core Flooding Tanks (CFTs), the maximum boron concentration of the BWST, and the minimum volume of trisodium phosphate dodecahydrate (TSP) in Containment (CTMT). Administrative changes to these Technical Specifications have also been proposed. These changes ensure adequate boration capability is maintained for normal operations, that adequate Shutdown Margin (SDM) can be achieved following an accident, and that the assumed post-Loss of Coolant Accident (LOCA) pH can be achieved. Therefore, as stated above, these proposed changes do not significantly affect accident initiators, conditions, or assumptions.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not change the source term, CTMT isolation, or allowable releases.

In particular, maintaining the appropriate amount of TSP will ensure the assumed pH will be achieved, the assumption of source term with respect to iodine retention will be maintained, and the radiological consequences of a previously evaluated accident will not be increased.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes.

These changes ensure that the assumptions used for initial and final conditions of SDM, pH, and source term are maintained. Also, the Environmental Qualification (EQ) and seismic requirements have been verified to be adequate to maintain the adequacy of Structures, Systems, and Components (SSCs) during assumed accident conditions.

3. Not involve a significant reduction in a margin of safety because the proposed changes to the minimum volume and boron concentration for the BAAS, BWST, and CFTs ensure that the margin of safety for reactor subcriticality is maintained at all times for future longer fuel cycles, including the upcoming Cycle 11.

The proposed increase in the BWST maximum boron concentration is set at the conservative limit for post-LOCA boron precipitation concerns. Therefore, the existing margin of safety with respect to post-LOCA boron precipitation is maintained.

The proposed increase in the minimum TSP volume requirement maintains the same margin of safety with respect to post-LOCA pH, time for dissolution, iodine retention, and chloride stress corrosion of austenitic stainless steels. The TSP capacity margin of approximately 40 cubic feet included in the minimum TSP volume requirement will not result in increasing the pH above the previously approved pH limit of 11. This reserve capacity adds margin to ensure adequate minimum pH is achieved.

The proposed removal of the 1800 ppm refueling boron concentration requirement does not reduce the margin of safety because the requirement of maintaining keff [less than or equal to] 0.95 is alone sufficient to ensure that the accident analysis assumptions are satisfied.

The proposed change to the boration rate requirement of the

LCO 3.9.1 Action statement does not reduce the margin of safety because the proposed boration rate of 12 gpm of 7875 ppm boric acid solution is equivalent to the present boration rate of

10 gpm of 8750 ppm boric acid solution.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: October 2, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 5.0, "Design Features," by adding a site location description, remove site area

maps, remove containment and reactor coolant system design parameters, remove the description of the meteorological tower location, remove component cyclic or transient limits, and revise the fuel assembly description to include the use of ZIRLO clad fuel rods.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to Section 5.0, Design Features, of the Technical Specifications. These changes are proposed to add a site location description, remove site area maps, remove containment and reactor coolant system design parameters, remove the description of the meteorological tower location, remove component cyclic or transient limits, and revise the fuel assembly description to include the use of ZIRLO clad fuel rods.

Under the proposed changes, Technical Specifications (TS) Section 5.0 would continue to satisfy the applicable requirements of Section 182.a of the Atomic energy Act of 1954, and 10 CFR 50.36(c)(4). Further, the proposed changes are consistent with NUREG-1430, "Standard Technical Specifications for Babcock and Wilcox Plants," Revision 1. The information proposed for removal from existing TS 5.0 is presently included in the Updated Safety Analysis Report (USAR) or is being proposed to be added to the USAR, hence sufficient controls exist under 10 CFR 50.59 to ensure that future changes to these items are acceptable.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, these changes are consistent with the "Standard Technical specifications for Babcock and Wilcox Plants" (NUREG-1430) and are administrative changes. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes, which involve only administrative controls. As described above, these changes are consistent with the "Standard Technical Specifications for Babcock and Wilcox Plants" (NUREG-1430) and are administrative changes. The proposed changes do not alter any accident scenarios.

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative and do not reduce or adversely affect the capabilities of any plant structure, systems or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document-Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: September 6, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.3.1 to reflect a change in the maximum initial enrichment for reload fuel. The amendment would also change the maximum reference $K_{infinity}$ for storage in Region 1 of the spent fuel pool and TS Figure 3.9-1 to reflect a change in the maximum initial enrichment for storage in Region 2.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

An increase to a maximum initial enrichment of 5.0 w/o U-235 does not involve an increase in the probability or consequence of an accident or other adverse condition over previous evaluations. Because of the conservative techniques and assumptions used to evaluate the maximum possible neutron multiplication factor, there is reasonable assurance that criticality safety is maintained when storing fuel assemblies of up to and including 5.0 w/o U-235 in the spent fuel storage racks under both normal and postulated accident conditions. For example, the calculations for non-accident conditions ignore the 2000 ppm soluble boron in the spent fuel pool calculations, thus resulting in conservative values of the multiplication factor. Storing fuel in the Region 1 configuration which meets the IFBA [integral fuel burnable absorber] versus enrichment curve (Figure 3 of Attachment 6) results in a maximum multiplication factor of 0.9481, including all biases and uncertainties.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

An increase to a maximum initial enrichment level of 5.0 w/o U-235 does not create the possibility of a new or different kind of accident or condition over previous evaluations. An increase to the enrichment level of 5.0 w/o U-235 involved performing extensive evaluations to develop the IFBA versus enrichment curve for V-5 fuel. Use of dual code packages ensures that the spent fuel pool Region 1 criticality limits are not exceeded.

3. The proposed changes do not involve a significant reduction in the margin of safety.

An increase in the maximum initial enrichment level to 5.0 w/o U-235 does not involve a reduction in the margin of safety. As discussed above, in all cases the multiplication factors for worst case assumptions fall considerably below the criticality limits and do not represent any reductions in margin. An increase to the initial enrichment level of 5.0 w/o U-235 does not adversely impact operation of the various plant systems, i.e. HVAC [heating, ventilation, and air conditioning], spent fuel pool cooling, or radiological control systems.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: William H. Bateman

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 6, 1995

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 4.2.b, "Steam Generator Tubes," its associated bases, and Figure TS 4.2-1 by redefining the pressure boundary for Westinghouse mechanical hybrid expansion joint (HEJ) steam generator (SG) tube sleeves.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist.

1. Operation of the KNPP in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Mechanical testing has shown that the inherent structural strength of the HEJ joint provides sufficient integrity such that the tube rupture capability recommendations of RG [Regulatory Guide] 1.121 are met, even for instances of 100 percent throughwall, 360° circumferentially oriented degradation in the HEJ HRLT [hardroll lower transition] region. Structural integrity recommendations consistent with RG 1.121 are supplied

for all tube degradation 1.1 inch or greater below the bottom of the HEJ HRUT [hardroll upper transition]. Based on test data, a bounding SLB [steam line break] leak rate of 0.033 gpm for indications between 1.1 and 1.3 inch below the bottom of the HRUT is applied. As the leakage data base is expanded and statistical basis established, this SLB leakage allowance may be reduced. For indications existing greater than 1.3 inch below the bottom of the HRUT, SLB event leakage can be neglected.

Additional prevention from tube rupture is inherently provided by the HEJ geometry. For RCS [reactor coolant system] release rates to exceed the normal makeup capacity of the plant, the tube must be postulated to experience a complete circumferential separation at the lower transition, and become axially displaced by 3 to 3.25 inches, resulting in complete geometric disassociation between the tube and sleeve resulting in sufficient flow area to support leakage in excess of makeup capacity. During the 1989 plug top release event at North Anna Unit 1, primary to secondary release rates were calculated to be less than 80 gpm, for a flow area approximately four times larger than the flow area created by a tube which was axially displaced by about 1.25 to 1.5 inch. Analysis of the steam generator indicates that at a 95 percent cumulative probability, the tube would experience an axial displacement of less than the 1.1 inch boundary. At this level of axial displacement, a ring of metal to metal contact would remain between the tube and sleeve, and leakage would be far less than makeup. Projected leakage at this point is expected to be less than 2.5 gpm. Therefore, implementation of the proposed repair boundary will not result in tube rupture, even for a tube postulated to not behave as predicted by the available test and pulled tube data.

The proposed technical specification change to support the implementation of the HEJ sleeve tube pressure boundary for parent tube degradation in the HEJ HRLT region does not adversely impact any other previously evaluated design basis accident or the results of accident analyses for the current technical specification minimum reactor coolant system flow rate. Plugging limit criteria are established using the guidance of RG 1.121. Furthermore, per RG 1.83 recommendations, the sleeved tube assembly can be monitored through periodic inspections with present eddy current techniques.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the revised pressure boundary will not introduce significant or adverse changes to the plant design basis. Mechanical testing of degraded sleeve joints supports the conclusions of the calculations that the sleeve retains structural (tube burst) capability consistent with RG 1.121. As with initial installation of sleeves, implementation of the relocated pressure boundary cannot interact with other portions of the RCS. Any hypothetical accident as a result of potential tube degradation in the HEJ HRLT region of the tube is bounded by the existing tube rupture accident analysis. Neither the sleeve design nor implementation of the tube repair boundary defined on Figure TS 4.2-1 affects any other component or location of the tube outside of the immediate area repaired.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The safety factors used in the establishment of the HEJ sleeved tube pressure boundary are consistent with the safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in steam generator design. Based on the sleeved tube geometry, it is unrealistic to consider that application of the revised pressure boundary could result in single tube leak rates exceeding the normal makeup capacity during normal operating conditions. The pressure boundary established ... has been developed using the methodology of RG 1.121. The performance characteristics of postulated degraded parent tubes of HEJ tube/sleeve joints have been verified by testing to retain structural integrity and preclude significant leakage during normal and postulated accident conditions. Testing indicates that postulated circumferentially separated tubes which the repair boundary addresses would not experience axial displacement during either normal operation or SLB conditions. The existing offsite dose evaluation performed for KNPP in support of the voltage based plugging criteria for axial ODSCC [outside diameter stress corrosion cracking] at TSP [tube support plate] intersections established a faulted loop primary to secondary leak rate of 34.0 gpm using technical specification dose equivalent Iodine-131 activity levels. Following implementation of the criteria, postulated leakage from all sources must not exceed 34.0 gpm in the faulted loop. Maintenance of this limit will ensure that offsite doses would not exceed the currently accepted limit of a small fraction of the 10 CFR 100 guidelines. The repair boundary uses a conservatively established "per indication" leak rate for estimation of SLB leakage. This leak rate is applied to all indications left in service as a result of the tube repair boundary, including non-throughwall indications and a limited number of indications of circumferential throughwall extent.

For a postulated indication whose performance is not characteristic of the test and pulled tube data, and which would experience axial displacement at the 95 percent cumulative probability value following a postulated SLB event with no operator intervention, leakage would not be expected to result in an uncontrolled release of reactor coolant in excess of normal makeup capacity.

For the three removed tube sleeve samples and nearly 1,000 PTIs [parent tube indications] detected in the field, there were no instances of degradation of elevations (multiple expansion transitions) on either side of the hardroll expansion in the same tube. This includes no instances on non-detected degradation in the upper hydraulic and hardroll upper expansion transitions for the removed tubes. One tube was identified in the most recent KNPP inspection with two separate circumferential crack elevations within the HRLT. Rapidly occurring degradation would not be expected at the upper transitions, based partly on the field inspection results. The available inspection results include two inspection programs (1994 and 1995) at Kewaunee and one at Point Beach Unit 2 (1994). Through these three inspection programs, approximately 11,000 HEJ sleeved tubes have been inspected using advanced ET [eddy current testing] techniques.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments

issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: October 6, 1995

Description of amendment request: Revise the Technical Specifications to change the definition of the F* distance.

Date of publication of individual notice in Federal Register: October 16, 1995 (60 FR 53648)

Expiration date of individual notice notice: November 15, 1995

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendment: September 13, 1995, as supplemented by letter dated October 19, 1995

Brief description of amendment request: The proposed amendments would revise Technical Specification (TS) Section 15.1, "Definitions," the basis for TS Section 15.3.1.G, "Operational Limitations," and TS Figure 15.2.1-2, "Reactor Core Safety Limits, Point Beach Unit 2." The proposed changes would reduce the reactor coolant system raw measured total flow rate limit and reflect new reactor core safety limits for Unit 2.Date of individual notice in **Federal Register:** October 24, 1995 (60 FR 54527)

Expiration date of individual notice notice: November 8, 1995

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 6, 1995

Brief description of amendments: The amendments extend the nominal surveillance interval requirements of selected safety systems instruments form 18 months to a refueling interval of 24 months.

Date of issuance: October 19, 1995

Effective date: As of the date of issuance to be implemented within 30 days for Unit 2 and prior to restart of the spring 1996 refueling outage for Unit 1.

Amendment Nos.: 208 and 186

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 5, 1995 (60 FR 35061) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 19, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and.2, Will County, Illinois Docket Nos. 50-10, 50-237 and 50-249, Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Illinois Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 24, 1995, as supplemented August 1 and September 14, 1995.

Brief description of amendments: The amendments would relocate the requirements for the "Review, Investigative and Audit Functions" and frequencies of the quality assurance (QA) program from the administrative controls section of the TS to the appropriate sections of the licensee's Quality Assurance Topical Report (QATR), CE-1-A, Revision 65. In addition, the proposed TS changes include title changes to reflect the reorganization of the licensee's Nuclear Operations Division and miscellaneous administrative and editorial changes.

Date of issuance: October 20, 1995

Effective date: October 20, 1995

Amendment Nos.: 75, 75, 67, 67, 38, 141, 135, 107, 93, 163, 159, 171, and 158

Facility Operating License Nos. NPF-37, NPF-66, NPF-72, NPF-77, DPR-2, DPR-19, DPR-25, NPF-11 NPF-18, DPR-29, DPR-30, DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 30, 1995 (60 FR 45175) and September 20, 1995 (60 FR 48726). The August 1 and September 14, 1995, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original Federal Register notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for LaSalle, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; and for Zion, Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: June 30, 1995

Brief description of amendments e amendments modify the surveillanc requirements for the emergency die generators.

Date of issuance: October 16, 1995

Effective date: October 16, 1995

Amendment Nos.: 170 and 157

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47615) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 4, 1995

Brief description of amendment: The amendment deletes requirements associated with part length control element assemblies.

Date of issuance: October 12, 1995

Effective date: October 12, 1995

Amendment No.: 169

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37090) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1995.No significant hazards consideration comments received: No

Local Public Document Room locotion: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: March 17, 1995

Brief description of amendment: The amendment deletes requirements associated with surveill ance to verify position stops for High . essure Safety Injection Emergency Core Cooling System throttle valves.

Date of issuance: October 18, 1995

Effective date: October 18, 1995

Amendment No.: 170

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37089) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 4, 1995, as supplemented by letter dated October 12, 1995

Brief description of amendment: The amendment revises the containment cooling response time to reduce the likelihood of a water hammer event in service water piping.

Date of issuance: October 26, 1995

Effective date: October 26, 1995

Amendment No.: 171

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37090) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Florida Power and Light Company, et al.. Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 28, 1994

Brief description of amendments: The amendments delete the minimum frequency criteria prescribed for quality assurance audits from Administrative Controls sections 6.5.2.8 and 6.8.4 of the Technical Specifications (TS). Audit periodicity will thereby be controlled by the program described in the Florida Power and Light Company (FPL) Topical Quality Assurance Report.

Date of issuance: October 25, 1995

Date of issuance: October 25, 1995

Effective date: October 25, 1995

Amendment Nos.: 140 and 80

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17599) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995

Brief description of amendments: These amendments consist of administrative corrections and clarifications.

Date of issuance: October 17, 1995

Effective date: October 17, 1995

Amendment Nos. 177 and 171Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Tech nical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47619) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995

Brief description of amendments: These amendments consist of administrative corrections and clarifications.

Date of issuance: October 17, 1995

Effective date: October 17, 1995

Amendment Nos.: 178 and 172Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47619) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: February 13, 1995, as supplemented April 21, 1995, and August 7, 1995.

Brief description of amendment: The proposed amendment deletes the audit requirements from the Duane Arnold Energy Center Technical Specifications (TS) and adds them to the Quality Assurance Program.

Date of issuance: October 17, 1995

Effective date: October 17, 1995

Amendment No.: 213

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16190) The additional information contained in the supplemental letters dated April 21, 1995, and August 7, 1995, was clarifying in nature and did not change the NRC staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 31, 1995

Brief description of amendments: The amendments revise Technical Specification (TS) surveillance requirements for safety-related pump testing to eliminate recirculation alignments. In addition, specific test parameters, discharge pressures, and flows associated with these pumps are removed from the TS and will be controlled by the Inservice Testing Program.

Date of issuance: October 17, 1995

Effective date: October 17, 1995, with full implementation within 45 days

Amendment Nos.: 203 and 188

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32368) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: February 1, 1995

Brief description of amendment: The amendment revises Technical Specification 3.6.13 and associated Bases to permit the controls and instruments from both Remote Shutdown Panels to be considered when assuring that one complete set of controls and instruments is operable. The changes also allow 30 days to restore an inoperable function to operable status, remove MODE 3 (hot shutdown) from the existing requirement for operability, and revise the LIMITING CONDITION FOR OPERATION ACTION to require achieving hot shutdown in 12 hours instead of cold shutdown in 36 hours. An additional change permits the operator 30 days to establish an alternate method of monitoring a parameter (and 90 days to restore the function) when the function is inoperable.

Date of issuance: October 16, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 155

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11135) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 29, 1995

Brief description of amendment: The amendment modifies the current Technical Specifications that have cycle-specific parameter limits in the Core Operating Limits Report to include an additional cycle-specific parameter and its supporting methodologies.

Date of issuance: October 18, 1995

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 120

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24912) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: September 1, 1995

Brief description of amendment: The amendment deleted License Condition 2.C.(5) which restricts power levels to no less than seventy percent in the coastdown condition.

Date of issuance: October 17, 1995

Effective date: As of date of issuance

Amendment No.: 215

Facility Operating License No. (DPR-56): This amendment revised the Facility Operating License. Public comments requested as to proposed no significant hazards consideration: Yes. (60 FR 48530). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 18, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated October 17, 1995.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. Vice President and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 19, 1995

Brief description of amendments: The amendments revise the Technical Specifications Table 3.3.3-3, "Emergency Core Cooling System Response Times" to reflect the value of 60 seconds for the High Pressure Coolant Injection system response time instead of 30 seconds as previously specified.

Date of issuance: October 16, 1995

Effective date: For both units, as of the date of issuance and to be implemented within 30 days.

Amendment Nos.: 102 and 66

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 5, 1995 (60 FR 35084) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 21, 1995

Brief description of amendment: The amendment revises TS Section 6.0 (Administrative Controls) to replace the title-specific list of members on the Plant Operating Review Committee with a more general statement of membership requirements, and expands the scope of disciplines represented on the committee to include Nuclear Licensing and Quality Assurance. The amendment also changes the following management position titles: "First Executive Vice President and Chief Nuclear Officer" to "Chief Nuclear Officer", "Resident Manager" to "Site Executive Officer", "Shift Supervisor" to "Shift Manager", and "Assistant Shift Supervisor" to "Control Room Supervisor." These changes in title do not affect the reporting relationships, authority, or responsibilities of these positions. Finally, the amendment also makes editorial corrections to the TSs.

Date of issuance: October 13, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 228

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47624) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 12, 1995.

Brief description of amendment: The amendment extends the surveillance test intervals for the nuclear steam supply system to support 24-month operating cycles. Surveillance test interval extensions that are justified will be denoted as being performed "every 24 months" or "at least once per 24 months" consistent with the guidance provided in Reference 1. Other surveillances currently performed "once each operating cycle," "at least once during each operating cycle," "each refueling," or similar notation, that are not being extended at this time will be denoted as being performed "at least once per 18 months." The NRC staff has determined that the proposed TS changes follow the guidance of Generic Letter 91-04, and are therefore acceptable.

Date of issuance: October 13, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 229

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24916) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 18, 1995

Brief description of amendment: This amendment changes Technical Specification Table 4.3.7.1-1, "Radiation Monitoring Instrumentation Surveillance Requirements," to increase the channel functional test interval from monthly to quarterly for each instrument.

Date of issuance: October 16, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 83

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 1995 (60 FR 42607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 4, 1995

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.6.1.8, "Drywell and Suppression Chamber Purge System," increasing the annual operational limit for the drywell and suppression chamber purge system from 120 to 500 hours.

Date of issuance: October 16, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 84

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 1995 (60 FR 42607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of applications for amendment: November 30, 1994 and March 30, 1995, as supplemented by letter dated September 5, 1995.

Brief description of amendment: The change to TS Table 3.3.1-2, "Reactor Protection System Response Times," TS Table 3.3.2-3, "Isolation System Instrumentation Response Time," TS Table 3.3.3-3, "Emergency Core Cooling System Response Times," and associated Bases, eliminates the requirement to perform response time testing for certain classes of equipment and transfers the requirements of the above-referenced TS Tables to the Updated Final Safety Analysis Report.

Date of issuance: October 24,1995

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 85

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16198 and August 16, 1995 (60 FR 42606) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: May 20, 1994, as supplemented on March 29, 1995

Brief description of amendment: The amendment revises Technical Specifications to implement the NRC's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactor by relocating specifications that do not meet policy statement criteria to the Final Safety Analysis Report.

Date of issuance: October 20, 1995

Effective date: Immediately, to be implemented within 120 days.

Amendment No.: 103

Facility Operating License No. NPF-30. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45036). The March 29, 1995, letter provided supplemental information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 26, 1994, as supplemented by letters dated December 1, 1994, and June 23, 1995

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.3.0, "General Considerations." This section specifies the actions to be taken for conditions not directly addressed in the action statements fo the TSs. In addition, changes to the applicable bases (including the bases for TS 15.3.3) and editorial changes are also included.

Date of issuance: October 12, 1995

Effective date: October 12, 1995

Amendment Nos.: 163 and 167

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12373) The December 1, 1994 and June 23, 1995, submittals provided supplemental information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 17, 1995

Brief description of amendments: These amendments change TS Sections 15.6.2, "Organization," and 15.6.3, "Facility Staff Qualifications." The requirement for the Operations Manager to hold an NRC Senior Reactor Operator's (SRO) license has been changed to provide additional staffing flexibility.

Date of issuance: October 12, 1995

Effective date: October 12, 1995

Amendment Nos.: 164 and 168

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1995 (60 FR 27346). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Dated at Rockville, Maryland, this 1st day of November 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/IV,Office of Nuclear Reactor Regulation

[Doc. 95–27543 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–F

[Docket Nos. 50–390 and 50–391]

Tennessee Valley Authority; Availability of Safety Evaluation Report Supplement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published the Safety Evaluation Report, Supplement 18 (NUREG–0847, Supp. 18) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50–390 and 50–391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20555, and in the Local Public Document Room, Chattanooga-Hamilton Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082. GPO deposit account holders may charge orders by calling 202–512–2249 or 2171. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 31st day of October 1995.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II Office of Nuclear Regulatory Commission.

[FR Doc. 95–27626 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8838]

Jefferson Proving Ground, Madison, IN; Consideration of an Amendment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of an Amendment Request for Release of the Remediated Portion of Jefferson Proving Ground (JPG), Madison, IN, for Unrestricted Use and Amendment of the U.S. Army Source Material License Number SUB–1435, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission is considering two license amendment requests for Source Material License SUB–1435, issued to the U.S. Army, Jefferson Proving Ground (JPG), Madison, IN. The first amendment would release, for unrestricted use, a portion of JPG. The second amendment would transfer the license from the U.S. Army at JPG to the U.S. Army Test and Evaluation Command (TECOM), Aberdeen, MD.

The first amendment request involves that portion of JPG which has been remediated to levels in compliance with the current NRC decommissioning criteria for unrestricted release (i.e., "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," August 1987). This portion of the JPG site is located south of the firing line. In a letter dated September 14, 1995, the licensee requested amendment of its license to release the area south of the firing line for unrestricted use. In support of this request, the licensee remediated the area south of the firing line and submitted a final survey report. In addition, the Army has submitted a certificate of disposition which indicated that the depleted uranium (DU) material, that resulted from the remediation activities, was disposed of at a licensed burial site. Subsequently, the NRC conducted a confirmatory radiological survey of that area and submitted the results of that survey to the Army on September 27, 1995 (Report No. 040–08838/95001/R–III). The radiological survey data in these two reports (final and confirmatory survey reports) did not identify any radioactive material in excess of the current NRC decommissioning criteria for unrestricted use. Therefore, in accordance with NRC regulations in 10 CFR 40.41, and NRC's Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites (57 FR 13389, April 16, 1992), that portion of JPG site would be released for unrestricted use.

The second amendment request involves the transfer of the license. The U.S. Army has ceased its function as a test center for DU projectiles and has closed JPG effective September 30, 1995. The Army has transferred certain DU material to other Army locations under different licenses. Therefore, the Army currently possesses only the DU material remaining onsite (estimated 80,000 kilograms), in the DU impact area north of the firing line, and will not conduct any further DU test activities at JPG. As a result of these changes, the Army has requested (in a letter dated September 14, 1995) an amendment to transfer the license to the U.S. Army TECOM Headquarters in Aberdeen, MD. Consequently, NRC is considering the Army's request to amend the license to conform with the current conditions and status at JPG. In addition, NRC is proceeding with the development of an environmental impact statement (EIS) which will examine alternatives for the decommissioning of the remaining radiologically contaminated portion of JPG (i.e., the DU impact area north of the firing line). A notice of intent to develop an EIS was published in the **Federal Register** on April 10, 1995 (60 FR 18155).

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings, of NRC's rules and practices for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for hearing must be filed within (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Test and Evaluation Command, Aberdeen Proving Ground, Maryland 21005–5055, ATTN: Ms. Tanya Palmateer Oxenberg, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

For further details with respect to this action, the application for the license amendment is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555. If you have any questions or comments about the requests, please contact NRC's project manager for the site, Dr. Boby Eid, at telephone number (301) 415–5811 or at Mail Stop T7F27, U.S. NRC, Washington, DC 20555.

Dated at Rockville, Maryland this 31st day of October 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–27623 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36450; International Release No. 878; File No. SR–OPRA–95–4]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Fee Schedule Establishing Certain Fees With Respect to OPRA's Foreign Currency Options Service That Are Counterparts to Existing OPRA Fees, and Reducing Certain "Basic Service" Fees

November 1, 1995.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Exchange Act") notice is hereby given that on October 19, 1995,[1] the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"), establishing certain fees with respect to OPRA's foreign currency options ("FCO") service that are counterparts to existing OPRA fees, and reducing certain fees applicable to OPRA's basic service. OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to establish a Direct Access Charge and a Redistribution Fee (and, under circumstances described below, a Pass-Through Fee) with respect to OPRA's FCO service, and to make offsetting reductions in these same fees as they apply to OPRA's basic service at the time the new FCO fees go into effect. The amendment also will establish a new FCO Subscriber Indirect Access Fee, FCO Voice-Synthesized Market Data Service Fee and FCO Dial-up Market Data Service Utilization Fee applicable to the FCO service; these fees will be established on the same basis as, but at lower rates than, the corresponding fees currently applicable to OPRA's basic service. In addition, the amendment will establish zero-based (no charge) fees for providers of FCO Radio Paging Services and FCO Back-up Facilities. All of the fees will go into effect on January 1, 1996, in accordance with the OPRA Plan as amended effective March 14, 1995.

Currently, all persons who receive options last sale and quotation information directly from OPRA's processor must pay a Direct Access Charge to OPRA, and all vendors and news services that receive such information indirectly from a vendor must pay a Pass-Through Fee to OPRA equal in amount to the Direct Access Charge. In a filing still pending before the Commission ("Pending Filing"), OPRA is proposing a reduction in the amount of the Direct Access Charge, the elimination of the Pass-Through Fee, and the establishment of a new Redistribution Fee. In the present filing, these three fees have been proposed to apply to OPRA's FCO service in both the situation where the Pending Filing has been approved by January 1, 1996, as well as the situation where the Pending Filing has not been approved by that date. In either event, concurrently with the introduction of these new fees, OPRA's counterpart basic service fees will be reduced by an amount equal to the new FCO fees. OPRA's proposal will not result in an increase in these fees, but instead will result in a reallocation of these fees between OPRA's basic service and its FCO service. Therefore, on and after January 1, 1996, OPRA's Direct Access Charges, Redistribution Fees and Pass-Through Fees for its basic service and FCO service, in the aggregate, will be the same as the "bundled" fees in effect prior to that date.

The amendment also will establish three new fees applicable to the FCO service that will be comparable to fees currently applicable to OPRA's basic service, but at reduced rates. These fees will be in addition to the comparable basic service fees. The FCO Subscriber Indirect Access Charge is payable by every subscriber to the FCO service that receives an uncontrolled data feed transmission of FCO market data from a vendor. This fee does not apply to a subscriber that receives a data feed to a single, stand-alone computer for the sole purpose of providing a single screen display of FCO data for the subscriber's internal use. The FCO Voice-Synthesized Market Data Service Fee is a port-based fee applicable to every vendor or subscriber that offers a voice synthesized FCO market data service to persons that are not required to be approved FCO subscribers. The FCO Dial-Up Market Data Service Utilization Fee is a port-based fee applicable to every vendor that provides a dial-up FCO market data service to a customer's personal computer without requiring the customer to be an approved FCO subscriber. As alternatives to these two port-based fees, usage-based fees may be elected during a pilot period ending December 31, 1996, and thereafter if the pilot is extended or made permanent.[3]

Two other fees that currently apply to OPRA's basic service are proposed to be established at a zero rate (no charge) for the FCO service; these fees are the Radio Paging Service Fee and the Back-up Facility Access Fee. The Radio Paging Service Fee is a device-based fee payable by every vendor that offers a radio paging service to persons not required to be approved subscribers. The Back-up Facility Access Fee is a monthly fee payable by persons who maintain terminals for us as back-up facilities during times when the terminals are not being used, and is in lieu of regular subscriber device charges for such terminals.

Persons subject to the foregoing fees (including the zero-based fees) will be required to sign agreements with OPRA. Such agreements will be substantially similar to those currently required to be signed with regard to OPRA's basic service.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the

[1] The proposed amendment was originally filed on October 5, 1995, but was subsequently amended to incorporate the usage-based fee alternatives proposed in a separate filing (SR–OPRA–95–3). The amendment is available for inspection and copying in the Commission's Public Reference Room.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Stock Exchange ("PSE"); and the Philadelphia Stock Exchange ("PHLX").

[3] In a separate proposal, OPRA is proposing the introduction of a usage-based alternative to its basic Voice-Synthesized Market Data Service Fee for a pilot period ending December 31, 1996, and the extension of its pilot for a usage-based basic Dial-Up Market Data Service Utilization Fee until this same date. *See* Securities Exchange Act Release No. 36402 (October 20, 1995), 60 FR 54905 (October 26, 1995).

Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–95–4 and should be submitted by November 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27588 Filed 11–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36449; File No. SR-Phlx–95–66]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Extension of Public Comment Period for Proposed Rule Change

November 1, 1995.

On September 15, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would amend: (i) Phlx Rule 1066[1] by adding new paragraph (h), P/A Orders (Principal Acting as Agent); and (ii) Phlx Rule 1015[2] by adding new paragraph (c). The proposed rule change would create a new equity options order designator, the P/A order, to ensure that when a floor trader (i.e., Specialist, market maker, Registered Options Trader, Lead Market Maker or Designated Primary Market Maker) from another options exchange in possession of a public customer order sends a mirror-image order[3] to the Phlx to obtain price improvement for that customer, the customer would receive the benefit of that better execution price, notwithstanding that the mirror-image order has been sent in the name of the floor trader. Similarly, the P/A order would ensure that when a Phlx floor trader sends such an order to another options exchange, the customer for whom the Phlx order is sent receives the benefit of the better price available on that exchange.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 36271, September 22, 1995) and by publication in the **Federal Register** (60 FR 50225, September 28, 1995).

The Commission has been requested to extend the time period for public comment on the proposed rule change.[4] The Commission hereby extends the period for public comment on the proposed rule change until December 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27589 Filed 11–7–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(29).

[1] *Philadelphia Stock Exchange Guide*, Options Rules, Rule 1066 (CCH) ¶3066.

[2] *Philadelphia Stock Exchange Guide*, Options Rules, Rule 1015 (CCH) ¶3015.

[3] A mirror-image order is an order sent by the floor trader for the exact number of contracts specified in the customer order.

[4] By letter dated October 30, 1995, the Phlx has consented to an extension of the comment period. *See* letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx to Ethan D. Corey, Senior Counsel, Division of Market Regulation, Commission.

[5] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–21469; File No. 812–9664]

Glenbrook Life and Annuity Company, et al.

November 2, 1995.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Glenbrook Life and Annuity Company ("Glenbrook" or the "Company"), Glenbrook Life and Annuity Company Separate Account A (the "Variable Account"), and Allstate Life Financial Services, Inc. ("Allstate").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expensive risk charge from the assets of the Variable Account and other separate accounts established by Glenbrook in the future ("Other Separate Accounts") in connection with the issuance and sale of certain deferred variable annuity contracts ("Contracts") and/or any contracts that are similar in all material respects to the Contracts ("Other Contracts"). Applicants also respect that the exemptive relief extend to certain other broker-dealers which may serve in the future as a principal underwriter of the Contracts or Other Contracts ("Future Underwriters").

FILING DATE: The application was filed on July 13, 1995, and amended on October 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 27, 1995, and should be accompanied by proof of service on Applicants in the form of a affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, David E. Stone, Esq., Glenbrook Life and Annuity Company, 3100 Sanders Road, Northbrook, Illinois 20062.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), or (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicant's Representations

1. Glenbrook, incorporated as a stock life insurance company is 1992, is organized under the laws of Illinois. The Company is a wholly-owned subsidiary of Allstate Life Insurance Company, which is a wholly-owned subsidiary of Allstate Insurance Company. Glenbrook sells individual and group annuities and life insurance.

2. The Variable Account was established by Glenbrook as a segregated investment account pursuant to a resolution of the Board of Directors, and serves as a funding medium for variable annuity contracts issued through the Variable Account. The Variable Account is divided into sub-accounts, each of which invests solely in shares of a registered open-end management investment company (the "Fund").

3. Allstate, a wholly-owned subsidiary of Allstate Life Insurance Company, will serve as the principal underwriter for the Contracts. Allstate is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are individual and group flexible premium deferred annuity contracts which may be sold on a non-tax qualified basis ("Non-Qualified Contracts") or offered in connection with retirement plans which qualify for favorable federal income tax treatment ("Qualified Contracts").[1] The Contracts provide for, among other things: (a) minimum initial purchase payments of $5,000 ($2,000 in the case of Qualified Contracts) and minimum subsequent purchase payments of $500; (b) several annuity payment options beginning on the payout start date; and (c) if the annuitant dies during the accumulation phase, the payment of a death benefit equal to the greatest of (1) the Contract value on the date the Company receives a complete request for payment of the death benefit, (2) the amount that would have been payable in the event of a full withdrawal of the Contract value on the date the Company receives a complete request for payment of the death benefit, or (3) the Contract value on the death benefit anniversary immediately preceding the date the Company determines the death benefit adjusted by any purchase payments, withdrawals and charges made between such death benefit anniversary and the date the Company determines the death benefit. The death benefit anniversary is every seventh Contract anniversary beginning with the issue date.

5. Applicants state that, upon purchase of the Contract, the Contract owner can also select one of the following death benefit options: (a) the greatest of the anniversary values as of the date Glenbrook determines that the death benefit (where the anniversary value, which is calculated each Contract anniversary prior to the deceased's attained age 75 or 5 years after the date the Contract was issued, if later, is equal to the Contract value on a Contract anniversary, increased by purchase payments made since that anniversary and reduced by the amount of any partial withdrawals since that anniversary); or (b) total purchase payments minus the sum of all partial withdrawals (where each purchase payment and each partial withdrawal accumulates daily at a rate equivalent to 5% per year until the first day of the month following the deceased's 75th birthday or 5 years after the date the Contract was issued, if later).

6. Various fees and charges are deducted under the Contracts. An annual contract maintenance fee of $35 will be deducted from Contract value to reimburse Glenbrook for certain administrative expenses incurred in maintaining each Contract and the Variable Account. A daily asset-based administrative expense charge equal to an effective annual rate of 0.10% of the daily net assets in the Variable Account will be deducted to cover actual administrative expenses which exceed the revenues from the contract maintenance charge. These administrative fees are guaranteed not to increase for the duration of the Contract. Applicants state that the Company does not intend to profit from either of these charges.

7. Applicants state that the Company intends to deduct premium taxes either (a) at the payout start date, or (b) when a total withdrawal occurs. Glenbrook reserves the right to deduct such taxes when incurred. Premium taxes currently range from 0% to 3.5%.

8. Certain full or partial surrenders will be subject to a contingent deferred sales charge ("Withdrawal Charge") during the first sic Contract years as follows:

No. of complete years since purchase payment being withdrawn was made	Applicable withdrawal charge percentage
0 years	6
1 years	6
2 years	5
3 years	5
4 years	4
5 years	4
6 years	3
7 years or more	0

For purposes of calculating the Withdrawal Charge, withdrawals are deemed to come from purchase payments first, beginning with the oldest purchase payment. Withdrawals made after all purchase payments have been withdrawn will not be subject to a Withdrawal Charge. In any Contract year, a Contract owner may withdraw 10% of the Contract value as of the date of the first withdrawal in the Contract year without incurring a Withdrawal Charge.

9. Proceeds from the Withdrawal Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts. Applicants state that the Withdrawal Charge may be insufficient to cover all costs relating to the distribution of the Contracts. To the extent that the Withdrawal Charge is insufficient to cover all distribution expenses, the deficiency will be met from Glenbrook's general account, which may include profits derived from the mortality and expense risk charge.

10. Applicants state that Glenbrook will assess a $10 charge on each transfer or other reallocation of Contract value among the sub-accounts in excess of 12 per Contract year.

11. Applicants state that shares of the Fund are sold to the Variable Account at net asset value. The Fund will impose certain expenses, such as an investment advisory fee, which Contract owners will bear indirectly.

12. A daily charge equal to an effective annual rate of 1.35% of the assets in the Variable Account will be deducted to compensate Glenbrook for bearing certain mortality and expense risks under the Contracts. Of that amount, approximately 0.95% is for mortality risks (0.85% for the standard death benefit and 0.10% for the enhanced death benefit) and approximately 0.40% is for the expense risk. The mortality risk arises from Glenbrook's guarantee to cover all death benefits and to make income payments in accordance with the annuity tables contained in the Contracts, thereby relieving the annuitants of the risk of outliving funds accumulated for retirement. The expense risk assumed by Glenbrook is the risk that its actual administrative costs will exceed the amount recovered through the

[1] Applicants state that a registration statement on Form N–4 was filed with the Commission to register the investment interest in the Contracts with the SEC (File No. 33–62203).

administrative expense and contract maintenance charges. Applicants guarantee that the level of this charge will not increase for the duration of the Contract. If the mortality and expense risk charge is insufficient to cover the actual mortality costs and excess expenses, Glenbrook will bear the loss.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a 1.35% charge from the assets of the Variable Account to compensate Glenbrook for the assumption of mortality and expense risks under the Contracts. Applicants also request that such exemptive relief extend to any Other Contracts which may be issued in the future by the Variable Account or any Other Separate Account established by the Company. Applicants further request that the exemptive relief extend to Future Underwriters, certain other broker-dealers which may serve in the future as a principal underwriter of the Contracts or Other Contracts. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Glenbrook represents that the 1.25% mortality and expense risk charge (excluding the 0.10% risk charge for the enhanced death benefit) is reasonable in relation to the risks assumed by the Company under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these representations are based upon Glenbrook's analysis of publicly available information about comparable industry products, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Glenbrook represents that it will maintain at its home office, a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative review.

4. Applicants represent that the mortality risk charge of 0.10% for the enhanced death benefit is reasonable in relation to the risks assumed by the Company under the Contracts. Applicants state that in making this determination, Glenbrook conducted a large number of trials at various issue ages to determine the expected cost of the enhanced death benefit. Hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical owner's death during the year in question. By analyzing the results of several such simulations, Applicants state that Glenbrook was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, Glenbrook determined that a 0.10% mortality risk charge was reasonable for providing the enhanced death benefit. Glenbrook represents that the basis for this determination will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

5. Prior to issuing any Other Contracts, Applicants will determine that the aggregate mortality and expense risk charge under any Other Contracts is reasonable in relation to the risks assumed by Glenbrook and/or reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants represent that the basis for this conclusion will be set forth in a memorandum which will be maintained at Glenbrook's home office and will be available to the Commission upon request.

6. Applicants state that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the Withdrawal Charge. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements under the Contracts will benefit the Variable Account and Contract owners. Glenbrook represents that the basis for that conclusion is set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

7. Prior to issuing any Other Contracts, Applicants will determine that there is a reasonable likelihood that the proposed distribution financing arrangement under any Other Contracts will benefit the Variable Account or any Other Separate Account and Other Contract owners. Glenbrook represents that the basis for this conclusion will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

8. Applicants assert that the terms of the future relief request with respect to Other Separate Accounts, Other Contracts and Future Underwriters are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants submit that, if Glenbrook were to seek exemptive relief repeatedly with respect to the issues addressed in this application, investors would not receive additional protection or benefit. Applicants assert that the requested relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants represent that both the delay and the expense of repeatedly seeking exemptive relief would impair the Company's ability to effectively take advantage of business opportunities as they arise.

9. Glenbrook also represents that the Variable Account or any Other Separate Accounts will invest only in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27652 Filed 11–7–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2274]

United States International Telecommunications Advisory Committee Telecommunications Development Sector (ITAC–D) Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Telecommunications Development Sector (ITAC–D) Group will meet on Friday, November 17, 1995, in Room 2533A from 10:00–12:00 noon at the U.S. Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The agenda for the ITAC–D Group meeting will include preparations and review of U.S. contributions for the ITU–D Study Group 1 (Telecommunication Development Strategies and Policies) and Study Group 2 (Development, Harmonization, Management and Maintenance of Telecommunication Networks and Services, including Spectrum Management) meetings in Geneva. ITU–D Study Group 1 is scheduled for November 27–30. ITU–D Study Group 2 is scheduled for December 4–7.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please call (202) 647–5233 no later than five (5) days before the scheduled meeting. Enter from the "C" Street Main Lobby. A picture ID will be required for admittance.

Dated: October 16, 1995.

Doreen F. McGirr,

Chair, U.S. ITAC for Telecommunication Development.

FR Doc. 95–27587 Filed 11–7–95; 8:45 am]

BILLING CODE 4710–45–M

Office of the Under Secretary for Economic and Agricultural Affairs

[Public Notice 2278]

Notice of Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from Portal Pipeline Company for a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, to construct an extension of its existing pipeline at the U.S.-Canadian border near Burke County, North Dakota carrying crude oil. Portal Pipeline Company is incorporated in the State of Delaware, with its corporate offices located in Dallas, Texas. The proposed pipeline extension would be constructed to cross the United States-Canada border located in lot 1 Section 27, Township 154 North, Range 92 West, Burke County, North Dakota.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Rosa Whitaker, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–2857.

Glen R. Rase,

Director, Int'l Energy and Commodities.

[FR Doc. 95–27584 Filed 11–7–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, McGhee-Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Metropolitan Knoxville Airport Authority for McGhee-Tyson Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is October 12, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301, 901–544–3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for McGhee-Tyson Airport are in compliance with applicable requirements of Part 150, effective October 12, 1995.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect the maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Metropolitan Knoxville Airport Authority. The specific maps under consideration are McGhee-Tyson Airport Existing (1995) Noise Exposure Map and Future (2000) Noise Exposure Maps submission. The FAA has determined that these maps for McGhee-Tyson Airport are in compliance with applicable requirements. This determination is effective on October 12, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under, section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports District Office, 3851 Directors Cove, Suite #3, Memphis, TN 38131–0301

Mr. William F. Marrison, Director of Airport Operations, McGhee-Tyson Airport, P.O. Box 15600, Knoxville, Tennessee 37901

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis Airports District Office, October 12, 1995.

LaVerne F. Reid,

Manager.

[FR Doc. 95–27704 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–41]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 28, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 2, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 010SW.

Petitioner: McDonnell Douglas Helicopter Systems.

Sections of the FAR Affected: 14 CFR 27.1(a).

Description of Relief Sought: To allow an increase in the maximum gross weight of the McDonnell Douglas Helicopter Systems Model MD900 from 6,000 pounds to 7,000 pounds.

Docket No.: 28186.

Petitioner: MTU Maintenance GmbH.

Sections of the FAR Affected: 14 CFR SFAR 36, section 3(a)(1).

Description of Relief Sought: To permit MTU Maintenance GmbH to develop and approve major repair data, as well as to inspect, to repair, to maintain, to overhaul, and to return into service aircraft engines, appliances, parts, and components, for installation on any U.S.-registered aircraft. These functions, if approved, would be permitted without geographical limitations and in accordance with MTU's ratings.

Docket No: 28295.

Petitioner: Delta Engineering, L.P.

Sections of the FAR Affected: 14 CFR 21.439(a) (2) and (3).

Description of Relief Sought: To permit Delta Engineering, L.P., to hold designated alteration station authorization for alterations on all aircraft type certificated under parts 23, 25, 27, 29, and their predecessor parts.

Docket No.: 28356.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 21,325(b)(1).

Description of Relief Sought: To permit the Douglas Aircraft Company (DAC) to obtain export airworthiness approvals for new aircraft that have been assembled and flight-tested under DAC's extension of its Production Certificate No. 27 to the Shanghai Aviation Industrial Corporation located in the People's Republic of China.

Docket No.: 28359.

Petitioner: Aerospace Industries Association of America, Inc./General Aviation Manufacturers Association.

Sections of the FAR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought: To permit the issuance of export airworthiness approvals for Class II and Class III products manufactured under AIA member and GAMA member production approvals at member facilities located throughout the world.

Docket No.: 27301.

Petitioner: Skydive City, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 5791, which permits Skydive City, Inc., (SCI) to allow nonstudent parachutists who are foreign nationals to participate in SCI-sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *Grant, September 29, 1995, Exemption No. 5791A*

Docket No.: 27674.

Petitioner: IBM Flight Operations.

Sections of the FAR Affected: 14 CFR 43.9(a), 43.11(a), 91.407(a)(2), and 145.57(a).

Description of Relief Sought/ Disposition: To allow IBM Flight Operations to use computerized personal identification codes in lieu of physical signatures required to issue airworthiness release and/or approval for return to service for the aircraft operated by IBM flight Operations and aeronautical products that it maintains for its repair station customers. *Grant, September 29, 1995, Exemption No. 6176*

Docket No.: 27903.
Petitioner: Dry Creek Aviation.
Sections of the FAR Affected: 14 CFR 45.25 and 45.29(b)(1)(i).

Description of Relief Sought/ Disposition: To permit continued display of small nationality and registration marks on its Great Lakes 2T1A, N3702F airplane. *Denial, October 4, 1995, Exemption No. 6813*

Docket No.: 28000.
Petitioner: Learjet, Inc.
Sections of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To allow Learjet, Inc., to assign a copy of its repair station inspection procedures manual to key individuals within departments, rather than provide a copy of the manual to each supervisory and inspection personnel. *Grant, October 4, 1995, Exemption No. 6181.*

Docket No.: 6182.
Petitioner: Steven Eugene Walz.
Sections of the FAR Affected: 14 CFR 45.22(c) and 45.29(h).

Description of Relief Sought/ Disposition: To permit Mr. Walz to operate his aircraft (Registration No. N331KW) through Air Defense Identification Zones (ADIZ) and Defense Early Warning Identification Zones (DEWIZ), without displaying temporary or permanent nationality and registration marks on the aircraft that are at least 12 inches high. *Denial, October 4, 1995, Exemption No. 6182.*

Docket No.: 28320.
Petitioner: Learjet, Inc.
Sections of the FAR Affected: 14 CFR 145.45(f) .

Description of Relief Sought/ Disposition: To allow Learjet, Inc., to assign a copy of its repair station inspection procedures manual to key individuals within departments, rather than provide a copy of the manual to each supervisory and inspection personnel. *Grant, October 4, 1995, Exemption No. 6180.*

[FR Doc. 95–27702 Filed 11–7–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Massena International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Massena International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 8, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito; Manager, New York Airports District Office; 600 Old Country Road, Suite 446; Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Duane T. Hazelton, Town Supervisor, of the Town of Massena at the following address: Town Hall, Main Street; Massena, New York, 13662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Town of Massena under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito; Manager, New York Airport District Office; 600 Old Country Road, Suite 446; Garden City, New York, 11530; telephone number (516) 227–3803. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Massena International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 11, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Town of Massena was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 13, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1996.

Proposed charge expiration date: January 1, 2009.

Total estimated PFC revenue: $362,428.

Brief description of proposed project(s):

—Runway 5 Obstruction Removal
—General Aviation Apron
—Taxiway A Rehabilitation & Lighting
—Runway 23 Extension Environmental Assessment
—Parallel Taxiway A
—Runway 5 Visual Aids & Beacon
—Passenger Facility Charge Application
—Storm Water Pollution Prevention Plan
—Airport Pavement Management System
—Inadvertent Entry Fence
—Parallel Taxiway Phase II (Construction)
—Runway 23 Extension

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not Applicable, all requested to collect PFCs.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Fitzgerald Federal Building #111; John F. Kennedy International Airport; Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Town of Massena.

Issued in Jamaica, New York State on October 26, 1995.

William J. DeGraaff,
Manager, Planning and Programming Branch, Eastern Region.

[FR Doc. 95–27706 Filed 11–7–95; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–11]

Procurement Authority, Delegation of Authority

1. Delegations

a. Procurement Executive

The Director, Office of Procurement, Departmental Offices, is designated as Procurement Executive, in accordance with the provisions of Executive Order (E.O.) 12931, "Federal Procurement Reform," and 41 U.S.C. 414. The Director, Office of Procurement, is responsible for the maintenance and oversight of a Departmentwide procurement system and is authorized to:

(1) Prescribe and publish Departmentwide procurement policies, regulations and procedures;

(2) Enter into, make determinations and decisions and take other actions, consistent with appropriate laws, E.O.s, policies, regulations, and procedures with respect to purchases, contracts, leases, and other contractual procurement transactions, except those required by law or regulation to be made by other authority;

(3) Designate persons qualified in procurement matters as contracting officers;

(4) Review agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures over and above those required by statute, and, where practicable, replace them with guiding principles that encourage and reward innovation;

(5) Participate as necessary in the review of agency programs to assure that such programs meet agency mission needs;

(6) Ensure that procurement organizations focus on measurable results and on increased attention to understanding and meeting customer needs;

(7) Increase the use of commercially available item where practicable, place more emphas on past contractor performance, d promote best value rather than sim ply low cost in selecting sources for supplies and services;

(8) Ensure that simplified acquisition procedures are used, to the maximum extent practicable, for procurements under the simplified acquisition threshold in order to reduce administrative burdens and more effectively support the accomplishment of agency missions;

(9) Expand the use of the Government purchase card by the agency and take maximum advantage of the micro-purchase authority provided in the Federal Acquisition Streamlining Act of 1994 by delegating the authority, to the maximum extent practicable, to the offices that will be using the supplies or services to be purchased;

(10) Establish clear lines of contracting authority and accountability;

(11) Establish career education programs for procurement professionals, including requirements for successful completion of educational requirements or mandatory training for entry level positions and for promotion to higher level positions, in order to ensure a highly qualified procurement work force;

(12) Review as appropriate information technology acquisitions and contracts to ensure that the agency receives the best value with regard to price and technology, and consider alternatives in cases where best value is not being obtained;

(13) Promote innovative practices and develop streamlined processes to improve procurement and increase productivity;

(14) Evaluate and monitor the performance of the Department's procurement system;

(15) Designate, pursuant to 41 U.S.C. 418, the Department of the Treasury advocate for competition, and pursuant to 41 U.S.C. 253j, a task and delivery order ombudsman who meets the qualifications required by that provision;

(16) Develop and maintain an automated procurement data system, as required by Office of Federal Procurement Policy Act, as amended, and assure that procurement data submitted to the Federal Procurement Data System is accurate, complete and timely;

(17) Approve, prior to development, other Departmentwide and bureau automated procurement systems;

(18) Encourage the use of information technology to support procurement and lead/direct efforts towards standardization, including the development of interfaces with other Departmental systems, such as the financial management accounting system, to increase productivity and streamline the procurement process;

(19) Designate, pursuant to 41 U.S.C. 252c, a program manager, reporting directly to the Procurement Executive, to direct the development and implementation of an electronic commerce capability for acquisition, compliant with the Federal Acquisition Computer Network architecture referred to as FACNET in the Federal Acquisition Streamlining Act of 1994;

(20) Implement an effective and efficient contract administration program that includes certification of contracting officer technical representatives and adequate training of procurement personnel; and

(21) Establish Procurement Councils of Departmental and bureau officials as necessary to assist in accomplishing all responsibilities.

b. Bureau Head Procurement Authority

(1) The following officials of the Department of the Treasury are delegated authority to perform the functions described in paragraphs 1.a.(2), 1.a.(3), 1.a.(5) through 1.a.(13), and 1.a.(20), with respect to procurement transactions and operations of their organizations:

(a) Deputy Assistant Secretary (Administration);

(b) Director, Bureau of Alcohol, Tobacco and Firearms;

(c) Comptroller of the Currency;

(d) Commissioner, U.S. Customs Service;

(e) Director, Bureau of Engraving and Printing;

(f) Director, Federal Law Enforcement Training Center;

(g) Commissioner, Financial Management Service;

(h) Commissioner, Internal Revenue Service;

(i) Director, United States Mint;

(j) Director, Office of Thrift Supervision;

(k) Commissioner, Bureau of the Public Debt; and

(l) Director, U.S. Secret Service.

(2) Each of the officials named in paragraph 1.b.(1) shall also appoint a Competition Advocate in accordance with 41 U.S.C. 418 and regulations issued by the Procurement Executive.

2. Redelegation

The authorities delegated in paragraphs 1.a.(2), 1.a.(3), 1.a.(5) through 1.a.(13), and 1.a.(20) may be redelegated by the Director, Office of Procurement, and by each of the officials named in paragraph 1.b.(1), to any subordinate officer or employee of their respective organizations, except that the authority of paragraphs 1.a.(2) and 1.a.(3) may be delegated only to personnel meeting the requisite qualifications standards to serve as Contracting Officers for the United States for the type and complexity of procurement actions specified.

3. Limitations

All authorities delegated, regardless of whether the affected procurement transactions are funded by appropriated or non-appropriated funds, shall be exercised in accordance with applicable limitations of:

a. the Federal Property and Administrative Services Act of 1949;

b. the Office of Federal Procurement Policy;

c. "Federal Acquisition Regulation," 48 CFR Chapter 1;

d. the "Federal Property Management Regulation," 41 CFR Chapter 101;

e. the "Federal Information Resources Management Regulation," 41 CFR Chapter 201; and

f. regulations issued by the Department of the Treasury including, but not limited to, 48 CFR Chapter 10.

4. Proviso

Notwithstanding any other provision of this Directive, the Director, Office of Thrift Supervision, shall exercise any authority conferred by section 9(e) of the Home Owners Loan Act, 12 U.S.C. 1467(e), regarding regulations with respect to the use of assessments and fees collected under that section.

5. Cancellation

Treasury Directive 12–11, "Procurement Authority," dated January 29, 1987, is superseded.

6. References

a. Federal Property and Administrative Services Act of 1949, as amended.

b. 48 CFR Chapter 1, Federal Acquisition Regulation.

c. 48 CFR Chapter 10, Subchapter E, General Contracting Requirements.

d. 41 CFR Chapter 101, Federal Property Management Regulation.

e. 41 CFR Chapter 201, Federal Information Resources Management Regulation.

7. Authorities

a. E.O. 12931, "Federal Procurement Reform," dated October 13, 1994.

b. "Federal Acquisition Streamlining Act of 1994," Pub. L. 103–355.

c. Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 401 *et. seq.*

d. "Competition in Contracting Act of 1984," Pub. L. 98–369, Division B, Title VII, codified in relevant part at 41 U.S.C. 418.

e. Treasury Order 101–30, "Designation of 'Head of Agency' for Procurement Matters."

8. Expiration Date

This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. Office of Primary Interest

Office of Procurement, Office of the Deputy Assistant Secretary (Departmental Finance and Management), Office of the Assistant Secretary (Management) & Chief Financial Officer.

Dated: October 31, 1995.

George Muñoz,

Assistant Secretary for Management and CFO.

[FR Doc. 95–27585 Filed 11–7–95; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Directive Number 11–02]

Delegation of Authority for Administering the Community Development Financial Institutions Fund

Dated: November 1, 1995.

1. *Delegation.*

a. Pursuant to Treasury Order (TO) 101–20, this Directive delegates to the Director, Community Development Financial Institutions Fund, all duties, powers, rights, and obligations vested by TO 101–20 in the Under Secretary (Domestic Finance) for purposes of administering the Community Development Financial Institutions Fund.

b. The Director, Community Development Financial Institutions Fund, is designated as an officer of the Community Development Financial Institutions Fund pursuant to section 104(b)(3) of the Community Development Banking and Financial Institutions Act of 1994, subtitle A of title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, September 23, 1994).

2. The Director, Community Development Financial Institutions Fund, shall report to the Under Secretary (Domestic Finance).

3. The Director, Community Development Financial Institutions Fund, may redelegate such of the authority granted under this Directive as the Director deems appropriate.

4. *Authority.* TO 101–20, "Administering the Community Development Financial Institutions Fund," dated August 14, 1995.

5. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

6. *Office of Primary Interest.* Office of the Under Secretary (Domestic Finance).

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 95–27639 Filed 11–7–95; 8:45 am]

BILLING CODE 4810–25–P

Office of Thrift Supervision

[AC–54; OTS No. 2522 and N1551]

Charter Bancorp, M.H.C., Sparta, Illinois; Approval of Conversion Application

Notice is hereby given that on October 27, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Charter Bancorp, M.H.C., Sparta, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: November 2, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–27578 Filed 11–7–95; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs Regional Office, 20 Washington Pl., Newark, New Jersey 07102, from December 6, 1995, through December 8, 1995. The meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting

former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: October 30, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–27655 Filed 11–7–95; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
November 8, 1995

Part II

Department of Agriculture

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department due to a reorganization.

EFFECTIVE DATE: November 8, 1995.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, D.C. 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: On June 16, 1995, USDA published in the **Federal Register** (60 FR 31766–31840) a proposal to revise the delegations of authority appearing in 7 CFR Part 2 due to a reorganization of the department. The revised delegations were intended to effectuate the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354. The Act permits the Secretary to reorganize the Department of Agriculture. The Act authorized the establishment of subcabinet positions and the restructuring of agencies and offices of the Department of Agriculture. In addition, the proposal noted that pursuant to Public Law 101–576, the Chief Financial Officers Act of 1990, there is required to be in the Department of Agriculture the position of Chief Financial Officer (CFO). The document proposed making delegations to the CFO. Finally the document proposed changing the name of the Consolidated Farm Service Agency to the "Farm Service Agency."

The majority of comments that were received were from employees of USDA who recommended that the name of the Consolidated Farm Service Agency be changed to the Farm Service Agency. Thirteen comments were received that could not be identified as being from employees of USDA. Twelve were in favor of changing the name; one was against. All the favorable comments noted that the word "Consolidated" added little to describing the function of the agency. Upon considering all the comments received, it is determined that the name of the agency should be changed to the Farm Service Agency since that name better reflects the mission of the agency. In addition, as a result of comments that were made, revisions were made in the following sections:

Section 2.7. The term "administrative rules and regulations" is changed to "administrative directives" to clarify that the authority delegated is to be exercised in accordance with applicable internal directives. The term "in this part or elsewhere" is changed to "in this part" to clarify that agency heads delegated authority in this regulation report to a general officer.

Section 2.16(a)(2)(i)(A). The proposal excepts from the authority delegated to the Under Secretary for Farm and Foreign Agricultural Services, the authority to administer section 303(a) (2) and (3) of the Consolidated Farm and Rural Development Act ("Con Act"), relating to real estate loans for recreation and non-farm purposes. It has been determined that the authority to administer section 303(a) (2) and (3) of the Con Act should have been included in the Under Secretary's delegation. Accordingly, the paragraph is deleted and the remaining paragraphs in section 2.16(a)(2)(i) are renumbered.

Section 2.16(a)(3)(x). Adds to the list of acts administered by the Under Secretary for Farm and Foreign Agricultural Services, "the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819)".

Section 2.22(a)(1)(viii)(EE). To be consistent with the above delegation to the Under Secretary for Farm and Foreign Agricultural Services, the phrase "except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x)" is added to the delegation to the Assistant Secretary for Marketing and Regulatory Programs relating to the Pork Promotion, Research, and Consumer Information Act of 1985.

Section 2.22(a)(2)(xciii). The citation to the 28 Hour Law is corrected to read "49 U.S.C. 80502" in the delegation to the Assistant Secretary for Marketing and Regulatory Programs.

Section 2.28(b)(16). The proposed delegation to the Chief Financial Officer is revised to add the authority to provide budget, accounting, fiscal and related management services, with authority to take action required by law or regulation to provide such services for Working Capital Funds and general appropriated and trust funds for the Secretary of Agriculture; General Officers of the Department, except the Inspector General; for offices reporting to the Assistant Secretary for Administration; and for any other officer or agency as may be agreed upon. This authority was inadvertently omitted. This authority formerly was exercised by the Assistant Secretary for Administration.

Section 2.42(a)(28)(i). This paragraph is revised to parallel the revision made to section 2.16(a)(2)(i)(A). The proposal excepts from the authority delegated to the Administrator, Farm Service Agency, the authority to administer section 303(a) (2) and (3) of the Con Act, relating to real estate loans for recreation and non-farm purposes. It has been determined that the authority to administer section 303(a) (2) and (3) of the Con Act should have been included in the Administrator's delegation. Accordingly, the provision is deleted and the remaining paragraphs in section 2.42(a)(28) are renumbered.

Section 2.43(a)(24). This paragraph is revised to parallel the revision made to section 2.16(a)(3)(x). It adds to the list of acts administered by Administrator, Foreign Agricultural Service, "the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819)".

Section 2.79(a)(8)(xxxix). This paragraph is revised to parallel the revision made to section 2.22(a)(1)(viii)(EE). It adds the phrase "except as specified in § 2.43(a)24)" to the delegation to the Administrator, Agricultural Marketing Service relating to the Pork Promotion, Research, and Consumer Information Act of 1985.

Section 2.80(a)(23). The citation to 28 Hour Law was corrected to read "49 U.S.C. 80502" in the delegation to the Administrator, Animal and Plant Health Inspection Service.

Section 2.87(a)(12). In this paragraph, the Assistant Secretary for Administration has proposed delegating to the Director, Office of Civil Rights Enforcement, the authority to perform investigations and make determinations on both the merits and required corrective action as to complaints that allege discrimination in USDA programs and activities. The Assistant Secretary has determined that he should make the final determinations on both the merits and required corrective action as to these complaints. Accordingly, that portion of the paragraph that delegates such responsibilities to the Director, Office of Civil Rights Enforcement, is deleted.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is revised as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart A—General

Sec.
2.1 Establishment of the Department.
2.2 Authority of the Secretary to prescribe regulations.
2.3 Authority of the Secretary to delegate authority.
2.4 General officers.
2.5 Order in which officers of the Department shall act as Secretary.

Subpart B—General Delegations of Authority by the Secretary of Agriculture

2.7 Authority to supervise and direct.
2.8 Delegations of authority to Agency Heads to order that the United States flag be flown at half-staff.
2.9 Additional delegations.
2.10 Limitations.
2.11 New principles and periodic reviews.
2.12 Secretary and general officers not precluded from exercising delegated powers.
2.13 Status of prior delegations.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2.15 Deputy Secretary.
2.16 Under Secretary for Farm and Foreign Agricultural Services.
2.17 Under Secretary for Rural Economic and Community Development.
2.18 Under Secretary for Food Safety.
2.19 Under Secretary for Food, Nutrition, and Consumer Services.
2.20 Under Secretary for Natural Resources and Environment.
2.21 Under Secretary for Research, Education, and Economics.
2.22 Assistant Secretary for Marketing and Regulatory Programs.
2.23 Assistant Secretary for Congressional Relations.
2.24 Assistant Secretary for Administration.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2.26 Director, Office of the Executive Secretariat.
2.27 Office of Administrative Law Judges.
2.28 Chief Financial Officer.
2.29 Chief Economist.
2.30 Director, Office of Budget and Program Analysis.
2.31 General Counsel.
2.32 Alternative Agricultural Research and Commercialization Board.
2.33 Inspector General.
2.34 Director, National Appeals Division.
2.35 Judicial Officer.
2.36 Director, Office of Communications.

Subpart E—Delegations of Authority by the Deputy Secretary

2.37 Director, Office of Small and Disadvantaged Business Utilization.

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.
2.42 Administrator, Farm Service Agency.
2.43 Administrator, Foreign Agricultural Service.

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

2.45 Deputy Under Secretary for Rural Economic and Community Development.
2.47 Administrator, Rural Utilities Service.
2.48 Administrator, Rural Business and Cooperative Development Service.
2.49 Administrator, Rural Housing and Community Development Service.

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

2.51 Deputy Under Secretary for Food Safety.
2.53 Administrator, Food Safety and Inspection Service.

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.
2.57 Administrator, Food and Consumer Service.

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

2.59 Deputy Under Secretaries for Natural Resources and Environment.
2.60 Chief, Forest Service.
2.61 Chief, Natural Resources Conservation Service.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

2.63 Deputy Under Secretary for Research, Education, and Economics.
2.65 Administrator, Agricultural Research Service.
2.66 Administrator, Cooperative State Research, Education, and Extension Service.
2.67 Administrator, Economic Research Service.
2.68 Administrator, National Agricultural Statistics Service.

Subpart L—Delegations of Authority by the Chief Economist

2.70 Deputy Chief Economist.
2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.
2.72 Chairman, World Agricultural Outlook Board.

Subpart M—Delegations of Authority by the Chief Financial Officer

2.75 Deputy Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.
2.79 Administrator, Agricultural Marketing Service.
2.80 Administrator, Animal and Plant Health Inspection Service.
2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

2.83 Deputy Assistant Secretary for Congressional Relations.
2.85 Director, Office of Congressional and Intergovernmental Relations.

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

2.87 Deputy Assistant Secretary for Administration.
2.89 Director, Office of Civil Rights Enforcement.
2.90 Director, Office of Information Resources Management.
2.91 Director, Office of Operations.
2.92 Director, Office of Personnel.

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart A—General

§ 2.1 Establishment of the Department.

The Department of Agriculture was created by the Act of May 15, 1862, and by the Act of February 9, 1889, it was made an executive department in the Federal Government under the supervision and control of the Secretary of Agriculture (7 U.S.C. 2201, 2202, 2204).

§ 2.2 Authority of the Secretary to prescribe regulations.

The general authority of the Secretary to prescribe regulations governing the work of the Department is based on 5 U.S.C. 301 which provides that the head of an Executive department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers, and property.

§ 2.3 Authority of the Secretary to delegate authority.

(a) The general authority of the Secretary to make delegations of his authority is based on:

(1) Section 4(a) of Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), which provides that the Secretary of Agriculture may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by an agency or

employee, of the Department of Agriculture of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan; and

(2) Section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, 7 U.S.C. 6912(a)(1), which provides that the Secretary may delegate to any agency, office, officer, or employee of the Department the authority to perform any function transferred to the Secretary under 7 U.S.C. 6912(a) or any other function vested in the Secretary as of the date of the enactment of the Act.

(8) [Reserved]

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: the Deputy Secretary; the Under Secretary for Farm and Foreign Agricultural Services; the Under Secretary for Rural Economic and Community Development; the Under Secretary for Food Safety; the Under Secretary for Food, Nutrition, and Consumer Services; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Assistant Secretary for Marketing and Regulatory Programs; the Assistant Secretary for Congressional Relations; the Assistant Secretary for Administration; the General Counsel; the Inspector General; the Chief Financial Officer; the Judicial Officer; the Director, Office of Budget and Program Analysis; the Chief Economist; the Director, National Appeals Division; the Director of Communications; and the Director, Office of Small and Disadvantaged Business Utilization.

§ 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 11957, 3 CFR, 1977 Comp., p. 79, in the case of the absence, sickness, resignation, or death of both the Secretary and the Deputy Secretary, the officials designated in paragraphs (a)(1) through (a)(10) of this section shall act as Secretary in the order in which they are listed. Each official shall act only in the absence, sickness, resignation, or death of the immediately preceding official:

(1) The Under Secretary for Farm and Foreign Agricultural Services.

(2) The Under Secretary for Rural Economic and Community Development.

(3) The Under Secretary for Food Safety.

(4) The Under Secretary for Food, Nutrition, and Consumer Services.

(5) The Under Secretary for Natural Resources and Environment.

(6) The Under Secretary for Research, Education, and Economics.

(7) The General Counsel.

(8) The Assistant Secretary for Marketing and Regulatory Programs.

(9) The Assistant Secretary for Administration.

(10) The Assistant Secretary for Congressional Relations.

(b) [Reserved]

Subpart B—General Delegations of Authority by the Secretary of Agriculture

§ 2.7 Authority to supervise and direct.

Unless specifically reserved, or otherwise delegated, the delegations of authority to each general officer of the Department and each agency head contained in this part includes the authority to direct and supervise the employees engaged in the conduct of activities under such official's jurisdiction, and the authority to take any action, execute any document, authorize any expenditure, promulgate any rule, regulation, order, or instruction required by or authorized by law and deemed by the general officer or agency head to be necessary and proper to the discharge of his or her responsibilities. This authority will be exercised subject to applicable administrative directives. Unless otherwise provided, a general officer or agency head may, subject to his or her continuing responsibility for the proper discharge of delegations made to him, in this part, delegate and provide for the redelegation of his or her authority to appropriate officers and employees. Subject to the general supervision of the Secretary, agency heads who are delegated authority from a general officer, in this part, report to and are under the supervision of that general officer.

§ 2.8 Delegations of authority to Agency Heads to order that the United States flag be flown at half-staff.

Pursuant to section 5 of Proclamation 3044, 3 CFR, 1954–1958 Comp., p. 4; each general officer and agency head is delegated authority to order that the United States flag shall be flown at half-staff on buildings and grounds under his or her jurisdiction or control. This authority shall be exercised in accordance with directives promulgated by the Director, Office of Operations.

§ 2.9 Additional delegations.

The authority granted to a general officer may be exercised in the discharge of any additional functions which the Secretary may assign.

§ 2.10 Limitations.

The delegations made in this part shall not be construed to confer upon any general officer or agency head the authority of the Secretary to prescribe regulations which by law require approval of the President.

§ 2.11 New principles and periodic reviews.

In the exercise of authority delegated by the Secretary, the application of new principles of major importance or a departure from principles established by the Secretary should be brought to the attention of the Secretary. General officers are responsible for assuring that periodic reviews are conducted of the activities of the agencies assigned to their direction and supervision, as required by 5 U.S.C. 305.

§ 2.12 Secretary and general officers not precluded from exercising delegated powers.

No delegation of authority by the Secretary or a general officer contained in this part shall preclude the Secretary or general officer from exercising any of the authority so delegated.

§ 2.13 Status of prior delegations.

Nothing in this part shall affect the bylaws of the Commodity Credit Corporation, the Federal Crop Insurance Corporation, or the Rural Telephone Bank. All delegations previously made which are inconsistent with delegations made in this part are superseded; however, any regulation, order, authorization, expenditure, or other instrument, heretofore issued or made pursuant to any delegation of authority shall continue in full force and effect unless and until withdrawn or superseded pursuant to authority granted in this part.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

§ 2.15 Deputy Secretary.

The following delegation of authority is made by the Secretary of Agriculture to the Deputy Secretary: Perform all of the duties and exercise all of the powers and functions which are now or which may hereafter be, vested in the Secretary of Agriculture. This delegation is subject to the limitation in § 2.10.

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Farm and Foreign Agricultural Services:

(1) *Related to consolidated farm service.*

(i) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282 *et seq.*).

(ii) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441 *et seq.*).

(iii) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(A) Clearing photography projects;

(B) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(C) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(D) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(E) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction, and serving as liaison with other governmental agencies on aerial photography but excluding mapping;

(F) Providing a Chairperson for the Photography Sales Committee of the Department;

(G) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(H) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(I) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(J) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(iv) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501 *et seq.*); and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g *et seq.*).

(v) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201 *et seq.*).

(vi) Conduct fiscal, accounting and claims functions relating to Commodity Credit Corporation (CCC) programs for which the Under Secretary for Farm and Foreign Agricultural Services has been delegated authority under paragraph (a)(3) of this section and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(vii) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98 *et seq.*).

(viii) Supervise and direct Farm Service Agency State and county offices and delegate functions to be performed by Farm Service Agency State and county committees.

(ix) Administer the dairy indemnity program under the Act of August 13, 1968, as amended (7 U.S.C. 450j *et seq.*).

(x) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1), except as delegated in paragraph (a)(3) of this section and to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19, and assist the Under Secretary for Food, Nutrition, and Consumer Services and the Assistant Secretary for Marketing and Regulatory Programs in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751, *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(xi) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781, *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(xii) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*), except those functions delegated in § 2.21(a)(8)(xi).

(xiii) Administer energy management activities as assigned.

(xiv) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901 *et seq.*), and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001 *et seq.*).

(xv) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(xvi) Administer the U.S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(xvii) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(xviii) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231 *et seq.*).

(xix) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(xx) Administer the integrated Farm Management Program under the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(xxi) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(xxii) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(xxiii) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(2) *Related to farm credit.* (i) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), except for the authority contained in the following sections:

(A) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(B) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(C) Section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b), relating to the emergency community water assistance grant programs;

(D) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(E) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(G) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(H) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(I) Section 342 (7 U.S.C. 1013a);

(J) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(K) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(ii) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(iii) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(iv) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(v) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(vi) Administer the Emergency Loan and Guarantee Programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No. 91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(vii) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(viii) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(ix) Service, collect, settle, and liquidate:

(A) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, "Water Conservation and Utilization projects" in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(B) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(C) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(x) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(xi) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 *et seq.*)

(xii) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(xiii) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. 103–248 (7 U.S.C. 1981(c)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(3) *Related to foreign agriculture.* (i) Coordinate the carrying out by Department agencies of their functions involving foreign agricultural policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development, and other departments, agencies, and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private U.S. and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(ii) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32 of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs, and utilization research delegated to the Under Secretary for Research, Education, and Economics.

(iii) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(iv) Conduct functions of the Department relating to GATT, WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801 *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101 *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901 *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act, and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(v) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(vi) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(vii) Administer functions of the Department relating to import controls, except those functions reserved to the Secretary in paragraph (b) of this section and those relating to section 8e of the Agricultural Act of 1938 (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs. These include:

(A) Functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624);

(B) General note 15(c) to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(C) Requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Recovery Act of 1983 (19 U.S.C. 2703(f));

(D) Section 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note);

(E) Section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e));

(F) Functions under sections 309 and 316 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3358 and 3381);

(G) Section 301(a) of the United States-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note); and

(H) Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

(viii) Represent the Department on the Interdepartmental Committee for Export Control and to conduct departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), except as reserved to the Secretary under paragraph (b)(2) of this section.

(ix) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such Agreement.

(x) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(xi) Formulate policies and administer barter programs under which agricultural commodities are exported.

(xii) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities under Public Law 480, 83rd Congress, hereafter referred to as "Public Law 480" (7 U.S.C. 1691, 1701 *et seq.*).

(xiii) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701 *et seq.*), and payment and related services with respect to export programs and barter operations.

(xiv) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8)), and represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(xv) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(xvi) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(xvii) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738 *et seq.*).

(xviii) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(xix) Determine the agricultural commodities acquired under price support programs which are available for export and allocate such commodities among the various export programs.

(xx) Conduct economic analyses pertaining to the foreign sugar situation.

(xxi) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(xxii) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(xxiii) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(xxiv) Establish and administer regulations relating to foreign travel by

employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(xxv) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601 *et seq.*).

(xxvi) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated to the Assistant Secretary for Marketing and Regulatory Programs in § 2.22(a)(2)(i), but including authority to approve joint regulations issued by the Department of State and authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(xxvii) Establish and maintain U.S. Agricultural Trade Offices, to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. No. 95–501 (7 U.S.C. 1765a-g).

(xxviii) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities.

(xxix) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(xxx) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(xxxi) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o).

(xxxii) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish international scientific and technical cooperation in food and agriculture.

(xxxiii) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151 *et seq.*).

(xxxiv) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(xxxv) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(xxxvi) Direct and coordinate the Department's work in international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201–2202).

(xxxvii) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(xxxviii) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(xxxix) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(xl) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(xli) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(xlii) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(4) *Related to federal crop insurance.* (i) Exercise general supervision of the Federal Crop Insurance Corporation.

(ii) Appoint such officers and employees as may be necessary for the transaction of the business of the Corporation, except, as provided in paragraph (b)(3) of this section.

(5) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(6) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning agricultural production; food processing, storage, and distribution; distribution of farm equipment and fertilizer; rehabilitation and use of food, agricultural and related agribusiness facilities; CCC resources; farm credit and financial assistance; and foreign agricultural intelligence and other foreign agricultural matters.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to farm service.* (i) Appointment of Farm Service Agency State committeemen.

(ii) Final approval of regulations relating to the selection and exercise of the functions of committees promulgated under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)).

(2) *Related to foreign agriculture.* (i) Approving export controls with respect to any agricultural commodity, including fats and oils or animal hides or skins as provided for in the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*).

(ii) Advising the President that imports are having the effect on programs or operations of this Department required as a prerequisite for the imposition of import controls under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), recommending that the President cause an investigation to be made by the Tariff Commission of the facts so that a determination can be made whether import restrictions should be imposed under that Act, and determining under section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e)) that there exists a serious injury, or threat thereof and recommending to the President whether or not to take action.

(iii) Determining the agricultural commodities and the quantities thereof available for disposition under Public Law 480 (7 U.S.C. 1731).

(3) *Related to federal crop insurance.* (i) Appointment of the Board of Directors, Federal Crop Insurance Corporation.

(ii) Appointment of the Manager, Federal Crop Insurance Corporation.

§ 2.17 Under Secretary for Rural Economic and Community Development.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Rural Economic and Community Development:

(1) Provide leadership and coordination within the executive branch of a Nationwide Rural Development Program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(2) Coordinate activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating official for other departmental agencies having primary responsibilities for specific titles of the Rural Development Act of 1972, and allied legislation.

(3) Administer a national program of economic, social, and environmental research and analysis, statistical programs, and associated service work related to rural people and the communities in which they live including rural industrialization; rural population and manpower; local government finance; income development strategies; housing; social services and utilization; adjustments to changing economic and technical forces; and other related matters.

(4) Work with Federal agencies in encouraging the creation of rural community development organizations.

(5) Assist other Federal agencies in making rural community development organizations aware of the Federal programs available to them.

(6) Advise rural community development organizations of the availability of Federal assistance programs.

(7) Advise other Federal agencies of the need for particular Federal programs.

(8) Assist rural community development organizations in making contact with Federal agencies whose assistance may be of benefit to them.

(9) Assist other Federal agencies and national organizations in developing means for extending their services effectively to rural areas.

(10) Assist other Federal agencies in designating pilot projects in rural areas.

(11) Conduct studies to determine how programs of the Department can be brought to bear on the economic development problems of the country and assure that local groups are receiving adequate technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities.

(12) Assist other Federal agencies in formulating manpower development and training policies.

(13) *Related to committee management.* Establish and reestablish

regional, state, and local advisory committees for activities under his or her authority. This authority may not be re-delegated.

(14) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning rural development credit and financial assistance.

(15) *Related to energy.* (i) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products or by-products.

(ii) Participate as a Department representative at conferences, meetings and other contacts including liaison with the Department of Energy and other government agencies and departments with respect to implementation of established Department energy policy.

(iii) Serve as Co-Chairperson of the Energy Coordinating Committee of the Department.

(16) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service, the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service, or their predecessor agencies.

(17) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service and the Rural Utilities Service.

(18) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(19) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(20) *Related to rural utilities service.* (i) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) except for rural economic development loan and grant programs; (7 U.S.C. 940c and 950aa *et seq.*): Provided, however, that the Under Secretary may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(ii) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(iii) Designate the chief executive officer of the Rural Telephone Bank.

(iv) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(B) Section 306A (7 U.S.C. 1926a);

(C) Section 306B (7 U.S.C. 1926b);

(D) Section 306C (7 U.S.C. 1926c);

(E) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(G) Section 310B(b) (7 U.S.C. 1932(b));

(H) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships; and

(I) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural utility activities.

(v) Administer section 8, and those functions with respect to repayment of obligations under section 4 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(vi) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(vii) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(viii) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa *et seq.*).

(ix) Administer Water and Waste Facility Programs and activities (7 U.S.C. 1926–1).

(21) *Related to rural business and cooperative development.* (i) Administer the Rural Economic Development Loan and Grant Programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa *et seq.*).

(ii) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306(a)(11)(A) (7 U.S.C. 1926 (a)(11)(A)), relating to grants for business technical assistance and planning;

(B) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(C) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(D) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(E) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business and cooperative development activities.

(iii) Administer Alcohol Fuels Credit Guarantee Program Account (Pub. L. 102–341, 106 Stat. 895).

(iv) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(v) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(vi) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

(vii) Administer the Drought and Disaster Guaranteed Loan Program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(viii) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(ix) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(x) Administer the Economically Disadvantaged Rural Community Loan Program (7 U.S.C. 6616).

(xi) Exercise administrative oversight over the Alternative Agricultural Research and Commercialization Center established pursuant to the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901 *et seq.*).

(xii) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(xiii) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(xiv) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(A) Exchanging materials and results with such institutions or organizations;

(B) Engaging in joint or coordinated activities; or

(C) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(xv) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Public Law 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391 *et seq.*)

(xvi) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(xvii) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(xviii) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(xix) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(xx) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program (7 U.S.C. 2204; 7 U.S.C. 2204b).

(22) *Related to rural housing and community development.* (i) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);

(B) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing and community development activities.

(ii) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(iii) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(iv) Administer the Rural Housing Disaster Program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(v) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (42 U.S.C. 1480(d)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to rural business and cooperative development.* Submission to the Congress of the report required pursuant to section 1469 of Pub. L. No. 101–624.

(2) [Reserved]

§ 2.18 Under Secretary for Food Safety.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food Safety:

(1) *Related to food safety and inspection.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(ii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(B) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(C) Egg Products Inspection Act, except for the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(D) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(E) Humane Slaughter Act (7 U.S.C. 1901–1906);

(F) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products; and

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427).

(iii) Coordinate with the Assistant Secretary for Marketing and Regulatory Programs the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(iv) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(2) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning the wholesomeness of meat and poultry and products thereof and inspection of eggs and egg products.

(4) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology as they may affect the safety of meat, poultry or egg products.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a); (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food, Nutrition, and Consumer Services:

(1) *Related to food and nutrition.* (i) Administer the following legislation:

(A) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(B) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(C) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(D) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(ii) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(A) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(B) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(C) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937, as amended (15 U.S.C. 713c), and related legislation;

(D) Section 9 of the Act of September 6, 1958, as amended (7 U.S.C. 1431b);

(E) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(F) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(G) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(H) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(I) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(J) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(K) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. 97–98);

(L) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(M) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(N) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(iii) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(iv) In connection with the functions assigned in paragraphs (a)(1)(i), (ii) and (iii) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(v) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(2) *Related to consumer advice.* (i) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(ii) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(iii) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(iv) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(v) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public

participation programs, policies and information, and to prevent duplication of responsibilities.

(vi) Serve as a consumer ombudsman and communication link between consumers and the Department.

(vii) Approve the designation of agency Consumer Affairs Contacts.

(3) *Related to human nutrition information.* (i) Develop techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet.

(ii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels.

(iii) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions.

(iv) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy.

(v) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs.

(vi) Coordinate nutrition education promotion and professional education projects within the Department.

(vii) Analyze data from food consumption surveys in coordination with the Under Secretary for Research, Education, and Economics to provide a basis for evaluating dietary adequacy.

(viii) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies (7 U.S.C. 3171–3175).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning food stamp assistance.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to food and nutrition.* Authority to appoint the members of the National Advisory Council on Maternal, Infant, and Fetal Nutrition as directed in section 17(k) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(k)).

(2) [Reserved]

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment:

(1) *Related to environmental quality.* (i) Administer the implementation of the National Environmental Policy Act for the United States Department of Agriculture (USDA).

(ii) Provide representation for USDA on the National Response Team on hazardous spills pursuant to Pub. L. No. 92–500 (33 U.S.C. 1151 note), and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(iii) Represent USDA in contacts with the United States Environmental Protection Agency, the Council on Environmental Quality, and other organizations or agencies on matters related to assigned responsibilities.

(iv) Formulate and promulgate USDA policy relating to environmental activity and natural resources.

(v) Provide staff support for the Secretary in the review of environmental impact statements.

(vi) Provide leadership in USDA for general land use activities including implementation of Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.

(2) *Related to forestry.* (i) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(ii) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interests in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(iii) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or more which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(iv) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(v) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(A) To carry firearms;

(B) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(C) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(D) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(E) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(F) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(vi) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(vii) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101 120(f), 125(a)–(c), 138, 202(a)–(b), 203 04(a)–(h), 205(a)–(d), 211, 317, 402(a)).

(viii) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR parts 215 and 217 and 36 CFR part 251, subpart C.

(ix) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(x) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(xi) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(xii) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(xiii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(xiv) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(xv) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(xvi) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(xvii) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(xviii) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(xix) Administer Rural Fire Protection and Control Programs (16 U.S.C. 2106).

(xx) Provide technical assistance on forestry technology or the implementation of the Conservation Reserve and Softwood Timber Programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(xxi) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(xxii) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(xxiii) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(A) Administer the forestry aspects of the programs listed in paragraphs (a)(2)(xxiii)(A)(*1*), (*2*) and (*3*) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands;

(*1*) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(*2*) The Eleven Authorized Watershed Improvement Programs and Emergency Flood Prevention Measures Program under the Flood Control Act (33 U.S.C. 701b–1); and

(*3*) The Small Watershed Protection Program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009); and

(B) Exercise responsibility in connection with the forestry aspects of the Resource Conservation and Development Program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(xxiv) Provide assistance to the Farm Service Agency in connection with the Agricultural Conservation Program, the Naval Stores Conservation Program, and the Cropland Conversion Program (16 U.S.C. 590g–q).

(xxv) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(xxvi) Coordinate mapping work of USDA including:

(A) Clearing mapping projects to prevent duplication;

(B) Keeping a record of mapping done by USDA agencies;

(C) Preparing and submitting required USDA reports;

(D) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(E) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(F) Maintaining the mapping records formerly maintained by the Office of Operations.

(xxvii) Administer the radio frequency licensing work of USDA, including:

(A) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(B) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(C) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith;

(D) Providing inspection of USDA's radio operations to ensure compliance

with national and international regulations and policies for radio frequency use; and

(E) Representing USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(xxviii) [Reserved]

(xxix) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(xxx) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(xxxi) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(xxxii) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(xxxiii) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278).

(xxxiv) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Regulatory Programs, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(xxxv) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(xxxvi) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

(xxxvii) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xxxviii) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(3) *Related to natural resources conservation.* (i) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(A) Quality in the natural resource base for sustained use;

(B) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(C) Quality in the standard of living based on community improvement and adequate income.

(ii) Provide national leadership in and evaluate and coordinate land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 4201 note), except as otherwise delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(1)(lxii).

(iii) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–l, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(A) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(*1*) Comprehensive planning assistance in nonmetropolitan districts;

(*2*) Assistance in the field of income-producing recreation on rural non-Federal lands;

(*3*) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(*4*) Assistance in developing programs relating to natural beauty; and

(*5*) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*i*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*ii*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs;

(B) Soil Surveys, including:

(*1*) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(*2*) Conducting soil surveys for resource planning and development; and

(*3*) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps;

(C) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(D) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(E) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(iv) Administer the Watershed Protection and Flood Prevention Programs, including:

(A) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1;

(B) The emergency flood control work under 33 U.S.C. 701b–1;

(C) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006;

(D) The pilot watershed projects under 16 U.S.C. 590 a–f and 16 U.S.C. 1001–1009;

(E) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development;

(F) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(G) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201 *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Under Secretary for Farm and Foreign Agricultural Services.

(v) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b), 590q and 590q–3.

(vi) Administer the Resource Conservation and Development Program under 16 U.S.C. 590 a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development.

(vii) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(viii) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*).

(ix) Administer the Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(x) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121 regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(xi) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(xxii) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c), including:

(A) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(B) Conduct salinity control studies of irrigated salt source areas;

(C) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(D) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(E) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(F) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(xiii) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801 *et seq.*), including responsibilities for:

(A) The conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(B) Technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(C) The Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(D) The Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(E) The Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(xiv) Approve and transmit to the Congress comprehensive river basin reports.

(xv) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(xvi) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xvii) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(xviii) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(xix) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(xx) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(4) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural land and water, forests and forest products, rural fire defense, and forestry research.

(6) *Related to surface mining control and reclamation.* Administer responsibilities and functions assigned to the Secretary of Agriculture under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(7) *Related to environmental response.* (i) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section

107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(ii) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(A) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(B) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(C) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(D) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(E) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(F) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(G) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(H) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(I) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(J) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(K) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(L) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(M) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(N) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(O) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), relating to mixed funding agreements.

(iii) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the "Federal Land Manager" pursuant to the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to natural resource conservation.* Designation of new project areas in which the resource conservation and development program assistance will be provided.

(2) [Reserved]

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics.

(1) *Related to science and education.* (i) Direct, coordinate and provide national leadership and support for research, extension and teaching programs in the food and agricultural sciences to meet major needs and challenges in development of new food and fiber; food and agriculture viability and competitiveness in the global economy; enhancing economic opportunities and quality of life for rural America; food and agricultural system productivity and development of new crops and new uses; the environment and natural resources; or the promotion of human health and welfare pursuant to the National Agricultural Research, Extension, and Teaching Policy of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(ii) Provide national leadership and support for research, extension, and teaching programs in the food and agricultural sciences to carry out sustainable agriculture research and education; a National Plant Genetic Resources Program; a national agricultural weather information system; research regarding the production, preparation, processing, handling, and storage of agricultural products; a Plant and Animal Pest and Disease Control Program; and any other provisions pursuant to title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. No. 101–624, 104 Stat. 3703), except the provisions relating to the USDA Graduate School in section 1669 and the provisions relating

to alternative agricultural research and commercialization under sections 1657–1664 (7 U.S.C. 5801 *et seq.*).

(iii) Coordinate USDA policy and conduct programs relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(iv) Carry out research, technology development, technology transfer, and demonstration projects related to the economic feasibility of the manufacture and commercialization of natural rubber from plants containing hydrocarbons (7 U.S.C. 178–178n).

(v) Conduct research on the control of undesirable species of honey bees in cooperation with specific foreign governments (7 U.S.C. 284).

(vi) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(vii) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(viii) Administer a Cooperative Agricultural Extension Program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(ix) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(x) Support agricultural research at eligible institutions in the States through the provision of Federal-grant funds to help finance physical research facilities (7 U.S.C. 390–390k).

(xi) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(xii) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(xiii) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(xiv) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(xv) Administer and conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, and animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in § 2.22(a)(1)(ii) and § 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201, and 2204).

(xvi) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(xvii) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(xviii) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(xix) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i).

(xx) Administer and direct a program of competitive and special grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals and of facilities grants to State agricultural experiment stations and designated colleges and universities to promote research in food, agriculture and related areas (7 U.S.C. 450i).

(xxi) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(xxii) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities (7 U.S.C. 950aa–1).

(xxiii) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(xxiv) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the byproducts thereof (7 U.S.C. 1292).

(xxv) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(xxvi) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(xxvii) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(xxviii) Administer a competitive grant program for non- profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(xxix) Administer a Nutrition Education Program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(xxx) Conduct education and extension programs and a pilot project related to nutrition education (7 U.S.C. 2027(a) and 5932).

(xxxi) Provide for the dissemination of appropriate rural health and safety information resources possessed by the Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(xxxii) Develop and maintain national and international library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(xxxiii) Accept gifts and order disbursements from the Treasury for carrying out of National Agricultural Library (NAL) functions (7 U.S.C. 2264–2265).

(xxxiv) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(xxxv) Administer, in cooperation with the States, a Cooperative Rural Development and Small Farm Research and Extension Program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(xxxvi) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(xxxvii) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to agricultural research conducted or funded by the Department involving biotechnology, including the development and implementation of guidelines for oversight of research activities, acting as liaison on all matters and functions pertaining to agricultural research in biotechnology between agencies within the Department and between the Department and other governmental, educational, or private organizations and carrying out any other activities authorized by (7 U.S.C. 3121).

(xxxviii) Establish a Joint Council on Food and Agricultural Sciences to bring about more effective research, extension, and teaching in the food and agricultural sciences (7 U.S.C. 3122).

(xxxix) Establish and oversee the National Agricultural Research and Extension Users Advisory Board and the Agricultural Science and Technology Review Board (7 U.S.C. 3123 and 3123A).

(xl) Provide and distribute information and data about Federal, State, local, and other Rural Development Assistance Programs and services available to individuals and organizations. To the extent possible, NAL shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(xli) Assemble and collect food and nutrition educational material, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(xlii) Conduct programs related to composting research and extension (7 U.S.C. 3130).

(xliii) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(xliv) Formulate and administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(xlv) Administer the National Food and Agricultural Sciences Teaching Awards Program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(xlvi) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(xlvii) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(xlviii) Establish a national food science and research center for the Southeast Region of the United States and administer a National Food and Human Nutrition Research and Extension Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(xlix) Administer and direct an Animal Health and Disease Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(l) Support continuing agricultural and forestry extension and research, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(li) Support agricultural research at the 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance physical facilities (7 U.S.C. 3223).

(lii) Make grants, under such terms and conditions as the Under Secretary determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(liii) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural science, education and development activities (7 U.S.C. 3291).

(liv) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(lv) Conduct program evaluations to improve the administration and effectiveness of agricultural research, extension, and teaching programs (7 U.S.C. 3317).

(lvi) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agriculture sciences (7 U.S.C. 3318).

(lvii) Enter into cost-reimbursable agreements with State cooperative institutions for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

(lviii) Conduct research and develop and implement a pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(lix) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers; and making grants to aquaculture research facilities to do research on intensive water recirculating systems (7 U.S.C. 3321–3323).

(lx) Administer a Cooperative Rangeland Research Program (7 U.S.C. 3331–3336).

(lxi) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(lxii) Design and implement educational programs and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland, and designate a farmland information center, pursuant to section 1544 of the Farmland Protection Policy Act (7 U.S.C. 4205).

(lxiii) Conduct programs of education, extension, and research related to water quality, agrichemicals and nutrient management (7 U.S.C. 5503–5506).

(lxiv) Administer programs and conduct projects for research, extension, and education on sustainable agriculture (7 U.S.C. 5811–5813).

(lxv) Conduct research and cooperative extension programs to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(lxvi) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(lxvii) Administer a competitive grant program to organizations to carry out a

training program on sustainable agriculture (7 U.S.C. 5832).

(lxviii) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841–5844).

(lxix) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(lxx) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including a competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(lxxi) Administer a research and extension grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(lxxii) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(lxxiii) Administer and conduct research and extension programs on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(lxxiv) Establish a National Pesticide Resistance Monitoring Program and disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(lxxv) Administer and conduct research and grant programs on the control and eradication of exotic pests (7 U.S.C. 5883).

(lxxvi) Conduct research and educational programs to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(lxxvii) Administer research programs and grants for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(lxxviii) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(lxxix) Establish and coordinate USDA grant programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(lxxx) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(lxxxi) Administer a grants program to States on immunoassay as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(lxxxii) Conduct research programs for the development of technology to determine animal lean content (7 U.S.C. 5925).

(lxxxiii) Conduct and support research programs to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(lxxxiv) Administer grants and conduct research programs to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(lxxxv) Administer grants and conduct research programs to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(lxxxvi) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(lxxxvii) Support and conduct basic and applied research in the development of new commercial products from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(lxxxviii) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(lxxxix) Establish an Agricultural Research Facilities Planning and Closure Study Commission to review currently operating and planned facilities, and to develop recommendations (7 U.S.C. 5927).

(xc) Administer research programs to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(xci) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(xcii) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(xciii) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(xciv) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(xcv) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(xcvi) Conduct programs of research, technology development, and education related to global climate change (7 U.S.C. 6701–6710).

(xcvii) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)–(k)).

(xcviii) Coordinate Departmental policies under the Toxic Substance Control Act (15 U.S.C. 2601–2629).

(xcix) Provide educational and technical assistance in implementing and administering the Conservation Reserve Program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509 (16 U.S.C. 3831–3844)).

(c) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(ci) Coordinate USDA activities delegated under 15 U.S.C. 3710a–3710c.

(cii) Conduct educational and demonstrational work in Cooperative Farm Forestry Programs (16 U.S.C. 568).

(ciii) Cooperate with the States for the purposes of encouraging and assisting them in carrying out programs of forestry, natural resources, and environmental research (16 U.S.C. 582a–8).

(civ) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(cv) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(cvi) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(cvii) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(cviii) Implement and conduct an educational program to assist the development of Urban and Community Forestry Programs (16 U.S.C. 2105).

(cix) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural activities within the Department (16 U.S.C. 2805).

(cx) Perform research, development, and extension activities in aquaculture (16 U.S.C. 2804 and 2806).

(cxi) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(cxii) Copy and deliver on demand selected articles and other materials from the Department's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976, (17 U.S.C. 106, 107, and 108).

(cxiii) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(cxiv) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices or real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(cxv) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(cxvi) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(cxvii) Obtain and furnish Federal excess property to eligible recipients for use in the conduct of research and extension programs (40 U.S.C. 483(d)(2)).

(cxviii) Conduct research demonstration and promotion activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(cxix) Carry out research, demonstration, and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(cxx) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(cxxi) Administer a Cooperative Agricultural Extension Program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(cxxii) Provide leadership and direct assistance in planning, conducting and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(cxxiii) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity in the Cooperative Extension Service (part 18 of this title).

(cxxiv) Represent the Department on the Federal Interagency Council on Education.

(cxxv) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(cxxvi) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA.

(cxxvii) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(cxxviii) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(cxxix) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(cxxx) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews, and other analytical information tools.

(cxxxi) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(cxxxii) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(cxxxiii) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18440, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c), as will ensure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318 *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(cxxxiv) Represent the Department on the Federal Coordinating Council for Science, Engineering, and Technology.

(cxxxv) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(cxxxvi) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a–3710c, with authority to disapprove or require the modification of any such agreement.

(2) *Related to committee management.* Establish or reestablish regional, state and local advisory committees for the activities authorized. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer the responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning scientific and educational programs; estimates of supplies of agricultural commodities and evaluation of requirements therefor; coordination of damage assessment; food and agricultural aspects of economic stabilization, economic research, and agricultural statistics; and the coordination of energy programs.

(4) *Related to rural development activities.* Provide guidance and direction for the accomplishment of activities authorized under the Rural Development Act of 1972, as amended (7 U.S.C. 1921 *et seq.*), for programs under the control of the Under Secretary for Research, Education, and Economics, coordinating the policy aspects thereof with the Under Secretary for Rural Economic and Community Development.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority,

exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(7) *Related to national food and human nutrition research.* (i) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(A) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(B) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(C) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(ii) The authority in paragraph (a)(7)(i) of this section includes the authority to:

(A) Appraise the nutritive content of the U.S. food supply;

(B) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(C) Coordinate nutrition education research projects within the Department; and

(D) Maintain data generated on food composition in a National Nutrient Data Bank.

(iii) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(A) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(B) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(C) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Conduct a program of nutrition education research.

(v) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Pub. L. No. 101–445, 7 U.S.C. 5301 *et seq.*

(8) *Related to economic research and statistical reporting.* (i) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(ii) Conduct economic and social science research and analyses relating to:

(A) food and agriculture situation and outlook;

(B) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(C) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(D) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(E) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(iii) Perform economic and other social science research under section 104(b) (1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704).

(iv) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 476, 951, and 2204).

(v) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1903, and 2072).

(vi) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(vii) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(viii) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio, and television.

(ix) Coordinate all economic analysis and review all decisions involving substantial economic policy implications.

(x) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global and agricultural system. Such work may be carried out by:

(A) Exchanging research materials and results with the institutions or persons;

(B) Engaging in joint or coordinated research;

(C) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Secretary of Agriculture;

(D) Stationing representatives at such institutions or organizations in foreign countries; or

(E) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Foreign Agricultural Service, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Secretary of Agriculture (7 U.S.C. 3291(a)).

(xi) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect on family farms and rural communities of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(xii) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(xiii) Enter into cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(9) *Related to energy.* (i) Advise the Secretary and other policy-level officials of the Department on energy policies and programs, including legislative and budget proposals.

(ii) Serve as or designate the Department representative at hearings, conferences, meetings and other contacts with respect to energy and energy-related matters, including liaison with the Department of Energy and other governmental agencies and departments.

(iii) Provide Department leadership in:

(A) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(B) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(C) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(D) Developing agricultural and rural components of national energy policy plans; and

(E) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(iv) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from other departments or agencies of the Federal Government pursuant to interagency agreements.

(v) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(10) *Related to immigration.* Serve as the designee of the Secretary pursuant to section 212(e) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(e) and 22 CFR 514.44(c)).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to science and education.* (i) Withhold funds from States and sending notification thereof to the President in accordance with sections 5 and 6 of the Smith-Lever Act, as amended (7 U.S.C. 345–346), sections 5 and 7 of the Hatch Act, as amended (7 U.S.C. 361 (e) and (g)), and sections 1436, 1444, 1445 and 1468 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3198, 3221, 3222 and 3314).

(ii) Reapportion funds under section 4 and apportion funds under section 5 of the Act of October 10, 1962 (16 U.S.C. 582a–3, 582a–5).

(iii) Appoint an advisory committee under section 6 of the Act of October 10, 1962 (16 U.S.C. 582a–4).

(iv) Final concurrence in Equal Employment Opportunity Programs within the cooperative extension programs submitted under part 18 of this title.

(v) Approve selection of State directors of extension.

(vi) Approve the memoranda of understanding between the land-grant universities and USDA related to cooperative extension programs.

(2) *Related to economic research and statistical reporting.* (i) Final approval and issuance of the monthly crop report (7 U.S.C. 411a).

(ii) Final action on rules and regulations for the Agricultural Statistics Board.

§ 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs:

(1) *Related to agricultural marketing.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State Departments of Agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(ii) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(A) Studies of facilities and methods used in physical distribution of food and other farm products;

(B) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(C) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(iii) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(iv) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(v) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(vi) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(vii) Cooperate with other Departmental agencies in the development and recommendation of policies for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(viii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(B) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(C) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(D) Naval Stores Act (7 U.S.C. 91–99);

(E) Tobacco Inspection Act (7 U.S.C. 511–511q);

(F) Wool Standard Act (7 U.S.C. 415b-415d);

(G) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a-608e, 610, 612, 614, 624, 671–674);

(H) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(I) Export Apple and Pear Act (7 U.S.C. 581–590);

(J) Export Grape and Plum Act (7 U.S.C. 591–599);

(K) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(L) Perishable Agricultural Commodities Act (7 U.S.C. 499a-499s);

(M) Produce Agency Act (7 U.S.C. 491–497);

(N) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(O) Tobacco Statistics Act (7 U.S.C. 501–508);

(P) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(Q) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(R) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(S) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(T) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(U) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(V) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xi) and (a)(3)(x);

(W) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(X) Beef Research and Information Act, as amended (7 U.S.C. 2901–2918), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xiv) and (a)(3)(x);

(Y) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(Z) Egg Products Inspection Act relating to the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(AA) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(BB) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(CC) In carrying out the procurement functions in paragraphs (a)(1)(viii)(AA) and (BB) of this section, the Assistant Secretary for Marketing and Regulatory Programs shall, to the extent practicable, use the commodity procurement,

handling, payment and related services of the Farm Service Agency;

(DD) Act of May 23, 1980, regarding inspection of dairy products for export (21 U.S.C. 693);

(EE) The Pork Promotion, Research and Consumer Information Act of 1985 (7 U.S.C. 4801–4819), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(HH) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(II) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(JJ) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(KK) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(LL) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(MM) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(NN) Lime Research, Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(OO) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(QQ) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(RR) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(SS) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522), provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(TT) Pesticide Recordkeeping (7 U.S.C. 136i–1) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(UU) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(VV) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(ix) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Assistant Secretary for Marketing and Regulatory Programs, and charge user fees therefor, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(x) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(2) *Related to animal and plant health inspection.* Exercise the functions of the Secretary of Agriculture under the following authorities:

(i) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to represent the Department of Agriculture in interagency consultations and negotiations with other foreign affairs agencies regarding joint regulations, nor the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service;

(ii) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the Gypsy Moth Program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands;

(iii) The Mexican Border Act, as amended (7 U.S.C. 149);

(iv) The Golden Nematode Act (7 U.S.C. 150–150g);

(v) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj);

(vi) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(vii) The Terminal Inspection Act, as amended (7 U.S.C. 166);

(viii) The Honeybee Act, as amended (7 U.S.C. 281–286);

(ix) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656);

(x) Tariff Act of June 17, 1930, as amended, sec. 306 (19 U.S.C. 1306);

(xi) Act of August 30, 1890, as amended (21 U.S.C. 102–105);

(xii) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130);

(xiii) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1);

(xiv) Act of June 16, 1948 (21 U.S.C. 114e–114f);

(xv) Act of September 6, 1961 (21 U.S.C. 114g–114h);

(xvi) Act of July 2, 1962 (21 U.S.C. 134–134h);

(xvii) Act of May 6, 1970 (21 U.S.C. 135–135b);

(xviii) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618);

(xix) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429);

(xx) The responsibilities of the United States under the International Plant Protection Convention;

(xxi) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159);

(xxii) Horse Protection Act (15 U.S.C. 1821–1831);

(xxiii) 28 Hour Law, as amended (49 U.S.C. 80502);

(xxiv) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902);

(xxv) Purebred Animal Duty Free Entry Provisions of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01);

(xxvi) Virus-Serum-Toxin Act (21 U.S.C. 151–158);

(xxvii) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a);

(xxviii) The Agricultural Marketing Act of 1946, sections 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine;

(xxix) Talmadge Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests;

(xxx) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814);

(xxxi) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544);

(xxxii) Executive Order 11987, 3 CFR, 1977 Comp., p. 116;

(xxxiii) Section 101(d), Organic Act of 1944 (7 U.S.C. 430);

(xxxiv) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813);

(xxxv) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378);

(xxxvi) Title III (and title IV to the extent that it relates to activities under title III,) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610);

(xxxvii) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260);

(xxxviii) The Act of March 2, 1931 (7 U.S.C. 426–426b);

(xxxix) The Act of December 22, 1987 (7 U.S.C. 426c);

(xl) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists of national and international institutions in such countries (7 U.S.C. 3291(a)(3));

(xli) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended;

(xlii) The provisions of 35 U.S.C. 156;

(xliii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c); and

(xliv) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(3) *Related to grain inspection, packers and stockyards.*

(i) Exercise the authority of the Secretary of Agriculture contained in the U.S. Grain Standards Act, as amended (7 U.S.C. 71–87h).

(ii) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities relating to grain.

(iii) Administer the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229).

(iv) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1655, 1681–1681t) with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(v) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(6) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and governmental and private organizations. Provided, that with respect to biotechnology matters affecting egg products, the Assistant Secretary shall consult and coordinate activities of Department agencies with the Under Secretary for Food Safety.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but

excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(9) *Related to the Capper-Volstead Act.* Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Relating to agricultural marketing.

(i) Promulgation, with the Secretary of the Treasury of joint regulations under section 402(b) of the Federal Seed Act, as amended (7 U.S.C. 1592(b)).

(ii) Appoint members of the National Dairy Promotion and Research Board established by section 113(b) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4504(b)).

(iii) Appoint members of the National Processor Advertising and Promotion Board established by section 1999H(b)(4) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(b)).

(2) *Related to animal and plant health inspection.* (i) Determination that an emergency or extraordinary emergency exists because of the outbreak of any dangerous, communicable disease of livestock or poultry anywhere in the United States and that such outbreak threatens the livestock or poultry of the United States (21 U.S.C. 114a, 114c, 134a(b)).

(ii) Determination as to the measure and character of cooperation with Canada, Mexico, Central American countries, Panama, and Columbia related to operations and measures to eradicate, suppress, or control or to prevent or retard any communicable disease of animals, the designation of members of advisory committees, and the appointment of commissioners on any joint commission with these governments set up under such programs (21 U.S.C. 114b).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases, and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 665).

(iv) Determination that an extraordinary emergency exists under the criteria in section 105(b)(1) of the Federal Plant Pest Act, as amended, (7 U.S.C. 150dd(b)(1)).

§ 2.23 Assistant Secretary for Congressional Relations.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Congressional Relations:

(1) *Related to congressional affairs.* (i) Exercise responsibility for coordination of all congressional matters in the Department.

(ii) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.

(2) *Related to intergovernmental affairs.* (i) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(A) National Association of State Departments of Agriculture;

(B) Office of Intergovernmental Relations (Office of Vice President);

(C) Advisory Commission on Intergovernmental Relations;

(D) Council of State Governments;

(E) National Governors Conference;

(F) National Association of Counties;

(G) National League of Cities;

(H) International City Managers Association;

(I) U.S. Conference of Mayors; and

(J) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(ii) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(iii) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(iv) Act as the department representative for Federal executive board matters.

(v) Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(3) *Related to Indian affairs.* Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

§ 2.24 Assistant Secretary for Administration.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Administration:

(1) *Related to administrative law judges.* (i) Assign, after appropriate consultation with other general officers, to the Office of Administrative Law Judges proceedings not subject to 5 U.S.C. 556 and 557, involving the holdings of hearings and performance of related duties pursuant to the applicable rules of practice, when the Assistant Secretary for Administration determines that because of the nature of the proceeding it would be desirable for the proceeding to be presided over by an Administrative Law Judge and that such duties and responsibilities would not be inconsistent with those of an Administrative Law Judge.

(ii) Provide administrative supervision of the Office of Administrative Law Judges.

(iii) Maintain overall responsibility and control over the Hearing Clerk's activities which include the custody of and responsibility for the control, maintenance, and servicing of the

original and permanent records of all USDA administrative proceedings conducted under the provisions of 5 U.S.C 556 and 557:

(A) Receiving, filing and acknowledging the receipt of complaints, petitions, answers, briefs, arguments, and all other documents that may be submitted to the Secretary or the Department of Agriculture in such proceedings;

(B) Receiving and filing complaints, notices of inquiry, orders to show cause, notices of hearing, designations of Administrative Law Judges or presiding officers, answers, briefs, arguments, orders, and all other documents that may be promulgated or issued by the Secretary or other duly authorized officials of the Department of Agriculture in such proceedings;

(C) Supervising the service upon the parties concerned of any documents that are required to be served, and where required, preserving proof of service;

(D) Keeping a docket record of all such documents and proceedings;

(E) Filing a stenographic record of each administrative hearing;

(F) Preparing for certification and certifying under the Secretary's facsimile signature, material on file in the Hearing Clerk's office;

(G) Performing any other clerical duties with respect to the documents relative to such proceedings as may be required to be performed;

(H) Cooperating with the Office of Operations in the letting of contracts for stenographic and reporting services; and forwarding vouchers to appropriate agencies for payment;

(I) Receiving and compiling data, views or comments filed in response to notices of proposed standards or rules or regulations; and

(J) Performing upon request the following services with respect to any hearings in such proceedings:

(*1*) Arranging for suitable hearing place; and

(*2*) Arranging for stenographic reporting of hearings and handling details in connection therewith.

(2) *Related to management.* (i) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(A) Assess and improve productivity of the Department; and

(B) Assist agencies in developing, implementing and maintaining productivity measurement systems.

(ii) Responsible for the Modernization of Administrative Processes project to analyze and make recommendations to the Secretary regarding improved processes with respect to administrative and financial activities of the Department.

(iii) Designate the Department's Chief Management Improvement Officer.

(iv) Improve Departmental management by: Performing management studies and reviews in response to agency requests for assistance; enhancing management decisionmaking by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(v) Administer the Department's Management Improvement Program including the provision of assistance to agencies through management studies and planning review; review the management and operating policies and processes; search for more economical approaches to the conduct of business and provide such other assistance as will aid in improving the management effectiveness and operation of the Department's programs.

(vi) Administer the Department's Management Review Program. This authority includes the development and promulgation of departmental directives regulating the management review function.

(vii) Develop, design, install, and revise systems, processes, work methods, and techniques, and undertake other system engineering efforts to improve the management and operational effectiveness of the USDA.

(3) *Related to operations.* (i) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(B) Socioeconomic programs relating to contracting, except matters otherwise assigned;

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(E) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(F) Mail management;

(G) Motor vehicle fleet and other vehicular transportation;

(H) Transportation of things (traffic management);

(I) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(J) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and

(K) Develop and implement energy management actions related to the internal operations of the Department. Maintain liaison with other government agencies in these matters.

(ii) Operate, or provide for the operation of, centralized Departmental services for printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(iii) Exercise the following special authorities:

(A) Designate the Department's Debarring Officer to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(B) Conduct liaison with the Office of the Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(C) Maintain custody and permit appropriate use of the official seal of the Department;

(D) Establish policy for the use of the official flags of the Secretary and the Department;

(E) Coordinate collection of historical material for Presidential Libraries;

(F) Oversee the safeguarding of unclassified materials designated "For Official Use Only;"

(G) Make determinations under 48 CFR 14.406–3 (a) through (d), relating to mistakes in bids alleged after opening of bids and before award; and

(H) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election by 26 CFR 1.6050M–1(d)(5)(i).

(iv) Exercise full Departmentwide contracting and procurement authority

for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies. This includes the promulgation of Department directives regulating the management or related contracting and procurement functions.

(v) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(vi) Represent the Department in contacts with the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(vii) Serve as the Acquisition Executive in USDA to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions. This delegation includes the authority to:

(A) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(B) Review the program management of each major system acquisition;

(C) Designate the program manager for each major system acquisition; and

(D) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(viii) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, designate a Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

(E) Evaluating and monitoring the performance of the Department's procurement system;

(F) Managing and enhancing career development of the procurement work force;

(G) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(H) Determining areas of Department-unique standards and developing unique Department-wide standards;

(I) Certifying to the Secretary that the procurement system meets approved standards;

(J) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(K) Redelegating, as appropriate, the authority in paragraph (a)(3)(viii)(A) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(L) Redelegating the authorities in paragraphs (a)(3)(viii) (B), (C), (D), (F) and (G) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(ix) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(x) Review and approve exemptions for Department of Agriculture contracts, subcontracts, grants, subgrants, agreements, subagreements, loans and subloans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in the above acts and Executive Order and the regulations of the Environmental Protection Act (40 CFR 15.5(c)).

(4) *Related to management services.* (i) Provide management support services for the Secretary of Agriculture and for the general officers of the Department, except the Inspector General. As used herein, such management support services shall include:

(A) Personnel services, as listed in paragraph (a)(5)(x) of this section, and organizational support services, with authority to take actions required by law or regulation to perform such services;

(B) Procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services; and

(C) Automation, forms management, files management, and directives management with authority to take actions required by law or regulation to perform such services.

(ii) Provide such services as listed in paragraph (a)(4)(i) of this section, as may be agreed, for other officers and agencies of the Department.

(5) *Related to personnel.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to personnel.

(ii) Provide personnel management procedural guidance and operational instructions.

(iii) Design and establish personnel data systems.

(iv) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(v) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in personnel matters.

(vii) Represent the Department in personnel matters in all contacts outside the Department.

(viii) Exercise specific authorities in the following operational matters:

(A) Authorize cash awards above $2,500;

(B) Waive repayment of training expenses where employee fails to fulfill service agreement;

(C) Establish or change standards and plans for awards to private citizens; and

(D) Execute, change, extend, or renew:

(*1*) Labor-Management Agreements; and

(*2*) Association of Management Officials or Supervisor's Agreements.

(E) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(F) Change a position (with no material change in duties) from GS to a pay system other than a wage system, or vice versa;

(G) Grant restoration rights, and release employees with administrative reemployment rights;

(H) Change working hours for groups of 50 or more employees in the Washington, DC, metropolitan area;

(I) Authorize any mass dismissals of employees in the Washington, DC, metropolitan area;

(J) Approve "normal line of promotion" cases in the excepted service where not in accordance with time-in-grade criteria;

(K) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(*1*) Was involved directly in the adverse action, or performance rating appeal; or

(*2*) Made the informal decision; or

(*3*) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(L) Make the final decision on all classification appeals from agency appellate decisions;

(M) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(N) Authorize all employment actions (except LWOP) for the following positions:

(*1*) Schedule C; and

(*2*) Administrative law judge.

(O) Authorize employment actions (accessions or extensions) for the following:

(*1*) Employees whose records are flagged; and

(*2*) Contract services.

(P) Authorize employment actions (accessions or extensions and transfers) for the following:

(*1*) Persons with criminal or immoral records;

(*2*) Persons separated for misconduct, delinquency, or resignation, to avoid such action; and

(*3*) Veterans with dishonorable or other than dishonorable discharge.

(Q) Authorize adverse actions for positions in GS–14–15 and equivalent;

(R) Approve assignments of White House details;

(S) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(T) Authorize long-term training in programs which require Department-wide competition;

(U) Issue all Coordinated Federal Wage System (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, DC metropolitan area; and

(V) Initiate and take adverse action in cases involving a violation of the merit system.

(ix) [Reserved]

(x) As used herein, the term personnel includes:

(A) Position management;

(B) Position classification;

(C) Employment;

(D) Pay administration;

(E) Automation of personnel data and systems design;

(F) Hours of duty;

(G) Performance evaluation and standards;

(H) Promotions;

(I) Employee development;

(J) Incentive Programs;

(K) Leave;

(L) Retirement;

(M) Program evaluation;

(N) Social security;

(O) Life insurance;

(P) Health benefits;

(Q) Unemployment compensation;

(R) Labor management relations;

(S) Intramanagement consultation;

(T) Security;

(U) Discipline; and

(V) Appeals.

(xi) The provisions of paragraphs (a)(5)(x)(N) through (R) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(xii) Maintain, review and update departmental delegations of authority.

(xiii) Authorize organizational changes which occur in:

(A) Departmental organizations:

(*1*) Service or office;

(*2*) Division (or comparable component); and

(*3*) Branch (or comparable component in departmental centers, only).

(B) Field organizations:

(*1*) First organizational level; and

(*2*) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental Regulation 1010–1 (see § 2.92(a)(15)(ii)(B)).

(xiv) Formulate and promulgate departmental organizational objectives and policies.

(xv) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xvi) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(xvii) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(xviii) Determine and/or provide Departmentwide technical services and regional staff support for the Safety and Health Programs.

(xix) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's Occupational Safety and Health Programs.

(xx) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(xxi) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(xxii) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(xxiii) Approve hazard pay differentials under the conditions specified in 5 CFR part 550.

(6) *Related to information resources management.* (i) Designated as the senior official to carry out the responsibilities of the Department under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This designation includes the following responsibilities:

(A) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department;

(B) Developing Department information policies and procedures and overseeing, auditing and otherwise periodically reviewing the Department's information resources management activities;

(C) Reviewing proposed Department reporting and recordkeeping requirements including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department;

(D) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs;

(E) Conducting and being accountable for acquisitions made by the Department pursuant to authority delegated under section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759);

(F) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), including

the review of Department information activities; and

(G) Reviewing, granting, and notifying Congress of waivers to Federal Information Processing Standards pursuant to the authority delegated under section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(ii) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(iii) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(iv) Provide Departmentwide guidance and direction in all aspects of the USDA Information Management Program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(v) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(vi) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(vii) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(viii) Administer the Departmental records, forms, reports, and Directives Management Programs.

(ix) Manage all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(x) Implement a program for applying information resources management technology to improve productivity in the Department.

(xi) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(xii) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(xiii) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(xiv) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(xv) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(7) *Related to committee management.* (i) Serve as the Department's Committee Management Officer and establish and maintain departmentwide policies and procedures for the management of committees. This delegation includes the authority to:

(A) Consult with the Committee Management Secretariat prior to the establishment or reestablishment of advisory committees;

(B) Approve and sign the written certification that creation of the advisory committee is in the public interest and provide for the publication of such certification in the **Federal Register**, along with a description of the nature and purpose of the advisory committee, following the Committee Management Secretariat's approval of the establishment of the committee;

(C) Approve and sign the notice of renewal of advisory committees for publication in the **Federal Register**, following the Committee Management Secretariat's concurrence in the renewal of the committees;

(D) Assign responsibility for preparation of timely notice of meetings for publication in the **Federal Register**; and

(E) Approve charters for national advisory committees when in a format other than a Secretary's Memorandum.

(ii) Establish and reestablish regional, State, and local advisory committees for activities authorized. This authority may not be redelegated.

(8) *Related to equal opportunity.* (i) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(A) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs;

(B) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(C) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(D) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(E) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(F) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(G) Actions to develop and implement the Department's Federal Women's Program; and

(H) Actions to develop and implement the Department's Hispanic Employment Program.

(ii) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(iii) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(iv) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(v) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vi) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(vii) Order proceedings and hearings in the USDA pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(viii) Order proceedings and hearings in the USDA pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(ix) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(x) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(xi) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(xii) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make final determinations, on both the merits and required corrective action, as to complaints filed under subpart B of part 15 of this title.

(xiii) Conduct investigations and compliance reviews Departmentwide.

(xiv) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(xv) Provide liaison on Equal Employment Opportunity Programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(xvi) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(xvii) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1613, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity, and the authority to make decisions on complaints of discrimination and order such corrective measures as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(xviii) Administer the Department's Equal Employment Opportunity Program.

(xix) Perform the EEO counseling function for the Department.

(xx) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(xxi) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, Office of Personnel Management or other outside authority.

(xxii) Provide liaison on EEO matters concerning complaints and appeals with the USDA agencies and Department employees.

(xxiii) Maintain liaison with historically black colleges and universities and with other colleges and universities with substantial minority group enrollment, and assist USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(xxiv) Investigate USDA EEO complaints with authority to enter into and administer contracts for such investigations.

(xxv) Make final decisions on complaints and grievance appeals, except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(xxvi) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(A) Was involved directly in the grievance; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xxvii) The provisions of paragraphs (a)(8)(xxv) and (xxvi) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(9) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(10) *Related to board of contract appeals.* Provide administrative supervision, and exercise general responsibility for budget and finance aspects of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(11) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and

wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42.U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(13) *Related to emergency programs.* (i) Coordinate the Departments Emergency Preparedness Program and Disaster Emergency Response Program including maintenance of an appropriate system whereby the Department can react immediately when notified of a civil defense or natural disaster emergency.

(ii) Maintain an overview of emergency relocation facilities and assure that resources are in a constant state of readiness.

(iii) Direct the entire defense program of USDA. This delegation includes:

(A) Maintaining liaison with executive departments and the Congress with respect to policy matters;

(B) Supervising and directing USDA regional emergency stalls and USDA State and county emergency boards;

(C) Directing the USDA part of the National Defense Executive Reserve Program;

(D) Providing policy guidance to USDA agencies in carrying out specific defense assignments; and

(E) Representing the Department in matters relating to international defense organizations, such as NATO and its suborganizations.

(iv) Coordinate and facilitate USDA operations of Natural Disaster Programs, including liaison with executive departments and the Congress in disaster matters.

(v) Maintain liaison with:

(A) Federal Preparedness Agency; and

(B) Defense Civil Preparedness Agency.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to personnel.* Make final determinations in the following areas:

(i) Separation of employees for security reasons.

(ii) Restoration to duty of employees following suspension from duty for security reasons.

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons.

(iv) Issuance of temporary certificates to occupy sensitive positions.

(2) [Reserved]

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

§ 2.26 Director, Office of the Executive Secretariat.

The following delegation of authority is made by the Secretary of Agriculture to the Director, Office of the Executive Secretariat: Responsible for all correspondence control and related records management functions for the Office of the Secretary.

§ 2.27 Office of Administrative Law Judges.

(a) The following designations are made by the Secretary of Agriculture to the Office of Administrative Law Judges:

(1) Administrative law judges (formerly hearing examiners) are designated pursuant to 5 U.S.C. 556(b)(3) to hold hearings and perform related duties in proceedings subject to 5 U.S.C. 556 and 557, arising under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*); the Commodity Exchange Act as amended (7 U.S.C. 1 *et seq.*); the Perishable Agricultural Commodities Act, as amended (7 U.S.C. 499a *et seq.*); the Federal Seed Act, as amended (7 U.S.C. 1551 *et seq.*); the (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131 *et seq.*); the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*); the Forest Resources Conservation and Shortage Relief of 1990 (16 U.S.C. 630 *et seq.*); and any other acts providing for hearings to which the provisions of 5 U.S.C. 556 and 557, are applicable. Pursuant to the applicable rules of practice, the administrative law judges shall make initial decisions in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Such decisions shall become final without further proceedings unless there is an appeal to the Secretary by a party to the proceeding in accordance with the applicable rules of practice: Provided, however, that no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. As used herein, "Secretary" means the Secretary of Agriculture, the Judicial Officer, or other officer or employee of the Department delegated, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), "regulatory functions" as that term is defined in the 1940 Act, in acting as final deciding officer in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Administrative Law Judges are delegated authority to hold hearings and perform related duties as provided in the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, set forth in part 1, subpart I of this title.

(2) [Reserved]

(b) The Chief Administrative Law Judge is delegated the following administrative responsibilities subject to the guidance and control of the Assistant Secretary for Administration (See § 2.24(a)):

(1) Exercise general responsibility and authority for all matters related to the administrative activities of the Office of Administrative Law Judges; and

(2) Direct the functions of the Hearing Clerk as set out in § 2.24(a)(1)(iii).

§ 2.28 Chief Financial Officer.

(a) The Chief Financial Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated for agency Chief Financial Officers in the Chief Financial Officers Act of 1990, Public Law No. 101–576, 31 U.S.C. 902, including:

(1) Reporting directly to the Secretary of Agriculture regarding financial management matters and the financial execution of the budget.

(2) Overseeing all financial management activities relating to the programs and operations of the Department and component agencies.

(3) Developing and maintaining an integrated accounting and financial system for the Department and component agencies, including financial reporting and internal controls, which—

(i) Complies with applicable accounting principles, standards, and requirements, and internal control standards;

(ii) Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;

(iii) Complies with any other requirements applicable to such systems; and

(iv) Provides for complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of Department management and for the development and reporting of cost information, the integration of accounting and budgeting information, and the systematic measurement of performance.

(4) Making recommendations to the Secretary regarding the selection of the Deputy Chief Financial Officer of the Department, and selection of principal financial officers of component agencies of the Department.

(5) Directing, managing, and providing policy guidance and oversight of Department financial management personnel, activities, and operations, including:

(i) Preparing and annually revising a Departmental plan to:

(A) Implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under 31 U.S.C. 3512(a)(3); and

(B) Comply with the requirements established for agency financial statements under 31 U.S.C. 3515 and with the requirements for audits of Department financial statements established in 31 U.S.C. 3521(e) and (f).

(ii) Developing Departmental financial management budgets, including the oversight and recommendation of approval of component agency financial management budgets;

(iii) Recruiting, selecting, and training of personnel to carry out Departmental financial management functions;

(iv) Approving and managing Departmental, and approving component agency, financial management systems design or enhancement projects; and

(v) Implementing and approving Departmental, and approving component agency, asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control.

(6) Preparing and transmitting, by not later than 60 days after the submission of the audit report required by 31 U.S.C. 3521(f), an annual report to the Secretary and the Director of the Office of Management and Budget, which shall include:

(i) A description and analysis of the status of financial management of the Department;

(ii) The annual financial statements prepared under 31 U.S.C. 3521;

(iii) The audit report transmitted to the Secretary under 31 U.S.C. 3521;

(iv) A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 1113, 3512); and

(v) Other information the Secretary considers appropriate to inform fully the President and the Congress concerning the financial management of the Department.

(7) Monitoring the financial execution of the budget of the Department in relation to projected and actual expenditures, and preparing and submitting to the Secretary timely performance reports.

(8) Reviewing, on a biennial basis, the fees, royalties, rent, and other charges imposed by the Department for services and things of value it produces, and making recommendations on revising those charges to reflect costs incurred by the Department in providing those services and things of value.

(9) Accessing all records, reports, audits, reviews, documents, papers, recommendations, or other material that are the property of the Department or that are available to the Department, and that relate to programs and operations with respect to which the Chief Financial Officer has responsibilities, except that this grant allows no access greater than that permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of the Office of Inspector General.

(10) Requesting such information or assistance as may be necessary for carrying out the duties and responsibilities granted the Chief Financial Officer by the Chief Financial Officers Act of 1990 (Pub. L. No. 101–576), from any Federal, State, or local governmental entity.

(11) To the extent and in such amounts as may be provided in advance by appropriations acts, entering into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services, and making such payments as may be necessary to carry out the duties and prerogatives of the Chief Financial Officer.

(b) In addition to the above responsibilities, the following delegations of authority are made by the Secretary of Agriculture to the Chief Financial Officer:

(1) Designate the Department's Director of Finance and Comptroller of the Department Working Capital Fund.

(2) Establish Departmental policies, standards, techniques, and procedures applicable to all USDA agencies for the following areas:

(i) Development, maintenance, review and approval of all departmental, and review and approval of component agency, internal control, fiscal, financial management and accounting systems including the financial aspects of payroll and property systems;

(ii) Selection, standardization, and simplification of program delivery processes utilizing grants, cooperative agreements and other forms of Federal assistance;

(iii) Review and approval of Federal assistance, internal control, fiscal, accounting and financial management regulations and instructions proposed or issued by USDA agencies for conformity with Departmental requirements; and

(iv) Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(3) Establish policies related to the Department Working Capital Fund.

(4) Approve regulations, procedures and rates for goods and services financed through the Department Working Capital Fund which will impact the financial administration of the Fund.

(5) Exercise responsibility and authority for operating USDA's Central Accounting System and related administrative systems including:

(i) Management of the National Finance Center (NFC), which includes developing, maintaining, and operating manual and automated administrative and accounting systems for the USDA agencies related to the Central Accounting System, Departmentwide payroll and personnel information, statistics, administrative payments, billings and collections, and related reporting systems that are either requested by the agencies or required by the Department;

(ii) Management of the NFC automated data processing and telecommunications systems and coordination with the Office of Information Resources Management to assure that the hardware and software located at the NFC will be integrated with and compatible with all other systems;

(iii) Develop new or modified accounting systems and documentation supporting the Central Accounting System which includes working with USDA agencies to obtain General Accounting Office approval; and

(iv) Review and approve the issuance of accounting and management instructions related to the operation of the NFC.

(6) Provide management support services for the NFC, and by agreement with agency heads concerned, provide such services for other USDA tenants housed in the same facility. As used herein, such management support services shall include:

(i) Personnel services, as listed in § 2.24(a)(5)(x), and organizational support services, with authority to take actions required by law or regulation to perform such services; and

(ii) Procurement, property management, space management, communications, messenger, paperwork management, and related administrative services, with authority to take actions required by law or regulation to perform such services.

(7) Exercise responsibility and authority for all matters related to the Department's accounting and financial operations including such activities as:

(i) Financial administration, including accounting and related activities;

(ii) Reviewing financial aspects of agency operations and proposals;

(iii) Furnishing consulting services to agencies to assist them in developing and maintaining accounting and financial management systems and internal controls, and for other purposes consistent with delegations in paragraph (b)(2) of this section;

(iv) Reviewing and monitoring agency implementation of Federal assistance policies;

(v) Reviewing and approving agencies' accounting systems documentation including related development plans, activities, and controls;

(vi) Monitoring agencies' progress in developing and revising accounting and financial management systems and internal controls;

(vii) Evaluating agencies' financial systems to determine the effectiveness of procedures employed, compliance with regulations, and the appropriateness of policies and practices;

(viii) Promulgation of Department schedule of fees and charges for reproductions, furnishing of copies and making searches for official records pursuant to the Freedom of Information Act, 5 U.S.C. 552; and

(ix) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(8) Establish Department and approve component agency programs, policies, standards, systems, techniques and procedures to improve the management and operational efficiency and effectiveness of the USDA including:

(i) Implementation of the policies and procedures set forth in OMB Circulars No. A–76: Performance of Commercial Activities, and No. A–117: Management Improvement and the Use of Evaluation in the Executive Branch;

(ii) Increased use of operations research and management science in the areas of productivity and management; and

(iii) All activities financed through the Department Working Capital Fund.

(9) Designate the Commercial Industrial Officer for USDA.

(10) Develop Departmental policies, standards, techniques, and procedures for the conduct of reviews and analysis of the utilization of the resources of State and local governments, other Federal agencies and of the private sector in domestic program operations.

(11) Represent the Department in contacts with the Office of Management and Budget, General Services Administration, General Accounting Office, Department of the Treasury, Office of Personnel Management, Department of Health and Human Services, Department of Labor, Environmental Protection Agency, Department of Commerce, Congress of the United States, State and local governments, universities, and other public and private sector individuals, organizations or agencies on matters related to assigned responsibilities.

(12) Maintain the Departmental inventory of commercial activities required by OMB Circular No. A–76 and provide Departmentwide technical assistance to accomplish Circular objectives.

(13) Establish policies related to travel by USDA employees.

(14) Exercise responsibility for coordinating and overseeing the implementation of the Government Performance and Results Act of 1993, Pub. L. No. 103–62, at the Department.

(15) Exercise responsibility for design, implementation, and oversight of the Department's project known as Financial Information Systems Vision, and approval of the design and implementation of an integrated financial information and management system for the Department and all component agencies.

(16) Provide budget, accounting, fiscal and related financial management services, with authority to take action

required by law or regulation to provide such services for Working Capital Funds and general appropriated and trust funds for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Any other officers and agencies of the Department as may be agreed.

§ 2.29 Chief Economist.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Chief Economist:

(1) *Related to economic analysis.* (i) Coordinate economic analyses of, and review Department decisions involving, policies and programs that have substantial economic implications.

(ii) Review and assess the economic impact of all significant regulations proposed by any agency of the Department.

(iii) Review economic data and analyses used in speeches and Congressional testimony by Department personnel and in materials prepared for release through the press, radio, and television.

(2) *Related to risk assessment.* (i) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the **Federal Register** as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e).

(ii) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(3) *Related to food and agriculture outlook and situation.* (i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(4) *Related to weather and climate.* (i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(5) *Related to interagency commodity estimates committees.* (i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(6) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(7) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(8) *Related to agricultural labor affairs.* Exercise the following functions of the Secretary under the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1101 *et seq.*):

(i) Pursuant to section 214(c) of INA (8 U.S.C. 1184(c)), provide consultation to the Attorney General and the Secretary of Labor concerning the question of the importation of aliens as nonimmigrant temporary agricultural workers, known as "H–2A" workers, under 8 U.S.C. 1101(a)(15)(H)(ii)(a);

(ii) Pursuant to section 218(e) of the INA (8 U.S.C. 1188 note), provide consultation to the Attorney General and the Secretary of Labor concerning all regulations to implement 8 U.S.C. 101(a)(15)(H)(ii)(a) and 1188 providing for the importation of H–2A workers;

(iii) Pursuant to section 210(h) of the INA (8 U.S.C. 1160(h)), promulgate regulations to define "seasonal agricultural services" for purposes of the Special Agricultural Worker (SAW) Program;

(iv) Pursuant to section 210A(a) of the INA (8 U.S.C. 1161(a)), determine jointly with the Secretary of Labor the number (if any) of additional special agricultural workers, known as "replenishment agricultural workers" (RAWs), who should be admitted to the United States or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 to meet a shortage of workers to perform seasonal agricultural services in the United States during each such fiscal year;

(v) Pursuant to section 210A(a)(7) of the INA (8 U.S.C. 1161(a)(7)), determine jointly with the Secretary of Labor emergency requests to increase the shortage number;

(vi) Pursuant to section 210A(a)(8) of the INA (8 U.S.C. 1161(a)(8)), determine jointly with the Secretary of Labor requests to decrease the number of man-days of seasonal agricultural services required of RAWs to avoid deportation and for naturalization under section 210A(d)(5) (A) and (B) of the INA (8 U.S.C. 1161(d)(5) (A) and (B));

(vii) Pursuant to section 210A(b)(1) of the INA (8 U.S.C. 1161(b)(1)), calculate jointly with the Secretary of Labor and annual numerical limitation on the number of RAWs who may be admitted or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 under section 210A(c)(1) of the INA (8 U.S.C. 1161(c)(1)); and

(viii) Pursuant to section 210A(b)(2) of the INA (8 U.S.C. 1161(b)(2)), establish jointly with the Secretary of Labor the information that must be reported by any person or entity who employs SAWs or RAWs in seasonal agricultural services during fiscal years 1989 through 1992, and to designate jointly with the Secretary of Labor the official to whom the person or entity must furnish such certification.

(9) *Related to the Capper-Volstead Act.* Serve as Chairman of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade. The Chairman is authorized to call upon any agency of the Department for support in carrying the functions of the Committee (7 U.S.C. 292).

(10) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

§ 2.30 Director, Office of Budget and Program Analysis.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Director, Office of Budget and Program Analysis:

(1) Serve as the Department's Budget Officer and exercise general responsibility and authority for all matters related to the Department's budgeting affairs including:

(i) Resource administration, including all phases of the acquisition, and distribution of funds and staff years; and

(ii) Legislative and regulatory reporting and related activities.

(2) Provide staff assistance for the Secretary, general officers, and other Department and agency officials.

(3) Formulate and promulgate Departmental budgetary, legislative and regulatory policies and procedures.

(4) Represent the Department in contacts with the Office of Management and Budget, the General Accounting Office, the Treasury Department, Congressional Committees on Appropriations, and other organizations and agencies on matters related to his or her responsibility.

(5) Coordinate and/or conduct policy and program analyses on agency operations and proposals to assist the Secretary, general officers and other Department and agency officials in formulating and implementing USDA policies and programs.

(6) Review and analyze legislation, regulations, and policy options to determine their impact on USDA programs and policy objectives and on the Department's budget.

(7) Monitor ongoing studies with significant program or policy implications.

(b) The following authority is reserved to the Secretary of Agriculture: Final approval of the Department's program and financial plans.

§ 2.31 General Counsel.

The General Counsel, as the chief law officer of the Department, is legal adviser to the Secretary and other officials of the Department and responsible for providing legal services for all the activities of the Department. The delegations of authority by the Secretary of Agriculture to the General Counsel include the following:

(a) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and the regulations of the Attorney General contained in 28 CFR part 14.

(b) Certify documents as true copies of those on file in the Department.

(c) Sign releases of claims of the United States against private persons for damage to or destruction of property of the department, except those claims cognizable under the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*).

(d) Responsible for the overall management and operation of the Law Library, furnishing complete legal and legislative library services to the Office of the General Counsel and the Department.

(e) Make determinations as to whether employees of the Department may retain commercial rights in inventions; prepare patent applications and prosecute the same before the Patent Office.

(f) Represent the Department in formal rulemaking and adjudicatory proceedings held in connection with the administration of the Department's activities, and decide whether initial decisions of the administrative law judges shall be appealed by the Department to the Secretary.

(g) Represent the Department in connection with legal issues that arise in its relations with the Congress, the General Accounting Office, or other agencies of the Government.

(h) Represent the Department in proceedings before the Interstate Commerce Commission involving freight rates on farm commodities, and in appeals from decisions of the Commission to the courts.

(i) In civil actions arising out of the activities of the Department, present the Department's case to the Attorney General and U.S. attorneys and, upon request of the Department of Justice, assist in the preparation and trial of such cases and in the briefing and argument of such cases at the appellate level.

(j) Review cases having criminal aspects and refer them to the Department of Justice.

(k) Act as liaison between the Department and the Department of Justice.

(l) Perform the following legal services:

(1) Render legal opinions on questions arising in the conduct of the Department's activities;

(2) Prepare or review regulations;

(3) Draft proposed legislation;

(4) Prepare or review contracts, mortgages, deeds, leases, and other documents; and

(5) Examine titles to land to be acquired or accepted as security for loans.

(m) Perform such other legal services as may be required in the administration of the Department's activities, including the defense program.

(n) Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(o) Settle claims for damage to, or loss of, privately owned property pursuant to the provisions of 31 U.S.C. 3723.

§ 2.32 Alternative Agricultural Research and Commercialization Board.

The following delegation of authority is made by the Secretary of Agriculture to the Alternative Agricultural Research and Commercialization Board: Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

§ 2.33 Inspector General.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Inspector General:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) Provide for the personal security of the Secretary and the Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the General Accounting Office.

(4) In addition to the above delegations of authority, the Inspector General, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to the Inspector General Act of 1978, Pub. L. No. 95–452, 5 U.S.C. App.

(b) The following authority is reserved to the Secretary of Agriculture: Approving the implementation in the Office of Inspector General of administrative policies or procedures that contravene standard USDA administrative policies as promulgated by the Assistant Secretary for Administration.

§ 2.34 Director, National Appeals Division.

The Director, National Appeals Division, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to subtitle H of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, title II (7 U.S.C. 6991 *et seq.*), including:

(a) Deciding appeals from adverse decisions, made by an officer or employee of an agency of the Department designated by the Secretary, that are adverse to participants. The term "agency" shall include the following and any predecessor agency: the Farm Service Agency; the Commodity Credit Corporation (with respect to domestic programs); the Federal Crop Insurance Corporation; the Rural Housing and Community Development Service; the Rural Business and Cooperative Development Service; the Natural Resources Conservation Service; and a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and

(b) The authority to appoint such hearing officers and other employees as are necessary for the administration of the activities of the Division.

§ 2.35 Judicial Officer.

The following delegations of authority are made by the Secretary of Agriculture to the Judicial Officer: Pursuant to the provisions of the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), the Judicial Officer is hereby authorized to act as final deciding officer in adjudication proceedings subject to 5 U.S.C. 556 and 557; in other adjudication proceedings which are or may be made subject to the "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" set forth in part 1, subpart H of this title; in adjudication proceedings under the "Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act" set forth in part 1, subpart I of this title; in rate proceedings under the Packers and Stockyards Act; in adjudication proceedings under the "Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986" set forth in part 1, subpart L of this title; in adjudication proceedings subject to the "Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)" set forth in part 1, subpart M of this title; and in reparation proceedings under statutes administered by the Department. As used herein the term "Judicial Officer" shall mean any person or persons so designated by the Secretary of Agriculture. The provisions of this delegation shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those defined in the said Act of April 4, 1940, which from time to time may be assigned by the Secretary to him or her.

§ 2.36 Director, Office of Communications.

(a) *Delegations.* The following delegations of authority are made by the Secretary of Agriculture to Director, Office of Communications:

(1) *Related to public affairs.* (i) Advise and counsel general officers on public affairs matters to the Department.

(ii) Organize and direct the activities of a public affairs office to include press relations of the secretary of agriculture and other executive functions and services for general officers of the Department.

(2) *Related to information activities.* (i) Advise the secretary and general officers in the planning, development, and execution of Department policies and programs.

(ii) Direct and coordinate the overall formulation and development of policies, programs, plans, procedures, standards and organization structures and staffing patterns for the information activities of the Department and its agencies, both in Washington and in the field.

(iii) Exercise final review and approval of all public information material prepared by the Department and its agencies and select the most effective method and audience for distributing this information.

(iv) Serve as the central public information authority in the USDA, with the authority to determine policy for all USDA communication activities and agency information activities in order to provide leadership and centralized operational direction for USDA and agency information activities so that all material shall effectively support USDA policies and programs, including the defense program.

(v) Serve as the central printing authority in the USDA, with authority to represent the USDA with Joint Committee on Printing of the Congress, the Government Printing Office, and other Federal and State agencies on information matters.

(vi) Cooperate with and secure the cooperation of commercial, industrial and other nongovernmental agencies and concerns regarding information work as required in the execution of the Department's programs.

(vii) Plan and direct communication research and training for the Department and its agencies.

(viii) Oversee general officers and agency heads in the development and implementation of information policies issued pursuant to the provisions of the "Freedom of Information Act" (5 U.S.C. 552) and the "Privacy Act" (5 U.S.C. 552a), and provide consultation regarding those policies.

(ix) Supervise and provide leadership and final clearance for the planning, production, and distribution of visual information material for the department and its agencies in Washington, D.C., and the field, and provide such information services as may be deemed necessary.

(x) Maintain overall responsibility and control over the preparation of the "Agricultural Decisions."

(xi) Administer, direct and coordinate publications and user fee authority granted under section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a; and publish any appropriate regulations necessary to the exercise of this authority.

(b) [Reserved]

Subpart E—Delegations of Authority by the Deputy Secretary

§ 2.37 Director, Office of Small and Disadvantaged Business Utilization

(a) *Delegations.* Pursuant to § 2.15, the following delegations of authority are

made by the Deputy Secretary to the Director, Office of Small and Disadvantaged Business Utilization:

(1) The Director, Office of Small and Disadvantaged Business Utilization, under the supervision of the Deputy Secretary, has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(i) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority business, including women-owned business, Labor Surplus Area concerns, and the small business and small minority business subcontracting programs;

(ii) Providing Departmentwide liaison and coordination of activities related to small and disadvantaged business with the Small Business Administration and others in the public and private sector;

(iii) Developing policies and procedures required by the applicable provisions of the Small Business Act, as amended to include the establishment of goals; and

(iv) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(2) In addition to the responsibilities in paragraph (a)(1) of this section, the following delegations of authority are made by the Deputy Secretary of Agriculture to the Director, Office of Small and Disadvantaged Business Utilization:

(i) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401 *et seq.*), is designated as the Department's Advocate for Competition with responsibility for sections 20 and 21 of the Act (41 U.S.C. 418 and 418a), including:

(A) Reviewing the procurement activities of the Department;

(B) Developing new initiatives to increase full and open competition;

(C) Developing goals and plans and recommending actions to increase competition;

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(E) Designating an Advocate for Competition for each procuring activity within the Department; and

(F) Preparing the annual report to the Congress for transmittal by the Secretary on activities of the Advocate for Competition.

(b) [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.

Pursuant to § 2.16(a), subject to reservations in § 2.16(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Farm and Foreign Agricultural Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services: Provided, that this authority shall be exercised by the respective Deputy Under Secretary in the order in which he or she has taken office as a Deputy Under Secretary.

§ 2.42 Administrator, Farm Service Agency.

(a) *Delegations.* Pursuant to § 2.16(a)(1) through (a)(4) and (a)(6) through (a)(8), subject to the reservations in § 2.16(b)(1), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Farm Service Agency:

(1) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282 *et seq.*).

(2) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441 *et seq.*), except the provisions of section 416(a)(1), (a)(2) and (b) of the Agricultural Act of 1949, as amended, unless specifically provided herein.

(3) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(i) Clearing photography projects;

(ii) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(iii) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(iv) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(v) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction;

(vi) Providing a Chairperson for the Photography Sales Committee of the Department;

(vii) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(viii) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(ix) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(x) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(4) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501 *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g *et seq.*).

(5) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural production; food processing, storage, and distribution of farm equipment and fertilizers. rehabilitation and use of feed, agricultural and related agribusiness facilities; and farm credit and financial assistance.

(6) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201 *et seq.*).

(7) Conduct fiscal, accounting and claims functions relating to CCC programs for which the Foreign Agricultural Service has been delegated authority under § 2.43 and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(8) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98 *et seq.*).

(9) Supervise and direct Farm Service Agency State and county offices and designate functions to be performed by Farm Service Agency State and county committees.

(10) Administer the Dairy Indemnity Program under the Act of August 13, 1968, as amended (7 U.S.C. 450j *et seq.*).

(11) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a-1), except as delegated to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19 and to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3), and assist the Food and Consumer Service and the Agricultural Marketing Service in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751 *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(12) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701 *et seq.*), and payment and related services with respect to export programs and barter operations.

(13) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781 *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(14) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*) except those functions delegated in § 2.21(a)(8)(xi).

(15) Administer energy management activities as assigned.

(16) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901 *et seq.*) and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001 *et seq.*).

(17) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(18) Administer the U. S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(19) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(20) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231 *et seq.*).

(21) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(22) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(23) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(24) Administer the Integrated Farm Management Program under section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(25) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(26) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(27) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(28) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) except for the authority contained in the following sections:

(i) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(ii) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(iii) Section 306A (7 U.S.C. 1926a) and Section 306B (7 U.S.C. 1926b), relating to the Emergency Community Water Assistance Grant Programs;

(iv) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(vi) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(vii) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(viii) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(ix) Section 342 (7 U.S.C. 1013a);

(x) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(xi) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(29) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(30) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(31) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(32) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(33) Administer the emergency loan and guarantee programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No. 91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(34) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(35) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(36) Service, collect, settle, and liquidate:

(i) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, "Water Conservation and Utilization projects" in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(ii) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(iii) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(37) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(38) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 *et seq.*).

(39) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(40) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. No. 103–248 (7 U.S.C. 1981(c)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(41) Provide supervision of the Federal Crop Insurance Corporation.

(42) Administer the provisions concerning the end-use certificate system authorized pursuant to section 301(f) of the North American Free Trade Implementation Act (19 U.S.C. 3391(f)).

(43) Determine the type and quantity of commodities that are available for programming under section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), and the Food for Progress Act of 1985 (7 U.S.C. 1736o), and charge for the processing, packaging, transportation, handling and delivery to port of such commodities in connection therewith.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Farm and Foreign Agricultural Services:

(1) Designating counties and areas for emergency programs under Pub. L. No. 85–58, as amended.

(2) Making and issuing notes to the Secretary of the Treasury for the purposes of the Agricultural Credit Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929).

§ 2.43 Administrator, Foreign Agricultural Service.

(a) *Delegations.* Pursuant to § 2.16 (a)(3) and (a)(6), subject to reservations in § 2.16(b)(2), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Foreign Agricultural Service:

(1) Coordinate the carrying out by Department agencies of their functions involving foreign agriculture policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development and other departments, agencies and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private United States and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(2) Conduct functions of the Department relating to GATT, WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801 *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101 *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901 *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act (except the provisions concerning the end-use certificate system authorized pursuant to section 321(f) of that Act (19 U.S.C. 3391(f)) delegated to the Administrator, Farm Service Agency), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(3) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(4) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32, of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs.

(5) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(6) Administer functions of the Department relating to import controls including, among others, functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) but not including those functions reserved to the Secretary under § 2.16(b)(2) and those relating to section 8e of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs.

(7) Represent the Department on the Interdepartmental Committee for Export Control and conduct Departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), except as reserved to the Secretary under § 2.16(b)(2).

(8) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such agreement.

(9) Provide foreign agricultural intelligence and other foreign agricultural services in support of programs administered by the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(10) Conduct economic analyses pertaining to the foreign sugar situation.

(11) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(12) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(13) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(14) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601 *et seq.*).

(15) Formulate policies and administer barter programs under which agricultural commodities are exported.

(16) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities on long-term credit or for foreign currencies under Public Law 480 (7 U.S.C. 1691, 1701 *et seq.*).

(17) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8)), and to represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(18) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(19) Formulate policies and implement a program for the export sales of dairy products, as authorized by

section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(20) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738 *et seq.*).

(21) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(22) Allocate among the various export programs agricultural commodities determined under § 2.16(a)(3)(xix) to be available for export.

(23) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(24) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Cotton Research and Promotion Act (7 U.S.C. 2102–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(25) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(26) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated in § 2.80(a)(1), but including authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign agencies with respect to joint regulations and authority to approve regulations issued by the Department of State relating to the administration of the Foreign Service.

(27) Establish and maintain U.S. Agricultural Trade Offices to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. No. 95–501 (7 U.S.C. 1765a–g).

(28) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities, except as otherwise delegated in § 2.42(a)(43).

(29) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(30) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(31) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o), except as otherwise delegated in § 2.42(a)(43).

(32) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish International Scientific and Technical Cooperation in Food and Agriculture.

(33) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151 *et seq.*).

(34) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(35) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(36) Direct and coordinate the Department's work with international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201 and 2202).

(37) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(38) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(39) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(40) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(41) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(42) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) [Reserved]

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

§ 2.45 Deputy Under Secretary for Rural Economic and Community Development.

Pursuant to § 2.17(a), subject to reservations in § 2.17(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Rural Economic and Community Development, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Rural Economic and Community Development.

§ 2.47 Administrator, Rural Utilities Service.

(a) *Delegations.* Pursuant to §§ 2.17 (a)(14) and (a)(16) through (a)(20), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Utilities Service:

(1) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*) except for rural economic development loan and grant programs (7 U.S.C. 940c and 950aa, *et seq.*): Provided, however, that the Administrator may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(2) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(3) The Administrator, Rural Utilities Service is designated to serve as the chief executive officer of the Rural Telephone Bank.

(4) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(ii) Section 306A (7 U.S.C. 1926a);

(iii) Section 306B (7 U.S.C. 1926b);

(iv) Section 306C (7 U.S.C. 1926c);

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(vi) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(vii) Section 310B(b) (7 U.S.C. 1932(b));

(viii) Section 310B(i)), relating to loans for business telecommunications partnerships;

(ix) Section 342 (7 U.S.C. 1013a); and

(x) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities;

(5) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(6) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(7) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(8) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service or its predecessor agencies.

(9) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Utilities Service.

(10) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural development credit and financial assistance.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);
(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);
(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);
(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);
(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and
(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).
(13) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa *et seq.*).
(14) Administer water and waste facility programs and activities (7 U.S.C. 1926–1).
(b) *Reservations.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development:
(1) Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).
(2) Administering loans for rural telephone facilities and service in rural areas as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

§ 2.48 Administrator, Rural Business and Cooperative Development Service.

(a) *Delegations.* Pursuant to § 2.17 (a)(1), (a)(2), (a)(14), (a)(16) through (a)(19) and (a)(21), subject to reservations in § 2.17(b)(1), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Business and Cooperative Development Service:
(1) Administer the rural economic development loan and grant programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa *et seq.*).
(2) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):
(i) Section 306(a)(11)(A) (7 U.S.C. 1926(a)(11)(A)), related grants for business technical assistance and planning;
(ii) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;
(iii) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;
(iv) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;
(v) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and
(vi) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Business and Cooperative Development Service activities;
(3) Administer Alcohol Fuels Credit Guarantee Program Account (Pub L. No. 102–341, 106 Stat. 895).
(4) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).
(5) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).
(6) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95–620).
(7) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).
(8) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).
(9) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).
(10) Administer the Economically Disadvantaged Rural Community Loan program (7 U.S.C. 6616).
(11) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).
(12) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).
(13) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:
(i) Exchanging materials and results with such institutions or organizations;
(ii) Engaging in joint or coordinated activities; or
(iii) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).
(14) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Business and Cooperative Development Service or its predecessor agencies.
(15) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Business and Cooperative Development Service.
(16) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural development credit and financial assistance.
(17) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:
(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;
(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;
(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;
(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;
(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;
(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;
(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;
(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;
(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;
(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;
(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;
(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and
(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.
(18) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:
(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);
(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);
(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);
(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);
(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);
(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);
(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and
(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).
(19) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Pub. L. No. 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391 *et seq.*).
(20) Provide leadership and coordination within the executive branch at the state and local level of Federal rural development program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).
(21) Coordinate, at the state and local level, activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating agency for other departmental agencies having primary responsibilities, in coordination with rural development programs of State and local governments (7 U.S.C. 2204).
(22) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).
(23) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).
(24) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).
(25) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).
(26) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program contact (7 U.S.C. 2204; 7 U.S.C. 2204b).
(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

§ 2.49 Administrator, Rural Housing and Community Development Service.

(a) *Delegations.* Pursuant to § 2.17(a)(14), (a)(16) through (a)(19) and (a)(22), and subject to policy guidance and directions by the Under Secretary for Rural Economic and Community Development, the following delegations are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Housing and Community Development Service:
(1) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):
(i) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);
(ii) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and
(iii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural

Housing and Community Development Service activities;

(2) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(3) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(4) Administer the rural housing disaster program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(5) Collect, service, and liquidate loans made, insured or guaranteed by the Rural Housing and Community Development Service or its predecessor agencies.

(6) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100–628 (42 U.S.C. 1480(d)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(7) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service.

(8) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural housing and community development credit and financial assistance.

(9) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(10) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the Treasury for the purposes the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929(a)) and the Rural Housing Insurance Fund as authorized by title V of the Housing Act of 1949 (41 U.S.C. 1487).

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

§ 2.51 Deputy Under Secretary for Food Safety.

Pursuant to § 2.18, and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food Safety to the Deputy Under Secretary for Food Safety, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services.

§ 2.53 Administrator, Food Safety and Inspection Service.

(a) *Delegations.* Pursuant to § 2.18, the following delegations of authority are made by the Under Secretary for Food Safety to the Administrator, Food Safety and Inspection Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(iii) Egg Products Inspection Act, except for the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(iv) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(v) Humane Slaughter Act (7 U.S.C. 1901–1906); and

(vi) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to wholesomeness of meat and poultry and products thereof and inspection of egg and egg products.

(3) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(4) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(5) Administer the National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

(6) Administer and conduct a food safety research program (7 U.S.C. 427).

(7) Coordinate with the Animal and Plant Health Inspection Service the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(8) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(b) [Reserved]

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

§ 2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.

Pursuant to § 2.19(a), subject to reservations in § 2.19(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food, Nutrition, and Consumer Services to the Deputy Under Secretary for Food, Nutrition and Consumer Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Food, Nutrition, and Consumer Services.

§ 2.57 Administrator, Food and Consumer Service.

(a) *Delegations.* Pursuant to § 2.19(a)(1), (a)(2) and (a)(5), subject to reservations in § 2.19(b)(1), the following delegations of authority are made by the Under Secretary for Food, Nutrition, and Consumer Services to the Administrator, Food and Consumer Service:

(1) Administer the following legislation:

(i) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(ii) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(iii) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(iv) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. No. 103–448).

(2) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(i) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(ii) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(iii) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation;

(iv) Section 9 of the Act of September 6, 1958 (7 U.S.C. 1431b);

(v) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(vi) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(vii) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(viii) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(ix) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(x) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(xi) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. No. 97–98);

(xii) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(xiii) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(xiv) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(3) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(4) In connection with the functions assigned in paragraphs (a)(1), (a)(2), and (a)(3) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(5) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(6) Authorize defense emergency food stamp assistance.

(7) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(8) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(9) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(10) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(11) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(12) Serve as a consumer ombudsman and communication link between consumers and the Department.

(13) Approve the designation of agency Consumer Affairs Contacts.

(b) [Reserved]

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

§ 2.59 Deputy Under Secretaries for Natural Resources and Environment.

Pursuant to § 2.20(a), subject to reservations in § 2.20(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Natural Resources and Environment to the Deputy Under Secretaries for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Natural Resources and Environment. Provided, that, except in the absence of both the Under Secretary and a Deputy Under Secretary, this authority shall exercised by the respective Deputy Under Secretary only with respect to that area or responsibility assigned to him or her.

§ 2.60 Chief, Forest Service.

(a) *Delegations.* Pursuant to § 2.20(a)(1), (a)(2), (a)(6), (a)(7)(ii) and (a)(8), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well being).

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 481) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 401(a)).

(8) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research; renewable resource environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and

urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(17) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control program (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(23)(i) (A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands:

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b-1);

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a-h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Farm Service Agency in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(26) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(27) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(28) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(29) [Reserved]

(30) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(31) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(32) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a-558d, 558a note).

(33) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(34) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(35) Represent USDA on the National Response Team on hazardous spills pursuant to Pub. L. No. 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(36) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(37) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 261.70, issue technical amendments and corrections to final rules issued by the Secretary or Under Secretary for Natural Resources and Environment, and issue proposed and final rules necessary and appropriate to carry out title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215) with regard to National Forest System Lands.

(38) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(39) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(40) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(41) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendment, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(42) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(43) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the "Federal Land Manager" pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(44) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

(45) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(46) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided in 36 CFR 261.70 and § 2.60(a)(37).

(2) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3,000 acres acquired under or subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(3) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial

agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), and Executive Order 11609, 3 CFR, 1971–1975 Comp., p. 586).

(4) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249) and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(5) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(6) Approval of acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) of $250,000 or more in value for national forest purposes.

§ 2.61 Chief, Natural Resources Conservation Service.

(a) *Delegations.* Pursuant to § 2.20 (a)(1), (a)(3), (a)(5), (a)(6), (a)(7)(ii) and (a)(8), subject to reservations in § 2.20(b)(1), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Natural Resources Conservation Service:

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Provide national leadership in evaluating and coordinating land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 4201 note), except as otherwise delegated to the Administrator, Agricultural Research Service in § 2.65(a)(80) and the Administrator, Cooperative State Research, Education, and Extension Service in § 2.66(a)(76).

(3) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590a–f, 1–1, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetroplitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*2*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the Watershed Protection and Flood Prevention Programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1, except for responsibilities assigned to the Forest Service;

(ii) The emergency flood control work under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service;

(iii) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service;

(iv) The pilot watershed projects under 16 U.S.C. 590a–f, and 16 U.S.C. 1001–1009, except for responsibilities assigned to the Forest Service;

(v) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Rural Housing and Community Development Service and the Forest Service;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201 *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Farm Service Agency.

(5) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Rural Utilities Service.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*), except for responsibilities assigned to other USDA agencies.

(9) Administer Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(10) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c) including:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(13) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801 *et seq.*), including responsibilities for:

(i) the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(ii) technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(iii) the Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(iv) the Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(v) the Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(16) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(17) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(18) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(19) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(20) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(21) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural lands and water.

(22) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), except for responsibilities assigned to the Forest Service.

(23) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary

assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622) and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlement, but excluding section 122(b)(1) of the Act (42 U.S.C. 9633(b)(1)), related to mixed funding agreements.

(24) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(2) Approving additions to authorized Resource Conservation and Development Projects that designate new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance, pursuant to 16 U.S.C. 590a-f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(3) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

§ 2.63 Deputy Under Secretary for Research, Education, and Economics.

Pursuant to § 2.21(a), subject to reservations in § 2.21(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Research, Education, and Economics, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Research, Education, and Economics.

§ 2.65 Administrator, Agricultural Research Service.

(a) *Delegations.* Pursuant to § 2.21(a)(1), (a)(3) and (a)(5) through (a)(7), subject to reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Agricultural Research Service:

(1) Coordinate USDA policy relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(2) Conduct research related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(3) Conduct research on the control of undesirable species of honeybees in cooperation with specific foreign governments (7 U.S.C. 284).

(4) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(5) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(6) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(7) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(8) Conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery

except as otherwise delegated in §§ 2.22(a)(1)(ii) and 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201 and 2204).

(9) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(10) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(11) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(12) Make facilities grants and conduct research under the IR–4 program (7 U.S.C. 450i(d) and (e)).

(13) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(14) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the by-products thereof (7 U.S.C. 1292).

(15) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(16) Conduct research to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(17) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(18) Provide national leadership and support for research programs and other research activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(19) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(20) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(21) Conduct program evaluations to improve the administration and effectiveness of agricultural research and education programs (7 U.S.C. 3317).

(22) Enter into contracts, grants, or cooperative agreements to further research programs and library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(23) Enter into cost-reimbursable agreements relating to agricultural research, teaching and to further library and related information programs supporting research, extension and teaching programs in the food and agricultural sciences (7 U.S.C. 3319a).

(24) Conduct research for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(25) Conduct research on potential uses for compost from agricultural wastes, including evaluating the application of compost on soil, plants, and crops (7 U.S.C. 3130).

(26) Reserved.

(27) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research activities (7 U.S.C. 3291).

(28) Perform research and development at aquacultural research and development centers (7 U.S.C. 3322).

(29) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(31) Conduct research to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(32) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841).

(33) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(34) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(35) Conduct research on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(36) Conduct research in the control and eradication of exotic pests (7 U.S.C. 5883).

(37) Conduct research to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(38) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(39) Establish and coordinate USDA programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(40) Conduct research for the development of technology to determine animal lean content (7 U.S.C. 5925).

(41) Conduct research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(42) Conduct research to develop production methods and commercial uses of mesquite (7 U.S.C. 5925).

(43) Conduct research to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(44) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(45) Conduct basic and applied research in the development of new commercial products from natural plant materials (7 U.S.C. 5925).

(46) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(47) Coordinate USDA policy and programs relating to global climate change (7 U.S.C. 6701–6703).

(48) Coordinate Departmental policies under the Toxic Substances Control Act (15 U.S.C. 2601–2629).

(49) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste

Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(50) Perform research and administer grants for research and development in aquaculture (16 U.S.C. 2804).

(51) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices of real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(52) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(53) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(54) Conduct research activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(55) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(56) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(57) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18840, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)), as will insure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE.; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318 *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(58) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(59) Provide management support services for the Economic Research Service, the Cooperative State Research, Education and Extension Service, and the National Agricultural Statistics Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, ADP support, and related administrative services.

(60) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(61) Carry out research activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(62) Perform food and agricultural research in support of functions assigned to the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(63) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(64) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(iii) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(65) The authority in paragraph (a)(64) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Coordinate nutrition education research and professional education projects within the Department; and

(iv) Maintain data generated on food composition in a National Nutrient Data Bank.

(66) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(67) Conduct a program of nutrition education research.

(68) Provide staff support to the Under Secretary for Research, Education, and Economics related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Pub. L. No. 101–445, 7 U.S.C. 5301 *et seq.*

(69) Obtain and furnish excess property to eligible recipients for use in the conduct of research and extension programs.

(70) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(71) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities in cooperation with the Extension Service (7 U.S.C. 950aa–1).

(72) Develop and maintain library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(73) Accept gifts and order disbursements from the Treasury for the benefit of the National Agricultural Library or for the carrying out of any of its functions (7 U.S.C. 2264–2265).

(74) Provide for the dissemination of appropriate rural health and safety information resources possessed by the National Agricultural Library Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(75) Provide national leadership in the development and maintenance of library and related information systems and other activities to support the research, extension, and teaching programs in the food and agricultural sciences pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 and 3121).

(76) Administer the programs and services of the National Agricultural Library consistent with its charge to serve as the primary agricultural information resource of the United States and enter into agreements and receive funds from various entities to conduct National Agricultural Library activities (7 U.S.C. 3125a).

(77) Provide and distribute information and data about Federal, State, local, and other rural development assistance programs and services available to individuals and organizations. To the extent possible, the National Agricultural Library shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(78) Assemble and collect food and nutrition educational materials, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(79) Conduct program evaluations to improve the administration and efficacy of the National Agricultural Library and related information systems in the food and agricultural sciences (7 U.S.C. 3317).

(80) Administer the National Agricultural Library, including the farmland information center, pursuant to section 1544(b) of the Farmland Protection Policy Act (7 U.S.C. 4205(b)).

(81) Support Department water programs through participation in State water quality coordination programs and dissemination of agrichemical information (7 U.S.C. 5503–5506).

(82) Provide a repository of agriculture and ground water quality planning information (7 U.S.C. 5505).

(83) Disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(84) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(85) Represent the Department in international organizational activities and on international technical committees concerned with library and information science activities.

(86) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews and other analytical information tools.

(87) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(88) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(89) Copy and deliver on demand selected articles and other materials from the National Agricultural Library's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976 (17 U.S.C. 106, 107 and 108).

(90) Formulate, write, or prescribe bibliographic and technically related standards for the library and information systems of USDA.

(91) Assure the acquisition, preservation, and accessibility of all information concerning food and

agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(92) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(b) [Reserved]

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(1) and (a)(3), subject to the reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Extension to the Administrator, Cooperative State Research, Education, and Extension Service.

(1) Administer research and technology development grants related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(2) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(3) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(4) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(5) Support agricultural research at eligible institutions in the States through provision of Federal-grant funds to help financial physical research facilities (7 U.S.C. 390–390k).

(6) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i(e)).

(7) Administer a program of competitive grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for research to further USDA programs (7 U.S.C. 450i(b)).

(8) Administer a program of special grants to carry out research to facilitate or expand promising breakthroughs in areas of food and agricultural sciences and to facilitate or expand ongoing State-Federal food and agricultural research programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i (c) and (d)).

(9) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(10) Administer, in cooperation with the States, a cooperative rural development and small farm research and extension program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(11) Provide national leadership and support for cooperative research and extension programs and other cooperative activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(12) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(13) Administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(14) Administer the National Food and Agricultural Sciences Teaching Awards program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(15) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohol and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(16) Administer a grant, in consultation with the Agricultural Research Service, for the establishment of a food science and nutrition research center for the Southeast Region of the United States (7 U.S.C. 3174).

(17) Conduct a program of grants to States to support continuing animal health and disease research programs under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(18) Support continuing agricultural and forestry research and extension, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(19) Administer grants to 1890 land-grant colleges, including Tuskegee University, to help finance and upgrade agricultural and food science facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222(b)–3223).

(20) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research and extension activities (7 U.S.C. 3291).

(21) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(22) Conduct program evaluations to improve the administration and efficacy of the cooperative research grants and extension programs involving State agricultural experiment stations, cooperative extension services, and colleges and universities (7 U.S.C. 3317).

(23) Enter into contracts, grants, or cooperative agreements to further research, extension or teaching activities in the food and agricultural sciences (7 U.S.C. 3318)

(24) Enter into cost-reimbursable agreements relating to agricultural research, extension or teaching activities (7 U.S.C. 3319a).

(25) Provide technical assistance to farm owners and operators, marketing cooperatives, and others in the development and implementation of a research and pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(26) Administer an aquacultural assistance program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; conducting a program of extension and demonstration centers; and making grants to States to formulate aquaculture development plans for the production and marketing of aquaculture species and products (7 U.S.C. 3322).

(27) Administer grants to further develop and expand aquaculture research facilities for intensive water recirculating aquaculture systems (7 U.S.C. 3323).

(28) Administer a cooperative rangeland research program (7 U.S.C. 3331–3336).

(29) Administer grants for basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Administer programs and conduct projects in cooperation with other agencies for research and education on sustainable agriculture (7 U.S.C. 5811–5813).

(31) Administer a cooperative research and extension program to optimize crop and livestock production potential in integrated resource management and integrated crop management systems (7 U.S.C. 5821).

(32) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(33) Administer a cooperative extension program on agricultural weather forecasts and climate information for agricultural producers and administer a grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(34) In cooperation with the Agricultural Research Service, administer competitive research grants regarding the production, preparation, processing, handling, and storage of agriculture products (7 U.S.C. 5871–5874).

(35) Administer a grants and contracts program on integrated pest management including research to benefit floriculture and administer an extension program developed for integrated pest management (7 U.S.C. 5881).

(36) Administer a grants program to States on the control of infestations and eradication of exotic pests (7 U.S.C. 5883).

(37) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(38) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(39) Administer a competitive grants program in support of the development of a plant genome mapping program (7 U.S.C. 5924).

(40) Support research related to the development of new commercial products derived from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(41) Administer a competitive grants program to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(42) Administer a competitive grants program to investigate enhanced selection and processing techniques of prickly pears (7 U.S.C. 5925).

(43) Support research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(44) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(45) Administer a grants program to States on immunoassay, as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(46) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(47) Administer a competitive grants program, in consultation with the Agricultural Research Service, to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(48) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(49) Support research on the effects of global climate change in agriculture and forestry, including mitigation of the effects on crops of economic significance, and on the effects of the emissions of certain gases on global climate change (7 U.S.C. 6702).

(50) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)-(k)).

(51) Administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a-8).

(52) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(53) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural responsibilities within the Department (16 U.S.C. 2805).

(54) Administer extension education programs in aquaculture and administer grants related to research and development in aquaculture (16 U.S.C. 2806).

(55) Coordinate research by cooperating State research institutions and administer education and information activities assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(56) Provide management support services to agencies reporting to the Under Secretary for Research, Education, and Economics in the administration of discretionary grants.

(57) Represent the Department on the Federal Interagency Council on Education.

(58) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(59) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(60) Administer education programs for the users and dealers of agrichemicals (7 U.S.C. 5506).

(61) Administer a cooperative agricultural extension program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(62) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(63) Conduct educational and demonstration work related to the distribution and marketing of a agricultural products under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

(64) Administer a competitive grant program for non-profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(65) Administer a nutrition education program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(66) Administer a grants program for rural health and safety education (7 U.S.C. 2662).

(67) Administer a rural economic and business development program to employ specialists to assist individuals in business activities (7 U.S.C. 2662).

(68) Administer a national program to provide rural citizens with training to increase their leadership abilities (7 U.S.C. 2662).

(69) Administer a competitive grant program for financially stressed farmers, dislocated farmers, and rural families (7 U.S.C. 2662(f)).

(70) Administer a grant program to improve the rural health infrastructure (7 U.S.C. 2662 note).

(71) Administer a competitive grant program to establish demonstration areas for rural economic development (7 U.S.C. 2662a).

(72) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(73) Identify and compile information on methods of composting agricultural wastes and its potential uses and develop educational programs on composting (7 U.S.C. 3130).

(74) Administer a national food and human nutrition extension program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(75) Make grants, under such terms and conditions as the Administrator determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(76) Design educational programs, implement, and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland pursuant to section 1544(a) of the Farmland Protection Policy Act (7 U.S.C. 4205(a)).

(77) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(78) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(79) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(80) Establish a national pesticide resistance monitoring program (7 U.S.C. 5882).

(81) Conduct educational programs on the biology and behavior of chinch bugs (7 U.S.C. 5884).

(82) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(83) Administer competitive grants to States to establish a pilot project to coordinate food and nutrition education programs (7 U.S.C. 2027(a) and 5932).

(84) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(85) Conduct educational and demonstrational work in cooperative farm forestry programs (16 U.S.C. 568).

(86) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(87) Conduct forestry and natural resource education programs, including guidelines for technology transfer (16 U.S.C. 1674).

(88) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(89) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(90) Implement and conduct an educational program to assist the development of urban and community forestry programs (16 U.S.C. 2105).

(91) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(92) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(93) Conduct demonstrational and promotional activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(94) Provide leadership and direct assistance in planning, conducting, and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(95) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity (part 18 of this title).

(96) Carry out demonstration and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(97) Provide educational and technical assistance in implementing and administering the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509, 16 U.S.C. 3831–3844).

(b) [Reserved]

§ 2.67 Administrator, Economic Research Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(3), (a)(8) and (a)(9), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Economic Research Service:

(1) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(2) Conduct economic and social science research and analyses relating to:

(i) food and agriculture situation and outlook;

(ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(v) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(3) Perform economic and other social science research under section 104(b) (1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704(b)(1), (3)).

(4) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(5) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio and television.

(6) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Office of International Cooperation and Development, USDA, international organizations (limited to agreements either involv g no exchange of funds or involving di: rsements by the agency to the cooper: or), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(7) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(8) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning estimates of supplies of agricultural commodities and evaluation of requirements therefor; food and agricultural aspects of economic stabilization and economic research; and coordination of energy programs.

(9) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(10) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(11) Provide Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans; and

(v) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(11) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from the departments and agencies of the Federal Government pursuant to interagency agreements.

(12) Represent the Under Secretary for Research, Education, and Economics at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy and other governmental departments and agencies.

(13) Provide the Under Secretary for Research, Education, and Economics with such assistance as he may request to perform the duties delegated to him concerning energy.

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(3) and (a)(8), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, National Agricultural Statistics Service:

(1) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 951, and 2204).

(2) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1905, and 2072).

(3) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(4) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning coordination of damage assessment; and food and agricultural aspects of agricultural statistics.

(5) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(6) Enter cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(7) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension, and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and, with the concurrence of the Foreign Agricultural Service, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

Subpart L—Delegations of Authority by the Chief Economist

§ 2.70 Deputy Chief Economist.

Pursuant to § 2.29, the following delegation of authority is made by the Chief Economist to the Deputy Chief Economist, to be exercised only during the absence or unavailability of the Chief Economist: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Economist.

§ 2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.

(a) *Delegations.* Pursuant to § 2.29(a)(2), the following delegations of authority are by the Chief Economist to the Director, Office of Risk Assessment and Cost-Benefit Analysis:

(1) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the **Federal Register** as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e)

(2) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

§ 2.72 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* Pursuant to § 2.29 (a)(3) through (a)(7), the following delegations of authority are made by the Chief Economist to the Chairman, World Agricultural Outlook Board:

(1) *Related to food and agriculture outlook and situation.* (i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(2) *Related to weather and climate.* (i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(3) *Related to interagency commodity estimates committees.* (i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(4) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(5) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

Subpart M—Delegations of Authority by the Chief Financial Officer

§ 2.75 Deputy Chief Financial Officer.

Pursuant to § 2.28, the following delegation of authority is made by the Chief Financial Officer to the Deputy Chief Financial Officer, to be exercised only during the absence or unavailability of the Chief Financial Officer: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

§ 2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.

Pursuant to § 2.22(a), subject to reservations in § 2.22(b), and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Marketing and Regulatory Programs to the Deputy Assistant Secretary for Marketing and Regulatory Programs, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Marketing and Regulatory Programs.

§ 2.79 Administrator, Agricultural Marketing Service.

(a) *Delegations.* Pursuant to § 2.22 (a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(2) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(i) Studies of facilities and methods used in physical distribution of food and other farm products;

(ii) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(iii) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(3) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(4) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(5) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(6) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies and programs for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(ii) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(iii) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(iv) [Reserved]

(v) Naval Stores Act (7 U.S.C. 91–99);

(vi) Tobacco Inspection Act (7 U.S.C. 511–511q);

(vii) Wool Standards Act (7 U.S.C. 415–415d);

(viii) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a-608e, 610, 612, 614, 624, 671–674);

(ix) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as specified in § 2.43(a)(24);

(x) Export Apple and Pear Act (7 U.S.C. 581–590);

(xi) Export Grape and Plum Act (7 U.S.C. 591–599);

(xii) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(xiii) Perishable Agricultural Commodities Act (7 U.S.C. 499a-499s);

(xiv) Produce Agency Act (7 U.S.C. 491–497);

(xv) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(xvii) Tobacco Statistics Act (7 U.S.C. 501–508);

(xxii) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(xxiii) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(xxiv) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as specified in § 2.43(a)(24);

(xxv) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371-2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(xxvi) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as specified in § 2.43(a)(24);

(xxvii) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as specified in § 2.43(a)(24);

(xxviii) [Reserved]

(xxix) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as specified in §§ 2.42(a)(25) and 2.43(a)(24);

(xxxi) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated in § 2.43(a)(24);

(xxxii) Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918), except as delegated in §§ 2.42(a)(29) and 2.43(a)(24);

(xxxiii) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated in § 2.43(a)(24);

(xxxiv) Egg Products Inspection Act relating to the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(xxxv) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(xxxvi) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(xxxvii) In carrying out the procurement functions in paragraphs (a)(8) (xxxv) and (xxxvi) of this section, the Administrator, Agricultural Marketing Service shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(xxxviii) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693);

(xxxix) The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819), except as specified in § 2.43(a)(24);

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616);

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(xlii) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(xliv) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(xlv) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis

in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(xlvi) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as specified in § 2.43(a)(24);

(xlvii) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as specified in § 2.43(a)(24);

(xlviii) Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as specified in § 2.43(a)(24);

(xlix) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as specified in § 2.43(a)(24);

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(li) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(lii) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(liii) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(liv) Pesticide Recordkeeping (7 U.S.C. 136i–l) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(lv) the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(lvi) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(9) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Administrator, Agricultural Marketing Service and charge user fees therefore, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(10) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Assistant Secretary for Marketing and Regulatory Programs:

(1) Taking final action on regulations under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A)); section 12(a) of the Cotton Research and Promotion Act (7 U.S.C. 2111(a)); section 311(a) of the Potato Research and Promotion Act (7 U.S.C. 2620(a)); section 118(a) of the Dairy Production Stabilization Act of 1983, as amended, (7 U.S.C. 4509(a)); section 1625(a) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4814(a)); section 1650(a) of the Watermelon Research and Promotion Act (7 U.S.C. 4909(a)); section 10(a) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4609(a)); section 14(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2713(a)); section 1714(a) of the Floral Research and Consumer Information Act (7 U.S.C. 4313(a)); section 1710(a) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409(a)); section 1913(a) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6008(a)); section 1927(a) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6106(a)); section 1957(a) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6206(a)); section 1971(a) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6306(a)); section 1999K(a) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6410(a)); and section 7 of the Sheep Promotion, Research, and Information Act (7 U.S.C. 7106).

(2) Issuing, amending, terminating, or suspending any marketing agreement or order or any provision thereof under the Agricultural Marketing Agreement Act of 1937; the Cotton Research and Promotion Act; the Potato Research and Promotion Act; subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended; the Pork Promotion, Research, and Consumer Information Act of 1985; the Beef Research and Information Act, as amended; the Watermelon Research and Promotion Act; the Honey Research, Promotion, and Consumer Information Act; the Floral Research and Consumer Information Act; the Egg Research and Consumer Information Act; the Wheat and Wheat Foods Research and Nutrition Education Act; the Pecan Promotion and Research Act of 1990; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Lime Research, Promotion, and Consumer Information Act of 1990; the Soybean Promotion, Research, and Consumer Information Act; the Fluid Milk Promotion Act of 1990; the Organic Foods Production Act of 1990; and the Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* Pursuant to § 2.22 (a)(2), (a)(6) through (a)(9), subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service: Exercise functions of the Secretary of Agriculture under the following authorities:

(1) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service, nor an authority to represent the Department of Agriculture in interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(2) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the gypsy moth program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

(3) The Mexican Border Act, as amended (7 U.S.C. 149).

(4) The Golden Nematode Act (7 U.S.C. 150–150g).

(5) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj).

(6) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(7) The Terminal Inspection Act, as amended (7 U.S.C. 166).

(8) The Honeybee Act, as amended (7 U.S.C. 281–286).

(9) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656).

(10) Tariff Act of June 17, 1930, as amended, section 306 (19 U.S.C. 1306).

(11) Act of August 30, 1890, as amended (21 U.S.C. 102–105).

(12) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130).

(13) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1).

(14) Act of June 16, 1948 (21 U.S.C. 114e–114f).

(15) Act of September 6, 1961 (21 U.S.C. 114g–114h).

(16) Act of July 2, 1962 (21 U.S.C. 134–134h).

(17) Act of May 6, 1970 (21 U.S.C. 135–135b).

(18) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618).

(19) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429).

(20) The responsibilities of the United States under the International Plant Protection Convention.

(21) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159).

(22) Horse Protection Act (15 U.S.C. 1821–1831).

(23) 28 Hour Law, as amended (49 U.S.C. 80502).

(24) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902).

(25) Purebred animal duty-free-entry provision of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01).

(26) Virus-Serum-Toxin Act (21 U.S.C. 151–158).

(27) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a).

(28) The Agricultural Marketing Act of 1946, section 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine.

(29) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests.

(30) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(31) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814).

(32) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

(33) Executive Order 11987, 3 CFR, 1977 Comp., p. 116.

(34) Section 101(d), Organic Act of 1944 (7 U.S.C. 430).

(35) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813).

(36) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378).

(37) Title III (and title IV to the extent that it relates to activities under title III) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610).

(38) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260).

(39) Provide management support services for the Grain Inspection, Packers and Stockyards Administration, and the Agricultural Marketing Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, and related administrative services.

(40) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and other governmental and private organizations.

(41) The Act of March 2, 1931 (7 U.S.C. 426–426b).

(42) The Act of December 22, 1987 (7 U.S.C. 426c).

(43) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries (7 U.S.C. 3291(a)(3)).

(44) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(45) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(46) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended.

(47) The provisions of 35 U.S.C. 156.

(48) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(49) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Marketing and Regulatory Programs: The authority to make determinations under 35 U.S.C. 156 as to whether an applicant acted with due diligence.

§ 2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

(a) *Delegations.* Pursuant to §§ 2.22 (a)(3) and (a)(9), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Grain Inspection Service, Packers and Stockyards Administration:

(1) Administer the United States Grain Standards Act, as amended (7 U.S.C. 71–87h).

(2) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities related to grain.

(3) Administer the Packers and Stockyards Act, 1921, as amended and supplemented.

(4) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1665, 1681–1681t), with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(5) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(6) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(7) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) [Reserved]

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

§ 2.83 Deputy Assistant Secretary for Congressional Relations.

Pursuant to § 2.23, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers which are now or which may hereafter be delegated to the Assistant Secretary for Congressional Relations.

§ 2.85 Director, Office of Congressional and Intergovernmental Relations.

(a) *Delegations.* Pursuant to § 2.23, the following delegations of authority are made by the Assistant Secretary for Congressional Relations to the Director, Office of Congressional and Intergovernmental Relations:

(1) Exercise responsibility for coordination of all congressional matters in the Department.

(2) Maintain liaison with the Congress and the White House on legislative matters of concern to the Department.

(3) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(i) National Association of State Departments of Agriculture;

(ii) Office of Intergovernmental Relations (Office of Vice President);

(iii) Advisory Commission on Intergovernmental Relations;

(iv) Council of State Governments;

(v) National Governors Conference;

(vi) National Association of Counties;

(vii) National League of Cities;
(viii) International City Managers Association;
(ix) U.S. Conference of Mayors; and
(x) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(4) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(5) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(6) Act as the department representative for Federal executive board matters.

(7) Administer the implementation of the National Historic Preservation Act of 1966, National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(8) Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.87 Deputy Assistant Secretary for Administration.

Pursuant to § 2.24(a), subject to reservations in § 2.24(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration.

§ 2.89 Director, Office of Civil Rights Enforcement.

(a) *Delegations.* Pursuant to § 2.24(a)(8), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Civil Rights Enforcement:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs;

(ii) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(iii) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(iv) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(v) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(vi) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(vii) Actions to develop and implement the Department's Federal Women's Programs; and

(viii) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department of Agriculture pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department of Agriculture pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations as to complaints filed under subpart B of part 15 of this title.

(13) Conduct investigations and compliance reviews Departmentwide.

(14) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(15) Perform staff work for the Director of Equal Employment Opportunity including coordination of the Department's affirmative employment program, special emphasis programs, Federal equal opportunity recruitment program, equal employment opportunity evaluations, and development of policy.

(16) Provide equal employment opportunity services for managers and employees in the Departmental staff offices.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(18) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial monitored group enrollment in Departmental programs and activities.

(19) Perform the EEO counseling function for the Department.

(20) Maintain liaison with historically black colleges and universities and other colleges and universities with substantial minority group enrollment, and assisting USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(22) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Perform staff work for the Director of Equal Employment Opportunity on the preparation of decisions on complaints of discrimination.

(25) Provide liaison on EEO matters concerning complaints and appeals with USDA agencies and Department employees.

(26) Investigate USDA EEO complaints, with authority to enter into and administer contracts for such investigations.

(27) Make final decisions on complaints and grievance appeals, except in those cases where the Director, Office of Civil Rights Enforcement has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(28) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(i) Was involved directly in the grievance; or

(ii) Made the informal decision; or

(iii) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(29) The provisions of paragraphs (a)(27) and (a)(28) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(b) [Reserved]

§ 2.90 Director, Office of Information Resources Management.

(a) *Delegations.* Pursuant to § 2.24 (a)(4) and (a)(6), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Information Resources Management:

(1) Assist the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), with the development of Departmental information resource management principles, policies and objectives.

(2) Coordinate with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the development and promulgation of Departmental information resources management standards, guidelines, rules, and regulations necessary to implement approved principles, policies, and objectives.

(3) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(4) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(5) Provide Departmentwide guidance and direction in all aspects of the USDA information management program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(6) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(7) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(8) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(9) Administer the Departmental records, forms, reports, and directives management programs, in coordination with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(10) Manage all aspects of the USDA telecommunications program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(11) Implement a program for applying information resources management technology to improve productivity in the Department.

(12) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(13) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(14) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(15) Provide automation, forms management, files management, directives management, and related services, with authority to take any action required by law or regulation to provide such services, for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such services as listed in paragraph (a)(15) of this section for any other officer or agency of the Department as may be agreed.

(16) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(17) Provide staff assistance as required for the Secretary, general officers, and other Department and agency officials.

(18) Provide related support services needed by the Department to carry out defense responsibilities.

(19) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(20) Review and make recommendations to the Assistant Secretary for Administration on proposed waivers to Federal Information Processing Standards (FIPS) pursuant to section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(b) [Reserved]

§ 2.91 Director, Office of Operations.

(a) *Delegations.* Pursuant to § 2.24 (a)(3), (a)(4) and (a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(i) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(ii) Socioeconomic programs relating to contracting, excepting those matters otherwise vested by statute in the Director of Small and Disadvantaged Business Utilization;

(iii) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(iv) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(v) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(vi) Mail management;

(vii) Motor vehicle fleet and other vehicular transportation;

(viii) Transportation of things (traffic management);

(ix) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(x) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601 *et seq.*); and

(xi) Development and implementation of energy management actions related to the internal operations of the Department. Maintain liaison with other Government agencies in these matters.

(2) Operate, or provide for the operation of, centralized Departmental services to provide printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(3) Exercise the following special authorities:

(i) The Director, Office of Operations, is designated as the Department's Debarring Officer, and authorized to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(ii) Conduct liaison with the Office of the **Federal Register** (1 CFR part 16), including the making of required certifications pursuant to 1 CFR part 18;

(iii) Maintain custody and permit appropriate use of the official seal of the Department;

(iv) Establish policy for the use of the official flags of the Secretary and the Department;

(v) Coordinate collection of historical material for Presidential Libraries;

(vi) Oversee the safeguarding of unclassified materials designated "For Official Use Only;"

(vii) Make determinations under 48 CFR 14.406–3(a)–(d), related to mistakes in bids alleged after opening of bids and before award. Except for the authority to permit withdrawal of bids under 48 CFR 14.406–3(c), this authority may not be redelegated; and

(viii) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election allowed by 26 CFR 1.6050M–1(d)(5)(i).

(4) Provide procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such services as listed in paragraph (a)(4) of this section for any other officers or agencies of the Department as may be agreed.

(5) Exercise full Departmentwide contracting and procurement authority for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies, subject to the review of the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This authority includes the promulgation of Departmental directives regulating the management of contracting and procurement functions.

(6) Provide related support services needed by the Department to carry out defense responsibilities.

(7) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(8) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(9) Exercise authority under the Department's Acquisition Executive (Assistant Secretary for Administration) to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions. This delegation includes the authority to:

(i) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(ii) Review the program management of each major system acquisition;

(iii) Designate the program manager for each major system acquisition; and

(iv) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(10) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, the Director, Office of Operations, is designated as the Senior Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(iii) Designating contracting officers;

(iv) Establishing clear lines of contracting authority;

(v) Evaluating and monitoring the performance of the Department's procurement system;

(vi) Managing and enhancing career development of the procurement work force;

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards;

(ix) Certifying to the Secretary that the procurement system meets approved standards;

(x) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(xi) Redelegating, as appropriate, the authority in paragraph (a)(10)(i) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(xii) Redelegating the authorities in paragraphs (a)(10) (ii), (iii), (iv), (vi), and (vii) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(11) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(12) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(13) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) [Reserved]

§ 2.92 Director, Office of Personnel.

(a) *Delegations.* Pursuant to § 2.24 (a)(4), (a)(5) and (a)(7), subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director of Personnel:

(1) Authority to formulate and issue Department policy, standards, rules and regulations relating to personnel.

(2) Provide personnel management procedural guidance and operational instructions.

(3) Design and establish personnel data systems.

(4) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(5) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(6) Receive, review, and recommend action on all requests for the Secretary's or Assistant Secretary for Administration's approval in personnel matters.

(7) Make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such adverse action is not being decided in a timely manner.

(8) Represent the Department in personnel matters in all contacts outside the Department.

(9) Specific authorities in the following operational matters:

(i) Authorize cash awards above $2,500;

(ii) Waive repayment of training expenses where employee fails to fulfill service agreement;

(iii) Establish or change standards and plans for awards to private citizens;

(iv) Execute, change, extend, or renew:

(A) Labor-Management Agreements; and

(B) Association of Management Officials or Supervisor's Agreements.

(v) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(vi) Change a position (with no material change in duties) from GS to a pay system other than a wage system, or vice versa;

(vii) Grant restoration rights, and release employees with administrative re-employment rights;

(viii) Change working hours for groups of 50 or more employees in the Washington, DC metropolitan area;

(ix) Authorize any mass dismissals of employees in the Washington, DC metropolitan area;

(x) Approve "normal line of promotion" cases in the excepted service where not in accordance with time-in grade criteria;

(xi) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(A) Was involved directly in the adverse action, or performance rating appeal; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xii) Make the final decision on all classification appeals from agency appellate decisions;

(xiii) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(xiv) Authorize all employment actions (except LWOP) for the following positions:

(A) Schedule C; and

(B) Administrative Law Judge.

(xv) Authorize employment actions (accessions or extensions) for the following:

(A) Employees whose records are flagged; and

(B) Contract services.

(xvi) Authorize employment actions (accessions or extensions and transfers) for the following:

(A) Persons with criminal or immoral records;

(B) Persons separated for misconduct, delinquency, or resignation to avoid such action; and

(C) Veterans with dishonorable or other than dishonorable discharge.

(xvii) Authorize adverse actions for positions in GS–14–15 and equivalent;

(xviii) Approve assignments of White House details;

(xix) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(xx) Authorize long-term training in programs which require Department-wide competition;

(xxi) Issue all Coordinated Federal Wage Systems (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, DC Metropolitan Area; and

(xxii) Initiate and take adverse action in cases involving a violation of the merit system.

(10) As used herein, the term personnel includes:

(i) Position management;

(ii) Position classification;

(iii) Employment;

(iv) Pay administration;

(v) Automation of personnel data and systems design;

(vi) Hours of duty;

(vii) Performance evaluation and standards;

(viii) Promotions;

(ix) Employee development;

(x) Incentive programs;

(xi) Leave;

(xii) Retirement;

(xiii) Program evaluation;

(xiv) Social security;

(xv) Life insurance;

(xvi) Health benefits;

(xvii) Unemployment compensation;

(xviii) Labor management relations;

(xix) Intramanagement consultation;

(xx) Security;

(xxi) Discipline; and

(xxii) Appeals.

(11) Provide personnel services, as listed in paragraph (a)(10) of this section, and organizational support services, with authority to take actions required by law or regulation for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration, except the National Finance Center; and

(iv) Provide such services as listed in paragraph (a)(11) of this section for any other officer or agency of the Department as may be agreed.

(12) Provide personnel services relating to defense responsibilities of the Department.

(13) The provisions of paragraphs (a)(9)(xiii) through (xvii) of this section shall not apply to positions in, or applicants for positions in, the Office of Inspector General.

(14) Maintain, review and update departmental delegations of authority.

(15) Authorize organizational changes which occur in:

(i) Departmental organizations:

(A) Service or office;

(B) Division (or comparable component); and

(C) Branch (or comparable component in departmental centers, only).

(ii) Field organizations:

(A) First organizational level; and

(B) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same requires approval in accordance with Departmental Regulation 1010–1, available from the Chief, Information Management Division, Office of Information Resources Management, Room 403–W, Administration Building, U.S. Department of Agriculture, Washington, DC 20250.

(16) Formulate and promulgate departmental organizational objectives and policies.

(17) Provide staff assistance and support to the Department's Committee Management Officer.

(18) Formulate policies and procedures on the establishment and management of committees in the Department.

(19) Consult with GSA and Departmental agencies on the establishment and reestablishment of advisory committees.

(20) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(21) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(22) Determine and/or provide Departmentwide technical services and regional staff support for the safety and health programs.

(23) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(24) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(25) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(26) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Administration: Authorize organizational changes occurring in a Department service or staff office which affect the overall structure of that service or office; i.e., require a change to that service or office's overall organization chart.

For Subparts A, B, C and D:

Dated: October 12, 1995.

Dan Glickman,

Secretary of Agriculture.

For Subpart E:

Dated: October 12, 1995.

Richard E. Rominger,

Deputy Secretary of Agriculture.

For Subpart F:

Dated: October 16, 1995.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

For Subpart G:

Dated: October 13, 1995.

Jill Long Thompson,

Under Secretary for Rural Economic and Community Development.

For Subpart H:

Dated: October 16, 1995.

Michael Taylor,

Acting Under Secretary for Food Safety.

For Subpart I:

Dated: October 17, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

For Subpart J:

Dated: October 18, 1995.

James R. Lyons,

Under Secretary for Natural Resources and Environment.

For Subpart K:

Dated: October 17, 1995.

Karl N. Stauber,

Under Secretary for Research, Education, and Economics.

For Subpart L:

Dated: October 17, 1995.

Keith J. Collin,

Chief Economist.

For Subpart M:

Dated: October 30, 1995.

Irwin T. David,

Acting Chief Financial Officer.

For Subpart N:

Dated: October 20, 1995.

Shirley R. Watkins,

Acting Assistant Secretary for Marketing and Regulatory Programs.

For Subpart O:

Dated: October 19, 1995.

P. Scott Sheare,

Acting Assistant Secretary for Congressional Relations.

For Subpart P:

Dated: October 18, 1995.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 95–27388 Filed 11–7–95; 8:45 am]

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Wednesday
November 8, 1995

Part III

Environmental Protection Agency

40 CFR Part 260, et al.

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Redefinition of On-Site; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 through 265, and 270

[EPA 530–Z–95–013; FRL–5325–5]

RIN 2050–AD90

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Redefinition of On-Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to Section 107 of the Federal Facility Compliance Act (FFCA) of 1992 which added a new subsection 3004(y) to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. section 6924(y)), EPA is today proposing a rule that identifies when conventional and chemical military munitions become a hazardous waste under RCRA, and that provides for the safe storage and transport of such waste. Today's proposal also amends existing regulations regarding emergency responses involving military munitions and other explosives. This amendment would apply to responses by non-military or private personnel, as well as by the military. The proposal also revises the definition of "on-site," which applies to all generators of hazardous waste.

DATES: Written comments on these proposed rules will be accepted until January 8, 1996.

ADDRESSES: Written comments (one original and two copies) should be addressed to: EPA RCRA Docket #F–95–MMP–FFFFF, Mail Code 5305W, 401 M Street SW, Washington, DC 20460. Comments also may be submitted electronically by sending electronic mail (e-mail) through the Internet system to: RCRA-Docket@epamail.epa.gov. All electronic comments must be submitted as an ascii file avoiding the use of special characters and any form of encryption. The comments should be identified with the above docket number.

The official action for this record will be kept in paper form. Accordingly, EPA will convert all documents received electronically into printed paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official record is the paper record kept in the RCRA Docket (see address above). (Comments submitted on paper will not be transferred to electronic format. These comments may be viewed only in the RCRA Docket as described here.)

Public comments and the supporting information used for this rule are available for public inspection and copying in the RCRA Information Center (RIC) located in room M2616 at the EPA address above. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327.

The RIC will be closed November 14–24, 1995 because it is relocating to Arlington, Virginia. Between November 14 and 24, 1995, special appointments can be made for viewing material in this docket by calling the above number. Beginning November 27, 1995, call 703–603–9230. After that date, the Docket will be physically located at: Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The mailing address remains the same as given above.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9 am and 6 pm EST, toll-free, at 800–424–9346; 703–412–9810 from Government phones or if in the Washington, DC local calling area; or 800–553–7672 for the hearing impaired; or Ken Shuster, U.S. EPA (5303W), 401 M St. SW., Washington, DC 20460, (703) 308–8759.

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I. Legal Authority

These regulations are proposed under authority of sections 2002, 3001–3007 (including 3004(y)), 3010, 7003, and 7004 of the Solid Waste Disposal Act of 1965, as amended, including amendments by RCRA and the FFCA (42 U.S.C. 6912, 6921–7, 6930, and 6973–4).

II. Background

A. Statutory Mandate

Section 107 of the Federal Facility Compliance Act (FFCA) of 1992 amended the Resource Conservation and Recovery Act (RCRA) by adding a new section 3004(y) that requires EPA to propose regulations, after consulting with the Department of Defense (DOD) and appropriate State officials, that identify when conventional and chemical military munitions become hazardous waste under RCRA, and that provide for the safe storage and transportation of such waste.

Over the years, the applicability of RCRA to military munitions has been the subject of considerable controversy. The Department of Defense has expressed concern that differing regulations or interpretations from State to State substantially undermine its ability to carry out its mission. DOD has particularly sought clarity in defining RCRA's application to military munitions storage and transport, the recycling or destruction of obsolete munitions, and immediate responses to emergencies involving explosives.[1] At the same time, citizens groups have expressed concern that many military activities involving munitions are insufficiently regulated. Congress amended RCRA to include section 3004(y) in response to these concerns.

Today's proposal responds to Congress's mandate in section 3004(y). In developing the proposal, EPA has consulted extensively with DOD and the States, as the statute requires. EPA has also met with and received comments from a consortium of citizens groups with particular interest in the environmental and human health impacts of military installations around the United States. In addition, representatives of the waste treatment industry have provided comments to EPA. Records of these meetings and information provided to EPA are included in the docket to today's rulemaking.

B. Issues Addressed in the Proposal

In developing today's proposal, EPA focused primarily on several key issues that have arisen in the implementation of the RCRA program at military installations, or that have been raised by DOD, States, or citizens groups. These issues are:

1. When does an unused munition become a RCRA "hazardous waste," potentially subject to RCRA permitting and technical management standards? All parties agree that the destruction of unused munitions is regulated under RCRA (if the munitions meet the definition of "hazardous"). But at what point in the process do stockpiled munitions slated for destruction first become subject to RCRA?

2. Should RCRA hazardous waste management standards apply to the use of munitions in weapons testing or military training exercises? Although EPA in the past has not regulated these activities under RCRA, it has been argued that military munitions are "discarded" during field exercises, and therefore should be subject to RCRA hazardous waste management standards. It has also been argued that certain activities associated with munitions training or testing—for example, the detonation of unexploded ordnance at a firing range—properly fall under RCRA jurisdiction.

3. How do RCRA hazardous waste regulations apply to emergencies involving explosive materials, including military munitions? DOD has expressed concern that current RCRA hazardous waste regulations may complicate responses by emergency personnel to unexploded ordnance and other emergencies.

4. In what way (if any) do RCRA requirements apply to unexploded ordnance and environmental contamination at military ranges and impact zones, especially ones that are closed?

5. Once it has been determined that a munition is a hazardous waste for regulatory purposes, what storage and transportation standards are needed to ensure protection of human health and the environment? DOD, in particular, expressed concern that certain RCRA standards are inconsistent with its internal regulations on munitions storage, and that the RCRA transportation requirements (including the manifest) are redundant with DOD controls.

Today's notice provides EPA's proposed resolution of these issues. The notice also proposes a new definition of "on-site," to reduce unnecessary paperwork requirements for hazardous wastes transported within large facilities, including military installations.

C. Solid Waste for Regulatory Purposes vs. Solid Waste for Statutory Purposes

In addressing the issues above, EPA carefully reviewed the RCRA statutory and regulatory definitions of "solid" and "hazardous" waste. To avoid confusion in today's proposal, EPA notes at the outset that the terms "solid waste" and "hazardous waste" have different meanings depending upon the context in which the terms appear. These terms are defined in both the statute and in the regulations implementing RCRA Subtitle C.

RCRA statutorily defines "solid waste" in section 1004, 42 U.S.C. 6903(27), in pertinent part, as follows:

> The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . .

42 U.S.C. 6903(27). The term "hazardous waste" is defined in the statute as those solid wastes that may "(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." 42 U.S.C. 6903(5).

The terms "solid waste" and "hazardous waste" are defined for purposes of the regulatory program under Subtitle C of RCRA at 40 CFR 261.2 (solid waste) and 40 CFR 261.3 (hazardous waste). Materials meeting these definitions are a subset of the materials meeting the statutory definitions. EPA regulations at 40 CFR 261.1(b)(1) make clear that the regulatory definition of "solid waste" applies only to wastes that are also hazardous for purposes of the regulations implementing subtitle C of RCRA. Accordingly, the statutory definition of solid waste is broader in scope than the regulatory definitions of the term. See also 40 CFR 261.1(b)(2).

In parts IV.A thru B.3 and B.5 of the preamble, EPA discusses the circumstances under which *unused* munitions in the military stockpile are considered to meet the definition of "solid waste" as defined in the *regulations* implementing Subtitle C of RCRA. Therefore, in this context the relevant definition of "solid waste" is the definition contained in the Subtitle C regulations. Unused military munitions meeting the regulatory definitions of "solid waste" could be regulated as hazardous waste and thus subject to full Subtitle C requirements.

In part IV. B.4. of the proposal EPA discusses the circumstances under which *discharged or fired* munitions meet the *statutory* definition of "solid waste". As explained below, these materials would not meet the regulatory definition of "solid waste" and thus would not be regulated as "hazardous waste". Nevertheless, these materials could be "solid waste" as defined by the statute. Therefore, in this context the relevant definition of "solid waste" is the statutory definition. Discharged or fired munitions that meet the statutory definition of "solid waste" are subject to RCRA's remedial statutory authority.

III. Summary of Proposed Rule

Today's proposal addresses: (1) when military munitions become a solid, and therefore potentially a hazardous waste, (2) what transportation and storage requirements apply to military munitions that become a hazardous

[1] EPA and DOD have developed a considerable body of interpretive guidance and memoranda addressing these issues. EPA's most recent general discussion of these issues is in a June 23, 1994 letter from Michael Shapiro, Director of the EPA Office of Solid Waste, to Patrick J. Meehan, Acting Assistant Deputy Under Secretary of Defense for Compliance. This letter and other relevant guidance are included in the docket to today's rulemaking.

waste, (3) how RCRA hazardous waste regulations apply to immediate responses to emergencies involving military munitions and other explosives, (4) what RCRA requirements apply to fired munitions, and (5) an amendment to the definition of "on-site," as it applies to hazardous waste generators.

On the issue of when a munition becomes a regulatory solid waste, today's proposal provides that *unused* military munitions in the military stockpile become solid waste when they are removed from storage in the stockpile for the purpose of disposal, or for treatment prior to disposal; when they are leaking or deteriorated to a point where they cannot be used or recycled; or when DOD or authorized Military Service personnel declare them to be a solid waste, whichever comes first. The proposal would make clear that munitions disposed of in the past, for example by burial at former military installations, are solid waste. At the same time, the proposal explicitly provides that use of munitions for their intended purpose (for example, in training exercises, or in activities associated with training, such as range clearance) does not constitute waste management regulated under RCRA.

The proposal also discusses alternate approaches to the regulation of unexploded ordnance and other munitions remaining at ranges after the range has been closed. Under the approach proposed in today's notice, these munitions would be considered statutory "solid waste," potentially subject to RCRA cleanup authorities, until DOD develops range cleanup standards, in consultation with EPA and with full opportunity for public participation. Under today's proposal, DOD's standards, once issued, would take precedence over RCRA.

The proposal would also codify EPA policy on immediate responses to emergencies involving munitions and other explosives. Under the proposal, immediate responses taken by trained personnel (whether military, other governmental, or private) would not be subject to RCRA permitting or other requirements. In addition, if emergency transportation of the explosive were necessary, this could occur without a RCRA manifest.

The proposal also includes new standards for military magazines or bunkers used to store hazardous waste munitions. These standards are designed to provide consistency between RCRA technical standards and DOD standards for munitions storage. In addition, today's proposal would exempt military munitions from RCRA manifest and other RCRA transportation requirements, if they are being shipped to other DOD facilities under DOD's munitions tracking system.

Finally, the proposal revises the definition of "on-site," so that hazardous waste generators may define on-site property to include all contiguous property (regardless of whether or not it is split by a road or right-of-way). This change will provide military installations and other large facilities (such as universities or large industrial complexes) greater flexibility in handling waste on site and will eliminate redundant paperwork requirements (e.g., by eliminating the manifest requirement).

IV. Section-by-Section Analysis

A. Definition of Military Munitions

Today's proposal includes a definition of "military munitions" (in § 260.10). This definition, which establishes the scope of today's rule, includes all types of ammunition products and their components, including conventional and chemical munitions, produced by or for the military for national defense and security. The definition lists a number of component examples, including propellants, explosives, pyrotechnics, and chemical and riot control agents; and product examples, including rockets, bombs, mines, grenades, artillery, and torpedoes. The definition excludes improvised explosive devices, for example, home-made bombs (which are non-military)[2] and nuclear weapons, devices, and components thereof managed under the Department of Energy's nuclear weapons program.

The proposed definition also clarifies that such military munitions may be under the control of the Department of Energy (DOE), the U.S. Coast Guard, the National Guard, or a private company producing the munitions under contract to or as an agent for DOD, as well as the Department of Defense.

EPA considered including in this rule non-nuclear components of munitions managed by DOE under its nuclear weapons program. Upon review, however, EPA has determined that section 107 of the FFCA does not contemplate the inclusion of nuclear weapons or their components within the scope of this rule. The statutory language and legislative history of § 107 demonstrates the intent of Congress that EPA develop regulations that address conventional and chemical munitions. No mention was made of nuclear weapons or their components. Furthermore, EPA recognizes that DOE's practices and procedures for the management of nuclear munitions under the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., as well as the potential impacts on DOE operations, are significantly different from those of DOD pertaining to conventional and chemical munitions.

For these reasons, EPA has decided not to include nuclear weapons components in today's proposal. Instead, the proposal addresses conventional and chemical weapons, as contemplated by § 107, and specifically does not apply to nuclear weapons or the components thereof managed under DOE's nuclear weapons program. Conventional or chemical munitions that DOE produces or manages for the military, however, would be subject to this proposed rule.

B. Definition of "Solid Waste" as It Applies to Military Munitions

RCRA section 3004(y) requires EPA to identify "when military munitions become hazardous waste for purposes" of Subtitle C of RCRA. In general, materials are considered to be "hazardous waste," for regulatory purposes, if: (1) the material is a "solid waste," as defined in 40 CFR 261.2, and (2) the material meets the definition of "hazardous waste" in 40 CFR 261.3. In today's proposal, EPA has focused on the first point—when munitions become a solid waste—and has not proposed to amend the definition of "hazardous waste" as it applies to munitions.

EPA has taken this approach because the controversy over when military munitions become regulated under RCRA Subtitle C hazardous waste standards has centered on the question of when munitions become "solid waste" under § 261.2, rather than on whether they are "hazardous waste" under § 261.3. Many military munitions meet the RCRA "ignitability" or "reactivity" characteristics, for example, because they are explosive (see 40 CFR 261.21 and 261.23 respectively).[3] In addition, other munitions are hazardous under the "toxicity" characteristic, because they contain high levels of lead or other toxic metals (see 40 CFR 261.24). EPA believes that the current definition of "hazardous waste" in 40 CFR 261.3 is adequate as it applies to

[2] Improvised explosive devices, or IEDs, are defined as non-standard explosive devices made from either military or non-military materials by non-military personnel.

[3] Some munitions are not "reactive." For example, in a memorandum of June 2, 1988, EPA stated that small arms ball ammunition of up to and including 0.50 calibers are not reactive within the meaning of RCRA. The Department of the Army has codified this position in Army Regulation 200–1, section 6–7(k).

waste munitions, and therefore proposes no change to 40 CFR 261.3.

Under 40 CFR 261.2 of the RCRA regulations, "solid waste" is defined as "discarded material." Section 261.2 (a) through (f) provides a detailed regulatory definition of this term. In particular, § 261.2(b) defines "discarded material" as materials that are abandoned by being disposed of; burned or incinerated; or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned. In today's notice, EPA proposes to add a new § 261.2(g) specifying how the regulatory term "discarded material" applies to unused military munitions. This proposed provision would address the regulatory definition of solid waste in the context of three specific categories of munitions: (1) unused munitions in the military stockpile, (2) used or fired munitions, and (3) munitions being used for their intended purpose.

Additionally, EPA proposes in new § 261.2(g)(4) to characterize munitions at closed or transferred ranges as statutory solid waste under RCRA section 1004(27). However, once DOD promulgated range cleanup regulations under its own standards, this section would be superseded.

1. Unused or Stockpiled Munitions

a. Status of Military Stockpile. According to DOD, the military services currently have 5.6 million tons of conventional munitions stored in magazines at installations within the United States. Of these munitions, more than 5.1 million tons (or more than 90%) are in an "active use" inventory, and therefore are available for use in training or war. At the same time, however, the Services have a significant volume of munitions in "demilitarization" accounts (for example, the Army's Resource Recovery and Disposition Account); munitions in these accounts are generally considered to be excess and unneeded, "unserviceable" (and needing further assessment or repair), or obsolete.[4]

According to DOD, approximately 440,000 tons of munitions are stored in demilitarization accounts; under DOD procedures, these materials first undergo evaluation to determine whether they can be returned to service, repaired, sold, or recycled. If these options are unavailable, the munition is then scheduled for destruction. DOD currently considers that its stockpile includes 48,000 tons of munitions scheduled for destruction.

EPA and DOD generally agree that munitions stored in the active use military stockpile do not meet the definition of "discarded material" or "solid waste" in 40 CFR 261.2, and therefore are not regulated under RCRA subtitle C. There is also general agreement that obsolete or excess munitions meet the regulatory definition of solid waste at the point when they are received for destruction or disposal—for example, at open burning/open detonation units or incinerators. Despite agreement on these points, however, there has been considerable discussion over whether and how RCRA standards apply to munitions slated for destruction before they are received at a treatment or disposal site.

This discussion has centered primarily on defining what event or munition status indicates a DOD "intent to destroy." EPA has had comparable discussions with industry over when commercial products become a solid waste. The Part 261 regulations regarding commercial products in storage rely largely on the "intent" of the owner to discard; over the years, EPA has sought to establish simple, consistent, and enforceable principles regarding the point at which commercial products are intended to be "discarded"—notably these are (1) when the products are removed from storage for disposal, or treatment prior to disposal, (2) when the owner declares them to be hazardous waste, and (3) when they are deteriorated or damaged (e.g., leaking) to the point they cannot be used, or reprocessed for beneficial use. In today's proposal EPA has sought to apply these general principles to military munitions.

In proposed § 261.2(g)(1)(i) through (iv), EPA clarifies this issue by identifying the specific circumstances under which an unused or stockpiled munition would be considered to be solid waste for regulatory purposes.

b. Proposed § 261.2(g)(1)(i)—Munitions that have previously been disposed of. Under proposed § 261.2(g)(1)(i), a munition becomes discarded, and therefore a solid waste when it is "abandoned by being disposed of, burned, or incinerated, or treated prior to disposal." Thus, open burning/ open detonation or incineration of unused munitions (except when done during an emergency response or during training in use of a product) is regulated under the RCRA subtitle C standards for hazardous waste, including the 40 CFR Part 270 permit requirements (assuming the waste munitions meet the § 261.3 definition of "hazardous waste"). Similarly, unused munitions that were buried or landfilled in the past are solid waste, and, if hazardous, they would become subject to applicable subtitle C regulation when unearthed and further managed. EPA emphasizes that this proposed section would not bring use of military munitions for their intended purposes—e.g., the firing of military rounds—within the scope of subtitle C. The use of a product (in this case a military munition), in EPA's view, is not a waste management activity and does not constitute abandonment for the purposes of proposed § 261.2(g)(1). ("Discarded material" in the context of munitions used at military firing ranges is addressed in proposed § 261.2(g)(4), which is discussed below.)

c. Proposed § 261.2(g)(1)(ii)—Munitions removed from the stockpile for the purposes of disposal/destruction. Proposed § 261.2(g)(1)(ii) would specify that a military munition becomes a solid waste for regulatory purposes when it is removed from storage in a military magazine or other storage area[5] for the purposes of destruction, disposal, or treatment prior to disposal.

Stockpiled munitions, in EPA's view, are unused "products" comparable to unused commercial products stored by manufacturers or their customers. Under RCRA, unused products do not become "waste" until they become "discarded material," that is, until an intent to discard the material can be demonstrated. Even if a commercial product's shelf life has expired, or it can no longer be used for its intended purpose (for example, because of physical deterioration), it may be reprocessed or used for other purposes. Thus, it would not necessarily be considered "discarded material" or solid waste.

Stockpiled military munitions are in a comparable situation, and the classification of a munition in one of the various DOD "demilitarization" accounts does not, in EPA's view, constitute a decision to discard the material because, pursuant to DOD's practices, such a classification does not necessarily evidence an intent to discard. Ammunition classified as "unserviceable," for example, may be returned to service, after further review, or in some cases after reprocessing.

[4] The Services also assign "condition codes" to ammunition. For example, the Army's *Ammunition Surveillance Procedures* (November 1990) provides designations for ammunition such as Condition Code H ("Material that has been determined to be unserviceable and does not meet repair criteria").

[5] The term "military magazine or other storage area" refers to all types of military munitions storage units, including outdoor or open storage areas, sheds, bunkers, and earth-covered and above-ground magazines allowed under the DOD Explosives Safety Board (DDESB) standards (DOD 6055.9–STD), which are mandatory for use by all DOD components.

Munitions in the demilitarization accounts (such as the Army's Resource Recovery and Disposition Account) may also be sold for non-military purposes, or to nations that still maintain older weapons systems. Even munitions scheduled for disposal may still have a deterrent purpose and may be called back into service in cases of emergency. Therefore, in EPA's view, inclusion of a munition in a "demilitarization" account or a military determination that a munition is "unusable" for its intended purpose does not constitute a decision to dispose of it.

For these reasons, today's proposal makes it clear that unused munitions stored in military stockpiles are not considered "solid waste" subject to subtitle C (except as provided in § 261.2(g)(1) (iii) and (iv) discussed below). Instead, EPA has sought to establish a simple, consistent, and enforceable point where a munition would be considered "discarded." In EPA's view, the most appropriate point for military munitions (and the point that is most consistent with the regulation of commercial/industrial products) is when the material is finally removed from storage for the purpose of disposal or treatment prior to disposal. In practical terms, this provision would mean that storage of stockpiled munitions would, for the most part, not be subject to RCRA regulation (with exceptions described below); however, once a munition was removed from a magazine *for the purpose of destruction or disposal* it would become solid waste potentially regulated under subtitle C of RCRA.

EPA emphasizes that this provision would trigger RCRA coverage only where a decision to destroy the munition had clearly been made. In many cases, munitions classified as "unserviceable" are removed from storage and sent to central arsenals for evaluation to determine whether they are in fact unusable, whether they can be sold for use, whether they can be recycled or processed for other uses, or whether they should be disposed of. In these cases, the munition is not being shipped for the purposes of destruction or disposal, but rather for evaluation. The munition would be handled as a waste only if no further evaluation would take place and the decision to destroy had already been made.[6] Similarly, a munition may be removed from storage for the purpose of recycling or materials recovery without triggering RCRA.

EPA recognizes that it may not always be easy to determine whether a decision to destroy the material has been made; however, it believes that the status of a munition removed from storage will generally be clear. In some cases, a decision to destroy might be evidenced by a specific order or document. In other cases, the intent to destroy the munition would be obvious even in the absence of such an order. For example, a munition sent to a commercial, non-military hazardous waste facility is presumably a waste (unless the facility is also a commercial dismantling/reclamation facility). Similarly, if a rocket undergoing demilitarization is disassembled, and the propellant shipped off-site to an incinerator at another installation, the intent to destroy the propellant would be clear. In both cases, the point of generation of the waste would be when it was removed from storage. EPA emphasizes, however, that the rocket disassembly process itself is not a form of RCRA "treatment," and only the propellant that is incinerated would be a solid waste. More generally, when a munition is disassembled, the removal of a component from the munition does not demonstrate or suggest an intent to discard that component. These activities are therefore not considered waste management under RCRA (unless the material is already classified as a waste, and the disassembly is carried out to prepare for waste disposal.)

To summarize, the disassembly of a munition and recovery of explosives or propellants and other components for reuse does not constitute a waste management activity. In fact, these operations constitute a large part of DOD's Resource Recovery and Recycling Program, and EPA strongly supports and encourages this program. EPA views recycling of unused military munitions as being directly analogous to the reclamation of commercial chemical products (see 40 CFR 261.2(c) and (e) and 261.33). Thus, the position EPA is taking in today's rule on military munitions recycling or materials recovery operations is consistent with the position it has taken with regard to the management of commercial chemical products.

Examples of munitions recycling activities performed by DOD that would not be regulated under RCRA include the following:

(1) Recovery of explosive filler, together with scrap metal sale. Explosive filler material may be removed from munitions by using a heated medium, such as steam, hot water, or air. Further processing may be necessary if the explosive material is contaminated or the end use requires a specific form of explosive. The filler material is then used or reformulated for military or commercial explosives, and the inert metal parts may be reused as is or sold for scrap value.

(2) Reuse of Hazard Class (HC) 1.3 large rocket motor propellent, together with casing reuse or scrap metal sale. The HC 1.3 propellant may be removed from the rocket motor case with a high pressure water jet. The washed-out material and liquor is then processed to remove ammonium perchlorate. The ammonium perchlorate is then crystallized and reused as an ingredient in a large rocket motor propellant formulation, and the motor casing is either used or sold for scrap value.

(3) Reuse of HC 1.1 large rocket motor propellant, together with casing reuse or scrap metal sale. The HC 1.1 propellant is removed from the rocket motor as propellant chips through a dry machining process. These chips are then mixed with other ingredients to produce commercial sector blasting charges for mining or quarrying. The motor casing is, again, either reused or sold for scrap metal.

(4) Reuse of red phosphorus composition. The red phosphorus composition is removed from unserviceable L8A1 smoke grenades for reloading into the new L8A3 grenades.

(5) White phosphorus to phosphoric acid conversion. This process converts white phosphorus to saleable phosphoric acid by integrating an industrial phosphoric acid conversion process to a modified furnace.

The examples of ways in which military munitions may be reused for military and commercial applications, while specific, apply not only to the identified munitions but illustrate how RCRA requirements apply to munitions of similar types. The examples, however, do not specifically address one type of recycling identified by DOD: that is, the processing of an unused explosive to allow its use as fertilizer. In this case, the explosive, arguably, is being applied to the land in lieu of its original intended use and therefore—by analogy to commercial chemical products—its use as a fertilizer would potentially be regulated as waste management (see 40 CFR 261.33). EPA solicits comment on whether this type of recycling is appropriate for military explosives and therefore whether it should be allowed under today's rule.

Of course, treatment or disposal of residual materials generated during the disassembly or processing of unused munitions is potentially subject to

[6] EPA has taken a similar position in the case of pharmaceuticals returned to the manufacturer. See letter from Sylvia K. Lowrance, Director, EPA Office of Solid Waste, to Mark J. Schulz, Pharmaceutical Services, Inc., Browning-Ferris Industries, May 16, 1991.

RCRA regulation. In example number 2 above, ingredients remaining after the crystallization of ammonium perchlorate might be incinerated. EPA would consider this incineration to constitute waste management and the materials incinerated to be a solid waste.

Proposed § 261.2(g)(5) in today's rule clarifies these points.

d. Proposed § 261.2(g)(1)(iii)—Leaking or deteriorated munitions.

Proposed § 261.2(g)(1)(ii), discussed above, would define the most common circumstances under which a stockpiled military munition would become a solid waste—that is, when a decision has been made to dispose of it and it is removed from storage for transportation to a disposal site. EPA, however, recognizes (and States and citizens groups have pointed out) that under certain circumstances military munitions in storage may deteriorate to a point where they are no longer "products" in any meaningful sense and indeed may present an environmental threat. To address these circumstances, proposed § 261.2(g)(1)(iii) would define a munition as a solid waste if it is "deteriorated or damaged (e.g., as a result of leaks or broken seals) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes." For example, leaking chemical munitions are typically overpacked and placed in separate storage. Further, the stabilizers and chemicals involved have often deteriorated, and these chemicals have no reclamation potential. In EPA's view, these munitions have lost any reasonably possible future uses. Therefore, they should be defined as solid waste, and if hazardous, managed accordingly.

EPA recognizes that there is no specific analogous provision for deteriorated or damaged stockpiled commercial products. EPA believes, however, that commercial products in similar situations without any reasonable future uses or recycling potential would qualify as solid waste under existing regulations. Furthermore, EPA shares commenters' concerns that, when a munition presents a threat because of leakage or physical deterioration and when there is no reasonable possibility of productive use of the material, it should be treated or destroyed as soon as feasible.

e. Proposed § 261.2(g)(1)(iv)—Munitions determined by DOD to be a solid waste. Finally, proposed § 261.2(g)(1)(iv) would make it clear that the military Services or the Department of Defense may identify a stockpiled military munition as a RCRA "solid waste." In this case, the munition (if "hazardous") would be subject to hazardous waste regulations. For example, the Department of Defense has previously determined that M55 rockets containing chemical agents are hazardous waste. DOD made this decision because the rockets' delivery system no longer exists, and because DOD decided, for operational reasons, that the rockets would not be used in military operations and that they would not be sold or reclaimed. These rockets are now being regulated as hazardous waste under RCRA interim status or permit requirements. Today's proposal would not affect the waste status of these materials, or of materials DOD in the future classifies as solid waste.

EPA emphasizes that proposed § 261.2(g)(1)(iv) requires a specific declaration by an authorized military official that a munition is a solid waste. As explained earlier, a decision under DOD's classification system that a munition is "unserviceable," or the transfer of a munition into a "demilitarization" account would not constitute a decision that a munition is a solid waste.

f. Rationale for EPA's Proposed Approach. EPA's proposed approach is based primarily on the recognition that stockpiled munitions are "products," generally outside the scope of RCRA; that Congress intended for EPA to develop a "fair and coherent" approach regarding RCRA's application to munitions; that DOD has in place extensive storage standards that, in providing for safety, are also protective of human health and the environment; and that the military Services' safety record in storing munitions has been good. EPA further believes that there is no compelling environmental or legal reason to develop an intent-based test for defining when munitions become hazardous waste. Indeed, to do so would significantly increase the regulatory burden not only on DOD, but also on regulators, and it would certainly complicate DOD's management of the military stockpile. These reasons are discussed in more detail below.

In the first place, the proposed approach would be simple, straightforward, and enforceable. Munitions while stored in the stockpile would generally be excluded from RCRA regulation. Alternative approaches that would divide munitions in the military stockpile into "waste" and "non-waste" munitions (based on one or another set of intent-based criteria) would be likely to provide little certainty, and would be difficult to implement in the field. EPA is particularly concerned about approaches that would lend themselves to site-specific disagreements over whether a particular stockpile munition is or is not a hazardous waste. Congress charged EPA with developing a "fair and coherent approach to identifying when military munitions become a hazardous waste," and expressed the opinion that, without such regulation, RCRA jurisdiction over munitions "will likely be left to the courts." (See H.R. Conference Report No. 886, 102d Cong., 2d Sess. 29 (1992). See also Cong. Rec. H9137 (daily ed. September 23, 1992), Floor statement of Rep. Ritter). In light of this directive, EPA has sought to draw as clear and universal a line as possible in this proposal, and to avoid definitions that are likely to lead to debate in their application, or to require specialized military expertise to interpret. EPA's goal has been to define a consistent national standard, which would eliminate the need for complicated site-specific judgments that may have little if any relevance to protection of human health and the environment.

Today's proposal on military munitions is also consistent with EPA's approach under RCRA to other products. To be sure, the proposal does not precisely parallel EPA's approach to commercial products, but the basic approach is the same; in both cases, unused products are generally excluded from RCRA jurisdiction. The only substantive differences between the proposal and the current definition of solid waste, as it applies to "commercial" products, are that: (1) RCRA jurisdiction for military munitions would generally be triggered by the actual removal of a munition from storage for disposal or treatment, rather than by evidence of an "intent" to discard the material before its removal from storage, and (2) leaking munitions that could not be returned to use would be explicitly defined as solid waste. EPA acknowledges these minor differences, but believes they are appropriate in the case of military munitions, given Congress's mandate that EPA develop specific regulations for military munitions that reflect the special circumstances surrounding these materials.

Moreover, EPA has chosen the proposed approach because it involves minimum interference with the military's established system for managing stockpiled munitions, and it would not conflict with the Services' logistical needs or constraints. Munitions in both the active and demilitarization accounts are managed

under the same storage and transportation standards, and they are often stored together in the same magazines. The threat from a specific munition does not change when it is determined to be "unserviceable"; when it is reclassified into a demilitarization account; or when it is scheduled for treatment or disposal. Today's proposal recognizes the efficiency of managing the military stockpile within the current system. Under the proposal, the demilitarization process would remain governed by logistical, safety, and strategic considerations; munitions slated for destruction or treatment could be removed from magazines and shipped to waste treatment or disposal facilities according to an orderly process, rather than by regulatory schedules.

Finally, EPA's proposal reflects the Agency's preliminary judgment that RCRA regulation of stockpiles of largely military "products" (only a very small portion of the stockpile would be "waste") would not significantly increase protection of human health and the environment. The military's storage standards and practices for munitions generally provide protection that is comparable to or better than RCRA regulation would provide. The storage of military munitions is regulated under standards overseen by the Department of Defense Explosives Safety Board (DDESB), an organization independent of the Services within DOD that was established by Congress and reports to the Secretary of Defense. EPA and one interested party, representing certain members of the waste treatment industry, have reviewed the DDESB standards in detail. Both concluded that the technical design and operating standards of the DDESB meet or exceed RCRA standards in virtually all respects. There were gaps in certain procedural requirements, and in areas unrelated to risks from explosive materials—e.g., in requirements to coordinate with local authorities or in closure requirements. At this point, however, EPA is not convinced that RCRA standards would substantially increase protection.[7] (Both EPA's and the commenter's review is available in the docket of today's rulemaking.)

In addition, the military's safety record for the entire stockpile has been good. According to DOD, there have been 27 "incidents" involving stockpiled munitions over the last twenty years, with only 13 of these involving structural damage to a bunker or storage unit. This represents a very low accident rate, considering the enormous quantity of munitions stored and handled (currently 5.7 million tons of conventional munitions in 28,122 storage units) and the high inherent hazard of the material. EPA questions whether RCRA regulation would improve this safety record. (Indeed, RCRA regulation of "waste" portions of the stockpile might increase risk, by leading to increased movement of munitions.)

2. Munitions That Have Been Used/Fired That Are Subsequently Discarded

Proposed § 261.2(g)(2) addresses munitions that have been used or fired and then are subsequently recycled or disposed of. This section clarifies that RCRA management standards apply to the recycling or subsequent disposal (assuming the material is hazardous).

Specifically, § 261.2(g)(2) states that munitions that have been used or fired are solid waste when they meet the definition of discarded material in § 261.2(a)(2), except as provided in § 261.2(g)(3). In other words, a used or fired munition is considered a solid waste if it is abandoned or recycled, or if it is inherently waste-like (i.e., it meets the definition of "discarded" in § 261.2(a)(2)). But the proposed language explicitly states that this definition does not include munitions used for their intended purpose (i.e., munitions covered under § 261.2(g)(3)). As explained below, munitions used for their intended purpose are products not subject to RCRA regulation. Under this approach, munitions that have been fired and can no longer be reused would be potentially subject to Subtitle C regulation if removed from their landing spot and then transported off-range and stored, reclaimed, treated, or disposed of (assuming they are "hazardous"). For example, former installations no longer under military control (i.e., Formerly Used Defense Sites or FUDS) often contain unexploded ordnance or other hazardous material. Used or fired munitions removed from their landing spot and transported off-site would have to be handled under RCRA subtitle C (assuming they are "hazardous"). Similarly, used or fired munitions resulting from military research or training exercises, when removed from firing ranges and sent off-range for destruction would be considered solid waste. (As discussed below, use of a product for its intended purpose is not considered abandonment; § 261.2(g)(3) specifies certain activities that fall within the intended use of military munitions.)

3. Munitions Used for Their Intended Purposes

Under RCRA, the use of products for their intended purpose does not constitute waste management and is not subject to regulation. For example, RCRA does not regulate the use of pesticides by farmers, even though pesticides are discharged to the environment during use (see 40 CFR 262.10(d) and 262.70). By the same logic, RCRA does not regulate the use of dynamite or other explosives during construction. Similarly, EPA has consistently held that the use of munitions (military or otherwise) for their intended purpose does not constitute waste disposal, and does not require RCRA permits. Proposed § 261.2(g)(3) (i) through (iii) clarifies this point and provides specific examples of military activities that are excluded from RCRA regulation.

a. Proposed § 261.2(g)(3)(i)—Military training exercises. Proposed § 261.2(g)(3)(i) clarifies that the use of munitions in the training of troops and explosive ordnance disposal (EOD) personnel is not regulated under RCRA. This is because such training constitutes the normal use of a product, rather than waste disposal.

The proposed language also makes it clear that training includes training troops in the destruction of excess propellant and other munitions, when that destruction is integral to the product's use. Propellant used for artillery and mortar rounds comes in packaged allotments that vary by the type of weapon, round, and propellant. Each allotment is made up of individual increments to allow troops to vary the distance a shell is fired—the more increments used, the farther the shell is fired. The Services generally package the allotments for wartime use, that allow maximum firing capability. During firing exercises (whether for training or during wartime), the full allotment is often not needed. In these circumstances, military procedures for safety reasons require that unused increments of propellant be burned. (In wartime, procedures specify that the excess propellant be burned at the closest safe point.) To ensure that troops can safely destroy propellant during wartime, according to DOD, military training exercises involving artillery and mortar rounds typically include the burning of excess propellant.

In EPA's view, the training of troops in the wartime use of munitions is a legitimate use that lies outside the scope of RCRA; the Agency has no reason to question DOD's position that training troops in the safe destruction of excess propellant constitutes legitimate training. Indeed, such training exercises typically follow detailed protocols for training troops in handling and burning of excess propellants. EPA in the past has concluded that training in the destruction of excess propellant is not subject to RCRA regulations, and is proposing in today's rule to codify this interpretation.

Critics of DOD have expressed concern over the burning of excess propellant, pointing out that the amount of excess propellant destroyed may equal or exceed the propellant actually used in firing the weapons. Concerns of the public have particularly focused on air emissions, although the burning of propellant directly on the ground can lead to soil (and possibly groundwater) contamination. For this reason, the Services often conduct the burning in lined trenches. (In some cases, this precaution has been required by state regulators.) In other cases, local opposition to burning of excess propellant has led individual installations to abandon the practice (and in at least one case to abandon training altogether), or reduce the number of increments used.

Some states and citizens groups have also argued that such burning could lead to sham training, when the primary purpose is really waste disposal. In enforcing today's proposal, EPA might look at whether propellant burning during a specific exercise was part of legitimate training—for example, that troops were in fact being trained and that the training was done in accordance with a specific training manual or training procedures. However, if these tests were met, EPA would consider the destruction of excess propellant to be normal use of munitions in a training exercise and not regulated under RCRA. In response to the concerns over sham training, DOD has suggested the existence and use of training manuals, and appropriate documentation of training activities should be accepted as evidence of training. EPA agrees that, should activities in a specific training exercise be challenged, such procedures and documentation would provide evidence that the activity did not involve waste disposal.

More generally, EPA appreciates the concerns of critics of DOD on this issue, but it tentatively accepts DOD's argument that the practice is necessary for effective training. At the same time, however, EPA solicits comments on this issue, in particular whether it is appropriate or necessary, under RCRA, to impose specific restrictions on burning of excess propellant, and if so what those restrictions should be.

b. Proposed § 261.2(g)(3)(ii)—Weapons testing. Today's proposal also clarifies that munitions used in weapons research, development, testing, and evaluation programs are not regulated under RCRA. Testing munitions, or using munitions to test a weapon system, to determine their performance capabilities clearly falls within the definition of use of a material/product for its intended purposes. EPA also considers removal of a used or fired munition from a testing or training firing range for further testing and evaluation to be within the definition of use of a material for its intended purpose.

c. Proposed § 261.2(g)(3)(iii)—Range clearance operations as a result of training or weapons testing. The military services often conduct range clearance exercises as a result of weapons testing or training at firing ranges. During these exercises, military specialists sweep ranges for debris and unexploded ordnance, which may be destroyed on-site or shipped off-range for treatment. EPA considers range management to be a necessary part of the safe use of munitions for their intended purpose; thus the range clearance activity is an intrinsic part of the training or testing exercise. Furthermore, from an environmental perspective, it makes no difference whether ordnance explodes on impact or is subsequently detonated by an EOD specialist. Therefore, today's proposal would exclude range clearance exercises from RCRA subtitle C regulation. As mentioned earlier, however, when shipped off-range for destruction (but not for further evaluation) the debris or UXO is a solid waste, and if a hazardous waste, potentially subject to the RCRA subtitle C requirements.

4. Discharged Military Munitions at Firing Ranges

In today's proposal, as well as in previous statements, EPA has taken the position that the discharge of a weapon does not constitute "waste management" for the purposes of RCRA. This position is reflected in proposed § 261.2(g)(3), discussed above, which excludes munitions used for their intended purposes from the definition of solid waste. At the same time, however, this proposal provides that spent munitions left in the environment may at some point become "discarded," in a RCRA statutory sense, and therefore may be potentially subject to various RCRA remedial statutory authorities. The most important of these authorities are: (1) RCRA section 7003, which authorizes EPA to require remedial action in cases in which solid wastes may present an imminent and substantial endangerment; (2) RCRA sections 3004(u) and (v), which require corrective action for releases of hazardous waste or constituents from any solid waste management unit at treatment, storage, or disposal facilities seeking a RCRA hazardous waste permit, and (3) RCRA section 3008(h), which allows EPA to require corrective action at interim status facilities.

Proposed § 261.2(g)(4) would specify how these authorities would apply to discharged munitions found at military firing ranges and impact areas. Proposed § 261.2(g)(4)(i) states that munitions left at closed ranges, or at ranges transferred out of military control, are discarded material. "Closed" ranges are ranges taken out of service by the military as ranges and put to new uses incompatible with range activities—e.g., as storage or warehouse areas. However, an "inactive" range—i.e., a range that is not currently being used, but that is still considered by the military to be a potential range area or that simply has not been put to any new use

[7] Strategic Environmental Services, Inc., in comments to EPA, cited three particular areas where it concluded that DDESB standards were less stringent than RCRA's: preparedness requirement with the local community, closure requirements, and inspection frequency. EPA believes that the differences in approach between the standards in these areas is of limited significance. First, under RCRA preparedness requirements, a facility must attempt to make arrangements with local police, fire departments, emergency response teams, and hospitals to allow them better to respond to emergencies. If these local institutions do not respond to overtures from the facility, however, the facility has satisfied its obligation. Military installations already have extensive contingency plans for munitions emergencies, and responsibility for responding to these emergencies generally falls on military rather than local personnel. Therefore, coordination with local response authorities is less important than it is with civilian facilities. Furthermore, it is unclear what value would be added by preparedness plans that applied only to that part of an installation's munition stockpile that was classified as waste, and not to other munitions on the installation—especially given that the active stockpile would typically dwarf "waste" munitions in quantity. The situation is different for stockpiled chemical munitions—partly because of the greater possibility that an emergency would have off-site effect, and partly because of heightened public concern. However, Congress has already required the Secretary of Defense to establish a chemical weapons stockpile safety contingency plan (National Defense Authorization Act for Fiscal Year (FY) 92) and the Secretary of the Army to establish citizens' commissions for states with stockpile sites (National Defense Authorization Act for FY93). Second, as to closure requirements, it is unclear how typical munitions bunkers would lead to contamination problems. In any case, however, storage magazines are subject to the decontamination and remediation requirements of CERCLA 120(h)(3) when the property is transferred, and DOD is required to clean up environmental contamination under the Defense Environmental Restoration Act. Residual contamination is also subject to other cleanup authorities, including RCRA section 7003. Finally, EPA sees no reason why Service inspection procedures for the active stockpile are not adequate for munitions slated for disposal.

incompatible with range activities—would not be considered "closed."

In the case of a closed range, the site is no longer being used as a range and it has been put to a new use incompatible with range activities. Under the proposal, any remaining munitions and debris that are left in place would be considered discarded and therefore such munitions and debris would be a "solid waste" according to the RCRA section 1004(27) definition. In the case of transferred ranges, the military no longer has control over the site and therefore the view taken by EPA in the proposal is that any remaining munitions and debris would have in effect been "discarded." This is not to say that the transfer of the property would constitute the act of discarding. Under this approach, the property transfer would simply affirm that the remaining materials on the range could be considered to have been discarded.

This approach to closed and transferred ranges would not be unprecedented. There are a number of scenarios under which hazardous wastes may be found in the environment, but were not put there through an act or circumstance that was a violation of RCRA or that otherwise subjects those wastes in place to subtitle C permitting or other requirements. A similar example of materials that may be classified as statutory "solid waste" under RCRA, but which are not automatically subject to RCRA subtitle C permitting or in-place waste management requirements, are wastes that had been disposed of before the effective date of RCRA. These materials would also potentially be subject to RCRA remedial authorities such as sections 7003, 3004(u) and (v), and 3008(h), or to CERCLA remedial authorities.

Today's proposal, however, contemplates that RCRA regulation of cleanups at closed and transferred ranges would be temporary. The proposal would further provide that, if DOD promulgates, pursuant to DOD's own statutory authorities, rules that allow for public involvement in cleanups of these ranges and that are fully protective of human health and the environment, then these DOD regulations would supersede RCRA regulations. The DOD regulations, rather than RCRA, would then govern range cleanups. EPA would issue a notice at the time DOD's regulations were issued, announcing that DOD cleanup regulations took precedence and that munitions at closed or transferred ranges are not to be considered RCRA statutory solid waste.

This "sunset" provision reflects EPA's conclusion that the legal arguments supporting the characterization of munitions on closed or transferred ranges as "solid waste," and the legal arguments opposing such a characterization are finely balanced, with the result that EPA has the discretion to select either interpretation pursuant to section 3004(y). The choice of whether to define such munitions as "solid waste," then, rests with EPA, and the proposal reflects EPA's views of how human health and the environment can best be protected, given the special hazards posed by military munitions.

In fact, the applicability of RCRA corrective action authorities to ranges has long been subject to dispute. The Department of the Army's Regulation 200–1, Environmental Protection and Enhancement, explicitly states that RCRA sections 3004(u) and (v) do not apply to military ranges (AR–200–1, section 6–7(j), April 23, 1990). In its proposed subpart S corrective action regulations, EPA agreed, suggesting that military firing ranges and impact areas "should not be considered solid waste management units," and therefore sections 3004(u) and (v) would not apply (55 FR 30809, July 27, 1990). On the other hand, several EPA regions and States have asserted that these authorities apply to military ranges.

Today's proposal would resolve this question. If adopted, proposed § 261.2(g)(4) would have the effect of bringing munitions at closed ranges and at ranges being transferred from military control under RCRA corrective action standards, if the installation were otherwise subject to RCRA permitting requirements. Under this proposed section, munitions at a closed range would be defined as solid waste, and the range (if it contained munitions or other contaminants) would constitute a solid waste management unit. Releases of hazardous wastes or constituents at or from the range would therefore potentially be subject to corrective action under sections 3004(u) and (v), or 3008(h). On the other hand, active and inactive ranges would not be considered solid waste management units. In addition, proposed § 261.2(g)(4) would provide that, once DOD issued regulations for range cleanup, these DOD regulations would supersede RCRA cleanup authorities.

In practice, RCRA corrective action would generally require an assessment of possible risks and releases at closed ranges. In some cases, sampling of environmental media (for example, soil, ground water, or surface water) might be required. The level of assessment needed would be consistent with the potential risk of exposure. It is important to emphasize, however, that the RCRA corrective action authorities do not automatically require cleanup to specific levels. For example, risks from unexploded munitions might be controlled, where appropriate, through access restrictions. In fact, DOD is already required to address range cleanup as part of its own restoration program. Thus, today's proposal, if adopted, would simply provide EPA or a delegated State with independent oversight of cleanups at RCRA sites, but would not affect the substantive cleanup standards that apply.

Proposed § 261.2(g)(4)(i) specifies that munitions remaining at closed ranges would be solid waste, for statutory purposes. Some may argue that EPA should propose to define munitions on active ranges as solid wastes as well. EPA, however, focused on closed rather than active ranges because it is technically difficult to address munitions on active ranges, and because periodic cleanups (other than range clearance exercises) at these ranges are likely to be of limited environmental value, particularly since the ranges are under direct control of the military and public access is restricted. Also, it could involve risk to cleanup personnel. EPA emphasizes, however, that non-munition releases are unaffected by today's rule. Also, environmental releases from range activities that migrate off-range in ground-water or runoff, including from active ranges, would be statutory "solid waste," and could be addressed under RCRA section 7003 . They could also be addressed under the Clean Water Act or CERCLA.

EPA also considered including munitions on "inactive" as well as "closed" ranges in proposed § 261.2(g)(4)(i). This approach would have the effect of pushing RCRA sections 3004(u) and (v), and 3008(h), corrective action requirements earlier in the process. EPA, however, has not proposed this approach. The Agency recognizes that inactive ranges may frequently be reused, and questions the value of a formal corrective action process when the area will likely be subject to range use again. Furthermore, such an approach might only encourage installations to continue use of ranges, rather than discontinue their active use, for fear of triggering EPA or State oversight. In any case, any necessary remedial action would be required at the time of change in land use or transfer of the range from military control, since at that point the range would clearly be closed.

There are very substantial legal arguments and, assuming DOD issues

protective standards for range cleanup, compelling policy reasons for EPA to exercise its authority pursuant to § 3004(y) in a way that will not lead to RCRA jurisdiction over range clean up at any stage. In *Barcelo* v. *Brown*, 478 F. Supp. 646, 668–669 (D. Puerto Rico 1979), the District Court held that materials resulting from activities that do not resemble industrial, commercial, mining, or agricultural operations, or community activities fall outside the definition of "solid waste" in RCRA. Because "uniquely military" activities such as target practice at bombing ranges do not fall into any of these categories, the Court held that such activities were not regulated under RCRA. This conclusion also would be consistent with the approach EPA took in its Subpart S proposal (55 F.R. 30809, July 27, 1990). Thus, the *Barcelo* decision provides a rationale for excluding munitions remaining at firing ranges from the RCRA definition of solid waste. EPA, however, recognizes that the lines between "uniquely military" range activities and other activities (for example, target practice at small arms ranges) are not always clear. Therefore, EPA seeks comment on what sorts of range activities are properly considered uniquely military.

Additional legal arguments in favor of this alternative approach have been advanced, including the argument that unexploded military munitions cannot become a "discarded material" because DOD is statutorily obligated by 10 U.S.C. 172 and 10 U.S.C. 2701 to address the human health and environmental hazards posed by its munitions and unexploded munitions whenever and wherever encountered. These statutory obligations, according to this argument, make it legally impossible for DOD to "abandon" such materials.

DOD has an existing responsibility to address environmental restoration under the "Defense Environmental Restoration Program" (DERP) (10 U.S.C. 2701 et seq.), and CERCLA response authorities, and is generally responsible for preventing hazardous conditions related to munitions under 10 U.S.C. 172. EPA understands that DOD intends to propose clean up standards and a clean up process under these authorities in a rulemaking to commence by January 31, 1996, and to be completed by October 31, 1996. DOD intends that the rulemaking will be an open process, with ample opportunity for the active participation of the States and of the public. Further, the remedy selection and implementation process in the rule will include a significant role for the affected states and the interested public. The proposed rule will specifically address the role of State regulatory agencies and the interested public. DOD's proposed rule will address the nature of the role of the States and will request comment on this important issue. DOD will conduct this rulemaking in consultation with EPA. The rulemaking is to fully involve the public and the States and adequately address the safety, health, and environmental concerns posed by munitions on closed and transferred ranges.

With the promulgation of such a rule, EPA believes that the proposed designation of munitions on closed or transferred ranges as a solid waste would be unnecessary. In this case, cleanups would be governed by clear regulations that are issued through a public process and that reflect the unique explosive safety considerations associated with munitions and the need for environmental protection. Therefore, regulation under a separate statute would be unnecessary. Further, if DOD promulgates such rules after EPA's proposed rule becomes final, then EPA believes that the DOD rules should supersede the EPA rule identifying munitions on closed or transferred ranges as solid waste.

Citizens groups have expressed concern that, because CERCLA authorities are limited to "hazardous substances" which include "hazardous waste," unexploded munitions might escape CERCLA control if it were not defined as being a solid (or hazardous) waste. EPA believes this concern is unfounded, because it is the Agency's expectation that most unexploded munitions fit within the CERCLA definition of "hazardous substance," independent of whether it is considered a solid waste.

Finally, proposed § 261.2(g)(4)(ii) would define military munitions fired off-range and not promptly rendered safe (if necessary) and retrieved to be solid waste, for the purposes of section 1004(27) of RCRA. Firing munitions that land outside of a range at a military installation would not be considered the intended use of the product (i.e., the munition.) However, today's proposal would be based on the view that a failure to render safe and retrieve a munition that lands off range would be evidence of an intent to discard the munition. Rendering safe might include treatment to prevent explosion as well as destruction of the ordnance. If remedial action were infeasible—for example because the munition was deeply buried or could not be located—the operator of the installation would be required to maintain a record of the event as long as any threat remained.

5. Waste Materials Derived From Munitions Manufacture

DOD and explosives manufacturers have often raised questions about the applicability of RCRA requirements to residues from munitions manufacture or manufacturing rejects. EPA, however, does not believe that munitions manufacture raises special regulatory issues, and it is not proposing to amend the current rules in this area. Instead, EPA's long-standing regulations defining when manufacturing products and secondary materials become solid wastes would continue to apply to residues and other byproducts of munitions manufacture and processing.

These regulations are found in 40 CFR 261.2 and 261.6, and part 266. Under these regulations, "secondary materials" from munitions manufacture or processing—including spent materials, sludges, by-products, certain commercial chemical products, and scrap metals[8]—are considered to be solid waste depending on how they are managed (for example, see section 261.2(c)). And, if these materials are also "hazardous," they are regulated under Subtitle C. On the other hand, off-specification ordnance or line rejects are considered products, and not wastes subject to regulation under RCRA. If these off-specification materials or rejects continue to meet the definition of military munitions, today's rule would define when they became hazardous waste.

EPA believes that it would be inappropriate to change these long-standing rules on the definition of solid waste in the context of today's rulemaking. At the same time, however, EPA is considering substantial amendments to its current rules to facilitate the recycling of secondary materials. These amendments would likely apply to secondary materials resulting from munitions manufacturing as well as secondary materials from other industrial and manufacturing operations.

C. Standards Applicable to Generators and Transporters

Today's proposal would make two changes to the RCRA generator and transportation requirements. First, proposed §§ 262.10(h) and 263.10(c) would clarify that persons responding to immediate threats from explosives and military munitions are not subject to RCRA generator and transportation

[8] These terms are defined in 40 CFR 261.1(c) and 261.33.

requirements. This proposal would apply to all explosives emergency responses (military and non-military) as well as to all conventional and chemical military munitions emergency responses. This proposal is discussed in more detail in Section IV.E of this preamble.

Second, proposed §§ 262.10(i), 263.10(d), 264.70(b)(2), and 265.70(b)(2) would exempt stockpiled munitions (that are hazardous wastes under sections 261.2(g)(ii–iv)) shipped off-site to DOD-owned or controlled TSDF under DOD tracking procedures from RCRA manifest requirements. This exemption would apply not only to military personnel, but also to commercial carriers who have signed a compliance agreement with the Military Traffic Management Command, and who operate under the DOD system. This exemption would not apply to the off-site transport of non-stockpile munitions (e.g., excavated hazardous wastes under proposed § 261.2(g)(1)(i) or range clearance munitions), since these materials are not subject to the same stringent DOD off-site shipping controls as are stockpiled munitions. Thus, the off-site shipment of buried or landfilled munitions, UXO, or munition debris would require the RCRA manifest and container markings (if the material were hazardous). The exemption would also not apply to the transport to a commercial (off-site) treatment, storage, or disposal facility.

This proposal to exempt stockpiled military munitions from the RCRA manifest is based on EPA's conclusion that the DOD transportation and inventory controls are at least equivalent to the RCRA manifest controls, and on the safe transportation record of DOD.

The DOD shipping standards and controls provide a "closed-loop" system similar to the RCRA manifest. These controls include the following forms: Government Bill of Lading (GBL) (GSA Standard Form 1109) and associated Special Instructions and Notes (SIN) and Routing Instructions and Notes (RIN)—a series of files within an automated information base used in preparing the GBL continuation sheets; requisition tracking form DD Form 1348; the Signature and Talley Record (DD Form 1907); Special Instructions for Motor Vehicle Drivers (DD Form 836); and the Motor Vehicle Inspection Report (DD Form 626). The DOD Standards, giving instructions on the use of these forms, include: Army Regulation (AR) 55–355—Transportation of Ammunition, Explosives, and Other Hazardous Materials; AR 725–50—Requisitioning, Receipt, and Issue System, Army Material Command (AMC)–R 385–100—Safety Manual; and DOD Directive 6055.13—Transportation Accident Prevention and Emergency Response Involving Conventional DOD Munitions and Explosives. "A Report to Congress On the Adequacy of Department of Defense Safety Standards for Transportation of Hazardous Materials" (1989) provides a summary of these controls. These documents are available in the public docket for today's proposal.

Features of the DOD transportation system include pre-trip routing plans, safe havens and secure holding areas for vehicles experiencing difficulties or for overnight storage, safe haven hotline, satellite motor surveillance and tracking, shipper seals, dual driver protective and escort services, firefighting instructions, and electronic notifications/communications between shipper, carrier, and receiver. DOD munitions shipments also comply with the DOT hazardous materials transportation standards, which address packaging, labeling, marking, placarding, emergency response, training, and shipping documentation (49 CFR 100–179, 350–399). Although the DOT standards are not mandatory for Federal agencies, DOD's standards have made them mandatory (e.g., DOD 4500.9–Transportation and Traffic Management, January 26, 1989). EPA has reviewed these DOD documents and concludes that the resulting procedures, in conjunction with the applicable DOT standards, provide for consistency with the requirements of RCRA section 3003.

As a result of these and other controls, DOD's transportation safety record is excellent. DOD makes approximately 50,000 shipments of military munitions and explosives annually, including shipments for demilitarization. According to the U.S. Army Technical Center for Explosives Safety's Explosives Safety Information Database and the DDESB's Historical Accident Database, there are about 20 minor non-explosive incidents per year (e.g., minor traffic accidents). In the past 20 years, there have been only three accidents involving the munitions cargo itself, and of these three, only one resulted in an explosive detonation.

Regarding the RCRA manifest and marking requirements, DOD is concerned about training its personnel in two separate systems, and maintaining both of these systems simultaneously—one for its own management of the military stockpile, and one (covering a small portion of the stockpile) for regulatory oversight. In addition, DOD is concerned about certain specific aspects of RCRA transport requirements—for example, the prohibition in § 263.12 against storage of wastes in transport in unpermitted "transfer facilities" for longer than ten days. According to DOD, this restriction may conflict with its need to sequester shipments of munitions in designated safe havens in case of emergencies or unanticipated transportation difficulties. At the same time, critics of DOD are concerned about any system that is self-regulating, and question the burden that compliance with RCRA would impose.

In light of the concerns of DOD and members of the public, EPA solicits comment on: (1) whether RCRA transportation requirements are needed for military munitions, given DOD's current practices, and whether other alternatives would be appropriate (e.g., the approach EPA adopted for "universal wastes" (60 FR 25492, May 11, 1995), which requires recordkeeping and a streamlined tracking system for certain recycled wastes), (2) whether transport of unused munitions (i.e., munitions in the stockpile) going for disposal should be handled differently from used or previously disposed of munitions, (3) whether other modifications (besides the manifest and marking exemptions) should be made to RCRA transportation requirements to address DOD concerns, and (4) whether shipment of munitions from FUDs sites or shipment to commercial waste management facilities should also be exempted from transportation requirements.

EPA has not proposed other amendments to generator or transporter standards for waste munitions. DOD has raised concern that, under today's proposal, compliance with generator standards could be complicated and expensive, particularly because of 40 CFR 262.34 requirements for contingency plans, inspections, personnel training plans, and tank or container storage. EPA emphasizes that facilities with military magazines used to store stockpiled munitions would not be subject to these requirements. These requirements apply to generator facilities that *accumulate* hazardous waste. Since in most cases a stockpiled munition in storage would not be regulated as waste until it was removed from the magazine, the facility (and the magazine) would not be subject to accumulation standards. Instead, installations removing stockpile munitions from storage for the purposes of disposal would be subject to the following standards: (1) Determining if the waste were hazardous and determining treatment requirements; (2) obtaining a RCRA identification number; (3) preparation of a RCRA biennial report and RCRA section 3016 biennial report; and (4) waste minimization program certification under RCRA section 3002(b). EPA solicits comment on the appropriateness of these requirements and whether they are necessary.

D. Storage of Military Munitions

In enacting RCRA § 3004(y), Congress sought to ensure that management standards for waste military munitions under RCRA would not be inconsistent with safety standards established under 10 USC § 172. In the development of the FFCA, EPA and DOD jointly took forward a legislative proposal to provide for better integration of the DDESB explosives safety regulations and the specific requirements of the RCRA regulations. Although the specific statutory language of RCRA § 3004(y) does not address integration of the RCRA standards with the DDESB explosives safety standards, this point was spoken to during the legislative development process and appears throughout the legislative history for RCRA § 3004(y).

Today's proposal includes a new subpart EE in 40 CFR Parts 264 and 265 for military magazines storing hazardous waste munitions. This subpart combines the environmental features of the current RCRA storage unit standards with the DOD Explosives Safety Board (DDESB) munitions storage magazines standards to eliminate potential inconsistencies or conflicts between the RCRA and DDESB standards. The proposal does not require that all munitions be stored in magazines meeting these standards, but rather, provides an alternative for permitting the storage of military munitions waste under RCRA. Depending on the explosive hazards, military installations may still seek a permit and store waste munitions under the already existing 40 CFR parts 264 and 265 standards for other types of storage units, including containers (subpart I), tanks (subpart J), containment buildings (subpart DD), and perhaps waste piles (subpart L). DOD would apply for a permit under the most appropriate of these sets of standards. The new subpart EE standards would be more appropriate for most military explosive and chemical munitions wastes, including products that DOD determines are a hazardous waste under today's § 261.2(g)(1)(iv) and unexploded ordnance recovered from ranges and moved into storage prior to treatment or disposal.

Consistent with the RCRA standards, today's proposal covers design, operation, monitoring, inspection, closure, and post-closure care, and it addresses the same concerns as do the other RCRA storage unit standards. The design and operating standards set containment and control performance standards to prevent contamination of soil, ground water, surface waters, and the air; they also address the DOD safety concerns to protect against explosions and to minimize the impact if one should occur. The proposal includes a primary barrier or containment system, which may be a bomb shell, a protective casing, a storage container, or a tank. For non-liquid wastes stored outdoors or in open storage areas, the unit design and operation must provide that the waste will not be in standing precipitation. This may be accomplished by a number of design and operating features, including a sloped impervious base or a pervious base, and/or waste elevation.

For those few military munitions wastes that are liquids, in addition to the primary barrier or container, the unit would have to provide a secondary containment system. The secondary containment system design, operation, controls, and monitoring features may include a combination of sumps, pumps, drains, slope, double-walled containers or tanks, and/or elevated waste or other features that provide that any released liquids or precipitation are contained and promptly detected and removed from the waste area.

The proposal covers the three basic designs of the DDESB storage standards: (1) earth-covered magazines (which are frequently used for shock sensitive and other munitions), (2) above-ground magazines (which might be used for munitions that do not pose a mass detonation or fragment producing hazard), and (3) outdoor or open storage areas (typically for munitions that do not pose a significant potential for explosion).

Monitoring and inspections would be required to assure that the containment systems and controls are working as designed, that the wastes are stable, and that no contaminants that might adversely affect human health or the environment are being released from the magazine. In addition, all hazardous waste munitions would have to be inventoried at least annually, which is consistent with current DOD requirements.

The closure standards mirror the other RCRA storage unit closure standards, requiring waste and contaminant removal and containment system decontamination.

In addition to the subpart EE approach, EPA is considering and solicits comment on three alternative approaches.

Under the first alternative, EPA would defer regulating the storage of waste military munitions under RCRA and subject them only to the explosives safety standards developed by DDESB and Services. DOD believes that this is statutorily permissible under the definition of hazardous waste found in RCRA § 1004(5). This definition states that a "hazardous waste" is a "solid waste, or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (A) cause, or significantly contribute to, an increase in mortality or an increase in serious, irreversible, or incapacitating reversible illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." With respect to the first criterion, DOD maintains there is no evidence that waste military munitions in storage cause or contribute to an increase in mortality or illness (save for the case of an accidental detonation of those munitions, which the DOD's excellent safety record shows is unlikely). Regarding the second criterion, DOD believes that the existing DOD controls over the storage and transportation of all munitions, including waste munitions, are adequate to prevent waste military munitions from posing a substantial or present threat to human health or the environment.[9]

DOD's underlying rationale for this approach is as follows. The regulatory program developed by EPA in response to the RCRA mandate establishes standards for the storage of wastes both by those who generate the waste and those who provide permanent long-term storage, treatment, or disposal. These regulations were designed from the outset to address problems stemming from waste management at, for example, industrial operations that, prior to RCRA, were largely unregulated. Hence, EPA has historically examined the consequences of "plausible mismanagement" scenarios since there were no other controls over the management of these wastes. DOD believes that the case of military munitions is fundamentally different in that there are existing statutory

[9] This logic does not extend to the treatment or disposal of waste munitions where EPA believes that full RCRA compliance is appropriate to protect human health and the environment.

authorities and regulatory programs addressing the storage of military munitions, including waste military munitions. The design and operation of all DOD ammunition storage units are conducted in compliance with standards set by DDESB and Service-specific regulations and implementing procedures. While these standards have safety as the primary concern, as explained earlier in this preamble, EPA and one interested party have reviewed the DDESB standards in detail and concluded that the technical design and operating standards of the DDESB meet or exceed RCRA standards in virtually all respects. There were gaps in certain procedural requirements and in areas unrelated to risks from explosive materials (e.g., in requirements to coordinate with local authorities or in closure requirements). At this point, neither EPA nor DOD is convinced that application of the RCRA standards in addition to DDESB and Service-specific standards would substantially increase protection of human health or the environment.

For example, all military munitions-related operations, including those involving waste military munitions, are conducted in accordance with an approved Standing Operating Procedure (SOP) that provides detailed guidance on how personnel are to complete a specific activity. These SOPs address a wide variety of issues including, but not limited to: safety, security, environmental protection, and quality assurance. Each SOP must be approved by different functional areas at the installation, including: operations, safety, industrial hygiene, environmental compliance, security, quality assurance, and command representatives. Personnel implementing these SOPs are required to be trained and certified as qualified to perform the task to which they are assigned.

Munitions storage units are also required to be inventoried on at least a yearly basis; however, some munitions (i.e., security class I or II) require inventory more frequently.[10] During these inventories, in addition to counting the munitions present, the organization conducting the inventory updates other data elements in the record. Discrepancies are addressed through a research, investigation, and reconciliation process. All inventory-related activities are overseen by an independent quality control and quality assurance organization. Accounting procedures for these munitions are managed through two separate and distinct data systems, one at the installation and one at a central repository. The records kept at the installation include: quantity, location, ownership (i.e., specific organizational element within DOD), physical condition, and current inventory status.

The actual storage procedures for military munitions are based on four factors that relate to the physical and chemical characteristics of these materials: (1) compatibility grouping; (2) hazard class; (3) net explosive weight (NEW); and (4) quantity distance formulae. These are contained in the DDESB standards "DOD Ammunition and Explosives Safety Standards" DOD 6055.9–STD, which may be obtained by contacting Ms. Lydia Sanchez, DOD Explosives Safety Board, 2461 Eisenhower Ave., Rm. 856–C, Alexandria, VA 22331–0600, or by E-mail at SANCHEZLY@DDESB.ACQ.OSD.MIL, or from the EPA docket for today's rule.

DOD also argues that the proposed approach in this first alternative is consistent with other aspects of RCRA, other findings in law, and the approach taken in other regulatory matters addressed by the Federal government.

DOD points out that the DDESB standards for the storage of munitions were subjected to judicial review in Pratt v. Hercules, Inc., 570 F. Supp. 773, Cir. 1982. In this decision the court held: For reasons cited in the court's earlier analysis * * * this court finds that the standards promulgated by the DDESB * * * were sufficient to comply with the mandate (10 U.S.C. 172) of eliminating undue risk of harm to those (inside and) outside the (facility). Further, the Occupational Safety and Health Administration has recognized the statutory authority of DDESB and their expertise in establishing requirements for the safe storage of military munitions. In a November 8, 1990, rule OSHA stated: The DDESB has the final review and approval authority for any engineering changes at government owned facilities to assure that they are consistent with explosives safety standards and do not increase explosive risk (55 FR 46948, November 8, 1990).

The most important piece of evidence in support of DOD's position is the Services' excellent record in providing for the safe storage and transportation of military munitions, as discussed elsewhere in this preamble.

In addition, DOD believes that such an approach is wholly consistent with the President's initiative to reform Federal regulations to eliminate unneeded, duplicative, or superfluous requirements and is also entirely consistent with the President's requirements for promulgation of new regulations, as set forth in Executive Order 12866. Executive Order 12866 requires that any Executive Branch agency consider, as part of developing new regulations, whether existing regulations (or other laws) have created or contributed to the problem that a new regulation is intended to correct, and whether those regulations (or other laws) could be modified to achieve the intended goal of regulation more effectively.

For these reasons, DOD asserts that waste military munitions do not have to be managed in accordance with RCRA standards for the storage of hazardous waste so long as they are stored in accordance with the regulations established by DDESB and the Service-specific implementing procedures and requirements. As a separate matter, however, to meet the obligations imposed by Executive Order 12866, DOD is working with EPA to address those limited areas in the DDESB standards where EPA has noted differences between the DDESB standards and RCRA standards. Therefore, EPA solicits comments as to what specific requirements are needed to make the DDESB standards consistent with RCRA.

The second alternative approach would specify that waste munitions transported and managed in accordance with DDESB standards would not be an RCRA hazardous waste, and therefore would not be subject to Subtitle C standards. RCRA section 1004(5)(B) defines as "hazardous" those wastes that may present a hazard "when improperly * * * managed." In addition, section 3001 of RCRA authorizes EPA to determine whether to designate a waste as "hazardous." In determining whether a specific waste should be designated as "hazardous," EPA traditionally considers plausible "mismanagement scenarios." If significant risk were likely to occur under these scenarios, EPA would designate the waste as hazardous. The Agency, however, believes that it is not required to consider implausible mismanagement scenarios in determining whether a waste is hazardous. Thus, if mismanagement of a particular waste is implausible even without regulation under Subtitle C, EPA believes it has authority to refrain from regulating the waste under that subtitle. Under this approach, EPA would take into account DOD's record in storing waste munitions and DOD's existing storage standards in determining whether it was necessary to regulate waste military munitions as hazardous. Once these controls are taken into account, it would be argued that mismanagement of waste munitions is unlikely and regulation of these materials under Subtitle C is redundant.

EPA is considering this approach in several other rulemakings and will be discussing the legal rationale in detail in those rulemakings. A more detailed legal discussion will be provided in EPA's forthcoming Hazardous Waste Identification Rule proposal, scheduled for publication in November 1995. Where it is relying on this approach, EPA typically intends to prescribe specific conditions or procedures to ensure that a waste would not be mismanaged. In the case of military munitions, EPA is considering a comparable approach. Under this approach, EPA would specify that waste munitions were not "hazardous" as long as they were stored in compliance with DDESB standards. Failure to store waste munitions in compliance with these standards would, in effect, render the material "hazardous" and constitute illegal management of hazardous waste.

Under the third alternative, EPA would not establish special performance standards for waste military munitions under 40 CFR Parts 264 and 265 Subpart EE; instead, EPA would simply specify in Parts 264 and 265 that storage of waste munitions must meet DDESB standards. Waste storage units at interim status facilities would automatically be required to comply with these standards. For permitted units, EPA or the State would not specify particular standards in the permit, but would simply cite DDESB standards. This approach would allow EPA or State regulators directly to enforce DDESB standards, but would eliminate any possible inconsistency or redundancy between military and EPA standards.

EPA took essentially the same approach in its regulations of underground storage tanks in 40 CFR Part 280. In this regulation, the Agency stated that compliance with the specific industry codes constituted compliance with EPA technical standards. One traditional concern with this general approach is that industry standards change from time to time, complicating regulatory referencing. In the third alternative approach under consideration in today's proposal, EPA would not expect to revise its RCRA standards every time the DDESB changed its standards. To do so would not only require constant EPA rulemaking, unnecessarily consuming limited resources; more important, perhaps, it would foster enormous confusion, because there would always be a time lag between DDESB's adoption of new standards and EPA's revision of the RCRA regulations. When DDESB came out with new standards, facilities would be required to meet them, and the standards would be enforceable through DDESB's regular compliance mechanisms. But (until EPA changed its standards), facilities would also remain subject to the older standards incorporated into the RCRA regulations. The state authorization process under RCRA would complicate the process even more, since it would lead to further delay in regulatory adoption of new DDESB standards. As a result, under this option, EPA would refer to the most recent DDESB standards. Given DOD and the Services' long record of safety in the storage of military munitions and the DDESB's independent status within the Department of Defense, EPA believes that this approach would be both enforceable and fully protective of human health and the environment.

As mentioned above, EPA recognizes that certain RCRA requirements (e.g., those related to closure) are not in the DDESB standards. Therefore, EPA solicits comments on what specific requirements should be added to supplement the existing DDESB standards under any of the four alternatives and whether these should be added to the RCRA or the DDESB standards.

All three of the alternative options discussed above rely on the DDESB standards. Military facilities would be assured that their basic obligation, in storing waste munitions, would be to comply with DDESB standards. If they were doing so, then under the first alternative, they would be excluded from RCRA coverage entirely; under the second alternative, the stored "waste" munitions would be RCRA solid waste, but would not be regulated as hazardous waste (e.g., permits would not be required); under the third option, "waste" munitions would be RCRA hazardous waste, but compliance with DDESB standards would constitute compliance with RCRA technical standards.

The first alternative differs from the other two options in one important respect: under this alternative, EPA and authorized States would have no enforcement or regulatory role in the storage of waste munitions. Under the other alternatives, EPA and the States would have an oversight role, and regulatory agencies could enforce against facilities storing waste munitions out of compliance with DDESB standards. At the same time, however, the second alternative would provide significantly more relief to DOD and the Services than the third, and in many respects is similar to the "deferral" alternative. In particular, the approach (like the "deferral" approach) would eliminate permit requirements for storage of waste munitions (e.g., the procedures of Part 270, including public notice would not apply to storage of waste munitions, because waste munitions stored in compliance with DDESB standards would not be considered "hazardous waste"); facilities generating waste munitions would not have to comply with generator standards (e.g., filing biennial reports); the land disposal prohibitions against extended storage would not apply; and permitted facilities receiving munitions for disposal would not be prevented from receiving that material, even if they had "off-site" prohibitions in their permits—since the material would only become a hazardous waste when it arrived at the treatment or disposal unit.

EPA solicits comments on all three of these alternatives, as well as the subpart EE approach in today's rule.

E. Emergency Responses

Today's proposal clarifies that RCRA generator, transporter, and permit requirements do not apply to immediate responses to threats involving military munitions or other explosives. EPA is proposing this language to address concerns of DOD and other emergency response officials that RCRA requirements may impede emergency responses, especially by causing delays or confusion.

The current RCRA rules exempt emergency responses from full permit requirements in two ways: (1) permits are not required for *immediate* responses to a discharge of hazardous waste or an imminent and substantial threat of a discharge (§§ 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3)); and (2) in cases of imminent and substantial endangerment to human health or the environment, a temporary emergency permit may be issued to a facility to treat, store, or dispose of hazardous waste—this permit may be issued orally, if followed by a written emergency permit within 5 days, and may not exceed 90 days in duration (§ 270.61). (In clarification, EPA emphasizes that the exemption from permit requirements in the case of *immediate* responses is an exemption from the requirement for an emergency permit under § 270.61, as well as from full RCRA permitting. Thus, an immediate response, under Federal regulations,

[10] These are items with a high intrinsic value and items for which additional security procedures are required to prevent their theft.

would require neither a full RCRA permit nor an emergency permit.)

EPA has received a number of inquiries, from both military and non-military sources, seeking clarification of how these provisions apply to emergency situations involving explosives. In response, EPA has stated that it considers *immediate* responses to situations involving explosives to be exempt from RCRA permitting (including emergency permitting), and substantive requirements (e.g., the risk assessment requirements for OB/OD treatment) under the exemptions listed in §§ 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3). In EPA's view, time-critical responses to explosives emergencies constitute immediate responses to a discharge, or imminent and substantial threat of a discharge, of hazardous waste. On the other hand, if an immediate response is not necessary to address the threat, and the response can be deferred, the responding personnel should seek a RCRA emergency permit under § 270.61.

The intent of today's proposal is to codify, with some clarifications, the existing EPA policy. Proposed §§ 264.1(g)(8)(i)(D), 265.1(c)(11)(i)(D), and 270.1(c)(3)(i)(D) make it clear that explosive and chemical munition emergencies can be addressed without a RCRA permit (including an emergency permit). The proposal also clarifies, in §§ 262.10(h) and 263.10(c), that, if an emergency response expert at the site determines it to be appropriate, the explosive material may be removed and transported for safe treatment without a RCRA manifest, and the transporter is not required to have a RCRA identification number. Such transport could be to an open space or an EOD range. This proposal, which EPA believes is necessary to allow prompt response to explosives emergencies, is consistent with current EPA policy.

Today's proposal includes three new definitions in § 260.10 to help clarify the scope of this exemption. The definition of "explosives and munitions emergency" describes in detail what would constitute an emergency, and clarifies that an emergency situation includes suspect or unknown situations with significant uncertainties, including improvised explosive devices (IEDs, e.g., home-made bombs). The definition also states that the "emergency response expert" is responsible for determining whether an emergency exists.

An "explosives and munitions emergency response expert" is defined to include all military and non-military personnel trained in the identification, handling, treatment, transport, and destruction of explosives or conventional or chemical military munitions. Military emergency response experts include DOD Explosives Ordnance Disposal (EOD) personnel, who are trained in responding to emergency situations involving military munitions and explosives, and DOD Technical Escort Unit (TEU) personnel, who are trained to respond to emergency situations involving chemical munitions. EOD and TEU personnel respond to on-installation and off-installation incidents involving military munitions. They also respond to requests by other Federal agencies or local civil authorities for assistance with incidents involving non-military explosives. Non-military emergency response experts include the Bureau of Alcohol, Tobacco, and Firearms (BATF), Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), Drug Enforcement Administration (DEA), US Postal Service, Federal Aviation Administration (FAA), other Department of Transportation (DOT), Department of Interior Bureau of Mines, State and local enforcement and emergency response personnel, and private sector explosives experts or specialists.

Finally, an "explosives and munitions emergency response" is defined as all immediate response activities identified and carried out by the emergency response expert to eliminate the threat, including all handling, render-safe (e.g., methods to defuse or separate initiator from the explosive), transportation, treatment, and destruction activities. These emergency actions might involve defusing, detonation, or other treatment of ordnance in-place, or transportation to a safer location, including to an EOD range, to defuse, detonate, or otherwise to abate the immediate threat.

DOD has raised three concerns regarding the regulation of emergency responses involving munitions or explosives under RCRA: (1) the effect of the RCRA land disposal restrictions on response actions, (2) possible RCRA corrective action liabilities, and (3) the possibility that treatment permits would be required for areas "routinely" used to handle emergencies. To the extent that any of these issues would delay or complicate responses to emergencies involving explosive material, EPA shares DOD's concerns. EPA's objective in proposing today's rule, and in clarifying the applicability of RCRA to emergency responses, is to remove regulatory impediments to emergency responses and to promote the safe and prompt management of explosives emergencies. EPA agrees with DOD that any regulatory impediments to prompt responses should be removed. DOD's three concerns are specifically discussed below.

Concerning the first issue—the application of the RCRA land disposal restrictions to explosives emergencies—EPA continues to regard open burning/open detonation as not constituting land disposal. Therefore, the land disposal restrictions do not apply. See 51 FR 40580 (November 7, 1986) and 52 FR 21011 (June 4, 1987). With regard to emergency responses to explosives involving deactivation methods other than open burn/open detonation, EPA notes that the treatment standard for reactive wastes is deactivation (i.e., removal of the hazardous waste characteristic of reactivity); see 40 CFR 268.42, Table 2. These standards are consistent with typical responses of an EOD team to an explosives emergency, and therefore the RCRA treatment requirements would not present a problem.

The responding agencies primary concern on the second issue—the applicability of RCRA corrective action requirements—is the possibility that they might incur liability for site remediation or investigation when they conducted an emergency response. In response to this concern, EPA emphasizes that RCRA corrective action requirements would not fall on the responding agency and that today's proposal would not in any way change or increase the responding agency's liability.

In the first place, the standard RCRA corrective action authorities in sections 3004(u), 3004(v), and 3008(h) would not be at issue, because they apply only to RCRA permitted or interim status facilities. Thus, these requirements would apply only if the emergency response took place at a RCRA treatment, storage, or disposal facility, and in this case any responsibilities for corrective action would fall on the facility owner, rather than on the responding authority. Furthermore, RCRA corrective action requirements do not apply to actions taken under the immediate response provisions of 40 CFR 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3). Finally, in the case of a response conducted under a RCRA emergency permit (40 CFR 270.61(b), RCRA corrective action requirements would be excluded under 40 CFR 270.61(b)(6). This provision requires that emergency permits exclude conditions that would be inconsistent with the emergency situation that the permit was addressing. (EPA discussed this point in its RCRA corrective action proposal of July 27, 1990, 55 FR 30806.) Finally, if a response action is taken under CERCLA authority, CERCLA

section 107(d)(1) provides that no person "shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan (NCP) or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or threat thereof."

DOD's concern on the third issue is that, if the responding agency transported an explosive device to an off-site treatment area, that area might become subject to RCRA permitting requirements. In emergency situations, DOD EOD teams and other responding agencies often find it safer to move explosive material away from the site where it was found—where it may threaten people or property—and transport it to an EOD range. In such cases, the fact that the material can be transported to another location does not necessarily mean that the dangerous situation is under control or the emergency is over. Rather, it indicates a need to find an area where site access is controlled and the site conditions are known (e.g., the distance to nearby structures is adequate and there are no subsurface utilities), so that the material can be disarmed, defused, deactivated, or destroyed with confidence that an explosion will not cause injury or collateral damage. In previous guidance, EPA has consistently stated that off-site treatment of explosives derived from emergency responses does not trigger permit requirements, as long as it is legitimately part of the emergency response.

Because of this need for safe treatment sites, some EOD ranges may be regularly used to destroy explosives managed during emergency responses. The issue has been raised (and previous EPA guidance suggests) that some level of "routine" use of a particular range should trigger RCRA permit requirements. In EPA's view, however, the question of whether a permit is necessary hinges on the nature of each individual response (i.e., whether or not it involves an emergency), rather than on the number of times a given area is used for emergency responses. As long as the response to each individual incident was an emergency response, a RCRA permit would not be required.

F. Definition of "On-Site"

Today's proposal would modify the definition of "on-site" in 40 CFR § 260.10 by adding contiguous property under the control of one person that is divided by a public or private right-of-way, even if access is by travelling along (as opposed to across) the right-of-way to gain entry.[11] The definition of on-site determines whether waste must be accompanied by a manifest during transportation and whether part 263 transporter requirements apply. (See, e.g., 40 CFR 262.20(a) and 263.10(b).

Many facilities generating hazardous wastes (including most military installations) are found on large properties split by public roads. Under current regulations, a generator or TSDF who produced or managed waste at one location and moved the waste across the road for temporary storage would be moving the waste "off-site," if the waste were transported along rather than directly across the road. The waste transported along the route currently requires a RCRA manifest. This requirement does not currently apply, however, if the wastes are transported directly across the road.

Today's proposal would expand the definition of "on-site" to allow transportation without a manifest between contiguous properties controlled by the same person regardless of how access is gained from one parcel to another when such contiguous property is cut by a public or private right-of-way. All other aspects of the definition would remain the same.

The question of how "on-site" is defined arose in the context of military munitions because many military installations are crossed by public roads. Today's proposal, however, would apply to hazardous waste generators and TSDFs in general, because the same situation exists for non-military entities. For example, a number of universities, with laboratories and other sources of small amounts of hazardous waste dispersed throughout campuses, have found that the manifesting and transportation requirements make it difficult to consolidate wastes at a single location for off-site shipment under the current requirements. Similarly, large industrial facilities may face the same administrative or logistical difficulties.

Whether waste no longer subject to the manifest would continue to be subject to Department of Transportation (DOT) requirements will depend on whether that material is regulated under any other DOT hazard class. The Hazardous Materials Regulations (HMR, 49 CFR parts 171 through 180) define a hazardous waste as any material that is subject to the Uniform Hazardous Waste Manifest Requirements of the EPA specified in 40 CFR part 262 (49 CFR 171.8). If a material is not subject to EPA's manifest requirements, it is not considered a "hazardous waste" by DOT. However, such material may still be regulated as a hazardous material and subject to the HMR if it meets the defining criteria for one or more of the DOT hazard classes. Therefore, for these shipments, generators and/or TSDFs must decide if the waste falls under any of the other DOT hazard classes in order to determine if compliance with the DOT requirements under CFR parts 171 through 180 is required.

EPA believes that change in the definition of "on-site" will result on balance in an increase in protection of human health and the environment. EPA believes that the current definition of on-site may be discouraging consolidation within a generator's or TSDF's site, resulting in less control of the waste by the generator or TSDF. Removing barriers to consolidation of waste in one main area, rather than several small areas, will reduce the possibility that the public and the environment will come into contact with hazardous waste.

EPA also believes that facilitating more central consolidation will allow generators and TSDFs to place such consolidation sites in more remotely located areas than they would if confined to the boundaries within rights-of-way, thereby increasing the safety of the public should an accident occur. The new definition gives generators and TSDFs such as military bases and universities more flexibility to determine where consolidation areas are situated. In addition, EPA believes this change in definition will have the added benefit of facilitating the building of safer accumulation areas because generators and TSDFs may be more likely to exceed regulatory requirements for consolidation areas if they are responsible for fewer consolidation sites overall. EPA expects the benefit of consolidation on balance outweighs the risk of allowing transportation without a manifest along a short stretch of road to which the public has access. EPA requests comments on these views of the net benefits regarding human health and the environment.

In modifying the definition of on-site, EPA intends not to affect requirements

[11] The current regulatory definition is: "On-site means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property."

other than the requirement that a manifest accompany hazardous waste shipments and whether part 263 transportation requirements apply. EPA requests comments on whether other requirements of the RCRA program are affected by this change.

Even though hazardous waste traversing contiguous property may be "on-site" for RCRA purposes, discharges on public rights-of-way could expose the public to a health risk. DOT and CERCLA reporting requirements would apply to such releases, but those authorities do not necessarily require actual clean-up of the release. EPA seeks comment on whether DOT and CERCLA authorities are sufficient to provide adequate protection to public health in the event of a spill or release on a public right-of-way considered on-site or if 40 CFR 263.30 and 263.31 should continue to apply to any discharge of hazardous waste during transportation of hazardous waste on a public right-of-way regardless of whether it is on or off site. One way to implement that result could be to limit the on-site exemption from transporter requirements in § 263.10(b) so that §§ 263.30 and 263.31 would continue to apply to any discharge of hazardous waste on a public right-of-way even if it is considered "on-site."

G. Permit Modifications to Receive Off-site Waste Munitions

Some RCRA permits at military installations have conditions prohibiting the receipt of "off-site" waste. Under these permit restrictions, if the point of generation of a waste munition is any place other than the permitted installation, then the waste munition could not be accepted at the facility for treatment, storage, or disposal without a permit modification. DOD maintains that this situation will cause a serious disruption of its munitions management program.

EPA shares DOD's concern that today's proposal might disrupt DOD's ongoing munitions management program, and in response is proposing in today's rule a means to minimize this impact. Under this proposal, permitted facilities with prohibitions would be allowed to continue receiving waste munitions from off-site sources, upon notification to EPA, until a final permit modification is approved. In the case of interim status, facilities would be allowed to continue receiving off-site wastes, although it might be necessary for the facility to amend its permit application.

There are three specific requirements that would attach to this provision and be codified at 40 CFR 270.42(h). First, to be covered under this provision the permitted facility must be in existence on the date these rules go into effect. Second, for permitted facilities, the facility must submit a request for a Class 1 permit modification following the procedures of 40 CFR 270.42(a), on or before the effective date. Third, a permitted facility must develop and submit a Class 2 permit modification within 180 days of the effective date. If extenuating circumstances will not allow submission of a Class 2 modification within 180 days, the facility may, within the 180 days, request the permitting agency to allow an extension for a specified period. The permitting agency shall respond to any request for an extension within 30 days. If no action is taken by the permitting agency within 30 days, the facility is considered to have been granted the extension. The permitting agency's action may be to extend the 30 day response time.

Today's proposal would not affect activities at interim status facilities. In some cases, however, the facility's part B permit application might include an off-site waste prohibition. In this case, the facility owner should amend the permit application.

These proposed requirements are similar to the provisions for newly listed wastes in 40 CFR 270.42(g), which are designed to prevent the disruption of ongoing waste management activities, while bringing them promptly under regulatory control. EPA anticipates that the provisions in proposed 40 CFR 270.42(h) will similarly prevent disruption in the handling of waste munitions.

Despite this proposed approach, DOD remains concerned about any option that might restrict the movement of munitions undergoing demilitarization or add, in its view, unnecessary paperwork costs and redundant reviews. As DOD has pointed out, operations at the receiving facility would remain the same after permit modifications, and conditions affecting human health and environmental protection would generally not change. For example, the provisions of the facility's permit addressing the types of waste, the quantities that might be treated at any given time, and permissible releases from the treatment process would likely remain the same. In which case, the permit modification would be a paperwork exercise, adding to costs but not adding to environmental protection. DOD's preferred option, discussed in Section V.A.1 of this preamble, would be to set the point of generation of the waste at the point when it arrives at the receiving unit. In this case, the waste would have been generated on-site, and its management would not constitute a permit violation.

EPA understands DOD's arguments, but is concerned about the expectations of the public in the vicinity of permitted installations and the perception that permit conditions are being circumvented. The permit was issued through a site-specific public process, and, on its face, it appears to prohibit acceptance of just the sort of material that would be allowed under DOD's recommended approach. Arguably, the most consistent way to address this issue would be through a site-specific permit modification, rather than a national rulemaking. EPA questions whether it would be appropriate to promulgate a regulation that would in effect remove off-site prohibitions from particular permits—at least as they applied to waste munitions—without site-specific notice and an opportunity for comment.

DOD has particularly cited the costs of permit modifications, which, it has argued, will cost in excess of $50,000 apiece. EPA questions whether a permit modification would be as costly as DOD estimates, especially since the modification would presumably only amend the permit's prohibition against off-site waste, and the permit's technical or procedural conditions would generally not be changed. EPA does agree, however, that permit modifications to allow "off-site" waste munitions will increase the compliance burden on DOD and the procedural burden on State regulators. In the economic analysis supporting this proposal, EPA has estimated that the permit modifications will cost $30,000 each (DOD's original estimate) and that 24 permits would have to be modified (DOD's estimate). Much of the costs, in EPA's view, would result from the need for public outreach rather than technical work associated with the permit modification.

However, in light of DOD's concerns, EPA requests comments on both the proposed approach and DOD's approach, and with specific recommendations on alternative means to address concerns regarding public involvement in the process.

V. Discussion of Major Alternatives

In addition to the approach proposed in today's notice, EPA considered several alternatives to addressing major issues. These alternatives are discussed below.

A. Stockpiled Munitions

1. Approach Based on Army Regulation 200–1

DOD and the individual Services have historically taken the position that munitions in the military stockpile only become waste when they are received at a treatment or disposal unit. This approach has been incorporated into Army regulations in AR 200–1 and, until recently, guided military practice. DOD believes its traditional approach addresses two key points: (1) That military munitions are fundamentally different from most other types of industrial hazardous waste due to their unique physical and chemical characteristics, and (2) that the management of military munitions is different from the situation RCRA was enacted to address in that there are extensive management, oversight, and accountability controls already in place.

The primary difference between DOD's and EPA's approach is in the definition of the waste's point of generation. Under the approach proposed today, the point of waste generation is generally when the waste is removed from storage for treatment or disposal; after that point, the munition is regulated as hazardous waste. Under the approach in AR 200–1, the point of generation is moved to receipt of the munition at the waste treatment or disposal unit. Before that point, the material would not be considered RCRA solid or hazardous waste.

DOD is concerned about EPA's proposed approach in part because of the costs and paperwork associated with transporting hazardous waste. More important, however, DOD is concerned that many RCRA permits at military installations prohibit the receipt of "off-site" waste. DOD's AR 200–1 approach would solve both of these concerns.

As discussed previously, EPA addresses these concerns in today's proposal by exempting DOD-controlled shipments between DOD installations from the RCRA manifest requirements, and by providing Class 1 followed by Class 2 permit modifications to allow for off-site wastes. Nevertheless, EPA solicits comments on both approaches.

2. DOD Interim Guidance

A second alternative would be for EPA to codify the approach outlined by the military Services in interim guidance issued in November 1993. Under this Services-wide interim approach, munitions removed from the active inventory undergo review to determine whether they can be returned to service or used for other purposes. When the possibility of beneficial uses has been eliminated, the material would be transferred to a hazardous waste account (e.g., the "BHW" account) and orders to destroy the munition transmitted to the installations that held it. The munition would become a hazardous waste at the point the order was received by its custodian. The custodian, then, would become the generator of the "waste"; generator standards would apply at the storage magazine; and RCRA land disposal restrictions would require prompt treatment and disposal.

EPA has chosen not to propose this approach because, in EPA's view, it would not provide any significant increase in environmental protection. EPA also shares DOD's concerns that the approach might significantly complicate the military's safe management of the military stockpile.

In particular, DOD has expressed two major concerns with this approach. First, if stockpiled munitions in a magazine were declared hazardous waste, that magazine would become subject to RCRA generator requirements, including RCRA tank, container, or containment-building standards; these standards, in turn, might require retrofitting of the units, even though they were designed according to military standards to protect against explosive hazards. Second, if the munitions were not removed from the magazine and shipped off installation within 90 days, the installation would become subject to RCRA permit requirements. Thus, the installation would be faced with the choice of readjusting its standard operating procedures for munitions to ensure that items in the BHW account were shipped off-site promptly, or seek a RCRA permit—a 2 to 3 year process involving considerable time and paperwork. Neither result, in DOD's view, would lead to increased safety or environmental protection, and risk might actually increase because munitions would be moved more frequently.

3. Munitions Scheduled for Destruction by International Treaty

Several interested parties have also suggested that when a munition has been slated for destruction by act of Congress or treaty, there is clear evidence of an intent to discard, and therefore the munition should be considered solid waste. For example, Congress has instructed the Department of Defense to destroy the chemical weapons stockpile by December 31, 2004 (National Defense Authorization Act for Fiscal Year (FY) 93), and, once the United States ratifies the Chemicals Weapons Convention and the Convention goes into force, the U.S. will be bound by international treaty to destroy the weapons within ten years. It has been argued that the act of Congress and U.S. ratification of the Convention (when that occurs) would constitute a decision to discard the munitions. Therefore, the munitions should be handled as hazardous waste.

EPA has not taken this position to date in interpreting its solid waste regulations, and it is not proposing to do so in today's rule. Disarmament conventions and Congressional directives to demilitarize a weapons system should not, as a general matter, be interpreted as a decision to discard a munition. For example, the Chemical Weapons Conventions (like most such conventions) establishes a staged schedule, to allow mutual assurances that all signatories are fulfilling the agreement. Thus, the stockpiled munitions serve a deterrent purpose. Furthermore, the phased schedule laid out by the treaty would put the Army in violation of the RCRA land disposal restrictions, which would prohibit storage of "waste" munitions beyond one year (with limited extensions). Indeed, despite the convention, the stored munitions (with the exception of M55 rockets) remain part of the active military stockpile. While these "products" may be slated for phase-out in the future, they are still available (at least in theory) for use in the interim.

Furthermore, EPA questions whether RCRA regulation would substantially add to the safe management of military munitions slated for destruction. Considerable attention, to be sure, has focused on the stability and safety of the chemical weapons stockpile. EPA notes, however, that the munition on which most of the discussion has centered—the M55 rocket—is already regulated as hazardous waste. Therefore, the main concern with the stored chemical weapons is already being addressed as a regulatory matter. In addition, under proposed § 261.2(g)(1)(iii), leaking munitions would be regulated under subtitle C. Therefore, leaking chemical munitions would require regulation. Finally, the general safety of stockpiled chemical munitions is already the subject of considerable internal and external review. EPA, as a result, tentatively concludes that additional oversight under RCRA would not significantly increase protection of human health and the environment, while increasing the paperwork burden on the services and the workload burden of the regulatory agencies.

4. Alternatives Based on Condition of Munition

EPA also considered definitional approaches based on the characteristics of the munition. It has been suggested, for example, that munitions should become hazardous waste when they can no longer be used for their intended purposes. This determination might be based on an analysis of the munition itself, or on a weapon's predicted service life. Similarly, "waste" munitions might include off-specification munitions and munitions rendered obsolete because the armaments for which they were made no longer exist. EPA, however, has tentatively rejected this approach (except in the case of leaking or deteriorated munitions).

First, this approach would be inconsistent with EPA's approach to other "products." Commercial products do not automatically become solid waste when they can no longer be used for their intended purposes, and off-specification commercial products are not considered solid waste. These materials remain products; they may be put to other uses, or reprocessed for their original use, or simply stored for possible future uses without being brought under RCRA jurisdiction. The event that triggers RCRA jurisdiction is an intent to discard the material.

Second, EPA believes that this approach would be extremely difficult for regulators to implement or enforce. The determination that a munition can or cannot be used for its intended purpose, for example, will often be highly technical and require detailed expertise in weaponry. EPA and State regulators typically will not have this expertise, and it will often be hard to rebut an assertion by military personnel that a munition can indeed be used. Service life is also likely to be an unreliable guide, because weapons do not necessarily lose their usefulness at the completion of service life, and reprocessing is often a possibility. Above all, EPA is concerned that this approach would not provide the clarity of regulations that Congress sought in passing the FFCA. Instead, the approach might lead to protracted disagreements between the regulators and the regulated over whether a particular munition is still usable as a munition, with no clear environmental issue at stake.

5. Regulation of the Demilitarization Process

One of the primary benefits of RCRA regulation, according to critics of DOD, is that prompt treatment of waste would be required under the RCRA land disposal restrictions or LDRs. These restrictions require that hazardous waste be treated before it is disposed of in a land disposal unit. Furthermore, the statute prohibits facilities from storing waste before treatment, except as necessary to accumulate sufficient quantities for proper treatment and disposal (RCRA § 3004(j)). (Under EPA's enforcement policy, if storage is for longer than a year, the person holding the waste must be able to demonstrate that the storage is necessary to accumulate sufficient quantities.) Thus, if "obsolete," "unserviceable," or "unusable" munitions were defined as hazardous wastes, their prompt destruction would be required.

One commenter representing members of the commercial waste treatment industry—Strategic Environmental Analysis, Inc.—expressed strong support for applying RCRA oversight at the point when a munition became unserviceable. The commenter was particularly concerned that, if RCRA did not apply at this point, DOD could play "shell games" and store waste munitions indefinitely. At the same time, the commenter acknowledged the military's need for flexibility in evaluating and managing obsolete munitions. To address these concerns, it recommended a regulatory approach that would, in effect, bring the military demilitarization process under RCRA regulatory control and set specific schedules for the recycling or destruction of obsolete munitions.

Under the recommended approach, EPA would define off-specification, obsolete, or unusable munitions as hazardous waste. This waste would be subject to technical management standards, but not yet covered by permit requirements or the land disposal restrictions. Hazardous waste munitions could be stored one to five years before they became subject to the land disposal restrictions. During this time, the holder of the munition or the appropriate service would investigate possible reclamation. If reclamation was determined to be feasible, it would be required within one to two years. (Reclamation would take place under specially designed RCRA standards.) If reclamation were not feasible, the munition would have to be treated according to land disposal standards within the regulatorily permitted time frames (i.e., one to two years), and the facility storing the munition would require a RCRA permit.

This approach, EPA notes, establishes a radically new definition of "solid waste" under RCRA, and applies RCRA standards to the reclamation of unused products—a considerable extension of the current regulatory scope of RCRA. In effect, the approach applies RCRA requirements to munitions within the demilitarization account and sets a limit on the time period a munition can remain within that account before reclamation or destruction.

EPA has not proposed this approach for several reasons. First—leaving aside the question of whether this approach is consistent with the statutory scope of RCRA—EPA does not believe it is appropriate in this rulemaking to develop a broadly expanded regulatory definition of solid waste. EPA also notes that commenters did not provide evidence of human health or environmental damage resulting from non-RCRA storage of "obsolete" munitions, nor did it provide details on military "shell games" delaying proper treatment and disposal. While these problems may to a certain extent exist, EPA would require considerably more evidence before it imposed such a far-reaching regulatory scheme, going well beyond requirements that apply to commercial products.

In addition, although EPA has not developed specific cost estimates for the recommended approach, it clearly could impose substantial burdens not only on DOD but also on regulators as well. Presumably, DOD would be subject to significant recordkeeping and reporting burdens necessary to identify obsolete munitions and document the demilitarization process. Reclamation of unserviceable munitions would for the first time come under regulation. EPA and the States would assume new obligations in inspecting perhaps thousands of storage units and ensuring that regulatory storage times were not exceeded. Fulfilling these obligations would likely divert limited resources from more pressing and demonstrable environmental problems. Especially given that the substantive requirements on stored munitions would not change, EPA questions whether this diversion of resources is justified.

B. Range Management

1. Active Ranges

EPA has consistently taken the position that the use of products for their intended purpose does not constitute waste management and is not reached by RCRA. Thus, today's proposal excludes military munitions training and testing activities at firing ranges from RCRA regulation on these grounds.

One group of interested parties has argued for an alternative approach at active ranges. According to this group, discharged munitions at military firing ranges clearly meet the definition of solid waste under RCRA; while their firing may or may not constitute "disposal" of a product, they become waste "as soon as they hit the ground"—at this point they become discarded material that has served its useful purpose, that is no longer needed by the military, and that will never be retrieved for any useful purpose. These commenters argued that EPA should use its RCRA authority to tailor special regulations for military firing ranges. For example, DOD and the relevant services might be required to track all fired munitions, retrieve and properly dispose of fired munitions at reasonable intervals, and (where the munition is irretrievable) manage the munitions in place in a way that guarantees that off-site migration of contaminants does not occur.

In support of the need for RCRA regulation, these commenters have pointed to examples of environmental damage or potential threats associated with firing ranges. These include deaths resulting from detonation of unexploded ordnance at old ranges transferred to non-military ownership; numerous other cases of unexploded munitions or discarded chemical munitions found on non-military lands; threats to endangered species and other ecosystem damage from range activities; death of thousands of waterfowl resulting from consumption of residual white phosphorus at an artillery impact range; destruction of lands that are culturally or religiously significant to Native Americans; possible adverse health effects related to air emissions from military training exercises; soil and groundwater at ranges contaminated with heavy metals and possibly organic toxics; and high heavy metal concentrations in streambeds and fish tissue in the area of firing ranges.

In developing this rulemaking, EPA has not independently reviewed each of these examples in detail, and it recognizes that in many cases the extent of damage has been the subject of considerable disagreement. Furthermore, it is often unclear whether an acknowledged problem was caused by weapons testing or training at ranges, or by other activities (e.g., open burning/open detonation of munitions, other waste management activities, or weapons manufacture and processing). At the same time, however, military ranges have clearly been associated with numerous environmental or safety concerns.

Although it recognizes these concerns, EPA is not proposing in today's rule to regulate military firing range activities under RCRA. EPA is taking this approach for several reasons. Above all, EPA questions whether RCRA regulatory authority appropriately extends to activities like weapons testing or training exercises, which involve the use of a product and which are not "waste management" as it has historically been understood. Further, EPA questions whether the RCRA regulatory apparatus is well adapted to the regulation of weapons testing or training, especially given RCRA's reliance on site-by-site permitting and the existence of statutory constructs such as the land disposal restrictions and minimum technology requirements, which make no sense in the context of range management.

DOD critics recognize the difficulties of applying conventional RCRA requirements (e.g., full RCRA permits) to every military firing range, and instead suggest a "permit-by-rule" approach. EPA has already issued permits-by-rule for certain activities involving hazardous waste; however, this approach has been adopted only in cases where detailed EPA regulations already exist under other statutory authorities implemented by EPA. The regulatory and legal difficulties of implementing such an approach at ranges are considerable. More particularly, EPA questions the need for, or (in some cases) the advisability, of the specific regulations suggested by DOD critics. A requirement that all fired munitions be tracked would be impracticable. It would also be largely redundant with existing DOD requirements. (DOD Directive 6055.9–STD, Chapter 12, requires that installations maintain permanent records of "known and suspected" ranges, including "contamination by nomenclature, hazard, quantity, exact locations, and dud rates.") Similarly, a requirement that ranges be regularly cleared for unexploded ordnance may be practical in some circumstances, but in others involve a significant safety threat to military personnel. According to DOD, the Air Force is able to require routine clearance of bombing ranges, where relatively limited numbers of unexploded munitions will be found. The Army, however, does not apply similar requirements to artillery ranges, given the much larger number of unexploded rounds.

DOD and the Services already have regulations governing range activities. For example, the DDESB has issued regulations requiring recordkeeping, remediation, use restrictions, and similar requirements. EPA believes that the most appropriate approach to regulating day-to-day range activities is through these standards, rather than under RCRA—given the poor fit of the statute. EPA recognizes that RCRA would provide for independent oversight and enforcement, an important factor for DOD critics. It questions, however, whether the costs of this oversight (both to DOD and the regulatory agencies) would be justified. This is particularly the case since many of the concerns addressed by commenters are already addressed under other independent authorities (e.g., DOD and the services must comply with the Endangered Species Act; CERCLA governs transfer of ranges (and other military property) to non-Federal ownership; and RCRA and CERCLA remedial authorities are available for conventional contamination resulting from range activities), or under any circumstances would fall outside the scope of RCRA (e.g., radioactive materials).

2. Applicability of Range Cleanup Authorities

Proposed § 261.2(g)(4)(i) states that munitions left in place are considered solid waste for statutory purposes when a range is closed, or when the property is transferred from military control. In practice, this requirement would make the munitions potentially subject to section 7003 of RCRA in the case of an imminent and substantial endangerment, and to sections 3004(u) and 3008(h) cleanup authorities if the facility was otherwise subject to RCRA permitting requirements. As discussed earlier in this preamble, the proposal also contains a sunset provision; munitions left in place at closed or transferred ranges would no longer be subject to RCRA cleanup authorities once DOD promulgates, pursuant to DOD's own statutory authorities, regulations governing cleanup of ranges.

Some critics of DOD are likely to argue that today's proposal does not go far enough. Section 7003 is a discretionary authority for EPA, and sections 3004(u) and 3008(h) only apply at RCRA treatment, storage, and disposal facilities where releases have been identified. Thus, according to some commenters, these authorities may not adequately address closing ranges. It has been suggested that EPA impose "post-closure" requirements on all closed military ranges where munitions or other contaminants are left in place. These requirements might or might not be imposed through a permit, and they might include permanent access restrictions, monitoring for off-site releases, and other requirements.

EPA notes that current statutory restrictions on Federal property transfers cover many of the problems

that a post-closure requirement would also address. For example, under section 120(h)(3) of CERCLA, deeds conveying contaminated real property from the United States to non-Federal ownership must contain a covenant that all remedial action necessary to protect human health and the environment has been taken with respect to any hazardous substances remaining at the property. All remedial actions necessary to protect human health and the environment have been taken when EPA determines that an approved remedy is constructed and operating properly and successfully. Therefore, current statutory provisions already provide considerable legal protection when a former range is transferred to non-Federal owners. The applicability of these safeguards is less clear, however, when a closed range on an installation is put to other uses, or a range is transferred from the Department of Defense to another Federal agency. EPA solicits comments on the need for "post-closure" controls under RCRA to address these situations where property remains under Federal ownership. Comments should address the legal basis for such controls under RCRA; their need, given current controls (including current DOD regulations and practices); the level of controls that would be appropriate; and the regulatory burden of such controls, both on DOD and the regulatory agencies.

C. Alternative Organization (Separate CFR Part)

EPA also sees the benefit of a uniform nationwide system for managing waste military munitions given DOD's national defense mission, nationwide presence, and logistical and operational needs. A consistent set of standards for waste military munitions will simplify integration of these rules with the DDESB and the Service requirements for the management of all military munitions (including waste munitions). Indeed, EPA believes Congress' intent in passing RCRA § 3004(y) was to establish a clearer, uniform national system for regulating military munitions. To support such clarity and consistency, DOD has recommended that the regulations for military munitions be included in a separate part of the CFR, which would identify the requirements that apply to military munitions in one single place. The new part as proposed by DOD would still contain numerous cross-references to other pertinent parts and sections, and the military would still have to comply with other parts for their non-munitions hazardous waste.

EPA solicits comment on whether this approach would be simpler to implement, easier to enforce, or easier for States to adopt. For an example of how the alternative approach might be structured, commenters may refer to the DOD proposal, which may be obtained by contacting Mr. Ed Sims, U.S. Army Environmental Center, Environmental Compliance Division, Mail Code SFIM-AEC-ECA, Building E4435, Aberdeen Proving Ground, Maryland 21010-5401, through the DOD Home Page on the Internet at: EWSIMS@AEC1.APGEA.ARMY.MIL, or from the EPA docket for today's rule. DOD recommends that the standards be placed in 40 CFR part 269. However, EPA believes that, if this approach is adopted, it should be placed in a separate subpart in 40 CFR part 266, which addresses other special types of waste and waste management facilities.

VI. State Authority

Under section 3006 of RCRA, EPA may authorize States to administer and enforce the RCRA hazardous waste program. (See 40 CFR part 271.) After authorization, the authorized State administers the program in lieu of the Federal government, although EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA. New Federal requirements (such as today's rule) do not apply until they have been adopted by the State and the State's authorization has been revised to incorporate the requirements.[12]

Under RCRA regulations, States must adopt and become authorized for new requirements within one to two years of the rule's effective date, where the requirements are more stringent or broader than existing requirements. Section 3009 of RCRA allows States to impose standards that are more stringent than those in the Federal program.

Today's proposal, however, raises an issue regarding State authority because Congress clearly expected EPA to develop national standards for waste munitions through the RCRA rulemaking process. Although today's rule would lay out such national standards, States under the standard RCRA approach could enforce their own more stringent standards under their own State programs. This situation, at least in theory, could lead to just the sort of piecemeal approach that the FFCA was intended to avoid. Therefore, EPA is also considering, in addition to the standard RCRA approach to state authorization, an approach that would prohibit States from enforcing broader or more stringent requirements with respect to military munitions. This alternative approach would be specific to today's proposal and, because it would be tied to the waiver of sovereign immunity in RCRA, it would in any case be limited to rules where the only regulated entity was the Federal government. In today's notice, EPA solicits comment on whether this alternative approach should be adopted for military munitions, or whether the standard RCRA approach should be maintained.

As explained above, the standard RCRA approach would allow States to promulgate regulations that are broader in scope or more stringent than Federal requirements. And States would not be required to adopt new regulations that are less stringent or narrower than regulations they already have in place. The legal basis for this approach would derive from section 3009, which allows States to impose more stringent hazardous waste standards.

Under the standard approach, therefore, states would be required to adopt those portions of today's rule that are more stringent or broader in scope than current requirements, but they would not be required to adopt less stringent requirements. Many of the requirements in today's rule, in EPA's view, are neither more nor less stringent than current regulatory requirements applicable to other materials. Therefore, it is EPA's view that under current RCRA procedures, the adoption of these regulatory provisions by States would not be required, as long as the States interpret their current regulations in a manner that is no less stringent than today's proposal. Similarly, States would not be required to pick up those portions of today's proposal if they are promulgated in a final rule, that are less stringent than existing requirements. The less stringent portions of the rule are: (1) the modified definition of "on-site" (§ 260.10), (2) the exemption of emergency responses involving explosives from RCRA transport requirements (§ 262.10(h)), and (3) the RCRA manifest exemption for the off-site shipment of stockpiled munitions waste from one DOD installation to another.

Although states would not be required to adopt less stringent requirements under this approach, EPA strongly urges States to adopt all aspects of today's rule, when it is finalized, to ensure clear

[12] Under section 3006(g) of RCRA, enacted as part of the Hazardous and Solid Waste Amendments (HSWA) of 1984, new requirements imposed by HSWA take effect in authorized States at the same time as they do in unauthorized States—as long as the new requirements are more stringent than the previous requirements. EPA implements these new requirements until the State is authorized for them. Since today's proposal is not issued under HSWA authority, however, section 3006(g) does not come into play.

guidelines for handlers of waste military munitions, State regulators, and the public. EPA believes that, although States under the standard approach can be more stringent, Congress intended for the rule to establish a uniform and consistent program for the management of waste military munitions. Therefore, States should adopt these regulations as quickly as their legislative and regulatory processes will allow.

In two respects, today's proposed rule is more stringent than current requirements: (1) The requirement that military installations retrieve munitions fired off-range (§ 261.2(g)(4)(ii)), and (2) the requirement that military personnel responding to immediate threats involving military munitions maintain records of the response (§§ 264.1(g)(8)(iv), 265.1(c)(11)(iv), and 270.1(c)(3)(iii)). If these proposed requirements are promulgated in a final rule, authorized States must adopt these requirements as part of their State programs and apply to EPA for approval of their program revisions. Section 270.21(e)(2) sets out the deadline for State program modifications; § 271.21 identifies the procedures for revision of State programs.

The above approach is consistent with the basic principles of Federal-State relationships under RCRA. EPA is committed to a partnership role with the States and recognizes that States should be the primary implementers of the hazardous waste program. Furthermore, it has been axiomatic under RCRA that States run their program under their own State laws, and that, while EPA sets national minimum standards, States may choose to be more stringent. At the same time, EPA recognizes DOD's very real need for national consistency in managing waste munitions, given DOD's national defense mission, nation-wide presence, and logistical and operational needs. Therefore, as discussed above, EPA is considering an alternative approach, under this rule, that ensures national standards by precluding States from enforcing more stringent requirements on waste military munitions.

This approach would characterize EPA's requirements as more stringent than the current requirements because they are new standards with respect to the identification of when munitions become waste and as to the storage and transportation standards for that waste. Under this alternative these regulations, when final, would not apply in an authorized State until such time as a State has revised its authorized program to incorporate these requirements and such revisions have been approved by EPA in accordance with 40 CFR Part 271. Additionally, this approach would interpret the waiver of sovereign immunity in section 6001 of RCRA to prohibit broader or more stringent State requirements as applied to military munitions than those requirements adopted in a final rule under section 3004(y).

The approach would be supported by policy and legal arguments that the generally available authority of the States to promulgate more stringent rules than those issued by EPA under RCRA is not present in the case of rules regulating military munitions. It could be argued that Congress in the FFCA intended that EPA, in consultation with DOD, the States, and interested parties, develop national regulations that reflected the views of all and that settled both the jurisdictional and the technical issues at one time.

The argument that the scope of the waiver of sovereign immunity does not permit a State to impose more stringent requirements than those contained in Federal regulation depends on the language of RCRA 6001. This section provides that Federal agencies "shall be subject to, and comply with, all Federal, State, interstate, and local requirements * * * respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to under such requirements." (42 U.S.C. 6961) EPA used similar language in section 118 of the Clean Air Act, in its General Conformity Rule (40 CFR Part 51) to preclude States from applying more stringent requirements on federally-assisted facilities. In the case of today's rule, it would be argued that, because military munitions are items unique to the military, more stringent state regulation would, by definition, apply only to the military and thus be discriminatory and outside the scope of the RCRA waiver of sovereign immunity in section 6001.

EPA will carefully consider both approaches and their policy and legal interpretations. Interested parties, including both DOD and the States, are asked to comment on the approaches and to address such issues as the potential for discrimination against the Federal government; the extent to which the military munitions rule would or could apply to non-Federal entities or to entities whose costs of compliance would not ultimately be borne by the Federal government; the policy considerations raised by the dangers of military munitions and the operational needs of the Military Services; and the practical implementation issues that both approaches would raise.

VII. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order No. 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that today's proposal is a significant rule under Executive Order 12866 due to the novel policy issues raised. EPA estimates that today's rule results in national annual incremental costs of $190,000 per year. This represents a savings over baseline costs of approximately $1,400,000 to over $2,500,000 per year. For more information on the costs impacts of today's proposal and of some alternative approaches, see the *Economic Impact Analysis of the Proposed Munitions Rule*, in EPA Docket #* * *

1. Cost Analysis

Today's rule focuses on several significant issues: (1) identification of munitions as waste; (2) transportation of munitions identified as wastes; (3) emergency response actions; (4) storage standards for waste munitions; and (5) maintenance and closure of military ranges. Some management approaches to some of these issues may result in significant costs to the U.S. Department of Defense. However, EPA has estimated that the proposed rule, which would relax requirements from the assumed full subtitle C regulations, would not result overall in additional financial burden to the Department of Defense or any military installation. In many instances, EPA has concluded that

current Department of Defense standards meet RCRA standards and imposition of RCRA standards would result in regulations that are redundant.

Over the next ten years, EPA estimates that the proposed regulation will result in annual costs of approximately $190,000 per year to the Department of Defense. The most significant costs would be related to the need for permit modifications for treatment and disposal facilities receiving off-site wastes. However, today's proposal results in avoided costs on the order of $1,400,000 to $2,500,000 per year over baseline. Baseline is based on DOD's current operations.

The principal sources of annual savings include avoided costs for new permits, contingency plans, manifests, and retrofitted storage units. These avoided costs may be more significant when compared with other regulatory alternatives considered by EPA. For example, analysis of costs for several alternatives suggests that incremental costs for full Subtitle C requirements and active range management may exceed $410,000,000 per year. Other alternatives may exceed $430,000,000 per year. The cost analysis for the proposed rule and alternatives is presented in the technical background document, *Economic Impact Analysis of the Proposed Munitions Rule*. These higher costs result primarily from the costs for active range management.

EPA did not develop specific costs for range closure and clean up (e.g., prior to property transfer) under RCRA 7003, 3004 (u) or (v), 3008(h), CERCLA, the Defense Environmental Restoration Program, or Base Realignment and Closure. Such costs are site-specific, and in general, the Agency assumed that these costs would be similar under each authority or program, and thus, there would be no incremental costs under today's proposal. EPA requests that commenters submit additional information relevant to the cost for clean-up of closed ranges under each of these authorities.

2. Benefits Analysis

EPA is proposing that stockpiled munitions generally do not become hazardous waste subject to regulation until they are removed from storage for transportation to a disposal unit. This proposal recognizes that current DOD storage regulations have been successful in protecting human health and the environment, and that additional requirements would be redundant. (See section IV.B.1.f of today's proposed rule). EPA also has proposed to exempt stockpiled waste military munitions from RCRA manifest and other requirements when transported because DOD standards provide comparable protection. The benefit of this proposed option is the annual cost savings of approximately $1,400,000 to over $2,500,000, due to avoided retrofits, permits, contingency plans, and manifest costs.

One exception to the above proposed definition is for munitions that are "deteriorated or damaged (e.g. leaks, broken seals) to the point that they cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes." Such munitions would be designated as regulatory solid waste under the proposed regulation. The benefit of regulating deteriorated or damaged munitions as a solid waste under RCRA would be the assurance that such munitions would be stored and transported in a safe manner and destroyed as soon as safely feasible, thus limiting the potential exposure of humans or the environment to hazardous substances.

The use of munitions for their intended purpose (i.e. discharged at a firing range) is not considered "waste management" for the purposes of RCRA. However, under today's proposal, used or fired munitions left in the environment become "discarded" in a RCRA statutory sense, and therefore are subject to RCRA statutory authorities, including RCRA sections 7003, 3004 (u) and (v), and 3008(h).

The benefits of considering used or fired munitions as "discarded" at the point of property transfer or discharge off-installation range are especially clear in the case of unexploded ordnance (UXO). Military personnel are trained in handling explosive munitions, and military installations have security precautions to prevent civilian exposure to explosive devices. Once property containing UXO leaves military control, however, there is no assurance that the same measure of protection would be maintained, even if it is transferred to another Federal Agency.

The Department of Defense Explosives Safety Board Accident Database reports that since 1943, there have been a total of 30 non-operational accidents from military unexploded ordnance, resulting in seventy-seven injuries and twenty-six fatalities. In many cases, these accidents occurred after property transfer. As more and more bases undergo closure, the potential for accidents from abandoned unexploded ordnance will increase. By including used or fired munitions which leave military control in the statutory definition of "solid waste," EPA and authorized States will be able to provide independent oversight of property transfers involving former ranges.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

EPA has determined that today's proposal will primarily affect Federal Agencies, such as the Department of Defense, and therefore few, if any, small entities will be affected. Furthermore, since today's proposal generally provides savings over current requirements, EPA believes that any small entities engaged in activity covered by the rule will not be adversely affected. However, the Department of Defense has raised the issue that these regulations may adversely impact businesses doing munitions management activities for the Department of Defense, the Department of Energy, the Coast Guard, and the National Guard. EPA requests that commenters submit additional information related to the types of businesses that may be impacted, the number of small businesses that would be affected, and the extent of adverse impacts to these businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 USC 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this proposed rule do not constitute a "collection of information" as defined in 44 USC 3502(4) because they apply to Federal entities (i.e. DOD, DOE, Coast Guard, and National Guard), or for those sections that apply to non-Federal entities (e.g. emergency responses) they do not impose new recordkeeping or reporting requirements.

Comments regarding this determination may be sent to Ken Shuster (RE: ICR Determination), EPA (Mail Code 5303W), 401 M St, SW, Washington, D.C. 20460.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated that the total potential cost to State, local, and tribal governments would not exceed approximately $190,000 per year over ten years or $1,300,000 in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VIII. References/Docket

The regulatory docket for this proposal contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 202–260–9327 and ask for the list of references in Docket #F–94–MMP–FFFFF.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Emergency responses, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Emergency responses, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Emergency responses, Hazardous waste, Insurance, Storage containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment and disposal.

40 CFR Part 265

Air pollution control, Emergency responses, Hazardous waste, Insurance, Storage containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Emergency responses, Hazardous materials transportation, Hazardous waste, Permit application requirements, Permit modifications, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 260, 261, 262, 263, 264, 265, and 270 are proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939, and 6974.

2. Section 260.10 is amended by revising the definition of "on-site" and by adding the following definitions, in alphabetical order, to read as follows:

§ 260.10 Definitions.

* * * * *

Explosives or munitions emergency response expert means Department of Defense (DOD) emergency explosive ordnance disposal (EOD) or technical escort unit (TEU) personnel; DOD-certified civilian contractor personnel; or other trained Federal, State, local, or civilian chemical or conventional munitions or explosives handling, render-safe, destruction, and response experts.

Explosives or munitions emergency means a situation involving the suspected or detected presence of unexploded explosive ordnance (UXO), damaged explosive ordnance, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harming military chemical warfare material or device, that creates an imminent threat to human health, including safety, or the environment, including property, as determined by an emergency response expert, and calls for immediate action by the emergency response expert to eliminate the threat.

Explosives or munitions emergency response means all immediate response activities by emergency response experts to eliminate an emergency threat by treating or destroying the ordnance in place or rendering the ordnance safe and/or removing it to another location for treatment or destruction. An emergency response includes transportation and treatment to the extent necessary to abate the immediate threat. Emergencies and expert responses can occur in the public sector or on Federal installations.

* * * * *

Military munitions means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy, and National Guard personnel. Military munitions include: gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic

missiles, bombs, warheads, mortar, artillery, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, devices, and components thereof managed under DOE's nuclear weapons program.

Military range means designated air, land, and water areas set aside, managed, and used to test and evaluate military explosives, other ordnance, and weapon systems, and to train personnel in their use and handling. Ranges include firing lines and positions, firing lanes, impact areas, and buffer zones with restricted access and exclusionary areas.

* * * * *

On-site means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. "On-site" also includes contiguous property comprised of an individual generation site and/or facility under the control of the same person, regardless of whether it is divided by a public or private right-of-way and whether access is by crossing, as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access is also considered "on-site" property.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.2 is amended by revising paragraph (a)(2) introductory text and adding a new paragraph (g) to read as follows:

§ 261.2 Definition of solid waste.

(a) * * *

(2) Except for military munitions addressed in § 261.2(g), a *discarded material* is any material which is:

* * * * *

(g) *Military munitions.* (1) Unused military munitions are discarded material and therefore a solid waste when any of the following occurs:

(i) The munition is abandoned by being disposed of, burned, or incinerated, or treated prior to disposal, or

(ii) The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal, or

(iii) The munition is deteriorated or damaged (e.g., the integrity of the round is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes, or

(iv) The munition has been declared a solid waste by an authorized military official.

(2) Used or fired military munitions are solid wastes if they meet the definition of discarded material in § 261.2(a)(2), unless they are excluded by paragraphs (a)(1) or (g)(3) of this section.

(3) Use of military munitions for their intended purpose does not constitute discard and is not subject to regulation under parts 260 through 271 of this chapter. "Use for intended purpose" includes:

(i) Use in training of troops and of explosives and munitions emergency response experts (including training in proper destruction of excess unused propellant or other munitions during training exercises),

(ii) Use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems, and

(iii) Recovery, collection, and on-range destruction of unexploded ordnance and contaminants during range clearance operations at active, inactive, or closing ranges.

(4) *Military munitions at ranges.* Munitions discharged during military activities at ranges are discarded material (and therefore solid waste) for purposes of § 1004(27) of RCRA under the following circumstances:

(i)(A) The munition is left in place at the firing range at the time the range is closed or when the range is transferred from military control, whichever occurs first, except that,

(B) Upon the issuance of DOD regulations that govern the cleanup of munitions on closed or transferred ranges and that provide for State and public participation in the cleanup decisionmaking process at specific sites, these DOD regulations shall supersede all RCRA authority over military munitions at closed and transferred military ranges.

(ii) The munition lands off-range and it is not promptly rendered safe (if necessary) and retrieved. To the extent feasible, any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

(5) Military munitions that have not been discharged, including subcomponents thereof, do not become a solid waste when they are being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912(a), 6922 through 6925, 6937, and 6938, unless otherwise noted.

2. Section 262.10 is amended by adding, before the notes, new paragraphs (h) and (i) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(h) Persons responding to an explosives or munitions emergency in accordance with sections 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.

(i) A generator of military munitions that become solid wastes under 40 CFR 261.2(g)(1)(ii through iv) is exempt from subpart B and §§ 262.32(b), 262.40(a), and 262.42 of this part when the munition is shipped under Department of Defense shipping controls (including at a minimum: Government Bill of Lading (GBL) (GSA Standard Form 1109) and associated Special Instructions and Notes (SIN) and Routing Instructions and Notes (RIN)—a series of files within an automated information base used in preparing the GBL continuation sheets, requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) from a federally-owned or operated installation to a DOD-owned or operated treatment, storage, or disposal facility, except that the Federal agency must report to the EPA Regional Administrator any waste that was not received by the receiving facility within 45 days of the day the waste was shipped.

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

1. The authority citation for Part 263 continues to read as follows:

Authority: 42 U.S.C. 6912(a), and 6922 through 6925.

2. Section 263.10 is amended by redesignating paragraph (c) as (e), and adding new paragraphs (c) and (d) to read as follows:

§ 263.10 Scope.

* * * * *

(c) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with §§ 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii).

(d) The regulations in this part do not apply to the transportation of military munitions that become solid wastes under 40 CFR 261.2(g) (1)(ii through iv) when shipped under Department of Defense shipping controls (including at a minimum: Government Bill of Lading (GBL) (GSA Standard Form 1109) and associated Special Instructions and Notes (SIN) and Routing Instructions and Notes (RIN)—a series of files within an automated information base used in preparing the GBL continuation sheets, requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) from a DOD-owned or operated installation to a DOD-owned or operated treatment, storage, or disposal facility.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding new paragraphs (g)(8)(i)(D) and (g)8)(iv) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(8) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, or local official acting within the scope of his or her official responsibilities, or if an explosives or munitions emergency response expert determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or expert may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response expert's unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 264.70 is revised to read as follows:

§ 264.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under § 263.10(d). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

4. Part 264 is amended by adding new subpart EE, consisting of §§ 264.1200 through 264.1202, to read as follows:

Subpart EE—Military Hazardous Waste Munitions Storage

§ 264.1200 Applicability.

The requirements of this subpart apply to owners or operators who store military wastes and munitions classified as hazardous wastes in military magazines, except as § 264.1 provides otherwise. (NOTE: Depending on explosive hazards, military hazardous waste munitions may also be managed in other types of storage units, including containment buildings (40 CFR part 264, subpart DD), tanks (40 CFR part 264, subpart J), or containers (40 CFR part 264, subpart I)).

§ 264.1201 Design and operating standards.

(a) Hazardous waste munitions storage units must be designed and operated, with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, or atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For non-liquid wastes stored outdoors, provide that the waste will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids or precipitation are promptly detected and removed from the waste area; and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Military hazardous waste munitions stored under this subpart may be stored in one of the following:

(1) Earth-covered magazines. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) to be of sufficient strength and thickness to support the weight of any munitions stored and any equipment used in the unit;

(B) to provide working space for personnel and equipment in the unit; and

(C) to withstand movement activities that occur in the unit.

(iii) Designed with walls and earthen covers that direct an explosion in the unit in a safe direction to prevent propagation of the explosion to adjacent units.

(2) Above-ground magazines. Above-ground magazines must be designed to disintegrate rather than blow apart into fragments.

(3) Outdoor or open storage areas.

(c) Hazardous waste munition units must be adequately designed and spaced to prevent propagation from one storage unit to another in the event of detonation.

(d) Hazardous waste munitions must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. These procedures would supersede the security and inspection requirements of 40 CFR 264.14, the preparedness and prevention procedures of 40 CFR part 264, subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 264, subpart D.

(e) Hazardous waste munitions must be packaged to ensure safety in handling and storage.

(f) Hazardous waste munitions must be inventoried at least annually.

(g) Inspection and monitoring as necessary to ensure stability and no migration of contaminants out of the magazine. At waste chemical munitions storage units, the preferred method for detection of leakers is the use of remote sensing equipment.

§ 264.1202 Closure and post-closure care.

(a) At closure of a military magazine which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for military magazines must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions magazine.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936, unless otherwise noted.

2. Section 265.1 is amended by adding new paragraphs (c)(11)(i)(D) and (c)(11)(iv) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(11) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, or local official acting within the scope of his or her official responsibilities, or if an explosives or munitions emergency response expert determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or expert may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding emergency response expert's unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 265.70 is revised to read as follows:

§ 265.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under § 263.10(d).

4. Part 265 is amended by adding new subpart EE, consisting of §§ 265.1200 through 265.1202, to read as follows:

Subpart EE—Military Hazardous Waste Munitions Storage

§ 265.1200 Applicability.

The requirements of this subpart apply to owners or operators who store military wastes and munitions classified as hazardous wastes in military magazines, except as § 265.1 provides otherwise. (NOTE: Depending on explosive hazards, military hazardous waste munitions may also be managed in other types of storage units, including containment buildings (40 CFR part 265, subpart DD), tanks (40 CFR part 265, subpart J), or containers (40 CFR part 265, subpart I)).

§ 265.1201 Design and operating standards.

(a) Hazardous waste munitions storage units must be designed and operated, with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, or atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For non-liquid wastes stored outdoors, provide that the waste will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids or precipitation are promptly detected and removed from the waste area; and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Military hazardous waste munitions stored under this subpart may be stored in one of the following:

(1) Earth-covered magazines. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) to be of sufficient strength and thickness to support the weight of any munitions stored and any equipment used in the unit;

(B) to provide working space for personnel and equipment in the unit; and

(C) to withstand movement activities that occur in the unit.

(iii) Designed with walls and earthen covers that direct an explosion in the unit in a safe direction to prevent propagation of the explosion to adjacent units.

(2) Above-ground magazines. Above-ground magazines must be designed to disintegrate rather than blow apart into fragments.

(3) Outdoor or open storage areas (for munitions that do not pose a significant potential for explosion).

(c) Hazardous waste munition units must be adequately designed and spaced to prevent propagation from one storage unit to another in the event of detonation.

(d) Hazardous waste munitions must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. These procedures would supersede the security and inspection requirements of 40 CFR 265.14, the preparedness and prevention procedures of 40 CFR part 265 Subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 265, subpart D.

(e) Hazardous waste munitions must be packaged to ensure safety in handling and storage.

(f) Hazardous waste munitions must be inventoried at least annually.

(g) Inspection and monitoring as necessary to ensure stability and no migration of contaminants out of the magazine. At waste chemical munitions storage units, the preferred method for detection of leakers is the use of remote sensing equipment.

§ 265.1202 Closure and post-closure care.

(a) At closure of a military magazine which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for military magazines must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions magazine.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310).

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding new paragraphs (c)(3)(i)(D) and (c)(3)(iii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device.

* * * * *

(iii) In the case of immediate responses involving military munitions, the responding military emergency response expert's unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 270.42 is amended by redesignating paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(h) *Military hazardous waste munitions treatment and disposal.* (1) The permittee is authorized to continue to accept military munitions designated as hazardous wastes under § 261.2(g) of this chapter, notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(i) The facility was in existence as a hazardous waste facility on the date when the waste munition became subject to hazardous waste regulatory requirements;

(ii) On or before the date when the waste munition becomes subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and

(iii) The permittee submits a complete Class 2 modification request within 180 days of the date when the waste munition became subject to hazardous waste regulatory requirements.

(2) Within the 180-day period for submission of the Class 2 modification request, the facility may request the permitting agency to extend the 180 days for a specified period. If the permitting agency does not respond to the extension request within 30 days, the permittee is automatically granted the extension.

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Wednesday
November 8, 1995

Part IV

Department of Housing and Urban Development

24 CFR Part 235
Refinancing Mortgages Under Section 235(r) of the National Housing Act; Amendment; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. FR–3927–F–01]

RIN 2502–AG52

Refinancing Mortgages Under Section 235(r) of the National Housing Act; Amendment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for refinancing mortgages under section 235(r) of the National Housing Act. Since the enactment of this program in 1988, mortgagees have not expressed an interest in participating in this program. Therefore, HUD seeks to enhance the program by providing for the payment by HUD, rather than by the mortgagee, of the incentive to the mortgagors and of specific refinancing costs, and by limiting the origination of these loans to the number of approved mortgagees that would make the program most attractive. This rule also eliminates obsolete regulations within 24 CFR part 235.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Robert E. Falkenstein, Jr., Office of Insured Single Family, Department of Housing and Urban Development, room 9278, 451 Seventh Street SW., Washington, DC 20410; Telephone number (202) 708–0614, ext. 2214; TDD (202) 708–4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Congress added section 235 to the National Housing Act (12 U.S.C. 1715z) (the Act) in 1968. This provision authorized the Secretary to insure mortgages so that lower income families could acquire housing. Section 235 also authorized the Secretary to assist the mortgagor by contracting with the mortgagee to make a portion of the mortgage payments on behalf of the mortgagor. Many of the mortgages insured under section 235, which are still outstanding, were made during the high interest rate years of 1980, 1981, and 1982. HUD would be able to save substantial amounts of assistance payments if the mortgages were refinanced at the current lower interest rates. Congress enacted section 235(r) of the Act in 1988 so that mortgages insured and assisted under section 235 of the National Housing Act could be refinanced at a reduced interest rate.

A. HUD's Payment of Mortgagors' Incentives and Refinancing Costs

Although HUD published regulations in 1991 [1] and 1992 [2] to make the 235(r) program attractive to mortgagees and mortgagors, no mortgages have been made nor insured under the program. However, HUD published those regulations on the basis that the mortgagee would have to pay the incentive payment to the mortgagor as well as the refinancing costs, and then recoup these costs through a premium interest rate. Although section 235(r) authorized the Secretary to make such payments, Congress did not appropriate funds for the payments until it passed the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994).

In light of the appropriation, HUD can now amend the 235(r) regulations to provide for the payment of the incentive and refinancing costs by HUD rather than the mortgagee. The mortgagee will not have to recoup any such costs through the maximum interest rate, which will be set by the Secretary. The Secretary has established the maximum rate by reference to the daily Government National Mortgage Association (GNMA) coupon quote as shown on a financial news wire service (such as Telerate), which is described below, plus a margin to be determined by the Secretary.

B. Limiting Origination to the Efficient Number of Mortgagees

HUD realized that in order to participate in the 235(r) program, most mortgagees would have to create a mechanism to provide for refinancing these loans. The expense of creating the mechanism to refinance a small universe of mortgages may have discouraged participation in this program. However, HUD considered that the mortgagee's expenses in preparing for the program would be most efficiently offset by the mortgagee's fees if participation was limited to one mortgagee. Therefore, HUD prepared and advertised a Request for Proposal (RFP) to contract with a single mortgagee that was approved by the Federal Housing Administration (FHA). The contract would have provided for the successful mortgagee to handle the disbursement of the funds that HUD is authorized to pay for mortgagor incentives and the refinancing costs, notify the mortgagors of the opportunity to refinance, and originate all the mortgages. However, HUD received no applications under the RFP.

HUD desires to make this program as attractive as possible to encourage mortgagees to make these mortgages, which will in turn save HUD subsidy funds. HUD is currently trying to ascertain the source of the lack of interest in the program and the contract that HUD sought to award. Therefore, the Secretary will decide after the publication of these amendments whether the program would be enhanced by limiting it to less than all HUD-approved mortgagees. The Secretary could then determine if it would be practical to publish another RFP in an attempt to obtain one or more contractors to handle the entire program for HUD.

Accordingly, this rule amends the interest rate provisions, formerly in § 235.1202(b)(3), to provide that the interest rate on these loans shall be negotiated between the parties. The interest rate shall not exceed the GNMA coupon rate, which is based on the closing price for three-month forward delivery contracts, closest to par but not exceeding par, on the date the Direct Endorsement mortgagee's underwriter executes the Mortgage Credit Analysis Worksheet, form HUD–92900 WS, or the date of the closing of the mortgage, whichever rate is higher, plus a margin to be determined by the Secretary. The Secretary will also pay the mortgagee a discount, as part of the refinancing costs. The maximum discount points that HUD will pay on these mortgages is to be determined by the Secretary. The mortgagors shall not be charged discounts. These provisions are located in § 235.1218(c) of this rule. As a result of this rule, HUD will no longer publish a notice in the **Federal Register** announcing the interest rate for the 235(r) mortgages or the margin.

This rule also amends the refinancing costs provisions, formerly in § 235.1202(b)(4), to eliminate the payment of the financing costs by the mortgagee, and to provide that the Secretary will pay for such costs, to be disbursed by the mortgagee on behalf of the Secretary. These provisions are located in § 235.1218(d) of this rule.

This rule amends the eligible mortgagees provision, formerly in § 235.1202(b)(5), to allow the Secretary to limit participation in the program to a specified number of mortgagees, depending upon the amount of interest generated by these amendments. This provision is located in § 235.1218(e) of this rule.

This rule also makes other miscellaneous amendments to subpart H of part 235, to conform all the regulations with the changes in the program mentioned above.

[1] 56 FR 27622; June 14, 1991.

[2] 57 FR 62452; December 30, 1992.

II. Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. With this review, HUD has determined that while the 235(r) program is active, HUD can eliminate other portions of 24 CFR part 235 that are obsolete.

First, since HUD is no longer insuring new mortgages under section 235 of the National Housing Act, this rule eliminates all of the eligibility provisions in subpart A except those required for the 235(r) program. The provisions required for the 235(r) program will now be located in subpart H. HUD will maintain a "savings" clause in subpart A, which will provide that the regulations in the subpart in effect before the effective date of this rule will continue to apply to any outstanding mortgages.

Second, subparts D, E, and F implemented the Rehabilitation Sales Projects Program authorized by section 235(j) of the National Housing Act. HUD insured such mortgages in the 1970s, but few of these mortgages remain outstanding. This rule will eliminate these subparts except for a "savings" clause.

Therefore, this final rule will result in the elimination of approximately 14 pages of obsolete regulations.

III. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary.

Section 235(r)(7) of the National Housing Act provides that this program shall be implemented by a notice published in the **Federal Register**. However, since implementation of the program has required changes to codified regulations, it has been necessary for HUD to implement this program through rulemaking. The amendments described above would not impose a regulatory burden on the public, but instead would relieve a financial burden on the parties to these mortgages. Therefore, HUD finds that there is good cause for final rulemaking in this case, and that it is unnecessary to solicit prior public comment.

IV. Other Matters

A. National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, 451 Seventh Street SW, Room 10276, Washington, DC 20410.

B. Executive Order 12286

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "National Environmental Policy Act."

C. Regulatory Flexibility Act

The Secretary, in approving this rule for publication, has certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule does not have a significant economic impact on a substantial number of small entities. If the rule affects small entities at all, the impact will be positive, as the rule is amending a HUD-insured mortgage program in an effort to make it more acceptable in the financial market.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. The rule involves the refinancing of mortgages insured under section 235 by mortgages to be insured under section 235(r). The purpose of the refinancing is to lower the interest rate on the mortgages so that the assistance payments being made by HUD will be reduced, thus saving HUD large cash outlays. The potential effect on families would be beneficial in that they would have a potential savings with respect to repayment of assistance payments to HUD and would also receive an incentive payment to refinance. Therefore, no further review under the Order is necessary.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 235 is amended as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z; 42 U.S.C. 3535(d).

§§ 235.1202, 235.1204, 235.1206, 235.1308, 235.1210, 235.1212, 235.1314, 235.1216, 235.1218, 235.1220, and 235.1222 [Redesignated as 235.1218, 235.1220, 235.1222, 235.1224, 235.1266, 235.1228, 235.1230, 235.1232, 235.1234, 235.1236, and 235.1238].

2. Sections 235.1202, 235.1204, 235.1206, 235.1208, 235.1210, 235.1212, 235.1214, 235.1216, 235.1218, 235.1220, and 235.1222 are redesignated as §§ 235.1218, 235.1220, 235.1222, 235.1224, 235.1226, 235.1228, 235.1230, 235.1232, 235.1234, 235.1236, and 235.1238, respectively.

§ 235.1 [Redesignated as 235.1202]

3. Section 235.1 is redesignated as § 235.1202, and it is amended by

revising the introductory text of paragraph (a) to read as follows:

§ 235.1202 Cross-reference.

(a) All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages insured under section 235(r) of the National Housing Act, except the following provisions:

* * * * *

3. A new § 235.1 is added to subpart A to read as follows:

§ 235.1 Applicability of regulations.

The regulations regarding eligibility requirements for homes for lower income families in force before December 8, 1995, will continue to govern the rights and obligations of mortgagors, mortgagees, and the Department of Housing and Urban Development with respect to loans insured under section 235(i) of the National Housing Act.

§ 235.2 [Removed]

4. Section 235.2 is removed.

§ 235.3 [Redesignated as 235.1204]

5. Section 235.3 is redesignated as § 235.1204.

§ 235.3 [Redesignated as 235.1204]

6. Section 235.5 is redesignated as § 235.1206.

§ 235.9 [Removed]

7. Section 235.9 is removed.

§ 235.10 [Redesignated as 235.1208 and amended]

8. Section 235.10 is redesignated as § 235.1208, and is amended by removing paragraphs (a) and (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (a), (b), and (c), respectively, and by removing the parenthetical phrase at the end of paragraph (c).

§ 235.11 [Removed]

9. Section 235.11 is removed.

§ 235.12 [Redesignated as 235.1210]

10. Section 235.12 is redesignated as § 235.1210.

§§ 235.13, 235.15, 235.16, 235.18, and 235.20 [Removed]

11. Sections 235.13, 235.15, 235.16, 235.18, and 235.20 are removed.

§ 235.22 [Redesignated as 235.1212]

12. Section 235.22 is redesignated as § 235.1212.

§§ 235.25, 235.30, 235.31, and 235.32 [Removed]

13. Sections 235.25, 235.30, 235.31, and 235.32 are removed.

§ 235.33 [Redesignated as 235.1214]

14. Section 235.33 is redesignated as § 235.1214.

§§ 235.35, 235.37, 235.38, and 235.39 [Removed]

15. Sections 235.35, 235.37, 235.38, and 235.39 are removed.

§ 235.40 [Redesignated as § 235.1216]

16. Section 235.40 is redesignated as § 235.1216.

§ 235.45 [Removed]

17. Section 235.45 is removed.

18. Subpart D is revised to read as follows:

Subpart D—Rehabilitation Sales Projects

§ 235.501 Applicability of regulations.

The regulations regarding eligibility requirements, contract rights and obligations, and assistance payments for rehabilitation sales projects in force before December 8, 1995, will continue to govern the rights and obligations of mortgagors, mortgagees, and the Department of Housing and Urban Development with respect to loans insured under section 235(j) of the National Housing Act.

Subparts E and F—[Removed]

19. Subparts E and F are removed.

§ 235.1200 [Amended]

20. Section 235.1200 is amended by removing the second sentence.

21. Section 235.1218 is revised to read as follows:

§ 235.1218 Additional eligibility requirements.

(a) *Mortgage amount.* It must be in an amount not exceeding the lesser of:

(1) The unpaid principal balance due on the mortgage being refinanced, including any advances properly made by the mortgagee under the terms of the mortgage and any current interest due and delinquent interest not to exceed two months; and

(2) The original principal amount of the mortgage being refinanced.

(b) *Maturity date.* It must have a maturity not to exceed the remaining term of the section 235 mortgage being refinanced. In the event that the remaining term is measured in years and months, the terms for the refinancing mortgage shall be rounded down to the next whole year.

(c) *Interest rate.* (1) The 235(r) interest rate is the rate negotiated between the parties. Such rate shall not exceed the GNMA coupon rate plus a margin to be determined by the Secretary. The GNMA coupon rate is based on the closing price for three-month forward delivery contracts closest to par but not exceeding par on one of the following dates, whichever rate is higher:

(i) The date the Direct Endorsement mortgagee's underwriter signs the Mortgage Credit Analysis Worksheet (form HUD–92900 WS); or

(ii) The date the mortgage is closed.

(2) The Secretary will pay the mortgagee a discount as part of the refinancing costs. The maximum discount points will be determined by the Secretary.

(3) For a mortgage to be insurable under this subpart, the interest rate on the mortgage must be less than the interest rate shown on the mortgage being refinanced. The Secretary shall determine how much less the interest rate on the mortgage shall be in order for it to be insured.

(d) *Mortgagors' Incentive and Refinancing Costs.* The incentive to the mortgagors and the refinancing costs that the Secretary will pay for mortgages insured under this subpart are as follows:

(1) An amount determined by the Secretary to be an incentive to the mortgagor to refinance a mortgage insured under section 235; and

(2) Amounts as determined by the Secretary for discounts, loan origination fees, closing costs, and other costs incurred in connection with the refinancing.

(e) *Eligible mortgagees.* The Secretary shall determine whether this program will be open to all approved Direct Endorsement mortgagees, or only to those approved Direct Endorsement mortgagees that meet certain specified requirements. The Secretary may limit the program to a designated number of Direct Endorsement approved mortgagees if such a limitation will facilitate the most expeditious handling of these refinancing mortgages.

(f) *Eligible mortgagor.* (1) It must be executed by a mortgagor who is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced and from whom a recertification was obtained within the preceding twelve months prior to the application for the 235(r) mortgage, or a new recertification was required prior to the execution of the mortgage credit worksheet by the direct endorsement lender, or the firm commitment was issued by HUD.

(2) The mortgagor must be an occupant of the property securing the mortgage.

(3) The mortgagor has not received payments for the costs of refinancing or the mortgagor's incentive, nor have such payments been made on his behalf, as described in paragraph (d) of this section, for a period of 60 months from the date of the first payment of principal and interest on the mortgage to be refinanced; provided, however, that if the mortgagor pays its own cost to refinance, then this prohibition will not apply.

(4) The mortgagor is eligible to continue to receive assistance in connection with the 235(r) mortgage, or the mortgagee has executed a HUD Notice of Suspension form that suspends the assistance payment contract from the date of disbursement of the mortgage loan.

(5) The mortgagor has agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(6) If the property is subject to a recapture mortgage securing the payment to the Secretary of assistance payments made on behalf of the mortgagor, the mortgagor must agree to modify and subordinate such mortgage to the mortgage to be insured under section 235(r) in accordance with instructions of the Secretary.

(7) If the mortgage submitted for insurance requires an increase in the mortgagor's portion of the monthly payments due under the mortgage by more than $50.00 over the amount the mortgagor was paying on the mortgage being refinanced, then a mortgage credit analysis must be performed on the mortgagor to establish that his income is or will be adequate to meet his portion of the periodic payment due under the new mortgage and that the mortgagor has a general credit standing satisfactory to the Secretary as required by 24 CFR 203.34.

(8) Cooperative members, who are receiving assistance payments, which in all cases are based on the cooperative member's proportionate share of the obligation under the project mortgage, are not eligible for section 235(r) mortgages.

(g) *Monthly Payments.* The mortgage must have monthly principal and interest payments at the 235(r) interest rate that are less than the monthly payments of principal and interest on the mortgage being refinanced.

§ 235.1220 [Amended]

22. Section 235.1220 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 235.1220 Processing section 235(r) mortgages under the direct endorsement program.

* * * * *

(c) *Authority to sign.* The mortgagees that have the authority to originate and close mortgages in accordance with § 235.1218(e) shall have the authority to sign for and on behalf of the Secretary, in accordance with procedures established by the Secretary, without further specific approval, the following documents:

* * * * *

Dated: September 1, 1995.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

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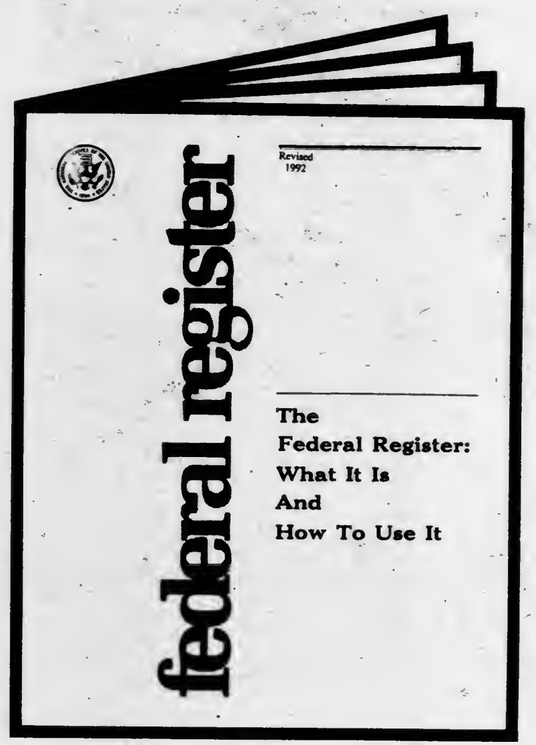
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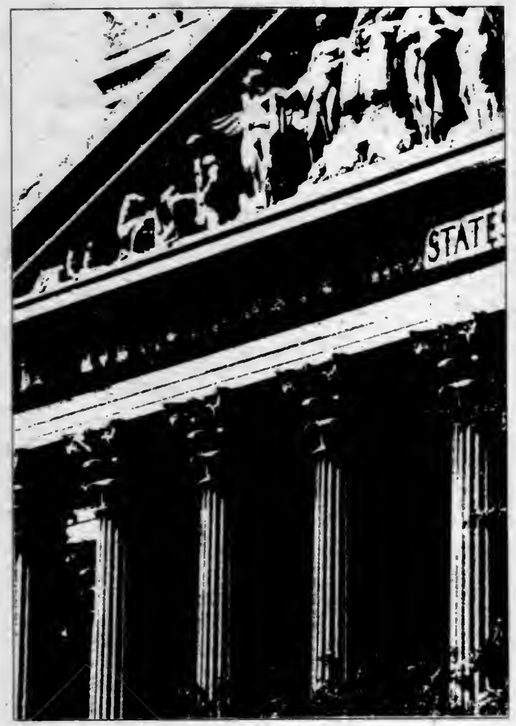
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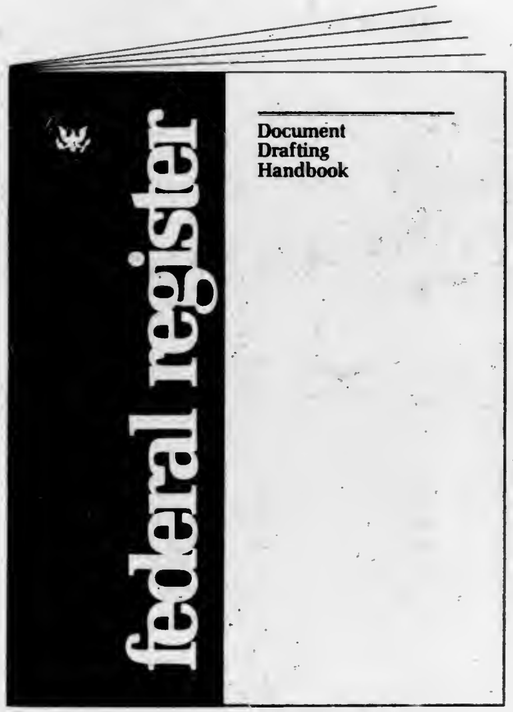
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 60, No. 217
Thursday, November 9, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV95-927-1FIR]

Expenses and Assessment Rate for the 1995-96 Fiscal Year; Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1995-96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456, telephone: (202) 720-5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, Green-Wyatt Federal Building, room 369, Portland, Oregon, telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable pears handled during the 1995-96 fiscal year, which began July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of pears. Because this rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on June 27, 1995, and unanimously recommended total expenses of $7,384,440 for the 1995-96 fiscal year. In comparison, the 1994-95 fiscal year expense amount was $7,460,160, which is $75,720 more than the amount recommended for the current fiscal year. The Committee also unanimously recommended an assessment rate of $0.405 per standard box, or equivalent for winter pears. In comparison, the 1994-95 winter pear assessment rate was $0.43 per standard

box, or equivalent. This represents a $0.025 decrease in the assessment rate recommended for this fiscal year. The Committee did not recommend a supplemental assessment rate for Anjou variety pears this fiscal year.

This rate, when applied to anticipated winter pear shipments of 16,171,000 boxes or equivalent, will yield a total of $6,549,296 in assessment income. Assessment income, along with $340,000 from other income sources, and $645,144 from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Major expense categories for the 1995–96 fiscal year include $6,064,163 for advertising, $417,934 for contingency, $323,422 for winter pear improvement, and $147,152 for salaries.

An interim final rule was issued on August 11, 1995, and published in the **Federal Register** [60 FR 42771, August 17, 1995] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal year for the program began July 1, 1995. The marketing order requires that the rate of assessment apply to all assessable winter pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 927 which was published at 60 FR 42771 on August 17, 1995, is adopted as a final rule without change.

Dated: November 3, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–27815 Filed 11–8–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 932 and 944

[Docket No. FV95–932–1FIR]

Olives Grown in California and Imported Olives; Establishment of Limited Use Olive Grade and Size Requirements During the 1995–96 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which authorized the use of smaller sized olives in the production of limited use styles for California olives during the 1995–96 crop year. This final rule allows more olives into fresh market channels and is consistent with current market demand for olives. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this final rule also changes the olive import regulation so that it conforms with the requirements established under the California olive marketing order.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, CA 93721, telephone (209) 487–5901; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including olives, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of California olives who are subject to regulation under the order during the current season, and there are about 1,200 olive producers in California. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (913 CFR 121.601) as those whose annual receipts are less than $500,000; and small agricultural service firms, which includes handlers and importers, have been defined by the Small Business Administration as those having annual receipts of less than $5,000,000. None of the domestic olive handlers may be classified as small entities. The majority of olive producers and importers may be classified as small entities.

An interim final rule was issued on August 11, 1995, and published in the **Federal Register** (60 FR 42772, August 17, 1995), with an effective date of August 21, 1995. That rule authorized the use of smaller-sized limited use olives under the order and for importation into the U.S. during the 1995–96 crop year. That rule provided a 30-day comment period which ended September 18, 1995. No comments were received.

Nearly all of the olives grown in the United States are produced in California. California olives are primarily used for canned black ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. A few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 163,023 tons during the 1992–93 crop year. The California Olive Committee (committee), the agency responsible for local administration of the order, indicated that 1994–95 production totalled about 80,925 tons. Total production for the 1995–96 crop year is estimated to be 75,500 tons. This is the first time that there have been two consecutive years of declining production. The unprecedented and unseasonal rains, poor pollination, and cool weather during the Spring of this year have resulted in a lower than normal fruit crop set on the trees.

Olive trees generally need to restore their nutrients from one season to the next, resulting in various varieties of olives produced in California having alternate bearing characteristics. This may result in high production one year and low the next, which can cause the total crop to vary greatly from year to year.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses styles if recommended by the committee and approved by the Secretary. The minimum sizes which can be authorized for limited uses were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which are authorized for limited uses must be disposed of through less profitable non-canning uses such as crushing for oil. Returns to producers are lower on fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was promulgated in 1965.

This rule will help growers and handlers meet the growing market demand for limited use style olives based upon current conditions. This demand can be illustrated in the record of shipments of sliced olives in the previous three years. Shipments of one type of limited use style fruit (sliced) totalled over 29,000 tons in the 1992–93 season, 34,000 tons in the 1993–94 season, and an estimated 30,000 tons in the 1994–95 season. Permitting the use of such smaller olives for limited use styles would, therefore, improve grower returns.

Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

The specified sizes for the different olive variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles allows handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. This rule will continue to permit handlers to market more olives than under regulations effective prior to the interim final rule.

Also, the committee estimates that production for this crop year is expected to be at 75,500 tons, which is smaller than the previous two seasons. The 1993–94 and 1994–95 crop years produced larger crops of 120,049 tons, and 80,925 tons, respectively.

During years with large olive crops, the ratio of limited use size olives to other sizes tends to be higher; there may be more limited use size olives in proportion to the other sizes. During years with small olive crops, the ratio of smaller olives to other sizes tends to be smaller; there may be fewer limited use size olives in proportion to the other sizes. The increased availability of limited use size fruit can be reflected in handler processing for the last three seasons. For example, during the 1992–93 crop year, 19 percent of the olives (31,175 tons) received by handlers were classified as limited use sizes as compared with 16 percent of the olives (19,465 tons) in 1993–94, and an estimated 9 percent of the olives (7,047 tons) in 1994–95. Thus, due to the poor pollination and sporadic fruit set of the 1995–96 crop, fewer limited use size olives are expected to be available for harvest. The percentage of limited use size olives available to handlers is, therefore, expected to be smaller.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This final rule finalizes an interim final rule that allowed smaller olives for limited use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in *Olive Regulation 1* (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the U.S. Standards for Grades of Canned Ripe Olives. The term does not include Spanish-style green olives.

Any lot of olives failing to meet the import requirements may be exported, disposed of, or shipped for exempt uses. Exportation or disposal of such olives would be accomplished under the

supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Exempt olives are those imported for processing into oil or donation to charity. Any person may also import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This final rule modifies paragraph (b)(12) of the olive import regulation to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles during the 1995–96 crop year.

Permitting the use of smaller olives in the production of limited use styles will allow importers to better take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this rule, the smaller fruit could not be imported for limited uses, and would have to be disposed of through less profitable, non-canning uses under the supervision of the inspection service, exported, or utilized in exempt outlets.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the committee's recommendations and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** on August 17, 1995 (60 FR 42772), will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932, which was published at 60 FR 42772 on August 17, 1995, is adopted as a final rule without change.

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR part 944, which was published at 60 FR 42772 on August 17, 1995, is adopted as a final rule without change.

Dated: November 3, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–27814 Filed 11–8–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 110, and 114

[Notice 1995–18]

Repeal of Obsolete Rules

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On June 15, 1995 (60 FR 31381), the Commission published the text of revised regulations repealing three obsolete provisions of the Commission's rules. The repealed provisions addressed contributions to retire pre-1975 debts; certain 1976 payroll deductions for separate segregated funds; and an alternative reporting option for candidates in presidential elections held prior to January 1, 1981. The Commission announces that these rules are repealed as of November 9, 1995.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR Parts 104, 110 and 114 were transmitted to Congress on July 19, 1995. Thirty legislative days expired in the Senate on September 14, 1995, and in the House of Representatives on October 11, 1995.

This rulemaking marks the Commission's first use of "direct final rules," under which proposed rules that are not expected to receive any adverse comments are sent to Congress for the legislative review period at the close of the public comment period, if in fact no negative comments are received. This eliminates the need to publish the final rules as a separate document, while still giving the public adequate notice of the proposed revisions. No adverse comments were received in response to the June 15, 1995, proposal.

The repealed rules include 11 CFR 104.17, which established alternative filing procedures for authorized committees of candidates for President and Vice President for elections that occurred prior to January 1, 1981; 11 CFR 110.1(g), which exempted certain contributions made to retire debts resulting from elections held prior to January 1, 1975, from the 11 CFR part 110 contribution limits; and 11 CFR 114.12(d), which allowed a corporation that offered all of its employees a payroll deduction plan prior to May 11, 1976, for contributions made to the corporation's separate segregated fund to continue to make such deductions for those employees who were not executive or administrative personnel, or stockholders, until December 31, 1976.

Announcement of Effective Date: Accordingly, the regulations removing 11 CFR 104.17, 110.1(g), and 114.12(d) published on June 15, 1995 (60 FR 31381) are effective November 9, 1995.

Dated: November 3, 1995.

Lee Ann Elliott,

Vice Chairman.

[FR Doc. 95–27642 Filed 11–8–95; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–194–AD; Amendment 39–9419; AD 95–22–11]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes. This action requires reinforcement of the fuselage frame (FR) 20 between stringer 30 and 32 in the forward fuselage. This amendment is prompted by the results of fatigue testing, which revealed that fatigue cracks can develop on the web and cap of lower left FR20. The actions specified in this AD are intended to prevent the initiation and propagation of such fatigue cracking, which could adversely affect the structural integrity of this area of the fuselage.

DATES: Effective November 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during full-scale fatigue testing conducted by the manufacturer, fatigue cracking was found to occur on the test airplane at the web and cap of the lower left fuselage frame (FR) 20 at 66,100 simulated flights. Fatigue cracking in this area, if not corrected, could adversely affect the structural integrity of the forward fuselage in the area of FR20.

Airbus has issued Service Bulletin A320–53–1017, Revision 1, dated September 7, 1993, which describes procedures for reinforcing left FR20 between stringers 30 and 32 by adding a web splice and a cap splice. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 93–107–045(B), dated July 7, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent initiation and propagation of fatigue cracking in the area of FR20, which could adversely affect the structural integrity of the fuselage. This AD requires installation of a reinforcing web splice and cap splice in left FR20 between stringers 30 and 32. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model A320 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 23 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would cost approximately $2,496 per airplane. Based on these figures, the total cost impact of this AD would be $3,876 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–194–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–22–11 Airbus: Amendment 39–9419. Docket 95–NM–194–AD.

Applicability: Model A320 airplanes; having manufacturer's serial numbers (MSN) 006, 008, 011, 017, 018, 039, 042, 045, 046, and 047; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the initiation and propagation of fatigue cracking in fuselage frame 20, which could adversely affect the structural integrity of this area of the fuselage, accomplish the following:

(a) Prior to the accumulation of 14,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, reinforce the left fuselage frame (FR) 20 between stringers 30 and 32, in accordance with Airbus Service Bulletin A320–53–1017, Revision 1, dated September 7, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The reinforcement shall be done in accordance with Airbus Service Bulletin A320–53–1017, Revision 1, dated September 7, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3	1	September 7, 1993.
2, 4–16 ..	Original ..	December 4, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 24, 1995.

Issued in Renton, Washington, on October 24, 1995.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–26869 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AWP–8]

Establishment of Class D Airspace; Bullhead City, AZ; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on October 6, 1995, Airspace Docket No. 94–AWP–8. The final rule established a Class D airspace area at Bullhead City, AZ.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95–24944, Airspace Docket No. 94–AWP–8, published on October 6, 1995 (60 FR 52293), established a Class D airspace area at Bullhead City, AZ. An error was discovered in the geographic coordinates for the Laughlin/Bullhead International Airport, AZ. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Laughlin/Bullhead International Airport, AZ, as published in the **Federal Register** on October 6, 1995 (60 FR 52293), (Federal Register Document 95–24944) , are corrected as follows:

§ 71.1 [Corrected]

AWP AZ D Bullhead City, AZ (Corrected)

On page 52294, column 1, the geographic coordinates for Laughlin/Bullhead International Airport, AZ, are corrected by removing "(lat. 35°08'50" N, long. 114°33'32" W)" and adding "(lat. 35°09'27" N, long. 114°33'34" W)".

Issued in Los Angeles, California, on October 27, 1995.

Rose L. Marino,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–27707 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ACE–4]

Alteration of Class E Airspace; Fairmont, NE

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action alters the Class E airspace at Fairmont, NE. The development of a new standard instrument approach procedure (SIAP) to Runway 17 at Fairmont State Airfield, Fairmont, NE utilizing the Beklof NDB will provide lower minimums for aircraft executing a SIAP at Fairmont, NE.

EFFECTIVE DATE: 0901 UTC, February 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch. ACE–530, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On August 31, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace at Fairmont State Airfield, Fairmont, NE (60 FR 45387). The proposed action would provide additional controlled airspace to accommodate an NDBSIAP to Runway 17 at the Fairmont State Airfield.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The class airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Fairmont, NE, by providing additional controlled airspace for aircraft executing the NDB Runway 17 SIAP to the Fairmont State Airfield.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 40 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1059–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Fairmont, NE [Revised]

Fairmont State Airfield, NE
(Lat. 40°35'09" N, long. 97°34'23"W)
Beklof NDB
(Lat. 40°35'24" N, long. 97°34'05" W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Fairmont State Airfield and within 2.6 miles each side of the 189° bearing of the Beklof NDB extending from the 6.8-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on October 24, 1995.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 95–27827 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28379; Amdt. No. 1694]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the Region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their geographic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the representative FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 3, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
10/19/95	IA	Iowa City	Iowa City Muni	FDC 5/5727	NDB or GPS RWY 30, AMDT 1...
10/19/95	IA	Iowa City	Iowa City Muni	FDC 5/5729	VOR or GPS RWY 34, AMDT 10...
10/19/95	IA	Iowa City	Iowa City Muni	FDC 5/5730	RNAV or GPS RWY 24, AMDT 1...
10/19/95	IA	Iowa City	Iowa City Muni	FDC 5/5731	NDB or GPS–A, ORIG...
10/19/95	NC	Erwin	Harnett County	FDC 5/5707	VOR/DME or GPS RWY 4, AMDT 1A...
10/19/95	NC	Erwin	Harnett County	FDC 5/5708	NDB or GPS RWY 22, ORIG–A...
10/19/95	WY	Riverton	Riverton Regional	FDC 5/5711	ILS RWY 28, AMDT 1...

FDC date	State	City	Airport	FDC No.	SIAP
10/19/95	WY	Riverton	Riverton Regional	FDC 5/5722	VOR or GPS RWY 28, AMDT 8...
10/20/95	LA	Houma	Houma-Terrebonne	FDC 5/5754	VOR/DME RNAV or GPS RWY 36, AMDT 4A...
10/20/95	MD	Salisbury	Salisbury-Wicomico County Regional.	FDC 5/5739	ILS RWY 32 AMDT 5...
10/20/95	NC	Salisbury	Rowan County	FDC 5/5751	VOR or GPS RWY 2, AMDT 5...
10/23/95	IL	Moline	Quad-City	FDC 5/5806	NDB or GPS RWY 9, AMDT 27...
10/26/95	AL	Selma	Craig Field	FDC 5/5892.	NDB or GPS RWY 32, AMDT 2A...
10/26/95	AL	Selma	Craig Field	FDC 5/5893	OIL RWY 32, ORIG–B...
10/27/95	IL	Moline	Quad-City	FDC 5/5879	ILS RWY 9, AMDT 29A...
10/30/95	MI	Pellston	Pellston Regional Airport of Emmet County.	FDC 5/5940	ILS RWY 32, AMDT 10...
11/01/95	NC	Edenton	Edenton/North-Eastern Regional	FDC 5/5962	NDB or GPS RWY 5, ADMT 4A...
11/01/95	NC	Edenton	Edenton/North-Eastern Regional	FDC 5/5963	NDB or GPS RWY 1, AMDT 5A...
11/01/95	NV	Las Vegas	McCarran Intl	FDC 5/5975	VOR/DME or GPS RWY 1R ORIG.

[FR Doc. 95–27829 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AE04

Computing Benefit Amounts, Reducing Benefit Amounts, and Filing Annual Reports of Earnings

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are amending our regulations to reflect provisions of sections 307, 308, and 314 of the Social Security Independence and Program Improvements Act of 1994. Section 307 provides that we not modify the computation of the basic social security benefit amount under the windfall elimination provision of the Social Security Act (the Act) for individuals who are entitled to U.S. social security benefits only as result of a totalization agreement between the United States and another country. In addition, section 307 provides that we not modify the computation for an individual who receives a benefit from another country if the benefit is payable only as a result of a totalization agreement between the United States and that country and benefits paid by us do not depend on a totalization agreement. Section 308 removes the modified computation requirement, as well as the requirement to reduce the social security benefits of an insured individual's spouse who is also receiving a benefit based on his or her noncovered government employment, i.e., the government pension offset provision, for certain individuals who are eligible to receive or are receiving a benefit based on inactive military reserve duty after 1956 and before 1988. Section 314 increases the extended period for a working social security beneficiary to submit a report of earnings.

EFFECTIVE DATE: These regulations are effective November 9, 1995. Since these rules relieve restrictions previously applicable, the 30-day delay in effectuating rules, as provided by 5 U.S.C. 553(d), does not apply.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Sections 307, 308, and 314 of the Social Security Independence and Program Improvements Act of 1994 (Pub. L. 103–296) amended sections 202, 203, and 215 of the Act. In these final regulations, we are amending sections 404.213, 404.408a, and 404.452 of 20 CFR to reflect those amendments to the Act.

Section 307—Totalization Agreements and the Windfall Elimination Provision

A totalization agreement between the U.S. and another country permits each country to establish entitlement to social security benefits by combining an individual's coverage under the social security systems of both countries, as provided in section 233(a) of the Act. Based on section 215(a)(7)(A) of the Act, the windfall elimination provision, as in effect for social security benefits payable before January 1995, we modified our computation of your basic benefit amount if: (1) You were entitled to a social security benefit which was based solely on your employment covered by our social security system without regard to work covered by a totalization agreement, as described in §§ 404.1900ff, and you were also entitled to a pension from a foreign country even though it is one with which the U.S. has a totalization agreement; and (2) if your basic social security benefit was based on a combination of U.S. covered employment and foreign employment covered by a totalization agreement and you were also entitled to a benefit based on employment otherwise not covered under the Act, including a benefit from a nontotalization country.

The social security benefit formula is weighted to replace a higher proportion of wages for individuals who worked many years for low wages in covered employment than for workers with high wages. The modified computation under the windfall elimination provision as required by section 215(a)(7)(A) of the Act is intended to eliminate the windfall that would otherwise occur if this weighting were to apply to workers who spent many years in noncovered employment and worked only a few years in covered employment. Under this provision, we use a modified formula, which yields a smaller benefit, to compute social security benefits for workers who first become eligible after 1985 for both social security benefits and a pension based on employment not covered by social security.

The computation of a totalization benefit (see § 404.1918) includes a prorating feature to account for the fact that an individual did not work for an

entire career under the social security system (U.S. or foreign country) that is paying the benefits. Because of this prorating, the weighting advantage intended for workers with low wages has been largely removed from the computation. Consequently, section 307 of Public Law 103–296 amended section 215(a)(7)(A) of the Act to provide that the windfall elimination provision does not apply when we compute a social security totalization benefit. Similarly, section 307 also provides that we will not apply the windfall elimination provision for an individual who is entitled to both a U.S. social security benefit that is not based on totalized credits and to a benefit from a foreign country which is based on a totalization agreement with the United States. As an exception to the latter rule, we will apply the windfall elimination provision if, in addition to the foreign pension, an individual is also entitled to a benefit from another source that is based on employment not covered by U.S. social security, for example, a civil service retirement annuity.

Accordingly, we are amending § 404.213(e) to provide in a new paragraph (7) that we will not apply the modified computation if you are entitled to both U.S. social security benefits based solely on your covered work or self-employment and to benefits from a foreign country under a totalization agreement with the United States. However, this exception will not apply if, in addition, you are also eligible for benefits based on noncovered work, e.g., benefits from a foreign country not based on a totalization agreement with the United States, or noncovered work for a U.S. employer. Additionally, we are providing in a new paragraph (8) that we will not apply the windfall elimination provision if you are entitled to a social security totalization benefit paid by us, whether or not you are entitled to any other benefits. These provisions in paragraphs (7) and (8) are effective for U.S. social security benefits payable after December 1994.

For clarity, we are amending the last sentence of § 404.213(a)(3). Also, we are amending paragraph (f) of § 404.213 to limit the application of that paragraph to entitlement before January 1995.

Section 308—Military Reservists

As required by the government pension offset provisions of sections 202(b)(4), (c)(2), (e)(7), (f)(2), and (g)(4) of the Act, we will usually reduce your social security benefits as the spouse of a retired or deceased insured worker if you are also receiving a monthly benefit based on your noncovered government employment. These provisions are explained in § 404.408a. Additionally, as required by section 215(a)(7)(A) of the Act and § 404.213(a) of these regulations, we will modify our computation of your basic benefit amount under the windfall elimination provision if you are also eligible after 1985 for a monthly pension based on your noncovered employment. "Noncovered employment" includes U.S. military service on inactive duty training after 1956 and before 1988, as explained in § 404.1019. A pension based on such military service has been the only kind of pension based on military service which caused a reduced benefit under the government pension offset provision or a modified computation under the windfall elimination provision.

Section 308 of Public Law 103–296 exempts entitlement to a payment based wholly on service as a member of a uniformed service as a basis for our modifying your basic benefit amount under the windfall elimination provision or reducing your social security benefits as a spouse under the government pension offset provision. Thus, inactive duty military service, which was not covered before 1988 and was used to determine your noncovered pension payment based wholly on service as a member of a uniformed service, is no longer a basis for our modifying your basic benefit amount or reducing your social security benefits as a spouse. We are, therefore, amending §§ 404.213 and 404.408a to reflect these amendments to the Act.

Section 314—Annual Earnings Report

Section 203(h)(1)(A) of the Act requires certain individuals who are entitled to social security benefits to submit to us a report of their earnings. The report must be submitted to us on or before a specified date, usually April 15 of the year following the year of earnings, which conforms to the due date for filing Federal income tax returns. Before the effective date of section 314 of Public Law 103–296, section 203(h)(1)(A) of the Act further provided that the date for submitting the report may be extended for no more than three months. We are amending § 404.452(f)(1) to change the maximum extended filing period from 3 months to 4 for tax years ending after December 31, 1994, as provided in section 314 of Public Law 103–296.

Regulatory Procedures

Justification for Final Rules Without Proposed Rules

The Social Security Administration follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and prior public comment procedures because such procedures are unnecessary in this case, as explained below.

Sections 307, 308, and 314 of Public Law 103–296 are explicit in their amendments to the Act and allow for no discretionary policy which would require publication of proposed rules with an opportunity for public comments. Since we are merely amending our current regulations to reflect legislatively mandated provisions, we believe it is not necessary to publish proposed rules.

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: October 30, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts C and E of part 404 of 20 CFR chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.213 is amended by revising the last sentence of paragraph (a)(3); by adding paragraphs (e) (7), (8), and (9); and by revising paragraph (f) introductory text to read as follows:

§ 404.213 Computation where you are eligible for a pension based on your noncovered employment.

(a) * * *

(3) * * * However, for benefits payable for months prior to January 1995, we will not modify the computation of a totalization benefit (see §§ 404.1908 and 404.1918) as a result of your entitlement to another pension based on employment covered by a totalization agreement. Beginning January 1995, we will not modify the computation of a totalization benefit in any case (see § 404.213(e)(8)).

* * * * *

(e) *Exceptions.*

* * * * * * *

(7) For benefits payable for months after December 1994, payments by the social security system of a foreign country which are based on a totalization agreement between the United States and that country are not considered to be a pension from noncovered employment for purposes of this section. See subpart T of this part for a discussion of totalization agreements.

(8) For benefits payable for months after December 1994, the computations in paragraph (c) do not apply in the case of an individual whose entitlement to U.S. social security benefits results from a totalization agreement between the United States and a foreign country.

(9) For benefits payable for months after December 1994, you are eligible after 1985 for monthly periodic benefits based wholly on service as a member of a uniformed service, including inactive duty training.

(f) *Entitlement to a totalization benefit and a pension based on noncovered employment.* If, before January 1995, you are entitled to a totalization benefit and to a pension based on noncovered employment that is not covered by a totalization agreement, we count your coverage from a foreign country with which the United States (U.S.) has a totalization agreement and your U.S. coverage to determine if you meet the requirements for the modified computation in paragraph (d) of this section or the exception in paragraph (e)(5) of this section.

* * * * *

3. The authority citation for subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.408a is amended by adding paragraph (b)(5) to read as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

* * * * *

(b) *Exceptions.*

* * * * *

(5) If, with respect to monthly benefits payable for months after December 1994, you are receiving a Government pension based wholly upon service as a member of a uniformed service, regardless of whether on active or inactive duty and whether covered by social security. However, if the earnings on the last day of employment as a military reservist were not covered, January 1995 is the earliest month for which the reduction will not affect your benefits.

* * * * *

§ 404.452 [Amended]

5. Section 404.452 is amended in paragraph (f)(1) by revising "3" to read "4".

[FR Doc. 95–27621 Filed 11–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 146

[Docket No. 94N–0452]

RIN 0905–AC48

Canned Fruit Nectars; Revocation of the Stayed Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the standard of identity for canned fruit nectars. This standard has never gone into effect, having been stayed by the filing of objections. In view of the FDA regulations that require declaration of the percentage of juice in beverage products that purport to contain juice and comments in letters from the petitioner for the canned fruit nectars standard and from other interested parties, the agency has concluded that the standard is unnecessary and should be revoked. The revocation of the stayed standard will minimize confusion in the labeling of canned fruit nectars and will facilitate the marketing of these foods.

DATES: Effective November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

In the **Federal Register** of October 1, 1964 (29 FR 13535), FDA published a proposal to establish a standard of identity for canned fruit nectars in § 146.113 (21 CFR 146.113 (formerly 21 CFR 27.126) (42 FR 14302, March 15, 1977)). The proposal responded to a petition filed by the National Canners Association (now the National Food Processors Association). FDA issued the final regulation adopting the proposed standard in the **Federal Register** of May 7, 1968 (33 FR 6862). Several organizations filed objections to the standard and requested a hearing, based principally on the minimum soluble solids (Brix) values to be applied to the fruit ingredients of the unconcentrated or reconstituted single-strength fruit nectars. Consequently, FDA published a notice staying the regulation in its entirety in the **Federal Register** of July 27, 1968 (33 FR 10713), pending

resolution of issues raised by the objections. No hearing on the objections was held.

B. The Nutrition Labeling and Education Act of 1990

Section 7 of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) amended section 403(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)) to provide that a food shall be deemed to be misbranded: "Unless its label bears (1) the common and usual name of the food * * * and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice in the food * * *."
In response to this provision, FDA adopted § 101.30 *Percent juice declaration for foods purporting to be beverages that contain fruit or vegetable juice* (21 CFR 101.30) on declaring the juice content of certain food products (58 FR 2897, January 6, 1993). Section 101.30 establishes minimum Brix values for 51 fruit and vegetable juice products, including values for all of the fruits listed in the canned fruit nectars standard to which objections had been raised. The Brix values are minimum values for 100 percent juice products and serve as a basis for accurate and consistent percentage juice declarations. In addition, FDA adopted § 102.33 *Beverages that contain fruit or vegetable juice* (21 CFR 102.33) setting forth requirements for establishing common or usual names for juice beverages that purport to contain fruit or vegetable juice, including beverages such as canned fruit nectars.

C. The Proposal to Revoke the Canned Fruit Nectars Standard

In the **Federal Register** of April 21, 1995 (60 FR 19866), FDA proposed to revoke the standard of identity for canned fruit nectars. In the preamble to that proposal (60 FR 19866 at 19867), the agency pointed out that it had adopted the stayed standard of identity under section 701(e) of the act (21 U.S.C. 371(e)), which required formal rulemaking in any action for the establishment or amendment of a food standard. However, the agency also pointed out that the 1990 amendments removed food standards rulemaking proceedings for most foods from the coverage of section 701(e) of the act, and that, as a result, further rulemaking on the stayed standard was subject to section 701(a) of the act.

The agency initiated the proposed action in response to the petitioner's request that it revoke the stayed standard, and because it had tentatively concluded that the standard was no longer needed. Canned fruit nectars are adequately provided for as nonstandardized foods under the regulations for percent juice declaration in § 101.30 and the common or usual name regulation for beverages that purport to contain fruit or vegetable juice in § 102.33. FDA proposed that if it were to revoke the standard, that action would be effective on the date of publication of the final rule in the **Federal Register**. Interested persons were given until July 5, 1995, to comment on the proposal.

II. The Revocation

Four letters, one each from the petitioner, a second industry trade association, a juice processor, and several consumers (commenting jointly), were received in response to the proposal. All expressed support for revocation on the standard of identity for canned fruit nectars.

Thus, in view of the support expressed by the comments and the existing requirements for percent juice declaration in § 101.30 and for naming diluted juice beverages in § 102.33, FDA concludes that the standard of identity for canned fruit nectars in § 146.113 is not needed, and that no further action on the objections filed to the May 7, 1968, final rule establishing that standard is warranted. Therefore, FDA is revoking the stayed standard of identity for canned fruit nectars. Products traditionally considered to be canned fruit nectars may continue to be labeled with the term "nectar" provided that they also comply with the applicable sections for the food labeling regulations set forth in parts 101 and 102 (21 CFR parts 101 and 102).

III. Economic Impact

As required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354), FDA has examined the economic implications of the proposed rule that would remove the stayed standard of identity for canned fruit nectars. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires that the agency analyze options for regulatory relief for small businesses.

FDA tentatively concluded that there will be no economic impact on the juice processing industry from the proposed rule because the removal of the stayed standard will not result in any new costs or requirements. Canned fruit nectars, currently marketed as nonstandardized foods, will continue to be named and labeled in accordance with the existing requirements of §§ 101.30 and 102.33. Removal of the stayed standard will eliminate confusion regarding the compositional requirements for juice products named by use of the term "nectar."

Thus, FDA tentatively concluded that the proposed rule will not constitute a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certified that the final rule will not have a significant impact on a substantial number of small businesses. FDA has not received any information or data that will change the tentative conclusions that it set forth in the proposal. Therefore, FDA concludes that this final rule is not a significant regulatory action, and that it will not have a significant impact on a substantial number of small businesses.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 146

Food grades and standards, Fruit juices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 146 is

PART 146—CANNED FRUIT JUICES

1. The authority citation for 21 CFR part 146 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

§ 146.113 [Removed]

2. Section 146.113 *Canned fruit nectars* is removed from subpart B.

Dated: October 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–27713 Filed 11–8–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 429

[Docket No. 91N–0173]

RIN 0910–AA07

Fees for Certification of Drugs Composed Wholly or Partly of Insulin

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to amend its regulations establishing the fee schedule for the insulin certification program. The interim final rule decreases the fees charged for insulin certification services because experience has demonstrated that the current fee schedule does not accurately reflect FDA's actual cost of administering the insulin certification program.

DATES: The interim final rule is effective December 11, 1995, written comments by February 7, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1941, Congress amended the Federal Food, Drug, and Cosmetic Act (the act) to require FDA to certify batches of drugs composed wholly or partly of insulin (Pub. L. 77–366). This amendment created section 506 of the act (21 U.S.C. 356), which requires the agency to provide for the certification of a batch of a drug composed wholly or partly of insulin if the "drug has such characteristics of identity and such batch has such characteristics of strength, quality, and purity [that are] * * * necessary to adequately insure safety and efficacy of use * * *." Section 506 of the act also requires FDA to promulgate regulations governing the certification of drugs containing insulin. Uncertified batches of insulin that are shipped in interstate commerce are misbranded under section 502 of the act (21 U.S.C. 352) and are subject to seizure and other sanctions under the act.

FDA's regulations providing for insulin certification are set forth in part 429 (21 CFR part 429). These regulations include requirements for packaging and labeling (§§ 429.10 through 429.12), product standards (§§ 429.25 and 429.26), tests and methods of assay (§ 429.30), and the contents of requests for certification and samples required to be submitted (§ 429.40), as well as setting forth the standards for review and approval of requests for certifications (§ 429.41). In addition, insulin is considered to be a new drug subject to section 505 of the act (21 U.S.C. 355). Therefore, drug products containing insulin must have an approved new drug application, submitted and approved under section 505 of the act and 21 CFR part 314 of the regulations, to market the drug in interstate commerce.

Under FDA's insulin certification program, insulin manufacturers submit a "Request for Certification of an Insulin Batch" containing manufacturing and analytical data, as well as product samples of the master lot of insulin crystals and insulin finished dosage forms, to FDA's Division of Prescription Drug Compliance and Surveillance and FDA's insulin laboratory in the agency's Center for Drug Evaluation and Research. The Division of Prescription Drug Compliance and Surveillance reviews the incoming requests and determines which tests that FDA needs to perform. After review of the analytical data, physical examination, and completion of testing, FDA's insulin laboratory forwards its report and recommendation to the Division of Prescription Drug Compliance and Surveillance, where the data is reviewed and compared with the data reported in the manufacturer's request for certification. If both documents show that the batch conforms to the requisite standards of identity, strength, quality, and purity, the agency issues an insulin certificate.

II. Fee Schedule

Section 506(b)(5) of the act requires FDA to establish such fees as are necessary to provide, equip, and maintain an adequate certification service. These fees are intended to recover the full costs of operation of FDA's insulin certification program. The current fee schedule set forth in § 429.55(b) was published as an interim final rule in the **Federal Register** of October 4, 1991 (56 FR 50248). This interim final rule revises those fees to more accurately reflect the cost of maintaining the insulin certification program. FDA currently charges $3,900 to certify each master lot and $2,800 to certify each dosage form batch. Under the new fee schedule, FDA will charge $2,400 to certify each master lot and $1,700 for each dosage form batch. All cost estimates are described in detail in a September 1995 FDA study of the insulin certification program's cost. A copy of the study has been placed on file at the Dockets Management Branch (address above). A provision of the current fee schedule allowing FDA to increase fees as Government salaries increase has been retained, with minor changes to emphasize the discretionary nature of any such fee increase. Fee increases based on salary increases will not take place before January 1, 1997.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this interim final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the interim final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA estimates that the fee schedule set out in this interim final rule will result in a decrease of approximately $400,000 annually in fees collected by the agency, and will not result in any increase in cost to manufacturers of drug products containing insulin. The agency certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Effective Date and Opportunity for Public Comment

The agency is issuing this amendment as an interim final rule effective December 11, 1995. The establishment of fees necessary to provide, equip, and maintain an adequate certification program for insulin has been mandated by Congress under section 506(b) of the act (21 U.S.C. 356(b)). As certification services are provided to manufacturers directly by FDA, the setting of a fee schedule to pay for these services is a matter particularly within the purview and expertise of the agency. The fees established by this regulation have been based on cost accounting methods using data compiled by the agency. The cost accounting methods used are the same as those used in two previous rulemakings that established fees for insulin certification. FDA invited comment on these rulemakings, but received none addressing either the adequacy of the fees or accuracy of the cost accounting methods used. Moreover, FDA's experience under the 1991 fee schedule indicates that the fees in that fee schedule do exceed the amounts needed to provide for the insulin certification program and are, therefore, in excess of the fees authorized by the act. For the foregoing reasons, FDA finds for good cause that notice and public procedure would be unnecessary, and contrary to the public interest, and, therefore, a public comment period before the establishment of this rule may be dispensed with under 5 U.S.C. 553(b)(B).

FDA believes that it is appropriate to invite and consider public comments on the provisions of this interim final rule, to determine if these provisions should be amended in the future. Therefore, under 21 CFR 10.40(e), interested persons may, on or before February 7, 1996, submit to the Dockets Management Branch (address above) written comments regarding this document. FDA will use any comments received to determine whether this interim final rule should be modified or other administrative actions taken. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 429

Administrative practice and procedure, Drugs, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 429 is amended as follows:

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

1. The authority citation for 21 CFR part 429 continues to read as follows:

Authority: Secs. 502, 506, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 356, 371).

2. Section 429.55 is amended by revising paragraph (b) to read as follows:

§ 429.55 Fees.

* * * * *

(b) The fees for requests for certification submitted under § 429.40 are as follows:

(1) $2,400 for each master lot or mixture of two or more master lots or parts thereof.

(2) $1,700 for each dosage form batch.

(3) The fees established in this paragraph may increase as Federal salary costs increase. The rate of increase will be no higher than Federal salary increases, commencing with pay raises on or after January 1, 1997. Notification of the exact fees established and adjustments will be communicated directly to the manufacturers of insulin products.

* * * * *

Dated: November 2, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–27714 Filed 11–8–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–110, Amendment Number 93–7, Part I]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is approving part of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana Surface Mining Rules provisions concerning OSM Regulatory Reform I, II and III issues, required program amendments, and State initiatives. This final rule notice is addressing the first of three subparts of the original amendment. The primary focus of the amendments in this subpart is on soil capability and restoration standards, individual civil penalties, significant/nonsignificant revisions, coal exploration, and performance bonds. The amendment is intended to resolve outstanding issues that remain present in the approved Indiana program resulting from changes to the Federal program. The amendment would also incorporate changes desired by the State that address various parts of the State rules.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

Since July 29, 1982 (the date of conditional approval of the Indiana program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Indiana on May 22, 1985 (Regulatory Reform I), on August 24, 1988 (Regulatory Reform II), and September 20, 1989 (Regulatory Reform III), that a number of Indiana regulations

are less effective than or inconsistent with the revised Federal requirements.

By letter dated December 30, 1993 (Administrative Record No. IND–1322), the Indiana Department of Natural Resources (IDNR) submitted to OSM State program amendment package number 93–7 consisting of revisions to 38 sections of the Indiana rules.

These revisions address changes to the Indiana program that were identified in the three letters referred to above, and certain required program amendments. The State has also proposed additional changes which Indiana believes will further improve the approved State program. The primary focus of the submittal is on soil capability and restoration standards, individual civil penalties, significant/non-significant revisions, coal exploration, and performance bonds.

OSM announced receipt of the proposed amendment in the January 24, 1994, **Federal Register** (59 FR 3528), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on February 24, 1994.

By letter dated December 6, 1994 (Administrative Record Number IND–1415), Indiana submitted additional minor changes to amendment 93–7.

By letter dated January 12, 1995 (Administrative Record Number IND–1423), OSM provided Indiana with comments concerning the proposed amendment. Indiana responded by letter dated January 25, 1995 (Administrative Record Number IND–1419). In that letter, Indiana said that it wishes to separate amendment 93–7 into three subparts, and that the responses being supplied pertain to the first subpart of amendment 93–7. The amendments are being addressed in this notice comprise amendment 93–7, Part I.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the first of three subparts of proposed program amendment 93–7.

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State rule	Subject	Federal counterpart
310 IAC 12–0.5–122.5.	Definition of substantially disturb	30 CFR 701.5.
310 IAC 12–3–78	Underground permits; general requirements	30 CFR 784.11.
310 IAC 12–3–82	Underground permits; postmining land use	30 CFR 784.15(b).
310 IAC 12–4–5	Filing bonds; requirements	30 CFR 800.11.
310 IAC 12–5–4	Coal exploration; permits	30 CFR 772.14.
310 IAC 12–6–21	Individual civil penalties; timing for assessment	30 CFR 846.12.
310 IAC 12–6–23	Individual civil penalties; assessment procedures	30 CFR 846.17.
310 IAC 12–6–24	Individual civil penalties; payment of penalty	30 CFR 846.18.
310 IAC 12–7–4	Filing requirements	30 CFR 705.11.
310 IAC 12–7–5	Filing dates	30 CFR 705.13.
310 IAC 12–7–6	Filing locations	30 CFR 705.15.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, or contain nonsubstantive wording and paragraph notation changes, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

1. 310 IAC 12–0.5–109.5 Definition of Rooting Media

"Rooting media" is defined as a soil material beneath the topsoil consisting of replaced "B" horizon, "B/C" mixture, another suitable soil material as determined by the director of the Indiana Department of Natural Resources (IDNR). While there is no direct counterpart to this definition, the Director finds that the definition is not inconsistent with the Federal definition of "soil horizons" as 30 CFR 701.5.

2. 310 IAC 12–0.5–110.5 Definition of Shadow Area

"Shadow area" is defined as any area beyond the limits of the permit area in which underground mine workings are located. This area includes resources above and below the coal that are protected by IC 13–4.1 that may be adversely impacted by underground mining operations including impacts of subsidence. While there is no direct Federal counterpart to this definition, the Director finds the definition to be consistent with the Federal definition of "affected area" at 30 CFR 701.5.

3. 310 IAC 12–1–5 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

This provision is being amended to correct a citation error. Reference to IC 13–4.1–1–4(2) is being deleted and replaced by IC 13–4.1–1–3(12). This amendment satisfies the required program amendment codified at 30 CFR 914.16(bb).

4. 310 IAC 12–3–31 and 310 IAC 12–3–69 Permit Applications; Geology Description

These provisions have been rewritten to be substantively identical to the counterpart Federal provisions at 30 CFR 780.22 and 784.22 with the following exceptions. At 310 IAC 12–2–31(c) and at 12–3–69 (a)(3) and (c), the Indiana language uses the term "rule" rather than the more inclusive term "article." To no less effective than the counterpart Federal regulations at 30 CFR 780.22(c) and 784.22 (a)(3) and (c), the Indiana language should use the term "article" meaning the entire set of performance standards under 310 IAC 12. In its letter to OSM dated January 25, 1995, Indiana stated that the language has been changed to read "article."

Indiana is amending 310 IAC 12–3–69(d) to clarify that the applicant may request that the director of the IDNR waive in whole or in part certain geologic information if that information is unnecessary because other reliable information is available. The amendments are substantively identical to and no less effective than the counterpart Federal language at 30 CFR 784.22(d) with one exception. The State provision would authorize the waiver of all the requirements of section 310 IAC 12–3–69(b) rather than only the requirements of 310 IAC 12–3–69 (b)(2) and (b)(3) as is authorized by the counterpart Federal provisions at 30 CFR 784.22(d). In its letter to OSM dated January 25, 1995, Indiana stated that the language has been changed to read subsections "69 (b)(2) and (b)(3)."

Therefore, OSM finds the proposed amendments to be no less effective than the counterpart Federal regulations.

5. 310 IAC 12–3–48 Permit Applications; Postmining Land Uses

In addition to nonsubstantive wording changes, Indiana is deleting a reference to 310 IAC 12–5–68 and adding in its place reference to new 310 IAC 12–5–68.5 concerning postmining land use capability. Indiana is also adding new subsection 48(a)(3) to provide that consideration be given to all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs. The new language is substantively identical to counterpart Federal language at 30 CFR 780.23(b)(3). The Director finds that the proposed citation change does not render the provision less effective than 30 CFR 780, and the added language is no less effective than the counterpart Federal language at 30 CFR 780.23(b)(3).

6. 310 IAC 12–3–97 Special Categories of Mining; Approximate Original Contour Variance for Steep Slope Mining; Permits

In addition to various nonsubstantive changes made throughout this section, the following changes are made. At subsection 97(a)(3), Indiana is deleting reference to sections 310 IAC 12–5–68 and 12–5–136 and replacing them with 310 IAC 12–5–68.5 and 12–5–136.5, respectively. The deletion of 310 IAC 12–5–68 and 310 IAC 12–5–136 and their replacement by 310 IAC 12–5–68.5 and 310 IAC 12–5–136.5, respectively is discussed later in this document. The Director finds that the amendments to subsection 97(a)(3) do not render the provision less effective than the counterpart Federal regulations at 30 CFR 816/817.133(d)(2) concerning alternative postmining land use requirements.

New subsection 97(a)(8) is added to require the design and certification of a proposed use by a qualified registered professional engineer. The director finds the proposed language to be substantively identical to counterpart Federal language at 30 CFR 816/817.133(d)(5).

New subsection 97(a)(9) is added to limit the amount of spoil to be placed off the mine bench. The Director finds the proposed language to be substantively identical to 30 CFR 816/817.133(d)(8).

New subsection 97(a)(10) is added to ensure adequate time for public agencies to review and comment on the proposed land use. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 816/817.133(d)(10).

7. 310 IAC 12–3–106 Permit Applications; Review, Public Participation, and Approval or Disapproval of Permit Applications; Permit Terms and Conditions; Responsibility

In addition to various nonsubstantive changes made throughout this section, the following changes are made. Subsection 106(a) is being amended to apply to both permit revisions and renewals in addition to initial permit. The amended language is substantively identical to the counterpart Federal language at 30 CFR 733.13(a)(1).

Subsection 106(a) is also being amended by adding the words "at a minimum" to clarify that the list of requirements starting at subsection 106(a)(1) is not an exhaustive list. The amended language is substantively identical to the counterpart language at 30 CFR 773.13(a)(1).

Subsection 106(a)(2) is amended to require a "map or" description that clearly "shows or" describes (at subsection 106(a)(2)(A)) the required information to be included in the newspaper announcement. The amended language is substantively identical to the counterpart Federal language at 30 CFR 773.13(a)(1)(ii).

Subsection 106(a)(2)(B) is amended to provide that if a map is used, it shall indicate the north direction. The added language is substantively identical to the counterpart language at 30 CFR 773.13(a)(1)(ii).

Subsection 106(a)(6) is being amended to provide that all of the requirements of subsection 106(a)(6) pertaining to the relocation of roads will also apply to the closure of roads. The words "approximate timing and" are added immediately preceding the words "duration of the relocation or closure." The amended language is substantively identical to the counterpart Federal provision at 30 CFR 773.13(a)(1)(v).

New subsection 106(a)(7) is added to require that copies of the advertisement be mailed to certain persons. While there is no direct Federal counterpart language, the proposed language is not inconsistent with SMCRA at section 513 concerning public notice and 30 CFR 773.13 concerning public participation.

New subsection 106(a)(8) is added to provide that if the permit application includes a request for an experimental practice under section 94, a statement must be provided that indicates that an experimental practice is requested and identifies the regulatory provisions for which a variance is requested. In its January 25, 1995, letter to OSM, Indiana stated that the citation of section "94" has been corrected to read "94.1." The Director finds that the proposed language, with the corrected citation is substantively identical to and no less effective than the counterpart Federal language at 30 CFR 773.13(a)(1)(vi).

Subsection 106(a)(9) as a counterpart to 30 CFR 773.13(a)(2) concerning the requirement to make a copy of the permit, revision, or renewal available to the public at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. Indiana language counterpart to the Federal requirement that applicants file changes to the applications at the public office at the same time the change is submitted to the regulatory authority is found at 310 IAC 12–3–106(c). The director finds that the proposed language, along with the language referred to above and found at 310 IAC 12–3–106(c), is substantively identical to the Federal language at 30 CFR 773.13(a)(2). The Director notes that Indiana uses public libraries as the accessible public office where the copies of permits, revisions, and renewals will be filed.

Subsection 106(c) is being amended to change a citation of subsection 106 "(b)" to read 106 "(a)(9)". In addition, the subsection is being amended to provide that any subsequent modification of the application "or permit" be also filed with the library copy of the application or permit. The Director finds these changes to be consistent with the counterpart Federal regulations at 30 CFR 773.13(a)(2).

Subsection 106(d) has several changes. Subsections 106(d)(2), (3), and (4) have been amended to clarify that the library copy of the application or permit may be removed from the library only after all bond has been released from the permit. Subsection 106(d)(4) is amended to add citations of 310 IAC 12–3–17 and 31, concerning application or permit information that may be exempt from public disclosure, to the citation of 310 IAC 12–3–110. The Director finds that these changes are consistent with and no less effective than the Federal regulations at 30 CFR 773.13.

New subsection 106(d)(5) is added to provide that the applicant shall not be responsible for the maintenance of the copy of the application or permit on file with the library. There is no Federal Counterpart to this proposed language. However, since the applicant is required, under subsection 106(d)(1), to pay the library a $50 dollar nonrefundable fee, it is reasonable to conclude that the library, upon acceptance of the fee, is responsible for the maintenance of the copy. Therefore, the Director finds the new language does not render the Indiana program less effective.

Subsection 106(e) is amended to add the words "or a revision or renewal of a permit." The added words are substantively identical to the counterpart language at 30 CFR 773.13(a)(3).

Subsection 106(g) is added as a counterpart to 30 CFR 773.12 concerning the coordination of the review and issuance of permits with other agencies to avoid duplication. The director finds the new language to be substantively identical to 30 CFR 773.12.

8. 310 IAC 12–4–7 Period of Liability

Subsection 7(a) is amended to update the citations of the revegetation standards to reflect the most current, approved standards. Language is also added to provide a counterpart to the Federal regulations at 30 CFR 800.13(a)(2) concerning the bonding of specific phases of reclamation. The Director finds that the revised citations do not render the Indiana program less effective and the added language is substantively identical to the counterpart Federal regulations.

Subsection 7(b) is revised by the updating of a citation to the approved revegetation standards. The Director finds that the citation change does not render the Indiana program less effective.

Subsection 7(d) is amended by updating two citations and adding language that mirrors Federal language. The proposed citation changes reflect amendments that were proposed in the original submittal of this amendment package (Amendment 93–7). On January 25, 1995, Indiana requested that Amendment 93–7 be subdivided and reviewed in three parts. The proposed citation changes reflect amendments that are now contained in Part III of Amendment 93–7. The Director is approving the citation changes and notes that the amendments to those provisions will be reviewed in a future **Federal Register** Notice.

The language in subsection 7(d) that mirrors the Federal language (at 30 CFR 800.13(c)) refers to the applicable five "or ten (10) year" period of liability for revegetation success. The director finds that the added language is substantively identical to and no less effective than the counterpart Federal language.

Subsection 7(e) is amended by deleting language that did not hold the operator responsible for actions by third parties. The Federal regulations previously contained such a provision, but were amended to eliminate the reference to actions by third parties. Indiana is adding, in place of the deleted language, language that is substantively identical to the counterpart Federal regulations at 30 CFR 800.13(d)(1). The Director finds that with the amendments, the provision is no less effective than the counterpart Federal language.

9. 310 IAC 12–5–3 Coal Exploration; Performance Standards

The introductory paragraph to this section is amended to add language that is substantively identical to and no less effective than the counterpart Federal language at 30 CFR 815.1 concerning the scope and purpose of the performance standards for coal exploration.

New subsection 3(a) is added and is substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 815.15(a) concerning the protection of certain habitats of unique or unusually high value.

Subsection 3(b)(2) is amended by deleting the existing language and adding in its place language that is substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 815.15(b) concerning roads and other transportation facilities.

Subsections 3(b)(3) and (4) are deleted. There are no Federal counterparts at 30 CFR 815.15 to the deleted language and the deletion does not render the Indiana program less effective than the Federal regulations.

Subsection 3(e) is amended by deleting and adding language to make the provision substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 815.15(e) concerning revegetation of areas disturbed by coal exploration.

Subsection 3(f) is amended to change the term "may" to read "shall" to clarify that the requirements of the section are mandatory rather than voluntary. The Director finds the change to be substantively identical to and no less effective than the Federal requirement at 30 CFR 815.15(f) concerning diversions.

Subsection 3(h) is amended by deleting language and adding language that is substantively identical to the Federal regulations at 30 CFR 815.15(i) concerning minimizing disturbances to the hydrologic balance. The Director finds that the amended provision is no less effective than the Federal counterpart.

Subsection 3(i) is amended by deleting and adding language that makes the provision substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 815.15(j) concerning acid- or toxic-forming materials.

10. 310 IAC 12–6–20 Individual Civil Penalties; Definitions

This new provision has been renumbered. In the original submittal, this provision was identified as 310 IAC 12–6–19.

This new provision is added to provide a counterpart to the Federal regulations at 30 CFR 846.5. In its January 25, 1995, letter to OSM, Indiana corrected two citation references in subsection (2)(B). Indiana is revising the sentence in subsection (2)(B) to read: "* * * except an order incorporated in a decision issued under IC 13–4.1–12–1." The citation change concerns civil penalties and adds specificity to the Indiana provision that is counterpart to the Federal citation of section 518(b) of SMCRA at 30 CFR 846.5 in the definition of "violation, failure or refusal." The Director finds that the addition is substantively identical to and no less effective than the counterpart Federal regulations.

11. 310 IAC 12–6–22 Individual Civil Penalties; Amount

This new provision has been renumbered. In the original submittal, this provision was identified as 310 IAC 12–6–21. This new provision is added to provide a counterpart to the Federal regulations at 30 CFR 846.14 concerning the amount of individual civil penalties. In its January 25, 1995, submittal to OSM, Indiana made one citation change. In subsection 22(a), Indiana changed "IC 13–4.1" to read "IC 13–4.1–12–1." The change adds appropriate specificity to identify the criteria concerning civil penalties. With the above change, the new language of this subsection is substantively identical to and no less effective than 30 CFR 846.14.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service (FWS) responded (Administrative Record Number IND–1335). The FWS commented that additional information should be added to 310 IAC 12–5–3(a) to state that if wetlands are affected, a permit by the U.S. Army Corps of Engineers may be needed. In response, the Director notes that the counterpart Federal standards at

30 CFR 815.15 do not contain such a provision and that the Indiana provision is substantively identical to the Federal provision so the Indiana provision need not be changed.

Other comments submitted by FWS pertain to amendments that will be addressed later in final rule notices concerning Amendment 93–7 parts II and III.

No other agency comments were received.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the January 24, 1994, **Federal Register** (59 FR 3528). The comment period closed on February 24, 1994. No one commented and no one requested an opportunity to testify at the scheduled public hearings so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that these amendments contain no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendments from EPA (Administrative Record No. IND–1330). EPA did not provide any comments concerning this amendment.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment #93–7 as submitted by Indiana on December 30, 1993, and amended on December 6, 1994, and January 25, 1995.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 20, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 914.15, paragraph (mmm) is added to read as follows:

§ 914.15 Approval of regulatory program amendments

* * * * *

(mmm) Amendment #93–7, Part I concerning revisions to the following Indiana rules as submitted to OSM on December 30, 1993, and amended on December 6, 1994, and January 25, 1995, is approved effective November 9, 1995.

310 IAC 12–0.5–109.5 concerning the definition of rooting media;
310 IAC 12–0.5–110.5 concerning the definition of shadow area;
310 IAC 12–0.5–122.5 concerning the definition of substantially disturb;
310 IAC 12–1–5 concerning exemption for coal extraction incidental to the extraction of other minerals;
310 IAC 12–3–31 concerning permit applications, geology description;
310 IAC 12–3–48 concerning permit applications, postmining land uses;
310 IAC 12–3–69 concerning permit applications (underground), geology description;
310 IAC 12–3–78 concerning permit applications (underground), general;
310 IAC 12–3–82 concerning permit applications (underground), postmining land use;
310 IAC 12–3–97 concerning special categories of mining, approximate original contour variance for steep slope mining, permits;
310 IAC 12–3–106 concerning permit applications, review, public participation, and approval or disapproval of permit applications, permit terms and conditions, responsibility;
310 IAC 12–4–5 concerning requirements for filing bonds;
310 IAC 12–4–7 concerning period of liability;
310 IAC 12–5–3 concerning performance standards for coal exploration;
310 IAC 12–5–4 concerning permits for coal exploration;
310 IAC 12–6–20 concerning individual civil penalties, definitions;
310 IAC 12–6–21 concerning individual civil penalties;
310 IAC 12–6–22 concerning the amount of individual civil penalties;
310 IAC 12–6–23 concerning assessment procedures for individual civil penalties;
310 IAC 12–6–24 concerning payment of individual civil penalties;
310 IAC 12–7–4 concerning financial interests, filing requirements;
310 IAC 12–7–5 concerning financial interests, filing dates; and
310 IAC 12–7–6 concerning financial interests, filing locations.

§ 914.16 [Amended]

3. In Section 914.16, paragraph (bb) is removed and reserved.

[FR Doc. 95–27806 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 920

[MD–038–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to its rules and statutes pertaining to the Small Operators Assistance Program (SOAP). The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, OSM, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15 and 920.16.

II. Submission of the Proposed Amendment

By letter dated June 16, 1995, (Administrative Record No. MD–572.00) Maryland submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Maryland proposed to revise its SOAP provisions in the Annotated Code of Maryland (Code) to incorporate the provisions of House Bill 945 approved on May 18, 1995, by the Governor of Maryland and in the Code of Maryland Regulations (COMAR). Specifically, the code has been revised to delete the portion of existing section 7–505(c)(4) which refers to SOAP operator eligibility. This provision is proposed to be added to section 7–515. Also, the Code has been revised to delete the provisions of existing section 7–515 which specified alternative permit procedures for coal mining operations of two acres or less. The revised provisions at 7–515 provide that, upon written request of the operator, the Department of Natural Resources (Department) will assume the cost of certain, specified activities for those operations where probable total annual production at all locations will not exceed 300,000 tons. The Department is also required to either provide training to or assume the cost of training coal operators in the preparation of permit applications and compliance requirements. If the operator's annual production of coal exceeds 300,000 tons, the operator is required to reimburse the Department for any assistance received. The corresponding regulations at COMAR 08.20.16.02A have been revised to specify the services that will be provided by a qualified laboratory and reimbursed by the Department to qualified operators. The eligibility for assistance provisions at COMAR 08.20.16.03A have been revised to increase the total annual coal production limit from 100,000 tons to 300,000 tons. COMAR 08.20.16.02B has been revised to increase the percentage of ownership for production purposes in an operation either by the applicant or others from 5% to 10%. The applicant liability provisions at COMAR 08.20.16.08A have been revised to require that if the operator's annual production of coal during the 12 months immediately following the date on which the operator is issued the permit exceeds 300,000 tons, the operator is required to reimburse the Department for the cost of services specified in section .02A. The same requirement applies if the operator sells, transfers, or assigns the permit to another person and the transferee's total production exceeds 300,000 tons.

OSM announced receipt of the proposed amendment in the July 13, 1995, **Federal Register** (60 FR 36080) and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 14, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Maryland's Statutes and Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Statutes and Federal Regulations

State regulation	Subject	Federal counterpart
COMAR 08.20.16.02A	Program Services	30 CFR 795.9 (a), (b).
COMAR 08.20.16.03A	Eligibility	30 CFR 795.6(a)(2).
COMAR 08.20.16.03B	Eligibility	30 CFR 795.6(a)(2) (i), (ii).
COMAR 08.20.16.08 A, B	Applicant Liability	30 CFR 795.12(a) (2), (3).
Code 7–515(A) (1), (3)–(6)	Operator Assistance	SMCRA 507(c)(1).

State regulation	Subject	Federal counterpart
Code 7–515(B)	Training	SMCRA 507(c)(2).
Code 7–515(C)	Reimbursement	SMCRA 507(h).

Because the above proposed revisions are identical in meaning to the corresponding Federal statutes and regulations, the Director finds that Maryland's proposed rules are no less stringent than SMCRA and no less effective than the Federal rules.

B. Revisions to Maryland's Statutes That Are Not Substantively Identical to the Corresponding Provisions of the Federal Statutes

1. Maryland deleted existing section 7–515 of its Code which authorized alternative permit procedures for small coal mining operations of two acres or less. New section 7–515 pertains to SOAP provisions. The Director finds that the proposed deletion does not render the Maryland program less effective than the Federal regulations. At section 7–505(c)(4), Maryland also deleted the requirement that the cost of analysis of test borings or core samplings and the determination of probable hydrologic consequences will be assumed by the Department upon the request of an operator for those operations where probable total annual production at all locations will not exceed 300,000 tons. This requirement was transferred to revised 7–515. The Director finds that the proposed deletion does not render the Maryland program less effective than the Federal regulations.

2. At section 7–515(A)(2), Maryland includes a cross-reference to section 7–505(C)(7) pertaining to maps and plans. The Director notes that the maps and plans required by 7–505(C)(7) differ from those required at section 507(b)(14) of SMCRA. However, at COMAR 08.20.16.02(A)(3), Maryland includes the correct cross-reference to the regulations at COMAR 08.20.02.11. The Director, therefore, finds the proposed revision at COMAR 08.20.16.02(A)(3) no less effective than the Federal regulations at 30 CFR 795.9(b)(3). The cross-reference to 7–505(c)(7) which pertains to reclamation plans, is approved only to the extent that it authorizes use of SOAP funding for the preparation of cross-sections, maps, and plans authorized by section 507(b)(14) of SMCRA and 30 CFR 795.9(b).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment.

One public comment was received in support of the amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. None were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On June 23, 1995, OSM solicited EPA's concurrence with the proposed amendment. On August 16, 1995, EPA gave its written concurrence (Administrative Record No. MD–572.04).

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment submitted by Maryland on June 16, 1995.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 20, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended by adding paragraph (bb) to read as follows:

§ 920.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendment, as submitted to OSM on June 16, 1995, is approved effective November 9, 1995.

The amendment consists of revisions to the following statutes in the Annotated Code of Maryland (Code) and regulations in the Code of Maryland Regulations (COMAR):

Code 7–505	Small Operators Assistance Program.
Code 7–515	Small Operators Assistance Program (cross-reference to 7–505(c)(7) which pertains to reclamation plans, is approved only to the extent that it authorizes use of SOAP funding for the preparation of cross-sections, maps, and plans authorized by section 507(b)(14) of SMCRA and 30 CFR 795.9(b)).
COMAR 08.20.16.02A	Program Services.
COMAR 08.20.16.03A, B	Eligibility for Assistance.
COMAR 08.20.16.08A, B	Applicant Liability.

[FR Doc. 95–27808 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

[OH–234; Amendment Number 63R]

Ohio Regulatory and Abandoned Mined Land Reclamation Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Ohio permanent regulatory and Abandoned Mined Land reclamation programs (hereinafter referred to as the Ohio programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to reduce and reorganize the engineering staff of the Ohio programs in response to recent drops in Ohio coal production. The amendment would abolish 3.6 Ohio engineering staff positions and would reorganize the remaining engineering staff positions to assume the existing job duties. This program amendment does not propose any revisions to Ohio's coal mining law or rules.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel L. Schrum, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Discussion of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.15, 935.16.

II. Discussion of the Proposed Amendment

By letter dated March 15, 1993 (Administrative Record No. OH–1845), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 63 (PA 63). In that submission, Ohio proposed to reduce the staff of the Ohio programs by abolishing 28 existing positions. Ohio also proposed to reorganize the remaining staff positions to assume the existing job duties. PA 63 contained no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

OSM announced receipt of PA 63 in the April 8, 1993, **Federal Register** (58 FR 18185), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 10, 1993.

OSM and Ohio staff met on May 20, 1993, to discuss OSM's preliminary concerns and questions about PA 63. By letter dated June 16, 1993 (Administrative Record No. OH–1890), Ohio submitted additional information in response to those OSM concerns and questions. Through an oversight, OSM did not reopen the public comment period at that time.

Subsequently, by letter dated November 2, 1993 (Administrative Record No. OH–1948), OSM formally provided Ohio with its questions and comments on the March 15 and June 16, 1993, submissions of PA 63. OSM's questions and comments were listed under the following six headings: Streamlining of AML Designs; Engineering: Bond Forfeitures; Engineering: Inspection and Enforcement Issues; Position Descriptions; Bond Forfeiture Program; and SOAP Program.

By letter dated December 6, 1993 (Administrative Record No. OH–1971), Ohio provided its responses to OSM's November 2, 1993, questions and comments. In addition, Ohio included three attachments. The first attachment was a November 5, 1993, letter to OSM explaining organizational responsibilities within Ohio's engineering/geotechnical support group and AML program. The second attachment was a log of engineering inspection and enforcement activity. The third attachment was an example of the revised position description for Ohio's reclamation inspectors, dated April 5, 1993. In its December 6, 1993, Administrative Record information, Ohio noted that additional position descriptions for Ohio's engineering management staff were being revised but did not attach copies.

OSM announced receipt of Ohio's additional Administrative Record information in the January 21, 1994, **Federal Register** (59 FR 3325), and, in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 7, 1994.

During its review of Ohio's December 6, 1993, response and attachments, OSM identified two concerns regarding engineering practices and engineering workload which OSM staff communicated to the State during a meeting held on April 20, 1994 (Administrative Record No. OH–2012). Ohio responded in a letter dated April 21, 1994 (Administrative Record No. OH–2014) with additional information on both issues. OSM announced receipt of this additional information, along with the explanatory information submitted by Ohio on June 16, 1993, and reopened the comment period for PA 63 in the June 9, 1994, **Federal Register** (59 FR 29748). The public comment period closed on June 24, 1994.

OSM and Ohio staff met on July 14, 1994, to discuss Ohio's progress with the reorganization of its engineering staff and whether the proposed staffing levels could handle the anticipated engineering workload (Administrative Record No. OH–2038). As of that date, Ohio had completed its engineering reorganization but could not yet provide OSM with projected workload calculations.

In the September 1, 1994, **Federal Register** (59 FR 45206), the Director of OSM announced his partial approval and deferral of PA 63. The Director approved the proposed staffing changes to ten areas of Ohio's programs but deferred his decision on the proposed changes to Ohio's engineering staff. The Director deferred that portion of his decision based on Ohio's April 21, 1994, letter to OSM (Administrative Record No. OH–2014) and the July 14, 1994, meeting with Ohio (Administrative Record No. OH–2038) in which Ohio indicated that its reorganization of engineering resources was still underway. Ohio agreed to resubmit the engineering portion of the amendment, upon completion, to OSM for review.

On November 1, 1994 (Administrative Record No. OH–2068), OSM requested an update from Ohio on the State's progress in documenting the results of its engineering reorganization. OSM and Ohio staff met on November 29, 1994, to discuss that progress (Administrative Record No. OH–2071). Ohio provided copies of four supporting documents at that time.

On November 29, 1994 (Administrative Record No. OH–2072), the Ohio Inspector General (OIG) published his report of investigation concerning the Sands Hill coal slurry impoundment. Ohio's PA 63 was mentioned specifically in the allegations discussed in the OIG report. The report stated that the OIG's investigation did not develop any information that the Chief of the Ohio Department of Natural Resources, Division of Reclamation reorganized the Division of Reclamation to benefit the coal industry.

OSM and Ohio staff met again on December 15, 1994 (Administrative Record No. OH–2074), at which time Ohio provided several additional documents describing Ohio's projection of the engineering resources needed to support its regulatory program. On December 30, 1994, Ohio provided a similar analysis of the engineering needs of its AML program (Administrative Record No. OH–2089). On January 23, 1995 (Administrative Record No. OH–2084), OSM provided comments to Ohio on these engineering work projections.

By letter dated February 2, 1995 (Administrative Record No. OH–2088), Ohio submitted its revised engineering staff configuration as Program Amendment Number 63 Revised (PA 63R). In this submission, Ohio is proposing to reduce the engineering staff of the Ohio regulatory and AML programs down to 10.4 full-time positions by abolishing 3.6 of the 14 engineering positions which supported those programs prior to PA 63. As with the previous submissions of PA 63, PA 63R contains no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

Ohio's February 2, 1995, submission of PA 63R consisted of five parts:

(1) Description and justification of engineering staff actions;

(2) Proposed table of organization showing the 10.4 engineering staff positions;

(3) Proposed position description for Engineering Specialists;

(4) Personnel table showing distribution of work percentages of its 10.4 engineering staff positions between Ohio's regulatory and AML programs; and

(5) Eight documents included by reference: table of organization, position description, personnel table, regulatory workload assessment, regulatory workload: geographic distribution—1993, regulatory work logs—1993, regulatory ARP logs—1993, and AML workload analysis.

As justification for these engineering staff changes, Ohio also submitted a narrative explaining its staffing proposal and summarizing the results of an engineering workload analysis conducted by Ohio with OSM assistance. Ohio also stated its plans to conduct on-going assessment of any additional engineering support needed by its regulatory and AML programs.

OSM announced receipt of PA 63R in the February 17, 1995, **Federal Register** (60 FR 9317), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 20, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning Ohio PA 63R. Section 503(a)(3) of SMCRA requires that a State regulatory authority must have sufficient administrative and technical personnel, as well as funding, to implement, administer and enforce its approved programs. The Director's findings discussed below reflect his determinations that under the proposed reduction and reorganization of Ohio's engineering staff, Ohio has sufficient engineering personnel to implement, administer and enforce its approved programs.

(1) Overall Justification for Engineering Staff Changes

Ohio's overall justification for the reduced engineering staff levels is based on the decline, between 1987 and 1992, in the issuance of new permits, the number of active permits, the number of inspections and enforcement actions, and in overall coal production. The Director concurs that this five-year decline has occurred as a result of the overall decline in Ohio coal production since 1977 (Administrative Record No. OH–2154). The Director also concurs that this present industry downturn has had direct impact on Ohio's programs and that Ohio's goals of reducing and streamlining its engineering program are therefore appropriate.

(2) Proposed Changes to Ohio Regulatory Engineering Staff

Ohio is proposing to have a total of 3.2 full-time engineering staff positions dedicated to its regulatory program. These 3.2 positions will be made up of varying percentages of the work hours of eight employees: 25 percent of one Central Office Engineer, 50 percent of two Field Engineers, 25 percent of one Field Engineer, 20 percent of one Surveyor, and 50 percent of three Engineering Specialists. This staffing level represents a reduction of 0.8 full-time staff positions from the 4.0 regulatory engineering positions that existed prior to PA 63.

Ohio has submitted a proposed Position Description for the three Engineering Specialist positions which it plans to create to provide technical assistance to its Central Office and Field Engineers. Ohio has also provided an explanation of the need for and responsibilities of these positions in the narrative portion of PA 63R.

Ohio has documented that the decrease in the number of active mine permits between 1987 and 1992 has also meant a corresponding decrease in engineering workload in the Inspection and Enforcement section. This engineering workload includes reviews of mine plans, pond designs, and general engineering assistance to inspectors. Ohio estimates that between 1570 and 4312 engineering staff hours will be needed each year to accomplish these tasks. OSM estimates the required hours to be in the range of 2100 to 6000 hours annually.

With the proposed 0.8 reduction in regulatory engineering staff, Ohio estimates that 3758 hours of engineering staff time will be available to meet these needs. Because this figure falls within both Ohio's and OSM's projections of needed resources, the Director finds that this engineering staff reduction is commensurate with the decrease in Ohio's regulatory engineering workload and will not prevent Ohio from effectively conducting its approved program. During oversight of the Ohio program, OSM will monitor the engineering workload to assure that there will be adequate staffing levels to implement the Ohio program.

(3) Proposed Changes to Ohio AML Engineering Staff

Ohio is proposing to have a total of 7.2 full-time engineering staff positions dedicated to its AML program. These 7.2 positions will be made up of varying percentages of the work hours of eleven employees: 100, 70, and 50 percent of three Central Office Engineers, respectively; 65 percent of one Field Engineer; 45 percent of two Field Engineers; 80 percent of one Surveyor; 50 percent of three Engineering Specialists; and 100 percent of one Drafting Technician. This staffing level represents a reduction of 2.8 full-time staff positions from the 10.0 AML engineering positions that existed prior to PA 63.

Ohio's Federal AML Program is responsible for reclaiming mined lands which were abandoned prior to August 3, 1977 and which are causing danger to the public's health and safety. The program selects, designs, and constructs AML reclamation projects to abate these public hazards. Income to Ohio's Federal AML Program is based, in part, on the amount of Federal coal severance taxes paid by Ohio coal mine operators. With the overall decline in Ohio's Statewide coal production since 1977, the funding available to Ohio's Federal AML program and the number of AML reclamation projects designed and constructed have also decreased.

Ohio estimates that, at current AML project levels, between 3502 and 22364 engineering staff hours are required annually to plan, design, and monitor Federal AML and emergency reclamation projects. With the proposed 2.8 reduction in AML engineering staff, Ohio estimates that 7951 hours of engineering staff time will be available to meet these needs. Because this figure falls within Ohio's projection of needed resources, the Director finds that this engineering staff reduction is commensurate with the decrease in Ohio's AML engineering workload and will not prevent Ohio from effectively conducting its approved program. As previously stated, during oversight of the Ohio program, OSM will monitor the engineering workload to assure that there will be adequate staffing levels to implement the Ohio program.

(4) On-going Assessment of Ohio Engineering Support

Both Ohio and OSM acknowledge the approximate nature of the workload estimates contained in PA 63R. In acknowledgement of this condition, Ohio has included in PA 63R a proposal to conduct on-going assessments of the actual engineering support needed by its programs. These assessments will allows Ohio to detect and correct any shortfall in engineering resources, should any such shortfall occur.

The Director concurs with this approach and is requiring Ohio to periodically assess the effectiveness of the engineering staff changes proposed in PA 63R and to evaluate the need for additional staff or other organizational changes.

With this provision, the Director finds, in accordance with section 503(a)(3) of SMCRA and 30 CFR 732.17, that all of proposed PA 63R meets the requirements of SMCRA and the Federal regulations in that Ohio has sufficient engineering personnel to implement its approved programs.

IV. Summary and Disposition of Comments

Public Comments

On April 8, 1993, January 21, 1994, June 9, 1994, and February 17, 1995, the Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. One commenter requested a public hearing, but that request was later withdrawn and so no hearings were held.

By letter dated May 10, 1993 (Administrative Record No. OH–1878), the Ohio Civil Service Employees Association (OCSEA) submitted substantive comments on 13 topics concerning PA 63. The Director discussed 12 of those topic areas in the September 1, 1994, **Federal Register** (59 FR 45206) as part of this decision to partially approve and defer PA 63. The remaining OCSEA comments concern Ohio's proposed engineering staff changes:

(1) *As a result of staff reductions, one regulatory engineer is now performing the work of five engineers. This represents approximately an 80 percent reduction in the regulatory engineering staff. This drastic reduction is not justified by the much smaller decrease in engineering services for mining operations.*

The Director notes that, before the submission of PA 63, the engineering portion of Ohio's regulatory staff (also know as the Inspection and Enforcement section or "I & E section") had five regulatory engineering positions (three environmental engineers and two project engineers), but only four of the five positions were filled. The remaining environmental engineer position was vacant.

After the first submission of PA 63, OSM raised its various engineering concerns with Ohio. Pursuant to those discussions, Ohio revised its engineering section to satisfy OSM's concerns and created positions for three engineering specialists, who will work directly with an engineer. Ohio determined, and OSM agrees, that Ohio's engineers were spending a significant portion of their time reviewing work and projects which could be more efficiently conducted by engineering specialists. Ohio is also requiring a surveyor to devote 20 percent of his time to the engineering portion of the I & E section. After Ohio implements its engineering staffing plan, the engineering portion will be composed not only of four engineers (devoting up to 50 percent of their time to the I & E section), but three engineering specialists (devoting up to

50 percent of their time to the I & E section) and a surveyor to assist the engineers. The net effect will be a loss of 0.8 engineering positions devoted to regulatory tasks as compared to the staffing level which existed prior to the initial submission of PA 63. There will be more engineering positions in place; but those positions will be conducting a wider range of regulatory and non-regulatory engineering work.

The Director finds that the addition of the three engineering specialists and the surveyor to the engineering section creates a more effective distribution of the workload of the engineering portion of the I & E section because it will free up more time for the engineers to perform those tasks which are best suited for the engineers and their areas of expertise. The Director also finds that the reduction of full-time positions by 0.8 is nominal in light of the reduced workload. Lastly, the Director finds that the existing staff is capable of effectively performing all the functions required by Ohio's regulatory program. For further discussion, see Comment 2 below.

(2) *Ohio is assigning engineer job duties to personnel not necessarily qualified to perform those duties and with job descriptions which only include assisting an engineer and which do not require performing the actual duties.*

The Director disagrees with the commentor. As discussed in the previous comment, Ohio found that the engineers were performing tasks that could have been done by other trained personnel. Ohio is free to delegate to non-engineers those engineering support activities so long as those personnel are capable of performing those duties.

As part of PA 63R, Ohio is transferring selected responsibilities from its engineers to engineering specialists and mine inspectors. OSM has reviewed the position descriptions provided by Ohio for the proposed new engineering specialist positions and existing inspector positions affected by the engineering staff changes. OSM has concluded that the proposed responsibilities for reviewing mining plans and pond designs, collecting field data, and operating computer applications are within the scope and capability of these positions.

This determination is based on the fact the Ohio's coal mining law and rules do not specifically require review of any part of mining permits by an engineer employed by Ohio. Rather, the permittee cannot conduct specific activities such as build a pond, construct a road, or develop an excess spoil site until that activity is approved by the Chief. The rules are not specific about how the Chief will develop or document decisions concerning engineering-type activities. Historically, Ohio field inspectors and permit reviewers have requested engineering review of typical engineering-type activities as part of the permit-approval process; but that review need not be done by a registered engineer.

The use of non-engineer design specialists is addressed in Ohio Revised Code (ORC) Chapter 4733. Non-engineers can perform all duties provided that those duties "do not include responsible charge of engineering or survey work" (ORC 4733.18(B)(1)) and the design specialist is "an employee or subordinate of a person holding a certificate of registration" (ORC 4733.18(B)(1)). Ohio has stated that the three engineering specialists will work directly with an engineer and under the supervision of a professional engineer (Administrative Record No. OH–2155).

(3) *Ohio did not consider recommendations from its engineering staff in purchasing a UNIX computer system and thot system has a high learning curve and does not meet the needs of the engineering staff.*

This comment is beyond the scope of this amendment because it concerns an internal resource management issue which is not directly related to Ohio's proposed staffing changes. Therefore, the Director is acknowledging but making no response to this comment.

The Director notes that one of the engineering specialists will be assigned to the TIPS workstation. TIPS is an advanced workstation that utilizes sophisticated computer software which is capable of substantially reducing the amount of time needed to evaluate certain type of projects in both the AML and regulatory programs. Ohio will assess the continued needs of its engineering program with regard to the use of SEDCAD, another engineering software program capable of predicting concentration of settleable and suspended solids in the effluent from sedimentation ponds and otherwise analyzing drainage control systems on surface mines.

(4) *Ohio has taken a systematic and planned approach to decimate the effectiveness and productivity of the engineering and design section. What was once a highly effective section has been dismantled without any survey work, designers, drafters, and less engineers to be replaced with machines with no personnel to operate them.*

The Director disagrees that Ohio has decimated the effectiveness and productivity of the engineering and design section. The reduced and reorganized engineering staff now proposed in PA 63R is capable of performing all functions required by Ohio's programs.

OSM also received comments on PA 63 and PA 63R dated June 22, 1994 (Administrative Record No. OH–2026), and July 13, 1995 (Administrative Record No. OH–2145), from Howard R. Fauss, P.E. In his June 22, 1994, letter, Mr. Fauss commented that the former Chief of the Division of Reclamation, Ohio Department of Natural Resources, restructured the Division of Reclamation to reduce or eliminate engineer's input into the review of mining and operations plans. According to Mr. Fauss, the Chief drastically reduced engineering hours available for regulatory purposes and eliminated engineers dedicated to those tasks. The Chief's plan was to create an engineering organizational structure with limited accountability, no individual responsibility for assisting the reclamation inspector, and no qualified engineers available to do such work. Engineers were pressed to do AML rather than regulatory work, with 44 persons on Ohio's AML staff and only three regulatory engineers.

In his July 13, 1995 letter, Mr. Fauss commented that Ohio's proposed fragmentation of individual engineer's duties between different programs is a clear recipe for a way not to get the regulatory duties accomplished. According to Mr. Fauss, the former Chief was always attempting to direct the engineer's attentions to anything other than regulatory duties. Even though Ohio's revised engineering staff plan looks better on paper, it will not accomplish the intended goals. Ponds will still not receive a realistic review using SCS-recommended parameters.

The Director notes these comments and reiterates that OSM's purpose in reviewing PA 63R is to determine if the reduced and reorganized engineering staff proposed in PA 63R will be capable of performing all engineering functions required by Ohio's programs. As discussed above, OSM has reviewed Ohio's workload analyses and concluded that the proposed staffing should be adequate. Ohio and OSM will continue to monitor the engineering workload of Ohio's programs. If those analyses indicate that the revised staffing is insufficient, OSM will require Ohio to further amend its program.

It is not appropriate for OSM to attempt to respond to Mr. Fauss' comments concerning the intent behind Ohio's engineering staff changes. OSM may only decide if those changes are likely to prevent or negatively impact Ohio's ability to perform its responsibilities under its approved programs. OSM does note, however, that the OIG's report (Administrative Record No. OH–2072) did not agree with Mr. Fauss' claims concerning the purpose of the engineering reductions.

OSM received no other public comments on PA 63R.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on PA 63 and PA 63R from the Regional Director of the U.S. Environmental Protection Agency (EPA) and from the heads of four other Federal agencies and one State agency with an actual or potential interest in the Ohio program. Comments received concerning PA 63 were discussed in the September 1, 1994 **Federal Register** (59 FR 45211).

Concerning PA 63R, the U.S. Department of Labor, Mine Safety and Health Administration, responded without comment. Comments on PA 63R were also received from the Ohio Historic Preservation Office (OHPO). The OHPO did not object to the proposed amendment. However, the OHPO noted that historic preservation matters must be fully integrated into the planning and engineering process and should be reflected in all job descriptions and factored into any evaluations of staffing needs. The Director acknowledges the importance of historic preservation planning and, through normal oversight of the Ohio program, will ensure that these matters are not adversely impacted by the proposed engineering staff changes.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on PA 63R from EPA. By letter dated February 28, 1995 (Administrative Record No. OH–2096), EPA stated that it had no comments on the amendment.

No other agency comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on February 2, 1995.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding new paragraph (zzz) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(zzz) The following amendment (Program Amendment 63R) pertaining to the Ohio regulatory and Abandoned Mined Land reclamation programs, as submitted to OSM on February 2, 1995, is approved, effective November 9, 1995: Reduction and reorganization of engineering staff.

[FR Doc. 95–27807 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 936

[SPATS No. OK–016–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed a revision to its rules pertaining to procedures for assessment conference. The amendment is intended to revise the Oklahoma program to improve operational efficiency.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Submission of the Proposed Amendment

By letter dated July 5, 1995 (Administrative Record No. OK–972), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. Oklahoma proposed to revise its rules at Oklahoma Administrative Code (OAC) 460:20–61–10 concerning procedures for assessment conference.

OSM announced receipt of the proposed amendment in the July 27, 1997, **Federal Register** (60 FR 38533), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 28, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

The proposed amendment submitted by Oklahoma adds the word "original" before the word "abatement" in the second sentence of OAC 460:20–61–10(b)(1). The effect of this proposed revision is that civil penalty assessment conferences will be held within 60 days from the date of issuance of the proposed assessment or the end of the *original* abatement period, whichever is later. The Federal counterpart regulation at 30 CFR 845.18(b)(1) provides that the assessment conference be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later.

The current time frame for holding Federal civil penalty assessment conferences resulted from a revision to 30 CFR 845.18(b)(1) which was effective April 8, 1991 (56 FR 10060, March 8, 1991). In the **Federal Register** document announcing the regulation revision, the preamble addressed the effect of the revision in States with primacy:

> Section 518(i) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain civil penalty assessment procedures which are the same as or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR part 845. The time allowed for holding an assessment conference is not prescribed in the Act; thus, the applicable standard governing the adequacy of State program provisions under 30 CFR 840.13(c) is whether the approved State programs contain procedural requirements relating to civil penalties which are consistent with (i.e., no less effective than) 30 CFR 845.18, as amended. Because OSM allows the States reasonable latitude in establishing certain procedural time frames, and because this rule merely extends one of such time frames, States do not have to adopt this change.

As indicated in the preamble provision quoted above, OSM allows the States reasonable latitude in establishing certain procedural time frames, and Oklahoma's proposed rule still provides for a minimum 60-day time frame for holding civil penalty assessment conferences. Therefore, the Director finds that Oklahoma's proposed revision does not render its rule at OAC 460:20–61–10(b)(1) less effective than the Federal regulation at 30 CFR 845.18(b)(1), and he is approving the proposal.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program. The Department of the Army, U.S. Army Corps of Engineers, responded that its review of the amendment found the changes to be satisfactory (Administrative Record No. OK–972.02). The United States Department of the Interior, Bureau of Land Management, responded that the amendment appears to be an improvement because it promotes timely procedures (Administrative Record No. OK–972.03).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The revision that Oklahoma proposed to make in this amendment did not pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. OK–972.01). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. No response was received from either agency.

V. Director's Decision

Based on the above finding, the Director approves the proposed amendment as submitted by Oklahoma on July 5, 1995.

The Director approves the rule as proposed by Oklahoma with the provision that it be fully promulgated in identical form to the rule submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 27, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding paragraph (q) to read as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(q) Revision to the following rule, as submitted to OSM on July 5, 1995, is approved effective November 9, 1995:

OAC 460:20–61–10(b)(1).	Procedures for assessment conference.

[FR Doc. 95–27810 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 943

[SPATS No. TX–026–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision not to approve a proposed amendment to the Texas regulatory program (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed a revision to its rules pertaining to surface mining permit applications—minimum requirements for information on environmental resources: cross sections, maps, and plans. The amendment was intended to allow professional biologists to prepare and certify cross sections, maps, and plans that are included as part of the permit application.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated August 31, 1995, (Administrative Record No. TX–596), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to revise the Texas Coal Mining Regulations (TCMR) at § 779.137 pertaining to cross sections, maps, and plans included in a surface mining permit application.

OSM announced receipt of the proposed amendment in the September 20, 1995, **Federal Register** (60 FR 48677), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 20, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Texas proposed a revision at TCMR 779.137(l) which would allow professional biologists, as appropriate, to prepare and certify cross sections, maps, and plans that are submitted as part of the surface mining permit application. Currently the Texas program only allows qualified registered professional engineers or professional geologists, with assistance from experts in related fields such as land surveying and landscape architecture, to prepare and certify cross sections, maps, and plans.

Section 507(b)(14) of SMCRA, as amended on November 4, 1983, by section 115, Pub. L. 98–146, 97 Stat. 938, requires that cross sections, maps, or plans included in an application for a surface mining and reclamation permit be prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans, with assistance from experts in related fields such as landscape architecture. The implementing Federal regulations at 30 CFR 779.25(b), as amended on April 24, 1985 (50 FR 16194), also require that cross sections, maps, and plans included in a permit application be prepared by or under the direction of and certified by the same professions specified in section 507(b)(14) of SMCRA. Thus under SMCRA and its implementing Federal regulations, only professional engineers, geologists, and land surveyors may prepare and certify cross sections, maps, and plans in surface mining and reclamation permit applications.

Additionally, considering the Federal provisions under section 507(b)(14) of SMCRA and 30 CFR 779.25(b), Texas did not provide adequate information and documentation to support its proposed amendment to TCMR 779.137(l). Information on the types of cross sections, maps, and plans professional biologists would be allowed to prepare and certify was not provided. Information as to whether or not professional biologists possess the same expertise as qualified registered professional engineers and geologists with respect to preparation of cross sections, maps and plans included in surface coal mining permit applications was not provided. Also, documentation as to whether professional biologists are authorized by Texas law to prepare and certify these documents for surface coal mining permit applications was not provided.

Therefore, the Director finds that the proposed revision would render TCMR 779.136(l) inconsistent with both section 507(b)(14) of SMCRA and the Federal regulations at 30 CFR 779.25(b) and is not approving it.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. 596.01). Comments were received from the U.S. Bureau of Land Management, the U.S. Army Corps of Engineers, and the Natural Resources Conservation Service.

The U.S. Bureau of Land Management responded on September 15, 1995, that the revised regulation appeared to exceed Federal coal standards (Administrative Record No. 596.04). The U.S. Army Corps of Engineers responded on September 18, 1995, that the proposed regulation change was satisfactory to its agency (Administrative Record No. 596.02). The Natural Resources Conservation Service responded on October 2, 1995, that it supported the amendment (Administrative Record No. 596.05).

As discussed in section III, neither SMCRA nor the Federal regulations authorize professional biologists to prepare and certify cross sections, map, and plans included in surface mining and reclamation permit applications.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

The revision that Texas proposed to make in this amendment did not pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. TX–596.01). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. Neither responded to the request for comments.

V. Director's Decision

Based on the above finding in section III, the Director is not approving the proposed amendment, as submitted by Texas on August 31, 1995, that would allow professional biologists to prepare and certify cross sections, maps, and plans for surface mining permit applications.

The Federal regulations at 30 CFR Part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. The final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program

be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Texas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Texas of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 27, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended by adding paragraph (k) to read as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(k) Effective November 9, 1995, the revision to TCMR 779.137(l), as submitted to OSM on August 31, 1995, is not approved to the extent that it would allow professional biologists to prepare and certify cross sections, maps, and plans included in surface mining permit applications.

[FR Doc. 95–27811 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–103, RM–7174]

Radio Broadcasting Services; Mt. Pleasant, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Susan I. Coloff of our *Report and Order*, 55 FR 47764 (Nov. 15, 1990) in this proceeding. The *Report and Order* substituted FM channel 288C3 for Channel 288A at Mount Pleasant and modified the license for Station KILJ to specify operation on the higher powered channel. The Commission determined that the public interest would be served by the substitution of Channel 288C3 for Channel A since it would provide the community with a wide coverage area FM service. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 776–1660.

SUPPLEMENTARY INFORMATION: This a synopsis of the Commission's *Order*, MM Docket No. 90–103, adopted October 24, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27721 Filed 11–8–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–100; RM–8509, 8549, 8550]

Radio Broadcasting Services; Okmulgee, Nowata, Pawhuska, Bartlesville, Bixby, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Integrated Broadcasting Company, Inc., substitutes Channel 231C1 for Channel 231C2 at Okmulgee, OK, modifies the license of Station KTHK(FM) to specify operation on the higher class channel, substitutes Channel 285A for Channel 232A at Nowata, OK, modifies the license of Station KRIG to specify the alternate Class A channel and substitutes Channel 280A for unoccupied but applied-for Channel 285A at Pawhuska, OK. *See* 59 FR 48281, September 20, 1994, 60 FR 37622, July 21, 1995. The Commission, at the request of Singer Broadcasting Group, Inc./KJMM, Inc., also substitutes Channel 287C2 for Channel 287C3 at Bixby, OK, and modifies the license of Station KJMM to specify operation on the higher powered channel. The request of KRIG, Inc. to substitute Channel 286C3 for Channel 232A at Nowata and modify the license of Station KRIG accordingly is denied. Channel 231C1 can be allotted to Okmulgee at Station KTHK(FM)'s licensed site, at coordinates 35–50–02 NL; 96–07–28 WL. Channel 285A can be allotted to Nowata at Station KRIG's licensed transmitter site, at coordinates 36–44–35; 95–45–17. Channel 280A can be allotted to Pawhuska with a site restriction of 8.4 kilometers (5.2 miles) northwest, at coordinates 36–44–00; 96–23–00. Channel 287C2 can be allotted to Bixby with a site restriction of 2.4 kilometers (1.5 miles) south, at coordinates 35–55–15; 95–52–25. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–100, adopted October 20, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 287C3 and adding Channel 287C2 at Bixby; removing Channel 231C2 and adding Channel 231C1 at Okmulgee, removing Channel 232A and adding Channel 285A at Nowata, and removing Channel 285A and adding Channel 280A at Pawhuska.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27367 Filed 11–8–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amendment 1–272]

Organization and Delegation of Powers and Duties; Transfer of Delegation From Coast Guard to Saint Lawrence Seaway Development Corporation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: This rule suspends the effectiveness of an interim final rule published in the **Federal Register** on July 31, 1995, transferring from the Coast Guard to the St. Lawrence Seaway Development Corporation responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act of 1960. The interim final rule became effective October 30, 1995. The suspension of effectiveness is necessary to allow the Department additional time to respond to comments.

EFFECTIVE DATE: October 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On July 31, 1995, the Department of Transportation published an interim final rule with request for comments (60 FR 38971). The interim final rule contained language that transferred delegation of Great Lakes Pilotage functions from the Coast Guard to the St. Lawrence Seaway Development Corporation (SLSDC). The comment period for the interim final rule ended on September 29, 1995, and specified an effective date of October 30, 1995.

Because additional time is needed to consider all the issues raised in the comments, the effectiveness of the interim final rule is being suspended until the Department concludes its review. The Department expects to publish a document in the **Federal Register** responding to the comments by November 30, 1995.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

Issued at Washington, DC this 27th day of October, 1995.

Federico Peña,

Secretary of Transportation.

Accordingly, 49 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by reinstating paragraph (a) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

(a) Carry out the Great Lakes Pilotage Act of 1960, as amended, except the authority to enter into, revise, or amend arrangements with Canada (74 Stat. 259, 46 U.S.C. 216 *et seq.*).

* * * * *

§ 1.52 [Amended]

3. Section 1.52 is amended by suspending paragraphs (d) and (e).

[FR Doc. 95–27504 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–62–P–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice Describing Fish and Wildlife Service Priority Listing Activities From October 1, 1995 Through November 13, 1995

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of priority listing activities.

SUMMARY: In this notice the Fish and Wildlife Service (Service) describes those activities that it believes may be lawfully conducted pursuant to section 4 of the Endangered Species Act while operating under the continuing resolution from October 1, 1995 through November 13, 1995. The Service interprets the provisions of the continuing resolution to prohibit the issuance of final rules adding species to the list of endangered or threatened wildlife and plants. Emergency listing and designation of critical habitat are also prohibited. Activities the Service believes are authorized include—review and issuance of findings on petitions; conducting public hearings and accepting public comments on proposed listings and critical habitat designations; and preparing, publishing, or withdrawing proposed rules to list, delist, or reclassify species. Highest priority listing activities during the period covered by the continuing resolution will include—completing ongoing public comment periods and conducting scheduled or requested public hearings; completing review and publishing findings on petitions received prior to July 15, 1995; and processing listing actions that would delist species or reclassify endangered species to threatened species.

DATES: This notice governs Service priorities and policies from October 1, 1995 through November 13, 1995.

ADDRESSES: Interested persons or organizations should submit comments to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–452, Washington, D.C. 20240 (703–358–2171 voice, 703–358–1735 facsimile).

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION: Public Law 104–6, enacted April 10, 1995, amended Public Law 103–332 (the Interior appropriations act for fiscal year 1995) by placing a moratorium on certain activities conducted pursuant to section 4 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The moratorium prohibited the Service from adding species to the lists of endangered or threatened wildlife and plants, including emergency listings, and also prohibited the Service from designating critical habitat for listed species. These moratorium provisions were to lapse on October 1, 1995.

Language included in section 101(a) of the continuing resolution (H.J. Res. 108) specifies that activities conducted in fiscal year 1995 continue in the first six weeks of fiscal year 1996 under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995. The Service interprets this language to extend the moratorium provisions of Public Law 104–6 until the expiration of the continuing resolution on November 13, 1995. Therefore, the Service believes that it is expressly prohibited from adding species to the lists of endangered or threatened wildlife and plants, and from designating critical habitat, during the period October 1, 1995 through November 13, 1995.

Actions that the Service believes are permitted under the authority of section 4 of the Act while operating under the continuing resolution include—review and publication of findings on petitions to list, reclassify, delist, or designate critical habitat; review of candidate species status; production of proposals to add species to the lists of endangered or threatened wildlife and plants; and conducting public hearings on proposed listings.

The Service is also experiencing funding constraints under the continuing resolution and foresees a significant decrease in the funds available for listing activities in fiscal year 1996. The limited amount of resources means that the Service must carefully prioritize its listing activities. To most effectively use the available funds, the Service will limit listing activities from October 1, 1995 through November 13, 1995 to the following:

Completing ongoing comment periods and conducting scheduled or requested public hearings for proposed listings.

Completing review and findings on petitions received prior to July 15, 1995.

Completing review of actions that would delist, reclassify, or withdraw proposed listing for a variety of species.

The Service intends to discontinue work on preparation of proposed listings and critical habitat designations because completion of such actions prior to November 13, 1995 would be unlikely. The Department of Justice has been requested to seek appropriate relief from pending court orders and settlement agreements. Action on proposed listings issued in fiscal year 1995 will cease once the public comment period closes (generally 60 days after publication of the proposed rule in the **Federal Register**).

Authority

This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 3, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–27899 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950725190–5257–02; I.D. 070395A]

RIN 0648–AH71

Coral and Coral Reefs of the Gulf of Mexico; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (FMP). Amendment 3 prohibits the taking of wild live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida north and west of the Levy/Dixie County line; removes the prohibition on taking wild live rock by chipping between the Pasco/Hernando County and Levy/Dixie County, FL lines; establishes annual quotas for wild live rock harvesting for 1995 and 1996 in the Gulf EEZ; and reduces the amount of substrate that may be taken with allowable octocorals in the Gulf EEZ. The intended effect is to protect the live rock resource and fishery habitat in the Gulf EEZ and to simplify the regulations.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations

at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Detailed descriptions, backgrounds, and rationale for the management measures in Amendment 3 were included in the preamble to the proposed rule (60 FR 40150, August 7, 1995) and are not repeated here.

Comments and Responses

A minority report was submitted by two Council members in opposition to Amendment 3. In addition, public comments on the proposed rule were accepted through September 18, 1995. One hundred and nine identical letters opposing the rule were forwarded by the American Aquarist Society (AAS). Also commenting against the rule were a representative of the Marine Aquarium Societies of North America (MASNA), a live rock harvester from Florida who also forwarded 14 identical letters from his supporters, 2 other live rock harvesters, and 2 additional individuals.

The U.S. Fish and Wildlife Service, the Center for Marine Conservation (CMC), and 28 individuals supported the proposed measures. The Professional Association of Diving Instructors (PADI) and several local governments and other organizations support an immediate and permanent ban on live rock harvesting. Specific comments are summarized below followed by NMFS' response.

Florida Panhandle Closure

Comment: The minority report claims that the Council's decision to close the EEZ off Florida's Panhandle area to live rock harvesting "was made without a shred of new data or evidence to justify the action." AAS members believe that the proposed closure has no scientific basis and appears to be "a blatant effort to accommodate the political interests of the State of Florida." MASNA and the live rock harvesters who commented also oppose the closure because of a perceived lack of scientific evidence to support it. In addition, one live rock harvester believes that the Council's decision in approving Amendment 3 was based on "false testimony," and that the decision violates national standard 2 of the Magnuson Act.

Response: There exists a considerable amount of scientific literature regarding the habitat value of reefs and rubble zones for a variety of commercial and recreational fish species. A list of references is included in Amendments 2 and 3 to the FMP. In addition, testimony was received by the Council documenting damage to recreational diving areas and reductions in availability of reef fish as a result of live rock harvesting. Impacts were said to be greatest in the areas of lowest abundance of hard bottom habitats, such as the northern Gulf. The NMFS Southeast Fisheries Science Center has certified that the management measures contained in Amendment 3 are based on the best scientific information available, as required by national standard 2.

The State of Florida banned harvest of live rock from State waters in 1989. Florida representatives have maintained opposition to continued live rock harvesting in the EEZ off Florida, in part because of the difficulty of enforcing the State prohibition when Federal waters remain open. Thus, Florida has a legitimate interest in ending the EEZ live rock harvest off Florida.

Comment: The minority report suggests that mitigation by replacement of wild live rock with quarried rocks is a viable alternative to the closure. A wild live rock harvester, who also holds an aquacultured live rock permit for a site in the Panhandle area, believes that the rock he has deposited for aquaculture purposes will mitigate impacts on naturally occurring substrate and that there has been a net gain of habitat off the Panhandle.

Response: NMFS concurs with the Council's opinion that the deposition of quarried rocks for the purpose of live rock aquaculture does not mitigate the continued taking of wild live rock. Although aquacultured live rock has been shown to serve some of the purposes of wild live rock when placed in marine aquariums, it is not comparable in terms of the complexity of its species composition to naturally occurring substrate that may have been in place for centuries. Since aquacultured rock has been deposited at the site for the purpose of eventual retrieval and sale, it cannot result in a net gain in fishery habitat.

Comment: The minority report and one live rock harvester claim that the closure of the Panhandle area to live rock harvesting is a violation of the Magnuson Act's national standard 4, which addresses fair and equitable allocation of fishing privileges.

Response: For purposes of national standard 4, allocation means a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete groups of fishermen. Area closures, however, only indirectly and incidentally result in allocation of fishing privileges by requiring individuals in certain areas to travel to other areas to fish. In the case of the closure of the Florida Panhandle area for conservation purposes, it will be necessary for certain fishermen in this area to relocate live rock harvesting operations to an area off the west central coast of Florida. The Council's action has no discriminatory intent and does not violate national standard 4. Additional discussion of national standard 4 requirements may be found at 50 CFR 602.14 and 50 CFR 602, Subpt. B, App. A.

Comment: CMC commented on the value of the resource to fishery habitat, the relative scarcity of reef areas in the northern Gulf, and the adverse impacts on recreational divers and reef fishermen from continued harvests of wild live rock. PADI believes that a direct degradation of the environment is being allowed in order to satisfy the narrow economic interests of a small group of individuals. One commenter sent copies of resolutions passed by local groups opposing live rock harvesting: Okaloosa and Walton County Board of Commissioners, the City of Destin, FL, Okaloosa County Economic Development Council, the Emerald Coast Convention and Visitors Bureau, the Elgin Yacht and Diving Club, the Destin Fishing Fleet, Inc., the Destin Fishermen's Cooperative Association, the Destin Charter Boat Association, and the South Walton Tourist Development Council.

Response: NMFS agrees with the concerns expressed by the CMC regarding the environmental impacts of a continuing live rock harvest. Amendment 3 is designed to eliminate impacts on hard bottom habitats that may affect the value of recreational diving and commercial and recreational fishing in the Gulf of Mexico.

Live Rock Quota

Comment: A live rock harvester and 14 of his supporters oppose the establishment of a quota for live rock taken south of the Panhandle area off Florida because of the financial hardship that this might place on aquaculturalists. He believes that the closure of wild live rock harvests by 1997 and the daily trip limit established under Amendment 2 to the FMP sufficiently limit the amount of live rock collected. Another live rock harvester also opposes this provision because he believes the daily vessel limit, inclement weather, and dangerous effects of nitrogen buildup in the deep waters of the Gulf already limit the amount of harvest.

Response: Live rock landings from the Gulf EEZ off Florida reported to Florida's Department of Environmental Protection increased from nearly 200,000 lb (90,718 kg) in 1991 to over 600,000 lb (272,155 kg) in 1994. During 1994, the landings nearly doubled. NMFS concurs with the Council's decision to place a cap on the harvest during the phaseout period to prevent further increases. The intent of the phaseout established under Amendment 2 was to maintain approximately current levels of harvest to allow those fishermen dependent on live rock harvesting some time for a transition to other activities.

Allowable Octocoral Definition

Comment: AAS, MASNA, and two live rock harvesters oppose the reduction in the amount of substrate that may be taken with an allowable octocoral. These commenters indicated that attached substrate up to 3 inches (7.6 cm) from a holdfast is necessary to ensure that an octocoral survives transport.

Response: Amendment 2 redefined allowable octocorals to close a potential loophole that could allow harvest of live rock as part of the 50,000 colony annual quota for allowable octocorals. The revised definition included as allowable octocoral only a limited amount of attached substrate: 1 inch (2.5 cm) in the EEZ off the southern Atlantic states and 3 inches (7.6 cm) in the Gulf EEZ. However, Florida recently implemented a rule allowing only 1 inch (2.5 cm) of substrate from the attachment of the octocoral. In accordance with 50 CFR 638.3(c), if a state has a landing regulation that is more restrictive than a Federal landing restriction for octocorals, a person landing in that state must comply with the more restrictive state regulation. There are no reported landings of octocorals outside Florida. Therefore, under § 638.3(c), the 1–inch (2.5–cm) rule will apply to the Gulf EEZ off Florida, whether or not Amendment 3 is implemented. Further, the Council and NMFS agreed with Florida's finding that a 3–inch (7.6–cm) rule would allow the continued taking of excessive amounts of live rock as bycatch under the octocoral quota and that a 1–inch (2.5 cm) limit is sufficient to allow proper anchoring of the octocoral in an aquarium.

Recreational Harvests

Comment: One of the form letters recommends that a recreational harvest of live rock be allowed as long as the commercial wild harvest remains open. MASNA and AAS strongly support a recreational harvest. MASNA believes that recreational use is allowed in all other fisheries and they see no reason for an exception in this case.

Response: NMFS believes that the harvest of wild live rock is a take of an essentially nonrenewable resource and results in a net loss of fishery habitat. In developing Amendments 2 and 3, NMFS and the Council rejected a recreational harvest that could result in a total of up to 1,825 gal (6,908 L) of live rock per person per year. While NMFS agreed with the Councils' final recommendation in Amendment 2 to delay the ban on commercial harvests in order to mitigate adverse economic impacts on the industry and allow a transition to live rock aquaculture, this justification is not applicable to the recreational sector.

Further, live rock is likely to contain prohibited corals. Commercial harvesters testified that they must carefully choose pieces to avoid taking prohibited corals. Occasional recreational divers may be less likely to be able to make these distinctions. As such, any allowable recreational take of live rock could result in increased takes of prohibited corals. Finally, the State of Florida banned both commercial and recreational harvest of live rock from State waters in 1989.

A recreational harvest in the EEZ off Florida could seriously complicate State enforcement efforts.

Economic Impacts

Comment: The minority report states that "Amendment 3 reneges on the Council's earlier commitment to allow investors currently in the Panhandle fishery sufficient time to convert their business investments to aquaculture." One live rock harvester who will be affected by the closure of the Panhandle area provided a videotape of his aquaculture site and asked for more time to continue his aquaculture operations: "Amendment 3 will stop this venture dead in its tracks as the revenue is needed from the wild harvest to fund the continued deployments." He stated that he has already placed over 30,000 lb (13,608 kg) of rock on his permitted site, has another 170,000 lb (77,111 kg) ready to deposit, and employs over 25 people. One employee commented that more time is needed to achieve a marketable live rock product and that Amendment 3 would "drive some people from this billion dollar a year industry" because the only live rock available would be imported. Another live rock harvester included copies of recent advertisements to demonstrate the availability of imported live rock, especially from the Marshall Islands, Tonga, and other areas of the Pacific. He believes that more time is needed to develop aquaculture products to compete with these imports.

Response: Florida live rock harvesters have had several years to begin the transition to live rock aquaculture. Beginning in 1991, the State of Florida held a series of public hearings and technical workshops on live rock aquaculture options. The Council began its deliberations with a series of public hearings in 1993, culminating in passage of Amendment 2 in 1994. Amendment 2 provided for an additional 2 years of live rock harvesting, until 1997, to allow time for this transition to aquaculture. Some businesses began aquaculture operations over 2 years ago on Florida lease sites or in the EEZ off Florida under permits issued by the U.S. Army Corps of Engineers. At least one company is already offering Gulf EEZ aquacultured live rock for sale. NMFS concurs with the Council's view that sufficient time has been made available under Amendments 2 and 3 for possible transitions from wild live rock harvesting to aquaculture operations.

Contrary to the views expressed in the minority report, regulatory actions are based on the best available science, particularly in a highly regulated industry such as commercial fishing. The Council is required to design, apply, and adjust management measures in an ongoing manner. However, the impacts of the management measures must be considered and balanced pursuant to various legal requirements. In this case, the impacts of the measures are not unreasonable, given that the wild live rock fishery does in fact remain open until 1997, albeit with a closed area resulting from the Council's consideration of information indicating the necessity of that adjustment. In addition, Amendment 3 will have no effect on authorized live rock aquaculture operations in the Gulf EEZ.

Comment: One commenter indicated that he thought the drafting of Amendment 3 was a violation of national standard 7 of the Magnuson Act, because there was no demonstrated impact to the EEZ of continued harvesting and the amendment is a waste of taxpayers' money. This commenter also asked why the economic impact analysis prepared by the Council changed from the draft to the final amendment.

Response: NMFS believes that Amendment 3 is needed to address continuing loss of fishery habitat. Also, public testimony on the draft amendment indicated that the harvests were having an adverse impact on recreational enjoyment of reef areas in the Gulf EEZ. Thus, the benefits of preventing a decrease in non-consumptive values were factored into the Council's economic analysis and Amendment 3 includes a conclusion that the benefits from the Panhandle closure may outweigh the costs to the affected producers.

Effective Dates

Comment: Two live rock harvesters asked NMFS and the Council not to waive the 30-day period of delayed effectiveness under the Administrative Procedure Act (APA) to allow an additional 30 days of live rock harvesting under the 1995 quota. These commenters indicated that "red tide" has damaged their aquaculture sites, and they need additional income from a continued harvest of wild live rock.

Response: A 30-day delay in effectiveness is likely to result in a quota overrun and possible habitat degradation contrary to the intent of the Council. Accordingly, as discussed below, good cause exists under the APA to waive the 30-day delay in effective date of this final rule. However, to provide time for notice to fishermen, the effective date is delayed for 3 days from its date of publication.

Changes from the Proposed Rule

In § 638.2, the definition of "allowable octocoral" is revised to clarify when nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, are "live rock" rather than "allowable octocoral."

In § 638.26(d)(2), the language regarding a closure when the quota for wild live rock in the Gulf EEZ is reached is revised to conform to standard language for such closures, as contained in the current coral regulations at 50 CFR 638.24(b) and 50 CFR 638.25(c)(2).

Classification

The Regional Director has determined that Amendment 3 is necessary for the conservation and management of the coral and coral reef resources of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the proposed rule was published that it would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (60 FR 40152, August 7, 1995). As a result, a regulatory flexibility analysis was not prepared.

The conservation and management concerns, i.e., possible degradation of habitat and quota overruns, that lead the Council and NMFS to prohibit the taking of wild live rock in the EEZ of the Gulf off Florida north and west of the Levy/Dixie County line and to establish an annual quota for wild live rock in the Gulf EEZ makes a delay in effective date for these measures contrary to the public interest. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds that good cause exists, under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date with respect to these measures. Removal of the prohibition on taking wild live rock in the EEZ by chipping between the Pasco/Hernando County and Dixie County, FL lines relieves a restriction. Thus, pursuant to 5 U.S.C. 553(d)(1), there is no need to delay the effective date of this provision. As explained in the proposed rule, reduction from 3 inches to 1 inch (7.6 cm to 2.5 cm) of the amount of substrate that may be taken with allowable octocoral in the Gulf EEZ is not a substantive change because all harvesters in the Gulf EEZ have been limited to 1 inch (2.5 cm) by Florida's rules. However, to provide time for notice to fishermen, NMFS is delaying the effective date of this final rule for 3 days from the date of its publication.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 2, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 638.2, the definition for "Allowable octocoral" is revised to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral. Note: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

* * * * *

3. In § 638.7, paragraphs (m), (n), and (p) are revised to read as follows:

§ 638.7 Prohibitions.

* * * * *

(m) Harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5′ N. lat., as specified in § 638.25(a), or in the Gulf of Mexico EEZ north and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, FL boundary or south of 25°20.4′ N. lat., as specified in § 638.26(a).

(n) Harvest wild live rock by chipping, or possess wild live rock taken by chipping, in the EEZ off the southern Atlantic states south of 25°58.5′ N. lat., as specified in § 638.25(b).

* * * * *

(p) Harvest or possess in the Gulf of Mexico EEZ, from a line extending in a direction of 235° from true north from the Levy/Dixie County, FL boundary to 25°20.4′ N. lat., wild live rock taken other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel, as specified in § 638.26(b).

* * * * *

4. Section 638.26 is revised to read as follows:

§ 638.26 Wild live rock in the Gulf of Mexico.

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) North and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary, that is, from a point at the mouth of the Suwannee River at 29°17.25′ N. lat., 83°09.9′ W. long.; or

(2) South of 25°20.4′ N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* In the Gulf of Mexico EEZ, from the line described in paragraph (a)(1) of this section to 25°20.4′ N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken other than by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5–gallon (19–L) buckets, or volume equivalent (16.88 ft (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from the line described in paragraph (a)(1) of this section south to 25°20.4′ N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

(d) *Quota and closure.* (1) The annual quota for wild live rock from the EEZ, from the line described in paragraph (a)(1) of this section south to 25°20.4′ N. lat., is 500,000 lb (226,796 kg) for the fishing years that begin January 1, 1995, and January 1, 1996. Commencing with the fishing year that begins January 1, 1997, the quota is zero.

(2) When the quota specified in paragraph (d)(1) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, wild live rock may not be harvested or possessed in the EEZ of the Gulf of Mexico and the purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of wild live rock in or from the EEZ of the Gulf of Mexico is prohibited. The latter prohibition does not apply to wild live rock that was harvested and landed prior to the effective date of the notification in the **Federal Register**.

[FR Doc. 95–27747 Filed 11–8–95; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 217
Thursday, November 9, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 179

RIN 3206–AH21

Claims Collection Standards Debt Collection Act of 1982: Salary Offset

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise the delegations of authority for matters affecting debt collection reflected in Title 5, Code of Federal Regulations. The proposed amendment will clearly reflect the Chief Financial Officer's (CFO) responsibility for providing policies, standards, and guidelines concerning agency financial administration of all programs, and the shared responsibility held by the CFO and the Associate Director for the Retirement and Insurance Service for matters affecting debts owed to the retirement, health, and life insurance programs.

DATES: Comments must be submitted on or before January 8, 1996.

ADDRESSES: Send comments to J. Gilbert Seaux, Chief Financial Officer (CFO), Office of Personnel Management, Room 5489, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert Loring, Accounting Officer, Office of the CFO, (202) 606–5028.

SUPPLEMENTARY INFORMATION: On July 11, 1994, the Office of Personnel Management (OPM) published final rules (59 FR 35215) establishing procedures for salary and administrative offsets for the administrative accounts of this agency. In the final rules, 5 CFR 179.102 provided specific delegations of authority to the CFO and to the Associate Director for Retirement and Insurance. Since then, OPM has reviewed all internal relationships and delegations. This revision clarifies the agency's delegation of authority with regard to the provisions of the Chief Financial Officers Act of 1990. The CFO has full responsibility for providing policies, standards, and guidelines for OPM action on all claims, including claims affecting the retirement, health, or life insurance programs. For matters affecting debts caused by or to be collected from payments from the retirement, health or life insurance funds, the Associate Director has operating responsibility for administration of these programs, subject to the CFO's policies, standards, and guidelines.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only provides information about the division of responsibility within the agency's organizational structure.

List of Subjects in 5 CFR Part 179

Claims.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend Part 179 of Title 5, Code of Federal Regulations, as follows.

PART 179—CLAIMS COLLECTION STANDARDS

1. The authority citation for part 179 continues to read as follows:

Authority: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Section 179.102 of subpart A is revised to read as follows:

§ 179.102 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the Chief Financial Officer and his or her delegatees are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations. For administrative accounts of the agency, the Chief Financial Officer and his or her delegatees will request a review by the General Counsel or his or her designee for claims processed (in amounts of $2500 or more) for compromise, suspension, and termination of collection action.

(b) The Chief Financial Officer and the Associate Director for Retirement and Insurance share responsibilities in matters affecting debts caused by or to be collected from payments from the Civil Service Retirement and Disability Fund (Subchapter III of chapter 83 or chapter 84), and claims under the provisions of the Federal Employees' Life Insurance Fund (chapter 87), the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Employees Health Benefits Fund (chapter 89), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widows' Annuity Act (64 Stat. 465). To ensure efficient administration, the Director delegates operating responsibility for these matters to the Associate Director and his or her delegatees, who, in the performance of this responsibility, shall be subject to the policies, standards, and guidelines of the Chief Financial Officer concerning financial administration.

[FR Doc. 95–27725 Filed 11–8–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket Nos. AO–368–A25, AO–380–A15; DA–95–01]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Notice of Extension of Time for Filing Briefs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of Time for Filing Briefs.

SUMMARY: This document extends the time for filing briefs on the record of the Pacific Northwest and Southwestern Idaho-Eastern Oregon hearing held July 11, 1995, through July 12, 1995, in Portland, Oregon. The Washington State Department of Corrections requested additional time to review the hearing record and to prepare briefs.

DATES: Briefs are now due on or before December 4, 1995.

ADDRESSES: Briefs (6 copies) should be filed with the Hearing Clerk, Room 1083, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 15, 1995; published June 21, 1995 (60 FR 32282).

Extension of Time for Filing Briefs: Issued October 12, 1995; published October 23, 1995 (60 FR 54315).

Extension of Time—Pacific Northwest, etc.—DA–95–01

Notice is hereby given that the time for filing briefs and proposed findings and conclusions on the record of the public hearing held July 11 and 12, 1995, at Portland, Oregon, with respect to tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas pursuant to the notice of hearing issued June 15, 1995, and published June 21, 1995 (60 FR 32282), is hereby extended to December 4, 1995.

The Washington Department of Corrections requested a further extension of time to file briefs based on the impact certain proposals could have on the Department of Corrections' milk production and sales program. The briefing period originally ended September 25, 1995, but was extended to October 23, 1995, based on a request from the Oregon Department of Corrections. This additional extension of time to file briefs is granted in accordance with the above-noticed deadlines.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

Dated: November 2, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–27816 Filed 11–8–95; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANM–19]

Proposed Establishment of Class D Airspace; Vancouver, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would establish Class D airspace at Pearson Airpark, Vancouver, Washington, encompassing that area which is excluded from the Portland International Airport Class C airspace and commonly referred to as the Pearson Cutout. Pearson Airpark underlies a proposed instrument approach procedure to Portland International Airport, Portland, Oregon. If established, the airspace would promote safety because aircraft operating at Pearson Airpark could be provided traffic information and wake turbulence advisories, as appropriate. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–19, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–535/A, Federal Aviation Administration, Docket No. 95–ANM–19, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Pearson Airpark, Vancouver, Washington. Pearson Airpark underlies a proposed instrument approach procedure to Portland International Airport, Portland, Oregon. If established, the Class D airspace would require two-way radio communication with the control tower at Portland International Airport, thus providing the necessary pilot/controller connectivity for issuing traffic information and wake turbulence advisories, as appropriate. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9C dated August 17, 1995,

and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26. 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

in consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANM WA D Vancouver, WA

Vancouver, Pearson Airpark, WA
(Lat. 45°37'14"N, long. 122°39'30"W)
Portland International Airport, OR
(Lat 45°35'19"N, long. 122°35'51"W)

That airspace extending upward from the surface to but not including 1,100 feet MSL in an area bounded by a line beginning at the point where the 019° bearing from Pearson Airpark intersects the 5-mile arc from Portland International Airport extending southeast to a point 1½, miles east of Pearson Airpark on the extended centerline of Runway 8/26, and thence south to the north shore of the Columbia River, thence west via the north shore of the Columbia River to the 5-mile arc from Portland International Airport and thence clockwise via the 5-mile arc to point of beginning.

* * * * *

Issued in Seattle, Washington, on October 26, 1995.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–27830 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 945

Hawaiian Islands Humpback Whale National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of public hearings.

SUMMARY: The OCRM is announcing the dates and places of public hearings on a Draft Environmental Impact Statement/Management Plan and proposed regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary.

DATES: For the dates of the hearings see the Supplementary Information section.

ADDRESSES: For the locations of the hearing see the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Allen Tom, On-site Project Specialist, at (808) 879–2818 (Maui), (808) 541–3184 (Oahu) or (800) 831–4888 (toll-free interisland). Copies of the DEIS/MP and Proposed Rules are available upon request to the Hawaiian Islands Humpback Whale National Marine Sanctuary, 726 South Kihei Road, Kihei, HI 96753.

SUPPLEMENTARY INFORMATION: The Hawaiian Islands Humpback Whale National Marine Sanctuary was designated by law on November 4, 1992 (Subtitle C, Title II, Pub. L. 101–587 (Oceans Act of 1992)). The primary purpose of the designation is to protect humpback whales and their habitat in the Hawaiian Islands. A notice of the availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP), the proposed regulations, and a summary of the management plan were published in the **Federal Register** on September 15, 1995 (60 FR 48000).

OCRM will hold public hearings on the DEIS/MP and Proposed Regulations. The purpose of the public hearings is to receive oral testimony from the public on the DEIS/MP and Proposed Rules. The comments expressed at these hearings, as well as written comments received on the DEIS/MP and Proposed Rules, will be considered in the preparation of the Final Environmental Impact Statement/Management Plan (FEIS/MP) and Rules. Written comments may also be submitted at these public meetings or mailed to the Hawaiian Islands Humpback Whale National Marine Sanctuary, 726 South Kihei Road, Kihei, HI. The period to receive written comments ends on December 15, 1995.

Date, Time and Place of Public Hearings:

November 27, 7:00 PM: Hawaii County Council Room, 25 Aupuni Street, Hilo, Hawaii

November 28, 7:00 PM: Kealakehe Elementary School, 74–511 Kealakaa Street, Kailua-Kona, Hawaii

November 29, 7:00 PM: Kaunoa Senior Center Cafeteria, 401 Alakapa Place, Pa'ia, Maui

November 30, 7:00 PM: Tokai University Auditorium, 2241 Kapiolani Blvd., Honolulu, Oahu

December 4, 7:00 PM: Lanai School and Public Library, 6th and Fraiser Ave, Lanai City, Lanai

December 5, 7:00 PM: Molokai Yacht Club, Hio Place, Kauanakakai, Molokai

December 6, 7:00 PM: Wilcox Elementary School Cafeteria, 4319 Hardy Street, Lihue, Kauai

Public Participation: The hearings will be open to public participation. Seats will be available on a first-come first-served basis. There will be a sign up sheet at each location for anyone wishing to give testimony. Individual speakers and organizations will be given a 3 minute time limit to present their testimony.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 6, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–27911 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 131, and 133

[Docket Nos. 95P–0125, 95P–0250, 95P–0261, and 95P–0293]

Lowfat and Skim Milk Products, Lowfat and Nonfat Yogurt Products, Lowfat Cottage Cheese: Proposed Revocation of Standards of Identity; Food Labeling, Nutrient Content Claims for Fat, Fatty Acids and Cholesterol Content of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove the standards of identity for sweetened condensed skimmed milk, lowfat milk, skim (nonfat) milk, acidified lowfat milk, acidified skim (nonfat) milk, cultured lowfat milk, cultured skim (nonfat) milk, sour half-and-half, acidified sour half-and-half, lowfat yogurt, nonfat yogurt, and lowfat cottage cheese, based in part, on petitions filed jointly by the Milk Industry Foundation (MIF) and the Center for Science in the Public Interest (CSPI). FDA also is proposing to remove the standards of identity for evaporated skimmed milk and lowfat dry milk based on a petition filed by the American Dairy Products Institute (ADPI). Removal of these food standards of identity would permit the products covered by these regulations to be manufactured and labeled in accordance with the general definition and standard of identity (the general standard) in the regulations for foods named by use of a nutrient content claim and a standardized term. These products would then be named in a manner that is consistent with the agency's definitions of the terms "lowfat" and "nonfat" established in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). This action will provide for consistency in the nomenclature and labeling of these nutritionally modified milk products and other foods bearing "lowfat" and "nonfat" claims and will promote honesty and fair dealing in the interest of consumers.

The agency also is proposing to amend the nutrient content claims regulations for fat, fatty acids, and cholesterol content to provide for "skim" as a synonym for "nonfat" when used in labeling milk products.

This action also is a part of the agency's ongoing review of existing regulations under President Clinton's Regulatory Reinvention Initiative.

DATES: Comments by January 23, 1996. FDA proposes that any final rule that may issue based on this proposal, unless stayed by the filing of proper objections, become effective January 1, 1998. Compliance may begin on the date of publication of the final rule in the **Federal Register.**

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

One of the main purposes of the 1990 amendments (Pub. L. 101–535) which amended the Federal Food, Drug, and Cosmetic Act (the act), was to establish the circumstances in which claims that describe the nutrient content of food could be made. In response to the mandates of the 1990 amendments, FDA established definition for specific nutrient content claims in part 101 (21 CFR part 101) together with principles for their use (58 FR 2302, January 6, 1993). In addition, at the same time, FDA published a final rule (58 FR 2302 at 2431), that established the general standard in § 130.10 (21 CFR 130.10) for foods named by use of a nutrient content claim defined in part 101, such as "nonfat," "lowfat," "reduced fat," "light," or "reduced calorie," in conjunction with a traditional standardized term, for example, "sour cream."

As FDA noted in that final rule, certain standards of identity for dairy products already incorporate terms such as "nonfat," "light," and "lowfat" in the names of the foods, including the standards for lowfat dry milk (§ 131.123 (21 CFR 131.123)), nonfat dry milk (§ 131.125 (21 CFR 131.125)), nonfat dry milk fortified with vitamins A and D (§ 131.127 (21 CFR 131.127)), lowfat milk (§ 131.135 (21 CFR 131.135)), acidified lowfat milk (§ 131.136 (21 CFR 131.136), cultured lowfat milk (§ 131.138 (21 CFR 131.138)), light cream (§ 131.155 (21 CFR 131.155)), lowfat yogurt (§ 131.203 (21 CFR 131.203)), nonfat yogurt (§ 131.206 (21 CFR 131.206)), and lowfat cottage cheese (§ 133.131 (21 CFR 133.131)). In addition, there are standards for skim milk products that provide for use of the synonym "nonfat" in place of the term "skim" in the names of these foods. For example, skim milk (§ 131.143 (21 CFR 131.143)), acidified skim milk (§ 131.144 (21 CFR 131.144)), and cultured skim milk (§ 131.146 (21 CFR 131.146)) may be labeled as "nonfat milk," "acidified nonfat milk," and "cultured nonfat milk," respectively. Some of the names in these standards are inconsistent with the definitions for the corresponding nutrient content claims established under the 1990 amendments.

Under section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), a food is misbranded if it bears a claim that characterizes the level of any nutrient unless the claim is made using terms defined by the regulations of the Secretary of Health and Human Services. Section 403(r)(5)(C) of the act provides an exemption from this requirement, however, for nutrient content claims that are part of the name of a food that is defined by a standard of identity that was issued before enactment of the 1990 amendments. According to the legislative history, this exemption was included in the law because Congress recognized the possibility that nomenclature and nutrient content claims requirements in preexisting standards of identity might conflict with the nutrient content claim definitions adopted under the 1990 amendments (H. Rept. 101–538, 101st Cong., 2d sess. 22, June 13, 1990). The legislative history went on to state that to the extent that those standards provide requirements that are different from the definitions in the regulations issued by FDA under the 1990 amendments, one basic purpose of the 1990 amendments will be partially undermined (id.). However, the legislative history affirmed that the Secretary of Health and Human Services (and, by delegation, FDA) has the authority to correct this problem by amending the standards of identity to conform with the regulations issued under section 403(r) of the act (id.).

The agency stated in the final rule establishing the general standard (58 FR 2431 at 2444) that, at a later date, it would consider amending the existing standards of identity for foods that use nutrient content claims in their names to make the content requirements for these foods consistent with the claims definitions it adopted. Alternatively, the agency stated that it could delete some of the standards and allow the foods defined by these standards to be named

using a nutrient content claim with a standardized term in accordance with the general standard (§ 130.10). The proposed actions set out below are intended, in part, to implement the latter option.

B. MIF and CSPI Petitions

This proposal also responds to two petitions filed by MIF and CSPI, dated May 10, 1995 (Docket No. 95P–0125) and August 2, 1995 (Docket No. 95P–0250). The May 10, 1995, petition, requests that the agency revoke the standard of identity for lowfat milk in § 131.135 and the standard of identity for skim milk in § 131.143 and to regulate these products under the general standard in § 130.10. The August 2, 1995, petition, which references the May 10, 1995, petition, requests that the agency revoke the standards of identity for 10 additional products (i.e., sweetened condensed skimmed milk (§ 131.122 (21 CFR 131.122)), acidified lowfat milk (§ 131.136), cultured lowfat milk (§ 131.138), acidified skim (or nonfat) milk (§ 131.144), cultured skim (or nonfat) milk (§ 131.146), sour half-and-half § 131.185 (21 CFR 131.185)), acidified sour half-and-half § 131.187 (21 CFR 131.187)), lowfat yogurt (§ 131.203), nonfat yogurt (§ 131.206), and lowfat cottage cheese (§ 133.131)) that include nutrient content claims in their names. The petitioners stated that the purpose of the petitions is to promote consistency in the use of nutrient content claims concerning fat on food labels.

To provide for the continued use of the term "skim" in the labeling of these skim milk products if FDA were to revoke the standards for these foods as requested, MIF and CSPI submitted a third petition, dated August 2, 1995, which requests that the agency amend the nutrient content claims regulations in § 101.62 to permit the use of the term "skim" as a synonym for the term "nonfat." That petition was filed under Docket No. 95P–0293.

C. Niagara County Healthy Heart Program Petition

FDA also received a petition from the Niagara County Healthy Heart Program (Docket No. 93P–0089) that requests that the agency amend the standards of identity for lowfat milk (§ 131.135), acidified lowfat milk (§ 131.136), and cultured lowfat milk (§ 131.138) by deleting the two upper-levels for milkfat content in these foods. These standards currently provide for the following fat levels: ½, 1, 1½, or 2 percent milkfat. The petitioner stated that milkfat levels of 1½ or 2 percent provided by these standards result in products that contain more than 3 grams (g) fat per serving and that, thus, are inconsistent with the agency's definition of "low fat." In addition, the petitioner claimed that these exceptions in the standards of identity have the potential to confuse consumers and therefore should be removed.

The agency notes that if the standards of identity for the lowfat milk products are revoked, as proposed below, the need to remove the upper-limits for milkfat (1½ and 2 percent) in these standards will be rendered moot. However, if the comments do not support revocation of the lowfat milk standards, the agency will consider alternative actions such as those suggested by the petitioner as a means of correcting the inconsistency between the standards in §§ 131.135, 131.136, and 131.138, and the nutrient content claims regulations in § 101.62((b)(2) regarding the use of the term "low fat" on food labels.

D. ADPI Petitions

This proposal also responds to two petitions filed by ADPI. One ADPI petition, filed on August 11, 1995 (Docket No. 95P–0261), requests that the agency revoke the standards of identity for evaporated skimmed milk in (§ 131.132 (21 CFR 131.132)) and lowfat dry milk in § 131.123 and amend the standard of identity for dry cream in (§ 131.149 (21 CFR 131.149)) by removing the reference to § 131.135 (the lowfat milk standard, which is being proposed for revocation). According to the petitioner, their suggested change would remove the lower-fat evaporated milk and dry milk standards that contain product specifications that potentially conflict with approved nutrient content claims applicable to foods in general. The petition would also amend the dry cream standard so as to bring it into conformity with the other suggested changes in the milk product standards.

The other ADPI petition (Docket No. 95P–0293, dated August 10, 1995) requests that the agency provide for use of the term "skim" as a synonym for "nonfat" in § 101.62. ADPI stated that providing for this term would allow use of the familiar term "skim" in the name of the lower fat evaporated milk product if the existing standard in § 131.132 is revoked, and this product is manufactured and labeled in conformance with the general definition and standard of identity in § 130.10.

E. Regulatory Reinvention Initiative—Review of Regulations

In addition, this proposal is a part of a larger agency project being undertaken in response to President Clinton's memorandum of March 4, 1995, to heads of departments and agencies, entitled "Regulatory Reinvention Initiative" (Ref. 1). This memorandum, among other things, directs departments and agencies to do a page-by-page review of regulations and to eliminate or revise those that are outdated or otherwise in need of reform. The review of the standards of identity for dairy products has revealed that a number of the products that are defined by individual standards in parts 131 and 133 (21 CFR parts 131 and 133) could be more appropriately covered by the general standard in § 130.10. Thus, the agency is proposing to remove those standards cited by the MIF, CSPI, and ADPI that are inconsistent with food labeling policy established under the 1990 amendments and that are unnecessary in light of the general standard in § 130.10.

II. Grounds for the Petitions

A. Removal of Standards

The petitioners pointed out that the regulations that FDA promulgated in response to the 1990 amendments defined "nonfat" and "low fat" in ways that are in conflict with the standards of identity for certain dairy products, e.g., skim (nonfat) milk and lowfat milk products. The nutrient content claims regulations (§ 101.62(b)(1)(i)) require that to qualify to bear the term "nonfat," a food must have less than 0.5 g of fat per reference amount customarily consumed. Conversely, the standards of identity for skim milk and the related cultured and acidified skim milk products in §§ 131.143(a), 131.144(a), and 131.146(a), for example, allow these "nonfat" milk products to have up to 0.5 percent milkfat, which translates to 1.2 g of fat per 8 fluid ounce serving, that is, per reference amount customarily consumed. Similarly, whereas "low fat" foods (§ 101.62(b)(2)(i)(A)) generally must have 3 g or less of fat per reference amount customarily consumed, the standards for "lowfat" milk products in §§ 131.135(a), 131.136(a), and 131.138(a), for example, allow these foods to contain as much as 2 percent milkfat, or 5 g of fat per reference amount customarily consumed (up to 60 percent more than is permitted under the definition for the claim).

Thus, the petitioners stated, if a term such as "low fat" has one meaning when applied to foods in general and a different meaning when applied to a widely-consumed staple food such as milk, the result might well be confusion in the minds of many consumers as to the significance of the term. They further noted that the Institute of Medicine, in "Nutrition Labeling: Issues and Directions for the 1990's," p. 251, 1990, stated that "the message conveyed by quantitative descriptors should be consistent, clear, and reliable * * * [L]ow sodium, for example, should have the same meaning, whether it is applied to soup, frozen peas, or meat."

MIF and CSPI urged FDA to repeal the standards of identity for lowfat milk, skim milk, and certain related dairy products and to make the use of nutrient content claims for fat in the names of these dairy products consistent with the use of nutrient content claims for fat on other foods. The petitioners asserted that this action would enhance the public health because it would eliminate consumer confusion about the significance of these claims and would facilitate comparisons between these dairy products and other foods.

In further support of their petitions, ADPI, MIF, and CSPI pointed to the agency's expressed intention to establish consistency in nutrient content claims as evidenced by its rejection of comments urging it to define "low fat" differently for different foods. The petitioners noted that in the proposed rule to establish definitions for nutrient content claims (56 FR 60478 at 60487 and 60488, November 27, 1991), the agency explained:

> The use of different criteria for different food categories has several disadvantages that affect both consumers and the food industry. When different criteria are used for different categories of foods, consumers cannot use the nutrient content claims to compare products across categories and will likely find it difficult to use the descriptor in substituting one food for another in their diets. * * * Furthermore, by having different criteria for different food categories, it would be possible that some foods that did not qualify to use the descriptor would have a lower fat content than foods in other categories that did qualify. This situation would contribute to consumer confusion and misunderstanding.

The petitioners claimed that this reasoning, which led FDA to adopt uniform definitions for nutrient content claims, should lead the agency to revoke the standards of identity for lower-fat fluid milk and yogurt products. These standards establish criteria for the use of the terms "lowfat" and "nonfat" in milk product labeling that are inconsistent with the criteria applicable to the labeling of other foods. Consequently, according to the petitioners, the regulations currently contain precisely what FDA has determined to avoid: Different definitions of "low fat" for different foods.

The petitioners cited the legislative history of the 1990 amendments as indicating that Congress anticipated that FDA would take action to make the nutrient content claims in standards of identity consistent with those in the regulations established under the 1990 amendments. They also referred to the agency's recognition that it may be appropriate to revoke the standards of identity containing nutrient content claims, such as "lowfat milk" and "skim (nonfat) milk," and to subject these foods to the same regulations as other foods (58 FR 2431 at 2444).

The petitioners noted that if the agency were to eliminate the standards of identity for "lowfat milk" and "skim milk" products, these lower-fat milk products would be labeled according to the general standard in § 130.10. They would be named by a nutrient content claim defined by regulation (such as "nonfat," "fat free," "low fat," or "reduced fat") in conjunction with the standardized name for whole milk (i.e., "milk") in § 131.110(e)(21 CFR 131.110(e)).

MIF and CSPI also stated that revocation of the standards of identity for sour half-and-half and acidified sour half-and-half would advance Congress's goal of making fat content claims clear and consistent. They claimed that the sour half-and-half products and the counterpart full-fat sour cream products are equivalent in every way except for fat content, and except for the fact that the lower-fat sour cream product names do not include the term "sour cream." They contended that because processors are required to use the standardized name, e.g., "sour half-and-half," "cultured sour half-and-half," or "acidified sour half-and-half," as appropriate, the relationship between these products and their full-fat counterparts, "sour cream," "cultured sour cream," or "acidified sour cream," is obfuscated. Therefore, the petitioners asked that the standards for the sour half-and-half products be revoked.

B. Other Issues

The petitioners stated that two issues needed to be addressed for the revocation of the standards for "lowfat milk" and "skim milk" to result in labels for the products that can be easily understood by consumers.

The petitioners maintained that most products currently labeled as "nonfat milk" would be eligible to retain that name under the general standard because nonfat milk contains less than 0.5 g of fat per serving, in accordance with the definition of the term "nonfat" in § 101.62(b)(1)(i). However, the petitioners noted that these products could not be called "skim milk" under the general standard because the fat content claims regulations in § 101.62 do not authorize the use of the term "skim." They stated that a significant number of processors presently use the nomenclature "skim milk," and that "skim" is the term by which many consumers distinguish between nonfat milk and all other forms of milk. The loss of authority to use this traditional and widely recognized name would thus be extremely disruptive. MIF stated that in view of widespread consumer reliance on the name "skim milk," it regards the approval of the descriptor "skim" (as a synonym for "nonfat") as essential to its continuing support of the revocation of the skim milk standard.

MIF and CSPI also requested that the agency revoke the standard of identity for sweetened condensed skimmed milk (§ 131.122). The petitioners stated that if the agency provides for the synonym "skim" in § 101.62, sweetened condensed skimmed milk could be manufactured and labeled under § 130.10 and could be named using the term "skim" in a manner that is consistent with other nonfat milk products.

The second issue to be resolved, according to the petitioners, concerns declaration of the percentage of milkfat in the name of the food. The petitioners suggested that they expected the authority to state the milkfat percentage before the name on product labels to continue under the general standard because section 3(b)(1)(A)(iv) of the 1990 amendments dictates that the regulations "shall permit statements describing the amount and percentage of nutrients in food which are not misleading and are consistent with the terms defined" under the act. The petitioners pointed out that the general nutrient content claims regulations in § 101.13(i) implement this provision by providing that:

> * * * the label or labeling of a product may contain a statement about the amount or percentage of a nutrient if: (1) The use of the statement on the food implicitly characterizes the level of the nutrient in the food and is consistent with a definition for a claim * * * or (3) The statement does not in any way implicitly characterize the level of the nutrient in the food and it is not false or misleading in any respect * * *.

MIF claimed that although the term "implicitly characterizes" is somewhat ambiguous, it is clear that a percentage figure can be used if it is consistent with the appropriate nutrient content claim (e.g., "2% reduced fat"; "1% lowfat").

MIF stated that it views the indication of the milkfat percentage before the name of the product as an indispensable aspect of lower-fat milk labeling because consumers have come to rely so heavily on these numbers to differentiate between milk products. MIF further stated that it would not be proposing the revocation of the lower-fat milk standards if it believed that such an action would affect milk processors' ability to state the milkfat percentage in the customary manner.

The petitioners also discussed the nutritional aspect of deleting the lower-fat milk, sour cream, and cottage cheese products standards of identity, stating that this aspect of the proposed action would not require additional action. They claimed that the only distinction of note between the milk standard and the lower-fat dairy product standards (e.g., lowfat milk and skim milk products), in relation to nutritional content, is that vitamin A fortification to 10 percent of the daily value (DV) is optional under the milk standard but mandatory under the lower-fat milk standards. The petitioners stated that, even if the skim milk and lowfat milk product standards were revoked, vitamin A fortification of these products to 10 percent of the DV would remain mandatory under the general standard.

The petitioners noted that because vitamin A is fat soluble, the process of removing fat from milk unavoidably removes some vitamin A. As a result, all commonly marketed lower-fat fluid milk products would be required to have at least some added vitamin A in order to meet the general standard's requirement that they not be nutritionally inferior to milk (§ 130.10(b)). Moreover, they noted, the milk standard in § 131.110(b)(1) states that if vitamin A is added, it must be added to the 10 percent DV level. Consequently, the petitioners concluded, lower-fat milk products, labeled according to the general standard, would have to be vitamin A fortified up to 10 percent of the DV. They concluded that elimination of the lower-fat milk product standards would have no practical effect on the nutritional benefit of these products.

ADPI maintained that revocation of the standards for evaporated skimmed milk and lowfat dry milk will not result in inferior dairy products because these foods are produced by removal of water from dairy products or are mixtures of other dairy products where water has been removed to some extent. ADPI further stated that besides water, the other key variable in evaporated milk and dry milk is fat. By revoking the standards for evaporated skimmed milk and lowfat dry milk, ADPI concluded that the amount of fat present in the products would be communicated through the use of terms (i.e., nutrient content claims) that would be consistent with the same terms applied to other foods. The remaining nutritional attributes of these foods would remain unchanged.

III. Proposed Actions

A. Removal of Standards

FDA agrees with the petitioners that the requested changes are consistent with the agency's stated intent to have consistent definitions across food categories for nutrient content claims. Accordingly, FDA is proposing to repeal the standards of identity for the lower-fat milk, sweetened condensed milk, evaporated milk, dry milk, sour cream (i.e., sour half-and-half or acidified sour half-and-half), and yogurt products, in §§ 131.122, 131.123, 131.132, 131.135, 131.136, 131.138, 131.143 131.144, 131.146, 131.185, 131.187, 131.203, and 131.206, and lowfat cottage cheese in § 133.131 that include nutrient content claims in their names. Repeal of the standards of identity for the lower-fat dairy products would allow these foods to bear the nutrient content claims "reduced fat," "lowfat," or "nonfat" in conjunction with the standardized term "milk," "sweetened condensed milk," "evaporated milk," "dry milk," "sour cream," or "yogurt" provided that they comply with the general standard in § 130.10. This standard in turn would require that all such products bearing these nutrient content claims comply with the definitions established for the claims in § 101.62. Thus, consumers would be presented with information on the fat content of the modified milk, sour cream, and yogurt products that is consistent with that on other foods and that will enable them to select much more readily those products that will provide, in the case of "low fat" foods, 3 g or less of fat per reference amount customarily consumed, or, in the case of "nonfat" or "fat free" foods, those products that contain less than 0.5 g of fat per reference amount and per labeled serving, than they are able to do under the existing standards.

MIF and CSPI suggested that milk products that are currently labeled as "2 percent lowfat milk" or "1.5 percent lowfat milk," and which would not be entitled to bear that name after the standard of identity for lowfat milk is removed, could be labeled as "2 percent reduced fat milk" or "1.5 percent reduced fat milk." The agency agrees that a declaration of the percentage of fat is permitted under the nutrient content claims regulations in § 101.13(i). It also agrees that continuing the percentage fat declaration as part of the name would assist consumers in recognizing these milk and yogurt products when the nutrient content claim in the names of these foods is changed from "lowfat" to "reduced fat" under the general standard (i.e, "reduced fat milk, 2 percent milkfat," or "reduced fat milk, 2 percent fat"). The agency points out that if it adopts this proposed action, unlike under the existing standards, e.g., in §§ 131.135 and 131.143, which provide that the name include a declaration of the percentage of milkfat, the percentage fat declaration in the name under § 130.10 will be on a total fat basis (milkfat and any fat from added optional ingredients).

ADPI and MIF requested that FDA provide for the continued use of the name "skim milk" as an alternative to "nonfat milk" after the standards of identity for skim milk products are repealed. They pointed out that the regulations in § 101.62(b) do not provide for the use of "skim" as a synonym for "nonfat" or "fat free." Thus, the name "skim milk" would not be available to producers of skim milk when that product is made under the general standard. ADPI also requested that the term "skim" be provided as a synonym for "nonfat," so that the lower-fat evaporated milk product can be labeled in a manner that is consistent with the labeling of other lower-fat fluid milk products.

The agency has considered these requests and is proposing to amend the regulations pertaining to nutrient content claims for fat in § 101.62(b)(1) to include "skim" as a synonym for "nonfat" in characterizing the level of fat in modified milk products. FDA notes that several standards in part 131 for skim milk products (i.e., skim milk, acidified skim milk, and cultured skim milk in §§ 131.143, 131.144, and 131.146) currently provide for the use of either "nonfat" or "skim" (or "skimmed" in the case of sweetened condensed milk and evaporated milk) in the names of these products. Based on their history of use in dairy product nomenclature, the agency tentatively concludes that consumers understand the name "skim milk" to mean the same as "nonfat milk". Thus, the agency is proposing under sections 403(r) and 701(a) of the act (21 U.S.C. 371(a)) to include the term "skim," when used to describe milk products, as a synonym for "nonfat" in § 101.62(b)(1), as set forth below.

FDA notes that in the absence of a specific standard of identity for the lower-fat sweetened condensed milk product or evaporated milk product, manufacturers will be provided greater flexibility in selecting the fat levels for these foods when they are made under the general standard. As in the case of the other lower-fat milk and yogurt products, the nutrient content claims used in the naming these foods under § 130.10 will be consistent with those used in the labeling of other foods, thereby decreasing the potential for consumer confusion as to the meaning of these nutrient content claims on food labels.

FDA also is proposing to remove the standard of identity for lowfat cottage cheese in § 133.131. The petitioners stated that virtually all lowfat cottage cheese on the market has less than 3 g of fat per the reference amount customarily consumed of 110 g. If so, this food could continue to be labeled as "lowfat cottage cheese" under the general standard. The agency notes that the standard of identity for lowfat cottage cheese in § 133.131(b)(2) requires that the percentage of milkfat in the food be declared as part of the name of the food. Thus, if § 133.131 is removed, there will be no provision requiring percentage declaration of milkfat content in conjunction with the name of this food. However, because the name of the food includes a nutrient content claim, a declaration of the amount of fat per reference amount customarily consumed will appear in the nutrition facts statement on the label. Thus, consumers will continue to have access to information on the fat content of the lowfat cottage cheese that can be used in making purchasing decisions. On the other hand, manufacturers may continue to declare fat content as part of the name of the food as has been suggested by the petitioners for lowfat milk products.

The agency notes that standards of identity for two cream products contain the term "light" in the names of the foods, light cream in § 131.155 and light whipping cream in § 131.157 (21 CFR 131.157). FDA is not proposing to change these standards at this time. The agency tentatively concludes that no change is necessary in the names of these foods because of their long history of use, since 1940. These names connote a difference in the texture of these products compared to the higher fat cream product defined in 21 CFR 131.150, heavy cream. In addition, light cream, which contains not less than 18 percent but less than 30 percent milkfat is often labeled by one of its alternative standardized names, as "table cream" or "coffee cream." Light whipping cream, which contains not less than 30 percent but less than 36 percent milkfat, is distinguished from heavy whipping cream, which contains 30 percent or more of milkfat, not only by its lower fat content but by its lighter, less dense texture on whipping. The agency requests comments on the appropriateness of these names and on whether consumers find the use of the term "light" in the names of these foods to be misleading. If comments demonstrate that amendment of these regulations is necessary, such action will be the subject of a later rulemaking.

As noted by ADPI, the standard of identity for dry cream (§ 131.149) provides that the food is obtained by removal of water only from pasteurized milk or cream or a mixture thereof, which may have been homogenized. The standard also provides that dry cream may be obtained by blending dry milks as defined in §§ 131.123(a), 131.125(a), and 131.147(a) with dry cream, as appropriate, provided that the resulting product is equivalent in composition to that obtained by the method described in the preceding sentence. Because this proposal would remove the standard of identity for lowfat dry milk in § 131.123, ADPI requests that the dry cream standard be amended to delete that reference. The agency also recognizes the need to delete the reference in § 131.123 and is proposing to make the change as set out below.

FDA is not proposing to revoke the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D, in §§ 131.125 and 131.127, respectively, because the use of the term "nonfat" in the names of these foods does not conflict with the definition of the term "nonfat" in § 101.62(b)(1). In addition, the agency notes that "nonfat dry milk," as defined by the Nonfat Dry Milk, Milk Act of July 2, 1956, does not contain added vitamins A and D. Retention of these standards will minimize confusion as to whether these vitamins may be added to the food.

B. Vitamin Addition

The agency disagrees with the MIF's and CSPI's interpretation of the impact of revoking the standards of identity for lowfat and skim milk on the requirements for addition of vitamins A and D to lowfat milk or nonfat milk that conform to § 130.10. Under the existing standards for lowfat and skim milk products in part 131, vitamin A addition is mandatory, while vitamin D addition is optional. Vitamin A is required to be added to a level of 2,000 International Units (IU) per quart (500 IU or 10 percent of the DV per reference amount customarily consumed). When vitamin D is added, the level must be 400 IU per quart (100 IU or 25 percent of the DV per reference amount customarily consumed). However, under the general standard, the only requirement for lower-fat milk products is that they not be nutritionally inferior to milk as defined in § 131.110. Vitamin A levels in milk in winter have been reported to range from 500 to 1,000 IU per quart, while in summer (pasture), these levels range from 2,000 to 3,000 IU per quart (Ref. 2). Vitamin D levels range from 5 to 15 IU (Ref. 2). Because the removal of milkfat from milk in the production of the lower-fat milk products removes corresponding amounts of the naturally occurring fat soluble vitamins, some amount of these two vitamins would have to be added for the lower-fat products to comply with the general standard. However, under § 101.3(e), the amount required to be added is only that necessary to make the level in the lower-fat milk products at least equivalent to that in whole milk.

Because the addition of both vitamins A and D to whole milk is optional, the requirements for levels of 2,000 IU of vitamin A and 400 IU of vitamin D per quart would not apply to products under the general standard. Although such levels would be permitted, they would not be required. Addition of vitamins A and D to these levels would be permitted because milk under § 131.110 can contain these amounts and be named for example "milk, vitamins A and D added." The lower-fat milks could have equivalent levels and be named for example "reduced fat milk, vitamins A and D added," or "nonfat milk, vitamin A added," as appropriate.

The same rationale applies to vitamin addition in the lower- fat yogurt products, in which both vitamin A and vitamin D addition is optional. There are no provisions for addition of vitamins to sweetened condensed skimmed milk. However, when the food is made under § 130.10, it must not be nutritionally inferior to sweetened condensed milk. Lower-fat evaporated milk products, however, must be fortified with vitamin D because addition of vitamin D in evaporated milk is mandatory.

The agency requests comment on whether current levels of vitamins A and D in the lower-fat milk products need to be maintained. Specifically, the agency requests information on levels of vitamins A and D currently in the milk supply and on the changes in these levels, if any, that are likely to occur if the standards of identity for the lowfat milk and skim milk products are

revoked. Information should include: (1) The percentage of milk currently optionally fortified with one or both vitamins and the likelihood of that changing; and (2) the percentage of lower-fat milk products currently so fortified, and the likelihood that the fortifications would continue if they were optional. Based on the information received in comments, FDA will consider whether special provisions are necessary (beyond the nutritional equivalency requirements of § 130.10) to require fortification of lowfat, reduced fat, and nonfat milk products manufactured under § 130.10.

C. Other Action—Unresolved Hearing Issue on the Lowfat Milk and Skim Milk Standards

In the **Federal Register** of October 6, 1983 (48 FR 45545), FDA published a notice of hearing on objections to a final rule (45 FR 81734, December 12, 1980) concerning the standards of identity for lowfat milk and skim milk (Docket Nos. 81N–204F and 76N–0175). The hearing was granted on four issues, three of which have been resolved (51 FR 40313, November 6, 1986). One issue dealing with labeling requirements of the standardized foods (i.e., the reasonableness of the decision to prohibit use of the terms "protein fortified" and "fortified with protein" on labels of lowfat milk and skim milk products containing not less than 10 percent milk-derived nonfat milk solids) has not been resolved. However, if a final rule is issued to remove the standards of identity for lowfat milk and skim milk in §§ 131.135 and 131.143, this unresolved issue will be rendered moot, and no further rulemaking procedures regarding the stayed provision will be necessary.

IV. Economic Impact

FDA has examined the economic implications of the proposed rule amending 21 CFR parts 101, 131, and 133 as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches which maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires that the agency analyze options for regulatory relief for small businesses. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small businesses.

There are approximately 1,350 lowfat and 570 skim (nonfat) milk products currently on the market. These products correspond to approximately 3,500 lowfat milk and 1,600 nonfat milk stockkeeping units (SKU's). If this rule is finalized as proposed, all milk products currently using the terms "lowfat" and "nonfat" will have to comply with the definitions established for those claims. Any milk product not labeled in compliance with the term "lowfat" or "nonfat" will have to be relabeled. According to the petitioners, most products currently labeled as "nonfat milk" would be eligible to retain that name. However, many products currently labeled as "lowfat milk" will not be eligible to retain that name and will have to be relabeled as "reduced fat milk". Specifically, products containing more than 1 percent milkfat and currently labeled "lowfat" will have to be relabeled. There are approximately 750 such products and approximately 2,225 SKU's.

Potentially, this regulation will also require changes in the labeling of evaporated skimmed milk, lowfat dry milk, sour half-and-half, acidified sour half-and-half, lowfat and nonfat yogurts, and lowfat cottage cheese. There are approximately 5 evaporated skimmed milk products and 8 SKU's, 1 lowfat dry milk product and 4 SKU's, 12 sour half-and-half products and 16 SKU's, approximately 119 lowfat yogurts and 1,294 SKU's, approximately 91 nonfat yogurts and 813 SKU's, and approximately 142 lowfat cottage cheese products and 436 SKU's. There are no acidified sour half-and-half products in FDA's database. FDA estimates that almost none of the nonfat yogurts and lowfat cottage cheeses will require relabeling because these products most likely meet FDA's definitions for "lowfat" and "nonfat". However, the sour half-and-half products will require relabeling with the term "reduced fat" in conjunction with the term "sour cream." FDA estimates that most of the lowfat yogurts contain too much fat to retain the term "lowfat" and will either be relabeled or reformulated.

There are four categories of costs associated with a mandatory relabeling: Administrative, analytical, redesign, and inventory disposal costs. The administrative costs associated with a labeling regulation are the dollar value of the incremental administrative effort expended in order to comply with a regulation. The magnitude of administrative costs to a representative firm is a function of several variables including the scope and intricacy of the regulation (positive relationship), the number of distinct products, and the length of the compliance period associated with the regulation (inverse relationship). This proposed regulation is not anticipated to be an intricate regulation. The administrative costs associated with a nonintricate regulation with a compliance period in excess of 1 year is $850 per small/medium firm and $6,300 per large firm. The total administrative costs associated with this proposed regulation are approximately $2.2 million.

Analytical tests are typically performed by technical personnel employed by firms or at independent laboratories. These costs consist of tests to determine nutrient and food component quantities required by various labeling provisions. The agency does not anticipate that this rule will cause any analytical testing. Because milk products are already subject to nutrition labeling requirements, firms should already be aware of the fat content of their products.

Incremental redesign costs depend on the type of printing process used, the complexity of the label change, and the length of the compliance period. Because printing activities are specific to individual labels, computing incremental printing effort on a per-SKU basis is necessary. The agency estimates that the changes required by this proposed regulation will result in a simple two-color label change. Also, because firms will have in excess of 1 year to comply, redesign costs will be reduced by the fact that they can incorporate mandated changes with previously planned label changes. Total redesign costs of the proposed regulation are estimated at $3 million.

An additional cost category is the label inventory loss associated with the transition from old to new labels. The cost of label inventory loss depends on average label inventory and the length of the compliance period. FDA is proposing an effective date that would allow for over 1 year for firms to comply with any final rule that may result from this rulemaking. A 1-year compliance period is sufficient to allow producers of milk, yogurt, sour half-and-half, and cottage cheese products to use up existing stocks of labels. Therefore, label inventory disposal costs will be zero. The agency estimates that the total costs of this proposed regulation will be approximately $5 million.

The agency believes that consumers will benefit from this regulation because it will provide consistency in the nomenclature of both standardized and nonstandardized foods that bear nutrient content claims relating to their fat content.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Comments

Interested persons may, on or before January 23, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

1. Memorandum entitled "Regulatory Reinvention Initiative" from President Clinton to heads of departments and agencies, March 4, 1995.

2. Jenness, Robert and Patton, Stuart, *Principles of Dairy Chemistry*, John Wiley and Sons, Inc., NY, pp. 403–404, 1959.

List of Subjects

21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

21 CFR Part 131

Cream, Food grades and standard Milk, Yogurt.

21 CFR Part 133

Cheese, Food grades and standards, Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 101, 131, and 133 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packing and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.62 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) "*Fat content claims.*" (1) The terms "fat free," "free of fat," "no fat," "zero fat," "without fat," "negligible source of fat," or "dietarily insignificant source of fat" or, in the case of milk products, "skim" may be used on the label or in labeling of foods, provided that:

* * * * *

PART 131—MILK AND CREAM

3. The authority citation for 21 CFR part 131 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

§ 131.122 [Removed]

4. Section 131.122 *Sweetened condensed skimmed milk* is removed from subpart B.

§ 131.123 [Removed]

5. Section 131.123 *Lowfat dry milk* is removed from subpart B.

§ 131.132 [Removed]

6. Section 131.132 *Evaporated skimmed milk* is removed from subpart B.

§ 131.135 [Removed]

7. Section 131.135 *Lowfat milk* is removed from subpart B.

§ 131.136 [Removed]

8. Section 131.136 *Acidified lowfat milk* is removed from subpart B.

§ 131.138 [Removed]

9. Section 131.138 *Cultured lowfat milk* is removed from subpart B.

§ 131.143 [Removed]

10. Section 131.143 *Skim milk* is removed from subpart B.

§ 131.144 [Removed]

11. Section 131.144 *Acidified skim milk* is removed from subpart B.

§ 131.146 [Removed]

12. Section 131.146 *Cultured skim milk* is removed from subpart B.

13. Section 131.149 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 131.149 Dry cream.

(a) * * * Alternatively, dry cream may be obtained by blending dry milks as defined in §§ 131.125(a) and 131.147(a) with dry cream as appropriate, *Provided*, That the resulting product is equivalent in composition to that obtained by the method described in the first sentence of this paragraph. * * *

* * * * *

§ 131.185 [Removed]

14. Section 131.185 *Sour half-and-half* is removed from subpart B.

§ 131.187 [Removed]

15. Section 131.187 *Acidified sour half-and-half* is removed from subpart B.

§ 131.203 [Removed]

16. Section 131.203 *Lowfat yogurt* is removed from subpart B.

§ 131.206 [Removed]

17. Section 131.206 *Nonfat yogurt* is removed from subpart B.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

18. The authority citation for 21 CFR part 133 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

§ 133.131 [Removed]

19. Section 133.131 *Lowfat cottage cheese* is removed from subpart B.

Dated: October 27, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–27712 Filed 11–8–95; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[SPATS AK–004–FOR; Alaska Amendment IV]

Alaska Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Alaska regulatory program (hereinafter, the "Alaska program" under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for Alaska's proposed rules pertain to permit fees, geology description, return of excess spoil to underground

workings, self-bonding, disposal of coal mine waste, protection of fish and wildlife, blending of spoil into surrounding terrain, and road construction. Additionally, Alaska is withdrawing its proposal to revise Alaska rules pertaining to compliance information in permit applications, administrative processing of permit applications, Commissioner's findings, improvidently issued permits, permit revisions and renewals, permit conditions, impoundment design and construction, standards for revegetation success, inspections, cessation orders, exemption for coal extraction incidental to the extraction of other minerals, and definitions. The amendment is intended to revise the Alaska program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., November 24, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Alaska program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202–5733

Mr. Jules Tileston, Director, Department of Natural Resources, Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, AK 99503–5925, Telephone: (907) 762–2149

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior conditionally approved the Alaska program as administered by the Alaska Department of Natural Resources. General background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program can be found in the March 23, 1983, **Federal Register** (48 FR 12274). Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15 and 902.16.

II. Proposed Amendment

By letter dated January 26, 1995, and FAX transmittals dated February 13 and 14, 1994 (Administrative Record No. AK–E–01), Alaska submitted proposed Amendment IV to its permanent program pursuant to SMCRA (State Program Amendment Tracking System AK–004–FOR). Alaska's proposed amendment consisted of: (1) revisions in response to required program amendments codified at 30 CFR Part 902.16(a) (1), (2), (3), (6)–(14), and (16); (2) revisions in response to program deficiency letters from OSM dated November 1, 1989, February 7, 1990, and January 15, 1993; and (3) revisions proposed at Alaska's own initiative.

The provisions of the Alaska Administrative Code (AAC) that Alaska proposed to revise are: 11 AAC 05.010(a)(9) and 11 AAC 90.011, permit fees; 11 AAC 90.001, adoption of rules by reference; 11 AAC 90.002, responsibilities; 11 AAC 90.003, interim permits; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.025, authority to enter and ownership information; 11 AAC 90.045(a), geology description; 11 AAC 90.049, surface water information; 11 AAC 90.083(b), reclamation plan requirements, roads; 11 AAC 90.097, transportation facilities; 11 AAC 90.099, placement of coal mine waste in underground workings; 11 AAC 90.117, processing of permit applications; 11 AAC 90.125, commissioner's findings; 11 AAC 90.126, improvidently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149, alluvial valley floors; 11 AAC 90.163, exploration that substantially disturbs or is conducted in areas designated unsuitable for mining; 11 AAC 90.173, eligibility for small operator assistance; 11 AAC 90.207, self-bonding provisions; 11 AAC 90.321, hydrologic balance; 11 AAC 90.323, water quality standards; 11 AAC 90.325, diversions and conveyance of flow; 11 AAC 90.327, stream channel diversions; 11 AAC 90.336, impoundment design and construction; 111 AAC 90.337, impoundment inspection; 11 AAC 90.341, underground mine discharges; 11 AAC 90.345, surface and ground water monitoring; 11 AAC 90.375, public notice of blasting; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.401, coal mine waste, refuse piles; 11 AAC 90.407, coal mine waste, dams and embankments; 11 AAC 90.409, coal mine waste, return to underground workings; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90.457, revegetation success standards; 11 AAC 90.491, construction and maintenance of roads and other transportation and support facilities; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation orders; 11 AAC 90.901, applicability; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions.

OSM announced receipt of the proposed amendment in the February 27, 1995, **Federal Register** (60 FR 10520), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. AK–E–05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 29, 1995.

During its review of the amendment, OSM identified concerns relating to the proposed provisions at 11 AAC 05.010(a)(9) and 11 AAC 90.011, fees; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.117, processing of permit applications; 11 AAC 90.125, commissioner's findings; 11 AAC 90.126, improvidently issued permits; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149, alluvial valley floors; 11 AAC 90.173, eligibility for small operator assistance; 11 AAC 90.207, self-bonding provisions; 11 AAC 90.327, stream channel diversions; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90.457, revegetation success standards; 11 AAC 90.491, construction and maintenance of roads and other transportation and support facilities; 11 AAC 90.601, inspections; 11 AAC 90.901, applicability; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions.

OSM notified Alaska of the concerns by letter dated July 19, 1995 (Administrative Record No. AK–E–12). Alaska responded by letters dated October 11 and October 24, 1995, and a FAX transmittal dated October 23, 1995, by submitting a revised amendment and additional explanatory information (Administrative Record No. AK–E–14).

Alaska proposes revisions to and additional explanatory information for: 11 AAC 05.010(a)(9) and 11 AAC 90.011, fees; 11 AAC 90.045(a), geology description; 11 AAC 90.099, placement of coal mine waste in underground workings; 11 AAC 90.149, alluvial valley floors; 11 AAC 90.173, eligibility for small operator assistance; 11 AAC 90.207, self-bonding provisions; 11 AAC 90.327, stream channel diversions; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90.491, construction and maintenance of roads and other transportation and support facilities; 11 AAC 90.901, applicability; and 11 AAC 90.907, public participation.

Alaska proposes these revisions:

—11 AAC 05.010(a)(11) and 90.011, to move the regulatory requirements for permit fees to the fee provisions for the whole department, and the set a fee for incidental boundary revisions;

—11 AAC 90.045, to require that the description of geology must include the deeper of the stratum immediately below the lowest coal seam to be mined, or any aquifer below the lowest seam which may be adversely affected by mining;

—11 AAC 90.099, to require that underground mining plans describe the design, operation, and maintenance of any proposed facility to return coal mine waste and excess spoil to underground workings;

—proposed 11 AAC 90.207(f)(7), to require, when the financial conditions of a self-bond applicant or guarantor no longer meet the bond conditions, that a cessation order be issued and reclamation immediately commence;

—11 AAC 90.391, to require that coal mine waste placed in excess spoil be nontoxic and nonacid forming;

—11 AAC 90.409, to allow excess spoil to be returned to underground mine workings in certain circumstances;

—11 AAC 90.423, to require that, on request, the fish and wildlife protection information required by 11 AAC 90.081 be provided to the U.S. Fish & Wildlife Service; and

—11 AAC 90.491(a)(8), to require that the use of acid- and toxic-forming materials be prevented.

Additionally, Alaska proposes several additional minor editorial revisions.

Alaska is also withdrawing its proposed revisions to: 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.117, processing of permit applications; 11 AAC 90.125, commissioner's findings; 11 AAC 90.126, improvidently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.457, revegetation success standards; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation orders; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; and 11 AAC 90.911, definitions.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Alaska program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Denver Field Division will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 26, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

FR Doc. 95–27809 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 934

[ND–032–FOR; Amendment XXII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional proposed revisions and additional explanatory information pertaining to a previously proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for North Dakota's proposed rules and statutes pertain to the North Dakota program's Small Operator Assistance Program, and individual civil and criminal penalties. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4 p.m., m.s.t., November 24, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. "B" Street, Room 2128, Casper, WV 82601–1918, Telephone: (307) 261–5776

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, ND 58505–0165, Telephone: (701) 224–4092

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning the North Dakota program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated April 12, 1995, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). (Amendment number XXII, Administrative Record No. ND–W–01). North Dakota submitted the proposed amendment in response to the required program amendment at 30 CFR 934.16(y) and in response to an inconsistency with SMCRA that was identified in a July 22, 1994, rulemaking action (59 FR 37426). The provisions of the North Dakota Century Code (NDCC) that North Dakota proposes to revise or add are: NDCC 38–14.1–37(4) [SOAP, reimbursement of costs], and NDCC 38–12.1–08 [coal exploration, individual civil and criminal penalties].

OSM announced receipt of the proposed amendment in the May 2, 1995, **Federal Register** (60 FR 21484), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. ND–W–04). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 1, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of NDCC 38–12.1–08, individual civil penalties. OSM notified North Dakota of the concerns by letter dated August 28, 1995 (Administrative Record No. ND–W–12). North Dakota responded in a letter dated October 19, 1995, by submitting additional proposed revisions and additional explanatory information (Administrative Record No. ND–W–14).

North Dakota proposes revisions to North Dakota Administrative Code chapter 43–02–01 and additional explanatory information pertaining to NDCC 38–12.1–08, individual civil and criminal penalties.

Specifically, North Dakota explains that North Dakota law does provide statutory authority subjecting officers, directors, and agents to individual civil and criminal penalties even though it is the corporation, not the individuals, that committed the violation. North Dakota cites statutory provisions not previously incorporated into the North Dakota program, specifically NDCC 12.1–03–03. This statute provides (1) that a person is legally accountable for any conduct he performs or causes to be performed in the name of an organization, and (2) that whenever duty or act is imposed upon an organization by a statute or regulation, any agent of the organization having primary responsibility for the subject matter of the duty is legally accountable for an omission to perform the required act.

North Dakota further explains that the legislative hearings and the legislative history of NDCC 38–12.1–08 demonstrates a legislative intent (1) to subject directors, officers, and agents to civil and criminal penalties even though it is the corporation, not the individual, that committed the violation, and (2) to make NDCC 38–12.1–08 no less stringent than SMCRA Section 518(f).

North Dakota also notes that NDCC 38–12.1–04 gives the commission authority to enforce orders to effectuate NDCC chapter 38–12.1, and that NDCC 38–12.1–08 imposes civil and criminal penalties for any person who violates that chapter, which would include orders issued pursuant to NDCC 38–12.1–04. Further, North Dakota notes that, as a practical matter, there has been very limited coal exploration in the State for the last decade.

Finally, North Dakota proposes to add new regulatory provisions at North Dakota Administrative Code (NDAC) 43–02–01 to implement the statutory provisions described above. The proposed rules include the following provisions: (1) when a corporate permittee violates permit conditions or any rule imposed under NDAC chapter 43–02–01 or NDCC chapter 38–12.1, or fails or refuses to comply with orders issued by the commission (with one exception), any director, officer, or agent who willfully and knowingly authorized or carried out the violation, failure, or refusal shall be held accountable, and the commission shall enforce the civil and criminal penalties provided against the corporation; (2) a civil penalty may be assessed only after opportunity for public hearing; and (3) any civil penalties assessed may be recovered by the commission in civil actions in the appropriate North Dakota district court.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed North Dakota program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 31, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–27812 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 224

RIN 1510–AA49

Federal Process Agents of Surety Companies

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This action proposes to amend 31 CFR Part 224 (also appearing as Treasury Department Circular 901, Revised) which governs surety companies doing business with the United States. Specifically, it proposes to eliminate the requirement that surety companies doing business with the United States report their Federal process agent appointments to the Financial Management Service (FMS). FMS no longer needs or collects this information. This revision will make the regulation consistent with current practice.

DATES: Comments on this proposed rule must be received on or before December 11, 1995.

ADDRESSES: Comments or inquiries may be mailed to Surety Bond Branch, Department of the Treasury, Financial Management Service, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, Attn: Laura Harshbarger.

FOR FURTHER INFORMATION CONTACT: Dorothy Martin, (202) 874–6850, (Manager, Surety Bond Branch).

SUPPLEMENTARY INFORMATION: This regulation proposes to eliminate the requirement that surety companies report their Federal Process Agent appointments to the Financial Management Service. This action does not eliminate the requirement for the companies to designate a person to serve as a Federal Process Agent and to register them with the clerk of the district court for the judicial district in which a surety bond is to be given.

The proposed rule includes several editorial changes and a realignment of the sections as a result of eliminating § 224.5, "Filing process agent appointment information with the Treasury."

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This change will clarify the regulation.

List of Subjects in 31 CFR Part 224

Surety bonds, Insurance.

Accordingly, Part 224 of Title 31 is proposed to be amended as follows:

PART 224—FEDERAL PROCESS AGENTS OF SURETY COMPANIES

1. The authority citation continues to read as follows:

Authority: 31 U.S.C. 9306.

2. Section 224.1 is revised to read as follows:

§ 224.1 Statutory provision.

The rules and regulations in this Part are prescribed for carrying into effect 31 U.S.C. 9306.

3. Section 224.5 is removed, and § 224.6 is redesignated as § 224.5 and revised to read as follows:

§ 224.5 Process agents; termination of authority.

Whenever the authority of a process agent is terminated by reason of revocation, disability, removal from the district, or any other cause, it shall be the duty of the company to immediately make a new appointment.

§ 224.7 [Redesignated as § 224.6]

4. Section 224.7 is redesignated as § 224.6, and revised to read as follows:

§ 224.6 United States district courts; location of divisional offices.

A list of the divisional offices of the court in each judicial district where powers of attorney should be filed may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782.

Dated: October 12, 1995.

Russell D. Morris,

Commissioner.

[FR Doc. 95–27577 Filed 11–8–95; 8:45 am]

BILLING CODE 4810–35–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC42

National Flood Insurance Program; Insurance Rates

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP. The rule is proposed in order to bring subsidized premiums more in line with the risk. We intend the proposed rule to help the NFIP increase the capability to build reserves for catastrophic loss years.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: These proposed amendments, which would increase the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, are the result of an ongoing review and reappraisal of the NFIP and of continuing efforts to maintain a business-like approach to its administration by emulating successful property insurance programs in the private sector and, at the same time, to achieve greater administrative and fiscal effectiveness in its operations. The proposed amendments are intended to help the NFIP increase its capability to build reserves for catastrophic loss years. Coverage changes and optional deductibles, in addition to rate increases, are part of the ongoing effort to achieve these goals.

The chargeable (subsidized) rates, for which an increase is being proposed, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP.

These rates are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant and Federal policy fee, produce a premium income less than the expense and loss payments that can be expected on the flood insurance policies issued on that basis. Funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Administrator for use under the Emergency Program (added to the NFIP by the Congress in Section 408 of the Housing and Urban Development Act of 1969) and for use in the Regular Program on construction or substantial improvement started before the effective date of the initial Flood Insurance Rate Map (FIRM) or on or before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973), whichever is later.

It should be noted that over the NFIP's history, the Program has not been subjected to the truly catastrophic flood event. Thus, the historical average is substantially less than could be expected over the long term when the influence of the extremely infrequent, truly catastrophic flood would result in a significant increase in the average historical year's losses. It is because of these fortuitous conditions, the lack of market penetration in areas suffering very large floods, and relatively high market penetration in the southeastern part of the United States, which has not suffered a catastrophic flood event recently, that the Program has remained self-supporting since 1986. However, the chargeable (subsidized) rates are significantly less than those that would be charged on a full risk basis.

Using current subsidized rates and projected full risk loss costs at 1995 levels, it is expected that the average annual shortfall in the risk portion of premiums needed to fund loss expenses, including the catastrophic potential, is over $400.00 for each subsidized policyholder.

The statutory mandate to establish chargeable rates requires the Federal Emergency Management Agency (FEMA) to balance the need for providing reasonable rates to encourage potential insureds to purchase flood insurance with the requirement that the NFIP be a flexible program that minimizes cost and distributes burdens equitably among those who will be protected by flood insurance and the general public.

In the past, appropriations were required to replenish the program's borrowing authority when income was not sufficient due to the subsidy. Since 1986, FEMA has not asked Congress to appropriate any taxpayer funds to pay for this subsidy. Recent years have been extremely high loss years starting with Hurricane Hugo in 1989, Hurricanes Andrew and Iniki in 1992, the great Midwest flooding of 1993, and several other major flooding events in 1995. FEMA believes it is time for a reduction in the subsidy.

Section 1308(e) of the National Flood Insurance Act of 1968, as amended, contains an annual rate increase limitation of 10 percent. The rates to accomplish the proposed increase are in the following table. It should be noted that the entire premium paid by the consumer consists of two components: a risk rate as well as an expense constant—a standard cost charged for each policy for administrative processing. Although the rates in the table, which are the risk rates for $100 worth of coverage, have been increased more than 10 percent, the actual premium paid by the consumer, which also includes the expense constant, would only increase by 10 percent.

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.68	$0.79
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.79	1.58

For comparison, the current subsidized rates are as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.70	1.40

The proposed increase would be balanced between the need to decrease the subsidy and the objective of the statute for chargeable rates—rates that are less than actuarial rates—i.e., to make flood insurance available at reasonable rates so as to encourage prospective insureds to purchase flood insurance.

The projected average annual premium for subsidized policies using the revised chargeable rates and purchasing 1995 amounts of insurance is $441.00, a $40.00 increase over the present average. Despite this increase, the new rates produce only an estimated 39 percent of the premium that would have to be charged if these policies were actuarially rated (i.e., not subsidized).

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA is conducting an environmental assessment of this proposed rule. If the assessment concludes that there will be a significant impact on the human environment as a result of the issuance of the proposed rule, then an Environmental Impact Statement will be prepared. Copies of the environmental assessment, when developed, will be available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action as defined under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735, October 4, 1993. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. This proposed rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood Insurance.

Accordingly, FEMA proposes to amend 44 CFR part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.68	$0.79
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration	.79	1.58

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: November 2, 1995.

Elaine A. McReynolds,

Administrator, Federal Insurance Administration.

[FR Doc. 95–27803 Filed 11–8–95; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–166, RM–8717]

Radio Broadcasting Services; Chama, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KNXX, Inc., seeking the allotment of Channel 255A to Chama, NM, as the community's first local aural service. Channel 255A can be allotted to Chama in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–54–12 North Latitude and 106–34–42 West Longitude.

DATES: Comments must be filed on or before December 26, 1995, and reply comments on or before January 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Don Davis, President, KNXX, Inc., 1217 Valencia Drive, NE., Albuquerque, NM 87110 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–166, adopted October 24, 1995, and released November 3, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27719 Filed 11–8–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–167; RM–8699]

Radio Broadcasting Services; Claremore and Chelsea, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Michael P. Stephens, requesting the reallotment of Channel 264A from Claremore to Chelsea, OK, and the modification of Station KTFR's permit to specify Chelsea as its community of license. The allotment of Channel 264A at Chelsea could provide the community with its first local aural transmission service and enable Station KTFR to operate with full Class A power of 6 kW. Channel 264A can be allotted to Chelsea in compliance with the Commission's minimum distance separation requirements, at coordinates 36–31–27 North Latitude; 95–26–55 West Longitude, which represents a site restriction of 2.0 kilometers (1.2 miles) southwest, to avoid a short-spacing to Station KGLC, Channel 265A, Miami, OK.

DATES: Comments must be filed on or before December 26, 1995, and reply comments on or before January 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael P. Stephens, P.O. Box 1250, Sapulpa, OK 74067 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–167, adopted October 24, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–27720 Filed 11–8–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 97]

RIN 2127—AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: Air bags are now standard equipment in millions of passenger cars, light trucks, sport utility vehicles, and vans and widely regarded to be a noteworthy safety advance, especially in higher speed crashes. However, air bags—even air bags with a lap/shoulder belt being used—are not a cure-all for every type of injury in crashes. The agency is aware of situations in which current air bag designs have undesired side effects. These include situations in which an air bag appears to have contributed to serious injuries and even death to vehicle occupants.

This document is intended to inform the public about NHTSA's actions to minimize these adverse side effects and to invite the public to share information and views with the agency.

DATES: Comments must be received by December 26, 1995.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Stephen R. Kratzke, Office of Vehicle Safety Standards, NPS–10, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366–5203 or by fax at (202) 366–4329.

SUPPLEMENTARY INFORMATION: Air bags are being offered on more and more light vehicles (i.e., cars, pickup trucks, vans, and sport utility vehicles). A decade ago, very few vehicles offered air bags and those that did were almost exclusively expensive luxury cars. In response to public demand, nearly every 1996 model year passenger car will be equipped with dual air bags as standard equipment. Installation of air bags is being accomplished in advance of federal statutory requirements that dual air bags be provided in all 1998 and later model year cars, and all 1999 and later model year light trucks and vans.

Air bags have an impressive overall performance record. Since 1987, they are estimated to have saved 911 lives. NHTSA estimates that in 1994 alone, air bags saved 374 lives. The agency fully expects these numbers to continue to increase.

The agency emphasizes that the presence of an air bag does not mean that it is less important for occupants to use their safety belts. Air bags are supplemental restraints. The primary means of occupant restraint, the safety belt, works in all types of crashes and is particularly effective in preventing ejection, where the air bag has limited benefits. NHTSA estimates that in 1994, safety belts saved almost 9,200 lives and prevented more than 211,000 moderate

to critical injuries. The combination of wearing safety belts and having an air bag installed at a seating position provides vehicle occupants with maximum safety protection in all types of crashes.

Applying appropriate scientific techniques, NHTSA has been carefully monitoring the real world performance of air bags, including any side effects, for more than a decade. The agency published an Evaluation Plan for front-seat occupant protection in January 1990 (55 FR 1586; January 17, 1990), which calls for periodic interim analyses of effectiveness (a final evaluation of effectiveness will not be possible until after air bags have been standard equipment for some time on high production volume cars). An Interim Evaluation Report, including analyses of fatality and injury reductions, was published in June 1992. The agency also submitted a Report to Congress on this subject in November 1992. The agency's analyses indicated that air bags are producing benefits for vehicle occupants. NHTSA plans to update its interim analyses of effectiveness early in 1996.

NHTSA's National Center for Statistics and Analysis (NCSA) provides comprehensive, high quality data on highway crashes. These data are used to relate human, vehicle, environmental, and roadway characteristics to crash frequency and the severity of injuries sustained in those crashes. NCSA has developed several programs for providing these data. The Fatal Accident Reporting System (FARS) provides basic information on all highway crashes in the U.S. in which one or more people die of their injuries within 30 days of a crash. The National Accident Sampling System (NASS) provides information from investigations of a statistical sample of police reported crashes at all levels of injury severity. As part of NASS, detailed investigations of 5,000 highway crashes are conducted annually to provide information on crash dynamics, injury mechanisms, and consequences of those mechanisms, and to support occupant protection research and rulemaking. To supplement the NASS system, the Special Crash Investigation Program conducts from 50 to 75 in-depth investigations per year, concentrating on crashes involving air bag deployments. Paper copies of individual investigations and electronic data files are available to the public. For more information contact NCSA at (202) 366–5394.

In addition, NHTSA's Office of Research and Development has a number of on-going projects examining specific air bag issues. A discussion of these projects can be found in the technical paper discussed later in this notice.

There are certain situations in which air bags can have adverse side effects. As more and more vehicles are equipped with them, these side effects have become better known to researchers. The agency wants to act expeditiously to ensure that these adverse side effects of air bags are minimized or eliminated.

This notice summarizes what NHTSA knows about side effects of air bags and how it plans to minimize them in the future. NHTSA is also asking manufacturers, insurers, members of the medical community, and any other interested members of the public to share information about air bag designs or experience.

In a frontal crash, the occupant moves forward toward the windshield and instrument panel prior to air bag deployment. The air bag inflator must produce enough energy to inflate the air bag fully in about 25 milliseconds to "cushion" the occupant before the occupant strikes the vehicle interior. The energy necessary to inflate the air bag in such a short time interval can cause injury or even fatality to an occupant who is not properly restrained, especially to children, given their small stature and light weight.

The table below shows, in no particular order, the types of situations in which the agency has some information suggesting there may be a risk of serious injury to vehicle occupants from the air bag.

Group affected	Seating position of primary risk	Probable cause of problem
Unrestrained Small Statured and/or Older People.	Driver Position	Proximity to Air Bag at Time of Deployment.
Infants in Rear-Facing Child Restraints	Passenger Position	Proximity to Air Bag at Time of Deployment.
Children Unrestrained in Front Seat	Passenger Position	Proximity to Air Bag at Time of Deployment.
Out-of-Position Occupants	Driver and Passenger Position	Proximity to Air Bag at Time of Deployment
Persons with Disabilities	Driver Position	Proximity to Air Bag at Time of Deployment; Adaptive Equipment between Air Bag and Driver; Safety Features in Vehicle Must be Modified to Accommodate Adaptive Equipment.
Persons Experiencing Extremity Injuries	Driver and Passenger Position	Unknown; Under Study.

It appears from this table that the primary task is to reduce the risk to occupants who are very near the air bag at the time of deployment. Such actions, however, won't necessarily help persons with disabilities.

NHTSA has already taken steps to address the problem of infants in rear-facing child seats by warning parents of air bag/infant restraint interaction problems through consumer advisories and warnings on infant restraints, on sun visors, and in owner's manuals. NHTSA's position is that rear-facing child seats should be used only in the rear seat of a vehicle with a passenger-side air bag.[1] In addition, on May 23, 1995, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection*, to allow manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which infant restraints can only fit in the front seat.

[1] A complete description of various steps NHTSA has taken to address this problem can be found in a Notice of Proposed Rulemaking published on October 7, 1994 (59 FR 51158).

For air bag vehicles already on the road or being produced in this model year, the agency's primary efforts will be directed at better educating the public about the characteristics of air bags and the steps which the public can take to minimize the likelihood of experiencing adverse side effects from air bags. On October 27, 1995, the agency issued a consumer advisory focusing on preventing children from being injured. The consumer advisory recommends three specific steps: (1) always restrain children properly, (2) put them in the back seat whenever possible, and (3)

when they must ride in the front seat, move the seat back as far as possible—away from the air bag. NHTSA will continue to work with state safety officials, national safety and medical organizations, vehicle manufacturers, insurers, and interested citizens to educate the public in this area.

In addition, anyone with knowledge of an unusual injury or fatality resulting from a low speed or other crash involving an air bag-equipped vehicle is urged to report this information to NHTSA's Auto Safety Hotline at (800) 424–9393 or (202) 366–0123.

For vehicles manufactured far enough in the future to incorporate significant design changes, NHTSA believes that there will be technological enhancements available that could minimize the unintended side effects of air bags. Vehicle manufacturers and air bag suppliers are now working on highly advanced air bags, often called "smart bags." These smart bags include advanced technologies for occupant sensing, phased deployment of air bags, and so forth. These technologies will be able to perform a number of functions, including preventing air bag deployment when they sense that an occupant is too close to the point of deployment, inflating the air bag at different speeds according to the severity of the crash, and preventing the bag from deploying in the absence of an occupant at that seating position. Based on discussions with suppliers and vehicle manufacturers, NHTSA anticipates these types of smart bags will eventually be widely incorporated into production. The agency will step up its monitoring of manufacturer efforts to use smart bags, especially the technologies being explored, the practicability and reliability of smart bag systems, and the timetables for availability of smart bag systems.

While NHTSA anticipates that these smart bag systems will substantially minimize adverse side effects of air bags in the not too distant future, this still leaves the question of what can be done in addition to public education for the near future. Manufacturers may be able to make adjustments to existing air bag systems. Further, NHTSA may be able to make temporary adjustments to its regulations if it is shown to be necessary to enable manufacturers to minimize any adverse side effects during this period.

For example, Ford has requested that NHTSA amend its crash testing procedures in Standard No. 208. The standard currently requires test dummies to be protected in a 30 mile per hour (mph) crash both when wearing safety belts and when not wearing the belts (i.e., protected by the air bag alone). Ford asked that the test speed for the unbelted dummies be lowered to 25 mph, while the test speed for the belted dummies be raised to 35 mph. According to Ford, this change would allow manufacturers to better "tune" the interaction between the air bag and the safety belt so as to optimize the protection afforded to occupants who use their belts. Ford stated that the current testing procedure forces manufacturers to base occupant protection designs solely on the air bag, rather than the interaction between the air bag and the belt. Ford believes that such a change can reduce air bag-induced injuries.

In response to this request, NHTSA prepared a detailed preliminary technical assessment of the issues presented in Ford's request. This technical assessment sets forth the agency's knowledge with respect to injuries from air bags. To help move public discussion forward in this area, NHTSA has placed copies of its technical assessment of the Ford request in the public docket for this rulemaking. Interested members of the public are invited to comment on the Ford proposal and to review this assessment to gain a better understanding both of what is known and of what is not known by NHTSA about injuries from deploying air bags, as well as the agency's plans for further research and data analyses in this area. Copies of the technical assessment can be obtained from the Docket Section at the address given above or by telephone at (202) 366–4949.

The agency hopes that this request for comments will help the agency obtain the information needed to make reasoned decisions about whether some regulatory changes are needed for the interim period, whether some simple technological fixes are available to minimize side effects until smart bags become a reality, or whether other activities, such as consumer information, offer the best chance of effectively minimizing these side effects.

Persons with disabilities may have problems with air bags in addition to those that result primarily from their proximity to the air bag at the time of deployment. While many drivers with disabilities may have a problem because of having to sit very near the steering wheel, they may also face unique problems because of the special adaptive equipment needed to allow them to drive. This adaptive equipment may reduce the protection afforded by air bags by interfering with their deployment. In September 1994, the agency issued a consumer advisory cautioning drivers with disabilities not to use steering control devices mounted on a bar installed across the steering wheel hub (a "spanner bar").

Light trucks that meet certain criteria, defined as "vehicles manufactured for operation by persons with disabilities," are not required to provide automatic protection until September 1, 1997. Automatic protection may be either an air bag or an automatic belt. As a practical matter, NHTSA believes that light truck manufacturers will install air bags as the only type of automatic protection in their 1998 model year vehicles because of the Federal law that requires air bags in all their vehicles as of September 1, 1998 (the 1999 model year). NHTSA does not now have sufficient data to allow the agency to decide if air bags will pose any unique problems for drivers with disabilities because of the interaction with the special adaptive equipment needed to allow people with disabilities to drive. However, the agency will conduct testing during fiscal year 1996 to examine this subject in detail. This testing will allow NHTSA to take any necessary regulatory and/or consumer information actions before the current exclusion for drivers with disabilities expires in September 1997.

Questions for the Public

To aid the agency in obtaining useful comments, NHTSA is including an appendix to this notice which consists of a number of specific questions and requests for data. For easy reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses for each question for which they may have information or views. In addition, in order to facilitate tabulating the comments by issue, the agency encourages commenters to respond to the questions in sequence, and to identify the number of each question to which they are responding.

NHTSA requests that commenters provide as specific a rationale as possible, including an analysis of safety consequences, for any positions that are taken. Commenters with a technical background are encouraged to provide scientific analysis of these matters. The automobile manufacturers and air bag component and system suppliers are requested to define major milestones for future plans and give estimated completion dates. The agency appreciates that much of this information may be confidential business information and will treat it in accordance with statutory requirements.

The list of questions does not purport to be an all inclusive list of items or information which the public may have available and believe is valuable in assessing the issues. Commenters are encouraged to provide any other data that they believe are relevant.

Public Meeting

NHTSA anticipates holding one or more public meetings on this subject after the written comments have been received.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This document seeks public input on possible regulatory and nonregulatory responses to an emerging issue. It does not contain any regulatory changes that have so far been identified as sufficiently likely to warrant calculation of possible benefits and costs. The task of calculating costs is further complicated by the fact that while some of the regulatory changes would mandate changes to existing air bag designs, those changes would not involve the addition or deletion of easily identifiable design elements or features. NHTSA has not analyzed the impact of this notice under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. If at some time in the future the agency proposes some regulatory action, it will make the determinations in connection with that future action.

Executive Order 12612 (Federalism)

NHTSA has analyzed this notice in accordance with the principles and criteria contained in E.O. 12612, and has determined that it does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CAR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CAR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50)

Issued on November 6, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

Appendix—List of Questions

Field Experience With Air Bags

As discussed above, NHTSA relies on data from FARS and NASS, including the Special Crash Investigation Program, to monitor air bag performance in crashes. However, the public, particularly insurers, vehicle manufacturers, and the medical community may have information that would supplement the NHTSA data regarding air bag performance in crashes.

1. Please provide any available air bag performance information in the following areas, separately for each calendar year from 1987 to the present[2]:

a. The total number of air bag deployments in crashes during the calendar year;

b. The air bag deployments in crashes for each make/model of vehicle;

c. The total number of air bag deployments in crashes in which the crash severity was 15 mph or less or in which little damage occurred to the vehicle; and

d. Any cases of deployment in which the air bag may have contributed to serious injuries or fatalities for occupants - if such cases are identified, please provide details about the position in which the occupant was seated (driver or passenger position), the injured person's gender, age, height, and weight, whether the occupant was belted, unbelted, or in a child restraint, and the source for this information (e.g., police report, insurance claim, hospital report, etc.).

e. Any cases of deployment in which the air bag may have saved lives, prevented injuries or reduced injury severity, etc.

NHTSA requests that when insurance companies provide data about field experience, it would be very helpful if they would include the number of vehicles they insured in each calendar year (insured vehicle years).

2. What information is available concerning the reduction or increase in different types of injuries and injury severities that may be associated with the introduction of air bags? The medical community is especially requested to respond to this question.

Crash Sensing

NHTSA's data indicate that situations in which air bags appear to have contributed to serious or fatal injuries have occurred at crash severities below 15 mph, some even below 10 mph, with minimal damage to the vehicle. The agency is asking the public to provide information that would help NHTSA assess the range of deployment thresholds currently chosen by vehicle manufacturers for their different vehicles, why those differences exist, and the manufacturers' efforts to adjust and redefine the algorithms used to determine whether the air bag should deploy. Specifically, the agency would like to learn:

3. What algorithms and calibrations do manufacturers use to determine when the air bag should deploy in each of their vehicles?

4. What are the reasons why that threshold for air bag deployment was chosen (e.g., corresponds to the speed at which an unbelted occupant would experience facial fractures from steering wheel, speed at which unbelted occupant would be likely to experience serious chest injuries, etc.)?

5. NHTSA believes that manufacturers generally specify different deployment thresholds for different vehicles. Is this belief correct and, if so, what are the reasons why different deployment thresholds are specified (e.g., more interior room in vehicle, different intended use of vehicle, different target purchasers, etc.)?

6. How do the deployment thresholds specified for different vehicles correlate to the speed the thresholds represent in a frontal crash test into a fixed rigid barrier?

Air Bag Inflators

Ford indicated in its request to the agency that it could reduce the air bag inflator onset

[2] September 1, 1986 was the start of the phase-in of automatic protection for all new passenger cars. Automatic protection means a vehicle must offer either air bags or automatic belts. Accordingly, 1987 was the first year for which any substantial number of vehicles with air bags were on the road.

rate simply by decreasing the amount of propellant contained in the inflator. Ford said that such a change could be made quickly and would, in Ford's opinion, reduce the incidence of air bag-induced injuries, particularly to upper extremities, and allow more optimal tuning of current safety belt systems.

7. Please provide as detailed information as possible about current air bag inflators, including inflator tank pressure curves, the effect of reduced propellant on those pressure curves and the overall performance of the inflator, and inflators that use dual or multiple staged inflation. The agency is particularly interested in learning why manufacturers have chosen the particular characteristics for the inflators used in their vehicles (e.g., cost, simplicity, etc.) and the leadtime that would be needed to change inflator characteristics in production vehicles.

Air Bag Design

NHTSA knows that there are many variables in air bag design that may affect the performance of air bag systems in the field. The agency would like to learn if there are data that indicate any of these variables significantly affect the performance of air bag systems. The variables NHTSA has identified thus far include:

—Air Bag Volume
—Air Bag Fold Patterns
—Air Bag Tethering
—Air Bag Venting
—Air Bag Mass/Material
—Shape and Size of Air Bag Module Opening
—Module location and deployment path

To help answer questions about these variables, NHTSA would like to learn:

8. What are the parameters for each of the above variables on the air bags used in current vehicles?

9. To the extent that a manufacturer uses different parameters on different vehicles, what are the reasons for the difference?

10. What other variables not identified above affect air bag performance, and what is the basis for that belief?

11. What is the estimated leadtime needed to change each of these variables in production vehicles, and what are the reasons for why such leadtime is needed?

Proximity Considerations

Most of the fatalities involving air bags have occurred to children and small statured adults who were unbelted or otherwise improperly restrained, possibly out of position, and very close to the air bag at deployment. To assist the agency in identifying possible approaches to mitigate the problem in these circumstances, the public is asked to provide any data or information that may be available on the following subjects:

12. Is there a quantified minimum safe distance from the inflator nozzle/air bag at the time of deployment for air bags generally or for any particular air bag designs? If so, please provide that information and the data in support of that distance.

For the following questions, NHTSA is especially interested in all the data and information that support the response given. In addition, the agency would like the public to identify the trade-offs that would be involved in taking any of these actions.

13. Do "top mounted" air bags substantially reduce the adverse side effects at the passenger position?

14. Can the adverse side effects be substantially reduced by recessing the inflator/air bag either in the steering wheel assembly or in the dash?

15. Would displacement of the inflator away from the occupant at deployment substantially reduce the adverse side effects?

16. Would pedal adjusters (which move the pedals closer to the driver and allow the driver's arms instead of leg length to determine how close the driver must sit) reduce adverse side effects of air bags by allowing drivers to sit further back?

17. Would telescoping and/or tilt steering wheel assemblies substantially reduce the adverse side effects of air bags?

18. Can advanced sensors, which would either sound a warning or not deploy when an occupant was too close to an air bag, substantially reduce the adverse side effects of air bags?

19. Would safety belt pre-tensioners reduce the risk of air bag deployment injuries?

20. What laboratory test procedures and devices do manufacturers use and find appropriate to assess inflation hazards to occupants in close proximity to the driver or passenger air bag?

Near Term Considerations

The agency would like to know if there are near term (six months to one year) changes which could significantly reduce the probabilities of the serious injuries and fatalities attributed to air bag deployment. The agency is aware that some possible near term changes to air bags could involve safety tradeoffs; i.e., reducing certain types of injuries while allowing increases in others, offering higher protection at higher speeds at the expense of lower speed crashes, or protecting certain types of occupants (e.g., belted or those of small stature) at the expense of others (e.g., unbelted or large occupants). The agency would like to obtain information on possible near term changes and any safety tradeoffs associated with such changes. NHTSA is particularly interested in the effects of any potential changes on particular groups, such as young adults and children, and occupants of the growing light truck and van market, where belt use has traditionally been lower.

21. What would be the safety consequences of permitting manual air bag cut-off switches? Are there policy or other considerations that warrant treating the driver's and passenger's positions differently? How difficult would it be to retrofit such devices for vehicles on the road?

22. It seems that a change in deployment threshold could be made relatively quickly simply by modifying the calibration of the sensors or the algorithm used for deployment. What is the estimated leadtime needed to change the deployment threshold used in current air bag designs, and why is that amount of leadtime needed to make such a change?

23. What would be the safety consequences of a reduction or modification of the inflation rate?

24. How quickly can the manufacturers develop module locations that are recessed in the steering wheel or the instrument panel?

Future Plans

The agency is aware that much effort is underway to develop various levels of "smart" air bag systems. These smart air bag systems may range from dual threshold sensors that deploy the bag at different crash severities by recognizing whether the occupant is restrained or unrestrained (such systems are already in some luxury vehicles) to systems that include items such as:

Variable inflation rates
Occupant seat sensors
Proximity detection/sensing
Dual or multi-stage inflators/sensors
Dual or variable venting, etc.

25. Please provide detailed information concerning the technologies and strategies being considered in each of the above areas, as well as any other advanced air bag concepts, and the potential and expected dates of implementation.

Obstacles to Near and Long Term Plans

26. The agency requests information and explanations of any obstacles that may hinder advancements in reaching near or long term solutions to these problems. These could include or require changes in present regulations or the development of new regulations. Please provide recommendations for any agency actions that could be beneficial, the rationale for that action, and its safety consequences (quantified, if possible).

27. As discussed above, Ford has requested that the agency reduce FMVSS 208's unbelted test speed from 30 mph to 25 mph. According to Ford, this would make it easier for it to reduce the air bag inflation speed, thereby reducing low speed air bag injuries.

a. If NHTSA were to make a short-term change in FMVSS 208 to facilitate quick reductions in air bag inflation speeds (i.e., a change that would apply until manufacturers can implement smart air bags or other design changes to address low speed air bag injuries), how would manufacturers respond? What would be the specific safety consequences of such a change, including possible adverse consequences for unbelted occupants and for occupants in much higher speed crashes?

b. A reduction in FMVSS 208's unbelted test speed might not be the only way to facilitate quick reductions in air bag inflation speeds. For example, NHTSA could possibly retain the 30 mph unbelted test but temporarily increase the chest loading maximum of 60 g's for that test. FMVSS No. 208 currently specifies the same chest loading maximum for both the belted and unbelted tests. The agency notes that a preliminary review of recent biomechanical data generated for NHTSA suggests that the human tolerance to acceleration for serious chest injury may be higher for air bags than for belts, because the air bag delivers a more broadly distributed, uniform loading to the chest than does a safety belt. Would manufacturers respond to this type of change differently than for the change suggested by Ford? What would be the specific safety consequences of such a change, including possible adverse consequences?

Air Bag Issues Related to Persons With Disabilities

28. What has been the experience in modifying air bag-equipped vehicles to be driven by persons with disabilities? What type of problems have been encountered? Have the drivers been pleased with the results?

29. Has any person with a disability that you know of been involved in a crash in which the air bag deployed at his or her seating position?

30. Were any of these persons apparently saved from serious injury by the air bag? If so, please describe the situation.

31. Has any person with a disability been injured by the deployment of an air bag in a vehicle (mpv, car or truck)? If so, please provide as much information as possible on the event.

32. Is it very common that children with disabilities (whether small enough to use a child seat or not) *must* for health reasons sit in the front seat to be near the driver, when the driver is the only adult in the vehicle. Of these, how many can not use conventional seat belts, or child seats, due to their disabilities?

33. How many persons in the U.S. use steering control devices mounted on steering wheels containing air bags? What is your source of data, or how would you estimate this number?

34. What types of conditions in persons with disabilities would make them more susceptible to injury from an air bag (driver or passenger) than any other person in the same seating position? Would these people also be more susceptible to seat belt-induced injury?

[FR Doc. 95–27781 Filed 11–6–95; 11:29 am]
BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 60, No. 217
Thursday, November 9, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Zellweger Uster Inc., having a place of business in Knoxville, Tennessee, an exclusive license for U.S. Patent No. 5,058,444, "System for Analyzing Entrained Solids such as Cotton or Seed," issued October 22, 1991, U.S. Patent No. 5,101,672, "System for analyzing Entrained Solids such as Cotton or Seed," issued April 7, 1992, and Serial No. 08/273,244, "System for Analyzing Moisture of Materials such as Cotton," filed July 11, 1994. Notices of Availability for Licensing were given on December 17, 1991, September 16, 1992, and April 19, 1995, respectively.

DATES: Comments must be received by no later than January 8, 1996.

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Beltsville Agricultural Research Center, 10300 Baltimore Boulevard, Building 005, Room 401, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: W.J. Phelps of the Office of Technology Transfer at the Beltsville address given above; telephone 301–504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 95–27743 Filed 11–8–95; 8:45 am]
BILLING CODE 3410–03–M

Forest Service

Transfer of Administrative Jurisdiction; Lake Ouachita Reservoir Project

AGENCY: Forest Service, USDA.

ACTION: Notice; land interchange.

SUMMARY: On May 18, 1995, and August 21, 1995, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 110 acres, more or less, from the Department of Agriculture to the Department of the Army lying within and adjacent to the Ouachita National Forest in Garland and Montgomery Counties, Arkansas, and 88.93 acres, more or less, from the Department of the Army to the Department of Agriculture within and adjacent to the exterior boundaries of the Ouachita National Forest, Montgomery County, Arkansas. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656, 16 U.S.C. 505a, 505b) has been met. A copy of the Joint Order, as signed, appears at the end of this notice.

EFFECTIVE DATE: The order is effective November 9, 1995.

FOR FURTHER INFORMATION CONTACT: David M. Sherman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20250, Telephone: (202) 205–1362.

Dated: November 2, 1995.
Gray F. Reynolds,
Deputy Chief for National Forest System.

Appendix

Department of the Army, Department of Agriculture, Lake Ouachita, Arkansas

Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

By virtue of the authority vested in the Secretary of the Army and the Secretary of Agriculture by the Act of July 26, 1956, (70 Stat. 656; 16 U.S.C. 505a, 505b) it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A and shown on Part 2 of Exhibit C, a map on file and available for public inspection in the Office of the Chief, US Forest Service, Washington, D.C., which lie within and adjacent to the Ouachita National Forest, Arkansas, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of record and to such flooding as may occur from the construction, maintenance, and operation of the Lake Ouachita Reservoir Project.

(2) The National Forest lands described in Exhibit B and shown on Parts 1 and 2 of Exhibit C, maps on file and available for public inspection in the Office of the Chief, US Forest Service, Washington, D.C., which lie within and adjacent to the Lake Ouachita Reservoir Project, Arkansas, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army.

(3) Pursuant to Section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Ouachita Reservoir Project, Arkansas. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereafter subject only to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the **Federal Register.**

Dated: May 18, 1995.
Togo D. West, Jr.,
Secretary of the Army.

Dated: August 21, 1995.
Dan Glickman,
Secretary of Agriculture.

Exhibit A

Lands Transferred From the Secretary of the Army to the Secretary of Agriculture

Lands acquired by the U.S. Army Corps of Engineers for Blakely Dam—Lake Ouachita Reservoir Project, Arkansas, as follows:

That portion of the following described lands lying below the 610-feet National Geodetic Vertical Datum (NGVD) and being more particularly described as follows:

T1S, R24W, Montgomery County, Arkansas

Section 19: pt. SW¼ SW¼; pt. S½NE¼ less the private lands in the SE¼ NE¼ containing approximately 12 acres; pt. NW¼ SW¼; pt. NE¼ SW¼ all below 610′ NGVD containing approximately 60.92 acres.

Section 20: pt. SE¼ NW¼ below 610′ NGVD containing approximately 12 acres.

Section 30: pt. NW¼ NW¼; pt. SE¼ NW¼; pt. SW¼ NE¼ all below 610′ NGVD containing approximately 16.01 acres.

Approximate Total Acreage—89 Acres.

Exhibit B

Lands Transferred From the Secretary of Agriculture to the Secretary of the Army

Lands acquired by the Department of Agriculture for and in connection with the Ouachita National Forest, as follows:

That portion of the following described lands lying below the 610-fee National Geodetic Vertical Datum (NGVD) and being more particularly described as follows:

T1S, R24W, Montgomery County, Arkansas

Section 20: pt. NE¼ NW¼ SW¼; pt. SE¼ NE¼ SW¼; pt. SW¼ NE¼ SW¼ all above 610′ NGVD containing approximately 10 acres.

T2S, R21W, Garland County, Arkansas

Section 4: pt. SE¼ SW¼ SW¼; pt. S½ SE¼ SW¼; p. NE¼ SE¼ SW¼ all above 610′ NGVD.

Section 9: pt. E½ NW¼*; pt. NW¼ NW¼; pt. NE¼ NE¼ SW¼ NW¼ all above 610′ NGVD containing approximately 100 acres.

Approximate Total Acreage—110 Acres.

*Part of the SENW has Public Domain Status.

[FR Doc. 95–27768 Filed 11–8–95; 8:45 am]
BILLING CODE 3410–11–M

Natural Resources Conservation Service

Jump Creek Water Quality Planning Project Owyhee County

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Luana E. Kiger, State Conservationist, Natural Resources Conservation Service, 3244 Elder Street, Room124, Boise, Idaho 83705, telephone (208) 334–1601 until 11/17/95. On or after 11/20/95 the telephone number will be (208) 378–5700.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Jump Creek Water Quality Planning Project, Owyhee County, Idaho.

The Plan/Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Luana E. Kiger, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Jump Creek Water Quality Planning Project consists of a system of land treatment measures designed to protect the resource base, reduce off-site sediment, and improve the quality of waters entering Jump Creek and the Snake River. Planned land treatment practices include pasture and hayland planting, critical area planting, sediment basins, nutrient and pesticide management, streambank protection, conservation tillage, fencing, waste management systems, livestock grazing management, sprinkler and surge irrigation systems, and channel vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the plan/environmental assessment are on file and may be reviewed by contacting Luana E. Kiger. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: October 26, 1995.
Luana E. Kiger,
State Conservationist.

[FR Doc. 95–27726 Filed 11–8–95; 8:45 am]
BILLING CODE 3410–16–M

Rural Telephone Bank

Determination of the 1995 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 1995 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank fiscal year 1995 cost of money rates have been established as follows: 6.04% and 6.88% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987 where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 1995 under bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 6.04% (the liquidating account rate). All loan advances made during fiscal year 1995 under bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 6.88% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 1995 for the liquidating account and the financing account are provided in Tables 1a and 1b. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. § 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 6.04% and 6.88%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Barbara L. Eddy, Deputy Assistant Governor, Rural Telephone Bank, room 4056, South Building, U.S. Department of Agriculture, Washington DC 20250, telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990

("Credit Reform") (2 U.S.C. § 661a, et seq.) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 1995 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 1995 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuances of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

Sources and Costs of Funds—Liquidating Account

During fiscal year 1995, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.5%.

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1995. Total advances for the purchase of Class B stock and cash purchases for Class B stock were $1,111,708. Rescissions of loan funds advanced for Class B stock amounted to $201,173. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $910,535 ($1,111,708 −201,173). The total amount received by the Bank in fiscal year 1995 from the issuance of Class C stock was $12,330.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 1995. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. § 948(b)(3)(D).

The excess of fiscal year 1995 loan advances from the liquidating account over amounts received from issuances of stocks, debentures, and other obligations amounted to $35,044,268. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. § 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is provided in Table 2a. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Pub. L. 100–203, and are listed in 7 CFR 1610.10(c) and Table 2a herein.

Sources and Costs of Funds—Financing Account

During fiscal year 1995, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.5%.

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1995. Total advances for the purchase of Class B stock and cash purchases for Class B stock were $1,769,597. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $1,769,597. No amounts were received in fiscal year 1995 from the issuance of Class C stock associated with the financing account.

During fiscal year 1995, issuances of debentures or any other obligations related to the financing account were $28,627,516.67 at an interest rate of 7.39% and $2,000,000 at an interest rate of 6.77%.

The excess of fiscal year 1995 loan advances from the financing account over amounts received from issuances of stocks, debentures, and other obligations amounted to $4,764,403. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. § 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the financing account is provided in Table 2b. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: November 3, 1995.

Wally Beyer,

Governor, Rural Telephone Bank.

BILLING CODE 3410–15–P

TABLE 1a – LIQUIDATING ACCOUNT
RURAL TELEPHONE BANK
COST OF MONEY RATE

Source of Bank Funds		Amount	Cost Rate	Amount X Cost Rate	(Amount X Rate) / Advances
FY 1995 Issuance of Class A Stock		$0	2.00%	$0	0.0000%
FY 1995 Issuance of Class B Stock		$910,535	0.00%	$0	0.0000%
FY 1995 Issuance of Class C Stock		$12,330	7.50%	$925	0.0026%
FY 1995 Issuance of Debentures and Other Obligations		$0	--	$0	0.0000%
Excess of Total Advances Over FY 1995 Issuance	1/	$35,044,268	6.20%	$2,172,745	6.0409%
Total FY 1995 Advances		$35,967,133	CALCULATED COST OF MONEY RATE		6.04%
			MINIMUM COST RATE ALLOWABLE		5.00%

1/ The excess of total advances over issuances represents borrower repayments used to meet advances in FY 1995.

TABLE 1b – FINANCING ACCOUNT
RURAL TELEPHONE BANK
COST OF MONEY RATE

Source of Bank Funds		Amount	Cost Rate	Amount X Cost Rate	(Amount X Rate) / Advances
FY 1995 Issuance of Class A Stock		$0	2.00%	$0	0.0000%
FY 1995 Issuance of Class B Stock		$1,769,597	0.00%	$0	0.0000%
FY 1995 Issuance of Class C Stock		$0	7.50%	$0	0.0000%
FY 1995 Issuance of Debentures and Other Obligations:	2/	$28,627,517 $2,000,000	7.39% 6.77%	$2,115,573 $135,400	5.6929% 0.3644%
Excess of Total Advances Over 1995 Issuances	3/	$4,764,403	6.43%	$306,351	0.8244%
Total FY 1995 Advances		$37,161,517	CALCULATED COST OF MONEY RATE		6.88%
			MINIMUM COST RATE ALLOWABLE		5.00%

2/ Issuance of debentures and obligations related to the financing account totalled $121,000,000. Of that total, $2,000,000 was borrowed in FY 1994 and carried over to make advances in FY 1995. In FY 1995, $119,000,000 was borrowed; however, only $28,627,516.67 was needed to meet the remainder of the advances in FY 1995. Since the Bank earns interest on Treasury borrowings until funds are advanced, equal to the borrowing rate, no cost was incurred on the difference of $90,372,483.33 ($119,000,000 less $28,627,516.67) and this amount will be used to make advances in FY 1996.

3/ The excess of total advances over issuances is provided primarily by subsidy appropriations (for either defaults or interest) as well as borrower repayments.

TABLE 2a
RURAL TELEPHONE BANK
HISTORICAL COST OF MONEY
LIQUIDATING ACCOUNT

Fiscal Year	Bank Cost of Money	Bank Loan Advances	Advances X Cost Rate	(Advances X Cost Rate) / Total Advances
1974	5.01%	$111,022,574	$5,562,231	0.247%
1975	5.85%	$130,663,197	$7,643,797	0.340%
1976	5.33%	$99,915,066	$5,325,473	0.237%
1977	5.00%	$80,907,425	$4,045,371	0.180%
1978	5.87%	$142,297,190	$8,352,845	0.372%
1979	5.93%	$130,540,067	$7,741,026	0.344%
1980	8.10%	$199,944,235	$16,195,483	0.720%
1981	9.46%	$148,599,372	$14,057,501	0.625%
1982	8.39%	$112,232,127	$9,416,275	0.419%
1983	6.99%	$93,402,836	$6,528,858	0.290%
1984	6.55%	$90,450,549	$5,924,511	0.264%
1985	5.00%	$72,583,394	$3,629,170	0.161%
1986	5.00%	$71,852,383	$3,592,619	0.160%
1987	5.00%	$51,974,938	$2,598,747	0.116%
1988	5.00%	$119,488,367	$5,974,418	0.266%
1989	5.00%	$97,046,947	$4,852,347	0.216%
1990	5.00%	$107,694,991	$5,384,750	0.240%
1991	5.43%	$163,143,075	$8,858,669	0.394%
1992	6.14%	$84,940,822	$5,215,366	0.232%
1993	6.05%	$84,605,366	$5,118,625	0.228%
1994	6.15%	$54,530,897	$3,353,650	0.149%
TOTAL ADVANCES		$2,247,835,818	COST OF MONEY RATE	6.20%

TABLE 2b
RURAL TELEPHONE BANK
HISTORICAL COST OF MONEY
FINANCING ACCOUNT

Fiscal Year	Bank Cost of Money	Bank Loan Advances	Advances X Cost Rate	(Advances X Cost Rate) / Total Advances
1992	7.38%	$4,056,250	$299,351	0.353%
1993	6.35%	$23,839,200	$1,513,789	1.787%
1994	6.40%	$56,838,902	$3,637,690	4.293%
TOTAL ADVANCES		$84,734,352	COST OF MONEY RATE	6.43%

[FR Doc. 95-27819 Filed 11-8-95; 8:45 am]
BILLING CODE 3410-15-C

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 3:30 p.m. on Tuesday, December 5, 1995, at the Mile High Center, Tower I, 1700 Broadway, Suite 490, Denver, Colorado 80290. The purpose of the meeting is to plan future activities and discuss civil rights developments.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joseph Arcese, 303-556-3139, or John F. Dulles, Director of the Rocky Mountain Regional Office, 303-866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 2, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95-27727 Filed 11-8-95; 8:45 am]
BILLING CODE 6335-01-P

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will be held from 6:00 p.m. to 10:00 p.m. on Wednesday, December 13, 1995 and from 9:00 a.m. to 6:00 p.m. on Thursday, December 14, 1995 at the Garden City Community College, 801 Campus Drive, Endowment Room, Garden City, Kansas 67846. The purpose of the meeting is to gather information regarding race relations in rural towns in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TTY 913-551-1413). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 2, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95-27728 Filed 11-8-95; 8:45 am]
BILLING CODE 6335-01-P

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn 12:30 p.m. on Thursday, November 30, 1995, at the E.S. Muskie Federal Building, Room 510, 40 Western Avenue, Augusta, Maine 04330. The purpose of the meeting is to prepare for a factfinding meeting on bilingual education issues in March 1996 and to hold a briefing session to gather information on hate crimes in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Barney Bérubé, 207-287-5980, or Edward Darden; Acting Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 1, 1995.

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 95-27729 Filed 11-8-95; 8:45 am]
BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of the Census

1996 Administrative Records Notification Evaluation

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 8, 1996.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to Randall Neugebauer, Bureau of the Census, Room 3587-3, Washington, DC 20233-7100, (301) 457-3952.

SUPPLEMENTARY INFORMATION:

I. Abstract

One objective of the 2000 decennial census calls for the Census Bureau to make greater use of other agencies' administrative record files to reduce cost, respondent burden, and the differential in the results among various components of the population. The Administrative Records Notifications Evaluation is a test to measure mail and item response rates to census forms containing different administrative record use notifications. The test also will measure how requests for Social Security numbers will affect mail return and item response rates.

II. Method of Collection

For this one-time survey, census questionnaires will be mailed to the sampled households and returned in postage- paid envelopes. We also plan to mail pre-notice letters, reminder cards, and replacement questionnaires (the only means used for following up on nonresponding households). There will be no telephone or field enumeration follow-up.

III. Data

OMB Number: Not available.

Form Numbers: DN–1A, DN–2A, DN–1B, and DN–2B.

Type of Review: Regular submission.

Affected Public: Individuals and households.

Estimated Number of Respondents: 28,600 (of which, 15,000 will receive a long form).

Estimated Time Per Response: 10 minutes per short form and 32 minutes per long form.

Estimated Total Annual Burden Hours: 10,269

Estimated Total Annuol Cost: $191,600, expended between fiscal years 1996 and 1997.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Orgonization.

[FR Doc. 95–27836 Filed 11–8–95; 8:45 a.m.]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 66–95]

Foreign-Trade Zone 202, Los Angeles, California Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to expand its zone in the Los Angeles, California area, adjacent to Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 30, 1995.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, 7/22/94). The zone project currently includes 3 sites (3,428 acres) in the Los Angeles/Long Beach Customs port of entry area: *Site 1* (2,783 acres)—Port of Los Angeles Harbor Complex, San Pedro; *Site 2* (3 acres)—within the Los Angeles International Airport (LAX) complex; and, *Site 3* (642 acres)—International Trade & Transportation Center, Santa Fe Highway at 7th Standard Road in Kern County, adjacent to the City of Bakersfield.

The applicant is now requesting authority to expand the zone to include five new sites (proposed Sites 4 through 8): Proposed *Site 4* (46 acres)—within the 438-acre Carson Dominguez Technology Center south of the Artesia Freeway, between the Harbor Freeway and I–710 in Rancho Dominguez; proposed *Site 5* (20 acres)—Alameda Import/Export Center, located at the northeast corner of Alameda and Bay Streets in Los Angeles; proposed *Site 6* (9 acres)—Western Sunset Distribution Center, 2626 Vista Industria, Rancho Dominguez; proposed *Site 7* (101 acres)—Pacific Gateway Center, at the southwest corner of the San Diego Freeway and Harbor Freeway Interchange, Los Angeles; and, proposed *Site 8* (6 acres)—Kintetsu Intermodal Warehouse, located at 1031/1035 Watson Center Road, Carson. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 8, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 23, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 11000 Wilshire Boulevard, Room 9200, Los Angeles, California 90024.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 1, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–27833 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 68–95]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Status, United Technologies Corporation and Precision Components International, Inc., Plants (Aircraft Turbine Engine Components) Columbus, Georgia

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting special-purpose subzone status for the aircraft turbine engine component manufacturing facilities of the United Technologies Corporation, Pratt & Whitney Group (Pratt & Whitney) and Precision Components International, Inc. (PCI) (a subsidiary of a Pratt & Whitney joint venture), located in Columbus, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 1, 1995.

The facilities (700,000 sq.ft., 720 employees) are located on a 339-acre site at 8801 Macon Road in Columbus (Muscogee County), Georgia, some 90 miles southwest of Atlanta. They are used to produce titanium disk forgings and airfoils (HTS# 8411.91.90) for the compressor components of turbine-type aircraft engines. Pratt & Whitney manufactures the disk forgings, and PCI manufactures the airfoils under contract for Pratt & Whitney. The airfoils and disk forgings are manufactured from titanium alloy sourced from abroad (HTS# 8108.10.50.45, 8108.90.60.30; duty rate: 15%). The disk forgings and airfoils are shipped to other U.S. Pratt & Whitney facilities for further processing and/or assembly into aircraft turbine engines, or they are exported.

Zone procedures would exempt Pratt & Whitney and PCI from Customs duty payments on the foreign titanium alloy used in export production. On domestic sales, the companies would be able to choose the lower duty rates that apply to finished aircraft turbine engine components (duty free, 3.0%) for the foreign titanium alloy. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 8, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 23, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, Marquis II Tower, Suite 200, 285 Peachtree Center Avenue, N.E., Atlanta, GA 30303.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 2, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–27835 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 67–95]

Foreign-Trade Zone 72—Indianapolis, Indiana Application for Subzone; Thomson Consumer Electronics, Inc.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the warehouse/distribution facilities of Thomson Consumer Electronics, Inc. (Thomson), in the Indianapolis, Indiana area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 31, 1995.

Thomson is a subsidiary of Thomson, S.A., one of the world's largest manufacturers and marketers of consumer electronics products. Its U.S. headquarters is located in Indianapolis. Thomson (U.S.) employs 6,900 people, and its total sales exceeded $4.5 billion in 1994.

The proposal calls for subzone status at 4 Thomson facilities in Indiana: *Site 1* (52 acres)—export distribution facility, 710 South Girls School Road, Indianapolis; *Site 2* (189 acres)—television distribution facility, 1300 South Rogers Street, Bloomington; *Site 3* (30 acres)—cathode ray tube storage facility for color TV tube manufacturing plant, 1001 East 38th Street, Marion; and, *Site 4* (7 acres)—TV tube warehouse, 1908 Stout Field West Drive, Indianapolis. The facilities (270 employees) are used to warehouse and distribute a variety of consumer electronic products including: televisions, VCRs, picture tubes, audio equipment, and telecommunication products. No requests for manufacturing authority are being made at this time. Some 6 percent of the products shipped from the plant are exported.

Zone procedures would exempt Thomson from Customs duty payments on the foreign items that are reexported. On domestic sales, it would be able to defer Customs duty payments until the items are shipped from the facilities. The application indicates that the zone savings would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 8, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 23, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Penwood One, Suite 106, 11405 N. Pennsylvania St., Carmel, Ind. 46032.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: November 2, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–27834 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–843]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4929 or (202) 482–1776, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA).

PRELIMINARY DETERMINATION: We preliminarily determine that bicycles from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on April 25, 1995 (60 FR 21065, May 1 , 1995) the following events have occurred:

On April 28 and May 11 and 12, 1995, we sent surveys to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) requesting the identification of producers and exporters, and information on production and sales of bicycles exported to the United States. We also sent courtesy copies of this survey to the China Chamber of Commerce for Machinery and Electronics Products Imports and Exports (China Chamber) and the China Chamber of Commerce for Import/Export of Light Industrial Products. In June, the China Chamber submitted responses to the Department of Commerce's (the Department's) surveys. These responses included partial company-specific data from 29 companies and export data from all companies. See Respondent Selection section of this notice.

On May 22, 1995, the United States International Trade Commission (ITC) notified the the Department of its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of bicycle imports from China.

On June 22, 1995, petitioners amended the petition to revise the definition of an "incomplete bicycle" in order to discourage circumvention of any antidumping order issued in this investigation. We have revised the scope of this investigation to reflect petitioners' amendment (see the "Scope of Investigation" section of this notice, below).

On June 30, 1995, we determined that, due to limited resources, we would only be able to analyze the responses of the nine largest exporters of PRC bicycles to the United States. In August 1995, we received responses from three of the nine mandatory respondents. We also received responses from six of the nine exporters who had requested voluntary participation. (See Respondent Selection section of this notice).

Also, on June 30, 1995, the Department requested that interested parties provide information for valuing the factors of production and for surrogate country selection. We received comments from the interested parties in September 1995.

On August 18, 1995, petitioners requested a postponement of the preliminary determination. We granted petitioners' request, and postponed the preliminary determination until not later than November 1, 1995 (60 FR 44006, August 24 , 1995).

In September 1995, we issued supplemental questionnaires to the nine exporters from whom we received questionnaire responses. Responses to these questionnaires were received in September and October 1995.

On September 15, 1995, petitioners alleged that critical circumstances exist with respect to imports of bicycles from the PRC. Accordingly, on September 20, 1995, the Department requested information regarding shipments of bicycles for the period January 1993 to November 1995 from all respondents participating in this investigation. We received the requested information on October 4 and 5, 1995. For these responding companies, we used company-specific shipment data to perform our critical circumstances analysis. On October 25, 1995, we received updated shipment data for Hua Chin Bicycle Co., Ltd. (Hua Chin). However, this information was received too late to be analyzed for purposes of the preliminary determination.

On September 28, 1995, we issued a supplemental questionnaire to respondents requesting information regarding their selling, general, and administrative (SG&A) expenses. On October 27 and 31, 1995, respondents submitted responses to this questionnaire. Due to the time constraints of this investigation, the Department was unable to analyze this data for purposes of the preliminary determination.

Between September 28, and October 31, 1995, 11 PRC exporters submitted unsolicited section A questionnaire responses and requested separate rates treatment.

On September 25, 1995, and in subsequent submissions, certain respondents requested that the Department terminate the investigation on the grounds that the petition failed to contain all relevant price and cost information reasonably available to petitioners, and because the petition relied on unsubstantiated assertions regarding U.S. prices.

Scope of the Investigation

The product covered by this investigation is bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law, or the Harmonized Tariff Schedule of the United States (HTSUS): (1) The term "unassembled" means fully or partially unassembled or disassembled; (2) the term "incomplete" means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and (3) the term "unfinished" means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame, finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components, whether or not assembled together with the frame and/or fork: (a) The rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin.

The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

Complete bicycles are classifiable under subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the 1995 HTSUS. Incomplete bicycles, as defined above, may be classified for tariff purposes under any of the aforementioned HTSUS subheadings covering complete bicycles or under HTSUS subheadings 8714.91.20–8714.99.80, inclusive (covering various bicycle parts). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

Our normal practice in cases involving non-market economy countries is to examine sales over a six-month period. In this case, however, we examined the import data for bicycles and noticed a distinct seasonal pattern associated with the Christmas and Spring selling seasons. We, therefore, determined that it would be appropriate to extend the POI to capture a full-year seasonal pattern. As a result, the period of investigation (POI) in this case is April 1, 1994, through March 31, 1995.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations (see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China 59 FR 22585 (May 2, 1994) (Silicon Carbide) and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China 60 FR 22544 (May 8, 1995) (Furfuryl Alcohol). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producers' factors of production, valued, to the extent possible, in a comparable market economy that is a significant producer of comparable merchandise. The

sources of individual factor prices are discussed under the NV section, below.

Surrogate Country

The Department has determined that India, Kenya, Nigeria, Pakistan, Sri Lanka, and Indonesia are countries comparable to the PRC in terms of overall economic development (see Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated June 15, 1995).

According to the available information on the record, we have determined that India and Indonesia are significant producers of merchandise comparable to the subject merchandise. India and Indonesia, in fact, produce a broad range of bicycles, including children's bicycles, mountain bicycles, lightweight road bicycles, and BMX bicycles. Moreover, the bicycle industries in both countries, like their PRC counterparts, purchase imported components for production of export-quality bicycles.

Because both countries are significant producers of bicycles, we analyzed the availability and quality of the surrogate price data from both India and Indonesia. Regarding Indonesia, petitioners submitted excerpts from a 1992 Indonesian government survey pertaining to the Indonesian bicycle industry. The survey is an annual government study which contains the average unit values for the majority of components used to produce bicycles. However, this survey does not report prices by material composition, quality, size, or other variations in the physical characteristics of the components. Furthermore, the portions within the survey that pertain to SG&A expenses, as well as profit, are not readily identifiable. It is, therefore, not apparent what should or should not be included in these categories. Lastly, it appears that certain factor values provided in the 1992 study are abnormally high when compared with comparable figures from 1991 and 1993, as provided by respondents subsequent to the initiation of this case.

Regarding India, respondents submitted Indian bicycle industry publications containing suggested wholesale and retail prices of several of the largest bicycle companies in India, covering the entire POI. Respondents also submitted a price list, contemporaneous with the POI, from one of the largest bicycles manufacturers in India, as well as 1993–1994 annual reports from two of the largest bicycle manufacturers in India. We also note that India, like the PRC, has a long and established tradition of bicycles production. This is not the case with Indonesia, where the bicycles industry was developed relatively recently.

The Indian data, like the Indonesian data, contains prices for components without specific descriptions with regard to size, material content, design, or other variations in the physical characteristics. However, the Indian data, in certain instances, does contain more specific information regarding the characteristics of components than the Indonesian data. In addition, the Indian data encompasses the entire POI. Moreover, contrary to petitioners' assertion that the Indian data submitted by respondents was self-serving, the objectivity of the data was corroborated by the U.S. embassy in New Delhi when it transmitted the identical market publication in response to the Department's request for pricing information. Lastly, the financial reports submitted for two large Indian bicycle companies provided information which was sufficiently detailed to render it usable in calculating factory overhead, SG&A, and profit.

For these reasons, we find that the availability and quality of the Indian data is superior to the Indonesian data. In instances where the Indian data was not available for a particular item, we used Indonesian data (subject to the conditions noted below).

Accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and where appropriate. We have obtained and relied upon published publicly available information wherever possible. However, due to the unique nature of the subject merchandise in this investigation, there are certain instances in which the Department determined that the published publicly available information was not adequate. Below is a discussion regarding situations in which we did not use the Indian prices (see, the "Valuation of Bicycle Parts" section of this notice).

Respondent Selection

In NME cases, we presume a single rate is applicable to all exporters and we attempt to examine the sales of all exporters during the POI. As is our normal practice, we sent a survey to MOFTEC to determine who the producers and exporters were, the relationships between and among these companies, and relevant information about production and exports. In response to the survey, the China Chamber of Commerce for Import & Export of Machinery and Electronics (the Chamber), which covers the bicycle industry, provided a list of companies identified by Chinese Customs as exporters of bicycles from the PRC to the United States, along with their respective export volumes. The Chamber also provided limited company-specific data regarding 29 other firms. This information showed that the number of exporters was extremely large. In fact, based on the information submitted by the Chamber, it appeared that there were well over 100 exporters of Chinese bicycles during the calendar year 1994. Given that we did not have the administrative resources to examine the sales of all exporters, we determined that our investigation would be limited to the analysis of the sales of the nine largest PRC exporters of bicycles to the United States. The identification of the largest exporters was based on the data supplied by the Chamber. We issued questionnaires to MOFTEC with instructions that all nine companies were required to respond to the questionnaire.

At the time we selected these companies, we were aware of at least ten other companies that wished to participate in the investigation as voluntary respondents. Although we had already determined that we did not have the resources to examine more than nine, we indicated that should any of the nine mandatory respondents fail to respond, we would randomly select voluntary respondents for analysis from those companies providing complete questionnaire responses, including a valid separate rates claim, on the date the mandatory responses were due.

On the due date for the nine mandatory respondents, we received questionnaire response from only three, that is, six mandatory respondents failed to respond. Instead, six other companies supplied voluntary responses.

All nine companies who submitted complete questionnaire responses on the due date have qualified for a separate rate. See Separate Rates section below.

Finally, in October, several months after the due date for the mandatory and voluntary responses, we received partial questionnaire responses from 11 companies. These were responses to only section A of the questionnaire which deals primarily with separate rates. We are rejecting these unsolicited responses as untimely. See China-Wide Rate section below for these companies.

Separate Rates

Four of the responding exporters in this investigation are located outside the

PRC. They are (1) Merida Industry (Hong Kong) Co., Ltd./Merida Bicycle Co., Ltd . (hereinafter Merida); (2) Giant China Co., Ltd. (hereinafter Giant); (3) Hua Chin Bicycle Co., Ltd. (hereinafter Hua Chin); and (4) Chitech Industries, Ltd. (Hong Kong) (and affiliated parties Tandem Industries, Ltd. (Hong Kong), Magna Technology Corp. (Taiwan), Taiwan Tandem Co., Ltd. (Taiwan), and Shun Lu Bicycle Co. (aka Shunde Tandem Bicycle Parts Company) (hereinafter Chitech)). Further, there is no PRC ownership of any of these companies. Therefore, we determine that no separate rates analysis is required for these exporters because they are beyond the jurisdiction of the PRC government. See, e.g., Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR 22359, 22361, May 5, 1995).

The remaining five respondents are joint ventures between Chinese and foreign companies. They are (1) CATIC Bicycle Co, Ltd. (hereinafter CATIC); (2) Shenzhen China Bicycles Co. (Holdings)., Ltd. (hereinafter CBC); (3) Shenzhen Overlord Bicycle Co., Ltd. (hereinafter Overlord); (4) Universal Cycle Corp. (hereinafter Universal); and (5) Bo An Bike Co., Ltd. (hereinafter Bo An). For these respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China 56 FR 20588 (May 6, 1991) (Sparklers) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control, including laws, regulations and provisions enacted by the State Council of the central government of the PRC. Respondents have also submitted documents which establish that bicycles are not included on the list of products that may be subject to central government export constraints (*Export Provisions*).

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they establish an absence of *de jure* control. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China, 60 FR 29572, 29573 (June 5, 1995); see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544 (May 8, 1995). We have no new information in this preceding which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence, that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See Silicon Carbide and Furfuryl Alcohol.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide and Furfuryl Alcohol).

Each respondent has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions and, according to respondents, there is no information on the record suggesting central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, we preliminarily determine that each of the nine exporters has met the criteria for the application of separate rates. We will examine this matter further at verification and determine whether the questionnaire responses are supported by verifiable documentation.

China-Wide Rate

As stated above, six of the mandatory respondents did not respond to the questionnaire. Hence, we are applying a single antidumping rate to these exporters as well as all other exporters in the PRC based on our presumption that the export activities of these respondents who failed to respond are controlled by the PRC government. This PRC-wide antidumping rate is based on adverse facts available.

Facts Available

We have based the China-wide rate on facts available using adverse inferences. Given that this margin involves secondary data contained in the petition (*i.e.*, secondary information), we are required to corroborate this data, to the extend practible, pursuant to section 776(c) of the Act. See, also, Statement of Administrative Action at 200. We have identified several major items (*i.e.*, depreciation, interest, and profit, as well as the factor values for frames, forks, and rims) contained in the petition which individually comprise a significant portion of the normal value calculations. We compared the data in the petition to secondary data which includes but is not limited to the same type of data used as the basis for the petition and the audited financial reports of two of the largest Indian bicycle producers.

As a result of our analysis, we found that, in the majority of instances, the secondary information for these factor values are comparable to those provided in the petition. Accordingly, this petition information has been corroborated.

However, after analyzing the figures contained in the petition for depreciation, interest and profit (value-added), we found, as did both petitioners and respondents, that this figure does not reflect usual cost and profit in the Indonesian bicycle industry. Specifically, the 57.91 percent figure provided in the petition for 1992 does not correspond with the 22.84 and 22 percent figures provided for 1993 and 1991, respectively. Therefore, we find that the 57.91 percent figure is not corroborated, (*i.e.*, has no probative value in determining depreciation, interest, and profit).

We have used the 1991 value-added figure for depreciation, profit, and interest in recalculating the margins in the petition. We did not use the more current 1993 figure, because the study containing it was issued only in draft form.

Finally, the respondents have made numerous submissions requesting that the Department rescind the investigation based on the fact that the petitioners had a variety of information available to them which showed lower or even *de minimis* dumping margins. The respondents argue that the Indonesia study is demonstrably aberrant and that the petitioners had access to more accurate Indian data. The respondents also show that the petitioners had access to some Chinese bicycle prices which they did not use in the petition.

We disagree with the respondents that any of the information they provided forms a basis for rescinding the investigation. The statute and regulations lay out in detail the requirements for a petition. In particular, the statute states that the domestic producers are required to provide information supporting each element required, to the extent it is reasonably available. Nevertheless, we are concerned about any potential for abuse or misrepresentation by all parties and to that extent have carefully considered the respondents' allegations. After comparing data in the petition with the information provided by the respondents, we find no evidence of abuse or misrepresentation. Moreover, as discussed above, we have corroborated the data in the petition and, with one exception, are satisfied with the data and have relied on it in making our determination.

Fair Value Comparisons

To determine whether sales of bicycles from the PRC to the United States by the nine PRC exporters were made at less than fair value, we compared the "United States Price" (USP) to the NV, as specified in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For all responding exporters, with the exception of CATIC, which had only constructed export price (CEP) sales, we based USP on export price (EP) in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and when CEP methodology was not otherwise indicated.

In addition, for Giant, CBC, CATIC, and Chitech, where sales to the first unaffiliated purchaser took place after importation into the United States, we based USP on CEP, in accordance with section 772(b) of the Act.

We made company-specific adjustments as follows:

1. Bo An

We calculated EP based on packed, FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the FOB Hong Kong price, where appropriate, for foreign inland freight and brokerage and handling (which includes containerization, documentation fees, the Hong Kong terminal handling charge and PRC brokerage costs) and Hong Kong duty. As all foreign inland freight and brokerage and handling were provided by PRC suppliers, these services were valued in India.

2. CBC

We calculated EP and CEP based on packed, FOB Hong Kong port or CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for the following services which were provided by market economy suppliers: ocean freight, foreign brokerage and handling (which includes containerization, documentation fees, the Hong Kong terminal handling charge and PRC brokerage costs), marine insurance, Hong Kong duty expenses, U.S. brokerage and handling fees, U.S. duty expenses (which also included harbor maintenance fees and merchandise processing fees), and freight expenses to the first unrelated U.S. customer and/or to the U.S. warehouse. We also deducted from the starting price, where appropriate, an amount for foreign inland freight. However, because these movement services were provided by PRC suppliers, these services were valued in India. We also deducted, where appropriate, discounts and rebates from the starting price.

Because there was insufficient time to analyze U.S. selling expense data submitted by CBC for purposes of this preliminary determination, we did not deduct U.S. selling expenses from CEP. This information will be considered for purposes of the final determination.

3. CATIC

We calculated CEP based on FOB warehouse or CIF delivered prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for the following services which were provided by market economy suppliers: ocean freight, marine insurance, Kong Kong duty expenses, U.S. brokerage and handling fees, U.S. duty expenses (which also included harbor maintenance fees and merchandise processing fees), and freight expenses to the first unrelated U.S. customer and/or to the U.S. warehouse. We also deducted from the starting price, where appropriate, an amount for foreign inland freight and foreign brokerage and handling expenses. However, because these movement services were provided by PRC suppliers, these services were valued in India. We also deducted, where appropriate, discounts and repacking expenses from the starting price.

Because there was insufficient time to analyze U.S. selling expense data submitted by CATIC for purposes of this preliminary determination, we did not deduct U.S. selling expenses from CEP. This information will be considered for purposes of the final determination.

4. Giant

We calculated EP and CEP based on packed, FOB PRC port or CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for the following: foreign inland freight, foreign brokerage and handling, U.S. brokerage, international freight (which includes U.S. inland freight), U.S. duty, loading and containerization, and marine insurance (which also includes U.S. inland insurance, harbor maintenance fees and merchandise processing fees). All of the above expenses were provided by market economy carriers and paid for in market economy currencies. We also deducted an amount for foreign inland freight but since this service was provided by a PRC supplier, we valued this expense in India. We also deducted from the starting price, where appropriate, discounts and rebates.

Because there was insufficient time to analyze U.S. selling expense data submitted by Giant for purposes of this preliminary determination, we did not deduct U.S. selling expenses from CEP. This information will be considered for purposes of the final determination.

5. Hua Chin

We calculated EP based on packed, FOB Hong Kong port prices to

unaffiliated purchasers in the United States. We made deductions from the FOB Hong Kong price, where appropriate, for foreign inland freight and Hong Kong terminal handling fees. As all foreign inland freight and handling fees were provided by PRC suppliers, these services were valued in India.

6. Merida

We calculated EP based on packed, FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the FOB Hong Kong price, where appropriate, for foreign inland freight and brokerage and handling (which includes containerization, documentation fees, the Hong Kong terminal handling charge and PRC brokerage costs) and Hong Kong duty. As all foreign inland freight and brokerage and handling were provided by PRC suppliers, these services were valued in India.

7. Overlord

We calculated EP based on packed, FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the FOB Hong Kong price, where appropriate, for foreign inland freight brokerage and handling and Hong Kong duty. As all foreign inland freight and brokerage and handling were provided by PRC suppliers, these services were valued in India.

8. Chitech

We calculated EP and CEP based on packed, FOB Hong Kong port or CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for the following: foreign inland freight, domestic inland insurance, ocean freight (which includes "door to door" delivery and handling), marine insurance, Hong Kong Customs fees, and U.S. duties (including harbor maintenance and merchandise processing fees), U.S. brokerage and handling and U.S. inland freight from port to warehouse, all of which were provided by non-PRC suppliers and paid for in market economy currencies. In addition, we deducted from EP and CEP four types of discounts Chitech offers its customers.

Because there was insufficient time to analyze U.S. selling expense data submitted by Chitech for purposes of this preliminary determination, we did not deduct U.S. selling expenses from CEP. This information will be considered for purposes of the final determination.

9. Universal

We calculated EP based on packed, FOB Hong Kong port prices to unaffiliated purchasers in the United States. We made deductions from the FOB Hong Kong price, where appropriate, for foreign inland freight, foreign brokerage and handling (which includes containerization, documentation fees, the Hong Kong terminal handling charge, and PRC brokerage costs), and Hong Kong duty. As all foreign inland freight and brokerage and handling were provided by PRC suppliers, these services were valued in India.

Normal Value

In accordance with section 773(c) of the Act we calculated NV based on factors of production reported by the responding exporters. To calculate NV where an input was sourced from a market economy and paid for in market economy currency, we have used the actual price paid for the input in accordance with Department practice, when possible. *Lasko Metal Products* v. *United States*, 437.3d 1442, 1443 (Fed. Cir. 1994) (*Lasko*)

In instances where inputs were sourced domestically, we valued the factors using publicly available published information from India where possible. Where appropriate Indian values were not available, we used publicly available published information from Indonesia, where possible, or other facts available, such as the publicly ranged market economy prices of the other responding exporters.

Valuation of Bicycle Parts and Components

The nine responding exporters reported that they purchased a large number of different components (*e.g.*, brake sets) and sub-components (*e.g.* brake arms) for use in assembling finished bicycles. The vast majority of these purchased inputs are sub-components. These inputs, both components and sub-components, vary in terms of material composition (*e.g.*, carbon steel versus aluminum), size, design (*e.g.*, cantilever versus side-pull brakes), and other relevant physical characteristics.

Some inputs are purchased from market-economy suppliers and paid for in convertible currency. Following our normal practice, we used the actual price paid for these inputs, where possible, See, Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China FR 56 55271, (October 25, 1991) (*Fans*). However, where the input was not purchased from a market economy supplier and paid for in a market economy currency, it was necessary to develop a surrogate value.

For certain components and sub-components, differences in material content and design result in large price differentials. For example, there is a substantial difference in the price of a frame tube made from high-tensile steel versus one made with chrome-molybdenum. Thus, for example, using a surrogate value for a frame tube of high-tensile steel would unreasonably distort the calculation of NV for a bicycle with a chrome-molybdenum frame. In reality, for certain components, a specific design or material composition can result in a distinctly different input.

With respect to the factors of production methodology, the Court of Appeals has noted that "there is much in the statute that supports the notion that it is Commerce's duty to calculate margins as accurately as possible and to use the best information in doing so." See, *Lasko*. Therefore, to minimize distortions and ensure the most accurate margin calculation possible, we developed a hierarchy for selection of surrogate values for parts and components based on the need for specificity with respect to design or material composition or both. Our first choice under that hierarchy is to use data from India or Indonesia if it is specific with respect to design and material composition or if we could not determine, based on the evidence, whether significant variations in the price data stemmed from design or material composition. Where design or material composition appeared to have a significant impact on price but design or material-specific data was not available in a surrogate country, we used the publicly ranged data on prices from market-economy suppliers to the PRC. We believe that in spite of the ranging, these data are far superior to average values that would not reflect important differences in design and material composition. However, we used this ranged data strictly as a second alternative to design- or material-specific data from India or Indonesia, where available. In one instance, a respondent reported a number of sub-components produced by its affiliated supplier. In that instance, we did not value those subcomponents because we did not have any sufficient price information to do so. Instead, we valued the smallest component that incorporated these subcomponents.

Other Factor Valuations

Where possible, we used public information for the surrogate values. The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see the Factors Calculation Memorandum to Barbara R. Stafford from the team, dated November 1, 1995.

To value caustic soda, sulfuric acid, nitric acid, oxalic acid, and chromic anhydride, we used public information from POI issues of the Indian publication Chemical Weekly. For various phosphates, we relied on import prices contained in the September 1994 issue of Monthly Statistics of the Foreign Trade of India (Monthly Statistics).

Regarding sodium bichromate, we could not find a price for this exact input. Therefore, we used an average of prices for two chemicals we found to be equally similar in name to sodium bichromate: sodium dichromate and sodium chromate. We used Indian import price data from Monthly Statistics and from the Indian publication, Chemical Business, to value this input.

Regarding dimethyl benzene, we could not obtain an exact material price from public information from India. Absent public information from India, we used the price of a similar chemical to value this input from an Indonesian publication. To do this, we used a 1993 price for diethyl benzene from the Indonesian Foreign Trade Statistical Bulletin for Imports (Statistical Bulletin).

To value acetylene, argon gas, and carbon dioxide, we relied on 1993 Indonesian price data in the Statistical Bulletin because we could not locate a price from Indian publications.

To value hydrochloric acid, we relied on a 1993 Indian domestic price quote from Chemical Weekly because the prices for this input in other known Indian publications are based on an Indian import category that is not exclusive to hydrochloric acid (see Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China FR 59 66895 (December 28, 1995.)

To value degreaser, we used information from the only known Indian publication which contained such a price, The Analyst's Import Reference 1993, Chemical & Pharmaceutical Products (The Analyst).

To value solvent, we could not find a material price from publicly available information. Therefore, we used the price of a similar chemical which also dilutes paint, thinner, to value this input. To value solvent, we used Indian price data from Monthly Statistics.

To value diesel fuel, we used a POI Indian price from the publication AP Worldstream. To value liquefied petroleum gas, we used a POI price from the periodical Financial Times of India.

To value electricity, we used an average 1992 industrial rate from the publication Current Energy Scene in India because this publication contained data more contemporaneous to the POI than other known publications.

To value labor, we used data from the United Nations' publication Yearbook of Labor Statistics. Following the method established in the Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the PRC 60 FR 52647 (October 10, 1995), we find no basis to assume the skill level of the surrogate value, nor do we have agreement among parties regarding use of this labor rate for skilled and unskilled labor rate assumptions. Thus, we applied a single labor value to all reported labor factors, including indirect labor.

To value scrap metal, we relied on Indian data from Monthly Statistics. We treated the scrap metal as a by-product and deducted its value from the cost of manufacture for Merida, Chitech, Overlord, and Giant. This adjustment was not appropriate for the remaining respondents.

For certain subcomponents we had no published prices or publicly ranged market prices from which to choose. Therefore, we valued these specific components based on the content of material (*e.g.*, steel, plastic or rubber). To value components made of steel, we used an average tax-exclusive 1994 domestic steel price from the Indian publication Statistics for Iron and Steel. For components made of plastic, we used Indian price data from Monthly Statistics. For components made of rubber, we could not obtain publicly available information. Therefore, we could not value such items for the preliminary determination.

To value factory overhead, SG&A, and profit, we calculated average percentages based on 1993–94 data from the financial reports of two Indian producers of the subject merchandise. We made certain adjustments to the percentages calculated by the respondents as a result of reclassifying expenses contained in the financial reports.

Finally, to value the packing materials, corrugated cartons, uncorrugated cartons, bubble wrap, staples, adhesive tape, rope, packing paper, polypropylene, polyethylene, and plastic bags, we relied on Indian data from Monthly Statistics. To value glue, we used an average price based on Indian price data for two types of glue products from the publication Chemical Weekly.

Critical Circumstances

On September 15, 1995, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

In this investigation, the first criterion is satisfied. Two countries and a customs union—Canada, Mexico, and the European Union—have recently imposed antidumping orders on bicycles from the PRC. Therefore, we preliminarily determine that there is a history of dumping elsewhere of bicycles by PRC producers/exporters. Because there is a history of dumping, it is not necessary to address importer knowledge.

Because we have preliminarily found that the first statutory criterion is met, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR 353.16(f) and 353.16(g), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) Volume and value of the imports: (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive." The Department examines shipment information submitted by the respondent or import statistics when respondent-specific shipment information is not available.

To determine whether or not imports of subject merchandise have been massive over a relatively short period, we compared each respondent's export volume for either the five or six months subsequent to the filing of the petition to that during the five or six months prior to the filing of the petition for all respondents, except Hua Chin, because we had such data. For Hua Chin, we only had three months of shipment data. Therefore, for this company, we compared the export volume for the three months subsequent to the filing of the petition to that during the three months prior to the filing of the petition. These periods were selected based on the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the effective date of the preliminary determination. For the non-responding PRC exporters, we did this analysis using import statistics.

Based on our analysis, we preliminarily find that the increase in imports were less than 15 percent with respect to Merida, Giant, Overlord, CBC, Universal, and CATIC. We found that the increase in imports of the subject merchandise from Bo An, Hua Chin and Chitech and the non-responding companies in the PRC increased by more than 15 percent over a relatively short period. However, based on the evidence of seasonality, discussed below, we do not find the increases to be massive with respect to Bo An, Chitech and the non-responding companies in the PRC. We do find, however, the increase in imports of the subject merchandise from Hua Chin to be massive over a relatively short period of time.

We compared the increase in shipments from the first to the second quarter for the period 1993 to 1995 for Bo An, Chitech, and Hua Chin and the non-responding PRC companies to determine if there was a regular seasonal occurrence associated with spring sales. We found that for Bo An, Chitech, and the non-responding PRC government there was such a regular occurrence and, therefore, determined the observed increase in the imports between the two periods was not reflective of a massive surge of imports associated with the filing of the petition. Therefore, we determined that imports were not massive for these two companies and the non-responding PRC companies. We noted no such pattern for Hua Chin. We were unable to consider the share of domestic consumption accounted for by the imports, pursuant to 353.16(f)(1)(iii), because the available data did not permit such analysis.

Therefore, because there is a history of dumping of such or similar merchandise, and imports of bicycles from Hua Chin have been massive over a relatively short period of time, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of bicycles from Hua Chin. Because imports from Merida, Giant, Overlord, CBC, Universal, CATIC Bo An, Chitech and the non-responding PRC companies have not been massive, we preliminarily determine that there is not a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from these companies.

We will make a final determination concerning critical circumstances when we make our final determination of sales at less than fair value in this investigation.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of bicycles from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service will require a cash deposit or posting of a bond equal to the estimated dumping margins by which the normal value exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice. Bo An, CATIC, and Giant will be excepted from these instructions because their sales of subject merchandise were found not to have been sold below fair value. Bo An, CATIC, and Giant's sales of subject merchandise will be excluded from an antidumping duty order should one be issued.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Bo An	0.00
CATIC	0.00
Giant	0.00
Hua Chin	18.04
Merida	2.39
CBC	5.69
Overload	3.10
Chitech	5.29
Universal	2.87
PRC-wide rate	61.7

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than December 27, 1995, and rebuttal briefs, no later than January 2, 1996. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. At this time, the hearing is scheduled for January 4, 1996, the time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by January 16, 1996.

This determination is published pursuant to section 733(f) of the Act.

Dated: November 1, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–27832 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–DS–P

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on December 6, 1995 from 10:30 a.m. to 3:00 p.m. at the U.S. Department of Commerce in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Room 4036, Washington, D.C. 20230, telephone: (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on July 5, 1994, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: November 1, 1995.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 95–27730 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 040795A]

Endangered and Threatened Species; Direct Budgetary Cost Addendum to the Proposed Snake River Salmon Recovery Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; extension of public comment period.

SUMMARY: NMFS is announcing the availability of the Direct Budgetary Cost Addendum (Addendum) to its Proposed Recovery Plan for Snake River Salmon (Proposed Recovery Plan); the Addendum provides more complete estimates of the direct cost to the Federal Government and a better description of the time required to implement the Proposed Recovery Plan. To provide the public with the opportunity to comment on this Addendum and the Proposed Recovery Plan, NMFS is extending the public comment period.

DATES: Comments must be submitted on or before December 11, 1995. NMFS will accept all comments on the Proposed Recovery Plan, including the Direct Cost Addendum, submitted between April 18, 1995, and December 11, 1995.

ADDRESSES: Comments and information regarding the Proposed Recovery Plan and the Addendum, as well as requests for copies of these documents, should be submitted to Snake River Salmon Recovery Plan, National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Katherine Hollar, (503) 231–2337.

SUPPLEMENTARY INFORMATION: On April 18, 1995 (60 FR 19388), NMFS published a notice of availability of the Proposed Recovery Plan for Snake River Salmon listed under the Endangered Species Act and announced that the public comment period would close on July 17, 1995. NMFS also announced its intention to provide more complete cost estimates of the Proposed Recovery Plan tasks and a better description of the time required to carry out these tasks. Since April 18, 1995, thousands of members of the public have provided comments on the Proposed Recovery Plan in writing or at public hearings. As a result of the large response, and because the Addendum to the Proposed Recovery Plan was expected to be published in mid-October of 1995, the public comment period was extended to November 17, 1995 (60 FR 44855, August 29, 1995).

NMFS is keenly aware of the public's interest in the process of salmon recovery and values public comments as an important source of information to help improve Federal decisions. Therefore, NMFS further extends the comment period on the Proposed Recovery Plan to December 11, 1995. Copies of the Addendum will be mailed to every person who received the Proposed Recovery Plan and are available upon request (see **ADDRESSES**).

Dated: October 30, 1995.

William W. Fox,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–27746 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–22–F

Notice of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel meeting in the areas of management and organization, budget status, strategical and tactical issues, law and policy, new technology and research, economic development, outreach for enhancement of Department of Commerce goals, and new business.

DATES: The announced meeting is scheduled during 2 days: Monday, November 20, 8:30 a.m. to 5:00 p.m.; Tuesday, November 21, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Sea Grant Office.

FOR FURTHER INFORMATION CONTACT: Dr. Chandrakant Bhumralkar, Acting Director, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1315 East-West Highway, Room 11362, Silver Spring, Maryland 20910, (301) 713–2448 extension 161.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Monday, November 20, 1995

8:00–8:10 Panel Introductions
8:10–9:00 Legislative Update
9:00–10:00 National Sea Grant Office Briefing
10:30–11:00 Status on the Selection of Sea Grant Director and 1996 Site Visit Plans
11:00–12:00 Council of Sea Grant Directors/ Sea Grant Association
1:00–2:30 Role of Panel: General Discussion
3:00–5:00 Involvement in Secretarial and Under Secretarial Constituency Roundtable Discussions

Tuesday, November 21, 1995

8:00–9:00 NOAA Briefing
9:00–9:30 Communications Paper
9:30–10:30 Operational Improvements
10:30–12:00 Panel Organizational Business
12:00 Adjourn Meeting

The meeting will be open to the public.

Dated: November 3, 1995.

Ned A. Ostenso,

Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 95–27826 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–12–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment Export Visa Requirements for Certain Silk Apparel and Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

November 3, 1995.

Make the following changes in the document published in the **Federal Register** on October 24, 1995 (60 FR 54478):

1. In the notice, 3rd paragraph, 4th line, under the heading 'Supplementary Information' change 'February 28, 1996' to 'February 29, 1996.'
2. In the letter to the Commissioner of Customs, 3rd paragraph, 6th line, change 'February 28, 1996' to 'February 29, 1996.'

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–27718 Filed 11-8-95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Public Comment Period on the Implementation of the Electronic Visa Information System

November 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Seeking Public Comment on the Implementation of the Electronic Visa Information System

FOR FURTHER INFORMATION CONTACT: Julie Carducci, Office of Textiles and Apparel, U.S. Department of Commerce, (202)482–3588.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Electronic Visa Information System (ELVIS) allows foreign governments to electronically transfer shipment information on textile and apparel shipments which are subject to quantitative restrictions, to the U.S. Customs Service. Preparations are underway to move beyond the current test phase and begin implementation of ELVIS with China, Korea, the Philippines and Singapore on January 1, 1996, pending bilateral agreement to amend the existing visa arrangements. As other trading partners complete the technical requirements, they will also be added to this system. (Note: This implementation will not eliminate the current requirement for a valid paper visa to accompany each shipment. After six months from the date of implementation, an assessment of the dual visa system will be made to determine whether a transition to a paperless ELVIS system with selected trading partners is appropriate.)

Implementation will require a complete and accurate ELVIS transmission before the U.S. Customs Service permits entry for a shipment. U.S. Customs will:

A. Not release merchandise if an ELVIS transmission has not been received from the country of origin.

B. Not release merchandise if the ELVIS transmission for that shipment is missing any of the following: visa number, category or part category, quantity, unit of measure, date of issuance, manufacturer identification number; or if information in the transmission does not match information supplied by the importer, or agent on behalf of the importer.

C. Not release merchandise if the quantity being entered is greater than the quantity transmitted.

D. Not release merchandise if the visa number has previously been used, except in the case of a split shipment.

E. Require a new, correct ELVIS transmission from the country of origin before releasing a shipment that has been denied entry because of one of the circumstances mentioned above.

The Committee for the Implementation of Textile Agreements is requesting interested parties to submit comments on the January 1, 1996 implementation of the Electronic Visa Information System. Comments must be received on or before Friday, December 8, 1995. Comments may be mailed to the Acting Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–27797 Filed 11–8–95; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Coal- and Wood-Burning Stoves

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of coal- and wood-burning stoves. The collection of information is in regulations entitled "Coal and Wood Burning Appliances—Notification of Performance and Technical Data," codified at 16 CFR Part 1406. These regulations require manufacturers and importers of coal- and wood-burning stoves to provide instructions for safe installation, operation, and maintenance on permanent labels attached to those appliances, and in owner's manuals, catalogs, and point-of-purchase materials. The regulations also require manufacturers and importers to provide a copy of the label and owner's manual for each model of stove, and an explanation of how minimum clearance distances between the stove and combustible materials in floors, walls, and ceiling were determined. The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than January 8, 1996.

ADDRESSES: Written comments should be captioned "Coal- and Wood- Burning Stoves" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR Part 1406, call or write Nicholas V. Marchica, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION: In 1981, residential fires involving coal- and wood-burning stoves were associated with an estimated 1,200 injuries and an estimated 160 deaths. Many of these fires resulted from installation of coal- and wood-burning stoves too close to combustible materials in walls, ceilings, floors, or carpets. Other causes of fires associated with these appliances included improper operation, such as over-fueling, and lack of proper maintenance.

A. Regulations Requiring Technical Information Related to Safety

To reduce risks of death and injury from fires associated with coal- and wood-burning stoves, the Commission issued regulations in 1983 requiring manufacturers to provide specified performance and technical information about their products to prospective purchasers, consumers, and the Commission. These regulations are codified at 16 CFR Part 1406 and were issued under the authority of section 27(e) of the Consumer Product Safety Act (CPSA) (15 U.S.C. § 2076(e)).

The Office of Management and Budget (OMB) approved the collection of information in the regulations under control number 3041–0040. OMB's most recent extension of approval expired on January 31, 1995. The Commission now proposes to request a reinstatement of approval without change for the collection of information in the regulations.

The regulations require manufacturers to provide instructions for safe installation, operation, and maintenance on permanent labels attached to coal- and wood-burning stoves, in owner's manuals, in other accompanying literature, and in catalogs and point-of-purchase materials. The regulations also required manufacturers of coal- and wood-burning stoves to submit by December 6, 1983, the following information to the Commission: a copy of the label and owner's manual for each model of stove, and an explanation of how clearance distances were determined. Additionally, the regulations require manufacturers to submit this information to the Commission any time a change is made to the label or owner's manual for any model of stove, and at any time a new model of stove is introduced.

The Commission reviews all submissions from manufacturers of coal- and wood-burning stoves to assure that the information on the label and in owner's manuals, catalogs, and point-of-purchase materials is appropriate for safe installation, operation, and maintenance of these appliances. If necessary, the Commission obtains revision of any incorrect information on the label or in the owner's manual, catalog, or point-of-purchase materials for an individual stove model.

B. Estimated Burden

The Commission staff estimates that the total annual burden imposed by the regulations on manufacturers of coal- and wood-burning stoves will be about 30 hours. All manufacturers of stoves currently provide to consumers all of the information required by the regulations, and have made at least one submission of the information required to be provided to the Commission. The Commission staff estimates that, each year, manufacturers will introduce or modify about ten stove models. The manufacturers of the new or modified stove models are required by the regulations to design or revise labeling information and owner's manuals for those models. These manufacturers are also required to submit to the Commission copies of the new or revised labels and owner's manuals and a statement of the method used to calculate clearance distances which appear on the labels and in owner's manuals.

The Commission staff estimates that the regulations will impose an annual burden of about three hours on the manufacturer of each new or modified stove model. Most of that burden will result from collecting and sending the required information to the Commission.

The hourly wage for accounting and bookkeeping time required to collect and send the information is about $12, for an annual cost to the industry of $360.

The Commission will expend approximately one-half month of professional staff time reviewing, evaluating, and obtaining any correction which may be required of the information submitted by manufacturers to the Commission. The annual cost to the Federal government of the collection of information collection in these regulations is estimated to be $2,800.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the regulations for coal- and wood-burning stoves. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: November 3, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–27715 Filed 11–8–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense University, Board of Visitors

AGENCY: Department of Defense, National Defense University.

ACTION: Notice.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors. The meeting will be held between 0800–1200 and 1330–1530, November 17, 1995. The meeting will be held in Room 155C, Marshall Hall, Building 62, Fort Lesley J. McNair. For further information contact the Director, University Operations, National Defense University, Fort Lesley J. McNair, Washington, D.C. 20319–6000. To reserve space, interested persons should phone (202) 287–9416. The agenda will include present and future educational and research plans for the National Defense University and its components. The meeting is open to the public, but the limited space available for observers will be allocated on a first come, first served basis.

Dated: November 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–27716 Filed 11–8–95; 8:45 am]

BILLING CODE 5000–04–M

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 185. This bulletin lists revisions in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 185 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1995.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supercedes Civilian Personnel Per Diem Bulletin Number 184, published October 13, 1995 (60 FR 53344). Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office.

The text of the Bulletin follows:

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Alaska:						
Adak[5]	$10		$34		$44	10–01–91
Anaktuvuk Pass	83		57		140	12–01–90
Anchorage:						
05–15—09–30	147		64		211	05–15–95
10–01—05–14	81		57		138	03–01–95
Aniak	73		36		109	07–01–91
Atqasuk	129		86		215	12–01–90
Barrow	105		83		188	11–01–93
Bethel	76		67		143	02–01–94
Bettles	65		45		110	12–01–90
Cold Bay	110		54		164	07–01–93
Coldfoot	95		59		154	10–01–92
Cordova:						
05–01—09–30	79		76		155	05–01–95
10–01—04–30	67		73		140	03–01–95
Craig	67		35		102	07–01–91
Denali National Park	113		68		181	05–01–94
Dillingham	85		64		149	11–01–93
Dutch Harbor-Unalaska	113		67		180	05–01–92
Eielson AFB:						
05–15—09–15	106		59		165	05–15–94
10–01—05–14	68		55		123	01–01–94
Elmendorf AFB:						
05–15—09–30	147		64		211	05–15–95
10–01—05–14	81		57		138	03–01–93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Emmonak	62		61		123	10–01–95
Fairbanks:						
05–15—09–15	106		59		165	05–15–94
09–16—05–14	68		55		123	01–01–94
False Pass	80		37		117	06–01–91
Ft. Richardson:						
05–15—09–15	106		64		211	05–15–95
10–01—05–14	81		57		138	03–01–95
Ft. Wainwright:						
05–15—09–15	106		59		165	05–15–94
09–16—05–14	68		55		123	01–01–94
Homer:						
05–01—09–30	71		60		131	05–01–94
10–01—04–30	60		58		118	02–01–94
Juneau:						
04–30—09–14	88		72		160	04–30–95
09–15—04–29	77		71		148	03–01–95
Katmai National Park	89		59		148	12–01–90
Kenai-Soldotna:						
04–02—09–30	104		74		178	04–02–94
10–01—04–01	67		71		138	01–01–94
Ketchikan:						
05–01—09–30	90		69		159	05–01–95
10–01—04–30	73		68		141	03–01–95
King Salmon[3]	75		59		134	12–01–90
Klawock	75		36		111	07–01–91
Kodiak	79		65		144	03–01–95
Kotzebue	133		87		220	05–01–93
Kuparuk Oilfield	75		52		127	12–01–90
Metlakatla:						
06–01—10–01	95		58		153	06–01–94
10–02—05–31	72		56		128	02–01–94
Murphy Dome:						
05–15—09–15	106		59		165	05–15–94
09–16—05–14	68		55		123	01–01–94
Nelson Lagoon	102		39		141	06–01–91
Noatak	133		87		220	05–01–93
Nome	71		67		138	10–01–93
Noorvik	133		87		220	05–01–93
Petersburg	77		54		131	03–01–95
Point Hope	99		61		160	12–01–90
Point Lay[6]	106		73		179	12–01–90
Prudhoe Bay-Deadhorse	73		60		133	11–01–93
Sand Point	64		67		131	08–01–94
Seward:						
05–01—09–30	100		55		155	05–01–95
10–01—04–30	83		53		136	03–01–95
Shungnak	133		87		220	05–01–93
Sitka-Mt. Edgecombe:						
05–15—09–30	93		64		157	05–15–95
10–01—05–14	83		63		146	03–01–95
Skagway:						
05–01—09–30	90		69		159	05–01–95
10–01—04–30	73		68		141	03–01–95
Spruce Cape	79		65		144	03–01–95
St. George	100		39		139	06–01–91
St. Mary's	77		59		136	06–01–93
St. Paul Island	62		63		125	10–01–93
Tanana	71		67		138	10–01–93
Tok:						
05–02—09–30	64		56		120	05–02–95
10–01—05–01	50		52		102	03–01–95
Umiat	97		63		160	12–01–90
Valdez:						
05–01—09–14	95		70		165	05–01–95

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
09–15—04–30	79		69		148	03–01–95
Wainwright	90		75		165	12–01–90
Walker Lake	82		54		136	12–01–90
Wrangell:						
05–01—09–30	90		69		159	05–01–95
10–01—04–30	73		68		141	03–01–95
Yakutat	77		58		135	11–01–93
Other[3 4 6]	65		50		115	06–01–95
American Samoa	73		48		121	11–01–94
Guam	150		82		232	06–01–95
Hawaii:						
Island of Hawaii: Hilo	73		64		137	10–01–95
Island of Hawaii: Other	98		63		161	10–01–95
Island of Kauai	105		75		180	10–01–95
Island of Kure[1]			13		13	12–01–90
Island of Maui:						
04–18—11–30	105		73		178	10–01–95
12–01—04–17	116		75		191	12–01–95
Island of Oahu	100		70		170	10–01–95
Other	79		62		141	06–01–93
Johnston Atoll[2]	22		22		44	08–01–94
Midway Islands[1]			13		13	12–01–90
Northern Mariana Islands:						
Rota	80		90		170	06–01–95
Saipan	89		89		178	06–01–95
Tinian	61		72		133	06–01–95
Other	20		13		13	12–01–90
Puerto Rico:						
Bayamon:						
04–16—12–23	96		65		161	11–01–95
12–24—04–15	130		70		200	12–24–95
Carolina:						
04–16—12–23	96		65		161	11–01–95
12–24—04–15	130		70		200	12–24–95
Fajardo (Incl Ceiba, Luquillo and Humacao):						
04–16—12–10	65		52		117	10–01–93
12–11—04–15	110		52		162	12–11–93
Ft. Buchanan (Incl GSA Serv Ctr, Guaynabo):						
04–16—12–23	96		65		161	11–01–95
12–24—04–15	130		70		200	12–24–95
Mayaguez	93		70		163	11–01–95
Ponce	107		64		171	11–01–95
Roosevelt Roads:						
04–16—12–10	65		52		117	10–01–93
12–11—04–15	110		52		162	12–11–93
Sabana Seca:						
04–16—12–23	96		65		161	11–01–95
12–24—04–15	130		70		200	12–24–95
San Juan (Incl San Juan Coast Guard Units):						
04–16—12–23	96		65		161	11–01–95
12–24—04–15	130		70		200	12–24–95
Other[7]	75		52		127	11–01–95
Virgin Islands Of the U.S.:						
St. Croix:						
04–15—12–14	119		73		192	08–01–94
12–15—04–14	169		78		247	12–15–94
St. John:						
06–01—12–14	255		78		333	11–01–94
12–15—05–31	370		90		460	12–15–94
St. Thomas:						
04–17—12–17	141		106		247	08–01–04
12–18—04–16	220		114		334	12–18–94
Wake Island[2]	30		25		55	10–01–94
All Other Localities	20		13		33	12–01–90

Footnotes:

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparreovhn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

Daily Rate

DOD Personnel—$13
Non-DOD Personnel—$30

[7] (Eff 9–1–94) A per diem rate of $200 (lodging $148; M&IE $52) will be in effect for Las Croabas, Puerto Rico, during the Annual Conference of the National Association of State Boating Law Administrators (NASBLA) being held at the El Conquistador Resort and Country Club. This rate will be in effect from 4–12 September 1994 only for travelers attending the conference and only for travelers staying at the El Conquistador Resort.

Dated: November 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–27717 Filed 11–8–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Notice of Rescheduling of Public Hearings and Extension of Comment Period on the Draft Environmental Impact Statement for Construction and Operation of a Relocatable Over the Horizon Radar, Puerto Rico

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for construction and operation of a Relocatable Over the Horizon Radar (ROTHR) system in Puerto Rico.

Public hearings scheduled for September 26, 1995 in Lajas, Puerto Rico and for September 28, 1995 in Vieques, Puerto Rico were postponed. This announcement is to notify the public that the public hearings have been rescheduled. The Navy will be participating in two public hearings to be held by the Puerto Rico Environmental Quality Board on November 27, 1995 at 6:30 p.m. in the Multiple Use Center, Vieques, Puerto Rico; and on November 29, 1995 at 6:30 p.m. in the Youth Cinema, Municipal Commercial Center, Lajas, Puerto Rico. These hearings will serve as NEPA hearings as recommended in 40 CFR 1506.2 and 1506.6. All comments received at these hearings, as well as written comments received, will be considered in the Final Environmental Impact Statement prepared by Navy in accordance with NEPA.

The DEIS has been distributed to various federal, commonwealth, local agencies, elected officials, special interest groups, and libraries. The DEIS is available for review at the following locations in Puerto Rico: Town Hall, Municipality of Vieques; Public Library, Municipality of Lajas; Environmental Quality Board, Hato Rey; Environmental Quality Board, Ponce Regional Office, Ponce; and Environmental Quality Board, Mayagues Regional Office, Mayagues.

Written statements and/or comments regarding the DEIS should be mailed to: Department of the Navy, Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511–2699 (Attn: Ms. Linda Blount, Code 2032LB). Questions may be directed to Ms. Linda Blount, (804) 322–4892 or Mr. Jose Negron, Commander Fleet Air, Caribbean, (809) 865–4215. All comments must be postmarked no later than December 15, 1995 to become part of the official record.

Dated: November 6, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–27805 Filed 11–8–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for the Management of Spent Nuclear Fuel From the K Basins at the Hanford Site, Richland, Washington

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearing.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Environmental Impact Statement (DEIS) for the Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, Washington (DOE/EIS–0245D) for public review and comment. The date, time, and place for a public hearing on the DEIS is also provided. The alternative actions analyzed in the DEIS would occur at the DOE's Hanford Site in south central Washington State and in a foreign country if the foreign processing alternative were selected.

DATES: Comments must be postmarked by December 29, 1995, to ensure consideration. Late comments will be considered to the extent practicable. The DOE will use the comments received to help prepare the Final EIS. A public hearing on the DEIS will be held on December 12, 1995 at 1:30 p.m. and again at 7 p.m. at the Red Lion Inn, 2525 N 20th, Pasco, Washington. The public hearing will provide an opportunity for information exchange and discussion and for submission of oral and/or written comments.

ADDRESSES: Requests for copies of the DEIS, written comments on the DEIS, or other matters regarding this environmental review should be addressed to: Dr. P.G. Loscoe, U.S.

Department of Energy, P.O. Box 550, M/S S7–41, Richland, Washington 99352. Dr. Loscoe may be contacted by telephone at (509) 376–7434 or at (800) 321–2008.

FOR FURTHER INFORMATION CONTACT: For general information on the project, interested parties may contact Dr. Loscoe at the address and phone number above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Ave., SW, Washington, D.C. 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600.

SUPPLEMENTARY INFORMATION: The DEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370d), the Council on Environmental Quality NEPA regulations (40 CFR 1500), and the DOE NEPA regulations (10 CFR 1021).

DOE proposes to provide for the safe management and storage of spent nuclear fuel (SNF) that is currently stored in the K-East and K-West storage basins at the Hanford Site. DOE has determined that the K Basins at Hanford are not suitable for long-term storage of SNF.

The DEIS analyzes the environmental consequences of alternative ways to provide for the safe management and storage of SNF currently stored in the Hanford K Basins. DOE's preferred alternative is drying/passivation (conditioning) of the SNF followed by dry vault storage. This alternative would provide for drying the SNF, placing it in multi-canister overpacks in an inert atmosphere, and storing it in a vault for up to 40 years. The DEIS compares the environmental impacts that would be expected to occur from continuing storage in the K-East and K-West basins (the no action alternative) with the consequences that would be expected to occur if DOE implemented the preferred alternative or one of five other alternatives. The five other alternatives are (1) an enhanced K Basin storage alternative under which SNF would be consolidated in the K-West Basin; (2) removal of the SNF and subsequent storage in a new wet storage facility at Hanford; (3) removal of the SNF followed by calcination and dry storage at Hanford; (4) removal of the SNF followed by processing at Hanford and dry storage of the recovered uranium and plutonium at Hanford; and (5) removal of the SNF followed by foreign processing and dry storage of the recovered uranium and plutonium at Hanford.

DOE has distributed copies of the DEIS to appropriate members of Congress, legislators, State of Washington agencies, American Indian tribal governments, local and county governments, federal agencies, and other interested parties.

Signed in Richland, Washington, this 2nd day of November 1995, for the United States Department of Energy.

Paul F.X. Dunigan, Jr.,

NEPA Compliance Officer, Richland Operations Office.

[FR Doc. 95–27821 Filed 11–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. GT96–31–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

November 3, 1995.

Take notice that on November 1, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 1, 1995:

Ninth Revised Sheet No. 1101
Eighth Revised Sheet No. 1105

Algonquin states that the purpose of this filing is to reflect a change in Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.14 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27748 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–40–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

November 3, 1995.

Take notice that on October 31, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96–40–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate the Red Buttes delivery facilities to deliver gas to Northern Gas of Wyoming (Northern Gas) under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that the Red Buttes delivery facilities were constructed at the request of Northern Gas pursuant to Section 311 of the Natural Gas Policy Act in Albany County, Wyoming. The estimated cost of the facilities is approximately $10,800. CIG states that it now seeks authorization to operate the facilities pursuant to Section 7(c) of the Natural Gas Act. CIG states the facilities consist of taps, approximately 200 feet of 2-inch pipe and appurtenant facilities. CIG also states that it currently makes deliveries to Northern Gas at the Red Buttes delivery facility of up to 100 Dth per day pursuant to Section 311.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27749 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–44–053]

El Paso Natural Gas Company; Notice of Tariff Filing

November 3, 1995.

Take notice that on October 27, 1995, El Paso Natural Gas Company (El Paso), tendered for filing pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, and in compliance with the Commission's letter order issued October 12, 1995 at Docket No. RP88–44–052, certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that the tendered tariff sheets are being submitted to reflect the designation of superseded sheets as required by the October 12, 1995 letter order. Accordingly, Substitute First Revised Sheet No. 215 supersedes First Revised Sheet No. 215, and Substitute Original Sheet No. 215A supersedes Original Sheet No. 215A. El Paso states that the tendered tariff sheets make no change to the previously approved tariff provisions.

El Paso respectfully requests that the Commission accept the tendered tariff sheets for filing and permit them to become effective on January 4, 1995, the date on which the Commission's July 14, 1995 order made the tariff sheets effective, subject to conditions.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27750 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–32–000]

Equitrans, Inc.; Notice of Refund Report

November 3, 1995.

Take notice that on November 1, 1995, Equitrans, Inc. (Equitrans) filed a Report summarizing the refunds of GRI overcollections that were credited to the October billing invoices of Equitrans' customers.

Equitrans states that on September 29, 1995, it received a refund from GRI of $182,901 for collections in excess of 105% of Equitrans' 1994 GRI funding level. Equitrans states that it credited this amount to its eligible firm customers in billing invoices which were mailed out on October 18, 1995. The credits were allocated to Equitrans' eligible firm customers pro-rata, based on GRI rate collections during the 1994 billing year.

Equitrans states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to be heard or protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27751 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–26–000]

Florida Gas Transmission Company; Notice of Final PGA Termination Report

November 3, 1995.

Take notice that on October 31, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

First Revised Sheet No. 8C

Pursuant to Section 26 of the General Germs and Conditions (GT&C) of FGT's FERC Gas Tariff, Third Revised Volume No. 1, as approved by Commission Order dated September 17, 1993 in Docket No. RS92–16, et al., FGT states that it is filing its Final PGA Termination Report (Report). The terms of Section 26 require FGT to file the Report no later than two (2) years after FGT's implementation of its restructured transportation services pursuant to Order No. 636. FGT implemented its restructured transportation services on November 1, 1993.

Therefore, FGT states that it is filing the Report to dispose of its Account 191 balance as required. Because FGT's Account 191 has a credit balance as of October 31, 1995, refunds plus interest calculated in accordance with Section 154.67(C)(2)(iii) of the Commission's Regulations are being made to FGT's former sales customers.

FGT states that it is refunding to its former sales customers a total adjusted Account 191 balance as of October 31, 1995 of $1,094,280. This amount has been allocated to FGT's former sales customers in accordance with Section 26 of the GT&C of FGT's tariff. The sales volume percentages as contained on First Revised Sheet No. 8C are the same as the percentages used in allocation of the approximately $6.4 million refunded in FGT's Initial PGA Termination Report approved by Commission Orders dated June 9, 1994 and September 29, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27752 Filed 11–8–95; 8:45 am]

BILLING CODE 67001–01–M

[Docket No. RP96–32–000]

Florida Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

November 3, 1995.

Take notice that on November 1, 1995, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 1, 1995:

Second Revised Sheet No. 117A
Fourth Revised Sheet No. 120
Second Revised Sheet No. 120A
Third Revised Sheet No. 125A
First Revised Sheet No. 125B

FGT states that on August 24, 1995, it filed a Stipulation and Agreement (Settlement) in resolution of all outstanding issues in Docket No. RP95–103–000. The Settlement set forth a number of revisions to FGT's Tariff which included agreed-upon operational changes, as well as modification to FGT's capacity relinquishment program. While the Settlement was pending approval before the Commission, FGT made three unrelated tariff filings which contained some of the same tariff sheets as in the Settlement. In each of these subsequent tariff filings, FGT stated that upon approval of the Settlement and acceptance of the tariff changes proposed within each of these subsequent filings, FGT would conform the corresponding tariff sheets contained in the Settlement to reflect all changes approved by the Commission in the subsequent filings.

The tariff sheets in the Settlement reflecting the operational changes were accepted by Commission order dated October 11, 1995 to become effective December 1, 1995, while the tariff sheets with modifications to the capacity relinquishment program were accepted to become effective February 1, 1996. In addition, the Commission issued orders accepting the tariff sheets filed with each of the three, subsequent tariff filings. Accordingly, the instant filing consolidates all of the changes previously approved by the Commission on the appropriate tariff sheets.

FGT states that copies of the filing were mailed to all customers serviced under the rate schedules affected by the filing and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27753 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–18–000]

Mojave Pipeline Company; Notice of Refund Report

November 3, 1995.

Take notice that on October 24, 1995, Mojave Pipeline Company (Mojave) tendered for filing a report of Gas Research Institute (GRI) refund for 1994 overcollections.

According to Mojave, it received a total refund of $147,933.00 from GRI on September 29, 1995, which Mojave allocated and credited to its eligible firm customers on October 13, 1995. Mojave states that the report is filed pursuant to the Commission's order issued in 70 FERC ¶ 61,205 (1995).

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–27754 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–29–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1995.

Take notice that on October 31, 1995, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective December 1, 1995:

Fourth Revised Sheet No. 2
First Revised Sheet No. 8
Second Revised Sheet No. 11
First Revised Sheet No. 13
First Revised Sheet No. 15
First Revised Sheet No. 16
Second Revised Sheet No. 18
First Revised Sheet No. 20
Third Revised Sheet No. 24
First Revised Sheet No. 26
First Revised Sheet No. 28
First Revised Sheet No. 29
First Revised Sheet No. 74
First Revised Sheet No. 85
Second Revised Sheet No. 89
First Revised Sheet No. 90
First Revised Sheet No. 91
First Revised Sheet No. 93
First Revised Sheet No. 94
Second Revised Sheet No. 95
First Revised Sheet No. 96
Second Revised Sheet No. 102
First Revised Sheet No. 103
First Revised Sheet No. 105
First Revised Sheet No. 106
Second Revised Sheet No. 107
First Revised Sheet No. 108
First Revised Sheet No. 124
First Revised Sheet No. 131AA
First Revised Sheet No. 131CC.10
Third Revised Sheet No. 154
Original Sheet No. 237.12
Original Sheet No. 237.13
Original Sheet No. 237.14

National states that the purpose of this filing is to propose revisions concerning the allocation of firm capacity, setting forth new open season procedures, and to eliminate Section 4.4 of its IT and ISS Rate Schedules and Section 5.6 of its P–1 and P–2 Rate Schedules.

National states that it is serving copies of the filing with its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–27755 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–38–000]

NorAm Gas Transmission Company and Koch Gateway Pipeline Company; Notice of Joint Application for Abandonment

November 3, 1995.

Take notice that on October 27, 1995, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002 and Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251 filed a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon two certificated exchange agreements, NorAm's Rate Schedules XE–47 and XE–49, First Revised Volume No. 2 and Koch's corresponding Rate Schedules X–101 and X–78, Original Volume No. 2. The application is on file with the Commission and open to public inspection.

NorAm and Koch state that they propose to abandon the above services authorized in Docket Nos. CP77–24–000 and CP77–228–000.[1] NorAm and Koch state that there is no longer a need for these exchanges and they have been terminated by written consent of both parties. They state that the proposed abandonment will not have an impact on any of their customers. No facilities are proposed to be abandoned in connection with the authorization requested therein.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NorAm and Koch to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27756 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 57 FPC 208 (1977) and 58 FPC 1874 (1977), respectively.

[Docket No. RP96–33–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1995.

Take notice that on November 1, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

In this filing Northern proposes to condense and simplify Northern's form of Service Agreement under Rate Schedule TF, TFX, TI, FDD and IDD.

Northern states that copies of this filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed on or before November 13, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Sectretary.

[FR Doc. 95–27757 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–442–000]

Northwest Pipeline Company; Notice of Technical Conference

November 3, 1995.

Take notice that a technical conference will be convened in the above-docketed proceeding on Wednesday, November 15, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, 20426. Any party, as defined in 18 CFR 385.102(c), any person seeking intervenor status pursuant to 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), is invited to participate.

For addition information, please contact Michael Goldenberg, 202–208–2294, or Irene McCallister, 202–208–0931, at the Commission or Toni Marie Sutliff, 801–584–7058, at Northwest.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27758 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–27–000]

Northwest Pipeline Corporation; Notice of Petition for Grant of Limited Waiver of Tariff

November 3, 1995.

Take notice that on October 31, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waiver of Tariff.

Northwest seeks a waiver of the Commission's first-come, first-served policy as reflected in Section 1 of Northwest's Rate Schedule TI–1 and in the Priority Date provisions in Section 12.3 of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1, in order to allow the receipt point priority dates held by Williams Gas Marketing Company (WGM) under an open-access interruptible transportation agreement to be retained by WGM's assignee, Williams Energy Services Company. The assignment is due to a corporate reorganization, effective November 1, 1995.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27759 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–31–000]

Northwest Pipeline Corporation; Notice of Petition for Grant of Limited Waiver of Tariff

November 3, 1995.

Take notice that on October 31, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waiver of Tariff.

Northwest seeks waiver of various tariff provisions which address the posting of available pipeline capacity, as set forth in Third Revised Volume No. 1 of Northwest's FERC Gas Tariff, in order to restore primary receipt points and northbound capacity to certain Northwest shippers.

Northwest states that a copy of this filing has been served upon all Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27760 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–30–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

November 3, 1995.

Take notice that on October 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a slight increase in its FT/FT–NN GSR Surcharge effective November 1, 1995.

Twenty-Third Revised Sheet No. 15
Twenty-Third Revised Sheet No. 17
Sixteenth Revised Sheet No. 29
Sixteenth Revised Sheet No. 30
Sixteenth Revised Sheet No. 31

Southern states that this revision is the result of a change in the level of firm service effective November 1, 1995 as well as the removal of a GSR cost credit that was in place during the month of October.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27761 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–28–000]

Tennessee Gas Pipeline Company; Notice of Filing

November 3, 1995.

Take notice that on October 31, 1995, Tennessee Gas Pipeline Company (Tennessee) filed First Revised Fourteenth Revised and Sixteenth Revised Sheet No. 30 to its FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective October 1 and November 1, 1995, respectively. Tennessee states that this filing is being made to discontinue its Market Area Volumetric Surcharge, effective October 1, 1995, pursuant to Article XXV, Section 4.3 of the General Terms and Conditions of its tariff. Tennessee further states that the surcharge is subject to reinstatement pursuant to Article XXV, Section 4.3.

Tennessee states that copies of the filing have been mailed to affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27762 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–34–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1995.

Take notice that on October 31, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is December 1, 1995.

Texas Eastern states that the tariff sheets are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and (ii) pursuant to Texas Eastern's Docket No. RP85–177–119, et al. Stipulation and Agreement ("Settlement") filed January 31, 1994 and approved by Commission order

issued May 12, 1994. Texas Eastern states that the filing constitutes Texas Eastern's third regular annual ASA filing under Section 15.6 for the purpose of reflecting changes in its requirement to retain gas in-kind in compensation for the quantities of gas used to provide service for its customers.

Texas Eastern states that the filing also constitutes Texas Eastern's second annual filing pursuant to the Settlement to (i) calculate revised reductions to its shrinkage factors to reflect projected purchases under Appendix C contracts under the Settlement, (ii) calculate revised Spot Fuel Components as provided in Section 5.08 of the Settlement, (iii) determine a Fuel Reservation Charge Adjustment rate to become effective December 1, 1995 based upon the balance as of August 31, 1995 in the non-Spot Fuel Deferred Account as provided in Section 5.09 of the Settlement, (iv) revise the Account No. 858 Costs rate component of Texas Eastern's rates as provided in Section 4.04 of the Settlement, and (v) report the second annual reconciliation of the interruptible revenues under Rate Schedules IT–1, PTI and ISS–1 as well as for Rate Schedule LLIT and for Rate Schedule VKIT. Texas Eastern states that all of the calculations associated with the changes proposed in the filing are in accordance with the Settlement and the methodologies previously approved by Commission orders.

Texas Eastern states that the changes proposed to become effective beginning December 1, 1995 consist of (1) revised ASA Percentages designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system, less quantities projected to be purchased from Appendix C contracts under the Settlement, in providing service to its customers for each seasonal calendar period, Winter (December 1, 1995–March 31, 1996), Spring Shoulder (April 1, 1996–May 31, 1996), Summer (June 1, 1996–September 30, 1996) and Fall Shoulder (October 1, 1996–November 30, 1996), (2) the ASA Surcharge designed to recover the net monetary value recorded in the Applicable Shrinkage Deferred Account as of August 31, 1995 (3) Spot Fuel Components designed to recover the Spot Costs, as defined in the Settlement, projected to be incurred over the twelve month period beginning December 1, 1995 and the balance recorded in the Spot Fuel Deferred Account as of August 31, 1995, (4) a Fuel Reservation Charge Adjustment designed to recover the excess (limited to a maximum rate) of the August 31, 1995 balance in the Non-Spot Fuel Deferred Account over the threshold amount of $30 million specified in Appendix E of the Settlement, and (5) a revised Account No. 858 Costs rate component designed to recover the August 31, 1995 balance recorded in the Account No. 858 Costs Deferred Account which represents the amount necessary to true up the actual costs incurred subsequent to the Effective Date of the Settlement with actual cost recoveries subsequent to the Effective Date of the Settlement, plus applicable carrying costs.

Texas Eastern states that the average decrease in usage rates due to the revised ASA Surcharge and the revised Spot Fuel Components is approximately 3 cents and the average increase in reservation rates due to the Fuel Reservation Charge Adjustment prescribed by the Settlement offset by the reduced Account No. 858 Costs is approximately 3 cents on a 100% load factor basis. Texas Eastern states that the ASA Percentages proposed in the filing are increased compared to those percentages in Texas Eastern's currently effective tariff due primarily to the reduction in the annual quantity of gas available to use as fuel from the Appendix C contracts as provided in the Settlement. Texas Eastern states that the increase in shrinkage percentages is offset by the decreases in Spot Fuel Components.

Texas Eastern states that copies of its filing have been served on all Firm Customers of Texas Eastern and Interested State Commissions, as well as all current interruptible shippers and all parties to the Settlement in Docket No. RP85–177–119, et al. Texas Eastern states that in accordance with the Settlement, with respect to those elements of the tariff sheets pursuant to the Settlement, Texas Eastern's filing is subject to refund or adjustment only to the extent not in compliance with the Settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27763 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1995.

Take notice that on October 31, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1995.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under the rate schedules set forth in Appendix B and to convert such service to service provided under Rate Schedule FT effective November 1, 1995.

The charges applicable to SEP firm transportation service, which has been converted from individually certificated Section 7(c) firm transportation service to annual firm transportation service under Transco's blanket certificate and Part 284 of the Commission's regulations, are set forth on Original Sheet No. 40F.

Transco states that copies of the filing are being mailed to the converting SEP shippers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27764 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96-3-29-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes In FERC Gas Tariff

November 3, 1995.

Take notice that on October 30, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to (1) storage service purchased from North Penn Gas Company (North Penn) under its Rate Schedule S, the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–1, (2) transportation service purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X–42, the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (3) storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (4) transportation service purchased from National Fuel under its Rate Schedule X–54, the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2, (5) transportation service purchased from National Fuel under its Rate Schedule X–58, the costs of which are included in the rates and charges payable under Transco's Niagara Import Point Project-System Expansion (NIPPs-SE) transportation service, (6) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, (7) transportation service purchased from CNG under its Rate Schedule X–74, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and (8) storage service purchased from CNG under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedule GSS.

Transco states that this tracking filing is being made pursuant to Section 5 of Transco's Rate Schedule SS–1, Section 4 of Transco's Rate Schedule LSS, Section 4 of Transco's Rate Schedule SS–2, Section 8.01(i) of Transco's NIPPs-SE Rate Schedule X–315, Section 4 of Transco's Rate Schedule FT–NT, and Section 3 of Transco's Rate Schedule GSS.

Transco states that Appendices B through G attached to the filing contain explanations of the rate changes and details regarding the computation of the revised SS–1, LSS, SS–2, NIPPs-SE, FT–NT, and GSS rates, respectively.

Transco states that copies of the filing are being mailed to each of its SS–1, LSS, SS–2, NIPPs-SE, FT–NT, and GSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection in the Pubic Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27765 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96-39-000]

Viking Gas Transmission Company; Notice of Request Under Blanket Authorization

November 3, 1995.

Take notice that on October 30, 1995, Viking Gas Transmission Company (Viking), 825 Rice Street, St. Paul, Minnesota 55117, filed in Docket No. CP96–39–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to increase the metering capacity at its East Grand Forks delivery point in Polk County, Minnesota to provide additional transportation services for Northern States Power Company—Minnesota (NSPM) under Viking's blanket certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The facilities presently at the East Grand Forks delivery point include a 4-inch valve header, two 2-inch orifice meter runs, data acquisition equipment and associated piping. Viking proposes to increase the metering capacity by up to 11,575 Mcf of natural gas per day by replacing one of the 2-inch orifice runs, associated piping and fittings with a 4-inch orifice meter run, associated piping and fittings. Viking states that NSPM requested the increased meter capacity at the East Grand Forks delivery point and has agreed to reimburse Viking for the cost of the facilities, estimated to be $18,600.

Viking states that the total quantities of natural gas to be delivered by Viking to NSPM after the proposed metering capacity increase would not exceed presently authorized quantities, and that the changes proposed are not prohibited by Viking's tariff. Viking further states that it has sufficient capacity in its system to accomplish delivery of gas to the proposed delivery point without detriment or disadvantage to any of Viking's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27766 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96-30-000]

Williston Basin Interstate Pipeline Company; Notice of Filing

November 3, 1995.

Take notice that on November 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27767 Filed 11–8–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Fusion Energy Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Fusion Energy Advisory Committee.

DATES: Thursday, December 7, 1995, 9:00 a.m. to 6:30 p.m.; and Friday, December 8, 1995, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, III, Executive Assistant, Office of Fusion Energy, ER–50, GTN, U.S. Department of Energy, Washington, D.C. 20585; Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Committee will begin a review of the new fusion energy research program strategy.

Tentative Agenda

Thursday, December 7, 1995, and Friday, December 8, 1995

Presentation of new charge to the Fusion Energy Advisory Committee.

Department of Energy perspective on the future of the fusion program.

Presentation of the results of the President's Committee of Advisors on Science and Technology.

Presentation and Discussion of a proposed new strategy.

Public Comments (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Albert Opdenaker at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 6, 1995.

Gail Cephas,

Acting Deputy, Advisory Committee Management Officer.

[FR Doc. 95–27820 Filed 11–8–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Environmental Management

Pollution Prevention Strategy; Notice of Availability

SUMMARY: This notice announces the availability of the Department of Energy's Pollution Prevention Strategy required by Executive Order 12856, "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements." The Pollution Prevention Strategy provides information to the public about the Department's commitment to meet and exceed the requirements of this Executive Order by setting goals and objectives and identifying responsible offices within the Department for implementing several recent environmental Executive Orders.

ADDRESSES: Requests for copies of the strategy are available from the U.S. Department of Energy, Office of Pollution Prevention, Trevion II, 19901 Germantown Road, Germantown, MD 20874–1290. Copies may also be obtained in person at the U.S. Department of Energy Headquarters, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC, Freedom of Information Act Public Reading Room in Room 1E–190, 9:00 a.m.–4:00 p.m. or the Center for Environmental Management Information Reference Room located at 470 L'Enfant Plaza East, S.W., Suite 7112, Washington, DC, 9 a.m.–7 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Weber at (301) 903–1388.

SUPPLEMENTARY INFORMATION: On August 3, 1993, President Clinton signed Executive Order 12856, "Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements," mandating that Federal facilities comply with source reduction goals set forth in the Order, in the Pollution Prevention Act of 1990, and in the planning and reporting sections of the Emergency Planning and Commuhity Right-To-Know Act. The Executive Order directed that each Federal agency develop a written pollution prevention strategy. On December 27, 1994, the Secretary of Energy issued the "United States Department of Energy Pollution Prevention Strategy" for compliance with Executive Order 12856.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 95–27822 Filed 11–8–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE DOCKET NO. EA–110]

Application for Electricity Export Authorization; CNG Power Services Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: CNG Power Services Corporation (CNG) has applied as a power marketer for authority to transmit electric energy from the United States to Canada.

DATES: Comments, protests or requests to intervene must be submitted on or before December 11, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Fossil Energy (FE–52), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Mike Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electric energy from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On October 27, 1995, CNG filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authority to export electric energy to Canada. CNG, a power marketer, proposes to sell electric energy to Hydro-Quebec in Canada. CNG proposes to export electric energy that is surplus to the generator or system from which it is to be purchased. CNG further proposes to export the electric energy through the cross-border transmission facilities owned by New York Power Authority (NYPA) and Niagara Mohawk Power Corp. (NMPC) for which Presidential permits have been issued. As appendicies to the application CNG has provided executed transmission agreements from both NYPA and NMPC.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Jolanta Sterbenz, Esq., Hogan & Hartson L.L.P., Columbia Square, 555 Thirteenth Street, NW, Washington, DC 20004–1109 and Gary A. Jeffries, CNG Power Services Corp., One Park Ridge Center, P.O. Box 15746, Pittsburgh, PA 15244–0746.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system, and the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 3, 1995.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–27823 Filed 11–8–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5230–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed October 30, 1995 Through November 03, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950506, FINAL EIS, AFS, MT, Beaver Woods Vegetation Management Project, Implementation, Bitterroot National Forest, West Fork Ranger District, Ravalli County, MT, Due: December 08, 1995, Contact: Stuart Lovejoy (406) 821–3201.

EIS No. 950507, FINAL EIS, SFW, CT, VT, MA, NH, Silvio O. Conte National Fish and Wildlife Refuge Act Establishment in the Connecticut River Watershed, Implementation, CT, VT, MA and NH, Due: December 08, 1995, Contact: Larry Bandolin (413) 863–0209.

EIS No. 950508, DRAFT EIS, BLM, UT, Dixie Resource Area, Resource Management Plan, Implementation, Cedar City Ranger District, Washington County, UT, Due: January 31, 1996, Contact: David Everett (801) 673–4654.

EIS No. 950509, FINAL EIS, USN, CA, San Diego Homeporting Facilities Construction and Operation to Support Berthing One NIMITZ Class Aircraft Carrier, Implementation, San Diego County, CA, Due: December 08, 1995, Contact: Robert Hexom (619) 532–3761.

EIS No. 950510, DRAFT EIS, FRC, PR, Eco Ele'ctrica Liquefied Natural Gas (LNG) Import Terminal and Electric Cogeneration Construction and Operation Project, Approvals and Permits Issuance, Guayanilla Bay, PR, Due: December 26, 1995, Contact: Chris Zerby (202) 208–0111.

EIS No. 950511, DRAFT EIS, NPS, NM, Carlsbad Caverns National Park General Management Plan, Implementation, Eddy County, NM, Due: January 16, 1996, Contact: Frank Deckert (505) 785–2232.

EIS No. 950512, DRAFT EIS, COE, CA, Morrison Creek Mining Reach Upstream North of Jackson Highway, Implementation, Community Plan Amendment, Rezoning, Use Permit Amendment to Existing Use Permit and COE Section 404 Permit, Sacramento County, CA, Due: December 26, 1995, Contact: Larry Vinzant (916) 557–6263.

EIS No. 950513, DRAFT EIS, UAF, MI, K. I. Sawyer Air Force Base (AFB) Disposal and Reuse, Implementation, Marquette County, MI, Due: December 26, 1995, Contact: William A. Myers (210) 536–3869.

EIS No. 950514, FINAL EIS, UAF, NY, Plattsburgh Air Force Base (AFB) Disposal and Reuse, Implementation, Clinton County, NY, Due: December 08, 1995, Contact: Don Gleason (703) 695–8942.

EIS No. 950515, FINAL EIS, FRC, NH, Ayers Island Hydroelectric Project, Issuance of New Licenses/Relicensing for a 8.4 Megawatt (MW) Project (FERC NO. 2456–009), Pemigewasset and Merrimack River Basin, Belknap and Grafton Counties, NH, Due: December 08, 1995, Contact: Richard Takacs (202) 219–2840.

EIS No. 950516, DRAFT EIS, AFS, CO, Vail Ski Area Category III Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit Issuance, White River National Forest, Holy Cross Ranger District, Rocky Mountain Region, Eagle County, CO, Due: December 26, 1995, Contact: Loren M. Kroenke (970) 827–5717.

EIS No. 950517, DRAFT EIS, IBR, NV, Southern Nevada Water Authority Treatment and Transmission Facility Construction and Operation, Issuance of Permits, Right-of-Way Grants and Modification of existing Water Delivery/Service Contracts, Clark County, NV, Due: February 06, 1995, Contact: James P. Green (702) 293–8519.

EIS No. 950518, DRAFT EIS, DOE, WA, Hanford Site K Basins Management of Spent Nuclear Fuel Storage and Disposal, Application for Approval of Construction and NPDES Permit Issuance, Columbia River, Richland, Benton County, WA, Due: December 29, 1995, Contact: Dr. P. G. Loscoe (509) 376–7434.

EIS No. 950519, FINAL EIS, FHW, CA, CA–180 Transportation Project, Construction between Temperance Avenue and Cove Road, Funding and COE Section 404 Permit Issuance, Fresno County, CA, Due: December 08, 1995, Contact: Dennis A. Scovill (916) 498–5034.

EIS No. 950520, DRAFT EIS, FHW, CA, East Sonora Bypass/CA–108 Construction, CA–108 from Post Mile M1.8 to Post Mile R6.9, Funding and COE Section 404 Permit Issuance, Tuolumne County, CA, Due: December 29, 1995, Contact: Dennis Scovill (916) 498–5034.

EIS No. 950521, DRAFT EIS, COE, IN, Indiana Harbor and Canal Dredging and Confined Disposal Facility Construction, Operation and Maintenance, Lake County, IN, Due: February 01, 1996, Contact: Keith Ryder (312) 353–6400.

EIS No. 950522, REVISED FINAL EIS, UAF, ME, Loring Air Force Base (AFB) Disposal and Reuse, Implementation, Aroostook County, ME, Due: December 08, 1995, Contact: Nancy Speake (210) 536–5630.

EIS No. 950523, DRAFT EIS, COE, MD, Poplar Island Restoration Project, Dredging, Construction and Placement of Dredged Materials, Implementation, Chesapeake Bay, Talbot County, MD, Due: December 28, 1995, Contact: Wesley E. Coleman (410) 962–4713.

EIS No. 950524, FINAL EIS, FHW, NH, NH–16 and US 302 Transportation Improvements, Funding, and COE Section 10 and 404 Permits Issuance, Villages of Conway and North Conway, Carroll County, NH, Due: December 08, 1995, Contact: William F. O'Donnell (603) 225–1608.

Amended Notices

EIS No. 950421, DRAFT EIS, USA, CA, Miramar Naval Air Station (NAS) Realignment or Conversion to Miramar Marine Corps Air Station, Implementation, San Diego, CA, Due: December 21, 1995, Contact: Ltc. George Martin (619) 537–6678.

Published FR 09–15–95—Review period extended.

Dated: November 06, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–27837 Filed 11–8–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No.1]

A Petition for Reconsideration of Action in Commission Proceedings

October 31, 1995.

A petition for reconsideration has been filed with respect to the Commission's Public Notice listed below. The full text of this document is available for viewing and copying in Room 610, 1919 M Street, N.W., Washington, D.C., by contacting Donna Viert ((202) 418–1725). In addition, copies may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800). In accordance with section 1.45(b) of the Commission's Rules (47 CFR 1.4(b)(1)) oppositions to this petition for reconsideration must be filed on or before November 24, 1995. Interested parties may file oppositions to this petition on or before November 22nd. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of cases Subject to Comparative Proceedings Freeze Policy (FCC 95–391).

Field By: Gene A. Bechtel and Harry F. Cole, Bechtel & Cole, Chartered, Counsel for John W. Barger and August Communications Group, Inc. on October 16, 1995.

Action by the General Counsel

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27722 Filed 11–8–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0899]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved a private sector adjustment factor (PSAF) for 1996 of $85.8 million, as well as fee schedules for Federal Reserve priced services and electronic connections. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The PSAF and the fee schedules become effective January 2, 1996.

FOR FURTHER INFORMATION CONTACT: For questions regarding the private sector adjustment factor: Elizabeth Tacik, Accounting Analyst (202/452–2303), Division of Reserve Bank Operations and Payment Systems; for questions regarding fees schedules: Scott Knudson, Senior Financial Services Analyst, ACH Payments (202/452–3959), Michele Braun, Senior Financial Services Analyst, Check Payments (202/452–2819), Darrell Mak, Financial Services Analyst, Funds Transfer and Book-Entry Securities Services, (202/452–3223), Ken Buckley, Manager, Information Technology (electronic connections), (202/452–3646), Michael Bermudez, Financial Services Analyst, (202/452–2216), or Marianne Hansberry, Financial Services Analyst, Cash Section, (202/452–2760), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf *only*, please contact Dorothea Thompson (202/452–3544).

Copies of the 1996 fee schedules for the check, automated clearing house (ACH), funds transfer and net settlement, book-entry securities, noncash collection, and special cash services, as well as electronic connections to Reserve Banks, are available from the Reserve Banks.

SUPPLEMENTARY INFORMATION:

I. Private Sector Adjustment Factor

A. *Overview*—The Board has approved a 1996 PSAF for Federal Reserve priced services of $85.8 million. This amount represents a decrease of $8.9 million or 9.4 percent from the PSAF of $94.7 million targeted for 1995.

As required by the Monetary Control Act (MCA) (12 U.S.C. 248a), the Federal Reserve's fee schedules for priced services include "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs are based on data developed in part from a model comprised of the nation's 50 largest (in asset size) bank holding companies (BHCs).

The methodology first entails determining the value of Federal Reserve assets that will be used in producing priced services during the coming year. Short-term assets are assumed to be financed by short-term liabilities; and long-term assets are assumed to be financed by a combination of long-term debt and equity derived from the BHC model. For 1995, the mix of long-term debt and equity was modified slightly to ensure an imputed equity to asset ratio of 4 percent as required for adequately capitalized institutions under provisions of Regulation F (12 CFR 206.5). This was not necessary for 1996.

Imputed capital costs are determined by applying related interest rates and rates of return on equity (ROE) derived from the BHC model to assets used in providing priced services. The rates drawn from the BHC model are based on consolidated financial data for the 50 largest BHCs in each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

In addition to capital costs, the PSAF includes imputed sales taxes, expenses of the Board of Governors related to priced services, and an imputed Federal

Deposit Insurance Corporation (FDIC) insurance assessment on clearing balances held with the Federal Reserve to settle transactions.

B. *Asset Base*—The estimated value of Federal Reserve assets to be used in providing priced services in 1996 is reflected in table A–1. Table A–2 shows that the assets assumed to be financed through debt and equity are projected to total $637.3 million. As shown in table A–3, this represents a net increase of $14.4 million or 2.3 percent from 1995. This increase results primarily from a higher priced asset base at the Reserve Banks. A decrease of $10.6 million or 14.3 percent in the FRAS priced asset base due to a reduction in capital purchases and a reduction in the FRAS priced percentage sightly offset the increase in Reserve Bank asset levels.

C. *Cost of Capital, Taxes, and Other Imputed Costs*—Table A–3 shows the financing and tax rates, as well as the other required PSAF recoveries proposed for 1996, and compares the 1996 rates with the rates used for developing the PSAF for 1995. The pre-tax return on equity rate increased from 12.1 percent in 1995 to 14.2 percent for 1996. The increase is a result of stronger 1994 BHC financial performance included in the 1996 BHC model, relative to the 1989 BHC financial performance in the 1995 BHC model.

The decrease in the FDIC insurance assessment from $19.0 million in 1995 to $2.2 million in 1996, as shown in table A–3, is attributable to the impact of the new lower rate for deposit insurance and lower clearing balances. The FDIC rate of $0.26 for every $100 in clearing balances was reduced to $0.04 as of June 1, 1995.

D. *Capital Adequacy*—As shown on table A–4, the amount of capital imputed for the proposed 1996 PSAF totals 34.4 percent of risk-weighted assets, well in excess of the 8 percent capital guideline for state member banks and BHCs.

II. Priced Services

A. *Overview*—Over the period 1985 through 1994, the Reserve Banks recovered 100.7 percent of the total costs of providing priced services, including special project costs that were budgeted for recovery and targeted ROE.[1] Table 1 summarizes the cost and revenue performance for priced services since 1985.

B. *1995 Performance*—The 1995 fees approved by the Board were expected to recover 100.6 percent of the costs of providing priced services, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE. Through August 1995, the System recovered 98.7 percent of total priced services expenses, including automation consolidation special project costs and targeted ROE. The Reserve Banks now estimate that priced services revenues will yield a net income of $25.8 million for the year, compared with a targeted ROE of $31.5 million. The recovery rate after ROE is expected to be 99.3 percent. Approximately $19.8 million in automation consolidation special project costs will be recovered in 1995, leaving $36.0 million in accumulated costs to be financed and recovered later.[2]

The variation in the cost recovery performance from the original 1995 projections can be attributed to the following major factors. First, the pre-tax credits arising from accounting for pensions under the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 87 (SFAS 87) were revised downward by $16.1 million from the estimate used to set 1995 fees. This reduction was due primarily to a lower return on assets in 1994 and a slightly lower discount rate for valuing pension plan assets. On the other hand, the FDIC insurance assessment was reduced, which lowered imputed expenses by $9.4 million. If these two changes had not occurred, the Reserve Banks' estimated 1995 recovery rate would have been 99.8 percent, or 0.5 percentage points higher than now forecast.

TABLE 1.—PRO FORMA COST AND REVENUE PERFORMANCE (A)

[$ millions]

Year	1 Revenue (b)	2 Operating costs and imputed expenses (c)	3 Special project costs recovered (d)	4 Total expense [2+3]	5 Net income (ROE) [1–4]	6 Target ROE (e)	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed (f)
1985	613.8	555.3	0.0	555.3	58.5	23.9	106.0	0.0
1986	627.7	571.6	0.0	571.6	56.1	27.3	104.8	0.0
1987	649.7	598.2	0.0	598.2	51.5	29.3	103.5	0.0
1988	667.7	641.1	3.2	644.3	23.4	32.7	98.6	0.0
1989	718.6	692.1	4.6	696.7	21.9	32.9	98.5	0.0
1990	746.5	698.1	2.8	700.9	45.8	33.6	101.6	0.0
1991	750.2	710.0	1.6	711.6	38.8	32.5	100.8	0.0
1992	760.8	731.0	11.2	742.2	18.6	26.0	99.0	1.6
1993	774.5	722.4	27.1	749.5	25.0	24.9	100.0	12.5
1994	767.2	748.3	8.8	757.1	10.1	34.6	96.9	33.9
1995 (Est)	757.7	712.1	19.8	731.9	25.8	31.5	99.3	36.0

[1] Certain offsets to costs and certain costs are treated differently in the *pro forma* income statement for Federal Reserve priced services that is published in the Board's *Annual Report* than they are for purposes of setting fees. For example, offsets to costs associated with the transition to and retroactive application of the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 87 (SFAS 87), pension accounting, and SFAS 106, other post-retirement employee benefits accounting, have not been considered in setting fees for priced services. Under the procedures used to prepare the *pro forma* income statement, the Reserve Banks recovered 101.4 percent of the expenses incurred in providing priced services, including targeted ROE, from 1985 through 1994.

[2] In 1981, the Board adopted a policy that permits the Reserve Banks to defer and finance development costs if the development costs would have a material effect on unit costs, provided a conservative time period is set for full cost recovery and a financing factor is applied to the deferred portion of development costs.

TABLE 1.—PRO FORMA COST AND REVENUE PERFORMANCE (A)—Continued

[$ millions]

Year	1 Revenue (b)	2 Operating costs and imputed expenses (c)	3 Special project costs recovered (d)	4 Total expense [2+3]	5 Net income (ROE) [1–4]	6 Target ROE (e)	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed (f)
1996 (Bud)	791.6	723.7	25.5	749.3	42.3	36.7	100.7	33.1

(a) Details may not sum to totals because of rounding. The revenues and expenses for 1985 through 1993 include the definitive safekeeping service, which was discontinued in 1993. The table includes revised revenue and expense data for 1992 and 1993.
(b) Beginning in 1987, net income on clearing balances is included in revenue.
(c) Imputed expenses include interest on debt, taxes, FDIC insurance, and the cost of float. Credits for prepaid pension costs under SFAS 87 and the charges for post-retirement benefits in accordance with SFAS 106 are included beginning in 1993.
(d) Special project costs include Electronic Payment System (EPS) costs from 1988 through 1990, check image project costs from 1988 through 1993, and certain categories of automation consolidation costs from 1992 through 1996.
(e) Targeted ROE is based on the ROE included in the PSAF and has been adjusted for taxes, which are included in column 2. Targeted ROE has not been adjusted to reflect automation consolidation special project costs deferred and financed. The Reserve Banks plan to recover these costs in the future.
(f) Totals are cumulative and include financing costs.

Second, for the second year, the check service's volume losses were greater than anticipated, reflecting increasing use of direct presentments and continuing consolidation in the banking industry. The Reserve Banks' current estimates indicate that check revenues will be about $10.0 million lower than original projections. Conversely, ACH volume has grown more rapidly than the Reserve Banks initially projected and revenues are nearly $4.0 million higher than anticipated.

C. *1996 Projection*—In 1996, all priced services expect to recover operating costs and imputed expenses, including targeted ROE. Total revenues in 1996 are projected to increase 4.5 percent compared with 1995 estimated revenues.[3] Based on the Reserve Banks' budgeted costs, volumes, and revenues, the proposed 1996 fees will yield net income of $42.3 million for the year, compared with a targeted ROE of $36.7 million. These estimates result in a 100.7 percent cost recovery rate, including automation consolidation special project costs budgeted for recovery and targeted ROE. Priced services expenses before special project costs are projected to increase 1.6 percent compared with estimated 1995 levels. Approximately $25.5 million in automated consolidation special project costs will be recovered, leaving $33.1 million of accumulated special project costs to be recovered in the future. The following sections discuss the 1994 and 1995 year-to-date performance for each priced service, as well as the changes to fees that were approved by the Board.

D. *Check*—Table 2 presents the actual 1994, estimated 1995, and projected 1996 cost recovery performance for the check service.

TABLE 2.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1–4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1994	582.4	579.8	0.0	579.8	2.6	26.3	96.1	11.3
1995 (Est)	569.2	548.9	5.3	554.2	15.0	24.0	98.4	12.0
1996 (Bud)	595.0	561.3	5.6	566.9	28.1	28.0	100.0	10.9

1. *1994 Performance*—The check service recovered 96.1 percent of total expenses in 1994, including targeted ROE. The volume of checks collected decreased 13.3 percent from 1993 levels as a result of the implementation of the same-day settlement regulation, as well as bank consolidation and merger activity. Return item volume decreased 1.7 percent.

2. *1995 Performance*—Through August 1995, the check service recovered 98.2 percent of total expenses, including automation consolidation special projects costs and targeted ROE, compared with the targeted 1995 recovery rate of 100.0 percent. The volume of checks collected decreased 7.0 percent from 1994 levels, reflecting a 3.7 percent decrease in processed volume and a 19.2 percent decrease in fine sort volume. Return item volume increased 2.6 percent.

The Reserve Banks now estimate that 1995 net income will amount to $15.0 million, compared with the $24.0 million budgeted. Two significant factors contribute to the variation. First, the decline in check collection volume experienced through August is expected to accelerate. The Reserve Banks now expect volume to decline by 9.3 percent for the year, versus the budgeted volume loss of 2.4 percent. As a result, check revenues are expected to be

[3] The projected revenues include net income on clearing balances.

approximately $10 million lower than the Reserve Banks' original projections. Second, although the Reserve Banks took steps to reduce production costs, those steps were largely offset by a net increase in other expenses of $5.2 million. This increase is due to a $12.4 million pre-tax reduction in pension credits, which increased expenses, offset by a $7.2 million reduction in the FDIC insurance assessment. As a result, several Reserve Banks implemented selective price increases during the year to address the revenue shortfall. On a volume-weighted average basis, forward collection and return check fees were increased by about 1.5 percent and about 9.5 percent, respectively, since January 1995.

In addition, the Federal Reserve Bank of Chicago opened a new check processing facility in Peoria, Illinois in September, which is expected to contribute to processing efficiency over the long run.

3. *1996 Issues*—As in 1995, the Reserve Banks will be challenged by the changes occurring in the check processing environment. In particular, the evolution to interstate banking is likely to lead to significant changes in the interbank check collection market. To ensure that the Reserve Banks will be able to provide efficient, fairly priced check services and to contribute to improving the efficiency of the payments system, the Banks will (1) emphasize the use of electronic check products that increase the efficiency of the check collection process, (2) introduce a set of consistent national products, and (3) continue to pursue operational efficiencies.

To encourage the use of electronics, the Reserve Banks will continue to promote electronic check presentment (ECP) products. In addition, by year-end 1996, all Reserve offices will offer electronic cash letter (ECL) deposit products. These products reduce Reserve Bank operating costs by reducing manual processing. As a result, the Reserve Banks will offer ECL deposit products at lower per-item fees or later deposit deadlines than traditional check deposit products. The Reserve Banks believe that widespread use of ECL and ECP products ultimately will reduce the costs incurred in transporting and handling paper checks and, thus, will reduce the total costs of the check collection system.

To address the needs of multi-district depository institutions, the Reserve Banks will implement a set of national core check products. The core products will have identical features and names, although fees for the products will be set at the local office level to reflect the difference in the Reserve Banks' cost structures. In addition, Reserve Banks are expanding the use of tiered prices to ensure that fees take into consideration the cost of collecting checks drawn on various paying institutions, adding low-priced group sort products to provide depositing institutions increased options for reducing check collection costs, and improving deposit deadlines to improve funds availability.

Several Reserve Banks are also introducing digital image technology into their commercial check operations and offering image-enhanced check products to payor banks. The use of image technology has the potential to reduce Reserve Banks' operating costs and increase the acceptance of ECP and check truncation.

Total check service operating costs plus imputed expenses are projected to increase by $12.4 million, or 2.3 percent above estimated 1995 expenses. Total check collection volume is expected to decline by 1.1 percent in 1996. The Reserve Banks project an increase of approximately 0.7 percent in processed volume, a decrease of 9.5 percent in fine sort volume, and a decrease of 1.1 percent in return item volume.

4. *1996 Fees*—The check fees approved by the Board reflect more accurately the fixed and variable costs of providing check services. In addition, the fees reflect the Reserve Banks' continued efforts to encourage the use of electronics to improve the efficiency of the check collection mechanism.

Overall, 1996 fees for forward collection products will increase by about 1.8 percent on a volume-weighted average basis, compared with current prices.[4] The most significant increases are in processed cash-letter and fine sort per-item fees, which are increasing 10.6 percent and 5.9 percent, respectively. Forward processed per-item fee increases are modest. Of the 2,166 forward collection and fine sort fees, about 69 percent will remain unchanged, 22 percent will increase, 5 percent will be for new products, and 4 percent will be reduced. About 125 fees that were in place in 1995 will be discontinued.

Compared with current prices, the volume-weighted average increase in fees for return item products will increase approximately 4.0 percent.[5] Of the 1,442 return item fees, 63 percent will remain unchanged, 34 percent will increase, 2 percent will be for new products, and 1 percent will decline. About 76 fees that were in place in 1995 will be discontinued. No changes in the fees for the Interdistrict Transportation Service (ITS) are recommended.

Table 3 highlights selected 1995 and 1996 check fees.

TABLE 3.—SELECTED CHECK FEES

Products	1995 price ranges	1996 price ranges
	(per item)	(per item)
Items:		
Forward processed		
City	$0.003 to 0.049	$0.003 to 0.080
Regional Check Procesing Center (RCPC)	0.003 to 0.069	0.003 to 0.079
Fine Sort		
City	0.002 to 0.012	0.003 to 0.012
RCPC	0.002 to 0.017	0.002 to 0.017
Qualified return items		
City	0.100 to 0.740	0.100 to 1.110
RCPC	0.120 to 1.040	0.120 to 1.560
Raw return items		
City	0.580 to 2.180	0.580 to 4.000
RCPC	0.800 to 2.180	0.900 to 4.000

[4] Selected price increases were implemented during 1995. Combining the Reserve Banks' recommended price changes for January 1996 with the price increases that were implemented since January 1995, the volume-weighted average increase in fees for forward collection products is approximately 3 percent.

[5] Combining the Reserve Banks' recommended price changes for January 1996 with the price increases that were implemented since January 1995, the volume-weighted average increase in return fees is about 14 percent.

TABLE 3.—SELECTED CHECK FEES—Continued

Products	1995 price ranges	1996 price ranges
	(per cash letter)	(per cash letter)
Cash letters:		
Forward processed	$1.50 to 8.00	$1.50 to 9.00
Forward fine-sort package	2.50 to 11.00	2.50 to 11.00
Return items: raw and qualified	1.50 to 8.00	1.50 to 8.00

Payor bank service revenue is expected to grow by approximately 22 percent in 1996, primarily due to more widespread acceptance of the Reserve Banks' electronic presentment and image-enhanced check products.

The Reserve Banks project that the check service will recover 100 percent of total costs, including $5.6 million in automation consolidation special project costs and targeted ROE. Approximately $10.9 million in automation consolidation special project costs will be deferred and financed for recovery in future years.

While most Reserve Banks' plans for 1996 are conservative, several Reserve Banks have adopted fairly aggressive pricing and product development strategies and plan significant operational changes aimed at improving efficiency and reducing costs. Because of the aggressiveness of some plans, the Board believes that there are risks in achieving the Reserve Banks' aggregate volume projections, in particular. Because additional steps could be taken during 1996 to reduce operating costs if volume projections were not met, the Board approved the 1996 check fees proposed by the Reserve Banks.

E. *Automated Clearing House (ACH)*—Table 4 presents the actual 1994, estimated 1995, and projected 1996 cost recovery performance for the commercial ACH service.

TABLE 4.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expenses [2+3]	5 Net income (ROE) [1 − 4]	6 Target ROE	7 Recovery rate after Target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1994	66.9	64.6	0.0	64.6	2.3	3.4	98.3	19.6
1995 (Est)	74.7	66.3	4.0	70.2	4.5	3.1	101.9	21.5
1996 (Bud)	78.9	66.0	9.2	75.2	3.6	3.6	100.0	17.3

1. *1994 Performance*—Revenues from the ACH service recovered 98.3 percent of total expenses, including targeted ROE, during 1994. The factors contributing to the net revenue shortfall included the costs associated with the transition to FRAS and Fednet and the expenses associated with the development of the new Fed ACH application software. Commercial ACH volume increased by 16.8 percent over the 1993 volume level.

2. *1995 Performance*—Through August 1995, the ACH service recovered 103.2 percent of total expenses, including automation consolidation special project costs and targeted ROE, compared with the targeted 1995 recovery rate of 100.0 percent. The higher cost recovery rate is due primarily to a higher than expected commercial volume growth rate. Year-to-date commercial ACH volume increased 18.4 percent over the 1994 level, compared with the projected 1995 increase of 12.9 percent. The Reserve Banks now project net income of $4.5 million, compared with the $3.1 million budgeted for 1995. Commercial ACH volume is expected to increase 17.5 percent over the 1994 level.

3. *1996 Issues*—During 1996, the Reserve Banks plan to complete implementation of the Fed ACH application software, which was developed over the last several years. Because no Reserve Banks had completed their transition to Fed ACH when the 1996 budgets were prepared, there is some uncertainty about the ongoing costs of operating the new software in the FRAS automation environment. The projected commercial volume growth rate of 17.5 percent may be aggressive in light of the continuing consolidation in the banking industry. The Reserve Banks believe, however, that their marketing efforts with the National Automated Clearing House Association have the potential to spur volume growth.

4. *1996 Fees*—The ACH service is capital intensive and demonstrates increasing returns to scale over wide volume ranges. As a result, the volume growth realized over the last several years has resulted in declining per-item processing costs. The Board anticipates that per-item costs will decline further after all ACH processing is consolidated, following the implementation of Fed ACH. The Board has approved several modifications to the current ACH fees for 1996. These modifications are shown in table 5.

TABLE 5

Fee category	Current fees	Fees as of January 1996
Interdistrict Items	$0.014	$0.012
Presorted Items	$0.012	$0.010
Interdistrict Addenda	$0.005	$0.004
Account Servicing Fee	$20.00	$25.00
Nonautomated Services	$10.00	$15.00

As table 5 indicates, the Board has approved per-item fees reductions for unsorted and presorted interdistrict transactions of $0.002. In addition, the interdistrict fee for addenda items, which provide supplementary payment-related data, will be reduced by $0.001, eliminating the differential between local and interdistrict addenda items. Because of the high fixed costs

associated with providing the ACH service, the Board has approved an increase of $5.00 per month in the account servicing fee. Finally, the Board has approved a $5.00 increase in the fees for paper return items and notifications of change (NOC), government paper NOCs, telephone return items, and telephone advices to reflect the labor intensive nature of processing, and to provide an incentive for depository institutions to automate these processes.

After the Reserve Banks have fully implemented Fed ACH, they plan to propose further reductions in per-item fees and to offer a number of new products, including products designed to assist receiving institutions, as well as products designed to permit high-volume originating institutions to obtain lower fees by sorting transactions before transmitting them to the Federal Reserve. The Board anticipates that it will be requested to approve additional fee reductions and service enhancements in mid-1996.

Based on the fee schedule proposed by the Reserve Banks, they are projecting that the ACH service will recover 100.0 percent of costs, including $9.2 in automation consolidation special project costs and targeted ROE. Approximately $17.3 million in automation consolidation special project costs will continue to be deferred and financed for recovery in future years. The Board has approved the 1996 fees proposed by the Reserve Banks.

F. *Funds Transfer and Net Settlement*—Table 6 presents the actual 1994, estimated 1995, and projected 1996 cost recovery performance for the funds transfer and net settlement service.

TABLE 6.—FUNDS TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1–4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1994	91.6	79.1	7.1	86.2	5.4	3.8	101.7	2.1
1995 (Est)	89.0	73.2	9.7	82.9	6.1	3.4	103.1	0.0
1996 (Bud)	90.5	71.8	9.3	81.1	9.4	3.8	106.6	0.0

1. *1994 Performance*—For 1994, the funds transfer and net settlement service recovered 101.7 percent of total expenses, including automation consolidation special project costs and targeted ROE. The net revenue surplus was largely due to lower data communications and accounting overhead costs. Funds transfer volume increased 3.4 percent over the 1993 volume level.

2. *1995 Performance*—Through August 1995, the funds transfer and net settlement service recovered 99.2 percent of total expenses, including automation consolidation special project costs and targeted ROE, compared with the targeted 1995 recovery rate of 106.5 percent. The lower cost recovery rate is due in part to the lower than expected pension credit and delays in the conversion of several Reserve Banks to the centralized funds transfer application software. This conversion has now been completed. The Reserve Banks now project net income of $6.1 million, compared with the $8.2 million budgeted for 1995. Funds transfer volume is expected to increase 3.1 percent over the 1994 volume level, which is consistent with the growth rate through August.

3. *1996 Issues*—The Reserve Banks expect continuing consolidation of the banking industry to affect funds transfer volume growth. For 1996, an increase of 2.1 percent over the 1995 level is projected, which is somewhat lower than historical trends. The Reserve Banks project that operating costs will decline modestly, reflecting the full year effect of consolidated processing.

4. *1996 Fees*—Based on retaining the 1995 fee schedule, the Reserve Banks project that revenues will recover 106.6 percent of total expenses, including $9.3 million in automation consolidation special project costs and targeted ROE. Although the Reserve Banks' net income projection exceeds the targeted ROE by $5.6 million, lower than projected volume growth could reduce revenues significantly. The Board has approved retaining the 1995 funds transfer fees for 1996.

G. *Book-Entry Securities*[6]—Table 7 presents the actual 1994, estimated 1995, and projected 1996 cost recovery performance for the book-entry securities service.

TABLE 7.—BOOK-ENTRY SECURITIES PRO FORMA COST AND REVENUE PERFORMANCE

[In millions of dollars]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1–4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1994	15.8	13.7	1.7	15.4	0.4	0.7	98.1	1.2
1995 (Est)	15.8	14.2	0.9	15.1	0.7	0.7	100.1	2.5
1996 (Bud)	15.8	13.6	1.4	15.0	0.7	0.8	100.0	4.5

[6] Includes Purchase and Sale Activity.

1. *1994 Performance*—Revenues from the book-entry securities service recovered 98.1 percent of total expenses, including automation consolidation special project costs and targeted ROE during 1994. Book-entry securities transfer volume increased only 1.6 percent over 1993 levels due to a sharp decline in trading activity associated with increasing mortgage interest rates in mid-1994.

2. *1995 Performance*—Through August 1995, the book-entry securities service recovered 99.3 percent of total expenses, including automation consolidation special project costs and targeted ROE, compared with the targeted 1995 recovery rate of 100.1 percent. During the same period, book-entry securities transfer volume decreased 4.2 percent compared with the 1994 level, reflecting the continuing decline in the volume of mortgage-backed securities activity. Although operating expenses are now expected to be slightly higher than originally projected, the Reserve Banks expect to achieve their targeted recovery rate for 1995. This projection is based on two factors. First, the volume of book-entry securities transfers, which declined through mid-1995, has begun to increase over 1994 levels. The Reserve Banks now project a decrease in book-entry securities transfers of only 0.8 percent for the year. Second, the number of accounts maintained and securities issues held, as well as the volume of off-line transfers, are expected to be higher than budgeted.

3. *1996 Issues*—The Reserve Banks expect book-entry securities transfer volume to remain at approximately the 1995 level. Participants Trust Company (PTC) announced its intent to expand its mortgage-backed securities business to include securities issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. PTC, however, has not indicated when these securities will be included in their system. The Reserve Banks anticipate that the effect on 1996 volume will be minimal, but the effect on volume levels in the future could be substantial.

The Reserve Banks plan to begin their conversion to the National Book-Entry System (NBES) in April 1996. Once the conversion is complete, the Reserve Banks expect to reduce data processing costs substantially. Unlike the current system, the NBES requires that securities held as collateral be held in separate securities accounts, rather than combined into one account. The Reserve Banks plan to analyze the effect of this change and recommend that the Board approve a modified fee in mid-1996.

4. *1996 Fees*—Although there are uncertainties with respect to volume projections beyond 1996, based on the approved fee schedule, the Reserve Banks project that the book-entry securities service will recover 100.0 percent of costs, including $1.4 million in automation consolidation special project costs and targeted ROE. The Board has approved retaining the 1995 book-entry securities fees for 1996.

H. *Electronic Connections*—The Federal Reserve Banks charge fees for the electronic connections used by depository institutions to access priced services. The costs and revenues associated with electronic connections are allocated to the various priced services based on the relative number of connections that are used to access each service.

In 1995, the Federal Reserve Board increased fees for several types of electronic connections due to the increasing costs of implementing Fednet. The Board also approved two new categories of electronic connections—(1) high-speed dedicated leased-line connections of 128 kilobits per second (kbps) and 256 kbps and (2) standard dedicated and shared options to support contingency testing by depository institutions with dedicated leased-line connections.

The Board has approved retaining the 1995 fees for electronic connections during 1996.

I. *Noncash Collection*—Table 8 presents the actual 1994, estimated 1995, and projected 1996 cost recovery performance for the noncash collection service.

TABLE 8.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1 – 4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1994	4.1	4.9	0.0	4.9	(0.8)	0.2	80.1	0.2
1995 (Est)	3.8	4.2	0.0	4.2	(0.4)	0.2	86.3	0.2
1996 (Bud)	4.8	4.5	0.0	4.5	0.2	0.2	100.0	0.2

1. *1994 Performance*—Revenues from the noncash collection service recovered 80.1 percent of total expenses, including targeted ROE, in 1994. The revenue shortfall is attributed to the costs associated with consolidating operations and a volume decline of approximately 37 percent from 1993 levels.

2. *1995 Performance*—Through August 1995, the noncash collection service recovered 81.8 percent of total expenses including targeted ROE, compared with the targeted 1995 recovery rate of 91.4 percent. The volume of noncash collection items increased 12.2 percent, compared with the projected 1995 increase of 21.6 percent. A recovery rate of 86.3 percent is now projected for 1995. The improvement compared with year-to-date performance reflects the Reserve Banks' projection of higher volume levels during the fourth quarter of 1995 because one of the major noncash collection service providers withdrew from the business in August. In addition, the consolidation of noncash collection operations at the Cleveland and Jacksonville offices was completed in July and should assist in controlling operating costs.

3. *1996 Issues*—The Reserve Banks are projecting an increase of 22.5 percent in noncash collection volume for 1996. Several factors may affect 1996 volume growth. All of the major service providers discontinued providing noncash collection services during 1995. At the same time, several smaller entities continue to provide noncash collection services. In addition, the Depository Trust Company (DTC), the largest national securities depository, has proposed to collect municipal

coupons on behalf of its participants. While some volume may shift to the Reserve Banks, the DTC's potential presence complicates forecasting 1996 volume levels.

Because of the changing environment, the Board believes that the Reserve Banks' presence in the business provides a degree of stability. In early 1996, the Reserve Banks plan to modify the geographical areas serviced by the two processing sites to increase processing efficiency and maintain high quality.

4. *1996 Fees*—The Reserve Banks proposed adoption of a national fee schedule for the noncash collection service. To standardize fees, the local and interregional coupon fees assessed by the Cleveland office will be increased by $0.50. In addition, to reflect more accurately the cost of collecting matured bonds, the bond collection fee will be increased from $40 to $50. Based on the proposed fee schedule, the Reserve Banks are projecting that the noncash collection service will recover 100.0 percent of total costs, including targeted ROE. The Board has approved the national fee schedule proposed by the Reserve Banks for the noncash collection service.

J. Cash Services—Cash services provided by the Federal Reserve Banks include cash transportation, coin wrapping, nonstandard packaging of currency orders and deposits, and nonstandard frequency of access to cash services.

Table 9 presents actual 1994 performance, estimated 1995, and projected 1996 cost recovery performance for the priced cash services.

TABLE 9.—CASH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Operating costs and imputed expenses	3 Special project costs recovered	4 Total expense [2+3]	5 Net income (ROE) [1–4]	6 Target ROE	7 Recovery rate after target ROE (percent) [1/(4+6)]	8 Special project costs deferred and financed
1994	6.4	6.0	0.0	6.0	0.4	0.2	102.6	0.0
1995 (Est)	5.2	5.1	0.0	5.1	0.1	0.1	99.5	0.0
1996 (Bud)	6.7	6.3	0.0	6.3	0.4	0.2	102.2	0.0

The Reserve Banks expect that 1996 revenues will recover all costs for cash services, including targeted ROE. Projected revenues and costs are higher for 1996 because the San Francisco District will begin to charge fees for access to cash services beyond the basic service level.

III. Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System." In this analysis, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such legal differences.

The Board believes that the recommended price and service level changes would not have a substantial effect on payments system participants, and would not have a direct and material effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. The 1996 fees approved by the Board result in a projected return on equity that meets the target return on equity based on the 50 bank holding company model. Therefore, the Board believes that approval of the proposed fees would not have an adverse effect on the ability of other service providers to compete with the Reserve Banks.

Attachments

TABLE A–1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1996		1995	
Short-term assets:				
Imputed reserve requirement on clearing balances	$ 409.6		$ 619.8	
Investment in marketable securities	3,686.7		5,577.9	
Receivables [1]	64.4		62.8	
Materials and supplies [1]	8.6		5.7	
Suspense & Difference [1]	0.0		0.1	
Prepaid expenses [1]	13.9		16.1	
Items in process of collection	2,413.2		2,592.5	
Total short-term assets		$6,596.4		$8,874.9
Long-term assets:				
Premises [1 2]	$ 346.4		$ 337.7	
Furniture and equipment [1]	189.4		187.8	
Leasehold improvements and long-term prepayments [1]	14.6		12.6	
Capital leases	2.3		3.8	

TABLE A–1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES—Continued

[Millions of dollars—average for year]

	1996		1995	
Total long-term assets		552.7		541.9
Total assets		$7,149.1		$9,416.8
Short-term liabilities:				
Clearing balances and balances arising from early credit of uncollected items	$4,096.3		$6,197.7	
Deferred credit items	2,413.2		2,592.5	
Short-term debt [3]	86.8		84.7	
Total short-term liabilities		$6,596.3		$8,874.9
Long-term liabilities:				
Obligations under capital leases	$ 2.3		$ 3.8	
Long-term debt [3]	182.7		161.6	
Total long-term liabilities		185.0		165.4
Total liabilities		$6,781.3		$9,040.3
Equity [3]		367.8		376.5
Total liabilities and equity		$7,149.1		$9,416.8

[1] Financed through PSAF; other assets are self-financing.
[2] Includes allocations of Board of Governors' assets to priced services of $0.5 million for 1996 and $0.4 million for 1995.
[3] Imputed figures represent the source of financing for certain priced services assets.
Note: Details may not add to totals due to rounding.

TABLE A–2.—DERIVATION OF THE 1996 PSAF

[Millions of dollars]

A. Assets to be Financed: [1]			
Short-term	$86.9		
Long-term [2]	550.4		$637.3
B. Weighted Average Cost:			
1. Capital Structure [3]			
Short-term Debt	13.6%		
Long-term Debt	28.7%		
Equity	57.7%		
2. Financing Rates/Costs [3]			
Short-term Debt	3.9%		
Long-term Debt	7.6%		
Pre-tax Equity [4]	14.2%		
3. Elements of Capital Costs			
Short-term Debt	$86.9	× 3.9% =	$3.4
Long-term Debt	182.7	× 7.6% =	13.8
Equity	367.8	× 14.2% =	52.3
			$69.5
C. Other Required PSAF Recoveries:			
Sales Taxes	$11.3		
Federal Deposit Insurance Assessment	2.2		
Board of Governors Expenses	2.8		$16.3
D. Total PSAF Recoveries			$85.8
As a percent of capital			13.5%
As a percent of expenses [5]			14.1%

[1] Priced service asset base is based on the direct determination of assets method.
[2] Consists of total long-term assets, including the priced portion of FRAS assets, less self financing capital leases.
[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 33 percent are assumed to be financed by long-term debt and 67 percent by equity.
[4] The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.
[5] Systemwide 1995 budgeted priced service expenses less shipping are $610.3 million.

TABLE A–3.—COMPARISON BETWEEN 1996 AND 1995 PSAF COMPONENTS

	1996	1995
A. Assets to be Financed (millions of dollars):		
Short-term	$86.9	$84.7
Long-term	550.4	538.2
Total	$637.3	$622.9
B. Cost of Capital:		
Short-term Debt Rate	3.9%	3.5%
Long-term Debt Rate	7.6%	8.2%
Pre-tax Return on Equity	14.2%	12.1%
Weighted Average Long-term Cost of Capital	12.0%	10.9%
C. Tax Rate	29.9%	31.0%
D. Capital Structure:		
Short-term Debt	13.6%	15.4%
Long-term Debt	28.7%	25.4%
Equity	57.7%	59.2%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	$11.3	$11.3
Federal Deposit Insurance Assessment	2.2	19.0
Board of Governors Expenses	2.8	2.7
F. Total PSAF:		
Required Recovery	$85.8	$94.7
As Percent of Capital	13.5%	15.2%
As Percent of Expenses	14.1%	15.7%

TABLE A–4—COMPUTATION OF CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[millions of dollars]

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$409.6	0.0	$0.0
Investment in marketable securities	3,686.7	0.0	0.0
Receivables	64.4	0.2	12.9
Materials and supplies	8.6	1.0	8.6
Suspense & Difference	0.0	0.2	0.0
Prepaid expenses	13.9	1.0	13.9
Items in process of collection	2,413.2	0.2	482.6
Premises	346.4	1.0	346.4
Furniture and equipment	189.4	1.0	189.4
Leases & long-term prepayments	16.9	1.0	16.9
Total	$7,149.1		$1,070.7
Imputed Equity for 1995	$367.8		
Capital to Risk-Weighted Assets	34.4%		
Capital to Total Assets	5.1%		

By order of the Board of Governors of the Federal Reserve System, November 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–27831 Filed 11–8–95; 8:45 am]

BILLING CODE 6210–01–P

David Andrew Barrett; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. David Andrew Barrett, Tallahassee, Florida; to acquire an additional 4.7 percent, for a total of 29.5 percent, of the voting shares of Evergreen Bancshares, Inc., Tallahassee, Florida, and thereby acquire Guaranty National Bank of Tallahassee, Tallahassee, Florida.

Board of Governors of the Federal Reserve System, November 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27778 Filed 11–8–95; 8:45 am]

BILLING CODE 6210–01–F

Pioneer Community Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 4, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Pioneer Community Group, Inc., Iaeger, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Iaeger, Iaeger, West Virginia.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of Enterprise National Bank of Atlanta, Dunwoody, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Oelwein Bancorporation, Minneapolis, Minnesota; to acquire 99.9 percent of the voting shares of Lakeside Credit Company, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First Trust and Savings Bank, Cedar Rapids, Iowa.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Padgett Agency, Greenleaf, Kansas; to acquire 100 percent of Lansing Financial Corporation, Inc., Lansing, Kansas, and thereby indirectly acquire First State Bank of Lansing, Lansing, Kansas.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Celina Corporation, Celina, Texas; to acquire 100 percent of the voting shares of First State Bank, Celina, Texas.

Board of Governors of the Federal Reserve System, November 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27777 Filed 11–8–95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: October, 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of October, 1995. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since October 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205–3598 PHONE: (202) 401–9220

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the **Federal Register** (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of October, 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of October, 1995.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

Type: AFDC.

Current Status: Pending

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Assistance Payments Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project by: exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala*.

Date Received: 8/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—School Attendance Demonstration Project.

Description: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.

Date Received: 12/5/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: Connecticut—A Fair Chance—Modification.

Description: Proposed modifications would: establish time limits; disregard earnings for time-limited recipients up to poverty level; reduce benefit increase for additional children by one-half; require minor parents to live with adult; change redetermination, verification, and reporting requirements; provide employer tax credits for hiring AFDC recipients; require biometric identification as condition of eligibility for unit; establish two-tier payment system for new residents; simplify and conform AFDC and Food Stamp rules on resources; allow 24 weeks of job search without child care guarantee; change good cause criteria regarding participation; change JOBS sanctions; apply uniform sanction policy for JOBS, child support, and voluntary quits; extend transitional Medicaid to two years; provide transitional child care while income below 75% of state median; limit the application period for transitional child care to 6 months after leaving AFDC; establish fee for child care for AFDC recipients; serve non-custodial parents under JOBS.

Date Received: 8/10/95.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Nancy Wiggett, (203) 424–5329.

Project Title: Georgia—Jobs First Project.

Description: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC-UP cases.

Date Received: 7/5/94.

Type: AFDC.

Current Status: Pending (not previously published).

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Hawaii—Families Are Better Together.

Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC-UP families.

Date Received: 5/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia Murakami, (808) 586–5230.

Project Title: Illinois—Six Month Paternity Establishment Demonstration.

Description: In 20 counties, would require the establishment of paternity, unless good cause exists, within 6 months of application or redetermination as a condition of AFDC and Medicaid eligibility for both mother and child; would deny Medicaid to children age 7 and under, exclude children from filing rules, and exempt Department from making protective payments to eligible children, when custodial parent has not cooperated in establishing paternity; delegate the establishment of paternity in uncontested cases to caseworkers who perform assistance payment or social service functions under title IV–A or XX.

Date Received: 7/18/95.

Title: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.

Description: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.

Date Received: 7/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Faith Spencer, (913) 296–0775.

Project Title: Louisiana—Individual Responsibility Project.

Description: Statewide, would limit AFDC benefits to 24 months out of a 60 month period for able-bodied recipients with extensions where the individual has been actively seeking employment, where job availability is unfavorable, where the individual loses a job for factors unrelated to his job performance, or where the individual requires up to one year to complete employment related education or training; require each child to attend school and be immunized or the child will be removed from the budget group; and applies a full family sanction where the parent has declined or refused an opportunity for full-time employment, without good cause.

Date Received: 9/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Sammy Guillory, (504) 342–4089.

Project Title: Maine—Welfare to Work Program.

Description: Statewide, would require caretaker relatives to sign a family contract; require participation in parenting classes and health care services; provide one-time vendor payments in lieu of AFDC for the purpose of obtaining/retaining employment; provide voucher payments to both married and unmarried minor parents; limit JOBS exemptions; expand eligibility for Transitional Medicaid and Child Care and replace sliding-scale fees with flat-rate fees; reduce Transitional Medicaid reporting requirements; disregard entire value of one vehicle; and apply any federal savings to the JOBS program services. In selected sites, implement ASPIRE-Plus, a subsidized employment program, would cash out food stamps, divert AFDC benefits and pass through all child support collected to families who participate in ASPIRE-Plus.

Date Received: 9/20/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Susan Dustin, (207) 287–3104.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.

Description: AFDC applicants and recipients would have the first $200 plus 1/2 the remaining earned income disregarded.

Date Received: 9/20/93.

Type: AFDC.

Current Status: Pending.

Contact Person: Avis L. Crane, (603) 271–4255.

Project Title: New Hampshire—New Hampshire Employment Program and Family Assistance Program.

Description: Statewide, would replace AFDC with Employment Program administered by both Employment Security Agency and Family Assistance Program; require job search and other employment-related activities for first 26 weeks of receipt followed by work-related activities for 26 weeks; eliminate JOBS target group funding requirement and change JOBS reporting requirements; require recipients attending post-secondary or part-time vocational training to participate in work-related activities; eliminate JOBS services priority for volunteers; establish limits for provision of transportation and other JOBS services based on activity and local conditions; eliminate remoteness as exemption from JOBS; require non-custodial parents to participate in JOBS; increase earned income disregard to 50%; eliminate AFDC-UP eligibility requirements; allow transitional case management for up to one year; raise resource limit to $2,000 and exclude one vehicle and life insurance policies; pass through child support directly to family; take SSI income into account in determining eligibility/payment; eliminate conciliation and apply JOBS sanction of 50% of AFDC benefits for three months followed by no payment for three months, allowing option to increase initial sanction up to 100%; exempt pregnant women from JOBS only during third trimester; for minor parents cases, include in assistance unit any parent or sibling living in the home; eliminate gross income test; disregard educational grants; allow emergency assistance for families with employment-related barriers; allow State to eliminate the certificate option for child care and development block grant funds and use of these funds for capital improvement; eliminate ceiling on At Risk Child Care funds; provide that FFP for AFDC not be reduced during life of demonstration; fund computer system modifications at 80% FFP; require pregnant recipients to cooperate with child support; require that AFDC apply for Medicaid as a unit and not individually; eliminate requirement of receipt of AFDC for 3 of last 6 months in order to receive transitional Medicaid; and allow State to require that some individuals be assigned to a managed care program; substitute outcome measures for JOBS participation rates; change participation requirements for parents with children under 6, UP recipients and minors; establish a medical deduction; increase the sanction for non-cooperation with child support; exempt individuals with significant employment barriers from JOBS; treat lump sum income and all real property, except a home, as a resource; and use 20% of gross earned income as a Medicaid disregard. Also contains various Food Stamp waivers.

Date Received: 9/18/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: New Hampshire—New Hampshire Employment Program.

Description: In three pilot sites, would require work after 6 months of AFDC receipt; eliminate the exemption from JOBS for women in the second trimester of pregnancy; eliminate the JOBS exemption for caretaker of a child under 3 but not less than 1 year of age; replace the earned income disregard of $90 and $30 and ⅓ with a 50% disregard which is not time-limited; raise the resource limit for recipients to $2,000; disregard full value of one vehicle per adult for applicants and recipients; apply a full family sanction voluntarily quitting a job or refusing to accept a job; apply a sanction of reducing the payment standard by 30% for one month for failure to comply with JOBS in the first instance, by 60% in the second instance for one month, and in the third instance apply a full-family sanction for three months or until compliance; and require non-custodial parents to participate in JOBS.

Date Received: 10/6/95.

Type: AFDC.

Current Status: New: 30–Day Request

Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: North Carolina—Work First Program.

Description: Statewide would eliminate increase in AFDC benefits resulting from a birth of a child, limit JOBS exemptions, require a self-sufficiency contract, and limit AFDC receipt to 24 cumulative months. Families who reach the time limit could not reapply for 3 years. The contract would require: cooperation with child support; child immunizations and medical check-ups; school attendance; and that teen parents live with a parent/adult and graduate from high school. Failure to sign the contract would result in denial of the AFDC application. Failure to comply would result in the loss of the adult's AFDC benefits and (starting with the second sanction) Medicaid coverage for of a minimum of: 3 months for the first sanction, 3 months for the second, 6 months for the third, and 3 years for the fourth. The State would offer new applicants a one-time payment in lieu of AFDC; expand AFDC-UP eligibility; raise the resource limit to $3,000 and the vehicle asset limit to $5,000 for AFDC and Food Stamps; and provide for automatic food stamps eligibility for AFDC-eligible families.

Date Received: 9/20/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Kevin Fitzgerald, (919) 733–3055.

Project Title: North Carolina—Cabarrus County Work Over Welfare Demonstration Project.

Description: In Cabarrus County, would require AFDC and Food Stamps

applicants and recipients, with exemptions, to sign an agreement to participate in employment and training for up to 40 hours per week; would divert AFDC and Food Stamps benefits to private employers to supplement wages; and would disregard those wages for AFDC, Food Stamps, and Medicaid eligibility (for NPA participants). Also, would extend the $30 and ⅓ disregard to 2 years for unsubsidized earnings. Individuals who not comply would be denied AFDC, Food Stamps, and Medicaid (unless pregnant) according to the following schedule: first, until compliance; second: for a minimum of 4 months; and third and subsequently: for a minimum of 8 months. Adults who do not sign an agreement would be denied AFDC, Food Stamps, and Medicaid (unless pregnant) until they sign.

Date Received: 10/5/95.
Type: AFDC/Medicaid.
Current Status: New.
Contact Person: Kevin Fitzgerald, (919) 733–3055.

Project Title: Ohio—Ohio First.
Description: Statewide, would replace current earned income disregards with $250 and ½ for twelve months for recipients; eliminate the work history requirement for married parents in AFDC-UP cases; eliminate 100-hour rule for AFDC-UP; disregard of stepparent income for four months; increase the vehicle asset limit; use established vacancies for subsidized employment slots; require applicant job search as a condition of family eligibility; maintain food stamp benefit levels when the AFDC benefit is reduced as a result of sanction; impose progressive sanctions for noncompliance with JOBS leading to whole family sanctions; establish that failure to comply with JOBS equates to failure to comply with work program requirements under the Food Stamp Program; limit AFDC eligibility to 36 months out of any 60 month period, unless exempt; allow the IV-D agency to determine good cause for noncooperation with Child Support Enforcement; change penalty for failure to cooperate with Child Support provisions to include a whole family sanction if the failure continues for two years; change penalty for fraud to include ineligibility for all assistance unit members until payments received fraudulently have been repaid; require development and signing of a self-sufficiency contract as a condition of eligibility for the assistance unit; require pregnant women receiving Medicaid to participate in substance abuse screening as part of prenatal care; implement sanctions for failure to cooperate with substance abuse screening leading to whole family sanctions.
Date Received: 10/27/95.
Type: AFDC/Medicaid.
Current Status: New.
Contact Person: Joel Rabb, (614) 466–3196.

Project Title: Oklahoma—Untitled.
Description: In four pilots conducted in five counties each, would (1) extend transitional child care to up to 24 months; (2) require that all children through age 18 be immunized and require that responsible adults with preschool age children participate in parent education or enroll the children in Head Start or other preschool program; (3) not increase AFDC benefits after birth of additional children, but provide voucher payment for the increment of cash benefits that would have been received until the child is two years old; and (4) pay lesser of AFDC benefit or previous state of residence or Oklahoma's for 12 months for new residents.
Date Received: 10/27/95.
Type: AFDC.
Current Status: New.
Contact Person: Raymond Haddock, (405) 521–3076.

Project Title: Oregon—Oregon Option.
Description: As a statewide project, would incorporate waivers already approved in 1992 for JOBS Welfare Program and in 1994 for the JOBS Plus Demonstration with previously pending waiver requests to increase vehicle asset limit and extend transitional child care. Requests guaranteed level of federal funding, with funds not used for benefits to be used for other community support or prevention programs. Also would, with some exceptions, limit receipt of AFDC benefits to no more than 24 out of 84 months for families with employable parents; allow case manager to determine JOBS exemptions on an individual basis; eliminate the time restrictions on job search; impose progressive sanctions, leading to full-family ineligibility, for non-compliance with JOBS; require ineligible alien parents of AFDC children to participate in JOBS; require counseling for recipients with substance abuse problems; require teen parents to live in an adult-supervised setting; discontinue the AFDC-UP program from June through September each year and eliminate the 100-hour rule and work history requirements; increase asset limit to $2,500 for non-JOBS participants and $10,000 for JOBS participants, and treat lump-sum payments as an asset; require annual AFDC eligibility redeterminations; modify the rules for potential liability under EBT.
Date Received: 7/10/95.
Type: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Expansion of the Transitional Child Care Program.
Description: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.
Date Received: 8/8/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Increased AFDC Motor Vehicle Limit.
Description: Would increase automobile asset limit to $9000.
Date Received: 11/12/93.
Type: AFDC.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Pennsylvania—School Attendance Improvement Program.
Description: In 7 sites, would require school attendance as condition of eligibility.
Date Received: 9/12/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.
Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.
Date Received: 12/29/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: South Carolina—Family Independence Program.
Description: Statewide, would, with exceptions, time limit AFDC benefits to families with able bodied adults to 24 months out of 120 months, not to exceed 60 months in a lifetime; eliminate increase in AFDC benefit resulting from birth of children 10 or more months after the family begins AFDC receipt, but provide benefits to such children in the form of vouchers for goods and services permitting child's mother to participate in education, training, and employment-related activities; eliminate deprivation requirements, principal earner provisions, work history requirements, and 100-hour rule for AFDC-UP; increase AFDC resource limit to $2,500 and disregard as resources one vehicle with a market value up to $10,000, the balance in an Individual Development Account (IDA) up to $10,000, and the cash value of life insurance; disregard from income up to $10,000 in lump sum payments deposited in an IDA within 30 days of receipt, earned income of children attending school, and interest and dividend income up to $400; require participation in a family skills training program; require certain AFDC recipients to submit to random drug tests and/or participate in alcohol or drug treatment; require children to attend school; increase amount of child support passed through to AFDC recipients; require more extensive information for child support enforcement purposes; modify JOBS exemptions and good cause criteria, and increase sanctions for non-compliance; make job search a condition of eligibility; allow non-custodial parents of AFDC children to participate in JOBS; pay transitional grant equaling 3 percent of the maximum family grant following employment; and provide transitional grant Medicaid and child care for 12 months from the date of employment for cases previously closed due to time limit.
Date Received: 6/12/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Linda Martin (804) 737–6010.

Project Title: Texas—Achieving Change for Texans.
Description: Statewide, would implement requirement for a personal responsibility agreement which addresses issues such as child support cooperation, early medical screening for children, work requirements, drug and alcohol abuse, school attendance, and parenting skills training; would limit the caretaker exemption from employment services, disregard the earned income and resources from earnings of a child, set resource limits which promote independence from AFDC, eliminate work history and 100-hour rules for otherwise eligible two-parent families. In Bexar County would time-limit AFDC benefits to 12, 24, and 36 months depending on education and job experience, with extensions of the time-limit based on severe personal hardship, or in cases where the State could not provide supportive services, or where the local economy was in such state that the recipient could not reasonably be expected to find employment, if State funds are available to continue assistance. Transitional Medicaid and child care services would be provided to individuals who exhaust their time-limited cash benefits. In two metropolitan statistical areas establish Individual Development Accounts to promote the transition to independence from AFDC, through allowable account deductions for education, business start-up costs and the like. In Fort Bend County would allow at recipient option, one-time AFDC cash emergency assistance payments of $1,000 in lieu of ongoing regular AFDC payments with prohibition from applying for regular AFDC for a period of 12 months from date of receipt. In Dallas-Fort Worth would require electronic imaging (fingerprinting combined with photographic identification).
Date Received: 10/6/95.
Title: AFDC/Medicaid.
Current Status: Pending.
Contact Person: Kent Gummerman, (512) 438–3743.

Project Title: Utah—Untitled.
Description: Statewide, would exclude the value of a vehicle for AFDC recipient families, including those also receiving Food Stamps. Would not apply to initial eligibility determination.
Date Received: 10/3/95.
Type: AFDC.
Current Status: New.
Contact Person: Bill Biggs, (801) 538–4337.

III. Listing of Approved Proposals Since October 1, 1995

Project Title: Georgia—Work for Welfare Project.
Contact Person: Nancy Meszaros, (404) 657–3608.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: November 3, 1995.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 95–27775 Filed 11–8–95; 8:45 am]

BILLING CODE 4184–01–P

Office of the Secretary

Office of the Secretary and Public Health Services; Statement of Organization, Functions, and Delegations of Authority

Under the authority of Section 6 of Reorganization Plan No. 1 of 1953 and Section 2 of Reorganization Plan No. 3 of 1966, 5 U.S.C. 301, and pursuant to the authorities vested in me as Secretary of Health and Human Services, I hereby order a reorganization within the DHHS that affects the Office of the Secretary and the U.S. Public Health Service. This Notice amends the following portions of Part A and Part H of the Statement of Organization, Functions, and Delegation of Authority for the Department of Health and Human Services: Part A, Chapter AA, Office of the Secretary, as amended at 49 FR 32257–58 and last amended at 60 FR 51480, 10/2/95; and Part H, Chapter H as last amended at 52 FR 47053–4, 12/11/87, and Chapter HA as last amended at 60 FR 51480, 10/2/95. The changes designate the Public Health Service agencies as Operating Divisions reporting directly to the Secretary, establish the Office of Public Health and Science within the Office of the Secretary and delete the Office of the Assistant Secretary for Health. The changes are as follows:

I. Amend Chapter H of the Statement of Organization, Functions, and Delegations of Authority. Delete Section H–10 Public Health Service, Organization; and Section H–30 Public Health Service, Order of Succession, in their entirety.

II. Designate the following Public Health Service agencies as Operating Divisions within the Department of Health and Human Services and assign the following new Part designations in the Statement of Organization, Functions, and Delegations of Authority:

- Agency for Health Care Policy and Research—Part (E)
- Agency for Toxic Substances and Disease Registry—Part (J)
- Centers for Disease Control and Prevention—Part (C)
- Food and Drug Administration—Part (D)
- Health Resources and Services Administration—Part (R)
- Indian Health Service—Part (G)
- National Institutes of Health—Part (N)
- Substance Abuse and Mental Health Services Administration—Part (M)

The Statement of Organization, Functions and Delegations of Authority, for the newly established Operating Divisions, and their respective Chapters, will remain intact, until either superseded or amended.

III. Amend Chapter HA as follows:

A. Transfer from the Office of the Assistant Secretary Part H, Chapter HA, Office of the Assistant Secretary for Health, the following components, along with their respective functional

responsibilities to Part A, Office of the Secretary:

- Office on Women's Health (HAW)
- Office of Minority Health (HAM)
- President's Council on Physical Fitness and Sports (HAC)
- Office of Research Integrity (HAG)
- Office of Population Affairs (HA5)
- Office of International and Refugee Health (HAL)
- Office of HIV/AIDS Policy (HAH)
- Office of Emergency Preparedness (HAP)
- Office of Disease Prevention and Health Promotion/Planning and Evaluation (HAV)
- Office of the Surgeon General (HAN)

B. Delete the remaining portion of Chapter HA, in its entirety.

IV. Amend Part A, Chapter AA, "the Office of the Secretary," Section AA.10 *Organization* by inserting the following title at the end of the section: "Office of Public Health and Science."

V. Establish a new Chapter AC, under Part A, to read as follows:

Office of Public Health and Science

AC.00 Mission
AC.10 Organization
AC.20 Functions
AC.30 Delegations of Authority

Section AC.00 Mission. The Office of Public Health and Science (OPHS) is under the direction of the Assistant Secretary for Health, who serves as the Secretary's Senior Advisor for Public Health and Science. The Office serves as the focal point for leadership and coordination across the Department in public health and science; provides direction to program offices within OPHS, and, where required by law, to other HHS components; and provides advice and counsel on public health and science issues to the Secretary.

Section AC.10 Organization. The Office of Public Health and Science (AC) is under the direction of the Assistant Secretary for Health and consists of the following components:

A. Immediate Office (ACA)
B. Office on Women's Health (ACB)
C. Office of Minority Health (ACC)
D. Office of the President's Council on Physical Fitness and Sports (ACE)
E. Office of Research Integrity (ACF)
F. Office of Population Affairs (ACG)
G. Office of International and Refugee Health (ACH)
H. Office of HIV/AIDS Policy (ACJ)
I. Office of Emergency Preparedness (ACK)
J. Office of Disease Prevention and Health Promotion (ACL)
K. Office of the Surgeon General (ACM)

Section AC.20 Functions.

A. Office of Public Health and Science (AC). The Office of Public Health and Science (OPHS), and, where required by law, other HHS components, are under the direction of the Assistant Secretary for Health (ASH) who is responsible to the Secretary for the conduct of a variety of advisory, coordinative, implementation, management, developmental, and representational activities in public health and science. The Office consists of specialized staffs that focus on cross-cutting public health and science issues of major significance to the Nation.

B. The Immediate Office (ACA). The Immediate Office: (1) Provides direction to program offices within OPHS; (2) provides advice to assure that the Department conducts broad based public health assessments designed to better define public health problems and to design solutions to those problems; assists other components within the Department in anticipating future public health issues and problems, and provides assistance to ensure that the Department designs and implements appropriate approaches, interventions, and evaluations, to maintain, sustain, and improve the health of the Nation; (3) at the direction of the Secretary, provides assistance in leading and managing the implementation and coordination of Secretarial decisions for Public Health Service Operating Divisions and, at the Secretary's direction, and for that purpose, draws on staff divisions and other organizational units for assistance in regard to legislation, budget, communications, and policy analysis; (4) provides a focus for leadership on matters including recommendations for policy on population-based public health and science and at the Secretary's direction leads and/or coordinates initiatives that cut across agencies and operating divisions; (5) provides advice to the Secretary and senior Department officials on budget and legislative issues of the Public Health Service Operating Divisions; (6) at the direction of the ASH, provides support for the Office of the Surgeon General in the exercise of statutory requirements and assigned activities, including policy setting for the Commissioned Corps; (7) works in conjunction with the Office of Intergovernmental Affairs in promoting relationships among and between State and local health departments, academic institutions, professional and constituency organizations, and the Department; (8) works in conjunction with the Assistant Secretary for Planning and Evaluation on matters of science policy analysis; (9) in consultation with the Office of International Affairs provides advice on international and refugee health policy and coordinates international health-related activities and provides advice on a broad range of health activities that may be intra- and interdepartmental in scope; coordinates and manages Departmental liaison with bilateral and multilateral health agencies; (10) provides leadership for and participates in public health system improvement and development activities, particularly as they relate to population-based public health and the public health infrastructure; and (11) communicates and interacts with national professional and constituency organizations on matters of public health and science.

C. Transfer the functional statements for Items B through K, identified under Section AC.10 Organization, to the Office of Public Health and Science, intact, from Part H, Chapter HA, Statement of Organization, Functions and Delegations of Authority.

VI. Continuation of the Public Health Service: The newly established Operating Divisions and the Office of Public Health and Science shall constitute the Public Health Service.

VII. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of the Secretary, and the Public Health Service heretofore issued and in effect prior to the date of this reorganization are continued in full force and effect.

VIII. Delegations of Authority: All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

IX. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: October 31, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–27804 Filed 11–8–95; 8:45 am]

BILLING CODE 4160–17–M

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Correction notice.

SUMMARY: This notice amends the statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Administration for Children and Families, published in the **Federal Register** August 9, 1995 (60 FR 40586).

FOR FURTHER INFORMATION CONTACT: Howard Rolston (202) 401–9220.

SUPPLEMENTARY INFORMATION: The notice published in the **Federal Register** on August 9, 1995, amended Part K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services as it applies to certain offices within the Administration for Children and Families. One of those offices is the Office of Planning, Research and Evaluation, Chapter KM.

As published, the functional statement of the Office of Planning, Research and Evaluation, Division of Child and Family Development, included extraneous and misplaced words (60 FR 40591). For clarity, the functional statement for this Division is published in its entirety below:

KM.10 Organization

The Office of Planning, Research and Evaluation is headed by a Director who reports to the Deputy Assistant Secretary for Policy and External Affairs. The Office is organized as follows:

- Office of the Director (KMA).
- Division of Economic Independence (KMB).
- Division of Child and Family Development (KMC).

KM.20 Functions

A. * * * * *
B. * * * * *

C. The Division of Child and Family Development

The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, states, community agencies, and the private sector to: improve the effectiveness and efficiency of programs; assure the protection of children and other vulnerable populations; strengthen and promote family stability; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for child and family development; statistical, policy and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division: Manages the section 1110 social service research budget; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstration, and evaluation studies; manages and conducts statistical, policy and program analyses on social trends and behaviors which impact child and family well-being; and works in partnership with states, local communities, and the private sector to promote the well-being of children and families.

Dated: November 3, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–27774 Filed 11–8–95; 8:45 am]

BILLING CODE 4184–01–M

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP)

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP), in association with the meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4:30 p.m., November 29, 1995.

Location: Edgewater Inn, 2411 Alaskan Way-Pier 67, Seattle, Washington 98121, telephone 206/728–7000, FAX 206/441–4119.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on Native American health effects at the Hanford, Washington, site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES including considerations regarding a proposed medical monitoring program and explorations of options and alternatives to providing support for tribal involvement in the HHES.

Matters to be Discussed: Agenda items will include a dialogue pertaining to issues unique to tribal involvement with HHES. This will include an update on the status of ATSDR's draft policy on establishing government-to-government relations with the nine affected tribes as sovereign nations, and exploring options and alternatives to providing support for tribal participation in HHES.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: November 3, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27770 Filed 11–8–95; 8:45 am]

BILLING CODE 4163–70–M

Public Health Service, Activities and Research at Department of Energy Sites, Citizens Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 9 a.m.–9 p.m., November 30, 1995. 9:15 a.m.–4 p.m., December 1, 1995.

Place: Edgewater Inn, 2411 Alaskan Way-Pier 67, Seattle, Washington 98121, telephone 206/728–7000, FAX 206/441–4119.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Purpose: The purpose of this meeting is to receive updates from the Inter-tribal Council on Hanford Health Projects; receive updates and clarification from ATSDR and CDC representatives on outstanding issues; discuss with Agency personnel, issues relevant to the Technical Steering Panel of the Hanford Environmental Dose Reconstruction Project; receive a report on the "Workshop on Radiation Health Risks for Hanford: Considerations for Medical Monitoring"; receive reports from the Outreach, Public Health Activities, and Health Studies Work Groups; and receive a presentation on "other contaminants of concern."

Matters to be Discussed: Agenda items will include ATSDR's and CDC's updates, a discussion of "Popular Epidemiology," and solicitation of concerns the Subcommittee wants ATSDR and CDC to address.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: November 3, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27771 Filed 11–8–95; 8:45 am]

BILLING CODE 4163–70–M

Food and Drug Administration

[Docket No. 88N–0394]

Generic Animal Drug and Patent Term Restoration Act; Ninth Policy Letter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a ninth policy letter, dated June 27, 1995, concerning implementation of the Generic Animal Drug and Patent Term Restoration Act (GADPTRA). The ninth policy letter states the revised policy of the Center for Veterinary Medicine (CVM) on the environmental information to be submitted by sponsors for generic animal drug products. The agency is soliciting comments on the policy letter.

DATES: Written comments may be submitted at any time regarding this or previous policy letters or implementation of GADPTRA in general.

ADDRESSES: Submit written requests for single copies of the ninth policy letter to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments on the ninth policy letter to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The ninth policy letter and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles E. Eirkson, Center for Veterinary Medicine (HFV–152), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1683.

SUPPLEMENTARY INFORMATION: On November 16, 1988, President Reagan signed GADPTRA into law (Pub. L. 100–670). GADPTRA amends the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) by extending the generic approval system to copies of new animal drugs that were approved after October 10, 1962, and provides patent extension for certain animal drugs.

FDA has published notices of availability for eight policy letters concerning implementation of GADPTRA. A list of the publication dates and topics of the first five letters was published in the **Federal Register** of June 18, 1990 (55 FR 24645). In the **Federal Register** of October 31, 1990 (55 FR 45860), FDA published a notice of availability of the sixth letter dated October 17, 1990. In the **Federal Register** of April 15, 1991 (56 FR 15083), FDA published a notice of availability of the seventh policy letter dated March 20, 1991. In the **Federal Register** of August 21, 1991 (56 FR 41561), FDA published a notice of availability of the eighth policy letter dated July 23, 1991.

FDA is now announcing the availability of a ninth policy letter dated June 27, 1995, which is a revision of the second policy letter, dated June 7, 1989. The second letter notified sponsors to submit an environmental assessment (EA) that addresses the environmental impact associated with the manufacture of the generic bulk drug and finished product. Based on the experience acquired from reviewing a considerable number of these EA's with no significant environmental impact identified, CVM has confirmed that there is no reason to believe the manufacture of generic animal drugs may significantly affect the environment and decided, in most cases, CVM will categorically exclude generic animal drug applications from preparation of an EA under 21 CFR 25.24(d)(1).

This policy does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way. The agency anticipates that changes in these policy statements may occur in the future. When and if changes are made, copies of the revised policy statements will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the **Federal Register**.

In addition, the subjects contained in these policy statements may be addressed in the regulations that will implement GADPTRA. Comments submitted in response to this notice will be considered in the drafting of the proposed regulations.

Dated: November 3, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–27801 Filed 11–8–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0356]

Schering Corp., et al.; Withdrawal of Approval of Seven Abbreviated Antibiotic Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of seven abbreviated antibiotic applications (AADA's). The holders of the AADA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the AADA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA No.	Drug	Applicant
61–979	Sisomicin Sulfate USP	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
62–119	Doxycycline Hyclate Capsules, 50 milligrams (mg) and 100 mg	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.
62–267	Gentamicin Sulfate USP	Chinoin Pharmaceutical and Chemical Works Co. Ltd., c/o Forum Products, Inc., 33 Flying Point Rd., Southampton, NY 11968.
62–403	Nystatin USP	Do.
62–406	Sterile Chloramphenicol Sodium Succinate USP	Elkins-Sinn Pharmaceuticals, Two Esterbrook Lane, Cherry Hill, NJ 08003–4099.
62–534	Gentamicin Sulfate Ointment USP	Pharmaderm, 60 Baylis Rd., Melville, NY 11747.
62–618	Erythromycin Delayed-Release Capsules USP	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the AADA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective November 9, 1995.

Dated: October 30, 1995.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 95–27802 Filed 11–8–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–62]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 3, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–27769 Filed 11–8–95; 8:45 am]

BILLING CODE 4210–29–M

Office of the Secretary

[Docket No. FR–3918–N–06]

Privacy Act of 1974; Proposed Amendment to System of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notification of proposed amendment to one of the existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Housing and Urban Development is giving notice that it intends to amend the Privacy Act's Single Family Case Files (HUD/Dept–46) system of records.

EFFECTIVE DATE: This amendment will be effective without further notice on December 11, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendment to the Rules Docket Clerk, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/Dept–46 is being amended to allow the release of mortgage origination and default/claim information to financial institutions and computer software companies for the purpose of conducting automated underwriting,

credit scoring, and other risk management evaluation studies. The new routine use will read as follows: To financial institutions and computer software companies—for automated underwriting, credit scoring and other risk management evaluation studies.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the "Federal Register Privacy Act Issuances, 1993."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate; the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget (OMB), pursuant to paragraph 4c of Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals" dated June 25, 1993 (58 36075, July 2, 1993).

Authority: 5 U.S.C. 552a; 88 Stat. 1986; sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, November 1, 1995.

Steven M. Yohai,

Acting Director, Office of Information Policies and Systems.

HUD/DEPT–46

SYSTEM NAME:

Single Family Case Files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine uses paragraphs or prefatory statement. Other routine uses include:

a. To welfare agencies for fraud investigation.

b. To the Department of Veterans Affairs for coordination with HUD in processing construction complaints.

c. To Congressional delegations to provide information concerning status of complaints.

d. Complainants and attorneys representing them for review of complainant file for status and other information.

e. Builders and attorneys representing them to review complainant files for status information.

f. To holders of subordinate or junior mortgages to determine the outstanding balance due to HUD on a Secretary-held mortgage.

g. To financial institutions and computer software companies for automated underwriting, credit scoring and other risk management evaluation studies.

[FR Doc. 95–27673 Filed 11–8–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–59442]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 29: SW¼SE¼SE¼.
Containing 10.00 acres, more or less.

This parcel of land, situated in Las Vegas is being offered as a direct sale to Nevada Power Company.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals, and will be subject to:

1. An easement 50.00 feet in width along the south, and 30.00 feet in width along the east, west and north boundaries for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

2. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N–55657 under the Act of October 21, 1976 (43USC1761).

3. Those rights for electrical substation site purposes which have been granted to Nevada Power Company by Permit No. N–55582 under the Act of October 21, 1976 (43USC1761).

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: October 30, 1995.

Micheal F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–27731 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–HC–P

[CO–930–1430–01; COC–58828]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

November 2, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 850 acres of National Forest System land for 50 years to protect recreational resources and planned and constructed facilities at the Loveland Ski Area. This notice closes this land to location and entry under the mining laws for up to two years. The land has been and remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before February 7, 1996.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 26, 1995, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch 2):

Sixth Principal Meridian

Arapaho National Forest

Loveland Ski Area

T. 4 S., 76 W.,
Sec. 15, SE¼SW¼NW¼, SW¼SE¼NW¼, SW¼, W½NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼, and W½SE¼SE¼;
Sec. 16, SE¼NE¼SE¼, SW¼SW¼SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 22, W½NE¼NE¼, W½NE¼, S½SE¼NE¼, NW¼, NE¼SW¼, and N½SE¼;
Sec. 23, SW¼SW¼NW¼, S½NE¼SW¼, NW¼SW¼, NE¼SE¼SW¼, and W½SW¼.

The area described contains approximately 850 acres in Clear Creek County.

The purpose of this withdrawal is to protect existing and planned recreational facilities and recreational resources at the Loveland Ski Area.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 95–27782 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–JB–P

[OR–958–1430–01; GP6–0016; OR–9041, et al.]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that all or portions of nine separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed either to surface entry, mining, and nonmetalliferous mining and in some cases, where closed, opened to nonmetalliferous mining. The lands would remain open, or where closed, opened to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, OR 97208, 503–952–6155.

EFFECTIVE DATE: Comments should be received by February 7, 1995.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following identified lands are involved:

1. OR–9041, Executive Order dated April 17, 1926, Public Water Reserve No. 187, 324.66 acres located in sec. 1, T. 41 S., R. 14½ E., sec. 7, T. 36 S., R. 22 E., sec. 25, T. 30 S., R. 23 E., sec. 14, T. 32 S., R. 23 E., sec. 28, T. 40 S., R. 23 E., sec. 31, T. 38 S., R. 24 E., secs. 21 and 22, T. 41 S., R. 24 E., sec. 1, T. 40 S., R. 28 E., and secs. 6 and 7, T. 40 S., R. 29 E., W.M., in Harney, Lake and Klamath Counties, south and west of Hart Mountain Antelope National Refuge.

2. OR–9041–A, Executive Order dated April 17, 1926, Public Water Reserve No. 107, 490.39 acres located in sec. 1, T. 12 S., R. 27 E., sec. 13, T. 26 S., R. 27 E., sec. 15, T. 21 S., R. 29 E., sec. 32, T. 29 S., R. 30 E., secs. 3 and 35, T. 33 S., R. 33 E., sec. 4, T. 34 S., R. 33 E., and sec. 8, T. 39 S., R. 34 E., W.M., in Grant and Harney Counties, south and east of the Malheur National Refuge and near the John Day Fossil Beds National Monument.

3. OR–9041–C, Executive Order dated April 17, 1926, Public Water Reserve 107, 89.02 acres located in sec. 20, T. 15 S., R. 23 E., sec. 31, T. 17 S., R. 23 E., and sec. 4, T. 21 S., R. 24 E., W.M., in Crook County, between approximately 44 to 50 miles east and southeast of Prineville.

4. OR–18997, Executive Order No. 5344, dated May 8, 1930, Public Water Reserve No. 131, 40 acres located in sec. 32, T. 38 S., R. 23 E., W.M., in Lake County approximately 18 miles northwest of Lakeview.

5. OR–19001, Executive Order dated August 8, 1932, Public Water Reserve No. 146, 40 acres located in sec. 35, T. 38 S., R. 13 E., W.M., in Klamath County, approximately 42 miles west of Klamath Falls.

6. OR–20221–C, Executive Order dated February 25, 1919, Public Water Reserve No. 61, 80 acres located in secs. 10 and 25, T. 40 S., R. 22 E., W.M., in Lake County, approximately 12 miles southeast of Lakeview.

7. OR–20224–B, Executive Order dated March 8, 1920, Public Water Reserve No. 70, 80.68 acres located in sec. 25, T. 15 S., R. 21 E., and sec. 20, T. 15 S., R. 23 E., W.M., in Crook County, approximately 40 miles west of Prineville.

8. OR–3660–A, Public Land Order No. 4537 dated November 20, 1968, Umpqua Recreation Site, 74.01 acres located in secs. 9, 10 and 15, T. 25 S., R. 7 W., W.M., in Douglas County, northwest of Roseburg.

9. OR–19341, Public Land Order No. 754 dated September 14, 1951, Myrtle Island Research Natural Area, 28.28 acres located in secs. 20 and 21, T. 24 S., R. 7 W., W.M., in Douglas County, northwest of Roseburg.

The purpose of the public water reserve withdrawals is to protect the water sources located on the lands for livestock and wildlife uses. The withdrawals currently segregate the lands from operation of the public land laws generally, including mining for nonmetalliferous minerals, but not to location and entry under the mining laws for metalliferous minerals or the mineral leasing laws. The Bureau of Land Management requests no changes in the purpose or segregative effect of the withdrawals except that some of the lands be opened to mining for nonmetalliferous minerals.

The purpose of the recreation withdrawal is to protect the Umpqua recreation site and segregates the land from surface entry and mining. The purpose of the research natural area withdrawal is to protect the natural environment and its value for research studies, and segregates the land from surface entry, mining and mineral leasing. No change is proposed in the purpose or segregative effect except to open the land to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views

in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination of the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 31, 1995.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 95–27732 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–33–P

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Chevron U.S.A., Exploration Activity, SEA No. R–3012U	Destin Dome, Block 57, Lease OCS–G 6407, 26 miles from Santa Rosa County, Florida.	09/21/95
Shell Offshore Inc., NORM disposal operations, SEA No. NORM 95–139.	Eugene Island Areas, Block 158, Lease OCS–G 1220, 35 miles south of St. Mary Parish, Louisiana.	04/06/95
Conoco Inc., NORM disposal operations SEA No. NORM 95–140.	West Delta Area, Block 95, Lease OCS–G 1497, 23 miles southeast of Jefferson Parish, Louisiana.	01/17/95
Shell Offshore, Inc., NORM disposal operations SEA No. NORM 95–141.	South Marsh Island Area, Block 58, Lease OCS–G 1194, 60 miles south of Vermilion Parish, Louisiana.	01/17/95
Amoco Production, NORM disposal operations, SEA No. NORM 95–145.	West Delta Area, Block 75, Lease OCS–G 1085, 18 miles south of Plaquemines Parish, Louisiana.	02/08/95
Mobile Exploration & Producing U.S. Inc., NORM disposal operations, SEA No. NORM 95–149.	West Cameron Area, Block 71, Lease OCS 0245, 9 miles south of Cameron Parish, Louisiana.	09/01/95
Tenneco Gas Gathering Company, pipeline activity, SEA No. OCS–G 14276.	Mobile Area, Blocks 916, 872, 871, 827, and 826, Lease OCS–G 14276.	03/17/95
Shell Pipe Line Corporation, pipeline activity, SEA No. OCS–G 15042.	South Timbalier Area, Blocks 301, 298, 297, 274, 269, 247, 246, 240, 219, 220, 211, 201, 191, 174, 175, 162, 147, 148, 138, 137, 107, 90, 89, 84, 65, 64, 57, 46, 45, 40, 27, 22, and Bay Marchand Area, Block 4, Lease OCS–G 15042.	08/08/95
Mobile Exploration & Producing U.S. Inc., Structure-Removal Operations, SEA No. ES/SR 94–23A.	West Cameron Area, Block 72, Lease OCS 0245, 17 miles southeast of Cameron, Louisiana.	07/12/95
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 95–01/S.	Eugene Island Area, Block 253, Lease OCS–G 10741, 60 miles south-southwest of Terrebonne Parish, Louisiana.	05/17/95
Century Offshore Management Corporation, Structure-Removal Operations, SEA No. ES/SR 95–006.	Ship Shoal Area, Block 62, Lease OCS–G 7747, 12 miles south of Terrebonne Parish, Louisiana.	02/07/95
Conoco Inc., Structure-Removal Operations, SEA No. ES/SR 95–007.	East Cameron Area, Block 83, Lease OCS 0187, 43 miles south-southeast of Cameron, Louisiana.	02/08/95
Century Offshore Management Corporation, Structure-Removal Operations, SEA No. ES/SR 008B.	Chandeleur Area, Block 24, Lease OCS–G 6840, 39 miles south of Jackson County, Mississippi.	12/21/95
Mobile Exploration & Producing U.S. Inc., Structure-Removal Operations, SEA Nos. ES/SR 95–009, 95–010, 95–011, and 95–012.	Eugene Island Area, Blocks 126 and 119, Leases OCS 052 and 049, 20 miles southwest of Terrebonne Parish, Louisiana.	01/30/95
Oryx Energy Company, Structure-Removal Operations, SEA No. ES/SR 95–013.	High Island Area, Block 130, Lease OCS–G 6199, 28 miles south of the nearest shoreline off Texas.	01/20/95
Conoco Inc., Structure-Removal Operations, SEA Nos. ES/SR 95–014, 015, and 016.	West Delta Area, Blocks 40 and 95, South Timbalier Area, Block 146, Leases OCS–G 3176, 1072, and 1497.	03/03/95
Chevron U.S.A. Structure-Removal Operations, SEA No. ES/SR 95–017.	Grand Island Area, Block 37, Lease OCS 0392, 5 miles southeast of Fourchon Beach, in Lafourche Parish, Louisiana.	12/21/95
Kerr-McGee Corporation, Structure-Removal Operations, SEA Nos. ES/SR 95–018, 95–019, 95–023, and 95–024.	Ship Shoal Area, Blocks 27, 29, 31, and 32; Leases OCS 0335, 0345, 0334, and 0347; 5 miles south of Terrebonne Parish, Louisiana.	02/08/95
Kerr-McGee Corporation, Structure-Removal Operations, SEA Nos. 95–020, 95–021, 95–022, and 95–025.	Ship Shoal Area, Block 28, Lease OCS 0346, 41 miles south of Morgan City, Louisiana.	02/03/95
Oryx Energy Company, Structure-Removal Operations, SEA No. ES/SR 95–026.	High Island Area, Block A–295, Lease OCS–G 11401, 96 miles southeast of Jefferson County, Texas.	02/16/95
Union Oil Company of California, Structure-Removal Operations, SEA Nos. ES/SR 95–027 and 95–030.	High Island Area, East Addition, South Extension, Block A–341, Lease OCS–G 2427, 70 miles south-southeast of Galveston County, Texas.	03/31/95
Unocal Corporation, Structure-Removal Operations, SEA Nos. ES/SR 95–029 and 95–028.	West Cameron Area, Block 280, Lease OCS–G 0911, 64 miles south of Cameron, Parish, Louisiana.	03/28/95

Activity/operator	Location	Date
Unocal Corporation, Structure-Removal Operations, SEA Nos. ES/SR 95–031, 95–032, 95–033, 95–034, 95–035, 95–036, and 95–037.	Eugene Island Area, Block 32, Lease OCS 0196, 48 miles west of Dulac, Louisiana.	03/17/95
Mobile Exploration & Producing U.S. Inc., Structure-Removal Operations, SEA No. ES/SR 95–038.	Eugene Island Area, Block 105, Lease OCS 0797, 17 miles south of Terrebonne Parish, Louisiana.	03/28/95
Texaco Exploration and Production Inc., Structure-Removal Operations, SEA Nos. ES/SR 95–039, –95–040, 95–041, and 95–042.	South Marsh Island Area, Blocks 217, 229, 238, and 239, Lease OCS 0310, 49 miles southwest of Morgan City, Louisiana.	03/08/95
Oryx Energy Company, Structure-Removal Operations, SEA No. ES/SR 95–043.	Vermilion Area, Block 320, Lease OCS–G 2087, 129 miles southeast of Sabine Pass, Texas.	05/04/95
Kerr-McGee Corporation, Structure-Removal Operations, SEA No. ES/SR 95–044.	Main Pass Area, Block 107, Lease OCS–G 7804, 150 miles east of Morgan City, Louisiana.	03/09/95
Oryx Energy Company, Structure-Removal Operations, SEA No. ES/SR 95–04[illegible]	Eugene Island Area, Block 380, Lease OCS–G 2317, 88 miles southeast of Terrebonne Parish, Louisiana.	04/28/95
Union Oil Company of California, Structure-Removal Operations, SEA Nos. ES/SR 95–046, 95–047, and 95–048.	Vermilion Area, Block 26, Lease OCS 0297, 10 miles south of Vermilion Parish, Louisiana.	06/07/95
Unocal Corporation, Structure-Removal Operations, SEA Nos. ES/SR 95–049, 95–050, 95–051, 95–052, and 95–053.	Vermilion Area, Blocks 27 and 35, Leases OCS–G 1329, OCS 0548 and 0549, 25 miles southwest of Intercoastal City, Louisiana.	05/23/95
Mobil Exploration & Producing U.S. Inc., Structure-Removal Operations, SEA No. ES/SR 95–054.	West Cameron Area, Block 68, Lease OCS 0526, 10 miles south of pCameron Parish, Louisiana.	06/13/95
PG & E Offshore Resources, Structure-Removal Operations, SEA No. ES/SR 95–055A.	Galveston Area, Block 427, Lease OCS–G 9053, 31 miles south-southeast of Freeport, Texas.	04/07/95
Chevron U.S.A., Structure-Removal Operations, SEA Nos. ES/SR 95–056, 95–057, and 95–058.	West Delta Area, Block 23, Lease OCS–G 1331, 3 miles southwest of Plaquemines Parish, Louisiana.	04/25/95
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 95–063.	West Cameron Area, Block 173, Lease OCS 0759, 25 miles south of Cameron Parish, Louisiana.	03/10/95
Murphy Exploration & Production U.S. Inc., Structure-Removal Operations, SEA No. ES/SR 95–064.	Eugene Island Area, Block 265, Lease OCS–G 6720, 82 miles southwest of Cocodrie, Louisiana.	05/04/95
Chevron U.S.A., Structure-Removal Operations, SEA Nos. ES/SR 95–065, 95–066, 95–070, and 95–071.	West Cameron Area, Blocks 18 and 145, Leases OCS–G 1436 and 1995, 4 miles south of Cameron Parish, Louisiana.	04/21/95
Chevron U.S.A., Structure-Removal Operations, SEA Nos. ES/SR 95–067, 95–068, and 95–069.	West Cameron Area, Block 48, Leases OCS–G 1438 and 1351, 7 miles south of Cameron Parish, Louisiana.	06/27/95
Chevron U.S.A., Structure-Removal Operations, SEA Nos. ES/SR 95–072, 95–073A, 95–074, 95–075, and 95–076.	Ship Shoal Area, Block 108, Lease OCS 0814, 22 miles south of Terrebonne Parish, Louisiana.	07/12/95
CNG Producing Company, Structure-Removal Operations, SEA No. ES/SR 95–077A.	Eugene Island Area, South Addition, Block 336, Lease OCS–G 5521, 82 miles south of Iberia Parish, Louisiana.	05/31/95
Union Pacific Resources, Structure-Removal Operations, SEA No. ES/SR 95–078.	South Marsh Island Area, Block 30, Lease OCS–G 10695, 44 miles from the nearest shoreline.	05/04/95
Union Pacific Resources, Structure-Removal Operations, SEA No. ES/SR 95–07[illegible]	High Island Area, Block A–72, Lease OCS–G 9099, 47 miles southeast of Galveston County, Texas.	04/28/95
Meridian Oil, Structure-Removal Operations, SEA No. ES/SR 95–080.	Vermilion Area, Block 45, Lease OCS–G 5026, 10 miles from the nearest shoreline.	04/19/95
Amerada Hess Structure-Removal Operations, SEA No. ES/SR 95–081.	Galveston Area, Block 379, Lease OCS–G 8129, 24 miles southeast of Brazoria County, Texas.	07/17/95
Union Pacific Resources, Structure-Removal Operations, SEA No. ES/SR 95–082.	North Parde Island Area, Block A–58, Lease OCS–G 5975, 30 miles east of Kennedy County, Texas.	05/26/95
Walter Oil & Gas Corporation, Structure-Removal Operations, SEA Nos. ES/SR 95–083 and 95–084.	Galveston Area, Blocks 460 and 350, Leases OCS–G 8134 and 4721, 30 miles south of Brazoria County, Texas.	06/07/95
CNG Producing Company, Structure-Removal Operations, SEA No. ES/SR 95–085.	South Marsh Island Area, Block 154, Lease OCS–G 9548, 93 miles south of Intracoastal City, Louisiana.	05/25/95
Union Pacific Resources, Structure-Removal Operations, SEA No. ES/SR 95–086.	Eugene Island Area, Block 23, Lease OCS–G 9573, 15 miles southwest of St. Mary Parish, Louisiana.	05/24/95
Mobile Exploration & Producing U.S. Inc., Structure-Removal Operations, SEA Nos. ES/SR 95–087, 95–088, and 95–089.	Eugene Island Area, Blocks 116, 128, and 129, Leases OCS 0478, 0053, and 0054, 23 miles south of Terrebonne Parish, Louisiana.	08/28/95
Tennessee Gas Pipeline Company, Structure-Removal Operations, SEA No. ES/SR 95–090.	East Cameron Area, Block 16, Lease OCS 0875, 4 miles south of Cameron Parish, Louisiana.	06/29/95
Stone Petroleum Structure-Removal Operations, SEA No. ES/SR 95–091.	Vermilion Area, Block 17, Lease OCS–G 5218, 3 miles from the nearest shoreline.	06/29/95
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 95–092.	Ship Shoal Area, Block 108, Lease OCS 0814, 60 miles southwest of Leeville, Louisiana.	06/15/95
Mobile Exploration & Producing U.S. Inc., Structure-Removal Operations, SEA Nos. ES/SR 95–093, 95–097, 95–098, and 95–099.	West Cameron Area, Block 72, Lease OCS 0245, 18 miles south of Cameron Parish, Louisiana.	08/28/95
DelMar Operating, Inc., Structure-Removal Operations, SEA No. ES/SR 95–094.	West Cameron Area, South Addition, Block 518, Lease OCS–G 4405, 94 miles south of Cameron Parish, Louisiana.	09/14/95
Apache Corporation, Structure-Removal Operations, SEA No. ES/SR 95–095.	West Cameron Area, Block 628, Lease OCS–G 5357, 118 miles south of Cameron Parish, Louisiana.	07/03/95
Forest Oil Corporation, Structure-Removal Operations, SEA No. ES/SR 95–096.	West Cameron Area, Block 241, Lease OCS–G 10561, 48 miles south of Cameron Parish, Louisiana.	07/13/95
DelMar Operating, Inc., Structure-Removal Operations, SEA Nos. ES/SR 95–100 and 95–101.	South Marsh Island Area, North Addition, Block 261, Lease OCS–G 2306, 28 miles south of Vermilion Parish, Louisiana.	06/22/95

Activity/operator	Location	Date
Murphy Exploration and Production Company, Structure-Removal Operations, SEA No. ES/SR 95–102.	South Pelto Area, Block 20, Lease OCS 074, 8 miles from the nearest shoreline.	06/29/95
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 95–103.	West Cameron Area, Block 173, Lease OCS 0759, 67 miles southwest of Intracoastal City, Louisiana.	06/29/95
OEDC Exploration & Production, Structure-Removal Operations, SEA No. ES/SR 95–104.	Eugene Island Area, Block 163, Lease OCS–G 10730, 30 miles southwest of Terrebonne Parish, Louisiana.	08/11/95
Union Pacific Resources, Structure-Removal Operations, SEA No. ES/SR 95–108.	West Cameron Area, Block 604, Lease OCS–G 10601, 110 miles from the nearest shoreline.	08/01/95
CNG Producing Company, Structure-Removal Operations, SEA No. ES/SR 95–109.	West Cameron Area, Block 478, Lease OCS–G 3969, 108 miles southwest of Intracoastal City, Louisiana.	07/19/95
Walter Oil & Gas Corporation, Structure-Removal Operations, SEA No. ES/SR 95–110.	Galveston Area, Block 239, Lease OCS–G 9032, 18 miles southeast of Galveston County, Texas.	08/11/95
Chevron U.S.A., Structure-Removal Operations, SEA No. ES/SR 95–114.	Eugene Island Area, Block 74, Lease OCS–G 2099, 20 miles from the nearest shoreline.	09/08/95
Murphy Exploration & Production Company, Structure-Removal Operations, SEA No. ES/SR 95–115.	Mobile Area, Block 908, Lease OCS–G 5071, 25 miles southeast of Pascagoula, Mississippi.	09/01/95
Murphy Exploration & Production Company, Structure-Removal Operations, SEA Nos. ES/SR 95–116 through 95–120.	West Cameron Area, Blocks 115, 116, and 187; Leases OCS–G 2828, 2829, and 5290; 16 miles south of Cameron Parish, Louisiana.	09/27/95

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: October 27, 1995.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 95–27784 Filed 11–8–95; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–726, 727, and 729 (Final)]

Polyvinyl Alcohol From China, Japan, and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–726, 727, and 729 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Japan, and Taiwan of polyvinyl alcohol,[1] provided for in subheading 3905.20.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Gina E. Beck (202–205–3232), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of polyvinyl alcohol from China, Japan, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in a petition filed on March 9, 1995, by Air Products and Chemicals, Inc., Allentown, PA.

[1] Polyvinyl alcohol is a dry, white to cream-colored, water-soluble synthetic polymer usually prepared by hydrolysis of polyvinyl acetate. This product includes polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid, except for polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or polyvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent, which are excluded.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on February 13, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on February 27, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 20, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 22, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible, but not later than February 20, 1996, any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is February 21, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is March 4, 1996; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before March 4, 1996. On March 22, 1996, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 27, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: November 6, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–27828 Filed 11–8–95; 8:45 am]

BILLING CODE 7020–02–P

Closure of Commission Offices Due to Furlough

AGENCY: U.S. International Trade Commission.

ACTION: Notice of closure of Commission offices due to furlough.

SUMMARY: The Commission is providing notice to the public that its offices will be closed on Thursday, November 9, 1995, because agency personnel will be on furlough. All filings due on that date will be due on Monday, November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Donna R. Koehnke, Secretary, U.S. International Trade Commission, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. By order of the Chairman:

Issued: November 7, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–27994 Filed 11–7–95; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32790]

Norfolk Southern Railway Company and The Alabama Great Southern Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Company

Burlington Northern Railroad Company has agreed to grant 129 miles of overhead trackage rights to Norfolk Southern Railway Company and The Alabama Great Southern Railroad Company (collectively, NS) between milepost 645.2 at Columbus, MS, and milepost 774.2 at Kimbrough, AL. This grant will replace the trackage rights previously granted NS over the same line between milepost 708.2 at Boligee, AL, and milepost 731.0 at Demopolis, AL.

NS will use the expanded trackage rights to: (a) reroute traffic between Birmingham, AL, and Columbus via Boligee and rationalize its lines between Columbus and Parrish, AL; and (b) reroute traffic between Birmingham and Mobile, AL, via Boligee and rationalize its lines between Selma, AL, and Demopolis and between Marion Junction, AL, and Kimbrough. The proposed trackage rights were scheduled to take effect on October 27, 1995, the effective date of this exemption.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27795 Filed 11–9–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32502]

Utah Central Railway Company—Acquisition and Operation Exemption—Lines of Ogden City Corporation

Utah Central Railway Company, a noncarrier, has filed a notice of exemption to acquire and operate .75 miles of rail line owned by Ogden City Corporation, between milepost 0.00 at Stratford, UT and milepost 0.75 near Ogden, UT. The proposed acquisition and operation transactions were expected to be consummated on or after October 17, 1995.

Any comments must be filed with the Commission and served on: W.D. Blansett, Union Station, Room 205, Ogden, UT 84401.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 25, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27796 Filed 11–8–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,463B]

Brown Shoe Company/Brown Group, Incorporated Steelville, Missouri; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated for workers of the subject firm. The Department inadvertently issued a certification on October 19, 1995 irrespective of the fact that the workers were under an existing certification. The notice will soon be published in the **Federal Register**. This notice corrects the above noted inadvertent action.

On October 4, 1994, under petition TA–W–30,275, the Department certified all workers of Brown Shoe Company in Steelville, Missouri engaged in the production of shoe components.

Therefore, since the subject workers were previously certified, further investigation in TA–W–31,463B would serve no purpose and the investigation has been terminated.

Signed at Washington, D.C., this 31st day of October, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27736 Filed 11–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,461A]

Brown Shoe Company/Brown Group, Incorporated, Pocahontas, Arkansas (Cutting Facility); Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated for workers of the subject firm. The Department inadvertently issued a certification on October 19, 1995 irrespective of the fact that the workers were under an existing certification. The notice will soon be published in the **Federal Register**. This notice corrects the above noted inadvertent action.

On July 22, 1994, under petition TA–W–29,804, the Department certified all workers of Brown Shoe Company in Pocahontas, Arkansas engaged in the production of shoe parts and auxiliary stitching of shoes, but denied eligibility to those workers in the shoe factory. The shoe factory workers were denied based on an increased level of production during the relevant period of the investigation.

Therefore, since the subject workers were previously certified or, in the case of the shoe factory workers, determined otherwise ineligible, further investigation in TA–W–31,461A would serve no purpose and the investigation has been terminated.

Signed at Washington, D.C., this 31st day of October, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27737 Filed 11–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,463A]

Brown Shoe Company/Brown Group, Incorporated, Fredericktown, Missouri; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated for workers of the subject firm. The Department inadvertently issued a certification on October 19, 1995 irrespective of the fact that the workers were under an existing certification. The notice will soon be published in the **Federal Register**. This Notice corrects the above noted inadvertent action.

On April 3, 1995, under petition TA–W–30,855, the Department certified all workers of Brown Shoe Company, Fredericktown, Missouri.

Therefore, since the subject workers were previously certified, further investigation in TA–W–31,463A would serve no purpose and the investigation has been terminated.

Signed at Washington, D.C., this 31st day of October, 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27738 Filed 11–8–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00634]

Lockheed Martin Ocean, Radar & Sensor Systems, Utica, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 21, 1994, applicable to all workers of Dura Convertible Systems in Adrian, Michigan. The notice will soon be published in the **Federal Register**.

Further information received from the company showed that the plant is not closing. At the request of the State designee, the Department has also reviewed the subject certification to specify that only the production of convertible topstacks for the Chrysler Corporation are being shifted to Mexico.

The intent of the Department's certification is to include workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York that were adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–00634 is hereby issued as follows:

"All workers engaged in the inspection operation of the printed circuit board assemblies at Lockheed Martin, Ocean, Radar & Sensor Systems Division located in Utica, New York who become totally or partially separated from employment on or after October 5, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 31st day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27740 Filed 11–8–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Public Law 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Program Manager of OTAA not later than November 20, 1995.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than November 20, 1995.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of October, 1995.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Berklee Manufacturing (UNITE)	Allentown, PA	09/26/95	NAFTA–00618.	Ladies sleepwear.
Reidboard Bros. Co.; Headquarters (Co.)	Pittsburgh, PA	09/26/95	NAFTA–00619.	Men's trousers.
I. Appell Corp.; Appel Daywear (Wkrs)	New York, NY	09/26/95	NAFTA–00620.	Underwear and daywear.
Kay's Caps Inc. (AFL–CIO)	Valley Stream, NY	09/26/95	NAFTA–00621.	Nurses caps.
Samax II, Inc. (Wkrs)	Eggleston, VA	09/26/95	NAFTA–00622.	Clothing.
Ozark Electronics Inc.; Sony Dept. (Wkrs)	Cullman, AL	09/27/95	NAFTA–00623.	Electronic products i.e. stereos.
Unimark Foods Inc. (Wkrs)	Hidalgo, TX	09/26/95	NAFTA–00624.	Guacamole.
Johnson Controls; Automotive Systems Group (UAW).	Vincennes, IN	09/29/95	NAFTA–00625.	Automobile seat frames and mechanisms.
Capitol Pants Company; Woolfolk Mfg. (Wkrs).	Louisa, VA	10/02/95	NAFTA–00626.	Ladies jeans.
Reidbord Bros. Company; (various locations) (Wkrs).	Elkins, WV	10/03/95	NAFTA–00627.	Men's casual pants.
Springtown Sportswear (Wkrs)	Milledgeville, GA	10/04/95	NAFTA–00628.	T-shirts.
Pacific Personnel; Coleville Branch (Co.)	Colville, WA	10/03/95	NAFTA–00629.	Lumber products.
Pacific Personnel; Colville Branch (Co.)	Colville, WA	10/03/95	NAFTA–00630.	Lumber products.
Frank Beatty Hauling; Log Trucks (Co.)	Ione, WA	10/03/95	NAFTA–00631.	Logs.
McDonnell Douglas Company; Missle Div. (Wkrs).	St. Louis, MO	10/04/95	NAFTA–00632.	Electrical wiring harnesses.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
General Electric (UE 506)	Erie, PA	10/05/95	NAFTA–00633.	Locomotive parts.
Lockheed Martin; Ocean, Radar and Sensor Systems (IAMAW).	Utica, NY	10/04/95	NAFTA–00634.	Circuit boards.
Emerson Electric Co.; Motor Div. (Wkrs)	Independence, KS	10/09/95	NAFTA–00635.	Motors.
Columbian Cutlery Company (USWA)	Reading, PA	10/11/95	NAFTA–00636.	Hand held lawn and garden tools.
Twinpak Inc.; USA (Wkrs)	Plattsburgh, NY	10/11/95	NAFTA–00637.	Containers.
Johnstown America Corporation (Co.)	Johnstown, PA	10/11/95	NAFTA–00638.	Railroad cars, parts, and kits.
Carl E. Smith Inc.; Pipeline Construction Div. (IUDE).	Sandyville, WV	10/11/95	NAFTA–00639.	Gas pipelines and gathering systems.
Bethlehem Steel Corp.; Bethlehem Steel Corp.; Bethship-Sabine Yard (BOILERMKRS).	Port Arthur, TX	10/12/95	NAFTA–00640.	Steel products.
Black & Decker Power Tools (Wkrs)	Tarboro, NC	10/12/95	NAFTA–00641.	El chargers.
McInnes Steel Company (Wkrs)	Corry, PA	10/11/95	NAFTA–00642.	Steel; Forgings.
Kenetech Windpower (Wkrs)	Portland, OR	10/13/95	NAFTA–00643.	Natural gas.
Shasta Landclearing Co.; Logging-Woods (Co.).	Klamath Falls, OR	10/12/95	NAFTA–00644.	Raw logs.
Alcoa Fujikura LTD; Automotive Div. (Wkrs)	San Antonio, TX	10/16/95	NAFTA–00645.	Airbag wire harnesses.
Pacific Power (UWUA)	Casper, WY	10/16/95	NAFTA–00646.	Electricity.
Cominco American Inc. (USA)	Spokane, WA	10/16/95	NAFTA–00647.	Fertilizer and sulfur dioxide.
MFC Group (Wkrs)	Telford, PA	10/16/95	NAFTA–00648.	Belts and hook and loop fasteners.
Reynolds Metals Co.; Fulton Can Plant (IAMAW).	Fulton, NY	10/17/95	NAFTA–00649.	Aluminum beer cans.
W.R. Grace & Co.; Construction Products Div. (Co.).	West Chicago, IL	10/17/95	NAFTA–00650.	Spray-on fireproofing and other cementious construction materials.
SCI Systems Inc.; (Digital Equipment Corp.) (Wkrs).	Augusta, ME	10/16/95	NAFTA–00651.	Computer modules and assemblies.
Master Package Company (UPIU)	Owen, WI	10/18/95	NAFTA–00652.	Fiber shipping drums.
Weksler Instruments Corp. (IBEW)	Freeport, NY	10/18/95	NAFTA–00653.	Electrical instruments.
Rome Cable Corp. (Wkrs)	Rome, NY	10/18/95	NAFTA–00654.	Insulated copper wire.
Pacific Power and Light Co.; Centralia Plant (IBEW).	Centralia, WA	10/24/95	NAFTA–00655.	Electricity.
Nieder Inc. (Wkrs)	York, PA	10/24/95	NAFTA–00656.	Fire hoses.
Georgia Pacific Corporation; Southwest Millwork & Specialty (Wkrs).	Atlanta, GA	10/25/95	NAFTA–00657.	Wood mouldings.
Fembrook and Company; #3 (UNITE)	Neffs, PA	10/25/95	NAFTA–00658.	Women's apparel i.e. vests, blouses, dresses, skirts, jackets.
Gentek Building Products Inc. (Co.)	Franklin Park, IL	10/25/95	NAFTA–00659.	Vinyl, steel and aluminum siding.
ITT; Automotive Aftermarket (IAM)	Tonawanda, NY	10/25/95	NAFTA–00660.	Brake drums and rotors (aftermarket).
Fruit of the Loom (Wkrs)	Greensburg, KY	10/26/95	NAFTA–00661.	T-shirts.

[FR Doc. 95–27741 Filed 11–8–95; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,367; Telescope Casual Furniture, Granville, NY
TA–W–31,355; Thompson Steel Pipe Co., Princeton, KY
TA–W–31,497; The Columbia Corp., Chatham Paper Mill, Chatham, NY
TA–W–31,498; The Columbia Corp., Kinderhook Specialties, Kinderhook, NY
TA–W–31,368; Roxanne of New Jersey, Neptune, NJ
TA–W–31,369; Artsan Corp., Neptune, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,381; The Metallized Paper Corp. of America, McKeesport, PA
TA–W–31,381; McDonnell Douglas Aerospace, Space & Defense Systems, Space Transportation Division, Huntington Beach, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,392; Exxon Chemical Co., Casper, WY
TA–W–31,448; Koch Service, Watford City, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–31,532; The UniMark Group, Inc., UniMark Foods, Inc., Hidalgo, TX: September 18, 1994.
TA–W–31,534; Amphenol Corp., Roselle, IL: October 4, 1994.
TA–W–31,475; Berklee Manufacturing Co., Allentown, PA: September 21, 1994.
TA–W–31,372; J.P. Emco, Ada, OK: August 16, 1994.
TA–W–31,495; U and H Starfleet, Spring, TX: September 11, 1995.
TA–W–31,398; G–III Leather Fashions, Inc., and G–III Apparel Group Limited, New York, NY: August 12, 1994.
TA–W–31,521; A & B; Samax II, Eggleston, VA, Samax I, Mouth of Wilson, VA, Samax III, Rich Creek, VA: September 21, 1994.
TA–W–31,500; Andover Togs, Inc., South Boston, VA: September 15, 1994.
TA–W–31,443; American Casualwear, Inc., Jellico, TN: September 5, 1994.
TA–W–31,449; Go/Dan Industries, (VT/HE Manufacturing), Dallas, TX: September 6, 1994.
TA–W–31,502; Atkinson Oil Co. (AKA WM H. Atkinson Estate), Oklahoma City, OK: August 31, 1994.
TA–W–31,526 & A; Larsdale, Inc., Gilbert Mfg Co (Division), Long Island City, NY and Warrenton, NC: September 28, 1994.
TA–W–31,379; Lexington Sportswear, Lexington, SC: August 14, 1994.
TA–W–31,436; Elf Exploration, Inc., Houston, TX: August 31, 1994.
TA–W–31,501; Owens-Brockway Closures & Specialty Products, North Riverside, IL: September 15, 1994.
TA–W–31,409; Springtown Apparel Corp., Wrightsville, GA: August 31, 1994.
TA–W–31,410 & A; Springtown Knitwear, Inc., Cartersville, GA & Springtown Sportswear, Milledgeville, GA: August 31, 1994.
TA–W–31,383; Oryx Energy Co., Dallas, TX & Operationg at Various Locations in the Following States: A; AR, B; CA, C; CO, D; Dist. of Col., E; KS, F; LA, G; MI, H; MS, I; MT, J; NM, K; ND, L; OK, M; TX, N; WY: November 30, 1995.
TA–W–31,346; Armstrong World Industries, Inc., Braintree, MA. All workers producing textile apron machinery: July 6, 1995. All workers except those producing textile apron machinery: July 21, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determination NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00603 & A; The Columbia Corp., Chatham Paper Mill, Chatham, NY & The Columbia Corp., Kinderhook Specialities, Kinderhook, NY
NAFTA–TAA–00602; Con-Agra Flour Milling Co., Superior, WI
NAFTA–TAA–00618; Berklee Manufacturing Co., Allentown, PA

NAFTA–TAA–00614; Roseart Lampshades, Inc., Bronx, NY
NAFTA–TAA–00608; Computer Memory Disk, Eugene, OR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00609; Dow Chemical Co. Corporate Aviation Div., Freeland, MI
NAFTA–TAA–00631; Frank Beatty Hauling, Ione, WA

The investigation revealed that the workers of the subject firm do not produce an article with in the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00641; Black & Decker, North American Power Tools, Tarboro, NC: October 12, 1994.
NAFTA–TAA–00634; Lockheed Martin, Ocean, Rador & Sensor Systems, Utica, NY: October 5, 1994.
NAFTA–TAA–00595; U. and H. Starfleet, Spring, TX: September 11, 1994.
NAFTA–TAA–00604; Fairfax Photographic, Ltd, US Division—Fairfax, Inc., Buffalo, NY: September 17, 1994.
NAFTA–TAA–00594; W.R. Grace and Co., Construction Products Div., Portland, OR: September 7, 1994.
NAFTA–TAA–00591; Go/Dan Industries, (VT/HE Manufacturing) Dallas, TX: September 6, 1994.
NAFTA–TAA–00624; The UniMark Group, Inc., UniMark Foods, Inc., Hidalgo, TX: September 18, 1994.
NAFTA–TAA–00611; Square D Company, Distribution Products, Lexington, KY: September 20, 1994.
NAFTA–TAA–00622, A & B; Samax II, Inc., Eggleston, VA, Samax I, Inc., Mouth of Wilson, VA, Samax III, Inc., Rich Creek, VA: September 21, 1994.
NAFTA–TAA–00598; Brown Shoe Co., Brown Group, Inc., Pocahontas, AR & Operating in the Following Locations: A; Pocahontas, AR, B; St. Louis, MO, C; Cabool, MO, D; Fredericktown, MO, E; Steelville, MO, F; Benton, MO, G; Charleston, MO, H; Dyer, TN, I; Lexington, TX: September 12, 1994.

I hereby certify that the aforementioned determinations were issued during the month of October, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 30, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–27739 Filed 11–8–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before December 26, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Energy, Office of Environmental Health and Safety (N1–434–96–1). Routine administrative records including document receipts and responses to public inquiries relating to human radiation experimentation.

2. Department of Energy (N1–434–95–5). Administrative and housekeeping records relating to Cooperative Research and Development Agreements, Cost Sharing Agreements, and work done by the Department of Energy for other government agencies.

3. Department of Justice (N1–60–95–1). Reference files and general correspondence, chiefly involving professional invitations, accumulated by the Solicitor General, 1983–93.

4. Administrative Conference of the United States (N1–451–95–1). Comprehensive records schedule for textual records.

5. American Battle Monuments Commission (N1–117–96–1). Photographic materials that are duplicate, routine and facilitative, or technically inferior.

6. Environmental Protection Agency, Office of Water Enforcement (N1–412–94–6). Reduction in retention period for import and export notification files.

7. Panama Canal Commission (N1–185–95–1). Facilitative, duplicative, and routine records of the Engineering and Construction Bureau.

8. Securities and Exchange Commission (N1–266–94–1). Tapes containing data from various electronic systems which are duplicated in other cumulative tapes scheduled for permanent retention.

10. Tennessee Valley Administration (N1–142–95–18). Still Photographs of Electrical Substations and Related Locations.

11. Department of the Interior, Bureau of Reclamation (N1–115–94–7). General administrative records, pertaining to environmental compliance and management.

Dated: November 2, 1995.

James W. Moore,

Assistant Archivist, for Records Administration.

[FR Doc. 95–27776 Filed 11–8–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Biological Sciences (#1754)
Date and Time: November 30–December 1, 1995, 8:30 a.m.–5:00 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. B. Jane Harrington, Program Director, Research Experiences for Undergraduates, Room 615, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1481 ext. 6437.
Minutes: Maybe obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted in response to the Research Experiences for Undergraduates solicitation (NSF 93–112).
Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27791 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).
Dates and Times: November 30, 1995 from 8:15 a.m. to 10:00 p.m.; December 1, 1995 from 8:15 a.m. to 5:00 p.m.
Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Gerald Selzer, Program Director, Division of Biological Instrumentation and Resources (BIR), Room 615, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1469.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF.
Agenda: To review and evaluate preproposals submitted in response to the BIO Research Training Groups announcement (NSF 95–114).
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27789 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering
Date and Time: November 30, 1995; 8:30 a.m. to 5 p.m.; December 1, 1995; 8:30 a.m. to 2:30 p.m.
Place: 4201 Wilson Blvd., Arlington, VA 22230, Room 375.
Type of Meeting: Open.
Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.
Agenda:
(1) CISE Strategic Planning
(2) Presentation of Planning Reports
(3) Advisory Committee Activities

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27793 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194
Date and Time: November 30, 1995, 8:00 a.m.–5:00 p.m.
Place: Rooms 360, 370, 380, 390, 530, and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Warren DeVries and Dr. Kesh Narayanan, Manufacturing Processes and Equipment Program, Dr. Pius Egbelu, Operations Research and Production Systems, Dr. George Hazelrigg and Dr. Christina Gabriel, Design and Integration Engineering Program, and Mr. Warren Chernock, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, inciuding technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5

U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27787 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Geosciences (1755); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (#1755).

Dates: November 28–29, 1995.

Time: 1:00–5:00 p.m. November 28 and 8:30–5:00 p.m. November 29.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas J. Baerwald, Deputy Assistant Director for Geosciences, Suite 705, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, 703–306–1502.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

The Federal outlook for the geosciences
Education and Human Resources Subcommittee issues
Reports from divisional subcommittees
Committee of Visitor (COV) reports
Evaluation of the NSF peer-review system
Government Performance and Results Act
Data for use by COV's and AC/GEO
Refinement of the GEO COV process

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27792 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: December 1, 1995; 8:30 a.m.–5:00 p.m.

Place: Room #770, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Judith L. Hannah, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate REU-Sites Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27788 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in the Division of Physics; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Physics will be holding a panel meeting for the purpose of reviewing proposals submitted to the Special Programs for the Research Experiences for Undergraduate. In order to review the proposals, panel meeting will be held on November 30 and December 1, 1995. The meeting will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, Va. from 8:30 to 5:00 each day.

Contact Person: Dr. Rolf M. Sinclair, Program Director for Special Programs, Division of Physics, NSF, Room 1015, 4201 Wilson Blvd., Arlington, VA 22230 (703) 306–1809.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27794 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science Resource Studies; Notice of meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Science Resources Studies.

Date and Time: December 1, 1995; 9:00 a.m. to 5:00 p.m.

Place: Room 970, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Ann Lanier, Ph.D., Project Director for Survey of Research Facilities, Division of Science Resources Studies, Suite 965, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1774, FAX (703) 306–0510, e.mail: ALANIER@nsf.gov.

Purpose of Meeting: To review and comment on the proposed modifications to the format and contents of the 1996 report to Congress; Scientific and Engineering Research Facilities at Universities and Colleges.

Agenda: The morning will be used by the advisory panel to comment on the content and format of the 1994 report to Congress. The afternoon will be used to review the new and modified items on the 1996 survey and recommended analysis plan for the 1996 report to Congress.

Dated: November 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–27790 Filed 11–8–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 317]

Baltimore Gas and Electric Company; Calvert Cliffs Nuclear Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary exemption from the provisions of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 to Baltimore Gas and Electric Company (the licensee), for the Calvert Cliffs Nuclear Power Plant, Unit No. 1 (CC1), located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of July 13, 1995. The proposed action would allow the licensee to use four lead fuel assemblies with advanced cladding material, zirconium-based alloys, that do not meet the definition of Zircaloy or ZIRLO which are referred to in Title 10 of the Code of Federal Regulations. The lead fuel assemblies are scheduled to be loaded into the CC1 reactor core during the upcoming refueling outage and will remain in the core for Cycles 13, 14, and 15.

The Need for the Proposed Action

The proposed temporary exemption from 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 is needed because these regulations specifically refer to light-water reactors containing fuel consisting of uranium oxide pellets enclosed in zircaloy or ZIRLO tubes. A new zirconium-based alloy cladding has been developed, which is not the same chemical composition as zircaloy or ZIRLO, and the licensee wants to insert assemblies with the new cladding material into the CC1 reactor core and test them during power operation.

Environmental Impacts of the Proposed Action

With regard to potential radiological impacts to the general public, the proposed temporary exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. The lead fuel assemblies, with the zirconium-based alloy cladding, meet the same design basis as the Zircaloy-4 fuel which is currently in the CC1 reactor core. No safety limits will be changed or setpoints altered as a result of using the lead fuel assemblies. The Updated Final Safety Analysis Report (UFSAR) analysis are bounding for the lead fuel assemblies as well as the remainder of the core. The mechanical properties and behavior of the lead fuel assemblies during postulated loss-of-coolant-accidents (LOCA) and non-LOCA transients and operational transients will be essentially the same. In addition, the four lead fuel assemblies represent a small portion of the total core and will be placed in non-limiting core locations which experience no more than 0.95 of the core power density during operation. The small number of lead fuel assemblies, in conjunction with the similarity of the chemical and material characteristics with the existing fuel, ensures that hydrogen production will not be significantly different from previous assessments.

Therefore, the proposed temporary exemption, which would allow the operation of CC1 with four lead fuel assemblies in its reactor core, will not significantly affect the consequences of radiological accidents previously considered.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would deny the licensee the operational flexibility to demonstrate any improved cladding material performance and would not reduce the environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for CC1.

Agencies and Persons Consulted

In accordance with its stated policy, on October 24, 1995, the staff consulted with the Maryland State official, Mr. Richard McLean of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 13, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 2nd day of November 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27773 Filed 11–8–95; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

RUIA Claims Notification and Verification System

Section 5 (b) of the Railroad Unemployment Insurance Act, as amended by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (P.L. 100–647), requires that "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim." The purpose of the claims notification system is to provide to each unemployment and sickness claimant's base year employer or current employer, notice of each application and claim for benefits under the RUIA and to provide an opportunity for employers to convey information relevant to the proper adjudication of the claim. Railroad employers receive notice of applications and claims by one of two options. The first option, Form Letter ID–4K is a computer generated form letter notice of all unemployment applications, unemployment claims and sickness claims received from employees of a railroad company on a particular day. Form Letters ID–4K are mailed on a daily basis to officials designated by railroad employers. The second option is an Electronic Data Interchange (EDI)

version of the Form Letter ID–4K notice. EDI notices of applications are transmitted to participating railroads on a daily basis, generally on the same day that applications are received. Railroad employers can respond to RRB notices of applications and claims manually by mailing a completed ID–4K back to the RRB or electronically via EDI. No changes are being proposed to Form ID–4K or the electronic equivalent.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

RRB messages	Annual responses	Time (min)	Burden (hrs)
Unemployment Insurance Applications/Claims:			
ID–4K (EDI version)	133,700	**	201
ID–4K (manual)	57,300	2	1,910
Sickness Insurance Applications/Claims:			
ID–4K (EDI version)	136,500	**	134
ID–4K (manual)	58,500	2	1,950
Total	386,000	2	4,195

**The burden for the 8 participating employers who transmit EDI responses is calculated at 10 minutes each per day, 251 workdays a year or 335 total hours of burden. We estimate that 60 percent of the responses are related to unemployment transactions and 40 percent to sickness transactions.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–27783 Filed 11–8–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36455; File No. SR–CBOE–95–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Adoption of Rule 9.24 and an Interpretation with Respect to Proposed Rule 9.24

November 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt new Rule 9.24 and to add an Interpretation and Policy thereunder with respect to the meaning and administration of proposed Rule 9.24. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to:

(i) Adopt Rule 9.24 requiring members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations, and to refrain from making telephone solicitations to persons named on such list; and

(ii) Set forth Interpretation and Policy .01 concerning the meaning and administration of proposed Rule 9.24 with respect to compliance with Federal Communications Commission ("FCC") and Commission rules relating to telemarketing practices.[3]

In 1994, an industry Task Force, comprised of representatives from various industry regulatory and self-regulatory organizations, was formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 ("TCPA"), as well as with the FCC rules and regulations which implemented that law. The TCPA and FCC rules address telemarketing practices and the rights of telephone customers. One of the TCPA's requirements is that businesses, including broker-dealers, that make telephone solicitations to residential telephone subscribers institute written policies and have procedures in place for maintaining "do-not-call" lists. As recommended by the Task Force, proposed Rule 9.24 implements this requirement by obligating CBOE members to make and maintain a centralized list of persons who have informed the member that they do not wish to receive telephone solicitations.

The proposed Interpretation to Rule 9.24 reminds members and member organizations that they are subject to compliance with the requirements of the relevant rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[4] in that it proposes a rule that promotes just and equitable principles of trade, and that protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Other

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–63 and should be submitted by November 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27824 Filed 11–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36453; File No. SR–OCC–95–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Customized Expiration Dates

November 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on September 11, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change (File No. SR–OCC–95–16) as described in Items I and II below, which Items have been prepared primarily by OCC. On September 22, 1995, and on October 27, 1995, OCC filed amendments to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to amend OCC's by-laws and rules to accommodate the Philadelphia Stock Exchange's ("PHLX") proposal to permit market participants to select customized expiration dates for flexibly structured currency option contracts[3] listed in PHLX's customized currency options program.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX has proposed to add a new feature to its customized currency options program that will allow program participants to select any business day other than an exchange[6] holiday for exchange designated holiday as an expiration date for flexibly structured currency option contracts. Any flexibly structured currency option contract with a customized expiration date ("customized expiration date currency option contracts") will expire at 9:15 A.M. Central Time on its expiration date.[7] Under PHLX's proposal, trading in such contracts would cease at 8:00 A.M. Central Time on their expiration date. No new series of flexibly structured currency option contracts with a "same day" expiration date (*i.e.*, expiration on the date that the contract

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] The CBOE notes that it intends to include this Interpretation and Policy in a Circular that will be distrubted to members and member organizations.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (September 22, 1995, and October 27, 1995).

[3] "Flexibly structured option" with respect to foreign currency options means a foreign currency option having an expiration date, an exercise price, or an exercise style that are customized within exchange specified limits by the parties to the transaction.

[4] For a description of PHLX's proposal, refer to Securities Exchange Act Release No. 36131, International Series Release No. 844 (August 22, 1995), 60 FR 44927 [File SR–PHLX–95–52] (notice of filing of proposed rule change by PHLX relating to customized expiration dates for customized foreign currency options).

[5] The Commission has modified the text of the summaries submitted by OCC.

[6] The term "exchange" is defined in Article I, section E. (4) of OCC's by-laws as a national securities exchange or an national securities association which has qualified for participation in OCC pursuant to the provisions of Article VII of OCC's by-laws.

[7] According to PHLX's filing (SR–PHLX–95–52), customized option contracts with expiration dates corresponding to the expiration dates for non-customized option contracts (*i.e.*, option contracts customized in other respects but which expire on normal mid-month or end-of-month expiration dates) would not be treated as customized expiration date currency option contracts. Those contracts still would expire at 10:59 P.M. Central Time, the expiration time for all option contracts other than customized expiration date currency option contracts, even if a market participant intentionally or unintentionally designates such contracts as customized expiration date currency option contracts. *Supra*, note 3.

is opened) may be opened, but trading in an existing series of customized expiration date currency option contacts will be permitted until 8:00 A.M. on their expiration date such that open positions in the contracts may be reduced or increased. In accordance with PHLX's filing,[8] PHLX member organizations will be required to utilize a pro rata methodology for allocation of exercises of customized expiration date currency option contracts, which OCC has assigned to the PHLX member organizations. OCC is modifying its rules to require that clearing member procedures for allocating exercise assignments shall be made in accordance with the requirements set forth in exchange rules rather than on a first in, first out basis or on a random selection basis. Furthermore, OCC will assign to its clearing members any exercise instructions with respect to a short position in customized expiration date currency option contracts using a pro rata methodology rather than OCC's current random assignment procedures.[9] PHLX believes that customized expiration dates will permit institutional market participants to hedge their exchange rate exposure more accurately than by trading a contract that expires on a date that PHLX has selected.

In order to accommodate these enhancements to PHLX's customized foreign currency options program, certain changes to OCC's by-laws, rules, and stated practices are necessary. In general, the proposed changes provide for the morning expiration of customized expiration date currency option contracts and pro rata procedures to be used for assigning exercises in connection with such option contracts. Position processing and exercise settlement of customized expiration date currency option contracts will occur using OCC's existing procedures.

Article I, Section I of OCC's by-laws will be amended to define the term "expiration time." Option contracts presently expire at 10:59 P.M. Central Time on their expiration date. The proposed definition of expiration time includes both that time and 9:15 A.M. Central Time which is the time that customized expiration date currency option contracts will expire on their expiration date. Conforming changes also are being made to Section 9 of Article VI; Section 3 of Articles XII, XIII, and XIV; and Section 2 of Articles XV, XVI, XVII, XX, XXII, and XXIII of OCC's By-Laws. OCC Rule 805 concerning expiration date exercise procedures also is being amended to incorporate the newly defined term "expiration time."

The definition of "variable terms" in Section 1.V.(1) of Article I of OCC's by-laws is being amended to provide that with respect to an option contract, variable terms refers to the name of the underlying security, the exercise price, the expiration month of such option contract, and in the case of an option contract identified by an exchange as being an "any day" option contract the expiration date of such option contract.

The definition of "expiration date" in Section 1.E.(2) of Articles XV and XX of OCC's by-laws is being amended to accommodate customized expiration date currency option contracts. Under Section 1.E.(2), the expiration date for a customized expiration date currency option contract will be the date reported by OCC by an exchange pursuant to Section 7 of Article VI of OCC's by-laws and OCC Rule 401 with respect to any option contract identified by such exchange as an "any day" option contract. In addition, Section 1.E.(2) is being amended to delete references to Saturday as an expiration date for specific foreign currency and cross-rate foreign currency option contracts. These references are unnecessary because all foreign currency and cross-rate foreign currency contracts with a Saturday expiration date have expired.

OCC Rule 803 concerning the assignment of exercise notices to clearing members is being amended to eliminate the reference to the procedures of random selection as the means used by OCC to assign exercise notices to clearing members with open short positions in the series of option involved.[10] The amended rule provides for the assignment of exercise notices in accordance with OCC procedures, which include the proposed pro rata method of assigning exercise notices for customized expiration date currency option contracts. Similar to the procedures for random assignment, the pro rata assignment procedures will be a stated policy, practice, or interpretation of proposed OCC Rule 803 and will not be set forth in Rule 803.

OCC Rule 804 concerning clearing members' procedures for allocating exercise assignments is being modified to provide that the allocation shall be made in accordance with the requirements set forth in exchange rules. By referencing exchange rules, this change provides flexibility in that it will encompass the current allocation procedure of Rule 804, which currently provides that the allocation must be made on a first in, first out basis or on a random selection basis that is consistent with exchange rules, and it also will compass pro rata allocation or any other method prescribed by exchange rules.

OCC also is amending Rules 1603 and 2103 regarding expiration date exercise procedures to eliminate the distinction between Saturday and Friday expiration date exercise procedures. The proposed changes to OCC Rule 805 and the recent deletion of Rule 806,[11] as well as the expiration of all Saturday expiration date foreign currency option contracts, make the distinction unnecessary.[12] Accordingly, the reference to Saturday expiration in current paragraph (a) of Rules 1603 and 2103 is being deleted. The text of paragraph (a) is otherwise unchanged except for the deletion of its designation as paragraph (a) and the new designation of the subparagraphs thereunder. Paragraph (b) also is being deleted because it is no longer necessary.

In addition, OCC is amending Rules 1604 and 2104 to provide that an exercise settlement date with respect to foreign currency and cross-rate foreign currency option contracts ordinarily will be the fourth business day [13] after the day an exercise notice is properly submitted to OCC. Prior to the amendment, Rules 1604 and 2104 provided that the exercise settlement date was the third foreign business day following the business day after the day on which an exercise notice was properly tendered to OCC pursuant to Rule 801. As a result, an exercise settlement date for such options could have occurred on a date that was not a business day in respect of OCC.

Furthermore, Rules 1604 and 2104 are being amended to enable OCC to establish a later settlement date to accommodate bank holidays in any country where OCC is to receive or deliver currency or where a correspondent bank is located. OCC believes the authority to defer the settlement date is necessary because options are being listed on an increasing number of currencies for which market participants may customize an expiration date. This authority will give OCC the flexibility to ensure that its correspondent banks are open for business on an exercise settlement date and have a sufficient amount of time to act on instructions. The proposed amendments to Rules 1604 and 2104 also will require OCC to provide notice of such later exercise settlement date to its clearing members. OCC presently contemplates providing such notice through its electronic bulletin board, ONN, or C/MACS message.

In addition, OCC is amending the Interpretations and Policies sections to Rules 1604, 1605, 2104, and 2105 to provide that Sunday will not be included as a business day for purposes of determining the exercise settlement date for customized currency options because OCC's correspondent banks will not be open to effect settlement on Sunday.

Finally, the proposal provides for modifications to OCC's stated policies, practices, and interpretations to accommodate pro rata assignments of exercised customized expiration date currency option contracts. Under the proposal, OCC will assign exercise notices with respect to customized expiration date currency option contracts to clearing members with open short positions in the same series of options by use of a pro rata methodology rather than a random selection method.

Using the proposed pro rata methodology, OCC will assign short positions in an options series based on the ratio of exercised long contracts to total open interest in that options series. Specifically, under the pro rata methodology the number of short contract positions in a given series will be summed to determine the total open interest in that series. Then, the number of exercised long contracts within that series will be summed, and that total will be divided by the total open interest in order to determine the exercise percentage. The number of short contract positions in each clearing member account then will be multiplied by the exercise percentage to determine the pro rata assignment amount. Only whole contracts will be allocated in the first round; therefore, any resulting decimal amounts will be ignored in that round.

If all exercised contracts are assigned in the first round, no further allocation will be required. However, if all exercised contracts are not assigned in the first round, then an additional round will be necessary. The remaining contracts will be assigned one at a time in descending order from the short position with the largest decimal number to the short position with the smallest decimal number. In the event that two or more accounts have equal decimal numbers and there is an insufficient number of long exercised positions remaining to assign to such short positions, a random number will be used to determine which will be assigned.

PHLX requested that OCC employ the foregoing pro rata assignment methodology because PHLX believes that by using a pro rata assignment methodology OCC clearing members will be able to determine at the earliest possible time how many contracts in each short position will be assigned and therefore will be able to assess what market action to take to cover an assignment. Accordingly, OCC will inform clearing members of the exercise percentage as soon as practical in the processing cycle so that clearing members can calculate their own assignment amounts before actual assignment reports are available from OCC.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act[14] because the proposal will facilitate the prompt and accurate clearance of customized expiration date currency option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[15] of the Act requires the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes the proposal is consistent with OCC's obligations under Section 17A(b)(3)(F) because it will facilitate the clearance and settlement of customized expiration date currency option contracts that will be traded at PHLX. OCC has observed that the over-the-counter market for foreign currency options has developed in part to meet the needs of market participants that require increased flexibility for the purpose of satisfying particular investment objectives. The clearance and settlement by OCC of customized expiration date currency option contracts will enhance investors' ability to tailor options transactions to meet their specific needs and at the same time have the benefit of having those transactions cleared and settled through the facilities of OCC instead of through broker-to-broker settlement.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the proposal should facilitate the prompt and accurate clearance and settlement of customized expiration date currency option contracts by ensuring that these contracts are covered by the relevant provisions of OCC by-laws, rules, and by the relevant OCC stated policies, practices, and interpretations when trading begins at the PHLX on November 6, 1995.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-95-16 and

[8] *Supra* note 4.

[9] The pro rata assignment methodology is described in detail later in this approval order.

[10] OCC Rule 803 currently refers to OCC's procedures of random selection for purposes of assigning exercise notices but does not describe those procedures. OCC's procedures for random assignment are considered to be a stated policy, practice, or interpretation with respect to OCC Rule 803, and a copy of those procedures is available from OCC on request.

[11] OCC Rule 806 was deleted because there no longer was a need for separate exercise processing procedures for options that expire on weekdays. Securities Exchange Act Release No. 36385 (October 18, 1995), 60 FR 54557 [File No. SR-OCC-95-10] (approving proposed rule change relating to the enhancement of Saturday expiration date processing procedures.)

[12] OCC will specify the cutoff times applicable to expiration date processing for foreign currency options in its Operations Manual. Those times will remain the same as those currently set forth in OCC Rule 1603(b).

[13] Business day is defined in Article I.B.(2) of OCC's bylaws to be a day on which OCC is open for business for the purpose of conducting money settlement.

[14] 15 U.S.C. 78q-1 (1988).

[15] 15 U.S.C. 78q-1(b)(3)(F)(1988).

should be submitted by November 30, 1995.

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-95-16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-27825 Filed 11-8-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Beauhan Minority Investment Corporation ("BMIC"), has surrendered its License (No. 09/09-5193) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. BMIC was licensed by the Small Business Administration on March 22, 1978.

Pursuant to a Final Order dated September 27, 1993, the receivership was terminated. The surrender of the license was accepted on September 27, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27852 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Bow Lane Capital Corporation ("Bow Lane"), has surrendered its License (No. 06/06-0227) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Bow Lane was licensed by the Small Business Administration on August 4, 1980.

[16] 17 CFR 200.30-3(a)(12) (1994).

Pursuant to a Final Order dated April 7, 1995, the receivership was terminated. The surrender of the license was accepted on April 7, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27853 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Business Equity and Development Corporation ("BEDC"), has surrendered its License (No. 09/12-5151) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. BEDC was licensed by the Small Business Administration on March 19, 1970.

Pursuant to a Final Order dated April 23, 1993, the receivership was terminated. The surrender of the license was accepted on April 23, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27839 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Canaveral Capital Corporation ("Canaveral"), has surrendered its License (No. 02/05-0068) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Canaveral was licensed by the Small Business Administration in 1962.

Pursuant to a Final Order dated August 18, 1993, the receivership was terminated. The surrender of the license was accepted on August 18, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27840 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Cornell Capital Corporation ("Cornell"), has surrendered its License (No. 02/02-0390) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Cornell was licensed by the Small Business Administration on July 18, 1980.

Pursuant to a Final Order dated August 19, 1993, the receivership was terminated. The surrender of the license was accepted on August 19, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27854 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Feyca Investment Company, Inc. ("FEYCA"), has surrendered its License (No. 04/04-5148) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. Feyca was licensed by the Small Business Administration in 1979.

Pursuant to a Final Order dated July 30, 1993, the receivership was terminated. The surrender of the license was accepted on July 30, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27841 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that First Southern Capital Corporation,

("FSCC"), has surrendered its License (No. 06/12-0023) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. FSCC was licensed by the Small Business Administration in 1961.

Pursuant to a Final Order dated April 5, 1995, the receivership was terminated. The surrender of the license was accepted on April 5, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27842 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that First Texas Investment Company ("First Texas"), has surrendered its License (No. 06/10-0013) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. First Texas was licensed by the Small Business Administration on Deceber 11, 1959.

Pursuant to a Final Order dated June 4, 1993, the receivership was terminated. The surrender of the license was accepted on June 4, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27855 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Gold Coast Capital Corporation ("Gold Coast"), has surrendered its License (No. 04/05-0010) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Gold Coast was licensed by the Small Business Administration on December 22, 1959.

Pursuant to a Final Order dated April 6, 1995, the receivership was terminated. The surrender of the license was accepted on April 6, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27856 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Housing Capital Corporation ("HCC"), has surrendered its License No. 03/03-0119) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. HCC was licensed by the Small Business Administration on September 3, 1975.

Pursuant to a Final Order dated January 26, 1994, the receivership was terminated. The surrender of the license was accepted on January 26, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27843 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that HUB Enterprises, Ltd. ("HUB"), has surrendered its License (No. 09/09-5218) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. HUB was licensed by the Small Business Administration on September 11, 1978.

Pursuant to a Final Order dated September 27, 1993, the receivership was terminated. The surrender of the license was accepted on September 27, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27857 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Ideal Financial Corporation ("Ideal"), has surrendered its License (No. 04/04-5190) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. Ideal was licensed by the Small Business Administration on March 7, 1983.

Pursuant to a Final Order dated May 9, 1994, the receivership was terminated. The surrender of the license was accepted on May 9, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27844 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Intercapco West, Inc. ("Intercapco West"), has surrendered its License (No. 07/07-0076) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Intercapco West was licensed by the Small Business Administration on January 21, 1977.

Pursuant to a Final Order dated March 10, 1995, the receivership was terminated. The surrender of the license was accepted on March 10, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-27858 Filed 11-8-95; 8:45 am]

BILLING CODE 8025-01-M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Inverness Capital Corporation ("Inverness"), has surrendered its License (No. 03/02-0273) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Inverness was licensed by the Small Business Administration in 1969.

Pursuant to a Final Order dated April 1, 1994, the receivership was terminated. The surrender of the license was accepted on April 1, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27845 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that New Mexico Capital Corporation ("NMCC"), has surrendered its License (No. 06/11–0023) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. NMCC was licensed by the Small Business Administration in 1963.

Pursuant to a Final Order dated August 19, 1994, the receivership was terminated. The surrender of the license was accepted on August 19, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27859 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that NSS Investments, Inc. ("NSS"), has surrendered its License (No. 09/09–0235) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. NSS was licensed by the Small Business Administration on February 28, 1984.

Pursuant to a Final Order dated July 15, 1994, the receivership was terminated. The surrender of the license was accepted on July 15, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27846 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that ODA Capital Corporation ("ODA"), has surrendered its License (No. 02/02–5307) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. ODA was licensed by the Small Business Administration on January 24, 1975.

Pursuant to a Final Order dated July 22, 1993, the receivership was terminated. The surrender of the license was accepted on July 22, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27860 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Professional Capital Corporation ("PCC"), has surrendered its License (No. 03/03–5126) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. PCC was licensed by the Small Business Administration in 1977.

Pursuant to a Final Order dated November 15, 1994, the receivership was terminated. The surrender of the license was accepted on November 15, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27847 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Sagera Venture Corporation ("Sagera"), has surrendered its License (No. 05/05–5121) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. Sagera was licensed by the Small Business Administration in 1978.

Pursuant to a Final Order dated August 22, 1995, the receivership was terminated. The surrender of the license was accepted on August 22, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27848 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure and Receivership and Surrender of Licensee

Notice is hereby given that Telacu Investment Company, Inc. ("Telacu"), has surrendered its License (No. 09/09–5187) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. Telacu was licensed by the Small Business Administration in 1975.

Pursuant to a Final Order dated July 27, 1993, the receivership was terminated. The surrender of the license was accepted on July 27, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27861 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Texas Capital Corporation ("Texas Capital"), has surrendered its License (No. 06/10–0004) to operate as a small business investment company under the Small Business Investment Act of 1968, as amended. Texas Capital was licensed by the Small Business Administration on September 25, 1959.

Pursuant to a Final Order dated August 10, 1993, the receivership was terminated. The surrender of the license was accepted on August 10, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27849 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that TransAm Bancorp, Inc. ("TransAm"), has surrendered its License (No. 10/13–0011) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. TransAm was licensed by the Small Business Administration on November 6, 1961.

Pursuant to a Final Order dated April 7, 1995, the receivership was terminated. The surrender of the license was accepted on April 7, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistence Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27862 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that United Business Capital, Inc. ("United"), has surrendered its License (No. 06/10–0098) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. United was licensed by the Small Business Administration on October 28, 1963.

Pursuant to a Final Order dated August 23, 1993, the receivership was terminated. The surrender of the license was accepted on August 23, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27850 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that United Venture Capital, Inc. ("UVC"), has surrendered its License (No. 05/05–0175) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. UVC was licensed by the Small Business Administration on April 2, 1984.

Pursuant to a Final Order dated May 4, 1994, the receivership was terminated. The surrender of the license was accepted on May 4, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27863 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Vanguard Investment Company, Inc. ("Vanguard"), has surrendered its License (No. 04/04–5092) to operate as a specialized small business investment company under the Small Business Investment Act of 1958, as amended. Vanguard was licensed by the Small Business Administration on July 14, 1970.

Pursuant to a Final Order dated October 24, 1994, the receivership was terminated. The surrender of the license was accepted on October 24, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27851 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Vermont Investment Capital, Inc. ("Vermont", has surrendered its License (No. 01/01–0072) to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Vermont was licensed by the Small Business Administration on August 12, 1971.

Pursuant to a Final Order dated June 4, 1993, the receivership was terminated. The surrender of the license was accepted on June 4, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 31, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–27864 Filed 11–8–95; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Notice of Tentative Meeting Schedule of the Representative Payment Advisory Committee

Purpose: The Social Security Administration will not be scheduling further meetings of the Representative Payment Advisory Committee in the 1995 calendar year. Additional meetings will be scheduled beginning in early 1996 and will be held in Atlanta, GA; San Francisco, CA; and Washington, D.C. Announcement of each meeting will be published in the **Federal Register** in accordance with section 10(a)(2) of the Federal Advisory Committee Act.

Reba Andrew,

Staff Director.

[FR Doc. 95–27772 Filed 11–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–95–659]

Application of Air 21 Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 95–10–42).

SUMMARY: The Department of Transportation is directing all interested

persons to show cause why it should not issue an order finding air 21, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail, for one year.

DATES: Persons wishing to file objections should do so no later than November 15 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–95–659 and addressed to the Documents Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–2340.

Dated: October 31, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–27779 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–62–P–M

Federal Aviation Administration

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Shreveport Regional Airport, Shreveport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Shreveport Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 11, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roy H. Miller, Jr., Director of Airports, Shreveport Regional Airport at the following address: Mr. Roy H. Miller, Jr., Director of Airports, Shreveport Regional Airport, 5103 Hollywood Avenue, Suite 300, Shreveport, Louisiana 71109.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Shreveport Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 23, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 19, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Charge effective date: February 1, 1994
Proposed charge expiration date:
  September 30, 2018
Total estimated PFC revenue:
  $33,337,210.00
PFC application number: 95–02–U–00–SHV
Brief description of proposed project(s):

Projects To Use PFC's

Rehabilitate Terminal Building

Proposed class or classes of air carriers to be exempted from collecting PFC's:

All non-scheduled FAR Part 135 air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Shreveport Regional Airport.

Issued in Fort Worth, Texas, on October 23, 1995.

Ronald L. Staley,

Acting Manager, Airports Division.

[FR Doc. 95–27831 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Kihei-Upcountry, Maui, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project to connect the Kihei and Upcountry areas of Maui, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. Abraham Wong, Division Administrator, Federal Highway Administration, Office Address: 300 Ala Moana Boulevard, Room #3202, Honolulu, Hawaii 96813; Mailing Address: P.O. Box 50206, Honolulu, Hawaii 96850. Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Hawaii Department of Transportation (HDOT), will prepare an EIS addressing a proposed new, four-lane divided rural arterial with limited access. The roadway would be approximately 15.4 kilometers (9.6 miles) long, and would link the coastal area of Kihei (Piilani Highway) to Upcountry Maui (either Haleakala Highway or Kula Highway), reducing the existing journey by approximately 15.3 kilometers (9.5 miles). This roadway, referred to as Kihei-Upcountry Maui Highway, would be generally aligned in an east-west (mauka-makai) direction.

The roadway would satisfy several goals: enhance access between the Maui Research and Technology Park in Kihei and the related scientific facilities at the summit of Haleakala, called Science City; provide a more efficient route for commuters traveling between Upcountry and Kihei; help alleviate traffic congestion on existing roadways by providing more roadway capacity; and facilitate tourist travel between Kihei and the summit of Haleakala.

Alternatives under consideration include taking no action, ten alternative roadway alignments, and a Transportation System Management alternative.

Letters describing the proposed action and soliciting comments have been sent to federal, State and local agencies, and to private land owners, organizations, and citizens who have previously expressed or are known to have an interest in this project. A meeting to discuss the scope of the EIS was held October 26, 1994, in Honolulu, Hawaii. In addition, a public hearing will be held after publication of the draft EIS. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the above address.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 31, 1995.

R.J. McCormick,

Field Operations Engineer.

[FR Doc. 95–27838 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–22–M

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Cancellation of Meeting

The Advisory Board meeting of the Saint Lawrence Seaway Development Corporation, to be held at 11:00 a.m., November 9, 1995, at the Corporation's Administration Building, 180 Andrews Street, Massena, New York 13662, has been cancelled. Notice of this meeting appeared in the November 2, 1995 Federal Register, page 55753.

Issued at Washington, D.C. on November 2, 1995.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 95–27733 Filed 11–8–95; 8:45 am]

BILLING CODE 4910–61–M

UNITED STATES INFORMATION AGENCY

The Edmund S. Muskie Fellowship Program; Request for Proposals; Notice

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, European Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces opportunities for regionally and professionally accredited U.S. institutions offering degree and executive education programs at the master's level in business administration, economics, law and public administration, to host graduate students from Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakhastan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan for nine month, one-year, eighteen month, or two-year degree, certificate, or professional development programs under the auspices of the 1996 Edmund S. Muskie Fellowship Program. Priority will be given to institutions that can provide academic guidance and professional development support to Fellows and that have experience working with international students. Due to budgetary considerations, and to allow participation of as many Fellows as possible, the cost per student to USIA will be given serious consideration in the review of institutional applications.

**Please note:* Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation; and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan or any of its instrumentalities will have no control in the actual selection of participants.

The Edmund S. Muskie Program is administered by USIA through cooperative agreements with the following organizations: The American Council of Teaches of Russian/ American Council for Collaboration in Education and Language Study (ACTR/ ACCELS), the Institute of International Education (IIE), the International Research & Exchanges Board (IREX), and the Soros Foundations/Open Society Institute (Soros/OSI). Under these agreements ACTR/ACCELS, IIE, IREX, and Soros/OSI are responsible for the recruitment, selection, academic placement, and monitoring of Fellows.

DATES: *Deadline for proposals:* Completed applications must be received at the appropriate organization (listed below) by 5 p.m. Eastern Standard Time, on Wednesday, January 31, 1996. Faxed documents will not be accepted, nor will documents postmarked on January 31, 1996, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Institutions selected to host Muskie Fellows should expect to receive students Fall semester of 1996.

PROGRAM AUTHORIZATION: Overall authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange, to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. . . and thus assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world."

DIVERSITY GUIDELINES: Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of the American political, social and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

APPLICATION PROCESS AND FURTHER INFORMATION: Interested institutions should read the complete **Federal Register** announcement and then contact ACTR/ACCELS, IIE, IREX, or Soros/OSI directly for an application and further instructions. The original and three copies of the proposal should be submitted by the deadline to the appropriate organization listed below:

For degree programs in business administration or two-year degree programs in public administration: The Edmund S. Muskie Fellowship Program, c/o ACTR/ACCELS, 1776 Massachusetts

Avenue, NW, Suite 700, Washington, DC 20036, e-mail: felows@actr.org.

For two-year degree programs in economics: The Edmund S. Muskie Fellowship Program, c/o IREX, 1616 H Street, NW., Washington, DC 20006, e-mail: muskie@info.irex.org.

For degree programs in law or nine month/one-year/eighteen month programs in public administration: The Edmund S. Muskie Fellowship Program, c/o The Open Society Institute, 888 Seventh Avenue, 31st Floor, New York, NY 10106, e-mail: akehoe@sorosny.org.

For professional development programs in business administration, economics, law, or public administration: The Edmund S. Muskie Fellowship Program, c/o The Institute of International Education, 1400 K Street, NW., Washington, DC 20005-2403, e-mail: moleszek@iie.org.

RENWAL PROCESS FOR CURRENT HOST INSTITUTIONS: U.S. institutions currently hosting or who have been approved to host 1994 and/or 1995 Muskie Fellows in degree, certificate, or professional development programs that wish to receive Fellows in 1996 in the same fields of study are not required to complete the institutional application providing the 1996 academic programs, support services, and cost-sharing level remain consistent with or better than the 1995 program.

These institutions must demonstrate intent to receive 1996 Muskie Fellows in the same field(s) by submitting a renewal application letter:

- Confirming that the academic program, professional and enrichment support, and adherence to other grant requirements will, at a minimum, remain consistent with current levels.
- Addressing how the host institution will work with its local community to provide assistance in the professional training and cultural enrichment of the students, including the use of such groups as Councils of International Visitors, business associations, local schools, and local government.
- Indicating the desired numbers of Fellows to be hosted, the length and type of program in which they will be placed (non-degree, degree, certificate, or professional development), the name and contact information of the Muskie coordinator, the 1996–97 academic calendar, what kind of pre-academic/ESL support can be offered, and the amount of cost-sharing provided for each Fellow, adjusted as needed for 1996–97 costs.

Current host institutions need to contact the appropriate contract organizations (ACTR/ACCELS, IREX, IIE, or Soros/OIS) to receive the required budget worksheet that must be submitted along with the letter. Original letters must be received by the appropriate contact organization by January 31, 1996.

Current host institutions that wish to host Fellows in a different academic field must submit a full application to be eligible to receive students in that discipline. Any institutions that are unsure which application materials to submit should contact the appropriate contract organization (ACTR/ACCELS, IREX, IIE, or Soros/OSI).

ADDITIONAL PROGRAM INFORMATION: The Edmund S. Muskie Fellowship Program is not intended as a precursor to doctoral studies in the United States. At the end of their designated academic and internship programs, Fellows are required to return to their home countries to fulfill the two-year home residency requirement as specified in the Exchange Visitor (J–Visa) regulations.

ACTR, IREX, IIE, and Soros Foundations/OSI will not approve the transfer of visa sponsorship to universities or the extension of visas for the purpose of Ph.D. programs, extended practical training, or other additional academic study. Universities that do not comply with the policies of the Muskie program and J-Visa regulations will be removed from the pool of host institutions.

Muskie Fellows are identified through a merit-based, open competition and a rigorous selection process implemented by ACTR/ACCELS, IIE, IREX, and Soros/OSI, in conjunction with USIA, professional associations, and U.S. faculty from the different academic fields. Semi-finalists in all disciplines must take the Test of English as a Foreign Language (TOEFL). Candidates for degree programs may also be required to take standardized admissions tests such as the Graduate Management Admission Test (GMAT), or the Graduate Record Examination (GRE). Candidates for the law program must have an undergraduate law degree from their home country. Fellows are matched with universities by selection committees composed of graduate admissions officers and faculty in the appropriate disciplines. Placements are determined according to Fellows' academic interests and needs. Fellows may not choose their own academic placements. Currently 130 Muskie Fellows are enrolled at U.S. institutions.

To be eligible for a Muskie Fellowship, applicants must be citizens of one of the country targeted by the program, have successfully completed an undergraduate program, be proficient in spoken and written English at the time of application, demonstrate professional aptitude and leadership potential in the field of specialization, and be under the age of 40. Applicants for professional development programs must have a minimum of three years relevant work experience in addition to an undergraduate degree. To be eligible for awards in law, candidates must have received an undergraduate diploma in law. Individuals currently studying, working or living outside the fifteen participating countries, spouses of U.S. citizens, and individuals who have applied for an immigrant visa or political asylum to any country are not eligible for the Muskie Program. Individuals who have spent four or more consecutive months outside the fifteen participatory nations since June 1994 are not eligible for the 1996 competition.

No financial support or provision is made for Fellows' dependents under the Muskie Program. Muskie Fellows receive scholarships for international transportation, domestic transportation within the United States, stipend, health insurance, full or partial tuition, room/board, and other expenses.

Fellows who receive TOEFL scores below 550 will enroll in courses of English as a Second Language (ESL) in summer 1996. Fellows who receive TOEFL scores above 550 may be placed in summer pre-academic programs prior to arrival at their host universities.

PROGRAM GUIDELINES: *Degree and Certificate Programs:* In general, Fellows with degree awards in business administration or economics, should take part in eighteen-month/two-year academic programs leading to the degree of Master of Business Administration (BMA) or Master of Arts (MA) degree. Economics programs should focus on applied fields such as economic policy and planning, economic development, econometrics, banking, international development and trade. Fellows with degree awards in public administration should take part in nine month, one-year, eighteen month, or two-year programs leading to the Masters of Public Administration (MPA) or Master of Arts (MA) degree. In some cases, certificates may be awarded instead of degrees. Three-month internships should take place during the summer of 1997, after one year of academic study. All programs in law must lead to the Master of Laws (LLM) degree. Fellows with awards in law generally participate in nine-month LLM programs followed by a three-month internship. Longer LLM programs are also admissible.

Professional Development Programs: The Professional Development awards are specifically designed for mid-career professionals with at least three years substantive work experience prior to application. These non-degree programs in business administration, economics, and public administration generally include two semesters of tailored academic study at the master's level, followed by up to six months of practical training. The law program for mid-career professionals should lead to the LLM degree with up to six months of practical training after the period of academic study.

PROGRAM REQUIREMENTS AND REVIEW CRITERIA: Nationally and professionally accredited U.S. institutions and accredited departments may apply to receive Fellows individually or in groups of two to ten people representing one or any combination of the four disciplines. Host institutions for 1996 Muskie Fellows will be selected by ACTR/ACCELS, IIE, IREX, Soros/OSI, and USIA, based on the following criteria:

a. *Strength of academic program:* Academic rigor and demonstrated capacity to meet participant needs in an accredited institution and department.

b. *Track record:* Experience working with and providing a full range of support services for international students. Recognition of and compliance with the intent, policies, and regulations governing the Muskie Program.

c. *Professional support:* Commitment to playing an active role in locating appropriate internships and professional affiliations. Additionally, proposals should briefly describe local community resources upon which the institution will draw.

d. *Academic support:* Capacity to assign a faculty advisor and a Muskie Program coordinator to provide academic guidance, logistical support, and assistance in arranging enrichment activities and internships.

e. *Cost-effectiveness:* Ability to provide a high quality program for lowest costs. A key measure of cost-effectiveness is the host institution's program cost per Fellow. The Agency also reviews the ratio of cost-sharing to program costs exhibited through such means as tuition scholarships, fellowships, or reduced room and board expenses.

f. *Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content. The Agency seeks to achieve maximum geographic diversity in the selection of host institutions.

g. *Evaluation plan:* Proposals should outline methods for monitoring the academic progress and integration of Fellows in the campus and community.

h. Adherence of proposed activities to the criteria outlined above and the goals and policies of the Edmund S. Muskie Program.

Interested institutions should indicate what kinds of pre-academic/ESL support they can offer Fellows. Commuter and/or non-residential schools should address how they will provide additional support to integrate Fellows into the university and local community.

Fellows' applications will be sent to the universities in June. The academic interests and professional needs of candidates selected as Fellows will be considered in the final designation of U.S. host institutions. Universities cannot select their own Fellows.

AGENCY COST SHARING GUIDELINES: U.S. institutions hosting Muskie Fellows are strongly encouraged to provide cost-sharing toward tuition and/or room and board expenses, so that greater numbers of students may take part in the program. Cost-sharing may also be in the form of direct program and participant costs. Indirect and administrative costs will not be considered allowable cost-sharing items, nor will these costs be covered by the Muskie Program. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110 (Revised), Subpart C.23—Cost-Sharing and Matching should be described in the proposal. In the event the institution does not provide the minimum amount of cost-sharing as stipulated in the institution's budget, the Agency's contribution will be reduced in proportion to the institution's contribution.

The National Performance Review, under Vice President Gore's leadership, has focused during the past several months on international exchange and training programs throughout the federal government. USIA has participated actively in the review and has committed itself to the aggressive pursuit of greater cost-effectiveness and efficiency in the conduct of our programs. We anticipate that cost-effectiveness and cost-sharing will be important criteria by which the NPR will determine which U.S. Government exchange and training programs should be maintained and which reduced or eliminated in an effort to prevent duplication.

Demonstrable efforts to significantly increase efficiency, therefore, are critical both to the continuation of U.S. and foreign student programs and the continued administration of them. Preference will be given to institutions that provide cost-sharing on direct participant costs. While the Agency strongly encourages cost-sharing, it is not a requirement. Institutions unable to offer cost-sharing are eligible to apply.

APPLICATION DISCLAIMER: The terms and conditions published in this RFP are binding and may not be modified by any USIA, ACTR/ACCELS, IIE, IREX, or Soros/OSI representative.

Explanatory information provided by USIA, ACTR/ACCELS, IIE, IREX, or Soros/OSI that contradicts published language will not constitute a commitment on the part of the Government or the implementing organization.

NOTIFICATION: Final notifications cannot be made until funds have been fully appropriated by Congress, allocated, and committed through internal USIA procedures. Applicants will be notified in writing of the results of the review process on or about April 15, 1996. Final placement of students at institutions is subject to the specific academic interests and needs of individuals selected as Muskie Fellows and availability of funding.

Please note: USIA retains the right to determine final selection decisions with regard to the competition for institutions to host Muskie Fellows. The Agency also reserves the right to determine final placement decisions. When the needs of the program warrant, the Agency may invite selected institutions to host Fellows whose academic needs require specialized placement.

OPTIONS FOR RENEWAL: Subject to the availability of funding and the satisfactory performance of host institutions,USIA, on behalf of the Muskie Fellowship Program, may invite grantee organizations to submit proposals for renewal of awards.

REVIEW PROCESS: ACTR/ACCELS, IREX, IIE, or Soros/OSI will acknowledge receipt of all applications and will review them for technical eligibility. Applications will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Application Package. Eligible applications will be forwarded to panels of USIA officers for advisory review. All eligible applications may also be reviewed by the Agency contracts office, as well as the USIA Office of East European and NIS Affairs, the USIS posts overseas, the Office of the General

Counsel, or other Agency elements, where appropriate.

Notification

All applicants will be notified of the results of the review process on or about April 15, 1996.

Dated: November 1, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–27800 Filed 11–8–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 217

Thursday, November 9, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Tuesday, November 14, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of actions approved by an officer of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendment to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which revise the rules setting forth the procedures to be used by members of the public in requesting records maintained by the Corporation, the amount of fees charged by the Corporation for responding to requests, the procedures to be used when appealing a decision to deny access to records or for a waiver of fees, circumstances and procedures under which exempt records might be disclosed, and the method by which a party can serve legal process on the Corporation in order to obtain information.

Discussion Agenda

Memorandum and resolution re: Notice regarding Bank Insurance Fund Semiannual Assessment Rates.

Memorandum and resolution re: Notice regarding Savings Association Insurance Fund Semiannual Assessment Rates.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees will auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 7, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–27963 Filed 11–7–95; 1:45 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 14, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, November 16, 1995 at 10:00 a.m.

PLACE: 999 E Street NW. Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–37: Robert W. Holmen on Behalf of the National Association of Realtors
Advisory Opinion 1995–38: Jeffrey C. Smith on behalf of the Washington Policy Associates, Inc
Regulations: Correction to the Final Disclaimer Rules. (Tentative)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–27973 Filed 11–7–95; 2:31 pm]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Tuesday, November 14, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27922 Filed 11–7–95; 10:48 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m. (est.); November 20, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 16, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Strategic Information Systems Plan review.
4. Quarterly investment policy review.
5. Review of KPMG Peat Marwick audit reports:
   (a) "Pension and Welfare Benefits Administration Review of Access Controls and Security Over the Thrift Savings Plan Computerized Resources at the United States Department of Agriculture, National Finance Center."
   (b) "Pension and Welfare Benefits Administration Review of Backup, Recovery, and Contingency Planning of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center."
   (c) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Withdrawal and Inactive Accounts Operations at the United States

Department of Agriculture, National Finance Center."
6. Semiannual status of audit recommendations.
7. Annual ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: November 6, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–27916 Filed 11–7–95; 8:45 am]

BILLING CODE 6760–01–M

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

DATE AND TIME: November 17, 1995, 8:00 a.m. Closed Session November 17, 1995, 8:15 a.m. Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Friday, November 17, 1995.

Closed Session 8:00 a.m.–8:15 a.m.

—Minutes, October 1995 Meeting
—Grants and Contracts

Friday, November 17, 1995

Open Session 8:15 a.m.–11:45 a.m.

—Minutes, October 1995 Meeting
—Closed Session Agenda Items for February 1996 Meeting
—Chairman's Report
—Director's Report
—Program Approval
—Committee Reports
—Other Business
—Presentation: Biological Sciences (BIO) Directorate
—Presentation: National Academy of Sciences (NAS) Science Standards
—Presentation: Education and Human Resources (EHR) Systematic Initiatives
—Adjourn.

Marta Cehelsky,

Executive Officer.

[FR Doc. 95–27906 11–7–95; 8:45 am]

BILLING CODE 7555–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 16, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Monthly Truth in Budgeting Report
(2) Funding for Operation, Maintenance, Utilities, Repairs, Overtime, and Security Services for the Headquarters Facility for Fiscal Year 1996.
(3) Tolerance for Processing Reconsideration, Waiver, and Appeal Requests in Retirement and Survivor Cases
(4) Study of Taxation Letters
(5) Coverage Determination—CANAC International Ltd.
(6) Proposed Durable Medical Equipment Agreement
(7) Proposed occupational Disability Standards
(8) Regulations:
A. Proposed Rule, Part 230, Proposed Letter to Mr. A.W. Westphal, National Association of Retired & Veteran Railway Employees, Inc.
B. Part 255, Recovery of Overpayments
C. Part 211, Proposed Rule—Finality of Returns of Compensation
D. Part 261, Proposed Rule—Administrative Finality
(9) Personnel Actions:
A. Request to Post a GS–13 Senior Compensation and Communications Specialist Position in the Bureau of Research and Employment Accounts
B Request to Post two GS–9 Debt Recovery Specialist Positions in the Bureau of Fiscal Operations
C. Director of Programs' Fiscal Year 1996 Performance Agreement
(10) Financial Disclosure
(11) 1996 Board Meeting Dates

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: November 6, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–27964 Filed 11–7–95; 1:45 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 60, No. 217
Thursday, November 9, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–108–1]

Pine Shoot Beetle; Quarantined Areas and Regulated Articles

Correction

In rule document 95–27284 beginning on page 55777 in the issue of Friday, November 3, 1995, make the following correction:

Under the heading **DATES,** in the fourth line, "January 2, 1995" should read "January 2, 1996".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ACE-10]

Proposed Amendment to Class E Airspace; Omaha, Millard Airport, NE

Correction

In proposed rule document 95–26762 beginning on page 55223 in the issue of Monday, October 30, 1995, make the following correction:

On page 55223, in the third column, in the **DATES** section, the date is corrected to read "December 11, 1995".

BILLING CODE 1505–01–D

federal register

Thursday
November 9, 1995

Part II

Department of Housing and Urban Development

Manufactured Home Construction and Safety Standards; Notice of Settlement

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–3969–N–01]

Manufactured Home Construction and Safety Standards; Notice of Settlement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner (HUD).

ACTION: Notice of Settlement.

SUMMARY: Pursuant to a Stipulation and Order of Settlement and Dismissal issued by the United States District Court for the Southern District of New York on September 7, 1995, HUD is providing notice of a settlement of the case entitled and numbered *Thinking Vents, Inc. v. Henry Cisneros, Secretary of Housing and Urban Development*, 94 Civ. 8488 (AGS).

DATES: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Philip W. Schulte, Acting Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B–133, Washington, DC 20410–8000. Telephone: (voice) (202) 755–7420; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the following attachment is the Stipulation and Order of Settlement and Dismissal issued by the United States District Court for the Southern District of New York on September 7, 1995 in the case entitled and numbered *Thinking Vents, Inc. v. Henry Cisneros, Secretary of Housing and Urban Development*, 94 Civ. 8488 (AGS).

Dated: October 6, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

Attachment—United States District Court Southern District of New York

94 Civ. 8488 (AGS).

Thinking Vents, Inc., Plaintiff, v. *Henry Cisneros, Secretary of Housing and Urban Development, in his official capacity*, Defendant.

Stipulation and Order of Settlement and Dismissal

Whereas, plaintiff THINKING VENTS, Inc. ("TVI") commenced this action in the United States District Court for the Southern District of New York, seeking injunctive and monetary relief from defendant HENRY CISNEROS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT ("HUD"); and

Whereas, the parties to this Stipulation and Order of Settlement and Dismissal ("Stipulation and Order") seek to resolve this action without resort to further litigation;

It is hereby stipulated and agreed, by and between plaintiff TVI, and defendant HUD, as follows:

1. Plaintiff hereby dismisses this action with prejudice and without costs, disbursements, or attorneys' fees.

2. Upon this Stipulation being So Ordered by the Court, HUD shall issue a letter in the form annexed hereto as Exhibit A. Said letter shall be effective as of the date the Court signs this Stipulation and Order, and HUD shall forward the letter to all Design Approval Inspection Agencies and publish it, along with this Stipulation and Order, in the **Federal Register** as soon as practicable.

3. HUD shall, it its own cost, conduct field inspections of 100 homes that, subsequent to the Court's signing of this Stipulation and Order, have been fitted with the Thinking Cap Ventilation System ("TCVS") and sold. Such field inspections shall be conducted in the manner provided by the testing protocol annexed hereto as Exhibit B, provided, however, that a home shall not be eligible for a field test unless: (a) all clothes dryers are vented directly to the outside and not vented under the home; (b) no open flame heaters are used in the home unless vented directly outside; (c) the ground under the home does not have standing water; (d) skirting or underpinning has a minimum of one foot of ventilation for every 150 square feet of ground area; and (e) the ground beneath the home has a vapor barrier if the applicable home owner's manual so requires. The homes inspected shall be selected by a method of random selection set forth in paragraph 4, with 50 of the homes located in thermal Zone 3 (the "North Zone") and 50 of the homes located in thermal Zones 2 and 1 (the "South Zone"). HUD shall make every effort to complete the inspections within 18 months of the date this Stipulation and Order has been signed by the Court. However, in no event shall the inspection period exceed 30 months ("the testing period").

4. The homes shall be selected for inspection pursuant to a two-step process. (a) *First*, HUD will randomly select on a quarterly basis two pools of homes in which the TCVS has been installed subsequent to the Court's signing of this Stipulation and Order from lists of homes sold in each of the North and South Zones in the previous three months. One pool shall be for the North Zone and one pool for the South Zone. Such random selection shall be based on the serial numbers of the homes on the lists. HUD shall randomly select 10% of the homes on the South Zone list for the South Zone pool, and 25% of the homes on the North Zone List for the North Zone pool. In the event that, at the time of a particular selection, there are fewer than 250 homes sold using the TCVS, the percentages will be increased to 20% in the South Zone and 40% in the North Zone. TVI shall have the right to be present at such random selection. (b) *Second*, from the North and South Zone pools of homes, HUD will select the homes to be inspected until a sufficient number of homes that meet the testing conditions set forth in paragraph 3 above have been selected. HUD will select homes based on considerations of obtaining a representative geographic sampling and limiting the costs of such inspections. If, however, there is any state that is not represented by either pool but contains homes in which the TCVS has been installed, HUD may randomly select up to two homes in that state for inspection. HUD will give TVI notice of any selections made.

5. At its option, TVI shall have the right, at its own cost, to conduct field inspections of the same 100 homes described in paragraphs 3 and 4, above. Such field inspections shall be conducted in the manner provided by the testing protocol annexed hereto as Exhibit C. If TVI chooses to conduct its inspection of a particular home on a different date or time than that designated by HUD, TVI shall give HUD 5 days notice of the date, time and location of the inspection, and HUD shall be entitled to attend any such inspection.

6. HUD shall give 5 days notice to TVI of the date, time and location for each of the field inspections described in paragraph 3, above, in order to enable TVI to exercise its right to be present at such inspections. No such inspections shall take place on a Friday, Saturday or Jewish Holiday. Such Jewish holidays will include those listed on the schedule annexed hereto as Exhibit D. For subsequent years, TVI will supply such list to HUD not later than January 31 of that year.

7. In the event that a home passes TVI's field inspection but fails HUD's field inspection, TVI may petition the Court to appoint an arbiter (the "arbiter") to determine whether such home passes or fails the field inspection. At the arbiter's discretion, said arbiter may visit the subject home(s) to assist the arbiter in reaching a determination. The costs associated with the arbiter's work will be agreed upon by the arbiter with the parties prior to the arbiter performing any work, and will be borne by the party against which the arbiter finds.

8. TVI and HUD hereby stipulate and agree that the arbiter, and any persons duly designated to act on the arbiter's behalf, shall be immune from personal liability for any conduct undertaken pursuant to this Stipulation and Order in any action brought by TVI or HUD or by anyone acting on their behalf, at their behest, or in their interest. TVI and HUD hereby agree that they will not sue the arbiter, or any persons duly designated to act on the arbiter's behalf, on account of any action taken pursuant to the Stipulation and Order.

9. The Court may appoint an arbiter jointly recommended by the parties. To assist in such appointment, within 15 days of the date the Court signs this Stipulation and Order, the parties will each nominate five candidates to be recommended as arbiter, and the parties will use best efforts to agree upon and jointly recommend such arbiter from such candidates to the Court.

10. In the event that 94 or more of the homes inspected pass HUD's field inspection or the determination by the arbiter, then the TCVS shall be deemed to have passed the test and the letter in the form annexed hereto as Exhibit A shall remain in effect.

11. In the event that 7 or more of the homes inspected fail HUD's field inspection and, if such determination is sought, the arbiter's determination, then the TCVS shall be deemed to have failed the test, the letter in the form annexed hereto as Exhibit A may be revoked, and HUD's obligation under paragraph 3 of this Stipulation and Order to test homes shall terminate. Revocation pursuant to this paragraph and paragraph 14 below are the only circumstances under which the letter in the form annexed as Exhibit A may be revoked.

12. In the event that the TCVS fails the test, HUD shall provide notice to all owners of homes in which the TCVS has been installed that the TCVS has failed the test; that their homes do not comply with the applicable Federal Manufactured Home Construction and Safety Standards; that if there is any moisture damage, TVI will, during the two-year period following the date of failure of the test, repair, without cost to the owner, the home and replace the TCVS with a system that meets the standards; that the TCVS is under a ten year warranty from TVI for the operation of the TCVS; and that if there are any questions about the ventilation systems or the notice, the owners can call HUD or the applicable State Administrative Agency. If, during the testing period or within two years from the date of the failure of the test as described in paragraph 11, a notified homeowner's home shows evidence of damage caused by the TCVS or the homeowner requests that the home be retrofitted, the home shall be retrofitted, at TVI's cost, with a ventilation system that brings the home into compliance with the applicable Federal Manufactured Home Construction and Safety Standards relating to ventilation, and TVI shall repair, without cost to the homeowner, any and all damage to the home caused by the installation and use of the TCVS.

13. During the testing period, TVI shall, on a monthly basis, provide HUD with two lists, one for the North Zone and one for the South Zone, of all consumers known to TVI who purchased homes containing the TCVS during the testing period. Each list shall include the consumer's address and telephone number, as well as the consumer's home's serial and HUD label numbers and the dates the consumer's home was produced and sold. The failure of TVI to provide all such information for a given home on an occasional basis shall not be a reason to exclude such home from the selection process if the information provided is otherwise sufficient to include such home in the selection process. If necessary to complete the testing within the testing period, TVI shall provide the consumer lists described above on a bi-weekly basis.

14. In the event that the random selection procedure described in paragraph 4 above does not yield 100 homes overall that meet the conditions for testing set forth in paragraph 3 above, then HUD will randomly select additional homes for the pools using the procedures set forth in paragraph 4 until 100 homes have been obtained. If, after exhaustion of the pools and lists using the procedures set forth above, there are still not 100 homes that meet the conditions for testing, then TVI may waive all the conditions set forth in paragraph 3, and HUD may select such homes to be tested based on considerations of obtaining a representative geographic sampling and limiting the costs of such inspections. In the event that TVI fails to grant such wavier, or, if upon such waiver there are still not 100 homes available for testing, the letter in the form annexed as Exhibit A may be revoked. In the event that a minimum of 400 homes containing the TCVS are not sold during the first 12 months of the testing period, or 200 homes are not sold in each 6 month period thereafter, than the letter in the form annexed as Exhibit A may be revoked.

15. TVI shall maintain a general liability insurance policy with coverage of $2,000,000.00. No later than 60 days after the date this Stipulation and Order is signed by the Court, TVI shall secure a product recall policy with coverage of $500,000.00. Within one year of the date this Stipulation and Order is signed by the Court, TVI shall secure an umbrella coverage to increase the general liability coverage to $5,000,000.00, and within two years of the date this Stipulation and Order is signed by the Court, TVI shall increase the general liability coverage to $10,000,000.00.

16. TVI shall, during the testing period, provide customers with a ten year limited warranty as set forth in Exhibit E.

17. TVI shall, no later than 60 days after the date this Stipulation and Order is signed by the Court, post a bond in the amount of $50,000.00 to be used in the event that damage occurs or retrofitting is need or requested that is not covered by the above-described insurance policies. During the testing period, TVI shall place 5% of its receipts derived from sales of the TCVs in an escrow account with an independent financial institution, which sums shall be available to augment the bond (the "set aside sum"). A portion of the set aside sum may be used to administer the escrow account. TVI will provide HUD with a monthly accounting of the set aside sum.

18. In the event that the TCVs passes the test as set forth in paragraph 10 above, the bond, and set aside sum, including accrued interest, will be the property of TVI. TVI will continue to provide a 10-year limited warranty as set forth in Exhibit E for the operation of the TCVSs it sells in the future. In the event that the TCVS fails the test as set forth in paragraph 11, the insurance, bond and set aside sum, and accrued interest, will remain in place for two years following the determination that TVI has failed the test as set forth in paragraph 11, and thereafter any sums remaining shall be in the property of TVI.

19. This Stipulation and Order constitutes the entire understanding and agreement between the parties with respect to the subject matter of this Stipulation and Order. All prior or contemporaneous understandings, discussions, agreements and/or representations with respect to the said subject matter, whether oral or written, including the Agreement dated October 22, 1987, and the Alternative Construction letter issued to Horton

Homes, are expressly superseded by this Stipulation and Order.

20. This Stipulation and Order will be binding on and will inure to the benefit of the parties and their respective agents, servants, employees, successors, assigns, and related, affiliated and subsidiary entities.

21. This Stipulation and Order will be interpreted and otherwise governed under the laws of the United States.

22. The Court shall retain jurisdiction over this matter and over the parties for the purpose of enforcing the terms of the Stipulation and Order and any Order entered by the Court thereupon. In the event either party to this Stipulation and Order fails to fulfill is obligations as set forth herein, the sole remedy will be an application brought before this Court. Any controversies between the parties regarding the terms of this Stipulation and Order shall be resolved by the Court employing such procedures as the Court deems appropriate.

Dated: September 5, 1995, New York, New York.

Thinking Vents, Inc.
By:
Stanley Kolt,
President.

Dated: September 5, 1995, New York, New York.

Laufer & Farkash
Attorneys for Plaintiff
By:
Jacob Laufer (JL 2846)
101 East 52d Street, New York, NY 10022, (212) 308–8500.

Dated: September 5, 1995, Washington, DC.

United States Department of Housing and Urban Development.
By:
Nicholas Retsinas,
Assistant Secretary for Housing.

Dated: September 6, 1995, New York, New York.

Mary Jo White,
United States Attorney for the Southern District of New York Attorney for Defendant.
By:
Beth E. Coldman (BC–6247),
Assisant United States Attorney, 100 Church Street—19th Floor, New York, New York 10007, Tel. No.: (212) 385–6225.

So Ordered:

Allen G. Schwartz,
United States District Judge.

Exhibit A

Mr. Stanley Kolt, Chief Executive Officer
Thinking Vents, Inc.
P.O. Box 752
Mamaroneck, New York 10543–0752

Dear Mr. Kolt: Subject to the terms and conditions of the Stipulation and Order dated September 1, 1995, entered in the case captioned *Thinking Vents, Inc. v. Henry Cisneros*, 94 Civ. 8488 (AGS), in the Southern District of New York (the "Stipulation"), the U.S. Department of Housing and Urban Development ("Department") will take no action with regard to any possible violations of the provisions of the Manufactured Home Construction and Safety Standards ("Standard") and Manufactured Home Procedural and Enforcement Regulations ("Regulations") listed below against any manufactured home manufacturer that installs and utilizes the Thinking Cap Ventilation System ("TCVS") in any of its homes. Accordingly, all Design Approval Primary Inspection Agencies ("DAPIAs") are authorized to approve designs utilizing the TCVS, notwithstanding that said homes are not constructed to the precise specifications of the following provisions of the Standards and regulations:

1. 24 C.F.R. § 3280.103(b)(4), "Whole House Ventilation," insofar as interior air will be ventilated through the roof cavity.

2. 24 C.F.R. § 3280.504(c)(1), "Attic and Roof Ventilation," insofar as neither the minimum free ventilation area nor a mechanical ventilation system will be installed.

3. 24 C.F.R. § 3280.504(c)(2), "Attic and Roof Ventilation," insofar as certain single section manufactured homes that are excepted from attic ventilation required by 24 C.F.R. § 3280.504(c)(1), have air leakage paths to the attic space that are not sealed.

4. 24 C.F.R. § 3282.205(c), "Certification Requirements," insofar as the label, in the form required by 24 C.F.R. §§ 3280.11 and 3280.362(c)(2), may be placed on each affected home even though the home is not constructed to the precise specifications of the Standards set forth above.

A copy of this letter will be forwarded to all DAPIAs. Upon receipt of this letter, DAPIAs are authorized to approve designs utilizing the TCVS under the conditions set forth herein. DAPIAs shall provide the National Conference of States Building Codes and Standards, Inc. ("NCSBCS") with a set of *approved* plans for all designs to be covered by this letter within 5 days of the date of approval of such designs. The failure of any manufactured home design to comply with the precise specifications of the Standards and Regulations set forth above is not grounds for a DAPIA to deny approval of any manufactured home design.

Sincerely,

David C. Nimmer,
Director, Office of Manufactured Housing and Regulatory Functions.

Exhibit B—Inspection Protocol Thinking Cap Ventilation System

Purpose of Inspection

To determine if the presence of moisture in the ceiling/roof cavity is at a level which is known to affect material and structural degradation.

Method of Inspection

The primary method of inspection is to visually examine the interior of the ceiling/roof cavity for signs that the wood and wood based products have reached fiber saturation and for signs of surface moisture on metal surfaces and other materials of low permeability.

Failure Level of Moisture

The failure level of moisture content shall be fiber saturation point of the material being evaluated.

The failure level of surface moisture will be when wetting occurs and/or evidence of moisture accumulation exist.

Indicators That Fiber Saturation is Exceeded For Wood and Wood-Based Products

Warping, bowing, buckling, delamination, swelling, visible mold, smell of mold, water marks, wet-to-touch, moisture droplets, ice and frost build-up, wood rotting or other signs of material decomposition.

Indicators of Excessive Accumulating Surface of Moisture

Ice and frost build-up, puddling of water on vapor retarder, wet insulation frost and ice on insulation, under surfaces, wet-to-touch, mold smell, visible mold, water marks on ceiling. Deterioration of ceiling. Evidence of moisture dripping into walls.

Pass/Fail Criteria

A failure would occur if any of the following conditions are present:

I. Fiber saturation levels are exceeded as shown by any of the indicators identified above.

II. Moisture is Accumulating in the Ceiling/Roof cavity as shown by any of the indicators identified above.

Other Conditions

1. The homes will be set-up in accordance with the Manufactured Housing Construction and Safety Standards and comply in all relevant respects with the standards.

2. The Thinking Cap will be inspected to note if the system is open or closed and the attic and outdoor temperature at the time of the inspection should be noted on the inspection report.

3. The moisture content of wood framing members may be tested in accordance in ASTM D4444–94, *Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters.*

Exhibit C—Testing Protocol for Thinking Cap Ventilation System

The testing shall consist of an on-site investigation of each of 100 manufactured homes that are equipped with the Thinking Cap Ventilation System ("the subject homes").

Stanley Kolt or his representative shall conduct a test to determine the level of moisture in the home. Such test shall be conducted by exposing the wood members of the attic by removing a single ceiling vent and determining the quantity of water in the wood. Said quantity shall be determined by the use of a wood moisture detector. A wood moisture detector reading of 19 percent or less shall be an acceptable level of moisture in the wood members of the attic. Should the wood moisture detector reading be 19 percent or less then the subject home shall be deemed to have passed the investigation. Should the wood moisture detector reading be greater than 19 percent, then the subject home shall be deemed to have failed the investigation.

Exhibit D—Jewish Holidays 1995–96

1995: September 24, 25, 26, 27; October 3, 4, 5, 8, 9, 10, 11, 15, 16, 17, 18.
1996: March 3, 4, 5; April 2, 3, 4, 9, 10, 11; May 23, 24; July 25; September 15, 16, 22, 23, 24, 30.

Exhibit E—Thinking Vents, Inc.

The "Thinking Cap" is a fully automatic natural passive total home ventilation system. It operates continually without using electricity. This system improves the ventilation of the occupied space of the home and attic. To maintain the optimum utilization of the system with respect to ventilation and therme efficiency, do not block or impair the automatic operation of the ceiling vents of your home or the roof. "Thinking Caps".

Limited Warranty

Thinking Vents, Inc. warrants each "Thinking Cap" ventilation system against defects in materials and factory workmanship for a period of ten (10) years from the date of manufacture. If under normal use and service the "Thinking Cap" discloses such defect within the warranty period, the homeowner may ship the entire unit or any defective part or parts to the manufacturer, freight prepaid by the purchaser and the manufacturer shall repair or replace such defective part or parts as may, in its judgment, be required to return the unit to full and proper working order.

Consumer Information and Comment Card

1. Owner's: Name _____
Address _____
City, State & Zip _____
Telephone No _____
2. Manufacturer's Name_____ Date Purchased_____
3. Home Model_____ Serial No._____
4. Date of Manufacture_____ HUD No._____
5. SQ FT of Home_____ Single____ Double____ Triple____Wide
6. How many in household____ Shingle Roof____ Metal Roof____
7. What is your heating system type_____
8. Do you have central air conditioning_____
9. Is this the first "thinking Cap" system in any home you have owned or occupied_____
10. Comments _____

Please return card so we can best service your ten year warranty.

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federal register

Thursday
November 9, 1995

Part III

Department of the Treasury

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF THE TREASURY

Privacy Act of 1974: Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Department of the Treasury has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records.

The systems notices are reprinted in their entirety following the Table of Contents. Changes are editorial in nature and consist principally of changes to system locations and system manager addresses, retention and disposal schedules, revisions to organizational titles and transfers of functions. The United States Savings Bond Division (USSBD), formerly a bureau within the Department of the Treasury, was abolished and its functions assigned to the Bureau of the Public Debt (BPD). Certain USSBD systems of records have been incorporated by the BPD while others have been deleted from Treasury's inventory of systems of records. Changes to a notice due to having been renumbered or having its title changed are indicated in the Table of Contents. The inventory of Privacy Act systems established by the Office of Thrift Supervision (OTS) was published separately on March 14, 1995, at 60 FR 13770.

As a result of this review, the following systems of records are being removed from Treasury's inventory of Privacy Act systems: (1) Treasury/DO .053—Treasury Emergency Preparedness Information Program; (2) Treasury/DO .066—Combined Applicant/Applicant Correspondence File; (3) Treasury/BEP .015—Executive Profiles; (4) Treasury/BEP .022—Monthly Equal Employment Opportunity Activity Report; (5) Treasury/BEP .042—Informal EEO Complaint Processing Records; (6) Treasury/Customs .049—Claims (Receivable and Payable); (7) Treasury/Customs .180—Payroll Record of Employees Not Covered by Automated System; (8) Treasury/Customs .182—Penalty Case File; (9) Treasury/Customs .273—Employee Debts, and (10) Treasury/FLETC .003—FLETC Confidential Financial Records.

A total of 11 systems have been added to the Department of the Treasury's inventory of Privacy Act notices. A total of 22 systems have been removed from Treasury's inventory since January 2, 1992.

Dated: October 26, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

New Systems of Records Since January 1, 1992.

Departmental Offices

Treasury/DO .203—Public Transportation Incentive Program Records. Published September 21, 1992 (57 FR 43485).

Treasury/DO .207—Waco Administrative Review Group Investigation. Published August 16, 1993 (58 FR 43404), proposed rule published at (58 FR 43312).

Treasury/DO .209—Personal Services Contracts. Published January 11, 1995 (60 FR 2807).

Treasury/DO .210—Integrated Financial Management and Revenue System. Published May 8, 1995 (60 FR 22601).

Treasury/DO .211—Telephone Call Detail Records. Published October 13, 1994 (59 FR 52026).

United States Customs Service

Treasury/Customs .171—Pacific Basin Reporting Network. Published November 19, 1992 (57 FR 54633). Proposed rule published at (57 FR 54539).

Bureau of Engraving and Printing

Treasury/BEP .045—Mail Order Sales Customer Files. Published April 10, 1992 (57 FR 12550).

Treasury/BEP .046—Automated Mutilated Currency Tracking System. Published August 31, 1992 (57 FR 39418).

Financial Management Service

Treasury/FMS .014—Debt Collection Operations System. Published January 11, 1995 (60 FR 2809).

Internal Revenue Service

Treasury/IRS 24.100—FTS2000 On-Line Certification of Usage System (FOCUS). Published December 3, 1993 (58 FR 64350).

Treasury/IRS 60.011—Internal Security Management Information System (ISMIS). Published July 28, 1993, (58 FR 40464). Final Rule published September 16, 1994 (59 FR 47538).

Deletions Since January 2, 1992

Departmental Offices

Treasury/DO .003—Personnel Working Files. May 11, 1994 (59 FR 24507).

Treasury/DO .052—Travel Records. May 8, 1995 (60 FR 22602).

Alcohol, Tobacco, and Firearms

Treasury/ATF .004—Fiscal Records. May 8, 1995 (60 FR 22602).

Comptroller of the Currency

Treasury/CC .315—Telephone Usage Information System (TUIS). October 13, 1994 (59 FR 52026).

U.S. Customs Service

Treasury/Custom .243—Customs Automated Travel System. May 8, 1995, (60 FR 22602).

Internal Revenue Service

Treasury/IRS 24.100—FTS2000 On-Line Certification of Usage System (FOCUS). October 13, 1994 (59 FR 5206).

Treasury/IRS 32.001—Travel Expense Records. May 8, 1995 (60 FR 22602).

Treasury/IRS 32.003—Schedules of Collections and Schedules of Canceled Checks. May 8, 1995 (60 FR 22602).

U. S. Mint

Treasury/Mint .006—Examination Reports of Coins Forwarded to the Mint from the U. S. Secret Service. May 11, 1994 (59 FR 245070).

Treasury/Mint .010—Purchases and Sales of Precious Metals. May 11, 1994 (59 PR 24507).

Treasury/Mint .011—Redemption of Uncurrent or Mutilated Coins. May 11, 1994 (59 FR 24507).

United States Savings Bonds Division

Treasury/USSBD .001—Savings Bonds Employee Records System. November 21, 1994 (59 FR 60045).

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DO .205—Executive Information System (EIS)
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DO .207—Waco Administrative Review Group Investigation
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Comptroller of the Currency (CC)

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CS .224—Suspect Persons Index
CS .226—Television System
CS .227—Temporary Importation Under Bond (TIB) Defaulter Control System
CS .232—Tort Claims Act File
CS .234—Tort Claims Act File
CS .238—Training and Career Individual Development Plans
CS .239—Training Records
CS .244—Treasury Enforcement Communications System
CS .249—Uniform Allowance—Unit Record
CS .251—Unscheduled Overtime Report
CS .252—Valuables Shipped Under Government Losses in Shipment Act
CS .258—Violator's Case Files
CS .260—Warehouse Proprietor Files
CS .262—Warnings to Importers in Lieu of Penalty
CS .268—Military Personnel and Civilian Employees' Claim Act File
CS .269—Accounts Payable Voucher File
CS .270—Background-Record File on Non-Customs Employees
CS .271—Cargo Security Record System
CS .272—Currency Declaration File (Customs Form 4790)
CS .274—Importers, Brokers, Carriers, Individuals and Sureties Master File
CS .277—Drivers License File
CS .278—Automated Commercial System (ACS)
CS .284—Personnel Verification System
CS .285—Automated Index to Central Investigative Files (formerly Automated Index to Central Enforcement Files)
CS Appendix A

Bureau of Engraving and Printing (BEP)

BEP .002—Personal Property Claim File
BEP .004—Counseling Records
BEP .005—Compensation Claims
BEP .006—Debt Files (Employees)
BEP .014—Employee's Production Record
BEP .016—Employee Suggestions
BEP .020—Industrial Truck Licensing Records
BEP .021—Investigative Files
BEP .023—Motor Vehicle Licensing Records
BEP .027—Programmable Access Security System (PASS)
BEP .035—Tort Claims (Against the United States)
BEP .038—Unscheduled Absence Record
BEP .040—Freedom of Information and Privacy Act Requests
BEP .041—Record of Discrimination Complaints
BEP .043—Parking Program Records
BEP .044—Personnel Security Files and Indices
BEP .045—Mail Order Sales Customer Files
BEP .046—Automated Mutilated Currency Tracking System

Federal Law Enforcement Training Center (FLETC)

FLETC .001—FLETC Payroll/Personnel Records System
FLETC .002—FLETC Trainee Records
FLETC .004—FLETC Administrative Employee Records

Financial Management Service (FMS)

FMS .001—Administrative Records

FMS .002—Payment Issue Records for Regular Recurring Benefit Payments
FMS .003—Claims and Inquiry Records on Treasury Checks, and International Claimants
FMS .005—FMS Personnel Records
FMS .007—Payroll and Pay Administration
FMS .008—Personnel Security Records
FMS .010—Records of Accountable Officers' Authority with Treasury
FMS .012—Pre-complaint Counseling and Complaint Activities
FMS .013—Gifts to the United States
FMS .014—Debt Collection Operations System

Internal Revenue Service (IRS)

IRS 00.001—Correspondence Files and Correspondence Control Files
IRS 00.002—Correspondence Files/Inquiries About Enforcement Activities
IRS 10.001—Biographical Files, Public Affairs
IRS 10.004—Subject Files, Public Affairs
IRS 21.001—Tax Administration Resources File, Office of Tax Administration Advisory Services
IRS 22.003—Annual Listing of Undelivered Refund Checks
IRS 22.011—File of Erroneous Refunds
IRS 22.026—Form 1042S Index by Name of Recipient
IRS 22.027—Foreign Information System (FIS)
IRS 22.032—Individual Microfilm Retention Register
IRS 22.034—Individual Returns Files, Adjustments and Miscellaneous Documents Files
IRS 22.043—Potential Refund Litigation Case Files
IRS 22.044—P.O.W.-M.I.A. Reference File
IRS 22.054—Subsidiary Accounting Files
IRS 22.059—Unidentified Remittance File
IRS 22.060—Automated Non-Master File (ANMF) (formerly Manual Accounting Replacement Systems)
IRS 22.061—Individual Return Master File (IRMF) (formerly Wage and Information Returns Processing (IRP) File)
IRS 24.013—Combined Account Number File, Taxpayer Services (formerly Combined Account Number File, Returns Processing)
IRS 24.029—Individual Account Number File (IANF), Taxpayer Services (formerly Individual Account Number (IANF), Returns Processing)
IRS 24.030—Individual Master File (IMF), Taxpayer Services (formerly Individual Master File (IMF), Returns Processing)
IRS 24.046—Business Master File (BMF), Taxpayer Services (formerly Business Master File (BMF), Returns Processing)
IRS 24.070—Debtor Master File (DMF)
IRS 26.001—Acquired Property Records
IRS 26.006—Form 2209, Courtesy Investigations
IRS 26.008—IRS and Treasury Employee Delinquency
IRS 26.009—Lien Files (Open and Closed)
IRS 26.010—Lists of Prospective Bidders at Internal Revenue Sales of Seized Property
IRS 26.011—Litigation Case Files
IRS 26.012—Offer in Compromise (OIC) File
IRS 26.013—One Hundred Percent Penalty Cases
IRS 26.014—Record 21, Record of Seizure and Sale of Real Property
IRS 26.016—Returns Compliance Programs (RCP)
IRS 26.019—Taxpayer Delinquent Accounts (TDA) Files including subsystems: (a) Adjustments and Payment Tracers Files, (b) Collateral Files, (c) Seized Property Records, (d) Tax Collection Waiver, Forms 900, Files, and (e) Accounts on Child Support Obligations
IRS 26.020—Taxpayer Delinquency Investigation (TDI) Files
IRS 26.021—Transferee Files
IRS 26.022—Delinquency Prevention Programs
IRS 30.003—Requests for Printed Tax Materials Including Lists
IRS 30.004—Security Violations
IRS 34.003—Assignment and Accountability of Personal Property Files
IRS 34.005—Parking Space Application and Assignment
IRS 34.007—Record of Government Books of Transportation Requests
RS 34.009—Safety Program Files
IRS 34.012—Emergency Preparedness Cadre Assignments and Alerting Rosters Files
IRS 34.013—Identification Media Files System for Employees and Others Issued IRS ID
IRS 34.014—Motor Vehicle Registration and Entry Pass Files
IRS 34.016—Security Clearance Files
IRS 34.018—Integrated Data Retrieval System (IDRS) Security Files
IRS 36.001—Appeals, Grievances and Complaints Records
RS 36.002—Employee Activity Records
IRS 36.003—General Personnel and Payroll Records
IRS 36.005—Medical Records
IRS 36.008—Recruiting, Examining and Placement Records
IRS 36.009—Retirement, Life Insurance and Health Benefits Records System
IRS 37.001—Abandoned Enrollment Applications
IRS 37.002—Files containing derogatory information about individuals whose applications for enrollment to practice before the IRS have been denied and Applicant Appeal Files
IRS 37.003—Closed Files Containing Derogatory Information About Individuals' Practice Before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice
IRS 37.004—Derogatory Information (No Action)
IRS 37.005—Present Suspensions and Disbarments Resulting from Administrative Proceedings
IRS 37.006—General Correspondence File
IRS 37.007—Inventory
IRS 37.008—Register of Docketed Cases and Applicant Appeals
IRS 37.009—Enrolled Agents and Resigned Enrolled Agents (Action pursuant to 31 CFR, Section 10.55(b))
IRS 37.010—Roster of Former Enrollees
IRS 37.011—Present Suspensions from Practice Before the Internal Revenue Service
IRS 38.001—General Training Records
IRS 42.001—Examination Administrative File
IRS 42.008—Audit Information Management System (AIMS)
IRS 42.013—Project Files for the Uniform Application of Laws as a Result of Technical Determinations and Court Decisions
IRS 42.014—Internal Revenue Service Employees' Returns Control Files
IRS 42.016—Classification/ Centralized Files and Scheduling Files
IRS 42.017—International Enforcement Program Files
IRS 42.021—Compliance Programs and Projects Files
IRS 42.027—Data on Taxpayers Filing on Foreign Holdings
IRS 42.029—Audit Underreporter Case Files
IRS 42.030—Discriminant Function File (DIF)
IRS 44.001—Appeals Case Files
IRS 44.003—Unified System for Time and Appeals Records (Unistar)
IRS 44.004—Art Case File
IRS 44.005—Expert Witness and Fee Appraiser Files
IRS 46.002—Criminal Investigation Management Information System (CIMIS) (formerly Case Management and Time Reporting System, Criminal Investigation Division)
IRS 46.003—Confidential Informants, Criminal Investigation Division
IRS 46.004—Controlled Accounts—Open and Closed
IRS 46.005—Electronic Surveillance File, Criminal Investigation Division
IRS 46.009—Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division
IRS 46.011—Illinois Land Trust Files, Criminal Investigation Division
IRS 46.015—Relocated Witnesses, Criminal Investigation Division
IRS 46.016—Secret Service Details, Criminal Investigation Division
IRS 46.022—Treasury Enforcement Communications System (TECS), Criminal Investigation Division
IRS 48.001—Disclosure Records
IRS 48.008—Defunct Special Service Staff File Being Retained Because of Congressional Directive
IRS 49.001—Collateral and Information Requests System
IRS 49.002—Competent Authority and Index Card—Microfilm Retrieval System
RS 49.003—Financial Statements File
IRS 49.007—Overseas Compliance Projects System
IRS 49.008—Taxpayer Service Correspondence System
IRS 50.001—Employee Plans/Exempt Organizations Correspondence Control Records (Form 5961)
IRS 50.003—Employee Plans/Exempt Organizations, Reports of Significant Matters in Technical (M—5945)
IRS 60.001—Assault and Threat Investigation Files, Inspection

IRS 60.002—Bribery Investigation Files, Inspection
IRS 60.003—Conduct Investigation Files, Inspection
IRS 60.004—Disclosure Investigation Files, Inspection
IRS 60.005—Enrollee Applicant Investigation Files, Inspection
IRS 60.006—Enrollee Charge Investigation Files, Inspection
IRS 60.007—Miscellaneous Information File, Inspection
IRS 60.008—Security, Background, and Character Investigation Files, Inspection
IRS 60.009—Special Inquiry Investigation Files, Inspection
IRS 60.010—Tort Investigation Files, Inspection
IRS 60.011—Internal Security Management Information System (ISMIS)
IRS 70.001—Individual Income Tax Returns, Statistics of Income
IRS 90.001—Chief Counsel Criminal Tax Case Files
IRS 90.002—Chief Counsel Disclosure Litigation Case Files
IRS 90.003—Chief Counsel General Administrative Systems
IRS 90.004—Chief Counsel General Legal Services Case Files
IRS 90.005—Chief Counsel General Litigation Case Files
IRS 90.006—Former Chief Counsel Interpretative Case Files
IRS 90.007—Chief Counsel Legislation and Regulations Division, Employee Plans and Exempt Organizations Division, and Associate Chief Counsel (Technical and International) Correspondence and Private Bill File
IRS 90.009—Chief Counsel Field Services Case Files
IRS 90.010—Digest Room Files Containing Briefs, Legal Opinions, and Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws
IRS 90.011—Attorney Recruiting Files
IRS 90.013—Legal Case Files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Enforcement Litigation), (Domestic), (International), (Finance and Management), Special Counsel (Large Case), and their immediate staffs.
IRS 90.015—Reference Records of the Library in the Office of Chief Counsel
IRS 90.016—Counsel Automated Tracking System (CATS) Records
IRS 90.017—Correspondence Control and Records, Associate Chief Counsel (Technical and International)
IRS 90.018—Expert Witness Library
IRS Appendix A

United States Mint (Mint)

Mint .001—Cash Receivable Accounting Information System
Mint .002—Current Employee Security Identification Record
Mint .003—Employee and Former Employee Travel & Training Accounting Information System
Mint .004—Occupational Safety and Health, Accident and Injury Records, and Claims for Injuries or Damage Compensation Records (formerly Employees, Former Employees and Members of the Public Medical Records, Personnel Records, Occupational Safety and Health, Accident and Injury Records, and Claims for Injuries or Damage Compensation Records)
Mint .005—Employee-Supervisor Performance Evaluation, Counseling, and Time and Attendance Records
Mint .007—General Correspondence
Mint .008—Criminal Investigations Files (formerly Investigatory Files on Theft of Mint Property)
Mint .009—Numismatic Coin Operations System (NUCOS) Records, Customer Mailing List, Order Processing Record for Coin Sets, Medals and Numismatic Items, and records of undelivered orders
Mint .012—Grievances. Union/Agency Negotiated Grievances, Adverse Action Procedures; Performance Based Personnel Actions; Discrimination Complaints; Third Party Actions (formerly Grievances. Union/Agency Negotiated)

Bureau of the Public Debt (BPD)

BPD .001—Personnel and Administrative Records
BPD .002—United States Savings Type Securities
BPD .003—United States Securities (Other than Savings Type Securities)
BPD .004—Controlled Access Security System
BPD .005—Employee Assistance Records
BPD .006—Health Services Program Records
BPD .007—Gifts to Reduce the Public Debt
BPD .008—Savings Bonds Sales Promotion/ Volunteer Record System (formerly numbered USSBD .002)
BPD .009—Savings Bond Sales Record System (formerly numbered USSBD .003)

United States Secret Service (USSS)

USSS .001—Administrative Information System
USSS .002—Chief Counsel Record System
USSS .003—Criminal Investigation Information System
USSS .004—Financial Management Information System
USSS .005—Freedom of Information Request System
USSS .006—Non-Criminal Investigation Information System
USSS .007—Protection Information System
USSS .008—Public Affairs Record System
USSS .009—Training Information System

Systems Covered by This Notice

This notice covers all systems of records adopted up to September 30, 1995.

Departmental Offices

Treasury/DO .002

SYSTEM NAME:

Treasury Integrated Management Information System (TIMIS)—Treasury/ DO.

SYSTEM LOCATION:

The system management staff of TIMIS is located at 1500 Pennsylvania Ave., NW, Treasury Annex Building, Room 4153–Annex, Washington, DC 20220. The TIMIS processing site is located at the United States Department of Agriculture National Finance Center, 13800 Old Gentilly Road, New Orleans, LA 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and historical payroll/ personnel data of employees of all Treasury bureaus and organizations. Certain non–Treasury agencies, which receive payroll personnel services from Treasury under cross–servicing agreements, will be moving to a system of their choice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in the records of the existing systems and the new TIMIS system include such data as: (1) Employee identification and status data such as name, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service. (2) Employment data such as service computation for leave, date probationary period began, date of performance rating, and date of within–grade increases. (3) Position and pay data such as position identification number, pay plan, step, salary and pay basis, occupational series, organization location, and accounting classification codes. (4) Payroll data such as earnings (overtime and night differential), deductions (Federal, state and local taxes, bonds and allotments), and time and attendance data. (5) Employee retirement and Thrift Savings Plan data. (6) Tables of data for editing, reporting and processing personnel and pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature block table, position title table, financial organization table, and salary tables.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Personnel Management Manual, 50 U.S.C. App. 1705–1707; 31 U.S.C. and Departmental Circular 145 and 830. The Department of the

Treasury Fiscal Requirements Manual; 5 U.S.C. 301; FPM Letter 298–10, Office of Personnel Management; Federal Personnel Manual (Chapter 713 Subchapter 3A).

PURPOSE(S):

The purposes of the system include, but are not limited to: (1) Maintaining current and historical payroll records which are used to compute and audit pay entitlement; to record history of pay transactions; to record deductions, leave accrued and taken, bonds due and issued, taxes paid; maintaining and distributing Leave and Earnings statements; commence and terminate allotments; answer inquiries and process claims, and (2) maintaining current and historical personnel records and preparing individual administrative transactions relating to education and training, classification; assignment; career development; evaluation; promotion, compensation, separation and retirement; making decisions on the rights, benefits, entitlements and the utilization of individuals; providing a data source for the production of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Furnish data to the Department of Agriculture, National Finance Center (which provides payroll/personnel processing services for TIMIS under a cross–servicing agreement) affecting the conversion of Treasury employee payroll and personnel processing services to TIMIS; the issuance of paychecks to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, some through electronic funds transfer; (2) furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to 5 U.S.C. 5516, 5217, and 5520, for the purpose of furnishing employees with Forms W–2 which report such tax distributions; (3) provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations; (4) furnish another Federal agency information to effect interagency salary or administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services; (5) disclose information to a Federal, state, local or foreign agency maintaining civil, criminal or other relevant enforcement information or other pertinent information which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (6) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; (7) disclose information to foreign governments in accordance with formal or informal international agreements; (8) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (9) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relates to civil and criminal proceedings; (10) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (11) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (12) provide wage and separation information to another agency, such as the Department of Labor or Social Security Administration, as required by law for payroll purposes; (13) provide information to a Federal, state, or local agency so that the agency my adjudicate an individual's eligibility for a benefit, such as a state employment compensation board, housing administration agency and Social Security Administration; (14) disclose pertinent information to appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil, or criminal law or regulation; (15) disclose information about particular Treasury employees to requesting agencies or non–Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of the Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other monies owed under those programs (i.e., matching for delinquent loans or other indebtedness to the government).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982; debt information concerning a government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and Section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt. Disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, microfiche, and hard copy. Disbursement records are stored at the Federal Records Center.

RETRIEVABILITY:

Records are retrieved generally by social security number, position identification number within a bureau and region, or employee name. Secondary identifiers are used to assure accuracy of data accessed, such as master record number or date of birth.

SAFEGUARDS:

Entrance to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign–on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of like sensitivity.

RETENTION AND DISPOSAL:

The current payroll and personnel system and the Treasury Integrated Management Information System (TIMIS) master files are kept on magnetic media. Information rendered to hard copy in the form of reports and payroll information documentation is also retained in automated magnetic format. Employee records are retained in automated form for as long as the employee is active on the system (separated employee records are maintained in an "inactive" status). Files are purged in accordance with Treasury Directives Manual TD 25–02, "Records Disposition Management Program."

SYSTEM MANAGER(S) AND ADDRESS:

Director, Treasury Integrated Management Information System (System Manager for TIMIS), 1500 Pennsylvania Avenue, NW, Treasury Annex Building, Room 4153–Annex, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are identified in this system, or to gain access to records maintained in the system, must submit a written request containing the following elements: (1) Identification of the record system; (2) identification of the category and types of records sought; and (3) at least two items of secondary identification (e.g. employee name and date of birth , employee identification number, date of employment or similar information). The individual's identity must be verified by one other identifier, such as a photocopy of a driver's license or other official document bearing the individual's signature. Alternatively, a notarized statement may be provided. Address inquiries to Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 1054– MT, Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and non–Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .004

SYSTEM NAME:

Personnel Security System—Treasury/DO.

SYSTEM LOCATION:

For individuals in category (a), Room 1302 Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. For individuals in category (b), Room 1322 Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Current and former senior officials of the Department and Treasury bureaus, and those within the Department who are involved in Personnel Security matters. (b) Current and former government employees or applicants occupying or applying for sensitive positions in the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Background investigations, (2) FBI and other agency name checks, and (3) investigative information relating to personnel investigations conducted by the Department of the Treasury and other Federal agencies and departments on preplacement and postplacement basis to make suitability and employability determinations and for granting security clearances. Card records comprised of Notice of Personnel Security Investigation (TD F 67–32.2) or similar, previously used card indexes, and an automated data system reflecting identification data on applicants, incumbents and former employees, and record type of E.O. 10450 investigations and degree and date of security clearance, if any, as well as status of investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, sections 2 and 3, and E.O. 12356, part 4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information to departmental officials or other Federal agencies relevant to, or necessary for, making suitability or employability retention or security clearance determinations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, index cards, and magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are stored in locked metal containers and in locked rooms. They are limited to officials who have a need to know in the performance of their official duties.

RETENTION AND DISPOSAL:

Active files are retained during incumbent tenure and are subject to update personnel investigation. Files of employees who effect intra–agency transfers (between Treasury bureaus) are automatically transferred to the gaining bureaus. When an employee transfers to another government agency or leaves the Federal government, files are retained, separate from the active files, for five years. Background investigations completed by OPM may be returned to that agency or destroyed. Card indexes are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Security, Room 1302 Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be informed if they are named in this system or gain access to records maintained in the system must submit a written, signed request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Assistant Director, Disclosure Services (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054 MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized by those concerned, information obtained from current and former employers, co–workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), through (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5).

Treasury/DO .005

SYSTEM NAME:

Grievance Records—Treasury/DO.

SYSTEM LOCATION:

These records are located in personnel or designated offices in the bureaus in which the grievances were filed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with their bureaus in accordance with part 771 of the Office of Personnel Management's (OPM) regulations (5 CFR part 771), the Treasury Employee Grievance System (TPM Chapter 771), or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by Treasury employees under part 771 of the OPM's regulations. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that bureaus and/or the Department may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; E.O. 10987; 3 CFR 1959–1963 Comp., p. 519; agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) to disclose information to any source from which additional information is requested in the course of processing in a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested; (3) to disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter; (4) to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) to disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court; (6) by the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908; (7) by the bureau maintaining the records of the Department in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference; (8) to disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties; (9) to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena, or in connection with criminal law proceedings; (10) to provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By the names of the individuals on whom they are maintained.

SAFEGUARDS:

Lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Disposed of 3 years after closing of the case. Grievances filed against disciplinary adverse actions are retained by the United States Secret Service for 4 years. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

ATF (Alcohol, Tobacco and Firearms) Chief, Personnel Division, 1200 Pennsylvania Avenue, NW, Room 1211, Washington, DC 20226.
CUSTOMS Director, Office of Human Resources, 2120 L Street, NW Washington, DC 20229.
E&P (Engraving and Printing) Chief, Office of Industrial Relations, 14th & C Streets, SW, Room 202–13A, E&P Annex, Washington, DC 20228.
FLETC (Federal Law Enforcement Training Center) Personnel Officer, Building 94, Room 1F–14, Glynco, GA 31524.
FMS (Financial Management Service) Director, Personnel Management Division, 401 14th Street, SW, Room 444, Liberty Loan Bldg., Washington, DC 20227
IRS (Internal Revenue Service) Director, Human Resources Division, 1111 Constitution Avenue, NW, Room 1408 IR, Washington, DC 20224.
DO (Departmental Offices) Chief, Personnel Resources, Room 1316 MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220
PD (Public Debt) Director, Personnel Management Division, 300 13th Street, SW., Room 446–4, E&P Annex, Washington, DC 20239.
SS (Secret Service) Chief, Personnel Division, 1800 G Street, NW, Room 901, Washington DC 20223.
Mint Assistant Director for Personnel, 633 3rd Street, NW, Room 651, Washington, DC 20004.
OCC (Office of Comptroller of the Currency) Director, Human Resources, 250 E Street, SW, Washington, DC 20219.
OTS (Office of Thrift Supervision) Director, Human Resources Division, 2nd Floor, 1700 G Street, NW, Washington, D.C. 20552

Records pertaining to administrative grievances filed at the Departmental level: Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the bureau personnel or designated office where the action was processed. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi–judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment to their records to correct factual errors should contact the bureau personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .007

SYSTEM NAME:

General Correspondence Files—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.
Components of this record system are in the following offices within the Departmental Offices:
Office of Foreign Assets Control
Office of Tax Policy
Office of the Assistant Secretary for International Affairs
Office of the Executive Secretariat
Office of Public Correspondence
Office of Legislative Affairs

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, U.S. Foreign Service officials, officials and employees of the Treasury Department, officials of municipalities and state governments, and the general public, foreign nationals, members of the news media, businesses, officials and employees of other Federal Departments and agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence and replies pertaining to the mission, function, and operation of the Department, tasking sheets, and internal Treasury memorandum.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The manual systems and/or electronic databases (e.g., Treasury Automated Document System (TADS))used by the system managers are to manage the high volume of correspondence received by the Departmental Offices and to accurately respond to inquiries, suggestions, views and concerns expressed by the writers of the correspondence. It also provides the Secretary of the Treasury with sentiments and statistics on various topics and issues of interest to the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (3) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (5) provide information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (6) provide information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, file folders and magnetic media.

RETRIEVABILITY:

By name of individual or letter number, address, assignment control number, or organizational relationship.

SAFEGUARDS:

Access is limited to authorized personnel with a direct need to know. Rooms containing the records are locked after business hours. Some folders are stored in locked file cabinets in areas of limited accessibility except to employees. Others are stored in electronically secured areas and vaults. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Some records are maintained for three years, then destroyed by burning. Other records are updated periodically and maintained as long as needed. Some electronic records are periodically updated and maintained for two years after date of response; hard copies of those records are disposed of after three

months in accordance with the NARA schedule. Paper records of the Office of the Executive Secretary are stored indefinitely at the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Foreign Assets Control, U.S. Treasury Department, Room 2233, Treasury Annex, 1500 Pennsylvania Ave., NW, Washington, DC 20220.
Freedom of Information Act Officer, or Director, Correspondence Unit, Office of Tax Policy, U.S. Treasury Department, Room 1124–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220
Director, OASIA Secretariat, U.S. Treasury Department, Room 5422–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220
Office of the Executive Secretariat, U.S. Treasury Department, Room 3419–MT, Washington, DC 20220
Director, Office of Public Correspondence, U.S. Treasury Department, Room 2124–MT. Washington, DC 20220
Director, Office of Legislative Affairs, U.S. Treasury Department, Room 3132–MT, Washington, DC 20220

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Members of Congress or other individuals who have corresponded with the Departmental Offices, other governmental agencies (Federal, state and local), foreign individuals and official sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .010

SYSTEM NAME:

Office of Domestic Finance, Actuarial Valuation System—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Office of Government Financing, Office of the Government Actuary, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries of the Foreign Service Retirement and Disability System and the Foreign Service Pension System. Covered employees are located in the following agencies: Department of State, Department of Agriculture, United States Information Agency, Agency for International Development, Peace Corps, and the Department of Commerce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system is as follows: Active Records: Name; social security number; salary; category–grade; year of entry into system; service computation date; year of birth; year of resignation or year of death, and refund if any; indication of LWOP status (if any); Retired Records: same as actives; annuity; year of separation; cause of separation (optional, disability, deferred, etc.); years and months of service by type of service; single or married; spouse's year of birth; principal's year of death; number of children on annuity roll; children's years of birth and annuities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 1101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data regarding specific individuals is released only to the contributing agency for purposes of verification.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are on computer tapes and computer printouts.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Records are stored in the Actuary's office. Access is restricted to employees of the Office of the Government Actuary.

RETENTION AND DISPOSAL:

Records are retained on a year–to–year basis. When agencies whose pension funds are valued forward new records for valuation, older records are discarded.

SYSTEM MANAGER(S) AND ADDRESS:

The Government Actuary, Departmental Offices, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Data for actuarial valuation are provided by organizations responsible for pension funds listed under "category of individual," namely the Department of State, Department of Agriculture, United States Information Agency, Agency for International Development, Peace Corps, and the Department of Commerce.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .060

SYSTEM NAME:

Correspondence files and records on employee complaints and/or dissatisfaction—Treasury/DO.

SYSTEM LOCATION:

Office of Personnel Policy, Room 4150–Annex, Pennsylvania Avenue at Madison Place, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current Department employees who have submitted

complaints to the Office of Personnel or whose correspondence concerning a matter of dissatisfaction has been referred to the Office of Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence dealing with former and current employee complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, state, and local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential civil or criminal law or regulation; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (3) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, file cabinets.

RETRIEVABILITY:

By bureau and employee name.

SAFEGUARDS:

Maintained in filing cabinet and released only to Office of Personnel staff or other Treasury officials on a need–to–know basis.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department of the Treasury Directive 25–02, "Records Disposition Management Program" and the General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Policy, Department of the Treasury, Room 4150–Annex Pennsylvania Avenue at Madison Place NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Persons inquiring as to the existence of a record on themselves may contact: Assistant Director, (Human Relations) Department of the Treasury, Room 4150–Annex, Pennsylvania Avenue at Madison Place, NW, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

RECORD ACCESS PROCEDURES:

Persons seeking access to records concerning themselves may contact: The Director, Office of Personnel Policy, Department of the Treasury, Room 4150–Annex, Pennsylvania Avenue at Madison Place, NW, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records to correct factual error should contact the Director of Personnel at the address shown in Access, above. They must furnish the following information: (a) Name; (b) employing bureau; (c) the information being contested; (d) the reason why they believe information is untimely, inaccurate, incomplete, irrelevant, or unnecessary.

RECORD SOURCE CATEGORIES:

Current and former employees, and/or representatives, employees' relatives, Congressmen, the White House, management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .062

SYSTEM NAME:

Executive Inventory Files—Treasury/DO.

SYSTEM LOCATION:

Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All SES and GS–16, 17 and 18 employees of the Department of the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

A brief description of identifying biographical data, work experience, education, professional activities, honors, special qualifications and references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11315.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system may be disclosed to a Congressional office in order to compile statistical information on SES participants. Information in the records may also be shared with the Office of Personnel Management and other Federal agencies in compiling reports or to correct information maintained by OPM on Treasury Executives.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Numerically by bureau and position number.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need–to–know basis.

RETENTION AND DISPOSAL:

The records are kept as long as the employee is assigned to an SES or GS–16, 17, or 18 position, except for employees who retire. The records on retirees are kept for approximately one year from their date of retirement. The records are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220. The individual needs to provide his/her name, present organizational assignment, position title and grade.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The SF–171 is provided by the employee to their servicing personnel office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .065

SYSTEM NAME:

Appointment at Above the Minimum Rate of the Grade Files—Treasury/DO.

SYSTEM LOCATION:

Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons proposed for employment by the Department of the Treasury at a salary rate above the minimum rate of the grade that exceeds by 20% the applicant's current pay.

CATEGORIES OF RECORDS IN THE SYSTEM:

A collection of documents required for requesting approval of appointments at a salary rate above the minimum rate of the grade that exceed the 20% limit, including: Personal Qualifications Statement (SF–171); Position Description (OF–8); letters of justification; application form showing current salary; documentation of appointment authority; and general correspondence requesting approval of the action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5333.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information may be used for review/audit purposes by the Office of Personnel Management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Indexed by name in log and filed chronologically.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need–to–know basis.

RETENTION AND DISPOSAL:

Records are retained for two years and are destroyed by standard destruction methods including burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220. The individual is required to provide his/her name and the Treasury organizational assignment, position title, grade/salary, and date of most recent appointment above the minimum rate of the grade requested.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The documents which constitute this system, and which are listed under Categories of Records, came from the individual applicant, his/her servicing personnel office, the Office of Personnel Management, and other concerned management officials within the Department of the Treasury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .067

SYSTEM NAME:

Detailed Employee Files—Treasury/DO.

SYSTEM LOCATION:

Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Treasury employees whose detail to other positions, or other Government employees whose details to the Department of the Treasury, require approval at the Departmental level.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence requesting approval of details and Request for Personnel Action (SF–52) which documents the detail and reflects approval of it. In some instances there may also be a Personal Qualifications Statement (SF–171), and attachments, Position Description (OF–8), and Request for Approval of Non–Competitive Action (SF–59).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3341–3349.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Automated index listed chronologically by approval date.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need–to–know basis.

RETENTION AND DISPOSAL:

Records are retained for 2 years and are destroyed by standard destruction methods including burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220. The individual is required to provide his/her name and the Treasury organizational assignment, position title, grade/salary, and approximate date of the detail requested requiring approval at the Departmental level.

RECORD ACCESS PROCEDURES:

Director, Office of Personnel Policy, Room 4150–Annex, Pennsylvania Ave. at Madison Place, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The documents which constitute this system, and which are listed under Categories of Records, came from the employee's servicing personnel office, and other concerned management officials within the Department of the Treasury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .068

SYSTEM NAME:

Time–In–Grade Exception Files—Treasury/DO.

SYSTEM LOCATION:

Room 1325–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by, or proposed for employment by, the Department of the Treasury and for whom an exception to Time–In–Grade Restrictions is sought.

CATEGORIES OF RECORDS IN THE SYSTEM:

A collection of documents required for approval of exceptions to Time–In–Grade Requirements including: Request for Approval of Non–Competitive Action (SF–59); Personal Qualifications Statement (SF–171); Position Description (OF–8); and, in some instances, Request for Personnel Action (SF–52); and memoranda of justification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, and 5 U.S.C. 1104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed to (1) the Office of Personnel Management for audit of exceptions granted, and (2) a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinet.

RETRIEVABILITY:

Indexed by name in log and filed chronologically.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need–to–know basis.

RETENTION AND DISPOSAL:

Records are retained for 2 years and are destroyed by standard destruction methods including burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Resources, Room 1316–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Director, Personnel Resources, Room 1316–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220. The individual is required to provide his/her name and the Treasury organizational assignment, position title, grade/salary, and approximate date of the Time–In–Grade exception requested.

RECORD ACCESS PROCEDURES:

Director, Personnel Resources Directorate, Room 1316–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The documents which constitute this system, and which are listed under Categories of Records, came from the individual employee or applicant, his servicing personnel office, and other concerned management officials within the Department of the Treasury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .070

SYSTEM NAME:

Automated Systems Division, ASD Project Recording System—Treasury/DO.

SYSTEM LOCATION:

Room B–91, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel in Automated Systems Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of projects and time spent on each project. List of projected project milestone dates and actual dates completed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, magnetic media.

RETRIEVABILITY:

Indexed by project. Retrieved by project, name or code identifier.

SAFEGUARDS:

Under supervision of responsible manager during working hours. Room locked at other times.

RETENTION AND DISPOSAL:

Retained 18 months, then erased or discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Automated Systems Division, Room 1136, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Director, Automated Systems Division, Room 1136, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Identifying information – name.

RECORD ACCESS PROCEDURES:

Written request to: Automated Systems Division, Room 1136, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information is furnished by ASD staff members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO 111

SYSTEM NAME:

Office of Foreign Assets Control Census Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Although most reporters in the Census in this system of records are not individuals, such censuses reflect some small number of U.S. individuals as holders of assets subject to U.S. jurisdiction which are blocked under the various sets of Treasury Department regulations involved.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of several censuses of U.S.–based, foreign–owned assets which have been blocked at any time since 1940 under Treasury Department regulations found under 31 CFR subpart B, chapter V.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a); 50 U.S.C. 1701 *et seq.*; and 31 CFR Chapter V.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to appropriate state agencies which are concerned with or responsible for abandoned property; (2) disclose information to foreign governments in accordance with formal or informal international agreements; (3) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (5)

provide certain information to appropriate senior foreign–policy–making officials in the Department of State.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

1950 Census of Blocked Chinese Assets are stored in folders in file cabinets in the offices of Foreign Assets Control, and at the Federal Records Center; 1964 Census of Blocked Cuban Assets are stored in folders in file cabinets; 1970 Census of Blocked Chinese Assets are stored in folders and on computer printout in file cabinets; 1980 censuses of Iranian Assets and Iranian Claims are stored in folders and on magnetic tape in file cabinets; 1983 comprehensive update of blocked assets under Foreign Assets Control Regulations, Foreign Funds Control Regulations, and Cuban Assets Control Regulations are stored in Treasury computers and in folders in file cabinets; 1986 Libyan "mini–census" of blocked assets are stored in file folders and on computer diskettes.

RETRIEVABILITY:

By name of holder or custodian or owner of blocked property.Safeguards: Locked room, or in locked file cabinets located in areas in which access is limited to Foreign Assets Control employees. Computerized records are password–protected.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.System Manager and address: Director, Office of Foreign Assets Control, Room 2233–Annex, Department of the Treasury, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of record sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (See "Record access Procedures" below.)

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Custodians or other holders of blocked assets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .114

SYSTEM NAME:

Foreign Assets Control Enforcement Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control, Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have engaged in or who are suspected of having engaged in transactions and activities prohibited by Treasury Department regulations found at 31 CFR subpart B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to suspected or actual violations of relevant statutes and regulations administered by the Office of Foreign Assets Control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 50 U.S.C. 1701 et. seq.; 22 U.S.C. 287(c); 22 U.S.C. 2370(a); and 31, CFR, chapter V; 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99–631.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to appropriate Federal agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in response to a subpoena or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic media.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Folders in locked file cabinets are located in areas of limited accessibility. Computerized records are password–protected.

RETENTION AND DISPOSAL:

Records are periodically updated and are maintained as long as necessary. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Foreign Assets Control, Room 2233–Annex, U.S. Treasury Department, Washington, DC 20220

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

From the individual, from the Office of Foreign Assets Control investigations, and from other federal, state or local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/DO .118

SYSTEM NAME:

Foreign Assets Control Licensing Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control, Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for permissive and authorizing licenses under Treasury Department regulations found at 31 CFR subpart B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for Treasury licenses–together with related and supporting documentary material and copies of licenses issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a); 22 U.S.C. 287(c); 50 U.S.C. 1701 *et seq.*; 31 CFR, chapter V; 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99–631.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) disclose information to the Department of State, Commerce, Defense or other federal agencies, in connection with Treasury licensing policy or other matters of mutual interest or concern; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses, in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic media.

RETRIEVABILITY:

The records are retrieved by license or letter number.

SAFEGUARDS:

Folders in locked filed cabinets are located in areas of limited accessibility. Computerized records are password–protected.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER(S) AND ADDRESS: DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, ROOM 2233–ANNEX, DEPARTMENT OF THE TREASURY, WASHINGTON, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system of records, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applicants for Treasury Department licenses under regulations administered by the Office of Foreign Assets Control.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .144

SYSTEM NAME:

General Counsel Litigation Referral and Reporting System—Treasury/DO.

SYSTEM LOCATION:

U.S. Department of the Treasury,, Office of the General Counsel, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties, plaintiff or defendant, in civil litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees. The system does not include information on every civil litigation or administrative proceeding involving the Department of the Treasury or its officers and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of index cards and a computer data base containing information related to litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the

record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The index cards are maintained in a file box. The computerized records are maintained in computer data banks and printouts.

RETRIEVABILITY:

The index cards are filed alphabetically by the name of the non-government party involved in the case. The computer information is accessible by case number and docket number.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel.

RETENTION AND DISPOSAL:

The index cards are maintained during the pending litigation and for approximately three years thereafter. They are then destroyed. The computer information is maintained during the pending litigation and for approximately three years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel (Legislation, Litigation, and Regulation), Office of the General Counsel, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) an identification of the record system; and (2) an identification of the category and type of records sought. This system contains records that are exempt under 31 CFR l.36; 5 U.S.C. 552a(j)(2); and (k)(2). Address inquiries to Assistant Director, Disclosure Services, Department of the Treasury, Room 1054 MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Treasury Department Legal Division, Department of Justice Legal Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(d), (e)(1), (e)(3), (e)(4)(G),(H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/DO .149

SYSTEM NAME:

Foreign Assets Control Legal Files—Treasury/DO.

SYSTEM LOCATION:

U.S. Department of the Treasury, Room 2101–Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or who have been parties in litigation involving the Office of Foreign Assets Control or statutes and regulations administered by the agency found at 31 CFR subpart B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information and documents relating to litigation involving the Office of Foreign Assets Control or statutes and regulations administered by the agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 301; 50 U.S.C. App. 5(b); 50 U.S.C. 1701 et seq; 22 U.S.C. 278(c); and other statutes relied upon by the President to impose economic sanctions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Prosecute, defend, or intervene in litigation related to the Office of Foreign Assets Control and statutes and regulations administered by the agency; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folders in file cabinets and magnetic media.

RETRIEVABILITY:

By name of private plaintiff or defendant.

SAFEGUARDS:

Folders are in lockable file cabinets located in areas of limited public accessibility. Where records are maintained on computer hard drives, access to the files is password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Room 3006–MT, U.S. Treasury Department, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Address inquiries to Assistant Director, Disclosure Services, Department of the Treasury, Room 1054, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Pleadings and other materials filed during course of a legal proceeding, discovery obtained pursuant to applicable court rules; materials obtained by Office of Foreign Assets Control investigation; material obtained pursuant to requests made to other Federal agencies; orders, opinions, and decisions of courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .150

SYSTEM NAME:

Disclosure Records—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests for information to the Departmental Offices or who have appealed initial denials to the requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for records or information pursuant to the Freedom of Information Act, 5 U.S.C. 552, and/or the Privacy Act, 5 U.S.C. 552a, internal processing documents, memoranda, and referrals are kept by the Disclosure Office. Copies of requested records are kept by the program office responsible for fulfilling the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 5 U.S.C. 552a, 31 CFR part 1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to other agencies when required for coordination of response or referral; (2) disclose information to the Department of Justice for defending law suits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, magnetic media.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Stored in filing cabinets. Access limited to individuals with need to know or legitimate right to review.

RETENTION AND DISPOSAL:

Retained in accordance with the provisions of the Departmental records management procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054, 1500 Pennsylvania Ave., NW, Washington, DC 20220.
Deputy Assistant Secretary (Law Enforcement), Department of the Treasury, Room 4328, 1500 Pennsylvania Ave., NW, Washington, DC 20220
Freedom of Information Act Officer or Director, Correspondence Unit, Office of Tax Policy, Department of the Treasury, Room 1124, 1500 Pennsylvania Ave., NW, Washington, DC 20220

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services at the above address.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals who make Freedom of Information Act requests, federal officials responding to Freedom of Information Act requests, and documents from official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .156

SYSTEM NAME:

Tax Court Judge Applicants—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of the General Counsel, Room 3000 MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting consideration for appointment to Tax Court judgeships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning the qualification of individuals for appointment to the Tax Court.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7443.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to the White House with recommendations to the President on appointments to the Tax Court.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

The files are kept in locked cabinets with a limited number of employees permitted access.

RETENTION AND DISPOSAL:

The records relating to individuals date from 1981 and are destroyed at the end of each administration.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of the General Counsel, Room 3006–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054 MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individual concerned and letters of recommendation from other individuals

submitted at the request of the individual and/or the Department.

EXEMPTIONS CLAIMED FOR THE SYSTEMS:

None.

Treasury/DO .183

SYSTEM NAME:

Private Relief Tax Bill Files—Office of the Assistant Secretary for Tax Policy—Treasury/DO.

SYSTEM LOCATION:

Room 4040–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have had private relief tax bills introduced in Congress on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Congressional Committee or OMB request for Treasury views on proposed legislation, plus comments on proposal from offices or bureaus of Treasury, plus the Internal Revenue Service data concerning the issues involved and that unit's recommendation, and the report of the Treasury on the Bill.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to OMB and Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File-Folders.

RETRIEVABILITY:

By bill numbers or name of person for whom relief is sought.

SAFEGUARDS:

Access limited to Tax Policy personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed until shipped to National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Technical Information Specialist, Room 4040–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Principally the Congress and the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .190

SYSTEM NAME:

General Allegations and Investigative Records—Treasury/DO.

SYSTEM LOCATION:

Office of the Inspector General, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20423

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and persons whose association with current and former employees relate to the alleged violations of the Department's rules of conduct, the Office of Personnel Management merit system, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Office of the Inspector General in the conduct of assigned duties. (B) Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants; parties who have been identified by the Office of the Inspector General, constituent units of the Department of Treasury, other agencies, or members of the general public in connection with the authorized functions of the Inspector General. (C) Current and former senior Treasury and bureau officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct. (B) Investigative files which include: (1) Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigations; (2) transcripts and documentation concerning requests and approval for consensual (telephone and consensual non–telephone) monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to the investigations; and (5) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file jackets and magnetic media maintained in locked safes.

RETRIEVABILITY:

Alphabetically by name and by case number.

SAFEGUARDS:

Records and word processing disks are maintained in locked safes and all access doors are locked when office is vacant. The records are available to Office of the Inspector General personnel who have an appropriate security clearance on a need–to–know basis.

RETENTION AND DISPOSAL:

Investigative files are stored on–site for three years and indices to those files are stored on site for five years. The word processing disks will be retained indefinitely; however, they will be updated periodically to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices are transferred to the Federal Records Center, Suitland, Maryland, for storage and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Room 2412–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of individuals" above. This system contains investigatory material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552(a)(c)(3)(4), (d)(1)(2)(3)(4), (e)(1)(2)(3), (4)(G), (H), and (I), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Treasury/DO .191

SYSTEM NAME:

OIG Management Information System (MIS).

SYSTEM LOCATION:

Office of Inspector General (OIG), all headquarters, regional and field offices. (See appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) MIS Personnel system records contain OIG employee name, office, start of employment, series/grade, title, separation date; (2) MIS tracking records contain status information on audits, investigations and other projects from point of request or annual planning through follow–up and closure; (3) MIS Timekeeping records contain assigned projects and distribution of time; (4) MIS Equipment Inventory records contain assigned equipment; (5) MIS Travel records contain dates, type of travel and costs; (6) MIS Training records contain dates, title of training, and costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–452), as amended, 5 U.S.C. 301 and 31 U.S.C. 321.

PURPOSE:

The purpose of the MIS system is to: (1) Manage effectively OIG resources and projects; (2) capture accurate statistical data for mandated reports to the Secretary of the Treasury, the Congress, the Office of Management and Budget, the General Accounting Office, the President's Council on Integrity and Efficiency and other federal agencies; and (3) provide accurate information critical to the OIG's daily operation, including employee performance and conduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records, which indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil or criminal, and whether arising by statute, regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local, or foreign agency or other public authority that investigates or prosecutes or assists in investigation or prosecution of such violation, or enforces or implements or assists in enforcement or implementation of the statute, rule, regulation or order. (2) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or to private sector (i.e., non–Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, which maintain civil, criminal, or other relevant enforcement records or other pertinent records, such as current licenses in order to obtain information relevant to an agency investigation, audit, or other inquiry, or relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government. (3) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or private sector (i.e., non–Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, if relevant to the recipient's hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government. (4) A record from the system of records may be disclosed to any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate agency investigation, audit, or other inquiry. (5) A record from the system of records may be disclosed to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the

agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records. (6) A record from the system of records may be disclosed in a proceeding before a court or adjudicative body, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records. (7) A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. (8) A record from the system of records may be disclosed to the Department of Justice and the Office of Government Ethics for the purpose of obtaining advice regarding a violation or possible violation of statute, regulation, rule or order or professional ethical standards. (9) A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation. (10) A record from the system of records may be disclosed in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies if, after careful review, the OIG determines that the records are both relevant and necessary to the requesting agency's needs and the purpose for which the records will be used is compatible with the purpose for which the records were collected. (11) A record from the system of records may be disclosed to a private contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act. (12) A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury provided that the Grand Jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such requests by the Attorney General, that she or he actually signs the letter specifying both the information sought and the law enforcement purpose served. In the case of a State Grand Jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted. (13) A record from the system of records may be disclosed to a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action. (14) A record from the system of records may be disclosed to an entity or person, public or private, where disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the United States Department of the Treasury, where such recovery will accrue to the benefit of the United States, or where disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of the programs or operations of the Department of the Treasury. (15) A record from the system of records may be disclosed to a Federal, state, local or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by an agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and over payments owed to any agency and its components. (16) A record from the system of records may be disclosed to a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed. (17) A record from the system of records may be disclosed to the Office of Management and Budget, the General Accounting Office, the President's Council on Integrity and Efficiency and other Federal agencies for mandated reports.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Debtor information may also be furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Most files are accessed by OIG employee name, employee number, office, or cost center. Some records may be accessed by entering equipment or project information.

SAFEGUARDS:

Access is limited to OIG employees who have a need for such information in the course of their work. A central console is located in a departmental computer room which is staffed during normal business hours and locked at other times. Terminals and paper copies are maintained in offices which are staffed during normal business hours and locked at other times. Access to records on magnetic media is controlled by computer passwords. Access to specific MIS records is further limited and controlled by computer security programs limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained as long as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Policy, Planning and Resources, Room 7119, 1201 Constitution Avenue, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (see "Record access Procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CONTESTING RECORDS PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Current and former employees of the OIG.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A—Addresses of OIG Offices

HEADQUARTERS:

Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Policy, Planning and Resources, Room 7210, 1201 Constitution Avenue, NWWashington, D. C. 20220.

FIELD LOCATIONS: Contact System Manager for addresses.

Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Investigations, Office of the Regional Inspector General for Investigations, Central Regional Office, Chicago, IL 60605.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Investigations, Office of the Regional Inspector General for Investigations, Southern Regional Office, Houston, TX 77057.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Investigations, Office of the Regional Inspector General for Investigations, Western Regional Office, El Segundo, CA 90245–4320.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, FLETC Field Office, Federal Law Enforcement Training Center, Glynco, GA 31524.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Northeastern Regional Office, Boston, MA 02222–1052
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Northeastern Regional Office, New York Field Office, New York, NY 10048.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Northeastern Regional Office, Philadelphia Field Office, Philadelphia, PA 19106.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Central Regional Office, Chicago, IL 60603.
Department of Treasury, Office of Inspector General, Office of Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Central Regional Office, Chicago Field Office, Chicago, IL 60605.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Central Regional Office, Indianapolis Field Office, Indianapolis, IN 46278.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Southern Regional Office, Houston, TX 77057.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Southern Regional Office, Miami Field Office, Miami, FL 33131
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, New Orleans Field Office, New Orleans, LA 70130.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Western Regional Office, El Segundo, CA 90425–4320.
Department of Treasury, Office of Inspector General, Office of the Assistant Inspector General for Audit, Office of the Regional Inspector General for Audit, Western Regional Office, San Francisco Field Office, San Francisco, CA 94103.

Treasury/DO .193

SYSTEM NAME:

Employee Locator and Automated Directory System—Treasury/DO.

SYSTEM LOCATION:

Main Treasury Building, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on all employees of the Department is maintained in the system if the proper locator card is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, bureau, office symbol, building, room number, home address and phone number, and person to be notified in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and magnetic media.

RETRIEVABILITY:

Indexed by name and/or block code numbers.

SAFEGUARDS:

All records, including computer system and all terminals are located within secure space. Only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are kept as long as needed, updated periodically and destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Operations Branch, Room 1121–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

See "System manager" above.

RECORD ACCESS PROCEDURES:

See "System manager" above.

CONTESTING RECORD PROCEDURES:

See "System manager" above.

RECORD SOURCE CATEGORIES:

Information is provided by individual employees. Necessary changes made if requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .194

SYSTEM NAME:

Circulation System – Treasury.

SYSTEM LOCATION:

Department of the Treasury, Library and Information Services Division, Room 5030–MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who borrow library materials or receive library materials on distribution. The system also contains records concerning interlibrary loans to local libraries which are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of items borrowed from the Treasury Library collection and patron

records are maintained on central computer. Records are maintained by name of borrower, office locator information, and title of publication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Track circulation of library materials and their borrowers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Data can be retrieved from the system by borrower name or bar code number and publication title or its associated bar code number.

SAFEGUARDS:

Access to the system requires knowledge of password identification codes and protocols for calling up the data files. Access to the records is limited to staff of the Readers Services Branch who have a need–to–know the information for the performance of their duties.

RETENTION AND DISPOSAL:

Only current data are maintained on–line. Records for borrowers are deleted when employee leaves Treasury.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Library and Information Services, Department of the Treasury, Room 5030–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to Assistant Director, Disclosure Services, Department of the Treasury, Room 1054–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Patron information records are completed by borrowers and library staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .196

SYSTEM NAME:

Security Information System—Treasury/DO.

SYSTEM LOCATION:

Components of this system are located in the following offices within the Departmental Offices: Office of Security, Room 1302 MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, and Assistant Director, Security, Safety and Parking, Administrative Operations Division, Room 1212 MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Department of the Treasury officials who classify documents with a national security classification, i.e., Top Secret, Secret, or Confidential. (2) Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information and who is not otherwise authorized to classify a document at its present classification level. (3) Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information, exclusive of officials specifically authorized original classification authority by 31 CFR part 2. (4) Each Department of the Treasury office by name and position title delegated the authority to derivatively classify national security information in accordance with an approved classification guide or on the basis of source documents. (5) Each Department of the Treasury official who does not have original classification authority for national security information and who is not authorized to downgrade and declassify national security information, but who may control and/or decontrol limited official use information. (6) An alphabetical listing of Department of the Treasury employees who have valid security violations as a result of the improper handling, safeguarding, or storage of classified national security and limited official use information. (7) Department of the Treasury personnel concerned with classified national security and limited official use information who have participated in a security orientation program regarding the salient features of the security requirements and procedures for the handling and safeguarding of such information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following records are maintained by the Director of Security: (1) Report of Authorized Downgrading and Declassification Officials, (2) Report of Authorized Classifiers, (3) Report of Authorized Derivative Classifiers, (4) Designation of Controlling/Decontrolling Officials, and (5) Record of Security Violation. The Assistant Director, Security, Safety and Parking maintains the following records: The Security Orientation Acknowledgment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 12356, dated April 2, 1982, Title 31 subtitle A, part 2, and Office of Security Handbook, TDP 71–10.

PURPOSE(S):

The system is designed to (1) oversee compliance with Executive Order No. 12356 and Departmental programming and implementation, (2) ensure proper classification of national security information, (3) record details of valid security violations and (4) assist in determining the effectiveness of information security programs affecting classified and limited official use information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used to disclose information to appropriate Federal agencies and for enforcing or implementing a statute, rule, regulation or order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard Copy paper files.

RETRIEVABILITY:

Manually filed and indexed by office or bureau, date, name of official and position title, where appropriate.

SAFEGUARDS:

Secured in security equipment to which access is limited to personnel with the need to know.

RETENTION AND DISPOSAL:

With the exception of the Record of Security Violation, which is maintained for a period of two years, and the Security Orientation Acknowledgment, the remaining records are destroyed and/or updated on an annual basis. Destruction is effected by shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Security, 1302 Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, DC 20220, and Assistant Director, Security, Safety and Parking, Administrative Operations Division, Room 1212 MT, 1500 Pennsylvania Avenue., NW, Washington, DC 20220

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and types of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information) to the Assistant Director, Disclosure Services. (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, Room 1054 MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The sources of the information are office and bureau employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and Department of State security officials as concerns Treasury personnel attached to U.S. diplomatic posts or missions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .200

SYSTEM NAME:

FinCEN Data Base—Treasury/DO.

SYSTEM LOCATION:

The Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Vienna, VA 22182.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who relate in any manner to official FinCEN efforts in support of the enforcement of the Bank Secrecy Act and money–laundering and other financial crimes. Such individuals may include, but are not limited to, subjects of investigations and prosecutions; suspects in investigations; victims of such crimes; witnesses in such investigations and prosecutions; and close relatives and associates of any of these individuals who may be relevant to an investigation; (2) Current and former FinCEN personnel whom FinCEN considers relevant to an investigation or inquiry; (3) individuals who are the subject of unsolicited information possibly relevant to violations of law or regulations, who offer unsolicited information relating to such violations, who request assistance from FinCEN, and who make inquiries of FinCEN.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information that contributes to effective law enforcement may be maintained in this system of records, including, but not limited to, subject files on individuals, corporations, and other legal entities; information provided pursuant to the Bank Secrecy Act; information gathered pursuant to search warrants; statements of witnesses; information relating to past queries of the FinCEN Data Base; criminal referral information; complaint information; identifying information regarding witnesses, relatives, and associates; investigative reports; and intelligence reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM.

5 U.S.C. 301, 31 U.S.C. 5311 *et seq.*; 31 CFR part 103; Treasury Department Order No. 105–08 (April 25, 1990).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be used to: (1) Provide responses to queries from Federal, State, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding Bank Secrecy Act and other financial crime enforcement; (2) furnish information to other Federal, State, local, territorial, and foreign law enforcement and regulatory agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where FinCEN becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) furnish information to the Department of Defense, to support its role in the detection and monitoring of aerial and maritime transit of illegal drugs into the United States and any other role in support of law enforcement that the law may mandate; (4) respond to queries from INTERPOL in accordance with agreed coordination procedures between FinCEN and INTERPOL; (5) furnish information to individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to financial law enforcement; (6) furnish information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, in response to a subpoena, or in connection with civil or criminal law proceedings; (7) furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings; and (8) furnish information to the Department of State and the Intelligence community to further those agencies' efforts with respect to national security and the foreign aspects of international narcotics trafficking.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media and hard copy.

RETRIEVABILITY:

By name, address, or unique identifying number.

SAFEGUARDS:

All FinCEN personnel accessing the system will have successfully passed a background investigation. FinCEN will furnish information from the system of records to approved personnel only on a "need to know" basis using passwords and access control. Procedural and physical safeguards to be utilized include the logging of all queries and periodic review of such query logs; compartmentalization of information to restrict access to authorized personnel; physical protection of sensitive hard copy information; encryption of electronic communications; intruder alarms; and 24–hour building guards.

RETENTION AND DISPOSAL:

FinCEN personnel will review records each time a record is retrieved and on a periodic basis to see whether it should be retained or modified. FinCEN will dispose of all records after six years and will never retain any record for more than seven years. Records will be disposed of by erasure of magnetic media and by shredding and/or burning of hard copy documents.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Vienna, VA 22182.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2).

Treasury/DO .201

SYSTEM NAME:

Fitness Center Records—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Treasury Department employees who have applied for membership and participate in the Treasury fitness program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, job title, addresses, date of birth, age, sex; name, address, and telephone number of personal physician; name, and address and telephone number of emergency contact; health and exercise history; physician's clearance; informed consent form, waiver and release form, program interest survey form; fitness assessment results; and results of health tests taken by the Fitness Center members.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE(S):

The records are collected and maintained to provide the Fitness Center contractor with written documentation of user's membership status. The records enable the contractor to identify the current fitness level and potential health risks faced by each user. The collection of these records provides essential baseline information allowing the contractor to prescribe the appropriate exercise program to each user.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

No disclosures will be made outside the Departmental Offices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name and membership number.

SAFEGUARDS:

Records are stored in locked cabinets in a locked room. Access is limited to authorized employees of the contractor responsible for servicing the records in the performance of their duties.

RETENTION AND DISPOSAL:

Active records are retained indefinitely. Inactive records are held for three years, then are destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

Director, Administrative Operations, Department of the Treasury, Room 1212–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Name of the contractor will be provided by the system manager upon request.

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, Room 1054–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Inquiries should be addressed to the Assistant Director, Disclosure Services, Departmental Offices, Room 1054–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Notification procedures" above.

RECORD SOURCE CATEGORIES:

The source of the data is the Treasury Department employee who has applied for membership, contractor personnel and the employee's personal physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .202

SYSTEM NAME:

Drug–Free Workplace Program Records—Treasury/DO.

SYSTEM LOCATION:

Records are located within Personnel Resources, Workforce Effectiveness, Room 1325–MT, Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Departmental Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees, drug test results, and related documentation concerning the administration of the Drug–Free Workplace Program within Departmental Offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–71; 5 U.S.C. 7301 and 7361; 21 U.S.C. 812; Executive Order 12564, "Drug–Free Federal Workplace".

PURPOSE(S):

The system will be established to maintain records relating to the selection, notification, and testing of Departmental Offices' employees for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be disclosed to a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

STORAGE:

Records consist of paper records maintained in file folders and magnetic media.

RETRIEVABILITY:

Records are retrieved by name of employee, position, title, social security number, I.D. number (if assigned), or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, e.g., safes, locked filing cabinets, etc. Access to such records is restricted to individuals having direct responsibility for the administration of the agency's Drug–Free Workplace Program. Procedural and documentary requirements of Pub. L. 100–71 and the Department of Health and Human Services Guidelines will be followed.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, burning, or, in case of magnetic media, erasure. Written records and test results may be retained up to five years or longer when necessary due to challenges or appeals of adverse action by the employee.

SYSTEM MANAGER AND ADDRESS:

Departmental Offices Drug Program Coordinator, Department of the Treasury, 1500 Pennsylvania Ave., Room 1325–MT, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Assistant Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave., Room 1054–MT, Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Assistant Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave., Room 1054–MT, Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

CONTESTING RECORD PROCEDURES:

The Department of the Treasury rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in 31 CFR part 1, subpart A, appendix A.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; Departmental Offices employees involved in the selection and notification of individuals to be tested; contractor laboratories that test urine samples for the presence of illegal drugs; Medical Review Officers; supervisors and managers and other Departmental Offices official engaged in administering the Drug–Free Workplace Program; the Employee Assistance Program, and processing adverse actions based on drug test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .203

SYSTEM NAME:

Public Transportation Incentive Program Records—Treasury/DO.

SYSTEM LOCATION:

(1) Departmental Offices, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.
(2) Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.
(3) United States Mint, Judiciary Square Building, 633 Third Street, NW, Washington, DC 20220; United States Mint, 5th and Arch Streets, Philadelphia, PA 19106; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; United States Mint, Old Mint Building, 88 Fifth Street, San Francisco, CA 94103.
(4) Bureau of the Public Debt, 13th and C Streets, SW., and 999 E Street NW., Washington, DC 20239; 200 Third Street, Parkersburg, WV 26106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have applied to participate in the Public Transportation Incentive Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Public Transportation Incentive Program application form containing the participant's name, social security number, place of residence, office address, office telephone, grade level, duty hours, previous method of transportation, and the type of fare incentive requested. (2) Reports submitted to the Department of the Treasury in accordance with Treasury Directive 74–10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Public Law 101–509.

PURPOSE(S):

The records are collected and maintained to provide written documentation pertaining to applicants and participants in the Public Transportation Incentive Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license; (2) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (3) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (4) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (5) agencies, contractors, and others to administer Federal personnel and payroll systems, and for debt collection and employment or security investigations; and (6) other Federal agencies for matching to ensure that employees receiving PTI Program benefits are not listed as a carpool or vanpool participant or the holder of a parking permit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, file folders and magnetic media.

RETRIEVABILITY:

Alphabetically by individual and by office.

SAFEGUARDS:

Access is limited to authorized employees. Files are maintained in locked safes and/or file cabinets. Records on magnetic media are password–protected. During non–work hours, records are stored in locked safes and/or cabinets in a locked room.

RETENTION AND DISPOSAL:

Active records are retained indefinitely. Inactive records are held for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Departmental Offices: Director, Administrative Operations Division, Department of the Treasury, Room 1212 MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

(2) Bureau of Engraving and Printing: Chief, Office of Management Services, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

(3) United States Mint: Executive Secretariat, United States Mint, Judiciary Square Building, 633 Third Street, NW, Washington, DC 20220; Property Management Officer, Management Analysis and Property Management Staff, United States Mint, 5th and Arch Streets, Philadelphia, PA 19106; Chief, Administrative Services Division, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Human Resources Division and Budget and Accounting Division, United States Mint, Old Mint Building, 88 Fifth Street, San Francisco, CA 94103.

(4) Bureau of the Public Debt: Assistant Commissioner, Office of Administration, 200 Third Street, Parkersburg, WV 26106

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions given in the Appendix for each Treasury component appearing at 31 CFR part 1, subpart C. Inquiries should be sent to the agency official identified below:

(1) Departmental Offices: Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, Room 1054 MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

(2) Bureau of Engraving and Printing: Inquiries should be addressed to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20229.

(3) United States Mint: Inquiries should be addressed to Executive Secretariat, United States Mint, Judiciary Square Building, 633 Third Street, NW, Washington, DC 20220; Property Management Officer, Management Analysis and Property Management Staff, United States Mint, 5th and Arch Streets, Philadelphia, PA 19106; Chief, Administrative Services Division, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Human Resources Division and Budget and Accounting Division, United States Mint, Old Mint Building, 88 Fifth Street, San Francisco, CA 94103.

(4) Bureau of the Public Debt: Assistant Commissioner, Office of Administration, 200 Third Street, Parkersburg, WV 26106

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The source of the data are employees who have applied for the transportation incentive, the system managers, and appropriate agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .205

SYSTEM NAME:

Executive Information System (EIS) – Treasury/DO.

SYSTEM LOCATION:

Office of Administration, Automated Systems Division, Computer Operations Branch, 15th and Pennsylvania Avenue, NW, Washington, DC 20220. Components of this records system consist of the following Treasury Department constituent units and other government agencies: Departmental offices, Internal Revenue Service, U.S. Customs Service, Financial Management Service, U.S. Mint, Bureau of Engraving and Printing, Savings Bonds Division, Office of Thrift Supervision, Comptroller of the Currency, Bureau of the Public Debt, Bureau of Alcohol, Tobacco and Firearms, U.S. Secret Service, and the Federal Law Enforcement Training Center; the U.S. Department of Commerce, Executive Office of the President, Office of Management and Budget, Counsel of Economic Advisors, and the Federal Reserve Board in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees having individual accounts and records in the EIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, titles, office addresses, and office phone numbers of all EIS subscribers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE(S):

The primary purpose of the system is to provide a facility for the electronic exchange of information between employees in the Departmental offices. All system subscribers have access to the following: (1) Electronic mail messages to other EIS users; (2) Word processing documents; (3) Calendars and time management; (4) Desk management functions; (5) Economic information in the form of current domestic and international economic indicators conveyed in tabular, text and graphic formats.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Departmental offices, bureaus of the U.S. Department of the Treasury, and the other Government departments that are system subscribers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By name of system subscriber.

SAFEGUARDS:

Access is limited by a computer sign–on procedure which includes access identification and a password protection as well as individual file protection features. Security features of the system include: automatic expiration of all passwords and security log records of unsuccessful attempts to log on or to access other users' files.

RETENTION AND DISPOSAL:

The records are retained for the duration of a subscriber account and stored for thirty days on magnetic media after the account is deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Computer Operations Branch, Automated Systems Division, Room B–91, 15th and Pennsylvania Avenue, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, Room 1054–MT, 15th and Pennsylvania Avenue, NW, Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Inquiries should be addressed to the Assistant Director, Disclosure Services, Departmental Offices, Room 1054–MT, 15th and Pennsylvania Avenue, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See notification procedure above.

RECORD SOURCE CATEGORIES:

Individual Executive Information System subscriber.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .206

SYSTEM NAME:

Office Tracking System (OTS) – Treasury/DO.

SYSTEM LOCATION:

Office of Administration, Automated Systems Division, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Departmental offices employees granted access to the OTS and individuals who correspond with the Departmental Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each piece of correspondence will have a record generated in OTS containing the name of the addresser, addressee, initials of the approving individual and the name of the individual assigned to respond or take action. This correspondence consists of letters to or from the public, Congress or other agencies, and internal memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

The primary purpose of the system is to provide a facility to track the status of incoming and internally generated correspondence within an office. It provides management information related to action(s) required and the responsible individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside Departmental Offices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

The records may be retrieved by name of writer, name of addresses, or subject of document.

SAFEGUARDS:

Access is limited by a computer sign–on procedure which includes access identification and a password protection as well as individual file protection features.

RETENTION AND DISPOSAL:

The records are retained at the discretion of the OTS user who may electronically delete or file the records. All records are saved to a backup magnetic media at least once a month. These media are retained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Automated Systems Development Branch, Automated Systems Division, Room 5457, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Inquiries should be addressed to the Assistant Director, Disclosure Services, Departmental Offices, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The source of data in OTS is letters or memoranda from Treasury officials, other agencies, members of Congress, the public or the press.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .207

SYSTEM NAME:

Waco Administrative Review Group Investigation—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of Enforcement, 1500 Pennsylvania Ave., NW Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and its bureaus and persons whose associations with current and former employees relate to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas on February 28, 1993, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) developed in the course of the investigation. (B) Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants who have been identified by the Office of Enforcement, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the Office of Enforcement. (C) Members of the general public who provide information pertinent to the investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal misconduct pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993. (B) Investigative files which include: (1) Reports of investigations to resolve allegations of misconduct or violations of law and to comply with the President's specific directive for a fact finding report on the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigation; (2) transcripts and documentation concerning requests and approval for consensual telephone and consensual nontelephone monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to the investigations; and (5) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution; (6) videotapes of events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; (7) audiotapes with transcripts of events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; (8) photographs and blueprints pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the

Department of Justice criminal prosecutions; and (9) drawings, sketches, models portraying events pertinent to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions.

PURPOSE(S):

The purpose of the system of records is to implement a data base containing records of investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, to disclose to other law enforcement agencies which have an interest in the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena, where relevant and necessary, or in connection with criminal law proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and (6) provide a report to the President and the Secretary of the Treasury detailing the investigation and findings concerning the events leading to the Bureau of Alcohol, Tobacco & Firearms' execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in binders and file jackets and all multisource media information are maintained in locked offices with access, through the administrative documents and records control personnel for the Waco Administrative Review Group, available to personnel with a need to know. Records will be maintained in locked offices during non–business hours. Records will be maintained in the Departmental Offices, in the main Treasury building which is subject to 24–hour security.

RETRIEVABILITY:

Alphabetically by name, and or by number, or other alpha– numeric identifiers.

SAFEGUARDS:

Records and word processing disks are maintained by administrative documents and records control personnel of the Waco Administrative Review Group. All access doors are locked when office is vacant. The records are available on a need–to–know basis to the Waco Administrative Review Group and Office of Enforcement personnel and other Federal and state law enforcement personnel who have an appropriate security clearance.

RETENTION AND DISPOSAL:

Investigative files are stored on–site for six years and indices to those files are stored on–site for ten years. The word processing disks will be retained indefinitely, and to the extent required they will be updated periodically to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices are transferred to the Federal Records Center, Suitland, Maryland, for storage and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Enforcement, Room 4312–MT, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of Individuals" above. This system contains investigatory material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(a)(c)(3)(4), (d)(1)(2)(3)(4), (e)(1)(2)(3), 4(G), (H) and (I), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). This system exemption can be found at 31 CFR 1.36.

Treasury/DO .209

SYSTEM NAME:

Personal Services Contracts (PCSs) – Treasury/DO.

SYSTEM LOCATION:

(1) Office of Technical Assistance Management, Eastern Europe & Former Soviet Union, Department of the Treasury, 1730 K Street, NW., Suite 220, Washington, DC 20006. (2) Procurement Services Division, Departmental Offices, Department of the Treasury, Room 1438, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been candidates or who have been awarded a personal services contract (PSC) with the Department of the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, demographic data, education, contracts, supervisory notes, personnel related information, financial, payroll and medical data and documents pertaining to the individual contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Support for Eastern European Democracy (SEED) Act of 1989 (Pub. L. 101–179), Freedom Support Act (Pub. L. 102–511), Executive Order 12703.

PURPOSE(S):

To maintain records pertaining to the awarding of personal services contracts to individuals for the provision of technical services in support of the SEED Act and the FSA, and which establish an employer/employee relationship with the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose: (1) Pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (3) information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged, and (5) information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on electronic media.

RETRIEVABILITY:

Retrieved by name of the individual contractor and contract number.

SAFEGUARDS:

Records are maintained in a secured vault with locked file cabinets with access limited to authorized personnel. Offices are locked during non–working hours with security provided on a 24–hour basis. Electronic media is password protected.

RETENTION AND DISPOSAL:

Records are periodically updated when a contract is modified. Contract records, including all biographical or other personal data, are retained for the contract period, with disposal after contract completion in accordance with the Federal Acquisition Regulation 4.805. Other records are retained for two years then are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Office of Technical Assistance, Eastern Europe & Former Soviet Union, Department of the Treasury, 1730 K Street, NW., Suite 220, Washington, DC 20006.
(2) Director, Procurement Services Division, Departmental Offices, Department of the Treasury, Room 3442, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access or seek to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, Room 1054–MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above

CONTESTING RECORD PROCEDURES:

See "Notification procedures" above.

RECORD SOURCE CATEGORIES:

Information is provided by the candidate, individual Personal Services Contractor, and Treasury employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .210

SYSTEM NAME:

Treasury Integrated Financial Management and Revenue System – Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Other locations at which the system is maintained by Treasury components and their associated field offices are:

(a)(1) Departmental Offices (DO), (2) Financial Crimes Enforcement Network (FinCEN), (3) Office of Inspector General (OIG);
(b) Bureau of Alcohol, Tobacco and Firearms (ATF);
(c) Office of the Comptroller of the Currency (CC);
(d) United States Customs Service (CS);
(e) Bureau of Engraving and Printing (BEP);
(f) Federal Law Enforcement Training Center (FLETC);
(g) Financial Management Service (FMS);
(h) Internal Revenue Service (IRS);
(I) United States Mint (MINT);
(j) Bureau of the Public Debt (BPD);
(k) United States Secret Service (USSS):
(l) Office of Thrift Supervision (OTS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former Treasury employees, non–Treasury personnel on detail to the Department, current and former vendors, all debtors including employees or former employees; 2) persons paying for goods or services, returning overpayment or otherwise delivering cash; (3) individuals, private institutions and business entities who are currently doing business with, or who have previously conducted business with the Department of the Treasury to provide various goods and services; (4) individuals who are now or were previously involved in tort claims with Treasury; (5) individuals who are now or have previously been involved in payments (accounts receivable/revenue) with Treasury; and (6) individuals who have been recipients of awards. Only records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations, other business entities, and organizations whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The financial systems used by the Treasury components to collect, maintain and disseminate information include the following types of records: Routine billing, payment, property accountability, and travel information used in accounting and financial processing; administrative claims by employees for lost or damaged property; administrative accounting documents, such as relocation documents, purchase orders, vendor invoices, checks, reimbursement documents, transaction amounts, goods and services descriptions, returned overpayments, or otherwise delivering cash, reasons for payment and debt, travel–related

documents, training records, uniform allowances, payroll information, student intern documents, etc., which reflect amount owed by or to an individual for payments to or receipt from business firms, private citizens and or institutions. Typically, these documents include the individual's name, social security number, address, and taxpayer identification number. Records in the system also include employment data, payroll data, position and pay data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, 31 U.S.C. 3711, 31 U.S.C. 3721, 5 U.S.C. 5701 et seq, 5 U.S.C. 4111(b), Pub. L. 97–365, 26 U.S.C. 6103(m)(2), 5 U.S.C. 5514, 31 U.S.C. 3716, 31 U.S.C. 321,5 U.S.C. 301, 5 U.S.C. 4101 et seq, 41 CFR part 301–304, EO 11348, and Treasury Order 140–01,

PURPOSE(S):

The Treasury Integrated Financial Management and Revenue System is to account for and control appropriated resources; maintain accounting and financial information associated with the normal operations of government organizations such as billing and follow–up, for paying creditors, to account for goods and services provided and received, to account for monies paid and received, process travel authorizations and claims, process training claims, and process employee claims for lost or damaged property. The records management and statistical analysis subsystems provide a data source for the production of reports, statistical surveys, documentation and studies required for integrated internal management reporting of costs associated with the Department's operation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information: (1) To appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) To the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records; (3) To a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) In a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) or any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (e) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged; (5) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) To the news media in accordance with guidelines contained in 28 CFR 50.2 which pertain to an agency's functions relating to civil and criminal proceedings; (7) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (8) To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed; (9) To a contractor for the purpose of compiling, organizing, analyzing, programming, processing, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act; (10) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena; (11) Through a computer matching program, information on individuals owing debts to the Department of the Treasury, or any of its components, to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset; (12) To other federal agencies to effect salary or administrative offset for the purpose of collecting debts, except that addresses obtained from the IRS shall not be disclosed to other agencies; (13) To disclose information to a consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports; (14) To a debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services; (15) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor–management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties; (16) To a public or professional auditing organization for the purpose of conducting financial audit and/or compliance audits; (17) To a student participating in a Treasury student volunteer program, where such disclosure is necessary to support program functions of Treasury, and (18) To insurance companies or other appropriate third parties, including common carriers and warehousemen, in the course of settling an employee's claim for lost or damaged property filed with the Department.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures made pursuant to 5 U.S.C. 552a(b)(12): Debt information concerning a government claim against an individual may be furnished in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365) to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microform and electronic media.

RETRIEVABILITY:

Name, social security number, vendor ID number, and document number (travel form, training form, purchase order, check, invoice, etc.).

SAFEGUARDS:

Protection and control of sensitive but unclassified (SBU) records in this system is in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual components.

RETENTION AND DISPOSAL:

Record maintenance and disposal is in accordance with National Archives and Records Administration retention schedules, and any supplemental guidance issued by individual components.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Offices:

(1) Director, Financial Management Division, 1500 Pennsylvania Avenue, NW., Room 1010, Washington, DC 20220.

(2) Chief Financial Officer, FinCEN, 2070 Chain Bridge Road, Vienna, VA 22182.

(3) Assistant Inspector General for Policy, Planning and Resources, 1201 Constitution Avenue, NW., Washington, DC 20220.

ATF : Chief, Financial Management DivisionBureau of Alcohol, Tobacco & Firearms650 Massachusetts Avenue, NW., Room 4270Washington, DC 20226

IRS: Chief Financial Officer,Internal Revenue Service1111 Constitution Avenue, NW., Room 3013Washington, DC 20224

BPD: Director, Division of Financial ManagementBureau of Public Debt, 220 Third StreetPO Box 1328, Parkersburg, WV 26106–1328

CS: Chief Financial Officer,U.S. Customs Service1301 Constitution Avenue, NW., Room 312Washington, DC 20229

FLETC: Comptroller, Budget and Finance DivisionFederal Law Enforcement Training CenterGlynco Facility, Bldg. 94, Glynco, GA 31524

CC: Chief Financial Officer, Comptroller of the Currency250 E Street, SW., Washington, DC 20219

BEP: Chief Financial Officer,Bureau of Engraving and Printing14th & C Streets, NW., Room 113M, Washington, DC 20228

FMS: Chief Financial Officer,Financial Management Service3700 East West Highway, Room 106A, Hyattsville, MD 20782

Mint: Chief Financial Officer, U.S. Mint633 3rd Street, NW., Room 625, Washington, DC 20220

USSS: Financial Management Division,U.S. Secret Service, 1800 G Street, NW.,Room 748, Washington, DC 20226

OTS: Controller,Office of Thrift Supervision1700 G Street, NW., Third Floor,Washington, DC 20552

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–L.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, private firms, other government agencies, contractors, documents submitted to or received from a budget, accounting, travel, training or other office maintaining the records in the performance of their duties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .211

SYSTEM NAME:

Telephone Call Detail Records – Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1425 New York Avenue, NW, Washington DC 20220. Other locations of this records system consisting of the following Treasury components and their associated field offices are: Departmental Offices (DO), including the Office of Inspector General (OIG); Bureau of Alcohol, Tobacco and Firearms (ATF); Comptroller of the Currency (CC); United States Customs Service (CS); Bureau of Engraving and Printing (BEP); Federal Law Enforcement Training Center (FLETC); Financial Management Service (FMS); Internal Revenue Service (IRS); United States Mint (Mint); Bureau of the Public Debt (BPD); United States Secret Service (USSS), and the Office of Thrift Supervision (OTS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally agency employees and contractor personnel) who make local and/or long distance calls, individuals who received telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Department telephones to place local and/or long distance calls, whether through the Federal Telecommunications System (FTS), commercial systems, or similar systems; including voice, data, and videoconference usage; Foncard numbers assigned to employees; records of any charges billed to Department telephones; records relating to location of Department telephones; and the results of administrative inquiries to determine responsibility for the placement of specific local or long distance calls. Telephone calls made to any Treasury Office of Inspector General Hotline numbers are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., appendix 3, section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 481, 5 U.S.C. 301 and 41 CFR 201–21.6.

PURPOSE(S):

The Department, in accordance with 41 CFR 201–21.6, Use of Government Telephone Systems, established the Telephone Call Detail program to enable it to analyze call detail information for verifying call usage, to determine responsibility for placement of specific long distance calls, and for detecting possible abuse of the government–provided long distance network.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be disclosed: (1) To representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; (2) to employees or contractors of the agency to determine individual responsibility for telephone calls; (3) to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential

violation of civil or criminal law or regulation; (4) to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings where relevant and necessary; (5) to a telecommunications company providing telecommunication support to permit servicing the account; (6) to another Federal agency to effect an interagency salary offset, or an interagency administrative offset, or to a debt collection agency for debt collection services. Mailing addresses acquired from the Internal Revenue Service may be released to debt collection agencies for collection services, but shall not be disclosed to other government agencies; (7) to the Department of Justice for the purpose of litigating an action or seeking legal advice; (8) in a proceeding before a court, adjudicative body, or other administrative body, before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to the litigation or has an interest in such litigation, and the use of such records by the agency is deemed relevant and necessary to the litigation or administrative proceeding and not otherwise privileged; (9) to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (10) to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor–management program for the purpose of processing any corrective actions or grievances or conducting administrative hearings or appeals or if needed in the performance of other authorized duties; (11) to the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service, and other Federal agencies through authorized computer matching programs to identify and locate individuals who are delinquent in their repayment of debts owed to the Department, or one of its components, in order to collect a debt through salary or administrative offsets; (12) in response to a Federal agency's request made in connection with the hiring or retention of an individual, issuance of a security clearance, license, contract, grant, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microform, electronic media, and/or hard copy media.

RETRIEVABILITY:

Records may be retrieved by individual name, component headquarters and field offices, by originating or terminating telephone number, by Forward number, by time of day, identification number or assigned telephone number.

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual components.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration General Records Schedule 23. Hard copy and microform media disposed by shredding or incineration. Electronic media erased electronically.

SYSTEM MANAGER(S) AND ADDRESSES:

Department of the Treasury: Official prescribing policies and practices – Director, Office of Telecommunications Management, Department of the Treasury, Room 2150, 1425 New York Avenue, NW., Washington, DC 20220.

The system managers for the Treasury components are:

DO: Chief, Telecommunications Branch, Automated Systems Division, Room 1121, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OIG: Assistant Inspector General for Policy, Planning and Resources, Office of the Inspector General, Department of the Treasury, Room 7119, 1201 Constitution Avenue, NW., Washington, DC 20220.

ATF : Chief, Telecommunications Services Branch, 650 Massachusetts Avenue, NW., Washington, DC 20552.

CC: Associate Director, Telecommunications, Systems Support Division, Office of the Comptroller of the Currency, 835 Brightseat Road, Landover, MD 20785.

CS: Chief, Voice Communications, Office of Systems Engineering and Operations, Field Office Division, 7681 Boston Boulevard, Springfield, VA 22153.

BEP: Deputy Associate Director (Chief Information Officer), Office of Information Systems, Bureau of Engraving and Printing, Room 711A, 14th and C Street, SW., Washington, DC 20228.

FLETC: Information Systems Officer, Information Systems Division, ISD–Building 94, Glynco, GA 31524.

FMS: Manager, Programs Branch, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

IRS: Official prescribing policies and practices—National Director, Network and Systems Management, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Office maintaining the system—Director, Detroit Computing Center, (DCC), 1300 John C. Lodge Drive, Detroit, MI 48226.

Mint: Assistant Director for Management Services, Telecommunications Division, 633 3rd Street, NW., Washington, DC 20220.

BPD: Official prescribing policies and practices—Assistant Commissioner (Office of Automated Information Systems), 200 Third Street, Room 202, Parkersburg, WV 26106–1328. Office maintaining the system—Division of Technical Services, 200 Third Street, Room 107, Parkersburg, WV 26106–1328.

USSS: Chief, Information Resources Management Division, 1800 G Street, NW., Room 1000, Washington, DC 20223.

OTS: Assistant Director for Information Resources Management, 1700 G Street, NW., 2nd Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings, results of administrative inquiries to individual employees, contractors or offices relating to assignment of responsibility for placement of specific long distance or local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BILLING CODE: 4810–25–F

Bureau of Alcohol, Tobacco, and Firearms

Treasury/ATF .001

SYSTEM NAME:

Administrative Record System—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226. Components of this record system are geographically dispersed throughout the Bureau's field offices. A list of field offices is available by writing to the Chief, Disclosure Branch, Room 8290, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Present employees of the Bureau of ATF. (2) Former employees of the Bureau of ATF. (3) Claimants against the Bureau of ATF.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Accident Report —non-vehicle; (2) Accident Report-vehicle; (3) Fatality reports. (4) Injury reports; (5) Motor vehicle operator's records; (6) Chief Counsel and District Counsel memoranda and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Federal Claims Collection Act. (2) Federal Property and Administration Services Act of 1949, as amended. (3) Federal Tort Claims Act. (4) Military Personnel and Civilian Claim Act. (5) Occupational Safety and Health Act of 1970. (6) Small Claims Act. (8) 5 U.S.C. 1302, 3301, 3302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) Employees of government agencies when required or authorized to be released by statute, regulations or Executive Order; (2) any third party, to the extent necessary, to collect relevant information from the third party, provided that the information is needed by the Bureau to render a decision in regard to an administrative matter; (3) appropriate Federal, state, local or foreign agencies responsible for enforcing administrative, civil or criminal laws; hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit; (4) a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in security filing cabinets. Inactive records stored in file folders at Federal Records Centers.

RETRIEVABILITY:

Records are retrievable by name of individual.

SAFEGUARDS;

Direct access restricted to personnel in Department of the Treasury in the performance of their duty. Transmitted to routine users on a "need to know" basis or where "a right to access" is established, and to others upon verification of the substance and propriety of the request. Stored in lockable metal file cabinets in rooms locked during non–duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules Numbers 1 through 23 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco and Firearms records control schedules numbers 101 and 201 and disposed of by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Program Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Requests may be delivered personally to Room 8290, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

RECORD ACCESS PROCEDURES:

Requests for access to records made by mail should be addressed to: Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Administrative records. (2) Claimants. (3) Doctors. (4) Employee records. (5) Fiscal records. (6) Former employees of the Bureau of ATF. (7) Former employers. (8) General Services Administration. (9) Individuals who have information relevant to claims. (10) Inspections records. (11) Internal Investigation reports. (12) Police reports. (13) Present employees of the Bureau of ATF. (14) Supervisors. (15) Witnesses. (16) Insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/ATF .002

SYSTEM NAME:

Correspondence Record System—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226. Components of this record system are geographically dispersed throughout the Bureau's field offices. A list of field offices is available by writing to the Chief, Disclosure Branch, Room 8290, 650 Massachusetts Avenue, NW Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Persons who correspond with the Bureau requesting information relating to Bureau personnel. (2) Persons who correspond with the Bureau requesting information relating to Bureau activities. (3) Persons who correspond with the Bureau requesting rulings, interpretations, or technical and scientific matters of a general nature. (4) Persons who correspond with others and whose correspondence is referred to ATF for response. (5) Persons referred to in correspondence with the Bureau. (6) Authors and publishers of technical and scientific matters relating to Bureau activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with individuals who contact the Bureau requesting information relating to Bureau personnel and/or activities, Chief Counsel and Regional Counsel memoranda and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) Employees of government agencies when required or authorized to be released by statute, regulations or Executive Order; (2) any third party, to the extent necessary, to collect relevant information from the third party, provided that the information is needed by the Bureau to render a decision in regard to an administrative, fiscal or personnel matter; (3) appropriate Federal, state, local or foreign agencies responsible for enforcing administrative, civil or criminal laws; hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit; (4) a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in security filing cabinets. Inactive records stored in file folders at Federal Records Centers.

RETRIEVABILITY:

Records are retrieved by name, subject matter and date of correspondence.

SAFEGUARDS;

Transmitted to routine users on a "need to know" basis. Stored in lockable file cabinets in rooms locked during non–duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 20 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco and Firearms Records Control Schedules numbers 101 and 201 and disposed of by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant– Liaison and Public Information, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW Washington, DC 20226. Requests may be delivered personally to Room 8290, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

RECORD ACCESS PROCEDURES:

Requests for access to records made by mail should be addressed to: Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Requests may be delivered personally to room 8290, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Appeals may be delivered personally to room 8290, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Persons who correspond with the Bureau on general, technical or scientific matters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/ATF .003

SYSTEM NAME:

Criminal Investigation Report System—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Components of this record system are geographically dispersed throughout Bureau of Alcohol, Tobacco and Firearms' field offices. A list of field offices is available by writing to the Chief, Disclosure Branch, Room 8290, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Criminal offenders or alleged criminal offenders acting alone or in concert with other individuals and suspects who have been or are under investigation for a violation or suspected violation of laws enforced by the Bureau. (2) Criminal offenders or alleged criminal offenders acting alone or in concert with individuals who have been referred to the Bureau of Alcohol, Tobacco and Firearms by other law enforcement agencies, governmental units and the general public. (3) Informants. (4) Persons who come to the attention of the Bureau in the conduct of criminal investigations. (5) Persons who have been convicted of a crime punishable by imprisonment for a term exceeding one year and who have applied for relief from disabilities under Federal law with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and explosives and whose disability was incurred by reason of such conviction. (6) Victims of crimes. (7) Witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrest, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) Records containing information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; (c) Records containing reports identifiable to an individual compiled at various stages of the process of enforcement of criminal laws from arrest or indictment through release from supervision; (d) Records compiled and maintained by the Bureau as generally described in (a), (b), and (c) above including the following: (1) Abandoned property reports. (2) ATF Criminal Investigation Reports. (3) ATF referrals to foreign, Federal, state, and local law enforcement agencies. (4) Chief and Regional Counsel opinions. (5) Contemporaneous investigative notes. (6) Criminal investigatory correspondence from and to foreign, Federal, state and local law enforcement agencies. (7) Criminal intelligence information on individuals suspected to be violating ATF laws and regulations. (8) Documentary proof of defendant's criminal record, identity, or lack of registration of N.F.A. (as amended) firearm(s). (9) FBI Criminal Record Reports. (10) Fingerprints and palmprints. (11) Fugitive arrest warrants. (12) Handwriting exemplars. (13) Index cards, violation and reputation. (14) Illicit liquor and raw material surveys. (15) Laboratory reports of evidence analysis. (16) Memoranda of expected testimony of witnesses. (17) Organized crime members violating or suspected of violating ATF laws. (18) Parole and pardon reports. (19) Personal histories (address, employment, social security number, financial background, physical description, etc.). (20) Photographs. (21) Purchase of evidence records. (22) Records of electronic surveillance by ATF. (23) Records received in response to summons and subpoenas. (24) Reliefs from disability. (25) Reports of interview with witnesses. (26) Search warrants and affidavits for search warrants. (27) Seized property reports. (28) Significant criminals, armed and dangerous, firearms, explosives and liquor. (29) Special agent's daily activity diary (accessible by date only). (30) State and local law enforcement criminal investigative reports. (31) Statements of defendants. (32) Statements of witnesses. (33) Summons and subpoenas issued pursuant to criminal investigations. (34) Voice prints. (35) Wagering tax suspected violators. (36) Warning and demand letters. (37) Criminal violation reports (a formal report compiling all or portions of the foregoing for prosecutive purposes).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 26 U.S.C. Chapters 35 and 40; (2) 26 U.S.C. Chapters 51 and 52; (3) 26 U.S.C. Chapter 53, as amended; (4) 26 U.S.C. Chapters 61 through 80, as amended; (5) 27 U.S.C. Chapter 8, as amended (Federal Alcohol Administration Act); (6) 18 U.S.C. Chapter 40; (7) 18 U.S.C. Chapter 44; (8) 18 U.S.C. Chapter 59; (9) 18 U.S.C. App. 1201–1203 (Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by Title III of the Gun Control Act of 1968); (10) 22 U.S.C. section 414, (Mutual Security Act of 1954, as amended); (11) 5 U.S.C. sections 901 and 903, 5 U.S.C. App. (Reorganization Plan of 1950), Treasury Order 221, 5 U.S.C. section 301.

PURPOSE(S):

The purpose of this system is to suppress traffic in illicit untaxpaid distilled spirits; to enforce the Federal laws relating to the illegal possession and use of firearms, destructive devices, explosives, explosive materials; and to assist Federal, state, local and foreign law enforcement agencies in reducing crime and violence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) Employees of other government agencies when required or authorized to be released by statute, regulations or Executive Order; (2) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (3) appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal laws relating to the hiring or retention of an employee; issuance of security clearance, license, contract, grant or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) INTERPOL and similar criminal intelligence gathering organizations for the purpose of identifying and suppressing the activities of international and national criminals and terrorists; (6) appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (7) insurance companies making determinations regarding claims in cases that the Bureau has conducted or is conducting an arson investigation; (8) a congressional office in response to an inquiry of the individual to whom the record pertains; (9) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (10) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in security filing cabinets. Inactive records stored in file folders at Federal Records Centers. Records also stored on magnetic tape and disk at the National Tracing Center and at the Science and Technology Branch at Bureau Headquarters. Records are stored in on–line mass computer storage at Newington, Virginia (Treasury Enforcement Communications System (TECS)).

RETRIEVABILITY:

Records are retrievable by name, date of birth, social security number, unique identifier, investigation number, serial number of firearm, or a combination of any of these; plus date and geographical location of incident giving rise to investigation.

SAFEGUARDS;

Direct access restricted to personnel in Department of Treasury in the performance of their duty. Transmitted to routine users on a "need to know" basis and to others upon verification of the substance and propriety of the request. Stored in lockable file cabinets in rooms locked during non–duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 23 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco and Firearms Records Control Schedules numbers 101 and 201 and disposed of by shredding or burning. Records on tape or on–line mass storage are disposed of by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director (Enforcement), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

The Director of the Bureau of Alcohol, Tobacco and Firearms has exempted this system of records from compliance

with the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(H).

RECORD SOURCE CATEGORIES:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(I).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Exempt under 5 U.S.C. 552a (j) and 31 CFR 1.36.

Treasury/ATF .005

SYSTEM NAME:

Freedom of Information Requests—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are requesting information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence pursuant to the Freedom of Information Act, internal processing documents and memoranda, referrals and copies of requested records, and Chief Counsel and Regional Counsel memoranda and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, 5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to other agencies when required for coordination of response or referral; (2) disclose information to the Department of Justice for defending law suits; (3) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of requester(s) and date of request.

SAFEGUARDS;

Filed in filing cabinet and released only to individuals with legitimate right to review.

RETENTION AND DISPOSAL:

In accordance with the provisions of the Act and Departmental records management procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Disclosure Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

See System manager.

RECORD ACCESS PROCEDURES:

See System manager.

CONTESTING RECORD PROCEDURES:

See System manager.

RECORD SOURCE CATEGORIES:

Individuals who make Freedom of Information Act requests. Federal officials responding to Freedom of Information Act requests and documents from official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/ATF .006

SYSTEM NAME:

Internal Security Record System—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Present employees of the Bureau of ATF. (2) Former employees of the Bureau of ATF. (3) Applicants for employment. (4) Non–Bureau employees involved in criminal acts toward Bureau employees and Bureau property. (5) Individuals who were interviewed by Internal Affairs Special Agents. (6) Contract employees involved in integrity matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records containing investigative material compiled for law enforcement purposes including reports relating to: (a) Conduct of employees and contract employees. (b) Integrity of employees. (2) Records containing investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information including reports relating to security clearances of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 201, Executive Order 10450, Executive Order 11222.

PURPOSE(S):

This system is used to assure the Bureau Director, the Department of the Treasury, and the public that the Bureau is taking strong and vigorous steps to maintain the highest standards of integrity, loyalty, conduct, and security among Bureau personnel and contract employees. When a criminal investigation results in a compilation of information contained in this system, the information so compiled shall be transferred to the ATF Criminal Investigation Report System and shall become a part of that system for all purposes of the Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) Employees of other government agencies when required or authorized to be released by statute, regulations or Executive Order; (2) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (3) appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or

regulation; (6) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in security filing cabinets and computer system (hard disk). Inactive records stored in file folders at Federal Records Center.

RETRIEVABILITY:

Records are retrievable by name.

SAFEGUARDS;

Direct access restricted to personnel in Department of the Treasury in the performance of their duty. Transmitted to routine users on a "need to know" basis and to others upon verification of the substance and propriety of the request. Stored in lockable metal file cabinets in rooms locked during non–duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules Numbers 1 through 20 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco and Firearms Records Control Schedules numbers 101 and 201 and disposed of by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director (Office of Inspection), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Employees of this Bureau; (2) Internal Investigative report forms; (3) Witnesses; (4) Informants; (5) Federal, state and local enforcement agencies; (6) Employers; (7) Educational institutions; (8) Credit agencies; (9) Neighbors; (10) References; (11) Professional Organizations; (12) Other government agencies; (13) Claimants; (14) Victims.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions exempt under 5 U.S.C. 552a (k) (relating to security clearances) and 5 U.S.C. 552a (k)(2) (relating to conduct and integrity) and 31 CFR 1.36.

Treasury/ATF .007

SYSTEM NAME:

Personnel Record System—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Components of this record system are geographically dispersed throughout the Bureau's field offices. A list of field offices is available by writing to the Chief, Disclosure Branch, Room 8290, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Present Employees of the Bureau of ATF. (2) Former Employees of the Bureau of ATF. (3) Applicants for employment with ATF.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Allotment and Dues. (2) Annual Tax Reports. (3) Applicants for employment. (4) Applications for reassignment. (5) Awards, honors, and fellowship records. (6) Classification appeal records. (7) Death claim records. (8) Educational history. (9) Employee indebtedness records. (10) Employees qualified as Grievance Examiners. (11) Employee Suggestions. (12) Employee history. (13) Employee relations case file. (14) Equal employment opportunity case file. (15) Health maintenance records. (16) Insurance records. (17) Military history. (18) Occupational injuries, disabilities, and Worker's Compensation Records. (19) Official personnel folder. (20) Outside employment and identification numbers, business or professional records. (21) Outside employment. (22) Outside financial interests. (23) Overtime and/or Premium Pay records. (24) Performance evaluation records. (25) Personal history. (26) Position description records. (27) Promotion/Selection Certificates Records. (28) Property custody records. (29) Retirement records. (30) Records of security clearance. (31) Statement of career goals. (32) Supervisory or managerial potential records. (33) Temporary assignments and details. (34) Time application reports and records. (35) Training record. (36) U.S. Savings Bond participation records. (37) Upward mobility applications. (38) Vehicle accidents. (39) Withholding tax records. (40) Work schedule records. (41) Chief Counsel and Regional Counsel memoranda and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. Chapter 29, Subchapter II. (2) 5 U.S.C. Chapters 31 and 33. (3) 5 U.S.C. Chapter 43. (4) 5 U.S.C. Chapter 45. (5) 5 U.S.C. Chapter 51. (6) 5 U.S.C. Chapter 55, subchapter III. (7) 5 U.S.C. Chapter 61. (8) 5 U.S.C. Chapter 75. (9) 5 U.S.C. Chapter 83. (10) 5 U.S.C. Section 301. (11) 5 U.S.C. 4503. (12) 5 U.S.C. Section 5101 – 5115. (13) 5 U.S.C. Section 7151 – 7154. (14) 5 U.S.C. Section 7901. (15) Public Law 92 – 261 (Equal Employment Act of 1972). (16) Pub. L. 93 – 579. (Federal Employees Compensation Act). (17) Occupational Safety and Health Act of 1970. (18) Executive Order 10561. (19) Executive Order 11222. (20) Executive Order 11478. (21) Executive Order 11491.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) Employees of government agencies when required or authorized to be released by statute, regulations or Executive Order; (2) any third party, to the extent necessary, to collect relevant information from the third party, provided that the information is needed by the Bureau to render a decision in regard to a personal matter; (3) appropriate Federal, state, local or foreign agencies responsible for enforcing administrative, civil, or criminal laws; hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) a

congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (8) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in security filing cabinets. Inactive records stored in file folders at Federal Records Centers. Records also stored on magnetic tape at the IRS Data Center, Detroit, MI. Records are stored in on–line mass computer storage at San Diego, CA (Treasury Enforcement Communications System).

RETRIEVABILITY:

Records are retrievable by name, date of birth, social security number, employee identification number, or a combination of any of these four.

SAFEGUARDS;

Direct access restricted to personnel in Department of Treasury in the performance of their duty. Transmitted to routine users on a "need to know" basis or where "a right to access" is established, and to others upon verification of the substance and propriety of the request. Stored in lockable file cabinets in rooms locked during non–duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 23 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco and Firearms Records Control Schedules numbers 101 and 201 and disposed of by shredding, burning or by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director (Management)/ Chief Financial Officer, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

The Director of the Bureau of Alcohol, Tobacco and Firearms has exempted this system of records from compliance with the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

The Director of the Bureau of Alcohol, Tobacco and Firearms has exempted this system of records from compliance with the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Administrative Records. (2) Applicants for employment with the Bureau. (3) Acquaintances. (4) Business and professional associates. (5) Creditors. (6) Criminal records. (7) Educational Institutions attended. (8) Employee records. (9) Equal Employment Opportunity Commission. (10) Financial institutions. (11) Fiscal records. (12) Former employees. (13) Former employers. (14) Inspection records. (15) Internal investigation reports. (16) Internal Revenue Service. (17) Military records. (18) Outside employers. (19) Physicians. (20) Police reports. (21) Position classification specialists. (22) Psychiatrists. (23) References. (24) Supervisors. (25) Training officers. (26) Unions, accredited. (27) Office of Personnel Management. (28) Witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Exempt under 5 U.S.C. 552a (k) and 31 CFR 1.36.

Treasury/ATF .008

SYSTEM NAME:

Regulatory Enforcement Record System—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Components of this system of records are also geographically dispersed throughout ATF's district and field offices. A list of field offices is available by writing to the Chief, Disclosure Branch, Room 8290, 650 Massachusetts Avenue, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who have been issued permits or licenses, have filed applications with ATF, or have registered with ATF as: (a) Brewers; (b) Claimants for refund, abatement, credit, allowance or drawback of excise or special occupational taxes; (c) Collectors of firearms or ammunition; (d) Importers of firearms or ammunition, and (e) Users of explosive materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing investigative material compiled for law enforcement purposes which may consist of the following: (1) Abstracts of offers in compromise. (2) Administrative law judge decisions. (3) Assessment records: (a) Notices of proposed assessments. (b) notices of shortages or losses. (c) notices to IRS to assess taxes. (d) recommendation for assessments. (4) Claim records: (a) claims. (b) letters of claim rejection. (c) sample reports. (d) supporting data. (e) vouchers and schedules of payment. (5) Comments on proposed rulemakings. (6) Complaints from third parties. (7) Correspondence concerning records in this system and related matters. (8) Financial statements. (9) Inspection and investigation reports. (10) Joint demands on principals and sureties for payment of excise tax liabilities. (11) Letters of reprimand. (12) Lists of permittees and licensees. (13) Lists of officers, directors and principal stockholders. (14) Mailing lists and addressograph plates. (15) Notices of delinquent reports. (16) Offers in compromise. (17) Operation records: (a) operating reports. (b) reports of required inventories. (c) reports of thefts or losses of firearms – who maintains records. (d) reports of thefts of explosive materials – who maintains records. (e) transaction records. (f) transaction reports. (18) Orders of revocation, suspension or annulment of permits or licenses. (19) District and Chief Counsel opinions and memoranda. (20) Reports of violations. (21) Permit status records. (22) Qualifying records: (a) access authorizations. (b) advertisement records. (c) applications. (d) bonds. (e) business histories. (f) criminal records. (g) diagrams of premises. (h) educational histories. (I) employment histories. (j) environmental records. (k) financial data. (l) formula approvals. (m) label approvals. (n) licenses. (o) notices. (p) permits. (q) personal references. (r) plant profiles. (s) plant capacities. (t) plats and plans. (u) registrations. (v) sample reports. (w) signature authorities. (x) special permissions and authorizations. (y) statements of process. (23) Show cause orders. (24) Tax records: (a) control cards relating to periodic payment and prepayment of taxes. (b) excise and special tax returns. (c) notices of tax discrepancy or adjustment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 26 U.S.C. 5172. (2) 26 U.S.C. 5271 (b)(1). (3) 26 U.S.C. 5356. (4) 26 U.S.C. 5401. (5) 26 U.S.C. 5417. (6) 26 U.S.C. 5502 (b). (7) 26 U.S.C. 5511 (3). (8) 26 U.S.C. 5521 (a). (9) 26 U.S.C. 5179 (a). (10) 22 U.S.C. 204 (c). (11) 26 U.S.C. 5105. (12) 26 U.S.C. 5275. (13) 26 U.S.C. 5301 (b). (14) 26 U.S.C. 5132. (15) 26 U.S.C. 5042 (a)(2). (16) 26 U.S.C. 7011. (17) 26 U.S.C. 5712. (18) 18 U.S.C. 923 (a). (19) 18 U.S.C. 923 (b). (20) 18 U.S.C. 843 (a). (21) 22 U.S.C. 414. (22) 26 U.S.C. 4401 (a). (23) 26 U.S.C. 6001. (24) 26 U.S.C. 6011 (a). (25) 26 U.S.C. 5001. (26) 26 U.S.C. 5021 – 5023. (27) 26 U.S.C. 5041. (28) 26 U.S.C. 5051. (29) 26 U.S.C. 6201. (30) 26 U.S.C. 5008. (31) 26 U.S.C. 5044. (32) 26 U.S.C. 5056. (33) 26 U.S.C. 5705. (34) 26 U.S.C. 6423 (b). (35) 26 U.S.C. 5009 (a). (36) 26 U.S.C. 5006 (a). (37) 26 U.S.C. 5055. (38) 26 U.S.C. 5062 (c). (39) 26 U.S.C. 5106. (40) 26 U.S.C. 5131 (c). (41) 26 U.S.C. 5064. (42) 26 U.S.C. 7122. (43) 27 U.S.C. 207. (44) 18 U.S.C. 843 (d). (45) 18 U.S.C. 923 (f). (46) 27 U.S.C. 204 (e). (47) 26 U.S.C. 5312 (a). (48) 26 U.S.C. 5042 (a)(3). (49) Reorganization Act of 1949; 5 U.S.C. Sections 901 *et seq.*; Revenue Act of 1951, Section 616; Treasury Department Order 221 (37 F.R. 11696, dated June 19, 1972). (50) 5 U.S.C. 301. (51) 26 U.S.C. 5181.

PURPOSE(S):

The purpose of this system is to determine suitability, eligibility or qualifications of individuals who are engaged or propose to engage in activities regulated by ATF; achieve compliance with laws under ATF's jurisdiction; assure full collection of revenue due from legal industries; eliminate commercial bribery, consumer deception and other improper trade practices in the distilled spirits, beer and wine industries; interact with Federal, state and local governmental agencies in the resolution of problems relating to industrial development, revenue protection, public health, ecology, and other areas of joint jurisdictional concern. When a criminal investigation results a compilation of information contained in this system of records, the information shall be transferred to the Treasury ATF – Criminal Investigation Report System and shall become part of that system for all purposes of the Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) Employees of other governmental agencies when required or authorized to be released by statute, regulations or Executive Order; (2) any third party to the extent necessary to collect or verify information pertinent to the Bureau's decision to grant, deny or revoke a license or permit; to initiate or complete an investigation of violations or alleged violations of laws and regulations administered by the Bureau; (3) appropriate Federal, state, local or foreign agencies for the purpose of enforcing administrative, civil or criminal laws; hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) INTERPOL and similar national and international intelligence gathering organizations for the purpose of identifying international and national criminals involved in consumer fraud, revenue evasion or crimes; (6) foreign governments in accordance with formal or informal international agreements; (7) appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (8) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (10) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in filing cabinets; card forms in card filing cabinets; and on magnetic tapes or microfiche at ATF Headquarters, or Department of the Treasury.

RETRIEVABILITY:

Records are retrievable by name, permit or license number, by document locator number, or by employer Identification Number (EIN).

SAFEGUARDS;

Direct access restricted to personnel in the Department of Treasury in the performance of their duty. Transmitted to routine users on a "need to know" basis and others upon verification of the substance and propriety of the request. Stored in file cabinets in rooms locked during non–duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 20 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco and Firearms Records Control Schedules numbers 101 and 201 and disposed of by shredding, burning or by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Associate Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Acquaintances. (2) Bureau Personnel. (3) Business and Professional Associates. (4) Creditors. (5) Criminal Records. (6) Financial Institutions. (7) Former Employers. (8) Internal Revenue Service. (9) Military Records. (10) Physicians. (11) Psychiatrists. (12) References. (13) Police Reports. (14) Witnesses. (15) Federal Law Enforcement Agencies. (16) State Law Enforcement Agencies. (17) Local Law Enforcement Agencies. (18) State Regulatory Agencies. (19) Federal Regulatory Agencies. (20) Local Regulatory Agencies. (21) Chief Counsel's Opinions. (22) Regional Counsel's Opinions. (23) Chief Counsel's Memoranda. (24) Regional Counsel's Memoranda. (25) Field Investigation Reports. (26) Third Parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Exempt under 5 U.S.C. 552a (k)(2) and 31 CFR 1.36.

Treasury/ATF .009

SYSTEM NAME:

Technical and Scientific Services Record System—Treasury/ATF.

SYSTEM LOCATION:

Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Components of this record system are geographically dispersed throughout Bureau of Alcohol, Tobacco and Firearms' field offices. A list of field

offices is available by writing to the Chief, Disclosure Branch, Room 8290, 650 Pennsylvania Avenue, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants to register firearms under the National Firearms Act. (2) Applicants for Surplus Military Firearms under the Director of Civilian Marksmanship Program. (3) Importers of implements of war as defined under the Mutual Security Act of 1954 and the Arms Export Control Act of 1976. (4) Licensed importers registered under the Mutual Security Act of 1954 and the Arms Export Control Act of 1976. (5) Manufacturers of National Firearms Act who are exempt from payment of Special (Occupational) tax provisions. (6) Non–Bureau chemists certified to make analysis of alcoholic beverages. (7) Persons involved in explosives tagging and detection program. (8) Registered owners of National Firearms Act firearms. (9) Special (Occupational) taxpayers as defined under Title II of the Gun Control Act of 1968. (10) Victims of explosives. (11) Individuals involved in Government funded research projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Alterations of registered National Firearms Act firearms. (2) Applications for surplus military firearms. (3) Applications to register firearms and destructive devices under the National Firearms Act. (4) Applications to import articles on the United States Munitions list. (5) Blueprints. (6) Certifications of payment of Special (occupational) tax payments. (7) Changes of address for owner of firearms registered under the National Firearms Act. (8) Claims for erroneous Special (Occupational) taxes payments. (9) Descriptions of Inventions. (10) Delinquency notices regarding proof of importation of National Firearms Act Firearms. (11) Explosive reports. (12) Non–Bureau chemists' statements of qualification. (13) Patent information. (14) Registrations of firearms and destructive devices under the National Firearms Act. (15) Registration of war trophy firearms. (16) Requests and authorizations for temporary movement and/or temporary storage of National Firearms Act firearms. (17) Technical and scientific data. (18) Transaction records concerning National Firearms Act firearms. (19) Trade secrets. (20) United States Government contracts to manufacturers of National Firearms Act firearms. (21) Chief Counsel and Regional Counsel memoranda and opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 18 U.S.C. Chapter 40; (2) 18 U.S.C. Chapter 44; (3) 18 U.S.C. Section 3056; (4) 26 U.S.C. Sections 6001 (a), 5001, 5008, 5009 (a), 5006 (a), 5021 – 5023, 5041, 5042 (a)(2), 5051, 5053, 5056, 5062 (c), 5705, 6201, 6423 (b), 5105, 5106, 5131(c), 5132, 5172, 5172 (b)(1), 5275, 5301 (b), 5356, 5401, 5417, 5502 (b), 5511 (3), 5521 (a), 5179 (a), 5712, 7011; (5) 27 U.S.C. Sections 204 (c); (6) 26 U.S.C. Chapter 35; (7) Executive Order 10973, as amended by Executive Order 11432.

PURPOSE(S):

The purpose of this system is to provide technical and scientific support and expertise to Criminal and Regulatory Enforcement activities of the Bureau; to other Federal, state, local and foreign law enforcement agencies; and to industries involved in activities regulated by the Bureau. When a criminal investigation results in a compilation of information contained in this system, the information so compiled shall be transferred to the ATF Criminal Investigation Report System and shall become a part of that system for all purposes of the Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) Employees of other governmental agencies when required or authorized to be released by statute, regulations or Executive Order; (2) any third party to the extent necessary to collect or verify information pertinent to the Bureau's decision to grant, deny or revoke a license or permit; to initiate or complete an investigation of violations or alleged violations of laws and regulations administered by the Bureau; (3) appropriate Federal, state, local or foreign agencies, for the purpose of enforcing administrative, civil, criminal laws; hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) INTERPOL and similar national and international intelligence gathering organizations for the purpose of identifying international and national criminals involved in consumer fraud, revenue evasion or crimes; (6) foreign governments in accordance with formal or informal international agreements; (7) appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (8) insurance companies making determinations regarding claims in cases that the Bureau has conducted or is conducting in an arson investigation; (9) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (10) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records stored in file folders in filing cabinets; on 3 x 5 and 5 x 8 cards stored in card file cabinets; on microfilm reels; magnetic tape reels and discs.

RETRIEVABILITY:

Records are retrievable by name, by unique identifier, control number, serial number of National Firearms Act firearms.

SAFEGUARDS:

Stored in file cabinets locked during non–duty hours.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Schedules numbers 1 through 20 issued by the National Archives and Records Administration, and Bureau of Alcohol, Tobacco and Firearms Records Control Schedules numbers 101 and 201 and disposed of by shredding or burning. Records stored on tape discs or on–line mass storage are disposed of by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Associate Director (Regulatory Enforcement Programs), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

The Director of the Bureau of Alcohol, Tobacco and Firearms has determined this system of records to be exempt from compliance with the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Individuals. (2) Companies. (3) Corporations. (4) Firearms Licensees. (5) Explosive Licensees. (6) Explosive Permittees. (7) Bureau personnel. (8) Federal law enforcement agencies. (9) State law enforcement agencies. (10) Local law enforcement agencies. (11) Foreign law enforcement agencies. (12) Federal Regulatory agencies. (13) State Regulatory agencies. (14) Local Regulatory agencies. (15) Non–Bureau Chemists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Exempt under 5 U.S.C. 552a (k)(2) and 31 CFR 1.36.

Billing code: 4810–31–F

Comptroller of the Currency

Treasury/Comptroller .004

SYSTEM NAME:

Consumer Complaint and Inquiry Information System (CCIS)—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Components of the CCIS are geographically dispersed through– out six (6) district offices. (See addresses listed in Appendix of OCC District Offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who file complaints against banks either directly or through second parties, e.g. attorneys, Congressional representatives or others who make inquiries about banks or banking issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records are maintained in three general categories: Correspondence; computer tapes; and hard copies of computer generated reports. Data contained in these records are: The name and address of the writer or their representative; the name and charter number of bank; the date of incoming letter; the date letter received by the OCC; numerical codes identifying the nature of the complaint, the source of the complaint, and the type of resolution; identification of the district and the person assigned to examine the complaint; the resolution date; and, if appropriate, the amount of reimbursement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, et.seq., 5 U.S.C. 301, 15 U.S.C. 41 et.seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Hard copy computerized reports are used to monitor the system, provide data for the Annual Report to Congress and inquiries from other agencies, public and private. Redacted copies of the files may be used in response to Congressional inquiries on specific subjects.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in active use are stored in file cabinets in the processing offices. Resolved complaints and inquiries are stored in the office having primary responsibility for the bank, generally the field office. Complaints regarding banks with over one billion dollars in assets are stored in the appropriate district office. Complaints which appeal the district office's resolution and complaints and inquiries received from Congressional sources are stored in Central Files in the Washington Office or in the Congressional Liaison office. Active computer tapes are secured in the Information Systems and Technology Division and the computerized reports are stored in file cabinets.

RETRIEVABILITY:

Correspondence records are retrieved from the appropriate office using the bank and complainant's or Congressman's or Senator's name. Other records are retrieved using the complainant's or inquirer's name or the identification number assigned to the correspondence.

SAFEGUARDS:

Access to locations where active complaint and inquiry files are located is controlled. Computer tapes are also located in a controlled access location. Inactive files are located in locked file rooms.

RETENTION AND DISPOSAL:

(a) Consumer complaint correspondence generating administrative action is part of the permanent bank record set that is retained at OCC for three calendar years, then transferred to Washington National Records Center (WNRC) and offered to National Archives and Records Administration when 30 years old. (b) Consumer complaints and inquiries of a routine nature are held for two years, then may be transferred to WNRC, and destroyed when five years old. (c) Computer tapes and one record copy of reports are retained in OCC for three years, then transferred to WNRC, and offered to NARA when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Compliance Management, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals who wish to be notified if they are named in the system or to gain access to records maintained in the system may write or call the Director of Compliance Management to obtain this information. They must provide their name, address, name of subject bank, complaint identification number, if available, and the approximate date. The requesting individual will only be provided an affirmative or negative answer. If additional information is requested, procedures under access must be followed.

RECORD ACCESS PROCEDURES:

Access to a record can be requested by writing to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Decisions by the district offices can be appealed to the Director of Compliance Management. Such an appeal is the final level of administrative action available to persons filing complaints.

RECORD SOURCE CATEGORIES:

The initial source is from the person filing a complaint against a national bank or the person making an inquiry about a bank or banking issue. Subsequent sources are from bank correspondence, bank files, or from reports based on on–site investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .012

SYSTEM NAME:

Freedom of Information Index and Log—Treasury/Comptroller.

SYSTEM LOCATION:

Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons making requests under the Freedom of Information Act (FOIA).

CATEGORIES OF RECORDS IN THE SYSTEM:

List of names of persons making requests under the Freedom of Information Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1 and 12 U.S.C. 9, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any party within or outside of the office of the Comptroller of the Currency or the Department of Treasury who wishes to review the Freedom of Information Act request log may do so by contacting or writing to the Director of Communications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

Log is arranged sequentially by case number of a Freedom of Information Act request. Log entries can be sorted by name of requester.

SAFEGUARDS:

Unlocked file cabinet.

RETENTION AND DISPOSAL:

Records are updated periodically to reflect changes and are maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Indicate the location of the Comptroller of the Currency Office where the record might be stored; and (4) Provide at least two items of secondary identification (date of birth, employee identification number, date(s) of employment or similar information).

RECORD ACCESS PROCEDURES:

Persons wishing to review the FOIA log/index should contact the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Submit requests to the Disclosure Officer, Communications at the above address.

RECORD SOURCE CATEGORIES:

Persons making requests under Freedom of Information Act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .013

SYSTEM NAME:

Enforcement and Compliance Information System—Treasury/Comptroller.

SYSTEM LOCATION:

Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities involved in actual or suspected fraudulent activities, or other violations of law, and bank directors, officers and shareholders named in administrative enforcement actions, actual or potential witnesses in investigations and enforcement actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information identifying the individual, describing the known or suspected criminal activity or violation of law enforcement action in which the individual is involved or named, giving the bank name and location, and where applicable, the law enforcement agency to which referred and date referred, indicating if a grand jury subpoena has been issued, indicating other actions and identifying the OCC attorney. These records also include evidentiary material, transcripts of testimony, documents prepared for administrative or court proceedings, correspondence and staff memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 481, 1817(j), 1818, and 1820; 15 U.S.C. 78c(a)(34), 78l(I), 78u, 78o–4

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used to: (1) Provide the Department of Justice with periodic reports which indicate the number, place and individual identity of outstanding potential criminal violations of the law which have been referred to the Department; (2) provide the Office of the Comptroller of the Currency with statistical information to respond to general information requests from the Congress; (3) disclose information to foreign governments in accordance with formal or informal international agreements; (4) disclose information to the news media in accordance with guidelines contained in 28 CFR 50.2 which covers release of information relating to civil and criminal proceedings; (5) disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information or records to any other appropriate domestic or foreign governmental agency or self–regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order or license; (7) disclose information to a court, magistrate, or administrative tribunal, including disclosure to opposing counsel or potential or actual witnesses in the course of discovery, in litigation or settlement negotiations, or in response to a subpoena, where relevant or potentially relevant to the processing; (8) disclose information of Federally insured financial institutions in connection with such institutions' hiring or retention of an employee, when considered appropriate; (9) disclose, when considered, appropriate, information to a bar association, the American Institute of Certified Public Accountants, or other professional organization performing similar functions, for possible disciplinary action; (10) disclose information to members of Congress in response to an inquiry made at the request of the individual to whom the record pertains; (11) disclose information to any person with whom the Comptroller contracts to reproduce, by typing, photocopying or other means, any record within this system for use by the Comptroller and its staff in connection with their official duties or to any person who is utilized by the Comptroller to perform clerical or stenographic functions relating to the official business of the Comptroller.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be maintained in general correspondence files, enforcement actions and investigatory files, criminal referral files, in card files and on computer disks.

RETRIEVABILITY:

Some records will be indexed by bank name and location. In addition, records on computer discs or in enforcement action, investigatory, or criminal referral files will be indexed by name of individual. Records on computer discs will also be indexed by code provision known or suspected to be violated.

SAFEGUARDS:

Correspondence files are stored in the Office's Central File room and may only be retrieved by authorized personnel. Enforcement, investigation, and criminal referral files are stored in lockable file cabinets and accessible only to authorized personnel. Card files will be stored in lockable file cabinets. Computer discs will be accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Enforcement and Compliance Division, and Director, Securities and Corporate Practices Division, Law Department, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Certain records in this system are exempt from notification requirements under 5 U.S.C. 552a (k)(2) of the Act as relating to investigatory material compiled for law enforcement purposes. Requests relating to records not subject to the exemption should contain the following elements: (1) Identity of the records system; (2) identity of the category and type of records sought; (3) the location of the Comptroller of the Currency office where the record might be stored; and (4) at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Submit requests to the Disclosure Officer, Communications Division, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Submit requests to the Disclosure Officer, Communications Division, 250 E Street, SW, Washington, DC 20219.

RECORD SOURCE CATEGORIES:

Examinations of national banks by national bank examiners; investigations performed by agency attorneys and notifications from the Department of Justice, other Federal and State law enforcement agencies, and other Federal and State bank regulatory agencies; filings made with the Office of the Comptroller of the Currency pursuant to law; communications and documents received by the agency in the course of its bank supervisory activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Components of this system have been designated as exempt from 5 U.S.C. 552a (j)(4). To the extent that the exemption under 5 U.S.C. 552a (j)(4) does not apply, the exemption under 5 U.S.C. 552a (k)(2) applies.

Treasury/Comptroller .014

SYSTEM NAME:

Personnel Security/Investigation Files/Employee/Applicant Reference File—Treasury/Comptroller.

SYSTEM LOCATION:

Comptroller of the Currency, Human Resources Division, 250 E Street, SW, Washington, DC 20219. Components of this system are geographically dispersed throughout six (6) district offices. Contact District Offices for addresses of field offices within their jurisdiction. (See addresses listed in Appendix of OCC District Offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with and employees of the Comptroller of the Currency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Compilation of material for a determination regarding employability and/or Security Clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1 and 9; 5 U.S.C. 301; and EO 10450 and 12356.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Locked steel file cabinets located in a room secured with a key lock.

RETRIEVABILITY:

Filed in alphabetical order.

SAFEGUARDS:

Locked Steel file cabinets located in a room secured with a key lock. Only the security officer within the Human Resources area have access.

RETENTION AND DISPOSAL:

Materials are retained for three months after employee leaves and the records are disposed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Comptroller for Resource Management, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Submit requests to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by subject of the record—employers, co–workers, friends, neighbors and associates, and finances.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system have been designated as exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a (k)(5).

Treasury/Comptroller .015

SYSTEM NAME:

Chain Banking Organizations System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219; 1114 Avenue of the Americas, Suite 3900, New York, NY 10036; Marquis One Tower, Suite 600, 245 Peachtree Center Avenue N.E., Atlanta, GA 30303; One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605; 2345 Grand Avenue, Suite 700, Kansas City, MO 64108; 1600 Lincoln Plaza, 500 North Akard, Dallas, TX 75201; 50 Fremont Street, Suite 3900, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who directly, indirectly, or in concert with others, own and/or control a chain banking organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Chain Banking Organizations System consists of word processing and microprocessing programs which perform editing, updating and reporting functions on two types of data: (1) Name of an individual (or group of individuals acting in concert) that owns or controls a chain banking organization and (2) information concerning individual chain banks, such as; name, location, charter number, charter type, date of last examination, percentage of outstanding stock owned by controlling individual or group and, if applicable, name of intermediate holding entity and percentage of it held by controlling individual or group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 481, 12 U.S.C. 1817(j).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The System may be used to: (1) Disclose information about specific chain banking organizations to other financial institution supervisory authorities for: (a) Coordination of examining resources when the chain banking organization is composed of banks or financial institutions subject to multiple supervisory jurisdiction; (b) coordination of evaluations and analysis of the condition of the consolidated chain group; (c) coordination of supervisory, corrective or enforcement actions. (2) Disclose information to the extent provided by law or regulation and as necessary to report any apparent violations of law to appropriate law enforcement agencies. (3) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (4) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit. (5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings. (6) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in a computer data base and on computer floppy disks or hard copy printouts stored in file cabinets.

RETRIEVABILITY:

All retrievable records are indexed by district location, state, alphabetically by surname of the individual(s) and/or entity controlling the chain banking organization.

SAFEGUARDS:

Access to records in electronic storage systems is restricted by user identification procedures and passwords which limit access to authorized employees of the Office. Computer disks and hard copy printouts will be stored in locked file cabinets when the Office is vacant.

RETENTION AND DISPOSAL:

Records are generally maintained in electronic storage disks in an off–line capacity until needed. Certain records are archived in off–line storage. All records, including those in printout form, are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Deputy Comptroller for Bank Supervision Operations, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20019. District Offices – The Deputy Comptroller for each District is responsible for assuring the accuracy and routine maintenance of that portion of the System applicable to the district.

NOTIFICATION PROCEDURE:

Individuals who wish to be notified if they are named in the system shall submit a signed, written request to the appropriate District Office (or to the System Manager at the address listed). The request must contain: (1) The requestor's name and address; (2) the name of the system of records; and (3) the name and location of the bank(s) which they control individually or in concert with others. In order to avoid excessive delay and unneeded correspondence, individuals requesting notification should simultaneously request access to records pertaining to them.

RECORD ACCESS PROCEDURES:

Portions of this system of records may be accessed under the Privacy Act for purposes of inspection by identified controlling individuals for the express purpose of verifying that their relationships are accurately recorded.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest a record in the system must submit a signed written request to the Senior Deputy Comptroller for Bank Supervision Operations, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The requests should contain: (1) The name and address of the individual contesting the record; (2) the name of the system of records; (3) the name and location of the chain bank(s) which they reportedly control individually or in concert with others; and (4) the specific information being contested and the reason for contesting (it is believed to be inaccurate, irrelevant, incomplete, etc.).

RECORD SOURCE CATEGORIES:

Information that identifies chain banking groups primarily is gathered from: (1) Examination reports and related materials; (2) regulatory filings; and (3) Change in Bank Control Notices filed pursuant to 12 U.S.C. 1817 (j).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .016

SYSTEM NAME:

Litigation Information System (LIS)—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

LIS covers: (a) Individuals who file administrative or judicial claims against the OCC and/or officials or employees of the OCC in their capacity as such, against whom the OCC files claims, or who are parties to claims in which the OCC participates, but is not a party; (b) All other individuals, including actual or potential witnesses, involved in litigation brought by or against the OCC or in which the OCC participates as a nonparty; (c) persons submitting requests for testimony and/or production of documents pursuant to 12 CFR 4.19.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records generated in connection with the litigation including evidentiary material, transcripts of testimony, documents prepared for administrative or judicial proceedings, correspondence, requests for information pursuant to 12 CFR 4.19, and staff memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1 and 481; 15 U.S.C. SS78c(a)(34), 78l(I), 78o–4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in these records may be used to: (1) Provide the Department of Justice with pleadings, memoranda, correspondence, litigation reports, and other documents that will assist it in the preparation of litigation involving the OCC; (2) disclose information to the news media in accordance with guidelines contained in 28 CFR 50.2, which covers the release of information relating to civil and criminal proceedings; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or potential or actual witnesses in the course of discovery, in litigation or settlement negotiations, or in response to a subpoena, where relevant or potentially relevant to the proceeding; (4) provide information or records to any other appropriate domestic or foreign governmental agency or self–regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing statutes, rules, regulations or orders pursuant thereto; (5) disclose information to bank and consumer groups; (6) disclose information to any person with whom the OCC contracts to reproduce, by typing, photocopy or other means, any record within the system of records for use by the OCC and its staff in connection with their official duties or to any person who is utilized by the OCC to perform clerical or stenographic functions relating to the official business of the OCC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Recor comprising this system are maintain in file folders kept in lockable file cabinets.

RETRIEVABILITY:

Access to the records is by name of the individual litigant(s).

SAFEGUARDS:

Records are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are updated periodically to reflect changes and are maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Litigation Division, Law Department, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in the system or to gain access to records maintained in the system must submit a request containing the following elements: (1) Identity of the record system; (2) identity of the category and type of records sought; (3) the location of the Comptroller of the Currency office where the record might be stored; and (4) at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Submit comments to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

RECORD SOURCE CATEGORIES:

Individuals who file claims against or otherwise are involved in legal proceedings with the OCC and/or an official or employee thereof in his or her capacity as such; communications and documents generated or received by the OCC, its officials or employees in the course of the legal proceedings; applications and other filings made with the OCC pursuant to law.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .221

SYSTEM NAME:

Professional Qualifications Records for Municipal Securities Principals, Municipal Securities Representatives, and U.S. Government Securities Associated Persons—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219. Records stored in computerized files are maintained off premises at the National Association of Securities Dealers, 9513 Key West Avenue, Rockville, Maryland 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or seek to be associated with a municipal securities dealer or a government securities broker/dealer which is a national or District of Columbia bank, or a department, division, or subsidiary of any such bank, in the capacity of municipal securities principals, municipal securities representatives, or government security associated person.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain identifying information, detailed educational and occupational histories, certain professional qualifications, examination information, disciplinary histories, and information concerning the termination of employment of individuals covered by the system. Identifying information includes name, address history, date and place of birth, and may include Social Security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 15B(c), 17 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(5), 78o–5(a)(1)(B)(ii), 78q and 78w); and the general authority of the National Banking Laws, 12 U.S.C. 1 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in these records may be subject to the following uses: (1) Referral to the appropriate governmental authority, whether Federal, State, local, or foreign, or to the appropriate self–regulatory organization, of such information as may indicate a violation or potential violation of law, regulation or rule. (2) Referral to the appropriate court, magistrate, or administrative law judge of such information as may be relevant to proceedings before any such court or judicial officer. (3) Disclosure of such information as may aid in the resolution of any action or proceeding: (a) In which the Federal securities or banking laws are at issue; (b) In which the propriety of any disclosure of information contained in the system is at issue; or (c) To which the Comptroller of the Currency or a past or present member of its staff is a party or otherwise involved in an official capacity. (4) Disclosure to a Federal, State, local, or foreign governmental authority, or to a self–regulatory organization, of such

information as may be necessary to obtain from such authority or organization additional information concerning the qualifications of an individual covered by the system. (5) Disclosure of such information as may be necessary to respond to a request from a Federal, State, local, or foreign governmental authority, or from a self–regulatory organization, for information needed in connection with the issuance of a license, granting of a benefit, or similar action by such authority or organization affecting an individual covered by the system. (6) Disclosure of such information as may be necessary to respond to any Congressional inquiry undertaken at the request of an individual covered by the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on magnetic media.

RETRIEVABILITY:

Records are indexed by name of individual, and by a numerical identifier assigned by the National Association of Securities Dealers

SAFEGUARDS:

File folders are stored in lockable metal cabinets and computer memory discs are accessed only by Authorized Personnel.

RETENTION AND DISPOSAL:

Records are updated periodically to reflect changes and maintained thirty (30) years.

SYSTEM MANAGER(S) AND ADDRESS:

Capital Markets Division, Office of the Chief National Bank Examiner, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Inquiries, including name, date and place of birth, should be addressed to the System Manager. Inquirers may be required to include a notarized statement attesting to identity.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Those individuals, and municipal and U.S. Government securities dealers described in the section entitled "Categories of Individuals Covered by the System" provide the bulk of the information in the system. Additional input is provided by Federal, State, local, and foreign governmental authorities, and by self–regulatory organizations, which regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .300

SYSTEM NAME:

Administrative Personnel System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Components of this system are geographically dispersed throughout six (6) district offices. Contact District Offices for addresses of field offices within their jurisdiction. (See addresses listed in Appendix of OCC District Offices.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment related administrative records. This system contains internal control type information about employees and contractual users of agency facilities and systems. The type of records found within this system are: List of individuals who are issued building passes, credit or identification cards, parking permits, accountable property and travel documents; lists of individuals who perform specialized duties (building wardens, relocation teams, safety officers, and civil defense officers); reports about individuals who are involved in accidents while employed, and authorization codes for use of internal computer systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority — 12 U.S.C. 1 and 9, 5 U.S.C. 301. Specific authority is derived from a number of laws, regulations and Executive Orders. Individuals wishing to obtain more detailed information should write to the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) The Office of Personnel Management (OPM) for the purpose of complying with regulations issued by the OPM; (2) the General Services Administration (GSA) for the purpose of complying with regulations issued by the GSA; (3) the Department of Labor for the purpose of investigating claims for work related injuries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, lists and forms.

RETRIEVABILITY:

Records are retrieved primarily by name (filed alphabetically by category of records); secondary identifiers are used to assure accuracy (date of birth, social security number or employee identification number).

SAFEGUARDS:

Records are stored in lockable cabinets or secure rooms; access is limited to officials who have a need for the information; employees are trained to make only authorized disclosures.

RETENTION AND DISPOSAL:

Personnel–type records are retained for thirty (30) days after termination. All other records are retained and destroyed in accordance with published disposition and retention schedules. Individuals wishing more detailed information should write to the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Deputy Comptroller for Administration, 250 E Street, SW, Washington, DC 20219; Director, Multinational and Regional Bank Supervision, 250 E Street, SW, Washington, DC 20219 (multinational records only).

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Indicate the location of the Comptroller of the Currency office where last employed; (4) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Access to a record can be requested by writing to the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Submit requests to the Disclosure Officer at the above address.

RECORD SOURCE CATEGORIES:

The information in these records was provided by or verified by the subject of the record, employers and co–workers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .310

SYSTEM NAME:

Financial System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency and Financial Management Division, 250 E Street, SW, Washington, DC 20219. Components of this system are geographically dispersed throughout six (6) district offices as well as Washington, DC. (See addresses listed in appendix of OCC District Offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees of the Office of the Comptroller of the Currency.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains payroll and disbursement type records including: Travel records, debt information, and information about employees. The types of records found within this system are: Award, allowance, salary, fund advancement justification and disbursement records; personnel information; leave information; payroll deductions for taxes, life and health insurance, financial institutions, retirement funds including the Federal Employees Retirement System and the Civil Service Retirement System, Thrift Savings Plan, and charitable groups.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority — 12 U.S.C. 1, 5 U.S.C. 301. Individuals wishing to obtain more detailed information should write to the Deputy Comptroller, Communications, Office of the Comptroller of the Currency, Communications, 250 E Street, SW, Washington, DC 20219.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation, with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520; (2) furnish the Office of Personnel Management (OPM) with data to update the Central Personnel Data File and other statistical reports as required for the purpose of complying with regulations issued by OPM; (3) furnish another Federal agency information to effect interagency salary offset; to furnish another Federal agency information to effect interagency administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other governmental agencies; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to debt collection agencies for collection services; (4) the General Services Administration (GSA) for the purpose of complying with regulations issued by GSA; (5) the General Accounting Office for the purpose of conducting audits; (6) entities designated to receive payroll deductions; (7) Department of Labor to determine eligibility for unemployment benefits; (8) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena, or in connection with criminal law proceedings.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552(b)(12) and section 3 of the Debt Collection Act of 1982; Debt information concerning a government claim against an individual is also furnished in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, magnetic media including computer discs and tapes, microfiche, and hard copy printout. Disbursement records are stored at the Federal Records Center.

RETRIEVABILITY:

Records are retrieved primarily by name (filed alphabetically), or an assigned identification number (Social Security Number or an assigned identification number). Secondary identifiers are used to assure accuracy of data assessed, including date of birth, Social Security number, or employee identification number.

SAFEGUARDS:

File folders are stored in lockable cabinets or secure rooms; access is limited to officials who have a need for the information; employees are trained to make only authorized disclosures. Computer records are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Payroll and disbursement records are retained by the Office in accordance with the Comptroller of the Currency's Comprehensive Records Disposition Schedule. Individuals wishing further information should write to the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Comptroller for Systems and Financial Management, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system or contest any records contained in the system must submit a request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Indicate the location of the Comptroller of the Currency office where last employed; and (4) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Submit request to the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record and OCC employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .320

SYSTEM NAME:

General Personnel System—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street, SW,

Washington, DC 20219. Components of this system are geographically dispersed throughout six (6) District Offices. (See addresses listed in Appendix of OCC District Offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment related biographical and performance material. This category of records is typically identified as personnel type records and contains data about employees and applicants. The records found within this category include: Performance evaluations; educational, employment, medical and military histories; employee benefit applications, forms and claims; travel and relocation claims; locator and emergency contact information; dependent and beneficiary information; physical and qualification descriptions; financial interest statements; personal and family assets, liabilities and other interests in business enterprises.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority — 12 U.S.C. 1 and 9, 5 U.S.C. 301. Specific authority is derived from a number of laws, regulations and Executive Orders. Individuals wishing to obtain more detailed information should write to the Deputy Controller, Communications, 250 E Street, SW, Washington, DC 20219.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record in this system may be disclosed as a routine use to: (1) The Office of Personnel Management (OPM) for the purpose of complying with regulations issued by the OPM; (2) the Veterans Administration (VA) for the purposes of determining veterans preference and pension benefits; (3) the Equal Employment Opportunity Commission for the purpose of providing minority information and case reports; (4) respond to requests from labor organizations for names of employees and identifying information; (5) the Department of Labor for the purpose of reporting health and safety matters; (6) the General Services Administration (GSA) for the purpose of complying with regulations issued by GSA; (7) the Merit Systems Protection Board for the purpose of providing necessary information relating to employee appeals; (8) the Department of Labor to provide information relative to Unemployment Compensation and OWCP claims.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic media, microfiche, printouts, lists and forms.

RETRIEVABILITY:

Records are retrieved primarily by name (filed alphabetically by category of records). Secondary identifiers are used to assure accuracy (date of birth, Social Security number or employee identification number).

SAFEGUARDS:

Records are stored in lockable cabinets, electronic data bases requiring security access codes or secure rooms; access is limited to officials who have a need for the information; employees are trained to make only authorized disclosures. Records maintained with vendors are under contractual obligation to maintain confidentiality.

RETENTION AND DISPOSAL:

Most personnel–type records are retained for thirty (30) days after termination, at which time they are transferred to the Federal Records Center or destroyed. Some records are retained for varying periods of time in accordance with Federal Personnel Manual Regulations. Individuals wishing more detailed information should write to the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Comptroller for Resource Management, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Indicate the location of the Comptroller of the Currency office where last employed or where application for employment was made; (4) Provide at least two secondary identifications (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Submit requests to the Disclosure Officer, Communications, 250 E Street, SW, Washington, DC 20219.

RECORD SOURCE CATEGORIES:

The information contained in these records was provided or verified by the subject of the record, employers, co–workers, friends, neighbors and associates listed as references, financial and educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Comptroller .500

SYSTEM NAME:

Chief Counsel's Management Information System—Treasury/ Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Physical components of this system are also located in district offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested information or action from the Law Department of the Comptroller of the Currency and individuals referenced in documents received by the Law Department in the course of the Agency's bank supervisory functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Chief Counsel's Management Information System consists of one database: The Work Assignment and Control System; Information contained in the system includes, inter alia, name of the author and/or correspondent and the organization to which the author/ correspondent belongs, the date of the correspondence, the city, state and region in which correspondent organization is located, the work type, the bank involved, and the subject.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 9, 12 U.S.C. 481, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in computer data banks, computer tapes and printouts, and in file cabinets.

RETRIEVABILITY:

All records are indexed on a variety of data fields including correspondent name and location, bank name and location, subject, statutory provisions, and date.

SAFEGUARDS:

All records are indexed through computer indices. Only employees within the Law Department with proper user identification and passwords have access to the computer banks. Employees are trained to make authorized disclosures only to those individuals who have a need for the information. Passwords and user IDs are changed frequently.

RETENTION AND DISPOSAL:

Records are generally maintained in the on–line data bank until it is determined that on–line access is not required. Thereafter the records are archived in an off–line storage system. Records in file cabinets are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant to the Chief Counsel, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in the system or to gain access to records maintained in the system must submit a request containing the following elements: (1) Identity of the record system; (2) identity of the category type of records sought; (3) the location of the Comptroller of the Currency Office where the record might be stored; and (4) at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Submit request to the Disclosure Officer, Communications, 250 E Street, SW., Washington, DC 20219. The system contains records which are exempt under 5 U.S.C. 552a (j)(2) or 552a (k)(2).

RECORD ACCESS PROCEDURES:

Same as Notification.

CONTESTING RECORD PROCEDURES:

Same as Notification. Requests should be submitted to the Disclosure Officer, Communications, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

RECORD SOURCE CATEGORIES:

Materials received by the Law Department from various sources including, inter alia, persons involved in sending inquiries to the Law Department and documents received by the Law Department in the course of the Agency's bank supervisory function. The Chief Counsel's Management Information System contains certain records which have been designated as exempt from certain provisions of the Privacy Act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3)(4), (d)(1)(2)(3)(4), (e)(1)(2)(3)(4), (G), (H), and (i), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Appendix A - Addresses of OCC District Offices:

Northeastern District: New York District Office, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036. (212) 819-9860.

Southeastern District: Atlanta District Office, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., N.E., Atlanta, GA 30303. (404) 659-8855.

Central District: Chicago District Office, One Financial Place, Suite 2700, 44 South LaSalle Street, Chicago, IL 60605. (312) 663-8000.

Midwestern District: Kansas City District Office, 2345 Grand Avenue, Suite 700, Kansas City, MO 64108-2683. (816) 556-1800.

Southwestern District: Dallas District Office, 1600 Lincoln Plaza, 500 North Akard, Dallas, TX. (214) 720-0656.

Western District: San Francisco District Office, 50 Fremont Street, Suite 3900, San Francisco, CA 94105. (415) 545-5900.

BILLING CODE: 4810–33–F

Bureau of Engraving and Printing

Treasury/BEP .002

SYSTEM NAME:

Personal Property Claim File—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian officers and employees of the Bureau of Engraving and Printing, former employees and their survivors having claim for damage to or loss of personal property incident to their service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal property damage claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Military Personnel and Civilian Employees' Claims Act of 1964, as amended, Public Law 88–558.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2

which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to Office of Chief Counsel staff.

RETENTION AND DISPOSAL:

Retained three years after case is closed, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals having claim for damage to or loss of personal property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .004

SYSTEM NAME:

Counseling Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees whose actions or conduct warrants counseling.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence relative to counseling information and follow–up reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains, contingent upon that individual signing a release of information form; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide general educational information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked in file cabinets; access is limited to EEO and Employee Counseling Services staff.

RETENTION AND DISPOSAL:

Retained for one year after close of file, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

EEO and Employee Counseling Services Staff Manager, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .005

SYSTEM NAME:

Compensation Claims—Treasury/BEP.

SYSTEM LOCATION:

Compensation Staff, Safety and Health Policy Division, Office of Safety and Health Management, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228. Safety and Occupational Health Staff, Room A117, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees incurring work–connected injuries or illnesses, who make claims under Federal Employee Compensation Act for medical expenses, continuation of pay or disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

All pertinent documentation, including investigative reports, medical reports, forms, letters to BEP Office of Financial Management authorizing continuation of pay, Labor Department reports, etc. relative to work–connected injuries or illnesses of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act, as amended, Pub. L. 93–416.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder, magnetic media and computer disks.

RETRIEVABILITY:

Name and date of injury.

SAFEGUARDS:

Locked file cabinets, locked computers, passwords. Back–up discs locked in file cabinets. Access is limited to Compensation Claims staff and Safety managers.

RETENTION AND DISPOSAL:

Records are retained for three years after last entry, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Safety and Health Policy Division, Office of Safety and Health Management, Bureau of Engraving and Printing, 14th and C Street SW., Washington, DC 20228.

Manager, Safety and Occupational Health Staff, Room A117, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Occupational Health Unit Daily Report, medical providers, employee's supervisor's report, and information provided by the employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .006

SYSTEM NAME:

Debt Files (Employees)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees on whom debt complaints are received.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's name, complaint information, court judgements, counseling efforts, receipts, and final disposition of complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Personnel Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained in locked cabinets; access is limited to Employee and Labor Relations Branch and Payroll, Personnel Services Division personnel.

RETENTION AND DISPOSAL:

Retained for two years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Personnel, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Employees, Complainants, and Court Judgements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .014

SYSTEM NAME:

Employee's Production Record—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current Washington, DC Bureau of Engraving and Printing employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's name, dates, work hours, record of production, history of work assignments, training, work performance, and progress reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 4103 and 4302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in data entry diskettes, file folders and production books.

RETRIEVABILITY:

Indexed by name, work code number and cross–referenced by project number.

SAFEGUARDS:

Maintained in locked cabinets or desks; access is limited to personnel having a "need–to–know."

RETENTION AND DISPOSAL:

Retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel; Chief, Office of Equal Employment Opportunity and Employee Counseling Services; Chief, Office of Personnel; Chief, Office of Currency Production; Chief, Office of Engraving; Chief, Office of Stamp Production; Chief, Office of Production Support; Chief, Office of Procurement; Chief, Office of Production Management; Chief, Office of Communications; Chief Office of Currency Standards; Chief, Office of Environmental Protection; Chief, Office of Advanced Counterfeit Deterrence; Address: Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information furnished by employee, developed by supervisor or by referral document.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .016

SYSTEM NAME:

Employee Suggestions—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees submitting suggestions under the incentive award program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's suggestion, reviewer evaluation and final disposition information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., 4502 (c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the

request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, as well as on computer disks.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in locked file cabinets; access is limited to Compensation Division Personnel, the Chief, Office of Currency Manufacturing, and the employee's supervisor.

RETENTION AND DISPOSAL:

Retained for three years following date of submission, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Personnel, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and the Chief, Office of Currency Manufacturing, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are identified in this system or gain access to records maintained in the system must submit a request containing the following elements: (1) Identification of the record system; (2) identification of the category and types of records sought; (3) at least two items of identification (e.g., name and date of birth, employee identification number, date of employment or similar information). Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employee, employee's supervisor and review committee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .020

SYSTEM NAME:

Industrial Truck Licensing Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees designated to operate self–propelled material and/or machinery handling equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of employee physical examination, testing, license number and issue date for purpose of operating one or more types of material handling equipment used within the Bureau of Engraving and Printing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder and card file.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked file cabinet, access is limited to Industrial Services Division and the Systems and Distribution Division personnel.

RETENTION AND DISPOSAL:

Destroyed three years after license revocation.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Industrial Services Division, Office of Inventory Management, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228, and the Manager, Systems and Distribution Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Supervisor's request, results of physical examination, and data obtained during training or practical tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .021

SYSTEM NAME:

Investigative Files— Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Separated Bureau Employees, Employee Applicants, Visitors to the Bureau, News–Media Correspondents, Contractor and Service Company Employees (Current and Separated).

CATEGORIES OF RECORDS IN THE SYSTEM:

Category: Security Files, Personnel Clearance Requests, Case Files, Bank Shortage Letters, Contractor Files, Currency Discrepancy Reports, Intelligence Files, Stamp Discrepancy Reports, Case Records, Correspondence from the Public concerning Security Matters, Security Files Reference Record, Employee Indebtedness Record, Type of Information: Character references, Police force reports, Previous employment verifications, Newspaper articles, Social Security numbers, Laboratory reports to include handwriting results and latent fingerprint examinations, Law enforcement criminal and subversive record checks, Court records, Security registers, Residency information, Reports of shortages or thefts of Bureau products including subsequent investigations, Personnel records of various types, Fingerprint card, Photograph, Names of individuals including those at contractor plants who

worked on a shortage involving Bureau products, Credit checks, Background investigation reports conducted by Office of Personnel Management, Bureau of Engraving and Printing, the Internal Revenue Service and other Federal Investigative Agencies, Disciplinary action recommended and/or received, Military record forms and extracted information, List of Bureau employees granted security clearances, Processes served, i.e. summons, subpoenas, warrants, etc., Personnel security case numbers, dates—case opened and closed, and recommendations, Certificate of Security Clearance, Reports of violations of Bureau regulations and procedures, Bureau visitor control documents, Correspondence relating to individuals, Claims of indebtedness from firms and collection agencies and other sources, and assorted documents, Tape–recorded testimony, Type of Information: Bureau investigation reports, Information supplied by Law Enforcement agencies, Applicant interview record, Anonymous tips concerning Bureau employees, Official investigative statements, Names of those requesting security assistance and report of the assistance rendered, other pertinent Governmental records, education records and information, Date of Birth and physical description of individual in the files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and implementing Treasury and Bureau Regulations and 31 U.S.C. 427.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders, 3 x 5 Index Cards, 5 x 8 Index Cards, Loose–leaf Binders, Ledgers, Recording Tape, Computer Database Programs, and Microfiche.

RETRIEVABILITY:

Numerically by case number and year, alphabetically by name and social security number, and alphabetically by Company name..

SAFEGUARDS:

Access is limited to Office of Security and Western Currency Facility staff. Records are maintained in locked file cabinets and secured computers.

RETENTION AND DISPOSAL:

Destroyed within 90 days following notification of an employee's death, or, within five years after separation or transfer of incumbent employee; or, five years after expiration of contractual relationship. Product Discrepancy Investigative Reports and Bank Letter Investigative Reports are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228; Head, Police and Security Branch, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are identified in this system or gain access to records maintained in the system must submit a request containing the following elements: (1) Identification of the record system; (2) identification of the category and types of records sought; (3) at least two items of identification (e.g., name and date of birth, employee identification number, date of employment or similar information). Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The sources of the information are the individual concerned and information supplied by Federal, State and local investigative agencies, credit bureaus, financial institutions, court records, educational institutions, and individuals contacted concerning the person being investigated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/BEP .023

SYSTEM NAME:

Motor Vehicle Licensing Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees designated to operate passenger vehicles, trucks, and/or vans for Bureau business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of employee physical examination, testing, license number and issue date for purpose of operating passenger and/or truck vehicles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder and card file.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Kept in locked file cabinets; access is limited to Motor Vehicle Operation Foreman.

RETENTION AND DISPOSAL:

Retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Administrative Services Division, Office of Management Services, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Supervisor's request, results of physical examination, and data obtained during training or practical tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .027

SYSTEM NAME:

Programmable Access Security System (PASS)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228 and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing Employees (Washington, DC. and Fort Worth, Texas); employees of the Bureau of the Public Debt (BPD) who are assigned to work at the 12th and C streets SW. Washington, DC. facility; employees of other U.S. Government agencies who have been cleared for access to the Bureau of Engraving and Printing and issued BEP Access Badges, and contractor and service company employees of the Bureau of Engraving and Printing and the Bureau of Public Debt who have been cleared for access to either bureau.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) The following information is maintained concerning all individuals who are issued BEP and BPD access badges with photographs: Photograph; Full name; Social Security number; date of birth; badge number; badge photograph background color; supervisory status, work telephone; work area number; BEP access clearance level; date BEP access level granted; date last security background investigation was completed; type of last security background investigation conducted; BEP access level; BEP access time zone; date access badge issued; date access badge voided; time, date and location of each passage through a security control point. (B) In the case of BEP and BPD employees and contractors issued "Temporary Access" badges and contractors and other issued "No Escort" badges, in lieu of his/her BEP access badge with photograph, the same information as in paragraph A (above) is kept. (C) Official visitors, contractors, and others issued "Escort Visitor" badges: No information is maintained in the BEP PASS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media and computer printouts.

RETRIEVABILITY:

Numerical by PASS/badge number, alphabetically by last name, and appropriate index by subject.

SAFEGUARDS:

Records are maintained in locked cabinets in a licked room; access is limited to Physical Security Branch staff, Office of Security, Senior management of the Office of Security, the staff of Internal Review Division, Office of Management Control, and at the fort Worth, Texas, facility. On–line CRT terminals are installed in a locked computer room in two (2) 24–hour manned police offices and selected Office of Security staff offices which are locked. These latter terminals are on lines that are manually activated and deactivated in the PASS computer facility. Access to these terminals is limited to Office of Security staff. Passwords further limit the extent of access to computer stored information. BEP, BPD and other U.S. Government agency managers and supervisors have access to information pertaining to their subordinates for official purposes as specified in the Record Source Categories.

RETENTION AND DISPOSAL:

Retention period is for two (2) years.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Physical Security Branch, Office of Security, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228 and Head, Technical Security Support Branch, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are identified in this system or gain access to records maintained in the system must submit a request containing the following elements: (1) Identification of the record system; (2) identification of the category and types of records sought; (3) at least two items of identification (e.g., name and date of birth, employee identification number, date of employment or similar information). Address inquiries to Disclosure Officer, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The individual concerned, his/her supervisor, or an official of the individual's firm or agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .035

SYSTEM NAME:

Tort Claims (Against the United States)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or organizations making claim for money damage against the United States for injury to or loss of property or personal injury or death caused by neglect, wrongful act, or omission of a Bureau of Engraving and Printing employee while acting within the scope of his office or employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal injury and/or property damage claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, Title 28 U.S.C. 2672, Pub. L. 89–506.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to Office of Chief Counsel staff.

RETENTION AND DISPOSAL:

Retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing; 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual or organization's claim and/or investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .038

SYSTEM NAME:

Unscheduled Absence Record—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees who have had unscheduled absences.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains chronological documentation of unscheduled absences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Kept in locked file cabinets; access to these records is restricted to Supervisor and authorized timekeeping personnel.

RETENTION AND DISPOSAL:

Retained for one year following separation or transfer, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Personnel, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and Personnel Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employee's time and attendance records, and his/her supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .040

SYSTEM NAME:

Freedom of Information and Privacy Acts Requests—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are requesting information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence pursuant to the Freedom of Information and Privacy Acts; internal processing documents and memoranda, referrals and copies of requested records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, 5 U.S.C. 552, 31 CFR part 1, and Privacy Act of 1974, 5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (3) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (4) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders locked in filing cabinet.

RETRIEVABILITY:

By name of requester(s) and date of request.

SAFEGUARDS:

Filed in locked filing cabinet and released only to those parties authorized pursuant to the Freedom of Information Act or the Privacy Act.

RETENTION AND DISPOSAL:

Disposition as prescribed by General Records Schedule 14 issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management Services, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals who make Freedom of Information and/or Privacy Act requests. Federal officials responding to Freedom of Information and/or Privacy Act requests and documents from official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .041

SYSTEM NAME:

Record of Discrimination Complaints—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have initiated discrimination complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data developed as a result of inquiry by the person making the allegation of discrimination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in the records may be used to: (1) Disclose to EEOC to adjudicate discrimination complaints; (2) disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders. Locked in combination safe.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Access is limited to Complainants and Equal Employment Opportunity Staff; maintained in locked combination safe.

RETENTION AND DISPOSAL:

Retained four years after resolution, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of EEO and Employee Counseling Services, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individual employees who have discrimination complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .043

SYSTEM NAME:

Parking Program Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau and Non–bureau personnel who have applied for carpool parking privileges.

CATEGORIES OF RECORDS IN THE SYSTEM:

Parking space applicant information—shows applicant's name and address, vehicle make, model and year, vehicle license number, state registration, work hours, work component, home/work phone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

5 x 8 card file lettersize file folders, and microcomputer floppy disks.

RETRIEVABILITY:

Alphabetically by applicant, or parking space number.

SAFEGUARDS:

Access is limited to Office of Management Services staff and maintained in a locked office.

RETENTION AND DISPOSAL:

Destroyed upon change in, or revocation of, parking assignment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Management Services, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Parking permit applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .044

SYSTEM NAME:

Personnel Security Files and Indices – Treasury/BEP.

SYSTEM LOCATION:

Employment Suitability Division, Office of Personnel, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228. Employment Suitability Branch, Human Resources Management Division, Room A119, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employee applicants, current and former Bureau employees, contractor and service company employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative information related to personnel investigations conducted by the Bureau of Engraving and Printing Security office and other Federal, State, and local Agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders; 3 x 5" Index cards, Microfiche and computer records maintained in an automated database.

RETRIEVABILITY:

Alphabetically by name and social security number.

SAFEGUARDS:

Access is limited to Office of Personnel and Human Resources Management Division staffs and records are maintained in locked file cabinets and secured databases.

RETENTION AND DISPOSAL:

Destroyed within 90 days following notification that an applicant for employment was not hired; or upon notification of employee death; or within five years after separation or transfer of incumbent employee; or five years after expiration of contractual relationship.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Personnel, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228. Manager, Human Resources Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual employee and information supplied by other Federal Investigative Agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(5).

Treasury/BEP .045

SYSTEM NAME:

Mail Order Sales Customer Files–Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers ordering engraved prints and numismatic products from the Bureau of Engraving and Printing through the mail, and those individuals who have requested that their names be placed on the BEP mailing list.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mail order customer's names, addresses, company names, credit card numbers and expiration dates; history of customer sales; and inventory data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purposes of the Mail Order Sales Customer Files are to: (1) Maintain information regarding customers to inform them of BEP products; (2) provide the capability to research in response to customer inquiries; and (3) transmit credit card information to financial institutions for approval or disapproval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used to electronically transmit credit card information to obtain approval or disapproval from the issuing financial institution. Categories of users include personnel involved in credit card approval.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a Government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and Section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and in electronic media.

RETRIEVABILITY:

By customer name, order number or customer number.

SAFEGUARDS:

Access is limited to those authorized individuals who process orders, research customer orders or maintain the computer system. In addition, files and computer data are maintained in a

secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Files on customers who have not purchased any products are kept for two years, after which they are taken out of the active system and placed in a separate storage file. This file generates two additional annual mailings after which time they are purged from the system. (Should a customer reorder after being placed ont this file,they will be assigned a new customer number and placed back in the main system).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Communications, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 515M, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORDS ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORDS PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Customers, BEP employees, financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BEP .046

SYSTEM NAME:

Automated Mutilated Currency Tracking System—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SE, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and financial institutions sending in mutilated paper currency claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mutilated currency claimants' names, addresses, company names, amount of claims, amount paid, types of currency and condition of currency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose of the Automated Mutilated Currency Tracking System is to maintain historical information and to respond to claimants' inquiries, e.g., non–receipt of reimbursement, status of case, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2)disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and records in electronic media.

RETRIEVABILITY:

By claimant name, case number, address or registered mail number.

SAFEGUARDS:

Access is limited to those specific employees who process the mutilated currency cases, prepare payment, research inquiries or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Active claimant files are maintained for two years. Inactive files are maintained for seven years. After seven years, the files are purged from the system and then destroyed. (Inactive files are those for which final payments have been made.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Currency Standards, Bureau of Engraving and Printing; 14th and C Streets, SW, Room 344A, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, banking institutions and BEP employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BILLING CODE: 4840–01–F

U.S. Customs Service

Treasury/Customs .001

SYSTEM NAME:

Acceptable Level of Competence, Negative Determination—Treasury/Customs.

SYSTEM LOCATION:

Located in Customs Headquarters Offices and in each Regional, District, SAC, and appropriate post of duty.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee of U.S. Customs Service, who receives a negative determination regarding acceptable level of competence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, social security number, position description, grade, and correspondence containing specific reasons for negative determination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in locked file cabinets.

RETRIEVABILITY:

The records are filed by the individual's name.

SAFEGUARDS:

Stored in locked cabinets.

RETENTION AND DISPOSAL:

Records are retained until the employee leaves the Customs Service.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor and Employee Relations Division, Office of Human Resources, Customs Headquarters, or Regional Labor and Employee Relations Division, Regional Headquarters, or appropriate managerial official in employee's district, SAC, port or post of duty offices.

NOTIFICATION PROCEDURE:

Correspondence with systems manager.

RECORD ACCESS PROCEDURES:

Correspondence with systems manager.

CONTESTING RECORD PROCEDURES:

Correspondence with systems manager.

RECORD SOURCE CATEGORIES:

Information is furnished by the employee, employee's supervisor and the Merit Systems Protection Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .002

SYSTEM NAME:

Accident Reports—Treasury/Customs.

SYSTEM LOCATION:

Logistics Management Division, Southeast Region, 99 SE 5th Street, Miami, FL 33131; Logistics Management Division, U.S. Customs Service, 211 Main Street, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee of Southeast Region who has had an accident on Government property or in an official vehicle since 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Government forms dealing with accidents and personal injuries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended. Executive Order 11807 and section 19 of Occupational Health & Safety Act of 1970; 5 U.S.C. 8101–8150, 8191–8193.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to employee's beneficiary in event of death following the accident or injury or to employee's agent in case of disability; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case folder is maintained in an unlocked drawer in chronological order by date.

RETRIEVABILITY:

Each case is identified by employee name and date of accident.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Logistics Management Division within the Southeast Region Headquarters Building. During non–working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

Accident Record files are retained in accordance with the Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Logistics Management Division, Southeast Region, Headquarters, 99 SE 5th Street; Logistics Management Specialist, Logistics Management Division, U.S. Customs Service, 211 Main Street, San Francisco, CA 94105.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information originates with employees who have been injured and/or have been involved in accidents during the exercise of their official duties. Also included are witness reports and statements, the employees' supervisors' statements and doctors' reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .005

SYSTEM NAME:

Accounts Receivable—Treasury/Customs.

SYSTEM LOCATION:

Financial Management Division, National Finance Center, U.S. Customs Service, 6026 Lakeside Blvd., Indianapolis, IN 46278; Financial Management Division, District and Ports, 99 SE 5th Street, Miami, FL 33131; U.S. Customs Service, Financial Management Division, Increase and Refund Section, 6 World Trade Center, New York, NY 10048; Financial Management Division, U.S. Customs Service, South Central Region, 1440 Canal Street, New Orleans, LA 70112.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons owing money for Customs duties and services and money owed to persons for overpayment of excessive duties and services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and documentation of telephone calls with debtors and creditors or their representatives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in file folders which are contained in an unlocked metal file cabinet.

RETRIEVABILITY:

The file is retrieved by the name of the individual which is kept in alphabetical order within the work area of the Collection Section.

SAFEGUARDS:

The files are located within an office that is locked during non–working hours. The building is guarded by uniformed security police and only authorized persons are permitted entry to the building.

RETENTION AND DISPOSAL:

The file is retained until collection or refund is effected and two (2) years thereafter, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Financial Management, 99 SE 5th Street, Miami, FL 33131; Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, NY 10048; Financial Management Division, U.S. Customs Service, South Central Region, 1448 Canal Street, New Orleans, LA 70112.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in the system is obtained from data gathered from the automated billing system and ports of entry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .009

SYSTEM NAME:

Acting Customs Inspector (Excepted)—Treasury/Customs.

SYSTEM LOCATION:

Inspection and Control Division, U.S. Customs Service, Southwest Region, 5850 San Felipe, Suite 500, Houston, TX 77057; Office of the District Director, San Diego, CA; Offices of the Port Directors, San Ysidro, CA; Calexico, CA; Tecate, CA; Andrade, CA; San Diego Barge Office; U.S. Customhouse, PO Box 111, District Director's Office, St. Albans, VT 05478.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or members of other Federal agencies who are designated by the District Directors as Customs Inspectors (Excepted).

CATEGORIES OF RECORDS IN THE SYSTEM:

System has name, social security number, rank or grade and duty station of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

CF 55 forms kept in manila folders in file cabinet.

RETRIEVABILITY:

Filed alphabetically.

SAFEGUARDS:

During non–working hours the offices and/or buildings in which records are located are locked.

RETENTION AND DISPOSAL:

Until individual transfers or designation is canceled. Form is then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Inspection and Control Division, U.S. Customs Service, Southwest Region, 5850 San Felipe, Suite 500, Houston, TX 77002; District Director, Port Directors, and Division Directors, within the San Diego Customs District (see appendix A.); District Director, U.S. Customs Service, St. Albans, VT 05478, District Director, 1, LaPontilla Street, Old PO Box 2112, San Juan, PR 00901.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual and his or her agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .014

SYSTEM NAME:

Advice Requests (Legal) (Pacific Region)–Treasury/Customs.

SYSTEM LOCATION:

Office of the Regional Counsel, 211 Main Street, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subject of any request for legal advice by another office within Customs, another Government agency, or the private individual himself. An example would be a request by a District Director for advice as to whether or not a violation of a Customs law for which a penalty may be assessed has occurred.

CATEGORIES OF RECORDS IN THE SYSTEM:

Intra–agency or inter–agency memoranda and reports of investigation and other documents submitted by the requesting office for use in handling the request. Correspondence from the private individual submitting the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department Order No. 165, Revised, as amended; Reorganization Plan No. 1 of 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in an alphabetical file folder which is filed in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name of the individual who is the subject of the request and in the alphabetical file folder within the metal file cabinet by the name of the individual who is the subject of the request.

SAFEGUARDS:

The metal file cabinet described above is maintained within the area assigned to the Office of the Regional Counsel within the Federal Building. During non–working hours the room in which the metal file cabinet is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

Request for legal advice files are retained until there is no longer any space available for them within the metal file cabinet, at which time files are transferred to the Federal Record Center or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel, 211 Main Street, San Francisco, CA 94105.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information comes from the memoranda or correspondence from the office or individual requesting the advice and from any supporting documents that office or individual may transmit.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .021

SYSTEM NAME:

Arrest/Seizure/Search Report and Notice of Penalty File—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, Room 228, United States Customs Service, 335 Merchant Street, Honolulu, HI 96813.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are suspected of attempting to smuggle, or have smuggled, merchandise or contraband into the United States; individuals who have undervalued merchandise upon entry into the United States; vessels and aircraft which have been found to be in violation of Customs laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals, vessels, aircraft; identifying factors; nature of violation or suspected violation; circumstances surrounding violation or suspected violation; date and place of violation or suspected violation; and on–site disposition actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose

pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each report is assigned a case number and filed accordingly in a locked, metal file located in the Office of Investigations.

RETRIEVABILITY:

Each report is identified in a manual alphabetical card file by the name of the individual, vessel or aircraft.

SAFEGUARDS:

In addition to being stored in a locked metal cabinet, these records are located in a locked room, the keys of which are controlled and issued only to authorized personnel.

RETENTION AND DISPOSAL:

These records are retained for one year (1) or until action has been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Investigations, U.S. Customs Service, Post Office Box 1641, Honolulu, HI 96806.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .022

SYSTEM NAME:

Attorney Case File–Treasury/ Customs.

SYSTEM LOCATION:

The Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Office of the Regional Counsel of each Region (for addresses see "Regional Commissioner of Customs" section, appendix A). District Counsel of Customs, 200 E. Bay Street, Charleston, SC 29401; District Counsel of Customs, 880 Front Street, Room 5–S–9, San Diego, CA 92188; District Counsel of Customs, PO Box 2450, San Francisco, CA 94216; District Counsel of Customs, c/o Special Agent in Charge, 909 1st Avenue, Room 4100, Seattle, WA 98174; District Counsel of Customs, 6585 Montana Street, Suite 100, El Paso, TX 79925; Resident Counsel, U.S. Customs Service Academy, Building 67–FLETC, Glynco, GA 31524; Assistant Chief Counsel (CIT), U.S. Customs Service, Room 258, 26 Federal Plaza, New York, NY 10007; Assistant Chief Counsel (NFC), National Logistics Finance Center, U.S. Customs Service, PO Box 68914, Indianapolis, IN 46278.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are subject of adverse actions, equal employment opportunity complaints, unfair labor practice complaints, and grievances; individuals who are the subject of Customs license or other administrative revocation or suspension proceedings; individuals who are the subject of or have requested legal advice from the various offices; individuals requesting access to information pursuant to any statute, regulation, directive, or policy to disclose such information, including individuals who are the subject of a Federal or state administrative or judicial subpoena; individuals who have filed or may file claims under the various Federal claims acts; individuals who are parties in litigation with the United States government or subunits or employees or officers thereof, in matters which affect or involve the United States Customs Service; individuals who are seeking relief from fines and penalties and forfeitures assessed for violations of the law and regulations administered by Customs; individuals who have outstanding Customs bills submitted for collection; and individuals who have challenged contracting decisions of the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of a computer database containing information designed to allow the system manager to track matters which have come into his or her office. The categories of records maintained in the file folders which are indexed by computer system are personnel actions; administrative revocation or suspension proceedings; intra–agency or inter–agency memoranda, reports of investigation, and other documents relating to the request for legal advice; claims and cases in administrative and judicial litigation; requests, information, records, documents, internal Customs Service memoranda, or memoranda from other agencies and related materials regarding the disclosure of information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 28 U.S.C. 2672, et. seq.; 28 CFR 14.1, et. seq.; 31 CFR 3.1, et. seq.; 31 U.S.C. 3701 et. seq.; 31 CFR part 4; 5 U.S.C. 552, 31 CFR part 1, Reorganization Plan No. 1 of 1965; Government employee laws found in Title 5 of the United States Code; government contracting laws found in Titles 31, 40, and 41 of the United States Code; and the Customs laws and regulations found in Title 19 of the United States Code and Code of Federal Regulations, respectively.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where

the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The computerized indices are maintained in computer data base. Each file is maintained in a numbered file folder which is filed in an unlocked drawer in the responsible attorney's office, a metal file cabinet, or a storage room at the local system manager's location.

RETRIEVABILITY:

Through the use of the computer located at the local system manager's location, each file is retrievable by name, number and title.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel. During non–working hours the rooms in which the files are located are locked. During working hours, the rooms in which the files are located are under control of the staff of the local systems manager.

RETENTION AND DISPOSAL:

The file folders are retained in accordance with the Federal Records Retention Manual.

SYSTEM MANAGER(S) AND ADDRESS:

See systems location above.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates from the subject individual, U.S. Customs employees, Reports of Investigation, Customs penalty case files, other government agencies, parties involved in administrative and judicial litigation, administrative proceedings regarding disciplinary action taken against Customs Service employees, Equal Opportunity complaints, unfair labor practice complaints, parties involved in administrative revocation or suspension proceedings, individuals or employees requesting legal advice, and from the parties requesting disclosure of information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .028

SYSTEM NAME:

Baggage Declaration—Treasury/ Customs.

SYSTEM LOCATION:

Located at the St. Albans District, Northeast Region.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons required to make a written baggage declaration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, items declared and value.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders in file cabinet.

RETRIEVABILITY:

By name, date and flight number.

SAFEGUARDS:

Available to authorized Customs personnel only.

RETENTION AND DISPOSAL:

Free entry declarations are retained for three (3) years, then destroyed. Dutiable declarations are retained for three years at the port, seven years at the Federal Record Center, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

District and Port Directors.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The individual who files the baggage declaration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .030

SYSTEM NAME:

Bankrupt Parties–in–Interest—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Director, National Finance Center, PO Box 68907, Indianapolis, Indiana 46268

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indebted to U.S. Customs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listed by name, address, port of service, bill number, and dollar amount of delinquent receivables.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 89–508, the "Federal Claims Collection Act of 1966;" 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cases are maintained in file folders at work site.

RETRIEVABILITY:

Alphabetical order by name.

SAFEGUARDS:

These cases are placed in locked cabinets during non–working hours. The building is guarded by uniformed security police.

RETENTION AND DISPOSAL:

As satisfaction is received, cases are closed. Records are maintained per Records Control Manual FIS–4 No. 124.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Customs, National Finance Center, 6026 Lakeside Boulevard, Indianapolis, IN 46268.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The source of information is obtained from individuals, bankruptcy courts, Customhouse brokers, and sureties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .031

SYSTEM NAME:

Bills Issued Files—Treasury/Customs.

SYSTEM LOCATION:

Director, U.S. Customs, National Finance Center, PO Box 68907.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom bills have been issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received from or sent to individuals in relation to bills issued by the United States Customs Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual alphabetical file folders in file cabinet.

RETRIEVABILITY:

Access by name of individual.

SAFEGUARDS:

The file cabinet is maintained in the offices of the Director, National Finance Center. During non–working hours the room/building in which the file is located is locked. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Correspondence is maintained for a period of three (3) years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Customs, National Finance Center, PO Box 68907, Indianapolis, Indiana 46268.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information consists of copies of letters or memoranda issued to or received from individuals. Records of phone calls and copies of documents related to the individual's transaction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .032

SYSTEM NAME:

Biographical Files (Headquarters)—Treasury/Customs.

SYSTEM LOCATION:

Public Information Division, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, DC 20229, and the Regional Public Information offices located at the addresses listed in Customs appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

General biographical records are maintained on all Customs employees for news release and public information purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

General biographical information including home address, date and place of birth, educational background, work experience, honors and awards, hobbies, and other information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in file cabinets in the Public Information Division at Customs Headquarters.

RETRIEVABILITY:

File folders are identified by the name of the person and are filed in alphabetical order.

SAFEGUARDS:

The office in which the records are located is locked during non–working hours and the building is guarded by uniformed guards.

RETENTION AND DISPOSAL:

Files are retained during the individual's tenure as an employee of the Customs Service, after which the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Information Division, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The individual involved, Customs personnel officers and co–workers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .040

SYSTEM NAME:

Carrier File—Treasury/Customs.

SYSTEM LOCATION:

Located in the Office of the District Director, Terminal Island, San Pedro, CA; Office of the District Director, San Diego, CA; Offices of the Port Directors, Los Angeles International Airport, Los Angeles, CA; Office of the District Director, Terrace and International Streets, Nogales, AZ 85621; San Ysidro, CA; Tecate, CA; Calexico, CA; Andrade, CA; San Diego Barge Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers or owners, employees, associates of Customs Bonded Carriers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number, place of birth and other information relating to Officers, Associates, employees, etc., of Bonded Carriers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended, and the Customs Regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folder in file cabinet.

RETRIEVABILITY:

Filed by name of company or individual.

SAFEGUARDS:

Building locked during non–working hours.

RETENTION AND DISPOSAL:

Records retained until obsolete, then destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, Port Directors, and Division Directors within the San Diego Customs District; District Director, Terminal Island, San Pedro, CA, and Port Director, Los Angeles International Airport, Los Angeles District; District Director, U.S. Customhouse, Nogales, AZ 85621. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Customs Bonded Carriers' employees and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .041

SYSTEM NAME:

Cartmen or Lightermen—Treasury/Customs.

SYSTEM LOCATION:

Customs ports, districts, and regional offices. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms who have applied for or hold a license as a bonded cartman or lighterman and individuals employed by cartman or lightermen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Internal Customs Service memoranda and related materials regarding applications for licenses and identification cards, reports of investigations for approving these licenses and identification cards and card files showing outstanding identification cards and their location. Files also include fingerprint cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165. Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained in a metal file cabinet in the office maintaining the system, or on magnetic disc.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name of the licensed cartman or lighterman and in the alphabetical file folder by the name of the licensed cartman or lighterman. Each employee's record is filed in a manual alphabetical card file cross–referenced with company names.

SAFEGUARDS:

The file is placed in a metal file cabinet at the work site. At locations where work is not performed on a 24–hour basis the work area is locked and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Files are reviewed at least once a year at which time canceled I.D. cards may be removed. Closed CF 3078's may also be removed, but normally are held for approximately three years in case a new application is received from the same company or transferred to another company after a new investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Port Directors, District Directors, and Regional Commissioners of the U.S. Customs Service. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .042

SYSTEM NAME:

Case and Complaint File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Regional Counsel, U.S. Customs Service, North Central Region, 55 E. Monroe Street, Room 1417, Chicago, IL 60603.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual initiating a court case or against whom a court case is brought; any individual involved in a personnel action, either initiating a grievance, discrimination complaint, or unfair labor practice complaint against the U.S. Customs Service or against whom a disciplinary or other adverse action is initiated; claimants or potential claimants under the Federal Tort Claim Act; individuals involved in accidents with U.S. Customs Service employees; U.S. Customs Service employees involved in accidents; persons seeking relief from fines, penalties and forfeitures and restoration of proceeds from the sale of seized and forfeited property; requesters under the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The System contains the individual's name, the type of case, the uniform filing guide number, the Regional Counsel's office file number, by whom the matter was referred, the district where the action originated, if applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each alphabetical card is inserted in a metal file drawer.

RETRIEVABILITY:

Each card is identified alphabetically by the individual's name described in Category of Individual and the filing is alphabetically used by last name.

SAFEGUARDS:

The metal filing drawer containing the alphabetical cards described above is maintained within the area assigned to the Office of the Regional Counsel, North Central Region at 55 E. Monroe Street, Chicago, IL 60603. During non–working hours, the room in which the metal filing drawer is located is locked and access to the building is controlled at all times by uniformed guards with a check–in system for employees. Only employees of the Regional Counsel's office and authorized building personnel have keys to the building.

RETENTION AND DISPOSAL:

These files are retained until there is no longer space available for them within the metal filing drawer at which time the oldest cards for closed files will be transferred to the storage area within the confines of the office. The storage area is a large area containing cardboard boxes and metal storage cabinets, unable to be locked.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel of Customs, Room 1417, United States Customs Service, 55 E. Monroe Street, Chicago, IL 60603.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained on these cards originates with the initiation of any action by an individual which is channeled through the Regional Counsel's office. Additional information is identifying information for locating the particular case file relating to the court case, personnel action, tort claim, relief petition, or request under the Freedom of Information Act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .043

SYSTEM NAME:

Case Files (Regional Counsel–South Central Region)—Treasury/Customs.

SYSTEM LOCATION:

The system is located at 1440 Canal Street, New Orleans, LA 70112, Office of the Regional Counsel, South Central Region, United States Customs Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The first category of individuals on whom records are maintained in the system includes employees who have filed adverse actions, equal employment opportunity complaints, and grievances within the South Central Region; employees who have filed tort claims under the Military Personnel and Civilian Employees Act; employees of the Regional Counsel's staff with regard to travel, training, evaluations, and other related personnel records; and applications for employment submitted to the Office of the Regional Counsel by prospective employees. (2) The second category of individuals on whom records are maintained in the system includes those individuals not employed by the agency who have filed equal employment opportunity complaints; tort claims under the Federal Tort Claims Act; tort claims filed under the Small Claims Act; individuals who have outstanding Customs bills submitted for collection; individuals, corporations, partnerships, and proprietorships who have filed supplemental petitions on fines, penalties, and forfeitures within the South Central Region; files relating to individuals, corporations, partnerships, and proprietorships upon whom criminal case reports are prepared pending litigation and prosecution for violation of 19 U.S.C. 1305, 18 U.S.C. 542, 18 U.S.C. 545, 18 U.S.C. 549, 18 U.S.C. 1001, 18 U.S.C. 496, and 18 U.S.C. 371; on individuals, corporations, partnerships, and proprietorships who have filed supplemental petitions submitted in civil and technical violations for 19 U.S.C. 1592, 19 U.S.C. 1453, 19 U.S.C. 1448, 19 U.S.C. 1584, irregular deliveries, shortages and overages; and miscellaneous civil and technical violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records maintained in the system are personnel actions; tort claims; collection efforts; supplemental petitions for fines, penalties, and forfeitures cases in the South Central Region; criminal case reports for pending litigation and prosecution of cases in the South Central Region; supplemental petitions for civil and technical violations committed within the South Central Region; and employment applications for positions in the Office of the Regional Counsel, South Central Region.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are currently maintained in alphabetical file folders which are filed in two steel filing cabinets in the Office of the Regional Counsel, South Central Region, and they are maintained under lock and key outside the ordinary business hours.

RETRIEVABILITY:

Records maintained by the Office of the Regional Counsel, South Central Region, are retrievable by identifying the character of the record (i.e., adverse action, grievance, tort claim, criminal case), then by comparable statute or regulation, and then alphabetically by name and identifier. In addition, each case file is similarly identified on the alphabetical file folder within the steel filing cabinet.

SAFEGUARDS:

The steel filing cabinets described above are maintained within the area assigned to the Office of the Regional Counsel, 1440 Canal Street, New Orleans, LA 70112. During non–working hours the room in which the locked steel cabinets are located is locked, and access to the building is controlled at all times by uniformed guards. The policies and practices of the Office of the Regional Counsel regarding access controls are that only members of the staff of the Office of the Regional Counsel have access to the records maintained by the office.

RETENTION AND DISPOSAL:

Individual records are placed into a file of closed cases by category as stated above, and within each category by name. The oldest closed cases are forwarded to the Federal Records Center in accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

The agency official responsible for the system of records maintained by the Office of the Regional Counsel is the Regional Counsel, South Central Region, United States Customs Service, 1440 Canal Street, New Orleans, LA 70112.

NOTIFICATION PROCEDURE:

See appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The categories of sources of records in this system are the individual himself and files compiled by the United States Customs Services by using employers, other government agency resources, financial institutions, educational institutions attended, and previous employers. Additional information in these files is also derived from reports of investigation regarding the enforcement of civil or criminal statutes, administrative proceedings regarding disciplinary action taken against Customs Service employees, equal opportunity complaints, investigations of tort claims, the processing of interoffice memoranda information requested under the Freedom of Information Act, and the investigation regarding the collection of debts due the Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .044

SYSTEM NAME:

Certificates of Clearance—Treasury/Customs.

SYSTEM LOCATION:

Regional Commissioner, U S. Customs Service, 10 Causeway Street, Boston, MA 022222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Northeast Region, Boston, MA, who have transferred, retired or resigned.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documented detailed information on an "in–house" prepared form indicating that the employee has returned all Government property in his/her personal possession and that the employee has cleared all debts owing to Customs such as unearned uniform allowances and travel advances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in file folders by District and name of employee in a metal file cabinet in the work area of the Payment Section.

RETRIEVABILITY:

The file is retrievable by District and name of employee.

SAFEGUARDS:

The file is located within an office that is locked during non–working hours. The building is guarded by uniformed security police and only authorized persons are permitted entry to the building.

RETENTION AND DISPOSAL:

The files are kept for 10 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Commissioner, U.S. Customs Service, 10 Causeway Street, Boston, MA 022222.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in the system originates at the District where the individual is employed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .045

SYSTEM NAME:

Claims Act File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Regional Counsel, Room 7422, New Federal Building, 300 N. Los Angeles Street, Los Angeles, CA 90053.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Customs employees who have filed, or may file claims under the Military Personnel and Civilian Employees' Claim Act of 1964 for damage to or loss of personal property incident to their service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative handling of the claim and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 240–243; 31 CFR part 4; Treasury Department Administrative Circular No. 131, August 19, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted numerically in a file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified numerically in the file folder within the metal container by the name of the person who has filed or may file a claim.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Regional Counsel within the New Federal Building. During non–working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained indefinitely or until there is no longer any space available for them within the metal container, at which time the oldest closed files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel, Room 7422, New Federal Building, 300 N. Los Angeles Street, Los Angeles, CA 90053.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with a Treasury Department Form No. 3079, Civilian Employee Claim For Loss or Damage to Personal Property, which is completed and filed with the Customs Service by the claimant. Additional information contained in these files may be separately provided by the claimant or by the claimant's supervisor. Where a claim is not filed, the information is limited to the investigative reports of damage to or loss of personal property of a Customs employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .046

SYSTEM NAME:

Claims Case File—Treasury/Customs.

SYSTEM LOCATION:

Office of Regional Counsel of Customs, 10 Causeway Street, Boston, MA 02222; Office of the District Counsel of Customs, 55 Battery Street, San Francisco, CA 94126; Office of the Regional Counsel of Customs, Suite 550, 5850 San Felipe Street, Houston, TX 77057.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties who have filed claims for damage or injury against the Government, or against whom the Government has a claim for damage or injury in matters which affect or involve the U.S. Customs Service; private individuals or Government employees who are involved in the incident which gave rise to the claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports relative to the circumstances of the claim (including accident reports provided by Customs personnel, agents' investigative reports, correspondence between Customs and the claimant or his representative); reports relative to an individual's ability to pay a claim for damages.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2672 et seq.; 28 CFR part 14; 31 CFR part 3; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in file folders.

RETRIEVABILITY:

Records indexed by name of individual making a claim or against whom a claim is made, cross–referenced file with name of Government employee, if any, involved.

SAFEGUARDS:

Open case files maintained in file cabinets with access by Regional Counsel and his staff only; closed case files maintained in locked cabinet with keys retained by Regional Counsel and staff only.

RETENTION AND DISPOSAL:

Retained until there is no longer any space available within metal cabinets, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel of Customs, 10 Causeway Street, Boston, MA 02222; District Counsel of Customs, 55 Battery Street, San Francisco, CA 94120; Regional Counsel of Customs, Suite 550, 5850 San Felipe Street, Houston, TX 77057.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files is received from U.S. Customs employees, reports of investigation, credit checks, private individuals involved in the claims, other Government agencies and other individuals with pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .050

SYSTEM NAME:

Community Leader Survey—Treasury/Customs.

SYSTEM LOCATION:

Equal Employment Opportunity Officer, U.S. Customs Service, Southwest Region, 500 Dallas Street, Suite 1240, Houston, TX 77002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The names, titles, and organization of persons who may be construed to be occupying a community leadership role and who may be in a position to furnish information or have some influence in regard to the equal employment opportunity program area.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of a card index of the names, titles, and organization of community leaders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An alphabetical card listing filed in a metal file cabinet.

RETRIEVABILITY:

Listed and filed alphabetically.

SAFEGUARDS:

The metal file cabinet described above is maintained within the area assigned to the Equal Employment Opportunity Officer. During non–working hours this office area is locked and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

To be useful, this information file must be kept current. Non–current files will be destroyed locally.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Employment Opportunity Officer, U.S. Customs Service, Southwest Region, 500 Dallas Street, Suite 1240, Houston, TX 77002.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information included in these files is developed from local agencies (city, county, state, and Federal) and from local civic organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .053

SYSTEM NAME:

Confidential Source Identification File – Treasury/Customs.

SYSTEM LOCATION:

Components of this system are located in the Office of Investigations, U.S. Customs Service Headquarters, and the Office of Internal Affairs, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (sources) supplying confidential information to the U.S. Customs Service, Office of Enforcement and Office of Internal Affairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains some or all of the following information: Name (actual or assumed), source (identifying) number, date number assigned, address, citizenship, occupational information, date and place of birth, physical description, photograph, miscellaneous identifying number such as social security number, driver's license number, FBI number, passport number, Customs Form 4621 documenting information received from confidential source, amount and date of monetary payment made to source for information supplied, criminal record, copy of driver's license, and copy of alien registration card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 19 U.S.C. 1619; and 18 U.S.C. Chapter 27.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in locked cabinets. Access during working hours is limited to authorized personnel.

RETRIEVABILITY:

Office of Investigations and Office of Internal Affairs – The name of each source is filed in both alphabetical order and by location of the submitting office.

SAFEGUARDS:

In addition to being stored in secure metal cabinets with government approved locks, the files are located in closely watched rooms of the Office of Investigations and the Office of Internal Affairs. Personnel maintaining the files are selected for their reliability, among other qualities, and afforded access only after having been cleared by a full field investigation. During non–working hours the rooms in which the records are located are locked and access to the building is controlled by uniformed security guards.

RETENTION AND DISPOSAL:

The Office of Investigations destroys a file when it no longer has any utility by either shredding or burning; the Office of Internal Affairs reviews files annually for relevance and necessity, and when a file no longer has any utility, it is destroyed either by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229, for those components of the system maintained by the Office of Investigations; Director, Office of Internal Affairs, (Integrity Management), U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229, and for those components of the system maintained by the Office of Internal Affairs.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/Customs .054

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests—Treasury/Customs.

SYSTEM LOCATION:

Located in each Headquarters and Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those employees as listed in Treasury Personnel Manual Chapter 735 Subpart C, Section 0.735–320, and the currently effective edition of Customs Circular PER–2–PER (Subject: Personnel; Departmental Rules of Conduct and Requirements Concerning Financial Statement).

CATEGORIES OF RECORDS IN THE SYSTEM:

Form SF–450 Executive Branch Confidential Financial Disclosure Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked safe.

RETENTION AND DISPOSAL:

Records are destroyed two (2) years after employee leaves a position in which a statement is required, or two (2) years after the employee leaves the agency, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioners, Headquarters, and Regional Commissioners.

NOTIFICATION PROCEDURE:

Write to systems manager.

RECORD ACCESS PROCEDURES:

Write to systems manager.

CONTESTING RECORD PROCEDURES:

Write to systems manager.

RECORD SOURCE CATEGORIES:

Individuals required to submit Form SF–450.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .056

SYSTEM NAME:

Congressional and Public Correspondence File—Treasury/Customs.

SYSTEM LOCATION:

Office of Field Operations (Administrative Staff), U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons sending letters of inquiry or complaint concerning Customs activities and procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence, the agency's reply, and related materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence records are maintained in file folders and on a computer system.

RETRIEVABILITY:

Correspondence records are identified by the name of the person making inquiry or complaint. They are retrievable by name.

SAFEGUARDS:

Access to the records is granted only to authorized Customs personnel. During non–working hours the room in which the records are located is locked and access to the building is controlled by uniformed security police.

RETENTION AND DISPOSAL:

The records are maintained from two to five years and then destroyed or retired to the Federal Records Center as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Workforce Effectiveness and Development Staff, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Correspondence and related records and materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .057

SYSTEM NAME:

Container Station Operator Files—Treasury/Customs.

SYSTEM LOCATION:

Offices of District Directors, North Central Region, Chicago, IL (see Customs appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past container station operators and employees that require an investigation and related information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of investigations, application and approval or denial of bond to act as container station operator and other Customs Service memoranda. Names, addresses, social security numbers, and dates and places of birth of persons employed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; Customs Regulations, part 19.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in file cabinets in each District Director's office within the North Central Region, Chicago, IL.

RETRIEVABILITY:

Each file is identified by the name of the container station operator.

SAFEGUARDS:

The file cabinets are maintained within the area assigned to the District Director. During non–working hours, the room and/or building in which the file cabinet is located is locked.

RETENTION AND DISPOSAL:

These files are disposed of in accordance with the Treasury Records Control Manual. Employee name data retained for period of employment with container station operator.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, each district within the North Central Region, Chicago, IL. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this file originates from the individual applicant for container station operator bond, from reports of investigation and other Customs memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .058

SYSTEM NAME:

Cooperating Individual Files—Treasury/Customs.

SYSTEM LOCATION:

These files are located in regional and local Customs Office of Investigations Offices within the United States. (See Customs' appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons providing confidential information to the U.S. Customs Service Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include: Assumed names; actual names; code numbers; addresses; telephone numbers; physical descriptions; miscellaneous identifying numbers such as social security numbers, driver's license number, etc., date individual's record was established; amount and date of reward paid for information supplied.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All files and indices relating to cooperating individuals are stored in metal file cabinets secured with combination locks in a government secured building.

RETRIEVABILITY:

The name of each cooperating individual is filed in alphabetical order by assumed name and by actual name. The indices are maintained in the same alphabetical order and are also cross–referenced by the Office of Enforcement alphanumeric code number. All other identifying data is used for verification of identity rather than method of retrieval.

SAFEGUARDS:

In addition to being stored in secure metal cabinets with government approved locks, the metal files are kept locked when not in use and located in a closely watched room of the Office of Investigations. Personnel maintaining the files are selected for their reliability among other qualities, and they are afforded access only after having been cleared by a full field investigation. The files are given the same treatment as material classified as Secret. During duty hours, Office of Investigations personnel maintain visual control and during off–duty hours the area containing the files is locked.

RETENTION AND DISPOSAL:

Retention periods have been established for records contained in the file in accordance with the Treasury Records Control Manual. When a file no longer has any utility, it is destroyed either by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Regional Commissioner (Investigations); the Special Agent in charge in regional SAC Offices; and the Resident Agent in charge in suboffices of the Special Agent in charge. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .061

SYSTEM NAME:

Court Case File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Regional Counsel, Room 7422, New Federal Building, 300 N. Los Angeles Street, Los Angeles, CA 90053; Office of the District Counsel, 555 Battery Street, San Francisco, CA 94126; Office of the Regional Counsel, U.S. Customs Service, North Central Region, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Office of the District Counsel, 909 First Avenue, Seattle, Washington 98174.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties in litigation with the United States Government or subunits or employees or officers thereof, in matters which affect or involve the United States Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Court documents with exhibits, reports of investigations, internal Customs Service memoranda summarizing or relating to the matter in controversy and other background information relating to the subject matter or origin of the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2676, 19 U.S.C. 1603, 5 U.S.C. 301; E.O. 6166; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in a numerical file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified by the name of the person against whom the Government has initiated the litigation, or by the name of the person who initiated the litigation against the Government.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Regional Counsel. During non–working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest closed files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel, Room 7422, United States Customs Service, 300 N. Los Angeles Street, Los Angeles, CA 90053; District Counsel, U.S. Customs Service, 555 Battery Street, San Francisco, CA 94126; Regional Counsel, Room 1417, U.S. Customs Service, 55 E. Monroe Street, Chicago, IL 60603; District Counsel, U.S. Customs Service, 909 First Avenue, Seattle, Washington 98174.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with a request by a

District Director to the appropriate United States Attorney that he institutes suitable judicial action to enforce the forfeiture of merchandise and vehicles, or the value thereof, which had been imported or used in violation of the Customs laws, and upon which final administrative action has taken place. Information in this file also originates with the filing of a complaint by a private person against the Government, and by the filing of a complaint by the Government against private persons or former employees to enforce the collection of debts due the Government. Information in the files is also derived from reports of investigation regarding the enforcement of civil or criminal statutes and denial of tort claims.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .064

SYSTEM NAME:

Credit Card File—Treasury/Customs.

SYSTEM LOCATION:

National Logistics Center, U.S. Customs Service, Fleet and Property Management Section, 6026 Lakeside Blvd. Indianapolis, IN 46278.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Headquarters Customs Service employees to whom national gasoline credit cards have been issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

Credit card numbers, names, and signatures of employees to whom credit cards have been issued, and the date of issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetically by name or by credit card number.

RETRIEVABILITY:

A portion of the index cards are identified by the name of the person to whom the credit card was issued in the case of credit cards which have been permanently assigned to higher level Customs Service officers and such index cards are filed alphabetically. The remainder of the index cards relate to credit cards which are issued to Customs Service officers or employees on a one–transaction basis, and these index cards are filed by the applicable credit card number.

SAFEGUARDS:

Index cards are maintained and stored in a secured room with limited accessibility. The building is guarded by uniformed security police, and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Index cards filed alphabetically by name are filed during the period that the officials named thereon are in possession of the credit cards, and then these index cards are retained (for audit purposes) when the officials are no longer in possession of the credit cards. Index cards are filed by office titles and contain receipt signatures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Headquarters Services Division, Office of Logistics Management, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from Customs Service records and is also furnished by the officers or employees to whom the credit cards have been issued.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .067

SYSTEM NAME:

Bank Secrecy Act Reports File—Treasury/Customs.

SYSTEM LOCATION:

Computerized Records; U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229; Treasury Enforcement Communications System, San Diego, CA, with computer terminal access in various Customs and IRS regional offices. Originals: 4790's — Customs ports of entry or departure; 4789's — Internal Revenue Service, Detroit, MI; 90.22–1's — Internal Revenue Service, Detroit, MI; 8362's —Internal Revenue Service, Detroit, MI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Listing of individuals who filed Form 4790 (Currency and Monetary Instrument Report), Form 4789 (Currency Transaction Report), Form 90.22–1 (Foreign Banking Account Report), Form 8362 (Currency Transaction Report by CASINOS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individuals and other entities filing the above–referenced forms, reports of the owners of monetary instruments, the amounts and kinds of currency or other monetary instruments transported, reported, or in foreign banking accounts, accounts numbers, addresses, personal identifiers, dates of birth, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5311 et seq; 5 U.S.C. 301; 31 CFR part 103; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or

settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes (original 4790's are stored at the appropriate Customs port of entry or departure, original 4789's are stored by IRS in Detroit, MI, original 90 22–1's are stored at Internal Revenue Service, Detroit, MI and original 8362's are stored at Internal Revenue Service, Detroit, MI.

RETRIEVABILITY:

By name and other unique identifiers.

SAFEGUARDS:

Procedural and physical safeguards are utilized such as accountability and receipt access, guards patrolling the area, restricted access and alarm protection systems, special communication security, etc.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/Customs .069

SYSTEM NAME:

Customs Brokers File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Chief Counsel, Broker Compliance and Evaluation Branch, Office of Trade Operations; U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229, and Customs regional, district and port offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Licensed customs brokers, employees of customs brokers, individuals or firms who have applied for a broker's license.

CATEGORIES OF RECORDS IN THE SYSTEM:

Internal Customs Service memoranda and related material regarding proposed administrative disciplinary action against customs brokers for violation of the regulations governing the conduct of their business; broker applications and related material; notification of change of business address, organization, name, or location of business records; status reports; requests for written approval to employ persons who have been convicted of a felony.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 1641; 19 CFR part 111; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in an alphabetical file folder which is filed in drawers that are capable of being locked and are locked at the close of business. Some records are in a separate room which is locked at other than official hours. File cards covering individual customhouse brokers, corporations, partnerships and trade names are in files not capable of being locked, but the entire area is locked at night.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name and in the alphabetical file folder within the metal container by the name of the customs broker or employees of customs brokers.

SAFEGUARDS:

The files described above are maintained in Customs Service Buildings. During non–working hours the room in which the files are located is locked, and access to the building is controlled after business hours by electronic access and alarm systems and during business hours access is controlled at all times by a U.S. Customs Service employee.

RETENTION AND DISPOSAL:

Broker files and records of broker's employees are kept indefinitely. They are periodically updated and removed to an inactive file, as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel; Director, Field Operations Division, Office of Trade Operations, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229, Customs regional commissioners, district directors, and port directors.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates from audits of or investigations into the conduct of customhouse brokers' businesses, applications for licenses, references as to character, court records, and local credit reporting services, as well as reports, notifications, and other applications filed by brokers pursuant to statutory and regulatory requirements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .077

SYSTEM NAME:

Disciplinary Action, Grievance and Appeal Case Files—Treasury/Customs.

SYSTEM LOCATION:

Located in the Office of Human Resources, Customs Headquarters, and in each Regional, SAC Port, and appropriate post of duty offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees on whom disciplinary action is pending or has occurred, and employees who have filed grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on such action as leave restriction letters, reprimands, suspensions, adverse actions, etc., and grievance and appeals by employees. Copies of correspondence, management requests for assistance, evidentiary materials on which action is contemplated, proposed or taken, regulatory material, examiners' reports, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in manila folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file.

RETENTION AND DISPOSAL:

Grievance records are maintained for 3 years; discipline and adverse action records are maintained for four years; and appeals are maintained for 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor and Employee Relations Division, Office of Human Resources, Customs Headquarters, or Regional Labor and Employee Relations Division, or appropriate managerial official in employee's district, port, or post of duty.

NOTIFICATION PROCEDURE:

Write to system manager.

RECORD ACCESS PROCEDURE:

Request from system manager.

CONTESTING RECORD PROCEDURES:

Write to the system manager.

RECORD SOURCE CATEGORIES:

Supervisors and supervisory records and notes; evidentiary materials supporting planned, proposed, or accomplished actions; grievance letters submitted by employee, grievance examiner, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .078

SYSTEM NAME:

Disclosure of Information File—Treasury/Customs.

SYSTEM LOCATION:

Boston Regional Counsel, U.S. Customs Service, 10 Causeway Street, Suite 801, Boston, MA 02222–1056 ; Office of the Regional Counsel, U.S. Customs Service, North Central Region, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Office of the Regional Counsel, 211 Main Street, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting access to information pursuant to the Freedom of Information Act or any other statute, regulation, directive or policy to disclose such information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, information, records, documents, internal Customs Service memoranda, or memoranda from other agencies and related materials regarding disclosure of the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 552, 31 CFR part 1, 19 CFR part 103, 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified in the file folder within the metal container by the name of the person requesting disclosure.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Regional Counsel within the Customhouse. During non–working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

Customhouse broker files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel, Room 125, U.S. Customhouse, 40 South Gay Street, Baltimore, MD 21202; Regional Counsel, Room 1417, U.S. Customs Service, 55 E. Monroe Street, Chicago, IL 60603; Regional Counsel, 211 Main Street, San Francisco, CA 94105.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates from the requests for information filed with the Customs Service which may pertain to any information contained in the files of the U.S. Customs Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .081

SYSTEM NAME:

Dock Passes—Treasury/Customs.

SYSTEM LOCATION:

District Director's office, U.S. Customs Service, 228 Federal Building, 335 Merchant Street, Honolulu, HI 96813.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consulate staff members, brokers, private individuals, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form lists following information: pass number; port; date of issue; name of individual; organizational affiliation; expiration date of pass; and vessel name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 card box, loose leaf binder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Building locked during non–working hours.

RETENTION AND DISPOSAL:

Retained until expiration.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, U.S. Customs Service, 228 Federal Building, 335 Merchant Street, Honolulu, HI 96806.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Individual applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .083

SYSTEM NAME:

Employee Relations Case Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Human Resources, U.S. Customs Service, Washington, DC 20229, and in each Headquarters, Region, District, SAC, and appropriate post of duty office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records maintained on the benefit aspects of employment such as, workers' and unemployment compensation, leave, health and life insurance, retirement, suggestions, awards, etc. and employees who have requested assistance with these programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of initiating correspondence and Customs correspondence and any forms submitted by or completed on behalf of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file.

RETENTION AND DISPOSAL:

Maintained for period of time employee remains with Customs. Records destroyed upon separation of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor and Employee Relations Division, Office of Human Resources, U.S. Customs Service, Washington, DC 20229, Regional Labor and Employee Relations Divisions, and in District, SAC, Port and appropriate post of duty offices.

NOTIFICATION PROCEDURE:

Write to systems manager–providing your name and social security account number.

RECORD ACCESS PROCEDURES:

Write to systems manager.

CONTESTING RECORD PROCEDURES:

Write to systems manager.

RECORD SOURCE CATEGORIES:

Individuals and offices depending on the problem.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .092

SYSTEM NAME:

Exit Interview—Treasury/Customs.

SYSTEM LOCATION:

Office of Human Resources (OHR) Division, Washington, DC

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees terminating from the Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, position, time in grade and position, time with Customs, organization designation, supervisor's name and answers to various questions about employment with Customs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Forms are kept in manila folders.

RETRIEVABILITY:

By organization or by name.

SAFEGUARDS:

Locked office.

RETENTION AND DISPOSAL:

Retained in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division. (See location above.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information obtained from departing employee and employee's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .096

SYSTEM NAME:

Fines, Penalties and Forfeiture Control and Information Retrieval System—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Office of Trade Operations, Fines, Penalties and Forfeiture Branch, 1301 Constitution Avenue, NW., Washington, DC 20229, and each Customs Service District Office in the United States and Puerto Rico.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or businesses who have been fined, penalized or have forfeited merchandise because of violations of Customs and/or related laws or breaches of bond conditions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual and business names, address, personal identifying numbers, date and type of violation, parties entitled to legal notice or who are legally liable, case information, bond and petition information, and actions (administrative) taken by U.S. Customs. Also included are actions taken by violator prior to the disposition of the penalty or liquidated damage case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy Customs Form 5955a (Notice of Liquidated Damages Incurred and Demand for payment) and Customs Form 151 Search/Arrest/Seizure Report.

RETRIEVABILITY:

Case number.

SAFEGUARDS:

All inquiries are made by officers with a full field background investigation on a "need–to–know" basis only. Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

A maximum of 11 years. Erasure of disc/tapes and shredding and/or burning of hard copy Customs Form 5955a.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Trade Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 and the District Directors of Customs for each Customs District in the United States and Puerto Rico.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Customs Form 5955a (Notice of Penalty or Liquidated Damages Incurred and Demand for Payment) and CF 151 (Search/Arrest/Seizure Report) prepared by Customs employees at the time and place where the violation has occurred.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .098

SYSTEM NAME:

Fines, Penalties and Forfeitures Records—Treasury/Customs.

SYSTEM LOCATION:

Customs district offices. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms who have been administratively charged with violations of Customs laws and regulations and other laws and regulations enforced by the Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entry documentation, notices, investigative reports, memoranda, petitions, recommendations, referrals and dispositions of fines, penalties and forfeiture cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended. 19 U.S.C. 66, 1618, 1624; 19 CFR parts 171 and 172.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, in connection with criminal law proceedings; (3) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in folders in locked file cabinets and safes and in the automated FP&F module in the Automated Commercial System (ACS).

RETRIEVABILITY:

The records are filed either by numerical sequence using year and port code, name of individual and/or company, with a cross reference available through ACS.

SAFEGUARDS:

During non–working hours, the records are maintained in locked file cabinets, locked buildings and buildings guarded by uniform guards or security detection devices.

RETENTION AND DISPOSAL:

The records are retained for one to three years after which they are either destroyed or forwarded to the Federal Records Center. Automated records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

District Directors of Customs (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information and representations supplied by importers, brokers and other agents pursuant to the entry and processing of merchandise or in the clearing of individuals or baggage through Customs. Information also includes information gathered pursuant to Customs investigations of suspected or actual violations of Customs and related laws and regulations and recommendations and information supplied by other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .099

SYSTEM NAME:

Fines, Penalties, and Forfeiture Files (Supplemental Petitions)—Treasury/Customs.

SYSTEM LOCATION:

Office of the District Counsel, 555 Battery Street, San Francisco, CA 94126; Office of Counsel, Room 7422, New Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90053; Office of the Regional Counsel, U.S. Customs Service, North Central Region, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Office of the District Counsel, 909 First Avenue, Seattle, Washington 98174.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed supplemental petitions for relief from fines, penalties and forfeitures assessed for violations of the laws and regulations administered by Customs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Petitions and supplemental petitions and other documents filed by the individual; reports of investigation concerning the fine, penalty or forfeiture; and documents relating to the internal review and consideration of the request for relief and decision thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 19 U.S.C. 1618; 19 CFR parts 171 and 172; Treasury Department Order No. 165, Revised, as amended; Reorganization Plan No.1 of 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Justice or an individual United States Attorney to assist that Department or United States Attorney when suit is filed by the Government in civil prosecution of the fine, penalty or forfeiture; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course or presenting evidence, including disclosures to

opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in a numerical file folder which is filed in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name of the petitioner and in the numerical file folder within the metal file cabinet by the name of the petitioner.

SAFEGUARDS:

The metal file cabinet described above is maintained within the area assigned to the Office of the Regional Counsel within the Federal Building. During non–working hours the room in which the metal file cabinet is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

Supplemental petition files are retained until there is no longer any space available for them within the metal file cabinet, at which time the oldest files may be transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

District Counsel, 555 Battery Street, San Francisco, CA 94126; Regional Counsel, Room 7422, U.S. Customs Service, 300 N. Los Angeles Street, Los Angeles, CA 90053; Regional Counsel, Room 1417, U.S. Customs Service, 55 East Monroe Street, Chicago, IL 60603; District Counsel, 909 First Avenue, Seattle, Washington 98174.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information contained in these files is obtained from the individual petitioning for relief and from the District Director of Customs within whose jurisdiction the fine, penalty or forfeiture action lies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .100

SYSTEM NAME:

Fines, Penalties and Forfeiture Records (Headquarters)—Treasury/Customs.

SYSTEM LOCATION:

Penalties Branch, International Trade Compliance Division, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229 and Fines, Penalties, and Forfeiture Offices at each Customs Service District Office in the United States and Puerto Rico.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons who have been administratively charged with violating Customs and related laws and regulations and on persons who have applied for awards of compensation for providing information regarding such violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entry documentation, notices, investigative and other reports, memoranda of information received, petitions, recommendations, referrals and dispositions of fines, penalties and forfeiture cases and applications for awards of compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 19 U.S.C. 66, 1618, 1624; 19 CFR parts 171 and 172.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are kept in file cabinets in the office and central file room of the International Trade Compliance Division at U.S. Customs Service Headquarters and in the storage facilities for the Fines, Penalties and Forfeitures Office in each Customs Service Districts.

RETRIEVABILITY:

The records are filed chronologically with a case number given to each file.

SAFEGUARDS:

The records are maintained in the U.S. Customs Service Headquarters building which is guarded by security police. During non–working hours, the central file room is locked and the building is guarded by security police. Records are maintained in each Customs Service District buildings.

RETENTION AND DISPOSAL:

The records are generally retained for five years after closing of the case. The records are then forwarded to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Penalties Branch, International Trade Compliance Division, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229, and each Fines, Penalties and Forfeitures Officer for the United States Customs Service Districts.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information and representations supplied by importers, brokers and other agents pursuant to the entry and processing of merchandise or in the clearing of individuals or baggage through Customs. Records also includes information gathered pursuant to Customs investigations of suspected or actual violations of Customs and related laws and regulations and recommendations and information supplied by other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .105

SYSTEM NAME:

Former Employees—Treasury/Customs.

SYSTEM LOCATION:

Laboratory Division, Room 1508,630 Sansome Street, San Francisco, CA 94111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All past employees of the Customs Laboratory.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains copies of personnel action notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may by used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in a metal file cabinet.

RETRIEVABILITY:

The record is filed alphabetically by name.

SAFEGUARDS:

The file is stored in a metal file cabinet in a private inner office of a government building protected by 24–hour guard service with limited access. The file is only used on a "need–to–know" basis and only by the laboratory employees.

RETENTION AND DISPOSAL:

Retained in accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Laboratory Division, U.S. Customs Service, 630 Sansome Street, Room 1508, San Francisco, CA 94111.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information contained in personnel action files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .109

SYSTEM NAME:

Handicapped Employee File—Treasury/Customs.

SYSTEM LOCATION:

Human Resources Division, Regional Commissioner of Customs, 55 East Monroe Street, Suite 1501, Chicago, IL 60603.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees identified as handicapped.

CATEGORIES OF RECORDS IN THE SYSTEM:

Indicates employee's home and organizational location and various physical and mental handicaps, infirmities and conditions. Also shows veteran's preference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

List.

RETRIEVABILITY:

Lists employees alphabetically by district.

SAFEGUARDS:

None at present and none required.

RETENTION AND DISPOSAL:

Employee's name removed from list at time of termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Data furnished by employee and employee's physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .122

SYSTEM NAME:

Information Received File—Treasury/Customs.

SYSTEM LOCATION:

District Division, Room 200, United States Customhouse, La Marina, Old San Juan, PR 00901; Office of the Special Agent In Charge, 423 Canal St, New Orleans, LA 70130; Office of the District Director, 880 Front Street, San Diego, CA 92318; Offices of the Port Directors, San Ysidro, CA., Tecate, CA., Calexico, CA., Andrade, CA; San Diego Barge Office, Offices of the Special Agent In Charge, San Diego, CA., San Ysidro, CA., Calexico, CA., Tecate, CA; Los Angeles Region. Office of the District Director, 423 Canal St., New Orleans, LA 70130; Special Agent In Charge, Room 213, International Trade Center, 250 N. Water Street, Mobile, AL 36602; Intelligence Support Staff (Pacific Region), Room 7514, 300 N. Los Angeles Street, Los Angeles, CA 90053; Special Agent In Charge, 300 Ferry Street, Terminal Island, San Pedro, CA 90731; Resident Agent in Charge, Office

of Investigations, PO Box 1385, Nogales, AZ 85621; Special Agent In Charge, Room 7N–FB–05, 301 W. Congress, Tucson, AZ 85701.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in whom Customs and/or other government agencies are interested from a law–enforcement and/or security point of view.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, alias, date of birth or age, personal data, addresses, home and business telephone number, occupation, background information, associations, license number and registration number of vehicle, vessel and/or aircraft, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are kept in a locked metal cabinet.

RETRIEVABILITY:

Records are filed within a metal file.

SAFEGUARDS:

The files are located within an office that is locked during non–working hours. The building is guarded by a central alarm system which is monitored by local law enforcement agencies, and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Files are retained for a period of three (3) years after which they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Special Agent In Charge, United States Custom Service, Room 200, La Marina, Old San Juan, PR 00901; Special Agent In Charge, 423 Canal St., New Orleans, LA 70130; Chief, Air Branch, U.S. Customs Service, Bldg. 240, Homestead Air Force Base, Homestead, FL 33039; Director, Regional Agent In Charge, 423 Canal St., New Orleans, LA 70130; District Director, Port Directors, and Division Directors within the San Diego Customs District: Intelligence Support Staff (Pacific Region), Room 7514, 300 N. Los Angeles Street, Los Angeles, CA 90053; Special Agent In Charge, 300 Ferry Street, Terminal Island, San Pedro, CA 90731; Resident Agent in Charge of Enforcement, PO Box 1385, Nogales, AZ 85621; Special Agent in Charge, Room 7N–FB–05, 301 W. Congress, Tucson, AZ 85701 (see Customs appendix A).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .123

SYSTEM NAME:

Injury Notice—Treasury/Customs.

SYSTEM LOCATION:

Regional Commissioner, 423 Canal Street, New Orleans, LA 70130; District Director, 423 Canal Street, New Orleans, LA 70130; District Director, 150 N. Royal, Mobile, Alabama 36602; Special Agent–in–Charge, 108 Decatur St., New Orleans, LA 70150; Special Agent–in–Charge, 951 Government St., Mobile, AL 36604.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who sustain an injury in performance of duty as an employee of U.S. Customs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, home address, organization, place of injury, date and hour of injury, dependents, occupation, cause of injury, nature of injury, statement of witness, supervisor's report of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 19 and 24 of the Occupational Safety and Health Act of 1970; 84 Statute 1609, 1614, 29 U.S.C. 668, 673 and the provisions of Executive Order 11807.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Labor for that agency's official use; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (3) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained on CA forms. The CA forms are filed in folders, alphabetically, and placed in a metal file cabinet.

RETRIEVABILITY:

Each CA form is identified by the name of the injured employee and filed alphabetically in a folder.

SAFEGUARDS:

The binder is placed within a metal file container located within an office that is locked during non–working hours. The building is guarded by uniformed security personnel and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Notice of injury reports are maintained in the employee's OPF and disposed of in accordance with the Treasury Records Control Manual. Copies maintained by the systems manager are maintained at location for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Commissioner, 423 Canal Street, New Orleans, LA 70130; District Director, 423 Canal St., New Orleans, LA 70130; District Director, 150 N. Royal St., Mobile, Alabama 36602; Special Agent–in–Charge, 108 Decatur St., New Orleans, LA 70130; Special Agent–in–Charge, 951 Government St., Mobile, Alabama 36604.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with and consists solely of information supplied by the injured employee, his supervisor, appropriate witness and attending physician on CA forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .125

SYSTEM NAME:

Intelligence Log—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Air Branch, Bldg. 240 PM–TUM, Homestead Air Force Base, Homestead, FL 33030.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are believed to be involved in activities which constitute, or may develop into, possible violation of Customs and related laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Internal Customs Service memoranda and related materials regarding the activities of individuals, vessels, or aircraft believed to be involved in acts which are contrary to Customs and related laws.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The intelligence log is maintained within a security area.

RETRIEVABILITY:

A manual, master card index, is maintained for the entire system. This index includes name and/or numerical identifier.

SAFEGUARDS:

The information files and master card index are located within an office which is locked during non–working hours. The building is guarded by U.S. Air Force Military Police and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

These files are retained until such time that it has been determined that there is no longer a need for their existence, at which time the oldest files are destroyed under Customs supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Air Branch, U.S. Customs, PM–TUM Bld 240, Homestead Air Force Base, Homestead, FL 33039.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .127

SYSTEM NAME:

Internal Security Records System–Treasury/Customs.

SYSTEM LOCATION:

Office of Internal Affairs, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Investigation Files, and information relating to investigations conducted by Internal Affairs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees, applicants for positions that require an investigation, and others that are principals or others in an investigation, or integrity issue.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background investigation files and integrity investigation files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or

regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Investigative records are maintained in computers as well as in file folders and stored in metal security cabinets secured by government approved three–position combination locks.

RETRIEVABILITY:

These records are indexed by name and/or numerical identifier in a computer.

SAFEGUARDS:

In addition to being stored in secure metal containers with government approved, combination locks, the metal containers are located in locked rooms, the keys of which are controlled and issued to the custodians of the files. The security specialists and administrative personnel who maintain the files are selected for their experience and afforded access only after having been cleared by a full–field background investigation and granted appropriate security clearances for critical sensitive positions. Those departmental officials who may occasionally be granted access consistent with their positions to employ and concur in the granting of security clearances have also been investigated prior to filling critical–sensitive positions.

RETENTION AND DISPOSAL:

The file records are maintained as long as the subject of the investigation is employed by the U.S. Customs Service and for one (1) year after the subject terminates employment. The files are then transferred to the Federal Records Center. Once files are transferred, they are retained for the following periods of time by the Federal Records Center and then destroyed: Background investigations–5 years, Conduct and special inquiry investigations–5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Internal Affairs (Program Management Staff), U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

Employers; educational institutions; police; government agencies; credit bureaus; references; neighborhood checks; confidential sources; medical sources; personal interviews; military, financial, citizenship, birth and tax records; and the applicants or employee's personal history and application forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5).

Treasury/Customs .129

SYSTEM NAME:

Investigations Record System–Treasury/Customs.

SYSTEM LOCATION:

All Office of Investigations offices located within each Customs Service Region in the United States and within each Office of Enforcement office located in a foreign country. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals who may bear some necessary relevance to investigations conducted within the scope of authority of the Office of Investigations, United States Customs Service. The categories include but are not limited to: (1) Known violators of U.S. Customs laws; (2) Convicted violators of U.S. Customs and/or drug laws in the U.S. and foreign countries; (3) Fugitives with outstanding warrants, Federal or State; (4) Suspect violators of U.S. Customs or other related laws; (5) Victims of violations of the U.S. Customs or related laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

The subject records may contain any identifying or other relevant information on subject individuals which might relate to the following categories of investigations: Smuggling, Diamonds & Jewelry; Smuggling, Liquor; Smuggling, Narcotics; Smuggling, All Other; Prohibited Importations; Navigation, Airplane and Vehicle Violations; Neutrality Violations; Illegal Exports. Baggage Declaration Violations; Customhouse Brokers and Customs Attorneys; Applications for Licenses; Theft, Loss, Damage and Shortage; Irregular Deliveries; All Other Criminal Cases; Currency Violations. Organized Crime; Personnel Derelictions; Other Departments, Bureaus and Agencies; Federal Tort Claims; Personnel Background Investigations. Undervaluation and False Invoicing; Petitions for Relief; Drawback; Marking of Merchandise; Customs Bonds; Customs Procedures; Collections of Duties and Penalties; Trademarks and Copyrights; Foreign Repairs to Vessels and Aircraft. Classification; Market Value; Dumping; Countervailing Duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended; 19 U.S.C. 2072; Title 19, United States Code; Title 18, United States Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both hard copy files and on microfiche which are placed in locked metal containers.

RETRIEVABILITY:

The record system is indexed on 3 x 5 file cards by the individual's name and/or identification number and by the investigative case numbers to which the information relates. The hard copy and microfiche records are retrieved by means of the investigative case numbers.

SAFEGUARDS:

All records are held in steel cabinets and are maintained according to the requirements of the United States Customs Records Manual and the United States Customs Security Manual. Access is limited by visual controls and/or a lock system. During normal working hours, files are either attended by responsible Office of Investigations employees or the file area is restricted. The office in which the records are located is locked during non–working hours and the building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

The index cards, the hard copies and microfiche records are retained in accordance with standard Customs Service record retention and disposal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/Customs .133

SYSTEM NAME:

Justice Department Case File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Ave., NW., Washington, DC 20229. Office of the Regional Counsel, Northeast Region, 10 Causeway Street, Boston, MA 02222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties in litigation with the United States Government or subunits or employees or officers thereof, in matters which affect or involve the United States Customs Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Litigation report requests and responses thereto, reports of investigations, internal Customs Service memoranda summarizing or relating to the matter in controversy and other background information relating to the subject matter or origin of the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 507; 19 U.S.C. 1603; 5 U.S.C. 301; E.O. 6166; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Justice or directly to United States Attorneys upon request to assist in representing the interests of the Government, the agency or officer or employee involved in the litigation, or to other agencies involved in the same or similar litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified in the file folder within the metal container.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Counsel. During non–working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

The files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.System manager(s) and address: Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC, 20229; Regional Counsel, Northeast Region, 10 Causeway Street, Boston, MA 02222.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the request from an appropriate customs official, the Department of Justice or directly from a United States Attorney or other Government agency or officer which results in a communication regarding the particular case. Information in this file is also derived from reports of investigation regarding the enforcement of civil or criminal statutes or regulations, administrative proceedings or any matter affecting or involving the United States Customs Service or its officers or employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .136

SYSTEM NAME:

All Liquidated Damage, Penalty, and Seizure Cases; Prior Violators–Treasury/Customs.

SYSTEM LOCATION:

Office of the District Director, Fines and Penalties Office, U.S. Customs Service, 2 India Street, Boston, MA 02109, and Office of the District Director, Fines and Penalties Office, U.S. Customs Service, PO Box 1490, St. Albans, VT 05478.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prior violators of Customs Laws: e.g. Customhouse brokers, individual TIB violators, liquidated damage cases, penalty cases, and seizure cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and case number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on 3 x 5 index cards and in file folders.

RETRIEVABILITY:

Alphabetically; by name.

SAFEGUARDS:

In file cabinet in locked room when not in use.

RETENTION AND DISPOSAL:

Boston District files are kept for two years and then destroyed on site. St. Albans District files are kept for five (5) years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Fines and Penalties Officer, U.S. Customhouse, Boston, MA 02109. Fines and Penalties Officer, Post Office and Customhouse Building, St. Albans, VT 05478.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is received from the individual at the time the violation occurs and from penalty notices which are issued in the Penalties section. Also, the Office of Investigations provides any information developed during its investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .137

SYSTEM NAME:

List of Vessel Agents Employees–Treasury/U.S. Customs.

SYSTEM LOCATION:

Offices of District Directors, North Central Region, Chicago, IL (see Customs appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by Vessel agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security numbers, and dates and places of birth of persons employed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Open file.

RETRIEVABILITY:

Alphabetical listing of employees by vessel agent name.

SAFEGUARDS:

The file described is maintained in the Offices of the District Directors in North Central Region, Chicago, IL. During non–working hours the room/building in which the file is located is locked. Access limited to authorized Customs personnel.

RETENTION AND DISPOSAL:

Employee name retained for period of employment with vessel agent agency.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, as appropriate, in North Central Region, Chicago, IL (see Location above).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Submission of data by importing carrier or his agent.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .138

SYSTEM NAME:

Litigation Issue Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Assistant Chief Counsel, Customs Court Litigation, Second Floor, 26 Federal Plaza, New York, NY 10007.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties in litigation before the United States Customs Court (or subunits or employees or officers thereof), and other individuals with knowledge of the issues in controversy, e.g., trade witnesses, foreign or domestic manufacturers, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Litigation report requests and responses thereto, reports of investigations, internal Customs Service memoranda summarizing or relating to the matter in controversy and other background information relating to the subject matter or origin of the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 1514–1516; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Department of Justice upon request to assist that Department in representing the interests of the Government, or agency involved in the litigation; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relates to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each issue file is inserted in a numerical file folder (according to issue) which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each issue filed is cross–indexed in the following card files: (a) By name of party–plaintiff; (b) by issue; and, (c) by titles of decided cases.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Assistant Chief Counsel within the Federal Building. At all times the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Counsel, Customs Court Litigation, Second Floor, 26 Federal Plaza, New York, NY 10007.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the receipt of protest reports (based on information supplied by the subject individuals or by their authorized agents or attorneys) from the various Districts and/or litigation report requests from the Department of Justice which results in a written report to that Department regarding the facts of the particular case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/Customs .144

SYSTEM NAME:

Mail Protest File–Treasury/Customs.

SYSTEM LOCATION:

Foreign Mail Branch, 1751 NW 79th Avenue, Miami, FL 33166; District Director of Customs, 3180 Bladensburg Rd., NE., Washington, DC 20018; 620 East 10th Avenue, Anchorage, AK 99501; 215 1st Avenue North, Great Falls, MT 59401; 335 Merchant, Honolulu, HI 96813; 909 First Avenue, Seattle, WA 98714; U. S. Customs Mail Facility, Room 416, 1675–7th Street, Oakland, California 94645.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed formal protest of the amount of duty assessed against mail parcels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, invoices, and other pertinent documents pertaining to protests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders within a metal file cabinet.

RETRIEVABILITY:

Records are retrievable by name or protest number.

SAFEGUARDS:

Access is limited to appropriate personnel and the office is locked during non–working hours.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

District Director of Customs, 1751 NW 79th Avenue, Miami, FL 33166; 3180 Bladensburg Rd., NE., Washington, DC 20018; 620 East 10th Avenue, Anchorage, AK 99501; 215 1st Avenue North, Great Falls, MT 59401; 335 Merchant, Honolulu, HI 96813; 511 NW. Broadway, Portland, OR 97209; 555 Battery Street, San Francisco, CA 94126; 909 First Avenue, Seattle, WA 98714.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Source of information is from the sender, the addressee, the Customs value records, and the manufacturer of the item.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .148

SYSTEM NAME:

Military Personnel and Civilian Employees' Claims Act File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Office of the Regional Counsel, Room 125, U.S. Customhouse, 40 S. Gay Street, Baltimore, MD 21202; Regional Counsel, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing claims under the Military Personnel and Civilian Employees' Claims Act of 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative handling of the claim and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 240–243; 5 U.S.C. 301; 31 CFR part 4; Treasury Department Administrative Circular No. 131, August 19, 1965; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted alphabetically in a file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified in a manual alphabetical card file by the name of the person who filed the claim and alphabetically in the file folder within the metal container by the name of the person who filed the claim.

SAFEGUARDS:

The metal container described above is maintained within the Customs Service Building. During non–working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Regional Counsel, U.S. Customhouse, 40 S. Gay Street, Baltimore, MD 21202; Regional Counsel, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the Treasury Department Form No. 3079, Civilian Employee Claim For Loss or Damage to Personal Property, which is completed and filed with the Customs Service by the claimant. Additional information contained in these files may be separately provided by the claimant or by the claimant's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .151

SYSTEM NAME:

Motor Vehicle Accident Reports–Treasury/Customs.

SYSTEM LOCATION:

National Finance Center, U.S. Customs Service,6026 Lakeside Blvd. Indianapolis, IN 46278.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Customs employees involved in automobile accident while on official duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, home address, telephone number, age, title, date of accident, place of accident, make, year, license number of vehicles, description of accident, information on driver of other vehicle.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Administrative Circular No. 131, dated August 19, 1965, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose

pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in an alphabetical file folder which is filed in an unlocked drawer in a metal file cabinet.

RETRIEVABILITY:

Each case file is in a file folder designated by the name of the Customs employee involved in the automobile accident.

SAFEGUARDS:

The metal file cabinet described above is maintained within the area assigned to the Regional Safety Coordinator within the office of the Regional Commissioner of Customs. Access to the building during non–working hours is controlled.

RETENTION AND DISPOSAL:

Files are maintained at location for two years and then transferred to the Federal Records Center where they are retained for four years.

SYSTEM MANAGER(S) AND ADDRESS:

Each Director, Logistics Management Division in each Regional Headquarters (see Customs appendix A for addresses).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in these files originates from the employee involved in the automobile accidents, police report and report of investigation conducted by the Office of Internal Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .156

SYSTEM NAME:

Narcotic Violator File—Treasury/Customs.

SYSTEM LOCATION:

Fines, Penalties and Forfeitures Office, District Director of Customs, Room 603, U.S. Federal Building, 111 West Huron Street, Buffalo, NY 14202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been found in possession of any controlled substance within the Buffalo District.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetized cross reference of violators' names and the associated case numbers assigned to these individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Open card file (3 x 5) is kept in metal flip file.

RETRIEVABILITY:

Narcotic violator files are cross–referenced by a 3 x 5 alphabetized card which contains both name and case number.

SAFEGUARDS:

Open card file kept in the Fines, Penalties and Forfeitures Office which is locked after working hours. During working hours, a staff person is always in the office. The building is under 24 hour guard.

RETENTION AND DISPOSAL:

File system has a purge date of two years after which cross reference cards are destroyed and case numbered file is no longer accessible by name of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, United States Customs Service, Room 603, 111 West Huron Street, Buffalo, NY 14202.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in these files is obtained from Search/Arrest and Seizure Reports transmitted to the

Fines, Penalties and Forfeitures Office by ports and stations within the District.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .159

SYSTEM NAME:

Notification of Personnel Management Division when an employee is placed under investigation by the Office of Internal Affairs—Treasury/Customs.

SYSTEM LOCATION:

Human Resources Division, 500 Dallas Street, Houston, TX 77002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees who are suspected of misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

A written or telephonic notification made by the Office of Internal Affairs that an investigation has been opened on an individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Notifications provided by the Office of Internal Affairs are maintained in a file folder and stored in a metal security cabinet equipped with a lock.

RETRIEVABILITY:

The file contains the name of the employee; therefore, Retrievability is by the individual's name.

SAFEGUARDS:

A metal container, described above, is maintained within the area assigned to Personnel Management in the One Allen Center Building. During non–working hours the room in which the metal container is kept is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

The name file is retained until notification has been received that the investigation has been canceled or on receipt of a report of investigation from the Office of Internal Affairs.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, 500 Dallas Street, Houston, TX 77002.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The only source of notification that an employee has been placed under investigation is the Regional Director, Internal Affairs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/Customs .161

SYSTEM NAME:

Optional Retirement List–Treasury/Customs.

SYSTEM LOCATION:

Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees who are eligible for optional law enforcement retirement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, organization code, and service computation date, social security number and retirement code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114: (3) determine qualification for FERS position.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in a locked file cabinet.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Accessible only to the Personnel Officer and to designated representative. The Areas in which these records are stored is locked during non–working hours, and the building guarded by uniformed security police.

RETENTION AND DISPOSAL:

Records are retained for two years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director Enforcement Division, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20044.

NOTIFICATION PROCEDURES:

Director Enforcement Division, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20044.

RECORDS ACCESS PROCEDURES:

Director Enforcement Division, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20044.

CONTESTING RECORDS PROCEDURES:

Write to System Manager.

RECORD SOURCE CATEGORIES:

The information is obtained from the TIPS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .162

SYSTEM NAME:

Organization (Customs) and Automated Position Management System (COAPMS)—Treasury/Customs.

SYSTEM LOCATION:

Chief Financial Officer, U.S. Customs Service, Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Customs employees by organizational entity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Position control number and other personnel data such as social security number, date of birth, name, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on mag–tape.

RETRIEVABILITY:

Records are indexed by organizational segment, code, position control number, and name.

SAFEGUARDS:

Limited access.

RETENTION AND DISPOSAL:

Records are maintained on mag–tapes until employee separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, U.S. Customs Service, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

COAPMS is composed of four basic inputs–CF–105 – Position Change Form– presently prepared by the Headquarters Personnel Branch and operating offices: Post of Duty Codes–established by the Accounting Division; Ceilings–established by the Budget Division; and CF–112–a Request for PPBS Code and Standard Abbreviation of Position. In addition to these four sources, the IRS payroll tape has many inputs –1150, 1125, 50, 52, union dues, etc., and Accounting tape K from IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .163

SYSTEM NAME:

Outside Employment Requests—Treasury/Customs.

SYSTEM LOCATION:

Located in Headquarters and regional offices and/or appropriate District, Port, or post of duty office of employee making request.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees engaged in outside employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Outside employment request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

CF–3031 kept in manila folder.

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Locked file cabinet or limited access offices.

RETENTION AND DISPOSAL:

Until disengagement from outside employment or employee separation.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate managerial official in each headquarters, region, district, SAC, port of employee.

NOTIFICATION PROCEDURE:

Write to System Manager, provide your name and social security number.

RECORD ACCESS PROCEDURES:

Write to System Manager.

CONTESTING RECORD PROCEDURES:

Write to System Manager, specify changes you are requesting and provide your name and social security number.

RECORD SOURCE CATEGORIES:

Employee submission of Form CF–3031.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .165

SYSTEM NAME:

Overtime Earnings—Treasury/Customs.

SYSTEM LOCATION:

Inspection and Control Division, San Francisco District, 555 Battery Street, Room 111, San Francisco, CA 94126; Inspection and Control Division, Pacific Region, 300 N. Los Angeles Street, Los Angeles, CA 90012; Los Angeles District, Airport Division, Los Angeles International Airport, 5758 W. Century Boulevard, Los Angeles, CA 90045; District Director, 300 S. Ferry Street, Terminal Island, San Pedro, CA 90731; District Director, International and Terrace Streets, P.O. Box 670, Nogales, AZ 85621; San Diego Barge Office; Offices of the Port Directors San Ysidro, CA; Andrade, CA; Calexico, CA; Douglas, AZ; Las Vegas, NV; Lochiel, AZ; Lukeville, AZ; Naco, AZ; Oxnard, CA; Phoenix, AZ; San Luis Obispo, CA; San Luis, AZ; Sasabe, AZ; Tecate, CA; Tucson, AZ. Office of the Regional Commissioner, North Central Region, Inspection and Control Division, 55 E. Monroe Street, Suite 1501, Chicago, IL; Pembina, ND; Detroit, MI; Minneapolis, MN; Cleveland, OH; St. Louis, MO; Duluth, MN; Milwaukee, WI. Chief Inspector, 1790 W. Port Boulevard, Miami, FL 33132; Port Director of Customs, Port Everglades, FL; Port Director of Customs, West Palm Beach, FL; Director, Airport Operations, Miami International Airport; Office of the Supervisory Warehouse Officer, U.S. Customhouse, Room 103, 2nd and Chestnut Streets, Philadelphia, PA

19106; District Director, U.S. Customs Service, 200 St. Paul Place, Baltimore, MD 21202–2004; District Director, U.S. Customs Service, 111 West Huron Street, Buffalo, NY 14202; District Director, U.S. Customs Service, 127 North Water Street, Ogdenburg, NY 13669; District Director, U.S. Customs Service, 312 Fore Street, Box 4688, Portland, ME 04112; District Director, U.S. Customs Service, 49 Pavilion Avenue, Providence, RI 02905; District Director, U.S. Customs Service, Main and Stebbins Streets, St. Albans, VT 05478; District Director, U.S. Customs Service, 10 Causeway Street, Boston, MA 02222; U.S. Customs Service, Honolulu International Airport, Honolulu, HI 96816.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inspection and Control employees participating in overtime assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and the total current monetary earnings computed to the nearest dollar.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on government internal control personal computer data disks and the information on earnings is updated on a daily basis.

RETRIEVABILITY:

The individual's name appears alphabetically.

SAFEGUARDS:

The room where the records are kept is locked at other than regular working hours. Passwords are required for access to records.

RETENTION AND DISPOSAL:

The information on each employee constantly changes and is maintained as long as the employee is working in the overtime system.

SYSTEM MANAGER(S) AND ADDRESSES:

Supervisory Customs Inspector, Station 1, U.S. Customs Service, 555 Battery Street, Room 111, San Francisco, CA 94125; Supervisory Customs Inspector, Inspection and Control Division, Pacific Region, 300 N. Los Angeles Street, Room 7508, Los Angeles, CA 90012; Director, (Airport), Los Angeles International Airport, 5758 W. Century Boulevard, Los Angeles, CA 90045; District Director, 300 S. Ferry Street, Terminal Island, San Pedro, CA 90731; District Director, International and Terrace Streets, PO Box 670, Nogales, AZ 85621; San Diego Barge Office; Port Directors: San Ysidro, CA; Andrade, CA; Calexico, CA; Douglas, AZ; Las Vegas, NV; Lochiel, AZ; Lukeville, AZ; Naco, AZ; Oxnard, CA; Phoenix, AZ; San Luis Obispo, CA; San Luis, AZ; Sasabe, AZ; Tecate, CA; Tucson, AZ. Director, Inspection and Control Division, North Central Region, 55 E. Monroe Street, Suite 1501, Chicago, IL 60603; District Directors: Chicago, IL; Pembina, ND; Detroit, MI; Minneapolis, MN; Cleveland, OH; St. Louis, MO; Duluth, MN; Milwaukee, WI. District Director of Customs, 77 S.E. 5th Street, Miami, FL 33131; District Director of Customs, U.S. Customhouse, 2nd and Chestnut Streets, Philadelphia, PA 19106; District Director of Customs, U.S. Customs Service, Honolulu, HI 96819.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORDS ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORDS PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is obtained from actual overtime earnings made by each employee in the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .170

SYSTEM NAME:

Overtime Reports—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Office of Investigations, South Central Region. RDI, 1440 Canal Street, New Orleans, LA 70112; SAC, 600 South Street, Room 444, New Orleans, LA 70130; SAC, PO Box 1704, Mobile, AL 36601; RA, 1719 West End Building, Room 303, Nashville, TN 37203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All special agents in region certified to receive premium compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Numbers of hours worked by special agents over and above the normal 40–hour week.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These forms are maintained in file folders in a locked cabinet.

RETRIEVABILITY:

Files are kept in alphabetical order.

SAFEGUARDS:

During non–working hours the rooms in which the above described containers are located are locked.

RETENTION AND DISPOSAL:

These files are destroyed three years after special agent leaves agency or office.

SYSTEM MANAGER(S) AND ADDRESS:

Resident Agent, U.S. Customs Service, 6125 Interstate, Bay 11, Shreveport, LA 71109; Resident Agent in Charge, c/o Drug Enforcement Agency, Little Rock, AR 72211; Resident Agent, Hoover Building, Ste. 216B, 8312 Florida Boulevard, Baton Rouge, LA 70806; Resident Agent, 1 Government Plaza, Rm. 423, 2909 13th Street, Gulfport, MS 39501; Resident Agent in Charge, U.S. Customs Service, U.S. Federal Building, Ste. 230, Jackson, MS 39269; Resident Agent in Charge, Station 1, Box 10182, Houma, LA 70363–5990; Resident Agent in Charge, 101 E. Cypress Street, Ste. 106, Lafayette, LA 70502; Resident Agent, 811 Bayou Pines Blvd., Lake Charles, LA 70601; Resident Agent, 811 Bayou Pines Blvd., Lake Charles, LA 70601; New Orleans Aviation Branch, PO Box 980, Belle Chasse, LA 70037.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with, and consists solely of information supplied by employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .171

SYSTEM NAME:

Pacific Basin Reporting Network—Treasury/Customs.

SYSTEM LOCATION:

Office of the Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, Room 6127, Honolulu, Hawaii 50104

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on masters, operators, pilots, crew members and passengers of vessels and aircraft traveling in or through the Pacific Basin. The Pacific Basin area includes the countries of northeast Asia, southeast asia, the Pacific islands (both independent and non–independent), Australia, New Zealand, United States, Canada and Mexico.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records included information pertaining to individuals, aircraft and vessels reporting; vessel/aircraft name and registration numbers; description of vessels and aircraft; departure and arrival information; and destination locations. Information about individuals includes name, date of birth, place of birth, physical description, nationality, passport number, address and occupation.

AUTHORITY FOR MAINTENANCE OF THIS SYSTEM:

19 U.S.C. 1433, 1459, and 162; 49 U.S.C. App. 1590.

PURPOSE(S):

The purpose of the Pacific Basin Reporting Network is to implement a law enforcement data base containing records with identifying and other relevant information on vessels, aircraft and individuals traveling in or through the Pacific basin area, and where appropriate to disclose this information to other domestic and foreign agencies which have an interest in this information.

ROUTINE USES OF RECORDS MAINTAINED IN THIS SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal agencies and to state, local/territorial or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation or order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, where relevant or potentially relevant to the proceedings, or in connections with criminal law proceedings; (3) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; and (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on tape, magnetic disc and hard copy.

RETRIEVABILITY:

By name (individual, master or pilot); unique identifiers (date of birth, passport number, aircraft/vessel registration number); date, place of destination; port of registry; or vessel description.

SAFEGUARDS:

All officials accessing to the system of records have had a full field background check as required and access data on a need–to–know basis only. Procedural and physical safeguards are utilized such as accountability, receipt records and specialized communications security. The data system has an internal mechanism designed to restrict access to authorized officials. Hard–copy records are held in steel cabinets and are maintained according to the requirements of the U.S. Customs Reports Manual and Customs Security Manual. Access is limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; they are locked during non–working hours and the building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

The records are periodically updated to reflect changes and maintained as long as needed, then shredded and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, Room 6127, Honolulu, Hawaii 50104.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2), and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5) and (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/Customs .172

SYSTEM NAME:

Parking Permits File—Treasury/Customs.

SYSTEM LOCATION:

Chief Financial Officer, U.S. Customs Service Headquarters, 1301 Constitution Ave., NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Organizational units and persons holding parking permits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of persons issued parking permits, and number of parking spaces assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide

information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Office locked at night.

RETENTION AND DISPOSAL:

Retained until changed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is compiled when parking permit is assigned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .186

SYSTEM NAME:

Personnel Search—Treasury/Customs.

SYSTEM LOCATION:

Office of Enforcement, 600 South Street, New Orleans, LA 70130; Special Agent in Charge, 951 Government Street, Suite 700, Mobile, AL 36604. U.S. Customs Service, Honolulu International Airport, Honolulu, HI 96810; Ports of Entry, Nogales, AZ (District).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indicating unlawful or suspicious activity that might result in a Customs violation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, phone number, place of business, physical description, associates, vessel, automobile, or aircraft identified with make, year, license number and registration of vehicles, area of activity, method of operation and other relevant and necessary information on individuals suspected of activity contrary to law.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in standard Customs file folders in locked metal cabinets.

RETRIEVABILITY:

Records are indexed by identifying file number and manually retrieved.

SAFEGUARDS:

File maintained in locked metal file cabinet, the keys of which are controlled by the custodian of the files. Those departmental officials who may occasionally be granted access, consistent with their positions, have been cleared by a full background investigation and granted appropriate security clearance for critical sensitive positions. During non–working hours, the room housing the metal cabinets is locked.

RETENTION AND DISPOSAL:

Negative Search Reports are destroyed after a five year period. Method of disposal is shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Customs Service, 600 South Street, New Orleans, LA 70130; District Directors/ Port Directors, as applicable, in North Central Region, Chicago, IL; Special Agent in Charge, 951 Government Street, Mobile, AL 36604; District Director of Customs, U.S. Customs Service, Honolulu, HI 96819; Port Directors at the various ports of entry in the Nogales, AZ (District).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with, and consists solely of, information supplied by the individual being searched and the patrol officer doing the search.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .190

SYSTEM NAME:

Personnel Case File—Treasury/ Customs.

SYSTEM LOCATION:

Office of the Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Office of the Regional Counsel, U.S. Customs Service, North Central Regional, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Regional Counsel of Customs, 6 World Trade Center, New York, NY, 10048; Office of Regional Counsel, 211 Main Street, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Customs Service employees against whom disciplinary action has been proposed or taken, who have filed grievances, and who have filed complaints under the Equal Opportunity (EO) Program, in most cases where administrative proceedings have been instituted.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of investigation into alleged employee misconduct, internal Customs Service memoranda recommending disciplinary action, documents relating to the institution or conduct of disciplinary proceedings, documents relating to the filing and administrative disposition of formal and informal grievances and documents relating to the filing and administrative disposition of EO complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code; 5 U.S.C. 301; Title 5 Code of Federal Regulations; Treasury Departmental Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to the Office of Personnel Management (OPM) in connection with administrative hearings and to the Department of Justice in connection with court proceedings resulting from appeals from decisions rendered at the administrative level; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted alphabetically in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file id identified in a manual alphabetical card file by name of the person, and each case file is similarly identified in alphabetical order within the metal container.

SAFEGUARDS:

The metal container described above is maintained within the Customs Service building. During non–working hours, the room in which the metal container is located is locked. Access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Regional Counsel of Customs, U.S. Customs Service, North Central Regional, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Regional Counsel of Customs, New York, NY, 10048; Regional Counsel of Customs, 211 Main Street, San Francisco, CA 94105.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files results from investigation into alleged misconduct on the part of Customs Service employees, recommendations from appropriate Customs Service field personnel that disciplinary proceedings be instituted against Customs Service employees, the filing of EO complaints by Customs Service employees, the statements of Customs Service employees including the employees who are directly affected by the administrative proceedings, and statements or other information provided by private non–governmental individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .193

SYSTEM NAME:

Operating Personnel Folder Files—Treasury/Customs.

SYSTEM LOCATION:

Files are located in Headquarters, Regional, District, Port and other post of duty offices throughout the Customs Service depending upon post of duty of employee. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees, present.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the appropriate Personnel offices, records are also maintained by district, port, or other post of duty management on personnel matters such as, but not limited to name, Social Security number, awards, letters of appreciation, promotions, step increases, memoranda, forms and materials related to hiring; address, pay, transfer and separation, service time, salary, phone, education, society memberships, publications, skills, chronological work history, position descriptions, reports of discussions held with employee regarding performance, copies of letters written to employee concerning performance, overtime hours; seniority status, leave, overtime earnings, productivity, locator card information, and related employment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used: (1) To disclose to the public for employment and salary verification upon request. (2) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (3) To disclose information to a Federal, State, or local agency,

maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit. (4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings. (5) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114. (6) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, and/or on index cards, and/or ledgers.

RETRIEVABILITY:

Records are indexed by name, or Social Security number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms with limited access.

RETENTION AND DISPOSAL:

When the employee leaves the Customs Service through transfer or other separation, the file will immediately be forwarded to the office maintaining the Official Personnel Folder. There it will be screened to insure that it contains no documents that should be permanently filed in the Official Personnel Folder other than exact duplicates of papers already so filed. The file and its contents will then be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division in each Region or Headquarters, or managerial official in appropriate posts of duty of employee. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from employee, from personnel actions as noted in official personnel folders, and from supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .196

SYSTEM NAME:

Preclearance Costs—Treasury/Customs.

SYSTEM LOCATION:

Regional Commissioner, U.S. Customs Service, 10 Causeway Street, Boston, MA 02222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Customs Inspectors and Foreign Service employees of North Central Region, who are stationed at Toronto and Montreal, Canada.

CATEGORIES OF RECORDS IN THE SYSTEM:

Salaries, living allowances and benefits paid to employees who are stationed at Toronto and Montreal, Canada.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in a file folder within two metal file cabinets in the work area of the Budget Section.

RETRIEVABILITY:

The file is identified as the "Pre-clearance Record" which contains the names of all employees listed in alphabetical order with corresponding costs associated with each employee.

SAFEGUARDS:

The file is located within an office that is locked during non-working hours. The building is guarded by uniformed security police and only authorized persons are permitted entry to the building.

RETENTION AND DISPOSAL:

The files are kept for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Commissioners, U.S. Customs Service, 10 Causeway Street, Boston, MA 02222.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in the system is obtained from the Bi-weekly Comprehensive Payroll Listing, Treasury Form 2979, supplied by the Payroll Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .197

SYSTEM NAME:

Private Aircraft/Vessel Inspection Reporting System—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Names of pilots and vessel masters arriving in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and personal identifiers of pilots, vessel masters, and owners of vessels with appropriate registration and/or documentation numbers and characteristics, and arrival dates at port of entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order,or license, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disc and tape storage; microfiche.

RETRIEVABILITY:

By individual name, private aircraft/vessel registration number; vessel name.

SAFEGUARDS:

All inquiries are made by officers with full field background investigation on a "need-to-know" basis only. Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

The records are periodically dated to reflect changes and maintained as long as needed, then destroyed. (Minimum of five years for aircraft arrival reports.)

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigation, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Proposed Customs Form 178 (Private Aircraft Inspection Report) which will be prepared by Customs officers, unnumbered forms prepared by vessel masters or owners who report their arrival to a United States port of entry, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3). (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .201

SYSTEM NAME:

Property File-Non-Expendable—Treasury/Customs.

SYSTEM LOCATION:

Offices of District Directors, North Central Region, Chicago, IL (see Customs appendix A.); Office of Logistics Management, U.S. Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Office of the District Director, San Diego, CA; Offices of the Port Directors: San Ysidro, CA; Tecate, CA; Calexico, CA; Andrade, CA; San Diego Barge Office, and the Offices of the Customs Patrol Division, San Diego, CA; San Ysidro, CA; Calexico, CA; Tecate, CA; District Directors Office, Entry Control Section (see Customs appendix A.); United States Customs Service, Room 228, Federal Building, 335 Merchant Street, Honolulu, HI 96813; Logistics Management Division, Southeast Region; U.S. Customs Service, 99 S.E. 5th Street, Miami, FL 33131; Federal Building, Room 198, 511 NW. Broadway, Portland, OR 97209; Office of District Director, Administrative Officer, United States Customs Service, 555 Battery Street, Room 319, San Francisco, CA 94126.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees issued non-expendable property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Receipts for badges, cap insignias, bonded warehouse keys, identification cards, Government driver's licenses, firearms and other non-expendable property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Locked file cabinet.

RETRIEVABILITY:

Folders identified by individual's name.

SAFEGUARDS:

During non-working hours the room/building in which the file is located is locked. Access limited to authorized Customs personnel.

RETENTION AND DISPOSAL:

Until employee separates /transfers. Transfer to National Personnel Records Center (NPRC), (CPR), St. Louis, MO, thirty days after employee is separated.

SYSTEM MANAGER(S) AND ADDRESS:

District Directors in North Central Region, Chicago, IL; Director, Office of Logistics Management, U.S. Customs Service, Headquarters, 1301 Constitution Avenue, NW., Washington, DC, 20229; District Director, Port

Directors, and Division Directors within the San Diego Customs District (see Customs appendix A.); Chief, Headquarters Support Branch, Logistics Management Division, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229; Local Property Officer, Room 228, Federal Building, Entry Control Section, 335 Merchant Street, Honolulu, HI 96813; Director, Logistics Management Division, United States Customs Service, Southeast Region, 99 SE 5th Street, Miami, Florida 33131; District Director, Federal Building, Room 198, 511 NW. Broadway, Portland, OR 97209; Administrative Officer, U.S. Customs Service, 555 Battery Street, Room 319, San Francisco, CA 94126.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system consists of receipts of employees receiving non–expendable property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .206

SYSTEM NAME:

Regulatory Audits of Customhouse Brokers—Treasury/Customs.

SYSTEM LOCATION:

Office of Regulatory Audit, United States Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229, and at each of the field offices of Regulatory Audit (see Customs appendix A for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons licensed to do business pursuant to 19 U.S.C. 1641.

CATEGORIES OF RECORDS IN THE SYSTEM:

Audit reports of customs broker accounts and records; correspondence regarding such reports; Congressional inquiries concerning customs brokers and disposition made of such inquiries; names of officers of customs broker firms, license numbers and dates issued and district covered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 1641; 19 CFR Part 111. 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order,or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each custom broker permanent file is inserted in alphabetical order by name of the firm in an unlocked drawer within a metal file cabinet located in one or more regulatory audit offices. Each customs broker work paper file is similarly stored, but maintained in numerical order by audit report number.

RETRIEVABILITY:

Each broker permanent file is readily retrievable when the name is given, while the workpaper file is retrievable after obtaining the audit report file number from within the permanent file.

SAFEGUARDS:

The files described above are maintained within the respective regulatory audit offices. During non–working hours, the offices in which the files are located are locked.

RETENTION AND DISPOSAL:

Customhouse broker files are generally retained in each office at least three years, after which they are placed in General Service Administration long–term archival storage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Regulatory Audit, United States Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229, and the Regional Directors, Regulatory Audit at each of the seven regional offices (see Customs appendix A for addresses).

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates in connection with customs broker audits conducted by the regional regulatory audit staffs. The audits may be supplemented with information furnished by the Office of the Regional Counsel, Office of Enforcement, and the Office of Regulations and Rulings. These audits include examinations of brokers business records, including data maintained in support of client customs business.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .207

SYSTEM NAME:

Reimbursable Assignment/Workticket System—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs Service employees who perform reimbursable services and parties in interest for whom reimbursable services are performed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number or importer of record number assigned by the Customs Service, listings of reimbursable overtime

assignments of Customs employees, bills and refund checks issued to parties in interest, travel expenses incurred by Customs employees in connection with the reimbursable services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 261, 267, and 1451; 19 CFR 24.16 and 24.17; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1)

Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained in a computerized system utilizing magnetic tape storage techniques.

RETRIEVABILITY:

The information in this system is retrieved by the individual's Social Security number or by the individual's importer of record number.

SAFEGUARDS:

Procedural and physical safeguards are utilized such as accountability and receipt access, guards patrolling the area, restricted access and alarm systems.

RETENTION AND DISPOSAL:

The records in this system are retained in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Field Operations, U.S. Customs Service Headquarters, 1301 Constitution Ave, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with the receipt of a request for reimbursable services from the party in interest. In addition, information in this system is derived from Customs Form 5106 (Notification of Importer's Number/Application for Importer's Number) which is filed with the Customs Service by the importer, and from Customs Form 6082 (Work Ticket) which is filed by the Customs Inspector who performed the reimbursable services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .208

SYSTEM NAME:

Restoration of Forfeited Annual Leave Cases—Treasury/Customs.

SYSTEM LOCATION:

Located in the Executive Management Staff of each region and Headquarters according to list in Customs appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the U.S. Customs Service who have applied for restoration of forfeited annual leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee applications for restoration of leave. Management decisions on employee applications for restoration of leave. Applicable regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in manila folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked files.

RETENTION AND DISPOSAL:

Records are retained in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Executive Management Staff in each region and Headquarters.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Evidential materials supporting employee applications for restoration of forfeited annual leave. Evidential materials supporting management decisions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .209

SYSTEM NAME:

Resumes of Professional Artists—Treasury/Customs.

SYSTEM LOCATION:

Area Director, New York Seaport Area, 6 World Trade Center, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional Artists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Artist's name and professional art background.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Alphabetical listing.

SAFEGUARDS:

Filing cabinet, office locked at end of day.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Area Director New York Seaport Area, 6 World Trade Center, New York, NY 10048.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Resume information provided by artist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .210

SYSTEM NAME:

Revocation of I.D. Privileges and "Cash Basis Only" for Reimbursable Services List—Treasury/Customs.

SYSTEM LOCATION:

Regional Commissioner, District and Ports, 909 SE First Ave, Miami, FL 33131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporate and Individual Brokers, Importers, Carriers, and Private Individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Corporations and individuals in financial difficulty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Alpha File in Manila Folder by Month.

SAFEGUARDS:

The metal container described above is maintained within the Customs Service Building. During non–working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

These files are retained as prescribed by GAD Regulations or until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Commissioner, 909 SE First Ave., Miami, FL 33131.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Generated in house by Accounting Personnel from delinquent bill listings and open file of outstanding bills. Additionally, feedback from Districts and Ports on bankrupt firms and from Regulatory Audit Division on firms in Financial difficulty or under investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .211

SYSTEM NAME:

Sanction List—Treasury/Customs.

SYSTEM LOCATION:

Director, U.S. Customs, National Finance Center, PO Box 68907, Indianapolis, Indiana 46228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are indebted to the United States Government for bills that are unpaid and past due.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listing is issued weekly showing individual's name and address plus number and amount of unpaid and past due bills.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each sanction list is stored in a file drawer in an unlocked file cabinet.

RETRIEVABILITY:

Each sanction list is identified by month and year of issuance.

SAFEGUARDS:

The file cabinet described above is maintained within the area assigned in the Customs Office. During non–working hours the room and/or building in which the file cabinet is located is locked.

RETENTION AND DISPOSAL:

Retained in Customs Office for minimum of one year. Disposal in accordance with Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Customs, National Finance Center, PO Box 68907, Indianapolis, Indiana 46022.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this listing is secured from CF 6084 Bill Form issued to each individual and correspondence files maintained for individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .212

SYSTEM NAME:

Search/Arrest/Seizure Report—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, Offices of the U.S. Customs Service. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have or may have violated a law of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, alias, date of birth, age, personal data, addresses, home and business telephone numbers, occupation, background information, associations, license number and registration number of vehicle, vessel and/or aircraft, mode of entry of individual or contraband, fingerprints, pictures, declaration forms, cash receipts, receipt for seized goods, all other forms pertinent to the case, such as Notice to Master, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statue, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case is placed in a folder which is filed in numerical order according to the assigned case file number. These files are kept in a locked metal cabinet.

RETRIEVABILITY:

The above–mentioned case file numbers are cross–indexed by name to such numbers, and cards are filed alphabetically within a metal file box.

SAFEGUARDS:

The metal file cabinet and the metal file box are located within an office that is locked during non–working hours.

RETENTION AND DISPOSAL:

These cases are retained for a period of three years after which they are destroyed together with related index cards.

SYSTEM MANAGER(S) AND ADDRESS:

Special Agent in Charge. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .214

SYSTEM NAME:

Seizure File—Treasury/Customs.

SYSTEM LOCATION:

Special Agent in Charge, Room 508, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Ship masters, ship crew members, longshoremen, vessels, private aircraft, private vessels, individuals from whom seizures have been made, or upon whom Memoranda of Information Received and Reports of Investigation have been written.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda of Information Received and reports of Investigation which are reports from law enforcement agencies of suspects or arrests. Reports of Seizures by Customs, other information indicating violators or suspected violators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where

the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila files within metal file cabinets.

RETRIEVABILITY:

Alphabetical; for aircraft or car by number; by seizure number; by name of individual.

SAFEGUARDS:

Room has a 24–hour guard and is locked.

RETENTION AND DISPOSAL:

Seizure files are maintained for three years after final disposition. Memoranda of Information Received are maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Patrol Division, U.S. Customs Service, 6 World Trade Center, New York, NY 10048.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .215

SYSTEM NAME:

Seizure Report File—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Mail Facility, Room 416, 1675–7th Street, Oakland, CA 94615.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom prohibited merchandise is addressed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, property description, estimated foreign value, duty, domestic value, circumstances of seizure, sender, section of law violated, delivery to San Francisco seizure clerk.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statue, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained on Customs Form 6051 Custody Receipt for Retained or Seized Property and Customs Form 151–Search/Arrest/Seizure Report. These forms are placed within file folders which are located in a metal file cabinet.

RETRIEVABILITY:

Each Seizure Report and Custody Receipt (stapled together) are identified by the name of the person to which the seized items are addressed and the names are filed by seizure number by fiscal year.

SAFEGUARDS:

The file folders are placed within a metal cabinet which is located within an office that is locked during non–working hours. The building is guarded by uniformed security police and only authorized persons are permitted in the building.

RETENTION AND DISPOSAL:

Last three fiscal years records are kept in a file cabinet in the office.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Mail Branch. See location above.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with and consists of information obtained from mail shipments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .217

SYSTEM NAME:

Set Off Files—Treasury/Customs.

SYSTEM LOCATION:

Financial Management Division, 99 SE 5th Street, Miami, FL 33131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Importer of Record, customhouse broker, parties in interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, identification number, copies of refund checks and copies of set off bills.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statue, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

File folders with individual's name annotated with set off.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Financial Management Division within the Customs Service Building. During non–working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

These files are retained as prescribed by GAD Regulations or until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Financial Management, 99 SE 5th Street, Miami, FL 33131.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

District Directors, Port Directors, Import Control Officers, External Auditors and Other Customs Employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .219

SYSTEM NAME:

Skills Inventory Records—Treasury/Customs.

SYSTEM LOCATION:

Human Resources Division, U.S. Customs Service, Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained in this system on Customs personnel in grades GS–13 and above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data elements to provide a complete skills profile of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on a Customs Form 121 and Mag–tape.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked file and limited access to computer system.

RETENTION AND DISPOSAL:

Records are maintained until separation of an employee from the Customs Service.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, U.S. Customs Service, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

CF–121 which is prepared by the employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .220

SYSTEM NAME:

Supervisory Notes and Files SF–7B—Treasury/Customs.

SYSTEM LOCATION:

Records are located with the immediate supervisor or at the immediate supervisor's operating office. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF–7B card contains identical information to that contained on SF–7 card; in addition it can have attached or separately–maintained supervisory notes concerning an employee's performance on the job, conduct, counseling sessions, training recommended or taken, awards granted, emergency contact information, job assignments, to be used for administration resource purposes in recommending or authorizing discipline, recognition, assignment of performance rating, training, job assignments, leave requests, and/or similar matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in manila folders or special file cabinets.

RETRIEVABILITY:

Records are indexed by organizational code and name.

SAFEGUARDS:

Records are stored in lockable metal filing cabinets or in a secured room. Alternative storage facilities may be employed provided they furnish an equivalent or greater degree of physical security.

RETENTION AND DISPOSAL:

Records are retained while employee is employed, and are destroyed upon separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Labor Employee Relations Division, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. (See Customs Appendix A.)

NOTIFICATION PROCEDURE:

Write to systems manager specifying type and location of information requested and name and provide your social security number and supervisor's name, title and office location.

RECORD ACCESS PROCEDURES:

Write to systems manager.

CONTESTING RECORD PROCEDURES:

Write to systems manager.

RECORD SOURCE CATEGORIES:

Form SF–50, employee and employee's supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .224

SYSTEM NAME:

Suspect Persons Index—Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs District Officers located at the following addresses: 620 E. 10th Avenue, Anchorage, AK 99501; 215 1st Avenue, No., Great Falls, MT 59401; 335 Merchant, Honolulu, HI 96813; 511 NW. Broadway, Portland, OR 99209; 555 Battery Street, San Francisco, CA 94126; First & Marion Sts., Seattle, WA 98714.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons suspected of violation of Customs Laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and related file number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statue, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in folders and stored in metal file cabinet.

RETRIEVABILITY:

The office and building are locked during non–working hours.

SAFEGUARDS:

Alphabetical by use of cross index.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

District Director of Customs. See location above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .226

SYSTEM NAME:

Television System–Treasury/Customs.

SYSTEM LOCATION:

Office of Port Director, U.S. Border Station, San Ysidro, CA 92073.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in incidents related to a secondary search and subsequent disturbance while entering the United States from Mexico.

CATEGORIES OF RECORDS IN THE SYSTEM:

An audio–video cassette recording of persons being escorted into, as well as inside, the secondary offices of the Customs area of the Port of Entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended, and the Customs Regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or

regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Audio–video cassette.

RETRIEVABILITY:

By subject's name, date, and time.

SAFEGUARDS:

Cassettes are under control of Port Director and released only to the courts when subpoenaed or when requested to be reviewed by subject and his attorney.

RETENTION AND DISPOSAL:

All cassettes with incidents are retained for six months. Those on which some action may be taken are retained for one year or close of the case. Cassettes are reusable. Therefore, erasure occurs when new recording takes place.

SYSTEM MANAGER(S) AND ADDRESS:

Port Director, U.S. Border Station, San Ysidro, CA 92073.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Audio–video recording of persons being escorted into the Customs area.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .227

SYSTEM NAME:

Temporary Importation Under Bond (TIB) Defaulter Control System–Treasury/Customs.

SYSTEM LOCATION:

U.S. Customs Service, Office of Investigations, 1301 Constitution Avenue, NW. Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been denied T.I.B. privileges because of failure to pay outstanding liquidated damages.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, personal identifying numbers and characteristics, address, company and case description, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Magnetic disc and tape storage; (2) Hard Copy; (3) Microfiche files.

RETRIEVABILITY:

Indexing is by violator name.

SAFEGUARDS:

All inquiries are made by officers with full field background investigations on a "need to know" basis only. Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Customs officers completing Customs Form 164 (TECS–TIB Defaulter Control).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .232

SYSTEM NAME:

Tort Claims Act File–Treasury/Customs.

SYSTEM LOCATION:

Office of the Regional Counsel, Room 7422, New Federal Building, 300 N. Los Angeles Street, Los Angeles, CA 90053; Regional Counsel of Customs, 6 World Trade Center, New York, NY 10048; Office of the Regional Counsel, U.S. Customs Service, North Central Region, 55 E. Monroe Street, Room 1417, Chicago, IL 60603; Office of Regional Counsel, Suite 1220, 500 Dallas Street, Houston, TX 77002; Office of the Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, DC 20229; Office of District Counsel, 555 Battery Street, San Francisco, CA 94126; and

Office of District Counsel, 909 First Avenue, Seattle, Washington, 98174.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private persons who have filed or may file claims under the Federal Tort Claims Act for property damage or personal injury allegedly caused by a wrongful or negligent act or omission on the part of a Customs Service employee while acting within the scope of his employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of Investigation regarding accidents involving Customs employees, documents relating to the administrative handling of the claims filed thereon, and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2672, et seq; 28 CFR 14.1, et seq; 31 CFR 3.1, et seq; Treasury Department Administrative Circular No. 131, dated August 19, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted in a numerical file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified in the numerical file folder within the metal container by the name of the person who has filed or may file a claim.

SAFEGUARDS:

During non–working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed guards.

RETENTION AND DISPOSAL:

Tort claim files are retained until there is no longer any space available for them within the metal container, at which time the oldest closed files are transferred to the Federal Records Centers.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel, Room 7422, United States Customs Service, 300 N. Los Angeles Street, Los Angeles, CA 90053; Regional Counsel, U.S. Customs Service, 6 World Trade Center, New York, NY 10048; Regional Counsel of Customs, Room 1417, U.S. Customs Service, 55 E. Monroe Street, Chicago, IL 60603; Regional Counsel, Suite 1220, U.S. Customs Service, 500 Dallas Street, Houston, TX 77002; Chief Counsel, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, DC 20229; Office of District Counsel, 55 Battery Street, San Francisco, CA 94126; and Office of District Counsel, 909 First Avenue, Seattle, Washington 98174.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with a Standard Form 95 (Claim for Damage or Injury) which is completed and filed with the Customs Service by the claimant. Using these forms as a basis, investigations are conducted by authorized Customs Service investigative personnel in order to determine the facts surrounding the claims. During these investigations information may be elicited from Customs Service employees, private persons, or any other parties who may have information regarding the facts surrounding the claims. When a claim is not filed, the information is limited to the investigative reports of the property damage or personal injury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .234

SYSTEM NAME:

Tort Claims Act File–Treasury/Customs.

SYSTEM LOCATION:

Offices of the District Directors, North Central Region, Chicago, IL 60603. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals presenting claims of damage to personal property resulting from Customs activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written damage claims supported by estimates, bills, claim forms and internal Customs Service memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 CFR part 3; 5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used: To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filed in cabinets in the District Directors offices.

RETRIEVABILITY:

Folders filed in alphabetical sequence.

SAFEGUARDS:

File cabinets are located within the area assigned in the Customs office. During non–working hours the room in which the cabinets are located is locked.

RETENTION AND DISPOSAL:

Retained in District Directors offices for three years then transferred to the

Federal Records Centers for seven years and three months prior to destruction.

SYSTEM MANAGER(S) AND ADDRESS:

District Director as appropriate in the North Central Region, Chicago, IL. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

The information in this system originates with a written claim submitted by the claimant, as well as information supplied on Standard Form 95 and internal Customs memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .238

SYSTEM NAME:

Training and Career Individual Development Plans—Treasury/Customs.

SYSTEM LOCATION:

Located in the Human Resources Division of each region and headquarters and/or district, ports, and post of duty of employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. Customs employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained on training or other development activities completed and/or planned for individual employees, whether for programs such as Executive Development or Upward Mobility, or other special emphasis development programs. Records also include such things as, but not limited to skills, abilities, education, experience, career plans and goals, and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are located in file folders, and/or official personnel folder.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked file or office.

RETENTION AND DISPOSAL:

Records are retained until separation or until employee is no longer part of a special emphasis program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, in each region and headquarters.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Information is obtained from the employee and supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .239

SYSTEM NAME:

Training Records–Treasury/Customs.

SYSTEM LOCATION:

Scheduling Office, U.S. Customs Service Academy, FLETC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees who have completed training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Form 182, Request, Authorization, Agreement and Certification of training. Selected information also recorded in individuals permit record, and a copy of the form is filed in the individual's official personnel folder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on file cards, on training forms, or on discs.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file or room, or with limited access.

RETENTION AND DISPOSAL:

Records are maintained for up to three years after employee separates from the Service.

SYSTEM MANAGER(S) AND ADDRESS:

National Director of Training, U. S. Customs SVC Academy, FLETC

NOTIFICATION PROCEDURE:

U. S. Customs Service Academy, Building 70 – FLETC, Glynco, GA 31524

RECORD ACCESS PROCEDURES:

U. S. Customs Service Academy, Building 70 – FLETC, Glynco, GA 31524

CONTESTING RECORD PROCEDURES:

U. S. Customs Service, Director, Office of Human Resources, 1301 Constitution Avenue, NW, Washington, DC 20229

RECORD SOURCE CATEGORIES:

Information for this file is obtained from supervisors, managers, instructors, educational institutions, and/or training facilities such as the Office of Personnel Management, Department of the Treasury, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .244

SYSTEM NAME:

Treasury Enforcement Communications System (TECS)–Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Violators or suspected violators of U.S. Customs or related laws (some of

whom have been apprehended by Customs officers); (2) Individuals who are suspected of, or who have been arrested for, thefts from international commerce; (3) Convicted violators of U.S. Customs and/or drug laws in the United States and foreign countries; (4) Fugitives with outstanding warrants—Federal or state; (5) Victims of U.S. Customs law violations; (6) Owners, operators and/or passengers of vehicles, vessels or aircraft traveling across U.S. borders; (7) Individuals participating in financial transactions reported under the Bank Secrecy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information from a variety of Federal, state and local sources, which contributes to effective law enforcement may be maintained in this system of records. Records include but are not limited to records pertaining to known violators, wanted persons, lookouts (temporary and permanent), reference information, regulatory and compliance data. Information about individuals includes but is not limited to name, alias, date of birth, address, physical description, various identification numbers (i.e., seizure number), details and circumstances of a search, arrest, or seizure, case information such as merchandise and values, methods of theft, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disc and tape, laser optical disks, microfiche, and hard copy.

RETRIEVABILITY:

By name; unique identifiers, address, or in association with an enforcement report or other system document.

SAFEGUARDS:

(1) All officers making inquiries have had a full field background investigation and are given information on a "need–to–know" basis only. (2) Procedural and physical safeguards are utilized such as accountability and receipt records, guards patrolling the area, restricted access and alarm protection systems, special communications security, etc.

RETENTION AND DISPOSAL:

Review is accomplished by Customs officers each time a record is retrieved and on periodic basis to see if it should be retained or modified. Since both temporary and permanent records are maintained, period of retention will vary with type of record entered. The records are disposed of by erasure of magnetic tape or disc, and by shredding and/or burning of hard copy documents.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Information Management, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/Customs .249

SYSTEM NAME:

Uniform Allowances–Unit Record–Treasury/Customs.

SYSTEM LOCATION:

Financial Management Division, 99 SE 5th Street, Miami, FL 33131; Management Services Branch, Administration Division, District Director, San Juan, PR 00903; Financial Management Division, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, MA 02110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Customs Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name–Record of Uniform Allowance Payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Alphabet by name. Appropriation Accounting Document Number.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Financial Management Division within the Customs Service Building. During non–working hours the room in which the metal container is located is locked and access to the building is controlled by uniformed guards.

RETENTION AND DISPOSAL:

These files are retained as prescribed by GAO Regulations or until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Centers.

SYSTEM MANAGER(S) AND ADDRESS:

Direction of Financial Management, 99 SE 5th Street, Miami, FL 33131; District Director, U.S. Customs Service, P.O. Box 2112, Old San Juan, PR 00903; Director, Financial Management Division, U.S. Customs Service, 100 Summer Street, Boston, MA 02110.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

From memoranda received from Districts. Data transcribed from Payment Vouchers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .251

SYSTEM NAME:

Unscheduled Overtime Report (Customs Form 31)—Treasury/Customs.

SYSTEM LOCATION:

Director, Office of Operations, 6 World Trade Center, Room 508, New York, NY 10048.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Agents assigned to the office of Regional Director of Investigations authorized to receive unscheduled overtime remuneration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customs Form 31 enumerates the nature of overtime performed, the number of hours and the date on which the overtime was performed and the case number of investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained on CF 31, the forms are contained within a file folder and are placed in a metal file cabinet.

RETRIEVABILITY:

By name.

SAFEGUARDS:

The file cabinet is maintained within the area assigned to the Regional Director of Investigations, New York, within the Customhouse. During non–working hours the complex in which the file is located is locked and access to the building is controlled at all times by uniform guards.

RETENTION AND DISPOSAL:

The forms are destroyed after three (3) years.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Director of Investigations. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates from the Special Agent who performs the unscheduled overtime.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .252

SYSTEM NAME:

Valuables Shipped Under the Government Losses in Shipment Act—Treasury/Customs.

SYSTEM LOCATION:

District Director of Customs, 610 S. Canal Street, Chicago, IL 60607.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customs employees collecting and transmitting funds to cashier for deposit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, collection document serial numbers, amount of collection.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 300.30, Customs Accounting Manual; 5 U.S.C. 134f; 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to those officers and employees of the Customs Service and the Department of the Treasury who have a need for the records in the performance of their duties; (2) disclose records as required in administration of the Freedom of Information Act (5 U.S.C. 552).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filed in folders with the individual's name appearing at the top thereof in a file cabinet.

RETRIEVABILITY:

Each record folder is filed by name of individual.

SAFEGUARDS:

The cabinet described above is maintained within the area assigned in the Customs office. During non–working hours the area in which the cabinet is located is secured.

RETENTION AND DISPOSAL:

Retained for three years and then forwarded to FRC for seven years retention.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, as appropriate, in the North Central Region, Chicago, IL.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Data submitted by individual Customs employee involved.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .258

SYSTEM NAME:

Violator's Case Files—Treasury/Customs.

SYSTEM LOCATION:

District Director of Customs, U.S. Customs Service, Main and Stebbins Streets, St. Albans, VT 05478.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in smuggling, filing false invoices, documents or statements, violators of Customs bonds, or any violation of Customs laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and address, Social Security number and physical description; alias, occupation, type of violation, previous record, driver's license, passport number, notes from inspectors involved, and any other supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and 3 x 5 index cards.

RETRIEVABILITY:

Filed by case number.

SAFEGUARDS:

Files are under the supervision of Fines, Penalties and Forfeitures Officer from 8 a.m. to 5 p.m., Monday through Friday. All other hours, office remains locked.

RETENTION AND DISPOSAL:

Files are maintained in the office of the Fines, Penalties, and Forfeitures Officer for a period of five years or six years. At the conclusion of this period, they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, U.S. Customs Service, St. Albans, VT 05478.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

See "Categories of individuals covered by the system" above. The system contains material for which sources may not need to be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .260

SYSTEM NAME:

Warehouse Proprietor Files—Treasury/Customs.

SYSTEM LOCATION:

Offices of District Directors, North Central Region, Chicago, IL 60603. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past warehouse proprietors and employees that require an investigation and related information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of investigations, application and approval or denial of bond to act as warehouse proprietor and other Customs Service Memoranda. Names, addresses, Social Security numbers, and dates and places of birth of persons employed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Customs Regulations, part 19, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in file cabinets in each District Director's office within the North Central Region, Chicago, IL 60603.

RETRIEVABILITY:

Each file is identified by the name of the warehouse proprietor.

SAFEGUARDS:

The file cabinets are maintained within the area assigned to the District Director. During non–working hours the room and/or building in which the file cabinet is located is locked.

RETENTION AND DISPOSAL:

Employee name data retained for period of employment with warehouse proprietor.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, as appropriate in the North Central Region, Chicago, IL 60603. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this file originates from the individual applicant for warehouse proprietor's bond, from reports of investigation, and other Customs Memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .262

SYSTEM NAME:

Warnings to Importers in lieu of penalty—Treasury/Customs.

SYSTEM LOCATION:

Located in the Office of the District Director, 880 Front Street, San Diego, CA 92318; Offices of the Port Directors, U.S. Border Station, San Ysidro, CA 92073; PO Box 189, Tecate, CA 92080; P.O. Box 632, Calexico, CA 92231; 235 Andrade Road, Winterhaven, CA 92283; Andrade, CA; San Diego Barge Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms in violation of Customs's laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Brief record of violation and warning.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on 5 x 7 cards.

RETRIEVABILITY:

Alphabetically indexed.

SAFEGUARDS:

Not accessible to other than Customs officers.

RETENTION AND DISPOSAL:

The records are disposed of in accordance with the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, Port Directors, and Division Directors within the San Diego Customs District. (See Customs appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Customs Officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .268

SYSTEM NAME:

Military Personnel and Civilian Employees' Claims Act File—Treasury/Customs.

SYSTEM LOCATION:

Office of the Regional Counsel, Suite 1220, 500 Dallas Street, Houston, TX 77002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Customs employees filing claims under the Military Personnel and Civilian Employees' Claims Act of 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative handling of the claim and documents submitted by the claimant in support of the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 240–243; 31 CFR part 4; Treasury Department Administrative Circular No. 131, August 19, 1965; 5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each case file is inserted alphabetically in a file folder which is filed in an unlocked drawer within a metal container.

RETRIEVABILITY:

Each case file is identified alphabetically in the file folder within the metal container by the name of the person who filed the claim.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Office of the Regional Counsel (12th floor), 500 Dallas Street, Houston, TX 77002. During non–working hours the room in which the metal container is located is locked, and access to the building is controlled at all times by uniformed security guards provided by the lessor.

RETENTION AND DISPOSAL:

These files are retained until closed at which time the closed files are

transferred to the Director, Logistics Management Division, Office of the Regional Commissioner, Houston, TX, for ultimate transportation to the Federal Record Center.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Counsel, Suite 1220, United States Customs Service, 500 Dallas Street, Houston, TX 77002.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information contained in these files originates with the Treasury Department Form No. 3079, Civilian Employee Claim For Loss or Damage to Personal Property, which is completed and filed with the Customs Service by the claimant. Additional information contained in these files may be separately provided by the claimant or by the claimant's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .269

SYSTEM NAME:

Accounts Payable Voucher File–Treasury/Customs.

SYSTEM LOCATION:

Financial Management Division, U:S. Customs Service, South Central Region, 1440 Canal Street, New Orleans, LA 70112.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All South Central Region personnel to whom travel and other disbursements are made. All individuals who provide goods and services to the South Central Region.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invoices and travel/other vouchers and supporting disbursements schedules.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in unlocked file cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Usage limited to Regional personnel; cabinets are located in rooms which are locked during non–working hours.

RETENTION AND DISPOSAL:

In accordance with Records Control Manual; records are disposed of when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, U.S. Customs Service, South Central Region, 1440 Canal Street, New Orleans, LA 70112.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Invoices and travel/other vouchers submitted by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .270

SYSTEM NAME:

Background–Record File of Non–Customs Employees—Treasury/ Customs.

SYSTEM LOCATION:

Office of Human Resources, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past non–Customs personnel requiring a background investigation to be granted a permit to conduct Customs business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of background investigations, names, addresses, Social Security numbers and date and place of birth, etc. of non–Customs employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and stored in file cabinets in the District Director's office. Records are also maintained in computer format in ports providing internal aircraft arrival/ departure services.

RETRIEVABILITY:

Each file is identified by the name of the non–Customs employee.

SAFEGUARDS:

The file cabinets are maintained within the area assigned to the District Director. During non–working hours the room and/or building in which the file cabinet is located is locked. Computer format are maintained in locked access areas within each respective district and/or port office.

RETENTION AND DISPOSAL:

Employee name data is retained during the period the non–Customs

employee requires admittance to restricted areas.

SYSTEM MANAGER(S) AND ADDRESS:

District Directors and Port Directors (For addresses, see United States Customs Service – appendix A.)

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this file originates from the individual non–Customs employee granted a permit to conduct Custom's business and from reports of background investigation which include interviews of Customs personnel and private parties and from other Customs internal documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/Customs .271

SYSTEM NAME:

Cargo Security Record System—Treasury/ Customs.

SYSTEM LOCATION:

District Director, 423 Canal Street, New Orleans, LA 70130; District Director, PO Box 2748, Mobile, AL 36601.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Drivers of motor vehicles or licensed cartmen and lightermen; properties and operators of each class of Customs bonded warehouse and their employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on drivers of motor vehicles contain information relating to personal statistical data, physical characteristics, history of past employment, previous five years residences, alias (if any), citizenship, military records, criminal record other than traffic violations, use of narcotic drugs, and photograph. Name of operator of bonded warehouse and employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder with Customs Form 3078, Customs Form 73, Photographs, and correspondence; For bonded warehouses, file folder contains Customs Form 3581 and names, addresses, and Social Security number of all employees; all stored in metal file cabinet. Alphabetical list of current I.D. cards issued on drivers retained in file folder and stored in desk drawer.

RETRIEVABILITY:

By individual name or corporate name.

SAFEGUARDS:

Locked metal file cabinet and desk drawer of customs employee; building secured after hours.

RETENTION AND DISPOSAL:

Information on drivers is retained in an active file until revoked or canceled. After revocation or cancellation, the information folder is placed in an inactive file for a period of five years, after which time the records are disposed of in accordance with the General Services Administration Records Disposal Manual. Information on proprietor bonded warehouse operators and employees is retained on file until Customs bonded operations cease and are discontinued, then are maintained in an inactive file for a period of three years. Final disposition is in accordance with the GSA Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

District Director, 423 Canal Street, New Orleans, LA 70130; District Director, PO Box 2748, Mobile, AL 36601.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Information is obtained from applicant (individual or corporation) and from reports of investigation on drivers obtained from Regional Director, Investigations, U.S. Customs Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2).

Treasury/Customs .272

SYSTEM NAME:

Currency Declaration File (Customs Form 4790)—Treasury/Customs.

SYSTEM LOCATION:

Law Enforcement Systems Division, U.S. Customs Service, PO Box 85145, San Diego, CA 92138 (for addresses of District Directors, see Customs appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals departing from or entering the country who filed IRS Form 4790.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identifying number, birth date, address, citizenship, visa date and place, immigration alien number, kinds and amounts of monetary instruments, address in the United States or abroad, passport number and country, and arrival or departure information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1101; 5 U.S.C. 301; Treasury Department Order No. 165, revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Form 4790 is maintained in a file folder or binder in an initial file cabinet. Information is stored chronologically in TECS II.

RETRIEVABILITY:

They are indexed and filed by name and date in the folder or binder. They can be retrieved by computer and printed.

SAFEGUARDS:

The office and building are locked during non–working hours. Electronic data is limited to persons cleared for access to the data.

RETENTION AND DISPOSAL:

The records are retained from one to five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

District and Port Directors of Customs.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information on the Customs Form 4790 originates from the individual or Customs agent reporting the bringing in or taking out of currency or monetary instruments exceeding 10,000 dollars.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .274

SYSTEM NAME:

Importers, Brokers, Carriers, Individuals and Sureties Master Files—Treasury/Customs.

SYSTEM LOCATION:

Financial Management Division, 99 SE 5th Street, Miami, FL 33131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Brokers, Importers, Individuals, Carriers, and Sureties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of correspondence incoming and outgoing, copies of bonds, entries, bills, data center listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in an unlocked drawer within a metal file cabinet.

RETRIEVABILITY:

Alphabetical by name appearing on correspondence.

SAFEGUARDS:

The metal container described above is maintained within the area assigned to the Financial Management Division within the Customs Service Building. During non–working hours the room in which the metal container is located is locked.

RETENTION AND DISPOSAL:

These files are retained until there is no longer any space available for them within the metal container, at which time the oldest files are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Financial Management, 99 SE 5th Street, Miami, FL 33131.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

Correspondence, Customs Service Data Center, Districts and Ports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .277

SYSTEM NAME:

Drivers License File—Treasury/Customs.

SYSTEM LOCATION:

Logistics Management Division, U.S. Customs Service, 211 Main Street, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information furnished by employee before being issued a government drivers license. It may also include information from National Driver Register Service if they have any information on the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to National Driver Register Service to determine whether they have any information on the individual which would concern the employee's suitability for receiving a government drivers license; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in this system is contained on Standard Form 47 (physical fitness inquiry for motor vehicle operators) and Treasury Form 2770 (application for motor vehicle operator's ID card and operator's record). These forms are kept in a desk file.

RETRIEVABILITY:

Each set of forms for a particular employee is numbered and those numbers are shown on an index sheet as pertaining to the particular employee.

SAFEGUARDS:

The desk in which the records are kept is within an office which is locked during non–working hours.

RETENTION AND DISPOSAL:

Forms are retained in this system in accordance with the requirements of the Treasury Records Control Manual. Forms of past employees who were issued drivers licenses are periodically destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Logistics Management Specialist, Logistics Management Division, U.S. Customs Service, 211 Main Street, San Francisco, CA 94105.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The information in this system originates with, and consists solely of, information supplied by the applicants on forms SF–47 and form 2770. There is a possibility that in the future there will be a response from the National Driver Register Service on a particular applicant. At the present time there are none in this system of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .278

SYSTEM NAME:

Automated Commercial System (ACS)—Treasury/Customs.

SYSTEM LOCATION:

The Computer is located in Newington, Virginia. Computer terminals are located at Customhouses and ports throughout the United States and at U.S. Customs Headquarters, Washington DC (For addresses of Customhouses, see Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Customs Service employees and individuals involved in the import trade.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system data base is comprised of commodity and merchandise processing information relating to Customs administration of trade laws. The following system files may contain information about U.S. Customs Services employees and/or individuals/companies involved in the import trade. (1) ACS Security Files: Contains randomly established five–digit identification codes assigned to Customs Service employees authorized to use the system. The file consists of the names and social security number of all Customs Service employees using the remote terminals to input information into the system. (2) Importer/Broker/Consignee Bond Files and FP and F Violator–Protest files: Records consist of importer of record number, importer name and address, type of importation bond, expiration date, surety code, violation statistics and protest information. The importer of record number is used as the method of accessing the files. The number is assigned by any one of three code formats according to availability and the following hierarchy. The first choice is the IRS Employer Identification Number (EIN). The vast majority of importers have the EIN because of the business necessity of it. The second alternative is the Social Security number (SSN). The third alternative is a Customs—assigned number. This file is referenced during entry processing to verify that the individual or company making entry is authorized to import and is properly bonded. (3) Entry Files: A record consists of a three–digit Customs – assigned Customhouse broker or importer number (non–SSN) and the name and address. The file is referenced during entry processing to validate the entry file code and is used to direct system output to the broker or importer. (4) Corporate Surety Power of Attorney and Bond Files: The data consists of names of agents who are authorized to write a Customs bond and their SSN, a three–digit surety code (non–SSN) assigned by the Customs Accounting Division, the surety name and Customs bond information. (5) Liquidator File: A record consists of a Customs–assigned three–digit liquidator identification (non–SSN) and a Customs employee's name. The employee's liquidator code is input into the system as a means of maintaining quality control and an audit trail on entries liquidated. (6) Foreign Manufacturer/Shipper File: The file contains an identification code constructed using a formula based on name and address, manufacturer name and address reported by importers and brokers on Customs entry forms or electronic formats. (7) Carrier Files: This file consists of carrier names and codes (non SSN) which are 4 characters—Standard Carrier Agent Code (SCA) for vessel carriers and 2 or 3 character—International Air Transport Association (IATA) for air carriers. This code is used to validate data input to the manifest and entry processing systems and to direct system output to the carrier.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 66, 1448, 1481, 1483, 1484, 1505, and 1624.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to the Bureau of the Census by providing magnetic tapes containing foreign trade data; (2) disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By identification codes and/or name.

SAFEGUARDS:

Access to computer area is controlled by a security pass arrangement and personnel not connected with the operation of the computer are prohibited from entering. The building security is protected by a uniformed guard. At the ports of processing, terminal rooms are under close supervision during working hours and locked after close of business. The system security officer issues a unique private five digit identification code to each authorized user. Access to the Customs computer from other than system terminals is controlled through a security software package. Users must input a unique identification code and password during the terminal log–in procedure to gain access to the system. The password is not printed or displayed at the port of processing. The system validates the user ID by transaction type, thereby limiting a system user's access to information on a "need–to–know" basis. A listing of identification codes of authorized users

can be printed only by request of the security officer. The passwords are changed periodically to enhance security.

RETENTION AND DISPOSAL:

Files are periodically updated to reflect changes, etc., and are disposed of in accordance with the requirements of the Treasury Records Control Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Automated Systems, Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, DC 20229, is responsible for all data maintained in the files.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The system data base contains data received on authorized Customs forms or electronic formats from individuals and/or companies incidental to the conduct of foreign trade and required by the Customs Service in administering the tariff laws and regulations of the United States.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .284

SYSTEM NAME:

Personnel Verification System (PVS)—Treasury/Customs.

SYSTEM LOCATION:

Office of Information and Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, and Regional Offices of the U.S. Customs Service. (See Customs appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized Customs personnel and non–Customs personnel who have received authorization to use the Regional Communications Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual identifiers including but not limited to name, office address, home address, office telephone number, home telephone number, badge number, Social Security number, radio call sign, page number, organization, and unit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Alphabetic or numerical listings or card files; (2) microfiche; (3) magnetic disc and tapes; (4) other electronic storage media.

RETRIEVABILITY:

By name, call sign, paging number, Social Security number, badge number, organizational code.

SAFEGUARDS:

Records are located in controlled access areas with alarm protection systems. Offices are staffed twenty–four hours a day, seven days a week.

RETENTION AND DISPOSAL:

Records are maintained in the system until such time as the individual is no longer authorized usage of the Regional Communications Center. Disposal is by erasure of disc/tapes, shredding and/or burning of listings or card files, and burning of microfiche.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Information and Technical Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

See Customs appendix A.

RECORD ACCESS PROCEDURES:

See Customs appendix A.

CONTESTING RECORD PROCEDURES:

See Access, Customs appendix A.

RECORD SOURCE CATEGORIES:

The sources include but are not limited to (1) the individual to whom the record relates; (2) internal Customs Service records; (3) Personnel Verification Sheet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/Customs .285

SYSTEM NAME:

Automated Index to Central Investigative Files—Treasury/Customs.

SYSTEM LOCATION:

Office of Investigations, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Known violators of U.S. Customs laws. (2) Convicted violators of U.S. Customs and/or drug laws in the United States and foreign countries. (3) Suspected violators of U.S. Customs or other related laws. (4) Private yacht masters and pilots arriving in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

A listing of Memoranda of Information Received, Reports of Investigations; Search/Arrest/Seizure Reports, Penalties, and Forfeitures, reports required by Private Aircraft Reporting System, reports required by the Private Yacht Reporting System, reports on vessel violations. Reports relating to an individual, various other correspondence (letter, memoranda, etc.), which related to an individual in the Treasury Enforcement Communications System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Treasury Department Order No. 165, Revised, as amended. Authority for the collection and maintenance of the report included in the system is: 19 U.S.C. 1603; 19 U.S.C. 1431; 19 U.S.C. 66; 31 CFR part 103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disc and tape, microfiche.

RETRIEVABILITY:

Name, personal identification numbers, Customs case number, document's central file number.

SAFEGUARDS:

(1) All Central Files users must have a full field background investigation. (2) The "need to know" principle applies. (3) Procedural and physical safeguards are utilized such as accountability and receipt records, guard patrolling restricted areas, alarm protection systems, special communication security. (4) Access is limited to all Office of Enforcement terminals and all Law Enforcement Systems Division Headquarters and Newington, VA terminals.

RETENTION AND DISPOSAL:

Records will be maintained in the Automated Index to Central Enforcement files for as long as the associated document or microfiche is retained. Records will be destroyed by erasure of the magnetic disc and by burning the microfiche.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Investigations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

APPENDIX A - U. S. CUSTOMS SERVICE

I. NOTIFICATION, RECORD ACCESS AND AMENDMENT PROCEDURES:

Notification and Record Access Procedures:

Requests by an individual to be notified if the system of records contains records pertaining to him and requesting access to the records shall be in writing with envelope and letter clearly marked "Privacy Act Request" and directed to the Director, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229, or to the Regional Commissioner of the region in which the records are located (see addresses below).

The request may be presented in person between the hours of 9 a.m. and 4:30 p.m. Where the request is presented in person, the requester shall present adequate identification to establish his identity, and a comparison of his signature and those in the records may be made where the records contain the signature of the person to whom the records pertain. If an individual is unable to provide the requisite documents for identification purposes, he may be required to make a signed statement asserting identity and stipulating that he understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of not more than $5,000.

Where the request is made in writing, it shall be accompanied by a notarized statement executed by the requester asserting identity and stipulating that he understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of not more than $5,000. A comparison of his signature and those in the records may be made where the records contain the signature of the person to whom the records pertain.

Amendment Procedures:

Requests by an individual contesting the context of a record within a system of records shall be in writing with the envelope and letter clearly marked "Privacy Act Amendment" and directed to the Director, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229, or to the Regional Commissioner of the region in which the records are located. (See addresses below.)

II. LOCATION:

Addresses of Headquarters, U.S. Customs Service, Regional Commissioners of Customs, Regional Directors (Internal Affairs), District Directors of Customs, and Customs Office of Enforcement field offices:

U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, DC 20229.
Regional Commissioner of Customs, 10 Causeway Street, Boston, MA 02110, (617) 223–7506.
Regional Commissioner of Customs, 55 E. Monroe Street, Chicago, IL 60603, (312) 353–4731.
Regional Commissioner of Customs, 2323 South Shepard Street, Suite 1200, Houston, TX 77019, (713) 953–6843.
Regional Commissioner of Customs, 1 World Trade Center, Long Beach, California 90831, (301) 980–3100.
Regional Commissioner of Customs, 909 SE First Avenue, Miami, FL 33131, (305) 536–5952.
Regional Commissioner of Customs, 423 Canal Street, New Orleans, LA 70112, (504) 589–6324.
Regional Commissioner of Customs, 6 World Trade Center, New York, N.Y. 10048, (212) 466–4444.

OFFICE OF INTERNAL AFFAIRS FIELD OFFICES

Regional Director (Internal Affairs), 10 Causeway Street, Boston, MA 02110.
Regional Director (Internal Affairs), Room 502, 6 World Trade Center, New York, N.Y. 10048.
Regional Director (Internal Affairs), 444 Bricknell Avenue, Miami, FL 33101.
Regional Director (Internal Affairs), 423 Canal Street, New Orleans, LA 70112.
Regional Director (Internal Affairs), 5850 San Felipe Street, Houston, TX 77002.
Regional Director (Internal Affairs), Suite 1539, 55 E. Monroe Street, Chicago, IL 60603.
Regional Director (Internal Affairs), Suite 7558, PO Box 951, Main Post Office, Los Angeles, CA 90053.

CUSTOMS DISTRICT OFFICES: (Note: New York has Area Directors instead of District Directors). The Regional office is identified in parenthesis at the end.

Anchorage, Alaska 99501/620 E. Tenth Ave. Suite 101 (907) 271–4043 (Pacific Region).
Baltimore, Maryland 21202/40 S. Gay Street (301) 962–2666 (Northeast Region).
Boston, Massachusetts 02222/10 Causeway Street (617) 565–6147. (Northeast Region).
Buffalo, New York 14202/111 W. Huron Street (716) 846–4374 (Northeast Region).
Charleston, South Carolina 29402/200 E. Bay Street (803) 724–4312 (Southeast Region).
Charlotte Amalie, St. Thomas Virgin Islands 00801/Main PO Sugar Estate (809) 774–2530 (Southeast Region).
Chicago, Illinois 60607/610 S. Canal Street (312) 353–6100 (North Central).
Cleveland, Ohio 44114/55 Erieview Plaza (216) 522–4284 (North Central).
Dallas/Fort Worth, TX 75261/700 Parkway Plaza, PO Box 619050 (214)574–2170 (Southwest).
Detroit, Michigan 48226/477 Michigan Avenue (313) 226–3177 (North Central).
Duluth, Minnesota 55802/515 W. First St., 209 Federal Building (218) 720–5201 (North Central).El Paso, TX 79985/Bldg. B, Room 134, Bridge of the Americas, PO Box 9516 (915) 534–6799 (Southwest).
Great Falls, Montana 59401/600 Central Plaza, Suite 200 (406) 453–7631 (North Central).
Honolulu, Hawaii 96806/335 Merchant St., PO Box 1641 (808) 522–8060 (Pacific).
Houston/Galveston, TX 77052/701 San Jacinto St., PO Box 52790 (713) 226–2334 (Southwest).
Laredo, Texas 78041/Lincoln Juarez Bridge, PO Box 3130 (512) 726–2267 (Southwest).
Los Angeles/Long Beach, California 90731, 300 S. Ferry St., Terminal Island (310) 514–6001 (Pacific).
Miami, Florida 33131/77 SE 5th Street (305) 536–4101 (Southeast).
Milwaukee, Wisconsin 53202/517 E. Wisconsin Ave. (414) 291–3924 (North Central).
Minneapolis, Minnesota 55401/110 S. Fourth Street (612) 348–1690 (North Central).
Mobile, Alabama 36652/150 Wall St., PO Box 2748 (205)690–2106 (South Central).
New Orleans, Louisiana 70130/432 Canal St. (504) 589–6353 (South Central).
New York Seaport Area, New York, New York 10048, Customhouse, 6 World Trade Center (212) 466–5817.
Kennedy Airport Area, Bldg 77, Jamaica, New York 11430, (718) 533–1536 (New York).
Newark Area, Newark, New Jersey, 07114 Airport International Plaza (201) 645–3760 (New York).
Nogales, Arizona 85621/International and Terrace Sts. (602) 287–3637 (Southwest).
Norfolk, Virginia 23510/101 E. Main St. (804) 441–6546 (Southeast).
Ogdensburg, New York 13669/127 N. Water St. (315) 393–0660 (Northeast).
Pembina, North Dakota 58271/Post Office Bldg. (701) 825–6201 (North Central).
Philadelphia, Pennsylvania 19106/2nd & Chestnut Sts., Room 102 (215) 597–4605 (Northeast).
Port Arthur, Texas 77642/4550 75th St. (409) 724–0087 (Southwest).
Portland, Maine 04112/312 Fore St., PO Box 4688 (207) 780–3326 (Northeast).
Portland, Oregon 97209/511 NW Broadway (503) 326–2865 (Pacific).
Providence, Rhode Island 02903/24 Weybosset St. (401) 528–5080 (Northeast).
St. Albans, Vermont 05478/Main & Strebbins St., PO Box 111 (802) 524–6572 (Northeast).
St. Louis, Missouri 63105/7911 Forsyth Bldg., Suite 625(314) 425–3127 (North Central).
San Diego, California 92101/610 W. Ash Street, Ste. 1200,(619) 557–5455. (Pacific).
San Francisco, California 94111, 33 Montgomery St., (415) 744–7701. (Pacific).
San Juan, Puerto Rico 00903/PO Box 2112 (809) 723–2091 Southeast).
Savannah, Georgia 31401/1 East Bay St. (912) 944–4256 (Southeast).
Seattle, Washington 98104 Key Towers, 1000 Second Ave.(206) 553–0554 (Pacific).
Tampa, Florida 33605/4430 East Adams Dr., Suite 301 (813) 228–2381 (Southeast).
Washington, DC 20041/POB 17423, Gateway 1 Bldg. Dulles International Airport, Chantilly, VA 22021 (202) 566–8511 (Southeast).
Wilmington, North Carolina 28401/One Virginia Ave. (919) 343–4601 (Southeast).

CUSTOMS ENFORCEMENT FIELD OFFICES

Assistant Regional Commissioner (Enforcement) Northeast Region, Room 801, 10 Causeway Street, Boston, MA 02222 (Northeast Region).
Resident Agent in Charge, PO Box 368, Derby Line, Vermont, 05830.
Resident Agent in Charge, PO Box 400, Houlton, Maine 04730.
Resident Agent in Charge, PO Box 4688 (DTS), Portland, Maine 04112.
Resident Agent in Charge, Federal Building, Suite 318, 150 Court Street, New Haven, CT 06510.
Special Agent in Charge, PO Box 68, Rouses Point, New York 12979.
Special Agent in Charge, 40 South Gay Street, Room 424, Baltimore, Maryland 21202.
Special Agent in Charge, Second and Chestnut Street, Room 200, Philadelphia, PA 19106.
Resident Agent in Charge, Room 826, Federal Building 1000 Liberty Avenue, Pittsburgh, PA 15222.
Assistant Regional Commissioner (Enforcement) New York Region, 6 World Trade Center, Room 716, New York, N.Y. 10048 (New York Region).
Special Agent in Charge, JFK International Airport, Building 75, 2nd Floor, Jamaica, N.Y. 11430.
Special Agent in Charge, Airport International Plaza, Suite 400, Routes 1 and 9 South, Newark, N.J. 07114.
Resident Agent in Charge, Leo O'Brien Federal Building, North Pearl Street, Room 746, Albany, N.Y. 12207.
Resident Agent in Charge, 575 Johnson Avenue, 2nd floor, Bohemia, New York 11716.
Assistant Regional Commissioner (Enforcement)South Central Region, 423 Canal Street, Room 337, New Orleans, LA 70130 (Southcentral).
Resident Agent in Charge 8312 Florida Boulevard, Suite 216B, Baton Route, LA 70806.
Resident Agent in Charge, Air Investigations, PO Box 980, Belle Chase, LA 70037.
Resident Agent in Charge, 600 Beacon Parkway West, Suite 725, Birmingham, AL 35209.
Resident Agent in Charge, PO Box 700, Dauphin Island, AL 36528.
Resident Agent in Charge, Security Building, Room 600, 2301 14th Street, Gulfport, MS 39501.
Resident Agent in Charge, Station 1, PO Box 10182, Houma, LA 70363.
Resident Agent in Charge, 100 West Capitol Street, Suite 1418, Jackson, MS 39269.
Resident Agent in Charge, 825 Kaliste Saloom, Brandywine, II, Suite 200, Lafayette, LA 70508.
Resident Agent, 811 Bayou Pines Drive, Lake Charles, LA 70601.
Resident Agent in Charge, 10825 Financial Parkway, Suite 321, Little Rock, AR 72211.
Special Agent in Charge, 951 Government Street, Suite 700, Mobile, AL 36604.
Resident Agent in Charge, 4721 Trousdale Drive, Suite 216, Nashville, TN 37220.
Special Agent in Charge, 108 Decanter Street, New Orleans, LA 70130.
Resident Agent in Charge, 610 Texas Street, Suite 610, Shreveport, LA 71101.
Assistant Regional Commissioner (Enforcement) Southwest Region, 5850 San Felipe Street, Suite 500, Houston, TX 77057 (Southwest).
Resident Agent in Charge, 421 Cold Avenue, SW, Albuquerque, NM 87103.
Resident Agent in Charge, PO Box 9640, Alpine, TX 79830.
Resident Agent in Charge, PO Box 99, Austin, TX 78767.
Resident Agent in Charge, PO Box 4500, Brownsville, TX 78521.
Resident Agent in Charge, PO Box 2159, Corpus Christi, TX 78403.
Special Agent in Charge, 400 South Record Street, Suite 800, Dallas TX 75242.
Resident Agent in Charge, PO Box 1169, Del Rio, TX 78841.
Resident Agent in Charge, PO Box 1818, Deming NM 88030.
Resident Agent in Charge, PO Box 1076, Dougles, AZ 86508.
Resident Agent in Charge, 160 Garrison Street, Eagle Pass, TX 78852.

Special Agent in Charge, 6501 Boeing Drive, Building G, El Paso, TX 79925.
Resident Agent in Charge, PO Box 12, Falcon Heights, TX 78545.
Resident Agent in Charge, PO Box HH, Flagstaff, AZ 86001.
Resident Agent in Charge, PO Box 570, Galveston, TX 77553.
Special Agent in Charge, 4141 East Northbelt, Suite 300, Houston, TX 77032.
Resident Agent in Charge, PO Box 2128, Laredo, TX 78044.
Resident Agent in Charge, PO Box 7150, Las Cruces, NM 88006.
Resident Agent in Charge, PO Drawer 189, Lukeville, AZ 85341.
Resident Agent in Charge, 1701 West Business 83, Suite 508, McAllen, TX 78501.
Resident Agent in Charge, 3500 NW 56th Street, Suite 200, Oklahoma City, OK 73112.
Resident Agent in Charge, 3010 North 2nd Street, Suite 201, Phoenix, AZ 85012.
Resident Agent in Charge, 4550 75th Street, Port Arthur, TX 77642.
Resident Agent in Charge, PO Drawer H, Presidio, TX 79845.
Resident Agent in Charge, 1802 NE Loop 410, Suite 302, San Antonio, TX 78217.
Resident Agent in Charge, PO Box 458, Sells, AZ 85634.
Special Agent in Charge, 555 East River Road, Tucson, AZ 85704.
Resident Agent in Charge, PO Box 5757, Yuma, AZ 85364.
Assistant Regional Commissioner (Enforcement), Pacific Region, PO Box 1309 MPO, Los Angeles, CA 90053 (Pacific).
Resident Agent in Charge, PO Box 100199, Anchorage, AK 99501.
Resident Agent in Charge, PO Box 535, Astoria, OR 97103.
Resident Agent in Charge, PO Box 1360, Blaine, WA 98230.
Resident Agent in Charge (Calexico) 1681 West Main Street, Suite 306, El Centro, CA 92243.
Resident Agent in Charge, PO Box 209, Coos Bay, OR 97420.
Resident Agent in Charge, PO Box 465, Eureka, CA 95502.
Resident Agent in Charge, PO Box 12465, Fresno, CA 93778.
Resident Agent in Charge (Guam), PO Box 2508, Agana, Guam 96910.
Resident Agent in Charge, (LAX), 222 North Sepulveda Boulevard, Suite 200, El Secundo, CA 90245.
Resident Agent in Charge, PO Box 329, Oceanside, CA 92054.
Resident Agent in Charge (Orange County), 15941 Red Hill Avenue, Suite 200, Tustin, CA 92680.
Resident Agent in Charge, PO Box 6155, Oxnard, CA 93031.
Resident Agent in Charge, Federal Office Building, 138 West First Street, Room 216, Port Angeles, WA 98352.
Resident Agent in Charge, PO Box 2841, Portland, OR 97208
Resident Agent in Charge, 1755 E. Plumb Lane, Airport Plaza, Suite 229, Reno, NV 89502.
Resident Agent in Charge, PO Box 214666, Sacramento, CA 95821.
Special Agent in Charge, 401 West A Street, Suite 305, San Diego, CA 90101.
Special Agent in Charge, 1700 Montgomery Street, Suite 445, San Francisco, CA 94111.
Resident Agent in Charge (SFO), San Francisco International Airport, P. O. Box 251747, San Francisco, CA 94128.
Resident Agent in Charge, Courthouse and Federal Building, 280 South First Street, Suite 190, San Jose, CA 95113.
Resident Agent in Charge, 406 Virginia Avenue, San Ysidro, CA 92073.
Special Agent in Charge, Federal Office Building, 909 First Avenue, Room 4100, Seattle, WA 98174.
Resident Agent in Charge, West 904 Riverside, Room 332, Spokane, WA 92210.
Assistant Regional Commissioner (Enforcement) North Central Region, 55 East Monroe Street, Suite 1501, Chicago, IL 60603 (North Central).
Special Agent in Charge, 610 South Canal Street, Room 851, Chicago, IL 60607.
Resident Agent in Charge (Cincinnati) Suite 200, 207 Grandview Drive, Fort Mitchell, KY 41017.
Special Agent in Charge (Cleveland) Commerce Place, 7123 Pearl Road, Room 305, Middleburg Heights, OH 44130.
Resident Agent in Charge, 78 E. Chestnut Street, Room 411, Columbus, OH 42315.
Special Agent in Charge, PO Drawer 3609, Denver, CO 80294.
Special Agent in Charge, McNamara Federal Building, 477 Michigan Avenue, Room 350, Detroit, MI 48226.
Resident Agent in Charge, PO Box 791, Great Falls, MT 59403
Resident Agent in Charge, PO Box 51366, Indianapolis, IN 46251.
Resident Agent in Charge, 2701 Rockcreek Parkway, Suite 206, North Kansas City, MO 64117.
Resident Agent in Charge, PO Box 92847, Milwaukee, WI 53202.
Special Agent in Charge, Federal Office Building, 212 Third Avenue South, Room 154, Minneapolis, MN 55401.
Resident Agent in Charge, PO Box 192, Pembina, ND 58271.
Resident Agent in Charge, 114 Market Street, Room 942, St.Louis, MO 63101.
Resident Agent in Charge, 1745 W. 1700 S, Room 1124, Salt Lake City, UT 84104.

BILLING CODE: 4820–02–F

Federal Law Enforcement Training Center

Treasury/FLETC .001

SYSTEM NAME:

FLETC Payroll/Personnel Records System—Treasury/FLETC.

SYSTEM LOCATION:

FLETC, Office of Administration, Building 94, Glynco, GA 31524. Systems are also located at other FLETC facilities. (See FLETC Appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All payroll records including Standard Forms 50 and 52, time and attendance reports, leave status, health and life insurance requests, payroll deduction requests, employee training, performance evaluations, retirement records, medical/treatment/ injury records, and Equal Employment Opportunity and personnel records consisting of records other than those described and reported by the Office of Personnel Management on behalf of all agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5 U.S.C. 4101 et seq; Executive Order No. 11348, dated April 20, 1967, and Treasury Order 140–01, dated September 20, 1994.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to the individual's parent agency and Federal regulatory agencies on a "need to know" basis which include the Department of Labor, Department of Health and Human Services, Merit Systems Protection Board, Federal and Labor Relations Authority, Equal Employment Opportunity Commission and the Office of Personnel Management concerning pay, leave, benefits, retirement deductions, and other information necessary for OPM to carry out its government–wide personnel management functions. These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceeding; (4) disclose information to foreign governments in accordance with

formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, microfiche and various electronic mediums. FLETC computers access the TIMIS payroll and personnel system.

RETRIEVABILITY:

Social Security Number, name, position, and/or organizational element.

SAFEGUARDS;

Physical security, personal access codes, and identification confirmations are all used to prevent unauthorized disclosure of records.

RETENTION AND DISPOSAL:

Disposition as prescribed by General Records Schedules 1 and 2 issued by the National Archives and Records Administration. For more information contact: Records Management Officer, FLETC, Building 94, Glynco, GA 31524.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, Building 94, FLETC, Glynco, GA 31524.

NOTIFICATION PROCEDURE:

The individual must provide full name, Social Security Number, and date of employment at the FLETC to the System Manager.

RECORD ACCESS PROCEDURES:

By written request to the System Manager.

CONTESTING RECORD PROCEDURES:

See "Record access" above.

RECORD SOURCE CATEGORIES:

The employee on whom the record is maintained, prior employers, client agencies and the FLETC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FLETC .002

SYSTEM NAME:

FLETC Trainee Records—Treasury/FLETC.

SYSTEM LOCATION:

FLETC, Office of Administration, Building 94, Glynco, GA 31524. Systems are also located at the FLETC facilities located in Artesia, NM and Tucson, AZ. (See FLETC appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who officially attends a FLETC–sponsored Training Program, Symposium, or similar event.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal background information supplied by the trainee; grades and performance or conduct evaluations, advisory letters to parent agencies, class rosters/photographs and relevant health/physical conditioning.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Treasury Order 140–01, dated September 20, 1993, and Memorandum of Understanding for the Sponsorship and Operation of the Consolidated Federal Law Enforcement Training Center, dated September 30, 1970.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure upon request to the individual;s parent agency, to a prospective Federal employer, and to other government officials involved in training or research. These records and information in the records may be used to: (1) Disclose to the Office of Personnel Management concerning pay, leave, benefits, retirement deductions, and other information necessary for OPM to carry out its government–wide personnel management functions; (2) disclose pertinent information to appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, o in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disk, tape, and paper files.

RETRIEVABILITY:

Name, class number, and Social Security Number.

SAFEGUARDS;

Access to these systems of records will be controlled by software, hardware, and other physical security procedures. Software will e used to ensure, in all technically feasible ways, that data cannot be made available to unauthorized persons. User–identifiers and passwords will be used where feasible to protect the data. Physical security will protect all terminals, disks and tapes, and paper archives from access by unauthorized persons. Offices will be locked except when authorized persons are present. Warehoused paper records are secured, the building alarmed, and access controlled by the Records Management Officer.

RETENTION AND DISPOSAL:

All records are retained and disposed of in accordance with the General Records Schedule issued by the National Archives and Records Administration. For more information contact: Records Management Officer, FLETC, Building 94, Glynco, GA 31524.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, Building 94, FLETC, Glynco, GA 31524.

NOTIFICATION PROCEDURE:

The individual must provide full name, Social Security Number, date of birth, parent agency, type of course and approximate dates of attendance to the System Manager.

RECORD ACCESS PROCEDURES:

By formal letter to the System Manager.

CONTESTING RECORDS PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The trainee himself and members of the staff responsible for the administrative processing and training of that individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FLETC .004

SYSTEM NAME:

FLETC Administrative Records—Treasury/FLETC.

SYSTEM LOCATION:

FLETC, Office of Administration, Building 94, Glynco, GA 31524. Systems are also located at the FLETC facilities located in Artesia, NM and Tucson, AZ. (See FLETC appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students, current employees, past employees, employees of client agencies, contractor employees, guests, and visiting personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Access Control/ Identification, Vehicle Registration and Driver Violation, Equipment Control, Property Pass/Accountability, Lost and Found, Key Assignment, Safety and Occupational Health Program, Security Incident, Emergency Services, Administrative Inquiry, and Instructor Management records and Resource and Marketing Mailing Lists.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Treasury Order 140–01, dated September 20, 1994.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure to the contract employer, the individual's parent agency, and Federal regulatory agencies on a "need to know" basis. These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance; license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various electronic mediums and paper files.

RETRIEVABILITY:

Name, Social Security Number, employer, and/or organizational element.

SAFEGUARDS;

Physical security, personnel screening and computer passwords are all used to prevent unauthorized disclosure of records.

RETENTION AND DISPOSAL:

Disposition as prescribed by the General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, Building 94, FLETC, Glynco, GA 31524.

NOTIFICATION PROCEDURE:

The individual must provide full name, social security number, and dates of duty at the Center to the System Manager.

RECORD ACCESS PROCEDURES:

By written request to the System Manager.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained, client agencies, employers, and the FLETC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FLETC Appendix A

Federal Law Enforcement Training Center
Glynco, GA 31524
Federal Law Enforcement Training Center
Washington Office 650 Massachusetts Avenue, NW Washington, DC 20226
Federal Law Enforcement Training Center
Artesia Facility 1300 W. Richey Avenue
Artesia, NM 88210
Federal Law Enforcement Training Center
Building 4310, 3rd Fl Davis–Monthan Air Force Base Tucson, AZ 85707

BILLING CODE: 4810–32–F

Financial Management Service

Treasury/FMS .001

SYSTEM NAME:

Administrative Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Room 135, Hyattsville, MD 20782. Also, please see appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Financial Management Service personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Motor Vehicle Drivers Permits. (2) Motor Vehicle Accident Reports. (3) Parking Permits. (4) Distribution List of individuals requesting various Treasury publications. (5) Treasury Credentials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to GSA for drivers permits, parking permits, accident reports, and credentials; (2) disclose to GPO for servicing public on Treasury publications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hardcopy and microcomputer.

RETRIEVABILITY:

By name and by Treasury publication.

SAFEGUARDS:

Locked containers. Administrative Procedure – names are not given to anyone except those who control the listing.

RETENTION AND DISPOSAL:

(1) Motor Vehicle Drivers Permits – destroy 3 years from date of separation or 3 years after rescission of authorization. (2) Distribution List – destroy one year after declared obsolete. (3) Motor Vehicle Accident Reports – six years after closure of the case. (4) Parking permits and Treasury Credentials – destroy 3 months after return to issuing officer.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Facilities Management Division, Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Room 127, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be sent to the Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th St., SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Financial Management Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix to FMS .001

Motor Vehicle Drivers Permits:Prince George Center II3700 East—West Highway, Hyattsville, MD 20782
Motor Vehicle Accident Reports:(1) Prince George Metro Center II, 3700 East—West Highway, Room 135, Hyattsville, MD 20782.(2) Ardmore East Business Center 3361–L 75th Avenue Landover, MD 20785
Parking Permits:Prince George Center II3700 East—West Highway, Room 127Hyattsville, MD 20782
Distribution List:(1) Ardmore East Business Center 3361–L 75th Avenue Landover, MD 20785(2) Liberty Center Building 401 14th Street, SW, Room 259 Washington, DC 20227
Treasury Credentials:Prince George Metro Center II3700 East—West Highway, Room 158–B,Hyattsville, MD 20782.

Treasury/FMS .002

SYSTEM NAME:

Payment issue records for regular recurring benefit payments—Treasury/ Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th Street, SW, Washington, DC 20227. Records maintained in Financial Centers in six Regions: Austin, TX; Birmingham, AL; Chicago, IL; Kansas City, KS; Philadelphia, PA; and San Francisco, CA. Also maintained in all Federal Record Centers by NARA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Beneficiaries of Title II of the Social Security Act.
(2) Beneficiaries of Title XVI of the Social Security Act.
(3) Beneficiaries of the Civil Service Retirement System.
(4) Beneficiaries of the Railroad Retirement System.
(5) Beneficiaries of the Department of Veterans Affairs
(6) Holders of Series H and HH Bonds (interest payment).

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment issue records for regular recurring benefit payments showing name, check number and symbol, or other identification, address, account number, payment amount, and date of issuance for each of the categories of individuals listed above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to banking industry for payment verification; (2) disclose to Federal investigative agencies, Departments and agencies for whom payments are made, and payees; (3) disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (5) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (6) disclose information to foreign governments in accordance with formal or informal international agreements; (7) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (8) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (9) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and (10) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm–magnetic tape for categories of individuals 1 through 6.

RETRIEVABILITY:

By account number.

SAFEGUARDS:

Computer password system, card–key entry system, limited to authorized personnel.

RETENTION AND DISPOSAL:

Indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Disbursing Officer, Financial Management Service, 401 14th Street, SW, Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR, part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See"Record access procedures" above.

RECORD SOURCE CATEGORIES:

Voucher certifications by Departments and agencies for whom payments are made.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .003

SYSTEM NAME:

Claims and Inquiry Records on Treasury checks, and International claimants—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Room 727D, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Payees and holders of Treasury checks, (2) Claimants awarded benefits under the War Claims Act and the International Claims Settlement Act of 1949.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Treasury check claim file: Treasury check, claim of payee with name and address, settlement action taken. (2) Awards for claims for losses sustained by individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; (1) For Treasury check claims – 31 U.S.C. 71 with delegation of authority from Comptroller General of the United States; (2) International claims – 50 U.S.C. 2012; 22 U.S.C. 1627, 1641, 1642.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

(1) Information is routinely disclosed to endorsers concerning checks for which there is liability, Federal agencies, State and local law enforcement agencies, General Accounting Office, Congressional offices and media assistance offices on behalf of payee claimants. (2) International Claims – Information in files is used by claimants (awardees) and their representatives, Foreign Claims Settlement Commission, and Congressmen. These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Claim file folders, card/paper checks, microfilm, and magnetic media. (2) Correspondence files. (3) Claim file folders.

RETRIEVABILITY:

(1) Name of payee and check number and symbol. (2) Alpha cross–reference to case number. (3) Name of claimant or alpha reference to claim number.

SAFEGUARDS:

(1) Secured building, (2) Secured files in secured building.

RETENTION AND DISPOSAL:

(1) Claim files and checks, six years seven months; Microfilm, indefinitely. (2) Correspondence files – seven years. (3) Claim file folders – indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Category 1: Director, Financial Processing Division, Prince George Metro Center II, 3700 East–West Highway, Room 727D, Hyattsville, MD 20782. Category 2: Director, Funds Management Division, Prince George Metro Center II, 3700 East–West Highway, Room 620D, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW, Washington, DC 20227. All individuals making inquiries should provide with

their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to: Disclosure Officer, Room 341–A, Financial Management Service, U.S. Department of the Treasury, 401 14th Street, SW., Washington, DC 20227. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Individual payees of Treasury checks, endorsers of Treasury checks, investigative agencies, contesting claimants. (2) Awards certified to Treasury for payment by Foreign Claims Settlement Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .005

SYSTEM NAME:

FMS Personnel Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, 401 14th ST., SW, Washington, DC 20227; Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Employees of Service (Separated employees – in certain cases) and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Locator Cards. (2) Incentive Awards Record. (3) Official Personnel Folder. (4) Personnel Roster. (5) Logs of SF–52's, (6) Correspondence File. (7) Position Listings. (8) Position Descriptions with Evaluation Statements. (9) Personnel Management Evaluation Survey Reports. (10) Applicant Supply File. (11) Request for Certification File. (12) Merit Promotion File. (13) Exit Interview File. (14) Performance File. (15) Statistical Reports – retrievable by names: (a) Personnel Status Report, (b)Ad Hoc Retiree Report, (c) Monthly EEO report, (d) Direct Hire Authority Report, (e) Registers Worked File, (f) Statements of Employment and Financial Interest, and (g) Other similar files or registers. (16) Training Course Nominations. (17) Evaluation of Training Program. (18) Tuition Assistance Files. (19) Senior Executive Service Development File. (20) Management Development File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10561, dated September 13, 1954, Federal Personnel Manual, and Title 5 of U.S.C. Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and magnetic storage.

RETRIEVABILITY:

Alphabetically by name; also in some instances by organization, then Social Security number.

SAFEGUARDS:

Secured building, secured room, and locked cabinets. Non—FMS access is limited to investigators from OPM, etc., members of Fair Employment staff and Union officials.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Room 113–F, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applicant Personnel Action Forms (SF–50), SF–171 (Completed by

applicant), Payroll Actions References, Educational Institutions, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .007

SYSTEM NAME:

Payroll and Pay Administration—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Room 133, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Employees of the Service and Separated Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Official Payroll Folder (a) Levy and Garnishment Records. (b) SF–1192—Savings Bond Authorization. (c) SF–1199A—Allotment of Pay to Saving Account. (d) Copies of SF–50—Notification of Personnel Action. (e) Withholding Tax Exemptions. (f) Copy of Health Benefit Designation. (g) Copy of Life Insurance Forms. (h) Payroll Change Slips. (i) Combined Federal Campaign Designations. (j) Copy of SF–1150. (2) Time and Attendance Reports (a) SF–71 Request for Leave. (b) Court Leave Documents. (c) Request for Advancement of Leave. (3) Payroll Comprehensive Listing (a) Current Payment Information. (b) Record of Leave Earned and Used. (c) All Deductions from Pay. (d) Personnel Information such as Grade, Step, Salary, Title, Date of Birth, Social Security Number, Veterans Preference, Tenure, etc. (4) Payroll Control Registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 – Pay, Leave and Allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure permitted to Federal Agencies and to State and Local Agencies for tax purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, microfiche, and magnetic media.

RETRIEVABILITY:

By Social Security number.

SAFEGUARDS:

Secured building, secured room and locked cabinets.

RETENTION AND DISPOSAL:

Records are stored, maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Division, Financial Management Service, Prince George Metro Center II, 3700 East–West Highway, Room 113–F, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer , 401 14th St., SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

From individual Service employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .008

SYSTEM NAME:

Personnel Security Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U. S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Room 158–B, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Financial Management Service Employees, contractor employees, and applicants for position in the Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations, national agency checks and written inquiries, and other limited investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., Chapter 73, Executive Order 10450, as amended, and Treasury Order 102–3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are reviewed for the purpose of determining the suitability of Service employees, contractor employees, and applicants and granting security clearances for employees in sensitive positions. Users: Federal Agencies, Federal, State and Local Law Enforcement Agencies; and credit bureaus. These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) disclose information to foreign governments in accordance with formal or informal international agreements; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal

proceedings; (7) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computers.

RETRIEVABILITY:

Filed alphabetically by name and Social Security Number.

SAFEGUARDS:

Stored in a safe cabinet secured with a combination lock and/or magnetic media. Access to the records is restricted to key personnel who have been granted clearances to occupy critical–sensitive positions.

RETENTION AND DISPOSAL:

The records on employees are retained by the Service during their employment. The records on applicants not selected and separated employees are destroyed, sent to the Federal Records Center, or returned to the investigating agency.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Review Division, Financial Management Service, Prince George Metro Center II, 3700 East–West Highway, Room 158–B, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, 401 14th Street, SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Records access procedures" above.

RECORD SOURCE CATEGORIES:

Sources are applicants, employers, former employers, contractor employers, references, fellow workers, neighbors, educational authorities, military records, police and criminal records, credit records and others as required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .010

SYSTEM NAME:

Records of Accountable Officers' authority with Treasury— Treasury/ Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th Street, SW, Washington, DC 20227.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Regional Directors. (2) Certifying Officers. (3) Designated Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained on the above listed accountable officers showing the designation or removal of the officer to act in the specified capacity pursuant to a proper authorization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose to Banking institutions, Federal Reserve Banks, and Government agencies for verification of information on authority of accountable officers to determine propriety of actions taken by such individuals; (2) disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files; paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Regional Directors' files are locked.

RETENTION AND DISPOSAL:

Hard–copy records are maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Disbursing Officer, Financial Management Service, U.S. Department of the Treasury, 401 14th Street, SW, Room 343, Washington, DC 20227.

Director, Austin Regional Financial Center, Financial Management Service, Department of the Treasury, 1619 E. Woodward Street, Austin, TX 78741.

Director, Birmingham Regional Financial Center, Financial Management Service, Department of the Treasury, 190 Vulcan Road, Birmingham, AL 35109.

Director, Chicago Regional Financial Center, Financial Management Service, Federal Office Building, 536 S. Clark Street, Chicago, IL 60605.

Director, Kansas City Regional Financial Center, Financial Management Service, Department of the Treasury, 2100 W. 36th Avenue, Kansas City, KS 66103.

Director, Philadelphia Regional Financial Center, Financial Management Service, 1300 Townsend Road, Philadelphia, PA 19154.

Director, San Francisco Regional Financial Center, 390 Main Street, San Francisco, CA 94104.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record accessprocedures" above.

RECORD SOURCE CATEGORIES:

Government Departments and Agencies requiring services of Treasury Department for issuance and payment of Treasury checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .012

SYSTEM NAME:

Pre–complaint Counseling and Complaint Activities—Treasury/ Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Treasury Department, Prince George Metro Center II, 3700 East–West Highway, Room 132, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees seeking services of EEO Counselors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly pre–complaint activity reports from seven Financial Centers and Headquarters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7154; 42 U.S.C. 200e–16; Executive Order 11478; and 5 CFR part 713.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to keep records on EEO Counseling activities for annual submission to Treasury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinet.

RETRIEVABILITY:

Filed by station and date of receipt.

SAFEGUARDS:

Staff supervision is maintained during the day. Records are kept locked in the files.

RETENTION AND DISPOSAL:

Reports destroyed at the end of four years.

SYSTEM MANAGER(S) AND ADDRESS:

EEO Officer, Financial Management Service, Prince George Metro Center II, 3700 East–West Highway, Room 132, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The Systems Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Monthly submissions by Financial Centers and Headquarters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .013

SYSTEM NAME:

Gifts to the United States—Treasury/ Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East–West Highway, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of intervivos and testamentary gifts to the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, copies of wills and court proceedings, and other material related to gifts to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3113.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filing cabinets.

RETRIEVABILITY:

Name of donor.

SAFEGUARDS:

Access is limited to persons on official business.

RETENTION AND DISPOSAL:

Records are maintained for 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Financial Information Management, Directorate, Financial Management Service, Prince George Metro Center II, 3700 East–West Highway, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee

identification number, dates of employment or similar information). Address inquiries to Disclosure Officer (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th Street, SW., Washington, DC 20227.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individuals, executors, administrators and other involved persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/FMS .014

SYSTEM NAME:

Debt Collection Operations System—Treasury/Financial Management Service.

SYSTEM LOCATION:

The Debt Collections Operations Staff, Financial Management Service, U.S. Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals and entities that are financially indebted to the U.S. Government through one or more of its departments and agencies and are the result of participation in a Federal direct or guaranteed loan program, the assessment of a fine, fee, or penalty, an overpayment or advance, or other extensions of credit such as would result from sales of goods or services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies, depending on the individual debtor, the type of indebtedness and the agency to which monies are owed. The system of records contains information pertaining to: (1) individuals and commercial organizations, such as name, Taxpayer Identification Number (i.e., social security number, or employer identification number), work and home address, and work and home phone numbers; (2) the indebtedness, such as the original amount of the debt, the date the debt originated, the amount of the delinquency/default, the date of delinquency/default, basis of the debt, amounts accrued for interest, penalties, and administrative costs, and payments on the account; (3) actions taken to enforce recovery of the debt, such as copies of demand letters/invoices, and documents required for the referral of accounts to collection agencies, or for litigation; and (4) referring or client agency, such as name, phone number, and address of the agency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub L. 89–508), as amended by the Debt Collection Act of 1982 (Pub L. 97–365. as amended), and the Deficit Reduction Act of 1984 (Pub L. 98–369, as amended); 31 U.S.C. 37, Subchapter I (General) and Subchapter II (Claims of the U.S. Government).

PURPOSE(S):

The purpose of the system is to maintain a record of individuals and entities that are indebted to the various Federal Government departments and agencies and whose accounts are being serviced or collected by the Financial Management Service (FMS), in accordance with written agreements reached between the relevant agency ("client") and FMS. The records ensure that: Appropriate collection action on debtors' accounts is taken and properly tracked, monies collected and credited, and accounts are returned to the appropriate client at the time the account is collected or closed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information to: (1) Appropriate Federal, state, local or foreign agencies responsible for investigating or implementing, a statute, rule, regulation, order, or license; (2) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (3) a congressional office in response to an inquiry made at the request of the individual or entity to whom the record pertains; (4) the Internal Revenue Service for the purpose of: effecting and administrative offset against the debtor's tax refund to recover a delinquent debt owed to the U.S. Government by the debtor; or, obtaining the mailing address of a taxpayer/debtor in order to locate the taxpayer/debtor in accordance with 31 U.S.C. 3711, 3717, and 3718 and 26 U.S.C. 6103(m)(2); (5) the Department of Justice for the purpose of litigation to enforce collection of a delinquent debt or to obtain the Department of Justice's concurrence in a decision to compromise, suspend, or terminate collection action on a debt with a principle amount in excess of $100,000 or such higher amount as the Attorney General may, form time to time, prescribe in accordance with 31 U.S.C. 3711(a); (6) the Department of Defense or the U.S. Postal Service or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, so as to identify and locate individuals receiving Federal payments (including, but not limited to, salaries, wages, and benefits) for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or administrative offset procedures; (7) the Department of Defense or U.S. Postal Service or other Federal agency for the purpose of effecting an administrative offset against Federal payments certified to be paid to the debtor to recover a delinquent debt owed to the U.S. Government by the debtor; and (8) any creditor Federal agency seeking assistance for the purpose of seeking voluntary repayment of a debt or implementing Federal employee salary offset or administrative offset in the collection of unpaid financial obligations.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor is also furnished in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, as amended (Pub. L. 97–365), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disc, tape, and hard copy.

RETRIEVABILITY:

Records are retrieved by name or taxpayer identification number (i.e., social security number or employer identification number).

SAFEGUARDS:

All officials access the system of records will do so on a need–to–know basis only, as authorized by the system manager. Procedural and physical safeguards are utilized, such as accountability, receipt records, and specialized communications security. This data system has an internal mechanism to restrict access to authorized officials. Hard–copy records are held in steel cabinets, with access limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; files are locked up during non–working hours. The building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

Hard–copy records are returned to the agency which had contracted for service or collection with FMS at the time an individual account is resolved through collection, compromise, or write–off/close out or at the agency's request. Summary information, such as results of collection action undertaken, for the purpose of producing management reports is retained for a period of five (5) years.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Debt Collection Operations Staff, Financial Management Service, 401 14th Street, SW, Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCE[illegible] PROCEDURES:

Individua[illegible] requesting information under the Pr[illegible]acy Act of 1974 concerning p[illegible]rocedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part, subpart C, appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information from this system is obtained from the individual or entity, creditor agencies, Federal employing agency, collection agencies, credit bureaus, and Federal, state or local agencies furnishing identifying information and/or address of debtor information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BILLING CODE: 4810–35–F

Internal Revenue Service

Treasury/IRS 00.001

SYSTEM NAME:

Correspondence Files and Correspondence Control Files—Treasury/IRS.

SYSTEM LOCATION:

Various offices of the Internal Revenue Service maintain files of correspondence received. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of the correspondence. (2) Persons upon whose behalf the correspondence was initiated. (3) Subjects of the correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received. (2) Responses to correspondence. (3) Associated records. Special Categories of correspondence may be included in other systems of records described by specific notices. Files are maintained in connection with a variety of correspondence received and the uses vary widely in accordance with the content of the correspondence. Correspondence may include letters, telegrams, memoranda of telephone calls, and other forms of communication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) Appropriate Federal, State, local, or foreign agencies responsible for enforcing or implementing a statute, rule, regulation, order or license; (3) disclose information to a Federal, State, or local agency, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's bureau's or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2, concerning this agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, and/or magnetic media.

RETRIEVABILITY:

Controlled items are generally retrievable by name, but it depends upon the controls established locally. No centralized index exists.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, disposition varies in accordance with the nature of the correspondence file.

SYSTEM MANAGER(S) AND ADDRESS:

Head of the Office maintaining the file. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record

pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the office believed to have received the correspondence. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information supplied by the initiators of the correspondence and information secured internally from other systems of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 00.002

SYSTEM NAME:

Correspondence Files/Inquiries About Enforcement Activities–Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of correspondence. (2) Persons upon whose behalf the correspondence was initiated. (3) Persons who are subjects of the correspondence. Includes individuals for whom tax liabilities exist, individuals who have made a complaint or inquiry relative to an Internal Revenue tax matter, or individuals for whom a third party is interceding relative to an Internal Revenue tax matter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number (if applicable), information about tax matters (if applicable), chronological investigative history. Other information relative to the conduct of the case and/or the taxpayer's compliance history (if applicable). Correspondence may include letters, telegrams, memoranda of telephone calls, and other forms of communication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (3) disclose information to a Federal, state, or local agency, or other public authority, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's bureau's or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2 concerning this agency's functions relating to civil and criminal proceedings; (7) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (8) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (9) provide information to other agencies to the extent provided by law or regulation and as necessary to report apparent violation of law to appropriate law enforcement agencies; (10) provide information to states, the District of Columbia, the Commonwealth of Puerto Rico, or possessions of the United States, to assist in the administration of tax laws.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or magnetic media.

RETRIEVABILITY:

Controlled items are generally retrievable by name, but it depends upon the controls established locally. No centralized index exists.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, disposition varies in accordance with the nature of the correspondence file.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioners, Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system is exempt from the Access and Contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 10.001

SYSTEM NAME:

Biographical Files, Public Affairs—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are biographical data and photographs of key IRS employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Information contained in this system may be included in news releases issued to the media and the public.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files or magnetic media.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Office doors locked at night.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to the Commissioner (Public Affairs), National Office; Regional, District, Internal Revenue Service Center, and Austin Compliance Center Public Affairs Officers. (see IRS appendix A for addresses).

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant to the Commissioner (Public Affairs), IRS, Washington, DC 20224, for National Office file. See appendix A for appropriate addresses for regional and district office or service center files.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information is supplied by the IRS official on an IRS biographical data form.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 10.004

SYSTEM NAME:

Subject Files, Public Affairs—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (see IRS appendix A for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In general, records are maintained on individuals whose names have been mentioned in the press in connection with their relationship with IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include correspondence, newspaper clippings, inter–office memoranda and similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be provided in response to inquiries from the media and the public.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files or magnetic media.

RETRIEVABILITY:

Alphabetically by subject.

SAFEGUARDS:

Office doors locked at night.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to the Commissioner (Public Affairs), National Office; Regional, District, Internal Revenue Service Center, and Austin Compliance Center, Public Affairs Officers (see IRS appendix A for addresses).

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the records are located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Records generally are clippings from newspapers, magazines, and similar sources, internal documents and memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 21.001

SYSTEM NAME:

Tax Administration Resources File, Office of Tax Administration Advisory Services—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW, Fourth Floor, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and potential tax administration advisors who have served or indicated an interest in serving on advisory assignments, and selected officials engaged in tax administration and related fields.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant roster database, locator cards and lists with names, addresses, telephone numbers, and organizational affiliations of officials engaged in tax administration; work assignment or application folders of past and potential tax administration advisors, which contain employment history, information, medical abstracts, security clearances, and passport information; bio–data sketches on IRS employees and others engaged in tax administration and related fields.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintained for use by Office management officials as a reference in obtaining and presenting information related to tax administration, and for administrative selection and processing of overseas and domestic assignments. The records and information in these records may be used to: (1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (2) disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

Access limited to authorized office personnel. File folders kept in locked file or locked room.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are disposed of when they are no longer needed for official use.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), Internal Revenue Service, 950 L'Enfant Plaza, SW, Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Office of the Assistant Commissioner (International), Internal Revenue Service, 950 L'Enfant Plaza, SW, Fourth Floor, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

From the individual, from the organization with which he or she is associated, or from other knowledgeable experts in the field of Tax Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.003

SYSTEM NAME:

Annual Listing of Undelivered Refund Checks—Treasury/IRS.

SYSTEM LOCATION:

District Offices and Internal Revenue Service Centers and the Austin Compliance Center. (see IRS appendix A for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers whose refund checks have been returned as undeliverable since the last Annual Listing of Undelivered Refund Checks was produced.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer entity information (Name, Street Address, City, State, Zip Code and social security number) and records containing tax module information (Tax Period, Amount of Credit Balance and Control Document Locator Number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made on as provided by 26 U.S.C. 6103. Individuals entitled to undeliverable refund checks will be notified of such checks by publication of their names in the news media.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents stored in files or on magnetic media.

RETRIEVABILITY:

By taxpayer name or taxpayer social security number (SSN).

SAFEGUARDS:

Access controls will not be less than those provide for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services), Officials maintaining the system—District Directors, Internal Revenue Service Centers Directors, and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the district office servicing the areas in which the individual resided at the time he or she filed the return which created the undeliverable refund. (see IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.011

SYSTEM NAME:

File of Erroneous Refunds—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers issued erroneous refunds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case reference name, number, control number, date of erroneous refunds, statute expiration date, status of case, location, correspondence and research material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper document files.

RETRIEVABILITY:

By Social Security Number (SSN) or Employer Identification Number (EIN).

SAFEGUARDS:

Access controls will not be less than those provide for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks IRM 1(15)59.1 through IRM 1(15) 59.32. Generally, records are retained for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services) Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the areas in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.026

SYSTEM NAME:

Form 1042S Index by Name of Recipient—Treasury/IRS.

SYSTEM LOCATION:

Philadelphia Internal Revenue Service Center, Mid–Atlantic Region, 11601 Roosevelt Boulevard, Philadelphia, PA 19154

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non–resident aliens and U.S. citizens living abroad whose taxes are covered by IR Chapter 3 Withholding.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include taxpayer's name, address, tax data, country of residence and employer identification number and name of withholding agent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook,IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15) 59.32. Generally, records are retained at the Service Center for 5 years and then at a Federal Records Center for 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Official maintaining the system—Philadelphia Internal Revenue Service Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to: Director, Philadelphia Internal Revenue Service Center, Mid–Atlantic Region, 11601 Roosevelt Boulevard, Philadelphia, PA 19154.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.027

SYSTEM NAME:

Foreign Information System (FIS)—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Philadelphia Internal Revenue Service Center, and its servicing Federal Records Centers, and the Detroit Computing Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who file Form 5471, Information Return with Respect to a Foreign Corporation and Form 5472, Information Return of a Foreign Owned Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer entity records (name, address, identification number), foreign corporation identification, information relating to stock, U.S. shareholders, Earnings and Profits, Balance Sheet, and other available accounting information relating to a specific taxable period.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media. (Various tables are published from this media.)

RETRIEVABILITY:

Documents are stored and retrieved by document locator numbers.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook,IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 206 for Service Centers, IRM 1(15)59.26.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Directors, Internal Revenue Service Centers. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the areas in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.032

SYSTEM NAME:

Individual Microfilm Retention Register—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers and the Martinsburg Computing Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals on whom records are maintained are: For Individual Master File (IMF) registers—Individuals who file, or may be required to file, individual tax returns such as Form 1040, 1040A, or 1040EZ.

CATEGORIES OF RECORDS IN THE SYSTEM:

Abstracts of tax and/or entity modules that have been removed from the IMF. These abstract records indicate the taxpayer name, identification number, specific tax returns filed, document locator number, tax years, debit and credit amounts, balances, and other transactions which have been recorded relative to the module(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm tape.

RETRIEVABILITY:

IMF Reference Register (for IMF Register only), taxpayer identification number, tax Period, name, and type of tax. Methods of retrievability are explained in the Research Operations Handbook, IRM 36(66)0.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook,IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors, and the Martinsburg Computing Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the areas in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.034

SYSTEM NAME:

Individual Returns Files, Adjustments and Miscellaneous Documents Files—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers, the Austin Compliance Center, and Federal Records Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers or return preparers who have had changes made to their accounts, or have had information posted to the Individual Master File or other tax accounting files as a result of filing returns, applications, or other documents, or as a result of actions initiated by the Service. A record will be maintained for those taxpayers whose individual income tax overpayments have been retained or transferred from the IMF to apply against past due child and/or spousal support payments as reported to IRS by the states under Pub. L. 97–35.

CATEGORIES OF RECORDS IN THE SYSTEM:

A variety of records reflecting tax matters which have served as input documents or supporting documentation for entries on the Individual Master File, or other tax accounting files, including tax return forms, declarations, applications, case records, processing documents, vouchers, computer notices, posting and correction forms, Interest Equalization Tax Forms, withholding allowance certificates, and similar records. Information will be maintained as to the name, SSN, address of individuals owing past due child and/or spousal support payments submitted by states under Pub. L. 97–35. Also maintained will be the name of the submission state, the amount owed, and the amount of any individual income tax overpayment retained and transferred to the state to apply against the amount owed. IRS administrative files (i.e., examination, collection, underreporter, criminal investigation, etc.) are not included in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper document files or magnetic media.

RETRIEVABILITY:

Documents are stored and retrieved by document locator numbers and by taxpayer name. The document locator numbers can be determined by reference to the Individual Master File entries for the individual to whom they relate.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 206 for Service Centers, IRM 1(15)59.26.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.043

SYSTEM NAME:

Potential Refund Litigation Case Files—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers, the Austin Compliance Center and Federal Records Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who have indicated to the Service that they may file suit against the Service for a refund.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms filed by the taxpayer and case documents determined by the Service to be related.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper document files.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook,IRM 2(10)00

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 206 for Service Centers, IRM 1(15)59.26.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.044

SYSTEM NAME:

P.O.W.–M.I.A. Reference File—Treasury/IRS.

SYSTEM LOCATION:

District Offices and the Austin Internal Revenue Service Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

P.O.W./M.I.A.–originated from Department of Defense lists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of P.O.W./M.I.A., Regulations, Rulings, and Instructions as to how to handle specific tax questions relating to their special tax status, copies of individual tax returns, claims, and other documents germane to specific cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents in file folders.

RETRIEVABILITY:

Cases filed alphabetically by last name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook,IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Austin Internal Revenue Service Center Director and District Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Austin Internal Revenue Service Center or the Director of the District Office servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.054

SYSTEM NAME:

Subsidiary Accounting Files —Treasury/IRS.

SYSTEM LOCATION:

District Offices and Internal Revenue Service Centers and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals on whom records are maintained are taxpayers affected by one or more of the transactions reflected in the categories of records listed below.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of records maintained in the system are documents containing entity information (name, address, social security number or employer identification number and other information necessary to identify the taxpayer) and accounting information relevant to one of the following categories: Funds held pending, disposition and not applied to the taxpayer's liability at present, properties, tangible or intangible, now in the custody of the Internal Revenue Service, counterfeit money, misappropriation or robbery of Internal Revenue Service funds, credits which cannot be applied to a specific taxpayer account at this time, accounts transferred to other Service Centers or agencies, substantiation for the receipt of funds collected by the Service for other agencies, abatements or assessments of tax on individuals, deposits received from taxpayers, refunds to taxpayers, taxpayer accounts written off by the Service as uncollectible, credits allowed taxpayers requiring special consideration due to processing constraints, litigation, seized and acquired property and Offers–in–Compromise.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801,and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Accounting Files consist of paper documents,computer printouts, magnetic media and disk storage.

RETRIEVABILITY:

By social security number, name, or document locator number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are retired to Federal Records Centers and retrieved by request from authorized individuals when account substantiation is necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—District Directors, Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the

Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account. Some Justice Department investigations are an additional source for the information contained in litigation case files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.059

SYSTEM NAME:

Unidentified Remittance File —Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers and theAustin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Remittances which have been received but cannot be positively identified, either as to taxpayer who sent it or the tax period to which it is to be applied.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each record contains a fourteen digit unidentified remittance (UR) control number, the amount, received date, and all known identifying data. In addition, the URF contains a record of all doubtfully applied Estimated Tax (ET) credits. The ES record contains the taxpayers' name, address, type of payment, taxpayer identification number, tax period, received date, money amount, and the transaction document locator number (DLN).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disk storage.

RETRIEVABILITY:

By remittance amount, unidentified remittance control number, taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are kept 180 days after the amount is reduced to zero balance.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Remittances received from taxpayers that cannot be positively identified either as to the taxpayer who sent it or the type of tax to which it is to be applied.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.060

SYSTEM NAME:

Automated Non–Master File (ANMF)—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers, the Austin Compliance Center and Federal Records Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on taxpayers having accounts with the Internal Revenue Service which are not compatible with the normal master file processes; e.g., penalties, transferee assessments, termination assessments, excise protest accounts, Master File overflow accounts, culpable and non–petitioning spouses, Forms 1042, 1040–NR, 926, 5330, 4720, 990–AR (Penalty) and any pre–ADP returns. Also, a record will be maintained for those taxpayers whose individual income tax overpayment has been retained and transferred from the IMF to apply against past due child and/or spousal support payments as reported to IRS by the States under Pub. L. 97–35.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records maintained are taxpayer entity records (name, address, taxpayer identification number or employer identification number and other indicators relevant to entity maintenance) and records containing tax module information (the tax return, the tax period, the balance due or credi balance, and transactions which have been recorded relative to the module). Information will be maintained as to the name, SSN, address of individuals owing past due child and/or spousal support payments submitted by the States under Pub. L. 97–35. Also maintained will be names of the submission state, the amount owed, and the amount on any individual income tax overpayment retained and transferred to the state to apply against the amount owed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card file or magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number), or document locator card.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 22.061

SYSTEM NAME:

Wage and Information Returns Processing (IRP) File—Treasury/IRS.

SYSTEM LOCATION:

Martinsburg Computing Center, Martinsburg, West Virginia 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of various types of income; wages; dividends; interest; rents and royalties; medical payments; capital gains distributions; non–taxable distributions; pensions, annuities, retired pay or IRA payments; patronage dividends, distributions, and allocations; fishing crew payments; sales or redemption of securities, future transactions, commodities, bartering exchange transactions; original issue discount; distributions and prizes; currency transactions; state tax refunds; unemployment compensation, agricultural payments, taxable grants, indebtedness forgiveness; non–employees compensation; gambling winnings; and miscellaneous income.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained are records representing certain wage and information returns: Forms W–2, W–2P, the 1087 and 1099 series; currency transaction reports; state tax refunds; statements of sales of equity obligations; and records of agricultural subsidy payments. Information included on each record identifies the recipient of the income (name, address, taxpayer identifying number, and other indicators relating to payee identification), identifies the income payer (very similar information), and identifies the type(s) and amount(s) of income.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By taxpayer social security number and name control.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, until tax year 1974, records were maintained until processed. After tax year 1974, records are maintained for four years and then magnetically erased.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 24.013

SYSTEM NAME:

Combined Account Number File, Taxpayer Services —Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and businesses having specific, current business with IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer entity records (name, address, taxpayer identification number, and filing requirements related to entity liability); and tax modules (specific tax returns, tax years, and transactions which have been recorded relative to the module) when specifically requested by a service center, or if a notice for balance of tax due has been issued; a specific tax period is in taxpayer delinquent account status (TDA); a specific tax period is either credit or debit balance; no return has been posted and the return due date (RDD) has passed; or when a specific tax period is in taxpayer delinquent return (TDI) status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disk storage.

RETRIEVABILITY:

By social security number or employer identification number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part I, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" above.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 24.029

SYSTEM NAME:

Individual Account Number File (IANF), Taxpayer Services—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having specific, current business with IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer entity records (name, address, taxpayer identification number, and filing requirements related to entity liability); and tax modules (specific tax returns, tax years, and transactions which have been recorded relative to the module) when specifically requested by a service center, or if a notice for balance of tax due has been issued; a specific tax period is in taxpayer delinquent account status (TDA); a specific tax period is either credit or debit balance; no return has been posted and the return due date (RDD) has passed; or when a specific tax period is in taxpayer delinquent return (TDI) status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disk storage.

RETRIEVABILITY:

By social security number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part I, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 24.030

SYSTEM NAME:

Individual Master File (IMF), Taxpayer Services —Treasury/IRS.

SYSTEM LOCATION:

Martinsburg Computing Center, Martinsburg, West Virginia 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file and/or are included on Federal Individual Income Tax Returns (i.e., Forms 1040, 1040A, and 1040EZ); individuals who file other information filings; and power of attorney notifications for individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer entity records (name, address, identification number (SSN), and other indicators pertaining to entity maintenance, including zip code), and tax modular records which contain all records relative to specific tax returns for each applicable tax period or year. Modular records for authorization information (name, address, identification number and type of authority granted, and the name of the

representative(s) for the taxpayer. Modular records for the representative (name, address and unique identification number). Recorded here are tax transactions such as tax amount, additions, abatements of tax payments, interest and like type transactions recorded relative to each tax module, power or attorney authorization transactions, and a code identifying taxpayers who threatened or assaulted IRS employees. An indicator will be added to any taxpayer's account who owes past due child and/or spousal support payments and whose name has been submitted to IRS by a state under provisions of Pub. L. 97–35.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by (1) 26 U.S.C. 3406, and (2) 26 U.S.C. 6103..

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By taxpayer identification number (social security number or employer identification number) and alphabetically by name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, the code identifying taxpayers who threatened or assaulted IRS employees may be removed five years after initial input.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors and the Director, Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part I, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director or the Internal Revenue Service Center Director servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 24.046

SYSTEM NAME:

Business Master File (BMF), Taxpayer Services —Treasury/IRS.

SYSTEM LOCATION:

Martinsburg Computing Center, Martinsburg, West Virginia 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in a sole proprietary role who file Excise Tax Returns (Form 720), Wagering Returns (Forms 11C and 730), Highway Use Returns (Form 2290), and U.S. Fiduciary Return (Form 1041) and Estate and Gift Taxes (Forms 706, 706NA, and 709). The latter can be individuals not in a sole proprietorship role.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer entity records (name, address, taxpayer identification number (TIN) which may be either EIN or SSN, and other indicators pertaining to entity maintenance, including zip code), and tax modules which are all the records relative to specific tax returns for each applicable tax period. Recorded are tax transactions such as tax amount, statements/additions to tax, payments, interest and like type transactions relative to each tax module.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By name, type of tax, and identifying number.

SAFEGUARDS:

Access Controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Taxpayer Services). Officials maintaining the system—Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part I, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 24.070

SYSTEM NAME:

Debtor Master File (DMF)—Treasury/IRS.

SYSTEM LOCATION:

Martinsburg Computing Center, Martinsburg, West Virginia 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have delinquent obligations to a Federal or State agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entity records (names and social security numbers), the amount owed by the individual, the name of the Federal or State agency to whom the debt is owed and a cross–reference number (SSN) of the spouse in the case of a jointly filed return.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 6305, 6402(c) and 6402(d); 31 U.S.C. 3720A.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disk file.

RETRIEVABILITY:

By name, address, and social security number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

The information is kept for one year and then destroyed. A new Debtor Master File is established each year.

SYSTEM MANAGER(S) AND ADDRESS:

Officials prescribing policies and practices—Assistant Commissioner (Taxpayer Services) and Assistant Commissioner (Information Systems Management). Officials maintaining the system—Director, Returns Processing and Accounting Division. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director or the Internal Revenue Service Center Director servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest any record contained in this system of records must contact the agency to whom the debt is owed.

RECORD SOURCE CATEGORIES:

Names, SSNs, and obligation amounts are supplied by the Federal or state agency to whom the delinquent obligation is owed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 26.001

SYSTEM NAME:

Acquired Property Records—Treasury/IRS.

SYSTEM LOCATION:

District Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delinquent taxpayers whose property has been acquired by purchase by government or right of redemption.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, revenue officer reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number), seizure number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.Retention and disposal: Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—District Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.006

SYSTEM NAME:

Form 2209, Courtesy Investigations—Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers on whom a delinquent account or delinquency or other investigation is or was located in one IRS district offices, but the individual is now living or has assets located in the jurisdiction of another IRS District office. Taxpayers on whom an investigation has been initiated for purposes of securing information necessary for federal tax administration purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains taxpayer name, current and former addresses, taxpayer identifying number, if known. Contains the information, including class of tax, if applicable, or information concerning the action desired to be taken. The name and address of party that was contacted, chronological investigative history and/or information secured. The following types of investigations are included in this system: Form SSA–1273 cases—Notice of determination of FICA wages—issued when SSA obtains evidence that wages paid to claimant have not been recorded on his earnings record; requests for data needed in proof of claim cases; applications for discharge of property from tax lien; service of tax court subpoenas; complaints of employers failing to provide withholding statements; recovery of unassessable erroneous refunds; Form SSA–7010 cases—Request for preferential investigation. This is a request for preferential treatment (over other SSA cases) on an earning discrepancy case. Secure application for exemption from self–employment tax. Offers in compromise and related activities; i.e., follow–up on defaulted installments, secure payments on collateral agreements, etc. Maximize compliance with withholding requirements on alien's earnings; other miscellaneous uses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Retrievable by taxpayer name and taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.008

SYSTEM NAME:

IRS and Treasury Employee Delinquency— Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS and Treasury employees who are shown on the Master File as delinquent in meeting Federal tax requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, social security number, address, fact of IRS or Treasury employment code, District location code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name and taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—Assistant Commissioner (Collection), Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.009

SYSTEM NAME:

Lien Files (Open and Closed)—Treasury/IRS.

SYSTEM LOCATION:

District Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers on whom Federal tax liens have been filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment including class of tax, period, dollar amount. Open and closed Federal tax liens including: Certificates of Discharge of Property from Federal Tax Lien; Certificates of Subordination; Certificates of Non–Attachment; Exercise of Government's Right of Redemption of Seized Property; Releases of Government's Right of Redemption. Federal tax lien information entered in Treasury Enforcement Communications System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 6323, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Notices of lien and the index thereto are available to the public.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name and taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—Assistant Commissioner (Collection), Regional Commissioners, District Directors and Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquires should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director of each District where records are to be searched. (See IRS appendix A for addresses.) This system contains copies of public records, the originals of which are filed in accordance with the laws of each state, the District of Columbia, the Commonwealth of Puerto Rico, or possessions of the United States. Contesting record procedures: 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 26.010

SYSTEM NAME:

Lists of Prospective Bidders at Internal Revenue Sales of Seized Property—Treasury/IRS.

SYSTEM LOCATION:

District Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested that they be notified of Internal Revenue sales of seized property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address and phone number (if provided).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name of prospective bidder.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook,IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices–Assistant Commissioner (Collection). Officials maintaining the system–District Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the District Office servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Supplied voluntarily by the subject prospective bidder.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 26.011

SYSTEM NAME:

Litigation Case Files—Treasury/IRS.

SYSTEM LOCATION:

District Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers on whom Federal tax assessments have been made but against whom litigation has been initiated or is being considered by the government or who have instituted suits against the government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, and dollar amount. This file includes: Suit to Reduce Tax Claim to Judgement; Suit for Failure to Honor a Levy; Suit to Enforce Federal Tax Lien; Suit Against Transferee; Suit to Set Aside Fraudulent Transfer; Suit to Recover Erroneous Refund; other suits include those which the United States may intervene to assert a Federal tax lien; a proceeding to require opening of a safe deposit box, etc. The following suits against the United States are also included in this file: Quiet Title Suit; Foreclosure of Mortgage or other Lien; Partition; Condemnation; Interpleader; Refund Suits Involving 100–Percent Penalty Assessments; Injunction Suits under Freedom of Information Act. Also included in Litigation Files are: Individuals against whom bankruptcy proceedings are pending; decedent estates in probate with outstanding Federal tax liabilities; individuals executing Assignments for the Benefit of Creditors; individuals in Receivership Proceedings; individuals conducting a bulk sale; summons referrals; subpoena files; advisory opinions; collateral security agreements; revenue officer reports; and various other legal instruments and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook,IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices–Assistant Commissioner (Collection). Officials maintaining the system—District Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.012

SYSTEM NAME:

Offer in Compromise (OIC) File—Treasury/IRS.

SYSTEM LOCATION:

Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who have submitted an offer to compromise a liability imposed by the Internal Revenue Code.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form 2515, used to control offer cases, contains space for entering taxpayer name, address, taxpayer identification number, and all other pertinent information for identifying and assigning the OIC investigation. The file contains all records, documents, reports and work papers relating to the assignment, investigation, review and adjudication of the offer. This includes such items as the original offer, results of property records checks, interviews with third parties and the taxpayer, collateral income agreements, financial statements, tax return copies, and other information submitted by the taxpayer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. This includes disclosure to the extent necessary to permit public inspection of any accepted offer–in–compromise as required by 26 U.S.C. 6103(k)(1).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices–Assistant Commissioner (Collection). Officials maintaining the system–Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported. If an offer is accepted, an Abstract and Statement which identifies the taxpayer, the liability, the amount compromised and the basic circumstances of the case is made available for public inspection in accordance with Executive Order 10386 and Executive Order 10906.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.013

SYSTEM NAME:

One Hundred Percent Penalty Cases—Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals against whom Federal tax assessments have been made or are being considered as a result of their being deemed responsible for payment of unpaid corporation withholding taxes and social security contributions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, dollar figures, waiver extending the period for asserting the 100–percent penalty (if any) and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By individual, or corporation name, taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices: Assistant Commissioner (Collection). Officials maintaining the system: District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.014

SYSTEM NAME:

Record 21, Record of Seizure and Sale of Real Property,—Treasury/IRS.

SYSTEM LOCATION:

District Offices (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals against whom tax assessments have been made and whose real property was seized and sold to satisfy their tax liability. Also name and address of purchaser.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, dollar amounts, property description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of this system of records evidences chain of title to real property and is a matter of public record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number) and seizure number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection); Officials maintaining the system—District Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to or individuals may appear in person at the Office of the District Director for each District whose records are to be searched. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records evidences chain of title to real property and is a matter of public record. (See "Categories of records in the system" above).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 26.016

SYSTEM NAME:

Returns Compliance Programs—Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who may be delinquent in filing or paying Federal taxes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of name, address, taxpayer identification number (if known) and information concerning the potential tax liability. Returns Compliance Programs involve any type of Federal tax administered by the Collection Division and are conducted in accordance with Section 7601 of the Internal Revenue Code. RCP programs can be initiated by the National Office, Regional Offices, or by individual districts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices–Assistant Commissioner (Collection), Officials maintaining the system–District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.019

SYSTEM NAME:

Taxpayer Delinquent Account (TDA) Files, including subsystems: (a) Adjustments and Payment Tracers Files, (b) Collateral Files, (c) Seized Property Records, (d) Tax Collection Waiver, Forms 900, Files, and (e) Accounts on Child Support Obligations— Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers on whom Federal tax assessments have been made, and persons who owe child support obligations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, dollar amounts, chronological investigative history, canceled checks, amended returns, claims, collateral submitted to stay collection, copies of notices of Federal tax liens, revenue officer reports, waivers to extend statutory period for collection, etc, and similar information about persons who owe child support obligations. This system includes Installment Agreement Files; Delinquent Account Inventory Profile (DAIP); Currently Not Collectible Register; Currently Not Collectible Register (over $25,000); Advance Dated Remittance Check Files; Currently Not Collectible Accounts Files; File of taxpayer names entered in the Treasury Enforcement Communications System and a code identifying taxpayers that threatened or assaulted IRS employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, or name of person who owes child support obligations, and taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—Assistant Regional Commissioners (Collection), District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.020

SYSTEM NAME:

Taxpayer Delinquency Investigation (TDI) Files—Treasury/IRS.

SYSTEM LOCATION:

District Offices and Internal Revenue Service Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers believed to be delinquent in filing Federal tax returns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information from previously filed returns, information about the potential delinquent return(s), including class of tax, chronological investigative history; Delinquency Investigation Inventory Profile (DIIP) and a code identifying taxpayers that threatened or assaulted IRS employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—District Directors and Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.021

SYSTEM NAME:

Transferee Files—Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Includes taxpayers on whom tax assessments have been made but who have allegedly transferred their assets in order to place them beyond the reach of the government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, dollar amounts. Also, the name, address, taxpayer identification number and related information about transferee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—District Directors, Internal Revenue Service Center Directors, the Director of the Detroit Computing Center, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.022

SYSTEM NAME:

Delinquency Prevention Programs,—Treasury/IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Collection). Officials maintaining the system—District Directors, Internal Revenue Service Center Directors, the Director of the Detroit Computing Center, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.022

SYSTEM NAME:

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers having a history of Federal tax delinquency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, taxpayer identification number, address, filing requirements, chronological investigative history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices–Assistant Commissioner (Collection). Officials maintaining the system–District Directors, Internal Revenue Service Center Directors, the Detroit Computing Center Director, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 30.003

SYSTEM NAME:

Requests for Printed Tax Materials Including Lists—Treasury/IRS.

SYSTEM LOCATION:

National Office, 1111 Constitution Avenue, NW, Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files include those individuals that request various IRS printed materials such as publication 1045, reproduction proofs, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of individual or company wanting to receive District Director's newsletters, and/or ordering tax forms materials on certain distribution programs, (i.e. tax Practitioner Program; Bank, Post Office and Library Program; Reproducible Forms Program, etc.). A cross reference index may be developed to identify and control requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to: (1) Disclose information to mailing or distribution services contractors for the purpose of executing mailouts, order fulfillment, or subscription fulfillment; (2) disclose information to mailing or distribution services contractors for the purpose of maintaining mailing lists.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosure of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C 1681a) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(e)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, paper records or mailing plates.

RETRIEVABILITY:

Alphabetically or numerically, by zip code.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Record Schedule 13, Printing, Binding, Duplication, and Distribution Records, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Publishing Services Branch, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures' Below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Chief, Publishing Services Branch, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The information is supplied by the individual and/or company making the request. The Service adds data pertaining to the fulfillment of the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 30.004

SYSTEM NAME:

Security Violations—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Violators of IRS Security Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of violator, circumstances of violation (date, time, actions of violator, etc), supervisory action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to: (1) The Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes. (2) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder (notices of violation), 3 x 5 inch card file, and electronic storage.

RETRIEVABILITY:

3 x 5 inch card file– by name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Access to lateral file cabinets by security officer and staff only.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property, Security, and Records Unit, National Office, Regional Office, District Offices, Internal Revenue Service Center, and Austin Compliance Center Security Officers. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the records are located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Contract Guard Force and Security Inspections.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.003

SYSTEM NAME:

Assignment and Accountability of Personal Property Files—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals receiving Government property for temporary use and repair.

CATEGORIES OF RECORDS IN THE SYSTEM:

Descriptions of property, receipts, reasons for removal, and property passes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information contained in these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) disclose pertinent information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on various forms and ledgers maintained in locked filing cabinets.

RETRIEVABILITY:

Indexed alphabetically by name.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedule 18, Security and Protective Services Records, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Space and Property Branch and Chief, National Office Facilities Management Branch, National Office; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, Computing Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the records are located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individuals who receive property or request property passes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.005

SYSTEM NAME:

Parking Space Application and Assignment—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Internal Revenue Service employees who apply for assignment of carpool or reserved parking spaces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, position title, organization, vehicle identification, arrival and departure time, and service computation date of individual or principal carpool applicant. Contains name, place of employment, duty telephone, vehicle license number and service computation date of applicants, individuals or carpool members, for parking spaces.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on an 8–1/2 x 10 inch or other local form.

RETRIEVABILITY:

Indexed by name of individual or principal carpool applicant.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedule 11, Space and Maintenance Records, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, National Office Protective Programs Staff, National Office; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, Computing Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the records are located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individuals applying for parking spaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.007

SYSTEM NAME:

Record of Government Books of Transportation Requests—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees issued Transportation Requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form 496, alphabetical card record by name or the serial numbers of Transportation Requests issued to the employee; and Form 4678, numerical list by serial number listing the name of the employee to whom issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information from these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (3) disclose information to another Federal agency to effect inter–agency salary offset; to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data available to private sector credit grantors.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

By name or serial number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedule 9, Travel and Transportation Records, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officers, National Office; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, Computing Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the records are located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Government Books of Transportation Requests and employees to whom books were issued.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.009

SYSTEM NAME:

Safety Program Files—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees and others involved in an IRS motor vehicle accident, an accident or injury on IRS property, or a tort or personal property claim against the Service. All individuals issued an IRS driver's license are covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual driving records and license applications, motor vehicle accident reports, lost time and no–lost time personal injury reports, tort and personal property claims case files, informal and formal investigative report files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 12196.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) provide information to the Department of Labor in connection with investigations of accidents occurring in the work place; (3) provide information to other federal agencies for the purpose of effecting interagency salary offset or interagency administrative offset; (4) provide information to consumer reporting agencies in accordance with 31 U.S.C. 3711(f); (5) provide information to a debt collection agency for debt collection services; (6) disclose pertinent information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (7) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (8) provide information to Officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

Indexed alphabetically by name.

SAFEGUARDS:

Access controls will not be less than those required by the Automated Information System Security Handbook, IRM 2(10)00. Generally, access is restricted to official use by IRS employees.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedule 1, 10, and 18; Records Control Schedule 114 for Facilities Management Division—National Office, IRM 1(15)59.1(14); and Records Control Schedule 212 for Regional Commissioner, Assistant Regional Commissioner (Resource Management) and District Director, IRM 1(15)59.2(12).

SYSTEM MANAGER(S) AND ADDRESS:

Safety Management Officer, Office of Research, Planning and Development, Director, Facilities and Information Management Systems, National Office; Director, Human Resources, Headquarters, appropriate Regional or District Office; Computing Center Directors; and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records or seeking to contest its content, may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the records are located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information originates from IRS employees, private individuals and private parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.012

SYSTEM NAME:

Emergency Preparedness Cadre Assignments and Alerting Rosters Files —Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Key IRS and Treasury personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cadre assignments–personal information on employees; i.e., name, address, phone number, family data, security clearance, relocation assignment, etc. Alerting rosters–current listing of individuals by name and title stating their work and home address and phone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information from these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual forms, correspondence kept in file folders, and electronic storage.

RETRIEVABILITY:

Cadre assignments are filed by relocation site and alerting rosters by title of list.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedule 18, Security and Protective Services Records, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Physical Security Section, Facilities Standards Branch, Facilities and Information Management Support Division, National Office. Regional Office, District Office, Internal Revenue Service Center, and Austin Compliance Center Security Officers. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the records are located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Provided by individuals themselves.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.013

SYSTEM NAME:

Identification Media Files System for Employees and Others Issued IRS ID—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees having one or more items of identification and federal and non–federal personnel working in or visiting IRS facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain individual's name, home address, and other personal information and reports on loss, theft, or destruction of pocket commissions, enforcement badges and other forms of identification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information from these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence file folders, 3 x 7 inch card files, and magnetic media.

RETRIEVABILITY:

Indexed separately by name and Identification Media serial number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Access to the records is restricted to official use of Internal Revenue.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedule 11, Space and Maintenance Records, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Physical Security Section, Facilities Standards Branch, Facilities and Information Management Support Division, and Chief, Property, Security and Records unit, National Office; Regional Offices, District Offices, Internal Revenue Service Center and Austin Compliance Center Security Officers.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below. Individual's name, SSN, address and type of ID media, plus the approximate date that he/she was issued and/or returned the particular item of identification, would have to be furnished to the Service office that issued the item for the Service to be able to ascertain whether or not the system contains a record about the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the offices where the record is located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information is generated by specific personnel action and is initially gathered on an application for employment. The information is confirmed by the newly hired employee,

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.014

SYSTEM NAME:

Motor Vehicle Registration and Entry Pass Files —Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requiring continued access to the facility and parking area violators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, registered owner of vehicle, branch, telephone number, description of car, license number, employee's signature, name and expiration date of insurance, parking violations, decal number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information from these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Function at Internal Revenue Service Centers and the Austin Compliance Center. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURES:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager in the office where the record is located.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information is supplied by individual, except for parking violations information which is supplied by Security guard personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.016

SYSTEM NAME:

Security Clearance Files—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Internal Revenue Service requiring a security clearance, having their security clearance canceled or transferred and individuals who have violated IRS security regulations regarding classified national security information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain individual's name, employing office, date of security clearance, level of clearance, reason for the need for the national security clearance, and any changes in such clearance. Security violations records contain name of violator, circumstance of violation and supervisory action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information from these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (3) provide information to agencies and on a need–to–know basis to determine the current status of an individual's security clearance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence file folders.

RETRIEVABILITY:

Indexed by name and cross filed by functional area.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Stored in locked security container in offices which are locked or guarded during non–work hours.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Physical Security Section, Facilities Standards Branch, Facilities and Information Management Support Division, National Office, for security violations; and Chief, Employment Branch, Personnel Division, National Office for security clearances.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the appropriate system manager.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information is provided by the employee, his/her supervisor or employee's personnel record. Security violation information is obtained from a variety of sources, such as guard reports, security inspections, supervisor's reports, Internal Audit Reports, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 34.018

SYSTEM NAME:

Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual employees who input or are authorized to input IDRS transactions or who are subjects of IDRS inputs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record logs of the employees who are authorized access to IDRS and of employee inputs and inquiries processed through IDRS terminals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, disk, flat paper, lists, and card files.

RETRIEVABILITY:

Indexed by employee's social security number or employer identification number. Also retrievable by the name of the taxpayer who is subject of IDRS inputs.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Record Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Program Management and Evaluation Section, Information System Risk Management Branch, Systems Management Division, Information System Management, National Office.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part I, subpart C, appendix B. Inquiries should be addressed to the Director of the Austin Compliance Center, or Internal Revenue Service Center or District Office servicing the area in which the individual resides. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Information is supplied by the IRS employee on standard personnel forms and computer generated records of all inputs to IDRS. Data may also be retrieved from other published systems of records used in the processing of this system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 36.001

SYSTEM NAME:

Appeals, Grievances and Complaints Records—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, PODs, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (see IRS appendix A for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Federal employment, current and former Federal employees (including annuitants) who submit appeals, grievances, or complaints for resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to a decision or determination made by an agency or other appropriate action organization (e.g., Office of Personnel Management, Equal Employment Opportunity Commission, Merit Systems Protection Board) affecting an individual. The records consist of the initial appeal or complaint, letters or notices to the individual, record of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimonies of witnesses, investigative reports, instructions to an agency about action to be taken to comply with decisions, and related correspondence, opinions and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 4308, 5115, 5338, 5351, 5388, 7105, 7151, 7154, 7301, 7512, 7701 and 8347, Executive Order 9830, 10577, 10987, 11222, 11478 and 11491; and Pub. L. 92–261 (EEO Act of 1972), and Pub. L. 93–259.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

Disclosure of returns and return information may be only made as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Provide information to a Member of Congress regarding the status of an appeal, complaint or grievance; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (3) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an

individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) provide information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (5) provide information to other agencies to the extent provided by law or regulation and as necessary to report apparent violations of law to appropriate law enforcement agencies; (6) provide records and information to the Office of Personnel Management, Merit Systems Protection Board or Equal Employment Opportunity Commission for the purpose of properly administering Federal Personnel Systems in accordance with applicable laws, Executive Orders and regulations; (7) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (10) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, flat paper, lists, forms, folders, binder, microfilm and microfiche, punch card, and magnetic media.

RETRIEVABILITY:

Indexed by the names and case number of the individuals on whom they are maintained.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00. This is also in conformance with existing EEOC regulations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedules, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

(a) EEO Discrimination Complaint Records—Regional Complaints Center Directors; (b) all other records—Director, Human Resources Division, or Chief, Personnel Branch, appropriate office. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to: District Director for each District whose records are to be searched; Service Center Director for each Service Center whose records are to be searched; Director, Martinsburg Computing Center (for computing center employees only); Director, Detroit Computing Center (for computing center employees only); Director, Austin Compliance Center (for compliance center employees only); Regional Commissioner for each Regional Office whose records are to be searched; Director, Personnel Division, National Office; Assistant Commissioner Human Resources, National Office; Regional Counsel for each region whose records are to be searched; Assistant Chief Counsel (Disclosure Litigation) for records in the National Office of Chief Counsel. (See IRS appendix A for addresses.) Individuals should provide their name, date of birth, agency in which employed, and the approximate date, and the kind of action taken by the agency when making inquiries about records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the appropriate official listed above. Individuals should provide their name, date of birth, POD, approximate date, and the kind of action taken by the agency when requesting access to, or contest of, records.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Individual to whom the record pertains; (2) Agency and/or other authorized Federal officials; (3) Affidavits or statements from employee; (4) Testimony of witnesses; (5) Official documents relating to the appeal, grievance, or complaints; (6) Correspondence from specific organization or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 36.002

SYSTEM NAME:

Employee Activity Records—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, PODs, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and information relating to voluntary employee activities and functions which are not directly related to the mission of the IRS or any of its functional components. These records will contain the names of participants and such other information only to the extent that it is necessary for the operation of the activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigation an action or seeking legal advice. Disclosure may be made during judicial processes; (2) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (3) provide information to officials of labor organization recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (4) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (5) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Indexed by the name of the individuals on whom they are maintained.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. This is in conformance with existing OPM regulations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor of the organizational segment participating in the activity. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below. Inquiring individuals need only provide their name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager or the individual designated to maintain the record. Inquiring individuals need only provide their name.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information is derived only from the individual to whom the record pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 36.003

SYSTEM NAME:

General Personnel and Payroll Records—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, PODs, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. Payroll records are maintained at the Detroit Computing Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current and former employees of the IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations made about an individual while employed in the Federal service. These records contain data on individuals required by the Office of Personnel Management (OPM) and maintained in the Official Personnel Folder (OPF). The OPF may also contain letters of commendation; awards from non–Federal organizations; recommendations for Federal awards; awards; reprimands; adverse or disciplinary charges; records relating to life insurance, health insurance, designation of beneficiary; training; and other records which OPM and IRS require or permit to be maintained in the OPF. This system also includes records which are maintained in support of a personnel action such as a position management or position classification action, a reduction–in–force action (including such documents as retention registers and notices), and priority placement actions. Other records maintained about an individual in this system are evaluation records, including appraisal, expectation and payout records; employee performance file (EPF) records (includes performance ratings); suggestion files; award files; financial and tax matters; back pay files; jury duty records; special emphasis programs records, such as Upward Mobility and Handicapped; outside employment statements; clearance upon separation; Unemployment Compensation Records; adverse and disciplinary action files; supervisory drop files; records relating to personnel actions correcting a pay problem; employment of relatives; furlough/recall records; work measurement records; emergency notification, employee locator and current address records; other records relating to the status of an individual; Executive Resources records and Senior Executive Service records; Management Careers Program records; and correspondence files pertaining to any personnel information contained in this notice. Payroll records included in this system are data storage and file records system for processing payroll and personnel actions, consisting of records of time and attendance, leave, tax withholding, bond purchases and issuances, emergency salaries, overtime and holiday pay, optional payroll deductions, and minority group designator codes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 1302, 2951, 4118, 4308 and 4506; and Executive Order 10561.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to a prospective employer of an IRS employee or former IRS employee; (2) provide data to update Federal Automated Career Systems (FACS), Executive Inventory File, and security investigations index on new hires, adverse actions, and terminations; (3) provide information to a Federal, state, or local agency, other organizations or individuals in order to obtain relevant and pertinent information about an individual which is necessary for the hiring or retention of an individual; letting of a contract; or the issuance of a license, grant or other benefit; (4) request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent agencies; (5) provide information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial process; (6) provide information to other agencies to the extent provided by law or regulation and as necessary to report apparent violation of law to appropriate law enforcement agencies; (7) provide information or records, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to any other appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto or upon request of such agency when the agency is investigating the possible violation of their rules or regulations; (8) provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal Personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and applicable regulations; (9) provide information to hospitals and similar institutions or

organizations involved in voluntary blood donation activities; (10) provide information to educational institutions for recruitment and cooperative education purposes; (11) provide information to a Federal, state, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state unemployment compensation board, housing administration agency and Social Security Administration; (12) provide information to financial institutions for payroll purposes; (13) provide information to another agency such as the Department of Labor or Social Security Administration and state and local taxing authorities as required by law for payroll purposes; (14) provide information to Federal agencies to effect inter–agency salary offset; to effect inter–agency administrative offset to the consumer reporting agency for obtaining commercial credit reports; and to a debt collection agency for debt collection services; (15) provide information to officials of labor organizations recognized under 5 U.S.C Chapter 71 when relevant and necessary to their duties of exclusive representation; (16) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (17) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (18) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (19) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (20) disclosure of information about particular Treasury employees may be made to requesting Federal agencies or non–Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of the Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other monies owed under those programs.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, discs, forms, punched cards, flat paper, lists, card files, forms, folders, binders, microfilm and microfiche.

RETRIEVABILITY:

Records are indexed by any combination of name, birthdate, social security number, or employee identification number.

SAFEGUARDS:

Access controls will be not less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. This is also in conformance with existing OPM and GAO regulations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedules, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Branch, and Chief, Personnel Branch, appropriate office (See IRS Appendix A for addresses); Executive Secretary, Executive Resources Board (for executive resource records).

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to: District Director for each District whose records are to be searched; Service Center Director for each Service Center whose records are to be searched; Director, Martinsburg Computing Center (for computing center employees only); Director, Detroit Computing Center (for computing center employees only); Director, Austin Compliance Center (for compliance center employees only); Regional Commissioner for each Regional Office whose records are to be searched; Director, Human Resources Division, National Office; for each appropriate Division in the National Office; Regional Counsel for each region whose records are to be searched; Assistant Chief Counsel (Disclosure Litigation) for records in the National Office of Chief Counsel; (See IRS appendix A for addresses.) Inquiries should include name, date of birth, social security number and post–of–duty.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the appropriate official listed above. Former IRS employees who wish to gain access to their records should direct such a request in writing, including their name, date of birth, and social security number, to: National Personnel Records Center, National Archives and Records Administration, 9700 Page Boulevard, St. Louis, Missouri 63132.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information supplied by that individual, except information provided by agency officials. Payroll information is compiled from existing master records, i.e., employees' official personnel folders, or the employee. Information is also obtained directly from an employee, payroll coordinator, or administrative officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 36.005

SYSTEM NAME:

Medical Records—Treasury/IRS.

SYSTEM LOCATION:

(1) Applicants and current IRS employees: National Office, Regional Offices, District Offices, PODs, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.); (2) Former IRS employees: National Personnel Records Center, 9700 Page Blvd., St. Louis, Missouri 63132. Records may also be maintained in the offices listed under (1) above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for IRS employment; (2) Applicants rejected on medical grounds; (3) Applicants for disability retirement under the Civil Service Retirement Law; (4) IRS employees; (5) Former IRS employees; (6) Visitors of IRS offices who require medical attention while on the premises.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Applications for IRS employment containing information relating to an individual's medical qualifications to hold a position in the IRS; (2) Applications rejected on medical grounds. Information relating to an applicant's rejection for a position because of medical reasons; (3) Disability retirement records. Information relating to an individual's capability (physical or mental) to satisfactorily perform the duties of the position he or she holds or held; (4) Health unit medical records (Federal civilian employees); (5) Information relating to an employee's participation in an occupational health services program; (6) Qualification examinations (Federal employees). Information relates to pre–employment, or periodic re–qualification medical examinations to assure that the incumbents are qualified (physically and mentally) to satisfactorily perform the duties of the position; (7) Fitness–for–duty examinations. Information relating to a medical examination to determine an individual's physical or mental condition with respect to ability to satisfactorily perform the duties of the position held; (8) Alcohol/drug employee assistance records. Information relating to employee participation in the Federal Civilian Alcoholism and Drug Abuse Program; (9) Injury Compensation Records. Information relating to on–the–job injuries of employees and former employees; (10) Records relating to the Blood Donor Program; (11) Records relating to drug testing program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Medical Information relating to the Retirement, Life Insurance and Health Benefits Programs—5 U.S.C. Chapters 81, 87, and 89. Information for Federal employment—5 U.S.C. 3301. Information relating to the Alcoholism, Drug Abuse and Employee Assistance Programs—Pub. L. 91–616 and 92–255 as amended by Pub. L. 93–282 in regard to confidentiality of patient records. Information relating to the Occupational Health Program—5 U.S.C. 7901. Information relating to workman's compensation—5 U.S.C. 8101. Information relating to drug testing—5 U.S.C. 7301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information contained in these records may be used to: (1) Provide information to other Federal agencies responsible for other Federal benefits programs administered by the Office of Workers' Compensation Programs; Retired Military Pay Centers; Veterans Administration; Social Security Administration; Office of Personnel Management; Private contractors engaged in providing benefits under Federal contracts; (2) disclose information to the Department of Justice for the purpose of litigating an action or seeking advice. Disclosure may be made during judicial processes; (3) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. (4) disclose information to other agencies to the extent provided by law or regulation; (5) disclosure may be made to the appropriate Federal, state or local agency where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature; (6) Federal, state, or local agencies in order to obtain or release relevant and pertinent information to an agency decision concerning the hiring or retention of an individual, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit; (7) disclose information to the Public Health Service; (8) disclose information to an individual's private physician where medical considerations or the content of medical records indicate that such release is appropriate; (9) disclose information to an agency designated employee representative where such representative is required by the Office of Personnel Management; (10) disclose information to hospitals and similar institutions or organizations participating in blood donor activities; (11) disclosure of Alcoholism, Drug Abuse, and Employee Assistance records are limited under Public Laws 91–616, 92–255, and 93–282; (12) disclose information to the Equal Employment Opportunity Commission when needed to resolve a complaint; (13) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (14) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (15) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, discs, flat paper, lists, forms, folders, card files, microfilm and microfiche.

RETRIEVABILITY:

Records are indexed by name, social security number, date of birth and/or claim number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedules, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Branch, or Chief, Personnel Branch, appropriate office; Associate Chief Counsel (Finance and Management), Regional and District Counsels. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to: District Director for each District whose records are to be searched; Service Center Director for each Service Center whose records are to be searched; Director, Martinsburg Computing Center (for Computing Center employees only); Director, Detroit Computing Center (for Computing Center employees only); Director, Austin Compliance Center (for Compliance Center employees only); Regional Commissioner for each Regional Office whose records are to be searched; Director, Human Resources Branch, National Office; Chief, Management and Administration, National Office; Regional Counsel for each region whose records are to be searched; Assistant Chief Counsel (Enforcement Litigation— Disclosure Litigation) for records in the National Office of Chief Counsel. (See IRS appendix A for addresses.) Former employees should direct inquiries to: The National Personnel Records Center, 9700 Page Blvd., St. Louis, Missouri 63132. Individuals requesting information about this system of records should provide their full name, date of birth, social security number, name and address of office in which currently or formerly employed in the Federal service, and annuity account number, if any has been assigned.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the appropriate official listed above.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) The individual to whom the record pertains; (2) private physicians; (3) Medical institutions; (4) Office of Workers' Compensation Programs; (5) Military Retired Pay Systems Records; (6) Federal civilian retirement systems other than Civil Service Retirement System; (7) General Accounting office pay, leave allowance cards; (8) OPM Retirement, Life Insurance and Health Benefits Records System; (9) OPM Personnel Management Records System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 36.008

SYSTEM NAME:

Recruiting, Examining and Placement Records—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, PODs, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center, (see IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for IRS employment, current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education, training, employment history and earnings, tests, results of written tests, test scores, qualification determinations, evaluations, appraisals of potential, interview records, responses to test items and questionnaires, honors, and awards or fellowships. Other information maintained in the records includes military service, date of birth, birthplace, SSN, home address. Records may also be maintained on suitability determinations, employee participation in special emphasis, placement and recruiting programs, and employee turnover records. This system also includes correspondence files relating to the above mentioned records. Personnel research and test validation records are included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 3349, 4103, 5532, 5533 and 5723; Executive Order 10577 and 11103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) disclose information to other agencies to the extent provided by law or regulation and as necessary to report apparent violations of law to appropriate law enforcement agencies; (3) disclose information and records to the Office of Personnel Management, Merit Systems Protection Board, or the Equal Employment Opportunity Commission, for the purpose of properly administering Federal Personnel Systems in accordance with applicable laws, Executive Orders and regulations; (4) refer applicants to officials of Federal government agencies for purposes of consideration for placement in positions for which an applicant has applied and is qualified; to state and local governments with permission of an applicant for the purpose of employment consideration; and to refer current IRS employees to Federal agencies for consideration for transfer, reassignment, and promotion; (5) disclose information to educational institutions in connection with recruiting efforts; (6) disclose information or records where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to any other appropriate agency, whether Federal, state or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule; (7) request information from a Federal, state or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain relevant information to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit; (8) provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter; (9) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (10) provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation; (11) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (12) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, punched cards, discs, card files, lists, flat paper, microfilm, microfiche, forms and folders.

RETRIEVABILITY:

Records are indexed by name, combination of birth date, social security account number, and an identification number that is applicable.

SAFEGUARDS:

Access Controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00. This is in conformance with existing OPM regulations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedules, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Branch, or Chief, Personnel Branch, appropriate office. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to: District Director for each District whose records are to be searched; Service Center Director for each Service Center whose records are to be searched; Director, Martinsburg Computing Center (for Computing Center employees only); Director, Detroit Computing Center (for Computing Center employees only); Director, Austin Compliance Center (for Compliance Center employees only); Regional Commissioner for each Regional Office whose records are to be searched; Director, Personnel Branch, National Office; Chief, Management and Administration, National Office; or other appropriate official. (See appendix A.) Individuals should provide name, date of birth, social security number, identification number (if known), approximate date of record, and title of examination or announcement with which concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the appropriate official as listed above. This system of records may not be accessed for purposes of inspection or for contest of content of Treasury Forms 4825 (Evaluation of Candidates for Initial Executive Placement) and Treasury Form 4245 (Report of Managerial Potential) prepared prior to September 27, 1975.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information he or she supplied, except reports from medical personnel on physical qualification; results of examination which are made known to applicants and vouchers supplied by references the applicant lists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 36.009

SYSTEM NAME:

Retirement, Life Insurance and Health Benefits Records System—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, PODs, Internal Revenue Service Centers, the Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center (see IRS appendix A for addresses.) For former employees: Records Division, Bureau of Retirement, Insurance and Occupational Health, Office of Personnel Management, Boyers, Pennsylvania.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) IRS employees who are covered by the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS); (2) IRS employees who have either declined or are covered by the Federal Employees' Group Life Insurance Program or the Federal Employees' Health Benefits Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Documentation of Federal service creditable under CSRS/FERS; (2) Documentation of coverage or declination of coverage under the Federal Employees' Group Life Insurance Program, and the Federal Employees' Health Benefits Program; (3) Documentation of claim for refund or for annuity benefits under CSRS/FERS; (4) Documentation of claim for survivor annuity or death benefits under CSRS/FERS; (5) Medical records supporting claims for disability retirement under CSRS/FERS; (6) Designations of beneficiary for benefits payable under CSRS/FERS or the Federal Employees' Group Life Insurance Program; (7) All other information necessary to enable offices to recruit annuitants for short term assignments and to send them requested publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 83, 87, and 89.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Provide information to the Office of Workers' Compensation Programs, Veterans Administration Pension Benefits Program, Social Security Old Age, Survivor and Disability Insurance and Medicare Programs, and Federal civilian employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system of records, for use in determining an individual's claim for benefits under such system; (2) provide information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance Program to the Office of Federal Employees' Group Life Insurance, 4 East 24th Street, New York, N.Y. 10010; (3) provide information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program; (4) disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (5) provide information to other agencies to the extent provided by law or regulation and as necessary to report apparent violations of law to appropriate law enforcement agencies; (6) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (7) provide information and records to the Office of Personnel Management for the purpose of properly administering Federal Personnel Systems in accordance with applicable laws, Executive Orders and regulations; (8) provide information to an agency designated employee representative when such representative is required under Office of Personnel Management regulations; (9) provide information to hospitals and similar institutions to verify an employee's coverage in the Federal Employees' Health Benefits Program; (10) provide information to the Equal Employment Opportunity Commission when needed to resolve a complaint; (11) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (12) provide information to

officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (13) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (14) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, punched cards, discs, forms, flat paper, card files, lists, folders, microfilm and microfiche.

RETRIEVABILITY:

Records are indexed by name, social security number, birth date, and by annuity or death claim number.

SAFEGUARD :

Access Controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. This is also in conformance with existing OPM regulations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedules, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Branch, and Chief, Personnel Branch, appropriate office. Associate Chief Counsel (Finance and Management), Regional and District Counsels. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

(1) Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR, part 1, subpart C, appendix B. Inquiries should be addressed to: District Director for each District whose records are to be searched; Service Center Director for each Service Center whose records are to be searched; Director, Martinsburg Computing Center (for Computing Center employees only); Director, Detroit Computing Center (for Computing Center employees only); Director, Austin Compliance Center (for Compliance Center employees only); Regional Commissioner for each Regional Office whose records are to be searched; Director, Human Resources Branch, National Office; Chief, Management and Administration, National Office; Regional Counsel for each region whose records are to be searched; Assistant Chief Counsel (Enforcement Litigation—Disclosure Litigation) for records in the National Office of the Chief Counsel. (See IRS Appendix A for addresses); (2) If the individual is retired from Federal service he should direct inquiries to: Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415; (3) if the individual is not retired, but has been separated from Federal service, he should direct inquiries to: National Personnel Records Center, 9700 Page Blvd., St. Louis, Missouri 63132.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the appropriate official listed above. Individuals requesting information in this system of records should provide their full name, date of birth, social security number, claim number, if assigned, and the POD in which currently or formerly employed.

CONTESTING RECORDS PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources: (1) The individual whom the information is about; (2) GAO Pay, Leave and Allowance Records System; (3) OPM Personnel Management Records System; (4) NARA National Personnel Records Center; (5) OPM Medical Records System; (6) Federal civilian retirement systems other than Civil Service Retirement System and Federal Employees' Retirement System; (7) Military retired pay system records; (8) Office of Workers' Compensation Programs; (9) Veterans Administration Pension Benefits Programs; (10) Social Security, Old Age, Survivor and Disability Insurance and Medicare Programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 37.001

SYSTEM NAME:

Abandoned Enrollment Applications—Treasury/IRS.

SYSTEM LOCATION:

Washington National Records Center, National Archives and Records Administration, General Services Administration, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who applied for enrollment to practice before the Internal Revenue Service but subsequently abandoned their applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for enrollment to practice before the Internal Revenue Service and, in some cases, information regarding individuals' fitness for enrollment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORD MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions

relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original application form and information relating to it.

RETRIEVABILITY:

Indexed by name of applicant.

SAFEGUARDS:

Those safeguards in effect at Federal Records Center.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Ave., NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by (1) the applicant; (2) individuals; (3) the Internal Revenue Service; (4) other government agencies, and (5) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 37.002

SYSTEM NAME:

Files containing derogatory information about individuals whose applications for enrollment to practice before the IRS have been denied and Applicant Appeal Files—Treasury/IRS.

SYSTEM LOCATION:

(1) Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW, Washington, DC 20224; (2) Washington National Record Center, National Archives and Records Administration, General Services Administration, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whose applications for enrollment to practice before the Internal Revenue Service have been denied, including those who have appealed such denial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to individuals' applications and eligibility for enrollment to practice before the Internal Revenue Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name of individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Dispose 25 years after case closed; transfer to Federal Records Center 5 years after case closed except for a random selection of a small number of disciplinary cases to be made at 5 year intervals for retention.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by: (1) Individuals; (2) the Internal Revenue Service; (3) other Government agencies, and (4) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/IRS 37.003

SYSTEM NAME:

Closed Files Containing Derogatory Information About Individuals' Practice Before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice—Treasury/IRS.

SYSTEM LOCATION:

(1) Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW., Washington, DC 20224; (2) Washington National Records Administration, National Archives and Records Service, General Services Administration, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals eligible to practice before the Internal Revenue Service (attorneys, certified public accountants and enrolled agents).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to individuals' enrollments to practice before the Internal Revenue Service and derogatory and other information regarding such practice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license; contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name of individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Dispose 25 years after case closed; transfer to Federal Records Center 5 years after case closed except for a random selection of a small number of disciplinary cases to be made at 5–year intervals for retention.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by: (1) Individuals, (2) Internal Revenue Service, (3) other government agencies, and (4) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/IRS 37.004

SYSTEM NAME:

Derogatory Information (No Action)—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys, certified public accountants, enrolled agents and others.

CATEGORIES OF RECORDS IN THE SYSTEM:

Such files contain derogatory information concerning attorneys, certified public accountants, and enrolled agents and others over whom there is no current jurisdiction, where such information is subject to future development, or where such information is not sufficiently serious to be currently considered a case file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return

information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name of individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Dispose after 5 years by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by (1) individuals, (2) the Internal Revenue Service, (3) other government agencies, and (4) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/IRS 37.005

SYSTEM NAME:

Present Suspensions and Disbarments Resulting from Administrative Proceeding—Treasury/IRS.

SYSTEM LOCATION:

(1) Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW, Washington, DC 20224; (2) Washington National Records Center, National Archives and Records Service, General Services Administration, Washington, DC 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals formerly eligible to practice before the Internal Revenue Service but now either suspended or disbarred from such practice after being accorded due notice and opportunity for hearing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to individuals' enrollment to practice before the Internal Revenue Service, derogatory and other information regarding such practice, and record of proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Transfer information regarding suspension or disbarment of attorneys, certified public accountants and enrolled agents to professional organizations; (2) disclose pertinent information to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a state, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name of individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Dispose 25 years after case closed; transfer to Federal Records Center 5 years after case closed except for a random selection of a small number of disciplinary cases to be made at 5–year intervals for retention.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by: (1) Individuals, (2) Internal Revenue Service, (3) other government agencies, and (4) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/IRS 37.006

SYSTEM NAME:

General Correspondence File—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW, Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

General public.

CATEGORIES OF RECORDS IN THE SYSTEM:

General inquiries and comments from the general public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a state, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to any agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Correspondence is indexed alphabetically by writer.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P,Internal Revenue Service, 801 Pennsylvania Avenue, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system has been provided by the general public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 37.007

SYSTEM NAME:

Inventory—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Attorneys, certified public accountants and enrolled agents about which alleged misconduct in their practice before the Internal Revenue Service is being reviewed and evaluated; (2) Appraisers who have been referred to the Director of Practice for review and evaluation of conduct which resulted in assessment of a penalty under 26 U.S.C. 6701(s); and (3) Applicants for enrollment to practice before the Internal Revenue Service

whose applications are being reviewed and evaluated.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to individuals' enrollment or eligibility to practice before the Internal Revenue Service, and information relating to their conduct in such practice; and information relating to appraisers and applicants for enrollment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation,order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name of individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Dispose 25 years after case closed; transfer to Federal Records Center 5 years after case is closed except for a random selection of a small number of disciplinary cases to be made at 5-year intervals for retention.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by: (1) Individuals, (2) Internal Revenue Service, (3) other government agencies, and (4) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/IRS 37.008

SYSTEM NAME:

Register of Docketed Cases and Applicant Appeals—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals against whom complaints have been filed with the Office of Director of Practice pursuant to title 31, CFR, subpart C, section 10.54, for alleged violation of the regulations governing practice before the Internal Revenue Service and individuals who have appealed to the Secretary of the Treasury, the denials of their application for enrollment to practice before the Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of actions taken in cases docketed for hearings and record of actions taken on appeals from denials of applications for enrollment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law

proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Loose-leaf binders.Retrievability: Indexed by complaint number and by name of the individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by: (1) This office, (2) administrative law judges and (3) the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 37.009

SYSTEM NAME:

Enrolled agents and Resigned Enrolled Agents (Action pursuant to 31 CFR 10.55(b))—Treasury/IRS.

SYSTEM LOCATION:

(1) Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW., Washington, DC 20224; (2) Washington National Records Administration, National Archives and Records Service, General Services Administration, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those individuals who are currently enrolled to practice before the Internal Revenue Service and those who were formerly enrolled to practice before the Internal Revenue Service and who resigned from such enrollment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to individuals' applications for enrollment to practice before the Internal Revenue Service and derogatory and other information regarding such practice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name of individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 60 years after enrollment.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue

Service, 801 Pennsylvania Avenue, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by (1) individuals, (2) Internal Revenue Service; (3) other government agencies, and (4) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/IRS 37.010

SYSTEM NAME:

Roster of Former Enrollees –Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and certified public accountants who were enrolled to practice before the Internal Revenue Service prior to enactment of the Agency Practice Act, Title 5 U.S. Code, Section 500 and former enrolled agents who do not renew their enrollment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains individuals' names, addresses, professions, the dates of their enrollments and the expiration dates of such enrollments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Loose–leaf binders.

RETRIEVABILITY:

Indexed by profession (i.e., attorney or certified public accountant) and by the individual's name.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in records in this system has been provided by: (1) Individuals and (2) the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 37.011

SYSTEM NAME:

Present Suspensions from Practice before the Internal Revenue Service—Treasury/IRS.

SYSTEM LOCATION:

(1) Internal Revenue Service, Office of Director of Practice, 801 Pennsylvania Avenue, NW., Washington, DC 20224; (2) Washington National Records Administration, National Archives and Records Service, General Services Administration, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys, certified public accountants and enrolled agents who have offered their consent to voluntary suspension from practice before the Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to individuals' enrollment or eligibility to practice before the Internal Revenue Service, derogatory and other information relating to their conduct in such practice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 330.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an in estigation to the extent necessary to obtain information pertinent to the investigation; (6) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name of individual.

SAFEGUARDS:

Locked doors. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Dispose 25 years after case closed; transfer to Federal Records Center 5 years after case closed except for a random selection of a small number of disciplinary cases to be made at 5–year intervals for retention.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of Practice, PC:E:P, Internal Revenue Service, 801 Pennsylvania Avenue, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system may have been provided by: (1) Individuals, (2) the Internal Revenue Service, (3) other government agencies, and (4) professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/IRS 38.001

SYSTEM NAME:

General Training Records—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees who have participated in or who may be scheduled for training activities (students, instructors, program managers, etc.). Other Federal or non–Government individuals who have participated in or assisted with training programs (students, instructors, course developers, interpreters, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Variety of records containing information about an individual related to training, such as: course rosters, student registrations, nomination forms, course evaluations, instructor lists, individual development plans, counseling records, examination materials, payment records, and other recordations of training necessary for reporting and evaluative purposes. Some records within this system may also be contained in TR/IRS 36.003, General Personnel Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 41; Executive Order 11348.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information from these records may be used to: (1) Disclosure of information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (2) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (3) provide input data for the automated Training CPDF at the Office of Personnel Management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, index cards, forms, or flat paper.

RETRIEVABILITY:

Computer records are indexed by social security account numbers, course titles, dates of training, location of training and by specific employee information (i.e., name, title, grade, etc.); other records are indexed by name and course title.

SAFEGUARDS:

Access Controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Individual computer records are available to those persons at OPM, Treasury or IRS who are directly involved with the training function.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 301—General Records Schedules, IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

All Branch Chiefs, Training and Development Division, and Office of the Assistant Commissioner (International), at the National Office; Chiefs, Training and Development Branches, and Chiefs, Human Resources Branches, at Regional

and District Offices and Internal Revenue Service Centers; training managers at the Detroit and Martinsburg Computing Centers and the Austin Compliance Center. (see appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR, part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager(s) in the office(s) where records to be searched are located. (See appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information is extracted from participant registration forms, individual development plans, skill surveys, personnel records, and other forms as may be developed and prescribed by OPM, Treasury, and IRS Training Personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 42.001

SYSTEM NAME:

Examination Administrative File—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Commissioner (Examination) and Office of the Assistant Commissioner (International), National Office; Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any taxpayer who is being considered for examination or is being or has been examined for tax determination purposes, i.e., income, estate and gift, excise, or employment tax liability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing investigatory materials required in making a tax determination or other verification in the administration of tax laws and all other related sub–files directly related to the processing of the tax case. This system also includes other management material related to a case and used for tax administrative purposes, including the appeals process and systems formerly published as 42.018, 42.023, and 42.025.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, machine–sensible data media, microfilm.

RETRIEVABILITY:

By taxpayer's name, taxpayer identification number (social security number or employer identification number) and document locator number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 202 for Examination—Regional and District Offices, IRM 1(15)59.22.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International); Officials maintaining the system—Assistant Commissioner (Examination), Assistant Commissioner (International) District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system is exempt from the access and contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

(1) Taxpayers' returns; (2) taxpayer's books and records; (3) informants and third party information; (4) city and state governments; (5) other Federal agencies; (6) examinations of related taxpayers; (7) examinations of other taxpayers, and (8) taxpayer's representative.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.008

SYSTEM NAME:

Audit Information Management System (AIMS)—Treasury/IRS.

SYSTEM LOCATION:

This system is composed of (1) computer files located at each jurisdictional IRS Service Center (where tax return is under examination control); (2) video terminals located at each jurisdictional district (served by an IRS Service Center), National Office, and the Austin Compliance Center; and (3) group control card forms 5345 and 5354 (including temporary and interim processing files for management and control purposes), located at each jurisdictional district office. Items described under (3) above are subfiles of the AIMS System. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers whose tax returns are under the jurisdiction of the Examination Division. Examiners assigned to taxpayer cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Tax return information from the Master File, Tax return status and location changes, Examination Closing information on examined and non–examined tax returns, examiner's name, including related internal management information and a code identifying taxpayers that threatened or assaulted IRS employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer, microfiche, paper.

RETRIEVABILITY:

By taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Computer Record: Examined closings, surveyed claims and some types of non–examined closings are dropped from the data base 60 days after closing or when assessment verification is completed, whichever is later. The balance of non–examined closings are dropped at the end of the month following the month of closing. Paper Records: Generally, AIMS forms are destroyed within 90 days of the closing. Exceptions include: (1) The charge–out which becomes part of the case file and is sent to the Federal Records Center with the case; (2) Examination request forms which become the Examination group's control card; and (3) The Examination group's control card which is retained in a closed file for 3 years (in the case of field examinations) and 90 days (in the case of office examinations). Authority: Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination). Officials maintaining the system—Assistant Regional Commissioners (Examination), District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system is exempt from the access and contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax Returns and Examination files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.013

SYSTEM NAME:

Project Files for the Uniform Application of Laws as a Result of Technical Determinations and Court Decisions—Treasury/IRS.

SYSTEM LOCATION:

District offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals grouped as to project, i.e., individual shareholders of a corporation where a determination having a tax effect has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listing of individuals and their income tax information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and magnetic media.

RETRIEVABILITY:

By taxpayer's name and social security number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 102 for Examination Division—National Office, IRM 1(15)59.12.

SYSTEM MANAGER(S) AND ADDRESS:

Officials prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Director of District where the taxpayer resides. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director in the District where the records are located. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

(1) Shareholder records, (2) individual's tax return, and (3) examination of related taxpayer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 42.014

SYSTEM NAME:

Internal Revenue Service Employees' Returns Control Files—Treasury/IRS.

SYSTEM LOCATION:

District Offices (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is employed by the Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical listing of employee, income tax return information including prior examination results and other tax related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, machine–sensible data media, microfilm.

RETRIEVABILITY:

By employee's name and social security number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are periodically updated to reflect changes and retained as long as the individual is employed.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination). Officials maintaining the system—Director of District where individual resides. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director in the District where the records are located. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Employee's tax return.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 42.016

SYSTEM NAME:

Classification/Centralized Files and Scheduling Files—Treasury/IRS.

SYSTEM LOCATION:

District Offices,Internal Revenue Service Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whose returns or claims are classified for examination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' tax returns/claims and other information, including information reports considered in screening/classifying of an individual's return or claim for refund.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, computer printouts, magnetic media.

RETRIEVABILITY:

By taxpayer's name and social security number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Returns/claims accepted as filed are returned to System of Records 22.034. Returns/claims selected for examination become part of System of Records 42.001. Other information is retained until associated with returns/claims or two years, whichever occurs first. Authority: Records Disposition Handbook IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination). Officials maintaining the system—District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system is exempt from the access and contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

(1) Tax returns, (2) requests from taxpayer, and (3) requests from Collection Division for prompt examination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.017

SYSTEM NAME:

International Enforcement Program Files—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Commissioner (International), National Office; District Offices, and Internal Revenue Service Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual having foreign business/financial activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listing of individuals, identification numbers (if known), summary of income expenses, financial information as to foreign operations or financial transactions, acquisition of foreign stock, controlling interest of a foreign corporation, organization or reorganization of foreign corporation examination results, information concerning potential tax liability, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, microfilm, machine sensible magnetic media.

RETRIEVABILITY:

By individual's name and social security number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are periodically updated to reflect changes and retained as long as the individual has substantial foreign business/financial activities.

SYSTEM MANAGER(S) AND ADDRESS:

Officials prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Assistant Commissioner (International), District Directors, Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system is exempt from the access and contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

(1) European treaty countries, (2) individual's tax returns, (3) examination of related taxpayers, and (4) public sources of information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.021

SYSTEM NAME:

Compliance Programs and Projects Files—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers that may be involved in tax evasions schemes, including withholding noncompliance or other areas of noncompliance grouped by industry, occupation, or financial transactions, and other; e.g., return preparers, political contributions, corporate kickbacks, questionable Forms W–4.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to individuals in projects and programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, machine–sensible data media, microfilm, and magnetic media.

RETRIEVABILITY:

By taxpayer's name and social security number or document locator number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

W–4 paper case files and National Computer Center (NCC) magnetic tape records are destroyed two years after the cases have been inactive. Records associated with the examination of returns are disposed of in accordance with the established Retention Schedule 1(15)59.22, Records Control Schedule. Records not associated with the examination of returns will be destroyed at the completion of the program or project, or in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination). Officials maintaining the system—District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

(1) Taxpayer's return, (2) taxpayer's books and records, (3) informants and third party information, (4) city, state government, (5) other Federal agencies, (6) examinations of related taxpayers, and (7) taxpayer's employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.027

SYSTEM NAME:

Data on Taxpayers Filing on Foreign Holdings—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Commissioner (International), National Office, Regional Offices, District Offices, Philadelphia Internal Revenue Service Center, and the Detroit Computing Center. (see IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals required to file Form 5471, Information Return with respect to a Foreign Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals filing on foreign holdings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape in Detroit Computing Center and Philadelphia Service Center; Paper at other listed locations, machine–sensible data media and microfilm.

RETRIEVABILITY:

By taxpayer's name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are disposed of within three years.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (International), National Office. Officials maintaining the system— District Directors; Regional Commissioners; Assistant Commissioner (Examination) and Assistant Commissioner (International), National Office; Director, Detroit Computing Center; Assistant Commissioner (Taxpayer Services), National Office. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director for each district whose records are to be accessed or contested, or to the directors, or Assistant Commissioner (International) in the case of records in the National Office. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Form 5471 only.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 42.029

SYSTEM NAME:

Audit Underreporter Case File—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of income who appear not to have declared on their income tax returns (Forms 1040, 1040A, and 1040EZ) all income paid to them in the tax year under study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained are taxpayer (i.e., payee) entity records containing payee name, address, taxpayer identification number, and other indicators relating to entity maintenance; and income records containing the types and amounts of income received/reported, and information identifying the income payer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By matching social security number and name control.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are retained for one year and then magnetically erased.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination), National Office. Officials maintaining the system—Internal Revenue Service Centers Directors and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purpose of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Information returns filed by payers and Forms 1040, 1040A, and 1040EZ.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.030

SYSTEM NAME:

Discriminant Function File (DIF)—Treasury/IRS.

SYSTEM LOCATION:

Internal Revenue Service Centers and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whose income tax returns have a DIF Score higher than a cutoff score determined by Examination and International, indicating high audit potential, based on formulae prescribed by Examination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Document Locator Number of the return, the Regional and District Offices of the taxpayer, the taxpayer's DIF Score and data from the individual's Income Tax Return needed to conduct an audit of his/her return.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and computer printout.

RETRIEVABILITY:

By individual's social security number.

SAFEGUARDS:

Access controls will not be less than those provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Record Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Generally, records are disposed of after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Internal Revenue Service Center Directors, and the Austin compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purpose of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This System of records may not be accessed for the purpose of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Individual's tax return information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 44.001

SYSTEM NAME:

Appeals Case Files—Treasury/IRS.

SYSTEM LOCATION:

Office of the National Director of Appeals, National Office; Regional Directors of Appeals (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who disagree with examiner's findings and proposed adjustments and seek administrative review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Tax returns, Revenue Agents' Reports, Appeals Supporting Statements, case correspondence, legal opinions, work papers, and Appeals closing actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C 901 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name of taxpayer.

SAFEGUARDS:

Locked file cabinets, locked doors, IRS employees access data only on a need to know basis.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Record Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Records are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

National Director of Appeals, Internal Revenue Service, 901 D Street, SW., Box 68, Washington, DC 20024; Regional Directors of Appeals (see IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 44.003

SYSTEM NAME:

Unified System for Time and Appeals Records (Unistar)—Treasury/IRS.

SYSTEM LOCATION:

Office of the National Director of Appeals, National Office; Regional Directors of Appeals (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who disagree with examiner's findings and proposed adjustments and seek administrative review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Databases which produce management information on case inventory by taxpayer name, tax year, amount of tax in dispute, settlement amount, and professional time required to arrive at settlement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, diskette, hard disk.

RETRIEVABILITY:

By taxpayer's name and/or taxpayer identification number (social security number or employer identification number) and by work unit number.

SAFEGUARDS:

IRS personnel access data only on a need–to–know basis and use passwords to access system information.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Record Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

National Director of Appeals, Internal Revenue Service, 901 D Street, SW., Box 68, Washington, DC 20024; Regional Directors of Appeals (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the system manager(s) in the office where records to be searched are located.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Tax returns and other filings made by the individual and agency entries made in the administration of the individual's tax account. Also, time reports prepared by Appeals Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 44.004

SYSTEM NAME:

Art Case File—Treasury/IRS.

SYSTEM LOCATION:

Office of the National Director of Appeals, National Office; Regional Directors of Appeal (see IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Famous or noted artists whose works have been evaluated by the Art Panel or its staff for use in a taxpayer case.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commissioner's Art Panel or its staff decisions on values of works of art by named artists and appraisal documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, 7802, and 7805(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigation an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Indexed by taxpayer, artist, and appraiser name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. The system has been retained since 1968.

SYSTEM MANAGER(S) AND ADDRESS:

National Director of Appeals, Internal Revenue Service, 901 D Street, SW., Box 68, Washington, DC 20024; Regional Directors of Appeals (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the National Director of Appeals, Internal Revenue Service, 901 D Street, SW., Box 68, Washington, DC 20024

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Art panel and staff decisions and appraisal documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 44.005

SYSTEM NAME:

Expert Witness and Fee Appraiser Files—Treasury/IRS.

SYSTEM LOCATION:

Office of the National Director of Appeals, National Office; Regional Directors of Appeals (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Actual and potential expert witnesses for litigation and fee appraisers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical sketches, application letters, or list of expert/appraiser names by specialty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, 7802, and 7805(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating and action and seeking legal advice; (2) disclose pertinent information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, state, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Indexed by taxpayer and expert witness/appraiser name.

SAFEGUARDS:

Access Controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Records are periodically updated to reflect changes and maintained as needed.

SYSTEM MANAGER(S) AND ADDRESS:

National Director of Appeals, Internal Revenue Service, 901 D Street, SW., Box 68, Washington, DC 20024; Regional Directors of Appeals. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR, part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the National Director of Appeals, Internal Revenue Service, 901 D Street, SW., Box 68, Washington, DC 20024

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Varied, generally from the named individual, often unsolicited.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 46.002

SYSTEM NAME:

Case Management and Time Reporting System, Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects and potential subjects of Criminal Investigation Division investigations, Special Agents, U.S. District Court Judges and U.S. Attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and financial information developed in criminal tax investigations, potential tax investigations and in projects including information from other Federal, state and local agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided in 26 U.S.C. 6103

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in binders, magnetic media, computer discs, computer printouts.

RETRIEVABILITY:

By taxpayer's name, case number and social security number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation), National Office. Officials maintaining the system— Assistant Commissioner (Criminal Investigation); Regional Commissioners, District Directors, Internal Revenue Service Center Directors, the Detroit Computing Center Director, and the Austin Compliance Center Director. (See IRS appendix A for addresses).

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 46.003

SYSTEM NAME:

Confidential Informants, Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

District Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Confidential Informants; Subjects of Confidential Informant's Reports.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memorandums, Index Cards, Related Data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By confidential informant's name and number or name in informant's report.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation), National Office. Officials maintaining the system—District Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 46.004

SYSTEM NAME:

Controlled Accounts (Open and Closed) Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, the Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects and potential subjects of criminal tax investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal Investigation Information and Control Notices; Lists of names and related data; Lists of action taken: Transcripts of account.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Paper records are destroyed one year after the close of the investigation. Magnetic tape is erased three months after the close of the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation), National Office. Officials maintaining the system—District Directors, Internal Revenue Service Center Directors, the Martinsburg Computing Center Director, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking to access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director for each District where records are to be searched (See IRS appendix A for addresses).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

District Office Personnel; Service Center Personnel, Form 4135, Criminal Investigation Control Notice.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 46.005

SYSTEM NAME:

Electronic Surveillance File, Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

National Office, 1111 Constitution Avenue, NW., Washington, DC 20224

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of electronic surveillance. Individuals who have been subjects of queries by other agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to conduct of electronic surveillance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By names, addresses, and telephone numbers.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.Retention and disposal: Records are maintained in accordance

with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Generally, records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation) National Office. Officials maintaining the system—Director, Office of Investigations (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 46.009

SYSTEM NAME:

Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers about whom the Internal Revenue Service has received information alleging a violation of laws within IRS jurisdiction, potential subjects of investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of income tax returns, special agent's reports, revenue agent's reports, reports from police and other investigative agencies, memoranda of interview, question–and–answer statements, affidavits, collateral requests and replies, information items, newspaper and magazine articles and other published data, financial information from public records, case initiating documents and other similar and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Paper records are disposed of after use.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation) National Office. Officials maintaining the system—District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 46.011

SYSTEM NAME:

Illinois Land Trust Files, Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

Chicago District Office, Springfield District Office, and the Kansas City Internal Revenue Service Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries of Land Trusts, Related individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notices of Fiduciary Relationships. Related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

By taxpayer and beneficiary name; trust and social security number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Chicago District Director, Springfield District Director, and the Kansas City Internal Revenue Service Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of

records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to :District Director, Chicago District, Internal Revenue Service, 230 South Dearborn Street, Room 2890, Chicago, Illinois 60604.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Financial institutions, Fiduciary reports and Notices of Fiduciary Relationships.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 46.015

SYSTEM NAME:

Relocated Witnesses, Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Commissioner (Criminal Investigation), National Office, 1111 Constitution Avenue, NW., Washington, DC. 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Relocated Witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation and Relocation Information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Generally, records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (Criminal Investigation), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. 20224

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 46.016

SYSTEM NAME:

Secret Service Details, Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices and District Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of Criminal Investigation participants and correspondence between Criminal Investigation and Secret Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and information contained in these records may be disclosed to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation), National Office. Officials maintaining the system—Assistant Commissioner (Criminal Investigation), Regional Commissioners, District Directors. (See IRS Appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act Amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 46.022

SYSTEM NAME:

Treasury Enforcement Communications System (TECS), Criminal Investigation Division—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, and the Austin Compliance Center. (See IRS Appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Fugitives, subjects of open and closed criminal investigations, subjects of potential criminal investigations, subjects with Taxpayer Delinquent Accounts against whom Federal Tax Liens have been filed and other subjects of potential interest to criminal investigation such as witnesses and associates of subjects of criminal investigations or related to a matter under Criminal Investigation jurisdiction.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number, address, identifying details, aliases, associates, physical descriptions, various identification numbers, details and circumstances surrounding the actual or suspected violator.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disc.

RETRIEVABILITY:

By name, social security number or other unique identifier.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 though IRM 1(15)59.32. Fugitives until apprehended. Other records are deleted when no longer of potential use for criminal investigation case or informational purposes. Cancellation after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation), National Office. Officials maintaining the system—Assistant Commissioner (Criminal Investigation), Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and the Austin Compliance Center Director. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 48.001

SYSTEM NAME:

Disclosure Records—Treasury/IRS.

SYSTEM LOCATION:

National Office, Regional Offices, District Offices, Internal Revenue Service Centers, Detroit Computing Center, Martinsburg Computing Center, and the Austin Compliance Center. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Subjects of requests for disclosure initiated by the Department of Justice, including suspects or persons related to the violation of Federal laws; persons who have initiated legal actions against the Federal Government, persons identified as strike force targets or related to organized crime activities, persons under investigation for national security reasons, persons believed by the Internal Revenue Service to be related to violations of Federal laws other than the Internal Revenue Code. (2) Persons under investigation by other executive departments or congressional committees for whom tax information has been requested pursuant to 26 U.S.C. 6103. (3) Persons who are parties to criminal or civil non–tax litigation in which the testimony of IRS employees has been requested. (4) Persons who have applied for Federal employment or presidential appointments for which preemployment tax checks have been requested and applicants for Department of Commerce "E" Awards. (5) Requesters for access to records pursuant to 26 U.S.C. 6103, the Freedom of Information Act, 5 U.S.C. 552, and initiators of requests for access, amendment or other action pursuant to the Privacy Act of 1974, 5 U.S.C. 552a. (6) Individuals identified by or initiating correspondence or inquiries processed or controlled by the Disclosure function or relating to the foregoing subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for records, information or testimony, responses to such requests, supporting documentation, processing records, copies of items provided or withheld, control records and related files. Department of Justice, and IRS replies to such requests. (1) Copies of related authorizations to IRS officials permitting such disclosures and, in some instances, their responses. (2) Copies of individuals' tax information, memoranda for file, notations of telephone calls, file search requests, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 552 and 552a; 26 U.S.C. 6103, 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) report apparent violations of law to appropriate law enforcement agencies; (3) disclose debtor information to a Federal payor agency for purposes of salary and administrative offsets, to a consumer reporting agency to obtain commercial credit reports, and to a debt collection agency for debt collection services; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C.3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in alphabetical or chronological order within subject categories and/or such automated or electronic record–keeping equipment as may be locally available. No centralized index exists. Accountings of disclosure of tax related records pursuant to 5 U.S.C. 552a(c) or 26 U.S.C. 6103(p)(3) are posted to the Individual Master File and retrievable by Social Security Number, or to the Business Master File and retrievable by Employer Identification Number.

RETRIEVABILITY:

Records are generally retrievable by name of individual, although category of record and chronological period may be necessary to retrieve some records. The social security number is necessary to access accountings of disclosure posted to the Individual Master File. The employer identification number is necessary for access to the Business Master File.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Director, Office of Disclosure, National Office. Officials maintaining the system—Director, Office of Disclosure, National Office; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, the Austin Compliance Center Director, or other official receiving or servicing requests for records. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Requesters seeking to determine if accountable disclosures about them have been made should request an accounting of disclosure pursuant to 5 U.S.C. 552a(c) and 26 U.S.C. 6103(p)(3) of the District Director for the area in which they reside. Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the District Director for the area of residence or to the official believed to be maintaining the record of interest (See IRS appendix A for addresses.) This system contains some records of law enforcement activities which may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Requests for disclosure, records being evaluated and processed for disclosure and related information from other systems of records. This system may contain investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 48.008

SYSTEM NAME:

Defunct Special Service Staff File Being Retained Because of Congressional Directive—Treasury/IRS.

SYSTEM LOCATION:

National Office, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals suspected of violating the Internal Revenue laws by the Special Service Staff before its discontinuation on August 23, 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Internal Revenue Service Master File printouts; returns and field reports; information from other law enforcement government investigative agencies; Congressional Reports, and news media articles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. This file is no longer being used by the Internal Revenue Service. The Special Service Staff was abolished August 13, 1973. Records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose information to Congressional Committees and individuals making Freedom of Information requests pertaining to themselves.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained alphabetically by individual and organization contained in vault at IRS National Office.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. No IRS official has access to these records except for retrieval purposes in connection with Congressional or Freedom of Information inquiries and litigation cases.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbook, IRM 1(15)59.1 through IRM 1(15)59.32. Initially retained solely for congressional committees' inquiries, these records are currently being retained because of their possible historical significance under Archival statutes. Consideration of their historical significance is in abeyance pending resolution of the Archivist right to access tax information under the Internal Revenue Code.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director, Office of Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. In addition, this System may contain some records provided by other agencies which are exempt from the access and contest provisions of the Privacy Act as published in the Notices of the Systems of Records for those agencies.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

News media articles, taxpayers' returns and records, informant and third party information, other Federal agencies and examinations of related or other taxpayers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information from another agency's exempt system of records duplicated in this system of records retains the exempt status.

Treasury/IRS 49.001

SYSTEM NAME:

Collateral and Information Requests System—Treasury/IRS.

SYSTEM LOCATION:

The central files for this system are maintained at the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Riyadh, Saudi Arabia; (5) Nassau, Bahamas; (6) London, England; (7) Mexico City, Mexico; (8) Ottawa, Canada; (9) Paris, France; (10) Rome, Italy; (11) Sao Paulo, Brazil; (12) Singapore and (13) Tokyo, Japan. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Assistant Commissioner (International).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Citizens, Resident Aliens, Nonresident Aliens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of interviewing witnesses regarding financial transactions of taxpayers; employment data; bank and brokerage house records; probate records; property valuations; public documents; payments of foreign taxes; inventories of assets; business books and records. These records relate to tax investigations conducted by the Internal Revenue Service where some aspects on an investigation must be pursued in foreign countries pursuant to the various tax treaties between the United States and foreign governments. The records also include individual case files of taxpayers on whom information (as is pertinent to carrying out the provisions of the convention or preventing fraud or fiscal evasion in relation to the taxes which are the subject of this convention) is exchanged with foreign tax officials of treaty countries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are disposed of after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Records of examinations of taxpayers, interviews of witnesses, etc. where some aspects of an investigation must be pursued in foreign countries pursuant to various tax treaties between the United States and foreign governments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 49.002

SYSTEM NAME:

Competent Authority and Index Card—Microfilm Retrieval System—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens, resident aliens, nonresident aliens whose tax matters come under the jurisdiction of the U.S. competent authority in accordance with pertinent provisions of tax treaties with foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual case files of taxpayers who request relief from double taxation or any other assistance that is pertinent to carrying out the provisions of income tax treaties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 26 U.S.C. 7602, 7801, and 7802; applicable treaties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and microfilm records.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records may be disposed of after ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of the records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Requests for relief from double taxation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 49.003

SYSTEM NAME:

Financial Statements File—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who submitted financial statements when interviewed overseas by Examination Branch employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Financial Statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By taxpayer's name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are disposed of after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza, SW, Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Overseas Examination branch employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 49.007

SYSTEM NAME:

Overseas Compliance Projects System—Treasury/IRS.

SYSTEM LOCATION:

The central files for this system are maintained at the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Riyadh, Saudi Arabia; (5) Nassau, Bahamas; (6) London, England; (7) Mexico City, Mexico; (8) Ottawa, Canada; (9) Paris, France; (10) Rome, Italy; (11) Sao Paulo, Brazil; (12) Singapore and (13) Tokyo, Japan. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Assistant Commissioner (International).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Citizens, Resident Aliens, Nonresident Aliens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents and factual data relating to: (1) Personal expenditures or investments not commensurate with known income and assets; (2) receipt of significant unreported income; (3) improper deduction of significant capital or personal living expenses; (4) failure to file required returns or pay tax due; (5) omission of assets or improper deduction or exclusion of items from state and gift tax returns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than provided for by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32.. Generally, records are disposed of after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Documents and data relating to income and expense items concerning income, Estate and Gift tax returns.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 49.008

SYSTEM NAME:

Taxpayer Service Correspondence System—Treasury/IRS.

SYSTEM LOCATION:

This system is separately maintained by each one of the 13 overseas posts of the Office of the Assistant Commissioner (International) located in: (1) Bonn, Germany, (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Riyadh, Saudi Arabia; (5) Nassau, Bahamas; (6) London, England; (7) Mexico City, Mexico; (8) Ottawa, Canada; (9) Paris, France; (10) Rome, Italy; (11) Sao Paulo, Brazil; (12) Singapore and (13) Tokyo, Japan. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Citizens, Resident Aliens, Nonresident Aliens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from taxpayers, foreign post personnel and the Office of the Assistant Commissioner (international) headquarters offices in Washington, DC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By taxpayer name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Generally, records are disposed of after three years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and the Office of the Assistant Commissioner (International) foreign posts and headquarter's offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 50.001

SYSTEM NAME:

Employee Plans/Exempt Organizations Correspondence Control Record (Form 5961)—Treasury/IRS.

SYSTEM LOCATION:

National Office, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Requestors of letter rulings, and subjects of field office requests for technical advice and assistance and other correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, date, nature and subject of an assignment, and work history. Sub–systems include case files that contain the correspondence, internal memoranda, and related material. They also include digests of issues involved in proposed revenue rulings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7801, 7802, and 7805.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103 and 26 U.S.C. 6104 where applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche and magnetic media.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 104 for Employee Plans/Exempt Organizations—National Office, IRM 1(15)59.14.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (Employee Plans/Exempt Organizations), 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant Commissioner (Employee Plans/Exempt Organizations), 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Individuals requesting rulings or information and field offices requesting technical advice or assistance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 50.003

SYSTEM NAME:

Employee Plans/Exempt Organizations, Report of Significant Matters in Technical (M–5945)—Treasury/IRS.

SYSTEM LOCATION:

National Office, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual subjects of letter ruling requests, technical advice requests etc., where a "Report of Significant Matter in Technical," has been prepared because of the presence of a matter significant to tax administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of "Reports of Significant Matter in Technical."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7801, 7802, and 7805.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103 and 26 U.S.C. 6104 where applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 104 for Employee Plans/Exempt Organizations—National Office, IRM 1(15)59.14.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, (Employee Plans/Exempt Organizations), 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant Commissioner, (Employee Plans/Exempt Organizations), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Individual subjects of letter ruling requests, technical advice requests, etc., where a "Report of Significant Matter in EP/EO" has been prepared.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 60.001

SYSTEM NAME:

Assault and Threat Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office; Regional Inspectors' Offices; as well as offices of the District Directors. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals attempting to interfere with the administration of Internal Revenue laws through threats, assaults or forcible interference of any officer or employee while discharging the official duties of his position, or individuals classified as potentially dangerous taxpayers, based on verifiable evidence or information that fit the following criteria: (1) Taxpayers who physically assault an employee; (2) taxpayers who have on hand a deadly or dangerous weapon when meeting with an employee and it is apparent their purpose is to intimidate the employee; (3) taxpayers who make specific threats to do bodily harm to an employee; (4) taxpayers who use animals to threaten or intimidate an employee; (5) taxpayers who have committed the acts set forth in any of the above criteria (1) through (4), but whose acts have been directed against employees of other governmental agencies at Federal, state, county, or local levels; (6) taxpayers who are not classifiable as potentially dangerous through application of the above criteria (1) through (5), but who have demonstrated a clear propensity toward violence through acts of violent behavior to a serious and extreme degree within the five (5) year period immediately preceding the time of classification as potentially dangerous; and (7) persons who are active members in chapters of tax protest groups that advocate violence against IRS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Document citing the complaint; (2) Documentary evidence (i.e., threatening letter); (3) Report of investigation, with possible statements, or affidavits as exhibits, and related tax information; (4) Report of legal action, if case is prosecuted; (5) Local police record of individual named in case; (6) FBI record of individual named in the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7608, 7801, and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, or on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for criminal law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.002

SYSTEM NAME:

Bribery Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS Appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and/or former employees of the Treasury Department; taxpayers and non–IRS persons whose alleged criminal actions may affect the integrity of the Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Report of investigation including exhibits, affidavits, transcripts, and documentation concerning requests and approval for consensual telephone and consensual non–telephone monitoring; (2) Report of legal action concerning the results of prosecution; (3) Prior criminal record of subject.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801, and 7802; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State,local, or foreign agencies responsible for enforcing or investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, or on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties, and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for criminal law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.003

SYSTEM NAME:

Conduct Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of Internal Revenue Service, and other Bureaus and Services within the Department of the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Document citing complaint of alleged misconduct or violation of statute; (2) Report of investigation to resolve allegation of misconduct or violation of statute, with related exhibits of statements, affidavits or records obtained during investigation; (3) Report of action taken by management personnel adjudicating any misconduct substantiated by the investigation; (4) Report of legal action resulting from violations of statutes referred for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801, and 7802; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (7) disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, and on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties, and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Department of Treasury personnel and records, taxpayers (complainants, witnesses, confidential informants), other Federal agencies, State and local agencies, tax returns and related documents, personal observations of the investigator and subjects of the investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.004

SYSTEM NAME:

Disclosure Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Internal Revenue Service employees and/or Government contract employees at IRS Facilities, who have allegedly disclosed confidential tax information; (2) Federal, state and local Government employees who have allegedly disclosed confidential Federal tax information. (3) Tax return preparers who have allegedly disclosed confidential Federal tax information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Document citing the complaint of the alleged criminal or administrative violation; (2) Investigative report, including statements, affidavits and any other pertinent documents supporting the investigative report, which will be attached as an exhibit; (3) Report of legal action if case is accepted by U.S. Attorney for prosecution; (4) Report of action by management personnel if case is referred for administrative adjudication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801, and 7802; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to

a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, or on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties, and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for criminal law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.005

SYSTEM NAME:

Enrollee Applicant Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former employees and non–IRS persons who apply for enrollment to practice before IRS under the provisions of Circular 230.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports on non–IRS employees covering derogatory results of checks of: FBI files; Inspection files; local police; Examination, Criminal Investigation and Collection Division files; and verification of Federal tax filing status. Also, appropriate documents attached as exhibits showing results of above file checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7801 and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for or investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets and on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties, and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Chief Inspector,

Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

The Internal Revenue Service, the Federal Bureau of Investigation, and local police departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 60.006

SYSTEM NAME:

Enrollee Charge Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

IRS employees or former employees, tax practitioners, attorneys, certified public accountants or enrolled persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

A documented complaint or request for investigation alleging criminal or administrative misconduct affecting IRS integrity. A report of investigation, including exhibits such as affidavits, statements or documents which have been reviewed. A report of legal action resulting from violations of statutes referred for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7608, 7801, and 7802.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets or on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross-referenced third parties, and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need-to-know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100-2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20024.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.Contesting record procedures: 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Department of Treasury, personnel and records, other Federal agencies, taxpayers/complainants, state and local agencies, tax returns, newspapers, person acquainted with the individual under investigation, subjects of the investigation, and personal observations of the investigator.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.007

SYSTEM NAME:

Miscellaneous Information File, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the Internal Revenue Service; Tax Practitioners (Attorneys, Certified Public Accountants, Enrolled Persons, Return Preparers); alleged tax violators; persons whose actions or alleged actions indicated a threat to IRS employees, facilities, or the integrity of the tax system; confidential informants; and reputed members of the organized criminal element.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Complaint type information regarding IRS employees which is not, in itself, specific or significant enough to initiate an investigation when received. (2) Allegations of bribery and gratuities by taxpayers and/or their representatives which are not by themselves specific or significant enough to initiate an investigation when received. (3) Allegations of misconduct by tax practitioners, enrolled persons, or tax preparers which are not by themselves specific or significant enough to initiate an investigation when received. (4) Any information received or developed by Inspection that has a bearing on IRS, but is not of itself specific or significant enough to initiate an investigation when received. (5) Information received by Inspection pertaining to alleged violations enforced by other agencies or divisions of IRS, copies of which are referred to those respective agencies or divisions. (6) Photographs and descriptive data of some IRS employees and of persons arrested by Inspection. (7) Information concerning lost or stolen Government documents, property, credentials, or IRS employee personal property lost or stolen on Government premises. (8) List of persons in state or local government agencies working under state agreements and having access to federal tax information. (9) Newspaper or periodical items about IRS. (10) Newspaper items regarding attorneys, CPA's, Tax Practitioners, or Return Preparers arrested, indicted, convicted or under investigation by other agencies. (11) Allegations of threats, assaults, forcible interference, or other violence type activity aimed at employees or facilities of IRS which are not by themselves specific or significant enough to initiate an investigation when received. Information regarding Inspection's mission which does not fall into any of the above categories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7802; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records and other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, or on magnetic media.

RETRIEVABILITY:

By name of individual, subject, or incident involved, by name of cross-referenced third parties, and/or information item number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need-to-know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100-2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Department of Treasury personnel and records, newspapers and periodicals, taxpayers (complainants, witnesses, and informants), state and local government agency personnel and records, and anonymous complainants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.008

SYSTEM NAME:

Security, Background and Character Investigations Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former and prospective employees of: Internal Revenue Service, Office of the Secretary of the Treasury, Office of the General Counsel, Office of the Treasurer of the United States, Office of the Comptroller of the Currency, Office of International Finance, Financial Management Service (formerly Bureau of Government Financial Operations), Bureau of Accounts, Bureau of Engraving and Printing, Bureau of the Mint, Bureau of the Public Debt, U.S. Savings Bonds Division, Federal Law Enforcement Training Center, and Private Contractors at IRS Facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Federal Employment Application Forms; (2) Results of National Agency Checks (prior reports and records from FBI Investigative Files, Fingerprint Files, Office of Personnel Management, Defense Central Index of Investigations, House Committee on Internal Security, and Coast Guard Intelligence); (3) Employees' Tax Account Histories; (4) Results of Employees' Tax Examinations; (5) Employees' Financial Statements; (6) A summary report, a narrative report, notes and/or written replies resulting from the investigator's inquiries into the subject's scholastic record, prior employment, military service, references, neighbors, acquaintances or other knowledgeable sources, police records and past credit record; (7) Report of action taken by management personnel adjudicating any derogatory information developed by the investigation; (8) Report of legal action resulting from violations of statutes referred for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7802; Executive Order 10450; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where

the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, or on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties, and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection Personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Employment Application Forms submitted by subjects of investigation. Financial information from subjects. Federal, State and Local Government Agencies (Police, Court and Vital Statistics records). Credit Reporting Agencies. Neighbors (former and present). References. Former and present employers and co–workers. Other third party sources. Schools. Tax Returns and Examination Results. Information provided by the individual under investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.009

SYSTEM NAME:

Special Inquiry Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees of the Treasury Department and the Internal Revenue Service. Non–employees whose alleged criminal actions may affect the integrity of the Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

A documented complaint from some source alleging criminal or administrative misconduct affecting Internal Revenue Service integrity. Reports of integrity reviews and tests for deterrence and detection of fraud or corrupt practices and serious control weaknesses. A report of investigation to resolve the complaint, or the suspected problem detected by integrity reviews and tests including exhibits of IRS or public documents reviewed during the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7802; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, and on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties,

subject, or other identifier and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers (complainants, witnesses, confidential informants), Federal, State and local government agencies' personnel and records (police, court, property, etc.), newspapers or periodicals, Department of the Treasury personnel and records, financial institutions and other private business records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 60.010

SYSTEM NAME:

Tort Investigation Files, Inspection—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office and Regional Inspectors' Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of the Treasury and non–Federal persons involved in accidents on property under Department of the Treasury jurisdiction or with Department of the Treasury employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of investigation including exhibits such as SF–91, Operator's Report of Motor Vehicle Accident; SF–91A, Investigation Report of Motor Vehicle Accident; SF–92A, Report of Accident Other Than Motor Vehicle; SF–94, Statement of Witness; Optional Form 26, Data Bearing Upon Scope of Employment of Motor Vehicle Operator. In addition, attached as exhibits might be a Police Report of the accident; copies of insurance policies of the involved drivers; photographs of the scene or vehicles after the accident; Treasury Department vehicle maintenance record, medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7802; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used: (1) Disclose pertinent information to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, maintained in file cabinets, or on magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties, and/or by case number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00. Accessible to Inspection personnel on a need–to–know basis, all of whom have been the subject of background investigations.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM Part X, Inspection, Exhibit (10)100–2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Department of Treasury personnel and records, Federal, State and local police agencies, witnesses, subjects involved in the investigation, hospitals (medical records), doctors (medical records and personal observations), personal observations of the investigator, automobile repair facilities, insurance companies, attorneys, Federal, State and local driver license

records, and Federal and State vehicle registration records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 60.011

SYSTEM NAME:

Internal Security Management Information System (ISMIS)—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office, and Regional Inspection Offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees of the Internal Revenue Service, other Bureaus and Services within the Department of the Treasury, and private contractors at IRS Facilities; (2) taxpayers and non–IRS persons whose alleged criminal actions may affect the integrity of the Internal Revenue Service; (3) former employees and non–IRS persons who apply for enrollment to practice before the IRS under the provisions of Circular 230; (4) tax practitioners, attorneys, certified public accountants or enrolled persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) ISMIS personnel system records contain Internal Security employee name, office, start of employment, series/grade, title, separation date; (2) ISMIS tracking records contain status information on investigations from point of initiation through conclusion; (3) ISMIS timekeeping records contain assigned cases and distribution of time; (4) ISMIS case tracking records contain background investigations and criminal/administrative cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7802; Executive Order 11222.

PURPOSE(S):

The purpose of ISMIS is to: (1) Effectively manage Internal Security resources and assess the effectiveness of current Internal Security programs and to assist in determining budget and staff requirements; (2) Provide the technical ability for other components of the Service to analyze trends in integrity matters on an organizational, geographic and violation basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (3) Disclose information to a Federal, State, or local, or other public authority, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged; (5) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (8) Disclose information to a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross–referenced third parties, social security numbers, or case number.

SAFEGUARDS:

Access is limited to authorized Inspection personnel who have a direct need to know. Hard copy of data is stored in rooms of limited accessibility except to employees. These rooms are locked after business hours. Access to magnetic media is controlled by computer passwords. Access to specific ISMIS records is further limited by computer security programs limiting access to select personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained and archived as long as deemed necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Inspector (Internal Security), Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to them may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Disclosure Officer, Officer of the Chief Inspector, Internal Revenue Service, Room 6116, I:IS:I, 1111 Constitution Avenue, NW, Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Department of the Treasury personnel and records, other Federal agencies, current and former employees of the Internal Revenue Service, taxpayers and non–IRS persons who alleged criminal actions may effect the integrity of the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2).

Treasury/IRS 70.001

SYSTEM NAME:

Individual Income Tax Returns, Statistics of Income—Treasury/IRS.

SYSTEM LOCATION:

Primary—Detroit Computing Center; Secondary—(a) Internal Revenue Service, Statistics of Income Branch, National Office; (b) Treasury Department, Office of Tax Analysis; (c) Treasury Department, Office of Economic Modeling and Computer Applications; (d) Federal Records Centers; (e) Congress of the United States, Joint Committee on Taxation. (See IRS Appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers selected for an annual statistical sample.

CATEGORIES OF RECORDS IN THE SYSTEM:

Sources of income, exemptions, deductions, income tax, and tax credits, as reported on Forms 1040, 1040A and 1040EZ U.S. Individual income tax return. The records are used to prepare and publish annual statistics, with respect to the operations of the tax laws and for special statistical studies and compilations. The statistics, studies, and compilations are designed so as to prevent disclosure of any particular taxpayer's identity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 6108.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Each magnetic tape record is identified by social security number and a unique document locator number assigned by the Internal Revenue Service. Those with sole proprietorship income, in addition, contain employer identification number, if reported by taxpayer.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbook, IRM 1(15)59.1 through IRM 1(15)59.32. Input records are disposed of after publication of the statistics, except for input records for high income taxpayers for tax years prior to 1967 which are disposed of after 40 years. Output records are retained as long as they are needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Statistics of Income, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Primary: Forms 1040, 1040A, and 1040EZ, U.S. Individual Income Tax Returns. Secondary: Form SS–5, Application for a social security number.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.001

SYSTEM NAME:

Chief Counsel Criminal Tax Case Files. Each Regional Counsel Office and District Counsel Office maintains one of these systems. The Office of the Assistant Chief Counsel (Criminal Tax) maintains one of these systems. The information in this notice applies to all 62 offices—Treasury/IRS.

SYSTEM LOCATION:

The addresses of the National Office, each Regional Counsel Office and each District Counsel Office are listed in the Appendix. (See IRS Appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Taxpayers and related parties against whom tax–related criminal recommendations have been made. (2) Taxpayers and related parties on whom advice has been requested concerning investigation for tax–related offenses. (3) Persons who have filed petitions for the remission or mitigation of forfeitures or who are otherwise directly involved as parties in forfeiture matters, judicial or administrative.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Internal Control Records. (2) Legal and administrative files including investigative reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than return and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide

information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply.

SAFEGUARDS:

Records are locked up during nonworking hours and during periods when the work area is vacant. Access is strictly controlled and limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Legal files are generally retired to the Federal Records Center (FRC) one year after they are closed. The FRC will retain "significant case" files an additional 19 years and dispose of them 20 years after they are closed. Other legal files are retained in the FRC 4 years after they are transferred to the FRC and disposed of 5 years after they are closed. Duplicate National Office monitoring files are destroyed immediately upon notification that the field has closed its file. National Office unjacketed case files (e.g., appeals for which no monitoring files exist: FOIA requests, search warrants, formal technical advice and miscellaneous legal opinions) are retained for ten years after closing. National Office original centralized grand jury files and administrative case files are maintained indefinitely. Files transferred from other functions are returned to the source when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Each Regional Counsel is the system manager of the systems in his or her Region. The Assistant Chief Counsel (Criminal Tax) is the system manager of the National Office system. The addresses are in the appendix. (See IRS appendix A.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or 552a(j)(2).

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for the purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or 552a(j)(2).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and their representatives; Department of Treasury personnel; other Federal agencies; State, local, and foreign governments; witnesses; informants; parties to disputed matters of fact or law; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.002

SYSTEM NAME:

Chief Counsel Disclosure Litigation Case Files—Treasury/IRS.

SYSTEM LOCATION:

Office of the Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who communicate with the Service regarding disclosure matters or who are involved with a disclosure issue involving the Service, or who are the subjects of investigations made by the Internal Security Division if their cases are referred to Disclosure Litigation for criminal violations of disclosure laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal Case and Administrative Case Files; (2) Internal Control Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Legal case and administrative case files: paper records. Internal control records: paper records and magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply, cross-referenced third parties, issues, attorneys assigned, and by case number.

SAFEGUARDS:

A background investigation is made on personnel. Offices are located in a security area. Access to keys to these offices is restricted. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Legal files are generally retired to the Federal Records Center (FRC) 1 year after they are closed. "Significant Case" files are retained an additional 29 years and disposed of 30 years after they are closed. Other legal files are retained in the FRC 5 years after they are transferred to the FRC and disposed of 6 years after they are closed. Other records are retained in the Division for the same time periods as described above.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a (d)(5) and/or (k)(2).

RECORD ACCESS PROCEDURES:

This system may not be accessed for purpose of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a (d)(5) and/or (k)(2).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Persons who communicate with the agency regarding disclosure matters; Department of Treasury employees; State, local, and foreign governments; other Federal agencies; witnesses; informants; parties to disputed matters of fact or law.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.003

SYSTEM NAME:

Chief Counsel General Administrative Systems. Each of the 7 Regional Counsel Offices and 54 District Counsel Offices, each of the 10 functions in the National Office, the Office of the Chief Counsel, and the Office of the Deputy Chief Counsel, the Offices of the Associate Chief Counsels (Enforcement Litigation), (International), (Domestic), (Finance and Management), and (Employee Benefits and Exempt Organizations) maintain a General Administrative System. This notice applies to all 78 of these offices.—Treasury/IRS.

SYSTEM LOCATION:

The location of these systems are listed in the appendix. (See IRS appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Past, present and prospective employees of the Office of Chief Counsel. (2) Tax Court Witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Employee Performance Folders and employee records other than Official Personnel Files of the Office of Personnel Management and the Merit Systems Protection Board. (2) Time cards and attendance rosters. (3) Financial records such as travel expenses, Notary Public expenses, moving expenses, expenses of Tax Court witnesses and miscellaneous expenses. (4) Employee recruiting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose information to the Office of Personnel Management and the Merit Systems Protection Board for appropriate Personnel actions; (3) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (4) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (5) disclose relevant, non-privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (6) disclose information to foreign governments in accordance with formal or informal international agreements; (7) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (8) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (9) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (10) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Records are generally retrievable by the name of the person to whom they apply.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Records are updated periodically to

reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Each Regional Counsel is the system manager of the systems in his or her Region. Each Assistant Chief Counsel is the system manager of the system in his or her function. The Chief Counsel, the Deputy Chief Counsel and the Associate Chief Counsels (Enforcement Litigation), (Domestic), (International), (Finance and Management), and (Employee Benefits and Exempt Organizations) are the system managers of the system in each of their Offices. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, apAppendix B. Inquiries should be addressed to the Regional Counsel of the Region in which the records are located or the Assistant Chief Counsel (Disclosure Litigation) in the case of records in the National Office. The addresses are listed in the Appendix. Information leading to the identity of a confidential source is exempt pursuant to 5 U.S.C. 552a (k)(5).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Employees, Department of Treasury personnel; Tax Court witnesses; Office of Personnel Management and Merit Systems Protection Board; other Federal agencies; State, local, and foreign governments; references; former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.004

SYSTEM NAME:

Chief Counsel General Legal Services Case Files. Each of the seven Regional Counsel Offices and the National Office maintain a General Legal Services Case File System. The information in this notice applies to all eight of the offices—Treasury/IRS.

SYSTEM LOCATION:

The addresses of the National Office and each Regional Counsel Office are listed in the Appendix. (See IRS Appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in litigation, actions, investigations or cases falling within the jurisdiction of the General Legal Services function including persons (1) who are parties in personnel matters, as well as discrimination and labor management relations matters, of the Internal Revenue Service, Chief Counsel's Office or, in some instances, other agencies in the Treasury Department; (2) who are parties in practitioner actions under the jurisdiction of the Director of Practice or the Joint Board of Actuaries; (3) who are parties in procurement matters and under the Federal Claims Collection Act (as amended by the Debt Collection Act); (4) who are parties in litigation or administrative claims involving alleged violations of the United States Constitution, the Federal Tort Claims Act, the Military Personnel and Civilian Employee Compensation Act, relief of accountable officers for loss of Government funds, claims or suits for rewards, acts of officers or employees acting within the scope of their employment, or official acts of officers or employees not directly relating to Federal tax issues but relating to the Internal Revenue Service; (5) who are parties in miscellaneous matters referred to the General Legal Service; (6) who are the subjects of Investigations made by the Internal Security Division if the case is referred to General Legal Services (7) who are officials of the Internal Revenue Service and Chief Counsel's Office required to file a Financial Disclosure Statement under the Ethics in Government Act of 1978; (8) who have corresponded regarding a matter under consideration within General Legal Services .

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal case and administrative case files. (2) Internal control cards. (3) Correspondence files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purposes of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (10) provide information to the Director of Practice and Joint Board of Actuaries in practitioner disciplinary matters; (11) provide information to the Office of Personnel Management in personnel, discrimination and labor management matters; (12) provide information to arbitrators, the Federal Labor Relations Authority, including the Office of the General Counsel of that authority, the Federal Service Impasses Board and the Federal Mediation and Conciliation Service in labor management matters; (13) provide information to the Merit Systems Protection Board, including its Special Counsel, in Personnel, Discrimination, and Labor Management matters; (14) provide information to the Equal Employment Opportunity Commission in Personnel, Discrimination, and Labor Management matters; (15) provide information to the General Services Administration in property management matters; (16) provide information to the Administrative Assistant of the Executive Resources Board as to Financial Disclosure Statements, who makes the statements available to the public as required by law; (17) provide information to other federal agencies for the purpose of effectuating inter–agency salary offset or inter–agency administrative offset; (18) provide information to the Office of Government Ethics in conflict of interest, conduct, financial statement reporting, and other ethical matters.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply. If more than one person is involved in a given case then it is generally retrievable only by the first named person.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Legal files are generally retired to the Federal Records Center (FRC) 1 year after the cases are closed. The FRC will retain "significant case" files an additional 19 years and dispose of them 20 years after they are closed. Other legal files are retained in the FRC 4 years after they are transferred to the center and disposed of 5 years after they are closed. Other records are retained for the same time periods described above.

SYSTEM MANAGER(S) AND ADDRESS:

Each Regional Counsel is the system manager of the system in his or her Region. The Assistant Chief Counsel (General Legal Services) is the system manager of the National Office system. The addresses are in the appendix. (See IRS appendix A.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and their representatives; Department of Treasury personnel; other Federal agencies; State, local, and foreign governments; witnesses; informants; parties to disputed matters of fact or law; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.005

SYSTEM NAME:

Chief Counsel General Litigation Case Files. Each Regional Counsel Office and each District Counsel Office maintains one of these systems. The National Office maintains one of these systems. The information in this notice applies to all 62 offices—Treasury/IRS.

SYSTEM LOCATION:

The addresses of the National Office, each Regional Counsel Office and each District Counsel Office are listed in the appendix. (See IRS appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Taxpayers or other individuals involved in matters referred to the General Litigation function including: (a) Taxpayers with outstanding tax liabilities or with potential outstanding tax liabilities; (b) persons from whom information is being sought (summons); (c) persons requesting information (disclosure); (d) present or former Internal Revenue Service employees who are being or may be sued in connection with their duties or who have been called upon to testify in private litigation; (e) persons who are or may be liable to the United States on non–tax claims; (f) persons who have submitted offers in compromise of federal taxes. (2) Persons who have corresponded regarding a matter under consideration within the General Litigation function.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal and Administrative Files. (2) Internal Control Records. (3) Offer in Compromise Files. (4) Correspondence Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Provide information to other Federal agencies holding funds of taxpayer for the purpose of collecting a liability owed by the taxpayer; (2) disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (3) provide information to State and local taxing authorities for the purpose of enforcing Federal tax laws; (4) provide information to Federal, state and local regulatory authorities for purposes of collection of Federal taxes; (5) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (6) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or

other benefit; (7) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (8) disclose information to foreign governments in accordance with formal or informal international agreements; (9) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (10) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (11) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (12) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

All records are retrievable by the name of the persons to whom they apply. Some internal control records are retrievable by names of taxpayers and related taxpayers, attorneys assigned, subject matter, and certain key administrative dates.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

National Office, Regional, and District counsel legal files are generally retired to the Federal Records Center (FRC) one year after they are closed. The FRC will retain "significant case" files an additional 24 years and dispose of them 25 years after the cases are closed. Other legal files are retained in the FRC 9 years after they are transferred to the Center and disposed of 10 years after they are closed. Other records are retained in the Division for the same time periods described above. Files transferred from other functions are returned to the source when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Each Regional Counsel is the system manager of the systems in his or her Region. The Assistant Chief Counsel (General Litigation) is the system manager of the National Office system. The addresses are in the appendix. (See IRS appendix A.)

NOTIFICATION PROCEDURE:

Most of the records in this system may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

RECORD ACCESS PROCEDURES:

This system may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a (d)(5) and/or(k)(2).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and their representatives; Department of Treasury personnel; other Federal agencies; State, local, and foreign governments; witnesses; informants; parties to disputed matters of fact or law; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.006

SYSTEM NAME:

Former Chief Counsel Interpretative Case Files—Treasury/IRS.

SYSTEM LOCATION:

Office of the Associate Chief Counsel (Domestic), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual taxpayers concerning whom legal issues were referred to the Interpretative Division (pre–October 1, 1988) for opinion.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal Case Files and Advisory Opinions; (2) Correspondence Files; (3) Internal Control Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local,or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal in the course of presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (10) provide information to the Social Security Administration to

consult about a matter involving legal issues concerning the imposition of Social Security taxes; (11) provide information to the Department of Labor or the Pension Benefit Guaranty Corporation concerning the Employee Retirement Income Security Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records in the system are maintained in paper format. Internal control records are also maintained on magnetic media.

RETRIEVABILITY:

Legal Case and Advisory Opinion files and Internal Control records are retrievable by case name or title assigned to the project (which sometimes, but not always, corresponds with the name of the individual taxpayer). Private Relief Bill files are retrievable by the H.R. or S number for each Congress. Correspondence files are retrievable by the name of the individual who initiated the correspondence.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

General Counsel Memorandums, Office Memorandums, and legal case files are retained indefinitely in the National Office.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Domestic), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Associate Chief Counsel (Domestic), Attn: CC:CORP:T, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and their personal representatives; Department of the Treasury personnel; Congressional documents; other Federal agencies; State, local, and foreign governments; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 90.007

SYSTEM NAME:

Chief Counsel Legislation and Regulations Division, Employee Plans and Exempt Organizations Division, and Associate Chief Counsel (Technical and International) Correspondence and Private Bill Files—Treasury/IRS.

SYSTEM LOCATION:

Legislation and Regulations Division, Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, Washington, DC 20224; Employee Plans and Exempt Organizations Division and Associate Chief Counsel (Technical and International), same address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Persons who have corresponded to the Service, the Department of the Treasury, the White House or Members of Congress regarding a matter in which the Legislation and Regulations Division or the Employee Plans and Exempt Organizations Division was asked to draft a reply. (2) Persons on whose behalf private relief bills were introduced in Congress involving tax related matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence Files; (2) Private Relief Bill Legal Files; (3) Internal Control Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. These records and information in these records may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (10) provide information to the agency or individual who directed correspondence to the Legislation and Regulations Division for the Division to draft a response.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Correspondence files are retrievable by the name of the individual who

initiated the correspondence. Private Relief Bill files are retrievable by the H.R. or S. number for each Congress.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Correspondence files are generally disposed of after 3 years. Private Relief Bill files are periodically updated to reflect changes and are maintained as long as needed. Internal control records are generally disposed of after 2 years or when no longer useful. Auth: IRM 1(15)59.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Legislation and Regulations Division, Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, Washington, DC 20224; Director, Employee Plans and Exempt Organization Division, same address. With respect to international issues, the Associate Chief Counsel (Technical and International) is the system manager.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Disclosure Litigation Division. The address is listed in the appendix. (See IRS appendix A.)

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Director of the Disclosure Litigation Division. The address is listed in the appendix. (See IRS appendix A.)

CONTESTING RECORD PROCEDURES:

See Access above.

RECORD SOURCE CATEGORIES:

Persons who initiate correspondence referred to the Legislation and Regulations Division; Congressional documents; taxpayers and their representatives; Department of Treasury personnel; other Federal agencies; state, local, and foreign governments; witnesses; informants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 90.009

SYSTEM NAME:

Chief Counsel Field Services Case Files. Each Regional Counsel Office and each District Counsel Office maintains one of these systems. The National Office maintains one of these systems. The information in this notice applies to all 62 offices–Treasury/IRS.

SYSTEM LOCATION:

The addresses of the National Office, each Regional Counsel Office, and each District Counsel Office is listed in the Appendix. (See IRS Appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Taxpayers who have filed petitions with the Tax Court or suits for refunds of Federal taxes. (2) Taxpayers upon whom the issuance of a statutory notice is or was contemplated whose case has been referred to the Tax Litigation function. (3) Taxpayers who are the subject of formal or informal advisory opinions during the investigative stage of the case or while under administrative processing. (4) Persons who have corresponded regarding a matter under consideration within the Tax Litigation function.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal Case and Administrative Case Files. (2) Internal Control Records. (3) Correspondence Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements. (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Legal files are generally retired to the Federal Records Center (FRC) one year after they are closed. The FRC will retain "significant case" files an additional 29 years and dispose of them

30 years after they are closed. Other legal files are retained in the FRC 9 years after they are transferred to the Center and disposed of 10 years after they are closed. Other records are periodically updated to reflect changes and maintained as long as needed. Files transferred from other functions are returned to the source when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Each Regional Counsel is the system manager of the systems in his or her Region. The Assistant Chief Counsel (Field Services) is the system manager of the National Office system. The addresses are in the appendix. (See IRS appendix A.)

NOTIFICATION PROCEDURE:

This system may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

RECORD ACCESS PROCEDURES:

This system may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and their representatives; Department of Treasury personnel; other Federal agencies; State, local, and foreign governments; witnesses; informants; parties to disputed matters of fact or law; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.010

SYSTEM NAME:

Digest Room Files Containing Briefs, Legal Opinions, and Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws—Treasury/IRS.

SYSTEM LOCATION:

Office of the Associate Chief Counsel (Finance and Management), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who have sought Internal Revenue Service rulings and/or legal opinions on tax problems and those whose cases are being or have been adjudicated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Internal Control Records; (2) Briefs; (3) Legal Opinions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to Justice Department personnel for research purposes; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply.

SAFEGUARDS:

Records are kept in a secured area. Access is limited to authorized personnel. Users of the system must show IRS identification and sign a register each time the room is used. Background checks are made on employees. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Briefs, legal opinions, and digests are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel, (Finance and Management), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

RECORD ACCESS PROCEDURES:

This system may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Department of Treasury personnel; Department of Justice personnel; taxpayers and their representatives; other Federal agencies; witnesses; informants; State, local, and foreign governments; parties to disputed matters of fact and law; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.011

SYSTEM NAME:

Attorney Recruiting Files—Treasury/IRS.

SYSTEM LOCATION:

Office of the Associate Chief Counsel (Finance and Management), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for attorney positions with the Office of Chief Counsel, both National Office and field.

CATEGORIES OF RECORDS IN THE SYSTEM:

Attorney Files and lists of eligible applicants; Internal Control Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (10) provide information to the Office of Personnel Management and Merit System Protection Board for appropriate personnel actions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Applicant files and internal control records: paper records and magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

The attorney applicant files and other records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Finance and Management), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Information leading to the identity of a confidential source is exempt pursuant to 5 U.S.C. 552a(k)(5).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applicants, Department of Treasury Personnel; Office of Personnel Management; other Federal agencies; State, local, and foreign governments; references, former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.013

SYSTEM NAME:

Legal case files of the Chief Counsel, Deputy Chief Counsel and Associate Chief Counsels (Litigation), (Domestic), (International), and (Employee Benefits and Exempt Organizations)—Treasury/IRS.

SYSTEM LOCATION:

Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons whose cases at one time involved important issues or unusual circumstances which were brought to the attention of the above persons (or their predecessors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal case files which include internal control records of such case files of both the persons currently holding the above positions and those who previously held such positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; (2) disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Records pertaining to individuals are retrievable by the name of the person to whom they apply.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Deputy Chief Counsel, or the Associate Chief Counsels, respectively, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

This system may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

RECORD ACCESS PROCEDURES:

This system may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2).

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and their representatives; Department of Treasury personnel; other Federal agencies; State, local, and foreign governments; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.015

SYSTEM NAME:

Reference Records of the Library in the Office of Chief Counsel–Treasury/IRS.

SYSTEM LOCATION:

Office of the Associate Chief Counsel (Finance and Management), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Taxpayers who have sought Congressional tax relief by means of a Private Bill. (2) IRS employees who charge out books.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Numerical and alphabetical listing of Private Relief Bill and files related to the Bill. (2) Charge cards and inter–library loan forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (3) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (4) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (5) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Records are retrievable by the name of the individual to whom they pertain and Private Bill material can also be retrieved by H.R. or S. number.

SAFEGUARDS:

Although access is limited to authorized individuals, this material would be available to any person through a Freedom of Information Act request. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Records are regularly updated. If the library materials to which the references pertain are no longer in the library collection, the reference cards are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Finance and Management), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C. appendix B. Inquiries should be addressed to Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Material to which reference information pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 90.016

SYSTEM NAME:

Counsel Automated Tracking System (CATS) Records—Treasury/IRS

SYSTEM LOCATION:

Computer Records: Detroit Computing Center, 1300 John C. Lodge Drive, Detroit, Michigan 48226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Taxpayers who initiated suits for refund in district courts or the Claims Court.(2) Taxpayers who have filed petitions with the United States Tax Court. (3) Taxpayers who have requested rulings from the Service in those cases in which the request has been referred to the Office of Chief Counsel for a legal opinion. (4) Taxpayers who have been involved in litigation concerning the collection of taxes. (5) Taxpayers whose cases were the subject of technical advice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Skeletal legal files and Indexes (including taxpayer name; uniform issue list number; key dates; subject matter; name of attorney and office handling the case; and miscellaneous remarks.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice for the purpose of litigating an action, seeking legal advice, or for research purposes; (2) disclose pertinent information to appropriate Federal, State, local,or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Skeletal legal files and indexes are stored on magnetic media. Input documents are on paper. The CATS system also allows access by interactive terminal.

RETRIEVABILITY:

Records are retrievable by legal jacket number, the name of the person to whom they apply, and by name of the attorney to whom the cases are assigned.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Passwords are required in the Counsel Automated Tracking System to access system information. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1(15)59.1 through IRM 1(15)59.32. Magnetic media will be periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Finance and Management), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Most of the records in this system may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2). An individual who wishes to determine whether the system contains any records pertaining to himself which are not exempt may address inquiries to the Assistant Chief Counsel (Disclosure Litigation), 1111 Constitution Avenue, NW., Washington, DC 20224.

RECORD ACCESS PROCEDURES:

Most of the records in this system may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (k)(2). Individuals seeking access to any record which is not exempt, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant Chief Counsel (Disclosure Litigation) whose address is listed above. Taxpayers seeking to adjust records which affect the determination of a tax assessment or the balance due, should utilize existing procedures for doing so, as substantive tax matters are not subject to the amendment provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Taxpayers and their representatives; Department of Treasury personnel; other Federal agencies, State, local, and foreign governments; witnesses; informants; parties to disputed matters of fact or law; other persons who communicate with the Internal Revenue Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.017

SYSTEM NAME:

Correspondence Control and Records, Associate Chief Counsel (Technical and International)—Treasury/IRS.

SYSTEM LOCATION:

National Office (See IRS appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual subjects of letter rulings, technical advice, memorandum and other correspondence from the Office of the Associate Chief Counsel (Technical and International).

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards, disks and tapes containing taxpayer names, date of correspondence, issue. and related information, including in some cases the conclusions reached, and related letter ruling, technical advice, memorandum and other correspondence files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 26 U.S.C. 7801, 7802, 7602, 7805(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C.6103. These records and information in these records may be used to: (1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice; (2) disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (5) disclose information to foreign governments in accordance with formal or informal international agreements; (6) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (9) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic media, and tapes.

RETRIEVABILITY:

Indexed by name and control number.

SAFEGUARDS:

Safeguards will not be less than those provided by the Physical and Document Security Handbook, IRM 1(16)41, and the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Cards, disks and tapes are periodically updated and maintained as long as needed. Related files are destroyed or retired over varying numbers of years as specified in the Records Control Schedule, IRM 1(15)59.1(10).

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Technical and International), National Office. (See IRS appendix A.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Associate Chief Counsel (Technical and International), National Office. (See IRS appendix A.)

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Associate Chief Counsel (Technical and International), National Office. (See IRS appendix A.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Individual subjects of letter rulings, technical advice memorandums, and other correspondence, field office personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 90.018

SYSTEM NAME:

Expert Witness Library—Treasury/IRS

SYSTEM LOCATION:

Office of the Assistant Chief Counsel (Field Services), Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential expert witnesses for tax litigation in a variety of areas of expertise.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, and phone numbers of expert witnesses who have been used either by IRS or taxpayers in litigation. The library also contains evaluations of the performance of each expert, copies of transcripts where experts have testified and copies of the experts' reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, 7802, and 7805(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose information to the Department of Justice in connection with requests for legal advice; (2) disclose information to a Federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of or retention of a security clearance, license, contract, grant, or other benefit; (3) disclose relevant, non–privileged information to a court, magistrate, or administrative tribunal, including the presentation of evidence, disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to the proceeding; (4) provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Indexed by name and subject matter expertise.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Furthermore, access to the paper files is controlled by a designated attorney in the Tax Shelter Branch. Access to the expert witness library indices on magnetic media are controlled by the Tax Shelter Branch. The Tax Shelter Branch is locked during nonworking hours. All facilities where records are stored have access limited to authorized personnel or individuals in the company of authorized personnel. Background checks are made on employees. Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

The records will be periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Counsel (Field Services), Internal Revenue Service, Office of Chief Counsel, 1111 Constitution Avenue, NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURE:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Attorneys working for the IRS and expert witnesses themselves.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

IRS APPENDIX A

This appendix contains the addresses of Treasury/IRS system locations along with the title of the principal system manager(s) at each location. Other system managers at these locations are individually noted in the text of the system notices. Generally, inquiries under Treasury/IRS systems should be addressed to the office where the records in question are located. For Regional and District Office records, this would be the office with jurisdiction over the area where the individual resides. For Internal Revenue Service Center records, this would be the service center where the individual files Federal income tax returns.

NATIONAL OFFICE INTERNAL REVENUE SERVICE

National Director, Equal Employment Opportunity and Diversity
National Director, Communications
Assistant Commissioner (Collection)
Chief Information Officer
Assistant Commissioner (Employee Plans and Exempt Organizations)
National Director, Strategic Planning and Research
National Director, Compliance and Research
Chief Financial Officer
Chief, National Management and Administration
Chief Taxpayer Service
Assistant Commissioner (Criminal Investigation)
Assistant Commissioner (Examination)
Assistant Commissioner (International)
Assistant Commissioner (Procurement)
Chief Inspector
Director, Office of Disclosure

The address for all of the above systems managers with the exception of the Assistant Commissioner (International), noted below, is as follows:

1111 Constitution Avenue, NW, Washington, DC 20224

Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024

ADDRESSES OF THE DETROIT COMPUTING CENTER, MARTINSBURG COMPUTING CENTER, AND THE AUSTIN COMPLIANCE CENTER

Director, Detroit Computing Center, 1300 John C. Lodge Drive, Detroit, Michigan 48226.

Director, Martinsburg Computing Center, PO Box 1208, Martinsburg, West Virginia 25401

Director, Austin Compliance Center, PO Box 2986, Stop 1000 AUCC, Austin, Texas 78768

ADDRESSES OF REGIONAL OFFICES, DISTRICT OFFICES, AND INTERNAL REVENUE SERVICE CENTERS

Regional Offices

Midstates Region (Dallas)Regional Commissioner, Internal Revenue Service4050 Alpha Road, Dallas, Texas 75244-4203

Northeast Region (Manhattan) Regional Commissioner, Internal Revenue Service, 90 Church Street, New York, New York, 10007

Southeast Region (Atlanta) Regional Commissioner, Internal Revenue Service, PO Box 926, Stop 100-R, Atlanta, Georgia 30370

Western Region (San Francisco) Regional Commissioner, Internal Revenue Service, Room 511,1650 Mission Street, San Francisco, California 95113

District Director, Internal Revenue Service, PO Box 1818, Cincinnati, Ohio 45201.

District Director, Internal Revenue Service, PO Box 99181, Cleveland, Ohio 44199

District Director, Internal Revenue Service, PO Box 330500, Stop 11, Detroit, Michigan 48232-6500

District Director, Internal Revenue Service, PO Box 44687, Stop 10, Indianapolis, Indiana 46244

District Director, Internal Revenue Service, PO Box 1735, Stop 100, Louisville, Kentucky 40201

District Director, Internal Revenue Service, 425 Juliana Street, Parkersburg, West Virginia 26101

Director, Internal Revenue Service Center, 201 W. Second Street., Covington, Kentucky 41019

District Director, Internal Revenue Service, George Fallon Building, 31 Hopkins Plaza, Baltimore, Maryland 21201

District Director, Internal Revenue Service, PO Box 939, Newark, New Jersey 07101

District Director, Internal Revenue Service, W. J. Green Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106

District Director, Internal Revenue Service, 1000 Liberty Avenue, Room 1139, Pittsburgh, Pennsylvania 15222

District Director, Internal Revenue Service, 400 North Eighth Street, Richmond, Virginia 23240

District Director, Internal Revenue Service, 409 Silverside Road, Wilmington, Delaware 19809

Director, Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19154

District Director, Internal Revenue Service, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401

District Director, Internal Revenue Service, 230 South Dearborn Street, Room 2890, Chicago, Illinois 60604

District Director, Internal Revenue Service, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309

District Director, Internal Revenue Service, Federal Building and Post Office, 657 Second Avenue, North Fargo, North Dakota 58102

District Director, Internal Revenue Service, Federal Building, Second Floor, 301 South Park Avenue, Helena, Montana 59626-0016

District Director, Internal Revenue Service, Federal Building and Court House, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203

District Director, Internal Revenue Service, Federal Office Building, 106 South Fifteenth Street, Omaha, Nebraska 68102

District Director, Internal Revenue Service, 1222 Spruce Street, St. Louis, Missouri 63101

District Director, Internal Revenue Service, Federal Building and Court House, 316 North Robert Street, St. Paul, Minnesota 55101

District Director, Internal Revenue Service, 320 West Washington Street, Springfield, Illinois 62701

Director, Internal Revenue Service Center, PO Box 24551, Kansas City, Missouri 64131

District Director, Internal Revenue Service, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203

District Director, Internal Revenue Service, 68 Sewall Street, Augusta, Maine 04330

District Director, Internal Revenue Service, Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, Albany, New York 12207

District Director, Internal Revenue Service, 120 Church Street, New York, New York 10007

District Director, Internal Revenue Service, 35 Tillary Street, Brooklyn, New York 11201

District Director, Internal Revenue Service, 111 West Huron Street, Buffalo, New York 14202

District Director, Internal Revenue Service, Courthouse Plaza, 119 Main Street, Burlington, Vermont 05401

District Director, Internal Revenue Service, William R. Cotter Federal Building, Stop 204, 135 High Street, Hartford, Connecticut 06103

District Director, Internal Revenue Service, Federal Building, 80 Daniel Street, Portsmouth, New Hampshire 03801

District Director, Internal Revenue Service, 380 Westminster Mall, Providence, Rhode Island 02903

Director, Internal Revenue Service, Stop 100, 310 Lowell Street, Andover, Massachusetts 05501

Director, Internal Revenue Service Center, Stop 100, 1040 Waverly Avenue, Holtsville, New York 11799

District Director, Internal Revenue Service, 401 West Peachtree Street, NW. Atlanta, Georgia 30365

District Director, Internal Revenue Service, 500 Twenty-second Street South, Birmingham, Alabama, 35233

District Director, Internal Revenue Service, 1835 Assembly Street, Columbia, South Carolina 29201

District Director, Internal Revenue Service, 320 Federal Place, Greensboro, North Carolina 27401

District Director, Internal Revenue Service, Suite 504, 100 W. Capitol Street, Suite 504, Jackson, Mississippi 39269

District Director, Internal Revenue Service, Federal Office Building, 400 West Bay Street, Jacksonville, Florida 32202

District Director, Internal Revenue Service, 801 Broadway, Nashville, Tennessee 37203

District Director, Internal Revenue Service, (Stop 6) 700 West Capitol, Little Rock, Arkansas 72201

District Director, Internal Revenue Service, (Stop 6) 501 Magazine Street, New Orleans, Louisiana 70130

District Director, Internal Revenue Service, One University Drive, Building B, Ft. Lauderdale, Florida 33324

Director, Internal Revenue Service Center, 4800 Buford Highway, Chamblee, Georgia 30341

Director, Internal Revenue Service Center, PO Box 30309, Airport Mail Facility, Memphis, Tennessee 38130

District Director, Internal Revenue Service, 5338 Montgomery NE, 3rd Floor, Albuquerque, New Mexico 87109

District Director, Internal Revenue Service, Stop 100D AUS, 300 East Eighth Street, Austin, Texas 78701

District Director, Internal Revenue Service, 1919 Smith Street, Houston, Texas 77002

District Director, Internal Revenue Service, 308 West Twenty-first Street, Cheyenne, Wyoming 82001

District Director, Internal Revenue Service, Stop 1000 DAL, 1100 Commerce Street, Dallas, Texas 75242

District Director, Internal Revenue Service, 600 Seventeenth Street, Stop 1000 DEN, Denver, Colorado 80202-2490

District Director, Internal Revenue Service, 210 East Earll Drive, Sixth Floor, Room 600 Phoenix, Arizona 85012

District Director, Internal Revenue Service, 465 South 400 East, Salt Lake City, Utah 84111

District Director, Internal Revenue Service, 200 NW. Fourth Street, Oklahoma City, Oklahoma 73102

District Director, Internal Revenue Service, 412 South Main Street, Wichita, Kansas 76202

Director, Internal Revenue Service Center, 3651 South Interregional Highway, Austin, Texas 73301

Director, Internal Revenue Service Center, 1160 West 1200 South Street, Ogden Utah 84201

District Director, Internal Revenue Service, 949 East Thirty-sixth Avenue, Anchorage, Alaska 99508

District Director, Internal Revenue Service, Box 041, 550 West Fort Street, Boise, Idaho 83724

District Director, Internal Revenue Service, PJKK Federal Building, 300 Ala Moana, Honolulu, Hawaii 96850

District Director, Internal Revenue Service, 24000 Avila Road, Laguna Niguel, California 92677

District Director, Internal Revenue Service, 300 North Los Angeles Street, Los Angeles, California 90012

District Director, Internal Revenue Service, 1220 SW. Third Avenue, Portland, Oregon 97204

District Director, Internal Revenue Service, 4750 West Oakey Boulevard, Las Vegas, Nevada 89102

District Director, Internal Revenue Service, 4330 Watt Avenue, North Highland, California 95660

District Director, Internal Revenue Service, 1301 Clay Street, South Tower, San Francisco, California 94612

District Director, Internal Revenue Service, 55 South Market Street, San Jose, California 95113

District Director, Internal Revenue Service, 915 Second Avenue, Seattle, Washington, 98174
Director, Internal Revenue Service Center, 5045 East Butler Avenue, Fresno, California 93888

ADDRESSES OF CHIEF COUNSEL, REGIONAL COUNSEL, DISTRICT COUNSEL, AND REGIONAL DIRECTOR OF APPEALS OFFICES

National Office:
Office of the National Director of Appeals, Internal Revenue Service, 901 D Street, SW., Box 68, Washington, DC 20024
Office of the Assistant Chief Counsel (Criminal Tax), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (Disclosure Litigation), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (General Legal Services), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (General Litigation), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (Income Tax and Accounting), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (Field Services), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224
Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Litigation), (Domestic), (International), Finance and Management) and (Employee Benefits and Exempt Organizations), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224

Regional Counsel Offices

Northeast Region:
Regional Counsel's Office, IRS, North-Atlantic Region, 7 World Trade Center, Twenty-fifth floor, New York, New York 10048

Southeast Region:
Regional Counsel's Office, IRS, 401 West Peachtree Street, Suite 2110-Stop 180-R, Atlanta, Georgia 30365

Midstates Region:
Regional Counsel's Office, IRS, 4050 Alpha Road, 14th Floor, Dallas, Texas 75244-4203

Western Region:
Regional Counsel's Office, IRS, Room 514, 1650 Mission Street, San Francisco, California 94103

Regional Director of Appeals

Northeast Region
Regional Director of Appeals, IRS, 90 Church Street, Room 1003 New York NY 10007

Southeast Region
Regional Director of Appeals, IRS, 625 Federal Office Building, Suite 2118, 401 West Peachtree Street, NW., Atlanta, Georgia 30365

Midstates Region
Regional Director of Appeals, IRS, 4050 Alpha Road, Fourteenth Floor, Dallas, Texas 75244-4203

Western Region
Regional Director of Appeals, IRS, Room 515, 1650 Mission Street, San Francisco, California 94103.

District Counsel Offices

District Counsel's Office, IRS, 7 World Trade Center, Twenty-fourth Floor, New York, New York 10048
District Counsel's Office, IRS, Leo W. O'Brien Federal Building, Clinton Avenue and N. Pearl Street, Albany, New York 12207
District Counsel's Office, IRS, 10 Causeway Street, Room 401, Boston, Massachusetts 02222-1061
District Counsel's Office, IRS Brooklyn Office, 1600 Stewart Avenue, Suite 601, Uniondale, New York 11590
District Counsel's Office, IRS, 28 Church Street, Guaranty Building, Suite 500, Buffalo, New York 14202
District Counsel's Office, IRS, 333 East River Drive, Suite 200, Commerce Center One, Hartford, Connecticut 06108
District Counsel's Office, IRS, Room 10424, 600 Arch Street, Philadelphia, Pennsylvania 19106
District Counsel's Office, IRS, Room 4100, 101 West Lombard Street, Baltimore, Maryland 21201
District Counsel's Office, IRS, Room 904, 970 Broad Street, Newark, New Jersey 07102
District Counsel's Office, IRS, 1001 Liberty Center,Room 601 C, Pittsburgh, Pennsylvania 15222
District Counsel's Office, IRS, 2727 Enterprise Parkway, First Floor, Richmond, Virginia 23240
District Counsel's Office, IRS, 4620 Wisconsin Avenue, NW., Fourth Floor, Washington, DC 20016
District Counsel's Office, IRS, Suite 1400, 401 West Peachtree Street, NW., Atlanta, Georgia 30365
District Counsel's Office, IRS, Room 340, 500 Twenty-second Street, South, Birmingham, Alabama 35233
District Counsel's Office, IRS, Room 509, 320 Federal Place, Greensboro, North Carolina 27401
District Counsel's Office, IRS, Box 35027, Federal Office Building, 400 West Bay Street, Room 564, Jacksonville,Florida 32202
District Counsel's Office, IRS, Room 1114, Federal Office Building, 51 SW First Avenue, Miami, Florida 33130
District Counsel's Office, IRS, Room 703, U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203-3814
District Counsel's Office, IRS, 917 Hale Boggs Building, 501 Magazine Street, New Orleans, Louisiana 70130
District Counsel's Office, IRS, Room 7525, John Weld Peck Federal Building 550 Main Street, Cincinnati, Ohio 45202
District Counsel's Office, IRS, Suite 810, One Cleveland Center, 1375 East, Ninth Street, Cleveland, Ohio 44114
District Counsel's Office, IRS, 1870 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226
District Counsel's Office, IRS, 513 Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204
District Counsel's Office, IRS, Suite 1100 Heyburn Building, 332 West Broadway, Louisville, Kentucky 40202
District Counsel's Office, IRS, 219 South Dearborn Street, Room 1342, Chicago, Illinois 60604
District Counsel's Office, IRS, 439 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309
District Counsel's Office, IRS, Room 242, Federal Building, 301 South Park Avenue, Helena, Montana 59626
District Counsel's Office, IRS, 2700 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106
District Counsel's Office, IRS, 760 Henry Reuss Federal Plaza, Suite 760, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203
District Counsel's Office, IRS, 3101 Federal Building, 215 North Seventeenth Street, Omaha, Nebraska 68101
District Counsel's Office, IRS, Room 720, 320 West Washington Street, Springfield, Illinois 62701
District Counsel's Office, IRS, Third Floor, Chouteau Center, 133 S. Eleventh Street, St. Louis, Missouri 63102
District Counsel's Office, IRS, Galtier Plaza, Suite 650, 175 East Fifth Street, St. Paul, Minnesota 55101
District Counsel's Office, IRS, 5338 Montgomery NE Suite 400, Albuquerque, New Mexico 87109
District Counsel's Office, IRS, Room 601, 300 East Eighth Street, Austin, Texas 78701
District Counsel's Office, IRS, Room 12A24, Stop 2000 DAL, 1100 Commerce Street, Dallas, Texas 75242
District Counsel's Office, IRS, Suite 500, 1244 Speer Boulevard, Denver, Colorado 80204
District Counsel's Office, IRS, Suite 350, 10850 Richmond Avenue, Houston, Texas 77042-4775
District Counsel's Office, IRS, Suite 320, 500 West Main, Oklahoma City, Oklahoma 73102
District Counsel's Office, IRS, Suite 1500, 3225 N. Central Avenue, Phoenix, Arizona 85012
District Counsel, IRS, Room 131, Wallace F. Bennett Federal Building, 125 South State Street, Salt Lake City, Utah 84138
District Counsel's Office, IRS, Room 607, 949 East Thirty-sixth Avenue, Anchorage, Alaska 99508
District Counsel's Office, IRS, Box 024, 550 West Fort Street, Boise, Idaho 83724
District Counsel's Office, IRS,7119 PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850
District Counsel's Office, IRS, Fourth Floor, Chet Holifield Building, 24000 Avila Road, Laguna Niguel, California 92656
District Counsel's Office, IRS, 4750 Oakey, Suite 403, Las Vegas, Nevada 89102
District Counsel's Office, IRS, 3018 Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012
District Counsel's Office, IRS, 222 SW. Columbia, Suite 450, Portland, Oregon 97201
District Counsel's Office, IRS, 4330 Watt Avenue, Suite 470, North Highlands, California 95660
District Counsel's Office, IRS, Suite 901, 701 B Street, San Diego, California 92101
District Counsel's Office, IRS, Room 504, 160 Spear Street, San Francisco, California 94105
District Counsel's Office, IRS, Suite 505, 55 South Market Street, San Jose, California 95113
District Counsel's Office, IRS, 2710 Federal Building, 915 Second Avenue, Seattle, Washington 98174
District Counsel's Office, IRS, 950 Hampshire Road, East Pavilion, Thousand Oaks, California 91361

BILLING CODE: 4830-01-F

United States Mint

Treasury/U.S. Mint .001

SYSTEM NAME:

Cash Receivable Accounting Information System — Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; United States Mint, 155 Hermann Street, San Francisco, CA 94102; United States Mint, West Point, NY 10996; United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States Mint and the general public who have: (a) Served on jury duty when employed by the United States Mint; (b) Paid for lost Government property belonging to the Mint; (c) Purchased numismatic items from Mint sales outlets; and (d) Have obtained travel advances.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Receivables due from Mint employees, former employees and general public for lost Government property, salary overpayments, and cash sales of over–the–counter numismatic items; and (2) Receivables due from Mint employees and former employees who have outstanding travel advances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5537 and 31 U.S.C. 5111 (a)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Accounting offices, managers, supervisors and government officials pertaining to cash receivables and debts owed the Government; (2) appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (3) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (5) foreign governments in accordance with formal or informal international agreements; (6) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (9) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

Name or number substitute.

SAFEGUARDS:

Storage in filing cabinets with access by authorized accounting personnel.

RETENTION AND DISPOSAL:

General records control schedule, GAO rules and regulations, United States Mint Records Control Schedule. Records are destroyed in accordance with National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; Financial Manager, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; Financial Manager, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Financial Manager, United States Mint, 155 Hermann Street, San Francisco, CA 94102; Chief, Accounting Division, United States Mint, West Point, NY 10996; Administrative Officer, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Refer to System manager(s) and address. An employee or former employee is required to show an identification such as: (a) Employee identification; (b) Driver's license; (c) Other means of identification, including social security number and date of birth.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, Room 715, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

U.S. Mint employees and appropriate agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .002

SYSTEM NAME:

Current Employee Security Identification Record — Treasury/ United States Mint.

SYSTEM LOCATION:

United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; United States Mint, 155 Hermann Street, San Francisco, CA 94102; United States Mint, West Point, NY 10996; United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current United States Mint employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security information system is used to verify proper admittance to restricted areas within the Mint facilities. The card record (Mint Form 8925) provides the name of the employee, date and place of birth, descriptive data on height, weight, hair and eyes; office and division in which employed; along with photograph and signature of the employee. The record also indicates approval by facility management for the issuance of personal identification to the employee, which is subsequently carried by the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 318–318c.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (3) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (4) foreign governments in accordance with formal or informal international agreements; (5) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are 5" x 8" cards filed in Kardex Binder or circular–type index system; or computerized database management system.

RETRIEVABILITY:

Alphabetical by name.

SAFEGUARDS:

Maintained in secure area by security officers.

RETENTION AND DISPOSAL:

Records are retained until separation of the employee and are destroyed upon termination in accordance with National Archives and Records Administration rules and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer (Coordinator), Treasury Department, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; Security Officer (Facility Manager), United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; Security Officer (Facility Manager), United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Security Officer (Facility Manager), United States Mint, 155 Hermann Street, San Francisco, CA 94102; Security Officer (Facility Manager), United States Mint, West Point, NY 10996; Security Officer (Facility Manager), United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Refer to System manager(s) and address. An employee is free to examine his card record upon request, after properly identifying himself as the subject of record. The following are used as proof of identity: (a) Employee identification; (b) Driver's license; and (c) Other acceptable identifying documents.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, Room 715, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

Personal information provided by the employee and identification approval by management staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .003

SYSTEM NAME:

Employee and Former Employee Travel and Training Accounting Information System — Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; United States Mint, 155 Hermann Street, San Francisco, CA 94102; United States Mint, West Point, NY 10996; United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States Mint who have engaged in travel and training.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) SF 1166 Voucher and Schedule of Payments with supporting documents such as: (a) SF 1012 Travel Voucher; (b) SF 1028 Application and Account for Advance of Funds; (2) Travel Authorities; (3) Government Travel Request SF 1169; (4) SF–182, Request, Authorization, Agreement and Certification of Training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 41 and 57.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Accounting offices, managers, supervisors and government officials pertaining to cash receivables and debts owed the Government; (2) appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (3) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (5) foreign governments in accordance with formal or informal international agreements; (6) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (9) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

Name or number substitute (social security number, authority number)

SAFEGUARDS:

Stored in filing cabinets with access by authorized accounting personnel.

RETENTION AND DISPOSAL:

General Records Control Schedule, GAO rules and regulations, United States Mint Records Control Schedule are destroyed in accordance with National Archives and Records Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; Financial Manager, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; Financial Manager, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Financial Manager, United States Mint, 155 Hermann Street, San Francisco, CA 94102; Chief, Accounting Division, United States Mint, West Point, NY 10996; Administrative Officer, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Refer to System manager(s) and address. An employee or former employee is required to show an identification such as: (a) Employee identification; (b) Driver's license; and (c) Other means of identification including social security number and date of birth.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, Room 715, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

United States Mint employees and appropriate agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .004

SYSTEM NAME:

Occupational Safety and Health, Accident and Injury Records, and Claims for Injuries or Damage Compensation Records — Treasury/ United States Mint.

SYSTEM LOCATION:

Location and Category of Records Maintained: United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220 — Accident/Injury/Illness Records, Vehicle Accident, and Claims against the Government; United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106 — Accident/ Injury/Illness Records, Motor Vehicle Accident Data, Claims against the Government, Safety Equipment Logs, and Operators Training/Licensing; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Accident/ Injury/Illness Records, Motor Vehicle Accident Data, Claims against the Government, Safety Equipment Logs, and Operators Licensing; United States Mint, 155 Hermann Street, San Francisco, CA 94102; Accident/Injury/ Illness Records, Motor Vehicle Accident Data, Claims against the Government, Safety Equipment Logs, and Operators Training/ Licensing; United States Mint, West Point, NY 10996; Accident/Injury/ Illness Records, Motor Vehicle Accident Data, Claims against the Government, and Safety Equipment Logs; United States Bullion Depository, Fort Knox, KY 40121; Accident/Injury/Illness Records, Motor Vehicle Accident Data, and Claims against the Government.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Mint employees, former employees and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Refer to System location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Ch. 81; 29 U.S.C. 668; 29 CFR part 1910; E.O. 12196, 28 U.S.C. 2680 et seq; 31 U.S.C. 3701 and 3721; and 31 CFR parts 3 and 4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (3) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (4) foreign governments in accordance with formal or informal international agreements; (5) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) third parties during the

course of an investigation to the extent necessary to obtain information pertinent to the investigation; (8) physicians providing medical services or advice to Mint management and/or employees, or to private physicians of Mint employees, for the purpose of assisting in making medical diagnoses or treatment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked file cabinets available to authorized personnel only.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Records Control Schedules; DOL, OSHA; EPA; and United States Mint Records Control Schedules; are destroyed in accordance with National Archives and Records Administration rules and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Human Resources, Treasury Department, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; Personnel Officer and Safety Officer, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; Personnel Officer, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Personnel Officer, United States Mint, 155 Hermann Street, San Francisco, CA 94102; Administrative Officer, United States Mint, West Point, NY 10996; Administrative Officer, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Refer to System manager(s) and address. An employee or former employee is required to show an identification such as: (a) Employee identification; (b) Driver's license; and (c) Other means of identification, including social security number and date of birth.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, Room 715, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

Employees, supervisors, medical staff, general public, and visitors to the facilities of the United States Mint.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .005

SYSTEM NAME:

Employee – Supervisor Performance Evaluation, Counseling and Time and Attendance Records — Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, 155 Hermann Street, San Francisco, CA 94102; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; United States Mint, West Point, NY; United States Bullion Depository, Fort Knox, KY 40121; and United States Mint, Customer Service Center, Matland Building, 10001 Aerospace Road, Lanham, MD 20706.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Mint employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information necessary for managers and supervisors to effectively carry out supervisory responsibilities. Included are such records as: Copies of personnel actions, performance appraisal including production and control, disciplinary actions, overtime reports, tardiness reports, work assignments, training reports, applications for employment, home addresses, leave reports, employee awards. (Supervisors maintain varying combinations of the above records. Some supervisors may maintain all or none of the above records depending upon the nature and size of the operation or organization and the number of individuals supervised.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and FPM Supplement 990 – 1, Section 3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (3) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (4) foreign governments in accordance with formal or informal international agreements; (5) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE.

Paper documents maintained in folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in file cabinets and desks of supervisors.

RETENTION AND DISPOSAL:

Retained as long as employee is under their supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate and Assistant Directors and Director's Staff, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220, and Customer Service Center, Matland Building, 10001 Aerospace Road, Lanham, MD 20706; Superintendent, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; Superintendent, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Superintendent, United States Mint, 155 Hermann Street, San Francisco, CA 94102; Superintendent, United States Mint,

West Point, NY 10996; Officer–in–Charge, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Refer to System manager(s) and address. Employee or former employee is required to show identification such as: identification card, driver's license.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, Room 715, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

Employees, previous employers, and appropriate agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .007

SYSTEM NAME:

General Correspondence — Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, Judiciary Square, 633 3rd Street, NW, Washington, DC 20220

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public, Members of Congress, Mint officials and officials from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence and replies pertaining to the mission, function and operation of the United States Mint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5131 and 5132.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (3) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (4) foreign governments in accordance with formal or informal international agreements; (5) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

By name (limited retrievability by subject and/or control number)

SAFEGUARDS:

Maintained in limited access area available only to appropriate agency officials.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration's General Records Control Schedule and the United States Mint Records Control Schedule. Destroyed in accordance with National Archives and Records Administration regulation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Executive Secretariat, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Refer to System Manager for addresses to which inquiries may be addressed and addresses at which the individual may present a request as to whether a system contains records pertaining to himself/herself. The individual must supply his/her name.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

The general public, Members of Congress and Federal officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .008

SYSTEM NAME:

Criminal Investigations Files — Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mint employees and members of the public suspected of criminal misconduct against the United States Mint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, location of Mint facility, and reports by security personnel of the U.S. Mint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 18 U.S.C.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (3) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (4) foreign governments in accordance with formal or informal international agreements; (5) a congressional office in

response to an inquiry made at the request of the individual to whom the record pertains; (6) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Files are kept in a locked metal file cabinet in an area accessible to authorized agency officials.

RETENTION AND DISPOSAL:

Retained in accordance with United States Mint Records Control Schedule; are destroyed in accordance with National Archives and Records Administration rules and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Mint Security Office, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220.

NOTIFICATION PROCEDURES:

Refer to System manager(s) and address.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, Room 715, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

United States Mint and other law enforcement officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

As authorized by 5 U.S.C. 552a (j) and (k); this system is exempt from the following provisions, subsections (c)(3), (d), (e)(1); (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a.

Treasury/U.S. Mint .009

SYSTEM NAME:

Numismatic Coin Operations System (NUCOS) Records; Customer Mailing List, Order Processing Record for Coin Sets, Medals and Numismatic Items, and records of undelivered orders — Treasury/Mint.

SYSTEM LOCATION:

United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220 and Customer Service Center, Matland Building, 10001 Aerospace Road, Lanham, MD 20706.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, order history of customers purchasing numismatic items and of individuals who wish to receive notification of numismatic offerings by the Mint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5111, 5112, 5132 and 31 CFR part 92.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Accounting offices, managers, supervisors and government officials pertaining to cash receivables and debts owed the Government; (2) appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (3) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (4) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (5) foreign governments in accordance with formal or informal international agreements; (6) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (7) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (8) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, discs, paper and cards:

RETRIEVABILITY:

Name, customer number or order number.

SAFEGUARDS:

CRT, password protection; only designated persons may request computer generated reports. Access to any information pertaining to any individual is limited to only those individuals requiring the information to accommodate handling of transactions with the customers. Separation of functions; source documents maintained in one division and programming systems in another.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration General Records Control Schedule and the United States Mint Records Control Schedule; are destroyed in accordance with National Archives and Records Administration regulations. Customer names and addresses are maintained as long as they are active.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Marketing, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Refer to System manager(s) and address. Individuals should supply order number as provided on order card or copy of both sides of canceled check; customer number which appears on pre–printed order cards or on face of check.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Executive Secretariat, United States Mint, Judiciary Square Building, Room 715, 633 3rd Street, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

Members of the public and appropriate government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/U.S. Mint .012

SYSTEM NAME:

Grievances. Union/Agency Negotiated Grievances; Adverse Performance Based Personnel Actions; Discrimination Complaints; Third Party Actions — Treasury/United States Mint.

SYSTEM LOCATION:

United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220; United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106; United States Mint, 320 West Colfax Avenue, Denver, CO 80204; United States Mint, 155 Hermann Street, San Francisco, CA 94102; United States Mint, West Point, NY 10996; United States Bullion Depository, Fort Knox, KY 40121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States Mint.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to employee grievances filed under provisions of negotiated grievance procedures, administrative grievance procedures, adverse action procedures, performance based action procedures, and discrimination complaint procedures, including decision of appropriate third parties where applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7701 and 7702; 5 U.S.C. Ch. 75; and 5 U.S.C. Ch. 71. Executive Orders 11491, 11616, 11636, 11838, 11901, 12027, 12107; 29 CFR part 1613; negotiated agreements between the United States Mint and exclusively recognized labor unions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to disclose information to: (1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (3) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court–ordered subpoena, or in connection with criminal law proceedings; (4) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders or binders.

RETRIEVABILITY:

These records are filed by the names of the individuals on whom they are maintained or by the subject of the action.

SAFEGUARDS:

Access to and use of these records are limited to those agency officials whose official duties require such access.

RETENTION AND DISPOSAL:

Retained in accordance with the United States Mint Records Control Schedules; are destroyed in accordance with National Archives and Records Administration rules and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

For current and former employees: Assistant Director for Human Resources, United States Mint, Department of the Treasury, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220. Personnel Officer, United States Mint, 151 North Independence Mall East, Philadelphia, PA 19106. Personnel Officer, United States Mint, 320 West Colfax Avenue, Denver, CO 80204. Personnel Officer, United States Mint, 155 Hermann Street, San Francisco, CA 94102. Administrative Officer, United States Mint, West Point, NY 10996. Administrative Officer, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Individuals who have filed an action are provided a copy of the record. They may, however, contact the System Manager indicated above regarding the existence of such records pertaining to them. It is necessary to furnish information sufficient to verify the identity of the requester such as full name, date of birth, a brief description of the grievance and the approximate date of submission.

RECORD ACCESS PROCEDURES:

Individuals who have filed a grievance, appeal, or complaint about a decision or determination made by an agency or about conditions existing in an agency already have been provided a copy of the record. The contest, amendment, or correction of a record is permitted during the prosecution of the action to whom the record pertains. However, after a case has been closed, an individual may gain access to, or contest the official copy of the grievance record by writing the appropriate System Manager indicated above. Individuals should provide name, date of birth, a brief description of the action and the approximate date of submission.

CONTESTING RECORD PROCEDURES:

Refer to "Record access procedures."

RECORD SOURCE CATEGORIES:

The sources of these records are as follows: (a) Individual to whom the record pertains; (b) Agency officials; (c) Affidavits or statements from employee(s); (d) Testimonies of witnesses; (e) Official documents and correspondence relating to the grievance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BILLING CODE: 4810–37–F

Bureau of the Public Debt

Treasury/BPD .001

SYSTEM NAME:

Personnel and Administrative Records—Treasury/BPD.

SYSTEM LOCATION:

Records are maintained at the following Bureau of the Public Debt locations: 200 Third Street, Parkersburg, WV 26106; Park Center, 90 Park Center, Parkersburg, WV 26101; H.J. Hintgen Building, 2nd and Avery Streets, Parkersburg, WV 26102; 999 E Street, NW, Washington, DC 20239; 300–13th Street, SW, Washington, DC 20239; and 800 K Street, NW, Washington, DC 20226. Copies of some documents have been duplicated for maintenance by

supervisors for employees or programs under their supervision. These duplicates are also covered by this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover present and former employees, applicants for employment, contractors, vendors, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following categories of records. This system of records is limited to those records Public Debt needs to function in an efficient manner and does not cover those records reported under another system of records notice.

(A) PERSONNEL RECORDS: (1) Employee and Labor Relations Records. These records relate to disciplinary and adverse actions, leave and hours of duty, alternate work schedules, standards of conduct and ethics programs, indebtedness, employee suitability and security determinations, grievances, performance problems, bargaining unit matters, Federal labor relations issues, relocation notices, and outside employment. (2) Employment and Classification Records. These records relate to recruitment; placement; merit promotion; special hiring programs, including Summer Employment, Veterans Readjustment, Career Development for Lower Level Employees (CADE), Co–operative Education; position classification and management; special areas of pay administration, including grade and pay retention, premium pay, scheduling of work, and performance management and recognition. (3) Employee Development and Services Records. These records relate to Public Debt's training and employee development programs, performance management programs, incentive awards, and benefits and retirement programs. (4) Personnel/Payroll Systems Records. These records relate to personnel and payroll actions, insurance, worker's and unemployment compensation, employee orientation, retirement, accident reports, and consolidation of personnel/program efforts among offices. (5) Equal Employment Opportunity Records. These are records of informal EEO complaints and discussions which have not reached the level of formal complaints. After 30 days these records are destroyed or incorporated in a formal complaint file. Formal complaints are handled by the Treasury Department's Regional Complaints Center. Copies of formal complaint documents are sometimes maintained by Public Debt's EEO Office.

(B) ADMINISTRATIVE RECORDS: (1) Administrative Services Records. These records relate to administrative support functions including motor vehicle operation, safety, access to exterior and interior areas, contract guard records, offense/incident reports, accident reports, and security determinations. (2) Procurement Records. These records relate to contractors/vendors if they are individuals; purchase card holders, including the name and credit card number for employees who hold Government–use cards; procurement integrity certificates, containing certifications by procurement officials that they are familiar with the Federal Procurement Policy Act. (3) Financial Management Records. These records relate to travel by employees and account information for vendors and contractors who are individuals. (4) Retiree Mailing Records. These records contain the name and address furnished by Public Debt retirees requesting mailings of newsletters and other special mailings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

PURPOSE(S):

These records are collected and maintained to document various aspects of a person's employment with the Bureau of the Public Debt and to assure the orderly processing of administrative actions within the Bureau.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records and information in these records may be disclosed as a routine use to: (1) the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority upon authorized request; (2) other Federal, State, or local agencies, such as a State employment compensation board or housing administration agency, so that the agency may adjudicate an individual's eligibility for a benefit, or liability in such matters as child support; (3) creditors, potential creditors, landlords, and potential landlords when they request employment data or salary information for purposes of processing the employee's loan, mortgage, or apartment rental application (when information is requested by telephone, only verification of information supplied by the caller will be provided); (4) next-of-kin, voluntary guardians, and other representative or successor in interest of a deceased or incapacitated employee or former employee; (5) unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, arbitrators, and other parties responsible for the administration of the Federal labor–management program if needed in the performance of their authorized duties; (6) private creditors for the purpose of garnishing wages of an employee if a debt has been reduced to a judgment; (7) authorized Federal and non–Federal entities for use in approved computer matching efforts, limited to those data elements considered necessary in making a determination of eligibility under particular benefit programs administered by those agencies or entities, to improve program integrity, and to collect debts and other monies owed to those agencies or entities or to the Bureau of the Public Debt; (8) contractors of the Bureau for the purpose of processing personnel and administrative records; (9) other Federal, State, or local agencies in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the issuance of a license, contract, grant, or other benefit; (10) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains; (11) other Federal agencies to effect salary or administrative offset for the purpose of collecting a debt, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; (12) consumer reporting agencies, including mailing addresses obtained from the Internal Revenue Service to obtain credit reports; (13) debt collection agencies, including mailing addresses obtained from the Internal Revenue Service, for debt collection services; (14) appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (15) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena; (16) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debtor information is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microform, and electronic media.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign–on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or burning. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Records: Director, Division of Personnel Management, 200 Third Street, Parkersburg, WV 26106–1328.

Equal Employment Opportunity Records: Equal Employment Opportunity Manager, 200 Third Street, Parkersburg, WV 26106–1328.

Administrative Services Records: Director, Administrative Services Division, 200 Third Street, Parkersburg, WV 26106–1328.

Procurement Records: Director, Division of Procurement, 200 Third Street, Parkersburg, WV 26106-1328.

Financial Management Records: Director, Division of Financial Management, 200 Third Street, Parkersburg, WV 26106–1328.

Retiree Mailing Records: Director, Division of Data Services, 200 Third Street, Parkersburg, WV 26106–1328.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under "Records Access Procedures." Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) The request should be submitted to the appropriate office as shown under "System Managers and Addresses" above. The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity. (2) The initial request should be submitted to the appropriate office as shown under "System Managers and Addresses" above. (3) The request should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons. (4) The request must include available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed to, or delivered personally to: Chief Counsel, Bureau of the Public Debt, 999 E Street, NW, Room 503, Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked "Privacy Act Amendment Appeal" and specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the subject of the record, authorized representatives, supervisors,

employers, medical personnel, other employees, other Federal, State, or local agencies, and commercial entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BPD .002

SYSTEM NAME:

United States Savings Type Securities.

SYSTEM LOCATION:

Bureau of the Public Debt: Washington, DC; Parkersburg, WV. Federal Reserve Banks and Branches located at: Atlanta, GA; Baltimore, MD; Birmingham, AL; Boston, MA; Buffalo, NY; Charlotte, NC; Chicago, IL; Cincinnati, OH; Cleveland, OH; Dallas, TX; Denver, CO; Detroit, MI; El Paso, Tx; Houston, TX; Jacksonville, FL; Kansas City, MO; Little Rock, AR; Los Angeles, CA; Louisville, KY; Memphis, TN; Miami, FL; Minneapolis, MN; Nashville, TN; New Orleans, LA; New York, NY; Oklahoma City, OK; Omaha, NE; Philadelphia, PA; Pittsburgh, PA; Portland, OR; Richmond, VA; Salt Lake City, UT; San Antonio, TX; San Francisco, CA; Seattle, WA; and St. Louis, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former owners of, claimants to, persons entitled to, and inquirers concerning United States savings–type securities and interest thereon—including, but not limited to, United States Savings Bonds, Savings Notes, Retirement Plan Bonds, and Individual Retirement Bonds.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Issuance: Records relating to registration, issuance, and correspondence in connection with issuance of savings–type securities. This category includes records of current income savings bonds processed under an automated system which will permit access by selected Federal Reserve Banks and Branches. (2) Holdings: Records documenting ownership, status, payments by date and account numbers, and inscription information; interest activity; correspondence in connection with notice of change of name and address; non–receipt or over– or underpayments of interest and principal; and numerical registers of ownership. Such records include information relating to savings–type securities held in safekeeping in conjunction with the Department's program to deliver such securities to the owners or persons entitled. This category includes records of current income savings bonds processed under an automated system which will permit access by selected Federal Reserve Banks and Branches. (3) Transactions (redemptions, payments, and reissues): Records, which include securities transaction requests; interest activity; legal papers supporting transactions; applications for disposition or payment of securities and/or interest thereon of deceased or incapacitated owners; records of retired securities; and payment records. This category includes records of current income savings bonds processed under an automated system which will permit access by selected Federal Reserve Banks and Branches. (4) Claims: Records including correspondence concerning lost, stolen, destroyed or mutilated savings–type securities; bonds of indemnity; legal documents supporting claims for relief; and records of caveats entered. (5) Inquiries: Records of correspondence with individuals who have requested information concerning savings-type securities and/or interest thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3101, et seq. and 5 U.S.C. 301.

PURPOSE(S):

Information in this system of records is collected and maintained to enable Public Debt and its agents to issue savings bonds, to process transactions, to make payments, and to identify owners and their accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record or information from a record maintained in this system of records may be disclosed as a routine use to: (1) Agents or contractors of the Department for the purpose of administering the public debt of the United States; (2) next-of-kin, voluntary guardian, legal representative or successor in interest of a deceased or incapacitated owner of securities and others entitled to the reissue, distribution, or payment for the purpose of assuring equitable and lawful disposition of securities and interest; (3) either co–owner for bonds registered in that form or to the beneficiary for bonds registered in that form, provided that acceptable proof of death of the owner is submitted; (4) the Internal Revenue Service for the purpose of facilitating collection of the tax revenues of the United States; (5) the Department of Justice in connection with lawsuits to which the Department of the Treasury is a party or to trustees in bankruptcy for the purpose of carrying out their duties; (6) the Veterans Administration and selected veterans publications for the purpose of locating owners or other persons entitled to undeliverable bonds held in safekeeping by the Department; (7) other federal agencies to effect salary or administrative offset for the purpose of collecting debts; (8) a consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports; (9) a debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services; (10) contractors conducting Treasury–sponsored surveys, polls, or statistical analyses relating to the marketing or administration of the public debt of the United States; (11) appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (12) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena; (13) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (14) disclose through computer matching information on individuals owing debts to the Bureau of the Public Debt to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset; (15) disclose through computer matching information on holdings of savings–type securities to requesting Federal agencies under approved agreements limiting the information to that which is relevant in making a determination of eligibility for Federal benefits administered by those agencies; and (16) disclose through computer matching; information on individuals with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Debtor information is also furnished, in accordance with 5 U.S.C. 552a (b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in their original form in file cabinets, or as information in electronic media, or on microform.

RETRIEVABILITY:

Information can be retrieved alphabetically by name, address, and period of time security was issued, by bond serial numbers, or, in some cases, numerically by social security number. In the case of securities, except Series G savings bonds, registered in more than one name, information relating thereto can be retrieved only by the name, or, in some cases, the social security number of the first–named co–owner. In the case of gift bonds inscribed with the social security number of the purchaser, bonds are retrieved under that number, or by bond serial number.

SAFEGUARDS:

Information is contained in secure buildings or in areas which are occupied either by officers and responsible employees of Public Debt who are subject to personnel screening procedures and to the Treasury Department Code of Conduct or by agents of Public Debt who are required to maintain proper control over records while in their custody. Additionally, since in most cases, numerous steps are involved in the retrieval process, unauthorized persons would be unable to retrieve information in meaningful form. Information stored in electronic media is safeguarded by automatic data processing security procedures in addition to physical security measures. Additionally, for those categories of records stored in computers with on–line terminal access, the information cannot be accessed without proper passwords and preauthorized functional capability.

RETENTION AND DISPOSAL:

Records of holdings, forms, documents, and other legal papers which constitute the basis for transactions subsequent to original issue are maintained for such time as is necessary to protect the legal rights and interests of the United States Government and the persons affected, or otherwise until they are no longer historically significant. Other records are disposed of at varying intervals in accordance with records retention schedules reviewed and approved by the National Archives and Records Administration (NARA). All records are destroyed by shredding, incineration, or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Savings Bond Operations Office, Parkersburg, WV 26106–1328.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination if the system contains records pertaining to them or for access to records as provided under "Record Access Procedures." Contesting records procedures or requests for correction of records and appeals from an initial denial of a request for correction of records may be submitted as provided under the applicable heading below.

RECORD ACCESS PROCEDURES:

Individuals who wish to request access to records relating to them or who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

(1) Requests by individuals about securities they own: (a) For current income savings bonds: Individuals may make inquiries at a Federal Reserve Bank or Branch or directly to the Bureau of the Public Debt, Savings Bond Operations Office, Division of Transactions and Rulings, Parkersburg, WV 26106–1328, (304) 480-6112. If the particular Federal Reserve Bank or Branch cannot access the particular record, the individual will be advised to contact the Savings Bond Operations Office. Individuals should provide sufficient information, including their address and social security number, to identify themselves as owner or coowner of the securities. They should provide sufficient information to identify the securities; this would include the series, approximate date of issue, serial number, form of registration, and, except for Series G Savings Bonds registered in coownership form, the name and social security number of the first–named coowner. If a Case Identification Number is known, that should be provided. (b) For all other types of securities covered by this system of records: Individuals should contact the following: Bureau of the Public Debt, Savings Bond Operations Office, Division of Transactions and Rulings, Parkersburg, WV 26106–1328, (304) 480-6112. Individuals should provide sufficient information, including their address and social security number, to identify themselves as owner or coowner of the securities. Individuals should provide sufficient information to identify the securities, such as type or series of security, approximate date of issue, serial number, form of registration, and the name and social security number of the first–named coowner, or in the case of gift bonds the social security number of the purchaser if that number was used.

(2) Requests by anyone other than individuals about securities they own must contain sufficient information to identify the securities; this would include type or series of securities, approximate date of issue, serial number, and form of registration. These requests will be honored only if the identity and right of the requester to the information have been established. Requests should be sent to the following: Bureau of the Public Debt, Savings Bond Operations Office, Division of Transactions and Rulings, Parkersburg, WV 26106–1328, (304) 480-6112. (a) Requests by a beneficiary for information concerning securities registered in beneficiary form must be accompanied by the name and social security number of the owner and by proof of death of the registered owner. (b) Requests for records of holdings or other information concerning a deceased or incapacitated individual should be accompanied either by evidence of the requester's appointment as legal representative of the estate of the individual or by a statement attesting that no such representative has been appointed and giving the nature of the relationship between the requester and the individual.

CONTESTING RECORD PROCEDURES:

(1) A request by an individual contesting the content of records or for correction of records should be in writing, be signed, and clearly state that the request is made pursuant to the Privacy Act of 1974.

(2) The request for correction should specify: (a) The dates of the prior correspondence concerning the records in question; (b) the specific records alleged to be incorrect; (c) the correction requested; and (d) the reasons therefor.

(3) The request must include any available evidence in support of the request.

(4) The request for correction should be sent to: Director, Division of Transactions and Rulings, Savings Bond

Operations Office, Bureau of the Public Debt, Parkersburg, WV 26106–1328, (304) 480–6112.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, be signed by the individual involved and clearly state that it is made pursuant to the Privacy Act of 1974. (2) All appeals must, to be processed under the Privacy Act procedures, be delivered to the address set forth for submission of appeals within 35 days of the individual's receipt of the initial denial of the requested correction. (3) All appeals must specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that initial denial of the request for correction was received. (4) All appeals must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

(5) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed to, or delivered personally to the following: Privacy Act Amendment Appeal, Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 999 E Street, Room 503, Washington, DC 20239–0001, or as otherwise provided in the applicable appendix to 31 CFR part 1, subpart C.

RECORD SOURCE CATEGORIES:

Information on records in this system is furnished by the individuals or their authorized representatives as listed in "Categories of Individuals" and issuing agents for securities or is generated within the system itself.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BPD .003

SYSTEM NAME:

United States Securities (Other than Savings Type Securities) — Treasury/BPD.

SYSTEM LOCATION:

Bureau of the Public Debt: Washington, DC; Parkersburg, WV; Federal Reserve Banks and Branches located at: Atlanta, GA; Baltimore, MD; Birmingham, AL; Boston, MA; Buffalo, NY; Charlotte, NC; Chicago, IL; Cincinnati, OH; Cleveland, OH; Dallas, TX; Denver, CO; Detroit, MI; El Paso, TX; Houston, TX; Jacksonville, FL; Kansas City, MO; Little Rock, AR; Los Angeles, CA; Louisville, KY; Memphis, TN; Miami, FL; Minneapolis, MN; Nashville, TN; New Orleans, LA; New York, NY; Oklahoma City, OK; Omaha, NE; Philadelphia, PA; Pittsburgh, PA; Portland, OR; Richmond, VA; Salt Lake City, UT; San Antonio, TX; San Francisco, CA; Seattle, WA; and St. Louis, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former owners of, subscribers to, claimants to, persons entitled to, and inquirers concerning United States Treasury securities (except savings–type securities) and interest thereon and such securities for which the Treasury acts as agent including, but not limited to, Treasury Bonds, Notes, and Bills; Adjusted Service Bonds; Armed Forces Leave Bonds; and Federal Housing Administration Debentures.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Issuance: Records relating to tenders, bids, subscriptions, advices of shipment, requests (applications) for original issue, and correspondence concerning erroneous issue and nonreceipt of securities. (2) Holdings: Records of ownership and interest activity on registered or recorded United States securities (other than savings–type securities); records about fees for TREASURY DIRECT accounts exceeding a stipulated amount; change of name and address notices; correspondence concerning errors in registration or recordation; nonreceipt or over– and underpayments of interest and principal; records of interest activity; records of unclaimed accounts; and letters concerning the New York State tax exemption for veterans of World War I. (3) Transactions (redemptions, payments, reissues, transfers, and exchanges): Records which include securities transaction requests; records about fees for definitive securities issued; legal papers supporting transactions; applications for transfer, disposition, or payment of securities of deceased or incompetent owners; records of Federal estate tax transactions; certificates of ownership covering paid overdue bearer securities; records of erroneous redemption transactions; records of retired securities; and payment records. (4) Claims: Records including correspondence concerning lost, stolen, destroyed, or mutilated United States securities (other than savings–type securities) or securities for which the Treasury acts as agent and interest coupons thereon; bonds of indemnity; legal documents supporting claims for relief; and records of caveats entered. (5) Inquiries: Records of correspondence with individuals who have requested information concerning United States Treasury securities (other than savings–type securities) or securities for which the Treasury acts as agent. (6) All of the above categories of records except "(4) Claims" include records of Treasury bills, notes, and bonds in the TREASURY DIRECT Book-entry Securities System. (7) Records in connection with the commercial book–entry system relate to information on tenders and in accounts maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3101 et seq. and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

A record or information from a record maintained in this system of records may be disclosed as a routine use to: (1) Agents or contractors of the Department for the purpose of administering the public debt of the United States; (2) next-of-kin, voluntary guardian, legal representative or successor in interest of a deceased or incapacitated owner of securities and others entitled upon transfer, exchange, distribution, or payment for the purpose of assuring equitable and lawful disposition of securities and interest; (3) any of the owners if the related securities are registered or recorded in the names of two or more owners; (4) the Internal Revenue Service for the purpose of facilitating the collection of the tax revenues of the United States; (5) the Department of Justice in connection with lawsuits to which the Department of the Treasury is a party or to trustees in bankruptcy for the purpose of carrying out their duties; (6) the Veterans Administration when it relates to the holdings of Armed Forces Leave Bonds to facilitate the redemption or disposition of these securities; (7) other federal agencies to effect salary or administrative offset for the purpose of collecting debts; (8) a consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports; (9) a debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services; (10) contractors conducting Treasury–sponsored surveys, polls, or statistical analyses relating to marketing or administration of the public debt of the United States; (11) appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (12) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena; (13) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (14) disclose through computer matching information on individuals owing debts to the Bureau of the Public Debt to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset; (15) disclose through computer matching information on holdings of Treasury securities to requesting Federal agencies under approved agreements limiting the information to that which is relevant in making a determination of eligibility for Federal benefits administered by those agencies; and (16) disclose through computer matching, information on individuals with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Debtor information is also furnished, in accordance with 5 U.S.C. 552a (b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in their original form in file cabinets, as information in electronic media, or on microform.

RETRIEVABILITY:

Information can be retrieved by social security or account number, or, in some cases, alphabetically by name or numerically by security serial number. In the case of securities registered in more than one name, information relating thereto can generally only be retrieved by social security number or by the name of the first–named owner. Information about individuals submitting electronic bids can also be retrieved by bidder identification number, where such number has been assigned.

SAFEGUARDS:

Information is contained in secure buildings, Federal Records Centers, or in areas which are occupied either by officers and responsible employees of the Department who are subject to personnel screening procedures and to the Executive Branch and Treasury Department Standards of Conduct or by agents of the Department who are required by the Department to maintain proper control over records while in their custody. Additionally, since in most cases, numerous steps are involved in the retrieval process, unauthorized persons would be unable to retrieve information in a meaningful form. Information stored in electronic media is safeguarded by automatic data processing security procedures in addition to physical security measures. Additionally, for those categories of records stored in computers with terminal access, the information cannot be obtained or modified without proper passwords and preauthorized functional capability.

RETENTION AND DISPOSAL:

Records of holdings, forms, documents, and other legal papers which constitute the basis for transactions subsequent to original issue are maintained for such time as is necessary to protect the legal rights and interests of the U.S. Government and the persons affected, or otherwise until they are no longer historically significant. Other records are disposed of at varying intervals in accordance with records retention schedules reviewed and approved by the National Archives and Records Administration (NARA). All records are destroyed by shredding, incineration, or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Records relating to information contained in the commercial book–entry system: Assistant Commissioner, Office of Financing, Bureau of the Public Debt, Washington, DC 20239–0001.

All other records: Assistant Commissioner, Office of Securities and Accounting Services, Bureau of the Public Debt,Parkersburg, WV 26106–1328.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination if the system contains records pertaining to them or for access to records as provided under "Records access procedures" and "Requests for access to records." Contesting records procedures or requests for correction of records and appeals from an initial denial of a request for correction of records may be submitted as provided under the applicable heading below.

RECORD ACCESS PROCEDURES:

Individuals who wish to request access to records relating to them or who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

Requests for access to records: (1) Requests by individuals for information relating to records contained in the commercial book–entry system should be directed to the Assistant Commissioner, Office of Financing, Bureau of the Public Debt, Washington, DC 20239–0001.

(2) Requests by individuals about securities they own: (a) For Treasury bills, notes, or bonds held in the TREASURY DIRECT Book–entry Securities System: Individuals may contact the nearest Federal Reserve Bank or Branch or the Bureau of the Public Debt as listed in the appendix 1 to this system of records. Individuals should provide sufficient information, including their social security number, to identify themselves as owners of securities and sufficient information, including account number, to identify their TREASURY DIRECT account.

(b) For all other categories of records in this system of records: Individual owners should contact: Assistant Commissioner, Office of Securities and Accounting Services, Bureau of the Public Debt; Parkersburg, WV 26106–1328. Requests should contain information to identify themselves including name, address, and social security number; the type of security involved such as a registered note or bond, an Armed Forces Leave Bond, etc.; and, to the extent possible, specify the loan, issue date, denomination, exact form of registration, and other information about the securities.

(3) Requests by individuals who are representatives of owners or their estates require appropriate authority papers. Write to: Assistant Commissioner, Office of Securities and Accounting Services, Bureau of the Public Debt, Parkersburg, WV 26106–1328, to obtain information on these

requirements. (4) In all cases: The request for information will be honored only if the identity and right of the requester to the information have been established.

CONTESTING RECORDS PROCEDURES:

(1) A request by an individual contesting records procedures or for correction of records should be in writing, be signed, and, in order for the Privacy Act procedures to apply, state that the request is made pursuant to the Privacy Act of 1974. (2) The request should specify: (a) The dates of the prior correspondence with the Bureau or a Federal Reserve Bank or Branch concerning the records in question, (b) the specific records involved, (c) the change or correction requested, and (d) the reasons therefor. (3) The request must include any available evidence in support of the request and should be sent to: Assistant Commissioner, Office of Financing, Bureau of the Public Debt, Washington, DC 20239–0001, for requests concerning information relating to records contained in the commercial book-entry system; for all other records Assistant Commissioner, Office of Securities and Accounting Services, Bureau of the Public Debt, Parkersburg, WV 26106–1328, for all other requests.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, be signed by the individual involved, and, in order for the Privacy Act procedures to apply, state that it is made pursuant to the Privacy Act of 1974. (2) All appeals must, to be handled under the Privacy Act procedures, be delivered to the address set forth for submission of appeals within 35 days of the individual's receipt of the initial denial of the requested correction. (3) All appeals must specify: (a) The records to which the appeal relates, (b) the date the initial request for correction of the records was made, and (c) the date that initial denial of the request for correction was received. (4) All appeals must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence. (5) Appeals should be addressed to the Commissioner, Bureau of the Public Debt, Washington, DC 20239–0001, or as otherwise provided in the applicable appendix to 31 CFR part 1, subpart C.

RECORD SOURCE CATEGORIES:

Information contained in records in the system is furnished by the individuals or their authorized representatives as listed in "Categories of Individuals," or is generated within the system itself.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix of TREASURY DIRECT contacts.

This appendix lists the places that may be contacted by individuals when inquiring about their securities accounts maintained in TREASURY DIRECT. The initials "FRB" stand for Federal Reserve Bank or Branch.

FRB Atlanta

Visits: 104 Marietta Street, NW, Atlanta, Georgia;
Mail: Securities Service Dept., 104 Marietta St., NW, Atlanta, GA 30303; Telephone: (recording) 404–521–8657; (other) 404–521–8673.

FRB Baltimore

Visits: 502 South Sharp Street, Baltimore, Maryland;
Mail: PO Box 1378, Baltimore, MD 21203; Telephone: (recording) 301-576-3500; (other) 301–576–3300

FRB Birmingham

Visits: 1801 Fifth Avenue, North, Birmingham, Alabama;
Mail: PO Box 830447, Birmingham, AL 35283–0447; Telephone: (recording) 205–731–8702; (other) 205–731–8708.

FRB Boston

Visits: 600 Atlantic Avenue, Boston, Massachusetts;
Mail: PO Box 2076, Boston, MA 02106; Telephone: (recording) 617–973–3805; (other) 617–973–3810.

FRB Buffalo

Visits: 160 Delaware Avenue, Buffalo, New York:
Mail: PO Box 961, Buffalo, NY 14240–0961; Telephone: (recording) 716-849-5158; (other) 716–849–5000.

FRB Charlotte

Visits: 530 East Trade Street, Charlotte, North Carolina;
Mail: PO Box 30248, Charlotte, NC 28230; Telephone: (recording) 704-358–2424; (other) 704–358–2100.

FRB Chicago

Visits: 230 South LaSalle Street, Chicago, Illinois:
Mail: PO Box 834, Chicago, IL 60690; Telephone: (recording) 312–786–1110; (other) 312–322–5369.

FRB Cincinnati

Visits: 150 East Fourth Street, Cincinnati, Ohio; Mail: PO Box 999, Cincinnati, OH 45102; Telephone: 513–721–4787, ext. 334.

FRB Cleveland

Visits: 1455 East Sixth Street, Cleveland, Ohio; Mail: PO Box 6387, Cleveland, OH 44101; Telephone: (recording) 216–579–2490; (other) 216–579–2000.

FRB Dallas

Visits: 2200 North Pearl Street, Dallas, Texas;
Mail: PO Box 655906 Dallas, TX 75265–5906; Telephone: (recording); 214–922–6100 (other) 214-922-6770.

FRB Denver

Visits: 1020 16th Street, Denver, Colorado;
Mail: PO Box 5228, Denver, CO 80217–5228; Telephone: (recording) 303–572–2475; (other) 303–572–2470 or 2473.

FRB Detroit

Visits: 160 West Fort Street, Detroit, Michigan;
Mail: PO Box 1059, Detroit, MI 48231; Telephone: (recording) 313–963–4936; (other) 313–964–6157.

FRB El Paso

Visits: 301 East Main, El Paso, Texas;
Mail: PO Box 100, El Paso, TX 79999; Telephone: (recording) 915–521–8295; (other) 915–521–8272

FRB Houston

Visits: 1701 San Jacinto Street, Houston, Texas;
Mail: PO Box 2578, Houston, TX 77252; Telephone: 713–659–4433.

FRB Jacksonville

Visits: 800 West Water Street, Jacksonville, Florida;
Mail: PO Box 2499, Jacksonville, FL 32231–2499; Telephone: (recording) 904–632–1178; (other) 904–632–1179.

FRB Kansas City

Visits: 925 Grand Avenue, Kansas City, Missouri;
Mail: PO Box 440, Kansas City, MO 64198; Telephone: (recording) 816–881–2767; (other) 816–881–2883.

FRB Little Rock

Visits: 325 West Capitol Avenue, Little Rock, Arkansas; Mail: PO Box 1261, Little Rock, AR 72203; Telephone: (recording) 501–324–8274; (other) 501–324–8272.

FRB Los Angeles

Visits: 950 South Grand Avenue, Los Angeles, California;
Mail: PO Box 2077, Terminal Annex, Los Angeles, CA 90051; Telephone: 213–624–7398.

FRB Louisville

Visits: 410 South Fifth Street, Louisville, Kentucky;
Mail: PO Box 32710, Louisville, KY 40232; Telephone: (recording) 502–568–9240; (other) 502–568–9236 or 9238.

FRB Memphis

Visits: 200 North Main Street, Memphis, Tennessee;
Mail: PO Box 407, Memphis, TN 38101; Telephone: (recording) 901-523-9380; (other) 901–523–7171, ext. 423.

FRB Miami

Visits: 9100 NW. Thirty–Sixth Street, Miami, Florida;
Mail: PO Box 520847, Miami, FL 33152; Telephone: (recording) 305-471–6257; (other) 305–471–6497.

FRB Minneapolis

Visits: 250 Marquette Avenue, Minneapolis, Minnesota;
Mail: 250 Marquette Avenue, Minneapolis, MN 55480; Telephone: (recording) 612–340–2051; (other) 612–340–2075.

FRB Nashville

Visits: 301 Eighth Avenue, North, Nashville, Tennessee;
Mail: 301 Eighth Avenue, N., Nashville, TN 37203–4407; Telephone: (recording) 615–251–7236; (other) 615–251–7100.

FRB New Orleans

Visits: 525 St. Charles Avenue, New Orleans, Louisiana;
Mail: PO Box 61630, New Orleans, LA 70161; Telephone: (recording) 504–593–5839; (other) 504–593-3200.

FRB New York

Visits: 33 Liberty Street, New York, New York;
Mail: Federal Reserve, PO Station, New York, NY 10045; Telephone: (recording) 212–720–5823; (other) 212–720–6619.

FRB Oklahoma City

Visits: 226 Dean A. McGee Avenue, Oklahoma City, Oklahoma;
Mail: P O Box 25129, Oklahoma City, OK 73125; Telephone: (recording) 405–270–8660; (other) 405–270–8652.

FRB Omaha

Visits: 2201 Farnam Street, Omaha, Nebraska;
Mail: 2201 Farnam Street, Omaha, NE 68102; Telephone: (recording) 402–221–5638; (other) 402–221–5636.

FRB Philadelphia

Visits: Ten Independence Mall, Philadelphia, Pennsylvania;
Mail: PO Box 90, Philadelphia, PA 19105; Telephone: (recording) 215–574–6580; (other) 215–574–6680.

FRB Pittsburgh

Visits: 717 Grant Street, Pittsburgh, Pennsylvania;
Mail: PO Box 867, Pittsburgh, PA 15230–0867; Telephone: (recording) 412-261–7988; (other) 412–261–7802.

FRB Portland

Visits: 915 SW Stark Street, Portland, Oregon;
Mail: PO Box 3436, Portland, OR 97208–3436; Telephone: (recording) 503-221-5931; (other) 503–221–5932.

FRB Richmond

Visits: 701 East Byrd Street, Richmond, Virginia;
Mail: PO Box 27622, Richmond, VA 23261; Telephone: (recording) 804-697-8355; (other) 804–697–8372.

FRB Salt Lake City

Visits: 120 South State Street, Salt Lake City, Utah;
Mail: PO Box 30780, Salt Lake City, UT 84130–0780; Telephone: (recording) 801–322–7844; (other) 801–322–7882.

FRB San Antonio

Visits: 126 East Nueva Street, San Antonio, Texas;
Mail: PO Box 1471, San Antonio, TX 78295; Telephone: (recording) 512–978–1330; (other) 512–978-1303 or 1305.

FRB San Francisco

Visits: 101 Market Street, San Francisco, California;
Mail: PO Box 7702, San Francisco, CA 94120; Telephone: (recording) 415-974–3491; (other) 415–974–2330.

FRB Seattle

Visits: 1015 Second Avenue, Seattle, Washington;
Mail: Securities Services Dept., PO Box 3567, Terminal Annex, Seattle, WA 98124; Telephone: (recording) 206–343-3615; (other) 206–343–3605.

FRB St. Louis

Visits: 411 Locust Street, St. Louis, Missouri;
Mail: PO Box 14915, St. Louis, MO 63178; Telephone: 314–444–8703.

United States Treasury, Washington, DC.

Visits: Bureau of the Public Debt, Capital Area Servicing Center, 1300 C Street, SW, Washington, DC.
Mail: Bureau of the Public Debt, Division of Customer Services, Washington, DC 20239–0001; Telephone: 202-874–4000; Device for hearing impaired, 202–874–4026.

Treasury/BPD .004

SYSTEM NAME:

Controlled Access Security System — Treasury/BPD.

SYSTEM LOCATION:

Bureau of the Public Debt, Parkersburg, WV.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of the Public Debt employees, employees of contractors and service companies, and official visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record is created for each access to designated areas and contains the individual's name; card number; work shift; access level; time, date, and location of each use of the access card at a proximity card reader.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321; 41 CFR 101–20.103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record or information from a record maintained in this system may be disclosed as a routine use to: (1) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license; (2) a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, or in response to a subpoena; (4) a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, arbitrators and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media and paper records.

RETRIEVABILITY:

Information on individuals can be retrieved by name or card number.

SAFEGUARDS:

Both the central system and the peripheral system will have limited accessibility. Paper records and magnetic disks are maintained in locked file cabinets with access limited to those personnel whose official duties require access, such as the systems manager, Bureau security officials, and employee relations specialists. Access to terminals is limited through the use of passwords to those personnel whose official duties require access, as for paper records.

RETENTION AND DISPOSAL:

The retention period is for three years; then the records are destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Administrative Services, 200 Third Street, Parkersburg, WV 26106–1328.

NOTIFICATION PROCEDURE:

Address inquiries and initial requests for correction of records to: Director, Division of Administrative Services, Parkersburg, WV 26106–1328.

RECORD ACCESS PROCEDURES:

Individuals who wish to request access to records relating to them or

who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

Requests for Access to Records: (1) A request for access to records should be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. The Bureau reserves the right to require additional verification of an individual's identity. (2) The request should be submitted to the following: Director, Division of Administrative Services, Parkersburg, WV 26106–1328. (3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR part 1, subpart C. (4) Requests for records concerning a deceased or incapacitated individual should be accompanied either by evidence of the requester's appointment as legal representative of the estate or by a statement attesting that no such representative has been appointed and giving the nature of the relationship between the requester and the individual.

Requests for Correction of Records: (1) A request by an individual for correction of records should be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. The Bureau reserves the right to require additional verification of an individual's identity. (2) The initial request should be submitted to the following: Director, Division of Administrative Services, Parkersburg, WV 26106–1328. (3) The request for correction should specify: (a) the dates of records in question; (b) the specific records alleged to be incorrect; (c) the correction requested; and (d) the reasons therefor. (4) The request must include any available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. The Bureau reserves the right to require additional verification of an individual's identity. (2) An appeal must, to be handled under the Privacy Act procedures, be addressed to the following: Commissioner, Bureau of the Public Debt, Washington, DC 20239-0001 (or as otherwise provided for in the applicable appendix to 31 CFR, part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction. (3) An appeal must also specify: (a) The records to which the appeal relates; (b) the date of the initial request made for correction of the records, and (c) the date that the initial denial of the request for correction was received. (4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" and "Record Access Procedures."

RECORD SOURCE CATEGORIES:

The individual concerned, his/her supervisor, or an official of the individual's firm or agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BPD. 005

SYSTEM NAME:

Employee Assistance Records — Treasury/BPD.

SYSTEM LOCATION:

Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106. This system covers Public Debt employee assistance records that are maintained by another Federal, State, or local government, or contractor under an agreement with Public Debt to provide the Employee Assistance Program (EAP) functions. The system location of entities under an agreement with Public Debt is available from the system manager. NOTE: Records covering individuals described in "Categories of individuals covered by the system" who are or were counseled through a Public Debt negotiated agreement with the U.S. Public Health Service, Department of Health and Human Resources, are not covered by this notice. Those records are maintained by the Public Health Service and its Privacy Act system notice (09–15–0001, Division of Federal Occupational Health Medical and Counseling Records, or 09–90–0010, Employee Assistance Program Records) applies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Public Debt employees and former employees who will be or have been counseled, either by self–referral or supervisory-referral regarding drug abuse, alcohol, emotional health, or other personal problems. Where applicable, this system also covers family members of these employees when the family member utilizes the services of the EAP as part of the employee's counseling or treatment process.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of each employee and, in some cases, family members of the employee who have utilized the Employee Assistance Program for a drug, alcohol, emotional, or personal problem. Examples of information which may be found in each record are the individual's name, social security number, date of birth, grade, job title, home address, telephone numbers, supervisor's name and telephone number, assessment of problem, and referrals to treatment facilities and outcomes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 7361, 7362, 7904; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be disclosed to: (1) An entity under contract with Public Debt for the purpose of providing the EAP function; (2) medical personnel to the extent necessary to meet a bona fide medical emergency in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2); (3) qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, provided individual identifiers are not disclosed in any manner, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2); (4) a third party upon authorization by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2); (5) the Department of Justice or other appropriate Federal agency in defending claims against the United States when the records are not covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

These records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are stored in locked safes with combination locks. Only individuals with a need–to–know have access. Automated records are protected by restricted access procedures. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records. These records are always maintained apart from any other system of records.

When Public Debt contracts with an entity for the purpose of providing the EAP functions, the contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor will surrender to Public Debt all of these records as well as any new records at the time of contract termination. Also, when the disclosure of records is requested, the contractor will not make the determination about whether the records may be disclosed.

RETENTION AND DISPOSAL:

The retention period is 3 years after termination of counseling or until any litigation is resolved. If an employee is no longer employed by Public Debt, records are retained for 3 years after the official date of termination. Then the records are destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Personnel Management, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

NOTIFICATION PROCEDURE:

Address inquiries and initial requests for correction of records to: Director, Division of Personnel Management, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

RECORD ACCESS PROCEDURES:

Individuals who wish to request access to records relating to them or who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1 subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

Requests for Access to Records: (1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employee; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity; (2) The request is to be submitted to the Director, Division of Personnel Management, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328; (3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR part 1 subpart C; (4) Requests for records concerning a deceased or incapacitated individual must be accompanied either by evidence of the requester's appointment as legal representative of the estate or by a notarized statement attesting that no such representative has been appointed and giving the nature of the relationship between the requester and the individual.

Requests for Correction of Records: (1) A request by an individual for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employee; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity; (2) The initial request is to be submitted to the Director, Division of Personnel Management, 200 Third Street, Parkersburg, WV 26106–1328; (3) The request for correction should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons therefor; (4) The request must include any available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employee; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity; (2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed as follows: Privacy Act Amendment, Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 999 E Street, N.W., Room 503, Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1 subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction; (3) An appeal must also specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that the initial denial of the request for correction was received; (4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" and "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, or the Employee Assistance Program staff member who records the counseling session.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BPD .006

SYSTEM NAME:

Health Service Program Records — Treasury/BPD.

SYSTEM LOCATION:

Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Bureau of the Public Debt employees who receive services under the Federal Employee Health Services Program from the Public Debt Health Unit in Parkersburg, West Virginia. (2)

Federal employees of other organizations in the Parkersburg, West Virginia, vicinity who receive services under the Federal Employee Health Services Program from the Public Debt Health Unit in Parkersburg, West Virginia. (3) Non–Federal individuals, such as members of the public visiting the credit union or cafeteria or non–Federal personnel working in the building, who may receive emergency treatment from the Public Debt Health Unit in Parkersburg, West Virginia.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of an individual's utilization of services provided under the Federal Government's Health Service Program. These records contain information such as: examination, diagnostic, and treatment data; laboratory findings; nutrition and dietetic files; nursing notes; immunization records; names, addresses, and telephone numbers of individual; name, address, and telephone number of individual's physician; name, address, and telephone number of hospital; name, address, and telephone number of emergency contact; and information obtained from the individual's physician.

NOTE: This system does not cover records related to counseling for drug, alcohol, or other problems covered by System No. Treasury/BPD .005 – Employee Assistance Records. Medical records relating to a condition of employment or an on–the–job occurrence are covered by the Office of Personnel Management's System of Records No. OPM/GOVT–10 – Employee Medical File System Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. 7901.

PURPOSE(S):

These records document an individual's utilization on a voluntary basis of health services provided under the Federal Government's Health Service Program at the Health Unit at the Bureau of the Public Debt in Parkersburg, West Virginia. Data is necessary to ensure proper evaluation, diagnosis, treatment, and referral to maintain continuity of care; a medical history of care received by the individual; planning for further care of the individual; a means of communication among health care members who contribute to the individual's care; a legal document of health care rendered; a tool for evaluating the quality of health care rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record or information from a record maintained in this system of records may be disclosed as a routine use to: (1) Medical personnel under a contract agreement with Public Debt; (2) a Federal, State, or local public health service agency as required by applicable law, concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition; (3) appropriate Federal, State, or local agencies responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority; (4) the Department of Justice in connection with lawsuits in which the Department of the Treasury is a party or has an interest; (5) a Federal agency responsible for administering benefits programs in connection with a claim for benefits filed by an employee; (6) a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual; (7) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

These records are retrieved by the name of the individual to whom they pertain.

SAFEGUARDS:

These records are maintained in a secured room with access limited to Health Unit personnel whose duties require access. Medical personnel under a contract agreement who have access to these records are required to maintain adequate safeguards with respect to such records.

RETENTION AND DISPOSAL:

Records of the Health Unit are maintained for 6 years from the date of the last entry and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Administrative Services, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination if the system contains records pertaining to them or for access to records as provided under "Record Access Procedures." Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records should be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the individual is seeking access by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity.

(2) The request should be submitted to the following: Director, Division of Administrative Services, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

(3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii). An individual who requests access to a Health Service Program Record shall, at the time the request is made, designate in writing the name of a responsible representative who will be willing to review the record and inform the subject individual of its content. This does not permit the representative to withhold the records from the requester. Rather, the representative is expected to provide access to the records while explaining sensitive or complex information contained in the records.

CONTESTING RECORD PROCEDURES:

(1) A request by an individual contesting the content of records or for correction of records should be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the request is by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity.

(2) The initial request should be submitted to the following: Director, Division of Administrative Services, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

(3) The request should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons therefor.

(4) The request must include any available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of record, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Chief Counsel, Bureau of the Public Debt, 999 E Street, NW., Room 503, Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must also specify: (a) the records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; laboratory reports and test results; Health Unit physicians, nurses, and other medical technicians who have examined, tested, or treated the individual; the individual's personal physician; other Federal employee health units; and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury BPD .007

SYSTEM NAME:

Gifts to Reduce the Public Debt — Treasury/BPD.

SYSTEM LOCATION:

Bureau of the Public Debt, Office of Securities and Accounting Services, Capital Area Servicing Center, C Street Building, Washington, DC 20239–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of gifts to reduce the public debt.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence; copies of checks, money orders, or other payments; copies of wills and other legal documents; and other material related to gifts to reduce the public debt, received on or after October 1, 1984, by the Bureau of the Public Debt either directly from the donor or through the donor's Congressional or other representative.

This system does not cover gifts to reduce the public debt received prior to October 1, 1984, when this function was handled by the Financial Management Service. This system of records does not cover gifts sent to other agencies, such as gifts sent with one's Federal income tax return to the Internal Revenue Service. This system does not include any other gifts to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 31 U.S.C. 3113.

PURPOSE(S):

These records document the receipt from donors of gifts to reduce the public debt. They provide a record of correspondence acknowledging receipt, information concerning any legal matters, and a record of depositing the gift and accounting for it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license; (2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings; (3) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (4) Disclose information to agents or contractors of the Department for the purpose of administering the public debt of the United States; (5) Disclose information to a legal representative of a deceased donor for the purpose of properly administering the estate of the deceased; (6) Disclose information to the Internal Revenue Service for the purpose of confirming whether a tax–deductible event has occurred; (7) Disclose information to the Department of Justice in connection with lawsuits in which the Department of the Treasury is a party or has an interest.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microform, and magnetic media.

RETRIEVABILITY:

These records are retrieved by the name of the donor; amount of gift, type of gift; date of gift; social security number of donor, if provided; control number, check number; State code.

SAFEGUARDS:

These records are maintained in controlled access areas. Automated records are protected by restricted access procedures. Checks and other payments are stored in locked safes with access limited to personnel whose duties require access.

RETENTION AND DISPOSAL:

Records of gifts to reduce the public debt are maintained in accordance with National Archives and Records Administration retention schedules. All records are destroyed by incineration or shredding. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Fiscal Officer, Capital Area Servicing Center, Office of Securities and Accounting Services, Bureau of the Public Debt, C Street Building, Washington, DC 20239–0001.

NOTIFICATION PROCEDURE:

Address inquiries and initial requests for correction of records to the System Manager.

RECORD ACCESS PROCEDURES:

Individuals who wish to request access to records relating to them or who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

Requests for Access to Records: (1) A request for access to records should be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the individual is seeking access by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity; (2) The request should be submitted to the following: Fiscal Officer, Capital Area Servicing Center, Office of Securities and Accounting Services, Bureau of the Public Debt, C Street Building, Washington, DC 20239–0001; (3) The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

Requests for Correction of Records: (1) A request by an individual for correction of records should be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking correction in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the individual is seeking correction by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity; (2) The initial request should be submitted to the following: Fiscal Officer, Capital Area Servicing Center, Office of Securities and Accounting Services, Bureau of the Public Debt, C Street Building, Washington, DC 20239–0001; (3) The request for correction should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons therefor; (4) The request must include any available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau reserves the right to require additional verification of an individual's identity; (2)

Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Chief Counsel, Bureau of the Public Debt, 999 E Street, NW., Room 503, Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction; (3) An appeal must also specify: (a) the records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that the initial denial of the request for correction was received; (4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" and "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, executors, administrators, and other involved persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BPD .008

SYSTEM NAME:

Savings Bonds Sales Promotion/ Volunteer Record System–Treasury/ BPD.

SYSTEM LOCATION:

Savings Bonds Marketing Office, Washington, DC; District and Area Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bond tellers, campaign managers, campaign nominees, volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative lists and related detail; general correspondence; biographical sketches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321; 31 U.S.C. 3121(f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There are no disclosures outside the Department for this records system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mailing lists are accessible to employees and stored on addressograph plates. Other correspondence and materials are filed in the regular correspondence file cabinets.

RETRIEVABILITY:

Records are indexed by year, volunteer position and name, and are retrievable by those identifiers.

SAFEGUARDS:

The individual, however, must be under supervision of a Savings Bonds officer during the entire time he or she has this information in his/her possession.

RETENTION AND DISPOSAL:

Records are maintained as long as needed and updated as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Savings Bonds Marketing Office, 800 K Street, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

Records that are housed by the Savings Bonds Marketing Office are not of a nature that would warrant strict guidelines for accessibility. An individual may request access to his/her record or any information pertaining to him/her by merely notifying the office or officer in charge.

RECORD ACCESS PROCEDURES:

An individual may request access to his or her record at any time by notifying the officer in charge. The individual, however, must be under the supervision of a Savings Bonds officer during the entire time the information is in his/her possession.

CONTESTING RECORD PROCEDURES:

See "System Manager" above. Contested information should be specified, and the reason(s) for contesting the record listed.

RECORD SOURCE CATEGORIES:

Data accumulated in the record system at Savings Bonds are gathered from the individual and/or from sources directly connected with the volunteer's appointment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/BPD .009

SYSTEM NAME:

Savings Bonds Sales Record System – Treasury/BPD.

SYSTEM LOCATION:

Savings Bonds Marketing Office, Washington, DC; District Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Routine lists and administrative details associated with sales, Blue Ribbon Target Cards, Blue Ribbon Target Status Control Sheets, Field Call Reports, Itineraries, Net–Saver Reports, Payroll Savings Reporting Procedures Forms, Progress Summaries, Time and Attendance Records, Training Reports, Work Plans, State–County Chairmen, State and Volunteer Fund Lists, "Take Stock in America" Records, Telephone calls, Volunteer Biographies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321; 31 U.S.C. 3121(f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There are no disclosures for this system of records outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records of this nature are filed in large notebooks and are indexed according to individual names, regions, areas and states.

RETRIEVABILITY:

Records are retrievable under indexes indicated above.

SAFEGUARDS:

Records do not warrant tight security.

RETENTION AND DISPOSAL:

High priority records are kept as long as needed, records of lower priority are destroyed after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Sales Operations, Savings Bonds Marketing Office, 800 K Street, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

An individual may request access to his or her record or any information pertaining to him/her by merely notifying the office or officer in charge. The individual, however, must be under the supervision of a Savings Bonds officer during the entire time he or she has this information in his/her possession.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" and "System Manager."

CONTESTING RECORD PROCEDURES:

See "System Manager" above. Contested information should be specified and the reasons(s) for contesting the record listed.

RECORD SOURCE CATEGORIES:

Data accumulated in the sales record system at Savings Bonds are gathered from the individual and/or from sources directly connected with the employee's appointment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BILLING CODE: 4810–40–F

United States Secret Service

Treasury/USSS .001

SYSTEM NAME:

Administrative Information System — Treasury/USSS.

SYSTEM LOCATION:

(a) U.S. Secret Service (Headquarters), 1800 G St. NW, Washington, DC 20223. Components of the this System are geographically dispersed throughout U.S. Secret Service field offices. (See below, United States Secret Service, appendix A, listing the addresses of Secret Service offices.) (b) U.S. Secret Service Uniformed Division, 1310 L St., NW, Washington, DC 20005;(c) Presidential Protective Division, U.S. Secret Service, Room 10, Old Executive Office Building, 17th and Pennsylvania Ave., NW, Washington, DC 20500; (d) Vice Presidential Protective Division, U.S. Secret Service, Old Executive Office Building, Room 295, Washington, DC 20500; (e) Dignitary Protective Division U.S. Secret Service, 1310 L St., NW, Washington, DC 20005; (f) Special Services Division, U.S. Secret Service, Washington Navy Yard, 2nd and M St., SE, Bldg. 216, Washington, DC 20374; (g) Johnson Protective Division, U.S. Secret Service, PO Box 921, Stonewall, TX 78671; (h) Ford Protective Division, U.S. Secret Service, PO Box 955, Rancho Mirage, CA 92270–955; (i) Technical Security Division, U.S. Secret Service, 1709 New York Avenue, NW., Washington, DC 20500; (j) Carter Protective Division, U.S. Secret Service, PO Box 308, Plains, GA 31780. (k) Reagan Protective Division, U.S. Secret Service, 2121 Avenue Of the Stars, Century City, CA 90067, (l) Bush Protective Division, U. S. Secret Service PO Box 79797, Houston, Texas 77279–9797, (m) White House Division, U.S. Secret Service, Old Executive Office Bldg., Rm. 23, Washington, DC 20500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who are now or were Secret Service employees; (b) Individuals, contractors, and vendors, etc., who are presently doing or previously did business with the Secret

Service; (c) Claimants against the Secret Service under the Federal Tort Claims Act and the Military Personnel and Federal Employees Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing information on issuance of Secret Service equipment and accountable government property; (b) Records containing procurement negotiations, contracts, agreements, etc., with the Secret Service; (c) Records containing information on past, present, and future administrative correspondence with individuals, contractors, vendors, etc., who have or plan to enter into contractual agreements with the Secret Service; (d) Records on vehicle accidents, injuries, fatalities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 40 and 41 of the U.S. Code, and other rules and regulations where applicable; 5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure of information to the Department of Treasury, GAO, OMB, GSA, the Department of Justice and other Federal, state, and local government agencies regarding purchases, contracts, and anticipated purchases and contracts of the Secret Service; (2) To provide administrative services for the Secret Service and maintain administrative records as required by law; (3) To use in the adjudication of any claim for or against the Secret Service; (4) Disclosure to individuals, contractors, vendors, etc., for the purpose of inquiries relating to or confirmation of orders and purchases; (5) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file jackets and portions of the information are stored electronically at Headquarters.

RETRIEVABILITY:

Records may be retrieved by name and/or number.

SAFEGUARDS:

(1) File jackets and electronic data at Headquarters are located in locked rooms which are secured by alarms and other internal security devices with guards on duty on an around the clock basis. Access is available only to employees responsible for records management and operational employees who have a need for such information, each of whom holds a top secret security clearance; (2) The file jackets in Secret Service field offices are located in locked file cabinets or in locked rooms when Secret Service employees are not on duty. Access to the system is limited to employees of the Secret Service holding top secret security clearances.

RETENTION AND DISPOSAL:

The file jackets and electronic data are retained in accordance with mandatory National Archives and Records Administration (NARA), General Records Schedules 3, 4, 8, 10, 11, 13, & 23. Disposal is by burning, shredding, and/or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Administration, U. S. Secret Service, 1800 G St., NW, Rm. 850 Washington, DC 20223.

NOTIFICATION PROCEDURE:

Individuals who wish to present a request as to whether this system contains records pertaining to them should address inquiries to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

RECORD ACCESS PROCEDURES:

Requests for information contained in this system should be addressed to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(a) Individuals who are presently or were Secret Service employees; (b) Individuals, corporations, companies, contractors, etc., previously engaged or presently engaged in business with the Secret Service; (c) Claimants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/USSS .002

SYSTEM NAME:

Chief Counsel Record System — Treasury/USSS.

SYSTEM LOCATION:

Office of Chief Counsel, United States Secret Service, 1800 G St., NW, Washington, DC 20223.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who have filed administrative claims; (b) Individuals involved in litigation against the U.S. Secret Service; (c) Individuals who have filed a petition regarding forfeiture; (d) Employees, former employees or applicants who have filed equal employment opportunity claims against the U.S. Secret Service; (e) Employees or former employees who have appealed disciplinary actions taken against them by the U. S. Secret Service to the Merit System Protection Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Copies of administrative claims filed against the Secret Service or employees of the U.S. Secret Service and responses thereto; (b) Any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, and any other court filing or administrative filing or evidence; (c) Records concerning requests for information regarding the use of reproductions of obligations of the United States including bonds, checks, coins, coupons, currencies (U.S. and foreign), fractional notes, postage stamps (U.S. and foreign), postal money orders, and postmarks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3056; 28 U.S.C. 2672 (Federal Tort Claims Act); 18 U.S.C. 471–509.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Administrative claims may be routinely sent to Department of Justice attorneys to assist them in litigation involving the Secret Service; (2) Legal records and litigation reports may be sent to Department of Justice attorneys to assist them in the preparation for litigation involving the U.S. Secret Service; (3) Records indicating a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be referred to the appropriate Federal, state, local or foreign agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto; (4) Disclosures to opposing counsel, a court magistrate or administrative tribunal in the course of a legal proceeding, and disclosures to opposing counsel in the course of discovery proceedings for the purpose of, enforcing, or prosecuting, a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto; (5) Disclosures to Federal, state or local agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit; (6) Disclosures to a Federal agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; (7) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file jackets.

RETRIEVABILITY:

This System is indexed chronologically for administrative claims and requests for information regarding reproductions. Access to the physical files containing litigation records is by name.

SAFEGUARDS:

The file jackets are secured in a locked room with guards on duty on an around–the–clock basis. Access to the records is available only to employees responsible for record management and operational employees who have a need for such information, each of whom holds a top secret security clearance.

RETENTION AND DISPOSAL:

(1) Closed litigation case files are retained for a period of 5 years; (2) Administrative claims, and requests for information are disposed of at varying intervals in accordance with the records retention schedule approved by the National Archives and Records Administration. Any disposal is by shredding and/or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Secret Service, 1800 G St., NW, Room 842, Washington, DC 20223.

NOTIFICATION PROCEDURE:

Individuals who wish to present a request as to whether the system contains records pertaining to them should address inquiries to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

RECORD ACCESS PROCEDURES:

Requests for information contained in this System should be addressed to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(a) Administrative claims are filed by those individuals who believe that they have a claim against the U.S. Secret Service; (b) Individuals who are involved in legal proceedings against the U.S. Secret Service. All litigation reports are initiated by Office of Chief Counsel, U.S. Secret Service; (c) Requests for information regarding the use of reproductions from Secret Service field offices, the general public, and from professional organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/USSS .003

SYSTEM NAME:

Criminal Investigation Information System — Treasury/USSS.

SYSTEM LOCATION:

(a) United States Secret Service, (Headquarters) 1800 G St., NW, Washington, DC 20223;(b) Components of this System are geographically dispersed throughout Secret Service field offices. (See United States Secret Service Appendix A listing the addresses of Secret Service field offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who have been or are currently the subject of a criminal investigation by the U.S. Secret Service in connection with the performance by that agency of its authorized criminal investigative functions; (b) Individuals who are payees, registered owners or endorsers of stolen or lost obligations and other securities of the United States; (c) Individuals who are witnesses, complainants, informants, suspects, defendants, fugitives, released prisoners, correspondents, organized crime figures, and victims of crimes who have been identified by the Secret Service in the conduct of criminal investigations or by information supplied by other law enforcement agencies, government units, and the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrest, the nature and disposition of criminal charges, sentencing, confinement, release, and parole or probation status; (b) Records containing information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; (c) Records containing reports identifiable with an individual compiled at various stages of the process of enforcement of criminal laws from arrest or indictment through release from supervision; (d) Records containing investigatory material compiled for law enforcement purposes, including but not limited to, handwriting exemplars; laboratory analyses of inks and papers; handwriting analyses; petitions for the remission of forfeitures; notice of non–receipt of Treasury drafts; affidavits of forged endorsements; opinions of the examiner of questioned documents; reports or opinions from the examination of computer evidence; reports or opinions from the examination of altered cellular telephones; certificates by owners of U.S. registered securities concerning forged requests for payments or assignments; applications for relief on account of loss, theft, or destruction of U.S. Savings Bonds or checks; photographic reproductions of obligations and other securities of the United States; contraband items; claims against the United States for the proceeds of government checks and bonds; and reports necessary for the settlement of check and bond claims; names and telephone numbers of persons intercepted by electronic, mechanical, or other device under the provisions of Title 18 U.S.C., Section 2510 et.seq. compiled during the lawful course of a criminal or civil investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3056.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure to Federal, state, and local government agencies foreign or domestic, having prosecutive and civil law enforcement functions for use by attorneys, magistrates, and judges, parole or probation authorities and other law enforcement authorities for the purpose of developing a criminal or civil investigation, prosecuting, sentencing, or determining the parole and probation status of criminal offenders or suspected criminal offenders; (2) Disclosure to personnel of other Federal, state and local law enforcement agencies, foreign or domestic, for the purpose of developing information on subjects involved in Secret Service criminal investigations and assisting other law enforcement agencies in the investigation and prosecution of violations of the criminal laws which those agencies are responsible for enforcing; (3) Disclosure to personnel of Federal, state, and local governmental agencies, where such disclosure is considered reasonably necessary for the purpose of furthering Secret Service efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders; (4) Disclosure to personnel of Federal, state, and local governmental agencies, foreign and domestic, where there is a showing of reasonable necessity to obtain such information to accomplish a valid law enforcement purpose; (5) Disclosure to employees and officials of financial and commercial business firms and to private individuals of identifying information pertaining to actual or suspected criminal offenders where such disclosure is considered reasonably necessary for the purpose of furthering Secret Service efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders; (6) Records maintained in this System indicating a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto; (7) Disclosures in the course of presenting evidence to a court, magistrate or administrative tribunal and disclosures to opposing counsel in the course of discovery proceedings for the purpose of enforcing, or prosecuting, a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto; (8) Disclosures to Federal, state or local agencies maintaining civil, criminal or other pertinent information or enforcement information relevant to an agency decision concerning the hiring or retention of an employee, or the issuance of a license, grant or other benefit; (9) Disclosures to a Federal, state or local agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; (10) Disclosures of information relating to criminal and civil proceedings to the news media in accordance with the guidelines contained in 28 CFR 50.2; (11) Disclosure in connection with the utilization by the Secret Service of the Northern Virginia Regional Identification System for the storage and retrieval of fingerprint information maintained by the Secret Service; (12) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records comprising this system are contained in file jackets, computerized data systems, microfilm and microfiche. Portions of the indices and information contained in the records are maintained in electronic storage media located at Headquarters.

RETRIEVABILITY:

This system is indexed by name, address, vehicle license number, and/or telephone number, and is retrieved through computer search of magnetic media indices both at Headquarters and in the field offices. Additionally, subjects are retrievable from the computerized files by physical description. Access to the physical files containing records is by case number.

SAFEGUARDS:

(1) At Headquarters the field jackets containing the records are secured by alarms, and other internal security devices, in locked rooms with guards on duty on an around–the–clock basis. Access to the records is available only to employees responsible for records management and operational employees with a "need to know," each of whom has a top secret security clearance; (2) In field offices the file jackets are located in locked filing cabinets and when Secret Service employees are not on duty in locked rooms. Access to the system is controlled and limited to employees of the Secret Service holding top secret security clearances.

RETENTION AND DISPOSAL:

(1) All Judicial cases, 20 years; (2) Non–judicial criminal investigative cases (except non–judicial check and bond cases), 10 years; (3) Non–judicial check claim and bond forgery cases, 5 years; (4) Administrative files of an investigatory nature, 5 years; (5) All other files and records the disposition of which is not otherwise specified, 5 years; (6) Investigations for other districts, 2 years; (7) Receipts vary with the case file to which they pertain; (8) Investigation Control Forms, varies; (9) Arrest History Forms, Indefinite; (10) Headquarters Criminal Investigative case files, 30 years; indices and microfilm copies are retained for an indefinite period; (11) Consensual and non–consensual interception indices, 10 years or when investigative use no longer exists, whichever is longer; (12) Fingerprint and photograph files, at varying intervals in accordance with record retention schedules approved by the National Archives and Records Administration. Disposal is by burning, shredding, maceration, and pulping, and/or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Investigations, U.S. Secret Service, 1800 G St., NW, Washington, DC 20223.

NOTIFICATION PROCEDURE:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k), the Director of the U.S. Secret Service has exempted this System from compliance with the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k), the Director of the U.S. Secret Service has exempted this System from compliance with the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k) the Director of the U.S. Secret Service has exempted this System from compliance with the provisions of 5 U.S.C. 552a (e)(4)(I).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k).

Treasury/USSS .004

SYSTEM NAME:

Financial Management Information System — Treasury/USSS.

SYSTEM LOCATION:

(a) U.S. Secret Service, (Headquarters), 1800 G St., NW, Washington, DC 20223; (See below United States Secret Service Appendix A listing the addresses of Secret Service field offices.); (b) U.S. Secret Service Uniformed Division, 1310 L Street, NW, Room 320, Washington, DC 20005; (c) Special Services Division, U.S. Secret Service, Building 216, Washington Navy Yard, Washington, DC 20374; (d) Presidential Protective Division, U.S. Secret Service, Room 10, Old Executive Office Building, Washington, DC 20500; (e) Vice–Presidential Protective Division, U.S. Secret Service, Old Executive Office Building, Room 295, Washington, DC 20500;(f) Dignitary Protective Division, U.S. Secret Service, 1310 L St., NW, Suite 500, Washington, DC 20005; (g) Johnson Protective Division, U.S. Secret Service, PO Box 927, Stonewall, TX 78671; (h) Ford Protective Division, U.S. Secret Service, PO Box 955, Rancho Mirage, CA 92270–955; (i) Carter Protective Division, U.S. Secret Service, PO Box 308, Plains, GA 31780–0308; (j) Technical Security Division, U.S. Secret Service, 1709 New York Ave. NW., Washington, DC 20223. (k) Reagan Protective Division, U.S. Secret Service, 2121 Avenue of the Stars, Century City, CA 90067. (l) Bush Protective Division, U. S. Secret Service PO Box 79797, Houston, Texas 77279–9797, (m) White House Division, U.S. Secret Service Old Executive Office Bldg., Rm. 23, Washington, DC 20500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who are now, or were previously, Secret Service employees; (b) Individuals, contractors, vendors, etc., who are presently doing business with or previously did business with the Secret Service; (c) Individuals who are involved in or were previously involved in tort claims with the Secret Service; (d) Individuals who are now or previously were involved in payments (accounts receivable) with the Secret Service; (e) Individuals who have been recipients of awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing information compiled for the purpose of pay, travel, property damage, expenses incurred other than travel, and retirement annuities and taxes; (b) Records containing information of accounts receivable and payable, involving Secret Service employees and other persons; (c) Records containing information of tort claims dealing with Secret Service property, concerning payment and accounts receivable; (d) Records containing information on the expenditures, anticipated expenditures, and budget studies of the Secret Service; (e) Time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 68, 484, 952, and 1801 through 1806, and 5 U.S.C. 5514, and 21 U.S.C. 2415.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses of the records contained in this System are as follows: (1) Disclosure to the Internal Revenue Service, U.S. Treasury, GAO, OPM and other Federal agencies dealing with the payment and collection of monies concerning Secret Service employees; (2) disclosure to the Internal Revenue Service, U.S. Treasury Department, OPM, GAO, and other Federal agencies dealing with the payment, collection and audit of monies concerning persons who have financial dealings with the Secret Service; (3) To establish and maintain a means of gaining statistical information needed to answer inquiries from other Federal, state,and local governments and Congress; (4) To establish a reporting system to Treasury, OMB, GAO, and Congress concerning Secret Service expenditures; (5) To establish a means of payments to contractors and vendors for purchases made by Secret Service; (6) Disclosure to other Federal agencies to effect inter–agency salary offset and to affect inter–agency administrative offset; (7) Disclosures to consumer reporting agencies to obtain commercial credit reports; (8) Disclosures to debt collection agencies for debt collection services; (9) Disclosures of current mailing addresses obtained from the Internal Revenue Service, which have become a part of this system, to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services; (10) Disclosures to appropriate Federal, State, or foreign agencies responsible for investigating or prosecution of the violation of, or for enforcing or implementing, a statute, rule, regulation, order or license; (11) Disclosures to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (12) Disclosures to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (13) Disclosures to foreign governments in accordance with formal or informal international agreements; (14) Disclosures to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (15) Disclosures to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (16) Disclosure to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (17) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Debt Collection of 1982 (31 U.S.C. 3701 (a)(3) or the Fair Credit Reporting Act [15 U.S.C. 1681a(f)].

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are contained in files, optical disc cartridges, microfilm, and/or microfiche. The information contained in this system is stored in computers maintained at Headquarters.

RETRIEVABILITY:

This system is indexed by name and/or number at Headquarters and by name only in field offices, resident offices and protective divisions. Access is by name and/or number.

SAFEGUARDS:

(1) The file jackets, and computers are secured by alarms and other internal security devices in locked rooms with guards on duty on a 24–hour basis; (2) Access to the records is available only to employees responsible for records management and operational employees who have a need for such information, each of whom holds a top secret security clearance; (3) The file jackets are located in locked filing cabinets and in locked rooms when Secret Service employees are not on duty. Access is limited to employees holding top secret security clearances.

RETENTION AND DISPOSAL:

(1) Financial Management Division's automated accounting systems, foreign disbursement file, and paid files are retained for six years; (2) Accounts receivable systems are maintained for four years unless they are not liquidated; (3) Systems for holiday, overtime, and other pay adjustments, enter on duty information, resignations, retirements, reassignments, etc., are disposed of at varying intervals in accordance with records retention schedules approved by the National Archives Record Administration (NARA); (4) Records on personnel are retained in accordance with mandatory National Archives and Records Administration General Records Schedules 2, 5, 6, and 7. Disposal of records is by burning, mulching, shredding, or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Administration, 1800 G St., NW, Rm 850, Washington, DC 20223.

NOTIFICATION PROCEDURE:

Individuals who wish to present a request as to whether this system contains a record pertaining to them should address inquiries to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

RECORD ACCESS PROCEDURES:

Request for information contained in this System should be addressed to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(a) Individuals who are presently or were previously Secret Service employees; (b) Individuals who are presently or were service contractors or suppliers with the Secret Service; (c) Individuals who are presently or were previously involved in tort claims with the Secret Service; (d) Individuals who are presently or were previously involved in collections and disbursements with the Secret Service; (e) Internal Revenue Service; (f) Surviving spouse of deceased personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/USSS .005

SYSTEM NAME:

Freedom of Information Request System — Treasury/USSS.

SYSTEM LOCATION:

United States Secret Service, 1800 G St., NW, Washington, DC 20223.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or organizations who have requested information under the Freedom of Information Act or the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Correspondence and documents relating to requests for information; (b) Documents relevant to appeals and lawsuits under the Freedom of Information Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that Agency, or for the purpose of consulting with that Agency as to the propriety of access or correction; (2) Records may be disseminated to any appropriate Federal, state, local, or foreign Agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records; (3) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records comprising this system are maintained in file jackets and computerized data bases.

RETRIEVABILITY:

The files and indices are indexed numerically and alphabetically and/or through computer search of magnetic media.

SAFEGUARDS:

The files and magnetic media are secured in locked rooms. Access to the records is available only to employees responsible for the management of the system and operational employees who have a need for such information, each of whom have a top secret security clearance.

RETENTION AND DISPOSAL:

All files are destroyed six years after the date of last entry. Magnetic media indices are retained for an indefinite period of time. Disposal is by burning, shredding, or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

NOTIFICATION PROCEDURE:

Individuals who wish to present a request as to whether this system contains records pertaining to them should address their inquiries to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

RECORD ACCESS PROCEDURES:

Any individual wishing to obtain information on the procedures for gaining access to and contesting records should contact: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individuals or organizations requesting information pursuant to the Freedom of Information Act or the Privacy Act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/USSS .006

SYSTEM NAME:

Non–Criminal Investigation Information System — Treasury/USSS.

SYSTEM LOCATION:

(a) United States Secret Service, 1800 G St., NW, Washington, DC 20223; (b) Components of this System are geographically dispersed throughout Secret Service field offices. (See below, United States Secret Service Appendix A, listing the addresses of Secret Service field offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who are applicants for employment with the U.S. Secret Service and other bureaus of the Department of the Treasury; (b) Individuals who are employees of the U.S. Secret Service and other bureaus of the Department of the Treasury holding security clearances granting access to classified documents and records; (c) Individuals who have filed administrative claims with the Secret Service and other bureaus of the Department of the Treasury under the Federal Tort Claims Act or who have been involved in automobile accidents or other incidents involving employees of the Secret Service and other bureaus of the Department of the Treasury resulting in tort claims against such individuals; (d) Individuals involved in investigations required in the administration of the Government Losses in Shipment Act, the Gold Reserve Act, and the Silver Purchase Act; (e) Individuals who are employees of the Secret Service and other bureaus of the Department of the Treasury who have been accused of misconduct in the performance of their duties, or who have been the subject of a complaint involving the performance of their official functions; (f) Individuals who are the subject of investigations or supply information to investigative agents conducting special investigations relating to the performance by the Secret Service of its statutory and regulatory functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Record containing investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information; (b) Records containing investigatory material compiled for law enforcement purposes, including but not limited to, reports of investigators relating to claims under the Federal Tort Claims Act, Government Losses in Shipment Act, the Gold Reserve Act and the Silver Purchase Act, and employee misconduct or malfeasance; (c) Records containing reports or statement of investigators, witnesses, complainants, claimants and correspondents associated with identifiable individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3056, Executive Order 10450 and Treasury Order 102–18 (revised March, 1985); and Treasury Order 173–1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses of the records contained in this System are as follows: (1) Disclosure to the Department of Justice and other Federal agencies for administrative, civil, or other legal proceedings to be used by personnel officials, attorneys, administrative law officers, and judges; (2) Disclosure to personnel of other Federal, state and local governmental agencies, foreign and domestic, for the purpose of developing or confirming information on individuals involved in non–criminal investigations conducted by the Secret Service; (3) Disclosure to personnel of private institutions and to private individuals for the purpose of confirming and/or determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information; and for the purposes of furthering the efforts of the Secret Service to investigate the activities of individuals related to or involved in non–criminal civil and administrative investigations; (4) Disclosure to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for the purpose of determining suitability, eligibility, or qualifications for employment with or access to classified information in such other agency or instrumentality; (5) Records maintained indicating a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be referred to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto; (6) Disclosures in the course of presenting evidence to a court, magistrate or administrative tribunal and disclosures to opposing counsel in the course of discovery proceedings for the purpose of enforcing, or prosecuting, a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto; (7) Disclosures to Federal, state or local agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the requesting agencies' decision on the matter; (8) Disclosures of information relating to civil proceedings to the news media in accordance with the guidelines contained in 28 CFR 50.2. (9) Disclosure to Federal, state, or local government agencies for the purpose of developing a relevant ongoing civil, criminal, or background investigation; (10) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records comprising this system are contained in file jackets, computerized data systems, microfilm, and microfiche. Portions of the information is maintained in on–line computer data files located at Headquarters.

RETRIEVABILITY:

This System is indexed alphabetically by name in Headquarters, Office of Inspection, and in field offices and retrieved through manual search of index cards and/or through computer search of magnetic media. Access to the physical files is by case number obtained from the name indices.

SAFEGUARDS:

(1) The file jackets, indices and magnetic media are secured by alarms and other internal security devices in locked rooms with guards on duty on an around–the–clock basis. Access to the records is available only to employees responsible for record management and operational employees who have a need for such information, each of whom holds a top secret security clearance; (2) The file jackets field offices are located in locked filing cabinets and when employees are not on duty, in locked

rooms.Access to the system is limited to employees holding top secret security clearances.

RETENTION AND DISPOSAL:

The retention schedule is as follows: (1) All judicial case records are retained for a period of 30 years; (2) Applicant security and background investigation records of Secret Service employees are retained for 20 years after retirement or separation of the employee from Secret Service employment; (3) Applicant investigation records relating to employees of Bureaus of the Treasury Department other than the Secret Service, are retained for 20 years; (4) All other records, the disposition of which are not otherwise specified, are retained. No destruction authorized. Magnetic media indices are retained for an indefinite period of time. Disposal: Disposal of records is by burning, shredding, maceration, pulping, and electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Directors, Office of Investigation and Office of Inspection, 1800 G St., NW, Washington, DC 20223.

NOTIFICATION PROCEDURE:

The Director of the U.S. Secret Service has exempted this System from the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

The Director of the U.S. Secret Service has exempted this System from the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The Director of the U.S. Secret Service has exempted this System from the provisions of 5 U.S.C. 552a (e)(4)(I).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k).

Treasury/USSS .007

SYSTEM NAME:

Protection Information System — Treasury/USSS.

SYSTEM LOCATION:

(a) United States Secret Service, 1800 G St., NW, Washington, DC 20223; (b) Presidential Protective Division, U.S. Secret Service, Room 1, Old Executive Office Building, Washington, DC 20500; (c) Vice–Presidential Protection Division, U.S. Secret Service, Room 295, Executive Office Building, Washington, DC 20500. (d) Dignitary Protective Division, U.S. Secret Service, 1310 L St., NW, Suite 500, Washington, DC 20005; (e) Special Services Division, U.S. Secret Service, Washington Navy Yard, 2nd and M St., SE, Bldg. 216, Washington, DC 20374;(f) Johnson Protective Division, U.S. Secret Service, PO Box 927, Stonewall, TX 78671; (g) Ford Protective Division, U.S. Secret Service, PO Box 955, Rancho Mirage, CA 92270–955; (h) U.S. Secret Service Uniformed Division, Room 320, 1310 L St., NW, Washington, DC 20005; (i) Technical Security Division, 1709 New York Avenue, NW., Washington, DC 20500. (j) Carter Protective Division, U.S. Secret Service, PO Box 308, Plains, GA 31780; (k) Reagan Protective Division, 2121 Avenue of the Stars, Fox Plaza, 34th Floor, Century City, CA 90067; (l) WAVES Center, Old Executive Office Bldg., Room 065. (m) Bush Protective Division, U. S. Secret Service PO Box 79797, Houston, Texas 77279–9797, White House Division, U.S. Secret Service Old Executive Office Bldg., Rm. 23, Washington, DC 20500. Components of this system are geographically dispersed throughout Secret Service field offices. (See below, United States Secret Service Appendix A, listing the addresses of Secret Service field offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who have been or are currently the subject of a criminal investigation by the U.S. Secret Service or another law enforcement agency for the violation of certain criminal statutes relating to the protection of persons or the security of properties; (b) Individuals who are the subjects of investigative records and reports supplied to the Secret Service by Federal, state, and local law enforcement agencies, foreign or domestic, other non–law enforcement governmental agencies, or private institutions and individuals; (c) Individuals who are the subjects of non–criminal protective and background investigations by the Secret Service and other law enforcement agencies where the evaluation of such individuals, in accordance with criteria established by the Secret Service, indicates a need for such investigations; (d) Individuals who are granted ingress and egress to areas secured by the Secret Service, or to areas in close proximity to persons protected by the Secret Service, including but not limited to invitees, passholders, tradesmen, and law enforcement, maintenance or service personnel; (e) Individuals who have attempted or solicited unauthorized entry into areas secured by the Secret Service; individuals who have sought an audience or contact with persons protected by the Secret Service or who have been involved in incidents or events which relate to the protective functions of the Secret Service; (f) Individuals who are witnesses, protectees, suspects, complainants, informants, defendants, fugitives, released prisoners, and correspondents who have been identified by the Secret Service or from information supplied by other law enforcement agencies, governmental units, private institutions, and members of the general public in connection with the performance by the Secret Service of its authorized protective functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrest, the nature and disposition of criminal charges, sentencing, confinement, release, and parole or probation status; (b) Records containing information compiled for the purpose of a criminal investigation, including reports of informants and investigators, which are associated with an identifiable individual; (c) Records containing reports relative to an individual compiled at various stages of the process of enforcement of certain criminal laws from arrest or indictment through release from supervision; (d) Records containing information supplied by other Federal, state, and local law enforcement agencies, foreign or domestic, other non–law enforcement governmental agencies, private institutions and persons concerning individuals who, because of their activities, personality traits, criminal or mental history, or history of social deviancy, may be of interest to the Secret Service in connection with the performance by that agency of its protective functions; (e) Records containing information compiled for the purpose of identifying and evaluating individuals who may constitute a threat to the safety of persons or security of areas protected by the Secret Service; (f) Records containing information compiled for the purpose of background investigations of individuals, including but not limited to, passholders, tradesmen, maintenance or service personnel who have access to areas secured by or who may be in close proximity to persons protected by the Secret Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The protective authority is contained in 18 U.S.C. 3056 and section 1 of Pub. L. 90–331, (18 U.S.C. 871; 18 U.S.C. 1751). The protective and security authority of the U.S. Secret Service Uniformed Division is contained in 3 U.S.C. 202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses are as follows: (1) Disclosure to the Department of Justice and other Federal, state, and local governmental agencies having a prosecutive function for the use of attorneys, magistrates, and judges; and parole and probation authorities for the purpose of prosecuting, sentencing, and determining the parole and probation status of criminal offenders or suspected criminal offenders; and for civil and other proceedings involving Secret Service Protective functions; (2) Disclosure to personnel of other Federal state and local law enforcement agencies, foreign or domestic, for the purpose of developing information on subjects involved in Secret Service protective investigations and evaluations and for the purpose of protective intelligence briefings of personnel of other law enforcement and governmental agencies assisting the U.S. Secret Service in the performance of its protective functions; (3) Disclosure to personnel of Federal, state, and local governmental agencies, foreign or domestic, where such disclosures are considered reasonably necessary for the purpose of furthering Secret Service efforts to investigate the activities of those persons considered to be of protective interest; (4) Disclosure to personnel of Federal, state, and local law enforcement agencies and other governmental agencies, foreign or domestic, where there is a showing of a reasonable need to accomplish a valid enforcement purpose; (5) Disclosure to personnel of private institutions and to private individuals of identifying information pertaining to actual or suspected criminal offenders or other individuals considered to be of protective interest for the purpose of furthering Secret Service efforts to evaluate the danger such individuals pose to persons protected by that agency; (6) Records indicating a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, may be disclosed to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto; (7) Disclosures in the course of presenting evidence to a court, magistrate or administrative tribunal and disclosures to opposing counsel in the course of discovery proceedings for the purpose of enforcing, or prosecuting, a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto; (8) Disclosures and/or responses to Federal, state or local agencies maintaining civil, criminal or other relevant law enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the issuance of a contract, grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; (9) Disclosures of information relating to criminal and civil proceedings to the news media in accordance with the guidelines contained in 28 CFR 50.2. (10) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are contained in file jackets, microfilm, or microfiche. Portions of the information contained in the records are maintained in on–line computer data files located at Headquarters and in the Old Executive Office Building.

RETRIEVABILITY:

This system is indexed by case number and other case related data in master and magnetic media indices. Access to the physical files is by case number, both at Headquarters and the field offices.

SAFEGUARDS:

(1) The file jackets and magnetic media are secured in locked rooms secured by alarms and other internal security devices with guards on duty on a twenty four hour basis. Access to the records is available only to employees responsible for record management and operational employees who have a need for such information, each of whom holds a top secret security clearance; (2) The file jackets in field offices are located in locked filing cabinets and in locked and alarmed rooms when employees are not on duty. Access to the system is limited to employees of the Secret Service holding top secret security clearances.

RETENTION AND DISPOSAL:

The retention schedule for records is as follows: (1) All judicial case records are retained for a period of 30 years. In cases where periodic checkups are conducted in protective intelligence cases, the retention period is computed from the date of the final check–up. (2) All other protective intelligence case records including protective surveys and non–judicial protective intelligence cases are routinely retained for a period of five years; (3) Disposal of records contained in this System is by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Protective Research, Assistant Director Protective Operations, U.S. Secret Service, 1800 G St., NW, Washington, DC 20223.

NOTIFICATION PROCEDURE:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k) the Director of the U.S. Secret Service has exempted this System from the provisions of 5 U.S.C. 552a(e)(4)(G).

RECORD ACCESS PROCEDURES:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k) the Director of the U.S. Secret Service has exempted this System from the provisions of 5 U.S.C. 552a(e)(4)(H).

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k) the Director of the U.S. Secret Service has exempted this System from the provisions of 5 U.S.C. 552a(e)(4)(I).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(2), (c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k).

Treasury/USSS .008

SYSTEM NAME:

Public Affairs Record System — Treasury/USSS.

SYSTEM LOCATION:

U.S. Secret Service, 1800 G St., NW, Washington, DC 20223.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Persons who are private citizens who correspond requesting information relating to the Secret Service; (b) Persons who are members of the news media, authors and publishers requesting information about the Secret Service; (c) Members of Congress who make inquiries with the Secret Service; (d) Persons who are recipients of the Secret Service Honor Award, who have received recognition from or assisted the Secret Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records of inquiries received from the general public, the communication media and the press relative to Secret Service activities; (b) Records of awards presented by the Secret Service; (c) Records of Congressional inquiries and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3056 and Treasury Department Order Number 173–3, dated October 29, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses are as follows: (1) Disclosures and/or responses to members of Congress and/or the general public. (2) Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records comprising this System are maintained in file jackets.

RETRIEVABILITY:

Records are filed alphabetically and chronologically.

SAFEGUARDS:

The records are secured in locked filing cabinets and/or in locked rooms, with guards on duty on a twenty four hour basis. Access is available only to employees responsible for management of the system and operational employees who have a need for such information, each of whom holds a top secret security clearance.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with mandatory General Services Administration, Records Schedule 14, Items 1–7. Disposal of records is by burning, shredding, and electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Government Liaison and Public Affairs, U.S. Secret Service, 1800 G St., NW, Room 805, Washington, DC 20223.

NOTIFICATION PROCEDURE:

Individuals who wish to present a request as to whether this system contains records pertaining to them should address inquiries to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

RECORD ACCESS PROCEDURES:

Requests for information contained in the System should be addressed to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(a) The general public, the news media and members of Congress who correspond with the Secret Service; (b) Persons who have received awards or honors from the Secret Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/USSS .009

SYSTEM NAME:

Training Information System — Treasury/USSS.

SYSTEM LOCATION:

(a) U.S. Secret Service, Special Agent Training and Employee Development Division, 1310 L St., NW, Room 904, Washington, DC 20005. (b) U.S. Secret Service Uniformed Forces and Firearms Training Division, James J. Rowley Training Center, Laurel, MD 20707.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are now or were Secret Service employees and officers of the U.S. Secret Service Uniformed Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the type and dates of training programs of the U.S. Secret Service employees, officers of the U.S. Secret Service Uniformed Division including course control documents and lesson plans for classes conducted by the Office of Training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3056.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to a student participating in a Secret Service student volunteer program, where such disclosure is necessary to further the efforts of the Secret Service, otherwise, disclosures are not made outside of the Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards and in a computer database.

RETRIEVABILITY:

Records are filed alphabetically.

SAFEGUARDS:

Records are secured in locked rooms with alarms when employees are not on duty. Access is available only to employees responsible for management of the records and operational employees who have a need for such information, each of whom holds a top secret security clearance.

RETENTION AND DISPOSAL:

Records are currently disposed of at varying intervals in accordance with record retention schedules approved by the National Archives and Records Administration NARA).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Training, U.S. Secret Service, Room 900, 1310 L St., NW, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals who wish to present a request as to whether this system contains records pertaining to them should address inquiries to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

RECORD ACCESS PROCEDURES:

Requests for information contained in the System should be addressed to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G St., NW, Room 720, Washington, DC 20223.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(a) Individuals who are now or were Secret Service employees, officers of the U.S. Secret Service Uniformed Division; (b) Individuals from other Federal, state and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

USSS Appendix A - U.S. Secret Service field offices and resident offices:

Western Bank Building, 505 Marquette Street, NW, Suite 1700, Albuquerque, NM 87102.
6100 Rockside Woods Blvd., Room 440, Cleveland, OH 44131–2334.
Equitable Building, PO Box 54407, Atlanta, GA 30308.
Strom Thurmond Federal Bldg., 1835 Assembly Street, Suite 1425, Columbia, SC 29201.
Federal Office Building, 300 East 8th Street, Suite 972, Austin, TX 78701.
500 South Front Street, Suite 800, Columbus, OH 43215.
100 S. Charles Street, 11th Floor, Baltimore, MD 21201.
125 East John W. Carpenter Fwy, Suite 300, Irving, TX 75062.
500 Building, 500 South 22nd St., Suite 203, Birmingham, AL 35233.
1660 Lincoln Street, Suite 1430, Denver, CO 80264.
Thomas P. O'Neill, Jr. Federal Bldg., 10 Causeway Street, Boston, MA 02222–1080.
Patrick V. McNamara Building, Suite 1000, 477 Michigan Avenue, Detroit, MI 48226.
Federal Building, Room 1208, 111 West Huron Street, Buffalo, NY 14202.
Mesa One Building, 4849 North Mesa, Suite 210, El Paso, TX 79912.
1 Valley Square, Suite 910, Charleston, WV 25301.
Gerald R. Ford Federal Bldg. & U.S. Courthouse, 110 Michigan Ave; NW, Grand Rapids, MI 49503.
4530 Park Road, Suite 226, Charlotte, NC 28209.
300 Ala Moana Boulevard; Room 6309, Honolulu, HI 96850.
Gateway IV Building, 300 Riverside Plaza, Suite 1200 North, Chicago, IL 60606.
Federal Office & Courts Building, Room 6216, 602 Sawyer St., Houston, TX 77007.
John Weld Peck Federal Building, 550 Main Street, Cincinnati, OH 45202.
575 N. Pennsylvania Street, Suite 211, Indianapolis, IN 46204.
Federal B[illegible], 100 West Capitol Street, Jackson S 39269.
7820 Arlington Expressway, Suite 500, Jacksonville, FL 32211.
Hale Boggs Federal Building, 501 Magazine St., New Orleans, LA 70130.
1150 Grand Avenue, Suite 510, Kansas City, MO 64106.
P.O. Box 16027, Federal Station, Las Vegas, NV 89101.
7 World Trade Center, 9th Fl., New York, NY 10048–0953.
111 Center Street, Suite 1700, Little Rock, AR 72201.
35 Pinelawn Road, Suite 216E, Melville, NY 11747.
Federal Building, Room 400, 200 Granby Mall, Norfolk, VA 23510.
RoyBal Federal Bldg., 17th Fl., 255 E. Temple Street, Los Angeles, CA 90012.
200 Northwest Fifth Street, Suite 926, Oklahoma City, OK 73102.
135 W. Central Blvd., Suite 670, Orlando, FL 32801.
377 Federal Building, 600 Dr. Martin Luther King, Jr., Place, Louisville, KY 40201.
Old Federal Bldg; 106 S. 15th Street, Room 905, Omaha, NE 68102.
5350 Poplar Ave., Suite 204, Memphis, TN 38103.
8375 Northwest 53rd Street, Suite 100, Miami, FL 33166.
600 Arch Street, 7236 Federal Bldg; Philadelphia, PA 19106–1676.
517 East Wisconsin Avenue, Room 572, Milwaukee, WI 53202.
3200 North Central Ave., Suite 2180, Phoenix, AZ 85012.
110 South 4th Street, 218 U.S. Courthouse, Minneapolis, MN 55401.
1000 Liberty Avenue, Room 835, Pittsburgh, PA 15222.
182 Saint Francis Street, Suite 200, Mobile, AL 36602.
121 Southwest Salmon Street, Suite 1100, Portland, OR 97204, (503)326–2162.
801 Broadway Street, U.S. Courthouse 658, Nashville, TN 37203, (615)736–5841.
The Federal Center, 380 Westminster St., Suite 343, Providence, RI 02903, (401)331–6456.
Headquarters Plaza – West Tower, 7th Floor, One Speedwell Ave., Morristown, NJ 07960, (201)645–2334.
600 East Main Street, Suite 1910, Richmond, VA 23240, (804)771–2274.
265 Church Street, Suite 1201, New Haven, CT 06510, (203)865–2449.
4407 Bland Road, Suite 210, Raleigh, NC 27609.
P.O. Box 1525, Riverside, CA 92502.
501 J Street, Suite 530, Sacramento, CA 95814, (916)440–2413.
301 E Genese, Suite 200, Saginaw, MI 48607.
280 South 1st St., Suite 2050, San Jose, CA 95113.
200 W. Santa Ana Blvd., Suite 500, Santa Ana, CA 92701.
1114 Market Street, Room 924, St. Louis, MO 63101.
57 West 200 South, Suite 450, Salt Lake City, UT 84101.
1050 Connecticut Ave., NW, Suite 1000, Washington, DC 20036.
727 E. Durango, Room B410, San Antonio, TX 78206.
550 West C St., Suite 660, San Diego, CA 92101.
345 Spear St., Suite 530, San Francisco, CA 94105.
U.S. Federal Building, Room 539, 5th Floor, 150 Carlos E. Chardon Avenue, Hato Rey, PR 00917–1717.
Henry M. Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174.
601 W. Riverside Avenue, Suite 1340, Spokane, WA 99201.
400 West Monroe, Suite 301, Springfield, IL 62704.
501 East Polk St., Room 1101, Tampa, FL 33602.
Suite 800, 505 South Flagler Drive, West Palm Beach, FL 33401.
140 Grand St., Suite 300, White Plains, NY 10601.
1 Roaney Square, Room 414, 920 King St., Wilmington, DE 19801.
American Embassy/USSS – London, England PSC 801, Box 64, FPO AE 09498–4064.
American Embassy/USSS – Manila, Philippines APO – AP 96440.
American Embassy/USSS – Paris, France Room D–306, D Bldg; 58 bis, Rue la Boetie.
American Embassy/USSS – Rome, Italy PSC 59, Box 100 USSS, APO AE 09624.

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November 9, 1995

Part IV

Department of Housing and Urban Development

24 CFR Parts 91 and 570
Community Development Block Grant Programs; Correction of Identified Deficiencies and Updates; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 91 and 570

[Docket No. FR–2905–F–02]

RIN 2506–AB24

Community Development Block Grant Program; Correction of Identified Deficiencies and Updates; Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule corrects identified deficiencies in the Community Development Block Grant (CDBG) program, implements relevant portions of the Cranston-Gonzalez National Affordable Housing Act, amends the CDBG conflict of interest provisions, implements statutory changes from the Housing and Community Development Act of 1987 and the Appropriations Act of 1989, and provides criteria for performance reviews and timely expenditure of funds under the CDBG program.

This rule also furthers goals of reinventing government by incorporating public input in rulemaking, providing performance standards, and clarifying regulatory language. Very few of this rule's provisions impose any additional burden on grantees, and these are designed to increase program accountability, primarily in areas identified by the Inspector General as material weaknesses or other serious recurrent audit issues.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Deirdre Maguire-Zinni, Director, Entitlement Communities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708–1577. A telecommunications device for deaf persons (TDD) is available at (202) 708–2565. FAX inquiries (but not comments on the rule) may be sent to Ms. Maguire-Zinni at (202) 708–2575. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the Community Development Block Grant (CDBG) program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and have been assigned OMB Control Number 2506–0077. This rule does not contain additional information collection requirements.

II. Background

The CDBG program is a key component of HUD's legislative reinvention proposal, the American Community Partnerships Act. By its nature, the CDBG program places responsibility for meeting program requirements squarely on the recipients entitled to receive and administer the grants. Because the CDBG regulations are the primary program guidance issued by HUD, program practitioners refer to them often (unlike other Federal regulations, the primary readers of which are often attorneys). Therefore, this rule, which updates the CDBG regulations to reflect significant statutory enhancements since 1987, furthers the reinvention of government, and of HUD in particular, by providing local CDBG decisionmakers the advantage of regulatory and statutory flexibility to design and use their CDBG program resources. This rule also contains several provisions that enhance grantee accountability to national program and financial performance standards. For example: the definition of "income" helps ensure that low- and moderate-income persons are served; the consolidated plan performance criteria will guide assessment of the extent to which grantees are carrying out their consolidated plans; and revolving loan fund and other related changes ensure that funds are not unduly sheltered from United States Treasury requirements.

Several of the provisions of this final rule were published for comment as a proposed rule on August 10, 1994 (59 FR 41196). As further discussed below, these provisions were designed to correct program deficiencies identified by HUD's Office of Inspector General (OIG), HUD staff, and HUD clients. The August 10, 1994 proposed rule included: a flexible definition of "income" for families and households; a change in calculating the planning and administration limitation; new revolving fund requirements to remove the special protection from drawdown requirements afforded program income in revolving funds; a clarification limiting the scope of the definition of "ineligible income payments" in 24 CFR 570.207(b)(4); a description of "float-funded" activities in the action plan; a specification of three situations in which income earned on grant funds must be remitted to the U.S. Treasury; a requirement of a determination of benefit when CDBG funds are used outside the jurisdiction of the recipient; and performance standards to replace the Housing Assistance Plan (HAP) standards at § 570.903, for determining whether a grantee has carried out its consolidated plan housing strategy (formerly Comprehensive Housing Affordability Strategy (CHAS)).

The preamble to the August 10, 1994 proposed rule stated that any differences between the rule and the Consolidated Plan final rule, published on January 5, 1995 (60 FR 1878), would be resolved at the final rule stage. In making the resolution, HUD included some of the provisions of the August 10, 1994 proposed rule in the Consolidated Plan final rule. These pieces include incorporation of some of the final statement requirements into the consolidated plan and language at § 91.220 describing CDBG program-specific requirements for the action plan, including some language on float-funded activities. HUD also incorporated the provision in the August 10, 1994 proposed rule regarding delay of the grant when performance reports are delinquent into the Consolidated Plan final rule at § 91.520(f). In addition, HUD has adjusted terms and approaches in both rules to conform to the consolidated plan process.

Two provisions of this final rule were published for comment as a proposed rule on November 12, 1993 (58 FR 60088) regarding performance reviews, timely expenditure of CDBG funds, sanctions, and due process hearings. As further discussed below, this final rule only includes the provisions from the November 12, 1993 rule on performance standards and timely expenditure of CDBG funds.

Four of the provisions of this final rule were published for comment as an interim rule on June 17, 1992 (57 FR 27116). The June 17, 1992 interim rule implemented relevant portions of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (the NAHA). The June 17, 1992 interim rule included: enhancing the calculation of the public services limitation by permitting CDBG entitlement recipients to include certain program income in the base amount of CDBG funds from which the funds available for public services are calculated; limiting the reach of the conflict of interest provisions; and responding to grantee requests by broadening the forms in which funds may be provided to subrecipients for their use.

Several other provisions of this final rule were published for comment as a proposed rule on March 28, 1990 (55 FR 11556). The March 28, 1990 proposed rule implemented: section 511 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) (the 1987 Act) regarding the availability of CDBG funds for Uniform Emergency Telephone Number Systems; and relevant portions of the Department of Housing and Urban Development—Independent Agencies Appropriations Act of 1989 (Pub. L. 100–404, approved August 19, 1988) (the Appropriations Act).

As further discussed below, this final rule also implements statutory provisions that require little or no regulatory elaboration. This rule implements three provisions of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 11, 1994): (1) section 207, regarding the use of CDBG funds to pay for administration of the HOME program and (2) authorization of a housing services eligibility category; and (3) section 234, permitting statutory waivers for activities designed to address a Federally declared disaster.

In addition, this rule implements the following provisions of the NAHA that require little or no regulatory elaboration: (1) section 902(a), regarding the overall benefit of 70 percent; (2) section 903, regarding city and county classification; and (3) section 912, regarding discrimination on the basis of religion. HUD included certain other self-implementing changes from the NAHA in the Consolidated Plan final rule, published in the **Federal Register** on January 5, 1995 (60 FR 1878).

This rule also implements changes from the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) that require little or no regulatory elaboration: (1) section 807(a), regarding separate eligibility categories for provision of technical assistance to public or private entities and assistance to institutions of higher education for carrying out eligible activities; (2) section 807(b), regarding the extension of the authority to use CDBG funds for direct homeownership assistance for a specified additional period; (3) section 807(c)(1), regarding recipient and subrecipient capacity building to carry out microenterprise activities; (4) section 807(e), regarding amendments to the current restrictions on areas in which CDBG funds may be used for code enforcement to take into account privately funded development in addition to publicly funded development; and (5) section 809, permitting as eligible administrative expenses the costs of establishing and administering Federally approved Empowerment Zones and Enterprise Communities.

Finally, as further described below, the rule contains miscellaneous technical updates and corrections to the CDBG Entitlement, State, Small Cities, and Insular Areas provisions.

III. Provisions From the August 10, 1994 Proposed Rule

HUD received 45 comments on the August 10, 1994 proposed rule. The following discussion summarizes those comments.

A. Definition of "Income"

The CDBG program is unique among HUD's major programs in needing a definition of income that will be familiar and useful to private businesses and others outside the industry of housing service providers, and that will be useful when measuring benefit for an activity that will serve an area generally. This rule furthers the reinvention of HUD by providing a great deal of administrative flexibility while improving accountability in an area of identified weakness. This flexibility is provided in the design of the definition as well as in the documentation requirements (which are unaffected by this rule). Grantees may choose to assess participant income in one of three ways based on the cash or asset elements included in either the Section 8, Internal Revenue Service, or Census definitions of income. The existing documentation requirements permit participants to self-certify their family incomes or to substitute documentation of their qualification in a Federal or State program that has income qualifications at least as rigorous as the selected definition. Standardizing the definitions ensures that citizens are treated fairly, and retaining the current documentation requirements continues to provide significant administrative flexibility to grantees. Further, grantees still retain the responsibility for determining how much assistance to provide.

HUD received eighteen comments on the proposed definition of income, including comments from five urban counties, four metropolitan cities, three national public interest groups, two low-income citizens advocacy groups, two single city nonprofit housing rehabilitation groups, one State, and one regional community development group. Twelve of the commenters were generally in favor of the new, flexible definition. Almost without exception, the commenters requested that if HUD implemented the proposed definition, HUD should permit a fourth option. The commenters suggested that this fourth option be either: (1) to qualify automatically an individual already qualified under a means-tested program, or (2) to allow each grantee to develop its own definition, to be approved by HUD. Some confusion about the difference between the documentation and definition provisions was apparent in the comments on these points.

The two low-income advocates generally endorsed the definition of income as proposed, although one requested additional clarification of two points. The first point involves clarification of the language proposed in paragraph (2) of the definition. By "integrally related activities of the same type," HUD intended to denote, for example, a program of single family rehabilitation lending activities (which are generally grouped for reporting purposes), a "bundle" of public services provided through a single program to the same clientele (such as services provided during transitional housing to the homeless), or a portfolio of commercial loans made by a particular subrecipient. If the grantee administers a community-wide single family rehabilitation loan program, it should use the same definition of household income or family income (as applicable) in evaluating each loan in that program.

HUD does not intend the phrase "integrally related activities of the same type" to denote activities that are part of the same "project," because many community development projects are for mixed uses and mixed purposes. For example, a three-story building may have public parking in the basement, commercial space and a community center on the ground floor, and affordable housing in the upper stories. This is all one construction project, but with distinct activities serving different populations and meeting distinct national objectives within the CDBG program. Further, while the term "project" is used throughout the HOME program, it is only used for limited purposes in the CDBG program (for example, under §§ 570.203 and 570.204 and for environmental and Davis-Bacon purposes).

Ideally, HUD would like each grantee to select one definition for all its CDBG activities, or at least for purposes of meeting each income-based national objective category. However, as described in the preamble to the August 10, 1994 proposed rule, HUD recognizes that this would be administratively difficult and not useful for many grantees.

Some commenters appeared to confuse definition and documentation issues. Both advocacy groups suggested that the rule require, in § 570.3, that none of the three definitions be used if the assistance was to be provided to a person who provides documentation of income-eligibility for another program "recognized as more rigorous than CDBG." This suggestion mixes the definition of income at § 570.3 and the documentation of income at § 570.506(b). The definition of income merely describes the assets (if any), salaries, and other income flows that must be considered in determining income. The documentation requirements describe how to verify income at the time assistance is provided. Therefore, if a person provides documentation from another means-tested program to show that the necessary elements (and possibly more than those elements) were considered, and affirms that his/her financial status remains the same at the time the CDBG assistance is provided, then HUD would find this acceptable.

The groups also requested that Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) be added to the definitions of "programs at least as restrictive" at § 570.506. HUD has decided to add neither, however, because the programs listed at that point are illustrative. Documentation from any means-tested program may be used if the grantee determines that the program's elements and thresholds are at least as restrictive as the CDBG definition being used for the activity.

Five grantees, one public interest group, and two nonprofits requested that a fourth option be added to permit grantees to develop their own definitions, or to continue using the definitions they had been using. Because HUD intends to limit the variation in definitions of income, HUD did not adopt these suggestions. However, as noted above, if a person is participating in a means-tested State or Federal program at least as restrictive as CDBG with regard to income elements and thresholds, documentation of qualification for that program may be used to determine CDBG income eligibility.

One grantee and two of its nonprofit subrecipients apparently misconceived how the IRS and Census definitions are to be used. These commenters apparently thought HUD meant that the Census or tax form, as completed at the time required for Census or tax purposes, should be used to determine CDBG income eligibility—even when the CDBG assistance was provided months or years after an individual completed the form. In almost all cases, neither of these documents alone would accurately represent the level of income of the family or household at the time CDBG assistance is provided. Instead, the familiar terms used on these forms will help each person receiving assistance to understand which cash and asset values to consider before making the certification required by § 570.506 as to their current family or household (not individual) income, as appropriate. Although the IRS 1040 form is often used to report individual income, not family or household income, that form provides a familiar way to show people which kinds of income are to be considered. One commenter asked whether the IRS short form could be used. Any form can be used, provided the grantee ensures that the information is current and that all sources of income covered by the selected definition are considered in making income eligibility determinations.

Finally, several commenters to the August 10, 1994 proposed rule and to the Consolidated Plan proposed rule requested that the terms used for the various income groups be conformed among the regulations for the CDBG program, the consolidated plan, and other programs. After discussion, HUD decided to use the existing CDBG terms in the regulations for both the CDBG program and the consolidated plan. In the consolidated plan HUD added two additional terms—"middle-income," to denote families whose income is 80 to 95 percent of median income, and "very low-income" to denote families whose income is below 30 percent of median income. HUD did not need to make changes in this rule to accommodate this decision.

B. Calculation of the Planning and Administration Limitation

HUD's original proposal was to rule out source-year based calculation of the spending limit and to require program-year based calculation based on expenditures. In response to the comments and in adherence with the principles of reinventing government, HUD changed the rule at this final stage to make the calculation more accommodating of costs (notably planning costs) which may unexpectedly cross program year boundaries. HUD retained the regulatory provision specifying the calculation method in the regulations instead of using less binding guidance materials, because abuse in this area would decrease funds available directly to improve the lives of low- and moderate-income persons and to rebuild their communities.

HUD received thirteen comments on the proposed change to the language describing the calculation of the limitation on planning and administration expenditures. Two commenters, both low-income citizens advocacy groups, supported the change. One group commented that the change would "inhibit grantees from playing shell games" with administrative funds. Both commenters felt that this change would make it harder for grantees to hide from citizens the exact amount of funds used for administering the program each year. One major metropolitan city commented that the change would not affect it.

Three metropolitan cities, three counties, one State, and three public interest groups submitted opposing comments. As one public interest group commented: "Although the source year method of calculation is infrequently used by CDBG grantees, those who do use it find the proposed change extremely detrimental." Almost every one of these commenters cited the disruption that could be caused to the calculation by a large contract (such as a planning contract) unexpectedly extending into another program year. Several commenters disagreed with the reasons HUD proposed the language change, stating that if the performance report did not support source-year funding, it should be modified. One commenter pointed out that program income can simply be sourced to the year in which it is received. The State commenter agreed with HUD's decision to rule out the source-year method as inherently arbitrary. It argued, however, that it may be necessary when apportioning expenditures among agencies with "varied non-CDBG funding sources," and the source-year method might also be the most efficient way to govern and track expenditures by other entities. An urban county and the interest groups made similar arguments.

The opposing commenters suggested a variety of solutions. One suggestion was to drop the proposed change entirely. However, this suggestion does not address the issues that led HUD to propose the change in the first place or the issues raised by the advocacy organizations in their comments. Another suggestion was to permit grantees that use this method of accounting to submit to an audit to determine whether they are using the method correctly, and to submit the results of any audit in their favor to HUD for approval to use this method. Another suggestion was to base the cap calculation on the amount "committed" for administration during the program year, rather than the amount expended. A variation of this suggestion was that the grantee count expenditures when the activity was to be carried out by its own staff and count commitments when the activities were to be carried out by a subrecipient, a contractor, or, in the case of the State, another agency.

In the past, HUD has based the planning and administrative limitation on expenditures because many, if not most, of the expenditures for these activities are for the grantee's own staff on payroll. Prediction and management of annual payroll expenses is a normal part of the budgeting process. Therefore, the expenditure basis of the cap is not a burden for most grantees, but rather is the simplest method of calculating and governing the cap. According to HUD data, some grantees also have an unused margin each year.

In drafting the final rule, HUD rejected suggestions allowing grantees to calculate 20 percent of each annual grant, and to use this amount in the current year or to carry it over into future grant years until the entire amount was expended. This could have the effect of making expenditure of the maximum possible for program administration costs the norm. Any funds spent on program administration are not being spent on activities that more directly implement the purposes of the Housing and Community Development Act of 1974 (the Act). However, HUD agrees with commenters who argued that even with proper management, planning and administrative contracts can occasionally involve expenditures occurring in a year other than the one in which the costs were budgeted. HUD also agrees that an expenditures-only test ignores the difficulties in managing the precise period when a contractor or subrecipient will actually expend funds. Therefore, this rule changes the cap calculation by basing it on annual obligations (rather than expenditures) for purposes of calculating the 20 percent cap. At the end of the program year, grantees will reconcile these amounts using the same method now used for reconciling the public services limitation, which is currently calculated based on obligations. (While the base for the public services cap includes the amount of program income received during the previous program year, the base for the planning and administration cap uses the current year's program income.) Using this approach, a grantee that does not obligate any planning and administrative funds before expending them is still treated as though the requirement is based on expenditures rather than obligations, while a grantee that requires some additional flexibility will have it.

C. Revolving Funds and Returning Excess Program Income

HUD proposed the revolving loan fund (RLF) and return of program income provisions in response to Inspector General findings. HUD is making these changes to ensure that recipients of Federal resources meet certain responsibilities (in this case demonstrating fiscal responsibility and not unnecessarily increasing the Federal deficit) in return for the Federal assistance, which is one of the principles of reinventing government. The proposed rule language would have eliminated the provision that sheltered money in RLFs from the requirement that no additional funds be drawn down from the line of credit when CDBG funds are already on hand.

HUD received 31 comments from groups and individuals regarding the revolving loan fund proposed changes. Fourteen metropolitan cities, four urban counties, three national interest groups, three community-based nonprofit organizations, two regional community development groups, two States, two local HUD program officers, and one low-income citizens advocacy group were included among the commenters. All commenters opposed the changes. Many of the comments linked the proposed revolving loan fund changes to the proposed rule to require grantee- or subrecipient-held program funds in excess of one-twelfth of the grant amount to be returned to the line of credit.

HUD has considered all the comments and finds some of them persuasive. However, several commenters apparently misunderstood how the proposed changes would work and were concerned that HUD was striking at the activities typically funded by RLFs, instead of just adjusting the RLF mechanism. This in turn led to confusion of the issues associated with permitting revolving funds to shelter program income. However, HUD did not propose to eliminate revolving loan funds, and HUD agrees that the activities typically carried out through revolving funds (e.g., housing rehabilitation) serve vital program purposes.

Any activity carried out under a revolving fund can be carried out through the normal CDBG delivery mechanism. The basic question, therefore, is whether the revolving fund structure, per se, serves a vital program purpose. Under the proposed rule, principal and interest payments for loans in a revolving fund would have been held in the grantee's general program account, while RLF accounts would have been kept separately. In effect, the proposed changes would have made the grantee the "bank" in which the RLF was held. HUD did not contemplate changes to the budgeting of RLF amounts in the final statement (now called the action plan), so comments claiming that the changes would increase the difficulty of securing funding during the local budgeting process seem misplaced. Even under existing rules, program income to RLFs must be projected for citizens who are then able to comment on whether to propose another use for the funds.

Other comments include those described in the following paragraphs. All of the following comments were expressed to some degree by more than one commenter. Several commenters asserted that the proposed rule changes would cause enough additional delay and expense that administration of RLFs would become time prohibitive. For instance, commenters remarked that RLFs held in local financial institutions can provide access time as short as one day; such short access times are often critical to small and minority contractors carrying out CDBG activities. One commenter remarked that management of its own RLF by a neighborhood- or community-based nonprofit organization empowers the organization. Allowing it to manage and keep its own funds teaches the skills that foster successful, sustainable organizations. Other commenters added that if a financial institution is used as a depository, it often can be persuaded to provide other benefits. Commenters also argued that the proposed changes will increase administrative costs to the RLF administrator caused by constant passing back and forth of small amounts of money, resulting in fewer CDBG dollars being used to assist activities.

In response, HUD agrees that it would be more advantageous for a number of reasons to keep loan repayments in a separate account and not "mix" it with other program income, the use of which has not been predetermined. This convenience does justify some expense to taxpayers.

Many commenters suggested as an alternative to the proposed rule that HUD require a minimum expenditure from a revolving fund in a year, or a maximum carryover percentage from year to year. One commenter, a local HUD program officer, suggested a single system that at least partly addresses the issues behind both the RLF proposal and the return of grant funds proposal.

Because many of the commenters indicated linkages between the RLF and return of excess program income proposals, the comments and issues related to the return of excess program income proposal are discussed immediately below, followed by the description of the final regulatory provisions adopted in response to comments on both proposals.

The proposal to require return of excess program income drew 17 comments opposing it in whole or in part. The commenters included six metropolitan cities, four urban counties, three public interest groups, one low-income citizens advocacy group, one local HUD program officer, one community-based nonprofit organization, and one State. The strongest opposition came from those who interpreted the language to mean that, on an ongoing basis, as a grantee accumulated in its program account an amount greater than one-twelfth of its annual grant amount, that amount must be remitted to the grantee's CDBG line of credit. This is what HUD originally intended. Several commenters expressed intense objection to this proposal, based on the costs of administering such a complex system and passing small amounts of funds back and forth. Three commenters stated that such a system would be a significant disincentive to carrying out the revenue-producing activities that currently generate approximately $450 million in additional funds for community development activities annually.

Several commenters suggested that the funds should be required to be remitted only at specific intervals, such as quarterly or annually. This process would establish CDBG balances and allow HUD to be certain that large sums were not being held unused, in violation of Treasury guidelines. One commenter, the HUD program officer, linked the concept of an annual remittance of funds on hand to his suggestion for how to better manage RLFs. This commenter suggested that all unexpended funds, except those needed immediately, those in RLFs, or those resulting from legal lump-sum drawdowns, be remitted to the line of credit annually near the beginning of the program year to establish a beginning balance. Under this proposal, with this one exception, program income received during the program year would be treated as it is now. At the time of the remittance, the recipient would describe to HUD the exact amount of funds in each RLF. The HUD program officer further proposed annual RLF expenditure and carryover standards, which, if violated, would result in HUD requiring the grantee to dissolve the RLF.

HUD is yielding to the unanimous view of the commenters that RLFs are an important CDBG tool by retaining a specific provision for RLFs in this final rule. The RLF provision in this final rule accommodates the suggestions of the commenters while substantially addressing the original problem, the loss of revenue to the U.S. Treasury. The final rule provides that cash balances of each RLF must be held in an interest-bearing account, and that any interest earned by funds accumulating in this account must be remitted annually, at the end of each program year, to the Treasury. This remittance will partially offset the cost to the Treasury of removing RLF funds from the general requirement that funds on hand must be used before any draws to the Treasury. Interest paid by borrowers on loans made from the RLF will remain program income and may be used as part of the RLF for further lending.

Furthermore, in response to comments on the return of grant funds proposal, HUD modified the rule to require all program income cash balances or investments thereof in excess of one-twelfth of the grant or subgrant amount—except for those needed immediately, those in RLFs, those resulting from lump-sum drawdowns authorized under § 570.513, and those invested or held as additional security for a Section 108 loan guarantee—be remitted to the CDBG line of credit annually. This remittance will take place as soon as practicable following the end of the grantee's program year. HUD expects that all such remittances will be complete within 60 days following the end of a grantee's program year. The amount to be remitted will be calculated based on the total program income balances (with the exceptions above) held by the grantee and all of its subrecipients as of the last day of the grantee's program year. While the rule requires at § 570.503(b)(3) that subrecipient agreements include a provision allowing the grantee to require subrecipient remittance of program income cash balances or investments at the end of the program year, the grantee is responsible for determining whether amounts held by any subrecipient or subrecipients are sufficiently large that such remittance will be necessary to enable it to meet the requirement at § 570.504(b)(2)(iii). HUD anticipates that information describing the exact amount of any program income cash balances and investments thereof that the rule permits grantees to retain will be provided to HUD by the grantee as part of the annual performance report.

D. Income Payments

The income payments provision of this final rule follows the principles of reinventing government by clarifying and limiting burdensome regulations; the rule allows grantees more options for empowering program participants. On the effective date of this rule, downpayment assistance (other than that authorized by § 570.201(n)), and loans for subsistence will be eligible public services, rather than ineligible income payments. Only subsistence grants will remain CDBG-ineligible.

HUD received 17 comments on the new definition of prohibited income payments. The commenters included five urban counties, four metropolitan cities, three public interest groups, two HUD program officers, two low-income citizens advocacy groups, and one State. Only the two HUD program officers opposed the change entirely.

First, one of the HUD program officers was concerned that loans for income payments would often be made to those who could not or would not make payments. Since grants are ineligible, this program officer asked what HUD's position would be on the eligibility of a subsistence loan activity that appeared from its results to be a grant activity. HUD recognizes that loans for small amounts for subsistence activities are risky. However, some grantees have had success in offering people the responsibility of loan repayments along with subsistence assistance. Grantees are responsible for meeting program requirements. If a loan program default rate is unusually high, HUD would examine the system the grantee has in place to ensure payment, and in this case, to ensure eligibility. If such a system was absent or faulty, HUD would recommend and, if necessary, enforce corrective actions.

The other program officer's objection was that other programs exist to provide for subsistence and downpayment assistance, and that it is inappropriate for the CDBG program to allow such activities. HUD acknowledges that the regulatory prohibition against direct-to-the-individual subsistence-type income payments exists, in part, because other large programs, such as food stamps, Aid to Families with Dependent Children (AFDC), Section 8, and Social Security are designed to provide such assistance. None of these programs, however, provides general assistance in the form of loans or is linked to an overall community development program. Further, since such loans in the CDBG program are subject to the 15 percent cap on public services obligations, their use will be limited. In response to similar comments on downpayment assistance activities, HUD believes it is clear that the amount required to meet the need for downpayment assistance for low- and moderate-income persons exceeds the amount of funds available under all HUD's programs within its Office of Community Planning and Development (CPD). HUD strongly supports expanding the resources available for homeownership, and many grantees have already found CDBG useful for this purpose.

Five commenters opposed the placement of downpayment assistance in the public services category upon its removal from the income payment category, although all agreed that it is not an income payment. Some suggested other placements for it, such as the economic development, rehabilitation, or acquisition categories. HUD understands the commenters' desire to keep downpayment assistance unencumbered by the public service cap, and agrees that the category is not a perfect fit. However, downpayment assistance also clearly does not belong under economic development, as it is defined in the CDBG regulations. Assisting acquisition by an individual homebuyer for the purpose of rehabilitation is already eligible, but activities not associated with rehabilitation do not fit in § 570.202. Furthermore, the law limits the eligibility of acquisition for purposes other than economic development or rehabilitation to grantees and other public or private nonprofit entities. Downpayment assistance may also be carried out by qualified Community-Based Development Organizations (CBDOs) as part of a § 570.204 eligible activity (such activities will generally be subject to the annual limitation on public services obligations).

Some of the commenters may have objected to changing the eligibility of downpayment assistance because they believed that HUD was indicating that such activities could meet the national objective of benefit to low- and moderate income persons under the criteria at § 570.208(a)(2)—Limited clientele activities. However, application of the limited clientele criteria would allow downpayment assistance qualifying under § 570.201(e) to be provided to a substantial percentage (up to 49 percent) of above-income persons even if it is not part of a neighborhood revitalization effort. The more appropriate low- and moderate-income category to apply is § 570.208(a)(3)—Housing activities. For clarification, HUD modified the second sentence of that section to include acquisition or rehabilitation by an individual homebuyer on the exemplary list of activities covered by that provision.

In terms of eligibility, downpayment assistance fits best as part of the temporary category at § 570.201(n)—Direct homeownership assistance. The eligibility for this activity expired on its "sunset" date of October 1, 1995. However, HUD has requested that Congress amend the statute to reinstate the activity's eligibility. One commenter, a public interest group, objected to HUD allowing downpayment assistance as a public service because this would remove pressure from Congress to delete the sunset provision on direct homeownership assistance (a broad category that includes downpayment assistance) as a separate activity. However, HUD believes that downpayment assistance is useful to grantees in meeting the needs of their residents and therefore has decided to make this activity eligible under CDBG (although it is constrained by the public services cap).

Four commenters requested that child care be removed from the list of prohibited income payments. One wanted ongoing "scholarship" payments made to a family, organization, or institution for medical and child care made eligible. HUD agrees that scholarships for child care should be eligible and is removing child care from the list of ineligible subsistence payments. However, the grantee must design a system that ensures that any cash payment made to a family for child care (or any purpose) is actually used as the grantee intended. To this end, HUD recommends that, whenever possible, payments for such purposes are made in the form of vouchers or payments directly to the provider.

One commenter wanted clarification that loans for housing rehabilitation are not public services. Loans for housing rehabilitation are eligible under § 570.202 as rehabilitation activities. Such loans are not eligible as public services. This includes loans and downpayments to assist acquisition for the purpose of rehabilitation.

The two advocacy groups wanted emergency one-time payments to be changed to emergency payments made over no longer than a three-month period. HUD agrees and has made the suggested change. Further, HUD wants to clarify that, under the language of this rule, payments to help a family or individual meet one emergency do not preclude such assistance being provided to the same family or individual at some later, not immediately sequential, point in time to meet a different emergency. The commenters also wanted the preamble language stating that loans for subsistence would not be considered income payments to be stated in the regulation, along with language in § 570.207 stating that downpayment assistance was no longer prohibited by that paragraph. HUD has adopted the first half of the suggestion at § 570.201 by adjusting the specific activity list. However, adding language in § 570.207 would be redundant.

E. Float-Funded Activities

Float-funded activities use undisbursed funds in the line of credit and the CDBG program account that are budgeted in action plans for one or more other activities that do not need the funds immediately. HUD included the provision governing float-funded activities in the proposed rule at the urging of the Office of Inspector General, which had identified serious repeated findings of program mismanagement in two audits of interim financing carried out during the 1980s.

In the proposed rule, HUD added criteria for float-funded activities in the final statement section of the regulations. These criteria included citizen participation and security requirements necessary to offset the risks of float-funding. In this final rule, because HUD incorporated basic final statement requirements into the regulations for the consolidated plan (24 CFR part 91), the float-funded activities language is the bulk of the language remaining in § 570.301.

HUD received 11 comments with respect to these proposed requirements. Three public interest groups representing community development practitioners, three urban counties, two low-income advocacy organizations, two large metropolitan cities, and a local HUD Community Planning and Development program officer responded. Seven of the commenters, including the HUD program officer, wanted the 2.5-year time limit for the duration of a float-funded activity either removed, lengthened, or modified by adding a provision permitting exceptions to the limit in certain cases. One advocacy organization suggested the 2.5-year limit might be too long, but admitted a lack of experience with the issue area. The other two commenters, a city and a county, generally supported HUD's proposed changes. The county characterized the rule as "logical and sufficient."

In the preamble to the proposed rule, HUD noted that among the primary risks to the CDBG program inherent in the float funding process are, first, that the float-funded activity will not generate sufficient program income to allow for timely undertaking of previously budgeted activities. HUD also noted that in undertaking a float-funded activity from which funds will not return for use for previously budgeted activities for a particularly long time period, grantees apparently assume that they will receive sufficient additional CDBG funds in future years to continue funding those previously budgeted activities until the float-funded activity generates program income. HUD further noted that grantees are only authorized to use such a funding technique (e.g., relying on future CDBG funds to backstop a large loan for a particular activity in the present) under the Section 108 Loan Guarantee program. Although one commenter, a city, stated that an irrevocable letter of credit removes the first risk, HUD's experience is that this is not always the case. Most of the commenters did accept the 2.5-year limit as the general rule or as a guideline. However, in response to comments, HUD is clarifying that, while it expects most float-funded activities will conform to the 2.5-year requirement, a float-funded loan may be extended, reissued, or "rolled over" by treating it as though it were a new float-funded activity and showing that it meets all the same requirements that apply to float funding. (In the past, HUD equated float extensions and rollovers with refinancing existing indebtedness, which is not generally allowed under the CDBG program.)

The advocacy organizations suggested a variety of special action plan amendment procedures for float-funded activities, including the following requirements: relating changes to consolidated plan priorities, focusing citizen participation on the area or neighborhood that would have benefited from a defaulted or canceled float-funded project, and reprogramming action within 30 days of learning of the delay or default. HUD has long held that float-funded activities must meet all the same requirements that apply to CDBG-assisted activities generally, and the proposed rule added additional requirements only in response to the identified primary risks to the program stemming from the float-funding process. The suggested additional citizen participation requirements far exceed the existing requirements covering all CDBG activities. Therefore HUD is not adopting these suggested changes.

One of the public interest groups asked HUD to clarify that the rule did not mean that each float-funded activity be identified separately in the action plan, but rather that such activities be identified by eligibility category, as many other activities may be designated (e.g., community-wide single family rehabilitation loan programs). However, to ensure that citizens are properly informed, HUD does intend that each float-funded activity be identified separately in the action plan.

Another of the public interest groups stated that the income stream from an activity can be difficult to predict, and it requested information on how HUD would treat a grantee who carried out a float activity that exceeded the 2.5-year limit. In response, HUD suggests that activities appropriate for float funding be evaluated for the predictability of their income streams, with only more predictable activities being so funded. HUD further notes that the corrective actions permitted to HUD under the CDBG program vary from issuing a letter of warning to enforcing a grant reduction. The local HUD offices (in the case of float-funded activities, usually in conjunction with Headquarters) will assess each deficiency and design a corrective action to prevent a continuation of the performance deficiency, mitigate the adverse consequences of the deficiency, and prevent a recurrence of the deficiency. As noted above, the rule does provide for float-funded activities to be extended, reissued, or rolled-over, provided certain requirements are met.

Two grantees responded to the request for comment on whether a limit should also be set on the proportion of a grantee's funds that could be used for float funding. Both grantees responded that there should be no limit, stating that the other proposed requirements were sufficient to address the identified risks. Therefore, HUD will impose no such limit at this time.

One commenter, a grantee, suggested that the rule permit the action plan covering the float-funded activity to describe the characteristics of the lender that will provide an irrevocable letter of credit, rather that providing the actual lender's name. The commenter also suggested describing the maximum and minimum terms for the letter of credit in the action plan, because the terms may change somewhat when the deal is negotiated after the action plan is amended. HUD finds no problem with this approach if the language used is as specific as possible. Therefore, any grantee choosing this approach should contact its local HUD office for guidance in developing a suitable description.

Another commenter, the local HUD program officer, suggested that the action plan break out the identified float payment amount into principal and interest, so that citizens can tell whether the activity will "make money." This rule requires at § 570.301(b) that each float-funded activity be individually listed in the action plan, and that the "full amount" of income expected to be generated by that activity must be shown (the latter requirement is also included in the consolidated plan regulations at 24 CFR 91.225(g)(1)(ii)(D)). These requirements will permit citizens to determine easily whether the activity is expected to "make money." The rule language is also easily adaptable to float-funded activities that do not involve loans.

The program officer also suggested that HUD allow in the rule for HUD approval of grantee-proposed methods, other than those described in the rule, of securing the repayment of the float funding. HUD accepted this proposal, so long as the method ensures fund availability within 30 days of default or shortfall. This approval can be made in writing by the appropriate local HUD office, in advance of carrying out the float-funded activity.

F. Using CDBG Funds Outside the Grantee's Jurisdiction

HUD included this provision in this rule as a result of the Inspector General's audit findings regarding grantees loaning funds to other jurisdictions rather than using the funds in their own. The proposed language would have added a new § 570.309 to require that, prior to using CDBG funds to assist projects outside jurisdiction boundaries, grantees make a determination that the principal benefit of the activities will accrue to persons residing within jurisdiction boundaries.

HUD received 13 comments on this portion of the proposed rule, nine of which expressed some opposition. Those opposed included four urban counties, one State, one national public interest group, one regional nonprofit organization, and one large metropolitan city. An advocacy group and a national public interest group supported the proposal with little additional comment. A metropolitan city and an urban county neither supported nor opposed the proposed change, but requested clarification on its effects. In addition, HUD received one comment from a local HUD program officer opposing the rule as proposed and raising some related issues.

The opposition to this proposal was primarily based on the chilling effect the commenters felt this proposal would have on projects that were jointly funded by cities and counties. The large metropolitan city argued that this change would increase the isolation of central cities. One urban county argued that all economies are linked—there are indirect effects of development and long-term benefits to an area from an activity, even one outside the county's jurisdiction. HUD's concern should be assuring that a national objective is met. Several grantees requested that different activities, such as water and sewer developments, that are expected to result in jobs be excluded from the requirement.

One public interest group cited a February 7, 1986 HUD memorandum signed by former Assistant Secretary for Community Planning and Development Moran. The Moran memorandum discussed an issue raised by an urban county using CDBG funds in cities within the county, but outside the jurisdiction of the urban county. As stated in that memorandum, HUD believes that the determination of to whom and how an activity will provide benefit is best left to the county. At that time, HUD had not yet come across any grantee that appeared to be regularly spending CDBG funds outside its jurisdiction. Since that time, several grantees have loaned their CDBG funds to nonparticipating or nonentitled jurisdictions, or have used CDBG funds outside their jurisdictions, despite pressing need for facilities and services within their own jurisdictions.

The CDBG formula results in grant awards to communities to benefit the residents whose poverty and housing needs determined (via the formula) the amount of funding. HUD has noticed that, particularly in large urban counties, citizens can easily be unaware of the boundaries of the urban county for purposes of the CDBG program when it differs from the boundaries of the county as a whole, and may not be aware that funds that were supposed to benefit one community are being spent to benefit another. Since HUD is aware that activities located outside a grantee's jurisdiction may indeed provide substantial benefits to the citizens within the jurisdiction, the rule does not prohibit such activities. The rule simply requires that the grantee consider whom the funds will benefit and make a determination. HUD will not question the determination unless it is clearly unreasonable. The rule does not limit the amount or percentage of funds that may assist such an activity, and should not affect joint efforts by cities and counties to benefit their residents.

Several commenters noted that "principal" benefit would be difficult to determine in certain cases. For example, the amount of benefit to ascribe to each jurisdiction participating in joint affirmative fair housing activities might not be easily assigned. In response, HUD has adjusted the final rule to require a determination that the activity was necessary to meet the purposes of the Act and community development objectives of the recipient, and that "reasonable" benefits will accrue to the residents of the recipient. The recipient is free to determine the reasonableness of the benefits in such case.

HUD received an inquiry from a large metropolitan city about whether this rule change would block affirmative fair housing efforts to develop minority housing outside of areas of minority concentration. In response, HUD definitely does not believe that this provision will cause any such problem, especially as HUD has adjusted the provision in this final rule.

One commenter, the HUD program officer, raised issues about the difficulty of monitoring this provision. The purpose of this provision is to ensure that, in funding an activity outside its boundaries, the recipient has properly considered the purposes for which it was awarded the funds. In most cases, HUD monitoring will simply involve making certain that the determination has been made. Only when the HUD monitor believes that the likely extent of the benefits to residents within the jurisdiction is clearly not commensurate with the amount of funds spent on the activity should it be raised as an issue with the recipient. For example, a loan of CDBG funds to another jurisdiction for an activity that would provide little or no benefit to the recipient's residents would be very likely to provoke a challenge from HUD.

G. Remission of Grant Funds

This provision responds to Inspector General findings and implements a General Accounting Office (GAO) opinion that income generated by an ineligible CDBG-assisted activity must be returned to the U.S. Treasury. Since, in the context of the GAO opinion, eligibility includes meeting a national objective, this provision should invoke a sharpened grantee focus on successful outcomes—interest generated from CDBG-funded loans may only be kept by the grantee when the national objective requirements are achieved.

HUD received four comments on this portion of the proposed rule. A low-income advocacy group commented simply that it supported the change. Another commenter, a State, had no objection, but suggested the language "or fail substantially to meet any other requirement of this part" was overly broad. However, HUD is retaining this language, as it is standard language throughout the CDBG regulations in similar situations.

A large metropolitan city requested a clarification on whether return of interest is possible with CDBG funds. It gave an example of an economic development loan that was supposed to meet the national objective of low- and moderate-income jobs, but does not. The commenter stated: "Auditors declare the loan ineligible because no national objective was met. Can the City identify CDBG funds and pay HUD the interest earned, or is the grantee expected to use non-federal funds for repayment?" If a grantee received interest that is required to be remitted to HUD pursuant to § 570.500(a)(2) and used the interest for payment of the costs of carrying out activities in its CDBG program, it may remit CDBG funds (grants or program income) to HUD. Grants should not be used for this purpose, however, if program income is available. The commenter also wanted to know whether it is correct in presuming that only interest, not principal, need be repaid in such a case. The rule requires the interest to be remitted to the Treasury; there is no recovery of principal amounts required for this purpose. If HUD advises reimbursement of the principal amount using local funds, any such payments would be available for use by the grantee under CDBG rules and would not go to the Treasury.

One commenter, a public interest group, wants HUD to pay more attention to the initial use for an eligible activity. HUD understands the commenter to be objecting to consideration of the national objective outcome in determining whether funds should be remitted. However, this rule provides that if a grantee makes a loan that is found not to meet a national objective, the interest may not be retained by the grantee, whether the loan was eligible in a more narrow sense or not. HUD intends to continue emphasizing loan programs that are outcome-oriented.

H. Consolidated Plan Performance Standard

This rule provides performance criteria for implementing the consolidated plan. This is important because every CDBG grantee must certify, before receiving its annual grant, that it is carrying out its consolidated plan—not just for its CDBG activities,

but for all programs and actions covered by the plan. Without a published, regulatory performance standard, grantees are unlikely to understand the significance of this certification.

HUD received six comments on this portion of the proposed rule. Also, several entities commenting on the Consolidated Plan final rule, published on January 5, 1995 (60 FR 1878), asked what standard HUD would use to judge whether a grantee had "carried out" its consolidated plan. HUD placed the standard in this rule because the standard is driven by a CDBG-specific certification (see § 91.225(b)(3)) required by statute to be made before CDBG funds can be awarded. A grantee making the certification affirms that it is following its consolidated plan—in its entirety, not just the CDBG portions—and that each CDBG-assisted activity will be consistent with the plan. Failure to follow the consolidated plan can result in loss of future CDBG funds. Parts of the Stewart B. McKinney Homeless Assistance Act, including the Emergency Shelter Grants program, are governed by a similar certification (§ 91.225(c)(9)), so forfeit of these funds may also be possible if the consolidated plan is not followed.

One national public interest group commented that the proposed standard is vague. The commenter requested clarification of the standard and conformance of the standard with the consolidated plan. HUD agrees that the proposed standard is general; it designed the criteria to cover broad categories of actions (to pursue and use resources, to make certifications of consistency, to take promised actions, and to refrain from obstructionism) that HUD considers most important in ensuring each plan is implemented. Within these categories, the standard will be as general or as vague as the descriptions of actions contained in each community plan. The same grounds that led HUD to adopt custom-tailoring of each plan to the needs and priorities of each community also led HUD to decide that the suitable policy for administering the certification was to hold each community to the standard of action the community set for itself in its consolidated plan. The HUD review will be carried out by the same local HUD office that is responsible for approving the plan. HUD made no change to the rule as a result of this comment.

Two low-income advocacy organizations asked HUD to make grantees "follow" the consolidated plan by allocating fair share based on needs. As HUD noted in the preamble to the Consolidated Plan final rule, HUD declines this suggestion. HUD's goal for the consolidated plan is to provide the framework for communities to have meaningful plans. HUD does not wish to substitute its judgment for locally developed plans and priorities framed through the strengthened citizen participation process.

A national public interest organization and an urban county commented that the proposed standard of taking all promised actions is too high and inappropriate. Instead, they suggest a "due diligence" clause. HUD believes a standard that all promised actions should be carried out will strengthen the consolidated plan process by strengthening the confidence of citizens that the grantee really intends to implement the actions described in the plan. The regulation allows for consideration of events beyond the control of the grantee and for grantee rebuttal of HUD reviews. Therefore, HUD made no change in response to these comments.

One metropolitan city suggested this section be eliminated as unnecessary. HUD agrees that this section would be unnecessary if the certification was not to be reviewed. However, section 104(e) of the Act requires HUD to review a grantee's performance to determine, among other things, whether a grantee has "carried out * * * its certifications." Without some standard for performance review, the consolidated plan would be an empty exercise. HUD has the responsibility to ensure that each grantee meets all program requirements, including the certification. Grantees have the right to know against what standard their performance will be judged.

IV. Provisions From the November 12, 1993 Proposed Rule on Sanctions

HUD published for comment two provisions of this final rule as a proposed rule on November 12, 1993 (58 FR 60088). This proposed rule covered performance reviews, timely expenditure of CDBG funds, sanctions, and due process hearings. HUD has included the first two topics in this final rule, but has withdrawn the other two topics. After thoroughly considering the comments on the November 12, 1993 proposed rule, HUD decided to adjust its approach to these issues, and HUD will be publishing another proposed rule in these areas shortly.

Therefore, this rule reflects the following changes to subpart O of part 570—Performance Reviews. HUD has withdrawn its changes to §§ 570.907–913 and plans to repropose changes to these sections.

A. Performance Review Procedures

In order to clarify the relationship between HUD's review procedures and HUD's process for resolving findings of deficiencies, this final rule amends several of the elements of the performance review procedures under § 570.900 to: clarify what the primary information sources will be for such reviews; provide the recipient that has failed to comply with a program requirement an opportunity to provide additional information; and indicate what initial actions HUD may take.

B. Timely Performance

With respect to entitlement recipients, this final rule revises and clarifies how HUD will review to determine if CDBG-funded activities are being carried out in a timely manner.

HUD received two comments, both from grantees. One commenter suggested that the measurement of timely performance be taken at a date coincident with consolidated planning or reporting. Another commenter recommended that program income not be coupled with the balance in the line of credit because of the effect of balloon repayments on timeliness calculations. This final rule at § 570.902 indicates that HUD will not only consider a recipient's line of credit balance but also its program income on hand 60 days prior to the end of the program year, as well as any evidence that lack of timeliness resulted from factors beyond the grantee's reasonable control, believing that generally a grantee should be able to plan and budget for the use of scheduled loan repayments, including balloon repayments. HUD has decided to continue measuring timeliness 60 days prior to the end of the program year so that program progress can be considered prior to the next grant award.

V. Provisions From the June 17, 1992 Interim Rule

A. Public Services Cap

This provision expands the public services limitation and rewards entrepreneurial grantees by allowing a portion of program income to be included in the amount available for public services. This increases the amount of funds available for public services for grantees that earn program income, and furthers government reinvention by maximizing the grantees' options for fund use.

HUD received three comments on this portion of the rule. One grantee suggested that the program income used in the calculation should come from the time period that ends one year before the beginning of the program year for which the cap is being determined. HUD had considered this option prior to publication of the interim rule, but rejected the time period as being overly remote from the time period for which the action plan was being prepared. The other two comments supported counting program income from the program year immediately preceding the year for which the cap is being determined. HUD selected this method for the final rule.

B. Conflict of Interest

This rule also incorporates a change to the prohibition against conflicts of interest in the use of CDBG funds. This change furthers government reinvention by clarifying regulatory requirements and by limiting regulatory burdens. The conflict of interest provisions of this rule include coverage of the subrecipient relationships that are central to CDBG, but that are not as common in programs outside HUD's Office of Community Planning and Development. (The regulation does not apply to conflicts in regard to procurement contracts, which are covered by 24 CFR part 85.) As described in the preamble to the June 17, 1992 interim rule (57 FR 27117–18), HUD believes that the conflict rules should be limited to the prohibition of situations that provide a financial interest or benefit.

HUD received three outside comments on the new provision, two from national community development organizations and one from a city official. All the commenters supported the change, believing that the new regulation is sufficient without requiring further definition or restriction. One commenter, employed as a community development director in a CDBG entitlement community, offered personal experience that his ability to serve on the boards of nonprofit corporations was an effective use of his time. The commenter cited his belief that it ensures better use of CDBG funds and compliance with Federal mandates as the CDBG-funded activities are carried out. Both national organizations expressed hope that amending the conflict of interest regulation is a sign that HUD is moving away from "overregulation of public officials" who are involved with nonprofit subrecipients. These two commenters believe that serving on such organizations' boards has a positive public benefit to the grantee, the subrecipient, and HUD.

In addition, HUD received comments from two local HUD offices, one from an office manager and another from a community planning and development director. Although both agreed that the use of the word "personal" has created difficulty, one was concerned that its removal may undermine HUD's efforts to eliminate improper lobbying and influence peddling. The other supported the proposed change.

Both HUD commenters offered additional points for consideration. First, both expressed concern about the introductory phrase at § 570.611(b): "Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs. * * *" One commenter felt that persons outside HUD read the phrase literally, and that the phrase could appear, by itself, to allow current board members of a CDBG subrecipient routinely to request CDBG-paid employment with that subrecipient and to be considered routinely for open positions, without prior approval from HUD.

The other HUD commenter believed the application of this exception to the grantee and its subrecipients is not clear. This commenter expressed concern that the exception implies that subrecipient board members or city directors would be allowed to hire family members as staff, and that other forms of nepotism or preferential treatment could occur (absent any local civil service rules to the contrary). The commenter described a situation in which the paid director of a nonprofit subrecipient leased space in a building he owned to the nonprofit for its offices. Both his salary and the rent were paid with CDBG funds. While the field office interpreted this as a conflict, this could have been considered "related administrative costs" excepted under the rule's introductory phrase, instead of a situation that requires a request for an exception under the provisions of § 570.611(d) and (e). Both commenters recommended that HUD add clarifying language expressly to indicate that receipt of a salary by an existing CDBG-funded staff person for performing eligible activities is not to be considered, in itself, a prohibited interest or benefit under § 570.611.

Since the existing introductory language at § 570.611(b) appears to cause confusion, HUD has deleted it. Although the commenters suggested changing or adding clarifying language, HUD decided that the existing restrictions at § 570.206 (Program administration costs) along with § 570.611 are sufficient to prevent inappropriate situations. Exceptions can be handled through the mechanism in § 570.611(d).

HUD received a second comment about § 570.611(b), specifically the phrase "may obtain a financial interest or benefit from a CDBG-assisted activity." The commenter expressed concern that a strict interpretation could prohibit a covered person in a subrecipient entity from obtaining an interest or benefit from any CDBG funded activity, not just the one(s) administered by the subrecipient. Although such an extreme interpretation is possible, generally a subrecipient employee is restricted to just the activity run by the subrecipient (although a city employee would be restricted from any CDBG activity). Thus, HUD made no change in the current language.

A third commenter raised the suggestion that HUD should replace the words "contract, subcontract" in § 570.611(b) with words such as "subrecipient agreements." This commenter remarked that the current terminology confuses the application of these rules, since procurement activities are covered in other regulations (in 24 CFR parts 84 and 85). Since the word "agreement" is already in § 570.611 (in the same phrase), it is not appropriate to follow this suggestion. "Contract" and "subcontract," as defined words, are appropriate to use in part 570 as well as parts 84 and 85, and in OMB Circular A–110.

A fourth commenter suggested that the phrase "family or business ties" in § 570.611(b) needs an expanded definition. This commenter expressed concern that, without more definition, it is unclear whether "immediate family," as defined in 24 CFR 85.36, is intended. The commenter argued that, in some communities with histories of extended family ties, it could be difficult to avoid a conflict. Similarly, the commenter expressed concern that, without definition, the business ties between, for example, an individual and the family doctor would be construed to pose the same conflict of interest concern as those between members of a partnership in a business. In response to this concern, HUD has amended § 570.611(b) to include the word "immediate" to clarify the extent of family to be covered. HUD has left the term "business" unchanged, however, on the basis that the exception provisions will allow for the necessary distinction.

A fifth comment concerned the existing language at § 570.611(c) (Persons covered). By not including the word "of" at the beginning of the final phrase, "subrecipients that are receiving funds under this part," the commenter argued that a subrecipient would not include in the regulation's coverage the same persons as those "of the recipient, or of any designated public agencies." It

could instead be construed only to mean the subrecipient as an entity and not its employees as individuals. HUD has therefore amended the rule at the beginning of that final phrase, "subrecipients that," to commence with the word "of," to be consistent with the other two types of entities covered.

Another commenter expressed concern that handling exceptions on a "case-by-case basis" has created a time-consuming exercise for both HUD and grantees in responding to the current regulation, which the commenter found to be too broad and vague. This commenter offered a number of suggestions, including allowing grantees to establish procedures "in a manner acceptable to HUD," exempting specific members and officials of subrecipients from persons covered, and separating the regulations applicable to the grantees from those applicable to subrecipients. HUD has clarified the conflict of interest provision in this rule, which should eliminate many of the exception cases that would now come to HUD for a determination. The exception thresholds in this rule continue to include a determination by the recipient's attorney that the conflict in question does not violate local or State standards. HUD does not believe, however, that permitting grant recipients to exempt some of their employees or subrecipient employees from CDBG conflict of interest provisions is in the best interests of the CDBG program.

In reviewing the comments, HUD determined that, although no further substantive changes to the regulation at § 570.611 are necessary, some editorial reorganization of § 570.611(d) would further clarify the exception requirements. Therefore, this final rule adjusts the language at § 570.611(b) as specified above, and makes additional adjustments to § 570.611 (d) and (e).

C. Loans to Subrecipients

This provision expands the ways CDBG assistance may be provided to subrecipients. It follows the principles of government reinvention by increasing grantee flexibility.

HUD received four comments on this provision. Two of the four commenters, an urban county and a public interest group, requested HUD to permit the urban county to make loans to units of general local government participating under an urban county consortium. The commenters gave the following reasons for this proposal: (1) the change would enhance program options and creativity; (2) the change would allow the grantee greater leverage in monitoring an activity and provide more opportunity for reusing funds; and (3) grants could be continued to communities experiencing widespread distress, but loans could be provided to better-off communities capable of repayment as an incentive to serve low-income areas.

HUD understands that the commenters would like the units of government participating in an urban county to be subrecipients for almost all purposes. However, since the urban county is simply a jurisdiction composed of a group of local governments (including a county) joined into one entity for the purpose of receiving a CDBG entitlement, any loan by the administering entity (the county government) to a member of the jurisdiction is a loan by the urban county to itself, and, as such, is not permissible.

HUD has adjusted § 570.500(c), defining "subrecipient" to clarify that a subrecipient may receive funds from the recipient or from another subrecipient.

D. Program Income Generated by Loans to Subrecipients

The intent of this provision is to permit grantees to accept loan payments derived from program income from subrecipients while eliminating any double-counting of program income received through that process. HUD received two comments on the revisions to program income in relation to loans to subrecipients, one from an urban county and one from a national public interest organization. HUD made no changes to the rule as the result of these comments.

One commenter objected to excluding from the calculation of total program income received any loan repayments received by grantees from subrecipients when such payments are made from program income received by the subrecipient. The commenter stated that while it may be appropriate in some cases for the repayment of principal to be classified as a "return or transfer of grant funds," interest payments should always be treated as new income. The comment suggests a misunderstanding of what HUD intended by the new § 570.500(a)(3). This section does not classify loan repayments to grantees by subrecipients using program income as a "return of grant funds," as that term is generally used in the CDBG program. It classifies them as "transfer[s] of program income."

If the funds used by a subrecipient to make principal or interest payments on a CDBG loan it received from a grantee consist solely of program income received by the subrecipient, no amount of those payments to the grantee represents "new income" to the grantee's CDBG program as a whole. If, however, the subrecipient uses non-CDBG funds to make the principal or interest payments, those payments to the grantee are "new income" to the CDBG program. The new § 570.500(a)(3) does not affect the treatment of such payments.

VI. Provisions From the March 28, 1990 Proposed Rule

HUD received a number of comments on the March 28, 1990 proposed rule. This final rule will not be implementing citizen participation changes resulting from the Housing and Community Development Act of 1987. These changes were included in the Consolidated Plan final rule, published on January 5, 1995 (60 FR 1878). Additional CDBG citizen participation changes, most notably requirements regarding float-funded activities, were published in the August 10, 1994 proposed rule discussed above. This rule will also not be implementing the substantial reconstruction provision of the March 28, 1990 proposed rule at this time, because pending legislative proposals would make this change unnecessary.

A. Use of CDBG Funds for Assisting Certain Uniform Emergency Telephone Number Systems

This provision increases grantee flexibility by implementing a new eligibility provision. HUD received nine comments on the proposed provisions implementing this use of CDBG funds. Two of the commenters were national organizations, one of them having an interest in the administration of the CDBG program generally, and the other representing persons involved in administering emergency number systems. Three of those commenting were officials of urban county grant recipients under the CDBG program. Two others represented law enforcement agencies that would presumably be involved in a uniform emergency number system. The remaining two commenters were from Congress—one Senator and one Representative. The commenters generally did not provide a basis for changing the proposed provisions, and the final rule reflects only minor clarifying changes to the proposed rule.

Two of the commenters argued that the information that grantees would be required to submit to HUD for approval under these provisions for the use of CDBG funds for uniform emergency telephone number systems (ETNS) would be too costly and impractical, especially for large metropolitan cities and urban counties. They believed that

since grantees can only use CDBG funds under this provision for the activity for two years, it would not be worth the expenditure of time and effort to gather and submit the proposed material. HUD acknowledges this possibility, but has been unable to identify any other more suitable ways to determine that the proposed activity meets all of the requirements set forth in the Act. The Act requires HUD to determine that at least 51 percent of the users of the system in question will be low- and moderate-income persons. It is not possible for HUD to make such a determination without factual information about the system and its likely users. Since the commenters did not offer any other approaches for HUD to consider, the final rule does not vary much from the proposal.

However, some of the commenters appeared to misunderstand how the proposed provision would operate in the CDBG program. The proposal would only come into play with respect to those emergency number systems that serve a geographical area that does not contain a high enough percentage of low- and moderate-income persons to qualify under the present regulations. (See § 570.208(a)(1) as it existed before this rule.) For emergency systems serving areas having percentages of such persons amounting to 51 percent or more, or where the service area's percentage is less than 51 percent but still falls within the community's "highest quartile" (see § 570.208(a)(1)(ii)), there would be no need for the grantee to submit information to HUD or for HUD to make any of the determinations called for in this rule.

One commenter believed the requirement that the CDBG contribution to the cost of the system be limited in proportion to the percentage of low- and moderate-income persons residing in the service area constituted a "method and perhaps a test of proportional accounting." This may have been a reference to HUD's announced intention several years ago to seek legislation aimed at changing the benefit accounting method for the program, which HUD subsequently decided not to pursue. However, HUD derived this portion of the proposed rule directly from the statute, and does not have any intention to change the method of accounting used generally in the CDBG program.

Two commenters suggested that HUD adopt a rule on the use of CDBG funds for ETNS that would allow all communities the opportunity to use funds to develop, establish, and operate ETNS to meet their own specific needs. The commenters were concerned that the proposed rule limited the usage to communities in which more than 51 percent of the residents of the area were low- and moderate-income (except for those communities covered by the "highest quartile" provision in the regulations). However, this is not the case. HUD designed the proposed rule to allow communities to use CDBG funds for ETNS in areas in which less than 51 percent of the residents are low- and moderate-income, if 51 percent of the users of the system will be low- and moderate-income. (In making this determination, HUD will assume that the distribution of income among the callers generally reflects the distribution of income among the entire population residing in the same area where the callers reside.)

For example, a community has an ETNS that covers three census tracts (tracts A, B, and C) with low- and moderate-income residents consisting of 20 percent for tract A, 80 percent for tract B, and 40 percent for tract C. (The percentages of low- and moderate-income persons are derived by dividing the total number of low- and moderate-income persons per census tract by the total number of persons within the census tract.) A total of 95 calls were received: 15 calls from tract A, 50 from tract B, and 30 from tract C. HUD would presume that 3 of the calls from tract A, 40 calls from tract B, and 12 calls from tract C were from low- and moderate-income persons (20%×15 = 3; 80%×50 = 40; and 40%×30 = 12). Thus, HUD would consider 55 of the 95 calls to be from low- and moderate-income persons, which is equivalent to 57.89 percent, exceeding the minimum required threshold of 51 percent.

One commenter, a rural county, suggested that rural communities be allowed to apply directly to HUD for CDBG funds for ETNS. The Housing and Community Development Act of 1974 requires States to distribute CDBG funds to nonentitled areas, unless a State has elected not to carry out the CDBG program. Only two States, Hawaii and New York, have made such an election. Therefore, nonentitled communities may not receive funds directly from HUD in the other States. This commenter also stated that grants for ETNS in the rural counties in its State had not been included in the State's most recent final statement. Because this provision has not yet been made a part of the regulations, a State would not have been expected to include activities qualifying under this provision in its final statement. For years, however, States have been able to make grants to be used for ETNS serving areas in which at least 51 percent of the residents are low- and moderate-income.

Another commenter sought clarification concerning the extent to which CDBG funds may be used to support an ETNS. The statute itself limits the percentage of the total cost of the ETNS development, establishment, or operation that is to be provided using CDBG funds to be no higher than the percentage of low- and moderate-income persons residing in the area served by the system. For example, using the same hypothetical situation as described above, assume that the grantee's jurisdiction consists of three census tracts (tract A having 20 percent, tract B having 80 percent, and tract C having 40 percent low- and moderate-income persons), and that the ETNS would serve the entire community. Also assume that tracts A and C each contain 100 people, while tract B contains only 80. Thus, the number of low- and moderate-income persons residing in these tracts would be 20 persons in tract A, 64 in tract B, and 40 in tract C. The total number of low- and moderate-income persons in the service area would be 124 out of a total of 280 persons. The percentage of low- and moderate-income persons in the service area would then equal 44.3 percent. CDBG funds for developing, establishing, and operating an ETNS during a one- or two-year period could therefore not exceed 44.3 percent of the total cost of developing, establishing, or operating the system. If it is assumed that the grantee only wanted to assist the operation of the system for one year, and that such an operation would cost $100,000 in total, CDBG funds in an amount not to exceed $44,300 could be used for this purpose.

The same commenter also asked what research had been done before the proposed rule was developed, arguing that the guidelines would have been quite different had research been done regarding what segment of the population actually used ETNS. HUD sought information from various State, local, and national organizations before developing the proposed rule. None of them was aware of any data already available that would demonstrate that any particular percentage of the total users of an ETNS would likely be of low or moderate income. In fact, one national organization suggested that interested communities should be required to gather data over a three-year period to determine the characteristics of the system's users. HUD determined, however, that such a requirement would be unnecessarily onerous for grantees, and decided instead that one year's

experience would be adequate for this purpose.

One of the commenters, a grantee, sought clarification on several issues not related to applying for approval of an ETNS under the proposed provisions. Noting apparent inconsistencies in the preamble to the proposed rule, the grantee asked which HUD office was to be making the required HUD determinations that: (1) The system will contribute substantially to the safety of the residents of the area served by the system; (2) not less than 51 percent of the use of the system will be by persons of low- and moderate-income; and (3) other Federal funds received by the recipient are not available for the development, establishment, and operation of the system due to the insufficiency of the amount of the funds, restrictions on the use of the funds, or the prior commitment of the funds for other purposes by the recipient. This determination is to be made by the appropriate local HUD office.

This commenter also asked about HUD's definition of "emergency services." HUD did not propose a definition of emergency services, believing that communities would only include services that involve emergency situations under their respective ETNS. HUD believes the emergency services that would typically be included in an ETNS are police, fire, and ambulance services. However, it recognizes that larger communities could be expected to include others, such as a suicide hotline. The same commenter also argued that, particularly in some rural communities, information on the number of calls received over the preceding 12-month period and the location from which those calls were made may not be available. This final rule provides that the grantee is to submit "information that serves as a basis for HUD to determine whether 51 percent of the use of the system will be by low- and moderate-income persons." The information on past users discussed by the commenter is to be supplied "as available." HUD is unaware of any basis upon which it could make the required determination about the income levels of likely users of a ETNS other than that specified in the rule. However, the grantee may submit whatever it believes could be used for this purpose, and HUD will review it as necessary to make a judgment about its usefulness. Since HUD expects that a grantee not having the past-use data mentioned in the rule may contemplate expending considerable effort to acquire other data for submission to HUD for this purpose, the rule suggests that the grantee make known its planned methodology to HUD in advance, in order to find out if HUD would consider the planned methodology to be acceptable as a basis for making its required determination.

The same commenter also recommended that the requirement that 51 percent of the users be low- and moderate-income should be reduced, pointing to the provision in § 570.208(a)(3)(i)(B) that permits as little as 20 percent occupancy by low- and moderate-income residents in cases in which CDBG funds are used to assist newly constructed, multifamily, nonelderly rental housing. However, the statute provides specific requirements for activities that benefit an area generally, such as an ETNS. These requirements are more exacting than those required for housing activities. For an ETNS that cannot qualify under the provisions in the regulations as they existed before this rule, the requirement to determine that at least 51 percent of the users will be low- and moderate-income persons is statutory and cannot be changed by regulation.

The commenter also thought that HUD should consider permitting ETNS to be carried out in Urban Development Action Grant (UDAG) eligible areas, because these areas qualify as distressed communities. However, the UDAG program has been terminated, and HUD no longer determines community distress levels for that program. Moreover, a designation of UDAG eligibility could not necessarily be substituted for the determination of income status of the likely users of an ETNS for the community, which the statute requires for this purpose.

One commenter stated that, given the regulatory requirements in the proposed rule, it was unlikely that significant amounts of CDBG funds would be spent on ETNS. While this may be the case, HUD does not have flexibility under the statute to reduce the requirements associated with this provision to increase the likelihood of use of CDBG funds.

B. Use of CDBG Funds To Pay Special Assessments

This provision increases grantee flexibility, furthering the principles of reinventing government, by allowing assistance for an eligible activity to consist solely of special assessments made on behalf of low- and moderate-income households. HUD received four comments on this proposed provision. None of the comments provided a basis for changing the rule. One commenter suggested that when CDBG funds are used just for the special assessments and are not used to pay for the construction of the public improvement directly, the project should not be subject to all the requirements of the CDBG program, such as Davis-Bacon and citizen participation. However, there is no eligibility category under which CDBG funds can be used for paying a special assessment except for the eligibility of the improvement for which the assessment is made. Thus, even when the only form of CDBG usage assisting a public improvement is in paying for special assessments levied for that improvement, all of the CDBG program rules are triggered with respect to the construction (see § 570.200(c)(3)).

Two commenters suggested that HUD amend this provision to limit the use of CDBG funds for the payment of assessments. One suggested that it should be limited to payments on behalf of low-income households, instead of both low- and moderate-income households, in order to avoid the use of CDBG funds in what they described as the "better parts of town." However, the statutory provision itself authorizes the use of funds for both categories of households, and HUD does not believe there is a need to so limit the regulatory provision. The second commenter suggested that the rule allow the use of CDBG funds to pay for the assessments for the very lowest-income households among those assessed, without having to pay the assessments on behalf of all of the low- and moderate-income households involved. To the degree that the statute allows, the regulations do provide for an exception only with respect to moderate-income households in certain circumstances. Given the clear statutory provisions, HUD cannot allow additional payment limitations based on income.

VII. Statutory Amendment Provisions

Title I of the Housing and Community Development Act (the Act) has been amended a number of times since 1987. Several self-implementing changes to the Act affecting the CDBG program are included in this rule merely to conform the regulations with statutory provisions. This furthers government reinvention by bringing the CDBG rule current with all its authorizing legislation, as grantees have requested. An updated entitlement CDBG rule will simplify program administration for CDBG entitlement grantee staff who currently must research back and forth among various statutes and outdated regulations, handbooks, and guidance to determine activity eligibility and program standards. The statutory additions largely increase grantee options and enhance CDBG flexibility.

A. National Affordable Housing Act

Subtitle A of title IX of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (the NAHA) amends the Housing and Community Development Act of 1974 (the Act). Section 903 of the NAHA amends section 102 of the Act, which includes the definitions of "metropolitan city" and "urban county." HUD has amended the definition of "metropolitan city" in § 570.3 to reflect the statute. No amendment is needed to the definition of "urban county" in § 570.3, because the regulation includes any other county eligible under section 102(a)(6) of the Act.

Section 904 of the NAHA amends section 102(a)(12) of the Act, which includes the definition of "extent of growth lag," to provide for boundary changes for a metropolitan city or urban county as a result of annexation. HUD has amended § 570.3 to add the new statutory language. In § 570.3, however, HUD refers to the more appropriate 1990 census, rather than the 1980 census to which section 102(a)(12) refers. This modification is required by section 102(b) of the Act.

Section 912 of the NAHA amends section 109 of the Act to prohibit discrimination on the basis of religion. HUD has amended § 570.602 to add the term "religion."

B. Housing and Community Development Act of 1992

Section 807 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act) amends section 105(a) of the Act to establish two new categories of eligible CDBG activities: the provision of technical assistance to public or private entities to increase their capacity to carry out eligible neighborhood revitalization or economic development activities as outlined in a new § 570.201(p), and the provision of assistance to institutions of higher education for carrying out eligible activities.

Provision of technical assistance to public or nonprofit entities to increase their capacity to carry out eligible neighborhood revitalization or economic development activities is specifically exempted from the 20 percent limitation on planning and administrative costs under §§ 570.205 and 570.206. Since this new provision became effective upon enactment, any costs incurred after October 28, 1992 for building such capacity should be considered eligible under the new provision and not subject to the 20 percent limitation, provided that the use of such funds after the effective date can be shown to meet one of the national objectives.

Since this provision of the statute clarifies that the capacity building must be linked to CDBG-eligible neighborhood revitalization or economic development activities, a grantee must determine the eligibility of the activity for which it is attempting to build capacity. It must also determine which national objective can reasonably be expected to be met once the entity has received the technical assistance and undertakes the activity. For example, a grantee may provide CDBG record-keeping, work write-up, loan underwriting, and rehabilitation inspection training to a nonprofit organization that anticipates carrying out a housing rehabilitation loan program. The grantee's contract with the nonprofit should identify the eligible activity and the national objective expected to be met by the rehabilitation program that is to be undertaken as a result of this capacity building effort. In determining the national objective to be met, the grantee should: (1) Review the nature of the organization, the type and eligibility of the activity expected to be carried out, the location of the activity, and the entity's expected (or traditional) clientele; and (2) as a result of the review, have a reasonable expectation that the activity to be undertaken by the nonprofit entity would comply with a national objective. For example, the grantee might reasonably conclude that the contemplated activity would meet the national objective of benefit to low- and moderate-income persons based on a review of the nonprofit's charter that showed the organization's activities would be directed toward and benefit the low- and moderate-income persons in the neighborhood in which it operates. HUD makes conforming changes to reflect the recipient determinations at §§ 570.200(e) and 570.506(c).

The 1992 Act also added a new paragraph 105(a)(22) to the Act. CDBG funds may now be used by colleges and universities that have the demonstrated capacity to use the funds for eligible activities. HUD intends to permit grantees to make this determination of demonstrated capacity using their own judgment. A grantee determination is the most effective way to meet this requirement, since the grantee is most familiar with the entities to which it proposes to give CDBG funds and is therefore in the best position to make a judgment of capacity. This rule adds a new paragraph § 570.201(q), and makes conforming changes to reflect the recipient determinations at §§ 570.200(e) and 570.506(c).

Section 807(b) of the 1992 Act amended section 907(b)(2) of the NAHA by extending the date that use of funds for direct homeownership assistance is eligible under the CDBG program to October 1, 1994. In addition, the date to which the Secretary of HUD may, under certain circumstances, extend such eligibility was changed to October 1, 1995. HUD received three comments in response to the publication of the direct homeownership assistance provision in the June 17, 1992 interim rule. All three commenters supported the extension. Two commenters recommended extending it beyond the original NAHA date of October 1, 1992 and making it a permanent eligible use of CDBG funds. HUD published a **Federal Register** notice on September 30, 1994 (59 FR 49954) extending the provision to October 1, 1995, and this final rule amends the regulations to reflect that date. Although the provision terminated when the extension period ended, HUD has requested that Congress change the statute to reinstate the activity's eligibility. Thus, HUD has retained the provision for now, although it is not in effect. HUD also made a conforming change to § 570.506.

Section 807(c)(1) of the 1992 Act amended section 105(g)(2) of the Act to authorize training, technical assistance, or other support services to increase the capacity of small businesses, microenterprises, the recipient, or subrecipient to carry out CDBG economic development activities. These costs were not to be included in the limitation on administration and planning expenditures. This provision was effective upon enactment. The Economic Development Guidelines, published on January 5, 1995 (60 FR 1922), incorporated into the CDBG regulations at § 570.201(o) the portions of the statute dealing with the microenterprises. This rule adds a new § 570.201(o)(4), allowing capacity building for the grantee and subrecipient as microenterprise activities.

Section 807(e) of the 1992 Act amended section 105(a)(3) of the Act with respect to the current restrictions on areas in which CDBG funds may be used for code enforcement activities, and now permits grantees to take into account privately funded development. Previously, CDBG-funded code enforcement was only permitted in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, would be expected to arrest the decline of the area. This rule

amends § 570.202(c) to permit consideration of private improvements in determining areas in which CDBG-assisted code enforcement may be provided. Section 570.202(c) now also clarifies that only the costs of inspections, not the costs of any improvements done as a result, are eligible in this category.

Section 809 of the 1992 Act amends section 105(a)(13) of the Act to make eligible the use of CDBG funds to pay for the reasonable administrative costs related to establishing and administering a Federally approved Enterprise Zone. While this authority became effective upon enactment, its utility is dependent on the implementing regulations at 24 CFR part 597, published January 12, 1995 (60 FR 3434), for the Federal Empowerment Zone and Enterprise Community legislation. This rule adds a new paragraph (i) to § 570.206 to provide authority for such costs for officially designated Federal Empowerment Zones and Enterprise Communities (EZ/EC).

C. Residential Lead-Based Paint Hazard Reduction Act of 1992

The Residential Lead-Based Paint Hazard Reduction Act of 1992 is title X of the 1992 Act. This final rule includes one statutory provision from this Act requiring little or no regulatory elaboration. The provision allows for evaluation and reduction of lead-based paint hazards as a separate activity. While reduction of lead-based paint hazards has always been a CDBG-eligible activity (provided the activity could meet a national objective), evaluation was heretofore only eligible in conjunction with a rehabilitation activity. Section 570.202(f) provides authority for evaluation as a rehabilitation activity in itself.

D. Multifamily Housing Property Disposition Reform Act

The Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 11, 1994) (the 1994 Act) included two eligibility enhancements and expanded CDBG waiver authority for disaster areas. Section 234 of the 1994 Act added section 122 to the Act to provide flexibility to the CDBG program for disaster areas. This rule adds this provision to the regulatory waiver provisions at § 570.5. When a CDBG recipient designates its CDBG funds to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170–5189b), the Secretary may suspend all requirements for purposes of assistance under section 106 of the Act for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income.

To use this provision, a CDBG recipient may designate funds from existing or future grants to address damage in a Presidentially declared disaster area and request the Secretary to waive provisions of law or regulation for the purpose of making such funds available for disaster recovery purposes. Local HUD offices receiving disaster recovery waiver requests will expedite the forwarding of such requests, together with local office reviews and recommendations, to the Assistant Secretary for Community Planning and Development for consideration.

Assuming HUD grants the waivers, the activities being carried out with the designated funds would operate under different requirements than the regular CDBG program. Therefore, the grantee will be required to annotate its performance report in such a way that activities for which waivers have been granted are distinguishable from regular program activities. Also, the grantee will be required to annotate and describe the activity in such a way in its annual action plan or amended action plan, as appropriate, that the activity is clearly distinguishable as a designated disaster recovery activity.

Section 207 of the 1994 Act also amended section 105(a)(13) of the Act to allow payment of reasonable administrative costs and carrying charges related to administering the HOME program under title II of the NAHA. This provision is included together with the EZ/EC provision at § 570.206(i). The costs covered by these provisions do not include planning costs under § 570.205. All administrative costs, whether used to administer the EZ/EC, HOME, or CDBG programs, are summed before applying the CDBG 20 percent limit on planning and administration expenditures. Activities may not be carried out under § 570.206(g), which currently is not available because of its link to a Housing Assistance Plan (HAP) that is no longer in effect for any grantees. HUD is currently exploring possible ways to update this provision.

Section 207 of the 1994 Act also amended section 105(a)(21) of the Act, authorizing housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the NAHA, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in housing activities assisted under title II of the NAHA.

These activities have been eligible since the enactment of CDBG amendments in 1992, but otherwise ineligible CDBG assistance in support of the HOME program was subject to the 20 percent limit on administrative and planning expenditures. The current amendment removes this restriction. This rule includes this provision at § 570.201(k).

Any costs of delivering the housing services made eligible under the amended section 105(a)(21) are eligible. CDBG grantees using the two programs together should be reminded that the eligibility and benefit requirements of the two programs differ, that the HOME term "project" and the CDBG term "activity" are not synonymous, and that care should be exercised in management and documentation of blended activities. To simplify this process, this rule adds a new paragraph at § 570.208(a)(3)(iii), which states that when CDBG funds are used for housing services eligible under § 570.201(k), such funds shall be considered to benefit low- and moderate-income persons when the housing for which the services are provided is to be occupied by low- and moderate-income households. Documentation demonstrating that the HOME project (or projects) supported by the CDBG housing services activity meets the HOME income targeting criteria at 24 CFR 92.252 and 92.254 should be sufficient to demonstrate compliance with this provision.

VIII. Miscellaneous Technical Updates and Corrections

This rule replaces the obsolete references in subpart J to OMB Circular A–110 with references to 24 CFR part 84, and this rule updates the references to OMB Circular A–87 to reflect recent revisions to that document. In conjunction with this update, HUD is clarifying and broadening the rule at § 570.200(h) defining pre-agreement (now pre-award) costs. The current CDBG rule authorizes a few types of costs that may be incurred prior to execution of the annual grant agreement; this rule permits grantees to incur any cost that meets certain standards (e.g., the activity is included

in the consolidated plan and citizens have been informed) and then charge the costs to the grant after the effective date of the grant agreement. Further, until now when a cost was not one of the types specified in the rule, the grantee had to request a pre-agreement cost waiver from HUD Headquarters. Under this rule, a grantee wishing to incur a cost that does not meet the new, broader standards may request certain pre-award cost exceptions from the local HUD office. This change furthers reinvention by providing local jurisdictions greater flexibility to determine use of resources and by devolving responsibility for decisionmaking to the local offices, thereby greatly limiting the number of cases that will need the Assistant Secretary's approval.

Another technical change is to replace the term "handicapped" in §§ 570.208 and 570.506 with terms compatible with available income data on persons with a disability provided by the Bureau of the Census' Current Population Reports. The data, issued in 1993 from the Survey of Income and Program Participation, provide a basis for a national presumption that adults meeting the Census criteria for severe disability meet the low- and moderate-income national objective under the CDBG program. The Census definition of severe disability only applies in the CDBG program for purposes of making presumptions about income levels for groups of disabled persons; it does not apply for purposes of meeting responsibilities under section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, or the Architectural Barriers Act. Therefore, HUD is changing the terminology in this rule to clarify the distinction between the income presumption provision and the civil rights requirements. Also, this rule adds the term "persons living with AIDS" to § 570.208(a)(2)(i)(A), because reliable national data has become available from the Center for Disease Control in Atlanta to support a reasonable presumption that at least 51 percent of such persons in a given geographic area are low- and moderate-income. This rule also clarifies provisions under which the use of CDBG funds is authorized for the removal of barriers to accessibility for elderly and disabled persons. Section 105(a)(5) of the Act makes eligible the use of program funds for special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons. Under current law and regulation, this provision has very limited usefulness and has caused confusion. HUD believes that it is important that the rules clearly state how CDBG funds may be used for barrier removal. The real questions arise with respect to national objective compliance. Virtually all public facilities and improvements serve an area generally and are thus subject to the limitations imposed by section 105(c)(2) of the Act. This provision states that activities that serve an area generally may be considered to address the national objective of benefit to low- and moderate-income persons only if the percentage of residents in the service area who are of such income meets certain minimum levels. In the regulations, this limitation is implemented at § 570.208(a)(1). Where accessibility barriers exist in a facility or improvement that serves an area that does not meet this requirement, the use of CDBG funds to remove such barriers can be problematic. Many years ago, to provide a way to authorize the use of CDBG funds to remove barriers in such cases, § 570.208(a)(2) was added to the regulations allowing use of CDBG funds for the following to be considered to meet the national objective of benefit to low- and moderate-income persons:

"(ii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned non-residential buildings, facilities and improvements and the common areas of residential structures containing more than one dwelling unit."

This presumption assumes that the principal benefit will go to elderly and disabled persons, and that the general public will not also benefit substantially from the activity, since if it did the activity might not meet the general rule that the majority of the beneficiaries must be low- and moderate-income persons. A number of recent policy cases have arisen from grantee confusion about the current language. To clarify the eligibility of architectural barrier removal, this rule removes the separate eligibility category at § 570.201(k) and describes in § 570.201(c) and § 570.202(b) that architectural barrier removal is an eligible activity. This rule also changes § 570.208(a)(2) to clarify in which circumstances the limited clientele presumption may be applied to such activities.

Another technical change at §§ 570.304(a), 570.429(g), and 24 CFR 91.500 restores language inadvertently deleted by the Consolidated Plan final rule, and clarifies that HUD retains authority under the CDBG program to require additional assurances from grantees when substantial evidence exists that a certification of future performance is not valid. This CDBG authority is in addition to the current Consolidated Plan final rule (based on the Comprehensive Housing Affordability Strategy statutory language) that simply provides for certifications to be wholly accepted or wholly rejected. Requiring additional assurances and potentially delaying or limiting the grantee's access to funds may trigger CDBG due process hearing requirements. Therefore HUD will coordinate such actions between HUD local offices and Headquarters.

Another technical change reinstates the applicability of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) (the ABA) to the CDBG Entitlement program. The ABA requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, persons with physical disabilities. HUD's original regulations implementing the CDBG program required compliance with accessibility standards issued pursuant to the ABA. (See former 24 CFR 570.606, 39 FR 40148, November 13, 1974; 42 FR 33020, June 28, 1977.) By final rule published September 23, 1983, and made effective November 2, 1983 (48 FR 43538), HUD amended its regulations governing the CDBG program to reflect changes made in the Act by the Housing and Community Development Act of 1980 (Pub. L. 96–399, approved October 8, 1980), and the Housing and Community Development Amendments of 1981 (Pub. L. 97–35, approved August 13, 1981). The purpose of the amending regulations, as noted by HUD in the proposed rule published October 4, 1982 (47 FR 43900), was to eliminate requirements not mandated by statute. On this basis, HUD eliminated the requirement that the CDBG program comply with the ABA accessibility standards (47 FR 43909, 48 FR 43549). HUD stated that the CDBG program was not statutorily subject to the accessibility standards of the ABA because the CDBG statute does not provide authority for imposing design, construction, or alteration standards on CDBG-funded facilities, as required by section 4151(3) of the ABA, and that it had imposed the ABA standards on the CDBG program as an administratively adopted requirement (47 FR 43909). HUD noted, however, that some facilities constructed or altered with CDBG assistance would remain subject to accessibility standards

by reason of the applicability of section 504 of the Rehabilitation Act of 1973.

Since HUD's decision in 1983 to remove compliance with the ABA as a CDBG program requirement, two significant events caused HUD to reconsider this decision. The first event was the passage of the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) (Fair Housing Act), which amended Title VIII of the Civil Rights Act of 1968 to add prohibitions against discrimination in housing on the basis of handicap and familial status. The Fair Housing Act also made it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991 in a manner that makes them inaccessible to persons with disabilities. Further, the Fair Housing Act made it unlawful to refuse to permit, at the expense of the person with a disability, reasonable modifications to existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises.

The second event was the passage of the Americans with Disabilities Act (Pub. L. 101–336, approved July 26, 1990) (ADA), which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The ADA provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense. (See the final rule implementing the ADA published by the Department of Justice on July 26, 1991 (56 FR 35544, 35568)).

The Fair Housing Act and the ADA indicate a clear policy that housing and commercial facilities and public accommodations should be "readily accessible and usable by" individuals with disabilities. In light of these developments and to foster consistency in the administration of HUD's programs, this final rule reinstates compliance with the ABA as a CDBG program requirement.

Compliance with the requirements of the ABA will be applicable to funds allocated or reallocated under the CDBG Entitlement, State, and HUD-administered Small Cities programs and the Section 108 Loan Guarantee program, after the effective date of this final rule. Assisted facilities must meet the requirements of the Uniform Federal Accessibility Standards for alterations if the alterations are financed in whole or in part by CDBG funds made available after the effective date of this final rule. Although alterations made without the use of Federal funds would not have to comply with the accessibility requirements of the ABA, alterations made to these facilities, in most instances, will have to comply with the accessibility requirements of the public accommodations provisions of the ADA. This final rule makes this regulatory change at § 570.614(a).

This final rule also provides a specific listing at § 570.614(b) for the ADA. The ADA is (and has been) covered by the grantee's annual certification that it will comply with "applicable laws." The addition of the specific provision highlighting the ADA is being made for consistency with other applicable laws for which HUD has enforcement responsibilities. The Federal Communications Commission has enforcement authority for enforcing the portion of the ADA applicable to emergency telephone numbering systems (the CDBG-eligibility of which is highlighted and enhanced in this regulation) and to common carriers.

This final rule replaces an obsolete reference to the Small Cities Application in § 570.405(e) on Insular Areas with a requirement that insular area applicants submit a final application and certifications to the appropriate HUD office in a form prescribed by HUD. This rule clarifies how HUD-administered Small Cities in New York will be treated under the consolidated plan. Section 570.423(a) has been revised to state clearly that New York HUD-administered Small Cities applicants that submit an abbreviated consolidated plan must prepare and publish a proposed application and comply with the citizen participation requirements of § 570.431 whether or not their application contains housing activities. HUD has previously determined that the Insular area grantees were subject to § 570.200(a)(3), which requires compliance with the primary objective of the Act. HUD is specifically adding insular areas recipients to this section to enhance clarity.

IX. Other Matters

A. Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in this docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

B. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not affect the portion of the CDBG regulations that affects small entities.

C. Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the address provided under the section of this preamble entitled "Executive Order 12866."

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. This rule is limited to implementing statutory provisions and responding to identified deficiencies in the CDBG program.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 91 is amended; and part 570 is amended by adopting the interim rule published June 17, 1992 (57 FR 27116) as final, and is further amended, as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. Section 91.500 is amended by revising paragraph (b) introductory text to read as follows:

§ 91.500 HUD approval action.

* * * * *

(b) *Standard of review.* HUD may disapprove a plan or a portion of a plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), if it is substantially incomplete, or, in the case of certifications applicable to the CDBG program under § 91.225 (a) and (b), if it is not satisfactory to the Secretary in accordance with § 570.304 or § 570.429(g) of this title, as applicable. The following are examples of consolidated plans that are substantially incomplete:

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

4. Section 570.2 is amended by revising the second sentence to read as follows:

§ 570.2 Primary objective.

* * * Consistent with this primary objective, not less than 70 percent of CDBG funds received by the grantee under subparts D, F, and M of this part, and under section 108(q) of the Housing and Community Development Act of 1974 shall be used in accordance with the applicable requirements for activities that benefit persons of low and moderate income.

5. Section 570.3 is amended by revising the definitions of "*CDBG funds*", "*Extent of growth lag*", "*Low- and moderate-income household*", "*Low- and moderate-income person*", "*Low-income household*", "*Low-income person*", "*Metropolitan city*", "*Moderate-income household*", and "*Moderate-income person*", and by adding a new definition of "*Income*" in alphabetical order, to read as follows:

§ 570.3 Definitions.

* * * * *

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under subparts D or F of this part, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, loans guaranteed under subpart M of this part, urban renewal surplus grant funds under subpart N of this part, and program income as defined in § 570.500(a).

* * * * *

Extent of growth lag means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of the metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate between 1960 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time equal to the population growth rate for that period of all metropolitan cities. Where the boundaries for a metropolitan city or urban county used for the 1990 census have changed as a result of annexation, the current population used to compute extent of growth lag shall be adjusted by multiplying the current population by the ratio of the population based on the 1990 census within the boundaries used for the 1990 census to the population based on the 1990 census within the current boundaries.

* * * * *

Income. For the purpose of determining whether a family or household is low- and moderate-income under subpart C of this part, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of § 570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(iv). Activities qualifying under § 570.208(a)(1) generally must use the area income data supplied to recipients by HUD. The three definitions are as follows:

(1)(i) "Annual income" as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106 (except that if the CDBG assistance being provided is homeowner rehabilitation under § 570.202, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

(ii) Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, etc.;

(B) Self-employment income from own nonfarm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) Interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions; and

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(iii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

(2) Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the CDBG-assisted activity shall not be considered in calculating estimated annual income.

* * * * *

Low- and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low- and moderate-income person means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

* * * * *

Metropolitan city means:

(1) A city within a metropolitan area that is the central city of such area, as defined and used by the Office of Management and Budget.

(2) Any other city within a metropolitan area that has a population of 50,000 or more.

(3)(i) Any city that was classified as a metropolitan city for at least two years pursuant to paragraph (1) or (2) of this definition shall remain classified as a metropolitan city.

(ii) Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to HUD, defer its classification as a metropolitan city for all purposes under the Act, if it elects to have its population included in an urban county.

(iii) Notwithstanding paragraph (3)(i) of this definition, a city may elect not to retain its classification as a metropolitan city.

(iv) Any city classified as a metropolitan city under this definition, and that no longer qualifies as a metropolitan city in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for the fiscal year in which the city ceases to qualify, and for the succeeding fiscal year, except that in the succeeding fiscal year the amount of the grant to that city shall be 50 percent of the amount calculated under section 106(b) of the Act, the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the city is located, and the city shall be eligible, in that succeeding fiscal year, to receive a distribution from the State allocation under section 106(d) of the Act.

* * * * *

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

* * * * *

6. Section 570.5 is revised to read as follows:

§ 570.5 Waivers.

(a) The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement and when application of the requirement would adversely affect the purposes of the Act.

(b) For funds designated under this part by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170–5189b), the Secretary may suspend all requirements for purposes of assistance under section 106 of the Act for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income.

7. Section 570.200 is amended by revising the second sentence of paragraph (a)(3), paragraph (a)(5), the second sentence of paragraph (d)(1), the third sentence of paragraph (e), and paragraphs (g) and (h), to read as follows:

§ 570.200 General policies.

(a) * * *

(3) *Compliance with the primary objective.* * * * Consistent with this objective, Entitlement, HUD-administered Small Cities, and Insular area recipients must ensure that, over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or § 570.208(d)(5) or (6) for benefiting low- and moderate-income persons. * * *

* * * * *

(5) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A–87, "Cost Principles for State, Local and Indian Tribal Governments"; A–122, "Cost Principles for Non-profit Organizations"; or A–21, "Cost Principles for Educational Institutions," as applicable.[1] All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart C, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

(iii) Pre-award costs are limited to those authorized under paragraph (h) of this section.

* * * * *

(d) * * *

(1) *Employer-employee type of relationship.* * * * In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. * * *

* * * * *

(e) *Recipient determinations required as a condition of eligibility.* * * * A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.202(f)(2), 570.206(f), 570.209, and 570.309.

* * * * *

(g) *Limitation on planning and administrative costs.* No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 507.206, respectively. Recipients of entitlement grants under subpart D of this part shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.

(h) *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date or the date that the consolidated plan is received by HUD, whichever is later. For a Section 108 loan guarantee, the effective date of the grant agreement is the date of HUD execution of the grant agreement amendment for the particular loan guarantee commitment.

(1) Prior to the effective date of the grant agreement, a recipient may incur costs or may authorize a subrecipient to incur costs, and then after the effective date of the grant agreement pay for those costs using its CDBG funds, provided that:

(i) The activity for which the costs are being incurred is included in a consolidated plan action plan or an amended consolidated plan action plan (or application under subpart M of this part) prior to the costs being incurred;

(ii) Citizens are advised of the extent to which these pre-award costs will affect future grants;

(iii) The costs and activities funded are in compliance with the requirements of this part and with the Environmental Review Procedures stated in 24 CFR part 58;

(iv) The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;

(v) CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and

(vi) The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or $300,000.

(2) Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraph (h)(1)(v) or (h)(1)(vi) of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

(i) Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;

(ii) Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

(iii) Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provision;

(iv) Whether circumstances are clearly beyond the recipient's control; or

(v) Any other relevant considerations.

* * * * *

8. Section 570.201 is amended by adding a parenthetical sentence following the first full sentence in paragraph (c); by revising the first two sentences of the introductory text of paragraph (e), paragraph (k), and the introductory text of paragraph (n); and by adding new paragraphs (o)(4), (p), and (q) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(c) * * * (However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in § 570.207(a)(1).) * * *

* * * * *

(e) *Public services.* Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 570.207(b)(4)), homebuyer downpayment assistance, or recreational needs. To be eligible for CDBG assistance, a public service must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan. * * *

* * * * *

(k) *Housing services.* Housing services, as provided in section 105(a)(21) of the Act (42 U.S.C. 5305(a)(21)).

* * * * *

(n) *Homeownership assistance.* Until October 1, 1995, CDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households to:

* * * * *

(o) * * *

(4) Assistance under this paragraph (o) may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this paragraph (o).

(p) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. (The recipient must determine, prior to the provision of the assistance, that the activity for which it is attempting to build capacity would be eligible for assistance under this subpart C, and that the national objective claimed by the grantee for this assistance can reasonably be expected to be met once the entity has received the technical assistance and undertakes the activity.) Capacity building for private or public entities (including grantees) for other purposes may be eligible under § 570.205.

(q) *Assistance to institutions of higher education.* Provision of assistance by the recipient to institutions of higher education when the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart C.

9. Section 570.202 is amended by:

a. Removing "and" at the end of paragraph (a)(3);

b. Redesignating paragraph (a)(4) as paragraph (a)(5);

c. Adding a new paragraph (a)(4);

d. Removing "and" at the end of paragraph (b)(9), and removing the period at the end of paragraph (b)(10) and adding "; and" in its place;

e. Adding new paragraphs (b)(11) and (f); and

f. Revising paragraph (c), to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

(a) * * *

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under § 570.201(c); and

* * * * *

(b) * * *

(11) Improvements designed to remove material and architectural

[1] These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998–9999 or (800) 483–2209 (TDD).

barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.

(c) *Code enforcement.* Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.

* * * * *

(f) *Lead-based paint hazard evaluation and reduction.* Lead-based paint hazard evaluation and reduction as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851b).

10. Section 570.206 is amended by adding paragraph (i) to read as follows:

§ 570.206 Program administration costs.

* * * * *

(i) Whether or not such activities are otherwise assisted by funds provided under this part, reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program management of:

(1) A Federally designated Empowerment Zone or Enterprise Community; and

(2) The HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note).

11. Section 570.207 is amended by:

a. Amending the second sentence of paragraph (a)(1) by removing the citation "§ 570.201(k)" and by adding in its place the citation "§ 570.201(c)"; and

b. Revising the first sentence of paragraph (b)(2)(i) and paragraph (b)(4), to read as follows:

§ 570.207 Ineligible activities.

* * * * *

(b) * * *

(2) * * *

(i) Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disabilities, parking and other public facilities and improvements. * * *

* * * * *

(4) *Income payments.* The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, "income payments" means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

12. Section 570.208 is amended by:

a. Redesignating paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) as paragraphs (a)(1)(v), (a)(1)(vi), and (a)(1)(vii), respectively;

b. Adding new paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(3)(iii);

c. Revising the second sentence of paragraph (a)(2)(i)(A), paragraph (a)(2)(ii), and the second sentence of paragraph (a)(3) introductory text;

d. Amending the second sentence of paragraph (a)(4)(vi)(F)(*2*) by removing the phrase "final statement" and by adding in its place the phrase "action plan under part 91 of this title"; and

e. Amending paragraphs (d)(5)(i), (d)(6)(i), and (d)(7) by removing the citation "paragraph (a)(1)(v) of this section" and by adding in its place the citation "paragraph (a)(1)(vii) of this section"; to read as follows:

§ 570.208 Criteria for national objectives.

(a) * * *

(1) * * *

(iii) An activity to develop, establish, and operate for up to two years after the establishment of, a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate-income residents required under paragraph (a)(1)(i) of this section or (as applicable) paragraph (a)(1)(ii) of this section, provided the recipient obtains prior HUD approval. To obtain such approval, the recipient must:

(A) Demonstrate that the system will contribute significantly to the safety of the residents of the area. The request for approval must include a list of the emergency services that will participate in the emergency telephone number system;

(B) Submit information that serves as a basis for HUD to determine whether at least 51 percent of the use of the system will be by low- and moderate-income persons. As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, HUD will assume that the distribution of income among the callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. If HUD can conclude that the users have primarily consisted of low- and moderate-income persons, no further submission is needed by the recipient. If a recipient plans to make other submissions for this purpose, it may request that HUD review its planned methodology before expending the effort to acquire the information it expects to use to make its case;

(C) Demonstrate that other Federal funds received by the recipient are insufficient or unavailable for a uniform emergency telephone number system. For this purpose, the recipient must submit a statement explaining whether the lack of funds is due to the insufficiency of the amount of the available funds, restrictions on the use of such funds, or the prior commitment of funds by the recipient for other purposes; and

(D) Demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low- and moderate-income persons in the service area of the system. For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or enumeration districts), the total number of persons and the total number of low- and moderate-income persons within each census division, the percentage of low- and moderate-income persons within the service area, and the total cost of the system.

(iv) An activity for which the assistance to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments (as defined in § 570.200(c)) levied against residential properties owned and occupied by persons of low and moderate income.

* * * * *

(2) * * *

(i) * * *

(A) * * * Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or

* * * * *

(ii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under paragraph (a)(1) of this section;

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under paragraph (a) (1) or (4) of this section; or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under paragraph (a)(3) of this section:

* * * * *

(3) * * * This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a subrecipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. * * *

* * * * *

(iii) When CDBG funds are used for housing services eligible under § 570.201(k), such funds shall be considered to benefit low- and moderate-income persons if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met.

* * * * *

13. Section 570.301 is added to read as follows:

§ 570.301 Activity locations and float-funding.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are those in 24 CFR part 91.

(a) For activities for which the grantee has not yet decided on a specific location, such as when the grantee is allocating an amount of funds to be used for making loans or grants to businesses or for residential rehabilitation, the description in the action plan or any amendment shall identify who may apply for the assistance, the process by which the grantee expects to select who will receive the assistance (including selection criteria), and how much and under what terms the assistance will be provided, or in the case of a planned public facility or improvement, how it expects to determine its location.

(b) *Float-funded activities and guarantees.* A recipient may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in statements or action plans for one or more other activities that do not need the funds immediately, subject to the limitations described below. Such funds shall be referred to as the "float" for purposes of this section and the action plan. Each activity carried out using the float must meet all of the same requirements that apply to CDBG-assisted activities generally, and must be expected to produce program income in an amount at least equal to the amount of the float so used. Whenever the recipient proposes to fund an activity with the float, it must include the activity in its action plan or amend the action plan for the current program year. For purposes of this section, an activity that uses such funds will be called a "float-funded activity."

(1) Each float-funded activity must be individually listed and described as such in the action plan.

(2)(i) The expected time period between obligation of assistance for a float-funded activity and receipt of program income in an amount at least equal to the full amount drawn from the float to fund the activity may not exceed 2.5 years. An activity from which program income sufficient to recover the full amount of the float assistance is expected to be generated more than 2.5 years after obligation may not be funded from the float, but may be included in an action plan if it is funded from CDBG funds other than the float (e.g., grant funds or proceeds from an approved Section 108 loan guarantee).

(ii) Any extension of the repayment period for a float-funded activity shall be considered to be a new float-funded activity for these purposes and may be implemented by the grantee only if the extension is made subject to the same limitations and requirements as apply to a new float-funded activity.

(3) Unlike other projected program income, the full amount of income expected to be generated by a float-funded activity must be shown as a source of program income in the action plan containing the activity, whether or not some or all of the income is expected to be received in a future program year (in accordance with 24 CFR 91.220(g)(1)(ii)(D)).

(4) The recipient must also clearly declare in the action plan that identifies the float-funded activity the recipient's commitment to undertake one of the following options:

(i) Amend or delete activities in an amount equal to any default or failure to produce sufficient income in a timely manner. If the recipient makes this choice, it must include a description of the process it will use to select the activities to be amended or deleted and how it will involve citizens in that process; and it must amend the applicable statement(s) or action plan(s) showing those amendments or deletions promptly upon determining that the float-funded activity will not generate sufficient or timely program income;

(ii) Obtain an irrevocable line of credit from a commercial lender for the full amount of the float-funded activity and describe the lender and terms of such line of credit in the action plan that identifies the float-funded activity. To qualify for this purpose, such line of credit must be unconditionally available to the recipient in the amount of any shortfall within 30 days of the date that the float-funded activity fails to generate the projected amount of program income on schedule;

(iii) Transfer general local government funds in the full amount of any default or shortfall to the CDBG line of credit within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule; or

(iv) A method approved in writing by HUD for securing timely return of the amount of the float funding. Such method must ensure that funds are available to meet any default or shortfall within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule.

(5) When preparing an action plan for a year in which program income is expected to be received from a float-funded activity, and such program income has been shown in a prior statement or action plan, the current action plan shall identify the expected income and explain that the planned use of the income has already been described in prior statements or action plans, and shall identify the statements or action plans in which such descriptions may be found.

14. Section 570.304 is amended by revising paragraph (a) and by removing paragraph (d) to read as follows:

§ 570.304 Making of grants.

(a) *Approval of grant.* HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and the certifications required

therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under § 570.903, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

* * * * *

15. Section 570.309 is added to subpart D to read as follows:

§ 570.309 Restriction on location of activities.

CDBG funds may assist an activity outside the jurisdiction of the grantee only if the grantee determines that such an activity is necessary to further the purposes of the Act and the recipient's community development objectives, and that reasonable benefits from the activity will accrue to residents within the jurisdiction of the grantee. The grantee shall document the basis for such determination prior to providing CDBG funds for the activity.

16. Section 570.405 is amended by revising paragraph (e)(2), by redesignating paragraph (e)(3) as paragraph (e)(4), and by adding a new paragraph (e)(3) to read as follows:

§ 570.405 The insular areas.

* * * * *

(e) * * *

(2) Applicants shall prepare and publish or post a proposed application in accordance with the citizen participation requirements of paragraph (h) of this section.

(3) Applicants shall submit to HUD a final application containing its community development objectives and activities. This application shall be submitted to the appropriate HUD office, together with the required certifications, in a form prescribed by HUD.

* * * * *

17. Section 570.423 is amended by revising paragraph (a) to read as follows:

§ 570.423 Application for the HUD-administered New York Small Cities Grants.

(a) *Proposed application.* The applicant shall prepare and publish a proposed application and comply with the citizen participation requirements as described in § 570.431. The applicant should follow the citizen participation requirements of 24 CFR part 91 if it submits a complete consolidated plan.

* * * * *

18. Section 570.429 is amended by revising paragraph (g) to read as follows:

§ 570.429 Hawaii general and grant requirements.

* * * * *

(g) *Application approval.* HUD will approve an application if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91 and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under § 570.903, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

* * * * *

19. Section 570.500 is amended by removing and reserving paragraph (a)(1)(viii); by revising paragraphs (a)(2), (a)(3), and (c); by adding a new paragraph (a)(5); and by adding two sentences to the end of paragraph (b), to read as follows:

§ 570.500 Definitions.

(a) * * *

(1) * * *

(viii) [Reserved];

* * * * *

(2) Program income does not include income earned (except for interest described in § 570.513) on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(i) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;

(ii) Interest earned on loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD either to be ineligible or to fail to meet a national objective in accordance with the requirements of subpart C of this part, or that fail substantially to meet any other requirement of this part; and

(iii) Interest earned on the investment of amounts reimbursed to the CDBG program account prior to the use of the reimbursed funds for eligible purposes.

(3) The calculation of the amount of program income for the recipient's CDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on CDBG-funded loans received from grantees if such payments are made using program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes, for purposes of applying the requirement under § 570.504(b)(2)(iii), and in determining limitations on planning and administration and public services activities to be paid for with CDBG funds.

* * * * *

(5) Examples of other receipts that are not considered program income are proceeds from fund raising activities carried out by subrecipients receiving CDBG assistance (the costs of fundraising are generally unallowable under the applicable OMB circulars referenced in 24 CFR 84.27), funds collected through special assessments used to recover the non-CDBG portion of a public improvement, and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in § 570.503(b)(8) for subrecipient-controlled property, or in § 570.505 for recipient-controlled property.

(b) * * * Each revolving loan fund's cash balance must be held in an interest-bearing account, and any interest paid on CDBG funds held in this account shall be considered interest earned on grant advances and must be remitted to HUD for transmittal to the U.S. Treasury no less frequently than annually. (Interest paid by borrowers on eligible loans made from the revolving loan fund shall be program income and treated accordingly.)

(c) *Subrecipient* means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under § 570.201(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of this part. The term excludes an entity receiving CDBG funds from the recipient under the authority of § 570.204, unless the grantee explicitly designates it as a subrecipient. The term includes a public agency designated by a unit of general local government to receive a loan guarantee under subpart M of this part, but does not include contractors providing supplies, equipment, construction, or services subject to the procurement requirements in 24 CFR 85.36 or 84.40, as applicable.

20. Section 570.502 is amended by revising the introductory text of paragraph (a) and by revising paragraph (b), to read as follows:

§ 570.502 Applicability of uniform administrative requirements.

(a) Recipients and subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A–87, "Cost Principles for State, Local, and Indian Tribal Governments"; OMB Circular A–128, "Audits of State and Local Governments" (implemented at 24 CFR part 44); and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" or the related CDBG provision, as specified in this paragraph:

* * * * *

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A–122, "Cost Principles for Non-profit Organizations," or OMB Circular No. A–21, "Cost Principles for Educational Institutions," as applicable, and OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" (as set forth in 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of the Uniform Administrative requirements of OMB Circular A–110 (implemented at 24 CFR part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations") or the related CDBG provision, as specified in this paragraph:

(1) Subpart A—"General";

(2) Subpart B—"Pre-Award Requirements," except for § 84.12, "Forms for Applying for Federal Assistance";

(3) Subpart C—"Post-Award Requirements," except for:

(i) Section 84.22, "Payment Requirements." Grantees shall follow the standards of §§ 85.20(b)(7) and 85.21 in making payments to subrecipients;

(ii) Section 84.23, "Cost Sharing and Matching";

(iii) Section 84.24, "Program Income." In lieu of § 84.24, CDBG subrecipients shall follow § 570.504;

(iv) Section 84.25, "Revision of Budget and Program Plans";

(v) Section 84.32, "Real Property." In lieu of § 84.32, CDBG subrecipients shall follow § 570.505;

(vi) Section 84.34(g), "Equipment." In lieu of the disposition provisions of § 84.34(g), the following applies:

(A) In all cases in which equipment is sold, the proceeds shall be program income (prorated to reflect the extent to which CDBG funds were used to acquire the equipment); and

(B) Equipment not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient;

(vii) Section 84.51 (b), (c), (d), (e), (f), (g), and (h), "Monitoring and Reporting Program Performance";

(viii) Section 84.52, "Financial Reporting";

(ix) Section 84.53(b), "Retention and access requirements for records." Section 84.53(b) applies with the following exceptions:

(A) The retention period referenced in § 84.53(b) pertaining to individual CDBG activities shall be four years; and

(B) The retention period starts from the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report for the award;

(x) Section 84.61, "Termination." In lieu of the provisions of § 84.61, CDBG subrecipients shall comply with § 570.503(b)(7); and

(4) Subpart D—"After-the-Award Requirements," except for § 84.71, "Closeout Procedures."

21. Section 570.503 is amended by revising paragraph (b)(3) to read as follows:

§ 570.503 Agreements with subrecipients.

* * * * *

(b) * * *

(3) *Program income.* The agreement shall include the program income requirements set forth in § 570.504(c). The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 security needs).

* * * * *

22. Section 570.504 is amended by revising the introductory text of paragraph (b)(2) and by adding a new paragraph (b)(2)(iii), to read as follows:

§ 570.504 Program income.

* * * * *

(b) * * *

(2) If the recipient chooses to retain program income, that program income shall be disposed of as follows:

* * * * *

(iii) At the end of each program year, the aggregate amount of program income cash balances and any investment thereof (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump-sum drawdown, or cash or investments held for Section 108 loan guarantee security needs) that, as of the last day of the program year, exceeds one-twelfth of the most recent grant made pursuant to § 570.304 shall be remitted to HUD as soon as practicable thereafter, to be placed in the recipient's line of credit. This provision applies to program income cash balances and investments thereof held by the grantee and its subrecipients. (This provision shall be applied for the first time at the end of the program year for which Federal Fiscal Year 1996 funds are provided.)

* * * * *

23. Section 570.506 is amended by:

a. Revising paragraphs (b)(3)(i) and (c);

b. Removing "and" at the end of paragraph (b)(4)(v), removing the period at the end of paragraph (b)(4)(vi) and adding a semicolon in its place; and

c. Adding paragraphs (b)(4)(vii) and (b)(4)(viii), to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(b) * * *

(3) * * *

(i) Documentation establishing that the facility or service is designed for the particular needs of or used exclusively by senior citizens, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," persons living with AIDS, battered spouses, abused children, the homeless, illiterate adults, or migrant farm workers, for which the

regulations provide a presumption concerning the extent to which low- and moderate-income persons benefit; or

* * * * *

(4) * * *

(vii) For any homebuyer assistance activity qualifying under §§ 570.201(e), 570.201(n), or 570.204, identification of the applicable eligibility paragraph and evidence that the activity meets the eligibility criteria for that provision; for any such activity qualifying under § 570.208(a), the size and income of each homebuyer's household; and

(viii) For a § 570.201(k) housing services activity, identification of the HOME project(s) or assistance that the housing services activity supports, and evidence that project(s) or assistance meet the HOME program income targeting requirements at 24 CFR 92.252 or 92.254.

* * * * *

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.202(f)(2) 570.206(f), 570.209, and 570.309.

* * * * *

§ 570.600 [Amended]

24. In § 570.600, the last sentence of paragraph (a) is amended by removing the citation "§ 570.496" and by adding in its place a citation "§ 570.487".

§ 570.602 [Amended]

25. Section 570.602 is amended in paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(4)(i), and (b)(4)(ii), by adding the phrase "religion," before the phrase "national origin" wherever it appears.

26. Section 570.606 is amended by:

a. Revising paragraph (b)(2)(i)(A);

b. Amending the first sentence of paragraph (c)(1)(iii)(G) by removing the phrase "HUD-approved Comprehensive Housing Affordability Strategy" and by adding in its place the phrase "HUD-approved consolidated plan";

c. Amending the second sentence of paragraph (c)(1)(iii)(G) by removing the phrase "a Housing Assistance Plan" and by adding in its place the phrase "a consolidated plan";

d. Amending the last sentence of paragraph (c)(1)(iv)(A) by removing the phrase "HUD-approved Comprehensive Housing Affordability Strategy" and by adding in its place the phrase "HUD-approved consolidated plan";

e. Revising paragraph (c)(3)(ii)(A)(*1*), to read as follows:

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) After notice by the grantee to move permanently from the property, if the move occurs after the initial official submission to HUD for grant, loan, or loan guarantee funds under this part that are later provided or granted.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) After notice by the grantee to move permanently from the property, if the move occurs after the initial official submission to HUD for grant, loan, or loan guarantee funds under this part that are later provided or granted.

* * * * *

27. Section 570.610 is revised to read as follows:

§ 570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A–87, A–110 (implemented at 24 CFR part 84), A–122, A–133 (implemented at 24 CFR part 45), and A–128[2] (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at § 570.502.

28. Section 570.611 is revised to read as follows:

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §§ 570.203, 570.204, 570.455, or 570.703(i)).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the

[2] See footnote 1 at § 570.200(a)(5).

program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

29. Section 570.614 is added to subpart K, to read as follows:

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995 and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

30. Section 570.900 is amended by revising paragraphs (b)(3), (b)(5), and (b)(6) to read as follows:

§ 570.900 General.

* * * * *

(b) * * *

(3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from monitoring, grantee and subrecipient audits, audits and surveys conducted by the HUD Inspector General, and financial data regarding the amount of funds remaining in the line of credit plus program income. HUD may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments, and other information provided by or concerning the recipient. A recipient's failure to maintain records in the prescribed manner may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.

* * * * *

(5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in § 570.902 or § 570.903, HUD will give the recipient an opportunity to provide additional information concerning the finding.

(6) If, after considering any additional information submitted by a recipient, HUD determines to uphold the finding, HUD may advise the recipient to undertake appropriate corrective or remedial actions as specified in § 570.910. HUD will consider the recipient's capacity as described in § 570.905 prior to selecting the corrective or remedial actions.

* * * * *

31. In § 570.901, paragraph (a) is amended by removing the phrase "60 percent" and by adding in its place the phrase "70 percent"; and paragraph (e) is revised, to read as follows:

§ 570.901 Review for compliance with the primary and national objectives and other program requirements.

* * * * *

(e) For HUD-administered small cities grants only, the citizen participation requirements at § 570.431, the amendment requirements at § 570.427 (New York HUD-administered small cities) or § 570.430(f) (Hawaii HUD-administered small cities), and the displacement policy requirements of § 570.606;

* * * * *

32. Section 570.902 is amended by revising paragraph (a) to read as follows:

§ 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

* * * * *

(a) *Entitlement recipients.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an entitlement recipient to be failing to carry out its CDBG activities in a timely manner if:

(i) Sixty days prior to the end of the grantee's current program year, the amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 1.5 times the entitlement grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(2) Notwithstanding that the amount of funds in the line of credit indicates that the recipient is carrying out its activities in a timely manner pursuant to paragraph (a)(1) of this section, HUD may determine that the recipient is not carrying out its activities in a timely manner if:

(i) The amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 1.5 times the entitlement grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(3) In determining the appropriate corrective action to take with respect to a HUD determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (a)(1) or (a)(2) of this section, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standard

described in paragraph (a)(1) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its subrecipients for specific activities at the time the finding is made and other relevant information.

* * * * *

33. Section 570.903 is revised to read as follows:

§ 570.903 Review to determine if the recipient is meeting its consolidated plan responsibilities.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are in 24 CFR part 91.

(a) *Review timing and purpose.* HUD will review the consolidated plan performance of each entitlement and Hawaii HUD-administered small cities grant recipient prior to acceptance of a grant recipient's annual certification under 24 CFR 91.225(b)(3) to determine whether the recipient followed its HUD-approved consolidated plan for the most recently completed program year, and whether activities assisted with CDBG funds during that period were consistent with that consolidated plan, except that grantees are not bound by the consolidated plan with respect to the use or distribution of CDBG funds to meet nonhousing community development needs.

(b) *Following a consolidated plan.* The recipient will be considered to be following its consolidated plan if it has taken all of the planned actions described in its action plan. This includes, but is not limited to:

(1) Pursuing all resources that the grantee indicated it would pursue;

(2) Providing certifications of consistency, when requested to do so by applicants for HUD programs for which the grantee indicated that it would support application by other entities, in a fair and impartial manner; and

(3) Not hindering implementation of the consolidated plan by action or willful inaction.

(c) *Disapproval.* If HUD determines that a recipient has not met the criteria outlined in paragraph (b) of this section, HUD will notify the recipient and provide the recipient up to 45 days to demonstrate to the satisfaction of the Secretary that it has followed its consolidated plan. HUD will consider all relevant circumstances and the recipient's actions and lack of actions affecting the provision of assistance covered by the consolidated plan within its jurisdiction. Failure to so demonstrate in a timely manner will be cause for HUD to find that the recipient has failed to meet its certification. A complete and specific response by the recipient shall describe:

(1) Any factors beyond the control of the recipient that prevented it from following its consolidated plan, and any actions the recipient has taken or plans to take to alleviate such factors; and

(2) Actions taken by the recipient, if any, beyond those described in the consolidated plan performance report to facilitate following the consolidated plan, including the effects of such actions.

(d) *New York HUD-administered Small Cities.* New York HUD-administered grantees shall follow the provisions of paragraph (b) of this section for their abbreviated or full consolidated plan to the extent that the provisions of paragraph (b) of this section are applicable. If the grantee does not comply with the requirements of paragraph (b) of this section, and does not provide HUD with an acceptable explanation, HUD may decide, in accordance with the requirements of the notice of fund availability, that the grantee does not meet threshold requirements to apply for a new small cities grant.

Dated: October 30, 1995.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

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Thursday
November 9, 1995

Part V

Department of Education

34 CFR Part 535

Bilingual Education: Graduate Fellowship Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 535

RIN 1885–AA21

Bilingual Education: Graduate Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to adopt these regulations and to add a new Part 535 for the Bilingual Education: Graduate Fellowship Program which is authorized by section 7145 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (the Act). The Bilingual Education: Graduate Fellowship Program replaces the existing Bilingual Education Fellowship Program, and expands the program to include post-doctoral fellowships.

DATES: Comments must be received on or before December 11, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Joyce Brown, U.S. Department of Education, 600 Independence Avenue, SW., Room 5086, Switzer Building, Washington, D.C. 20202–6510. Comments may also be sent through the Internet to "Graduate_Fellowship@ed.gov".

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in this preamble under the heading *Paperwork Reduction Act of 1995*. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Joyce Brown, U.S. Department of Education, 600 Independence Avenue, SW., Room 5086, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9727. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations would implement statutory changes made when the program was reauthorized by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). These proposed regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review II and are essential to an effective partnership with educational institutions. The Secretary proposes these regulations because he believes the regulations are necessary to implement the law and reflect the greatest flexibility and least burden possible.

The Secretary held six regional meetings from June 15 through June 29, 1994 in Chicago, Los Angeles, Miami, New York, San Antonio, and Seattle. The purpose of these meetings was to obtain public input on issues relevant to the development of new regulations for title VII programs. The discussions at the meetings focused on ways that the regulations could address educational reform, staff development, standards and assessments, and relationships among the school, family, community, and State.

The Bilingual Education: Graduate Fellowship Program addresses the National Education Goal that relates to professional development for educators.

The following is a summary of the provisions the Secretary believes are necessary for implementing the statute. The summary does not address regulatory provisions that merely restate statutory language.

Section 535.2 Eligibility

The statute does not specifically address the issue of who is eligible to apply for a fellowship or how the distribution of funds should be accomplished. Section 535.2 of the regulations would define an eligible participant as an institution of higher education (IHE). Individuals would be able to apply for fellowships through IHEs that have been approved for participation under this program. Under §§ 535.10–535.23 IHEs would compete to be able to nominate individuals for fellowships. Through this structure individuals would receive fellowships under this program and IHEs would serve as conduits for the funds. This is the procedure currently followed under the program.

Section 535.3 Financial Assistance

Section 7148 of the Act authorizes the Secretary to provide stipends, in amounts he determines to be appropriate, to persons participating in training programs.

Under these regulations, the Secretary proposes to allow, for master's and doctoral fellowship recipients, stipends of up to $500 per month plus costs for tuition and fees, books, and travel related to clinical experience or to practice teaching. Because of rising costs, the Secretary proposes to raise the maximum amounts provided from the amounts provided under the previous Fellowship Program.

For post-doctoral program fellowship recipients the Secretary proposes to allow stipends of up to $40,000 and up to $5,000 for publications, research and scholarly materials, research-related travel and fees. The Secretary believes that these stipend amounts are adequate to defray the costs a fellowship recipient may incur while participating in the program.

Subparts B and C—Application Procedures and Evaluation of Applications

The statute does not prescribe how the Secretary will evaluate an application. The proposed regulations provide that in order to participate in this program, an IHE must submit to the Secretary an application that responds to the selection criteria in either § 535.20 or § 535.21, as appropriate.

The Secretary proposes to evaluate an IHE application by awarding points based on the appropriate selection criteria and then, as described in §§ 535.20(e) and 535.22(e), to determine the maximum number of fellowships that may be awarded at each IHE.

Section 535.30 Fellowship application, Section 535.40 Selection of Fellows; Section 535.41 IHE Nominees

The statute does not specify minimum qualifications a Fellow must have. The proposed regulations require that individuals apply for fellowships through IHEs that have been approved for participation under §§ 535.20 and 535.22. The regulations propose that an IHE may only nominate individuals for fellowships who (1) are proficient in English and, if applicable, another language; (2) have experience in providing services to, teaching in, or administering programs for LEP individuals; (3) are planning to serve LEP individuals after completion of their studies; (4) are eligible to receive assistance under 34 CFR 75.60 and 75.61; and (5) are citizens, nationals, or permanent residents of the United States.

In addition, the regulations propose that an IHE may only nominate for a master's or doctoral fellowship individuals who (1) have been accepted for enrollment as full-time students in the IHE; and (2) have an excellent academic record. The proposed regulations provide that an IHE may only nominate for post-doctoral study fellowships individuals who have doctoral degrees in relevant disciplines that qualify those individuals to conduct independent research on educational programs and policies for LEP individuals.

The Secretary proposes to restrict an IHE to nominees who meet these requirements to ensure that Fellows will be highly qualified. These requirements address the desire to provide fellowships to those applicants who already have advanced language training, have a demonstrated commitment to providing services to LEP individuals, and will be able to complete quickly their program of study and begin providing services to LEP individuals.

Section 535.50 Service Requirement

Under section 7145(b) of the Act, a fellowship recipient must agree to work in an activity for a period of time equivalent to the period of time during which the fellowship recipient receives assistance. To ensure that the intent of the program is met by the Fellows and that an activity is related to the program or authorized under part A of title VII of the Act, the proposed regulations would require that the activity be approved by the Secretary.

The proposed regulations provide that the recipient of a master's or doctoral fellowship must begin working in these activities within six months of the date on which the fellow is no longer enrolled as a full-time student. In the case of a post-doctoral fellowship, the regulations proposed that the recipient must begin working in these activities within six months of the date on which the project period in the approved area of study ends. The Secretary believes that within six months after completion of the training, a fellow should be able to find appropriate employment in a program for LEP children and youth.

Section 535.51 Repayment; Section 535.52 Repayment schedule; Section 535.53 Interest; Section 535.54 Deferment; Section 535.56 Waiver

Under section 7145(b) of the Act, if a fellowship recipient does not meet the service requirement, the fellowship recipient must follow procedures for repayment. The proposed regulations provide the following rules and procedures regarding repayment by recipients who are not meeting the service requirement:

(1) The Secretary would prorate the amount of repayment based on the length of time that the fellowship recipient worked in an authorized activity.

(2) A master's or doctoral fellowship recipient would be required to begin repaying the fellowship amount plus interest within six months of the date when the fellow is no longer a full-time student. Post-doctoral fellows would be required to begin repaying the fellowship amount plus interest within six months of the date when the fellow's project period ends.

(3) The fellowship recipient would be able to pay in full or in installments as approved by the Secretary.

In certain circumstances, the Secretary proposes to defer repayment. Under section 7145(b) of the Act, the Secretary may waive repayment in extraordinary circumstances.

The Secretary believes that these procedures regarding repayment are necessary to inform individuals of their rights and obligations regarding repayment. These procedures would help to ensure that funds are used to carry out the purposes of this program.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective an efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 535.1 *What is the Bilingual Education: Graduate Fellowship Program?*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Ave., SW., Room 5121, FB10, Washington, D.C. 20202–2110.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations would affect individuals. Individuals, however, are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that would be affected by these proposed regulations are IHEs receiving Federal funds under this program. The proposed regulations, however, would not have a significant economic impact on the entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to create a system for disbursing funds to individual fellows through IHEs and to ensure the proper accounting for expenditures of program funds.

Paperwork Reduction Act of 1995

Sections 535.21, 535.23, 535.40, 535.50 and 535.57 contain information

collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Bilingual Education—Graduate Fellowship Program.

These regulations affect IHEs eligible for participation and and individuals eligible for grants under this program. Sections 535.21, 535.23 and 535.40 require IHEs to provide information in their applications that the Department needs and uses to select IHEs for participation and to make awards. Sections 535.50 and 535.57 require individuals to provide information demonstrating compliance with the terms of the program. The Department needs and uses the information it collects from the fellowship recipients to collect funds possibly owed to the Department. Information from IHEs regarding approval for participation is to be collected once every three years and all other information is to be collected and reported once per year. Annual public reporting burden for the collection of information is as follows:

1. Sections 535.21, 535.23 and 535.40 are estimated to average 35 hours per response for 25 respondents.

2. Sections 535.50 and 535.57 are estimated to average 36 minutes per response for 400 respondents.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Wendy Taylor, Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5630, Switzer Building, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 535

Bilingual education, Education, Educational research, Reporting and recordkeeping requirements, Scholarships and fellowships, Teachers.

(Catalog of Federal Domestic Assistance Number 84.195C Bilingual Education: Graduate Fellowship Program.)

Dated: October 31, 1995.

Dang T. Pham,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 535 to read as follows:

PART 535—BILINGUAL EDUCATION: GRADUATE FELLOWSHIP PROGRAM

Subpart A—General

Sec.
535.1 What is the Bilingual Education: Graduate Fellowship Program?
535.2 Who is eligible to participate in this program?
535.3 What financial assistance is available for fellowship recipients?
535.4 What regulations apply?
535.5 What definitions apply?

Subpart B—How Does an IHE Apply to Participate in the Program?

535.10 How does an IHE apply to participate in the program?
535.11 What assurance must an application contain?
535.12 In what circumstances may an IHE waive the training practicum requirement?

Subpart C—How Does the Secretary Approve an IHE's Participation?

535.20 How does the Secretary evaluate an application to participate in this program for master's and doctoral level fellowships?
535.21 What selection criteria does the Secretary use?
535.22 How does the Secretary evaluate an application to participate in this program for post-doctoral study fellowships?
535.23 What selection criteria does the Secretary use?

Subpart D—How Does an Individual Apply for a Fellowship?

535.30 How does an individual apply for a fellowship?

Subpart E—How Are Fellows Selected?

535.40 How does the Secretary select Fellows?
535.41 Who may an IHE nominate for fellowships?
535.42 What is the period of a fellowship?

Subpart F—What Conditions Must Be Met by Fellows?

535.50 What is the service requirement for a fellowship?
535.51 What are the requirements for repayment of the fellowship?
535.52 What is the repayment schedule?
535.53 What is the rule regarding interest?
535.54 Under what circumstances is repayment deferred?
535.55 What is the length of the deferment of repayment?
535.56 Under what circumstances is repayment waived?
535.57 How shall the fellowship recipient account for the obligation?

Authority: 20 U.S.C. 7475, unless otherwise noted.

Subpart A—General

§ 535.1 What is the Bilingual Education: Graduate Fellowship Program?

The Bilingual Education: Graduate Fellowship Program provides financial assistance, through institutions of higher education (IHEs), to individuals who are pursuing master's, doctoral, or post-doctoral study related to instruction of limited English proficient (LEP) children and youth in such areas as teacher training, program administration, research and evaluation, and curriculum development, and for the support of dissertation research related to this study.

(Authority: 20 U.S.C. 7475(a)(1))

§ 535.2 Who is eligible to participate in this Program?

(a) An IHE is eligible to participate in this program.

(b) An individual who meets the eligibility requirements under § 535.41 may apply for a fellowship through an IHE participating in this program.

(Authority: 20 U.S.C. 7475)

§ 535.3 What financial assistance is available for fellowship recipients?

(a) The Secretary may authorize the following financial assistance to master's and doctoral program fellowship recipients:

(1) Tuition and fees—the usual costs associated with the course of study.

(2) Books—up to $300.

(3) Travel—up to $250 for travel related to practice teaching or clinical experience.

(4) A stipend of up to $500 per month, including allowances for subsistence and other expenses for a participant and his or her dependents, if the participant is—

(i) A full-time student in a program of study that was in the approved application; and

(ii) Gainfully employed no more than 20 hours a week or the annual equivalent of 1040 hours.

(b) The Secretary may authorize the following financial assistance to post-doctoral fellowship recipients:

(1) A stipend of up to $40,000 per year.

(2) Publications, research and scholarly materials, research-related travel, and fees—up to $5,000.

(c) In authorizing assistance to fellowship recipients under paragraphs (a) and (b) of this section, the Secretary considers the amount of other financial compensation that the fellowship recipients receive during the training period.

(Authority: 20 U.S.C. 7478)

§ 535.4 What regulations apply?

The following regulations apply to this program:

(a) 34 CFR 75.51, 75.60–62.

(b) 34 CFR Part 77.

(c) 34 CFR Part 85.

(d) The regulations in this Part 535.

(Authority: 20 U.S.C. 7475)

§ 535.5 What definitions apply?

(a) *Definitions in the Act.* (1) The following terms used in this part are defined in section 7501 of the Act:

Bilingual education program
Children and youth
Limited English proficiency
Native Hawaiian or Native American Pacific Islander Native language educational organization
Office
Other programs for persons of limited-English proficiency

(2) The following terms used in this part are defined in section 7104 of the Act:

Indian tribe
Tribally sanctioned educational authority

(3) The following terms used in this part are defined in section 14101 of the Act:

Institution of higher education
Local educational agency (LEA)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Project
Recipient
Secretary
State
State educational agency (SEA)

(c) *Program definition.* The following definition also applies to a term used in this part:

Act means the Elementary and Secondary Education Act of 1965, as amended.

(Authority: 20 U.S.C. 7475–7480)

Subpart B—How Does an IHE Apply to Participate in the Program?

§ 535.10 How does an IHE apply to participate in the program?

To apply for participation under this part, an IHE must submit an application to the Secretary that—

(a) Responds to the appropriate selection criteria in §§ 535.21 and 535.23; and

(b) Requests a specific number of fellowships to be awarded in each proposed language or other curriculum group for the fellowship period specified in § 535.42.

(Authority: 20 U.S.C. 7475)

§ 535.11 What assurance must an application contain?

An application that proposes to train master's- or doctoral-level students with funds received under this part must provide an assurance that the program will include a training practicum in a local school program serving LEP students.

(Authority: 20 U.S.C. 7476(a)(3)(A))

§ 535.12 In what circumstances may an IHE waive the training practicum requirement?

An IHE participating under this program may waive the requirement in § 535.11 for a training practicum for a master's or doctoral degree candidate who has had at least one academic year of experience in a local school program serving LEP students.

(Authority: 20 U.S.C. 7476(a)(3)(B))

Subpart C—How Does the Secretary Approve an IHE's Participation?

§ 535.20 How does the Secretary evaluate an application to participate in this program for master's and doctoral level fellowships?

(a) The Secretary evaluates an application to participate in this program for master's and doctoral-level fellowships on the basis of the criteria in § 535.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) After all the applications have been evaluated under § 535.21, the Secretary rank-orders the applications.

(e) The Secretary then determines the maximum number of fellowships by language or other curriculum group that may be awarded at each IHE—

(1) Based on the IHE's capacity to provide graduate training in the areas proposed for fellowship recipients; and

(2) To the extent feasible, in proportion to the need for individuals with master's and doctoral degrees in the areas of training proposed by the IHE.

(Authority: 20 U.S.C. 7475)

§ 535.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application for participation in this program for master's and doctoral level fellowships:

(a) *Institutional commitment.* (25 points) The Secretary reviews each application to determine the quality of the institution's graduate program of study, including consideration of—

(1) The extent to which the program has been adopted as a permanent graduate program of study;

(2) The organizational placement of the program of study;

(3) The staff and resources that the IHE has committed to the program;

(4) The IHE's demonstrated competence and experience in programs and activities such as those authorized under the Act;

(5) The IHE's demonstrated experience in assisting fellowship recipients to find employment in the field of bilingual education; and

(6) If the IHE has carried out a previous project with funds under title VII of the Act, the applicant's record of accomplishments under that previous project.

(b) *Quality of the graduate academic program.* (20 points) The Secretary reviews each application to determine the quality of the graduate program of study for which approval is sought, including—

(1) The course offerings and academic requirements for the graduate program;

(2) The availability of related course offerings through other schools or departments within the IHE;

(3) The IHE's focus and capacity for research;

(4) The quality of the standards used to determine satisfactory progress in, and completion of, the program;

(5) The extent to which the program of study prepares Fellows to improve the academic achievement of LEP children and youth; and

(6) In the case of a program designed to prepare trainers of educational personnel for programs of bilingual instruction, the extent to which the program incorporates the use of English and another language to develop the Fellows' competencies as trainers of bilingual educational personnel.

(c) *Quality of key faculty members.* (20 points) The Secretary reviews each application to determine the qualifications of the key faculty to be used in the program of study, including the extent to which their background, education, research interests, and relevant experience qualify them to plan and implement a successful program of high academic quality related to instruction of LEP children and youth.

(d) *Field-based experience.* (15 points) The Secretary reviews each application to determine the extent to which the program of study provides field-based experience through arrangements with LEAs, SEAs, or persons or organizations with expertise in programs for LEP children and youth.

(e) *Evidence of local or national need.* (10 points) The Secretary reviews each application to determine the need for more individuals trained, at the graduate level, in the area of study proposed by the applicant.

(f) *Recruitment plan.* (10 points) The Secretary reviews each application to determine the quality of the applicant's plan for recruitment and nomination of students.

(Authority: 20 U.S.C. 7475, 7547)

§ 535.22 How does the Secretary evaluate an application to participate in this program for post-doctoral study fellowships?

(a) The Secretary evaluates an application to participate in this program for post-doctoral study fellowships on the basis of the criteria in § 535.23.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) After all the applications have been evaluated according to the selection criteria, the Secretary rank-orders the applications.

(e) The Secretary designates the maximum number of fellowships that may be awarded at each IHE based on the factors in § 535.23(a), (c), and (d).

(Authority: 20 U.S.C. 7475)

§ 535.23 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application for participation in this program for post-doctoral level fellowships:

(a) *Institutional commitment.* (35 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meeting the educational needs of LEP children and youth, including consideration of—

(1) The IHE's demonstrated competence and experience in programs and research activities such as those authorized under subpart 2 of part A of title VII of the Act;

(2) The extent to which the IHE's research environment is supportive of the success of post-doctoral Fellows in their research;

(3) The IHE's demonstrated experience in assisting fellowship recipients to find employment in the field of bilingual education;

(4) The IHE's procedures for the dissemination and utilization of research findings; and

(5) If the IHE has carried out a previous project with funds under title VII of the Act, the applicant's record of accomplishments under that previous project.

(b) *Proposed areas of research.* (35 points) The Secretary reviews each application to determine to what extent—

(1) There is a clear description of the areas of research proposed to be undertaken by the post-doctoral Fellows;

(2) The research to be undertaken by the post-doctoral Fellows is likely to produce new and useful information;

(3) The areas of proposed research relate to the educational needs of LEP children and youth and of the educational personnel that serve that population;

(4) The outcomes of the research and study are likely to benefit the defined target population by improving the academic achievement of LEP children and youth;

(5) The data collection and the data analysis plans are sound; and

(6) A project period for completion of the study, consistent with period of availability of post-doctoral fellowships in § 535.42, is specified.

(c) *Quality of key faculty members.* (20 points) The Secretary reviews each application to determine the qualifications of the key faculty likely to assist, guide or mentor post-doctoral Fellows, including the extent to which the faculty's background, education, research interests, and relevant experiences qualify them to support high-quality research and study performed by post-doctoral Fellows.

(d) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine to what extent—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(Authority: 20 U.S.C. 7475)

Subpart D—How Does an Individual Apply for a Fellowship?

§ 535.30 How does an individual apply for a fellowship?

(a) An individual shall submit an application for a fellowship to an IHE that has been approved for participation under § 535.20 or § 535.22.

(b) Each participating IHE may establish procedures for receipt of applications from individuals.

(Authority: 20 U.S.C. 7475)

Subpart E—How Are Fellows Selected?

§ 535.40 How does the Secretary select Fellows?

(a)(1) A participating IHE shall submit names of nominees to the Secretary.

(2) If the IHE has more than one nominee, the IHE shall rank the nominees in order of preference to receive a fellowship.

(b) The Secretary selects new Fellows according to the rank order prepared by the IHE, subject to the maximum number of fellowships designated for that IHE under § 535.20 and § 535.22.

(Authority: 20 U.S.C. 7475)

§ 535.41 Who may an IHE nominate for fellowships?

(a) In nominating individuals to receive master's and doctoral level fellowships, an IHE shall only nominate individuals who—

(1) Have been accepted for enrollment as full-time students in an approved course of study offered by the IHE;

(2) Have an excellent academic record;

(3) Are proficient in English and, if applicable, another language;

(4) Have experience in providing services to, teaching in, or administering programs for LEP children and youth;

(5) Are planning to enter or return to a career in service to LEP children and youth after completion of their studies;

(6) Are eligible to receive assistance under 34 CFR 75.60 and 75.61; and

(7)(i) Are citizens, nationals, or permanent residents of the United States;

(ii) Are in the United States for other than temporary purposes and can provide evidence from the Immigration and Naturalization Service of their intent to become permanent residents; or

(iii) Are permanent residents of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(b) In nominating individuals to receive post-doctoral fellowships, an IHE shall only nominate individuals who—

(1) Have doctoral degrees in relevant disciplines that qualify those individuals to conduct independent research on educational programs and policies for LEP children and youth; and

(2) Meet the criteria in paragraphs (a)(3) through (7) of this section.

(Authority: 20 U.S.C. 7475)

§ 535.42 What is the period of a fellowship?

(a) Except as provided in paragraph (b) of this section, the Secretary may award a fellowship—

(1) For a maximum of two one-year periods to an individual who maintains satisfactory progress in a master's or post-doctoral program of study; and

(2) For a maximum of three one-year periods to an individual who maintains satisfactory progress in a doctoral program of study.

(b) Subject to the availability of funds and if an IHE provides adequate justification, the Secretary may extend a fellowship beyond the maximum period to a master's or doctoral Fellow who, for circumstances beyond the Fellow's control, is unable to complete the program of study in that period.

(c) A fellowship recipient who seeks assistance beyond the initial one-year period must be renominated by the participating IHE.

(d) The Secretary may give preference to fellowship recipients in their second or third year who maintain satisfactory progress in the program of study prior to approving nominations of new Fellows.

(Authority: 20 U.S.C. 7475)

Subpart F—What Conditions Must Be Met by Fellows?

§ 535.50 What is the service requirement for a fellowship?

(a) Upon selection for a fellowship, a Fellow shall sign an agreement, provided by the Secretary, to work for a period equivalent to the period of time that the Fellow receives assistance under the fellowship in an activity—

(1) (i) Related to the program; or

(ii) Authorized under part A of title VII of the Act; and

(2) Approved by the Secretary.

(b) A fellowship recipient shall begin working in an activity specified in paragraph (a) of this section within six months of the date from which—

(1) The master's or doctoral recipient ceases to be enrolled at an IHE as a full-time student; or

(2) The post-doctoral recipient completes the project period in the approved program of study.

(Authority: 20 U.S.C. 7475(b))

§ 535.51 What are the requirements for repayment of the fellowship?

(a) A fellowship recipient who does not work in an activity described in § 535.50 shall repay the full amount of the fellowship.

(b) The Secretary prorates the amount a fellowship recipient is required to repay based on the length of time the fellowship recipient worked in an authorized activity compared with the length of time the fellowship recipient received assistance.

(Authority: 20 U.S.C. 7475(b))

§ 535.52 What is the repayment schedule?

(a) A fellowship recipient required to repay all or part of the amount of the fellowship shall begin repayments—

(1) Within six months of the date the fellowship recipient meets the criteria in § 535.50(b) (1) or (2); or

(2) On a date and in a manner established by the Secretary, if the fellowship recipient ceases to work in an authorized activity.

(b) A fellowship recipient must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(c) The repayment period may be extended if the Secretary grants a deferment under § 535.54.

(Authority: 20 U.S.C. 7475(b))

§ 535.53 What is the rule regarding interest?

(a) In accordance with 31 U.S.C. 3717, the Secretary charges a fellowship recipient interest on the unpaid balance that the fellowship recipient owes.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the fellowship recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 535.54.

(Authority: 20 U.S.C. 7475(b))

§ 535.54 Under what circumstances is repayment deferred?

The Secretary may defer repayment if the fellowship recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the fellowship recipient's employability in an activity described in § 535.50;

(b) Demonstrates to the Secretary's satisfaction that the fellowship recipient is conscientiously seeking but unable to secure employment in an activity described in § 535.50;

(c) In the case of a master's or doctoral fellowship recipient, re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States on active duty;

(e) Is in service as a volunteer under the Peace Corps Act; or

(f) Demonstrates to the Secretary's satisfaction that the existence of extraordinary circumstances prevents the fellowship recipient from making a scheduled payment.

(Authority: 20 U.S.C. 7475(b))

§ 535.55 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a fellowship recipient shall apply to renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 7475(b))

§ 535.56 Under what circumstances is repayment waived?

The Secretary may waive repayment if the fellowship recipient demonstrates the existence of extraordinary circumstances that justify a waiver.

(Authority: 20 U.S.C. 7475(b)(2))

§ 535.57 How shall the fellowship recipient account for the obligation?

(a) Within six months of the date a fellowship recipient meets the criteria in § 535.50(b) (1) or (2), the fellowship recipient shall submit to the Secretary one of the following items:

(1) A description of the activity in which the fellowship recipient is employed.

(2) Repayment required under §§ 535.51 and 535.52.

(3) A request to repay the obligation in installments.

(4) A request for a deferment or waiver as described in §§ 535.54 and 535.56 accompanied by a statement of justification.

(b) A fellowship recipient who submits a description of employment under paragraph (a)(1) of this section shall notify the Secretary on a yearly basis of the period of time during the preceding year that the fellowship recipient was employed in the activity.

(c) A fellowship recipient shall inform the Secretary of any change in employment status.

(d) A fellowship recipient shall inform the Secretary of any change of address.

(e)(1) A fellowship recipient's failure to timely satisfy the requirements in paragraphs (b) through (d) of this section shall result in the fellowship recipient being in non-compliance or default status subject to collection action.

(2) Interest and costs of collection may be collected in accordance with 31 U.S.C. 3717 and 34 CFR Part 30.

(Authority: 20 U.S.C. 7475(b))

[FR Doc. 95–27744 Filed 11–8–95; 8:45 am]

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federal register

Thursday
November 9, 1995

Part VI

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Grants and Cooperative Agreements; Availability, etc.: Food and Agricultural Sciences and National Needs Graduate Fellowship Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program; Solicitation of Proposals for Fiscal Year 1996; Supplemental Grants for Special International Study or Thesis/ Dissertation Research Travel Allowances

Applications are invited for competitive grant awards to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences for Fiscal Year (FY) 1996. Additionally, the Cooperative State Research, Education, and extension Service (CSREES) seeks applications from recipients of presently active national needs fellowship grants for supplemental grants to support special international study or thesis/ dissertation research experiences for current Fellows:

I. Food and Agricultural Sciences National Needs Graduate Fellowship Grants

Authority

The authority for this program is contained in Section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)). Under this program, subject to the availability of funds, the Secretary may make competitive grants, for periods not to exceed five years, to land-grant colleges and universities, colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct graduate fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. Please note that the authorizing legislation for the National Needs Graduate Fellowship Grants Program allows the award of grants to colleges and universities only; awards cannot be made to research foundations established by the college or university.

Targeted Areas

Food and agricultural sciences areas appropriate for fellowship applications are those in which shortages of expertise have been determined and targeted by CSREES for national needs doctoral fellowship support. In FY 1996, only the doctoral level of study will be supported. CSREES supports six national needs areas on a rotating basis of three needs areas per fiscal year. The targeted national needs areas to be supported in FY 1996 are: Animal Biotechnology; Human Nutrition and/or Food Science; and Food, Forest Products, or Agribusiness Marketing or Management. Approximately one-third of the available funds will be allocated to each of the three national needs areas. CSREES plans to support the remaining three national needs areas (Plant Biotechnology; Food, Forest, Biological, or Agricultural Engineering; and Water Science) in FY 1997. Although this procedure limits the participation of an applicant interested in a specific targeted national needs area to alternating years, it increases the likelihood that the applicant will obtain funding under the program each time a grant application is submitted.

Proposal Limitations

For the FY 1996 program, a proposal may request funding in only one national needs area. A proposal may request a minimum of two fellowships and a maximum of four fellowships in the national needs area for which funding is requested. No limitation is placed on the number of proposals an institution may submit. However, the same college or equivalent administrative unit within an institution may only submit a maximum of three proposals, but no more than one proposal may be submitted in any one national needs area by the same college or equivalent administrative unit within an institution. While proposals must document institution willingness to recruit and train at least two but not more than four fellows in a national needs area, CSREES may fund fewer fellows than requested in a proposal.

Available Funding

CSREES anticipates that approximately $3,395,000 will be available for this program in FY 1996. This program is highly competitive, and it is anticipated that available funding will support approximately 63 doctoral fellows through approximately ten grants in each of the three targeted areas. However, no-year funds drawn from expired fellowship grants with unspent funds remaining may be used to fund more than the approximately 63 fellows supported by the FY 1996 appropriations.

Each institution funded will receive $54,000 for each doctoral fellowship awarded. However, it is anticipated that total program funds available will not be evenly divisible by $54,000. Therefore, one fellowship may be supported on a partial basis with a lesser amount of funds, or one fellowship may be supported fully by a combination of FY 1996 funds and unspent funds remaining from expired fellowship grants. Except in the case of a partially funded fellowship, fellowship monies must be used to (1) support the same doctoral fellow for three years at $17,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1,000, not to exceed a total of $3,000 over the duration of the grant. Total funds awarded to an institution under the program in FY 1996 shall not exceed $324,000.

Application Information

An application package is available that provides the forms, instructions, and other relevant information needed by institutions to apply to the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program described herein. Copies of the application package may be requested from Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; Ag Box 2245; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. To request, via e-mail, that a copy of the application package be sent to you through U.S. mail, send your request including your name and mailing address to psb@reeusda.gov.

Reminder: The proposal narrative must be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch. The proposal should be paginated and a Table of Contents should be included preceding the proposal narrative. Applicants are cautioned to comply with the 20-page limitation for the narrative section of the proposal. Applicants also are cautioned to include *summary* faculty vitae through the use of Form CSREES–708.

When and Where to Submit Proposals

An original plus six copies of a proposal and one copy of the institution's latest graduate catalog must be submitted. Proposals submitted through the U.S. mail must be postmarked by February 9, 1996, and should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; Ag Box 2245; Washington, D.C. 20250–2245. Hand-delivered proposals must be submitted by February 9, 1996, to an express mail or a courier service or brought to the following address by 4:30 p.m. eastern standard time: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Proposals transmitted via a facsimile (FAX) machine will not be accepted.

Submission of an Intent a Submit a Proposal form (Form CSREES–706) is neither required nor requested in FY 1996.

II. Special International Study or Thesis/Dissertation Research Travel Allowances

Authority

Under the authority contained in Section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), and in accordance with the Administrative Provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program (7 CFR Part 3402.5(e)), CSREES will award supplemental grants, on a competitive basis, for special international study or thesis/dissertation research travel allowances. Institutions eligible to receive supplemental grants are those that have active National Needs Graduate Fellowship Grants (awarded in FY 1995 or eralier). These supplemental grants may be awarded to colleges and universities only; awards cannot be made to research foundations established by a college or university.

Eligibility

Eligibility for this opportunity is limited to any current Fellow with sufficient time to complete the international experience before the termination date of the fellowship grant under which he/she is supported. Before the international study or thesis/ dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the fellowship appointment and arrangements must have been formalized for the Fellow to study and/ or conduct research in the foreign location(s). All national needs areas previously supported under the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program are eligible for the supplementary grants for special international study or these/dissertation research travel world.

Available Funding

CREES has determined that no FY 1996 appropriations will be targeted to supplemental grants supporting special international study or thesis/ dissertation research travel allowances; rather, no-year funds drawn from expired fellowup grants with unspent funds remaining will be used to support such supplemental grants.

For each travel allowance, the institution may request up to $3,000. Travel allowance monies may be used only to pay travel and living expenses for the Fellow while the Fellow is on the specific international assignment as proposed in the application for the special international study or thesis/ dissertation research travel allowance. No limitation is placed on the number of applications an institution may submit. Awards will be made to the extent possible based on availability of funds. Estimated funds for supplemental grants in FY 1996 are approximately $60,000. To the extent possible, all applications associated with one CSREES grant number should be submitted at the same time in order to facilitate the award of these supplemental grants and minimize accounting activity at the grantee institution.

Application Information

A separate application must be submitted by a fellowship grant project director at an eligible institution on behalf of each Fellow for which a special international study or thesis/ dissertation research travel allowance is requested. Applications for the special international study or thesis/ dissertation research travel allowance supplemental awards may be submitted at any time prior to July 1, 1996. However, to allow time for CSREES to process the applications, proposals should be submitted at least three months prior to the proposed beginning date of the international travel experience. Applicants are urged to submit their proposals early.

Note: Proposals for these special supplemental awards should *not* be submitted as part of the application for a FY 1996 Graduate Fellowship grant.)

Each application must include an "Application for Funding," Form CSREES–661, and a "Budget," Form CSREES–55. To provide HEP with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/ dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following: (1) The specific destination(s) and duration of the travel; (2) the specific study or thesis/ dissertation research activities in which the Fellow will be engaged; (3) how the international experience will contribute to the Fellow's program of study; (4) a budget narrative specifying and justifying the dollar amount requested for the travel; (5) summary credentials of both the U.S. and international faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person; "Summary Vita—Teaching Proposal," Form CSREES–708, may be used for this purpose); (6) a letter for the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and (7) a letter from the fellowship grant project director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

The narrative portion of the application must not exceed 10 pages, excluding the summary vita/vitae. The narrative should be typed on one side of the page only, using a font no smaller than 12 point, and double-spaced. All margins must be at least one inch.

An application package containing the forms, instructions, and other relevant information needed by institutions to apply for the special international study or thesis/ dissertation research travel allowances may be requested from Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245. The telephone number is (202) 401–5048. To request, via e-mail, that a copy of the application package be sent to you through U.S. mail, send your request including your name and mailing address to psb@reeusda.gov.

Evaluation of Applications

Applications for the special international travel allowances will be evaluated as they are received until available funds for the supplemental grants are exhausted. Upon receipt of an application, CSREES staff will first determine the eligibility of the Fellow, for whom the application was

submitted, for an international travel experience. Eligible and complete requests then will be reviewed, using the criteria and weights indicated below, by professional staff from USDA or other Federal agencies, as appropriate. Proposals judged to be worthy of funding will be eligible for supplemental awards. Since awards for supplemental grants will be made as reviews are completed, there is no assurance funds will be available late in the Federal fiscal year (which runs from October 1 through September 30) for every acceptable proposal.

The evaluation criteria for special international study or thesis/dissertation research travel allowance applications are indicated below. The points are provided as a guide to the relative importance of each criterion, but all criteria must be addressed satisfactorily.

a. Destination and duration—the degree to which the destination and duration of the travel experience is appropriate for enhancing the Fellow's academic program—10 points.

b. Travel experience activities—the degree to which the specific international experiences contribute to the Fellow's program of study—30 points.

c. Advance preparations—the degree to which the proposed study or research activities are well-planned, including the likelihood that these activities will come to fruition and that the participation of identified personnel will materialize—20 points.

d. Budget—the degree to which the budget for the international experience is justified—10 points.

e. Personnel—the degree to which the personnel, both U.S. and international, involved with the travel experience have the appropriate credentials and experience to direct the Fellow's international experience, and the likelihood that their participation as mentor, trainers, advisors, or teachers will contribute to the educational value of the travel experiences—20 points.

f. Supporting documentation—the degree to which letters from the dean of the college (or equivalent administrative unit) and the fellowship grant project director support the application—10 points.

When and Where to Submit Applications

An original plus six copies of each application must be submitted. Each copy of the application should be stapled securely in the upper left-hand corner. Please do not bind the original or the copies of the application. All copies of the application must be mailed in one package. Applications transmitted via a facsimile (FAX) machine will not be accepted. Applications submitted through the U.S. mail should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245. Hand-delivered proposals, including those submitted to an express mail or a courier service, should be brought to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW.; Washington, DC 20024. The telephone number is (202) 401–5048. Applications may be submitted at any time prior to July 1, 1996.

III. Applicable Regulations

This program is subject to the administrative provisions found at 7 CFR Part 3402. A Final Rule amending the administrative provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program was published in the **Federal Register** on December 30, 1994 [59 FR 68072].

In addition, the USDA Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, 7 CFR Part 3019 (60 FR 44,122 (August 24, 1995)); the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015, as amended; the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR Part 3017; the Restrictions on Lobbying, 7 CFR Part 3018; and the regulations regarding Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR Part 3051, apply to this program. Other Federal statutes and regulations that apply to this program are identified in the administrative provisions.

IV. Supplementary Information

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210. For the reasons set forth in the Final Rule-related notice to 7 CFR part 3015, Subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements for this program have been approved under OMB Document Nos. 0524–0022 and 0524–0024.

V. Program Contact

If you have questions concerning the submission of Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program proposals, please contact Dr. Wm. Jay Jackman, Higher Education Programs, Science and Education Resources Development, CSREES, USDA, at (202) 720–1973 (voice), (202) 720–2030 (fax), or jjackman@reeusda.gov (Internet).

Done at Washington, D.C., this 3rd day of November 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–27818 Filed 11–8–95; 8:45 am]

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S. 1322/P.L. 104–45

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(Upon expiration of the 10-day period prescribed by the Constitution of the United States, S. 1322 became law on Nov. 8, 1995, without the President's approval.)

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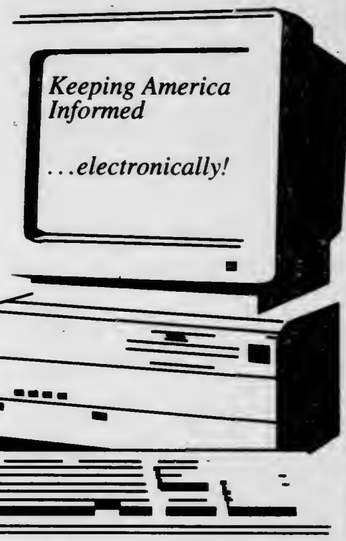
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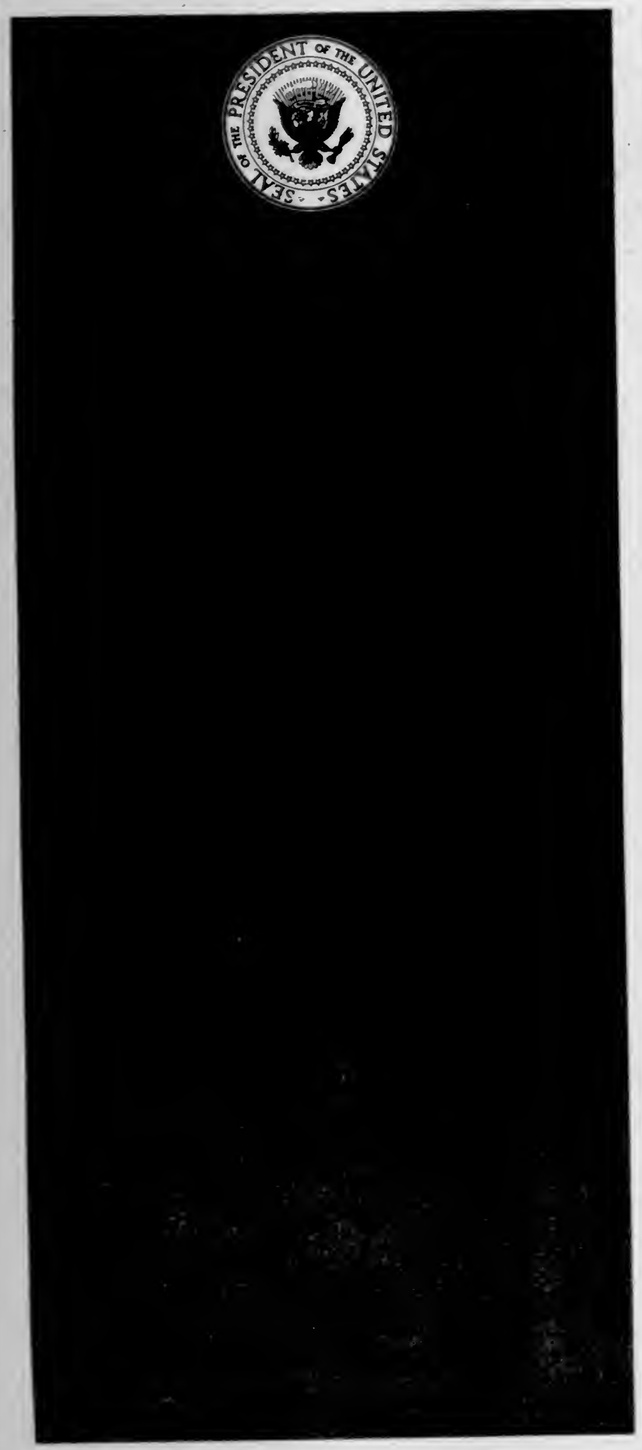
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[Three Sessions]

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Presidential Documents

Title 3—

The President

Presidential Determination No. 96–4 of November 1, 1995

Presidential Determination on the Proposed Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM)

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 1, 1995.

[FR Doc. 95–28082
Filed 11–8–95; 2:59 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 406

General Crop Insurance Regulations; Various Endorsements; Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby amends the crop insurance provisions of the wheat endorsement, the winter coverage option for wheat, the barley endorsement, the winter coverage option for barley, the oat endorsement, the rye endorsement, the corn endorsement, the corn silage option, the grain sorghum endorsement, the flaxseed endorsement, the soybean endorsement, the cotton endorsement, the ELS cotton endorsement, the sunflower seed crop endorsement, the fig endorsement, and the malting barley option of 7 CFR part 401, General Crop Insurance Regulations, to restrict their application effective for the 1995 and succeeding crop years. The crop insurance provisions of the sugarcane endorsement of 7 CFR part 401, General Crop Insurance Regulations are also amended to restrict their application effective for the 1996 and succeeding crop years. The FCIC further amends the crop insurance provisions of the nursery crop insurance regulations of 7 CFR part 406 to restrict their application effective for the 1996 and succeeding crop years. These sections and 7 CFR part 406 have been replaced by policy provisions added to the Common Crop Insurance Regulations located at 7 CFR part 457.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

This rule has been determined to be exempt for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget ("OMB"). Since this rule relates solely to internal agency management, and will have no effect on the public, this rule is exempt from regulatory review under Executive Order 12866, and good cause is shown for publishing this rule as a final rule without the customary opportunity for notice and comment.

In accordance with the Paperwork Reduction Act of 1985 (44 U.S.C. chapter 35), no information collection or record-keeping requirements are found in this rule.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action does not increase the paperwork burden on the insured producer or the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

The intended effect of this rule is to provide a standard set of policy provisions and a master policy for insuring most of the crops insured under the provisions of the Federal Crop Insurance Act, as amended, to substantially reduce: (1) The time involved for future amendment or revision of policy provisions; (2) the necessity of the repeated policy review process; and (3) the volume of paperwork processed by the FCIC, the Consolidated Farm Service Agency ("CFSA"), and the reinsured insurance companies.

The sections restricted by this rule include: the wheat endorsement, the winter coverage option for wheat, the barley endorsement, the winter coverage option for barley, the oat endorsement, the rye endorsement, the corn endorsement, the corn silage option, the grain sorghum endorsement, the flaxseed endorsement, the soybean endorsement, the cotton endorsement, the ELS cotton endorsement, the sunflower seed endorsement, the malting barley option, the fig endorsement, the nursery crop insurance regulations, and the sugarcane endorsement. These crop insurance policies have been replaced by the small grains crop insurance provisions, the winter wheat coverage option, the malting barley option, the

cotton crop insurance provisions, the ELS cotton crop insurance provisions, the coarse grains crop insurance provisions, the sunflower seed crop insurance provisions, the fig crop insurance provisions, the nursery crop insurance provisions and the nursery frost, freeze, and cold damage exclusion option, and the sugarcane crop insurance provisions located at 7 CFR 457.101, 457.102, 457.103, 457.104, 457.105, 457.108, 457.110, 457.113, 457.114, 457.115, and 457.116. Such policy provisions, as endorsements to the General Crop Insurance Regulations, are no longer effective for the 1995 and succeeding crop years (1996 and succeeding crop years for the nursery crop insurance provisions and the sugarcane endorsement). FCIC will later publish a regulation to remove and reserve these sections and part.

List of Subjects

7 CFR Part 401

Crop insurance, barley, corn, corn silage, cotton, ELS cotton, fig, flaxseed, grain sorghum, oat, rye, soybean, sugarcane, sunflower seed, and wheat.

7 CFR Part 406

Crop insurance, nursery.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR parts 401 and 406) as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. The introductory text of § 401.101 is revised to read as follows:

§ 401.101 Wheat endorsement.

The provisions of the Wheat Crop Insurance Endorsement for the 1988 through the 1994 crop years are as follows:

* * * * *

3. Section 401.102 is amended by revising the introductory text and the undesignated paragraph immediately following the listing of counties under SOUTH DAKOTA to read as follows:

§ 401.102 The winter coverage option for wheat.

The Winter Coverage Option for wheat is available in the following counties and states beginning in the 1988 through 1994 crop years:

* * * * *

The provisions of the Winter Coverage Option for Wheat for the 1988 through 1994 crop years are as follows:

* * * * *

4. The introductory text of § 401.103 is revised to read as follows:

§ 401.103 Barley endorsement.

The provisions of the Barley Crop Insurance Endorsement for the 1988 through the 1994 crop years are as follows:

* * * * *

5. Section 401.104 is amended by revising the second undesignated paragraph to read as follows:

§ 401.104 Winter coverage option for barley.

* * * * *

The provisions of the Winter Coverage Option for Barley for the 1988 through 1994 crop years are as follows:

* * * * *

6. The introductory text of § 401.105 is revised to read as follows:

§ 401.105 Oat endorsement.

The provisions of the Oat Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

7. The introductory text of § 401.106 is revised to read as follows:

§ 401.106 Rye endorsement.

The provisions of the Rye Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

8. The introductory text of § 401.111 is revised to read as follows:

§ 401.111 Corn endorsement.

The provisions of the Corn Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

9. Section 401.112 is amended by revising the introductory text and the undesignated paragraph immediately following the *Corn Silage Option* chart to read as follows:

§ 401.112 Corn silage option.

The provisions of the Corn Silage Crop Insurance Option to the Corn Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

Upon our approval, this amendment is applicable for the 1988 through 1994 crop years.

* * * * *

10. The introductory text of § 401.113 is revised to read as follows:

§ 401.113 Grain sorghum endorsement.

The provisions of the Grain Sorghum Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

11. The introductory text of § 401.116 is revised to read as follows:

§ 401.116 Flaxseed endorsement.

The provisions of the Flaxseed Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

12. The introductory text of § 401.117 is revised to read as follows:

§ 401.117 Soybean endorsement.

The provisions of the Soybean Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

13. The introductory text of § 401.119 is revised to read as follows:

§ 401.119 Cotton endorsement.

The provisions of the Cotton Crop Insurance Endorsement for the 1990 through 1994 crop years are as follows:

* * * * *

14. The introductory text of § 401.121 is revised to read as follows:

§ 401.121 ELS cotton endorsement.

The provisions of the ELS Cotton Crop Insurance Endorsement for the 1990 through 1994 crop years are as follows:

* * * * *

15. The introductory text of § 401.124 is revised to read as follows:

§ 401.124 Sunflower seed crop endorsement.

The provisions of the Sunflower Seed Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

16. The introductory text of § 401.125 is revised to read as follows:

§ 401.125 Fig endorsement.

The provisions of the Fig Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

* * * * *

17. The introductory text of § 401.133 is revised to read as follows:

§ 401.133 Sugarcane endorsement.

The provisions of the Sugarcane Crop Insurance Endorsement for the 1991 through 1995 crop years are as follows:

* * * * *

18. The introductory text of § 401.135 is revised to read as follows:

§ 401.135 Malting barley option.

The provisions of the Malting Barley Option for the 1989 through 1994 crop years are as follows:

* * * * *

PART 406—[AMENDED]

19. The authority citation for 7 CFR part 406 is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

20. Section 406.7 is amended by revising the introductory text of paragraph (d) of the Nursery Crop Insurance Regulations to read as follows:

§ 406.7 The application and policy.

* * * * *

(d) The application for the 1989 through 1995 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Nursery Crop Insurance Policy for the 1989 through 1995 crop years are as follows:

* * * * *

Done in Washington, DC, on November 2, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–27875 Filed 11–9–95; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV95–915–1FIR]

Avocados Grown in South Florida; Revision of Grade Requirements for Certain Florida Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule without change, the provisions of an interim final rule which revised grade requirements for fresh Florida avocados shipped in certain containers to destinations within the production area in Florida. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Florida Avocado Administrative Committee (committee). This rule enables Florida growers and handlers to market a larger percentage of their crop in the production area, in response to demand.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: 813–299–4770; or Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915 (7 CFR Part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of avocados who are subject to regulation under the marketing order and approximately 95 producers of avocados in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of South Florida avocados may be classified as small entities.

An interim final rule was issued on August 11, 1995, and published in the **Federal Register** (60 FR 42770, August 17, 1995), with an effective date of August 17, 1995. That rule provided a 30-day comment period which ended September 18, 1995. No comments were received.

This rule finalizes an interim final rule which revised the order's rules and regulations by removing all grade requirements for fresh avocados shipped to destinations within the production area in Florida packed in containers other than those authorized under § 915.305. The committee met July 12, 1995, and unanimously recommended this action.

Sections 915.50 and 915.52 provide the authority for the committee to recommend various regulations and modifications, suspension, or termination of regulations to the Secretary. Section 915.306 of the regulations specifies grade, pack, and container marking regulations for fresh shipments of avocados grown in Florida. Currently § 915.306 of the order specifies that all fresh Florida avocados must grade at least U.S. No. 2, when shipped in any container.

This rule revises § 915.306 by removing all grade requirements for fresh avocados shipped to destinations within the Florida production area packed in containers other than those authorized under § 915.305. Section 915.306 was amended through a proposed rule published at 56 FR 4953 on February 7, 1991, and finalized at 56 FR 36079 on July 31, 1991. That amendment established a minimum grade requirement of U.S. No. 2 and container marking and sealing requirements for Florida avocados handled to points within the production area (South Florida). This rule was established prior to Hurricane Andrew when avocados were plentiful. Shipments of poorer quality avocados to the markets within the production area

depressed prices for better quality avocados and resulted in lower overall returns to producers. Plentiful supplies of avocados had allowed for higher quality avocados to be offered at a relatively lower cost, encouraging consumption by presenting a higher quality product.

However, Hurricane Andrew, in August of 1992, reduced production acreage from approximately 9,000 acres to less than 6,000 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,110,105 bushels. In the 1992–93 season, production fell to 283,666 bushels and in the 1993–94 season it was at 174,712 bushels. In response to this reduced production the committee requested and was granted a temporary suspension of grade requirements for fresh avocados shipped in certain containers to destinations within the production area in Florida. The relaxation for the 1993–94 season was published as a final rule at 58 FR 34684, on June 29, 1993, and for the 1994–95 season by a final rule published at 59 FR 33417 on June 29, 1994. These temporary relaxations were requested and granted under the assumption that production would return to pre-Hurricane Andrew levels.

Although the 1994–95 season recovered to 778,951 bushels, it is still well below the levels reached prior to the hurricane. Also, changing economic and environmental priorities of the South Florida area are capping the growth on Florida avocado production. Future production is expected to remain flat at approximately 700,000 bushels annually, or to increase only slightly. The committee considers production levels set prior to Hurricane Andrew as unattainable.

The temporary grade relaxations of the last two seasons were successful in making additional supplies of fruit available to meet consumer needs consistent with crop and market conditions. The relaxations demonstrated that there is a market for lower quality avocados in the production area. Also, better quality avocados did not suffer depressed prices due to the availability of the lower quality fruit.

The container and marking requirements clearly identify graded avocados from non-graded avocados. Those avocados sold in the production area which are not subject to grade cannot be packed in regulated containers. This allows customers to readily identify graded versus those not meeting grade.

This continued relaxation provides Florida avocado growers and handlers with an opportunity to sell, in the production area, fresh avocados which would otherwise be culled during the packing process, thus making additional avocados available to consumers. This rule is expected to facilitate the movement of fresh market avocados sold within the production area.

This relaxation only applies to Florida avocados shipped to destinations within the production area. Thus, the U.S. No 2 grade requirement will continue to apply unchanged to avocados shipped to destinations outside the production area, as well as to all avocados shipped to any destination in those containers whose size and type are specified in § 915.305. Also unchanged by this action are current maturity, container, pack, and inspection requirements for all fresh Florida avocado shipments under the avocado marketing order.

Avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28). Since this rule does not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there is no need to change the avocado import regulation. Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

This rule reflects the committee's and the Department's appraisal of the need to relax the grade requirements for certain avocados grown in Florida. The Department's view is that this action will have a beneficial impact on producers and handlers since it will permit avocado handlers to make additional supplies of fruit available to meet consumer needs consistent with crop and market conditions.

Based on these considerations, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 42769, August 17, 1995), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 60 FR 42769 on August 17, 1995, is adopted as a final rule without change.

Dated: November 3, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–27813 Filed 11–9–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 287

[INS No. 1717–95]

RIN 1115–AE15

Subpoena Issuance Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends existing Immigration and Naturalization Service (Service) regulations by adding the Assistant Chief Patrol Agency Officer position to the lists of those immigration officers who may issue and designate service of subpoenas under this section. These changes will reduce unnecessary delay in the processing of criminal and civil investigations by reducing the need to transfer case files between offices for signatures. These changes will allow the Service to maximize its use of personnel and resources. The rule is in keeping with current organizational command structure and program responsibility within a Border Patrol sector.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Alan R. Conroy, Assistant Chief Border Patrol, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 514–3073.

SUPPLEMENTARY INFORMATION: The Service is modifying section 287.4(a)(1) and 287.4 (c) of its existing regulations to add Assistant Chief Patrol Agent positions to those immigration officials authorized to issue and designate service of subpoenas. One of the Service priorities is the apprehension and removal of criminal aliens. The authority for Assistant Chief Patrol Agents to issue subpoenas will allow for greater flexibility in the processing of these aliens. The subpoena is issued in criminal or civil investigations to require the production of documentary evidence, for use in a Service-related case. Currently employees above and below the Assistant Chief level have the power to issue subpoenas. Implementation of the rule will add continuity to the Immigration and Naturalization Service and the Border Patrol chains of command. The Service's implementation of this rule as a final rule, without provision for public comment, is based upon the exception found in 5 U.S.C. 553(b)(B). This rule related to agency management and is administrative in nature. Thus, the comment period and noticed are deemed unnecessary and contrary to the public interest.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), had reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulation is administrative in nature and the rule relates only to agency management.

List of Subjects in 8 CFR Part 287

Immigration, Law enforcement officers.

For the reasons set forth in the preamble, part 287 in chapter I of title 8 of the Code of Federal Regulations, is amended as set forth below.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

1. The authority citation for Part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357, 8 CFR part 2.

2. In Section 287.4 paragraphs (a)(1) and (c) are revised to read as follows:

§ 287.4 Subpoena.

(a) * * *

(1) *Criminal or civil investigations.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Assistant Chief Patrol Agents, Officers-in-Charge, Patrol Agents in Charge, Assistant District Directors, Investigations, Supervisory Criminal Investigators (Anti-Smuggling), Regional Directors, Office of Professional Responsibility, Service Center Directors, and Assistant District Directors for Examinations, may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.

* * * * *

(c) *Service.* A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case, designated to make such service by the District Director, Deputy District Director, Chief Patrol Agent, Deputy Chief Patrol Agent, Assistant Chief Patrol Agent, Patrol Agent in Charge, Officer in Charge, Assistant District Director, Investigations, Supervisory Criminal Investigator (Anti-Smuggling), Regional Director, and Office of Professional Responsibility, having administrative jurisdiction over the office in which the subpoena is issued. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

* * * * *

Dated: October 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–27919 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–28–AD; Amendment 39–9430; AD 95–23–10]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, that requires revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with additional procedures for shutting down the auxiliary power unit (APU) when an APU fire is indicated. This amendment is prompted by reports indicating that a latent electrical failure exists in the fire extinguishing system for the APU; this failure could prevent the APU from shutting down and fire extinguishant from discharging into the APU compartment in the event of an APU fire. The actions specified by this AD are intended to ensure that the flightcrew is provided with procedures for shutting down the APU in the event of an APU fire.

EFFECTIVE DATE: December 13, 1995.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes was published in the **Federal Register** on June 2, 1995 (60 FR 28763). That action proposed to require revising the Emergency Procedures and Limitations Sections of the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with these additional procedures for shutting down the APU when an APU fire is indicated.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposed rule.

One commenter requests that the requirements of the proposed AD be made a reference procedure found both in the AFM and the Quick Reference Handbook, rather than "recall items" in the Limitations section of the AFM. The commenter does not provide justification for its request. The FAA concurs partially. The FAA finds that the operational procedure should be included in the Emergency Procedures Section of the AFM; however, the procedure should not be included in the Limitations Section. Further, the FAA finds that inclusion of the procedure in the Quick Reference Handbook, as suggested by the commenter, will not adequately address the recall requirement of this AD. The FAA has determined that any hesitation on the part of the flightcrew with regard to taking action to shut down the APU in the event of an APU fire could jeopardize safe flight and landing of the airplane. The FAA finds it critical that the flightcrew commit such procedures to memory; therefore, these procedures must be considered recall items. Paragraph (a) of the final rule has been revised to remove the requirement to include the operational procedure in the Limitations Section of the AFM.

One commenter agrees that the AFM should be revised to incorporate the additional procedures specified in the proposed rule. However, the commenter states that the unsafe condition addressed by the proposal does not warrant issuance of an AD. The commenter suggests that Boeing revise the AFM to incorporate the proposed additional procedures, which would negate the cost of AD compliance paperwork for both the FAA and operators while providing an equivalent level of safety. The commenter adds that incorporation of the additional procedures into operators' manuals (through Boeing issuing a revision to the master AFM) would be more expeditious than the FAA issuing an AD with a 6-month compliance period.

The FAA does not concur with the commenter's position that issuance of an AD is not warranted. As stated in the preamble of the proposed rule, the FAA received reports indicating that a latent electrical failure exists in the fire extinguishing system of the APU on the affected airplanes. This electrical failure presents an unsafe condition in airplanes, since it could eventually prevent the APU from shutting down and fire extinguishant from discharging when the flight crew pulls and rotates the fire handle. Consequently, the flightcrew would be unable to extinguish an APU fire. The FAA has determined that this unsafe condition could exist or eventually develop on Model 737 series airplanes, and that revision of the AFM must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive. However, the FAA has confirmed that Boeing intends to update the AFM for the affected airplanes in the next revision, which is scheduled for December 1995.

One commenter, Boeing, requests that the FAA reevaluate the cost-benefit analysis of the proposed rule. The commenter states that simply changing the AFM to add a recall item, as proposed in this AD, will not fully accomplish the intent of the rule; flightcrews must be retrained to commit the recall item to memory. The commenter states that the cost benefit analysis should account for such training (including flightcrew training time, instructors, and updated materials). The commenter points out that the FAA is required by Executive Order 12866 to do an analysis to show that benefits outweigh costs before imposing new regulations. The commenter adds that, in calculating the total cost impact of the proposed AD, the FAA is stating that industry will be incurring a cost in implementing this rule that it would otherwise not be liable for if the rule was not issued.

The FAA acknowledges the concerns of this commenter. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually "implement" that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with retraining flightcrews, as suggested by the commenter. (The commenter does not provide an estimate of such costs.)

Further, because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain and operate aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining and operating safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In any case, the FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

In addition, the FAA is not required to do a full cost-benefit analysis for each AD, since an AD typically does not meet the criteria of a "significant regulatory action" under Executive Order 12866. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost beneficial. When the FAA later makes a finding of an unsafe condition in an aircraft and issues an AD, it means that the original cost beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost beneficial, and because the AD does not add an additional regulatory requirement that increases the level of safety *beyond* what has been established by the type design, a full cost-benefit analysis for each AD would be redundant and unnecessary.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,602 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,072 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $64,320, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–23–10 Boeing: Amendment 39–9430. Docket 95–NM–28–AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is provided with additional procedures necessary for shutting down the auxiliary power unit (APU) in the event of an APU fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, revise the Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will ensure that the flightcrew is able to shut down the APU when an APU fire is indicated. This may be accomplished by inserting a copy of this AD in the AFM.

"APU FIRE WARNING

RECALL	
APU Fire Warning Switch.	PULL AND ROTATE
APU Switch	OFF
REFERENCE	
Master Fire Warning.	RESET"

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 13, 1995.

Issued in Renton, Washington, on November 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27914 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–217–AD; Amendment 39–9424; AD 95–23–04]

Airworthiness Directives; British Aerospace Model BAC 1–11 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 400 series airplanes. This action requires an inspection of the rod ends of the lift dumper to detect drill holes; a dye penetrant inspection to detect any cracking of drilled holes; and replacement of the rod end with an undrilled rod end, if necessary. This amendment is prompted by a report that, during a routine examination of the operating mechanism of the lift dumper, two cracked aft rod ends were found. Investigation revealed that holes had been drilled in the rod ends for grease nipples during manufacturing, and that cracking had developed at the holes. The actions specified in this AD are intended to prevent asymmetric deployment and subsequent lateral control problems due to cracking of either pair of aft rod ends of the operating mechanism of the lift dumper.

DATES: Effective November 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–217–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAC 1–11 400 series airplanes. The CAA advises that, during a routine examination of the operating mechanism of the lift dumper, cracking was found on two aft rod ends (one per wing) on a British Aerospace Model BAC 1–11 500 series airplane. Investigation revealed that, during manufacture, holes had been drilled in

the rod ends for grease nipples. The cracking had developed at the point where an external grease nipple had been fitted to the eye-end of the rods, and caused the failure of the rod ends. This condition, if not corrected, could result in uncontrolled asymmetric deployment and subsequent lateral control problems, particularly at low speeds with the flaps extended.

The subject aft rod ends installed on Model BAC 1–11 500 series airplanes are similar to those installed on Model BAC 1–11 400 series airplanes. Therefore, Model BAC 1–11 400 series airplanes are subject to this same unsafe condition. (The Model BAC 1–11 500 is not type certificated for operation in the United States.)

British Aerospace has issued Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995, which describes procedures for visual inspection to detect drill holes for a grease nipple in the housing of the rod ends. If drill holes are detected, the alert service bulletin also describes procedures for a dye penetrant inspection to detect any cracking of the drill holes, and eventual replacement of the rod end with an undrilled rod end. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent asymmetric deployment and subsequent lateral control problems, particularly at low speeds with the flaps extended, due to failure of either pair of aft rod ends of the lift dumper operating mechanism. This AD requires a visual inspection of the lift dumper to detect drill holes in the rod ends. This AD also requires a dye penetrant inspection to detect any cracking if drill holes are detected, and eventual replacement of the rod ends with rod ends that have not been drilled for a grease nipple. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–217–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–23–04 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–9424. Docket 95–NM–217–AD.

Applicability: All Model BAC 1–11 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections and replacement of the rod ends in accordance with British Aerospace Campaign Wire 27–CW–PM6034, dated May 18, 1995, are considered to be acceptable for compliance with the actions specified in this AD.

To prevent asymmetric deployment and subsequent lateral control problems, particularly at low speeds with the flaps extended, due to cracking of either pair of aft rod ends of the lift dumper operating mechanism, accomplish the following:

(a) Within 100 flight hours or 30 days after the effective date of this AD, whichever occurs first: Perform a visual inspection to detect drill holes for a grease nipple in the housing of the rod ends of the lift dumper, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995.

(b) If no drill holes for a grease nipple are found, no further action is required by this AD.

(c) If any drill hole for a grease nipple is found, prior to further flight, perform a dye penetrant inspection to detect cracking of the rod eye-end, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995. Pay particular attention to the area surrounding the grease nipple hole.

(1) If no cracking is found, accomplish the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (c) of this AD thereafter at intervals not to exceed 100 flight hours until the rod ends are replaced in accordance with paragraph (c)(1)(ii) of this AD.

(ii) Within 60 days after the effective date of this AD, replace the drilled rod end with an undrilled rod end, in accordance with the alert service bulletin. Accomplishment of this replacement constitutes terminating action for the inspections required by paragraph (c)(1)(i) of this AD.

(2) If any cracking is found, prior to further flight, replace the rod end with an undrilled rod end, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995.

(d) As of the effective date of this AD, no person shall install on any airplane a rod end, part number RMX 7GUE, having any holes drilled for a grease nipple; nor shall any person drill any holes for a grease nipple in a rod end having part number RMX 7GUE on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and replacement of the rod ends shall be done in accordance with British Aerospace Alert Service Bulletin 27–A–PM6034, Issue 1, dated October 6, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 28, 1995.

Issued in Renton, Washington, on November 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27786 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–34; Amendment 39–9402, AD 95–21–15]

Airworthiness Directives; Teledyne Continental Motors Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Teledyne Continental Motors (TCM) reciprocating engines installed on certain aircraft identified by registration numbers. This action supersedes priority letter AD 94–14–12 that currently requires engines certified to operate on 91 octane or higher aviation gasoline (avgas) to undergo a teardown and analytical inspection for detonation damage, and engines certified to operate on 80 octane avgas to undergo inspection for evidence of possible internal engine damage. This action revises incorrect engine model numbers and aircraft registration numbers listed in the priority letter AD. This amendment is prompted by the Federal Aviation Administration (FAA) receiving more accurate information concerning which aircraft were fueled with the contaminated mixture at the affected airports. The actions specified by this AD are intended to prevent detonation due to low octane, which can result in severe engine damage and subsequent failure.

DATES: Effective November 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1995. Comments for inclusion in the Rules Docket must be received on or before January 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95- ANE–34, 12 New England Executive Park, Burlington, MA 01803- 5299.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Locke Easton, Aerospace Engineer, Engine and Propeller Standards Staff, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (617) 238–7113, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On June 23, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94-14–12, applicable to Teledyne Continental Motors (TCM) A–65-8, C–85–12, E–185–11, O–200, O–300–D, GO–300, IO–360–G, IO-360–K, TSIO–360, O–470–L, O–470–R, O–470–U, IO–470–C, IO–470-E, IO–470–F, IO–470–L, IO–470–N, IO–470–S, IO–470–V, IO–520-A, IO–520–B, IO–520–C, IO–520–D, IO–520–F, IO–520–K, IO–520- M, TSIO–520, TSIO–520–C, TSIO–520–M, TSIO–520–N, TSIO–520-UB, GTSIO–520, IO–550–C, and R–670 reciprocating engines, installed on the following U.S. registered aircraft: N101G, N101JB, N101PQ, N1077B, N11PT, N111MK, N114R, N1162D, N1167J, N1208U, N121LG, N124WN, N13159, N1344V, N1360L, N140NL, N1503S, N1556T, N1584V, N16165, N166AU, N1672R, N1680R, N172CB, N1724T, N17793, N179SV, N1806F, N1818L, N182MC,

N186Q, N19193, N19346, N207X, N200BD, N2051S, N2083S, N210KC, N21179, N2168N, N22FG, N2248Z, N2281T, N231KQ, N24FG, N2616N, N26560, N27G, N27326, N2841W, N2854W, N2881M, N2928B, N2995F, N3DX, N30C, N30CA, N300RS, N3097D, N31CU, N313TM, N3145Y, N3153B, N323K, N3397Q, N340VV, N3499G, N35MX, N35840, N35964, N3599L, N3603L, N36319, N3639D, N3700J, N39545, N4008F, N4088V, N41CU, N41032, N4105C, N4154Y, N421CW, N421EM, N421SM, N4218L, N4259B, N46GS, N4302L, N4354K, N4354W, N444BJ, N4562D, N4568D, N4591S, N4598S, N4672B, N476KE, N4761K, N47964, N4812F, N4884B, N4895E, N5089V, N51EN, N5204C, N5314T, N5357A, N5377J, N5453J, N550DF, N5517A, N555YT, N5591D, N57032, N5732X, N58BS, N5808F, N58689, N60DM, N60062, N619B, N6108F, N6158R, N6169N, N6193X, N62121, N6222F, N6278V, N6281F, N6285H, N6341X, N6363K, N6421P, N65WW N65031, N6527P, N6579M, N6664L, N6669X, N6670G, N66909, N6706G, N67249, N677PC, N6789R, N6800R, N6822R, N6837Q, N68937, N6915F, N6951M, N6952M, N6992E, N704GY, N704NQ, N7125E, N714BD, N7208V, N721X, N724BE, N7248H, N7303Y, N7309Q, N732DD, N735DV, N739JG, N7405S, N758JF, N777E, N7981D, N800WB, N8103Z, N8107D, N8150Q, N8160Q, N8168U, N8210, N8241N, N8307D, N8308Z, N836BQ, N8426S, N8432Z, N8465L, N8491S, N85WB, N8501S, N8532R, N8579H, N8579M, N85797, N86VS, N8660M, N8669A, N8867T, N9099G, N9114A, N9124U, N9151M, N9157S, N91603, N91860, N922DK, N92465, N9410S, N9434N, N9435U, N9516Y, N9547U, N9597T, N9606Y, N96134, N9613Y, N9673L, N96761, N9764E, N9777R, N97799, N9833H, N984BC, and N9992G. That action requires teardown and analytical inspection for engines certified to operate on 91 or higher octane aviation gasoline (avgas), and differential compression test and examination of the oil filter for engines certified to operate on 80 octane avgas. That action was prompted by reports of aviation gasoline (avgas) being contaminated by Jet A fuel. After investigation, the source of the contamination has been determined to be the refiner of the avgas. Through its distribution system, the refiner inadvertently caused Jet A fuel to be loaded into distribution tanks intended for avgas. Contaminated avgas from these distribution tanks was then shipped to local fuel distributors. The FAA has determined that aircraft with certain TCM engines installed were fueled with this contaminated mixture between May 22 and June 2, 1994, at Sacramento Executive (SAC) airport, or between May 18 and June 2, 1994, at Sacramento Metro (SMF) airport. The list of U.S. registered aircraft specified in the applicability paragraph of this AD is based on investigation of fueling records secured from the two affected airports, which the FAA has determined to represent the population of affected engines. That condition, if not corrected, could result in detonation due to low octane, which can result in severe engine damage and subsequent failure.

This AD requires engines certified to operate on 91 octane or higher avgas to undergo a teardown and analytical inspection for detonation damage, and engines certified to operate on 80 octane avgas to undergo inspection for evidence of possible internal engine damage. Engineering analysis of operating these engines with avgas contaminated with Jet A fuel indicates that actual damage to the engine may range from unnoticeable to very severe, according to the duration of run, engine power level, and level of contamination. Damage may be characterized by increased operating temperatures resulting in damaged intake valves and burned pistons, and excessive loads imposed by detonation. Since internal damage may not be assessed by any other method, engines certified to operate on 91 octane or higher avgas must undergo a teardown and analytical inspection and any parts showing signs of detonation damage must be replaced. Investigation revealed the lowest octane level of the contaminated fuel to be 83 octane, therefore engines certified to operate on 80 octane avgas need not undergo a teardown and analytical inspection unless evidence of internal engine damage is present by the required differential compression test and examination of the oil filter for metal particles. The refiner has advised the FAA that it may pay for any reasonable expense associated with the inspection and/or disassembly in accordance with the mechanic's and manufacturer's recommendations.

Since the issuance of that priority letter AD, the FAA has received more accurate information concerning which aircraft were fueled with the contaminated mixture at the affected airports. This AD therefore corrects certain engine model numbers and aircraft registration numbers for aircraft that were fueled with the contaminated mixture.

The FAA has reviewed and approved the technical contents of TCM Service Bulletin (SB) No. M88–10, dated August 24, 1988, that specifies that reciprocating engines operated with lower octane than that approved for the engine or contaminated with Jet A fuel should undergo a teardown and analytical inspection as the engine could sustain damage that cannot be assessed by any other method; and TCM SB No. M84–15, dated December 21, 1984, that describes procedures for differential compression tests.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 94–14–12 to revise incorrect engine model numbers and aircraft registration numbers listed in the priority letter AD. The actions are required to be accomplished in accordance with the SB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–34." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–21–15 Teledyne Continental Motors: Amendment 39–9402. Docket No. 95–ANE–34.

Applicability: Teledyne Continental Motors (TCM) A–65–8, C–85–12, E–185–11, O–200, O–300–D, GO–300, IO–360–G, IO–360–K, TSIO–360, O–470–L, O–470–R, O–470–U, IO–470–C, IO–470–E, IO–470–F, IO–470–L, IO–470–N, IO–470–S, IO–470–V, IO–520–A, IO–520–B, IO–520–C, IO–520–D, IO–520–F, IO–520–K, IO–520–M, TSIO–520, TSIO–520–C, TSIO–520–M, TSIO–520–N, TSIO–520–UB, GTSIO–520, IO–550–C, and R–670 reciprocating engines, installed on the following U.S. registered aircraft: N101G, N101JB, N101PQ, N1077B, N11PT, N111MK, N114R, N1162D, N1167J, N1208U, N121LG, N124WN, N13159, N1344V, N1360L, N140NL, N1503S, N1556T, N1584V, N16165, N166AU, N1672R, N1680R, N172CB, N1724T, N17793, N179SV, N1806F, N1818L, N182MC, N186Q, N19193, N19346, N207X, N200BD, N2051S, N2083S, N210KC, N21179, N2168N, N22FG, N2248Z, N2281T, N231KQ, N24FG, N2616N, N26560, N27G, N27326, N2841W, N2854W, N2881M, N2928B, N2995F, N3DX, N30C, N30CA, N300RS, N3097D, N31CU, N313TM, N3145Y, N3153B, N323K, N3397Q, N340VV, N3499G, N35MX, N35840, N35964, N3599L, N3603L, N36319, N3639D, N3700J, N39545, N4008F, N4088V, N41CU, N41032, N4105C, N4154Y, N421CW, N421EM, N421SM, N4218L, N4259B, N46GS, N4302L, N4354K, N4354W, N444BJ, N4562D, N4568D, N4591S, N4598S, N4672B, N476KE, N4761K, N47964, N4812F, N4884B, N4895E, N5089V, N51EN, N5204C, N5314T, N5357A, N5377J, N5453J, N550DF, N5517A, N555YT, N5591D, N57032, N5732X, N58BS, N5808F, N58689, N60DM, N60062, N619B, N6108F, N6158R, N6169N, N6193X, N62121, N6222F, N6278V, N6281F, N6285H, N6341X, N6363K, N6421P, N65WW N65031, N6527P, N6579M, N6664L, N6669X, N6670G, N66909, N6706G, N67249, N677PC, N6789R, N6800R, N6822R, N6837Q, N68937, N6915F, N6951M, N6952M, N6992E, N704GY, N704NQ, N7125E, N714BD, N7208V, N721X, N724BE, N7248H, N7303Y, N7309Q, N732DD, N735DV, N739JG, N7405S, N758JF, N777E, N7981D, N800WB, N8103Z, N8107D, N8150Q, N8160Q, N8168U, N8210, N8241N, N8307D, N8308Z, N836BQ, N8426S, N8432Z, N8465L, N8491S, N85WB, N8501S, N8532R, N8579H, N8579M, N85797, N86VS, N8660M, N8669A, N8867T, N9099G, N9114A, N9124U, N9151M, N9157S, N91603, N91860, N922DK, N92465, N9410S, N9434N, N9435U, N9516Y, N9547U, N9597T, N9606Y, N96134, N9613Y, N9673L, N96761, N9764E, N9777R, N97799, N9833H, N984BC, and N9992G.

Note: This airworthiness directive applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent detonation due to low octane, which can result in severe engine damage and subsequent failure, accomplish the following:

(a) For engines that are certified to operate on only 91 or higher octane aviation gasoline (avgas) within the next 2 hours time in service (TIS) after the effective date of this AD perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with TCM Service Bulletin (SB) No. M88–10, dated August 24, 1988.

(b) For engines that are certified to operate on 80 octane avgas, within the next 2 hours TIS after the effective date of this AD conduct a differential compression test on all cylinders in accordance with TCM SB No. M84–15, dated December 21, 1984, and examine the oil filter by cutting the oil filter apart and spreading the filter paper out to look for metal particles. If metal particles are present, or if one or more cylinders shows unacceptable compression as specified in TCM SB No. M84–15, dated December 21, 1984, perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with TCM SB No. M88–10, dated August 24, 1988.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine and Propeller Standards Staff. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine and Propeller Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine and Propeller Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following SB's:

Document No.	Page	Date
TCM SB No. M88–10. Total Pages: 1	1	August 24, 1988.
TCM SB No. M84–15. Total Pages: 6	1–6 .	December 21, 1984.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. Copies may be inspected at the FAA,

New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment supersedes priority letter AD 94–14–12, issued June 23, 1994.

(g) This amendment becomes effective on November 28, 1995.

Issued in Burlington, Massachusetts, on October 30, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–27887 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 97

[Docket No. 28378; Amdt. No. 1693]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 3, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 utc on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LOA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs identified as follows:

Effective December 7, 1995

Wilmington, DE, New Castle County, VOR RWY 9, Amdt 5
Cocoa, FL, Merritt Island, NDB–A, Orig
Cocoa, FL, Merritt Island, NDB RWY 11, Orig
Des Moines, IA, Des Moines Intl, LOC RWY 5, Orig
Bad Axe, MI, Huron County Memorial, VOR OR GPS RWY 3, Amdt 10
Bad Axe, MI, Huron County Memorial, VOR OR GPS RWY 21, Amdt 9
Bad Axe, MI, Huron County Memorial, VOR OR GPS RWY 35, Orig
Youngstown, OH, Youngstown Executive, VOR/DME OR GPS–A Amdt 10, Cancelled
Youngstown, OH, Youngstown Executive, VOR/DME OR GPS–A Amdt 10, Cancelled
Youngstown, OH, Youngstown Executive, VOR OR GPS RWY 11 Amdt 6, Cancelled

Effective January 4, 1996

Little Rock, AR, North Little Rock Muni, VOR RWY 35, Amdt 4, CANCELLED
North Little Rock, AR, North Little Rock Muni, VOR RWY 35 Orig
Chico, CA, Chico Muni, NDB RWY 13L, Amdt 5 CANCELLED
Chico, CA, Chico Muni, ILS RWY 13L, Amdt 9
Madera, CA, Madera Muni, GPS RWY 30, Orig
Charles City, IA, Charles City Muni, NDB–A, Orig
Charles City, IA, Charles City Muni, NDB OR GPS RWY 30, Amdt 2C, CANCELLED
Pocahontas, IA, Pocahontas Muni, VOR/DME OR GPS RWY 29, Amdt 3
Pocahontas, IA, Pocahontas Muni, NDB OR GPS RWY 11, Amdt 4
Webster City, IA, Webster City Muni, VOR/DME OR GPS RWY 14, Amdt 4
Webster City, IA, Webster City Muni, NDB OR GPS RWY 32, Amdt 8
Wichita, KS, Wichita Mid-Continent, GPS RWY 19L, Orig
Wichita, KS, Wichita Mid-Continent, GPS RWY 32, Orig
Lexington, KY, Blue Grass, NDB or GPS RWY 4, Amdt 20
Lexington, KY, Blue Grass, ILS RWY 4, Amdt 15
Lexington, KY, Blue Grass, ILS RWY 22 Amdt 16
Lexington, KY, Blue Grass, RADAR–1M Amdt 10
Eastport, ME, Eastport Muni, GPS RWY 15, Orig
Orange, MA, Orange Muni, VOR or GPS–A, Amdt 6
Orange, MA, Orange Muni, NDB or GPS–B Amdt 4
Worcester, MA, Worcester Muni, GPS RWY 33, Orig
Grenada, MS, Grenada Muni, ILS RWY 13, Orig
Falls City, NE, Brenner Field, GPS RWY 32, Orig
Reno, NV, Reno/Tahoe Intl, GPS RWY 16R, Orig
Readington, NJ, Solberg-Hunterdon, VOR RWY 4, Orig
Hudson, NY, Columbia County, GPS RWY 3, Orig
White Plains, NY, Westchester County, COPTER ILS/DME 162, Orig
Ada, OK, Ada Muni, VOR/DME–A Orig
Ada, OK, Ada Muni, NDB OR GPS–A, Amdt 3, CANCELLED
Goldsby, OK, David Jay Perry, GPS RWY 31, Orig
Guthrie, OK, Guthrie Muni, NDB OR GPS RWY 16, Amdt 4
Guthrie, OK, Guthrie Muni, GPS RWY 34, Orig
Norman, OK, University of Oklahoma Westheimer Airpark, GPS RWY 17, Orig
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 3
Pauls Valley, OK, Pauls Valley Muni, GPS RWY 35, Orig
Weatherford, OK, Thomas P. Stafford, NDB OR GPS RWY 17, Amdt 2
Woodward, OK, West Woodward, GPS RWY 35, Orig
York, PA, York, NDB or GPS RWY 16, Amdt 3
Burlington, VT, Burlington Intl, GPS RWY 33, Orig

Note: The FAA published an Amendment in Docket No. 28340, Amdt. No. 1686 to Part 97 of the Federal Aviation Regulations (Vol. 60 FR No. 191 Page 51718; dated Tuesday, Oct 3, 1995) under Section 97.33 eff 12 October 95, which is hereby amended as follows:

Charleston, SC, Charleston Executive, GPS RWY 9, Orig * * * change eff date to * * * 9 Nov 95. * * *

Note: The FAA published an Amendment in Docket No. 28364, Amdt. No. 1692 to Part 97 of the Federal Aviation Regulations (Vol. 60 FR, No. 209, Page 55195; dated Monday, October 30, 1995) under Section 97.27 Effective 4 Jan 96, which is hereby amended as follows:

Caddo Mills, TX, Caddo Mills Muni, GPS RWY 35L, Orig. EFFECTIVE DATE should read PROPOSED 10 OCT 1996.

[FR Doc. 95–27924 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") amends its Appliance Labeling rule by publishing new ranges of comparability to be used on required labels for refrigerators, refrigerator-freezers, and freezers, and by issuing corrections to its ranges of comparability for room air conditioners, which were published on August 21, 1995.[1] The Commission also announces that the ranges of comparability for central air conditioners and heat pumps, which were published on August 5, 1994,[2] will remain in effect until further notice. Finally, the Commission is amending the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to part 305 that contain cost calculation formulas. These amendments change the figures in the formulas to reflect the current Representative Average Unit Cost of electricity that was published in January by the Department of Energy ("DOE").

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION:

Background

Section 324 of the Energy Policy and Conservation Act of 1975 ("EPCA")[3] requires the Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption

[1] 60 FR 43367.
[2] 59 FR 39951.
[3] 42 U.S.C. 6294.

information for at least thirteen categories of appliances. Refrigerators, refrigerator-freezers, room air conditioners, central air conditioners, and heat pumps are included in those categories. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued the Appliance Labeling Rule ("Rule"), which covered seven of the thirteen appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners and furnaces (this category includes boilers).[4] The Commission has extended the coverage of the Rule five times since it originally issued the Rule: in 1987 (central air conditioners, heat pumps, and pulse combustion and condensing furnaces[5]); 1989 (fluorescent lamp ballasts[6]); 1993 (certain plumbing products[7] and certain lighting products[8]), and in 1994 (pool heaters, instantaneous water heaters, and heat pump water heaters[9]).

On July 1, 1994, the Commission amended the Rule to make certain improvements, including making the label format more "user-friendly," changing the energy usage descriptors required on labels, and adopting new product sub-categories for ranges of comparability purposes.[10] The amendment prescribing a new label format affects the labels for all products. Labels for refrigerators, refrigerator-freezers, and freezers also are affected by the amendments requiring a new energy use descriptor and revised product sub-categories. More specifically, the amendments change the principal energy usage descriptor on labels for refrigerators, refrigerator-freezers, and freezers from an estimated annual operating cost to an estimated annual energy consumption. In addition, the amendments eliminate the cost grid from the labels and add a secondary disclosure of energy usage in the form of an estimated annual operating cost in a box at the bottom of the label, with an expanded disclosure of the usage assumptions and electrical cost upon which the operating cost is based. The original effective date of these amendments was December 28, 1994, but, on December 8, 1994, the Commission granted a partial delay of compliance dates for these products.[11] The Commission announces today that manufacturers of refrigerators, refrigerator-freezers, and freezers must begin using the new labels (and ranges of comparability published herein) on all covered products manufactured on or after the effective date of today's notice.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[12] These reports contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels up to date, the Commission is empowered, under Section 305.10 of the Rule, to publish new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior ranges remain in effect for the next year.

New Ranges of Comparability for Refrigerators, Refrigerator-freezers, and Freezers

The Commission has analyzed annual submissions of data for refrigerators, refrigerator-freezers, and freezers. The submissions have resulted in new ranges of comparability figures for these products. In compiling these ranges of comparability, the Commission did not include the estimated annual energy consumption of models with energy consumption in excess of DOE's current maximum energy use standards for this category, which became effective on January 1, 1993.[13] After that date, it became illegal to distribute in commerce products that exceed those standards. Because the standards have been in place for almost three years, the number of legally produced, but nonconforming, products still in the marketplace is likely to be small. Therefore, it is no longer appropriate to include those products in the ranges. The new ranges will supersede the current ranges for refrigerators, refrigerator-freezers, and freezers, which were published on January 12, 1994.[14]

Corrections to Ranges of Comparability for Room Air Conditioners That Were Published on August 21, 1995

Energy efficiency figures for 1995 for room air conditioners were submitted earlier this year by manufacturers and analyzed by the Commission. New ranges of comparability based upon them were published in the **Federal Register** on August 21, 1995.[15] The Commission staff has learned since publication that there were inadvertent errors in the ranges. The new ranges published today contain the corrected numbers. In preparing these corrections and in compiling the earlier ranges of comparability for these products, the Commission did not include the energy efficiency of models with efficiencies below DOE's current minimum efficiency standards for room air conditioners, which became effective on January 1, 1990.[16] The Commission's reasoning is the same as in the case of the new ranges for refrigeration products, discussed above. For the sake of clarity, the Commission is republishing the complete set of ranges for room air conditioners in their corrected form.

Although these corrected ranges of comparability for room air conditioners are being published prior to the effective date of the August 21, 1995 notice, which is hereby rescinded, manufacturers need not relabel any room air conditioners already labeled and may use any labels that were ordered or printed before the date of this notice in good faith reliance on the August 21 notice. After this initial stock of labels is exhausted, however, manufacturers must use labels based on today's notice.

Changes Applicable to Disclosures for Central Air Conditioner and Heat Pumps

The 1995 data submission for central air conditioners and heat pumps has been completed, and the Commission has determined that the upper and lower limits of the ranges of comparability for these products, which were published on August 5, 1994,[17] have not changed by more than 15%. Therefore, the Commission is announcing that those ranges will remain in effect until further notice.

The Commission is amending in this Notice, however, the cost calculation formulas appearing in the Appendices (H and I) to Part 305 that contain, for central air conditioners and heat pumps, heating and cooling performance costs and the ranges of comparability. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. This amendment changes the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity—8.67 cents per kilowatt-hour—that was published on January 5, 1995, by DOE[18] and by the Commission on February 17, 1995.[19]

Amendments

In consideration of the foregoing, the Commission amends Appendices A1 through A8, B1 through B3, E, H, and I of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and catalog sales of refrigerators, refrigerator-freezers, and freezers, the following corrected ranges of comparability for room air conditioners, and the following amendments to the cost calculation formulas that manufacturers of central air conditioners and heat pumps and must include on fact sheets and in directories, beginning February 12, 1996.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix A1 to Part 305 is revised to read as follows:

Appendix A1 to Part 305—Refrigerators With Automatic Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	327	331
2.5 to 4.4	331	369
4.5 to 6.4	331	457
6.5 to 8.4	(*)	(*)
8.5 to 10.4	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	588	588
16.5 and over	438	668

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

3. Appendix A2 to Part 305 is revised to read as follows:

Appendix A2 to Part 305—Refrigerators and Refrigerator—Freezers With Manual Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	285	321
2.5 to 4.4	270	351
4.5 to 6.4	270	381
6.5 to 8.4	378	407
8.5 to 10.4	376	431
10.5 to 12.4	433	457
12.5 to 14.4	496	496
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

4. Appendix A3 to Part 305 is revised to read as follows:

Appendix A3 to Part 305—Refrigerators—Freezers With Partial Automatic Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	419	489
10.5 to 12.4	454	522
12.5 to 14.4	562	562
14.5 to 16.4	573	573
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

5. Appendix A4 to Part 305 is revised to read as follows:

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer Without Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	511	741
10.5 to 12.4	525	572
12.5 to 14.4	496	624
14.5 to 16.4	514	653
16.5 to 18.4	518	697
18.5 to 20.4	533	732
20.5 to 22.4	555	767
22.5 to 24.4	680	800
24.5 to 26.4	609	834
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

6. Appendix A5 to Part 305 is revised to read as follows:

[4] FR 66466, 16 CFR Part 305 (Nov. 19, 1979). The Statement of Basis and Purpose for the final Rule describes the reasons the Commission declined to cover the other categories of covered products. *Id.* at 66467–69.

[5] 52 FR 46888 (Dec. 10, 1987).

[6] 54 FR 28031 (July 5, 1989).

[7] 58 FR 54955 (Oct. 25, 1993).

[8] 59 FR 25178 (May 13, 1994).

[9] 59 FR 49556 (Sept. 28, 1994).

[10] 59 FR 34014.

[11] 59 FR 63688.

[12] Reports for central air conditioners and heat pumps are due July 1; reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

[13] 16 CFR 430.32(a) (1995).

[14] 59 FR 1626.

[15] *See* note 1, above.

[16] 16 CFR 430.32(b) (1995).

[17] *See* note 2, above.

[18] 60 FR 1773. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by DOE for the industry's use in calculating, among other figures, the cost figures required by the Commission's Rule.

[19] 60 FR 9295.

Appendix A5 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer Without Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	579	579
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	702	796
20.5 to 22.4	724	821
22.5 to 24.4	750	848
24.5 to 26.4	776	876
26.5 to 28.4	(*)	(*)
28.5 and over	920	950

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

7. Appendix A6 to Part 305 is revised to read as follows:

Appendix A6 to Part 305—Refrigerator-Freezers With Automatic Defrost With Bottom-Mounted Freezer Without Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	463	463
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	666	666
16.5 to 18.4	709	709
18.5 to 20.4	612	612
20.5 to 22.4	524	789
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

8. Appendix A7 to Part 305 is revised to read as follows:

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer With Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	557	557
16.5 to 18.4	769	769
18.5 to 20.4	(*)	(*)
20.5 to 22.4	727	840
22.5 to 24.4	789	915
24.5 to 26.4	814	917
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

9. Appendix A8 to Part 305 is revised to read as follows:

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	710	935
20.5 to 22.4	561	967
22.5 to 24.4	750	1008
24.5 to 26.4	641	1041
26.5 to 28.4	658	1059
28.5 and over	956	1144

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

10. Appendix B1 to Part 305 is revised to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	250	347
5.5 to 7.4	(*)	(*)
7.5 to 9.4	322	414
9.5 to 11.4	459	459
11.5 to 13.4	469	474
13.5 to 15.4	509	534
15.5 to 17.4	562	565
17.5 to 19.4	(*)	(*)
19.5 to 21.4	615	627
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

11. Appendix B2 to Part 305 is revised to read as follows:

Appendix B2 to Part 305—Upright Freezers With Automatic Defrost

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	504	516
5.5 to 7.4	(*)	(*)
7.5 to 9.4	(*)	(*)
9.5 to 11.4	(*)	(*)
11.5 to 13.4	704	704
13.5 to 15.4	738	774
15.5 to 17.4	791	821
17.5 to 19.4	876	876
19.5 to 21.4	896	909
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

12. Appendix B3 to Part 305 is revised to read as follows:

Appendix B3 to Part 305—Chest Freezers and All Other Freezers

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	250	260
5.5 to 7.4	291	293
7.5 to 9.4	322	322
9.5 to 11.4	347	347
11.5 to 13.4	369	399
13.5 to 15.4	431	437
15.5 to 17.4	(*)	(*)
17.5 to 19.4	493	493
19.5 to 21.4	529	529
21.5 to 23.4	552	588
23.5 to 25.4	629	629
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

*No data submitted for units meeting Federal Maximum Energy Use Standards effective January 1, 1993.

13. Appendix E to Part 305 is revised to read as follows:

Appendix E to Part 305—Room Air Conditioners

Range Information

Manufacturer's rated cooling capacity in Btu's/yr.	Range of Energy Efficiency Ratios (EERs)	
	Low	High
Without Reverse Cycle and with Louvered Sides:		
Less than 6,000 Btu	8.0	10.0
6,000 to 7,999 Btu	8.5	10.3
8,000 to 13,999 Btu	9.0	12.0
14,000 to 19,999 Btu	8.8	10.7
20,000 and more Btu	8.2	10.0
Without Reverse Cycle and without Louvered Sides:		
Less than 6,000 Btu	(*)	(*)
6,000 to 7,999	8.5	9.6
8,000 to 13,999 Btu	8.5	9.2
14,000 to 19,999 Btu	(*)	(*)
20,000 and more Btu	(*)	(*)
With Reverse Cycle and with Louvered Sides	8.5	11.5
With Reverse Cycle, without Louvered Sides	8.0	9.0

*No data submitted for units meeting Federal Minimum Efficiency Standards effective January 1, 1990.

14. In section 2 of Appendix H of Part 305, the text and formulas are amended by removing the figure "8.41¢" wherever it appears and by adding, in its place, the figure "8.67¢". In addition, the text and formulas are amended by removing the figure "12.62¢" wherever it appears and by adding, in its place, the figure "13.01¢".

15. In section 2 of Appendix I of Part 305, the text and formulas are amended by removing the figure "8.41¢" wherever it appears and by adding, in its place, the figure "8.67¢". In addition, the text and formulas are amended by removing the figure "12.62¢" wherever it appears and by adding, in its place, the figure "13.01¢".

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–27889 Filed 11–9–95; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 435

Trade Regulation Rule: Mail or Telephone Order Merchandise

AGENCY: Federal Trade Commission.

ACTION: Technical amendments to rule.

SUMMARY: The Federal Trade Commission ("Commission") makes three non-substantive, minor, technical corrections to the definition of "prompt refund" in the Commission's Mail or Telephone Order Merchandise Trade Regulation Rule ("MTOR" or "Rule"), 16 CFR 435.2(f). The two cross-references in section 435.2(f) of the Rule are corrected to refer to section 435.2(e) of the Rule instead of to section 435.2(c). Additionally, a comma is added to section 435.2(f)(1) to parallel the punctuation in section 435.2(f)(2). Because these corrections are non-substantive, the Commission has determined that Magnuson-Moss rulemaking proceedings are not required by section 18(d)(2)(B) of the FTC Act. Additionally, because these are minor technical changes correcting inadvertent editing errors, the Commission has also determined that notice and public procedure are not required under section 553 of the Administrative Procedure Act because they would be unnecessary.

EFFECTIVE DATE: November 13, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2967.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the FTC Act, 15 U.S.C. 57a, on September 21, 1993, the Commission adopted proposed amendments to the Commission's Mail Order Merchandise Trade Regulation Rule (the "MOR"), 16 C.F.R. Part 435, including renaming the rule "Mail or Telephone Order Merchandise" (the "MTOR").[1] Two new definitions, "mail or telephone order sales" and "telephone," were added as sections 435.2 (a) and (b) of the MTOR. The addition of these definitions resulted in all other definitions being renumbered. Thus, the definition for "shipment," which formerly appeared as section 435.2(a) of the MOR, was renumbered section 435.2(c) of the MTOR; the definition for "receipt of a properly completed order," which formerly appeared as section 435.2(b) of the MOR, was renumbered section 435.2(d) of the MTOR, etc.

In making these changes, two cross-references to the definition of "refund" in the definition of "prompt refund" in section 435.2(d) of the MOR (now renumbered section 435.2(f) of the MTOR) were inadvertently overlooked. The Commission has accordingly determined to correct the two cross-references in section 435.2(f) to refer to section 435.2(e), the MTOR's definition of "refund."

Additionally, a comma is being inserted in section 435.2(f)(1) of the MTOR to parallel the punctuation of section 435.2(f)(2). This error was in the text of the MOR originally and was carried from the MOR to the MTOR.

Section 18(d)(2)(B) of the FTC Act provides that the procedures for making any "substantive" amendment to a trade regulation rule shall be the same as the procedures for promulgating a rule under section 18(a)(1)(B). In this case, the changes, which are necessary to correct inadvertent editorial errors in the recently concluded rulemaking proceedings, are non-substantive; thus, section 18(d)(2)(B) is inapplicable. Accordingly, section 553 of the Administrative Procedure Act (the "APA"), 5 U.S.C. 553, applies to these amendments.[2] Section 553(b)(B) of the APA provides that rulemaking procedures are not required where the agency determines that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Because the changes here are minor and technical, the Commission has determined that notice and public procedure are unnecessary in this case, and that rulemaking procedures are accordingly not required.

[1] 58 FR 49095.

[2] See, 15 U.S.C. 57a(b)(1).

List of Subjects in 16 CFR Part 435

Advertising, Mail or telephone order Merchandise: Trade Practices.

Based on the foregoing analysis, the Commission makes non-substantive, minor, technical amendments to title 16, part 435 of the Code of Federal Regulations.

PART 435—MAIL OR TELEPHONE ORDER MERCHANDISE

1. The authority citation for part 435 continues to read as follows:

Authority: 5 U.S.C. 553; 15 U.S.C. 41 *et seq.*

2. Section 435.2(f) is revised to read as follows:

§ 435.2 Definitions.

* * * * *

(f) "Prompt refund" shall mean:

(1) Where a refund is made pursuant to paragraph (e) (1) or (2)(iii) of this section, a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part;

(2) Where a refund is made pursuant to paragraph (e)(2) (i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–27890 Filed 11–9–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

U.S. Virgin Islands State Plan for Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document announces the Occupational Safety and Health Administration's (OSHA) decision to suspend the U.S. Virgin Islands State Plan "final approval" determination under Section 18(e) of the Occupational Safety and Health Act. OSHA is reinstating concurrent Federal enforcement authority over occupational safety issues in the private sector which issues have been solely covered by the State Plan in the U.S. Virgin Islands since 1984. (OSHA currently exercises authority over occupational health issues in the private sector, which issues are excluded from the State plan.) The scope of the exercise of this concurrent Federal enforcement authority is further defined in this document under "Level of Federal Enforcement."

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The Virgin Islands operates a State Plan to develop and enforce occupational safety standards for private sector employers and occupational safety and health standards for public sector (State and local government) employers, pursuant to the provisions of Section 18 of the Occupational Safety and Health Act of 1970 (the Act). Pursuant to Section 18(e) of the Act, OSHA granted the Virgin Islands "final approval" (which is also referred to as an 18(e) determination) and relinquished concurrent Federal enforcement jurisdiction effective April 17, 1984. As a result of more recent Federal monitoring of the U.S. Virgin Islands State Plan, OSHA has now found that the State plan, in actual operation, is no longer "at least as effective as" Federal OSHA and that other 18[e) requirements are no longer being met. In response to this finding, in August 1995, Lisa Harris-Moorehead, the newly appointed Virgin Islands' Commissioner of Labor, indicated the Virgin Islands' agreement to voluntarily relinquish the State Plan's final approval status under Section 18(e). The Commissioner also agreed to the reassertion of concurrent Federal enforcement jurisdiction. On behalf of the Governor, the Commissioner pledged to accomplish the necessary corrective action to regain final approval status by December, 1995. Subsequently, as a result of the intervening devastation inflicted by Hurricane Marilyn on September 15, 1995, the Virgin Islands, by letter dated September 22, 1995, requested Federal technical assistance and indicated that the necessary corrective action of the State Plan may now be somewhat delayed.

Pursuant to the procedures set forth in 29 CFR 1902.47 *et seq.*, OSHA published notice of its reconsideration of the Virgin Islands' 18(e) determination; proposed reassumption of concurrent Federal enforcement authority; and a request for written comments and opportunity to request an informal hearing on September 11, 1995 (60 FR 47131). That notice also contains a more detailed description of the Virgin Islands' State plan and the identified deficiencies. Similar notice was published in two newspapers in the Virgin Islands on September 25, 1995. The 35 day comment period closed on October 16, 1995, and OSHA received no written comments or requests for a hearing.

B. Decision

Pursuant to the procedures set forth in 29 CFR 1902.47 *et seq.*, the Assistant Secretary for Occupational Safety and Health has made a final decision to suspend the 18(e) final approval status of the Virgin Islands' State Plan and to reinstate concurrent Federal enforcement authority over occupational safety issues in the U.S. Virgin Islands pending the necessary corrective action by the State Plan to again meet the criteria for an 18(e) final approval determination. Concurrent Federal enforcement authority will be exercised in the U.S. Virgin Islands effective November 13, 1995.

The Assistant Secretary's decision is based upon the facts determined by OSHA in the monitoring of the State Plan and after opportunity for public comment. OSHA did not receive any written comments. The applicable evaluation reports and the State's letters and Corrective Action Plan may be inspected and copied during normal business hours at the OSHA Technical Data Center (TDC), Room N2625, 200 Constitution Avenue, NW., Washington, DC [Docket #T030]; at the Office of the Regional Administrator, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; Puerto Rico Area Office, Occupational Safety and Health Administration, U.S. Courthouse & FOB, Carlos Chardon Avenue, Room 555, Hato Rey, Puerto Rico, 00918; or at the Virgin Islands Department of Labor, Occupational Safety and Health Division, 3012 Golden Rock, Christiansted, St. Croix, Virgin Islands 00820.

C. Effect of the Decision

The Assistant Secretary's decision to suspend the State Plan's final approval under section 18(e) restores the state Plan to "initial" approval status and permits the resumption of concurrent Federal enforcement activity. The Assistant Secretary's decision does not terminate Federal approval of the State Plan and does not affect the legal authority of the Virgin Islands to carry on enforcement activities under the State Plan. Federal OSHA or joint State and Federal OSHA inspections may result in the issuance of appropriate Federal citations and penalties. Federal OSHA compliance officers may issue citations effective immediately. Contested Federal citations and penalties will be reviewed by the Federal Occupational Safety and Health Review Commission (OSHRC). In addition to enforcement actions, Federal and State OSHA will provide as much technical assistance and voluntary compliance assistance as possible to assure worker protection during the extensive cleanup and rebuilding effort that is occurring on the Virgin Islands as a result of Hurricane Marilyn. (The Virgin Islands suffered significant property damage with most businesses requiring substantial or complete reconstruction.) Joint Federal/State seminars and other training and outreach activities have been and will continue to be conducted to assist employers and employees in understanding their compliance obligations.

Reverting the State Plan's Federal approval status from "final" to "initial" allows Federal OSHA to exercise discretionary concurrent enforcement authority to compensate for the current deficiencies in the State Plan's enforcement, while allowing the Virgin Islands sufficient time and assistance to improve its performance. Federal OSHA will provide technical assistance to the Virgin Islands in the form of staff training for compliance officers and administrative, legal, and operational guidance.

Immediate Effective Date: November 13, 1995.

OSHA finds that good cause exists for making this rule effective immediately upon publication in the **Federal Register.** Monitoring of the State plan indicates the immediate need for supplementary Federal enforcement of safety requirements for the protection of workers in the Virgin Islands. In addition, today's action essentially imposes no new compliance obligations on affected employers since standards enforced under the Virgin Islands State plan are for the most part identical to Federal standards.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Accordingly, 29 CFR Part 1952 is amended as set forth below.

Signed in Washington, D.C. this 6th day of November, 1995.

Joseph A. Dear,

Assistant Secretary.

PART 1952—[AMENDED]

1. The authority citation for 29 CFR Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart S—Virgin Islands

2. Section 1952.253 is amended by adding the following sentence to the end of paragraph (a) to read as follows:

§ 1952.253 Final approval determination.

(a) * * *. *Note:* The Virgin Islands final approval status under Section 18(e) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

* * * * *

3. Section 1952.253 is amended by adding the following sentence to the end of paragraph (b) to read as follows:

§ 1952.253 Final approval determination.

* * * * *

(b) * * *. *Note:* The Virgin Islands final approval status under Section 18(e) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

* * * * *

4. Section 1952.253 is amended by adding paragraph (d) to read as follows:

§ 1952.253 Final approval determination.

* * * * *

(d) As a result of Federal monitoring of the U.S. Virgin Islands State Plan and after opportunity for public comment, the Assistant Secretary for Occupational Safety and Health has determined that the State Plan no longer meets the criteria for final approval under Section 18(e). As a result the final approval status has been suspended and the State Plan reverts to "initial approval" status effective November 13, 1995. Concurrent Federal enforcement authority over occupational safety issues in the U.S. Virgin Islands has been reinstituted pending the necessary corrective action by the State Plan to again meet the criteria for an 18(e) final approval determination. Concurrent Federal enforcement authority will be exercised in the U.S. Virgin Islands effective November 13, 1995, and will continue until further notice.

5. Section 1952.254 is revised to read as follows:

§ 1952.254 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination to suspend the final approval determination under section 18(e) for the Virgin Islands state plan, effective November 13, 1995, Federal occupational safety standards which have been promulgated under section 6 of the Act now apply to all covered employers in the Virgin Islands. Until subsequent determinations are made by Federal OSHA affecting the level of Federal enforcement in the Virgin Islands, discretionary Federal concurrent enforcement authority will be exercised in the following manner. Federal OSHA will exercise the full range of enforcement authority available under the Act, including but not limited to, issuance of citations under section 9 for violations of any requirement of section 5, of any standard, rule or order promulgated pursuant to section 6, or of any regulation prescribed pursuant to the Act; conduct of inspections and investigations under section 8; conduct of enforcement proceedings in contested cases under section 10; institution of proceedings to correct imminent dangers under section 13; and proposal of civil penalties or initiation of criminal proceedings for violations of the Act under section 17 with regard to occupational safety issues in the private sector. The Virgin Islands retains full authority under its approved State plan to continue to adopt and enforce occupational safety standards including issuing citations for violations thereof, proposing penalties and adjudicating contested cases under State law. Where State and Federal compliance officers conduct joint inspections, enforcement actions may be either Federal or State.

(b) Federal OSHA also continues to retain full authority over issues which have not been subject to State enforcement under the Virgin Islands plan. Thus, OSHA retains authority to enforce all provisions of the Act, Federal standards, rules or orders which relate to occupational health in private sector employment in the Virgin Islands. OSHA also retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders and all Federal standards, current or future, specifically directed to maritime employment (e.g., 29 CFR part 1915, shipyard employment; 29 CFR part 1917, marine terminals; 29 CFR part 1918, longshoring; 29 CFR part 1919, gear

certification), as well as provisions of general industry (29 CFR part 1910) standards appropriate to hazards found in these employments. Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

(c) The Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees. Any Federal standards, including any standards promulgated or modified during the period of the Virgin Islands final approval under section 18(e), are now enforceable by Federal OSHA.

(d) The Assistant Secretary also retains authority to continue to conduct investigations and inspections for the purpose of the evaluation of the Virgin Islands State plan under section 18 (e) and (f) of the Act. The Regional Administrator will closely monitor State performance and corrective action and make prompt recommendation to the Assistant Secretary for either reinstatement of the Virgin Islands final approval status or initiation of plan withdrawal action. Federal enforcement authority will continue to be exercised to the extent necessary to assure occupational safety and health protection to employees in the Virgin Islands until further notice.

[FR Doc. 95–27915 Filed 11–9–95; 8:45 am]
BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, and 271

[FRL–5328–4]

RIN 2060–AB94

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of postponed effective date.

SUMMARY: This document postpones the effective date of the final rule on Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers until June 6, 1996.

EFFECTIVE DATE: The final rule will be effective as of June 6, 1996. The EPA specified in the final rule a schedule that established the compliance dates by which different requirements of the final rule must be met. These compliance dates and requirements are explained further in the final rule (59 FR 62896, December 6, 1994) under **SUPPLEMENTARY INFORMATION.** This document changes only the effective date of the standards. The effective date will be June 6, 1996 for all provisions of the standards, including the applicability of 40 CFR part 265 subparts AA, BB, and CC to 90-day accumulation units at hazardous waste generators, the applicability of 40 CFR part 265 subparts AA, BB, and CC to Resource Conservation and Recovery ACT (RCRA) permitted units, and the applicability of the final standards to tanks in which waste stabilization activities are performed. All other compliance dates for the final rule remain as published in the final rule (59 FR 62896.)

ADDRESSES: Docket. The supporting information used for the final rule is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to the final rule are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, and F–95–CE3A–FFFFF. The docket is available for inspection at the EPA RCRA Docket Office (5305), Room 2616, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 260–9327.

FOR FURTHER INFORMATION CONTACT: For information about this postponement contact the RCRA Hotline at (800) 424–9346 toll-free, or (703) 920–9810.

SUPPLEMENTARY INFORMATION:

1. Postponement of December 6, 1995 Effective Date

This notice announces the postponement of the effective date for the final Air Emission Standards published under the RCRA. These final standards were published on December 6, 1994 (59 FR 62896) and were originally scheduled to become effective as of June 5, 1995. On May 19, 1995 (60 FR 26828) the EPA postponed the effective date until December 6, 1995 to allow time for the EPA to identify provisions of the final standards that require clarification, and to publish a **Federal Register** notice to clarify such provisions. The EPA expects to publish that notice in the near future.

Subsequently, on August 14, 1995 the EPA published a **Federal Register** document entitled, "Proposed rule; data availability" (60 FR 41870) and opened RCRA docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA is considering for the final standards. The provisions of the final rule that these revisions would affect are the waste determination procedures, the standards for containers, and the applicability of the final standards to units that operate air emission controls in accordance with certain Clean Air Act standards. In addition, these revisions would reduce the monitoring, record keeping, and reporting requirements for affected tanks, surface impoundments, and containers.

The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. The EPA is now reviewing the comments received by the docket and will determine whether to revise the final rule to incorporate the described revisions. The incorporation of these revisions would provide certain compliance options for waste determination procedures and for container standards that are not currently available in the published final rule. By January of 1996, the EPA expects to complete its review of the public comments, and publish a **Federal Register** notice explaining the EPA's decision if and how to amend the rule.

Given that the EPA intends to clarify provisions of the rule and is actively considering amending the rule in ways that would increase compliance flexibility and possibly reduce certain regulatory requirements, the EPA considers it appropriate to delay the December 6, 1995 effective date for six months. This delay will both allow the ongoing administrative review process to be completed successfully, and allow ample time for facilities to make any necessary alterations to their compliance plans before the effective date of the standards.

The EPA has received a request that it stay the rule, from a party that has brought a judicial challenge to the published rule. In taking this action to postpone the rule's effective date, the EPA is not concurring that the criteria for a stay (such as likelihood of irreparable harm or likelihood that these parties will ultimately prevail should the rule be litigated) are met. Rather, as a prudential matter, the EPA believes that a six month delay is appropriate for the reasons explained above.

2. Retention of Final Compliance Date of December 8, 1997

The December 6, 1994 published rule set a final compliance date of December 8, 1997, by which time all required air emission control equipment must be operating (59 FR 62897). The EPA does not believe that postponing the effective date of this rule necessitates any postponement of the December 8, 1997 compliance date. The final compliance date was chosen to allow time for facility modifications that may be involved in the compliance approach of certain facilities. The EPA believes that, for many air emission control applications, the required control devices can be installed and in operation within several months. However, the EPA agrees that under some circumstances, the owner's or operator's approach to complying with the air emission control requirements under the subpart CC standards may involve a major design and construction project which requires a longer time to complete. In recognition of these cases, the EPA decided that it is reasonable to allow up to December 8, 1997 for affected facilities to install and begin operation of air emission controls required by the supbart CC standards. (Hazardous Waste TSDF Background Information Document for Promulgated Organic Air Emission Standards, EPA–453/R–94–076b, page 9–7.)

The final rule requirements that may necessitate a major modification, as described above, for tanks are paragraphs (b) through (d) of 40 CFR parts 264.1084 and 265.1085. These paragraphs specify air emission control equipment that must be operated on tanks receiving affected hazardous waste. Similarly, the requirements that may necessitate such a major modification for surface impoundments are paragraphs (b) through (e) of 40 CFR parts 264.1085 and 265.1086. These paragraphs specify air emission control equipment that must be operated on surface impoundments receiving affected hazardous waste. To comply with these requirements for tanks and surface impoundments, facilities may choose to construct new hazardous waste management units to replace existing units, or may choose to modify existing hazardous waste management units. Examples of facility equipment modifications that could require an extended period of compliance would be replacing a large open surface impoundment with a series of covered tanks, or fitting an existing open tank with a fixed roof vented to a control device. The EPA recognizes that such major modifications or new construction can require several months or more, and therefore allows until December 8, 1997 for facilities to comply with the air emission control requirements of the final subpart CC standards.

In addition, certain States may require that a facility obtain a permit modification prior to performing a major modification such as those described above. The EPA recognizes that such permit modifications can be a lengthy process, and therefore felt it was appropriate to afford an extended compliance period to allow such modifications to be obtained (59 FR 62919). The EPA does not expect that such a lengthy period of implementation would be required in circumstances other than those described above, although such a period is available if necessary.

The final rule provisions that justified a compliance date of December 8, 1997 are not among those that are potentially affected by the revisions currently under the EPA's consideration. Specifically, the EPA is not considering changes to the requirements for covers and air emission controls on tanks and surface impoundments. All affected facilities have been on notice of the final rule air emission control requirements for these units since the final rule publication on December 6, 1994. Therefore, the EPA does not consider it appropriate to postpone the compliance date of December 8, 1997, by which all required air emission control equipment must be operating.

3. Conclusion

The EPA is postponing the effective date of the final rule until June 6, 1996. The final rule text affected by this postponement is amended as follows.

Dated: October 31, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 264, 265, and 271 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

2. Section 264.1080 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before June 6, 1996, and in which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to June 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 of this chapter or reviewed in accordance with the requirements of 40 CFR 270.50(d) of this chapter. Until such date when the owner and operator receives a final permit incorporating the requirements of this subpart, the owner and operator is subject to the requirements of 40 CFR part 265, subpart CC.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

4. Section 265.1080 is amended by revising paragraph (b)(1) and paragraph (c) introductory text to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before June 6, 1996, and in which no hazardous waste is added to the unit on or after this date.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA section 3005 prior to June 6, 1996, the following requirements apply:

* * * * *

5. Section 265.1082 is amended by revising paragraphs (a) introductory text, paragraph (a)(1), (a)(2), (a)(2)(iii), and (a)(2)(iv) to read as follows:

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on June 6, 1996, and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment required by this subpart by June 6, 1995, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment required by this subpart cannot be installed and in operation by June 6, 1996, the owner or operator shall:

* * * * *

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than June 6, 1996.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than June 6, 1996.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

7. Section 271.1(j) is amended by revising the December 6, 1994 entry in Table 1 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
December 6, 1994.	Air Emission Standards for Tanks, Surface Impoundments, and Containers	59 FR 62896–62953	June 6, 1996.

8. Section 271.1(j) is amended by revising the December 6, 1995 entry in Table 2 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
June 6, 1996	Air Emission Standards for Tanks, Surface Impoundments, and Containers	3004(n)	59 FR 62896–62953

[FR Doc. 95–27950 Filed 11–9–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 766 and 799

[OPPTS–40028; FRL–4956–3]

Technical Amendments to Test Rules and Consent Orders; Republication

Editorial Note: This document was originally published at 60 FR 50432, September 29, 1995, and is being reprinted in its entirety because of typesetting errors.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has approved by letter certain modifications to test standards and schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors, will be incorporated and codified in the respective test regulation or consent order. Because these modifications do not significantly alter the scope of a test or significantly change the schedule for its completion, EPA approved these requests without seeking notice and comment. EPA annually publishes a notice describing all of the modifications granted by letter for the previous year.

EFFECTIVE DATE: This rule is effective on September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551, Internet: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a rule published in the **Federal Register** of September 1, 1989 (54 FR 36311), amending procedures for modifying test standards and schedules for test rules and testing consent orders under section 4 of TSCA. The amended procedures allow EPA to approve requested modifications which do not alter the scope of a test or significantly change the schedule for its completion. These modifications are approved by letter without public comment. The rule also requires immediate placement of these letters in EPA's public files and publication of these modifications in the **Federal Register**. This document includes modifications approved from January 1, 1994, through December 31, 1994. For a detailed description of the rationale for these modifications, refer to the submitters' letters and EPA's responses in the public record for this rulemaking.

I. Discussion of Modifications

Each chemical discussed in this rule is identified by a specific CAS number and docket number. Copies of correspondence relating to specific chemical modifications may be found in docket number (OPPTS–40028) established for this rule. The following table lists all chemical-specific modifications approved from January 1, 1994, through December 31, 1994.

MODIFICATIONS TO TEST STANDARDS AND CONSENT ORDERS JANUARY 1, 1994 THROUGH DECEMBER 31, 1994

Chemical/CAS Number	Chemical FR Cite	Test	Modifications	Docket No.
Final Rule Chemicals				
Dioxins.				
Pentabromodiphenyloxide	766.35	Analytical testing	5	40028/83002M
Octabromodiphenyloxide	766.35	Analytical testing	5	40028/83002M
Tetrabromobisphenol-A	766.35	Analytical testing	5	40028/83002M
Decabromodiphenyloxide	766.35	Analytical testing	5	40028/83002M
2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione.	766.35	Analytical testing	5	40028/83002M
1,2-bis(tribromophenoxy)ethane	766.35	Analytical testing	5	40028/83002M
Isopropanol	799.2325	Vapor inhalation oncogenicity study in rats	5	40028/42097B
Office of Drinking Water.				
Chloroethane	799.5075	Subacute and subchronic testing	5	40028/42111F
1,1-dichloroethane	799.5075	Subacute and subchronic testing	5	40028/42111F
1,1,2,2-tetrachloroethane	799.5075	Subacute and subchronic testing	2, 5	40028/42111F
1,3,5-trimethylbenzene	799.5075	Subacute and subchronic testing	5	40028/42111F
Consent Order Chemicals				
Refactory ceramic fibers	799.5000	Submission of raw data by June 29, 1994; submission of report with data analysis by July 18, 1994; bi-annual meeting rescheduled for August 12, 1994..	3	40028/42166B
Sodium cyanide	799.5000	Plant uptake and translocation study	5	40028/42118

Modifications
1. Modify sampling schedule.
2. Change to test substance (form/purity).
3. Change in non-critical test procedure or condition.
4. Add satellite group for further testing.
5. Extend test or protocol deadline, delete test initiation date.
6. Clarify and/or add specific guideline requirement.
7. Alternate specific guideline requirement approved for certain test(s).
8. CAS No. correction.
9. Test standard amendment.

Note: In § 766.35(b)(4)(i) changes have been made to four existing chemicals and one new submitter is added to the table; however, for the convenience of the user, the entire table is being revised.

II. Public Record

EPA has established a public record for this rulemaking (Docket number OPPTS–40028). The record includes the information considered by EPA in evaluating the requested modifications.

The record is available for inspection from 12:00 noon to 4 p.m., Monday through Friday, except legal holidays, in Rm. NEB–607, 401 M St., SW., Washington, DC 20460.

III. Regulatory Assessment Requirements

A. Analyses Under E.O. 12866, and the Unfunded Mandates Act of 1995

Because the modifications to the subject testing actions do not impose any additional requirements, this action is not "significant" within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), and does not impose any Federal mandate on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action will not have a significant economic impact on a significant number of small entities.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501, and have been assigned OMB control number 2070-0033. EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements.

List of Subjects

40 CFR Part 766

Dibenzo-para-dioxins/dibenzofurans, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing.

Dated: September 25, 1995.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR parts 766 and 799 are amended as follows:

1. In part 766:

PART 766—[AMENDED]

a. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

b. In § 766.35, by revising paragraph (a)(2)(i)(B)(*3*), the table to paragraph (a)(2)(ii)(A), and the table to paragraph (b)(4)(i) and paragraph (f) to read as follows:

§ 766.35 Dibenzo-para-dioxins/dibenzofurans.

(a) * * *

(2) * * *
(i) * * *
(B) * * *

(3) The deadline for submitting protocols for pentabromodiphenyloxide (CAS No. 32534–81–9) is February 6, 1995. The deadline for submitting tetrabromobisphenol-A-bisethoxylate (CAS No. 4126–45–2) is January 31, 1991.

* * * * *

(2) * * *
(ii) * * *
(A) * * *

CAS No.	Submitter	Chemical	Due date
118–75–2 ..	Rhone-Poulenc	2,3,5,6-tetrachloro-2,5-cyclohexaniene-1,4-dione	March 4, 1994

* * * * *

(b) * * *
(4) * * *

(i) * * *

CAS No.	Submitter	Chemical	Due Date	Effective Date
79–94–7	Great Lakes	Tetrabromobisphenol-A	May 26, 1992	May 28, 1993
79–94–7	Ethyl	Tetrabromobisphenol-A	August 10, 1992	May 28, 1993
79–94–7	Ameribrom	Tetrabromobisphenol-A	April 15, 1994	September 29, 1995
87–10–5	Pfister	3,4',5-tribromosalicylanilide	45 days after protocol approval	May 28, 1993
118–79–6	Great Lakes	2,4,6-Tribromophenol	May 26, 1992	May 28, 1993
1163–19–5	Ameribrom	Decabromodiphenyloxide	April 15, 1994	September 29, 1995
1163–19–5	Ethyl	Decabromodiphenyloxide	May 26, 1992	May 28, 1993
1163–19–5	Great Lakes	Decabromodiphenyloxide	May 26, 1992	May 28, 1993
4162–45–2	Great Lakes	Tetrabromobisphenol-A-bisethoxylate	June 2, 1993	September 8, 1994
25327–89–3	Great Lakes	Allyl Ether of Tetrabromobisphenol-A	August 10, 1992	May 28, 1993
32534–81–9	Great Lakes	Pentabromodiphenyloxide	March 22, 1993	September 8, 1994
32534–81–9	Akzo Chemicals Inc.	Pentabromodiphenyloxide	February 6, 1995	September 29, 1995
32534–81–9	Ameribrom	Pentabromodiphenyloxide	March 22, 1993	September 8, 1994
32536–52–0	Ameribrom	Octabromodiphenyloxide	January 8, 1993	September 29, 1995
32536–52–0	Ethyl	Octabromodiphenyloxide	May 15, 1994	May 28, 1993
32536–52–0	Great Lakes	Octabromodiphenyloxide	May 26, 1992	May 28, 1993
37853–59–1	Great Lakes	1,2-bis(tribromophenoxy)ethane	January 24, 1995	September 29, 1995

* * * * *

(f) *Effective date.* (1) The effective date of this final rule is July 6, 1987, except for paragraphs (a)(2)(i)(B) introductory text, (a)(2)(i)(B)(*1*), (a)(2)(i)(B)(*2*), (a)(2)(i)(B)(*3*), (a)(2)(i)(B)(*4*), the table in paragraph (a)(2)(ii)(A), and the table in paragraph (b)(4)(i) of this section.

(2) The effective date for paragraph (a)(2)(i)(B) introductory text, (a)(2)(i)(B)(*1*), (a)(2)(i)(B)(*2*), and (a)(2)(i)(B)(*4*), is May 21, 1991. The effective date of paragraphs (a)(2)(i)(B)(*3*), and the table in paragraph (a)(2)(ii)(A) is September 29, 1995. The effective date of paragraph (b)(4)(i) introductory text is May 28, 1993, and the effective date of the entries in the table in paragraph (b)(4)(i) is shown in the effective dates column of the table.

(3) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

2. In part 799:

PART 799—[AMENDED]

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. In § 799.2325 by revising paragraphs (c)(8)(ii)(A) and (d) to read as follows:

§ 799.2325 Isopropanol

* * * * *
(c) * * *
(8) * * *
(ii) * * * (A) The oncogenicity test shall be completed and the final report submitted to EPA by July 5, 1994.
* * * * *

(d) *Effective date.* (1) The effective date of this final rule is December 4, 1989, except for the provisions of paragraphs (c)(5)(i)(C)(*1*), (c)(5)(ii)(A)(*3*), (c)(6)(i)(D), and (c)(8)(ii)(A), of this section. The effective date for paragraphs (c)(5)(i)(C)(*1*), and (c)(5)(ii)(A)(*3*) of this section is May 21, 1990. The effective date for paragraphs (c)(6)(i)(D) of this section is May 21, 1991. The effective date of paragraph (c)(8)(ii)(A) is September 29, 1995.

(2) The guidelines and other test methods cited in this rule are references as they exist on the effective date of the final rule.

c. In § 799.5075 by revising paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2)(ii)(A) and paragraph (d) to read as follows:

§ 799.5075 Drinking water contaminants subject to testing.

(a) * * *
(2) A test substance of at least 99 percent purity shall be used for Chloroethane, 1,1-dichloroethane, and 1,3,5-trimethylbenzene. A test substance of at least 98 percent purity shall be used for 1,1,2,2-tetrachloroethane.
* * * * *
(c) * * *
(1) * * *
(ii) * * * (A) The subacute testing for chloroethane shall be completed and the final report submitted to EPA by March 27, 1995. The subacute testing for 1,1-dichloroethane and 1,1,2,2-tetrachlorethane shall be completed and the final report submitted to EPA by April 27, 1995. The subacute testing for 1,3,5-trimethylbenzene shall be completed and the final report submitted to EPA by February 11, 1995.

(B) Except for 1,3,5-trimethylbenzene, a progress report shall be submitted to EPA for each test beginning 6 months after the date specified in paragraph (d)(1) of this section and at 6–month intervals thereafter until the final report is submitted to EPA . The progress report for 1,3,5-trimethylbenzene shall be submitted to EPA by April 10, 1995.

(2) * * *
(ii) * * * (A) The subchronic testing for chloroethane shall be completed and the final report submitted to EPA by June 27, 1995. The subchronic testing for 1,1-dichloroethane and 1,1,2,2-tetrachlorethane shall be completed and the final report submitted to EPA by August 27, 1995. The subchronic testing for 1,3,5-trimethylbenzene shall be completed and the final report submitted to EPA by April 10, 1995.
* * * * *

(d) *Effective date.* (1) This section is effective on December 27, 1993 except for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(2)(ii)(A). The effective date for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2)(ii)(A) is September 29, 1995.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

[FR Doc. 95–24211 Filed 9–28–95; 8:45 am]
BILLING CODE 1505–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM–215A; Amdt. No. 173–242]

RIN 2137–AC42

Implementation of the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petition for reconsideration.

SUMMARY: On December 29, 1994, RSPA published a final rule which amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. A final rule correcting errors in the December 29, 1994 final rule and responding to petitions for reconsideration was published on May 18, 1995. This final rule denies a petition for reconsideration to the May 18, 1995 final rule concerning adoption of certain testing provisions for plastic aerosol containers.

EFFECTIVE DATE: The effective date for the final rules published under Docket HM–215A on December 29, 1994 (59 FR 67390), and May 18, 1995 (60 FR 26796), remains October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Machado, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On July 18, 1994, RSPA published a Notice of Proposed Rulemaking (NPRM) (59 FR 36488) proposing changes to the Hazardous Materials Regulations (HMR) in order to maintain alignment with corresponding provisions of the recently revised International Maritime Dangerous Goods Code (IMDG Code), International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). On December 29, 1994, RSPA published a final rule under Docket HM–215A (59 FR 67390). A final rule published on May 18, 1995 (60 FR 26796), incorporated editorial and technical revisions to the December 29, 1994 final rule based on the merit of petitions and other revisions RSPA determined to be necessary to correct or clarify the final rule.

One of these editorial revisions entailed deleting all references in § 173.306(a)(3)(v) to testing procedures for certain non-specification plastic aerosol containers. (Section 173.306(a)(3)(v) enumerates one of the five different conditions that must be met in order to ship limited quantities of compressed gas in *metal* containers.) Language in the preamble to the July 18, 1994 NPRM and in the December 29, 1994 final rule suggested that RSPA intended to add *testing provisions* for plastic aerosol containers. However, the HMR do not authorize the *use* of plastic aerosol containers, and both documents were silent on any intent to authorize the *use* of plastic aerosol containers. In proposing and adopting revisions to § 173.306(a)(3)(v), RSPA inadvertently incorporated UN Recommendation language regarding testing procedures for plastic containers. (*See*, UN Recommendations, Eighth Ed. ¶¶9.8.1 and 9.8.2 entitled "Leakproofness Test for Aerosols and Small Receptacles for Gas.")

This drafting error was brought to RSPA's attention by a member of petitioner Winston & Strawn's staff during a telephone conversation with a RSPA staff member, and in a subsequent letter dated January 10, 1995, seeking clarification of the origin and intent of the amendments to § 173.306(a). On May 16, 1995, RSPA responded to petitioner's letter and stated that

> Based on a provision in the UN Recommendations, RSPA proposed and incorporated a hot water bath test for aerosol containers in § 173.306(a)(3)(v). By adopting provisions identical to those contained in the UN Recommendations, RSPA failed to remove wording referring to certain non-specification plastic aerosol containers. It was not RSPA's intent in amending § 173.306 to authorize the use of plastic containers, and the final rule made no revisions to paragraphs (a)(3) and (a)(3)(ii), which specify only metal containers. We plan to amend paragraph (a)(3)(v) to remove all reference to plastic containers in order to clarify that they are not authorized for use under the HMR.

On May 18, 1995, RSPA published a final rule and amended § 173.306(a)(3)(v) to remove all references to plastic containers. RSPA explained that in adopting provisions identical to those contained in the UN Recommendations regarding metal containers, it had failed to remove wording referring to testing of certain non-specification plastic aerosol containers. Because plastic containers are not authorized for use under § 173.306(a)(3), RSPA removed all references to the hot water immersion test for plastic containers from § 173.306(a)(3)(v).

On June 16, 1995, Winston & Strawn filed a petition for reconsideration of this issue, on behalf of an unnamed client, on the grounds that adequate notice and an opportunity to comment were not given for this change, as required under the Administrative Procedure Act, 5 U.S.C. 553, and that RSPA's actions were arbitrary and capricious. The petitioner asked RSPA to reinstate § 173.306(a)(3)(v) as originally promulgated in the December 29, 1994 final rule. The petitioner also asked that RSPA make several "editorial revisions" in paragraphs (a)(3) and (a)(3)(ii) so as to authorize the use of plastic containers for aerosols. A copy of this petition for reconsideration is on file in the Dockets Unit (DHM–30),

Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington DC and may be reviewed between the hours of 8:30 a.m. and 5 p.m. Monday through Friday, except for Federal holidays.

In its May 18, 1995 final rule, RSPA stated that it was making an editorial correction to § 173.306(a)(3)(v) to remove all references to plastic containers because those containers are not authorized for use under § 173.306(a)(3). In treating this amendment as a routine editorial correction, RSPA reasoned that: (1) There would be no public interest in retaining testing procedures for containers that are not authorized for use; (2) removing the language would have no impact on the industry because the containers are not authorized for use; and (3) removing the language would avoid confusion. Consequently, RSPA determined that notice and comment were unnecessary.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, sets forth the requirement for public notice and an opportunity to comment on rulemaking proceedings. Section 553(b) requires that an NPRM be published in the **Federal Register**, unless persons subject to the requirements of the rulemaking are named and either personally served or otherwise have actual notice. Section 553(b)(3) states that publication of an NPRM is not required when

> the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, *unnecessary*, or contrary to the public interest. (Emphasis added.)

Section 553(b)(3) makes clear that "there is no need for giving the public an opportunity to participate in minor amendments to rules * * *." *Texaco v. Federal Power Commission*, 412 F.2d 740, 743 (3rd Cir. 1969). The court in *Texaco*, quoting *National Motor Freight Traffic Ass'n v. U.S.*, 268 Fed. Supp. 90, 95–96 (D.D.C. 1967), *aff'd* 393 U.S. 18, found the language of 5 U.S.C. 553(b)(3) to apply to situations where an agency rule is "a routine determination," "insignificant in nature and impact," and unimportant "to the industry and to the public." *Texaco* at 743. The *Texaco* court also quoted the Attorney General's Manual on Administrative Procedure Act (1947), pp. 12–13, which contains the following language: "'Unnecessary' refers to the issuance of a minor rule or amendment in which the public is not particularly interested. Senate Hearings (1941, p. 882." *Id.*

As evidenced by petitioner's telephone call and January 10. 1995 letter, the petitioner itself recognizes that, standing alone, the language as adopted in the December 29, 1994 final rule does not authorize the use of plastic aerosol containers. In fact, the December 29, 1994 language regarding testing for plastic aerosol containers conflicts with § 173.306(a) which makes clear that only metal containers are authorized. In its petition for reconsideration, Petitioner not only asked that the language from the December 29, 1994 rule be reinstated but also that several additional revisions be made to § 173.306 (a)(3)(v) in order to authorize the use of plastic aerosol containers. Specifically, petitioner requests that the limiting reference to metal containers be removed from §§ 173.306 (a)(3) and (a)(3)(ii)) so that plastic containers would also be authorized. The revisions requested by petitioner are exactly the type that would be subject to the notice and comment requirements of 5 U.S.C. 553(b) in that they propose a significant change to the regulations that would have a substantial impact on the regulated industry. For example, RSPA is not aware of any proposed industry standards for the manufacture and use of aerosol containers other than those made of metal.

With respect to petitioner's statement that compliance with the May 18, 1995 final rule is "unreasonable," the final rule merely makes clear that no new containers are authorized under § 173.306(a)(3); it neither imposes new requirements, burdens, restrictions or costs on the industry nor eliminates any rights or benefits.

Petitioner also argues that the record does not support RSPA's contention that the language regarding testing standards for plastic aerosol containers was mistakenly inserted into the NPRM and final rule by RSPA staff because of (1) the specificity of the language with regard to the testing procedures; (2) the preamble language suggesting that RSPA intended to propose the testing procedures; and (3) RSPA's stated intent to harmonize the HMR with the various international standards. Consequently, petitioner argues that RSPA's May 18, 1995 action in revising the language of § 173.306(a)(3)(v) was arbitrary and capricious. In support of this contention, petitioner cites three cases which stand for the propositions that: (1) There must be a rational connection between the facts found and the choice made by an agency, *see Motor Vehicle Mfrs. Ass'n of the United States* v. *State Farm Mut. Automobile Insurance Co.*, 463 U.S. 29, 42 (1983) (in rescinding requirement, agency failed to consider other viable options); and (2) the reason for an agency's action must be satisfactorily articulated, *see Kent County, Delaware Levy Court* v. *U.S. Environmental Protection Agency*, 963 F.2d 391, 397 (D.C. Cir 1992) (agency failed to offer *any* reason why it was infeasible to follow its own experts' recommendations); *HLI Lordship Industries, Inc.* v. *The Committee for Purchase from the Blind and Other Severely Handicapped*, 791 F.2d 1136, 1141 (5th Cir. 1981) (agency provided no basis for its decision).

As discussed both above and below, RSPA's action in rescinding the erroneously adopted testing provisions for plastic containers was rational and well articulated. First, as noted above, the NPRM and final rule language regarding testing procedures for plastic aerosol containers is virtually identical to the language in paragraphs 9.8.1 and 9.8.2 of the Eighth edition of the UN Recommendations. In preparing the NPRM, RSPA staff failed to note that it had incorporated the testing procedure for plastic aerosol containers into the language it borrowed "wholesale" from paragraphs 9.8.1. and 9.8.2. of the UN Recommendations. Consequently, the specificity of the language in the NPRM and final rule shows only that RSPA did indeed copy the language from the UN Recommendations. The identical language appears in both the NPRM and final rule because no comments were received regarding the proposed changes to § 173.306 and, as a result, the erroneous language in the NPRM was simply carried over, without change, into the final rule.

The language in the preamble of the NPRM and final rule regarding the proposed addition of testing provisions for plastic containers was drafted after RSPA staff had identified the provisions of the various international standards it would propose to adopt in the NPRM. The preamble language merely reflected the contents of the proposed regulatory text for § 173.306(a)(3)(v). It is not logical that RSPA would have intentionally proposed to adopt (and subsequently adopted) testing provisions for containers that are not authorized for use, or that RSPA would have chosen this confusing manner in which to authorize plastic aerosol containers. Specifically, §§ 173.306(a)(1), (a)(2), and (a)(3) clearly identify, in the first line of each text, the three packagings that are authorized for the transportation of limited quantities of compressed gas. The subparagraphs that follow each of those three paragraphs set forth the limitations or conditions that apply to those three packagings. It would be illogical for RSPA to have buried an authorization for plastic containers in the last of five subparagraphs that relate to a paragraph authorizing metal containers.

Finally, petitioner asserts that RSPA's failure to adopt an authorization for plastic aerosol containers is directly contrary to RSPA's statement in the NPRM and final rule that the purpose of the rulemaking was to maintain alignment with corresponding provisions of international standards. Petitioner repeatedly argues that RSPA's statement regarding its desire to keep the HMR in alignment with international standards obligated the agency not to deviate from those standards. Petitioner fails to note, however, that language throughout the preamble to the NPRM and to the final rule indicated that the intent of the rulemaking was not to incorporate every term of the international standards, but to "*more fully align* the HMR with the seventh and eighth revised editions of the UN Recommendations. These proposed changes to the HMR will provide *consistency* with the international air and sea requirements * * *." (Emphasis added.) *See* 59 FR 36488 and 59 FR 67390. RSPA further stated in the NPRM that the proposed regulatory changes are "proposed to ensure a *basic consistency* with *many* changes contained in the [international standards]." (Emphasis added.) 59 FR 36489.

The above statements demonstrate that RSPA did not intend to adopt, verbatim, every provision of international standards. Furthermore, evidence of RSPA's intent can be found in the NPRM statement that "although the eighth revised edition of the UN Recommendations adopted a quality assurance program for the manufacture of performance packagings, RSPA is not proposing a formal quality assurance program in this document." 59 FR 36489. There are numerous examples of U.S. variations from international standards, such as retention of the combustible liquid hazard classification and exceptions, adoption of a vibration standard for package testing, the establishment of inhalation toxicity criteria, and the authorization to continue using plastic packagings beyond five years from date of manufacture. Consequently, RSPA's stated desire to maintain general alignment with international standards does not negate the agency's ability to exercise its own discretion in certain areas.

In short, RSPA accidentally adopted testing procedures for a plastic aerosol packaging that is not authorized for use under the HMR. When RSPA realized its mistake, it acted reasonably and quickly to ensure that the regulated industry understood that the packaging still was not authorized. It did so by removing the superfluous language from the HMR and explaining in a concise general statement the reason for its action. RSPA's action was rational and well articulated and, therefore, was not arbitrary and capricious. To grant the petitioner's request would result in a regulation that would include certain testing procedures for plastic aerosol containers that are not authorized for use. The result would be illogical and contrary to our efforts to clarify the HMR and eliminate obsolete or redundant rules. To grant the petitioner's request to authorize use of plastic aerosol containers would require public comment.

Based on the above, RSPA denies petitioner's June 16, 1995 petition for reconsideration.

Issued in Washington, DC on November 6, 1995, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–27953 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[I.D. 103195D]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason orders.

SUMMARY: NMFS publishes the inseason orders regulating fisheries in U.S. waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary of Commerce (Secretary) during the 1995 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.)(Panel Area). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1995 orders are therefore being published in this document as a composite of the year's inseason orders.

DATES: Each of the following inseason orders was effective upon announcement on telephone hotline numbers as specified at 50 CFR 371.21(b)(1).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 371 provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Panel Area that apply during the period each year when the Commission exercises jurisdiction over these fisheries.

The regulations close the Panel Area to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give the effect of Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotline numbers described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. The 1995 orders are therefore being published in this document as a composite of the year's inseason actions.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1995 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 1995–1: Issued 5:40 p.m., August 1, 1995

Treaty Indian Fishery

Areas 4B, 5 and 6C: Open for drift gillnets from 12 p.m., August 2 to 12 p.m., August 5.

Areas 6, 7 and 7A: Open to net fishing from 6 p.m., August 2 to 9 p.m., August 3.

All-Citizen Fishery

Areas 7, 7A: Reefnets open from 5 a.m. to 9 p.m., August 2 and 3.

Order No. 1995–2: Issued 4:30 p.m., August 2, 1995

All-Citizen Fishery

Areas 7, 7A: Gillnets open 9 p.m., August 3 to 8 a.m., August 4.

Purse seines open 5 a.m. to 9 p.m., August 4.

Order No. 1995–3: Issued 2 p.m., August 4, 1995

Treaty Indian Fishery

Areas 4B, 5 and 6C: Drift gillnets open 12 p.m., August 6 to 12 p.m., August 9.

All-Citizen Fishery

Areas 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 5 to 11:59 p.m., August 8.

Order No. 1995–4: Issued 2:30 p.m., August 9, 1995

All-Citizen Fishery

Areas 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 12 to 11:59 p.m., August 15.

Order No. 1995–5: Issued 6:30 p.m., August 15, 1995

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing open 6 p.m., August 16 to 9 p.m., August 17.

All-Citizen Fishery

Areas 7, 7A: Gillnets open 6 a.m. to 6 p.m., August 16. Purse seines open 5 a.m. to 9 p.m., August 18.

Areas 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 19 to 11:59 p.m., August 22.

Order No. 1995–6: Issued at 3 p.m. August 18, 1995

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open 12 p.m., August 21 to 12 p.m., August 23.

Areas 6, 7, and 7A: Net fishing open 5 a.m., August 21 to 9 a.m., August 22 southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass.

All-Citizen Fishery

Areas 7 and 7A southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass: Gillnets open 9 a.m., August 22 to 5 a.m., August 23.

Purse seines open 5 a.m. to 9 p.m., August 23.

Reefnets open 5 a.m. to 9 p.m., August 24.

Order No. 1995–7: Issued 11:30 a.m., August 21, 1995

Referred only to fishing in Canadian area Panel Waters.

Order No. 1995–8: Issued 4:45 p.m., August 22, 1995

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnets open 12 p.m., August 23 to 12 p.m., August 26.

Areas 6, 7, and 7A: Open for net fishing 5 a.m., August 24 to 12 p.m., August 25 southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass.

All-Citizen Fishery

Areas 7 and 7A: Reefnets open 5 a.m. to 9 p.m., August 24, August 25, and August 26 southerly of a line from Iwersen's Dock on Point Roberts to the Georgina Point Light at the entrance to Active Pass with non-retention of sockeye salmon.

Order No. 1995–9: Issued 3:10 p.m., August 25, 1995

Treaty Indian Fishery

Areas 6 and 7: Open to net fishing 5 a.m., August 28 to 9 a.m., August 29.

All-Citizen Fishery

Area 7: Reefnets open 5 a.m. to 9 p.m., August 27, August 28, August 29, and August 30 with the retention of pink salmon only.

Area 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., August 26 to 11:59 p.m., August 29.

Order No. 1995–10: Issued 4:20 p.m., August 25, 1995

All-Citizen Fishery

Area 7: Gillnet open 9 p.m., August 31 to 9 a.m., September 1.

Purse seines open 5 a.m. to 9 p.m., August 31.

Reefnets open 5 a.m. to 9 p.m. August 30, August 31, September 1, and September 2 with the retention of pink salmon only.

Order No. 1995–11: Issued 4 p.m., September 1, 1995

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing open 6 p.m., September 2 to 9 p.m., September 4 southerly and easterly of a line from the low water range marker in Boundary Bay on the International Boundary, through the east tip of Point Roberts, to the East Point Light on Saturna Island.

All-Citizen Fishery

Areas 7 and 7A southerly and easterly of a line from the low water range marker in Boundary Bay on the International Boundary, through the east tip of Point Roberts, to the East Point Light on Saturna Island: Gillnets open 8 p.m., September 5 to 8 a.m., September 6, and 8 p.m., September 6 to 7 a.m., September 7.

Purse seines open 5 a.m. to 9 p.m., September 5 and September 6.

Reefnets open 5 a.m. to 9 p.m., September 3, September 4, September 5, September 6, and September 7 to the retention of pink salmon only.

Area 4 and 3 north of 48°00′15″ N. lat.: Commercial trolling open 12:01 a.m., September 2 to 11:59 p.m., September 4.

Order 1995–12: Issued 12:10 p.m., September 8, 1995

Referred only to fishing in Canadian area Panel Waters.

Order 1995–13: Issued at 11:10 a.m., September 15, 1995

Referred only to fishing in Canadian area Panel Waters.

Classification

This action is authorized by 50 CFR 371.21, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 7, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27955 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 218
Monday, November 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2284]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rule.

SUMMARY: This notice proposes certain amendments to the regulations implementing the Diversity Immigrant Visa Program provided for in sections 201(a)(3), 201(e), 203(c), and 204(a)(1)(G) of the Immigration and Nationality Act, as amended. In order to enhance the Department's ability to combat fraudulent practices in this program, the Department proposes to require aliens seeking to compete for immigration under the program to sign their petitions for consideration and to furnish a photograph with their petitions. Also the Department is adding a provision to authorize collection of a processing fee from those petitioners selected for further processing.

DATES: Written comments must be received on or before December 13, 1995.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC, 20522–0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Bureau of Consular Affairs, Department of State, (202) 663–1184.

SUPPLEMENTARY INFORMATION: During the processing of the immigrant visa applications of aliens selected to compete for an immigrant visa in the Fiscal Year 1995 Diversity Immigrant Visa Program, several consular sections encountered cases in which the visa applicant was proven, or strongly suspected, to be an impostor—that is, not the individual who had submitted the petition which had been selected. In order to deter such abuses, the Department proposes to modify the provisions of § 42.33(b)(1), Form of Petition, to require aliens competing for immigration under the Diversity Immigrant Visa Program to sign their petitions and affix thereto a photograph of the kind which is required to be affixed to Form OF–156, the Nonimmigrant Visa Application.

The photograph must be recent and must be 1 and ½ inches square (37mm x 37mm). The petitioner must clearly print his or her name on the reverse of the photograph.

This proposed new requirement is intended to apply to petitions submitted early in Calendar Year 1996 by aliens seeking consideration to compete for visa issuance under the Diversity Immigrant Visa Program during Fiscal Year 1997 (October 1, 1996 to September 30, 1997).

The Department also proposes to add to § 42.33 a new paragraph (i) to authorize collection of a processing fee from each Diversity Immigrant visa applicant, in addition to the immigrant visa application and issuance fees which are collected from all immigrant visa applicants to cover the cost of the visa lottery. The Department has not yet determined the amount of the fee to be charged which will depend on a thorough cost analysis. The Department, however, seeks to amend the applicable regulations to permit collection of the fee should the decision be made that charging such a fee is necessary. If it should be so decided to do so, there will be a separate rulemaking process in the form of a proposal to amend the Department's Tariff of Fees set forth in Part 22 of this Title.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required under E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 42

Aliens, Documentation, Immigrants, Passports and visas.

It is proposed to amend 22 CFR Part 42 as follows:

PART 42 —[AMENDED]

1. The authority citation for Part 42 would continue to read:

Authority: 8 U.S.C. 1104.

2. Section 42.33 is amended by revising paragraph (b)(1) and, by adding paragraph (i) to read as follows:

§ 42.33 Diversity Immigrants.

* * * * *

(b) *Petition for Consideration.*– (1) *Form of Petition.* An alien claiming to be entitled to compete for consideration under INA 203(c) shall file a petition for such consideration. The petition shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet the petitioner's name; date and place of birth (including city and county, province or other political subdivision, and country); the country of which the alien claims to be a native, if other than the country of birth; name(s) and date(s) and place(s) of birth of spouse and child(ren), if any, a current mailing address and location of consular office nearest to current residence or, if in the United States, nearest to last foreign residence prior to entry into the U.S. The alien shall affix his or her signature to the sheet of paper, using his or her usual signature. The alien shall also affix to the sheet of paper a recent photograph of himself or herself. The photograph shall be 1 and 1/2 inches square (37mm x 37mm) and the alien shall clearly print his or her name on the reverse of the photograph before affixing the photograph to the sheet of paper.

* * * * *

(i) *Processing Fee.* In addition to collecting the immigrant visa application and, if applicable, issuance fees, as provided in § 42.71(b) of this part, the consular officer shall also collect from each applicant for a visa under the Diversity Immigrant Visa Program such processing fee as the Secretary of State shall prescribe.

Dated: November 5, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 95-27871 Filed 11-9-95; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. 95-25]

RIN 2125-AD60

Emergency Relief Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend its regulation on the emergency relief (ER) program in order to incorporate changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The time period in which the Federal share payable for certain eligible emergency repairs is 100 percent would be extended from 90 days to 180 days; the limit for total obligations for ER projects in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands would be increased from $5 million to $20 million; and the term "Federal-aid highway systems" would be replaced with the term "Federal-aid highways" to conform with terminology now used to describe highways eligible for Federal-aid ER assistance. In addition, various statements clarifying eligible uses of ER funding would be incorporated into the regulation.

DATES: Written comments are due on or before January 12, 1996. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and should be submitted to Room 4232, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mohan P. Pillay, Office of Engineering, 202-366-4655, or Wilbert Baccus, Office of the Chief Counsel, 202-366-0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

The current FHWA regulations implementing the emergency relief program are found primarily in 23 CFR part 668. Subpart A of part 668 sets forth the procedures for the administration of ER funds for the repair or reconstruction of Federal-aid highways. The FHWA intends to amend these regulations in the following manner and for the reasons indicated below.

In subpart A, the terms "Federal-aid system" and "Federal-aid highway system" would be replaced with the term "Federal-aid highways." The revision is in accordance with The Dire Emergency Supplemental Appropriations Act (Pub. L. 102-302, 106 Stat. 248) which amended 23 U.S.C. 125(b) by replacing the term "Federal-aid highway systems including the Interstate System" with the term "Federal-aid highways."

In section 668.101, the second sentence would be amended by replacing "Federal roads not on the Federal-aid system" with "roads on Federal lands." This modification reflects the change in terminology used to describe highways eligible for Federal assistance and clarifies the cross reference to emergency relief funding for roads on Federal lands which is contained in subpart B of part 668.

Section 668.105(e) would be amended by adding the phrase "or by a toll authority for repair of the highway facility" after the words "political subdivision" in the last sentence. This amendment would require that an ER project receive a credit for that portion of insurance proceeds recovered by a toll authority that are attributable to the cost of capital improvements.

In section 668.107, the last sentence in paragraph (a) would be amended to extend to 180 days the current 90-day time period following a natural disaster or catastrophic failure in which the Federal share payable for certain eligible emergency repair costs may amount to 100 percent. This amendment would be made to conform section 668.107(a) to 23 U.S.C 120(e) (as amended by section 1022 of the ISTEA).

In section 668.107, the second sentence of paragraph (b) would be amended to raise to $20 million the current $5 million limit on the total amount of obligations for emergency relief projects in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This amendment would parallel an amendment made to 23 U.S.C. 125(b)(2) by section 1022(b) of the ISTEA.

Section 668.109 would be amended to expand and clarify the eligible uses for ER funds based on recent experiences in administering the ER program. ER funds would be eligible to participate in:

1. Repair of traffic damage to roadway surfaces, including those on designated detours, attributable to emergency relief work.
2. Repair of damage to the surface of Federal-aid highways caused by traffic making necessary repairs to other transportation facilities (for example, trucks hauling materials to repair a damaged railroad facility).
3. Raising of roadway grades temporarily to maintain essential traffic service during flooding.
4. Raising grades of critical Federal-aid highways faced with long-term loss of use due to an unprecedented rising in basin water level.
5. Repair of toll facilities when the provisions of 23 U.S.C. 129 are met.

Section 668.109 (c)(1) would be amended to clarify the extent to which certain activities listed under heavy maintenance are eligible for ER participation. The amendment would amend the policy that slope damage that does not extend into the travelled way is not eligible for ER participation. It is FHWA's current policy to consider repair of significant slip-outs of cut or fill slopes, even if the slip-outs do not extend into the travelled way, as an activity potentially eligible for ER funding.

Section 668.109 (c)(2) would be amended to cross-reference the newly added Section 668.109(b)(7) which discusses the extent to which ER funding can participate in the repair of damage to roadway surfaces caused by traffic.

Section 668.109 (c)(6) would be amended to cross-reference the newly added section 668.109(b)(9) which discusses the extent to which ER funding can participate in raising grades of Federal-aid highways due to an unprecedented rise in basin water levels.

Section 668.109(c)(7) would be amended to redefine the term "scheduled." As currently defined, the term refers to an approved Federal-aid program, which is a program incorporating various projects submitted by a State to the FHWA for approval in accordance with the requirements of 23 U.S.C. 105; however, 23 U.S.C. 105 has been superseded by the new requirements of 23 U.S.C. 135 and, as a result, State now is required to develop a Statewide transportation improvement program which is to be submitted to the FHWA for approval. The existing definition of "scheduled" also refers to the current or next fiscal year's Highway Bridge Replacement and Rehabilitation Program or to a determination if contract plans are prepared. To update and simplify the definition of "scheduled," the proposed definition would refer only to the approved Statewide transportation improvement program.

A new paragraph (c)(10) would be added to Section 668.109 to make clear that the loss of toll revenue is not eligible for reimbursement.

Section 668.113(a) would be amended to remove the outdated reference to the program requirements of 23 CFR part 630. The requirements for a program of ER projects are adequately described in section 668.113 and therefore cross-reference to 23 CFR part 630 is no longer needed.

Section 668.113(b)(1) would be amended to reflect the current policy on project review, oversight, and administration as applicable to ER projects. In those cases where a regular Federal-aid project (in a State) similar to the ER project would be handled under the certification acceptance procedures found in 23 U.S.C. 117 or the project oversight exceptions found in 23 U.S.C. 106, the ER project can be handled under these alternate procedures subject to the following two conditions: (1) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval, and (2) the FHWA reserves the right to conduct final inspections on ER projects as deemed appropriate.

A few minor editorial changes in sections 668.109(b)(3) and 668.11(b)(2) would be made for clarity.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. These proposed changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely amends current regulations implementing the emergency relief program to incorporate changes made to this program by Congress in the ISTEA. It is not anticipated that these proposed changes would affect the total Federal funding available under the ER program. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. These amendments would only clarify and simplify procedures used for providing emergency relief assistance to States in accordance with the existing laws, regulations and guidance. The ER funds received by the States would not be significantly affected by these proposed amendments. States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. Therefore, this action will not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. These proposed amendments would not preempt any State law or State regulation, and no additional costs or burdens would be imposed on the States thereby. In addition, this rule would not affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3500.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 668

Disaster assistance, Grant programs-transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: October 23, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, code of Federal Regulations, part 668 as set forth below.

PART 668—EMERGENCY RELIEF PROGRAM

1. The authority citation for part 668 is added to read as set forth below and the authority citations for subparts A and B are removed:

Authority: 23 U.S.C. 101, 120(e), 125 and 315; 49 CFR 1.48(b).

Subpart A—Procedures for Federal-Aid Highways

§ 668.101 [Amended]

2. In § 668.101, the second sentence is amended by removing the words "Federal roads not on the Federal-aid system" and adding in their stead the words "roads on Federal lands".

§ 668.103 [Amended]

3. Section 668.103 is amended by removing the paragraph designations (a) through (i) from the definitions; in the definition for "Applicant" by removing the words "Federal-aid highway system" and adding in their place the words "Federal-aid highways".

§ 668.105 [Amended]

4. In § 668.105, the last sentence of paragraph (e) is amended by adding the words "or by a toll authority for repair of the highway facility" after the words "political subdivision".

§ 668.107 [Amended]

5. Section 668.107, is amended in paragraph (a) by removing the words "within 90 days" and adding in their place the words "within 180 days" and in paragraph (b) by removing the figure "$5 million" and adding in its place the figure "$20 million".

6. Section 668.109, is amended in paragraph (b)(3) by revising the misspelled word "Actural" to read "Actual"; in paragraph (b)(5) by removing the word "and" after the semicolon; by removing the period at the end of paragraph (b)(6) and adding a semicolon in its place; by adding paragraphs (b)(7), (b)(8), (b)(9), and (b)(10); by republishing the introductory text of paragraph (c); by revising paragraphs (c)(1), (c)(2), (c)(6), and (c)(7); by removing the period at the end of paragraph (c)(8) and adding "; and" in its place; and by adding paragraph (c)(9) to read as follows:

§ 668.109 Eligibility.

* * * * *

(b) * * *

(7) Repair of traffic damage to roadway surfaces, including those on designated detours, caused by the movement of traffic during or following the incident period attributable to emergency relief work; and repair of damage to surface of Federal-aid highways caused by traffic making necessary repairs to Federal-aid highways as well as traffic making repairs to other transportation facilities, i.e., railroads, airports, ports, etc.;

(8) Temporary work to maintain essential traffic, such as, raising a roadway grade during a period of flooding by placing fill and temporary surface material;

(9) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame; and

(10) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.

(c) ER funds may not participate in:

(1) Heavy maintenance such as repair of minor damages consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits, slope sloughing, slides, and slip-outs in cut or fill slopes. In order to simplify the inspection and estimating process, heavy maintenance may be defined using dollar guidelines developed by the States and Divisions with Regional concurrence;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, except for traffic damage repair as noted in paragraph (b)(7) of this section;

* * * * *

(6) Repair or reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations, such as, gradual, longterm rises in water levels in basins or slow moving slides;

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other funds. A project is considered scheduled if the construction phase is included in the FHWA approved Statewide Transportation Improvement Program (STIP);

* * * * *

(9) Reimbursing loss of toll revenue.

* * * * *

§ 668.111 [Amended]

7. In § 668.111, paragraph (b)(2) is amended by removing the words "receipt of".

8. In § 668.113, paragraph (a) is amended by revising the first and second sentences, and paragraph (b)(1) is revised to read as follows:

§ 668.113 Program and project procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program which defines the work needed to restore or replace the damaged facilities. It should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification.

* * *

(b) *Project procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures, except in those cases where a regular Federal-aid project (in a State) similar to the ER project would be handled under the certification acceptance procedures found in 23 U.S.C. 117 or the project oversight exceptions found in 23 U.S.C. 106, the ER project can be handled under these alternate procedures subject to the following two conditions:

(i) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval; and

(ii) The FHWA reserves the right to conduct final inspections on ER projects as deemed appropriate.

* * * * *

[FR Doc. 95–27502 Filed 11–9–95; 8:45 am]
BILLING CODE 4910–22–P

Coast Guard

33 CFR Part 110

[CGD08–95–019]

RIN 2115–AA98

Anchorage Grounds, Mississippi River Below Baton Rouge, LA., Including South and Southwest Passes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the anchorage regulations for the Mississippi River below Baton Rouge, La., including South and Southwest Passes in order to expand seven anchorages and establish four new anchorages in response to revetment work along the banks of the Mississippi River by the Army Corps of Engineers which has reduced the available space within existing anchorages.

DATES: Comments must be received by January 12, 1996.

ADDRESSES: Comments should be mailed to: Commander (oan), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396. The comments and other material related to this notice will be available for inspection and copying in Room 1211 at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. M. M. Ledet, Project Officer, Commander (oan), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396. Telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice, [CGD08–95–019], the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information. The drafters of this regulation are Mr. M. M. Ledet, Project Officer, Eighth Coast Guard District Aids to Navigation Branch, and LCDR C.D. Michel, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The Army Corps of Engineers conducts revetment work along the banks of the Mississippi River to protect against erosion and caving. The work is essential to preserve the levee system. Current articulated concrete mattress revetment is used in a number of designated anchorages serving the Lower Mississippi River below Baton Rouge, LA. Federal regulations prohibit vessels from anchoring over this revetment. Because usable space in these designated anchorages was reduced due to the placement of this revetment, members of the maritime community have expressed concerns regarding the devastating impact on the amount of available space within the designated anchorages. To alleviate these concerns, and provide for safe and efficient use of the waterway, the Coast Guard is proposing the expansion of certain anchorages where practical and the establishment of new anchorage ground where available.

The lower limit of Ostrica Anchorage will be moved down to mile 23.0 providing an additional 0.5 mile of anchorage ground. The Davant Anchorage lower limit will be moved down to mile 52.8 providing an additional 0.7 mile of anchorage ground. The lower limit of New Orleans General Anchorage will be moved to mile 90.1 to accommodate the establishment of the New Orleans Emergency Anchorage. The lower limit of Lower Kenner Bend Anchorage will be moved down to mile 113.3 adding an additional 0.5 mile to this anchorage. The upper limit of lower Grandview Reach Anchorage will be moved to mile 147.2 adding 0.1 mile to this anchorage. The lower limit of Upper Grandview Reach Anchorage will be moved down to mile 147.5 adding 0.2 of a mile to this anchorage. The Lower Sunshine and Upper Sunshine Anchorage will be combined to form one anchorage with limits of mile 165.0 to mile 167.0. The pipeline at mile 166.1 has been removed allowing for the addition of 0.3 of a mile.

Four new anchorages will be established, the Point Celeste Anchorage will extend from mile 49.8 to mile 52.0 with a width of 800 feet along the right descending bank, New Orleans Emergency anchorage will be established from mile 89.6 to mile 90.1 extending 800 feet along the right descending bank, the Geismar Anchorage from mile 184.0 to mile 185.0 with a width of 700 feet along the right descending bank and the White Castle Anchorage from mile 190.6 to mile 191.3 with a width of 700 feet along the right descending bank. The establishment of these four anchorages will provide an additional 4.4 mile of safe anchorage for deep draft vessels on the Lower Mississippi river.

Regulatory Evaluation

This rule is not significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulation will in fact have a positive impact on steamship companies and shipping support activities. The regulation will also enhance safe navigation on the Lower Mississippi River by providing additional safe anchorage space outside the navigation channel for large vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons specified in the Regulatory Evaluation section of this rule, the Coast Guard has determined that this rule will have minimal, if not a positive, impact on non-participating small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rule does not raise sufficient federalism concerns to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This proposed rule has been thoroughly reviewed by the Coast Guard. It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. The Coast Guard welcomes comments on potential environmental impacts of this proposal.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

For the reasons set forth in the preamble, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.195 is revised to read as follows:

§ 110.195 Mississippi River Below Baton Rouge, LA., including South and Southwest Passes.

(a) *The anchorage grounds.* Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).

(1) *Pilottown Anchorage.* An area 5.2 miles in length along the right descending bank of the river from mile 1.5 to mile 6.7 above Head of Passes, extending in width to 1,600 feet from the left descending bank of the river.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(2) *Lower Venice Anchorage.* An area 1.6 miles in length along the left descending bank of the river from mile 8.0 to mile 9.6 above Head of Passes with the west limit 1,200 feet from the ALWP of the right descending bank.

Caution: A pipeline crossing exists at mile 9.8 above Head of Passes. Mariners are urged to use caution between mile 9.6 and mile 10.0 above Head of Passes.

(3) *Upper Venice Anchorage.* An area 1.2 miles in length along the left descending bank of the river from mile 10.0 to mile 11.2 above Head of Passes with the west limit 1,200 feet from the ALWP of the right descending bank.

(4) *Boothville Anchorage.* An area 6.3 miles in length along the right descending bank of the river, 1,000 feet wide, extending from mile 12.2 to mile 18.5 above Head of Passes. A 250 foot wide revetment as measured from the Low Water Reference Plane (LWRP) extends from mile 12.2 to mile 17.9 above Head of Passes within this anchorage.

(5) *Ostrica Anchorage.* An area 1.4 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 23.0 to mile 24.4 above Head of Passes.

(6) *Port Sulphur Anchorage.* An area 2.2 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 37.5 to mile 39.7 above Head of Passes.

(7) *Magnolia Anchorage.* An area 2.1 miles in length along the right descending bank of the river, 1,100 feet wide, extending from mile 45.5 to mile 47.6 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 45.5 to mile 45.7 above Head of Passes within this anchorage. Additional revetment, 400 feet wide as measured from the LWRP, extends from mile 47.1 to mile 47.6 above Head of Passes within this anchorage area.

(8) *Point Celeste Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 49.8 to mile 52.0 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 51.6 to mile 52.0 above Head of Passes within this anchorage.

(9) *Davant Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 52.8 to mile 53.9 above Head of Passes.

(10) *Alliance Anchorage.* An area 2.0 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 63.8 to mile 65.8 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 65.1 to mile 65.8 above Head of Passes within this anchorage.

(11) *Wills Point Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 66.5 to mile 67.6 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 66.5 to mile 66.9 above Head of Passes within this anchorage.

(12) *Cedar Grove Anchorage.* An area 1.2 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 69.9 to mile 71.1 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 69.9 to mile 70.4 above Head of Passes within this anchorage.

(13) *Belle Chasse Anchorage.* An area 2.1 miles in length along the right descending bank of the river, 1,000 feet wide, extending from mile 73.1 to mile 75.2 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 73.1 to mile 74.4 above Head of Passes within this anchorage. Additional revetment, 425 feet wide as measured from the LWRP, extends from mile 74.9 to mile 75.2 above Head of Passes within this anchorage.

(14) *Lower 12 Mile Point Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 78.6 to mile 80.8 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 78.6 to mile 79.0 above Head of Passes within this anchorage.

(15) *Lower 9 Mile Point Anchorage.* An area 2.3 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 82.7 to mile 85.0 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 82.7 to mile 84.4 above Head of Passes within this anchorage.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(16) *New Orleans Emergency Anchorage.* An area 0.5 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 89.6 to mile 90.1 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 89.6 to mile 90.1 above Head of Passes within this anchorage.

Note: No vessel shall occupy this anchorage unless expressly authorized by the Captain of the Port. No vessel may anchor in this anchorage exceeding 24 hours without the authorization of the Captain of the Port.

(17) *New Orleans General Anchorage.* An area 0.8 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 90.1 to mile 90.9 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 90.1 to mile 90.3 above Head of Passes within this anchorage.

(18) *Quarantine Anchorage.* An area 0.7 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 90.9 to mile 91.6 above Head of Passes.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

Note: a. Vessels carrying cargoes of particular hazard as defined in 33 CFR 126.10 or cargoes of petroleum products in bulk may not be anchored in the New Orleans General Anchorage or the Quarantine Anchorage without permission from the Captain of the Port.

b. Except when required by the United States Public Health Service for quarantine inspection, the Quarantine Anchorage may be used as a general anchorage.

(19) *Lower Kenner Bend Anchorage.* An area 1.0 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 113.3 to mile 114.3 above Head of Passes. A 350 foot wide revetment as measured from the LWRP extends from mile 113.3 to mile 114.3 above Head of Passes within this anchorage.

(20) *Kenner Bend Anchorage.* An area 0.9 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 114.7 to mile 115.6 above Head of Passes.

(21) *Ama Anchorage.* An area 1.8 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 115.5 to mile 117.3 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 115.5 to mile 116.8 above Head of Passes within this anchorage.

Caution: A wreck is located at mile 115.4 left descending bank above Head of Passes marked by Mississippi River Wreck Lighted Buoy WR4. Mariners are urged to use caution when anchoring in the lower end of this anchorage.

(22) *Bonnet Carre Anchorage.* An area 1.5 miles in length along the left descending bank of the river, 600 feet wide, extending from mile 127.3 to mile 128.8 above Head of Passes. This area is located adjacent to the river end of the Bonnet Carre Spillway.

Note: When the Bonnet Carre Spillway is open, no vessel may be anchored in the Bonnet Carre Anchorage.

(23) *La Place Anchorage.* An area 0.7 miles in length along the left descending bank of the river, 600 feet wide, extending from mile 134.7 to mile 135.4 above Head of Passes.

(24) *Reserve Anchorage.* An area 0.5 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 137.0 to mile 137.5 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 137.0 to mile 137.3 above Head of Passes within this anchorage.

(25) *Lower Grandview Reach Anchorage.* An area 0.7 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 146.4 to mile 147.2 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 146.4 to mile 147.2 above Head of Passes within this anchorage.

(26) *Upper Grandview Reach Anchorage.* An area 1.3 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 147.5 to mile 148.8 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 147.5 to mile 148.1 above Head of Passes within this anchorage.

(27) *Sunshine Anchorage.* An area 2.0 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 165.0 to mile 167.0 above Head of Passes. A 350 foot wide revetment as measured from the LWRP extends from mile 166.1 to mile 167.0 above Head of Passes within this anchorage.

(28) *Geismar Anchorage.* An area 1.0 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 184.0 to mile 185.0 above Head of Passes.

(29) *White Castle Anchorage.* An area 0.7 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 190.4 to mile 191.1 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 190.4 to mile 191.1 above Head of Passes within this anchorage.

(30) *Baton Rouge General Anchorage.* An area 1.5 miles in length along the right descending bank of the river, 1,400 feet wide, extending from mile 225.8 to mile 227.3 above Head of Passes.

Caution: Two wrecks are located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(31) *Lower Baton Rouge Anchorage.* An area 0.5 miles in length near mid-channel between mile 228.5 and mile 229.0 above Head of Passes with the west limit 1,100 feet off the right descending bank and having the width of 700 feet at both the upper and lower limits.

(32) *Middle Baton Rouge Anchorage.* An area 0.2 miles in length near mid-channel between mile 229.6 and mile 229.8 above Head of Passes with the west limit 1,100 feet off the right descending bank and having a width of 700 feet at both the upper and lower limits.

(33) *Upper Baton Rouge Anchorage.* An area 0.4 miles in length near mid-channel between mile 230.6 and mile 231.0 above Head of Passes with the west limit 1,100 feet off the right descending bank and having a width of 1,075 feet at the upper limit and 1,200 feet at the lower limit.

(b) *Temporary anchorages.* (1) Temporary anchorages are non-permanent anchorages established by the Commander, Eight Coast Guard District to provide additional anchorage space. Establishment of temporary anchorages is based on recommendations by the Captain of the Port.

(2) Each vessel using temporary anchorages shall anchor as prescribed by the Captain of the Port.

(3) Establishment of each temporary anchorage and any requirement for the temporary anchorage will be published in the Local Notice to Mariners.

(4) Each person who has notice of any requirement prescribed for a temporary anchorage shall comply with that requirement.

(c) *The regulations.* (1) Anchoring in the Mississippi River below Baton Rouge, LA., including South and Southwest Passes is prohibited outside of established anchorages except in cases of emergency. In an emergency, if it becomes necessary to anchor a vessel outside an established anchorage, the vessel shall be anchored so that it does not interfere with or endanger any facility or other vessel. The master of person in charge of the vessel shall notify the Captain of the Port of the location of the emergency anchoring by the most expeditious means and shall move the vessel as soon as the emergency is over.

(2) In an emergency, if it becomes necessary to anchor a vessel in South Pass or Southwest Pass, the vessel shall be positioned as close to the left descending bank as possible.

(3) No vessel may be anchored unless it maintains a bridge watch, guards and answers Channel 16 FM (or the appropriate VTS New Orleans sector frequency), maintains an accurate position plot and can take appropriate action ensure the safety of the vessel, structure, and other vessels.

(4) When anchoring individually, or in fleets, vessels shall be anchored with sufficient anchors, or secured with sufficient lines, to ensure their remaining in place and withstanding the actions of winds, currents and the suction of passing vessels.

(5) No vessel may be anchored over revetted banks of the river or within any cable or pipeline area. The locations of revetted areas and cable and pipeline areas may be obtained from the District Engineer, Corps of Engineers, New Orleans, LA.

(6) The intention to transfer any cargo while in an anchorage shall be reported to the Captain of the Port, giving particulars as to name of ships involved, quantity and type of cargo, and expected duration of the operation the Captain of the Port shall be notified upon completion of operations. Cargo transfer operations are not permitted in the New Orleans General or Quarantine Anchorages. Bunkering and similar operations related to ship's stores are exempt from reporting requirements.

Note: Activities conducted within a designated anchorage (e.g. cargo transfer, tank cleaning, stack blowing, etc.) may be restricted by other Federal, State or local regulations. Owners, or persons in charge of any vessel should consider all safety and/or environmental regulations prior to engaging in any activity within designated anchorages.

(7) Nothing in this section relieves the owner or person in charge of any vessel from the penalties for obstructing or interfering with navigational aids or for failing to comply with the navigation laws for lights, day shapes, or fog signals and any other applicable laws and regulations.

Dated: October 24, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–27868 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–141]

RIN 2115–AA97

Safety Zone: Sunken Vessel M/V EMPIRE KNIGHT, Boon Island, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone encompassing those waters of the Atlantic Ocean within 1,000 yards of the approximate position 43°06'19" N, 70°27'09" W (datum NAD 83) and from the water's surface to the seabed floor. This rulemaking is being undertaken to ensure that the stern portion of the sunken vessel M/V EMPIRE KNIGHT, and its cargo of mercury, is not disturbed by dredging, diving, salvage, anchoring, fishing, or other activity. This proposed rule is necessary to protect the environment, and the commercial fishery, and the general public from any adverse effects of contamination from mercury which could result from the disturbance of the stern section of the wreck.

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: Comments may be mailed to Chief, Response & Planning Department, U.S. Coast Guard Marine Safety Office, P.O. Box 108, Portland, ME 04112–0108. Comments may also be hand delivered to the Response & Planning Office at 312 Fore Street, Portland, Maine between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (207) 780–3251, extension 153.

FOR FURTHER INFORMATION CONTACT: Lieutenant Al Echols, Response & Planning Department, U.S. Coast Guard Marine Safety Office, Portland, Maine at (207) 780–3251, extension 153.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD01–95–141) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" × 11" unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information. The principal persons involved in drafting this document are Lieutenant Al Echols, Project Manager, Marine Safety Office Portland, Maine, and Lieutenant Commander Sam Watkins, Project counsel, First Coast Guard District Legal Office, Boston, MA.

Background and Purpose

In February of 1944, the M/V EMPIRE KNIGHT, a 428 foot British freight ship ran aground on Boon Island Ledge, Maine, and later broke into two sections. The stern section, which includes the ship's cargo holds, sank in approximately 260 feet of water, one and one half miles from Boon Island Ledge. In August of 1990, the Coast Guard Captain of the Port, Portland, Maine (COTP) became aware of the existence of a "Proposed" Plan of Stowage for the wreck of the M/V EMPIRE KNIGHT which indicated that 221 flasks containing mercury may have been loaded into cargo hold number 5. The COTP issued a Captain of the Port Order to a company then conducting salvage operations, requiring them to refrain from further salvage activity until the situation could be more thoroughly assessed.

Over the next year, the COTP convened an Incident Specific Regional Response Team (RRT) consisting of representatives from the Maine Department of Environmental Protection, the New Hampshire Department of Environmental Services, the Maine Department of Marine Resources, the New Hampshire Department of Fish and Game, the U.S. Environmental Protection Agency, the U.S. National Oceanic and Atmospheric Administration, and the U.S. Coast Guard to gather information about the M/V EMPIRE KNIGHT and its cargo, and to identify the possible courses of action.

During the summer of 1992, the Maine Department of Marine Resources collected samples of bottom sediment around the stern portion of the EMPIRE KNIGHT to determine if mercury was present and, if so, to what extent. Laboratory analyses of the samples revealed levels of mercury consistent with the background levels with some exceptions, rendering them inconclusive on whether mercury had been on board the M/V EMPIRE KNIGHT at the time of its sinking.

In the spring of 1993, the COTP, in consultation with the RRT, determined that the possible presence of mercury on board the M/V EMPIRE KNIGHT constituted an imminent and substantial threat to the environment. The RRT agreed that an on site assessment of the stern section of the M/V EMPIRE KNIGHT was necessary to determine the presence of the mercury, and to assess whether it would be necessary, feasible, and safe to remove it if on board.

In August, 1993, the COTP, as the Federal On Scene Coordinator, initiated a $6.8 million emergency site assessment and removal operation. The presence of mercury on board was quickly confirmed. All 221 manifested mercury flasks were located in cargo hold number 5 and were recovered, but were found in badly deteriorated condition and were nearly empty. Loose mercury was discovered throughout cargo hold number 5, and approximately 1,230 pounds were recovered. Nearly 2,200 pounds of mercury-contaminated debris and cargo residue were also recovered.

Extensive sampling and analysis was conducted throughout the operation. Samples included bottom sediments in the vicinity of the stern section of the wreck and various species of fish and shellfish from the area around the vessel. From within cargo hold number 5, samples of the sediment, scrapings off the cargo, and fish and shellfish were taken.

In October, 1993, the operation was suspended due to deteriorating weather conditions. At that time, an estimated 16,000 pounds of mercury remained unaccounted for and is believed to be spread throughout the cargo residue of cargo hold number 5.

In February, 1994, the RRT was reconvened by the COTP to consider the results of the sample analyses and to determine the best course of action. The sample analysis results showed that concentrations of mercury were elevated inside cargo hold number 5, but dropped off quickly to background levels in the bottom sediments outside the hold. No contamination of fish or shellfish was identified with the exception of those specimens collected from within cargo hold number 5. The key issue then became the long term fate of mercury in a marine environment. The RRT decided to submit the sample results to NOAA and an independent scientist with a request for an analysis of the available data and scientific literature and to develop a forecast of the long term behavior of the mercury on site.

In August, 1994, a commercial salvage company that had remained prohibited from conducting salvage operations by the Captain of the Port Order, submitted to the COTP a request to lift the order. The company also submitted a proposal to conduct salvage operations on the wreck of the M/V EMPIRE KNIGHT.

In September, 1994, the RRT was again reconvened to consider the reports submitted by NOAA and the independent scientist.

While the reports differed in details, they concurred in concluding that the site was currently stable and that the mercury did not pose a substantial threat to the environment. Both reports were written, however, under the presumption that the wreck of the M/V EMPIRE KNIGHT would remain essentially undisturbed with the exception of its gradual decomposition from natural forces. Both reports further agreed that the probability of a catastrophic release of mercury to the environment as a result of activity on or near the M/V EMPIRE KNIGHT was low. The RRT reached the conclusion that the wreck of the M/V EMPIRE KNIGHT did not meet the condition of "imminent and substantial" threat under CERCLA and that additional emergency response operations would not be conducted. The RRT further agreed to develop a plan for long-term monitoring of the site with the intent of detecting any changing conditions.

In August, 1995, the RRT reconvened to discuss the issue of allowing any type of activity on or near the wreck of the M/V EMPIRE KNIGHT. Consensus was reached that all information currently before the RRT indicated that the predictable risk of activity on the wreck resulting in mercury contamination of the environment was low. It was further agreed that, although the risk of a release was low, the foreseeable consequences of that release could be devastating to the local environment, the public health, and the economy of the region's fisheries. The unanimous recommendation of the RRT was to prohibit any activity on or near the stern section of the wreck of the M/V EMPIRE KNIGHT. This safety zone is being proposed as a result of that meeting.

Discussion of Proposed Amendments

This Safety Zone is proposed to protect the environment, the local economy, and the public health and welfare from the possible adverse consequences associated with the voluminous mercury cargo that remains on board the M/V EMPIRE KNIGHT. The United States Coast Guard, in consultation with the Incident Specific Regional Response Team, has determined that, although the current level of threat from the mercury cargo is low, any disturbance of the wreck site, whether intentional or unintentional, poses an unacceptable risk to the environment and to human health. The safety zone will prohibit all vessels and persons from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations within 1000 yards of the stern portion of the wreck of the M/V EMPIRE KNIGHT from the water's surface to the seabed floor except as authorized by the Captain of the Port, Portland, Maine.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the proposal has no significant effect on shipping, and its impact on fishing is minimal as it removes a small portion (less than one square mile) of the available fishing grounds from active fishing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.(e) of the Coast Guard's procedures for implementing the National Environmental Policy Act (Commandant Instruction M16474.1B), this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Section 165.141 is added to read as follows:

§ 165.141 Safety Zone; Sunken vessel M/V EMPIRE KNIGHT, Boon Island, ME.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within 1,000 yards of the stern section of the sunken vessel EMPIRE KNIGHT, in approximate position 43°06'19" N, 70°27'09" W, and extending from the water's surface to the seabed floor. (Datum: NAD 83)

(b) *Regulations.* In accordance with the general regulations governing safety zones contained in § 165.23, all vessels

and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Captain of the Port, Portland, Maine. Innocent transit through the area within the safety zone is not affected by this section and does not require the authorization of the Captain of the Port.

Dated: September 15, 1995.

Burton S. Russell,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 95–27866 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

Coalbed Methane

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that it is extending the public comment period on a Notice of Proposed Rule, which was published in the **Federal Register** on September 15, 1995 (60 FR 47920). The proposed rule would add a new part to the oil and gas leasing regulations. This regulation is intended to encourage the production of coalbed methane in States where production has been impeded by conflicts in ownership. In response to public requests for additional time, BLM extends the comment period 15 days from November 14, 1995, to November 29, 1995.

DATES: Comments should be submitted by November 29, 1995. Comments received or postmarked after the above date may not be considered in the decision making process on the final rule.

ADDRESSES: Comments should be sent to: Director (420), Bureau of Land Management, Room 401 LS, 1849 C Street NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include "attn:AC27" and your name and address in your internet message. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David R. Stewart, Bureau of Land Management, Eastern States Office at (703) 440–1728.

Dated: November 6, 1995.

W. Hord Tipton,

Assistant Director, Resource Use and Protection.

[FR Doc. 95–27966 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 15

[CGD 95–062]

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Revised by the 1995 Amendments to It

AGENCY: Coast Guard, DOT.

ACTION: Notice of inquiry.

SUMMARY: The Coast Guard seeks information that may be useful in calculating the costs and benefits of implementing the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. This information will be useful in evaluating alternative regulatory approaches, especially where the 1995 Amendments allow some flexibility in how particular new requirements can be implemented to improve the training and assessment of candidates for merchant mariners' licenses and endorsements.

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 95–062], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the 1995 Amendments to STCW may be obtained by writing Commandant (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or by calling (202) 267–0214, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. Requests may also be submitted by facsimile at (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Standards Evaluation and Development Division (G–MES), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–6220.

SUPPLEMENTARY INFORMATION:

Request for Information

The Coast Guard encourages interested persons to participate in this inquiry by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this inquiry [CGD 95–062] and the specific section or question of this document to which each comment or question applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period.

The Coast Guard held a public meeting on August 31, 1995, in Washington, DC. Persons may request additional public meetings by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that another opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public meeting at a time and place announced by a later notice in the **Federal Register**.

Drafting Information. The principal persons involved in drafting this document are Mr. Randall N. Crenwelge, Project Manager, Standards Evaluation and Development Division (G–MES), and Mr. Patrick J. Murray, Project Counsel, Regulations and Administrative Law Division (G–LRA).

Background and Purpose

On July 7, 1995, a Conference of Parties to STCW, meeting at the headquarters of the International Maritime Organization (IMO) in London, adopted a package of amendments to STCW. The amendments will enter into force on February 1, 1997, unless a third of the parties to the Convention, or parties representing over 50 percent of the world's shipping tons, subject to them by August 1, 1996. Because they were adopted unanimously by the Conference, no objections are expected.

The Coast Guard held a public meeting on August 31, 1995 [60 FR 39306 (August 2, 1995)], to discuss the outcome of the 1994 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW).

Discussion of Prospective Rules

The Coast Guard must consider how to revise the current rules on licensing and documentation, as well as those on workhours and watchkeeping [46 CFR parts 10, 12, and 15], to reflect the requirements of the 1995 Amendments to STCW. The most important changes for implementation are these:

1. All candidates for STCW certificates (for instance, licenses and documents for service on seagoing ships) will have to undergo approved training and assessment of competence.

2. Mariners engaged in training, whether aboard ship or at shore-side facilities, will have to meet standards of IMO. All training will have to meet standards, which will be subject to a system of approval and independent monitoring. Many mariners will have to use training-record books.

3. Assessment of competence [section A–I/6 of the STCW Code] will involve both examination, to verify knowledge and understanding of essential subjects, and demonstration, to verify practical skills. Either kind of assessment will require documented proof. Persons engaged in either kind, whether aboard ship or at shore-side facilities, will themselves undergo assessment against standards.

4. Simulators used in training or assessment will have to meet certain standards of performance.

5. Mariners employed or engaged on seagoing ships (all persons aboard except passengers) will have to undergo familiarization training to ensure that they can safely handle themselves in an emergency or a life-threatening situation. Persons responsible for safety or for preventing pollution—whether or not part of the required complement—will have to acquire further basic training in safety, including fire-fighting. Persons responsible for medical care must also meet certain standards.

6. All persons employed or engaged aboard seagoing ships must meet standards of medical fitness.

7. Ratings for members of navigational watches on ships of 500 gross tons or more, or for members of engine-room watches or for those designated to perform duties in periodically unmanned engine-rooms on seagoing ships powered by propulsion machinery of 750 kW [1,000 hp] or more, must come into line with the 1995 Amendments to STCW. This revises current rules and their standards respecting even unlicensed mariners.

8. Watch-standing personnel must receive a minimum of rest. Masters must arrange watch-rotations adequate for safety.

9. Suspension-and-revocation procedures must enable the taking of appropriate action against a license or document whose holder has either (a) allowed the performance of a shipboard function by a non-holder of a required STCW certificate or (b) certified that a non-holder has properly demonstrated a skill when either (i) the non-holder has not properly demonstrated a skill or (ii) the holder has not observed the non-holder properly demonstrate a skill.

10. Companies must ensure that new crewmembers are familiar with ship-specific equipment, procedures, and other arrangements necessary for performing their jobs.

11. Tankers and roll-on/roll-off (ro-ro) passenger ships needs renewed scrutiny, through the prism of STCW.

12. New policy will be necessary to implement expanded port-state control.

Beyond the above, specific revisions will be necessary to ensure that requirements for being issued a license or document under domestic regulations fully meet those of the 1995 Amendments to STCW. For example, officers of the navigational watch will need training in the use of Automatic Radar Plotting Aids (ARPA) for service on ships fitted with ARPA. Also, such officers will have to hold radio operators' certificates valid under the Global Maritime Distress and Safety System (GMDSS) for service in ships operating in the GMDSS.

Likewise, in revising domestic requirements, the Coast Guard should consider harmonizing the license categories with structure outlined in the 1995 Amendments to STCW, which is as follows:

Deck Department

1. Officers of the navigational watch on ships of 500 gross tons or more.
2. Officers of the navigational watch on ships of less than 500 gross tons not engaged on near-coastal voyages.
3. Officers of the navigational watch on ships of less than 500 gross tons engaged on near-coastal voyages.
4. Masters and Chief Mates on ships of 3,000 gross tons or more.
5. Master and Chief Mates on ships of between 500 and 3,000 gross tons.
6. Masters on ships of less than 500 gross tons not engaged on near-coastal voyages.
7. Masters on ships of less than 500 gross tons engaged on near-coastal voyages.

Engine Department

1. Officers in charge of the engineering watch in manned engine-rooms of more than 750 kW [1,000 hp].
2. Designated duty engineers in periodically unmanned engine-rooms of more than 750 kW [1,000 hp].
3. Chief engineer officers of ships powered by main propulsion machinery of 3,000 kW [4,000 hp] or more.
4. Second engineer officers of ships powered by main propulsion machinery of 3,000 kW [4,000 hp] or more.
5. Chief engineer officers of ships powered by main propulsion machinery of between 750 kW [1,000 hp] and 3,000 kW [4,000 hp].
6. Second engineer officers of ships powered by main propulsion machinery of between 750 kW [1,000 hp] and 3,000 kW [4,000 hp].

Questions

To adequately address the cost and benefits of these issues, the Coast Guard needs more information. Public response to the questions contained in this notice will assist the Coast Guard in developing a more complete and carefully considered rulemaking. Responses to the following questions would be particularly useful in determining the economic impact in terms of costs and benefits of a future rulemaking.

What *new* costs would be imposed on you as employee, employer, training institution, union, or other affected member of the maritime industry, if you had to comply with the following conditions?

1. If all candidates for a license and upgrade as master or mate on a seagoing (e.g., ocean or near-coastal) ship were required to—

a. Hold a GMDSS radio-operator certificate, unless they were serving on ships not required to participate in the GMDSS (i.e., less than 300 gross tons);

b. Complete simulator training in the use of ARPA, if they were serving on ships fitted with ARPA;

c. Complete training in techniques of personal survival;

d. Complete training in personal safety and social responsibility;

e. Demonstrate competence in bridge-teamwork procedures; and

f. Demonstrate familiarity with the contents of the IMO Merchant Ship Search and Rescue Manual (MERSAR).

2. If all seafarers (i.e., all persons employed on board other than passengers) were required to receive familiarization training or instruction on what to do in an emergency?

3. If all seafarers with responsibility for safety or for preventing pollution (including all subject to manning requirements or members of fire parties) had to receive basic safety-training in fire-fighting, first aid, personal survival, and personal safety?

4. If all candidates for engineering licenses and upgrades for service on seagoing ships were required to demonstrate competence in electronic an control engineering (some training institutions or schools call this "automated-process-control engineering")?

5. If all candidates for deck and engineer licenses and upgrades were required to demonstrate competence in first aid aboard ship?

6. If all instructors were required to receive guidance in instructional techniques?

7. If all candidates' competence and proficiency in a skill or area of knowledge had to be evaluated by an "assessor" (one that evaluates a candidate's competence and proficiency in a skill or area of knowledge)?

8. If all assessors were required to receive guidance in assessment methods and practice?

9. If all training and assessment were subject to a qualify-standards system that included independent monitoring and evaluation to ensure that stated objectives were being achieved? (Please address costs of development, implementation, and operating, as well as other costs you consider important.)

10. If companies that own or operate seagoing ships were required to (a) maintain records on their seafarers' experience, training, medical fitness, and competency; (b) ensure that those persons newly assigned to their ships were familiarized with their specific duties there, the ships' arrangements, and their equipment; and (c) ensure that the ships' complements can coordinate their activities in an emergency?

11. If watchkeeping personnel on seagoing ships had to get not less than 10 hours of rest a day, including not less than 6 continuous hours, with only strictly limited exceptions?

12. If simulator training were required or necessary for compliance with the 1995 Amendments to STCW? (Please address costs of acquisition and operating, and costs to modify existing programs.)

13. If new training courses needed development to meet some requirements? (Please estimate the complete cost of development and state a range of costs.)

The above list may not be complete. It should suggest the scope and nature of requirements that must be addressed in the implementation of the 1995 Amendments to STCW. The Coast Guard also seeks comments on the impacts associated with requiring practical demonstration in addition to an exam.

The Coast Guard would also appreciate having a breakdown of costs, beyond these costs, associated with courses that currently offer training in the areas mentioned in questions 1 through 11.

The Coast Guard also requests views on the distribution of new costs that may result from implementation of the 1995 Amendments to STCW. For example, to what degree might training costs be borne by employers, schools, employees, unions, or individuals as prospective future employees?

In responding to the above questions, please identify your status or affiliation in the marine industry (e.g., owner-operator, union, maritime school, seafarer), and please explain the basis on which your costs were calculated.

Dated: November 1, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–27869 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

48 CFR Parts 216, 217, 233, 237, 247, 250, and 252

[DFARS Case 95–D703]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting and Other Miscellaneous Provisions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify guidance on multiyear contracting; implement sections of the Federal Acquisition Streamlining Act of 1994 pertaining to payment of claims and Civil Reserve Air Fleet Contractors; and conform the DFARS to recent revisions to the FAR pertaining to determinations and findings and personal services contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 12, 1996 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D703 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, at (703) 602–0131. Please cite DFARS Case 95–D703.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. This proposed rule implements the following sections of the Act:

Section 2301, Certification of Contract Claims—This section of the Act repeals 10 U.S.C. 2410e and revises 10 U.S.C. 2410. The new statutory language aligns DoD claims certification requirements with those for civilian agencies (as implemented in the FAR at 33.207), thereby eliminating the need for DFARS Subpart 233.70 and the associated clause at DFARS 252.233–7000, both of which are deleted by this proposed rule. The rule also amends DFARS 233.205 and 250.102 to add references to 10 U.S.C. 2410(b), which places restrictions on legislative payment of claims.

Section 3031, Definitions; Section 3032, Consolidation of Provisions Relating to Contractual Commitment of Aircraft; and Section 3033, Use of Military Installations by Contractors—These sections of the Act expand upon existing coverage in United States Code governing the use of Civil Reserve Air Fleet (CRAF) Contractors, principally upon the relationship between the DoD and CRAF contractors. The proposed rule adds a new DFARS subpart at 247.70 to address the Act's definition of a CRAF contractor, the obligations of a CRAF contractor to the Government, and how the CRAF program impacts the Government's choice of air transportation sources.

This proposed rule also reorganizes and clarifies DFARS guidance pertaining to multiyear contracting in Subpart 217.1. The revised coverage contains DoD-unique statutory multiyear contracting requirements applicable to services, supplies, weapon systems, and economic order quantity procurements.

In addition, the proposed rule amends the DFARS as follows to conform to recent revisions to the FAR: (1) The rule deletes DFARS coverage at 216.301–3 which addresses a determination and findings requirement for the use of the cost-reimbursement contracts that was eliminated from the FAR by Item IV of Federal Acquisition Circular 90–30 (60 FR 37772, July 21, 1995); (2) The rule amends DFARS coverage on personal services contracts at 237.104 to remove the reference to "GS–18," Although "GS–18" pay rates now correlate to "SES 6" under current Federal grade structures, recent changes to 5 CFR 304.105(a) do not allow increased payments to certain professional categories. The proposed change to DFARS 237.104 is related to the FAR revisions pertaining to expert services published as Item II of Federal Acquisition Circular 90–31 (60 FR 42648, August 16, 1995), as DFARS 237.104 establishes a "cap" on the rates that can be paid such experts.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule primarily reorganizes existing DFARS coverage on multiyear contracting for clarity; adds a new subpart which only applies to the acquisition of air transportation; and makes minor revisions to conform the DFARS to statutory or regulatory requirements. An initial regulatory flexibility analysis, therefore, has not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D703 in correspondence.

C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252 be amended as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Parts 216, 217, 233, 237, 247, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

216.301 and 216.301–3 [Removed]

2. Sections 216.301 and 216.301–3 are removed.

PART 217—SPECIAL CONTRACTING METHODS

3. Subpart 217.1 is revised to read as follows:

Subpart 217.1—Multiyear Contracting

Sec.
217.101 Definitions.
217.170–1 All multiyear contracts.
217.170–2 Multiyear contracts used to purchase services.
217.170–3 Multiyear contracts used to purchase supplies.
217.170–4 Multiyear contracts for weapon systems.
217.170–5 Multiyear contracts that employ economic order quantity procurement.

217.101 Definitions.

Advance procurement, as used in this subpart, means an exception to the full funding policy which allows acquisition of long leadtime items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, and components as well as costs associated with the further processing of those materials, parts, and components.

217.170–1 All multiyear contracts.

(a) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items procured (10 U.S.C. 2306b(j)).

(b) Before a multiyear contract is awarded, the cost of that contract shall be compared against the cost of an annual procurement approach, using a present value analysis. The multiyear contract shall not be awarded unless the analysis shows it results in the lower cost (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts).

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 10 days before termination of any multiyear contract authorized by Congress (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts.)

217.170–2 Multiyear contracts used to purchase services.

(a) *Limitations.*

(i) *10 U.S.C. 2306(g).*

(A) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(4) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(1) Does not extend beyond five years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(ii) *10 U.S.C. 2829.*

(A) DoD may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(B) This authority may be used as long as the contract—

(1) Does not extend beyond four years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of a multiyear contract for services requires a written determination by the head of the agency (10 U.S.C. 2306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(1) A substantial initial investment in plant or equipment; or

(2) The incurrence of substantial contingent liabilities for the assembly, training or transportation of a specialized work force; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic-lot purchases and more efficient production rates).

217.170–3 Multiyear contracts used to purchase supplies.

(a) *Applicability.* This subsection applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.107–4.

(b) A multiyear contract for supplies may be used if, in addition to the conditions listed in FAR 17.105–1 (b)(1) through (5), the use of such contract will promote the national security of the United States.

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before the contracting officer awards—

(1) A multiyear contract containing a cancellation ceiling in excess of $100 million (10 U.S.C. 2306b(g)); or

(2) A multiyear contract including an unfunded contingent liability in excess of $20 million (section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts).

(d) Agencies shall establish reporting procedures to meet the requirements of paragraph (c) of this subsection. Submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)/DP), and to the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

217.170–4 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(a), and subject to the conditions in paragraph (b) of this subsection, the head of the agency may enter into a multiyear contract for—

(1) A weapon system, associated items and services, and logistics support for that weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates. See 217.170–5 regarding economic order quantity procurement.

(b) The following conditions must be satisfied before a multiyear contract may be awarded under the authority described in paragraph (a) of this subsection:

(1) The Secretary of Defense certifies to Congress that the current five-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A));

(2) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B));

(3) If the value of the multiyear contract exceeds $500,000,000, the applicable DoD appropriations act specifically provides that a multiyear contract may be used to procure the particular system or system component (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts); and

(4) All other requirements of law are met and there are no other statutory restrictions on the use of a multiyear contract for the specific system or component, or statute provides for award of multiyear contracts (Section 9021, Public Law 101–165, and similar sections in subsequent Defense appropriations acts). One such restriction may be achieving specified cost savings. If the agency finds, after negotiations with the contractor(s) that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details about the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(A&T)/DP for transmission to Congress via the Secretary of Defense and the President (10 U.S.C. 2306b(i)(2)).

217.170–5 Multiyear contracts that employ economic order quantity procurement.

The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before awarding—

(a) A multiyear contract providing for economic order quantity purchases in excess of $20 million in any year; or

(b) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any year (Section 9021, Public Law 101–165 and similar sections in subsequent Defense appropriations acts).

PART 233—PROTESTS, DISPUTES, AND APPEALS

4. Section 233.205 is added to read as follows:

233.205 Relationship of the Act to Public Law 805–804.

Limitation on payment. For payment of either a claim under the Contract Disputes Act of 1978 or equitable adjustment or other particular relief under Public Law 85–804, see 10 U.S.C. 2410(b).

Subpart 233.70—[Removed]

5. Subpart 233.70 is removed.

PART 237—SERVICE CONTRACTING

6. Section 237.104 is amended by revising paragraph (f)(i) to read as follows:

237.104 Personal services contracts.

* * * * *

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS–15 (see 5 CFR 304.105(a)).

* * * * *

PART 247—TRANSPORTATION

7. Subpart 247.70 is added to read as follows:

Subpart 247.70—Air Transportation by Civil Reserve Air Fleet Contractors

Sec.

247.7000 Scope of subpart.
247.7001 Definitions.
247.7002 Applicability.
247.7003 Air transportation of DoD passengers and cargo.
247.7004 Civil Reserve Air Fleet.

247.7000 Scope of subpart.

This subpart implements the National Security Decision Directive Number 280, National Airlift Policy, dated June 24, 1987, DoD Policy Memorandum on Transportation and Traffic Management, dated June 16, 1994, and 10 U.S.C. 9513, Use of Military Installations by Civil Reserve Air Fleet (CRAF) Contractors. The national defense airlift objective is to ensure that military and civil airlift resources will be able to meet defense mobilization and deployment requirements in support of U.S. defense and foreign policy commitments. In support of this objective, DoD requirements shall be satisfied by the procurement of airlift from commercial air carriers participating in the CRAF program.

247.7001 Definitions.

As used in this subpart—

CRAF contractor means a U.S. civilian air carrier holding a certificate under Title 49 United States Code, Section 41102, which participates in the CRAF program. This definition complies with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, Fly American Act), as implemented in FAR subpart 47.4.

CRAF participation means acceptance of the aircraft offered by the contractor into the CRAF program prescribed by the Commander-in-Chief, U.S. Transportation Command, and contractor satisfaction of the other requirements of that program.

CRAF Program means a cooperative plan developed by DoD with the U.S. civilian air carrier industry to augment DoD organic airlift capability during national emergencies and defense-oriented situations.

247.7002 Applicability.

This subpart applies to all contracting methods used to acquire air transportation for DoD passengers or property. The contract methods affected include agreements (freight forwarding agreements), bills of lading, transportation requests, tenders, and other transportation forms as well as more traditional contract methods such as contracts and purchase orders.

247.7003 Air transportation of DoD passengers and cargo.

(a) CRAF contractors shall be used to transport DoD passengers and cargo by air unless the contracting officer determines—

(1) Available CRAF contractor airlift is not suitable and responsive to the requirement;

(2) Law, regulation, or international agreement precludes the use of a CRAF contractor; or

(3) The cost of transportation by a CRAF contractor is unreasonable.

(b) If the total transportation charge exceeds $500,000, the contracting officer shall obtain the concurrence of U.S. Transportation Command (USTRANSCOM/TCJA) and furnish a copy of the determination described in paragraph (a) of this section to USTRANSCOM/TCJA before using a non-CRAF carrier.

(c) Each contract or agreement shall provide for immediate termination in the event a contractor fails to maintain CRAF membership.

247.7004 Civil Reserve Air Fleet.

Contractor's requests for membership in the CRAF program are processed by the Assistant for Civil Air, Air Mobility Command (AMC), Scott AFB IL 62225–5001. Participation requires the offer and commitment of contractor owned or controlled aircraft, suitable and responsive to military requirements, to the CRAF program and the execution of a CRAF contract. The Assistant for Civil Air, AMC, maintains a current list of CRAF contractors and may be contacted regarding contractor eligibility and membership.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

8. Section 250.102 is added to read as follows:

250.102 Policy.

Limitation on payment. Prior to payment of either an equitable adjustment or other particular relief under Public Law 85–804, see 10 U.S.C. 2410(b).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.233–7000 [Removed]

9. Section 252.233–7000 is removed.

[FR Doc. 95–27724 Filed 11–9–95; 8:45 am]
BILLING CODE 5000–04–M

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48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Ground and Flight Risk

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify who approves flight crew members, increase the amount of the contractor's financial responsibility for loss or damage to the aircraft from $1,000 to $25,000, and make other minor changes in the clauses entitled "Ground and Flight Risk" and "Aircraft Flight Risks."

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 12, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D028 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the clauses at DFARS 252.228–7001, Ground and Flight Risk, and 252.228–7002, Aircraft Flight Risks, based on the recommendations of a Tri-Service Process Review Team, which conducted an intensive 4-month study of contractor flight operations. The most substantive issues relate to approval of the flight crew members and the amount of the contractor's financial responsibility for loss or damage to the aircraft. Procedures for authorizing contractor's flight crew members and flight are clearly delegated to the Government Flight Representative in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations." With regard to the contractor's financial responsibility for loss or damage to the aircraft, the proposed rule increases the amount from $1,000 to $25,000, because $1,000 does not adequately compensate the Government for the processing costs required to recover the $1,000, and $1,000 does not operate as an economic incentive for the contractor to adhere to prudent care of property.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there are only a limited number of defense aviation contractors to which these DFARS clauses apply, and few of those contractors are small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D028 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require OMB approval under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Part 252 be amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 252.228–7001 is amended by revising paragraphs (d)(2), (e), (i) introductory text, (i)(1), (i)(2) introductory text, and (k) to read as follows:

252.228–7001 Ground and flight risk.

* * * * *

(d) * * *

(2) Is sustained during flight if the flight crew members have not been approved in writing as delineated in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C; and Defense Logistics Agency Manual 8210.1);

* * * * *

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first $25,000 of loss or damage to the aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $25,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

* * * * *

(i) If prior to delivery and acceptance by the Government, the aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the aircraft. If this contract is terminated with respect to the aircraft, the Contractor shall be paid the contract price for the aircraft (or if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

* * * * *

(k) The Contractor agrees to be bound by the operating procedures contained in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" in effect on the date of contract award.

3. Section 252.228–7002 is amended by revising paragraphs (c) introductory text and (e) to read as follows:

252.228–7002 Aircraft flight risks.

* * * * *

(c) Unless the flight crew members previously have been approved in writing as delineated in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C; and Defense Logistics Agency Manual 8210.1), the Contractor shall not be—

* * * * *

(e) The Contractor agrees to be bound by the operating procedures contained in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" in effect on date of contract award.

[FR Doc. 95–27723 Filed 11–9–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Extension of Comment Period on Reports and Other Data Pertaining to the Listing of the Bruneau Hot Springsnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on reports and other data pertaining to the listing of the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) is extended. The notice of availability opening the public comment period was published on September 12, 1995 (60 FR 47339), which opened the comment period until November 13, 1995. This document extends the comment period until December 15, 1995.

DATES: The comment period is extended until December 15, 1995. Any comments and materials received by the closing date will be considered in the final determination.

ADDRESSES: Comments and materials concerning the reports and other information pertaining to the listing of the Bruneau hot springsnail should be submitted to the U.S. Fish and Wildlife Service, Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. Reports and other data cited in this notice, and public comments and other materials received will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the address listed above (telephone 208/334–1931, facsimile 208/334–9493).

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1993, the U.S. Fish and Wildlife Service (Service) published a final rule in the **Federal Register** determining the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) to be an endangered species (58 FR 5946). In its decision to list the springsnail the Service relied, in part, on a provisional draft of a U.S. Geological Survey (USGS) report (Berenbrock 1992) analyzing the hydrology of the geothermal aquifer in the Bruneau Valley area. The USGS provided the Service with the draft report, but did not release it to the public and requested that the Service not release the report to the public, pending agency review and approval.

On May 7, 1993, the Idaho Farm Bureau Federation Owyhee County Farm Bureau, Idaho Cattleman's Association, and Owyhee County Board of Supervisors challenged the listing decision on several grounds in a lawsuit filed in United States District Court for the District of Idaho. The plaintiffs argued that the Service committed a number of procedural violations during the listing process, including not allowing the public to review the draft USGS report. On December 14, 1993, the district court determined that the Service committed several procedural errors and set aside the final rule listing the springsnail as an endangered species.

The district court decision was appealed to the United States Court of Appeals for the Ninth Circuit by two intervening conservation groups, the Idaho Conservation League and Committee for Idaho's High Desert. On June 29, 1995, the appellate court overturned the district court decision and reinstated the Bruneau hot springsnail to the endangered species list. However, the appellate court concluded that the Service should have made the draft USGS report (i.e., Berenbrock 1992) available for public review, as the Service relied largely on this report to support the final listing rule. The appellate court directed the Service to provide an opportunity for public comment on the USGS report and other relevant information, and to reconsider its listing decision. The notice of availability complied with the court's direction.

On October 24, 1995, Susan E. Buxton requested on behalf of her client (John B. Urquidi, J & J Ranches, Bruneau, Idaho) an extension in the comment period until November 24, 1995. Ms. Buxton requested the extension in order that she and her client may review all available data. Because the Service has no objection to this short extension, the comment period is extended until December 15, 1995.

Available Reports and Data

In addition to the draft USGS report, which was finalized in August 1993 (i.e., Berenbrock 1993), the Service has additional reports and information pertinent to the listing decision received since the original listing rule was published January 25, 1993. The following reports, plans, and letters contained in Service files, including other non-cited information, are available for public review and comment:

Berenbrock, C. 1992. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations, Boise, Idaho. Preliminary report.

Berenbrock, C. 1993. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations Report 93–4001, Boise, Idaho.

Bruneau Valley Coalition, Inc. 1995. Habitat maintenance and conservation plan for the Bruneau hot springsnail, January, 1995. Unpublished plan.

Bruneau Valley Coalition, Inc. 1995. Proposed amendment to the "Threatened and Endangered Species" section of the Interim Comprehensive Land Use Plan for the federally and state managed lands in Owyhee County. Unpublished amendment.

Idaho Water Resources Research Institute. 1994, Bruneau hot springs aquifer restoration report: a proposal. Unpublished report, University of Idaho, Moscow, Idaho.

Lee, J.A. 1994. Summary report for the control survey of the Bruneau hot springsnail. Unpublished report, Bureau of Land Management, Boise District Office, Boise, Idaho.

Mladenka, G.C. 1993. Report on the 1993 Bruneau hot springsnail site survey. Unpublished report.

Mladenka, G.C. 1995. Bruneau Hot Springs invertebrate survey. Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

Royer, T.V. and G.W. Minshall. 1993. 1993 Annual Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

U.S. Geological Survey. 1993. Unpublished letter addressing error in estimating natural recharge to geothermal aquifer system, and status of Bruneau-area ground water-levels and spring discharges. Boise, Idaho.

U.S. Geological Survey. 1995a. Unpublished letter summarizing results of Bruneau-area ground water-level and spring discharge monitoring data through December 1994. Boise, Idaho.

U.S. Geological Survey. 1995b. Unpublished letter commenting on Idaho Water Resources Research Institute's report and summarizing provisional, spring discharge data collected from June 1994 through July 1995 from three hot springs above Hot Creek, Idaho.

Varricchione, J.T. and G.W. Minshall. 1995. 1994 Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Technical Bulletin No. 95–14, Idaho Bureau of Land Management.

Varricchione, J.T. and G.W. Minshall. 1995. Gut content analysis of wild *Gambusia* and *Tilapia* in Hot Creek, Bruneau, Idaho. Unpublished report, Idaho State University, Pocatello, Idaho.

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531–1544.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 6, 1995.

H. Dale Hall,

Acting Regional Director, Region I, U.S. Fish and Wildlife Service.

[FR Doc. 95–27961 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 218
Monday, November 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held December 7, 1995, 2:00 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 6800, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1995, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: November 6, 1995.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 95–27937 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On October 26, 1995, Rancho El Aguaje, Rancho El Toro and Rancho Guacatay filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of Antidumping Duty Administrative Review made by the International Trade Administration respecting Fresh Cut Flowers from Mexico. This determination was published in the **Federal Register** on September 26, 1995 (60 FR 49569). The NAFTA Secretariat has assigned Case Number USA–95–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedures for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 the Agreement, on October 26, 1995, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 27, 1995);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 11, 1995); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 6, 1995.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 95–27965 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Final Certification for the Consolidation of Galveston Weather Service Office and Los Angeles Residual Weather Service Office

ACTION: Notice.

SUMMARY: On June 26, 1995 (60 FR 32943), the National Weather Service (NWS) published proposed consolidation certifications for the consolidations of:

(1) The Galveston Weather Service Office (WSO) into the future Houston/Galveston Weather Forecast Office (WFO); and

(2) The residual Los Angeles WSO into the future Los Angeles WFO in accordance with Pub. Law 102–567. The public had 60-days in which to comment on these proposed certifications. After considering comments received and consulting with the Modernization Transition Committee (MTC), the NWS has determined that these actions will not result in any degration of service to the affected areas and has so certified. In accordance with Pub. Law 102–567,the Secretary of Commerce transmitted these certifications to the Congress, and the NWS is now publishing the final certifications together with a summary of the supporting documentation.

EFFECTIVE DATE: November 13, 1995.

ADDRESSES: Requests for copies of the final consolidation certification package(s) should be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, ME 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: The National Weather Service is consolidating its Galveston WSO with the future Houston/Galveston WFO and its Residual Los Angeles WSO with the future Los Angeles WFO. Based on the recommendations of the respective Meteorologist-in-Charge (MIC), on September 26, 1995, the Assistant Administrator of the NWS certified that these consolidations will not result in any degradation of service to the affected service areas as required by section 706 of the Pub. Law 102–567. On October 23, 1995 the Secretary of Commerce transmitted these certifications to Congress. The NWS is now completing the certification requirements by publishing the final consolidation Certifications in the **Federal Register.**

Published with this notice are (1) the Certifications by the Assistant Administrator of the NWS; (2) memorandum from Bill Read, MIC of future WFO Houston/Galveston, endorsed by Harry S. Hassel, Director, Southern Region; and (3) memorandum from Todd Morris, MIC of future WFO Los Angeles, endorsed by Dr. Thomas D. Potter, Director, Western Region. These memoranda recommend certification, summarize the basis for the recommendation, and set forth the supporting documentation required by the Pub. Law 102–567. However, this supporting documentation is too voluminous to publish with this notice and can be obtained through the contact listed in **ADDRESSES.** For each certification this material includes:

(1) A Description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(2) A detailed comparison of services provided within the service area and the services to be provided after such action;

(3) A description of any recent or expected modernization of NWS operations which enhance services in the service area;

(4) An identification of any area within Texas or California which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(5) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report, User Confirmation of Services Report, and the radar Decommissioning Readiness Report;

(6) A letter appointing the liaison officer; and

(7) The recommendations of the MTC made at its June 14, 1995 meeting and the final consultation made at the September 14, 1995 MTC meeting.

The memoranda recommending certification considered the public comment received on the proposed certification during the 60-day comment periods. One comment was received. This comment and response is set forth here for reference:

Comment: Mr. Peter J. Nuhn objected to the proposed consolidation certifications of the Galveston and residual Los Angeles Weather Service Offices (WSO). The comment set forth three concerns as the basis for this objection:

(1) These proposed consolidations violate the Weather Service Modernization Act, Public Law 102–567, and the *Strategic Plan for Modernization and Associated Restructuring of the National Weather Service* by proceeding with these consolidation certifications before all new technologies (ASOS, NEXRAD, GOES-Next and AWIPS) have been deployed, made operational, and demonstrated to not cause a degradation of service.

(2) It is premature to recommend consolidation certifications before it can be demonstrated that the NEXRADs involved are meeting availability requirements.

(3) It is premature to recommend consolidation certifications until staff at future WFOs Houston and Los Angeles have been fully trained on new satellite products being generated by GOES-Next.

Response: The NWS is in compliance with the Weather Service Modernization Act. The NWS proposes these consolidation certifications in full compliance with the agency regulations implementing the Act that were published in the **Federal Register** on December 3, 1993, and final modernization criteria for consolidation certification that were published in the **Federal Register** on March 2, 1994. Specific responses to the above three concerns are:

(1) The NWS is implementing the modernization in a two stage transition as described in agency regulations and the *Strategic Plan for Modernization and Associated Restructuring of the National Weather Service,* as well as in the annual *National Implementation Plan.* In these documents the NWS describes its' intent and rationale for proceeding with automation, consolidation, and relocation certifications for WSO Galveston and residual WSO Los Angeles satisfy all of the final modernization criteria for this type of action. The NWS consulted with the National Research Council's Modernization Committee and the Modernization Transition Committee. The NWS also invited the public to submit comments during the process of establishing modernization criteria. These criteria envision that the availability of AWIPS (Mr. Nuhn's particular concern) will be a prerequisite for closure but not consolidation.

(2) The NWS has demonstrated that the NEXRADs involved are meeting availability requirements. The NWS has complied with the modernization criteria for a consolidation certification by the commissioning of the NEXRAD(s) (i.e. WSR–88D (s)) which will be providing radar coverage for the affected service area. As part of this WSR–88D commissioning process, the NWS

requires "at least 96 percent availability of the radar coded message for a period of at least 30 consecutive days prior to commissioning" to demonstrate that the WSR–88D is meeting the availability requirements. See modernization criteria I.2.d., "Satisfactory Support of Associated NWS Forecasting and Warning Services".

The NWS commissioned the WSR–88D covering the WSO Galveston affected service area on March 23, 1994. The Meteorologist-In-Charge of NWSO Houston determined that the radar did in fact meet NWS Modernization Criteria I.2.d. (item 4a on the WSR–88D Site Component Commissioning Checklist) as indicated by a check mark in the satisfactory column and his approval signature. This approval was based on radar coded message availability statistics for this WSR–88D collected between January 10, 1994 and February 23, 1994 which showed greater than 96 percent availability.

The NWS commissioned the WSR–88D covering the residual WSO Los Angeles affected service area on December 16, 1994. The Meteorologist-In-Charge of NWSFO Los Angeles determined the NWS had met Modernization criteria I.2.d. (item 4a on the WSR–88D Site Component Commissioning Checklist) as indicated by a check mark in the satisfactory column and his approval signature. The NWS based its' approval on the radar coded message availability statistics for this WSR–88D collected between February 12, 1994 and December 16, 1994, which showed greater than 96 percent availability.

(3) The NWS has taken all prerequisite steps to comply with modernization criteria for consolidation certifications including: WSR–88D commissioning, user confirmation of services, and existing radar decommissioning. These criteria do not require staff training on new satellite products being generated by GOES-Next. GOES-Next will eventually provide enhanced and new satellite products to WFOs during Stage 2 of the modernization. During Stage 1, NWSO Houston and NWSFO Los Angeles will continue to receive existing GOES satellite products on which staff at these offices have already been trained.

Dated: November 3, 1995.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Certification

Weather Service Office Consolidation

I hereby certify that there will be no degradation in weather services to the Galveston service area as a result of the consolidation of the Galveston Weather Service Office with the future Houston/Galveston Weather Forecast Office. I have considered the recommendation of the responsible Meteorologist in Charge, Bill Read, as endorsed by Southern Region Director Harry Hassel and have reviewed the attached documentation provided in compliance with the Weather Service Modernization Act that supports this recommendation.

Susan F. Zevin for Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Attachments

September 18, 1995.

Memorandum For: Harry S. Hassel, Director, Southern Region

From: Bill Read, MIC, NWSO Houston/Galveston, TX

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Galveston Weather Service Office (WSO) with the future Houston/Galveston Weather Forecast Office (WFO) will not result in any degradation in weather services to the Galveston service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. Dr. Friday, in turn, will forward the certification to the Secretary for transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Galveston service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from Houston/Galveston WFO will not degrade these services.

2. A detailed list of the services currently provided within the Galveston service area from the Galveston WSO location and a list of services to be provided from the Houston/Galveston WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Galveston Area of Responsibility (i.e. "Affected Service Area") and the future WFO Houston/Galveston Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Galveston service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that only two negative comments were received. Both of the negative comments have been answered to the satisfaction of the commentors as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Galveston WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Galveston service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the one public comment received during the comment period (attachment J). On September 14, 1995, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

Dated: September 20, 1995

Harry S. Hassel

Attachments

Certification

Weather Service Office Consolidation

I hereby certify that there will be no degradation in weather services to the Los Angeles service area as a result of the consolidation of the Residual Los Angeles Weather Service Office with the future Los Angeles Weather Forecast Office. I have considered the recommendation of the responsible Meteorologist in Charge, Todd Morris, as endorsed by Western Region Director Thomas D. Potter, and have reviewed the attached documentation provided in compliance with the Weather Service Modernization Act that supports this recommendation.

Susan F. Zevin for Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Attachments

September 14, 1995.

Memorandum For: Thomas D. Potter, Director, Western Region

From: Todd Morris, AM/MIC NWSFO Los Angeles

Subject: Recommendation for Consolidation Certification

A change of operations occurred at the Los Angeles Weather Service Forecast Office (WSFO) in October 1993 when most personnel were transferred to the facility of the future Los Angeles Weather Forest Office (WFO) in Oxnard, California to operate the WSR–88D and assume forecast and warning responsibility for the Los Angeles service area. At the same time this office has been designated a Residual Weather Service Office (RWSO) at the original WSFO location to continue operating the existing WSR–74C radar.

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Los Angeles Residual Weather Service Office (RWSO) with the future Los Angeles/Oxnard Weather Forecast Office (WFO) will not result in any degradation in weather services to the Los Angeles service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending that you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and appliction of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the pre-modernized Los Angeles service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the Los Angeles/Oxnard WFO will not degrade these services.

2. A detailed list of the services currently provided from the Los Angeles RWSO location and comparable services to be provided from the Los Angeles/Oxnard WFO location after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the pre-modernized Los Angeles service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for California is included as attachment D. NWS operational radar coverage for the Los Angeles service area will be vastly increased and will not degrade services.

It should be noted that neither the old radar network nor the NEXRAD include coverage of a small mountainous area in the northeast corner of the service area. Therefore this does not represent a degradation of radar coverage or services.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. the WSR–88D RADAR Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed. There were two national work-arounds. One of these has been satisfied while the other one remains in effect.

B. The User Confirmation of Services, attachment F, documents that only two negative comments were received. Both of the negative comments have been answered to the satisfaction of the commentors as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Los Angeles WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Los Angeles service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the one public comment received during the comment period (attachment J). On September 14, 1995, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Thomas D. Potter, Director, Western Region, endorse this consolidation certification.

Dated: September 15, 1995.

James L. Campbell for Thomas D. Potter.

[FR Doc. 95–27745 Filed 11–9–95; 8:45 am]

BILLING CODE 3310–12–M

National Technical Information Service

Notice of Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 C.F.R. 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in Australia to practice the invention embodied in Australian Patent No. 609689 to Shelljet Pty Ltd, Trading as Anderson Drilling, having a place of business in Orange NSW, Australia. The counterpart U.S. patent is No. 5,196,401. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 C.F.R. 404.7. The prospective exclusive license may be granted unless, within 3 months from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 C.F.R. 404.7.

While the primary purpose of this notice is to announce NTIS' intent to grant an exclusive license to practice the noted foreign patent, it also serves to publish said patient's availability for licensing in accordance with law.

The invention expressed in the cited patent describes a method of enhancing the fragmentation and excavation of hard, solid materials such as rock formations which comprises adding to the rock surface an aqueous solution including a high molecular weight nonionic polymer such as polyethylene oxide which is capable of hydrogen bonding with water the produce charge-neutralizing positive charge dipoles. The nonionic polymeric solution is thus capable of neutralizing the rock surface charge and obtaining a condition of zero surface charge (ZSC) so that the drilling, tunneling, cutting or other similar operation can be conducted with the substantial increases in drilling performance and penetration rate. The method is also extremely effective in extending the lives of drill bits, cutting tools, grinding media, or other polishing or drilling tools such that an enormous savings in terms of replacing equipment can be achieved. The method of the present invention is particularly advantageous in that the nonionic polymer solutions of the invention are effective over a wide range of concentrations in neutralizing the rock surface charge, which has not been the

case with previously used methods involving cationic compounds which were only effective at very specific concentrations. The method of the present invention provides a means for enhancing performance and achieving substantial cost savings in a wide variety of drilling, tunneling, cutting and other similar operations.

Copies of the instant Australian patent are available from the Australian Patent Office or the Office of Federal Patent Licensing (Ph: 703/487–4738). The U.S. patent may be ordered from Commissioner of Patents and Trademarks, Box 9, Washington, D.C. 20231 at a cost of $3.00.

Any inquiries and comments relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, Virginia 22151. Properly filed competing license applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Director, Office of Federal Patent Licensing.

[FR Doc. 95–27938 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–04–M

National Telecommunications and Information Administration

Meeting

AGENCY: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the next meeting of the Spectrum Requirements, Interoperability, Technology, Operational Requirements, and Transition Subcommittees and the Steering Committee of the Public Safety Wireless Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of the five Subcommittees and Steering Committee of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees and the Steering Committee.

DATES: December 13, 14 and 15, 1995.

ADDRESSES: December 13 and 14, 1995 in The Commodity Futures Trading Commission First Floor Hearing Room 1000 at 1155 21st Street (Lafayette Centre), Washington, D.C. 20036. On December 15, 1995 in the U.S. Department of Transportation Nassif Building Room 2230 (See Note below for additional details) at 7th and E. Streets, S.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The five Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings over a three day period, Wednesday through Friday, December 13, 14 and 15, 1995. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

December 13, 1995 the Operational Requirements and Technology Subcommittees will meet consecutively starting at 9 a.m. A separate Public Notice providing additional details about the Technology Subcommittee meeting and associated technology briefings has been released (reference Report No. WT 95–31). On December 14, 1995 the Interoperability and Spectrum Requirements Subcommittees will meet consecutively starting at 9 a.m. On December 15, 1995 the Transition Subcommittee will meet starting at 9 a.m. Note this meeting will be held in room 2230 of the U.S. Department of Transportation Nassif Building at 7th and E Streets, S.W. (See Note below for additional details). The agenda for each meeting is as follows:

1. Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Steering Committee of the Public Safety Wireless Advisory Committee will meet starting at 1:30 p.m. on December 15, 1995. This meeting will also be held in room 2230 of the U.S. Department of Transportation Nassif Building at 7th and E Streets, S.W. (See Note below for additional details). The agenda for the Steering Committee meeting is as follows:

1. Introduction/welcoming remarks
2. Presentation of definitions of Public Safety and Interoperability from the Interoperability Subcommittee
3. Presentation of draft report from Operational Requirements Subcommittee
4. Subcommittee progress reports
5. Other business
6. Closing remarks

Note: For meetings held at the Nassif Building, participants should go to the southeast building entrance and tell the guard that they are attending a meeting in room 2230. The Metro stop is L'Enfant Plaza, using the exit market "US Department of Transportation, 7th and D Streets S.W.".

The tentative schedule and general location of future meetings of the Subcommittees of Public Safety Wireless Advisory Committee is as follows:

January 8, 9 and 10, 1996, at the University of California (Berkeley Campus)
February 28, 29 and March 1, 1996, in Orlando, Florida
April, 1996, in San Diego, CA
May, 1996 at Scott AFB, St Louis, MO
June, 1996 in Washington, D.C.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: June 1996, in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact: Interoperability Subcommittee: James E. Downes (202–622–1582); Operational Requirements Subcommittee: Paul H. Wieck (515–281–5261); Spectrum Requirements Subcommittee: Richard N. Allen (703–630–6617); Technology Subcommittee: Alfred Mello (401–738–2220); Transition Subcommittee: Ronnie Rand (904–322–2500 or 800–949–2726 ext. 600). The Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA (202–482–1652), and John J. Borkowski, FCC (202–418–0680). Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswax.ntia.doc.gov).

Dated: November 3, 1995.

William Donald Speights,

PSWAC Co-Designated Federal Official, National Telecommunications and Information Administration.

[FR Doc. 95–27888 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–60–M

Patent and Trademark Office

[Docket #: 951019254–5254–01]

RIN 0651–XX05

Proposed Changes in Procedures Relating to an Application Filing Date

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The Patent and Trademark Office (PTO) requests written public comment on a proposed change in procedures relating to the treatment of *prima facie* incomplete applications. Currently, applications filed without all the pages of the specification or without all of the figures of the drawings are treated as prima facie incomplete and not accorded a filing date. The PTO is considering changing this procedure to accord a filing date to any application that contains something that can be construed as a written description, any necessary drawing, and a claim.

DATES: Written comments will be accepted by the PTO until January 12, 1996.

ADDRESSES: Written comments should be addressed to Box DAC, Assistant Commissioner for Patents, Washington, D.C. 20231. Comments may also be sent by facsimile transmission to (703) 308–6916, with a confirmation copy mailed to the above address, or by electronic mail over the Internet to filedate@uspto.gov.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr by telephone at (703) 305–9285, by facsimile at (703) 308–6916, or Jeffrey V. Nase by telephone at (703) 305–9285, or by mail addressed as indicated above.

SUPPLEMENTARY INFORMATION: The PTO is considering changes in procedures relating to the treatment of *prima facie* incomplete applications. Currently, applications filed without all the pages of the specification (Section 608.01 of the Manual of Patent Examining procedure (MPEP)) (*e.g.*, with page numbering revealing that page(s) are missing), or without all of the figures of the drawings (MPEP 608.02) (*e.g.*, without drawing figures that are mentioned in the specification), are treated as *prima facie* incomplete and not accorded a filing date. The Initial Application Examination Division (formerly the Application Processing Division) in the Office of Initial Patent Examination (formerly the Office of National Application Review) mails a Notice of Incomplete Application indicating that a filing date has not been assigned to the application, and indicating that: (1) The filing date will be the date of receipt of the missing items, and (2) any assertion that the missing item was submitted, or not necessary for a filing date, must be by way of petition (with the $130 fee). MPEP 506.02. To obtain the date of deposit of the application as the filing date, the applicant must: (1) Establish receipt in the PTO of the allegedly missing item (generally by way of postcard receipt in accordance with MPEP 503), in which case the petition fee is refunded, or (2) petition to have the application accepted as deposited, in which case the petition fee is not refunded.

A petition to have the application accepted as deposited requires: (a) An amendment deleting all references to the missing item and correcting the sequential numbering of the pages or drawings in the application, (b) a request to cancel the missing item, if such missing item has been submitted after the date of deposit, and (c) a supplemental oath or declaration by the applicant stating that the invention is adequately disclosed in, and a wish to rely on, the application as thus amended without the missing item and the references thereto in the specification, for purposes of an original disclosure and filing date. The supplemental oath or declaration by the applicant is a statement in writing evidencing that the applicant has been informed of the content of his or her application as filed on the original date of deposit and that the actual content has been reviewed and understood.

As a significant number of applicants are willing to accept the application without the "missing part," the procedure of requiring the applicant to file a petition to obtain the date of deposit as the filing date results in numerous filing date petitions. The preparation by applicants and the consideration by the PTO of some 3000 such petitions a year is time consuming and burdensome. In addition, in most instances there is no controversy as to the content of the *prima facie* incomplete application (*i.e.*, a grantable petition requires only the above-mentioned corrective amendment(s) and supplemental oath or declaration). Finally, the $130 petition fee does not cover the administrative cost of treating such *prima facie* incomplete applications and petitions.

Accordingly, the PTO is considering changing the procedure for the treatment of applications filed without all the pages of the specification or without all of the figures of the drawings. These changes in practice would not require any amendment to the rules of practice.

The Initial Application Examination Division will continue to review application papers for completeness in the manner that such papers are currently reviewed.

Applications Filed Without All Drawings or Pages of Specification

There is no requirement in the statutes or regulations that an application include sequentially numbered pages, or all of the pages, or all of the drawings referred to in the specification to obtain a filing date. That is, while 37 CFR 1.52(b) provides that the pages of the application should be numbered consecutively, the regulations do not provide that compliance with 37 CFR 1.52 is necessary to obtain a filing date. Therefore, applications which contain something that can be construed as a written description, where drawing figure(s) are referred to in the written description, at least one drawing figure, and at least one claim, but are filed with page numbering revealing that page(s) are missing or without all of the drawing figures which are mentioned in the specification will be treated by mailing a notice that indicates that the application papers so deposited have been accorded a filing date, but are lacking some of the pages of specification or drawings described in the specification. The mailing of such a notice will permit applicants to either: (1) Promptly establish prior receipt in the PTO of the item(s), or (2) promptly submit the omitted item(s) and request a later filing date.

The notice will also indicate that:

(a) An applicant asserting that the mentioned item was in fact deposited in the PTO with the application papers must file a petition (and $130 petition fee, which will be refunded if it is determined that the item was in fact received by the PTO) with evidence of such deposit within two months of the date of the notice (37 CFR 1.181(f)),

(b) An applicant desiring to "complete" the application and accept the date of completion as the filing date must file any missing items (with a supplemental declaration referring to such items) and a petition under 37 CFR 1.182 (with the $130 petition fee) requesting the later filing date within two months of the date of the notice (37 CFR 1.181(f)), and

(c) An applicant willing to accept the application as deposited in the PTO need not respond to the notice, and the failure to file a petition (and $130 petition fee) under options (a) or (b) above within two months of the date of the notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the PTO.

The application will be retained in the Initial Application Examination Division for a period of two months from the mailing date of such a notice

to permit the applicant to either establish prior receipt in the PTO of the item(s), or submit the omitted item(s) and request a later filing date within this two-month time period. As an applicant may, but is not required to, respond to such a notice, extensions of time under 37 CFR 1.136 will not be applicable to this two-month time period. At the expiration of this two-month non-extendable time period the application will be forwarded to the appropriate examining group for examination of the application. The application will be accorded a filing date as of the date of deposit of the application papers in the PTO. The original application papers (*i.e.*, the original disclosure of the invention) will include only those application papers present in the PTO on the date of deposit.

Due to the effect that a loss of filing date can have on an application, currently the PTO generally treats untimely filing date petitions on their merits since the application, as incomplete, will have undergone no further processing or examination. In the procedure set forth in this notice, however, the PTO will strictly adhere to the two-month period set forth in 37 CFR 1.181(f), and dismiss as untimely any petition not filed within this two-month period. This strict adherence to the two-month period set forth in 37 CFR 1.181(f) is necessary since: (1) Such applications will now be forwarded for examination at the end of this two-month period, (2) according the application a filing date later than the date of deposit may affect the date of expiration of any patent issuing on the application under Public Law 103–465, and (3) the filing of a continuation-in-part application is a sufficiently equivalent mechanism for adding additional subject matter to avoid the loss of patent rights.

Applications Filed Without at Least One Claim

35 U.S.C. 111(a)(2) provides, in part, that an "application shall include (A) a specification as prescribed by section 112 of this title; (B) a drawing as prescribed by section 113 of this title; and (C) an oath by the applicant as prescribed by section 115 of this title," and 35 U.S.C. 111(a)(4) provides that the "filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office." 35 U.S.C. 112, second paragraph, provides that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." Therefore, 35 U.S.C. 111 and 112, second paragraph, provide that the filing date of an application is that date on which a specification including at least one claim(s) is filed in the PTO. *In re Mattson*, 208 USPQ 168 (Comm'r Pat 1980). Since a claim is a statutory requirement for a filing date, applications filed without a claim will not be accorded a filing date. In situations in which an application is filed without a claim, the Initial Application Examination Division will continue to mail a notice of Incomplete Application, and the treatment of such applications will remain unchanged.

Applications Filed Without Any Drawings

35 U.S.C. 111(a)(2) provides, in part, that an "application shall include * * * a drawing as prescribed by section 113 of this title" and 35 U.S.C. 111(a)(4) provides, in part, that the "filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office." 35 U.S.C. 113 in turn provides that an "applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented." Drawings are usually not necessary for an understanding of the subject matter in process and composition applications (*i.e.*, applications having claims directed to a process or composition (MPEP 608.02)). As such, applications having at least one process or composition claim and describing drawing figures in the specification, but filed without drawings, will be treated as an application filed without all of the drawings referred to in the specification as discussed above and processed for examination. Applications having at least one process or composition claim which do not describe drawing figures in the specification will simply be processed for examination. In a situation in which the appropriate examining group determines that drawings are necessary under 35 U.S.C. 113, the filing date issue will then be reconsidered on reference from the examining group.

In design applications, the Initial Application Examination Division will continue to mail a notice of Incomplete Application indicating that the application lacks the drawings required under 35 U.S.C. 113, and the applicant may: (a) File a petition (and $130 fee) asserting that the missing item was submitted, or not necessary for a filing date, or (b) "complete" the application and accept the date of completion as the filing date.

Dated: November 3, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–27874 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 351/651 is being increased by application of swing, reducing the limit for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 40162, published on August 7, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 16, 1995, as amended on August 2, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period beginning on March 27, 1995 and extending through December 31, 1995.

Effective on November 14, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
351/651	535,000 dozen.
352/652	7,865,265 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–27932 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Cancellation of a Limit on Certain Wool Textile Products Produced or Manufactured in Hong Kong

November 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the restraint on imports of woven wool shirts and blouses in Category 440 from Hong Kong established on July 25, 1995 pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 440 for the period April 27, 1995 through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17322, published on April 5, 1995; and 60 FR 37881, published on July 24, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on July 18, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of wool textile products in Category 440, produced or manufactured in Hong Kong and exported during the period which began on April 27, 1995 and extends through December 31, 1995.

Effective on November 15, 1995, you are directed to cancel the limit established for Category 440 for the period April 27, 1995 through December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–27933 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Cancellation of a Limit on Certain Wool Textile Products Produced or Manufactured in India

November 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the restraint on imports of men's and boys' wool coats in Category 434 from India established on July 14, 1995, pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 434 for the period April 18, 1995 through April 17, 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 35899, published on July 12, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 7, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in India and exported during the period which began on April 18, 1995 and extends through April 17, 1996.

Effective on November 15, 1995, you are directed to cancel the limit established for Category 434 for the period April 18, 1995 through April 17, 1996.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–27934 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 334/634, 335/635, 336/636, 340/640, 342/642, 347/348 and 351/651 are being increased 5 percent for handmade, handloomed apparel products. Also, the limit for Categories 340/640 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 62645, published on December 20, 1994). Also see 60 FR 8344, published on February 14, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 14, 1995, you are directed to amend the directive dated February 9, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
334/634	131,994 dozen.
335/635	546,162 dozen.
336/636	775,293 dozen.
340/640	1,927,120 dozen.
342/642	1,175,453 dozen.
347/348	559,159 dozen.
351/651	265,752 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–27935 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

November 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339 and 340/640 are being increased for carryover and special carryforward, respectively.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17333, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 14, 1995, you are directed to amend the directive dated March 30, 1995 to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
338/339	462,139 dozen.
340/640	641,600 dozen of which not more than 429,597 dozen shall be in Categories 340–Y/640–Y [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–27938 Filed 11–9–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 25 and September 1, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 44320 and 45705) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Accordingly, the following commodity and service are hereby added to the Procurement List:

Commodity

Garlic Powder
8950–01–254–2691

Service

Grounds Maintenance, Puget Sound Naval Shipyard Bremerton, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27958 Filed 11–9–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Dispenser, Tape
7520–00–240–2417
NPA: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi

Carrying Cover, Arch
8340–00–556–9674

NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California
Shape, Day Maritime
8345–01–101–1101
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California

Services

Administrative Services, General Services Administration, Federal Supply Service, 26 Federal Plaza, New York, New York
NPA: Young Adult Institute, New York, New York
Food Service Attendant at the following locations:
Missouri Air National Guard, 10800 Lambert International Boulevard, Bridgeton, Missouri
Jefferson Barracks and Base, Building 280, #1 Grant Road, St. Louis, Missouri
NPA: Challenge Unlimited, Inc., Alton, Illinois
Janitorial/Custodial, Rome Laboratories, Griffis Air Force Base, New York,
NPA: Human Technologies Corporation, Utica, New York
Janitorial/Custodial, The Courthouse and Federal Building, 5th & Hamilton Streets, Allentown, Pennsylvania
NPA: Lehigh Valley Association Rehabilitation Centers, Inc., Bethlehem, Pennsylvania
Laundry Service, Naval Air Station, North Island, Bachelor Enlisted Quarters and Bachelor Officer Quarters, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California
Laundry Service, Immigration & Naturalization Service, 201 Varick Building, New York, New York
NPA: Goodwill Industries of Greater New York, Astoria, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27959 Filed 11–9–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Undershirt, Flyers' Aramid
8415–00–485–6547
8415–00–485–6548
8415–00–485–6680
8415–00–485–6681
8415–01–043–8475
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27960 Filed 11–9–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Conference Meeting of the National Advisory Panel on the Education of Handicapped Dependents

AGENCY: Department of Defense Dependents Schools.

ACTION: Notice.

SUMMARY: On October 3, 1995, 60 FR 51780, the Department of Defense published a notice concerning a Conference Meeting of the National Advisory Panel on the Education of Handicapped Dependents to be held November 28–30, 1995. This meeting is canceled.

Dated: November 6, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–27930 Filed 11–9–95; 8:45 am]

BILLING CODE 5000–04–M

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will conduct a closed Executive Session on December 12, 1995, at Lawrence Livermore National Laboratory, Livermore, California.

The Joint Advisory Committee is charged with advising the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting, the Joint Advisory Committee will discuss classified material on Science Based Stockpile Stewardship, alternatives to nuclear testing and future JAC projects.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II (1988)), this meeting concerns matters, sensitive to the interests of national security, listed in 5 U.S.C. 552(c)(1) and accordingly this meeting will be closed to the public.

Dated: November 6, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–27931 Filed 11–9–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 12, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the Internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Department review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection of the respondents, including through the use of information technology.

Dated: November 6, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Family Education Loan, Student Financial Assistance, Federal Aid Programs.
Frequency: One Time.
Affected Public: Individual or households.
Annual Reporting and Recordkeeping Hour Burden
Reporting Burden:
Responses: 1,148,818.
Burden Hours: 183,811.
Abstract: These forms are the means by which a borrower applies for a deferment of repayment of the principal balance on a loan and the lender determines whether a borrower is entitled to a specific type of deferment.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Family Education Loan Program Application Documents.
Frequency: One Time.
Affected Public: Individual or households; Business or other for-profit; not for Profit institutions.
Annual Reporting and Recordkeeping Hour Burden
Reporting Burden:
Responses: 100,000.
Burden Hours: 50,000.
Abstract: These forms are the means by which a parent borrower applies for a Federal PLUS Loan and promises to repay the loan.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Stafford Loan, (subsidized and unsubsidized) Program Application Documents.
Frequency: One Time.
Affectecd Public: Individual or households; Business or other for-profit.
Annual Reporting and Recordkeeping Hour Burden
Reporting Burden:
Responses: 2,800,000.
Burden Hours: 1,400,000.
Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Stafford Loan and a school, lender, and guaranty agency determines a borrower's eligibility to receive a Stafford loan.

[FR Doc. 95–27954 Filed 11–9–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER5–1107–000, et al.]

LTV Steel Mining Company, et al.; Electric Rate and Corporate Regulation Filings

November 3, 1995.

Take notice that the following filings have been made with the Commission:

1. LTV Steel Mining Company

[Docket No. ER95–1107–000]

Take notice that on October 18, 1995, LTV Steel Mining Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Amoco Power Marketing Corporation

[Docket No. ER95–1359–000]

Take notice that on October 27, 1995, Amoco Power Marketing Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. UGI Utilities, Inc.

[Docket No. ER96–60–000]

Take notice that on October 6, 1995, UGI Utilities, Inc. (UGI), tendered for filing FERC Electric Tariff, First Revised Volume No. 1, which makes changes to its currently effective FERC Electric Tariff, Original Volume No. 1. These changes modify the rates, terms and conditions for service rendered under Rate Schedule BLR. The changes are identical in form and substance to tariff changes which became effective for UGI's retail sales service pursuant to orders of the Pennsylvania Public Utility Commission. UGI proposes that the tendered tariff sheets become effective upon filing and requests waiver of the 60-day prior notice filing

requirements of the Commission's regulations. The filing has been served upon all affected customers and the Pennsylvania Public Utility Commission.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER96–117–000]

Take notice that on October 18, 1995, New England Power Company (NEP) tendered for filing a service agreement with KCS Power Marketing, Inc. for sales under NEP's FERC Electric Tariff, Original Volume No. 5. In addition NEP filed on October 24, 1995, an amendment to its October 18, 1995, filing in the above-referenced docket.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER96–128–000]

Take notice that on October 20, 1995, Southwestern Electric Power Company (SWEPCO), submitted an executed service agreement with Terrebonne Parish Consolidated Government, Terrebonne Parish, Louisiana (Terrebonne) under SWEPCO's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff). The executed Service Agreement supersedes an unexecuted Service Agreement with Terrebonne which became effective April 28, 1995.

SWEPCO requests an effective date of April 28, 1995 for the executed service agreement. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Terrebonne and the Public Utility Commission of Texas.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Washington Water Power Company

[Docket No. ER96–129–000]

Take notice that on October 23, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.15, a Notice of Termination concerning Rate Schedule FERC No. 206. On June 21, 1995, an agreement, between WWP and Public Utility District No. 1 of Chelan County, in which WWP provided power and energy to the Chelan Service Area Load when the Chelan Hydro-Electric Plant Project generation was insufficient terminated by its own terms and conditions.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Company

[Docket No. ER96–130–000]

Take notice that on October 23, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination concerning Rate Schedule FERC No. 177 and 177.1. On October 31, 1994, the firm capacity sales agreement between WWP and Portland General Electric Company terminated by its own terms and conditions.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER96–131–000]

Take notice that on October 23, 1995, Florida Power Corporation (FPC), tendered for filing a letter of commitment (Letter) for the provision of service between itself and the Orlando Utilities Commission (OUC). The Letter commits FPC to take negotiated service from OUC in accordance with the terms of the Contract for Interchange Service dated January 24, 1979, as supplemented by Service Schedule J dated June 23, 1986. Under the terms of the Letter, OUC will provide 20 MW of capacity and/or energy to FPC.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER96–134–000]

Take notice that on October 23, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with KCS Power Marketing, Inc. (KCS) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

KCS also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to KCS.

NUSCO requests that the Service Agreement become effective December 1, 1995.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER96–136–000]

Take notice that on October 23, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with North American Energy Conservation, Inc. (NAEC). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to NAEC and NAEC will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 24, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and NAEC.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER96–140–000]

Take notice that on October 23, 1995, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and National Fuel Resources (National Fuel). This Service Agreement specifies that National Fuel has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and National Fuel to enter into separately scheduled transactions under which NMPC will sell to National Fuel capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of October 17, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and National Fuel.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER96–141–000]

Take notice that on October 24, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 246.9.

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Edgar D. Jannotta, Sr.

[Docket No. ID–2918–000]

Take notice that on October 23, 1995, Edgar D. Jannotta, Applicant tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director—Commonwealth Edison Company
Senior Partner—William Blair & Company

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Edward A. Brennan

[Docket No. ID–2920–000]

Take notice that on October 25, 1995, Edward A. Brennan (Applicant) tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director—Commonwealth Edison Company
Director—Dean Witter, Discover & Company

Comment date: November 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Megan-Racine Associates, Inc.

[Docket No. QF89–58–004]

On October 27, 1995, Megan-Racine Associates, Inc. (applicant), of 80 Lincoln Street, Canton, New York 13617, submitted for filing an application for recertification of a facility as a cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the natural gas-fueled topping-cycle cogeneration facility is located in St. Lawrence County, New York. It consists of a combustion turbine generator, a separately fired heat recovery boiler, and an extraction/condensing steam turbine generator. The facility commenced commercial operation on May of 1991. Thermal output of the facility is sold to Niagara Mohawk Power Corporation.

In Docket No. QF89–58–000, the applicant was granted certification for a 47.85 MW topping-cycle cogeneration facility [46 FERC ¶ 62,074 (1989)]. On July 7, 1995, in Docket No. QF89–58–003, the applicant filed a notice of self-recertification. The instant recertification is submitted to reflect a change in the operation of the facility.

Comment date: Thirty days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27892 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2310–073 California]

Pacific Gas & Electric Co.; Notice of Availability of Environmental Assessment

November 6, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the Drum Spaulding Hydroelectric Project, No. 2310–073. The Drum Spaulding Project is located on the Bear, South Yuba, and North Fork American Rivers in Placer and Nevada Counties, California. The plan is for a revised recreation plan for the project. An Environmental Assessment (EA) was prepared for the plan. The EA finds that approving the plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 2310–073 to all comments. For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27905 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP95–119–000, CP95–119–001]

Steuben Gas Storage Company; Notice of Availability of the Environmental Assessment for the Proposed Thomas Corners Gas Storage Field Project

November 6, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Steuben Gas Storage Company (Steuben) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed underground gas storage facility and related pipeline facilities in Steuben County, New York, including:

- A storage field in the town of Bath including 13 injection/withdrawal wells (11 new and 2 existing [#1 Sylvan and #1 Mullins]) and 1 observation well; various dehydration facilities including a dehydration unit, a field separator, glycol storage tanks, and an auxiliary

building; and 0.4 mile of 4-inch-diameter and 0.3 mile of 12-inch-diameter well lines within the main well pad area;

• The existing #1 Sylvan well located southeast of the main well pad area and requires 0.2 mile of 4-inch-diameter well lateral pipeline to connect it to the storage field;

• A new 3,284-horsepower (hp) compressor station (Thomas Corners Compressor Station) at the existing Adrian Compressor Station property in the town of Canisteo;

• 6.4 miles of 12-inch-diameter gathering header pipeline between the Thomas Corners Compressor Station and storage field in the towns of Canisteo, Cameron, and Bath; and

• A pipeline drip and storage tank east of the Canisteo River in the town of Canisteo between the Conrail railway and Canisteo River Road.

The purpose of the proposed facilities would be to develop and operate the Thomas Corners gas field as an underground natural gas storage field capable of providing up to 5,300,000 dekatherms (Dth) of working gas storage capacity. The additional gas storage capacity would help satisfy the growing demand for storage service in the Northeast to meet winter use demands and supplement its general system operations in the market area. Presently, only one customer, Virginia Natural Gas, Inc., has signed a Firm Storage Service Precedent Agreement with Steuben for 1,350,000 Dth of capacity in the Thomas Corners Storage Field.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Howard J. Wheeler, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation (PR 11.2), 888 First Street, N.E., Washington, DC 20426, (202) 208–2299.

Any person wishing to comment on the EA may do so. Written comments must be reference Docket Nos. CP95–119–000 and CP95–119–001 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than December 6, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Howard Wheeler, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Howard J. Wheeler, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27929 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2897–002, et al.]

Hydroelectric Applications [S.D. Warren Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2897–002.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Saccarappa Project.
f. *Location:* Presumpscot River, Town of Westbrook, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2931–001.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Gambo Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2932–002.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Mallison Falls Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Application:* Amendment of License Term.

b. *Project No:* 2941–001.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Little Falls Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be extended to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. *Type of Application:* Amendment of License Term.
b. *Project No:* 2942–004.
c. *Date Filed:* October 4, 1995.
d. *Applicant:* S.D. Warren Company.
e. *Name of Project:* Dundee Project.
f. *Location:* Presumpscot River, Towns of Gorham and Windham, Cumberland County, Maine.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(e).
h. *Applicant Contact:* Nancy J. Skancke, Grammer, Kissel, Robbins & Skancke, 1225 Eye Street, NW., Suite 1225, Washington, DC 20005, (202) 408–5400.
i. *FERC Contact:* Hillary Berlin, (202) 219–0038.
j. *Comment Date:* December 8, 1995.
k. *Description of Amendment Request:* The licensee proposes that the license term be accelerated to expire five years from the issuance date of the order on this request to facilitate a coordinated review of the relicensing of five projects on the Presumpscot River.
l. The notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. *Type of Application:* Transfer of License.
b. *Project No:* 9907–004.
c. *Date Filed:* October 6, 1995.
d. *Applicant:* A.W. Brown Co., Inc.
e. *Name of Project:* Sunshine Power Project.
f. *Location:* Lake Creek, Lemhi County, Idaho.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Bill Brown, A.W. Brown Co., Inc., Suite F, 3416 Via Lido, Newport Beach, CA 92663, (714) 673–8119.
i. *FERC Contact:* Ahmad Mushtaq, (202) 219–2672.
j. *Comment Date:* December 12, 1995.
k. *Description of Application:* The licensee, jointly and severally with Jerry Lee and Christine McMillan, request Commission approval to transfer the project license to Mr. Lee and Ms. McMillan.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of Applications:* New Major License.
b. *Project Nos.:* 2569–004, and 2538–001.
c. *Dates Filed:* November 29, 1991, and December 21, 1995.
d. *Applicants:* Niagara Mohawk Power Corporation, and Beebee Island Corporation.
e. *Name of Project:* Black River Hydro Project, and Beebee Island Project.
f. *Location:* On the Black River, in Jefferson County, New York.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. *Applicant Contact:* Mr. Jerry Sabattis, Hydro Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.
i. *FERC Contact:* Tom Camp (202) 219–2832.
j. *Deadline Date:* See paragraph D10.
k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time with one exception. The report on the fish entrainment studies, being conducted as a result of additional information requested by the Commission, has not yet been filed. When the entrainment report is submitted to the Commission, it will be reviewed for adequacy. In the interim, environmental analysis will proceed on all other issues—see attached paragraph D10. No second REA notice will be issued.
l. *Description of Project:* The existing Black River Project consists of five developments, and the existing Beebee Island Project consists of one development. Both projects are on the Black River in Jefferson County, New York.

Black River Project

Herrings Development

The Herrings Development is located in the town of Champion, has a total installed capacity of 5.4 MW, and consists of: (1) a 140-acre reservoir at normal maximum surface elevation of 680.1 feet, and a gross storage capacity of 669.4 acre-ft; (2) a 512-ft by 25-ft high "L"-shaped concrete gravity dam with crest elevation of 679.1 feet, topped with a 1-foot-high wooden flashboard; (3) intake structure, integral with the powerhouse, consisting of (a) stop-log waste sluice upstream of the existing perpendicular trashracks measuring 101-foot-wide by 31-foot-high with 3.5 inches of clear spacing (b) 11-foot-wide stop-log waste sluice downstream of the trashracks, and (c) nine, 9-foot-wide, 12.5-foot-high motor operated slide gates; (4) 137-foot-wide, 33-foot long brick-masonry powerhouse containing three vertical Allis-Chalmers generating units, each rated at 1,800 kW, with design head of 19.5 ft and hydraulic capacity of 1,203 cfs; (5) short excavated rock tailrace discharging directly into the Black River; (6) transmission lines consisting of (a) 30, 70, and 108-foot-long leads connecting to a 2.4-kV powerhouse bus, and (b) three 97-foot-long 2.4-kV lines connected to a 2.4/23-kV step-up transformer; and (7) appurtenant facilities.

Deferiet Development

The Deferiet Development is located in the town of Wilna, has a total installed capacity of 10.8 MW, and consists of: (1) 70-ac reservoir, at normal maximum surface elevation of 659.0 feet and gross storage capacity of 405 ac-ft; (2) dam consisting of (a) 503-foot-long by 18-foot-high ambursen dam section, with permanent crest elevation of 656 feet, topped with existing 3-foot-high wooden flashboards, and (b) 192-foot-long sluice gate section that houses eleven 14-foot-wide stop-log bays; (3) headworks structure consisting of (a) 180-foot-wide concrete power canal headworks section housing twenty 5-foot-wide by 12.5-foot-high hand operated timber slide gates; (4) 4,200-foot-long canal which connects the power canal headworks and existing powerhouse; (5) intake structure consisting of (a) 108-foot-wide by 27-foot-high perpendicular trashrack with 3.5 inches of clear spacing, (b) three steel slide gates, and (c) 11-foot-wide ice sluice controlled by stop-logs; (6) 145.5-foot-wide by 92.5-foot-long brick/masonry powerhouse equipped with three vertical Francis generating units, each rated at 3,600 kW, with design head of 46 feet, and hydraulic capacity of 1,147 cfs; (7) 1,400-foot-long excavated rock tailrace; (8) transmission lines consisting of (a) 65-, 45-, and 65-foot-long leads connecting to a 2.4 kV powerhouse bus, (b) 67-, 69-, and 73-foot-long 2.4-kV underground lines connecting to 2.4/23-kV step-up transformer; and (9) appurtenant facilities.

Kamargo Development

The Kamargo Development is located in the town of Rutland, has a total installed capacity of 5.4 MW, and consists of: (1) 40-ac reservoir, at normal maximum surface elevation of 563.8 feet and gross storage capacity of 359.5 ac-ft; (2) dam consisting of (a) 647-foot-long by 12-foot-high concrete gravity spillway dam, with permanent crest elevation of 561.8 ft, topped with existing 2-foot-high wooden flashboards, and (b) 150-foot-long overflow section; (3) headworks structure consisting of (a) 131-foot-long power canal headworks structure, with 14 8-foot-wide by 11-foot-high wooden headgates, leading to (b) 3,850-foot-long unlined power canal, and (c) 143-foot-long bulkhead section; (4) 580-foot-long concrete forebay channel consisting of (a) 190-foot-long concrete gravity overflow section, (b) 230-foot-long concrete gravity section topped with 1-foot-high flashboards, and (c) 160-foot-long side channel spillway section equipped with twelve stop-log-bays; (5) intake structure consisting of (a) 66-foot-wide by 28.5-foot-high perpendicular trashrack, with 3.5-inches clear spacing, (b) waste sluice, and (c) nine timber gates with stop-log slots; (6) 97.5-foot-wide by 37-foot-long brick/masonry powerhouse equipped with three vertical Francis generating units, each rated at 1,800 kW, a design head of 25 feet, and a hydraulic capacity of 1,100 cfs; (7) short excavated rock tailrace discharging directly into the Black River; (8) transmission lines consisting of (a) three 25-foot-long leads connecting to a 2.4-kV powerhouse bus, and (b) three 89-foot-long, 2.4-kV underground lines connecting to 2.4/23-kV step-up transformer; and (9) appurtenant facilities.

Black River Development

The Black River Development is located in the town of LeRay, has a total installed capacity of 6.0 MW, and consists of: (1) 25-ac reservoir, at normal maximum surface elevation of 536 feet and gross storage capacity of 128 ac-ft; (2) dam consisting of (a) 327-foot-long by 16-foot-high horseshoe-shaped concrete retaining wall, (b) 36.5-foot-long gated section housing two sluice gates, (c) abandoned substructure powerhouse, and (d) 291-foot-long by 25-foot-high concrete gravity spillway, with a permanent crest of 534 feet, topped with 2-foot high wooden flashboards; (3) headworks structure consisting of (a) 80-foot-long concrete power canal upper bulkhead structure, housing twelve 6-foot-wide by 11-foot-high timber slide gates and one 3.5-foot-wide by 11.0-foot-high gate, and (b) 2,250-foot-long power canal composed of a 1,270-foot-long unlined section containing a 250-foot-long side concrete waste weir, and a 980-foot-long concrete-lined section containing a 134-foot-long side concrete waste weir and low-level sluice gate; (4) intake structure consisting of (a) 80-foot-wide by 29-foot-high perpendicular trashrack, with 3.5-inches clear spacing, and (b) nine timber slide gates; (5) 118-foot-wide by 66-foot-long powerhouse equipped with three vertical Francis generating units, each rated at 2,000 kW with a design head of 33 feet, and a hydraulic capacity of 1,067 cfs; (6) short excavated rock tailrace discharging directly into the Black River; (7) transmission lines consisting of (a) 36-, 65-, and 95-foot-long leads connecting to a 2.4-kV powerhouse bus, and (b) three 88-foot-long, 2.4-kV underground lines connecting to 2.4/23-kV step-up transformer; and (8) appurtenant facilities.

Sewalls Development

The Sewalls Development is located in the city of Watertown and consists of one facility on the south channel and one on the north channel of Sewalls Island. Power generation is obtained only from the powerhouse on the south channel.

The South Channel facility has an installed capacity of 2.0 MW, and consists of the following features: (1) 4-ac reservoir, at normal maximum surface elevation of 463.9 feet and gross storage capacity of 48 ac-ft; (2) 243-ft by 15.5-ft high concrete gravity dam with a permanent crest elevation of 463.9 feet; (3) headworks structure consisting of (a) 65.5-ft power canal headworks structure housing two stop-log bays and two 15-foot-wide by 12-foot-high automated steel slide gates, leading to (b) 400-foot-long by 33 to 35-foot-wide concrete-lined power canal, with a wall adjacent to the Black River with a permanent crest elevation of 463 feet and equipped with 2-foot flashboards for its entire length; (4) intake structure consisting of (a) 69-foot-wide by 21-foot-high perpendicular trashrack with 3.5 inches clear spacing, (b) waste sluice and low-level drain, and (c) four gate openings for steel slide gates; (5) 81-foot-wide by 32-foot-long powerhouse equipped with two vertical Allis-Chalmers propeller-type generating units, each rated at 1,000 kW, a design head of 15.5 feet, and a hydraulic capacity of 900 cfs; (6) short excavated rock tailrace discharging directly into the Black River; (7) transmission lines consisting of (a) 12- and 47-foot leads connecting to a 2.4-kV powerhouse bus, and (b) two 180-foot-long, 2.4-kV underground lines connecting to a 2.4/23-kV step-up transformer; and (8) appurtenant facilities.

The North Channel facility is abandoned and not used for power generation.

Beebee Island Project

Existing project features include: (1) 20-ac reservoir, at normal maximum surface elevation of 431.0 feet and gross storage capacity of 60 ac-ft; (2) 18-foot-high by 266-foot-long, U-shaped concrete gravity main dam with permanent crest elevation of 428.0 feet, topped with 3 -foot-high wooden flashboard; (3) 50-foot-long by 15-foot-high, concrete-capped stone auxiliary non-overflow dam, equipped with a skimmer gate; (4) 47-foot-wide by 82-foot-long powerhouse equipped with two vertical generating units, each rated at 4,000 kW, a design head of 32.0 feet, and a hydraulic capacity of 1,800 cfs; (5) tailrace with a normal surface elevation of 397.4 feet; (6) 300-foot-long, 4.8-kV primary transmission line; and (7) appurtenant facilities.

On October 13, 1995, the applicant filed a settlement offer executed by parties to this proceeding.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph: A4 and D10.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202 or by calling (315) 474–1511.

8 a. *Type of Application:* Surrender of License (Minor License).

b. *Project No.:* 9186–014.

c. *Date Filed:* October 5, 1995.

d. *Applicant:* Big Bear Area Regional Wastewater Agency.

e. *Name of Project:* Lucerne Valley Hydroelectric Project.

f. *Location:* On its existing treated wastewater effluent outfall pipeline near Lucerne Valley in San Bernardino County, California. The project would occupy lands of the United States within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825 (r).

h. *Applicant Contacts:* Mr. Steven C. DeBaun, Best, Best & Krieger, 400 Mission Square, 3750 University Avenue, P.O. Box 1028, Riverside, CA 92502, (909) 686–1450.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* December 13, 1995.

k. *Description of the Proposed Action:* The existing project, for which the license is being surrendered, consists of: (1) an existing 15,050-foot-long, 18-inch-diameter force main; (2) an existing outfall pipeline—with a 29,500-foot-long, 16-inch diameter section and a 19,500-foot-long, 12-inch-diameter section; (3) a new 650-kW generating unit at the lower end of the existing 16-inch diameter section of outfall pipeline (Kaiser station); (4) a new 19,500-foot-long, 16-inch-diameter pipeline paralleling the existing 12-inch-diameter pipeline, extending from the Kaiser station to Lucerne station; (5) a new 650 kW generating unit at the lower end of the new 16-inch-diameter pipeline at the disposal area of the outfall pipeline—(Lucerne station); two 500-foot long, 4.16-kV transmission line segments; and (6) appurtenant facilities. The license was issued on December 9, 1991. The licensee states that no construction or ground disturbance has been undertaken for the purpose of facilitating the installation of the proposed generating equipment or the related transmission facilities and that the project is no longer economically feasible.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9 a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10893–002.

c. *Date Filed:* February 21, 1995, and supplemented on April 27, 1995.

d. *Applicant:* HY Power Energy Company.

e. *Name of Project:* Inglis Lock By-pass.

f. *Location:* On the Inglis Lock By-pass, Withlacoochee River, Levy County, Florida.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Mr. Robert Karow, 7008 Southwest 30th Way, Gainesville, FL 32601, (904) 336–4727.

i. *FERC Contact:* Charles T. Raabe, (202) 219–2811.

j. *Deadline Date:* December 26, 1995.

k. *Status of Environmental Analysis:* This application is categorically excluded from the preparation of an environmental assessment.

l. *Description of Project:* The proposed project would utilize the existing State of Florida's Inglis Lock By-pass Conduit and would consist of: (1) an open intake channel; (2) a reinforced concrete powerhouse with dimensions of 115 feet by 28 feet and containing one 3.0-megawatt (MW) pit turbine and generator unit, rated at a head of 22.5 feet and a hydraulic capacity of 1,667 cubic feet per second; (3) a short tailrace lined with concrete and rip-rap; and (4) appurtenant equipment and facilities. The project would have an estimated annual output of 15.7 GWh. Power generated would be sold to Florida Power Corporation.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at HY Power Energy Company, 7008 Southwest 30th Way, Gainesville, Florida 32601, (904) 336–4727, and at the A.F. Knotts Public Library, 11 56th Street, Yankeetown, FL.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11557–000.

c. *Date filed:* August 28, 1995.

d. *Applicant:* Harry and Shirley Coleman.

e. *Name of Project:* Coleman Ranch Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management, near the Town of Leadore, in Lemhi County, Idaho. Township 15N, Range 25E Sections 1, 2, 11, and 12, Township 16N, Range 25E, Section 35, Township 15 N, Range 26 E, Section 5, Township 16 N, Range 26E, Section 31 and 32.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a) - 825(r).

h. *Applicant Contact:* Mr. Ted Sorenson, 5203 South 11th East, Idaho Falls, ID 93404, (208) 522–8069.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* January 11, 1996.

k. *Description of Project:* The proposed project would consist of: (1) an existing rock rubble diversion structure; (2) a 22,800-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 540 Kw and an estimated average annual generation of 3.2 Gwh; and (4) a 3.25-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $20,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 26, 1995 for Project No. 10893–002). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 9, 1996 for Project No. 10893–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 26, 1995 for Project No. 2569–004). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 6, 1996 for Project No. 2569–004).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: November 6, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27893 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RM95–3–000 and RM95–4–000]

Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs and Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Informal Technical Conference

November 6, 1995.

Take notice that on Thursday, November 30, 1995, an informal technical conference will be convened pursuant to the orders issued September 29, 1995, in Docket Nos. RM95–3–000 and RM95–4–000.[1] The Commission directed staff to convene an industry-wide conference to resolve any remaining electronic filing issues.

The goals of the conference are to:

- Establish working groups to resolve all remaining issues regarding the Form No. 11, Form No. 2, and rate case filings; and, determine the first date these groups will convene.
- Resolve issues remaining with respect to the use of Rich Text Format (RTF) for text.
- Resolve all remaining electronic filing issues regarding the Index of Customers and the discount rate reports.

Rich Text Format

In the orders, the Commission specifically stated that the following issues should be addressed by conference participants:

- Alternatives to RTF.
- Whether text prepared in the RTF format would be error free when translated.
- Whether translation into and from RTF is available in the most popular word processing programs.
- Whether RTF is compatible with use in databases.
- Where RTF should be used in the Commission's filings and reports.

Index of Customers and Discount Rate Reports

Due to the simplicity of the Index of Customers and the discount rate reports, staff expects to resolve all remaining electronic filing issues associated with these two filings at this conference. To expeditiously resolve all remaining issues, interested conference participants should prepare proposed solutions to the following issues:

- Whether the header record identifying the filing pipeline and the period for which data is being reported should include other information and, if so, what information.
- How files should be named.
- What date format should be adopted to avoid any difficulties in the year 2000.
- How footnotes should be dealt with in the file.

Issues specific to the Index of Customers, include:

- How to treat seasonal contract quantities.
- How to report the expiration date of contracts operating on a month to month, year to year, or similar basis.
- How units of measurement should be included in the report.

In order for the conference to be as productive as possible, staff invites written comments on the above listed issues and topics of discussion. Such comments should be addressed to Richard A. White, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should be received by November 21, 1995. As part of staff's experimentation with RTF, we encourage commenters to submit their comments on a 3½" diskette in RTF. Comments in ASCII format are also welcome.

Any parties wishing to make a presentation at the conference should contact Richard White, (202) 208–0491. Presentations should be limited to 10 minutes duration.

The conference will begin at 9:00 a.m. on Thursday, November 30, 1995, in a Hearing Room of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27891 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995), 72 FERC ¶ 61,300 (1995); and, Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), 72 FERC ¶ 61,301 (1995).

[Docket No. GT96–25–000]

CNG Transportation Corporation; Notice of Refund Report

November 6, 1995.

Take notice that on October 27, 1995, CNG Transmission Corporation (CNG) tendered for filing a report of the disposition of refunds received from the Gas Research Institute (GRI) for overcollections of the GRI surcharge during 1994. CNG states that the report is being made pursuant to the Commission's February 22, 1995, Order Approving Refund Methodology for 1994 Overcollections in GRI's Docket No. RP95–124–000.

CNG states that the report shows that $412,967.00 refunded by GRI has been refunded pro rata to CNG's eligible firm customers on October 16, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27903 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–35–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

November 6, 1995.

Take notice that on November 2, 1995, East Tennessee Natural Gas Company (East Tennessee), tendered for filing the following amendments to its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 52
Original Sheet No. 52A
First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105

East Tennessee is proposing to lower its Unauthorized Overrun charge to $15 per dth, to delete the current Unauthorized Overrun charge language in Section 5.1 of its LMS–MA rate schedule, to be replaced with a "Maximum Allowed Deliveries" (MAD) provision, and to add a provision allowing East Tennessee to waive Daily Variance Charges on a nondiscriminatory basis. East Tennessee states that the primary function of the proposed MAD language is to eliminate East Tennessee's need to use Operational Flow Orders to prevent shippers from exceeding their firm entitlements. East Tennessee is lowering its Unauthorized Overrun Charge in response to customer requests and adding the waiver provision to enable it to respond to extenuating circumstances.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Section 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27897 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–4–000]

El Paso Electric Company; Supplemental Notice of Application

November 6, 1995.

This notice supplements the notice issued the Commission on October 19, 1995, in this Docket.

Take notice that on October 11, 1995, El Paso Electric Company (El Paso) filed application under § 204 of the Federal Power Act seeking authorization to issue securities and assume obligations and liabilities under a primary plan and an alternative plan associated with El Paso's reorganization and emergence from bankruptcy. Under the primary plan El Paso would issue several series of first mortgage bonds, preferred stock and common stock. Under the alternate plan, El Paso would issue first mortgage bonds, second mortgage bonds, subordinated debentures, preferred stock, and common stock.

Under either plan, El Paso would also enter into other financing arrangements including (1) a Nuclear fuel Trust arrangement for the nuclear fuel at the Palo Verde Nuclear Generating Station, (2) a revolving credit facility in the amount of $100 million, and (3) modifications to the letters of credit underlying the pollution control bonds issued by the Maricopa County Arizona Pollution Control Corporation and by the City of Farmington, New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–27904 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–013]

Equitrans, Inc.; Notice of Tariff Filing

November 6, 1995.

Take notice that on November 1, 1995, Equitrans, Inc. (Equitrans) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1995:

Fifth Revised Sheet No. 5
Third Revised Sheet No. 7

Equitrans states that it filed a Stipulation and Agreement in the captioned proceedings on July 31, 1995. Equitrans states that the Stipulation and Agreement resolves the remaining reserved issue in Equitrans' general Section 4(e) rate cases, namely, the treatment of stranded production well plugging and abandonment costs and the future treatment of Equitrans' production function. By Order issued on September 28, 1995, the Commission approved the uncontested Stipulation and Agreement filed by Equitrans. Equitrans states that its filing is intended to implement a demand surcharge of $0.0923 per Dth applicable to all firm Part 284 open-access rate schedules for the stranded cost recovery of no more than $2.6 million for abandoned production plant and well plugging costs over a four year period in accordance with the provisions of the Stipulation and Agreement and the Commission's Order.

Any person desiring to protest this application should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27894 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–326–004, RP95–242–005]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff and Motion To Make Rates Effective

November 6, 1995.

Take notice that on October 31, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective December 1, 1995.

Natural states that the purpose of this filing is to comply with the Commission's "Order Following Technical Conference" issued October 11, 1995, in Docket Nos. RP95–326–000, et al. and RP95–242–000, et al. The Order allowed Natural to implement new services effective December 1, 1995, subject to modifications. Natural states that certain existing services will be cancelled as a result of the approval of the new services.

Natural also states that it is submitting revised rates under motion. Natural states that the rates are lower than the rates set out in its Pro Forma Case filed July 11, 1995. Natural states that it is also filing to reflect reduced fuel and gas lost percentages.

Natural requests whatever waivers may be necessary to permit the tariff sheets as submitted to become effective December 1, 1995.

Natural states that copies of the filing are being mailed to all parties on the restricted service list in the referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27896 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–440–001]

Sabine Pipe Line Company; Notice of Compliance Filing

November 6, 1995.

Take notice on November 1, 1995, Sabine Pipe Line Company (Sabine) tendered for filing Second Revised Sheet No. 226 and Original Sheet No. 226A to its FERC Gas Tariff, Second Revised Volume No. 1 in compliance with the Commission letter order issued in this docket on October 20, 1995. Sabine requests an effective date on October 20, 1995, for the revised tariff sheets.

Sabine states that the purpose of the filing is to clarify Sabine's nomination procedures for transportation that commences on any day other than the first day of the month, in accordance with the Commission's order issued in this docket on October 20, 1995. Sabine clarifies that nomination deadlines will be posted for 30 days prior to the effective date. Sabine states that any proposed change that would result in a nomination deadline earlier than the existing deadline of 9 a.m. Central Time on the business day preceding the commencement of service would still require prior Commission approval.

Sabine states that copies of this filing were served on Sabine's jurisdictional customers, the state regulatory commissions of Texas and Louisiana, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27895 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–30–000]

Trunkline Gas Company; Notice of Compliance Filing

November 6, 1995.

Take notice that on October 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing the material required by Section 24 (Interruptible Revenue Credit Surcharge Adjustment) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that this filing contains the required computations and workpapers in accordance with Section 24 and that since the said computations of the Interruptible Revenue Credit Amount applicable to Rate Schedules FT, EFT, QNT and SST is less than the Base Interruptible Costs, no Interruptible Revenue Credit Surcharge Adjustment is required.

Trunkline requests that the Commission grant such waivers as may be necessary for the acceptance of this filing as being in compliance with Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that copies of the filing are being served on all customers subject to Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1, and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27898 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–16–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1995.

Take notice that on October 31, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1995.

As background to the instant filing, on October 23, 1995, Transco filed in Docket No. GT96–16–000 (October 23 Filing) to convert the incremental Southern Expansion Project (SEP) seasonal firm transportation service provided to the City of Fountain Inn, South Carolina and the City of Kings Mountain, North Carolina (hereinafter referred to as the "converting SEP shippers") pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, to firm transportation under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's regulations. As a part of the conversion process, Transco and the converting SEP shippers expressly agreed that the converted SEP service would be billed on a seasonal basis corresponding to the period during which Transco provides SEP service (i.e. November through March) as opposed to the current annual billing cycle. Such conversions were proposed to be effective December 1, 1995.

Subsequent to the October 23 Filing, Transco has determined that a change from the current annual billing cycle to a seasonal billing cycle requires that the proposed conversions be made effective November 1, 1995, the beginning of the winter season, rather than December 1, 1995. Making the conversions effective November 1, 1995, will allow Transco and the converting SEP shippers to remain economically indifferent to moving from an annual billing cycle to a seasonal billing cycle, consistent with the parties' agreement on the conversion process. To the extent the proposed SEP conversions were to be made effective subsequent to November 1, Transco would incur a revenue shortfall for the time period during which it was to bill converted SEP service based on annual rates. In recognition of this unintended result, Transco and the converting SEP shippers have agreed to effectuate the conversions proposed in Docket No. GT96–16–000 effective November 1, 1995, in lieu of December 1, 1995. Therefore, Transco requests that the Commission accept the tariff sheets included in Appendix A attached to the subject filing, in lieu of those filed in Docket No. GT96–16–000.

Transco states that copies of the filing are being mailed to the converting SEP shippers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27902 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–685–003]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

November 6, 1995.

Take notice that on October 27, 1995, Tuscarora Gas Transmission Company ("Tuscarora") tendered for filing as part of its FERC Gas Tariff, Original Volume no. 1, the following tariff sheets, to become effective December 1, 1995:

Original Sheet No. 1
Alternate Original Sheet No. 1
Original Sheet Nos. 2–5
Sheet Nos. 6–9
Original Sheet Nos. 10–17
Sheet Nos. 18–19
Original Sheet Nos. 20–25
Sheet Nos. 26–29
Original Sheet Nos. 30–31
Alternate Original Sheet No. 31
Original Sheet Nos. 32–78
Alternate Original Sheet No. 78
Original Sheet Nos. 79–88
Sheet Nos. 89–90
Alternate Original Sheet Nos. 89–90
Sheet Nos. 91–99
Original Sheet Nos. 100–108
Sheet No. 109
Original Sheet Nos. 110–115
Sheet No. 116–119
Original Sheet Nos. 120–126
Sheet Nos. 127–129
Original Sheet No. 130
Alternate Original Sheet No. 130
Original Sheet Nos. 131–138
Sheet Nos. 139–149
Original Sheet No. 150
Alternate Original Sheet No. 150

Tuscarora asserts that the purpose of this filing is to comply with (i) the Commission's April 4, 1995 and May 31, 1995 orders in this certificate proceeding and (ii) changes in the Commission's regulations that occurred after Tuscarora filed its certificate application with the Commission. Also, Tuscarora has provided in this filing additional information and documentation regarding Tuscarora's markets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27901 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–119–000]

Young Gas Storage Company, Ltd.; Notice of Filing

November 6, 1995.

Take notice that on October 31, 1995, Young Gas Storage Company, Ltd. (Young) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 5

Young states that the purpose of Young's filing is to reflect an increase in the fuel reimbursement percentage based on actual experience from 1.3% to 2.0% effective December 1, 1995.

Young states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27900 Filed 11–9–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5330–5]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 7 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register**.

DATES: Comments on the exemptions proposed by this action must be received on or before December 13, 1995.

ADDRESSES: *Comments.* Send comments to: David Kee, Director, Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

Administrative Records. The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: For plants in Minnesota, Franklin Echevarria, (312) 886–9653, and for plants in Wisconsin, Beth Valenziano, (312) 886–2703.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn and all public comment received on that exemption based on the relevant exemption in this notice of draft written exemptions. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's **Federal Register**.

Dated: November 3, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–28043 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5330–6]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The Environmental Protection Agency (EPA) is issuing for comment 5-year sulfur dioxide (SO_2) and nitrogen oxides (NO_x) compliance plans which either amend previously issued Phase I Acid Rain Permits, or will, if approved, result in the issuance of a Phase I Acid Rain Permit to sources not previously required to have one. These actions are taken in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76).

DATES: Comments on the draft permits and modifications must be received no later than 30 days after the date of this notice or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for sources in New York, EPA Region 2, 290 Broadway, New York, NY 10007; for sources in West Virginia, EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107; for sources in Alabama, Florida, Georgia, and Mississippi, EPA Region 4, 345 Courtland St. NE., Atlanta, GA 30365.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to: for sources in New York, EPA Region 2, Air and Waste Management Division, Attn: Gerald DeGaetano (address above); for sources in West Virginia, EPA Region 3, Air, Radiation and Toxics Division, Attn: Linda Miller (address above); and for sources in Alabama, Florida, Georgia, and Mississippi, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Brian Beals (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a compliance plan.

FOR FURTHER INFORMATION: For sources in New York, call Gerry DeGaetano, (212) 637–4020; for sources in West Virginia, call Linda Miller, (215) 597–7547; for sources in Alabama, Florida, Georgia, and Mississippi, call Scott Davis, (404) 347–5014.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is issuing to the following utility plants draft permits and draft permit modifications that propose to allocate SO_2 emission allowances, approve SO_2 compliance plans, and approve NO_x compliance plans under 40 CFR parts 72 and 76:

Region 2

Dunkirk in New York: Ten conditional substitution plans for units 3 and 4, one

for each year, 1995–1999, that designate Roseton unit 1 as a substitution unit; and one for each year, 1995–1999, that designate Roseton unit 2 as a substitution unit. The designated representative is Clement E. Nadeau.

Roseton in New York: 19,147 conditional substitution allowances to unit 1 for each year, 1995–1999; 16,872 conditional substitution allowances to unit 2 for each year, 1995–1999; ten conditional substitution plans, five for unit 1 (one for each year, 1995–1999) and five for unit 2 (one for each year, 1995–1999) in which units 1 and 2 are designated as substitution units for Dunkirk units 3 and 4; ten conditional reduced utilization plans, five for unit 1 (one for each year, 1995–1999) and five for unit 2 (one for each year, 1995–1999) in which units 1 and 2 will rely on improved unit efficiency, energy conservation and sulfur-free generation to account for any underutilization. The designated representative is Ronald P. Brand.

Region 3

Harrison in West Virginia: Two substitution plans for unit 1 for 1995–1999, one that designates Rivesville unit 7 and one that designates Rivesville unit 8 as a substitution unit; two substitution plans for unit 3 for 1995–1999, one that designates Willow Island unit 1 and one that designates Willow Island unit 2 as a substitution unit. The designated representative is David C. Benson.

Rivesville in West Virginia: 1,009 substitution allowances to unit 7 for each year, 1995–1999; 3,059 substitution allowances to unit 8 for each year, 1995–1999; two substitution plans for 1995–1999, one in which unit 7 is designated as a substitution unit and one in which unit 8 is designated as a substitution unit, both for Harrison unit 1. The designated representative is David C. Benson.

Willow Island in West Virginia: 1,855 substitution allowances for unit 1; 7,765 substitution allowances for unit 2; two substitution plans for 1995–1999, one in which unit 1 is designated as a substitution unit, and one in which unit 2 is designated as a substitution unit, both for Harrison unit 3. The designated representative is David C. Benson.

Region 4

E.C. Gaston in Alabama: Units 1, 2, 3, 4, and 5 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.48 lbs/MMBtu for units 1, 2, 3, and 4, and 0.52 lbs/MMBtu for unit 5, and the actual annual heat input for units 1, 2, 3, and 4 shall not be less than the annual heat input limits of 14,841,000 MMBtu, 13,018,000 MMBtu, 15,826,000 MMBtu, and 14,978,000 MMBtu, respectively, and the actual annual heat input for unit 5 shall not be greater than the annual heat input limit of 50,992,000 MMBtu. The other units designated in this plan are Gadsden units 1 and 2, Gorgas units 6, 7, 8, and 9, and J.H. Miller unit 4. The designated representative is Willard L. Bowers.

Gadsden in Alabama: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.70 lbs/MMBtu and the actual annual heat input for units 1 and 2 shall not be greater than the annual heat input limits of 3,300,000 MMBtu, and 1,189,000 MMBtu, respectively. The other units designated in this plan are E.C. Gaston units 1, 2, 3, 4, and 5, Gorgas units 6, 7, 8, and 9, and J.H. Miller unit 4. The designated representative is Willard L. Bowers.

Gorgas in Alabama: Units 6, 7, 8, and 9 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.70 lbs/MMBtu for units 6, 7, and 8, and 0.46 lbs/MMBtu for unit 9, and the actual annual heat input shall not be greater than the annual heat input limits of 3,904,000 MMBtu, 4,472,000 MMBtu, and 12,984,000 MMBtu for units 6, 7, and 8, respectively, and the actual annual heat input shall not be less than annual heat input limit of 9,401,000 MMBtu for unit 9. The other units designated in this plan are Gadsden units 1 and 2, E.C. Gaston units 1, 2, 3, 4, and 5, and J. H. Miller unit 4. The designated representative is Willard L. Bowers.

J.H. Miller in Alabama: Unit 4 will comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for this unit shall not exceed the alternative contemporaneous annual emission limitation of 0.33 lbs/MMBtu and the actual annual heat input for this unit shall not be less than the annual heat input limit of 50,323,000 MMBtu. The other units designated in this plan are Gadsden units 1 and 2, Gorgas units 6, 7, 8, and 9, and E.C. Gaston units 1, 2, 3, 4, and 5. The designated representative is Willard L. Bowers.

Big Bend in Florida: One NO_X compliance plan for 1996–1999 in which unit BB04 will comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is A. Spencer Autry.

Crist in Florida: Units 4, 5, and 6 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.60 lbs/MMBtu for units 4 and 5 and 0.55 lbs/MMBtu for unit 6, and the actual annual heat input for units 4, 5, and 6 shall not be greater than the annual heat input limits of 4,330,920 MMBtu, 3,518,988 MMBtu, and 13,451,097 MMBtu, respectively. The other units designated in this plan are Jack Watson units 4 and 5, Scholz units 1 and 2, Victor J. Daniel units 1 and 2, and Lansing Smith units 1 and 2. The designated representative is Frederick D. Kuester.

Jack Watson in Florida: Units 4 and 5 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.53 lbs/MMBtu, and the actual annual heat input for units 4 and 5 shall not be greater than the annual heat input limits of 12,086,872 MMBtu and 20,127,887 MMBtu, respectively. The other units designated in this plan are Scholz units 1 and 2, Lansing Smith units 1 and 2, Victor J. Daniel units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Lansing Smith in Florida: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.67 lbs/MMBtu for unit 1 and 0.45 lbs/MMBtu for unit 2, and the actual annual heat input for unit 1 shall not be greater than the annual heat input limit of 11,490,877 MMBtu. The other units designated in this plan are Jack Watson units 4 and 5, Scholz units 1 and 2, Victor J. Daniel units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Scholz in Florida: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.68 lbs/MMBtu, and the actual annual heat input for units 1 and 2 shall not be greater than the annual heat input limits of 723,608 MMBtu and 731,528 MMBtu, respectively. The other units designated in this plan are Jack Watson units 4 and 5, Lansing Smith units 1 and 2, Victor J. Daniel units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Victor J. Daniel in Florida: Units 1 and 2 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.34 lbs/MMBtu, and the actual annual heat input for units 1 and 2 shall not be less than the annual heat input limits of 21,244,417 MMBtu and 29,987,051 MMBtu, respectively. The other units designated in this plan are Jack Watson units 4 and 5, Lansing Smith units 1 and 2, Scholz units 1 and 2, and Crist units 4, 5, and 6. The designated representative is Frederick D. Kuester.

Arkwright in Georgia: One NO_X compliance plan for 1996–1999 in which units 1 and 2 will comply with the standard emission limitation of 0.45 lbs/MMBtu, and units 3 and 4 will comply with the standard emission limitation of 0.50 lbs/MMBtu. The designated representative is C.M. Hobson.

Harllee Branch in Georgia: One NO_X compliance plan for 1996–1999 in which unit 3 will comply with the standard emission limitation of 0.50 lbs/MMBtu. The designated representative is C.M. Hobson.

McIntosh in Georgia: One NO_X compliance plan for 1996–1999 in which unit 1 will comply with the standard emission limitation of 0.50 lbs/MMBtu. The designated representative is L.O. Keller.

Mitchell in Georgia: One NO_X compliance plan for 1996–1999 in which unit 3 will comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is C.M. Hobson.

Port Wentworth in Georgia: One NO_X compliance plan for 1996–1999 in which units 1, 2, and 3 will each comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is L.O. Keller.

Scherer in Georgia: One NO_X compliance plan for 1996–1999 in which unit 3 will comply with the standard emission limitation of 0.45 lbs/MMBtu. The designated representative is R.H. Haubein.

Dated: November 3, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–28040 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5330–7]

Acid Rain Program: Notice of Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of written exemptions.

SUMMARY: The Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain permitting and monitoring requirements to 7 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on December 26, 1995, unless significant, adverse comments are received by December 13, 1995. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the **Federal Register.**

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: For plants in Minnesota, Franklin Echevarria, (312) 886–9653, for plants in Wisconsin, Beth Valenziano, (312) 886–2703.

SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date a unit exempted under 40 CFR 72.7 burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions to the following new units, effective from January 1, 1996 through December 31, 2000:

IEA Georgia Pacific units 1, 2, 3, 4, and 5 in Minnesota. The designated representative is William C. Douglas.

Oneida Casino units 1 and 2 in Wisconsin. The designated representative is Gary T. Van Helvoirt.

Dated: November 3, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–28041 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5331–5]

Common Sense Initiative Council, Iron and Steel Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting of the Public Advisory Common Sense Initiative Council, Iron and Steel Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that, pending resolution of EPA's FY 1996 appropriation, the Iron and Steel Sector Subcommittee of the Common Sense Initiative Council will meet on Thursday, December 7, 1995 in Washington, D.C. The Subcommittee is currently overseeing approved projects and exploring issues related to the iron and steel industry. Limited time will be provided for members of the public to make oral comments at the meeting.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, is convening an open meeting of the Iron and Steel Sector Subcommittee on Thursday, December 7, 1995. The meeting will begin at 8:00 a.m. est and run until 4:00 p.m. est, and will be held at the Doubletree Hotel Park Terrace, 1515

Rhode Island Avenue NW., Washington, D.C. 20005, telephone number 202–232–7000. Seating will be available on a first come, first served basis. Limited time will be provided for public comment.

The Iron and Steel Subcommittee has created four work groups which are responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The Subcommittee has approved seven projects and their work plans. The purpose of the December meeting is to discuss in detail the status of projects sponsored by the Permits and the Brownfields work groups, to hear brief status updates from the Compliance and Innovative Technology work groups, to learn more about integrated industries, and to discuss the role of pollution prevention in the industry.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2821M of EPA Headquarters, 401 M Street SW., Washington, D.C. 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.gov.

FOR FURTHER INFORMATION CONTACT: For more information about and verification of this meeting, please call either Ms. Mary Byrne at 312–353–2315 in Chicago, Illinois or Ms. Judith Hecht at 202–260–5682 in Washington, D.C.

Dated: November 1, 1995.

Mahesh Podar,

Designated Federal Officer.

[FR Doc. 95–28042 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5331–6]

Common Sense Initiative Council, Printing Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting of the Public Advisory Common Sense Initiative Council, Printing Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that, pending resolution of EPA's FY 1996 appropriation, the Printing Subcommittee of the Common Sense Initiative Council (CSIC) will meet November 29, 1995, in Washington, D.C. All meetings are open to the public. Seating at meetings will be on a first-come basis. Limited time will be provided for members of the public wishing to make an oral presentation or comments at the Subcommittee meeting.

PURPOSE: The purpose of the Subcommittee meeting is to discuss the three projects under consideration by the Subcommittee. These projects are the Multi-Media Flexible Permitting Project, the New York Education Project, and the Information/Data Collection and Management Project. The purpose of the workgroup meetings the day before is to further develop workplans for these projects. Agendas will be available November 22, 1995.

DATES: Notice is hereby given that the Environmental Protection Agency, pending resolution of its FY 1996 appropriation, is convening an open meeting of the Prin'ing Sector Subcommittee (PSS) on November 29, 1995, in Washington, D.C. This meeting will take place from 8:30 a.m. est until 11 a.m. est. The Subcommittee will meet at the Washington Hilton, 1919 Connecticut Avenue NW., Washington, D.C. 20009. The telephone number for the hotel is 202–483–3000. The workgroups will meet the day before on November 28, 1995 from approximately 10 a.m. est until about 5:30 p.m. est. Workgroups will also meet on November 29, 1995 from approximately 2:30 p.m. est until about 3 p.m. est.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 2821M of EPA Headquarters, 401 M Street SW., Washington, D.C. 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.gov.

FOF FURTHER INFORMATION: For further information, contact Ginger Gotliffe of EPA's Office of Enforcement and Compliance Assurance at 202–564–7072, or Nancy Cichowicz of EPA's Region III at 215–597–2030.

Dated: November 7, 1995.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 95–28044 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5330–1]

Resource Conservation and Recovery Act; (RCRA) Docket Information Center: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and of closing of RCRA Docket Information Center during the move.

SUMMARY: The Resource Conservation and Recovery Act Docket Information Center (RIC) will move from M2616, 401 M Street SW., Washington, DC to Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC will be closed from November 14, 1995 through November 24, 1995. Closing the RCRA Docket Information Center during the move will facilitate the moving of the RIC's collection and ensure the integrity of the regulatory dockets. The move will allow the RIC to provide improved services to its patrons.

As of October 30, 1995, the public comment periods that will be open during the move are as follows:

F–95–PH4P	Land Disposal Restrictions—Phase IV: Issues Associated With Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes; Proposed Rule.	11/20/95
F–94–DPLP	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Hazardous Waste Listing Determination Policy; and CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rules.	11/30/95
F–95–WT3P	Hazardous Waste Management System; Testing and Monitoring Activities; Proposed Rule	12/01/95
F–95–CPGN	Procedures for Submission of Recycled Content Products Information to EPA; Notice and Request for Information.	02/29/96

The RIC expects the following dockets to open between October 30 and November 27:

F–95–MMP
Military Munitions
F–95–PRLP
Petroleum Listing Proposal
F–95–B5EP
Bethlehem Steel Delisting Proposal
F–95–WHWP
Hazardous Waste Identification Rule (HWIR) Waste Proposal

Special arrangements may be made to see the materials in the above dockets during the time the RIC is closed by calling (202) 260–9327.

The Docket will continue to receive mailed comments at the EPA Headquarters mailing address—RCRA Information Center (5305W), 401 M Street, SW, Washington DC 20460. During the time the RIC is closed, comments may be hand-delivered to M2616, 401 M Street, SW, Washington, DC. Beginning November 27, comments should be hand-delivered to the Virginia address.

FOR FURTHER INFORMATION CONTACT: RCRA Docket Information Center (5305W), 401 M Street, SW, Washington, DC 20460, (202/260–9327). Beginning November 27, the phone number will be 703/603–9230.

Dated: November 1, 1995.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 95–27947 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5329–8]

User's Guide to Federal Accidental Release Databases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the public availability of an EPA document developed in coordination with the 16 federal agencies on the National Response Team (NRT) titled "User's Guide to Federal Accidental Release Databases." This document was produced to address impediments to accessing the various federal accidental release databases as identified by "A Review of Federal Authorities for Hazardous Materials Accident Safety," which was required under Section 112(r)(10) of the Clean Air Act.

DATES: This report is now available at the address indicated below.

ADDRESSES: Copies of the report may be obtained by phoning the Emergency Planning and Community Right-to-Know Information Hot Line Telephone: (800) 424–9346 or (703) 412–9877 when calling local from Washington, DC area.

FOR FURTHER INFORMATION CONTACT: Mr. David Chung, Chemical Emergency Preparedness and Prevention Office (Code 5101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone 202–260–8942.

SUPPLEMENTARY INFORMATION: EPA is announcing the public availability of a document titled "User's Guide to Federal Accidental Release Databases." The guide was produced to make the various federal accidental release databases more usable, available, and comparable. It addresses the problems with using the federal accidental release databases as identified by the report titled "A Review of Federal Authorities for Hazardous Materials Accident Safety," which was called for under section 112(r)(10) of the Clean Air Act, 42 U.S.C. 7412. Issuance of the user's guide does not represent final Agency action.

The user's guide provides information on the seven major federal accidental release databases maintained by the National Response Center (NRC), EPA, DOT, OSHA, and the Agency for Toxic Substances and Disease Registry (ATSDR) so as to facilitate data interpretation, analysis, and comparison. The guide describes the information included in each of the databases and outlines some general search strategies to assist the user in formulating a search strategy and choosing the appropriate database. Also included in the user's guide are brief, descriptive profiles of the seven federal accidental release databases and discussions of future linking of databases to enable analysis of the databases in combination.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 95–27948 Filed 11–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011375–020.
Title: Trans-Atlantic Conference Agreement.
Parties:
Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line
Cho Yang Shipping Co. Ltd.
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A, de C.V.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd
Hyundai Merchant Marine Co., Ltd.

Synopsis: the proposed amendment provides for (1) multi-two year service contracts; and (2) an option by shipper service contract parties to fix currency adjustment factors within a ten percentage point band.

Agreement No.: 202–011456–010.
Title: South Europe American Conference.
parties:
Cho Yang Shipping Co., Ltd.
Compagnie Maritime d'Affretement
DSR Senator Lines GmbH
Evergreen Marine Corporation (Taiwan) Ltd.
Hanjin Shipping Col, Ltd.
"Italia" di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Ltd.
A.P. Moller Maersk Line
Nedlloyd Lijen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment revises Article 14.1(d) to provide that the duration of a service contract shall not exceed two years. It also amends Article 14.3 to provide that an amendment to a service contract is subject to a majority vote of the members entitled to vote.

Agreement No.: 232–011475–001.

Title: Hanjin/Tricon Agreement.
Parties:
Hanjin Shipping Co., Ltd.
Cho Yang Shipping Co. Ltd.
DSR-Senator Lines

Synopsis: The proposed amendment increases the charterer's combined eastbound/westbound slot allocation from 600 slots per week to 800 slots per week effective January 1, 1996.

Agreement No.: 232–011481–002.
Title: Hanjin/AMA Agreement.
Parties:
Hanjin Shopping Co., Ltd.
Cho Yang Shipping Co. Ltd.
DSR-Senator Lines

Synopsis: The proposed amendment expands the geographic scope of the Agreement to include ports in the Middle and Far East (Singapore/Japan range). It also increases the charterer's combined eastbound/westbound slot allocation from 400 slots per week to 600 slots per week effective January 1, 1996.

By Order of the Federal Maritime Commission.

Dated: November 6, 1996.

Joseph C. Poking,

Secretary.

[FR Doc. 95–27877 Filed 11–9–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 132–011518.
Title: SPCL/Polynesia Line Cross Space Charter and Sailing Agreement
Parties:
South Pacific Container Line
Polynesia Line Limited

Synopsis: The proposed Agreement permits the parties to charter space to one another and rationalize sailings in the trade between ports in the American Samoa and ports on the Pacific Coast of the United States.

Dated: November 6, 1995.

By Order of the Federal Maritime Commission.

[FR Doc. 95–27878 Filed 11–9–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses are revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3629
Name: Regina G. Derbin dba Lacs Forwarding
Address: 806 Lemons Drive, Cedar Hill, TX 75104
Date Revoked: September 8, 1995
Reason: Surrendered license voluntarily.

License Number: 2167
Name: An-Mar Project International, Inc.
Address: 425 Victoria Terrace, Ridgefield, NJ 07657
Date Revoked: September 14, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3427
Name: Rainbow International, Inc.
Address: 3700 Bells Lane, Louisville, KY 40211
Date Revoked: September 16, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3787
Name: Matrix Express, Inc.
Address: 154–09 146th Ave., Jamaica, NY 11434
Date Revoked: September 21, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3217
Name: Kremer International Transport, Inc.
Address: 1736 Gilsinn Lane, Fenton, MO 63026
Date Revoked: October 11, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 2456
Name: Export Forwarding Company
Address: 2213 Royal Lane, Dallas, TX 75229
Date Revoked: October 12, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 3609
Name: Asia Trans Lines, Inc.
Address: 163 East Compton Blvd., Gardena, CA 90248
Date Revoked: October 13, 1995
Reason: Failed to maintain a valid surety bond.

License Number: 1499
Name: Anderson Bros. Storage & Moving Co.
Address: 3141 North Sheffield, Chicago, IL 60657
Date Revoked: October 18, 1995
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Toriffs, Certification and Licensing.

[FR Doc. 95–27876 Filed 11–9–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

F&M Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F&M Bancorporation, Kaukauna, Wisconsin; to merge with Monycor Bancshares, Inc., Superior, Wisconsin, and thereby indirectly acquire Monycor Bank of Superior, Superior, Wisconsin.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. C Bar M, Inc., Carrizo Springs, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Union State Bank, Carrizo Springs, Texas.

Board of Governors of the Federal Reserve System, November 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27921 Filed 11–9–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3785–N–04]

Announcement of Funding Awards for the FY 1995 Service Coordinators for Public Housing Agencies Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1995 to public housing agencies under the Service Coordinators for Public Housing Agencies Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–4214. (This is not a toll-free number.) Hearing and speech impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 for information on the program.

SUPPLEMENTARY INFORMATION: The Service Coordinators for Public Housing Agencies Program is funded under the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994.

The purpose of the Service Coordinator for Public Housing Agencies Program is to ensure that elderly and non-elderly disabled residents have access to the services they need to enhance the quality of their lives, to live independently, and to avoid premature or unnecessary institutionalization. The grants will be for up to three years in duration, depending upon the activities undertaken.

A National Lottery competition was held and recipients were chosen under selection criteria announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on February 27, 1995 (60 FR 10764).

The major functions of the service coordinators are:

—To provide general case management and referral services to all elderly and non-elderly disabled residents needing such assistance;
—To establish linkage with all agencies and service providers in the community;
—To set out a directory of providers for use by both PHA staff and residents;
—To educate residents on service availability, application, procedures, and client rights.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–35, approved December 15, 1989) the Department is publishing the names and addresses of the Public Housing Agencies which received funding under this NOFA, and the amount awarded to each. This information is provided in Appendix A to this document.

Dated: November 2, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS

Name and address	Grant amount
Mr. Daniel R. Fauske, Executive Director, Alaska Housing Finance Corporation, P.O. Box 230329, 624 West International Airport Road, Anchorage, AK 99523–0329	$90,000
Mr. Shaler Roberts, III, Executive Director, Florence Housing Authority, 303 North Pine Street, Florence, AL 35630	90,000
Mr. A. A. Roberts, Jr., Executive Director, Housing Authority of the City of Phenix City, P.O. Box 338, 200 16th Street, Phenix City, AL 36868–0338	90,000
Mr. Eric Q. Strong, Executive Director, Jefferson County Housing Authority, 3700 Industrial Parkway, Birmingham, AL 35217	90,000
Mr. William S. Clements, Executive Director, Housing Authority of the City of North Little Rock, P.O. Box 516, 2201 Division, North Little Rock, AR 72115–0516	108,700
Ms. Karen Thoreson, Executive Director, City of Tuscon Community Services Department, P.O. Box 27210, 1501 North Oracle Road, Tucson, AZ 85726–7120	150,000
Mr. Marvin Bowles, Executive Director, Phoenix Housing Department, 251 West Washington Street, Phoenix, AZ 85003	604,000
Mr. James E. Koslow, Executive Director, Housing Authority of the City of San Buenaventura, P.O. Box 1648, 995 Riverside Street, Ventura, CA 93002–1648	90,000
Mr. Paul J. Castro, Executive Director, Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308–4799	90,000
Mr. Harold Davis, Executive Director, Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612	230,587
Mr. John Molloy, Executive Director, Sacramento City Housing & Redevelopment Agency, P.O. Box 1834, 630 I Street, Sacramento, CA 95812–1834	621,272
Ms. Elizabeth Morris, Executive Director, San Diego Housing Commission, 1625 Newton Street, San Diego, CA 92113	90,000
Mr. Sal Carpio, Executive Director, Housing Authority of the City and County of Denver, Box 40305 Mile High, 1100 West Colfax Avenue, Denver, CO 80204	150,000
Mr. Clarence H. Craig, Jr, Executive Director, Housing Authority of the City of Bridgeport, 150 Highland Avenue, Bridgeport, CT 06604–2128	150,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. John D. Wardlaw, Executive Director, Housing Authority of the City of Hartford, 475 Flatbush Avenue, Hartford, CT 06106–3728	150,000
Ms. Dorislee Carpenter, Executive Director, Housing Authority of the City of New Britain, 34 Marimac Road, New Britain, CT 06053–2699	150,000
Mr. Curtis O. Law, Executive Director, Housing Authority of the City of Norwalk, P.O. Box 508, 24½ Monroe Street, Norwalk, CT 06854–0508	90,000
Mr. John B. Roughan, Executive Director, Housing Authority of the Town of East Hartford, 546 Burnside Avenue, East Hartford, CT 06108	90,000
Mr. Michael W. Siwek, Executive Director, West Haven Housing Authority, 15 Glade Street, West Haven, CT 06516–2607	150,000
Mr. Arthur LaChioma, Executive Director, Housing Authority of the City of Fort Myers, 4224 Michigan Avenue, Fort Myers, FL 33916	90,000
Mr. Deborah Vincent, Executive Director, Clearwater Housing Authority, P.O. Box 960, 210 South Ewing Avenue, Clearwater, FL 34617	90,000
Mr. Gregory A. Byrne, Executive Director, Dade County HUD, 1401 NW 7th Street, Miami, FL 33125	674,016
Clarence J. Brown, Executive Director, Housing Authority of the City of Fort Pierce, 707 North 7th Street. Fort Pierce, FL 34950	90,000
Mr. Ronnie A. Ferguson, Executive Director, Jacksonville Housing Authority, 1300 Broad Street, Jacksonville, FL 32202–3901	150,000
Mr. Owen A. Dixon, Executive Director, Riviera Beach Housing Authority, 2014 West 17th Court, Riviera Beach, FL 33404	150,000
Mr. Jacob L. Oglesby, Executive Director, Housing Authority of the City of Augusta, P.O. Box 3246, Augusta, GA 30901	274,754
Mr. William Traylor, Executive Director, Housing Authority of the City of Carrollton, P.O. Box 627, Carrollton, GA 30117–0627	90,000
Mr. William Wilkins, Executive Director, City of Des Moines Housing Services Department, 1101 Crocker Street, Des Moines, IA 50309–1110	90,000
Mr. Daniel V. Stroda, Executive Director, Ottumwa Housing Authority, 102 West Finley Avenue, Ottumwa, IA 52501	90,000
Mr. Roger Marcum, Executive Director, Champaign County Housing Authority, P.O. Box 183, 1201 East Colorado Street, Urbana, IL 61801–0183	80,000
Mr. Kevin Marchman, Executive Director, Chicago Housing Authority, 626 West Jackson Boulevard, Chicago, IL 60661	1,875,000
Mr. Victor L. Walchirk, Executive Director, Cook County Housing Authority, 59 East Van Buren Street, Chicago, IL 60605	675,000
Mr. David P. Carr, Executive Director, Decatur Housing Authority, 1808 East Locust Street, Decatur, IL 62521–1409	90,000
Ms. Gloria McKittrick, Executive Director, Housing Authority City Bloomington, 104 East Wood, Bloomington, IL 61701–6768	90,000
Mr. Stevens Gregory, Executive Director, Housing Authority East St Louis, 700 N 20th Street, East St Louis, IL 62205	675,000
Mr. Henry Morris, Executive Director, Joliet Housing Authority, P.O. Box 2519, Joliet, IL 60434–2519	150,000
Mr. Alon Jeffrey, Executive Director, Lake County Housing Authority, 33928 North Route 45, Grayslake, IL 60030	90,000
Mr. Lawrence E. Williams, Executive Director, Marion County Housing Authority, 719 East Howard Street, Centralia, IL 62801	90,000
Mr. Gary Verni-Lau, Executive Director, Rockford Housing Authority, 330 15th Avenue, Rockford, IL 61108	150,000
Mr. David L. Wagner, Executive Director, Saint Clair County Housing Authority, 100 North 48th Street, Belleville, IL 62223	87,833
Ms. Joanne Quaglia, Executive Director, Williamson County Housing Authority, P.O. Box 045, 300 Hickory Street, Carterville, IL 62918–0045	90,000
Ms. Sarah Moyado, Executive Director, Winnebago County Housing Authority, 2901 Searle Avenue, Rockford, IL 61103	90,000
Mr. Thomas Hannen, Executive Director, Fort Wayne Housing Authority, P.O. Box 13489, 2013 South Anthony Boulevard, Fort Wayne, IN 46803–3489	90,000
Ms. Maria Becerra, Executive Director, Hammond Housing Authority, 7329 Columbia Circle West, Hammond, IN 46324–2819	150,000
Mr. John Nelson, Jr., Executive Director, Indianapolis Public Housing Division, Five Indiana Square, Indianapolis, IN 46204	150,000
Ms. Shirley D. Ying, Executive Director, Kokomo Housing Authority, P.O. Box 1207, 210 East Taylor Street, Kokomo, IN 46903–1207	90,000
Ms. Barbara Huppee, Executive Director, Lawrence Housing Authority, 1600 Haskell Avenue, Lawrence, KS 66044	90,000
Mr. Bobby Crooks, Executive Director, Housing Authority of Bowling Green, P.O. Box 116, Bowling Green, KY 42101	90,000
Ms. Sheri Lee, Executive Director, Housing Authority of Glasgow, P.O. Box 1745, 106 Bunche Avenue, Glasgow, KY 42141	90,000
Mr. Reuben Boswell, Executive Director, Housing Authority of Henderson, 901 Dixon Street, Henderson, KY 42420	90,000
Mr. Austin Simms, Executive Director, Housing Authority of Lexington, 635 Ballard Street, Lexington, KY 40508	90,000
Mr. Donald Costello, Executive Director, Housing Authority of Mayfield, P.O. Box 474, 312 Brookside Drive, Mayfield, KY 42066	90,000
Ms. Peggy Henault, Executive Director, Housing Authority of Paducah, 2330 Ohio Street, Paducah, KY 42002	90,000
Mr. Larry E. Cole, Executive Director, Housing Authority of East Baton Rouge Parish, 4546 North Street, Baton Rouge, LA 70806–3422	109,583
Mr. Joseph D. Feaster, Executive Director, Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2302	675,000
Mr. Richard Sergi, Executive Director, Brockton Housing Authority, P.O. Box 240, 45 Goddard Road, Brockton, MA 02403	615,404
Mr. Brian Cloonan, Executive Director, Brookline Housing Authority, 90 Longwood Avenue, Brookline, MA 02146	90,000
Mr. Daniel Wuenschel, Executive Director, Cambridge Housing Authority, 270 Green Street, Cambridge, MA 02139–3360	675,000
Mr. Richard Viveiros, Executive Director, Fall River Housing Authority, P.O. Box 989, 85 Morgan Street, Fall River, MA 02722–0989	105,240
Mr. Domenic J. O'Neill, Executive Director, Lawrence Housing Authority, 353 Elm Street, Lawrence, MA 01842	150,000
Mr. Charles Gaeta, Executive Director, Lynn Housing Authority, 174 South Common Street, Lynn, MA 01905–2513	89,000
Mr. John Daly, Jr., Executive Director, Malden Housing Authority, P.O. Box 365, 630 Salem Street, Malden, MA 02148–0365	150,000
Mr. Joseph Finnerty, Executive Director, New Bedford Housing Authority, P.O. Box A–2081, 134 South Second Street, New Bedford, MA 02741–2081	123,227
Mr. William Casamento, Executive Director, Somerville Housing Authority, 30 Memorial Road, Somerville, MA 02145	90,000
Ms. Michelle Booth, Executive Director, Worcester Housing Authority, 40 Belmont Street, Worcester, MA 01605	622,759
Mr. Larry A. Loyd, Executive Director, Anne Arundel County Housing Authority, P.O. Box 817, Glen Burnie, MD 21060–2817	84,401
Mr. Daniel Henson, III, Executive Director, Housing Authority of Baltimore City, 417 East Fayette Street, Baltimore, MD 21202	675,000
Mr. Fay C. Mummert, Executive Director, Housing Authority of Cumberland, 635 East First Street, Cumberland, MD 21502	85,880
Mr. Roger W. Miller, Executive Director, Housing Authority of the City of Hagerstown, P.O. Box 2859, Hagerstown, MD 21741–2859	150,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. Bernard L. Tetreault, Executive Director, Housing Opportunity Commission, Montgomery County, 10400 Detrick Avenue, Kensington, MD 20895	149,911
Mrs. Dorothy E. Igoe, Executive Director, Brewer Housing Authority, One Colonial Circle, Brewer, ME 04412	90,000
Mr. Peter Howe, Executive Director, Portland Housing Authority, 14 Baxter Boulevard, Portland, ME 04101–4935	150,000
Ms. Danethel Whitfield, Executive Director, Benton Harbor Housing Commission, 925 Buss Street, Benton Harbor, MI 49022	90,000
Mr. Reginald Richardson, Executive Director, Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506–2616	150,000
Mr. Floyd B. Simmons, Executive Director, Inkster Housing Commission, 4500 Inkster Road, Inkster, MI 48141–1871	90,000
Mr. Phillip M. Fracker, Executive Director, Jackson Housing Commission, 301 Steward Avenue, Jackson, MI 49201–1132	90,000
Mr. James M. Inglis, Executive Director, Livonia Housing Commission, 19300 Purlingbrook, Livonia, MI 48152–1902	90,000
Ms. Sharon L. Thomas, Executive Director, Plymouth Housing Commission, 1160 Sheridan Avenue, Plymouth, MI 48170–1561	90,000
Mr. Gerald E. Schock, Executive Director, Port Huron Housing Commission, 905 Seventh Street, Port Huron, MI 48060–5399	90,000
Mr. Ravi Yalamanchi, Executive Director, Saginaw Housing Commission, 2811 Davenport Street, Saginaw, MI 48602–3747	150,000
Ms. Branna K. Lindell, Executive Director, HRA of The City of South Saint Paul, 125 Third Avenue North, South Saint Paul, MN 55075	90,000
Mr. Richard W. Ball, Executive Director, Housing & Redevelopment Authority of Duluth, P.O. Box 16900, 222 East Second Street, Duluth, MN 55816–0900	150,000
Ms. Cora McCorvey, Executive Director, Minneapolis PHA In And For The City of Minneapolis, 1001 Washington Ave, Minneapolis, MN 55401	675,000
Mr. Jon M. Gutzmann, Executive Director, Public Housing Agency of the City of Saint Paul, 480 Cedar Street, Saint Paul, MN 55101–2240	576,053
Mr. William H. Brown, Executive Director, Housing Authority of the City of Columbia, 301 North Providence Road, Columbia, MO 65203–4091	90,000
Mr. Kenneth King, Executive Director, Housing Authority of the City of Poplar Bluff, P.O. Box 1009, 506 Hazel Street, Poplar Bluff, MO 63901–6049	90,000
Mr. Eugene Jones, Executive Director, Kansas City Housing Authority, 299 Paseo, Kansas City, MO 64106–2608	89,976
Ms. Brenda Williams, Executive Director, Saint Louis Housing Authority, 4100 Lindell Boulevard, Saint Louis, MO 63108–2999	112,744
Mr. Ike Francis, Executive Director, Saint Joseph Housing Authority, P.O. Box 1153, 502 South 10th, Saint Joseph, MO 64502	90,000
Mr. Roy E. Necaise, Executive Director, Mississippi Regional Housing Authority No. VIII, P.O. Box 2347, Gulfport, MS 39505–2347	90,000
Mr. Thomas M. Coleman, Executive Director, Tennessee Valley Regional Housing Authority, P.O. Box 1329, Corinth, MS 38834–1329	150,000
Ms. Beverly D. Romeo, Executive Director, The Housing Authority of the City of Biloxi, P.O. Box 447, Biloxi, MS 39533	90,000
Mr. Alvin E. Stevenson, Executive Director, The Housing Authority of the City of Meridian, P.O. Box 870, 2305 D Street, Meridian, MS 39302–0870	150,000
Mr. David Jones, Jr., Executive Director, Housing Authority of the City of Asheville, P.O. Box 1898, 165 South French Broad Avenue, Asheville, NC 28802	150,000
Ms. Elaine T. Ostrowski, Executive Director, Housing Authority of the City of Greensboro, P.O. Box 21287, 450 North Church Street, Greensboro, NC 27420	150,000
Mr. Paul H. Messenger, Executive Director, Housing Authority of the City of Raleigh, P.O. Box 28007, 600 Tucker Street, Raleigh, NC 27611	150,000
Mr. Arthur S. Milligan, Jr., Executive Director, Housing Authority of the City of Winston-Salem, 901 Cleveland Avenue, Winston-Salem, NC 27101	675,000
Ms. Julie Love, Executive Director, Minot Housing Authority, 310 Second Street, SE, Minot, ND 58701	90,000
Mr. Robert L. Armstrong, Executive Director, Omaha Housing Authority, 540 South 27th Street, Omaha, NE 68105–1521	669,288
Mrs. Catherine Naczas, Executive Director, Laconia Housing Authority, 25 Union Avenue, Laconia, NH 03246–3558	90,000
Ms. Grace Hicks-Grogan, Executive Director, Manchester Housing & Redevelopment Authority, 198 Hanover Street, Manchester, NH 03103–6125	150,000
Mr. John J. McAvaddy, Jr., Executive Director, Atlantic City Housing Authority, P.O. Box 1258, 227 North Vermont Avenue, Atlantic City, NJ 08404–7549	147,735
Mr. Benjamin Quattlebaum, II, Executive Director, Camden Housing Authority, 517 Market Street, Camden, NJ 08102–1293	147,735
Mr. Dale P. Gravett, Executive Director, Millville Housing Authority, P.O. Box 803, Millville, NJ 08332–0803	90,000
Ms. Roberta Strater, Executive Director, Morris County Housing Authority, 99 Ketch Road, Morristown, NJ 07960–3115	90,000
Mr. Harold Lucas, Executive Director, Newark Housing Authority, 57 Sussex Avenue, Newark, NJ 07103–3992	675,000
Ms. Diane Pierano-Ingvaldsen, Executive Director, North Bergen Housing Authority, 6121 Grand Avenue, North Bergen, NJ 07047–5436	150,000
Mr. William Reid, Executive Director, Orange Housing Authority, 340 Thomas Boulevard, Orange, NJ 07050–4121	90,000
Mr. Douglas G. Dzema, Executive Director, Perth Amboy Housing Authority, P.O. Box 390, 881 Amboy Avenue, Perth Amboy, NJ 08862–0390	90,000
Mr. William Snyder, Executive Director, Secaucus Housing Authority, 777 Fifth Street, Secaucus, NJ 07094–3362	90,000
Mr. Michael A. Varela, Executive Director, Housing Authority of the City of Santa Fe, P.O. Box 4039, 664 Alta Vista Street, Santa Fe, NM 87502–4039	90,000
Mr. Frederick Brown, Executive Director, Housing Authority of the City of Las Vegas, P.O. Box 1897, Las Vegas, NV 89125	671,698
Mr. W. F. Cottrell, Executive Director, Housing Authority of the County of Clark, 5390 East Flamingo Road, Las Vegas, NV 89122–5308	90,000
Mr. Steven Longo, Executive Director, Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202–1637	150,000
Mr. David K. Tanenhaus, Executive Director, Binghamton Housing Authority, P.O. Box 1906, 45 Exchange Street, Binghamton, NY 13902–1906	90,000
Mr. Michael K. Clarke, Executive Director, Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204–2299	675,000
Mr. James A. Mirando, Executive Director, Elmira Housing Authority, 346 Woodlawn Avenue, Elmira, NY 14901–1397	90,000
Mr. Jeffrey T. McChesly, Executive Director, Jamestown Housing Authority, Hotel Jamestown, 110 West Third Street, Jamestown, NY 14701–5199	90,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. Peter Smith, Executive Director, Municipal Housing Auth. for the City of Yonkers, P.O. Box 35, 1511 Central Park Avenue, Yonkers, NY 10710–0035	675,000
Mrs. Sharon A. Jordan, Executive Director, Municipal Housing Authority of Schenectady, 375 Broadway, Schenectady, NY 12405–2595	150,000
Mr. Paul Graziano, Executive Director, New York City Housing Authority, 250 Broadway, New York, NY 10007–2516	1,875,000
Mr. Micheal J. Raymond, Executive Director, Niagara Falls Housing Authority, 744 10th Street, Niagara Falls, NY 14301–1852	150,000
Ms. S. Patricia Lucia, Executive Director, Plattsburgh Housing Authority, 19 Oak Street, Plattsburgh, NY 12901–2830	90,000
Mr. Thomas F. McHugh, Executive Director, Rochester Housing Authority, 140 West Avenue, Rochester, NY 14611–2744	542,280
Mr. Frederick Murphy, Executive Director, Syracuse Municipal Housing Authority, 516 Burt Street, Syracuse, NY 13202–3999	540,112
Mr. William E. Rutkoske, Executive Director, Town of Islip Housing Authority, 963 Montauk Highway, Oakdale, NY 11769–1494	90,000
Ms. Sandy Forman, Executive Director, Town of Ramapo Housing Authority, Pondview Drive, Suffern, NY 10901–6599	164,880
Mr. Hubert W. McDuffie, Executive Director, Village of Hempstead Housing Authority, 75 Laurel Avenue, Hempstead, NY 11550–5599	90,000
Mr. Anthony O'Leary, Executive Director, Akron Metropolitan Housing Authority, 180 West Cedar Street, Akron, OH 44307–2546	675,000
Mr. James Noyes, Executive Director, Ashtabula Metropolitan Housing Authority, 3526 Lake Avenue, Ashtabula, OH 44004–5780	76,077
Mr. Donald J. Troendle, Executive Director, Cincinnati Metropolitan Housing Authority, 16 West Central Parkway, Cincinnati, OH 45210–1991	507,630
Ms. Claire Freeman, Executive Director, Cuyahoga Metropolitan Housing Authority, 1441 West 25th Street, Cleveland, OH 44113–3101	675,000
Mr. Michael M. Merick, Executive Director, Jefferson Metropolitan Housing Authority, 815 North Sixth Avenue, Steubenville, OH 43952–1847	150,000
Mr. Dennis Morgan, Executive Director, Lucas Metropolitan Housing Authority, P.O. Box 477, 435 Nebraska Avenue, Toledo, OH 43697–0477	675,000
Mr. Rudy J. Vazmina, Executive Director, Youngstown Metropolitan Housing Authority, 131 Boardman Street, Youngstown, OH 44503–1329	148,930
Mr. Philip E. Allen, Executive Director, Zanesville Metrpolitan Housing Authority, 407 Pershing Road, Zanesville, OH 43701	90,000
Mr. John Doty, Executive Director, Housing Authority of the City of Miami, P.O. Box 848, 205 B Street, NE, Miami, OK 74355–0848	89,886
Ms. Linda Dupont-Johnson, Executive Director, Housing Authority of the City of Tulsa, P.O. Box 6369, 415 East Independence, Tulsa, OK 74148–0369	150,000
Mr. Jack G. Womack, Executive Director, Oklahoma City Housing Authority, 1700 NE Fourth Street, Oklahoma City, OK 73117	645,000
Mr. Ric Weaver, Executive Director, HA & Urban Renewal Agency of Polk County, P.O. Box 467, Dallas, OR 97338	90,000
Mr. Denny West, Executive Director, Housing Authority of Portland, 135 SW Ash Street, Portland, OR 97204	439,922
Mr. J. L. Wingard, Executive Director, Altoona Housing Authority, P.O. Box 671, 1100 Eleventh Street, Altoona, PA 16603	90,000
Mr. James F. Tress, Executive Director, Beaver County Housing Authority, 300 State Avenue, Beaver, PA 15009–1798	606,866
Mr. Donald E. Grondahl, Executive Director, Bucks County Housing Authority, P.O. Box 1329, 350 South Main Street, Doylestown, PA 18901–0967	105,000
Mr. Perry O'Malley, Executive Director, Butler County Housing Authority, 111 South Cliff Street, Butler, PA 16003–1917	90,000
Mr. Philip J. Spagnolo, Executive Director, Dauphin County Housing Authority, P.O. Box 7598, 501 Mohn Street, Steelton, PA 17113–2021	150,000
Mr. Thomas Harkless, Executive Director, Lancaster Housing Authority, 333 Church Street, Lancaster, PA 17602–4253	88,693
Mr. Edward P. Christiano, Executive Director, Northumberland County Housing Authority, 50 Mahoning Street, Milton, PA 17847–1021	90,000
Mr. John F. White, Jr., Executive Director, Philadelphia Housing Authority, 2012 Chestnut Street, Philadelphia, PA 19103–4497	626,806
Mr. Stephen K. Hall, Executive Director, Washington County Housing Authority, 100 Crumrine Tower, Franklin Street, Washington, PA 15301–6995	87,844
Ms. Debbie Loucks, Executive Director, York Housing Authority, P.O. Box 1963, 31 South Broad Street, York, PA 17405	150,000
Ms. Elaine Woloohojian, Executive Director, Cranston Housing Authority, 50 Birch Street, Cranston, RI 02920–7565	150,000
Mr. Daniel Marvelle, Executive Director, Newport Housing Authority, One York Avenue, Newport, RI 02840–1212	90,000
Ms. Christine Palma, Executive Director, North Providence Housing Authority, 947 Charles Street, North Providence, RI 02904–5654	90,000
Mr. Roland C. Moussally, Executive Director, Pawtucket Housing Authority, P.O. Box 1303, Pawtucket, RI 02862–1303	150,000
Mr. Stephen O'Rourke, Executive Director, Providence Housing Authority, 100 Broad Street, Providence, RI 02903–4129	668,420
Mr. Stephen Vadnais, Executive Director, Woonsocket Housing Authority, 679 Social Street, Woonsocket, RI 02895–3251	150,000
Ms. Mary Louise Battisti, Executive Director, Housing Authority of Spartanburg, P.O. Box 2828, 325 South Church Street, Spartanburg, SC 29306	150,000
Mr. Donald J. Cameron, PHM, Executive Director, Housing Authority of the City of Charleston, 20 Franklin Street, Charleston, SC 29401–6907	147,457
Mr. Rodney H. Fauser, Executive Director, Housing Authority of the City of Columbia, 1917 Harden Street, Columbia, SC 29204–4307	102,704
Mr. T.A. "Al" Harris, Executive Director, Chattanooga Housing Authority, P.O. Box 1486, 505 W.M.L. King Boulevard, Chattanooga, TN 37401–1148	675,000
Mr. Fred O. DeBruhl, Sr., Executive Director, Knoxville's Community Development Corporation, P.O. Box 3550, 901 Broadway NE, Knoxville, TN 37927	675,000
Mr. Jerome Ryans, Executive Director, Memphis Housing Authority, P.O. Box 3664, 700 Adams Avenue, Memphis, TN 38103–0664	675,000
Mr. James L. Thiltgen, Executive Director, Metropolitan Development & Housing Agency, P.O. Box 846, 701 South Sixth Street, Nashville, TN 37202–0846	465,513
Ms. Roxann Chargois, Executive Director, Austin Housing Authority, P.O. Box 6159, 1640 East Second Street, Austin, TX 78762–6159	150,000
Mr. Ernesto Pena, Executive Director, Brownsville Housing Authority, P.O. Box 4420, 24 Elm Street, Brownsville, TX 78520–4420	150,000

APPENDIX A—1995 SERVICE COORDINATORS RECIPIENTS—Continued

Name and address	Grant amount
Mr. Victor De La Cruz, Executive Director, Corpus Christi Housing Authority, 3701 Ayers Street, Corpus Christi, TX 78415–7019	90,000
Mr. Alphonso Jackson, Executive Director, Housing Authority of Dallas, 3939 North Hampton Road, Dallas, TX 75212	150,000
Ms. Barbara Holston, Executive Director, Housing Authority of Fort Worth, P.O. Box 430, 212 Burnett Street, Fort Worth, TX 76101–0430	90,000
Mr. Hal Rose, Executive Director, Housing Authority of Temple, P.O. Box 634, 700 West Calhoun, Temple, TX 76503–0634	90,000
Mr. Dan Strange, Executive Director, Housing Authority of Waco, P.O. Box 978, 1001 Washington, Waco, TX 76703–0978	90,000
Mr. Ernest Wilson, Executive Director, Housing Authority of the City of Beaumont, P.O. Box 1312, 4925 Concord Road, Beaumont, TX 77704–1312	90,000
Mr. Walter Norris, Jr., Executive Director, Housing Authority of the City of Galveston, 920 53rd Street, Galveston, TX 77551–1099	150,000
Ms. Joy W. Fitzgerald, Executive Director, Housing Authority of the City of Houston, P.O. Box 2971, 2640 Fountainview, Houston, TX 77252–2971	150,000
Mr. Abraham Rodriquez, Executive Director, Laredo Housing Authority, 2000 San Francisco Avenue, Laredo, TX 78040	90,000
Mr. Apolonio Flores, Executive Director, San Antonio Housing Authority, P.O. Drawer 1300, 818 South Flores Street, San Antonio, TX 78295–1300	660,246
Mr. Michael McNamara, Executive Director, Alexandria Redevelopment & Housing Authority, 600 North Fairfax Street, Alexandria, VA 22314–2094	90,000
Mr. H. Thomas Griffith, Executive Director, Cumberland Plateau Reg. Housing Authority, P.O. Box 1328, Lebanon, VA 24266–1328	675,000
Mr. James B. Rattray, Executive Director, Hampton Redevelopment & Housing Authority, P.O. Box 280, 22 Lincoln Street, Hampton, VA 23669–0280	90,000
Mr. William L. Hawkins, Jr., Executive Director, Newport News Redev. & Housing Authority, P.O. Box 77, 227 27th Street, Newport News, VA 23607–0077	150,000
Mr. David H. Rice, Executive Director, Norfolk Redevelopment & Housing Authority, P.O. Box 968, 201 Granby Street, Norfolk, VA 23501–0968	525,457
Mr. Richard C. Gentry, Executive Director, Richmond Redevelopment & Housing Authority, P.O. Box 26887, 901 Chamberlayne Parkway, Richmond, VA 23261–6887	471,390
Ms. Lucinda Jones, Executive Director, Barre Housing Authority, 455 North Main Street, Barre, VT 05641–0525	90,000
Mr. Allan L. White, Executive Director, Housing Authority of the City of Everett, P.O. Box 1547, 3107 Colby Avenue, Everett, WA 98206–1547	90,000
Mr. David Gilmore, Executive Director, Housing Authority of the City of Seattle, 120 Sixth Avenue, N, Seattle, WA 98109–5002	675,000
Mr. Wayne W. Morris, Executive Director, Housing Authority of the City of Tacoma, 902 South "L" Street, Tacoma, WA 98405	90,000
Mr. Jim Wiley, Executive Director, King County Housing Authority, 15455 65th Avenue, S, Tukwila, WA 98188–2583	675,000
Mr. Brad J. Masterson, Executive Director, Appleton Housing Authority (Low Rent), 525 North Oneida Street, Appleton, WI 54911–4749	90,000
Mr. Ricardo Diaz, Executive Director, Housing Authority of the City of Milwaukee, P.O. Box 324, 809 North Broadway, Milwaukee, WI 53202–3669	675,000
Mr. George E. Austin, Executive Director, Madison Community Development Authority, P.O. Box 1785, 215 Martin Luther King Jr Boulevard, Madison, WI 53701–1785	90,000
Mr. John M. Franzen, Executive Director, Oshkosh Housing Authority, P.O. Box 397, 600 Merritt Avenue, Oshkosh, WI 54902–0397	86,360
Ms. Zelma Boggess, Executive Director, Housing Authority of the City of Charleston, P.O. Box 86, 911 Michael Avenue, Charleston, WV 25321	150,000
Mr. William Dotson, Executive Director, Housing Authority of the City of Huntington, P.O. Box 2183, 30 Northcott Court, Huntington, WV 25722–2183	150,000

[FR Doc. 95–27865 Filed 11–9–95; 8:45 am]
BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–59440]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 35: S½NW¼NW¼NW¼.
Containing 10.00 acres, more or less.

This parcel of land, situated in Las Vegas is being offered as a direct sale to Nevada Power Company.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

1. Those rights for an electrical substation and electrical line purposes which have been granted to Nevada Power Company by Permit No. N–55657

under the Act of October 21, 1976 (43 U.S.C. 1761).

2. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. N–58122 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for public road purposes which have been granted to Clark County by Permit No. N–58342 under the Act of October 21, 1976 (43 U.S.C. 1761). Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: October 31, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–27873 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–HC–P

[NM–030–1231–00]

Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Las Cruces District, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final supplementary rules; Visitor restrictions.

SUMMARY: The BLM New Mexico State Director is establishing these final supplementary rules, which are necessary for the protection of persons, property, and public land and resources currently under the Bureau's administration within the Las Cruces District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR 8365.1–6.

EFFECTIVE DATES: December 13, 1995.

ADDRESSES: Inquiries or suggestions may be sent to the District Manager, BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT:

- Mark Hakkila, Outdoor Recreation Planner, BLM Mimbres Resource Area, 1800 Marquess, Las Cruces NM 88005, (505) 525–4341.
- Kevin Carson, Outdoor Recreation Planner, BLM Socorro Resource Area, 198 Neel Ave. NW, Socorro NM 87801, (505) 835–0412.
- Joe Sanchez, Outdoor Recreation Planner, BLM Caballo Resource Area, 1800 Marquess, Las Cruces NM 88005, (505) 525–4391.

SUPPLEMENTARY INFORMATION: The visitor restrictions are necessary for the management of actions, activities, and use on public land including those which are acquired or conveyed to the BLM. Supplementary rule making is provided for under Title 43 CFR Subpart 8365. These regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public land, the user is required to follow certain rules designed to protect the land and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience.

Exceptions to these visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable. More specifically, the purpose falls into the following categories:

- *Implementation of Management Plans*—Certain prohibited activities have been recommended as rules for designated recreation sites and Special Recreation Management Areas (SRMAs). In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of the Supplementary Rules Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirety in the resource management plan or recreation management plan for the specific area.
- *Mitigation of User Conflict*—Certain other rules are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on a first-come, first-served basis. This will prevent people from monopolizing the use of limited developed camping space. Prohibition of motorized vehicle free-play (operation of any 2-, 3-, or 4-wheel motor vehicle for purposes other than accessing a campsite) is necessary to minimize the noise and nuisance factors that such activities represent in developed recreation sites.
- *Public Health and Safety*—The erection and maintenance of unauthorized toilet facilities or other containers for human waste on the public land could represent a major threat to public safety and health. It should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within ½ mile of developed sites. Recreational shooters will be encouraged to use public land where such shooting restrictions do not apply and this use does not significantly conflict with other uses.
- *Complementary Rules*—Some rules, such as parking or camping near water sources, are recommended to complement those of State and local agencies. Because these rules provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these rules are deemed necessary.

This notice supersedes previous notices published in the **Federal Register**, December 15, 1988 (Vol. 53, No. 241); July 24, 1989 (Vol. 54, No. 140); August 17, 1989 (Vol. 54, No. 158); August 31, 1989 (Vol. 54, No. 168); May 10, 1990 (Vol. 55, No. 91); July 9, 1991 (Vol. 56, No. 131); January 22, 1991 (Vol. 56, No. 14); and correction to Supplementary Rules No. 2., February 1, 1991 (Vol. 56, No. 28), establishing Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Land in New Mexico.

Proposed visitor use restrictions were published in 60 FR 109, pages 30093–30095, June 7, 1995. No comments were received on the proposed rules. Therefore, the rules are being published in final form with no changes.

Under the authority of 43 CFR 8365.1–6, the Bureau of Land Management issues the following supplementary rules, to be applied on public land in the Las Cruces District, New Mexico:

Final Supplementary Rules

Definitions:

As used in these supplementary rules, the term:

—*A SRMA* means an area where special or more intensive types of resource and user management are needed.

—*A developed recreation site and area* means sites and areas that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited development for protection of the resources and the safety of users to a distinctly defined site in which developed facilities that meet the Land and Water Conservation Fund Act of 1965 (as amended) criteria for a fee collection site are provided for concentrated public recreation use.

—*Public land* means any land, interest in land, or related waters owned by the United States and administered by the BLM. Related waters are waters which lie directly over or adjacent to public land and which require management to protect Federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy. Occupying a developed camp site or an approved location within developed recreation areas and sites during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes.

—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

—*Administrative activities* means those activities conducted under the authority of the BLM for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with regulations or repairing or maintaining facilities.

—*Pet* means a dog, cat, or any domesticated companion animal.

—*Occupancy* means the taking or holding possession of a camp site, other location, or residence on public land.

—*Vehicle* means any motorized or mechanized device, including bicycles, hang gliders, ultra lights, and hot air balloons which is propelled or pulled by any living or other energy source, and capable of travel by any means over ground, water, or air.

—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; and includes any weapon the possession of which is prohibited under New Mexico law.

—*Historic or prehistoric structure or ruin site* means any location at least 50 years old which meets the standards for inclusion on the National Register of Historic Places as defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

Supplementary Rules—All Public Land

In addition to regulations contained in 43 CFR 8365.1, the following supplementary rules apply to all public land in the Las Cruces District including those lands acquired or conveyed to the BLM and related waters. The following are PROHIBITED unless authorized by written permit or for administrative use:

Sanitation

- To construct or maintain any unauthorized toilet facility.
- The dumping or disposal of sewage or sewage treatment chemicals from self-contained or containerized toilets except at facilities provided for that purpose.
- To shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet or fountain, or rest room water faucet unless such water source is designated for that purpose.

Occupancy and Use

- To camp or occupy any site on public land or any approved location, including those in developed recreation areas and sites or SRMAs, for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14 day of occupation, campers must move beyond a 25-mile radius from the previous location. When a camping limit has been reached, use of any public land site within the 25-mile radius shall not occur again until at least 30 days have elapsed from the last day of authorized use.
- To park any motor vehicle for longer than 30 minutes, or camp within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock. Hunters with valid hunting licenses may not park within 300 yards of these water sources.
- To dispose of any burning or smoldering material except at sites or facilities provided for that purpose.
- Unauthorized cutting, removing, or transporting woody materials including, but not limited to:

1. Any type or variety of vegetation (excluding dead and downed),
2. Fuelwood or firewood, either green or standing deadwood or,
3. Live plants (except for consumption, medicinal purposes, study or personal collection).

- Removing or transporting any mineral resources including rock, sand, gravel, and other minerals on or from public land without written consent, proof of purchase, or a valid permit. Collection of specimens and samples in reasonable amounts for personal noncommercial use, under 43 CFR 8365.1–5(b) is not affected by this section.
- Failure to prevent a pet from harassing, molesting, injuring, or killing humans, wildlife or livestock.
- Violation of the terms, stipulations, or conditions of any permit or use authorization.
- Failure to show a permit or use authorization to any BLM employee upon request.
- Camp or occupy or build any fire on, or in, any historic or prehistoric structure or ruin site.

• Competitive or commercial operations or events without a Special Recreation Permit.

Vehicles

• Operation of an off-road vehicle without full time use of an approved spark arrester and muffler.
• Failure to display the required State off-road vehicle registration.
• Lubricating or repairing any vehicle, except repairs necessitated by emergency.
• Operate, park, or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles, or
6. Endanger property or any person.

Public Health and Safety

• Possession or use of fireworks.
• Leaving a campfire unattended, or failing to completely extinguish a fire after use.
• The sale or gift of an alcoholic beverage to a person under 21 years of age.
• The possession of an alcoholic beverage by a person under 21 years of age.
• Ignition or burning of any material containing or producing toxic or hazardous material.
• Carrying of weapons in violation of State or Federal law.
• Abandonment of animals.

State and Local Laws

• Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

Supplementary Rules—Developed Recreation Sites/Areas and Special Recreation Management Areas

In addition to the regulations contained in 43 CFR 8365.1, 8365.2 and those listed above, the following rules will be applied in accordance with 43 CFR 8365.2. The following activities are PROHIBITED unless authorized by written permit or for administrative use:

• Failure to pay use fees at Aguirre Spring Campground, Dripping Springs Natural Area, Datil Well Campground, or Three Rivers Recreation Area.
• Failure to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.
• Failing to physically restrain a pet at all times within developed campsites and picnic areas. Pets are prohibited where posted on all designated nature or interpretive trails and from entering caves. Animals trained to assist handicapped persons are exempt from this rule.
• Reserving space, except within established guidelines for group facility reservations at Aguirre Spring Campground or Dripping Springs Natural Area. Camping and picnicking space is available on a first-come, first-served basis.
• Failure to maintain quiet between the hours of 10 p.m. to 6 a.m. or other hours posted. During this period, no person shall create noise which disturbs other visitors.
• Vehicles off existing or designated roads and trails unless facilities have been specifically provided for such use. Motorized vehicles will be operated for access to and from developed facilities only.
• To park or occupy a parking space posted or marked for handicapped use without displaying an official identification tag or plate.
• Posting or distribution of any signs, posters, printed material, or commercial advertisements.
• The discharge of firearms or other weapons, hunting and trapping within ½ mile of developed recreation sites and areas.
• Using, displaying, or carrying loaded weapons within developed campsites or picnic areas.
• Disposing of any waste or grey water except where facilities are provided.
• Bringing equine stock, llama, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.
• Unauthorized gathering or collecting woody plants or any other natural resource, minerals, cultural, or historical artifacts that require permits.
• Not adhering to fire danger ratings issued by Government.
• Climbing, walking on, ascending, descending or traversing on the earthwork of Fort Craig National Historic Site, or historic structures within the Dripping Springs Natural Area, the Lake Valley Historic Site, or Fort Cummings.
• Wood fires are prohibited within the Dripping Springs Natural Area unless the firewood is provided by the BLM.
• Aguirre Spring Campground use is limited to overnight campers after 10:00 p.m. The entrance gate will be closed at 8:00 p.m. during summer hours (approximately April 1 to September 30) and at 6:00 p.m. during winter hours (approximately October 1 to March 31).
• The Dripping Springs Natural Area will be managed as a day-use area (no overnight camping). The entrance gate located in T. 23 S., R. 3 E., Section 3 on the Dripping Springs road (controlling access to La Cueva Picnic Area, A.B. Cox Visitor Center, and Dripping Springs Natural Area) will be locked at sunset.
• Pets are prohibited on the Dripping Springs Trail uphill (southeast) of the Crawford Trail junction (located in T. 23 S., R. 3 E., Section 12, NW¼SE¼NE¼). All hikers beyond this point are required to stay on trails or in established use areas in order to reduce damage to the Dripping Springs Ruins and to protect endangered plants in the area.
• Swimming, wading, and bathing are prohibited at the pond at the Dripping Springs Natural Area.
• Discharge of firearms, walking off established trails, or unauthorized overnight camping are prohibited within the fenced enclosure at Fort Cummings, Lake Valley, or the Fort Craig National Historic Site.
• Overnight camping, discharge of firearms, and wood fires are prohibited within The Box Special Management Area.
• Lake Valley Historic Site use is limited to posted hours.
• Pets are prohibited on the Petroglyph Trail and the Pit House Village Trail within the Three Rivers Recreation Area.

Penalties

These supplementary rules apply to all persons using public land. Violations of these rules may be punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

List of Developed Recreation Sites/ Areas and Special Recreation Management Areas

1. Aguirre Spring Campground (Mimbres Resource Area)

T. 22 S., R. 4 E., NMPM,
Sec. 29.

2. Dripping Springs Natural Area (Mimbres Resource Area)

T. 23 S., R. 3 E., NMPM,
Secs. 1, 2.
T. 23 S., R. 4 E., NMPM,
Sec 7.

3. Three Rivers Recreation Area (Caballo Resource Area)

T. 11 S., R. 9½ E., NMPM,
Secs. 17, 20, 21, 28.

4. Datil Well Campground (Socorro Resource Area)

T. 2 S., R. 10 W., NMPM,
Secs. 10, 11.

5. Fort Craig National Historic Site (Socorro Resource Area)

T. 8 S., R. 2 W., NMPM,
Secs. 10, 11.

6. Paleozoic Trackways (Mimbres Resource Area)

T. 22 S., R. 1 E., NMPM,
Sec. 19.

7. Organ Mountains Recreation Lands SRMA (Mimbres Resource Area)

T. 22–26 S., R. 3–4 E., NMPM,

8. Gila Lower Box SRMA (Mimbres Resource Area)

T. 19 S., R. 19 W., NMPM,
Secs. 7–10, 15–19, 30.
T. 19 S., R. 20 W., NMPM,
Secs. 13–17, 20–29.

9. Fort Cummings SRMA (Mimbres Resource Area)

T. 21 S., R. 8 W., NMPM,
Secs. 22, 23.

10. The Box Special Management Area (Socorro Resource Area)

T. 3 S., R. 1 W., NMPM,
Sec. 31.

11. Lake Valley Historic Site (Caballo Resource Area)

T. 18 S., R. 7 W., NMPM,
Sec. 28.

Dated: October 16, 1995.

William C. Calkins,

State Director, New Mexico.

[FR Doc. 95–27956 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–FB–P

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Hotel and Related Facilities in Kings Canyon National Park

SUMMARY: The National Park Service is seeking to award a concession contract for the future operation and improvement of existing visitor facilities within Kings Canyon National Park, which is part of Sequoia and Kings Canyon National Parks. The contract will be awarded on a fully competitive basis without application of any preference to the incumbent.

SUPPLEMENTARY INFORMATION: The concession facilities, which include overnight accommodations, food service, retail and other related operations, are located at the Grant Grove and Cedar Grove areas of the park. Grant Grove is a meadow setting adjacent to groves of giant sequoias. Cedar Grove is deep within the spectacular Kings Canyon on the South Fork of the Kings River.

To receive this prospectus send your name and address to: National Park Service, Concession Program Management Division, Attention: Kings Canyon Prospectus, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson

Applications will be accepted for one hundred and twenty (120) days under the terms described in the Prospectus. The one hundred and twenty (120) day application period will begin on October 30, 1995.

Dated: October 17, 1995.

Stanley T. Albright,

Field Director, Pacific West Field Area.

[FR Doc. 95–27909 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent To Issue a Prospectus for the Operation of Hotel and Related Facilities in Sequoia National Park

SUMMARY: The National Park Service is seeking to award a concession contract for the operation and construction of new visitor facilities and continued operation of certain existing facilities within Sequoia National Park, which is part of Sequoia and Kings Canyon National Parks. The contract will be awarded on a fully competitive basis without application of any preference to the incumbent.

SUPPLEMENTARY INFORMATION: The development to be constructed includes as many as 414 guest units, along with food service and other related commercial and support facilities. Extensive site preparation, roads, parking and other infrastructure work have already been completed by the government. The site is in the Sierra Nevada with a panaramic view of the central High Sierra.

To receive this prospectus send your name and address to: National Park Service, Concession Program Management Division, Attention: Kings Canyon Prospectus, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson.

Applications will be accepted for one hundred and twenty (120) days under the terms described in the Prospectus. The one hundred and twenty (120) day application period will begin on October 30, 1995.

Dated: October 17, 1995.

Stanley T. Albright,

Field Director, Pacific West Field Area.

[FR Doc. 95–27910 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Dayton Aviation Heritage Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Monday, November 27, 1995; 5:15 p.m. to 6:30 p.m.

ADDRESSES: Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

AGENDA TOPICS INCLUDE: Committee membership, committee assignments, committee structure; update on the park and general management plan. This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, one week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

William W. Schenk,

Field Director, Midwest Region.

[FR Doc. 95–27908 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scheduled meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: November 17–18, 1995, from 10:00 a.m.–5:00 p.m. on 11/17, and 8 a.m.–5 p.m. on 11/18.

ADDRESSES: Holiday Inn—Rushmore Plaza, 505 North 5th Street, Rapid City, South Dakota. (605) 348–4000.

THE AGENDA OF THIS MEETING WILL BE: Introduction/opening remarks, administrivia, minutes from last meeting, discuss follow-up actions from last meeting, review of design competition language/draft text of competition document, set design competition timetable, discuss fund-raising strategy and promotional materials.he meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Sutteer, Chief, Office of American Indian Trust Responsibilities, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: October 18, 1995.

Gerard Baker,

Designated Federal Officer Little Bighorn Battlefield National Monument, National Park Service.

[FR Doc. 95–27967 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Realty Action

AGENCY: National Park Service, Interior.

ACTION: Notice of realty action.

SUMMARY: Proposed exchange of Federal land for private land, both of which are located within the District of Columbia and within the boundary of the Chesapeake and Ohio Canal National Historical Park.

SUPPLEMENTARY INFORMATION: Public comments will be accepted for a period of 45 days from the date of this notice. An environmental assessment for this project was completed in August 1995, resulting in a Finding of No Significant Impact on September 6, 1995.

The land to be exchanged by the United States of America is generally described as follows: A rectangularly-shaped parcel of land containing approximately 1.09 acres lying and situated adjacent to the Potomac River in the City of Washington, the District of Columbia. The property is located approximately 910 feet west from the southwesterly corner of the intersection of 35th and K (Water) Streets, NW. The fee simple interest in the property is to be exchanged together with a 15-foot-wide right-of-way for ingress and egress across other lands of the United States.

The land to be acquired in fee simple by the United States of America is generally described as follows: An irregularly-shaped parcel of land, including a 15-foot-wide right-of-way for ingress and egress, containing approximately 1.09 acres of land and approximately 1.9 acres of right-of-way, lying and situated adjacent to the Potomac River in the City of Washington, the District of Columbia. The property is located approximately 5,300 feet west from the southwesterly corner of the intersection of 35th and K (Water) Streets NW., and contains approximately 1,076 feet of Potomac River shoreline. The land, located within the boundary of the Chesapeake and Ohio Canal National Historical Park, is now owned by the President and Directors of Georgetown College, a corporation which is better known as Georgetown University.

The selected Federal land, with attached use covenants, has been determined to be suitable for disposal by means of exchange. This exchange is authorized by 16 U.S.C. 4601–22(b) (188), and 16 U.S.C. 410y–1(b) (1988). No cultural resources resulting from human development and use have been identified on this tract. The vegetation found on this site is of the type found in previously-cleared urban areas. The land may be inhabited by limited populations of small mammals and birds. The property is located within a floodplain, and wetland characteristics are visible. The U.S. Army Corps of Engineers has been consulted and has determined that subterranean improvements, if not corrected, have artificially altered the historic hydrology of the site.

The exchange Federal tract will become the site of a non-motorized boating facility which is functionally dependent on a waterfront floodplain site. The alternative to exchange of the Federal tract would be the development by Georgetown University of a boathouse upon the tract of land which is proposed to be acquired in this realty action.

The development by Georgetown University of a boathouse upon the Federal property that it would receive conforms with the findings of National Park Service studies and regional planning. The land to be acquired by the United States of America is an undisturbed parcel within the park boundary which features mature trees, a wetland which is contributory to the water quality of the Potomac River and the Chesapeake Bay, native vegetation, wildlife, and wildlife habitat. Acquisition of this land will ensure that this tract: (1) Remains as an amenity to the public enjoyment of the Potomac River shoreline; (2) with its attached access rights will not conflict with the public use and enjoyment of a coincident recreational trail; and (3) will preserve the historic character of the Chesapeake and Ohio Canal National Historic Park as it leads to or departs its historic commercial destination of Georgetown. Acquiring this in holding is in furtherance of the Act creating this park.

The value of the properties are of approximate equal value. Each site was surveyed for the presence of hazardous materials and none were found. The mineral rights of both tracts are to be exchanged.

Detailed information concerning the exchange including precise legal descriptions, the environmental assessment, the Finding of No Significant Impact, maps, and other referenced reports in this exchange are available from the Associate Superintendent, Stewardship and Partnerships, National Capital System Support Office, National Park Service, 1100 Ohio Drive SW., Room 201, Washington, D.C. 20242.

Comments will be accepted from interested parties for a period of 45 calendar days from the date of this notice, and may be submitted to the above address. Comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate this exchange, this realty action will become the final determination of the Department of the Interior.

For further information contact Mr. John Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital System Support Office, 1100 Ohio Drive SW., Room 201, Washington, D.C. 20242.

Dated: October 20, 1995.

Terry R. Carlstrom,

Acting Field Director, National Capital Area.

[FR Doc. 95–27907 Filed 11–9–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

The following Notice was filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Knouse Foods, Inc.

(2) 800 Peach Glen-Idaville Rd., Peach Glen, PA 17375–0001.

(3) Peach Glen, PA 17375–0001.

(4) Arlene Jennings, 800 Peach Glen Idaville Rd., Peach Glen, PA 17375–0001.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27945 Filed 11–9–95; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–369 (Sub-No. 4X)]

Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—In Clearfield County, PA

Buffalo & Pittsburgh Railroad, Inc. (B&P), has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon 2 miles of its Wharton subdivision between MP 5+/– (valuation station 2440 + 00) and MP 7+/– (valuation station 2560 + 50), in Sandy Township, Clearfield County, PA.

B&P has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 13, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 24, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 4, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Eric M. Hocky, 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

B&P has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 17, 1995. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27946 Filed 11–9–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Vision Service Plan; Proposed Revised Final Judgment and Revised Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Revised Final Judgment, a Superseding Stipulation, and a Revised Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Vision Service Plan*, Case No. 1:94CV02693.

The Complaint in the case alleges that Vision Service Plan (VSP) entered into so-called "most favored nation" agreements with its panel doctors in unreasonable restraint of trade, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, by effectively restricting the willingness of panel doctors to discount fees for vision care services and substantially reducing discounted fees for vision care services.

The proposed Revised Final Judgment eliminates VSP's most favored nation clause and enjoins VSP from engaging in other actions that would limit future discounting by its participating doctors. The proposed Revised Final Judgment modifies a few provisions of the original proposed Final Judgment in view of VSP's experience while operating under the terms of the original proposed Final Judgment, pursuant to a Stipulation with the Government, pending approval of a Final Judgment by the Court. The specific revisions, and the reason for making them, are summarized and explained in the Revised Competitive Impact Statement.

Public comment on the proposed Revised Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Kursh, Chief; Professions & Intellectual Property Section/Health Care Task Force; United States Department of Justice; Antitrust Division; 600 E Street, NW., Room 9300; Washington, DC 20530 (telephone: (202) 307–5799).

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia:

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Superseding Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. This Superseding Stipulation supersedes the Stipulation of the parties filed with the Court on December 15, 1994.

2. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

3. The parties consent that a Revised Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

4. Defendant agrees to be bound by the provisions of the proposed Revised Final Judgment pending its approval by the Court. If plaintiff withdraws its consent, or if the proposed Revised Final Judgment is not entered pursuant to the terms of the Superseding Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

For Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joel I. Klein,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director, Office of Operations.

Gail Kursh,

D.C. Bar #293118, Chief.

David C. Jordan,

D.C. Bar #914093, Ass't. Chief Professions & Intellectual Property Section, Antitrust Division, U.S. Department of Justice.

Steven Kramer

Richard S. Martin,

Attorneys, Antitrust Division, U.S. Dept. of Justice, 600 E Street, NW., Room 9420, BICN Bldg., Washington, DC 20530 (202) 307–0997.

For Defendant:

John J. Miles,

D.C. Bar #364054, Ober, Kaler, Grimes & Shriver, Fifth Floor, 1401 H Street, NW., Washington, DC 20005–2202 (202) 326–5008.

Barclay L. Westerfeld,

General Counsel, Vision Service Plan, 3333 Quality Drive, Rancho Cordova, CA 95670, (916) 851–5000.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Revised Final Judgment

Plaintiff, United States of America, filed its Complaint on December 15, 1994. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party about any issue of fact or law or that any violation of law has occurred. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used herein, the term:

(A) "Defendant" or "VSP" means Vision Service Plan;

(B) "Panel Doctor's Agreement" means the VSP Panel Member Agreement by which Defendant contracts with optometrists or ophthalmologists, including all amendments and additions, in effect at any time since January 1, 1992, and during the term of this Final Judgment;

(C) "Most Favored Nation Clause" means:

(1) the clause characterized as a Fee Non-Discrimination Clause in paragraph 6 of the VSP Panel Doctor's Agreement, pursuant to which each VSP member doctor agrees:

(a) not to charge fees to VSP that are any higher than those charged to the doctor's non-VSP patients, nor those that the doctor accepts from any other non-governmental group, group plan, or panel;

(b) If a published VSP fee schedule would cause payment in excess of the doctor's usual and customary fee, to notify VSP and accept such lower fee as is consistent with the doctor's usual and customary fees; and

(c) if VSP determines that the doctor is charging fees to VSP that are higher than those charged non-VSP patients, VSP shall reduce the doctor's fees accordingly; or

(2) any other existing or future clause in the VSP Panel Doctor's Agreement, VSP policy, or VSP practice having the same purpose or effect, in whole or in part.

(D) "Non-VSP patients" means patients who are not members of a plan insured or administered by VSP.

(E) "Non-VSP plan" means any plan (other than VSP) responsible for all or part of any expense for vision care services, provided to plan members, pursuant to contractual terms with providers of vision services limiting the fees that providers collect for serving the plan's members.

(F) "Usual and customary fees" means the fees for services and materials that are charged, before any discounting, by VSP panel doctors to their private patients (patients not covered by Medicare or Medicaid programs).

(G) "VSP panel doctor" means any optometrist or ophthalmologist who has entered into, or who has applied to enter into, a VSP Panel Doctor's Agreement.

III

Applicability

This Final Judgment applies to:

(A) the Defendant and to its successors and assigns, and to all other persons (including VSP panel doctors) in active concert or participation with any of them, who have received actual notice of the Final Judgment by personal service or otherwise; and

(B) the Most Favored Nation Clause, as defined in Section II(C) of this Final Judgment, but to no other clause of the VSP Panel Doctor's Agreement, VSP policy, or VSP practice.

IV

Prohibited Conduct

Except as permitted in Section V, Defendant is enjoined and restrained from:

(A) maintaining, adopting, or enforcing a Most Favored Nation Clause in any VSP Panel Doctor's Agreement, corporate bylaws, policies, rules, regulations, or by any other means or methods;

(B) maintaining, adopting, or enforcing any policy or practice linking payments made by VSP to any VSP panel doctor to fees charged by the doctor to any non-VSP patient or any non-VSP plan;

(C) differentiating VSP's payments to, or other treatment of, any VSP panel doctor because the doctor charges any fee lower than that charged by the doctor to VSP, to any non-VSP patient or to any non-VSP plan;

(D) taking any action to discourage any VSP panel doctor from participating in any non-VSP plan or from offering or charging any fee lower than that paid to the doctor by VSP to any non-VSP patient or any non-VSP plan;

(E) monitoring or auditing the fees any VSP panel doctor charges any non-VSP patient or any non-VSP plan; and

(F) communicating in any fashion with any VSP panel doctor regarding the doctor's participation in any non-VSP plan or regarding the doctor's fees charged to any non-VSP patient or to any non-VSP plan.

V

Permitted Activities

Despite any prohibition contained in Section IV of this Final Judgment,

(A) for the purpose of calculating payments to be made to its panel doctors, Defendant may request annually that a VSP panel doctor report the doctor's usual and customary fee, for each applicable service, provided by the doctor during a preceding period of up to 12 months ending no later than 2 months before the information must be reported, provided that such information is requested uniformly from all panel doctors within a meaningful geographic area comprising zip codes;

(B) Defendant may calculate the fees that it pays to a VSP panel doctor for services rendered to VSP patients based on the panel doctor's usual and customary fees, provided that Defendant employs a uniform method of calculation at least within each meaningful geographic area, comprising zip codes, in which it does business;

(C) only for the purposes of verifying whether the information reported by a VSP panel doctor, pursuant to Section V(A), is accurate or of investigating a VSP panel doctor's suspected excessive billing to VSP, upon reasonable belief that the reported fees may be inaccurate or excessive, and subject to the reasonable convenience of the VSP panel doctor, Defendant may audit the VSP panel doctor's charges to patients;

(D) consistently with Sections IV (C) and (D), Defendant may devise and utilize a fee system for doctors who apply for VSP panel membership after the date of this Final Judgment that is different from the system used to compensate current panel doctors, and that system may be based on the average fees VSP pays in a meaningful geographic area comprising zip codes;

(E) consistently with Sections IV (C) and (D), Defendant may elect to maintain current fees for panel doctors at their existing levels and may base any future fee increases on the Consumer Price Index, VSP's own financial growth, or any other meaningful economic indicator;

(F) consistently with Sections IV (C) and (D), Defendant may impose penalties on panel doctors who have misrepresented their usual and customary fees; and

(G) when acting as an agent of the Medicare program or any state Medicaid program, Defendant may administer the payment methodologies employed by such programs, provided that any fee information, that VSP is required to collect from its panel doctors in administering any such payment methodology, is not considered by VSP in determining the fees that it pays its panel doctors for services rendered to patients not covered by these programs.

VI

Nullification

The Most Favored Nation Clause shall be null and void and Defendant shall impose no further obligation arising from it on any VSP panel doctor. Within 60 days of entry of this Final Judgment, Defendant shall disseminate to each present VSP panel doctor an addendum to the Panel Doctor's Agreement, nullifying the Most Favored Nation Clause, and Defendant shall eliminate the Most Favored Nation Clause from all Panel Doctor's Agreements entered into after entry of this Final Judgment.

VII

Compliance Measures

The Defendant shall:

(A) distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) all VSP officers and directors; (2) VSP employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with VSP panel doctors; and (3) all present VSP panel doctors and all former VSP panel doctors whom VSP should reasonably know have resigned because of the Most Favored Nation Clause;

(B) distribute in a timely manner a copy of this Final Judgment to any officer, director, or employee who succeeds to a position described in Section VII(A) (1) or (2);

(C) obtain from each present or future officer, director, or employee designated in Section VII(A) (1) or (2), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(D) maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VII(C), the certification has been obtained;

(E) The Defendant shall notify all former VSP panel doctors whom it should reasonably know have resigned because of the Most Favored Nation Clause, that they are reinstated, on terms and conditions that VSP may establish consistently with this Final Judgment, unless they do not desire reinstatement; and

(F) report to the Plaintiff any violation of the Final Judgment.

VIII

Certification

(A) Within 75 days of the entry of this Final Judgment, the Defendant shall certify to the Plaintiff whether it has: (1) disseminated contractual addenda pursuant to Section VI, (2) distributed the Final Judgment in accordance with Section VII(A), and (3) obtained certifications in accordance with Section VII(C).

(B) For five years after the entry of this Final Judgment, on or before its anniversary date, the Defendant shall file with the Plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of Sections IV, V, VI, and VII.

IX

Plaintiff's Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the Defendant made to its principal office, shall be permitted, subject to any legally recognized privilege:

(1) access during the Defendant's office hours to inspect and copy all documents in the possession or under the control of the Defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the Defendant and without restraint or interference from it, to interview officers, employees or agents of the Defendant, who may have Defendant's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the Defendant's principal office, the Defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section IX shall be divulged by the Plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to the Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Defendant is not a party.

Further Elements of the Final Judgment

(A) This Final Judgment shall expire five years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment, but not other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge

In the United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Revised Competitive Impact Statement

I

Background

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Revised Competitive Impact Statement relating to the proposed Revised Final Judgment submitted for entry in this civil antitrust proceeding. These documents are styled as "Revised" because they reflect changes made to a few of the provisions of the proposed Final Judgment, filed on December 15, 1994, as the basis for settling this antitrust lawsuit, and in related portions of the Competitive Impact Statement, filed on January 13, 1995, and published at 60 Fed. Reg. 5110–17 (1995).

This civil antitrust action commenced on December 15, 1994, when the United States filed a Compliant alleging that Vision Service Plan (VSP), in all or parts of the 46 states and the District of Columbia in which VSP operates vision care plans, entered into agreements with its panel doctors that unreasonably restrain competition by restraining discounting of fees for vision care services in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks injunctive relief to enjoin continuance of the violation.

The previously filed Competitive Impact Statement is incorporated by reference herein, except as modified by this Revised Competitive Impact Statement. The Government has agreed to the revisions of the proposed Final Judgment that are contained in the proposed Revised Final Judgment and outlined below to remedy certain problems VSP has experienced while operating under the terms of the proposed Final Judgment since it was filed, pursuant to a Stipulation with the Government, pending the Court's approval of the Final Judgment.

II

Explanation of the Proposed Final Judgment

A. Definitions

A definition of "VSP panel doctor" has been added as Section II(G) of the proposed Revised Final Judgment to clarify that to the extent provisions of the Final Judgment prohibit VSP from taking, or permit VSP to take, specified actions regarding the doctors on its panel, those provisions apply in the same manner also to doctors who have applied for panel membership. In addition, the definitions of "modal fee" and "median fee," which had been Sections II (F) and (G) of the original proposed Final Judgment, have been deleted because, as explained below, VSP will no longer collect or use information concerning the modal or median fees of its panel doctors in calculating payments to be made to them. A definition of "usual and customary fees" has been added as a new Section II(F) because, as explained below, VSP will be permitted to collect and use information concerning the usual and customary fees that its panel doctors charge in calculating VSP's payments to them.

B. Permitted Activities and Obligations

The proposed Revised Final Judgment modifies Section V of the original proposed Final Judgment. Generally, Section V permits VSP to undertake prescribed activities in determining payments to its panel doctors that could otherwise violate applicable injunctive provisions of Section IV. The proposed Revised Final Judgment adds a new Section V(G) and revises Sections V (A), (B), (C), and (F).

The addition of Section V(G) is the primary basis for submitting the Revised Final Judgment. Section V(G) permits VSP to implement the reimbursement methodologies of any Medicare program or any state Medicaid program that it may administer. VSP acts as the agent for those programs in several states and, in negotiating the proposed Final Judgment, VSP simply overlooked the Final Judgment's possible restriction upon its ability to carry out its obligations to those governmental programs. Section V(G) of the proposed Revised Final Judgment, therefore, makes clear that nothing in the Judgment should be construed to prevent VSP from gathering fee information required by Medicare or Medicaid, while precluding VSP from using that fee information in setting the fees that VSP pays its panel doctors for providing services to VSP patients not covered by Medicare or Medicaid programs.

Sections V (A), (B), (C), and (F) of the proposed Revised Final Judgment have been changed to reflect that VSP will no longer maintain the option, contained in the original proposed Final Judgment, to calculate the payments made to its panel doctors based on a doctor's modal or median fee and to collect and, if warranted, verify the accuracy of, the fee data from its panel doctors needed to make such calculations. Pursuant to revised Sections V (A), (B), (C) and (F), VSP will now merely retain the option of calculating the fees that it pays panel doctors based on their usual and customary fees, and it will no longer be permitted to request panel doctors annually to report "sufficient information" or, if warranted, verify the accuracy of the reported information, to enable VSP "to calculate" a doctor's modal or median fee. Rather, VSP will simply be permitted to ask each panel doctor to report annually only the doctor's usual and customary fees before any discounts are applied, and it will be allowed, if warranted, to verify only that fee information. These changes will substantially reduce both the level of detail of fee information that VSP will be permitted to obtain routinely from its panel doctors and the resultant reporting requirements it may impose on VSP panel doctors.

VSP requested these changes because of difficulties encountered during the past several months in trying to calculate the modal and median fees of its panel doctors pursuant to the terms of the original proposed Final Judgment. Based on that experience, VSP has concluded that it does not routinely need to obtain more detailed fee information from its panel doctors than an annual report of each doctor's usual and customary fees, as now provided by Sections V (A) and (B) of the proposed Revised Final Judgment. The Government is amendable to making these requested changes because they narrow the scope of activities permitted by VSP under the Final Judgment and raise no competitive concerns.

III

Procedures Available for Modification of the Proposed Revised Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Revised Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Professions & Intellectual Property Section/Health Care Task Force; Department of Justice; Antitrust Division; 600 E Street, N.W.; Room 9300; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, along with comments already received on the previously published Competitive Impact Statement, and the Government's responses to them, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Revised Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is necessary to the public interest. The proposed Revised Final Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

IV

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Revised Final Judgment. Consequently, none are filed herewith.

Dated: _____

Respectfully submitted,

Steven Kramer

Richard S. Martin,

Attorneys, Antitrust Division, U.S. Dept. of Justice, 600 E Street, N.W., Room 9420, Washington, D.C. 20530, (202) 307–0997.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Vision Service Plan, Defendant.

[Case No. 1:94CV02693 TPJ]

Certificate of Service

I certify that I caused copies of the Revised Final Judgment, Revised Competitive Impact Statement and Superseding Stipulation to be served on October ____, 1995, by Federal Express to: Barclay L. Westerfeld, General Counsel, Vision Service Plan, 3333 Quality Drive, Rancho Cordova, California 95670, and by courier to: John J. Miles, Ober, Kaler, Grimes & Shriver, 1401 H Street, NW., Fifth Floor, Washington, DC 20005–2110.

Dated: _____.

Steven Kramer,

Attorney, Antitrust Division, Department of Justice, 600 E Street, NW., Room 9420, Washington, DC 20530, (202) 307–1029.

[FR Doc. 95–27939 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Intelligent Large Area Processing

Notice is hereby given that, on May 23, 1995, pursuant to Section 6(a) of the national Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Consortium for Intelligent Large Area Processing ("CILAP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a Joint Research and Development Program. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Joint Program are: The Dow Chemical Company, Midland, MI; Rediant Technology Corporation, Anaheim, CA; FAS Technologies, Inc., Dallas, TX; ACSIST Associates, Inc., Minneapolis, MN; and MicroModule Systems, Inc., Cupertino, CA.

The objectives of the program are to engage in advanced research and development with the intent of developing demonstrable technology for the manufacture of multichip module packaging via intelligent large area processing and transferring this technology to multichip module foundries, thereby allowing them to achieve lower manufacturing costs.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27940 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Message Oriented Middleware Association

Notice is hereby given that, on May 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Message Oriented Middleware Association ("MOMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Joint Venture are: Apertus/ Systems Strategies, Melville, NY; Applied Communications, Inc., Omaha, NE; AT&T GS, San Diego, CA; Covia Technologies, Rosemont, IL; Digital Equipment Corporation, Rocky Hill, CT; Early, Cloud & Company, Middletown, RI; IBM UK Laboratories, Ltd., Hampshire, UK; LEGENT Corporation, Herndon, VA; Momentum Software, Needham, MA; Motorola, Inc., Glen Rock, NJ; Novell, Inc., Summit, NJ; PeerLogic, Inc., San Francisco, CA; SOFTWARE AG, Uhlandstrasse, Darmstadt, GERMANY; SunSoft, Inc., Mountain View, CA; Compuware, Los Gatos, CA; National Securities Clearing Corporation, New York, NY; and Liberty Mutual Insurance, Portsmouth, NH.

The objectives of the venture are to promote message passing and queuing technology that provides interoperability for peer-to-peer and client/server computing applications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27941 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on August 7, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Atlantech Technologies, Ltd., Glasgow, SCOTLAND; and Nexus Telecom AG, Hombrechtikon, SWITZERLAND are Corporate Members. CITR PTY Limited, St. Lucia, Queensland, AUSTRALIA; and Nuvo Network Management, Ottawa, Ontario, CANADA are Associate Members. ClearSystems, Inc., Irving, TX; FINATEL, Santa Rita do Sapucai, BRAZIL; International Centers for Telecommunication Technology, Inc., Terre Haute, IN; OpenCon Systems, Inc., Piscataway, NJ; Q3 Consulting Ltd., Valbonne Village, FRANCE; University College London, London, UNITED KINGDOM; and the University of Missouri at Kansas City, Kansas City, MO are Affiliate Members.

No other changes have been made since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on June 6, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 28, 1995 (60 FR 33433).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27942 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—NIST ATP Joint Venture

Notice is hereby given that, on June 13, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the NIST ATP Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of Cooperative Agreement No. 70NANB5H1024. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Kestrel Development Corporation, Palo Alto, CA; University of Southern California, Los Angeles, CA; SRI International, Menlo Park, CA; and Stanford University, Stanford, CA.

The purpose of the NIST ATP Joint Venture is to perform preproduct stage research and development on a complete suite of software tools based on semantic descriptions of software capabilities and automated "theorem-provers" to enable fundamentally new capabilities in automated software composition.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27943 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Diesel Particulate NO_x Aftertreatment Using Plasma or Corona Discharges Cooperative Research Project

Notice is hereby given that, on July 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute, ("SwRI"), on behalf of the Participants in the Diesel particulate/ NO_x Aftertreatment Using Plasma or Corona Discharges Cooperative Research Project has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the Project, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the current parties participating in the Cooperative Research Project are Caterpillar, Inc., Peoria, IL: Equipements et Composants pour L'Industrie Automobile, Valentigny, FRANCE; and Renault VI DITCM/DERM, Saint-Priest, FRANCE, together with its subsidiary, Mack Trucks, Inc., Hagerstown, MD.

The nature and objective of this cooperative research project is to investigate the feasibility of using plasma or corona discharge technologies as diesel exhaust aftertreatment devices through the screening of the present plasma or corona discharge technologies utilizing a diesel engine comparing the effects of the different technologies on the various type and concentrations of exhaust components such as particulates, NO_x, THC and CO, of the velocity, production of unregulated emissions in the plasma and other safety related aspects associated with implementation of the technologies; theoretical modelling of the electrical and chemical processes and a scaled-up development of the most promising technologies on a heavy-duty diesel engine followed by a full-scale demonstration on a heavy-duty vehicle.

Participation in this Cooperative Research Project will remain open, and SwRI intends to file additional written notifications disclosing all changes in its membership or planned activities.

Information regarding participation in the Cooperative Research Project may be obtained from John W. McLeod, Southwest Research Institute, 6220 Culebra Road, Post Office Drawer 28510, San Antonio, TX 78228–0510.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–27944 Filed 11–9–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
- NY950013 (Feb. 10, 1995)

Rhode Island
- RI950001 (Feb. 10, 1995)
- RI950002 (Feb. 10, 1995)
- RI950003 (Feb. 10, 1995)

Volume II

District of Columbia
- DC950001 (Feb. 10, 1995)
- DC950002 (Feb. 10, 1995)
- DC950003 (Oct. 6, 1995)

Maryland
- MD950002 (Feb. 10, 1995)
- MD950008 (Feb. 10, 1995)
- MD950010 (Feb. 10, 1995)
- MD950015 (Feb. 10, 1995)
- MD950031 (Feb. 10, 1995)
- MD950034 (Feb. 10, 1995)
- MD950035 (Feb. 10, 1995)
- MD950036 (Feb. 10, 1995)
- MD950045 (Feb. 10, 1995)
- MD950046 (Feb. 10, 1995)
- MD950048 (Feb. 10, 1995)
- MD950053 (Feb. 10, 1995)
- MD950055 (Feb. 10, 1995)

Pennsylvania
- PA950005 (Feb. 10, 1995)
- PA950006 (Feb. 10, 1995)
- PA950031 (Feb. 10, 1995)

Virginia
- VA950012 (Feb. 10, 1995)
- VA950015 (Feb. 10, 1995)
- VA950018 (Feb. 10, 1995)
- VA950023 (Feb. 10, 1995)
- VA950025 (Feb. 10, 1995)
- VA950034 (Feb. 10, 1995)
- VA950036 (Feb. 10, 1995)
- VA950039 (Feb. 10, 1995)
- VA950048 (Feb. 10, 1995)
- VA950052 (Feb. 10, 1995)
- VA950058 (Feb. 10, 1995)
- VA950063 (Feb. 10, 1995)
- VA950064 (Feb. 10, 1995)
- VA950068 (Feb. 10, 1995)
- VA950069 (Feb. 10, 1995)
- VA950080 (Feb. 10, 1995)
- VA950081 (Feb. 10, 1995)
- VA950085 (Feb. 10, 1995)
- VA950088 (Feb. 10, 1995)
- VA950102 (Feb. 10, 1995)

VA950104 (Feb. 10, 1995)
VA950105 (Feb. 10, 1995)
VA950108 (Feb. 10, 1995)
VA950114 (Feb. 10, 1995)
VA950115 (Feb. 10, 1995)

Volume III

Kentucky
KY950001 (Feb. 10, 1995)
KY950002 (Feb. 10, 1995)
KY950003 (Feb. 10, 1995)
KY950004 (Feb. 10, 1995)
KY950006 (Feb. 10, 1995)
KY950007 (Feb. 10, 1995)
KY950025 (Feb. 10, 1995)
KY950026 (Feb. 10, 1995)
KY950027 (Feb. 10, 1995)
KY950028 (Feb. 10, 1995)
KY950029 (Feb. 10, 1995)
KY950035 (Feb. 10, 1995)

Volume IV

Illinois
IL950016 (Feb. 10, 1995)
Ohio
OH950001 (Feb. 10, 1995)
OH950002 (Feb. 10, 1995)
OH950003 (Feb. 10, 1995)
OH950012 (Feb. 10, 1995)
OH950027 (Feb. 10, 1995)
OH950029 (Feb. 10, 1995)
OH950034 (Feb. 10, 1995)

Volume V

Louisiana
LA950005 (Feb. 10, 1995)
LA950015 (Feb. 10, 1995)

Volume VI

California
CA950001 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
CA950016 (Feb. 10, 1995)
CA950029 (Feb. 10, 1995)
CA950030 (Feb. 10, 1995)
North Dakota
ND950002 (Feb. 10, 1995)
South Dakota
SD950002 (Feb. 10, 1995)
SD950024 (Feb. 10, 1995)
SD950041 (Feb. 10, 1995)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 3d day of November 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–27734 Filed 11–9–95; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–95–152–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.380(d)(4)(escapeways; bituminous and lignite mines) to its Powhatan No. 4 Mine (I.D. No. 33–01157) located in Monroe County, Ohio. The petitioner requests that its petition for modification, docket number M–93–60–C be amended to allow a minimum clearance of 4 feet for its alternate escapeway instead of the 2 feet minimum clearance specified in its previous petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Twentymile Coal Company

[Docket No. M–95–153–C]

Twentymile Coal Company, One Oxford Center, 301 Grant Street—20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests that its previous petition for modification, docket number M–92–55–C be amended to allow the use of high-voltage cables that are made by any manufacturer instead of cables made by one manufacturer and that meets the specification listed in this petition. The petitioner proposes to use these cables for 2400 and 4160-volts high-voltage longwall systems. The types of cables would be the Tiger Brand SHD–CGC, Pirelli SHD-Center-GC, and Cablec SHD + GC, or any cable manufactured to ICEA specification S–75–381 for type SHD–3 conductor cable that is 5000 volt, MSHA-accepted flame-resistant cable with a ground-check wire that is 16 AWG minimum. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Knott County Mining Company

[Docket No. M–95–154–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its Hollybush Mine No. 1 (I.D. No. 15–15289), and its Brimstone Mine No. 1 (I.D. No. 15–16893) both located in Knott County, Kentucky. The petitioner proposes to operate electric face equipment without cabs and canopies in mining heights below 48 inches. The petitioner states that application of the standard would result in a diminution of safety to equipment operator. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Clintco Enterprises, Inc.

[Docket No. M–95–155–C]

Clintco Enterprises, Inc., P.O. Box 2831, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.388(a)(3) (boreholes in advance of mining) to its No. 1 Mine (I.D. No. 15–17700) located in Floyd County, Kentucky. The petitioner requests a modification of the standard to allow them to not drill boreholes to locate old workings. The petitioner asserts that application of the standard could be dangerous because drilling would create a conduit for gas or water to accumulate on the active section and cause the equipment to slip, slide, or become marred in wet bottom; and that these wet conditions would increase the probability of electrical-related injuries and accidents. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Amax Coal Company and Clipmate Corporation

[Docket No. M–95–156–C]

Amax Coal Company and Clipmate Corporation, 16 S. Pennsylvania, Oklahoma City, Oklahoma 73106 have filed a petition to modify the application of 30 CFR 75.1303(y) (1) and (2) to its Chinook Mine (I.D. No. 12–00322) located in Clay County, Indiana. The petitioner proposes to use a protected Rozdet open circuit detonator system at its Chinook Mine instead of shunted electrical detonators; to package and store the detonator at the mine in accordance with the U.S. Department of transportation Report, Reference Number EX–9309092; and to provide instructions in each Rozdet package on the proper use of the Rozdet. The petitioner asserts that application of the standard would result in a diminution of safety to the miners under certain conditions. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Sunshine Precious Metals, Inc.

[Docket No. M–95–11–M]

Sunshine Precious Metals, Inc., P.O. Box 1080, Kellogg, Idaho 83837–1080 has filed a petition to modify the application of 30 CFR 57.11055 (inclined escapeways) to its Sunshine Mine (I.D. No. 10–00089) located in Shoshone County, Idaho. The petitioner requests a modification of the requirement for an emergency hoisting facility. The Petitioner states that a portion of the West Chance orebody between the 2700 and 3100 foot levels of the mine is being developed for mining; that no mining has taken place in recent years; and that the 2700 foot level is only accessible from the Jewell Shaft. The petitioner proposes to establish a second escapeway to the 3100 foot level which would provide access to the adjoining Silver Summit Mine; to have a borehole at a 5-foot diameter raise lined with steel in order to establish a 4-foot diameter opening for ventilation from the 2700 foot to the 3100 foot level; and to have a suitable ladderway for safe travel in an emergency. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1995. Copies of these petitions are available for inspection at that address.

Dated: November 1, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–27872 Filed 11–9–95; 8:45 am]

BILLING CODE 4510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Power Company, Big Rock Point Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(i), concerning testing of the escape air lock, to the Consumers Power Company (CPCo or the licensee), for operation of the Big Rock Point Plant (BRP), located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow an exemption from the requirement of 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(i), to test air locks at an internal pressure not less than P_a. This requires the emergency (or escape) air lock at Big Rock Point to be tested at 23 psig, the calculated peak pressure (P_a) for Big Rock Point. The proposed action is in accordance with the licensee's application for exemption dated October 4, 1994, as supplemented by letter dated September 27, 1995.

The Need for the Proposed Action

The regulation, as set forth in 10 CFR Part 50, Appendix J, paragraph III.D.2(b)(i), requires that Big Rock Point's containment emergency air lock be tested at an internal pressure not less than P_a, which is 23 psig for Big Rock Point. Currently, the containment escape air lock at Big Rock Point is tested at a pressure of 2 psig. Therefore, the explicit requirement of paragraph III.D.2(b)(i) of Appendix J is not met. The requested exemption is required because of the emergency air lock manufacturer's restrictions on internal pressurization and the Big Rock Point design which necessitates frequent personnel entries. The licensee stated that the escape air lock internal pressurization is limited by the manufacturer to 2 psig without a strongback and 5 psig with a strongback in place, thereby making pressurization to peak pressure impossible for local leak rate tests. In addition, the licensee stated that the required use of a strongback for the 5-psig test and its positioning on the inside of the lock which tends to assist the door in sealing is less conservative than the 2-psig test for the inner door. Therefore, the 5-psig test has no significant increase in value. The licensee believes that the escape air lock's performance is demonstrated with the local leak rate test at 2 psig.

Environment Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed exemption will not affect facility radiation levels or facility radiological effluents. The licensee has provided an acceptable basis for concluding that the proposed exemption to test the escape air lock at a pressure of 2 psig would maintain the containment leak rates within acceptable limits.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or

greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of Big Rock Point Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on October 3, 1995, the staff consulted with the Michigan State official, Mr. Dennis Hahn of the Nuclear Facilities and Environmental Monitoring Section, Office of the Department of Public Health, regarding the environmental impact of the proposed action. The State official has no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 4, 1994, as supplemented by letter dated September 27, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 6th day of November 1995.

For the Nuclear Regulatory Commission.

John B. Hickman,

Acting Director, Project Directorate III–I, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27917 Filed 11–9–95; 8:45 am]

BILLING CODE 7590–01–P

Availability of NRC Iterative Performance Assessment Phase 2: Development of Capabilities for Review of a Performance Assessment for a High-Level Waste Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG–1464, "NRC Iterative Performance Assessment (IPA) Phase 2: Development of Capabilities for Review of a Performance Assessment for a High-Level Waste Repository."

ADDRESSES: Copies of NUREG–1464 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG–1464 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Performance Assessment and Hydrology Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11545 Rockville Pike, MD 20852–2738. Telephone: (301) 415–6677.

SUPPLEMENTARY INFORMATION: This report describes the results of the second phase of the development of the NRC staff's capability to review a performance assessment for a geologic repository. This capability, developed with the assistance of its contractor (the Center for Nuclear Waste Regulatory Analyses—the CNWRA), helps the NRC staff assess whether the U.S. Department of Energy's (DOE's) site characterization activities are adequate, during the pre-licensing phase, and, later, will help the staff review a license application for the potential geologic repository for spent nuclear fuel and other high-level radioactive waste (HLW) at Yucca Mountain, NV.

As its name indicates, IPA involves repeated iterations directed at improving both the NRC staff's capability for reviewing DOE's demonstration of repository performance and the staff's understanding of combined systems and events and processes that are key to repository performance. In addition, IPA is intended to support timely feedback to DOE on their licensing strategy, site characterization, and design programs. Performance assessment of a geologic repository, like other systematic safety-assessment methodologies, benefits substantially by being conducted in an iterative manner, primarily because the lessons learned regarding modeling improvements, data needs, and methodology can be addressed in subsequent iterations.

The IPA Phase 2 demonstration made use of the scenario selection procedure developed by Sandia National Laboratories and modified by the NRC staff to provide a set of scenarios, with corresponding probabilities, for use in the consequence analysis of a potential HLW disposal site in unsaturated tuff. Models of release of radionuclides from the waste form and transport in ground water, air and by direct pathways provided preliminary estimates of releases to the accessible environment for a 10,000 year period. The input values of parameters necessary for the consequence models were sampled numerous times using Latin Hypercube Sampling from probability distributions. The results from the consequence models were then used to generate Complementary Cumulative Distribution Functions (CCDFs) for either normalized radionuclide release to the accessible environment or effective dose equivalents to a target population. CCDFs were calculated for probabilistically significant combinations (scenarios) of four disruptive events; exploratory drilling, pluvial climate, seismicity, and magmatism. Sensitivity and uncertainty analyses of the calculated releases and effective dose equivalents were also used to determine the importance of the parameters.

Because of the preliminary nature of the analysis and data base, the results and conclusions presented in NUREG–1464 should be carefully interpreted. They should not be misconstrued to represent the actual performance of the proposed Yucca Mountain repository nor serve as an endorsement of the methods used.

Dated at Rockville, Maryland, this 30th day of October 1995.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Performance Assessment and Hydrology Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–27918 Filed 11–9–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36424A; File No. SR–PSE–95–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Amendment of the Schedule of Rates for Exchange Services

November 6, 1995.

Correction

In notice document 95–27129 beginning on page 55628 in the issue of Wednesday, November 1, 1995, make the following correction.

On page 55628, in the third column, under the Purpose heading, the second sentence should read as follows:

The Exchange is proposing to establish a rate $0.25 per contract side where the premium is $1 or more per contract for contracts in a block trade over the first 400.

In the initial notice of this proposed rule change, the Commission erroneously stated that the PSE's reduced fee schedule would apply to the first 400 of such contracts, as opposed to the Exchange's intent that this reduced fee be applicable to contracts over the first 400. In all other respects, the PSE's initial proposal is unchanged.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27971 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36452; File No. SR–PSE–95–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Stock Exchange Incorporated, Relating to the Listing and Trading of Flexible Exchange Options on Specified Equity Securities

November 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 1995, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 25, 1995, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to provide for the listing and trading of Flexible Exchange Options ("Flex Options") on specified equity securities ("FLEX-Equity Options"). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the PSE's FLEX Options rules[4] to permit the introduction of trading in FLEX Options on specified equity securities that satisfy the Exchange's listing standards for equity options. Currently, FLEX Options are listed and traded on the PSE in respect of several broad market indexes of equity securities ("FLEX Index Options").[5]

For the most part, the PSE represents that the current rules governing FLEX Index Options will apply unchanged to FLEX Equity Options. Certain changes to the PSE's existing FLEX Options rules, however, are proposed to deal with the special characteristics of FLEX Equity Options. Specifically, the PSE proposes to add several new definitions to rule 8.100 to accommodate the introduction of trading in FLEX Equity Options,[6] and to revise certain other PSE rules describing FLEX Options and governing their trading, as described below.

The PSE proposes to revise Rule 8.102 concerning the terms of FLEX Options to make specific reference to the terms of FLEX Equity Options. Specifically, FLEX Equity Options will have (1) a maximum term of three years, (2) a minimum size of 250 contracts for an opening transaction in a new series, and (3) a minimum size of 100 contracts for an opening or closing transaction in a series in which there is already open interest (or any lesser amount in a closing transaction that represents the remaining underlying size). The minimum value size for FLEX Quotes[7] by a single Market-Maker in response to a Request for Quotes[8] in FLEX Equity Options is the lesser of 100 contracts or the remaining underlying size in a closing transaction.

The PSE also proposes to allow exercise prices and premiums for FLEX Equity Options to be stated in dollar amounts or percentages, with premiums rounded to the nearest minimum tick and exercise prices rounded to the nearest one-eighth. The exercise of FLEX Equity Options will be by physical delivery, and the exercise-by-exception procedures of The Options Clearing Corporation ("OCC") will apply.[9]

The PSE represents that the trading procedures applicable to FLEX Equity Options will be mostly the same as

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange first proposes to add the definition of "FLEX Post Official" to PSE Rule 8.100(b)(7). Second, the Exchange proposes to add as new PSE Rule 8.114, the provision on financial requirements for FLEX Appointed Market Makers, which had been inadvertently deleted from the proposed rule change as originally filed. Third, the Exchange proposes to re-number PSE Rule 8.114, as PSE Rule 8.115. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated October 26, 1995.

[4] *See* PSE Rules 8.100 through 8.114.

[5] Specifically, the Commission has approved the listing by the PSE of FLEX Options on the Wilshire Small Cap and PSE Technology Indexes. *See* Securities Exchange Act Release No. 34364 (July 13, 1994), 59 FR 36813 (July 19, 1994) (approval of FLEX Options on the Wilshire Small Cap and PSE Technology Indexes).

[6] In addition to the term FLEX Equity Options, the proposal also defines the terms "FLEX Index Options," "Non-FLEX Options," "Non-FLEX Equity Option," and, "Applicable Floor Procedure Committee.

[7] *See* PSE Rule 8.100(b)(7).

[8] *See* PSE Rule 8.100(b)(12).

[9] OCC Rule 805 provides for automatic exercise of in-the-money options at expiration without the submission of an exercise notice to the OCC if the price of the security underlying the option is at or above a certain price (for calls) or at or below a certain price (for puts); and the non-exercise of an option at expiration if the price of the security underlying the option does not satisfy such price levels. *See* OCC rule 805.

those that apply to FLEX Index Options, except that unless the Exchange decides otherwise, there will not be FLEX Appointed Market-Makers[10] who are obligated to respond to Requests for Quotes in respect of FLEX Equity Options as there are in respect of FLEX Index Options. Instead, the PSE proposes to have five or more "FLEX Qualified Market-Makers" appointed to each class of FLEX Equity Option who must satisfy essentially the same standards of qualification as FLEX Appointed Market-Makers (including the requirement for a specific clearing member letter of guarantee for FLEX Options),[11] and who may, but without obligation to do so, enter quotes in response to a Request for Quotes in a class of FLEX Equity Options in which the Market-Maker is qualified. In addition, FLEX Qualified Market-Makers will be obligated to make responsive quotes when called upon to do so by a FLEX Post Official[12] in the interests of a fair and orderly market. Quotes of FLEX Qualified Market-Makers must satisfy the minimum size parameters discussed above for FLEX Equity Options and must be entered within the time periods provided in the PSE's FLEX Options Rules.[13]

The PSE represents that the rules governing priority of bids and offers for FLEX Equity Options are also much the same as those that apply to FLEX Index Options, except that in the case of FLEX Equity Options, no guaranteed minimum right of participation is provided to an Exchange member that initiates a Request for Quotes and indicates an intention to cross or act as principle on the trade;[14] as to such a member the Exchange's regular rules of price and time priority shall apply.[15]

The PSE represents that position limits and exercise limits for FLEX Equity Options are proposed to be larger than the limits applicable to Non-FLEX Equity Options, in the same manner and for the same reasons that the position and exercise limits for FLEX Index Options are larger than those applicable to Non-FLEX Index Options. Position and exercise limits for FLEX Equity Options are proposed to be five times the limits for Non-FLEX Equity Options on the same underlying security. Also, as is currently the case for FLEX Index Options, it is proposed that there will be no aggregation of positions or exercises in FLEX Equity Options with positions or exercises in Non-FLEX Equity Options for purposes of position or exercise limits. The PSE believes that the larger position and exercise limits for FLEX Options and the nonaggregation of positions and exercises in FLEX Options and Non-FLEX Options reflect the institutional nature of the market for FLEX Options and the fact that the PSE must compete with over-the-counter markets throughout the world, many of which do not impose any position or exercise limits whatsoever.

Also, the Exchange proposes to provide that the expiration date of a FLEX Equity Option may not fall on a day that is within two business days of the expiration date of a Non-FLEX Equity Option. This is intended to eliminate the possibility that the exercise of FLEX Equity Options at expiration will cause any untoward pressure on the market for underlying securities at the same time as Non-FLEX Options expire. The Exchange proposes that this change will also apply to FLEX Index Options.[16]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to SR–PSE–95–24 and should be submitted by December 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 95–27880 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* Rule 8.109.

[11] *See, e.g.*, PSE Rules 8.109, 8.113, 8.114, and 8.115.

[12] *See* PSE Rule 8.100(b)(7).

[13] *See* PSE Rule 8.103.

[14] *See* PSE Rule 8.103(c).

[15] *See* PSE Rule 8.75.

[16] Current PSE Rule 7.52(b)(4) provides that the expiration date of a FLEX Index Option may not fall within three business days of the expiration date of a Non-FLEX Index Option.

[17] 17 CFR 200.30–3(a)(12).

[Release No. 34–36457; File No. SR–Phlx–95–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Regarding Alternate Specialists

November 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on September 15, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 1, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 202A, Responsibilities of Alternate Specialists, to reduce the number of equity issues in which an individual can serve as Alternate Specialist from the current maximum, which is all of the Exchange's approximately 2,300 securities, to a new level of 60 securities.

Moreover, under the proposed rule change, the Exchange would permit the "50% on-floor requirement" to be met by trade volume, rather than share volume. The proposed rule change would also allow Alternate Specialists to count trades effected on another national securities exchange through the Intermarket Trading System ("ITS") towards their 50% on-floor requirement provided that the Alternate Specialist's on-floor trades outnumber his/her ITS trades by a minimum ratio of three-to-one. An Alternate Specialist's ITS trades in excess of that ratio could not be used to satisfy the 50% requirement. Moreover, unexecuted orders of 500 shares or more placed with the Specialist on the Exchange at a price on or in-between the consolidated market and maintained on the book for an extended period of time would be eligible for the 50% on-floor requirement.[2]

The Exchange also proposes that, once a member has been assigned as an Alternate Specialist, the member must maintain such assignment for at least 30 business days, after which the member may terminate the assignment by providing written notification to the Exchange on a form prescribed by the Exchange.[3] Terminations will become effective as of the opening of trading on the equity floor on the business day following the submission.

Moreover, to avoid repetition and improve the clarity of Rule 202A, the Phlx proposes to amend several provisions that focus on the coordination of Alternate Specialist activities with the respective Specialist, the Alternative Specialist's participation on openings, and the handling of orders. Specifically, the Exchange proposes to consolidate into Rule 202A(a) the provisions relating to an Alternate Specialist's affirmative and negative market making obligations, which were previously covered by paragraphs (b)–(e) of Rule 202A. Under the proposed rule change, Rule 202A(a) defines an Alternate Specialist as an individual member of the Exchange registered as an equity Specialist on the floor who, in addition to those securities for which he serves as Specialist, has agreed to provide liquidity on demand as an Alternate Specialist in the execution of customer orders in certain other securities on the Exchange. The responsibilities of the Alternate Specialist are defined as follows: to provide a bid and/or offer in the security upon the request of a Floor Broker or Specialist holding a customer order and to only participate in the execution of such orders in a manner reasonably calculated to contribute to the maintenance of a fair and orderly market.

Finally, the Exchange proposes to incorporate certain requirements previously contained in the Supplementary Materials into new Rule 202A(c), which will list the criteria for qualifying and maintaining the status of an Alternate Specialist. The Exchange also proposes to delete the remaining requirements in the Supplementary Materials because the Exchange finds them unnecessary in light of other existing Exchange rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 202A, which was adopted in 1987, outlines the responsibilities of Alternate Specialists on the Exchange. The Rule presently permits equity Specialists to trade in an Alternate Specialist capacity in all securities traded on the equity floor. As a result, the current rule does not encourage Alternate Specialists to focus liquidity in small groups of stocks where more concentration of activity could result in a higher degree of liquidity. Therefore, the proposal limits the maximum number of Alternate Specialist issues to 60 per member. The primary purpose of the propose rule change is to bolster liquidity provided by the Phlx's Alternate Specialist program by concentrating Alternate Specialist activities in a more focused manner.

The current rule also provides that Alternate Specialists must comply with two quarterly trading requirements. First, 50% of an Alternate Specialist's quarterly share volume (excluding share volume in securities in which he is registered as Specialist) must be in issues to which he is assigned. In situations where a Floor Official requests an Alternate Specialist to participate in trading an issue in which he is not assigned, to share volume so accumulated will be included as part of the volume required to satisfy the 50% requirement. Second, 50% of the quarterly share volume that creates or increases a position ("opening") in an alternative specialist account must result from transactions consummated on the Exchange.

This proposal deletes the first requirement that 50% of the Alternate Specialist's share volume must be in assigned issues because the Exchange has limited the maximum number of Alternate Specialist securities to 60. The other 50% requirement (*i.e.*, that 50% of the Alternate Specialist's "opening" volume must be effected on the Phlx) is retained.[4] The Exchange, however, proposes to replace the "50% of quarterly opening share volume" requirement with "50% of quarterly trade volume." The Exchange states that it has determined that the requirement should no longer be limited to

[1] *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated October 30, 1995. In Amendment No. 1, the Exchange clarifies that the "50% of quarterly opening share volume" requirement has been replaced with "50% of quarterly trade volume."

[2] According to the Exchange, an "extended period of time" will be determined by the Exchange on a case by case basis. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and Jennifer S. Choi, SEC, on October 11, 1995.

[3] The Exchange notes that the general provision pertaining to assignment of Alternate Specialists is Phlx Rule 201A.

[4] *See* Phlx Rule 202A(c)(iv).

"opening" positions because measuring all trade volume each quarter to ensure that 50% is executed on the Exchange should fulfill the Phlx's intent to monitor for true alternate specialist activity and obligations. The Exchange also notes that opening transactions are difficult to monitor because floor tickets are not marked with an opening or closing distinction on the equity floor.

Moreover, the 50% on-floor requirement is proposed to be amended both to employ trade volume rather than share volume in the calculation as well as to include: (1) ITS trades and (2) unexecuted orders placed on the Phlx at prices on or between the consolidated market. In this regard, the Phlx notes that, consistent with their regulatory responsibility to provide fair and orderly markets, Alternate Specialists must provide liquidity on the Exchange in assigned alternate issues. The ability to inventory or offset securities positions is a critical aspect of the National Market System, which links equity markets, including the Phlx and seven other equity markets, with the goal of best-execution pricing. Thus the Exchange believes that it is appropriate to allow one-quarter of the 50% on-floor requirement to be met by ITS trades effected away from the Exchange, because ITS enhances liquidity and provides the linkage vital to a true National Market System. Only those ITS trades that do not exceed a ratio of three Phlx trades to one ITS trade may be counted. For example, if an Alternate Specialist needs to employ ITS trades to meet his on-floor requirement, and has executed a total of 2,000 trades in that quarter, the requirement could be met by effecting 250 off-floor ITS trades and 750 on-floor trades.

Second, the Exchange notes that Alternate Specialists serve an important role in providing liquidity and stabilizing the marketplace in their Alternate Specialist securities. In offsetting positions or responding to market needs, Alternate Specialists routinely place orders on the Exchange that add liquidity to the Exchange's market, regardless of whether the orders are subsequently availed upon by a customer's agent, to facilitate customer interest. In order to give proper credit to such stabilizing and liquidity-providing orders placed on the Exchange floor by Alternate Specialists that are not executed, the Exchange also proposes to count toward the 50% requirement orders placed on the Exchange on or in-between the consolidated market, notwithstanding that the orders are not executed. The Alternate Specialist must evidence for any such claim that the respective bid or offer was maintained for an extended period of time.

As part of the proposed simplification of the Rule, the Phlx proposes to delete certain existing provisions, namely former Supplementary Material .06, .07 and .09. First, the Exchange proposes to delete Commentary .06, which states that Alternate Specialists as a group are entitled to participate in opening a security on the Exchange with equal standing with respect to any net imbalance (after Specialist participation) of purchase and sale orders on the Exchange. This provision is being deleted because the Exchange believes that the priority of orders is already adequately addressed in Rules 119 and 120,[5] which fairly allot participation levels to all members, including Alternate Specialists.[6]

Second, the Phlx also proposes to delete Commentary .07, which provides that following the opening, when the bids or offers of one or more Alternate Specialists are equal in price to those of the Specialist, the Alternate Specialist as a group are entitled to participate in the transactions effected thereon to the extent of one-third of the total shares involved (excluding those needed to satisfy public orders). This provision also is being deleted because existing parity and priority provisions of Rules 119 and 120 satisfactorily allocate shares in today's market environment.[7]

Third, the Exchange also proposes to delete Commentary .09, which states that, when requested by a Floor Broker, an Alternate Specialist must accept and guarantee execution of all 100 share agency orders to which his assignment extends that are not accepted by the Specialist. This provision is being deleted because the affirmative obligation of this provision only pertains to 100 share orders and will be largely superseded by new Rule 202A(c)(iv), where the Alternate Specialist's affirmative obligation to maintain an adequate presence in his assigned issues is more pronounced.[8]

[5] See Phlx Rule 119 (Precedence of Highest Bid) and Phlx Rule 120 (Precedence of Offers at Same Price).

[6] Therefore, in accordance with Phlx's rules of priority and precedence, the level of Alternate Specialists participation would depend on price and size. Telephone conversation between Gerald O'Connell, Vice President, Phlx, and Jennifer S. Choi, SEC, on October 25, 1995.

[7] Under the Phlx's rules of priority and precedence, the number of shares that an Alternate Specialist and a regular specialist would be entitled to would depend on price, time, and size. Telephone conversation between Gerald O'Connell Vice President, Phlx, and Jennifer S. Choi, SEC, on October 25, 1995.

[8] The Commission notes that new provision 202A(c)(iv) requires that the Alternate Specialist "maintain an adequate presence in the Exchange's market with respect to assigned alternate issues and related trade activities for the alternate account," and sets forth the 50% on floor requirement. This provision, however, does not require the alternate specialist to guarantee execution of any specific number of shares.

[9] Phlx specialists and alternate specialist qualify for favorable margin treatment under Rule 12 of Regulation T.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest. The Exchange believes that the proposed changes to Rule 202A strengthen its requirements by limiting the number of Alternate Specialist issues, which, in turn, should prevent fraudulent and manipulative acts and practices, and foster consistency with the principles underlying the National Market System and Section 11A, as well as favorable specialist margin treatment.[9] Nevertheless, the Exchange also believes that the proposed changes with respect to the 50% requirements should protect investors and the public interest as well as promote just and equitable principles of trade by facilitating the inventory needs of Alternate Specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–95–60 and should be submitted by December 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 95–27879 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36456; File No. SR–Phlx–95–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Increasing the Maximum Size of Placer Dome Options Orders Eligible for Automatic Execution

November 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Generally, public customer market and marketable limit orders for up to 25 option contracts are eligible for execution through the automatic execution ("AUTO–X") feature of the Phlx's Automated Options Market ("AUTOM") system.[2] The Phlx proposes to implement a six-month pilot program that increases the maximum AUTO–X order size eligibility for public customer market and marketable limit orders for Placer Dome, Inc. ("PDG") options from 25 contracts to 50 contracts.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to implement a six-month pilot program that increases the maximum AUTO–X order size eligibility for PDG options from 25 to 50 contracts.[3] The Phlx has traded PDG options since 1987. According to the Exchange, PDG, which is traded on the New York Stocks Exchange, has moved in price from 18⅜ in January 1995 to 27⅝ in September 1995. This, in turn, has caused increased volatility in the overlying options. In addition, the Phlx notes that PDG options have consistently been one of the most active equity options traded on the Phlx. According to the Phlx, the daily trading volume in PDG options has averaged 1,641 contracts per day throughout 1995, and open interest was 69,425 contracts on September 8, 1995.

Because of this recent activity, the Phlx proposes to implement a six-month pilot program allowing up to 50 PDG contracts to be executed automatically by AUTO–X. Generally, a maximum of 25 equity option contracts are eligible for AUTO–X, although USTOP 100 Index options are subject to a 50 contract AUTO–X maximum.[4] In addition, the Phlx recently filed a proposal with the Commission to increase the maximum AUTO–X order size to 50 contracts for all equity and index options.[5] Accordingly, the purpose of the proposal at hand is to afford expedited treatment to PDG options to provide a sample, which can be reviewed while consideration is given to File No. SR–Phlx–95–39.

The Phlx notes that the proposed 50 contracts for PDG options represents the maximum size of a permissible AUTO–X order in PDG options, which is determined by the specialist in PDG options. Under the 10-up rule,[6] the maximum size of the Exchange's AUTO–X guarantee is 10 contracts.

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[7] is the Phlx's electronic order

[1] On October 30, 1995, the Phlx amended its proposal to request that the proposal be implemented on a six-month pilot basis. See Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated October 30, 1995 ("Amendment No. 1").

[2] For USTOP 100 Index ("TPX") options, public customer market and marketable limit orders for up to 50 contracts are eligible for AUTO–X. See Securities Exchange Act Release No. 35781 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR–Phlx–95–29).

[3] See Amendment No. 1, *supra* note 1.

[4] See Securities Exchange Act Release No. 35871, *supra* note 1.

[5] See File No. SR–Phlx–95–39.

[6] See Phlx Rule 1033(a), "Size of Bid/Offer and 10-up Guarantee."

[7] See Securities and Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–Phlx–94–41). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–Phlx–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–Phlx–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6485 (order approving File No. SR–Phlx–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–Phlx–89–03, extending pilot through June 30, 1990); 28525 (July 26, 1990), 55 FR 31274 (order approving File No. SR–Phlx–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–Phlx–90–34),

Continued

routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO–X.[8] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

The Commission approved the use of AUTO–X as part of the AUTOM pilot program in 1990.[9] In 1991, the Commission approved a Phlx proposal to extend AUTO–X to all equity options.[10] As noted earlier, orders for up to 500 contracts are eligible for AUTOM and orders for up to 25 contracts, in general, are eligible for AUTO–X.

The Phlx believes that the proposed expanded AUTO–X parameter for PDG options should improve the AUTOM system by offering the benefits of AUTO–X, including prompt and efficient automatic executions at the displayed price, to additional customer orders. The Exchange states that the proposed AUTO–X increase for PDG options from a maximum of 25 to 50 contracts is in line with prior changes. For examples, the Phlx notes that the Commission previously has approved an AUTO–X increase from 10 to 20 contracts.[11] In addition, the Commission has previously approved the expansion of AUTO–X with respect to a specific equity option.[12]

The Exchange represents that the specialist unit currently assigned in PDG, which requested this change, presently is in compliance with Exchange financial requirements and possesses adequate capital to fulfill its proposed AUTO–X responsibilities respecting 50 contracts in PDG. In addition, the Exchange notes that although AUTO–X orders are by definition executed automatically, there are opportunities for price improvement in accordance with a post-execution price change. For example, in the event of an error in the displayed price, the AUTO–X price can be adjusted.

The Exchange notes that the proposed expansion of the maximum AUTO–X order size in PDG options should not impose significant burdens on the operation and capacity of the AUTOM system. Instead, the Phlx believes that the proposal may enhance AUTOM's effectiveness by increasing the number of orders eligible for automatic execution, thereby reducing manual processing.

The Phlx believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by extending the benefits of AUTO–X to a larger number of customer orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27881 Filed 11–9–95; 8:45 am]

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extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–Phlx–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–Phlx–91–33, increasing size of AUTO–X orders from 10 contracts to 20 contracts); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–Phlx–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–Phlx–93–57, extending pilot through December 31, 1994).

[8] Orders for up to 500 contracts are eligible for AUTOM and public customer orders for up to 25 contracts, in general, are eligible for AUTO–X. *See* Securities Exchange Act Release Nos. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving File No. SR–Phlx–95–30); and 32000 (March 15, 1993), 58 FR 15168 (March 19, 1994) (order approving File No. SR–Phlx–92–38). As noted above, public customer orders for up to 50 contracts in TPX options are eligible for AUTO–X. *See* Securities Exchange Act Release No. 35781, *supra* note 1.

[9] *See* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR–Phlx–89–03).

[10] *See* Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR–Phlx–90–34).

[11] *See* Securities Exchange Act Release No. 29837, *supra* note 5.

[12] *See* Securities Exchange Act Release No. 29662, *supra* note 5 (permitting AUTO–X orders up to 20 contracts in Duracell options only).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 35–26403]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 3, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 27, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Co., et al. (70–8693)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio, 43215, a registered holding company, and eight electric utility subsidiary companies, Appalachian Power Company ("Appalachian"), 40 Franklin Road, S.W., Roanoke, Virginia, 24011, Columbus Southern Power Company ("Columbus"), 214 North Front Street, Columbus, Ohio, 43215, Indiana Michigan Power Company ("Indiana"), One Summit Square, P.O. Box 60, Forth Wayne, Indiana, 46801, Kentucky Power Company ("Kentucky"), 1701 Central Avenue, Ashland, Kentucky, 41101, Ohio Power Company ("Ohio"), 301 Cleveland Avenue, S.W., Canton, Ohio, 44701, AEP Generating Company ("Generating"), 1 Riverside Plaza, Columbus, Ohio, 43215, Kingsport Power Company ("Kingsport"), 40 Franklin Road, S.W., Roanoke, Virginia, 24011, and Wheeling Power Company ("Wheeling") 51 Sixteenth St., Wheeling, West Virginia, 26003, have filed an application under section 6(b) of the Act and rule 54 thereunder.

AEP, Appalachian, Columbus, Indiana, Kentucky and Ohio request authorization to incur short-term indebtedness, through December 31, 2001, through the issuance and sale of short-term notes to banks and commercial paper to dealers in commercial paper and, in addition, Generating, Kingsport, and Wheeling request authorization to incur short-term indebtedness, through December 31, 2001, through the issuance and sale of short-term notes to banks, in aggregate amounts not to exceed those herein specified:

Company	Amount
AEP	$150,000,000
Appalachian	250,000,000
Columbus	175,000,000
Indiana	175,000,000
Kentucky	150,000,000
Generating	100,000,000
Kingsport	30,000,000
Ohio	250,000,000
Wheeling	30,000,000
Total	1,310,000,000

AEP, Appalachian, Columbus, Indiana, Kentucky, Generating, Kingsport, Ohio and Wheeling ("Applicants") request authorization for an increase in the exemption provided from the provisions of Section 6(a) by the first sentence of Section 6(b) of the Act to the extent necessary to cover the issuance and sale of notes and commercial paper. AEP's request is in addition to the authority granted to AEP in Holding Co. Act Release No. 36200 (Dec. 22, 1994). Applicants will use the short-term debt to pay general obligations and for other corporate purposes.

Applicants propose to issue and sell notes to several domestic and foreign banks through various credit arrangements, to include revolving credit agreements or shared lines of credit. Notes under the credit arrangements will mature within 270 days. Credit arrangements generally require commitment fees borne by each Applicant in proportion to its respective projected maximum need for credit.

The total annual cost of borrowings under all such bank lines is estimated to be not in excess of the effective rate for borrowings that bear interest at the prime commercial rate with compensating balances of up to 10% of the line of credit.

The maximum effective annual interest cost under any of these arrangements, assuming full use of the line of credit, is estimated to not exceed 125% of the prime commercial rate in effect from time to time, or not more than 10.94% on the basis of a prime commercial rate of 8.75%.

Commercial paper will be sold directly by AEP, Appalachian, Columbus, Indiana, Kentucky, or Ohio to dealers in commercial paper. Commercial paper will be in the form of promissory notes in denominations of not less than $50,000 and will mature within 270 days. Such notes will not be prepayable and will be sold at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. The commercial paper dealers will re-sell the commercial paper to investors, generally at a discount rate of up to ⅛ of 1% per annum less than the discount rate at which it was sold.

Applicants also request authorization to issue unsecured promissory notes or other evidence of their reimbursement obligations in respect of letters of credit issued on their behalf by certain banks. Letters of credit, together with other short-term indebtedness authorized, would be in an aggregate amount not to exceed the above-itemized aggregate amounts authorized for each Applicant.

Drawings under the letters of credit would bear interest at not more than 125% of the prime commercial rate in effect from time to time. An annual fee may be required for the issuance of such letters of credit. Such fee will not exceed 1% of the face amount of such letter of credit. Any such promissory note or other evidence of reimbursement obligations would mature within 270 days.

Arkansas Power & Light Company (70–8723)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol Avenue, 40th Floor, Little Rock, Arkansas 72201, an electric public utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

AP&L proposes, from time-to-time through December 31, 2000, to: (1) Issue and sell through one or more special purpose subsidiaries, one or more series of preferred securities of such subsidiary having a stated per share liquidation preference ("Entity Interests"), in an aggregate principal amount not to exceed $200 million; (2) issue one or more series of AP&L's junior subordinated debentures to the special purpose subsidiary(ies), each series in an amount not to exceed the amount of the respective series of Entity Interests, plus an equity contribution; and (3) provide certain guarantees.

AP&L proposes to organize either a special purpose limited partnership or a statutory business trust ("Issuing Entity") for the sole purpose of issuing the Entity Interests. In the case of a limited partnership, AP&L would either: (1) Act as the general partner of the Issuing Entity; or (2) organize a special purpose, wholly owned corporation for the sole purpose of acting as the general partner of the Issuing Entity. In the case of a business trust, the business and affairs of the trust would be conducted

by one or more trustees. AP&L will directly or indirectly make an equity contribution to the Issuing Entity at the time the Entity Interests are issued and thereby directly or indirectly acquire all of the general partnership interest (in the case of a limited partnership) or all of the voting interests (in the case of a business trust) in the Issuing Entity.

AP&L will issue, from time-to-time in one or more series, Subordinated Debentures ("Entity Subordinated Debentures") to the Issuing Entity. The Issuing Entity will use the proceeds from the sale of its Entity Interests, plus the equity contributions made to it by AP&L to purchase the Entity Subordinated Debentures.

Each series of Entity Subordinated Debentures will mature at such time, not more than fifty years from their date of issuance, as AP&L may determine at the time of issuance. Prior to maturity, AP&L will pay interest only on the Entity Subordinated Debentures at either a fixed or adjustable rate. The distribution rates, payment dates, redemption, maturity, and other terms applicable to each series of Entity Interests will be substantially identical to the related interest rates, payment dates, redemption, maturity, and other terms applicable to the Entity Subordinated Debentures, and will be determined by AP&L at the time of issuance. The interest paid by AP&L on the Entity Subordinated Debentures will constitute the only source of income for the Issuing Entity and will be used by the issuing Entity to pay monthly or quarterly distributions on the Entity Interests.

AP&L may also enter into a guaranty ("Guaranty") to guarantee unconditionally: (1) Payment of distributions on the Entity Interests, if and to the extent the Issuing Entity has legally available funds; (2) payments to the holders of Entity Interests of certain amounts due upon liquidation of the Issuing Entity or redemption of the Entity Interests; and (3) certain additional "gross up" amounts that may be payable regarding the Entity Interests. AP&L's Entity Subordinated Debentures and any Guaranty will be subordinated to senior indebtedness. Payment of interest on Entity Subordinated Debentures may be deferred for specified periods, without creating a default, so long as no dividends are being paid on, or certain actions are being taken with respect to the retirement of, the common or preferred stock of AP&L, respectively, during the deferral period.

Distributions on the Entity Interests will be paid monthly, quarterly or as determined at the time of sale of each series, will be cumulative, and will be mandatory to the extent that the Issuing Entity has legally available funds sufficient for such purposes. The Issuing Entity will have the right to defer distributions on the Entity Interests for a specified period, but only if and to the extent that AP&L defers the interest payments on the Entity Subordinated Debentures. It is anticipated that interest payments by AP&L on the Entity Subordinated Debentures will be deductible for federal and state income tax purposes and that the Issuing Entity will be treated as either a partnership or a trust, as the case may be, for federal income tax purposes. Consequently, the holders of Entity Interests will be deemed to have received interest income rather than dividends, and will not be entitled to any "dividends received deduction" under the Internal Revenue Code.

One or more series of Entity Interests and Entity Subordinated Debentures may include provisions for the mandatory and/or optional retirement of some or all of such series prior to maturity. The Entity Interests will be subject to redemption, in whole or in part, on and after a specified date ("Earliest Redemption Date") at the option of the Issuing Entity, with the consent of AP&L, at a price equal to their stated liquidation preference, plus any accrued and unpaid distributions. The Earliest Redemption Date will be not later than five years after the date of issuance.

AP&L may also reserve the right, under certain circumstances, to exchange the Entity Subordinated Debentures for the Entity Interests or otherwise to distribute the Entity Subordinated Debentures to the holders of Entity Interests. If, as the result of: (1) The Entity Subordinated Debentures not being treated as indebtedness for federal income tax purposes; or (2) the Issuing Entity not being treated as either a partnership or a trust, for federal income tax purposes, the Issuing Entity is required to withhold or deduct from payments on the Entity Interests amounts that otherwise would not be required to be withheld or deducted, the Issuing Entity may also have the obligation, if the Entity Interests are not redeemed or exchanged, to increase or "gross up" such payments so that the holders of Entity Interests will receive the same payment after such withholding or deduction were required.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Issuing Entity, holders of Entity Interests will be entitled to receive, out of the assets of the Issuing Entity available for distribution to the limited partners or the preferred security holders, before any distribution of assets to the general partner or AP&L, an amount equal to the stated liquidation preference of the Entity Interests, plus any accrued and unpaid distributions.

No series of Entity Interests or corresponding series of Entity Subordinated Debentures will be sold if the fixed distribution or interest rate or initial adjustable distribution or interest rate would exceed the lower of 15% per annum or market rates generally obtainable at the time of pricing for sales of limited partnership or business trust interests having a reasonably equivalent maturity, issued by subsidiaries of companies of reasonably comparable credit quality and having reasonably similar terms, conditions and features. The initial distribution rate for Entity Interests of such series having an adjustable distribution will be determined in negotiations between AP&L and the purchasers of such series and be based on then current market rates for comparable subsidiary securities. Thereafter, the distribution rate on the Entity Interests would be adjusted according to a pre-established formula or method of determination or would be that rate which, at the time of remarketing, would be sufficient to remarket the Entity Interests at their principal amount.

The price, exclusive of accrued distributions, to be paid to the Issuing Entity for each such series of Entity Interests to be sold at competitive bidding will be within a range from 95% to 105% of the liquidation amount of such series of Entity Interests.

The Southern Company (70–8725)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed an application-declaration under sections 6(a), 7, 12(b), 32 and 33 of the Act and rules 45, 53, 54 and 100(a) thereunder.

Southern is currently authorized under the terms of three separate orders to finance the operations of its subsidiaries: (1) by issuing and selling approximately 50 million additional authorized shares of its common stock, par value $5 per share, from time to time through December 31, 1999, (2) by issuing guaranties of the securities of one or more exempt wholesale generators ("EWGs") or foreign utility companies ("FUCOs"), as defined in sections 32 and 33 of the Act, in an aggregate amount not to exceed $1.2 billion at any one time outstanding, from time to time through December 31, 1999, and (3) by issuing notes evidencing short-term and term loan borrowings and/or commercial paper, in an aggregate principal amount not to exceed $1 billion at any one time outstanding, from time to time through March 31, 2000 (Holding Co. Act Release Nos. 26349 (Aug. 3, 1995), 26347 (Aug. 2, 1995), and 26346 (Aug. 1, 1995) (the "Orders")).

Under the terms of the Orders, Southern may use the proceeds of common stock sales and borrowings to finance the acquisition of the securities of one or more EWGs or FUCOs, and may issue guaranties in respect of the securities of such entities, provided that the sum of the net proceeds of common stock sales and borrowings used by Southern for these purposes and the guaranties at any time outstanding shall not, when added to Southern's "aggregate investment" (as defined in rule 53(a) under the Act) in all EWGs and FUCOs, exceed 50% of Southern's "consolidated retained earnings" (as defined in rule 53(a)).[1]

Southern requests the Commission to modify this limitation, and exempt Southern from the requirements of rule 53(a)(1), to permit Southern to use the net proceeds of common stock sales and borrowings authorized by the Orders to acquire the securities of EWGs and FUCOs, and to issue guaranties pursuant to the Orders,[2] in an aggregate amount that, when added to Southern's direct and indirect "aggregate investment", as defined, in all EWGs and FUCOs, would not at any time exceed 100% of Southern's "consolidated retained earnings", as defined. The current amount of Southern's "aggregate investment", as defined, in EWGs and FUCOs (approximately $1.244 billion) represents approximately 38.72% of its "consolidated retained earnings", as defined, at June 30, 1995 (approximately $3.213 billion). Increasing this limitation as Southern proposes would allow financing of additional investments in EWGs and FUCOs of approximately $1.97 billion.

Southern states that it is committed to making substantial additional investments in EWGs and FUCOs, primarily because (1) since 1988 and for at least the next ten years, there has been and is projected to be little or no need for Southern to make any significant equity investment in any of its utility subsidiaries; and (2) Southern has invested in utility systems in countries where competition is more fully developed so that it will be better able to compete in the future in the southeastern United States. Southern also describes comprehensive procedures that it has established to identify and address risks involved in EWG and FUCO investments.

Southern states that the use of financing proceeds and guaranties to make investments in EWGs and FUCOs to the proposed increased level will not have a substantial adverse impact on the financial integrity of the Southern system or an adverse impact on any utility subsidiary of Southern or its customers or on the ability of the affected state commissions to protect such customers. Southern further represents that it will not seek recovery through higher rates to its utility subsidiaries' customers in order to compensate Southern for any possible losses that it may sustain on investments in EWGs and FUCOs or for any inadequate returns on such investments.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[1] This investment limitation is consistent with the investment limitation contained in Rule 53(a)(1).

[2] In a separate proceeding in File No. 70–8733, Southern is proposing to restate its authority to guaranty the securities of EWGs, FUCOs and certain other nonutility subsidiaries. If an order in that matter is issued prior to the issuance of the order requested in this filing, such order will be subject to the percentage limitation sought to be increased herein. The issuance of an order in this filing would amend Southern's guaranty authority as in effect at the date of issuance of such order.

[Investment Company Act Rel. No. 21472; 812–9558]

Ridgewood Electric Power Trust III et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Ridgewood Electric Power Trust III ("Power III"), Ridgewood Electric Power Trust IV ("Power IV") (Collectively, the "Funds"), and Ridgewood Power Corporation.

RELEVANT ACT SECTIONS: Order requested under rule 17d–1 in accordance with sections 17(d) and 57(a)(4).

SUMMARY OF APPLICATION: Applicants request an order permitting Power III and Power IV, which are affiliated with each other, to co-invest in the same portfolio securities.

FILING DATE: The application was filed on April 6, 1995 and amended on November 2, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who with to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 947 Linwood Avenue, Ridgewood, New Jersey 07450.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are Delaware business trusts that have each elected to be regulated as a business development company (a "BDC") under the Act. They are designed to provide investors with the ability to participate primarily in investments in unregulated entities that own electric power plants or other facilities used in the generation, transmission, or distribution of electrical energy and related products and services (the "Portfolio Companies").

2. The investment objectives of each BDC are to (i) generate current cash flow for distribution to investors from the operation of the Portfolio Companies, and (ii) provide the opportunity for capital appreciation through the subsequent sale of the BDC's investments. Applicants request an order permitting the Funds to invest jointly in Portfolio Companies.

3. Power III raised approximately $40 million in an offering that was exempt from registration under the Securities Act of 1933 (the "1933 Act") pursuant to Regulation D thereunder. In order to

qualify as a BDC, Power III registered the offering on Form 10 under the Securities Exchange Act of 1934 (the "1934 Act"). Power III's 1934 Act registration became effective on April 16, 1994. The offering terminated on June 30, 1995.

4. Power IV expects to raise funds from only accredited investors pursuant to an offering which is exempt from registration under the 1933 Act pursuant to Regulation D thereunder. In order to qualify as a BDC, on January 23, 1995 Power IV filed a registration statement for its proposed offering on Form 10 under the 1934 Act. The Form 10 registration became effective and the Power IV offering commenced on March 31, 1995. It is expected that the proceeds of Power IV's offering of securities will result in assets for Power IV in the range of 30 to 40 million dollars.

5. Power III and Power IV each have a management structure consisting of a three member Board of Trustees. Ridgewood Power Corporation ("PRC"), a Delaware corporation, services as one member of the Board of Trustees and as Managing Shareholder of Power III and Power IV. RPC also has an equity interest in each of the Funds. The Funds each have two individual trustees (the "Independent Trustees"), who are not "affiliated persons" of RPC or otherwise "interested persons" of Power III and Power IV. Neither of the Independent Trustees of Power III serves as an Independent Trustee of Power IV.

6. Pursuant to each Fund's Declaration of Trust, the Board of Trustees provides overall guidance and supervision with respect to the operations of the Fund, and performs all duties that the Act imposes on the boards of directors of business development companies. The Managing Shareholder is charged with certain responsibilities pursuant to each Fund's Declaration, including authority to determine and manage the Fund's independent power investments, subject to the supervision of the Board of Trustees.

7. Before a co-investment transaction will be effected, the Managing Shareholder will make a written investment presentation respecting the proposed co-investment transaction to the Board of Trustees of each Fund based on such considerations and circumstances as the Managing Shareholder may deem appropriate, including the consistency of the proposed co-investment transaction with the investment objectives and policies of each Fund. Each Fund will make its own decision and have the right to decide not to share a particular investment with another.

8. There will be no consideration paid to the Managing Shareholder (or its controlling persons) directly or indirectly, including without limitation any type of brokerage commission, in connection with a co-investment transaction. The Managing Shareholder will continue to receive, however, its normal compensation arrangements with respect to a Fund and will participate indirectly in a transaction through its existing equity interest in a Fund.

9. Prior to engaging in a co-investing transaction, a required majority (as that term is defined in section 57(o) of the Act) ("Required Majority") of the trustees of each Fund shall each conclude, as to their respective Fund, that as presented to them by the Managing Shareholder, the terms of the proposed co-investment transaction are reasonable and fair and do not involve overreaching of their Fund or its Shareholders on the part of any person concerned.

10. Neither the Managing Shareholder nor its controlling persons will participate directly or indirectly in a co-investment transaction effected by a Fund pursuant to the order. For this purpose, the term "participate" shall not include either the Managing Shareholders' existing equity interest in a Fund or their normal compensation arrangements with the Fund.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder provide, among other things, that it shall be unlawful for an affiliated person of an investment company, acting as principal, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which any such investment company is a participant unless an application regarding such joint enterprise or arrangement has been filed with an exemptive order issued by the SEC. Section 57(a)(4) of the Act applies the same prohibitions to the persons specified in section 57(b), including any person under common control with a BDC. Because the Funds are under common control, they are prohibited under section 57(a)(4), absent an exemptive order, from engaging in co-investment transactions. Section 57(i) makes rule 17d–1 applicable to transactions prohibited by section 57(a)(4). In reviewing applications filed under rule 17d–1, the SEC considers whether the participation of such investment company (or BDC) or controlled company in such joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extend to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants propose, subject to SEC approval, to allow Power III and Power IV to invest jointly in Portfolio Companies in transactions that are otherwise prohibited by section 57(a)(4) or rule 17d–1 under the Act ("co-investment transactions").[1] The Funds have the same investment objectives, and applicants believe that the ability to participate in co-investment transactions, in the manner described below, would be advantageous for each of the Funds. Applicants believe there are a significant number of potential investments that may be possible investments for both of the Funds. Moreover, a Fund's ability to participate in co-investment transactions would enlarge the scope of each Fund's investment opportunities. Finally, the aggregate capital resulting from the pooling of the Funds' available resources should cause co-investment transactions to be affected at better prices and on more favorable terms if only one Fund had been able to participate in any given transaction.

3. Additionally, under the terms of the proposed procedures to be followed in effecting co-investment transactions, the terms of the co-investment transactions will not be less advantageous to one Fund than they are to the other Fund. To the contrary the terms and conditions of each co-investment transaction will be identical for both Funds since each Fund will be offered the opportunity to participate in the co-investment transactions on a *pro rata* basis. The decision to participate would, moreover, be based on the written investment presentation of the Managing Shareholder. If the Independent Trustees determined not to participate in a proposed co-investment transaction, they could decline to do so on behalf of their Fund. By the same token, the Independent Trustees could determine to participate more or less fully in a proposed co-investment transaction than their Fund's *pro rata* share would have authorized, and the Independent Trustees have the same flexibility as the final sale, exchange, or other disposition of a co-investment transaction.

4. For these reasons, applicants believe that the requested exemption for such co-investment transactions meets the standards for granting exemptive relief under sections 17(d) and 57(a)(4) and rule 17d–1.

Applicant's Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. (a) To the extent that a Fund is considering new investments, the Managing Shareholder will review investment opportunities on its behalf, including investments being considered on behalf of the other Fund. The Managing Shareholder will determine whether a particular investment is eligible for investment by either Fund.

(b) If the Managing Shareholder deems an investment eligible for investment by either Fund, the Managing Shareholder will determine what it considers to be an appropriate amount that the Fund should invest in the particular investment. Where the aggregate amount recommended for the Funds is greater than the amount available for investment, the amount available for purchase by a Fund shall be determined on a *pro rata* basis by dividing the net assets of the Fund by the sum of the net assets of both Funds.

(c) Following the making of the determinations referred to in (a) and (b), the Managing Shareholder will distribute written information concerning the proposed co-investment transaction to the Independent Trustees of each Fund.

(d) The Independent Trustees of each Fund will review the information regarding the Managing Shareholder's preliminary determination. A Fund will only engage in a co-investment transaction if a Required Majority of the trustees of the Fund conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Fund and do not involve overreaching of the Fund or such shareholders on the part of any person concerned;

(ii) The transaction is consistent with the interests of the share holders of the Fund and is consistent with the Fund's investment objectives and policies as recited in its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders; and

(iii) The investment by the other Fund would not disadvantage the Fund and that participation by the Fund would not be on a basis different from or less advantageous than that of the other Fund.

(e) Each Fund has the right to decline to participate in a particular co-investment transaction or may purchase less than its full allocation.

2. Neither Fund will make an investment for its portfolio if a Fund or the Managing Shareholder or a person controlling, controlled by, or under common control with the Managing Shareholder is an existing investor in such issuer.

3. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any) and other rights related thereto, at the same unit consideration, and on the same terms and conditions, and the settlement dates will be the same.

4. If a Fund elects to sell, exchange, or otherwise dispose of an interest in a particular security that is also held by the other Fund, the Managing Shareholder will notify the other Fund of the proposed disposition at the earliest practical time and such Fund will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions. The Managing Shareholder will formulate a recommendation as to participation by such Fund in such a disposition, and provide a written recommendation to the Independent Trustees of such Fund. A Fund will participate in any such disposition if a Required Majority of its trustees determines that it is in the best interest of the investing Fund. Each Fund will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Fund desires to make a "follow-on" investment (i.e., an additional investment in the same entity) in a particular issuer whose securities are held by the other Fund or to exercise rights to purchase securities of such an issuer, the Managing Shareholder will notify the other Fund of the proposed transaction at the earliest practical time. The Managing Shareholder will formulate a recommendation as to the proposed participation by each Fund in a follow-on investment, and provide the recommendation to the Fund's Independent Trustees along with notice of the total amount of the follow-on investment. Each Fund's Independent Trustees will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment available to a Fund is not based on the amount of its initial investment, the relative amount of investment by each Fund will be based on a ratio derived by comparing the remaining funds available for investment by each Fund with the total amount of the follow-on investment. A Fund will participate in such investment to the extent that a Required Majority of its trustees determine that it is in the Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Independent Trustees of the Funds will be provided quarterly for review all information concerning transactions made by the Funds so that they may determine whether all co-investment transactions made during the preceding quarter, including co-investment opportunities that were declined, complied with these conditions.

7. Each Fund will maintain the records required by section 57(f)(3) of the Act as if each of the co-investment transactions permitted under these conditions were approved by the Fund's Independent Trustees under section 57(f).

8. The Funds will not have common Independent Trustees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27884 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[1] The Funds intend to seek shareholder approval of proposals to withdraw their elections to be regulated as BDC's. If shareholder approval is obtained, the Funds intend to conduct business thereafter as operating companies. Accordingly, applicants request that the SEC's order apply to those joint transactions with respect to which a binding contract has been entered into by March 31, 1996.

[Release No. IC–21471; 812–9690]

SEI Financial Management Corporation, et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: SEI Financial Management Corporation and SEI Financial Services Company (collectively, "SEI").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting SEI from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain transactions.

SUMMARY OF APPLICATION: SEI seeks an order amending a prior order that facilitates the conversion of bank-sponsored collective funds into mutual funds by permitting registered open-end management investment companies administered or distributed by SEI, and

any registered open-end management investment company as may in the future be distributed or administered by SEI or any entity controlling, controlled by, or under common control with SEI (together with any portfolio thereof, the "Funds") to accept in-kind transfers of marketable securities from bank-sponsored collective investment funds in exchange for shares of Funds advised by the bank. As amended, the order also would permit the Funds to accept in-kind transfers of marketable securities from bank-sponsored accounts consisting solely of the assets of a single retirement plan for employees of the bank or bank affiliates, in exchange for Fund shares.

FILING DATES: The application was filed on July 25, 1995, and amended on November 2, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving SEI with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1995, and should be accompanied by proof of service on SEI, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. SEI, c/o SEI Financial Services Company, 680 East Swedesford Road, Wayne, Pennsylvania 19087, Attention: Kathryn L. Stanton, Esq.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. SEI, on behalf of the Funds, seeks an order amending a prior order of exemption (the "Prior Order").[1] The Prior Order was issued under sections 6(c) and 17(b) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder, granting an exemption from the provisions of section 17(a) of the Act and allowing the Funds to participate in the conversion of assets from bank-sponsored collective investment funds ("CIFs") into shares of the Funds.

2. Some or all of the assets in a converting CIF may belong to employee retirement plans established for employees of the bank that sponsors the converting CIF (the "Bank") or employees of entities that are affiliated persons of the Bank (the "Affiliated Plans"). From time to time, however, a Bank also may maintain assets of an Affiliated Plan in an account consisting solely of the assets of that Plan (an "Affiliated Plan Account"), rather than in a CIF. Because the Prior Order does not contemplate expressly Affiliated Plan Account conversions, SEI seeks to amend the Prior Order to allow the conversion of Affiliated Plan Account assets, as well as CIF assets, into shares of a Fund. Any order granted on the current application will supersede the Prior Order.

3. SEI provides or procures administrative and other services necessary for the operation of the Funds and their portfolios. The precise services provided by SEI to a Fund may vary depending on the contract with the particular Fund. SEI will, however, always provide certain core services specified in the application (including the provision of individuals reasonably acceptable to the Fund's board of directors for nomination, appointment, or election as officer of the Fund) that will enable SEI to help assure and monitor compliance with the terms of any order that may be granted on the application. By virtue of its role as administrator, SEI plays an integral and active role in the conversion of CIFs, and will play such a role in the conversion of Affiliated Plan Accounts, into Funds.

4. The Funds are or will be registered as open-end management investment companies under the Act. Such Funds' shares are or will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933 (the "Securities Act"). The overall management of each Fund, including the negotiation of investment advisory and other service contracts, rests with the members of the Board of Directors or Trustees (the "Board of Directors") of the Fund, at least 40% of whom are not "interested persons" (as defined by the Act) of the Fund.

5. The CIFs and Affiliated Plan Accounts are sponsored by Banks as investment vehicles for employee retirement plans. The CIFs and Affiliated Plan Accounts are excluded from the definition of investment company under section 3(c)(11) of the Act, which excepts certain individual and collective investment vehicles that consist solely of the assets of employee retirement plans qualified under Section 401 of the Internal Revenue Code or similar governmental plans described in section 3(a)(2)(C) of the Securities Act (each, a "Plan"). In addition to sponsoring a CIF and/or maintaining an Affiliated Plan Account, a Bank or an affiliate of the Bank also may serve as the investment adviser to a Fund, within the meaning of section 2(a)(20) of the Act. In some instances, the Bank may provide additional services such as custody and transfer agency to a Fund and be compensated by the Fund for those services.

6. Banks frequently determine that Plan holders would be better served if sponsored CIFs and/or Affiliated Plan Accounts were converted into Funds with substantially similar investment objectives so that the Plan holders may be afforded the enhanced disclosure and other protections of the Securities Act and the Act. Banks that seek conversion of CIF and/or Affiliated Plan Accounts assets will cause the CIFs and Affiliated Plan Accounts to transfer their assets to corresponding portfolios of Funds with substantially similar investment objectives in exchange for Fund shares (the "Proposed Transfers").

7. Each Affiliated Plan participating in a Proposed Transfer will have an employee benefit review committee or equivalent body that serves as a fiduciary for the Plan (the "Committee"). Each unaffiliated Plan participating in a Proposed Transfer will have an independent or "second" fiduciary, in addition to and independent of the Bank or its affiliates, that supervises the investment of that Plan's assets. This second fiduciary generally will be the unaffiliated Plan's named fiduciary, trustee, or sponsoring employer and will be subject to fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 ("ERISA"). Under section 404(a) of ERISA, such fiduciaries must ensure that the investment of the Plans' assets is prudent and operates exclusively for the benefit of participating employees of the particular corporation and its subsidiaries and of the participating employees' beneficiaries.

8. Before transferring a CIF's or Affiliated Plan Account's assets to a Fund, a Bank will be required to obtain the approval of the Committee, the Plan's second fiduciary, or both, as the case may be. The Bank will provide the Committee and the second fiduciaries with a current prospectus for the relevant portfolio(s) of the Fund and a written statement giving full disclosure of the fee structure and the terms of the Proposed Transfer. Such disclosure will explain why the Bank believes that the investment of Plan assets in the Fund is appropriate.

9. On the basis of such information, the Committee, the second fiduciary, or both, as the case may be, will decide whether to authorize the Bank to invest the relevant Plan's assets in the Fund and to receive fees from the Fund (subject to the Bank's agreement to waive, credit, or rebate relevant fees). A Bank will not collect fees at both the Plan level and the Fund level for managing the same assets. Depending on the Plan, the Bank either will charge a fee only to the Fund or will rebate or credit its management fees at the Plan level.

10. Subject to obtaining the fiduciary approvals discussed above and the requested exemptive order, SEI will assist a Bank, in SEI's capacity as administrator, to effect the acquisition of Fund shares by a Plan currently invested in a CIF or Affiliated Plan Account. On the date of each transfer, the converting CIF or Affiliated Plan Account will deliver to the corresponding Fund securities equal in value to the interest of each participating Plan, in exchange for Fund shares, using market values as of the time that the Fund calculates its net asset value at the close of business on that day. The Fund share received by a CIF then will be distributed, *pro rata*, to all Plans whose interests were converted as of that date. No such additional distribution will be required in the case of an Affiliated Plan Account, as it will hold Fund shares already. All securities transferred to a Fund will be securities for which market quotations are readily available, as that term is used in rule 17a–7(a) under the Act, and will be consistent with the investment objectives and fundamental policies of the corresponding Fund.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in pertinent part, defines an "affiliated person" to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by or under common control with such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Section 17(d) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the SEC issues an order upon application.

3. Because a Bank that sponsors a CIF and/or Affiliated Plan Account Plan Account may have legal title to the assets of the CIF or Affiliated Plan Account and therefore may be viewed as acting as a principal in the Proposed Transfers, and because a CIF or Affiliated Plan Account and a Fund may be viewed as being under the common control of that Bank within the meaning of section 2(a)(3)(C), the Proposed Transfers may be prohibited by section 17(a). For the same reasons, the Proposed Transfers might be deemed to be a prohibited enterprise or other joint arrangement within the meaning of rule 17d–1.

4. Rather than requiring an exemption for all CIF conversions, the SEC's Division of Investment Management has issued a series of no-action letters permitting conversions if the changes comply with subparagraphs (b)–(f) of rule 17a–7 under the Act.[2] *See e.g.*, Federated Investors (pub. avail. Apr. 21, 1994). The letters require, however, that no first or second-tier affiliated person of the registered open-end fund have a beneficial interest in the exchange (except for the bank acting in its fiduciary capacity). Because some or all of the assets in a converting CIF may belong to Affiliated Plans, and the converting Affiliated Plan Accounts will consist entirely of such assets, SEI is unable to rely on the no-action letters.

5. Section 17(b) of the Act provides that any person may file an application for an order exempting a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act.

6. Under section 6(c) of the Act, the SEC may exempt any person or transaction from any provision of the Act, or any rule thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. In passing upon applications under rule 17d–1, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and is not on a basis less advantageous than that of other participants.

8. SEI requests an order under sections 6(c) and 17(b) granting an exemption from section 17(a), and pursuant to section 17(d) and rule 17f–1, to amend the Prior Order to allow the Proposed Transfers of Affiliated Plan Account as well as CIF assets. SEI submits that the terms of the Proposed Transfers, as set forth above, satisfy the standards for an exemption set forth in sections 6(c) and 17(b) and rule 17d–1.

9. The terms of the Proposed Transfers will be reasonable and fair to the Plans and to the shareholders of the Funds. The fact that the Proposed Transfers are designed as in-kind transfers does not affect their fairness. If the Proposed Transfers instead were effected in cash, the Plans would have to sell their securities, thereby incurring brokerage commissions or the adverse effects of mark-downs. Similarly, following the Plans' investment in the Fund, the Fund would purchase similar securities in the market, causing a second round of brokerage commissions and the adverse effects of mark-ups. In addition, since some time could elapse between the two transactions, the Fund would not necessarily be able to purchase the same quantity of securities at the same price. In contrast, the Proposed Transfers would not expose the Plans' assets to transaction costs or timing risk. Moreover, the Proposed

[1] Investment Company Act Release Nos. 21128 (June 9, 1995) (notice) and 21194 (July 7, 1995) (order).

[2] Rule 17a–7 conditionally exempts from the prohibitions of section 17(a) certain purchases and sales of securities between registered investment companies and certain affiliated persons, where the affiliation arises solely by reason of having a common investment adviser, directors and/or officers. Since the Banks may be deemed to have a direct or indirect beneficial interest in the performance of the CIFs and/or Affiliated Plan Accounts and the Funds, the limited affiliation required to make rule 17a–7 available does not exist.

Transfers will result in no gain or loss being recognized by the individual participants of the Plans.

10. The terms of the Proposed Transfers also will not involve overreaching. Although each Bank may have an indirect beneficial interest in the performance of the Funds, the Proposed Transfers will be subject to ERISA, must be approved by a Committee or second fiduciary and, as required by Condition 1 below, will be conducted in accordance with the valuation standards set forth in rule 17a–7. In addition, as required by Condition 2 below, the conversions will be made subject to the requirement of rule 17a–8 under the Act that the Fund Directors and Plan fiduciaries find that the Proposed Transfers are in the best interests of the Fund and the Plans.[3] SEI's administrative role and its significant compliance responsibilities places it in an ideal position to monitor each conversion and implement procedures designed to ensure that the terms and conditions of any application are strictly adhered to. Thus, the Proposed Transfers may be expected to occur in a manner that is in the best interests of both the Plans and the Funds.

11. The investment objectives and policies of the Funds and the CIFs and/or Affiliated Plan Accounts will be substantially similar. Therefore, it will be consistent with the policies of the Funds to acquire securities that the Bank has previously purchased for the CIFs and/or Affiliated Plan Accounts on the basis of substantially similar objectives and policies.

12. The request exemptive relief also would be consistent with the purposes intended by the policy and provisions of the Act, since the Proposed Transfers do not give rise to the abuses that sections 17 (a) and (d) and rule 17d–1 were designed to prevent. A primary purpose underlying sections 17 (a) and (d) and rule 17d–1 is to prevent a person with a pecuniary interest in a transaction from using his or her position with a registered investment company to benefit himself or herself to the detriment of the company's shareholders. After the Proposed Transfers, each Plan will be a shareholder in a Fund with substantially similar investment objectives. In this sense, the Proposed Transfers can be viewed as a change in the form in which assets are held, rather than as a disposition giving rise to section 17 concerns. In addition, the participation in the Proposed Transfers by each Fund will not be on a basis less advantageous than that of other participants for purposes of rule 17d–1.

13. The effectuation of the Proposed Transfers in the manner described also is fully consistent with the policies underlying the adoption of rules 17a–7 and 17a–8 under the Act. Even though Fund shares would be exchanged for securities, rather than "solely" for cash as required by subparagraph (a) of rule 17a–7, the terms of rule 17a–7 otherwise will be fully met, as required by Condition 1 below. In addition, as set forth in Conditions 2 and 3, below, the Plan fiduciaries and Directors of the Fund will be required to make the fairness and dilution findings required by rule 17a–8.

Applicants' Conditions

SEI agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The Proposed Transfers will comply with the terms of rule 17a–7(b)–(f).

2. The Proposed Transfers will not occur unless and until: (a) the Board of Directors of the Fund (including a majority of its directors who are not interested persons of the Fund) and the Committee or the Plans' second fiduciaries, as the case may be, find that the Proposed Transfers are in the best interests of the Fund and the Plans, respectively; and (b) the Board of Directors of the Fund (including a majority of its directors who are not interested persons of the Fund) finds that the interests of the existing shareholders of the Fund will not be diluted as a result of the Proposed Transfers. These determinations and the basis upon which they are made will be recorded fully in the records of the Fund and the Plans, respectively.

3. In order to comply with the policies underlying rule 17a–8, any conversion will be approved by a Fund's Board of Directors, and any non-affiliated Plan's second fiduciaries who would be required to find that the interests of beneficial owners would not be diluted.

[3] Rule 17a–8 conditionally exempts from the prohibitions of section 17(a) the merger or consolidation of affiliated registered investment companies where the affiliation arises solely by reason of having a common investment adviser, common directors and/or common officers. Because the CIFs and Affiliated Plan Accounts are not registered investment companies, and the affiliation of the CIFs and/or Affiliated Plan Accounts and the Funds would not exist "solely by reason of" the commonality of their management, SEI cannot rely on rule 17a–8 for the Proposed Transfers.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27886 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21473; 812–8670]

Smith Barney Adjustable Rate Government Income Fund, et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Adjustable Rate Government Income Fund, Smith Barney Aggressive Growth Fund Inc., Smith Barney Appreciation Fund Inc., Smith Barney Arizona Municipals Fund Inc., Smith Barney California Municipals Fund Inc., Smith Barney Equity Funds, Smith Barney Florida Municipals Fund Inc., Smith Barney Fundamental Value Fund Inc., Smith Barney Funds, Inc., Smith Barney Income Funds, Smith Barney Investment Trust (formerly, Smith Barney Income Trust), Smith Barney Investment Funds Inc., Smith Barney Institutional Cash Management Fund Inc., Smith Barney Managed Governments Fund Inc., Smith Barney Managed Municipals Fund Inc., Smith Barney Massachusetts Municipals Fund, Smith Barney Money Funds, Inc., Smith Barney Municipal Money Market Fund, Inc., Smith Barney Muni Funds Inc., Smith Barney New Jersey Municipals Fund Inc., Smith Barney New York Municipals Fund Inc., Smith Barney Oregon Municipals Fund, Smith Barney Precious Metals and Minerals Fund Inc., Smith Barney Principal Return Fund, Smith Barney Series Fund, Smith Barney Telecommunications Trust, Smith Barney/Travelers Series Fund, Inc., Smith Barney Variable Account Funds, Smith Barney World Funds, Inc. The Consulting Group Capital Markets Funds, Greenwich Street California Municipal Fund Inc., Greenwich Street Municipals Fund Inc., High Income Opportunity Fund Inc., Managed High Income Fund Inc., Managed Municipals Portfolio Inc., Managed Municipals Portfolio II Inc., Municipal High Income Fund Inc., Smith Barney Intermediate Municipal Fund, Inc., Smith Barney Municipal Fund, Inc., The Italy Fund Inc., The Inefficient Market Fund, Inc. and Zenix Income Fund Inc.

(collectively, the "Investment Companies") and Smith Barney Holdings Inc. ("Holdings").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act and rule 2a-7 thereunder; pursuant to sections 6(c) and 17(b) from section 17(a)(1); and pursuant to section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The Applicants seek an order to allow the Investment Companies, and all subsequently registered investment companies for which any entity controlling, controlled by or under common control with Holdings serves as investment adviser or principal underwriter (such subsequently registered investment companies, together with the Investment Companies, the "Funds") to enter into deferred fee arrangements with their trustees or directors who are not "interested persons," as that term is defined in the Act (the "Directors"), and effect certain transactions incidental thereto with participating Directors.

FILING DATES: The application was filed on July 18, 1995, and amended and restated applications were filed on August 25 and November 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1995, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 388 Greenwich Street, 22nd Floor, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Investment Company is organized as either a Maryland corporation or a Massachusetts business trust and is registered under the Act as either an open-end or a closed-end management investment company. Smith Barney Inc. (the "Distributor"), the principal underwriter of the open-end Investment Companies, is an affiliated person of Holdings. Holdings is a wholly-owned subsidiary of Travelers Group Inc., a diversified financial services holding company.

2. All of the Investment Companies, except for one portfolio of Smith Barney Series Fund, are advised by investment advisers that are affiliated persons of Holdings (such advisers are collectively referred to herein as the "Managers"). An entity controlling, controlled by or under common control with Holdings will serve as investment adviser or principal underwriter (as such terms are defined in the Act) for each of the Funds.

3. The board of directors of each Investment Company includes a majority of Directors who are not "interested persons," as that term is defined in section 2(a)(19) of the Act, of any of the Managers, the Distributor or any of the Investment Companies. Each Director who is not an interested person receives an annual retainer fee and an additional fee for each Directors' meeting attended. All such fees are collectively referred to herein as the "Director's Fees."

4. Certain Directors who are not interested persons have entered into a "Deferred Compensation Agreement" (each an "Agreement"), an unfunded, nonqualified deferred compensation arrangement with certain Investment Companies for all or part of 1995. Under an Agreement, a Director may elect to defer receipt of his Director's Fees earned from the effective date of the Agreement through December 31, 1995 until a later date specified by the Director. Each Investment Company with respect to which one or more Agreements have been entered into by Directors has established an account on behalf of each electing Director (each a "Deferred Fee Account"). On the dates that each such Investment Company would otherwise pay these deferred fees, the Investment Company credits such amounts into the Deferred Fee Account. Interest on each Deferred Fee Account is credited at 90 day intervals, calculated based on the balance of the Deferred Fee Account as of the first day of each rolling 90 day period and the prevailing 90 day U.S. Treasury Bill rate in effect at such time.

5. Under each Agreement, deferral of the Director's Fees essentially maintains the parties in the same position as if the fees were paid on a current basis. For income tax purposes, however, a Director's inclusion of the Director's Fees in his or her gross income and interest credited with respect to such Fees, and the individual Investment Company's deduction of its share of the Director's Fees, are both deferred until actual receipt by the Director or his or her beneficiary. Deferral of Director's Fees also has a negligible effect on each Investment Company's assets, liabilities and net income per share. Because the Investment Companies believe such Agreements are substantially similar to deferred compensation arrangements that have been the subject of previous no-action letters, they have not obtained any exemptive relief in connection with the Agreements. *See, e.g.*, The North Carolina Cash Management Trust (pub. avail. Jan. 23, 1992).

6. Each Investment Company now proposes to adopt, and if the requested exemptive relief is granted each other Fund will adopt, a formal plan (each a "Proposed Plan") to allow eligible Directors to defer receipt of all or a portion of future Director's Fees. Each Proposed Plan will be identical (except for the identity of the adopting Fund). As is the case with the existing Agreements, the Director's Fees deferred by an electing Director under the Proposed Plans will be credited to the Director's Deferred Fee Account as of the date the Fund otherwise would have paid them.

7. Under the Proposed Plans, however, the value of the Deferred Fee Account as of any date will be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in certain designated securities (the "Underlying Securities"). In addition, if the requested exemptive relief is granted, Directors who have entered into Agreements may designate amounts credited to their Deferred Fee Account under their Agreements as being deemed invested in Underlying Securities. The Underlying Securities for a Deferred Fee Account will be shares of any of the Funds as designated by the participating Director. Unless a Fund actually purchases the Underlying Securities to cover its obligation under a Proposed Plan, each Deferred Fee Account shall be credited or charged monthly with book adjustments to reflect any increase or decrease in the value of the Underlying Securities.

8. The Proposed Plans provide that a participating Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Proposed Plan will be made from such Fund's general assets and property. The relationship of a Director to the Fund will be only that of a general unsecured creditor. Each Proposed Plan also provides that the adopting Fund will be under no obligation to the Director to purchase, hold or dispose of any investments. Nonetheless, if the Fund chooses to purchase investments, including Underlying Securities, to cover its obligations under such Proposed Plan, such investments will continue to be a part of the general assets and property of the Fund. Decisions on whether to purchase and maintain Underlying Securities to cover a Fund's obligation will be made by the Fund's senior management personnel. With respect to any money market Fund that values its assets by the amortized cost method or the penny-rounding method, such money market Fund has undertaken to purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts of its Directors.

9. Deferral of Director's Fees in accordance with each Proposed Plan will have no material effect on the net assets and net income per share of any Fund. This is because the amount of the Fund's liability for deferred fees may be exactly offset by the value of shares of the Underlying Securities owned by the Fund (or in cases where the Director has designated the Fund itself as the Underlying Security, by the general investment assets of the Fund). In the case where the Fund purchases the Underlying Securities to cover its obligations, changes in the amount of the liability will be exactly matched by changes in the value of the Underlying Securities. At times determined by a Fund's management, the Fund (other than a money market Fund) may elect to cover its obligations under a Proposed Plan with the Fund's general investment assets, rather than with the purchase of Underlying Securities. Under those circumstances, there will not be an exact match between the Fund's liability for deferred fees and the value of the Deferred Fee Accounts. Any such mismatch will be *de minimis* in relation to the net assets of the Fund. In such event, the Fund's Board of Directors would monitor the amount of uncovered liability and consider whether to continue to permit shares of such other Fund to be designated as Underlying Securities.

10. Under each Proposed Plan, a Director may specify that the deferred Director's Fees be distributed in whole or in part commencing on or as soon as practicable after a date specified by the Director, which date may not be sooner than the earlier of (a) a date at least one year following the election of deferral, or (b) the date of the Director's anticipated retirement as a Director of the Fund. Notwithstanding any elections by a Director, his or her Deferred Fee Account shall be distributed (a) in the event of the Director's death or disability, (b) upon his or her ceasing to be a Director of the Fund or (c) upon the dissolution, liquidation or winding up of the Fund (unless the obligations of the Fund shall have been assumed by another Fund) or the merger of the Fund into another trust or corporation or its consolidation with one or more other trusts or corporations (unless the obligations of the Fund are assumed by such surviving entity and such surviving entity is another Fund). In addition, upon application and appropriate determination that the Director has suffered a "Financial Hardship," as defined in each Proposed Plan, the Plan Administrator (the Fund's Board of Directors or such person(s) as the Board may designate) shall distribute to the Director an amount equal to the lesser of the amount needed by the Director to meet the hardship, or the balance of the Director's Deferred Fee Account. The Director's right to receive payments will be nontransferable, except in the event of his or her death, in which case amounts payable under the Proposed Plan will be payable to his or her designated beneficiary.

11. Each Proposed Plan provides that it will not obligate the adopting Fund to retain the services of a Director, nor will it obligate such Fund to pay any (or any particular level of) Director's Fees to any Director. Rather, it will merely permit a Director to elect to defer receipt of all or part of the Director's Fees which he or she would otherwise receive for future services from the Fund. Moreover, the proposed arrangement will not affect the voting rights of the shareholders of any of the Funds. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other shareholders of such other Fund.

Applicants' Legal Analysis

1. The Applicants request an order under section 6(c) of the Act exempting the Funds from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act, and rule 2a–7 thereunder, to the extent necessary to permit the Funds to enter into deferred fee arrangements with their Directors pursuant to the Proposed Plans. In addition, the Applicants request an exemption under sections 6(c) and 17(b) of the Act from section 17(a)(1) to the extent necessary to permit the Funds to sell securities issued by them to participating Funds, and under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds and participating Directors to effect certain joint transactions incident to the proposed deferred fee arrangements.

2. Section 6(c) provides, in part, that the SEC may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) provides that any person may file an application for an order exempting a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act. Rule 17d–1(a) provides that the SEC may, by order upon application, grant exemptions from the prohibitions of section 17(d) regarding certain joint arrangements involving a registered investment company. Rule 17d–1(b) further provides that, in passing upon such an application, the SEC will consider whether the participation of the registered investment company in such arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants believe that the Proposed Plans would possess none of the characteristics of the instruments that led to the adoption of restrictions pertaining to "Senior securities." In this regard, the Funds would not be "borrowing" from their Directors in the manner that concerned Congress. Liabilities for deferred fees will be *de minimis* in relation to Fund net assets. In addition, given the common existence of deferred compensation agreements, the Proposed Plans would not confuse investors.

4. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. Sections 22(g) and 23(a) prohibit registered open-end and closed-end investment companies, respectively, from issuing securities for services. The Applicants submit that the restriction on transferability of a Director's benefits under the Proposed Plans will have no adverse effects on the Director, the adopting Fund or Fund shareholders. With respect to Sections 22(g) and 23(a), Applicants submit that each Fund's obligation to make payments under its Proposed Plan would not be issued for services, but in return for the Fund not being required to pay fees on a current basis.

5. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicants submit that the sale of securities issued by the Funds pursuant to the Proposed Plans to other Funds do not implicate the concerns that led to the enactment of section 17(a), but would merely facilitate that matching of a Fund's liability for deferred Director's Fees with the Underlying Securities that would determine the amount of such Fund's liability. Accordingly, Applicants believe that, in addition to satisfying section 6(c), they also meet the standards of section 17(b) for exempting a series of transactions from section 17(a).

6. Section 139(a)(3) prohibits registered investment companies from, among other things, deviating without a shareholder vote from any investment policy that is changeable only if authorized by shareholder vote or deviating from any policy recited in its registration statement pursuant to section 8(b)(3). Certain of the Investment Companies have a fundamental investment restriction prohibiting them from investing in securities of other investment companies, except in connection with a merger, consolidation or acquisition of assets (collectively, the "Restricted Investment Companies"). Applicants submit that it is appropriate to exempt the Restricted Investment Companies from the provisions of Section 13(a)(3), so as to enable the Restricted investment Companies to invest in Underlying Securities without a shareholder vote. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of each Restricted Investment Company. Furthermore, the relief requested from section 13(a)(3) would extend only to future Funds for which an affiliated person of Holdings becomes investment adviser or principal underwriter subsequent to the future Fund's initial public offering and that have fundamental investment policies prohibiting the purchase of investment company shares without shareholder approval.

7. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a Fund that is a money market fund from investing in the shares of any other Fund. The Applicants submit that exempting each Fund that is a money market Fund from rule 2a–7 to the limited extent required to permit it to invest in Underlying Securities (and to exclude Underlying Securities in calculating such Fund's dollar-weighted average maturity) is appropriate. Such an exemption would permit the Funds in question to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect net asset value.

8. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement without prior SEC approval. To the extent that the Proposed Plans may be deemed to involve joint transactions between the Funds and their Directors, Applicants submit that the participation in the Proposed Plans by any Fund will not be on a basis that is less advantageous than that of any other participant. Deferral of a Director's Fees in accordance with the Proposed Plans would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position (apart from tax effects) as if the Fees were paid on a current basis.

9. Applicants believe that, for the reasons set forth above, the Proposed Plans are in the best interests of each Fund and its shareholders and are consistent with the purposes fairly intended by the policy and provisions of the Act. In addition, the Applicants submit that exemption of the proposed deferred fee arrangement and transactions related thereto from the foregoing provisions of the Act is necessary and appropriate in the public interest and consistent with the protection of investors.

Conditions

Each Applicant agrees that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other shareholders of such other Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27683 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21474; 812–9812]

Standish, Ayer & Wood Investment Trust; Notice of Application

November 6, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Standish, Ayer & Wood Investment Trust (the "Trust").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act to exempt applicant from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an order to permit the in-kind redemption of Trust shares held by an "affiliated person" of the Trust.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 1, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111 .

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is an open-end management investment company established as a Massachusetts business trust. The Trust consists of twelve portfolios, including the Standish Equity Fund (the "Fund"). Standish, Ayer & Wood, Inc. (the "Adviser") serves as the Fund's investment adviser.

2. State Mutual Separate Account F (the "Separate Account") is a shareholder of the Fund and is an insurance company segregated asset account established by State Mutual Life Assurance Company of America ("State Mutual"). It is operated as a comingled funding and investment vehicle for several qualified pension plans. As of September 21, 1995, the Separate Account owned beneficially and of record approximately 39.3% of the outstanding shares of the Fund.

3. State Mutual, acting pursuant to its fiduciary obligation under the Employee Retirement Income Security Act of 1974, as amended, has concluded that the assets of the Separate Account invested in the Fund should be managed directly by the Adviser in the form of a separate investment advisory account. Consequently, State Mutual, on behalf of the Separate Account, has notified the Trust that it expects to redeem its shares of the Fund and place the proceeds in a separate investment advisory account to be managed by the Adviser.

4. The Fund's prospectus and statement of additional information provide that redemption requests generally will be paid in cash. If, however, the Fund's board of trustees (the "Board") determines that it would be in the best interest of the shareholders of the Fund, redemption amounts will be paid in-kind with respect to redemption requests in a single transaction or series of transactions during any 90 day period in excess of $250,000. In such event, cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not susceptible for distribution (including receivables and prepaid expenses), net of all liabilities. The Board has determined that it would be in the best interest of shareholders to redeem the shares of the Separate Account in-kind to the extent permitted by the Trust's election under rule 18f–1.[1]

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits affiliated persons of the Fund from knowingly purchasing any securities from the Fund. Section 2(a)(3)(A) of the Act defines an "affiliated person" of another person as any person owning five percent or more of the outstanding voting securities of such other person. The Separate Account is an affiliated person of the Fund because it owns beneficially and of record in excess of 5% of the Fund's shares.

2. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

3. Applicant submits that the terms of the proposed in-kind redemption meets the standards set forth in section 17(b). Applicant believes that the redemption will be on terms that are reasonable and fair to the Fund and its shareholders and will not involve overreaching on the part of any person because the Fund will use an objective, verifiable standard for the selection and valuation of any securities to be distributed in connection with the proposed redemption in-kind. Similarly, the proposed transactions are consistent with the investment policy of the Fund, which expressly allows redemptions in-kind. Finally, applicant believes that the proposed transaction is consistent with policies and purposes of the Act to protect shareholders of investment companies from self-dealing on the part of investment company affiliates to the detriment of other shareholders because the Separate Account would not receive any advantage not available to any other shareholder if the proposed in-kind redemption is permitted.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Fund distributed to the Separate Account pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed on a *pro rata* basis after excluding (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933 and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. In addition, the Fund will distribute cash in lieu of any securities held in the Fund's portfolio not amounting to round lots, fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to the Separate Account will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is the last reported trade price on the exchange on which the securities are principally traded, or, if there is no such reported price, is the last quoted bid price.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption by the separate account occurred, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

[1] The Trust has elected to be governed by the provisions of rule 18f–1 under the Act and is, therefore, committed to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90 day period to the lesser of $250,000 or 1% of the Fund's net asset value at the beginning of such period.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27968 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21476; File No. 811–7053]

Torchmark Government Securities Fund, Inc.; Application for Deregistration

November 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Torchmark Government Securities Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on August 25, 1995, and amended on October 25, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 6300 Lamar Avenue, P.O. Box 29217, Shawnee Mission, Kansas 66201–9217.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a corporation under Maryland law. On October 20, 1992, applicant registered under section 8(a) of the Act by filing a notification of registration on Form N–8A, and filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 to register an indefinite number of shares. The registration statement was declared effective on February 26, 1993, and the initial public offering of applicant's shares commenced on that date.

2. At a meeting held on February 8, 1995, applicant's board of directors determined that it was desirable to dissolve applicant and approved a plan to liquidate. In determining to liquidate applicant, the board considered the fact that applicant's investment adviser, based upon analysis of market conditions, applicant's performance, and opportunities for growth, determined that it was unlikely that applicant's assets would increase to a level that would enable applicant to achieve a desirable expense level.

3. On or about March 1, 1995, proxy materials were distributed to applicant's shareholders containing the proposed plan of liquidation (the "Plan"). Applicant's shareholders approved the Plan at a special meeting of shareholders held on April 3, 1995.

4. Pursuant to the Plan, applicant sold substantially all of its portfolio securities and other property by June 27, 1995, on which date applicant had outstanding 150,772.54 shares of common stock. As of June 28, 1995, applicant had an aggregate value of $1,460,985.89, and a net asset value per share of $9.69. On June 28, 1995, pursuant to the Plan and in accordance with Maryland law, applicant made a liquidating distribution to its shareholders *pro rata* at net asset value. In addition, Waddell & Reed, Inc., the parent of applicant's investment adviser, made individual payments to applicant's shareholders not affiliated with Waddell & Reed, Inc., that, when added to the amounts received by such shareholders, approximated their investment in applicant.

5. The expenses incurred in connection with the liquidation are expected to total $3,788 and have been or will be paid by Waddell & Reed, Inc. They consist primarily of legal expenses, expenses of printing and mailing communications to shareholders, and miscellaneous accounting and administrative expenses.

6. At the time of the application, applicant had no securityholders, assets, or liabilities, except for certain legal and audit fees that will be paid by Waddell & Reed, Inc. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

7. Applicant filed Articles of Dissolution with the Maryland Department of Assessments and Taxation on April 24, 1995. Applicant also took other actions required by Maryland law in connection with the dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27970 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21475; File No. 811–7045]

Torchmark Insured Tax-Free Fund, Inc.; Application for Deregistration

November 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Torchmark Insured Tax-Free Fund, Inc..

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on August 25, 1995, and amended on October 25, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 6300 Lamar Avenue, P.O. Box 29217, Shawnee Mission, Kansas 66201–9217.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a corporation under Maryland law. On September 29, 1992, applicant registered under section 8(a) of the Act by filing a notification of registration on Form N–8A, and filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 to register an indefinite number of shares. The registration statement was declared effective on February 26, 1993,and the initial public offering of applicant's shares commenced on that date.

2. At a meeting held on February 8, 1995, applicant's board of directors determined that it was desirable to dissolve applicant and approved a plan to liquidate. In determining to liquidate applicant, the board considered the fact that applicant's investment adviser, based upon analysis of market conditions, applicant's performance, and opportunities for growth, determined that it was unlikely that applicant's assets would increase to a level that would enable applicant to achieve a desirable expense level.

3. On or about March 1, 1995, proxy materials were distributed to applicant's shareholders containing the proposed plan of liquidation (the "Plan"). Applicant's shareholders approved the Plan at a special meeting of shareholders held on April 3, 1995.

4. Pursuant to the Plan, applicant sold substantially all of its portfolio securities and other property by June 27, 1995. As of that date, applicant had outstanding 244,444.751 shares of common stock, with an aggregate value of $2,426,548, and a net asset value per share of $9.93. On June 28, 1995, pursuant to the Plan and in accordance with Maryland law, applicant made a liquidating distribution to its shareholders *pro rata* at net asset value. In addition, Waddell & Reed, Inc., the parent of applicant's investment adviser, made individual payments to applicant's shareholders not affiliated with Waddell & Reed, Inc. that, when added to the amounts received by such shareholders, approximated their investment in applicant.

5. The expenses incurred in connection with the liquidation are expected to total $3,631 and have been or will be paid by Waddell & Reed, Inc. They consist primarily of legal expenses, expenses of printing and mailing communications to shareholders, and miscellaneous accounting and administrative expenses.

6. At the time of the application, applicant had no securityholders, assets, or liabilities, except for certain legal and audit fees that will be paid by Waddell & Reed, Inc. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

7. Applicant filed Articles of Dissolution with the Maryland Department of Assessments and Taxation on April 24, 1995. Applicant also took other actions required by Maryland law in connection with the dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27969 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21470; 812–9532]

The Vanguard Group, Inc., et al.; Notice of Application

November 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Vanguard Group, Inc. ("TVGI"); and Vanguard Balanced Index Fund, Inc., Vanguard Index Trust, Vanguard International Equity Index Fund, Inc., Vanguard Bond Index Fund, Inc., Vanguard Institutional Index Fund, Vanguard Institutional Portfolios, Inc., Vanguard California Tax-Free Fund, Vanguard New York Insured Tax-Free Fund, Vanguard Pennsylvania Tax-Free Fund, Vanguard Fixed Income Securities Fund, Inc., Vanguard Preferred Stock Fund, Vanguard Asset Allocation Fund, Inc., Vanguard/Trustees' Equity Fund, Vanguard/Windsor Funds, Inc., Vanguard Tax-Managed Fund, Inc., Vanguard Florida Insured Tax-Free Fund, Inc., Vanguard/Primecap Fund, Inc., Vanguard/Morgan Growth Fund, Inc., Vanguard Variable Insurance Fund, Vanguard Money Market Reserves, Inc., Vanguard Municipal Bond Fund, Inc., Vanguard New Jersey Tax-Free Fund, Vanguard Ohio Tax-Free Fund, Vanguard/Wellesley Income Fund, Inc., Vanguard Convertible Securities Fund, Inc., Vanguard/Wellington Fund, Inc., Vanguard Equity Income Fund, Inc., Vanguard Quantitative Portfolios, Inc., Vanguard World Fund, Inc., Vanguard Explorer Fund, Inc., Vanguard Specialized Portfolios, Inc., Vanguard Admiral Funds, Inc., Gemini II, Inc. and any future registered open-end management investment company, or portfolio thereof, in which a Fund of Index Funds (as defined below) invests that (a) is part of a group of investment companies which holds itself out to investors as related companies for purposes of investment and investor services, and (b) obtains corporate management, administrative, and distribution services from TVGI.

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and pursuant to rule 17d–1 under the Act permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit applicants to create a "fund of index funds" that would invest according to specified ratios or weightings in shares of two or more Vanguard index funds without regard to the percentage limitations of section 12(d)(1) ("Fund of Index Funds"). The requested order also would permit the boards of trustees/directors of the funds constituting the Vanguard Group of Investment Companies to modify the funds' service agreement to provide that a Fund of Index Funds may become a member of The Vanguard Group of Investment Companies without bearing duplicative capital contribution or expense allocation costs.

FILING DATE: The application was filed on March 16, 1995, and amended on November 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Vanguard Group, Inc., P.O. Box 2600, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Vanguard Funds are 32 registered management investment companies that currently offer shares in 86 portfolios (the "Portfolios"). The Vanguard Funds organized and operate TVGI, pursuant to the terms of a Second Amended and Restated Funds' Service Agreement dated May 15, 1993 (the "Funds' Service Agreement") in order to provide the Funds with services on an "internalized," at-cost, no-load basis.[1] Each Fund is organized as a business trust under Pennsylvania law, or as a Maryland corporation. Each Fund is registered as an open-end management investment company, except for Gemini II, Inc., which is registered as a closed-end company. Each Fund has a board of directors/trustees (the "Board of Directors") that consists of the same ten persons, eight of whom are not "interested persons" of the Fund under section 2(a)(19) of the Act. Nine of the directors compose the board of directors of TVGI. The Funds that are party to the Funds' Service Agreement constitute The Vanguard Group of Investment Companies ("The Vanguard Group"). Vanguard Institutional Index Fund is a registered management investment company that receives services from the Vanguard Group, Inc., but is not a member of The Vanguard Group.

2. Within the Vanguard Funds are the following index funds: Vanguard Balanced Index Fund, Inc., Vanguard Index Trust, Vanguard International Equity Index Fund, Inc., Vanguard Bond Index Fund, Inc. (collectively, with the Vanguard Institutional Index Fund, the "Index Funds"). The Index Funds currently offer shares in 15 separate portfolios ("Index Portfolios"). Except for Vanguard Balanced Index Fund, each Index Portfolio seeks to provide investment results that correspond to the results of a particular securities index (or benchmark) by investing its assets in the same proportion as the securities represented in the index (or a representative sampling thereof). Vanguard Balanced Index Fund seeks to provide investment results that correspond to the results of a 60%/40% weighting of two indices, the Wilshire 5000 Index and the Lehman Brothers Aggregate Bond Index.

3. As a matter of fundamental policy, the Index Portfolios invest all of their investable assets in securities selected to replicate the composition of a specified securities index or benchmark. In addition, the Index Portfolios invest solely in liquid, readily marketable securities. Several Index Portfolios impose purchase charges that are designed to allocate transaction costs associated with new purchases to investors making the purchases. The Emerging Markets Portfolio is the only Index Portfolio that charges a redemption fee.

4. Vanguard seeks to create a Fund of Index Funds. The initial portfolio of the Fund of Index Funds would be an "International Index Portfolio," which would replicate the Morgan Stanley Capital International Europe, Australia and Far East Index ("EAFE"). Vanguard intends to create this International Index Portfolio by combining two existing Index Portfolios, the European Portfolio and the Pacific Portfolio, rather than creating a separate investment company or portfolio to invest in securities directly. By combining existing Index Portfolios, Vanguard seeks to avoid higher start-up and ongoing costs, and tracking errors.

5. Applicants request that the relief sought herein apply to any future Fund of Index Funds, whether organized as an open-end investment company or as a portfolio thereof, which operates in all material respects in accordance with the representations contained in the application, complies with the conditions to the requested order, and is a Vanguard Fund or is operated by TVGI.

6. TVGI, a registered investment adviser under the Investment Advisers Act of 1940, is a wholly and jointly owned and capitalized subsidiary of the Vanguard Funds. TVGI provides to the Vanguard Funds on an at-cost basis almost all of their necessary corporate management, administrative, and shareholder accounting services, distribution services, and, for certain Portfolios, advisory services. TVGI also provides specified services to two funds, Vanguard STAR Fund and Vanguard Institutional Index Fund, that do not contribute to the capital of TVGI.

7. Under current provisions of the Funds' Service Agreement, a Fund of Index Funds, if structured as a separate investment company, could not become a member of The Vanguard Group without making a capital investment in TVGI, and being allocated a portion of TVGI's corporate management and distribution expenses, even though Fund of Index Funds shareholders would bear a portion of these expenses through the fees they pay with respect to the Index Portfolios. The Boards of Directors of the Funds propose to amend the Funds' Service Agreement to permit a Fund of Index Funds, whether structured as a separate investment company or as a portfolio of a Vanguard Fund, to become a member of The Vanguard Group.

8. The amendment to the Funds' Service Agreement would provide, in substance, that: (a) The obligation of a Fund of Index Funds to make capital contributions to TVGI would be reduced or eliminated to the extent that its assets consist of shares of an Index Portfolio that is already contributing to the capital of TVGI; (b) a Fund of Index Funds would not be allocated any portion of the corporate management and administrative expenses, or the distribution expenses, that are allocated under the Funds' Service Agreement; and (c) a Fund of Index Funds would be obligated to pay for services rendered by outside parties and certain other direct Fund of Index Funds expenses customarily borne by each Fund pursuant to the Funds' Service

[1] The Funds operate TVGI pursuant to a number of exemptive orders. The Vanguard Group, Inc., Investment Company Act Release Nos. 19011 (Oct. 9, 1992) (notice) and 19184 (Dec. 29, 1992) (order); Wellington Fund, Inc., Investment Company Act Release Nos. 15788 (June 9, 1987) (notice) and 15846 (July 2, 1987) (order); Wellington Fund, Inc., Investment Company Act Release Nos. 13566 (Oct. 5, 1983) (notice) and 13813 (Nov. 3, 1983) (order); The Vanguard Group, Inc., Investment Company Act Release Nos. 11718 (Apr. 6, 1981) (notice) and 11761 (May 4, 1981) (order); The Vanguard Group, Inc., Investment Company Act Release Nos. 9850 (July 15, 1977) (notice), and 9927 (Sept. 13, 1977) (temporary order) and 11645 (Feb. 25, 1981) (order); Wellington Fund, Inc., Investment Company Act Release Nos. 8644 (Jan. 17, 1975) and 8676 (Feb. 18, 1975) (order).

Agreement, subject to the partial or complete elimination of these charges by the savings which would accrue to the benefit of the Index Portfolios.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) to permit any Fund of Index Funds to invest in the Index Portfolios in excess of the percentage limitations of section 12(d)(1).

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of large-scale redemptions, the acquisition by the acquiring company of voting control of the acquired company, the layering of sales charges, advisory fees, and administrative costs, and the creation of a complex pyramidal structure that may be confusing to investors.

4. Applicants believe that none of these potential abuses would be present in the structure of a Fund of Index Funds. A Fund of Index Funds would not exercise any influence over the management of the acquired Index Portfolios by the threat of redemptions. A Fund of Index Funds would invest its assets solely to establish and maintain specified ratios or weightings of Index Portfolios. Unless a Fund of Index Funds would cease using one Index Portfolio and begin using another, the Fund of Index Funds would have no investment management authority to select which Index Portfolios to purchase or redeem, and would not hold itself out as doing so. Redemptions from the acquired Index Portfolios would result solely in the ordinary course of business as a result of a Fund of Index Fund's receipt of net redemption requests from its shareholders. The acquired Index Portfolios, as a matter of policy and practice, are at all times fully invested in liquid, publicly traded securities. Thus, they would have no reason to hold a cash position to protect their other shareholders against potential redemptions by a Fund of Index Funds.

5. The structure of a Fund of Index Funds would contain no improper layering of sales charges or advisory fees. Neither a Fund of Index Funds nor the Index Portfolios currently intend to impose any sales charges or fees pursuant to rule 12b–1. Applicants currently do not intend to charge an advisory fee at the Fund of Index Funds level with respect to assets invested in the Index Portfolios. Similarly, virtually all administrative fees would be imposed at the Index Portfolio level, and shareholders of a Fund of Index Funds would bear a portion of these fees only in proportion to their holdings of the Index Portfolios.

6. A Fund of Index Funds would not have a complex structure that would make it difficult for a shareholder to determine the true value of his or her interest in the Fund of Index Funds. The Fund of Index Funds would seek to replicate specified indices by investing in shares of Index Portfolios that hold securities replicating the indices, rather than by direct investments in these securities.

7. In addition to not containing the actual and potential abuses which led to the enactment of section 12(d)(1), applicants believe that the structure of a Fund of Index Funds would provide a number of benefits to a Fund of Index Funds and its shareholders, including: (a) The opportunity to obtain through a single investment account a diversified investment program suitable for retirement or long-term savings; (b) a simpler method for an investor to allocate his or her assets on a continuous basis without, at a minimum, the inconvenience of initiating the steps periodically to "rebalance" his or her portfolio; (c) a modest reduction in the investor's account maintenance costs, because an investor would not need to maintain two or more accounts to attain a desired allocation; and (d) the lower expense ratios and increased diversification which result from a new Fund of Index Fund's ability to take advantage of the existing asset base created by the acquired Index Portfolios.

8. The acquired Index Portfolios benefit from the existence of a Fund of Index Funds in three major respects: (a) The likely addition of assets from a Fund of Index Funds would reduce the expense ratios of the Index Portfolios; (b) to the extent many shareholders of a Fund of Index Funds would otherwise open accounts with each of the Index Portfolios, the number of accounts maintained by the Index Portfolios in the aggregate, and the resulting transfer agency fees, would be reduced; and (c) the costs of printing and mailing prospectuses, sales material, and periodic reports would be reduced because The Vanguard Group can combine information concerning two or more funds in a single document. All of the Vanguard Funds are also likely to benefit from the existence of a Fund of Index Funds since increased distribution and the resulting addition of assets to The Vanguard Group produces cost savings and other benefits for all Funds even if they are not the acquired Funds.

B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. A Fund of Index Funds and the acquired Index Portfolios may be considered affiliated persons because they share common officers and/or directors/trustees. An acquired Index Portfolio's issuance of its shares to a Fund of Index Funds may be considered a sale prohibited by section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Index Portfolios to sell their shares to a Fund of Index Funds.[2]

[2] Section 17(b) applies to specific proposed transactions and not to an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–299 (1945). Section 6(c) can be used to grant relief from section 17(e) for an ongoing series of future transactions.

3. Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b). All purchases and redemptions of shares of an Index Portfolio would be effected at current net asset value. A Fund of Index Fund's purchase and sale of shares of the Index Portfolios is consistent with the Fund of Index Funds' policy, as set forth in its registration statement. Applicants also believe that the proposed transactions are consistent with the general purposes of the Act.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement. The Vanguard Funds and TVGI are engaged in a joint enterprise within the meaning of section 17(d).

2. Applicants request an order under section 17(d) and rule 17d–1 to permit the Boards of Directors of the Vanguard Funds to modify the Funds' Service Agreement. Applicants believe that, for the reasons discussed above, the proposed amendments to the Funds' Service Agreement are consistent with the standards of rule 17d–1. Requiring a Fund of Index Funds to make an asset-related capital contribution to TVGI, when the assets of the Fund of Index Funds will already be bearing a capital assessment indirectly at the Index Portfolio level, would unfairly impose duplicative expenses upon the shareholders of the Fund of Index Funds, and confer an unjustified benefit on the acquired Index Portfolios, as well as the other Vanguard Funds, which will be deriving other benefits from the Fund of Index Funds' participation in TVGI.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Fund of Index Funds and each underlying Index Portfolio will be part of a group of investment companies which holds itself out to investors as related companies for purposes of investment and investor services, and which obtains corporate management, administrative, and distribution services from TVGI.

2. No underlying Index Portfolio shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the directors of the Fund of Index Funds will not be "interested persons," as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15 of the Act, the board of directors of the Fund of Index Funds, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19), shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any underlying Index Portfolio's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Index Funds.

5. Any sales charges or service fees charged with respect to securities of the Fund of Index Funds, when aggregated with any sales charges or service fees paid by the Fund of Index Funds with respect to shares of the underlying Index Portfolios, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. The applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Fund of Index Funds portfolio and each of its underlying Index Portfolios; monthly purchases and redemptions (other than by exchange) for each Fund of Index Funds portfolio and each of its underlying Index Portfolios; monthly exchanges into and out of each Fund of Index Funds Portfolio and each of its underlying Index Portfolios; month-end allocations of each Fund of Index Funds portfolio's assets among its underlying Index Portfolios; annual expense ratios for each Fund of Index Funds portfolio and each of its underlying Index Portfolios; and a description of any vote taken by the shareholders of any underlying Index Portfolio, including a statement of the percentage of votes cast for and against the proposal by the Fund of Index Funds and by the other shareholders of the underlying Index Portfolios. Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Fund of Index Funds (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27885 Filed 11–9–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2286]

Policy on Munitions Export Licenses to Ecuador and Peru

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Pursuant to Sections 38 and 42 of the Arms Export Control Act, notice is hereby given that it is no longer the policy of the United States to deny all requests for licenses and other approvals to export or otherwise transfer lethal items to Ecuador or Peru. All requests will henceforth be reviewed on a case-by-case basis.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Brian D. Bachman, Office of Arms Transfer and Export Control, Bureau of Political-Military Arms Transfer and Export Control, Bureau of Political-Military Affairs, Department of State (202–647–4231).

SUPPLEMENTARY INFORMATION: Effective immediately, it is no longer the policy of the U.S. Government to deny all requests for licenses and approvals to authorize the export or other transfer of lethal items to Ecuador and Peru. All requests will henceforth be reviewed on a case-by-case basis.

Exports will be evaluated in light of the recent conflict between these countries and the desirability of promoting multilateral restraint in arms transfers to Peru and Ecuador.

The licenses and approvals subject to this policy include those which permit commercial defense and service exports of any kind (e.g. exemptions and licenses and other approvals for licenses for manufacturing, license agreements, technical assistance agreements, and

technical data exports) involving Ecuador and Peru under the authority of the Arms Export Control Act.

This action has been taken pursuant to Sections 38 and 42 of the Arms Export and Control Act (22 U.S.C. 2778, 2791) and Section 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States.

Dated: November 6, 1995.

Thomas E. McNamara,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 95–27957 Filed 11–9–95; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–076]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice of PREP area exercise schedule for 1996, 1997 and 1998, and summary of the PREP Annual Workshop.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA) and the minerals management Service (MMS), in concert with the states, the oil industry and concerned citizens, developed the Preparedness for Response Exercise Program (PREP). This notice announces the schedule of the Area Exercises for 1996, 1997 and 1998. It also provides a summary of the annual public workshop held on June 14, 1995, in Alexandria, VA.

DATES: Industry members interested in leading an Industry-led Area Exercise or participating in a Government-led Area Exercise should submit their requests directly to the USCG or EPA On-Scene Coordinator (OSC) in the appropriate Area as soon as possible, but no later than 3 months before conducting the exercise. Industry representatives should indicate the date and location of the exercise in which they are interested in participating or leading. Once the OSC has chosen an industry plan holder for an Industry-led Area Exercise or as participant for the Government-led Exercise, the OSC will contact the National Scheduling Coordinating Committee (NSSC) at the address listed below.

ADDRESSES: Written comments should be mailed to COMMANDANT (G–MRO–2), Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC, 20593–0001. Attn: Ms. Karen Sahatjian.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Sahatjian, Office of Marine Safety, Security and Environmental Protection, Response Division, (G–MRO–2), (202) 267–2850. PREP Guidelines and Training Elements, previously available through Coast Guard Headquarters, are now available from the Government Printing Office, (202) 512–1800. Stock numbers and cost for each manual are: PREP GUIDELINES—050–012–00365–3 COST: $3.75; TRAINING REFERENCE—050–012–00364–5 COST: $8.50.

SUPPLEMENTARY INFORMATION:

Background Information

The Coast Guard, EPA, RSPA and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). OPA 90 requires periodic unannounced drills. See 33 U.S.C. 1321(j)(7). However, the working group (comprised of Coast Guard, EPA, RSPA, MMS, state representatives, and industry representatives) determined that the PREP Guidelines should also include announced drills. See 33 CFR 154.1055(a)(5) and 155.1060(d), and 40 CFR part 112. This notice addresses announced drills only. The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories, Area exercises, and Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given Area to ensure adequate pollution response preparedness. The goal of the PREP is to conduct approximately 20 Area exercises per year, with the intent of exercising most Areas of the country over a three year period. This notice sets forth the Area exercise schedule for calendar years 1996, 1997 and 1998.

The National Scheduling Coordinating Committee (NSCC) conducts an annual public workshop. In the past, this workshop focused on the upcoming schedule; however, this year, the workshop included presentations from a variety of individuals with experiences participating in or conducting Area Exercises. This notice also provides a summary of the workshop.

Summary of PREP Workshop

On June 14, 1995, the Coast Guard, EPA, RSPA Office of Pipeline Safety (OPS), and MMS hosted the second annual PREP Workshop. The following provides a brief summary of the points raised by the Workshop participants. A more complete summary is available on the Coast Guard Navigation Information Service (NIS) Electronic Bulletin Board (BBS) at 703–313–5910.

The workshop was opened by speakers from the four Federal Agencies: Captain Michael Donohoe, USCG; Chris Hoidal, OPS; Ann Whalen, EPA Region 5; and Carl Andersön, MMS. The objectives of the workshop were to ensure that the program is effective for the entire response community; share industry experiences on internal exercises; and identify industry concerns regarding participation in Area exercises in an effort to increase their participation. All four Federal Agency representatives agreed that their Agencies were committed to making the exercise program work for the entire response community.

A panel of industry representatives was convened to give their perspectives of the Area exercise and share their experiences. Tiffany Rau of ARCO Marine, Inc., described ARCO's participation in a Government-led Area Exercise. She said that it was, overall, a positive experience and enabled them to become familiar with area resources and personnel available during an incident. There were negative considerations also. The planning process is very time consuming. Additionally, PREP does not allow for maximum participation of industry management during an exercise. Ms. Rau believed that this is not representative of an actual incident when the government would have minimal participation if the responsible party was responding to the oil spill. Ms. Rau also said that if a company wants to have an exercise with the government, then it is best to volunteer for a PREP Area Exercise.

Dick Wilson and Joel Larkin of Buckeye Pipeline discussed their experience with an Industry-led Area Exercise in the inland zone. Mr. Wilson said that he supports PREP because it reinforces government relations in advance of real incidents. Furthermore, this exercise allowed Buckeye to demonstrate their commitment and competence. Overall, both Mr. Wilson and Mr. Larkin felt that the exercise was meaningful for all participants. The exercise reflected many attributes of real events including internal confusion.

Earl Espeland of TOSCO discussed his Industry-led Area Exercise in the coastal zone. Mr. Espeland said that TOSCO found that preparing for the exercise was just as beneficial as conducting one. They decided to exercise limited objectives so that they could focus on how the management response team would work together. Unlike many other scenario designs,they viewed the source of the spill as relatively unimportant, since the exercise focused on the response once oil entered the water.

During the afternoon, Mike Kurgan, USCG National Strike Force Coordination Center (NSFCC), and Carrie Bravenec, Robert J. Meyers & Associates, gave presentations on preparing an exercise from the perspective of the public and private sector (respectively).

Throughout the course of the workshop there was a considerable amount of discussion and questions asked of the federal agencies and states represented, as well as other company officials. The summary provides more information, but the following highlights the more salient issues raised.

Scope and Size of Exercise

There is a perception that the exercises are very large and too costly. The industry panelists all said that the cost of conducting their exercise was not excessive. There was some discussion regarding the way costs were figured. A PREP Area Exercise does not have to be a large production and very costly to meet the exercise objectives.

Credit for Spill Management Team (SMT) Tabletop Exercises

This issue has been raised on several different occasions. A workshop participant asked if someone else has a drill that exercises all members of his company's SMT, can he take credit? The answer was no. To further clarify, this does not mean that the plan holder can view an exercise from an audience and then take credit for an annual SMT Tabletop exercise. The purpose of the exercise is not to exercise the team, but to exercise the plan. The focus is how the SMT works within a specific plan, not how well your spill management team works within someone elses plan. To carry out the role of the SMT, the SMT must be familiar with their client's response plan. The reason for this exercise requirement is to ensure familiarity with sources, sizes and locations of potential spill scenarios they will be responsible for managing. In addition, familiarity with the response plan ensures that the SMT knows the plan holders' organization, i.e. domestic, foreign, family-owned, corporate structure, etc. A question was raised in another context regarding participation of the plan holder of a foreign vessel and the SMT during the exercise. This question was raised because of the cost of the plan holder to travel to the United States for the exercise. Understanding the economic burden this may cause a company, the Coast Guard believes that the plan holder gains invaluable experience and knowledge when participating, in person, in the exercise. The Coast Guard suggests combining the exercise with ancillary meetings or conferences to make the exercise more economical. Where this is not possible, the plan holder may participate in the exercise via telephone. In many circumstances, this may be more realistic since it could take the plan holder as long as 30 hours to arrive at the spill site.

Scheduling

One of the participants said that the scheduling was too rigid and inflexible because the dates and location were already chosen before industry has an opportunity to comment on it. The schedule that is published in the spring is proposed. The Coast Guard accepts comments on the proposed schedule, and makes appropriate revisions at the annual workshop. But there was agreement within the Coast Guard that the scheduling seemed too structured. The final schedule in this notice addresses that comment by only listing suggested quarters for calendar year 1996; listing quarters only for the exercises where volunteers have already come forward for calendar years 1997 and 1998; and listing dates or quarters for government-led exercises. It would not be fair to change the date of the exercise after companies have been planning for the exercise. For government-led exercises, NSFCC established a schedule with dates that cannot vary greatly. In all other cases, the industry can work with the appropriate agencies to schedule an exercise. We expect to generate more industry volunteers by increasing the flexibility of the schedule.

Another participant asked whether the scheduling cycle could be changed from three years to five years. The participant thought more companies would volunteer for the exercises if the schedule was extended. It does not appear that more companies would volunteer by extending the schedule. Furthermore, the Coast Guard needs to ensure that the Captains of the Ports (COTPs) are exercised frequently enough so the ACPs can be updated regularly, as needed.

Schedule

The following is the revised PREP schedule for Calendar Years 1996, 1997 and 1998. All of the comments received were considered by the NSCC. Where no industry plan holders have come forward to either participate or lead an exercise, the OSCs may solicit and recommend plan holders. Companies that wish to participate should contact the Coast Guard or EPA OSC, who will then forward the name to the NSCC at the address listed under **ADDRESSES.**

Dated: November 1, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

PREP SCHEDULE.—GOVERNMENT LED AREA EXERCISES

Area	Agency	Date/QTR *	Participant
1996			
Charleston, SC Area (MSO Charleston OSC)	CG	2/15–16	
Puget Sound Area (MSO Puget Sound OSC)	CG	4/18–19	
Buffalo, NY Area (MSO Buffalo OSC)	CG	6/13–14	
EPA Region VIII Area (EPA OCS)	EPA	8/8–9	
Philadelphia Coastal Area (MSO Philadelphia OSC)	CG	9/26–27	
South Florida Area (MSO Miami OSC)	CG	12/12–13	

PREP SCHEDULE.—GOVERNMENT LED AREA EXERCISES—Continued

Area	Agency	Date/QTR*	Participant
1997			
Providence, RI Area (MSO Providence OSC)	CG	1	
Jacksonville Area (MSO Jacksonville OSC)	CG	1	
Southeast Alaska Area (MSO Juneau OSC)	CG	2	
Detroit Area (MSO Detroit OSC)	CG w/RSPA	3	
EPA Oceania Region (EPA OSC)	EPA	3	
New Orleans Area (MSO New Orleans OSC)	CG w/MMS	4	
1998			
Guam Area (MSO Guam OSC)	CG	1	
San Diego Area (MSO San Diego OSC)	CG	2	
Savannah Area (MSO Savannah OSC)	CG	2	
EPA Region VIII Area (EPA OSC)	EPA	3	
Long Island Sound, NY Area (COTP Long Island Sound OSC)	CG	3	
Morgan City Area (MSO Morgan City)	CG	4	

PREP SCHEDULE.—INDUSTRY-LED EXERCISES

Area	Ind**	Date/QTR*	Lead
1996			
Virginia Coastal Area (MSO Hampton Roads OSC)	v	1	
Portland, OR Area (MSO Portland OSC)	f (mtr)	1	
Hawaii/American Samoa Area (MSO Honolulu OSC)	v	1	
EPA Region VI Area (EPA OSC)	p	2	Fina.
Buffalo, NY Area (MSO Buffalo OSC)	v	2	
Central Coast Area (MSO San Francisco OSC)	v	2	
Prince William Sound Area (MSO Valdez OSC)	f (mtr)	3	Chevron.
Western Alaska Area (MSO Anchorage OSC)	p	3	
Boston Area (MSO Boston OSC)	f	3	
EPA Region IX Area (EPA OSC)	f(nonmtr)	3	
Maine & New Hampshire Area (MSO Portland OSC)	v	3	
LA/LB North Area (MSO Los Angeles/Long Beach OSC)	v	4	
EPA Region II Area (EPA Caribbean OSC)	f(nonmtr)	4	
1997			
North Coast Area (MSO San Francisco OSC)	v		
Northeast North Carolina Coastal Area (MSO Hampton Roads OSC)	v		
Commonwealth of N. Marianas Islands Area (MSO Guam OSC)	v	1	Mobile Corp.
Caribbean Area (MSO San Juan OSC)	f(mtr)		
Florida Panhandle Area (MSO Mobile OSC)	v	2	Kirby Corp.
Western Lake Erie Area (MSO Toledo OSC)	f(mtr)		
EPA Alaska Region (EPA OSC)	p		
EPA Region X Area (EPA OSC)	f(nonmtr)		
Houston/Galveston Area (MSO Houston OSC)	v	3	Aramco Services Co.
New York, NY Area (COTP New York OSC)	v	3	OMI Corp.
EPA Region IV Area (EPA OSC)	p		
Detroit Area (MSO Detroit OSC)	v		
1998			
Southern Coastal NC Area (MSO Wilmington)	v		
San Francisco Bay & Delta Region Area (MSO San Francisco OSC)	f(mtr)		
Chicago Area (MSO Chicago OSC)	f(mtr)		
Cleveland, OH Area (MSO Cleveland OSC)	v		
EPA Region V Area (EPA OSC)	p		
EPA Region III Area (EPA OSC)	f		
Saulte Ste. Marie, MI Area (COPT Saulte Ste. Marie OSC)	f(mtr)		
South Texas Coastal Zone Area (MSO Corpus Christie OSC)	v		
Maryland Coastal Area (MSO Baltimore OSC)	v		
SW Louisiana/SE Texas Area (MSO Port Arthur OSC)	v		
Tampa, FL Area (MSO Tampa OSC)	v		
EPA Region I Area (EPA OSC)	p		
LA/LB South Area (MSO LA/LB OSC)	v		

PREP SCHEDULE.—INDUSTRY-LED EXERCISES—Continued

Area	Ind**	Date/QTR*	Lead
EPA Region II (EPA OSC)	f(nonmtr)		

*Quarters: 1 (January–March); 2 (April–June); 3 (July–September); 4 (October–December).
Industry: v-vessel, f(mtr)-marine transportation-related facility; f(nonmtr)-nonmarine transportation-related facility; p-pipeline.

[FR Doc. 95–27867 Filed 11–9–95; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc., Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held December 1, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Systems Management Working Group Report to the Technical Management Committee; (4) Consider and Approve: a Proposed Final Draft, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment; b. Proposed Final Draft, Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services (AMSS); c. Report from SC165/WG6 Concerning Feasibility of High Frequency Data Link (HFDL) MASPS; (5) Take Action on Open Items from Previous Meeting: Consider White Paper on RNP Issues and Recommendations; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27925 Filed 11–9–95; 8:45 am]
BILLING CODE 4810–13–M

RTCA, Inc., Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held December 5–7, 1995, starting at 8:30 a.m. on December 5. (On subsequent days, meeting begins at 8 a.m.) The meeting will be held on RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Consensus Items; (6) Review Action Items; (7) Review Issue Log; (8) Joint Team Status Reports; (9) Joint Team Meeting Assignments and Objectives; (10) Presentation by JT3 on Tools and Qualification; (11) Adjourn to Joint Team Sessions; (12) Joint Team Reports; (13) Other Business; (14) Agenda for Next Meeting; (15) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27926 Filed 11–9–95; 8:45 am]
BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 187, Mode Select Beacon and Data Link System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 187 meeting to be held on November 30, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Introductory Remarks; (2) Review and Approval of the Agenda; (3) Terms of Reference; (4) Activities and Accomplishments of Special Committee 142; (5) Current Status of Mode S Standards Development in the ICAO SICAS Panel; (6) Background on the Changes Required to RTCA/DO–181A and DO–218; (7) Review of Change 2 to RTCA/DO–181A and Change 1 to RTCA/DO–218; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27927 Filed 11–9–95; 8:45 am]
BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 165 meeting to be held on November 28–29, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Remarks; (2) Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review of Results of Working Group 1 Editorial Group Meeting; (6) Assignment of Tasks; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 6, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–27928 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–91; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 Mercedes-Benz 300SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Mercedes-Benz 300SL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Mercedes-Benz 300SL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 13, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Liphardt and Associates, Inc. of Ronkonkoma, New York ("Liphardt") (Registered Importer 90–004) has petitioned NHTSA to decide whether 1992 Mercedes-Benz 300SL (Body Style 129) passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1992 Mercedes-Benz 300SL that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Mercedes-Benz 300SL to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Mercedes-Benz 300SL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Mercedes-Benz 300SL is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1992 Mercedes-Benz 300SL complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of U.S.-model speedometer/odometer assembly.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and sidemarkers; (b) installation of U.S.-model taillamp assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (b) installation of knee bolsters to augment the vehicle's air bag-based passive restraint system, which otherwise conforms to the standard. The petitioner states that the vehicle is also equipped with Type 2 seat belts.

Standard No. 214 *Side Impact Protection:* installation of reinforcing tubes.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 10590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–27923 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 218
Monday, November 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: November 14, 1995, 9:15—11:15 a.m.

PLACE: New Orleans Marriott Hotel, 555 Canal St., New Orleans, LA 70140, Acadia Ballroom, 3rd Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED: At the Annual Convention and Regulatory Symposium of the National Association of Regulatory Utility Commissioners on the topic of the Commission's Notice of Proposed Rulemaking on Open Access Transmission Services and Recovery of Stranded Costs (Docket Nos. RM95–8–000 and RM94–7–001), there will be a general discussion between the Commission and members of the NARUC Committees on Electricity and Energy Conservation.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Dated: November 7, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28032 Filed 11–8–95; 2:21 pm]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, November 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory and receivership activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: November 7, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 95–28110 Filed 11–8–95; 8:45 am]

BILLING CODE 6714–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Thursday, November 16, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Operating Fee Structure and Assessment Scale for 1996.
3. Proposed Rule: Amendments to Part 703, NCUA's Rules and Regulations, Investment and Deposit Activities.
4. Final Rule: Amendments to Section 701.22, NUCA's Rules and Regulations, Loan Participation.
5. Final Rule: Amendments to Part 741, NCUA's Rules and Regulations, Requirements for Insurance.
6. Final Rule: Amendments to Part 748, NUCA's Rules and Regulations, Criminal Referral; and System of Records, System NCUA 15.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Thursday, November 16, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexander, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 125 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Administrative Action under Part 701, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
6. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

FR Doc. 95–28077 Filed 11–8–95; 2:22 pm]

BILLING CODE 7535–01–M

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 8:00 a.m., Tuesday, November 14, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: Portions of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: November 7, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 95–28024 Filed 11–8–95; 10:23 am]

BILLING CODE 8720–01–M

federal register

Monday
November 13, 1995

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 2800 et al.

Rights-of-Way, Rental Schedule for Communication Uses; Final Rule and Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2810, 2880

[WO–350–1430–00–24–1A]

RIN 1004–AC12

Rights-of-Way, Rental Schedule for Communication Uses

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends right-of-way regulations containing procedures for setting rent for communication uses located on lands administered by the Bureau of Land Management. The final rule establishes procedures and a rental schedule for determining rent for nine categories of communication uses. The rental schedule is identical to one recently adopted by the U.S. Forest Service for use on National Forest System lands in the Western States.

These revisions establish a fair and consistent approach for determining rental payments for various communication uses, based on the population of the community nearest the site and reflective of fair market value as required by Title V of the Federal Land Policy and Management Act of 1976. The final rule encourages tenants in a communication facility to consolidate their separate authorizations under one authorization, reducing billing costs and minimizing agency involvement in managing use and occupancy of the facility. The schedules will reduce BLM costs associated with obtaining appraisals, and can be expected to reduce the number of disputes concerning rental values. Rental payments will be applied on a consistent basis and allow users to anticipate changes in rent for planning purposes. At the same time, the administrative process implementing the schedule has been simplified and includes sufficient flexibility and safeguards to minimize disruption in business relationships and service.

DATES: The effective date of the regulations is December 13, 1995.

ADDRESSES: Inquiries or suggestions should be sent to: Director (350), Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Cavanaugh, (202) 452–7774.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

At 43 U.S.C. 1701(a)(9), FLPMA states that it is the policy of the United States to receive the fair market value of the use of the public lands and their resources unless otherwise provided by statute.

At 43 U.S.C. 1761(a), FLPMA authorizes the Secretary of the Interior to grant, issue, or renew rights-of-way for communication uses, including systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals.

Section 504(g) of FLPMA (43 U.S.C. 1764(g)) requires the holder of a right-of-way to pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing the right-of-way. The Secretary may waive part or all of the payment when it is found to be equitable and in the public interest. Rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way.

The regulations implementing the right-of-way provisions of FLPMA are found in 43 CFR part 2800. Portions of these regulations relating to cost recovery were last amended in 1987. Provisions for rental payments are found in 43 CFR subpart 2803, and state in part that the holder of a right-of-way grant or temporary use permit is required to pay annually, in advance, with certain exceptions, the fair market value rental. The authorized officer determines the rental, applying sound business management principles and, so far as practicable and feasible, using practices used in commerce.

Payment of fair market rent is different from provisions of 43 CFR subpart 2808 on reimbursement of reasonable costs in processing applications. The payment of rent for the right to use land is separate from payment of fees for costs associated with processing an application.

Background

The BLM currently administers approximately 3,200 communication site authorizations and collects annually between $1.5 and $2.0 million dollars in rental payments. Approximately 50 percent of the authorized users pay no rent because they are exempt under existing regulations. Examples of holders who are exempt from rent include local law enforcement and emergency response groups; Federal, State, and county agencies; and public broadcast stations. The remaining communication use right-of-way holders pay an annual rental based upon BLM-approved appraisals.

Generally, BLM bases rents for new uses on a preliminary estimate of fair market value until an appraisal can be completed. As a customary practice, rents for existing users are updated every 5 years to ensure that the amounts reflect changes in market conditions. Many BLM appraisals are out-of-date because statutory language in successive appropriations bills from 1990 to 1994 limited the Secretary's authority to raise rents. The 1995 appropriations bill did not contain any limiting language.

In 1992, Congress directed both the Secretary of Agriculture and the Secretary of the Interior to establish a Radio and Television Use Fee Advisory Committee. The advisory committee report made several recommendations. These included use of rental schedules instead of individual appraisals for setting rental payments; acceptance of market ranking methods that relate to the population served; a phase-in period for rent increases greater than $1,000; a provision for charging 25 percent of the gross sublease income; and annual increases based on the Consumer Price Index, Urban Consumer, U.S. City Average (CPI–U). These recommendations were considered in developing the proposed rule.

The BLM and FS endorsed many of the Committee's recommendations on rental implementation and administration, but rejected its proposed rental schedule on the basis that it did not represent fair market rental.

In July 1993, the FS published a notice in the **Federal Register** (58 FR 37840, July 13, 1993) proposing a schedule for four categories of commercial uses and invited public comment. The uses included television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses. The FS proposed schedule for television and radio adopted many proposals of the advisory committee. However, the proposed rent was higher than the schedule proposed by the advisory committee. The comment period ended October 12, 1993. In order to coordinate with BLM, the FS decided to delay their final policy.

The FS and BLM jointly reviewed and considered the comments received by the FS on its July 1993 proposed policy. The FS decided to delay publishing their final notice pending BLM's publication of a proposed rule and review of comments.

On July 12, 1994, BLM published a proposed rule in the **Federal Register** (59 FR 46806). The BLM rule incorporated many of the comments

received by the FS regarding the four categories of commercial communication uses, and the ranges of population served by a facility, that serve as variables on the schedule to determine the rent to be charged. BLM's proposal expanded the number of site categories from 4 to 11, and increased the number of population ranges in the schedule to minimize impacts on holders located on sites serving populations at the lower end of the range. The proposed rule was drafted in cooperation with the FS. It was agreed that the BLM proposal would be the basis for the FS's final notice.

On July 12, 1994, the House of Representatives Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, and the Committee on Government Operations, Subcommittee on Environment, Energy, and Natural Resources, held a joint hearing on rents for communication sites on Federal lands. At the hearing, the General Accounting Office (GAO) released a report (GAO/RCED–94–248) and testified that fees being charged for the communication sites on Federal lands are, in most instances, significantly below fair market value. The Committee strongly encouraged BLM and FS to promulgate rental schedules as soon as possible.

The GAO report stated that FS rental payments are based on an outdated formula established 40 years ago, and that BLM rents are based on out-of-date appraisals. GAO recognized that agency efforts to raise rents had been prohibited by Congress, and warned that if these prohibitions continued, the Federal government would not obtain fair market value for communications sites for many years.

The GAO also found that BLM and FS do not have the basic information needed to manage communication sites effectively and to ensure that the agencies are collecting all of the revenues owed to the government. GAO recommended that the agencies develop and maintain complete and reliable program-wide data on the number and types of uses, and amount of rent that they generate.

The Proposed Rule

The proposed rule amending regulations for determining annual rent was published in the **Federal Register** (59 FR 35596) on July 12, 1994. The comment period closed on September 12, 1994. On September 12, the BLM extended the comment period to October 12, 1994.

The proposed rule contained amended procedures for setting annual rent for ten categories of communication uses on public lands, plus a category for facility managers. The rule proposed three major categories of use: broadcast, nonbroadcast, and other. Broadcast included television, FM radio, rebroadcast devices, and cable television. Nonbroadcast included commercial mobile radio service, cellular telephone, private mobile communications, common carrier microwave communications, private microwave, other communication uses, and facility management. The category "other" referred to small, unobtrusive, low power uses serving small numbers of customers. The rent for a facility with more than one category of use would have been based on its primary use authorized under terms of the right-of-way.

The proposed rule included different methods for setting the base rent for each of the categories. For instance, it proposed that rent for television and FM radio stations be based on the population of the principal community or communities primarily served by the transmitter. For cable television, the base rent was to be determined by the total number of subscribers as reported by the right-of-way holder.

The proposed rule provided that the base rent for nonbroadcast uses—commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager and miscellaneous uses—would be determined by different factors. For these uses, rent would be determined by the population of the county in which the transmitter is located or the population of an adjacent or nearby county served by the transmitter, whichever is greater.

In addition to a base rent for the authorized use of a facility, the proposed rule also included an assessment for additional users within the facility. The BLM proposed that right-of-way holders, typically the facility owner, be required to pay a percentage of gross rent received from the subleasing of space in the facility.

Increases in the base rent and the percentage of gross rent were to be phased in over 5 years. Initial increases in the base rent in excess of $1,000 or 20 percent of the current rent, whichever is greater, would have been phased in. The proposed rule included provisions that the percentage of gross rent received from additional tenants in the facility be phased in; 15% during the first five years, and 25% thereafter.

The proposed rule also required annual updates of the rental payments, required periodic review of the rental schedule, and reiterated BLM policy regarding waiver of rental.

As proposed, the rule would have adopted a new procedure that would have reduced agency costs of setting and updating rental payments for new and existing right-of-way holders. The final rule adopts the basic procedure, in which the rental schedule is applied, eliminating most individual appraisals, encouraging consolidated billing under a master right-of-way authorization, and providing a means for annually updating the rent. The BLM estimates appraisals to cost approximately $2,000 each. With more than 1,500 commercial communication site rights-of-way, each cycle of rent establishment could cost more than $3 million. The rule will eliminate much of this cost, although some appraisals will still be performed.

Organization of Rule

This final rule amends 43 CFR 2803.1–2 Rental. This section of the existing regulations includes a schedule for linear rights-of-way, including oil and gas pipelines, related pipeline roads, ditches, canals, electric transmission lines, telephone, electric distribution, non-energy pipelines, and other linear uses. This final rule adds procedures and authorizes a rental schedule for non-linear communication site rights-of-way. The schedule itself appears elsewhere in this issue of the **Federal Register**.

Many respondents to the proposed rule argued that the proposed rents were too high and would harm small entities, that the provision to charge a percent of the gross rent was unfair, and the different criteria in the schedules—population of the community or communities served or county population—were unworkable and would create inequities. Their overriding concern was that the procedure for setting rental payments was too complicated, that the schedule may not reasonably set rental payments, and that the new rental payments would potentially create problems unless there was some mechanism to alleviate them.

In response to the comments, BLM made a number of changes in the final rule for nonlinear communication site rights-of-way. The schedule in its final form more closely reflects market rent and minimizes impacts on holders of sites serving smaller population areas. Rents will correlate with the population of the local community where the facility is situated or that it serves, or both, rather than distant communities served by the facility. Instead of having several different methods for determining population, the final rule utilizes the Ranally Metro Areas

(RMA's) as identified in the "Rand McNally Commercial Atlas and Marketing Guide, 1995" for listed communities having a population of 50,000 or more. Rental payments for uses on sites serving communities not listed and having a population of less than 50,000 will be based on the category of use and the most recent census performed by the U.S. Census Bureau for the community. Therefore, the final schedule that BLM is adopting more directly correlates to the population of the local community where the facility is situated.

To simplify implementation further, the definitions for two categories have been broadened, resulting in the reduction of categories from 11 to 8. The Commercial Mobile Radio Service (CMRS) category has been broadened to include facility managers and ancillary microwave link equipment, and the microwave now includes common carrier microwave category.

To improve consistency in setting rents, the final rule adopts the concept of using the schedule to determine the primary use of the facility and assessing an additional amount for other users. The base rent is determined by the use that generates the highest rent on the schedule (highest valued use) of all uses in the facility, excluding those uses that would qualify for an exemption or waiver. To avoid having to keep track of rents received from tenants in the facility, the final rule assesses an additional amount for each tenant occupying space in the facility. This responds to the contention in many comments that it was not a widespread practice for landowners to charge a percentage of gross rent from tenants. In addition, the final rule defines "tenant" to alleviate the potential for charging occupants in the facility who are customers paying for a communication service.

In response to concerns that the rental schedule may be unfair, the final rule provides the authorized officer ample discretion to use other methods to set rental payments. Holders who believe the initial rents set by the schedule are unreasonable may ask the authorized officer to reconsider the initial rental assessment. The holder may request an individual appraisal or may provide recent leases for similar uses in similar locations to help BLM set appropriate rent. If agreement cannot be reached, the holder may appeal the rental determination. For those whose rent will increase more than $1,000 during the first year, the amount over $1,000 will be phased in over the next five years. Also, the authorized officer may consider hardship requests or give partial waivers to holders who provide, without charge or at reduced rates, a valuable benefit to the public or programs of the Secretary.

The final rule also simplifies the process for determining when the holder is eligible for phasing in increases in rent and the amount to be phased in. The final rule phases in increases of more than $1,000, removing the 20 percent or more calculation required in the proposed rule.

Finally, the final rule provides that rental payments will be updated annually based on the Consumer Price Index. This applies to all rents, whether initially determined through the schedules, appraisals, or some other means. Increases in rent based on the Consumer Price Index would be limited to 5 percent. This will reduce the likelihood that rental payments will drop below market levels or result in sharp increases when the schedule is updated.

The rule also adds sections 2800.0–9, 2812.0–9, and 2880.0–9 to the regulations. These sections merely codify the Notes on information collection currently found at the beginning of part 2800.

Section 2803.1–2 has been reorganized in part in the final rule, and paragraphs in the proposed rule have been redesignated in the final rule to reflect this. Mainly, subparagraphs within paragraph (c) of the existing regulation have reen redesignated as paragraphs (e) through (h), and paragraph (e) of the proposed rule, which introduced the rental schedules, has been redesignated (d) in the final rule.

Analysis of Comments

The BLM received a total of 61 comments on the proposed rule. All comments on the rule were shared and jointly analyzed by the BLM and FS.

In general, eight major issues were identified in the comments. (1) Do proposed rents reflect fair market value? (2) Format of schedule. (3) Additional users. (4) Use of appraisals to set fair market rent. (5) Administrative complexity. (6) Phase-in. (7) Updating rental payments. (8) Use categories.

1. Do Proposed Rents Reflect Fair Market Value?

Several respondents stated that the proposed rents were too high. Many of them objected to both the proposed rental payments and the proposal to charge an additional amount based on a percent of the gross receipts received from renting space in the facility. Several suggested that the proposed rental payments were unfair and would affect their economic survival.

A few comments suggested that preparing individual appraisals would more accurately reflect fair market value than use of a schedule, while others expressed concern that individual appraisals would be used instead of the schedule. Others stated that the base rents were acceptable but totally disagreed with adding on a percentage of the gross for rental of space in the facility. A smaller number commented that the proposed rents were far too low and in some cases would not possibly cover the costs of processing the billing. Other comments stated that the right-of-way authorization conveyed fewer rights and therefore should be less valuable than leases conveyed in the private sector.

The BLM intends the approach taken in developing the final schedule to achieve a reasonable estimate of fair market value, and believes that it succeeds in doing so. The BLM took information from a variety of sources into consideration in developing the schedule. These sources include (1) the report of the Radio and Television Broadcast Use Fee Advisory Committee, whose recommendations were discussed above, (2) information obtained by government appraisers, industry representatives, and private lessors, (3) market information provided by users and industry groups in response to the original FS notice and the BLM proposed rule, and (4) agency records showing current billings for new and existing users. The application of this information was described in the preamble to the proposed rule, and is revisited in this preamble in the discussion of public comments.

Appraisals may provide a more accurate indication of the fair market value of a particular use on a specific site. However, the costs of performing individual appraisals—estimated at $2,000 each—would be enormous compared to those of implementing uniformly applicable schedules, reducing the returns to the Treasury for use of public resources. There would be pressure to increase the rents charged to make up for these costs. Also, the lag time involved in performing a large number of appraisals would be so great that some holders would be paying rents disproportionately higher or lower than others for significant periods of time. This might impel holders to complain of unequal treatment under the law.

The rental process outlined in the final rule sets as reasonable a rent as possible for the type of use, its location, and rights granted. The rental market for communication sites varies considerably. Also, terms of private lease agreements vary widely, and it is difficult to quantify the effect of lease provisions on rental value.

In response to concerns expressed by the comments, BLM has made the following changes in the final rule:

The originally proposed rents in several categories have been reduced to reflect information provided by respondents.

The proposal to base rent for tenants on a percentage of the annual gross receipts received from rental of space in the facility has been eliminated.

Current right-of-way holders will be notified of the new rent and given instructions for appealing the new rent in accordance with existing regulations.

Schedule rents, and rents determined by appraisal or other methods, may be adjusted by the authorized officer if the criteria in section 2803.1–2(b)(2) apply, e.g., the holder is a nonprofit business, provides a public service at reduced or no costs, or would suffer undue hardship from imposition of the schedule rent.

2. Format of Schedule

Several respondents requested that the basis in the proposed rule for setting rent for broadcast and nonbroadcast uses, i.e., U.S. Census Population for the principal community or communities served, or the county population, depending on circumstances and the type of use, be reconsidered. Comments suggested a variety of other methods, including market ranking services for broadcast radio and television, number of subscribers, size of building, the FCC-defined service contour of the individual facility, a percentage of the total value of the facility, number of transmitters, height of the tower, or a percentage of the rental income.

We considered all suggestions. Most of them would require site-specific studies, development of specific criteria and instructions for each type of use, or result in rental determinations that would be too subjective and create potential inconsistencies in application of the schedule. Other suggestions would require a system of information collection that would make the billing process less efficient. The final rule features a common schedule format for all uses based on population, because it represents the best way to obtain a reasonable estimate of fair market value with a tool that is evenhanded and economical to use.

Several of the respondents opposed using the population of the principal communities served for setting the rent for television and radio stations. One comment expressed concern that, based on the total population of the principal communities served in the Boise, Idaho, market, television and radio stations would be paying $16,000 and $11,000 respectively, instead of the $6,000 and $4,000 amounts in the example included in the proposed rule. The major concern was that the original proposal would be difficult to implement and create inequities because of differences in identifying the principal communities served and calculating their populations. The respondents argued that the concept was too vague and that it would be difficult to determine the population served using census information. We agree with the comments and have dropped the idea of calculating rental payments based solely on the U.S. census population of the principal communities served, except for small communities as discussed below.

Television and radio broadcasters preferred that BLM adopt industry-recognized market ranking methods: Nielsen Designated Market Areas for television and Arbitron Company Metro Area rankings for radio.

For several reasons, the final rule does not incorporate the suggestion that the schedule for television and radio uses be based on an industry-recognized market ranking system.

First, radio market rankings are not nationwide, and there are significant gaps in coverage. Therefore, other methods must be developed to establish rent in those areas not covered by the market ranking services.

Second, the television market ranking system does not measure the households or audience reached by the broadcast transmitter. Instead, it includes households reached by a combination of microwave technology and translators that serve other smaller markets. This inadvertently inflates rental payments for those stations that have an extensive network of translators that serve communities outside the area normally reached by the transmitter. Also, translators on public land themselves pay rent based on populations served.

Third, television market rankings do not include satellite or affiliate stations that serve smaller communities within the dominant market area (DMA).

Fourth, having separate market ranking systems for each category of use would complicate implementation of the schedule.

Other respondents questioned using county population for nonbroadcast uses, stating that there was little relationship between county population and rent for nonbroadcast uses. They also believed that in geographically large counties, such as Riverside and San Bernardino, California, using county population would result in overpayment of rent for uses in more remote, sparsely populated areas of the county. One comment suggested that the population considered be more narrowly defined and consideration be given to the population of the nearest community.

Several respondents stated that there was no correlation between the rent paid for microwave and private mobile radio sites and population, and that this would be an inappropriate method for setting rent.

There are various factors that influence rent but that are not necessarily related to population. For example, microwave facilities provide a system for transporting information from one point to another point. They operate on a linear, line-of-sight basis and, in many instances, do not serve nearby population areas, and therefore rent may not have any relationship to population. However, in those instances where the microwave facility is located on a site that serves a nearby population area, land rents are more directly correlated to nearby population. The same reasoning applies to private mobile radio users.

The final rule bases scheduled rent on populations of the community where facilities are situated, rather than of entire counties or other arbitrary political subdivisions containing them. That is, the populations upon which the schedules are based are those that in many cases are being served by the facilities, or are those of the community near or containing the facility (because population is usually causally related to land value) or in some cases where the people working at the facility live, or all of these. Although the concept may not be universally applicable, BLM believes this to be an appropriate basis for developing a schedule, especially compared with other options that would be more difficult to implement.

We disagree with comments that there is no correlation between population and rent charged for a communication site. We recognize there may be no direct relationship between the private communication use and population, since the service is not sold. However, market information gathered by BLM shows that land rents are generally higher for sites near metropolitan areas than for those sites in less populated areas.

Our primary goal has been to develop a schedule that is easy to implement and facilitates the calculation of a reasonable rent. As a result of the comments, the final rule adopts a

formula for calculating the rental based on the population of the community nearest the site, served by the site, affected by the site, or all of these, depending on the nature of the facility. Some facilities affect the environment of or provide employment for a local community while providing communication service to a distant metropolis, while others serve only the locality where they are situated. In calculating rents using the schedules, distant population centers served by the facility will not be considered.

The population base for the site is determined in three ways. The first step is to determine whether the facility is situated in or near a community listed as a Ranally Metro Area (RMA) as identified in the "Rand McNally Commercial Atlas and Marketing Guide, 1995." An RMA represents Rand McNally's definition of metropolitan areas in the United States. There are 452 RMA's. Four hundred and seventeen have a population of 50,000 or more. Thirty-five listed RMA's have a population near 50,000 and are included as RMA's because they include a central city of an official Metropolitan Statistical Area. If the community is listed as an RMA, the population of the community as shown in the Rand McNally publication will be used to set the scheduled rent. RMA's are updated every year, and are more useful than U.S. Census reports on cities in providing accurate counts of the population affected by, serving, served by, or related to a communication facility.

Second, if the site does not serve a listed RMA, the scheduled rent will be based on the most recent Rand McNally Road Atlas population of the largest nearby community.

Third, for sites located in or serving a community of less than 25,000 people, the rent that will be charged is the minimum rent shown on the schedule for the type of facility.

Consideration was given to using statistical definitions of Metropolitan Statistical Areas (MSA), as defined by the Office of Management and Budget (OMB Bulletin No. 93–17), for determining the population of nearby communities. MSA's are defined in terms of entire counties, except in the six New England States where they are defined in terms of cities and towns. In many of the Western States the counties are very large: Maricopa County, Arizona, and Clark County, Nevada, for example. As a result, use of MSA's would result in unfair rents for those holders serving a portion of a larger county. Therefore, BLM decided not to use this method.

In response to the public comments, the final rule includes the following changes:

The final rule bases the rental schedule on a ranking of RMA's as identified in the *Rand McNally Commercial Atlas and Marketing Guide, 1995.*

The rents for uses located on sites serving RMA's will be based on the population of the RMA's served by the site.

Rents for those uses located on sites not serving an RMA will be based on the most recent U.S. census population of the community.

We made minor changes in the description of "other communication uses" in response to comments. The description is clarified by including other small, low-power devices used to operate, monitor, or control remote activities such as wireless telephone or mobile radio service to sparsely populated areas, in order more accurately to depict the uses covered by the category.

3. Additional Users

A majority of the comments opposed assessing rent for additional users in the building based on a percentage of the gross rent received. The proposal was criticized as unfair, not supported by market data, exorbitant in view of the proposed base rent, and too difficult and costly to implement. Others pointed out that, with few exceptions, private landowners do not receive an additional amount from the primary lessee for tenants in the building. One respondent suggested that BLM provide data to support its position that payment of a percentage of gross rent is common in the marketplace.

Respondents stated that the term "gross sublease rent" was not clear, and worried that the holder would be assessed a charge for all occupants in the facility, customers as well as tenants. There was also concern that it would be difficult for holders to report rent received accurately, making them vulnerable to charges of underpayment of rent. Others argued that, since several BLM State Offices currently charge each tenant separately, this provision would reduce total public revenues.

In view of the comments, the final rule no longer charges 25 percent of the gross rent received from tenants in the facility. We agree the provision would be intrusive for most businesses and would be difficult to implement. Therefore the original proposal has been amended to charge the holder the full schedule rent for the principal use of the facility, even if a tenant's use is the principal use, plus 25 percent of the schedule rent for the other uses, whether of tenants or the holder.

Generally, multiple user facilities located on public lands are more valuable than single user facilities, and an additional amount of rent should be paid. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site by no longer requiring agency approval for other tenants in the facility, prevents recovery of fair market value. Also, the BLM and FS in some States authorize tenants in facilities, and charge them rent. Dispensing with that practice entirely, as some respondents suggested by implication (in arguing against the collection of a percentage of actual gross rent), would result in a significant reduction in revenue.

The BLM's statutory responsibility is to obtain fair market value for the use of public lands, and this includes obtaining a rent for secondary uses in the facility. Charging secondary users is in the public interest, and as a business practice is supported by policies of other land managing agencies and companies.

One comment made the observation that setting the base rent on the authorized use without adjusting for other users in the building would encourage lower rent users to obtain an authorization and then rent to higher rent users. For example, a holder having an authorization for internal mobile radio would sublease to a television or radio broadcaster, collecting high rent from the sublessee under the schedule in the proposed rule and paying low rent to the Government under the same schedule. The comment suggested that the rent should be based on all of the actual users in the facility, rather than just the holder's use.

As a result of the comment, BLM realized that the existing provision in section 2801.1–1, which was not addressed in the proposed rule, limits uses of rights-of-way to those "specified in" the authorization and prevents BLM from basing rent on the principal use of the facility in cases where tenants of the holder actually operate the primary or higher valued uses. In practice, most BLM authorizations are for a "communication use" and do not specify a particular type of communication use. Therefore, in a technical amendment in the final rule, we have removed the reference in section 2801.1–1(b) to purposes "specified in" the authorization.

The rent for a holder of a facility with tenants will be the highest rent the rental schedule assigns to any one of the uses in the facility. An additional amount for the other tenants covered by the authorization will be 25 percent of the scheduled rent for each of those categories of use. The total rent paid by the holder will be the schedule rent for the highest valued use plus 25 percent of the schedule rent for each of the other tenant uses in the facility, including the holder's use if it is not the highest valued. In some cases, the rent paid by the holder under the final rule will be higher than the rent that would have been required under the proposed rule, depending on the amount of rent actually paid by tenants to the holder. However, the total rent will still be less than it would be if the full rent for all uses were assessed individually.

In response to the comments, the final rule makes the following changes from the proposed rule:

Prior written approval from the authorized officer for other tenants in the communications facility is no longer required.

The BLM will adjust the rent assessed the holder to reflect the principal occupancy and use in the facility instead of basing it only on the holder's use authorized by the existing right-of-way.

The certified statement of rents collected from sublessees, provided for in section 2803.1–2(e)(6) of the proposed rule, has been revised (section 2803.1–2(d)(6) in the final rule) to require only a listing of tenants, by category of use, in the facility on September 30 of the current year. Provision for reporting the amount of rent collected has been removed. The BLM reserves the right to conduct spot audits.

The base rent for an authorized multiple use facility will be charged for the use generating the highest schedule rent.

The terms "tenant" and "customer" have been defined to help make clear which occupants in the facility would be subject to an additional amount of rent under terms of the holder's authorization.

Existing tenants maintaining a separate authorization will be subject to paying their full schedule rent. Applicants for rights-of-way on land already subject to rights-of-way may obtain separate authorizations from BLM. However, they will be subject to paying their full scheduled rent, plus appropriate administrative costs. Users are encouraged to combine same-site rights-of-way under a single right-of-way authorization, and the final rule provides a rent reduction incentive for such combinations.

4. Use of Appraisals To Set Fair Market Rent

Several respondents opposed permitting the authorized officer to set rent payments based on individual appraisals instead of using the schedule. They feared that the agency would seek to rely on appraisals instead of uniformly implementing the schedule. One respondent asked BLM to provide guidance on when individual appraisals would be needed. Two respondents stated that the proposed rule would allow the authorized officer to have unfettered discretion to set rental payments different from the schedule, and another stated that the proposed rule could result in significant abuse. Another comment suggested that BLM establish criteria or standards to be applied when the rental schedule does not yield fair market rent.

In response to the comments, section 2803.1–2(e)(4) of the proposed rule (section 2803.1–2(d)(7) in the final rule) has been clarified and criteria established in the final rule for allowing the authorized officer to use appraisals or otherwise deviate from the schedule. Under this section, the authorized officer may use appraisals or other means if the holder is eligible for a waiver or reduction in rent, if payment of the rent will cause undue hardship, if the right-of-way is a cost-share road or reciprocal right-of-way, if the original right-of-way authorization has been or will be issued under a competitive bidding process, or if the State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent based on comparable leases for the communication use is more than $10,000 above the schedule rent. To accommodate this change, paragraph 2803.1–2(c)(1)(v) of the existing regulation is amended in the final rule to allow BLM to use methods other than the schedule in establishing rents for communication uses.

5. Administrative Complexity

Several respondents stated that the proposed rule would not improve processing or reduce costs. One argued that the new procedure would increase administrative processing and associated costs. The major problems identified included how to categorize uses properly, the difficulty of requesting and obtaining information from holders on a timely basis to calculate a rental, whether to rely on the accuracy of information provided by the holder regarding population served, number of subscribers, or listings of tenants; and how to calculate the rent accurately during the phase-in period. Some comments stated that audits and inspections might be necessary to ensure enforcement, and feared that the agencies would not have the resources to manage the changes effectively.

Several comments complained that it takes too long to process an application for use of public lands. One comment suggested that we need to stop emphasizing the issue of fair market rent and get on to more important matters, such as excessive delays and unnecessary requirements for processing authorizations for use of Federal lands. Others said that Government should not regulate or require rent for secondary users, because of the length of time it takes to authorize additional users in an existing building. However, one of the main purposes of this rule is to streamline the process. This is accomplished, for example, by removing appraisals from the process in most instances, and removing the requirement for prior written approval of tenants. No changes are made in the final rule in response to these comments.

The BLM is committed to improving administration of communication site uses and to full implementation of new, streamlined rental procedures. Once they are implemented, rental payments will be calculated consistently and updated annually to reflect fair market value, and both administrative costs to the Government and non-rental costs to users should decline, while service to the public improves. At the same time, BLM will have more complete information on who is authorized to be on public lands and what uses they may make of the lands, and will be able to assess rental payments more accurately.

In response to the public comments, the final rule has been revised in an effort to streamline implementation of the schedule. These changes include:

The number of use categories is reduced from 11 to 9.

Use categories are defined more broadly to include other related uses associated with the maintenance and monitoring of the use. For example, internal mobile radio is often associated with other uses and, therefore, is included in the definition of each category of use.

Commercial mobile radio service is redefined to include internal and private communication used by commercial concerns but not sold for a profit. When commercial mobile radio service is the highest valued in the facility, the holder will not be assessed a percentage of the scheduled rent for

internal and private communication uses.

The rule is amended to provide that occupants owning and operating communication equipment in a commercial mobile radio service facility for internal use only, and not re-selling their service for a profit, are considered customers, not tenants. The base rent assessed (that is, the rent paid by the holder for the holder's use and all tenant uses) does not include any added rent for customers.

Facility owners and tenants may decide whether to consolidate their authorizations.

Except as otherwise provided in Section 504(g) of FLPMA, the requirement that the holder obtain written consent from the authorized officer before allowing other parties to use the facility is removed.

The final rule allows phase-in of new rental payments if the holder shows that the increase will exceed the previous year's rental by $1,000 or more.

The information collection burdens placed on users in the original BLM proposal are drastically reduced. For example, the final rule eliminates the requirements that cable television users provide the number of basic subscribers, that broadcasters provide a 1 millivolt contour map or a list of communities served, and that holders account to BLM for all rent actually received from sublessees.

Differences in the methods used to determine rent for each category of use are minimized.

New applicants are encouraged to co-locate in existing facilities in order to reduce surface disturbances for new roads and buildings and avoid the proliferation of buildings and towers.

6. Phase-in

The proposed rule included provisions for reducing potential impacts of large increases in rent. As proposed, increases in the base rent of more than $1,000, or 20 percent of the current rent, whichever is greater, were to be phased in over a 5-year period. Additional rent from tenants based on a percent of the gross rent was proposed to be set at 15 percent during the first 5 years and 25 percent thereafter.

Many of the respondents stated that the proposed procedure phasing in increases in the base rent was reasonable. One person argued that the 5-year phase-in was too generous, and another wondered why the agency should provide a financial break for users who have not paid fair market value for many years.

In response to general suggestions that the rental determination process be simplified, we have changed the proposed phase-in procedure.

The final rule eliminates the dual standard test to determine eligibility for phase-in of increases in rent. Instead, the final rule requires that any increase of more than $1,000 or more will be phased in over a five-year period. The original proposal would have required the agency to make two separate calculations: determine if the new rent exceeds the current rent by (1) $1,000 or (2) 20 percent of the current rent. We have simplified the process by only requiring a determination of whether the new rent exceeds the old by more than $1,000.

The phase-in adjustment works in this manner: if the current base rent is $700 and the new rent based on the schedule will be $2,700, the first year's rent will be $1,700, and the rent for years 2 through 5 will be increased $250 per year, plus the inflation adjustment increase or decrease. Assuming a 2 percent annual increase in the CPI-U during the 5-year phase-in period, the base rents will be calculated as follows:

Year 1 $700+$1,000=$1,700
Year 2 ($1,700+$250)×1.02=$1,989
Year 3 ($1,989+$250)×1.02=$2,283.78
Year 4
($2,283.78+$250)×1.02=$2,584.46
Year 5
($2,584.46+$250)×1.02=$2,891.15
Year 6 ($2,891.15×1.02)=$2,948.97

7. Updating Rental Payments

Under the current regulations, rental payments are based on appraisals, and the appraisals are supposed to be updated every 5 years. Because of delays in performing appraisals, increases in rent have often been substantial, resulting in complaints and more appeals. All too often, rental assessments had not been updated for 10 to 15 years. Legislated limitations on agency authority to increase rents have made the problem worse.

The proposed rule included provisions to update payments annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average, published in July of each year, in order to avoid larger increases in rent and the possible economic disruptions that would be caused by longer update intervals.

Two respondents expressed concern over when the agency would re-evaluate the schedule. The proposed rule provided that the schedule would be re-evaluated and if necessary updated periodically. One respondent asked what was meant by "periodically." The other comment suggested that the rental schedule should be re-evaluated every 5 years. The comment noted that the rent for communication uses has surged over the last several years, and that unless there was a mechanism to update market information, rents under the schedule would fall below fair market value.

In response to the comments, we have included in section 2803.1–2(d)(2) of the final rule a provision that the rental schedule will be reviewed for possible update no later than 10 years after it becomes effective, and at least every 10 years thereafter, to ensure that the schedule reflects a reasonable estimate of fair market value. Also, individual rights-of-way may be reviewed after the first 10 years, and no more often than once every 5 years thereafter, on holder request, to determine whether rents are appropriate.

Many of the respondents generally supported use of the Consumer Price Index-Urban (CPI–U) to index the rental payments. One respondent stated that the CPI–U may not relate to local market conditions. Others suggested the CPI–U be limited so that increases would not be too dramatic. One suggested that increases be limited to no more than 5 percent, and others suggested they be limited to 1 percentage point below the annual level of inflation.

In response to these comments, the final rule limits subsequent increases based on changes in the consumer price index to 5 percent. We believe this limitation, along with the notification and appeal process and hardship provisions contained in section 2803.1–2(b)(2)(iv), should reduce the potential for overcharging. One of the inherent problems with schedules is that, over the long term, they may not adequately reflect fair market rent. Market rents in specific areas may be more or less than rents set by a schedule. Periodic reviews of the schedule itself will help ensure that the rents do not become too low.

One respondent suggested that the example included in the proposed rule was incorrect. The proposed rule provided that the first year's base rent would be adjusted to reflect any increase in the consumer price index. We agree with the comment. Any increase in the Consumer Price Index (CPI–U) not exceeding 5 percent for the year will be applied for the first time during the second year.

Along with updating rents based on the CPI–U, the RMA rankings will be updated annually to reflect changes in estimated population. Of course, this may also result in rent adjustments.

8. Comments Pertaining to Use Categories

Television and FM Radio Broadcast

In response to comments made by the Arizona Broadcasters Association (ABA), BLM met with the Administrative Assistant, City of Phoenix, Parks and Recreation, on October 12, 1994. The purpose of the meeting was to gather information regarding rental payments paid on South Mountain, a major communications site within the City of Phoenix, and administrative procedures used by the city. The ABA suggested that the proposed rents for Phoenix and Tucson were too high and that consideration should be given to recently negotiated rents charged by the Phoenix City Parks Department on South Mountain.

The information obtained was useful in preparing the final rule. The City of Phoenix grants a license to each user, including tenants within the facilities. The facility owner and tenants pay individual rental payments. The BLM final rule establishes a different process. The facility owner is allowed to manage the facility without any interference from the agency. BLM will no longer require prior written approval to allow other parties to use the facility and tenants will be encouraged to relinquish their separate authorization, thereby reducing agency billing costs and user administrative costs. Although the schedule rent for the primary use of the facility is slightly higher, the additional rent assessed for tenants will be less. Overall, total revenues generated by the City of Phoenix for multiple user facilities will be greater than those obtained on a similar BLM facility because of greater management involvement by the city.

The BLM also considered examples of rent levels in other typical locations to arrive at the final schedule rents.

Land rents for television facilities in similar markets vary considerably. There is also a difference between rents paid for communication sites based on Ranally Metro Area (RMA) populations and rents based on Nielsen market rankings. In response to the comments, the final rule lowers the rent for television and FM radio stations serving areas with an RMA population of 500,000 to 999,999 from $16,000 for television and $12,000 for FM radio to $14,000 and $10,000 respectively.

The proposed rule included FM (frequency modulation) radio only. Several respondents wondered if AM (amplitude modulation) stations were also included. The rule has been amended to include BLM authorizations for the location of AM stations on public lands.

One respondent asked how an AM station would be handled if it is in an FM broadcast facility. AM and FM radio stations located in the same facility will be considered two radio stations in determining rent, with one considered the primary holder and the other as a tenant, even if co-owned.

In response to the public comments, the following changes have been included in the final regulation:

- AM broadcast radio stations have been included in the schedule. Rents will be based on 70 percent of the FM scheduled rental payment in recognition of the lower profit generally derived from AM broadcasting. Co-located AM and FM stations will pay the full FM radio rent, plus 25 percent of the AM rent.
- The scheduled rent for television and radio stations serving RMA's with a population of 1,000,000 to 2,499,999 is reduced in the notice published today elsewhere in this issue of the **Federal Register**. Typical cities within this population range are Phoenix, AZ, San Diego, CA, and Portland, OR.

Broadcast Translator and Low Power Television (LPTV)

Broadcast translators are low-power devices that transmit television and radio signals originated elsewhere to remote areas, and LPTV serves the same function, but may originate programming on a limited basis.

Several respondents suggested that the BLM final rule should adopt the fee schedule for broadcast translator stations previously approved by the FS. The FS regional offices had adopted a schedule supported by the National Translator Association.

The BLM proposed rule was different from the FS rule in two respects. First, it included LPTV, an FCC-licensed facility that has limited authority to originate programming, as well as broadcast translators. Second, it set a schedule to be applied to all markets, regardless of population, whereas the FS schedule was limited to communities having a population of less than 60,000. The scheduled rents for population ranges less than 50,000 were essentially the same as those adopted by the FS.

Two FM translator operators argued that the proposed rental payment schedule would have an enormous impact on holders and result in an elimination or reduction of service. FCC regulations effective June 1, 1994, prohibit television stations from supporting the operation or maintenance of a translator either directly or indirectly. The new FCC rules allow the owners to solicit contributions from listeners for the operation and maintenance of the FM translator. The comments stated that the recent changes in FCC regulations, along with the proposed increase in rents imposed by the BLM, will eliminate or reduce service in some areas.

In response to the comments, we have substantially revised the schedule for broadcast translator and LPTV in the final rule. Because of insufficient market information and the concerns expressed in the comments, the schedule will be applied only to the 4 lowest population groups. Rental for holders located on sites serving a community of 200,000 population or more will be based on other methods, including separate appraisals.

Another respondent suggested that a distinction in the rent be made for the difference between a translator and LPTV. LPTV stations are essentially translators that are permitted by the FCC to originate programming. They cannot interfere with full-power stations and are limited to 10 watts VHF and 1,000 watts UHF. Both LPTV and translators serve remote areas, and there is little information to suggest that there should be a difference in land rent between the two uses. Therefore, BLM has kept LPTV stations and translators in the same category on the schedule.

One respondent suggested that the term "Rebroadcast Device" be clarified, because microwave relays and repeaters are also rebroadcast devices. Because of the potential confusion, we have changed the name of the category to "Broadcast Translators and Low Power Television" in the final rule.

Cable Television

Cable television uses on public lands include facilities for receiving and transmitting television programming over a wired or wireless network.

Respondents raised concerns about basing the schedule on the total number of basic subscribers. One suggested that there should be a provision for increasing the rent as the population served increases. Another suggested that requiring the holder to report the number of basic subscribers would exclude those that subscribe to other program packages that include basic programming. Another suggested that the standard for determining rent should be based on the actual number of households subscribing to the cable television service at a given time.

The proposed schedule would have imposed annual reporting requirements on cable television authorization holders. The comments indicated potential confusion over the reporting of

the number of basic subscribers. Also, it is administratively more complicated for BLM to set different information requirements for each category of use when preparing a billing. As a result the format of the cable television schedule was amended in the final rule to reflect the population of areas served by the cable television station. Cable television holders serving a metropolitan area should pay rents similar to those paid by other broadcast users in the same market, based on the cost to the public and the impact on the land of similar uses, rather than market shares enjoyed by the holder.

One respondent disagreed with the proposed $2,400 rent for a cable user having 2,500 or more subscribers. The respondent stated that in larger markets the proposed rent was too low. He concluded the rents should be similar to rents paid by broadcasters on sites serving larger metropolitan areas.

A review of market information revealed that most of the data available to BLM came from leases in smaller, rural areas. Since in the final rule the schedule format has been changed to population instead of number of basic subscribers as in the proposed rule, and because we have limited comparable lease data for cable use in larger markets, the cable schedule is limited to those locations serving less than 200,000 population. In larger population markets, rent will be established through appraisals or other methods.

Commercial Mobile Radio Service (CMRS)

CMRS businesses provide mobile radio service to individual customers by operating interconnected network of transmitters linking contiguous coverage areas, and ranging in power from 10 to 1000 watts.

As to CMRS, the BLM proposal included: (1) Rents based on the population of the largest county predominantly served by the transmitter, (2) a separate category for facility managers (building owners), and (3) adjusting rents in most levels to reflect additional analysis.

Right-of-way holders providing commercial mobile radio service were strongly opposed to the schedule. Their comments stated that the schedule was unfair and the rents too high, and that many small businesses would be driven out of the market. They objected to using county population as a basis for setting rent, and were opposed to paying 25 percent of the gross rents received from tenants in the building. Several likened the revenue sharing proposal to a tax. Others were dismayed at the prospect of the Government being a partner in their businesses. Their primary argument was that revenue sharing with the landowner is not a widespread practice. One comment stated that since CMRS and facility manager uses were so similar they should be combined into one category.

In response to the proposed rule, industry groups submitted extensive market data to support lower schedule rents. Their comments provided lease data, appraisals, and references to lease information, and concluded that there was very little difference in the land rent paid by common carrier and industrial microwave users. Further, they asserted that the difference between microwave (all types) and mobile radio-commercial communications was less than 4 percent.

Several respondents objected to the proposed rents in Maricopa County, Arizona as being too high. One comment provided information from a real estate listing for a 10,000 square foot undeveloped site on Shaw Butte, 10 miles north of downtown Phoenix. The site was offered at $350 per month rent or $4,200 per year. On Usery Mountain east of Phoenix undeveloped parcels are available for $1,200 per month. The comment argued that the listed rent on Usery Mountain was too high. The comment suggested that the fair market rent for sites serving the Phoenix metropolitan area should be $9,000 per year or 25 percent of gross rent as it was defined in the proposed rule, whichever is greater.

Another comment suggested BLM take into consideration rents paid by local users on South Mountain, a mountain managed by the City of Phoenix. The comment reported that CMRS providers pay $5,400 per year on South Mountain, in contrast to the $12,000 proposed in the schedule.

The rent paid to the City of Phoenix on South Mountain was set by agreement dated February 7, 1992. It is our understanding that the City of Phoenix Parks and Recreation Board set a rent of $750 per month, or $9,000 per year, for building owners and $450 per month, or $5,400 per year, for commercial tenants.

The BLM final schedule sets the rent for CMRS users serving the Phoenix RMA at $8,000 per year. The rent for CMRS tenants included under the building owner's authorization is based on 25 percent of the scheduled rent, or $2,000 per year.

A number of other respondents also provided market data. One suggested that comparable leases for a CMRS user in Bonneville County, Idaho, were $1,000, not $1,500 as proposed. This information supports the scheduled rent of $1,200 for a site serving Idaho Falls.

A user in South Dakota objected to the minimum rents of $600 per year proposed in rural areas and suggested that a minimum rent of $300 per year would be more equitable. The respondent indicated that on 16 sites in South Dakota rents vary from $50 $300 per year. Market research by BLM showed that rents at these levels would be too low, and the comment is not adopted in the final schedules. However, rents can be adjusted on a case-by-case basis under the final rule, and thus hardships proven to be caused by the schedule rent can be mitigated.

Comments stated that the commercial mobile radio service (CMRS) category should have included microwave communication equipment. The comment stated that CMRS facilities are dependent on microwave communication equipment similar to cellular telephone facilities. We agree and have added microwave communications link equipment to the CMRS definition.

The definition of CMRS contained in the proposed rule included two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, and public switched network (telephone/data) interconnect service. It did not include cellular telephone or personal communication service (PCS). The final rule maintains the distinction between the two wireless forms of communication because market information indicates that cellular telephone companies pay more for sites than CMRS users.

Based on the comments, the following changes were included in the final rule, and in the notice accompanying the final rule containing the rental schedule:

The proposed rental payments have been adjusted to coincide more closely with rental payments for cellular telephone in larger markets. In less populated areas, rents for CMRS use are generally less than rents for cellular telephone, and this relationship has been maintained in the final rule.

The definition of CMRS has been broadened to include facility managers and ancillary microwave link equipment.

The definition was also broadened to include microwave link equipment.

Rents in 6 of the 9 population categories were reduced.

Facility Manager

The proposed rule included a separate category for facility managers. Because many facility managers do not sell,

operate, or maintain communication systems or equipment, BLM considered them separate and distinct from CMRS providers.

The comments received in response to the proposed rule contended that the proposed rental schedule was discriminatory and inequitable. The respondents stated that since the facility manager derives income only from the rental of space in the building, the proposed schedule would unfairly reduce their gross income by charging a percentage of all revenues over and above the base rent. By contrast, rents assessed holders that provide CMRS are not adjusted to reflect their revenues from services such as dispatch, cellular subscriptions, or broadcast advertising.

There were questions concerning the similarity between CMRS and that provided by the facility manager, and possible confusion in applying the schedule. Others expressed concern that we may have inadvertently created a loophole by setting the rent for the facility manager lower than that for CMRS. One comment suggested that the category be eliminated and incorporated into the CMRS. Another expressed support for the category of use, but argued that it was unfair for the Government to take 25 percent of their revenue since their only source of revenue was from the rental of space in the facility.

BLM agrees there are many similarities between the CMRS category and facility manager. To eliminate potential inequities and confusion in applying the schedule, the facility manager category has been removed and included under the CMRS category for purposes of setting the base rent on the empty facility.

Cellular Telephone

Cellular telephone is a means of providing mobile telephone service to subscribers. Current cellular telephone systems are based on analog signal transmission. The next generation of cellular telephones will be based on digital transmission and is sometimes referred to as personal communication service (PCS).

Two comments suggested that the cellular telephone category should include systems providing similar wireless telecommunications services to the public, such as specialized mobile radio. They pointed out that Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 directed that similar wireless telecommunications services should be regulated consistently.

The FCC has made recent regulatory changes to establish a level playing field for competitive mobile communications market. The Budget Act outlined three criteria for determining commercial mobile radio service: the service must be provided for profit, it must be interconnected to the public switched network, and it must be available to a substantial portion of the public. Under FCC regulations, mobile services not included under the CMRS definition are classified as private mobile radio services (PMRS).

The suggestion in the comments was not adopted in the final rule. Other wireless communication users were not included under cellular telephone. In large metropolitan markets cellular telephone companies and commercial mobile radio providers often pay similar rents for privately owned space. In small to medium size markets, mobile radio service providers pay less than cellular telephone companies. Therefore, for purposes of assessing rent, separate schedules are included in the notice accompanying the final rule.

Two comments objected to including PCS, a new digital wireless telephone technology, in the schedule with cellular telephone. One comment suggested that this category be dropped until the technology is more fully developed. The other comment explained that the PCS licensees network will be far more concentrated and require more sites than a cellular network. The comment warned that it would be a serious mistake to require PCS licensees to pay the same rental as a cellular carrier.

PCS is similar to cellular telephone services. The major differences are that it is low power and provides coverage to a smaller area. The service is not yet available. In December 1994, the FCC began auctioning licenses, and it is likely that PCS service will be available in some markets as early as mid-1996.

Therefore, we have removed PCS from the cellular telephone definition. Once we know what the site requirements will be for PCS facilities, we will consider amending the regulation to include them. However, we have broadened the definition of cellular telephone to include other technologies in the event PCS facilities prove to be similar. It is our intent to apply the schedule to similar, emerging technologies when practical. Meanwhile, appraisals or other methods will be used to set rents for PCS and other advanced technologies.

Another respondent suggested establishing a separate rent category for microcell facilities. The comment letter explained that these facilities efficiently serve small, distinct communities. In contrast to conventional cellular facilities that operate at 10 watts and use larger antenna, the microcell antenna is much smaller, usually mounted on a pole, and the equipment operates at 5 watts or less. It also suggested that the rent for these facilities be $2,500 per year. We have not adopted the suggestion because it cannot be incorporated in the final rule without further opportunity for public comment.

In response to the comments, we have made the following changes:

We removed personal communication service use from the definition of cellular telephone.

Rental payments in the top population levels were adjusted to coincide with rents paid by CMRS users.

Adjustments were made in the proposed rent to reflect more recent market information.

Private Mobile Radio

The definition of "Private Mobile Communications" was inadvertently omitted from the proposed rule, but this use was discussed in the preamble and included in the proposed rent schedule. In the final rule, this category of use has been renamed Private Mobile Radio (PMR), a discussion of it has been inserted as section 2803.1–2(e)(1)(vi), and the remaining paragraphs have been redesignated. Holders in this category are subject to a rent if they own and operate the facility for their own use. If they are located in an authorized facility, they are considered customers and no additional amount will be assessed for their use.

One comment pointed out that the proposed rule did not make it clear which use is primary for holders using both microwave and private mobile communications. Many microwave sites are also used for private mobile communications. To eliminate possible confusion, the comment suggested that when microwave and mobile facilities are at the same site, the primary use should be defined as private mobile if the microwave ends at the site and is primarily for the control of the mobile facility.

We agree. If the microwave and mobile radio are ancillary to each other, the holder should not be subject to paying separate rents. To correct the potential problem, we have broadened the definition of PMR to include other equipment for the control of the facility, such as private local radio dispatch, private paging services, and ancillary microwave communications equipment for facility control.

Microwave

One comment observed that there is little difference in the schedule rent for private or common carrier microwave facilities and suggested that the two categories be combined. We agree with the comment and have consolidated the two categories in an effort to simplify implementation.

Other Communication Uses

The rental schedule for "other communication uses" was intended to include small, unobtrusive, low-power uses that monitor or provide communication service to a small number of customers. The definition of "other communication uses" has been clarified to include low-power monitoring or controlling devices. The definition explicitly excludes communication devices and related facilities appurtenant to either a BLM oil and gas lease or pipeline right-of-way authorized under the Mineral Leasing Act.

Holders in this category are subject to a rent if they own and operate the facility for their own use. If they are located in a facility authorized to another holder, they are considered customers and no additional amount will be assessed for their use.

The definition of other communication uses has been rewritten to include FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other low power monitoring or controlling devices, excluding communication devices and related facilities appurtenant to either a BLM oil and gas lease or pipeline right-of-way authorized pursuant to the Mineral Leasing Act of 1920. Passive reflector has been removed from the schedule—the use is not common on the public lands, and appropriate rent will be determined based on appraisals or other methods.

The rental schedule has been changed to correct a misprint for amateur radio and remove the local exchange carrier use from this category. The amateur radio use rental should be $75 instead of $.75.

The local exchange carrier category of use has been removed from other uses in the final rule, because of a misunderstanding regarding the appropriate name for this service. The term "local exchange carrier" is generally understood to mean the local telephone company. It was our intent that we include basic exchange telephone radio service (BETRS), a microwave radio service that provides telephone service to remote areas. We were unable to get sufficient information to establish a schedule rent for this use, and appropriate rent will be determined based on appraisals or other methods.

Impact of Schedule on Existing Rental Payments

Several selected authorizations were reviewed in Idaho, New Mexico, Arizona, and California to assess the potential impact of the final rule on existing rental payments.

Impacts on current rents varied because current rents vary considerably. In some areas communication rental payments have been low historically or have not been updated for many years. In other areas, rental payments that have been updated recently by site-specific appraisals are higher than those in the final rule. Complicating this analysis are assumptions about the number of tenants who will relinquish their authorization and no longer pay full rent, and questions about how to determine the number of tenants in existing buildings. As a consequence, it is difficult to draw any reliable conclusions as to what the impact may be on total revenues.

There are situations where rental payments based on a schedule may be substantially lower than the current rent. When this occurs the authorized officer may use provisions of section 2803.1–2(c)(1)(iv).

Rental Determination

Rental payments for communication sites will be calculated as follows:

1. The authorized officer requests that the holder provide a certified statement by October 15 of each year containing a list of tenants, by category of use, in the facility on September 30 of that year.

2. Using information submitted by the holder, the schedule will be used to determine the highest schedule use.

If the highest schedule rent is a "tenant" rent, the "tenant" rent becomes the base rent and the building owner's schedule rent is used as a tenant rent for calculating the total rent for the facility.

Tenants located in a CMRS facility who provide internal and private communication services are considered customers, not tenants, and therefore no additional amount is assessed for their use. This is only applicable to CMRS providers holding a right-of-way authorization.

3. The base rent will be calculated from the schedule based on the category of use and the population of the community served by the site, or determined by appraisal or other methods, such as negotiating rents for new sites, extrapolating from current rent paid, or using comparable lease information provided by the holder, in appropriate circumstances.

4. To the base rent, add 25 percent of the schedule rent applicable to each tenant located in the facility on September 30 of that year, to get the total rent.

5. Compare the total rent to existing rent and determine whether the holder is eligible for phase-in. If eligible, calculate the first year's rent.

6. Compare total estimated rent against expected or current rent to determine whether the rent should be exempted from the schedule.

7. If the rent as calculated from the schedule is not applicable, it will be set following an appraisal or using other methods as determined by the authorized officer.

The following examples show how schedule rents are calculated:

Example 1: A communications facility serving an RMA population of 200,000, with CMRS provider (building owner), one TV broadcaster, two FM broadcasters, one cellular telephone, and two private mobile radio users.

Base rent = $6,000 (TV broadcast is the highest value use in the facility) + $750 (25% CMRS provider (building owner)), + $2,000 (25% of two FM broadcasters) + $1,000 (25% cellular telephone + $0.00 (no charge for PMRS)) = Total first year rent for the facility: $9,750.

Example 2: A microwave facility located in a remote, sparsely populated community with no tenants in the facility would pay a first year rent of $1,500.

Example 3: A television station located on a site serving a RMA listed community with a population of 60,000 with two tenants; a FM radio station, and a paging company. Current rent is $1,000.

Base rent = $3,000 (television station is highest schedule rent) + $500 (25% of schedule rent for FM station) + $300 (25% of $1,200 since paging is covered under CMRS) = $3,800. $3,800 (schedule rent) − $1,000 (current rent) = $2,800. First year's rent is $1,560 ($1,000 + one fifth of $2,800).

Implementation Plan

The BLM plans the following to implement the final rule:

1. The BLM and FS will adopt a format for communication use authorizations to be used by both agencies. The new authorization will allow the holder to have tenants in the facility, eliminating the requirement for prior written consent of the agency.

2. A notice will be sent to all authorized communication site users. This notice will advise them of regulatory changes affecting assessment of communication site rental payments, and the option to convert to a new authorization. Holders will have 60 days to respond to the authorized officer indicating their intention.

3. Tenants in a facility who have a separate BLM authorization will be given an option to retain their separate authorization, or relinquish their authorization and be included in the facility owner's authorization. Tenants electing to maintain their existing authorization will be billed the full rental in accordance with the schedule.

4. Holders will be notified by December 1 each year what their rent would be for the next calendar year.

Procedural Matters

The principal author of this final rule is David Cavanaugh of the Special Area/Land Tenure Team, assisted by the Regulatory Management Team, BLM. Other persons who have made significant contributions include Ellen Heath and Mark Scheibel of the FS, Ron Appel, Dan Nowell, Larry Shiflet, and Bil Weigand of BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, being a regulation of an administrative, financial, legal, technical, or procedural nature, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866. The BLM expects the rule will result in savings estimated at $3,000,000 per rent cycle. These savings will result primarily from a significant reduction in the number of communication site appraisal reports that will have to be prepared and reviewed. Under current policy rents for communication sites are established based upon appraisals, which are to be updated every five years. Through the establishment of rental schedules applicable to categories of communications users, the final rule will eliminate the need for individual appraisal reports for most communication site rights-of-way. The BLM estimates appraisals of this type to cost approximately $2,000 each. With more than 1,500 communication site rights-of-way, the savings for each cycle of rent is estimated to be more than $3,000,000.

The BLM expects the rule to bring annual rental payment charged holders to fair market value as required by statute. The current rental payments for most current holders have not been reviewed or updated in the last five years, with many not adjusted for 10–15 years. The payments that would be placed in effect by this final rule would bring existing rental charges for communication holders on public lands more into line with those who lease land from private landowners. Revenues are expected to initially increase modestly to $2,000,000 annually and keep pace with inflation. Increases may be greater depending on the number of tenants in the building that would be assessed a rent under the schedule. At this time we are unable to project the impact of charging holders for tenants since we currently have no data on tenants in authorized facilities.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The final rule, with its fee schedule, affects only that segment of the communications industry operating on the public lands. There are 57 FM radio broadcast sites, 26 television broadcasting facilities, and approximately 3,200 other permits in effect on these lands. Available records do not indicate how many of these permits are held by small entities. The phase-in of annual fees proposed in this rule will allow any small entities that may be affected to adjust to the new fees over a period of time and thereby minimize the risk of adverse impact due to the magnitude of some fee increases under the rule.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0102 and 1004–0107, with the exception of the annual collection of information concerning tenants and tenants' category of use from right-of-way holders.

In compliance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Accordingly, none of the information proposed to be collected as described below will be required until comments have been received and analyzed and approval has been obtained from OMB under 44 U.S.C. 3501 *et seq.* and a clearance number assigned.

In this rule, BLM is establishing procedures for setting rent for communication uses located on lands administered by BLM as required by FLPMA. Generally, multiple-user facilities located on public lands involve tenants, and under this rule, the holder will be assessed an additional amount for certain categories of tenants. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site, prevents recovery of fair market value. Thus, BLM's statutory responsibility to obtain fair market value for the use of public lands includes obtaining a rent for tenant uses in the facility.

In response to comments on the proposed rule, BLM changed the original proposal (at § 2803.1–2(d)(6) in the final rule) from charging 25 percent of the gross rent received from tenants

in the facility because it would be too intrusive and difficult to implement. The final rule has been amended to charge the holder of the right-of-way the full schedule rent for the highest valued use in the facility, plus 25 percent of the schedule rent for the other uses. To implement this provision, BLM must obtain from the holder a listing of tenants by category of use on an annual basis. The information collected will allow BLM to calculate the rent for the communications facility. The information is mandatory to obtain a benefit, use of public lands for communications facilities.

The public reporting burden for this collection of information is estimated to average one hour per response. The respondents are holders of right-of-way grants or temporary use permits. The estimated number of respondents is 1,500. The estimated number of responses per respondent is one per year. The estimated total annual burden on respondents is 1,500 hours.

Elsewhere in this issue of the **Federal Register**, BLM is publishing a separate notice soliciting comments on this proposed information collection.

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2810

Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 2880

Public lands—rights-of-way, Reporting and recordkeeping requirements.

Dated: October 2, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

Under the authority of Sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1740, and 1760–1771), and for the reasons stated in the preamble, 43 CFR Parts 2800, 2810, and 2880 are amended as follows:

PART 2800—[AMENDED]

1. The Note at the beginning of Group 2800 is removed.

2. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, and 1760–1771.

Subpart 2800—Rights-of-Way; General

3. Section 2800.0–5 is amended by revising paragraph (j) and adding paragraphs (aa) through (cc) to read as follows:

§ 2800.0–5 Definitions.

* * * * *

(j) *Facility* means an improvement constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant. For purposes of communication site rights-of-way, facility means the building, tower, and/or other related incidental improvements authorized under terms of the right-of-way grant.

* * * * *

(aa) *Base rent* means the amount required to be paid by the holder of a right-of-way on public lands for the communication use with the highest assigned schedule rent in the facility, in accordance with terms of the right-of-way grant.

(bb) Tenant means an occupant who rents space in a facility and operates communication equipment in the facility to resell the communication service to others for a profit. For purposes of calculating rent, the term "tenant" does not include private mobile radio or those uses included in the category of Other Communication Uses.

(cc) Customer means a person who is paying the facility owner or tenant for communication services, and is not reselling communication services to others. Persons or entities benefiting from private or internal communication uses located in a CMRS facility are considered customers for purposes of calculating rent.

4. Section 2800.0–9 is added to read as follows:

§ 2800.0–9 Information collection.

(a) The information collection requirements contained in part 2800 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 41.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0102 or 1004–0107, Washington, DC 20503.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

5. Section 2801.1–1 is amended by revising the first sentence of paragraph (b) and adding a sentence to the end of paragraph (f) to read as follows:

§ 2801.1–1 Nature of right-of-way interest.

* * * * *

(b) A right-of-way grant or temporary use permit may be used only for the purposes authorized. * * *

* * * * *

(f) * * * However, the holder of a right-of-way grant for communication purposes may authorize other parties to use a facility, without prior written consent of the authorized officer, if so provided by terms and conditions of the grant.

* * * * *

Subpart 2803—[Amended]

6. Section 2803.1–2 is amended by revising paragraph (b)(1)(i), paragraph (c)(1)(iv), the introductory text of paragraph (v), and paragraph (c)(2), by redesignating paragraphs (c)(3)(i), (c)(3)(ii), (c)(4), (c)(5), and (d) as paragraphs (e)(1), (e)(2), (f), (g), and (h) respectively, and by adding paragraph (d) and revising newly designated paragraph (e), to read as follows:

§ 2803.1–2 Rental.

* * * * *

(b)(1) * * *

(i) The holder is a Federal, State, or local government, or agency or instrumentality thereof, except parties who are using the space for commercial purposes, and municipal utilities and cooperatives whose principal source of revenue is customer charges:

* * * * *

(c)(1) * * *

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit is the rental per acre from the current schedule multiplied by the number of acres embraced in the grant or permit, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

(v) The authorized officer will use the linear rental schedule unless the authorized officer determines:

* * * * *

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder.

(ii) Where the new annual rental for linear rights-of-way exceeds $100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3 year period.

* * * * *

(d) The annual rental payment for communication uses listed in paragraph (d)(1) of this section is based on rental payment schedules. The rental schedules apply to right-of-way holders and tenants authorized to operate and maintain communication facilities on public lands. They do not apply to holders who are public telecommunications service operators providing public television or radio broadcast services granted a waiver under § 2803.1–2(b)(2)(i). Nor do they apply to communication site uses, facilities, or devices located exclusively within the exterior boundaries of an oil and gas lease and directly associated with the operations of the oil and gas lease (subpart 2880).

(1) The schedules are applicable to communication uses that provide the following services:

(i) Television broadcast includes right-of-way holders that operate FCC-licensed facilities used to broadcast UHF and VHF audio and video signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category does not include holders licensed by the FCC to operate Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

(ii) AM and FM radio broadcast includes rights-of-way that contain FCC-licensed facilities primarily used to broadcast amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category is not applicable to holders licensed by the FCC as a low-power FM radio. This category also does not include rebroadcast devices such as translators, boosters, or microwave relays serving broadcast translators.

(iii) The broadcast translator and low power television category includes FCC-licensed translators and low power television, low power FM radio, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Microwave facilities used in conjunction with LPTV and broadcast translators are included in this category.

(iv) Cable television includes FCC-licensed facilities that transmit video programming to multiple subscribers in a community over a wired or wireless network, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, personal or internal antenna systems such as private systems serving hotels or residences.

(v) Commercial mobile radio service/facility manager includes FCC-licensed commercial mobile radio facilities or their holders providing mobile communication service to individual customers, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Such services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment. Some holders in this category may not hold FCC licenses or operate communication equipment, but may lease building, tower, and related facility space to a variety of tenants as a part of their business enterprise, and may act as facility managers.

(vi) Private Mobile Radio includes FCC-licensed private mobile radio systems primarily used by a single entity for mobile internal communications, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

(vii) Cellular telephone includes FCC-licensed systems and related technologies used for mobile communications using a combination of radio and telephone switching technology, and providing public switched network services to fixed and mobile users within a defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and communication equipment directly related to the maintenance and monitoring of the use.

(viii) Microwave includes FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communication equipment directly related to the operation, maintenance, or monitoring of the use.

(ix) Other communication uses include holders of FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

(2)(i) The rental schedules will be adjusted annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U, U.S. City Average, published in July of each year), and Ranally Metro Area population rankings. Annual adjustments based on the CPI–U will be limited to no more than 5 percent. The rental schedule will be reviewed for possible update no later than 10 years after December 13, 1995, and at least every 10 years thereafter, to ensure that the schedule reflects fair market value.

(ii) Rights-of-way may be reviewed on a case-by-case basis 10 years after issuance or beginning [10 years and 30 days after the date of publication], whichever is later, and no more often than every 5 years thereafter, on holder request, to determine whether rents are appropriate.

(3) Rent is based on the actual users in the facility. For a facility with a single user, the base rent is the schedule rent for the use. Base rent for authorizations that include more than one user will be based on the use in the facility with the highest rent as shown on the schedule. An additional amount will be assessed based on 25 percent of the schedule rent for all other users. (A facility manager is not considered a separate use for purposes of calculating

the additional amount for tenants in the facility.)

(4) Increases in base rental payments over 1996 levels in excess of $1,000 will be phased in over a 5-year period. In 1997, the rental payment will be the 1996 rental, plus $1,000. The amount exceeding $1,000 will be divided into 4 equal installments, and beginning in 1998 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent.

(5) Annual rental payments will be calculated and provided to the holder by December 31 for each ensuing calendar year based on the schedules published from time to time as necessary in the **Federal Register**.

(6) Also, the right-of-way holder must submit a certified statement by October 15 of each year listing tenants in the facility and the category of use for each tenant as of September 30 of that year, and pay 25 percent of the schedule rent for the category of use. Tenants occupying space in the facility under terms of the holder's right-of-way authorization will not be required to have a separate BLM authorization.

(7) Other methods may be used to set rental payments for communication uses when the authorized officer determines one of the following:

(i) The holder is eligible for a waiver or reduction in rent in accordance with § 2803.1–2(b)(2);

(ii) Payment of the rent will cause undue hardship under § 2803.1–2(b)(2)(iv);

(iii) The original right-of-way authorization has been or will be issued pursuant to a competitive bidding process;

(iv) The State Director concurs in a determination made by the authorized officer that the expected rent exceeds the schedule rent by 5 times, or the communication site serves a population of 1 million or more and the expected rent for the communication use is more than $10,000 above the schedule rent; or

(v) The communication facilities are ancillary to and authorized under a right-of-way grant for a linear facility. In such cases, rent for the associated communication facilities is to be determined in accordance with the linear fee schedule.

(e)(1) The rental for right-of-way grants and temporary use permits not covered by the right-of-way schedule in § 2803.1–2(d)(5) will be determined by the authorized officer and paid annually in advance. Rental for communication site rights-of-way not covered by the schedule, except those issued pursuant to Section 28 of the Mineral Leasing Act (30 U.S.C. 185), will be based on comparative market surveys, appraisals, or other reasonable methods. All such rental determinations shall be documented, supported, and approved by the authorized officer. Where the authorized officer determines that a competitive interest exists for site-type right-of-way grants such as for wind farms, communication sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3.

(2) To expedite the processing of any grant or permit covered by paragraph (e)(1) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit will be adjusted according to the final fair market rental value determination.

* * * * *

PART 2810—TRAMLOADS AND LOGGING ROADS

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

7. Section 2812.0–9 is added to read as follows:

§ 2812.0–9 Information collection.

The information collection requirements contained in part 2810 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

PART 2880—[AMENDED]

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities: General

8. Section 2880.0–9 is added to read as follows:

§ 2880.0–9 Information collection.

The information collection requirements contained in part 2880 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

[FR Doc. 95–27619 Filed 11–9–95; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–00–24–1A]

RIN 1004–AC12

Notice of Proposed Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, BLM is announcing its intention to request approval for the collection of information annually from communications right-of-way holders concerning their tenants and the category of use for each tenant.

DATES: Comments on the proposed information collection must be received by January 12, 1996 to be assured of consideration.

ADDRESSES: All comments regarding this proposed information collection should be sent to Director (420), Bureau of Land Management, Room 401, 1620 L Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, (202) 452–5030.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), the Bureau of Land Management (BLM) is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Accordingly, none of the information proposed to be collected as described below will be required until comments have been received and analyzed and approval has been obtained from OMB under 44 U.S.C. 3501 *et seq.* and a clearance number assigned.

In the final rule published elsewhere in this issue of the **Federal Register**, BLM is establishing procedures for setting rent for communication uses located on lands administered by BLM as required by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)). Generally, multiple-user facilities located on public lands involve tenants, and under this rule the holder will be assessed an additional amount for certain categories of tenants. Ignoring tenant use of the facility when setting rent, while allowing the holder nearly exclusive use of the site, prevents recovery of fair market value. Thus, BLM's statutory responsibility to obtain fair market value for the use of public lands includes obtaining a rent for tenant uses in the facility.

In response to comments on the proposed rule, BLM changed the original proposal (at § 2803.1–2(d)(6) in the final rule) from charging 25 percent of the gross rent received from tenants in the facility because it would be too intrusive and difficult to implement. The final rule has been amended to charge the holder of the right-of-way the full schedule rent for the highest valued use in the facility, plus 25 percent of the schedule rent for the other uses. To implement this provision, BLM must obtain from the holder a listing of tenants by category of use on an annual basis. The information collected will allow BLM to calculate the rent for the communications facility. The information is mandatory to obtain a benefit, use of public lands for communications facilities.

The public reporting burden for this collection of information is estimated to average one hour per response. The respondents are holders of right-of-way grants or temporary use permits. The estimated number of respondents is 1,500. The estimated number of responses per respondent is one per year. The estimated total annual burden on respondents is 1,500 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: November 6, 1995.

Annetta Cheek,

Regulatory Management.

[FR Doc. 95–27785 Filed 11–9–95; 8:45 am]
BILLING CODE 4310–84–P

[WO–350–1430–00–24–1A]

Rights-of-Way, Rental Schedule for Communication Uses for 1996

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of establishment of rental fee schedule for communication site rights-of-way on public lands for 1996.

SUMMARY: The Director, Bureau of Land Management (BLM), hereby publishes the schedule for the rental fees for communication site rights-of-way on public lands administered by BLM.

EFFECTIVE DATE: January 1, 1996, through December 31, 1996.

ADDRESSES: Any inquiries should be sent to Director (420), Bureau of Land Management, Main Interior Building, Room 5650, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Cavanaugh (202) 452–7793.

SUPPLEMENTARY INFORMATION: Rental fees for the use of public lands for right-of-way purposes are established and collected under the authority of Section 504(g) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)), and in accordance with the procedures provided in the regulations at 43 CFR subpart 2803. Elsewhere in this issue of the **Federal Register** ([*insert FR citation of schedule notice*]), BLM is publishing a final rule that establishes procedures for determining rent for nine categories of communication uses for which fair market value is required for the use of the public lands. This final rule authorizes a rental schedule for non-linear communication site rights-of-way. Annual rental payments will be calculated and provided to the holder by December 31 for each ensuing calendar year based on the following schedule:

RENTAL SCHEDULE

Population	Television	AM/FM radio*	Cable television	Broadcast translator/ LPTV/ LPFM	CMRS/facility manager	Cellular telephone	Private mobile radio service	Microwave	Other	Sample RMA's
5,000,000 plus.	$45,000	$34,000	Insufficient market data.	Insufficient market data.	$12,000	$12,000	$10,000	$10,000	$75	Los Angeles, CA.
2,500,000 to 4,999,999.	30,000	21,000	.....	.....	10,000	10,000	8,000	8,000	75	Seattle, WA.
1,000,000 to 2,499,999.	18,000	14,000	Rent to be determined.	Rent to be determined.	8,000	8,000	8,000	7,000	75	Phoenix, AZ, San Diego, CA Portland, OR, Riverside, CA.
500,000 to 999,999.	14,000	10,000	.....	.....	5,000	6,000	4,000	5,500	75	Las Vegas, NV, Salt Lake City, UT, Tucson, AZ, Albuquerque, NM.
300,000 to 499,999.	12,000	8,000	.....	.....	4,000	5,000	2,500	2,500	75	Bakersfield, CA, Spokane, WA.
100,000 to 299,999.	6,000	4,000	$2,400 ...	$2,400 ...	3,000	4,000	2,000	2,000	75	Boise, ID, Reno, NV, Anchorage, AK, Palm Springs, CA, Yakima, WA, Yuma, AZ, Billings, MT.
50,000 to 99,999.	3,000	2,000	1,200	1,200	1,200	3,000	1,000	1,500	75	Las Cruces, NM, Grand Junction, CO, Idaho Falls, ID, Missoula, MT, Santa Fe, NM, Pocatello, ID, Farmington, NM, Roswell, NM.
25,000 to 49,999.	1,500	1,200,	1,000	500	1,000	2,500	600	1,500	75	Butte, MT.
Less than 25,000.	1,200	900	600	100	600	2,500	350	1,500	75	

*Rent for AM radio is 70% of the FM scheduled rent.

The rental schedule will be updated from time to time as necessary under these regulations.

Dated: October 2, 1995.
Sylvia V. Baca,
Acting Assistant Secretary of the Interior.
[FR Doc. 95-27620 Filed 11-9-95; 8:45 am]
BILLING CODE 4310-84-M

federal register

Monday
November 13, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 103 et al.
Beverages: Bottled Water; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 103, 129, 165, and 184

[Docket No. 88P–0030]

RIN 0910–AA11

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing a standard of identity for bottled water. At the same time, the agency is recodifying the standard of quality for bottled water. FDA is revising the definition for bottled water in the quality standard to include mineral water and ingredient uses of this product. In addition, FDA is defining "artesian water," "ground water," "mineral water," "purified water," "sparkling bottled water," "spring water," "sterile water," and "well water." FDA is exempting mineral water from certain physical and chemical allowable levels. FDA is taking these actions, in part, in response to a petition submitted by the International Bottled Water Association (IBWA). FDA finds that the regulations will promote honesty and fair dealing in the interest of consumers as well as the interests of the regulated industry.

EFFECTIVE DATE: May 13, 1996. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications at 21 CFR 129.35(a)(3)(ii), 129.80(g), and 184.1563(c), effective May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 5, 1993 (58 FR 393), FDA published a proposal to establish a standard of identity in § 165.110(a) for bottled water (hereinafter referred to as the January 1993 proposal). At the same time, the agency proposed to recodify in § 165.110 (b), (c), and (d), the standard of quality for bottled water currently found in § 103.35. FDA proposed to revise the definition for bottled water in the quality standard to include mineral water and ingredient uses of this product. In addition, FDA proposed to define "artesian water," "distilled water," "mineral water," "purified water," "spring water," and "well water." FDA proposed to exempt mineral water from certain physical and chemical allowable levels if the mineral water contained total dissolved solids (TDS) in excess of 500 parts per million (ppm). Interested persons were given until March 8, 1993, to submit comments.

In the **Federal Register** of March 9, 1993 (58 FR 13041), FDA extended the comment period to April 7, 1993. In addition, the agency reopened the comment period for comments concerning two spring water surveys that FDA received in response to the proposal (58 FR 34010, June 23, 1993). Interested persons were given until July 23, 1993, to submit comments concerning the two spring water surveys.

FDA received approximately 430 responses, each of which contained one or more comments, from trade and retail associations, government organizations, manufacturers, consumers, health care professionals, retailers, consumer groups, State groups, private organizations, the U.S. Congress, professional societies, and universities. The comments generally supported the proposal. Several comments addressed issues outside the scope of the proposal (e.g., microbiological quality standards, definitions for multicomponent bottled water beverages) that will not be discussed here. A number of comments suggested modifications and revisions in various provisions of the proposal. A summary of the suggested changes and the agency's responses follow.

Elsewhere in this issue of the **Federal Register**, FDA is proposing to update the methods referenced in § 165.110(b)(3) and to exempt mineral water from the allowable level for aluminum in the quality standard. FDA is responding to the comments on the January 1993 proposal that addressed those issues in that proposal.

II. The Standard of Identity

A. Coverage

The agency proposed in the January 1993 proposal, to move the definition for bottled water from the quality standard to the standard of identity and to revise the definition to include mineral water and ingredient uses of bottled water. Specifically, FDA proposed that bottled water be defined as water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients, except that it may contain safe and suitable antimicrobial agents. The agency also proposed that bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled water) but stated that the term did not cover those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," and "tonic water." Finally, FDA proposed that the processing and bottling of bottled water must comply with applicable regulations in part 129 (21 CFR part 129).

1. One comment asked why bottled water is singled out for a source identification requirement (e.g., water from a municipal source), and why soft drinks, beers, reconstituted juices, salad dressings, and other products that contain water as an ingredient are not also subject to this requirement.

The agency considered the scope of the bottled water standard, particularly its application to water used as an ingredient in multicomponent foods such as flavored waters and diluted juices, in the proposal to this final rule (58 FR 393 at 395). FDA stated that highlighting the water component of these products is effectively a claim that the water ingredient in the beverage has particular value, and that consumers are likely to purchase these products in large measure because of the claim concerning the water ingredient. For example, in a significant number of situations, the labeling of products stated or implied that the water originated from a source such as a spring or a well. In contrast, in products such as soft drinks or reconstituted juices in which water is simply used as an ingredient, no claim is made about the water. The intent of the proposal was not to require source labeling of all water ingredients from a municipal source, but to require it in the former type of situation, where the finished product is bottled water or the labeling makes an explicit or implied claim concerning the water ingredient.

Under section 403(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(a)), a product is misbranded if its labeling is false or misleading in any particular. To determine whether the absence of information on food labels constitutes misbranding the agency must take into account the extent to which the labeling fails to reveal facts material in light of representations made or suggested with respect to consequences that may result from the use of the article under customary or usual conditions of use (section 201(n) of the act (21 U.S.C. 321(n))). The agency does not deem

source labeling of ingredient water from a municipal source as a material fact unless labeling representations are made or suggested that the water possesses particular properties.

Thus, the agency finds no reason to include water that is not a highlighted ingredient in the bottled water standards, and the comment has not provided a basis to do so. Therefore, § 165.110 applies only to bottled water and ingredient uses of water where the water ingredient is highlighted in the labeling.

2. Two comments expressed concern about sparkling water being regulated under the bottled water standards. They stated that sparkling water has long been understood by consumers and recognized by FDA as a common or usual name for unsweetened and unflavored water containing compressed carbon dioxide. The comments contended that consumers clearly understand "sparkling water" to be in the same category as "carbonated water," "seltzer water," "soda water," and "tonic water," substances that historically have been regulated by FDA as "soft drinks." They stated that as such, "sparkling water" is more appropriately classified as a "soft drink" that is not subject to the proposed bottled water standard.

Some comments stated that it was unclear whether "sparkling water" was included under the exemption for "carbonated water" and asked for clarification. One comment stated that if the standard does not encompass the term, FDA should include "sparkling water" in the definition of bottled water.

FDA stated in the preamble to the proposed rule that when a beverage is labeled as containing "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," and "tonic water," there is no claim that the water ingredient has particular value, and that, thus, these ingredients were not included in the definition of bottled water (58 FR 393 at 395). This proposed exclusion did not extend to the term "sparkling water" or to any other term not specifically excluded by the standard. In the proposal, the agency used the example of the term "sparkling" as indicating that the water ingredient possessed a specific characteristic or had received a specific treatment (*id.*). FDA tentatively concluded at that time that use of such highlighted terms concerning the water component was effectively a claim that the water ingredient in the beverage had particular value, and that consumers were likely to purchase these beverages in large measure because of the claim.

The agency notes, however, that sparkling water was included in the former soda water standard. In the **Federal Register** of February 16, 1967 (32 FR 2940), the agency amended the soda water standard to add the term "sparkling water" to the standard as an example of a type of soda water generally designated by a particular common name. FDA proposed this change to permit the designation of nonsweetened and nonflavored soda water by names other than those prescribed in the standard (31 FR 11109, August 20, 1966). However, FDA repealed the standard of identity for soda water in the **Federal Register** of January 6, 1989 (54 FR 398) because some provisions of the standard were being adequately dealt with by other regulations, while other provisions were no longer necessary.

Given the traditional use of this term, as evidenced by the repealed standard, the agency agrees that the term "sparkling water" describes a nonsweetened and nonflavored carbonated water, and that it thus, is a term that is synonymous with the term "carbonated water." The fact is that the agency had separate standards at one time for bottled water and for soda water, and that it included sparkling water in the soda water, and not the bottled water standard. Therefore, the comments have persuaded the agency that some types of sparkling water are in the same category as "carbonated water," "seltzer water," "soda water," and "tonic water," and should be regulated as a soft drink instead of as a bottled water. Accordingly, the bottled water standard in § 165.110 does not include those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "sparkling water" (except as explained in this response) and "tonic water."

However, the term "sparkling water" may also refer to water that is naturally carbonated (i.e., contains carbon dioxide as it emerges from the source) and that is labeled as "sparkling water." The bottled water standard has traditionally included this type of water because the water has not been carbonated in the same sense that a soda water is carbonated (i.e., with added carbon dioxide). Thus, water that contains carbon dioxide as extracted from the source is not a soda water and must continue to be regulated as a bottled water. Therefore, to differentiate between the two types of sparkling waters, the agency is defining "sparkling bottled water" in § 165.110(a)(2)(v) as bottled water that, after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at emergence from the source. This definition is in accordance with the definition in the European Regional Codex Standard (ERCS) for "naturally carbonated natural mineral water" (Ref. 1).

The agency concludes that defining the term "sparkling bottled water" is within the scope of this rulemaking because FDA proposed that sparkling water be included under the bottled water standard. As a consequence of proposing that course of action, FDA has been persuaded that some types of sparkling water should be excluded from the standard and that it should differentiate among the types of sparkling water in its bottled water regulations.

3. Two comments objected to the exclusion of carbonated bottled waters from the bottled water standards. They stated that any product that professes to be, or that has as an important ingredient that is one of the defined bottled water types (e.g., spring water, mineral water), whether noncarbonated or carbonated, should be considered to be bottled water. The comments contended that only those carbonated products with respect to which no reference is made to defined bottled water types should be excluded.

The agency agrees with the comment. Products or ingredients described by a term that is defined by the standard of identity (e.g., "spring water") or with a term that makes a claim about the water (e.g., "natural water") are standardized waters and must comply with § 165.110 whether carbonation has been added or not. Although terms to describe the water ingredient in a product may sometimes be used in combination with a term that is not included under the standards (e.g., "carbonated spring water" or "filtered natural water"), the product or the water ingredient in the product must comply with the bottled water standards because a claim is being made concerning the value of the water. However, use of only a term specifically excluded from the bottled water standards (e.g., "filtered water" or "carbonated water") means that no claim is being made concerning the value of the water, and, thus, the water is not a standardized food.

4. Several comments stated that it is inconsistent for FDA to exempt carbonated waters from the bottled water standards. They held that carbonated water may be consumed at levels which constitute a major portion of an individual's daily water intake. One comment added that exempting

carbonated water from the bottled water category does not provide for consumer safety or confidence.

The agency does not agree with the comments, although it acknowledges that carbonated waters may constitute a major portion of some consumers' daily water intake. However, FDA points out that standards of identity and quality are not established because a product is consumed in large volumes or for consumer safety or confidence but are established to promote honesty and fair dealing in the interest of consumers.

"Carbonated water" or "soda water" has traditionally not been covered by the provisions of the bottled water quality standard because it has been considered to be a soft drink. Bottled water and soda water, although similar, are two different foods as evidenced by the fact that the agency had quality standards for bottled water at the same time that it had a standard of identity for soda water that included "carbonated water."

FDA tentatively concluded in the proposal that it would not include "carbonated water" in the standards for bottled water because it has historically not been considered to be bottled water. In addition, the agency tentatively concluded that the standards for bottled water covered water ingredients that were highlighted because of a claim concerning the water ingredient itself.

Labels of foods that claim to contain as an ingredient, or to be, "carbonated water" do not claim or imply any particular properties or characteristics for the water ingredient. Any claims on such foods for the ingredient are simply that carbon dioxide has been added. Thus, "carbonated water" does not fit within the type of food that the bottled water standard is intended to address because no claim is being made about the water itself. The agency finds no reason to include "carbonated water" in the bottled water standard, and the comment has not provided any basis to do so. Therefore, the agency concludes that it has not been inconsistent in the regulation of "carbonated water" and "bottled water."

5. Two comments stated that the terms "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," and "tonic water" should be defined to avoid confusion by industry and consumers as to what types of water are covered by the bottled water standards and what types of water are not. One of the comments stated that these terms may have different meanings to the bottled water and beverage industries and consumers.

The agency does not agree with the comments. There is general understanding of the meanings of these terms, even though they are not defined in FDA's regulations. "Carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," and "tonic water" are common or usual names that are in general use by both manufacturers and consumers. In the proposal to this final rule (58 FR 393 at 395), the agency noted that the terms "carbonated water," "seltzer water," "soda water," and "tonic water" have historically been considered to be soft drinks, and that "disinfected water" and "filtered water" described water that has been subjected to a commonly used treatment.

The reason for not addressing these terms under the bottled water standard is that they make no claims about the water used in the ingredients that they denominate. The exclusion is not based on the specific source, composition, or processing of these types of waters. The comments did not provide any information to persuade the agency to conclude otherwise. Therefore, FDA is not defining these common terms at this time. However, persons interested in establishing definitions for "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," and "tonic water" may petition the agency to do so, providing recommended definitions and justification for the recommendations.

6. Several comments objected to any definition of bottled water that does not allow for the addition of ingredients such as minerals for flavor, flavors that comprise less than 1 percent by weight of the product, and carbon dioxide. They stated that changing the definition of bottled water to exclude established products would: (1) Be costly to the bottled water industry; (2) exempt excluded bottled water products from meeting FDA's proposed health, safety, and quality standards; and (3) confuse rather than unify regulatory authority. One comment declared that it is imperative that the final regulation include all established products of the bottled water industry.

One comment stated that some model codes and State regulations provide for the addition of ingredients to bottled water provided that these additives comprise less than 1 percent by weight of the final product. The comment noted that many consumers may supply a major portion of their daily water intake needs with these 1 percent bottled water products.

Another comment noted that § 129.80(a) states that carbonation, mineral addition, or any other process shall be done in a manner so as to be effective in accomplishing its intended purpose and in accordance with section 409 of the act. It stated that there is no reason to disallow any of these processes or their resultant products as bottled water.

FDA does not agree that it is changing the definition of bottled water. The agency acknowledges that some State regulations define bottled waters with added flavors, minerals, and carbon dioxide as described in the comments (Ref. 2). However, the Federal definition of "bottled water" has traditionally been "water that is sealed in bottles or other containers and that is intended for human consumption" (§§ 103.35(a)(1) and 129.3(b) (1994)). This definition is the basis of the definition that FDA is adopting in this final rule (§ 165.110(a)(1)). Although § 129.80(a) mentions treatment of product water with carbonation and mineral addition, among other processes, any bottled water product with added ingredients would be just that—bottled water with added ingredients. (However, see the discussion of fluoride in bottled water in comment 8 of this document.)

Firms may manufacture nonstandardized bottled water products with ingredients such as minerals for flavor, flavors that comprise less than 1 percent by weight of the product, and carbon dioxide added to bottled water. The common or usual name of the resultant product must reflect these additions. However, only the bottled water ingredient is subject to the standard in § 165.110. The other ingredients in the product are subject to regulation under the food additive or other food ingredient provisions of the act. Thus, it is not necessary to include added ingredients, such as minerals for flavor, flavors that comprise less than 1 percent by weight of the product, or carbon dioxide, in the standard for bottled water.

Therefore, for the reasons listed above the agency is not persuaded by the comments to include the addition of minerals, flavors, and carbon dioxide in the standard of identity for bottled water in § 165.110(a)(1).

7. One comment stated that all bottled waters imported into the United States should meet all of FDA's requirements for bottled waters including mineral water. It added that U.S. standards should not be lessened to meet European standards unless there are compelling public health reasons for doing so.

FDA agrees that both foreign and domestic bottled waters sold in interstate commerce in the United States must comply with the act and the regulations issued thereunder, including the specific regulations for bottled water found in part 129 and § 165.110. Although the agency attempts, where possible, to harmonize its regulations with the regulations of other countries, there must be appropriate grounds for FDA to amend any of its bottled water regulations, whether or not such action would harmonize international standards.

B. Fluoridated Water

The agency did not propose a definition for "fluoridated water," although it did request comments on the need to define types of bottled water other than those for which it proposed definitions. Some comments addressed issues on fluoridated water that fall within the scope of this rulemaking. Therefore, the agency is addressing these issues in this final rule.

8. Several comments stated that the addition of fluoride to bottled water should be allowed. One comment noted that many people specifically request and use fluoridated water because of its benefits to dental health. The comment stated that these products have long been established and should not be discontinued. One comment noted an inconsistency between the definition of bottled water and the provisions of proposed § 165.110(b)(4)(ii) that discuss the addition of fluoride.

FDA agrees that there is an inconsistency between the proposed standard of identity and the standard of quality for bottled water with respect to the addition of fluoride. The agency proposed in § 165.110(a)(1) that bottled water contain no added ingredients other than safe and suitable antimicrobial agents. This provision would preclude the addition of fluoride (58 FR 393 at 407). The quality standard, however, provides maximum levels for bottled water to which fluoride is added (§ 165.110(b)(4)(ii)).

The agency recognizes that water with fluoride added may provide a benefit to consumers. The Surgeon General's Report on Nutrition and Health (the Surgeon General's report) recommends that community water systems contain fluoride at optimal levels for prevention of tooth decay, and that, if such water is not available, other appropriate sources of fluoride should be used (Ref. 3). Bottled water may be used by some consumers as an alternative to community drinking water. Therefore, because of the unique circumstances presented by fluoride, the agency is providing for the optional addition of fluoride to bottled water in § 165.110(a)(1) within the limitations established in the quality standard (§ 165.110(b)(4)(ii)).

Because the agency is providing for the optional addition of fluoride to bottled water, the standardized product may be a multiingredient food, and, as such, its label must bear ingredient labeling. According to § 101.4(a)(1) (21 CFR 101.4(a)(1)), all food ingredients are required to be declared on the label. Therefore, bottled water containing added fluoride must list the names of the water ingredient and the fluoride.

Therefore, because FDA is providing for the optional addition of fluoride to bottled water, and thus, bottled water may be a multicomponent food, the agency is adding § 165.110(a)(4) to require that each of the ingredients used in the food be declared on the label as required by the applicable sections of 21 CFR parts 101 and 130.

9. Several comments requested that FDA define "fluoridated water." Some of these comments recommended that "fluoridated water" be defined as bottled water containing naturally occurring or added fluoride, and that the label specify whether fluoride is naturally occurring or added. One comment stated that the regulation only discusses maximum limits on fluoride addition without setting a minimum, thus opening a loophole that would allow manufacturers to add insignificant amounts of fluoride to their products and call them "fluoridated water." One comment stated that any water that is called "fluoridated water" should contain not less than 0.8 milligram per liter (mg/L) fluoride ion. Another comment stated that any water that is defined as "fluoridated water" should contain not less than 1.0 mg/L fluoride. One comment requested that "fluoridated water" be defined only as water containing added fluoride.

FDA has provided for the use of the terms "fluoridated," "fluoride added," and "with added fluoride" on the label or in labeling of bottled water that contains added fluoride in § 101.13(q)(8). The agency adopted this regulation in the **Federal Register** of January 6, 1993 (58 FR 2302 at 2314) and stated that the presence of fluoride in bottled water is of interest to consumers, and its declaration should not be prohibited. However, the agency also stated that it did not wish to encourage unnecessary addition of fluoride to bottled water, and that it was concerned that if it permitted the use of terms like "good source of fluoride" or "high in fluoride," they might encourage such additions. Therefore, the agency has not defined a nutrient content claim for fluoride. Instead, it has provided that a statement indicating the presence of added fluoride could be used, but that the claim cannot include a description of the level of fluoride present.

As stated in another final rule in the **Federal Register** of January 6, 1993 (58 FR 2079 at 2149), the agency has considered the identity statement "fluoridated water" to be misleading if the product is derived from a source naturally containing fluoride. Because the term "fluoridated" represents that fluoride has been added to the water, FDA concluded that the term "fluoridated water" should be used to describe only products to which fluoride has been added in the manufacturing process, and that such products would be required to bear nutrition labeling that complies with the simplified format (*id.*). FDA also points out that fluoride may not be present in amounts that exceed the limits in § 165.110(b)(4)(ii).

Although labeling could be used to describe whether fluoride was added or naturally present in bottled water, the term "fluoridated" continues to mean that fluoride has been added. FDA is not establishing a minimum level for fluoride addition because the terms "fluoridated," "fluoride added," or "with added fluoride" have been defined in § 101.13(q)(8) and amending that provision falls outside the scope of this final rule. However, if the addition of fluoride to water is so minimal that it would be considered dietarily insignificant, a product that bears a claim about such addition would be misbranded under section 403(a) of the act in that its labeling would be misleading because the use of the term "fluoridated" or any of its synonyms implies that fluoride has been added in a meaningful amount. Thus, FDA concludes that it has not created a loophole that would allow manufacturers to add insignificant amounts of fluoride to their products and call them "fluoridated water."

The Surgeon General's Report states that the optimal fluoride concentration of approximately 1 ppm fluoride has been shown to reduce the prevalence of dental caries by more than 50 percent (Ref. 3). In addition, the Surgeon General's Report states that current recommendations for optimum fluoride concentrations vary from 0.7 to 1.2 ppm (*id.*). Therefore, the comments' suggested values of 0.8 mg/L and 1.0 mg/L fluoride are meaningful amounts of this mineral in bottled water.

10. One comment stated that infant bottled waters may contain fluoride, and that the presence of this mineral may be a problem if parents are not aware that too much fluoride is undesirable, or that an infant should not receive both a physician's prescription of fluoride

drops and drink water containing fluoride. For this reason, the comment stated that the label of a bottled water containing 0.3 ppm or more fluoride should include a statement advising parents not to use the product before consulting with their baby's physician if the baby is receiving a fluoride supplement. The comment added that bottled water for general use is also used for infants, so such a label statement should be required on any bottled water containing 0.3 ppm or more fluoride. It stated that this level of fluoride is taken from the current recommendation of pediatricians and pediatric dentists relating to administration of fluoride supplements. It suggested that the statement could read as follows: "Note: If you are giving your baby a fluoride supplement, do not use water with fluoride without consulting your doctor."

The agency agrees that an advisory statement such as that suggested by the comment may be appropriate to prevent unwanted aesthetic effects from excessive doses of fluoride, and it encourages manufacturers to provide such information to consumers, especially on products labeled for infant use. However, FDA does not agree that this statement should be mandatory on all bottled waters containing 0.3 ppm or more fluoride. There are allowable levels for fluoride in the quality standard, and bottled water exceeding these levels must be labeled as substandard. The allowable levels are related to secondary levels established by the Environmental Protection Agency (EPA) for public drinking water in 40 CFR parts 141 and 143 and take into consideration excessive infant fluoride intake. In addition, as discussed in the previous comment, the Surgeon General's Report recommends an optimal level of 1.0 ppm fluoride in drinking water.

Fluoride supplements are generally prescribed for breast-fed infants because those infants frequently consume little or no water. Human milk contains little fluoride, even in areas with fluoridated water supplies. Physicians may also prescribe fluoride supplements for infants not receiving adequate dietary fluoride. Health care professionals must take into consideration the patient's weight and the exposure to fluoride from dietary and other sources to establish the proper dose (Ref. 4).

Therefore, the agency finds no basis to require an advisory statement concerning infant fluoride consumption on bottled waters containing 0.3 ppm or more fluoride.

C. Nomenclature

FDA proposed that the name of the standardized food meeting the definition of bottled water in § 165.110(a)(1) is "bottled water" or one of the following defined terms: "Artesian water," "distilled water," "mineral water," "purified water," "spring water," and "well water." The agency requested comments from interested persons on the definitions for these terms and on other terms that need to be defined.

11. A number of comments requested that FDA define the term "drinking water" because: (1) It is the most commonly used term to describe bottled water and represents 36 to 40 percent of the gallonage of bottled water sold in food stores; (2) the lack of a Federal definition allows States to adopt special, nonuniform definitions for this segment of the bottled water market; and (3) many bottlers would have to revise their drinking water labels to remove this term to come into compliance with the standard, and doing so would impose severe economic hardships to the industry. One comment noted that producers of 5-gallon returnable bottled water products have a very large investment in bottle inventories that are designed to last for a considerable time, and that a high percentage of these packages is permanently labeled as "drinking water." It stated that it would be costly to dispose of these containers, and that the use of stick-on labels would present problems in its manufacturing operation.

Some comments recommended modifying paragraph § 165.110(a)(2) to define the terms "bottled water" and "drinking water" synonymously. However, other comments stated that "drinking water" is a classification within the bottled water category along with "spring water," "mineral water," and "purified water." These comments suggested the following definition: "Drinking water means bottled water obtained from an approved source that has at a minimum undergone treatment consisting of filtration (activated carbon or particulate) and ozonation or an equivalent disinfection process. Drinking water that has been treated to meet the definitions of distilled or purified water may contain added minerals for taste, provided an ingredient statement 'minerals added for taste' or optionally 'minerals added for flavor' appears on the label."

One comment stated that it is important for FDA to define drinking water as only one type of bottled water, and that the terms "drinking water" and "bottled water" not be interchangeable. It stated that "bottled water" includes and describes all types of bottled water products, including bottled "drinking water," but that bottled "drinking water" does not include or describe all types of "bottled water." It stated that it is important that FDA define "drinking water" to prevent the consumer confusion that would result if this product type, already marketed to and accepted by the public, is not recognized by FDA as a specific type of bottled water. It stated that failure to do so could, at worst, mean that products labeled as "drinking water" could no longer be sold in interstate or foreign commerce involving the United States.

Conversely, two comments stated that the term "drinking water" should not be permitted on the label because consumers may be misled because they do not understand the meaning of the term.

The agency agrees with the comments that stated that it should define the term "drinking water." Consumers are familiar with the term because, as the comments pointed out, products labeled as "drinking water" comprise a significant portion of the bottled water market. In addition, not defining this term would impose an economic hardship on the bottled water industry because products labeled as "drinking water" would have to be relabeled as "bottled water."

However, FDA disagrees with the comments that said that "drinking water" should be defined differently than "bottled water." As required by the standard of quality, "bottled water" must meet certain quality requirements, or the water is substandard and must be labeled as such. The definition for "drinking water" suggested by the comments provides an apt description of the method of processing bottled water that is used by many manufacturers. Thus, FDA concludes that a separate definition of "drinking water" is not warranted.

In addition, EPA has standards for "drinking water" from public water systems (40 CFR parts 141 and 143) that are nearly identical to FDA's standards for bottled water. FDA is not aware of any reason why its standard for "drinking water" that is sold in a bottle should differ significantly from EPA's standard for "drinking water." Therefore, the agency is including "drinking water" as an alternative name for "bottled water" in § 165.110(a)(2).

The agency agrees with the comments that pointed out that if minerals are added to bottled water or drinking water, an appropriate statement of identity must appear on the principal display panel of the label of the product

to inform consumers of this fact (e.g., "drinking water with minerals added for taste"). An ingredient statement must also appear on the label in accordance with § 101.4(a). In addition, if sodium, calcium, or iron are present in the bottled water product in more than an insignificant amount, nutrition labeling is required.

12. One comment suggested that an alternative name for "spring water" or "well water" could be "ground water."

The agency agrees that "ground water" is an appropriate name for water from a spring or a well. The term "ground water" encompasses not only "spring water" and "well water" but also "artesian water" and "mineral water" because by definition all of these waters come from an underground source. A geological definition states that "ground water" is water in the saturated zone that is under a pressure equal to or greater than atmospheric pressure (Ref. 5). The saturated zone is the subsurface zone in which all openings are full of water (*id.*).

Because "ground water" is an appropriate alternative term to describe some types of bottled water, and because in the January 1993 proposal, the agency requested comments from interested persons on other terms that need to be defined, the agency concludes that it is within the scope of this rulemaking to define the term "ground water." FDA concludes that the geological definition stated above is appropriate. Therefore, the agency is defining "ground water" in § 165.110(a)(2)(ii) to mean water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure. (Because the agency is establishing an additional definition in § 165.110(a)(2), it is recodifying the other terms in § 165.110(a)(2) so that they continue to appear in alphabetical order.) The agency is also requiring in § 165.110(a)(2)(ii) that "ground water" not be under the direct influence of surface water. EPA defines ground water under the direct influence of surface water as any water beneath the surface of the ground with: (1) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia;* or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions (40 CFR 141.2). Ground water under the direct influence of surface water is not "ground water" because water that does not meet this definition is mingling with water that otherwise would meet the definition. To clarify that ground water must not be under the direct influence of surface water, FDA concludes that this distinction should be included in the definition of "ground water."

13. One comment stated that FDA should establish a separate definition for "sterilized water." It stated that water for the initial feeding of babies has been called "sterilized water" for decades. The comment held that all water intended for the initial feeding of infants should be commercially sterile, as defined in the low-acid canned food processing regulations (21 CFR part 113). The comment stated that to require a change in the statement of identity from "sterilized water" to "bottled water" or "purified" or "distilled water" would create confusion in hospitals and could result in nonsterilized "bottled water" or "purified" or "distilled water" being fed to newborns. The comment suggested that the following definition be added to § 165.110(a)(2)(vi): "The name of the water intended as the initial feeding of infants may be 'sterilized water' provided it meets the definition of commercial sterility contained in 21 CFR 113.3(e)(1)(i)."

The agency agrees that the terms "sterile water" and "sterilized water" should be defined as a specific bottled water type. Doing so is the logical outgrowth of FDA's request in the proposal for other terms that need to be defined. Defining these terms will mean that the water must meet a certain minimum standard to be labeled with these terms and will allow firms to prominently label their products in the statements of identity as having been treated to achieve this standard.

The definition of commercial sterility in § 113.3(e)(1)(i) states that "commercial sterility" of thermally processed food means the condition achieved by the application of heat that renders the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution and of viable microorganisms (including spores) of public health significance.

FDA notes that the United States Pharmacopeia (USP) has official monographs for "sterile water for inhalation," "sterile water for injection," and "sterile water for irrigation." The monographs require that each of these types of water meet sterility requirements set forth by the USP (Ref. 6). These requirements involve microbiological tests to determine the presence of viable microorganisms. If no evidence of microbial growth is observed, the article tested meets the requirements of the test for sterility.

The difference between the sterility standard in § 113.3(e)(1)(i) and that used by USP is that water that is commercially sterile may contain bacteria, although in an innocuous amount, whereas water that is sterile according to USP standards does not. The agency acknowledges that water for general drinking purposes need not be sterile or even commercially sterile. However, sterile water may be purchased by immunosuppressed individuals, contact lens wearers, infant caretakers, and laboratories with an expectation that the water is free of any bacteria. In addition, FDA finds that it would be confusing to consumers to have two standards for sterility, one for "sterile water" and another for "sterile water, USP."

Therefore, the agency concludes that bottled water labeled as "sterile" must meet the USP definition. Thus, FDA is defining the terms "sterile water" and "sterilized water" in § 165.110(a)(2)(vii) to mean water that meets the requirements under "Sterility Tests" <71> in the USP, 23d Revision.

14. Several comments requested that the agency clarify whether a bottler may use any name defined in § 165.110(a)(2) as long as the bottled water complies with the definition used. One comment asked whether mineral water that contains between 250 and 500 ppm TDS could be labeled as "mineral water," "mineral spring water," or "mineral well water."

The agency advises that if more than one term is applicable, bottlers may combine the terms, as appropriate, in naming the food (e.g., "mineral spring water, low mineral content"). Thus, bottlers will be able to label their products in an informative manner because all applicable terms can be presented prominently on the labels in the statements of identity. Because this approach will ensure the informativeness of the statement of identity, FDA finds that it will promote honesty and fair dealing in the interest of consumers. Therefore, FDA is revising § 165.110(a)(2) to state that the name of the food is "bottled water," "drinking water," or alternatively one or more of the terms listed in that section as appropriate.

15. Two comments expressed concern that the proposed definitions for "artesian water," "mineral water," "spring water," and "well water" provide an opportunity for unintended mineral content manipulation that could lead to potential consumer deception. To alleviate this problem, the comments requested that FDA revise the

definitions for each of these waters to include the following: "Artesian water (or mineral water, spring water, or well water) shall not be altered by addition or deletion of minerals or by blending it with water from a nonartesian water source."

FDA disagrees that the suggested revision is warranted or needed. Once a defined bottled water product (e.g., artesian water, mineral water, spring water, or well water) has been blended with water from another source, the product no longer meets the definition of that particular type of bottled water, although it remains bottled water. For example, if artesian water is blended with spring water to reduce the water hardness, the product is "bottled water" or "drinking water," although its labeling may state the percentages of the artesian water and spring water it contains. Mineral water may be labeled as "mineral water" even if it is a blend of one or more waters, as long as each of the component waters complies with the source, composition, and other requirements of § 165.110(a)(2)(iii).

The agency notes that mineral addition or deletion does not change the source of the water. However, if the water has been altered significantly from the source water, under section 201(n) of the act, that the alteration has been made is a fact material in the light of representations made and must appear on the label of the product. The water is no longer unmodified ground water and differs significantly from the water that was harvested. Therefore, the fact that the water has been altered significantly must be included in the statement of identity so that consumers are aware that the source water has been modified. If minerals have been added, the statement of identity must state that fact. If minerals have been removed from the product, other than those that are removed during normal processing (e.g., filtration to remove precipitates), that fact must be included in the statement of identity of the product (e.g., partially demineralized) (§ 165.110(a)(2)(iii)). Therefore, FDA concludes that the requested revision is not necessary.

1. Artesian Water

The agency proposed to define "artesian water" as water from a well tapping a confined aquifer in which the water level stands above the natural water table. The agency also proposed to provide for the collection of artesian water with the assistance of an external force to enhance the natural underground pressure so long as such measures do not alter the physical properties, composition, and quality of the water.

16. One comment stated that FDA should not permit the use of the term "artesian" on bottled water labels because it is the most misused term in the bottled water business today.

The agency disagrees that it should prohibit the use of the name "artesian." Because FDA is defining this term in the standard of identity for bottled water, manufacturers will have to label their products in accordance with the standard or face regulatory action. FDA expects that misuse of the term will cease as a result. Therefore, FDA concludes that this comment, rather than establishing why FDA should not define "artesian water," only serves to point up why defining this term will promote honesty and fair dealing in the interest of consumers, and, thus, why it is appropriate for FDA to do so.

17. Several comments stated that the original and vernacular meaning of "artesian water" is water that is forced from below the ground to the surface through a well by natural underground pressure and collected at or above the surface. They recommended that this definition be adopted.

One comment pointed out that the geologic definition that FDA referenced in the proposal actually states that "the water level in artesian wells stands at some height above the top of the aquifer but not necessarily above the land surface" and does not require that the water stand above the water table. Therefore, the comment added, the water level in an artesian well may be either above or below the water table and still be considered artesian. The comment stated that the distinction in the geologic definition between the water table and the top of the confined aquifer is an important technical one, and that the proposed definition is much more restrictive and not the one that is generally accepted by groundwater scientists.

The agency disagrees with the comments that contended that the water in an artesian well must flow to the surface. As mentioned by the latter comment described above, the geologic definition states that "the water in artesian wells stands at some height above the top of the aquifer but not necessarily above the land surface" (Ref. 5). Therefore, the geologic definition does not require that the water flow to the surface, or that, as FDA proposed (58 FR 393 at 398), the water level stand above the natural water table. Because the agency intended that its definition for "artesian water" be the geologic definition, it is revising the definition of artesian water in § 165.110(a)(2)(i) to state that bottled water that is drawn from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer may be called "artesian water" or alternatively "artesian well water."

Concerning artesian water that flows to the surface, FDA notes that a typical geologic definition states that "if the water level in an artesian well stands above the land surface, the well is a flowing artesian well" (Ref. 5). The agency would not object to manufacturers labeling their products accordingly, as long as it is done in a truthful and nonmisleading manner. However, the name of the food remains "artesian water" or "artesian well water."

18. One comment urged that the specific name "artesian well water" be permitted on labels instead of "artesian water" to provide full disclosure to consumers.

FDA advises that both "artesian well water" and "artesian water" can be used to identify this product because both terms appropriately describe it, and consumers would recognize either term. "Artesian water" does indeed come from a well and only differs from "well water" in that the water comes from a confined aquifer where the water is under pressure and stands at some height above the top of the aquifer. Therefore, FDA is modifying § 165.110(a)(2)(i) to state that the name of water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer may be "artesian water" or "artesian well water."

19. One comment asked how someone who is reviewing the label statement "artesian well water" will be able to verify that the well is actually an artesian well, meeting the definition, after the well has been bored and is in production.

The agency agrees that there must be some means of verifying food labeling claims. In specific instances FDA may require that records or other means of verification be provided to FDA regulatory officials, despite the act's lack of express, general statutory records access authority for foods. The Supreme Court has recognized that FDA has authority that "is implicit in the regulatory scheme, not spelled out *in haec verba*" in the statute. *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973). Indeed, "it is a fundamental principle of administrative law that the powers of an administrative agency are not limited to those expressly granted by the statutes, but include, also, all of the powers that may fairly be implied therefrom. * * * In the construction of a grant of powers, it is a general principle of law that where the end is required the appropriate means are given and that every grant of power carries with it the use of necessary and lawful means for its effective execution." (See *Morrow* v. *Clayton*, 326 F.2d 35, 44 (10th Cir. 1963).)

Under section 701(a) of the act (21 U.S.C. 371(a)), the agency may promulgate regulations for the efficient enforcement of the act. Although it is possible to determine that a source of water is an artesian well after the well is in operation, in some cases it would be onerous for regulatory officials to do so. Therefore, FDA has determined that a verification requirement is necessary for the efficient enforcement of the act. FDA has previously stated that a food manufacturer is responsible for the accuracy of its food labels (58 FR 2079, 2163, and 2165, January 6, 1993). Indeed, placing a claim in food labeling that calls the consumer's attention to a water's source is a representation that the manufacturer has evidence that the product meets the requirements for the claim. See *Thompson Medical Co., Inc.* v. *FTC*, 791 F.d. 189, 193 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987). Making a claim without such a basis would be misleading, in violation of section 403(a) of the act.

The agency anticipates that, in some instances, companies will be amenable to demonstrating to FDA the basis for the claim, regardless of the existence of these regulations. The agency considers, however, that, when a product bears a claim based on information available solely to the manufacturer, it is reasonable for the agency to have access to that information. See *United States* v. *An Article of Device*, 731 F.d. 1253, 1261–62 (7th Cir. 1984) (upholding regulation requiring makers of prescription devices to be able to prove that their devices work safely for their intended purposes and stating that "[w]here the government's access to the necessary information may be limited * * * it seems not inappropriate to put the burden of persuasion on the party who * * * presumably has better access to the relevant information"); *see also Trans-American Van Service, Inc.* v. *United States*, 4[illegible] F. Supp. 308, 331 (N.D. Tex. 1976). Therefore, FDA is modifying § 165.[illegible]0(a)(2)(i) to require that plants be able to demonstrate to regulatory officials that the water level of the well stands at some height above the top of the aquifer, and, thus, that the well is an artesian well. Compliance with this provision does not entail the creation of any new information or the compilation of any special records. Rather, the requirement would obligate manufacturers simply to have access to information that they should already possess, or to make a measurement of their well, and to provide FDA with this information.

FDA considers this requirement to be the logical outgrowth of its January 1993 proposal. The purpose of this rulemaking is to ensure that terms such as "artesian water" are used in a manner that promotes honesty and fair dealing (see section 401 of the act (21 U.S.C. 341)). Such a result requires not only that these terms be appropriately defined, but that they be used in a manner that accurately describes the product. Thus, how FDA would enforce the definitions was a matter that was within the purview of the proposal, and that the agency would provide for such enforcement in the final rule in this proceeding was reasonably foreshadowed by the proposal. The fact that FDA received comments on how it would ensure that the defined terms are appropriately used evidences that this issue is the logical outgrowth of the proposal.

To comply with this requirement, producers may maintain records that demonstrate that the well is indeed an artesian well. The manufacturer may also rely on records from the company that drilled the well. In addition, many States and the United States Geological Survey have records of some wells and of the geology of the surrounding area. To verify that the water is at some height above the top of the aquifer and is, thus, artesian water, the pump may be shut off, and the height or the pressure of the water in the drilled hole measured. This information can then be used, along with information on the depth of the aquifer, to determine whether the water is artesian water. If the source does not meet the definition of artesian water, the product must not be labeled as artesian water, or it is misbranded under sections 403(a), 403(b), and 403(g) of the act.

20. One comment stated that water chemistry changes as wells are pumped, and that the larger the drawdown, the greater the water chemistry may change. It stated that a mineralogical analysis from a water sample taken at 10 gallons per minute (gpm) may be quite different than one taken at 500 gpm for the same well. The comment added that there would be an ongoing burden on FDA to verify that water produced by bottlers drawing on "artesian" groundwater resources remains constant in water chemistry.

FDA agrees with the comment. The use of external force may alter the physical properties, composition, and quality of the water, although usually not significantly, depending on the rate of extraction, because of changes in the pressure of the water as it is extracted. This fact is the basis on which the agency proposed to require that the use of external force not alter these characteristics (58 FR 393 at 398). However, because the rate of extraction from the use of external force could vary from day to day or even hour to hour, the characteristics of the water can be also altered.

As discussed in the previous comment, the agency is requiring that the manufacturer demonstrate that the source of the water is indeed an artesian source. However, the agency does not deem it necessary to require that the definition for artesian water extend to the physical properties, composition, and quality of the water. In fact, as long as the source is demonstrated to be an artesian source that meets the definition in § 165.110(a)(2)(i), the actual characteristics of the water are a quality control concern for the manufacturer rather than an attribute that defines artesian water. As stated previously, the agency intends that its definition of artesian water be the geological definition. The geological definition does not take into consideration the composition of the water. Therefore, the agency is removing the requirement in § 165.110(a)(2)(i) that the use of external force in the extraction of artesian water not alter the physical properties, composition, and quality of the water.

2. Mineral Water

The agency proposed that water coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source, may be called "mineral water." FDA further proposed that mineral water be distinguished from other types of water by its constant level of minerals and trace elements at the point it emerges from the source.

The agency tentatively concluded in the proposal that it would be contradictory for bottled water that has essentially no minerals and does not perform (e.g., taste) like mineral water to be labeled as mineral water. Consistent with this tentative conclusion, FDA proposed that "mineral water" be defined as water containing not less than 250 ppm TDS. The agency requested comments on the proposed minimum level of 250 ppm TDS in mineral water and stated that if it received substantive data to support another minimum level, it would consider issuing a final rule with a different minimum level.

21. A number of comments objected to FDA establishing a minimum TDS level for mineral water. The comments argued that establishing such a level would be arbitrary and contrary to the most current mineral water definitions, including international definitions which do not include a minimum level, and would prohibit many brands from being labeled as mineral water, thereby adversely affecting consumer sales with no apparent benefit to consumers.

Conversely, other comments suggested raising the minimum TDS level to 500 ppm. These comments argued that establishing the minimum TDS at the higher level would: (1) Make it closer to the definition that has been adopted by most States that have bottled water regulations and to the definition that is currently being considered by the Canadian Government; (2) provide the basis for identification of the term "mineral water" with the distinctive taste of a higher mineral content; (3) be less confusing to consumers in that it would not allow the same water to be marketed under several names (e.g., "mineral water, low mineral content" or "spring water"); and (4) simplify application of the quality standards and the label identity statement.

Several comments expressed the view that mineral water is ground water with at least 50 ppm TDS, while several other comments supported the proposed minimum level of 250 ppm TDS in mineral water. One of these comments stated that waters having a TDS of 250 ppm or more generally have a distinctive flavor. Two comments, however, stated that actual taste thresholds for mineral water are often in the range of 100 ppm TDS. One of these comments stated that consumer identification and differentiation among the flavors of various individual source waters, which result from naturally occurring mineral variations in the water, is clearly possible below the proposed threshold of 250 ppm TDS.

The agency acknowledges that many different definitions exist for "mineral water." In the January 1993 proposal, the agency compared several current definitions, including State and European standards, in arriving at its proposed definition (58 FR 393 at 396). International standards vary from requiring at least 500 ppm TDS (Canadian Province of Quebec) to no minimum requirement (ERCS). In a like manner, different States have different requirements. Therefore, no FDA action will harmonize existing State and international regulations.

As stated in the proposal (58 FR 393 at 397), the minimum level of 250 ppm TDS for mineral water is based on the apparent consumer expectation that a product identified as "mineral water" will contain at least a minimum level of minerals. The agency tentatively concluded that it would be misleading for bottled water that has essentially no minerals, and that does not perform (e.g., taste) like mineral water, to be labeled as mineral water. The minimum level that FDA proposed, 250 ppm TDS, is in agreement with the Association of Food and Drug Officials (AFDO) definition (Ref. 7) for light mineral water and mineral water.

The main characteristic of mineral water is, as its name implies, the presence of a significant quantity of minerals. Other important characteristics (Ref. 8) are that it be from a geologically and physically protected underground water source, and that it contain a constant level of minerals and trace elements at its point of emergence from the source. Mineral water may come from a spring or a well, including an artesian well, but must contain a significant amount of minerals. The agency considers 250 ppm TDS as a significant amount of minerals because at this level, the minerals, depending on the specific mineral content, begin to impart a particular taste to the water. Although minerals may impart some taste below this level, it is not the significant mineral taste that is characteristic of mineral water.

FDA recognizes that mineral water from a spring that contains between 250 and 500 ppm TDS may be identified as "spring water," "mineral water, low mineral content," or both. However, FDA disagrees that the availability of these terms will cause consumer confusion because such a product meets the definitions of both "mineral water" and "spring water" in § 165.110(a)(2)(iii) and (a)(2)(vi), and both terms appropriately describe the product. As discussed previously (see comment 14 of this document), use of all applicable terms presented prominently on the label in the statement of identity is appropriate because it will ensure the informativeness of the statement of identity.

FDA realizes that brands previously sold as "mineral water" that contain less than 250 ppm TDS will not be provided for under § 165.110 as "mineral water." However, the brands mentioned in the comments are not being sold in the United States as mineral water but as other types of bottled water (e.g., spring water) because of the many State requirements that mineral water contain greater than 500 ppm TDS. Thus, although some of these brands cannot be labeled as "mineral water," other brands that previously could not be labeled as "mineral water" and sold in some States now meet the definition of "mineral water" in § 165.110(a)(2)(iii) and can be labeled and sold as such.

Moreover, the agency has not been persuaded that this regulation will adversely influence consumer sales or put some bottled mineral water producers at a disadvantage as compared to others. The comments did not provide any information on such adverse consequences, and the agency is not aware of these adverse effects.

Therefore, for the reasons discussed above, FDA concludes that establishing a minimum level of TDS in mineral water is reasonable, and that the proposed level of 250 ppm TDS is the appropriate level.

22. One comment remarked that some bottled waters would not significantly differ from a mineral water slightly above the 250 ppm TDS minimum. Another comment stated that if companies wish to market their products on the basis of the mineral content, they can do so through a TDS disclosure statement on the principal display panel regardless of the amount present. Therefore, there would be no need to establish a minimum TDS level for mineral water.

Several comments declared that each mineral water product is unique because of its particular composition of minerals, and that this unique character imparts distinctive flavor. These comments stated that some water products with a constant mineral content of less than 250 ppm TDS might have a distinctive flavor and should be called "mineral water—very low mineral content" or "mineral light."

Comments also stated that establishing a level of 250 ppm TDS is contrary to the industry's belief that the overall mineral content is less important than the level of each particular mineral.

The agency agrees that some waters that contain slightly less than the 250 ppm TDS minimum would not significantly differ from a mineral water slightly above the minimum. Any minimum level that the agency establishes will preclude some waters from bearing the term "mineral water" even though they do not vary significantly from waters that are above the minimum. FDA also agrees that there is a taste aspect to the presence of minerals, although some minerals may contribute a more distinct flavor to the water than others. For example, in sufficient amounts, sodium chloride gives water a salty taste, and sulfate contributes a bitter taste (Ref. 5). In fact, a common industry practice is to add minerals to some bottled waters for the flavor that they contribute.

However, a minimum requirement for TDS is necessary to ensure that when consumers purchase a product labeled as "mineral water," the product contains minerals at a level that justifies calling the product by that name. As explained in response to the previous comment, that level is 250 ppm TDS. The minimum TDS requirement for mineral water will not preclude a product that contains less than 250 ppm TDS from being marketed under another name, such as "ground water," "spring water," or "well water," as applicable, or from being called "bottled water." In addition, manufacturers may include a truthful statement of the TDS level on the label of any bottled water product. Thus, even though FDA has carefully considered these comments, it concludes that it is appropriate to establish a minimum TDS requirement for "mineral water."

23. One comment stated that the definition for "mineral water" should include all water containing over 500 ppm TDS and argued that whether it occurs naturally or is constructed (as are other food products) is irrelevant. The comment added that if mineral solids are added, FDA should require that such additions be noted on the label.

Another comment stated that it is essential that the definition be clear that mineral water may not be altered by the addition or deletion of minerals. The comment stated that mineral water should not be water that is derived from a public water supply and to which minerals are then added.

FDA disagrees with the comment that advocated that water to which minerals have been added should be eligible to be called "mineral water." The agency has reviewed a number of State and foreign standards, and none define "mineral water" as containing added minerals (Ref. 8). In fact, many of these standards define water with added minerals as a different type of bottled water, distinct from "mineral water." Therefore, the agency concludes that the definition for "mineral water" should not be revised to permit the addition of minerals.

The agency agrees with the comment that stated that the addition of minerals should be clearly prohibited in the definition for mineral water. The definition for mineral water has geological as well as compositional factors. The amounts and types of minerals in mineral water is a result of the path that the water has traveled underground. Therefore, to clarify that the minerals present in mineral water must be from the underground source and not added to the water after extraction, FDA is modifying the definition of mineral water in § 165.110(a)(2)(iii) to specifically preclude the addition of minerals.

However, some mineral waters as extracted from their geological source, may contain high levels of some undesirable minerals (e.g., arsenic, precipitated manganese). In some instances, the water can be treated to selectively remove these undesirable elements. FDA is aware of no reason why it should preclude the removal of these undesirable elements, or why such removal should preclude the manufacturer from labeling the product as "mineral water" as long as all other requirements (e.g., source and composition) of the definition are met. Section 165.110(a)(2)(iii) provides accordingly.

24. Several comments requested that FDA more precisely define "mineral water" in that the agency should require that the level and relative proportions of minerals and trace elements remain constant. Comments stated that such a requirement would harmonize the definition of mineral water with the European Community and Codex concepts. These comments suggested the following definition: "Mineral water shall be distinguished from other types of water by its constant level and relative proportions of minerals and trace elements, at the point of emergence from the source, due account being taken of the cycles of natural fluctuations." One comment added that this wording recognizes that minor natural fluctuations occur with any source water.

Some comments requested that the agency clarify that, in the term "constant level of minerals," the "level" is not the characteristic element. They stated that what is fundamental is the "constancy" or "stability" of the mineral composition, which acts more as a fingerprint of the water rather than as a measure of the overall total dissolved solids content.

One comment stated that all ground water (well or spring) has a constant level of minerals and trace elements as it emerges from the source. The comment questioned the scientific basis of FDA's approach.

The agency agrees that it needs to clarify its definition of mineral water. In the proposal (58 FR 393 at 396), FDA stated that mineral waters may have very different flavors depending on the mineral content and types of minerals and trace elements present in the water. Consumers may purchase a particular mineral water from a particular source because of the flavor contributed by the mineral content. It is important to consumers that the mineral composition of a particular source remain constant. FDA considers that industry and consumers have come to expect that mineral water has a fairly stable mineral composition. Therefore, FDA proposed that mineral water be distinguished from other types of water by the constant level of minerals and trace elements in the water as it emerges from its source.

FDA further notes that the ERCS defines "natural mineral water" as being characterized by its content of certain mineral salts and their relative proportions and by the presence of trace elements or other constituents (Ref. 1). The ERCS also states that mineral water is characterized by the constancy of its composition, the stability of its discharge, and its temperature, due account being taken of the cycles of natural fluctuations.

As stated previously, the composition and concentration of substances dissolved in ground water depend on the chemical composition of precipitation, on the biologic and chemical reactions occurring on the land surface and in the soil zone, and on the mineral composition of the aquifers and confining beds through which the water moves (Ref. 5). Thus, under constant conditions, the mineral content of ground water will be constant. There are certain natural factors that may affect the constancy of a source such as occurrence of earthquakes and long term climatic changes. These natural factors do not preclude the water from qualifying as mineral water as long as the water continues to meet the compositional requirements in § 165.110(a)(2)(iii).

Therefore, to clarify the importance of the relative proportion of minerals and trace elements, and to take into account the cycles of natural fluctuations, FDA concludes that modification of the definition of mineral water, along the lines requested by the comments, is appropriate. The modification reflects the fact that there may be some minor variation in mineral water over time, and that absolute amounts of minerals in the water may change slightly. Thus, the agency is modifying § 165.110(a)(2)(iii) to state that mineral water shall be distinguished from other types of water not only by its constant level of minerals and trace elements at the point of emergence from the source, but also by its relative proportions of these substances, due account being taken of the cycles of natural fluctuations. Natural fluctuations in mineral content may occur, but these fluctuations must not affect the relative

proportions of minerals and trace elements. Samples of mineral water can be compared to ensure that major dissolved mineral contents are the same using several scientific methods, such as the Stiff diagram and the Piper trilinear diagram (Ref. 9).

25. Two comments urged FDA to amend the proposed definition for "mineral water" to require that if mineral water is taken from a bore hole tapping a spring, it be from the same underground stratum, and be of the same quality and composition, as the water derived from the natural orifice.

The comments seem to be arguing that any product drawn from a spring must meet the requirements for "spring water." However, this is not the case. A product need only meet the requirements for the term used to name it. Thus, a product labeled as "mineral water" need only meet the requirements in § 165.110(a)(2)(iii). It need not meet the definition for "spring water" unless its label claims that the water is also spring water. If the product were, however, to claim to be "mineral spring water," it must meet the definition of spring water in § 165.110(a)(2)(v) as well as that for "mineral water."

26. One comment noted that the proposed definition of mineral water refers to water "* * * originating from a geologically and physically protected underground water source." The comment stated that this phrase appears to be ambiguous and meaningless because there is no indication in the definition of what would constitute protection. It stated that the terminology seems to offer the consumer some assurance of purity that may not be warranted. The comment asserted that every ground water source inherently possesses some degree of geologic and physical protection by the very fact that it is underground. It stated that there are no operational means to differentiate a protected underground water source from an unprotected one.

The agency agrees that every ground water source inherently possesses some degree of geologic and physical protection by the very fact that it is underground. However, some underground water sources are not protected. This lack of protection is evidenced by the fact that some underground sources are under the direct influence of surface water. As discussed earlier (see comment 12 of this document), EPA defines ground water under the direct influence of surface water as any water beneath the surface of the ground with: (1) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*; or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions (40 CFR 141.2).

The latter part of EPA's definition pertains to changes in the physical characteristics of the water. Changes in these physical characteristics can have a significant influence on the mineral composition of the water. Because the definition of "mineral water" is geological as well as compositional, the agency concludes that it is important that "mineral water" be from a physically protected underground water source. Mineral water has been traditionally distinguished from other types of water by its constant level, and relative proportions, of minerals and trace elements at the point of emergence from the source, due account being taken of the cycles of natural fluctuations. This distinction is a reflection of the fact that, traditionally, the mineral composition of products labeled as mineral water does not vary significantly over time. Therefore, it is important that mineral water come from a geologically protected underground source, so that the mineral water retains its distinctive mineral content.

FDA does not agree, however, that there are no operational means to differentiate a protected underground water source from an unprotected one. The presence of insects or other macroorganisms as well as changes in physical characteristics are measurable. Thus, regulatory officials can determine whether mineral water is from a geologically and physically protected underground source.

27. One comment stated that the label statement "mineral water" will lead some consumers to believe that the food contains a nutritionally significant amount of minerals. It stated that this perception will occur even if the food is labeled "low mineral content," because "low" is a relative term and not a quantitative term. Therefore, the comment asserted that all bottled water labeled as "mineral water" should also bear nutrition labeling or a statement such as, "Not a significant source of _____," with the blank being filled in with the names of any essential minerals that are missing or present in insignificant amounts.

One comment asked whether the statement of identity for "mineral water" or "mineralized water" would constitute a health claim and, thus, trigger full nutrition disclosure, even in abbreviated form. Another comment stated that use of the term "mineral water" should not require additional nutrition information.

The agency stated in the preamble to the January 1993 proposal (58 FR 393 at 404), that its tentative view was that nutrition labeling should appear on bottled water labeled as "mineral water, high mineral content" because consumers may assume that water with a high mineral content would be of nutritional benefit. In addition, mineral water with a high mineral content could contain enough sodium, calcium, or iron to make nutrition labeling mandatory. Under § 101.9, foods that contain more than an insignificant amount of the nutrients or food components that are required to be listed, or whose label, labelling, or advertising contains a nutrient content claim or any other nutrition information, must bear nutrition labeling.

Nutrients likely to be present in bottled water products in amounts that could trigger nutrition labeling are calcium, sodium, and iron. If any of these minerals are present in a product in more than insignificant amounts, nutrition labeling is required under section 403(q) of the act. More than an insignificant amount of calcium is 20 mg or more per labeled serving, more than an insignificant amount of sodium is 5 mg or more per labeled serving, and more than an insignificant amount of iron is 0.36 mg or more per labeled serving (§ 101.9(c)(8)). The reference amount customarily consumed for bottled water is 240 milliliter (mL) (§ 101.12(b)).

The agency has considered whether the term "mineral water" is an implied nutrient content claim, and whether, as a result, nutrition labeling should be mandatory on any product labeled as "mineral water" regardless of the level of required nutrients. In the **Federal Register** of January 6, 1993 (58 FR 2302 at 2369), the agency concluded that when an ingredient constitutes essentially 100 percent of the food, so that the name of the ingredient is the statement of identity, the name of the ingredient does not constitute an implied nutrient content claim, even though in other contexts, reference to the ingredient could constitute such a claim (see § 101.65(b)(4)). For example, when the name of the ingredient constitutes the common or usual name of the product, as described in § 102.5 (21 CFR 102.5), or the identity of the commodity, as described in § 101.3 (e.g., "canola oil"), it is not a nutrient content claim. In such a context, the name of the ingredient does not imply that a nutrient is present in a certain amount, but rather, it describes the nature of the product. However, the claim "made only with canola oil" does characterize the level of a nutrient in the food. This claim represents an implied claim that the food is low in saturated fat (§ 101.65(c)).

The term "mineral water," when u as the statement of identity of the foo does not trigger nutrition labeling because it does not make a representation, either explicit or implied, about the level of nutrients in the food. "Mineral water" is simply the name of the food. Although the term "mineral water" indicates that the water contains a significant amount of minerals, it does not imply that these minerals are nutrients. In fact, not all of the total dissolved solids in mineral water are nutrients (e.g., bicarbonates). However, labeling claims that imply the presence or absence of any nutrient in bottled water would trigger nutrition labeling.

The major dissolved inorganic constituents of ground water are sodium, magnesium, calcium, chloride, bicarbonate, and sulfate. The total concentration of these major ions comprises more than 90 percent of the TDS in the water (Ref. 9). The presence of 83 ppm calcium or 21 ppm sodium or more will trigger nutrition labeling. Therefore, because mineral water must contain at least 250 ppm TDS, it is likely that many mineral waters, especially high-mineral-content mineral waters, will contain enough calcium or sodium that the labels of these products must bear nutrition labeling.

The agency does not agree with the comment that asserted that consumers will be led to believe that the food is a significant source of minerals if the food is labeled "low mineral content." Use of the term "low" does not suggest that minerals are present in a significant amount. The term "low," as used in the statement of identity of the product, is not used in a dietary context. It is simply a qualitative term used as part of the name of the food to describe the food. Thus, use of the term "low mineral content" would not indicate that the mineral water was a significant source of minerals.

Therefore, for the reasons discussed above, FDA concludes that consumers will not be misled that mineral water contains more than a nutritionally insignificant amount of minerals, and nutrition labeling of all mineral water is not required.

28. Several comments stated that the product should be labeled as "inorganic mineral water" because all minerals found in water are in an inorganic state. They stated that the inorganic minerals found in water are only substances that have been dissolved by the water itself. The comments stated that fruits or vegetables take in inorganic material through their roots to become organic and readily accepted by the body's cells. They stated that not labeling the product as "inorganic mineral water" is misleading to consumers. Additionally the comments noted that many of the so-called "minerals" found in mineral water are not minerals at all but are in fact inorganic chemicals. They urged FDA to require the label to read: "Inorganic mineral & inorganic chemical content _____ ppm TDS."

FDA disagrees with the comment. Minerals by definition are inorganic elements or chemicals in any food (Ref. 10). Thus, the term "inorganic" is not a material fact that must be disclosed in labeling mineral water because the term "mineral" means that the water contains inorganic chemicals. While the agency recognizes that some minerals that are also nutrients may be more bioavailable in some foods than in mineral water (e.g., calcium in milk), the comments did not provide any data to substantiate their claim that inorganic nutrients taken into plants systemically are more bioavailable than the same nutrients in water.

In regards to a required label statement concerning TDS, as will be discussed later in this final rule, FDA does not require that the TDS appear on the label of any bottled water product, and the comments have not provided substantive grounds to do so. However, firms may include this information on the label of bottled water in a truthful and nonmisleading manner, including in the manner suggested by the comment if the firm so chooses.

3. Purified Water

The agency proposed that water that is produced by distillation, deionization, reverse osmosis, or other suitable processes, and that meets the definition of "purified water" in the most recent edition of the USP, can be labeled as "purified water." FDA also proposed that if the water is produced by distillation and meets the USP standard, alternatively it may be called "distilled water."

29. Two comments stated that the term "purified water" should not be permitted on labels because consumers do not understand its specific meaning and, thus, may be confused by the use of this term. They requested that only the following specific names be permitted on labels in order to give full disclosure to the consumer: "Distilled water," "reverse osmosis water," and "deionized water."

FDA disagrees with these comments. The agency proposed that the name "purified water" be defined as water that has been processed to meet the requirements of the USP definition for "purified water." An alternative name for water processed by distillation and that meets the USP standard is "distilled water." "Purified water" and "distilled water" meeting the USP definition have been marketed under these names for many years, and the comments did not provide any evidence that consumers do not understand the meaning of these terms. Therefore, the agency is aware of no basis on which to conclude that these terms will confuse consumers. The agency views this rulemaking as standardizing the use of these terms, not introducing new terms into the market. Manufacturers may include more specific information concerning the method of preparation of these bottled water products on the label. Therefore, the comments have not persuaded the agency to alter its approach to the use of these terms.

However, the agency agrees that the terms "reverse osmosis water" and "deionized water" are appropriate alternative names for purified water because these terms describe how water is processed to produce purified or distilled water. Therefore, FDA is modifying § 165.110(a)(2)(iv) to provide for the alternative term "deionized water" if the water has been processed by deionization, and "reverse osmosis water" if the water has been processed by reverse osmosis.

30. Several comments objected to FDA's proposal that "purified water" meet the USP definition because: (1) Water for human consumption does not need to be pharmaceutical grade water; (2) USP methods of analyses for bottled water are different from EPA and FDA methods; and (3) the regulation would automatically adopt future updates of the USP, thus, providing the publisher of the USP with lawmaking power without any formal comment or review mechanism. Comments asked that FDA delete any reference to the USP in § 165.110(a)(2)(iv). Some of the comments recommended that FDA establish specific standards for purified water rather than adopt the USP standard by reference.

One comment stated that a standard for purified drinking water should require the use of "distillation, deionization, reverse osmosis, or other suitable processes" and impose a water conductivity testing requirement with a conductivity maximum allowable threshold level of 30 microsiemen per centimeter. It stated that the conductivity test, which would measure

the ionic strength of water based on a customarily used reverse osmosis system, would verify the purification process. Another comment stated that "purified water" should only be required to meet the current USP requirements for total solids, pH, and chloride.

FDA is persuaded by the comments that the definition of purified water should not be bound "to the most recent" USP standard as it proposed to do. However, the agency does conclude that the definition should use the USP standard because purified water meeting this standard has been sold for years and is an established product. Although water for human consumption does not need to be pharmaceutical grade, water that is labeled as "purified water" should meet stricter standards than other types of bottled water because the term "purified" asserts that the product has been processed to be of a purer quality than other types of water. Therefore, requiring that "purified water" meet a USP definition ensures that the water meets a stricter standard than other types of bottled water.

FDA recognizes that it would be a burden for manufacturers producing purified water and other types of bottled water to have to use different methods of analysis (USP and EPA) to test for the same contaminant. Bottlers may use EPA methods to test their purified water, although the agency notes that it will use USP methods to check for compliance. However, FDA points out that most of the USP methods do not provide a numerical water quality requirement that would parallel EPA methods but instead require testing with a positive or negative result. Thus, the methods may not be easily interchangeable.

FDA concludes that the requirement should remain as proposed because the term "purified water" explicitly asserts that the water has been purified, and the USP definition is a commonly used standard for what constitutes purification. This common use is evidenced by the fact that AFDO's definition of "purified water" is the USP definition (Ref. 7). However, FDA agrees that interested persons should have an opportunity to comment on any proposed change in the standard of identity for purified water. Therefore, FDA is referencing a specific edition of the USP monograph in the definition of "purified water" (§ 165.110(a)(2)(iv)). The agency is defining "purified water" as water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of purified water in the USP, 23d Revision.

The agency notes that the USP is in the process of updating its monograph for purified water. One such revision may be a water conductivity test requirement as mentioned by one of the comments. As modifications are made to the USP definition, FDA will consider amending its definition for purified water to reflect the modification.

The agency notes that any bottled water that is labeled as "purified water, USP," or that indicates in any manner that the product meets USP specifications, must, in addition to complying with FDA regulations, meet the most recent USP standard, or the product will be misbranded under section 403(a)(1) of the act in that its labeling will be false in this particular.

31. One comment asked that FDA explicitly designate the product as "purified drinking water" and, as a food product, differentiate it from "purified water, USP" usable for pharmaceutical purposes. The comment stated that a change in nomenclature from "purified water" to "purified drinking water" would reduce any potential for confusion between purified water that is suitable for use in preparation of compendial dosage forms and purified drinking water for potable purposes. It stated that the qualification would make clear to the public that products labeled as "purified drinking water" are not represented as, and do not purport to be, in compliance with the USP monograph for "purified water."

The agency disagrees that the term "purified water" should be replaced by "purified drinking water" in the standard of identity. Many products that are currently being sold as "purified water" for drinking purposes meet the USP definition for "purified water," and FDA is not aware of any evidence of public confusion. Thus, FDA concludes that "purified water" remains an appropriate name.

However, "purified drinking water" and "distilled drinking water" are appropriate alternative names for the product because these names will enable consumers to identify the product as water for drinking purposes that has been processed to meet stricter purity standards. Therefore, FDA is modifying § 165.110(a)(2)(iv) to provide for alternative terms that describe the product as a type of drinking water (e.g., "purified drinking water").

32. One comment recommended that FDA establish a definition for "demineralized water" as follows: "The name of water demineralized by distillation, reverse osmosis, or other method so that it contains not more than 10 ppm TDS may be 'demineralized water.'"

The agency agrees that "demineralized water" is an appropriate name for water that has been processed to significantly decrease its mineral content. However, FDA concludes that there is no need to establish a separate definition for "demineralized water" because the USP definition for "purified water" encompasses water that has been demineralized by distillation, reverse osmosis, or other method and that contains not more than 10 ppm TDS. Therefore, the agency is including the term "demineralized water" as an alternative name for "purified water" in § 165.110(a)(2)(iv).

33. One comment recommended the establishment of a heterotrophic bacteria standard for purified water. It stated that, although the health risks from such bacteria may be small, a higher expectation exists for a product labeled as "purified" than for other bottled water products. The comment stated that purified water is purchased by immunosuppressed individuals, contact lens wearers, mothers of small infants, laboratories, and others with an expectation of purity from general bacteria. The comment recommended a limit of no more than 500 bacteria per milliliter for purified water because this standard will limit the suppression of coliform detection and reduce the exposure and dosage level for organisms that might have a health effect on at-risk groups. The comment also recommended that, if FDA does not establish a general bacteria standard for "purified water," the agency substitute the name "demineralized water" for "purified water" so as not to mislead consumers.

FDA disagrees with the comment. Traditionally, water that is essentially free of chemical impurities is called "purified water," and water that is free of microorganisms is called "sterile" or "sterilized water." This distinction is evidenced by the fact that there are USP monographs for "sterile water" and for "purified water" that distinguish between the two types of water (Ref. 6). Thus, the labeling of a product as "purified water" does not imply that it is sterile water.

USP has established a general guideline for purified water for pharmaceutical purposes of 100 colony-forming units per mL. This level evidences that the water has been treated appropriately, even though bacteria are present at low levels. Purified water that has been treated by distillation or reverse osmosis may be sterile if appropriately processed. However, the agency points out that purified water is typically low in the nutrients required by microorganisms for growth, and, thus, ordinarily has low bacterial counts. Adherence to the regulations in part 129 significantly reduces the risk of contamination. Therefore, "purified water," if appropriately processed as required by part 129, should contain less than the comment's requested 500 bacteria per mL. The agency consequently concludes that the establishment of a bacterial standard for "purified water" is not necessary.

The agency is defining "sterile water" in this final rule. Use of this term in the statement of identity of qualifying bottled waters will allow consumers desiring to purchase water that is bacteriologically pure to easily identify this type of water and to distinguish it from purified water that is chemically pure.

4. Spring Water

FDA proposed that bottled water derived from an underground formation from which water flows naturally to the surface of the earth, or would flow naturally to the surface of the earth if not for its collection below the earth's surface, may be called "spring water." The agency proposed to provide for the collection of spring water only at the spring or through a bore hole adjacent to the point of emergence. FDA also proposed that spring water collected with the assistance of a bore hole to protect the water shall be from the same underground stratum as the spring and shall retain all the physical properties and be of the same composition and quality as the water that flows naturally to the surface of the earth or that would flow naturally to the surface of the earth if not for its collection below the earth's surface. FDA requested comments from interested persons concerning the definition for "spring water" and on the use of a bore hole adjacent to the point of emergence of the spring to facilitate collection of the water.

a. Consumer Surveys

34. Two comments included consumer telephone surveys, each conducted by a different bottled water producer, that addressed issues of consumer understanding and preferences for bottled water labeled as "spring water." A number of subsequent comments pointed to methodological shortcomings in one or the other of the two consumer surveys, including inadequate sample size, nonrepresentative sampling, ambiguous and biased question wording, failure to counterbalance order of questions, improper survey approach, and flawed interpretations of results.

The agency recognizes that such problems exist to some extent in both studies, as they do in virtually all survey studies, but it is not convinced that there is sufficient basis for dismissing the results of these studies. Each study has some merit, and there is a surprising degree of agreement between the two studies in their primary findings. Therefore, FDA finds that both studies provide useful information concerning consumer opinions on spring water, and that it is appropriate to use this information in arriving at a definition for "spring water."

35. The principal concern of both surveys, and the primary subject of comments about the respective survey results, was an attempt to describe consumer understanding of the use of the term "spring water" with respect to the method of extraction, bore hole or surface collection, used to obtain the water. In study 1 (C302 in this docket), respondents were asked about which extraction method they would expect would be used to collect a product called "spring water." In study 2 (MM5 in this docket), respondents were asked which extraction method is used to collect "spring water."

Many comments criticized one or the other of the studies for the way the different methods of extraction (borehole or surface collection) were described to respondents, usually alleging that the wording introduced a bias in respondents' answers. In study 1, for example, surface extraction was described as "water that flows naturally to the surface," and bore hole extraction was described as "water pumped * * * through a bore hole." In study 2, surface extraction was described as "water taken from springs whose water is captured above ground level," and bore hole extraction was described as "water taken from springs whose water is captured below ground level."

FDA agrees that biases were introduced by the wording of these questions. However, despite the difficulties in communicating to consumers about methods of extraction for spring water in a telephone survey, the results of both surveys show that there is considerable uncertainty among consumers about which extraction method is or should be used for spring water.

Study 1 asks the question, "When you see spring water on the label of a bottle, which of the following describes the water you would expect to be in the bottle?" in a forced-choice form such that "not sure" answers are not allowed. Although 54 percent of respondents responded that the water naturally flows to the surface, 46 percent of respondents expressed the possibility that spring water was extracted from a bore hole. In addition, even though the question context strongly encouraged selecting one or the other of the alternatives provided, 34 percent of respondents choose to answer "either of the above" when asked which extraction method they would expect for spring water. FDA considers this level of response to the "either of the above" alternative to indicate considerable consumer uncertainty. Because of the observed uncertainty, the study documents that there is no consensus among consumers about how spring water is or should be extracted.

In study 2, a "not sure" alternative was allowed for each of the two yes/no questions, "Is bottled spring water taken from springs whose water is captured above the ground level?" and "Is bottled spring water taken from springs whose water is captured below the ground level?" Forty one percent of respondents answered "not sure" to both questions, and an additional 13 percent answered "not sure" to one of the two questions. These responses mean that, overall, 54 percent of respondents indicated that they were not sure about the extraction methods used for bottled spring water.

Given the high levels of consumer uncertainty about extraction methods used for bottled water that were found in both studies, FDA concludes that the issue of how spring water is or should be extracted is not an issue to which many consumers have given much thought. At the same time, however, FDA considers the finding that consumers have limited opinions about the extraction methods used for bottled spring water to be very relevant to its objective of developing bottled water definitions that promote honesty and fair dealing in the marketplace. The fact that consumers do not appear to be informed or concerned about issues related to the extraction methods used for spring water suggests that FDA has little reason to suggest major changes in the usage of the "spring water" designation on bottled water on the grounds of promoting honesty and fair dealing in the marketplace. Currently, as many comments stated, spring water products on the market are produced using both methods of extraction. In addition, most State and international definitions provide for both methods of extraction for spring water (Comment 91 and Refs. 2, 7, 11, 12). Thus, FDA concludes that the use of the term "spring water" does not imply a particular extraction method, and that

providing for the use of either surface or bore hole collection of spring water will not mislead consumers.

36. A number of comments cited survey results indicating that consumers perceive that spring water has a higher quality and a better taste than other kinds of bottled water, and that, therefore, consumers are more likely to buy it. They argued that, because spring water has greater consumer appeal, it is incumbent on FDA to ensure that the definition of spring water is not misleading to consumers.

FDA agrees with these comments and with the conclusion, based mainly on Study 1 findings, that consumers consider bottled water labeled as spring water to be of a higher quality than other kinds of bottled water. FDA notes, however, that the favorable state of consumer opinion toward spring water has developed under circumstances in the marketplace in which the term "spring water" has been used to describe both water extracted at the surface and water extracted by the bore hole method. Given that it has been extracted in both ways, with apparent consumer satisfaction, how the water is extracted does not appear to be the key factor.

There is a second aspect of the definition of "spring water"—from where the water comes. By the process of elimination, this factor appears to be key. Thus, it is this aspect of the definition that FDA has made most rigorous.

FDA concludes, therefore, that its requirement in § 165.110(a)(2)(vi) that bottled water labeled as "spring water" be from the same underground stratum as the spring and always have the same physical properties, composition, and quality as water that flows naturally to the surface of the earth, without specifying a necessary method of extraction, will provide appropriate protection against use of the term to mislead consumers about quality characteristics of bottled water.

37. A number of comments, based principally on Study 2 findings, argued that safety considerations were the primary consumer concerns about bottled water, that FDA should take these concerns into account when deciding on the appropriate definition of "spring water," and that these concerns provided a sufficient basis for including water obtained by bore hole extraction in the definition of "spring water."

FDA agrees that safety considerations are important in the regulation of bottled water. However, the agency does not generally view the standard of identity for a product as the means to ensure its safety. FDA stated in the proposed rule (58 FR 393) that it was developing definitions for types of bottled water to ensure honesty and fair dealing in the interest of consumers, and this remains the agency's basic purpose for defining these terms.

FDA has established quality standards for bottled water to satisfy consumer expectations that bottled water will be of appropriate quality. To be of appropriate quality, the water must be safe. Thus, the quality standard sets maximum levels that are well within safe levels for a number of water contaminants. FDA has also adopted a good manufacturing practice (GMP) regulation for bottled water to ensure that bottled drinking water is processed, bottled, held, and transported under sanitary conditions that will not render the product injurious to health. Thus, regardless of the extraction method used to obtain bottled water, the water will be safe.

For these reasons, FDA does not see consumers' concerns about safety as a particular reason for including water that is obtained by bore hole extraction in the definition of "spring water." FDA is including water obtained in this way in the definition because, as explained above, bore hole collection of spring water is a common industry practice, and consumers are not misled by the use of this collection method. The key to the definition, as FDA stated in response to comment 36 of this document is from where the water comes.

b. Use of a Bore Hole

38. A number of comments objected to a definition of "spring water" that would allow the use of a bore hole to collect the water. Comments stated that the definition would allow "well water" or "bore hole water" to be labeled as "spring water." Comments requested that the reference to bore hole extraction be deleted from the proposed regulation because the water is not "spring water."

Some comments stated that ground water derived by the use of bore holes is not compatible with the geological definition of a spring and should not be permitted to be labeled as "spring water." One of the comments added that the proposed definition is inaccurate and does not represent the common usage of this term by professional hydrogeologists, professional ground water hydrologists, or the general public. It stated that springs are naturally occurring discharges or flows of ground water that occur at the land surface.

On the other hand, a number of comments argued that water extracted through the use of a bore hole should be eligible to be called "spring water." Comments stated that a bore hole is a preferred method of spring water collection, and that inclusion of this method of collection in the definition of "spring water" would provide flexibility to manufacturers. One comment from a hydrogeologist stated that the use of bore hole collection methods is widely recognized throughout the United States and the rest of the world as a safe, convenient, sanitary, and reliable method for intercepting spring water before it emerges to the earth's surface, where it can be exposed to sources of pollution or alteration.

A number of comments noted that the use of bore holes has long been recognized in this country, Canada, Europe, and elsewhere as a preferred and sometimes necessary method for extracting spring water. Comments stated that bore hole collection of spring water is practiced exclusively in Europe and many other parts of the world for sanitary reasons. Comments added that the proposed definition recognizes that over 50 percent of the water used in domestic spring water production is currently collected through the use of a bore hole, and that the definition provides a consistent standard of identity regardless of the technology used for extraction and collection.

One comment stated that some advance the view that spring water collected at the surface is natural because its collection involves no physical or technological intervention into, or development of, the spring source or of the water, and that subsurface collection of spring water is not natural because it involves extraction and piping through a bore hole, which means that the finished product is produced through physical alteration of, and intervention into, the source. The comment said that this view is misleading because even when spring water is collected at the surface, piping must be used, a bore must be drilled, and technology must be employed in the collection process. The comment said that frequently, physical alteration of the natural orifice also must be undertaken.

The agency has decided to adopt the proposed definition of "spring water" as water that is derived from an underground formation from which water flows naturally to the surface of the earth. FDA has also decided to provide that "spring water" may be collected below the earth's surface through a bore hole. As previously discussed in response to comment 35 in this final rule, consumers do not necessarily believe that spring water is

collected at the surface of the earth. In addition, over half of the spring water sold in the United States is extracted through a bore hole. Therefore, the agency has concluded that providing for the use of a bore hole in addition to surface collection will permit production flexibility without interfering with established consumer understanding or expectations in any way.

FDA recognizes that some geologists and hydrogeologists disagree with the use of a bore hole in the collection of spring water. However, FDA finds that as long as the physical properties, composition, and quality of the water that is captured by a bore hole are the same as those of the water from the same underground formation that flows to the surface, it is appropriate to label the water as spring water. If the use of a bore hole does not change the characteristics of that water, then the bore hole is only tapping the underground water source that feeds the spring. However, if the water collected through the bore hole has different characteristics from the water emerging from the spring orifice, the water is not spring water. To clarify that the source of the water must be the same underground formation, the agency is adding a provision to § 165.110(a)(2)(vi) that the bore hole collection of spring water must be through a bore hole tapping the underground formation feeding the spring.

A spring is a natural flow of water from the earth (Ref. 13). An aquifer is a porous rock stratum that yields water in a usable quantity to a well or spring (Ref. 5). A stratum is a single layer of rock. Spring water is water that emerges from the spring orifice or water from the stratum that feeds the spring. Scientific field methods can demonstrate that water that emerges from a spring and water from an adjacent bore hole are from the same underground source. Geochemical methods may be used to demonstrate that water extracted from a spring and water extracted from an adjacent bore hole are of the same chemical quality.

FDA agrees that there must be appropriate development of an approved source, whether the water is to be collected at the natural orifice or with the use of a bore hole. Both methods of collection require careful engineering for proper water collection. A source must be appropriately developed, in accordance with the GMP's in part 129, to qualify as an approved source. Under § 129.3(a), an approved source is one that has been inspected by the State and local government agencies having jurisdiction. Under § 129.35(a)(1), the source must be properly located, protected, and operated and be easily accessible and adequate.

In summary, FDA finds that water that is collected by use of a bore hole tapping the underground stratum of a spring is appropriately included in the definition of "spring water" in § 165.110(a)(2)(vi), as long as the source of the water is the same no matter which method of collection is used, and the method of collection does not interfere with the quality or composition of the water.

39. Comments contended that this rulemaking is being orchestrated by parties who will profit from being able to legally increase their production of spring water by using pumping mechanisms. One comment stated that the reason that anyone would bore a well next to a spring is because the flow of water from the spring has decreased. Another comment added that the bottled water industry wants a loophole that would allow companies to call their well water by the better perceived term "spring water."

One comment stated that to allow "spring water" to be collected through a bore hole that is adjacent to the point of emergence is being less than honest with consumers. This comment maintained that allowing this practice only serves the interest of a special segment of the bottled water industry. The comment stated that when bore holes have to be qualified to determine whether they are adjacent to the spring and to determine whether the water is from the same underground stratum, and has all the same physical properties, composition, and quality, as the water emerging at the surface, then fair dealing will be lost in the many ways that these provisions will be interpreted.

Conversely, a comment that supported the use of a bore hole stated that adoption of the standard as proposed would protect consumers against artificial barriers to commerce and restraints on competition that ultimately raise consumer prices and reduce product quality. Another comment stated that the controversy about the use of a bore hole stems partly from a lack of understanding of practices accepted around the world and partly by small companies striving to use regulations for competitive advantages.

One comment asserted that differentiating between the same water, whether it comes from a natural orifice or from a bore hole tapping an aquifer, is an artificial marketing difference.

Some comments stated that if the definition of "spring water" were to preclude the use of bore holes, many smaller companies would be constrained from expanding their businesses. These comments added that as long as the water is compositionally identical, the method of extraction is a production matter and should not be a factor in classifying the water.

The agency disagrees with the comment that stated that consumer interests would be compromised by providing for the use of a bore hole in the definition of spring water. As discussed in the response to comment 35 in this document, many consumers have not formed opinions concerning an appropriate method of extraction of spring water, and, based on information from the consumer surveys and other comments received, FDA has concluded that consumers are not misled because of the use of a bore hole.

FDA also disagrees that its position only serves the interest of a special segment of the bottled water industry. Currently, as stated by many comments, over half of the spring water produced in the United States is collected through bore holes. Not providing for the use of a bore hole in the definition of spring water would thus force a significant segment of the industry to relabel their products as other types of bottled water products. Given that most consumers are not concerned about whether a bore hole or a spring collection box is used, and that FDA can control the source of the water and its composition and quality by means of its standard, the agency advises that it is not aware of any factor that compels such a result.

In addition, the agency disagrees that its definition will provide a loophole to allow water that is not spring water to be called "spring water," with certain parties profiting from a broadened definition. FDA's definition is no broader than the definition used by most States, most notably the major bottled water-producing States of New York, California, Texas, and Florida. These States already provide for the use of a bore hole, although the State of North Carolina has a stricter definition for "spring water." Many foreign governments have even broader definitions for "spring water" than is provided by FDA's definition. For example, the government of the province of Quebec defines "spring water" as ground water containing greater than 10 ppm TDS and less than 500 ppm TDS, regardless of whether the water flowed to the surface of the earth or was collected through a well. Therefore, FDA concludes that its definition will not create a loophole to

market water that is not spring water. FDA's definition is generally consistent with worldwide industry practice and most government regulations. Thus, if anything, FDA's definition will help to eliminate artificial barriers to competition and commerce.

Although how the determination of whether a bore hole actually is tapping a spring is made may vary because of regional geological differences (e.g., limestone formations versus granite formations), the water collected from a bore hole must be the same water that feeds the spring's natural orifice. To be called "spring water," the water must be from a stream that flows naturally to the surface of the earth. No matter what method of extraction is used, the water must have the same physical properties, quality, and composition as the water that actually flows to the surface.

The agency recognizes that there is the possibility of a bore hole extracting water from an aquifer that does not feed the spring. However, the agency is requiring in § 165.110(a)(2)(vi) that the water be from the same underground stratum, retain all the physical properties, and be of the same composition and quality as the water that flows naturally to the surface of the earth. Water from a different underground stratum will have different properties and characteristics. Thus, the water will not meet the definition of spring water unless it has the same properties and characteristics as the water that flows through the spring's natural orifice. Therefore, § 165.110(a)(2)(vi) will protect against the possibility of a bore hole extracting water that does not feed the spring.

40. Comments noted that a domestically produced beer that is identical to a German beer could not be called German beer because it does not come from Germany. They stated that, similarly, spring water must come from a spring, not a bore hole.

Another comment maintained that under the law, "the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance" (*F.T.C.* v. *Algoma Lumber Co.*, 291 U.S. 67, 79 (1934)). It concluded that bottlers should not be allowed to tell consumers that a product is spring water when it actually comes from a bore hole.

The agency disagrees with the comments. In the example of the German beer, FDA recognizes that a German source does indeed make the product a German beer, and that if the beer was not produced in Germany the product would not be German beer. However, in the case of spring water, the underground source of the water, that is, the spring, will be the same whether collected at the surface or through use of a bore hole. It is only the method of extraction that is different. Therefore, water that is from an underground formation from which water flows to the surface, and that has the same physical properties, quality, and composition as the water that flows to the surface, is fairly and appropriately considered to be spring water even if it is extracted by use of a bore hole.

41. Several comments stated that natural spring water is free flowing, and that if a bore hole is used by a bottler, it should be so noted on the label to allow consumers to make the ultimate decision on this issue.

Other comments suggested that to differentiate between spring water that is naturally flowing and spring water that is collected from a bore hole, FDA should define "natural spring water" as water that is derived from an underground formation from which water flows naturally to the surface of the earth and "spring water" as water derived from an underground source from which water flows naturally or through a bore hole adjacent to the point of emergence. One comment added that to not differentiate between "natural spring" and "spring" waters would be to perpetuate a fraud.

The agency disagrees with the comments. As defined in § 165.110(a)(2)(vi), the underground source of "spring water" must be the same whether it is extracted from the natural orifice or from a bore hole. In addition, as shown by the submitted surveys, many consumers did not object to the use of a bore hole to extract spring water. Therefore, it is not necessary to establish mandatory labeling regulations to distinguish between spring water extracted through a bore hole or through the natural orifice. However, FDA would not object to a truthful, nonmisleading statement on the label that stated that the water flowed naturally to the surface, if indeed the water was extracted from the natural orifice without the use of external force, or to a statement that the water was extracted through a bore hole.

42. One comment suggested that bore hole-collected water more clearly fits the definition of "artesian well water." It stated that FDA defined the other types of water with their proper historic geologic definitions, and that spring water should also be defined in this manner.

The agency disagrees that spring water collected from a bore hole more clearly meets the definition of "artesian water." The definition for "spring water" mandates that the water come from an underground source where water flows naturally to the earth's surface before the drilling of a bore hole. Artesian water comes from a well tapping a confined aquifer. Artesian water does not flow to the earth's surface unless a well is drilled to tap the source, and the natural hydraulic pressure is great enough to force the water to the earth's surface. Therefore, spring water and artesian water are from distinct sources. However, to clearly distinguish between the definitions of "artesian water" and "spring water," FDA is modifying § 165.110(a)(2)(vi) to state that there must be a natural force causing the water to flow to the surface through a natural orifice for the water to be labeled as "spring water."

c. Adjacency

43. Some comments asked how one could be assured that water collected through a bore hole would have emerged from the ground through a free-flowing spring at a point adjacent to the bore hole had it not been extracted through the bore hole.

Several comments suggested that FDA incorporate a requirement for hydrogeological data to demonstrate a hydraulic link between a bore hole and a spring to document that the source is a spring. One comment added that the spring water definition will not resolve the matter of whether a bore hole is adjacent to a spring unless scientific support for the term "adjacent" is presented.

Some comments suggested specific methods to determine the hydraulic linkage. These included using dye tracer tests, geophysical conductivity tests, water analyses, and graphical methods, such as the Stiff diagram and the Piper trilinear diagram, to demonstrate that the chemical and physical characteristics of the water correspond to those of the spring. Comments stated that pumping should cause a measurable decline in the spring's discharge rate if the well is tapping spring water, although if the withdrawal rate from the bore hole is small relative to the discharge rate of the spring, or if the spring is submerged, this decline may not be measurable.

The comments stated that because of the differences in the mineral composition of geological strata, no one set of analyses will apply to all spring formations to demonstrate compliance with these criteria.

Some comments suggested that the criterion of adjacency used in the hydrogeological context of hydraulic connection is reasonable and logical and objectively addresses this important and controversial issue. They requested that language be added to the regulation to require that bore hole adjacency to the spring be verified by its measurable hydraulic influence on the spring flow from the natural orifice at the time of collection, as certified by a professional hydrogeologist.

However, some comments asserted that it will be difficult to establish the uniformity or sameness of actual spring water and water collected through an adjacent bore hole.

The agency agrees that hydraulic linkage is important in the definition of "spring water." If the bore hole taps the same underground water source as that which feeds the natural spring, and has the same physical properties, composition, and quality as the water emerging from the natural orifice, it is clear that the location of the bore hole relative to that of the point of emergence is not relevant. However, a bore hole adjacent to a natural emergence can actually tap another water bed far below the aquifer feeding the natural spring source and thus collect water of a totally different composition from that of the water which emerges from the natural spring.

The agency concludes that requiring a hydraulic (i.e., physical) connection between a bore hole and a spring will clarify the definition of spring water and will eliminate the possibility of indiscriminate bore hole use. Therefore, FDA is modifying its definition of "spring water" in § 165.110(a)(2)(vi) to require that a measurable hydraulic connection, using a hydrogeologically valid method, between the bore hole and the natural spring be established to show that the water is from the same underground stratum as the spring.

The comments suggested several different methods to determine hydraulic linkage. One or more hydrogeologically valid methods may be used as appropriate to determine hydraulic linkage. However, not all methods may be appropriate for different geologic regions or for the specific bore hole site. Therefore, the agency is not recommending or requiring any specific method or methods.

44. Some comments stated that the location of the bore hole relative to that of the point of emergence is not relevant as long as the bore hole taps the same underground water source as that that feeds, or that would feed, the natural spring if not for the collection below the earth's surface. Other comments objected to the use of the word "adjacent" in the definition because they believe that it is ambiguous. Comments suggested that the agency modify the definition for "spring water" to delete the use of the term "adjacent." One comment added that such a definition would be easier to enforce and would eliminate the need to arbitrarily decide what "adjacent" means in terms of a measurable distance.

Conversely, one comment stated that if bore hole access is permitted in the final definition of "spring water," then it is crucial to retain the requirement that the bore hole be adjacent or near to the point of natural emergence of the spring. The comment stated that this requirement is necessary to assure that the bore hole is tapping only water that would otherwise emerge at that point, and that consumers are not misled that they are purchasing spring water from a specifically identified spring source.

The agency agrees with the comments that suggested that the term "adjacent" be deleted from the definition of spring water. As discussed in the previous comment, the agency is requiring that there be a measurable hydraulic connection, using a hydrogeologically valid method, between the bore hole and the natural spring established to show that the water is from the same underground stratum as the spring. To meet the definition of "spring water," the manufacturer must ensure that the water collected through a bore hole is from the same underground stratum as the spring and has the same physical properties, composition, and quality as the water that flows naturally to the surface of the earth from the spring. Water collected at a distance from the natural orifice will not have traveled the same path as the water that flows from the natural orifice of the spring and, therefore, could have a different composition. FDA is accommodating the use of bore hole technology so long as there is assurance that the water from the bore hole has the same composition and characteristics as the water from the natural orifice. If the bore hole is too far from the natural orifice, the latter assurance would not exist.

FDA concludes that the requirement of a measurable hydraulic connection between the bore hole and the spring's natural orifice adequately encompasses the intent of the proposed adjacency requirement. Therefore, the agency is deleting the requirement in § 165.110(a)(2)(vi) that the bore hole be adjacent to the point of emergence of a spring.

45. A number of comments asked FDA to explain or define the terms "adjacent" and "point of emergence." Comments requested that FDA designate a specific distance (e.g., 50 feet, 100 feet, 250 feet, 1 mile) for how far bore holes could be located from the source and still meet the criterion of "adjacent to the point of emergence." One comment suggested that a person should be able to see the spring and bore hole at the same time. Some comments held that the rule should specify that the bore hole must be as close as possible to a specifically identified spring discharge, and that the bore hole must be closer to the spring discharge than to any other source of ground or surface water.

One comment stated that the State of California informally defines "adjacent" as a distance of approximately 250 feet. It stated that this definition avoids cases of confusion, such as the installation of spring bore holes several miles from the spring location. Other comments stated that some States have used a ballpark figure of 200 feet for adjacent, others more or less than 200 feet.

Another comment stated that the reasoning provided in the preamble of the proposal necessitates a relatively narrow interpretation of "adjacent" as a point located a minimal distance from the spring orifice and asked that a statement to this effect be included in the regulation.

In the preamble of the January 1993 proposal (58 FR 393 at 399), FDA stated that allowing for a bore hole adjacent to a spring would provide for the tapping of the source at a point near the mouth of the spring. The agency is not specifying a particular distance between a bore hole and the mouth of the spring because the appropriate distance will vary significantly in different geological areas. FDA is also not adopting a requirement that a person be able to see the spring and bore hole at the same time because, depending on the terrain, a person may be able to see a great distance or only a small distance. Therefore, FDA finds that defining "adjacent" in these terms would not be appropriate. As discussed in the previous comment, the agency is defining adjacency in terms of a measurable hydraulic connection.

FDA agrees that the collection apparatus should be as close as possible to the specifically identified spring discharge. The agency also agrees that the bore hole should normally be closer to the spring discharge than to any other source of ground or surface water. However, the agency does not agree that this distance need be specified in the regulation because it is requiring that a measurable hydraulic connection, using a hydrogeologically valid method, between the bore hole and the natural spring be established to show that the water is from the same underground stratum as the spring (§ 165.110(a)(2)(vi)). The agency

concludes that the requirement for a hydraulic connection is appropriate and avoids uncertainty concerning any specific distance implied by the term "adjacent."

46. Comments requested that FDA address the issues of ownership and control in the regulations. Comments questioned whether proper inspections could be mandated in a case where a spring is located on one owner's property, and the bore hole is on another's property. One comment stated that the ownership and control of the bore hole should be the same as that of the spring for quality control purposes. One comment stated that, if a company owns, or owns the rights to, a legitimate spring, it should not matter how it collects the water as long as it does so in a sanitary way.

The issues raised by these comments are outside the scope of this rulemaking and really beyond the coverage of the act. Issues of ownership and control turn on property laws, water rights, and access to the spring's natural orifice. However, FDA cautions that a manufacturer must be able to test the water that flows naturally to the surface of the earth to ensure that the water that it is collecting from the bore hole is the same water as that from the spring that flows to the surface, and that there is a hydraulic connection between the bore hole and the natural spring. If the manufacturer cannot establish that the water that it is calling "spring water" is the same as that from the identified spring, it runs a significant risk that its product is misbranded, and, thus, that it will be the subject of a regulatory action.

d. External Force

47. Several comments objected to the use of external force in the collection of spring water. One of the comments stated that consumers believe that spring water has no unique taste, color, or other characteristic other than being water that comes to the surface through a natural orifice, and that most believe that the water flowed to the surface by the spring's natural pressure. Comments stated that to furnish other than a natural flow rate by supplemental pressure is misleading, and that such a product should be labeled as "well water."

Comments stated that the use of a bore hole is appropriate only if external force is not used. One comment stated that the freely flowing water from a natural spring site represents the overflow of the underlying aquifer, and that, by contrast, pumped water from a vertical well of arbitrary depth may tap many hydrogeologic layers, drawing against the storage of the aquifer. The comment asserted that some trace of the natural flow should be visible at the original spring orifice.

One comment stated that some of the problems associated with pumped wells are: (1) The cone of depression caused by pumping an unconfined aquifer triggers a series of changes in the ground water and aquifer; (2) dewatering the aquifer around a well allows air intrusion into the formation voids, which can oxidize iron and other metals resulting in reduced water storage capacity, thereby increasing the size of the cone of depression; (3) pumping from an aquifer that yields water to a spring can induce recharge from neighboring hydrogeologic units that are not normally hydraulically connected to the spring; and (4) pumping an aquifer causes changes in flow velocity and direction of flow and creates turbulence.

The agency does not agree that the use of external force should be prohibited for the extraction of spring water. Although there must be a natural force that causes at least some of the water to flow to the surface through a natural orifice, this force may not be sufficient to cause the water to flow through some bore holes. The angle and the distance of the bore hole from the mouth of the spring may not provide adequate water pressure for the water to flow through the bore hole.

It is true, as described by the comment, that changes may occur in the underground strata as a result of pumping. The creation of a cone of depression, changes in water flow, and the nature of the recharge can alter the composition of the ground water. However, if the properties of the water change as a result of the use of external force, the water is no longer spring water because the water is no longer the same water that flows through the natural spring orifice. If pumping action alters the properties of the water, pumping will have to cease, and the area allowed to return to its natural equilibrium, so that water collected from the bore hole with the aid of external force will once again have the same properties as the water flowing from the natural spring orifice. If not, while pumping may continue, the water can no longer be labeled as "spring water."

Finally, the agency points out, in response to one comment, that if water is pumped from a vertical bore hole of any depth that taps other hydrologic strata, that water is not spring water.

FDA concludes that the use of external force in the collection of spring water is not misleading to consumers because the agency is requiring in § 165.110(a)(2)(vi) that the water be derived from an underground formation from which water flows naturally to the surface of the earth; that the water have the same physical properties, composition, and quality as the water that emerges from the natural orifice; and that there be a hydraulic connection between the bore hole and the spring stratum. Thus, the agency concludes that the definition will ensure that water labeled as "spring water" meets consumers' expectations.

48. Three comments stated that FDA should require that the spring continue to flow to the surface naturally. They stated that if the spring ceases to flow for a period of 90 days, then the water from the bore hole should no longer be considered to be spring water, and any labeling of the product as such must cease. One of the comments stated that such a requirement would help to ensure the integrity of the spring source and prevent contamination caused by a reversed flow close to the ground surface.

One comment stated that if the spring ceases to flow to the earth's surface, the pumping mechanism is at fault, and comparative samples would not be available. Another comment asked whether, if the spring ceases to flow as a result of pumping, the water may still be called "spring water."

The agency agrees with the concerns of the comments. In some cases pumping may cause the spring to cease flowing through the natural orifice, and, thus, comparative samples of the water would not be available because of the use of external force when the water is collected through a bore hole. It is important to maintain some flow of water through the natural orifice to prevent any reverse flow of surface water, which could then be pumped through the bore hole. As previously stated in the response to comment 12 of this document, ground water under the influence of surface water cannot be called "spring water."

FDA recognizes that occasionally a spring may cease flowing temporarily because of fluctuations in ground water levels. Ground water fluctuations may be caused by natural conditions (e.g., drought) or man-induced (e.g., pumping) and are classified as short-lived, diurnal, seasonal, and long-term changes (Ref. 9). If the spring has ceased flowing, and this cessation is not a temporary condition, the water is not spring water. In addition, if the external force is routinely (e.g., more often than during the time of year when the water table is typically low) causing cessation of the spring's flow to the surface, this too is not a temporary condition, and the water does not qualify to be called "spring water."

The State of Florida's definition for "spring water" does not include water from a strata feeding a spring that ceases to flow naturally to the surface for a period of 90 days (Comment 184). The agency agrees that there must be an expectation that the spring will continue to naturally flow to the surface for the water to qualify as spring water. Thus, any cessation in the flow of the spring from the natural orifice must be for a limited period of time. Ninety days is an appropriate time limit for seasonal types of changes in ground water. However, the agency will consider each situation on a case-by-case basis and take into consideration all circumstances (e.g., climatic conditions and effect of pumping) causing the flow cessation.

To clarify in § 165.110(a)(2)(vi) that the spring must continue to flow when external force is applied to a bore hole in the collection of spring water, FDA is deleting the statement that it included in the proposed regulation that the water would flow naturally to the surface of the earth if not for its collection below the earth's surface. In addition, the agency is adding a requirement in § 165.110(a)(2)(vi) that if spring water is collected with the use of external force, water must continue to naturally flow to the surface of the earth through the spring's natural orifice.

49. A number of comments expressed concern that the use of external force will allow a spring water bottler to extract more water from the ground than would have naturally flowed to the surface of the earth through the spring's natural orifice. Comments requested that the agency include a provision in the definition of "spring water" to require that the quantity of water extracted through external force not exceed the quantity of the water that would flow naturally to the surface of the earth if not for its collection below the earth's surface.

Two comments asked what the purpose of permitting the use of a bore hole was if the quality of the water from the bore hole must equal that of the water that flows naturally to the earth's surface except to enable the pumping of larger volumes of water from a stratum. Another comment held that under the proposed rule, there will be few springs developed with collection boxes because bore holes will be generally more economically advantageous, and greater volumes of water will normally be available through the use of bore holes than through the use of collection boxes.

One comment added that provision for the use of bore holes could encourage bottlers to exceed the safe yield from the spring's aquifer. It stated that excessive withdrawal is usually discussed in terms of "mining" of the water (defined as when more water is withdrawn than is replaced by recharge). The comment stated that the real issue as far as surface contamination is concerned is not the "mining" of water or the collection device but the quality and purity of the aquifer as determined by the source of recharge.

One comment expressed concern that the proposed rule is silent on any method to identify when, because of overpumping, wells are capturing water that would otherwise not flow to the spring. It stated that overpumped bore holes (i.e., those that pump more water than the spring naturally discharges) could induce flow from surface water or nearby contaminant sources, such as septic tanks. The comment stated that possible solutions to this problem would be to: (1) Restrict the allowable daily pumping volume to that volume equal to the natural average (mean) daily flow from the spring; (2) restrict the use of bore holes to those that do not require the "assistance of external force" (i.e., pumping); or (3) require a demonstration that any additional pumping is not altering the flow paths to the spring such that flow is induced from nearby potential sources of contamination to the well.

FDA agrees that there may be adverse effects of overpumping (i.e., mining) a bore hole that is tapping a spring. There may be public health concerns if the recharge to the aquifer is contaminated by surface water. In addition, ground water extracted with external force, and under the direct influence of surface water because of overpumping, is not spring water because the source of the water is not entirely the source that feeds the spring. However, such water may be treated and called "bottled water" or another applicable name.

FDA does not object to the use of external force, and does not deem it necessary to restrict the amount of water that may be extracted through the use of external force, as long as the water meets the requirements of § 165.110(a)(2)(vi) (e.g., it is compositionally the same as the water flowing from the natural orifice). Water that has not traveled the same course as the water feeding the spring, and, thus, that does not have the same characteristics as water from the spring, cannot be labeled as "spring water."

The agency disagrees that allowing the use of a bore hole and external force will decrease the number of springs developed with collection boxes. Many States already allow the use of both extraction methods, and both methods are already used by manufacturers. Providing for the use of both methods of collection of spring water allows manufacturers the flexibility to use the method best suited for their spring site.

A demonstration that pumping is altering the flow paths to the spring, such that flow is induced from nearby potential sources of contamination to the bore hole, could include bore hole pump tests, monitoring of observation wells, and ground water flow modeling. EPA's Ground Water Protection Division has developed a variety of tools designed to assist State and local governments in the task of identifying the capture zones of pumping as part of the Wellhead Protection Program (WHPA). A capture zone is the area around a bore hole containing ground water that is destined to flow to that bore hole within a specified time. EPA's existing ground water flow model (WHPA 2.1) can identify induced flow from surface water caused by changes in pumping rates. Should a demonstration of the effects of pumping be required, this model could be used as a tool by government agencies to determine the impact of the aquifer's recharge. FDA concludes that a ground water flow model could be used to ascertain whether allowable overpumping is inducing deleterious results. However, regardless of the use of external force to extract spring water, the water must still comply with the definition in § 165.110(a)(2)(vi) to be labeled as "spring water."

e. Source Approval and Enforcement Issues

50. Comments asked how it can be proven that the water from the bore hole is from the same stratum as the water that is actually emerging from the spring. They stated that once the bore hole at the spring has been constructed and the establishment is in operation, it would be difficult to verify that the water from the bore hole met the definition of spring water. One comment asked what type of documentation the producer could keep that would satisfy the requirements of the regulation concerning source. It asked whether the records or a certification statement from the drilling company that drilled the holes would be necessary, or whether a site examination and the manufacturer's word on source would be adequate.

One comment expressed concern about potential abuse from the use of a bore hole because the nonexistence of a

spring can be readily attributed to the effect of the bore hole, and no confirmation of the prior existence of a spring at that location is required.

The agency acknowledges the concerns of the comments. Section 129.35(a)(1) states that the product water supply for each plant shall be: (1) From an approved source that is properly located, protected, and operated; (2) easily accessible, adequate, and of a safe, sanitary quality; and (3) in conformance at all times with the applicable laws and regulations of the government agency or agencies having jurisdiction. However, part 129 does not require that the government agency having jurisdiction identify or certify that the source is a spring source.

As discussed in the response to comment 48, FDA has modified § 165.110(a)(2)(vi) to mandate that the spring continue to flow, although it may be at a diminished rate, for the product to qualify as "spring water." In addition, it is important that manufacturers identify the location of the spring to determine that the water is, in fact, flowing and, thus is spring water. A spring is a flow of water from the earth. If there is no identifiable spring, the water can not be labeled as "spring water." Thus, it is critical that manufacturers of "spring water" identify the exact location of the natural orifice where the spring flows from the earth. Therefore, the agency is modifying § 165.110(a)(2)(vi) to include a requirement that the location of the spring be identified.

There must be other means of verifying labeling claims once the bore hole at the spring has been constructed, and the establishment is in operation. As discussed above under "1. Artesian Water," the agency may promulgate regulations for the efficient enforcement of the Act under section 701(a) of the Act. Although it is possible to determine that a source of water is a spring after the bore hole is in operation, in some cases it would be onerous for regulatory officials to do so. Therefore, FDA has determined that a requirement to demonstrate the hydraulic connection between the bore hole and the spring's natural orifice is necessary for the efficient enforcement of the Act.

As FDA has stated, a food manufacturer is responsible for the accuracy of its food labels (58 FR 2079, 2163, and 2165 January 6, 1993). Indeed, placing a claim in food labeling that calls the consumers's attention to a water's source is a representation that the manufacturer has evidence that the product meets the requirements for the claim. See *Thompson Medical Co., Inc.* v. *FTC*, 791 F.2d 189, 193 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987). Thus, making a claim without such a basis would be misleading and in violation of section 403(a) of the Act.

The evidence that manufacturers compile in response to the requirement in § 165.110(a)(2)(vi) that they be able to demonstrate to regulatory officials that a measurable hydraulic connection exists between the bore hole and the natural spring orifice (see comment 43 of this document) should also establish that the spring is the source of water for the bore hole. To comply with this requirement, producers may maintain records that demonstrate that a measurable hydraulic connection does indeed exist between the natural orifice and the bore hole. In addition, many States and the United States Geological Survey may have records of the development of some springs and the geology of the surrounding area. Records or a certification statement from a professional hydrogeologist or the drilling company that drilled the holes are appropriate sources of documentation. In addition, manufacturers may use methods such as the dye tracer test to demonstrate the hydraulic connection during an inspection.

If the source does not meet the definition of spring water then the product must not be labeled as "spring water," or it is misbranded under sections 403(a), 403(b), and 403(g) of the Act. Compliance with this provision does not entail the creation of any new information or the compilation of any special records. Rather, the requirement would obligate manufacturers simply to have access to information that they should already possess and be able to provide FDA with this information upon request.

51. Several comments expressed concern about the requirements that spring water be "from the same underground stratum," "retain all the physical properties," and "be of the same composition and quality." They stated that these requirements are too general and are undefined, leaving many questions relative to acceptable differences in such parameters as temperature, pH, turbidity, hardness, iron content, and calcium content. One comment stated that it will be difficult for FDA or any other government agency to monitor the conditions required for "spring water."

One comment requested clarification of the requirement in part 129 that product and source waters be approved by State regulatory agencies having approval authority. It asked whether the proposed regulations mandated approval of the bore hole and the spring, whether the spring must be validated as a natural spring, and whether engineering had to be performed to protect the spring site if a bore hole is to be utilized. The comment stated that there is no reference to continuous maintenance of the spring. Comments asked how many, and at what frequency, tests are necessary to show that water from the bore hole is identical to water from the spring.

Comments stated that manufacturers should present geological information about the vicinity of the orifice and bore hole so that the State can devise a representative set of water quality analyses specific to the situation.

FDA notes that the source is approved by the government agency or agencies having jurisdiction (§ 129.3(a)), and that in many cases, it will be a State agency. However, the approval mandated under part 129 is to inspect the source and sample the water to ascertain that the water is of a safe and sanitary quality. Firms are responsible for ensuring that their products comply with the particular source requirements in § 165.110(a)(2)(vi). As discussed previously, the bottled water firm must be able to demonstrate to regulatory officials that a measurable hydraulic connection exists between the bore hole and the natural spring, and that the water complies in all other respects with § 165.110(a)(2)(vi).

Concerning continuous maintenance of the spring, the firm is responsible for ensuring that their products comply with all applicable regulations. The quality of the source water is critical to the quality of the final product. Without proper maintenance of the spring, the quality of the source water will decrease, and the firm is taking a risk that the water will not meet FDA requirements. Thus it is in the interest of the firm to maintain the source in appropriate condition.

In regards to methods of testing for comparative purposes, one or more hydrogeologically valid methods may be used as appropriate to verify that the product is in compliance. However, not all methods may be suitable for different geologic regions or for the specific bore hole site. Therefore, the agency is not recommending or requiring any specific method or methods.

Under § 165.110(a)(2)(vi), manufacturers must be able to demonstrate, upon request, to regulatory officials that there is a measurable hydraulic connection between the natural spring and the bore hole. This verification must be current to be satisfactory. It is the responsibility of the firm to be in compliance at all times.

52. Two comments asked for clarification of whether water emerging at the surface not as a result of flow from an underground formation or aquifer, but as the result of seepage from a higher elevation surface water source reemerging at a lower elevation, is really spring water (e.g., springs fed by higher level lakes; underground creeks popping up to the surface; or other surface water that originates high in a mountain which emerges at a lower elevation).

The agency considers that surface water from a higher elevation reemerging through a natural orifice at a lower elevation is spring water if the water has traveled sufficiently through the ground so as not to be under the direct influence of surface water. According to 40 CFR 141.2, ground water under the direct influence of surface water means any water beneath the surface of the ground with: (1) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia*; or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. The existence of any of these factors indicates that the source is under the direct influence of surface water and is, therefore, not a ground water source that meets the definition of "spring water."

A spring is water from an underground source that flows naturally to the surface of the earth. Under normal conditions, aquifers feeding springs are in a stable environment. On the other hand, surface water is subject to a changing environment and may assimilate these changes. Thus, if water flowing naturally to the surface of the earth exhibits the characteristics of surface water, it does not comply with the definition of "spring water" in § 165.110(a)(2)(vi) and is not spring water.

53. One comment claimed that some members of industry consider any wet location on an otherwise dry mountainside or flat pasture to be a spring. The comment stated that sometimes these wet spots can bead water, producing a small trickle. The comment contended that after development, these wet spots can sometimes produce a considerable flow of water. It also stated that water has been known to come up in natural depressions in hillsides without flowing until the water is pumped. The comment requested clarification on these questions. It asked whether any alteration to the natural terrain that results in water coming spontaneously to the surface of the alteration should be deemed a spring (e.g., a road cut into a mountain and in this cut water trickles (or gushes) out).

FDA is defining "spring water" in § 165.110(a)(2)(vi) as water derived from an underground formation from which water flows naturally to the surface of the earth. There must be a natural force causing the water to flow to the surface through a natural orifice. If the water does not flow to the surface of the earth from the underground source without development of the area or the use of external force, then the water does not qualify for use of the name "spring water."

54. One comment complained that the January 5, 1993 proposal, if adopted, would be yet another Federal mandate, without Federal funding, to State agencies having the responsibility of ensuring compliance. It stated that justification for additional program expenditures must be based on need and public safety. The comment stated that there has been no evidence presented that adoption of the proposed rules would increase product safety.

One comment stated that the very general nature of FDA's proposal would create problems for regulatory agencies attempting to implement and enforce the rule by generating additional workload, controversy within the bottled water industry, and legal battles over whether a "bore hole" is tapping "spring water" or "well water."

Comments stated that the use of a bore hole in the collection of spring water would make enforcement of the provision not only expensive but most difficult.

The agency disagrees that it is imposing a burden on State regulatory agencies by establishing a standard of identity for spring water. There is no requirement that a State ensure that a firm is complying with FDA regulations. However, a State may elect to enforce § 165.110 under section 310(b) of the Act (21 U.S.C. 337).

In response to comments, the agency has added provisions to its definition of spring water that make it more specific and that should make its requirements more understandable both to the regulated and the regulators. Manufacturers must identify the location of the spring; there must be evidence that the water is flowing naturally to the surface through a natural orifice; firms must demonstrate and be able to verify to regulatory officials that there is a measurable hydraulic connection between the bore hole and the natural spring; and water must continue to flow naturally to the surface of the earth through the springs' natural orifice. FDA concludes that these provisions will aid in enforcement of the definition of "spring water."

f. Contamination and Sanitary Bottling

55. A number of comments disagreed with FDA's statement in the preamble to the proposal that use of a bore hole will reduce the possibility of contamination and is an aid in the sanitary bottling of spring water (58 FR 393 at 399). Two comments argued that the available evidence did not support that a bore hole is a more sanitary method to collect spring water than a collection box. Comments stated that a properly engineered and constructed spring collection box system can adequately protect a natural spring from outside microbial contamination.

A comment stated that if the quality of spring water is an issue, then it can and should be addressed by quality standards rather than by altering the common definition of spring water to permit use of a bore hole. It argued that the evidence of record on this rule does not justify any departure from the accepted definitions of "spring" and "spring water." Another comment stated that with respect to bore holes serving as an aid in the sanitary bottling of the water, FDA already has provisions for this purpose in part 129. It stated that bore holes as aids in sanitary bottling of water should not be a consideration under the standard of identity.

Another comment stated that the proposed rule provides no specifications for the construction of bore holes, and that, if improperly constructed, sources of contamination could enter the aquifer through the bore hole. It stated that the technology exists to protect a spring water source at its point of discharge, and that treatment systems can be incorporated at the point of discharge to provide protection from a number of types of potential contaminants.

The agency points out that both properly engineered and constructed bore holes and properly engineered and constructed spring collection boxes are appropriate methods to collect spring water. However, in some circumstances, use of a bore hole instead of a collection box will reduce the possibility of contamination and thus aid in the sanitary bottling of the water. For example, springs may surface in areas where it would be difficult to collect the water at the orifice without contaminating the water. In such cases, use of a bore hole can be an effective means to extract the water in a sanitary manner. In all cases the processing and

bottling of drinking water must comply with part 129.

FDA agrees with the comments that stated that sanitation is a function of GMP and not a standard of identity. The agency stated in the preamble of the proposed rule that the use of a bore hole would reduce the possibility of contamination and would be an aid in the sanitary bottling of the water (58 FR 393 at 399), but the intent of this statement was not to say that use of a bore hole is a superior method of collecting the water. Rather, the agency was saying that even though the geological definition of "spring water" does not provide for bore holes, it is a good idea to include their use in the definition of "spring water" because it would provide an alternative sanitary means of extracting the water. Thus, the statement was intended to be a basis for what the agency was proposing to do, not to be an end in itself. The usefulness of bore holes is one of several factors that have convinced the agency that it is appropriate to include water collected by means of their use in the definition of "spring water."

External force is often used with bore holes to extract the water. To clarify the agency's intent that use of bore holes, including those using external force, or properly engineered and constructed spring collection box systems must adequately protect the water, FDA is modifying § 165.110(a)(2)(vi) to remove any inference that manufacturers may use external force to protect the water. Under part 129, any method of collection of spring water must protect the water (§ 129.35(a)(1)).

The agency is not providing detailed specifications for the construction of bore holes or for the construction of spring collection boxes. Appropriate construction specifications may vary according to the site. However, construction of either type of collection mechanism must be in accordance with current good engineering practice. In addition, under § 129.3(a), the source water must be of a safe and sanitary quality. Proper construction will greatly assist in complying with this requirement.

56. Comments asserted that a main concern is that drilling a bore hole next to a free flowing spring orifice may create a hydraulic connection or direct communication between any nearby surface water (river, creek, lake, pond, or swamp) and the spring source and, thus serve only to increase the risk of contamination. Comments were concerned about altering the patterns of recharge by the use of external force and lowering the quality of the water as a result. One comment stated that the use of bore hole collection systems runs contrary to the standards set by EPA regulations (40 CFR part 141) because, almost by definition, the bore hole will be shallow, and it can be sited near surface waters created by the discharging spring.

Conversely, one comment stated that, in a properly equipped bore hole, reverse ground water flow from the surface should not occur. It stated that pumping may change the flow of ground water in a horizontal direction within the aquifer, specifically within the cone of depression created by pumping, and that if a bore hole is properly equipped and managed, vertical movement of surface water downward into the screen will not occur. It added that properly equipped bore holes are accepted by both Federal and State agencies as safe supplies of both domestic and municipal drinking water.

FDA agrees that the potential exists for improper recharge of an aquifer feeding a spring. Water recharge is an issue that must be considered during source approval because there is the potential that the recharge may come from surface sources that may contaminate the underground source. For source approval, the government agency having jurisdiction must determine whether the water will be of a safe and sanitary quality. The States, however, have experience with issues of this type.

The establishment of a definition for "spring water" does not have any effect on the State's burden in reviewing a site for approval, whether a bore hole or a collection box is to be used. The State's decision on whether to approve a source has nothing to do with how water collected from that source and bottled is to be labeled. That decision is made by the bottler, subject to the definitions in § 165.110(a)(2)(vi) and the scrutiny of FDA.

57. One comment stated that the language of the proposed rule creates the impression that spring water may be collected from the surface, which is unlikely, and that bottlers may bottle untreated surface water. The comment stated that surface water intended for drinking must undergo treatment that may result in alteration of the original chemical properties of the water, which would destroy the product's identity as "spring water" in the public's perception. It recommended that the following language be added to the definition of spring water: "After treatment, spring water shall maintain the same physical properties and chemical composition as the water that does or would flow naturally to the surface of the earth."

FDA disagrees with the comment. Spring water may be collected from the surface by means of a collection box. A properly engineered collection box captures the water as it surfaces, before it can be contaminated by surface elements and become surface water. However, spring water collected under the most sanitary conditions may still require some treatment.

The definition of "spring water" is based on the underground source of the water. Thus, water meeting the definition of "spring water" in § 165.110(a)(2)(vi) would remain spring water after treatment, even if the physical properties and chemical composition of the water are altered from such treatment. For example, ozonation is commonly used to treat bottled water and may cause some dissolved minerals, such as manganese, to precipitate. Other treatments, such as filtering, may also cause changes in the water. As long as the water meets the definition of "spring water," however, even though it has been treated, it may be called "spring water."

In the case of spring water extracted from a bore hole, the water must be compared with the water extracted from the natural spring. When that comparison occurs, either before or after any treatment, may have a significant impact on whether the water collected from the bore hole maintains the same physical properties and chemical composition as the water from the natural orifice. To clarify the intent of the regulation, FDA is modifying § 165.110(a)(2)(vi) to state that, before treatment, the water collected from the bore hole must have the same physical properties and chemical composition and quality as water from the natural spring.

However under section 201(n) of the Act, if the water has been treated in such a way that it differs significantly from the source water, regardless of whether that source water is from a natural spring or a bore hole, the fact that that alteration has been made is a fact material in light of representations made and must appear on the label of the product. The water is no longer unmodified spring water and differs significantly from the water that was harvested. Therefore, the fact that the water has been altered significantly must be disclosed in the statement of identity, so that consumers are aware that the source water has been modified. If minerals have been added, the statement of identity must state that fact. If minerals have been removed from the product, other than those that are removed during normal processing (e.g., filtration to remove precipitates), that fact must be included in the statement of identity of the product as well (e.g., demineralized) (§ 165.110(a)(2)(iv)).

5. Well Water

FDA proposed that the name of bottled water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer may be "well water." The agency received no comments requesting modifications to this source definition. Therefore, the definition for "well water" is the same as FDA proposed (58 FR 393), although it is now codified at § 165.110(a)(2)(viii) as a result of the additions that FDA has made to § 165.110(a)(2).

6. Other Water Definitions

58. Several comments urged FDA to define "natural water." Comments suggested that "natural water" means bottled spring, artesian, mineral, or well water that is unmodified by mineral addition or deletion, except that "natural water" may be filtered and must be sanitized with ozone or an equivalent disinfection process and treated to reduce the concentration of any substance that exceeds an allowable level established by the agency.

One comment urged FDA to define "natural water" as in the IBWA Model Code. IBWA defines "natural water" as spring, mineral, artesian, or well water that is derived from an underground formation and that is not derived from a municipal system or public water supply.

Some comments recommended that FDA define "natural" for use on bottled water labels because the term is often used on labels and may be misused. One comment stated that water to be called and labeled "natural" must come from the ground and may be sanitized with ozone or an equivalent disinfection process. It added that any removal of excessive substances should not allow that water to be labeled as "natural." Another comment stated that the word "natural" should be used only if the mineral content of the water is not altered during the production process. Therefore, distilled, purified, or drinking water products that use reverse osmosis to remove solids, then add back minerals, could not be described as "natural."

One comment suggested that FDA provide for the use of the term "natural" in conjunction with "mineral water" (i.e., "natural mineral water") as it is allowed in the European standard. The comment stated that consumers want to be assured that the product that they are purchasing is from a natural source and has not been blended or manipulated in any fashion with surface or municipal water sources. The comment added that the use of the term "natural" also implies that, because of the bacterial purity of the product, chemical disinfection is not necessary.

Two comments suggested the addition of the word "natural" to the definition of "spring water" to fully ensure that the spring water has the same composition, whether collected through a bore hole or at the surface, and that it has not been treated except for the addition of carbon dioxide or the removal of iron and manganese and suspended solids.

However, two comments stated that the term "natural water" should not be permitted on a label because consumers do not understand what it means.

The agency considered establishing a definition for "natural" in a proposal on food labeling that it published in the **Federal Register** of November 27, 1991 (56 FR 60421 at 60466), because of the widespread use of the term and the evidence that consumers regard many uses of this term as noninformative. After considering the comments that it received in response to the November 27, 1991 proposal, the agency stated that if the term "natural" were adequately defined, the ambiguity surrounding use of this term that results in misleading claims could be abated (58 FR 2302 at 2407, January 6, 1993). Because of resource limitations and other agency priorities, however, FDA did not undertake rulemaking to define "natural" at that time. The agency stated that, while it regarded the term as meaning that nothing artificial or synthetic has been included in, or has been added to, a food that would not normally be expected to be in the food, it would maintain its policy of not restricting the use of the term except as provided for in § 101.22 (*id.*).

A number of States, AFDO, and IBWA have defined "natural water" (Refs. 2, 7, 11, 12, 14, and 15). All of the definitions require that the water be derived from an underground formation (spring, artesian, or well water) and be unmodified except for limited treatment (e.g., filtration and ozonation or equivalent disinfection process). Those States that have adopted the IBWA model regulation as their State regulation provide for treatment of "natural water" to reduce the concentration of any substance that exceeds safety standards. The IBWA model regulation also states that the water "may be collected and transported by pumps, pipes, tunnels, trucks, or similar devices."

The Codex Standard for Natural Mineral Waters and Edible Ices and Ice Mixes (Codex Standard) (Ref. 1) defines "natural mineral water" and "naturally carbonated natural mineral water." These waters are obtained from underground water-bearing strata either through natural flow or drilling. Treatments permitted for "natural mineral water" under the Codex standard include separation from unstable constituents by decantation or filtration that is, if necessary, accelerated by previous aeration.

The agency finds that the IBWA code and State requirements are basically consistent with FDA's informal policy on "natural" because the product is only minimally processed. However, there are some surface waters (e.g., water collected from glacier runoff) that may only require minimal processing to be acceptable bottled waters and, thus could qualify to be called "natural." Most surface waters and ground waters under the influence of surface water require additional processing to ensure that the water is consistent in quality and, thus could not be labeled as "natural." Therefore, because FDA's informal policy already encompasses bottled water, the agency concludes that it is not necessary to establish a regulation that specifically defines "natural" for use with bottled water.

59. One comment noted that no consideration was given to the proper use of the word "pure." It stated that many bottlers misuse this word.

The agency advises that while there is no specific prohibition against the use of the term "pure," it has discouraged the use of the term because it is ambiguous and may be misleading (58 FR 2897 at 2903). For example, "spring water" and "pure spring water" may be identical foods, but "pure," as applied to the food, implies that other identical products are "impure" or "not pure" if they do not bear the same term on their label. In addition, the agency notes that the term "pure" may be confused with the term "purified," and consumers may be misled into believing that bottled water labeled as "pure" has been treated to substantially decrease the total dissolved solids content.

The agency is not convinced that it should use its resources to define the term "pure" at this time but will continue to discourage its use. In addition, the agency will continue to deal with this issue on a case-by-case basis.

60. Two comments asked what bottled waters made by using well water for a source, and then diluting the water with distilled or purified water to improve hardness and taste, could be called.

Blends of different types of water, such as well water and purified water,

may be appropriately labeled as "bottled water" or "drinking water." Truthful statements may also be made on the label to inform consumers that the product is blended, with the percentage of each type of water included.

61. Two comments stated that the name "mountain water" should not be permitted on the label because it is misleading to consumers.

The agency is not providing for the use of the term "mountain water" as the name of a bottled water product. The name of the product is "bottled water," "drinking water," or one or more of the terms defined in § 165.110(a)(2) as appropriate. However, if the water is from a mountain source, manufacturers may include a truthful and nonmisleading statement reflecting that fact.

62. One comment stated that there are bottlers in Canada and Alaska that bottle "glacier water" and asked whether they could continue to use this term to label their bottled water. It provided a definition for "glaciofluvial" as "of or relating to or coming from streams deriving much or all of their water from the melting of a glacier." The comment stated that minerals are rarely detectable in this water, let alone environmental pollutants, and noted that the water requires little if any filtration. The comments said that the water is passed through ozonation or ultraviolet light as a precaution for total and fecal coliform bacterial counts.

FDA notes that the definition that the comment provided is not a clear definition because, under it, not all of the water need come from the melting of the glacier, and the percentage of the water actually coming from the glacier would vary significantly according to the season of the year. Therefore, FDA is not providing for this term.

FDA notes that manufacturers that bottle this category of water may state in the labeling that the source of the water is glaciofluvial. However, the statement of identity for the product is "bottled water" or "drinking water."

D. Other Label Statements

1. Mineral Content of Mineral Water

The agency tentatively concluded in the January 1993 proposal that the listing of relative mineral content is useful to consumers to characterize a given mineral water product. FDA proposed to require that if the TDS is below 500 ppm, the statement "low mineral content" appear on the label. In addition, the agency proposed that if the TDS of mineral water is more than 1,500 ppm, the statement "high mineral content" must appear on the label. FDA did not propose to define the term "light" or other descriptive terms as they apply to mineral water because FDA tentatively concluded that the use of only the statements "low mineral content" and "high mineral content" would be less confusing to consumers. FDA proposed that the statement of mineral content appear on the principal display panel following the statement of identity in type at least one-half the size of the type used for the statement of identity but in no case of less than one-sixteenth of an inch. The agency requested comments concerning the proposed levels defining high or low mineral content.

63. A number of comments noted that § 165.110(a)(3)(i) concerning the labeling of a product as "low mineral content" or "high mineral content," does not refer solely to "mineral water" and objected to this labeling if it were to apply to all bottled waters. One comment stated that the statement "low mineral content" would be misleading on products such as "artesian water," "spring water," "well water," or "bottled water" when they in no way claim to be mineral water, and this statement would imply a less-than-normal mineral content. One comment recommended that the regulation state "if the TDS content of mineral water is below * * *," so that the regulation only would apply to products labeled as mineral water.

FDA agrees with the comments. The normal mineral content of artesian water, spring water, well water, bottled water, or any other bottled water product except for the majority of mineral waters is less than 500 ppm TDS. In fact, bottled water, except for mineral water, must comply with the provisions in the quality standard for bottled water that require that if the product contains more than 500 ppm TDS, the product be labeled as substandard (§§ 165.110 (b)(4) and (c)). In the preamble to the proposal, the agency only discussed labeling a product as "low mineral content" or "high mineral content" if the product was "mineral water" (58 FR 393 at 397), although the agency failed to specifically mention in the regulation that it applied only to "mineral water." This failure was an oversight. Therefore, the agency is modifying § 165.110(a)(3)(i) to state that if the total dissolved solids (TDS) content of mineral water is below 500 ppm, or if it is greater than 1,500 ppm, the statement "low mineral content" or "high mineral content", respectively, shall appear on the principal display panel.

64. A number of comments objected to the labeling of mineral water as "low mineral content" and "high mineral content" and requested that § 165.110(a)(3)(i) be deleted because this labeling would be confusing to consumers. One comment opposed denoting the "low" or "high" mineral content of mineral water because flavor is more affected by specific minerals than by TDS.

FDA disagrees that the label statements concerning low or high mineral content should be deleted from the regulation. As discussed previously, the agency is requiring that mineral water contain a certain amount of minerals because consumers expect that mineral water contains some minerals. Because the mineral content of mineral water may vary greatly, and because the high and low ends of the range of mineral contents may have a significant bearing on the characteristics of the water, the agency concludes that information about the mineral level is a material fact, under section 201(n) of the act, in conjunction with the term "mineral water." The agency's action establishes three broad categories, but only manufacturers of mineral waters below 500 ppm TDS or above 1,500 ppm TDS need provide the additional information on the label.

FDA agrees that the taste of some mineral waters may be affected more by specific minerals than by total mineral content. Nevertheless, if a mineral water contains less than 500 ppm TDS, it is important that consumers be made aware that the product has a low mineral content, and that it may not have the mineral taste that another mineral water may have. Many State regulations have required that mineral water contain more than 500 ppm TDS (Ref. 8), and most mineral water sold in the United States has complied with this minimum so that it could be sold in those particular States. Therefore, FDA concludes that the use of the statement "low mineral content" on mineral water containing less than 500 ppm TDS is appropriate to alert consumers to the fact that the water may have a lower mineral content than mineral waters that they have previously purchased.

Additionally, the agency notes that, as discussed in the proposal to this final rule (58 FR 393 at 397), a mineral content of over 1,500 ppm TDS greatly affects the taste of the water no matter what the specific minerals may be. Therefore, the agency concludes that because this information is a material fact, consumers should be informed that the product contains a high mineral content.

65. Two comments held that the statement "low mineral content water" on mineral water could be misleading to some consumers if, for example, they interpret it as saying that the water is low in sodium. The comment stated that low mineral content mineral waters may be relatively high in sodium.

FDA disagrees that the statement "low mineral content" would be misleading to consumers. The term "low" in this statement is referring to the overall total dissolved solids content and not to any specific mineral. However, the agency agrees that some mineral waters containing between 250 and 500 ppm TDS may contain more than an insignificant amount of sodium. Under § 101.9(a), nutrition labeling is required if the product contains more than an insignificant amount of any nutrient that is required to be included in the declaration of nutrition information under § 101.9(c). If a product labeled as "low mineral content" is not sodium free (i.e., contains 5 or more mg sodium per serving), nutrition labeling is mandatory, and consumers will be informed that, although the product is low in mineral content, it contains more than an insignificant amount of sodium.

66. Four comments asked whether mineral waters with a mineral content greater than 1,500 ppm could be labeled as "rich in mineral salts."

Another comment stated there may be confusion about the term "high mineral content" because it appears to be substantially similar to nutrient content claims that are allowed under the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), and in fact it may be misinterpreted by many consumers as an indication that the product may be useful as a mineral supplement.

The agency finds no merit to these comments. In the **Federal Register** of January 6, 1993 (58 FR 2302 at 2414), FDA adopted § 101.54(b)(1), which defines the terms "high," "rich in," and "excellent source of" to mean that the food contains 20 percent or more of the reference daily intake (RDI) or the daily reference value (DRV) of the nutrient in question per reference amount customarily consumed. The claim "high mineral content" is not subject to § 101.54 because the term does not describe the nutrient content of the water. FDA has not defined nutrient content claims for minerals as a category, only for individual minerals. While FDA has authorized some nutrient content claims concerning mineral content of foods, such as "high in three minerals," it has not authorized "high mineral content." Thus, this claim only applies to mineral water.

There is no authorization in FDA's regulations for use of a synonym for "high" in the statement "high mineral content" for bottled water because the statement is not a nutrient content claim but part of the statement of identity of the product. The term "rich" is not appropriate in this context because it means that a product is abundantly supplied with something of value. Although the terms "high," "rich in," and "excellent source of" have been defined as synonymous nutrient content claims, not all of these terms are appropriate when used to describe the mineral content of mineral water containing more than 1,500 ppm TDS because such water may not be an "excellent" or "rich" source of minerals of nutritional significance. Use of the term "high mineral content," however, provides a quantitative contrast to the term "low mineral content" of mineral water containing less than 500 ppm TDS.

Therefore, FDA concludes that only the declaration "high mineral content" is appropriate for mineral water. Given that the statement is part of the statement of identity of the product, FDA has not provided for the use of synonyms. The statement appropriately should be as simple and as straightforward as possible.

67. One comment stated that 1,500 ppm TDS as the triggering level for the label statement "high mineral content" is an extremely high level. The comment suggested that the statement "exceeds the secondary maximum contaminant level of 500 ppm," for mineral water containing greater than 500 ppm TDS, is a better disclosure and would help to eliminate consumer confusion over the differences in water quality standards between bottled water and public tap water.

The agency disagrees with the comment. The term "mineral water" has traditionally implied that the water has a higher mineral content than most water, including public tap water. As discussed in the proposal (58 FR 393 at 397), all water contains some minerals, unless it has been demineralized (Ref. 16). Thus, the agency tentatively concluded that consumers expect that a product identified as "mineral water" would contain at least a minimum level of minerals. This expectation is reinforced by the fact that some States (Ref. 8) have only included water that contains more than 500 ppm TDS in their definition of "mineral water."

The label declaration "high mineral content" is to inform consumers that the mineral content is high in comparison to other mineral waters. As discussed in the proposal (58 FR 393 at 397), a mineral content of more that 1,500 ppm TDS greatly affects the flavor of the water. This level is consistent with the European Community definition of "mineral water—rich in mineral salts" (Ref. 17) and will not hinder international trade. Thus, the comment has not persuaded the agency that 500 ppm TDS is a more appropriate minimum level than 1,500 ppm TDS for a product labeled as "mineral water, high mineral content."

Therefore, to ensure that consumers know that the product that they are purchasing is high in minerals as compared to other mineral waters, the agency is requiring in § 165.110(a)(3)(i) that the label of mineral water containing more than 1,500 ppm TDS include the statement "high mineral content."

68. Several comments recommended that FDA require that TDS content appear on the label of all bottled waters because: (1) Consumers will more easily relate bottled water designations to their specific TDS ranges, (2) consumers will have a better chance of purchasing a bottled water corresponding to their tastes if they learn to associate a particular level of TDS with those tastes, and (3) it renders unnecessary the ruling that a mineral water with a TDS higher than 1,500 ppm be labeled as "high mineral content." One comment stated that consumers will rapidly relate TDS content values in the range of "thousand(s)" with a "high mineral taste" without the need for arbitrary qualifiers. It added that a TDS labeling requirement works towards establishing similar standards between Canada and the United States.

One comment stated that it would be more informative to consumers to list the TDS in the side panel because concerned consumers want hard information, not generalities like the relative mineral content statements that the agency proposed. It stated that there is a gray area between 250 and 500 ppm TDS in which some waters may taste distinctive and others may taste undistinctive, like low-TDS spring water.

FDA disagrees that it should require mandatory declaration of TDS level. The agency stated in the proposal that many consumers may not understand the relevance of a specific TDS and, thus, tentatively concluded that there is no substantive basis on which to require that this information appear on the label (58 FR 393 at 397). None of the comments provided any information that showed that consumers would understand the significance of this information and that would support a conclusion different than FDA's

tentative determination. However, the agency will not object if manufacturers include information concerning the TDS content, or any information relating to a distinctive taste of a specific product, on their labels as long as the information is truthful and not misleading.

Because many consumers will not understand the relevance of a specific TDS (Ref. 16), FDA concludes that the requirement to label mineral water as "low mineral content" or "high mineral content," as appropriate, will be generally more informative to consumers than TDS labeling. Therefore, the agency concludes that mandatory labeling of TDS is not necessary, and that there is no substantive basis on which to require that this information appear on the label.

69. One comment remarked that all bottled water should be labeled with the percentage of minerals present and the limits allowed. Another comment encouraged actual content disclosure on bottled water labels, stating that consumers have a right to know whether any substance regulated under the Safe Drinking Water Act (the SDWA) is contained in the bottled water they purchase, even though it would have to be present at a level below the Maximum Contaminant Level (MCL) established as being permissible.

The agency disagrees that this additional labeling should be required. MCL's have not been established for all minerals or other substances that may be in bottled water. FDA established the standard of quality for bottled water to require that bottled water meet certain quality specifications or else be clearly labeled as "substandard." The quality standard for bottled water is based on EPA's regulations for public drinking water (40 CFR parts 141 and 143), and EPA establishes its regulations based on health and aesthetic considerations. Thus, any contaminant present at a level lower than its maximum allowable level is not considered a safety or quality concern.

Given this fact, there is no basis to require the information that the comments requested. The information would not be a material fact, and thus there would be no basis to claim that the product is misbranded if the information is not disclosed. The presence of these substances in bottled water at levels meeting the quality standard is inconsequential. The appearance of this information on the label may be confusing and may imply that the substance is present in excessive amounts when it is not. Therefore, the agency concludes that the requested additional labeling is not warranted.

70. One comment requested that FDA add the following language to § 165.110(a)(3)(i): "Mineral water products falling between the TDS values of 500 to 1,500 mg/L do not have to add additional terms."

The agency notes that mineral water containing more than 500 ppm TDS and less than 1,500 ppm TDS need not bear labeling on relative mineral content. Although a specific statement to this effect is not necessary in the regulation, FDA is modifying § 165.110(a)(3)(i) to state that if the TDS of mineral water is between 500 and 1,500 ppm, no additional statement need appear. The agency concludes that this modification will clarify the regulation.

71. One comment suggested that the producers of identified, sole-source bottled water products (e.g., artesian or mineral waters) that desire to market their products based on the naturally occurring mineral contents be allowed to label their products: "Water with (or containing) naturally occurring minerals," provided that the product labeling clearly identifies the water's sole source and also identifies the naturally occurring minerals. It stated that such mineral identification in the labeling of natural, identified sole-source water should not require additional nutrition information.

The agency disagrees with the comment. All water, unless it has been treated to remove minerals or has had minerals added, contains naturally occurring minerals, regardless of whether it comes from an identified single source. A statement such as "water with naturally occurring minerals" has the potential to be misleading to consumers because it implies that the products of competitors may contain added minerals or have had minerals removed, when, in fact, they have not. However, manufacturers may use the term "natural" on their bottled water labels if they follow FDA's informal policy as discussed previously (see comment 58) of this document.

The agency is not defining the statement "water with naturally occurring minerals" for bottled water labels at this time because it has no basis to conclude that use of the statement would not be misleading, or that it would be useful to consumers. The comment did not provide sufficient information on which to base a regulation.

2. Water From a Municipal Supply

The agency proposed to require that the phrase "from a municipal source" appear on the principal display panel or panels as a part of the name of the food if the water is obtained from a municipal water supply, except if the water has been treated to meet the definitions of distilled water or purified water (58 FR 393 at 399). FDA also proposed to require that the statement appear on the principal display panel following the statement of identity in type at least one-half the size of the type in which the statement of identity appears but in no case less than one-sixteenth of an inch. The agency also proposed to require that the statement immediately and conspicuously precede or follow the name of the food without intervening written, printed, or graphic matter, other than statements required by proposed § 165.110(c).

72. Two comments suggested that FDA use the term "public water supply" as defined by EPA rather than use the term "municipal supply." The comments noted that the use of the term "public water supply" would avoid confusion, as FDA would be using a term that is already defined and well understood. One comment stated that questions could arise about the definition of a "municipal supply," such as how many people would a supply be required to serve to meet the definition of a "municipal supply." Another comment stated that the term "public water system" is a more appropriate term because it would include the numerous water systems that are independent water purveyors not affiliated with specific municipalities.

The agency disagrees that the statement "from a municipal source" should be replaced with "from a public water supply" or "from a public water system" in § 165.110(a)(3)(ii). EPA defines a "public water system" as a system that provides piped water for human consumption and that: (1) Has at least 15 service connections, or (2) regularly serves at least 25 persons at least 60 days per year (40 CFR 141.2). Public water systems are split into two categories: Community and noncommunity water systems. Community water systems are systems that regularly serve 25 or more year-round residents (or have at least 15 service connections used by year-round residents) (40 CFR 141.2). Many factories, restaurants, schools, parks, and rest areas also operate their own supply of drinking water. However, these systems do not have the required residential community and are, thus, considered noncommunity systems.

There are two types of noncommunity water systems: Transient noncommunity or nontransient noncommunity (40 CFR 141.2).

Transient noncommunity systems serve travelers and other transients at locations such as highway rest stops, small restaurants, and public parks. The system serves at least 25 people a day for at least 60 days per year but typically not the same 25 people each day (40 CFR 141.2). On the other hand, nontransient noncommunity water systems do serve the same 25 persons for at least 6 months a year but not on a year-round residential basis (40 CFR 141.2). Schools and workplaces that have their own water supply and serve at least 25 of the same persons each day are examples of these systems.

The agency stated in the proposal (58 FR 393 at 399) that information about the actual source of a bottled water product is a material fact in light of either the explicit (e.g., use of terms such as "spring" or "well") or implied (the presentation of the product in the bottle) representation made by a bottled water product that the product is not tap water. Information about the source of the water is necessary to ensure that consumers do not incorrectly assume that because water is sold in a bottle it is not tap water.

According to 40 CFR 142.2, a "municipality" means a city, town, or other public body created by, or pursuant to, State law. Municipal water sources are systems that serve municipalities. Thus the term "municipal source" may be too narrow to encompass all types of tap water sources. Independent water purveyors and other community systems may operate similarly to municipal water sources, rely on the same types of water (e.g., surface water), use the same type of treatments of the water, and supply the water that flows from a tap. They may differ from a municipal source only in that they are not affiliated with a municipality.

Thus, FDA agrees that water from water systems that are independent water purveyors, but that are not affiliated with specific municipalities, should bear labeling that makes clear its source. Clearly, what would be considered a municipal source would be encompassed by the definition of a community water system because a source supplying an incorporated city or town would regularly serve 25 or more people on a year-round basis (or have the minimum 15 year-round service connections). The term "community water system" would encompass the independent water purveyors that the term "municipal source" would not.

Noncommunity water systems by definition would not serve a municipality. FDA notes that some bottled water firms may meet the definition of a nontransient noncommunity system if they employ at least 25 persons and use the source water as the workplace water supply. The intent of the labeling requirement was not to include these bottled water manufacturers. Their water is considered a public water system only because they choose to use their own water source and not pipe water in from another source for their workplace water supply.

Therefore, the agency concludes that bottled water from a community water system, as defined by EPA (40 CFR 141.2), must bear source labeling. FDA finds that including all community water system sources in § 165.110(a)(3)(ii) is the logical outgrowth of the January 5, 1993, proposal because the intent of the proposal, as explained above, was to cover all tap water. Thus, FDA is revising § 165.110(a)(3)(ii) to apply to bottled water coming from a community water system as defined in 40 CFR 141.2, rather than from a municipal source. Alternatively, manufacturers may label their product as "from a municipal source" if appropriate. (Moreover, as explained in comment 96 of this document, there may be some instances in which "from a public water supply" or "from a public water system" is appropriate.)

73. One comment disagreed with the provision that would exempt purified water from having to be labeled as from a municipal supply. It stated that the process does not change the source.

Although the agency acknowledges that purification does not change the source, FDA concludes that the exception for purified water is appropriate. As FDA stated in the proposal (58 FR 393 at 399), consumers purchase purified water because of its treatment and resultant purity rather than because of its source. In addition, because purified water and distilled water must meet the compositional requirements of the USP monograph for purified water, there are no significant compositional differences among purified and distilled waters, regardless of the source of the water. Source information for purified waters is not a material fact because the water may be significantly different in composition than other water from that particular source. Thus, the absence of source information for purified water is not misleading under section 403(a) of the act. The comment did not present any information other than the basic argument summarized above. Thus, FDA is not making any changes in response to this comment. However, manufacturers may optionally include source information on the label of purified water.

74. Several comments stated that proposed § 165.110(a)(3)(ii) implies that if bottled water from a municipal source has been treated to meet the definition of "purified" or "distilled water," it may be exempt from the labeling declaration of "from a municipal source," whether or not the product is labeled as "purified water" or "distilled water." The comments stated that the circumstances in which the municipal source of the water need not be disclosed should be limited, as the agency apparently intended, to when the water is labeled as "purified" or "distilled." To effect this limitation, the comments suggested that the agency add the words "and is labeled as such" to the regulation.

The agency agrees with the comments. In the preamble to the proposal, the agency stated that the exemption would apply only to purified water or distilled water that was labeled as such (58 FR 393 at 399). However, FDA failed to include the statement "and is labeled as such" in the regulation. Therefore, FDA is modifying § 165.110(a)(3)(ii) to include this requirement.

In addition, because FDA has included the alternative terms "deionized water," "demineralized water," "purified drinking water," and "reverse osmosis water" in the definition of purified water, the agency is modifying § 165.110(a)(3)(ii) to include all of the terms that may be used under § 165.110(a)(2)(iv) in the exemption.

75. One comment requested that, if the source of bottled water labeled as "sterilized water" is a municipal source, the product be exempt from the labeling requirements in § 165.110(a)(3)(ii).

The agency agrees that use of the terms "sterile" or "sterilized" on the label of bottled water should exempt it from the requirements of § 165.110(a)(3)(ii). Sterile water has undergone a treatment to meet strict microbiological standards. Purified water is exempt from the requirements of § 165.110(a)(3)(ii) in part because the process of purification removes many substances that are typical of the source water, and also because there are no significant differences between purified waters even though the source waters may be very different. Consumers may purchase purified water and sterile water because of the specific treatment and not the source of the water. In addition, because sterile water must meet the microbiological requirements of the USP definition for "sterile," there are no significant microbiological

differences among sterile waters, regardless of the source of the water. Source information for sterile waters is not a material fact because the water may be significantly different in microbiological content than water from that particular source. Thus, the absence of source information for sterile water is not misleading under section 403(a) of the act.

Therefore, the agency is modifying § 165.110(a)(3)(ii) to exempt sterile water and sterilized water that is from a community water system from the source labeling requirement.

76. One comment stated that FDA overlooked source labeling of partially purified water from a municipal source that is processed to remove some chemicals but does not meet the requirements of purified water.

FDA disagrees with the comment and affirms that water from a community water system that is partially purified (i.e., it does not meet the definition of purified water) does not qualify for an exemption from the requirements of § 165.110(a)(3)(ii). As discussed above under comment 74 of this document, there are no significant compositional differences between purified and distilled waters, regardless of the source of the water. Partially purified water, however, effectively continues to resemble the source water. Because partially purified water does not qualify for the exemption, it is covered by § 165.110(a)(3)(ii). Therefore, if the water is partially processed, and is from a community water source, the label must declare the latter fact.

77. One comment stated that it would be misleading if a country setting is shown on the label, including lakes or ponds, and the product is drinking water processed from municipal supplies via reverse osmosis systems.

FDA agrees that the use of certain graphics on a label of bottled water may be misleading to consumers if the source of the water is different than the source depicted or implied. For example, a country setting on a label may mislead consumers into believing that the product is spring water when it is not. Section 403(a) of the act specifically states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. If a product is from a community water system, the label must clearly disclose this fact except as provided in § 165.110(a)(3)(ii).

78. Several comments stated that FDA has not provided, except in § 129.80(a), for the long-established industry practice of adding minerals to adjust the taste of water that has been previously treated to meet the definition of "distilled" or "purified water." One comment stated that water that is purified to meet the definition for "purified water," and subsequently has minerals added back to it, should be exempt from the source labeling requirement in § 165.110(a)(3)(ii) because it has a totally different composition than other water from the municipal source. It stated that the labeling could indicate that the water was purified or distilled, and that minerals had been added for flavor. Another comment stated that this approach would allow for flexibility in labeling while providing adequate information for the consumer.

FDA advises that water from a community water system that has been treated to meet the definition of "purified water" in § 165.110(a)(2)(iv), and is labeled as "purified water" or one of its alternative names, is exempt from the labeling requirements of § 165.110(a)(3)(ii). Water with minerals added for taste is considered a multi-component food, and the labeling "from a municipal source" describes only the water ingredient. Thus, if minerals are added to purified water for taste, and the label states that the product is "purified water (or any of its alternative names) with minerals added for taste," the product is exempt from § 165.110(a)(3)(ii) because the water ingredient meets the criteria for the exemption.

79. Some comments agreed with the requirement in § 165.110(a)(3)(ii) but stated that the name of the source, be it a municipal source, water authority, or any other public water system, should be specifically included on the label so that the consumer may obtain water quality test results, such as those maintained by the public water system or the relevant regulatory agency. One comment stated that consumers may then compare water quality results of the bottler with those of the public water system selling the water to the bottler, and consumers could contact the municipal source and ascertain whether a bottler is using a municipal source that adds fluoride to its finished water.

Other comments requested that all bottlers of water list on the label the source of the product contained in the bottle. Comments asked that, for full disclosure, bottled water labels include the name of manufacturer, address of source, and well number or spring's legal name, so that consumers will know specifically from where the water comes. One comment noted that many States require the geographic source identity. Another comment added that many companies are misrepresenting their products to the consumer by vague labeling.

FDA does not object to the optional label declaration of more specific information concerning the water source because such information may be useful to some consumers. However, the agency does not agree that it should require specific water source labeling, or that the lack of such labeling means that the label is misleading and vague.

Under section 201(n) of the act, the agency must consider whether the information is a material fact whose nondisclosure will render the labeling misleading. Under this standard, it is difficult to see why the name of the specific source, be it a public water supply, spring, or well, would be a material fact. The agency requires that the product water supply for each bottled water plant be from a source that is inspected and approved by the government agency having jurisdiction (§ 129.3(a)). The product water supply must be properly located, protected, and operated, and must be easily accessible, adequate, and of a safe, sanitary quality that is in conformance at all times with the applicable laws and regulations of the government agency having jurisdiction (§ 129.35(a)(1)). Thus, the specific name of the source is not material to ensure the safety of the product.

In addition, the water must meet the requirements of the quality standard in § 165.110(b) or be labeled as substandard. Thus, the identity of the specific source is not material to ensure the quality of the product.

Finally, in this final rule FDA is providing for the use of alternative names that generally describe the source of the water (e.g., artesian, spring, and well). Thus, consumers can have confidence that bottled water labeled as being from a certain type of water source is from a source meeting an appropriate definition.

Therefore, the agency concludes that the absence of information concerning the exact water source (e.g., specific municipal source, the well number, spring's legal name, address of the source) is not a material omission that would render the labeling misleading because bottled water must meet FDA's requirements which provide the consumer with assurances as to the safety, quality, and type of source. While the agency recognizes that some States require the geographic source identity, FDA simply is not persuaded that the additional information is a material fact that must be disclosed.

The brand name and the name of the manufacturer distinguish bottled waters as much as specific source labeling would. According to § 101.5(a), the label of a food in packaged form must specify conspicuously the name and place of business of the manufacturer, packer, or distributor. This labeling requirement provides consumers with the necessary information to contact the firm and obtain information (e.g., the name and location of the source, the well number, or the spring's legal name) that is not provided on the label if they are interested. Therefore, FDA concludes that there is no basis on which to require that information concerning the specific source of bottled water appear on the label.

3. Water for Infant Use

The agency proposed to require notice on the principal display panel of bottled water products that are promoted for infant use that such products are not sterile (if such is in fact the case), and that they should be used as directed by a physician or by infant formula preparation instructions (58 FR 393 at 400).

80. One comment stated that § 165.110(a)(3)(iii) should read: "When the label or labeling characterizes the bottled water in any manner * * * as for feeding infants, and the product is not commercially sterile, within the meaning of the term at 21 CFR 113.3(e), the principal display panel shall bear conspicuously the phrase * * *." The comment stated that a qualification of the phrase "not sterile" to "not commercially sterile" would clarify that, by use of the term "sterile," the agency does not intend to require that bottled water for infant food use meet the requirements of the USP monographs for sterile waters which are compendial pharmaceutical articles in themselves. It stated that there is no safety concern that necessitates that bottled water for infant use meet a different standard than the standard applicable to hermetically sealed low-acid foods, and none has been articulated by FDA in the proposal.

The agency agrees with the comment. As discussed previously, unless the label or labeling of a product that is labeled for use in feeding infants implies that the product meets USP requirements, FDA will not require that the product meet those requirements for sterility because commercial sterility is adequate. Canned infant formula is processed to be commercially sterile, as defined in § 113.3(e), and the agency sees no reason to subject bottled water for infants to stricter requirements. Therefore, the agency is modifying § 165.110(a)(3)(iii) to state that its provisions apply when the product is not commercially sterile under § 113.3(e)(3)(i).

81. A number of comments opposed the use of the phrase "not sterile, use as directed by physician or by labeling directions for use of infant formula" in § 165.110(a)(3)(iii). The comments stated that infants, and even adults, do not require sterile foods but need foods that are free of pathogens, and that many health care professionals do not recommend sterilizing infant formula. Some comments submitted scientific publications to support their position that infants do not need sterile foods. They pointed out that infant medicines, oral preparations (vitamins), and breast milk are not sterile.

Comments noted that it is difficult for parents to achieve and maintain sterility in infant preparations and stated that there is no difference between infant formulas prepared using a clean method and formulas prepared with sterile water. They stated that boiling bottled water that is not sterile may not be preferable to using water as it comes from the bottle because potentially harmful trace elements from the container used to boil the water may be concentrated during boiling. The comments maintained that, in some cases (e.g., areas not served by municipal supplies), bottled water may be a more reliable and superior source of water for infant use than other sources of water.

Some comments held that the requirement for the use of the phrase "not sterile" on infant formula or bottled water labeling is outdated, inappropriate, and may be unnecessarily alarming to consumers. They asserted that the phrase may have the unintended but harmful effect of giving a false sense of security to parents that would cause them, and perhaps cause the preparer of the infant formula, to ignore several important sources of bacterial risk.

Comments stated that the recommendations calling for sterilization were made in the 1940's and 1950's, before the widespread practice of chlorination of municipal water supplies, and that bottled water products being marketed today go through a rigorous quality control program to eliminate pathogens. They maintained that there already are adequate industry standards in place, and that the phrase "not sterile" is not necessary.

Some comments pointed out that all aqueous systems contain a normal, nonpathogenic microbial content, and that the absence of such a normal microbial content could in itself be indicative of the presence of a microbial antimetabolite in the water. Comments stated that a requirement for the label statement "not sterile" lacks technical merit and is contrary to FDA's position of not imposing plate count limitations on all food products. They stated that FDA provided no scientific rationale, hospital survey data, epidemiological health data, physician-use surveys, bottled water surveys, or any other reasonable, objective information to support this requirement. The comments held that sterilization does not provide a level of safety assurance equal to the assurance provided by the conjunction of protecting the aquifer from all risks of contamination and compliance with current good manufacturing practices (CGMP's), as demonstrated by the absence of microorganisms that are indicators of contamination (fecal bacteria).

Other comments stated that requiring a statement that the water is not sterile would serve only to eliminate certain products from the bottled water market. They held that it would be grossly misleading, unjustified, and discriminatory to the infant water industry.

Comments stated that the labeling recommended, but not required, by FDA for infant formula is to direct parents to consult with their physicians before using the product. The comments stated that this labeling of infant formula is to ensure that the parents are using the proper type and amount of formula for their babies, not because there was or should be concern about the water source used to mix the product. These comments recommended that FDA drop the requirement in § 165.110(a)(3)(iii) entirely because such labeling gives medical advice to parents. As an alternative, comments suggested that labeling could state that "parents should consult their physician for infant use."

Conversely, several comments supported the proposal because: (1) Infants are a high-risk group in terms of susceptibility to infections, (2) consumers will interpret a label "water for infant use" as not requiring any preparation before use in infant formulas, and (3) the disclosure required for bottled water marketed for use with infants or children is consistent with the objectives of FDA in promulgating these regulations. One comment added that labeling that can mislead a consumer to use nonsterile water in the belief that it is sterile may cause needless illness and possibly deaths.

One comment stated that bottled water intended for the general population is used for a significant proportion of infants. It suggested a side

panel statement on all bottled water products such as: "If using to prepare infant formula, follow the mixing instructions on the infant formula label." Another comment suggested that each label reference to use for infant formula preparation be accompanied by a statement referring the consumer to the side panel usage instructions.

However, another comment that supported the intent of the disclosure statement disagreed with the proposed labeling requirement for infant water. It stated that the proposed requirement in § 165.110(a)(3)(iii) is a backward approach to public health protection for infants. The comment stated that bottled water promoted for infant use should be required to meet strict sterility requirements.

FDA has considered these comments and, based on its consideration, concludes that labeling is necessary to inform consumers that bottled water labeled for infant use may not be sterile.

The agency generally agrees with the conclusions of the scientific publications that the commenters submitted. Although the conclusions of the articles demonstrated that infants generally do not need to consume a sterile product, one publication noted that "it is safer to feed an infant an almost sterile formula, than to feed him a formula with an unknown amount of contamination" (Ref. 18). Use of appropriate ingredients and procedures in the preparation of infant formula is key in providing a suitable product for infant consumption.

One study, concerning the inoculation of the digestive tracts of axenic mice with the autochthonous bacteria of mineral water, was conducted on 6-week-old mice and found that the autochthonous bacteria present in the mineral water from Vittel "Grande Source" were not able to establish themselves (i.e., to multiply and subsist in a great number) in the digestive tracts of axenic mice (Ref. 19). However, FDA questions whether these results apply to human infants because 6-week-old mice are past an infant stage. In addition, only one source of water was used in the study, and the results cannot be extrapolated to water from other sources.

The agency agrees with the comments that stated that nursing infants do not consume a sterile product, and that infants do not necessarily need to consume sterile products. However, although the heterotrophic bacteria present in water may not be harmful to the general population, high levels of some microorganisms, particularly opportunistic pathogens, may cause illness in some infants (Ref. 20). Parents need to be informed that bottled water labeled for infant use is not sterile because, without this statement, they may be led to believe that water labeled for infant use is sterile, and that its sterility is the characteristic that makes it appropriate for infant use. Thus, the agency concludes that bottled water intended for infant use should be at least commercially sterile or be labeled to inform consumers that it is not.

There are essentially two situations in which an infant may consume infant water: (1) When it is used to reconstitute powdered infant formula or dilute concentrated liquid formula; and (2) when it is not used as an ingredient of the infant formula but is otherwise fed to infants, especially when used directly for feeding infants. If infant water was used only in the first situation, the labeling statement on infant water to "use as directed on the infant formula labeling" would be sufficient (and indeed, the additional statement "use as directed by a physician" would be redundant, since this statement is also required on the formula label). Concerns of sterility are adequately addressed on the infant formula label because under § 107.20 (21 CFR 107.20), the product label must bear instructions for sterilization of water, bottles, and nipples when necessary for preparing infant formula for use. However, the second situation does not involve other appropriate labeling information. The second situation represents circumstances in which it would be appropriate to seek physician oversight, not only because of a potential concern about sterility, but also because of the concern about excessive feeding of water (and risk of hyponatremia) to infants.

FDA agrees that once a package has been opened, it is subject to contamination. The process of preparing infant formula may also introduce other sources of contamination. The contamination of these foods from environmental sources and during preparation may not be harmful to most infants. However, parents must be aware of the fact that bottled infant water is not sterile, so that they may take special precautions if needed. Parents may be purchasing bottled infant water rather than using other sources of water including tap water and other types of bottled water specifically because they assume that the infant water is sterile.

The agency is not advocating that parents boil bottled water that is not sterile and that is intended for infants. However, parents need to use infant water as directed by their physicians or by the labeling for infant formula. The agency stated in the final rule concerning labeling requirements for infant formula that "potable," "sterile," or "pure drinking water" must be used in preparing infant formula (50 FR 1833 at 1836, January 14, 1985). As stated previously in the response to this comment, under § 107.20(a)(3), infant formula labels must bear directions for sterilization of water, bottles, and nipples when necessary for preparing infant formula for use. In addition, § 107.20(b) requires that a pictogram appear on the label depicting the major steps for preparation of that infant formula. One of the steps in the example provided in the regulation includes an accompanying statement that sterilization is recommended, and that the infant's physician will decide if it is not required.

Thus, while it is true that recommendations for sterilization of water for infant use were made before the widespread practice of chlorination of municipal water supplies, FDA's regulations provide that sterilization should occur unless the physician decides otherwise. Parents need to consult with the infant's physician to determine whether sterilization is not necessary. The labeling requirement on bottled water is necessary to inform parents that the water is not sterile. Thus, if the physician says that sterilization of the infant's water is necessary, the parents will know that it is necessary to take appropriate steps to provide the infant with sterile water.

FDA agrees that bottled water ordinarily contains a normal microbial content unless treated. As some comments pointed out, the reason for the absence of microorganisms in bottled water may be from the presence of an antimetabolite (i.e., an antimicrobial agent) in the water. The bottled water standards allow for the optional addition of safe and suitable antimicrobial agents, and the lack of microorganisms may be the result of the addition or use of these agents. As defined in § 130.3(d), "safe and suitable" means that the ingredient performs an appropriate function in the food, is used at a level no higher than necessary to achieve its intended purpose, and is used in conformity with established regulations. Bottled water containing a substance, such as an antimetabolite, at a level considered injurious to health is deemed to be adulterated under section 402(a) of the act.

FDA disagrees that all bottled water labels need a side panel statement concerning infant use. Under section 201(n) of the act, in conjunction with section 701(a) of the act, the agency is authorized to require labeling if the

information is a material fact with respect to consequences that may result from the usual and customary use of the article. Because most bottled water is not consumed by infants, however, and thus, infant use is not the usual or customary use of bottled water, in the absence of other relevant statements in the labeling, only a mandatory statement on bottled water for infant use is necessary to disclose a material fact under section 201(n) of the act. Therefore, the agency concludes that the comment has not provided sufficient grounds to require that all bottled water bear this statement.

In regard to the comments stating that the labeling requirement is misleading, unjustified, and discriminatory to the infant water industry, the agency has found that this information is a material fact on infant water under section 201(n) of the act because the product is targeted for an infant subpopulation that has unique needs. Manufacturers are labeling their products with a special claim, and thus the agency is establishing a special requirement, the disclosure of a fact that is material in light of the claim, for the use of this claim.

Finally, the agency does not agree that all bottled water intended for use by infants should be sterile. As already discussed under this comment, infants do not always require sterile products. Thus, it is not necessary to require that bottled infant water be sterile.

Therefore, for the reasons discussed above, FDA concludes that the label statement, "Not sterile. Use as directed by physician or by labeling directions for use of infant formula" is appropriate for bottled water that is labeled for use in feeding infants if the product is not commercially sterile.

82. Three comments stated that the agency should consider limiting the sodium levels of infant waters to levels lower than those authorized for adults. They suggested limiting sodium levels to a maximum of 25 mg/L.

FDA disagrees with these comments. Sodium is an important nutrient for infants, and the agency has determined that it would not be prudent to take a regulatory approach that could cause bottlers to eliminate the sodium from their infant water products. However, FDA acknowledges that there is concern that, if sodium is consumed at high levels, infants may develop a taste for it that can have consequences later in life. The agency's infant formula regulations, in § 107.100(a) (21 CFR 107.100(a)), specify that for each 100 kilocalories of formula in the form prepared for consumption as directed on the container, the formula contain at least 20 mg, and not more than 60 mg, of sodium.

Bottled water is generally not a significant source of sodium. Data on the sodium content of the U.S. water supplies were reviewed and discussed in the April 18, 1984, final rule on the declaration of sodium content (49 FR 15510 at 15524). The data revealed that 50 percent of the water sources contain less than 3.0 mg sodium per 6 fluid ounces (oz), and that 95 percent contain less than 17.7 mg sodium per 6 fluid oz. Higher sodium levels, up to 52.9 mg per 6 fluid oz, occur in only 5 percent of the water sources.

Any bottled water, including bottled infant water, containing more than an insignificant amount of sodium (5 mg or more per 240 mL serving) must bear nutrition labeling that lists the number of mg of sodium per serving. The comment's recommended maximum level of 25 mg/L sodium is equivalent to 6 mg per 240 mL serving. Thus, any bottled water at or above the comment's recommended level will, in fact, be required to bear nutrition labeling.

Therefore, the agency concludes that no maximum level for sodium is warranted for bottled water labeled for infants because sodium is an important nutrient for infants, and bottled water generally does not contain more than an insignificant amount of sodium. Parents concerned about the amount of sodium in bottled water labeled for infant use will be alerted to the presence of more than an insignificant amount of sodium through nutrition labeling.

83. Three comments stated that the agency should consider limiting the nitrate levels of infant waters to levels lower than those authorized for adults. They suggested limiting nitrate levels to a maximum of 15 mg/L when expressed as nitrate (NO_3-) (3.4 mg/L when expressed as nitrogen (N)). The comments stated that infants are particularly at risk from ingestion of large amounts of nitrates which, at high doses, can result in cases of methemoglobinemia (blue baby syndrome).

In the **Federal Register** of December 1, 1994 (59 FR 61529) (hereinafter referred to as the December 1994 final rule), FDA established maximum levels of 10.0 ppm for nitrate (as N), 1 mg/L for nitrite (as N), and 10 mg/L (as N) for total nitrate and nitrite in bottled water (§ 165.110(b)(4)(iii)(A)). Bottled water exceeding these levels must be labeled as substandard under § 165.110(c)(3). FDA's maximum levels are based on maximum contaminant level goals (MCLG's) established by EPA in the **Federal Register** of January 30, 1991 (56 FR 3526). EPA based the MCLG's on the toxicity of nitrate in humans from the reduction of nitrate to nitrite in the human body. By reacting with hemoglobin, nitrite forms methemoglobin, which will not transport oxygen to the tissues and thus can lead to asphyxia (i.e., blue babies). If sufficiently severe, asphyxia can lead to death. Concern for adverse effects of nitrate and nitrite are primarily for infants and other special populations.

Therefore, because the toxicity of nitrate and nitrite in infants and other special populations was considered in establishing EPA's MCLG's, the agency concludes that there is no basis to establish a separate level for bottled water intended for infant use.

4. Method of Preparation of Purified Water

FDA did not propose to require that the method of preparation of purified water be stated on the label, although it stated that a manufacturer may include this information on the label if it desires. FDA requested comments from interested persons on the need to include this information on the label.

84. One comment stated that the specific purification process should be identified on the label because the public has a right to know what specific treatment the water receives.

FDA disagrees with the comment. Although the information may be useful for some consumers, the agency tentatively concluded in the proposal that there was no substantive basis on which to require that this information appear on the label. Under section 201(n) of the Act, the agency must determine, among other factors, whether the information is a material fact with respect to consequences that may result from use of the article, or in light of other representations made in the labeling, to require that information appear on the label. As discussed previously, purified water is defined compositionally, and there are no significant compositional differences among purified waters prepared through the different methods. Therefore, FDA finds that the comment has not provided an appropriate basis to justify a requirement that the specific purification process appear on the label, and it is not requiring that the method of preparation be stated on the label of purified water. However, a manufacturer may include this information on the label if it so desires.

5. Other Labeling

85. One comment asked that FDA reconsider IBWA's requested provision that any bottler whose corporate name, brand name, or trademark contains the

words "spring," "well," "artesian," "mineral," or any other derivation should be required to label each bottle with the type of bottled product in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark if the type of bottled water differs from that implied in the corporate name, brand name, or trademark. It stated that this requirement may eliminate some of the misconceptions consumers have about bottled water products on which the term "spring water" appears as part of the corporate name.

Another comment expressed concern about labels that use trade names or registered and unregistered trademarks on water that imply a geographic origin that is different from the actual source of the water.

The agency agrees that the use of certain corporate names, brand names, and trademarks may be misleading to consumers if the source of the water is different from the source stated or implied. Section 403(a) of the Act specifically states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. Thus, the use of terms or vignettes that state or imply that the source of the water is different than the actual source would misbrand the food. In addition, section 403(f) of the Act states that a food is misbranded if any word, statement, or other information required by or under authority of the Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Thus, if required labeling describing the water is not appropriately conspicuous in relation to other label representations, the product is misbranded. Therefore, the agency concludes that it already has the authority to charge misbranding under the Act in the situations discussed by the comments, and that a specific regulation is not necessary. With the establishment of the standard of identity in § 165.110(a), FDA now has particular definitions of bottled water sources that will assist the agency in enforcing these misbranding provisions of the Act.

86. One comment stated that water can support the growth of bacteria, and that opening the bottle and pouring out the water exposes the remaining water to air and can constitute an "inoculation" with environmental bacteria. It stated that few consumers are aware that water is a suitable growth medium for bacteria, and that FDA may consider the advisability of a storage statement, such as "refrigerate after opening," in the usage instructions for bottled water.

The agency does not agree that such labeling is necessary, although it would not object to manufacturers voluntarily including a statement such as "refrigerate after opening" on the label. The agency has established a microbiological quality standard in § 165.110(b)(2). In the **Federal Register** of October 6, 1993 (58 FR 52042), FDA proposed to amend the microbiological quality provision to require that bottled water be free of coliform bacteria. The agency expects to issue a final rule in that proceeding soon. Also in the October 6, 1993 proposal, FDA requested comments on other matters concerning the microbiological quality of bottled water. The agency will address these issues as appropriate.

FDA acknowledges that some bacteria can grow in bottled water, and that bottled water, unless treated in some manner, is not sterile. Innocuous bacteria are generally already present before the consumer's first use. Additional bacteria may enter a bottle of water with exposure to the air. However, the growth of bacteria is limited in bottled water because it is not a good source of nutrients for most microorganisms.

Therefore, the agency is not convinced that a statement such as "refrigerate after opening" is necessary on bottled water because water is not a good growth medium for microorganisms, and because the agency has already addressed microbiological standards in its quality standard.

III. Standard of Quality

FDA proposed to move the definition for bottled water from § 103.35(a)(1) to § 165.110(a)(1) and the standard of quality for bottled water from § 103.35 to § 165.110. The agency also proposed to include existing definitions for "lot," "sample," and "analytical unit" found in § 103.3 in part 165. Because FDA was proposing to remove the quality standard from § 103.35 and include it in § 165.110, FDA tentatively concluded that the definition of these terms should be moved as well.

87. One comment objected to a provision in § 165.3(b) that states that "a sample consists of 10 subsamples (consumer units)" because this amount of testing is too costly. It stated that a better procedure would be to analyze at least one sample for coliforms and heterotrophic plate count for each size of container and each type of product from one lot.

This comment falls outside the scope of this rulemaking. The agency did not propose to amend the current definitions but only to move these definitions to be in proximity with the bottled water standard in part 165. Therefore, FDA is not modifying the general definitions at this time. However, persons interested in an amendment of the definitions for "lot," "sample," and "analytical unit" may petition the agency, providing recommended definitions and justification for the recommendations.

A. Exemptions for Mineral Water

The agency tentatively concluded in the January 1993, proposal that certain aesthetically based allowable levels should not apply to waters with more than 500 ppm TDS. Accordingly, the agency proposed to add a footnote to the list of allowable levels in § 165.110(b)(4)(i)(A) to provide that when water is labeled as "mineral water," it will be exempt from the allowable levels for color, odor, TDS, chloride, iron, manganese, sulfate, and zinc. However, FDA did not propose to include bottled waters that are not conspicuously identified with the term "mineral" or that are identified as "mineral water, low mineral content" in this exemption because consumers will not generally expect to encounter flavors affected by high mineral content in these bottled water products. In addition, the agency did not propose to exempt mineral water from the allowable levels for copper, fluoride, silver, and turbidity. The agency requested comment concerning the need to establish a separate turbidity level for mineral water.

The agency stated in the January 1993, proposal that, if it established an allowable level for aluminum, it would propose to exempt mineral water (except low-mineral-content type mineral waters) from that standard because the standard is intended to control the aesthetic properties of the water (turbidity) and not its effect on the body. In the December 1994 final rule, the agency established an allowable level of 0.2 mg/L for aluminum in bottled water. In a proposal published elsewhere in this issue of the **Federal Register**, the agency is proposing to exempt mineral water from the allowable level for aluminum.

88. Three comments stated that mineral water should be subject to all of the same regulations (including the TDS maximum allowable level) as bottled water with no exceptions. However, the comments provided nothing to support this position.

The agency disagrees with these comments. For the most part, mineral water is subject to the same requirements as bottled water. FDA is only exempting mineral water that contains more than 500 ppm TDS from the maximum level requirements for chloride, iron, manganese, sulfate, zinc, and total dissolved solids in § 165.110(b)(4) (see footnote 1 to § 165.110(b)(4)(i)(A)). The agency established these maximum levels based on aesthetic factors and not health or safety factors (27 FR 2152, March 6, 1962). Most mineral waters exceed the quality requirement of 500 mg/L for total dissolved solids because they contain higher levels of these minerals than other types of bottled water. The comments have not provided any basis for modifying the exemption for mineral water, only the general request that the agency do so. Given the nature of mineral water, and the fact that the exemption it is granting only has aesthetic significance, FDA finds no reason to make a change in § 165.110(b)(4) in response to these comments.

89. Several comments supported the proposed exemption from secondary aesthetic-based maximum limits in the case of mineral water. However, they urged the agency not to limit the exemption only to mineral waters containing more than 500 mg/L. They requested that all mineral waters, regardless of their TDS content, be exempt from the secondary aesthetic-based maximum limits. The comments stated that given that there is no consumer safety concern for these secondary maximum levels, there is no reason to limit the exemption to mineral waters with a TDS above 500 mg/L. One comment noted that a mineral water with 490 ppm TDS, 0.4 mg/L iron, and 0.08 mg/L manganese and a mineral water with the same iron and manganese content but with 510 ppm TDS would be identical from an analytical perspective, but one would be substandard, and the other would not.

In the January 1993 proposal (58 FR 393 at 401), FDA stated that it did not include bottled waters that are not conspicuously identified with the term "mineral," or that are identified as "mineral water, low mineral content," in the exemption because consumers will not generally expect to encounter flavors affected by high mineral content in these bottled water products.

The agency agrees that there are no consumer safety concerns for these secondary maximum levels. The exemption from the quality standard for mineral water is based on allowable levels that were established for aesthetic reasons and not for consumer safety. The allowable levels from which mineral water is exempted are color and odor (physical quality) and chloride, iron, manganese, sulfate, total dissolved solids, and zinc (chemical quality). Water containing less than 500 ppm TDS will not exceed the allowable levels for chloride, sulfate, or total dissolved solids because of the high allowable levels in the standard. In addition, it is unlikely that water containing less than 500 ppm TDS would exceed the allowable levels from which mineral water is exempted.

The agency must consider whether consumers would expect products labeled as "mineral water, low mineral content" to contain objectionable aesthetic characteristics. Clearly, consumer expectations exist that products labeled as "mineral water" may contain unique aesthetic characteristics (Ref. 21). Because products containing less than 500 ppm TDS are labeled as "mineral water," FDA finds that consumers will be informed that the product may contain objectionable aesthetic characteristics. Therefore, FDA concludes that the exception should also apply to "mineral water, low mineral content." FDA is modifying the footnote to § 165.110(b)(3) and § 165.110(b)(4)(i)(A) to include all mineral water, including that containing less than 500 ppm TDS.

90. Some comments stated that it might be appropriate for the agency to clarify in the text of the regulation that the standards for which an exemption is provided for mineral water are aesthetically based and do not relate to a health concern.

FDA agrees that the exemptions from the allowable levels in the standard are for those that are based on EPA secondary maximum contaminant levels (SMCL's), which were established for aesthetic reasons and not for health or safety reasons, although the agency is not exempting mineral water from all of the allowable levels based on EPA's SMCL's. FDA finds that the requested modification in the footnote of the regulation would clarify the intent of the exemption. Therefore, the agency is modifying the footnote to § 165.110(b) to state that the exemptions are aesthetically based allowable levels and do not relate to a health concern.

91. Some comments urged the agency to exert caution concerning certain harmless, naturally occurring minerals that the agency characterizes as possibly causing negative aesthetic effects. They urged the agency to consider the rate of consumption by consumers of mineral waters containing these compounds before making any final decision.

The agency assures the commenters that, as it considers how EPA's SMCL's should apply to bottled water and to mineral water in particular, FDA has evaluated, and will continue to evaluate, whether the aesthetic effect of the substance will be of concern to consumers. This evaluation includes a consideration of the rate of consumption of mineral water. The agency is exempting mineral water from some but not all allowable levels that are based on EPA's SMCL's. As FDA explained in response to the previous comment, FDA has formulated the quality standards to protect consumers from any adverse effects on the body, even those that may be characterized as aesthetic.

92. One comment recommended that FDA reexamine the allowable levels for fluoride in the case of carbonated mineral water packaged in bottle sizes of 1.5 L or less because consumers will not use products packaged in these types of containers as a tap water alternative, and there will be a much lower average daily intake of these products. The comment stated that it would promote fairness towards existing mineral water bottlers by setting standards in a manner that is the same as that used for other food products. It suggested that the maximum allowable concentration of fluoride be no greater than 3.0 ppm for carbonated mineral waters, where the TDS is between 500 and 1000 ppm, and up to 6.0 ppm where the TDS is above 1000 ppm.

Another comment recommended that FDA set the fluoride limit for bottled waters at 2 ppm. The comment said that this limit is a feasible one for mineral water producers to meet. As an alternative, based on the theory that children rarely consume much of the high-mineral waters that are likely to have a high fluoride level, the comment suggested that FDA permit a fluoride content of more than 2 ppm in mineral waters, provided that the label bear this prominent warning: "Not recommended for use by children; fluoride content can contribute to a significant risk of dental mottling."

FDA disagrees that mineral water should be exempt from the maximum levels for fluoride for bottled water. Although mineral water may not be consumed in as great a quantity as other types of water, consumers may obtain fluoride from other sources, and thus, mineral water can contribute to excessive total consumption of this mineral.

The agency notes that the quality standard sets forth maximum levels for fluoride. FDA proposed a revised allowable level for fluoride of 2.0 ppm

for naturally occurring fluoride in bottled water (53 FR 36063 at 36067, September 16, 1988). The agency will be proceeding with that rulemaking now that EPA has published a notice of intent not to revise its fluoride drinking water standards (58 FR 68826, December 29, 1993). The label of bottled water, including mineral water, containing fluoride at levels greater than the maximum allowable levels of fluoride in § 165.110(b)(4)(ii) must bear the statement "contains excessive fluoride" in accordance with § 165.110(c)(3).

93. One comment stated that, if in the final rule FDA allows an exemption for sulfate in mineral water containing more than 500 ppm TDS, FDA should require that all bottled water containing sulfates display labels with language similar to the following: "Warning, this product may contain high levels of sulfate which may cause diarrhea in sensitive population groups including infants, children, and pregnant women." It stated that this statement should be a minimum requirement because there is evidence that sensitive population groups are susceptible to harmful effects from products that contain sulfates.

The agency notes that in the **Federal Register** of December 20, 1994 (59 FR 65578), EPA proposed a MCLG and a National Primary Drinking Water Regulation (NPDWR) including a MCL of 500 ppm TDS for sulfate. EPA stated that sulfate is a unique contaminant because the health effect associated with the ingestion of relatively high levels of sulfate in drinking water (i.e., ranging from loose stools to diarrhea) is acute and temporary and is expected to last approximately 2 weeks. In addition, EPA stated that the health risk only applies to persons not already acclimated to high sulfate-containing water—infants, travelers, and new residents. EPA did not propose to amend the SMCL of 250 mg/L for sulfate that is based on aesthetic effects (i.e., taste and odor).

In the Memorandum of Understanding (MOU) concerning the control of drinking water, EPA and FDA agreed that the authority to control substances in drinking water should be vested with EPA to avoid duplicative and inconsistent regulation. Therefore, FDA is not establishing a maximum allowable level for sulfate in mineral water at this time. However, if EPA establishes an MCL for sulfate in public drinking water, in accordance with section 410 of the act (21 U.S.C. 349), FDA will consider amending the bottled water quality standard to establish a maximum allowable level for sulfate in mineral water.

The agency is exempting mineral water from the allowable level for sulfate of 250 ppm at this time because some mineral waters exceed this aesthetically determined level without causing any adverse effects (Ref. 22). However, if mineral water contains sulfate, or any other substance, at a level that is injurious to health, it is deemed to be adulterated and subject to regulatory action.

94. One comment stated that under the January 1993 proposal, bacteriologically and chemically pure artesian or mineral water, for example, that is safe for consumers would have to bear the label statement "abnormal color and smell," even if the "abnormal" color and smell results from perfectly normal, naturally occurring dyes and gasses that are constituent to its source. The comment contended that these substances make the water unique by their individual combination and are often sought or favored by consumers, both domestically and internationally. It stated that the designation "abnormal" on unadulterated, uncontaminated water is an inappropriate requirement for labeling. It stated that it is especially inappropriate when the source waters are unique, identified as to their source, and otherwise pure, natural, and uncontaminated.

FDA established the physical quality standards concerning color and odor based on EPA SMCL's. These allowable levels were established for aesthetic reasons and not to ensure consumer safety. The primary purpose of a quality standard is to establish the minimum acceptable quality criteria for a product when it is offered to consumers. The quality standard for bottled water is based on the normal range of waters, and a consumer's expectation is also based on the normal range of waters. Thus, the label needs to respond to that expectation and not be tailored to individual situations. Because bottled water that does not meet the color and odor quality standard may be objectionable to consumers, the labeling requirements established in the standard continue to be appropriate for bottled water in general.

Therefore, bottled water (e.g., artesian water) that is not exempted from the quality standard and that exceeds the maximum allowable levels for color or odor must bear the label statements "Abnormal Color" or "Abnormal Odor" as required by § 165.110(c)(2). However, the agency points out that in the case of mineral water, products that do not meet the color and odor quality standard are exempted from the standard.

B. Substandard Chemical Quality Labeling

In the January 1993 proposal, FDA tentatively concluded that the general phrase, "Contains Excessive Chemical Substances," may not be adequate for mineral water and proposed that the label or labeling of mineral water list the specific names of any substances present in amounts that exceed the allowable levels to which mineral water is subject (e.g., "Contains Excessive Fluoride," "Contains Excessive Trihalomethanes").

95. Two comments objected to allowing bottlers to distribute a product that does not meet the water quality standards. One comment stated that the purpose of water quality standards is to prevent products that are below acceptable standards from being distributed to consumers. It noted that given the emphasis by the bottled water industry on the quality of bottled water versus tap water, it is quite doubtful that bottlers would print any substandard notice on the product label. Another comment questioned whether consumers would be able to interpret the significance of the phrase "contains excessive chemical substances" on a label. It requested that FDA require at a minimum that the specific chemical substances be listed similar to FDA's proposal for substandard mineral water.

One comment questioned whether bottled water exceeding the microbiological standards should be sold at all, regardless of how it is labeled.

FDA notes that under section 403(h)(1) of the act, a food is deemed to be misbranded if it is a food for which a standard of quality has been prescribed by regulation, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. Bottled water may be sold even though it contains a substance at a level that exceeds the maximum allowable levels in the quality standard so long as that substance does not adulterate the food under section 402 of the act. However, the agency points out that most of the maximum allowable levels in the bottled water quality standard are identical to EPA MCL's, and EPA establishes its levels based on health considerations. Therefore, many substances, including microorganisms (e.g., coliforms), present in amounts exceeding FDA's maximum allowable levels could be present at levels that are injurious to health.

The agency disagrees with the request that it require, at a minimum, that the specific chemical substances that exceed the maximum allowable levels in § 165.110(b)(4) to be listed on the label instead of providing the exception in § 165.110(c)(3) if the bottled water is not mineral water. The chemical content of mineral waters generally exceeds one or more allowable levels in the bottled water standard, and thus, consumers would expect mineral water to normally contain excessive chemicals. As discussed above, the agency has exempted mineral water from certain allowable levels in the quality standard on this basis. Consumers would not expect bottled water that is not mineral water to contain any excessive chemicals because the quality standard is based on the normal range of waters.

Therefore, the agency concludes that the statement "contains excess chemical substances" is appropriate for bottled water other than mineral water, and that it is not necessary to require more specific labeling because consumers will be alerted to the presence of chemical substances in amounts that exceed the maximum allowable levels. However, the agency does not object to the labeling of bottled water that declares the substandard presence of specific chemicals in lieu of the more general statement "contains excess chemical substances."

FDA notes that it has made a number of editorial modifications in § 165.110(c), including deleting and renumbering several of the provisions that appeared in the proposal, for clarity.

IV. Current Good Manufacturing Practices

A. Product Water, Operations Water, and Compliance Procedures

On January 5, 1993, the agency proposed to update the references in § 129.35 and to delete the exclusion for mineral water from testing requirements in § 129.80(g). FDA also proposed to permit firms that use a municipal water system as the source of their water to substitute municipal testing results showing full compliance with the EPA primary and secondary drinking water regulations (or a certificate to this effect) for the source water chemical contaminant testing required in § 129.35(a)(3). In addition, the agency proposed to permit firms that use a nonmunicipal water source as the source of their water to reduce the frequency of testing and the number of chemical contaminants for which they test source water if they can document that such reduction is consistent with a waiver that the State has issued under EPA regulations (§ 129.35(a)(4)(ii)).

96. Several comments suggested that FDA use the term "public water supply" as defined by EPA rather than use the term "municipal supply." (See previous discussion in comment 72.)

The agency notes that it used the term "municipal water system" in proposed source water testing exemptions in § 129.35(a)(4) (58 FR 393 at 407). However, FDA agrees that in the context of this section, the term "public water system" is more appropriate because it includes water that is covered by EPA's drinking water regulations and State programs established under EPA programs. The intent of FDA's testing exemptions was to apply to water based on whether or not the source was a public water system. Therefore, the agency is modifying § 129.35(a)(4)(i) to include firms that use a public water system for source water and § 129.35(a)(4)(ii) to include firms that do not use a public water system.

97. One comment requested that all types of nonmunicipal sources maintain documentation on file that establishes that the source has been evaluated and determined to meet the design, operation, and maintenance requirements of the government agency having jurisdiction.

The agency advises that firms must have source approval of their product water and must maintain records of the source approval. According to § 129.3(a), an "approved source," when used in reference to a plant's product water or operations water, means a source of water and the water therefrom, whether it be from a spring, artesian well, drilled well, municipal water supply, or any other source, that has been inspected, and the water sampled, analyzed, and found to be of a safe and sanitary quality, according to the applicable laws and regulations of the State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from the government agency or agencies having jurisdiction constitutes approval of the source and the water supply. Therefore, no action is necessary in response to the comment.

98. Comments stated that no standards are set to protect a well or spring and its recharge area against the intrusion of contaminants. One comment stated that there should be very strict rules governing ownership, control, and protection of the recharge area of any well or spring.

FDA agrees that the recharge area of any well or spring is a critical area. However, the agency disagrees that it is necessary to establish requirements concerning ownership, control, and protection of the recharge area of any well or spring because it has already established requirements in parts 129 and 165 to guard against the presence of contaminants in bottled water, whether from the recharge area or any other source of contamination.

First of all, the source of the water must be an approved source, and the water found to be of a safe and sanitary quality by the government agency approving the source (§ 129.35(a)). Such source approval could include the source of recharge to determine whether the water will be of a safe and sanitary quality.

In addition to meeting the requirements of part 129, bottled water must meet the requirements of the quality standard in § 165.110(b) or be labeled as substandard in accordance with § 165.110(c). The quality standard lists allowable levels for many common contaminants of recharge areas (e.g., pesticides and nitrates).

Finally, as stated in § 165.110(d), bottled water containing a substance at a level considered injurious to health under section 402(a)(1) of the act is deemed to be adulterated, regardless of whether or not the water bears a label statement of substandard quality. Therefore, the agency concludes that consumers are protected against problems that may occur in the recharge area of a spring or well used as a source for any bottled water product.

99. One comment stated that any water under the influence of surface water must be treated as surface water and should never be called "spring water," "well water," or "natural water," regardless of whether it was collected from a spring or pumped from a well.

Another comment stated that, in general, the microbiological standards in the proposed regulation are weak and do not address the issue of ground water under the influence of surface water. The comment urged FDA to incorporate appropriate source approval standards similar to those of the State of North Carolina as a means to ensure safe bottled spring and well waters.

One comment requested that FDA state that spring water must not be under the direct influence of surface water. The comment stated that a requirement, such as an initial water particulate test during the rainy season, should be considered for spring water.

The agency agrees that any water under the direct influence of surface water is not ground water, regardless of whether it was collected from a spring or pumped from a well. EPA defines

"ground water under the direct influence of surface water" in 40 CFR 141.2 as any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlates to climatological or surface water conditions. The manifestation of any of these factors evidences that the source is under the direct influence of surface water and is, therefore, not a ground water source. The definitions of "spring water," "artesian water," "mineral water," and "well water" that FDA is adopting in this document require that the source be a ground water source.

EPA has published a *Consensus Method for Determining Groundwaters Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA)* (Ref. 23). The consensus method is the result of a collaborative effort combining the experiences and knowledge of contributors from around the country into an acceptable consensus method. This guidance may be used to determine whether ground water is under the direct influence of surface water. This determination may be considered as part of the source approval conducted by the State or local agency having jurisdiction because, under § 129.3(a), source water must be found to be of a safe and sanitary quality.

FDA adds that it published a proposal, to amend the quality standard for bottled water to require that bottled water be free of coliform bacteria (58 FR 52042). In that proposed rule, FDA also addressed other matters concerning the microbiological quality of bottled water and requested comments on whether the agency should establish quality standard regulations for other microorganisms that may be present in bottled water and pose a health hazard. The agency will discuss the comments that it received in response to that proposal in that rulemaking.

100. One comment recommended added testing for bacteriological contaminants, trihalomethanes, lead, and copper in those situations where the bottled water manufacturers will be permitted to substitute municipal test results for the testing requirements of § 129.35(a)(3). It stated that additional testing is necessary for these contaminants because of contamination that could occur in the water distribution system.

One comment stated that allowing bottled water producers that use a municipal water source to substitute municipal testing results for the source testing requirements is reasonable only if the final product testing requirements are retained.

FDA disagrees that it should require additional testing by bottled water manufacturers who substitute public water system test results for source water testing. However, the agency agrees with the comment that stated that the substitution of public water system test results for source water testing is appropriate only if the final product is tested according to the requirements in § 129.80(g). The testing exemptions for microbiological contaminants that FDA established previously (§ 129.35(a)(3)(i)) and for chemical contaminants that FDA is establishing in this rulemaking (§ 129.35(a)(4)(i)) apply to the source water testing requirement only. Part 129 also requires testing of product water (i.e., after processing but prior to packaging) and finished product. Under § 129.80(a), product water samples must be taken after processing and before bottling by the plant and analyzed as often as is necessary to ensure uniformity and the effectiveness of the processes performed by the plant. In addition, under § 129.80(g)(1) and (g)(2), a bottled water plant must analyze a representative sample of the finished product of each type of bottled drinking water at least once a week for the presence of bacteria and at least annually for chemical contaminants.

The agency concludes that no additional chemical or microbiological testing requirements are necessary for bottled water manufacturers who use public water systems and who substitute testing results from the public water system for source water testing requirements in part 129 because FDA requires that product water and finished product water be regularly tested, and if any contaminant is contributed by the water distribution system it will be detected by the required testing. The testing requirements in § 129.80 have functioned satisfactorily since FDA adopted them in 1979 (44 FR 12173, March 6, 1979), and the agency finds no reason to amend them. FDA points out that its adoption of the source water testing exemptions in § 129.35(a)(4) in no way changes how product water and finished product water are to be tested.

101. Two comments objected to § 129.35(a)(4)(ii) regarding a waiver for nonmunicipal water used by firms for the purposes of manufacturing bottled water. They stated that under proposed § 129.35(a)(4)(ii), a firm could reduce the number of contaminants for which it tests, and the frequency with which it performs testing, if it can document that such reduction is consistent with a waiver that the State has issued under EPA regulations. The comments stated that FDA should not allow a manufacturer to establish that such a waiver exists but should require the governmental entity regulating the source to make such a determination.

The agency disagrees with the comments. Firms may reduce the frequency of testing and the number of chemical contaminants for which they test source water if they can document that such reduction is consistent with a State-issued waiver under EPA regulations for public water systems. State waivers may either eliminate the requirement for a 3-year compliance period (e.g., pesticides/polychlorinated biphenyl's (PCB's)) or reduce the frequency of testing (e.g., inorganics and volatile organic chemicals). Waivers are either based on a review of established criteria ("a waiver by rule") or on a vulnerability assessment. In the **Federal Register** of January 30, 1991 (56 FR 3526 at 3562), EPA discussed the criteria for waivers by "rule" and "vulnerability assessment."

EPA may rescind waivers issued by a State where EPA determines that the State has issued a significant number of inappropriate waivers. If a waiver is rescinded, the firm must monitor in accordance with the requirements in § 129.35.

States develop their own specific vulnerability assessment procedures that use the general guidelines established by EPA. If a State chooses not to develop these procedures, firms cannot receive waivers and must monitor the source water in accordance with § 129.35.

Therefore, firms cannot decrease the amount of testing that they perform unless the State has issued a waiver to them. The presence of a current State-issued document in the plant will certify that testing of source water may be reduced. The reduction in testing is only for those contaminants covered by the waiver. If the State has not issued such a waiver, the firm must annually test for all contaminants.

FDA points out that the State-issued waiver from chemical testing requirements in § 129.35(a)(4) applies only to source water testing, and that the product water must be tested in accordance with § 129.80(a). Moreover, the finished product must be tested for all substances in accordance with § 129.80(g). Thus, FDA concludes that no modification of § 129.35(a)(4)(ii) is warranted.

102. One comment recommended that § 129.35(a)(4)(ii) be modified to require that at least two complete samples for

all contaminants be made before any reduction in testing is allowed, even when the State has issued a waiver. It stated that there can be great variation in contaminant levels in both surface and ground water sources, even with withdrawal points that are in close proximity. The comment claimed that a requirement for initial sampling is the only way to ensure that waivers are appropriate, and that, where firms make use of this testing exception, they should be required to maintain the data from initial sampling and support documentation on State waivers indefinitely rather than for the 2-year period typically required for test data.

The agency disagrees with the comment. As EPA explained in the **Federal Register** of January 30, 1991 (56 FR 3526 at 3562), waivers are granted on a contaminant-by-contaminant basis. Waivers for pesticides/PCB's and volatile organic chemicals (VOC's) may be granted after the firm conducts a vulnerability assessment, and the State determines that the source is not vulnerable based on that assessment. A waiver must be renewed every 3 years (*id.*). Waivers for inorganic contaminants (except nitrate/nitrite) may be granted for up to 9 years. If a firm does not receive a waiver, it must comply with the requirements in § 129.35.

The vulnerability assessment is based on a two-step waiver procedure. Step 1 determines whether the contaminant was used, manufactured, stored, transported, or disposed of in the area. In the case of some contaminants, an assessment of the contaminant's use in the treatment or distribution of water may also be required. "Area" is defined as the watershed area for a surface water system or the zone of influence for a ground water system and includes effects in the distribution system. If the State determines that the contaminant was not used, manufactured, stored, transported, or disposed of in the area, then the system may obtain a "use" waiver. Systems receiving a "use" waiver are not required to continue on to Step 2 to determine susceptibility. EPA anticipated that most "use" waivers will be for pesticides/PCB's, the use of which can be determined more easily than for VOC's. Obtaining a use waiver for the VOC's will be limited because VOC's are ubiquitous in the United States (56 FR 3526 at 3562).

If a use waiver cannot be given, that is, if the State cannot make a determination that the contaminant was not used, manufactured, stored, transported, or disposed of in the area, a system may conduct an assessment to determine susceptibility (Step 2). Susceptibility considers prior occurrence or vulnerability assessment results, environmental persistence and transport of the chemical, the extent of source protection, and EPA Wellhead Protection Program reports. Systems with no known "susceptibility" to contamination based upon an assessment of the above criteria may be granted a waiver by the State. If "susceptibility" cannot be determined, a system is not eligible for a waiver (56 FR 3526 at 3563).

EPA also established guidelines for decreased monitoring of inorganic chemicals (56 FR 3526 at 3564). States may decide, based on prior analytical results, variation in analytical results, and system changes such as pumping rates or stream flows/characteristics, to allow firms to reduce the monitoring frequency to no less than 9 years. To qualify for this waiver, at a minimum, three previous compliance samples must have been reliably and consistently less than the MCL.

The above minimum guidelines, along with any additional State requirements, provide adequate consumer protection because a firm must perform appropriate testing before a waiver will be issued. In addition, the use or susceptibility requirements of the program provide assurances that a contaminant is not present in the area. Finally, the waiver does not extend to testing of the product water and the finished product. Thus, FDA concludes that the requirements for obtaining the waiver adequately address consumer safety concerns.

Firms must document that they have a current State-issued waiver, and that the waiver complies with State requirements even though the waiver may have been issued prior to the 2-year record retention time period required by § 129.80(h). Records of the waiver must be retained for not less than 2 years after the waiver expires to meet the requirements of § 129.80(h). This retention requirement ensures that all testing records, exemptions from testing, and source approval requirements are documented for the same production batch of bottled water. However, the agency sees no need for manufacturers to maintain these records indefinitely, and the comment has not provided grounds for such a requirement.

103. One comment asked whether FDA is requiring the same sampling frequency as is required for public systems under EPA's Phase II rules (56 FR 3526) by including the waiver process in this regulation. The comment stated that, for example, inorganics could be tested at a frequency of once every 9 years according to EPA regulations. It asked whether FDA feels that such a frequency of testing provides adequate protection of source water.

The agency notes that manufacturers must comply with all the source testing requirements in § 129.35(a)(3) unless they have received a State-issued waiver for specific contaminants. As discussed above, under EPA's Phase II rules (56 FR 3526), States may issue waivers only if circumstances affecting the source and the area surrounding the source make it unlikely that the contaminant will be present. Based on its review of the evidence on these factors, the State may issue a waiver decreasing the frequency of testing from 3 to 9 years depending on the contaminant.

FDA believes that the use of a State-issued waiver is an appropriate substitute for source water testing because a State must require that the water be tested before issuing the waiver, and that the conditions relevant to the occurrence of the contaminant confirm that it is unlikely that the contaminant will be present. Again, FDA affirms that the finished bottled water must be tested at least annually for chemical contaminants and comply with FDA regulations.

104. One comment stated that, because the source has no bearing on the final product for purified or distilled water, there was reason to question whether it was necessary for a bottler that bottles only purified water to have annual chemical and radiological tests of its source water.

FDA disagrees with the comment. Source testing is important to ensure the purity of the source water. The source water must be of reasonable quality to ensure that the finished product complies with the quality requirements. If a source contains excessively high levels of some contaminants, these contaminants may not be adequately removed in the purification process. Therefore, the agency concludes that the source water for purified water should not be exempt from all the requirements of part 129. However, the agency notes that there are source water testing exemptions in § 129.35(a)(4) that may apply to the source water for purified water. If applicable, these exemptions could replace or reduce the source testing requirements for chemical contaminants.

105. One comment expressed concern about FDA regulating the testing of source water if FDA would preempt State agencies from setting standards for source water that are equivalent to State Drinking Water Standards. The comment held that the State should have the authority to set more stringent standards for source water when there is

a safety issue. It noted that water bottled in a State should have at least the same health-based quality standards as public drinking water in that State. The comment questioned whether FDA has jurisdiction over source water and was opposed to FDA regulating the water quality standards for source water, which are under the jurisdiction of the States or EPA.

The agency notes that it is not amending its regulations with respect to the testing of source water except to provide that bottlers using a public water supply may substitute certificates showing compliance with EPA's requirements for chemical contaminants for testing results, and that bottlers may use a State-issued waiver for some chemical contaminants. Section 129.35(a)(3) specifies the frequency of testing of source water for chemical, radiological, and microbiological contaminants. This sampling is in addition to any that is performed by government agencies having jurisdiction. The source is approved by the State or local government agency having jurisdiction and must comply with the applicable laws of that agency, even though those laws are more stringent than FDA requirements. FDA has traditionally relied on the laws of the State or locality having jurisdiction. Therefore, FDA concludes that there is no basis for the concern expressed by the comment.

B. Additional Definitions

Although the agency did not propose definitions for "bottled water plant," "plant operator," or "water dealer," or to revise the definition for "bottled drinking water," as IBWA requested, FDA requested comment from interested persons on the need to define or amend the definitions of these terms.

106. One comment recommended that FDA define "bottled water plant." It stated that such a definition would enable States that have bottled water regulations to adopt a uniform definition.

The agency has decided that it is not necessary to adopt a definition for "bottled water plant." Part 110, concerning CGMP in manufacturing, packing, and holding human food, applies to bottled water along with part 129. Under § 110.3(k), "plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, or holding of human food. Thus, "bottled water plant" can be fairly interpreted, under FDA's regulations, to mean the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, or holding of bottled water. In its petition, IBWA defined "bottled water plant" as any place or establishment in which bottled water is prepared for sale. The State of California defines "water-bottling plant" as any facility in which bottled water is produced (Ref. 2). Thus, FDA concludes that the definition in § 110.3(k) is adequate because it is consistent with the common definition of a bottled water plant, and that a specific definition for this term in part 129 is not necessary.

C. Unregulated Contaminants

IBWA requested revision of part 129 to provide for additional source and final product testing requirements in § 129.35 to detect and control specific unregulated contaminants. The agency did not propose to require such testing because firms are free to test for contaminants not listed in the quality standard, and they must employ appropriate quality control procedures to ensure that food is suitable for human consumption (§ 110.80). In addition, bottled water that contains a poisonous or deleterious substance is subject to regulatory action under the adulteration provisions of the act. Producers that knowingly produce and distribute adulterated bottled water may be subject to the criminal penalties of the act.

107. One comment requested that FDA amend § 129.35 to require testing of bottled water products (on at least an annual basis) for those substances listed in EPA's requirements for monitoring of unregulated contaminants. It stated that this requirement should be made immediately applicable to all bottled water producers.

The agency disagrees with the comment. Under section 1445(a) of the SDWA, EPA was required to promulgate monitoring requirements for unregulated contaminants. EPA established monitoring requirements for 51 synthetic organic chemicals in the **Federal Register** of July 8, 1987 (52 FR 25690), and promulgated monitoring requirements for an additional 30 synthetic organic chemicals and inorganic chemicals in the **Federal Register** of January 30, 1991 (56 FR 3526), that were not regulated by NPDWR's to assist EPA in establishing future NPDWR's. EPA did not establish regulations that would set forth maximum levels of these contaminants, only the requirement that public water systems monitor for them.

FDA does not believe that it is necessary to mandate testing for unregulated contaminants in bottled water because such testing is for EPA monitoring and information purposes only. As EPA identifies the need to regulate a substance from its monitoring activities, and subsequently adopts MCL's for them, FDA will promulgate applicable regulations for bottled water under section 410 of the act (21 U.S.C. 349). The comment did not provide a basis to establish a requirement for additional testing. It only requested that FDA do so. Therefore, the agency concludes that amending § 129.35 in the manner suggested by the comment is not warranted.

108. One comment stated that additional final product testing should be required for any contaminants that can enter the water through the water system or through the bottles. It stated that these contaminants, given their low levels, may not be poisonous or immediately deleterious but should not be in bottled water. The comment stated that several years ago, a California firm used a new clear resin that was subsequently found to be leaching cyclohexanes, among other things. It stated that at least one consumer injury was reported when a particularly bad batch of resin was used. The comment cited another instance of chemicals entering the water from improperly cured new piping. It stated that in these instances, the required source water monitoring for additional contaminants would not have uncovered the problem in the finished product.

FDA disagrees that it should establish additional finished product testing requirements for chemical contaminants derived from processing equipment or packaging. Substances that get into the product from product contact surfaces can vary from manufacturer to manufacturer and from lot to lot. The agency considers these substances to be indirect food additives. Thus, any product that contains such a substance whose use has not been regulated by FDA will be deemed to be adulterated under section 402(a)(2)(C) of the act (21 U.S.C. 342(a)(2)(C)) in that it contains an unsafe food additive.

Under § 129.40(a), all plant equipment and utensils must be suitable for their intended use. Included under the coverage of this section are all collection and storage tanks, piping, fittings, connections, bottle washers, fillers, cappers, and other equipment that may be used to store, handle, process, package, or transport product water. All product water contact surfaces must be constructed of nontoxic and nonabsorbent material that can be adequately cleaned and sanitized and that is in compliance with section 409 of the act (21 U.S.C. 348). Furthermore, § 129.80(f) requires that only nontoxic containers and closures be used. "Nontoxic materials" is defined in § 129.3(e) as materials for product water contact surfaces, used in the transporting, processing, storing, and packaging of bottled drinking water, that are free of substances that may render the water injurious to health or that may adversely affect the flavor, color, odor, or bacteriological quality of the water. Therefore, the agency concludes that there are already adequate provisions in part 129 to address the comment's concern, and that no modifications are necessary.

D. Microbiological Control Standards

IBWA requested revision of § 129.40 to include microbiological control standards that included prohibitions from processing and bottling water with equipment that has been used to produce milk, fruit juice, or any other food product likely to contribute nutrients for microbiological growth. FDA was not persuaded by the information that IBWA submitted that the revision was needed.

109. A number of comments stated that FDA did not provide a sufficient rationale for not requiring that firms use dedicated equipment (i.e., equipment used solely for one product) for processing bottled water. One comment stated that dedicated equipment, with the exception of fillers, is an important precaution to maintain the quality of bottled water.

One comment stated that FDA should prohibit equipment used for milk production from being also used for bottled water production to protect consumers from potential health hazards. It stated that there is a greater potential of microbiological contamination of bottled water if it is produced using equipment that is also used for milk production. Another comment stated that high coliform and other bacteria counts from either inadequate cleaning or inadequately trained personnel improperly maintaining or operating the equipment has been a problem with at least one California dairy that also bottles water.

Several comments were concerned that FDA proposed no restriction on the use by water bottlers of: (1) Equipment used to transport, store, process, or bottle nonfood products (e.g., pesticides, toxic chemicals); and (2) equipment used to transport, store, process, or bottle food products likely to contaminate bottled water with nutrients for microbial growth. The comments stated that these equipment use restrictions are important public health safeguards.

Conversely, other comments supported FDA's position that dedicated lines for bottled water should not be a requirement. The comments noted that only good sanitation will ensure a low probability of microbiological contamination. One comment stated that the rationale used by the agency is supportable based on the performance history of the dairies and soft drink manufacturers that also produce bottled water.

One comment stated that certified results confirmed that bottled water produced by dairy plants equalled or exceeded the bacterial quality of that produced by dedicated water bottlers. It stated that all bottlers should be subject to the same quality and testing regulations.

One comment from a dairy stated that a requirement for dedicated equipment would eliminate that dairy from the bottled water market. The comment stated that, because the firm is experienced in high quality sanitation practices from bottling fluid milk products, it is confident of its ability to meet regulatory product standards for consumer safety.

One comment stated that, although milk, fruit juice, and other food processing operations should not be prohibited from processing bottled water, additional operational requirements should be imposed on these types of processing plants because of the likelihood of mineral deposits building up inside feed lines. The comment stated that these mineral deposits tend to shield bacteria and other pathogens from disinfection if standard disinfection practices are used.

FDA disagrees with the comments that stated that it should require dedicated equipment for processing bottled water. Under § 129.37(a), the product water-contact surfaces of all multiservice containers, utensils, pipes, and equipment used in the transportation, processing, handling, and storage of product water must be clean and adequately sanitized. All product water-contact surfaces must be inspected by plant personnel as often as necessary to maintain the sanitary condition of such surfaces and to ensure that they are free of scale, oxidation, and other residues. The presence of any unsanitary condition, scale, residue, or oxidation must be immediately remedied by adequate cleaning and sanitizing of that product water-contact surface before it is used again.

Section 129.40(a)(2) requires that all product water contact surfaces be constructed of nontoxic and nonabsorbent material that can be adequately cleaned and sanitized and that is in compliance with section 409 of the act. Furthermore, § 129.80(d) states that sanitizing operations must be adequate to effect sanitization of the intended product water-contact surfaces and any other critical area. Therefore, the agency concludes that there already are appropriate regulations in part 129 that adequately address the concerns of the comments.

As FDA stated in the proposal (58 FR 393 at 403), dedicated equipment will not ensure that the goal of production of foods with a low probability of microbiological contamination will be met. Only good sanitation will ensure that this goal is achieved. FDA does not require dedicated equipment for any other food and is not persuaded that dedicated equipment is necessary for bottled water. Bottled water containing any substance considered injurious to health is adulterated under section 402(a)(1) of the act.

Microbiological standards exist for bottled water in § 165.110(b)(2). Manufacturers must ensure that bottled water meets the microbiological quality standards in § 165.110(b)(2) or label the product as substandard. If the product is deemed to be adulterated, it cannot be sold at all.

In the **Federal Register** of October 6, 1993 (58 FR 52042), the agency proposed to amend the quality standard to require that bottled water be free of coliform bacteria. In addition, FDA addressed other matters concerning the microbiological quality of bottled water and requested comments on whether it should establish quality standard regulations for other microorganisms that may be present in bottled water and may pose a health risk. The agency intends to discuss the comments that it received in response to that proposal in that rulemaking.

E. Processes and Controls

IBWA requested revision of certain requirements in part 129 pertaining to filtration and germicidal treatment. FDA did not propose the requested revisions but stated that it would consider adopting them in other rulemakings. As stated above, the agency has proposed to amend the quality standard for bottled water to require that bottled water be free of coliform bacteria (58 FR 52042). In that proposal, FDA also addressed other matters concerning the microbiological quality of bottled water and requested comments on whether the agency should establish quality standard regulations for other microorganisms that may be present in bottled water and may pose a health risk. The agency will discuss the comments that it received in response to that proposal in that rulemaking.

110. Several comments urged FDA to require mandatory disinfection of

bottled water with ozone or an equivalent disinfection process. Two comments stated that failure to require treatment of mineral water with ozone or an equivalent disinfectant process would reduce the level of public health protection now provided.

However, some comments stated that bottled water need not be disinfected if it meets the standards of the European Economic Community Directive 80/777/EEC for Natural Mineral Water, July 15, 1980 (European Community), which mandates that numerous and frequent microbiological analyses of the water be done to ensure its potability in lieu of disinfection. One comment stated that mandatory disinfection of mineral water that includes bottled water products covered by the ERCS for "natural mineral waters" would constitute interstate commerce restraints and inappropriate regulations.

The agency does not consider it necessary at this time to require disinfection of bottled water. FDA acknowledges the strict standards for bottling water that have been adopted by the European Community and by other countries, and that, when water from protected sources is bottled under strict hygienic conditions, disinfection may not be necessary. However, the agency has established microbiological quality standards in § 165.110(b)(2), and bottled water that does not comply with the microbiological quality standard must be labeled with a statement of substandard quality, in accordance with § 165.110(c)(1). In addition, any bottled water containing a substance at a level considered injurious to health is deemed to be adulterated regardless of whether or not the label bears a statement of substandard quality. FDA has authority to take regulatory action against such product under section 402(a)(1) of the act.

Under the SDWA, EPA monitors drinking water and establishes regulations to protect the public from the adverse health effects of contaminants in public drinking water. FDA's microbiological standard, like other bottled water standards, follows EPA's requirements for drinking water. Thus, even though the microbiological standard was established for quality purposes and not safety, FDA concludes that it is adequate to protect the public health. The agency points out that should EPA require disinfection of drinking water, FDA will consider mandatory disinfection of bottled water.

F. Laboratory and Personnel Approval

IBWA requested that the CGMP regulations be revised to include requirements for certification of laboratories that analyze water and of supervisory personnel. The agency stated in the proposal that the act did not provide authority to the agency to require such approval, and that even if such authority were provided by the act, the agency lacked the resources to monitor analytical laboratories and personnel in the absence of a significant public health problem. Under § 129.35(a)(3)(iii), analysis of samples may be performed for the plant by competent commercial laboratories. The agency did not receive comments concerning laboratory personnel.

111. A number of comments urged FDA to require the use of certified laboratories to test bottled water. Comments stated that laboratories performing analyses should be validated in some manner to ensure their competency, although FDA need not be the validator. One comment stated that the public is better and more consistently protected by requiring that certified laboratories conduct the required analyses.

One comment stated that the compliance of bottled water with quality standards is directly related to the competence and reliability of the laboratories that perform the analysis for contaminants. It stated that it is not clear what FDA means by "competent commercial laboratories." It asked, concerning the criteria that would be used to determine whether a laboratory is competent, who would determine whether a laboratory meets these criteria, and how would a bottler be able to determine that a laboratory is able to provide valid test results. The comment stated that the term "competent" is too vague and will not promote uniformity. Another comment stated that the use of uncertified, "competent" laboratories provides little assurance that contaminants, even when present, will be detected.

Comments stated that, because EPA requires that determinations of compliance with its MCL's be based on data generated by a certified drinking water laboratory, it would be consistent with the spirit of the MOU between FDA and EPA for FDA also to require the use of certified laboratories. The comments stated that FDA would not have to expend resources because certification programs are in place and administered by the States, with laboratories bearing the cost. They added that FDA's adoption of a laboratory certification requirement would be consistent with its stated intent of incorporating EPA drinking water analytical methods for determining compliance with bottled water quality standards.

Comments stated that bottled water laboratory testing certification is a major problem that must be addressed by FDA. They stated that, currently, a number of State regulatory agencies require that bottled water sold in their States be tested in one of their State-certified laboratories, and that this issue causes undue replication expenses for multiple State licensing and hinders free interstate commerce.

One comment stated that water bottlers should be encouraged to perform laboratory tests on site. It stated that transportation to a certified laboratory can require considerable time and can delay results. The comment stated that while it is important for a certified laboratory to serve as a reference, water bottlers would best serve the public by performing analyses on site.

The agency disagrees that it should require the use of certified laboratories to test bottled water. Under § 129.35(a)(3)(iii), analysis of the water samples may be performed for the plant by competent commercial laboratories. Thus, laboratories used to analyze bottled water must be competent whether or not they have been certified competent. A competent laboratory is one that is capable of performing the required analyses and of obtaining valid and accurate results from its analyses. Any laboratory that has been certified by EPA or a State to test drinking water is deemed to be a competent laboratory. EPA- and State-certified laboratories may be used for comparative purposes against other commercial laboratories or a plant's own laboratory. To clarify that the agency believes that EPA- and State-certified laboratories are appropriate to perform water analyses to demonstrate compliance with parts 129 and 165, FDA is amending § 129.35(a)(3)(iii) to specifically cite EPA- and State-certified laboratories as examples of competent laboratories. Failure to have been certified will not preclude a laboratory from being considered competent, but the existence of such certification will eliminate any doubt about the laboratory's competency.

FDA agrees with the comment that stated that water bottlers should be encouraged to perform laboratory tests on site. Manufacturers of many types of foods effectively perform their own routine laboratory tests on their products. To the extent possible, bottled water manufacturers should perform routine tests on bottled water. For example, testing for microbiological quality must be conducted at least once a week for source water (§ 129.35(a)(3)), as often as necessary for product water (§ 129.80(a)), and at least once a week for the finished product (§ 129.80(g)(1)). Manufacturers can obtain quick, reliable results using their own laboratories versus the time it would take to send the samples to a commercial laboratory. However, firms must ensure the competency of their labs.

The comments have not convinced the agency that the public health will be better protected by requiring the use of certified laboratories. Regardless of the laboratory used for testing, water containing any substance at a level considered injurious to health is deemed to be adulterated (see section 402(a)(1) of the act and § 165.110(d)). Thus, the agency concludes that the public health is already protected.

The MOU between FDA and EPA delineates jurisdiction over types of drinking water but does not consider the issue of certified laboratories. Although FDA incorporates EPA methods into the quality standard, FDA has yet to be convinced that only EPA- or State-certified laboratories are capable of using EPA methods.

In response to the comment concerning States requiring additional testing in laboratories certified in their own States, the agency points out that regardless of whether it required the use of certified labs, the CGMP regulations are not preemptive and does not preclude States from establishing stricter requirements for bottled water sold in their States.

G. Annual Plant Inspection

IBWA requested that FDA revise the CGMP regulations to include a requirement for annual plant inspections to ensure compliance with the regulations. FDA stated in the January 1993, proposal that without a clear indication of a significant public health problem that could not be corrected by other means, there is no basis for FDA to adopt such a requirement for bottled water. FDA recognized, however, that IBWA requires third party inspection of its member firms, and FDA encourages such self-regulated programs within industry.

112. A number of comments stated that FDA did not provide sufficient rationale for not imposing annual plant inspection requirements on the growing bottled water industry. Several comments stated that annual inspections would reduce the likelihood that bottlers would be out of compliance for extended periods of time. One comment stated that, irrespective of who performs the inspection, FDA should require inspections at least biannually for bottled water plants. It added that FDA could contract with State regulatory agencies to accomplish these inspections.

Some comments encouraged FDA to consider third party inspections because third party inspections would ensure compliance with the regulations without requiring FDA to increase resource requirements. One comment urged FDA to modify § 129.80(g) to include a requirement for annual inspections by a qualified third party organization because it would address expressed State government concerns. It stated that some State governments require that companies submit a report issued by a recognized organization that inspects bottled water systems for compliance with part 129 (i.e., NSF International or other organization, State, or country with an inspection protocol as stringent as NSF's).

The agency disagrees with the comments and affirms that, in the absence of a significant public health problem, the hazards from bottled water do not warrant this requirement.

The monitoring/inspectional aspect of FDA's program is carried out by its field force. The agency monitors and inspects bottled water products and processing plants as part of its compliance programs for foods. There are roughly 30 compliance programs for foods covering the full range of potential food safety problems, including chemical contaminants, pesticides, filth, and food additives. About one-half of the programs are for imported foods. They provide broad guidance to the field on the agency's inspectional priorities. The agency's work plan further specifies the number of inspections, sample collections, wharf exams, analyses, and other activities in each program by district. The districts have considerable latitude as to the establishments that they inspect and the products that they examine to allow for adequate coverage of local problems and regionalized industry.

Bottled water establishments are covered under the general food safety program. Bottled water plants, along with carbonated beverage bottling plants and warehouses, generally are assigned low priority for inspection. Priorities are based on factors such as the potential for a public health problem and the violation rate of the industry. When compared to products such as low-acid canned foods and products in which *Listeria* or *Salmonella* have a significant potential to develop, bottled water products are a relatively low public health problem.

FDA's experience over the years has supported that ranking (Ref. 24). Studies of bottled water products have generally not found significant problems in these products (*id*). Consequently, bottled water plants shipping in interstate commerce are inspected about once every 4 years, unless the firm is violative. The frequency of inspection of violative firms is accelerated depending on the number, significance, and recurrence of violations. Furthermore, the districts follow up on consumer and trade complaints and other leads, as appropriate, on potentially violative bottled water products.

FDA also contracts with the States to perform some bottled water plant inspections. The FDA district offices are generally in contact with their State counterparts to exchange information about compliance problems, inspectional coverage, and new food establishments. In addition to FDA inspection, the State and local governments have their own inspection and licensing programs. Therefore, FDA concludes that it need not mandate annual plant inspections for bottled water.

113. One comment suggested that FDA consider establishing specific criteria for the operation of a bottled water plant to ensure that there is compliance with CGMP's for bottled water manufacturing. It stated that it is a lot easier for an inexperienced person to establish a bottling facility for water, capable of producing high volumes of product, than it is to start up with other food products. The comment held that an effective licensing program is needed far more for this type of product than for other foods and beverages because of a greater risk to the public.

Another comment suggested that FDA establish for its quality standards some type of monitoring timeframes along with deadlines for submission of monitoring results from State-approved drinking water laboratories.

FDA notes that it has established a CGMP regulation in part 129 for the processing and bottling of drinking water. Thus, FDA has established regulations on how to operate a bottled water plant. Bottled water produced in violation of part 129 is adulterated under section 402(a)(4) of the act in that the food has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

Part 129 requires monitoring of the source water, product water, and finished product. According to § 129.35(a)(3), samples of source water must be taken and analyzed at a minimum frequency of once each year for chemical contaminants and once every 4 years for radiological

contaminants. Additionally, source water obtained from somewhere other than a public water system is to be sampled and analyzed for microbiological contaminants at least once each week. Test and sample methods must be consistent with the minimum requirements set forth in § 165.110(b).

Product water samples must be taken after processing and before bottling, and analyzed as often as is necessary to assure the uniformity and the effectiveness of the processes performed by the plant (§ 129.80(a)).

The compliance procedures for the finished product are set forth in § 129.80(g). A firm must test a representative sample of each product for bacteriological contamination at least once a week. To ensure chemical, physical, and radiological quality, a manufacturer must take and analyze at least annually a representative sample of each product. The finished bottled water must comply with the quality standard in § 165.110(b).

Plants must retain all records required by part 129 for not less than 2 years, and these documents must be available for official review at reasonable times (§ 129.80(h)). These records must be available for FDA plant inspections. The agency notes that it does not have the resources to review bottled water test results except during FDA plant inspections.

Thus, while FDA has not established a licensing requirement for water bottlers, it has established a regulatory regime to ensure the safety and quality of bottled water products.

H. Recall Procedures

IBWA requested that FDA establish specific recall procedures for bottlers and dealers in the CGMP regulations. In the January 1993 proposal FDA found no basis for this requested revision.

114. A number of comments stated that FDA did not provide sufficient rationale in the proposal for not establishing specific recall procedures for bottlers and dealers in the growing bottled water industry.

One comment stated that, although there should not be specific recall procedures in the regulations, language that requires that a written recall plan or document be maintained by the bottler should be included in the FDA regulations. It stated that the existence of such a plan would ensure a quick response by a bottler in the event that a recall is necessary.

The agency notes that part 7 (21 CFR part 7), subpart C provides guidelines on policy, procedures, and industry responsibilities for recalls. In § 7.59, FDA advises firms to: (1) Prepare and maintain a current written contingency plan for use in initiating and effecting a recall; (2) use sufficient coding of regulated products to make possible positive lot identification and to facilitate effective recall of all violative lots; and (3) maintain such product distribution records as are necessary to facilitate locating of products that are being recalled. Such records should be maintained for a period of time that exceeds the shelf life and the expected use of the product.

The agency notes that recall is a voluntary action that takes place because manufacturers and distributors carry out their responsibility to protect the public health and from products that present risks of injury or gross deception or are otherwise defective. Recall is an alternative to an FDA court action for removing distributed products from interstate commerce.

FDA is not aware of any circumstances that establish that there is a unique problem with recalls of bottled water. Therefore, FDA concludes that the guidelines for recall procedures for foods are adequate. If a firm refuses to undertake a recall that is requested by FDA, or where FDA has reason to believe that a recall would not be effective, determines that a recall is ineffective, or discovers that a violation is continuing, it may initiate seizure, multiple seizure, or other court action.

V. Other Matters

A. Ozone

The agency proposed to specify in § 184.1563(d) that the term "bottled water," for purposes of this section, does not include mineral water with TDS greater than 500 ppm. The agency stated that this action is necessary to ensure that FDA's rulemaking on the definition of bottled water in § 165.110 does not inadvertently have the effect of expanding the permitted uses of ozone.

115. Two comments objected to the exclusion of mineral water from ozonation. One of the comments stated that this exclusion conflicts with other FDA proposals to include mineral water as a bottled water. It stated that California has permitted the ozonation of mineral water for many years, and that ozonation is by far the most common means of germicidal water treatment that California mineral water firms use.

Another comment stated that there is no known reason to preclude ozonation as the antimicrobial agent for mineral water with TDS's greater than 500 ppm, provided that the maximum residual level requirements are met. It stated that the difference between mineral water and bottled water is only how much ozonation is required, at what temperature, and for how long a period of time.

The agency has reconsidered its January 1993, proposal in light of these comments and of its original decision to affirm the use of ozone in bottled water as generally recognized as safe (GRAS). In that decision (47 FR 50209, November 5, 1982), FDA noted its 1968 opinion that ozone used to disinfect potable water is GRAS if it is used in accordance with CGMP and with the recommendations of the U.S. Public Health Service. The only restriction was that the water must be potable. FDA also noted the continuous use of ozone in Europe for disinfecting municipal water for nearly 70 years without any evidence of toxicity. To ensure that the levels of any oxidation products formed are low and safe, the agency included a requirement in the GRAS affirmation regulation that the starting water, before ozonation, meet the microbiological, physical, chemical, and radiological quality standards for bottled water specified in § 103.35 (b) through (e). FDA considers this requirement to be a clarification of what it considered to be CGMP, namely, that ozone would not be used to disinfect polluted water.

A restriction on the use of ozone in mineral water with TDS greater than 500 ppm does not specifically address the goal of the proposal which was to ensure that the level of oxidation products do not exceed the levels anticipated when the GRAS affirmation regulation was issued. The oxidation products of concern from the use of ozone that were considered in establishing the GRAS regulation were those from dissolved organic material, whereas the increased solids content of mineral water consists primarily of minerals (inorganic material). Moreover, the restriction in the GRAS affirmation regulation that the use of ozone in disinfecting water be in accordance with CGMP means that only water that meets the new standard in § 165.110(b), which limits the amount of dissolved organic material that may be present, will be processed with ozone. Therefore, FDA has decided that there is no need to include the restriction limiting the TDS to 500 ppm for mineral water in the GRAS affirmation regulation for ozone.

Of relevance in this regard is the fact that bromate can be formed when ozone is used on waters that contain sufficient levels of bromide (a mineral component). EPA has conducted an evaluation of bromate and classified it as a probable human carcinogen because bromate administered to rodents in their drinking water has been shown to produce several types of tumors in both sexes. EPA has proposed an MCLG for bromate of zero and an MCL of 10 micrograms (µg)/L (59 FR 38668, July 29, 1994). In the event EPA establishes an MCL for bromate in drinking water, then in accordance with section 410 of the Act FDA will propose to establish an allowable level for bromate in bottled water in § 165.110(b). The agency further emphasizes that water that is treated with ozone that results in bromate levels that may be injurious to health is adulterated under section 402(a)(1) of the Act.

B. Nutrition Labeling

116. One comment stated that it was concerned with the level of sodium that is allowed under the current regulations, while still allowing the label to claim that the food is "sodium free" or "salt free." It stated that FDA permits the label to claim "sodium free" up to 21.1 ppm in bottled water. The comment noted that bottlers who use ion exchange in their treatment process can actually add sodium to the bottled water. The comment expressed concern about any regulation that permits advertising of "sodium free" when there actually is sodium in the bottled water.

The agency discussed this aspect of its "sodium-free" regulation in the **Federal Register** of January 6, 1993 (58 FR 2302 at 2321) and stated that it believes that it is appropriate to apply the term "free" to a nutrient when a food contains that nutrient in a dietetically trivial or physiologically inconsequential amount, even though the nutrient is present at a level at or near its reliable limit of quantitation. With modern analytical methods, the level at which the presence of a nutrient may be quantified is becoming increasingly smaller.

For example, there are almost no foods that can be said to be truly sodium free, yet the level of sodium present in some foods has no impact on the diet. The Daily Recommended Value for sodium is 2,400 mg. Thus, the agency concluded that a food containing less than 5 mg per reference amount customarily consumed (reference amount) could be considered sodium free because 5 mg is a dietarily insignificant fraction of 2,400 mg. The reference amount for bottled water is 240 mL. Therefore, the claim "sodium free" may be used on a bottled water label if the sodium content is less than 5 mg per 240 mL serving (21 ppm). If a "sodium free" claim is made, the bottled water must bear nutrition labeling in accordance with § 101.9.

The agency points out that although the term "salt" is not synonymous with "sodium," salt refers to sodium chloride. Under § 101.61(c)(1), the term "salt free" may be used on the label or in labeling of foods only if the food is "sodium free."

FDA recognizes that some sodium may be added to water during ion exchange treatment. The label of the bottled water product treated in this manner could still qualify to bear the statement "sodium free" if the sodium content of the final product is less than 5 mg per 240 mL serving. However, if the sodium content is 5 mg or greater per 240 mL serving, the bottled water must bear nutrition labeling and could not be labeled as "sodium free."

117. One comment asked that bottled water have a qualified exception from the nutrition labeling regulations except when a claim is made that the water contains a significant level of a nutrient or nutrients. It stated that in that event, nutrition labeling for the nutrient for which the claim is made would be required. The comment stated that, for example, if a bottled water bore a claim of "no sodium" or "no calories," it could be accompanied, on the information panel, by a statement, "not a significant source of ___ ____" with the blank filled in with the items claimed in the statement. Another comment questioned why the declaration "sodium free" would trigger a nutritional panel for information on fat and calories when it is common knowledge that water does not contain these nutrients.

One comment requested that FDA exempt bottled water products other than mineral water from nutrition labeling. It stated that consumers do not expect any nutrition from bottled water, except perhaps for some minerals in mineral water. It suggested that bottled water with less than 250 ppm TDS (i.e., bottled water that is not mineral water) be exempted from nutrition labeling, even if fluoride is added. It stated that label space was a problem.

FDA notes that the requested exemptions and modifications for nutrition labeling fall outside the scope of this rulemaking. However, FDA discussed these issues in the final rule on nutrition labeling of January 6, 1993 (58 FR 2079 at 2149), and stated that:

> A recent IOM (Institute of Medicine) report, "Food Labeling: Toward National Uniformity" (Ref. 25), noted that many States have expressed concern about the heightened potential for consumer confusion because of the increased number of bottled water products on the market and the aggressive marketing and advertising claims of superiority made for them. Thus, FDA maintains its position that nutrition information relating to food must be provided for all products, including bottled and mineral water, that contain more than insignificant amounts of any of the nutrients or food components that are required to be listed, or whose label, labeling, or advertising contains a nutrient content claim or any other nutrition information in any context. For products that qualify for the simplified format, if manufacturers voluntarily declare nutrients allowable under § 101.9(c) that are not among the 14 required nutrients (e.g., potassium), the required statement "Not a significant source of _____," must be used, with the blank filled in with the name of any of the 14 required nutrients or food components that are not present or are present in insignificant amounts. Moreover, if a product is voluntarily enriched or fortified with added vitamins or minerals, any such nutrients must be declared using the simplified format and followed by the above statement. Thus, a product labeled as "bottled water, minerals added" will have to bear nutrition labeling.
>
> * * * * *
>
> Bottled water products containing juice or other flavors are subject to the same nutrition labeling requirements as any other food. If a product meets the criteria for no nutritional significance, and no claims are made, then nutrition labeling is not required. A "sodium free" declaration on bottled water or on any other food label will trigger nutrition labeling, because such a claim promotes the nutritional properties of the product.
>
> As discussed previously under comment 92 of this document, if fluoride is added to bottled water, and the label bears a statement to indicate this addition, other than in the ingredient statement, the label must bear nutrition labeling that complies with the simplified format.

C. Preemption

118. Comments from several States objected to the Federal standards of identity for bottled water preempting any State standards that are not identical to it, as some States have established regulations for bottled water that are more stringent than the FDA standard. One comment stated that it is a fundamental right of a State to make regulations and standards that are at least as stringent as or more stringent than Federal regulations and standards. It contended that FDA's role is more appropriately to establish Federal rules that will protect the public health and prevent fraudulent claims from being made that might mislead consumers of bottled water products. Another State held that it has made great efforts to ensure that bottled water meets standards at least as stringent as those set forth in EPA's primary drinking water regulations.

A number of comments requested that FDA more clearly explain the scope of

the preemption provision, and that it specifically address whether the agency interprets Federal preemption to apply to certain State requirements (i.e., labeling restrictions, laboratory certification, and certain testing requirements).

Comments asserted that many State regulations are costly and do not provide consumers with any more protection than is likely to be provided by those proposed by FDA. One comment stated that FDA should emphasize that a given State should not be allowed to place an undue burden on interstate commerce by requiring that analyses be performed only in laboratories that are certified by that State, or that analyses be performed according to an unduly restrictive frequency unrelated to public health protection. The comment added that regulatory activity by the States in areas such as standards and environmental protection is causing difficulties for those seeking to import goods into the United States.

FDA notes that, under section 403A(a)(1) of the act (21 U.S.C. 343–1(a)(1)), a State may not establish or continue in effect a standard of identity for a food that is the subject of a standard of identity under section 401 of the act if the State standard is not identical to the Federal standard. Section 403A(a)(1) of the act only effects preemption with respect to matters on which a Federal requirement exists. If there is no Federal requirement to be given preemptive effect, preemption does not occur.

Under § 100.1(c)(4), if the State requirement is identical to the Federal law, there is no issue of preemption. In addition, if the State requirement does the same thing that the Federal law does, even if the words are not exactly the same, then it is effectively the same requirement as the Federal requirement. FDA's view, as embodied in § 100.1(c)(4), is that such a State or local requirement is consistent with the Federal requirement. Therefore, the only State requirements that are subject to preemption are those that are affirmatively different from the Federal requirements on matters that are covered by section 403A(a) of the act.

FDA acknowledges that some stringent State laws will be preempted by less restrictive Federal regulations. However, one of the goals of the national uniformity provisions of the 1990 amendments was to give industry some relief from some types of State requirements that interfere with their ability to market products in all 50 States in an efficient and cost-effective manner (Statement of Rep. Madigan, 136 Congressional Record H12954 (October 26, 1990)). Thus, in enacting the 1990 amendments, Congress apparently decided that even though Federal requirements may preempt more restrictive State requirements in certain instances, the net benefits from national uniformity in these aspects outweigh the loss in consumer protection that may occur as a result.

The agency notes that certain State laws and regulations will not be preempted because FDA's requirements have not been given preemptive effect. Therefore, a State will not be precluded from enforcing its provisions in such circumstances. The agency points out, for example, that FDA has not sought to give preemptive effect to part 129. Therefore, if a State has stricter requirements than those in part 129, the State standard is not preempted by the Federal requirement.

The agency advises that, in those instances where a State requirement is preempted and the State believes that there are significant protections of the public that will be lost as a result, the State may petition the agency to modify the standard in question. FDA intends to give careful consideration to any such petitions that it receives.

119. Some comments contended that many States have bottlers whose products do not cross State lines, thereby avoiding compliance with FDA regulations. They suggested that the regulation should include all bottlers regardless of intrastate/interstate sales.

One comment from a State contended that by proposing to apply these standards only to interstate manufacturers, FDA establishes an undue logistical burden on regulatory agencies, as they would have to establish two levels of regulation. The comment argued that more consistent regulation is possible by applying the same standards to all bottled water firms that desire to sell their products in a particular State.

The agency advises that the act only applies to food that is in, or is intended to be shipped in, interstate commerce. Sections 301 and 304 of the act (21 U.S.C. 331 and 334) specifically describe prohibited acts and liability for seizure of food that is held for sale in, is in, or has been shipped in interstate commerce. FDA encourages States to apply the Federal standard to both interstate and intrastate commerce to eliminate two levels of regulation and to avoid undue logistical burdens.

VI. Conclusions

After review and consideration of the comments received in response to the January 1993 proposal, FDA concludes that it should amend part 129 and establish part 165 as set forth in the proposal but with the specific modifications to the proposed regulation discussed in this document. For the purposes of this final rule, certain changes, in addition to those discussed in this document, were made for editorial purposes, clarity, and consistency only. These changes do not modify any matter of substance.

VII. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (58 FR 393, January 5, 1993). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VIII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "economically significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affect in a material way a sector of the economy, competition, or jobs. A regulation is considered "significant" under Executive Order 12866 if it raises novel legal or policy issues.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

In the economic assessment to the proposal in this rulemaking (58 FR 393), FDA considered the costs and benefits of taking this action. FDA estimated compliance costs to be between $18 million and $21 million and benefits to be approximately $35 million plus the value of any increase in interstate commerce that might occur because of the elimination of conflicting State regulations. Thus, benefits were estimated to exceed costs by from $14 million to $17 million, plus the value of any increase in interstate commerce in bottled water.

The comments to the proposal discussed three issues relevant to the economic assessment. The first issue involves the ability of the product definitions adopted in this final rule to communicate information about bottled water products to consumers. The second issue involves the cost of label changes. The third issue involves the economic consequences of the definitions and labeling requirements adopted in this final rule for particular bottled water manufacturers.

A. Ability of Definitions To Communicate Information to Consumers

Some comments suggested or provided data indicating that some of the definitions for particular types of bottled water adopted in this final rule may not correspond to some consumers' current ideas about the essential features of various types of bottled water. The implication of these comments is that the definitions adopted in this final rule will generate confusion over the characteristics of these products.

Although FDA acknowledges that some of the definitions may not correspond to some consumers' current ideas about the essential features of some types of bottled water, this phenomenon does not necessarily imply that confusion over these products will be increased by this final rule. In States in which these products are not currently defined, the terms currently used to refer to various bottled water products may also not correspond to some consumers' current ideas about the essential features of those types of bottled water. Similarly, in States in which these products are already defined, the State definitions may also not correspond to some consumers' current ideas about the essential features of those types of bottled water.

Other comments suggested that alternative definitions could be adopted that would be more consistent with most consumers' current ideas about the essential features of various types of bottled water than the definitions adopted in this final rule. These comments imply confusion will be greater under the definitions adopted in this final rule than under the alternative definitions. Similarly, some comments suggested definitions already adopted by particular States are more consistent with consumers' current ideas about the essential features of various types of bottled water than the definitions adopted in this final rule. These comments imply confusion will be increased if existing state definitions are superseded by the definitions adopted in this final rule.

For example, a number of comments suggested that most consumers believe "spring water" must be extracted from the natural orifice of a spring and not from a bore hole. This final rule defines "spring water" to include water extracted from both the natural orifice of a spring and from a bore hole tapping the underground formation feeding the spring. The comments imply the definition of "spring water" adopted in this final rule will generate greater confusion over the characteristics of this product than would a definition specifying that "spring water" be extracted from the natural orifice of a spring. As discussed in the preamble to this document, FDA believes that these comments are in error, and that most consumers do not believe "spring water" must be extracted from the natural orifice of a spring.

Another comment discussed the results of a survey in which the majority of respondents thought "artesian well water" flowed to the surface due to natural pressure. In contrast, the geological definition of an artesian well does not imply water from this type of well flows to the surface due to natural pressure. The definition of "artesian well water" adopted in this final rule is consistent with the geological definition of an artesian well and does not require that this type of water flow to the surface due to natural pressure. The comment suggested the definition adopted in this final rule will create more confusion over the characteristics of this product than would a definition specifying that "artesian well water" flows to the surface due to natural pressure.

FDA acknowledges that many consumers may be unaware of the geological definition of an "artesian well," and that, in the short run, the definition of "artesian well water" adopted in this final rule may lead some consumers to be confused over the characteristics of this product. However, in the long run, this confusion will be less than the confusion that would be generated if FDA failed to adopt a definition for this term or adopted a definition that failed to correspond to the accepted geological definition of an artesian well. Adopting a standardized definition for this term will increase the ability of interested consumers to interpret this term. Adopting a standardized definition consistent with accepted geological terminology will increase the ability of interested consumers to attain information on this type of water.

Comments also discussed a number of other elements of the definitions adopted in this final rule. These comments are addressed in the preamble to this document. These comments do not provide sufficient information to establish that alternative definitions would be more consistent with most consumers' current ideas about the essential features of various types of bottled water than the definitions adopted in this final rule.

B. The Cost of Label Changes

Comments provided a wide range of estimates of the cost of relabeling bottled water products to conform to the proposed definitions and labeling requirements. One comment suggested label changes will cost $2,000 per product, per location, not including the cost of the actual label. Another comment suggested the cost of each label plate change alone will be $200. Another comment suggested it will cost a single firm "hundreds of thousands of dollars" to change their labels.

In the economic assessment of the proposal in this rulemaking, FDA used an average relabeling cost of $45,000 per label change. This cost estimate was based on information previously provided by a bottled water manufacturer. Although the comments suggest the cost of relabeling may be highly variable across firms, and that the cost of relabeling may be lower than $45,000 per label for many firms, the comments do not provide sufficient information to determine an appropriate adjustment in the average cost of relabeling.

Some comments implied that changes in advertising would also be required to accommodate the product definitions established under this final rule. In the economic assessment to the proposal in this rulemaking, FDA did not consider these costs because FDA believed the proposed definitions were sufficiently broad that no firm legally selling a given type of bottled water would be unable to do so because of the proposed regulation.

One comment suggested 44 brands of bottled water currently marketed as mineral water in the United States would no longer be able to be marketed as mineral water under this final rule. However, the only brands listed in this comment were Mountain Valley, Volvic, and Poland Spring. Based on the information available to the agency, this comment is in error. It appears that no

mineral water is actually being marketed under these brand names.

Another comment suggested most of the mineral water sold in the world, including the U.S. market, is produced in Europe, and that these products currently exhibit a wide range of total dissolved solids (TDS) levels, from under 100 mg/L to over 1,000 mg/L. The implication of this comment is that some mineral water produced in Europe with less than 250 ppm TDS is currently being marketed as mineral water in the United States and would no longer be able to be marketed as mineral water under this final rule. However, this comment did not identify any European brands that would actually be affected in this manner, and FDA is not aware of any such brands.

FDA, therefore, has no information that this final rule will require extensive modification of existing advertising.

C. Economic Consequences of Definitions and Other Labeling Requirements on Particular Bottled Water Manufacturers

A number of comments suggested that the definitions and the labeling requirements in this final rule will have a negative impact on the sales of some bottled water products and thus a negative impact on some bottled water manufacturers.

Two comments suggested that some water currently sold as mineral water would no longer be able to be sold as mineral water under this final rule, and that this would have a negative impact on the sales of those products. This issue is different from the advertising cost issue, which is the context in which these same comments were discussed in the preceding section. However, FDA's response to these comments is the same in this context as in the context of advertising costs. FDA is not aware of any brand of mineral water that will no longer be able to be marketed as mineral water under this final rule.

Another comment noted the definition of "bottled water" does not allow for the addition of ingredients such as minerals for flavor, sodium fluoride, flavors which comprise less than one percent by weight, and carbon dioxide. According to this comment, many products currently sold simply as "bottled water" contain these ingredients, and that by causing these products to be labeled differently, this final rule will generate a tremendous adverse economic impact on the firms producing these products. FDA believes this comment is in error because it is currently illegal to sell water containing these ingredients as simply "bottled water," and FDA is not aware of any products that are labeled in this manner.

Another comment suggested that if drinking water is not recognized by FDA as a specific type of bottled water, severe economic repercussions would occur for companies that currently sell bottled drinking water. This final rule does not define "drinking water" as a specific type of bottled water, although it does allow for the use of the term "drinking water" as a synonym for "bottled water." However, this comment provided no information to support the claim that consumers believe drinking water is a specific type of bottled water. In addition, nearly all bottled water sold in the United States meets the conditions suggested in this comment as being peculiar to drinking water. Therefore, FDA does not believe the sales of drinking water will be significantly affected by this final rule.

Another comment suggested that the additional labeling requirements for bottled water marketed for use in infant formula will cause a negative impact on the sales of these products and will effectively destroy this product line. However, the comment provided no information to support this claim. Therefore, there is no basis for FDA to take any action in reliance on this comment.

D. Conclusions

The economic assessment to the proposal in this rulemaking (58 FR 393) estimated net benefits of $14 million to $17 million plus the value of any increase in interstate commerce that might occur because of the elimination of conflicting State regulations.

The previous economic assessment did not consider the potential effect of the definitions and labeling requirements on the level of consumer confusion over bottled water products. Accounting for this effect will probably increase estimated net benefits. However, FDA has insufficient information to estimate this increase in net benefits.

In addition, the definitions and labeling requirements adopted in this final rule may result in a decrease in the sales of some products and an increase in the sales of other products. However, FDA has insufficient information to determine the size or significance of these effects.

Therefore, FDA estimates that the benefits of this final rule will exceed the costs by $14 million to $17 million, plus the value of any increase in interstate commerce which might occur because of the elimination of conflicting State regulations and the value of any reduction in consumer confusion over these products.

IX. Effective Date

FDA proposed that any final rule that was issued based upon the proposal would become effective 180 days following issuance of the final rule.

120. One comment asked FDA to consider the cost and phase- in considerations for bottled water companies whose main business involves 3-, 5-, or 6-gallon reusable polycarbonate silk-screened bottles. The comment stated that these bottles, which are generally recycled when no longer fit for use, cost approximately $4 to $5 each and have a normal life span of 5 to 7 years, although they can last 10 years or longer. It stated that a company with about $6 million in sales has an inventory of about 200,000 bottles or a bottle investment of $800,000 to $1,000,000. The comment maintained that any change in labeling requirements has major potential expense implications for bottlers using 3-, 5-, or 6-gallon polycarbonate silk screened bottles. It held that any relabeling of these bottles with adhesive labels can be costly and presents potential problems in the washing process. It asked that consideration be given to extended phase-in periods for reusable bottles where a change in labels is required because of the new regulations.

Under section 403(g) of the act, a food is deemed to be misbranded if it purports to be, or is represented as, a food for which a definition and standard of identity has been prescribed by regulation unless it conforms to such definition and standard, and its label bears the name of the food specified in the definition and standard. Thus, all bottled water labels must bear appropriate labeling in conformance with an effective standard of identity.

FDA recognizes that some bottled water labels will have to be modified to comply with the standard of identity for bottled water, even though the definitions are based on current meanings of terms. The agency has provided for additional nomenclature (e.g., "drinking water") in this final rule, and as a result, many label changes that the comment may have anticipated will not be required.

However, FDA realizes that it may be a hardship for some firms to make required label changes on reusable polycarbonate silk-screened bottles because these bottles are used for years before replacement, and replacement of an entire stock would be burdensome by the effective date of this final rule. Therefore, the agency is allowing an alternative means of compliance whereby the labeling information required by the standard of identity that is otherwise required on reusable polycarbonate silk- screened bottles may be placed on the customer invoice or bill of lading that is provided with each delivery. This alternative means of compliance is provided in lieu of having the labeling information required by the standard of identity permanently affixed to an existing bottle as otherwise required by section 201(k) of the act. This alternative means of compliance only applies to information on the polycarbonate silk-screened bottles and does not apply to information on the bottle cap.

The special labeling provision is provided for currently existing containers. As a firm replaces the polycarbonate silk-screened bottles presently in use with new ones, the required information must be permanently affixed to the new bottles. To fulfill the intent of the act, all labeling on the invoice or bill of lading must be in compliance with FDA requirements. The agency notes that this alternative means of compliance is consistent with that established for nutrition labeling under § 101.9(g)(9).

X. References

The following information has been placed on display in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

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22. Allen, H.E., M.A. Halley-Henderson, C.N. Hass, "Chemical Composition of Bottled Mineral Water," *Archives of Environmental Health*, vol. 44 (No. 2), p. 102, March/April 1989.
23. Vasconcelos, J. and S. Harris, "Consensus Method for Determining Groundwaters Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis," USEPA Manchester Environmental Laboratory, Port Orchard, WA, October 1992.
24. Troxell, T., "Role of the FDA in Regulating Bottled Water," Proceedings of the Bottled Water Workshop, A Report Prepared for the Use of the Subcommittee on Energy and Commerce, U.S. House of Representatives, U.S. Government Printing Office, Washington, DC, 1990.
25. Committee on State Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, "Food Labeling: Toward National Uniformity," National Academy Press, Washington DC, 1992.

List of Subjects

21 CFR Part 103

Beverages, Bottled water, Food grades and standards.

21 CFR Part 129

Beverages, Bottled water, Food packaging, Reporting and recordkeeping requirements.

21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 379e).

Subpart B—[Reserved]

2. Subpart B, consisting of § 103.35 *Bottled water*, is removed and reserved.

PART 129—PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER

3. The authority citation for 21 CFR part 129 continues to read as follows:

Authority: Secs. 402, 409, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 348, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

4. Section 129.35 is amended by revising paragraphs (a)(3)(ii) and (a)(3)(iii) and by adding new paragraph (a)(4) to read as follows:

§ 129.35 Sanitary facilities.

* * * * *

(a) * * *

(3) * * *

(ii) Test and sample methods shall be those recognized and approved by the government agency or agencies having jurisdiction over the approval of the water source, and shall be consistent with the minimum requirements set forth in § 165.110(b) of this chapter.

(iii) Analysis of the sample may be performed for the plant by competent commercial laboratories (e.g., Environmental Protection Agency (EPA) and State-certified laboratories).

(4) *Source water testing exemptions.* (i) Firms that use a public water system for source water may substitute public water system testing results, or certificates showing full compliance with all provisions of EPA National Primary and Secondary Drinking Water Regulations pertaining to chemical contaminants (40 CFR parts 141 and 143), for the testing requirements of § 129.35(a)(3).

(ii) Firms that do not use a public water system as the source of their water may reduce the frequency of their testing of that source, as well as the number of chemical contaminants for which they test the source water, if they can document that such reduction is consistent with a State-issued waiver under EPA regulations (40 CFR parts 141 and 143).

(iii) The finished bottled water must comply with bottled water quality standards (21 CFR 165.110(b)) and section 402(a)(1) of the act dealing with adulterated foods.

* * * * *

5. Section 129.80 is amended by revising the introductory text of paragraph (g) to read as follows:

§ 129.80 Processes and controls.

* * * * *

(g) *Compliance procedures.* A quality standard for bottled drinking water is established in § 165.110(b) of this chapter. To assure that the plant's production of bottled drinking water complies with the applicable standards, laws, and regulations of the government agency or agencies having jurisdiction, the plant will analyze product samples as follows:

* * * * *

6. New part 165 is added to read as follows:

PART 165—BEVERAGES

Subpart A—General Provisions

Sec.
165.3 Definitions.

Subpart B—Requirements for Specific Standardized Beverages

165.110 Bottled water.

Authority: Secs. 201, 401, 403, 403A, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 343A, 348, 349, 371, 379e).

Subpart A—General Provisions

§ 165.3 Definitions.

(a) A *lot* is:

(1) For purposes of determining quality factors related to manufacture, processing, or packing, a collection of primary containers or units of the same size, type, and style produced under conditions as nearly uniform as possible and usually designated by a common container code or marking, or in the absence of any common container code or marking, a day's production.

(2) For purposes of determining quality factors related to distribution and storage, a collection of primary containers or units transported, stored, or held under conditions as nearly uniform as possible.

(b) A *sample* consists of 10 subsamples (consumer units), one taken from each of 10 different randomly chosen shipping cases to be representative of a given lot, unless otherwise specified in a specific standard in this part.

(c) An *analytical unit* is the portion(s) of food taken from a subsample of a sample for the purpose of analysis.

Subpart B—Requirements for Specific Standardized Beverages

§ 165.110 Bottled water.

(a) *Identity*—(1) *Description.* Bottled water is water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents. Fluoride may be optionally added within the limitations established in § 165.110(b)(4)(ii). Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "sparkling water," and "tonic water." The processing and bottling of bottled water shall comply with applicable regulations in part 129 of this chapter.

(2) *Nomenclature.* The name of the food is "bottled water," "drinking water," or alternatively one or more of the following terms as appropriate:

(i) The name of water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer is "artesian water" or "artesian well water." Artesian water may be collected with the assistance of external force to enhance the natural underground pressure. On request, plants shall demonstrate to appropriate regulatory officials that the water level stands at some height above the top of the aquifer.

(ii) The name of water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure is "ground water." Ground water must not be under the direct influence of surface water as defined in 40 CFR 141.2.

(iii) The name of water containing not less than 250 parts per million (ppm) total dissolved solids (TDS), coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source, may be "mineral water." Mineral water shall be distinguished from other types of water by its constant level and relative proportions of minerals and trace elements at the point of emergence from the source, due account being taken of the cycles of natural fluctuations. No minerals may be added to this water.

(iv) The name of water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of "purified water" in the United States Pharmacopeia, 23d Revision, January 1, 1995, which is incorporated by reference in accordance with 5 U.S.C. 551(a) and 1 CFR part 51. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852 and may be examined at the Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC), may be "purified water" or "demineralized water." Alternatively, the water may be called "deionized water" if the water has been processed by deionization, "distilled water" if it is produced by distillation, "reverse osmosis water" if the water has been processed by reverse osmosis, and "_____ drinking water" with the blank being filled in with one of the defined terms describing the water in this paragraph (e.g., "purified drinking water" or "deionized drinking water").

(v) The name of water that, after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at emergence from the source may be "sparkling bottled water."

(vi) The name of water derived from an underground formation from which water flows naturally to the surface of the earth may be "spring water." Spring water shall be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. There shall be a natural force causing the water to flow to the surface through a natural orifice. The location of the spring shall be identified. Spring water collected with the use of an external force shall be from the same underground stratum as the spring, as shown by a measurable hydraulic connection using a hydrogeologically valid method between the bore hole and the natural spring, and shall have all the physical properties, before treatment, and be of the same composition and quality, as the water that flows naturally to the surface of the earth. If spring water is collected with the use of an external force, water must continue to flow naturally to the surface of the earth through the spring's natural orifice. Plants shall demonstrate, on request, to appropriate regulatory officials, using a hydrogeologically valid method, that an appropriate hydraulic connection exists between the natural orifice of the spring and the bore hole.

(vii) The name of water that meets the requirements under "Sterility Tests" <71> in the United States Pharmacopeia, 23d Revision, January 1, 1995, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51. (Copies may be obtained from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852 and may be examined at the Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC), may be "sterile water." Alternatively, the water may be called "sterilized water."

(viii) The name of water from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer may be "well water."

(3) *Other label statements.* (i) If the TDS content of mineral water is below 500 ppm, or if it is greater than 1,500 ppm, the statement "low mineral content" or the statement "high mineral content", respectively, shall appear on the principal display panel following the statement of identity in type size at least one-half the size of the statement of identity but in no case of less than one-sixteenth of an inch. If the TDS of mineral water is between 500 and 1,500 ppm, no additional statement need appear.

(ii) When bottled water comes from a community water system, as defined in 40 CFR 141.2, except when it has been treated to meet the definitions in paragraphs (a)(2)(iv) and (a)(2)(vii) of this section and is labeled as such, the label shall state "from a community water system" or, alternatively, "from a municipal source" as appropriate, on the principal display panel or panels. This statement shall immediately and conspicuously precede or follow the name of the food without intervening written, printed, or graphic matter, other than statements required by paragraph (c) of this section, in type size at least one-half the size of the statement of identity but in no case of less than one-sixteenth of an inch.

(iii) When the label or labeling of a bottled water product states or implies (e.g., through label statements or vignettes with references to infants) that the bottled water is for use in feeding infants, and the product is not commercially sterile under § 113.3(e)(3)(i) of this chapter, the product's label shall bear conspicuously and on the principal display panel the statement "Not sterile. Use as directed by physician or by labeling directions for use of infant formula."

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

(b) *Quality.* The standard of quality for bottled water, including water for use as an ingredient in beverages (except those described in the labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "sparkling water," and "tonic water"), is as follows:

(1) *Definitions.* (i) *Trihalomethane* (THM) means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(ii) *Total trihalomethane* (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromodichloromethane and tribromomethane), rounded to two significant figures.

(2) *Microbiological quality.* Bottled water shall, when a sample consisting of analytical units of equal volume is examined by the methods described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), American Public Health Association, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (copies may be obtained from the American Public Health Association, 1015 15th St., NW., Washington, DC 20005, or a copy may be examined at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC, or at the Center for Food Safety and Applied Nutrition, 200 C St., SW., Washington, DC), meet the following standards of microbiological quality:

(i) *Multiple-tube fermentation method.* Not more than one of the analytical units in the sample shall have a most probable number (MPN) of 2.2 or more coliform organisms per 100 milliliters and no analytical unit shall have an MPN of 9.2 or more coliform organisms per 100 milliliters; or

(ii) *Membrane filter method.* Not more than one of the analytical units in the sample shall have 4.0 or more coliform organisms per 100 milliliters and the arithmetic mean of the coliform density of the sample shall not exceed one coliform organism per 100 milliliters.

(3) *Physical quality.* Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (b)(2) of this section), meet the following standards of physical quality:

(i) The turbidity shall not exceed 5 units.

(ii) The color shall not exceed 15 units.[1]

(iii) The odor shall not exceed threshold odor No. 3.[1]

(4) *Chemical quality.* (i)(A) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (b)(4)(i)(B) of this section, meet standards of chemical quality and shall not contain chemical substances in excess of the following concentrations:

Substance	Concentration in milligrams per liter
Arsenic	0.05
Chloride[1]	250.0
Iron[1]	0.3
Manganese[1]	0.05
Phenols	0.001
Sulfate[1]	250.0
Total dissolved solids[1]	500.0
Zinc[1]	5.0
Organics:	
Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy 1, 4, 4a, 5, 6, 7, 8, 8a-octa-hydro-1,4-endo, endo-5,8-dimethane naphthalene)	0.0002
Total Trihalomethanes	0.10

[1] Mineral water is exempt from allowable level. The exemptions are aesthetically based allowable levels and do not relate to a health concern.

(B) Analyses conducted to determine compliance with paragraph (b)(4)(i)(A) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water

and Wastewater," 15th Ed. (1980), or "Methods for Chemical Analysis of Water and Wastes," Environmental Monitoring and Support Laboratory (EMSL), EPA–600/4–79–020, March 1983, U.S. Environmental Protection Agency (EPA), both of which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(C) Analyses for organic substances shall be determined by the appropriate methods set forth below. The methods in paragraphs (b)(4)(i)(C)(*1*) and (C)(*2*) of this section are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and are described in "Standard Methods for Examination of Water and Wastewater," 15th Ed. (1980). Copies may be obtained from the American Public Health Association, 1015 Fifteenth St., NW., Washington DC 20005, and examined at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington DC, or the Center for Food Safety and Applied Nutrition, 200 C St. NW., Washington DC. The methods in paragraphs (b)(4)(i)(C)(*3*) and (C)(*4*) are cross-referenced in 40 CFR part 141, subpart C, Appendix C.

(*1*) "Methods for Organochlorine Pesticides in Industrial Effluents;"

(*2*) "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents," November 28, 1973;

(*3*) "Part I: The Analysis of Trihalomethanes in Finished Waters by the Purge and Trap Method;" which is cross-referenced in 40 CFR part 141, subpart C, appendix C;

(*4*) "Part II: The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2 which is cross-referenced in 40 CFR part 141, subpart C, appendix C;

(ii)(A) Bottled water packaged in the United States to which no fluoride is added shall not contain fluoride in excess of the levels in Table 1 and these levels shall be based on the annual average of maximum daily air temperatures at the location where the bottled water is sold at retail.

TABLE 1

Annual average of maximum daily air temperatures (°F)	Fluoride concentration in milligrams per liter
53.7 and below	2.4
53.8–58.3	2.2
58.4–63.8	2.0
63.9–70.6	1.8
70.7–79.2	1.6
79.3–90.5	1.4

(B) Imported bottled water to which no fluoride is added shall not contain fluoride in excess of 1.4 milligrams per liter.

(C) Bottled water packaged in the United States to which fluoride is added shall not contain fluoride in excess of levels in Table 2 and these levels shall be based on the annual average of maximum daily air temperatures at the location where the bottled water is sold at retail.

TABLE 2

Annual average of maximum daily air temperatures (°F)	Fluoride concentration in milligrams per liter
53.7 and below	1.7
53.8–58.3	1.5
58.4–63.8	1.3
63.9–70.6	1.2
70.7–79.2	1.0
79.3–90.5	0.8

(D) Imported bottled water to which fluoride is added shall not contain fluoride in excess of 0.8 milligram per liter.

(iii) Having consulted with EPA as required by section 410 of the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration has determined that bottled water, when a composite of analytical units of equal volume from a sample is examined by the methods listed in paragraphs (b)(4)(iii)(E) through (b)(4)(iii)(F), and (b)(4)(iii)(G) of this section, shall not contain the following chemical contaminants in excess of the concentrations specified in paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(D) of this section.

(A) The allowable levels for inorganic substances are as follows:

Contaminant	Concentration in milligrams per liter (or as specified)
Barium	2.
Cadmium	0.005.
Chromium	0.1.
Copper	1.0.
Lead	0.005.
Mercury	0.002.
Nitrate	10 (as nitrogen).
Nitrite	1 (as nitrogen).
Total Nitrate and Nitrite.	10 (as nitrogen).
Selenium	0.05.

(B) The allowable levels for volatile organic chemicals (VOC's) are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
Benzene (71–43–2)	0.005
Carbon tetrachloride (56–23–5)	0.005
o-Dichlorobenzene (95–50–1)	0.6
p-Dichlorobenzene (106–46–7)	0.075
1,2-Dichloroethane (107–06–2)	0.005
1,1-Dichloroethylene (75–35–4)	0.007
cis-1,2-Dichloroethylene (156–59–2)	0.07
trans-1,2-Dichloroethylene (156–60–5)	0.1
1,2-Dichloropropane (78–87–5)	0.005
Ethylbenzene (100–41–4)	0.7
Monochlorobenzene (108–90–7)	0.1
Styrene (100–42–5)	0.1
Tetrachloroethylene (127–18–4)	0.005
Toluene (108–88–3)	1
1,1,1-Trichloroethane (71–55–6)	0.20
Trichloroethylene (79–01–6)	0.005
Vinyl chloride (75–01–4)	0.002
Xylenes (1330–20–7)	10

(C) The allowable levels for pesticides and other synthetic organic chemicals (SOC's) are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
Alachlor (15972–60–8)	0.002
Atrazine (1912–24–9)	0.003
Carbofuran (1563–66–2)	0.04
Chlordane (57–74–9)	0.002
1,2-Dibromo-3-chloropropane (96–12–8)	0.0002
2,4-D (94–75–7)	0.07
Ethylene dibromide (106–93–4)	0.00005
Heptachlor (76–44–8)	0.0004
Heptachlor epoxide (1024–57–3)	0.0002
Lindane (58–89–9)	0.0002
Methoxychlor (72–43–5)	0.04
Pentachlorophenol (87–86–5)	0.001
PCB's (as decachlorobiphenyl) (1336–36–3)	0.0005
Toxaphene (8001–35–2)	0.003
2,4,5-TP (Silvex) (93–72–1)	0.05

(D) The allowable levels for certain chemicals for which EPA has established secondary maximum contaminant levels in its drinking water regulations (40 CFR part 143) are as follows:

Contaminant	Concentration in milligrams per liter
Aluminum	0.2
Silver	0.1

(E) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(A) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(E)(*1*) through (b)(4)(iii)(E)(*13*) of this section and described, unless otherwise noted, in "Methods for Chemical Analysis of Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*1*) [Reserved]

(*2*) Barium shall be measured using the following methods:

(*i*) Method 208.2—"Atomic Absorption; furnace technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 208.1—"Atomic Absorption; direct aspiration," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(A) of this section.

(*iii*) Method 200.7—"Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry," Rev. 3.3, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*3*) [Reserved]

(*4*) Cadmium shall be measured using the following methods:

(*i*) Method 213.2—"Atomic Absorption; furnace technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.7—"Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry," Rev. 3.3, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development,(EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*5*) Chromium shall be measured using the following methods:

(*i*) Method 218.2—"Atomic Absorption; furnace technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*ii*) Method 200.7—"Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry," Rev. 3.3, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*6*) Copper shall be measured as total recoverable metal without filtration using the following methods:

(*i*) Method 220.2—Atomic Absorption; furnace technique, in "Methods for Chemical Analysis of Water and Wastes," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 220.1—Atomic Absorption; direct aspiration, in "Methods for Chemical Analysis of Water and Wastes," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—"Determination o Metals and Trace Elements in Water an Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry," Rev. 3.3, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*iv*) Method 200.8—"Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Rev. 4.4, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*7*)(*iii*) of this section.

(*v*) Method 200.9—"Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," Revision 1.2, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*7*) [Reserved]

(8) Lead shall be measured as total recoverable metal without filtration using the following methods:

(*i*) Method 239.2—Atomic Absorption; furnace technique, in "Methods for Chemical Analysis of Water and Wastes," which is incorporated by reference in accordance

with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*ii*) Method 200.8—"Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Revision 4.4, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*7*)(*iii*) of this section.

(*iii*) Method 200.9—"Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," Rev. 1.2, April 1991. The revision is contained in the manual entitled "Methods for the Determination of Metals in Environmental Samples," June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*9*) Mercury shall be measured using the following methods:

(*i*) Method 245.1—"Manual cold vapor technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 245.2—"Automated cold vapor technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*10*) [Reserved]

(*11*) Nitrate and/or nitrite shall be measured using the following methods:

(*i*) Method 353.3—"Spectrophotometric cadmium reduction," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 353.2—"Colorimetric, automated, cadmium reduction," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(*iii*) Method 300.0—"The Determination of Inorganic Anions in Water by Ion chromatography," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC.

(*iv*) Method 353.1—"Colorimetric, automated, hydrazine reduction," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*12*) Selenium shall be measured using the following methods:

(*i*) Method 270.2—"Atomic Absorption; furnace technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 270.3—"Atomic Absorption; gaseous hydride," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*13*) [Reserved]

(F) Analyses to determine compliance with the requirements of paragraphs (b)(4)(iii)(B) and (b)(4)(iii)(C) of this section shall be conducted in accordance with an applicable method or applicable revisions to the methods listed in paragraphs (b)(4)(iii)(F)(*1*) through (b)(4)(iii)(F)(*20*) of this section and described, unless otherwise noted, in "Methods for the Determination of Organic Compounds in Drinking Water," Office of Research and Development, Environmental Monitoring Systems Laboratory EPA/600/4–88/039, December 1988, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, or may be examined at the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*1*) Method 502.1—"Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography," Rev. 2.0, 1989, (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*2*) Method 502.2—"Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series," Rev. 2.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*3*) Method 503.1—"Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography," Rev. 2.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*4*) Method 524.1—"Measurement of Purgeable Organic Compounds in Water by Packed Column Gas Chromatography/Mass Spectrometry," Rev. 3.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*5*) Method 524.2—"Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry," Rev. 3.0, 1989 (applicable to VOC's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*6*) Method 504—"1,2-Dibromoethane (EDB) and 1,2-Dibromo-3-Chloropropane (DBCP) in Water by Microextraction and Gas Chromatography," Rev. 2.0, 1989 (applicable to dibromochloropropane (DBCP) and ethylene dibromide (EDB)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*7*) Method 505—"Analysis of Organohalide Pesticides and Commercial Polychlorinated Biphenyl (PCB) Products in Water by Micro-Extraction and Gas Chromatography," Rev. 2.0, 1989 (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene and as a screen for polychlorinated biphenyl's (PCB's)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*8*) [Reserved]

(*9*) Method 507—"Determination of Nitrogen- and Phosphorus-Containing Pesticides in Water by Gas Chromatography with a Nitrogen-Phosphorus Detector," Rev. 2.0, 1989 (applicable to alachlor and atrazine), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*10*) Method 508—"Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector," Rev. 3.0, 1989 (applicable to chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, and as a screen for PCB's), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*11*) Method 508A—"Screening for Polychlorinated Biphenyls by Perchlorination and Gas Chromatography," Rev. 1.0, 1989 (used to quantitate PCB's as decachlorobiphenyl if detected in methods 505 or 508) in paragraph (b)(4)(iii)(F)(*7*) or (b)(4)(iii)(F)(*9*) of this section, respectively), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*12*) Method 515.1—"Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector," Rev. 5.0, May 1991 (applicable to 2,4-D, 2,4,5–TP (Silvex) and pentachlorophenol), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*13*) Method 525.1—"Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry," Rev. 2.2, May 1991 (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, and pentachlorophenol), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*14*) Method 531.1—"Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Post Column Derivatization," Rev. 3.0, 1989 (applicable to carbofuran), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(*F*) of this section.

(*15*) [Reserved]

(G) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(D) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(G)(*1*) and (b)(4)(iii)(G)(*2*) of this section and described, unless otherwise noted, in "Methods of Chemical Analysis of Water and Wastes," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*1*) Aluminum shall be measured using the following methods:

(*i*) Method 202.1—"Atomic Absorption; direct aspiration technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(*ii*) Method 202.2—"Atomic Absorption; furnace technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—"Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry," Rev. 3.3, April 1991. The revision is contained in "Methods for the Determination of Metals in Environmental Samples," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of the incorporation by reference is given in paragraph (b)(4)(iii)(E)(*2*)(*iii*) of this section.

(*iv*) Method 200.8—"Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Rev. 4.4, April 1991. The revision is contained in "Methods for the Determination of Metals in Environmental Samples," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*v*) Method 200.9—"Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption, Spectrometry," Rev. 1.2, April 1991. The revision is contained in "Methods for the Determination of Metals in Environmental Samples," which is incorporated by reference in accordance with 5. U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*7*)(*iii*) of this section.

(*2*) Silver shall be measured using the following methods:

(*i*) Method 272.1—"Atomic Absorption, direct aspiration," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*ii*) Method 272.2—"Atomic Absorption, furnace technique," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E) of this section.

(*iii*) Method 200.7—"Determination of Metals and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry," Rev. 3.3, April 1991. The revision is contained in "Methods for the Determination of Metals in Environmental Samples," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*iv*) Method 200.8—"Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Rev. 4.4, April 1991. The revision is contained in "Methods for the Determination of Metals in Environmental Samples," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*1*)(*iii*) of this section.

(*3*) and (*4*) [Reserved]

(*5*) *Radiological quality.* (i) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (b)(5)(ii) of this section, meet standards of radiological quality as follows:

(A) The bottled water shall not contain a combined radium-226 and radium-228 activity in excess of 5 picocuries per liter of water.

(B) The bottled water shall not contain a gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water.

(C) The bottled water shall not contain beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year.

(ii) Analyses conducted to determine compliance with paragraph (b)(5)(i) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), and "Interim Radiochemical Methodology for Drinking Water," U.S. EPA, EMSL,

EPA–600/4–75–008 (Revised), March 1976, both of which are incorporated by reference. The availability of these incorporations by reference is given in paragraph (b)(2) of this section.

(c) *Label statements.* When the microbiological, physical, chemical, or radiological quality of bottled water is below that prescribed by paragraphs (b)(2) through (b)(5), of this section, the label shall bear the statement of substandard quality specified in § 130.14(a) of this chapter except that, as appropriate, instead of or in addition to the statement specified in § 130.14(a) the following statement(s) shall be used:

(1) "Contains Excessive Bacteria" if the bottled water fails to meet the requirements of paragraph (b)(2) of this section.

(2) "Excessively Turbid", "Abnormal Color", and/or "Abnormal Odor" if the bottled water fails to meet the requirements of paragraph (b)(3) (i), (ii), or (iii), respectively, of this section.

(3) "Contains Excessive _____," with the blank filled in with the name of the chemical for which a maximum contaminant level in paragraph (b)(4) of this section is exceeded (e.g., "Contains Excessive Arsenic," "Contains Excessive Trihalomethanes") except that "Contains Excessive Chemical Substances" may be used if the bottled water is not mineral water.

(4) "Excessively Radioactive" if the bottled water fails to meet the requirements of paragraph (b)(5) of this section.

(d) *Adulteration.* Bottled water containing a substance at a level considered injurious to health under section 402(a)(1) of the act is deemed to be adulterated, regardless of whether or not the water bears a label statement of substandard quality prescribed by paragraph (c) of this section.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

7. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

8. Section 184.1563 is amended by revising paragraph (c) to read as follows:

§ 184.1563 Ozone.

* * * * *

(c) In accordance with § 184.1(b)(2), the ingredient is used to treat food only within the following specific limitations:

Category of food	Maximum treatment level in food	Functional use
Bottled water that prior to ozonation meets the microbiological, physical, chemical, and radiological quality standards of § 165.110 (b)(2) through (b)(5) of this chapter.	Not to exceed current good manufacturing practice. Current good manufacturing practice results in a maximum residual level at the time of bottling of 0.4 milligram of ozone per liter of bottled water.	Antimicrobial agent, § 170.3 (o)(2) of this chapter.

Dated: November 3, 1995.

William K. Hubbard,

Acting Duputy Commissioner for Policy.

[FR Doc. 95–27798 Filed 11–7–95; 8:45 am]

BILLING CODE 4160–01–P

federal register

Monday
November 13, 1995

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 165
Beverages; Bottled Water; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 95N–0203]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to exempt mineral water from the allowable level for aluminum in FDA's quality standard for bottled water. The agency is also proposing to update the testing methods referenced in the quality standard for bottled water. Elsewhere in this issue of the **Federal Register**, the agency is publishing a final rule to establish a standard of identity for bottled water. This proposal addresses two related issues that fell outside the scope of that rulemaking. FDA tentatively concludes that the proposed actions will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by January 29, 1996. The agency intends to make any final rule based upon this proposal effective 60 days following the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

I. Background

On January 5, 1993 (58 FR 393), FDA published a proposal in the **Federal Register** to establish a standard of identity in § 165.110(a) (21 CFR 165.110(a)) for bottled water. At the same time, the agency proposed to recodify the standard of quality for bottled water, which is currently found in § 103.35 (21 CFR 103.35), to § 165.110(b), (c), and (d). In addition, FDA proposed to define "artesian water," "ground water," "mineral water," "purified water," "spring water," and "well water."

Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule that implements those proposed actions. However, two related issues, which fell outside the scope of that rulemaking, are discussed in this document along with the comments that the agency received on those matters.

A. Exemption for Aluminum

In the January 5, 1993, proposal (58 FR 393 at 396), FDA proposed to include mineral water in the standard for bottled water and, thus, to subject mineral water to the requirements of the quality standard for bottled water. Some allowable levels in the quality standard are based on the Environmental Protection Agency (EPA) secondary maximum contaminant levels (SMCL's) that are established for aesthetic reasons and not for consumer safety. Mineral water with a high mineral content may not meet these allowable levels. Therefore, the agency tentatively concluded that certain aesthetically based allowable levels should not apply to mineral waters (58 FR 393 at 400). Elsewhere in this issue of the **Federal Register**, FDA is exempting mineral water from the allowable levels for color, odor, total dissolved solids, chloride, iron, manganese, sulfate, and zinc.

FDA stated in the January 5, 1993, proposal that if it established an allowable level for aluminum, it would propose to exempt mineral water from that standard because the standard is intended to control aesthetic properties of the water, and not its effect on the body (58 FR 393 at 401). EPA established an SMCL of 0.2 milligram per liter (mg/L) for aluminum because of increased turbidity of the water and to prevent post-treatment precipitation in public water distribution systems ((56 FR 3526, January 30, 1991). On December 1, 1994 (59 FR 61529), FDA established an allowable level of 0.2 mg/L for aluminum in bottled water in § 103.35(d)(3)(iv) (recodified as § 165.110(b)(4)(iii)(D) elsewhere in this issue of the **Federal Register**).

In response to the January 5, 1993, proposal, FDA received one comment that expressed concern about the proposed allowable level for aluminum in bottled water and with exempting aluminum in mineral water from the quality standard, because there are some data that suggest that there may be a link between aluminum and Alzheimer's Disease and other adverse health effects. It recommended that FDA maintain an allowable level of 0.2 mg/L for aluminum in all bottled water.

The agency disagrees with the comment. EPA established a SMCL for aluminum to control aesthetic properties of the water (turbidity) and not its effect on the body. Aluminum has been found to be neurotoxic when injected into the brains of animals and in renal patients dosed inappropriately with aluminum salts. However, the current evidence suggests that aluminum neither causes Alzheimer's disease nor contributes to the expression of Alzheimer's disease (Ref. 1).

Therefore, the agency tentatively concludes that it is appropriate to exempt mineral water from the allowable level of 0.2 mg/L for aluminum in § 165.110(b)(4)(iii)(D) because it is an aesthetically-based (turbidity) allowable level. Accordingly, the agency is proposing to add a footnote to the list of allowable levels in § 165.110(b)(4)(iii)(D) to provide that when water is labeled as "mineral water," it will be exempt from the allowable level for aluminum. FDA is not proposing to include bottled waters that are not conspicuously identified with the term "mineral" in this exemption because consumers will not generally expect to encounter aesthetic effects typical of high mineral content waters in these bottled waters products. In addition, the agency is not proposing to exempt mineral water from the allowable level for turbidity because high turbidity may interfere with disinfection and microbiological determinations. This exemption parallels the exemptions in § 165.110(b)(3) and (b)(4)(i)(A) that FDA is establishing in a final rule published elsewhere in this issue of the **Federal Register** that exempts mineral water from certain other aesthetically based allowable levels.

B. Updating References

In the proposal to establish a standard of identity for bottled water (58 FR 393, January 5, 1993), the agency proposed to update the methods referenced in § 165.110(b)(2) and (b)(3) for testing water for the listed contaminants to the "Standard Methods for the Examination of Water and Wastewater," 17th edition (1989). Several comments received in response to that proposal stated that § 165.110(b)(2) and (b)(3) should be updated and should reference "Standard Methods for the Examination of Water and Wastewater," 18th edition (1992). However, because the agency failed to state in the proposal that it intended to update the references to the latest edition, the comments' requested change did not fall within the scope of that rulemaking, and a separate rulemaking was necessary to effect that change.

Title 1, part 51 of the Code of Federal Regulations (1 CFR part 51) requires the filing and updating of material that has been incorporated by reference in the Code of Federal Regulations. The purpose of the requirement is to ensure the public availability and accuracy of material that has been incorporated from other sources.

In the **Federal Register** of October 6, 1993 (58 FR 52042), FDA proposed to update the reference in § 165.110(b)(2) to the 18th edition. The agency expects to adopt that modification in a final rule that will be published in the near future. However, to ensure the accuracy of methods for testing bottled water, that are referenced in § 165.110(b)(3), FDA is proposing to update them to reference "Standard Methods for the Examination of Water and Wastewater," 18th edition (1992). If subsequent editions of the methods referenced are published before the completion of this rulemaking, the agency intends to update the references in § 165.110(b)(2) and (b)(3) to reflect the most recent edition.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "economically significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered "significant" under Executive Order 12866 if it raises novel legal or policy issues. The Regulatory Flexibility Act requires agencies to minimize the economic impact of their regulations on small entities. FDA finds that this proposed rule is neither an economically significant nor significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

Updating the references is not expected to significantly affect the content of those references or the cost of complying with regulations citing those references. FDA requests comments on any costs generated by updating the references as proposed.

Exempting mineral water from the allowable level for aluminum in bottled water does not represent a change from the current situation. There is currently no limitation on the amount of aluminum in mineral water. Similarly, there is no limitation on the amount of aluminum in mineral water under this proposal (other than a level that is injurious to health). The current situation is the baseline in comparison with which costs and benefits of proposed actions are measured. Therefore, there are neither costs nor benefits associated with exempting mineral water from the allowable level for aluminum in bottled water.

IV. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Humphreys, S., Contaminants, Standards, and Monitoring Branch (HFS–308F), Center for Food Safety and Applied Nutrition, Food and Drug Administration, memo to Shellee Davis, May 26, 1995.

V. Comments

Interested persons may, on or before January 29, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: Secs. 201, 401, 403, 403A, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 343A, 348, 349, 371, 379e).

2. Section 165.110 is amended by revising the introductory text of paragraph (b)(3) and by revising paragraph (b)(4)(iii)(D) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(3) Physical quality. Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 18th ed. (1992), which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (b)(2) of this section), meet the following standards of physical quality:

* * * * *

(4) * * *

(iii) * * *

(D) The allowable levels for certain chemicals for which EPA has established secondary maximum contaminant levels in its drinking water regulations are as follows:

Contaminant	Concentration in milligrams per liter
Aluminum	0.2[1]
Silver	0.1

[1] Mineral water is exempt from the allowable level. The exemption is an aesthetically based allowable level and does not relate to a health concern.

* * * * *

Dated: November 3, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–27799 Filed 11–7–95; 8:45 am]

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federal register

Monday
November 13, 1995

Part V

The President

Notice of November 8, 1995—
Continuation of Emergency Regarding
Weapons of Mass Destruction

Federal Register
Vol. 60, No. 218
Monday, November 13, 1995

Presidential Documents

Title 3—

The President

Notice of November 8, 1995

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order No. 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons ("weapons of mass destruction") and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on November 14, 1994, must continue in effect beyond November 14, 1995. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order No. 12938.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 8, 1995.

[FR Doc. 95–28124
Filed 11–8–95; 4:49 pm]
Billing code 3195–01–P

federal register

Monday
November 13, 1995

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation: Contingent Fee Representation; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 13, 31, 52, and 53

[FAR Case 93–009]

Federal Acquisition Regulation; Contingent Fee Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing revising the Federal Acquisition Regulation (FAR) to delete the provision requiring an offeror to provide a contingent fee representation and agreement and to submit a statement of contingent or other fees. Also, the proposed rule rescinds the information collection requirement under Office of Management and Budget (OMB) Clearance Number 9000–0003, Contingent Fee Representation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before January 12, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 93–009 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 93–009.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 3.404(b) requires the contracting officer to insert the provision at 52.203–4, Contingent Fee Representation and Agreement, in all solicitations, with five exceptions. The provision requires offerors to provide a contingent fee representation as requested by the contracting officer. When the representation is answered affirmatively, the offeror must also provide a complete Standard Form (SF) 119, Statement of Contingent or Other Fees or a signed statement indicating the SF 119 was previously submitted to the same contracting office. The proposed rule revises FAR 3.404 to remove the solicitation provision and removes the accompanying subparts 3.406, 3.407, and 3.408 which deal with the SF 119. FAR 3.409 and 3.410 have been renumbered.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* There is a slight beneficial impact on small entities since offerors will no longer be required to provide contingent fee representations and agreements or to submit statements of contingent or other fees. The contingent fee underlining policy still remains in place. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 93–009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53

Government procurement.

Dated: November 3, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53 be amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1, 3, 4, 13, 31, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

1.106 [Amended]

2. Section 1.106 is amended in the list of "FAR Segments" and "OMB Control Numbers" following the introductory text by removing "52.203–4" and "9000–0003", and "SF 119" and "9000–0003".

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.404 is revised to read as follows:

3.404 Contract clause.

The contracting officer shall insert the clause at 52.203–5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 other than those for commercial items (see parts 2 and 12).

3.405 through 3.408–2 [Removed]

4. Sections 3.405 through 3.408–2 are removed.

3.409 and 3.410 [Redesignated as 3.405 and 3.406]

5. 3.409 and 3.410 are redesignated as 3.405 and 3.406.

6. The newly designated 3.406 is amended by revising the first sentence to read as follows:

3.406 Records.

For enforcement purposes, agencies shall preserve any specific evidence of one or more violations of 3.405(a), together or with all other pertinent data, including a record of actions taken.

* * *

PART 4—ADMINISTRATIVE MATTERS

7. Section 4.803 is amended by revising (a)(11) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(11) Contractor's certifications and representations.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.111 [Amended]

8. Section 13.111 is amended by removing paragraph (c) and redesignating paragraphs (d) through (j) as (c) through (i).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–38 [Amended]

9. Section 31.205–38 is amended at the end of paragraph (f) by removing the parenthetical "(see 3.408–2)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–4 [Reserved]

10. Section 52.203–4 is removed and reserved.

52.203–5 [Amended]

11. Section 53.203–5 is amended in the introductory paragraph by removing "3.404(c)" and inserting "3.404".

PART 53—FORMS

53.203 [Amended]

12. Section 53.203 is amended by removing paragraph (a) and the designation of paragraph (b).

53.301–119 [Removed]

13. Section 53.301–119 is removed.

[FR Doc. 95–27742 Filed 11–9–95; 8:45 am]

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Monday
November 13, 1995

Part VII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 985
Spearmint Oil Produced in the Far West; Hearing on Proposed Amendment; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. AO–79–2; FV95–985–4]

Spearmint Oil Produced in the Far West; Hearing on Proposed Amendment of Marketing Order No. 985

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing: correction.

SUMMARY: This action corrects language in the text of the notice of hearing to consider amending Marketing Order No. 985, which regulates spearmint oil grown in the Far West. Language is added to exempt certain employees of the Office of the General Counsel who may be assigned to represent the Spearmint Oil Administrative Committee at the hearing from the prohibition of discussing the merits of this rulemaking proceeding on an ex parte basis.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127 or FAX (202) 720–5698; or Robert Curry, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, OR 97204–2807; telephone: (509) 326–2724 or FAX (509) 326–7440.

SUPPLEMENTARY INFORMATION: This action makes a correction in a notice of hearing which appeared in the **Federal Register** (60 FR 52869, October 11, 1995). This correction adds language to exempt designated employees of the Department of Agriculture's Office of General Counsel assigned to represent the Spearmint Oil Administrative Committee in the rulemaking proceeding from the prohibition of discussing the merits of this case on an ex parte basis. This Committee, which is appointed by the Secretary, is responsible for administering the Order. This action adds language to the sixth full paragraph in the third column on page 52869. In the last sentence of the paragraph after the words "Office of the General Counsel", the following language is added ", except designated employees of the General Counsel assigned to represent the Spearmint Oil Administrative Committee in this rulemaking proceeding."

Dated: Novemember 8, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–28079 Filed 11–9–95; 8:45 am]

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S. 1322/P.L. 104–45

Jerusalem Embassy Act of 1995 (Nov. 8, 1995; 109 Stat. 398)

(Upon expiration of the 10-day period prescribed by the Constitution of the United States, S. 1322 became law on Nov. 8, 1995, without the President's approval.)

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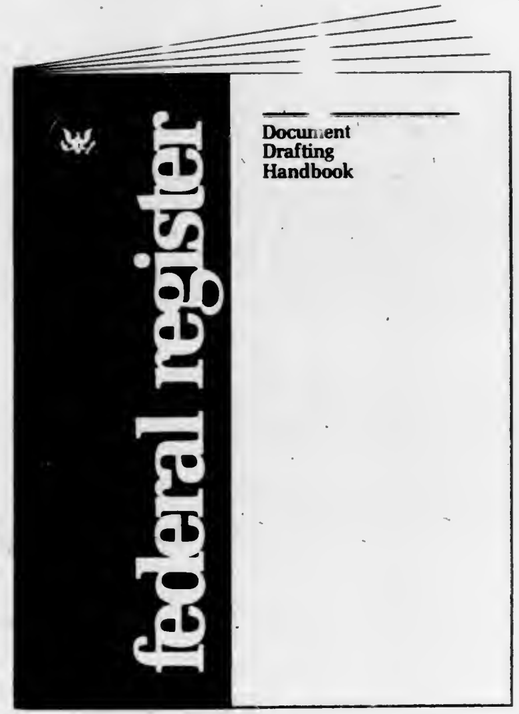
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 60, No. 219
Tuesday, November 14, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH22

Prevailing Rate Systems; Abolishment of Philadelphia, PA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Philadelphia, PA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine the five counties having continuing FWS employment as areas of application to nearby NAF wage areas for pay-setting purposes. No employee's wage rate will be reduced as a result of this change.

DATES: This interim rule becomes effective on November 14, 1995. Comments must be received by December 14, 1995. Employees currently paid rates from the Philadelphia, PA, NAF wage schedule will continue to be paid from that schedule until their conversion to the schedules of the wage areas to which their counties of employment are being redefined by this rule on December 1, 1995, the first day of the month in which their new wage schedule would have been effective.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Philadelphia, PA, FWS NAF wage area be abolished and that the five counties having continuing FWS employment be redefined as areas of application to nearby NAF wage areas. Philadelphia County and Chester County, PA, are being redefined to the Montgomery, PA, wage area. New Castle County, DE; Cape May County, NJ; and Salem County, NJ; are being redefined to the Burlington, NJ, wage area. The remaining Philadelphia wage area counties (Camden and Gloucester, NJ) have no FWS employees and are being deleted. This change is necessary because the pending closure of Naval Station Philadelphia leaves the Philadelphia wage area without an activity having the capability to conduct a wage survey.

As required in regulation, 5 CFR 532.219, the following criteria were considered in redefining these wage areas:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similaries of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

All regulatory factors favor redefinition of Philadelphia County to the adjacent Montgomery, PA, wage area.

For Chester County, population and industrial patterns more closely resemble Burlington, NJ. However the remaining regulatory factors, proximity and commuting patterns, both favor redefinition to the Montgomery, PA, wage area. Overall, redefinition to the Montgomery, PA, wage area is favored.

Regulatory factors for New Castle County, DE, are mixed but on balance favor redefinition to the Burlington, NJ, wage area. While New Castle County is closest to Harford, MD, population and industrial patterns are very similar to Burlington, NJ, and bear little resemblance to Harford, MD. The highest commuting rate is to Montgomery, PA, but this is not a determining factor in that commuting rates to the various candidate survey areas are very similar.

Regulatory factors are mixed for Salem County, NJ, but on balance favor redefinition to the Burlington, NJ, wage area. The closest survey area is Montgomery, PA. However, Burlington is fairly close to Salem, and Salem geographically falls between New Castle (being redefined to Burlington) and the Burlington survey area. Commuting patterns favor Burlington, PA. Although population and industrial patterns favor Lebanon, PA, Lebanon County is about double the size of Salem County in terms of population and industry.

Regulatory factors are mixed for Cape May County, NJ, but on balance favor redefinition to the Burlington, NJ, wage area. Proximity and commuting patterns favor Burlington, NJ. Population and industrial patterns favor Lebanon, PA. However, Lebanon County is very far removed from coastal Cape May County, with intervening wage areas.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the 1995 Philadelphia, PA, NAF wage area survey must otherwise begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532 [Amended]

2. In appendix B to subpart B, the listing for the State of Pennsylvania is amended by removing the entry for Philadelphia.

3. Appendix D to subpart B is amended by removing the wage area list for Philadelphia, Pennsylvania, and by revising the lists for Burlington, New Jersey, and Montgomery, Pennsylvania, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

New Jersey
Burlington
Survey Area

New Jersey:

Burlington
Area of application. Survey area plus:
Delaware:
New Castle
New Jersey:
Atlantic
Cape May
Ocean
Salem
* * * * *
Pennsylvania
* * * * *
Montgomery
Survey area
Pennsylvania:
Montgomery
Area of Application. Survey area plus:
Pennsylvania:
Bucks
Chester
Luzerne
Philadelphia
* * * * *

[FR Doc. 95–28051 Filed 11–13–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

Seed Certifying Agency Standards and Procedures

CFR Correction

In title 7 of the Code of Federal Regulations, parts 53 to 209, revised as of January 1, 1995, the centered heading above § 201.67 was incorrectly amended, and § 201.67 and the heading of § 201.68 were inadvertently removed. The text as it should appear is set forth below.

CERTIFIED SEED

§ 201.67 Seed certifying agency standards and procedures.

In order to qualify as a seed certifying agency for purposes of section 101(a)(25) of the Federal Seed Act (7 U.S.C. 1551(a)(25)) an agency must enforce standards and procedures, as conditions for its certification of seed, that meet or exceed the standards and procedures specified in § 201.68 through 201.78.

[38 FR 25662, Sept. 14, 1973]

§ 201.68 Eligibility requirements for certification of varieties.

* * * * *

BILLING CODE 1505–01–D

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children: Correction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food and Consumer Service is correcting errors in the regulatory text of the final rule published on June 13, 1995, (60 FR 31188) entitled National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302; by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1995, the Department published a final rule incorporating provisions from proposals published on June 10, 1994, and January 27, 1995. The final rule implemented provisions of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, requiring that a variety of meal planning approaches be made available to school food authorities, including "food-based menu systems," and that school meals comply with the *Dietary Guidelines for Americans.* In addition, the final rule contained provisions to streamline the administration of the school meal programs. However, the final rule, as published, contained errors in the regulatory text that need correction.

Correction of Publication

Accordingly, the publication on June 13, 1995, is corrected as follows:

§ 210.10 [Corrected]

1. On page 31209, § 210.10, in the table entitled "MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES/ NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES), in the first column, line 4, "RDA for protein" is corrected to read "RDA for protein (g)".

2. On page 31212, the table in § 210.10(k)(2) is corrected by adding a column containing an option for kindergarten through grade 3 which was inadvertently omitted. The entire table is republished for the convenience of readers.

Meal component	Minimum quantities required for				Option for
	Ages 1–2	Preschool	Grades K–6	Grades 7–12	K-Grade 3
Milk (as a beverage)	6 Ounces	6 Ounces	8 Ounces	8 Ounces	8 Ounces.
Meat or Meat Alternate (quantity of the edible portion as served).					
Lean meat, poultry or fish	1 Oz	1½ Oz	2 Oz	2 Oz	1½ Oz.
Cheese	1 Oz	1½ Oz	2 Oz	2 Oz	1½ Oz.
Large egg	½	¾	1	1	¾.
Cooked dry beans or peas	¼ Cup	⅜ Cup	½ Cup	½ Cup	⅜ Cup.
Peanut butter or other nut or seed butters	2 Tbsp	3 Tbsp	4 Tbsp	4 Tbsp	3 Tbsp.

Meal component	Minimum quantities required for				Option for
	Ages 1–2	Preschool	Grades K–6	Grades 7–12	K-Grade 3
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds=1 ounce of cooked lean meat, poultry or fish.).	½ oz.=50%	¾ Oz.=50%	1 Oz.=50%	1 Oz.=50%	¾ Oz.=50%.
Vegetables/Fruits (2 or more servings of vegetables or fruits or both).	½ Cup	½ Cup	¾ Cup plus extra ½ Cup over a week[1].	1 Cup	¾ Cup.
Grains/Breads Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week—minimum of ½ per day[1].	8 servings per week—minimum of 1 per day[1].	12 servings per week—minimum of 1 per day[1 2].	15 servings per week—minimum of 1 per day[1 2].	10 servings per week—minimum of 1 per day.[1 2]

[1] For the purposes of this chart, a week equals five days.
[2] Up to one grains/breads serving per day may be a dessert.

3. On page 31215, in the second column, the amendatory language item 13.a. is corrected to read "The introductory text of paragraph (c) is amended by removing the phrase '4-year review cycle' wherever it appears in the first sentence and adding in its place the phrase '5-year review cycle' and by removing the date '1997' in the second sentence and adding in its place the date '1998'".

§ 210.19 [Corrected]

4. On page 31216, in the first column, in § 210.19(a)(1)(i), last line, "§ 210.10(b) and § 210.10(c)" is corrected to read "§ 210.10(b) and the appropriate calorie and nutrient levels in § 210.10(c) or § 210.10(i)(1), whichever is applicable".

5. On page 31216, in the first column, in § 210.19(a)(1)(ii)(A), lines 5 and 6, "§ 220.8(e) or § 220.8(f)" is corrected to read "§ 220.8(g)".

§ 220.2 [Corrected]

6. On page 31217, in the first column, in § 220.2(m), line 19, "under the offer versus serve" is corrected to read "under offer versus serve".

§ 220.8 [Corrected]

7. On page 31219, in the second column, in § 220.8(e)(2)(ii), the phrase "senior high" is removed from lines 5 and 6 in the second sentence, and the third and fifth sentences are removed.

8. On page 31219, in the third column, in § 220.8(e)(5)(iii), line 7, "in accordance to" is corrected to read "in accordance with".

9. On page 31219, in the third column, in § 220.8(e)(7), line 3, "paragraph" is corrected to read "paragraphs".

10. On page 31220, in the first column, in § 22u.8(e)(11), line 20, "nutrient sand" is corrected to read "nutrients and".

Dated: October 30, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–28025 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–30–P

7 CFR Part 235

State Administrative Expense Funds: National School Lunch Program, Special Milk Program for Children, School Breakfast Program, Child and Adult Care Food Program, Food Distribution Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food and Consumer Service is correcting errors in the regulatory text of the final rule published on March 24, 1995 (60 FR 15457), entitled State Administrative Expense Funds: National School Lunch Program, Special Milk Program for Children, School Breakfast Program, Child and Adult Care Food Program, Food Distribution Program.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1995, the Department published a final rule incorporating provisions from a proposal concerning State Administrative Expense (SAE) funds published on December 6, 1991 (at 56 FR 63882). The final rule implemented provisions of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989 (103 Stat. 877), to: (1) Establish limits on the level of SAE funds that may be retained by the State from one fiscal year to another; (2) specify how SAE funds that are returned by the State are to be redistributed; and (3) provide that alternate State agencies which admininster the Child and Adult Care Food Program (CACFP) receive the funds to which they are entitled, including the SAE funds for the "adult care component" of the CACFP.

However, the final rule, as published, contained an incorrect version of § 235.6(c) which is hereby corrected. Please also note that, for purposes of contextual logic, the designation of new paragraph § 235.6(g) in the March 24, 1995 final has been corrected to § 235.6(d). In addition, the redesignation of paragraph 235.6(i) as 235.6(h) was accidentally omitted in the March 1995 final rule.

Correction of Publication

Accordingly, the final rule published at 60 FR 15457 on March 24, 1995, is corrected as follows:

1. On page 15460, in the preamble, second column, top paragraph, the reference to § 235.6(h) is corrected to read § 235.6(d).

2. On page 15462, column 3, amendatory language item 6.c for § 235.6 is corrected to read as follows:

c. Paragraph (d) is added; and paragraphs (g), (h), and (i) are redesignated as paragraphs (f), (g), and (h), respectively.

3. On page 15463, column 1, § 235.6, paragraph (c) is corrected to read as follows:

§ 235.6 Use of Funds.

(c) In addition to State Administrative Expense funds made available specifically for food distribution purposes under § 235.4 (b)(2) and (b)(4), State Administrative Expense funds allocated under § 235.4 (a)(1), (a)(2), (b)(1), (b)(3), and (d), and under (b)(4) for the Child and Adult Care Food Program may be used to assist in the administration of the Food Distribution Program (7 CFR part 250) in schools and institutions which participate in programs governed by parts 210, 220, and 226 of this title when such Food Distribution Program is administered within the State agency and may also be used to pay administrative expenses of a distributing agency, when such agency is other than the State agency and is responsible for administering all or part of such Food Distribution Program.

4. On page 15463, § 235.6, column 1, the paragraph (g) designation is corrected to read (d).

Dated: November 1, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–28031 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–30–U

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7 CFR Part 248

WIC Farmers' Market Nutrition Program: Correction

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food and Consumer Service is correcting errors in the regulatory text of the final rule published on September 27, 1995, (60 FR 49739) entitled WIC Farmers' Market Nutrition Program.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman or Debra Whitford, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1995, the Department published a final rule amending and finalizing an interim rule that was published on March 11, 1994. The final rule also implemented the nondiscretionary WIC Farmers' Market Nutrition Program mandates of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994. However, the final rule, as published, contained errors in the regulatory text that need correction.

Correction of Publication

Accordingly, the final rule published at 60 FR 49739 on September 27, 1995, is corrected as follows:

1. On page 49748, column 1, § 248.14(i), line 7, "FNS" is corrected to read "FCS".
2. On page 49748, column 1, in amendatory item 9, "second" is corrected to read "first".
3. On page 49748, column 1, § 248.16(f), line 4 is corrected by removing "* * *".
4. On page 49748, column 2, § 248.25(a), line 4, "FNS" is corrected to read "FCS".

Dated: November 2, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–28029 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Parts 1030, 1065, 1068, 1076 and 1079

[Docket Nos. AO–361–A31, etc.; DA–92–27]

Milk in the Chicago Regional and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

7 CFR part	Marketing area	AO Nos.
1030	Chicago Regional	AO–361–A31
1065	Nebraska-Western Iowa.	AO–86–A50
1068	Upper Midwest ...	AO–178–A48
1076	Eastern South Dakota.	AO–260–A32
1079	Iowa	AO–295–A44

SUMMARY: This final rule implements changes in the Federal milk marketing orders for five north central marketing areas based on industry proposals considered at a public hearing. This rule adopts a plan for pricing milk on the basis of its protein and other nonfat solids, as well as butterfat, components. The plan includes adjustments per hundredweight based on the somatic cell count of producer milk used in Class II and Class III, and on payments to producers of all pooled milk. Each of the amended orders was approved by producers who were eligible to have their milk pooled during the representative month for voting purposes.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or is the handler's principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 22, 1993; published January 4, 1994 (59 FR 260).

Extension of Time for Filing Briefs: Issued April 22, 1994; published April 29, 1994 (59 FR 22138).

Recommended Decision: Issued October 25, 1994; published November 2, 1994 (59 FR 54952).

Extension of Time for Filing Exceptions: Issued December 2, 1994; published December 9, 1994 (59 FR 63733).

Final Decision: Issued August 3, 1995; published August 14, 1995 (60 FR 41833).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, for each of the specified orders, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas. The minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk which is marketed within each of the specified marketing areas to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of the order amending each of the specified orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1030, 1065, 1068, 1076, 1079

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for 7 CFR parts 1030, 1065, 1068, 1076, and 1079 continues to read as follows:

Authority: 7 U.S.C. 601–674.

1. Section 1030.30 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1030.9(a) shall report for each plant of the handler (except if a handler requests and the request is approved by the market administrator, a handler may file a consolidated report for supply plants and a consolidated report for distributing plants); and each handler described in § 1030.9 (b) and (c) shall report the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handlers from the pool plant to other plants; and

(ii) Receipts of milk from handlers described in § 1030.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants, including a separate statement of the net receipts from each supply plant computed pursuant to § 1030.7(b)(4);

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1030.31 is amended by revising paragraph (a) to read as follows:

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1030.73(e).

* * * * *

3. Section 1030.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1030.50 Class and component prices.

Subject to the provisions of § 1030.52, the class prices per hundredweight of milk containing 3.5 percent butterfat

and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Class III–A differential price.* The Class III–A differential price shall be the difference between the current month's Class III and Class III–A prices (this price may be negative).

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somotic cell adjustment.*

(1) The somatic cell adjustment rate per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1030.60 and the undesignated center heading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1030.9 (a), (b), and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1030.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1030.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1030.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1030.30(a)(1) by the percentage of the total producer milk allocated pursuant to § 1030.44(c) that is allocated to Class II and Class III; and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1030.43(d) and § 1030.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(11) and the corresponding steps of § 1030.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1030.61 is amended by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 1030.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the

computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1030.60 (a)(1), (a)(2), (a)(7), and (b) through (k) for all handlers; and

(2) Add values computed pursuant to § 1030.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment;

* * * * *

7. Section 1030.62 is revised to read as follows:

§ 1030.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1030.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1030.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk; and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(f) by the producer price differential as adjusted pursuant to § 1030.52 for the location of the plant from which received.

* * * * *

9. Section 1030.73 is amended by revising paragraphs (a), (c), and (d) and adding a new paragraph (e) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer;

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §§ 1030.75 and 1030.86;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a) of this section; and

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer; and

(3) If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described under § 1030.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price

differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (d)(1) of this section; and

(vii) Less proper authorized deductions.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

10. Sections 1030.74 and 1030.75 are revised to read as follows:

§ 1030.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1030.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in § 1030.52(a), except that the adjusted producer differential price shall not be less than zero.

11. Section 1030.76 is amended by removing the reference "§ 1030.71(a)(2)(ii)" in paragraph (b)(1)(iii) and adding in its place "§ 1030.71(a)(2)(v)" and revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows:

§ 1030.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1030.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.30 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 1065.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1065.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1065.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1065.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1065.31 is amended by revising paragraph (a) to read as follows:

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1065.73(e).

* * * * *

3. Section 1065.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1065.50 Class and component prices.

Subject to the provisions of § 1065.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Class III–A differential price.* The Class III–A differential price shall be the difference between the current month's Class III and Class III–A prices (this price may be negative).

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.*

(1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1065.60 and the undesignated center heading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1065.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1065.9(a) with respect to each of its pool plants and each handler described in § 1065.9 (b) and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1065.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1065.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1065.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1065.30(a)(1) by the percentage of the total producer milk allocated pursuant to § 1065.44(c) that is allocated to Class II and Class III; and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1065.43(d) and § 1065.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(11) and the corresponding steps of § 1065.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1065.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (f) to read as follows:

§ 1065.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers, as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1065.60 (a)(1), (a)(2), (a)(7) and (b) through (i) for all handlers; and

(2) Add values computed pursuant to § 1065.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their

respective prices, and the total value of the somatic cell adjustment;

* * * * *

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the "producer price differential."

7. Section 1065.62 is revised to read as follows:

§ 1065.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1065.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1065.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk determined pursuant to § 1065.44(c) by the producer price differential as adjusted pursuant to § 1065.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk; and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1065.60(f) by the producer price differential as adjusted pursuant to § 1065.52 for the location of the plant from which received.

* * * * *

9. Section 1065.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1065.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(g) for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1065.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to 1065.86 and for advertising and promotion pursuant to § 1065.107; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1065.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1065.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer or diversion from a pool plant operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

* * * * *

10. Sections 1065.74 and 1065.75 are revised to read as follows:

§ 1065.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1065.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1065.52.

(b) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the producer price differential shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

11. Section 1065.76 is amended by removing the reference "§ 1065.71(a)(2)(ii)" in paragraph (b)(1)(iii) and adding in its place "§ 1065.71(a)(2)(v)" and revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows:

§ 1065.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1065.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.30 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 1068.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1068.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1068.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1068.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1068.31 is amended by revising paragraph (a) to read as follows:

§ 1068.31 Payroll reports.

(a) On or before the 22nd day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1068.73(f).

* * * * *

3. Section 1068.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1068.50 Class and component prices.

Subject to the provisions of § 1068.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.20.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the

difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Class III–A differential price.* The Class III–A differential price shall be the difference between the current month's Class III and Class III–A prices (this price may be negative).

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment per hundredweight shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1068.60 and the undesignated center heading preceding it, the introductory text, and paragraphs (a), (f), and (g) are revised to read as follows:

Producer Price Differential

§ 1068.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1068.9 (a), (b), and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1068.43(a) and § 1068.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1068.43(a) and § 1068.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1068.43(a) and § 1068.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.43(a) and § 1068.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.43(a) and § 1068.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1068.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1068.43(a) and 1068.44(c); and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1068.43(e) and § 1068.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(11) and the corresponding steps of § 1068.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for a handler described in § 1068.9(c), the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1068.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e) to read as follows:

§ 1068.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk as follows:

(a) Combine into one total for all handlers:

(1) The estimated values computed pursuant to § 1068.60 (a)(1), (a)(2), (a)(7), and (b) through (j) for all handlers; and

(2) Add the estimated values computed pursuant to § 1068.60 (a)(3), (a)(4), (a)(5), and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and

total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment;

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential" for milk received from producers.

7. Section 1068.62 is revised to read as follows:

§ 1068.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1068.71 is amended by revising paragraph (a) to read as follows:

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1068.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler described in § 1068.9(c). In the case of a handler described in § 1068.9(c), less the amount due from other handlers pursuant to § 1068.73(d). The value of producer milk shall be computed as follows:

(A) An amount obtained by multiplying the total hundredweight of producer milk by the producer price differential as adjusted pursuant to § 1068.75;

(B) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price; and

(C) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(D) The total value of the somatic cell adjustment to producer milk; and

(ii) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1068.60(f) by the producer price differential as adjusted pursuant to § 1068.52 for the location of the plant from which received.

* * * * *

9. Sections 1068.73, 1068.74, and 1068.75 are revised to read as follows:

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers or cooperative associations as follows:

(a) On or before the 25th day of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a cooperative association:

(1) That is a handler pursuant to § 1068.9(a), at not less than the Class I price for the month at the location of the transferee or transferor plant, whichever is higher, adjusted by the butterfat differential for the preceding month;

(2) That is a handler pursuant to § 1068.9(c), at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month; and

(3) That is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(b) On or before the 4th day after the end of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a producer for whom payment is not being made pursuant to paragraph (a) of this section and who has not discontinued shipping to such handler, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(c) On or before the 11th day after the end of the month, each handler shall pay for milk received and classified during the month from a cooperative association which is a handler pursuant to § 1068.9(a) adjusted at the location of the transferee or transferor plant, whichever is higher, payment shall be determined as follows:

(1) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(2) The hundredweight of Class II milk received times the Class II differential price for the month;

(3) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

(4) The pounds of butterfat received times the butterfat price for the month;

(5) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(6) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(7) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(8) Less any payment made pursuant to paragraph (a)(1) of this section.

(d) On or before the 18th day after the end of the month, each handler shall make payment as described in paragraph (d)(4) of this section to:

(1) A cooperative association that is a handler pursuant to § 1068.9(c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate;

(3) A producer for whom payment is not being made pursuant to paragraphs (d) (1) and (2) of this section; and

(4) Payment shall be determined by:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1068.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (a) or (b) of this section.

(e) In making payments pursuant to paragraphs (a) (2) and (3), (b) and (d) of this section, deductions may be made for marketing services pursuant to § 1068.86 and for any proper deductions authorized by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1068.72 by the 18th day of the month, the handler may reduce pro rata its payments to producers pursuant to paragraph (d) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the

handler shall complete payments to producers not later than the next payment date provided under this section.

(f) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom it received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and producer;

(2) The total pounds of milk received from the producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this section;

(8) The rate that is used in making payment if such rate is other than the applicable minimum;

(9) The amount, or the rate per hundredweight, or rate per pound of component, of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

(10) The net amount of the payment to the producer.

§ 1068.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1068.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a pool plant or delivered to a nonpool plant shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1068.52.

(b) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in § 1068.52, except that the adjusted producer price differential shall not be less than zero.

10. Section 1068.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows:

§ 1068.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1068.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

§ 1068.85 [Amended]

11. Section 1068.85 is amended by removing the word "15th" in the introductory text and adding in its place "16th".

§ 1068.86 [Amended]

12. Section 1068.86 is amended by removing the word "15th" in paragraphs (a) and (b) and adding in its place "16th".

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.30 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 1076.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1076.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1076.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1076.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1076.31 is amended by revising paragraph (a) to read as follows:

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1076.73(e).

* * * * *

3. Section 1076.50 is amended by revising the section heading, introductory text and paragraph (a), adding and reserving paragraph (d), and adding paragraphs (e) through (l):

§ 1076.50 Class and component prices.

Subject to the provisions of § 1076.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

(d) [Reserved].

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) [Reserved].

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly Cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) [Reserved];

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1076.60 and the undesignated center heading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1076.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk, the market administrator shall determine for each month the value of milk of each handler described in § 1076.9(a) with respect to each of its pool plants and each handler described in § 1076.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1076.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price; and

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1076.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1076.43(a) and 1076.44(c);

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1076.43(d) and § 1076.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a)(11) and the corresponding steps of § 1076.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1076.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e) to read as follows:

§ 1076.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1076.60 (a)(1), (a)(2), and (b) through (i) for all handlers; and

(2) Add values computed pursuant to § 1076.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment;

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price

computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential."

7. Section 1076.62 is revised to read as follows:

§ 1076.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;
(b) The protein price;
(c) The other solids price;
(d) The butterfat price;
(e) The somatic cell adjustment rate;
(f) The average butterfat, protein and other solids content of producer milk and milk received from a handler described in § 1076.9(c); and
(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1076.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1076.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1076.9(c) by the producer price differential as adjusted pursuant to § 1076.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1076.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1076.9(c) by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk and milk received from handlers described in § 1076.9(c); and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1076.60(f) by the producer price differential as adjusted pursuant to § 1076.52 for the location of the plant from which received.

* * * * *

§ 1076.72 [Amended]

9. Section 1076.72 is amended by removing the last sentence.

10. Section 1076.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1076.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1076.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1076.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1076.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(g) adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) [Reserved];

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

11. Sections 1076.74 and 1076.75 are revised to read as follows:

§ 1076.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1076.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1076.52; and

(b) For the purpose of computations pursuant to §§ 1076.71 and 1076.72 the producer price differential shall be adjusted at the rates set forth in § 1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

12. Section 1076.76 is amended by removing the reference "§ 1076.71(a)(2)(ii)" in paragraph (b)(1)(iii) and adding in its place "§ 1076.71(a)(2)(v)" and revising paragraphs (a)(4) and the last sentence of (b)(1)(ii) to read as follows:

§ 1076.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both price to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1076.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.30 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 1079.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1079.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1079.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1);

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to paragraph (a) of this section; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1079.31 is amended by revising paragraph (a) to read as follows:

§ 1079.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in § 1079.9 (a), (b), or (c) shall report to the market administrator its producer payroll for such month in the detail prescribed by the market administrator, showing for each producer the information described in § 1079.73(e).

* * * * *

3. Section 1079.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1079.50 Class and component prices.

Subject to the provisions of § 1079.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.55.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Class III–A differential price.* The Class III–A differential price shall be the

difference between the current month's Class III and Class III–A prices (this price may be negative).

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section; and

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1079.60 and the undesignated center heading preceding it, the introductory text, and paragraphs (a), (f), and (g) are revised to read as follows:

Producer Price Differential

§ 1079.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1079.9(a) with respect to each of its pool plants, and each handler described in § 1079.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1079.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.43(a) and § 1079.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.43(a) and § 1079.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1079.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1079.43(a) and 1079.44(c); and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1079.43(d) and § 1079.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding steps of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract for a handler described in § 1079.9(c) the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1079.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e) to read as follows:

§ 1079.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1079.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1079.60 (a)(1), (a)(2), (a)(7), and (b) through (j) for all handlers; and

(2) Add values computed pursuant to § 1079.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of somatic cell adjustments;

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the "producer price differential."

7. Section 1079.62 is revised to read as follows:

§ 1079.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk and milk received from a handler described in § 1079.9(c); and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1079.71 is amended by revising paragraph (a)(2) and adding and reserving paragraph (b) to read as follows:

§ 1079.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1079.9(c) by the producer price differential as adjusted by § 1079.75. In the case of a handler described in § 1079.9(c), less the amount due from handlers pursuant to § 1079.73;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1079.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1079.9(c) by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk and milk received from handlers described in § 1079.9(c); and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1079.60(f) by the producer price differential as adjusted pursuant to § 1079.52 for the location of the plant from which received.

(b) [Reserved].

9. Sections 1079.73, 1079.74 and 1079.75 are revised to read as follows:

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(g) for the preceding month and adjusted pursuant to § 1079.75, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential adjusted pursuant to § 1079.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper authorized deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1079.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1079.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to paragraph (a) of this section next following receipt of the balance due from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative association is authorized to collect payment:

(1) On or before the last day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 18th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1079.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(g), applicable at the location of the receiving handler's plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price applicable at the transferee plant as computed pursuant to § 1079.62(g) and adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

§ 1079.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1079.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52.

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the producer price differential shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

10. Section 1079.76 is amended by removing the reference "§ 1079.71(a)(2)(ii)" in paragraph (b)(1)(iii) and adding in its place "§ 1079.71(a)(2)(v)" and revising paragraph (a)(4) and the last sentence of paragraph (b)(1)(ii) to read as follows:

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

Dated: October 23, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–26894 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD91

Tobacco; Tobacco Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt, without change, the interim rule published in the **Federal Register** on May 1, 1995, (60 FR 21036). The interim rule amended the regulations to require that persons seeking tobacco price support must be in compliance with the crop insurance requirements implemented by the Federal Crop Insurance Corporation (FCIC). The crop insurance requirement is mandated amendments to the Federal Crop Insurance Act (FCIA) enacted in the Federal Crop Insurance Reform Act of 1994 ("1994 Act").

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Gary W. Wheeler, Tobacco Marketing Specialist, United States Department of Agriculture, Consolidated Farm Service Agency, P.O. Box 2415, Washington, D.C., 20013–2415, telephone 202–720–7562.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V published at 48 FR 2915 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR Part 1464, the administrative appeal provisions set forth at 7 CFR Part 780 must be exhausted.

Paperwork Reduction Act

This final rule does not change the Consolidated Farm Service Agency information collection requirements that have been approved by OMB and assigned control number 0560–0058. FCIC information collection requirements for 0563–0003 have been modified and approved by OMB to reflect the program requirements imposed by the Federal Crop Insurance Reform Act of 1994.

Background and Discussion

Section 106 of the 1994 Act amended Section 508 of the FCIA (7 USC 1501 *et seq.*) to provide in 508 (b)(7) that individuals and entities will not be eligible for any price support or production adjustment program, the Conservation Reserve Program, or any benefit described in section 371 of the Consolidated Farm and Rural Development Act, unless that person or entity obtains at least the catastrophic level of insurance for each crop of economic significance grown on each farm in the county in which the producer has an interest, if insurance is available in the county for the crop. Section 508 (b)(7) specifies that the term "crop of economic significance" means a crop that has contributed, or is expected to contribute 10 percent or more of the total expected value of all crops grown by the producer.

Other provisions of Section 508 govern the establishment of catastrophic insurance by the FCIC and rules governing these requirements have been codified in 7 CFR Parts 400 and 402. Consequently, the aforementioned May 1, 1995, amended the tobacco program regulations in 7 CFR part 1464 to incorporate the requirements of the 1994 Act by reference to 7 CFR parts 400 and 402. No comments were received and it has been determined that the interim rule should be made final.

Accordingly, the interim rule published in the **Federal Register** (60 FR 21036, May 1, 1995) amending 7 CFR part 1464 is adopted as final without change.

Signed at Washington, D.C., on November 7, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–28047 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS No. 1682–94]

RIN 1115–AD72

Implementation of Field Office Structure Within the Immigration and Naturalization Service

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule updates existing Immigration and Naturalization Service (Service) field office structure due to the reorganization effective January 14, 1994. This regulation, which reflects the division of the Service into regions, districts, suboffices, and border patrol sectors, is necessary to ensure that the public has current and accurate up-to-date information on field office structures.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Taylor, Program Analyst, Office of Policy and Planning, Immigration and Naturalization Service, 425 I Street, NW., Room 6052, Washington, DC 20536, telephone (202) 514–3242.

SUPPLEMENTARY INFORMATION: The reorganization of the Immigration and Naturalization Service was approved by Attorney General Reno on January 14, 1994. The reorganization: (a) Created a clearer sense of mission by consolidating the Service's major functions and programs; (b) decentralized decision-making authority and delegated authority to persons geographically closer to the locations where work is being performed; (c) empowered field operational units to improve the delivery of services to customers; (d) reengineered major processes, such as those which develop and disseminate organizational policy and guidelines, and which are outdated approaches to handing records and information; and (e) developed a capability and commitment to plan for the future, set customer service standards, and established quantitative performance measures to enable the Service to evaluate its programs and service delivery.

The Service performs its functions through an extensive network of sites, located in proximity to the customers it serves and the locations where enforcement presence is most needed. The Nation is divided into three regions, each headed by a Regional Director, who directs all aspects of the Service's field operations within his/her assigned geographic areas of activity relating to the administration of immigration laws. The Regional Directors direct and supervise Regional operations staff, District Directors, and Chief Patrol Agents. There are 33 domestic Districts (consisting of Suboffices and Ports-of-Entry) allotted among the three Regions, each headed by a District Director reporting to a Regional Director. In addition, there are three overseas Districts (consisting of Suboffices) which report to the Director, International Affairs. As constituent elements of a field organization, domestic Districts represent the direct operating level of the Service's structure and have been delegated authority for the execution of program operations. Overseas Districts, reporting directly to national Headquarters, perform analogous program functions for immigration matters arising within their geographic areas of jurisdiction. There are 21 Border Patrol Sectors (consisting of Stations), within the three regions, each directed by a Chief Patrol Agent reporting to a Regional Director. The primary mission of the Border Patrol is

to control the national border; prevent illegal entry; apprehend and remove aliens who enter illegally; and prevent alien smuggling. Secondarily, the Border Patrol is responsible for the ancillary mission of interdicting illegal narcotics and contraband while conducting operations in support of its primary mission.

The Service's implementation of this rule as a final rule is based upon the exception found at 5 U.S.C. 553(b)(3)(B) and (d). This rule relates to agency management.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation deals with an internal reorganization within the Service, as discussed in the Supplemental section of this document.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "nonsignificant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 100

Organizations and functions (Government agencies).

Accordingly, part 100 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. Section 100.4 is revised to read as follows:

§ 100.4 Field Offices.

The territory within which officials of the Immigration and Naturalization Service are located is divided into regions, districts, suboffices, and border patrol sectors as follows:

(a) *Regional Offices.* The Eastern Regional Office, located in Burlington, Vermont, has jurisdiction over districts 2, 3, 4, 5, 6, 7, 8, 21, 22, 24, 25, 26, 27, and 28; border patrol sectors 1, 2, 3, 4, 5, 20, and 21. The Central Regional Office, located in Dallas, Texas, has jurisdiction over districts 9, 10, 11, 14, 15, 19, 20, 29, 30, 38, and 40; border patrol sectors 6, 7, 15, 16, 17, 18, and 19. The Western Regional Office, located in Laguna Niguel, California, has jurisdiction over districts 12, 13, 16, 17, 18, 31, 32, and 39; and border patrol sectors 8, 9, 10, 11, 12, 13, and 14.

(b) *District Offices.* The following districts, which are designated by numbers, have fixed headquarters and are divided as follows:

(1) [Reserved].

(2) *Boston, Massachusetts.* The district office in Boston, Massachusetts, has jurisdiction over the States of Connecticut, New Hampshire (except the Port-of-Entry at Pittsburg, New Hampshire), Massachusetts, and Rhode Island.

(3) *New York City, New York.* The district office in New York City, New York, has jurisdiction over the following counties in the State of New York: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester; also, over the United States immigration office located in Hamilton, Bermuda.

(4) *Philadelphia, Pennsylvania.* The district office in Philadelphia, Pennsylvania, has jurisdiction over the States of Pennsylvania, Delaware, and West Virginia.

(5) *Baltimore, Maryland.* The district office in Baltimore, Maryland, has jurisdiction over the State of Maryland, except Andrews Air Force Base Port-of-Entry.

(6) *Miami, Florida.* The district office in Miami, Florida, has jurisdiction over the State of Florida, and the United States immigration offices located in Freeport and Nassau, Bahamas.

(7) *Buffalo, New York.* The district office in Buffalo, New York, has jurisdiction over the State of New York except the part within the jurisdiction of District No. 3; also, over the United States immigration office at Toronto, Ontario, Canada; and the office located at Montreal, Quebec, Canada.

(8) *Detroit, Michigan.* The district office in Detroit, Michigan, has jurisdiction over the State of Michigan.

(9) *Chicago, Illinois.* The district office in Chicago, Illinois, has jurisdiction over the States of Illinois, Indiana, and Wisconsin.

(10) *St. Paul, Minnesota.* The district office located in Bloomington, Minnesota, has jurisdiction over the States of Minnesota, North Dakota, and South Dakota; also, over the United States immigration office in the Province of Manitoba, Canada.

(11) *Kansas City, Missouri.* The district office in Kansas City, Missouri, has jurisdiction over the States of Kansas and Missouri.

(12) *Seattle, Washington.* The district office in Seattle, Washington, has jurisdiction over the State of Washington and over the following counties in the State of Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone; also, over the United States immigration offices located in the Province of British Columbia, Canada.

(13) *San Francisco, California.* The district office in San Francisco, California, has jurisdiction over the following counties in the State of California: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

(14) *San Antonio, Texas.* The district office in San Antonio, Texas, has jurisdiction over the following counties in the State of Texas: Aransas, Atascosa, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Brazos, Brown, Burleson, Burnet, Caldwell, Calhoun, Coke, Coleman, Comal, Concho, Coryell, Crockett, De Witt, Dimmitt, Duval, Edwards, Falls, Fayette, Frio, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Irion, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kerr, Kimble, Kinney, Lampasas, La Salle, Lavaca, Lee, Live Oak, Llano, McCulloch, McLennan, McMullen, Mason, Maverick, Medina, Menard, Milam, Mills, Nueces, Reagan, Real, Refugio, Robertson, Runnels, San Patricio, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Williamson, Wilson, Zapata, Zavala.

(15) *El Paso, Texas.* The district office in El Paso, Texas, has jurisdiction over the State of New Mexico, and the following counties in Texas: Brewster, Crane, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler.

(16) *Los Angeles, California.* The district office in Los Angeles, California, has jurisdiction over the following counties in the State of California: Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

(17) *Honolulu, Hawaii.* The district office in Honolulu, Hawaii, has jurisdiction over the State of Hawaii, the Territory of Guam, and the Commonwealth of the Northern Mariana Islands.

(18) *Phoenix, Arizona.* The district office in Phoenix, Arizona, has jurisdiction over the States of Arizona and Nevada.

(19) *Denver, Colorado.* The district office in Denver, Colorado, has jurisdiction over the States of Colorado, Utah, and Wyoming.

(20) *Dallas, Texas.* The district office in Dallas, Texas, has jurisdiction over the State of Oklahoma, and the following counties in the State of Texas: Anderson, Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Bosque, Bowie, Briscoe, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Collingsworth, Comanche, Cooke, Cottle, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Gaines, Garza, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harison, Hartley, Haskett, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Leon, Limestone, Lipscomb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Moore, Morris, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Ranall, Red River, Roberts, Rockwall, Rusk, Scurry, Shackelford, Sherman, Smith, Somervell, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wheeler, Wichita, Willbarger, Wise, Wood, Yoakum, and Young.

(21) *Newark, New Jersey.* The district office in Newark, New Jersey, has jurisdiction over the State of New Jersey.

(22) *Portland, Maine.* The district office in Portland, Maine, has jurisdiction over the States of Maine, Vermont, and the Port-of-Entry at Pittsburg, New Hampshire.

(23) [Reserved].

(24) *Cleveland, Ohio.* The district office in Cleveland, Ohio, has jurisdiction over the State of Ohio.

(25) *Washington, DC.* The district office located in Arlington, Virginia, has jurisdiction over the District of Columbia, the State of Virginia, and the Port-of-Entry at Andrews Air Force Base, Maryland.

(26) *Atlanta, Georgia.* The district office of Atlanta, Georgia, has jurisdiction over the States of Georgia, North Carolina, South Carolina, and Alabama.

(27) *San Juan, Puerto Rico.* The district office in San Juan, Puerto Rico, has jurisdiction over the Commonwealth of Puerto Rico, and the Virgin Islands of the United States and Great Britain.

(28) *New Orleans, Louisiana.* The district office in New Orleans, Louisiana, has jurisdiction over the States of Louisiana, Arkansas, Mississippi, Tennessee, and Kentucky.

(29) *Omaha, Nebraska.* The district office in Omaha, Nebraska, has jurisdiction over the States of Iowa and Nebraska.

(30) *Helena, Montana.* The district office in Helena, Montana, has jurisdiction over the State of Montana and over the following counties in the State of Idaho: Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Clark, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, Valley, and Washington; also, over the United States immigration offices located in Calgary and Edmonton, Alberta, Canada.

(31) *Portland, Oregon.* The district office in Portland, Oregon, has jurisdiction over the State of Oregon.

(32) *Anchorage, Alaska.* The district office in Anchorage, Alaska, has jurisdiction over the State of Alaska.

(33) *Bangkok, Thailand.* The district office in Bangkok has jurisdiction over Hong Kong, B.C.C. and adjacent islands, Taiwan, the Philippines, Australia, New Zealand; all the continental Asia lying to the east of the western border of Afghanistan and eastern borders of Pakistan and India; Japan, Korea, Okinawa, and all other countries in the Pacific area.

(34) [Reserved].

(35) *Mexico City, Mexico.* The district office in Mexico City has jurisdiction over Mexico, Central America, South America, Caribbean Islands, and Santo Domingo, Dominican Republic, except for those specifically delegated to the districts of Miami, Florida, and San Juan, Puerto Rico.

(36) [Reserved].

(37) *Rome, Italy.* The district office in Rome, Italy, has jurisdiction over Europe; Africa; the countries of Asia lying to the west and north of the western and northern borders, respectively, of Afghanistan, People's Republic of China, and Mongolian People's Republic; plus the countries of India and Pakistan.

(38) *Houston, Texas.* The district office in Houston, Texas, has jurisdiction over the following counties in the State of Texas: Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Walker, Waller, Washington, and Wharton.

(39) *San Diego, California.* The district office in San Diego, California, has jurisdiction over the following counties in the State of California: Imperial and San Diego.

(40) *Harlingen, Texas.* The district office in Harlingen, Texas, has jurisdiction over the following counties in the State of Texas: Brooks, Cameron, Hidalgo, Kenedy, Kleberg, Starr, and Willacy.

(c) *Suboffices.* The following offices, in addition to the facilities maintained at Class A Ports-of-Entry listed in paragraph (c)(2) of this section, indicated by asterisk, are designated as suboffices:

(1) *Interior locations.*

Agana, Guam
Albany, NY
Albuquerque, NM
Charlotte, NC
Charlotte Amalie, St. Thomas, VI
Cincinnati, OH
Fresno, CA
Hartford, CT
Indianapolis, IN
Jacksonville, FL
Las Vegas, NV
Louisville, KY
Memphis, TN
Milwaukee, WI
Norfolk, VA
Oklahoma City, OK
Orlando, FL
Pittsburgh, PA
Providence, RI
Reno, NV
Sacramento, CA
Salt Lake City, UT
San Jose, CA
Spokane, WA
St. Albans, VT
St. Louis, MO
Tampa, FL
Tucson, AZ

(2) *Ports-of-Entry for aliens arriving by vessel or by land transportation.* Subject to the limitations prescribed in this paragraph, the following places are hereby designated as Ports-of-Entry for aliens arriving by any means of travel other than aircraft. The designation of such a Port-of-Entry may be withdrawn whenever, in the judgment of the Commissioner, such action is warranted. The ports are listed according to location by districts and are designated either Class A, B, or C. Class A means that the port is a designated Port-of-Entry for all aliens. Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are lawfully in possession of valid alien registration receipt cards or valid non-resident aliens' border-crossing identification cards or are admissible without documents under the documentary waivers contained in part 212 of this chapter. Class C means that the port is a designated Port-of-Entry only for aliens who are arriving in the United States as crewmen as that term is defined in section 101(a)(10) of the Act with respect to vessels.

District No. 1—[Reserved]

District No. 2—Boston, Massachusetts

Class A

Boston, MA (the port of Boston includes, among others, the port facilities at Beverly, Braintree, Chelsea, Everett, Hingham, Lynn, Manchester, Marblehead, Milton, Quincy, Revere, Salem, Saugus, and Weymouth, MA)
Gloucester, MA
Hartford, CT (the port at Hartford includes, among others, the port facilities at Bridgeport, Groton, New Haven, and New London, CT)
Providence, RI (the port of Providence includes, among others, the port facilities at Davisville, Melville, Newport, Portsmouth, Quonset Point, Saunderstown, Tiverton, and Warwick, RI; and at Fall River, New Bedford, and Somerset, MA)

Class C

Newburyport, MA
Plymouth, MA
Portsmouth, NH
Provincetown, MA
Sandwich, MA
Woods Hole, MA

District No. 3—New York, New York

Class A

New York, NY (the port of New York includes, among others, the port facilities at Bronx, Brooklyn, Buchanan, Manhattan, Montauk, Northport, Port Jefferson, Queens, Riverhead, Poughkeepsie, the Stapleton Anchorage-Staten Island, Staten Island, Stoney Point, and Yonkers, NY, as well as the East Side Passenger Terminal in Manhattan)

District No. 4—Philadelphia, Pennsylvania

Class A

Erie Seaport, PA
Philadelphia, PA (the port of Philadelphia includes, among others, the port facilities at Delaware City, Lewes, New Castle, and Wilmington, DE; and at Chester, Essington, Fort Mifflin, Marcus Hook, and Morrisville, PA)
Pittsburgh, PA

District No. 5—Baltimore, Maryland

Class A

Baltimore, MD
Patuxent River, MD

Class C

Piney Point, MD
Salisbury, MD

District No. 6—Miami, Florida

Class A

Boca Grande, FL
Fernandina, FL
Fort Lauderdale/Port Everglades, FL, Seaport
Fort Pierce, FL
*Jacksonville, FL
Key West, FL
Miami Marine Unit, FL
Panama City, FL
Pensacola, FL
Port Canaveral, FL
St. Augustine, FL
St. Petersburg, FL
*Tampa, FL (includes Fort Myers)
West Palm Beach, FL

Class C

Manatee, FL
Port Dania, FL
Port St. Joe, FL

District No. 7—Buffalo, New York

Class A

Albany, NY
Alexandria Bay, NY
Buffalo, NY
Cape Vincent, NY
Champlain, NY
Chateaugay, NY
Ft. Covington, NY
Massena, NY
Mooers, NY
Niagara Falls, NY (the port of Niagara Falls includes, among others, the port facilities at Lewiston Bridge, Rainbow Bridge, and Whirlpool Bridge, NY)
Ogdensburg, NY
Peace Bridge, NY
Rochester, NY
Rouses Point, NY
Thousand Islands Bridge, NY
Trout River, NY

Class B

Cannons Corner, NY
Churubusco, NY
Jamison's Line, NY

Class C

Oswego, NY

District No. 8—Detroit, Michigan

Class A

Algonac, MI
Detroit, MI, Detroit and Canada Tunnel
Detroit, MI, Detroit International Bridge (Ambassador Bridge)
Grosse Isle, MI
Isle Royale, MI
Marine City, MI
Port Huron, MI
Sault Ste. Marie, MI

Class B

Alpena, MI
Detour, MI
Grand Rapids, MI
Mackinac Island, MI
Rogers City, MI

Class C

Alpena, MI
Baraga, MI
Bay City, MI
Cheboygan, MI
Detour, MI
Escanaba, MI
Grand Haven, MI
Holland, MI
Houghton, MI
Ludington, MI
Mackinac Island, MI
Manistee, MI
Marquette, MI
Menominee, MI
Monroe, MI
Munising, MI
Muskegon, MI
Pontiac, MI
Port Dolomite, MI
Port Inland, MI
Rogers City (Calcite), MI
Saginaw, MI
South Haven, MI

District No. 9—Chicago, Illinois

Class A

Algoma, WI
Bayfield, WI
Chicago, IL
Green Bay, WI
*Milwaukee, WI

Class C

Ashland, WI
East Chicago, IL
Gary, IN
Kenosha, WI
Manitowoc, WI
Marinette, WI
Michigan City, IN
Racine, WI
Sheboygan, WI
Sturgeon Bay, WI

District No. 10—St. Paul, Minnesota

Class A

Ambrose, ND
Antler, ND
Baudette, MN
Carbury, ND
Duluth, MN (the port of Duluth includes, among others, the port facilities at Superior, WI)
Dunseith, ND
Ely, MN
Fortuna, ND

Grand Portage, MN
Hannah, ND
Hansboro, ND
International Falls, MN
Lancaster, MN
Maida, ND
Neche, ND
Noonan, ND
Northgate, ND
Noyes, MN
Pembina, ND
Pine Creek, MN
Portal, ND
Ranier, MN
Roseau, MN
Sarles, ND
Sherwood, ND
St. John, ND
Walhalla, ND
Warroad, MN
Westhope, ND

Class B

Crane Lake, MN
Oak Island, MN

Class C

Grand Marais, MN
Silver Bay, MN
Taconite Harbor, MN
Two Harbors, MN

District No. 11—Kansas City, Missouri

Class A

Kansas City, MO

Class B

Wichita, KS

District No. 12—Seattle, Washington

Class A

Aberdeen, WA (the port of Aberdeen includes, among others, the port facilities at Raymond and South Bend, WA)
Anacortes, WA
Bellingham, WA
Blaine-Pacific Highway, WA
Blaine-Peach Arch, WA
Boundary, WA
Colville, WA
Danville, WA
Eastport, ID
Ferry, WA
Friday Harbor, WA (the port of Friday Harbor includes, among others, the port facilities at Roche Harbor, WA)
Frontier, WA
Kalama, WA
Laurier, WA
Longview, WA
Lynden, WA
Metaline Falls, WA
Neah Bay, WA
Olympia, WA
Oroville, WA
Point Roberts, WA
Port Angeles, WA
Port Townsend, WA
Porthill, WA
Seattle, WA (the port of Seattle includes, among others, the port facilities at Bangor, Blake Island, Bremerton, Eagle Harbor, Edmonds, Everett, Holmes Harbor, Houghton, Kennydale, Keyport, Kingston, Manchester, Mukilteo, Orchard Point, Point Wells, Port Gamble, Port Ludlow, Port Orchard, Poulsbo, Shuffleton, and Winslow, WA)
Sumas, WA
Tacoma, WA (the port of Tacoma includes, among others, the port facilities at Dupont, WA)
Vancouver, WA
Yakima, WA

Class B

Nighthawk, WA

District No. 13—San Francisco, California

Class A

San Francisco, CA (the port of San Francisco includes, among others, the port facilities at Antioch, Benicia, Martinez, Oakland, Pittsburgh, Port Chicago Concord Naval Weapon Station, Redwood City, Richmond, Sacramento, San Pablo Bay, and Stockton, CA)

Class C

Eureka, CA

District No. 14—San Antonio, Texas

Class A

Amistad Dam, TX
Corpus Christi, TX (the port of Corpus Christi includes, among others, the port facilities at Harbor Island, Ingeleside, and Port Lavaca-Point Comfort, TX)
Del Rio, TX
Eagle Pass, TX
Laredo, TX (the port of Laredo includes, among others, the port facilities at Colombia Bridge, Convent Bridge, and Lincoln-Juarez Bridge, TX)

District No. 15—El Paso, Texas

Class A

Columbus, NM
El Paso, TX (the port of El Paso includes, among others, the port facilities at Bridge of the Americas, Paso Del Norte Bridge, and Ysleta Bridge, TX)
Fabens, TX
Fort Hancock, TX
Presidio, TX
Santa Teresa, NM

District No. 16—Los Angeles, California

Class A

Los Angeles, CA (the port of Los Angeles includes, among others, the port facilities at Long Beach, Ontario, Port Hueneme, San Pedro, and Ventura, CA)
San Luis Obispo, CA (the port of San Luis Obispo includes, among others, the port facilities at Avila, Estero Bay, El Capitan, Elwood, Gaviota, Morro Bay, and Santa Barbara, CA)

District No. 17—Honolulu, Hawaii

Class A

*Agana, Guam, M.I. (including the port facilities at Apra Harbor, Guam)
Honolulu, HI, Seaport (including all port facilities on the Island of Oahu)

Class C

Hilo, HI
Kahului, HI, Kahului Harbor
Nawiliwilli, HI, Nawiliwilli Harbor
Port Allen, HI, Port Allen Harbor

District No. 18—Phoenix, Arizona

Class A

Douglas, AZ
Lukeville, AZ
Mariposa, AZ
Morley Gate, AZ
Naco, AZ
Nogales, AZ
Sasabe, AZ
San Luis, AZ

District No. 19—Denver, Colorado

Class A

Denver, CO
Grand Junction, CO
Pueblo, CO
Salt Lake City, UT

District No. 20—[Reserved]

District No. 21—Newark, New Jersey

Class A

Camden, NJ (the port of Camden includes, among others, the port facilities at Artificial Island, Billingsport, Burlington, Cape May, Deepwater Point, Fisher's Point, Gibbstown, Gloucester City, Paulsboro, Salem, and Trenton, NJ)
Newark, NJ (the port of Newark includes, among others, the port facilities at Bayonne, Carteret, Edgewater, Elizabeth, Jersey City, Leonardo, Linden, Perth Amboy, Port Newark, and Sewaren, NJ)

District No. 22—Portland, Maine

Class A

Alburg, VT
Alburg Springs, VT
Bangor, ME (the port of Bangor includes, among others, the port facilities at Bar Harbor, Belfast, Brewer, Bucksport Harbor, Prospect Harbor, Sandypoint, Seal Harbor, Searsport, and South West Harbor, ME)
Beebe Plain, VT
Beecher Falls, VT
Bridgewater, ME
Calais, ME (includes Ferry Point and Milltown Bridges)
Canaan, VT
Coburn Gore, ME
Derby Line, VT
Eastport, ME
East Richford, VT
Fort Fairfield, ME
Fort Kent, ME
Hamlin, ME
Highgate Springs, VT
Houlton, ME
Jackman, ME
Limestone, ME
Lubec, ME
Madawaska, ME
Morses Line, VT
North Troy, VT
Norton, VT
Pittsburgh, NH
Portland, ME
Richford, VT (includes the Pinnacle Port-of-Entry)
* St. Albans, VT
Van Buren, ME
Vanceboro, ME
West Berkshire, VT

Class B

Daaquam, ME
Easton, ME
Eastcourt, ME
Forest City, ME
Monticello, ME
Orient, ME
Robinston, ME
St. Aurelie, ME
St. Pamphile, ME

Class C

Bath, ME
Boothbay Harbor, ME
Kittery, ME
Rockland, ME
Wiscasset, ME

District No. 23—[Reserved]

District No. 24—Cleveland, Ohio

Class A

Cincinnati, OH
Cleveland, OH
Columbus, OH
Put-In-Bay, OH
Sandusky, OH
Toledo, OH

Class C

Ashtabula, OH
Conneaut, OH
Fairport, OH
Huron, OH
Lorain, OH
Marblehead, OH

District No. 25—Washington, DC

Class A

Hopewell, VA
* Norfolk, VA—(the port of Norfolk includes, among others, the port facilities at Fort Monroe and Newport News, VA)
Richmond, VA
Washington, DC (includes the port facilities at Alexandria, VA)
Yorktown, VA

District No. 26—Atlanta, Georgia

Class A

Charleston, SC (the port of Charleston includes, among others, the port facilities at Georgetown and Port Royal, SC)
Mobile, AL
Savannah, GA (the port of Savannah includes, among others, the port facilities at Brunswick and St. Mary's Seaport, GA)
Wilmington, NC (the port of Wilmington includes the port facilities at Morehead City, NC)

District No. 27—San Juan, Puerto Rico

Class A

Aguadilla, PR
* Charlotte Amalie, St. Thomas, VI
Christiansted, St. Croix, VI
Cruz Bay, St. John, VI
Ensenada, PR
Federiksted, St. Croix, VI
Fajardo, PR
Humacao, PR
Jobos, PR
Mayaguez, PR
Ponce, PR
Red Hook, St. Thomas, VI

Class B

Coral Bay, St. John, VI

District No. 28—New Orleans, Louisiana

Class A

Baton Rouge, LA
Gulfport, MS
Lake Charles, LA
Memphis, TN
Nashville, TN
New Orleans, LA (the port of New Orleans includes, among others, the port facilities at Avondale, Bell Chasse, Braithwaite, Burnside, Chalmette, Destrahan, Geismar, Gramercy, Gretna, Harvey, Marrero, Norco, Port Sulphur, St. Rose, and Westwego, LA)

Class C

Morgan City, LA
Pascagoula, MS

District No. 29—Omaha, Nebraska

Class A

Omaha, NE
Des Moines, IA

District No. 30—Helena, Montana

Class A

Chief Mountain, MT (May–October)
Del Bonita, MT
Morgan, MT
Opheim, MT
Peigan, MT
Raymond, MT
Roosville, MT
Scobey, MT
Sweetgrass, MT
Turner, MT
Whitetail, MT
Wildhorse, MT
Willow Creek, MT

Class B

Goat Haunt, MT
Trail Creek, MT
Whitlash, MT

District No. 31—Portland, Oregon

Class A

Astoria, OR (the port of Astoria includes, among others, the port facilities at Bradwood, Pacific City, Taft, Tilliamook, (including Bay City and Garibaldi), Warrenton, Wauna, and Westport, OR)
Coos Bay, OR (the port of Coos Bay includes, among others, the port facilities at Bandon, Brookings, Depoe Bay, Florence, Frankfort, Gold Beach, Newport (including Toledo), Port Orford, Reedsport, Waldport, and Yachats, OR)
Portland, OR (the port of Portland includes, among others, the port facilities at Beaver, Columbia City, Prescott, Rainier, and St. Helens, OR)

District No. 32—Anchorage, Alaska

Class A

Alcan, AK
Anchorage, AK (the port of Anchorage includes, among others (for out of port inspections only), Afognak, Barrow, Cold Bay, Cordova, Homer, Kodiak, Kotzebue, Nikiski, Seward, Valdez, and Yakutat, AK)
Dalton's Cache, AK
Dutch Harbor, AK
Fairbanks, AK
Gambell, AK
Juneau, AK
Ketchikan, AK
Nome, AK
Poker Creek, AK
Skagway, AK

Class B

Eagle, AK
Hyder, AK

Class C

Valdez, AK

District No. 38—Houston, Texas

Class A

Galveston, TX (the port of Galveston includes, among others, the port facilities at Freeport, Port Bolivar, and Texas City, TX)
Houston, TX (the port of Houston includes, among others, the port facilities at Baytown, TX)
Port Arthur, TX (the port of Port Arthur includes, among others, the port facilities at Beaumont, Orange, and Sabine, TX)

District No. 39—San Diego, California

Class A

Andrade, CA
Calexico, CA
Otay Mesa, CA
San Ysidro, CA
Tecate, CA

District No. 40—Harlingen, Texas

Class A

Brownsville, TX (the port of Brownsville includes, among others, the port facilities at Brownsville Seaport, Port Isabel, Padre Island and Harlingen, TX, Ship Channel)
Brownsville, TX, Gateway Bridge and Brownsville/Matamoros Bridge
Falcon Heights, TX
Hidalgo, TX
Los Ebanos, TX
Los Indios, TX
Pharr, TX
Progreso, TX
Rio Grande City, TX
Roma, TX

(3) *Ports-of-Entry for aliens arriving by aircraft.* In addition to the following international airports which are hereby designated as Ports-of-Entry for aliens arriving by aircraft, other places where permission for certain aircraft to land officially has been given and places where emergency or forced landings are made under part 239 of this chapter shall be regarded as designated for the entry of aliens arriving by such aircraft:

District No. 1—[Reserved]

District No. 2—Boston, Massachusetts

Boston, MA, Logan International Airport
Manchester, NH, Grenier Airport
Portsmouth, NH, Pease Air Force Base
Warwick, RI, T. F. Greene Airport
Windsor Locks, CT, Bradley International Airport

District No. 3—New York City, New York

Newburgh, NY, Stewart International Airport
Queens, NY, LaGuardia Airport
Westchester, NY, Westchester County Airport

District No. 4—Philadelphia, Pennsylvania

Charlestown, WV, Kanahwa Airport
Dover, DE, Dover Air Force Base
Erie, PA, Erie International Airport (USCS)
Harrisburg, PA, Harrisburg International Airport
Philadelphia, PA, Philadelphia International Airport
Pittsburgh, PA, Pittsburgh International Airport

District No. 5—Baltimore, Maryland

Baltimore, MD, Baltimore-Washington International Airport

District No. 6—Miami, Florida

Daytona, FL, Daytona International Airport, FL
Fort Lauderdale, FL, Executive Airport
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Airport
Fort Myers, Southwest Regional International Airport
Freeport, Bahamas, Freeport International Airport
Jacksonville, FL, Jacksonville International Airport
Key West, FL, Key West International Airport
Melbourne, FL, Melbourne International Airport
Miami, FL, Chalks Flying Service Seaplane Base
Miami, FL, Miami International Airport
Nassau, Bahamas, Nassau International Airport
Orlando, FL, Orlando International Airport
Palm Beach, FL, Palm Beach International Airport
Paradise Island, Bahamas, Paradise Island Airport
Sanford, FL, Sanford International Airport
Sarasota, FL, Sarasota Airport
St. Petersburg, FL, St. Petersburg/Clearwater International Airport
Tampa, FL, Tampa International Airport

District No. 7—Buffalo, New York

Albany, NY, Albany County Airport
Buffalo, NY, Buffalo Airport
Massena, NY, Massena Airport
Niagara Falls, NY, Niagara Falls International Airport
Ogdensburg, NY, Ogdensburg Municipal Airport
Rochester, NY, Rochester Airport
Syracuse, NY, Hancock International Airport
Watertown, NY, Watertown Municipal Airport

District No. 8—Detroit, Michigan

Battle Creek, MI, Battle Creek Airport
Chippewa, MI, Chippewa County International Airport
Detroit, MI, Detroit City Airport
Detroit, MI, Detroit Metropolitan Wayne County Airport
Port Huron, MI, St. Clair County International Airport
Sault Ste. Marie, MI, Sault Ste. Marie Airport

District No. 9—Chicago, Illinois

Chicago, IL, Chicago Midway Airport
Chicago, IL, Chicago O'Hare International Airport
Indianapolis, IN, Indianapolis International Airport
Mitchell, WI, Mitchell International Airport

District No. 10—St. Paul, Minnesota

Baudette, MN, Baudette International Airport
Duluth, MN, Duluth International Airport
Duluth, MN, Sky Harbor Airport
Grand Forks, ND, Grand Forks International Airport
International Falls, MN, Falls International Airport
Minneapolis/St. Paul, MN, Minneapolis/St. Paul International Airport
Minot, ND, Minot International Airport
Pembina, ND, Port Pembina Airport
Portal, ND, Portal Airport
Ranier, MN, International Seaplane Base
Warroad, MN, Warroad International Airport
Williston, ND, Sioulin Field (Municipal)

District No. 11—Kansas City, Missouri

Kansas City, MO, Kansas City International Airport
Springfield, MO, Springfield Regional Airport
St. Louis, MO, St. Louis Lambert International Airport
St. Louis, MO, Spirit of St. Louis Airport

District No. 12—Seattle, Washington

Bellingham, WA, Bellingham Airport
Friday Harbor, WA, Friday Harbor
McChord, WA, McChord Air Force Base
Oroville, WA, Dorothy Scott Municipal Airport
Oroville, WA, Dorothy Scott Seaplane Base
Point Roberts, WA, Point Roberts Airport
Port Townsend, WA, Jefferson County International Airport
SEA–TAC, WA, SEA–TAC International Airport
Seattle, WA, Boeing Municipal Air Field
Seattle, WA, Lake Union
Spokane, WA, Felts Field
Spokane, WA, Spokane International Airport

District No. 13—San Francisco, California

Alameda, CA, Alemeda Naval Air Station
Oakland, CA, Oakland International Airport
Sacramento, CA, Beale Air Force Base
San Francisco, CA, San Francisco International Airport
San Jose, CA, San Jose International Airport
Travis, CA, Travis Air Force Base

District No. 14—San Antonio, Texas

Austin, TX, Austin International Airport
Corpus Christi, TX, Corpus Christi Airport
Del Rio, TX, Del Rio International Airport
Laredo, TX, Laredo International Airport
San Antonio, TX, San Antonio International Airport

District No. 15—El Paso, Texas

Albuquerque, NM, Albuquerque International Airport
El Paso, TX, International Airport
Presidio, TX, Presidio Airport
Santa Teresa, NM, Santa Teresa Airport

District No. 16—Los Angeles, California

Los Angeles, CA, Los Angeles International Airport
Ontario, CA, Ontario International Airport

District No. 17—Honolulu, Hawaii

Agana, Guam, Guam International Airport Terminal
Honolulu, Hi, Honolulu International Airport
Honolulu, HI, Hickam Air Force Base

District No. 18—Phoenix, Arizona

Douglas, AZ, Bisbee-Douglas Airport
Las Vegas, NV, McCarren International Airport
Nogales, AZ, Nogales International Airport
Phoenix, AZ, Phoenix Sky Harbor International Airport
Reno, NV, Reno Carron International Airport
Tucson, AZ, Tucson International Airport
Yuma, AZ, Yuma International Airport

District No. 19—Denver, Colorado

Colorado Springs, CO, Colorado Springs Airport
Denver, CO, Denver International Airport
Salt Lake City, UT, Salt Lake City Airport

District No. 20—Dallas, Texas

Dallas, TX, Dallas-Fort Worth International Airport
Oklahoma City, OK, Oklahoma City Airport (includes Altus and Tinker AFBs)

District No. 21—Newark, New Jersey

Atlantic City, NJ, Atlantic City International Airport
Lakehurst, NJ, Lakehurst Naval Air Station
Morristown, NJ, Morristown Airport
Newark, NJ, Newark International Airport
Newark, NJ, Signature Airport
Teterboro, NJ, Teterboro Airport
Wrightstown, NJ, McGuire Air Force Base

District No. 22—Portland, Maine

Bangor, ME, Bangor International Airport
Burlington, VT, Burlington International Airport
Caribou, ME, Caribou Municipal Airport
Highgate Springs, VT, Franklin County Regional Airport
Newport, VT, Newport State Airport

District No. 23—[Reserved]

District No. 24—Cleveland, Ohio

Akron, OH, Municipal Airport
Cincinnati, OH, Cincinnati International Airport
Cleveland, OH, Cleveland Hopkins Airport
Columbus, OH, Port Columbus International Airport
Sandusky, OH, Griffing/Sandusky Airport

District No. 25—Washington, D.C.

Camp Springs, MD, Andrews Air Force Base
Chantilly, VA, Washington Dulles international Airport
Winchester, VA, Winchester Airport

District No. 26—Atlanta, Georgia

Atlanta, GA, Atlanta Hartsfield International Airport
Charleston, SC, Charleston International Airport
Charleston, SC, Charleston Air Force Base
Charlotte, NC, Charlotte International Airport
Raleigh, NC, Raleigh-Durham International Airport

Savannah, GA, Savannah International Airport

District No. 27—San Juan, Puerto Rico

San Juan, PR, San Juan International Airport

District No. 28—New Orleans, Louisiana

Louisville, KY, Louisville International Airport
New Orleans, LA, New Orleans International Airport
Memphis, TN, Memphis International Airport
Nashville, TN, Nashville International Airport

District No. 29—Omaha, Nebraska

Des Moines, IA, Des Moines International Airport
Omaha, NE, Eppley International Airport
Omaha, NE, Offutt Air Force Base

District No. 30—Helena, Montana

Billings, MT, Billings Airport
Boise, ID, Boise Airport
Cut Bank, MT, Cut Bank Airport
Glasgow, MT, Glasgow International Airport
Great Falls, MT, Great Falls International Airport
Havre, MT, Havre-Hill County Airport
Helena, MT, Helena Airport
Kalispel, MT, Kalispel Airport
Missoula, MT, Missoula Airport

District No. 31—Portland, Oregon

Medford, OR, Jackson County Airport
Portland, OR, Portland International Airport

District No. 32—Anchorage, Alaska

Anchorage, AK, Anchorage International Airport
Juneau, AK, Juneau Airport (Seaplane Base Only)
Juneau, AK, Juneau Municipal Airport
Ketchikan, AK, Ketchikan Airport
Wrangell, AK, Wrangell Seaplane Base

District No. 38—Houston, Texas

Galveston, TX, Galveston Airport
Houston, TX, Ellington Field
Houston, TX, Hobby Airport
Houston, TX, Houston Intercontinental Airport

District No. 39—San Diego, California

Calexico, CA, Calexico International Airport
San Diego, CA, San Diego International Airport
San Diego, CA, San Diego Municipal Airport (Lindbergh Field)

District No. 40—Harlingen, Texas

Brownsville, TX, Brownsville/South Padre Island International Airport
Harlingen, TX, Valley International Airport
McAllen, TX, McAllen Miller International Airport

(4) *Immigration offices in foreign countries:*

Athens, Greece
Bangkok, Thailand
Calgary, Alberta, Canada
Ciudad Juarez, Mexico
Dublin, Ireland
Edmonton, Alberta, Canada
Frankfurt, Germany
Freeport, Bahamas
Hamilton, Bermuda
Havana, Cuba
Hong Kong, B.C.C.
Karachi, Pakistan
London, United Kingdom
Manila, Philippines
Mexico City, Mexico
Monterrey, Mexico
Montreal, Quebec, Canada
Moscow, Russia
Nairobi, Kenya
Nassau, Bahamas
New Delhi, India
Oranjestad, Aruba
Ottawa, Ontario, Canada
Rome, Italy
Santo Domingo, Dominican Republic
Seoul, Korea
Shannon, Ireland
Singapore, Republic of Singapore
Tegucigalpa, Honduras
Tijuana, Mexico
Toronto, Ontario, Canada
Vancouver, British Columbia, Canada
Victoria, British Columbia, Canada
Vienna, Austria
Winnipeg, Manitoba, Canada

(d) *Border patrol sectors.* Border Patrol Sector Headquarters and Stations are situated at the following locations:

Sector No. 1—Houlton, Maine

Calais, ME
Fort Fairfield, ME
Houlton, ME
Jackman, ME
Rangeley, ME
Van Buren, ME

Sector No. 2—Swanton, Vermont

Beecher Falls, VT
Burke, NY
Champlain, NY
Massena, NY
Newport, VT
Ogdensburg, NY
Richford, VT
Swanton, VT

Sector No. 3—Ramey, Puerto Rico

Ramey, Puerto Rico

Sector No. 4—Buffalo, New York

Buffalo, NY
Fulton, NY
Niagara Falls, NY
Watertown, NY

Sector No. 5—Detroit, Michigan

Detroit, MI
Grand Rapids, MI
Port Huron, MI
Sault Ste. Marie, MI
Trenton, MI

Sector No. 6—Grand Forks, North Dakota

Bottineau, ND
Duluth, MN
Grand Forks, ND
Grand Marais, MN
International Falls, MN
Pembina, ND
Portal, ND
Warroad, MN

Sector No. 7—Havre, Montana

Billings, MT
Havre, MT
Malta, MT
Plentywood, MT
Scobey, MT
Shelby, MT
St. Mary, MT
Sweetgrass, MT
Twin Falls, ID

Sector No. 8—Spokane, Washington

Bonners Ferry, ID
Colville, WA
Eureka, MT
Oroville, WA
Pasco, WA
Spokane, WA
Wenatchee, WA
Whitefish, MT

Sector No. 9—Blaine, Washington

Bellingham, WA
Blaine, WA
Lynden, WA
Port Angeles, WA
Roseburg, OR

Sector No. 10—Livermore, California

Bakersfield, CA
Fresno, CA
Livermore, CA
Oxnard, CA
Sacramento, CA
Salinas, CA
San Luis Obispo, CA
Stockton, CA

Sector No. 11—San Diego, California

Brown Field, CA
Campo, CA (Boulevard, CA)
Chula Vista, CA
El Cajon, CA (San Marcos and Julian, CA)
Imperial Beach, CA
San Clemente, CA
Temecula, CA

Sector No. 12—El Centro, California

Calexico, CA
El Centro, CA
Indio, CA
Riverside, CA

Sector No. 13—Yuma, Arizona

Blythe, CA
Boulder City, NV
Wellton, AZ
Yuma, AZ

Sector No. 14—Tucson, Arizona

Ajo, AZ
Casa Grande, AZ
Douglas, AZ
Naco, AZ
Nogales, AZ
Phoenix, AZ
Sonita, AZ
Tucson, AZ
Willcox, AZ

Sector No. 15—El Paso, Texas

Alamogordo, NM
Albuquerque, NM
Carlsbad, NM
Deming, NM
El Paso, TX
Fabens, TX
Fort Hancock, TX
Las Cruces, NM,
Lordsburg, NM
Truth or Consequences, NM
Ysleta, TX

Sector No. 16—Marfa, Texas

Alpine, TX
Amarillo, TX
Fort Stockton, TX
Lubbock, TX
Marfa, TX
Midland, TX
Pecos, TX
Presidio, TX
Sanderson, TX
Sierra Blanca, TX
Van Horn, TX

Sector No. 17—Del Rio, Texas

Abilene, TX
Brackettville, TX
Carrizo Springs, TX
Comstock, TX
Del Rio, TX
Eagle Pass, TX
Llano, TX
Rocksprings, TX
San Angelo, TX
Uvalde, TX

Sector No. 18—Laredo, Texas

Cotulla, TX
Dallas, TX
Freer, TX
Hebbronville, TX
Laredo North, TX
Laredo South, TX
San Antonio, TX
Zapata, TX

Sector No. 19—McAllen, Texas

Brownsville, TX
Corpus Christi, TX
Falfurrias, TX
Harlingen, TX
Kingsville, TX
McAllen, TX
Mercedes, TX
Port Isabel, TX
Rio Grande City, TX

Sector No. 20—New Orleans, Louisiana

Baton Rouge, LA
Gulfport, MS
Lake Charles, LA
Little Rock, AR
Miami, OK
Mobile, AL
New Orleans, LA

Sector No. 21—Miami, Florida

Jacksonville, FL
Orlando, FL
Pembroke Pines, FL
Tampa, FL
West Palm Beach, FL

(e) *Service centers.* Service centers are situated at the following locations:

Texas Service Center, Dallas, Texas
Nebraska Service Center, Lincoln, Nebraska
California Service Center, Laguna Niguel, California
Vermont Service Center, St. Albans, Vermont

(f) *Asylum offices.* (1) *Newark, New Jersey.* The Asylum Office in Lyndhurst has jurisdiction over the State of New York within the boroughs of Manhattan and the Bronx in the City of New York; the Albany Suboffice; jurisdiction of the Buffalo District Office; the State of Pennsylvania, excluding the jurisdiction of the Pittsburgh Suboffice; and the States of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont.

(2) *New York City, New York.* The Asylum Office in New York has jurisdiction over the State of New York excluding the jurisdiction of the Albany Suboffice, the Buffalo District Office and the boroughs of Manhattan and the Bronx.

(3) *Arlington, Virginia.* The Asylum Office in Arlington has jurisdiction over the District of Columbia, the western portion of the State of Pennsylvania currently within the jurisdiction of the Pittsburgh Suboffice, and the States of Maryland, Virginia, West Virginia, North Carolina, Georgia, Alabama, and South Carolina.

(4) *Miami, Florida.* The Asylum Office in Miami has jurisdiction over the State of Florida, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(5) *Houston, Texas.* The Asylum Office in Houston has jurisdiction over the States of Louisiana, Arkansas, Mississippi, Tennessee, Texas, Oklahoma, New Mexico, Colorado, Utah, and Wyoming.

(6) *Chicago, Illinois.* The Asylum Office in Chicago has jurisdiction over the States of Illinois, Indiana, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Missouri, Ohio, Iowa, Nebraska, Montana, Idaho, and Kentucky.

(7) *Los Angeles, California.* The Asylum Office in Los Angeles has jurisdiction over the States of Arizona, the southern portion of California as listed in 8 CFR 100.4(b)(16) and 100.4(b)(39), and that southern portion of the State of Nevada currently within the jurisdiction of the Las Vegas Suboffice.

(8) *San Francisco, California.* The Asylum Office in San Francisco has jurisdiction over the northern part of California as listed in 8 CFR 100.4(b)(13), the portion of Nevada currently under the jurisdiction of the Reno Suboffice, and the States of Oregon, Washington, Alaska, and Hawaii and the Territory of Guam.

Dated: October 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–27920 Filed 11–13–95; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Final rule: extension of compliance date.

SUMMARY: The NCUA Board is extending the compliance date for nonautomated and insufficiently automated credit unions that have assets of $2 million or less as reported to, or determined by, the NCUA. The extension gives the smaller, automation impaired credit unions continued immunity from compliance until Congress has acted on its contemplated regulatory relief initiatives, which might ultimately exempt their compliance with Truth in Savings.

DATES: *Effective Date*: This document is effective January 1, 1996.

Compliance Date: The compliance date of part 707 is amended and extended to January 1, 1997, for credit unions of an asset size of $2 million or less as reported to, or determined by, the NCUA, that are not sufficiently automated.

FOR FURTHER INFORMATION CONTACT: Richard Schulman, Associate General Counsel, or Martin Conrey, Staff Attorney, Office of General Counsel, telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Prior Extensions

NCUA has twice before extended the compliance date for part 707, which implements the Truth in Savings Act (TISA), for certain small, underautomated credit unions. Both times, the NCUA Board took into consideration the limited resources of the exempted credit unions. The first time, the compliance date of part 707 was extended to March 31, 1995, for credit unions of an asset size between $500,000 and $1 million as of December 31, 1993, that are not automated. (Final rule, 59 FR 13435, March 22, 1994.) Simultaneously, the compliance date of part 707 was extended to June 30, 1995, for credit unions of an asset size of less than $500,000 as of December 31, 1993, that are not automated. The second time, the compliance date of part 707 was extended to January 1, 1996, for credit unions of an asset size of $2 million or less as of December 31, 1993, that were nonautomated or grossly

underautomated. (Final rule; extension of compliance date, 59 FR 39425, August 3, 1994). The compliance date remains January 1, 1995, for all other credit unions.

Legislative Activity

Since the last extension, several bills have been introduced into the 104th Congress of the United States to either repeal, or restrict the scope of TISA. "A bill to repeal the Truth in Savings Act," H.R. 337, introduced in the House of Representatives on January 4, 1995, would repeal TISA. The "Financial Institutions Regulatory Relief Act of 1995," H.R. 1858, introduced in the House of Representatives on June 15, 1995, would amend TISA by repealing many of its disclosure requirements and civil liability provisions. Section 270(3)(B) of H.R. 1858 excludes "nonautomated credit unions which were not required to comply with the requirements of [TISA] as of the date of the enactment of [H.R. 1858] pursuant to the determination of the NCUA Board." The "Economic Growth and Regulatory Paperwork Reduction Act of 1995," S. 650, introduced in the Senate on March 30, 1995, would repeal TISA and replace it with the Payment of Interest Act (PIA). PIA basically eliminates TISA's disclosure requirements, but retains the requirement that interest and dividends on accounts be calculated on the full amount of principal in the account for each day and at the rate(s) disclosed by the depository institution.

Importance of Small Credit Unions

The NCUA Board is very concerned with the continued viability of small credit unions. Ten years ago, credit unions under $2 million in size made up about two-thirds (10,564) of all federally insured credit unions. Today, such credit unions number only 3,666, about one-third of federally insured credit unions. In addition, the assets of today's 3,666 smallest credit unions are approximately one percent of total assets in all credit unions, while credit unions of $2 million or less accounted for 7.7 percent of total assets ten years ago. The average credit union today has $25.4 million in assets, compared to $5 million ten years ago.

However, many of these small credit unions are already automated or have in-house data processing capabilities, and have not been covered by previous exemptions. Only a small number of credit unions are affected by this amendment and extension. NCUA previously determined that there were 1,248 credit unions under $2 million in assets that have no or insufficient or inadequate computers or in-house data processing capability.

Given Congressional legislative activity, and requests for a postponement in the Official Staff Commentary from national trade associations, the Board has decided, in the name of regulatory relief and in the spirit of the National Performance Review and Presidential Regulatory Reform Initiative, to delay the compliance date of part 707 until January 1, 1997 for affected credit unions. A compliance date extension of this length will enable the NCUA to observe and implement any possible legislative initiatives by the 104th Congress, while also providing continued regulatory relief to presently exempted credit unions. In the meantime, the Board continues to support several small credit union initiatives to continue the development of small credit unions. Recently, the Board authorized an NCUA Conference on "Serving the Underserved" scheduled for August of 1996. The purpose of this conference is to provide opportunities for education, networking between different asset size credit unions, and to find solutions to availability of service issues faced by the agency and credit unions. In April of 1994, the NCUA Board adopted a program to place retired NCUA computers with nonautomated credit unions with $2 million or less in assets. To date, 435 small credit unions have participated in this program and received retired NCUA examiner laptop computers. The Board is also working on several other initiatives to enhance small credit union development.

The compliance date has remained January 1, 1995, for all other credit unions (automated credit unions under $2 million in assets and all credit unions having over $2 million or more in assets).

Definition of Nonautomated

NCUA generally uses the December 31, 1994, NCUA Form 5300 report to determine the requisite nonautomation status and asset size for those credit unions filing Form 5300 reports that are eligible for the extensions in required compliance.

Credit unions which do not file Form 5300 reports will be permitted to prove nonautomation status and asset size by other means. By the term "nonautomation status" NCUA means those credit unions without adequate and sufficient computer or data processing capacity and capability to operate and maintain a share and loan software program able to cover all member accounts at the credit union. NCUA will consider verified self-certifications, certifications by appropriate state supervisory authorities, and other equivalent forms of proof as sufficient for eligibility for the extension by non-federally insured credit unions. With the assistance of the affected credit unions, trade groups, and the NCUA regional and central office staffs, NCUA has identified credit unions in need of Truth in Savings compliance assistance, and is providing various educational and other assistance to the affected small, nonautomated credit unions.

Credit unions currently exempt, that surpass the $2 million asset threshold during the 1995 calendar year, should plan to comply with TISA on January 1, one year subsequent to the year end reporting cycle in which they report assets over $2 million.

Administrative Procedure Act

The amendment and extension made to this part are not subject to the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The extension relates to a few credit unions that need more time and assistance in complying with part 707. No major changes are contemplated, or made, by this amendment and extension. Therefore, the NCUA Board has determined that, in this case, the APA notice and comment procedures for this amendment and extension are impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

By the National Credit Union Administration Board on November 6, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–28014 Filed 11–13–95; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–206–AD; Amendment 39–9426; AD 95–23–06]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Airplanes and Model Avro 146–RJ70A, –RJ85A, and RJ–100A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A airplanes and Model Avro 146–RJ70A, –RJ85A, and RJ–100A airplanes. This action requires inspections to detect cracking and evidence of exhaust leaks in the forward face of the central panel of the forward firewall of the auxiliary power unit (APU) bay, and replacement of the central panel with a new panel, if necessary. This amendment is prompted by a report indicating that cracking due to leakage of hot exhaust gases was found in the forward face of the forward firewall of the APU bay. The actions specified in this AD are intended to prevent such gas leakage and subsequent cracking, which could damage the wiring to the APU fire bottle; this condition could result in failure of the APU fire bottle to discharge in the event of an APU fire.

DATES: Effective November 29, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The service information referenced in this AD may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A airplanes and Model Avro 146–RJ70A, –RJ85A, and RJ–100A airplanes. The CAA advises that it received a report indicating that cracking was found in the aluminum face plate on the forward side of the central panel of the forward firewall of the auxiliary power unit (APU) bay on a British Aerospace Model BAe 146 series airplane. Hot exhaust gases escaped through the sealing system used around the duct at the central panel of the forward firewall of the APU bay. Exposure to these hot gases resulted in cracking of the aluminum alloy portion of the central panel. Leakage of additional hot gases through the seal and resultant cracking could damage the wiring to the APU fire bottle. This condition, if not corrected, could result in failure of the APU fire bottle to discharge in the event of an APU fire.

British Aerospace has issued Service Bulletin S.B.26–35, Revision 1, dated August 30, 1995, which describes procedures for repetitive close detailed visual inspections to detect cracking and evidence of exhaust leaks in the forward face of the central panel of the forward firewall of the APU bay. For airplanes on which both cracking and evidence of gas leakage are found, the service bulletin specifies that operation of the APU must be prohibited either when the aircraft is on the ground or in flight until the central panel has been replaced with a new panel. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

British Aerospace also has issued Service Bulletin SB.26–35–36179A, dated August 4, 1995, which describes procedures for replacement of the central panel (constructed of aluminum alloy) of the forward firewall of the APU bay with a new panel constructed of titanium TA2 (Modification HCM36179A). The modification also involves replacing the associated stiffeners. The titanium central panel will provide better resistance to cracking at high temperatures. Accomplishment of this modification eliminates the need for repetitive inspections of the forward face of the central panel of the forward firewall of the APU bay.

For airplanes on which the previously described modification has not been accomplished, British Aerospace also has issued Service Bulletin SB.26–36–36179B, dated June 22, 1995, which describes procedures for installation of a protective aluminum alloy shield on the vertical stiffener (left-hand) next to the exhaust aperture of the forward firewall of the APU bay (Modification HCM36179B). Accomplishment of the installation provides protection of the wiring installation of the APU fire bottle. The service bulletin specifies that accomplishment of this installation increases the interval for repetitive inspections of the forward face of the central panel of the forward firewall of the APU bay to coincide with regularly scheduled maintenance of the affected airplanes.

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent leakage of hot exhaust gases and subsequent cracking of the forward face of the forward firewall of the APU bay, which could damage the wiring to the APU fire bottle and result in failure of the APU fire bottle to discharge in the event of an APU fire. This AD requires repetitive close detailed visual inspections to detect cracking and evidence of exhaust leaks in the forward face of the central panel of the forward firewall of the APU bay, and replacement of the central panel with a new panel, if necessary. Such replacement, if accomplished, constitutes terminating action for the requirements of this AD. For airplanes on which cracking and evidence of gas leakage are found, this AD also prohibits operation of the APU (either when the aircraft is on the ground or in flight) until the central panel has been replaced with a new panel. This AD also provides for installation of a protective aluminum alloy shield on the vertical stiffener (left-hand) next to the exhaust aperture of the forward firewall of the APU bay, which, if accomplished, increases the interval for repetitive inspections of the forward face of the central panel of the forward firewall of the APU bay. The actions are required to be accomplished in accordance with the service bulletins described previously.

Operators should note that, for airplanes on which cracks are found, but no evidence of gas leakage is found, British Aerospace Service Bulletin S.B.26–35 recommends that daily inspections be accomplished and that

corrective action be accomplished at the "next convenient downtime." This AD, however, requires daily inspections and accomplishment of the corrective action (replacement of the central panel) within 14 days after crack detection. The FAA finds that a 14-day compliance time will address the unsafe condition in a timely manner and will decrease reliance on daily inspections, which require approximately one work hour to perform.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–206–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–23–06 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9426. Docket 95–NM–206–AD.

Applicability: Model BAe 146–100A, –200A, and –300A airplanes, and Model Avro 146–RJ70A, –RJ85A, and RJ–100A airplanes; on which British Aerospace Modification HCM36019A is installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hot exhaust gases and subsequent cracking of the forward face of the forward firewall of the auxiliary power unit (APU) bay, which could damage the wiring to the APU fire bottle and result in failure of the APU fire bottle to discharge in the event of an APU fire, accomplish the following:

(a) Within 7 days after the effective date of this AD: Perform a close detailed visual inspection to detect cracking and evidence of exhaust leaks in the forward face of the central panel of the forward firewall of the APU bay, in accordance with British Aerospace Service Bulletin S.B.26–35, Revision 1, dated August 30, 1995.

Note 2: Inspections accomplished prior to the effective date of this AD in accordance with British Aerospace Service Bulletin S.B.26–35, dated May 17, 1995, are considered acceptable for compliance with the applicable action specified in this amendment.

(1) If no crack or evidence of gas leakage is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 200 landings, except as provided by paragraph (b) of this AD.

(2) If any crack is found, but no evidence of gas leakage is detected, repeat the inspection required by paragraph (a) of this AD thereafter at daily intervals. Within 14 days after detecting any crack, accomplish the replacement specified in paragraph (c) of this AD.

(3) If any crack is found and evidence of gas leakage is detected, prior to further flight, accomplish the replacement specified in paragraph (c) of this AD. Operation of the APU is prohibited (either when the aircraft is on the ground or in flight) until the replacement is accomplished.

(b) Installation of a protective aluminum alloy shield on the vertical stiffener (left-hand) next to the exhaust aperture of the forward firewall of the APU bay (Modification HCM36179B), in accordance with British Aerospace Service Bulletin SB.26–36–36179B, dated June 22, 1995, increases the interval for repetitive inspections required by paragraph (a)(1) of this AD from 200 landings to 400 landings.

(c) Replacement of the central panel of the forward firewall of the APU bay with a new panel (Modification HCM36179A), in accordance with British Aerospace Service Bulletin SB.26–35–36179A, dated August 4, 1995, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with British Aerospace Service Bulletin S.B.26–35, Revision 1, dated August 30, 1995; British Aerospace Service Bulletin SB.26–35–36179A, dated August 4, 1995; and British Aerospace Service Bulletin SB.26–36–36179B, dated June 22, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 29, 1995.

Issued in Renton, Washington, on November 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27913 Filed 11–13–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 452

RIN 1294–AA09

Eligibility Requirements for Candidacy for Union Office

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Final rule.

SUMMARY: The Office of Labor-Management Standards is amending its interpretative regulations on labor organization officer elections. The amendment will add a reference to a ruling by the Court of Appeals for the District of Columbia Circuit regarding the reasonableness of meeting attendance requirements set by labor organizations for eligibility for union office. This amendment will inform the public of a court decision that guides the Office in its enforcement actions.

EFFECTIVE DATE: December 14, 1995.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) sets forth standards and requirements for the election of labor organization officers. Section 401(e) of title IV, 29 U.S.C. 481(e), provides in part that every member in good standing has the right to be a candidate subject "to reasonable qualifications uniformly imposed."

In connection with the Department's enforcement responsibilities under LMRDA title IV, interpretative regulations have been promulgated, 29 CFR Part 452, in order to provide the public with information as to the Secretary's "construction of the law which will guide him in performing his [enforcement] duties." 29 CFR § 452.1. Several provisions in the interpretative regulations discuss union-imposed qualifications on candidacy eligibility. One of these provisions, 29 CFR § 452.38, deals specifically with meeting attendance requirements and lists several factors to consider in determining whether, under "all the circumstances," a particular meeting attendance requirement is reasonable.

On June 15, 1994, OLMS published an advance notice of proposed rulemaking (ANPRM) requesting comments from the public on the possible need to modify the interpretative regulations on meeting attendance requirements in order to incorporate a ruling of the United States Court of Appeals for the District of Columbia Circuit in *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Cir. 1987). In *Doyle*, the Secretary had decided not to bring civil action on a member's complaint about his union's meeting attendance requirement, even though the requirement disqualified 97% of the members. The Secretary's position, after reviewing the factors set forth in 29 CFR § 452.38, was that since the requirement was not on its face unreasonable (i.e., it did not require a member to decide to become a candidate an excessively long period before the election) and it was not difficult to meet (i.e., the meetings were held at convenient times and locations and the union provided liberal excuse provisions), the large impact of the requirement was not by itself sufficient to render it unreasonable. The district court ruled against the Secretary, *Doyle* v. *Brock*, 641 F. Supp. 223 and 632 F. Supp. 256 (D.D.C. 1986), and the court of appeals affirmed the lower court.

After reviewing the comments submitted on the ANPRM, the Department published a notice of proposed rulemaking (NPRM) on May 17, 1995 (60 FR 26388). The NPRM proposed revising 29 CFR 452.38 by replacing the current text of footnote 25 with a brief summary of the holding in *Doyle* that a meeting attendance requirement may be unreasonable solely on the basis of its impact in rendering members ineligible.

One comment from an individual was received on the NPRM. That comment wanted to have meeting attendance requirements banned because they impede challenges to current union leadership. However, as stated in the NPRM, after reviewing the comments on the ANPRM the Department has concluded that there is not a sufficient legal basis at this time to hold that meeting attendance requirements are per se unreasonable under the LMRDA. Therefore, the Department is adopting the proposal as set forth in the NPRM.

Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this proposed rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Any regulatory revision will only apply to labor organizations, and the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This proposed rule contains no information collection requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 29 CFR Part 452

Labor unions.

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor hereby amends part 452 of title 29, Code of Federal Regulations, as follows:

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

1. The authority citation for part 452 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 2–93 (58 FR 42578).

2. Footnote 25 cited at the end of § 452.38(a) is revised to read as follows:

§ 452.38 Meeting attendance requirements.

[25] If a meeting attendance requirement disqualifies a large portion of members from candidacy, that large antidemocratic effect alone may be sufficient to render the requirement unreasonable. In *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Circuit 1987), the court held that the impact of a meeting attendance requirement which disqualified 97% of the union's membership from candidacy was by itself sufficient to make the requirement unreasonable notwithstanding any of the other factors set forth in 29 CFR 452.38(a).

Signed in Washington, DC this 7th day of November, 1995.

Charles L. Smith,

Deputy Assistant Secretary.

[FR Doc. 95–28015 Filed 11–13–95; 8:45 am]

BILLING CODE 4510–86–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH70

Duty Periods

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to clarify the status of individuals attending the preparatory schools of the United States Air Force Academy, the United States Military Academy, and the United States Naval Academy for purposes of compensation and pension eligibility. This amendment is necessary to reflect opinions of VA's General Counsel setting out the circumstances under which preparatory school attendance will constitute active duty or active duty for training for VA purposes.

EFFECTIVE DATE: This amendment is effective October 3, 1994, the date of the initial General Counsel opinion upon which it is based.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: In most instances, an individual qualifies for VA compensation or pension by meeting the statutory definition of a "veteran" or by being the survivor of a "veteran." 38 U.S.C. 101(2) and 38 CFR 3.1(d) state that a "veteran" is a person who served in the "active military, naval, or air service," and who was discharged or released therefrom under conditions other than dishonorable.

The phrase "active military, naval, or air service" is defined in 38 CFR 3.6(a) as including "active duty" as well as certain periods of active- or inactive-duty training during which the individual was disabled or died. If the individual upon whose service the claim is based had "active military, naval, or air service" and was discharged under other than dishonorable conditions, that individual qualifies as a "veteran."

Under 38 U.S.C. 101(21)(D), service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy is considered "active duty." A precedent opinion of the VA General Counsel (VAOPGCPREC 18–94) dated October 3, 1994, addressed the question of whether attendance at the United States Air Force Academy Preparatory School constituted "active duty." (Such precedent opinions are binding in VA benefit decisions; see 38 CFR 3.101, 14.507(b), and 19.5.) The General Counsel noted that attendance at a service academy preparatory school does not constitute service as a cadet or midshipman at a service academy.

In VAOPGCPREC 18–94 the General Counsel held that an enlisted servicemember who is reassigned to the United States Air Force Academy Preparatory School without a release from active duty continues on "active duty" but that persons who enlisted directly from civilian life, a reserve component, or the Air National Guard for the sole purpose of attending the Air Force Academy Preparatory School are on "active duty for training." The General Counsel found it significant that an enlisted servicemember who is disenrolled from a preparatory school prior to completion of the school program still has a military obligation to complete while an individual attending a preparatory school from the Reserves, National Guard, or civilian life is generally discharged from the service in the event of premature disenrollment.

In VAOPGCPREC 6–95 dated February 10, 1995, the VA General Counsel held that the analysis in VAOPGCPREC 18–94 for determining whether service at the United States Air Force Academy Preparatory School constitutes "active duty" is generally applicable to service consisting of attendance at the United States Military Academy Preparatory School and the United States Naval Academy Preparatory School.

However, the opinion stated that in individual cases it would be advisable to determine whether a student had made a commitment to active-duty service which would be binding upon disenrollment because such a student, even though not transferring directly from enlisted active-duty status, would be considered to be on active duty while attending a preparatory school.

Paragraphs (b) and (c) of 38 CFR 3.6 are amended by this document to reflect the holdings in VAOPGCPREC 18–94 and VAOPGCPREC 6–95.

In the second sentence of § 3.6(a) the phrase "*any* period of active duty for training" is substituted for "*and* period of active duty for training." This corrects a typographical error. No substantive rule change is involved.

Under 5 U.S.C. 553, there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since the final rule constitutes an interpretive rule regarding 38 U.S.C. 101, paragraphs 21 (definition of active duty) and 22 (definition of active duty for training).

The Secretary certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment, which constitutes an interpretive rule, will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: November 3, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.6, paragraph (a) is amended by removing "active duty, and" and adding in its place "active duty, any"; paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(6) and (b)(7), respectively; paragraph (c)(5) is redesignated as paragraph (c)(6); and new paragraphs (b)(5) and (c)(5) are added to read as follows:

§ 3.6 Duty periods.

* * * * *

(b) * * *

(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy for enlisted active-duty members who are reassigned to a preparatory school without a release from active duty, and for other individuals who have a commitment to active duty in the Armed Forces that would be binding upon disenrollment from the preparatory school;

* * * * *

(c) * * *

(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy by an individual who enters the preparatory school directly from the Reserves, National Guard or civilian life, unless the individual has a commitment to service on active duty which would be binding upon disenrollment from the preparatory school.

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[FR Doc. 95–27995 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–5329–9]

RIN 2060–AF95

Transportation Conformity Rule Amendments: Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action makes several changes to the current regulation requiring transportation plans, programs, and projects to conform to state air quality implementation plans.

This action allows any transportation control measure from an approved state implementation plan (SIP) to proceed during a conformity lapse; aligns the date of conformity lapses with the date of application of Clean Air Act highway sanctions for any failure to submit or submission of an incomplete control strategy SIP; extends the grace period before which areas must determine conformity to a submitted control strategy implementation plan; establishes a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas; and corrects the nitrogen oxides provisions of the transportation conformity rule consistent with the Clean Air Act and previous commitments made by EPA.

A transportation conformity SIP revision consistent with these amendments must be submitted to EPA by 12 months from November 14, 1995.

EFFECTIVE DATE: This regulation is effective December 14, 1995, except for §§ 51.448(a)(1) and 93.128(a)(1) which will be effective November 14, 1995, and §§ 51.394(b)(3)(i), 93.102(b)(3)(i), 51.428(b)(1)(ii), and 93.118(b)(1)(ii) which will be effective February 12, 1996, for the reasons explained in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket A–95–05. The docket is located in room M–1500 Waterside Mall (ground floor) at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, Transportation and Market Incentives Group, Regional and State Programs Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 741–7842.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act" (58 FR 62188, November 24, 1993). Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations (MPOs) determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). Conformity ensures that transportation planning does not produce new air quality violations, worsen existing violations, or delay timely attainment of national ambient air quality standards. According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining these standards.

This final rule is based on the August 29, 1995 proposed rule entitled, "Transportation Conformity Rule Amendments: Miscellaneous Revisions" (60 FR 44790) and comments received on that proposal. The public comment period for the proposed rule ended on September 28, 1995.

EPA also issued on August 29, 1995, an interim final rule entitled,

"Transportation Conformity Rule Amendments: Authority for Transportation Conformity Nitrogen Oxides Waivers" (60 FR 44762). The interim final rule changed the statutory authority for transportation conformity nitrogen oxides (NO_x) waivers from Clean Air Act section 182(f) to section 182(b)(1), for areas subject to section 182(b)(1). The interim final rule took effect on August 29, 1995, without prior notice and comment, and the subsequent public comment period ended on September 28, 1995. This final rule includes the provisions of the August 29 interim final rule, after completing notice-and-comment rulemaking procedures on such provisions.

This final rule is the second in a series of three anticipated amendments to the transportation conformity rule. The first set of amendments was published as an interim final rule on February 8, 1995 (60 FR 7449), and was finalized on August 7, 1995 (60 FR 40098). The first set of amendments aligned the dates of conformity lapses (i.e., halting of new federally funded highway/transit projects) due to SIP failures with the application of Clean Air Act highway sanctions for a few ozone areas and all areas with disapproved SIPs with a protective finding. The third set of amendments, which will be proposed shortly, will streamline the conformity rule and address other issues related to non-federal projects, the build/no-build test, adding projects to the transportation plan and transportation improvement program (TIP), and rural nonattainment areas.

II. Description of Final Rule

This final rule makes changes from the proposed rule, involving transportation control measures (TCMs) and grace periods for new nonattainment areas. All other provisions of the proposal are included in this final rule without modification. EPA will not restate here its rationale for the changes which are identical to the August 29 proposal. The reader is referred to the proposal notice for such discussions.

A. TCMs

The proposed rule would have allowed TCMs in an approved SIP to proceed even if the conformity status of the current transportation plan and TIP lapses, provided the TCMs were in a previously conforming transportation plan and TIP.

In the final rule, EPA is changing the provisions of the proposal in response to public comment such that any TCM in an approved SIP may proceed, regardless of whether there is a currently conforming transportation plan and TIP or whether the project was once included in a previously conforming transportation plan and TIP. However, this position does not alter or affect the title 23 (23 CFR Part 450) or Federal Transit Act requirements for the funding of TCMs. EPA acknowledges that the implementation of the Clean Air Act is done in conjunction with statewide and metropolitan planning requirements of the Intermodal Surface Transportation Efficiency Act (ISTEA). Most current and all future TCMs are subject to these provisions and are generally from a previously conforming transportation plan and TIP.

EPA received public comment that a TCM which is in an approved SIP should be allowed to proceed at any point in time, regardless of whether or not the TCM was once included in a previously conforming transportation plan and TIP. The commenter stated that since SIP requirements are legally binding, as evidenced by the fact that failure to comply subjects the violator to enforcement action, EPA cannot restrict the implementation of a TCM in the context of conformity. Furthermore, given that approved SIPs must be implemented according to the Clean Air Act and sanctions can be imposed for nonimplementation, EPA cannot adopt a rule that has the effect of preventing TCMs in an approved SIP from being implemented.

EPA agrees with the commenter. Although Clean Air Act sections 176(c)(2) (C) and (D) require that the conforming transportation plan and TIP be used to determine whether a TCM conforms to an approved SIP, a TCM contained in an approved SIP must necessarily conform to the purpose of the SIP, as required by section 176(c)(1). By definition, a TCM in an approved SIP conforms to the SIP because it is contained in the SIP. To halt the implementation of TCMs in approved SIPs during a conformity lapse of a transportation plan and TIP would be contrary to the purpose of conformity and the approved SIP. EPA is not exempting TCMs from the requirement for a conformity determination, however. Also, where applicable, hot-spot analysis would still be required. TCMs are simply not required to satisfy §§ 51.420 (93.114) and 51.422 (93.115) because to require such compliance could prevent TCM implementation.

Another commenter stated that any transportation project that is in an approved SIP and a previously conforming transportation plan and TIP should be allowed to proceed during a conformity lapse. EPA believes that this final rule's change to the proposal accommodates this comment, because all transportation projects that are in approved SIPs that require conformity determinations are TCMs. No transportation project would be approved into a SIP unless it was designed to reduce emissions from transportation activities, and these projects should be specifically identified as TCMs.

Although EPA is changing the proposed rule in response to public comment, EPA does not foresee an instance as a practical matter where a TCM would be contained in an approved SIP without first meeting the transportation planning requirements contained in 23 CFR Part 450 and 49 CFR Part 613. In order for EPA to approve a SIP, the measures contained in the SIP must have commitments from appropriate agencies and have adequate funding and resources as stipulated in section 110(a)(2)(E) of the Clean Air Act.

In the case of TCMs, EPA expects this to be demonstrated by the project's inclusion in a fiscally constrained and conforming transportation plan and TIP.

Furthermore, EPA does not intend to approve SIPs containing TCMs that have not been coordinated through the transportation planning process, because the Clean Air Act and ISTEA require that an integrated transportation/air quality planning process be used as the vehicle to identify effective TCMs and ensure their funding sources. The interagency consultation required by the conformity rule and the States' conformity SIPs is intended to ensure that the transportation planning process becomes a routine component of any analysis involving TCMs slated for inclusion in a SIP. Furthermore, as a practical matter, a project cannot receive federal highway or transit funds or Federal Highway Administration (FHWA)/Federal Transit Administration (FTA) approval unless it is contained in a fiscally constrained and conforming transportation plan and TIP that has been approved through the transportation planning process, under the requirements of 23 CFR Part 450 and 49 CFR Part 613.

Finally, projects in approved SIPs remain subject to other planning requirements, such as provisions of the National Environmental Policy Act and ISTEA, which further stipulate that these projects be reviewed through the transportation process prior to approval and implementation.

B. Grace Period for New Nonattainment Areas

Like the proposed rule, the final rule allows newly designated nonattainment areas a 12-month grace period before conformity determinations to the transportation plan and TIP are required. In response to public comment, EPA clarifies in the final rule that this grace period also applies if a nonattainment area's boundaries are newly expanded. Transportation plan and TIP conformity determinations will not be required to include transportation projects in the portion of the area that is newly added until 12 months from the date of the boundary change. Although the proposed rule did not specifically discuss applying the 12-month grace period to newly expanded areas, EPA believes that this is a logical extension of the proposed rule. EPA believes a grace period is appropriate because transportation plan and TIP conformity determinations will not have included projects in the new portion of the nonattainment area prior to the expansion. As described in the proposal, Clean Air Act section 176(c) allowed a similar grace period for 12 months after the date of enactment of the Clean Air Act Amendments of 1990. EPA believes it is consistent with Congressional intent and appropriate to include such a grace period for newly designated areas to prevent short-term adverse impacts in the implementation of transportation projects immediately following redesignation.

C. Grace Period for Determinotion of Conformity to Newly Submitted SIPs

Like the proposed rule, this final rule extends the grace period before which areas need to complete conformity determinations to newly submitted SIPs. Under this final rule and for reasons explained in the proposal, conformity to a newly submitted SIP must now be determined within 18 months of its submission. This grace period provision in §§ 51.448(a)(1) and 93.128(a)(1) is effective immediately.

This grace period will prevent the conformity status of certain plans and TIPs from lapsing on November 15, 1995, in several moderate and above ozone areas that have not completed conformity determinations to newly submitted SIPs. This conformity lapse would be contrary to the public interest because as explained in the proposal EPA now believes that halting of transportation plan, program, and project implementation in these cases is not necessary at this time for the lawful and effective implementation of Clean Air Act section 176(c). If EPA did not make this provision of the rule effective by November 15, 1995, conformity lapse which is contrary to the public interest could occur in some areas during the 30-day period between publication and the effective date which is ordinarily provided under the Administrative Procedures Act (APA), 5 U.S.C. 553(d). EPA therefore finds good cause to make this grace period provision contained in this final rule effective on publication. In addition, the extension of this grace period relieves a restriction and therefore qualifies for an exception from the APA's 30-day advance-notice period under 5 U.S.C. 553(d)(1).

The other provisions of this final rule will be effective on December 14, 1995, except for §§ 51.394(b)(3)(i), 93.102(b)(3)(i), 51.428(b)(1)(ii), and 93.118(b)(1)(ii) which will be effective 90 days from November 14, 1995.

D. Alignment of Certain Conformity Lapses With Sanctions

Like the proposed rule, this final rule does not impose a transportation plan/conformity lapse as a result of failure to submit or submission of an incomplete ozone, carbon monoxide (CO), particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM–10), or nitrogen dioxide (NO_2) control strategy SIP. Conformity lapse as a result of these SIP failures is delayed until Clean Air Act section 179(b) highway sanctions for these failures are applied.

Like the proposed rule, this final rule does not change the timing of conformity lapse for disapproval of any control strategy SIP without a protective finding. This issue will be addressed in a forthcoming proposal.

E. NO_X Budgets

Like the proposed rule, this final rule requires consistency with NO_x motor vehicle emissions budgets in control strategy SIPs, regardless of whether a NO_x waiver has previously been granted. However, the NO_x build/no-build test and less-than-1990 tests would not apply to ozone nonattainment areas receiving a NO_x waiver. Furthermore, as described in the *Response to Comment* section of today's action, some flexibility is possible for areas that have been issued a NO_x waiver based upon air quality modeling data. Please refer to that section for further discussion on this issue.

The NO_x budget provisions will be effective 90 days from November 14, 1995. In response to public comment, EPA has delayed this effective date to prevent difficulties in identifying appropriate NO_x budgets from disrupting conformity determinations that are currently underway.

EPA believes that *Sierra Club* v. *EPA*, 719 F.2d 436 (DC Cir. 1983), gives EPA the authority to delay the effective date of the NO_x budget provisions in today's action. EPA believes that *Sierra Club* provides a legal basis to allow grandfathering when there is an abrupt departure from requirements that affected parties have previously relied upon. Although EPA had previously announced that the NO_x budget changes to the transportation conformity rule would be contained in this action, comments on the proposal indicate that certain areas are not prepared for these provisions to be effective within the usual 30-day timeframe following publication of the final rule. Therefore, EPA finds good cause to make these provisions effective 90 days from November 14, 1995.

F. NO_x Waiver Authority

Like the interim final rule, the final rule changes the statutory authority for transportation conformity NO_x waivers from Clean Air Act section 182(f) to section 182(b)(1), for areas subject to section 182(b)(1). In general, NO_x waivers are findings by the EPA Administrator under Clean Air Act section 182(f) or 182(b) that additional reductions of NO_x would not contribute to attainment of the ozone national ambient air quality standards by the statutory deadline. The interim final rule will remain in effect until December 14, 1995, at which time the final rule will be effective and supersede the interim final rule. As a result, the requirements for NO_x waivers granted after August 29, 1995, remain the same and are not altered by today's action.

G. Conformity SIP Revision

A conformity SIP revision consistent with these amendments is required to be submitted to EPA 12 months from November 14, 1995. Section 176(c)(4)(C) of the Clean Air Act as amended in 1990 allowed States 12 months from the promulgation of the original transportation conformity rule to submit conformity SIP revisions. EPA believes that it is consistent with the statute to provide states a similar time period to revise their conformity SIPs in response to these rule revisions.

III. Response to Comments

Twenty comments on the proposed rule and interim final rule were submitted, including comments from MPOs, state and local air and transportation agencies, neighborhood associations, and environmental groups.

The majority of the comments supported the proposed rule and the interim final rule. A complete response to comments document is in the docket. Major comments and EPA responses are summarized here.

A. TCMs

Some comments suggested that TCMs from a submitted (and not yet approved) SIP should be allowed to proceed at any time, without regard to the conformity status of the transportation plan and TIP. However, Clean Air Act section 176(c) requires conformity to the "applicable implementation plan." Clean Air Act section 302(q) defines an applicable implementation plan as a portion (or portions) of the current implementation plan which has (have) been approved or promulgated by EPA. Projects from a submitted SIP that has not yet been approved do not necessarily conform to the "applicable" (approved) SIP. In order for such projects, including TCMs, to conform, there must be a conforming transportation plan and TIP, as required by Clean Air Act sections 176(c)(2) (C) and (D). For these reasons, only TCMs which are included in an approved SIP are affected by today's rule change allowing implementation of TCMs in an approved SIP to proceed during a transportation plan and TIP conformity lapse.

Similar comments suggesting ways in which to increase the scope and impact of this final rule changes regarding TCMs are not possible due to the reasons already outlined above. For example, one commenter suggested that any new project with a demonstrated emission reduction benefit, regardless of whether it is in an approved SIP, should be allowed to proceed even if it was not in a previously conforming transportation plan and TIP. EPA could not make this change because the agency has no evidence that such projects conform to the approved SIP.

B. Grace Period for New Nonattainment Areas

One commenter opposed the 12-month grace period for newly designated nonattainment areas and stated that this grace period is not consistent with Clean Air Act section 176(c). As stated in the proposed rule, section 176(c)(3)(B)(i) allowed a similar grace period for 12 months after the date of enactment of the Clean Air Act Amendments of 1990. EPA continues to believe it is appropriate to implement section 176(c) so as to allow this same grace period for newly designated areas. The existence of the grace period in section 176(c) indicates that Congress clearly did not wish to immediately halt transportation activities upon application of section 176(c) to an area.

The commenter suggested that there is sufficient time during the redesignation process in which areas could plan ahead and prepare to meet conformity requirements upon being designated to a nonattainment area. However, as stated in the preamble of the proposed rule, conformity determinations take time and the 12-month grace period provides local and state transportation agencies with the temporary relief that is necessary for these agencies to complete future conformity requirements. Further, such agencies do not control the timing of redesignation requests by state air quality agencies.

The commenter also disagreed that *Sierra Club* v. *EPA*, 719 F.2d 436 (DC Cir. 1983), gave EPA the authority to grant such a grace period to newly designated nonattainment areas. EPA believes that *Sierra Club* provides a legal basis to allow grandfathering when there is an abrupt departure from requirements that affected parties have previously relied upon. Although the case did involve retroactivity, the legal analysis applies equally to grandfathering from new requirements, and EPA has historically relied on the case in this context. See, e.g., 54 FR 2214, 2219 (Jan. 19, 1989); 59 FR 13044, 13057 (March 18, 1994). Although the Court of Appeals did not uphold all of the grandfathering provisions in *Sierra Club*, the Court did uphold grandfathering when supported by reliance. Attainment areas have traditionally relied upon not being required to fulfill conformity requirements that are mandated for nonattainment areas. Immediate application of such requirements to newly designated areas without an appropriate transition period clearly represents a significant departure from past practice. The commenter points to Supreme Court case law indicating that if any reliance on prior law were enough to shield everyone from all changed requirements, all laws would be frozen forever. However, this case law does not prohibit limited grandfathering from new complex requirements for a short time period to allow areas time to complete activities necessary to comply with such requirements, where such areas had relied on past law that did not impose such requirements. Based on the Court's interpretations of reliance in *Sierra Club*, EPA believes that this case supports its authority to grant a 12-month grace period to newly designated nonattainment areas prior to subjecting such areas to transportation conformity requirements.

C. Grace Period for Determination of Conformity to Newly Submitted SIPs

Several commenters were concerned that the 18-month grace period before which a conformity determination is required for a newly submitted SIP was not extended to those areas that have already submitted a SIP revision. Specifically, the comments raised concerns surrounding the equity of the proposed grace period.

The proposed rule states that the grace period would begin upon the date of a new SIP's submission. This also applies to SIPs submitted prior to today's rule change. Therefore, although areas that have already submitted a SIP prior to this final action will not benefit from the grace period extension as much as areas that have not yet submitted a SIP, they will still get the full 18-month period from SIP submission to make a conformity determination. EPA believes that this final action makes the conformity rule more equitable because every area has the same time period in which to determine conformity to newly submitted SIPs. Prior to this final action, time periods for completing conformity determinations were calculated starting from SIP submittal deadlines.

One commenter stated that EPA did not provide adequate rationale in the preamble of the proposed rule regarding the selection of the length of this grace period. The commenter further suggested that 12 months would be a more appropriate grace period length and would be consistent with prior EPA policy regarding this issue. Based on experience with the transportation conformity rule to date, EPA continues to believe that 18 months reflects the most realistic timeframe required for nonattainment areas to determine conformity to newly submitted SIPs. Conformity determinations are typically completed by local transportation planners on an annual basis. If the grace period was 12 months instead of 18 months, a newly submitted SIP could be introduced into a local conformity cycle at a time in that cycle that is disruptive to the local transportation planning process. Such a disruption could necessitate that additional time be required to complete the conformity determination, which may then delay the implementation of local transportation projects. EPA's experience with the existing 12-month grace period has convinced the agency that 12 months is an unrealistic grace period in this context.

D. Alignment of Certain Conformity Lapses With Sanctions

All commenters that commented on this issue supported the alignment of conformity lapses due to SIP failures with Clean Air Act sanctions. In addition, some commenters advocated aligning lapses and sanction deadlines even in the case of SIP disapprovals without a protective finding. As utilized under transportation conformity regulations, a protective finding is a mechanism that would allow a submitted SIP's motor vehicle emissions budget to be used for conformity purposes even though the SIP does not fulfill all requirements in enforceable form, as stipulated by Clean Air Act section 110(a)(2)(A). This conclusion is based on a determination by EPA that a SIP would have been approvable with respect to requirements for emissions reductions if all of the section 110(a)(2)(A) requirements had been met. Thus, a protective finding allows an area to proceed with transportation planning and project implementation while the area revises the SIP. In contrast, a SIP that is disapproved without a protective finding does not contain an emissions budget that could be used for transportation conformity purposes. A protective finding only allows the SIP's motor vehicle emissions budget to be used for conformity purposes; it does not guarantee that the SIP will eventually be approved.

EPA has been aware of stakeholder concerns regarding conformity lapse following SIP disapprovals without protective findings, and as EPA has previously stated, this issue will be raised for comment in the preamble of the upcoming proposal of the third set of conformity amendments. EPA could not take final action on this issue today because it had never proposed to do so.

E. NO_X Budgets

Several commenters stated that consistency with a NO_X budget should not be required for areas that have received a NO_X waiver from EPA based on air quality modeling. NO_X waivers are findings by the EPA Administrator under Clean Air Act section 182(b) or 182(f) that additional reductions of NO_X would not contribute to attainment of the ozone national ambient air quality standards by the statutory deadline. NO_X waivers may be granted on the basis of modeling demonstrations or monitoring data.

For the reasons described in the preamble to the August 29, 1995, proposal, EPA continues to believe that the Clean Air Act requires consistency with NO_X motor vehicle emissions budgets in control strategy SIPs, regardless of whether a NO_X waiver has previously been granted. The demonstration typically utilized to justify a NO_X waiver does not necessarily address the level of NO_X emissions necessary for an area to attain and maintain the ozone standard. That is, a NO_X waiver's demonstration that additional NO_X reductions would not contribute to attainment does not necessarily mean that NO_X increases would not affect an area's ability to attain and maintain the ozone standard. The purpose of conformity to a NO_X budget is to prevent NO_X emissions from reaching levels that would threaten attainment or maintenance of the ozone standard.

The commenters opposing a NO_X budget test in areas with modeling-based NO_X waivers state that the attainment demonstrations in such areas do not include NO_X inventories or NO_X projections with sufficient accuracy to warrant their use in determining conformity. Although the attainment demonstration contains NO_X projections that EPA could treat as an "implicit budget," areas may not have performed the modeling necessary to determine how high NO_X emissions could be while remaining consistent with attainment and maintenance of the ozone standard. The projections that could act as an implicit budget could thus be unnecessarily constraining, and exceeding those projections may not have real air quality consequences. Furthermore, commenters argue that if the modeling that would determine a maximum NO_X motor vehicle emissions budget is not a necessary part of the attainment demonstration, it should not be required solely for conformity purposes.

Although EPA is retaining in the final rule the requirement for consistency with NO_X emissions budgets for all ozone areas with control strategy SIPs, including areas that received NO_X waivers, EPA agrees that in some circumstances it is appropriate to interpret the control strategy SIP as not establishing a NO_X motor vehicle emissions budget. EPA may conclude in such circumstances that modeling-based sensitivity analyses included in the attainment or maintenance demonstration are sufficient to indicate that motor vehicle NO_X emissions could grow without limit over the transportation planning horizon because the area would still attain the ozone standard without jeopardizing attainment in other areas. In such a case, EPA would agree that the control strategy SIP does not establish a NO_X motor vehicle emissions budget, and the NO_X budget test would not have to be satisfied for transportation conformity purposes.

For example, EPA expects that it would be able to interpret the attainment demonstration as not establishing a NO_X motor vehicle emissions budget if it included modeling demonstrating that additional reductions of NO_X would increase peak ozone concentrations. In contrast, modeling that did not examine the effect of NO_X reductions would not be sufficient to show that the attainment demonstration did not establish a NO_X motor vehicle emissions budget. Also, areas with a SIP requirement to control NO_X emissions in order for downwind nonattainment areas to attain the ozone standard would have an established NO_X budget, because of the need to indicate the level of NO_X reductions required.

In addition, it is important to note that areas that are in nonattainment or maintenance for both PM_{10} and ozone may have a NO_X motor vehicle emissions budget established in the PM_{10} SIP, regardless of whether the area has a NO_X waiver for ozone purposes or the area's ozone attainment or maintenance SIP establishes a NO_X motor vehicle emissions budget.

EPA continues to believe that, in general, control strategy SIPs by their nature establish motor vehicle emissions budgets, whether or not these budgets are explicitly stated. Motor vehicle emissions budgets are implicitly a feature of control strategy SIPs, and a statement in the SIP that no motor vehicle emissions budget is established does not necessarily relieve the requirement to demonstrate consistency with the SIP's implicit budget. However, as described above, EPA believes that there are special circumstances under which EPA would agree that the attainment or maintenance SIP demonstrates that no motor vehicle emissions budget is necessary, and the budget test is not required for transportation conformity purposes.

EPA encourages areas that are developing SIPs to explicitly state the motor vehicle emissions budget(s) for each relevant pollutant or pollutant precursor. For SIPs that have already been submitted, agencies should work through the interagency consultation process to identify the motor vehicle emissions budget(s) that is (are) not explicitly stated. EPA will not consider a submitted SIP adequate for transportation conformity purposes unless it either includes explicit motor vehicle emissions budgets or adequate information to establish budgets, or EPA

has agreed that the SIP sufficiently demonstrates that a NO_x motor vehicle emissions budget is not necessary.

F. Additional Comments Not Addressed in the Proposal

Several commenters also raised concerns about aspects of the transportation conformity rule which are not relevant to this action, including the build/no-build test, non-federal projects, and adding projects to the transportation plan and TIP. These comments do not affect whether EPA should proceed with this final action, but EPA will be considering these and other issues, such as issues related to rural nonattainment areas, in the context of the third set of conformity rule amendments.

EPA did not address in this final rule the issues contained in the Environmental Defense Fund et al.'s Petition for Reconsideration relating to the November 24, 1993, transportation conformity rule that may still be outstanding. Many of the issues contained in this petition were beyond the scope of this rulemaking. The third set of conformity amendments will address several of these issues, and EPA intends to formally respond to others at a later date.

IV. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact or entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866. Therefore, this notice was not subject to OMB review under the Executive Order 12866.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that these regulations will not have a significant impact on a substantial number of small entities. This regulation affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that to the extent this rule imposes any mandate within the meaning of the Unfunded Mandates Act, this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

List of Subjects

40 CFR Port 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: November 6, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 51 and 93 are amended as follows:

PARTS 51 AND 93 —[AMENDED]

1. The authority citation for parts 51 and 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. The identical text of §§ 51.392 and 93.101 is amended by adding a definition in alphabetical order to read as follows:

§ . Definitions.

* * * * *

Protective finding means a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

* * * * *

3. The identical text of §§ 51.394 and 93.102 is amended by revising paragraph (b)(3)(i) and adding paragraph (d) to read as follows:

§ . Applicability.

* * * * *

(b) * * *

(3) * * *

(i) Volatile organic compounds and nitrogen oxides in ozone areas;

* * * * *

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been in attainment for either ozone, CO, PM–10, or NO_2 since 1990 and are subsequently redesignated to nonattainment for any of these pollutants, the provisions of this subpart shall not apply for such pollutant for 12 months following the date of final designation to nonattainment.

4. Section 51.396(a) is amended by adding a sentence after the second sentence to read as follows:

§ 51.396 Implementation plan revision.

(a) * * * Further revisions to the implementation plan required by amendments to this subpart must be submitted within 12 months of the date of publication of such final amendments to this subpart. * * *

* * * * *

5. Section 51.420 is revised to read as follows:

§ 51.420 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 51.400.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subpart are satisfied.

6. Section 93.114 is revised to read as follows:

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 93.104.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subpart are satisfied.

7. The identical text of §§ 51.422 and 93.115 are amended by adding a sentence to the end of paragraph (a) and by adding paragraph (d) as follows:

§ . Criteria and procedures: Projects from a plan and TIP.

(a) * * * Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.

* * * * *

(d) *TCMs.* This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

8. The identical text of §§ 51.428 and 93.118 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ . Criteria and procedures: Motor vehicle emissions budget (transportation plan).

* * * * *

(b) * * *

(1) * * *

(ii) NO_x as an ozone precursor;

* * * * *

9. Section 51.448 is amended by removing paragraph (g), redesignating paragraphs (h) and (i) as (g) and (h), and revising paragraphs (a) through (d) and the newly designated paragraph (g) to read as follows:

§ 51.448 Transition from the interim period to the control strategy period.

(a) *Control strategy implementation plan submissions.* (1) The transportation plan and TIP must be demonstrated to conform by 18 months from the date of the State's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emissions budget. If conformity is not determined by 18 months from the date of submission of such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made, until the transportation plan and TIP have been demonstrated to conform.

(2) For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning 90 days after submission, unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle emissions budget(s) may be used to determine conformity during the first 90 days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

(b) *Disapprovals.* (1) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act section 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) Notwithstanding paragraph (b)(1) of this section, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(c) *Failure to submit and incompleteness.* For areas where EPA notifies the State, MPO, and DOT of the State's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under Clean Air Act section 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(d) *Federal implementation plans.* When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

* * * * *

(g) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 51.464 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and

(e) of this section apply. Because the areas listed in § 51.464 are not required to demonstrate reasonable further progress and attainment the provisions of paragraphs (b) and (c) of this section do not apply to these areas.

* * * * *

10. Section 93.128 is amended by removing paragraph (g), redesignating paragraphs (h) and (i) as (g) and (h), and revising paragraphs (a) through (d) and the newly designated paragraph (g) to read as follows:

§ 93.128 Transition from the interim period to the control strategy period.

(a) *Control strategy implementation plan submissions.* (1) The transportation plan and TIP must be demonstrated to conform by 18 months from the date of the State's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emissions budget. If conformity is not determined by 18 months from the date of submission of such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made, until the transportation plan and TIP have been demonstrated to conform.

(2) For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning 90 days after submission, unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle emissions budget(s) may be used to determine conformity during the first 90 days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

(b) *Disapprovals.* (1) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act section 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) Notwithstanding paragraph (b)(1) of this section, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(c) *Failure to submit and incompleteness.* For areas where EPA notifies the State, MPO, and DOT of the State's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(d) *Federal implementation plans.* When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

* * * * *

(g) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 93.136 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 93.136 are not required to demonstrate reasonable further progress and attainment the provisions of paragraphs (b) and (c) of this section do not apply to these areas.

* * * * *

§§ 51.452 and 93.130 [Amended]

11. The identical text of §§ 51.452 and 93.130 is amended by redesignating paragraph (b)(5) as paragraph (a)(6); and in paragraph (c)(1) by revising the references, "paragraph (a)" to read "paragraph (b)" in two places.

[FR Doc. 95–27949 Filed 11–13–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[KY–95–01; FRL–5330–2]

Clean Air Act Final Interim Approval of Operating Permits Program; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating source category-limited (SCL) interim approval of the Operating Permits Program submitted by the Kentucky Natural Resources and Environmental Protection Cabinet for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 14, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365, on the 3rd floor of the Tower Building. Interested persons wanting to examine these documents, contained in EPA docket number KY–95–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–3555, Ext. 4149.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a

period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal program.

On September 5, 1995, EPA proposed SCL interim approval of the operating permits program for the Commonwealth of Kentucky. *See* 60 FR 46072. The September 5, 1995 notice also proposed approval of Kentucky's interim mechanism for implementing section 112(g) and for delegation of section 112 standards as promulgated. EPA did not receive any comments on the proposal. In this action, EPA is promulgating SCL interim approval of Kentucky's operating permits program, and approving the section 112(g) and section 112(l) mechanisms noted above.

II. Final Action and Implications

A. Title V Operating Permits Program

The EPA is promulgating SCL interim approval of the operating permits program submitted by the Commonwealth of Kentucky on December 27, 1993, and as supplemented on November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995. Kentucky's program substantially, but not fully, meets the requirements of part 70 and meets the interim approval requirements under 40 CFR 70.4. The Commonwealth must make the following changes to receive full approval: (1) revise the definitions of "emissions unit" and "stationary source" to include emissions of any pollutant listed under section 112(b) of the Act; (2) revise the definition of "regulated air pollutant" to include any pollutant subject to any requirements established under Section 112 of the Act; and (3) revise Rule 401 KAR 50:035 Section 5(2)(a) to provide for EPA review consistent with 40 CFR 70.8 in order to allow for requirements from preconstruction review permits to be incorporated into part 70 permits via administrative amendments.

The EPA can grant SCL interim approval to states whose programs do not provide for permitting all required sources if the state makes a showing that two criteria were met: (1) That there were "compelling reasons" for the exclusions and (2) that all required sources will be permitted on a schedule that "substantially meets" the requirements of part 70. EPA considers the omissions in Kentucky's definitions of "emissions unit", "stationary source", and "regulated air pollutant", as compelling reasons for granting SCL interim approval. Kentucky's SCL interim approval request included a revised transition schedule that demonstrates the Commonwealth will permit at least 60% of its sources and at least 80% of its emissions during the first three years. The revised transition plan demonstrates that all part 70 sources will be permitted on a schedule that substantially meets the requirements of part 70.

The scope of the Commonwealth's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the Commonwealth of Kentucky, except Jefferson County and any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until December 15, 1997. During this interim approval period, the Commonwealth of Kentucky is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the Commonwealth. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the Commonwealth fails to submit a complete corrective program for full approval by June 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If Kentucky then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Kentucky has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the Commonwealth, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Kentucky had come into compliance. In any case, if, six months after application of the first sanction, Kentucky still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Kentucky's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the Commonwealth has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the Commonwealth, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Kentucky has come into compliance. In all cases, if, six months after EPA applies the first sanction, the Commonwealth has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Kentucky has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Kentucky's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the Commonwealth upon interim approval expiration.

B. Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Kentucky's preconstruction review program found in Rule 401 KAR 50:035 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and Kentucky's adoption of rules specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by Kentucky to implement 112(g). The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the Commonwealth with adequate time to adopt regulations consistent with Federal requirements.

C. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a

program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to both existing and future standards and to sources covered by the part 70 program as well as non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of the Commonwealth's submittal and other information relied upon for the final interim approval are contained in docket number KY–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

Patrick M. Tobin.

Acting Regional Administrator.

[FR Doc. 95–28066 Filed 11–13–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[IN001; FRL–5331–2]

Clean Air Act Final Interim Approval of Operating Permits Program; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final interim approval.

SUMMARY: The USEPA is promulgating an interim approval of the operating permits program submitted by Indiana for the purpose of complying with Federal requirements which mandate that States develop, and submit to USEPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: The effective date of this action is December 14, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: USEPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act ("the Act") as amended (1990), USEPA has promulgated regulations which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the USEPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to USEPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to USEPA by November 15, 1993, and that USEPA act to approve or disapprove each program within 1 year after receiving the submittal. 40 CFR 70.4(e)(2), however, allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the 1-year review period. This additional review period may not extend beyond 1 year following receipt of the revised submission.

The USEPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, USEPA may grant the program interim approval for a period of up to 2 years. If USEPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

On May 22, 1995, USEPA proposed an interim approval of the operating permits program for Indiana (see 60 FR 27064) and received public comments on the proposal. In this document, USEPA is taking final action to promulgate an interim approval of the operating permits program for Indiana.

II. Final Action and Implications

A. Analysis of State Submission

The USEPA is promulgating an interim approval of the operating permits program submitted by Indiana on August 10, 1994. Indiana's program substantially meets the requirements of part 70; however, certain issues must be addressed in the State's submittal before USEPA can grant full approval.

For more detailed information on the analysis of the State's submission, please refer to the May 22, 1995, proposed interim approval of the Indiana Title V program (see 60 FR 27064) and the technical support document (TSD) included with the docket of the proposed interim approval.

1. Regulations and Program Implementation

a. *Applicability.* The Indiana program meets the requirements of 40 CFR 70.2 and 70.3 for applicability in 326 IAC 2–7–2. Please refer to the proposed interim approval and the TSD included with the docket of the proposed interim approval for more information regarding the language in 326 IAC 2–7–2.

b. Permit Applicotions. A deficiency in the State's permit application requirements exists concerning insignificant activities, which are defined in 326 IAC 2–7–1(20). In the Indiana program, the insignificant activity threshold level for sulfur dioxide (SO_2) is 10 pounds per hour (lb/hr) or 50 pounds per day (lb/day) and the insignificant activity threshold level for hazardous air pollutants (HAP) is 4 tons per year (tpy) for one HAP or 10 tpy of any combination of HAPs. USEPA proposed interim approval for these threshold levels in the May 22, 1995, **Federal Register**.

USEPA is promulgating interim approval to the SO_2 and HAP insignificant ivity levels and promulgating ll approval to the volatile organ compounds, particulate matter, carbon nonoxide, nitrogen oxides, and lead insignificant activity levels. The rationale for the interim approval status is provided in the propose interim approval and the TSD include with the docket of the propose nterim approval.

c. Permit issuance, renewal, reopenings and revisions. The Indiana program meets the requirements of 40 CFR 70.7 and 70.8 for permit issuance, renewal, reopenings, and public participation and the requirements of 40 CFR 70.4(b)(12) for operational flexibility. Please refer to the proposed interim approval and the TSD included with the docket of the proposed interim approval for more information regarding the language in 326 IAC 2–7–11 for administrative permit amendments.

In the May 22, 1995, notice, USEPA proposed interim approval with respect to the State's threshold levels for group processing of permits (326 IAC 2–7–12(c)). In that notice, USEPA stated that Indiana program's threshold level for minor permit modification (MPM) group processing eligibility was not as stringent as the part 70 threshold level. To obtain full approval, USEPA stated that Indiana must establish a group processing threshold consistent with 40 CFR 70.7(e)(3)(i), or demonstrate that an alternative threshold would alleviate severe administrative burden and result in trivial environmental impact. The May 22, 1995, notice stated that "if EPA's concerns are addressed by a change in the State's final regulations or by a State demonstration before final action on this notice, then EPA can fully approve the State's group processing threshold levels."

In an August 30, 1995, letter to USEPA, Indiana submitted a demonstration that an alternative threshold would alleviate severe administrative burden and would result in trivial environmental impact. In this letter, Indiana noted that its Title V regulation requires the State to provide public participation for all MPMs, including group processing MPMs. Since part 70 does not require public participation for MPMs, the State requirement is more stringent and will require public participation for many more permit modifications than the Federal rule requires. Indiana's group processing threshold level will allow the State to consolidate more of its MPM public notice and comment periods. Although staff review of modifications as individuals or as a group may not significantly differ, the administrative savings incurred by the State to provide public notice of these permits on an individual basis would be significant. Under its current permit programs, the State processes approximately 115–125 permit exemptions per year based on the stated group processing thresholds; and the State estimates that a majority of these might have to undergo individual processing under a part 70 threshold.

With regard to environmental impact, the State's letter also notes that under its program, more modifications than required by part 70 would be subject to permitting authority review and public notice. The level and result of permitting authority review should not be impacted by individual or group processing. In fact, since group processing actions must be completed within 180 days as opposed to 90 days, there may be opportunity for greater review and consideration. In addition, increased opportunity for public comment, whether as individual or group modifications, could result in enhanced environmental benefits, but at the very least will not directly result in adverse environmental impacts. Based on these considerations, USEPA believes the State has met the required justification for a different group processing threshold and is promulgating full approval for the Indiana MPM group processing threshold levels.

2. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Indiana has demonstrated in its Title V program submittal adequate legal authority to implement and enforce all section 112 requirements through Title V permits. This legal authority is contained in Indiana's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. USEPA has determined that this legal authority is sufficient to allow Indiana to issue permits that assure compliance with all section 112 requirements.

The USEPA is accepting the above legal authority as an adequate demonstration that Indiana is able to carry out all section 112 activities relative to Title V sources. For further rationale on this interpretation, please refer to the proposed interim approval, the TSD accompanying the proposed interim approval, and the April 13, 1993, guidance memorandum titled "Title V Program Approval Criteria for section 112 activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of Section 112(g) Upon Program Approval. As a condition of approval of the Title V program, Indiana is required to implement section 112(g) of the Act. Indiana has promulgated a "MACT Rule" in 326 IAC 2–1–3.3. The purpose of this regulation is to provide Indiana the necessary mechanism to implement section 112(g).

According to the **Federal Register** interpretive notice published on February 14, 1995 (60 FR 8333), the requirements of section 112(g) will not become effective until after USEPA has promulgated a regulation addressing that provision. The **Federal Register** notice sets forth in detail the rationale for this interpretation. At the time of Indiana's program submittal and USEPA's subsequent review period, USEPA had not promulgated a federal regulation containing the specific requirements of section 112(g).

The section 112(g) interpretive notice explains that USEPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal regulation so as to allow States time to adopt regulations implementing the Federal regulation, and that USEPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until USEPA provides for such an additional postponement of section 112(g), Indiana must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) regulation and adoption of implementing State regulations. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis.

For this reason, USEPA is promulgating approval of Indiana's MACT regulation (326 IAC 2–1–3.3) under the authority of Title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between promulgation of the section 112(g) regulation and adoption by Indiana of regulations implementing the provisions of section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if USEPA decides in the final section 112(g) regulation that sources are not

subject to the requirements of the regulation until State regulations are adopted. The USEPA is limiting the duration of this proposal to 18 months following promulgation by USEPA of the section 112(g) regulation. Once promulgated by USEPA, the 112(g) regulation will serve as the mechanism for establishing federally enforceable case-by-case MACT emission limits for HAPs. USEPA is interpreting Indiana's legal authority and commitment (Enclosure H, page 33 of the Indiana program submittal) to mean that, upon promulgation of the section 112(g) regulation, the State will expeditiously adopt regulations consistent with the provisions of 112(g).

Although section 112(l) generally provides authority for approval of State air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of section 110 or any other provision under the Act.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for a Title V program approval, specified in 40 CFR 70.4(b), also encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards as promulgated by USEPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the USEPA is promulgating approval, under section 112(l)(5) and 40 CFR 63.91, of Indiana's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. This program approval applies to both existing and future standards, but is limited to sources covered by the part 70 program.

Indiana has informed USEPA that it intends to accept delegation of section 112 standards through rule adoption. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Indiana and USEPA expected to be completed prior to approval of Indiana's section 112(l) program for delegations.

d. Limiting HAP Emissions Through a Federally Enforceable State Operating Permit (FESOP) Program. On August 18, 1995, USEPA published a **Federal Register** notice promulgating a direct-final approval of the Indiana FESOP regulation which would establish federally enforceable limits on sources' potential to emit. If USEPA does not receive any comments on this notice by September 18, 1995, the approval will become effective on October 17, 1995, and Indiana will have the ability to place federally enforceable limits on HAPs in addition to criteria pollutants through a FESOP permit. The federal enforceability of HAP limits in a FESOP permit is addressed in the August 18, 1995, **Federal Register** notice.

e. Title IV. Indiana's program contains adequate authority to issue permits which reflect the requirements of Title IV and its implementing regulations. 326 IAC 21–1–1 incorporates by reference 40 CFR part 72, 75, 76, 77, and 78. Indiana's program submittal contains a commitment to revise its regulations as necessary to accommodate federal revisions and additions to Title IV and the Acid Rain regulations once they are promulgated.

B. Response to Public Comments

The USEPA received comments from two parties. The USEPA's responses to these comments are summarized in this section.

1. Comment by Mobil Oil Company

Mobil Oil Company commented that it supports the proposed interim approval of the Indiana Title V program. Mobil, however, urges USEPA to expeditiously approve a federally enforceable state operating permit (FESOP) program for the State of Indiana so that sources will have a federally enforceable mechanism to limit potential to emit so as to stay below the Title V threshold level.

USEPA agrees that a FESOP program may provide a useful mechanism for reducing the permitting burden on sources that can limit potential to emit to below the Title V threshold level. Indiana has submitted a FESOP program to USEPA as a proposed revision to the State implementation plan and USEPA has published a direct-final approval notice for the Indiana FESOP program in the August 18, 1995, **Federal Register**.

2. Comment by Eli Lilly and Company

Eli Lilly and Company (Lilly) commented that it supports the proposed interim approval of the Indiana Title V program. Lilly, however, commented on a definition that was not addressed in the proposed interim approval. Lilly wants USEPA to clarify that the definitions of "Title I modification" and "case-by-case determination of an emission limit or other standard," as used in 326 IAC 2–7, do not include minor new source review (NSR) requirements. This is commonly known as the "narrow definition of a Title I modification." Such a definition would allow minor NSR modifications to be processed through the minor permit modification (MPM) procedure of 326 IAC 2–7–12 or the operational flexibility procedures of 326 IAC 2–7–20.

In an August 29, 1995, letter to USEPA, Indiana has stated that, it developed the State Title V regulation to allow flexibility in this definition. Indiana also stated that it did not indicate at any time during the regulation development process that it would include minor NSR modifications as "Title I modifications." The August 29, 1995, letter states that, since the use of the narrow definition of "Title I modification" is not a USEPA interim approval issue and USEPA stated in a June 20, 1995, letter that it plans to adopt the narrow definition in upcoming supplemental rulemaking, Indiana will be employing the narrow definition in the implementation of its Title V program. Consistent with actions taken on other Title V programs, USEPA is accepting Indiana's intention to use the narrow definition of "Title I modification" and is not identifying this interpretation as an interim approval issue in this notice.

C. Options for Approval/Disapproval and Implications

The USEPA is promulgating an interim approval to the operating permits program submitted by Indiana on August 10, 1994. The State must make the following changes to receive full approval: The State must amend its insignificant activities levels for SO_2 and HAPs to levels which assure that large sources are included in Title V review. Indiana's program is not fully approvable because of this deficiency. The program, however, substantially meets the requirements of part 70 because Indiana's regulations and legislation comply with all other part 70 requirements.

D. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends for a period of up to 2 years from the effective date of this promulgation. During the interim approval period, the State is protected from sanctions for failure to have a program, and USEPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications. Because the interim approval automatically expires 2 years after promulgation of a final interim approval, the State may submit its interim corrections at any time. However, the State may not submit its corrections any later than 18 months after promulgation of final interim approval. The USEPA will then have 6 months to promulgate a final action.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by 6 months before expiration of the interim approval, USEPA would start an 18-month clock for the mandatory imposition of section 179(b) sanctions. Section 179(b) of the Act mandates the impositions of the following sanctions: (1) 2 to 1 emission offsets for new construction in nonattainment areas and (2) restriction on federal funding of highway projects.

If the State then failed to submit a corrective program that USEPA found complete before the expiration of that 18-month period, USEPA would be required to apply the emission offset sanction, which would remain in effect until USEPA determined that the State had submitted a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, 6 months after the application of the first sanction, the State still had not submitted a corrective program that USEPA found complete, the highway sanction would be required.

If, following final interim approval, USEPA were to disapprove the State's complete corrective program, USEPA would be required to apply the emission offset sanction on the date 18 months after the effective date of the disapproval, unless, prior to that date, the State had submitted a revised program and USEPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In all cases, if, 6 months after USEPA applied the first sanction, the State had not submitted a revised program that USEPA had determined corrected the deficiencies that prompted disapproval, the highway sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or USEPA had disapproved a submitted corrective program. Moreover, if USEPA has not granted full approval to a State program by the expiration of an interim approval USEPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final regulation on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the regulation will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal operating permits program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning operating permits programs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribunal governments in the aggregate, or to the private sector, of $100 million or more. In such cases, under Section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Also in such cases, Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the final approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 27, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by adding the entry for Indiana in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Indiana

(a) The Indiana Department of Environmental Management: submitted on August 10, 1994; interim approval effective on November 14, 1995; interim approval expires November 14, 1997.

(b) (Reserved)

* * * * *

[FR Doc. 95–28067 Filed 11–13–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7170

[OR–943–1430–01; GP5–126; OR–50874, OR–51194]

Withdrawal of Public Lands To Protect the Floras Lake and Lost Lake Addition to the New River Area of Critical Environmental Concern; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 182.38 acres of public lands from surface entry and mining until April 28, 2013, for the Bureau of Land Management to protect the Floras Lake and Lost Lake Addition to the New River Area of Critical Environmental Concern. The lands will be open to mineral leasing.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Floras Lake and Lost Lake Addition to the existing New River Area of Critical Environment Concern:

Willamette Meridian

Floras Lake

T. 31 S., R. 15 W.,
Sec. 7, lot 1;
Sec. 8, lots 3, 4, 5, and 6.

To include any accretion of land, the area described contains approximately 111.48 acres in Curry County.

Lost Lake

T. 29 S., R. 15 W.,
Sec. 35, N½NE¼NE¼;
Sec. 36, NW¼NW¼ and that portion of the NE¼NW¼ beginning at the southwest corner of the NW¼NE¼NW¼ of sec. 36, T. 29 S., R. 15 W., and running thence north along the west line of the NE¼NW¼ of said sec. 36, a distance of 300 feet; thence east parallel to the north line of said sec. 36, a distance of 250 feet; thence south parallel to the west line of the NE¼NW¼ of said sec. 36, a distance of 300 feet; thence west along the south boundary of the NW¼NE¼NW¼ of said sec. 36, a distance of 250 feet to the point of beginning;

And Beginning at the southwest corner of the NE¼NW¼ of sec. 36, T. 29 S., R. 15 W., proceeding thence east 634 feet; thence north 420 feet to Berg Road; thence westerly along said road 52 feet, more or less to the southwest corner of property conveyed in Book 193, Page 489, Deed Records of Coos County, Oregon; thence north 242 feet, more or less, to the northwest corner of property conveyed in Book 193, Page 489, Deed Records of Coos County, Oregon; thence west 523 feet to the west line of the NE¼NW¼ of said section; thence south 662 feet to the southwest corner of the said NE¼NW¼ and the point of beginning, Saving and Excepting that part subject to the right of way of the said Berg Road.

The area described contains 70.90 acres in Coos County.

2. At 8:30 a.m. on November 14, 1995, the lands will be opened to application and offers under the mineral leasing laws and the Geothermal Steam Act.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire April 28, 2013, unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 27, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–27988 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–33–P

43 CFR Public Land Order 7171

[CA–010–1430–01; CACA 36065]

Partial Revocation of Executive Order Dated February 25, 1919; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 4.19 acres of public lands withdrawn for the Bureau of Land Management's Power Site Reserve No. 707. The lands are no longer needed for this purpose, and the revocation is necessary to facilitate completion of a land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. The lands have been and will remain open to mineral leasing. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Sacramento, CA 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated February 25, 1919, which withdrew lands for Power Site Reserve No. 707, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 3 N., R. 13 E.,
Sec. 32, lots 23 to 26, inclusive (originally described in the Executive Order as lot 10 except for patented mineral entries).

The areas described aggregate 4.19 acres in Calaveras County.

2. The lands are temporarily segregated by a pending land exchange and will not be opened at this time.

3. The State of California has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818 (1988), as amended.

Dated: October 27, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–27987 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–40–P

43 CFR Public Land Order 7172

[NM–932–1430–01; NMNM–42918]

Partial Revocation of Executive Order No. 5907; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Executive Order No. 5907 insofar as it affects 60.82 acres of public land withdrawn for Public Water Reserve No. 146. The land is no longer needed for this purpose. The land has been leased since 1976 to the New Mexico State Park and Recreation Commission for the Villanueva State Park. The revocation is needed to convert the lease to a patent to convey the land to the New Mexico State Park and Recreation Commission under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 (1988).

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 5907 dated August 18, 1932, which withdrew public land for Public Water Reserve No. 146, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 12 N., R. 15 E.,
Sec. 15, lots 5 and 6.

The area described contains 60.82 acres in San Miguel County.

2. The land described above is hereby made available for conveyance under the Recreation and Public Purposes Act of 1926, as amended, 43 U.S.C. 869 (1988).

Dated: October 27, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–27989 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–FB–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 91–273; FCC 95–417]

Notification of Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Order on Reconsideration* (Order) amends the Commission's rules regarding the reporting of telephone network outages in accordance with requests for reconsideration filed in response to the *Second Report and Order*. Previously the rules required carriers to report, *inter alia*, fire-related incidents impacting 1000 or more of a carrier's lines and outages affecting major airports and 911 facilities. Under the previous rule, outages affecting 911 were to be reported if they disrupted 25% or more of the lines to a Public Service Answering Point (PSAP) and outages affecting major airports were to be reported if they were "likely to be of media interest." The present Order alters these aspects of the outage reporting rule.

For 911 outages, the Order replaces the requirement that carriers report all outages that disrupt more than 25% of the lines to any PSAP. The old requirement was difficult to apply. The new rules simplify the system.

Reports will hereafter be required in the following situations: If, for 24 hours or more, one or more PSAPs cannot be reached by 911 callers, and each such isolated PSAP serves fewer than 30,000 access lines, an initial report of the outage is due within 120 minutes of the carrier's first knowledge of such an outage; if, for at least 30 minutes, an E911 Tandem fails to relay 911 calls to one or more PSAPs, an initial report is due within 120 minutes, regardless of the number of access lines served by that tandem; if, for at least 30 minutes, an end office serving 50,000 or more access lines fails to relay 911 calls, or one or more PSAPs serving in the aggregate 50,000 or more access lines cannot be reached by 911 callers, an initial report is due within 120 minutes; or if, for at least 30 minutes, an end office serving from 30,000 to 50,000 access lines is cut off from 911 service, or one or more PSAPs serving in the aggregate 30,000 to 50,000 access lines cannot be reached by 911 callers, an initial report is due within 3 days. Final reports of all these outages are due within 30 days.

The Order also eliminates the requirement that carriers report any outage affecting a major airport that is "likely to be of media interest." This rule was too subjective. The new rule requires that carriers report any outage affecting a major airport that "has received any media attention of which the carrier's reporting personnel are aware."

The Order denies the request of Pacific Bell that the Commission clarify that the obligation to report fire-related incidents does not apply to telephone poles and aerial cables that are consumed in fires. This requirement has not proved burdensome to carriers and will supply the Commission with valuable information.

EFFECTIVE DATE: April 12, 1996.

FOR FURTHER INFORMATION CONTACT: Robert E. Kimball, (202) 418–2339, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No 91–273, FCC 95–417, adopted October 4, 1995, and released October 30, 1995. The item is available for inspection and copying during normal hours in the Commission's FCC Reference Center (room 230), 1919 M St., NW., Washington, D.C., or a copy may be purchased from the duplicating contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037. The Order will be published in the FCC Record.

OMB Review

Implementation of this collection of information will be subject to approval by the Office of Management and Budget.

Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (Section 63.100): Order on Reconsideration.

OMB Number: 3060–0484.

Expiration Date: 6/30/96.

Action: Revised collections.

Respondents: Business or other for profit.

Frequency of Response: On occasion. Initial report due 120 minutes or 3 days after incident depending on number of potentially affected customers and nature of disruption. Final report due twenty-eight or thirty days after initial report, depending on nature of disruption.

Estimated Annual Burden: For the entire reporting requirement inclusive of the amendments, the estimated burden remains the same as that approved by the OMB for the *Second Report and Order*, 59 FR 40264, August 8, 1994. 200 responses; 5 hours each; 1000 hours total. The information to be furnished is generally gathered by carriers during outages and will be less than is presently being provided, so the requirement is not burdensome.

Paperwork Reduction: Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Room 234, Paperwork Reduction Project (3060–0484), Washington, D.C. and to the Office of Management and Budget, Paperwork Reduction Project (3060–0484), Washington, D.C. 20503.

Needs and Uses: Section 63.100 of the Commission's Rules, 47 CFR § 63.100, is amended to provide for the collection of information which we believe is essential to our mission of ensuring that the public is protected from major disruptions to telephone services. The amendments modify 47 CFR Section 63.100 to require that local exchange or interexchange common carriers or competitive access providers that

operate either transmission or switching facilities and provide access service or interstate or international telecommunications service report outages that affect 30,000 or more customers or that affect special facilities and report fire-related incidents impacting 1000 or more lines. With such reports the FCC can monitor and take effective action to ensure network reliability. The present amendments provide for the replacement of the requirement that carriers report 911 outages that disrupt 25% or more of the lines serving any PSAP with a less burdensome requirement that will, nevertheless, supply the Commission with all necessary 911 outage information. The present amendment also replaces the requirement that carriers report outages affecting major airports that are likely to attract media attention with a less burdensome requirement that will supply the Commission with all necessary information on major outages affecting airports.

Analysis of Proceeding

In requiring carriers to report 911 outages that disrupt more than 25% of the lines serving any PSAP, the previous rules were supposed to simplify the criteria under which carriers had voluntarily reported special facilities outages prior to the *Second Report and Order* (59 FR 40264, August 8, 1994). A subcommittee of the Network Reliability Council, a Federal Advisory Committee providing reporting recommendations to the Federal Communications Commission, suggested that carriers report, *inter alia*, any "outage of a loop facility containing 75% or more of the lines to the PSAP." Prior to the *Second Report and Order*, confusion among carriers submitting voluntary reports seemed to result from the multiplicity of other 911 reporting criteria suggested by the subcommittee, especially the criteria involving tandem or tandem-affecting failures. During the two years of voluntary reporting under the subcommittee's suggestions, the Commission received no indication that carriers were having difficulty determining the percentage of lines affected. By applying a lower percentage standard—25%—and eliminating all other 911 reporting criteria, the *Second Report and Order* attempted to clarify the 911 reporting standards, obtain the same amount of data, better measure the relative impact of 911 outages and motivate carriers to take greater cognizance of those routes that serve 911 PSAPs. In the present Order, however, commenters have demonstrated that determinations of the exact percentage of lines affecting a particular PSAP involve greater difficulties than had been anticipated.

On the basis of the comments submitted in this proceeding and comparisons of 911 outage reports received before and after the *Second Report and Order* went into effect, the present Orders concludes that the 911 outage reporting requirements adopted in the *Second Report and Order* have produced a far greater number of 911 reports and a far greater reporting burden for some carriers than anticipated. In the five months following September 7, 1994, the effective date of the *Second Report and Order*, the Commission received 64 reports of outages affecting 911 services. In the five months prior to the September 7, 1994 effective date, carriers using the TRG Guideline standards reported only seven 911-affecting outages. Non-911 outages reported since September 7, 1994 have not significantly increased. Commission analyses of 911 reports do not reveal any common causes of 911 outages relating to network vulnerability that account for this increase.

Some 911 reports received since the effective date of the *Second Report and Order* appear to be the result of carriers preferring to err on the side of over-inclusiveness where they are unable to determine accurately the percentage of lines serving PSAPs that may have been affected by an outage. Numerous initial reports, not included in the totals above, have been withdrawn when carriers were subsequently able to determine with greater accuracy the effects of the outages reported. The most pronounced reason, however, for the increased 911 outage reporting is that carriers in less populated areas serve a very large number of small, dispersed PSAPs. Eleven of the sixty-four 911 outages reported since September 7, 1994 occurred in a single state where there are approximately 560 PSAPs. Approximately 80% of these PSAPs are manned by only one or two operators. Twenty of the sixty-four 911 outages were reported by a single carrier serving an area encompassing over 700 PSAPs. Nearly 600 of these PSAPs are served by fewer than three voice connections, including connections maintained solely to provide redundancy. Failure of a single line to any PSAP served by no more than three lines will generate an outage report under the standards set forth in the *Second Report and Order* even if the failed line is provided solely for redundancy. In these circumstances the "outage" will have no effect at all on PSAP operators or customers. Half of the 911 outages reported under these standards have been reported by the two carriers (including those carriers' subsidiaries) serving the largest number of predominantly rural areas.

The Order finds that, because of the disproportionate number of very small rural PSAPs, the criteria for reporting 911 outages are unnecessarily broad to achieve the rule's intended purpose. The effect of the rule is to require the greatest amount of reporting for those PSAPs serving the fewest number of lines. This was not the object of the rule. It is clear from the NRC's E911 Focus Group Report that outages affecting 911 service were believed to be especially important because each 911 system was thought to represent a uniquely vulnerable point in the telecommunications network. An E911 PSAP was viewed as a gateway through which the whole variety of possible requests for emergency help would converge, be rapidly evaluated, and connected with the nearest and most appropriate public safety services. The rapid nationwide deployment of these increasingly complex and concentrated systems justified federal interest in discovering any common threats to their reliability. In rural areas where PSAPs are numerous and very small, where, for example the PSAP is a telephone in the local fire department, such convergence and vulnerability is more limited. The large number of 911 outage reports proceeding from these areas does not provide the Commission with significant, new information or promote the stated objectives of 911 outage reporting in the *Second Report and Order*.

Burdensome federal reporting requirements may also increase the costs of 911 service reliability. Under the present reporting standard, for example, providing a redundant line to a PSAP will increase the probability that additional outages will have to be reported. The costs of such reporting could increase the costs of the line. Since the reliability of 911 service in rural areas will often depend on whether local governments can afford to deploy redundant lines, the federal reporting requirements could make it less likely that reliability will be increased in this way. The particular expenses carriers incur as providers of 911 service capabilities should not be inflated by a requirement that they monitor, analyze, tabulate, and report 911 outages that are numerous, not because of any real threat to reliability, but only because the PSAPs in certain areas are, by necessity, small, separate and widely dispersed. The cost of providing 911 service reliability should not be augmented by unnecessary federal reporting requirements.

The problem of unnecessary 911 outage reporting can be fairly resolved without ignoring outages that affect smaller PSAPs. No statistical base of comparison will be sacrificed if a longer reporting threshold is established for outages that isolate the smaller PSAPs likely to be found outside major urban areas. A duration of 30 minutes or more for an outage in a rural area will not necessarily have the same significance for purposes of analyses as an outage of 30 or more minutes in an urban area. Restoration times for small installations over widely dispersed areas are likely to be longer due to their remoteness from vendors and from the more sophisticated equipment or technical help often needed to diagnose and to restore service. An outage lasting just 30 minutes in a rural area, for example, is likely to proceed from different causes and involve simpler solutions than an outage lasting the same amount of time in an urban area. A longer reporting threshold for smaller PSAPs will, however, alleviate the disproportionate burden the present 911 requirements impose on carriers serving such PSAPs. This order, therefore, amends Section 63.100(a)(4) of our rules, altering the duration threshold for reporting smaller outage affecting PSAPs.

The amendments herein adopted replace the percentage standard, which has proven confusing and difficult to apply, by redefining 911 reportable outages as those that lead to isolation of one or more PSAP(s) for 24 hours or more, if the isolated PSAP(s) collectively serve fewer than 30,000 access lines and no alternate routing has been invoked. The amendments define 911 outages requiring a report as those for which loss of call processing capabilities in the E911 tandem(s) continues for 30 minutes or more, regardless of the number of customers affected, if no alternate routing has been invoked. The amendments require reporting of both these types of 911 outages within 2 hours of the carrier's first knowledge that the outage is reportable. This will resolve the problems of reporting outages affecting smaller PSAPs while enabling the Commission to continue monitoring such outages at a more reasonable level.

Previously, the rules allowed use of the blocked calls standard to determine whether the numerical thresholds had been reached for LEC tandem outages. In the case of 911 outages, however, it is more practical to require reporting of larger 911 outages according to the number of access lines served by the affected PSAP, regardless of the number of blocked calls. Carriers have had considerable difficulty determining the number of blocked 911 calls during outages. 911 outages are also less likely to be predictable on the basis of historical time-of-day traffic loads, the alternative method of determining blocked calls provided for in the *Second Report and Order*. The number of access lines, on the other hand, is easily determined and will ensure maximum coverage of larger 911 outages. The amendments herein require reporting of larger 911 outages according to the number of access lines served by the affected PSAP, regardless of the number of blocked calls.

To make as accessible and clear as possible the 911 outage reporting requirements under both the special facilities subsection and the numerical thresholds subsection of section 63.100 of the Commission's Rules, the amendments change the definition of "special facilities" to remove reference to 911 in that paragraph and consolidate all 911 reporting rules in a separate new subsection, 47 CFR 63.100(h). To make application of this new subsection as specific as possible, the amendments complete the definition of reportable 911 outages in section 63.100(a)(4) by including outages for which there is: (1) isolation of one or more PSAP(s) for 30 or more minutes, if the isolated PSAP(s) collectively serve(s) 30,000 or more access lines and no alternate routing has been invoked; or (2) isolation of an end office switch or host/remote cluster from 911 services for 30 minutes or more, if these installations collectively serve 30,000 or more access lines and no alternate routing has been invoked. For 911 outages, only those that fall within these two categories or those described in the paragraph above will be reportable under the amendments.

Under the previous rule, the time periods for initially reporting outages at the 50,000 and 30,000 potentially-affected-customers thresholds are 2 hours and 3 days, respectively. To avoid confusion, the amendments herein establish parallel reporting periods for 911 outages affecting 50,000 and 30,000 customers respectively. Whether these thresholds have been reached will be determined by the number of access lines served by the isolated 911 installations. The amendments set a 3 day deadline for filing initial reports of outages isolating 911 installations serving 30,000 to 50,000 lines and 2 hours for those serving 50,000 or more access lines.

Finally, the amendments change the information requirements by eliminating the sentence, "Carriers must indicate, when 911 is one of those services, whether more than 25% of the lines to any PSAP were disrupted and there was no automatic rerouting to an alternate PSAP." Any known effect on 911 services attributable to any outage reportable under other criteria is to be described under the information requirement that carriers specify the "types of services affected." The amendments make this clear.

In establishing an exemption for reporting 911 outages in situations where there is automatic rerouting to an alternate PSAP, the *Second Report and Order* attempted to avoid the reporting of 911 outages that had no real impact on 911 customers. The phrase "automatic rerouting to an alternate PSAP," however, has resulted in some confusion and overreporting. Therefore, the present Order eliminates that phrase and, instead, requires 911 outage reports only where rerouting to the same or an alternate PSAP location did not occur. This will make it clear that an outage is reportable if there is a rerouting capability that is not used, but not reportable when calls are successfully rerouted.

Since the *Second Report and Order* went into effect on September 7, 1994, few outages affecting major airports have been reported. None has been reported because of the likelihood that it would attract media interest. Commenters have shown that attempting to estimate the newsworthiness of an outage, along with the other reporting and restoration efforts at hand, is an unreasonable task to impose on telecommunications technicians. The Commission's role as a source of information to which the public can turn when concerned about matters involving telecommunications, however, the Commission needs to know if an outage affecting a major airport does, in fact, receive media attention. The Order amends Section 63.100(a)(6) of the Commission's rules, therefore, to require the reporting of any outage affecting a major airport that "has received any media attention of which the carrier's reporting personnel are aware."

The reporting requirement triggered when an outage arises because of a fire can give us and the industry valuable information about such vulnerabilities, particularly if alternative technologies, such as underground cable, could significantly improve reliability. For these reasons, the Order declines, at this time, to modify the reporting requirement for fire-related incidents.

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i), and 201 of the Communications Act

of 1934, as amended, 47 U.S.C. 151, 154 and 201, Section 63.100 of the Commission's Rules, 47 CFR 63.100, IS AMENDED as set forth below, effective April 12, 1996.

It is Further Ordered, that, the Secretary shall cause a summary of this *Order* to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain the complete text of this Commission decision. The Secretary shall also provide a copy of this *Order* to each state utility commission.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Service disruptions.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 63 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403 and 533, unless otherwise noted.

2. Section 63.100 is amended by revising paragraphs (a)(3), (a)(4), and (a)(6); in paragraphs (b), (c), (d) and (e) by removing the sentence "Carriers must indicate, when specifying the types of service affected by any reportable outage, when 911 is one of those services, whether more than 25% of the lines to any PSAP were disrupted and there was no automatic rerouting to an alternate PSAP." and adding in its place "When specifying the types of services affected by any reportable outage, carriers must indicate when 911 service was disrupted and rerouting to alternative answering locations was not implemented."; and adding paragraph (h) to read as follows:

§ 63.100 Notification of service outage.

(a) * * *

(3) *Special offices and facilities* are defined as major airports, major military installations, key government facilities, and nuclear power plants. 911 special facilities are addressed separately in paragraph (a)(4) of this section.

(4) *An outage which potentially affects a 911 special facility* is defined as a significant service degradation, switch or transport, where rerouting to the same or an alternative answering location was not implemented, and involves one or more of the following situations:

(i) Isolation of one or more Public Service Answering Points (PSAPs) for 24 hours or more, if the isolated PSAPs collectively serve less than 30,000 or more access lines, based on the carrier's database of lines served by each PSAP; or

(ii) Loss of call processing capabilities in the E911 tandem(s), for 30 minutes or more, regardless of the number of customers affected; or

(iii) Isolation of one or more PSAP(s), for 30 or more minutes, if the isolated PSAPs collectively serve 30,000 or more access lines, based on the carrier's database of lines served by each PSAP; or

(iv) Isolation of an end office switch or host/remote cluster, for 30 minutes or more, if the switches collectively serve, 30,000 or more access lines.

* * * * *

(6) *An outage which "potentially affects" a major airport* is defined as an outage that disrupts 50% or more of the air traffic control links or other FAA communications links to any major airport, any outage that has caused an Air Route Traffic Control Center (ARTCC) or major airport to lose it radar, any ARTCC or major airport outage that has received any media attention of which the carrier's reporting personnel are aware, any outage that causes a loss of both primary and backup facilities at any ARTCC or major airport, and any outage to an ARTCC or major airport that is deemed important by the FAA as indicated by FAA inquiry to the carrier management personnel.

* * * * *

(h)(1) Any local exchange or interexchange common carrier or competitive access provider that operates transmission or switching facilities and provides access services or interstate or international telecommunications services, the experiences an outage on any facilities that it owns, operates or leases that potentially affects 911 services must notify the Commission within the applicable period shown in the chart in this paragraph (h)(1) if such outage meets one of the following conditions, as defined in paragraph (a)(4) of this section:

Condition	Lines affected	Duration	Period
Loss of E911 Tandem capability	No limit	30 minutes or more	120 minutes.
Isolation of PSAP(s)	Under 30,000 access lines served	24 hours or more	120 minutes.
Isolation of PSAP(s)	50,000 or more access lines served	30 minutes or more	120 minutes.
Isolation of PSAP(s)	30,000 to 50,000 access lines served	30 minutes or more	3 days.
Isolation of EO switch, host/remotes from 911	50,000 or more access lines served	30 minutes or more	120 minutes.
Isolation of EO switch, host/remotes from 911	30,000 to 50,000 access lines served	30 minutes or more	3 days.

(2) Satellite carriers and cellular carriers are exempted from the reporting requirement in this paragraph (h). Notification must be served on the Commission's Monitoring Watch Officer, on duty 24 hours a day in the FCC headquarters building in Washington, D.C., or on a secondary basis it may be served on the Commission's Watch Officer on duty at the FCC's facility at Grand Island, Nebraska. The notification must be by facsimile or other record means delivered within the notification period indicated above from the time of the carrier's first knowledge that the service outage "potentially affects a 911 special facility" as described in paragraph (a)(4) of this section and summarized in the chart in paragraph (h)(1) of this section and the service outage has continued for the duration indicated in paragraph (a)(4) of this section and summarized in the chart in paragraph (h)(1) of this section. Notification shall identify a contact person who can provide further information, the telephone number at which the contact person can be reached, and the information known at the time notification is made about the service outage including: the date and estimated time (local time at the location of the outage) of commencement of the outage; the geographic area affected; the estimated number of customers affected; the types of services affected; the duration of the outage, *i.e.* time elapsed from the estimated commencement of the outage until restoration of full service; the estimated number of blocked calls during the outage; the apparent or known cause of the incident, including the name and type of equipment involved and the specific part of the network affected; methods used to restore service; and the steps taken to prevent recurrences of the outage. The report shall be captioned Initial Service Disruption Report. Lack of any of the information in this paragraph (h)(2) shall not delay the filing of this report. Not later than thirty days after the outage, the carrier shall file with the Chief, Common Carrier Bureau, a Final Service Disruption Report providing all available information on the service outage, including any information not contained in its Initial Service Disruption Report and detailing specifically the root cause of the outage and listing and evaluating the effectiveness and application in the immediate case of any best practices or industry standards identified by the Network Reliability Council to eliminate or ameliorate outages of the reported type.

[FR Doc. 95–27300 Filed 11–13–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 60, No. 219
Tuesday, November 14, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 782

RIN 0560–AE37

End-Use Certificate Program

AGENCY: Consolidated Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Consolidated Farm Service Agency (CFSA) is proposing to amend the regulations found at 7 CFR part 782 which govern the End-Use Certificate Program. The End-Use Certificate Program is administered in accordance with section 321(f) of the North American Free Trade Agreement Implementation Act. This rule proposes to amend reporting requirements, reporting deadlines, and the required notification process in a manner that will increase program effectiveness and efficiency for government and affected industries. If adopted, the provisions of this regulation would simplify the reporting burden placed on importers, subsequent buyers, end users and exporters by extending reporting deadlines and incorporating alternative reporting methods.

Other minor revisions to the regulations are proposed as well.

DATES: Written comments must be received on or before December 14, 1995 in order to be assured of consideration.

ADDRESSES: Comments concerning this proposed rule must be mailed to Deputy Administrator, Commodity Operations, CFSA, P.O. Box 2415, Washington, DC 20013–2415. All written comments will be available for public inspection in Room 5962, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 5 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Acting Deputy Director, Warehouse and Inventory Division, CFSA, Box 2415, Washington, DC 20013–2415; telephone (202) 720–5647 or FAX (202) 690–0014.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Analysis is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

This rule proposes to amend the reporting requirements by extending reporting deadlines and incorporating alternative reporting methods. Since February 27, 1995, the effective date of the end-use certificate program, CFSA has determined that entities required to file form CFSA–750, End-Use Certificate for Wheat, and form CFSA–751, Wheat Consumption and Resale Report, have encountered some difficulty in meeting the requirement that these forms be filed with the Kansas City Commodity Office (KCCO) within 10 workdays following the date of entry, or the date of resale, as applicable. This proposal to increase the reporting requirement from 10 workdays following the date of entry or resale, as applicable, to 15 workdays following the date of entry or resale will provide increased flexibility to the entity that is required to file the report without decreasing the efficiency of the program on the part of the government. Additionally, numerous requests have been received by CFSA to permit facsimile transmission and computer generation of forms CFSA–750, End-Use Certificate for Wheat, and CFSA–751, Wheat Consumption and Resale Report. In an attempt to utilize technology that is currently available, CFSA is proposing that such report submissions will be acceptable under the End-Use Certificate Program. While all of the entities that are required to file forms CFSA–750 and CFSA–751 have the potential of being affected by these proposed changes in reporting requirements, no entities will be adversely affected.

The changes proposed in this rule do not impact recordkeeping requirements.

The reporting requirements for CFSA–750 and CFSA–751 were previously approved by the Office of Management and Budget (OMB) and assigned OMB control number 0560–0151.

These revised reporting requirements will be submitted to OMB for approval under the provisions of 44 U.S.C. 35. Send comments regarding this collection of information to: Department of Agriculture, Clearance Officer, Office of Information Resources Management, Room 404–W, Washington, DC 20250, and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Room 3201, New Executive Office Building, Washington, DC 20503.

Regulatory Flexibility Act

On January 26, 1995, CFSA published a final rule that established program requirements for the End-Use Certificate Program. At that time, a Regulatory Flexibility Analysis was prepared to discuss the impact of the implementation of the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Helen Linden, Warehouse and Inventory Division, CFSA, P.O. Box 2415, Washington, DC 20013–2415; telephone: (202) 690–4321.

The changes that are proposed in this rule are intended to reduce the reporting burden for all businesses, including small businesses. Because these proposed changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required for this proposed rule.

Background

This rule proposes to amend the regulations at 7 CFR part 782 with respect to the U.S. End-Use Certificate Program. Since February 27, 1995, the effective date for the implementation of the End-Use Certificate Program, several items have been identified that could improve the effectiveness and the efficiency of the End-Use Certificate Program.

The final rule published on January 26, 1995, at 60 FR 5087, did not include a specific time requirement for importers and subsequent buyers to inform subsequent buyers or end users that wheat being purchased is of Canadian origin, and as such, is subject to these regulations. In some instances, importers are delivering Canadian wheat to subsequent buyers and end users through grain handlers. CFSA has found that this method of transporting Canadian wheat results in some grain handlers acquiring title to a portion of the wheat, thus becoming either a subsequent buyer or end user. The general interpretation of existing regulations by affected parties is that the importer or subsequent buyer has 10 days to provide a copy of the form End-Use Certificate for Wheat, ASCS–750, to the subsequent buyer or exporter, which mirrors the requirement for submitting forms to the Kansas City Commodity Office (KCCO). This delay in notification has resulted in situations where subsequent buyers and end users have either commingled Canadian wheat with U.S. origin wheat or resold Canadian wheat before they were informed that the wheat is of Canadian origin. Therefore, CFSA proposes to amend the regulations at 7 CFR part 782 to require importers and subsequent buyers to provide immediate notification to purchasers and grain handlers when wheat being sold is of Canadian origin.

Secondly, in an effort to simplify and expedite the receipt of reports, this proposed rule would extend the time requirements for filing form ASCS–750 with KCCO from 10 to 15 workdays following the date of entry and incorporate provisions which will permit the electronic transmission and computer generation of required forms.

Finally, this proposed rule includes nomenclature changes to revise form numbers ASCS–750 and ASCS–751 to CFSA–750 and CFSA–751, respectively.

For the reasons set out in the preamble, 7 CFR part 782 is proposed to be amended as follows:

PART 782—END-USE CERTIFICATE PROGRAM

1. The authority citation for part 782 continues to read as follows:

Authority: 19 U.S.C. 3391(f).

2. In part 782 all references to "ASCS–750" are revised to read "CFSA–750."

3. In part 782 all references to "ASCS–751" are revised to read "CFSA–751."

4. Section 782.2 is amended to add the following definition immediately following the definition for "Entry":

§ 782.2 Definition.

* * * * *

Grain handler means an entity other than the importer, exporter, subsequent buyer, or end user that handles wheat on behalf of an importer, exporter, subsequent buyer, or end user.

* * * * *

5. Section 782.4 is revised to read as follows:

§ 782.4 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 0560–0151.

6. Section 782.12 is amended by:

A. Removing the number "10" in the first sentence of paragraph (a) and adding the number "15" in its place,

B. Removing paragraph (a)(8),

C. Redesignating paragraphs (a)(9) and (a)(10) as paragraphs (a)(8) and (a)(9), respectively,

D. Redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (f), respectively, and revising newly redesignated paragraph (e) to read as set forth below,

E. Adding new paragraphs (b) and (c) to read as follows:

§ 782.12 Filing CFSA–750, End-Use Certificate for Wheat.

* * * * *

(b) Importers may provide computer generated form CFSA–750, provided such computer generated forms:

(1) Are approved in advance by KCCO,

(2) Contain a KCCO assigned serial number, and

(3) Contain all of the information required in paragraphs (a)(1) through (a)(9) of this section.

(c) KCCO will accept form CFSA–750 submitted through the following methods:

(1) Mail service, including express mail,

(2) Facsimile machine, and

(3) Other electronic transmissions, provided such transmissions are approved in advance by KCCO. The importer remains responsible for ensuring that electronically transmitted forms are received in accordance with paragraph (a) of this section.

* * * * *

(e) Distribution of form CFSA–750 will be as follows:

(1) If form CFSA–750 is submitted to KCCO in accordance with paragraph (c)(1) of this section, the original shall be forwarded to Kansas City Commodity Office, Warehouse License and Contract Division, P.O. Box 419205, Kansas City, MO 64141–6205, by the importer,

(2) If form CFSA–750 is submitted to KCCO in accordance with paragraphs (c)(2) or (c)(3) of this section, the original form CFSA–750 that is signed and dated by the importer in accordance with paragraph (d) of this section shall be maintained by the importer,

(3) One copy shall be retained by the importer,

(4) The importer shall provide a photocopy to the end user or, if the wheat is purchased for purposes of resale, the subsequent buyer(s).

* * * * *

7. Section 782.13 is amended by:

A. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by removing the number "10" in the new paragraph (d) and adding the number "15" in its place,

B. Adding paragraph (b) to read as follows:

§ 782.13 Importer Responsibilities.

* * * * *

(b) Immediately notify each subsequent buyer, grain handler, or end user that the wheat being purchased or handled originated in Canada and may only be commingled with U.S.-produced wheat by the end user or when loaded onto a conveyance for direct delivery to the end user or a foreign country.

* * * * *

8. Section 782.15 is amended by:

A. Removing the number "10" in paragraph (a)(1) and adding the number "15" in its place, and

B. Adding paragraphs (e), (f), and (g) to read as follows:

§ 782.15 Filing CFSA–751, Wheat Consumption and Resale Report.

* * * * *

(e) Filers may provide computer generated form CFSA–751, provided such computer generated forms:

(1) Are approved in advance by KCCO, and

(2) Contain the information required in paragraphs (b)(1) through (b)(9).

(f) KCCO will accept form CFSA–751 submitted through the following methods:

(1) Mail service, including express mail,

(2) Facsimile machine, and

(3) Other electronic transmissions, provided such transmissions are approved in advance by KCCO. The importer remains responsible for ensuring that electronically transmitted forms are received in accordance with this section.

(g) Distribution of form CFSA–751 will be as follows:

(1) If form CFSA–751 is submitted to KCCO in accordance with paragraph (f)(1) of this section, the original shall be forwarded to Kansas City Commodity Office, Warehouse License and Contract Division, P.O. Box 419205, Kansas City, MO 64141–6205, by the importer, end user, exporter, or subsequent buyer,

(2) If form CFSA–751 is submitted to KCCO in accordance with paragraphs (f)(2) or (f)(3) of this section, the original form CFSA–751 that is signed and dated by the importer, end user, exporter, or subsequent buyer in accordance with paragraph (b)(8)(v) or (b)(9)(iv) of this section shall be maintained by the importer, end user, exporter, or subsequent buyer,.

(3) One copy shall be retained by the importer, end user, exporter, or subsequent buyer.

* * * * *

9. Section 782.17 is amended by:

A. Redesignating paragraph (b) as paragraph (c), and

B. Adding a new paragraph (b) to read as follows:

§ 782.17 Wheat purchased for resale.

* * * * *

(b) The importer or subsequent buyer shall immediately notify each subsequent buyer, grain handler, exporter, or end user that the wheat being purchased or handled originated in Canada and may only be commingled with U.S.—produced wheat by the end user or when loaded onto a conveyance for direct delivery to the end use or a foreign country.

* * * * *

Signed at Washington, DC, on November 3, 1995.

Grant Buntrock,

Administrator, Consolidated Farm Service Agency.

[FR Doc. 95–27817 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

8 CFR Parts 292 and 292a

[EOIR: 109N; AG Order No. 1196–95]

RIN 1125–ZA00

Executive Office for Immigration Review; Representation and Appearance

AGENCY: Department of Justice.

ACTION: Request for public comment.

SUMMARY: This request for comment seeks input regarding possible changes in the qualifications required of an organization before it may be recognized by the Executive Office for Immigration Review (EOIR) to represent persons before the Immigration and Naturalization Service (Service), the Board of Immigration Appeals (Board), and the Immigration Court. Specifically, comments are requested regarding whether the requirement that recognized organizations may charge only "nominal fees" should be changed.

DATES: Comments must be submitted on or before December 14, 1995.

ADDRESSES: Comments may be submitted to General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

Under the present version of 8 CFR 292.2, non-profit religious, charitable, social service, or similar organization may designate representatives to practice before the Service, the Immigration Court, and the Board if the organization has applied for and received recognition from the Board. To gain such recognition, an organization must establish to the satisfaction of the Board that—

(1) It charges only nominal fees for its services and assesses no excessive membership dues, and

(2) It has adequate knowledge, information, and experience to represent its clients in immigration matters.

The requirement that a recognized organization may charge only nominal fees has been a requirement for recognition by the Board since 1975. The requirement has existed to ensure that recognized organizations are in fact charitable, are serving low-income or indigent clients, and are not representing their clients for profit.

The term "nominal fees" has not been specifically defined, but rather interpretation has been left to a case-by-case analysis. However, the Board has stated that the "imposition of nominal fees was not intended as a means through which an organization could fund itself." *Matter of American Paralegal Academy, Inc.*, 19 I&N Dec. 386 (BIA 1986). The Board has also stated that the fact that an organization's fees are "substantially less than those charged by law firms is not a proper standard for consideration since such organizations are not law firms." *Id.* Beyond this, little concrete guidance regarding the meaning of nominal fees has been provided in the 20 years since the term first appeared in the regulation. Traditionally, however, the term has been narrowly construed to permit recognized organizations to charge only minimal amounts for their services.

The nominal fees restriction has been criticized by some as constituting a barrier to affordable, quality legal services to poor aliens. It has been asserted that some organizations, well-qualified to represent aliens, do not even attempt to gain recognition from the Board because of the nominal fee restriction, and that many other recognized organizations are unable to meet the demand for their services due to the financial constraints imposed by the nominal fees restriction.

On the other hand, other groups have suggested that an increase in nominal fees charged by recognized organizations may place them in competition with members of the bar for clients who can afford legal services. This arguably exceeds the scope of the "recognized organization" program, which was intended to address the needs for pro bono representation. It also creates certain issues with respect to oversight by the Board of the performance and fee charging policies of recognized organizations.

The issues raised by the nominal fees regulation have recently become the focus of additional attention. Many recognized organizations have stated that they are losing funding as charitable contributions dwindle and sentiment against providing legal aid to aliens grows. A number of organizations have informed EOIR that they have closed completely or have scaled back their immigration programs. At the same time, some organizations assert, the need for services to low-income aliens has been steadily growing. The perceived hardship imposed by the nominal fee restriction on both recognized organizations and their clients has been the impetus for a renewed effort to change or eliminate the restriction.

Request for Comments

The concerns outlined above have led EOIR to formally request comments on possible changes to the nominal fee and accreditation provisions of 8 CFR 292.2. The outlined concerns are not considered to be comprehensive, and those responding are invited to address these and any additional areas of concern they may have regarding the nominal fee issue. For example, EOIR also seeks comments on the following:

1. Should the nominal fee restriction be retained, but more broadly interpreted, so as to permit higher fees to be charged?

2. If the nominal fee restriction is changed, or is eliminated from the regulation, what should replace it?

3. Should recognized organizations be able to fund themselves, in whole or in part, through imposition of fees? If so, what would be an appropriate level of such funding?

4. What safeguards should exist to ensure that recognized organizations are in fact operating in the best interests of their clientele and not for profit?

A concern that is frequently raised in discussing change or elimination of the nominal fee requirement is that the requirement guards against the proliferation of unregulated immigration consultants or "notarios," who are operating for profit, and who frequently provide poor advice or otherwise take advantage of their clients. The concern is that if larger fees may be charged by recognized organizations, more unscrupulous organizations may apply for and gain recognition by the Board. Those arguing in favor of changing the regulation, on the other hand, contend that such questionable organizations are more likely to exist where there are inadequate quality legal services available. They argue that these organizations take advantage of the fact that many aliens cannot afford lawyers, that legal services are not available, and that aliens therefore turn to unqualified and sometimes dishonest organizations for advice and help.

Parties on each side of this argument, however, agree that if the nominal fee regulation is changed or eliminated, some safeguards should be put in place to carefully regulate the recognition of organizations before the Board. Comments are requested regarding how best to do this. The following are ideas on which comments are invited:

(a) Should an organization be required to show that it has both non-profit and tax-exempt status, within the meaning of the Internal Revenue Code?

(b) Should an organization be required to show that it serves only low-income clients? Should the term low-income be defined, and if so, how?

(c) Should an organization be required to provide, as part of the application for recognition, proof of where they receive their funding? Once recognized, should they also be required to provide annual reports which include the sources of their revenue, their fee schedules, their income guidelines, and proof that they serve only, or primarily, low-income clients?

(d) Should an organization be required to vary its fees depending on ability to pay?

(e) Should there be formal procedures requiring recognized organizations to show continuing compliance with any applicable regulation? Should recognized organizations be required to be re-recognized periodically, as is the case with accredited representatives?

(f) In requests for reaccreditation of accredited representatives of recognized organizations, should there be a requirement that Immigration Judges before whom the representative practices be consulted? Should the local bar be notified of reaccreditation applications, with opportunity to comment?

(g) Should there be formal procedures for filing complaints against recognized organizations or accredited representatives? Should the regulation provide that any attorney or advocate may report suspected abuse?

5. Should the regulation regarding lists of free legal services, at 8 CFR part 292a, be amended to allow including organizations and/or individuals who provide low cost legal services? Should private attorneys be permitted to have their names on this list, provided their fees are within the range accepted:

As mentioned above, EOIR welcomes all comments regarding any of the concerns identified in this notice as well as any other comments regarding possible changes in the qualifications required of an organization for recognition by EOIR to represent persons before the Service, the Board, and the Immigration Court.

Dated: November 6, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–28011 Filed 11–13–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–47–AD]

Airworthiness Directives; de Havilland Model DHC–3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 90–12–08, which currently requires the following on de Havilland Model DHC–3 airplanes: repetitively inspecting (using dye penetrant methods) the tailplane main rib forward flanges and the main rib forward lower flanges at the tailplane front attachment fitting for cracks and repairing any cracked flange. The proposed action would retain the repetitive inspections currently required by AD 90–12–08, and would allow the provision of incorporating a certain modification as terminating action for these repetitive inspections. The proposed action is prompted by the Federal Aviation Administration's determination that installing new angles and plates on the tailplane root ribs on de Havilland Model DHC–3 airplanes provides an equivalent level of safety to the repetitive inspections required by AD 90–12–08. The actions specified by the proposed AD are intended to prevent failure of the tailplane structure caused by cracked tailplane main rib forward flanges or main rib forward lower flanges at the tailplane front attachment fitting, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–47–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Bombardier Inc., (the parent company of de Havilland) Bombardier Regional Aircraft Division, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone (416) 633–7310. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Casale, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 5th St., 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7521; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–47–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 90–12–08, Amendment 39–6622 (55 FR 1450, January 16, 1990), currently requires the following on de Havilland Model DHC–3 airplanes: repetitively inspecting (using dye penetrant methods) the tailplane main rib forward flanges and the main rib forward lower flanges at the tailplane front attachment fitting for cracks and repairing any cracked flange. Accomplishment of the actions required by AD 90–12–08 is in accordance with de Havilland Service Bulletin (SB) No. 3/46, Revision B, dated December 1, 1989.

Since issuance of AD 90–12–08, de Havilland has developed tailplane root rib angles and plates of improved design (Modification 3/935). When incorporated, Modification 3/935 eliminates the need for the repetitive inspections required by AD 90–12–08.

Bombardier, Inc. (the parent company of de Havilland) has issued de Havilland SB No. 3/50, Revision A, dated February 17, 1995, which specifies procedures for incorporating Modification 3/935 on de Havilland Model DHC–3 airplanes.

Transport Canada, which is the airworthiness authority for Canada, classified this service bulletin as mandatory and revised Transport Canada AD CF–89–20 to the R1 level, dated February 22, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement between Canada and the United States. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

After examining the findings of Transport Canada and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that (1) incorporating Modification 3/935 provides an equivalent level of safety to the repetitive inspections required by AD 90–12–08; and (2) AD action should be taken to prevent failure of the tailplane structure caused by cracked tailplane main rib forward flanges or main rib forward lower flanges at the tailplane front attachment fitting, which, if not detected and corrected, could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland Model DHC–3 airplanes of the same type design that do not have Modification 3/935 incorporated, the proposed AD would supersede AD 90–12–08 with a new AD that would (1) retain the requirement of repetitively inspecting the tailplane main rib forward flanges and the main rib forward lower flanges at the tailplane front attachment fitting for cracks and repairing any cracked flange; and (2) allowing for the provision of incorporating Modification 3/935 as terminating action for the repetitive inspections. Accomplishment of the proposed inspections would be in accordance with de Havilland SB No. 3/46, Revision B, dated December 1, 1989. Accomplishment of the proposed modification would be in accordance with de Havilland SB No. 3/50, Revision A, dated February 17, 1995.

The FAA estimates that 49 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 35 workhours per airplane to accomplish the proposed inspection and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $102,900 or $2,100 per airplane. This figure represents the cost of the initial inspection, and does not reflect the costs for repetitive inspections or possible repairs. The FAA has no way of determining how many tailplane main rib forward or main rib forward lower flanges may need repaired or how many repetitive inspections each owner/operator of the affected airplanes would incur over the life of the airplane.

The FAA has issued alternative methods of compliance (AMOC) to the repetitive inspection requirement of AD 90–12–08 for owners/operators of three de Havilland Model DHC–3 airplanes. These AMOC's consist of the incorporation of a certain design modification in the tailplane root rib area of the affected airplanes. These AMOC's would remain in effect for the proposed AD, which would eliminate the inspection costs for these three airplanes. With this in mind, the cost of the proposed AD would be reduced by $6,300 from $102,900 to $96,600.

The compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). In developing the compliance time of AD 90–12–08, the FAA utilized calendar time because it was unknown whether the rib flange cracking was a result of in-flight loads (flight hours) or loads associated with ground gusts. With this in mind, airplanes with lower usage may experience a cracked rib flange before an airplane with higher usage. For this reason, calendar time rather than flight hours was judged to be an appropriate inspection basis. This situation still exists and in order to maintain the repetitive inspection continuity between AD 90–12–08 and the proposed AD, a compliance based on calendar time is proposed.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 90–12–08, Amendment 39–6622 (55 FR 1450, January 16, 1990), and by adding the following new AD:

De Havilland: Docket No. 95–CE–47–AD; Supersedes AD 90–12–08, Amendment 39–6622.

Applicability: Model DHC–3 Airplanes (all serial numbers), certificated in any category, that do not have Modification 3/935 incorporated in accordance with de Havilland Service Bulletin (SB) number (No.) 3/50, Revision A, dated February 17, 1995.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within the next 3 calendar months after the effective date of this AD, unless already accomplished (compliance with AD 90–12–08), and thereafter at intervals not to exceed 24 calendar months.

To prevent failure of the tailplane structure caused by cracked tailplane main rib forward flanges or main rib forward lower flanges at the tailplane front attachment fitting, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect, using dye penetrant methods, the tailplane main rib forward flanges and the main rib forward lower flanges at the tailplane front attachment fitting in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 3/46, Revision B, dated December 1, 1989.

(b) Prior to further flight, repair any tailplane main rib forward flange or main rib forward lower flange found cracked during any inspection required by this AD. Accomplish this repair in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 3/46, Revision B, dated December 1, 1989.

(c) Installing tailplane root rib angles and plates of improved design (Modification 3/935) in accordance with de Havilland SB 3/50, Revision A, dated February 17, 1995, terminates the repetitive inspection requirement of this AD. Modification 3/935 may be incorporated at any time provided that any tailplane main rib forward flange or main rib forward lower flange found cracked during any inspection required by this AD is repaired.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), 10 5th St., 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Alternative methods of compliance approved in accordance with AD 90–12–08 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Bombardier Inc., Bombardier Regional Aircraft Division, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone (416) 633–7310; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 90–12–08, Amendment 39–6622.

Issued in Kansas City, Missouri, on November 6, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27984 Filed 11–13–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AA75

High-Voltage Longwall Equipment Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to requests from the mining community for additional time in which to prepare comments, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule addressing the use of high-voltage longwall equipment in production areas of underground coal mines.

DATES: All comments must be submitted on or before December 18, 1995.

ADDRESSES: Send comments to MSHA, Office of Standards, Regulations and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Commenters are encouraged to submit comments on a computer disk along with a hard copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: On October 18, 1995, MSHA published a document in the **Federal Register** (60 FR 53891) announcing the reopening of the rulemaking record on its proposed standard allowing the use of high-voltage longwall equipment in underground coal mines. The comment period was scheduled to close on November 17, 1995. By this document, the Agency is extending the comment period to December 18, 1995. All interested parties are encouraged to submit comments prior to that date.

Dated: November 7, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–27975 Filed 11–13–95; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 206 and 260

Bidding Systems for Leases in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: Due to requests for additional time the Minerals Management Service (MMS) extends by 30 days the comment period for a notice of proposed rulemaking (NPR) that was published in the **Federal Register** on August 23, 1995. The NPR is concerned with an amendment to change the bidding systems for newly issued leases under the Outer Continental Shelf Lands Act.

DATES: MMS will consider all comments we receive by November 22, 1995. We will begin reviewing comments at that time and may not fully consider comments we receive after November 22, 1995.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief Economic Evaluation Branch, telephone (703) 787–1636.

Dated: November 6, 1995.

Richard J. Glynn,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 95–28037 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[PR001; FRL–5331–1]

Clean Air Act Proposed Full Approval of Operating Permits Program: the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes full approval of the operating permits program submitted by the Commonwealth of Puerto Rico for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by December 14, 1995.

ADDRESSES: Written comments should be addressed to Steven C. Riva, Chief, Permitting and Toxics Support Section, at the New York Region II Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed full approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway, 21st Floor, New York, New York 10007–1866, Attention: Steven C. Riva.

EPA Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attention: Jose Ivan Guzman.

Puerto Rico Environmental Quality Board, Air Programs Area, Eurobank Building, 431 Ponce de Leon Avenue, Hato Rey, PR 00910, Attention: Francisco Claudio.

FOR FURTHER INFORMATION CONTACT: Christine Fazio, Permitting and Toxics Support Section, at the above EPA office in New York or at telephone number (212) 637–4015. Jose Ivan Guzman of the Caribbean Field Office can be reached at (809) 729–6951, extention 223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Chairman of the Environmental Quality Board (EQB) submitted a part 70 permitting program for the Commonwealth of Puerto Rico with a letter requesting EPA's approval on November 15, 1993 and a supplemental package on March 22, 1994. The program contains a description of how the EQB intends to implement the program consistent with the requirements of the Act and 40 CFR part 70. The program includes supporting documentation such as evidence of the procedurally correct adoption of the permitting rule, permit application forms, and a sample permit form. On April 11, 1994 the Attorney General of Puerto Rico submitted a legal opinion stating that EQB has adequate legal authority to carry out the program. On September 29, 1995, EQB submitted a revised regulation which included minor changes to the regulation submitted on March 22, 1994. The EPA intends to develop an implementation agreement with Puerto Rico which will define EPA's and EQB's responsibilities and commitments for administering the program, although this proposed action does not depend on the implementation agreement.

2. Regulations and Program Implementation

Puerto Rico's part 70 permitting regulation is contained in Part I, Rule 102; Part II, Rule 206; Part VI, Rules 601 through 610; and Appendices A through E of the Regulation For The Control Of Atmospheric Pollution (RCAP) dated September 1995. Puerto Rico's regulation meets the main requirements of Part 70 as described below:

a. applicability (40 CFR 70.2 and 70.3): Sources required to obtain a permit under Puerto Rico's regulation are defined as "Title V sources" and include all major part 70 sources. The rule defers non-major sources until the Administrator completes a rulemaking to determine how the title V program should be structured for non-major sources and the appropriateness of any permanent exemptions. The regulation permanently exempts any source that would be required to obtain a permit solely because it is subject to Standards of Performance for New Residential Wood Heaters or the National Emission Standard for Hazardous Air Pollutants for Asbestos, Standards for Demolition and Renovation. (Rules 102 and 601 of the RCAP)

b. permit content (40 CFR 70.6): Rule 603 requires that each permit contain emission limitations and standards to ensure compliance with all applicable requirements. Permits may also contain certain operational flexibility requirements such as terms and conditions for reasonably anticipated operating scenarios (including worst-case operational scenarios) and for the trading of emissions increases and decreases (to the extent the applicable requirements provide for such trading) in the permitted facility. Such operational flexibility provisions are explained more fully in Rules 603 and 607 of the RCAP.

c. public participation (40 CFR 70.7): The public will be provided with notice of, and an opportunity to comment on, draft permits relating to initial permit issuance, permit renewals, and significant modifications (Rule 609 of the RCAP).

d. permit modifications (40 CFR 70.7): Sources may apply for expedited permit changes for minor permit modifications. Significant modifications must undergo all part 70 permit issuance procedures (Rule 606 of the RCAP).

e. EPA oversight (40 CFR 70.8): Each permit, renewal, and minor or significant modification is subject to EPA oversight and veto (Rule 609 of the RCAP).

f. insignificant activities (40 CFR 70.5): The lists of insignificant activities can be found at Rule 206 and Appendix B of the RCAP (the two lists are different). Insignificant activities which need not be described in the permit application include sources on the two lists provided no applicable requirements apply to the source and the source emits 2 tons per year or less of a criteria pollutant or 5 tons per year or less of any combination of criteria pollutants; and 2 tons per year or the de minimis rates for hazardous air pollutants listed in Appendix E (whichever is lower). For insignificant activities exempted because of size or production rate, a list of such insignificant activities must be included in the permit application. In addition, any unit with allowable emission rates less than certain quantities identified in Item P of Appendix B (e.g., from 1 to 2 tpy depending on pollutant) can be listed on the permit application as an insignificant activity if no applicable requirements apply to the unit.

g. enforcement authority (40 CFR 70.11): Article 17 of Law No. 9 of June 18, 1970 as amended on November 12, 1993 ("Law No. 9") directly provides for enforcement and penalties for civil and criminal violations of permits and rules. Penalties will be assessed up to $25,000 per day per violation.

h. complete application forms (40 CFR 70.5): Rule 602 defines what elements must be in an application in order for it to be complete. All information is included in EQB's permit application.

i. variance provisions: Part III, Rule 301 of the RCAP contains provisions for EQB to approve variances from the strict application of substantive requirements of the Puerto Rico regulation, except for NSPS and NESHAP requirements. Rule 301 also states that no variance will be approved by EQB unless it has been approved by EPA. Under Rule 302, EQB may provide for an emergency variance of up to 90 days under very special circumstances such as to avoid an imminent health threat. EPA regards Rules 301 and 302 as wholly external to the program submitted for approval under part 70. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

3. Permit Fee Demonstration

Puerto Rico's workload analysis and fee demonstration shows that the state will collect sufficient revenue to implement the Title V program. Puerto Rico will collect permit fees beginning at $25 adjusted by the Consumer Price Index (base year 1989) per ton of allowable emissions of regulated pollutants. However, the state-owned utility will be capped at a fee of $1 million per year for its existing facilities and the state hospital is exempt from fees. Puerto Rico's fee demonstration and regulation (Rule 610 of the RCAP) state that Puerto Rico may raise fees if necessary in the future. Furthermore, Article 11 of Law No. 9 requires that sufficient fees be collected to cover the direct and indirect expenses necessary to develop, administer and enforce Puerto Rico's Title V program, including the Small Business Technical and Environmental Compliance Assistance Program as required by section 507 of the Act. Article 11 of Law No. 9 establishes a special account which is independent and separate from any other account in Puerto Rico and must be used only for the Air Quality Program.

4. Provisions Implementing Section 112 of the Act

a. authority for Section 112 Implementation: Puerto Rico has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Puerto Rico's enabling legislation (Article 12 of Law No. 9) and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this is sufficient to allow Puerto Rico to issue permits that assure compliance with all section 112 requirements. The Attorney General's legal opinion also certifies that EQB has authority to implement the air toxics program and to accept automatic delegation of future national emission standards for hazardous air pollutants. Rule 110(A)(2) of the Regulation for the Control of Atmospheric Pollution (RCAP) provides that NESHAPs when promulgated by the EPA Administrator will become effective as part of Puerto Rico's rules and regulations. Rule 604 of the RCAP provides for the following section 112 requirements:

i. case-by-case MACT determinations: In the event that no applicable emissions limitations have been established by the Administrator, EQB will make case-by-case Maximum Achievable Control Technology (MACT) determinations as required under sections 112 (j) and (g) of the Act.

ii. early reductions: Rule 604 authorizes EQB to issue permits with an alternate emission limit under the Act's section 112(i)(5) early reductions program.

iii. implementation of section 112(r): Rule 604 requires sources subject to section 112(r) of the Act to prepare and submit risk management plans. A source must submit an annual certification ensuring the proper implementation of the risk management plan.

b. implementation of section 112(g): The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponing of section 112(g), Puerto Rico must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and the adoption of Puerto Rico rules implementing EPA's section 112(g) regulations.

The EPA is proposing to approve Puerto Rico's preconstruction permitting program found in Rule 203 of the RCAP under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Furthermore, EQB has provided broad language in its regulation that will allow the implementation of 112(g) immediately after EPA establishes and adopts final guidelines (Rule 604 of the RCAP). EQB defines the de minimis levels under Appendix E based on the 112(g) draft rule but stipulates if the final 112(g) rule differs in any way, the federal de minimis levels prevail (Rule 102 of the RCAP—definition of de minimis).

c. Section 112(l): Requirements for approval specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under part 70. In a letter dated December 29, 1994, EQB requested delegation through 112(l) of all existing 112 standards and all future 112 standards for both part 70 and non-part 70 sources and infrastructure programs. In the letter, EQB demonstrated that they have sufficient legal authorities, adequate resources, the capability for automatic delegation of future standards, and adequate enforcement ability for implementation of section 112 of the Act for both part 70 sources and non-part 70 sources. Therefore, the EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to Puerto Rico for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs that are unchanged from Federal rules as promulgated.

Puerto Rico commits to appropriately implementing the existing and future requirements of sections 111, 112 and 129 of the Act, and all MACT standards promulgated in the future, in a timely manner.

B. Options for Approval/Disapproval and Implications

The EPA is proposing full approval of the operating permits program submitted to EPA by the Commonwealth of Puerto Rico on November 15, 1993 and supplemented on March 18, 1994, April 8, 1994, and September 29, 1995. Among other things, Puerto Rico has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to Puerto Rico for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and infrastructure programs under section 112 that are unchanged from Federal rules as promulgated.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Offices located in New York and San Juan and at the EQB. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by December 14, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated

costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 30, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–28065 Filed 11–13–95; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 219
Tuesday, November 14, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Collection Requirements Submitted for Public Comment and Recommendations: National Food Stamp Program Survey

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB review of the National Food Stamp Program Survey.

DATES: Comments on this notice must be received by January 16, 1996.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: National Food Stamp Program Survey.

OMB Number: Not yet assigned.

Expiration Date: N/A

Type of Request: New collection of information.

Abstract: In response to the National Performance Review's call for customer surveys, this study will conduct a nationally, representative survey of Food Stamp Program participants. Data will be collected in order to understand recipients' needs and views on a variety of matters. Potentially eligible households not currently participating in the program will also be interviewed as will the general public. The four major substantive components are: stigma and customer service; nutrition education needs; access to food stores; and hunger measurement.

The study includes three surveys: 1) a screener survey to be administered to the general public to identify households participating in and/or eligible to participate in the Food Stamp Program; 2) a telephone survey of food stamp participants and potentially eligible participants, and 3) a two-part, intensive survey of food stamp participants. Each of the data collection instruments will be administered to each respondent only once.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes for the screener survey; 45 minutes for the telephone survey; and, 150 minutes for the in-person survey.

Respondents: For the screener survey, the respondents are: the general public residing in households with telephones. For the telephone interview, the respondents are low-income households (with telephones) with incomes below 150 percent of the poverty level. For the intensive, in-person survey, the respondents are food stamp program participants.

Estimated Number of Respondents: For the screener, 8,000 respondents are estimated. For the telephone interview 2,000 respondents are estimated. For in-person interviews, 1000 respondents are estimated.

Estimated Number of Responses per Respondent: one.

Estimated Total Annual Burden on Respondents: 4,670 hours. Copies of this information collection can be obtained from Margaret Andrews, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Dated: November 2, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–28048 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–30–U

Collection Requirements Submitted for Public Comment and Recommendations: Nutrition Education and Training (NET) Inventory Survey

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB review of the Nutrition Education and Training Inventory Survey.

DATES: Comments on this notice must be received by January 16, 1996.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: The Nutrition Education and Training Inventory Survey

OMB Number: Not yet assigned.

Expiration Date: N/A

Type of Request: New collection of information.

Abstract: This project provides a national description of the Nutrition and Education Training (NET) program. This description includes information about nutrition education needs that States have identified. It was developed by reviewing and compiling the information that all States provide in their annual NET State Plans. In addition to the national description, FCS will conduct a NET Inventory survey of all State NET coordinators to supplement the information gained from the State Plans. The data collection instrument will be administered to each respondent only once.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes.

Respondents: The respondents are State NET coordinators.

Estimated Number of Respondents: 53

Estimated Number of Responses per Respondent: one.

Estimated Total Annual Burden on Respondents: 18 hours. Copies of this information collection can be obtained from Leslie Christovich, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Dated: November 2, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–28030 Filed 11–13–95; 8:45 am]

BILLING CODE 3410–30–U

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Release of Records

AGENCY: Assassination Records Review Board.

ACTION: Notice of Formal Determinations.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on October 24, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, N.W., Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On October 24, 1995, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

REVIEW BOARD DETERMINATIONS

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
FBI Documents				
124–10005–10133	4	0	Open in Full	N/A
124–10018–10362	1	0	do	N/A
124–10018–10489	2	0	do	N/A
124–10018–10490	9	0	do	N/A
124–10020–10093	12	0	do	N/A
124–10027–10000	6	0	do	N/A
124–10027–10021	4	0	do	N/A
124–10027–10029	2	0	do	N/A
124–10027–10032	3	0	do	N/A
124–10027–10044	3	0	do	N/A
124–10027–10059	3	0	do	N/A
124–10027–10072	2	2	Postponed in Part	2017
124–10027–10144	9	9	do	2017
124–10027–10147	1	0	Open in Full	N/A
124–10027–10375	2	0	do	N/A
124–10027–10395	1	0	do	N/A
124–10058–10367	3	0	do	N/A
124–10079–10122	2	0	do	N/A
124–10143–10067	6	0	do	N/A
124–10145–10290	2	0	do	N/A
124–10145–10295	4	0	do	N/A
124–10151–10053	3	0	do	N/A
124–10159–10393	1	0	do	N/A
124–10170–10462	10	9	Postponed in Part	2017
124–10173–10250	3	0	Open in Full	N/A
124–10178–10125	2	0	do	N/A
124–10178–10400	1	0	do	N/A
124–10183–10144	6	0	do	N/A
124–10183–10170	3	0	do	N/A
124–10228–10329	2	0	do	N/A
124–10234–10272	6	0	do	N/A
124–10239–10247	4	0	do	N/A
124–10243–10082	3	0	do	N/A
124–10245–10456	6	0	do	N/A
124–10248–10316	1	0	do	N/A
124–10264–10156	6	0	do	N/A
124–10264–10160	2	0	do	N/A
124–10272–10037	1	0	do	N/A

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
CIA Documents				
104–10015–10002	4	0	Open in Full	N/A
104–10015–10004	3	0	....do	N/A
104–10015–10007	0	1	Postponed in Part	12/1995
104–10015–10018	3	0	Open in Full	N/A
104–10015–10028	2	0	....do	N/A
104–10015–10029	1	0	....do	N/A
104–10015–10045	1	1	Postponed in Part	12/1995
104–10015–10064	2	3	....do	12/1995
104–10015–10065	3	3	....do	12/1995
104–10015–10083	2	0	Open in Full	N/A
104–10015–10085	7	0	....do	N/A
104–10015–10107	0	1	Postponed in Part	12/1995
104–10015–10116	5	1	....do	12/1995
104–10015–10123	4	1	....do	12/1995
104–10015–10124	6	1	....do	12/1995
104–10015–10130	4	0	Open in Full	N/A
104–10015–10168	13	1	Postponed in Part	2005
104–10015–10202	4	0	Open in Full	N/A
104–10015–10207	6	0	....do	N/A
104–10015–10217	8	2	Postponed in Part	12/1995
104–10015–10218	1	2	....do	12/1995
104–10015–10219	1	1	....do	12/1995
104–10015–10221	1	2	....do	12/1995
104–10015–10222	9	1	....do	12/1995
104–10015–10224	1	2	....do	12/1995
104–10015–10228	1	2	....do	12/1995
104–10015–10229	2	2	....do	12/1995
104–10015–10231	1	2	....do	12/1995
104–10015–10236	0	2	....do	12/1995
104–10015–10246	12	0	Open in Full	N/A
104–10015–10251	4	1	Postponed in Part	12/1995
104–10015–10252	4	2	....do	12/1995
104–10015–10253	1	2	....do	12/1995
104–10015–10254	8	2	....do	12/1995
104–10015–10256	4	1	....do	12/1995
104–10015–10257	12	1	....do	12/1995
104–10015–10260	10	1	....do	12/1995
104–10015–10262	4	0	Open in Full	N/A
104–10015–10265	2	0	....do	N/A
104–10015–10266	6	0	....do	N/A
104–10015–10267	2	0	....do	N/A
104–10015–10268	4	0	....do	N/A
104–10015–10270	2	0	....do	N/A
104–10015–10271	3	0	....do	N/A
104–10015–10272	3	0	....do	N/A
104–10015–10273	40	0	....do	N/A
104–10015–10274	4	0	....do	N/A
104–10015–10275	2	0	....do	N/A
104–10015–10276	2	0	....do	N/A
104–10015–10277	2	0	....do	N/A
104–10015–10278	2	0	....do	N/A
104–10015–10283	6	0	....do	N/A
104–10015–10284	5	0	....do	N/A
104–10015–10285	5	0	....do	N/A
104–10015–10286	4	0	....do	N/A
104–10015–10287	7	0	....do	N/A
104–10015–10288	6	0	....do	N/A
104–10015–10289	7	0	....do	N/A
104–10015–10290	5	0	....do	N/A
104–10015–10291	4	0	....do	N/A
104–10015–10292	5	0	....do	N/A
104–10015–10293	5	0	....do	N/A
104–10015–10294	10	0	....do	N/A
104–10015–10295	1	0	....do	N/A
104–10015–10296	4	0	....do	N/A
104–10015–10297	7	0	....do	N/A
104–10015–10299	2	0	....do	N/A
104–10015–10301	2	0	....do	N/A

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
104–10015–10306	3	0	....do	N/A
104–10015–10307	6	0	....do	N/A
104–10015–10308	3	0	....do	N/A
104–10015–10309	1	0	....do	N/A
104–10015–10310	1	0	....do	N/A
104–10015–10312	1	0	....do	N/A
104–10015–10313	4	0	....do	N/A
104–10015–10315	1	0	....do	N/A
104–10015–10317	1	0	....do	N/A
104–10015–10318	2	0	....do	N/A
104–10015–10319	2	0	....do	N/A
104–10015–10320	1	0	....do	N/A
104–10015–10322	4	0	....do	N/A
104–10015–10323	7	0	....do	N/A
104–10015–10324	10	0	....do	N/A
104–10015–10325	9	0	....do	N/A
104–10015–10326	6	0	....do	N/A
104–10015–10327	10	0	....do	N/A
104–10015–10328	3	0	....do	N/A
104–10015–10329	3	0	....do	N/A
104–10015–10332	5	0	....do	N/A
104–10015–10333	13	0	....do	N/A
104–10015–10334	34	0	....do	N/A
104–10015–10335	5	0	....do	N/A
104–10015–10336	3	0	....do	N/A
104–10015–10337	5	0	....do	N/A
104–10015–10338	5	0	....do	N/A
104–10015–10340	1	0	....do	N/A
104–10015–10341	2	0	....do	N/A
104–10015–10347	4	0	....do	N/A
104–10015–10349	5	0	....do	N/A
104–10015–10351	5	0	....do	N/A
104–10015–10352	6	0	....do	N/A
104–10015–10354	2	0	....do	N/A
104–10015–10355	3	0	....do	N/A
104–10015–10357	2	0	....do	N/A
104–10015–10361	3	0	....do	N/A
104–10015–10363	3	0	....do	N/A
104–10015–10366	1	0	....do	N/A
104–10015–10367	4	0	....do	N/A
104–10015–10368	3	0	....do	N/A
104–10015–10369	9	0	....dr	N/A
104–10015–10370	4	0	....do	N/A
104–10015–10371	9	0	....do	N/A
104–10015–10391	3	0	....do	N/A
104–10015–10393	8	0	....do	N/A
104–10015–10406	10	0	....do	N/A
104–10015–10407	3	0	....do	N/A
104–10015–10409	4	0	....do	N/A
104–10015–10419	4	0	....do	N/A
104–10015–10426	5	0	....do	N/A
104–10015–10427	1	0	....do	N/A
104–10015–10429	1	0	....do	N/A
104–10015–10430	4	0	....do	N/A
104–10015–10434	7	0	....do	N/A
104–10015–10437	3	2	Postponed in Part	12/1995
104–10015–10438	8	2	....do	12/1995
104–10015–10439	2	2	....do	12/1995
104–10015–10440	0	2	....do	12/1995
104–10015–10441	10	2	....do	12/1995
104–10015–10442	0	2	....do	12/1995
104–10015–10443	10	2	....do	12/1995
104–10015–10445	1	2	....do	12/1995
104–10015–10446	4	2	....do	12/1995
104–10015–10447	2	0	Open in Full	N/A
104–10015–10449	13	1	Postponed in Part	12/1995
104–10016–10002	8	0	Open in Full	N/A
104–10016–10003	3	1	Postponed in Part	12/1995
104–10016–10004	1	1	....do	12/1995
104–10016–10008	6	0	Open in Full	N/A

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
104–10016–10009	2	0	.....do	N/A
104–10016–10010	4	0	.....do	N/A
104–10016–10018	1	0	.....do	N/A
104–10016–10028	2	0	.....do	N/A
104–10016–10029	3	0	.....do	N/A
104–10016–10031	5	0	.....do	N/A
104–10016–10038	17	0	.....do	N/A
104–10016–10039	2	0	.....do	N/A
104–10016–10041	4	0	.....do	N/A
104–10016–10043	14	0	.....do	N/A
104–10016–10046	4	0	.....do	N/A
104–10016–10049	5	0	.....do	N/A
104–10017–10015	7	0	.....do	N/A
104–10017–10016	2	0	.....do	N/A
104–10017–10020	5	0	.....do	N/A
104–10017–10026	1	0	.....do	N/A
104–10017–10028	5	0	.....do	N/A
104–10017–10029	4	0	.....do	N/A
104–10017–10030	7	0	.....do	N/A
104–10017–10032	3	0	.....do	N/A
104–10017–10054	1	0	.....do	N/A
104–10017–10059	4	0	.....do	N/A
104–10017–10060	7	0	.....do	N/A
104–10017–10064	7	0	.....do	N/A
104–10017–10066	5	0	.....do	N/A
104–10017–10067	8	0	.....do	N/A
104–10017–10070	8	0	.....do	N/A
104–10017–10071	16	0	.....do	N/A
104–10017–10083	3	0	.....do	N/A
104–10017–10085	11	0	.....do	N/A
104–10018–10011	3	2	Postponed in Part	12/1995
104–10018–10013	0	1	.....do	12/1995
104–10018–10039	2	0	Open in Full	N/A
104–10018–10043	1	1	Postponed in Part	12/1995
104–10018–10044	3	0	Open in Full	N/A
104–10018–10047	5	0	.....do	N/A
104–10018–10053	1	2	Postponed in Part	12/1995
104–10018–10054	1	2	.....do	12/1995
104–10018–10057	4	1	.....do	12/1995
104–10018–10058	2	0	Open in Full	N/A
104–10018–10066	13	1	Postponed in Part	12/1995
104–10018–10067	4	1	.....do	12/1995
104–10018–10068	2	0	Open in Full	N/A
104–10018–10069	0	1	Postponed in Part	12/1995
104–10018–10078	6	0	Open in Full	N/A
104–10018–10079	4	2	Postponed in Part	12/1995
104–10018–10081	3	2	.....do	12/1995
104–10018–10085	7	0	Open in Full	N/A
104–10018–10086	3	2	Postponed in Part	12/1995
104–10018–10097	5	2	.....do	12/1995
104–10018–10098	1	2	.....do	12/1995
104–10018–10100	1	2	.....do	12/1995
104–10018–10101	6	0	Open in Full	N/A
104–10018–10102	2	0	.....do	N/A
104–10018–10105	8	0	.....do	N/A
104–10018–10107	6	0	.....do	N/A
104–10018–10109	3	0	.....do	N/A
104–10018–10110	3	0	.....do	N/A
104–10052–10087	83	1	Postponed in Part	2005
104–10062–10002	92	0	Open in Full	N/A
HSCA Documents				
180–10060–10435	5	3	Postponed in Part	2017
180–10060–10436	11	10	.....do	2017
180–10060–10437	12	5	.....do	2017
180–10060–10438	6	4	.....do	2017
180–10060–10439	10	4	.....do	2017
180–10060–10440	11	9	.....do	2017
180–10060–10441	7	6	.....do	2017

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
180–10060–10442	18	6	.....do	2017
180–10060–10443	24	12	.....do	2017
180–10060–10444	5	2	.....do	2017
180–10060–10445	10	9	.....do	2017
180–10060–10446	23	15	.....do	2017
180–10060–10447	7	4	.....do	2017
180–10060–10448	4	2	.....do	2017
180–10060–10449	11	5	.....do	2017
180–10060–10450	9	3	.....do	2017
180–10060–10451	5	3	.....do	2017
180–10060–10452	12	10	.....do	2017
180–10060–10453	10	4	.....do	2017
180–10060–10454	8	3	.....do	2017
180–10060–10455	6	2	.....do	2017
180–10060–10456	5	3	.....do	2017
180–10060–10457	9	2	.....do	2017
180–10060–10458	12	8	.....do	2017
180–10060–10459	9	8	.....do	2017
180–10060–10460	7	2	.....do	2017
180–10060–10461	18	4	.....do	2017
180–10060–10462	9	8	.....do	2017
180–10060–10463	19	15	.....do	2017
180–10060–10464	10	9	.....do	2017
180–10060–10465	9	5	.....do	2017
180–10060–10466	6	0	Open in Full	N/A
180–10060–10467	11	8	Postponed in Part	2017
180–10060–10468	14	10	.....do	2017
180–10060–10469	14	5	.....do	2017
180–10060–10470	6	3	.....do	2017
180–10060–10471	7	4	.....do	2017
180–10060–10472	10	7	.....do	2017
180–10060–10473	6	4	.....do	2017
180–10060–10474	6	2	.....do	2017
180–10060–10475	17	7	.....do	2017
180–10060–10476	10	4	.....do	2017
180–10060–10477	11	5	.....do	2017
180–10060–10478	5	3	.....do	2017
180–10060–10479	4	3	.....do	2017
180–10060–10480	13	5	.....do	2017
180–10060–10481	4	2	.....do	2017
180–10060–10482	4	2	.....do	2017
180–10060–10483	12	9	.....do	2017
180–10060–10484	4	2	.....do	2017
180–10060–10485	7	5	.....do	2017
180–10060–10486	21	6	.....do	2017
180–10060–10487	10	8	.....do	2017
180–10060–10488	12	10	.....do	2017
180–10060–10489	9	3	.....do	2017
180–10060–10490	13	4	.....do	2017
180–10060–10491	6	4	.....do	2017
180–10060–10492	7	4	.....do	2017
180–10060–10493	5	3	.....do	2017
180–10060–10494	13	11	.....do	2017
180–10060–10495	8	7	.....do	2017
180–10060–10496	32	3	.....do	2017
180–10060–10497	6	3	.....do	2017
180–10060–10498	8	1	.....do	2017
180–10060–10499	9	6	.....do	2017
180–10068–10298	3	1	.....do	2017
180–10068–10299	14	9	.....do	2017
180–10068–10300	16	1	.....do	2017
180–10068–10301	11	6	.....do	2017
180–10068–10302	14	6	.....do	2017
180–10068–10303	10	5	.....do	2017
180–10068–10304	5	2	.....do	2017
180–10068–10305	6	3	.....do	2017
180–10068–10306	4	2	.....do	2017
180–10068–10307	6	4	.....do	2017
180–10068–10308	11	10	.....do	2017
180–10068–10309	3	1	.....do	2017

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
180–10068–10310	15	13	....do	2017
180–10068–10311	3	2	....do	2017
180–10068–10312	11	6	....do	2017
180–10068–10313	7	3	....do	2017
180–10068–10314	5	3	....do	2017
180–10068–10315	6	3	....do	2017
180–10068–10316	20	4	....do	2017
180–10068–10317	10	5	....do	2017
180–10068–10318	5	2	....do	2017
180–10068–10319	7	3	....do	2017
180–10068–10320	7	4	....do	2017
180–10068–10321	5	4	....do	2017
180–10068–10322	14	5	....do	2017
180–10068–10323	20	6	....do	2017
180–10068–10324	8	4	....do	2017
180–10068–10325	7	4	....do	2017
180–10068–10326	8	7	....do	2017
180–10068–10327	5	3	....do	2017
180–10068–10328	5	4	....do	2017
180–10068–10329	6	5	....do	2017
180–10068–10330	5	3	....do	2017
180–10068–10331	5	2	....do	2017
180–10068–10332	6	2	....do	2017
180–10068–10333	12	5	....do	2017
180–10068–10334	13	9	....do	2017
180–10068–10335	3	2	....do	2017
180–10068–10336	7	5	....do	2017
180–10068–10337	8	6	....do	2017
180–10068–10338	13	5	....do	2017
180–10068–10339	8	4	....do	2017
180–10068–10340	14	2	....do	2017
180–10068–10341	10	3	....do	2017
180–10068–10342	12	11	....do	2017
180–10068–10343	3	1	....do	2017
180–10068–10344	10	8	....do	2017
180–10068–10345	17	8	....do	2017
180–10068–10346	15	4	....do	2017
180–10068–10347	4	2	....do	2017
180–10068–10348	20	8	....do	2017
180–10068–10349	11	10	....do	2017
180–10068–10350	6	4	....do	2017
180–10068–10351	9	8	....do	2017
180–10068–10352	13	7	....do	2017
180–10068–10353	13	9	....do	2017
180–10068–10354	4	3	....do	2017
180–10068–10355	7	2	....do	2017
180–10068–10356	13	8	....do	2017
180–10068–10357	9	8	....do	2017
180–10068–10358	6	2	....do	2017
180–10068–10359	4	3	....do	2017
180–10068–10360	6	2	....do	2017
180–10068–10361	6	3	....do	2017
180–10068–10362	4	2	....do	2017
180–10068–10363	11	9	....do	2017
180–10070–10143	7	4	....do	2017
180–10070–10144	5	3	....do	2017
180–10070–10145	9	6	....do	2017
180–10070–10146	12	7	....do	2017
180–10070–10147	5	2	....do	2017
180–10070–10148	15	7	....do	2017
180–10070–10149	9	7	....do	2017
180–10070–10150	9	4	....do	2017
180–10070–10151	7	0	Open in Full	N/A
180–10070–10152	6	3	Postponed in Part	2017
180–10070–10153	7	5	....do	2017
180–10070–10154	7	3	....do	2017
180–10070–10155	4	2	....do	2017
180–10070–10156	4	2	....do	2017
180–10070–10157	6	3	....do	2017
180–10070–10158	4	2	....do	2017

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
180–10070–10159	8	7	....do	2017
180–10070–10160	12	6	....do	2017
180–10070–10161	7	6	....do	2017
180–10070–10162	16	6	....do	2017
180–10070–10163	11	9	....do	2017
180–10070–10164	18	8	....do	2017
180–10070–10165	9	4	....do	2017
180–10070–10166	7	2	....do	2017
180–10070–10167	9	5	....do	2017
180–10070–10168	12	5	....do	2017
180–10070–10169	2	1	....do	2017
180–10070–10170	6	4	....do	2017
180–10070–10171	9	5	....do	2017
180–10070–10172	10	6	....do	2017
180–10070–10173	6	4	....do	2017
180–10070–10174	7	6	....do	2017
180–10070–10175	9	8	....do	2017
180–10070–10176	12	6	....do	2017
180–10071–10000	7	4	....do	2017
180–10071–10001	12	11	....do	2017
180–10073–10093	0	1	....do	2017
180–10074–10328	0	1	....do	2017
180–10074–10480	0	1	....do	2017
180–10076–10478	1	0	Open in Full	N/A
180–10078–10301	1	0	....do	N/A
180–10089–10031	1	0	....do	N/A
180–10091–10227	0	1	Postponed in Part	2017
180–10091–10228	0	8	....do	2017
180–10100–10129	0	1	....do	2017
180–10104–10220	0	1	....do	2017
180–10105–10388	0	1	....do	2017
180–10105–10391	0	1	....do	2017
180–10107–10131	1	1	....do	2017
180–10111–10046	0	1	....do	2017
180–10113–10246	0	1	....do	2017
180–10113–10257	0	1	....do	2017
180–10113–10258	0	1	....do	2017
180–10113–10400	0	1	....do	2017
180–10114–10118	0	1	....do	2017
180–10118–10061	0	1	....do	2017
180–10147–10257	5	2	....do	2017
180–10147–10258	5	3	....do	2017
180–10147–10259	4	2	....do	2017
180–10147–10260	4	3	....do	2017
180–10147–10261	8	6	....do	2017
180–10147–10262	5	2	....do	2017
180–10147–10263	5	2	....do	2017
180–10147–10264	5	3	....do	2017
180–10147–10265	4	2	....do	2017
180–10147–10266	5	3	....do	2017
180–10147–10267	5	2	....do	2017

On August 29, 1995, the Assassination Records Review Board made a formal determination to release some postponements in records identified by RIF numbers 124–10085–10330 and 124–10085–10333. Subsequent to those determinations, but before the records were released to the public, the Review Board was provided additional information in support of the proposed postponements. Based upon that additional evidence, the Review Board decided to withdraw its determinations and to reconsider its decisions at a later date.

The Assassination Records Review Board reviewed portions of a document (RIF number 180–10110–10484) created by the Staff of the House Select Committee on Assassinations entitled Oswald in Mexico City (commonly identified as the Lopez Report). The Review Board voted to open in full the following pages that previously had contained redactions: O1, A3, 6–9A, 13, 15, 18, 32, 33, 36, 37, 40, 41, 43, 48, 61, 73, 81, 89, 92–99, 102, 107–110, 112–116, 118, 122, 132, 137–139, 142–149, 153, 154, 158, 159, 172, 173, 180, 181, 183, 184A, 198, 207–210, 222, 223, 239, 243, 245–248, 251, 253, 301, 305, 307, F9A, F17, F25, F27, F30, F32, F39, F42, F60, F71–F74.

These decisions opened up 232 previous postponements. The Review Board made no decisions with respect to the remaining pages, which will be considered in forthcoming meetings.

Dated: November 7, 1995.
David G. Marwell,
Executive Director.
[FR Doc. 95–27986 Filed 11–13–95; 8:45 am]
BILLING CODE 6118–01–D

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 950727195–5195–01]

Privacy Act: Amendment of System of Records, Commerce/Dept-18

AGENCY: Commerce.
ACTION: Notice.

SUMMARY: This notice establishes the Office of White House Liaison as the location for employee personnel files, not covered by Privacy Act notices of other agencies, of political appointees in the Department of Commerce. The new location will facilitate records management of COMMERCE/DEPT-18 records and will facilitate access to the records by the individuals whose records are being maintained.

EFFECTIVE DATE: November 14, 1995.
FOR FURTHER INFORMATION CONTACT: Daniel J. Rooney: (202) 482–4115.
SUPPLEMENTARY INFORMATION: The Office of White House Liaison is added as a location for Privacy Act COMMERCE/DEPT-18 records of Department of Commerce employees who are political appointees. The COMMERCE/DEPT-18 System location "i" is relabeled system location "j" and a new system location "i" is added: For political appointees in the Department of Commerce: Office of White House Liaison, U.S. Department of Commerce, Room 5717, Washington, DC 20230. This is not a significant alteration of a system of records under OMB Circular A–130.

Authority: 5 U.S.C. 552a.

Daniel J. Rooney,
Management Analyst, Office of Executive Assistance Management, Department of Commerce.
[FR Doc. 95–28096 Filed 11–13–95; 8:45 am]
BILLING CODE 3510–FE–M

Bureau of Export Administration

Action Affecting Export Privileges; Julia Freedman

In the **Federal Register** of Monday, July 3, 1995, the Bureau of Export Administration published an Order at 34507. This notice is being published to correct the name of the city listed in the caption and text in that order. The address is as follows:

Julia Freedman, Rue de Vieux-Marche 3, Nyon, Switzerland

Dated: November 2, 1995.
William A. Reinsch,
Under Secretary for Export Administration.
[FR Doc. 95–27976 Filed 11–13–95; 8:45 am]
BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 70–95]

Foreign-Trade Zone 83—Huntsville, AL; Application for Subzone Status, MagneTek, Inc., Plant (Fluorescent Ballasts and Components), Madison, AL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Huntsville-Madison County Airport Authority, grantee of FTZ 83, requesting special-purpose subzone status for the electronic fluorescent lighting ballasts and components manufacturing facility of MagneTek, Inc., located in Madison, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 3, 1995.

The plant (80,000 sq.ft. on 36 acres) is located at 1430 Wall-Triana Highway in Madison (Madison County), Alabama, some 12 miles southwest of Huntsville. The facility (484 employees) is used to produce electronic fluorescent lighting ballasts (HTS# 8504.10.00) and related printed circuit assemblies (HTS# 8504.90.60). The electronic ballasts are used in the manufacture of commercial fluorescent lighting equipment. Components and materials sourced from abroad (about 20% of finished product value) include: wire, capacitors, resistors, diodes, semiconductors, printed and integrated circuits, switches, fuses, insulators, voltage limiters, surge suppressors, transformers, rectifiers, inductors, thermostats, flux, solder bars, and tape (duty rate range: free — 9.8%).

Zone procedures would exempt MagneTek from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the lower duty rate that apply to finished electronic fluorescent lighting ballasts and printed circuit assemblies (3.0%) for the foreign inputs noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 16, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 29, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Suite 204, 2850 Wall-Triana Highway, Huntsville, AL 35824

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: November 3, 1995.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 95–28092 Filed 11–13–95; 8:45 am]
BILLING CODE 3510–DS–P

[Docket 69–95]

Foreign-Trade Zone 105, Providence/North Kingston, Rhode Island; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the State of Rhode Island Department of Economic Development, grantee of Foreign-Trade Zone 105, Providence and North Kingston, Rhode Island, requesting authority to expand its zone to include a site in the City of Warwick, Rhode Island, within the Providence Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 2, 1995.

FTZ 105 was approved on September 13, 1984 (Board Order 270, 49 FR 37133, 9/21/84). The zone project includes 2 sites in the Providence Customs port of entry: *Site 1* (12 acres)—within the Port of Providence, a 185-acre commercial and industrial intermodal facility owned by the City of Providence; and *Site 2* (900 acres)—within the Economic Development Corporation's 2000-acre Quonset Point/Davisville Industrial Park, North Kingston.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (proposed *Site 3*—43 acres) at the Airport Business Center, adjacent to the T.F. Green State Airport, Warwick. This zone site would become part of the City of Warwick's economic development and industrial revitalization efforts.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited for interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 16, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period January 29, 1996. A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 49 Pavilion Avenue, Providence, Rhode Island 02905

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: November 3, 1995.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 95–28091 Filed 11–13–95; 8:45 am]
BILLING CODE 3510–DS–P

[Docket 71–95]

Foreign-Trade Zone 199, Texas City, TX Proposed Foreign-Trade Subzone Marathon Oil Company (Oil Refinery Complex) Texas City, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Texas City Foreign Trade Zone Corporation, grantee of FTZ 199, requesting special-purpose subzone status for the oil refinery complex of Marathon Oil Company, located in Texas City, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1995.

The refinery complex (200 acres) consists of 2 sites in Galveston County, Texas City, Texas: *Site 1* (170 acres)—main refinery and petrochemical feedstock complex located at 1320 Loop 197 South in east Texas City; and *Site 2* (30 acres/859,300 barrel capacity)—South Tank Farm located at Dock Road and Loop 197 South across from the refinery.

The refinery (74,000 barrels per day; 260 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, blending stock, distillates, residual fuels, and naphthas. Petrochemicals include methane, ethane, propane, butane, benzene, toluene, xylene, propylene. Refinery by-products may include sulfur and petroleum coke. Some six percent of the crude oil (90 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 16, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 29, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, #1 Allen Center, Suite 1160, 500 Dallas, Houston, Texas 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 6, 1995.
Dennis Puccinelli,
Acting Executive Secretary.
[FR Doc. 95–28098 Filed 11–13–95; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

[A–588–607]

Amorphous Silica Filament Fabric From Japan, Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on amorphous silica filament fabric from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 14, 1995.
FOR FURTHER INFORMATION CONTACT: Leon McNeill or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–4236.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On July 31, 1995, the Department published in the **Federal Register** (60 FR 38989) its notice of intent to revoke the antidumping duty order on amorphous silica filament fabric from Japan (September 23, 1987). Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on amorphous silica filament fabric from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of amorphous silica filament fabric from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 7019.20.50 and 7019.20.20. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of amorphous silica filament fabric from Japan entered, or withdrawn from warehouse, for consumption on or after September 1, 1995. Entries made during the period August 1, 1994, through July 31, 1995, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1995, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: November 2, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28089 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–P

Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review, Certain Compact Ductile Iron Waterworks Fittings and Glands (CDIW), from the People's Republic of China (PRC), A–570–820.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of the antidumping duty order on CDIW from the PRC which has a September anniversary date. In accordance with Department Regulations, we are initiating this administrative review.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received a timely request from Beijing M Star Pipe Corp., Ltd. (BMSP), in accordance with interim regulation 19 CFR 353.22(h) (1995), for a new shipper review of the antidumping duty order on CDIW from the PRC which has a September anniversary date. BMSP has certified that it did not export CDIW to the U.S. during the period of investigation (POI), and that it is not affiliated with any exporter or producer which did export CDIW during the POI. This certification is in accordance with section 751(a)(2)(B)) of the Tariff Act of 1930 as amended, and the Department's interim regulations, 19 CFR 353.22(h). Therefore, we are initiating the new shipper review as requested. However, it is the Department's usual practice with non-market economies to require information regarding de jure and de facto government control over a company's export activities to establish its eligibility for an antidumping duty rate separate from the country-wide rate. Accordingly we will issue a separate rates questionnaire to BMSP and seek additional information from the PRC government (as appropriate), allowing 30 days for response. If the responses from BMSP and the PRC government indicate adequately that BMSP is not subject to de jure and de facto government control with respect to its exports of CDIW, the review will proceed. If, on the other hand, BMSP does not demonstrate its eligibility for a separate rate, BMSP will be deemed to be affiliated with other companies that exported during the POI that did not establish their entitlement to a separate rate, and the review will be terminated.

Initiation of Review

In accordance with 19 CFR 353.22(h), we are initiating a new shipper review of the antidumping duty order on CDIW from the PRC. If this review proceeds normally, we will issue the final results of review not later than July 31, 1996.

Antidumping duty proceeding	Period to be reviewed
People's Republic of China: Certain Compact Ductile Iron Waterworks Fittings and Glands, A–570–820, Beijing M Star Pipe Corp., Ltd	02/01/95–08/31/95

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion or termination of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise in accordance with section 751(a)(2)(B)(iii) and 19 CFR 353.22 (h)(4) (1995).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended and 19 CFR 353.22(h).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28097 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–007]

High Capacity Pagers From Japan, Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on high capacity pagers from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482–0650.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On August 1, 1995, the Department published in the **Federal Register** (60 FR 39153) its notice of intent to revoke the antidumping duty order on high capacity pagers from Japan (August 16, 1983). Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2(k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on high capacity pagers from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of high capacity pagers from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8527.90.80 and 8531.80.00. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of high capacity pagers from Japan entered, or withdrawn from warehouse, for consumption on or after August 1, 1995. Entries made during the period August 1, 1994, through July 31, 1995, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1,, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: November 2, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28088 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–833–803]

Titanium Sponge From Georgia, Revocation of the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on titanium sponge from Georgia because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

On August 1, 1995, the Department published in the **Federal Register** (60 FR 39153) its notice of intent to revoke the antidumping finding on titanium sponge from Georgia (August 28, 1968). Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on titanium sponge from Georgia is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR § 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of titanium sponge from Georgia. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 8108.10.50.10.. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of titanium sponge from Georgia entered, or withdrawn from warehouse, for consumption on or after August 1, 1995. Entries made during the period August 1, 1994, through July 31, 1995, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1995, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: November 2, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28090 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–122–404]

Live Swine From Canada; Amended Final Results of Administrative Review in Accordance With Decision on Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of countervailing duty administrative review.

SUMMARY: On September 27, 1995, the Binational North American Free Trade Agreement (NAFTA) Panel ("Panel") affirmed the Department of Commerce's ("the Department") remand results of the sixth administrative review of the countervailing duty order on live swine from Canada, as amended. The Panel also approved the Department's Consent

Notice of Motion Requesting Termination of Panel Review With Respect to Weanlings, and the Request of Pryme for an individual review. On October 10, 1995, the NAFTA Secretariat, United States Section, provided a Notice of Final Panel Action in this proceeding. As a result, the Department is amending the final results of the sixth administrative review of the countervailing duty order on Live Swine from Canada for purposes of the entries subject to the Panel's review and for cash deposit purposes.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1994 (59 FR 12243), the Department published the final results of its sixth administrative review of the countervailing duty order on Live Swine from Canada covering the period from April 1, 1990 through March 31, 1991. These results were challenged by the Canadian Pork Council, Pryme Pork, Ltd. ("Pryme"), Earle Baxter Trucking LQ., and P. Quintaine & Son, Ltd. before a Binational Panel pursuant to Article 1904 of the NAFTA and 19 U.S.C. § 1516a(g). Pursuant to 19 U.S.C. § 1516a(g)(5)(C), P. Quintaine & Son, Ltd., Earle Baxter Trucking LQ., and Pryme requested that the Department continue suspension of liquidation of entries covered by the sixth administrative review.

The Panel issued its decision on May 30, 1995, and therein remanded for certain issues to the Department for reconsideration. Live Swine from Canada, USA–94–1904–01. In particular, the Panel directed the Department to reinstate the subclass for sows and boars, and to calculate a separate countervailing duty (CVD) rate for sows and boars.

Pursuant to this remand order, the Department submitted to the Panel its final results of redetermination on August 14, 1995, which reinstated the sows and boars subclass and provided a separate CVD rate for sows and boars. In addition, the Department filed, pursuant to Rule 71(2), a Consent Notice of Motion Requesting Termination of Panel Review With Respect to Weanlings and the Request of Pryme for an Individual Review.

After discovering a ministerial error in its calculations, the Department submitted amended final results of redetermination on September 1, 1995, in which it found the countervailing duty rate for sows and boars to be *de minimis*.

On September 27, 1995, the Panel affirmed the Department's remand results, as amended, and approved the Consent Notice of Motion. Based upon the Panel's order affirming the Department's determination on remand, the Department has established a countervailing duty rate for sows and boars and has recalculated the countervailing duty rate for all other Live Swine from Canada for purposes of the entries for which liquidation was suspended subject to the Panel's review. In addition, the Department has assigned a *de minimis* CVD rate to Pryme, pursuant to the Consent Notice of Motion.

The subsidy rates contained herein are those determined by the Department in its final remand results, as amended. They are: for sows and boars, CAN$0.0036 per kilogram. This rate is *de minimis*. For all live swine, other than sows and boars, CAN$0.0296 per kilogram.

Amended Final Results of Review

The Department will instruct the Customs Service to liquidate without regard to countervailing duties all shipments of live swine from Canada produced by Pryme Pork, Ltd. exported on or after April 1, 1990 and on or before March 31, 1991. In addition, the Department will instruct the Customs Service to liquidate entries of merchandise produced/exported by P. Quintaine & Son, Ltd., and Earle Baxter Trucking LQ., exported on or after April 1, 1990 and on or before March 31, 1991 as follows: to liquidate without regard to countervailing duties all shipments of sows and boars and to assess CAN$0.0296 per kilogram on entries of all other live swine.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of zero on all shipments of live swine from Canada produced by Pryme Pork, Ltd. entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Futhermore, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of zero on all shipments of sows and boars from Canada and CAN$0.0296 per kilogram on shipments of all other live swine from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This amended notice of final results is published in accordance with 19 U.S.C. § 1675(a)(1), 19 U.S.C. § 1516a(g)(5)(B), 19 CFR § 355.22 and 19 CFR § 356.8(a).

Dated: November 6, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–28081 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–P

Columbia University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–011. *Applicant:* Columbia University in the City of New York, New York, NY 10027. *Instrument:* High Energy Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 60 FR 13700, March 14, 1995. *Reasons:* The foreign instrument provides: (1) stored electrical energy to 340J, (2) anti-reflection coated quartz optics for focusing, and (3) optical/electrical shielding. *Advice Received From:* National Institutes of Health, April 28, 1995.

Docket Number: 95–013. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Eye Tracking System, Model EYELINK. *Manufacturer:* SR Research Ltd., Canada. *Intended Use:* See notice at 60 FR 16619, March 31, 1995. *Reasons:* The foreign instrument provides: (1) a sampling rate of 250 Hz, (2) spatial resolution of eye position to 0.005 and (3) real-time detection of saccades as small as 0.3° over a horizontal range of ± 30° and a vertical range of ± 20°. *Advice Received From:* National Institutes of Health, April 28, 1995.

Docket Number: 95–014. *Applicant:* University of Wisconsin-Milwaukee, Milwaukee, WI 53211. *Instrument:* Mass Spectrometer, Model Autospec 3000. *Manufacturer:* Fisons Instruments, Inc., United Kingdom. *Intended Use:* See notice at 60 FR 16619, March 31, 1995. *Reasons:* The foreign instrument provides: (1) trisector (EBE) double focusing geometry, (2) liquid secondary ion MS capability and (3) mass range to 3000. *Advice Received From:* National Institutes of Health, April 28, 1995.

Docket Number: 95–015. *Applicant:* Georgia State University, Atlanta, GA 30303. *Instrument:* ICP Mass Spectrometer, Model SOLA. *Manufacturer:* Finnigan MAT, United Kingdom. *Intended Use:* See notice at 60 FR 16619, March 31, 1995. *Reasons:* The foreign instrument provides: (1) sub-ng/liter detection limits for liquids and sub-ppb for solids across the periodic table, (2) Faraday and electron multiplier detectors and (3) an accelerating cone providing high light element sensitivity (e.g. Li > 100MHz/ppm). *Advice Received From:* National Institutes of Health.

Docket Number: 95–042. *Applicant:* University of California, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer System. *Manufacturer:* Europa Scientific, United Kingdom. *Intended Use:* See notice at 60 FR 31144, June 13, 1995. *Reasons:* The foreign instrument provides: (1) dual isotope capabilities for carbon and nitrogen, (2) automated C/N module, and (3) mass spectrometer precision of 0.2 per mil for carbon and 0.5 per mil for nitrogen. *Advice Received From:* National Institutes of Health, September 14, 1995.

Docket Number: 95–052. *Applicant:* Dartmouth College, Hanover, NH 03755-3571. *Instrument:* ICP Mass Spectrometer, Model ELEMENT. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 37051, July 19, 1995. *Reasons:* The foreign instrument provides: (1) high mass resolution providing detection of <0.1 ng/l of cadmium at three times standard deviation of background at resolution 300, and (2) low detection limit analysis of the elements Ca, Fe, As, G and V. *Advice Received From:* National Institutes of Health, September 21, 1995.

Docket Number: 95–054. *Applicant:* California State University, Long Beach, CA 90840. Instrument: Real-Time 4 Camera System, Model VICON 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 39710, August 3, 1995. *Reasons:* The foreign instrument provides comprehensive kinetic and kinematic analysis of human cyclical movement using infra-red strobed and shuttered video images of special markers placed on joint centers of the body. *Advice Received From:* National Institutes of Health, September 22, 1995.

Docket Number: 95–057. *Applicant:* University of Connecticut, Storrs, CT 06269-1020. *Instrument:* Fiber-Electron Manipulator System. *Manufacturer:* Thomas Recording, Germany. *Intended Use:* See notice at 60 FR 39711, August 3, 1995. *Reasons:* The foreign instrument provides: (1) independently manipulated microelectrodes at inter-electrode distances of 256μm and (2) microelectrode shaft diameter of 80μm permitting non-interfering simultaneous measurement of cortical neurons. *Advice Received From:* National Institutes of Health, September 22, 1995.

Docket Number: 95–058. *Applicant:* University of Maryland, College Park, MD 20742. *Instrument:* Scanning Electron Microscope, Model XL-40. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 39711, August 3, 1995. *Reasons:* The foreign instrument is a specially modified scanning electron microscope (SEM) serving as a platform for a focused ion beam column with the ion beam's scanning, scan amplifier and vacuum controlled by the SEM's computer. *Advice Received From:* National Institutes of Health, September 22, 1995.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 95–28093 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–093. *Applicant:* Florida International University, University Park, Miami, FL 33199. *Instrument:* Stopped-Flow System. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The system consists of accessories to a spectrophotometer and will be used to study the fast kinetics of chemical reactions. *Application Accepted by Commissioner of Customs:* October 5, 1995.

Docket Number: 95–094. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. *Instrument:* Stopped-Flow Spectrophotometer, Model SX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used to analyze genetically engineered proteins with substitutions of tyrosine and other amino acids. The objective of the experiments will be to understand the function of Fe(III)-tyrosine in ferritin, Nature's anti-rust protein important in normal blood formation and anemia. Predoctoral and postdoctoral trainees will learn the techniques for rapid kinetic analysis of protein reactions in the course BCH 690. *Application Accepted by Commissioner of Customs:* October 5, 1995.

Docket Number: 95–095. *Applicant:* Norfolk State Univerity, 2401 Corprew Avenue, Norfolk, VA 23504. *Instrument:* Electron Paramagnetic Resonance Spectrometer System, Model EMX 10/2.7. *Manufacturer:* Bruker, Germany. *Intended Use:* The instrument will be used for studies of single crystals such as neodymium doped in fluorides and other crystals doped with rare-earth or transition metal ions that will be grown in a crystal growth facility. These studies will involve spin densities and crystal defects experiments, orientation experiments for looking at angular dependence and experiments to examine the ion environment. In addition, the instrument will be used for educational purposes in the courses Chemistry 363L - Physical Chemistry Laboratory and Physics 450 - Advanced Laboratory. *Application Accepted by*

Commissioner of Customs: October 5, 1995.

Docket Number: 95–096. *Applicant:* Arizona State University, Botany Department, Life Sciences Building - E Wing Rm 218, Tempe, AZ 85287-1601. *Instrument:* Fluorescence Measuring System, Model PAM 101. *Manufacturer:* Heinz Walz GmbH, Germany. *Intended Use:* The instrument will be used to measure the kinetics of Q_A reduction and reoxidation in wild-type and genetically engineered mutants of a cyanobacterium, in which photosystem II, the part of photosynthesis with which Q_A is associated, has been altered. A major objective of this work is to elucidate how specific changes in the protein environment surrounding Q_A alter the properties of this cofactor. In addition, the instrument will be used for graduate education in the courses BOT 592 and 792 and MCB 592 and 792. *Application Accepted by Commissioner of Customs:* October 5, 1995.

Docket Number: 95–097. *Applicant:* Johns Hopkins University, 3400 N. Charles Street, Baltimore, MD 21218. *Instrument:* Stopped-Flow Spectrophotometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the structure and function of a set of three bacterial heat shock proteins that act as molecular chaperones in mediating several aspects of protein metabolism, including protein folding, protein transport, and assembly and disassembly of protein complexes. *Application Accepted by Commissioner of Customs:* October 5, 1995.

Docket Number: 95–098. *Applicant:* Research Foundation of SUNY at Albany, AD 335, 1400 Washington Avenue, Albany, NY 12222. *Instrument:* Formaldehyde Monitor. *Manufacturer:* Aero Laser GmbH, Germany. *Intended Use:* The instrument will be used to measure ambient concentrations during regional pollution episodes in rural locations of the northeastern U.S. In this research program both undergraduate and graduate students in atomospheric chemistry will study the formation of formaldehyde and its role in atmospheric photooxidation processes leading to ozone formation. In addition, the instrument will be used to train undergraduate students and technicians in its use and application in quality monitoring networks. *Application Accepted by Commissioner of Customs:* October 12, 1995.

Docket Number: 95–099. *Applicant:* National Institute of Standards and Technology, Building 222, Room A113, Gaithersburg, MD 20899. *Instrument:* Rotating Sample Stage for Ion Microscope. *Manufacturer:* Kore Technology, United Kingdom. *Intended Use:* The instrument is an accessory for a Cameca ion microscope which will be used to improve the depth resolution of secondary ion mass spectrometry sputter depth profiles. *Application Accepted by Commissioner of Customs:* October 12, 1995.

Docket Number: 95–101. *Applicant:* Rutgers University, P.O. Box 69999, Piscataway, NJ 08855. *Instrument:* Chlorophyll Fluorescence Measuring System, Model PAM 101. *Manufacturer:* Walz (Mess- und Regeltechnik), Germany. *Intended Use:* The instrument will be used to characterize the kinetics of fluorescence for chlorophyll *a* in whole cells of microalgae in studies of how photosynthetic light reactions are modulated by stochastic light environment. The instrument will also be used in undergraduate courses in marine microbiology and primary productivity in the world's ocean to demonstrate the dramatic physiological plasticity of the microalgae which is central to understanding the dynamic ocean environment in which they live. *Application Accepted by Commissioner of Customs:* October 13, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–28094 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–F

University of Rhode Island, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–081. *Applicant:* University of Rhode Island, Narragansett, RI 02882-1997. *Instrument:* ICP Mass Spectrometer, Model Element. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 50554, September 29, 1995. *Reasons:* The foreign instrument provides a double focusing magnetic sector analyzer with a sensitivity of 2.0 x 10^7 ions per second per ppm of indium at resolution 300.

Docket Number: 95–083. *Applicant:* Continuous Electron Bean Accelerator Facility, Newport News, VA 23606. *Instrument:* Gas Cherenkov Counters for Hall A Magnetic Spectrometers. *Manufacturer:* CEA/DSM, France. *Intended Use:* See notice at 60 FR 50554, September 29, 1995. *Reasons:* The foreign instrument provides specially designed counters for atomic particle identification with an efficiency of 99.9%.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–28095 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, December 5, 1995, from 1:00 a.m. to 5:00 p.m., and on Wednesday, December 6, 1995, from 8:30 a.m. to 11:45 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. On December 5, 1995, the agenda will include presentations of

NIST programs; the facilities construction program; the strategic planning for the Information Technology Laboratory; and a laboratory tour. On December 6, 1995, the agenda will include presentations on Investing in Public Technology Companies; report of the Board on Assessment on NIST programs; and a report on the NIST Laboratory Role.

DATES: The meeting will convene December 5, 1995, at 1:00 p.m. and will adjourn at 11:45 a.m. on December 6, 1995.

ADDRESSES: The meeting will be held in Lecture Room A (seating capacity 70, includes 36 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, NIST, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

Dated: November 7, 1995.

Samuel Kramer,

Associate Director.

FR Doc. 95–28083 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–13–M

Patent and Trademark Office

Notice of Hearings and Request for Comments on Issues Relating to Patent Protection for Nucleic Acid Sequences

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearings and request for comments.

SUMMARY: The Patent and Trademark Office (PTO) will hold public hearings, and it requests comments, on issues relating to patent protection for nucleic acid sequences. Interested members of the public are invited to testify at public hearings and to present written comments on any of the topics outlined in the supplementary information section of this notice.

DATES: Public hearings will be held on Wednesday, November 29, 1995, from 9:00 a.m. until 5:00 p.m., and Thursday, December 7, 1995, from 9:00 a.m. until 1:00 p.m.

Those wishing to present oral testimony at any of the hearings must request an opportunity to do so no later than Monday, November 27, 1995, for the November 29 hearing, or Tuesday, December 5, 1995, for the December 7 hearing.

Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings no later than Monday, December 18, 1995.

Written comments will be accepted by the PTO until December 18, 1995.

Written comments and transcripts of the hearings will be available for public inspection on or about Monday, January 22, 1996.

ADDRESSES: The November 29 hearing will be held from 9:00 a.m. until 1:00 p.m. at the University of California, San Diego, The Mandeville Auditorium/ Recital Hall, Muir Campus, La Jolla, California.

The December 7 public hearing will be held from 9:00 a.m. until 1:00 p.m. in Suite 912, Commissioner's Conference Room, Crystal Park Building No. 2, 2121 Crystal Drive, Arlington, Virginia.

Requests to testify should be sent to Esther Kepplinger by telephone at (703) 306–2714, by facsimile transmission at (703) 308–6879, or by mail marked to her attention addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231. No request for oral testimony will be accepted through electronic mail.

Written comments should be addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231, marked to the attention of Esther Kepplinger. Comments may also be submitted by facsimile transmission at (703) 308–6879, with a confirmation copy mailed to the above address, or by electronic mail over the Internet to "sequence@uspto.gov."

Written comments and transcripts of the hearings will be maintained for public inspection in Suite 520 of Crystal Park One, 2011 Crystal Drive, Arlington, Virginia. Transcripts and comments provided in machine readable format will also be available through anonymous file transfer protocol (ftp) via the internet (address: sequence@uspto.gov).

FOR FURTHER INFORMATION CONTACT: Esther Kepplinger by telephone at (703) 306–2714, by facsimile transmission to (703) 308–6879, by electronic mail at ekepplin@uspto.gov, or by mail marked to her attention addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

I. Background

With the growth of the biotechnology industry have come significant changes in the process of research, development and commercialization of biotechnology inventions. For at least a decade, patent applications claiming nucleic acid sequences, such as genes composed of deoxyribonucleic acid ("DNA"), have been examined and granted patent rights by the PTO. These sequences typically encode known proteins or proteins for which applicant discovered a function. Scientific and technological advances have permitted researchers to identify large numbers of gene fragments rapidly. Armed with databases containing the sequences of known genes, they can identify a novel sequence. The ease of sequencing large numbers of random nucleic acid fragments has resulted in the filing of a growing number of patent applications each claiming thousands of nucleic acid sequences. This is a serious problem for the PTO. While the PTO has recently acquired sophisticated and costly hardware and software necessary to search applications containing such sequences, their examination will significantly burden the existing system and may necessitate the acquisition of many additional, expensive, massively parallel processor computers to complete examination in a reasonable time.

PTO estimates that the computer search time for one hundred sequences is about fifteen hours and the examiner time for evaluating the sequence search results is about sixty-five hours. The estimated cost for computer search time for one hundred sequences is $1500. Although the number of cases involving large numbers of sequences presently before the PTO is small, it is estimated that the cost to search and examine these cases will be $8 million. These estimates represent searches by a massively parallel processor computer of commercially available databases.

Applications that claim excessively long sequences present similar challenges, since the claimed sequence must be broken up into numerous smaller sequences in order to be searched.

An additional issue has been raised relating to what is known as the Human Genome Initiative (HGI).

The HGI is a project to obtain the entire DNA sequence in the human genome. Many of the benefits expected from the HGI are due to the characterization of expressed nucleic acid sequences in the human genome and their protein products.

Some individuals believe that expressed nucleic acid sequences in the human genome should not be patentable because of the possibility that a patent to a gene fragment could preclude future use of the gene or its protein product. This, it is argued, could inhibit future research efforts to isolate the entire gene or to develop medically beneficial protein compounds. Others believe that

the benefits of the patent system should not be withheld from this area of technology, because research and development would be drastically curtailed due to the inability to protect capital investments or to reap financial rewards from those investments. Appropriate policies must be established to address these challenges.

II. Issues for Public Comment

Interested members of the public are invited to testify or to present written comments related to the above topics, including the following issues:

1. Is there a more cost-effective way to examine applications containing large numbers of sequences or excessively long sequences, in view of the PTO's limited human and computer resources?

2. How should the significantly higher cost associated with searching applications claiming large numbers of sequences or excessively long sequences be underwritten? For example:

(a) By fees from all applications?

(b) By fees from the biotechnology industry applications only?

(c) By fees from those specific applications involving large numbers of sequences or extraordinarily long sequences?

3. Will the patenting of a complete genome of an organism inhibit rather than promote advancement of the biotechnology arts? If so, why?

4. Will the patenting of human genome fragments inhibit rather than promote advancement of the biotechnology arts? If so, why?

III. Guidelines for Oral Testimony

Individuals wishing to testify at the hearings must adhere to the following guidelines:

1. Requests to testify must include the speaker's name, affiliation, title, phone number, fax number, mailing address, and Internet mail address (if available).

2. Speakers will be provided between seven and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. All efforts will be made to accommodate requests for additional time for testimony presented before the day of the hearing.

3. Requests to testify may be accepted on the date of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

A schedule providing approximate times for testimony will be provided to all speakers the morning of the day of the hearing.

Speakers are advised that the schedule for testimony may be subject to change during the course of the hearings.

IV. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of the individual responding.

2. If applicable, an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views.

3. If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, non-profit organization) and general areas of interest.

Information that is provided pursuant to this notice will be made part of the public record. In view of this, parties should not provide information they do not wish publicly disclosed. Parties who would like to rely on confidential information to illustrate a point being made are requested to summarize or otherwise provide the information in a way that will permit its public disclosure.

Parties offering testimony or written comments should provide their comments in machine readable format, if possible. Such submissions should be provided by electronic mail messages over the Internet, or on a 3.5" floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine readable submissions should be provided as unformatted text (e.g., ACSII or plain text), or formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS or Windows versions) or WordPerfect (Macintosh, DOS or Windows versions).

V. Guidelines for Comments via Internet

Comments received via the Internet should include the same information requested in the guidelines set out for written comments.

VI. Other Information

Questions regarding the facilities and lodging in the La Jolla, California, area should be directed to the University of California, San Diego, Special Events, by phone at (619) 534–6386, or by fax to (619) 534–0905. Parking permits are required for on-campus parking and may be purchased in advance through the Parking Office or on November 29 at Information booths at the university. Questions regarding parking should be directed to the Special Events Parking Office at (619) 534–9682, or by fax to (619) 534–9685.

Dated: November 8, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–28053 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339/638/639 and the sublimit for 338–S/339–S/638–S/639–S are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 16622, published on March 31, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 15, 1995, you are directed to amend the March 27, 1995 directive to increase the limit for the following categories, as provided for under the current bilateral textile agreement between the Governments of the United States and the Republic of Fiji:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,122,476 dozen of which not more than 848,039 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–28086 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcing Settlement on Import Limits and Guaranteed Access Levels and Amending Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit and restraint period and directing Customs to begin signing form ITA–370P.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated October 19, 1995, the Governments of the United States and the Republic of Guatemala agreed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish a limit for Categories 342/642 for the periods May 31, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through May 30, 1998. The governments also agreed to establish Guaranteed Access Levels (GALs) for Categories 342/642 for the periods January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through May 30, 1998.

Beginning on November 15, 1995, the U.S. Customs Service will start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 342/642 that are destined for Guatemala and subject to the GAL established for Categories 342/642 for the period beginning on January 1, 1996 and extending through December 31, 1996. These products are governed by Harmonized Tariff item number 9802.00.8015 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Categories 342/642 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Guatemala in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current level and restraint period for Categories 342/642, and to begin signing the first section of form ITA–370P. Also, visa requirements are being amended to include the coverage of merged Categories 342/642.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 55 FR 3079, published on January 30, 1990; and 60 FR 44316, published on August 25, 1995.

Requirements for participation in the Special Access Program are provided in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on August 22, 1995 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on May 31, 1995 through May 30, 1996.

Effective on November 15, 1995, you are directed, pursuant to the Memorandum of Understanding dated October 19, 1995 between the Governments of the United States and the Republic of Guatemala, the

Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, to amend the current restraint period for Categories 342/642 to end on December 31, 1995 at a level of 285,685 dozen[1].

Effective on November 15, 1995, you are directed to amend the directive dated January 24, 1990 to require a visa for goods in Categories 342 and 642 which are produced or manufactured in Guatemala and exported from Guatemala on and after November 15, 1995. Shipments of goods in Categories 342 and 642 may be visaed as merged Categories 342/642 or the correct category corresponding to the actual shipment. Goods exported during the period November 15, 1995 through December 14, 1995 shall not be denied entry for lack of a visa.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

Beginning on November 15, 1995, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 342/642 that are destined for Guatemala and re-exported to the United States on and after January 1, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28087 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6716. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17335, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 14, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
239	498,895 kilograms.
331	460,466 dozen pairs.
340	897,045 dozen.
341	225,563 dozen.
347/348	1,113,701 dozen of which not more than 631,176 dozen shall be in Category 347 and not more than 490,915 dozen shall be in Category 348.
604	910,142 kilograms.
631	501,771 dozen pairs.
635	290,762 dozen.
639	3,544,625 dozen.
648	1,647,109 dozen.

[1] The limit has not been adjusted to account for any imports exported after May 30, 1995.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28084 Filed 11–13–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Board of Trade for Designation as a Contract Market in Futures and Options on Illinois, Indiana, Nebraska, Ohio, and U.S. Corn Yield Insurance

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in corn yield insurance futures and futures options based on four states, Illinois, Indiana, Nebraska, and Ohio, and the entire United States. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 14, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, DC 20581. Reference should be made to the CBT contract markets in futures and options on Illinois, Indiana, Nebraska, Ohio, and U.S. corn yield insurance.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, DC 20581, telephone 202–418–5273.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 7, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–28038 Filed 11–13–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0064]

Request for Public Comments Regarding OMB Clearance Entitled Organization and Direction of Work

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0064).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Organization and Direction of Work. This OMB clearance currently expires on March 31, 1996.

DATES: *Comment Due Date:* January 16, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0064, Organization and Direction of Work, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government awards a cost-reimbursement construction contract, the contractor must submit to the contracting officer and keep current a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The chart is used in administration of the contract and as an aid in determining cost. The chart is used by contract administration personnel to assure the work is being properly accomplished at reasonable prices.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.75* hours per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *50;* responses per respondent, *1;* total annual responses, *50;* preparation hours per response, *.75;* and total response burden hours, *38.*

Dated: November 7, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–28023 Filed 11–13–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0004]

Request for Public Comments Regarding OMB Clearance Entitled Architect-Engineer and Related Services Questionnaire (SF 254)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0004).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire (SF 254). This OMB clearance currently expires on March 31, 1996.

DATES: *Comment Due Date:* January 16, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541–544 by firms

wishing to be considered for Government A–E contracts. The information obtained on this form is used to determine if a firm should be solicited for A–E projects.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondent, *5,000*; responses per respondent, *7*; total annual responses, *35,000*; preparation hours per response, *1*; and total response burden hours, *35,000*.

Dated: November 7, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–28019 Filed 11–13–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0060]

Request for Public Comments Regarding OMB Clearance Entitled Accident Prevention Plans and Recordkeeping

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0060).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Accident Prevention Plans and Recordkeeping. This OMB clearance currently expires on March 31, 1996.

DATES: *Comment Due Date:* January 16, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause "Accident Prevention" (48 CFR 52.236–13) requires Federal construction contractors to keep records of accidents incident to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal inquiries are required by OSHA (OMB Control No. 1220–0029). The Federal Acquisition Regulation requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, the contractor must submit a written proposal for implementation of the clause. The Accident Prevention Plan, for projects that are hazardous or of long duration, is analyzed by the Contracting Officer along with the agency safety representatives to determine if the proposed plan will meet the requirement of the safety regulations and applicable statutes. The records maintained by the contractor are used to evaluate compliance and may be used in workmen's compensation cases. The Accident Prevention Plan is placed in the contract file for reference.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2* hours per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,106*; responses per respondent, *2*; total annual responses, *4,212*; preparation hours per response, *2*; and total response burden hours, *8,424*.

Dated: November 7, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–28021 Filed 11–13–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0005]

Request for Public Comments Regarding OMB Clearance Entitled Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0005).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255). This OMB clearance currently expires on March 31, 1996.

DATES: *Comment Due Date:* January 16, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project. Hence the need for information regarding the number and discipline of consultant personnel. The degree to which an A–E firm will utilize consultants can significantly impact on their suitability and qualifications for a specific project. The revision to the form requesting A–E firms provide the name and phone number of a point of contact, usually the project manager, will (1) reduce the time required by the Government to verify performance on current Federal contracts, and (2) reduce the time lost by the A–E firms providing this information at a later date. The information is used to determine if a firm is qualified to perform a specific project.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1.2* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *5,000*; responses per respondent, *4*; total annual responses, *20,000*; preparation hours per response, *1.2*; and total response burden hours, *24,000*.

Dated: November 7, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–28020 Filed 11–13–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent to Prepare a Joint Draft Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) with Sacramento County for the Proposed Aggregate Mining within the Morrison Creek Drainage Basin.

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DOD.

ACTION: Notice of Intent.

SUMMARY: The proposed aggregate mining of approximately 950 acres of land within the Morrison Creek Drainage Basin south of Highway 16, Sacramento County, California. The area evaluated by the EIR/EIS is bounded roughly by Jackson Road (Highway 16) to the north, Excelsior Road to the east, Elder Creek Road to the south and Hedge Avenue to the west. There are four mining areas within the 950 acre study area. They are known as Granite Vineyard, Aspen III South, Aspen IV South and Aspen V South. Granite Construction Company and Teichert Aggregates have applied to the Corps of Engineers for Department of the Army permits pursuant to Section 404 of the Clean Water Act.

Granite proposes to impact 21.95 acres of waters of the United States subject to DOA jurisdiction on their ± 400 acre Granite Vineyard site. The applicant proposes to reroute Morrison Creek into a bypass channel that will be constructed at the present grade. Low flows will be directed to the pit floor where the applicant proposes to mitigate for project impacts to seasonal wetlands and creek channel. Teichert proposes to impact 1.78 acres of waters of the United States subject to DOA jurisdiction on their ± 180 acre Aspen IV South site and 4.91 acres of waters of the United States subject to DOA jurisdiction on their ± 180 acre Aspen IV South site and 4.91 acres of waters of the United States subject to DOA jurisdiction on their ± 255 acre Aspen V South site. Teichert's Aspen III site is ± 110 acres and contains no waters of the United States subject to DOA jurisdiction.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and Draft EIR/EIS should be directed to Larry Vinzant, Regulatory Branch, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–5263.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The proposed action would eliminate approximately 30 acres of wetlands and other waters if the permits were issued.

2. *Alternatives:* The alternatives being considered at this time are:

a. Aggregate mining on-site as proposed by the applicants;

b. Downsizing mining operation on-site to reduce adverse impacts to waters of the United States;

c. Alternate site location; and

d. No action (no project alternative).

3. *Significant Issues:* The significant issues which have been identified to date and which will be analyzed in the report are:

a. The need for additional aggregate material in Sacramento;

b. Impacts to wetlands;

c. Impacts to threatened and endangered species;

d. Impacts to wildlife;

e. Impacts to the hydrology of the Morrison Creek drainage basin;

f. Impacts to water quality;

g. Impacts to traffic (alternative site location);

h. Impacts to aesthetics; and

i. Impacts to noise levels.

4. *Other Environmental Review and Consultation:* Environmental review and consultation as required by Sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order 11990, "Protection of Wetlands," (24 May 1977); and other applicable statutes or regulations will be conducted concurrently with the EIR/EIS review process.

Another joint draft EIR/EIS is being prepared concurrently for the Morrison Creek drainage basin north of Highway 16. This report will focus on the following mining projects: Granite I, Aspen VI and Aspen V North. Both EIR/EIS documents will evaluate cumulative impacts to the entire Morrison Creek drainage basin.

The Sacramento District of the U.S. Army Corps of Engineers will issue a 30-day public notice, concurrently with this notice, to initiate the scoping process. The public notice will be sent to all known, interested parties, and will request that the reviewers provide comments on the topical scope, alternatives, and major issues to be covered in the Draft EIR/EIS. We intend to accomplish the scoping process in this manner; however, if it is perceived that this method is not adequate, the need for a public scoping meeting will be considered.

5. *Schedule.* We estimate the Draft EIR/EIS will be made available to the public in summer of 1996.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–27978 Filed 11–13–95; 8:45 am]

BILLING CODE 3710–E2–M

Defense Investigative Service Privacy Act of 1974; Notice to Add a System of Records

AGENCY: Defense Investigative Service, DOD.

ACTION: Notice to add a systems of records.

SUMMARY: The Defense Investigative Service proposes to add a system of records to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective without further notice on December 14, 1995, unless comments are received that

would result in a contrary determination.

ADDRESSES: Send comments to the Defense Investigative Service, Chief, Information and Public Affairs Office, 1340 Braddock Road, Alexandria, VA 22314–1651.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hartig at (202) 475–1062.

SUPPLEMENTARY INFORMATION: The Defense Investigative Service's systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above address.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, was submitted on November 1, 1995, to the Committee on Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: November 7, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V8–02

SYSTEM NAME:

Key Contractor Management Personnel Listing.

SYSTEM LOCATION:

Primary Location: Defense Investigative Service, National Computer Center, 2200 Van Deman Street, Baltimore, MD 21203–1211.

Remote terminals are located at Defense Investigative Service, Defense Industrial Security Clearance Office, 3990 East Broad Street, Building 306, Columbus OH 43213–1138, and

Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Key management personnel of government contractor facilities which have been issued, now possess, are, or have been in process for a facility clearance.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated record may include individuals name, Social Security Number, date of birth, place of birth, citizenship, and date and level of security clearance granted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12829; E.O. 9397; E.O. 10865; E.O. 10909; DoD Directive 5105.42, Defense Investigative Service (DIS); DoD Regulation 5200.2R, DoD Personnel Security Program; and DoD 5220.22-M, National Industrial Security Program Operating Manual.

PURPOSE(S):

Records serve to provide a listing of key management personnel at civilian contractor facilities falling under the National Industrial Security Program for use by the Defense Industrial Security Clearance Office which will be used to track, monitor and expedite personnel clearance processing of those personnel who require a security clearance in conjunction with the facility clearance in order to expedite initial facility clearance processing and to assist in maintaining facility clearances in a valid status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DIS's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained in computer disk packs, magnetic tapes and associated data processing files.

RETRIEVABILITY:

Records are accessed by Social Security Number or name or both.

SAFEGUARDS:

Specific codes are required to access the automated records.

RETENTION AND DISPOSAL:

Records are retained as long as the individual is a key management person at a DoD contractor facility in the National Industrial Security Program and are destroyed immediately upon notification that the individual no longer occupies such a position. Electronic records are erased or overwritten.

EXCEPTIONS: Records released in accordance with the Privacy Act or the Freedom of Information Act are retained for two years from date of release.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director (Industrial Security), Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Office of Information and Public Affairs, Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Investigative Service, Privacy Act Office, 2200 Van Deman Street, Baltimore, MD 21224–6603.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Investigative Service, Privacy Act Office, P.O. Box 1211, Baltimore, MD 21203–1211.

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Investigative Service, Privacy Act Office, 2200 Van Deman Street, Baltimore, MD 21224–6603.

CONTESTING RECORD PROCEDURES:

DIS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DIS Regulation 28–4; 32 CFR part 321; or may be obtained from the Office of Information and Public Affairs, Defense Investigative Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Reports from civilian contractors participating in the National Industrial Security Program. Business records of civilian contractors participating in the National Industrial Security Program. Federal, state, county and municipal records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–27972 Filed 11–13–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: November 30, 1995, 8 a.m. to 4:30 p.m.; December 1, 1995, 8 a.m. to 2 p.m.

ADDRESSES: Washington Court Hotel, Ballroom West, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, DC 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528. Internet: John__Christensen@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public. The agenda for November 30 includes a report on the status of legislation affecting educational research and reports on the preparation of a research priorities plan. The Board will also discuss models of peer review. On December 1 the Board will consider standards related to exemplary programs and promising practices. A final agenda will be available from the Board's office on November 22, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, DC 20208–7564.

Dated: November 7, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–28018 Filed 11–13–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Solicitation for Financial Assistance Applications; Rebuild America Program

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications number DE–PS36–96GO10131.

SUMMARY: The U.S. Department of Energy (DOE), through the Rebuild America Program, announces its intention to issue a competitive solicitation and make multiple awards to regional or community wide public/private sector groups to accelerate the use of cost-effective energy efficiency improvements in commercial and multifamily residential housing. This action is subject to the DOE Financial Assistance Rules, which can be found in Title 10 of the Code of Federal Regulations (10 CFR Part 600).

AVAILABILITY OF THE SOLICITATION: To obtain a copy of the solicitation once it is issued in December, 1995, write to the U.S. Department of Energy's Golden Field Office, 1617 Cole Blvd, Golden, CO, 80401, Attn: Mr. John Motz, Contract Specialist. Only written requests for the solicitation will be honored. For convenience, requests for the solicitation may be faxed to Mr. Motz at (303) 275–4754. For further information concerning the Rebuild America Program, contact the Energy Efficiency and Renewable Energy Clearinghouse (EREC), P.O. Box 3048, Merrifield, VA, 22116. Telephone: (800) 363–3732.

SUPPLEMENTARY INFORMATION: The DOE Office of Building Energy Research, under authority of Section 2104 of the Energy Policy Act of 1992, Pub. Law No. 102–486, seeks to substantially increase the energy efficiency of existing commercial buildings by the year 2005. This solicitation is part of Action #1 of the Administration's Climate Change Action Plan to reduce energy use in buildings and lower greenhouse gas emissions. The objective of this solicitation is to make multiple financial assistance awards to public/private sector groups that are expected to accelerate the use of cost-effective energy efficiency measures in commercial and multifamily residential housing in the United States.

"Commercial Building" means a public or privately owned building with more than 50 percent of its floorspace used for commercial activities. Commercial buildings include, but are not limited to, stores, offices, schools, churches, auditoriums, gymnasiums, libraries, museums, hospitals, clinics, warehouses and correctional facilities. Awardees will be expected to: apply retrofit energy efficiency improvements to a large portion of the total floorspace in existing commercial and multifamily buildings within a community or region by not later than five years after award date of the cooperative agreement; integrate and enhance existing energy efficiency improvement programs and capital investment resources in their community or region to support the implementation of their energy efficient retrofits, e.g., the U.S. Environmental Protection Agency's Energy Star Buildings Program or the U.S. Department of Housing and Urban Development's Empowerment Zones/Enterprise Communities; and ensure that the activities initiated through the group will continue without further DOE funding.

DOE will consider for award those entities which have not received a prior award under this program and which represent a consortium of private sector firms and the public sector which coul include business partnerships, joint ventures or other business relationship between such organizations as profit and non-profit corporations, educational institutions, etc. Each consortium must include a state or local government organization as a member, but can be led by any organization. The awardee must propose to cost share at least 50% of the total project costs from non-federal sources in order to receive an award under the solicitation.

Applicants will be expected to customize their program approaches to fit their community's needs and capabilities. Awards under this solicitation will be cooperative agreements. The term of the awards may be for up to five years. It is anticipated total DOE funding available for this round of awards will be approximately $2.5 million. Individual awards under this solicitation will not exceed $500,000 of DOE funding. DOE funds may not be used for capital investments

needed to retrofit nor to purchase any buildings under any cooperative agreements awarded under this solicitation. The solicitation will be issued in December, 1995, and will contain detailed information on funding, cost sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due 120 days after solicitation release.

Issued in Golden, Colorado, on November 1, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–28056 Filed 11–13–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, November 15, 1995: 6:00 pm–9:00 pm.

ADDRESSES: Oak Ridge Mall Community Room, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

November Meeting Topics

The Board members will continue to address issues required for the Board to function routinely. Topics to be discussed are largely organizational, but the Board will be provided a presentation on the Environmental Management Program's prioritization system.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting.

Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on November 7, 1995.

Gail Cephas,

Acting Advisory Committee Management Officer.

[FR Doc. 95–28057 Filed 11–13–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, Texas

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, November 28, 1995: 1:30 pm–5:30 pm.

ADDRESS: Boatman's First National Bank, Centennial Room, 8th and Fillmore, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 pm—Welcome—Introductions—Approval of Minutes
1:40 pm—Co-Chairs' Comments
2:00 pm—Task Force Reports
—Public Participation/Public Information
—Environmental Restoration
—Sitewide Environmental Impact Statements
—Future of the Nuclear Complex
—Waste Management
2:30 pm—Updates
—Occurrence Reports—DOE
3:30 pm—Break
3:45 pm—Presentation
—Employee Concerns Process
4:30 pm—Subcommittee Reports
—Budget and Finance
—Community Outreach
—Policy and Personnel
—Program and Training
—Nominations
5:30 pm—Adjourn.

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on November 7, 1995.

Gail Cephas,

Acting Advisory Committee Management Officer.

[FR Doc. 95–28058 Filed 11–13–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, November 27, 1995: 6:00 p.m.–7:00 p.m. (public comment session); 7:00 p.m.–9:00 p.m. (issues-based subcommittee meetings); Tuesday, November 28, 1995: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The public comment session and subcommittee meetings will be held at: The Winton Inn, Marlboro Avenue (Corner of Hwy 278 and Hwy 3), Barnwell, South Carolina.

The Board meeting will be held at: The Barnwell County Museum, Hagood and Marlboro Avenue, Barnwell, S.C.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, November 27, 1995

6:00 p.m.—Public Comment Session (5-minute rule)
7:00 p.m.—Subcommittee Meetings
9:00 p.m.—Adjourn

Tuesday, November 28, 1995

8:00 a.m.—Coffee
8:30 a.m.—Approval of minutes, Agency Updates, Facilitator Report
9:00 a.m.—Risk Management & Future Use Subcommittee Report
10:00 a.m.—Environmental Remediation & Waste Management Subcommittee Report
12:00 p.m.—Lunch
1:00 p.m.—Nuclear Materials Management Subcommittee Report
1:30 p.m.—Consortium for Risk Evaluation and Stakeholder Participation
2:15 p.m.—Nominations/Elections
2:30 p.m.—Bylaws Subcommittee Report
3:10 p.m.—Membership Subcommittee Report
3:30 p.m.—Public Comment Session (5-minute rule)
4:00 p.m.—Adjourn.

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, November 27, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC on November 7, 1995.

Gail Cephas,

Acting Advisory Committee Management Officer.

[FR Doc. 95–28059 Filed 11–13–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–10–000, et al.]

Northwest Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Power Company, LLC

[Docket No. EG96–10–000]

On October 26, 1995, Northwest Power Company, LLC (Applicant), 10500 N.E. Eighth Street, Suite 1100, Bellevue, WA 98004, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant intends, directly or indirectly, to own or operate all or part of eligible facilities including without limitation an 838 MW electric generating facility located in the vicinity of Creston, Washington.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CSW Development-3, Inc.

[Docket No. EG96–11–000]

On October 26, 1995, CSW Development-3, Inc. (Applicant), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a non-utility indirect subsidiary of Central and South West Corporation, a registered holding company, intends, directly or indirectly, to own and operate all or part of eligible facilities including, without limitation, an 838 MW electric generating facility

located in the vicinity of Creston, Washington.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit consideration of comments to those that concern the adequacy or accuracy of the application.

3. Ashburnham Municipal Light Department, Boylston Municipal Lighting Department, Danvers Electric Department, Georgetown Municipal Light Department, Littleton Electric Light Department, Middleborough Gas & Electric Department, Middleton Municipal Light Department, Sterling Municipal Light Department, Taunton Municipal Lighting Plant, West Boylston Municipal Lighting Plant, and, New Hampshire Electric Cooperative v. Maine Yankee Atomic Power Company

[Docket No. EL96–2–000]

Take notice that on October 5, 1995, Ashburnham Municipal Light Department, Boylston Municipal Lighting Department; Danvers Electric Department; Georgetown Municipal Light Department; Littleton Electric Light Department; Middleborough Gas & Electric Department; Middleton Municipal Light Department; Sterling Municipal Light Department; Taunton Municipal Lighting Plant; West Boylston Municipal Lighting Plant; and New Hampshire Electric Cooperative (collectively referred to herein as "Maine Yankee Secondary Purchasers) tendered for filing a complaint and motion for summary disposition against Maine Atomic Power Company.

Comment date: December 6, 1995, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint and Motion for Summary Disposition shall also be due on or before December 6, 1995.

4. Delmarva Power & Light Company

[Docket No. ER95–1684–000]

Take notice that on October 20, 1995, Delmarva Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER96–132–000]

Take notice that on October 23, 1995, Florida Power Corporation (Florida Power) tendered for filing a Contract for Interchange Service between itself and LG&E and Power Marketing, Inc. Florida Power states that the contract provides for service under existing Schedule J, Negotiated Interchange Service, existing Schedule S, FERC Electric 1 and existing Schedule OS, Opportunity Sales.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Montana-Dakota Utilities Company, a Division of MDU Resources Group, Inc.

[Docket No. ER96–143–000]

Take notice that on October 24, 1995, Montana-Dakota Utilities Company, a division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's regulations, Revision 4 of Exhibit E of a certain contract between Montana-Dakota and the United States of America, acting through the Western Area Power Administration (Western) of the Department of Energy.

Montana-Dakota asserts that the filing has been served on Western and on interested state regulatory commissions.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Company

[Docket No. ER96–145–000]

Take notice that on October 25, 1995, Atlantic City Electric Company (ACE), tendered for filing an Agreement for Short-Term Energy Transactions between ACE and Koch Power Services. ACE requests that the Agreement be accepted to become effective October 26, 1995.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Company

[Docket No. ER96–147–000]

Take notice that on October 25, 1995, Central Illinois Public Service Company (CIPS), submitted a Service Agreement, dated October 4, 1995, establishing Industrial Energy Applications, Inc. (IEA) as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of October 4, 1995, for the service agreement with IEA. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon IEA and the Illinois Commerce Commission.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–148–000]

Take notice that on October 25, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Dartmouth Power Associates Limited Partnership

[Docket No. ER96–149–000]

Take notice that on October 25, 1995, Dartmouth Power Associates Limited Partnership, tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for the open-ended marketing and sale of electricity at market-based rates. Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER96–151–000]

Take notice that on October 25, 1995, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Engelhard Power Marketing, Inc. for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the proposed service agreements be permitted to become effective on November 1, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER96–152–000]

Take notice that on October 25, 1995, Duquesne Light Company (DLC), filed a Service Agreement dated October 18, 1995 with Heartland Energy Service, Inc. under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Heartland Energy Service, Inc. as a customer under the Tariff. DLC requests an effective date of October 18, 1995 for the Service Agreement.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER96–153–000]

Take notice that on October 26, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide fully interruptible transmission service to Heartland Energy Services, for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER96–154–000]

Take notice that on October 26, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Aquila Power Corporation (Aquila). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Aquila and Aquila will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 27, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Aquila.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ER96–156–000]

Take notice that on October 26, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Rainbow Energy Marketing Corporation*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Rainbow Energy Marketing Corporation* pursuant to the tariff, and for the sale of capacity and energy by *Rainbow Energy Marketing Corporation* to WestPlains Energy-Kansas pursuant to *Rainbow Energy Marketing Corporation's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Rainbow Energy Marketing Corporation*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ER96–157–000]

Take notice that on October 26, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Rainbow Energy Marketing Corporation*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *Rainbow Energy Marketing Corporation* to WestPlains Energy-Colorado pursuant to *Rainbow Energy Marketing Corporation's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Rainbow Energy Marketing Corporation*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company

[Docket No. TX94–1–003]

Take notice that on October 12, 1995, Northern States Power Company tendered for filing an updated copy of Appendix D to the Interconnection and Interchange Agreement between Northern States Power Company and Minnesota Municipal Power Agency.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28001 Filed 11–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP85–221–059]

Frontier Gas Storage Co.; Notice of Sale Pursuant to Settlement Agreement

November 7, 1995.

Take notice that on November 2, 1995, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Avenue NW., Suite 800, Washington, D.C. 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, et al., submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 100,000 MMBtu, not to exceed 10 Bcf for the term of the Agreement, of Frontier's gas storage inventory on an "as metered" basis to Koch Gas Services Company.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is "authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (888 First Street NE., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28002 Filed 11–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1278–000]

NAP Trading and Marketing, Inc.; Notice of Issuance of Order

November 7, 1995.

On June 28, 1995, as amended September 29, 1995, NAP Trading and Marketing Inc. (NAP) submitted for filing a rate schedule under which NAP will engage in wholesale electric power and energy transactions as a marketer. NAP also requested waiver of various Commission regulations. In particular, NAP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NAP.

On October 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NAP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NAP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NAP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28003 Filed 11–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–446–000]

The Southwire Co.; Notice of Issuance of Order

November 7, 1995.

On December 27, 1993 and July 25, 1995, The Southwire Company (Southwire) submitted for filing a power sale agreement with the Oglethorpe Power Corporation. In that filing, Southwire requested waiver of various Commission regulations. In particular, Southwire requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Southwire.

On October 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Southwire should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Southwire is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Southwire's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28004 Filed 11–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–550–001]

Washington Natural Gas Co., as Project Operator; Notice of Petition to Amend

November 7, 1995.

Take notice that on October 20, 1995, Washington Natural Gas Company, as Project Operator of the Jackson Prairie Storage Project (Applicant), 815 Mercer Street, Seattle, Washington 98109, filed in Docket No. CP94–550–001 a petition pursuant to Section 7(c) of the Natural Gas Act (NGA) to amend the certificate issued November 16, 1994 in this proceeding all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the certificate issued November 16, 1994 authorized Applicant to add 3 Bcf of cushion gas and to increase the shut-in bottom hole reservoir pressure to 1225 psia in Zone 9 at the Jackson Prairie Storage Project (Storage Project) located in Lewis County, Washington. Further, Applicant states that it expects to reach the maximum certificated shut-in bottom hole reservoir pressure in mid-November. Therefore Applicant is requesting authority to increase the maximum allowable shut-in bottom hole reservoir pressure to 1325 psia in order to complete the testing of Zone 9 of the Storage Project.

Any person desiring to make any protest with reference to said application should on or before November 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (19 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in the hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on the application if a motion to intervene is not filed within the time required herein. If a motion to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28005 Filed 11–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1415–000]

Wickford Energy Marketing, L.C.; Notice of Issuance of Order

November 7, 1995.

On July 2, 1995, as amended October 2, 1995, Wickford Energy Marketing, L.C. (Wickford) submitted for filing a rate schedule under which Wickford will engage in wholesale electric power and energy transactions as a marketer. Wickford also requested waiver of various Commission regulations. In particular, Wickford requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Wickford.

On October 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Wickford should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Wickford is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Wickford's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28006 Filed 11–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–43–000]

William Natural Gas Co.; Notice of Request Under Blanket Authorization

November 7, 1995.

Take notice that on November 1, 1995, Williams Gas Storage Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–43–000 a request pursuant to Sections 157.205, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon by reclaim certain facilities originally installed for the direct sale of natural gas to Jones Land and Cattle, Inc. (Jones), and the transportation of gas through such facilities installed under WNG's blanket certificate authority issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to abandon by reclaim measuring and appurtenant facilities, and the transportation of gas through such facilities, located in Nuckolls County, Nebraska, originally installed in 1967 to serve Jones' irrigation operation. It is indicated that Jones has agreed to the reclaim of facilities and the abandonment of service. WNG estimates the total cost to reclaim these facilities at $1,000 with a salvage value of $0.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28007 Filed 11–13–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for disbursement of $4,567,399.72 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Malcolm M. Turner (Case No. VEF–0013), Revere Petroleum Corporation *et al.* (Case No. VEF–0014), Granite Petroleum Corporation (Case No. VEF–0015), and Dalco Petroleum Corporation (Case No. VEF–0016). The OHA has determined that the funds obtained from these firms, plus accrued interest, will be disbursed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $4,567,399.72, plus accrued interest, remitted to the DOE by Malcolm M. Turner, Revere Petroleum Corporation *et al.*, Granite Petroleum Corporation and Dalco Petroleum Corporation. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP,

crude oil overhcarge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995, deadline for the crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted for the 20 percent of these funds allocated to individual claimants. Instead, that share of the funds will be added to the general crude oil overcharge pool used for direct restitution.

Dated: November 6, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 6, 1995.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Malcolm M. Turner, Revere Petroleum Corporation et al. Granite Petroleum Corporation, Dalco Petroleum Corporation

Dates of Filing: April 10, 1995; April 10, 1995; April 10, 1995; May 2, 1995

Case Numbers: VEF–0013, VEF–0014, VEF–0015, VEF–0016

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR part 205, Subpart V, the Office of General Counsel, Regulatory Litigation (OGC) (formerly the Economic Regulatory Administration (ERA), Office of Enforcement Litigation), filed four Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on April 10, 1995, and May 2, 1995. The Petitions request that OHA formulate and implement procedures to distribute funds received by the DOE from Malcolm M. Turner (Turner), Revere Petroleum Corporation (Revere), Granite Petroleum Corporation (Granite), and Dalco Petroleum Corporation (Dalco), pursuant to court-approved settlements between the parties and the DOE, DOE consent orders or remedial orders. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

As indicated by the following summaries of the relevant enforcement proceedings, all of the funds that are subject to this Decision were obtained through enforcement actions involving alleged or adjudicated crude oil overcharges.

A. Malcolm Turner

Turner, the sole Director and President of Bayport Refining Co. (Bayport), was a reseller of crude oil during the period of petroleum price controls and was subject to regulations governing the pricing and allocation of crude oil set forth at 10 CFR Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations. As the result of an ERA audit of Turner's and Bayport's operations, the ERA issued a Proposed Remedial Order (PRO) on September 20, 1984, alleging that they violated the provisions of 10 CFR § 212.186, by charging prices for crude oil in excess of actual purchase prices without providing any service or other function traditionally and historically associated with the resale of crude oil during the period from September 1978 through December 1980. According to the PRO, those transactions resulted in overcharges amounting to $11,810,639.84. The PRO further alleged that during the period from December 1979 through December 1980, the Respondents violated the provisions of 10 CFR § 212.131 by the miscertification of crude oil. According to the PRO, those transactions resulted in overcharges amounting to $12,554,371.74. The OHA in large part affirmed the findings of the PRO and issued a Remedial Order (RO) to the Respondents on February 16, 1989. Bayport Refining Co., 18 DOE ¶ 83,007 (1989). The RO was upheld by the Federal Energy Regulatory Commission (FERC) on October 4, 1993. Bayport Refining Company and Malcolm M. Turner, 65 FERC ¶ 61,021 (1993). Turner appealed to the United States District Court for the Northern District of Texas on March 31, 1994.[1] In January 1995, the court entered an Agreed Judgment resolving the issues addressed by the RO against Turner. Pursuant to the Agreed Judgment, Turner agreed to pay to the DOE the sum of $65,000. Turner has fulfilled his financial obligation to the DOE. As of September 30, 1995, the Bayport Consent Order fund contained $65,000 in principal plus accrued interest.[2]

B. Revere Petroleum Corp.

During the period of Federal petroleum price controls, Revere was engaged in crude oil reselling.[3] The firm was therefore subject to regulations governing the pricing of crude oil set forth at 10 CFR Parts 205, 210, 211, and 212 of the Mandatory Petroleum Price and Allocation Regulations. As a result of an ERA investigation of Revere's compliance with the price and allocation regulations, the ERA issued a PRO to Revere on January 18, 1983. However, on August 9, 1983, that PRO was amended by the ERA to include additional violations of 10 CFR § 212.186, alternative violations of 10 CFR § 212.183, and five additional parties as co-respondents of the PRO.[4] On May 29, 1992, the OHA issued the Amended PRO, with modifications, as an RO. *Revere Petroleum Corp.*, 22 DOE ¶ 83,004 (1992). The RO found Revere liable for violations of 10 CFR § 212.186 in connection with its resales of crude oil during the period April 1979 through March 1980. Revere appealed to FERC (Case No. R092–4–00). However, subsequently, this enforcement proceeding was settled when Revere and DOE entered into a settlement on an ability-to-pay basis in order to resolve DOE's claims against the firm. Revere agreed to pay the DOE the sum of $50,000.00, plus a percentage of the proceeds of Revere's asset liquidation. As of September 30, 1995, Revere and the other respondents have paid to the DOE the sum of $1,310,140.13 in satisfaction of their obligations.[5] Although additional revenues may be collected, no good reason exists to delay implementing distribution of the current balance of the fund.

C. Granite Petroleum Corporation

Granite engaged in the reselling and marketing of crude oil during the period of petroleum price controls. The firm was therefore subject to regulations governing the pricing and allocation of crude oil set forth at 10 CFR. Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations. The ERA conducted a detailed audit to determine Granite's compliance with the federal petroleum price and allocation regulations during the period from September 1, 1979 through January 27, 1981. As a result of the audit, on March 4, 1983, the ERA issued a PRO to the firm alleging violations of the crude oil price and allocation regulations (Case No. 640X00447). In September 1983, Granite and the DOE entered into a Consent Order which resolved a number of outstanding enforcement issues involving Granite. Under the terms of the settlement, Granite agreed to pay $200,000 in installment payments to the DOE.[6] As of September 30, 1995, Granite has paid to the DOE the sum of $176,698.85. Granite is currently delinquent in its payments to the DOE. Although we anticipate that additional sums may be collected from Granite, no good reason exists to forestall distribution of the current balance of the fund.

D. Dalco Petroleum Corporation

Dalco [7] was a reseller of crude oil during the period of price controls and was subject to regulations governing the pricing and allocation of crude oil set forth at 10 CFR. Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations.

[1] Bayport, which was dissolved in November 1982, did not appeal the RO. While the matter was referred for enforcement of the RO against Bayport, no funds were ever collected from the corporation.

[2] The funds submitted by Turner pursuant to the Agreed Judgment are deposited in the Bayport Consent Order fund, No. 6A0X00329.

[3] References to Revere in this Decision include Richard E. Dobyns, President of Revere, during the price control period.

[4] Those five individuals were James J. Cross, M. Kemp McMillan, Gordon K. Welz, and Milton E. Walz, who entered into a separate Consent Order with the DOE in December 1987, and John E. Woolsey, who entered into a separate Consent Order with the DOE in September 1986.

[5] Revere and all of the named individuals except Woolsey have satisfied their obligations to the DOE. Although Woolsey has made substantial payments to the DOE, he is delinquent in his payments, and the possibility exists that additional funds will be paid by him.

[6] Granite Petroleum Corporation and John E. Woolsey, President of Granite, are collectively referred to as Granite in the text. Both were parties to the Consent Order.

[7] References to Dalco in this Decision include W. Darryl Zang and Louis Porter, the firm's owners.

As the result of an ERA audit, the ERA issued a PRO to Dalco on April 30, 1982, alleging that between March 1976 and September 1978, Dalco violated the DOE mandatory petroleum price regulations which governed the resale of domestic crude oil, pursuant to 10 CFR. §§ 212.93, 212.10, 212.131, 205.202, 210.62(c), and 212.185, resulting in the illegal receipt of revenues. After the issuance of the PRO, but before a Statement of Objections was filed, Dalco filed for bankruptcy.[8] In August 1983, the Bankruptcy Court for the Northern District of Oklahoma issued an injunction which stayed the enforcement proceeding against the respondents. The bankruptcy court ultimately approved and allowed the DOE's claims against Dalco and as of September 30, 1995, Dalco has paid $3,015,560.74 to the DOE. Although the possibility exists that additional revenues will be obtained by the DOE in the Dalco bankruptcy proceeding, no reason exists to delay in implementing distribution of the current balance of the funds.[9]

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of fund received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see* Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 *et seq.*; *see also Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. The Proposed Decision and Order

On September 13, 1995, OHA issued a Proposed Decision and Order (PDO) setting forth the OHA's tentative plan to distribute these funds. *See* 60 Fed. Reg. 48510 (September 19, 1995). OHA tentatively concluded that the funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 Fed. Reg. 27899 (August 4, 1986). Pursuant to the MSRP, OHA proposed to reserve 20 percent of those funds for direct refunds to applicants who claim that they were injured by the crude oil violations. We stated that the remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution.

We provided a period of 30 days from the date of the PDO publication in the **Federal Register** in which the public could submit comments regarding the tentative refund procedures. More than 30 days have elapsed, and the OHA has received no comments concerning the proposed procedures.

IV. The Refund Procedures

A. Crude Oil Refund Policy

We adopt the tentative determination of the Proposed Decision and Order to distribute the monies remitted pursuant to the Turner, Revere, Granite, and Dalco enforcement proceedings in accordance with the MSRP, which was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia*, DOE ¶ 85,550 (1987).

B. Refund Claims

The amount of money subject to this Decision is $4,567,399.72, plus accrued interest. In accordance with the MSRP, we propose initially to reserve 20 percent of those funds ($913,479.94 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We propose to base refunds to claimants on a volumetric amount which has been calculated in accordance with the description in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. *See* 60 Fed. Reg. 15562 (March 24, 1995).

Applicants who have executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement have waived their rights to apply for a crude oil refund under Subpart V. *See Mid-America Dairyman Inc. v. Herrington*, 878 F.2d 1448, 3 Fed. Energy Guidelines ¶ 26,617 (Temp. Emer. Ct. App. 1989); *In re Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987). Because the June 30, 1995, deadline for crude oil refund applications has passed, we will not accept any new applications from purchasers of refined petroleum products for these funds. *See Western Aspholt Service, Inc.*, 25 DOE ¶ 85,047 (1995). Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.[10]

C. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the alleged crude oil violation amounts subject to this Decision, or $3,653,919.78 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the consent order funds shown in the Appendix to this Decision and Order, plus all accrued interest from the escrow accounts of the firms listed in the Appendix, pursuant to Paragraphs (2), (3), and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer $1,826,959.89 plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE0003W.

(3) The Director of Special Accounts and Payroll shall transfer $1,826,959.89 plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $913,479.94 plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE0010Z.

[8] Zang, Porter and Dalco filed for bankruptcy on August 16, 1982, June 15, 1983, and July 20, 1983 respectively.

[9] Porter has satisfied his obligations to the DOE under the PRO. Additional funds may be collected from the Dalco and Zang estates.

[10] A crude oil refund applicant is only required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,176 (1988).

(5) This is a final Order of the Department of Energy.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: November 6, 1995.

APPENDIX

Case No.	Firm	ERA order No.	Principal amount
VEF–0013 ..	Malcolm M. Turner (Bayport Consent Order Fund)	6A0X00329	$65,000.00
VEF–0014 ..	Revere Petroleum Corp. *et al*	6A0X00336W	1,310,140.13
VEF–0015 ..	Granite Petroleum Corporation	640X00447W	176,698.85
VEF–0016 ..	Dalco Petroleum Corporation	6C0X00240W	3,015,560.74
Total			4,567,399.72

[FR Doc. 95–28060 Filed 11–13–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5330–9]

C & R Battery Company, Inc. De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: United States Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a second *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 3 *de minimis* parties for response costs incurred by the United States Environmental Protection Agency at the C & R Battery Company, Inc. Site, Chesterfield County, Virginia.

DATES: Comments must be provided on or before December 14, 1995.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: C & R Battery Company, Inc. Site, Chesterfield County, Virginia, U.S. EPA Docket No. III–95–58–DC.

FOR FURTHER INFORMATION CONTACT: Lydia Isales (215) 597–9951, United States Environmental Protection Agency, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

SUPPLEMENTARY INFORMATION: *Notice of de minimis Settlement:* In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the C & R Battery Company, Inc. Site in Chesterfield County, Virginia. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on August 30, 1995 and subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of Interior and the National Oceanic and Atmospheric Administration. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

Steve A. Stump t/a Stump's Scrap Yard
Gilbert Freedman t/a Ace Junk Company
Vinton Scrap & Metals Company

These 3 parties collectively agreed to pay $27,581.50 to the United States Environmental Protection Agency and all 3 have agreed to pay $4,234.97 to the Department of Interior and the National Oceanic and Atmospheric Administration for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties, which allow them to resolve their liability under Section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites, without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with three potentially responsible parties at the C & R Battery Company, Inc. Site who are each responsible for less than 1% percent of the volume of hazardous substances at the Site. The United States previously settled with 66 *de minimis* parties who are each responsible for less than 1% percent of the volume of hazardous substances at the Site. The grant of a covenant not to sue for damages to natural resources by the Department of Interior and the National Oceanic and Atmospheric Administration to those parties paying their share of such allocated costs is subject to agreement in writing by the Department of Interior and the National Oceanic and Atmospheric Administration pursuant to Section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The *de minimis* parties listed above will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the C & R Battery Company, Inc. Site. The *de minimis* parties listed above will be required to pay their share of the Department of Interior's and the National Oceanic and Atmospheric Administration's estimated costs of damages to natural resources.

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Lydia Isales, Senior Assistant Regional Counsel, at (215) 597–9951.

W. Michael McCabe,

Regional Administrator, EPA, Region III.

[FR Doc. 95–28062 Filed 11–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5330–8]

Proposed De Minimis Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as Amended by the Superfund Amendments and Reauthorization Act—Hansen Container Site, Grand Junction, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Notice and Request for Public Comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed *de minimis* settlement under section 122(g) concerning the Hansen Container site in Grand Junction, Colorado (Site). The proposed Administrative Order on Consent (AOC) requires 149 Potentially Responsible Parties (PRPs) to pay an aggregate total of $1,328,745.54 to address their liability to the United States Environmental Protection Agency (EPA) related to response actions taken or to be taken at the Site.

OPPORTUNITY FOR COMMENT: Comments must be submitted within thirty (30) days of the date of publication of this notice.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 8th Floor, North Tower, Denver, Colorado. Comments should be addressed to Maureen O'Railly, Enforcement Specialist (8HWM–ER), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, and should reference the Hansen Container Site.

FOR FURTHER INFORMATION CONTACT: Maureen O'Reilly, Enforcement Specialist, at (303) 294–7505.

SUPPLEMENTARY INFORMATION: Notice of section 122(g) *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) have been agreed to by the following 149 parties, for the following amounts (in order by highest amount paid to lowest amount paid):

National Lead Company of Ohio	$155,507.04
Wyoming State Highway Dept	151,164.47
Ennis Paint	90,368.82
Colorado State Highway Dept	84,645.51
Texaco, Inc./Texaco Ref. & Mktg./Texaco Expl. & Prod./Petrotomics	44,467.73
Shell Oil Company	42,848.87
Van Waters & Rogers, Inc	37,842.84
Dowell Co./Bob Butler/Div. of Dow	37,660.02
Arapahoe Chemicals/Snytex Chem	37,263.56
Celtite, Inc	34,883.78
Halliburton Services/Energy Services	33,542.79
Exxon Company, U.S.A.	32,298.67
Kaminsky Barrel Co	32,101.02
Atlantic Richfield Co	25,956.87
McKesson Corporation	25,835.59
Sun Chemical Corp./Sequa Corp	20,346.07
Coors Ceramics/Coors Porcelain	18,920.30
Chevron U.S.A./Gulf Oil Corp	15,538.07
Phillips Petroleum Company	14,834.66
Union Chemical	14,771.48
BJ Hughes, Inc	14,038.60
Wellborn Paint Mfg. Co	13,806.68
Marathon Oil Company	13,365.62
Nalco Chemical	13,120.38
Ball Metal Container	12,180.30
Dow Chemical	11,925.75
FMC Corporation	11,772.54
Birko Corporation	11,627.82
Climax Uranium Co./Cyprus Climax Metal	11,174.44
Georgia Pacific Corp	11,061.87
Flint Ink Corp	9,774.47
SRP Treasurers Office	9,591.31
Mason & Hanger-Silas Mason Co., Inc	9,034.74
Little America Refining Co	7,851.17
Packaging Corp. of America	7,629.41
Pepper Tank Company	7,007.54
Giant Refining Co	6,796.06
Fremont Chemical Co	6,457.00
Master Builders, Inc	6,356.96
Reynolds Electrical & Engineering Co	6,313.79
Arizona State Dept. of Transportation	6,262.99
Head Sports Wear/Head Sports, Inc	5,987.36
IBM Corp	5,956.74
Colorado Paint Company	5,795.71
Nevada State Dept. of Transportation	5,752.01
Occidental Oil Shale, Inc./OXY USA	5,075.46
A&F Auto Paint Supply Co	4,941.73
Verticel Honeycomb/Verticel, Inc	4,603.19
National Cooperative Refinery Assoc	4,536.32
Glidden Paint Co	4,317.83
Sinclair Oil Co	4,146.19
Tenneco, Inc	3,984.55
Continental Can Co	3,834.50

Sunstrand Corp	3,719.20
Sweeney Mining & Milling Corp	3,424.36
Jefferson County	3,421.20
Stimson Lumber Co	3,414.88
Abex, Inc	3,348.54
Cities Service Company	3,217.97
Mobil Oil Company	3,154.79
Pueblo Chemical & Supply Co	2,881.01
Idarado Mining Co	2,764.13
C.E. Natco/Natco	2,729.38
Northwest Pipeline/Williams Field Srv	2,695.68
Inexco Oil Company/Louisiana Land/Exp	2,674.62
Columbia Paint	2,649.35
Sun Oil Co./Oryx Energy Co	2,611.44
Molycorp, Inc./Molybdenum Corp	2,603.02
City of Aurora	2,409.26
City of Arvada	2,379.44
Asamera Oil Co	2,352.40
Regal Fiberglass Inc	2,214.46
Baroid Corp./Dresser Industries	2,106.00
Crown Cork & Seal Co., Inc	1,945.94
Monsanto Chemical Co	1,819.27
Public Service Co. of CO	1,680.04
Unocal Corporation	1,663.74
Coors Brewing Company	1,571.08
Western Slope Gas Company	1,486.84
Weskem	1,474.20
Montana State Dept. of Transportation	1,424.35
Electric Hose & Rubber Co./Dayco Prdts	1,415.23
Energy Fuels Nuclear, Inc	1,415.23
Holly Sugar Corp	1,415.23
Union Pacific Fruit Express, Co	1,415.23
Sam Hill Oil	1,394.17
Tesoro Petroleum Co	1,385.75
Santa Fe Energy Resources	1,355.20
Lowder, Val	1,322.57
Continental Insulating Co	1,318.36
California State Dept. of Trnsprt	1,263.60
Rosebud Coal Sales, Co	1,234.12
Century Hulbert, Inc./Century Lube	1,200.42
Benray Marble Prod., Inc	1,176.20
Shakertown Corp./Winlock Wood Prod	1,160.93
Okner's Supply Company	1,120.39
Fraley & Company, Inc	1,111.97
Inland Oil/Karen Rasmussen/Siegel Oil	1,061.42
Northwest Exploration Co./Williams Field Services	1,061.17
Sohio Western Mining Company	1,023.52
Lucky MC Uranium/Pathfinder Mines Corp	956.12
Joy Manufacturing Co./Joy Technologies	951.91
Lane Plywood, Inc	838.19
Puritan Supply	779.22
American Can Company	707.62
Rockmont Envelope Co	624.43
Beech Aircraft Corp./Raytheon Aircraft	581.26
John DeBons Exxon	564.41
Hoyle Lowdermilk, Inc/Tectonic Construction Co	547.56
Headway Industries, Inc	530.71
Coors Packaging	526.50
Forest Fibre Products, Co	521.24
Northwest Marine Iron Works/South West Marine	492.80
Neuman Transit Co	484.38
Garrett Freightlines/ANR Freight Sys	465.43
Burke Concrete/The Burke Co	450.68
Belt Salvage Co	421.20
Williams, J.H	421.20
Public Service Company of New Mexico	414.88
Boyles Bros. Drilling/Christenson Boyles Corporation	391.72
Albright Oil Co., Inc	387.50
Morrison-Knudsen Corp	387.50
Ryder Truck Rental	376.97
Achziger Oil Company, Inc	374.87
Coors Bio Tech Products	362.23
American Gilsonite, Co	357.49
Wyoming Refining Co./Hermes Consolidated, Inc	353.81
Colorado Kenworth, Inc	310.64
Montana Metal Bldg., Inc	309.58

Armco National Supply Co./Armco, Inc	286.42
Mesa County School District #51	286.42
Kohl & Madden Printing Ink	282.20
Westinghouse Electric Corp	252.72
Circle A.W. Products	218.54
Tolin Refrigeration Company	214.81
Rio Grande Motor Way, Inc	211.65
Rollins Trucks/Rollins Truck Rental	202.18
Matador Cattle Co	185.33
Mercedes Benz of North America, Inc	170.59
MLM Distributing, Inc	168.48
Jim Chelf, Inc./JC Trucking Inc	157.95
Terra Resources, Inc./Pacific Enterprises Oil Co	147.42
Inland Containers	130.57
Steinfeld Products Co	105.30
University of Colorado	80.03
Mt. Bell Telephone	46.33
Greif Brothers Corp. Norco Division	42.12
Total	1,328,627.60

By the terms of the proposed AOC, these PRPs will together pay $1,328,627.60 to the Hazardous Substance Superfund. This payment represents approximately 22% of the total anticipated costs for the Site upon which this settlement is based.

In exchange for payment, EPA will provide the settling parties with a limited covenant not to sue for liability under sections 106 and 107(a) of CERCLA, including liability for EPA's past costs, the cost of the remedy, and future EPA oversight costs, and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act).

The amount that each individual PRP will pay, as shown above, reflects the number of drums that each PRP sent to the Site that had hazardous materials in them. The cost per drum is $3.24. The total amount of settlement dollars owed by each party to the settlement was arrived at by multiplying the price per drum by the number of drums a party sent to the Site (Base Amount) plus a premium payment of 30% of the Base Amount.

For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to this proposed *de minimis* settlement.

A copy of the proposed AOC may be obtained from Maureen O'Reilly (8HWM–ER), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 294–7505. Additional background information relating to the *de minimis* settlement is available for review at the Superfund Records Center at the above address.

It Is So Agreed:

Dated: November 8, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–28063 Filed 11–13–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

November 3, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0646.

Expiration Date: 09/30/98.

Title: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129.

Estimated Annual Burden: 1000 total annual hours; average 2 hours per respondent; 500 respondents.

Description: Interexchange carriers are required to provide consumers with letters of agency that are physically separate or severable from any inducements or promotional materials. The letter of agency must be written in clear and unambiguous language and printed in a font whose size and style are comparable to the inducement.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27979 Filed 11–13–95; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Approved by Office of Management and Budget

November 3, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0653.

Expiration Date: 09/30/98.

Title: Consumer Information—Posting by Aggregators, Section 64.703(b).

Estimated Annual Burden: 206,566 total annual hours; average 3.67 hours per respondent; 56,200 respondents.

Description: As required by 47 U.S.C. Section 226(c)(1)(A), Section 64.703(b) of the Commission's rules provides that aggregators (providers of telephones to the public or transient users) must post in writing, on or near such phones, information about presubscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–27981 Filed 11–13–95; 8:45 am]
BILLING CODE 6712–01–F

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission, Comments Requested

November 6, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 16, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: None.

Title: Telecommunicatons Access Provider Survey.

Form No.: None.

Type of Review: Proposed New Collection.

Respondents: Businesses or other for profit.

Number of Respondents: 1600.

Estimated Time Per Response: 24 hours.

Total Annual Burden: 36,500.

Needs and Uses: The Commission is soliciting public comment on its proposed Telecommunications Access Provider Survey which would be filed by all access providers. The information is needed to evaluate competition in local telecommunications markets. The information will be used to estimate market shares, growth in competitive offerings, and changes in markets due to changes in FCC regulations. The total annual burden estimated reflects that access providers will submit varying information.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–27980 Filed 11–13–95; 8:45 am]
BILLING CODE 6712–01–F

Public Safety Wireless Advisory Committee; Technology Subcommittee Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission, Reed E. Hundt, Chairman.

ACTION: Notice of next meeting of the Technology Subcommittee and request for presentations by interested individuals addressing technical issues of spectrum use by public safety agencies.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons that the next meeting of the Technology Subcommittee will afford an opportunity for technical presentations to be made and the procedures for interested persons seeking to appear before the Subcommittee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee and subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend the next round of meetings of the Subcommittee.

DATES: December 13, 1995; Commencing at 1:00 p.m.

ADDRESSES: Commodity Futures Trading Commission, 3 Lafayette Centre, 1155 21st Street, NW., 1st Floor Hearing Room 1000, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Technology Subcommittee seeks presentations addressing communications technologies that embrace significant and evolutionary improvements in radio bandwidth and spectrum efficiency for public safety agencies. The presentation should be an overview of technical capabilities able to achieve more efficient and effective spectrum use through the year 2010. The range of present and emerging technologies should be addressed, including broadband and narrowband alternatives and capabilities.

The Subcommittee will evaluate the information submitted to advise the steering committee of technologies that can best serve public safety's present and future requirements. The Subcommittee seeks to establish a record of the technical aspects of spectrum use and the impact for public safety purposes. The presentations should be premised on affording public safety agencies wireless capabilities that provide high information transfer rates supporting multimedia requirements, while also meeting historic public safety requirements in an environment that agencies are able to afford. The range of public safety agencies, from high density urban to low density rural operations, and the need for interoperable and compatible capability, are factors to be considered.

Information is sought from educational and research institutions, as well as government agencies, with expertise in spectrum technology, government and private organizations who procure and operate radio systems, manufacturers and service providers of radio technology, and other interested parties who can assist the Advisory Committee in examining the technical aspects and capabilities of the spectrum. The Advisory Committee will evaluate how best spectrum should be allocated for public safety uses, and will include examining commercial alternatives.

The presentations will be made at the December 13, 1995, meeting of the Technology Subcommittee. The oral presentation should be no more than 30 minutes in length and accompanied by a written submission that will be placed in the record of the Advisory Committee's proceedings. Those seeking to provide an oral presentation should notify Joy Alford at 202–418–0680 (telephone), 202–418–2643 (fax), jalford@fcc.gov (email) by December 1, 1995, to schedule a time at the December 13, 1995, meeting to make the presentation as well as to advise of any audio visual needs accompanying the presentation. Written submissions not accompanied by oral presentations will be accepted and should be submitted no later than December 8, 1995, to Joy Alford at 2025 M St., NW.; Room 8010; Washington, DC 20554 (mailing address). Any submission received by the Subcommittee will be at no cost to the Advisory Committee or the federal government and will become the property of the Advisory Committee.

The Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designated WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010; 2025 M Street, NW., Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: For information regarding the Technology Subcommittee, contact: Alfred Mello at 401–738–2220 (telephone), 401–738–7336 (fax), or amello5757@aol.com (Internet) or contact Richard DeMello at 517–335–3266 (telephone) 517–373–0784 (Fax). For information regarding accommodations, transportation, and the Advisory Committee, contact: Deborah Behlin at 202–418–0650 (telephone), 202–418–2643 (fax), or dbehlin@fcc.gov (Internet). Information is also available from the Internet at the Public Safety Wireless Advisory Committee's homepage (http://pswac.ntia.doc.gov).

Federal Communications Commission.
Robert H. McNamara,
Chief, Private Wireless Division, Wireless Telecommunications Bureau.
[FR Doc. 95–27983 Filed 11–13–95; 8:45 am]
BILLING CODE 6712–01–M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Public Law 95–454), Chairman Reed E. Hundt appointed the following executives to the Executive Resources and Performance Review Board:

Andrew S. Fishel
Mary Beth Richards
William Kennard
Roy Stewart
Robert Pepper
Regina Keeney

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–27982 Filed 11–13–95; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1069–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1069–DR), dated October 4, 1995, and related determinations.

EFFECTIVE DATE: November 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of David Grier as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,
Director.
[FR Doc. 95–28049 Filed 11–13–95; 8:45 am]
BILLING CODE 6718–02–P

[FEMA–1073–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1073–DR), dated October 23, 1995, and related determinations.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 23, 1995:

The counties of Madison and Mitchell for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,
Deputy Associate Director, Response and Recovery Directorate.
[FR Doc. 95–28050 Filed 11–13–95; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

BALtrans USA, Inc.
700 Rockaway Turnpike, Suite 401, Lawrence, NY 11559.
Officers: David C.H. Wai, President, Anthony S. Lau, Vice President.

Basic Shipping U.S.A., Inc.
33–70 Prince Street, Suite 707, Flushing, NY 11354.
Officer: Kit Ming, Leung, President.

DMK International Logistics, Inc.
256 N. Sam Houston Parkway, Suite 206, Houston, TX 77060.
Officers: Marsaline M. Kochak, President, William Seele, Secretary.

Atlant (USA), Inc.
5777 W. Century Blvd., Suite 1120, Los Angeles, CA 90045.
Officer: Bolko Kissling, President.

Expedited Transportation Services Inc.
2075 West Park Place Blvd., Suite D, Stone Mountain, GA 30087.
Officers: Charlene Taylor, President, William E. Taylor I, Vice President.

Dated: November 8, 1991.
By the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 95–28034 Filed 11–13–95; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry (BSC, ATSDR).

Times and Dates: 1 p.m.–5 p.m., November 28, 1995; 8:30 a.m.–5 p.m., November 29, 1995.

Ploce: The Centers for Disease Control and Prevention, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: The entire meeting will be open to the public.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The agenda will include an update on Superfund reauthorization and will also focus on other issues of concern to ATSDR, including enhancing ATSDR's Public Health Assessments, an update from the BSC Work Group on Health Studies, and a review of ATSDR Health Studies [national perspective on extent of exposure, status of human exposure assessment in community settings, and description of health findings from ATSDR studies and work of state health departments).

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person For More Information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Mailstop E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: November 7, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–28017 Filed 11–13–95; 8:45 am]

BILLING CODE 4163–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the 1995 Class III Gaming Compact By and Between the Nez Perce Tribe and the State of Idaho, which was executed on August 22, 1995.

DATES: This action is effective November 14, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: October 17, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–28036 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Class III Gaming Compact Between the Sac and Fox Nation of Missouri in Kansas and Nebraska and the State of Kansas, which was executed on August 29, 1995.

DATES: This action is effective November 14, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: October 17, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–28035 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CA–058–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the next meeting of the Ukiah Resource Advisory Council will be held on Thursday, December 7 and Friday, December 8, 1995 In Redding, California.

DATES: The meeting is scheduled for Thursday, December 7 and Friday, December 8, 1995.

SUPPLEMENTARY INFORMATION: The meeting on Thursday will begin at 8:30 a.m. at the Redding Resource Area Office conference room, 355 Hemsted Drive, Redding, CA 96002. A tour of grazing leases managed by the Redding Resource Area will begin at 10:00 a.m. and will last until 4:30 p.m. The meeting will resume at the Redding Resource Area conference room at 8:30 a.m. on Friday. Topics at the meeting will focus on standards and guidelines for rangeland health and management as well as coordination with other resource advisory councils, council organizational business, reports from the Province Advisory Committees and updates from the Arcata, Clear Lake and Redding Resource Area Managers.

The meeting is open to the public with a public comment period scheduled for 1:00–2:00 p.m., Friday, December 8. Depending on the number of persons wishing to speak, a time limit may be imposed. Summary minutes of the meeting will be maintained at the Arcata, Clear Lake and Redding Resource Area Offices.

Members of the public wishing to attend the field tour must contact the Redding Resource Area Office at 916–224–2100 by Tuesday, December 5 so that transportation arrangements can be made.

FOR MORE INFORMATION CONTACT: Renee Snyder, Bureau of Land Management, Clear Lake Resource Area, 2550 N. State St., Ukiah, CA 95482, 707–468–4000.

Renee Snyder,

Clear Lake Resource Area Manager.

[FR Doc. 95–28099 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–40–P

[OR–056–96–1010–00:GP6–0018]

Vehicle Closure

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Notice is given that, effective November 13, 1995, all public lands as legally described below are closed to off-highway motorized vehicle use.

SUMMARY: A 40 acre area near the intersection of State Highway 126 and Cline Falls Road near Redmond, OR is being closed to off-highway motorized vehicle use.

Use of a off-highway motorized vehicle is prohibited, except directly on Cline Falls Road, in the following area: T. 15S R. 12E Section 14 SWNE.

Exception to this closure is given to law enforcement, fire suppression, and to emergency personnel while engaged in emergency purposes; BLM employees or contractors while engaged in official duties as approved by the authorized officer; and any other person whose use of a motorized vehicle is officially approved.

The purpose of this closure is to avoid further soil and vegetation loss, to protect wildlife habitat, and to allow the site to re-vegetate.

Failure to comply with this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided by 43 CFR 8340.0–7.

Harry R. Cosgriffe,

Acting District Manager, Prineville District.

[FR Doc. 95–27990 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of a Joint Application for an Incidental Take Permit for a Residential Project Called Pineda Crossing/Windover Farms, Located In Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: EKS Properties, Incorporated and Pineda Crossing Corporation (Applicants), are seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The permit would authorize the take of two families of the endangered red-cockaded woodpecker, *Picoides borealis* in Brevard County, Florida. The proposed taking is incidental to construction of two adjacent projects, Windover Farms and Pineda Crossing residential developments encompassing 940 acres and 323 acres, respectively (Project). The two project sites are located on the western side of the city of Melbourne, between Wickham Road and Interstate 95, in Sections 36 and 25, Township 26 south, Range 36 east, in Brevard County, Florida. Windover Farms of Melbourne occur north and west of the intersection of Post and Wickham Roads. The Pineda Crossing site lies immediately north of Windover Farms. Both sites have been partially developed, including construction of roads, single-family houses, and recreational centers. The Applicants are seeking an incidental take permit to proceed with development in areas currently occupied by the red-cockaded woodpecker.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. Requests must be submitted in writing to be adequately processed. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before December 14, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–808474 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The red-cockaded woodpecker (RCW) is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees used by a breeding group is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature, fire-maintained, ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest populations occur on federally owned lands such as military installations and national forests.

Continued development of the two tracts may result in death of, or harm to, any remaining RCWs through the loss of nesting and foraging habitat. The Service's EA outlines two alternatives in response to this application. The first alternative is a no-action alternative, which would result in the Service's denial of the request for incidental take. The second alternative is to accept the application as sufficient and issue an incidental take permit. Under Alternative 2, the Applicants' HCP proposes to offset the anticipated level of incidental take, by implementing the following mitigation/minimization measures, including providing adequate funding to ensure their success:

1. For Pineda Crossing, temporary restrictions on construction activities at the project site will continue during the proposed period of 3 to 5 years of reproductive monitoring and translocations. This will provide

temporary foraging, nesting, and roosting habitat. Construction within RCW habitat will not occur until translocation success is noted at the mitigation site or for 3 years, whichever comes first. If young birds are not available for 3 years, the HCP period will be extended to 5 years.

2. Three new cluster sites will be created at the Hal Scott Preserve in Orange County. Each cluster site will consist of three completed cavities and two start holes. New cavities will be caged and inspected for 6 months for sap leakage. Any trees leaking sap will not be opened for use by RCW.

3. Annual monitoring of nesting and roosting activity will be conducted at the project sites. During nesting season, weekly visits to occupied cavity trees will be conducted.

4. At Windover Farms, the single male RCW will be relocated to the newly created clusters at Hal Scott Preserve, along with a young female from Pineda Crossing, (if available) or from the Big Econlockhatchee population, of which the RCWs occupying Hal Scott are a part.

5. The young birds from Pineda Crossing will be translocated to the newly created clusters at Hal Scott Preserve. Weekly visits will be conducted to the mitigation site once a week for 1 month after translocation to inspect the cavity and the surrounding area for the presence of these birds. Checks of the cluster sites will also be made four times during the following nesting season to monitor reproductive status and success.

6. Young birds from the surrounding population in the Big Econ River area will be used, if necessary, to augment these created cluster sites during years of no reproduction on the Pineda Crossing site.

7. At the mitigation site, inspections will be conducted in the fall and winter to locate the roost sites.

Dated: November 7, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–28016 Filed 11–13–95; 8:45 am]

BILLING CODE 4310–65–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–725 (Final)]

Manganese Sulfate from the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China (China) of manganese sulfate, provided for in subheading 2833.29.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted this investigation effective May 11, 1995, following a preliminary determination by the Department of Commerce that imports of manganese sulfate from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). The petition in this investigation was filed on November 30, 1994, prior to the effective date of the Uruguay Round Agreements Act. Thus, this investigation was subject to the substantive and procedural rules of the Tariff Act of 1930 as it existed prior to the Uruguay Round Agreements Act.[3] Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 24, 1995 (60 F.R. 27555). The hearing was held in Washington, DC, on October 3, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 6, 1995. The views of the Commission are contained in USITC Publication 2932 (November 1995), entitled "Manganese Sulfate from the People's Republic of China: Investigation No. 731–TA–725 (Final)."

Issued: November 2, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–28054 Filed 11–13–95; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] The product covered by this investigation is manganese sulfate, including manganese sulfate monohydrate ($MnSO_4 \times H_2O$) and any other forms, whether or not hydrated, without regard to form, shape, or size, the addition of other elements, the presence of other elements as impurities, and/or the method of manufacture.

[3] *See* P.L. 103–465, approved December 8, 1994, 108 Stat. 4809, at § 291.

INTERSTATE COMMERCE COMMISSION

Indexing the Annual Operating Revenues of Railroads, Motor Carriers of Property and Motor Carriers of Passengers

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads, motor carriers of property and motor carriers of passengers for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. For both motor carriers of property and motor carriers of passengers, the inflation factors are based on the annual average Producer Price Index for all commodities. The indexes are developed by the Bureau of Labor Statistics (BLS).

The base years for railroads, motor carriers of property, and passenger motor carriers are 1991, 1993, and 1988 respectively. The inflation index factors are presented as follows:

	Index	Deflator percent
	Railroads–Railroad Frieght Index	
1991	409.5	[1] 100.00
1992	411.8	99.45
1993	415.5	98.55
1994	418.8	97.70
	Motor Carriers of Property Producer Price Index	
1993	118.9	[2] 100.00
1994	120.4	98.70
	Motor Carriers of Passengers Producer Price Index	
1988	106.9	
1991	116.5	91.76
1992	117.2	91.21
1993	118.9	89.90
1994	120.4	88.70

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201*, served June 17, 1992, raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992.

[2] Ex Parte No. MC–206, *Revisions to Accounting and Reporting Requirements for Motor Carriers of Property*, served January 27, 1994, raised the revenue classification level for Class I motor carriers of property from $5 million to $10 million (1993 dollars), effective for the reporting year beginning January 1, 1994.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn Jr., (202) 927–5740.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28045 Filed 11–13–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 516X)]

CSX Transportation, Inc.—Abandonment Exemption—in Floyd County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.96-mile portion of its rail line (known as the Stephens Branch) between milepost COP–0.0 and milepost COP–1.96 at the end of the track, near Marrs, in Floyd County, KY.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is either pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 14, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 24, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 4, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423–2191.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 17, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Decided: November 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28046 Filed 11–13–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlements Pursuant to the Clean Water Act and the National Wildlife Refuge Administration Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that two settlements in *United States* v. *Leitheiser*, Civil No. 92–4143 (D.S.D.), were lodged with the United States District Court for the District of South Dakota, Southern Division, on or about November 7, 1995.

The first settlement is in the form of a proposed Consent Decree resolving alleged violations of Clean Water Act section 301(a), 33 U.S.C. 1311(a), and alleged violations of the National Wildlife Refuge Administration Act, 16 U.S.C. 668dd(c) ("Refuge Act"), by Merle Hoiten, Merle Hoiten, Jr., and the Hoiten Construction Company ("Hoitens"). Under the terms of the agreement, the Hoiten defendants will pay a civil penalty to the United States.

The second settlement is in the form of a Stipulation to Dismiss resolving alleged violations of the Refuge Act by the Leitheisers. Under the terms of the Stipulation to Dismiss, the Leitheisers will perform certain restoration work adjacent to the Hyde Waterfowl Protection Area ("WPA"), and pay money to the Fish and Wildlife Service for the maintenance of the Hyde WPA. Any remaining claims would also be dismissed.

The Department of Justice will receive written comments relating to the proposed settlements for a period of 30 days from the date of publication of this notice. Comments should be addressed to Rebecca A. Lloyd, Esquire, U.S. Department of Justice, Environmental Defense Section, Suite 945—North Tower, 999 18th Street, Denver, CO 80202, should refer to *United States* v. *Leitheiser*, Civil No. 92–4143 (D.S.D.), and should also make reference to DJ# 90–5–1–1–3600.

The proposed settlements may be examined at the Clerk's Office, United States District Court for the District of South Dakota, Southern Division, 400 S.

Phillips Avenue, Suite 220, Sioux Falls, South Dakota 57102.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 95–28012 Filed 11–13–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed partial consent decree in *United States* v. *The S.W. Shattuck Chemical Company, Inc.*, Case No. 95–WY–1240, was lodged on October 31, 1995, with the United States District Court for the District of Colorado.

The proposed partial consent decree resolves claims of the United States against the defendant in *United States* v. *The S.W. Shattuck Chemical Company, Inc.*, brought under Section 107 of the comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, as amended, for the recovery of past costs incurred by the United States at the Denver Radium Superfund Site-Operable Unit VIII ("Denver Radium-OU VIII Site") in Denver, Colorado. Under the terms of the proposed decree, the settling defendant will pay the United States $2,402,278, plus interest after April 1, 1995, in settlement of the United States' past costs claims against the settling defendant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The S.W. Shattuck Chemical Company, Inc.*, DOJ Ref. #90–11–2–741.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, 11th Floor, Denver, Colorado 80294; the Region 8 Office of the United States Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and at the Consent Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28013 Filed 11–13–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Folk and Traditional Arts Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk & Traditional Arts Advisory Panel (Folk Arts Organizations Section) to the National Council on the Arts will meet on December 5-8, 1995. The panel will meet from 8:30 a.m. to 6:30 p.m. on December 5; from 8:30 a.m. to 3:30 p.m. on December 6; from 8:30 a.m. to 6:30 p.m. on December 7; and from 8:30 a.m. to 3:30 p.m. on December 8. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants.

In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 7, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–28061 Filed 11–13–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District, Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of its regulations to Facility Operating License Number DPR–46. This license was issued to the Nebraska Public Power District (the licensee) for operation of the Cooper Nuclear Station (CNS) located in Nemaha County, Nebraska.

Environmental Assessment

Identification of the Proposed Action

The licensee requested, in its application dated May 13, 1994, an exemption from the pressure test requirements of Section III.D.2(b)(ii) of Appendix J, "Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors," to 10 CFR Part 50 (Appendix J to 10 CFR Part 50). The staff discussed the details of the proposed exemption with the licensee in a telephone conference call on September 28, 1995. The proposed exemption would allow the licensee to leak test the personnel air lock at CNS at a test pressure less than P_a, (the calculated peak containment internal pressure resulting from the containment design basis accident), under certain conditions. The reduced pressure test of the air lock would be conducted as the first of two tests during a restart from refueling or cold shutdown, prior to entry into an operational mode requiring containment leaktight integrity by the CNS Technical Specifications (TSs). As stated in CNS TS 4.7.A.2.f.5, for periodic leakage testing of the personnel air lock, P_a is 58 psig and the reduced test pressure is 3 psig.

This leakage test is part of the Type B tests required by Appendix J to 10 CFR Part 50 to verify containment integrity. Because an air lock allows entry into the containment and is part of the containment pressure boundary, excessive leakage through the air lock could compromise containment integrity. The air lock consists of an inner and outer door and the leakage test is performed by pressurizing the space between the doors.

The Need for the Proposed Action

Section III.D.2 of Appendix J to 10 CFR Part 50 specifies the required periodic retest schedule for Type B tests, including testing of air locks. Pursuant to Section III.D.2(b)(ii), licensees are required to leakage test air locks, opened during periods when containment integrity is not required by the TSs, at the end of such periods. This section applies to testing of air locks during restart from refueling or cold shutdown because the CNS TSs do not require containment integrity for either of these operational modes. This section states that the air lock test shall be performed at a pressure that is not less than P_a.

The proposed exemption is concerned with Section III.D.2(b)(ii); however, there are two other sections in Appendix J which have requirements on testing air locks. Section III.D.2(b)(i) requires an air lock test every 6 months at a test pressure of P_a and, as relevant here, Section III.D.2(b)(iii) requires a test every 3 days when the air lock is used during a period when containment integrity is required by the TSs. The latter section requires the test pressure to be P_a, or the test pressure specified in the TSs, which for CNS is stipulated as 3 psig in TS 4.7.A.2.f.5.

The licensee stated in its application that it currently tests the personnel air lock twice during the restart of the plant for power operation from refueling or cold shutdown: (1) Prior to the reactor being taken critical, or the reactor water temperature being above 100°C (212°F), and (2) after the last entry into containment for leak inspection during restart. The time between the two tests is about 24 to 48 hours, and the second test is at low reactor power prior to entry into the run mode, the full power mode of operation.

The first test is in accordance with Section III.D.2(b)(ii) and is performed at the conclusion of the period when containment integrity is not required by the TSs. This test is conducted prior to entry into an operational mode requiring containment integrity. The second test is in accordance with Section III.D.2(b)(iii) and is performed at 3-day intervals while the air lock is being used when containment integrity is required. As stated above, in accordance with this section, the second test could be conducted at a test pressure of 3 psig at CNS because this pressure is stated in TS 4.7.A.2.f.5. However, because the licensee also performs the second test to meet the 6-month interval requirement in Section III.D.2(b)(i), the second test is conducted at P_a. If this second test is not necessary to satisfy the 6-month interval test requirement, there is no requirement that the licensee conduct it at P_a.

When no maintenance or repairs have been performed on the air lock that could affect its sealing capability and the periodic 6-month test at P_a has been performed successfully, opening of the air lock during a plant shutdown or refueling outage is not a reason to expect it to leak in excess of the requirements. When the air lock is tested at a pressure less than P_a in preparation for restart from refueling or cold shutdown, under such conditions, and the air lock has been successfully tested at P_a within the previous six months, containment integrity is assured. If, however, maintenance or repairs have been performed on the air lock affecting its sealing capability since the last 6-month test, the first test prior to entering a condition which requires containment integrity must meet the test pressure requirements of Section III.D.2(b)(ii) and be conducted at a test pressure not less than P_a.

In testing the air lock at reduced pressure, a strongback (structural bracing) would not have to be installed on the inner air lock door. During the test, the space between the inner and outer doors is pressurized. The strongback is needed when the test pressure is P_a because the pressure exerted on the inner door during the test is in a direction opposite to the pressure on the inner door during an accident, and P_a is sufficiently high to damage the inner door during the test without the strongback. The reduced pressure test would be conducted at 3 psig, and the strongback would not be needed to protect the inner door during the test.

Installing a strongback, performing the test, and removing the strongback requires several hours during which access through the air lock is prohibited. The strongback is attached to the door inside containment where personnel would be exposed to radiation inside containment. The reduced pressure test could be conducted without the strongback and, thus, in a shorter time with less occupational exposure to CNS personnel involved with the test. Because the second test is conducted at P_a, not performing the first test at P_a will reduce the number of such tests using strongbacks and, therefore, will reduce the time involved in performing the tests and the magnitude of occupational exposure at CNS.

The licensee is, therefore, proposing to conduct the first test during restart at a test pressure of 3 psig, which is less than P_a, which is not presently allowed by Section III.D.2(b)(ii). The air lock leakage measured for the reduced test pressure would be extrapolated to a value consistent with P_a, then that value would be compared to the acceptance criteria in Appendix J for Type B tests to confirm that containment integrity is verified. If containment integrity is verified, the measured air lock leakage is considered acceptable.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's request. The proposed exemption does not change the number of air lock tests to verify containment integrity upon plant restart, the manner in which the second test is conducted, the time when the tests would be conducted, nor the acceptance criteria for the tests. Thus, the assurance of containment integrity would be maintained at a level consistent with current Appendix J requirements. The proposed exemption would also not change other requirements in Appendix J for periodic testing of the air lock at P_a, and would not change the existing CNS safety limits, safety settings, power operations, or effluent limits. The proposed exemption would effectively replace the test pressure requirement in Section III.D.2(b)(ii) with that in Section III.D.2(b)(iii), in that the latter section allows for reduced pressure testing of air locks in accordance with plant TSs.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested

exemption. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar, but the proposed action would reduce occupational exposure at CNS.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Cooper Nuclear Station, dated February 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on October 19, 1995, the staff consulted with the Nebraska State official, Ms. Julia Schmidt, Division of Radiological Health, Nebraska Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's request for an exemption dated May 13, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 6th day of November 1995.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28028 Filed 11–13–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRAATION

[OMB Control No. 9000–0062]

Request for Public Comments Regarding OMB Clearance Entitled Material and Workmanship

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0062).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Material and Workmanship. This OMB clearance currently expires on March 31, 1996.

DATES: *Comment Due Date:* January 16, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0062, Material and Workmanship, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under Federal contracts requiring that equipment (e.g., pumps, fans, generators, chillers, etc.) be installed in a project, the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item.

The Government uses the submitted data to determine whether or not the equipment meets the contract requirements in the categories of performance, construction, and durability. This data is placed in the contract file and used during the inspection of the equipment when it arrives on the project and when it is made operable.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 hours per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,160*; responses per respondent, *1.5*; total annual responses, *4,740*; preparation hours per response, *.25*; and total response burden hours, *1,185*.

Dated: November 7, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–28022 Filed 11–13–95; 8:45 am]

BILLING CODE 6820–EP–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its June 17, 1994, application for proposed amendment to Facility Operating License Nos. 50–325 and 50–324 for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would have removed the pressure-temperature curves and vessel surveillance capsule withdrawal schedule from the Technical Specifications.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 20, 1994 (59 FR 37065). However, by letter dated October 10, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 17, 1994, and the licensee's letter dated October 10, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 3rd day of November 1995.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manoger, Project Directorate II–1, Division of Reactor Projects II–1, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28027 Filed 11–13–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 70–7001; 70–7002]

United States Enrichment Corporation: Notice of Receipt of Compliance Plan for the Certification of the Paducah Gaseous Diffusion Plant and the Portsmouth Gaseous Diffusion Plant, Notice of Comment Period, and Notice of Public Meetings

I. Receipt of Compliance Plan and Availability of Documents

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC or the Commission) has received by letter dated November 6, 1995, a compliance plan from the U. S. Enrichment Corporation (USEC) to address those areas at the gaseous diffusion plants (GDPs) located near Paducah, Kentucky and Piketon, Ohio, that are not yet in compliance with the NRC requirements in 10 CFR Part 76, "Certification of Gaseous Diffusion Plants." The Energy Policy Act of 1992, which established the USEC to operate the GDPs under lease from the U. S. Department of Energy, requires this compliance plan, prepared by the Department of Energy (DOE). NRC received USEC's application for certification of the GDPs on September 15, 1995, and notice of its receipt was published on September 21, 1995, (60 FR 49026). The previous notice also announced the public comment period on the USEC application, and the public meeting dates scheduled for each plant. Copies of the compliance plan, the application for certification (except for classified and proprietary portions withheld in accordance with 10 CFR 2.790, "Availability of Public Records"), and related correspondence, are available for public inspection and copying at the Commission's Public Document Room (PDR) in the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and in the Local Public Document Rooms (LPDRs) established for these facilities. A copy of the compliance plan and application for the Paducah plant is available at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003. A copy of the compliance plan and application for the Portsmouth plant is available at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

II. Notice of Comment Period

Any interested party may submit written comments on the compliance plan for either the Paducah plant or the Portsmouth plant for consideration by the NRC staff. To be certain of consideration, comments must be received by December 29, 1995 for the compliance plan. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Written comments on the application should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555 or hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 am and 4:15 pm Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the commenter. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room located in Washington, D.C. and the Local Public Document Rooms located in Paducah, Kentucky and Portsmouth, Ohio. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments or provide oral comments at a public meeting described below to petition the Commission requesting review of the Director's decision on certification.

III. Notice of Public Meetings

As previously announced on September 21, 1995, public meetings are being held to solicit public input on the initial certification of these facilities. The meeting for the Paducah Gaseous Diffusion Plant will be held at the *Paducah Information Age Park Resource Center*, 200 McCracken Boulevard in Paducah, Kentucky on December 5, 1995, 7 pm. The meeting on the Portsmouth Gaseous Diffusion Plant will be held at the *Vern Riffe Joint Vocational School*, 23365 State Rt. 124 in Piketon, Ohio on November 28, 1995, 7 pm.

In order to allow a maximum number of speakers, statements by the public will be limited to 5 minutes per individual. Those interested in speaking at the meetings may register at the meeting and will be taken in the order of sign-up. A record of the public meeting will be placed in the PDR and the LPDRs established for the GDPs. Written comments will also be accepted at the meetings.

FOR FURTHER INFORMATION CONTACT: Ms. Rocio Castaneira, (301) 415–8103; Mr. Carl B. Sawyer, (301) 415–8174; or Ms. Merri Horn, (301) 415–8126; Office of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Rockville, Maryland, this 7th day of November 1995.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 95–28026 Filed 11–13–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:00 p.m., November 15, 1995.

PLACE: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

STATUS: This meeting will be open to the public from 1:00 p.m. until approximately 1:30 p.m. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: National Partnership Council (NPC) Training and Facilitation Handbook; selection of NPC Award winners.

PORTION OPEN TO THE PUBLIC: Discussion of the NPC Training and Facilitation Handbook referred to in the strategic action plan for 1995 that was adopted at the January 10, 1995, meeting. This portion of the meeting will run from 1:00 p.m. until approximately 1:30 p.m.

PORTION CLOSED TO THE PUBLIC: Under 5 U.S.C. 552b(c)(9)(B) of the Government in the Sunshine Act, the discussion and selection of NPC Partnership Award winners, beginning at approximately 1:30 p.m., will be closed to the public. Because of the desire to keep the final selection of the NPC award winners confidential until they are officially notified and the awards are announced, disclosure of the NPC's deliberations and final selection of award winners would significantly frustrate implementation of the awards program.

CONTACT PERSON FOR MORE INFORMATION: Phyllis F. Foley, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7412, Washington, DC 20415–0001, (202) 606–2194.

SUPPLEMENTARY INFORMATION: We are giving less than 15 days notice of this meeting because the final decision on

the date of the meeting was delayed until November 7, 1995, in order to assure that all of the information needed to make final selections of award winners would be available. The meeting cannot be delayed because final decisions must be made on award winners well in advance of the award ceremony planned for December 1995.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–28055 Filed 11–13–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Concerning Japanese Taxes on Distilled Spirits

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) if providing notice that a dispute settlement panel convened under the Agreement Establishing the World Trade Organization (WTO), at the request of Canada, the European Communities and the United States, will examine Japanese taxes on distilled spirits. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 20 in order to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to the Office of the General Counsel, Attn: Japan Distilled Spirits Dispute, Room 223, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Amelia Porges, Associate General Counsel, Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, N.W. Washington, DC 20506, (202) 395–7305.

SUPPLEMENTARY INFORMATION: At the request of Canada, the European Communities and the United States, a WTO dispute settlement panel will examine whether Japan's excise taxes on distilled spirits are consistent with Japan's obligations under Article III of the General Agreement on Tariffs and Trade (GATT) 1994. Norway has reserved its rights to intervene in the panel proceeding as an interested third party.

The panel was constituted on October 30, 1995 and its members were agreed by the parties. The panel is expected to meet as necessary at the WTO headquarters in Geneva, Switzerland to examine the dispute. Under normal circumstances, the panel would be expected to issue a report detailing its findings and recommendations in six to nine months.

Legal Basis of Complaint

Japan assesses different excise taxes on different types of distilled spirits. Whisky and brandy are taxed between four and seven times more heavily than shochu, a traditional Japanese distilled spirit. For other distilled spirits such as vodka, gin and rum, the tax rate is two to three times higher than the tax rate on shochu. Because of this preferential tax treatment for shochu, Canada, the EC and the United States have asserted that Japan's excise taxes on distilled spirits accord less favorable treatment to imported distilled spirits than to distilled spirits of Japanese origin, and thus are inconsistent with Article III of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issue raised in the dispute. The provisions of 15 CFR 2006.13(a) and (c) (providing that comments received will be open to public inspection) and 2006.15 will apply to comments received. Comments must be in English and provided in fifteen copies. Pursuant to 15 CFR 2006.15, confidential business information must be clearly market "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page.

Pursuant to section 127(e) of the URAA, USTR will maintain a public file on this dispute settlement proceeding, which will include a list of comments received, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20506. An appointment to review the docket (Docket WTO/D–3, "Canada/EC/United States-Japan: Japan Excise Taxes on Distilled Spirits"), may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Jennifer Hillman,

General Counsel.

[FR Doc. 95–28039 Filed 11–13–95; 8:45 am]

BILLING CODE 3190–01–M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of the addition of a new routine use to an existing system of records.

SUMMARY: This document publishes notice of the addition of a new routine use to Privacy Act system of records USPS 080.010, Inspection Requirements—Investigative File System. This new routine use permits the disclosure of information on computer bulletin boards by the Postal Inspection Service in the performance of an authorized activity to elicit information or cooperation from users of such bulletin boards. It also permits the Postal Inspection Service to alert users of such bulletin boards of possible criminal activity for which the Postal Inspection Service has authority to investigate and about which it has obtained credible information.

DATES: This proposal will become effective without further notice December 26, 1995, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments should be mailed or delivered to Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 8650, Washington, DC 20260–5240. Copies of all written comments received will be available for public inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Peak, Records Office, (202) 268–2601.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (e)(11) of the Privacy Act of 1974, 5 U.S.C. 552a, the Postal Service is publishing a notice of a new routine use of its system of records USPS 080.010, Inspection Requirements— Investigative File System. This system contains information on the investigation of criminal, civil, or administrative matters, including employee and contractor background investigations. This new routine use permits disclosure of an individual's identity and conduct on computer bulletin boards shared by non-law enforcement organizations or individuals in the public and private sectors.

The Postal Inspection Service is the law enforcement arm of the Postal Service (18 U.S.C. 3061). This new routine use would allow the Postal Inspection Service to elicit from users of computer bulletin boards information or cooperation required to perform an authorized activity, or to alert users of possible criminal activity for which the Postal Inspection Service has authority to investigate and about which it has obtained credible information.

This new use will also directly benefit the anti-crime efforts of the Postal Inspection Service and organizations that are customers of the Postal Service, such as credit card issuers, health care providers, and insurance carriers. Currently, the Postal Inspection Service is working with these organizations to detect and prevent fraud and mail-related crimes.

In addition to assisting the Postal Inspection Service in its detection and apprehension efforts, the information to be disclosed on the bulletin boards by this new routine use will help prevent fraud by alerting users of the bulletin boards with information about a particular criminal activity within their industries.

Pursuant to 5 U.S.C. 552a(r) and paragraph 4.c.(1)(f) of Appendix 1 of Office of Management and Budget Circular A–130, Federal Information Resources Management, interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

New Routine Use

The most recent description of USPS 080.010 appears at 54 FR 11798, dated March 20, 1991. It is proposed that routine use No. 12 be added to that system description as follows:

USPS 080.010

SYSTEM NAME:

Inspection Requirements— Investigative File System, 080.010.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 404, 18 U.S.C. 3061, and 5 U.S.C., App. 3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

* * * * *

[Add:]

12. A record from this system may be disclosed on an electronic bulletin board to organizations or individuals in the public or private sectors that share in the bulletin board, provided that the disclosure is deemed necessary: (1) To elicit information or cooperation from these organizations or individuals for use by the Postal Inspection Service in the performance of an authorized activity; or (2) to alert these organizations or individuals of possible criminal activity for which the Postal Inspection Service has authority to investigate and about which it has obtained credible information.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–27985 Filed 11–13 –95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36458; File No. SR–CBOE–94–53]

Self-Regulatory Organizations; Notice of Filing of Amendments No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Financial Requirements for Clearing Members

November 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 13, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to its previously filed proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[2] The Commission is publishing this notice to solicit comments on the amendment to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make certain minor changes to the proposed rule change previously filed relating to financial requirements for clearing members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements as they pertain to the proposed amendment.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt a Regulatory Circular that would require all Exchange members that clear options market maker transactions on a proprietary or market maker customer basis to calculate options market maker haircuts in accordance with a haircut methodology developed jointly by the Exchange and The Options Clearing Corporation based on the theoretical options pricing model of Cox-Ross-Rubinstein. The purpose of this amendment is to make certain minor changes to the proposed Regulatory Circular. This amendment deals largely with haircuts applicable to market maker positions in certain broad-based index products and qualified stock baskets.

As proposed to be amended, the Regulatory Circular will more clearly state that computed gains and losses for qualified stock baskets must be taken into account when determining haircuts for an options market maker's complete position in a broad-based index class or product group. The amended Regulatory Circular also will permit 50% of the gain in a broad-based market index product group to offset the loss in a different broad-based index product group at the same valuation point, and would simplify the description of various other permitted offsets. The definition of what constitutes a qualified stock basket in relation to an index is proposed to be amended to

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The proposed rule change was noticed for comment in Securities Exchange Act Release No. 35282 (February 2, 1995), 60 FR 6577.

[3] A summary of the Exchange's statements concerning the purpose and statutory basis of the proposed rule change is contained in the notice of its filing, *supra* note 2.

require that the basket represents no less than 50% of the capitalization of a broad-based market index, and no less than 95% of the capitalization of a narrow-based index. The minimum charge for a non-high-cap index basked is proposed to be 7½%, and the Regulatory Circular will recognize that broker-dealers may utilize theoretical options pricing models and vendors of such information as approved from time to time by the Commission. If amended Rule 15c3–1 as finally adopted by the Commission differs from CBOE's Regulatory Circular, CBOE promptly will file an amendment to its Regulatory Circular to bring it into conformity with the Commission's Rule.

CBOE believes that the proposed Regulatory Circular, as proposed to be amended, is consistent with and furthers the objective of Section 6(b)(5) of the Securities Exchange Act of 1934 in that, by establishing a uniform haircut treatment applicable to all market maker positions, it will contribute to the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed amendment to the rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Stotement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed amendment to the rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–53 and should be submitted by November 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27991 Filed 11–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36460; File No. SR–Phlx–95–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a Reduction of the Value of the Phlx National Over-the-Counter Index

November 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to reduce the value of its National Over-the-Counter Index ("Index") option ("XOC") to one-half of its present value by doubling the divisor used in calculating the Index. The Index is a capitalization-weighted market index composed of the 100 largest capitalized stocks trading over-the-counter. The other contract specifications for the XOC remain unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx began trading the XOC in 1985.[3] The Index was created with a value of 150 on its base date of September 28, 1984, which rose to 548 in June 1994, and to 700 in June 1995. On September 14, 1995, the Index value was 868. Thus, the value has increased significantly, especially during the last year. Consequently, the premium for XOC options has also risen.

As a result, the Phlx proposes to conduct a "two-for-one split" of the Index, such that the value will be reduced by one-half. The number of XOC contracts will be doubled, such that for each XOC contract currently held, the holder will receive two contracts at the reduced value, with a strike price of one-half the original strike price. For instance, the holder of an XOC 800 call will receive two XOC 400 calls. In addition to the strike price being reduced by one-half, the position and exercise limits applicable to the XOC will be doubled, from 17,000 contracts to 34,000 contracts until the last expiration then trading.[4] Currently, the last expiration month trading in March 1996.[5] This procedure is similar to that employed with equity options where the underlying security is subject to a two-for-one stock split, as well as the recent split of the Phlx's Semiconductor Index.[6] The trading symbol will remain as XOC (plus any necessary wrap symbols).

In conjunction with the split, the Exchange will l[illegible] strike prices surrounding the [illegible]ew, lower Index value, pursuant t[illegible] Phlx Rule 1101A. The Phlx will an[illegible]ounce the effective date by way of an Exchange memorandum to the membership, which will also serve as notice of the strike price and position limit changes.

The purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, a near-term, at the money call option series currently trades at approximately $1,200 per contract. With the Index split, the same option series (once adjusted), with all else remaining equal, could trade at approximately $600 per contract. Thus, certain investors and traders may currently be impeded from trading at such levels. A reduced value should, therefore, encourage additional investor interest.

The Phlx believes that XOC options provide an importa[illegible] opportunity for investors to hedge a[illegible]d speculate upon the market risk associated with the underlying over-the-counter stocks. B[illegible] reducing the value of the Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. This should attract additional investors, and, in turn, create a more active and liquid trading environment.

For these reasons, the Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[7] in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest. The Exchange believes that reducing the value of the Index does not raise manipulation concerns and will not cause adverse market impact, because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the Index split, including adequate prior notice to market participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx received one comment letter opposing the proposed rule change from a financial planner at Smith Barney Shearson.[8] According to the commenter, one of the primary inducements to trading the XOC Index is its volatility. If the Index is split in half, however, the commenter believes that investors will be unnecessarily forced to trade twice as many contracts in order to maintain their current degree of leve[illegible]age. The commenter also opposes [illegible] proposed rule change because he be[illegible]eves that splitting the Index will reduce its value to an inappropriately low level. The commenter also suggests alternative split levels (e.g., a 4 for 3 split, or a 3 for 2 split) as a less problematic approach. In this manner, according to the commenter, the Index will retain a greater percentage of its current value. Finally, the commenter suggests that the Exchange postpone the splitting of the Index to provide investors with a reasonable amount of time to adjust their positions as a result of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–61 and should be submitted by December 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27993 Filed 11–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36461; File No. SR–Phlx–95–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in Position and Exercise Limits on the Phlx National Over-the-Counter Index

November 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to increase the

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[3] *See* Securities Exchange Act Release Nos. 21576 (January 18, 1985), 50 FR 3445 (January 24, 1985); and 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (File No. SR–Phlx–84–28).

[4] Separately, the Exchange is proposing to increase the XOC position and exercise limits to 25,000 contracts. *See* SR–Phlx–95–38).

[5] The Exchange notes that following September expiration, June 1996 options are listed.

[6] *See* Securities Exchange Act Release No. 35999 (July 20, 1995), 60 FR 38387 (July 26, 1995) (File No. SR–Phlx–95–41).

[7] 15 U.S.C. § 78f(b)(5) (1988).

[8] *See* Letter from Barry J. Weisberg, Vice President, Smith Barney Shearson, to Andy Kolinsky, Vice President, Phlx, dated August 1, 1995.

[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[4] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

position [3] and exercise limits [4] for options ("XOC") on its National Over-the-Counter Index ("Index") [5] from 17,000 to 25,000 contracts.

The text of the proposed rule change is available at the Phlx and at the Commission.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise XOC position and exercise limits to 25,000 contracts in order to increase liquidity, which should be enhanced by the ability to hold a higher position. In addition, the Exchange seeks to remain competitive with broad-based index option products traded on other exchanges.

Currently, the position limit for XOC options is 17,000 contracts. In early 1994, the Commission approved a 70% increase to the Phlx's position limit from 10,000 to 17,000 contracts.[6] The Exchange notes that a proposal was recently filed by the Pacific Stock Exchange, Inc. ("PSE") to raise the position limit on its Technology Index to 37,500 contracts.[7] In addition, most market (broad-based) index options have position limits of at least 25,000 contracts,[8] with certain products trading with even higher limits.[9] Thus, the proposed rule change is intended to keep the Phlx in line with position limits of index options traded on other exchanges.

XOC options have been trading on the Exchange since 1985.[10] The Index value is currently at 868,[11] with volume having increased sharply since 1991, and consistently since 1993.[12] At the current position limit, the aggregate dollar value of the maximum permissible XOC position is approximately $1.5 billion.[13] With the limit raised to 25,000 contracts, the aggregate dollar value would be increased to approximately $2 billion.[14] The Exchange believes that this compares with the values of other exchanges' broad-based index options,[15] as well as its own.[16]

Recently, the Exchange filed a separate proposed rule change to conduct a "two-for-one split" of the Index, such that the value will be reduced by one-half.[17] For example, with the Index at 868, the new Index value after the split would be 434. At the current position limit, the aggregate dollar value of the maximum permissible post-split XOC position would be approximately $700 million.[18] With the limit raised to 25,000 contracts, the aggregate dollar value of a post-split position would be approximately $1 billion.[19] The Exchange believes that these post-split values also compare with the values of other exchanges' broad-based index options,[20] as well as its own.[21]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular [22] in that it is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, as well as to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[3] Position limits impose a ceiling on the aggregate number of option contracts on the same side of the market that an investor, or group of investors acting in concert, may hold or write. *See* Phlx Rule 100A(a)(ii).

[4] Exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or group of investors acting in concert, can or will have exercised within five consecutive business days. *See* Phlx Rule 1002A.

[5] The Index is a capitalization-weighted market index composed of the 100 largest capitalized stocks trading over-the-counter.

[6] Securities Exchange Act Release No. 33634 (February 17, 1994), 59 FR 9263 (February 25, 1994) (File No. SR–Phlx –93–07). This increase corresponded to the listing of options on the Nasdaq 100 Index ("NDX") on the Chicago Board Options Exchange, Inc. ("CBOE") with a position limit of 25,000 contracts.

[7] *See* Securities Exchange Act Release No. 36146 (August 23, 1995), 60 FR 45509 (August 31, 1995) (File No. SR–PSE–95–18).

[8] *See, e.g.*, American Stock Exchange, Inc.'s ("Amex") EUR–25,000 contracts, HKO–25,000 contracts, JPN–25,000 contracts; and CBOE's NDX–25,000 contracts.

[9] *See, e.g.*, CBOE's SPX–45,000 contracts, RUT–50,000 contracts; Amex's XII–45,000 contracts, XMI–34,000 contracts; New York Stock Exchange, Inc.'s ("NYSE") NYA and NNA—45,000 contracts each.

[10] Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985).

[11] This value was recorded on September 14, 1995.

[12] XOC volume January–June 1995 was 167,894 contracts, compared to 158,228 contracts January–June 1993.

[13] The aggregate dollar value of the maximum position is calculated by multiplying the Index value by the multiplier by the position limit as follows: 868 × 100 × 17,000 = $1,475,600,000.

[14] 868 × 100 × 25,000 = $2,170,000,000.

[15] These values were recorded on June 27, 1995:

CBOE: OEX 520 × 100 × 25,000 = $1,300,000,000
CBOE: SPX 545 × 100 × 45,000 = $2,452,500,000
CBOE: RUT 281 × 100 × 50,000 = $1,405,000,000
CBOE: NDX 534 × 100 × 25,000 = $1,335,000,000
Amex: XMI 477 × 100 × 34,000 = $1,621,800,000
PSE: WSX 363 × 100 × 37,500 = $1,361,250,000
NYSE: NYA 292 × 100 × 45,000 = $1,314,000,000

[16] VLE: 518 × 100 × 25,000 = $1,295,000,000.
TPX: 482 × 100 × 25,000 = $1,205,000,000.

[17] *See* File No. SR–Phlx–95–61.

[18] 434×100×17,000=$737,000,000.

[19] 434×100×25,000=$1,085,000,000.

[20] *See supra* note 15. The Exchange notes that post-split the maximum size of the proposed XOC position would be lower than most other broad-based index options.

[21] *See supra* note 16.

[22] 15 U.S.C. § 78f(b)(5) (1988).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–38 and should be submitted by December 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27992 Filed 11–13–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2281]

Shipping Coordinating Committee; Subcommittee on Ship Design and Equipment and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 1:30 PM on Monday, December 04, 1995, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593. The purpose of the meeting is to prepare for the Thirty-ninth session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) which is scheduled for January 22–26, 1996, at IMO Headquarters in London, England.

Among other things, items of particular interest are: safety of passenger submersible craft; safety standards for combined pusher tug-barges; safe ocean towing guidelines; guidelines for the design & operation of passenger ships to the needs of elderly and disabled persons; ro-ro ferry & bulk carrier safety matters; ship structures matters; emergency sources of electrical power; role of the human element in maritime casualties; redundancy of machinery installations; review of existing ships' safety standards; and matters relating to lifesaving.

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/ regulations. The U.S. Safety of Life at Sea (SOLAS) Working Group supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. Because of the impact on domestic regulations through development of these international agreements, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All members of the maritime industry are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR Jim Stamm, U.S. Coast Guard Headquarters, Commandant (G–MMS), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: November 2, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–27974 Filed 11–13–95; 8:45 am]

BILLING CODE 4710–07–M

[23] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA); Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Meeting of Joint Planning Advisory Group.

The Maritime Administration and the United States Transportation Command, Co-Chairs of the Joint Planning Advisory Group (Group), announce the initial meeting of the Group to discuss administrative and operational issues under the Voluntary Intermodal Sealift Agreement, see 60 FR 54144, Oct. 19, 1995. The meeting will be in Room P1–1303, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, on November 15, 1995 from 9:30 a.m. to 2:00 p.m. If required, a closed meeting may be convened immediately following the public session for consideration of classified information.

CONTACT PERSON FOR ADDITIONAL INFORMATION: James E. Caponiti, Director, Office of Sealift Support (202) 366–2323.

By Order of the Maritime Administrator.

Dated: November 8, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–28103 Filed 11–13–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement Program to Support the Development of an Index to Quantify the Functional Outcome of Pediatric Motor Vehicle Injuries

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of Discretionary Cooperative Agreement Program to Support the Development of an Index to Quantify the Functional Outcome of Pediatric Motor Vehicle Injuries.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to support research in the development of a derivative of the Functional Capacity Index that will be applicable to pediatric motor vehicle injuries, and solicits applications for projects under this program.

DATES: Applications must be received on or before January 17, 1996.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attn: Amy Poling, 400 7th Street S.W., Room 5301, Washington DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–94–H–06001.

FOR FURTHER INFORMATION CONTACT: Questions relating to this cooperative agreement program should be directed to Stephen Luchter, Senior Policy Advisor, Office of Plans and Policy (NPP–32), National Highway Traffic Safety Administration, 400 7th St. S.W., Room 5208, Washington, DC 20590; (202) 366–2576. General administrative questions may be directed to Amy Poling, Office of Contracts and Procurement, at (202) 366–9552.

SUPPLEMENTARY INFORMATION:

Background

NHTSA's mission is to reduce injuries and fatalities on the nation's highways. In order to have an objective way to determine where to place its limited resources, the agency has developed an expertise in quantitative measures of the consequences of motor vehicle crashes. These efforts have been largely devoted

to determining the economics costs resulting from the crash, including the costs of any resulting injuries or fatalities.

Until recently the agency's focus has been on mitigating the effects of the most serious injuries, those that result in fatality. As fatality rates decreased, and knowledge of the magnitude of the long term consequences of non-fatal injuries increased, more attention began to be given to the non-fatal injury portion of the agency's mission. It soon became apparent that although a thorough understanding of the costs of injury was important, costs alone did not provide a complete picture of injury consequences. A decision was made to develop a measure of injury consequences in terms of time, and the product of that effort is the Functional Capacity Index.[1]

The Functional Capacity Index consists of a set of alphabetical indicators representing the level of functioning for each of ten functional attributes, plus a numerical value that represents the relative value of the combination on a scale from 0.0 to 1.0. A value of 0.0 represents no loss of function, and a value of 1.0 represents a complete loss of function. The attributes are: eating, excreting, sexual function, arm/hand, bending/lifting, ambulation, sight, hearing, speech, and cognitive functions. Rigorous definitions were developed for each of these attributes at both full functioning and at appropriate levels of reduced functioning. Using the methods of Multi-Attribute Utility Theory, the value judgments of a diverse population were determined for each level of functioning. Since these value judgment followed a normal distribution, the mean value was taken as representative. An algorithm was developed to combine the value judgments into a "whole-body" numerical value using a multiplicative model. An expert panel provided their judgment of the level of functioning one year post-injury for a previously healthy adult for each of the injuries listed in the AIS 90 dictionary.[2]

These efforts have resulted in a useable index, which has been applied successfully to the agency's injury data base.[3] When applied to a population, the parameter of interest becomes the Life-years Lost of Injury (LLI), which is the sum over the injured population of the product of the Functional Capacity Index (FCI) and the injured person's life expectancy. This parameter provides a measure of the effect on the entire society of a particular injury. The average Life-years Lost to Injury (LLI/incidence) is a measure of the relative severity of the injury to the average member of the population with that injury.

At present, applications of the Index must be done with due care, taking into account the known limitations:

- Index values are based on the consensus judgment of an expert panel, not on clinical data. (A clinical validation project is currently underway to remove this limitation).
- The Index is not applicable to the pediatric or geriatric populations, due to the different effects of injury on these populations as compared to healthy adults.
- The Index is limited to single injuries. (The assumption is made in applications that the injury with the highest value of FCI can be used in a similar way as the highest AIS value injury is used as an indication of injury severity. The current effort at clinical validation is expected to yield data that will allow testing of hypotheses on how to use the Index for multiple injuries).
- The Index is applicable for a fixed time post injury. (A one year post-injury timeframe was chosen because it is known that the effects of many, though not all, injuries have stabilized at one year after the injury. Future efforts will consider this issue).

This research effort focuses on removing the pediatric injury limitation in the application of the Functional Capacity Index. The possible use of the PEDI[4] and WeeFim[5] scales was considered for this project, but rejected as they have a number of limitations; these indices do not relate to specific injuries, but rather are applicable in a clinical setting for all injuries. Also, although these indices include the concept of age appropriate responses, these responses are not defined as an implicit part of the index.

Objective

The Functional Capacity Index consists of objective definitions of functional attributes at full functioning and at various levels of reduced functioning for the injury descriptions in the 1990 Abbreviated Injury Scale. The Index consists of two parts. The first part is a set of ten alphabetical designations which indicate the anticipated functional level for each attribute one year post injury. The second part consists of a numerical "whole body" designation derived using the value judgments of a representative population. The current Index is applicable to previously healthy adults. The objective of this effort is to develop a derivative of the Functional Capacity Index that is applicable to previously health children, particularly those injured in motor vehicle crashes.

The following issues have been identified and applicants should include a discussion of their approach to resolving them in their application.

Developmental Level—The agency's hypothesis is that there are certain injuries where age is an important factor in estimating functional capacity one year post injury and others where it is not.[6] Assuming this is correct, the work described here will identify the injuries that fit into these two categories. For example, healthy six-month-olds usually can't walk (but can crawl), can't speak intelligibly (but can usually communicate via sound), nor can they balance a checkbook. Thus injuries that affect mobility or vocal communication for six-month-olds are not likely to be properly scaled by the current Index. At age two most healthy children can perform the first two of these functions, but not the third. Thus, any Index must take into account these differences. Questions the applicant should address include the following:

- The current FCI levels were developed for ages 18 to 34, but they are believed to be applicable to a somewhat younger population. Is this limit 16, 12, 10? Are there different age limits for different injuries?
- How should the functional attributes be defined for the pediatric population for those injuries where the current Index is not applicable? Should they relate to what a child could do now (for example, crawling by a six-month-old), or to what the child could do when s/he becomes an adult (for example, being able to walk 150 feet and climb 12 steps)?
- In order to minimize complexity when applying the index there must be a simple, straightforward approach to accommodating the age variations. Is it necessary to have multiple indices, based on age categories, or can there be an adjustment factor to the current Index such as, if under 3, use the values in column B instead of the "standard" values in column A?
- The relationships between chronological age and developmental age are not single valued functions for the entire population. How does one treat this issue in applying the Index?

Physiological Factors—The consequences of a particular injury may be considerably different in young children than in adults. For example, bones that are still soft may heal with less residual loss of functional capacity than adult bones. On the other hand, injuries to central nervous system components that have not fully developed may arrest the development of the child and have a greater effect on long term functional capacity. How should these concerns be incorporated into the Index?

Value Judgment—The theoretical basis for the Index numerical values is that they reflect the value judgments of the exposed population. Not only does one not expect pre-schoolers to understand the issues, it is unlikely that they would be able to communicate their thoughts using the approach taken in the initial development of the Index. However, it is conceivable that 8 or 10 year olds would be able to comprehend these effects and be able to communicate them adequately. The question then is whose judgments are applicable—parents, pediatricians, educators, etc., and when should one consider the child's judgment? If this method is not applicable at all, what other approaches are appropriate to arrive at a quantitative whole body value?

Compatibility with the Existing Functional Capacity Index—The product of this research must be compatible with the Functional Capacity Index. Although there are a number of ways to approach the pediatric injury problem, there must be a seamless relationship between the results of this research and the Index applicable to the adult population.

Index Validation—The product of this research effort will be clinically validated estimates of functional capacity one year post injury for a representative set of pediatric injuries experienced in motor vehicle crashes. What validation methods does the applicant propose so that the results will be broadly representative of the national experience?

NHTSA Involvement

NHTSA, Office of Plans and Policy, will be involved in all activities undertaken as part oft he cooperative agreement program and will:

1. Provide, on an as-available basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to serve as a co-investigator participating in the technical planning and management of the cooperative agreement project and coordinate activities between the organization and NHTSA.
2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.
3. Provide liaison with other government agencies and organizations, as appropriate.
4. Stimulate the exchange of ideas.
5. Due to the complex nature of this research, a multidisciplinary intergovernmental group of representatives interested in pediatric injuries will guide the substantive work under this agreement.

The NHTSA Contracting Officer's Technical representative will chair this group. It is anticipated that this group will include representatives from the National Institute of Child Health and Human Development, the National Center for Rehabilitation Medicine and the Bureau of Maternal and Child Health.

Period of Support

The research effort described in this announcement will be supported through the award of a single cooperative agreement. It is anticipated that the project performance period will be up to 27 months, including submission of the final report. The total anticipated funding level is $200,000.00, with $100,000.00 to be provided in the first incremental period. The application for Federal Assistance should address what is proposed and can be accomplished within the time and funding constraints.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be an educational institution or research organization. For-profit research organizations may apply; however, no fee or profit will be allowed.

Application Procedure

Applicants must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), Attn: Amy Poling, 400 7th Street SW., Room 5301, Washington, DC 20590. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–96–H–06001. Only complete application packages received on or before January 17, 1996 shall be considered. Submission of three additional copies will expedite processing, but is not required.

1. The application package must be submitted with a Standard Form 424 (rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and certified assurances signed. While the Form 424A deals with budget information and Section B identifies budget categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs. The budget shall identify any cost-sharing contribution proposed by the applicant, as well as any additional financial commitments made by other sources. In preparing their cost proposals, applicants shall assume that the award will be made by February 21, 1996, and should prepare their applications accordingly.

2. Applications shall include a project narrative statement which addresses the following:

(a) Identifies the objectives, goals, and anticipated outcomes of the proposed research effort and the approach or methods that will be used to achieve these ends, and discusses the specific issues previously mentioned in this Notice, i.e., developmental level, physiological factors, value judgment, compatibility with the existing Functional Capability Index, and index validation;

(b) Identifies the proposed plan for conducting the activities of the research effort, including a schedule of milestones and their target dates, and for assessing the project accomplishments. It shall also include a plan for the effective dissemination of the research results;

(c) Identifies the types and sources of data that will be used in this research effort, including approaches to insure compatibility of data and the arrangements made or agreements entered into to insure access to needed data. Prior to submitting any such data to NHTSA, the recipient will be required to purge any information from which the personal identity of individuals may be determined;

(d) Identifies the proposed program director and other key personnel identified for participation in the proposed research effort, including description of their qualifications and their respective organizational responsibilities; and

(e) Describes the applicant's previous experience or on-going research program that is related to this proposed research effort.

Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The Technical Evaluation Committee will be augmented by non-voting specialty experts from the National Institute of Child Health and Human Development, the National Center for Rehabilitation Medicine and the Bureau

of Maternal and Child Health. The applications will be evaluated using the following criteria:

1. The technical merit of the proposed research effort, including the feasibility of the approach, planned methodology and anticipated results.

2. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical and support staff.

3. The adequacy of the plans for disseminating the research results to effectively contribute to the base of knowledge through the scientific literature, popular press, etc.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement awarded as a result of this notice, the agreement shall be subject to the general administrative requirements of 49 CFR Part 19, Department of Transportation Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; the cost principles of OMB Circular A–21, or A–122, or FAR 31.2, as applicable to the recipient, and the NHTSA General Provisions for Assistance Agreements.

3. If human subjects are to be used in any portions of this research, applications must include certification that the applicable provisions of 49 CFR Part 11 and NHTSA Order 700–1 will be followed.

4. Reporting Requirements and Deliverables: The recipient shall submit a quarterly performance report in letter format within 15 days after each quarter; a draft final report and draft technical summary within 24 months after award; a camera ready reproducible final report and technical summary, and any data bases and computer programs developed as part of this cooperative agreement, within 27 months of award. An original and two copies of each report shall be submitted to the COTR.

Issued on: November 7, 1995.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

References

1. MacKenzie E J et al., Development of the Functional Capacity Index (FCI), DOT HS 808 160 July 1994
2. Association for the Advancement of Automotive Medicine, The Abbreviated Injury Scale, 1990 Revision, Des Plaines IL
3. Luchter S. An Estimate of the Long Term Consequences of Motor Vehicle Injuries, Proceedings of the Enhanced Safety Vehicle Conference, May 1994
4. Haley S M et al., Pediatric Evaluation of Disability Inventory, New England Medical Center, 1989
5. Granger C V, Hamilton B B, Kayton R. Functional Independence Measure for Children (WeeFIM), Research Foundation, State University of New York, 1987
6. This hypothesis is an extension of the approach to pediatric injury severity in the Abbreviated Injury Scale. Except for brain hematomas, blood loss in severe lacerations, or internal bleeding due to abdominal or thoracic injuries, the AIS '90 scale does not differentiate between pediatric and other populations. See The Abbreviated Injury Scale 1990 Revision p4 for a discussion of pediatric injury severity.

[FR Doc. 95–28100 Filed 11–13–95; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 14, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11570–N	KYB Corp., Lombard, IL	49 CFR 172.200, 172.300, 173.306(f)(2)(iii), 173.306(f)(3)(i), 174.24, 177.817.	To authorize the manufacture, mark and sale of certain shock absorbers, struts, and shock absorber cartridges, for transportation in commerce as accumulators to be shipped without required labels, markings or shipping papers. (Modes 1, 2, 3, 4, 5.)
11572–N	North American Biologicals, Inc., Miami, FL.	49 CFR 173.196	To authorize the transportation of infectious substances in specially designed packaging, (Mode 1.)
11573–N	Colorite Polymers Co., Burlington, NJ.	49 CFR 174.67(i) & (j)	To authorize tank cars containing vinyl chloride, Division 2.1, to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
11575-N	Chem-Nuclear Systems, Inc., Columbia, SC.	49 CFR 172.201(a)(1), 172.203(d).	To authorize the transportation of low-level radioactive material with shipping papers which deviate from the requirements of 49 CFR. (Modes 1, 2, 3, 4, 5.)
11576-N	Tempo Products Co., Cleveland, OH.	49 CFR 178.509(7)	To authorize the manufacture, mark and sale of non-DOT specification containers of polyethylene resin for use in transporting fuel in amounts that exceed the capacity rate. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11577-N	Los Angeles Chemical Co., South Gate, CA.	49 CFR 177.848(d)	To authorize the transportation of sodium hydrosulfite, Division 4.2 in the same transport vehicle with Class 8 material. (Mode 1.)
11578-N	General Alum & Chemical Co., Searsport, MA.	49 CFR 174.67(j)	To authorize tank cars to remain connected during unloading process of sulfuric acid without the physical presence of an unloader. (Mode 2.)
11579-N	Dyno Nobel Inc., Salt Lake City, UT.	49 CFR 177.848(e)(2)	To authorize the transportation in commerce of Division 1 material and Class 8 material in the same non-DOT specification compartmented vehicles. (Mode 1.)
11580-N	The Columbiana Boiler Co., Columbiana, OH.	49 CFR 173.158(b), (g) & (h), 173.192(a), 173.201, 173.202, 173.203, 173.226, 173.227, 173.336, 173.40(a).	To authorize the manufacture, mark and sale of non-DOT specification stainless steel cylinders conforming to DOT 4BW welded steel cylinder for use in transporting certain hazardous materials. (Modes 1, 2, 3, 4, 5.)
11582-N	Mapco Alaska Petroleum, Inc., North Pole, AL.	49 CFR 173.31(b)(3)	To authorize the use of a 29 inch rigid aluminum pipe wrench from end of handle to outer jaw for use in "securing closures" on outlet valve caps of tank cars. (Mode 2.)
11583-N	Alaska Railroad Corp., Anchorage, AL.	49 CFR 174.82(b)	To authorize the transportation of freight traffic and passengers in mixed train service. (Mode 2.)
11584-N	Monsanto Co., St. Louis, MO	49 CFR 173.188	To authorize the transportation of phosphorous samples in specification packaging without the additional 4C1 wooden boxes. (Mode 1.)
11586-N	Chem Coast Inc., La Porte, TX	49 CFR 172, 173, Parts 107	To authorize limited quantities of various hazardous materials (test kits) contained in specially designed packagings to be exempt from shipping paper, marking and labeling requirements. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 7, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–28101 Filed 11–13–95; 8:45 am]

BILLING CODE 4910–60–M

Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denotes a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 29, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If the confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
3216–M	E.I. DuPont de Nemours & Co., Wilmington, DE (See Footnote 1)	3216
7954–M	Air Products & Chemicals, Inc., Allentown, PA (See Footnote 2)	7954
8556–M	Air Products & Chemicals, Inc., Allentown, PA (See Footnote 3)	8556
10094–M	Air Products, Allentown, PA (See Footnote 4)	10094
11260–M	Texas Instruments, Inc., Attleboro, ME (See Footnote 5)	11260
11516–M	Falcon Safety Products, Inc., Sommerville, NJ (See Footnote 6)	11516
11562–M	Monmsanto Co., Chemical Group, St. Louis, MO (See Footnote 7)	11562

(1) To modify the exemption to provide for additional Division 2.2 mixture to be transported in DOT Specification 110A300W tank cars.
(2) To modify the exemption to provide for additional compressed gas mixtures in DOT Specification cylinders.

(3) To modify the exemption to provide for an additional design portable tank for use in transporting liquified hydrogen.
(4) To modify the exemption to provide for alternative liner to be used in insulated tank car tanks for use in transporting ammonium nitrate solution in DOT Specification 111A100W1.
(5) To modify the exemption to increase the gross weight of airbag pressure switches to be shipped in specially designed packaging.
(6) To reissue an exemption originally issued on an emergency basis to authorize the transport of HFC–152a in specification DOT 2Q containers overpacked in strong outside packages.
(7) To reissue an exemption originally issued on an emergency basis to authorize the transportation in commerce of benyzl chlorine in phenolic lined UN1A1 drums.

Application No.	Applicant	Parties to exemption
4884–P	BOC Gases, Brisbane, CA	4884
8451–P	Mason & Hanger-Silas Mason Co., Inc., Middletown, IA	8451
8958–P	Hodgdon Power Company, Inc., Shawnee Mission, KS	8958
9657–P	PVS Chemicals, Inc. (New York), Buffalo, NY	9657
9694–P	Elf Atochem North America, Portland, OR	9694
9723–P	Envirotech Systems, Inc., Seattle, WA	9723
9741–P	U.S. Department of Energy, Washington, DC	9741
10094–P	Simplot Canada Limited, Brandon, Manitoba, CN	10094
10114–P	America West Airlines, Phoenix, AZ	10114
10298–P	Woods Air Fuel, Inc., Palmer, AK	10298
10647–P	Edwall Chemical Corporation, Edwall, WA	10647
11156–P	Cheri-Lee, Inc., Kulpmont, PA	11156
11197–P	Henry J. Kaiser Company, Fairfax, VA	11197
11197–P	ICF Kaiser Engineers, Inc., Fairfax, VA	11197
11207–P	Oklahoma Gas & Electric Services, Oklahoma City, OK	11207
11207–P	Northeast Utilities Service Company, Berlin, CT	11207
11294–P	Ashland Chemical Company, Columbus, OH	11294
11320–P	BASF Corporation, Mount Olive, NJ	11320
11516–P	Photoco, Inc., Cleveland, OH	11516

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 7, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–28102 Filed 11–13–95; 8:45 am]

BILLING CODE 4910–60–M

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., December 1, 1995, at the Corporation's Washington, D.C. office, 400 7th Street, S.W., Suite 5424, Washington, D.C. 20590. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Acting Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than November 16, 1995, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on November 6, 1995.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 95–27977 Filed 11–13–95; 8:45 am]

BILLING CODE 4910–61–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under Office of Management and Budget (OMB) Review

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), federal agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency will make such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of E.O. 10450. USIA is requesting approval for a revision and three-year extension of an information collection entitled "Overseas Activities Data", under OMB control number 3116–0014 which expires December 31, 1995. Estimated burden hours per response is thirty minutes.

DATES: Comments are due on or before January 16, 1996.

COPIES: Copies of the Request for Clearance (OMB 83-I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408; and OMB review: Mr. Jefferson Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. As part of its continuing effort to reduce the paperwork burden, USIA invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Title: Overseas Activities Data.

Form Numbers: IAP–10.

Abstract: The form serves as a supplement to SF–86, "Security Investigation Data for Sensitive Positions" and is used to obtain names of persons currently in the United States, who have personal knowledge of the overseas activities of applicants for employment in the domestic or foreign service. The information is for security purposes only.

Proposed Frequency of Responses: No. of Respondents—200; Recordkeeping Hours—.50; Total Annual Burden—100.

Dated: November 3, 1995.

Cathy Brown,

Alternate Federal Register Liaison.

[FR Doc. 95–28080 Filed 11–13–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0253.

Title and Form Number: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is submitted to VBA by a nonsupervised lender with the initial application for authority to close loans on an automatic basis or in connection with nominations of additional or new credit underwriters, subsequent to approval. The information is used by VBA to determine if the lender's nominee is qualified to close VA loans on an automatic basis.

Current Actions: Title 38, U.S.C., Section 3702(d) provides for nonsupervised lenders to make automatic guaranteed loans if approved for such purpose, and if the loans are made pursuant to the standards established by the Secretary of Veterans Affairs. The standards established by the Secretary require that a lender have a qualified underwriter review all loans to be closed on an automatic basis to determine that the loan meets VA's credit underwriting standards.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 3,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: October 31, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–27996 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Study of Environmental Health and Persian Gulf War Syndrome, VA Form 10–20989(NR)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Health Administration (VHA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VHA request for Office of Management and Budget (OMB) approval. In this document VHA is soliciting comments concerning the following information collection:

OMB Control Number: None Assigned.

Title and Form Number: Study of Environmental Health and Persian Gulf War Syndrome, VA Form 10–20989(NR).

Type of Review: Existing collection in use without an OMB control number.

Need and Uses: This information collection will be a case controlled study to describe and elucidate the causes of Gulf War Syndrome. Participants will be 2,000 veterans of the Persian Gulf War who currently reside in Oregon and Washington.

Current Circumstances: The overall goal of this epidemiologic survey and case control study is to determine whether the occurrence of unexplained symptoms referred to as "Gulf War Syndrome" is associated with any environmental exposure(s) encountered while in the Persian Gulf War theater. Information collection is necessary to document the presence, onset, duration and severity of symptoms as well as the frequency and type of environmental exposures experienced. The study will be conducted in two phases: Phase I consists of epidemiologic survey activities designed to locate a sample of Persian Gulf War veterans and identify those who may be experiencing unexplained symptoms (potential cases) and those who report no symptoms (potential controls). Phase II will consist of a case control study involving clinical examination and testing activities. Only forms for Phase I survey activities are submitted here; protocols and forms for the Phase II case control will be submitted under separate cover when fully developed.

Affected Public: Individuals and households.

Estimated Annual Burden: 2,833 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 2,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: October 31, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–27997 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: VA MATIC Authorization, VA Form 29–0532 and 29–0532–1

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0492.

Title and Form Number: VA MATIC Authorization, VA Form 29–0532 and 29–0532–1.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by policyholders to authorize deductions from his/her bank accounts to pay insurance premiums. The information is used by VBA to process the policyholder's request.

Current Actions: Title 38, U.S.C. 1908(d) provides for the time and method of payment of the premiums on Government Life Insurance polices. No insurance deductions may be made unless a complete authorization is received. The information provided by the policyholder is on a voluntary basis. VA MATIC uses the latest technology in the banking industry (Preauthorized Electronic Funds Transfer) to automatically deduct monthly insurance premium payments for the policyholder's bank account.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 3,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: October 31, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–27998 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Adjacent Gravesite Set-Aside Survey (1 Year), VA Form Letter 40–40

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, National Cemetery System (NCS) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Wayne Kenney, National Cemetery Area Office (787), Department of Veterans Affairs, P.O. Box 11720, 5000 Wissahickon Avenue, Philadelphia, PA 19101. All comments will become a matter of public record and will be summarized in the NCS request for Office of Management and Budget (OMB) approval. In this document NCS is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0546.

Title and Form Number: Adjacent Gravesite Set-Aside Survey (1 Year), VA Form Letter 40–40.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information requested by the form letter is needed to determine if individuals holding gravesite set-asides in national cemeteries wish to retain the set-aside and whether their eligibility for the set-aside has been affected.

Current Actions: In 1982, the Adjacent Gravesite Set-Aside Program was established which allows cemeteries to administer gravesites set-aside at cemeteries where 4'×8' single-depth interments are authorized. This program permits an adjacent gravesite being set aside at the time of the first interment of a veteran—s family for its future use. An automated Adjacent Gravesite Set-Aside Survey System (AGSSS) was developed and managed by the staff at Philadelphia National Cemetery Area Office. A database was formulated to record the names of the holders and contain information about the particular adjacent gravesite set-aside (AGS). Computer generated form letters are sent to AGS holders annually to ascertain their wish to retain their set-aside, or wish to relinquish it. If a holder cancels his/her set-aside or becomes ineligible, the gravesite set-aside is then relinquished, and will be used for another eligible veteran and/or dependent. Upon return of the form letter, action is taken by the national cemetery staff to update the database.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,334 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 38,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: November 2, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–27999 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Monthly Record of Training and Wages, VA Form 20–1905c

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0176.

Title and Form Number: Monthly Record of Training and Wages, VA Form 20–1905c.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Need and Uses: The requested information is used to verify the training history and to determine the continuing entitlement to benefits. The form reports the number of hours spent each month on each unit of training.

Current Actions: For each chapter 31 rehabilitation program participant, VBA is required to define the instruction that a facility provides and certify program pursuit and attendance. VA Form 20–1905c is provided to on-job training establishments and to trainers in certain special programs for use if they do not normally maintain similar records of progress in training. This usage includes training programs that neither the Department of Labor nor a joint apprenticeship council has approved. In general, these establishments do not have an extensive history of providing on-job training, but VA has approved them for chapter 15 or 31 participants. In addition, facilities may use the form for eligible persons training under Title 38 U.S.C. Chapter 35. The authority to collect this information is provided in 38 U.S.C., Sections 3104, 3111, and 3677. The monthly collection of chapter 31 wage data is required by 38 U.S.C., Section 3108(c)(1) and 38 CFR 21.296.

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit institutions.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 1,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: October 31, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–28000 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Financial Statement, VA Form 26–6807

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal

agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0047.

Title and Form Number: Financial Statement, VA Form 26–6807.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is completed by respondents (veteran-obligors and prospective assumers) in connection with release of liability and substitution of entitlement cases. The information collection is essential to determinations for release of liability and substitution of entitlement cases.

Current Actions: Under the provisions of 38 U.S.C., 3714, VA may release original veteran-obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided purchasers/assumers meet the necessary requirements, among which is qualifying from a credit standpoint. Substitution of entitlement is authorized by 38 U.S.C., 3702(b)(2) and prospective veteran-assumers must also meet the creditworthiness requirements. The form may also be used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan. In addition, the form may be used in determining the eligibility of homeowners for aid under the Homeowners Assistance Program, Public Law 89–754, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed in whole or in part.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 40,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: October 31, 1995.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–28008 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan, VA Form 26–1847

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0040.

Title and Form Number: Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan, VA Form 26–1847.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form serves as the lender's and veteran's request for guaranty of home loan for which offsite or exterior onsite improvements are incomplete to permit the veteran's occupancy of the property. Without this information, it would not be possible for loans to be guaranteed in such cases with adequate protection for the veteran and VA, and for veterans to occupy affected properties.

Current Actions: VA is directed by Title 38 U.S. Code with assuring that properties proposed for VA financing meet certain standards, are suitable as dwellings, and that proposed loans do not exceed the VA-established reasonable value of the property. The reasonable value, in case of new construction, is based on the anticipated value of the dwelling and all improvements after completion. New homes often cannot be completed in every respect because of weather conditions or other circumstances. However, VA policies permit the closing of loans in such cases when the house itself is basically complete, but certain offsite or exterior onsite improvements are incomplete. For such cases, funds amounting to one and one-half times the cost of completion must be deposited with a third party, or other incentives to completion must be present which are acceptable to VA. Escrow funds may only be used to complete the remaining improvements. These procedures make it possible for loans to be guaranteed in such cases with adequate protection for the veteran and VA, and for veterans to occupy affected properties.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 5,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: October 31, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–28009 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Proposed Information Collection Activity; Public Comment Request: Verification of Pursuit of Course (Leading to a Standard College Degree), VA Form 22–6553

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0355.

Title and Form Number: Verification of Pursuit of Course (Leading to a Standard College Degree), VA form 22–6553.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by schools to certify enrollment information and to report changes in a student's enrollment status. The information is used to determine if VA education benefits are affected.

Current Actions: VA is authorized to pay education benefits to veterans and other eligible persons pursuing approved programs of education under Chapters 32 and 35, Title 38, U.S.C.; Chapter 1606 of Title 10, U.S.C.; and Section 903 of Public Law 96–342. Benefits are not payable when pursuit of the program is interrupted or terminated, or is not in accordance with the regularly established policies and regulations of the school. Schools are required to report, without delay to VA, in the form required by VA, failure to enroll, an interruption or termination, or a finding of unsatisfactory progress or conduct. Schools are also required to verify the continued enrollment of degree-seeking students whose enrollment has previously certified to VA for a period of more than one semester, quarter, or term. VA Form 22–6553 serves as this verification of enrollment and report of change in enrollment status. For students receiving assistance under chapter 1606 Title 10, U.S.C., schools receive computer generated letters containing the same information (essentially a computer generated letter requesting the same information requested on VA Form 22–6553). These forms are associated with all other forms for the school and sent in a packet with a cover letter.

Affected Public: State, Local or Tribal Government and Not-for-profit institutions.

Estimated Annual Burden: 35,240 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,286.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: October 31, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–28010 Filed 11–13–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 219

Tuesday, November 14, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, December 19, 1995.

PLACE: 1155 21st St., N.W., Washington, D.C. Lobby Level Hearing Room located at Room 1000.

STATUS: Open.

MATTERS TO BE CONSIDERED: Roundtable Discussion on the Prohibition of Agricultural Trade Options.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–28160 Filed 11–9–95; 11:09 am]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION, WASHINGTON, DC 20207

TIME AND DATE: 10:00 a.m., Friday, November 17, 1995.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS:

Open to the Public

MATTERS TO BE CONSIDERED: *1. CPSC Vice Chairman*

The Commission will elect a Vice Chairman.

2. FY 1996 Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1996.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: November 8, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–28246 Filed 11–9–95; 3:10 pm]

BILLING CODE 6355–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FED. REG. 55085, FRIDAY OCTOBER 27, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, November 14, 1995.

CHANGE IN THE MEETING: There will be a closed session for the meeting rescheduled for November 14, 1995, to consider General Counsel recommendations on litigation authorizations.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: November 9, 1995.

Francis M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–28191 Filed 11–9–95; 8:45 am]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 16, 1995, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

COO's Fourth Quarter FY 1995 Report

a. Exam Schedule/Funding Report/ Emerging Issues/Other Matters

b. Windows NT Project

C. New Business

Regulations

a. Regulatory Burden Issues/Phase II [12 CFR Chapter VI] (Notice)

b. Issuance of Systemwide Debt Securities in Global Markets [12 CFR Part 615] (Interim Rule)

c. Systemwide Securities Sold in Foreign Currencies [12 CFR Part 615, Subpart O] (ANPRM)

d. Regional Election of Directors [12 CFR Parts 615 and 620] (Final)

Closed Session*

A. Reports

OSMO's Quarterly Report

Dated: November 9, 1995.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28161 Filed 11–9–95; 11:12 pm]

BILLING CODE 6705–01–P

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 55885, November 3, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., November 8, 1995.

CHANGES IN THE MEETING: The following topic was withdrawn from the open portion of the meeting:

- Technical Amendment to the Community Support Regulation.

The following topic was withdrawn from the closed portion of the meeting:

- FHLBank of San Francisco Affordable Housing Subsidies on Guaranteed Rate Advances.

The following topic was moved from the open portion to the close portion of the meeting:

- 1996 Strategic Plan for Examinations of the FHLBanks.

The Board determined that agency business requires its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was possible.

The item moved to the closed portion of the meeting is pursuant to section 552b(c) (8) of title 5 of the United States Codes.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–28125 Filed 11–8–95; 4:49 pm]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 20, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28254 Filed 11–9–95; 3:56 pm]

BILLING CODE 6210–01–P

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Friday, November 17, 1995.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Consideration of the first agenda item will be open to the public. Consideration of the second and third agenda items will be in closed session.

MATTERS TO BE CONSIDERED:

(1) Proposal to create an experimental "Discovery Period Extension".

(2) Discuss the identification of official who render initial decisions on Board final orders and short forms.

(3) Discuss the issuance of modified short forms.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Shannon McCarthy, Deputy Clerk of the Board, (202) 653–7200.

Dated: November 8, 1995.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 95–28126 Filed 11–8–95; 4:49 pm]

BILLING CODE 7400–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on November 6, 1995, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for December 4, 1995, in Washington, D.C. The members will consider a funding request for truck tractors and spotters.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate a proposed management action.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–28247 Filed 11–9–95; 3:30 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 13, 1995.

A closed meeting will be held on Thursday, November 16, 1995, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Thursday, November 16, 1995, at 11:00 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Options.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 8, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–28166 Filed 11–9–95; 3:10 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 219
Tuesday, November 14, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Duty Administrative Reviews; Time Limits

Correction

In notice document 95–27559 beginning on page 56141 in the issue of Tuesday, November 7, 1995, make the following corrections:

On page 56142, in the table, in the third column, the first four entries now reading "1/12/94" should read "1-12/94".

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34063; FRL 4962-1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

Correction

In notice document 95–27064 beginning on page 55576 in the issue of Wednesday, November 1, 1995 make the following corrections:

(1) On page 55576, in the first column, under **DATES**, in the fourth line remove "(*insert date 90 days after date of publication in the* **Federal Register**)" and insert "January 30, 1996".

(2) On the same page, in the 3d column, in the 1st full paragraph, in the 11th line remove "(*insert date 90 days after date of publication*)" and insert "January 30, 1996".

BILLING CODE 1505–01–D

federal register

Tuesday
November 14, 1995

Part II

Department of Labor

Employment and Training Administration

Department of Education

Office of Vocational and Adult Education;
Urban/Rural Opportunities Grants;
Application Procedures; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; School-to-Work Opportunities; Urban/Rural Opportunities Grants; Application Procedures

AGENCIES: Employment and Training Administration, Department of Labor. Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of availability of funds, solicitation for grant application (SGA), an administrative cost cap, a definition of administrative costs, and final selection criteria for School-to-Work Urban/Rural Opportunities Grants.

SUMMARY: This notice announces the fiscal year (FY) competition for Urban/Rural Opportunities Grants authorized under Title III of the School-to-Work Opportunities Act of 1994 (the Act). This notice contains all of the necessary information and forms needed to apply for grant funding in FY 1995. The Departments of Labor and Education (the Departments) also establish final selection criteria to be used in evaluating applications submitted under the Urban/Rural Opportunities Grant competition in FY 1995 and in succeeding years. Urban/Rural Opportunities Grants will enable local partnerships serving youth who reside or attend school in high poverty areas to develop and implement School-to-Work Opportunities intiatives in high poverty areas of urban and rural communities. These intiatives will offer young Americans in such communities access to School-to-Work Opportunities programs specifically designed to address barriers to their successful participation in such programs and to prepare them for first jobs in high-skill, high-wage careers and further education and training.

DATES: Applications for grant awards will be accepted commencing November 14, 1995. The closing date for receipt of applications is January 29, 1996, at 2 p.m. (Eastern time) at the address below. Telefacsimile (FAX) applications will not be accepted.

ADDRESSES: Applications must be mailed to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.278D, Washington, DC 20202–4725.

FOR FURTHER INFORMATION CONTACT: Karen Clark, National School-to-Work Office, Telephone: (202) 401–6222 (this is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Section A. Background

The Departments of Labor and Education are reserving funds appropriated for FY 1995 under the Act (Public Law 103–329) for a competition for Urban/Rural Opportunities Grants authorized under Title III of the Act. Grants under this competition will be awarded to local partnerships that serve high poverty areas and that are also prepared to develop and implement local School-to-Work Opportunities initiatives in these areas. The Departments recognize that high poverty areas face particular challenges in implementing such initiatives, including: few large private or public employers in high poverty areas; dropout rates that, in many cases, are over 50 percent; poorer students who may be much less aware of college opportunities than students in other areas; strong peer pressure that does not necessarily promote achievement among youth; pressure on youth from situations outside of school which may affect their school performance; schools with students of more diverse ethnic and racial backgrounds than schools in other areas; proportionately more out-of-school youth than in other areas; and uneven quality in educational and employment opportunities among high poverty area youth.

Due to these particular challenges, a local partnership in a high poverty area must identify and address a great variety of needs of youth residing or attending school in these areas. The Departments encourage applications from only those local partnerships that propose innovative and effective ways to deliver the common features and basic program components as outlined in Title I of the Act and that have the potential to serve large numbers of students who reside or attend school in the targeted area. Further, the Departments wish to emphasize the importance of a local partnership's ability to coordinate its strategies for serving in-school and out-of-school youth; for achieving its planned goals and outcomes; for assessing and addressing the multiple needs of high poverty area youth, particularly human service needs; and for linking effectively with both schoolwide reform efforts and with the State's plan for a comprehensive School-to-Work Opportunities system.

In accordance with the authority provided in Section 5 of the Act, the Departments have determined that the administrative provisions contained in the Education Department General Administrative Regulations (EDGAR), at 34 CFR Parts 74, 75, 77, 79, 80, 82, 85 and 86, will apply to grants awarded to local partnerships under this Urban/Rural Opportunities Grant competition.

This notice establishes a definition of the term "administrative costs," a 10 percent cap on administrative costs incurred by local partnerships receiving grants under Title III, and the selection criteria that will be used in evaluating applications submitted in response to this year's competition, and contains all of the other necessary information and forms needed to apply for grant funding.

Public Comment

It is the practice of the Secretaries to offer to interested parties the opportunity to comment on proposed solicitations under the Act. However, as explained elsewhere in this notice, the selection criteria contained in this notice were previously published for public comment (See 60 FR 46984–47009, September 8, 1995). The eligibility criteria and funding priority contained in this notice are statutory. For these reasons, the Secretaries have determined that further public comment on the content of this notice is unnecessary and contrary to the public interest.

Section B. Purpose

Under this competition, the Departments will award grants to local partnerships serving youth who reside or attend school in high poverty areas that have built a sound planning and development base for their school-to-work programs, to begin implementation of School-to-Work Opportunities initiatives that will become part of statewide School-to-Work Opportunities systems. These local initiatives will offer young Americans access to programs designed to prepare them for first jobs in high-skill, high-wage careers, to increase their opportunities for further education and training, and to address the special needs of youth residing or attending school in high poverty areas.

Section C. Application Process

1. Eligible Applicants

(A) Local Partnership Definition

A local entity that meets the definition of "local partnership" in section 4(11) of the Act, is eligible to apply for an Urban/Rural Opportunities Grant. As defined in the Act, an eligible partnership must include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators, representatives of labor organizations or nonmanagerial employee representatives, and students. Other entities appropriate to effective implementation of a local School-to-Work Opportunities initiative should also be included in the partnership.

Under section 302(b)(2) of the Act, a local partnership is eligible to receive only one (1) Urban/Rural Opportunities Grant.

(B) High Poverty Area Definition

In addition to meeting the definition of "local partnership" in section 4(11) of the Act, under section 307 of the Act, applicants seeking funding under this notice are required to meet the definition of "high poverty area" as stated in that section and describe the urban or rural high poverty area to be served. The description must include—

- A map indicating the urban census tract, contiguous group of urban census tracts, block number area, contiguous group of block number areas, or Indian reservation to be served by the local partnership;
- The population of each urban census tract, block number area, or Indian reservation to be served, along with the total population of the entire area to be served; and
- The poverty rate for each urban census tract, block number area, or Indian reservation to be served, among individuals under the age of 22, as determined by the Bureau of the Census, along with an average poverty rate among this age group for the entire area to be served.

In accordance with section 307 of the Act, only those applicants that both provide the required population/poverty rate data in their applications in the format outlined in this subsection of this notice and that meet the definition of a high poverty area as described in this subsection will be considered for funding. The Departments intend to pre-screen all applications for high poverty area eligibility prior to the panelists' review and will not consider any applications that do not contain the required population/poverty rate data. Information in addition to what is required in this notice with regard to population/poverty rate data is not necessary and will have no influence upon meeting the high poverty area definition. Applicants will not have the opportunity to submit additional or revised information should a determination be made that the identified area does not meet the high poverty definition.

Note: Census information may be obtained through a local college or university, city planning department, State data center, or through the Data User Service Division of the Bureau of the Census. Applicants are encouraged to utilize local providers of census data. For those applicants who are unable to locate such data, please contact the Census Bureau State Data Center for your local area. A list of State and Local Data Center contacts is included in an appendix to this notice. Population/poverty rate data published by the Bureau of the Census is provided in age ranges: 0–5, 6–11, 12–17, 18–24, and 25 and up. The Departments will accept poverty rate data for either age range up to 17 or up to 25, whichever is higher, for the purposes of eligibility. In order to be considered for funding, areas to be served must be characterized by a poverty rate of 20.0 percent or greater among the age group.

2. State Comments

The local partnership must submit its application to the State for review and comment before submitting the application to the Departments, in accordance with section 303(a) of the Act. The application should be submitted to the State's School-to-Work Contact. A list of State School-to-Work Contacts is included in an appendix to this notice. The Departments expect that the State School-to-Work Contact will provide all members of the State School-to-Work Partnership listed in section 213(b)(4) (A)–(K) of the Act, an opportunity to review and comment on the local partnership's application.

Of particular importance to the Departments are each State's comments on the consistency of the local partnership's planned activities with the State's plan for a comprehensive statewide School-to-Work Opportunities system and the relationship of any proposed activities with other local plans, especially if the grant applicant is not specifically identified as a local partnership within the State system.

In accordance with section 305 of the Act, if a State has an approved State School-to-Work Opportunities plan, the State must confirm that the plan submitted by the local partnership is in accordance with the State plan. The application from the local partnership must contain this confirmation.

Section 303(b)(1) of the Act requires that each State review and comment on a local partnership's application within 30 days from the date on which the State receives the application from the local partnership. Therefore, even though an applicant has 75 days to apply for a Urban/Rural Opportunties Grant under this notice, it must provide its application to its State in time for the State to have at least 30 days before the due date to review and comment on the application.

Furthermore, under section 303(c)(2) of the Act, the State's comments must be included in the local partnership's application. However, if the State does not provide review and comment within the 30-day time period described above, the local partnership may submit the application without State comment. In such a case, the local partnership should provide proof that the State received a copy of the local partnership's application at least 30 days prior to the application due date.

3. Period of Performance

The period of performance for Urban/Rural Opportunities Grants is twelve (12) months from the date of award by the Departments.

4. Option to Extend

Urban/Rural Opportunities Grants may be extended up to four additional years, regardless of the State Implementation Grant status of the State in which the partnership is located. Extensions will be based upon availability of funds and the progress of the local partnership toward its objectives as approved in its application and will be subject to the annual approval of the Secretaries of Labor and Education (the Secretaries). It is likely that the amount of Federal funds, if any, that are awarded to local partnerships under this notice in subsequent years will decrease.

5. Available Funds

Approximately $15 million is available for this competition.

6. Estimated Range of Awards

The amount of an award under this competition will depend upon the scope, quality, and comprehensiveness of the proposed initiative and the relative size of the high poverty area to be served by the local partnership. While there is no limitation on the size of a high poverty area, the Departments expect that the resources available for individual grants will effectively serve high poverty areas of no more than a total of 50,000 in population. The Departments further expect that first-year award amounts will range from a minimum award of $200,000 to a maximum award of $650,000. These estimates are provided to assist applicants in developing their plans.

7. Estimated Number of Awards

The Departments expect to award 25–35 grants under this competition.

Note: The Departments are not bound by any estimates in this notice.

8. Reporting Requirements/Deliverables

(a) Reporting requirements.

The local partnership will be required, at a minimum, to submit—

- Quarterly Financial Reports (SF 269 A);
- Quarterly Narrative Progress Reports;
- An Annual Continuation Application package, if appropriate, including—

—A revised SF 524 and renewed Assurances and Certifications;
—A Narrative Report describing progress toward stated goals, and identifying goals and objectives for the coming year;
—Annual Financial Reports (ED Form 524 B, and SF 269);
—Budget Information for Upcoming Years;

- An Annual Performance Report providing data on performance measures; and
- A close-out report at the end of the grant.

(b) Deliverables.

The local partnership will be required to—

- Provide information on best practices and innovative school- and work-based curricula suitable for dissemination to States and other stakeholders;
- Participate in two grantee meetings per year sponsored by the National School-to-Work Office;
- Act as a host to outside visitors who are interested in developing and implementing School-to-Work Opportunities initiatives in urban or rural areas of high poverty and to other visitors interested in the replication, adaptation and/or impact of successful program elements; and
- Participate as needed in national evaluation and special data collection activities.

9. Application Transmittal Instructions

An application for an award must be mailed or hand delivered by the closing date.

(A) Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention CFDA #84.278D, 600 Independence Avenue, SW, Washington, DC 20202–4725.

An application must show proof of mailing consisting of one of the following:

- A legibly dated U.S. Postal Service Postmark;
- A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
- A dated shipping label, invoice, or receipt from a commercial carrier; or
- Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretaries do not accept either of the following as proof of mailing:

- A private metered postmark; or
- A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

(B) Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW, Washington, DC.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays and Federal holidays.

Individuals delivering applications must use the D Street Entrance. Proper identification is necessary to enter the building.

In order for an application sent through a courier service to be considered timely, the courier service must be in receipt of the application on or before the closing date.

Section D. Organization and Content of Applications

Applicants are encouraged to submit an original and four (4) copies of their application. The Departments suggest that the application be divided into six distinct parts: detachable description addressing the high poverty area definition, budget and certifications, abstract, State comments, program narrative, and appendices. To ensure a comprehensive and expedient review, the Departments strongly suggest that applicants submit an application formatted follows:

Table of Contents

I. Eligibility Requirements

Part I must contain detailed information as described in the Eligible Applicants, High Poverty Area Definition subsection of this notice and, for pre-screening purposes, should be separate and easily detachable from the remainder of the application.

II. Budget and Certifications

Part I should contain the Standard Form (SF) 424, "Application for Federal Assistance," and SF 524, "Budget." All copies of the SF 424 must have original signatures of the designated fiscal agent. In addition, the budget should include—on a separate page(s)—a detailed cost break-out of each line item on SF 524. All Assurances and Certifications found in an appendix to this notice should also be included in Part II of the application.

III. Abstract

Part III should consist of a one-page abstract summarizing the essential components and key features of the local partnership's plan.

IV. State Comments

Part IV should contain the State's comments on the application. Details on this section can be found under the State Comments heading of this notice.

V. Program Narrative

Part V should contain the application narrative that demonstrates the applicant's plan and capabilities in accordance with the selection criteria contained in this notice. In order to facilitate expeditious evaluation by the panels, applicants should describe their proposed plan in light of each of the selection criteria. No cost data or reference to price should be included in this part of the application. The Departments strongly request that applicants limit the program narrative section to no more than 40 one-sided, double-spaced pages.

VI. Appendices

All applicable appendices including letters of support, resumes, and organizational charts should be included in this section. The Departments recommend that all appendix entries be cross-referenced back to the applicable sections in the program narrative.

Note: Applicants are advised that the peer review panels evaluate each application solely on the basis of the selection criteria contained in this notice and the School-to-Work Opportunities Act. Appendices may be used to provide supporting information. However, in scoring applications, reviewers are required to take into account only information that is presented in the application narrative, which must address the selection criteria and requirements of the Act. Letters of support are welcome, but applicants should be aware that support letters contained in the application will strengthen the application only if they contain commitments that pertain to the selection criteria.

Section E. Safeguards

The Departments will apply certain safeguards, as required under section

601 of the Act, to School-to-Work Opportunities programs funded under this notice. The application must include a brief assurance that the following safeguards will be implemented and maintained throughout all program activities:

(a) No student shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).

(b) No School-to-Work Opportunities program shall impair existing contracts for services or collective bargaining agreements, and no program funded under this notice shall be undertaken without the written concurrence of the labor organization and employer concerned.

(c) No student shall be employed or fill a job—

(1) When any other individual is on temporary layoff, with the clear possibility of recall, from the same or any substantially equivalent job with the participating employer; or

(2) When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with the student.

(d) Students shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of Federal, State, and local laws.

(e) Nothing in the Act shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability.

(f) Funds awarded under the Act shall not be expended for wages of students or workplace mentors.

(g) The grantee shall implement and maintain such other safeguards as the Secretaries may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or to otherwise further the purposes of the Act.

Section F. Waivers

Under Title V of the Act, the Secretaries may waive certain Federal requirements that impede the ability of a State or local partnership to carry out the purposes of the Act. Only local partnerships in States with approved School-to-Work Opportunities plans may apply for waivers. A local partnership that seeks a waiver should contact its State School-to-Work Contact to determine what documentation is required and to whom it should be sent.

In May, 1995, the National School-to-Work Opportunities Office issued a document entitled "School-to-Work Opportunities Waiver and Plan Approval Process Questions and Answers." This document was sent to every Governor and State School-to-Work Contact. The document contains answers to many of the questions that localities may have when preparing their waiver requests. Local Partnerships interested in applying for waivers should contact the National School-to-Work Opportunities Office or their State School-to-Work Contact for a copy of the waivers document.

Section G. Bidders' Conferences

Bidders' Conferences for interested School-to-Work Urban/Rural Opportunities representatives are scheduled from 1:00 p.m. to 4:00 p.m., on the following dates and locations:

- November 17, 1995
  Mary Burch Theater
  Essex County College
  303 University Avenue
  Newark, NJ 07102
  1:00–4:00 p.m., Registration: 12:00–1:00 p.m. (Eastern time).
- November 20, 1995
  Arlington Convention Center
  1200 Ballpark Way
  Arlington, TX 76011
  1:00–4:00 p.m., Registration 12:00–1:00 p.m. (Central time)

Participants at each of the Conferences will receive a detailed description of the School-to-Work Opportunities Act, the selection criteria and high poverty area definition and how they will be applied, and will have the opportunity to ask questions of Federal School-to-Work officials.

All partnerships should pre-register by faxing the names and addresses of up to three members of the local partnership planning to attend, the name of the local partnership, and a phone number to: Kevin Shelton, Training and Technical Assistance Corporation, 2409 18th Street, NW, Washington, DC; FAX #: (202) 408–8308.

Questions regarding the solicitation may be submitted in advance. If you are unable to attend one of the Bidders' Conferences but would like the conference materials and a conference transcript, submit your request via fax to the fax number listed above. All information must be submitted no later than November 15, 1995. You will be sent a confirmation along with hotel accommodation information once your registration has been received; walk-in registration will also be permitted.

Urban/Rural Opportunities Grant Competition

Previous Comments and Changes

On September 8, 1995, the Departments of Labor and Education published a notice establishing final selection criteria, a 10 percent cap on administrative costs, and a definition of the term "administrative costs" for the Local Partnership Grant competition and competitions in succeeding years in the **Federal Register** (60 FR 46984–47009). That notice further contained an analysis of the comments received in response to its prior publication (May 25, 1995, 60 FR 27812–27814) and of the changes made in response to those comments. Since, pursuant to section 302(b)(3) and section 307 of the Act, the only distinctions between the Local Partnership Grant and the Urban/Rural Opportunities Grant are statutory, the Secretaries have chosen to use the same selection criteria that have been subject to notice and comment and to forego publication of proposed selection criteria and proposed definition for this Urban/Rural Opportunities Grant competition. Distinctions established by these sections of the Act can be found under the Eligible Applicants and Selection Criteria headings of this notice.

School-to-Work Local Partnership Grants

Administrative Cost Cap

The Departments are applying the 10 percent cap on administrative costs contained in section 215(b)(6) of the Act to local partnerships receiving grants directly under this competition. Section 215(b)(6) of the Act applies the 10 percent administrative cap to subgrants received by local partnerships from a State. The Departments have concluded that applying the 10 percent cap to local partnerships under this competition is consistent with the Act's intent and its broader limitations on administrative costs. Further, this limitation is consistent with section 305 of Title III, which requires conformity between School-to-Work Opportunities plans of local partnerships and State School-to-Work Opportunities plans.

Definition

All definitions in the Act apply to local School-to-Work Opportunities systems funded under this and future Urban/Rural Opportunities Grant competitions. Since the Act does not contain a definition of the term "administrative costs" as used in section 217 of the Act, the Departments will apply the following definition to

this and future competitions for Urban/Rural Opportunities Grants.

The term "administrative costs" means the activities of a local partnership that are necessary for the proper and efficient performance of its duties under the Urban/Rural Opportunities Grant pursuant to the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the program's allowable activities listed in section 215(b)(4) and section 215(c) of the Act. Administrative costs may be either personnel or non-personnel costs, and may be either direct or indirect. Costs of administration include those costs that are related to this grant in such categories as—

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in—

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments;
- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Developing systems and procedures, including management information systems, for ensuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act;
- Coordinating the resolution of audit findings;

B. Costs for goods and services required for administration of the School-to-Work Opportunities system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grants management or administrative activities.

Selection Criteria

Under the School-to-Work Urban/Rural Opportunities Grant competition, the Departments will use the following selection criteria in evaluating applications and will utilize a peer review process in which review teams, including peers, will evaluate applications using the selection criteria and the associated point values. The Departments will base final funding decisions on the ranking of applications as a result of the peer review, and such other factors as replicability, sustainability, innovation, geographic balance, and diversity of system approaches.

Further, as established in section 302(b)(3) of the Act, the Secretaries, in awarding grants under this notice, shall give priority to local partnerships that have demonstrated effectiveness in the delivery of comprehensive vocational preparation programs with successful rates in job placement through cooperative activities among local educational agencies, local businesses, labor organizations, and other organizations. In addition, the Secretaries may consider, as part of the basis for funding decisions under this competition, any other priorities giving special consideration to applications proposing to implement School-to-Work initiatives in areas designated as Empowerment Zones or Enterprise Communities (EZ/EC) under section 1391 of the Internal Revenue Code, as amended, that the Departments may publish in the **Federal Register**.

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (40 Points)

Considerations: In applying this criterion, reviewers will consider—

A. *20 Points.* The extent to which the partnership has designed a comprehensive local School-to-Work Opportunities plan that—

- Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;
- Is likely to produce systemic change that will have substantial impact on the preparation of all students for a first job in a high-skill, high-wage career and in increasing their opportunities for further learning;
- Ensures all students will have a full range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs;
- Ensures coordination and integration with existing school-to-work programs, and with related programs financed from State and private sources, with funds available from Federal education and training programs (such as the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act); and where applicable, communities designated as Empowerment Zones or Enterprise Communities (EZ/EC);
- Serves a geographical area that reflects the needs of the local labor market (i.e., considers the needs of the local labor market that encompasses the high poverty area), and is able to adjust to regional structures that the State School-to-Work Opportunities plan may identify;
- Targets occupational clusters that represent growing industries in the partnership's geographic area; and, where applicable, demonstrates that the clusters are included among the occupational clusters being targeted by the State School-to-Work Opportunities system; and
- Consistent with section 301(2) of the Act, includes an effective strategy for assessing and addressing the academic and human service needs of students and dropouts within the high poverty area, making improvements or adjustments as necessary, with particular emphasis on the coordination of various human services provided within the community.

B. *20 Points.* The extent to which the partnership's plan demonstrates its capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

- A work-based learning component that includes the statutory "mandatory activities" and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences such as mentoring, job-shadowing, unpaid work experiences, school-sponsored enterprises, and paid work experiences;
- A school-based learning component that provides students with high-level academic and technical skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act;
- A connecting activities component to provide a functional link between students' school and work activities, and between workplace partners, educators, community organizations, and other appropriate entities;
- Effective processes for assessing skills and knowledge required in career majors, and issuing portable skill certificates that are benchmarked to high-quality standards such as those States will establish under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process in concert with the State;
- A flexible School-to-Work Opportunities system that allows students participating in the local system to develop new career goals over time, and to change career majors; and

- Effective strategies for: providing staff development for teachers, worksite mentors and other key personnel; developing model curricula and innovative instructional methodologies; expanding career and academic counseling in elementary and secondary schools; and utilizing innovative technology-based instructional techniques.

Selection Criterion 2: Quality and Effectiveness of the Local Partnership (20 Points)

Considerations: In applying this criterion, reviewers will refer to section 4(11) of the Act and consider—

- Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of required partners and other interested parties in the local School-to-Work Opportunities system. As defined by the Act, partners must include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students, and may include other relevant stakeholders such as those listed in section 4(11)(B) of the Act, including employer organizations; community-based organizations; national trade associations working at the local levels; industrial extension centers; rehabilitation agencies and organizations; registered apprenticeship agencies; local vocational education entities; proprietary institutions of higher education; local government agencies; parent organizations; teacher organizations; vocational student organizations; private industry councils under JTPA; Federally recognized Indian tribes, Indian organizations, and Alaska Native villages; and Native Hawaiian entities;
- Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of workplace partners and other interested parties in the local School-to-Work Opportunities system;
- The effectiveness of the partnership's plan to include private sector representatives as joint partners with educators in both the design and the implementation of the local School-to-Work Opportunities system;
- The extent to which the local partnership has developed strategies to provide a range of opportunities for workplace partners to participate in the design and implementation of the local School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula, and determining outcomes; providing worksite experiences for teachers; helping to recruit other employers; and providing worksite learning activities for students such as mentoring, job shadowing, unpaid work experiences, and paid work experiences;
- The extent to which the roles and responsibilities of the key parties and any other relevant stakeholders, are clearly defined and are likely to produce the desired changes in the way students are prepared for the future;
- The extent to which the partnership demonstrates the capacity to build a quality local School-to-Work Opportunities system; and
- Whether the partnership has included methods for sustaining and expanding the partnership, as the program expands in scope and size.

Note: As indicated in the Background section of this notice, in accordance with section 301(2) of the Act, the Departments recognize the significance of a local partnership's capability to provide for a broad range of services that sufficiently address the various needs of high poverty area youth. Applicants are, therefore, reminded that local partnerships should include members that are appropriate to the effective implementation of the local initiative, particularly community-based organizations and others experienced in dealing with the distinctive needs of youth residing or attending schools in high poverty areas.

Selection Criterion 3: Participation of All Students (15 Points)

Considerations: In applying this criterion, reviewers will refer to the definition of the term "all students" in section 4(2) of the Act, and consider—

- The extent to which the partnership will implement effective strategies and systems to provide all students with equal access to the full range of program components specified in sections 102 through 104 of the Act and related activities such as recruitment, enrollment, and placement activities, and to ensure that all students have meaningful opportunities to participate in School-to-Work Opportunities programs;
- Whether the partnership has identified potential barriers to the participation of any students, and the degree to which it proposes effective ways of overcoming these barriers;
- The degree to which the partnership has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including non-traditional jobs;
- The partnership's methods for ensuring safe and healthy work environments for students, including strategies for encouraging schools to provide students with general awareness training in occupational safety and health as part of the school-based learning component, and for encouraging workplace partners to provide risk-specific training as part of the work-based learning component, as well the extent to which the partnership has developed realistic goals to ensure environments free from racial and sexual harassment; and
- The extent to which the partnership's plan provides for the participation of a significant number or percentage of students in School-to-Work Opportunities activities listed under Title I of the Act.

Selection Criterion 4: Collaboration With State (15 Points)

Considerations: In applying this criterion, reviewers will consider—

- The extent to which the local partnership has effectively consulted with its State School-to-Work Opportunities Partnership, and has established realistic methods for ensuring consistency of its local strategies with the statewide School-to-Work Opportunities system being developed by that State Partnership;
- Whether the local partnership has developed a sound strategy for integrating its plan, as necessary, with the State plan for a statewide School-to-Work Opportunities system;
- The extent to which the local partnership has developed effective processes through which it is able to assist and collaborate with the State in establishing the statewide School-to-Work Opportunities system, and is able to provide feedback to the state on their system-building process; and
- Whether the plan includes a feasible workplan which describes the steps that will be taken in order to make the local system part of the State School-to-Work Opportunities System, including a timeline that includes major planned objectives during the grant period.

Selection Criterion 5: Management Plan (10 Points)

Considerations: In applying this criterion, reviewers will consider—

- The feasibility and effectiveness of the partnership's strategy for using other resources, including private sector resources, to maintain the system when Federal resources under the School-to-

Work Opportunities Act are no longer available;

- The extent to which the partnership's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise;
- Whether the plan includes feasible, measurable goals for the School-to-Work Opportunities system, based on performance outcomes established under section 402 of the Act, and an effective method for collecting information relevant to the local partnership's progress in meeting its goals;
- Whether the plan includes a regularly scheduled process for improving or redesigning the School-to-Work Opportunities system based on performance outcomes established under section 402 of the Act;
- The extent to which the resources requested will be used to develop information, products, and ideas that will assist other States and local partnerships as they design and implement local systems; and
- The extent to which the partnership will limit equipment and other purchases in order to maximize the amounts spent on delivery of services to students.

Note: Experience with the 1994 Urban/Rural Opportunities Grant competition provided the Departments with a greater awareness with regard to a local partnership's responsibilty for understanding and coordinating an array of programs and services available to high poverty area youth. In considering this criterion, applicants should address the partnership's capacity to manage the implementation of the local School-to-Work Opportunities initiative.

Program Authority: Pub. L.103–329.

Dated: November 8, 1995.

Tim Barnicle,

Assistant Secretary for Employment and Training, Department of Labor.

Patricia McNeil,

Acting Assistant Secretary for Vocational and Adult Education, Department of Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 7 8D

TITLE: Urban/Rural Opportunities Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY

U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1830–0530, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0530, Expiration date: 6/30/98.)

BILLING CODE 4000-01-P

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. (OMB Control No. 1801–0004 (Exp. 8/31/98)

Census Bureau Telephone Contacts National, State, & Local Data Centers

Business/Industry Data Centers—DUSD.....301–457–1305
Clearinghouse for Census Data Services—Larry Carbaugh (DUSD).....301–457–1242
National Census Information Centers—Barbara Harris (DUSD).....301–457–1305
State Data Center Program—Tim Jones.....301–457–1305

State data centers (SDC's) and business/industry data centers (BIDC's)

(Data centers are usually State government agencies, universities and libraries that head up a network of affiliate centers. Below are listed the SDC and BIDC lead agency contacts. All States except Alaska have SDC's. Asterisks (*) identify States that also have BIDC's. In some States, one agency serves as the lead for both the SDC and the BIDC; the BIDC is listed separately where there is a separate agency serving as the lead.)

Alabama—Annette Walters, University of Alabama.....205–348–6191
*Arizona—Betty Jefferies, Department of Security.....602–542–5984
Arkansas—Sarah Breshears, University of Arkansas at Little Rock.....501–569–8530
California—Linda Gage, Department of Finance.....916–322–4651
Colorado—Rebecca Picaso, Department of Local Affairs.....303–866–2156
Connecticut—Bill Kraynak, Office of Policy & Management.....203–566–8285
*Delaware—Staff Development Office.....302–739–4271
District of Columbia—Gan Ahuja, Mayor's Office of Planning.....202–727–6533
*Florida—Valerie Jugger, State Data Center.....904–487–2814
BIDC—Nick Leslie, Department of Commerce.....904–487–2971
Georgia—Marty Sik, Office of Planning & Budget.....404–656–0911
Guam—Art De Oro, Department of Commerce.....671–646–5841
Hawaii—Jan Nakamoto, Department of Business, Economic Development & Tourism.....808–586–2493
Idaho—Alan Porter, Department of Commerce.....208–334–2470
Illinois—Suzanne Ebetsch, Bureau of the Budget.....217–782–1381
*Indiana—Laurence Hathaway, State Library.....317–232–3733
BIDC—Carol Rogers, Business Research Center.....317–274–2205
Iowa—Beth Henning, State Library.....515–281–4350
Kansas—Marc Galbraith, State Library.....913–296–3296
*Kentucky—Ron Crouch, Center for Urban & Economic Research.....502–852–7990
Louisiana—Karen Paterson, Office of Planning & Budget.....504–342–7410
Maine—Jean Martin, Department of Labor.....207–287–2271
Maryland—Robert Dadd/Jane Traynham, Department of State Planning.....410–225–4450
*Massachusetts—Valerie Conti, University of Massachusetts.....413–545–3460
Michigan—Eric Swanson, Department of Management & Budget.....517–373–7910
*Minnesota—David Birkholz, State Demographer's Office.....612–297–2557
BIDC—David Rademacher, State Demographer's Office.....612–297–3255
*Mississippi—Rachael McNeely University of Mississippi.....601–232–7288
BIDC—Bill Rigby, Division of Research & Information Systems.....601–359–2674

*Missouri—Kate Graf, State Library.....314–751–1823
BIDC—Terry Maynard, Small Business Development Centers.....314–882–0344
*Montana—Patricia Roberts, Department of Commerce.....406–444–2896
Nebraska—Jerome Deichert, University of Nebraska-Omaha.....402–595–2311
Nevada—Laura Witschi, State Library.....702–687–8327
New Hampshire—Thomas J. Duffy, Office of State Planning.....603–271–2155
*New Jersey—Connie O. Hughes, Department of Labor.....609–984–2593
*New Mexico—Kevin Kargacin, University of New Mexico.....505–277–6626
BIDC—Bobby Leitch, University of Mexico.....505–277–2216
*New York—Staff, Department of Economic Development.....518–474–1141
*North Carolina—Staff, State Library.....919–733–3270
North Dakota—Richard Rathge, North Dakota State University.....701–231–8621
Northern Mariana Islands—Juan Borja, Department of Commerce & Labor.....670–322–0874
*Ohio—Barry Bennett, Department of Development.....614–466–2115
*Oklahoma—Jeff Wallace, Department of Commerce.....405–841–5184
Oregon—George Hough, Portland State University.....503–725–5159
*Pennsylvania—Diane Shoop, Pennsylvania State University at Harrisburg.....717–948–6336
Puerto Rico—Irmgard Gonzalez Segarra, Planning Board.....809–728–4430
Rhode Island—Paul Egan, Department of Administration.....401–277–6493
South Carolina—Mike MacFarlane, Budget & Control Board.....803–734–3780
South Dakota—DeVee Dykstra, University of South Dakota.....605–677–5287
Tennessee—Charles Brown, State Planning Office.....615–741–1676
Texas—Steve Murdock, Texas A&M University.....409–845–5115
*Utah—Brenda Weaver, Office of Planning & Budget.....801–538–1036
Vermont—Sybil McShane, Department of Libraries.....802–828–3261
Virgin Islands—Frank Mills, University of the Virgin Islands.....809–776–9200
*Virginia—Dan Jones, Virginia Employment Commission.....804–786–8308
*Washington—David Lamphere, Office of Financial Management.....206–586–2504
*West Virginia—Mary C. Harless, Office of Community & Industrial Development.....304–558–4010
BIDC—Randy Childs, Center for Economic Research.....304–293–7832
*Wisconsin—Robert Naylor, Department of Administration.....608–266–1927
BIDC—Michael Knight, University of Wisconsin-Madison.....608–265–3044
Wyoming—Wenlin Liu, Department of Administration & Fiscal Control.....307–777–7504

National census information centers

(National Census Information Centers, in partnership with the Census Bureau, coordinate information networks that disseminate census data on the Black, Hispanic, Asian and Pacific islander, and American Indian/Alaska Native populations)

Asian American Health Forum, Inc. San Francisco—Clarissa Tom.....415–541–0866
Indian Net Information Center Arkadelphia, AR—George Baldwin.....501–230–5294
National Council of La Raza Washington, DC—Sonia Perez.....202–289–1380
National Urban League, Washington, DC—Billy Tidwell.....202–898–1604
Southwest Voter Research Institute, San Antonio, Texas—Robert Brischetto.....210–222–8014

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F: 809–754–3478

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federal register

Tuesday
November 14, 1995

Part III

Department of Housing and Urban Development

24 CFR Parts 950 and 990
Public and Indian Housing; Performance Funding System: Unit Months Available; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 950 and 990

[Docket No. FR–3747–F–02]

RIN 2577–AB49

Performance Funding System: Unit Months Available

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: The Department is revising the Performance Funding System to permit payment of operating subsidies for scattered-site units as they become occupied.

EFFECTIVE DATE: December 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Comerford, Director, Financial Management Division, Office of Management Operations, Public and Indian Housing, Room 4212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1872; or with respect to the Indian Housing programs, Ms. Joann A. Teiken, Financial Management Specialist, Office of Native American Programs, Public and Indian Housing, Room B–133, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2980. Hearing or speech impaired individuals may call HUD's TDD number, (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On May 9, 1995 (60 FR 24597), the Department published a proposed rule which would revise the definition of unit months available (§§ 950.102 and 990.102) and provide an explanation of the alternate method for calculating unit months available upon acquisition of units in a scattered-site project (§§ 950.705 and 990.104(b)). The change in procedure would be applicable to scattered-site developments acquired by Indian Housing Authorities.

Only five public comments were received. All supported the Department's proposed rule. However, one commenter requested a clarification of the regulatory reference to amending the Development Cost Budget to reflect units occupied in the previous six months. The commenter asked: "Does the PHA claim the unit months available through an amendment every six months until all units are occupied, do we project the occupancy when the annual budget is proposed or can this be a year-end adjustment item?"

The Department will not permit revisions to the Department Cost Budget or to the calculation of operating subsidy based on projections. The regulations state that the development budget revision will reflect the number of units that were occupied and that subsidy shall be revised to include units that are actually occupied. The reference to previous six months in the regulations is intended to ensure that revisions are not processed more often than once every six months. The rule does not require housing authorities to request these revisions and the Department would certainly allow housing agencies to submit a revision that reflects activity for the previous twelve months at the end of the year.

Findings and Certifications

Environmental Impact

The subject matter of this final rule is categorically excluded from HUD's environmental clearance procedures under 24 CFR 50.20(k). It relates to internal administrative procedures whose content does not constitute a development decision or affect the physical condition of project areas or building sites.

Executive Order 12866

The Office of Management and Budget reviewed this final rule under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of General Counsel, room 10276, Department and Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this final rule does not have a significant economic impact on substantial number of small entities. The final rule will recognize that homes that are part of scattered-site developments become ready for occupancy at varying times, and removes a potential penalty to housing authorities who would otherwise have to wait for all units in a scattered-site development to be occupied before they can receive subsidy.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this final rule would not have federalism implications and, thus, are not subject to review under the Order. The final rule refines an established formula under which HUD calculates operating subsidies for low-income housing developments, but contains no requirement for explicit action by local officials and does not interfere with State or local governmental functions.

Executive Order 12606

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

The Catalog of Federal Domestic Assistance number is 14.850.

List of Subjects

24 CFR Port 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, in title 24 of the Code of Federal Regulations, parts 950 and 990 are amended, as follows:

PART 950—INDIAN HOUSING PROGRAMS

1. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b), 1437aa–1437ee, and 3535(d).

2. Section 950.102 is amended by revising the definition of "*Unit months available*" to read as follows:

§ 950.102 Definitions.

* * * * *

Unit months available. Units multiplied by the number of months the project units are available for occupancy during a given IHA fiscal year. See also § 950.705(b).

* * * * *

3. The existing text in § 950.705 is redesignated as paragraph (a), and a new paragraph (b) is added, to read as follows:

§ 950.705 Determination of amount of operating subsidy under PFS.

* * * * *

(b) For purposes of this part, a unit is considered available for occupancy from the date on which the End of Initial Operating Period (EIOP) is established for the project with which it is associated until the time it is approved by HUD for deprogramming and is vacated or is approved for non-dwelling use, except that, on or after July 1, 1991, a unit shall not be considered available for occupancy in any IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined to be nonviable. In the case of an IHA development involving the acquisition of scattered site housing, the IHA may submit, and HUD shall review and can approve, a revised Development Cost Budget reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

4. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

5. Section 990.102 is amended by revising the definition of "*Unit Months Available*", to read as follows:

§ 990.102 Definitions.

* * * * *

Unit months available. Units multiplied by the number of months the project units are available for occupancy during a given PHA fiscal year. See also § 990.104(b).

* * * * *

6. In § 990.104, paragraph (b) is revised, to read as follows:

§ 990.104 Determination of amount of operating subsidy under PFS.

* * * * *

(b) For purposes of this part, a unit is considered available for occupancy from the date on which the End of Initial Operating Period (EIOP) is established for the project with which it is associated until the time it is approved by HUD for deprogramming and is vacated or is approved for non-dwelling use, except that, on or after July 1, 1991, a unit shall not be considered available for occupancy in any PHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined to be nonviable. In the case of a PHA development involving the acquisition of scattered site housing, the PHA may submit, and HUD shall review and can approve, a revised Development Cost Budget reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

Dated: August 30, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–28033 Filed 11–13–95; 8:45 am]

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federal register

Tuesday
November 14, 1995

Part IV

Environmental Protection Agency

Resource Conservation and Recovery Act
OUST Docket: Relocation; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5330–4]

Resource Conservation and Recovery Act Oust Docket: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and of closing of OUST Docket during the move.

SUMMARY: The Office of Underground Storage Tanks (OUST) Docket will move from M2616, 401 M Street SW., Washington, DC to Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The OUST Docket will be closed from November 14, 1995 through November 24, 1995. Closing the OUST Docket during the move will facilitate the moving of the Docket's collection and ensure the integrity of the regulatory dockets. The move will allow the OUST Docket to provide improved services to its patrons.

FOR FURTHER INFORMATION CONTACT:

OUST Docket (5305W), 401 M Street SW., Washington, DC 20460, (202/260–9720). Beginning November 27, the phone number will be 703/603–9231.

Dated: November 6, 1995.

Lisa Lund,

Acting Director, Office of Underground Storage Tanks.

[FR Doc. 95–28064 Filed 11–13–95; 8:45 am]

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federal register

Tuesday
November 14, 1995

Part V

The President

Proclamation 6849—Thanksgiving Day, 1995

Federal Register
Vol. 60, No. 219
Tuesday, November 14, 1995

Presidential Documents

Title 3—

The President

Proclamation 6849 of November 9, 1995

Thanksgiving Day, 1995

By the President of the United States of America

A Proclamation

In 1621, Massachusetts Bay Governor William Bradford invited members of the neighboring Wampanoag tribe to join the Pilgrims as they celebrated their first harvest in a new land. This 3-day festival brought people together to delight in the richness of the earth and to give praise for their new friendships and progress. More than 300 years later, the tradition inspired by that gathering continues on Thanksgiving Day across America—a holiday that unites citizens from every culture, race, and background in common thanks for the gifts we receive from God.

As we pause to reflect on the events of the past year, we recognize anew our Nation's many and wonderful blessings. We are deeply grateful for the abundance that keeps America strong and prosperous; for our freedoms and the freedom spreading to people all over the world; for the new hope of peace in regions where people have suffered much but are working hard toward reconciliation; for the 50 years of international cooperation that have followed the end of World War II; and especially for the generosity and love that united our Nation after the tragedy in Oklahoma City. Let us open our hearts to the grace that makes all good things possible and acknowledge God's care for our world.

Let us each take time to offer thanks for the bounty of our own lives and for the relatives and friends that gather with us to share food and companionship on this special day. We give praise for the relationships that sustain us—in our families, churches, schools, and communities. We voice our appreciation for the satisfaction of work and the joys of leisure, and, most of all, we give thanks for the children that enrich our lives and remind us daily that we are the stewards of the earth and all its possibilities.

This cherished season also calls us to look forward to the challenges that lie before us as individuals and as a country. With God's help, we can shoulder our responsibilities so that future generations will inherit the wealth of opportunities we now enjoy. In everything we do, we must plan for the Thanksgivings to come and continue our efforts to build an America where everyone has a place at the table and a fair share in our Nation's harvest.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 23, 1995, as a National Day of Thanksgiving. I encourage all the people of the United States to assemble in their homes, places of worship, or community centers to share the spirit of goodwill and prayer; to express heartfelt gratitude for the blessings of life; and to reach out in friendship to our brothers and sisters in the larger family of mankind.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–28282
Filed 11–13–95; 8:48 am]
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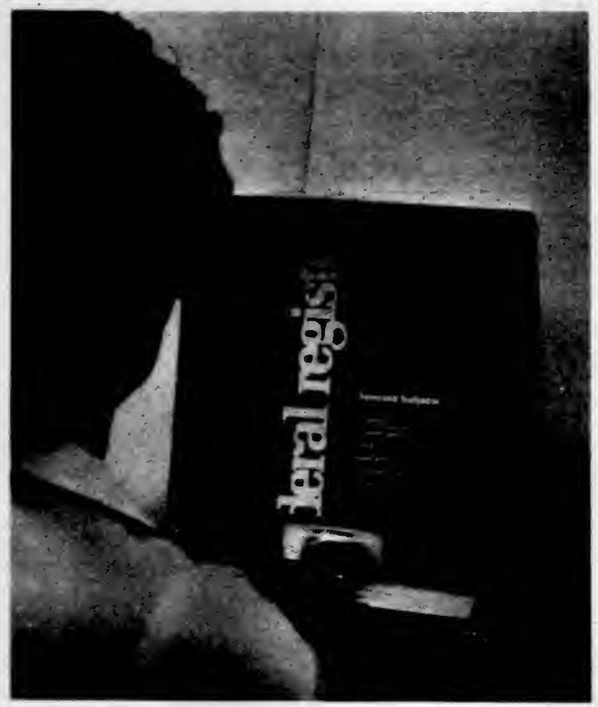
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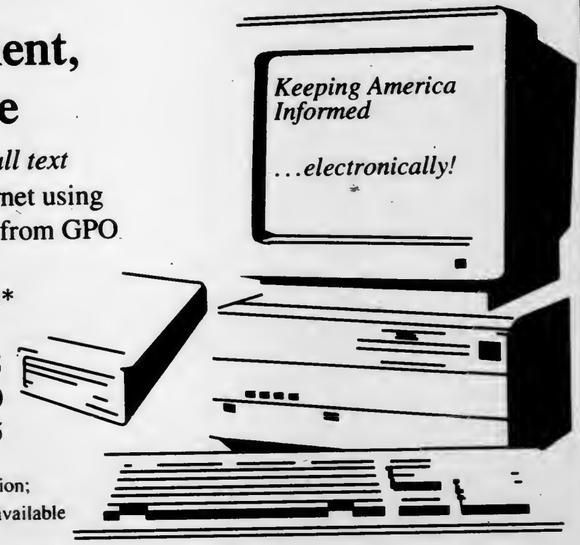
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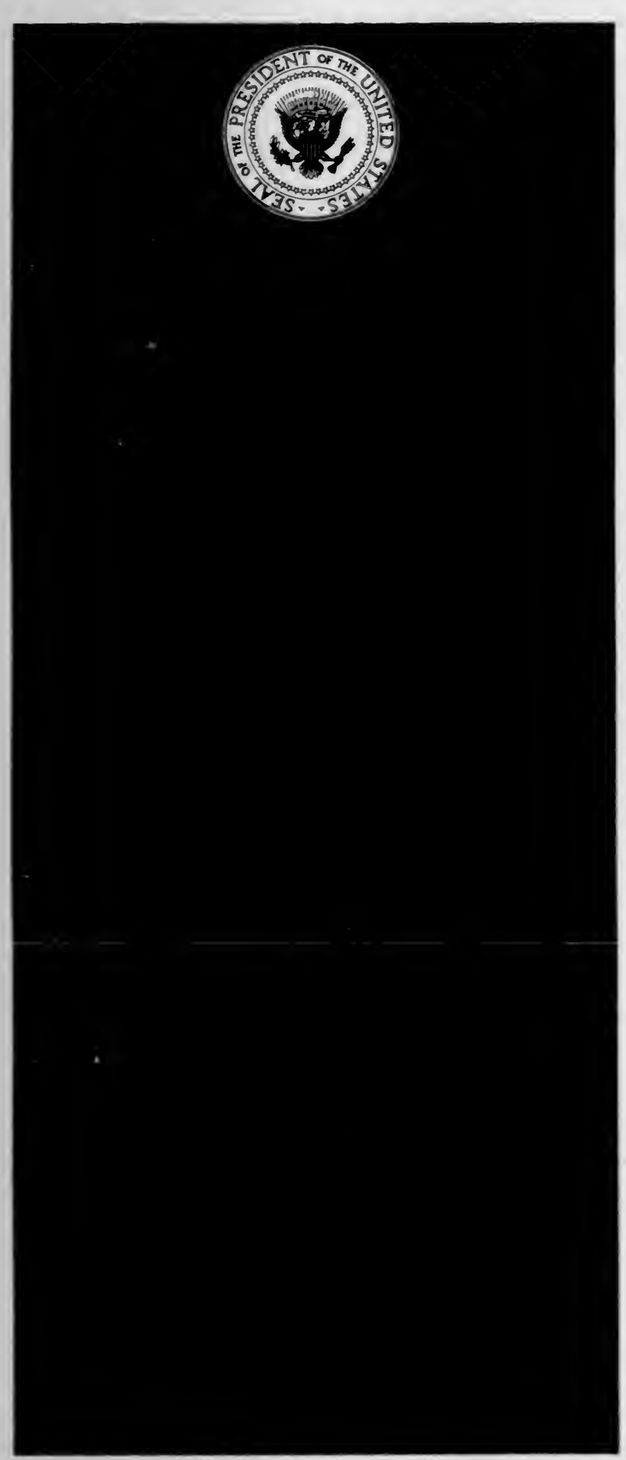
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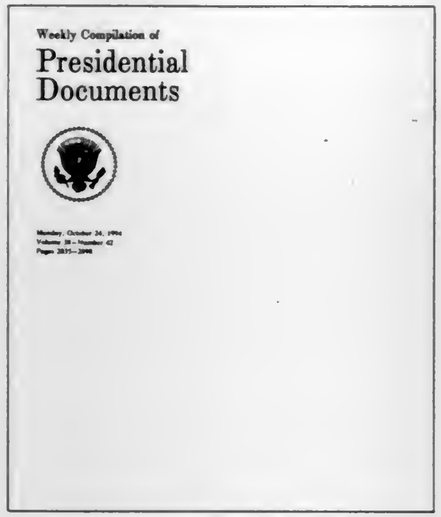
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Wednesday
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DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 110F; AG Order No. 1997–95]

RIN 1125–AA11

Executive Office for Immigration Review; Board of Immigration Appeals Adjudication Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulation on the general authorities of the Board of Immigration Appeals (Board) to expand the circumstances under which the Chairman of the Board may designate the Chief Attorney Examiner of the Executive Office for Immigration Review (EOIR) as an Alternate Board Member. This final rule also changes the Board's procedure for adjudicating certain types of motions, specifically, unopposed motions and motions to withdraw an appeal. This final rule is necessary to ensure the effective and efficient operation of the Board.

EFFECTIVE DATE: This final rule is effective November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Chief Attorney Examiner presently serves as an Alternate Board Member in instances where a Board Member or Members are absent or unavailable and his participation is deemed necessary by the Chairman. This rule will expand the circumstances under which the Chairman may designate the Chief Attorney Examiner as an Alternate Board Member by also enabling the Chairman to do so for good cause. This change will increase the Board's flexibility and efficiency.

Additionally, this rule changes the procedure for adjudicating certain types of motions, specifically, unopposed motions and motions to withdraw an appeal. Presently, the Chairman may divide the Board into three-member panels and each panel is empowered to review cases by majority vote. A majority of the number of Board Members authorized to constitute a panel constitutes a quorum for such panel. This rule will allow a single Board Member or the Chief Attorney Examiner to adjudicate both motions that are unopposed by the non-moving party and motions that request withdrawal of an appeal pending before the Board. Motions that are unopposed by the non-moving party and motions to withdraw an appeal do not present a case or controversy requiring review by a three-member panel. Permitting such motions to be adjudicated by a single Board Member or the Chief Attorney Examiner will promote the effectiveness and efficiency of the Board's adjudication process while maintaining appropriate consideration of every motion filed with the Board.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because this rule relates to rules of agency procedure and practice.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule merits the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

For the reasons set forth in the preamble, 8 CFR part 3 is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart A—Board of Immigration Appeals

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1 is amended by adding a new sentence after the 11th sentence in paragraph (a)(1) and revising the 4th sentence in paragraph (a)(2) to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* * * * In the case of an unopposed motion or a motion to withdraw an appeal pending before the Board, a single Board Member or the Chief Attorney Examiner may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of such motions before it. * * *

(2) *Chairman.* * * * The Chief Attorney Examiner shall serve as an Alternate Board Member when, in the absence or unavailability of a Board Member or Members or for other good cause, his participation is deemed necessary by the Chairman. * * *

* * * * *

Dated: November 7, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–28128 Filed 11–14–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 95–037–2]

Pork and Pork Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule allows fresh, chilled, and frozen pork and pork products from the Mexican State of Chihuahua to transit the United States,

under certain conditions, for export to another country. Previously, we allowed such pork and pork products only from the Mexican State of Sonora to transit the United States for export. Otherwise, fresh, chilled, or frozen pork and pork products are prohibited movement into the United States from Mexico because of hog cholera in Mexico. Chihuahua, like Sonora, appears to be a low risk area for hog cholera, and we believe that fresh, chilled, and frozen pork and pork products from Chihuahua can transit the United States with minimal risk of introducing hog cholera. This action will facilitate trade.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. Section 94.9 of the regulations prohibits the importation of pork and pork products into the United States from countries where hog cholera exists, unless the pork or pork products have been treated in one of several ways, all of which involve heating or curing and drying.

Because hog cholera exists in Mexico, pork and pork products from Mexico must meet the requirements of § 94.9 to be imported into the United States. However, under § 94.15, pork and pork products that are not eligible for entry into the United States in accordance with the regulations may transit the United States for immediate export if certain conditions are met. Prior to the effective date of this final rule, only pork and pork products from Sonora, Mexico, were eligible to transit the United States in accordance with § 94.15.

On August 21, 1995, we published in the **Federal Register** (60 FR 43409–43411, Docket No. 95–037–1) a proposal to amend the regulations by allowing pork and pork products from the Mexican State of Chihuahua to transit the United States for export under the same conditions as pork and pork products from Sonora.

These conditions were set forth as follows:

1. Any person wishing to transport pork or pork products from Chihuahua through the United States for export must first obtain a permit for importation from the Animal and Plant Health Inspection Service (APHIS).
2. The pork or pork products must be sealed in Chihuahua in a leakproof container, with a serially numbered seal approved by APHIS. The container must remain sealed at all times while transiting the United States.
3. The person moving the pork or pork products through the United States must inform the APHIS officer at the U.S. port of arrival, in writing, of the following information before the pork or pork products arrive in the United States: The times and dates that the pork or pork products are expected at the port of arrival in the United States; the time schedule and route of the shipments through the United States; and the permit number and serial numbers of the seals on the containers.
4. The pork or pork products must transit the United States under Customs bond.
5. The pork or pork products must be exported from the United States within the time period specified on the permit.

Any pork or pork products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

We solicited comments concerning our proposal for 60 days ending October 20, 1995. We received one comment by that date. The comment was from a domestic pork industry group. The commenter commended the efforts of Mexican State pork producers in their hog cholera eradication efforts, stated support for the principles of regionalization outlined in the proposed rule, reemphasized the importance of surveillance and control measures to minimize the risk of transmitting hog cholera to the United States swine population, and discussed a related trade issue. The commenter did not recommend any clarification or changes to the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule, without change. Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions no longer found to be warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule allows fresh, chilled, and frozen pork and pork products from the Mexican State of Chihuahua to transit the United States, under certain conditions, for export to another country. It has been determined that Chihuahua is a low risk area for hog cholera and has the veterinary infrastructure necessary to monitor for the presence of this disease.

Because Interstate Commerce Commission regulations forbid Mexican carriers from hauling pork and pork products beyond the border zone, small specialized U.S. transport companies and brokerage houses will benefit from this rule. The additional economic activity from such trucking activity is estimated at $195,865 per year, assuming the trucks make 208 total trips per year (the current level of shipments from the Mexican State of Sonora through the United States).

There appears to be little risk of hog cholera exposure from Mexican pork shipments from Chihuahua through the United States. Assuming that proper risk management techniques continue to be applied in Mexico, and that accident and exposure risk is minimized by proper handling during transport, the risk of exposure to hog cholera from pork in transit from Mexico through the United States is minimal. At a rate of 208 trips per year, an accident that could lead to an outbreak of hog cholera could be expected once in 4,109,139 years. Even at a rate of 1,000 trips per year, one accident capable of resulting in a United States outbreak of hog cholera could be expected once every 854,701 years.

Both the United States and Mexico are net pork importers. United States pork imports represent approximately 2–3 percent of production, and Mexican imports represent 7–8 percent of production. With favorable income growth expected in Mexico due to trade liberalization, meat imports, including pork products, are expected to grow and limit Mexican pork exports. However, facilitating export opportunities for the Mexican pork industry may provide incentives for continued efforts to eradicate hog cholera from infected Mexican States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.15 [Amended]

2. In § 94.15, paragraph (b), the introductory text and paragraph (b)(2) are amended by adding the words "Chihuahua or" immediately before the word "Sonora".

Done in Washington, DC, this 2nd day of November 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28127 Filed 11–14–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 10, 11, and 18

Office of the Secretary

31 CFR Part 1

[Docket No. 95–27]

RIN 1557–AA87

Organization and Functions, Availability and Release of Information, Contracting Outreach Program; Municipal Securities Dealers; Securities Exchange Act Disclosure Rules; Disclosure of Financial and Other Information by National Banks; Disclosure of Records

AGENCY: Office of the Comptroller of the Currency and Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its rules that describe the agency's organization and functions and govern the availability and release of information in order to facilitate the OCC's interaction with the banking industry and the public. The OCC is also making technical and clarifying amendments to its rules governing municipal securities dealers, disclosures under the Securities Exchange Act, and the disclosure of financial and other information by national banks. Finally, under authority delegated by the Department of the Treasury, the OCC is making minor changes to certain Treasury rules regarding disclosure of records. This final rule is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090 (except with respect to 12 CFR part 4, subpart C); Lester N. Scall, Senior Attorney, Administrative and Internal Law Division, (202) 874–4460, or Daniel L. Cooke, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090 (with respect to 12 CFR part 4, subpart C).

SUPPLEMENTARY INFORMATION:

The Proposal

On March 27, 1995, the OCC published a notice of proposed rulemaking (60 FR 15705) to revise 12 CFR part 4—the OCC's regulations that describe the agency's organization and functions, govern the availability and release of information, and implement the outreach program for potential OCC contractors.

The proposal sought to further the goals of the Regulation Review Program by updating, clarifying, reorganizing, and streamlining the regulations where appropriate to promote better and more efficient interaction between the OCC and the banking industry and the public at large. The proposal also made technical and clarifying amendments to 12 CFR part 10 (municipal securities dealers), part 11 (Securities Exchange Act disclosure rules), part 18 (disclosure of financial and other information by national banks), and 31 CFR part 1 (disclosure of records).

The Final Rule

The final rule implements the proposal with a few additional changes, which are made generally in response to comments received. The OCC received a total of five comment letters: two from banks, one from a bank trade organization, one from a bank consulting firm, and one from a community group. The community group directed its comments to several aspects of the OCC's corporate application process set forth in 12 CFR part 5. That same community group had previously submitted substantially similar comments on the notice of proposed rulemaking proposal to revise part 5 (59 FR 61304, Nov. 29, 1994). Because many of the issues that the community group's comments raise relate to part 5, the OCC is considering them in the context of the part 5 rulemaking. The remaining four comment letters focused exclusively on proposed subparts A, B, and C of 12 CFR part 4, which, respectively, describe the agency's organization and functions, govern the disclosure of information under the Freedom of Information Act (FOIA), and govern the release of non-public OCC information.

The following sections summarize the amendments to part 4 and briefly describe the changes made to parts 10, 11, and 18, and 31 CFR part 1.

Part 4, Subpart A—Organization and Functions

Purpose (§ 4.1).

Proposed § 4.1 explained the purpose of subpart A—namely, to describe the OCC's organization and functions and provide the OCC's principal addresses. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Office of the Comptroller of the Currency (§ 4.2).

Proposed § 4.2 described the functions of the OCC. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Comptroller of the Currency (§ 4.3).

Proposed § 4.3 described the responsibilities of the Comptroller of the Currency. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Neither the proposal nor the final rule contains the detailed job descriptions of OCC positions subordinate to the Comptroller of the Currency that formerly appeared in part 4. As explained in the preamble of the proposal, the OCC will continue to publish current and accurate descriptions of the functions of its major departments and divisions in the OCC's annual report to Congress. The annual report, required under 12 U.S.C. 14, consists of the four issues of the *Quarterly Journal* published each year; the first issue contains the Comptroller's Report of Operations, which describes in detail the functions of the major departments and divisions of the OCC. Persons may also contact the OCC's Communications Division for information concerning the OCC's organizational structure.

Washington Office (§ 4.4).

Proposed § 4.4 described the functions and responsibilities of the OCC's Washington office, and provided its address. The OCC received one comment on this section, suggesting that the regulation be revised to clarify which national banks are directly supervised by the Washington office and why. This commenter and other readers are referred to the Comptroller's Report of Operations found in the *Quarterly Journal*, which discusses national banks supervised by the Washington office (through the Multinational Banking Department and the Special Supervision Division) to the extent that the information is not confidential. The *Quarterly Journal* provides more current information than the OCC's codified regulations. Accordingly, the OCC adopts this section as proposed.

District and Field Offices (§ 4.5).

Proposed § 4.5 described the functions and responsibilities of the OCC's district and field offices, and provided the office address and geographical composition of each OCC district. The OCC received no comments on this section, which is adopted as proposed.

Part 4, Subpart B—Availability of Information Under the Freedom of Information Act.

Purpose and scope (§ 4.11).

Proposed § 4.11 explained the purpose of subpart B—namely, to set forth the standards, policies, and procedures that the OCC applies in administering the FOIA to facilitate the OCC's interaction with the banking industry and the public. The proposal also delineated the scope of subpart B by briefly describing the sections in the subpart. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Information available under the FOIA (§ 4.12).

Proposed § 4.12 explained that OCC records are available to the public in accordance with the FOIA, except records that the FOIA exempts from disclosure. The proposal set forth the nine FOIA exemptions. Additionally, the proposal incorporated a "special exclusion" provision found in the FOIA that authorizes an agency to treat records as excluded from FOIA's coverage in certain circumstances where disclosure of the existence of the records may interfere with criminal law enforcement proceedings. One commenter expressed concerns about the propriety of the FOIA special exclusion, and suggested that the OCC adopt a means of nondisclosure that does not involve a misrepresentation.

To date, the OCC has not relied on the FOIA special exclusion. Under current OCC practice, whenever the OCC receives a request for records in circumstances where disclosure of the existence of those types of records may interfere with criminal law enforcement proceedings, the OCC indicates that it will neither confirm nor deny the existence of those records, regardless of whether those records exist. Because the OCC believes that its current practice is sufficient to prevent the disclosure of the existence of these types of records, the OCC has determined that it is not necessary to include the FOIA special exclusion in its regulations, and has omitted the proposed language on the special exclusion.

The proposal also stated that, on a case-by-case basis, even if a record is exempt from disclosure under the FOIA, the OCC may decide in its discretion not to apply the exemption to the requested record. One commenter suggested that the OCC add to this discretionary disclosure provision a cross-reference to proposed section 4.16 (predisclosure notice for confidential commercial information) to clarify that the OCC will not override the predisclosure notice requirements of that section. The OCC has added appropriate language in response to this comment.

Publication in the Federal Register (§ 4.13).

Proposed § 4.13 clarified that the OCC publishes in the **Federal Register** proposed and final rules, and certain notices and policy statements of concern to the general public. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Public inspection and copying (§ 4.14).

Proposed § 4.14 clarified that the OCC makes certain information readily available from the Communications Division for public inspection and copying, including: (1) Final orders, agreements, or other enforceable documents issued in the adjudication of an OCC enforcement case; (2) final opinions issued in the adjudication of an OCC enforcement case; (3) statements of general policy or interpretations of general applicability not published in the **Federal Register**; (4) administrative staff manuals or instructions to staff that may affect a member of the public; (5) a current index identifying each document described in items (1)–(4) that the OCC issued, adopted, or promulgated after July 4, 1967 (a date set under 5 U.S.C. 552(a)(2)); (6) a list of OCC publications available; and (7) a list of forms available from the OCC, and specific forms and instructions.

The OCC received no comments on this section. However, the OCC is clarifying item (7) with a footnote indicating that some forms that national banks use, such as the Consolidated Report of Condition and Income (FFIEC 031–034), may not be available from the OCC. The OCC will provide information on where persons may obtain these forms and instructions upon request. Moreover, for the sake of completeness, the OCC is adding three items to the list of records available from the Communications Division under this section, numbering them as follows: (8) public Community Reinvestment Act performance evaluations; (9) public securities-related filings required under 12 CFR part 11 or 16; and (10) public comment letters regarding a proposed rule.

Finally, the OCC is adding item (11): public files (as defined at 12 CFR 5.9) with respect to pending applications described in part 5 of its regulations. Under the proposed rule (and the former rule), public files were available only by specific written request under the procedures set forth in proposed § 4.15 (former § 4.17a). The OCC has added item (11) to § 4.14 to indicate that public files will be readily available for public inspection and copying from Licensing Manager at the appropriate district office at the address listed in § 4.5(a).

Specific requests for records (§ 4.15).

Proposed § 4.15 clarified that any OCC record not exempt from disclosure is available to any person upon specific request. The proposal set forth the standards, policies, and procedures that apply to a request for records or an administrative appeal of a denial of a request for records. The OCC received no comments on this section. However, the OCC has decided to make public files with respect to corporate applications available under the less formal provisions of § 4.14 rather than this section (see discussion of § 4.14, aboye). Accordingly, the OCC has removed references to the availability of public files from this section.

Predisclosure notice for confidential commercial information (§ 4.16).

Proposed § 4.16 explained the predisclosure notice procedures that the OCC follows, in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235), when the OCC receives a request for records that arguably are exempt from disclosure under exemption 4 of the FOIA as confidential commercial information. 5 U.S.C. 552(b)(4). *See* proposed § 4.12(b)(4). One commenter suggested that the OCC extend the predisclosure notice requirements of this section to requests for disclosure of information for which the submitter has requested confidentiality pursuant to FOIA exemption 6 (unwarranted invasion of personal privacy) or expects confidentiality under FOIA exemption 8 (bank examination reports and related records). The OCC is not aware of, and the commenter did not identify, any problems that warrant extending these specific procedures beyond the scope of Executive Order 12600. Accordingly, this section is adopted as proposed with minor stylistic edits.

It is important to emphasize the OCC's continuing commitment to maintaining the confidentiality of bank-related information that is protected under FOIA exemption 4, 6, or 8. The OCC does not disclose under subpart B information that falls under those FOIA exemptions. Rather, the OCC releases such non-public information only under the procedures set forth in subpart C. The discussion of subpart C below addresses the OCC's notice procedures regarding requests for non-public information.

Fees for services (§ 4.17).

The proposal set forth the fees that the OCC assesses for the services it renders in providing information under the FOIA. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Part 4, Subpart C—Release of Non-public OCC Information

This subpart contains the OCC's procedures for the release of non-public OCC information and states the restrictions on the dissemination of non-public OCC information.[1] The OCC received four comments that addressed subpart C. These comments were generally supportive of the proposal. The section-by-section discussion below summarizes these comments and the changes the OCC has incorporated in the final rule.

Purpose and scope (§ 4.31).

Proposed § 4.31 identified the purposes of subpart C, including the prevention of undue burden on the OCC. One commenter urged that, if one purpose of the rule is to prevent undue burden on the OCC, another purpose of the rule should likewise be to prevent undue burden on the banking industry or the public. The OCC agrees with the commenter that its rules with respect to the release of non-public OCC information should seek to minimize burden to all participants in the process. The final rule reflects this change and includes minor conforming changes as well.

The proposal prescribed the scope of subpart C by specifying the types of litigation to which subpart C applies and the type of information covered by the regulation. The OCC received no comments on the scope of subpart C.

The proposal stated that a request by an agency with authority to investigate violations of criminal law or a request by a Federal agency for use in civil or administrative enforcement proceedings was not governed by subpart C. The final rule modifies the proposal by stating that requests for non-public OCC information by the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), government agencies of the United States and foreign governments, state agencies with authority to investigate violations of criminal law, and state bank regulatory agencies are governed solely by § 4.36(c). As described below, § 4.36(c) generally provides that, when not prohibited by law, the Comptroller may make, in the Comptroller's sole discretion, non-public OCC information available to these agencies. The final rule is, therefore, almost identical to the former rule, § 4.18(b), which also gave the Comptroller sole discretion to make non-public OCC information available to certain agencies. The final rule differs from the former provision only in the addition of two categories of agencies: (1) state agencies with authority to investigate violations of criminal law; and (2) state bank regulatory agencies.

Under the final rule, these state agencies, the Board of Governors, the FDIC, and government agencies of the United States and foreign governments need not follow the specific procedures set forth in subpart C when seeking non-public OCC information. The OCC anticipates that these agencies will, however, consult the subpart C procedures for guidance regarding, for example, confidentiality undertakings and the type of information the OCC will need in order to determine whether to release the information requested.

Definitions (§ 4.32).

The proposal provided definitions for the following terms: "compelling need," "complete request," "non-public OCC information," "showing that the information has high relevance," and "testimony." The OCC received three comments on these definitions. Two commenters urged the OCC to make the standards for the release of information more stringent by changing the proposed rule's definitions of "compelling need" and "showing that the information has high relevance." One commenter urged the OCC to make the standards less stringent by redefining these terms.

The OCC has determined that the standards, as they were proposed, best reflect the current state of the law and achieve the OCC's objective of accommodating the interests of requesters subject to the need to ensure open communications in the bank examination and supervision process by preserving appropriate confidentiality. Therefore, the OCC adopts the definitions as they were proposed with a few changes in wording that clarify or streamline the provisions. For example, the definition of "compelling need" is revised to reflect that this standard applies only to requests for testimony and to substitute the word "relevant" for the phrase defining relevance that appeared in the proposal. The final rule uses the term "relevant" in place of the term "highly relevant," but the substance of its definition remains the same.

The proposal did not retain the provision in former § 4.18(b) that stated that examination reports are the property of the OCC. *See* 60 Fed. Reg.

[1] The OCC's authority to prescribe this subpart derives from 5 U.S.C. 301 and 552 and recent judicial interpretations of the bank examination privilege. This authority wes discussed in detail in the proposal. *See* 60 FR 15705, 15708.

15705, 15709. The OCC received no comments on this point but has decided that the statement is useful information that should be retained. Therefore, the statement is incorporated as part of the definition of "non-public OCC information."

Requirements for a request of records or testimony (§ 4.33).

Proposed § 4.33 specified the submissions that requesters must provide to the OCC when seeking non-public OCC information. The OCC received no comments on this section, which the OCC adopts as proposed with minor changes.

Where to submit a request (§ 4.34).

Proposed § 4.34 specified that requests for non-public OCC information, requests for authentication of a record, and notifications regarding the issuance of subpoenas or other compulsory process must be addressed to the OCC's Litigation Division in Washington, DC. The proposal also added a provision that permits a person who is requesting public OCC information and non-public OCC information to submit a combined request for both to the Litigation Division in Washington, DC. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B (FOIA).

The OCC received no comments on this section. For clarity, the OCC adds to the final rule a provision detailing where certain government agencies should submit a request.

Consideration of requests (§ 4.35).

Proposed § 4.35 stated that the decision to release non-public OCC information is at the sole discretion of the Comptroller and listed the issues and factors that the OCC will consider in acting on requests for non-public OCC information. The proposal also stated that the OCC may require a requester to submit additional information, or seek information from other sources, and may respond to certain requests by authorizing others in possession of the requested information to release the information.

One commenter urged the OCC to modify the proposal to indicate that, when a third-party litigant seeks non-public OCC information and when other evidence reasonably suited that litigant's need is available from another source, a strong presumption exists in favor of finding that the public interest in maintaining the confidentiality of the information outweighs the need for it. The OCC agrees with this concern, but believes that the availability from other sources of information reasonably suited to the requester's need is already adequately addressed in § 4.35(a)(2)(iii) as a basis for denial of a request.

Three commenters urged the OCC to add provisions that would ensure that a national bank receives notice whenever a requester seeks non-public OCC information about that bank so that the bank may have an opportunity to comment. One of those commenters urged the OCC to use the procedures for publicly available information as proposed at § 4.16(b). Another commenter urged the OCC to require any third-party litigant that requests non-public OCC information to notify, as a prerequisite for OCC consideration of the request, all other parties to the litigation and the bank that is the subject of the information sought.

The OCC recognizes that a national bank has a strong interest in the release of non-public OCC information that relates to the bank and that the bank is most often in the best position to explain why the information falls within the definition of non-public OCC information. For these reasons the OCC adds a new provision to the final rule, § 4.35(a)(6), that states that, following receipt of a request for non-public OCC information, the OCC generally notifies the national bank that is the subject of the request, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue. The OCC is not here applying subpart B's submitter notification procedures, § 4.16(b), because the scope of the OCC's release of information under subpart C is more limited than its release of information under subpart B. Information disclosed under subpart B enters the public domain and therefore loses its confidentiality. Information released under subpart C remains the property of the OCC and may be provided only to limited categories of requesters or upon the prior approval of the OCC. It thus retains its confidential character. The more detailed procedures set forth in subpart B are, accordingly, unnecessary.

The final rule adds to the statement that release of non-public OCC information is at the sole discretion of the Comptroller an explicit statement clarifying that OCC action on a request for non-public OCC information exhausts administrative remedies for discovery of the information. The final rule also includes several minor changes to the wording of § 4.35.

Persons and entities with access to OCC information; prohibition on dissemination (§ 4.36).

The title to proposed § 4.36 "Parties with access to OCC information; restriction on dissemination" is changed in the final rule by replacing the word "restriction" with "prohibition," and by replacing the word "Parties" with the words "Persons and entities," which better reflect the content of the section.

(a) *OCC employees or former employees.* Proposed § 4.36(a), incorporated and clarified the provisions of former §§ 4.18(a) and 4.19 that prohibited OCC employees and former employees from disseminating non-public OCC information without prior OCC approval. The proposal also stated the OCC's policy of objecting to subpoenas for non-public OCC information, such as employee testimony, when subpoenas are used in lieu of the request procedures of this subpart. The OCC received no comments on § 4.36(a).

The proposal stated that the OCC will attempt to have compulsory process withdrawn and may register appropriate objections when an employee or former employee receives a subpoena. The final rule clarifies that the OCC may intervene in a judicial or administrative proceeding either to have compulsory process withdrawn or to make appropriate objections.

The proposal instructed OCC employees and former employees that they must notify the Director of the OCC's Litigation Division when they receive a subpoena for non-public OCC information. The final rule clarifies that the appropriate District Counsel, or the Director of the Enforcement and Compliance Division as appropriate, handles subpoenas arising out of criminal actions. In all other cases, employees and former employees should notify the Director of the Litigation Division. Because time is usually of the essence in these cases, immediate notification of the appropriate OCC personnel is essential, and the OCC has added these provisions to ensure that notices are directed precisely. The final rule also makes several technical changes.

(b) *Non-OCC employees or entities.* In § 4.36(b), the proposal incorporated and clarified the provisions of former § 4.18 (b) and (c) that prohibited persons who are not current or former OCC employees from disseminating non-public OCC information. Proposed § 4.36(b) did not address situations in which a Federal court has ordered discovery of non-public OCC information. The final rule incorporates an express exception for this situation that permits the subpoenaed person or entity to make the information available according to the Federal court's order if the requester has complied with the request procedures of this subpart.

The final rule adds a requirement that a person or entity served with a subpoena or request to provide non-public OCC information notify the OCC so that the OCC can intervene in judicial proceedings when appropriate. The final rule requires persons and entities to notify the OCC upon receipt of service. In addition, the final rule requires persons and entities requested to disclose non-public OCC information to inform the requester of these rules and, in particular, of the submission requirements. The final rule also requires persons and entities to notify, at the appropriate time, the court or tribunal that issued process of the substance of these rules.

This provision is consistent with the holding of the United States Court of Appeals for the Sixth Circuit in *In re Bankers Trust Company*, 61 F.3rd 465 (6th Cir. 1995). The Sixth Circuit held that the Board of Governors of the Federal Reserve System's (FRB's) regulation that requires a party "to continually decline to disclose information or testimony" following receipt of a subpoena, order, or other judicial process exceeds the FRB's delegated authority. *Id.* at 470.

The OCC's final rule does not require a party to continue to refuse to disclose a document or otherwise supplant a court's jurisdiction over discovery. Rather, as countenanced by the Sixth Circuit in *Bankers Trust*, this rule ensures that the OCC has "the opportunity to intervene to protect any interests, arguments, or concerns" it has in the production of "confidential supervisory information" by requiring that the OCC be given notice of a request and, through the request procedures, by providing the OCC with facts sufficient to respond to process. *Id.* at 470, n. 6.

Proposed § 4.36(b) permitted national banks to disclose non-public OCC information to persons officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor. The OCC requested specific comment on whether "consultants" should be included in the list of bank-connected persons who are eligible to receive OCC examination reports without first obtaining the express approval of the OCC.

Two commenters addressed § 4.36 and both urged the OCC to include "consultants" in the list of individuals eligible to receive examination reports without prior OCC approval. The commenters noted that many national banks use consultants and that access to examination reports helps a consultant to assist bank management in responding to problems and needs. The commenters asserted that whether to release an exam report to a consultant should fall within the bank's discretion.

To ensure the confidentiality of exam reports released to consultants, one commenter urged the OCC to attach a form confidentiality agreement to each exam report. Another commenter urged the OCC to attach a statement to each exam report that explains the report's confidential nature and the sanctions for disseminating the report.

The OCC agrees that the ability of a national bank to benefit from the services of a consultant will often be maximized if a bank may provide the consultant with an exam report. However, the OCC also has an interest in protecting the confidentiality of the examination process and is concerned that adding "consultants" to the § 4.36(b) list without condition could result in prohibited dissemination of non-public OCC information. Accordingly, the final rule is modified to state that a national bank or holding company or a director, officer, or employee thereof may only release non-public OCC information to a consultant if the consultant: (1) is under a written contract to provide services to the bank; and (2) has a written agreement with the bank in which the consultant (i) states its awareness of, and agreement to abide by, the prohibition on the dissemination of non-public OCC information contained in § 4.36(b)(1) of this subpart, and (ii) agrees not to use the non-public OCC information for any purpose other than as provided under its agreement to provide services to the bank. (Persons not listed in § 4.36(b) may still seek non-public information pursuant to the request procedures in § 4.35.) The final rule also clarifies that the prohibition on dissemination of non-public OCC information that is contained in § 4.36(b)(1) applies to all persons and entities, including consultants, who have access to non-public OCC information under § 4.36(b)(2).

One commenter suggested that a national bank should be permitted to allow exam report access to consultants who are considering accepting an engagement from the bank. The OCC believes that a prospective consultant does not have the type of relationship with the bank that is appropriate to ensure the confidentiality of the non-public OCC information and therefore has not incorporated this suggestion in the final rule.

(c) *Disclosure to government agencies.* Proposed § 4.36(c) incorporated the provisions of former § 4.18(b) that governed the disclosure of non-public OCC information to the Board of Governors, the FDIC, and certain government agencies of the United States and foreign governments. The proposal thereby preserved the OCC's policies and procedures for sharing information with these agencies and did not supersede information sharing agreements. The OCC received no comments on § 4.36(c).

The final rule also preserves the OCC's information sharing policies and procedures. However, the final rule modifies § 4.36(c) to state more accurately that, in addition to requests by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and certain government agencies of the United States and foreign governments, requests by state agencies with authority to investigate violations of criminal law and state bank regulatory agencies are governed solely by § 4.36(c).

The final rule also clarifies that "testimony" is one type of non-public OCC information that the Comptroller may make available to these agencies. Though "testimony" was implicit in the proposal because it is included within the definition of "non-public OCC information," the proposal did not expressly mention the term.

Proposed § 4.36(c) stated that all non-public OCC information made available pursuant to this subpart is OCC property. The final rule modifies this provision by stating expressly that the OCC may condition the use of non-public OCC information made available under this paragraph (disclosure to government agencies) on appropriate confidentiality protections. This provision parallels § 4.37, which applies to all requests for non-public OCC information.

(d) *Intention of OCC not to waive rights.* Proposed § 4.36(d) stated that non-public OCC information does not lose its non-public status when released to a person or entity. The OCC received no comments on this provision, which is adopted as proposed.

Restrictions on dissemination of released information (§ 4.37).

The title to proposed § 4.37 "Limitation of dissemination of released information" is changed in the final rule by replacing the word "Limitation" with "Restrictions," which better reflects the content of the section.

The proposal permitted the OCC to condition release of non-public OCC information on the issuance of a protective order and the sealing of transcripts. The proposal also specified that the OCC may authorize the use of the same records or testimony in another case. The OCC received no comments on this section, and therefore adopts the section as proposed. A model

stipulation and protective order are printed at appendix A to this subpart.

Notification of parties and procedures for sharing and using OCC records in litigation (§ 4.38).

The title to proposed § 4.38 "Procedures for sharing and using OCC records in litigation" is changed in the final rule by adding "Notification of parties," which reflects the content of the section as changed in the final rule.

Proposed § 4.38 required: (1) parties to a case to share released records among litigants; (2) all requesters to retrieve released non-public OCC information from court files; and (3) all parties to destroy non-public OCC information covered by a protective order. The proposal also informed requesters that the OCC will authenticate its documents for use as evidence. The OCC adopts these provisions as proposed.

The OCC adds a provision to the final rule that requires a litigant who submits a request to the OCC for the testimony of an OCC employee or former employee to notify all other parties to the litigation. This provision is necessary to ensure that other parties who wish to depose the same OCC employee or former employee will have opportunity to submit a request for testimony to the OCC prior to the deposition of the employee or former employee, in accordance with § 4.35(b)(3).

Fees for services (§ 4.39).

Proposed § 4.39 set fee schedules that apply when the OCC provides records or authorizes testimony from current or former employees. The OCC received no comments on this section, which is adopted, with minor stylistic changes, as proposed.

Part 4, Subpart D—Contracting Outreach Program

The proposal relocated the OCC's rules regarding the minority-, women-, and individuals with disabilities-owned business contracting outreach program from subpart C to subpart D, and renumbered them. The OCC received no comments on this subpart. Accordingly, subpart D is adopted as proposed.

The program's focus is on outreach as a means to enhance the participation by these businesses in OCC procurements. Except for procurements made pursuant to government-wide special purpose programs, OCC procurements do not employ racial, ethnic, or gender classifications as bases for contract awards. Given its focus on outreach, the OCC does not believe the program is affected by the recent Supreme Court decision in *Adarand Contractors, Inc.* v. *Pena*, 63 U.S.L.W. 4523 (U.S. June 12, 1995). However, this program, as well as the government-wide special purpose programs, will be further reviewed in context of the overall review of all Federal affirmative action programs recently initiated pursuant to the President's direction.

Part 10—Municipal Securities Dealers

The proposal eliminated certain forms and instructions from the OCC's rules regarding municipal securities dealers because it is not necessary to publish them in the regulation. The OCC received no comments on this amendment, which is adopted as proposed.

Part 11—Securities Exchange Act Disclosure Rules

The proposal made technical amendments to the OCC's rules regarding disclosure under various provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78l, 78m, 78n, 78p, and 78w), including updating the reference to the name of the division that receives filings and specifying the division that receives requests for copies of filings. The OCC received no comments on these amendments, which are adopted as proposed.

Part 18—Disclosure of Financial and Other Information by National Banks

The proposal made several technical and conforming amendments to the OCC's rules regarding annual financial disclosures by national banks. The only significant amendment involved conforming the OCC's rules to language adopted in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 187, describing persons subject to administrative enforcement action by the Federal banking agencies. Specifically, section 901(b) of FIRREA amended 12 U.S.C. 1811 *et seq.*, by substituting the term "institution-affiliated party" for the terms "director," "officer," "employee," "agent," and "other person participating in the conduct of the affairs of a bank" (the term "institution-affiliated party" is defined at 12 U.S.C. 1813(u)). The proposal made amendments to the provision that indicates the parties subject to administrative action for violations of part 18, in order to conform that provision to the language introduced in section 901(b) of FIRREA.

The OCC received no comments on these amendments, which are adopted as proposed.

31 CFR Part 1—Disclosure of Records

The proposal made technical amendments to appendix J of subpart A and appendix J of subpart C of part 31 to update regulatory information specific to the OCC. Subpart A contains the Department of the Treasury's FOIA rules, and subpart C contains the Department of the Treasury's Privacy Act rules. The various appendices to subparts A and C contain standardized information about components of the Department of the Treasury, including officials and addresses relevant to the implementation of the FOIA and the Privacy Act. Appendix J of subpart A and appendix J of subpart B, entitled "Office of the Comptroller of the Currency," contain information about the OCC.

The Department of the Treasury, at 31 CFR 1.1(d) and 1.20, has authorized the head of each of its components to substitute the officials designated and change the addresses specified in the appendices corresponding to that component. Pursuant to this grant of authority, the OCC proposed to amend the OCC administrative information in appendix J of subpart A and appendix J of subpart C.

The OCC received no comments on these amendments, which are adopted as proposed with minor stylistic edits.

DERIVATION TABLE FOR 12 CFR PART 4

[This table directs readers to the provisions of the former 12 CFR part 4, if any, on which the revised 12 CFR part 4 is based]

Revised provision	Former provision	Comments
Subpart A:		
§ 4.1	§ 4.1	Significantly modified.
§§ 4.2–4.5	§ 4.1a	Significantly modified.
Subpart B:		
§ 4.11	§ 4.1	Significantly modified.
§ 4.12(a)	§ 4.16(a)	Modified.
(b)	§ 4.16(b)	Modified.

DERIVATION TABLE FOR 12 CFR PART 4—Continued

[This table directs readers to the provisions of the former 12 CFR part 4, if any, on which the revised 12 CFR part 4 is based]

Revised provision	Former provision	Comments
(c)	§ 4.16(c)	Modified.
(d)	§ 4.16(d)	Modified.
§ 4.13	§ 4.14(a)	Significantly modified.
§ 4.14(a)(1)–(4)	§ 4.15(a)(1)–(4)	Modified.
(a)(5)	§ 4.15(b)	Modified.
(a)(6)	§ 4.14(b)	Modified.
(a)(7)	§ 4.13	Modified.
(a)(8)	§ 4.17(b)(2)(ii)	Modified.
(a)(9)	§ 4.15(a)(6)–(9)	Modified.
(a)(10)		Added.
(a)(11)	§ 4.17(b)(2)(i)(A)	Significantly modified.
(b)	§ 4.15(c)	Modified.
(c)		Added.
§ 4.15(a)	§ 4.16(a)	Modified.
(b)	§ 4.17(b), (c), and (d)(1)	Significantly modified.
(c)	§§ 4.17(d)(2), (d)(3), and (g), and 4.17a(b).	Significantly modified.
(d)	§§ 4.17(e) and 4.17a(c)	Modified.
(e)(1)		Added (see 5 U.S.C. 552(a)(4)(B)).
(e)(2)	§ 4.17(f)	Modified.
(f)	§ 4.17a(d)	Modified.
(g)	§ 4.17a(a)	Modified.
§ 4.16	§ 4.18(d)	Modified.
§ 4.17	§ 4.17(h)	Modified.
Subpart C:		Added.
§ 4.31		Added.
§ 4.32		Significantly modified.
§ 4.33	§ 4.19	Added.
§ 4.34		Significantly modified.
§ 4.35	§ 4.19	Significantly modified.
§ 4.36(a)	§§ 4.18(a) and 4.19	Significantly modified.
(b)	§§ 4.18(c) and 7.6025(c)	Modified.
(c)	§ 4.18(b)	Added.
(d)		Added.
§ 4.37		Added.
§ 4.38		Added.
§ 4.39		Renumbered.
Subpart D:		
§§ 4.61–4.66	§§ 4.61–4.74	

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule is primarily clarifying in nature and has no material impact on national banks, regardless of size.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have received emergency approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under OMB control number 1557–0200. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557, Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division 1557–0200, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. The OCC will submit the collection of information requirements contained in this final rule for renewal of OMB approval following publication of this final rule.

The collection of information requirements in this rule are found in 12 CFR 4.33, 4.35, 4.36, 4.37, and 4.38. This information is required to protect non-public OCC information from unnecessary disclosure in order to ensure that national banks and the OCC engage in a candid dialogue during the bank examination process. This collection accomplishes that end primarily by providing the OCC with information to process requests for non-public OCC information to determine if sufficient grounds exist for the OCC to release requested information. This collection also provides the OCC with notice of requests submitted to national banks for non-public OCC information, which will enable the OCC to intervene in litigation to register objections to disclosure when appropriate.

Respondents are not required to respond to this collection of information unless it displays a currently valid OMB control number. The likely respondents are national banks, persons in litigation with national banks, and former employees of the OCC.

Estimated average annual burden hours per respondent/recordkeeper: 5

Estimated number of respondents and/or recordkeepers: 180

Estimated total annual reporting and recordkeeping burden: 894 hours.

Start-up costs to respondents: None.

Unfunded Mandates Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments,

or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Confidential business information, Freedom of information, National banks, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 18

National banks, Reporting and recordkeeping requirements.

31 CFR Part 1

Confidential business information, Courts, Freedom of information, Government employees, Privacy.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12, and subtitle A of title 31, of the Code of Federal Regulations are amended as follows:

Comptroller of the Currency

12 CFR CHAPTER I

1. Part 4 is revised to read as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

Subpart A—Organization and Functions

Sec.
4.1 Purpose.
4.2 Office of the Comptroller of the Currency.
4.3 Comptroller of the Currency.
4.4 Washington office.
4.5 District and field offices.

Subpart B—Availability of Information Under the Freedom of Information Act

4.11 Purpose and scope.
4.12 Information available under the FOIA.
4.13 Publication in the **Federal Register**.
4.14 Public inspection and copying.
4.15 Specific requests for records.
4.16 Predisclosure notice for confidential commercial information.
4.17 Fees for services.

Subpart C—Release of Non-Public OCC Information

4.31 Purpose and scope.
4.32 Definitions.
4.33 Requirements for a request of records or testimony.
4.34 Where to submit a request.
4.35 Consideration of requests.
4.36 Persons and entities with access to OCC information; prohibition on dissemination.
4.37 Restrictions on dissemination of released information.
4.38 Notification of parties and procedures for sharing and using OCC records in litigation.
4.39 Fees for services.

Appendix A to Subpart C—Model Stipulation for Protective Order and Model Protective Order

Subpart D—Minority-, Women-, and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

4.61 Purpose.
4.62 Definitions.
4.63 Policy.
4.64 Promotion.
4.65 Certification.
4.66 Oversight and monitoring.

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR, 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 481, 482, 1821(o), 1821(t); 18 U.S.C. 641, 1905, 1906; 31 U.S.C. 9701. Subpart D also issued under 12 U.S.C. 1833e.

Subpart A—Organization and Functions

§ 4.1 Purpose.

This subpart describes the organization and functions of the Office of the Comptroller of the Currency (OCC), and provides the OCC's principal addresses.

§ 4.2 Office of the Comptroller of the Currency.

The OCC supervises and regulates national banks and Federal branches and agencies of foreign banks by examining these institutions to determine compliance with applicable laws and regulations; approving or denying applications for new charters or for changes in corporate or banking structure; approving or denying activities; taking supervisory or enforcement actions; appointing receivers and conservators; and issuing rules and regulations applicable to these institutions, their subsidiaries, and affiliates.

§ 4.3 Comptroller of the Currency.

The Comptroller of the Currency (Comptroller), as head of the OCC, is responsible for all OCC programs and functions. The Comptroller is appointed by the President, by and with the advice and consent of the Senate, for a term of five years. The Comptroller serves as a member of the board of the Federal Deposit Insurance Corporation, a member of the Federal Financial Institutions Examination Council, and a member of the board of the Neighborhood Reinvestment Corporation. The Comptroller is advised and assisted by OCC staff, who perform the duties and functions that the Comptroller directs.

§ 4.4 Washington office.

The Washington office of the OCC is the main office and headquarters of the OCC. The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks, including the largest national banks (through its Multinational Banking Department) and other national banks requiring special supervision. The Washington office is located at 250 E Street, SW, Washington, DC 20219.

§ 4.5 District and field offices.

(a) *District offices.* Each district office of the OCC is responsible for the direct supervision of the national banks and Federal branches and agencies of foreign banks in its district, with the exception of the national banks supervised by the Washington office. The six district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The office address and the geographical composition of each district follows:

District	Office address	Geographical composition
Northeastern	Office of the Comptroller of the Currency, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands

District	Office address	Geographical composition
Southeastern	Office of the Comptroller of the Currency, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE, Atlanta, GA 30303.	Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia
Central	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin
Midwestern	Office of the Comptroller of the Currency, 2345 Grand Ave., Suite 700, Kansas City, MO 64108.	Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
Southwestern	Office of the Comptroller of the Currency, 1600 Lincoln Plaza, 500 N. Akard Street, Dallas, TX 75201.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Western	Office of the Comptroller of the Currency, 50 Fremont Street, Suite 3900, San Francisco, CA 94105.	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington, Wyoming, Utah.

(b) *Field offices and duty stations.* Field offices and duty stations support the bank supervisory responsibilities of the district offices.

Subpart B—Availability of Information Under the Freedom of Information Act

§ 4.11 Purpose and scope.

(a) *Purpose.* This subpart sets forth the standards, policies, and procedures that the OCC applies in administering the Freedom of Information Act (FOIA) (5 U.S.C. 552) to facilitate the OCC's interaction with the banking industry and the public.

(b) *Scope.* (1) This subpart describes the information that the FOIA requires the OCC to disclose to the public (§ 4.12), and the three methods by which the OCC discloses that information under the FOIA (§§ 4.13, 4.14, and 4.15).

(2) This subpart also sets forth predisclosure notice procedures that the OCC follows, in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235), when the OCC receives a request under § 4.15 for disclosure of records that arguably are exempt from disclosure as confidential commercial information (§ 4.16). Finally, this subpart describes the fees that the OCC assesses for the services it renders in providing information under the FOIA (§ 4.17).

(3) This subpart does not apply to a request for records pursuant to the Privacy Act (5 U.S.C. 552a). A person requesting records from the OCC pursuant to the Privacy Act should refer to 31 CFR part 1, subpart C, and appendix J of subpart C.

§ 4.12 Information available under the FOIA.

(a) *General.* In accordance with the FOIA, OCC records are available to the public, except the exempt records described in paragraph (b) of this section.

(b) *Exemptions from availability.* The following records, or portions thereof, are exempt from disclosure under the FOIA:

(1) A record that is specifically authorized, under criteria established by an Executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that Executive order;

(2) A record relating solely to the internal personnel rules and practices of an agency;

(3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(4) A record that is privileged or contains trade secrets, or commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person (see § 4.16 for notice requirements regarding disclosure of confidential commercial information);

(5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees;

(6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of the right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;

(v) Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;

(vi) Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or

(vii) Endanger the life or physical safety of any individual;

(8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and

(9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

(c) *Discretionary disclosure of exempt records.* Even if a record is exempt under paragraph (b) of this section, the OCC may elect, on a case-by-case basis, not to apply the exemption to the requested record. The OCC's election not to apply an exemption to a requested record has no precedential significance as to the application or nonapplication of the exemption to any other requested record, regardless of who requests the record or when the OCC receives the request. The OCC will provide predisclosure notice to submitters of confidential commercial information in accordance with § 4.16.

(d) *Segregability.* The OCC provides copies of reasonably segregable portions of a record to any person properly requesting the record pursuant to § 4.15, after redacting any portion that is

exempt under paragraph (b) of this section.

§ 4.13 Publication in the Federal Register.

The OCC publishes certain documents in the **Federal Register** for the guidance of the public, including the following:

(a) Proposed and final rules; and

(b) Certain notices and policy statements of concern to the general public.

§ 4.14 Public inspection and copying.

(a) *Available information.* Subject to the exemptions listed in § 4.12(b), the OCC makes the following information readily available for public inspection and copying:

(1) Any final order, agreement, or other enforceable document issued in the adjudication of an OCC enforcement case, including a final order published pursuant to 12 U.S.C. 1818(u);

(2) Any final opinion issued in the adjudication of an OCC enforcement case;

(3) Any statement of general policy or interpretation of general applicability not published in the **Federal Register**;

(4) Any administrative staff manual or instruction to staff that may affect a member of the public as such;

(5) A current index identifying the information referred to in paragraphs (a)(1) through (a)(4) of this section issued, adopted, or promulgated after July 4, 1967;

(6) A list of available OCC publications;

(7) A list of forms available from the OCC, and specific forms and instructions; [1]

(8) Any public Community Reinvestment Act performance evaluation;

(9) Any public securities-related filing required under part 11 or 16 of this chapter;

(10) Any public comment letter regarding a proposed rule; and

(11) The public file (as defined in 12 CFR 5.9) with respect to a pending application described in part 5 of this chapter.

(b) *Redaction of identifying details.* To the extent necessary to prevent an invasion of personal privacy, the OCC may redact identifying details from any information described in paragraph (a) of this section before making the information available for public inspection and copying.

(c) *Addresses.* The information described in paragraphs (a)(1) through (a)(10) of this section is available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. The information described in paragraph (a)(11) of this section is available from the Licensing Manager at the appropriate district office at the address listed in § 4.5(a), or in the case of banks supervised by the Multinational Banking Department, from the Licensing Manager, Multinational Banking, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

4.15 Specific requests for records.

(a) *Available information.* Subject to the exemptions described in § 4.12(b), any OCC record is available to any person upon specific request in accordance with this section.

(b) *Where to submit request or appeal*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a person requesting a record or filing an administrative appeal under this section must submit the request or appeal to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(2) *Exceptions*—(i) *Records at the Federal Deposit Insurance Corporation.* A person requesting any of the following records, other than blank forms (see § 4.14(a)(7)), must submit the request to the Disclosure Group, Federal Deposit Insurance Corporation, 550–17th Street, NW, Washington, DC 20429, (800) 945–2186:

(A) Consolidated Report of Condition and Income (FFIEC 031, 032, 033, 034);

(B) Annual Report of Trust Assets (FFIEC 001);

(C) Uniform Bank Performance Report; and

(D) Special Report.

(ii) *Records of another agency.* When the OCC receives a request for records in its possession that another Federal agency either generated or provided to the OCC, the OCC promptly informs the requester and immediately forwards the request to that agency for processing in accordance with that agency's regulations.

(c) *Request for records*—(1) *Content of request for records.* A person requesting records under this section must state, in writing:

((i) The requester's full name, address, and telephone number;

(ii) A reasonable description of the records sought (including sufficient detail to enable OCC employees who are familiar with the subject matter of the request to locate the records with a reasonable amount of effort);

(iii) A statement agreeing to pay all fees that the OCC assesses under § 4.17;

(iv) A description of how the requester intends to use the records, if a requester seeks placement in a lower fee category (i.e., a fee category other than "commercial use requester") under § 4.17; and

(v) Whether the requester prefers the OCC to deliver a copy of the records or to allow the requester to inspect the records at the appropriate OCC office.

(2) *Initial determination.* The OCC's Director of Communications or that person's delegate initially determines whether to grant a request for OCC records.

(3) *If request is granted.* If the OCC grants a request for records, in whole or in part, the OCC promptly discloses the records in one of two ways, depending on the requester's stated preference:

(i) The OCC may deliver a copy of the records to the requester. If the OCC delivers a copy of the records to the requester, the OCC duplicates the records at reasonable and proper times that do not interfere with their use by the OCC or preclude other persons from making inspections; or

(ii) The OCC may allow the requester to inspect the records at reasonable and proper times that do not interfere with their use by the OCC or preclude other persons from making inspections. If the OCC allows the requester to inspect the records, the OCC may place a reasonable limit on the number of records that a person may inspect during a day.

(4) *If request is denied.* If the OCC denies a request for records, in whole or in part, the OCC notifies the requester by mail. The notification is dated and contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, and advises the requester of the right to an administrative appeal in accordance with paragraph (d) of this section.

(d) *Administrative appeal of a denial.*—(1) *Procedure.* A requester must submit an administrative appeal of denial of a request for records in writing within 35 days of the date of the initial determination. The appeal must include the circumstances and arguments supporting disclosure of the requested records.

(2) *Appellate determination.* The Comptroller or the Comptroller's delegate determines whether to grant an appeal of a denial of a request for OCC records.

(3) *If appeal is granted.* If the OCC grants an appeal, in whole or in part, the OCC treats the request as if it were originally granted, in whole or in part, by the OCC in accordance with paragraph (c)(3) of this section.

(4) *If appeal is denied.* If the OCC denies an appeal, in whole or in part, the OCC notifies the requester by mail. The notification contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, and advises the requester of the right to judicial review of the denial under 5 U.S.C. 552(a)(4)(B).

(e) *Judicial review*—(1) *General.* If the OCC denies an appeal pursuant to paragraph (d) of this section, or if the OCC fails to make a determination within the time limits specified in paragraph (f) of this section, the requester may commence an action to compel disclosure of records, pursuant to 5 U.S.C. 552(a)(4)(B), in the United States district court in:

(i) The district where the requester resides;

(ii) The district where the requester's principal place of business is located;

(iii) The district where the records are located; or

(iv) The District of Columbia.

(2) *Service of process.* In commencing an action described in paragraph (e)(1) of this section, the requester, in addition to complying with the Federal Rules of Civil Procedure (28 U.S.C. appendix) for service upon the United States or agencies thereof, must serve process on the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(f) *Time limits*—(1) *Request.* The OCC makes an initial determination to grant or deny a request for records within 10 business days after the date of receipt of the request, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.

(2) *Appeal.* The OCC makes a determination to grant or deny an administrative appeal within 20 business days after the date of receipt of the appeal, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.

(3) *Extension of time.* The time limits set forth in paragraphs (f)(1) and (2) of this section may be extended as follows:

(i) *In unusual circumstances.* The OCC may extend the time limits in unusual circumstances for a maximum of 10 business days. If the OCC extends the time limits, the OCC provides written notice to the person making the request or appeal, containing the reason for the extension and the date on which the OCC expects to make a determination. Unusual circumstances exist when the OCC requires additional time to:

(A) Search for and collect the requested records from field facilities or other buildings that are separate from the office processing the request or appeal;

(B) Search for, collect, and appropriately examine a voluminous amount of requested records;

(C) Consult with another agency that has a substantial interest in the determination of the request; or

(D) Allow two or more components of the OCC that have substantial interest in the determination of the request to consult with each other;

(ii) *By agreement.* A requester may agree to extend the time limits for any amount of time; or

(iii) *By judicial action.* If a requester commences an action pursuant to paragraph (e) of this section for failure to comply with the time limits set forth in this paragraph (f), a court with jurisdiction may, pursuant to 5 U.S.C. 552(a)(6)(C), allow the OCC additional time to complete the review of the records requested.

(g) *Date of receipt of request or appeal.* The date of receipt of a request for records or an appeal is the date that OCC Communications Division receives a request that satisfies the requirements of paragraph (c)(1) or (d)(1) of this section, except as provided in § 4.17(d).

§ 4.16 Predisclosure notice for confidential commercial information.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records that arguably contain material exempt from release under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4); § 4.12(b)(4)), because disclosure reasonably could cause substantial competitive harm to the submitter.

(2) *Submitter* means any person or entity that provides confidential commercial information to the OCC. This term includes corporations, State governments, foreign governments, and banks and their employees, officers, directors, and principal shareholders.

(b) *Notice to submitter*—(1) *When provided.* In accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235), when the OCC receives a request under § 4.15(c) or, where appropriate, an appeal under § 4.15(d) for disclosure of confidential commercial information, the OCC provides a submitter with prompt written notice of the receipt of that request (except as provided in paragraph (b)(2) of this section) in the following circumstances:

(i) With respect to confidential commercial information submitted to the OCC prior to January 1, 1988, if:

(A) The records are less than 10 years old and the submitter designated the information as confidential commercial information;

(B) The OCC reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter; or

(C) The information is subject to a prior express OCC commitment of confidentiality; and

(ii) With respect to confidential commercial information submitted to the OCC on or after January 1, 1988, if:

(A) The submitter in good faith designated the information as confidential commercial information;

(B) The OCC designated the class of information to which the requested information belongs as confidential commercial information; or

(C) The OCC reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(2) *Exceptions.* The OCC generally does not provide notice under paragraph (b)(1) of this section if the OCC determines that:

(i) It will not disclose the information;

(ii) The information already has been disclosed officially to the public;

(iii) The OCC is required by law (other than 5 U.S.C. 552) to disclose the information;

(iv) The OCC acquired the information in the course of a lawful investigation of a possible violation of criminal law;

(v) The submitter had an opportunity to designate the requested information as confidential commercial information at the time of submission of the information or a reasonable time thereafter and did not do so, unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm; or

(vi) The OCC determines that the submitter's designation under paragraph (b)(1)(ii)(A) of this section is frivolous; in such case, however, the OCC will provide the submitter with written notice of any final administrative determination to disclose the information at least 10 business days prior to the date that the OCC intends to disclose the information.

(3) *Content of notice.* The OCC either describes in the notice the exact nature of the confidential commercial information requested or includes with the notice copies of the records or portions of records containing that information.

(4) *Expiration of notice period.* The OCC provides notice under this paragraph (b) with respect to information that the submitter

[1] Some forms and instructions that national banks use, such as the Consolidated Report of Condition and Income (FFIEC 031–034), are not available from the OCC. The OCC will provide information on where persons may obtain these forms and instructions upon request.

designated under paragraph (b)(1)(ii)(A) of this section only for a period of 10 years after the date of the submitter's designation, unless the submitter requests and justifies to the OCC's satisfaction a specific notice period of greater duration.

(5) *Certification of confidentiality.* If possible, the submitter should support the claim of confidentiality with a statement or certification that the requested information is confidential commercial information that the submitter has not disclosed to the public. This statement should be prepared by an officer or authorized representative if the submitter is a corporation or other entity.

(c) *Notice to requester.* If the OCC provides notice to a submitter under paragraph (b) of this section, the OCC notifies the person requesting confidential commercial information (requester) that it has provided notice to the submitter. The OCC also advises the requester that if there is a delay in its decision whether to grant or deny access to the information sought, the delay may be considered a denial of access to the information, and that the requester may proceed with an administrative appeal or seek judicial review. However, the requester may agree to a voluntary extension of time to allow the OCC to review the submitter's objection to disclosure (see § 4.15(f)(3)(ii)).

(d) *Opportunity to object to disclosure.* Within 10 days after receiving notice under paragraph (b) of this section, the submitter may provide the OCC with a detailed statement of objection to disclosure of the information. That statement must specify the grounds for withholding any of the information under any exemption of the FOIA. Any statement that the submitter provides under this paragraph (d) may be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The OCC considers carefully a submitter's objection and specific grounds for nondisclosure prior to determining whether to disclose the requested information. If the OCC decides to disclose information over the objection of the submitter, the OCC provides to the submitter, with a copy to the requester, a written notice that includes:

(1) A statement of the OCC's reasons for not sustaining the submitter's objections to disclosure;

(2) A description of the information to be disclosed;

(3) The anticipated disclosure date, which is not less than 10 business days after the OCC mails the written notice required under this paragraph (e); and

(4) A statement that the submitter must notify the OCC immediately if the submitter intends to seek injunctive relief.

(f) *Notice of requester's lawsuit.* Whenever the OCC receives service of process indicating that a requester has brought suit seeking to compel the OCC to disclose information covered by paragraph (b)(1) of this section, the OCC promptly notifies the submitter.

§ 4.17 Fees for services.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Actual costs* means those expenditures that the OCC incurs in providing services (including searching for, reviewing, and duplicating records) in response to a request for records under § 4.15.

(2) *Search* means the process of locating a record in response to a request, including page-by-page or line-by-line identification of material within a record. The OCC may perform a search manually or by electronic means.

(3) *Review* means the process of examining a record located in response to a request to determine which portions of that record should be released. It also includes processing a record for disclosure.

(4) *Duplication* means the process of copying a record in response to a request. A copy may take the form of a paper copy, microform, audiovisual materials, or machine readable material (e.g., magnetic tape or disk), among others.

(5) *Commercial use requester* means a person who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution requester* means a person who seeks records on behalf of a public or private educational institution, including a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research.

(7) *Noncommercial scientific institution requester* means a person who is not a "commercial use requester," as that term is defined in paragraph (a)(5) of this section, and who seeks records on behalf of an institution operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Requester who is a representative of the news media* means a person who seeks records for the purpose of gathering news (*i.e.*, information about current events or of current interest to the public) on behalf of, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by, an entity organized and operated to publish or broadcast news to the public.

(b) *Fees*—(1) *General.* The hourly and per page rate that the OCC generally charges requesters is set forth in the "Notice of Comptroller of the Currency Fees" (Notice) described in 12 CFR 8.8. Any interested person may request a copy of the Notice from the OCC by mail or may obtain a copy at the location described in § 4.14(c). The OCC may contract with a commercial service to search for, duplicate, or disseminate records, provided that the OCC determines that the fee assessed upon a requester is no greater than if the OCC performed the tasks itself. The OCC does not contract out responsibilities that the FOIA provides that the OCC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce a fee.

(2) *Fee categories.* The OCC assesses a fee based on the fee category in which the OCC places the requester. If the request states how the requester intends to use the requested records (see § 4.15(c)(1)(iv)), the OCC may place the requester in a lower fee category; otherwise, the OCC categorizes the requester as a "commercial use requester." If the OCC reasonably doubts the requester's stated intended use, or if that use is not clear from the request, the OCC may place the requester in the "commercial use" category or may seek additional clarification. The fee categories are as follows:

(i) *Commercial use requesters.* The OCC assesses a fee for a requester in this category for the actual cost of search, review, and duplication. A requester in this category does not receive any free search, review, or duplication services.

(ii) *Educational institution requesters, noncommercial scientific institution requesters, and requesters who are representatives of the news media.* The OCC assesses a fee for a requester in this category for the actual cost of duplication. A requester in this category receives 100 free pages.

(iii) *All other requesters.* The OCC assesses a fee for a requester who does not fit into either of the above categories for the actual cost of search and duplication. A requester in this category receives 100 free pages and two hours of free search time.

(3) *Special services.* The OCC may, in its discretion, accommodate a request for special services. The OCC may recover the actual cost of providing any special services.

(4) *Waiving or reducing a fee.* The OCC may waive or reduce a fee under this section whenever, in its opinion, disclosure of records is in the public interest because the disclosure:

(i) Is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Is not primarily in the commercial interest of the requester.

(5) *Fee for unsuccessful search.* The OCC may assess a fee for time spent searching for records, even if the OCC does not locate the records requested.

(c) *Payment of fees*—(1) *General.* The OCC generally assesses a fee when it delivers the records in response to the request, if any. A requester must send payment within 30 calendar days of the billing date to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

(2) *Fee likely to exceed $25.* If the OCC estimates that a fee is likely to exceed $25, the OCC notifies the requester of the estimated fee, unless the requester has indicated in advance a willingness to pay a fee as high as the estimated fee. If so notified by the OCC, the requester may confer with OCC employees to revise the request to reflect a lower fee.

(3) *Fee likely to exceed $250.* If the OCC estimates that a fee is likely to exceed $250, the OCC notifies the requester of the estimated fee. In this circumstance, the OCC may require, as a condition to processing the request, that the requester:

(i) Provide satisfactory assurance of full payment, if the requester has a history of prompt payment; or

(ii) Pay the estimated fee in full, if the requester does not have a history of prompt payment.

(4) *Failure to pay a fee.* If the requester fails to pay a fee within 30 days of the date of the billing, the OCC may require, as a condition to processing any further request, that the requester pay any unpaid fee, plus interest (as provided in paragraph (c)(5) of this section), and any estimated fee in full for that further request.

(5) *Interest on unpaid fee.* The OCC may assess interest charges on an unpaid fee beginning on the 31st day following the billing date. The OCC charges interest at the rate prescribed in 31 U.S.C. 3717.

(d) *Tolling of time limits.* Under the circumstances described in paragraphs (c) (2), (3), and (4) of this section, the time limits set forth in § 4.15(f) (*i.e.*, 10 business days from the receipt of a request for records and 20 business days from the receipt of an administrative appeal, plus any permissible extension) begin only after the OCC receives a revised request under paragraph (c)(2) of this section, an assurance of payment under paragraph (c)(3)(i) of this section, or the required payments under paragraph (c)(3)(i) or (c)(4) of this section.

(e) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of a fee, the OCC may aggregate the requests and assess a fee accordingly.

Subpart C—Release of Non-Public OCC Information

§ 4.31 Purpose and scope.

(a) *Purpose.* The purposes of this subpart are to:

(1) Afford an orderly mechanism for the OCC to process expeditiously requests for non-public OCC information, and, when appropriate, for the OCC to assert evidentiary privileges in litigation;

(2) Recognize the public's interest in obtaining access to relevant and necessary information and the countervailing public interest of maintaining the effectiveness of the OCC supervisory process and appropriate confidentiality of OCC supervisory information;

(3) Ensure that the OCC's information is used in a manner that supports the public interest and the interests of the OCC;

(4) Ensure that OCC resources are used in the most efficient manner consistent with the OCC's statutory mission;

(5) Minimize burden on national banks, the public, and the OCC;

(6) Limit the expenditure of government resources for private purposes; and

(7) Maintain the OCC's impartiality among private litigants.

(b) *Scope.* (1) This subpart applies to requests for, and dissemination of, non-public OCC information, including requests for records or testimony arising out of civil lawsuits and administrative proceedings to which the OCC is not a party. Lawsuits and administrative proceedings to which the OCC is not a party include proceedings in which a Federal agency is a party in opposition to the private requester.

(2) This subpart does not apply to:

(i) A request for a record or testimony in a proceeding in which the OCC is a party; or

(ii) A request for a record that is required to be disclosed under the Freedom of Information Act (FOIA) (5 U.S.C. 552), as described in § 4.12.

(3) A request for a record or testimony made by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, a government agency of the United States or a foreign government, a state agency with authority to investigate violations of criminal law, or a state bank regulatory agency is governed solely by § 4.36(c).

§ 4.32 Definitions.

(a) *Complete request* means a request containing sufficient information to allow the OCC to make an informed decision.

(b) *Non-public OCC information.* Non-public OCC information:

(1) Means information that the OCC is not required to release under the FOIA (5 U.S.C. 552) or that the OCC has not yet published or made available pursuant to 12 U.S.C. 1818(u) and includes:

(i) A record created or obtained by the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a bank holding company, or an affiliate;

(ii) A record compiled by the OCC in connection with the OCC's enforcement responsibilities;

(iii) A report of examination, supervisory correspondence, an investigatory file compiled by the OCC in connection with an investigation, and any internal agency memorandum, whether the information is in the possession of the OCC or some other individual or entity;

(iv) Confidential OCC information obtained by a third party or otherwise incorporated in the records of a third party, including another government agency;

(v) Testimony from, or an interview with, a current or former OCC employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties with the OCC or due to that person's official status at the OCC; and

(vi) Confidential information relating to operating and no longer operating national banks as well as their subsidiaries and their affiliates; and

(2) Is the property of the Comptroller. A report of examination is loaned to the

bank or holding company for its confidential use only.

(c) *Relevant* means could contribute substantially to the resolution of one or more specifically identified issues in the case.

(d) *Show a compelling need* means, in support of a request for testimony, demonstrate with as much detail as is necessary under the circumstances, that the requested information is relevant and that the relevant material contained in the testimony is not available from any other source. Sources, without limitation, include the books and records of other persons or entities and non-public OCC records that have been, or might be, released.

(e) *Testimony* means an interview or sworn testimony on the record.

§ 4.33 Requirements for a request of records or testimony.

(a) *Generally*—(1) *Form of request.* A person seeking non-public OCC information must submit a request in writing to the OCC. The requester must explain, in as detailed a description as is necessary under the circumstances, the bases for the request and how the requested non-public OCC information relates to the issues in the lawsuit or matter.

(2) *Expedited request.* A requester seeking a response in less than 60 days must explain why the request was not submitted earlier and why the OCC should expedite the request.

(3) *Request arising from adversarial matters.* Where the requested information is to be used in connection with an adversarial matter:

(i) The OCC generally will require that the lawsuit or administrative action has been filed before it will consider the request;

(ii) The request must include:

(A) A copy of the complaint or other pleading setting forth the assertions in the case;

(B) The caption and docket number of the case;

(C) The name, address, and phone number of counsel to each party in the case; and

(D) A description of any prior judicial decisions or pending motions in the case that may bear on the asserted relevance of the requested information;

(iii) The request must also:

(A) Show that the information is relevant to the purpose for which it is sought;

(B) Show that other evidence reasonably suited to the requester's needs is not available from any other source;

(C) Show that the need for the information outweighs the public interest considerations in maintaining the confidentiality of the OCC information and outweighs the burden on the OCC to produce the information;

(D) Explain how the issues in the case and the status of the case warrant that the OCC allow disclosure; and

(E) Identify any other issue that may bear on the question of waiver of privilege by the OCC.

(b) *Request for records.* If the request is for a record, the requester must adequately describe the record or records sought by type and date.

(c) *Request for testimony*—(1) *Generally.* A requester seeking testimony:

(i) Must show a compelling need for the requested information; and

(ii) Should request OCC testimony with sufficient time to obtain the testimony in deposition form.

(2) *Trial or hearing testimony.* A requester seeking testimony at a trial or hearing must show that a deposition would not suffice.

§ 4.34 Where to submit a request.

(a) *A request for non-public OCC information.* A person requesting information under this subpart, requesting authentication of a record under § 4.38(d), or submitting a notification of the issuance of a subpoena or compulsory process under § 4.36, shall send the request or notification to: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Director, Litigation Division.

(b) *Combined requests for non-public and other OCC information.* A person requesting public OCC information and non-public OCC information under this subpart may submit a combined request for both to the address in paragraph (a) of this section. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B of this part (FOIA).

(c) *Request by government agencies.* A request made pursuant to § 4.36(c) must be submitted:

(1) In a civil action, to the Director of the OCC's Litigation Division at the Washington, DC office; or

(2) In a criminal action, to the appropriate district counsel or the Director of the OCC's Enforcement and Compliance Division at the Washington, DC, office.

§ 4.35 Consideration of requests.

(a) *In general*—(1) *OCC discretion.* The OCC decides whether to release non-public OCC information based on its weighing of all appropriate factors including the requestor's fulfilling of the requirements enumerated in § 4.33. Each decision is at the sole discretion of the Comptroller or the Comptroller's delegate and is a final agency decision. OCC action on a request for non-public OCC information exhausts administrative remedies for discovery of the information.

(2) *Bases for denial.* The OCC may deny a request for non-public OCC information for reasons that include the following:

(i) The requester was unsuccessful in showing that the information is relevant to the pending matter;

(ii) The requester seeks testimony and the requestor did not show a compelling need for the information;

(iii) The request arises from an adversarial matter and other evidence reasonably suited to the requester's need is available from another source;

(iv) A lawsuit or administrative action has not yet been filed and the request was made in connection with potential litigation; or

(v) The production of the information would be contrary to the public interest or unduly burdensome to the OCC.

(3) *Additional information.* A requester must submit a complete request. The OCC may require the requester to provide additional information to complete a request. Consistent with the purposes stated in § 4.31, the OCC may inquire into the circumstances of any case underlying the request and rely on sources of information other than the requester, including other parties.

(4) *Time required by the OCC to respond.* The OCC generally will process requests in the order in which they are received. The OCC will notify the requester in writing of the final decision. Absent exigent or unusual circumstances, the OCC will respond to a request within 60 days from the date that the OCC receives a request that it deems a complete request. Consistent with § 4.33(a)(2), the OCC weighs a request to respond to provide information in less than 60 days against the unfairness to other requesters whose pending requests may be delayed and the burden imposed on the OCC by the expedited processing.

(5) *Notice to subject national banks.* Following receipt of a request for non-public OCC information, the OCC generally notifies the national bank that is the subject of the requested information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue.

(b) *Testimony.* (1) The OCC generally will not authorize a current OCC employee to provide expert or opinion evidence for a private party.

(2) The OCC may restrict the scope of any authorized testimony and may act to ensure that the scope of testimony given by the OCC employee adheres to the scope authorized by the OCC.

(3) Once a request for testimony has been submitted, and before the requested testimony occurs, a party to the relevant case, who did not join in the request and who wishes to question the witness beyond the scope of testimony sought by the request, shall timely submit the party's own request for OCC information pursuant to this subpart.

(4) The OCC may offer the requester the employee's written declaration in lieu of testimony.

(c) *Release of non-public OCC information by others.* In appropriate cases, the OCC may respond to a request for information by authorizing a party to the case who is in possession of non-public OCC information to release the information to the requester. An OCC authorization to release records does not preclude the party in possession from asserting its own privilege, arguing that the records are not relevant, or asserting any other argument for which it has standing to protect the records from release.

§ 4.36 Persons and entities with access to OCC information; prohibition on dissemination.

(a) *OCC employees or former employees*—(1) *Generally.* Except as authorized by this subpart or otherwise by the OCC, no OCC employee or former employee may, in any manner, disclose or permit the disclosure of any non-public OCC information to anyone other than an employee of the Comptroller who is entitled to the information for the performance of OCC duties.

(2) *Duty of person served.* Any OCC employee or former employee subpoenaed or otherwise requested to provide information covered by this subpart shall immediately notify the OCC as provided in this paragraph. The OCC may intervene, attempt to have the compulsory process withdrawn, and register appropriate objections when an employee or former employee receives a subpoena and the subpoena requires the employee or former employee to appear or produce OCC information. If necessary, the employee or former employee shall appear as required and respectfully decline to produce the information sought, citing this subpart and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). The OCC employee or former employee shall immediately notify the OCC if subpoenaed or otherwise asked for non-public OCC information:

(i) In a civil action, by notifying the Director of the OCC—s Litigation Division at the Washington, DC office; or

(ii) In a criminal action, by notifying the appropriate district counsel, for district employees and former district employees; or the Director of the OCC's Enforcement and Compliance Division at the Washington, DC office, for Washington employees and former Washington employees.

(b) *Non-OCC employees or entities*—(1) *Generally.* (i) Without OCC approval, no person, national bank, or other entity, including one in lawful possession of non-public OCC information under paragraph (b)(2) of this section, may disclose information covered by this subpart in any manner, except:

(A) After the requester has sought the information from the OCC pursuant to the procedures set forth in this subpart; and

(B) As ordered by a Federal court in a judicial proceeding in which the OCC has had the opportunity to appear and oppose discovery.

(ii) Any person who discloses or uses non-public OCC information except as expressly permitted by the Comptroller of the Currency or as ordered by a Federal court, under paragraph (b)(1)(i) of this section, may be subject to the penalties provided in 18 U.S.C. 641.

(2) *Exception for national banks.* When necessary or appropriate for bank business purposes, a national bank or holding company, or any director, officer, or employee thereof, may disclose non-public OCC information, including information contained in, or related to, OCC reports of examination, to a person or organization officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor. A national bank or holding company or a director, officer, or employee thereof may also release non-public OCC information to a consultant under this paragraph if the consultant is under a written contract to provide services to the bank and the consultant has a written agreement with the bank in which the consultant:

(i) States its awareness of, and agreement to abide by, the prohibition on the dissemination of non-public OCC information contained in paragraph (b)(1) of this section; and

(ii) Agrees not to use the non-public OCC information for any purpose other than as provided under its contract to provide services to the bank.

(3) *Duty of person or entity served.* Any person, national bank, or other entity served with a request, subpoena, order, motion to compel, or other judicial or administrative process to provide non-public OCC information shall:

(i) Immediately notify the Director of the OCC's Litigation Division at the Washington, DC office and inform the Director of all relevant facts, including the documents and information requested, so that the OCC may intervene in the judicial or administrative action if appropriate;

(ii) Inform the requester of the substance of these rules and, in particular, of the obligation to follow the request procedures in §§ 4.33 and 4.34; and

(iii) At the appropriate time, inform the court or tribunal that issued the process of the substance of these rules.

(4) *Actions of the OCC following notice of service.* Following receipt of notice pursuant to paragraph (b)(3) of this section, the OCC may direct the requester to comply with §§ 4.33 and 4.34, intervene in the judicial or administrative action, attempt to have the compulsory process withdrawn, or register other appropriate objections.

(5) *Return of records.* The OCC may require any person in possession of OCC records to return the records to the OCC.

(c) *Disclosure to government agencies.* When not prohibited by law, the Comptroller may make available to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and, in the Comptroller's sole discretion, to certain other government agencies of the United States and foreign governments, state agencies with authority to investigate violations of criminal law, and state bank regulatory agencies, a copy of a report of examination, testimony, or other non-public OCC information for their use, when necessary, in the performance of their official duties. All non-public OCC information made available pursuant to this paragraph is OCC property, and the OCC may condition its use on appropriate confidentiality protections, including the mechanisms identified in § 4.37.

(d) *Intention of OCC not to waive rights.* The possession by any of the entities or individuals described in paragraphs (a), (b), and (c) of this section of non-public OCC information does not constitute a waiver by the OCC of its right to control, or impose limitations on, the subsequent use and dissemination of the information.

§ 4.37 Restrictions on dissemination of released information.

(a) *Records.* The OCC may condition a decision to release non-public OCC

information on entry of a protective order by the court or administrative tribunal presiding in the particular case or, in non-adversarial matters, on a written agreement of confidentiality. In a case in which a protective order has already been entered, the OCC may condition approval for release of non-public OCC information upon the inclusion of additional or amended provisions in the protective order. The OCC may authorize a party who obtained records for use in one case to provide them to another party in another case.

(b) *Testimony.* The OCC may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of the testimony under seal or to make the transcript available only to the parties, the court, and the jury. Upon request or on its own initiative, the OCC may allow use of a transcript in other litigation. The OCC may require the requester, at the requester's expense, to furnish the OCC with a copy of the transcript. The OCC employee whose deposition was transcribed does not waive his or her right to review the transcript and to note errors.

§ 4.38 Notification of parties and procedures for sharing and using OCC records in litigation.

(a) *Responsibility of litigants to notify parties of a request for testimony.* Upon submitting a request to the OCC for the testimony of an OCC employee or former employee, the requester shall notify all other parties to the case that a request has been submitted.

(b) *Responsibility of litigants to share released records.* The requester shall promptly notify other parties to a case of the release of non-public OCC information obtained pursuant to this subpart, and, upon entry of a protective order, shall provide copies of OCC information, including OCC information obtained pursuant to § 4.15, to the other parties.

(c) *Retrieval and destruction of released records.* At the conclusion of an action:

(1) The requester shall retrieve any non-public OCC information from the court's file as soon as the court no longer requires the information;

(2) Each party shall destroy the non-public OCC information covered by the protective order; and

(3) Each party shall certify to the OCC that the non-public OCC information covered by the protective order has been destroyed.

(d) *Authentication for use as evidence.* Upon request, the OCC authenticates released records to facilitate their use as evidence. Requesters who require authenticated records or certificates of nonexistence of records should, as early as possible, request certificates from the OCC's Litigation Division pursuant to § 4.34(a).

§ 4.39 Fees for services.

(a) *Fees for records search, copying, and certification.* The requester shall pay a fee to the OCC, or to a commercial copier under contract to the OCC, for any records search, copying, or certification in accordance with the standards specified in § 4.17. The OCC may require a requester to remit payment prior to providing the requested information.

(b) *Witness fees and mileage.* A person whose request for testimony of a current OCC employee is approved shall, upon completion of the testimonial appearance, tender promptly to the OCC payment for the witness fees and mileage. The litigant shall compute these amounts in accordance with 28 U.S.C. 1821. A litigant whose request for testimony of a former OCC employee is approved shall tender promptly to the witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

Appendix A to Subpart C—Model Stipulation for Protective Order and Model Protective Order

I. Model Stipulation

CASE CAPTION

MODEL STIPULATION FOR PROTECTIVE ORDER

Whereas, counsel for _____ have applied to the Comptroller of the Currency (hereinafter "Comptroller") pursuant to 12 CFR Part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 CFR 4.12, and Part 4, Subpart C; and

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records available to the parties in this action, provided that appropriate protection of their confidentiality can be secured;

Therefore, it is hereby stipulated by and between the parties hereto, through their respective attorneys that they will be bound by the following protective order which may be entered by the Court without further notice.

Dated this __ day of ____, 19__.

_____

Attorney for Plaintiff

_____

Attorney for Defendant

II. Model Protective Order

CASE CAPTION

MODEL PROTECTIVE ORDER

Whereas, counsel for _____ have applied to the Comptroller of the Currency (hereinafter Comptroller") pursuant to 12 CFR Part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 CFR 4.12, and Part 4, Subpart C;

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records available to the parties in this action, provided that appropriate protection of their confidentiality can be secured;

Now, Therefore, it is Ordered That:

1. The records, as denoted in Appendix "A" to the Stipulation for this Protective Order, upon being furnished [or released for use] by the Comptroller, shall be disclosed only to the parties to this action, their counsel, and the court [and the jury].

2. The parties to this action and their counsel shall keep such records and any information contained in such records confidential and shall in no way divulge the same to any person or entity, except to such experts, consultants and non-party witnesses to whom the records and their contents shall be disclosed, solely for the purpose of properly preparing for and trying the action.

3. No person to whom information and records covered by this Order are disclosed shall make any copies or otherwise use such information or records or their contents for any purpose whatsoever, except in connection with this action.

4. Any party or other person who wishes to use the information or records or their contents in any other action shall make a separate application to the Comptroller pursuant to 12 CFR Part 4, Subpart C.

5. Should any records covered by this Order be filed with the Court or utilized as exhibits at depositions in the captioned action, or should information or records or their contents covered by this Order be disclosed in the transcripts of depositions or the trial in the captioned action, such records, exhibits and transcripts shall be filed in sealed envelopes or other sealed containers marked with the title of this action, identifying each document and article therein and bearing a statement substantially in the following form:

CONFIDENTIAL

Pursuant to the Order of the Court dated _____ this envelope containing the above-identified papers filed by (the name of the party) is not to be opened nor the contents thereof displayed or revealed except to the parties to this action or their counsel or by further Order of the Court.

6. FOR JURY TRIAL: Any party offering any of the records into evidence shall offer only those pages, or portions thereof, that are relevant and material to the issues to be decided in the action and shall block out any portion of any page that contains information not relevant or material. Furthermore, the name of any person or entity contained on any page of the records who is not a party to this action, or whose name is not otherwise relevant or material to the action, shall be blocked out prior to the admission of such page into evidence. Any disagreement regarding what portion of any page that should be blocked out in this manner shall be resolved by the Court *in camera*, and the Court shall decide its admissibility into evidence.

7. At the conclusion of this action, all parties shall certify to the Comptroller that the records covered by this Order have been destroyed. Furthermore, counsel for _____, pursuant to 12 CFR 4.38(b), shall retrieve any records covered by this Order that may have been filed with the Court.

So Ordered:

_____

Judge

Date

Subpart D—Minority-, Women-, and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

§ 4.61 Purpose.

Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Sec. 1216(c), Pub. L. 101–73, 103 Stat. 183, 529 (12 U.S.C. 1833e(c)) and consistent with the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*), this subpart establishes the OCC Minority-, Women-, and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). The Outreach Program is intended to ensure that firms owned and operated by minorities, women, and individuals with disabilities have the opportunity to participate, to the maximum extent possible, in all contracting activities of the OCC.

§ 4.62 Definitions.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women (MWOB)* means firms at least 51 percent unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(b) *Minority* means any African American, Native American (*i.e.*, American Indian, Eskimo, Aleut and Native Hawaiian), Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

(c) *Individual with disabilities-owned (small and large) businesses and entities owned by individuals with disabilities (IDOB)* means firms at least 51 percent unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members who are individuals with disabilities and who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(d) *Individual with disabilities* means any person who has a physical or mental impairment that substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this part, it does not include an individual who is currently engaging in the illegal use of drugs nor an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job as defined by the IDOB.

(e) *Unconditional ownership* means ownership that is not subject to conditions or similar arrangements which cause the benefits of the Outreach Program to accrue to persons other than the participating MWOB or IDOB.

§ 4.63 Policy.

The OCC's policy is to ensure that MWOBs and IDOBs have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC. The OCC awards contracts consistent with the principles of full and open competition and best value acquisition, and with the concept of contracting for agency needs at the lowest practicable cost. The OCC ensures that MWOBs and IDOBs have the opportunity to participate fully in all contracting activities that the OCC enters into for goods and services, whether generated by the headquarters office in Washington, DC, or any other office of the OCC. Contracting opportunities may include small purchase awards, contracts above the small purchase threshold, and delivery orders issued against other governmental agency contracts.

§ 4.64 Promotion.

(a) *Scope.* The OCC, under the direction of the Deputy Comptroller for Resource Management, engages in promotion and outreach activities designed to identify MWOBs and IDOBs capable of providing goods and services needed by the OCC, to facilitate interaction between the OCC and the MWOBs and IDOBs community, and to indicate the OCC's commitment to doing business with that community. The Outreach Program is designed to facilitate OCC's participation in business promotion events sponsored by other government agencies and attended by minorities, women and individuals with disabilities. Once the OCC has identified a prospective participant, it will assist the minority- or women-owned business or individual with disabilities-owned business in understanding the OCC's needs and contracting process.

(b) *Outreach activities.* OCC's Outreach Program includes the following:

(1) Obtaining various lists and directories of MWOBs and IDOBs maintained by government agencies;

(2) Contacting appropriate firms for participation in the OCC's Outreach Program;

(3) Participating in business promotion events comprised of or attended by MWOBs and IDOBs to explain OCC contracting opportunities and to obtain names of potential MWOBs and IDOBs;

(4) Ensuring that the OCC contracting staff understands and actively promotes this Outreach Program; and

(5) Registering MWOBs and IDOBs in the Department of the Treasury's database to facilitate their participation in the competitive procurement process for OCC contracts. This database is used by OCC procurement staff to identify

firms to be solicited for OCC procurements.

§ 4.65 Certification.

(a) *Objective.* To preserve the integrity and foster the Outreach Program's objectives, each prospective MWOB or IDOB must demonstrate that it meets the ownership and control requirements for participation in the Outreach Program.

(b) *MWOB.* A prospective MWOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid MWOB certification received from another government agency whose definition of MWOB is substantially similar to that specified in § 4.62(a);

(2) Self-certifying MWOB ownership status by filing with the OCC a completed and signed certification form as prescribed by the Federal Acquisition Regulation, 48 CFR 53.301–129; or

(3) Submitting a valid MWOB certification received from the Small Business Administration.

(c) *IDOB.* A prospective IDOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid IDOB certification received from another government agency whose definition of IDOB is substantially similar to that specified in § 4.62(c); or

(2) Self-certifying IDOB ownership status by filing with the OCC a completed and signed certification as prescribed in the Federal Acquisition Regulation, 48 CFR 53.301–129, and adding an additional certifying statement to read as follows:

I certify that I am an individual with disabilities as defined in 12 CFR 4.62(d), and that my firm, (Name of Firm) qualifies as an individual with disabilities-owned business as defined in 12 CFR 4.62(c).

§ 4.66 Oversight and monitoring.

The Deputy Comptroller for Resource Management shall appoint an Outreach Program Manager, who shall appoint an Outreach Program Specialist. The Outreach Program Manager is primarily responsible for program advocacy, oversight and monitoring.

PART 10—MUNICIPAL SECURITIES DEALERS

2. The authority citation for part 10 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78o–4(c)(5), and 78q–78w.

§ 10.1 [Amended]

3. In § 10.1, the introductory text is amended by revising the term "Comptroller of the Currency" to read "Office of the Comptroller of the Currency (OCC)".

§ 10.2 [Amended]

4. In § 10.2, paragraph (b) is amended by revising the term "Rulemaking board" to read "Rulemaking Board".

5. In § 10.3, paragraph (a) is revised, paragraphs (b) and (c) are amended by revising the term "Comptroller of the Currency" to read "OCC", and a new paragraph (d) is added to read as follows:

§ 10.3 Filing of documents.

(a) All documents required to be filed with the OCC in accordance with this part are to be filed at the Chief National Bank Examiner's Office, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

* * * * *

(d) Forms MSD–4 and MSD–5, with instructions, may be obtained from the Chief National Bank Examiner's Office at the address listed in paragraph (a) of this section.

§ 10.4 [Amended]

6. In § 10.4, paragraphs (a)(1), (a)(2)(ii), (b)(2)(ii), (c)(1), and (d)(2) are amended by revising the term "Comptroller of the Currency" to read "OCC", and paragraph (b)(2)(i) is amended by revising the term "board" to read "Board".

7. The undesignated centerheading preceding § 10.41 is removed.

§ 10.41 [Removed]

8. Section 10.41 is removed.

§ 10.42 [Removed]

9. Section 10.42 is removed.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

10. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, and 78w.

§ 11.1 [Amended]

11. In § 11.1, paragraph (a) is amended in the first sentence by revising the term "Comptroller" to read "Office of the Comptroller of the Currency (OCC)", and in the second sentence by revising the term "Comptroller" to read "OCC".

§ 11.2 [Amended]

12. In § 11.2, paragraph (a) is amended by revising the term "'Comptroller'" to read "'OCC'", and paragraph (c) is amended by revising the term "Comptroller" to read "OCC".

13. Section 11.3 is revised to read as follows:

§ 11.3 Filing requirements and inspection of documents.

(a) All papers required to be filed with the OCC pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Material may be filed by delivery to the OCC through the mail or otherwise. The date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements.

(b) Copies of registration statements, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this part (exclusive of exhibits) are available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at the address listed in paragraph (a) of this section.

14. In § 11.4, paragraph (a) is revised to read as follows:

§ 11.4 Filing fees.

(a) The OCC may require filing fees to accompany certain filings made under this part before it will accept the filing. The OCC provides an applicable fee schedule for such filings in the "Notice of Comptroller of the Currency Fees" described in 12 CFR 8.8.

* * * * *

PART 18—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY NATIONAL BANKS

15. The authority citation for part 18 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, and 1818.

§ 18.1 [Amended]

16. In § 18.1, paragraph (a) is amended by revising the term "Office's supervisory efforts" to read "supervisory efforts of the Office of the Comptroller of the Currency (OCC)".

§ 18.4 [Amended]

17. In § 18.4, paragraph (a)(1)(ii) is amended by revising the term "Non accrual Loans and Leases" to read "Nonaccrual Loans, Leases, and Other Assets", and paragraph (b) and the text preceding the statement in paragraph (d) are amended by revising the term "Office" to read "OCC" each place it appears.

18. In § 18.5, paragraph (a) is revised to read as follows:

§ 18.5 Alternative annual disclosure statements.

* * * * *

(a) In the case of a national bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), by its annual report to security holders for meetings at which directors are to be elected;

* * * * *

§ 18.9 [Amended]

19. Section 18.9 is amended by revising the term "Office of the Comptroller of the Currency" to read "OCC".

20. Section 18.10 is revised to read as follows:

§ 18.10 Prohibited conduct and penalties.

(a) No national bank or institution-affiliated party shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of material or required information in the annual disclosure statement; or

(2) Represent that the OCC, or any employee thereof, has passed upon the accuracy or completeness of the annual disclosure statement.

(b) For purposes of this part, *institution-affiliated party* means:

(1) Any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, a national bank;

(2) Any other person who has filed or is required to file a change-in-control notice with the OCC under 12 U.S.C. 1817(j);

(3) Any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the OCC (by regulation or case-by-case) who participates in the conduct of the affairs of a national bank; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in:

(i) Any violation of any law or regulation;

(ii) Any breach of fiduciary duty; or

(iii) Any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the national bank.

(c) Conduct that violates paragraph (a) of this section also may constitute an unsafe or unsound banking practice or otherwise serve as a basis for enforcement action by the OCC including, but not limited to, the assessment of civil money penalties against the bank or any institution-affiliated party who violates this part.

Office of the Secretary

31 CFR Subtitle A

PART 1—DISCLOSURE OF RECORDS

21. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

22. Under the authority of 12 U.S.C. 93a and 31 CFR 1.1(d), appendix J of subpart A of 31 CFR part 1 is amended by revising paragraphs 2. through 5. to read as follows:

Appendix J—Office of the Comptroller of the Currency

* * * * *

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available for review on an ad hoc basis when necessary. Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Director of Communications or that person's delegate. Requests may be mailed or delivered in person to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller or the Comptroller's delegate. Appeals may be mailed or delivered in person to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

5. *Delivery of process.* Service of process shall be delivered to the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

23. Under the authority of 12 U.S.C. 93a and 31 CFR 1.20, appendix J of subpart C of 31 CFR part 1 is amended by revising paragraphs 2. through 6. to read as follows:

Appendix J—Office of the Comptroller of the Currency

* * * * *

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26 whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Comptroller of the Currency will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of that official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published biennially by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d) whether to grant requests to amend records will be made by the Comptroller's delegate or the head of the organizational unit having immediate custody of the records or the delegate of that official. Requests for amendment shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller of the Currency or the Comptroller's delegate. Appeals shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

5. *Statements of disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the OCC's Director of Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process shall be delivered to the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

* * * * *

Dated: October 31, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–28115 Filed 11–14–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–61–AD; Amendment 39–9386; AD 95–20–07]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA24, PA28R, PA30, PA32R, PA34, and PA39 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 95–20–07 concerning The New Piper Aircraft, Inc. (Piper) PA24, PA28R, PA30, PA32R, PA34, and PA39 airplanes, which was published in the **Federal Register** on October 5, 1995 (60 FR 52073). That publication incorrectly references who may accomplish the inspections of the left and right main gear side brace studs. The AD currently requires the inspection "* * * by a facility approved by the FAA. * * *" The Federal Aviation Administration's intent is to have this inspection accomplished "by a facility or person authorized by the FAA. * * *" This action corrects the AD to reflect this change.

EFFECTIVE DATE: November 17, 1995.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: On September 28, 1995, the Federal Aviation Administration (FAA) issued AD 95–20–07, Amendment 39–9386 (60 FR 52073, October 5, 1995), which applies to Piper PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes. This AD requires repetitively inspecting (using dye penetrant or magnetic particle methods) the main gear side brace studs for cracks, and replacing any cracked main side brace stud.

The AD incorrectly references who may accomplish the inspections of the left and right main gear side brace studs. AD 95–20–07 currently requires the inspection "* * * by a facility approved by the FAA. * * *" The Federal Aviation Administration's intent is to have this inspection accomplished "by a facility or person authorized by the FAA. * * *" This action corrects the AD to reflect this change.

Need for Correction

As published, the final regulations have incorrectly referenced who can accomplish the main side brace stud inspections. The way the final regulations are currently written will prevent certain qualified mechanics from accomplishing the main side brace stud inspections, which is not the FAA's intent.

Correction of Publication

Accordingly, the publication of October 5, 1995 (60 FR 52073) of Amendment 39–9386; AD 95–20–07, which was the subject of FR Doc. 95–24713, is corrected as follows:

In the last line of the third column on page 52073, and continuing on the first two lines of the first column on page 52074, replace "* * * accomplished at a facility that is approved by the FAA to perform either dye penetrant or magnetic particle inspections" with "* * * accomplished by a facility or persons authorized by the FAA to perform either dye penetrant or magnetic particle inspections."

§ 39.13 [Corrected]

On page 52075, in the third column, in § 39.13, in lines 8 through 11 of paragraph (a) of AD 95–20–07, replace "Inspections must be accomplished by a facility approved by the FAA to accomplish the applicable inspection method." with "Inspections must be accomplished by a facility or persons authorized by the FAA to accomplish the applicable inspection method."

On page 52077, in the second column, in § 39.13, in lines 4 through 7 of paragraph (c) of AD 95–20–07, replace "Inspections must be accomplished by a facility approved by the FAA to accomplish the applicable inspection method." with "Inspections must be accomplished by a facility or persons authorized by the FAA to accomplish the applicable inspection method."

Issued in Kansas City, Missouri, on November 8, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28146 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Parts 61, 63, 65, 108, 121, and 135

[Docket No. 25804; SFAR No. 58–1]

RIN 2120–AF00

Advanced Qualification Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to a final rule published on October 3, 1995 (60 FR 51850). This action deletes the words "Amendment No. 61–98, 63–30, 65–39, 108–13, 121–250, and 135–57", inadvertently used in the heading of the document, and adds the words "Special Federal Aviation Regulation No. 58–1, in the subject line.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: John Allen, Advanced Qualification Program Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, P.O. Box 20027, Dulles International Airport, Washington, DC 20041–2027; telephone (703) 661–0260.

Correction of Publication

In the final rule on page 51850 in the issue of Tuesday, October 3, 1995, delete the words "Amendment No. 61–98, 63–30, 108–13, 121–250, and 135–57", from the heading and add to the subject line the words: "Special Federal Aviation Regulation No. 58–1".

Issued in Washington, DC, on November 6, 1995.

Donald P. Byrne,

Assistant Chief Counsel, Regulation Division.

[FR Doc. 95–28221 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AAL–2]

Amendment of G–8 and V–328; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the designations of Colored Federal Airway G–8 and Alaskan Federal Airway V–328. The FAA is realigning Colored Airway G–8 to avoid certain restricted areas. Alaskan Federal Airway V–328 is realigned from Dillingham, AK, and Kipnuk, AK, resulting in a lower minimum en route altitude (MEA) of 9,000 feet. This amendment will enhance the flow of air traffic.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On September 7, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the designations of Colored Airway G–8 and Federal Airway V–328 in Alaska (60 FR 46547). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and a one degree bearing change to G–8 from "Campbell Lake NDB 032°" to "Campbell Lake NDB 031°" and "Glenallen, AK, NDB 253°" to "Glenallen, AK, NDB 255°," this amendment is the same as that proposed in the notice. Green Colored Federal airways are published in paragraph 6009(a) and Alaskan Federal airways are published in paragraph 6010(b) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway and the Alaskan Federal airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Colored Federal Airway G–8 by realigning it to avoid Restricted Areas R–2203A, R–2203B and R–2203C. Realigning Alaskan Federal Airway V–328, as a direct route between Dillingham, AK, and Kipnuk, AK, will result in a lower MEA of 9,000 feet. This action will enhance the flow of traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6009(a)—Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL Adak, AK, NDB; 20 AGL Dutch Harbor, AK, NDB; 20 AGL INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings, to Kachemak NDB. From Campbell Lake, AK, NDB; INT Campbell Lake NDB 031° and Glenallen, AK, NDB 255° bearings; Glenallen NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

* * * * *

Paragraph 6010(b)—Alaskan VOR Federal Airways

* * * * *

V–328 [Revised]

From Dillingham, AK; to Kipnuk, AK.

* * * * *

Issued in Washington, DC, on November 8, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–28220 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–13–P

Federation Aviation Administration

14 CFR Part 121

[Docket No. 27065, Amendment 121–249]

RIN 2120–AE43

Suspension of PreEmployment Alcohol Testing Requirement

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, correction.

SUMMARY: This document contains a correction to the final rule published on May 10, 1995, (60 FR 24765). This action deletes the numbers "121–237", inadvertently used in the heading of the document and replaces it with the numbers "121–249".

EFFECTIVE DATE: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Bill McAndrew, (202) 366–6710.

Correction of Publication

In the final rule on page 24765 in the issue of Wednesday, May 10, 1995, delete the numbers "121–237", from the heading and add the numbers "121–249" to the heading.

Issued in Washington, DC, on November 6, 1995.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 95–28222 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 95–0710174–5248–02]

RIN 0691–AA26

International Services Surveys: BE–82 Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules institute a new international services survey, the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The survey will update information collected on the quinquennial BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which was first conducted for 1994. Together, the two surveys will produce continuous annual time series of data on financial services that are out of scope of other international services surveys. The information is needed, among other purposes, to support trade policy initiatives, including trade negotiations, on financial services and to compile the U.S. balance of payments and national income and product accounts.

The survey will be conducted under the International Investment and Trade in Services Survey Act and the Omnibus Trade and Competitiveness Act of 1988. The first survey will cover 1995.

DATES: These rules will be effective December 15, 1995.

FOR FURTHER INFORMATION CONTACT:

Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9805.

SUPPLEMENTARY INFORMATION: In the August 8, 1995 **Federal Register**, volume 60, No. 152, 60 FR 40336, BEA published a notice of proposed rulemaking setting forth reporting requirements for a new survey, the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. No comments on the proposed rules were received. As a result, the final rules are the same as the proposed rules.

These final rules amend existing 15 CFR 801.9 to implement the new survey. The survey will be conducted by BEA under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended) and the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 4908). Section 3103(a) of the International Investment and Trade in Services Survey Act provides that "The President shall, to the extent he deems necessary and feasible—* * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *; and (5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection * * *" In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA. The Omnibus Trade and Competitiveness Act of 1988 directs that "The Secretary (of Commerce) shall ensure that * * * there is included in the Data Bank information on service sector activity that is as complete and timely as information on economic activity in the merchandise sector. The Secretary shall undertake a new benchmark survey of services transactions, including transactions with respect to * * * banking services; (and) brokerage services. * * * The Secretary shall (also) provide, not less than once a year, comprehensive information on the service sector of the economy."

The major purposes of the survey are to provide the information on financial services needed in monitoring U.S. services trade, analyzing its effects on the U.S. economy, formulating U.S. international trade policy, supporting bilateral and multilateral trade negotiations, compiling the U.S. balance of payments and national income and product accounts, developing U.S. international price indexes for services, assessing U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate foreign market opportunities.

The BE–82 survey will be conducted in years in which the BE–80 benchmark survey, or census, is not conducted; the first BE–80 survey was for 1994 and the first BE–82 survey will be for 1995. The BE–82 survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons obtained in the BE–80 survey. It covers the same types of financial services as the BE–80 survey, but the exemption level below which reporting is not required is $5 million, compared with $1 million in the BE–80 survey. Thus, reporting in the BE–82 is required from U.S. financial services providers who have sales to or purchases from unaffiliated foreign persons in all covered financial services combined in excess of $5 million during the reporting year. Those financial services providers meeting this criteria must apply data on the amount of their sales or purchases of each covered type of service, disaggregated by country. U.S. financial services providers that have covered transactions of $5 million or less during the reporting year are asked to provide, on a voluntary basis, estimates only of their total sales or purchases of each type of financial service.

Executive Order 12612

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These final rules have been determined to be not sufficient for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information requirement in these final rules has been approved by OMB (OMB No. 0608–0063).

Public reporting burden for this collection of information is estimated to vary from 4 to 150 hours, with an overall average burden of 7.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions in financial services with unaffiliated foreign persons by U.S. financial services providers exceed $5 million during the year. In addition, international business tends to be conducted mainly by the larger companies in a given industry; in the financial services industry, this is particularly true, because of the high degree of consolidation that has occurred in that industry in the United States during the past several years. In any event, small businesses tend to have specialized operations and activities, so those with reportable transactions will likely not have significant amounts of data to report; therefore, the burden on them will be relatively small.

List of Subjects in 15 CFR Part 801

Balance of payments, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: October 4, 1995.

J. Steven Landefeld,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding paragraph (b)(7) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) *Annual surveys.* * * *

(7) BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering companies' 1995 fiscal year and every year thereafter except when a BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, is conducted (see § 801.11). All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.8 are applicable to this survey. Additional rules and regulations for the BE–82 survey are given in paragraphs (b)(7)(i)(A) through (D) of this section. More detailed instructions are given on the report form itself.

(A) *Who must report.*—(*1*) *Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, *and* who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of $5,000,000 during its fiscal year covered by the survey. The $5,000,000 threshold should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $5,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries or parts combined that are financial services providers or intermediaries, are $5,000,000 or less, the U.S. person is *requested* to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the $5,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(B) *BE–82 definition of financial services provider.* The definition of a financial services provider used for this survey is the same as that used for the BE–80 benchmark survey, as defined in § 801.11(b).

(C) *Covered types of services.* The BE–82 survey covers the same types of financial services transactions that are covered by the BE–80 benchmark survey, as listed in § 801.11(c).

(D) *What to file.* (*1*) The BE–82 survey consists of Forms BE–82(A) and BE–82(B). Before completing a Form BE–82(B), a consolidated U.S. enterprise (including the top parent and all of its subsidiaries and parts combined) must complete Form BE–82(A) to determine its reporting status. If the enterprise is subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, either a separate Form BE–82(B) may be filed for each separately organized financial services subsidiary or part of the consolidated U.S. enterprise, or a single BE–82(B) may be filed, representing the sum of covered transactions by all financial services subsidiaries or parts of the enterprise combined.

(*2*) Reporters that receive the BE–82 survey from BEA, but that are not reporting data in either the mandatory or voluntary section of any Form BE–82(B), must return the Exemption Claim, attached to Form BE–82(A), to BEA.

(ii) [Reserved]

[FR Doc. 95–28229 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to the list of FDA officials in the Center for Drug Evaluation and Research (CDER) with authority to perform all the functions of the Commissioner of Food and Drugs with respect to approval of new drug applications and supplements thereto on drugs for human use. This action is being taken to realign approval points for division-level authorities to a more reasonable and manageable number.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT:

Rixie L. Scott, Center for Drug Evaluation and Research (HFD–057), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0530; or

Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.80 *Approval of new drug applications and their supplements* (21 CFR 5.80) by revising § 5.80(a)(1)(iii) and removing paragraph (a)(1)(iv) with the titles therein to delegate to the Director, Office of Over-the-Counter Drugs, authority to approve new drug applications and supplements thereto on drugs for human use, except for those drugs listed in 21 CFR 314.440(b). These changes are being made to realign approval points for division-level authorities to a more reasonable and manageable number.

Further redelegation of the authority delegated is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.80 is amended by revising paragraph (a)(1)(iii) and by removing paragraph (a)(1)(iv) to read as follows:

§ 5.80 Approval of new drug applications and their supplements.

(a)(1) * * *

(iii) The Director, Office of Over-the-Counter Drug Evaluation, CDER, for drugs under the Director's jurisdiction.

* * * * *

Dated: November 2, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–28149 Filed 11–14–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 175

[Docket No. 95F–0064]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of silver chloride-coated titanium dioxide as a preservative in polymer latex emulsions in resinous and polymeric coatings intended for use in contact with food. This action is in response to a petition filed by Johnson Matthey Chemicals.

DATES: Effective November 15, 1995; written objections and requests for a hearing by December 15, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 13, 1995 (60 FR 18845), FDA announced that a food additive petition (FAP 5B4453) had been filed by Johnson Matthey Chemicals, c/o 1000 Potomac St. NW., Washington, DC 20007. The petition proposed that the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of silver chloride-coated titanium dioxide as a preservative in polymer latex emulsions used in resinous and polymeric coatings intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive in resinous and polymeric coatings intended for use in contact with food is safe and that the regulations in § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 15, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii) by alphabetically adding a new entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxiii) Miscellaneous materials:

* * * * *

Silver chloride-coated titanium dioxide for use only as a preservative in latex emulsions at a level not to exceed 2.2 parts per million (based on silver ion concentration) in the dry coating.	

* * * * *

Dated: October 26, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–28216 Filed 11–14–95; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in December 1995, and to multiemployer plans with valuation dates in December 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the December 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities." *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during December 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1995.

For annuity benefits, the interest rates will be 6.00% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50% for the period during which benefits are in pay status, and 4.0% during all years preceding the benefits' placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for November 1995) of .20 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent a decrease (from those in effect for November 1995) of .25 percent for the period during which benefits are in pay status, and are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during December 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B to part 2619, Rate Set 26 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuitites

Lump Sum Valuations

In determining the value of interest factors of the form $v^{o}{}_{n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
26	12–1–95	01–1–96	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o}{}_{n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rate (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
December 1995	.0600	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B to part 2676, Rate Set 26 is added to Table I, and a new entry is added to Table II, as set forth below. The new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{o}{}_{n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate is i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
26	12–1–95	01–1–96	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o}{}_{n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
December 1995	.0600	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of November 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–28200 Filed 11–14–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–162]

RIN 2115–AA97

Safety Zone: Yale Party Fireworks, Bayville, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: On November 18, 1995, the Coast Guard is establishing a temporary safety zone in Long Island Sound, around the barge designated as the fireworks launching platform located offshore Ferry Beach, Bayville, NY. This safety zone is needed to protect the maritime community from the hazards associated with this fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATE: This regulation is effective on November 18, 1995, from 9 p.m. until 9:30 p.m. unless extended or terminated sooner by the Captain of the Port. There is no rain date scheduled for this event.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG E.J. Doucette, project officer for Captain of the Port, Long Island Sound, and LT S. Tyler, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Due to the date the application was received, there was not sufficient time to publish proposed rules in advance of the event. If a NPRM was required to be published, it would postpone the event effectually causing the event to be cancelled.

Background and Purpose.

On October 16, 1995, the sponsor, Bay Fireworks, Syosset, NY, requested that a 20-minute fireworks display be permitted in Long Island Sound in the vicinity of Ferry Beach, Bayville, NY. The fireworks display will occur on November 18, 1995, from 9 p.m. until 9:30 p.m. The safety zone covers all waters of Long Island Sound within a 1200-foot radius of the barge designated as the fireworks launching platform. This zone is required to protect the maritime community from the dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on scene representative.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of Long Island Sound to vessel traffic on November 18, 1995, from 9 p.m. until 9:30 p.m., unless extended or terminated sooner by the Captain of the Port Long Island Sound. Although this regulation prevents traffic from transiting a portion of Long Island Sound, the effect of this regulation will not be significant for several reasons: the safety zone will not impact a navigable channel; the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass seaward of this safety zone; and extensive, advance advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and a Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–162, is added to read as follows:

§ 165.T01–162 Yale Party Fireworks, Bayville, NY.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 1,200-foot radius of the barge designated as the fireworks launching platform, located offshore Ferry Beach, Bayville, NY, in approximate position 40°54'55" N, 073°32'58" W. (NAD 1983)

(b) *Effective date.* This section is effective on November 18, 1995, from 9 p.m. until 9:30 p.m., unless extended or terminated sooner by the Captain of the Port Long Island Sound. There is no rain date scheduled for this event.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: November 11, 1995.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 95–28106 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–010]

RIN 2115–AA97

Safety Zone: Annual South Street Seaport New Year's Eve Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the annual South Street Seaport New Year's Eve fireworks program located on the East River, New York. The safety zone is in effect annually from 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port New York. The safety zone temporarily closes all waters of the East River, shore to shore, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn, New York.

EFFECTIVE DATE: This rule is effective on December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On April 3, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 16820). Interested persons were requested to submit comments on or before June 2, 1995. No comments were received. A public hearing was not requested and one was not held. The Coast Guard is promulgating this final rule as proposed.

Background and Purpose

For the last several years, South Street Seaport, Inc. has submitted an Application for Approval of Marine Event for a New Year's Eve fireworks program on the East River. This regulation establishes a permanent safety zone on all waters of the East River, shore to shore, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn, New York. The safety zone is in effect annually from 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port New York. The safety zone prevents all vessels from transiting this area of the East River and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

This permanent regulation provides notice to mariners that this event occurs annually at the same location, on the same day and time, allowing them to plan transits accordingly. The effective period of the safety zone will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The safety zone closes a portion of the East River to vessel traffic annually from 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port New York. Although this regulation prevents traffic from transiting this area of the East River, the effect of this regulation is not significant for several reasons: the duration of the event is limited; the event is at a late hour; pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers; the event has been held annually for the past several years without incident or complaint; and the extensive, advance advisories which will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process each year.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.174, is added to read as follows: *§ 165.174 Safety Zone; Annual South Street Seaport New Year's Eve Fireworks Display, East River, New York.*

(a) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn, New York.

(b) *Effective period.* This section is in effect annually from 11:30 p.m. on December 31, until 12:45 a.m. on January 1, unless extended or terminated sooner by the Captain of the Port New York. The effective period will be announced annually via Safety Marine Information Broadcasts and locally issued notices.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: November 2, 1995.

J. Rutkovsky,

Commander, U.S. Coast Guard, Captain of the Port New York, Acting.

[FR Doc. 95–28105 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Parts 224, 261, 262, 263, 264, 265, 266, 267 and 268

Release of Information and Records Management

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises organizational names and titles contained in Postal Service regulations relating to the policies for the release of information and records management. These names and titles changed as a result of agency restructuring. The revisions reflect to whom the public should address issues relating to the release of information and records management. This action will bring organizational mentions in agency regulations up to date with the current structure of the Postal Service.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records, (202) 268–2608.

SUPPLEMENTARY INFORMATION: As a result of an agency restructuring, Postal Service regulations governing the release of information and records management contain outdated organizational names and titles. This

rule will revise those names and titles to show the current organization and official responsible for release of information and records management functions.

List of Subjects

39 CFR Part 224

Organizations Reporting Directly to the Postmaster General.

39 CFR Part 261

Records and information management.

39 CFR Part 262

Records and information management definitions.

39 CFR Part 263

Records retention and disposition.

39 CFR Part 264

Vital records.

39 CFR Part 265

Release of information.

39 CFR Part 266

Privacy of information.

39 CFR Part 267

Protection of information.

39 CFR Part 268

Privacy of information—employee rules of conduct.

For the reasons set out in this notice, 39 CFR parts 224 and 261 through 268 are amended as set forth below.

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

1. The authority citation for part 224 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 403, 404, 409, 1001, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

§ 224.1 [Amended]

2. Sections 224.1(a) and 224.1(f) are amended by removing the words "Records Officer" and adding, in their place, the words "Records Office".

§ 224.2 [Reserved]

3. Section 224.2 is added and reserved.

PART 261—RECORDS AND INFORMATION MANAGEMENT

4. The authority citation for part 261 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 261.2 [Amended]

5. Section 261.2(b) is amended by removing the words "39 CFR 224.3(b) assigns to the Postal Service Records Officer, located under the Senior Assistant Postmaster General, Finance Group," and adding, in their place, the words "39 CFR 224.1(f) assigns to the Postal Service Records Office, located under Finance".

6. Section 261.4(a) is revised to read as follows:

§ 261.4 Responsibility.

(a) The Manager, Payroll Accounting and Records, administers the Postal Service records and information management program through a Headquarters organizational component and records office coordinators in the finance function of area and district offices.

* * * * *

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

7. The authority citation for part 262 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 262.2 [Amended]

8. Section 262.2(b) is amended by removing the words "Records Officer" and adding, in their place, the words "Manager, Payroll Accounting and Records".

9. Section 262.2(c) is amended by removing the words "an Assistant Postmaster General" and adding, in their place, the words "a Vice President".

§§ 262.4 and 262.5 [Amended]

10. Sections 262.4(a), 262.4(b), and 262.5(d)(2) are amended by removing the words "Records Officer" and adding, in their place, the words "Records Office".

PART 263—RECORDS RETENTION AND DISPOSITION

11. The authority citation for part 263 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 263.3 [Amended]

12. Section 263.3(a) is amended by removing the words "Records Officer" and adding, in their place, the words "Records Office"; and by removing the word "he" and adding, in its place, the words "that office".

§ 263.5 [Amended]

13. Section 263.5 is amended by removing the words "Records Officer" and adding, in their place, the words "Records Office".

14. Section 263.6 is added to read as follows:

§ 263.6 Inquiries.

Inquiries regarding records retention and disposal should be directed to the Manager, Payroll Accounting and Records, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5243, or, by telephone, to the Records Specialist, telephone number (202) 268–4869.

PART 264—VITAL RECORDS

15. The authority citation for part 264 continues to read as follows:

Authority: 39 U.S.C. 401.

16. Section 264.3(a) and (b) is revised to read as follows:

§ 264.3 Responsibility.

(a) *Manager, Payroll Accounting and Records.* The Manager, Payroll Accounting and Records, is responsible for categorizing records as vital and shall establish and maintain the vital records program, insofar as rights and interests records are concerned, and ensure compliance with supportive procedures.

(b) *Chief Postal Inspector.* As the Postal Service's Emergency Coordinator, the Chief Postal Inspector (with the assistance of Headquarters and Regional Emergency Coordinating Committees and the advice of the Records Office) shall establish and maintain a program to ensure that emergency operating records are available at predesignated off-site locations for use during a national emergency.

* * * * *

§ 264.4 [Amended]

17. Section 264.4 is amended by removing the words "Records Officer" and adding, in their place, the words "Records Office".

PART 265—RELEASE OF INFORMATION

18. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 401, 403, 410, 1001, 2601; 5 U.S.C. App. 3.

19. Section 265.3(b) is revised to read as follows:

§ 265.3 Responsibility.

* * * * *

(b) *Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Payroll Accounting and Records, is responsible for the overall administration of this part, including the issuance of detailed instructions to custodians.

* * * * *

20. Section 265.4 is revised to read as follows:

§ 265.4 Inquiries.

Inquiries regarding the availability of Postal Service records should be directed to the appropriate records custodian. If the appropriate records custodian is not known, inquiries should be directed to the USPS Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5243, telephone number (202) 268–2608.

§ 265.6 [Amended]

21. Section 265.6(a)(2) is amended by removing the words "Law Department" and adding, in their place, the words "General Counsel".

§§ 265.6, 265.9, 265.9, and 265.10 [Amended]

22. In the following places, remove the words "Records Officer" and add, in their place, the words "Records Office":
(a) Section 265.6(b) introductory text;
(b) Section 265.9(b)(2)(ii);
(c) Section 265.9(g)(4); and
(d) Section 265.10.

§§ 265.6, 265.7, and 265.7 [Amended]

23. In the following places, remove the words "Regional Counsel" and add, in their place, the words "Chief Field Counsel":
(a) Section 265.6(d)(3)(i);
(b) Section 265.7(b)(1); and
(c) Section 265.7(b)(4).

§ 265.7 [Amended]

24. Section 265.7(a)(2) is amended as follows:
(a) By removing the words "USPS Records Officer, U.S. Postal Service, Washington, DC 20260–5010, telephone (202) 268–2924" and adding, in their place, the words "USPS Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5243, telephone (202) 268–2608";
(b) By removing the words "e.g., sectional center manager, district manager, Regional Postmaster General" and adding, in their place, the words "e.g., district manager, area vice president"; and
(c) By removing the words "Records Officer is deemed" and adding, in their place, the words "Records Office is deemed".

§ 265.11 [Amended]

25. Section 265.11(a)(4)(ii) is amended by removing the words "Regional Postmasters General, Postal Data Center Directors, or regional counsels" and adding, in their place, the words "Area, Information Systems Service Center, or Chief Field Counsel".

§ 265.12 [Amended]

26. Section 265.12(b)(7) is amended by removing the words "Records Officer, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5240" and adding, in their place, the words "Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–5243, telephone (202) 268–2608".

PART 266—PRIVACY OF INFORMATION

27. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

28. Section 266.3 (a) and (c) are revised to read as follows:

§ 266.3 Responsibility.

(a) *Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Payroll Accounting and Records, will ensure Postal Service-wide compliance with this policy.

* * * * *

(c) *Information System Executive.* These managers are responsible for reporting to the Records Office the existence or proposed development of Privacy Act systems of records. They also must report any change that would alter the systems description as published in the **Federal Register**. They establish the relevancy of the information within those systems.

* * * * *

§ 266.5 [Amended]

29. Section 266.5(d) is amended by removing the words "Records Officer" and adding, in their place, the words "Records Office".

§ 266.6 [Amended]

30. Section 266.6(a)(1) is amended by removing the words "Records Officer, U.S. Postal Service, Washington, DC 20260–5010" and adding, in their place, the words "Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5243, telephone (202) 268–2608".

31. Section 266.6(d) is amended by removing the words "USPS Records Officer" and adding, in their place, the words "Freedom of Information/Privacy Acts Officer".

§ 266.7 [Amended]

32. Section 266.7 is amended by removing, in paragraph (a)(4), the words "Records Officer" and adding, in their place, the words "Records Office"; and by removing paragraph (c).

§§ 266.10, 266.10, 266.10, 266.10 and 266.10 [Amended]

33. In the following places, remove the words "Records Officer" and add, in their place, the words "Freedom of Information/Privacy Acts Officer":
(a) Section 266.10(a);
(b) Section 266.10(b);
(c) Section 266.10(c);
(d) Section 266.10(d) introductory text; and
(e) Section 266.10(d)(2).

§ 266.10(c) [Amended]

34. In § 266.10, the undesignated paragraph following paragraph (b) is amended by removing the words "USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Rm 8831, Washington, DC 20260–5240" and adding, in their place, the words "Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–5243".

PART 267—PROTECTION OF INFORMATION

35. The authority citation for part 267 continues to read as follows:

Authority: 39 U.S.C. 401; Pub. L. 93–579, 88 Stat. 1896.

36. Section 267.3(a) is revised to read as follows:

§ 267.3 Responsibility.

(a) *Chief Postal Inspector and Freedom of Information/Privacy Acts Officer.* The Chief Postal Inspector and the Freedom of Information/Privacy Acts Officer will ensure within their respective areas of jurisdiction:
(1) Postal Service-wide compliance with this policy and related standards and procedures; and
(2) Implementation of remedial action when violations or attempted violations of these standards and procedures occur.

* * * * *

37. Section 267.5 is amended by revising paragraphs (c)(1) introductory text, (c)(1)(i) and (ii) and (c)(1)(vi) to read as follows:

§ 267.5 National Security Information.

* * * * *

(c) *Responsibility and authority.* (1) The Manager, Payroll Accounting and Records, serves as the USPS National Security Information Oversight Officer. This officer shall:

(i) Conduct an active oversight program to ensure that the appropriate provisions of these regulations are complied with;

(ii) Chair a committee composed of the Manager, Payroll Accounting and Records; the Chief Postal Inspector (USPS Security Officer); the General Counsel; the Executive Assistant to the Postmaster General; and the Director, Operating Policies Office; or their designees, with authority to act on all suggestions and complaints concerning compliance by the Postal Service with the regulations in this part;

* * * * *

(vi) Establish, staff, and direct activities for controlling documents containing national security information at USPS Headquarters and to provide functional direction to the field.

* * * * *

§§ 267.5 and 267.5 [Amended]

38. In the following places, remove the words "USPS Records Officer" and add, in their place, the words "Manager, Payroll Accounting and Records":

(a) Section 267.5(c)(2)(i); and

(b) Section 267.5(c)(3)(v).

§ 267.5 [Amended]

39. Section 267.5(e)(3)(i) is amended by removing the words "USPS Records Officer, U.S. Postal Service, Washington, DC 20260–5010" and adding, in their place, the words "Manager, Payroll Accounting and Records, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5243".

PART 268—PRIVACY OF INFORMATION—EMPLOYEE RULES OF CONDUCT

40. The authority citation for part 268 is revised to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 268.1 [Amended]

41. Section 268.1(b) is amended by removing the words "Records Officer" and adding, in their place, the words "Freedom of Information/Privacy Acts Officer".

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–28107 Filed 11–14–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AL–95–01; FRL–5332–4]

Clean Air Act Final Interim Approval of Operating Permits Program; Alabama Department of Environmental Management, Jefferson County Department of Health, and the City of Huntsville Department of Natural Resources and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating source category-limited interim approval of the Operating Permits Programs submitted by the State of Alabama Department of Environmental Management (ADEM) and the Jefferson County Department of Health (JCDH). The EPA is also promulgating interim approval of the Operating Permits Program submitted by the City of Huntsville Department of Natural Resources and Environmental Management (City of Huntsville). These approvals are for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location:

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 347–3555, Ext. 4170.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 13, 1995, EPA proposed source category-limited interim approval of the operating permits programs submitted by ADEM and JCDH, and interim approval of the program submitted by the City of Huntsville. See 60 FR 47522. The EPA received public comments from four organizations on the proposal and responds to those comments in the discussion below. The EPA has also compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this document EPA is taking final action to promulgate source category-limited interim approval of the operating permits programs submitted by ADEM and JCDH, and interim approval of the program submitted by the City of Huntsville.

II. Final Action and Implications

A. Analysis of State Submission

The EPA is promulgating source category-limited (SCL) interim approval of the operating permits program submitted by ADEM on December 15, 1993, as supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995. The EPA is promulgating SCL interim approval of the operating permits program submitted by JCDH on December 14, 1993, as supplemented on July 14, 1995. The EPA is promulgating interim approval of the operating permits program submitted by the City of Huntsville on November 15, 1993, as supplemented on July 20, 1995. The State and local programs substantially, but not fully, meet the requirements of part 70 and meet the interim approval requirements under 40 CFR 70.4.

B. Response to Comments

In this document, EPA discusses in detail all comments received concerning the proposal notice. The EPA responds to each comment and provides clarification where requested. Significant changes to EPA's opinions stated in the proposal notice include the retraction of three interim approval issues.

A public comment period on the proposed interim approval was held from September 13, 1995, until October 13, 1995. During that period EPA received comments from ADEM, the City of Huntsville, the Alabama Pulp and Paper Council (APPCO), and Exxon Company, U.S.A. The ADEM submittal includes eight comments regarding the interim approval issues listed in the proposed interim approval notice. The City of Huntsville concurs with the comments provided by ADEM and provides additional comments on three of those issues. The APPCO submittal includes three comments similar to those contained in ADEM's submittal. The Exxon submittal requests clarification on three items related to the definition of "administratively complete" applications. Responses to each comment follow.

1. Criminal Penalty Provisions

The ADEM agrees that a criminal penalty provision of not less than $10,000 per day per violation should be addressed in its program before full approval can be granted. The ADEM reaffirmed that they will continue to pursue the necessary criminal penalty authority with their State legislature. The City of Huntsville concurs with ADEM on this issue.

2. Certification of Completeness

The ADEM acknowledges their agreement with EPA to require the minimum elements of an "administratively complete" permit application in all initial applications submitted to the State. These elements are outlined in section II.D. of EPA's July 25, 1995, White Paper for Streamlined Development of Part 70 Permit Applications. This policy is necessary to support the two-step process discussed in the White Paper for accepting applications that are not acted upon within the first year of ADEM's title V program approval. Those applications will first be determined to be administratively complete, then be updated with supporting information as needed. The ADEM will receive fully complete applications from 40 percent of all part 70 sources within the first year of interim program approval. Also within the first year, the remaining 60 percent of part 70 sources will submit initial applications that meet the minimum requirements of an administratively complete permit application. The two-step application process is not being used by JCDH or the City of Huntsville.

ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) states: "Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective." However, since adopting this rule, ADEM has included the certification of completeness on all application forms. As discussed above, all sources will submit applications containing the minimum elements to be deemed administratively complete by the end of the first year of program approval. Therefore, ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) is extraneous and should be deleted.

The Exxon Company also submitted comments related to the certification of completeness required for initial applications. They are concerned that the requirements of an administratively complete application committed to by ADEM will not grant the same degree of relief envisioned in ADEM Regulation 335–3–16–.04(9)(b) discussed above. The Exxon submittal requests clarification on three items:

(a) Defining Applicable Requirements. The Exxon Company requests that EPA confirm that only a small amount of detail is required in defining applicable requirements in the initial applications of a two-step process. The EPA confirms that defining the part 70 applicable requirements could be accomplished by listing all requirements that apply to the facility, and that detailed rule citations and descriptions should not be necessary. The State has discretion in determining how much additional information they would need in order to begin processing the permit.

(b) Requirements of Compliance Status Certification. Exxon believes that a certification of compliance status regarding all applicable requirements (without the option of stating that compliance status is unknown for certain requirements) would create a burden on the applicant equivalent to that required to prepare and submit a fully complete title V application. Exxon requests that EPA state what is specifically required in the certification of compliance status.

Sources should certify either that they are in compliance with all applicable requirements, or that they are not in compliance with specific applicable requirements. A statement from a source that it is not in compliance with an applicable requirement would require a brief explanation of the pertinent circumstances and an acknowledgment of the need to submit a compliance plan in accordance with ADEM Regulation 335–3–16–.04(8)(h) (JCDH Regulation 18.4.8(h) and City of Huntsville Regulation 3.9.3(h)).

The EPA points out that this certification does not imply any guilt on the part of the certifying official and does not itself subject the source to any enforcement action. The certifying official is simply certifying that, to the best of his or her knowledge and belief, the statements and information contained in the document are truthful, accurate, and complete. The only necessary result of a negative statement on compliance status would be the submission of a plan to bring the facility into compliance.

The EPA does not agree that this certification creates a burden on the applicant equivalent to that required to prepare and submit a fully complete title V application. Several items are required in a fully complete application that are not required for an administratively complete initial application. These include the description of the source's processes and products, detailed emissions related information, air pollution control requirements, etc.

(c) Intent of Completeness Certification. The Exxon Company requests that EPA state whether the intent for the applicant to certify that applications are complete is only in regard to the limited information that they assume ADEM is going to request. The EPA affirms that the certification applies only to the information contained in the document submitted. This includes certifications in initial applications that are submitted to satisfy the requirement that administratively complete applications be submitted by all part 70 sources within the first year of program approval. This certification serves as an assurance from the source that the statements and information contained in the document submitted are truthful, accurate, and complete.

3. Insignificant Activities

The EPA received comments on three issues regarding "insignificant activities" as discussed in the proposed interim approval notice:

(a) Section 112(g) De Minimis Levels for HAPs. The ADEM objects to EPA's requirement that the definition of insignificant activities be revised such that emissions thresholds for individual activities or units that are exempted from permitting requirements (but are to be listed in the permit application) will not exceed five tons per year for criteria pollutants, and the lesser of 1,000 pounds per year or section 112(g) de minimis levels for hazardous air

pollutants (HAPs). With regard to HAPs, ADEM's definition of insignificant activities includes a potential to emit threshold of 1,000 pounds per year only. The ADEM states that if and when EPA establishes the de minimis levels for HAPs, they have the ability to reduce (or increase) each HAP's significance level. They also state that the part 70 regulations do not define what an insignificant activity is and that it is left to each agency to establish its own definition.

The APPCO states that ADEM's current program of addressing trivial and insignificant activities and emitting units should receive final approval without revision, with the exception of addressing section 112(g) de minimis levels when promulgated. They do not consider the issue of section 112(g) de minimis levels to be inconsistent with 40 CFR part 70, but point out that these levels have yet to be established.

For other state and local programs, EPA has accepted emission thresholds for insignificant activities of five tons per year for criteria pollutants and the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs. Since publication of the Alabama proposal notice, EPA has reconsidered the 1,000 pounds per year limit established by the State. The EPA now agrees that this limit is acceptable as long as the requirements discussed in (c) below are met. Important to this finding is the fact that the level is articulated in terms of potential emissions rather than actual emissions. Where EPA has rejected similar HAP thresholds in other programs, it has been because those levels were in terms of actual emissions and because those programs did not attempt to demonstrate why such a level would be insignificant. Even absent a demonstration, EPA believes the use of potential rather than actual levels, in combination with the gatekeepers discussed in (c) below, provide adequate assurance that significant activities will not be excluded from the application.

(b) EPA and Public Review of List of Insignificant Activities. The ADEM objects to the requirement to make their list of insignificant activities available for EPA and public review and comment each time that the list is revised. They state: "Due to the number of different industries in Alabama, changes to the insignificant list will occur often, especially at the beginning of the program. For this reason, it would be difficult and burdensome to require EPA and public review of the list each time it is revised . . . ADEM has committed to EPA to have semi-annual reviews of its list by EPA and the public. In addition, each time a new insignificant activity not previously reviewed by EPA and the public is put into an application, it is put out for the public and EPA to review per the requisite title V review requirements."

The City of Huntsville believes that the requirement for public comment and EPA review of additions to their list of recognized insignificant activities is already satisfied in that any activities which the applicant is claiming to be insignificant must be identified in the permit application. They state that the vast majority of insignificant activities will be initially identified in the permit application review process which involves EPA and public participation. They add that a duplicative requirement for public and EPA notice and review when revising a list of insignificant activities is entirely unnecessary.

The APPCO considers EPA's comments regarding insignificant activities to be inconsistent with part 70, with the exception of addressing the issue of section 112(g) de minimis levels. They provided a review of the insignificant activities provisions contained in ADEM's program, the Federal regulations, and other guidance promulgated by EPA. Overall, the APPCO summary is correct. However, the distinction between what is required for trivial activities and what is required for insignificant activities was not addressed by APPCO. Trivial activities, as discussed in section II.B.3. of the White Paper, are certain activities that are clearly trivial (i.e., emissions units and activities without specific applicable requirements and with extremely small emissions). Trivial activities can be omitted from applications even if they are not included on a list of insignificant activities approved in a State's part 70 program. Attachment A of the White Paper lists examples of activities which EPA believes should normally qualify as trivial in this sense. Permitting authorities can allow, on a case-by-case basis without EPA approval, exemptions similar to those activities identified in Attachment A.

Insignificant activities are emissions units and activities included on a list approved by EPA as part of a State program pursuant to 40 CFR 70.5(c). As provided in the White Paper, permitting authorities can allow sources merely to list in applications the kinds of insignificant activities that are present at the source or check them off a list of insignificant activities approved in the program. The White Paper also states that "additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to State lists of insignificant activities" [emphasis added].

The fact that EPA will have the opportunity to review insignificant activities contained in title V applications does not satisfy the requirement for EPA approval of additions to the list of insignificant activities. Considering resource constraints, it is unlikely that EPA will be able to review each and every permit issued. Therefore, relying upon the permit review process for concurrence on additions to the lists of insignificant activities would result in additions being made without any review by EPA. Also, ADEM's commitment to a semi-annual review of their list of insignificant activities by EPA and the public is not sufficient for EPA to confirm that new additions to the list are appropriate. Such a procedure gives no protection from the possibility of issued permits having to be reopened to remove listed insignificant activities that are disallowed by EPA.

States can develop lists of insignificant activities, however EPA is required to review and approve these lists initially during the program review and later during implementation as States seek to add new exemptions to the lists. The EPA is not interfering with the State and Locals' legitimate exercise of discretion but, to be consistent with 40 CFR 70.5(c), is merely requiring them to include EPA review and approval when amending their lists. To obtain full approval the State and the Local agencies must revise their approach on insignificant activities such that the lists are made available for EPA review each time the lists are revised. However, EPA acknowledges that no requirement exists for public review of a State's list of insignificant activities.

(c) *Exemptions from Permitting Requirements and Major Source Applicability Determinations.* The ADEM objects to prohibiting any emissions units with applicable requirements from being exempted from title V permitting requirements or major source applicability determinations. They argue that such a prohibition would prevent any unit subject to generic State Implementation Plan (SIP) requirements, no matter how small, from being treated as an insignificant activity, thus rendering the concept of insignificant activities useless.

The City of Huntsville states that their rules do not provide for exemptions from applicable requirements and that "squeezing" under a facility-wide applicability threshold by "subtracting" aggregated emissions resulting from

insignificant activities is not being sanctioned.

The EPA disagrees with ADEM and the City of Huntsville on this issue. Generic SIP requirements are discussed in section II.B.4. of the White Paper. Emissions units and activities may be treated generically in the application and permit for certain broadly applicable requirements often found in the SIP. Examples of such requirements include those that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., process weight requirements). These requirements are sometimes referred to as "generic" because they apply to all subject units or activities at a facility and they are enforced in the same manner for all. If the applicant documents the applicability of these requirements and describes the compliance status as required by 40 CFR 70.5(c), the individual emissions units or activities may be excluded from the application, provided no other requirement applies that would mandate a different result.

Additionally, although section 70.5(c) provides that insignificant activities need not be described in permit applications, EPA maintains that part 70 does not allow for insignificant activities to be excluded from major source applicability determinations. Major source determinations are made in accordance with the definitions in section 70.2, which do not allow for exclusions of emissions from insignificant activities. EPA believes that this does not create a burdensome inquiry. Part 70 does not require use of any specific method for estimating the impact of these emissions for applicability purposes. However, it does require them to be taken into account where they could impact a major source applicability determination.

As indicated in the proposal notice, EPA finds that the ADEM, JCDH, and City of Huntsville programs lack assurance that insignificant activities will not be exempted from title V permitting requirements or be excluded from major source applicability determinations. As a condition of full approval, State and Local agencies must revise their regulations, consistent with section 70.5(c), to ensure that (1) applications do not omit information needed to determine or impose applicable requirements, and (2) insignificant activities or emissions units will not be exempted from the determination of whether a source is major.

4. Trading of Emissions Increases and Decreases

The ADEM objects to adding provisions to their regulations that allow for the trading of emissions under a Federally enforceable emissions cap. They state that their regulations do not prohibit putting these types of conditions in an operating permit, and nothing prevents them from doing so if requested by an applicant. They also point out that ADEM has always had the ability to put conditions in a permit that provide for emissions trading, and have done so extensively in their construction permit program. The City of Huntsville concurs with ADEM on this issue.

The APPCO concurs with EPA that these operational flexibility provisions should be added to ADEM regulations in order to be consistent with Federal standards. However, APPCO feels that, given the present operational flexibility within ADEM regulatory framework, such provisions would be moot.

The EPA agrees with ADEM that nothing prevents them from issuing permits that contain conditions that allow trading of emissions increases and decreases under an emissions cap if requested by an applicant. However, having this ability does not satisfy Federal regulations which require all part 70 programs to include these provisions. Section 70.4(b)(12)(iii) states: "The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions . . . allowing for the trading of emissions increases and decreases . . ." [emphasis added].

As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville regulations must be amended to require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all standard permit requirements and compliance requirements, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a Federally enforceable emissions cap established in the permit independent of otherwise applicable requirements. As noted in the proposed interim approval of Alabama's program, EPA recognizes that the flexibility provisions of 40 CFR part 70 are under revision due to litigation on the rule. However, for this notice to accurately reflect current Federal regulations, this deficiency must remain noted until the State revises its program accordingly.

5. Director's Discretion in Approving Alternative Methods

The ADEM objects to deleting the Department Director's discretion in approving alternatives to standard reference test methods used in demonstrating compliance with title V permit terms. In the proposal notice, EPA required this deletion due to a State regulation which suggests that the Director has authority to approve alternatives to any required standard reference test methods. ADEM Regulation 335–3–16–.04(8)(b)(3) (JCDH Regulation 18.4.8(c)(3) and City of Huntsville Regulation 3.9.3(c)(3)) states that the permit application shall include "emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director."

The ADEM agrees that the Director does not have the discretion to change a compliance method that has been established for any Federal regulation that the State adopts by reference. This includes compliance methods contained in any NESHAP, NSPS, or MACT regulation. The ADEM points out, however, that they can change any method established to determine compliance with a State Implementation Plan (SIP) regulation (including Prevention of Significant Deterioration (PSD) and New Source Review (NSR)) or other non-Federal regulation. They add that even in Federal regulations, which only have provisions for initial compliance determinations, ADEM can establish its own compliance methods to determine compliance on an interim or continuous basis. The City of Huntsville concurs with ADEM on this issue.

The APPCO concurs with EPA that test methods approved by EPA should be utilized for compliance determinations. However, APPCO points out that this may not always be the case for determining title V fee amounts.

The EPA agrees with ADEM's statements on this issue and has not called for changes in current testing protocol. However, the State regulation in question seems to imply that the Director may approve alternatives to standard reference test methods under any circumstance. Based upon ADEM's comments on this issue, EPA has reevaluated its interpretation of the regulation and now finds no need for change. The reference to an "alternative method approved by the Department's Director" is confined to those

circumstances in which the Director has already been granted authority to approve such changes. This includes and is limited to methods established to determine compliance with SIP regulations (i.e., PSD and NSR) and methods used to determine compliance with Federal regulations on an interim or continuous basis. However, methods used to determine compliance with Federal regulations on an interim or continuous basis must be established in the operating permit in order for them to be sufficient for a demonstration of compliance.

6. Definition of Significant Modifications

The ADEM objects to modifying their definition of "significant modifications" to meet part 70 requirements. Their rule defines significant modifications as changes that result in a net emissions increase of any of the pollutants and levels listed in ADEM Regulation 335–3–14–.04 or .05 (JCDH Regulation 2.4 or 2.5 and City of Huntsville Regulation 3.4 or 3.5), or any modifications under NSPS or NESHAP. The EPA pointed out in the proposal notice that 40 CFR 70.7(e)(4)(i) requires the State's program to contain criteria for determining whether a change is significant. These criteria must include, at a minimum, "every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions . . ." The ADEM states that the modification requirements of a title V permit, including the definition of a significant modification, will be changed in the upcoming part 70 revision. The ADEM feels that it would be premature to change their regulations prior to this revision.

The City of Huntsville concurs with ADEM and adds that, in their opinion, no deficiency exists in their program regarding the types of changes mentioned in 40 CFR 70.7(e)(4)(i). They point out that these types of changes do not fall under the definition of "administrative amendments" (City of Huntsville Regulation 3.9.11(a)(1)) and are specifically excluded from the definition of "minor permit modifications" (City of Huntsville Regulation 3.9.11(c)(1)(i)(b)). Also, City of Huntsville Regulation 3.9.11(c)(4)(iii) stipulates that requested permit modifications not meeting the minor permit modification criteria will be reviewed under the significant modification procedures. Therefore, the types of changes mentioned in 40 CFR 70.7(e)(4)(i) could only be considered to be significant modifications and would be processed as such.

The EPA agrees with the City of Huntsville's assessment on the adequacy of their regulations regarding the types of changes mentioned in 40 CFR 70.7(e)(4)(i), and concludes that no modifications regarding this issue are necessary. For the same rationale, EPA also finds that the ADEM and JCDH programs are not in need of modification regarding this issue.

7. Director's Discretion in Allowing Administrative Permit Modifications

The ADEM objects to revising their regulations to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. This requirement was made because ADEM Regulation 335–3–16–.13(1) (JCDH Regulation 18.13.1 and City of Huntsville Regulation 3.9.11(a)) does not require the Administrator's approval of administrative changes similar to those listed in the chapter. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d) (i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv).

The ADEM states that the definition of what can be an administrative permit amendment is likely to be changed in the upcoming part 70 revision. The ADEM feels that it would be unproductive to change their regulations now when the new definition may give the governing agency the ability to make such a change. They also assert that ADEM should have this type of discretion in order to deal with the day-to-day variations that will occur in running the operating permits program.

The City of Huntsville states that no need exists to revise their rules to be consistent with part 70 in its present form. They state that the Director's discretion in approving administrative changes in addition to the ones specifically mentioned in 40 CFR 70.7(d) (i) through (v) is clearly circumscribed by City of Huntsville Regulation 3.9.11(a) (i.e., the types of changes specified in 70.7(d)(1) (i) through (iv)). The City of Huntsville asserts that this flexibility allowed to their Director "merely serves as a safety valve against the ludicrous, not as a mechanism for circumventing the requirement to provide opportunity for EPA and public participation when such opportunity is clearly appropriate." They also point out that the Director must submit copies of all administrative amendments to the Administrator, thus affording opportunity for EPA objection.

The EPA does not agree with the positions taken by ADEM and the City of Huntsville on this issue. The purpose of 40 CFR 70.7(d)(1)(vi) is to allow states to have the opportunity to make additions to the list of items that can be considered administrative permit amendments in their programs. Any changes that might be considered to be inconsequential, or ludicrous, are already allowed by the regulations in place. Section 70.7(d)(1)(i) grants the permitting authority the ability to make amendments which correct typographical errors. Section 70.7(d)(1)(ii) grants the permitting authority the ability to make amendments which identify changes in name, address, or phone number, or which provide a similar minor administrative change at the source [emphasis added].

For full approval, ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. Alternatively, the State may revise 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(5) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) to reference the "Administrator" rather than the "Director." The EPA recognizes the possibility of a change to this requirement in forthcoming revisions to the part 70 regulations. However, for this notice to accurately reflect current Federal regulations, this deficiency must remain noted until the State revises its program accordingly.

8. EPA and Affected State Review of Administrative Permit Amendments

The ADEM commits to correcting an error in citation contained in ADEM Regulation 335–3–16–.13(1)(a)6. This change will remove an apparent lack of EPA and affected states review of administrative permit amendments required by 40 CFR 70.7(d)(1)(v).

In addition to the necessary changes to the title V programs noted above, it has come to EPA's attention that two questions of interpretation exist with respect to ADEM Regulations 335–3–16–.11(1) and 335–3–16–.11(2)(c) (JCDH Regulations 18.11.1 and 18.11.2(c), and City of Huntsville Regulations 3.3.8(a), 3.3.8(b) and 3.3.8(b)(3)). The questions of interpretation concern the Director's ability to exempt emissions exceedances on a case-by-case basis and the ability of EPA and citizens to participate in the emergency determination process. The EPA and the State agree to develop a program revision that resolves these issues in a manner consistent with part 70.

C. Final Action

1. Title V Operating Permits Program

The EPA is promulgating final source category-limited interim approval of the operating permits programs submitted by ADEM and JCDH on December 15, 1993, and December 14, 1993, respectively. The EPA is also promulgating final interim approval of the program submitted by the City of Huntsville on November 15, 1993. The State and Local agencies must make the following changes to receive full approval:

(a) The State statutes must be revised to provide adequate criminal authority as required by 40 CFR 70.11(a)(3) (ii)–(iii), including criminal fines recoverable in a maximum amount of not less than $10,000 per day per violation.

(b) The ADEM, JCDH, and City of Huntsville must revise their regulations regarding insignificant activities such that (1) their list of insignificant activities is made available for EPA review each time the list is revised and (2) emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.

(c) The ADEM, JCDH, and City of Huntsville programs must be revised to provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). These rules allow the agencies, if requested by permit applicants, to issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in permitted facilities.

(d) ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. Alternatively, the State may revise 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(5) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) to reference the "Administrator" rather than the "Director." Also, ADEM Regulation 335–3–16–.13(1)(a)6 must be revised to include the EPA and affected states review provisions required by 40 CFR 70.7(d)(1)(v).

The ADEM and JCDH are being granted source category-limited (SCL) interim approval of their part 70 operating permits programs. For a discussion on the basis for SCL interim approval, refer to the proposal notice of September 13, 1995. See 60 FR 47522.

The scope of the ADEM, JCDH, and City of Huntsville part 70 programs approved in this notice applies to all part 70 sources (as defined in the approved programs) within the State, except any sources of air pollution over which an Indian tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until December 15, 1997. During this interim approval period, ADEM, JCDH, and the City of Huntsville are protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the jurisdictions of ADEM, JCDH, and the City of Huntsville. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If ADEM, JCDH, or the City of Huntsville fail to submit a complete corrective program for full approval by June 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If ADEM, JCDH, or the City of Huntsville then fail to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that ADEM, JCDH, or the City of Huntsville has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of ADEM, JCDH, or the City of Huntsville, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that ADEM, JCDH, or the City of Huntsville has come into compliance. In any case, if, six months after application of the first sanction, ADEM, JCDH, or the City of Huntsville still have not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the ADEM, JCDH, or City of Huntsville's complete corrective programs, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date ADEM, JCDH, or the City of Huntsville has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of ADEM, JCDH, or the City of Huntsville, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that ADEM, JCDH, or the City of Huntsville has come into compliance. In all cases, if, six months after EPA applies the first sanction, ADEM, JCDH, or the City of Huntsville has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if ADEM, JCDH, or the City of Huntsville has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to ADEM, JCDH, or the City of Huntsville program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for ADEM, JCDH, or the City of Huntsville upon interim approval expiration.

2. Preconstruction Review Program Implementing Section 112(g)

The EPA is approving the use of Alabama's preconstruction review program found in Chapter 335–3–14 of the ADEM Regulations (Chapter 2 of the JCDH Regulations and Chapter 3.5 of the City of Huntsville Regulations) as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and Alabama's adoption of rules

specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by Alabama to implement section 112(g). To provide the State and Locals adequate time to adopt regulations consistent with federal requirements, this approval is granted with a duration of 18 months following promulgation by EPA of section 112(g) regulations.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is approving under section 112(l)(5) and 40 CFR 63.91, the State's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA is delegating all existing standards and programs under 40 CFR Parts 61 and 63. This program for delegation applies to part 70 and non-part 70 sources.[1]

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including 17 public comments received and reviewed by EPA on the proposal, are contained in docket number AL–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 of the Unfunded Mandates Act requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Alabama in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alabama

(a) Alabama Department of Environmental Management: submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) City of Huntsville Department of Natural Resources and Environmental Management: submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(c) Jefferson County Department of Health: submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

* * * * *

[FR Doc. 95–28212 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–P

[1] The radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with ADEM, JCDH, and the City of Huntsville in the development of their radionuclide program to ensure that permits are issued in a timely manner.

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40 CFR Part 70

[AD–FRL–5332–5]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by West Virginia for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

ADDRESSES: Copies of West Virginia's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (CAA), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that states seeking to administer a Title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

On August 29, 1995, EPA proposed interim approval of the operating permits program for West Virginia. (See 60 FR 44799). EPA compiled a technical support document (TSD) associated with the proposal which contains a detailed analysis of West Virginia's operating permits program. In this document EPA is taking final action to promulgate interim approval of the operating permits program for West Virginia.

II. Analysis of State Submission

On November 12, 1993, West Virginia submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR Part 70 and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal was supplemented by additional materials on August 26 and September 29, 1994. EPA reviewed the program against the criteria for approval in section 502 of the CAA and the Part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the state's operating permits program (see 60 FR 44799 (August 29, 1995)) and the TSD for this action, that West Virginia's operating permits program substantially meets the requirements of the CAA and Part 70.

III. Response to Public Comments

EPA received several comments from industry representatives during the public comment period. Additional comments were submitted after the expiration of the public comment period. These comments and EPA's responses are grouped into eight (8) categories. All comments are contained in the docket at the address noted in the **ADDRESSES** section above.

1. "Insignificant Activities"

Comment: The authority of the Chief of West Virginia's Office of Air Quality (WVOAQ) to make additions to the insignificant activity list should not be limited as proposed by EPA. EPA should indicate to the WVOAQ that it is appropriate to recognize "trivial sources", described in EPA's July 10, 1995 "White Paper for Streamlined Development of Part 70 Permit Applications" (herein after the "White Paper"), as being exempt from Part 70 permit applications.

EPA Response: Section 70.5(c) specifically requires activities and emissions levels to be considered as "insignificant" to be approved by EPA as part of a state's operating permits program. EPA's criteria for approving activities and emissions levels as "insignificant" derive from the requirement that permit applications include all information necessary to determine the applicability of, or to impose, any applicable requirement, and to evaluate fees.

Section 3.2.d.M of West Virginia's rule authorizes the Chief to determine activities or emissions units to be insignificant beyond those approved as part of West Virginia's operating permits program. The Chief's discretion is not limited to any specific categories of activities or emission levels. As discussed in the proposed notice, this broad provision is not approvable because EPA has no way to evaluate such activities against the criteria discussed above. Furthermore, this provision allows new exemptions from permit requirements to be granted without prior EPA approval, an approach which is inconsistent with the requirements of section 70.5(c).

EPA recognizes the desire and need for state permitting authorities to have the flexibility to determine additional activities other than those listed and approved as part of a state's operating permits program to be insignificant. For this reason, EPA has proposed to allow the Chief to determine on a permit-by-permit basis and within bounds approved by EPA as part of West Virginia's program additional activities to be considered as insignificant. EPA believes that this approach will provide the needed flexibility in a manner which is consistent with the requirements of section 70.5(c). West Virginia also has the option to submit to EPA for approval additional insignificant activities or emissions levels which are to apply to all permittees.

As discussed in the "White Paper", EPA believes that, in addition to the insignificant activity provisions of section 70.5(c), section 70.5 allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in any way implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's Part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial. However, additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to state lists of insignificant activities.

While section 70.5 has been interpreted to allow flexibility for the determination of trivial activities, EPA will defer to West Virginia to determine whether similar flexibility exists under its own permit application provisions. EPA believes that it is appropriate to have such determinations made in the first instance at the state level as the decision of whether any particular item should be on a state's trivial list may depend on state-specific factors, such as whether the activity is subject to state-only requirements or specific requirements of the SIP.

2. Emissions Trading/Volatile Organic Compounds (VOCs)

Comment: EPA should not prohibit the Chief's discretion in establishing permit provisions which allow emissions trading of categories of VOCs. There is no reason why emissions trading of this type should be considered as an alternative operating scenario when allowed by applicable requirements. EPA's position severely restricts the Chief's ability to administer permits and reduces operational flexibility for business and industry.

EPA Response: West Virginia 45CSR30, section 5.1.j.D. provides that permit provisions for emissions trading "[m]ay include categories of VOCs

which in the Chief's discretion can be substituted for one another in a production process." EPA's primary concern with this provision is that, as written, it is not clear how substituting categories of VOCs in a production process could be considered to be emissions trading.

According to the public record of the adoption of West Virginia's operating permits regulations, this provision was added to clarify that West Virginia's alternative operating scenario provisions should not be limited to changes in the hours of production or process configuration, but should also encompass the use of different chemicals to make slight changes in the production process if consistent with applicable requirements. In response to a request for clarification of this provision, a supplemental Attorney General's opinion submitted to EPA by West Virginia on September 29, 1994 acknowledged that section 5.1.j.D. was misplaced and instead belonged in section 5.1.i.D.

EPA recognizes that Part 70 allows permits to contain provisions, if the permit applicant requests them, for emissions trading in accordance with applicable requirements. In no way is EPA attempting to limit this authority or reduce operational flexibility for business and industry by prohibiting categories of VOCs from being traded under authorized emissions trading provisions.

3. Section 112(g) implementation

Comment: The immediate implementation of section 112(g) following promulgation of EPA's regulations is not workable. An appropriate amount of time must be provided to develop state regulations. An appropriate time limit for West Virginia to adopt section 112(g) rules is 24 months.

EPA response: As discussed in the proposed rulemaking, EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the state's operating permits program regardless of whether EPA had completed its section 112(g) rulemaking. EPA's current interpretation of the CAA postpones the requirement for sources to comply with section 112(g) until after the time EPA has promulgated a rule addressing that provision (see 60 FR 8333).

EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow states time to adopt rules implementing the federal rule. This decision, however, will be made in the context of the final 112(g) rulemaking. Consequently, EPA will not respond to the comment related to the effective date of section 112(g) in this document.

Unless and until EPA provides for such an additional postponement of section 112(g), West Virginia must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of West Virginia's implementing regulations. West Virginia will be required to adopt state rules in a time frame consistent with the requirements of the federal section 112(g) rule. To the extent that the federal section 112(g) rule does not establish a timeframe for the adoption of state rules, West Virginia will be allowed up to 24 months to implement its "transition mechanisms" in place of state 112(g) regulations. EPA believes twenty-four (24) months to be an appropriate timeframe since West Virginia's rulemaking procedures require regulations to be approved by the state legislature prior to adoption.

4. Fees

Comment: West Virginia's fee structure is adequate to maintain the quality of the program. No additional flexibility to adjust permitting fees is required.

EPA Response: EPA is not requiring West Virginia to adjust its fee structure in any way. EPA's fee discussion in the proposed notice merely mentioned that by having additional flexibility to adjust fee levels, West Virginia would be in a better position to respond to resource needs without having to wait for legislative approval.

5. Effective Date

Comment: West Virginia's electronic permit application forms have not been completed and are not available to the regulated community. Therefore, West Virginia has not fulfilled the requirements of 70.4(b)(4)(i) for permit application forms. The interim approval should be provided with an effective date of April 1, 1996 so that West Virginia will have ample time to complete the electronic forms.

EPA Response: West Virginia's electronic permit application forms are completed and available to the regulated community. These forms were submitted to EPA on October 18, 1995 to replace the hard copy permit application forms submitted on November 12, 1993 as part of the original operating permits program to satisfy the requirements of section 70.4(b)(4)(i). No postponement of the effective date is warranted.

6. "De Minimis" Changes

Comment A: EPA's requirement for removal of section 6.5.a.A.(c) is not mandated under Part 70 in light of the other "gatekeeper" provisions of section 6.5 which serve to prevent Title I modifications or constructions from being exempt from permit modification procedures.

EPA Response: EPA agrees that the "gatekeeper" provisions of section 6.5.a.A. do serve to prevent Title I modifications or constructions from being exempt from permit modification procedures. However, section 6.5.a.A.(c) allows changes which are below certain "de minimis" emissions levels which would otherwise be required to be processed as minor permit modifications to be completely exempt from such procedures. While Part 70 may allow certain of these changes to instead be processed "off-permit", sources making "off-permit" changes must provide contemporaneous written notice of the change to the permitting authority and to EPA. As written, section 6.5.a.A.(c) does not require any reporting requirements for changes defined to be "de minimis".

Comment B: Section 6.5.a.A.(c) should not be removed as described by EPA. This section, authorizing certain "de minimis" changes to occur without a permit modification is consistent with the provisions of the "White Paper".

EPA Response: EPA disagrees. The "White Paper" clarifies EPA's expectations for permit application information only. These clarifications were necessary to streamline and simplify the development of Part 70 permit applications and did not address the topic of permit revisions. Part 70 does not provide "de minimis" levels for source changes below which no permit modification is required.

7. Definition of "Emissions Unit"/112(b) Pollutants

Comment: EPA considers West Virginia's section 2.18 definition of the term "Emissions unit" to be deficient since it does not expressly include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the Clean Air Act in addition to pollutants considered to be "regulated air pollutants". As a practical matter, are there any pollutants listed under section 112(b) of the CAA that are not now "regulated air pollutants"?

EPA Response: The population of regulated air pollutants (RAPs), as described in an April 26, 1993 guidance document entitled "Definition of Regulated Air Pollutant for Purposes of

Title V", is composed of the following categories of pollutants: (1) Nitrogen oxides (NO_x) and volatile organic compounds (VOCs); (2) any pollutants for which an ambient air quality standard has been promulgated; (3) any pollutant that is subject to a new source performance standard under section 111 of the CAA; (4) any Class I or Class II ozone-depleting substance specified under Title VI of the CAA; and (5) any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the CAA.

While it is true that section 112(b) pollutants are "regulated air pollutants" if they fall under any one of the five (5) categories of pollutants listed above, EPA has not determined that each of the 189 pollutants listed under section 112(b) of the CAA are "regulated air pollutants" at this time. Such a determination would entail an analysis of each of the 189 pollutants listed in section 112(b) of the CAA with respect to the five categories of RAPs, an effort which EPA has not undertaken to date. If a determination is made that all of the section 112(b) pollutants are RAPs then the scope of pollutants defined under West Virginia's definition of "Emissions unit" would be broad enough to fully meet the section 70.2 definition of "Emissions unit". Until such a determination is made, West Virginia must define the term "Emissions unit" to specifically include pollutants listed under section 112(b) of the CAA consistent with the section 70.2 definition. West Virginia may chose to submit such a determination instead of modifying its definition of "Emissions unit" to satisfy the condition for interim approval.

8. Criminal Penalties for Knowing Misrepresentations of Fact

Comment: In its proposed interim approval of West Virginia's Title V operating permit Program, EPA requires West Virginia to modify W. Va. Code § 22–5–6(b)(1) of the enabling statute for the program to provide for a maximum criminal penalty of not less than $10,000 per day per violation for knowing misrepresentations of fact. One commenter questions whether the knowing misrepresentation of material fact is truly amenable to the "continuing violation" position EPA has taken in 40 CFR 70.11(a)(3)(iii). The commenter does not further articulate an argument on this point, but goes on to note that, while Section 502(b)(5)(E) of the CAA, as amended, 42 U.S.C. 7661a(b)(5)(E), provides that state operating permit programs include the authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, the same subsection, "vests discretion with the States to establish 'appropriate criminal penalties' in their respective Title V programs." Finally, the commenter argues that, in light of the recent decision in *U.S.* v. *Telluride Company,* 884 F. Supp. 404 (D. Colorado, May 2, 1995), EPA's "efforts to apply the 'continuing violation' theory to this particular type of violation seems misdirected. Just as in the *Telluride* case, where the discharge of fill materials into wetlands was held not to be a 'continuing violation,' the misrepresentation of material fact on an application or other report is a discrete action which a reviewing court will most certainly find not to be continuing in nature."

EPA Response: EPA's clear requirement at 40 CFR 70.11(a)(3)(iii) that state operating permit programs include the authority to recover criminal penalties in an amount of not less than $10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method, is grounded in legitimate concerns that the environmental risks engendered by such conduct continue until the false information is corrected. In fact, in many circumstances, as where a required monitoring device is tampered with, it is impossible to obtain correct information after the fact, and in any such circumstance, continuing environmental contamination can go uncorrected where required information is falsified. The "continuing violation" theory at 40 CFR 70.11(a)(3)(iii) is consistent with EPA's position elsewhere in the CAA and under other statutes.

The commenter is misguided in its view that the statutory language at Section 502(b)(5)(E) which provides that state operating permit programs must include, "appropriate criminal penalties," amounts to a Congressional grant of discretion to the states to determine what constitutes appropriate criminal penalties. There is nothing to suggest that Congress viewed the matter in this way, and it is counter-intuitive to assume that Congress, while concerned enough about civil violations to require maximum civil penalties to be assessed at at least $10,000 per day per violation, at the same time felt it would be appropriate for states to set significantly less stringent penalties for criminal behavior, which is what West Virginia has done here. In fact, as is the normal course, EPA was charged with interpreting Section 502, and did so with the promulgation of 40 CFR part 70. In doing so, EPA made the clear determination that appropriate criminal penalties include, at a minimum, those penalties specified at 40 CFR 70.11(a)(3)(iii). This proposed action on the West Virginia operating permit program is consistent with that interpretation.

Finally, notwithstanding the view of the U.S. District Court for the District of Colorado on the continuing nature of discharges to wetlands under the Clean Water Act, the *Telluride* decision has not warranted a reversal of EPA's position under Section 502 of the Clean Air Act, as set forth above, on the continuing nature of knowingly false material statements, representations or certifications in forms, notices or reports required by a permit, or the knowing tampering to render inaccurate any required monitoring device or method.

In addition to the eight (8) categories of comments discussed above, one general comment raised with respect to several of the proposed interim approval issues questions why such program deficiencies warrant interim approval status. Although this same comment was submitted with respect to several of the proposed interim approval issues, EPA will respond to this comment generally in this notice.

The Part 70 regulations define the minimum elements required by the CAA for approval of state operating permit programs. Section 70.4(d) authorizes EPA to grant interim approval in situations where a state's program substantially meets the requirements of Part 70, but is not fully approvable. In reviewing West Virginia's operating permit regulations, the impact of seemingly "small" deficiencies such as vague or awkward language, misplaced, misreferenced or mislabeled provisions, and omissions prevents EPA from being able to determine that the requirements of Part 70 are fully met. EPA identified such deficiencies as "interim approval issues" which West Virginia must revise, modify or otherwise clarify to fully meet Part 70's requirements. To the extent that EPA's concerns can be satisfied through other mechanisms, regulatory revisions may not be necessary. Specific responses to each comment submitted can be found in a response to comments document located in the public docket at the address noted in the **ADDRESSES** section above.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by West Virginia on November 12, 1993, and supplemented on August 26 and September 29, 1994. West Virginia must make the following changes to the operating permits program to fully meet the requirements of the July 21, 1992 version of Part 70. (See 60 FR 44799):

1. Clarify that the section 2.18 definition of "Emissions unit" includes activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the CAA.

2. Clarify in section 3.2.d that permit applications will contain sufficient information needed to determine the applicability of, or to impose, all applicable requirements. West Virginia must also ensure that the insignificant activities list approved as part of the state's program will not be modified without prior EPA approval. Moreover, West Virginia must clarify that potential emissions from all insignificant activities or emissions units, whether included in section 3.2.d. or determined by the Chief on an application by application basis, will be included in determining whether a source is a major source.

3. Clarify in section 3.3.a that permits issued to major sources will include all applicable requirements that apply to the source, including those applicable requirements which may be later found to be applicable to one or more "insignificant activities".

4. Either remove the section 5.1.j.D. provision for VOC category substitution or clarify how it will be implemented within the context of emissions trading.

5. Clarify in section 5.3.e.A. that permits will contain provisions requiring compliance certifications to be submitted at least annually or such more frequent periods as specified by an applicable requirement or by the permitting authority.

6. Clarify in section 5.5 that for temporary sources that do not obtain a new preconstruction permit prior to each change in location, the operating permits shall include a requirement that the owner operator notify the Chief at least ten (10) days in advance of each change in location.

7. Clarify in section 4.1 that sources which become subject to the permitting program after the effective date are required to submit permit applications within 12 months.

8. Remove section 6.5.a.A.(c).

9. Clarify in section 6.8.a.A.(a).(B) that public notice will be given for all scheduled public hearings, not just those public hearings which have been scheduled at the request of an interested person.

10. Clarify in section 6.8.a.C. that for all permit modification proceedings, except those modifications qualifying for minor permit modifications or fast-track modifications under the Acid Rain Program, public notice will be given by publication in a newspaper of general circulation in the area where the source is located (or in a state publication designed to give general public notice), and to persons on a mailing list developed by the permitting authority including those who request in writing to be on the list.

11. Clarify W. Va. Code section 22–5–6(b)(1) as necessary to provide for a maximum criminal penalty in an amount of not less than § 10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method.

West Virginia must also seek amendments to fix errors in 45CSR33—"Acid Rain Provisions and Permits" and, until such regulatory changes are adopted, interpret 45CSR33 consistent with the requirements of part 72 in accordance with commitments made in a June 23, 1995 letter to EPA.

The scope of West Virginia's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within West Virginia, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until December 15, 1997. During this interim approval period, West Virginia is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in West Virginia. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If West Virginia fails to submit a complete corrective program for full approval by June 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If West Virginia then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the West Virginia has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of West Virginia, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that West Virginia had come into compliance. In any case, if, six months after application of the first sanction, West Virginia still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves West Virginia's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date West Virginia has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of West Virginia, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that West Virginia has come into compliance. In all cases, if, six months after EPA applies the first sanction, West Virginia has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if West Virginia has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to West Virginia's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for West Virginia upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of West Virginia's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

Additionally, EPA is promulgating approval of West Virginia's 45CSR30 operating permits program, 45CSR13 and 45CSR14 preconstruction permit programs, and authority under W. Va Code § 22–5–4(a)(5) to issue administrative orders, under the authority of Title V and Part 70 for the purpose of implementing section 112(g) if necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of state rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of these mechanisms for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. Unless the federal section 112(g) rule establishes a specific timeframe for the adoption of state rules, the duration of this approval is limited to 24 months following promulgation by EPA of section 112(g) regulations, to provide West Virginia with adequate time to adopt regulations consistent with federal requirements.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this final interim approval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action, promulgating interim approval of West Virginia's operating permits program, approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Stanley L. Laskowski,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for West Virginia in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

West Virginia

(a) Department of Commerce, Labor and Environmental Resources: submitted on November 12, 1993, and supplemented by the Division of Environmental Protection on August 26 and September 29, 1994; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) (Reserved)

* * * * *

[FR Doc. 95–28211 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[NC–95–01; FRL–5332–2]

Clean Air Act Final Interim Approval Of Operating Permits Program; State of North Carolina, Western North Carolina, Forsyth County, and Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permit program submitted by the State of North Carolina Department of Health (DEHNR), Western North Carolina Regional Air Pollution Control Agency (WNCRAPCA), Forsyth County Department of Environmental Affairs (FCDEA), and Mecklenburg County Department of Environmental Protection (MCDEP) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

ADDRESSES: Copies of the North Carolina State and local agency submittals and the other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365. Interested persons wanting to examine these documents, contained in EPA docket number NC–95–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. EPA Region 4, 345 Courtland Street NE., Atlanta, GA 30365, (404) 347–3555 extension 4153.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (the Act) and the implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State or local agency submittals are changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following

receipt of additional materials. EPA received the North Carolina State and local agency submittals on November 12, 1993. The State and local agencies provided EPA with additional materials in supplemental submittals dated December 17, 1993; February 28, 1994; May 31, 1994; and August 9, 1995. Because the supplements materially changed the State and local agency title V program submittals, EPA extended the one-year review period.

EPA reviews state and local operating permit programs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for the state or local agency.

On August 29, 1995, EPA proposed interim approval of the operating permits program for the DEHNR, WNCRAPCA, FCDEA, and MCDEP. *See* 60 FR 44805. The August 29, 1995 notice also proposed approval of the DEHNR, WNCRAPCA, FCDEA, and MCDEP interim mechanism for implementing section 112(g) and for delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. Public comment was solicited on these proposed actions. In this document, EPA is responding to the comments received and taking final action to promulgate interim approval of the North Carolina State and local operating permit programs.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

On August 29, 1995, EPA proposed interim approval of the DEHNR, WNCRAPCA, FCDEA, and MCDEP title V operating permit programs. *See* 60 FR 44805. The program elements discussed in the proposal notice are unchanged from the proposal notice and continue to substantially meet the requirements of title V and part 70. For detailed information on EPA's analysis of North Carolina State and local program submittals, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

EPA received one letter during the 30-day public comment period held on the proposed interim approval of the North Carolina State and local agency programs. The commenter requests that EPA extend the title V permit application submittal deadline for at least two years from the effective date of approval for the DEHNR, WNCRAPCA, FCDEA, and MCDEP due to the complexity and evolving nature of the title V program. The application submittal deadline is a function of North Carolina State and local law in response to the original part 70 regulations promulgated July 21, 1992. *See* 57 FR 32250. Section 503(c) of the Act requires all title V facilities to submit an application to the relevant state and local permitting authorities within one year after the effective date of the title V program approval. The DEHNR, WNCRAPCA, FCDEA, and MCDEP programs fulfill this statutory requirement. Therefore, EPA denies the request to extend the title V permit application submittal deadline for at least two years from the effective date of approval for the DEHNR, WNCRAPCA, FCDEA, and MCDEP title V operating permit programs.

The commenter requests that insignificant activity levels for hazardous air pollutants (HAP) should be set no lower than the section 112(g) de minimis levels for individual pollutants. The commenter is concerned that "increases above the 112(g) de minimis levels trigger a complex review process and the State should be given the flexibility to reserve limited resources for more significant modifications." Section 70.4(b)(2) requires state and local agencies to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state or local agency must request and EPA may approve as part of that state's or local agency's program any activities or emission levels that they wish to consider insignificant. Part 70, however, does not establish emission thresholds for insignificant activities. EPA has accepted emission thresholds of five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAP, as reasonable.

The commenter urges EPA to limit the amount of fees that may be charged to a facility to be limited to the presumptive minimum ($25/ton of actual emissions adjusted annually to the Consumer Price Index (CPI)). The Act leaves to state discretion the structure of the title V fee schedule provided it meets the requirement of presumptive minimum or cost of the program. The DEHNR, FCDEA, and MCDEP fee schedules were set to raise, in the aggregate, the presumptive minimum based on estimates of title V source numbers and emissions. The flat fee plus tonnage fee formula was recommended by a State-legislatively established Clean Air Act Advisory Council to reflect work effort to issue and enforce permits. It was adopted by the Environmental Management Commission after public hearings. This fee formula means that some sources will pay less than a straight $25 plus inflation per ton fee, and some will pay more. In the aggregate, fee revenue has not exceeded the presumptive minimum. In the North Carolina State and local agency proposed program approval notice, EPA noted submittal of fee demonstrations from the DEHNR, FCDEA, and MCDEP that showed each program will collect the presumptive minimum fee. The WNCRAPCA submitted a title V program fee demonstration that demonstrated that it will collect less than the presumptive minimum. Therefore, the DEHNR, WNCRAPCA, FCDEA, and MCDEP have in effect accommodated the commenter's request.

The commenter requested that EPA urge the DEHNR, WNCRAPCA, FCDEA, and MCDEP to set aside any surplus monies generated in the title V operating permit program to be placed in a separate interest-bearing account. The commenter further requests that these funds should be applied as a credit against fees required in succeeding years, according to the proportion of the total of all emissions fees which were paid by a title V facility in a timely manner. As previously stated, the Act leaves to state discretion the structure of the title V fee schedule provided it meets the requirement of presumptive minimum or cost of the program. State statutes provide that the fees go into a separate title V nonreverting account. State statutes do not provide for interest, as they would have to for interest to be credited. State statutes do provide for reductions of fees when and if the funds in the account exceed the title V program cost for the next fiscal year.

The commenter requests that EPA urge DEHNR, WNCRAPCA, FCDEA, and MCDEP to adopt a list of "trivial activities," as outlined in the EPA's "White Paper for Streamlined Development of Part 70 Permit Applications" as well as develop a process for approving trivial activities on a case-by-case basis. EPA notes that DEHNR, WNCRAPCA, FCDEA, and MCDEP have an insignificant activities list found at 15A NCAC 2Q.0102 and respective local agency regulations which include activities that do not have to be included in a title V permit application. Should the State and local programs elect to utilize the list of trivial activities from the "White Paper for Streamlined Development of Part 70 Permit Applications," they may do so at their own discretion. In addition, DEHNR, WNCRAPCA, FCDEA, and MCDEP have complete discretion over whether to create a process for case-by-case determinations of trivial activities. EPA recommends that the commenter make any such request to DEHNR, WNCRAPCA, FCDEA, and MCDEP.

Finally, the commenter took opportunity to make comments regarding provisions of the part 70 supplemental revisions published on August 31, 1995. *See* 60 FR 45530. This rulemaking exclusively covers the DEHNR, WNCRAPCA, FCDEA, and MCDEP title V operating permit programs which are being approved under the existing regulations found at 40 CFR part 70. EPA recommends that the commenter provide comment on the proposed part 70 revisions to the appropriate rulemaking docket for the subject rulemaking found at 60 FR 45530 (August 31, 1995).

B. Final Action

1. Title V Operating Permit Program

EPA is promulgating interim approval of the operating permits program submitted by the DEHNR, WNCRAPCA, FCDEA, and MCDEP on November 12, 1993, and supplemented on December 17, 1993; February 28, 1994; May 31, 1994; and August 9, 1995. The DEHNR, WNCRAPCA, FCDEA, and MCDEP must make the following changes to receive full program approval:

(a) Revise Regulation 15A NCAC 2Q.0507 (MCAPCO Regulation 1.5507, FCAQTC Regulation 3Q.0507, and WNCRAPCARR Regulation 17.0507) to require an applicant to include all fugitive emissions regardless of whether such emissions will be used to determine title V applicability. These fugitive emissions estimates may be of a qualitative nature as opposed to a numerical quantitative emission estimate.

(b) Revise Regulation 15A NCAC 2Q.0502(c) (MCAPCO Regulation 1.5502(c), FCAQTC Regulation 3Q.0502(c), and WNCRAPCARR Regulation 17.0502(c)) to assure that R&D facilities which are collocated with manufacturing facilities and which are under common control and belonging to a single major industrial grouping will be considered as the same facility for determining title V major source applicability for a facility. This change will not be necessary in the event that EPA promulgates revisions to part 70 that are similar to the DEHNR, WNCRAPCA, FCDEA, and MCDEP current treatment of R&D facilities for purposes of title V applicability.

(c) Revise Regulation 15A NCAC 2Q.0102(b)(2)(B) and respective local agency regulations to adjust the insignificant emission threshold levels downward from potential emissions of 40 tpy to potential per emission unit levels for insignificant activities of 5 tons per year for criteria pollutants and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAP. The DEHNR, WNCRAPCA, FCDEA, and MCDEP must also revise Regulation 15A NCAC 2Q.0102(b)(2)(F) and respective local agency regulations to provide that the list granted under 15A NCAC 2Q.0102(b)(2)(F) must be subject to the above-mentioned potential emission caps.

(d) Revise Regulation 15A NCAC 2Q.0514(a)(4) and respective local agency regulations to clarify that administrative permit amendments may be used to change test dates or construction dates only as long as no applicable requirements would be violated by doing so. Also, the DEHNR, WNCRAPCA, FCDEA, and MCDEP agencies must change the language of Regulation 15A NCAC 2Q.0514(a)(4) and respective local agency regulations to clarify that an administrative permit amendment may be used to move terms and conditions from the State-enforceable side of the permit to the State and Federal enforceable portion of the permit provided that the term being moved is a requirement which has become Federally enforceable through sections 110, 111, or 112 or other parts of the Clean Air Act.

(e) Revise Regulation 15A NCAC 2Q.0515(f) and respective local agency regulations to stipulate that a permit shield may not be granted for a minor permit modification. In addition, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must change Regulation 15A NCAC 2Q.0515(d) and respective local agency regulations to specify that in the event an applicant submits a single minor permit modification which exceeds the thresholds listed in 15A NCAC 2Q.0515(c), the minor permit modification must be processed within 90 days after receiving the application or 15 days after the end of EPA's 45 day review period, whichever is later.

(f) Revise Regulation 15A NCAC 2Q.0517(b) and respective local agency regulations to provide that a title V permit shall be reopened and reissued within 18 months after a newly applicable requirement is promulgated. Also, the DEHNR, WNCRAPCA, FCDEA, and MCDEP must amend Regulation 15A NCAC 2Q.0517(b)(2) and respective local agency regulations to clarify that no reopening of a permit is required only if the effective date of a newly applicable requirement is after the expiration of the permit, unless the term of the permit was extended based on the fact that the DEHNR, WNCRAPCA, FCDEA, and MCDEP had not renewed the permit prior to its expiration.

(g) Revise Regulation 15A NCAC 2Q.0518(f) and respective local agency regulations to remove the phrase "subject to adjudication."

The scope of the DEHNR, WNCRAPCA, FCDEA, and MCDEP part 70 programs approved in this document applies to all part 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–55818 (November 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

This interim approval, which may not be renewed, extends until December 15, 1997. During this interim approval period, the State of North Carolina is protected from sanctions, and EPA is not obligated to promulgate, administer, and enforce a Federal operating permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of this final interim approval, as does the three-year time period for processing the initial permit applications.

If the State of North Carolina fails to submit a complete corrective program for full approval by June 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If North Carolina then fails to submit a corrective program that EPA finds complete before the

expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that North Carolina has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of North Carolina, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that North Carolina has come into compliance. In any case, if, six months after the application of the first sanction, North Carolina has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves North Carolina's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of North Carolina, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, six months after EPA applies the first sanction, North Carolina has not submitted a revised program that EPA determines to have corrected the deficiencies that prompted disapproval, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if a state has not timely submitted a complete corrective program. Moreover, if EPA has not granted full approval to a state program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that state upon interim approval expiration.

2. Preconstruction Review Program Implementing Section 112(g)

EPA is approving the use of the North Carolina State and local agency's preconstruction review programs found in Regulation 15A NCAC 2Q.0300 and respective local agency regulations as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and the North Carolina State and local programs adoption of rules specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by the North Carolina State and local agencies to implement 112(g). The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the North Carolina State and local agencies with adequate time to adopt regulations consistent with Federal requirements.

3. Program for Delegation of Section 112 Standards as Promulgated

The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a state and local program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the State and local programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is approving under section 112(l)(5) and 40 CFR 63.91, the North Carolina State and local programs for receiving delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. EPA is also approving the delegation of all existing standards under 40 CFR parts 61 and 63. This program for delegation applies to both part 70 and non-part 70 sources.[1]

Based on the delegation requests North Carolina submitted by North Carolina and each local agency, EPA has determined that all requirements (i.e., legal authority, available resources, implementation schedules, and compliance mechanisms) necessary for delegation have been satisfied. As the delegation relates to the existing NESHAP standards, the effective date of the delegations would be the date the individual standards become effective as a matter of State or local law. For future standards, the State of North Carolina, once State approved, will utilize automatic adoption as its delegation mechanism. Hence, all standards will be state effective on the date of EPA promulgation. Subsequent (or within thirty days) to the State's delegation, the local programs will seek delegation of Federal authorities. During the interim period between Federal promulgation and the effective local delegations, the North Carolina State and local programs will continue to implement the standards, excluding enforcement actions, under a Memorandum of Agreement entered into with EPA. EPA will retain primary enforcement authority until the respective effective dates for each promulgated standard becomes State and locally effective. The most efficient use of State, local and EPA resources would dictate usage of this streamlined approval approach, thereby, negating the need for either the North Carolina State or any of the local programs to submit additional demonstrations of authority sufficiency, resource availability, and/or implementation mechanisms for any requests that are not approved with this title V approval action.

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State and local operating permit programs for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State and local agencies in the development of a radionuclide program to ensure that permits are issued in a timely manner.

III. Administrative Requirements

A. Docket

Copies of the State and local agency submittals and other information relied upon for the final interim approval, including the one public comment letter received and reviewed by EPA on the proposal notice, are contained in docket number NC–95–01 maintained at the EPA Region 4 Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 70 of title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for North Carolina in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

North Carolina

(a) Department of Environment, Health and Natural Resources, Western North Carolina Regional Air Pollution Control Agency, Forsyth County Department of Environmental Affairs and the Mecklenburg County Department of Environmental Protection: submitted on November 12, 1993, and supplemented on December 17, 1993; February 28, 1994; May 31, 1994; and August 9, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) (Reserved)

* * * * *

[FR Doc. 95–28186 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 2F4072/R2188; FRL–4986–7]

RIN 2070–AB78

Metalaxyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the raw agricultural commodities brassica (cole) leafy vegetables group [except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens] at 0.1 part per million (ppm); brussels sprouts at 2.0 ppm; cabbage at 1.0 ppm; cauliflower at 1.0 ppm; and mustard greens at 5.0 ppm. Ciba-Geigy Corp. submitted a petition under the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This rule becomes effective on October 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4072/R2188], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled Tolerance Petition Fees and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 2F4072/R2188]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6226; e-mail: welch.connie@.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the **Federal Register** of June 15, 1995 (60 FR 31465), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition, PP 2F4063, to EPA requesting that the Administrator, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), establish tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the raw agricultural commodities brassica (cole) leafy vegetables group [except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens] at 0.1 part per million (ppm); brussels sprouts at 2.0 ppm; cabbage at 1.0 ppm; cauliflower at 1.0 ppm; and mustard greens at 5.0 ppm.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an *in vivo* cytogenetics assay (hamsters) and a dominant-lethal assay (mice).

Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of themicroscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD), anticipated residue contribution (ARC), and food additive regulations are covered by existing tolerances.

The nature of the residue is adequately understood. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5232.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number (PP 2F4072/R2188) (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.408, in paragraph (a) by amending the table therein by revising the entries for Brassica (cole) leafy vegetables group, cabbage, and cauliflower and by adding new entries for brussels sprouts and mustard greens, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Brassica (cole) leafy vegetables group [except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens]	0.1
Brussels sprouts	2.0
* * * * *	
Cabbage	1.0
* * * * *	
Cauliflower	1.0
* * * * *	
Mustard greens	2.0
* * * * *	

* * * * *

[FR Doc. 95–28068 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 3F4258/R2181; FRL–4983–1]

RIN 2070–AB78

Avermectin B_1 and its Delta-8,9-isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity bell peppers. Merck Research Laboratories requested the regulation to establish a maximum permissible level for residues of the pesticide pursuant to a petition submitted to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective November 15, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4258/R2181], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3F4258/R2181]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 20, 1995 (60 FR 48681), EPA issued a proposed rule that gave notice that Merck Research Laboratories, Inc., had submitted a pesticide petition, PP 3F4258, under section 408 of the FFDCA, 21 U.S.C. 346a, to establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity bell peppers at 0.01 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4258/R2181] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4258/R2181], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 24, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.449(b) in the table therein by adding and alphabetically inserting an entry for bell peppers, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Peppers bell	0.01
* * * * *	

[FR Doc. 95–28069 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket No. 94–131 and PP Docket No. 93–253, FCC 95–445]

Filing Procedures in Multipoint Distribution Service and in the Instructional Television Fixed Service, Including Electronic Filing and Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document addresses issues raised on reconsideration of the Multipoint Distribution Service (MDS) Report and Order, which modified the MDS application process and established competitive bidding procedures to select among mutually exclusive applicants for MDS. This proceeding is intended to resolve the issues presented in the petitions for reconsideration filed on various aspects of the MDS Report and Order. Clarification is needed in order to expedite the auction of the MDS spectrum, intended to enhance the delivery of wireless cable to the public.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Dzeidzic at (202) 418–1604, Sharon Bertelsen at (202) 416–0892, Jerrianne Timmerman at (202) 416–0881, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: The *Memorandum and Order on Reconsideration* addresses petitions for reconsideration filed in response to the MDS Report and Order, released June 30, 1995, *summarized at* 60 FR 36524 (July 17, 1995), which modified the MDS application process and established competitive bidding procedures for MDS. Thirteen petitions for reconsideration on various aspects of the *MDS Report and Order* were filed with the Commission. Petitioners include the Wireless Cable Association, Bell Atlantic, Pacific Telesis-Cross Country Wireless, Instructional Telecommunications Foundation, Network for Instructional Television, Trans Video Communications, as well as a number of individual wireless cable or Instructional Television Fixed Service (ITFS) operators.

The petitioners raise numerous legal and technical issues. Under the competitive bidding procedures established in the *MDS Report and Order*, a geographic licensing plan was developed under which the Commission would allot one MDS authorization for each of the 487 Basic Trading Areas (BTAs) and six additional BTA-like geographic areas. The BTA authorization holder would be able to construct and license facilities to provide wireless cable service on any usable MDS channels within the BTA, and would have preferred rights to the available ITFS frequencies and lease agreements within the BTA. The *MDS Report and Order* required the BTA authorization holder to protect currently authorized and previously proposed MDS stations, known as "incumbents," as well as the receive sites of ITFS systems, against harmful interference. In the *Report and Order*, the Commission also provided certain preferences for small businesses participating in the auction, established a five year build-out requirement for the BTA authorization holders, and established procedures to allow partitioning of the BTA.

Petitioners generally praised the Commission's efforts to facilitate the development of wireless cable services. However, petitioners asked for reconsideration or clarification of certain Commission rules and policies adopted in the MDS Report and Order. The Commission granted certain aspects of the petitions for reconsideration, most notably those requesting elimination of the BTA authorization holder's right of first refusal regarding new ITFS lease agreements. In addition, the Commission raised one issue, regarding unjust enrichment to prevent abuse of the partitioning rules, on its own motion.

The complete text of the rule changes follows. The complete text of the *Memorandum and Order on Reconsideration* is also available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

These rule changes will become effective immediately upon their publication in the **Federal Register**. Pursuant to 5 U.S.C. 553(d)(3) the Commission found good cause to have the rule amendments take effect immediately upon publication in the **Federal Register**. The MDS auction is scheduled to commence on November 13, 1995. The revised rules need to be effective in less than 30 days so that the auction may take place as scheduled and bidders are fully informed of the rules prior to the auction.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 21 and 47 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 602; 47 U.S.C. 552, 554.

2. Section 21.2 is amended by revising the definitions for "BTA service area" and "Partitioned service area" to read as follows:

§ 21.2 Definitions.

* * * * *

BTA service area. The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS facilities, including registered receive sites.

* * * * *

Partitioned service area (PSA). The area within the coterminous boundaries of one or more counties or other geopolitical subdivisions, drawn from a BTA, to which an authorization holder may provide Multipoint Distribution Service or the area remaining in a BTA upon partitioning any portion of that BTA. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS stations, including registered receive sites.

3. Section 21.15(g) is revised to read as follows:

§ 21.15 Technical content of applications.

* * * * *

(g) Except for applications in the Multipoint Distribution Service filed on or after September 15, 1995, each application in the Point-to-Point Radio, Local Television Transmission and Digital Electronic Message Service (excluding user stations) proposing a new or replacement antenna (excluding omni-directional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC–ID number that indicates that the pattern is on file with the Commission. Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

* * * * *

4. Section 21.42(d) is revised to read as follows:

§ 21.42 Certain modifications not requiring prior authorization.

* * * * *

(d) Licensees may correct erroneous information on a license which does not involve a major change (i.e., a change that would be classified as a major amendment as defined by § 21.23) without obtaining prior Commission approval by filing a completed FCC Form 494, or for the Multipoint Distribution Service licensees, by filing the MDS long-form application.

5. Section 21.902 is amended by revising paragraph (g)(1) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(g)(1) All interference studies prepared pursuant to paragraph (c) of this section must be served on all licensees, conditional licensees, and applicants for the stations required to be studied by this section. This service must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

* * * * *

6. Section 21.904 is amended by redesignating paragraph (c)(2) as paragraph (c)(3) and adding new paragraph (c)(2) to read as follows:

§ 21.904 Transmitter power.

* * * * *

(c) * * *

(2) The interfered-with stations may increase it own power consistent with the rules; and

* * * * *

7. Section 21.924 is amended by revising paragraph (c) to read as follows:

§ 21.924 Service areas.

* * * * *

(c) The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service excludes the protected service areas of any incumbent MDS stations and previously proposed and authorized ITFS facilities, including registered receive sites.

8. Section 21.925(a)(2) is revised to read as follows:

§ 21.925 Applications for BTA authorizations and MDS station licenses.

(a) * * *

(2) For purposes of conducting competitive bidding procedures, short-form applications are considered to be mutually exclusive with each other if they were filed for, and specified, the same BTA service area.

* * * * *

9. Section 21.929 is amended by designating the undesignated paragraph as paragraph (b), and adding a new paragraph (a) to read as follows:

§ 21.929 Authorization period for station licenses.

(a)(1) A BTA authorization will be granted for a term of ten years, terminating ten years from the date of the Commission declared bidding closed in the MDS auction.

(2) A BTA authorization shall automatically terminate without further notice to the licensee upon expiration of the ten-year license term unless prior thereto an application for renewal of such license has been filed with the Commission.

* * * * *

10. Section 21.933 is revised to read as follows:

§ 21.933 Protected service areas.

(a) The stations licensed to the holder of a BTA authorization shall have a protected service area that is coterminous with the boundaries of that BTA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and of previously proposed and authorized ITFS facilities within that BTA, even if these protected service areas extend into adjacent BTAs. The protected service area also includes registered receive sites.

(b) The stations licensed to the holder of a PSA authorization shall have a protected service area that is coterminous with the boundaries of the counties or other geopolitical subdivisions comprising the PSA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and of previously proposed and authorized ITFS facilities within that PSA, even if these protected service areas extend into adjacent BTAs. The protected service area also includes registered receive sites.

11. Section 21.938 is amended by redesignating paragraphs (c) through (g) as (d) through (h) respectively, revising newly redesignated paragraphs (d) and (f), and adding new paragraph (c), to read as follows:

§ 21.938 BTA and PSA technical and interference provisions.

* * * * *

(c)(1) ITFS applicants may locate a new station in an unused portion of a BTA or PSA where interference to a previously-proposed or authorized MDS station of a BTA or PSA authorization holder would not be predicted.

(2) With respect to ITFS applications only and for purposes of determining the existence of harmful electromagnetic interference as caused to MDS stations licensed to BTA or PSA authorization holders by subsequently proposed ITFS stations within that BTA, MDS stations licensed to BTA and PSA authorization holders and will have a protected service area of 56.33 km (35 miles), centered on the antenna site of the MDS stations.

(3) The 56.33 km (35 mile) protected service area afforded to a previously-proposed or authorized MDS station of a BTA or PSA authorization holder with respect to a subsequently proposed ITFS station is entitled to the interference protection standards of § 21.902.

(4) An ITFS station authorized before September 15, 1995 may be modified, provided the power flux density of that station does not exceed −73 dBw/m2 at locations along the 56.33 km (35 mile) circle centered on the then-existing transmitting antenna site or service area of collocated incumbent MDS station, as applicable.

(d) Unless the affected parties have executed a written interference agreement in accordance with § 21.937, it shall be the responsibility of a BTA or PSA authorization holder to correct at its expense any condition of harmful electromagnetic interference caused to authorized MDS service at locations within other BTAs or PSAs or within the 56.33 km (35 mile) protected service areas of authorized or previously proposed ITFS and MDS stations (incumbents), or at authorized or previously proposed ITFS receive sites.

* * * * *

(f) The calculated free space power flux density from an MDS station, other than an incumbent MDS station, may not exceed −73 dBW/m2 at locations on BTA or PSA boundaries for which there is an unobstructed signal path from the transmitting antenna to the boundary, unless the applicant has obtained the written consent of the authorization holder for the adjoining BTA or PSA.

* * * * *

12. Section 21.960 is amended by revising paragraphs (b)(5)(i) and (d)(1)(i) to read as follows:

§ 21.960 Designated entity provisions for MDS.

* * * * *

(b) * * *

(5) * * *

(i) If an eligible BTA authorization holder that utilizes installment financing under this paragraph seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval. If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must

make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

* * * * *

(d) * * *

(1) * * *

(i) If a BTA authorization holder that utilizes a bidding credit under this paragraph seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for bidding credits, the authorization holder must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, before assignment or transfer will be permitted. If an eligible BTA authorization holder that utilizes a bidding credit under this paragraph seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for bidding credits, the authorization holder must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, before the partitioning will be permitted. The amount of the required reimbursement will be reduced over time. An assignment, transfer or partition in the first two years after issuance of the BTA authorization will result in a reimbursement of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no reimbursement.

* * * * *

13. Section 21.961 is amended by revising paragraph (b)(2) introductory text to read as follows:

§ 21.961 Definitions applicable to designated entity provisions.

* * * * *

(b) * * *

(2) *Aggregation of gross revenues*

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended; 47 U.S.C. 154, 303, 554.

2. Section 74.903 is amended by revising paragraph (b)(5) and by adding a sentence in paragraph (d) between the first and second sentence to read as follows:

§ 74.903 Interference.

* * * * *

(b) * * *

(5) An analysis of the potential for harmful interference within the protected service area, as defined in paragraph (d) of this section, of any authorized or previously proposed station(s) described in paragraph (d) of this section.

* * * * *

(d) * * * Alternatively, an applicant, permittee, or licensee may select a 56.33 km (35 mile) circular protected area centered at the geographic latitude and longitude of the transmitting antenna site. * * *

* * * * * *

[FR Doc. 95–28118 Filed 11–14–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–116; RM–8507, RM–8567]

Radio Broadcasting Services; Jefferson City, Cumberland Gap, Elizabethton, TN, and Jonesville, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Holston Valley Broadcasting Corporation (RM–8567), allots Channel 256A to Jonesville, Virginia. Channel 256A can be allotted to Jonesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.8 kilometers (4.9 miles) southwest. The coordinates for Channel 256A at Jonesville are 36–38–08 and 83–10–04. The proposal filed by Eaton P. Govan, III and Berton B. Cagle, Jr. (RM–8507), *see* 59 FR 51540, October 12, 1994, requesting the substitution of Channel 256A for Channel 257A at Jefferson City, the reallotment of Channel 256A from Jefferson City to Cumberland Gap, Tennessee; and the substitution of Channel 257C2 for Channel 257C3 at Elizabethton, Tennessee, is denied. With this action, this proceeding is terminated.

DATES: Effective December 26, 1995. The window period for filing applications will open on December 26, 1995, and close on January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–116, adopted October 26, 1995, and released November 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Jonesville, Channel 256A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–28119 Filed 11–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–114; RM–8666]

Radio Broadcasting Services; Raton, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of N'Joy Broadcasting, allots Channel 243A to Raton, NM, as the community's second local FM service. *See* 60 FR 39142, August 1, 1995. Channel 243A can be allotted to Raton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–54–00 North Latitude; 104–24–00 West Longitude. With this action, this proceeding is terminated.

DATES: Effective December 26, 1995. The window period for filing applications will open on December 26, 1995, and close on January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–114, adopted October 31, 1995, and released November 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 243A at Raton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–28120 Filed 11–14–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 220
Wednesday, November 15, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RuleNet Communication Program; Fire Protection Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: RuleNet program: notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of a new pilot computer based program called "RuleNet" to maximize communication between the NRC and the public on rulemaking issues. The RuleNet pilot will be used initially to gather information on the safety issue of fire protection at nuclear power plants. RuleNet will allow participants in an NRC rulemaking proceeding to communicate both with the NRC and among themselves, with a view toward defining issues, eliminating misunderstanding, and finding areas of common ground. In addition to providing the NRC and the public with valuable information, RuleNet will test the usefulness of computer-based communications as a tool in the rulemaking process.

DATES: The public can access the RuleNet world wide site beginning November 20, 1995. Participant registration will be conducted from November 20, 1995 through January 2, 1996. RuleNet pilot will run from January 2, 1996 through February 9, 1996.

ADDRESSES: The world wide web site will be linked to NRC's home page: http://www.nrc.gov or it may be accessed directly by loading the following URL:http:/nssc.llnl.gov/RuleNet.

FOR FURTHER INFORMATION CONTACT: Francis Cameron, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is undertaking a project of an entirely novel kind, designed to use state-of-the-art computer technology to maximize communication between the NRC and the public on an important nuclear power plant safety issue, fire protection. This project, called RuleNet, is intended to serve not only to provide the NRC and the public with valuable information, but also to test the usefulness of computer-based communications as a tool in the rulemaking process.

The concept underlying RuleNet is that computer-based communications technology makes it possible for participants in an NRC proceeding to communicate both with the NRC and among themselves, with a view toward defining issues, eliminating misunderstanding, and finding areas of common ground.

The issue on which RuleNet will be gathering information is one that has been of concern to the Commission for some time. The Commission's overall approach to safety issues in recent years has been to move in the direction of performance-based regulations and away from prescriptive regulations. The Commission has already determined that fire protection is one area in which a shift to performance-based regulation is appropriate.[1] Thus, although a petition was filed in February 1995, by the Nuclear Energy Institute, asking the Commission to add a performance-based alternative to the existing prescriptive regulations, the Commission would be examining the issue of performance-based fire protection rules even in the absence of such a petition.[2]

The NRC has already innovated in the area of rulemaking in two significant ways: Through the concept of "enhanced participatory rulemaking," designed to promote Early public comment and interaction on rulemaking issues before a proposed rule is developed; and through electronic bulletin boards, which allow comments on a proposed rule to be submitted electronically. RuleNet represents a step toward melding these two approaches: early public comment and interaction, as in the enhanced participatory rulemaking, together with communications technology, developed specially for this purpose, to permit participants to deal with one another and with the NRC by computer. (Participants will not be restricted to communication by computer, however; written comments may be submitted in place of or in addition to electronic communications.[3])

A comparison with traditional rulemaking, as conceived in the Administrative Procedure Act (APA), may help make clear why this fresh approach to the rulemaking process has the potential to make the participation of all interested parties—governmental units, industry, and members of the public—significantly more effective and influential.

In the classic model of APA rulemaking, the agency publishes either an advance notice of proposed rulemaking or, eliminating that step, issues a proposed rule. In the former case, the process is generally extremely time-consuming; in the latter, there is a risk that the agency may be too wedded to the proposed approach to be able to rethink the issue from the ground up if a wholly new proposal is submitted by a commenter. In either case, the hub-and-spoke structure of the process, in which all communication is directed to the agency, does not tend to encourage interested parties to work among themselves toward common ground.

The NRC has already made strides to improve on the traditional rulemaking with innovative procedures, such as workshops in which different participants interact with agency staff and with each other. RuleNet represents a further development along those lines. Because participants can take part from home, workplace, or public library, this step opens up the process to persons who might otherwise have been unable to take part. The NRC Headquarters Public Document Room will also have a computer terminal from which access to RuleNet will be available.

The capacity of computer technology to improve the current rulemaking process can be readily illustrated. In a traditional rulemaking, if a particular matter raises questions in the minds of participants, they have no recourse other than to point out the issue in their written comments. If the rulemaking is on a proposed rule, the commenter may not learn the answer to the question until the final rule is issued. The computer, however, allows the agency staff to analyze the comments and questions received, ascertain which questions arise most often, and then post electronically a list of "Frequently Asked Questions" and their answers. In this way, doubtful points can be clarified before, not after, comments are filed.

The dialogue through the RuleNet computer network is not intended to supplant formal comments (submitted in writing or electronically). Rather, RuleNet is intended to provide additional opportunities for commenters to provide input to agency personnel before the agency has developed text on which formal written comments are required to be filed. This can mean better informed, focused, and influential comments. Likewise, the ability of commenters to interact among themselves before comments are filed means that misunderstandings and miscommunications can be corrected in a timely way. However, because the electronic communications will contribute to the information base used by the agency in the rulemaking process, a copy of these communications will be placed in the rulemaking record.

For facilitating exchanges of views, a central element in the rulemaking is the "caucus," designed to allow discussions among subgroups of participants. These caucuses may be of two kinds. First, participants of similar viewpoints can join together on an issue or issues to maximize their effectiveness. Second, caucuses can be used to allow a specific issue to be placed before all participants for highly focused consideration. In this way, a particular topic can be considered in detail, the strengths and weaknesses of conflicting positions can be analyzed, and the possibilities of a compromise resolution can be explored. Caucusing may take place either separate from the rulemaking, by the private interaction of participants, or through the rulemaking's electronic communications, and either with or without facilitation provided by a contractor.

Such assistance will come from facilitators and/or moderators supplied through the NRC contract with Lawrence Livermore National Laboratory for technical support on the development of RuleNet. Such facilitators can serve a variety of functions: Helping to categorize comments on fire protection issues; helping to maximize the usefulness of the electronic communications process; and providing assistance to facilitate on-line and off-line caucuses, including helping participants to articulate and refine their positions on issues. The facilitators/moderators themselves will have no stake in the outcome, however; independent of any of the parties, their role will simply be to contribute to the smooth and productive functioning of the process.

Computer-based technology can not hope to substitute altogether for the actual reading of comments submitted by participants (except where the computer identifies a comment as identical to one previously filed and analyzed). Computer technology can, however, facilitate greatly the process of analyzing and tabulating comments. For example, persons participating electronically may be asked to indicate by clicking screen icons whether they agree, disagree, agree with qualifications, etc., with the proposition on which they are commenting. In this way, rather than the agency characterizing the positions of the participants, the participants can do so themselves. In addition, computer technology, searching for specific words and phrases, can make it easier to find where if at all a participant is addressing a particular issue in his or her comment.

The electronic forum outlined here points to a potential greater democratization of the rulemaking process. The individual person with expertise and good ideas to offer has as much access to the forum as any governmental unit, corporation, or law firm, and if his or her thinking is sound, may be just as influential or more so. With discussions held via computer, rather than in a meeting room in the Washington, D.C. area, and with access to the forum already available in millions of homes nationwide (and at terminals in public libraries, for those who do not already have access elsewhere), there is the potential to level the playing field to an unprecedented degree.

Phases of the RuleNet Process

As a preliminary step, necessary to allow meaningful participation in the RuleNet process, the NRC is making relevant information on fire protection available to all who can use it: that is, both potential participants and those who want only to observe the process. Toward this end, the agency has loaded some basic fire protection documents onto the network in searchable full text form. Specific discussion topics will be loaded at a later point.

The first phase of the process itself will begin with a "virtual kickoff" in which all participants will be able to communicate in a simultaneous discussion via computer. This will be followed by a period of 5 days for any caucuses; for the posting of questions and requests for clarification, directed either to the NRC or to other participants, and for the posting of answers to those questions; and for the identification of any further issues to be addressed, or challenges to be met, in the rulemaking.

In the second phase of the process, which will comprise approximately 10 days, the NRC will solicit proposed solutions to the challenges and issues identified in the first phase. This will also be the opportunity for participants to respond to comments and suggestions made during the first phase.

After the second phase, the NRC technical staff, acting with the assistance of staff supplied by the contractor, will consolidate and synthesize the challenges and the proposed solutions, using them to develop more concrete proposals, which will be posted electronically. The participants will then respond to the proposals just identified. As before, there will be the opportunity for participants to caucus either within the electronic rulemaking or outside of it.

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[1] On February 4, 1992, the Commission published notice in the **Federal Register**, at 57 FR 4166, that it regarded the NRC's fire protection rules, set forth in appendix R to 10 CFR part 50, as a candidate for being made less prescriptive, with some requirements relaxed or eliminated on the basis of cost-benefit considerations. Later in the same year, the Commission announced its intention to begin rulemaking to develop a performance-based fire protection regulation, that would rely in part on risk analyses. 57 FR 55156 (November 24, 1992). Subsequently, the NRC staff published a general framework for developing performance-based, "risk-informed" regulations. 58 FR 6196 (January 27, 1993). At a public workshop held in April, 1993, the NRC staff invited discussions on this general regulatory framework and on specific proposals for changing the appendix R fire protection rules. (The proceedings of the workshop, including comments from members of the public and the regulated industry, were documented in NUREG/CP–0129, issued in September, 1993.) At the workshop, industry representatives presented their plans for submitting a rulemaking petition to the NRC. (Such a petition was in fact filed on February 2, 1995.) On May 18, 1994, the Commission approved the policies and framework proposed by the NRC staff in SECY–94–090 for revising its fire protection regulations, including the initiation of a staff study to support the effort. The NRC staff published the petition on June 6, 1994, at 60 FR 29784, received public comment on it, and is currently reviewing it within the context of the policies and framework approved by the Commission.

[2] The RuleNet initiative does not supersede the NEI petition, which will continue to be considered on its own merits.

[3] Written comments will be scanned and placed on the electronic network for all participants to read. Clearly, therefore, those who choose to take part through the electronic network will be in a better position to respond to the views of other participants.

We do not need to decide at this time exactly how many rounds of comment there will be. One of the advantages of RuleNet's interactive approach is that the participants can offer their views as to procedures as well as substance. Accordingly, the agency plans to take a flexible approach, shaping its procedures as needed to meet the goals of the process.

Terms of Participation

The electronic network will be available both to those who want to participate directly in RuleNet and to those who want only to observe the process. Participants must identify themselves (just as participants in a written comment process identify themselves). The NRC fully expects that all participants will recognize that certain norms of civility will be observed. (In the event that a participant's conduct was such as to warrant his or her severance from the electronic dialogue, the option of submitting paper comments would remain, but it seems unlikely that this issue would ever arise.)

Conclusion

The RuleNet project is one of a number of high performance computing initiatives advanced by the NRC. It has no costs over and above those already budgeted for these initiatives generally. Before the type of electronic exchange being demonstrated in the RuleNet project became a part of the agency's usual process for the development of rules, it would have to be shown to be cost-effective.

It is worth emphasizing that in proceeding in this new direction, using procedures that have not previously been tried by this or any other federal agency, the NRC is focusing on *potential* benefits. Whether those benefits will in fact be realized depends in large part on the willingness of the affected public—which includes governmental units, industry, organizations, and individuals—to take part in the process and attempt to make it work. RuleNet can help establish whether computer communications technology can make a significant contribution to the interaction of citizens and a government agency regulating in a technical field.

Dated at Rockville, Maryland, this 8th day of November, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–28152 Filed 11–14–95; 8:45 am]

BILLING CODE 7590–1–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2607

RIN 1212–63

Disclosure and Amendment of Records Under the Privacy Act

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing to amend its regulations implementing the Privacy Act of 1974, as amended, to describe more accurately the exemption applicable to certain records maintained by the PBGC in view of changes to PBGC's Privacy Act systems of records. The PBGC also is proposing an amendment to increase its standard copying fee in view of increased costs.

DATES: Comments must be received on or before December 15, 1995.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or hand-delivered to Suite 340 at the above address between 9:00 a.m. and 5:00 p.m., Monday through Friday. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, Suite 240, at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4123 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC's rules implementing the Privacy Act of 1974, as amended ("Privacy Act") (5 U.S.C. 552a) (1) establish procedures whereby an individual can determine whether the PBGC maintains any system of records that contains a record pertaining to him or her, access that record, and seek to amend that record (29 CFR §§ 2607.3–2607.8), (2) establish fees for making copies of records (29 CFR § 2607.9), and (3) exempt a system of records from certain Privacy Act provisions (29 CFR § 2607.10).

The PBGC is proposing to amend § 2607.9(a) by increasing, from $0.10 to $0.15 per page, the fee it charges for record copies furnished to individuals. The PBGC will maintain the current exception for record copies of fewer than 10 pages by increasing from $1.00 to $1.50 the threshold amount under which the agency does not assess a fee. The proposed fee, which is the same as the PBGC's standard fee for copies furnished under the Freedom of Information Act (see 29 CFR 2603.52(b)(2)), will reflect current costs more accurately. The current fee was established in 1975.

The PBGC is dividing an existing Privacy Act system of records into two systems of records, PBGC–5 (retitled Personnel Files—PBGC) and PBGC–12 (Personnel Security Investigation Records—PBGC). (The PBGC's notice of changes to its system of records, including proposed new and revised routine uses of records, appears elsewhere in today's **Federal Register**.) The PBGC proposes to amend § 2607.10 to exempt PBGC–12 from certain provisions of the Privacy Act because the records to which the exemption pertains will be maintained in PBGC–12 instead of PBGC–5.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Based on fees assessed in the past, the PBGC estimates that the copying fee increase under the proposed rule will raise the total amount of fees assessed annually by less than $1,000. In view of the small increase in anticipated costs, the PBGC certifies that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not apply because the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 29 CFR Part 2607

Privacy.

For the reasons set forth above, the PBGC is proposing to amend 29 CFR Part 2607 as follows:

PART 2607—DISCLOSURE AND AMENDMENT OF RECORDS UNDER THE PRIVACY ACT

1. The authority citation for Part 2607 continues to read as follows:

Authority: 5 U.S.C. 552a.

§ 2607.1 [Amended]

2. Paragraph (a) of § 2607.1 is amended by removing "which" and adding, in its place, "that" and by adding "or her" after "his" in the first sentence.

§ 2607.2 [Amended]

3. In § 2607.2, the definition of *record* is amended by adding "or her" after "his" both times it appears.

§§ 2607.3–2607.9 [Amended]

4. Sections 2607.3(a) and (c), 2607.4(a) and (c), 2607.5(a), 2607.6(c), 2607.7(b) and (c), and 2607.8(b) and (c) and the introductory text of § 2607.9 are amended by adding "or her" after "his" and after "him" each time either "his" or "him" appears.

5. The second sentence of § 2607.3(b), the second sentence of § 2607.4(b), and the third sentence of § 2607.6(b) are amended by removing "he" and adding, in its place, "the disclosure officer".

6. Paragraph (d) of § 2607.4 is amended by adding "or she" after "he".

7. Paragraph (b) of § 2607.5 is amended by removing "his choosing" and adding, in its place, "his or her choosing"; by removing "he shall" and adding, in its place, "the requestor shall"; by removing "he wishes" and adding, in its place, "he or she wishes"; by removing "accompany him" and adding, in its place "accompany him or her"; by removing "his record" and adding, in its place, "the record"; and by removing "to him" and adding, in its place, "to him or her".

8. Paragraph (d) of § 2607.8 is amended by removing "If an individual requests" and adding, in its place, "To request"; by removing "review, he" and adding, in its place, "review, an individual"; and by removing "Counsel and he" and adding, in its place, "Counsel, who".

9. Paragraph (a) of § 2607.9 is amended by removing "$0.10" and adding, in its place, "$0.15" in the first sentence and by removing "$1.00" and adding, in its place, "$1.50" in the second sentence.

10. In § 2607.10, the first paragraph is amended by adding "Security Investigation" after "Personnel" and by removing "that the identity of the source would be held in confidence" both times it appears and adding, in its place, "of confidentiality"; and the second paragraph is amended by removing "for employment" and adding, in its place, "and fitness for PBGC employment, access to information, and security clearances" and by adding "the" before "PBGC".

Issued in Washington, DC this 8th day of November, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–28210 Filed 11–14–95; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5326–9]

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's proposal would revise the applicability of the sulfur dioxide (SO_2) and particulate matter (PM) emission control requirements of the standards of performance for new, modified, and reconstructed small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc; September 12, 1990, 55 FR 37683) by excluding certain small steam generating units—when conducting combustion research—from the category of small steam generating units that are regulated as new sources (see Clean Air Act section 111(b)(2)). Small steam generating units are units with a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr)), or less, but greater than or equal to 2.9 MW (10 million Btu/hr). The proposed revisions would encourage the development of air pollution control technology that will ultimately result in reduced air emissions from all steam generating units.

DATES: Comments. Comments must be received on or before January 2, 1996.

Public Hearing. If anyone requests to speak at a public hearing by December 15, 1995, a public hearing will be held on December 22, 1995, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Donna Collins at (919) 541–5578 to verify that a hearing will be held. Assistance will be available for persons with hearing impairments.

Request to Speak at Hearing. Persons wishing to present oral testimony must request to speak at the public hearing by December 15, 1995.

ADDRESSES: Comments. Comments should be submitted in duplicate to: U.S. Environmental Protection Agency, The Air and Radiation Docket & Information Center, 401 M Street, S.W., Room 1500, Mail Code 6102, Washington, DC 20460. Attention Docket Number A–86–02.

Public Hearing. If anyone requests a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony, should notify Ms. Donna Collins, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

Docket. Docket Number A–86–02, containing information used in developing the original standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA Air and Radiation Docket and Information Center, Room 1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland (919) 541–5265 or Mr. Fred Porter (919) 541–5251, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The revisions to the applicability of the SO_2 and PM emission control requirements of 40 CFR Part 60, Subpart Dc are being proposed pursuant to a settlement agreement that would resolve litigation in the case of *Babcock and Wilcox Company* v. *U.S. EPA*, No. 90–1509 (D.C.Cir.). Notice of the proposed settlement was published in the **Federal Register** on April 4, 1994 (59 FR 15728) in accordance with section 113(g) of the Clean Air Act. There was only one comment and it supported the proposed settlement.

Final adoption of today's proposal, which solicits comments on the appropriateness of the proposed revisions to the applicability of the SO2 and PM emission control requirements of 40 CFR Part 60, Subpart Dc, is contingent upon EPA's review of any comments submitted in response to this notice. As discussed below, today's proposal is intended to revise the applicability requirements primarily for a small steam generating unit operated by the Babcock and Wilcox Company. This steam generating unit is occasionally used for combustion research to evaluate the performance of and to develop unproven combustion technologies. The applicability requirements would be revised, however, to apply to any small steam generating unit used for research purposes which operates in a manner similar to the unit operated by the Babcock and Wilcox Company. There may be other small steam generating

units also used to evaluate the performance of and to develop unproven combustion technologies and EPA solicits comments on both the merits and means of extending these revised applicability requirements to these units.

The Babcock and Wilcox Company challenged the New Source Performance Standards' emission control requirements for small-scale, intermittently-operated steam generating research units, because such steam generating units are often equipped with experimental, and as yet unproven, air pollution control technology that may not consistently meet the required standards of performance. Babcock & Wilcox Company, therefore, maintains that compliance with the standards of performance when conducting combustion research (that is used to evaluate the performance of and to develop unproven combustion technologies) would create serious start up and shut down problems during test runs and would hinder the purpose of the tests of obtaining useful data within normal operating ranges. The Babcock and Wilcox Company, Research & Development Division, conducts research, development, experimentation, and testing of small-scale burners, boilers, processes, and special equipment arrangements in combustion devices for the purpose of producing data and information necessary to evaluate the performance of and to develop unproven combustion technologies. The data and information are used by The Babcock and Wilcox Company, by the EPA, the Department of Energy, and others to, among other things, ascertain the technological achievability of air pollution emission control standards.

EPA initially rejected The Babcock and Wilcox Company's request—in its comments to the June 9, 1989 proposed standards of performance (54 FR 24792)—for an exemption for small steam generating units conducting combustion research, because EPA's research showed that the impacts of the promulgated standards, including the allowable emissions, potential emission reductions and compliance costs, were reasonable for intermittently or infrequently operated steam generating units, irrespective of whether such units were used for combustion research.

Nevertheless, EPA has agreed to revise the applicability of the SO_2 and PM emission control requirements of 40 CFR Part 60, Subpart Dc because of the limited potential impact of combustion research on the environment: Babcock & Wilcox Company, the petitioner which requested the revision of the applicability of the standards of performance, operates a single small steam generating unit for research purposes, which is used for combustion research less than five percent of its operating time. Significantly, Babcock and Wilcox Company also does not use the energy that the steam generating unit produces during periods of combustion research for any other purpose (such as space heating, process heating, electric generation, etc.). Accordingly, in order to minimize the potential for inappropriate claims of combustion research (potentially undermining EPA's ability to enforce the standards of performance for small steam generating units), EPA has conditioned today's proposed exclusion of certain limited combustion research activities from the standards of performance on the requirement that a steam generating unit not use the energy produced during combustion research for other purposes. No other members of the regulated community have commented on or challenged—at the time of the June 9, 1989 proposed rule or the September 12, 1990 final rule—the applicability of the standards of performance to combustion research (that is used to evaluate the performance of and to develop unproven combustion technologies) that may also use the energy produced for other purposes.

Economic and Regulatory Impacts

Today's proposal will impose no additional costs on the regulated community or the national economy. It would reduce the costs of compliance for some small steam generating units when conducting combustion research by not requiring them to comply with the standards of performance for new, modified, and reconstructed small industrial-commercial-institutional steam generating units. Accordingly, EPA has determined that today's proposal: (1) Does not constitute a "major rule" under Executive Order 12291 (the proposal would not result in any increase in costs or prices and would not disrupt market competition), (2) does not constitute a substantial revision that would require an economic impact assessment pursuant to section 317 of the Clean Air Act, (3) does not constitute a Federal mandate under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, or tribal governments or the private sector, (4) does not contain regulatory requirements that might significantly or uniquely affect small governments under Title II of UMRA, and (5) would not affect the public reporting burden for the collection of information required, in compliance with the Paperwork Reduction Act of 1980, under the new source performance standards for small steam generating units.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that these revisions would not have a significant impact on a substantial number of small entities. Not only would today's proposal reduce the regulatory burden on the small steam generating units source category, but it has previously been determined that even without today's proposed revisions the standards would not affect a substantial number of small entities (55 FR 37682, September 12, 1990).

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental relations, reporting and recordkeeping requirements.

Dated October 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.40c is amended by revising paragraph (a) and adding paragraphs (c) and (d) as follows:

§ 60.40c Applicability and delegation of authority.

(a) Except as provided in paragraph (d) of this section, the affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

* * * * *

(c) Steam generating units which meet the applicability requirements in paragraph (a) of this section are not subject to the sulfur dioxide (SO_2) or particulate matter (PM) emission limits, performance testing requirements, or monitoring requirements under this subpart (§§ 60.42c, 60.43c, 60.44c, 60.45c, 60.46c, or 60.47c) during periods of combustion research, as defined in § 60.41c.

(d) Any temporary change to an existing steam generating unit for the purpose of conducting combustion research is not considered a modification under § 60.14.

3. Section 60.41c is amended by adding the following definition in alphabetical order:

§ 60.41c Definitions.

* * * * *

Combustion Research means the experimental firing of any fuel or combination of fuels in a steam generating unit for the purpose of conducting research and development of more efficient combustion or more effective prevention or control of air pollutant emissions from combustion, provided that, during these periods of research and development, the heat generated is not used for any purpose other than preheating combustion air for use by that steam generating unit (i.e., the heat generated is released to the atmosphere without being used for space heating, process heating, driving pumps, preheating combustion air for other units, generating electricity, or any other purpose).

* * * * *

[FR Doc. 95–28187 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–P

DATES: Comments, identified by the document control number [PP 2E4037 and 5E4437/P635], must be received on or before December 15, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket numbers [PP 2E4037 and 5E4437/P635]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information." CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted to EPA pesticide petitions, PP 2E4037 and PP 5E4437, on behalf of the named Agricultural Experiment Stations. The petitions request that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.434 by establishing tolerances for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on certain raw agricultural commodities as follows:

1. *PP 2E4037.* Petition submitted on behalf of the Agricultural Experiment Station of Oregon proposing a tolerance for mint tops (leaves and stems) at 0.3 ppm. The petitioner proposed that use of propiconazole on mint be limited to mint production areas west of the Cascade Mountains based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking broader registration should contact the Agency's Registration Division at the address provided above.

2. *PP 5E4437.* Petition submitted on behalf of the Agricultural Experiment Station of Pennsylvania proposing a tolerance for mushrooms at 0.1 ppm.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 1-year feeding study with dogs, which were fed diets containing 0, 5, 50, or 250 ppm, with a no-observed-effect level (NOEL) of 50 ppm (equivalent to 1.25 mg/kg/day). Mild irritation of stomach mucosa was observed at the 250- ppm dose level.

2. A developmental toxicity study with rabbits, which were given gavage doses of 0, 30, 90, or 180 mg/kg/day, with no evidence of maternal or developmental toxicity observed under the conditions of the study.

3. A second developmental toxicity study in rabbits, which were given gavage doses of 0, 100, 250, or 400 mg/kg/day on gestation days 7 through 19, with no developmental toxicity observed under the conditions of the study. The NOEL for maternal toxicity for this study is established at 100 mg/kg/day based on decreased food consumption, weight gain, and an increase in the number of resorptions at the higher dose levels.

4. A developmental toxicity study with rats, which were given gavage doses of 0, 30, 100, or 300 mg/kg/day, with no developmental toxicity observed under the conditions of the

40 CFR Part 180

[PP 2E4037 and 5E4437/P635; FRL–4983–3]

RIN 2070–AC18

1-[[2-(2,4-Dichlorophenyl)-4- Propyl-1,3-Dioxolan-2-yl]Methyl]- 1H-1,2,4-Triazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2yl]methyl]-1*H*-1,2,4-triazole (also called propiconazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on the raw agricultural commodities mint tops (leaves and stems) at 0.3 part per million (ppm) and mushrooms at 0.1 ppm. The Interregional Research Project No. 4 (IR–4) submitted petitions under the Federal Food, Drug and Cosmetic Act (FFDCA) requesting that EPA establish maximum permissible levels for residues of propiconazole in or on the commodities.

study. The NOEL for maternal toxicity for this study is established at 100 mg/kg/day based on decreased body weight gain and food consumption in rats from the high-dose group. The NOEL for fetotoxicity (ossification retardation) is established at 30 mg/kg/day.

5. A second developmental toxicity study with rats, which were given gavage doses of 0, 30, 90, or 360/300 mg/kg/day, with a NOEL for developmental toxicity of 30 mg/kg/day. Evidence of developmental toxicity observed at the 90 mg/kg/day level includes increased incidence of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae.

6. A two-generation reproduction study with rats, which were fed diets containing 0, 1, 100, 500, or 2,500 ppm, with no reproductive effects observed under the conditions of the study. The NOEL for developmental toxicity is established at 500 ppm (equivalent to 25 mg/kg/day) based on decreased offspring survival, body weight depression, and increased incidence of hepatic lesions in rats at the 2,500-ppm level.

7. A 2-year chronic feeding/carcinogenicity study with rats fed diets containing 0, 100, 500, or 2,500 ppm with a systemic NOEL of 100 ppm (equivalent to 5 mg/kg/day) based on hepatocyte changes in males at the 500-ppm level and in both sexes at the 2,500-ppm level. There were no carcinogenic effects observed under the conditions of the study.

8. A 2-year chronic feeding/carcinogenicity study with mice, which were fed diets containing 0, 100, 500, or 2,500 ppm, with a systemic NOEL of 100 ppm (equivalent to 15 mg/kg/day) based on decreased body weight, and increased liver lesions and liver weight in males. There was a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at the 2,500-ppm level (equivalent to 375 mg/kg/day).

9. A battery of mutagenicity studies to determine propiconazole's potential for gene mutation, chromosomal aberrations, and other genotoxic effects were all negative.

Propiconazole is classified as a possible human carcinogen (Group C) by the Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee. (See the **Federal Register** of May 25, 1994 (59 FR 26948) for additional information regarding EPA's evaluation of the carcinogenicity potential of propiconazole.) Based on the weight of evidence, EPA has, therefore, chosen to use the reference dose (RfD) to estimate dietary risk from propiconazole residues.

The reference dose is established at 0.013 mg/kg/day, based on a NOEL of 1.25 mg/kg of body weight/day and an uncertainty factor of 100. The NOEL is taken from a 1-year feeding study in dogs which demonstrates irritation of the stomach in males as an endpoint effect. The Agency has evaluated dietary exposure to the propiconazole residues based the anticipated residue contribution (ARC) from certain existing tolerances and the theoretical maximum residue contribution (TMRC) from other existing tolerances and the proposed tolerances for mushrooms and mint. The TMRC assumes that 100 percent of the crops are treated and that the resulting residues are at tolerance levels. The ARC estimates expected dietary exposure based on actual residue levels that are anticipated on the treated commodities and/or the estimated percent of the crop treated.

Dietary exposure to residues of propiconazole from existing uses and the proposed uses on mushrooms and mint is estimated at 0.000630 mg/kg/day (5 percent of the RfD) for the general population, or 0.002020 mg/kg/day (16 percent of the RfD) for nonnursing infants, less than 1-year-old. The dietary risk assessment indicates that there is no appreciable risk from established tolerances and the proposed tolerances for mushrooms and mint.

The nature of the residue in plants is adequately understood for the purposes of the proposed tolerances. Adequate analytical methods are available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methods in the Pesticide Analytical Manual, Vol. II, the analytical methods are being made available to anyone with an interest in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–5937.

There is no reasonable expectation that secondary residues will occur in meat, milk, poultry or eggs since there are no livestock feed items associated with the proposed tolerances.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

A record has been established for this rulemaking under docket numbers [PP 2E4037 and 5E4437/P635] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 24, 1995,

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.434, paragraph (a) is amended in the table therein by adding and alphabetically inserting an entry for mushrooms, and paragraph (b) is amended in the table therein by adding and alphabetically inserting an entry for mint, to read as follows:

§ 180.434 1 - [[2 - (2,4 - dichlorophenyl) - 4 - propyl - 1,3 - dioxolan - 2 - yl]methyl] - 1H - 1,2,4 - triazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Mushrooms	0.1
* * * * *	

(b) * * *

Commodity	Parts per million
* * * * *	
Mint, tops (leaves and stems)	0.3
* * * * *	

* * * * *

[FR Doc. 95–28184 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300401; FRL–4985–4]

RIN 2070–AC18

1,2-Ethanediamine, Polymer With Oxirane and Methyloxirane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of 1,2-ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) when used as an inert ingredient (surfactant and dispersing agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and to animals, under 40 CFR 180.1001 (c) and (e). The BASF Corp. requested this proposed regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: Written comments, identified by the document control number [OPP–300401], must be received on or before December 15, 1995.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300401]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)–308–8380; e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The BASF Corp., 3000 Continental Drive-North, Mount Olive, NJ 07828–1234, has submitted a pesticide petition, PP 5E04579, to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001 (c) and (e) by exempting 1,2-ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) when used as an inert ingredient (surfactant and dispersing agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and to animals, under 40 CFR 180.1001(c) and (e). These inert ingredients meet the definition of polymers under 40 CFR 723.250(b) and the criteria listed in 40 CFR 723.250(e) that define chemical substances that pose no unreasonable risks under section 5 of the Toxic Substance Control Act (TSCA).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without such data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for 1,2-ethanediamine, polymer with oxirane and methyloxirane will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk.

1,2-Ethanediamine, polymer with oxirane and methyloxirane conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers:

1. 1,2-Ethanediamine, polymer with oxirane and methyloxirane is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. 1,2-Ethanediamine, polymer with oxirane and methyloxirane contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen, and nitrogen.

3. 1,2-Ethanediamine, polymer with oxirane and methyloxirane does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. 1,2-Ethanediamine, polymer with oxirane and methyloxirane is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. 1,2-Ethanediamine, polymer with oxirane and methyloxirane is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. 1,2-Ethanediamine, polymer with oxirane and methyloxirane is not a water-absorbing polymer.

7. The minimum number-average molecular weight of 1,2-ethanediamine, polymer with oxirane and methyloxirane is 2,800. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

8. 1,2-Ethanediamine, polymer with oxirane and methyloxirane has a number average molecular weight in the range of 2,800 to 10,000 daltons and contains less than 10 percent oligomeric material below molecular weights 500 and less than 25 percent oligomeric material below 1,000 molecular weight.

9. 1,2-Ethanediamine, polymer with oxirane and methyloxirane has a combined (total) reactive group equivalent weight greater than or equal to 1,000 for amines as functional groups.

Based on the information above and review of its uses, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful, and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established for the polymer as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains the ingredient listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP–300401]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP–300401] (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will be placed in the paper copies of the official rulemaking record which also will include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in the **ADDRESSES** at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pes s, Processed foods, Reporting and recordkeeping requirements.

Dated: October 27, 1995,

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 paragraphs (c) and (e) are amended in the tables therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredient	Limits	Uses
1,2 Ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) minimum number average molecular weight 2,800 and the range of number average molecular weight is 2,800 to 10,000 daltons.	.....	Surfactant, dispersing agent.

(e) * * *

Inert ingredients	Limits	Uses
1,2 Ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) minimum number average molecular weight 2,800 and the range of number average molecular weight is 2,800 to 10,000 daltons.	.....	Surfactant, dispersing agent.

* * * * * * *

[FR Doc. 95–28182 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300402; FRL–4985–6]

RIN 2070–AC18

3,5-Dichloro-N-(1,1-Dimethyl-2-Propynyl)Benzamide; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has completed the reregistration process and issued a Reregistration Eligibility Decision (RED) document for the pesticide 3,5-dichloro-*N*- (1,1-dimethyl-2-propynyl)benzamide, also known as pronamide. In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemical subject to this proposed rule, EPA is proposing the following tolerance actions: to delete individual tolerances and establish crop-grouping tolerances, raise some tolerances and lower others, amend an incorrectly listed tolerance, and modify the statement under 40 CFR 180.317 for the pesticide pronamide.

DATES: Written comments, identified by the OPP document control number [OPP-300402], must be received on or before January 16, 1996.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300402]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: The contact for the chemical listed above is: Philip Poli, (703)-308-8038; e-mail: poli.philip@epamail.epa.gov. By mail: Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION:

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.)

authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 (21 U.S.C. 346(a)). Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" (21 U.S.C. 346a(b)). For a pesticide to be sold and distributed the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration and if any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or repealing tolerances or exemptions from the requirement of tolerances is set forth in the Code of Federal Regulations, 40 CFR parts 177 through 180. The Administrator of EPA or any person may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. The proposal must explain the grounds for such a proposed action and must be published as a public notice. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee or a request for a waiver of such fee. Current Agency policy on tolerance actions identified during the reregistration process is to administratively process without requiring payment of a fee tolerance actions for revision or revocation of an established tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

II. Chemical-Specific Information and Proposed Actions

Pronamide: Amendment to 40 CFR 180.317

1. *Regulatory background.* Pronamide was registered in the United States in 1972 for use as a herbicide to control grassy and broadleaf weeds on field, vegetable, and orchard crops, forage and fodder, fallow land, woody ornamentals, nursery stock, and Christmas tree plantations.

A Registration Standard for pronamide was issued in April 1986. Under this standard, registrants were required to generate data, supply missing data, and replace unacceptable data. A Data Call-In was issued in 1990 for pronamide requiring additional data. The Reregistration Eligibility Decision (RED) document of May 1994 reflects a reassessment of all data which were submitted in response to the Registration Standard and the Data Call-In.

2. *Proposed action—Modification of tolerance expression.* The Agency is proposing to modify the 40 CFR 180.317(a) and (b) tolerance expressions to state that tolerances "* * * are established for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety and calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) * * *" to clarify which metabolites of pronamide are determined by the enforcement methods and are included in the tolerance expression.

Tolerances Under 40 CFR 180.317(a)

It is the Agency's policy to set a crop group tolerance when there is an established or proposed tolerance for all of the representative commodities for a specific group or related commodities. This reduces the number of tolerances in 40 CFR part 180 and allows the pesticide to be used on all the commodities in the crop group. The procedures and data requirements for establishing a group tolerance are described in 40 CFR 180.34(f).

A crop group tolerance of 10 parts per million (ppm) is proposed for residues of pronamide in/on the forage and hay of the nongrass animal feeds group. The available data satisfy the requirements for crop group tolerance establishment. Concomitant with this tolerance proposal, the established tolerances for "alfalfa, fresh", "alfalfa, forage", "alfalfa, hay", "clover", "crown vetch", "sainfoin", and "trefoil" will be deleted.

A crop group tolerance of 0.1 ppm is proposed for residues of pronamide in/on the stone fruits group. Adequate data are available to support the established tolerances for the representative commodities cherries, nectarines, peaches, and plums/fresh prunes, all at 0.1 ppm. Concomitant with this tolerance proposal, the established tolerances for "cherries", "nectarines", "peaches", and "plums" will be deleted.

The available residue data support a proposal to reduce the tolerance for residues in/on endive from 2.0 ppm to 1.0 ppm.

As a result of the improvement in the enforcement method for animal commodities, the Agency is proposing to amend the tolerances for the kidney and liver of cattle, goats, hogs, horses, and sheep from 0.2 ppm to 0.4 ppm. The improved enforcement method measured a higher percentage of the residues of concern in the kidney and liver, plus the residue data reflected an inadequate established tolerance. The Agency has examined the added dietary exposure as a result of this tolerance increase. Since exposure to kidney and liver amounts to approximately 5 percent of the total dietary intake, the additional risk is insignificant. In addition, the tolerance for sheep meat was incorrectly listed in 40 CFR 180.317(a) as 0.2 ppm and will be changed to the correct tolerance of 0.02 ppm.

Confirmatory residue data are required for alfalfa seed; once these data are received the Agency will reassess the tolerance for this commodity. In the interim, the existing tolerance for alfalfa forage will support the alfalfa seed use.

Tolerances Under 40 CFR 180.317(b)

Confirmatory residue data are required for dried winter peas; once these data are received the Agency will reassess the tolerance for this commodity. In the interim, alternate data from Europe are available to support the present tolerance on dried winter peas.

III. Public Comment Procedures

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by January 16, 1996. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either

location listed under **ADDRESSES** above in this document. Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of a comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 60 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Documents considered and relied upon by EPA pertaining to this action, and all written comments filed pursuant to this proposed rule, will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. Any person who has registered, or who has submitted an application for registration under FIFRA of any of the pesticide chemicals listed in this proposed rule, may request that this proposal be referred to an advisory committee. Such a request must be made within 60 days of the publication of this proposal. To satisfy requirements for analysis specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has considered the impacts of this proposal.

A record has been established for this rulemaking under docket number [OPP-300402] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this rule is not a "significant regulatory action," because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and EPA has determined that it will not have a significant economic impact on any small businesses, governments, or organizations. Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates

This proposed rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, for State, local, or tribal governments or the private sector because it would not impose enforceable duties on them.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 1, 1995.

Jack E. Housenger,

Chief, Special Review Branch, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.317 to read as follows:

§ 180.317 3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety and calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.1
Artichokes	0.1
Blackberries	0.05
Blueberries	0.05
Boysenberries	0.05
Cattle, fat	0.02
Cattle, kidney	0.4
Cattle, liver	0.4
Cattle, mbyp (except kidney, liver)	0.02
Cattle, meat	0.02

Commodity	Parts per million
Eggs	0.02
Endive (escarole)	1.0
Goats, fat	0.02
Goats, kidney	0.4
Goats, liver	0.4
Goats, mbyp (except kidney, liver)	0.02
Goats, meat	0.02
Grapes	0.1
Hogs, fat	0.02
Hogs, kidney	0.4
Hogs, liver	0.4
Hogs, mbyp (except kidney, liver)	0.02
Hogs, meat	0.02
Horses, fat	0.02
Horses, kidney	0.4
Horses, liver	0.4
Horses, mbyp (except kidney, liver)	0.02
Horses, meat	0.02
Lettuce	1.0
Milk	0.02
Nongrass animal feeds	10.0
Pears	0.1
Poultry, fat	0.02
Poultry, kidney	0.2
Poultry, liver	0.2
Poultry, mbyp (except kidney, liver)	0.02
Poultry, meat	0.02
Raspberries	0.05
Sheep, fat	0.02
Sheep, kidney	0.4
Sheep, liver	0.4
Sheep, mbyp (except kidney, liver)	0.02
Sheep, meat	0.02
Stone fruits	0.1

(b) Tolerances with regional registrations are established for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2 propynyl)benzamide and its metabolites (containing the 3,5 dichlorobenzoyl moiety and calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Peas, dried (winter)	0.05
Rhubarb	0.1

[FR Doc. 95–28070 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 372

[OPPTS–400062; FRL–4045–4]

Hydrochloric Acid; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting a petition by proposing to modify the listing for hydrochloric acid on the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Specifically, EPA proposes to delete non-aerosol forms of hydrochloric acid from the list of toxic chemicals subject to section 313. The proposal to delete non-aerosol forms of hydrochloric acid is based on the Agency's conclusion that releases of non-aerosol forms of hydrochloric acid do not cause adverse effects to human health or the environment under ordinary exposure scenarios, and therefore, do not meet the section 313(d)(2) criteria. This proposed rule does not contain an analysis of aerosol forms of hydrochloric acid because they are not the subject of the petition.

DATES: Written comments must be received by January 16, 1996.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office (7407), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPPTS–400062.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400062. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII. of this document.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, e-mail: doa.maria@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Hydrochloric acid was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (November 30, 1994; 59 FR 61439).

II. Description of Petition and Related Activities

On September 11, 1991, EPA received a petition from BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, and Vulcan Materials

Company to qualify the listing for hydrochloric acid by requiring release reporting only for hydrochloric acid aerosols and deleting other forms of hydrochloric acid from the list of chemicals under EPCRA section 313. The petitioners maintain that non-aerosol forms of hydrochloric acid do not meet the statutory criteria for acute, chronic, or environmental effects. For the purposes of this proposal, EPA considers the term aerosol to cover any generation of airborne hydrochloric acid (including mists, vapors, gas, or fog) without regard to particle size.

On February 1, 1993 (58 FR 6609), EPA published a notice announcing that a public hearing would be held to address petitions to modify the listings for both hydrochloric and sulfuric acids (on December 24, 1990, a petition was received from the Environmental Policy Center on behalf of American Cyanamid to modify the listing of sulfuric acid to include only aerosols). In the February 1, 1993 notice, EPA requested comment on a number of the issues raised by commenters in response to the proposed rule to modify the listing for sulfuric acid (July 26, 1991, 56 FR 34156). The Agency believed that these issues would also apply to hydrochloric acid. Specifically, these issues were: (1) The extent to which EPA should rely on existing regulatory controls under other statutes to support a determination that continuous or frequently recurring releases of these acids are unlikely to cause adverse acute human health effects or significant adverse environmental effects; (2) the sufficiency of the evidence required to determine if the non-aerosol forms of these acids meet the EPCRA section 313(d)(2)(A) and (C) criteria; (3) whether EPA should consider accidental release data in making a finding for environmental effects under EPCRA section 313(d)(2)(C); (4) the relevance of release reporting under other statutory provisions to the issue of whether non-aerosol forms of these acids meet the listing criteria; and (5) other reporting options.

The public meeting was held on March 3, 1993. At this meeting, EPA discussed the specific issues described in the February 1, 1993 notice and presented data on accidental and routine releases of sulfuric and hydrochloric acids. Comments were then presented by the public. Responses to the major issues raised by the comments presented and/or submitted at the public meeting specific to the listing for hydrochloric acid will be addressed at the time final regulation is promulgated. Many of the issues discussed above have been addressed by the Agency in the final rulemaking delisting non-aerosol forms of sulfuric acid (June 30, 1995; 60 FR 34182).

III. EPA's Technical Review of Hydrochloric Acid

EPA's technical review of non-aerosol forms of hydrochloric acid is detailed in the support document for today's proposal (*Technical Support Document for the Petition to Delist Non-aerosol Forms of Hydrochloric Acid from EPCRA Section 313*, Ref. 1). A summary of the chemistry, health, and environmental effects associated with non-aerosol forms of hydrochloric acid follows.

A. Chemistry

Hydrogen chloride is a colorless, corrosive, nonflammable gas, having a characteristic pungent odor. Aqueous hydrochloric acid (also commonly known as muriatic acid) refers to solutions of hydrogen chloride gas in water.

Like all strong acids, hydrogen chloride is virtually completely dissociated in aqueous solutions. It is the hydrogen ion species that is responsible for the acidic characteristics of aqueous hydrochloric acid. Such solutions can be very mild to severe irritants, depending upon concentration.

B. Toxicological Evaluation

Toxicological data on non-aerosol forms of hydrochloric acid were reviewed for evidence indicating acute toxicity, chronic toxicity, carcinogenicity, mutagenicity, reproductive toxicity, developmental toxicity, and environmental effects.

1. *Acute toxicity.* Hydrochloric acid is a strongly acidic, corrosive substance that is acutely toxic to all human tissue. The extent of tissue damage is dependent upon concentration (pH) and duration of exposure, and can range from a mild, transient irritation, to corrosion, chemical burn, and, in extreme and isolated cases, death. Non-aerosol forms of hydrochloric acid pose a significant health hazard only under aberrant conditions of exposure (e.g., deliberate ingestion).

2. *Chronic toxicity.* EPA has not identified any evidence that indicates that chronic exposures to low doses of non-aerosol forms of hydrochloric acid at low concentrations in food or water produces adverse health effects. Chronic exposure to more concentrated forms (lower pH), may affect metabolism, growth, nutritional status, and produce lethality. These effects are dependent upon pH.

3. *Carcinogenicity.* Data available to the Agency are insufficient to classify the carcinogenic potential of hydrochloric acid. The currently available animal bioassays are not sufficient for this purpose, and the available epidemiological evidence is limited. The total weight of evidence is not strong enough to draw a causal conclusion.

4. *Mutagenicity.* The overall weight of evidence suggests that hydrochloric acid is not mutagenic *in vitro*. No *in vivo* mutagenicity studies on hydrochloric acid have been reported.

5. *Reproductive and developmental toxicity.* There is insufficient information to determine whether hydrochloric acid may cause reproductive or developmental effects in humans.

6. *Environmental effects.* The pH range of 6.5 to 9.0 corresponds to the EPA Water Quality Criteria for freshwater organisms. Available data indicate that non-aerosol forms of hydrochloric acid can produce acute effects to freshwater aquatic organisms below pH 5. Chronic exposure of fish to hydrochloric acid resulted in abnormal behavior and deformed fish at pH 4.5 and 5.2, but not at pH 5.9; at pH values less than 5.9, reduction was noted in egg production and egg hatchability.

Hydrochloric acid is not a persistent chemical. In addition, hydrochloric acid, a very hydrophilic and water soluble substance, is not expected to undergo bioconcentration or bioaccumulation.

C. Release and Exposure

In making listing determinations under EPCRA section 313, there are limited circumstances under which it is appropriate for EPA to consider exposure factors (see 59 FR 61440). The Agency believes that exposure considerations are appropriate in making determinations (1) under section 313(d)(2)(A), (2) under section 313(d)(2)(B) for chemicals that exhibit low to moderately low toxicity based on a hazard assessment (i.e., those chemicals for which the value of listing under EPCRA section 313 on hazard alone is marginal), and (3) under section 313(d)(2)(C) for chemicals that are low or moderately ecotoxic or do not induce well-documented serious adverse effects. The Agency believes that exposure considerations are not appropriate in making determinations (1) under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity based on a hazard assessment and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. Based on its most recent

assessment, EPA has preliminarily determined that non-aerosol forms of hydrochloric acid exhibit low chronic human toxicity and moderate environmental toxicity.

The principle pathways for the release of non-aerosol forms of hydrochloric acid to the environment include wastewater discharges, underground injection of dilute solutions, and releases to land.

1. *Releases to water.* Under the Clean Water Act (33 U.S.C. 1251–1387), parameters such as pH may be subject to both technology-based and water quality-based limitations. The technology-based limitations are either derived from nationally applicable effluent guidelines or pre-treatment standards (many of which limit pH to a range of 6.0 to 9.0) or are based on (1) The permit writer's "Best Professional Judgement" if there is no applicable guideline for a direct discharge or (2) local pretreatment requirements. Water quality-based limitations generally are established to ensure that applicable water quality standards are attained and maintained. Dischargers are typically subject to monitoring provisions under which permittees are to report discharges of controlled parameters.

2. *Accidental releases to water.* Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 U.S.C. 9601–9675), a release into the environment of hydrochloric acid equaling or exceeding 5,000 pounds within a 24-hour period must be reported to the National Response Center (see 40 CFR part 302). These release reports are entered into the Emergency Response Notification System (ERNS) computer data base maintained by EPA. The Agency believes that although limited to non-coastal regions, the data in ERNS are representative of spills of hydrochloric acid in the United States from nontransportation sources. EPA analyzed all releases of hydrochloric acid reported to ERNS during calendar year 1991 (this analysis is described in Ref. 1). Of the releases reported to ERNS, only three may have potentially resulted in adverse environmental effects, i.e. fish-kills, due to a transient lowering of the pH of the receiving stream. No data were available to confirm such an impact. As these releases of hydrochloric acid resulted in only transient lowering of the pH in the receiving stream, they cannot reasonably be anticipated to have caused chronic ecotoxicity.

In addition to ERNS, EPA analyzed accidental release data from the Accidental Release Information Program (ARIP) and the Acute Hazardous Events Data Base (AHE/DB). Consistent with the ERNS data, the available information present in ARIP and AHE/DB indicate that accidental releases of non-aerosol forms of hydrochloric acid are isolated and infrequent occurrences. Thus, releases of non-aerosol forms of hydrochloric acid are not expected to cause significant adverse ecological effects (a complete discussion of this analysis is provided in Ref. 1).

3. *Underground injection.* In the case of underground injection, regulations promulgated under the Underground Injection Control (UIC) Program of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26, specify that deep industrial waste disposal must occur in either Class I or Class V wells. The standards, requirements, and the permitting process for the design, operation, monitoring, and closure of Class I wells were designed to prevent contamination of underground sources of drinking water (USDW).

In addition to controls under the SDWA, regulations issued under the Resource Conservation and Recovery Act (RCRA 42 U.S.C. 6901–6992k) at 40 CFR part 148 allow underground injection into a Class I well of aqueous wastes with a pH of 2 or less only if the waste is the subject of a successful "no migration" petition. This petition must demonstrate that there will be no migration of hazardous constituents for as long as the waste remains hazardous. The petition must also show that the injected fluid will not migrate within 10,000 years. There is currently no evidence which indicates that underground injection of hydrochloric acid into Class I wells would result in such migration.

Injection of hazardous waste into shallow injection wells is prohibited under RCRA section 3020 and the UIC program of the SDWA (40 CFR 144.13). The disposal of nonhazardous industrial waste, such as treated hydrochloric acid, into shallow injection wells is the subject of the Agency's current Class V rulemaking proceedings (EPA published a proposed rule in the **Federal Register** of August 28, 1995; 60 FR 44652). In the interim, such wells are still subject to the prohibition in section 1422 of the SDWA against any injection which may endanger a drinking water source, as defined in section 1421(d)(2).

4. *Releases to land.* Total on-site land releases of hydrochloric acid reported to the Toxics Release Inventory in 1993 were 359,506 pounds, or 0.16 percent of total on-site releases. Of the off-site transfers of hydrochloric acid sent from facilities reporting greater than 100,000 pounds sent off-site (which accounts for 90 percent of all off-site transfers of hydrochloric acid), 2.3 percent was released to land off-site. Regulations promulgated under RCRA at 40 CFR 261.22 provide that aqueous wastes that exhibit a pH of less than or equal to 2 are hazardous wastes. Land disposal of such wastes may take place only after pH adjustment above 2 or a successful "no migration" petition. Hydrochloric acid at a pH above 2 is not considered a hazardous waste under RCRA. Thus, land disposal of hydrochloric acid at a pH above 2 is not regulated under RCRA at 40 CFR 261.22. There is no available national information on releases of hydrochloric acid to land at pHs greater than 2.

C. Summary of Technical Review

Non-aerosol forms of hydrochloric acid are acutely toxic to human tissue, producing effects ranging from irritation to corrosion to risk of early death. The extent of damage, however, is dependent upon concentration and duration of exposure. EPA's analysis of releases of non-aerosol forms of hydrochloric acid indicate that releases will not result in levels of concern.

The effects produced by chronic exposure to non-aerosol forms of hydrochloric acid are highly dependent on concentration and duration of exposure. Non-aerosol forms of hydrochloric acid cause adverse effects only at relatively high dose levels. EPA's analysis of releases of non-aerosol forms of hydrochloric acid indicate that releases will not result in concentrations of concern.

The data indicate that accidental releases of hydrochloric acid to surface waters are infrequent and isolated occurrences. In only a few circumstances could evidence of adverse environmental effects (e.g., fish kills) be found.

IV. Rationale for Proposed Modification of the Hydrochloric Acid Listing

EPA's decision to propose deletion of non-aerosol forms of hydrochloric acid is based on the Agency's evaluation of the toxicity of non-aerosol forms of hydrochloric acid and the levels of non-aerosol forms of hydrochloric acid exposure to which humans and the environment may be subject.

EPA believes that non-aerosol forms of hydrochloric acid do not meet the statutory criteria of section 313(d)(2)(A) regarding acute human health effects; specifically, that the "chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases." Hydrochloric acid's toxic properties are dependent upon concentration (i.e., pH level) and duration of exposure. Only under aberrant conditions of exposure (e.g., spills onto the skin) do concentrated solutions of hydrochloric acid pose a potentially serious acute health hazard. EPA's review of the toxicity and exposure information indicates that although hydrochloric acid is acutely toxic at low pH levels, it is unlikely that persons will be exposed to acutely toxic concentration levels "beyond facility site boundaries as a result of continuous or frequently recurring releases."

EPA also believes that non-aerosol forms of hydrochloric acid do not meet the criteria of section 313(d)(2)(B) regarding chronic human health effects; specifically, that the "chemical is known to cause or can reasonably be anticipated to cause in humans" certain chronic health effects (see Unit III.B. of this proposal).

EPA believes that non-aerosol forms of hydrochloric acid do not meet the section 313(d)(2)(C) criteria regarding adverse environmental effects. Although accidental releases of concentrated hydrochloric acid solutions to surface waters may result in acute ecotoxic effects, such as fish-kills, the available information indicates that accidental releases of hydrochloric acid to surface waters are isolated and infrequent occurrences. As such, the Agency believes that the limited number of accidental releases of non-aerosol forms of hydrochloric acid do not result in significant acute adverse effects on the environment of sufficient seriousness to warrant continued listing under EPCRA section 313. In addition, EPA believes that accidental releases of non-aerosol forms of hydrochloric acid cannot reasonably be anticipated to induce chronic ecotoxicity because pH excursions are expected to dissipate rapidly due to the chemical's high solubility in water. Therefore, the Agency believes that non-aerosol forms of hydrochloric acid do not meet the listing criteria of EPCRA section 313(d)(2)(C).

EPA proposes to modify the listing under EPCRA section 313 for hydrochloric acid by deleting non-aerosol forms of hydrochloric acid. EPA's proposal to delete non-aerosol forms of hydrochloric acid from the section 313 list is not meant to suggest that the Agency considers non-aerosol hydrochloric acid to be a "safe" chemical. Rather, this proposed action reflects the fact that non-aerosol forms of the chemical do not meet the criteria set forth in EPCRA section 313(d)(2).

Currently, most facilities base their threshold determinations for reporting under section 313 on the amounts of hydrochloric acid in solution form manufactured, processed, or otherwise used. If this proposal were adopted, for purposes of threshold determinations of hydrochloric acid aerosols for reporting under section 313, a facility would consider any generation of airborne hydrochloric acid (including mists, vapors, gas, or fog) without regard to particle size as manufacture. The quantity of airborne hydrochloric acid manufactured or processed, not the amount released, would be compared with the 25,000 pound threshold. Any otherwise use of aerosol forms of hydrochloric acid must also be applied towards the 10,000 pound threshold. Generation of aerosol forms of hydrochloric acid is expected to occur from, among other processes, the production or processing of solutions of hydrochloric acid. However, generation of aerosol forms of hydrochloric acid from other processes must also be considered.

Although not a factor in the delisting decision, deleting non-aerosol forms of hydrochloric acid from the section 313 list will not result in any significant reduction in the information now available to the public concerning spills of hydrochloric acid. Since reporting of spills under section 313 is only required to be submitted to EPA as part of an overall annual release number, no direct and immediate notice to the public of such an accidental release or spill of hydrochloric acid is available through section 313 reports or through the TRI data base, i.e., only annual release figures are available.

However, other statutory mechanisms exist by which information on spills of hydrochloric acid are made available to the public. For example, hydrochloric acid is listed as a hazardous substance under CERCLA, 40 CFR 302.4. CERCLA section 103 requires that the person in charge of a facility or vessel immediately report a release of 5,000 pounds or more of hydrochloric acid (other than a federally permitted release) to the National Response Center. There is a reduced reporting requirement for releases determined to be "continuous and stable in quantity and rate" (40 CFR 302.8). Releases of 5,000 pounds or more also must be reported to State and local authorities under EPCRA section 304. EPCRA section 304 requires the owner or operator of a facility to immediately report to the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) when there is a release of a CERCLA hazardous substance requiring a report under CERCLA section 103(a) or when there is a release of 1 pound or more of a non-CERCLA Extremely Hazardous Substance (EHS) listed under EPCRA section 302(a). However, section 304 does not apply ". . . to any release which results in exposure to persons solely within the site or sites on which a facility is located" (EPCRA section 304(a)(4)).

In addition, data on the presence of hydrochloric acid for emergency planning purposes are already being collected at the local level. Under sections 311 and 312 of EPCRA, facilities are required to submit lists and inventories of chemicals on-site to LEPCs to help them plan for emergencies and inform the public about the types and amounts of chemicals being handled in their communities.

V. Precedents for Modified Listings

A. Background

There are precedents for qualified chemical listings under EPCRA section 313. The original list established by Congress contained a number of qualified listings including: aluminum (fume or dust), ammonium nitrate (solution), asbestos (friable), yellow or white phosphorus, vanadium (fume or dust), and zinc (fume or dust). Also, EPA recently qualified the aluminum oxide listing by exempting non-fibrous forms of aluminum oxide from the reporting requirements so that only fibrous aluminum oxide is subject to reporting (40 CFR part 372). EPA found that there was no evidence that non-fibrous forms of aluminum oxide cause adverse human health or environmental effects as specified under section 313. The decision to retain fibrous forms of aluminum oxide was based on evidence that exposure to fibrous forms of this chemical can reasonably be anticipated to cause cancer in humans. In addition, EPA recently added a category, water dissociable nitrate compounds, to the EPCRA section 313 list (59 FR 61460) with a qualifier that limits reporting to aqueous solutions. The Agency had originally proposed (59 FR 1825) to list nitrate ion; however, many commenters argued that what the Agency actually proposed was a category of nitrate compounds that dissociate in water. EPA agreed with the commenters and used the qualified category in the final listing. This category indicates that only water dissociable nitrate compounds that are manufactured, processed, or otherwise used as an aqueous solution at a facility are subject to reporting.

B. Effect of Modifying Toxic Release Inventory (TRI) Reporting of Hydrochloric Acid

If the hydrochloric acid listing is qualified to require reporting for only hydrochloric acid aerosols, then facilities would determine their reporting threshold based on how many pounds of hydrochloric acid aerosols they manufactured, processed, or otherwise used during the calendar year.

In 1992, 3,281 facilities reported a total of 77.1 million pounds of hydrochloric acid released to air. EPA estimates that the total number of reports (Form Rs and certification statements) submitted after the modification will be between 333 and 1,514 and that the total amount of releases to air will be between 73.6 and 76.8 million pounds (Ref. 1). Therefore, modifying the list to cover only hydrochloric acid aerosols is not expected to result in any appreciable loss of information on releases of hydrochloric acid to air since, at a minimum, it is estimated that 95.5 percent of the total air emissions reported for 1992 would still be captured.

VI. Request for Public Comment

EPA requests general comments on this proposal to delete non-aerosol forms of hydrochloric acid from the list of toxic chemicals under EPCRA section 313. Comments should be submitted to the address listed under the **ADDRESSES** unit at the front of this document. All comments must be received by January 16, 1996.

VII. Rulemaking Record

A record, that includes the reference in Unit VIII. below, has been established for this rulemaking under docket number OPPTS–400062 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of any special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

VIII. References

USEPA. 1995. Technical Support Document for the Petition to Delist Non-aerosol Forms of Hydrochloric Acid from EPCRA Section 313.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

The cost savings to industry from the modification of the hydrochloric acid listing is estimated to be between $4.9 and $7.6 million per year. The cost savings to EPA is estimated at $135,000 to $201,000 per year. The lower bound estimate of the total annual savings for industry and EPA from the partial delisting of hydrochloric acid is $5,035,000. The upper bound estimate is $7,801,000 in savings annually.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the proposed rule. Because this proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local or tribal governments, and the private sector. This action does not result in the expenditure of $100 million or more by any State, local or tribal governments, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 unit above.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 3, 1995.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by changing the entry for hydrochloric acid to read "Hydrochloric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size)" under paragraph (a) and under paragraph (b) for CAS number entry 7647–01–0.

[FR Doc. 95–28183 Filed 11–14–95; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13 and 17

RIN 1018–AC57

Fish and Wildlife Service, General Provisions and General Permit Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule notice of reopening of comment period.

SUMMARY: On September 5, 1995 regulations providing for uniform rules and procedures for general permit procedures, as published in the **Federal Register** (60 FR 46087) the Fish and Wildlife Service (Service) published a proposed rule to amend regulations providing for general permit procedures. The Service hereby provides notice that the comment period on the proposal is reopened. All interested parties are invited to submit comments on this proposal.

DATES: Comments must be submitted on or before January 16, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240, Telephone number (703) 358–1949 or Maggie Tieger, Chief, Branch of Permits, Office of the Management Authority, Telephone Number (703) 358–2104.

SUPPLEMENTARY INFORMATION: The comment period is being extended to allow interested parties time for consideration and review of the proposed rule. Supplementary information and the full text of the proposed rule appears in the **Federal Register** of September 5, 1995, (60 FR 46087).

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–28243 Filed 11–14–95; 8:45 am]
BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AD29

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Aubrey Valley, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Arizona Game and Fish Department (Department), proposes to introduce black-footed ferrets (*Mustela nigripes*) into Aubrey Valley, Arizona. This reintroduction is proposed to implement a primary recovery action for this federally listed endangered species and to evaluate release techniques. Provided conditions are acceptable, captive-raised black-footed ferrets that are surplus to the captive population will be released in 1995, or later, and surplus animals will be released annually thereafter for several years or until a self-sustaining population is established. Releases will utilize and refine reintroduction techniques used at other reintroduction areas. If the Aubrey Valley program is successful, it is expected that a wild population will be established within about 5 years. The Aubrey Valley ferret population is proposed to be designated as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). This population will be managed in accordance with the provisions of the accompanying proposed special rule.

DATES: Comments from all interested parties must be received by: January 2, 1996.

A public hearing on this proposal will be held from 7:00 P.M. to 10:00 P.M., on December 12, 1995, at Seligman, Arizona.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: William Austin, at the above address, or telephone 602/640–2720.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative*: Among the significant changes made in the Endangered Species Act (Act) by the Amendments of 1982 (Public Law No. 97–304) was the creation of a new section 10(j), which provides for the designation of specific populations of listed species as "experimental populations." Under previous authorities in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service (Service) was authorized to reintroduce populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species. However, opposition to reintroduction efforts by local citizens, concerned about the restrictions and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of reintroductions as a management tool. Under section 10(j), reintroduced populations established outside the species' current range but within its historical range may be designated, at the discretion of the Service, as "experimental." This designation increases the Service's flexibility to manage reintroduced populations of endangered species because experimental populations are treated as threatened species under the Act, thereby permitting the Service greater discretion in devising management programs and special regulations. Per section 4(d) of the Act, such programs and regulations may be necessary and advisable to provide for the conservation of the species. In addition, per section 4(d) of the Act, these regulations may be less restrictive than those for endangered species, and more compatible with current or planned human activities in the reintroduction area. For example, for the purposes of the proposed Aubrey Valley reintroduction, a person may take a ferret in the wild within the Aubrey Valley Experimental Population Area provided such take is incidental as defined under the Act, and if any resulting injury or mortality was unintentional, and not due to negligent conduct. The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Such conduct will not be considered "intentional take" and the Service will not take legal action for such conduct. However, the knowing take of a black-footed ferret will result in the referral of the incident to the appropriate authorities for prosecution.

Experimental populations can be determined to be "essential" or "nonessential." Nonessential populations are not essential to the continued existence of the species. The proposed Aubrey Valley population of black-footed ferrets, if reintroduction is undertaken, will be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act.

Nonessential experimental populations located outside of the National Wildlife Refuge System or National Park System lands are treated, under section 7 of the Act, as if they were species proposed for listing. Thus, only two provisions of section 7 would apply to an experimental population outside of National Wildlife Refuge System and National Park System lands: Section 7(a)(1), which requires all Federal agencies to use their authority to conserve listed species; and section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed

species throughout its range. Section 7 (a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded or carried out by a Federal agency.

However, pursuant to section 7(a)(2), the individual animals comprising the designated experimental population may be removed from an existing source or donor population only after it has been determined that such removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be conducted in accordance with the permitting requirements of 50 CFR 17.22.

2. *Biological*: The species addressed by this rulemaking is the black-footed ferret (*Mustela nigripes*), an endangered carnivore with a black face mask, black legs, and a black-tipped tail. Black-footed ferrets are nearly 60 centimeters (2 feet) in length and weigh up to 1.1 kilogram (2.5 pounds). It is the only ferret species native to North America.

Historically, the black-footed ferret was found over a wide area, but it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The historical range of the species, based on specimen collections, includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of this ferret occurring from the Yukon Territory in Canada to New Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets primarily prey on prairie dogs and use their burrows for shelter and denning and depend almost exclusively on prairie dogs for food and shelter (Henderson *et al.* 1969, Forrest *et al.* 1985). Ferret range is coincident with that of prairie dogs (Anderson *et al.* 1986), with no documentation of black-footed ferrets breeding outside of prairie dog colonies. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: The black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) (Anderson *et al.* 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dog numbers, particularly in the southern portions of their range. The severe decline of prairie dogs nearly resulted in the extinction of black-footed ferrets. The ferret's decline may be partially attributable to other factors such as secondary poisoning from prairie dog toxicants and canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population of ferrets was discovered in South Dakota and studied intensively. This population disappeared from the wild in 1974, and its last member died in captivity in 1979. The species was then thought to be extinct until a small population was discovered in 1981, near Meeteetse, Wyoming. The Meeteetse population underwent a severe decline in 1985–1986 due to canine distemper. Eighteen survivors were taken into captivity in 1986–1987 to prevent the species' extinction and to serve as founder animals for a captive propagation program for reintroducing the species back into the wild. Today, the captive population numbers 400 animals in 7 separately maintained locations.

3. *Recovery Efforts*: The national recovery objective in the recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) is to ensure immediate survival of the species by—(a) Increasing the captive population of ferrets to 200 breeding adults by 1991, which has been achieved, (b) Establishing a prebreeding census population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010; and (c) Encouraging the widest possible distribution of reintroduced animals throughout their historic range.

When this national objective is achieved, the black-footed ferret will be downlisted to a threatened status, assuming that the extinction rate of established populations remains at or below the rate at which new populations are established for at least 5 years. Cooperative efforts to rear black-footed ferrets in captivity have been successful. In 5 years, the captive population has increased from 18 to over 400 animals. In 1988, this single captive population was divided into five separate captive subpopulations to prevent the possibility of a single catastrophic event eliminating the entire captive population. In 1991 and 1992, two additional captive subpopulations were established. Since a captive population of 240 breeding adults has been achieved, recovery efforts have advanced to the reintroduction phase of establishing animals back into the wild.

4. *Reintroduction Sites*

a. *Site Selection Process*: The Service, in cooperation with 11 western State wildlife agencies has identified potential ferret reintroduction sites within the historical range of the species. To date, reintroductions have occurred in Wyoming, Montana, and South Dakota. Utah and Colorado are currently identifying potential reintroduction sites while other western States are in the process of evaluating additional potential reintroduction sites. Sites are selected for reintroduction by the Service in coordination with the Black Footed Ferret Interstate Coordinating Committee.

b. *Northwest Arizona/Aubrey Valley Site:* The area selected for reintroduction of the nonessential experimental population of black-footed ferrets in Arizona is designated as the Aubrey Valley Experimental Population Area (AVEPA). The AVEPA is located in Coconino and Yavapai counties in northwestern Arizona. The AVEPA includes the Aubrey Valley west of the Aubrey Cliffs, from Chino Point, north along the crest of the Aubrey Cliffs to the southeast boundary of the Hualapai Indian Reservation. The area's boundary continues southwest along the Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 5.2 km (3.5 miles) to mile post 116; then along the 5,300-foot elevation contour east and north of the Juniper Mountains and then back to the point of origin at Chino Point. This area encompasses 25,598 hectares (ha) (63,253 acres) of deeded land and 18,536 ha (45,802 acres) of State trust land for a total of 44,134 ha (109,055 acres). A detailed map showing the location and delineating the boundaries of the AVEPA accompanies this special rule.

Surveys conducted in 1992 indicate that approximately 6,969 ha (17,196 acres) of prairie dog towns exist within the AVEPA. Using an index outlined in Biggins *et al.* (1989), this area has a current black-footed ferret family rating of 35, which means that about 35 black-footed ferrets could potentially be supported at the AVEPA site. The ferret family rating is a numerical value derived from the acreage and density of prairie dogs and is used to estimate ferret carrying capacity of a prairie dog complex. Since 1990, 10 surveys have been conducted in the Aubrey Valley by Federal agencies for activities authorized, funded, or carried out by the Federal agency that may affect prairie dog colonies deemed capable of supporting black-footed ferrets. These surveys did not discover any evidence of extant black-footed ferrets and it is unlikely that any wild ferrets exist within the AVEPA. Consequently, the Service concludes that the reintroduction of ferrets into the site will be separate and distinct from other existing populations.

Current plans call for releasing ferrets into a subportion of the AVEPA (within the area considered best for the release). If this reintroduction is successful, black-footed ferrets will probably disperse into other areas of the AVEPA. Other individuals will be released into selected portions of the AVEPA at a later date. Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework that has been developed. The Service will reevaluate the reintroduction efforts in the AVEPA should any of the following conditions occur:

(1) Failure to maintain black-footed ferret habitat sufficient to support ≥30 breeding adults after five years.

(2) Failure to maintain at least 90 percent of prairie dog acreage known in 1992.

(3) A wild black-footed ferret population is found within the AVEPA prior to the first breeding season following the initial reintroduction.

(4) Any active case of canine distemper or other disease is found in any animal in or near the reintroduction area within six months prior to the scheduled release.

(5) Fewer than 20 black-footed ferrets are available for the first release.

(6) Funding is not available to implement the reintroduction plan in Arizona.

(7) Land ownership changes or cooperators withdraw from the project.

5. *Reintroduction Protocol:* The reintroduction protocol involves releasing approximately 20 or more captive-raised black-footed ferrets in the first year of the program, and up to 50 or more animals annually for the next 2 to 4 years. Released animals should be excess to the needs of the captive breeding program. Hence, the loss of released animals would unlikely have any impact on the genetic diversity of the species. Since captive breeding of ferrets will continue, any animal loss in the reintroduction effort can be replaced. It may be necessary to release ferrets from other sources, including established reintroduced populations, to enhance the genetic diversity of the population.

The Service has implemented several protocols for releasing captive-reared ferrets back into the wild. There are many factors that must be considered when determining which reintroduction methodology to use. A "hard" release is when animals are released shortly after arrival at the release site. A "soft" release is when the animals are supplied with food, shelter, and protection from predators for a period of time before being released. In either method, ferrets are released from above ground cages with access to nest boxes underground. Reintroduction also may be accomplished by releasing preconditioned or nonconditioned young or adult animals into the wild. "Preconditioning" is where captive-bred ferrets are exposed to living within prairie dog towns which mimic natural conditions. In addition, it may be necessary to surround each above-ground cage with an electric fence to prevent damage by livestock or large mammals. The Service will determine and use the reintroduction method best suited for the proposed ferret release at the AVEPA.

Released animals will be vaccinated against diseases, including canine distemper, when a vaccine for distemper is developed for black-footed ferret use. Measures to reduce predation by coyotes, badgers, raptors, and other predators will be taken during the initial reintroduction stage. Habitat conditions will also be monitored during the reintroduction phase. All released ferrets will be marked and monitored. Radiotelemetry, spotlight and snow surveys, and visual sighting techniques will be employed to locate and track released ferrets.

High mortality (up to 90 percent) is expected among animals during the first year of release. Captive-bred animals are more susceptible to predation, starvation, and environmental conditions than wild born individuals. Mortality is highest during the first month of release. In the first year of the program, a realistic goal is to have some ferrets survive the first month in the wild with at least 10 percent of the animals surviving winter.

From 1982 to 1986, intensive studies were conducted on the Meeteetse population to establish baseline data to aid future reintroduction efforts. This baseline data has been supplemented with biological and behavioral data observed from the South Dakota population in the 1960's and 1970's. The Wyoming, South Dakota, and Montana reintroduction programs will also provide additional data for future releases.

The goal of the Arizona reintroduction effort is the establishment of a free-ranging population of at least 30 adult animals within the AVEPA by the year 2000. The Service will monitor the progress of the project on an annual basis, including all determinable sources of mortality. The status of the population and the information gained at this site will be evaluated annually for the first 5 years to determine future ferret management needs. This 5-year evaluation will not include an evaluation on whether the "nonessential experimental" designation for the Aubrey Valley population should be changed. The nonessential designation for this experimental population will remain unchanged unless the experiment is deemed by the Service to be a failure and the designation and the animals are withdrawn.

Status of Reintroduced Population

The Aubrey Valley proposed reintroduction is "nonessential" to the continued existence of the black-footed ferret for the following reasons:

1. The captive breeding population is the primary population and it has been protected against the threat of extinction from a single catastrophic event by dividing the population into seven widely separated subpopulations. Hence, any loss of an experimental population will not threaten the survival of the species as a whole.

2. Presently, the primary repository of genetic diversity for the species is the 240 breeding adults in the captive breeding population. Animals selected for reintroduction purposes should be excess to the needs of the captive population. Hence, any loss of animals for an experimental population will not impact the overall genetic diversity of the species.

3. All animals lost during this reintroduction attempt will be replaced through captive breeding. Based on current population dynamics, juvenile ferrets are being produced in excess of the numbers needed to maintain 240 breeding adults in captivity.

This will be the fourth experimental population of black-footed ferrets released back into the wild. The other reintroduction efforts are in Wyoming, southwestern South Dakota, and north-central Montana. Reintroduction of ferrets is important to help ensure the survival of the species in the wild. Ferrets held in captivity are at risk of losing behaviorial aspects critical to their survival in the wild. Consequently, it is important to reintroduce captive-held ferrets as soon as possible to

increase the likelihood of successful reintroductions.

Approximately 58 percent of the land in the AVEPA is deeded land and State trust lands make up the other 42 percent. The nonessential experimental population designation will facilitate reestablishment of the species in the wild by alleviating landowner concerns about possibly restrictive measures that could be taken under the Act. The nonessential experimental designation is intended to relax regulations that protect reintroduced populations of endangered species, while promoting the conservation of this population. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets so that private landowners can continue their current daily activities.

Attempts to reintroduce ferrets into the wild (in Wyoming, South Dakota, and Montana) have placed emphasis on developing and improving reintroduction techniques. This research will lay the groundwork for ferret reintroduction and management protocol at future release sites. Thus, failure to establish an Arizona population in the first few years of the program will not reduce the likelihood of the survival of the species in the wild. The data obtained from this reintroduction effort will be used to improve ferret reintroduction techniques in Gunnison's prairie dog towns. All previous releases have occurred in black-tailed or white-tailed prairie dog towns.

Location of Reintroduced Population

Under section 10(j) of the Act, an experimental population must be geographically separate from other nonexperimental populations of the same species. Since 1987, when the last members of the Meeteetse population were captured for inclusion in the captive population, no ferrets have been reported from the wild. There is still the possibility that ferrets exist in the wild today. Extensive surveys for black-footed ferrets in the AVEPA were conducted. In addition to these surveys, many hours were spent surveying prairie dog colonies at the proposed relocation site; no ferrets or sign have been observed. Therefore, the Service believes that the reintroduced population will not overlap with any wild ferrets.

The AVEPA is located in northwestern Arizona and includes the Aubrey Valley west of the Aubrey Cliffs. The area has geographic features that may hinder, but not prevent black-footed ferrets from moving outside of the AVEPA. However, it is unlikely that ferrets would migrate outside the designated area.

The AVEPA will serve as one of the core recovery areas described in the Black-footed Ferret Recovery Plan. Following the first release and prior to the first breeding season, all marked ferrets in the reintroduction site, but still within the designated experimental population area, will be considered as the nonessential experimental population. During and following the first breeding season, all ferrets located in the AVEPA, including offspring of released ferrets, will be considered as the nonessential experimental population. It is expected that all animals will remain in the AVEPA because of prime prairie dog habitat, their limited home range, and surrounding geographic barriers. Should any animal leave the AVEPA, the Service and its cooperators may capture the stray and either return it to the management area, translocate it to another reintroduction site, or place it in captivity. If a ferret is found on private lands outside the reintroduction area (but still within the experimental population site), the landowner will be contacted and the animal will be removed at the request of the landowner. If the landowner has no objection to the ferret remaining on his/her property, the animal will not be removed. Black-footed ferrets dispersing into areas outside of the experimental area will receive full protection under the Act.

All ferrets released in the AVEPA will be marked. If any unmarked animals are found following the first release and prior to the first breeding season, a concerted effort will be made to determine the source of such ferrets. A search will be undertaken to determine whether a wild population exists in the area. Any ferret occurring outside the AVEPA would be considered as endangered, but it could be captured for genetic testing. If the animal is determined to be from the experimental population, it will either be returned to the AVEPA, held in captivity, or released at another reintroduction site. If the captured animal is determined to be genetically unrelated to ferrets from the experimental population (possibly a wild animal), it can be captured for use in the captive breeding program. Under the existing contingency plan, up to nine such ferrets can be captured for the captive population. If a landowner outside the experimental population area wishes to retain the black-footed ferret(s) on his or her property, a conservation agreement or easement will be arranged.

Management

The AVEPA reintroduction will be undertaken by the Service in cooperation with the Arizona Game and Fish Department, the Navajo Nation, and the Arizona State Land Department (in accordance with the Cooperative Reintroduction Plan For Black-footed Ferrets—Aubrey Valley, Arizona (Belitsky et al. 1994)). Additional considerations pertinent to reintroduction are discussed below.

1. *Monitoring*: Various monitoring efforts are planned during the first 5 years of the program. Prairie dog numbers and their distribution and monitoring for sylvatic plague will be conducted on an annual basis. Monitoring for canine distemper will be conducted before and during the reintroduction. Reintroduced ferrets and their offspring will be monitored each year, using spotlight surveys and/or snowtracking surveys. Assuming a few ferrets survive the first winter, surveys will be conducted to monitor breeding success and the recruitment of surviving animals . All behaviorial aspects will also be investigated during the reintroduction phase.

The Service has requested that the Arizona Game and Fish Department serve as the primary contact for governmental agencies, private landowners, and the public within the area affected by the black-footed ferret reintroduction. The Department will also serve as the primary contact for any reports on injured or dead ferrets. All reports of any injured or dead animals should be referred to the State Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Phoenix, Arizona, telephone (602) 640–2720. The State Supervisor also will notify the Service's Division of Law Enforcement concerning any dead or injured ferret.

Ferret populations and their habitat will be monitored annually by the Service and/or its authorized cooperators to document any hazards or ongoing activities which would impact black-footed ferrets. When appropriate, strategies and contingencies to minimize harm to ferrets will be included in the management plan and implemented by the Service.

The Service and its cooperators will keep other agencies and the public informed about the presence of black-footed ferrets in the AVEPA through public outreach programs. Such educational programs will address the handling of sick or injured ferrets. When dead black-footed ferrets are found, the carcass should be preserved. The Service requests that any individual finding a dead ferret not disturb

potential evidence that may be used to determine cause of death.

Any person locating a dead, injured, or sick black-footed ferret, or witnessing anyone causing harm or death to a ferret, should immediately notify the State Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Phoenix, Arizona, telephone (602) 640–2720.

2. *Disease Considerations:* If an active case of canine distemper is documented in any wild mammal found in proximity to or within the reintroduction site (within 6 months prior to the reintroduction), the reintroduction program will be reevaluated. At least 10 coyotes, and possibly badgers, will be tested for canine distemper before ferrets are released at the AVEPA. All persons will be discouraged from bringing dogs into the AVEPA. Residents and hunters will be encouraged to vaccinate pets and to report any unusual behavior witnessed in wild animals or any dead animals that are found within the area. Efforts are underway to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague within prairie dog towns will occur before and during the release.

3. *Genetic Considerations:* Ferrets selected for the initial reintroduction will be animals excess to the needs of the captive populations in order to preserve the genetic diversity of the captive populations. The genetic diversity found within experimental ferret reintroductions is usually less than that of the captive populations. This disparity can be corrected by selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases. The ultimate goal is to establish wild ferret populations that represent the maximum level of genetic diversity.

4. *Prairie Dog Management:* The Service will work cooperatively with landowners and land management agencies in the AVEPA to maintain sufficient prairie dog habitat to support ≥30 breeding adult black-footed ferrets, as well as to maintain at least 90 percent of the prairie dog habitat known in 1992. In areas where prairie dogs are a nuisance, control programs compatible with ferret recovery objectives will be implemented. The Service will work cooperatively with the affected landowners and land management agencies to resolve any prairie dog management conflicts.

5. *Mortality:* Only animals surplus to the needs of the captive breeding program will be used in this reintroduction attempt. Significant mortality is expected to occur since captive-reared animals must adapt to the wild. Natural mortality, resulting from predation, a fluctuating food supply, disease, and the lack of any hunting experience on the part of the released animals, will be compensated for through predator and prairie dog management, vaccination, supplemental feeding, and improved release methods. Human-related mortality may be reduced through public education efforts. A low level of mortality from incidental take is expected as a result of designing the reintroduction program to coincide with traditional land use practices in the reintroduction site. The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

A person may take a ferret in the wild within the AVEPA provided such take is incidental as defined under the Act, and if any resulting injury or mortality was unintentional, and not due to negligent conduct. Such conduct will not be considered "intentional take" and the Service will not take legal action for such conduct. However, the knowing take of a black-footed ferret will result in the referral of the incident to the appropriate authorities for prosecution. Any take of black-footed ferrets must be reported immediately to the Service's State Supervisor (see **ADDRESSES** section).

The draft biological opinion prepared for the reintroduction anticipates an incidental take level of about 12 percent of all reintroduced ferrets and their offspring. If this level of incidental take is reached at any time within a given year, the Service in cooperation with landowners and land managing agencies will conduct an evaluation of the incidental take and will implement the necessary measures to reduce the level of incidental take.

6. *Special Handling:* Under the proposed special rule, Service employees and their acting agents will be authorized to handle black-footed ferrets for various reasons: scientific purposes, relocation to avoid conflict with human activities, recovery efforts, relocation to future reintroduction sites, aiding sick, injured, or orphaned animals, and salvaging of dead animals. If a ferret is deemed not fit to remain in the wild, it will be placed in captivity. The Service will also determine the placement of all sick, injured, orphaned, and dead animals.

7. *Coordination with Landowners and Land Management:* An effort to identify issues and concerns associated with this proposed ferret reintroduction was conducted prior to the development of the proposed rule. The proposed reintroduction has also been discussed with those potentially affected State agencies and landowners located within the proposed release site. These affected State agencies and landowners/managers indicate that they will support the reintroduction if the released animals are considered to be a nonessential experimental population.

8. *Potential for Conflict with Grazing and Recreational Activities:* Under the current management scheme developed for the AVEPA, conflicts between grazing and black-footed ferret management are not anticipated. There will be no additional grazing restrictions other than those contained in the "Cooperative Reintroduction Plan for Black-footed Ferrets in Aubrey Valley, Arizona" placed on landowners. The reintroduction plan states that all lands in the management area are subject to livestock grazing and, to date, no grazing practices have been observed that will adversely affect ferret habitat. However, the reintroduction plan does call for working cooperatively with landowners in the experimental area to maintain at least 90 percent of the prairie dog habitat known to exist in 1992. No restrictions will be placed on landowners regarding prairie dog control on private lands within the experimental population area. In the event that prairie dog control efforts proposed for private or State trust lands might eliminate the prey base for established black-footed ferrets in a specific problem area, State and Federal biologists will determine whether black-footed ferrets are negatively impacted. Any agent of the Service or the appropriate State wildlife agency may translocate animals from a problem area to other areas with less conflict. Big game hunting, prairie dog shooting, and trapping of furbearers or predators in the AVEPA are not likely to impact ferrets.

9. *Protection of Black-footed Ferrets:* Released black-footed ferrets will need to be protected from natural mortality (predators, disease, lack of prey base) and from human-related sources of mortality. Natural mortality will be reduced through improved release methods, vaccination, predator control, and the management of prairie dog populations. Human causes of mortality will be minimized by releasing ferrets in areas with low human population densities and with little development.

A draft biological opinion was prepared on this proposal for the reintroduction of black-footed ferrets into the AVEPA. It concluded that this action is not likely to jeopardize the continued existence of the species. A final biological opinion will be prepared for the final rulemaking.

10. *Public Awareness and Cooperation*: An extensive educational effort will be undertaken to inform the public in the region and nationally about the importance of this reintroduction in the recovery of the black-footed ferret. This should enhance public awareness of the significance of the project and gain its support.

11. *Overall*: The designation of the AVEPA population as a nonessential experimental population will encourage local cooperation since this designation will allow for greater flexibility while conducting normal activities within the release site. The Service considers the nonessential experimental population designation to be necessary in order to receive full cooperation from landowners, agencies, and recreational interests in the affected area. Based on the above information, and utilizing the best scientific and commercial data available, (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the AVEPA will further the conservation and recovery of the species.

Public Comments Solicited

The Service intends that any action resulting from this proposed rulemaking to designate the AVEPA population as a nonessential experimental population be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited (see **ADDRESSES** section) from State, public, and government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. Final promulgation of a rule to implement this proposed action will take into consideration all comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

Public Hearings

The Act provides for at least one public hearing on this proposal, if requested within 45 days from date of publication of the proposal. The Service has arranged for a public hearing to be held on December 12, 1995, from 7:00 P.M. to 10:00 P.M. with registration beginning at 6:00 P.M. at the Cafetorium, Seligman High School, 500 N. Main Street, Seligman, Arizona.

National Environmental Policy Act

A draft environmental assessment as defined under the authority of the National Environmental Policy Act of 1969 has been prepared and is available from the Service office identified in the **ADDRESSES** section.

Required Determinations

This proposed rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the experimental population area, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action, and the rule contains no recordkeeping requirements as defined under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

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Author

The primary author of this rule is Lorena L.L. Wada (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed that § 17.11(h) be amended by revising the existing entries for the "Ferret, black-footed" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Ferret, black-footed.	*Mustela nigripes*	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1, 3, 433, 545, 546, ——.	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (specified portions of WY, MT, SD, and AZ).	XN	433, 545, 546, ——.	NA	17.84(g)

3. It is proposed that 50 CFR 17.84 be amended by revising the text of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i), (g)(9)(ii), (g)(9)(iii), and (g)(9)(iv) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population areas except as provided in paragraphs (g)(3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret in the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Reintroduction Area when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(13) of this section;

(iv) To relocate ferrets within the experimental population areas to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas, provided such take is incidental to and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered "knowing take" for the purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4)(vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service Field or State Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772–2374).

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

(iii) Such taking in the north-central Montana experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana (telephone: 406/449–5225).

(iv) Such taking in the Aubrey Valley experimental population area must be reported to the State Supervisor, Ecological Services, Fish and Wildlife Service, Phoenix, Arizona (telephone: 602/640–2730).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any ferret or part thereof from the experimental population taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (g)(2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map of Wyoming and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I–90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following actions if necessary:

(A) If an animal is genetically determined to have originated from the

experimental population, it may be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(iii) The North-central Montana Reintroduction Area is shown on the attached map for Montana and will be considered the core recovery area for this species in north-central Montana. The boundaries of the nonessential experimental population will be those parts of Phillips and Blaine Counties, Montana, described as the area bounded on the north beginning at the northwest corner of the Fort Belknap Indian Reservation on the Milk River; east following the Milk River to the east Phillips County line; then south along said line to the Missouri River; then west along the Missouri River to the west boundary of Phillips County; then north along said county line to the west boundary of Fort Belknap Indian Reservation; then further north along said boundary to the point of origin at the Milk River. All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will thereafter comprise the nonessential experimental population. A black-footed ferret occurring outside the experimental area in Montana would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may be done in the following manner if necessary.

(A) If an animal is genetically determined to have originated from the experimental population, it would be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined not to be genetically related to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive breeding program.

(iv) The Aubrey Valley Experimental Population Area (see Arizona map) will be considered the core recovery area for this species in northwestern Arizona. The boundary of the nonessential experimental population area will be those parts of Coconino and Yavapai Counties that include the Aubrey Valley west of the Aubrey Cliffs, starting from Chino Point, north along the crest of the Aubrey Cliffs to the southeast boundary of the Hualapai Indian Reservation. The area's boundary continues southwest along the Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 5.2 km (3.5 miles) to mile post 116; then along the 5,300-foot elevation contour east and north of the Juniper Mountains and then back to the point of origin at Chino Point. Any black-footed ferrets found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of ferrets into the reintroduction area. A black-footed ferret occurring outside the experimental area in Arizona would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the reintroduction area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against disease prevalent in mustelids, as appropriate, prior to release. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or appropriate State wildlife agency or their agents, and given appropriate care. Such an animal may be released back to the appropriate reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of each experimental population will be reevaluated within the first 5 years after the first year of releases of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

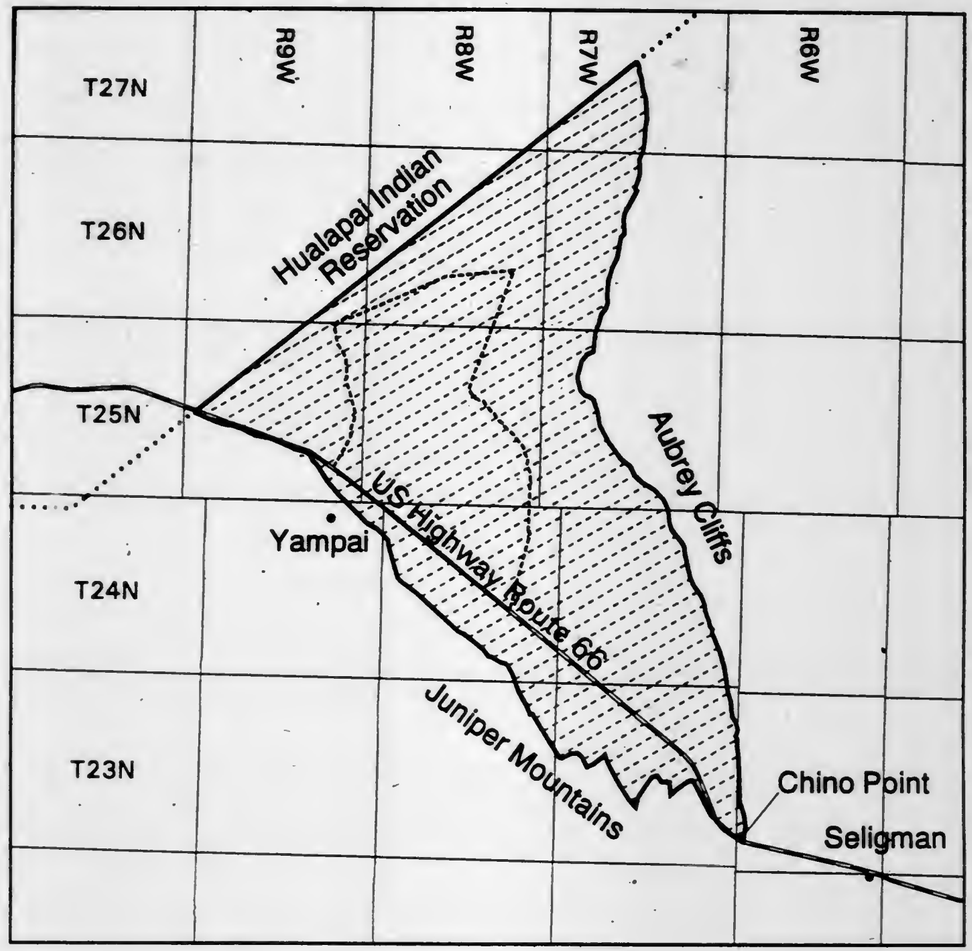
(12) This 5-year evaluation will not include a reevaluation of the "nonessential experimental" designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on their lands will be permitted to terminate their consent, and at their request, the ferrets will be relocated pursuant to paragraph (g)(4)(iii) of this section.

* * * * *

§ 17.84 [Amended]

4. It is proposed to amend § 17.84 by adding a map to follow the existing map at the end of paragraph (g).

BILLING CODE 4310-55-P



Dated: October 20, 1995.
George T. Frampton, Jr.,
Assistant Secretary, Fish, Wildlife and Parks.
[FR Doc. 95–28078 Filed 11–14–95; 8:45 am]
BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 60, No. 220
Wednesday, November 15, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Collection Requirements Submitted for Public Comment and Recommendations; School Food Purchase Study

AGENCY: Food and Consumer Service, USDA.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB review of the School Food Purchase Study.

DATES: Comments on this notice must be received by January 16, 1996.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: The School Food Purchase Study.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: This study will provide statistically valid national estimates of the types, amounts, and costs of food acquired by local public school districts participating in the National School Lunch Program and School Breakfast Program. The study will also examine the changes in the mix of foods acquired by schools since the last study of school food purchases (School Year 1984–85). In addition, the study will furnish the opportunity for schools to describe their food purchase practices so that information associated with food buying efficiency can be provided to other schools.

A nationally representative sample of 400 School Food Authorities (SFAs) will be scientifically selected and divided into four subsamples of 100 SFAs each. Each subgroup of 100 SFAs will provide source documents (vendor summaries, invoices, etc.) containing complete food purchase information for all food acquisitions made during one of four three-month periods. The quarterly sample design insures that data is collected across the entire school year and restricts the burden on any one school district to only three months of data collection. SFA food service directors will also be asked to describe school food purchase practices and school food service operations.

Estimate of Burden: Public reporting burden for the collection of food purchase information is estimated to average 12 hours for each SFA and 1 hour for the School Food Purchase Practices Questionnaire.

Respondents: The food service directors will be responsible for aggregating source documents for the food purchase data and responding to the School Food Purchase Practices Survey.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 5,200 hours.

Copies of this information collection can be obtained from John Endahl, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

William E. Ludwig,
Administrator, Food and Consumer Service.
[FR Doc. 95–28192 Filed 11–14–95; 8:45 am]
BILLING CODE 3410–30–M

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc.; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.
ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact related to the construction of a new headquarters facility proposed by Tri-State Generation and Transmission Association, Inc. (Tri-State), of Thornton, Colorado. The proposed project will be located on a site near the intersection of 116th Avenue and Huron Street in the Town of Westminster in Adams County, Colorado.

RUS has concluded that the environmental impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not required.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, Ag Box 1569, South Agriculture Building, RUS, Washington, DC 20250, telephone: (202) 720–1784.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that Tri-State prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from Federal, State and local agencies and the public, has been adopted as RUS's Environmental Assessment for the project in accordance with 7 CFR 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project should have no impact on cultural resources, floodplains, wetlands, important farmland, and federally listed or proposed for listing threatened or endangered species or their critical habitat.

Alternatives considered to the proposed project included no action, expansion of Tri-State's existing headquarters facility, lease of new office space, and construction of an annex building at the existing headquarters site. RUS has considered these alternatives and concluded that the project as proposed meets the needs of Tri-State to reduce overcrowding at the present facility, provide increased space for equipment storage, consolidate operations done at various existing facilities and provide adequate space for future expansion.

Copies of the BER and FONSI are available for review at RUS at the address provided herein; or can be reviewed at or obtained from the office of Tri-State, 12076 Grant Street, Thornton, Colorado 80233, telephone (303) 452–6111, during normal business hours.

Dated: November 7, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–28193 Filed 11–14–95; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid from Belgium; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the respondent, Soci•t•! Chimique Prayon-Rupel (Prayon), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on industrial phosphoric acid (IPA) from Belgium. The review covers one manufacturer, Prayon, and exports of the subject merchandise to the United States during the period August 1, 1993, through July 31, 1994.

We preliminarily determine that no margin exists for Prayon for the period August 1, 1993, through July 31, 1994. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: David Genovese or Joseph Hanley, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 39543) of the antidumping duty order on IPA from Belgium (52 FR 31439; August 20, 1987). On August 31, 1994, Prayon requested an administrative review. The Department initiated the review on September 16, 1994 (59 FR 47609), covering the period August 1, 1993, through July 31, 1994. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this review include shipments of IPA from Belgium.

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2809.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

United States Price

In calculating United States Price (USP), the Department used purchase price, as defined in section 772(b) of the Act. The Department based USP on the delivered price to unrelated purchasers.

The Department made deductions, where appropriate, for commissions, foreign inland freight, ocean freight, foreign inland freight and ocean freight insurance, U.S. inland freight, U.S. brokerage fees and European brokerage fees associated with U.S. sales. Additionally, we adjusted USP for taxes that would have been assessed on merchandise had it been sold in the home market.

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the *"Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the *"Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the *"Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), we used home market price, as defined in section 773(a) of the Act, since quantities of merchandise sufficient to provide a reasonable basis for comparison were sold in the home market. Home market price was based on the delivered or FOB plant price to unrelated purchasers in the home market.

The Department made adjustments, where applicable, for inland freight, inland insurance, and for differences in packing material and credit. We also made an adjustment for home market indirect selling expenses up to the amount of U.S. commissions deducted from the U.S. price. Furthermore, since the respondent reported home market sales net of consumption taxes, we calculated the amount of such tax and added the amount back to FMV.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of USP to FMV, the Department preliminarily determines that no margin exists for Prayon for the period August 1, 1993, through July 31, 1994.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs and written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any such written comments or hearing.

The Department shall determine, and U.S. Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to U.S. Customs.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be that rate established in the final results of this administrative review; (2) the cash deposit rate for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the "all others" rate, as determined in the LTFV investigation, will be 14.67 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 6, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–28242 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting in Moss Point, Mississippi on the site selection process for the nomination of a candidate site for the National Estuarine Research Reserve System.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of Mississippi and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct a public meeting on November 30, 1995 in Moss Point, Mississippi as part of NOAA's site selection process for the nomination of a candidate site for the National Estuarine Research Reserve (NERR) System.

DATES: Thursday, November 30, 1995, at 7:00 p.m.

ADDRESSES: East Jackson County Community Center—Orange Grove, 9313 Old State Road, Moss Point, Mississippi 39581.

FOR FURTHER INFORMATION CONTACT: Mark W. LaSalle, MSU Coastal Research and Extension Center at (601) 388–4710 or Nathalie Peter, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, at (301) 713–3132, ext. 119.

SUPPLEMENTARY INFORMATION: The NERR System is dedicated to fostering a system of estuarine reserves that represents the wide range of coastal and estuarine habitats found in the United States. NOAA has developed a classification scheme and typology of national estuarine areas that places the coastlines of the United States into biogeographic regions and subareas.

Site selection criteria are based on ecological representativeness, value for research and education, and practical coastal management considerations. The site ultimately designated will be used by researchers, educators, and the general public to study estuarine ecology and coastal issues that can aid in coastal policy making and management decisions.

During the past year, the State of Mississippi in consultation with NOAA has undertaken a process to identify a site which adequately represents the

major estuarine characteristics of the Mississippi delta coastal ecosystem. An estuary located in Mississippi would be the first site to represent the Mississippi Delta subarea of the Louisianian Biogeographic Region.

After consideration of several possible sites along the Mississippi Gulf coast, the Mississippi National Estuarine Research Reserve Site Selection and Advisory Committee has selected the Grand Bay area of southeast Mississippi as its candidate site for nomination as a potential NERR. The public meeting is being held to provide details and solicit comments on this proposed site.

At the public meeting, the Mississippi Department of Marine Resources and Mississippi State University (MSU) will provide an overview of the national NERR Program; a summary of the Mississippi NERR initiative, including the site selection process and a description of the proposed site; and an open question and answer period.

Following the public meeting, a site nomination document will be developed based on existing research documents and literature, and comments received from NOAA, the Mississippi National Estuarine Research Reserve Site Selection and Advisory Committee, and the general public. The final site selection document will then be sent to the Governor of Mississippi for approval. If approved, the Governor will forward the site selection package and a nomination letter to NOAA for final clearance. A draft and final Environmental Impact Statement and Management Plan must be prepared prior to final site designation.

The public meeting will be held at 7:00 p.m. on Thursday November 30, 1995, at the East Jackson County Community Center—Orange Grove, 9313 Old Stage Road, Moss Point, Mississippi 39581.

Interested parties who wish to comment on the site selection are invited to attend. For more information, contact Mark W. LaSalle, MSU Coastal Research and Extension Center at (601) 388–4710 or Nathalie Peter, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, at (301) 713–3132, ext. 119.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: November 9, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–28228 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 110995B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 3 to permit 822 (P500B).

SUMMARY: Notice is hereby given that NMFS has issued a modification to a permit that authorizes a take of listed species for the purpose of scientific research and enhancement, subject to certain conditions set forth therein, to the Fish Passage Center (FPC) located in Portland, OR.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: Modification 3 to permit 822 was issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Modification 3 to permit 822 was issued on October 24, 1995. The background and description of modification 3 to permit 822 were published with the notice of receipt of the application and request for comments on July 6, 1995 (60 FR 35178) and are not repeated here. Modification 3 is valid for the duration of the permit. Permit 822 expires on December 31, 1997.

Issuance of this permit modification, as required by the ESA, was based on a finding that such action: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the listed species that is the subject of the permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: November 8, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28206 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 101395D]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P597).

SUMMARY: Notice is hereby given that Mr. Michael Kundu of Arcturus Adventure Communications, 1026–A 56th Street SE, Everett, WA 98203 has applied in due form for a permit to take several species of marine mammals for photographic purposes.

DATES: Written comments must be received on or before December 15, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-depleted marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a "pilot" application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes. The applicant seeks authorization to photograph the following marine mammals: Harbor seal (*Phoca vitulina*); California sea lion (*Zalophus californianus*); Steller sea lion (*Eumetepias jubatus*); Northern elephant seal (*Mirounga angustirostris*); killer whale (*Orcinus orca*); Gray whale (*Eschrichtius robustus*); minke whale (*Balaenoptera acutorostrata*); Dall's porpoise (*Phocoenoides dalli*); harbor porpoise (*Phocoena phocoena*); and Pacific white-sided dolphin (*Lagenorhynchus obliquidens*). Although the applicant has requested authority to harass Steller sea lions, he has been advised that such authorization is not possible inasmuch as this species is listed as "Threatened" under the Endangered Species Act. The applicant proposes to initiate this work on January 1, 1996.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 20, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28203 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 103195A]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P405B).

SUMMARY: Notice is hereby given that The Burke Museum Box 353010, University of Washington, Seattle, WA 98195–3010 has applied in due form to continue to obtain, archive, import and export an unspecified number of dead-salvaged marine mammals and/or parts thereof, world wide, over a five year period.

DATES: Written comments must be received on or before December 15, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northwest Region, NMFS, 7600 Sandpoint Way, NE BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

The applicant seeks authorization for purposes of scientific research to continue to salvage and/or import/export, over a five year period, carcasses and/or specimen materials from an unspecified number of all species of marine mammals of any age and of both sexes. Specimens will be obtained from dead, naturally stranded animals and/or from animals legally taken (killed) in the country of origin as a result of fishery interactions, aboriginal takes, or as a part of research or management programs. U.S. Pacific marine mammal stocks will be the primary source for the collection, however, species with a world wide distribution have also been requested. Activities are requested to continue beginning January 1, 1996.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 3, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28202 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110795B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of amendment 3 to permit 802.

SUMMARY: Notice is hereby given that on October 19, 1995, NMFS issued Amendment 3 to Permit Number 802 to Dr. Andre Landry of Texas A&M University (P512) to take listed sea turtles for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The permit and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: This amendment restricts sea turtle netting activities to waters shallower than 4 feet, and was issued in accordance with the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Issuance of this amendment, as required by the ESA, was based on a finding that: (1) The permit was applied for in good faith, (2) the amended permit will not operate to the disadvantage of the listed species that are the subject of the amendment, and (3) the amended permit is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 7, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28199 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 103195C]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P254D).

SUMMARY: Notice is hereby given that the Pacific Whale Foundation 101 Kihei Road, Kihei, HI 96753 has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

DATES: Written comments must be received on or before December 15, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2937).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222).

The permit application requests authorization to conduct scientific research (*i.e.*, photo-identification, behavioral observations, and acoustic recordings) on up to 1000 humpback whales (*Megaptera novaeangliae*) in Hawaiian waters over a 5-year period. Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28198 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–22–F

Marine Mammals

[I.D. 101395E]

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 888 (P559).

SUMMARY: Notice is hereby given that Mr. Hiroyuki Suganuma, Ogawawara Marine Center, Byobundani, Chichijima Ogasawara-mura, Toyko 100–21, Japan, has requested a modification to Permit No. 888.

DATES: Written comments must be received on or before December 15, 1995.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject modification is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 888 authorizes the Permit Holder to potentially harass up to 400 humpback whales (Megaptera novaeangliae) annually over a 5-year period during the course of photo-identification studies in waters off the Northern Mariana Islands. The Permit Holder is now requesting authorization to expand the research locations to include Rota, Guam, and Wake Islands.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 20, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28197 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110695A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of two applications for scientific research permits (P599 and P600).

SUMMARY: Notice is hereby given that the California Department of Water Resources in Sacramento, CA (CDWR) and California State University at Chico, CA (CSU) have applied in due form for permits to take juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before December 15, 1995.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: CDWR and CSU request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

CDWR (P599) requests a 3-year permit to collect non-lethal fin tissue samples from juvenile chinook salmon for genetic research. The goal is to develop a technique to distinguish between California's Central Valley chinook races in a mixed-stock population, particularly winter-run, based on an analysis of the nuclear DNA material from the fin tissue samples. CDWR will obtain juvenile fish from the U.S. Fish and Wildlife Service and the California Department of Fish and Game, agencies that are authorized to capture and handle listed fish under separate authorizations. CDWR proposes to anesthetize the juvenile fish, excise a 1 mm^2 piece of caudal fin tissue using disinfected stainless steel scissors, allow the fish to recover from the anesthetic, and release the fish back into the watershed.

CSU (P600) requests a 3-year permit to assess the use of the non-natal rearing habitat in the Central Valley by juvenile chinook salmon, specifically the small, intermittent tributaries. This knowledge may be important to protecting listed fish populations since many of the smaller tributaries are being degraded. CSU proposes to capture listed juveniles with a nylon seine, anesthetize the fish, obtain biological information, allow the fish to recover from the anesthetic, and release the fish into the habitat from which they were captured.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: November 8, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28205 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Civilian Community Corps Advisory Board Meeting

AGENCY: Corporation for National Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service, gives notice under Public Law 92–463 (Federal Advisory Committee Act), that it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The board advises the Director of the CCC concerning the administration of the program and assists in the development and administration of the Corps. This meeting of the Board will discuss the progress to date and future direction of the program. The meeting will be open to the public up to the seating capacity of the room.

DATES: December 5, 1995, 9:00 a.m.–4:00 p.m.

ADDRESSES: Corporation for National Service, 1201 New York Ave. 8th Floor NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: To assure adequate accommodation, contact Ms. Annalisa Robles, Special Events Coordinator, CNS at 1201 New York Ave., NW, Washington, DC 20525; (202) 606–5000 ext. 153 or (202) 606–5000 (TDD) prior to December 5, 1995.

Donald L. Scott,

Director, NCCC.

[FR Doc. 95–28179 Filed 11–14–95; 8:45 am]

BILLING CODE 6050–28–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased by application of swing, reducing the limit for Categories 351/651 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 14931, published on March 21, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 15, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 15, 1995, you are directed to adjust the limits for the following categories, as provided under the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,197,756 dozen.
351/651	216,991 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28085 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DR–P

Shipments of Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Apparel in Excess of Agreement Limits

November 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold or Janet Heinzen, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

It has come to CITA's attention that some textile and apparel products may be shipped in excess of 1995 limits with the expectation that they will be entered and charged against the limits of the 1996 quota year. This notice serves to remind interested parties that charges against the limits subject to U.S. bilateral agreements, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC) are by date of export and not date of entry. Shipments made in one year in excess of agreed limits are in violation of the terms of the agreements.

It has been the practice of the Committee for the Implementation of Textile Agreements (CITA) to charge merchandise exceeding the limit(s) established for one quota period, if entered or withdrawn from warehouse for consumption, to the limit(s) established for the immediately subsequent quota period. The purpose of this notice is to advise the public that CITA reserves the right under the bilateral agreements, the Uruguay Round Agreements Act and the ATC to deny entry permanently to goods which have been overshipped, or to allow entry and charge to the following restraint period merchandise exported during a prior quota period which exceeds the restraint limit(s) established for that period.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28239 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

November 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing levels under the North America Free Trade Agreement.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In order to implement Annex 300–B of the North America Free Trade Agreement (NAFTA), restrictions and consultation levels for certain cotton, wool and man-made fiber textile products from Mexico are being established for the period beginning on January 1, 1996 and extending through December 31, 1996.

These restrictions and consultation levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to implement levels for the 1996 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of NAFTA, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 8, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the provisions of Executive Order 11651 of March 3, 1972, as amended; and pursuant to the North America Free Trade Agreement (NAFTA) between the Governments of the United States, the United Mexican States and Canada, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels:

Category	Twelve-month level
219	9,438,000 square meters.
313	16,854,000 square meters.
314	6,966,904 square meters.
315	6,966,904 square meters.
317	8,427,000 square meters.
338/339/638/639	650,000 dozen.
340/640	137,788 dozen.
347/348/647/648	650,000 dozen.
410	397,160 square meters.
433	11,000 dozen.
443	162,240 numbers.
611	1,267,710 square meters.
633	10,000 dozen.
643	155,556 numbers.

Imports charged to these category levels for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of Annex 300–B of the NAFTA.

The foregoing levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28240 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Ukraine

November 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated May 6, 1995, between the Governments of the United States and Ukraine establishes a limit for textile products in Category 435 for the period January 1, 1996 through December 31, 1996.

This limit is subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement of Textiles and Clothing (ATC). On the date that Ukraine becomes a member of the World Trade Organization the restraint limit will be modified in accordance with the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 8, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated May 6, 1995 between the Governments of the United States and Ukraine; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products Category 435, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of 85,850 dozen.

Imports charged to this category limit for the period January 1, 1995 through December 31, 1995, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

Should Ukraine become a member of the World Trade Organization (WTO), the limit set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing, and any administrative arrangement notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28235 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

November 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17333, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 8, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on Deceber 19, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 9, 1995, you are directed to amend the directive dated December 19, 1994 to adjust the limits for the following categories, as provided for under the current bilateral textile agreement concerning textile products from Taiwan:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
363	12,739,650 numbers.
Levels in Group II	
345	119,105 dozen.
435	24,910 dozen.
442	43,071 dozen.
444	73,037 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28237 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DR–F

Cancellation of a Limit on Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

November 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the restraint on imports of cotton and man-made fiber nightwear and pajamas in Categories 351/651 from Costa Rica established on September 26, 1995 pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Categories 351/651 for the period June 29, 1995 through June 28, 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 49587, published on September 26, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 8, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on September 22, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Costa Rica and exported during the period which began on June 29, 1995 and extends through June 28, 1996.

Effective on November 16, 1995, you are directed to cancel the limit established for Categories 351/651 for the period June 29, 1995 through June 28, 1996.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–28238 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DR–F

Denial of Participation in the Special Access Program

November 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access Program.

EFFECTIVE DATE: November 15, 1995.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that New Continental Sportswear is in violation of the requirements set forth for participation in the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on November 15, 1995, to deny New Continental Sportswear the right to participate in the Special Access Program, for a period of three months, from November 15, 1995 through February 14, 1996.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 58 FR 41245, published on August 3, 1993.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 8, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that New Continental Sportswear is in violation of the requirements for participation in the Special Access Program.

Effective on November 15, 1995, you are directed to prohibit New Continental Sportswear from further participation in the Special Access Program, for a period of three months, from November 15, 1995 through February 14, 1996. For the period November 15, 1995 through February 14, 1996, goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access Program will not be accepted. In addition, for the period November 15, 1995 through February 14, 1996, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric for New Continental Sportswear.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28236 Filed 11–14–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 16, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the Internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9186. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Family Literacy Migrant Education Even Start Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State Local, Tribal Governments.
Annual Reporting and Recordkeeping Burden: Responses: 60; Burden Hours: 2700.
Abstract: The Migrant Education Even Start Program (MEES) is designed to help break the cycle of poverty and improve literacy by integrating early childhood education, adult literacy or adult basic education, and parenting into a unified literacy program for migrant families.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Performance Report for the Training Program for Federal TRIO Programs.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden: Reporting Burden Responses: 12; Burden Hours: 48.
Abstract: Data assures that grantees have conducted the project for which funded, signals problems of implementation, and indicates extent and quality of performance. The Department uses reports in evaluating projects for continuation, assessing technical assistance needs, determining future funding levels and in assigning scores to projects in competition for new grants.

Office of Special Education and Rehabilitative Services

Type of Review: Regular.
Title: The Projects with Industry Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local or Tribal Government.
Reporting Burden: Responses: 411; Burden Hours: 16,440.
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.
Abstract: Grant application forms, compliance indicator reports and Annual Evaluation Plan for the Projects With Industry Program are required so that all forms are uniformly completed.

[FR Doc. 95–28145 Filed 11–14–95; 8:45 am]

BILLING CODE 4000–01–M

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The National Institute on Disability and Rehabilitation Research (NIDRR) is authorized to support research and related activities to improve the lives of individuals with disabilities, and is required to develop a Long-Range Plan for rehabilitation research. NIDRR invites interested parties to present comments at a public hearing on research and training needs and opportunities during the coming decade in all areas of disability. The Hearing will be organized into four sessions: (1) Technology and Medical Rehabilitation Research; (2) Employment Research; (3) Living Independently in the Community; and (4) Capacity-Building in Research and Rehabilitation Services. The purpose of the hearing is to obtain ideas from the public on the content and direction of a new NIDRR Long-Range Plan.

NIDRR encourages interested parties to attend a public meeting. Persons desiring to testify or seeking additional

information should telephone Ms. Sheila Newman at (703)488–2300; TDD may call (703)448–3079.

MEETING INFORMATION: The public hearing is scheduled to be held on Tuesday, November 28, 1995 from 10:00 a.m. to 5:00 p.m. in the auditorium of the Paralyzed Veterans of America at 801 Eighteenth Street, NW, Washington, DC 20006.

COMMENTS: NIDRR invites written comments from those who will be unable to attend the public hearing. Written comments should be received by December 29, 1995.

ADDRESSES: Written comments should be addressed to Ms. Sheila Newman, Conwal, Inc., 6858 Old Dominion Drive, Suite 200, McLean, VA 22101.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should telephone (703) 488–2300. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (703) 488–3079 for TDD service.

Dated: November 8, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–28109 Filed 11–15–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In document #95–26719, published on October 27, 1995, page 55008, third column, replace the second sentence with the following:

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/KO(SW)–1, for the transfer of 18,905 kilograms of uranium containing 718 kilograms of the isotope uranium-235 (3.8 percent enrichment) from Sweden to Korea for fuel production.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–28196 Filed 11–14–95; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings for a Proposed Time-Critical Removal Action at the Middlesex Sampling Plant Site and Vicinity Properties

AGENCY: Oak Ridge Operations Office, Department of Energy.

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for a proposed time-critical removal action at the Middlesex Sampling Plant Site and vicinity properties. DOE proposes to remove sediments containing elevated levels of uranium, radium, and thorium located in the 100-year floodplain of the South Drainage Ditch at the Middlesex Sampling Plant Site in Middlesex County, New Jersey. DOE prepared a Floodplain and Wetlands Assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementation of the proposed action.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION OR TO COMMENT ON THE ACTION, CONTACT: Ms. Susan Cange, Former Sites Restoration Division, Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8541, Phone: (615) 576–5724, FAX: (615) 576–0956.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain and Wetlands Involvement was published in the **Federal Register** on July 6, 1993 (58 FR 36192). DOE proposes to remove sediments containing elevated levels of uranium, radium, and thorium located in the 100-year floodplain of the South Drainage Ditch at the Middlesex Sampling Plant Site in Middlesex County, New Jersey. The proposed action would be located in a floodplain because the concentrations of these radioactive elements in the sediments exceed levels considered safe for humans and the environment. DOE is remediating the Middlesex Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The area to be disturbed would be approximately 0.3 hectare (0.7 acre) and excavation would be limited to a depth of approximately 0.15–0.3 meter (6–12 inches). Alternative remedial actions for the Middlesex site are no action or complete excavation. There is no practicable alternative to the proposed action if the site is to be remediated. Remediation is necessary to protect public health and the environment. The proposed action would conform to applicable state and local floodplain protection standards. The following steps would be taken to minimize potential harm to or within the affected floodplain:

1. The design and performance of excavation activities would incorporate guidelines contained in the document "Standards for Soil Erosion and Sediment Control in New Jersey," prepared by the New Jersey State Soil Conservation Committee.
2. During remediation operations the area of soil disturbance would be confined to the minimum necessary for successful completion of the cleanup.
3. Care would be exercised to provide minimum practicable exposure of soils and sediments to erosion.
4. A soil erosion and sediment control design would be prepared prior to any major soil disturbance. Soil erosion and sediment barriers would remain in place until the soil is stabilized by applicable measures.
5. Disturbed soils on the banks of waterways would be protected by rip-rap, sandbags, sod, or approved mulch netting, as conditions warrant, in accordance with "Standards for Soil Erosion and Sediment Control."
6. Sediment-laden water from dewatering of trenches or other excavations would not be pumped directly into waterways.
7. Trees, shrubs, grasses, and other vegetation within 25 feet of the stream bank or 25 feet from the edge of the low water flow, where the bank is not well defined, would be disturbed only where necessary for the remediation activities. Construction would be performed from one stream bank where possible, leaving vegetation on the opposite bank. Where practical, access roads to work sites would not be constructed along shoreline routes.
8. Vegetative waste, including waste mulch not serving to control erosion or sediment, would not be disposed of in channels or on waterway banks.
9. Remediation would not obstruct any streams and all streams would retain their original capacity for floodwaters. Therefore, the proposed action would not impede flow or increase flooding.
10. Areas affected by remedial activities would be restored to their original contours to the extent possible.
11. Disturbed areas would be seeded and mulched in accordance with New Jersey soil erosion and sediment control standards.
12. Areas in floodplains would not be used for storage purposes.
13. Construction techniques to avoid or reduce adverse water quality impacts may include scheduling excavation during dry periods or when low or no flow is expected in drainageways or ditches and constructing a temporary diversion channel for any stream flow that occurs during remediation.
14. Measures would be taken to minimize soil compaction and disturbance such as requiring heavy equipment to work in wetlands on mats, use of low ground pressure machines, or extended reach excavating equipment.
15. Other mitigation techniques may include restoring surface and subsurface flow patterns, minimizing easement widths, and selecting dust control measures that minimize adverse impacts to avoid or minimize potential harm to streams or floodplains.

DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementation of the proposed action.

Issued in Oak Ridge on November 2, 1995.

James L. Elmore,

Alternate NEPA Compliance Officer

[FR Doc. 95–28194 Filed 11–14–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2354–018]

Georgia Power Company; Notice of Public Meeting in Clayton, Georgia, to Discuss the Draft Environmental Impact Statement for the Proposed Relicensing of the North Georgia Project

November 8, 1995.

The Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Impact Statement (Draft EIS) for the North Georgia Project, No. 2354–018, on October 27, 1995. The 168-megawatt project is located in the Savannah River Basin on the Tallulah, Chattooga, and Tugalo Rivers in Rabun, Habersham, and Stephens Counties, Georgia, and Oconee County, South Carolina.

Commission staff will conduct a public meeting to: (1) present the Draft EIS findings, (2) solicit public comment on Draft EIS, and (3) answer questions about the Draft EIS. All interested individuals, organizations, and agencies are invited to attend the meeting.

The public meeting will be conducted on Thursday evening, December 7, 1995, from 7:00 p.m. to 10:00 p.m., at the Rabun County Courthouse (main courtroom), in Clayton, Georgia, located on U.S. Highway 76 near the center of town.

The public meeting will be recorded by a court reporter, and all meeting statements (oral and written) will become part of the Commission's public record of this proceeding. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to identify themselves for the record. Anyone wishing to receive a copy (for a fee) of the transcript of the meeting may contact Ann Riley & Associates by calling (202) 482–0034.

For further information, please contact Joe Davis at (202) 219–2865.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28133 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–448–001]

Northern Border Pipeline Company; Notice of Tariff Filing

November 8, 1995.

Take notice that on November 3, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing Substitute First Revised Sheet Number 110 of its FERC Gas Tariff, First Revised Volume No. 1.

Northern Border states that the filing is in compliance with the Commission's order, issued October 27, 1995, in the above-referenced docket. Northern Border further states that the October 27 Order required Northern Border to revise its tariff language to clarify that it will seek separate authorizations from the Commission for authorization of each item it records in Account No. 182.3.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28135 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–37–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 8, 1995.

Take notice that on November 2, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered for filing the Firm Natural Gas Transportation Agreement between Tennessee and Commonwealth Gas Company, dated November 1, 1995, for service under Tennessee's Rate Schedule NET, and the following revisions to its FERC Gas Tariff.

Fifth Revised Volume No. 1

Third Revised Sheet No. 26A
Third Revised Sheet No. 181

Tennessee states that the filing is intended to reflect the assumption of 9600 dkt/day of firm NET service by Commonwealth Gas Company, as ordered by the Commission on September 27, 1995 in Docket No. CP91–2206–010. Tennessee requests that its submission be accepted for filing effective November 1, 1995, and in that connection, seeks waiver of the 30-day notice requirement pursuant to 18 CFR 154.51.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before November 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection at the Commission's Public Reference office.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28136 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–38–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

November 8, 1995.

Take notice that on November 3, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. More specifically, Williston Basin filed the following tariff sheets:

Second Revised Volume No. 1

3rd Rev Thirteenth Revised Sheet No. 15
3rd Rev Sixteenth Revised Sheet No. 16
3rd Rev Thirteenth Revised Sheet No. 18
3rd Rev Eleventh Revised Sheet No. 21

Original Volume No. 2

3rd Rev Fifty-Eighth Revised Sheet No. 11B

The proposed effective date for these tariff sheets are as shown on the tariff sheets.

Williston Basin states that, in accordance with Subsection 36.2.1 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, and the Company's Annual Take-or-Pay Reconciliation Filing in Docket No. TM95–3–49–000, filed May 31, 1995, the revised tariff sheets are being filed to reflect the elimination on November 1, 1995 of the Docket No. RP90–137–000 throughput surcharge.

Any person desiring to be heard or to protest said filing should file motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28137 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM96–1–8–000, RP95–21–000, and RP95–38–000]

South Georgia Natural Gas Company and Southern Natural Gas Company; Notice on Technical Conference

November 8, 1995.

On September 29, 1995, the Commission issued an order [1] in Docket No. TM96–1–8–000 requiring, among other things, a technical conference on South Georgia Natural Gas Company's proposed changes to the fuel recovery provisions of its general terms and conditions. The conference will be held 12:30 p.m., November 14, 1995, at 810 First Street, NE., Washington, DC, in a room to be designated at that time.

In addition, the issue of the mid-day nomination procedures of South Georgia and Southern Natural Gas Pipeline Company remains open in Docket Nos. RP95–38–000 and RP95–21–000, respectively. The Commission staff will inquire at the technical conference whether the matter needs to be pursued further in light of recent discussions of operating issues between Southern and its customers that may have resolved the issue.[2]

Any questions concerning the conference should be directed to John M. Robinson (202) 208–0808, or Kerry Noone (202) 208–0285.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28138 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–82–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 8, 1995.

Take notice that on November 6, 1995, Viking Gas Transmission Company (Viking), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 6.

Viking states that the purpose of this filing is to adjust Viking's Gas Research Institute ("GRI") Rate Adjustment, to reflect the 1996 RD&D funding formula approved in the Commission's October 13, 1995, Order in Gas Research Institute, 73 FERC ¶61, 073 (1995). Viking has a proposed effective date of January 1, 1996.

Viking states that copies of the filing have been mailed to all of its customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions should be filed on or before November 16, 1995. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28139 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC96–1–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 7, 1995.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. EC96–1–000]

Take notice that on November 2, 1995, Pacific Gas and Electric Company (PG&E) submitted an application pursuant to section 203 of the Federal Power Act for authority to carry out a "disposition of facilities" that would be deemed to occur as the result of proposed corporate reorganization that would create a holding company. The proposed reorganization is described more fully in the application, which is on file with the Commission and open to public inspection.

The application states that PG&E would become a subsidiary of the proposed holding company. It also states that the proposed holding company structure is intended to facilitate the separation of PG&E's utility operations from its activities in other segments to better position PG&E for industry restructuring, to increase financial flexibility and to better insulate utility customers from the risks of non-utility ventures. The application declares that the proposed restructuring will not affect jurisdictional facilities, rates or services.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Kingston Cogen Limited Partnership

[Docket No. EG96–12–000]

Take notice that on October 27, 1995, Kingston Cogen Limited Partnership (Kingston) (c/o Michael J. Zimmer, Esq., Reid & Priest LLP, 701 Pennsylvania Avenue, N.W. Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

According to its application, Kingston is an Ontario, Canada limited partnership formed to own an electric generating facility located on in Ernestown Township, Ontario, Canada.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. NYC Energy Group, L.P.

[Docket No. EG96–13–000]

On October 31, 1995, NYC Energy Group, L.P. (Applicant) (c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, NJ 07054) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365.

Applicant states that it is a Delaware limited partnership formed to develop, construct, own and operate an approximately 28.5 MW natural gas-fired cogeneration facility to be located in the general location of the Brooklyn Navy Yard in Brooklyn, the City of New York, New York. According to Applicant, all of the facility's electrical output will be sold at wholesale to Consolidated Edison Company of New York, Inc.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

[Docket No. EL96–7–000]

Take notice that on October 24, 1995, Puget Sound Power & Light Company tendered for filing a Petition for Declaratory Order and Motion for Summary Disposition.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER95–1638–000]

Take notice that on October 27, 1995, Northern States Power Company, Eau Claire, Wisconsin (NSPW) tendered for filing the following documents:

A. A First Amendment to Power and Energy Supply Agreement by and between the City of Spooner, Wisconsin, and NSPW dated October 10, 1995.

B. A First Amendment to Amended and Restated Power and Energy Supply Agreement by and between the Village of Cadott, Wisconsin, and NSPW dated August 16, 1995.

C. A First Amendment to Amended and Restated Power and Energy Supply Agreement by and between the City of Bloomer, Wisconsin, and NSPW dated August 25, 1995.

Each of the Amendments reduces the negotiated rate cap from $160/kW-year to $150/kW-year as set forth in paragraph 3.01 of Schedule B of each of the Agreements. The Amendments also substitute an updated Schedule SO_2 and incorporate a Schedule W–FC (Sale for Resale-Fuel Clause) which was inadvertently omitted from the initial filing.

A copy of the filing was served upon the City of Spooner, Village of Cadott, City of Bloomer and the State of Wisconsin Public Service Commission.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER95–1663–000]

Take notice that on October 27, 1995, Illinois Power Company (IPC), tendered for filing an Amendment to the Interchange between IPC and Wisconsin Power and Light Company (WP&L). IPC states that the purpose of this Amendment is to clarify the intent of the Agreement.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Texas Utilities Electric Company

[Docket No. ER95–1764–000]

Take notice that on October 23 1995, Texas Utilities Electric Company (TU Electric) tendered for filing amendments to the transmission service agreements (TSA's) filed herein on September 15, 1995.

TU Electric requests effective dates for the TSA's that will permit them to become effective on the dates service first commenced under each of the TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Central & South West Services, Inc., Enron Power Marketing, Inc. and Electric Clearinghouse, Inc., as well as the Public Utility Commission of Texas.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company

[Docket Nos. ER95–1818–000 and ER95–1819–000]

Take notice that on October 18, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a request to withdraw its filing in the above listed dockets.

Con Edison states that a copy of this filing has been served upon Hydro-Quebec.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER95–1836–000]

Take notice that PacifiCorp, on October 27, 1995, tendered for filing an amended filing in this docket.

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER95–1838–000]

Take notice that PacifiCorp, on October 27, 1995, tendered for filing an amended filing in this docket.

Copies of this filing were supplied to Black Hills, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company

[Docket No. ER96–121–000]

Take notice that on October 19, 1995, New England Power Company (NEP) filed an Assignment and Assumption of Interconnection Agreement, dated as of August 22, 1995, (Agreement) between Pepperell Power Associates Limited Partnership, Mill Street Associates Limited Partnership, Indeck Pepperell Power Associates, Inc. and NEP. NEP requests waiver for good cause shown of Commission's sixty (60) day notice requirement and an effective date of October 20, 1995, for the Agreement.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

[1] South Georgia Natural Gas Company, 72 FERC ¶61,304 (1995).

[2] See Southern Natural Gas Company's filing dated September 22, 1995, in Docket No. RP95–444–000, which modified the mid-day nomination procedure to accommodate its customers.

12. Nevada Power Company

[Docket No. ER96–133–000]

Take notice that on October 23, 1995, Nevada Power Company (Nevada Power) tendered for filing a proposed Agreement for the Sale of Non-Firm Transmission Service by Nevada Power to Rainbow Energy Marketing Corporation (Rainbow Electric).

Nevada Power states that the Agreement provides for the sale of non-firm transmission services to Rainbow Energy for periods ranging from hourly to monthly provided Nevada Power has sufficient transmission capacity to do so.

Copies of this filing have been served on Rainbow Electric and the Public Service Commission of Nevada.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER96–142–000]

Take notice that on October 24, 1995, Nevada Power Company (Nevada Power), tendered for filing an Agreement for the Sale of Economy Energy by Nevada Power Company to the City of Needles, California (Needles).

Copies of this filing have been served on Needles and the Public Service Commission of Nevada.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Yankee Energy Marketing Company

[Docket No. ER96–146–000]

Take notice that on October 25, 1995, Yankee Energy Marketing Company (Yankee Energy) petitioned the Commission for acceptance of Yankee Energy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Yankee Energy is a subsidiary of Yankee Energy Systems, Inc., a holding company headquartered in Connecticut.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Carolina Power & Light Company

[Docket No. ER96–150–000]

Take notice that on October 25, 1995, Carolina Power & Light Company (Carolina), tendered for filing separate Service Agreements executed between Carolina and the following Eligible Entities: Catex-Vitol Electric, L.L.C.; Cinergy Services, Inc.; Commonwealth Edison; Wabash Valley Power Association, Inc.; Tennessee Power Company; Sonat Power Marketing, Inc.; MidCon Power Services Corp.; and Citizens Lehman Power Sales. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER96–155–000]

Take notice that on October 26, 1995, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to CMEX Energy Inc., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: November 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Indianapolis Power & Light Company

[Docket No. ER96–158–000]

Take notice that on October 27, 1995, Indianapolis Power & Light Company (IPL), tendered for filing an initial rate schedule consisting of enabling agreement between IPL and ENRON Power Marketing, Inc., pursuant to which they will engage in general purpose energy and negotiated capacity sales and purchase transactions. IPL requests waiver of the 60-day notice requirement to permit service to commence November 1, 1995.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and ENRON Power Marketing.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. The Washington Water Power Company

[Docket No. ER96–159–000]

Take notice that on October 27, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement with Springfield Utility Board to FERC Electric Tariff Volume No. 4 previously approved as an unsigned service agreement.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Electric Power Company

[Docket No. ER96–161–000]

Take notice that on October 27, 1995, Maine Electric Power Company (MEPCO), tendered for filing a Transmission Service Agreement between MEPCO and Houlton Water Company (HWC), dated effective as of January 1, 1996. MEPCO will provide HWC with firm transmission service over the MEPCO transmission system. The rates for such service shall be as provided in MEPCO Rate Schedule FPC No. 1 on file with the Commission.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. PSI Energy, Inc.

[Docket No. ER96–165–000]

Take notice that on October 27, 1995, PSI Energy, Inc., tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 1994 Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (IMPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER96–166–000]

Take notice that on October 27, 1995, Commonwealth Edison Company (ComEd), submitted two Service Agreements, establishing Tennessee Valley Authority (TVA), and Wisconsin Power and Light (WP&L) as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of September 29, 1995, for the Service Agreement between ComEd and TVA, and an effective date of October 10, 1995, for the Service Agreement between ComEd and WP&L and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon TVA, WP&L and the Illinois Commerce Commission.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28177 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–614–000]

Paiute Pipeline Co.; Notice of Availability of the Environmental Assessment for the Proposed Paiute LNG Trucking Project

November 8, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Paiute Pipeline Company (Paiute) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction project which includes the following facilities: and operation of Paiute's proposed liquefied natural gas (LNG) trucking

- About 330 feet of 3-inch-diameter transfer piping;
- A 115-foot-long drainage channel;
- A cryogenic flexible hose;
- Isolation and relief valves; and
- Other appurtenant facilities.

The purpose of the project is to construct an LNG truck unloading station to give Paiute the ability to provide its LNG storage service customers with additional options for helping to meet their peak demand, emergency, or other requirements.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. James Dashukewich, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation (PR11.1), 888 First Street, N.E., Washington, DC 20426, (202) 208–0117.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP95–614–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than December 8, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. James Dashukewich, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. James Dashukewich, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28132 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2680–017 Michigan]

Consumers Power Company and the Detroit Edison Company; Notice of Availability of Final Environmental Assessment

November 8, 1995.

A final environmental assessment (FEA) is available for public review. The FEA is for a settlement agreement containing proposed measures for fish protection and angler access at the Ludington Pumped Storage Project (FERC No. 2680). The FEA finds that approval of the settlement agreement and implementation of the proposed measures for fish protection and angler access would not constitute a major federal action significantly affecting the quality of the human environment. The Ludington Pumped Storage Project is located on the eastern shore of Lake Michigan in Mason County, Michigan.

The FEA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed at the Commission's Reference and Information Center, Room 2–A, 888 1st Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below. For more information, please contact the project manager, John Mudre, at (202) 219–1208.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28134 Filed 11–14–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1996

AGENCY: U.S. Department of Energy, Office of Hearings and Appeals

ACTION: Notice of Determination of Excess Monies Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that $19,800,470 of the amounts currently in escrow is determined to be excess funds for fiscal year 1996. Pursuant to the statutory directive, these funds will be made

available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 [Mann]; (202) 586–2383 [Klurfeld].

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter DOE) pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter EPAA) or the Economic Stabilization Act of 1970 (hereinafter ESA). These funds, commonly referred to as oil overcharge funds, are monies obtained through enforcement actions instituted to remedy actual or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR Part 205, Subpart V, to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination must be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on the best currently available information, $19,800,470 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which monies covered by PODRA are deposited. PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). As of September 30, 1995, the total in escrow subject to the PODRA procedures was $142,608,733.

The OHA has employed the following methodology to determine the amount of excess funds. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution." Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the entire amount of these claims. The reserves also include all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1995, but not yet paid. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, on funds in accounts that were closed (with a zero balance) in the fiscal year 1995 PODRA determination (59 F.R. 56485 (1994)) are included as part of the "excess" for fiscal year 1996. Finally, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Office of General Counsel, which finds in its accompanying determination, as it has found in the past, that none of those funds are currently excess. No "other commitments" are reflected in the reserves.

As indicated above, the total escrow account equity subject to PODRA is $142,608,733. The total amount needed as reserves for direct restitution in those cases is $122,808,263. When this figure is subtracted from the former, the remainder—$19,800,470—is the amount in fiscal year 1996 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each refund case within the OHA's jurisdiction the total amount eligible for distribution under PODRA and the "excess" amount. Appendix B reflects information supplied by the Office of General Counsel regarding cases subject to PODRA under its jurisdiction.

Accordingly, $19,800,470 will be transferred to a separate account within the United States Treasury and made available to the States for use in the four designated energy conservation programs in the manner prescribed by PODRA.

Dated: November 8, 1995.

George B. Breznay,

Director Office of Hearings and Appeals.

APPENDIX A: EXCESS AMOUNT AVAILABLE IN FISCAL YEAR 1996

Name	OHA Case No.	Consent Order No.	Equity as of Sept. 30, 1995	Amount available
Texaco Inc	KEF–0119	RTXE006A1Z	$32,846,164.95	12,000,000.00
Tesoro Petroleum Corp	KEF–0128	BUBBBBBBBB	6,342,036.67	3,000,000.00
Enron Corporation	KEF–0116	730V00221Z	24,291,974.49	3,000,000.00
Eason Oil Company	LEF–0040	740S01314Z–	6,272,562.76	1,000,000.00
Cumberland Farms Dairy Inc	LEF–0068	120K00497T	201,355.38	201,355.38
N C Ginther Company	LEF–0060	710V03022T	159,226.03	159,226.03
Dalco Petroleum	HEF–0060	660T00642Z	99,639.84	99,639.84
Marathon Petroleum Co	KEF–0021	RMNA00001Z	59,045.52	59,045.52
Sunset Blvd Car Wash	LEF–0091–	999K90113T	57,375.27	57,375.27
General Equities, Inc.	HEF–0078	110H00527Z	39,236.78	39,236.78
Mockabee Gas & Fuel Co	VEF–0001	311H00342W	81,297.41	20,324.35
Murphy Oil Corporation	KEF–0095	RMUH01983Z	9,950.20	9,950.20
Regalia's Chevron Service	LEF–0102	999K90110T–	9,766.38	9,766.38
Joe Berube Services	LEF–0099	999K90101T	9,113.80	9,113.80
Weber's Chevron Service	LEF–0108	999K90119T	8,790.34	8,790.34
Hughes Burlingame Shell	LEF–0110	999K90100T	8,003.59	8,003.59
Tenth Street Chevron	LEF–0104	999K90115T	7,798.94	7,798.94

APPENDIX A: EXCESS AMOUNT AVAILABLE IN FISCAL YEAR 1996—Continued

Name	OHA Case No.	Consent Order No.	Equity as of Sept. 30, 1995	Amount available
McDowell Exxon	LEF–0100	999K90104T	7,689.72	7,689.72
Elwood Chevron Service	LEF–0085	999K90098T	7,589.88	7,589.88
Starr Union Service	LEF–0103	999K90067T	7,442.32	7,442.32
Ed Gularte Chevron	LEF–0098	999K90095T	6,851.21	6,851.21
Cutting Shell Service	LEF–0097	999K90091T	5,290.83	5,290.83
C J King Chevron	LEF–0109	999K90089T	5,258.44	5,258.44
Aptos Shell	LEF–0092	999K90083T	5,040.57	5,040.57
Tom's Coffee Tree Chevron	LEF–0105	999K90116T	4,943.13	4,943.13
Bill Wren's Shell	LEF–0096	999K90087T	4,796.80	4,796.80
Petaluma Standard Service	LEF–0101	999K90106T	4,380.14	4,380.14
Walt's Shell	LEF–0107	999K90118T	3,912.92	3,912.92
Strasburger Enterprises,Inc	LEF–0014	400H00219Z	3,796.68	3,796.68
Redhill Mobil and Towing	LEF–0088	999K90109T	3,788.35	3,788.35
Quintana Energy Corp. et al	KEF–0131	650X00356Z	3,656.30	3,656.30
Ben's Exxon Service	HEF–0512	999K90085T	3,356.74	3,356.74
A–1 Exxon	HEF–0509	999K90080T	3,294.57	3,294.57
Berryesse Chevron	LEF–0095	999K90086T	3,221.20	3,221.20
Sandusky's Union Service	LEF–0111	999K90068T	3,136.18	3,136.18
Skycrest Shell	LEF–0112	999K90112T	2,470.19	2,470.19
Reinauer Petroleum Company Inc	KEF–0110	240H00492Z	2,360.61	2,360.61
Wallace Arco Service	LEF–0106	999K90117T	2,269.03	2,269.03
Agway, Inc	KEF–0102	RTYA00001Z	2,107.89	2,107.89
Half Moon Bay Exxon	LEF–0087	999K90099T	2,063.25	2,063.25
Ed's Exxon	LEF–0078	999K90097T	2,063.25	2,063.25
Bob's Broadway	LEF–0075	900Z40056T	1,732.74	1,732.74
Alameda Chevron	LEF–0093	999K90081T	1,608.89	1,608.89
Milbrae Shell	LEF–0079	900Z06293T	1,453.94	1,453.94
Miles Union Service	LEF–0083	900Z03258T	997.58	997.58
Ron's Shell	LEF–0084	900Z10251T	954.83	954.83
Alameda Chevron	LEF–0093	900Z06251T	881.07	881.07
Quantum Chemical Corporation	LEF–0011	720V01245Z	540.05	540.05
Clearview Gulf	LEF–0076	640Z00670T	493.44	493.44
Buchanan Shell Inc	LEF–0081	900Z10250T	464.13	464.13
Crescent Oil Company	LEF–0044	930H00094Z	262.89	262.89
Bob Hutchinson, Inc	LEF–0080	900Z02252T	224.82	224.82
Jim Campbell Shell	LEF–0082	900Z03255T	160.55	160.55
Automatic Comfort Corp	LEF–0005	110H00519A	81.22	81.22
Pete Alijian Chevron	LEF–0089	999K90062T	56.77	56.77
Shaw & 99 Chevron	LEF–0090	999K90061T	46.91	46.91
Indian Wells Oil Company	KEF–0103	710V02002Z	44.97	44.97
Beacon Oil Co	HEF–0203	910S00008Z	13.47	13.47
Exxon Corporation	KEF–0087	REXL00201Z	12.22	12.22
Mobil Oil Corporation	HEF–0508	RMOA00001Z	9.98	9.98
Edgington Oil Company	KEF–0003	930S00173Z	7.25	7.25
Aminoil U.S.A., Inc	HEF–0007	740V01259Y	5.40	5.40
Starks Shell Service	LEF–0034	999K90065Z	0.99	0.99
Fuel Oil Supply & Terminaling	LEF–0037	650X00284Z	0.90	0.90
Fletcher Oil & Refining Comp	LEF–0010	960S00100Z	0.84	0.84
Pester Marketing Company	KEF–0134	730S01236Z	0.82	0.82
Wallace & Wallace	HEF–0190	240H00399Z	0.71	0.71
United Refining Company	KEF–0132	340S00445Z	0.69	0.69
Northeast Petrol Industry Corp	HEF–0580	6C0X00241Z	0.68	0.68
Crown Central Petroleum Corp	KEF–0044	RCWA00000Z	0.68	0.68
John R. Adams		660H00060Z	0.62	0.62
West Coast Oil Company	KEF–0142	961S00028Z	0.59	0.59
Sauvage Gas Service Co., Inc	KEF–0024	710H06008Z	0.54	0.54
Thomas P. Reidy, Inc	KEF–0137	720H06015Z	0.49	0.49
South Hampton Refining	HEF–0222	6E0S00002Z	0.49	0.49
Paul Invests & A.B. Holding Co	LEF–0006	400H00231Z	0.36	0.36
True Oil Company	HEF–0557	733V02019Z	0.34	0.34
Meadows Realty Company	KEF–0133	910S00001Z	0.21	0.21
Elias Oil Company	KEF–0022	412H00105Z	0.21	0.21
Diamond Industries, Inc	KEF–0130	320H00097Z	0.12	0.10
Witco Chemical Corp	HEF–0227	240S00054Z	821,970.84	
Vessels Gas Processing, Ltd	VEF–0007	740V01387W	2,199,706.37	
Vermont Morgan Corp	LEF–0072	110H00514T	22,282.76	
SOS Monarch Oil Corp	LEF–0066	240H00498T	6,483.36	
Skinney's Inc	LEF–0071	400H00227T	17,583.72	
Shell Oil Company	KEF–0093	RSHA00001Z	5,109,102.39	
Reco Petroleum Inc	LEF–0065	320H00304T	29,094.44	
Permian Corporation	LEF–0035	650X00246T	1,448,669.60	

APPENDIX A: EXCESS AMOUNT AVAILABLE IN FISCAL YEAR 1996—Continued

Name	OHA Case No.	Consent Order No.	Equity as of Sept. 30, 1995	Amount available
Oasis Petroleum Corp	LEF–0007	940X00217Z	1,958,919.08	
Metropolitan Petroleum Co., Inc	LEF–0032	412H00171Z	31,791.08	
Maxwell Oil Co	HEF–0125	000H00425Z	16,989.66	
MacMillan Oil Company, Inc	LEF–0046	730T00031Z	776,412.71	
Lampton-Love Inc	LEF–0070	422T00013T	14,268.26	
Kickapoo Oil	LEF–0069	570H00214T	44,856.57	
Kenny Larson Oil Co	HEF–0104	000H00439W	16,698.27	
Jedco Inc	VEF–0024	421K00107W	3,900.40	
Jaguar Petroleum Inc	LEF–0059	640X00444T	70,892.67	
Intercoastal Oil Co	LEF–0057	940X00076T	31,808.81	
Hudson Oil Co., Inc	VEF–0011	740S01256W	8,302,081.45	
Houston/Pasadena Apache Oil Corp	VEF–0022	BJBBBBBBBB	17,586.84	
Houma Oil Co	VEF–0023	640H10422W	389,866.49	
Gulf States Oil & Refining	LEF–0073	6E0S00057T	549,574.45	
Gulf Oil Corporation	HEF–0590	RGFA00001Z	4,616,812.65	
Gratex/Compton Corp	VEF–0012	6A0X00340W	2,395,517.65	
Good Hope Refineries Inc	HEF–0211	150S00154Z	3,580,301.02	
Getty Oil Company	HEF–0209	RGEA00001Z	5,869,839.59	
General Petroleum	LEF–0064	550H00075T	25,344.63	
G & G Oil Company	LEF–0063	550H00332T	53,962.59	
Este Oil Company	LEF–0062	533H00163T	69,281.20	
Empire Gas Corporation	KEF–0048	720T00521Z	494,691.10	
E-Z Service Inc	LEF–0077	400H00220T	304,476.24	
Crude Oil Purchasing Inc	LEF–0058	6A0X00269T	103,042.97	
Capitol 66 Oil Company	LEF–0067	422H00238T	17,327.19	
Bell Fuels Inc	LEF–0061	570H00195T	37,338.80	
Beacon Bay Enterprises, Inc	LEF–0074	999K90120T	83,189.99	
Atlantic Richfield Co (Arco)	HEF–0591	RARH00001Z	18,324,396.18	
AOC Acquisition Corporation	LEF–0003	RCKH016A1Z	9,164,609.23	
Anchor Gasoline Corporation	KEF–0120	740S01247Z	4,973,880.63	
Total			142,608,733.83	19,800,470.00

Department of Energy,
Washington, DC 20585, October 31, 1995.

MEMORANDUM FOR: George B. Breznay, Director, Office of Hearings and Appeals.

FROM: Bill J. Eaton, Director, Office of Administration, Office of General Counsel.

SUBJECT: GC input for the PODRA section 3003 (c) report.

My office has reviewed the funds held in escrow as of September 30, 1995, which have not been petitioned under Subpart V. The purpose of the review was to identify funds held in escrow in excess of the amounts required to effect restitution to persons or classes of persons in accordance with Section 3003 (b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Since the amount of funds which will be available and the extent of claims which will be filed are not known, the funds currently on deposit in the escrow accounts we reviewed are not excess funds for the purposes of PODRA.

[FR Doc. 95–28195 Filed 11–9–95; 3:58 pm]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5332–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, Please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0012.09; Motor Vehicle and Non-Road Engine Exclusion Determination; was approved 07/31/95; OMB No. 2060–0124; expires 07/31/98.

EPA ICR No. 0270.34; Public Water System Supervision Program, Public Notification and Education Requirements; was approved 09/27/95; OMB No. 2040–0090; expires 03/31/97.

EPA ICR No. 1170.05; Collection of Economic and Program Support Data; was approved 08/23/95; OMB No. 2040–0034; expires 08/31/98.

EPA ICR No. 1051.06; NSPS Subpart F, Portland Cement Plants; was approved 08/30/95; OMB No. 2060–0025; expires 08/31/98.

EPA ICR No. 0143.05; Recordkeeping Requirements for Producers of Pesticides Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); was approved 08/14/95; OMB No. 2070–0028;; expires 08/31/98.

EPA ICR No. 1284.04; New Source Performance Standard for the Polymeric Coating of Supporting Substrates Facilities; was approved 08/31/95; OMB No. 2060–0181; expires 08/31/98.

EPA ICR No. 0168.06; National Pollutant Discharge Elimination System and Sewage Sludge Management State Program; was approved 08/30/95; OMB No. 2040–0057; expires 08/31/98.

EPA ICR No. 1078.04; NSPS Subpart NN, Phosphate Rock; was approved 08/30/95; OMB No. 2060–0111; expires 08/31/98.

EPA ICR No. 0226.12; Application for NPDES Discharge Permit and the Sewage Sludge Management Permit; was approved 08/30/95; OMB No. 2040–0086; expires 08/31/98.

EPA ICR No. 1158.05; Rubber Tire Manufacturing, Standard of Performance for New Stationary Sources; was approved 07/31/95; OMB No. 2060–0156; expires 07/31/98.

EPA ICR No. 1062.05; NSPS Monitoring for Coal Preparation Plants—Subpart Y; was approved 08/30/95; OMB No. 2060–0122; expires 08/31/98.

EPA ICR No. 1488.03 Superfund Site Evaluation and Hazardous Ranking System; was approved 07/31/95; OMB No. 2050–0095; expires 07/31/98.

EPA ICR No. 0029.06; NPDES Modification and Variance Requests; was approved 08/29/95; OMB No. 2040–0068; expires 08/31/98.

EPA ICR No. 1367.04; Gasoline Volatility Rule; was approved 08/29/95; OMB No. 2060–0178; expires 08/31/98.

EPA ICR No. 0941.05; Quality Control (QC) Sample Request Form; was approved 08/15/95; OMB No. 2080–0016; expires 08/31/98.

EPA ICR No. 1602.02; Maximum Achievable Control Technology Standards Development under Title III (Section 112 of the Clean Air Act Regulatory Development Program; was approved 08/03/95; OMB No. 2060–0239; expires 08/31/98.

EPA ICR No. 1652.02; NESHAP for Halogenated Solvent Cleaners/ Halogenated Hazardous Air Pollutants (HAP); was approved 12/02/94; OMB No. 2060–0273; expires 12/31/97.

EPA ICR No. 1601.03; Air Pollution Regulations for Outer Continental Shelf (OCS) Activities: Reporting, Recording, Recordkeeping, and Testing Requirements; was approved 08/29/95; OMB No. 2060–0249; expires 08/31/98.

EPA ICR No. 0661.05; NSPS for Asphalt Processing and Asphalt Roofing Manufacturing—40 CFR Part 60, Subpart UU; was approved 07/28/95; OMB No. 2060–0002; expires 07/31/98.

EPA ICR No. 1084.04; NSPS Subpart 000, Nonmetallic Mineral Processing Plants; was approved 08/30/95; OMB No. 2060–0050; expires 08/31/98.

EPA ICR No. 0167.05; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines; was approved 08/25/95; OMB No. 2060–0094; expires 08/31/98.

EPA ICR No. 0657.05 NSPS for Graphic Arts Industry—Subpart QQ; was approved 07/28/95; OMB No. 2060–0105; expires 07/31/98.

OMB Extensions of Expiration Dates

EPA ICR No. 1500.02; National Estuary Program; OMB No. 2040–0138; expiration date was extended to 03/31/96.

EPA ICR No. 0275.05; Preaward Compliance Review Report for all Applicants Requesting Federal Financial Assistance; OMB No. 2090–0014; expiration date was extended to 03/31/96.

EPA ICR No. 1504.02; Data Generation for Registration; OMB No. 2070 expiration date was extended to 06/30/96.

EPA ICR No. 1069.04; Standards of Performance for Iron and Steel Plants (Basic Oxygen Process Furnaces)—NSPS Subpart N, NA, OMB No. 2060–0029; expiration date was extended to 03/31/96.

EPA ICR No. 1617.01; The Servicing of Motor Vehicles Air Conditioning; OMB No. 2060–0247; expiration date was extended to 01/31/96.

EPA ICR No. 1286.03; Used Oil Management Standards; OMB No. 2050–0124; expiration date was extended to 03/31/96.

EPA ICR No. 0746.02; New Source Performance Standards for Calcines and Dryers in Mineral Industries, Reporting and Recordkeeping; OMB No. 2060–0251; expiration date was extended to 03/31/96.

EPA ICR No. 1100.07; National Emission Standards for Hazardous Air Pollutants: Radionuclides; OMB No. 2060–0191; expiration date was extended to 01/31/96.

EPA ICR No. 1622.01; National Environmental Education Awards Program; OMB No. 2015–003; expiration date was extended to 02/28/96.

Dated: November 7, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–28180 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30395; FRL–4985–2]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by December 15, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30395] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30395]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM 13), Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 206, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing an active ingredient not included in any previously registered products and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 62719–EAT. Applicant: DowElanco, 9330 Zionville Road, Indianapolis, IN 46268. Product name: NAF-85. Insecticide. Active ingredients: (Spinosad (proposed common name) 2-[(6-deoxy-2,3,4-tri-*O*-methyl-alpha-L-mannopyranosyl)oxy]-13-[[5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-indaceno[3,2-d]oxacyclododecin-7,15-dione,[2*R* [2*R**,3a*S**,5a*R**,5b*S**,9*S**,13*S**(2*R**,5*S**,6*R**), 14*R**,16a*S**,16b*R**]](9Cl) and 2-[(6-deoxy-2,3,4-tri-*O*-methyl-alpha-L-mannopyranosyl)oxy]-13-[[5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1*H*-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, [2*S*[2*R**,3a*S**, 5a*R**,5b*R**,9*R**,13*R**(2*S**,5*R**,6*S**), 14*S**,16a*R**,16b*R**]](9Cl) at 44.2 percent. Proposed Use: For insect management on cotton.

2. File Symbol: 62719–EAA. Applicant: DowElanco. Product name: XDE-105 Technical. Insecticide. Active ingredients: (Spinosad (proposed common name) 2-[(6-deoxy-2,3,4-tri-*O*-methyl-alpha-L-mannopyranosyl)oxy]-13-[[5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-indaceno[3,2-d]oxacyclododecin-7,15-dione,[2*R* [2*R**,3a*S**,5a*R**,5b*S**,9*S**,13*S**(2*R**,5*S**,6*R**), 14*R**,16a*S**,16b*R**]](9Cl) and 2-[(6-deoxy-2,3,4-tri-*O*-methyl-alpha-L-mannopyranosyl)oxy]-13-[[5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1*H*-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, [2*S*[2*R**,3a*S**, 5a*R**,5b*R**,9*R**,13*R**(2*S**,5*R**,6*S**), 14*S**,16a*R**,16b*R**]](9Cl) at 90.4 percent. Proposed Use: For manufacturing use only in the formulation of products used for insect management on cotton.

II. Product Involving a Changed Use Pattern

File Symbol: 1021–RATI. Applicant: McLaughlin Gormley King Company, 8810 Tenth Avenue, N. Minneapolis, MN 55427–4372. Product name: Responde Insecticide. Insecticide. Active ingredient: Prallethrin (RS)-2-methyl-4-oxo-(2-propynyl) cyclopent-2-enyl-(1RS)-cis; trans-chrysanthemate at 9.05 percent. Proposed Use: To include in its presently registered use a new use outdoors to control adult mosquitoes.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30395] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 24, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–27951 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30389A; FRL–4978–8]

Sankyo Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Sankyo Company, to conditionally register the pesticide products Tachigaren Technical and Tachigaren 70 WP containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 28, 1995 (60 FR 33416), which announced that Sankyo Company Ltd., c/o Rockwell Enterprises, Inc., 3331 Esplanade Circle S.E. Rio Rancho, NM 87124, had submitted an application to conditionally register the pesticide product Tachigaren Technical a fungicide (EPA File Symbol 48210–E, containing the active ingredient hymexazol (5-methylisoxazol-3-ol) at 99.0 percent, an active ingredient not included in any previously registered products.

EPA subsequently received an application from Sankyo to register the end-use product Tachigaren 70 WP (EPA File Symbol 48210–R), containing the active ingredient hymexazol at 70.0 percent, an active ingredient not included in any previously registered product. However, since the notice of receipt of application was not published in **Federal Register**, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically by sending electronic mail; e-mail to: opp-docket@epamail.epa.gov. More detailed information is found in all documents requesting comments as of May 1995.

The applications were approved on August 4, 1995, for one technical and one end-use product listed below:

1. Tachigaren Technical for manufacturing or formulation use as a seed treatment of sugar beet seeds (EPA Registration Number 48210–2).

2. Tachigaren 70 WP for use only by commercial seed treaters on sugar beets (EPA Registration Number 48210–1).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of hymexazol (5-methylisoxazol-3-ol), and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of hymexazol (5-methylisoxazol-3-ol) during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e). Sankyo must make sure that the studies listed below are filled within the next 12 months:

1. Avian Dietary.
2. Aquatic Growth.
3. Phytotoxicity and Commercial Applicator Exposure.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on hymexazol (5-methylisoxazol-3-ol).

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 27, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–27952 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–631; FRL–4971–5]

Pesticide Tolerance Petitions; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings, amendments, and withdrawal of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-631]. No Confidential Business Information (CBI) should be submitted

through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number/e-mail	Address
Rick Keigwin, Jr. (PM 10)	Rm. 210, CM #2, 703-305-6788; e-mail: keigwin.richard@epamail.epa.gov..	1921 Jefferson Davis Hwy., Arlington, VA.
George LaRocca (PM 13)	Rm. 204, CM #2, 703-305-6100; e-mail: larocca.george@epamail.epa.gov..	Do.
Connie Welch (PM 21)	Rm. 227, CM #2, 703-305-6226; e-mail: welch.connie@epamail.epa.gov..	Do.
Theresa A. Stowe (Acting PM 22)	Rm. 261, CM #2, 703-305-6117; e-mail: stowe.theresa@epamail.epa.gov..	Do.
Joanne Miller (PM 23)	Rm. 237, CM #2, 703-305-7830; e-mail: miller.joanne@epamail.epa.gov..	Do.
Rita Kumar	5th Floor, CS #1, 703-308-8709; e-mail: kumar.rita@epamail.epa.gov..	2800 Jefferson Davis Hwy., Arlington, VA.
Denise Greenway	5th Floor, CS #1, 703-308-8263; e-mail: greenway.denise@epamail.epa.gov..	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 5E4435.* Nihon Nohyaku Co., Ltd., 2-5 Nihonsbashi 1-Chome, Chuo-ku, Tokyo 103, Japan, has submitted the petition proposing to establish a new tolerance in 40 CFR part 180 permitting residues of the miticide fenpyroximate (t-butyl (E)-*alpha* (1,3-dimethyl-5-phenoxy-pyrazol-4-ylmethyleneamino-oxy-p-toluate) (CAS 134098-61-6) and its metabolites (z-isomer and demethyl fenpyroximate) in or on wine grapes at 1 part per million (ppm), green hops at 4 ppm, and dried hops at 7 ppm. (PM 10)

2. *PP 5E4504.* DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes amending 40 CFR part 180 by establishing import tolerances for cymoxanil, (E)-2-cyano-N-[(ethylamino) carbonyl)]-2-(methoxyimino) acetamide, in or on the raw agricultural commodities grapes at 0.1 ppm and tomatoes at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with a nitrogen phosphorus detector. (PM 21)

3. *PP 5E4524.* F. Russel Cook Associates, REDA Bldg., Suite 217, 401 S.E. Dewey, Bartlesville, OK 74005, has submitted a petition on behalf of Biosys (formerly AgriSense) to amend 40 CFR part 180 to establish a generic exemption from the requirement of a tolerance for acrylate polymers and copolymers which fit the Toxic Substances Control Act definition of polymers which are intrinsically safe. (Rita Kumar)

4. *PP 4F4393.* Plant BioTech, Inc., 702 Coronado Rd., Corrales, NM 87048, has submitted the petition proposing that 40 CFR 180.1042 be amended to establish an exemption from the requirement of a tolerance for the plant regulator aqueous extract of seaweed meal in or on all fruits, berries, nuts, vegetables, and grains. (Denise Greenway)

5. *PP 5F4475.* Bayer Corp., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, has submitted the petition proposing that 40 CFR 180.436 be amended to establish a tolerance for cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl) methyl 3-(2,2-dichloroethylnyl)-2,2-dimethyl cyclopropancecarboxylate, in or on corn, rice, and wheat grains at 2 parts per million (ppm), sorghum grain at 4 ppm, aspirated grain fractions at 300 ppm, cattle fat at 6 ppm, and milk fat at 20 ppm resulting from the postharvest treatment of stored grain and grain storage structures (PM 13).

6. *PP 5F4498.* Ciba Crop Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, has submitted the petition proposing that 40 CFR 180.434 be amended by establishing inadvertent/rotational crop tolerances for residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metaboltes determined as 2,4-dichlorobenzoic acid and expressed as parent compound equivalent in or on the following raw agricultural commodities: grain sorghum, grain at 0.2 ppm; grain sorghum, forage at 0.3 ppm; grain sorghum, fodder (stover) at 0.3 ppm; alfalfa, forage at 0.1 ppm; alfalfa, hay at 0.1 ppm. The proposed analytical method for determining residues is AG-454A. (PM 21)

7. *PP 5F4537.* Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the fungicide cyproconazole, 2-(4-chlorophenyl)-3-cyclopropyl-1-,2,4-triazole-1-yl)butan-2-ol, in or on the raw agricultural commodities banana (pulp) at 0.01 ppm, wheat grain at 0.02 ppm, wheat straw at 2.0 ppm, peanut nutmeat at 0.02 ppm, peanut hulls at 0.5 ppm, and liver of beef cattle at 0.2 ppm. (PM 21)

8. *PP 5F4549.* Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018, has submitted the petition proposing to amend 40 CFR 180.464 to establish

tolerances for residues of the herbicide dimethenamid, 2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide, in or on the following commodities: grain sorghum, sorghum forage, and sorghum fodder at 0.01 ppm, dry bean seed and dry bean straw/hay at 0.01 ppm, sweet corn (kernel plus cob with husk removed), sweet corn forage, sweet corn dry grain, and sweet corn fodder (stover) at 0.01 ppm, and peanut nutmeat, peanut forage, peanut hay, and peanut hulls at 0.02 ppm. The proposed analytical method for determining residues is by gas chromatography. (PM 22)

9. *PP 5F4556.* Bayer Corp., P.O. Box 4913, Kansas City, MO 64120-0013, proposes amending 40 CFR 180.349 to establish tolerances for ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate in or on almonds at 0.3 ppm, almond hulls at 0.4 ppm, and pecans at 3.5 ppm. The proposed method for determining residues is gas chromatography procedure using a flame ionization detector. (PM 22)

10. *PP 5F4558.* ISK Biosciences Corp., 5966 Heisly Rd., P.O. Box 8000, Mentor, OH 44061-8000, has submitted the petition proposing that 40 CFR 180.275 be amended by establishing tolerances for residues of chlorothalonil (tetrachlorisophthalonitrile) and its metabolites 4-hydroxy-2,4,6-trichloroisophthalonitrile in or on almonds, nutmeat at 0.05 ppm and almonds, hulls at 1.0 ppm. (PM 22)

11. *PP 5F4561.* The Ziram Task Force, consisting of NPC, Inc., 22636 Glenn Drive, Suite 304, Sterling, VA 20164, Elf Atochem North America, Inc., Agrichemicals Div., 21st Floor, 2000 Market St., Philadelphia, PA 19103-3222, and UCB Chemicals Corp., 2000 Lake Park Drive, Smyrna, GA 30080, has submitted the petition proposing for the fungicide ziram (zinc dimethyldithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, to amend 40 CFR 180.116 to add a new tolerance for almond hulls at 20 ppm and amend the existing tolerance for apricots from 7.0 ppm to 20 ppm. (PM 23)

12. *FAP 5H5717.* Bayer Corp. has submitted the petition proposing that 40 CFR 185.1250 and 186.1250 be amended to establish a tolerance for cyfluthrin in or on corn starch and wheat bran at 3 ppm; corn flour at 4 ppm; corn, refined oil (wet milling) at 12 ppm; corn, refined oil (dry milling) at 15 ppm; corn, milled byproducts at 4 ppm; rice, hulls at 9 ppm and wheat, milled byproducts at 3 ppm, resulting from the postharvest treatment of stored grain and grain storeage structures.

According to the petition, the toxicology data required to establish cyfluthrin tolerances have been previously submitted to and accepted by the Agency. Cyfluthrin tolerances have been established for raw agricultural commodities listed in 40 CFR 180.436, in or on various food commodities listed in 40 CFR 185.1250, and in or on various feed commodities listed in 40 CFR 186.1250. Additional toxicology data requested have been comitted to and submitssion dates are proposed. Previously submitted residue chemistry data are cited and also included are magnitude of the residues in the raw agricultural commodities and processed commodities data to support these tolerances. Discussions regarding potential secondary residues in livestock commodities as a result of primary residues on various feestocks are included with this submission. These discussions provide the support for the tolerances proposed for beef fat and milkfat (as a component of whole milk). The toxicological and metabolism data and analytical methods for enforcement purposes in support of these tolerances are discussed in detain in related documents published in the **Federal Register** of July 28, 1995 (60 FR 33360).

The tolerances for cyfluthrin proposed in the petition are based on the postharvest treatment of stored grains and grain storage structures to control stored grain pests.

An estimation of the resulting dietary exposure of cyfluthrin from the establishment of the tolerances proposed is included with this petition. Based on these assumptions the addition of the tolerances associated with the use of cyfluthtrin proposed in the petition is estimated to result in an increase in dietary exposure to residues of cyfluthrin such that total dietary exposure to cyfluthrin is still below the RfD. (PM 13)

Amended Filings

13. *PP 0F3915* EPA gave notice in the **Federal Register** of May 29, 1991 (56 FR 24189), that Mobay Corp., P.O. Box 4913, Kansas City, MO 64120-0013, had requested that 40 CFR part 180 be amended to establish tolerances for ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate in or on almonds at 0.3 ppm, almond hulls at 0.4 ppm, pecans at 3.5 ppm, plums at 0.02 ppm, and walnuts at 0.4 ppm. Bayer Corp. (previously Mobay Corp.) has amended the petition by withdrawing the request for almonds at 0.3 ppm, almond hulls at 0.4 ppm, and pecans at 3.5 ppm. (PM 22)

14. *PP 2F4086.* In a notice published in the **Federal Register** of June 10, 1992 (57 FR 24645), and amended in the **Federal Register** of June 15, 1995 (60 FR 31465), it was announced that Ciba Crop Protction, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted PP 2F4086 proposing that 40 CFR 180.434 be amended to establish tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound equivalent in or on oat grain at 0.1 ppm, oat straw at 0.1 ppm, and oat forage at 10 ppm. Ciba has further amended the petition to propose establishing tolerances for the fungicide propiconazole in or on oat grain at 0.1 ppm, oat straw at 1.0 ppm, oat forage at 10.0 ppm, and oat hay at 30.0 ppm. (PM 21)

15. *PP 4F4321.* In a notice published in the **Federal Register** of November 2, 1994 (59 FR 54906), it was announced that Ciba Crop Protction, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted PP 4F4321 proposing that 40 CFR 180.434 be amended to establish a tolerance for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzic acid and expressed as parent compound equivalent in or on stone fruit crop grouping at 1.0 ppm. Ciba has submitted an amended petition proposing to establish a tolerance for propiconazole in or on stone fruit crop grouping at 1.5 ppm. (PM 21)

16. *PP 8F3600.* DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268-1054, has submitted an amended petition proposing to amend 40 CFR 180.431 by revising tolerances for the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on sugarbeet roots from 0.5 ppm to 1.0 ppm and sugarbeet tops from 0.5 ppm to 1.0 ppm. The original notice of filing for this petition appeared in the **Federal Register** of May 27, 1992 (57 FR 22231). The proposed analytical method for determining residues is gas chromatography with electron capture detection. (PM 23)

17. *PP 8H5551.* DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268-1054, has submitted an amended petition proposing to amend 40 CFR 186.1100 by revising tolerances for the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on sugarbeet molasses from 7.0 ppm to 8.0 ppm. The original notice of filing for this petition appeared in the **Federal Register** of May 27, 1992 (57 FR 22231).

The proposed analytical method for determining residues is gas chromatography with electron capture detection. (PM 23)

Withdrawn Petitions

18. *PP 3F4251* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, has requested that PP 3F4251 to establish tolerances for metolachlor in grasses grown for seed be withdrawn without prejudice to future filing. The original notice of filing appeared in the **Federal Register** of October 21, 1993 (58 FR 54353). (PM 23)

19. *PP 6F1770.* Bayer Corp., P.O. Box 4913, Kansas City, MO 64120-0013, has requested that this petition to establish tolerances for ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl phosphoramidate in or on carrots be withdrawn without prejudice to future filing. Notice of this petition appeared in the **Federal Register** of May 12, 1976 (41 FR 19373). (PM 22)

A record has been established for this rulemaking under docket number [PF-631] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Feed additives, Food additives, Reporting and recordkeeping requriements.

Authority: 7 U.S.C. 136a.

Dated: September 27, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–28071; Filed 11–14–95; 8:45 am]
BILLING CODE 6560–50–F

[PF–638; FRL–4986–8]

Pesticide Tolerance Petitions; Filings and Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings and amendments of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-638]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number/e-mail	Address
Dennis Edwards (PM 19)	Rm. 205, CM #2, 703-305-6386; e-mail: edwards.dennis@epamail.epa.gov..	1921 Jefferson Davis Hwy., Arlington, VA.
Robert Taylor (PM 25)	Rm. 241, CM #2, 703-305-6027; e-mail: taylor.robert@epamail.epa.gov..	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 5E4479.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposes to amend 40 CFR part 180 by estblishing a regulation to permit residues of Touchdown Herbicide containing glyphosate-trimesium (formerly sulfosate), trimethylsulfonium carboxymethylaminomethylphosphonate, in or on the raw agricultural commodity bananas at 0.05 part per million (ppm). (PM 25)

2. *PP 4F4343.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of Touchdown Herbicide containing glyphosate-trimesium (formerly sulfosate), trimethylsulfonium carboxymethylaminomethylphosphonate, in or on the raw agricultural commodities tree nuts at 0.05 ppm; almond hulls (of which no more than 0.5 ppm is trimethylsulfonium) at 2.00 ppm. (PM 25)

3. *PP 5F4600.* Bayer Corp., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.472 by establishing a regulation to permit residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on pome fruit (fresh fruit), including apple, pear, crabapple, loquat, mayhaw, pear (oriental) and quince, at 0.6 ppm. (PM 19)

4. *FAP 1H5606.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposes to amend 40 CFR part 186 by establishing a regulation to permit residues of Touchdown Herbicide containing glyphosate-trimesium (formerly sulfosate), trimethylsulfonium carboxymethylaminomethylphosphonate, in or on grape dried pomace and raisins (of which no more than 0.05 ppm is trimethylsulfonium) at 0.2 ppm. (PM 25)

5. *FAP 5H5733.* Bayer Corp., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 185 by establishing a regulation to permit residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on apples, pomace (wet or dried) at 4.0 ppm. (PM 19)

Amended Filings

6. *PP 0F3860.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of Touchdown Herbicide containing glyphosate-trimesium (formerly sulfosate), trimethylsulfonium carboxymethylaminomethylphosphonate, in or on the raw agricultural commodities soybean seed (of which no more than 1 ppm is trimethylsulfonium) at 3.00 ppm; soybean hay (of which no more than 2 ppm is trimethylfulfonium) at 5.00 ppm; soybean forage (of which no more than 1 ppm is trimethylfulfonium) at 2.00 ppm; aspirated grain fractions (of which no more than 60 ppm is trimethylsulfonium) at 210.00 ppm; meat byproducts of cattle, goats, hogs, horses, and sheep at 1.00 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.10 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.2 ppm; milk at 0.2 ppm; poultry fat, liver, and meat at 0.05 ppm; poultry byproducts (except liver) at 0.10 ppm; and eggs at 0.02 ppm. The petition originally appeared in the **Federal Register** of July 18, 1990 (55 FR 29267), and proposed establishing tolerances in or on soybean hay at 3.0 ppm; soybean seed at 2.0 ppm; and soybean forage at 1.0 ppm. (PM 25)

7. *PP 0F3890.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of Touchdown Herbicide containing glyphosate-trimesium (formerly sulfosate), trimethylsulfonium carboxymethylaminomethylphosphonate, in or on the raw agricultural commodities citrus fruits at 0.05 ppm. The petition originally appeared in the **Federal Register** of January 16, 1991 (56 FR 1632), and proposed establishing tolerances in or on citrus fruits at 0.5 ppm. (PM 25)

8. *PP 1F3950.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of Touchdown Herbicide containing glyphosate-trimesium (formerly sulfosate), trimethylsulfonium carboxymethylaminomethylphosphonate, in or on grapes at 0.1 ppm. The petition originally appeared in the **Federal Register** of April 3, 1991 (56 FR 13642), and proposed establishing tolerances in or on the raw agricultural commodity grapes at 0.2 ppm. (PM 25)

9. *PP 9F3796.* Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of Touchdown Herbicide containing glyphosate-trimesium (formerly sulfosate), trimethylsulfonium carboxymethylaminomethylphosphonate, in or on the raw agricultural commodities corn grain at 0.2 ppm; corn fodder at 0.3 ppm; and corn forage at 0.1 ppm. The petition originally appeared in the **Federal Register** of April 12, 1990 (55 FR 13829), and proposed establishing tolerances in or on corn grain at 0.1 ppm, corn fodder at 0.2 ppm, and corn forage at 0.2 ppm. (PM 25)

A record has been established for this rulemaking under docket number [PF-638] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
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Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Feed additives, Food additives, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: October 30, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–28072; Filed 11–14–95; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

New Features of Broadband PCS C Block FCC Form 175 Application Software

November 3, 1995.

This Public Notice highlights important features of the FCC Form 175 Application Software (application software) to be used in the Broadband PCS C block auction. These features were added to the application software that potential bidders received prior to the cancelled auction dates of June 8, 1995 and August 2, 1995. The new application software, entitled "F175v5.exe," was made available to potential bidders over the Internet and the FCC Auction Bulletin Board Service on October 18, 1995.

The instructions in the "Readme File" of the new application software direct applicants to place "confidential information" in Exhibit E. In previous versions of the electronic software, Exhibit E was reserved for miscellaneous or "other" information. With the new application software, applicants must include miscellaneous or "other" information in the Exhibit (A, B, C or D) that appears most appropriate. Applications that contain miscellaneous or "other" information in Exhibit E will be deemed incomplete and must be resubmitted with the information inserted in the proper exhibit prior to the resubmission date.

In addition, only those applicants who have previously sought and received approval from the Commission to include "confidential" information with their application should enter such information in Exhibit E. Any other applications that submit any information in Exhibit E will be considered incomplete. These applicants will then be permitted to resubmit their incomplete applications with the information included in the appropriate exhibit during the resubmission period. Applicants should be aware that all information required by the Commission's Rules in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications and, as such, will be available for public inspection. Accordingly, the Commission envisions that confidentiality requests would be granted only in rate instances, if ever. Applicants requesting confidential treatment for any information required as a condition to participate in the auction must follow the procedures set out in § 0.459 of the Commission's Rules (47 CFR 0.459). An applicant's request for confidentiality must include a demonstration that it would suffer substantial competitive harm from the public disclosure of the confidential information.

The "Readme" file also contains instructions on submitting information in the "Ownership Worksheet" file. Because the "Ownership Worksheet" file asks for applicants' Social Security Numbers or Texpayer Identification Numbers, the Commission will not release it to the public. Applicants are strongly encouraged, but are not required, to submit the ownership information in this file. In addition, all applicants are required to submit the ownership documentation in Exhibit A, which will be made public. By submitting the "Ownership Worksheet" file, applicants help ensure expeditious processing of their applications by the Commission.

Finally, the application software contains a file for waiver requests. Requests for waivers that are made within the body of any of the Exhibits A through D should be repeated in the "Waiver" screen. By including waiver requests in the "Waiver" screen, applicants will help ensure that the requests are properly considered. For Further Information, contact: Jamie Hedlund—Auctions Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28117 Filed 11–14–95; 8:45 am]

BILLING CODE 6712–01–M

[FCC 95–455]

Rate Rules for Cable Services

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission is seeking comment on its proposal to waive, on a temporary and trial basis, certain rules governing the rates charged for cable services in Dover Township, New Jersey, in light of the initiation there of the first permanent commercial video dialtone system.

DATES: Interested parties may file comments on or before December 13, 1995, and reply comments on or before December 28, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C., 20554.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order Requesting Comments adopted November 2, 1995 and released November 6, 1995. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Cable Reference Center (room 333), 2033 M Street, N.W., Washington, D.C., 20554.

Synopsis of the Order Requesting Comments

I. Introduction

Under the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), the Commission is charged with identifying criteria for determining whether rates for cable programming service tiers ("CPSTs") are unreasonable with respect to cable operators that are subject to regulation. In carrying out this mandate, the Commission has adopted a rate setting approach for CPSTs that utilizes a competitive differential, benchmarks, and cost-of-service factors. By this Order, we seek to develop a record that would permit us to decide whether to waive, on a temporary and trial basis, certain rules governing the rates charged for CPSTs by cable operators serving subscribers in Dover Township, Ocean County, New Jersey, in light of the initiation there of the first permanent commercial video dialtone ("VDT") system.

We tentatively conclude that the provision of video programming by multiple independent programmers over a permanent VDT system within the franchise areas of these cable operators, along with certain other conditions described below, will ensure that the rates the operators charge for cable programming services will not be unreasonable. If we are correct as to the substantial impact that the VDT programmers will have, then we believe that congressional intent would be furthered by a properly conditioned waiver of our rules on the initiation of commercial operation of the VDT system, to the extent those rules require that rates for CPSTs be set in accordance with our benchmark or cost-of-service methodologies. Such an approach holds the promise of reducing the administrative burdens of rate regulation and providing the cable operators greater flexibility in responding to competition and developing their systems through programming and technological innovation, while ensuring that the rates charged to subscribers for CPSTs are not unreasonable. Providing the cable operators such flexibility will also promote competition with unaffiliated

VDT programmers, who will face no regulatory restrictions in the packaging and pricing of their video offerings. We adopt this Order to solicit public comment on whether we should adopt such a waiver, and if we decide to do so, the appropriate scope, duration, and conditions, of such a waiver.

II. The Development of Video Dialtone

On December 15, 1992, the Bell Atlantic Telephone Companies ("Bell Atlantic") filed a Section 214 application to provide VDT service in Dover Township, New Jersey. The VDT system includes fiber optic transport facilities, using fiber to the curb architecture. Copper and coaxial cable with deliver the signals from the curb to the subscribers' premises. The VDT system is capable of delivering up to 384 channels of video capacity at 6 megabits per second per channel. Bell Atlantic expects to add a VDT capability to its Dover Township telephone network at an average rate of approximately 1,000 homes per month, reaching its planned final buildout of 38,000 homes passed within approximately three years. Bell Atlantic has predicted a penetration rate of 35% following the completion of its buildout. Our records indicate that at least two cable operators, Clear TV Cable and Cablevision of Monmouth, offer cable service within Dover Township. These operators soon will find themselves in a unique competitive environment, given that the Bell Atlantic VDT system in Dover Township will be the first such system to be operated on a non-trial basis.

III. Regulation of Rates for Cable Programming Services

The question of whether to waive our CPST rate rules, on the initiation of permanent VDT service in Dover Township, must be viewed against the backdrop of our existing rules and the statute from which they emanate. The 1992 Cable Act was passed in large part to address Congress's finding that cable operators enjoyed "undue market power . . . as compared to that of consumers and video programmers." (1992 Cable Act, § 2(a)(2).) To protect consumers against the exercise of this market power, the 1992 Cable Act provides for regulation of the rates charged for certain programming and equipment by cable systems that are not subject to "effective competition." (47 U.S.C. § 543(a)(2).) The 1992 Cable Act authorizes local franchising authorities to regulate rates for basic program service and equipment according to criteria established by the Commission to ensure that such rates are "reasonable." (47 U.S.C. § 543(a)(2)(A) & (b)(1).) The Commission is directed to establish criteria to ensure that CPST rates are not "unreasonable." (47 U.S.C. § 543(a)(2)(B) & (c)(1)(A).)

The language and structure of the 1992 Cable Act, and sound policy considerations, suggest that we continually monitor the impact and appropriateness of our rules as the market for multichannel video programming evolves, and that in crafting and applying our rules we keep pace with and encourage the development of competition. Congress expressly declared its desire for competition as opposed to regulation, when feasible. Of course, we must remain cognizant of our paramount duty to ensure that CPST rates are not unreasonable. We believe that the initiation of services by VDT programmers whose offerings and rates will not be subject to regulation, when considered in conjunction with other factors, may sufficiently restrain the CPST rates of the Dover Township cable operators such that they can be presumed not unreasonable. We believe such a conclusion is in accord with Congress' express policy under the 1992 Cable Act to "rely on the marketplace, to the maximum extent feasible," to promote "the availability to the public of a diversity of views and information through cable television and other video distribution media."

The statutory definition of effective competition remains the dividing line between systems that are subject to rate regulation and those that are not. However, nothing in the 1992 Cable Act prohibits the Commission from adopting different regulatory rules for different categories of operators or from waiving its rules for certain operators or categories of operators. For the reasons set forth below, we tentatively conclude that the launch of VDT service in Dover Township is potentially so significant and unique as to justify, on a two-year trial basis, a separate regulatory treatment for the cable operators providing service there. Accordingly, we tentatively conclude that for the cable systems operating within Dover Township, a two-year experimental waiver of our CPST rate rules, subject to certain conditions to ensure that rates remain not unreasonable, is in the public interest.

IV. The Significance of Video Dialtone and Other MVPDs

For a number of reasons, we believe that the availability of VDT service in Dover Township may have a profound effect on competition there. These reasons are grounded in what we believe to be well established economic principles relating to competition. In particular, we are guided by an accepted competitive analysis that seeks first to define the relevant product market and next to examine market power within that market.

A. The Relevant Market

We tentatively conclude that the offerings to be delivered over the Dover VDT system will fall within the same product market as the cable operators' CPSTs and therefore constitute a potentially competitive alternative. We understand that seven programmers have reserved space on Bell Atlantic's system. End user subscribers will be able to select offerings from these programmers, individually or in combination. One of the VDT programmers, Rainbow Holdings, a CableVision affiliate, will offer 192 channels. Another programmer, FutureVision, has reserved 96 channels. In contrast to other alternative MVPDs currently providing service in the Dover Township area, both programmers appear capable of providing a full range of both broadcast and cablecast services comparable to those offered by the two local incumbent cable operators. By way of comparison, according to the Warren Publishing 1995 Cable TV Factbook one of the cable operators, Clear TV Cable, currently offers 18 basic service tier channels, 17 CPST channels, and seven premium channels, and the other, CableVision of Monmouth, currently offers 21 basic service tier channels, 15 CPST channels, and six premium channels. In addition to being in a position to compete with respect to these program offerings, the VDT system will be equipped to provide interactive services and other features not currently available from existing providers. Thus, there is evidence to suggest that the VDT programmers will be potent competitors to cable and will greatly enhance consumer choice, thus restraining the cable operators' ability to raise CPST rates. To confirm our tentative conclusions, we solicit information concerning the specific programming that will be available to VDT subscribers in Dover Township and appropriate comparisons of the specific VDT offerings to those of the cable operators.

By statute, the market for comparable programming also includes multichannel multipoint distribution service ("MMDS"), direct broadcast satellite ("DBS"), and television receive-only ("TVRO") satellite programming service. 47 U.S.C. § 552(12). Similarly, in the Competition Report we identified a number of multichannel video

programming distributors ("MVPDs"), in addition to VDT providers, that offer services that seemed "reasonably interchangeable" with a typical cable operator's services, including DBS, TVRO, MMDS, and satellite master antenna television ("SMATV") systems. Competition Report, 59 Fed. Reg. 64,657, 9 FCC Rcd at 7642, 7473–7492 (1994). The competitive significance of these providers will depend upon the pricing and structuring of their video offerings and their market share. Thus, in our discussion of market power below, we invite comparisons between the offerings of these providers and the composition and pricing of the CPSTs of the cable operators located in Dover Township.

Although a typical analysis of competition requires identification of a relevant geographic market, our proposed waiver effectively defines the geographic market, for purposes of this proceeding, as being the franchise areas of the two cable operators. However, the degree of proposed overlap between the VDT service area and each of the cable franchise areas is important. If, for example, Bell Atlantic intends its VDT system to pass only 2% of the homes located in a franchise area, the cable operator presumably will offer less of a competitive response than if Bell Atlantic tends to pass 75% of the homes. Thus, our inclination to relax CPST rate regulation may depend upon the degree of overlap between the VDT and cable systems. Interested parties should comment on the appropriate extent of the anticipated overlap.

B. Market Power

Market power is generally defined as the ability to general excess profits by raising and maintaining prices or by adversely affecting product quality for a significant period of time. *See United States* v. *E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391–92 (1956). The marker power of a cable operator can be diluted by two categories of entities: those currently offering comparable programming and those that could commence offering comparable programming within a relatively short period of time. *See, e.g., United States* v. *Marine Bancorporation, Inc.*, 418 U.S. 602, 623–25 (1974). Once such entities are identified, further analysis is necessary to ensure that they indeed impose competitive pressure on cable operator.

With respect to market power, any waiver would be premised on the availability in Dover Township of products that cable subscribers view as sufficiently reasonable substitutes for cable programming service. A standard method of determining whether a firm can exercise market power with respect to a particular product is to answer the question: if this firm raised the price of the product, to what degree would consumers continue to purchase that product or turn to the products of other firms, and what are these other products and other firms?

Our analysis of this issue is significantly affected by what we understand to be the anticipated offerings of the VDT system. As described above, it appears that the VDT programmers will be able to provide programming fully comparable to that currently provided by the Dover Township cable operators. Moreover, the cable operators can expect aggressive competition from the VDT programmers with respect to pricing strategies, according to press reports. We tentatively conclude that the combination of a fully comparable product and aggressive pricing, if and when made available to consumers via VDT, may produce an effective restraint on cable rates, particularly given that the VDT programmers will be able to implement packaging and pricing strategies free of regulatory restraints. We seek comment as to the factual and analytical validity of this tentative conclusion. We seek similar data and comparison with respect to all other MVPDs offering programming comparable to that of the cable operators in Dover Township.

We presume that any competitive pressure felt by the Dover Township cable operators as a result of the initiations of VDT service will increase over time as Bell Atlantic continues construction of its system and as consumers become more familiar with the service and the offerings of the VDT programmers. Although the penetration rate of VDT programmers will not reach a mature level immediately, in the present instance there are several reasons to suggest that the commencement of VDT service may restrain prices and prompt other competitive responses from the cable operators such that application of our CPST rate rules will be unnecessary.

Initially, we note that the remaining barriers to the initiation of service by Bell Atlantic are relatively minor. Bell Atlantic has received the required Section 214 authorization from the Commission. In addition, Bell Atlantic's VDT tariff has become effective, subject to investigation. Bell Atlantic now has substantial control over the rollout of its new service and has every incentive to expedite that process. Once VDT service is initiated, Bell Atlantic faces a similar lack of barriers with respect to the continued buildout of the system. Thus, the availability of service may represent a logical point at which to make any waiver effective. We seek comment on whether Bell Atlantic's entry plan alone is sufficient to exert a present restraint on cable prices and cable operator conduct in Dover Township.

We further note that a current cable subscriber apparently will be able to switch from his or her current video provider to one or more of the VDT programmers without sacrificing broadcast channels or channel capacity. This distinguishes VDT from DBS service, which generally does not include local broadcast stations, and from MMDS, which has a lower overall channel capacity. Moreover, the DBS and MMDS require the installation of receiving antennae and other equipment. Competition from VDT may pose a greater competitive threat to cable operators than competition from other providers that have more limited channel line-ups or require significant initial expenditures by the consumer. We do not mean to understate, and we welcome comments concerning, the significance of DBS and other MVPDs that may be offering service in Dover Township. We believe, however, that the addition of permanent VDT service to the competitive mix is independently significant. We seek comment on the validity of these comparisons, including data concerning the initial installation costs of VDT for its end users.

Dover Township is a laboratory in which these theories can be tested. In view of the novelty and potential consequences of this situation, we are considering waiving our rules that require these cable operators to establish and maintain rates for their CPSTs in accordance with our benchmark or cost-of-service methodologies, as adjusted for changes in inflation, external costs, and for channel additions and deletions. (*See* 47 C.F.R. § 76.922.) We believe that such a waiver may well be justified in light of the rate restraining impact that the VDT plus other competitive offerings may have on the cable operators' CPSTs. Additionally, such a trial waiver may yield information that will prove useful in the future as we continue to adapt our regulations to the ever-changing MVPD marketplace.

To the extent that the particular circumstances of the Dover Township MVPD marketplace will ensure that the cable operators refrain from charging unreasonable rates for their CPSTs, we tentatively conclude that a waiver would be consistent with congressional policy favoring competition over regulation. We invite comment on this tentative conclusion.

V. Waiver Analysis

The Commission may waive rules only for "good cause shown." (47 C.F.R. § 1.3.) Waiver orders must show that special circumstances warrant a deviation from the general rule and that the deviation will serve the public interest. *See, e.g., WAIT Radio* v. *FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co.* v. *FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In this Order, we indicate why we believe there may be good cause to waive our CPST rate rules for the Dover Township cable operators upon the initiation of VDT service, and we seek comment thereon. In particular, we believe that the availability to cable subscribers of video services offered by multiple VDT programmers may exert competitive pressure on CPST rates, and thus may constitute special circumstances justifying waiver of our CPST benchmark rules. Such waiver may serve the public interest by encouraging operator innovation and programming diversity, establishing some measure of regulatory parity between the cable operators and the VDT programmers, and reducing the regulatory burdens faced by the cable operators, while still satisfying the underlying goal of ensuring that CPST rates are not unreasonable.

We note that in establishing our rate regulation rules, we considered the six statutory factors identified by Congress as potentially relevant. (*See* 47 U.S.C. § 543(c)(1).) In the context of waiving those rules, we believe it is appropriate to consider as many of those factors as are relevant. For example, the 1992 Cable Act directs us to consider "the rates for cable systems, if any, that are subject to effective competition . . . ." Consideration of this factor is consistent with Congress' direction that the marketplace be the sole arbiter of the reasonableness of an operator's rates once the operator is subject to effective competition. Equally consistent with the reasoning underlying this statutory factor is the notion that as a cable operator nears the effective competition standard, the market should play more of a role, and our regulations less of a role, in setting rates. We seek comment on our tentative conclusion that consideration of this factor weighs in favor of waiving CPST rate rules upon the initiation of VDT service.

Other relevant factors set forth in the 1992 Cable Act include the capital and operating costs of the cable system and the system's advertising revenues. The presence of competition from programmers on the VDT platform suggests that a cable operator's costs may increase due to, for example, the need to finance marketing efforts to compete with the VDT programmers' offerings. Meanwhile, VDT programmers may draw advertising revenues away from the cable operators. Therefore, under certain circumstances, both of these statutory factors might support a waiver of our CPST rules that generally are applicable to operators that do not face such increases in operating costs on the one hand and decreases in advertising revenues on the other. While the result of these conditions might be higher CPST rates, we cannot conclude automatically that such higher rates are unreasonable, particularly if they are the product of a competitive environment.

As the D.C. Circuit recently held, it may be appropriate to consider a particular factor, but ultimately attach little weight to it in devising a regulatory scheme. *See Time Warner Entertainment Co.* v. *FCC*, 56 F.3d 151, 175 (D.C. Cir. 1995). Commenters should respond to this consideration as well. We note in particular that all of the statutory factors specifically identified by Congress in the 1992 Cable Act relate either to the rates, costs, and revenues of the regulated cable operator itself or to the rates of other cable operators that can be used for purposes of comparison. None of the statutory factors calls for specific consideration of the presence of a competing MVPD in the cable operator's franchise area. This suggests that Congress may have intended the specific statutory factors to be of particular relevance when no such competition existed, as was more likely to be the case when Congress enacted the legislation, but that as the marketplace changed, the Commission was given the discretion to place more reliance on the "other factors," not specifically identified in the statute, that the Commission is permitted to identify and take into account in ensuring that CPST rates are not unreasonable. (*See* 47 U.S.C. 543(c)(2).) We already have identified one such factor—the provision of video services over a VDT platform by programmers who will face no regulatory restraints on their ability to design and price their programming packages. We request comment on the potential relevance of the statutory factors to our waiver analysis and our tentative views that the statutory factors may support a waiver.

VI. Scope and Conditions of Waiver

Because our proposed waiver assumes the absence of effective competition as defined by the 1992 Cable Act, we are statutorily obligated to ensure that the cable operators' CPST rates will not be unreasonable. (47 U.S.C. § 543(c)(1); no waiver would be required if effective competition existed, because rates are not subject to regulation in such circumstances. 47 U.S.C. § 543(a)(2).) Accordingly, complaints against unreasonable rates may continue to be filed under 47 U.S.C. § 543(c). But rather than being adjudicated against the benchmark, any complaints would be resolved on a case-by-case basis, subject to a presumption of the reasonableness of the rates.

We stress that we intend the proposed waiver to apply only to Section 76.922 to the extent it prescribes rates for CPSTs and Section 76.956 to the extent it places the burden upon the operator to justify a CPST rate that is the subject of a complaint. We do not propose to extend the waiver to include the other rules applicable to regulated cable operators such as, but not limited to, those concerning a uniform rate structure, negative option billing, subscriber notices, and tier buy-throughs, to the extent they apply. While recognizing the possible need to give the Dover Township cable operators some additional flexibility in light of the unique competitive circumstances in which they soon may find themselves, we deem it prudent to move cautiously in experimenting with waivers of our generally applicable rules.

For the same reasons we propose to waive our CPST rate regulations, we believe it may be appropriate to give the relevant local franchising authorities in Dover Township the option of waiving rate regulation rules applicable to BSTs and associated equipment. Ordinarily, if a local franchising authority has been certified to regulate basic rates and seeks to retain that certification, it cannot forbear from regulating in accordance with the Commission's rules. With the advent of VDT, however, we tentatively conclude that the Dover Township franchising authorities should have greater discretion to determine how to regulate basic service. Therefore we seek comment on whether local authorities should have the option of waiving the BST rate rules on the same basis and to the same extent that we propose to waive the CPST rate rules.

Finally, our tentative view is that the waiver will take effect as of the date VDT service is actually available in the relevant franchise areas. Thus, if initially VDT service is available in only one of Dover Township's two franchise areas, the proposed waiver would apply only to the cable operator serving the franchise area in which consumers have access to VDT service. The second

operator would become subject to the waiver upon providing notice to this Commission and its local franchising authority that VDT service has been initiated in its franchise area. We propose to re-examine any waiver of CPST regulation for the Dover Township two years from the date the waiver goes into effect. We are concerned that a shorter period would not give the operators sufficient incentive or flexibility to respond freely to the changes in the competitive landscape. In fact, that landscape will continue to evolve throughout the entirety of that two year period, according to Bell Atlantic's projections with respect to passings and penetration. In two years, we will revisit the issue and take steps consistent with the market environment that exists and is developing at that time.

VII. Conclusion

In analyzing these issues, the Commission is guided by the goal of reducing unnecessary burdens on cable operators and providing the cable operators incentives to innovate and promote program diversity in response to competition. At the same time, we must confident that a waiver will not lead to unreasonable rates for the CPSTs offered by the Dover Township operators. We will look to the record in this proceeding to provide us the necessary assurance that the proposed approach will satisfy this statutory mandate. We consequently urge commenters to support their positions with empirical and other data, and to frame their arguments in terms of the economic concepts outlined above or other relevant economic analysis. As noted, comments also should take into account the factors that the Commission is required by statute to consider in establishing criteria for determining when CPS rates are unreasonable and other factors that commenters believe to be relevant.

VIII. Procedural Provisions

Pursuant to its discretion under 47 C.F.R. § 1.1200, the Commission is treating this as a non-restricted proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally*, 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206.

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before December 13, 1995, and reply comments on or before December 28, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28217 Filed 11–14–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bourbon Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than November 27, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Bourbon Bancshares, Inc., Paris, Kentucky; to acquire The Jessamine First Federal Savings and Loan Company of Nicholasville, Nicholasville, Kentucky, and thereby engage in operating a savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y; and acting as an agent or broker for insurance directly related to an extension of credit by such savings bank, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-28140 Filed 11-14-95; 8:45 am]

BILLING CODE 6210-01-F

Eastern Bank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Eastern Bank Corporation, Lynn, Massachusetts; to retain 100 percent of the voting shares of Eastern Bank and Trust Company, Salem, Massachusetts. Eastern Bank Corporation (EBC) currently owns 100 percent of Eastern Bank and Trust Company (Trust). Trust has a commercial bank charter, but is currently operating as a trust company pursuant to section 4(c)(8) and 12 CFR 225.25(b)(3). EBC is seeking approval to alter Trust's activities such that Trust meet the definition of a "bank" for purposes of the Bank Holding Company Act of 1956, as amended.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Empire Bancshares Incorporated, Sioux Falls, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Founders Trust National Bank, Sioux Falls, South Dakota, a *de novo* bank.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community First Bancorp, Inc., Reynoldsville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First Nation Bank of Reynoldsville, Reynoldsvill Pennsylvania.

Board of Gov rnors of the Federal Reserve System, Novem er 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-28141 Filed 11-14-95; 8:45 am]

BILLING CODE 6210-01-F

Huntington Bancshares Incorporated; Request for an Exemption from Tying Provisions

Huntington Bancshares Incorporated, Columbus, Ohio (Huntington), has requested, pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) ("section 106"), that the Board grant an exemption to permit Huntington or any of its bank or nonbank subsidiaries to vary the consideration charged for a floorplan loan to an automobile dealership based on the percentage of retail paper financing originated by the dealers[1] on behalf of Huntington.[1] According to Huntington, a "floorplan loan" is a loan or line of credit provided to an automobile dealership to finance the acquisition of the dealer's inventory for sale to the general public, and "retail paper financing" means financing provided to consumers seeking to purchase an automobile from the dealer's inventory.[2] Huntington indicates that floorplan loans and retail paper financing will remain separately available to customers at market prices.

Section 106 generally prohibits a bank from varying the consideration charged for any product or service, including an extension of credit, on the condition or requirement that: (1) a customer obtain some additional credit, property, or service from such bank, other than a loan, discount, deposit, or trust service (so called, "traditional bank products") (*See* 12 U.S.C. 1972(1)(A));[3] or (2) a customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service. (*See* 12 U.S.C. 1972(1)(C)). The Board may, by regulation or order, grant exceptions that are not contrary to the purposes of the section.

Huntington argues that the proposed tying arrangement should be permissible under the statutory exceptions discussed above as well as exceptions contained in the Board's anti-tying rules. 12 CFR 225.7. However, Huntington is seeking an exemption from section 106 to clarify whether retail paper financing may be characterized as either a traditional bank product so that the proposal is consistent with the exception contained in 12 U.S.C. 1972(1)(A), or as a practice related to and usually provided in connection with a floorplan loan so that the proposal is consistent with the exception contained in 12 U.S.C. 1972(1)(C).

Even if the proposal does not fall within the literal terms of exceptions to the prohibitions contained in section 106, Huntington believes that the proposed package arrangement is not anticompetitive and is generally offered by Huntington's nonbank competitors who are not subject to section 106. Huntington also argues that the market for floorplan loans and retail financing services is national in scope and highly competitive, and that Huntington does not possesses sufficient market power in any relevant market to impair competition in that market. Furthermore, Huntington believes that the proposal is consistent with Congressional intent that section 106 not interfere with a customer's ability to negotiate the price of multiple banking services with a bank on the basis of the customer's entire relationship with the bank.[4] Finally, Huntington asserts that the proposal will promote competition because automobile dealerships may obtain floorplan lending and retail paper financing from other financial institutions, and there is no requirement that consumers finance their vehicle purchase through this arrangement.

Notice of Huntington's request is published in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106. The request may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 12, 1995.

Board of Governors of the Federal Reserve System, November 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-28142 Filed 11-14-95; 8:45 am]

BILLING CODE 6210-01-F

Robert H. Stewart, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

[1] Huntington has requested that any exception granted by the Board be broad enough to cover dealers in goods other than automobile dealerships who may finance their inventory through floorplan lending.

[2] For purposes of this proposal, retail paper financing may consist of either: (1) a retail installment contract or similar instrument between the purchaser and the dealer which is then assigned to Huntington; or (2) a direct obligation between the purchaser and Huntington originated on Huntington's behalf by the dealer.

[3] Section 106 also prohibits a bank from varying the consideration charged for any product or service on the condition or requirement that a customer "obtain" some additional credit, property or service from an "affiliate" of such bank. *See* 12 U.S.C. 1972(1)(B).

[4] S. Rep. No. 1084, 91st. Cong., 2d Sess., 16-17 (1970).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Robert H. Stewart, Jr., Terrence S. Stewart, Gary A. Stewart, and Karylee Gilbert, all of York, Pennsylvania; jointly to retain a total of 15 percent of the voting shares of Drovers Bancshares Corporation, York, Pennsylvania, and thereby indirectly acquire The Drovers and Mechanics Bank, York, Pennsylvania.

Board of Governors of the Federal Reserve System, November 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-28144 Filed 11-14-95; 8:45 am]

BILLING CODE 6210-01-F

Societe Generale, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Societe Generale, Paris, France; to engage *de novo* through its subsidiary, FIMAT Facilities Management, Chicago, Illinois, in providing data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. This activity will be conducted worldwide.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Guaranty Bankshares, Ltd., Cedar Rapids, Iowa; to engage *de novo* through its subsidiary, Guaranty Bankshares, Ltd., Cedar Rapids, Iowa, through a wholly-owned subsidiary to be named, in providing full pay-out leasing of personal and real property, pursuant to § 225.25(b)(5) of the Board's Regulation Y; and to make and service installment loans, finance personal and small business loans, buy dealer paper, provide a funding source for second mortgages and other needs, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Geneva State Company, Geneva, Nebraska; to engage *de novo* through its subsidiary, Bicentennial Apartments, Inc., Geneva, Nebraska, in the construction to low-income housing, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-28143 Filed 11-14-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102395 AND 110395

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
CS Holding, Signet Group plc, Signet Group plc	96-2801	10/23/95
SunGuard Data Systems Inc., William W. Featheringill, MACESS Corporation	96-0018	10/23/95
Fleming, ABCO Holding, Inc., ABCO Holding, Inc	96-0046	10/23/95
Hicks, Muse, Tate & Furst Equity Fund II, L.P., Arnold E. Ditri, Hedstrom Holdings, Inc	96-0048	10/23/95
Gilbert Associates, Inc., XEL Corporation, XEL Corporation	96-0050	10/23/95
ConAgra, Inc., Canada Malting Co. Limited (a Canadian company), Canada Malting Co. Limited	96-0053	10/23/95
TPG Partners, L.P., Alfred I. Dupont Testamentary Trust, St. Joe Communications, Inc	96-0060	10/23/95
Tenneco Inc., Hexacomb Corporation, Hexacomb Corporation	96-0068	10/23/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102395 AND 110395—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Parker & Parsley Petroleum Company, Jack C. Wallace, Jr., Wallace Oil & Gas, Inc	96-0074	10/23/95
Joseph Littlejohn & Levy Fund II, L.P., MWC Holdings, Inc., MWC Holdings, Inc	96-0076	10/23/95
Blue Cross and Blue Shield of Virginia, Mid-South Insurance Company, Mid-South Insurance Company	96-0079	10/23/95
Paul Zecchi, Apache Corporation, Apache Corporation	96-0081	10/23/95
NCI Building Systems, Inc., David B. Curtis, Doors & Building Components, Inc	96-0083	10/23/95
Canadian Occidental Petroleum Ltd., Royal Dutch Petroleum Company, Shell Offshore Inc. and SOI Finance Inc	96-0093	10/23/95
Foodbrands America, Inc., KPR Holdings, Inc., KPR Holdings, L.P	96-0118	10/23/95
Newell Co., Pen Investors Inc. II, Pen Investors Inc. II	95-2237	10/24/95
Promina Health System, Inc., Georgia MedCorp, Inc., Georgia MedCorp, Inc	95-2766	10/24/95
W.R. Berkley Corporation, MECC, Inc., MECC, Inc	96-0006	10/24/95
Engelhard Corporation, Michael C. Thomason, Salem Engelhard	96-0070	10/24/95
Engelhard Corporation, Engelhard Corporation, Salem Engelhard	96-0071	10/24/95
The Interpublic Group of Companies, Inc., The Estate of Mark Goodson, Mark Goodson Productions, L.P	96-0082	10/24/95
The Interpublic Group of Companies, Inc., Hans Ullmark, Anderson & Lembke, Inc	96-0085	10/24/95
The SK Equity Fund, L.P., Hibbett Sporting Goods, Inc	96-0086	10/24/95
Catholic Healthcare West, Sierra Nevada Memorial-Miners Hospitals, Inc., Sierra Nevada Memorial-Miners Hospitals, Inc	96-0087	10/24/95
All American Communications, Inc., The Estate of Mark Goodson, Mark Goodson Productions, L.P	96-0089	10/24/95
Code, Hennessy & Simmons II, L.P., Nestle S.A., Nestle Ice Cream Company	96-0090	10/24/95
Ronald S. Lauder, The Estee Lauder Companies Inc., The Estee Lauder Companies Inc	96-0095	10/24/95
1976 Descendants of Ronald S. Lauder Distribution Trust, The Estee Lauder Companies Inc., The Estee Lauder Companies Inc	96-0096	10/24/95
1976 Descendants of Ronald S. Lauder Accumulation Trust, The Estee Lauder Companies Inc., The Estee Lauder Companies Inc	96-0097	10/24/95
1976 Descendants of Leonard Lauder Distribution Trust, The Estee Lauder Companies Inc., The Estee Lauder Companies Inc	96-0098	10/24/95
Gary M. Lauder, The Estee Lauder Companies Inc., The Estee Lauder Companies Inc	96-0099	10/24/95
Leonard A. Lauder, The Estee Lauder Companies Inc., The Estee Lauder Companies Inc	96-0100	10/24/95
William P. Lauder, The Estee Lauder Companies Inc., The Estee Lauder Companies Inc	96-0101	10/24/95
The Estee Lauder Companies, Lauder Family Partners, L.P., Lauder Family Partners, L.P	96-0102	10/24/95
The Williams Companies, Inc., Halliburton Company, NUS Training Corporation	96-0104	10/24/95
Freedom Communications, Inc., Photo Electronics Corporation, Photo Electronics Corp./Photo Electronics Company, L.P	96-0105	10/24/95
The Interpublic Group of Companies, Inc., Steve Trygg, Anderson & Lembke, Inc	96-0114	10/24/95
Heidelberger Zement AG (a German Corporation), Cimenteries C.B.R. S.A. (a Belgian Corporation), Cimenteries C.B.R. S.A	96-0027	10/25/95
Tyler Capital Fund, L.P., WR Acquisition, Inc., WR Acquisition, Inc	96-0088	10/25/95
AlliedSignal Inc., AlliedSignal Inc., AlliedSignal Inc	96-0125	10/25/95
Exxon Corporation, AlliedSignal Inc., AlliedSignal Inc	96-0126	10/25/95
TheraTx, Incorporated, Helian Health Group, Inc., Helian Health Group, Inc	96-0035	10/26/95
Neil M. Golub, Calvin C. Gould, The Wonder Market Companies, Inc	96-0075	10/26/95
Lewis Golub, Calvin C. Gould, The Wonder Market Companies, Inc	96-0077	10/26/95
MCI Communications Corporation, SHL Systemhouse Inc., SHL Systemhouse Inc	96-0080	10/26/95
Pentair, Inc	96-0094	10/26/95
Andrew J. Fleckenstein, Fleck Controls, Inc. Heartland Wireless Communications, Inc., Charterhouse Equity Partners, L.P., CableMaxx, Inc	96-0135	10/26/95
Charterhouse Equity Partners, L.P., Heartland Wireless Communications, Inc., Heartland Wireless Communications, Inc	96-0136	10/26/95
G.E. Investment Private Placement Partners I, General Electric Company, Casablanca Fan Company	95-2541	10/27/95
The Upjohn Company, Pharmaica AB, Pharmaica AB	95-2547	10/27/95
Pharmacia AB, The Upjohn Company, The Upjohn Company	95-2548	10/27/95
Integrated Health Services, Inc., Lillian Conti, as custodian for Joseph Conti, etc., Medserv Corporation	95-0165	10/28/95
The Washington Water Power Company, Ramos-Thibault Corp., Ramos-Thibault Corp. (dba Advanced Manufacturing and De	95-2774	10/28/95
Tele-Communications, Inc., Lawrence Flinn, Jr., United Video Satellite Group, Inc	95-2265	10/30/95
Lawrence Flinn, Jr., Tele-Communications, Inc., Tele-Communications, Inc	95-2266	10/30/95
Institute of the Sisters of Mercy of the Americas, Dominican Sisters of Springfield-in-Illinois, Hospital Corporation	96-0047	10/30/95
Rhodes, Inc., John P. Weberg, Weberg Enterprises, Inc	96-0063	10/30/95
Lawrence P. Cimmarusti, Royal Co., Ltd., A Japanese company, Pentagram Corporation	96-0111	10/30/95
Ralph J. Cimmarusti, Royal Co., Ltd., Pentagram Corporation	96-0112	10/30/95
Mercury Radio Communications, L.P., Alta V Limited Partnership, Panache Broadcasting L.P	96-0115	10/30/95
Michael Bregman, Brothers Gourmet Coffees, Inc., Edglo Enterprises, Inc	96-0117	10/30/95
Kansas City Southern Industries, Inc., Transportacion Maritima Mexicana, S.A. de C.V., Mexrail, Inc	96-0122	10/30/95
Chartwell Re Corporation, Piedmont Management Company Inc., Piedmont Management Company Inc	96-0127	10/30/95
Puerto Rican Cement Company, Inc., Mr. Jorge A. Juncos, Concreto Mixto, Inc	96-0128	10/30/95
Puerto Rican Cement Company, Inc., Ready Mix Concrete, Inc., Ready Mix Concrete, Inc	96-0129	10/30/95
AmVestors Financial Corporation, Frank T. Crohn, Financial Benefit Group, Inc	96-0131	10/30/95
Falcon Holding Group, L.P., Falcon First Communications, L.P., Falcon First, Inc	96-0133	10/30/95
John B. Sanfilippo & Son, Inc., The Proctor & Gamble Company, Fisher Nut Company	96-0138	10/30/95
Playtex Products, Inc., Thomas H. Lee Equity Partners, L.P., Banana Boat Holding Corporation	96-0140	10/30/95
Marcus A. Hutchins, Dresdner Bank Aktiengesellschaft, Fenchurch Capital Management	96-0141	10/30/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102395 AND 110395—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Maruberi Corporation, Triton Group, Ltd., Western Metal Lath	96-0148	10/30/95
New Heritage USA Corporation, BankAmerica Corporation, BA Properties, Inc	96-0149	10/30/95
Richard E. O'Leary, James John McLaren, J&L Industries, Inc	96-0152	10/30/95
Michigan Physicians Mutual Liability Company, Kentucky Medical Association, Kentucky Medical Insurance Company	96-0153	10/30/95
Rhodes, Inc., The Glick Furniture Company, The Glick Furniture Company	96-0156	10/30/95
GATX Corporation, Clay M. Biddinger, Sun Financial Group, Inc	96-0167	10/30/95
CUC International Inc., Advance Ross Corporation, Advance Ross Corporation	96-0170	10/30/95
Charoen Pokphand Group Company Limited, Kopin Corporation, Kopin Corporation	96-0171	10/30/95
Partners HealthCare System, Inc., The North Shore Medical Center, Inc., The North Shore Medical Center, Inc	96-0038	10/31/95
TCI, The Chronicle Publishing Company, The Chronicle Publishing Company	96-0043	10/31/95
Classic Communications, Inc., Time Warner, Inc., Time Warner, Inc	96-0124	10/31/95
Ronald O. Perelman, Creative Nail Design, Inc., Creative Nail Design, Inc	96-0139	10/31/95
Alumax Inc., Tristram C. Colket, Jr., Cressona Aluminum Company	96-0146	10/31/95
The Gillette Company, Thomas H. Lee Equity Partners, L.P., Thermoscan, Inc	96-0158	10/31/95
Fuqua Enterprises, Inc., Mr. Gene J. Minotto, Basic American Medical Products, Inc	96-0174	10/31/95
San Faustin N.V., Mannesmann AG, Italimpianti of America, Inc	96-0176	10/31/95
Diebold, Incorporated, Griffin Technology Incorporated, Griffin Technology Incorporated	96-0200	10/31/95
Chesapeake Corporation, Paper Mill Investment Pty., Ltd., Chicago Tissue Company, L.P	95-2621	11/01/95
Columbia/HCA Healthcare Corporation, Memorial Medical Center, Inc., CareOne Home Health Services	95-2704	11/01/95
General Electric Company, USF&G Corporation, USF&G Corporation	96-0091	11/01/95
Tele-Communications, Inc., Time Warner Inc., Time Warner Inc	96-0120	11/01/95
H.F. Lenfest, Time Warner Inc., Tri-County Cable Television Company	96-0121	11/01/95
Healthdyne, Inc., Tokos Medical Corporation, Tokos Medical Corporation	96-0021	11/02/95
Tokos Medical Corporation, Healthdyne, Inc., Healthdyne, Inc	96-0022	11/02/95
Galaxy Telecom Investments, L.L.C., Douglas Cable Communications, L.P., Douglas Cable Communications, L.P	96-0164	11/02/95
Dr. Manfred George Krukemeyer, Brim, Inc., Brim, Inc	96-0042	11/03/95
Varity Corporation, Hayes Wheels International, Inc., Hayes Wheels International, Inc	96-0069	11/03/95
GS Capital Partners II, L.P., SW Holding Corp., SW Holding Corp	96-0142	11/03/95
Kelso Investment Associates V, L.P., SW Holding Corp., SW Holding Corp	96-0143	11/03/95
Kelso Investment Associates V, L.P., I.C.H. Corporation, debtor in possession, SWL Financial Services, Inc., Southwestern Life Insurance	96-0147	11/03/95
The Williams Companies, Inc., IntelCom Group Inc., Wireless Acquisition Corporation	96-0184	11/03/95
Titan Resources L.P., Anadarko Petroleum Corporation, Anadarko Petroleum Corporation	96-0186	11/03/95
CeCorr, Inc., Cleaners Hanger Company, Cleaners Hanger Company	96-0188	11/03/95
Health Systems International, Inc., Health Data Sciences Corporation, Health Data Sciences Corporation	96-0193	11/03/95
National Power PLC, Enron Corporation, Milford Power Limited Partnership	96-0194	11/03/95
Mark Hatten, MIDCOM Communications, Inc., MIDCOM Communications, Inc	96-0196	11/03/95
MIDCOM Communications, Inc., Mark Hatten, Connecticut Telephone and Communications Systems, Inc	96-0197	11/03/95
National Power PLC, Philipp Holzmann A.G., Milford Power LP	96-0202	11/03/95
Jerry Herbst, Coast Resorts, Inc. (Joint Venture), Coast Resorts, Inc. (Joint Venture)	96-0210	11/03/95
Michael J. Gaughan, Coast Resorts, Inc. (Joint Venture), Coast Resorts, Inc. (Joint Venture)	96-0211	11/03/95
Norwest Corporation, Cawsl Corp., Beacon Business Credit Corp	96-0216	11/03/95
Matsushita Electric Industrial Co., Ltd., The 3DO Company, a Delaware Corporation, the 3DO Company, a Delaware Corporation	96-0219	11/03/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC, 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-28122 Filed 11-14-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Assessment of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through the Center for Health Care Technology (CHCT) (formerly Office of Health Technology Assessment), announces that it is initiating an assessment of the safety and effectiveness of lung volume reduction surgery.

The AHCPR is requesting information on the risks, benefits, and costs associated with the use of this mode of treatment and the specific indications for which this lung surgery is appropriate. The AHCPR also requests information on patient selection criteria and institutional or team criteria necessary to establish acceptable standards for appropriate benefits and risks.

The assessment consists of a synthesis of information found in published literature and obtained from appropriate organizations in the private sector, Public Health Service (PHS) agencies and others in the Federal Government. AHCPR assessments are conducted in accordance with sections 904(b) and (d) of the PHS Act (42 U.S.C. 299a-2(b) and (d)). This assessment is based on the most current knowledge concerning the safety, clinical effectiveness, and appropriate uses of a technology. A recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought by this notice is a review and evaluation of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit from lung volume reduction surgery, as well as information on the clinical acceptability, effectiveness, and the extent of use of this technology, is also being sought.

The AHCPR is interested in receiving information which would help in the evaluation or review of the technology as described above. To enable the interested scientific community to evaluate the information included in the assessment, AHCPR will discuss in the assessment only those data and analyses for which a source(s) can be cited. Respondents are therefore encouraged to include with their submissions a written consent permitting AHCPR to cite the sources of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a-1(c), no information received will be published or disclosed which could identify an individual or entity described in the information, or could identify an entity or individual supplying the information.

Any person or group wishing to provide AHCPR with information relevant to this assessment should do so in writing no later than February 13, 1996 to: Thomas V. Holohan, M.D., FACP, Acting Director, Center for Health Care Technology, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Suite 309, Rockville, MD 20852, Phone: (301) 594-4023.

Dated: November 6, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95-28214 Filed 11-14-95; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Statistics for Minority and Other Special Populations: Meeting

Pursuant to Pub. L. 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: NCVHS Subcommittee on Health Statistics for Minority and Other Special Populations.

Time and Date: 9 a.m.-4:30 p.m., December 7, 1995.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will meet with Audrey Burwell, Grants Coordinator for the NCHS Minority Health Statistics Grants Program, to plan a joint conference designed, in part, to evaluate past performance of the Grants Program. In addition, the Subcommittee will gather information about race and ethnicity data collected in the context of Medicaid waivers granted to various states.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, telephone 301/436-7050.

Dated: November 8, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95-28162 Filed 11-14-95; 8:45 am]

BILLING CODE 4163-18-M

Disease, Disability, Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health—Program Announcement 565: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Grants for Education Programs in Occupational Safety and Health—Program Announcement 565.

Times and Dates: 8 p.m.-10 p.m., January 7, 1996; 8 a.m.-6 p.m., January 8, 1996; 8 a.m.-5 p.m., January 9, 1996.

Place: Commonwealth Hilton Hotel, I-75 and Turfway Road, Florence, Kentucky 45275.

Stotus: Closed.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 123.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92-463.

Contact Person For More Information: Bernadine Kuchinski, Ph.D., Occupational Health Consultant, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, CDC, Mailstop D40, Atlanta, Georgia 30333, telephone 404/639-3342.

Dated: November 6, 1995.

Carolyn J. Russell,

Director, Monagement Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95-28163 Filed 11-14-95; 8:45 am]

BILLING CODE 4163-18-M

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces fees for vessel sanitation inspections effective January 1, 1996.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas E. O'Toole, Deputy Chief, Special Programs Group, National Center for Environmental Health, CDC, 4770 Buford Highway, NE., Mailstop F-29, Atlanta, Georgia 30341-3724, telephone (404) 488-7070.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships currently inspected under the CDC Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has revised the fee schedule annually. This notice announces fees effective January 1, 1996.

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is then multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). The revised cost/factor is presented in Appendix A.

Fees

The fee schedule is presented in Appendix A and will be effective

January 1, 1996, through December 31, 1996. However, should there be a substantial increase in the cost of air transportation, it may be necessary to adjust the fees prior to December 31, 1996, since travel constitutes a sizable portion of the costs of this program. If such an adjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days prior to the effective date.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Dated: November 8, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Appendix A

SIZE/COST FACTOR

Vessel size	GRT [1]	Average cost X
Extra small ..	(<3,001)	0.25
Small	(3,001–15,000)	0.5
Medium	(15,001–30,000)	1.0
Large	(30,001–60,000)	1.5
Extra large ..	(≤60,000)	2.0

[1] GRT-Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

FEE SCHEDULE JANUARY 1, 1996–DECEMBER 31, 1996

Vessel size	GRT [1]	Fee
Extra small	(<3,001)	$1,024
Small	(3,001–15,000)	2,048
Medium	(15,001–30,000)	4,095
Large	(30,001–60,000)	6,143
Extra large	(≤60,000)	8,191
Inspections and reinspections involve the same procedure, require the same amount of time and will, therefore, be charged at the same rate.		

[1] GRT-Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

[FR Doc. 95–28164 Filed 11–14–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95F–0365]

Sasol Alpha Olefins; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sasol Alpha Olefins has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/pentene-1 copolymers containing not less than 90 percent of polymer units derived from ethylene as components of articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by December 15, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–418–3080.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4482) has been filed by Sasol Alpha Olefins, P.O. Box 5486, Johannesburg 2000, Republic of South Africa. The petition proposes to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of ethylene/pentene-1 copolymers containing not less than 90 percent of polymer units derived from ethylene as components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 15, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 19, 1995.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–28215 Filed 11–14–95; 8:45 am]

BILLING CODE 4160–01–F

Regulatory Policy Issues in the Development and Manufacture of Biopharmaceuticals and Other Biotechnology Derived Products; Notice of Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Office of the Northeast and Mid-Atlantic Regions, Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, and Office of External Affairs) is announcing two free public workshops to assist small companies that are developing and producing biopharmaceutical and biologic therapeutic products for clinical trials and product marketing approval. The workshops will address regulatory policy issues, licensing requirements, cooperative manufacturing arrangements, multiproduct facilities, clinical trial design, and manufacturing requirements for clinical material. These workshops are a continuance of the grassroots partnering approach with front line regulators and the people affected by the work of this agency.

DATES: The public workshops are scheduled as follows:

1. Tuesday, November 28, 1995, 8 a.m. to 5 p.m., Baltimore, MD.

2. Thursday, November 30, 1995, 8:30 a.m. to 5 p.m., Woburn, MA.

ADDRESSES: The public workshops will be held at the following locations:

1. Baltimore Marriott Inner Harbor, 110 South Eutaw St., Baltimore, MD.

2. Crown Plaza Boston/Woburn, 2 Forbes Rd., Woburn, MA.

FOR FURTHER INFORMATION CONTACT:

Regarding registration for the Baltimore public workshop: Jo Ann Maquire, Regional Training Specialist, Mid-Atlantic Region, Food and Drug Administration, 900 U.S. Customhouse, 2d & Chestnut Sts., Philadelphia, PA 19106, 215–597–4390, ext. 4004, or FAX 215–597–5798.

Regarding registration for the Woburn public workshop: Ellen Madigan, Blood Bank Monitor, Northeast Region, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617–279–1675, ext. 157 or FAX 617–279–1742.

Those persons interested in attending a workshop should register by FAXing their name(s), firm name/affiliation, address, telephone and FAX numbers, and any specific questions they want addressed at the workshop to the information contact person listed above for each workshop. There is no registration fee for these workshops, but advance registration is required. Interested parties are encouraged to register early because space is limited.

SUPPLEMENTARY INFORMATION: The purpose of these workshops is to further assist small companies that are developing and producing biopharmaceutical and biologic therapeutic products in better understanding: Current regulatory policy; licensing requirements for products and establishments and cooperative manufacturing arrangements; multiproduct facilities design and operation; clinical trial design and monitoring; points to consider during processing, cell culture, fermentation, harvest, recovery, purification, and ascites production; current good manufacturing practice requirements in the production of clinical material; and recordkeeping, processing changes, and environmental monitoring.

Dated: November 8, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–28148 Filed 11–9–95; 9:54 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Income, and Eligibility Verification System (IEVS) Information Collection Requirements in 42 CFR 435.940–435.965; *Form No.:* HCFA–R–74; *Use:* Section 1137 of the Social Security Act requires Medicaid State agencies and other federally-funded welfare agencies to request income and resource data from certain federal agencies, State wage information collection agencies, and State unemployment compensation agencies through an IEVS. The purpose of the IEVS is to ensure that only eligible individuals receive benefits. Our regulations implementing these requirements are found at 42 CFR 435.940–435.965; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours Requested:* 131,390.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collection should be sent within 60 days of this notice direct to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 6, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–28114 Filed 11–14–95; 8:45 am]

BILLING CODE 4120–03–P

[BPO–132–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Second Quarter 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during April, May, and June of 1995 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe. We are also providing the content of revisions to the Medicare Coverage Issues Manual published between April 1 and June 30, 1995. On August 21, 1989, we published the content of the Manual (54 FR 34555) and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:

Margaret Cotton, (410) 786–5255 (For Medicare instruction information).

Pat Prete, (410) 786–3246 (For Medicaid instruction information).

Nancy Ranels, (410) 786–8928 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from April 1 through June 1995.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989 constitute a complete manual as of June 30, 1995. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

Addendum V lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, the parts of the Code of Federal Regulations (CFR) which have changed (if applicable), the agency file code number, the ending date of the comment period (if applicable), and the effective date (if applicable).

IV. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1993. The remaining portions of CD–ROM are updated on a monthly basis.

The CD–ROM disk does not contain Appendix M (Interpretative Guidelines for Hospices). Copies of this appendix may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 2—Program Administration (HCFA-Pub. 14–2) transmittal entitled "Beneficiary Services," use the Superintendent of Documents No. HE 22.8/7–3 and the HCFA transmittal number 132.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Bureau of Program Operations, Issuances Staff, Health Care Financing Administration, S3–01–27, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–5255.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3246.

Questions concerning all other information may be addressed to Nancy Ranels, Bureau of Policy Development, Office of Regulations, Health Care Financing Administration, C5–09–05, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–8928.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: November 3, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the most recent quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual. For a complete listing of the quarterly updates to the Coverage Issues Manual published between March 20, 1990 through November 14, 1994, please refer to the January 3, 1995 update (60 FR 134).

January 3, 1995 (60 FR 132)
April 6, 1995 (60 FR 17538)
July 26, 1995 (60 FR 38344)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS
[April through June 1995]

Trans. No.		Manual/Subject/Publication No.
		Intermediary Manual **Part 2—Audits, Reimbursement** **Program Administration (HCFA-Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–1)**
405	•	Beneficiary Services
		Intermediary Manual **Part 3—Claims Process (HCFA-Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1647	•	On-Site CMRs Review Options
1648	•	Table of Contents Updates (Chapters I through X)
1649	•	Under Arrangements Skilled Nursing Facility Defined Utilization Review Plan Physician Members of UR Committee Reporting Outpatient Surgery and Other Services Ambulatory Surgical Center PRICER Program PRO Reporting on Medical Review
1650	•	Provider Information Notification Rural Health Clinics—General
1651	•	Review of Form HCFA–1450 for Inpatient and Outpatient Bills
1652	•	Pneumococcal Pneumonia Vaccinations Influenza Virus Vaccine
1653	•	Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
1654	•	Outpatient Services Treated as Inpatient Services Requirements for Submission of EMC Data File Specifications, Records Specifications, and Data Element Specifications for EMC Bills National Standard Electronic Remittance Advice Medicare Standard Electronic PC-Print Software
		Carriers Manual—Part 2 **Program Administration (HCFA-Pub. 14–2)** **(Superintendent of Documents No. HE 22.8/7–3)**
132	•	Beneficiary Services
		Carriers Manual—Part 3 **Claims Process (HCFA-Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1513	•	Claims for Outpatient Services Furnished by Physical or Occupational Therapist in Independent Practice
1514	•	Sample Notification Letter
1515	•	List of Covered Surgical Procedures ASC Payment Group Rates
1516	•	Pneumococcal Pneumonia Vaccinations Influenza Virus Vaccine
1517	•	Type of Service
1518	•	Data Sets and Formats for Electronic Media Claims and Electronic Remittance Advice Personal Computer Software Medicare Standard PC-Print-B Software
		Program Memorandum **Intermediaries (HCFA-Pub. 60A)** **(Superintendent of Documents No. HE 22.8/7)**
A–95–4	•	Requirement for Line Item Dates of Service on All Claims Containing Clinical Diagnostic Laboratory Services Subject to the Laboratory Fee Schedule Spanning 2 or More Dates
A–95–5	•	Submission of Form HCFA–265–94 (Independent Renal Dialysis Facility Cost Report)
A–95–6	•	Submission of Form HCFA–2552–92 (Hospital and Hospital Health Care Complex Cost Report) Print Image Encryption
A–95–7	•	Extension of Due Date for Filing Cost Reports on Form HCFA–2540–92, Revised January 1995
A–95–8	•	Medicare's Partial Hospitalization Benefit-Eligibility and Scope of Services
		Program Memorandum **Carriers (HCFA-Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–95–2	•	Coverage of Epoetin Alfa for HIV/AIDS and Cancer Patients Undergoing Chemotherapy

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April through June 1995]

Trans. No.		Manual/Subject/Publication No.
B–95–3	•	Statistical Software Tools to Assist in Random Sampling and Overpayment Projection
B–95–4	•	Temporary HCPCS Codes for Certain Drugs and Radionuclides
		Program Memorandum **Intermediaries/Carriers (HCFA-Pub. 60 A/B)** **(Superintendent of Documents No. HE 22/8–5)**
AB–95	•	Preparing and Transmitting Provider Data for the Medicare Transaction System Medicare Provider Database Preparation Project
		Program Memorandum **Medicaid State Agencies (HCFA-Pub. 17)** **(Superintendent of Documents No. HE 22.8/6–5)**
95–2	•	Title XIX, Social Security Act, Persons with Drug Addiction or Alcoholism
95–3	•	Title XIX, Social Security Act, Medicaid Eligibility and Coverage
95–4	•	Title XIX, Social Security Act—Survey, Certification, and Enforcement Regulation for Nursing Facilities
		Hospital Manual (HCFA-Pub. 10) **(Superintendent of Documents No. HE 22.8/2)**
679	•	Table of Contents Updates (Chapters 1 through IV)
680	•	Reporting Outpatient Surgery and Other Services
681	•	Need to Reprocess Inpatient Claims in Sequence
682	•	Outpatient Services Treated as Inpatient Services
		Home Health Agency Manual (HCFA-Pub. 11) **(Superintendent of Documents No. HE 22.8/5)**
275	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Skilled Nursing Facility Manual (HCFA-Pub. 12) **(Superintendent of Documents No. HE 22.8/3)**
337	•	Skilled Nursing Facility Defined Utilization Review Plan Physician Members of UR Committee Limitations on Payment for Inpatient Services Following Adverse Finding by URC Availability and Appropriateness of Other Facilities and Services Failure to Make Timely Review of Cases
338	•	Need to Reprocess Inpatient Claims in Sequence
		Health Maintenance Organization/Competitive Medical Plan Manual (HCFA-Pub. 75) **(Superintendent of Documents No. HE 22/8/21:989)**
14	•	General Reasonable Cost Payment Direct Payment by HMO/CMP to Hospital and Skilled Nursing Facilities Services Furnished Directly or Through Arrangement Interim Payment for Cost Reimbursed Plans Plan Payment Report Interim Cost and Enrollment Reports Interim Cost Report for Experienced HMO/CMPs Adjustment of Payments Final Settlement Process—Cost Basis HMO/CMPs Interest Charges for Medicare Overpayments/Underpayments Prudent Buyer Principle Costs in Excess of Adjusted Average Per Capita Costs Medicare as Secondary Payer Payment Procedures for Provider Services Paid for Directly by HMO/CMP Filing Requirements for Providers Using Form HCFA–2552 Providers Receiving Payment Under Prospective Payment System New Limitations Imposed by OBRA 1989 Enrollment and Marketing Costs Determining Deductibles and Coinsurance Medicare Secondary Payer Policies Benefit Coordination LGHP Alternative Method for Cost Report Treatment of Employer Health Plans Determining Total Costs for Comparison With AAPCC Limits Taxes

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April through June 1995]

Trans. No.		Manual/Subject/Publication No.
		Rural Health Clinic and Federally Qualified Health Centers Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
20	•	Billing of Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines by Rural Health Clinics and Federally Qualified Health Centers
		Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.18)
46	•	Credit Balance Reporting Requirements Payment of Amounts Owed Medicare Medicare Credit Balance Report Certification Medicare Credit Balance Report (HCFA–838)
		Coverage Issues Manual (HCFA-Pub. 6) (Superintendent of Documents No. HE 22.8/14)
75	•	Home Blood Glucose Monitors
76	•	Positron Emission Tomography (PET or PETT) Scans
77	•	Pneumatic Compression Devices (Used for Lymphedema)
		Regional Office Manual Medicare (HCFA-Pub. 23–2) (Superintendent of Documents No. HE 22.8/8)
328	•	Contractor Performance Evaluation
		Regional Office Manual Standards and Certification (HCFA-Pub. 23–4) (Superintendent of Documents No. HE 22.8/8–3)
58	•	Approval of Facilities Furnishing Renal Services Health and Safety Conditions to be Surveyed by the State Agency Participation of Veterans Administration Hospitals in the Program Use of Provider Tie-In Notice, HCFA–2007, for Suppliers of ESRD Program Services Network Activities Continuous Ambulatory Peritoneal Dialysis Coverage Notice of Initial Approval of ESRD Facility Notice—Recertification of ESRD Facility Notice of Approval of CAPD Services
59	•	Citations Processing Allegations of Noncompliance Termination Procedures for Violations of 42 CFR 489.20 and 42 CFR 489.24 Procedures for Coordinating Statutorily Mandated Peer Review Organization Review of Confirmed Dumping Cases Request for Survey of 42 CFR 489.20 and 42 CFR 489.24, Essentials of Provider Agreements: Responsibilities of Medicare Participating Hospitals in Emergency Cases, Form HCFA–1541A Model Letter Acknowledging Complaint Alleging Noncompliance with 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: Investigation Not Warranted Model Letter Acknowledging Complaint Alleging Noncompliance with 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: Investigation Warranted Responsibilities of Medicare Participating Hospitals in Emergency Cases Investigation Report, Form HCFA–1541B Model Letter Requesting Physician Review of A Possible Violation of 42 CFR 489.24 Physician Review Outline for Emergency Care Obligations of Medicare Participating Hospitals Model Letter Following Investigation Into Alleged Violation of 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: Facility in Compliance Model Letter for a Violation of 42 CFR 489.24: Preliminary Determination Letter (Immediate and Serious Threat) Model Letter for a Violation of 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: Preliminary Determination Letter (90 Day Termination Track) Model Letter to Complainant Following Investigation of Alleged Violation of 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: Complaint Not Substantiated Model Letter to Complainant Following Investigation of Alleged Violation of 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: Complaint Substantiated Model Letter for Referring a Violation of 42 CFR 489.24 to the Office of the Inspector General Model Letter for Referring a Violation of 42 CFR 489.24 to the Regional Office for Civil Rights Model Letter for a Past Violation of 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: No Termination Model Letter for a Violation of 42 CFR 489.24 and/or the Related Requirements of 42 CFR 489.20: Notice of Termination Model Letter Requesting PRO Review of a Confirmed Violation of 42 CFR 489.24 for Purposes of Assessing Civil Monetary Penalties or Excluding Physicians

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April through June 1995]

Trans. No.		Manual/Subject/Publication No.
		Peer Review Organization Manual (HCFA-Pub. 19) (Superintendent of Documents No. HE 22.8/15)
49	•	Citations and Authority Issuance of Hospital Notices of Noncoverage Content of Hospital-Issued Notice of Noncoverage Monitoring Hospital-Issued Notices of Noncoverage Background Monitoring Procedures
50	•	Consumer Representative
51	•	Sections 2100–2150 are Deleted Sections 4700–4735 are Deleted Exhibit 4–2 is Deleted Sections 12200–12210 are Deleted
		State Operations Manual Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)
270	•	Certification Functions of the State Agency Types of ESRD Facility ESRD Application Requirement State Agency Control of HCFA–3427 ESRD Survey Procedures End-Stage Renal Disease Survey Report—Crucial Data Extract Model Letter to Previously-Approved Facility Requesting Approval to Expand or Add a New ESRD Service Model Letter to Facility Returning Application Not Accompanied by Required Certificate of Need (Where Applicable) ESRD Application and Survey and Certification Report, HCFA–3427 Survey Procedures and Interpretive Guidelines for ESRD Facilities
271	•	Basis for Accredited Hospital Complaint Investigation RO Direction of Accredited Hospital Complaint Investigation Conducting an Accredited Hospital Complaint Investigation Background Basis for Investigation RO Direction of Investigation Conducting an Investigation Forwarding Report of Investigation to the RO RO Review of Investigation Termination Procedures for Violations of Section 489.24 and/or the Related Requirements of Section 489.20 Request for Survey of Section 489.20 and Section 489.24, Essentials of Provider Agreements: Responsibilities of Medicare Participating Hospitals in Emergency Cases, Form HCFA–1541A Responsibilities of Medicare Participating Hospitals in Emergency Cases Investigation Report, Form HCFA–1541B Physician Review Outline for Emergency Care Obligations of Medicare Hospitals Investigation Procedures and Interpretive Guidelines-Special Responsibilities of Medicare Hospitals in Emergency Cases
272	•	Specification of RAIs for Use in Long Term Care Facilities Definitions Minimum Data Set and RAI Designated by HCFA Specification of a State RAI Variations in Formatting the State Specified RAI Approval Process Resident Assessment Instrument for Long Term Care Facilities
273	•	Introduction Definitions and Acronyms Change in Certification Status for Medicaid NFs SNFs—Citations and Description NFs—Citations and Description Types of Facilities That May Qualify as SNFs and NFs SNFs Providing Outpatient Physical Therapy, Speech Pathology or Occupational Services Special Waivers Applicable to SNFs and NFs Emphasis, Components and Applicability Survey Team Size and Composition—Length of Survey Conflicts of Interest for Federal and State Employees Survey Protocol Survey Frequency Unannounced Surveys Substandard Quality of Care and Extended and Partial Extended Surveys Informal Dispute Resolution Certification of Compliance and Noncompliance for SNFs and NFs Action When Facility Is Not in Substantial Compliance

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April through June 1995]

Trans. No.	Manual/Subject/Publication No.
	Appeal of Certification of Noncompliance
	Certification-Related Terms
	Notice Requirements
	Timing of CMPs
	Immediate Jeopardy Exists
	Enforcement Action When Immediate Jeopardy Exists
	Key Dates When Immediate Jeopardy Exists
	Immediate Jeopardy Does Not Exist
	Enforcement Action When Immediate Jeopardy Does Not Exist
	Considerations Affecting Enforcement Recommendation to Impose Remedies When Immediate Jeopardy Does Not Exist
	Procedures for Recommending Enforcement Remedies When Immediate Jeopardy Does Not Exist
	Special Procedures for Recommending and Imposing Category 1 Remedies
	Disagreements About Remedies When Immediate Jeopardy Does Not Exist
	Key Dates When Immediate Jeopardy Does Not Exist
	Response to Allegation of Compliance
	New Deficiencies Identified
	Procedures for Certifying Compliance
	Action When There is Substandard Quality of Care
	Enforcement Remedies for SNFs and NFs
	Directed Plan of Correction
	Directed In-Service Training
	State Monitoring
	Denial of Payment For All New Admissions for SNFs and NFs
	Secretarial Authority to Deny All Payment
	Basis for Imposing CMPs
	Compliance With Section 1128A of the Act
	Special Procedures Regarding Compliance Decision and Overlap of Remedies
	Determining Amount of CMP
	Effective Date of CMP
	Notice of Imposition of CMP
	Duration of CMP
	Settlement of CMP
	Appeal of Noncompliance Which Led to Imposition of CMP
	When Penalty Is Due and Payable
	Notice of Amount Due and Collectible
	Disposition of Collected CMP
	Loss of NATCEP or CEP as a Result of CMP
	Temporary Management
	Transfer of Residents and Transfer of Residents with Closure of Facility
	Termination Procedures for SNFs and NFs When Facility is Not in Substantial Compliance with Program Participation Requirements
	Continuation of Payment During Remediation
	Investigation of Complaints of Violations and Monitoring of Compliance
	Action on Complaints of Resident Neglect and Abuse and Misappropriation of Resident Property
	Consistency of Survey Results
	Sanctions for Inadequate State Survey Performance
	Educational Programs
	Criteria for Reviewing State Plan Amendments for Specified and Alternative Enforcement Remedies
	State/Federal Disagreements Over Timing and Choice of Remedies
	NATCEP and CEP Disapprovals
	Information Disclosed to Public
	Requesting Public Information
	Charges for Information
	Time Periods for Disclosing SNF/NF Information
	Information Furnished to State's Long Term Care Ombudsman
	Information Furnished to Attending Physician and State Board
	Access to Information by State Medicaid Fraud Control Unit
	Model Letter to Provider (Immediate Jeopardy Does Not Exist)
	Model Letter Notifying Provider of Acceptance of Allegation of Compliance
	Model Letter Notifying Provider of Results of Revisit
	Model Letter to Provider (Imposition of Remedies) (Immediate Jeopardy Does Not Exist)
	Model Letter to Provider (Imposition of Remedies) (Immediate Jeopardy Exists)
	Notice of Imposition of a Civil Money Penalty
	Notification of Change in the Amount of the Civil Money Penalty
	Notice of Receipt of the Written Request of Waiver of Right to a Hearing
	Notice of Payment Amount Due and Payable
	Notification of Deduction of Civil Money Penalty From Money Owing to the Provider

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April through June 1995]

Trans. No.		Manual/Subject/Publication No.
		Medicare Provider Reimbursement Manual (Part 1) (HCFA-Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
383	•	Regional Medicare Swing-Bed SNF Rates
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions—Chapter 16 (HCFA-Pub. 15–IIP) (Superintendent of Documents No. HE 22.8/4)
4	•	Return on Equity Capital Reimbursement in the SNF Cost Report for Community Mental Health Centers
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions—Chapter 24 (HCFA-Pub. 15–IIX) (Superintendent of Documents No. HE 22.8/4)
7	•	Allocation of the Operating Cost Reduction Due to Change in Payment for Ambulatory Surgery and Radiology for Cost Reporting Periods Ending January 31, 1991, through September 29, 1991
		Provider Reimbursement Manual Part II— Provider Cost Reporting Forms and Instructions—Chapter 28 (HCFA-Pub. 15–II–AB) (Superintendent of Documents No. HE 22.8/4)
6	•	Regulatory Changes for the Wage Index Electronic Reporting Specifications for Form-2552–92
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions—Chapter 22 (HCFA-Pub. 15–II–AG) (Superintendent of Documents No. HE 22.8/4)
1	•	Organ Procurement Organization and Tissue Typing Laboratory (Histocompatibility Laboratory) Cost Report, Form HCFA–216–94
		End Stage Renal Disease Network Organizations Manual (HCFA-Pub. 81) (Superintendent of Documents No. HE 22.8.9/4)
3	•	Background/Authority Objectives System Capacity Software Requirements Hardware Requirements Communications Data Security Confidentiality of Data Data Management ESRD Data Responsibility HCFA ESRD Forms Review of ESRD Medical Evidence Report—Medicare Entitlement and/or Patient Registration Form Collection, Completion, and Validation of ESRD Forms Tracking System for ESRD Forms ESRD Forms Submission Compliance Rates HCFA ESRD Forms Facsimiles and Data Corrections Resolving Discrepant Records—Forms Facsimiles Disposition Code Correcting Facsimile Error Code Determining Correct Medicare Health Insurance Claim Number Other Incorrect Data Elements Maintenance of Hardcopy Forms Facility Roster Update of Network Database National Surveillance of Dialysis-Associated Disease Form Special Studies/Surveys

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April through June 1995]

Trans. No.		Manual/Subject/Publication No.
		Department of Veterans Affairs
		Renal Transplant Data
		Obtaining and Processing Renal Transplant Data
		Inquiries from HMOs/CMPs
		Network Required to Provide Information to HMOs/CMPs
		Network Not Required to Furnish Information to HMOs/CMPs
		Data—Core Indicators
		Authority
		Objectives
		Health Care Quality Improvement Program
		Quality of Care Assessment
		Core Indicators
		Core Indicators—Network National Sample
		Core Indicators—Sampling Method
		Core Indicators—Data Collection
		Core Indicators—Data Validation
		Core Indicators—Data Reporting
		Pattern Analysis
		Pattern Analysis Reporting
		Preparation of Reports
		National Cooperative Projects
		National Cooperative Process
		Quality of Care Evaluation and Improvement
		Feedback Reports
		Network Intervention and Follow-up
		Improvement Plan
		Special Projects
		Special Projects Protocol
		Special Projects—Delivery Requirements
		Quality Assessment and Improvement Reports Authority
		Network Role Prior to Initiating a Sanction Recommendation
		Documentation Requirements for Sanction Recommendation
		Forwarding the Sanction Recommendation to the Appropriate Regional Office
		Project Officer Role in Sanction Procedures
		RO Role in Sanction Procedures
		RO Role in Notice and Appeal Rights
		Duration and Removal of Alternative Sanction
		State Medicaid Manual Part 3—Eligibility (HCFA-Pub. 45–3) (Superintendent of Documents No. HE 22.8/10)
66	•	American Indian Born in Canada—Types of Documentation
		Illegal Aliens Eligible for Emergency Services
		State Medicaid Manual Part 4—Services (HCFA-Pub. 45–4) (Superintendent of Documents No. HE 22.8/10)
67	•	Personal Care Services
		State Medicaid Manual Part 5—Early and Periodic Screening, Diagnosis, and Treatment (HCFA-Pub. 45–5) (Superintendent of Documents No. HE 22.8/10)
9	•	Screening Service Content
10	•	Periodicity Schedule
		Transportation and Scheduling Assistance (Support Services)
		Program Monitoring, Planning, and Evaluation
		Reimbursement
		State Medicaid Manual Part 6—Payment for Services (HCFA-Pub. 45–6) (Superintendent of Documents No. HE 22.8/10)
28	•	Updates the Drug Ingredient Prices Used to Establish Upper Limits for Prescription Drugs
		Medicare/Medicaid Sanction/Reinstatement Report
95–4	•	Report of Physician/Practitioners, Providers and/or Other Health Care Suppliers—February 1995

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April through June 1995]

Trans. No.		Manual/Subject/Publication No.
95–5	•	Cumulative Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Sanctioned/Reinstated
95–6	•	Report of Physician/Practitioners, Providers and/or Other Health Care Suppliers—March 1995

Addendum IV—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 75; sections 60–11 - 60–11 (Cont.) Home Blood Glucose Monitors CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: For Services Furnished On or After 04/27/95.

Section 60–11, Home Blood Glucose Monitors.—This section is revised to eliminate the requirement that the patient must be subject to poor diabetic control. Medical evidence indicates that blood glucose monitors are medically appropriate for individuals who do not have poor diabetic control. In addition, the policy is revised to allow any responsible individual, not only a family member, to be trained to use the equipment and monitor the patient when the patient is not capable of doing so.

60–11 Home Blood Glucose Monitors

There are several different types of blood glucose monitors which use reflectance meters to determine blood glucose levels. Medicare coverage of these devices varies, both with respect to the type of device and the medical condition of the patient for whom the device is prescribed.

Reflectance colorimeter devices used for measuring blood glucose levels in clinical settings are not covered as durable medical equipment for use in the home because their need for frequent professional recalibration makes them unsuitable for home use. However, some types of blood glucose monitors which use a reflectance meter specifically designed for home use by diabetic patients may be covered as durable medical equipment, subject to the conditions and limitations described below.

Blood glucose monitors are meter devices which read color changes produced on specially treated reagent strips by glucose concentrations in the patient's blood. The patient, using a disposable sterile lancet, draws a drop of blood, places it on a reagent strip and, following instructions which may vary with the device used, inserts it into the device to obtain a reading. Lancets, reagent strips, and other supplies necessary for the proper functioning of the device are also covered for patients for whom the device is indicated. Home blood glucose monitors enable certain patients to better control their blood glucose levels by frequently checking and appropriately contacting their attending physician for advice and treatment. Studies indicate that the patient's ability to carefully follow proper procedures is critical to obtaining satisfactory results with these devices. In addition, the cost of the devices, with their supplies, limits economical use to patients who must make frequent checks of their blood glucose levels. Accordingly, coverage of home blood glucose monitors is limited to patients meeting the following conditions:

- The patient must be an insulin-treated diabetic;
- The patient's physician states that the patient is capable of being trained to use the particular device prescribed in an appropriate manner. In some cases, the patient may not be able to perform this function, but a *responsible individual can be trained to use the equipment and monitor* the patient to assure that the intended effect is achieved. This is permissible if the record is properly documented by the patient's physician; and
- The device is designed for home rather than clinical use.

There is also a blood glucose monitoring system designed especially for use by those with visual impairments. The monitors used in such systems are identical in terms of reliability and sensitivity to the standard blood glucose monitors described above. They differ by having such features as voice synthesizers, automatic timers, and specially designed arrangements of supplies and materials to enable the visually impaired to use the equipment without assistance.

These special blood glucose monitoring systems are covered under Medicare if the following conditions are met:

- The patient and device meet the four conditions listed above for coverage of standard home blood glucose monitors; and
- The patient's physician certifies that he or she has a visual impairment severe enough to require use of this special monitoring system.

The additional features and equipment of these special systems justify a higher reimbursement amount than allowed for standard blood glucose monitors. Separately identify claims for such devices and establish a separate reimbursement amount for them. For those carriers using HCPCS, the procedure code and definition is: E0609—Blood Glucose Monitor—with special features (e.g., voice synthesizers, automatic timer).

Transmittal No. 76; sections 50–36—50–39.1 Positron Emission Tomography (PET or PETT) Scans—New Implementing Instructions—Effective Date: Services furnished on or after March 14, 1995.

Section 50–36, Positron Emission Tomography (PET or PETT) Scans.—This section is revised to provide limited coverage of positron emission tomography scans. Previously, PET scans were considered experimental by HCFA. PET scans are covered for use in noninvasive imaging of the perfusion of the heart for diagnosis and management of patients with known or suspected coronary artery disease. Coverage is limited to scans which employ Rubidium-82, done on equipment approved by the Food and Drug Administration, and when done in place of, but not in addition to a single photon emission computed tomography (SPECT) scan. PET centers must file claims for Medicare beneficiaries using specific G codes, and provide information regarding the results of previous tests. PET centers are also expected to maintain patient records for each Medicare patient with sufficient information to substantiate the need for the scan.

50–36 Positron Emission Tomography (Pet or Pett) Scans (Effective for Services Performed on or After March 14, 1995)

Positron emission tomography (PET), also known as positron emission transverse tomography (PETT), is a noninvasive imaging procedure that assesses perfusion and the level of metabolic activity in various organ systems of the human body. A positron camera (tomograph) is used to produce cross-sectional tomographic images by detecting radioactivity from a radioactive tracer substance (radiopharmaceutical) that is injected into the patient.

Until recently Medicare considered PET scans experimental and, therefore, not covered. HCFA has now concluded that one use of PET scans, imaging of the perfusion of the heart using Rubidium 82 (Rb 82), is no longer experimental, and may be covered, provided that several conditions, outlined below, are met. This conditional coverage is dictated by two significant factors that apply to PET scans.

First, although PET is no longer considered experimental for this single use, it duplicates other covered forms of diagnostic testing, and the degree to which PET scans may substitute as primary tests for such uses, as compared to a confirming or medically necessary additional test, is not as clear as is preferable. For example, in the case of imaging perfusion of the heart, body size and type may result in a technically uninterpretable single photon emission computed tomography (SPECT) test in some cases, necessitating a PET scan in order to produce clearer images and allow diagnosis and treatment of the patient.

Second, the Food and Drug Administration (FDA) has approved only Rubidium 82 for general PET scan use. The FDA considers radiopharmaceuticals drugs, subject to all of the requirements for manufacture, testing and approval (including approval for certain specific uses) that the FDA applies to all drugs. Thus some uses of PET cannot be considered for coverage due to the lack of approval of the radiopharmaceuticals involved in those uses.

Although the FDA has approved another radiopharmaceutical (deoxy-2–Fluoro-D-glucose (FDG)), that approval is very limited and is restricted to a single PET site at this time. The FDA currently requires each site to submit its version of FDG for testing and approval as a new drug. In view of these restrictions, coverage of PET with FDG is not being considered at this time. HCFA will continue to monitor the use of PET with FDG, with a view toward considering coverage of such uses when they appear appropriate.

The following coverage requirements must be met to assure that PET scans (1) are medically necessary, (2) do not unnecessarily duplicate other covered diagnostic tests, and (3) do not involve investigational drugs or procedures using investigational drugs.

A. Approved Sites.—PET scans may be covered only at PET imaging centers with PET scanners that have been approved by the FDA. Medicare contractors must determine, prior to making payment for any PET scans, whether the center applying for payment has an FDA-approved scanner.

B. Use of Rubidium 82 (Rb 82) and Related Tests.—Coverage of PET scans under Medicare is currently limited to rest alone or rest with pharmacologic stress PET scans used for noninvasive imaging of the perfusion of the heart for the diagnosis and management of patients with known or suspected coronary artery disease using the FDA-approved radiopharmaceutical Rubidium 82 (Rb 82). Coverage is further limited to scans that meet either one of the following conditions:

- *The PET scan, whether rest alone or rest with stress, is used in place of, but not in addition to, a single photon emission computed tomography (SPECT); or*
- *The PET scan, whether rest alone or rest with stress, is used following a SPECT that was found inconclusive. In these cases, the PET scan must have been considered necessary in order to determine what medical or surgical intervention is required to treat the patient. (For purposes of this requirement, an inconclusive test is a test(s) whose results are equivocal, technically uninterpretable, or discordant with a patient's other clinical data.)*

Note: PET scans using Rubidium 82, whether rest or stress are not covered by Medicare for routine screening of asymptomatic patients, regardless of the level of risk factors applicable to such patients.

C. Submission of Claims Data.—Claims for PET scans must include the following information. Failure to submit this information may result in denial of a claim.

The PET center must, for any PET scan for which payment is claimed, complete all required information on the claim form (including proper codes and modifiers) to indicate the results of the PET scan, as well as information as to whether the PET scan was done after an inconclusive noninvasive cardiac test. The information submitted with respect to the previous cardiac test must specify the type of test done prior to the PET scan and whether it was inconclusive or unsatisfactory. These explanations are in the form of special G codes used for billing PET scans.

D. Maintenance of Patient Record Data Onsite.—In view of these limitations on coverage, HCFA may decide to conduct some post-payment reviews to determine that the use of PET scans is consistent with this instruction. PET centers must keep patient record information on file for each Medicare patient for whom a PET scan claim is made. These medical records will be used in any post-payment reviews and must include the information necessary to substantiate the need for the PET scan. The records must include standard information (e.g., age, sex, and height) along with any annotations regarding body size or type which indicated a need for a PET scan to determine that patient's condition (i.e., any reason the nature of the patient's body size or type mandated the use of a PET scan in order to continue treatment).

Transmittal No. 77; sections 60–16—60–19 (Cont.) Pneumatic Compression Devices (Used for Lymphedema) CLARIFICATION—Effective Date: Not Applicable.

Section 60–16, Pneumatic Compression Devices (Used for Lymphedema).—This section is revised to clairfy (1) That the nonsegmented and segmented pump without manual control of pressure in each chamber is considered the least costly alternative that meets the clinical needs of the individual for this type of durable medical equipment (HCPCS codes E0650 and E0651), unless there is documentation that warrants payment of the more costly manual control pump (HCPCS code E0652); (2) the documentation needed for determination of the type of pump to be used for the treatment of lymphedema; and (3) which pneumatic compression pump is appropriate for chronic venous insufficiency. 60–16 Pneumatic Compression Devices (used for Lymphedema)

Lymphedema is the swelling of subcutaneous tissues due to the accumulation of excessive lymph fluid. The accumulation of lymph fluid results from an impairment to the normal clearing function of the lymphatic system and/or from an excessive production of lymph. It is a relatively uncommon, chronic condition which may be due to many causes, e.g., surgical removal of lymph nodes, post radiation fibrosis, scarring of lymphatic channel, onset of puberty (Milroy's Disease), and congenital anomalies. In the home setting, both the segmental and nonsegmental pneumatic compression devices are covered only for the treatment of generalized, refractory lymphedema.

Pneumatic compression devices are only covered as a treatment of last resort, i.e., other less intensive treatments must have been tried first and found inadequate. Such treatments would include leg or arm elevation and custom fabricated gradient pressure stockings or sleeves.

Pneumatic compression devices may be covered only when prescribed by a physician and when they are used with appropriate physician oversight, i.e., physician evaluation of the patient's condition to determine medical necessity of the device, suitable instruction in the operation of the machine, a treatment plan defining the pressure to be used and the frequency and duration of use, and ongoing monitoring of use and response to treatment.

The determination by the physician of the medical necessity of a pneumatic compression device must include (1) The patient's diagnosis and prognosis; (2) symptoms and objective findings, including measurements which establish the severity of the condition; (3) the reason the device is required, including the treatments which have been tried and failed; and (4) the clinical response to an initial treatment with the device. The clinical response includes the change in pre-treatment measurements, ability to tolerate the treatment session and parameters, and ability of the patient (or caregiver) to apply the device for continued use in the home.

In general, the nonsegmented (HCPCS code E0650) or segmented (HCPCS code E0651) compression device without manual control of pressure in each chamber is considered the least costly alternative that meets the clinical needs of the individual.

Therefore, when a claim for a segmented pneumatic compression device which allows for manual control in each chamber is received, payment must be made for the least expensive medically appropriate device. If the patient medically needs a segmented device but does not need manual controls, payment must be made for HCPCS code E0651. The segmented device with manual control (HCPCS code E0652) is covered only when there are unique characteristics that prevent the individual from receiving satisfactory pneumatic treatment using a less costly device, e.g., significant sensitive skin scars or the presence of contracture or pain caused by a clinical condition that requires the more costly manual control device.

The use of pneumatic compression devices may be medically appropriate only for those patients with generalized, refractory edema from venous insufficiency with lymphatic obstruction (i.e., recurrent cellulitis with secondary scarring of the lymphatic system) with significant ulceration of the lower extremity(ies) who have received repeated, standard treatment from a physician using such methods as a compression bandage system or its equivalent, but fail to heal after 6 months of continuous treatment. The exact nature of the medical problem must be clear from the medical evidence submitted. If, after obtaining this information, a question of medical necessity remains, the contractor's medical staff resolves the issue.

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 60 page	CFR part	File code	Regulation title	End of comment period	Effective date
04/06/95	17538–17547		BPO–130–N.	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Fourth Quarter 1994.		04/06/95
04/10/95	18136–18137		MB–084–N	Medicaid Program; Rescission of the Guidelines for Documenting Medicaid Recipient Access to Immunizations Under the Vaccines for Children (VFC) Program.		
04/20/95	19753		OFHR–001–N.	New Address and Telephone Numbers of the Office of Acquisition and Grants, Office of Financial and Human Resources.		05/22/95
04/21/95	19856–19862	440, 441	MB–041–F	Medicaid Program; Required Coverage Of Nurse Practitioner Services.		05/22/95
04/24/95	20035–20051	493	HSQ–216–FC.	CLIA Program; Categorization of Tests and Personnel Modifications.	06/23/95	04/24/95
05/01/95	21048	421	BPO–083–F.	Medicare Program; Revisions to Criteria and Standards for Evaluating Intermediaries and Carriers (Correction).		05/01/95
05/03/95	21824–21825		HSQ–227–N.	Medicaid Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations-Alaska, Delaware, the District of Columbia, Idaho, Kentucky, Maine, Nebraska, Nevada, South Carolina, Vermont, and Wyoming.		05/03/95
05/08/95	22533–22535	406	BPD–738–F.	Medicare Program; Clarification of Resumption of Entitlement Rules for Medicare Patients With End-Stage Renal Disease (ESRD).		06/07/95
05/25/95	27736		OPL–005–N.	Medicare Program; June 12, 1995 Meeting of the Practicing Physicians Advisory Council.		05/25/95
06/02/95	29202–29434	412, 485, 413, 489, 424	BPD–825–P.	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates.	08/01/95	
06/12/95	30877–30891		BPD–832–N.	Medicaid Program; HHS' Approval of NAIC Statements Relating to Duplication of Medicare Benefits.		08/11/95

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 60 page	CFR part	File code	Regulation title	End of comment period	Effective date
06/13/95 ...	31158–31161	.....	ORD–075–N.	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February and March 1995.	.....	06/13/95
06/27/95 ...	31126–31137	.....	BPD–366–F.	Medicare Program; Clarification of Medicare's Accrual Basis of Accounting Policy.	.....	07/27/95
06/27/95 ...	33123–33126	413	BPD–689–F.	Medicare Program; Uniform Electronic Cost Reporting System for Hospitals.	.....	07/27/95
06/27/95 ...	33262–33298	417, 483, 430, 484, 431, 489, 434	BPD–718–F.	Medicare and Medicaid Programs; Advance Directives.	.....	07/27/95
06/27/95 ...	33137–33143	.....	BPD–794–F.	Medicare Program; Date for Filing Medicare Cost Reports.	.....	06/27/95
06/27/95 ...	33221–33224	.....	ORD–076–N.	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: April 1995.	.....	06/27/95

*GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; SN—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling.

[FR Doc. 95–28172 Filed 11–14–95; 8:45 am]
BILLING CODE 4120–01–P

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Weishu Y. Weiser, Ph.D., Harvard Medical School: On October 19, 1995, ORI found that Weishu Y. Weiser, Ph.D., formerly of the Harvard Medical School at Brigham and Women's Hospital, committed scientific misconduct by falsifying data in biomedical research supported by two Public Health Service (PHS) grants.

Dr. Weiser has entered into a Voluntary Exclusion Agreement with ORI in which she has accepted ORI's finding and has agreed to exclude herself voluntarily, for the three (3) year period beginning October 19, 1995, from:

(1) Participating in any Federal contracts or subcontracts and from eligibility for or involvement in Federal nonprocurement transactions (e.g., grants and cooperative agreements), as covered in 45 C.F.R. Part 76 and 48 C.F.R. Subparts 9.4 and 309.4 (Debarment Regulations); and

(2) Serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

She has agreed to submit a letter to the Journal of Immunology and to the Proceedings of the National Academy of Sciences to retract the articles entitled "Human recombinant migration inhibitory factor activates human macrophages to kill Leishmania donovani" (Journal of Immunology 147:2006–2011, 1991), "Recombinant migration inhibitory factor induces nitric oxide synthase in murine macrophages" (Journal of Immunology 150:1908–1912, 1993), and "Recombinant human migration inhibitory factor has adjuvant activity" (Proceedings of the National Academy of Sciences 89:8049–8052, 1992).

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–28150 Filed 11–14–95; 8:45 am]
BILLING CODE 4160–17–P

Office of Inspector General

Program Exclusions: October 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective Date
PROGRAM-RELATED CONVICTIONS	
CONNOLLY, JOHN L, CARLTON, MN	11/14/95
COOPER, JEAN, LONGMONT, CO	11/16/95
DERENZO, ADRIANNE, BERWYN, PA	11/16/95
DONOVAN, JAMES, BALTIMORE, MD	11/16/95
EARLEY, TERESITA E, NEW YORK, NY	11/16/95
ELITE AMBULANCE SERVICE, SUNBURY, PA	11/16/95
FARO, ANTHONY J, ANCHORAGE, AK	11/16/95
GONCHOROFF, MICHAEL C, WIXOM, MI	11/14/95
ISLAM, KAZI, BROOKLYN, NY	11/16/95
KAHN, WALAYAT A, YPSILANTI, MI	11/14/95
KARMO, ROOSEVELT Q, BALTIMORE, MD	11/16/95
KNIGHT, MARY ROSEANN, HOT SPRINGS, AR	11/16/95

Subject City, State	Effective Date
KWAN, TONY LEONG, TEMPE, AZ	11/16/95
LEE, SAMUEL, JR, WILLINGBORO, NJ	11/16/95
MADDEN, DOLORES M, KIMBALL, MN	11/14/95
MARSHALL, MARK, LORAIN, OH	11/14/95
McKIM, VICKI L, MUNCIE, IN	11/14/95
PURI, RAJESH, RALEIGH, NC	11/16/95
RUNYAN, MARILYN MICHELLE, DENVER, CO	11/16/95
SNYDER, DONALD ELWOOD, SCOTTSDALE, AZ	11/16/95
VOGELSONG'S PHARMACY, INC, LUCASVILLE, OH	11/14/95
WALLER, CHARLES M, PARKVILLE, MO	11/14/95
WEISEL DRUG, INC, MONROE, MI	11/14/95
WEISS, HOWARD S, VIRGINIA BEACH, VA	11/16/95
WERNER, JOHN R, WAUWATOSA, WI	11/14/95
WHITLOCK, COLEMAN M, JR, KOKOMO, IN	11/14/95
WILKS, DEBORAH Y, BALTIMORE, MD	11/16/95
WILLIAMS, GEORGE D, AURORA, CO	11/16/95
WISE, RALPH J, MIDDLETOWN, NY	11/16/95
ZIMMERMAN, LINDA SUE, DEWITT, MI	11/14/95
PATIENT ABUSE/NEGLECT CONVICTIONS	
BARHAM, WILLIAM B, ALEXANDRIA, VA	11/16/95
COUCH, JOYCE, MEMPHIS, TN	11/16/95
DEAN, SHANE M, GILBERTVILLE, IA	11/14/95
DEOLIVEIRA, MICHELINE, SALT LAKE CITY, UT	11/16/95
EDWARDS, KIRK, COLUMBUS, OH	11/14/95
FORGE, CESCELY, STEPHENVILLE, TX	11/16/95
GARRETT, FRANCINE M, DETROIT, MI	11/14/95
GATERS, ANGELA M, MEMPHIS, TN	11/16/95
GOEL, VIJENDER, CINCINNATI, OH	11/14/95
GRIFFIN, ALFRED L, KENDALL, WI	11/14/95
HARRIS, MICHAEL C, DENVER, CO	11/16/95
HEINZ, JOHN NICOLAS, BLOOMINGTON, MN	11/14/95
HENRY, SHIRLEY, COLUMBUS, OH	11/14/95
JOHNSON, ADONNA ELAINE, TEXAS CITY, TX	11/16/95
LAMOTHE, RICHARD M, BERKELEY, CA	11/16/95
PETERSON, CAROL, HARRIETTA, MI	11/14/95
SANCHEZ, VIRGINIA, SAGINAW, MI	11/14/95
SMITH, RITA J, FRAZEYBURG, OH	11/14/95
SWAILES, JACQUELINE G, GRAND BLANC, MI	11/14/95
THOMPSON, BETTY A, BATON ROUGE, LA	11/16/95
TRAYLOR, STANLEY V, MARRERO, LA	11/16/95
TYSON, SHARON, MEMPHIS, TN	11/16/95
WALKER, JAMES R, ANOKA, MN	11/14/95
CONVICTION FOR HEALTH CARE FRAUD	
DURNING, NANELLE L, AURORA, CO	11/16/95
HUGHES, KARRIE L, MEDFORD, OR	11/16/95
MONTEZ, VALERIE ANN, PUEBLO, CO	11/16/95
CONTROLLED SUBSTANCE CONVICTIONS	
IGWE, GRANT N, CLINTON TOWNSHIP, MI	11/14/95
RAYMUNDO, EMMANUEL L, WARREN, OH	11/14/95
ROTMAN, PHILLIP A, SPRINGBORO, OH	11/14/95
SAUNDERS, JOSEPHINE P, PHILADELPHIA, PA	11/16/95
WEN, HESIN, LOS ANGELES, CA	11/16/95
WEST, MITCHELL F, BETHEL PARK, PA	11/16/95
LICENSE REVOCATION/SUSPENSION/ SURRENDER	
ALFARO, SALLY, TUCSON, AZ	11/16/95
BOYNTON, MARILYN, PORTLAND, ME	11/16/95
BRIGGS, ELSA, STAMFORD, CT	11/16/95
CECKA, LANCE J, GREER, SC	11/16/95
CONTRACTOR, MOHAMEDIKBAL, JAMAICA, NY	11/16/95
FISGUS, C WAYNE, SPARTANBURG, SC	11/16/95
HOGG, ROSE YANKEVICH, HERITAGE, PA	11/16/95
INNISS, JEFFREY R, ALEXANDRIA, VA	11/16/95
JUTKOWITZ, JESSE, MILFORD, CT	11/16/95
LOWE, MARGARET A, NAUVOO, IL	11/14/95
McLEAN, VICKY L, GOOCHLAND, VA	11/16/95
PARK, TAE HONG, HIGHLAND, IN	11/14/95
RUGGIERO, ANTHONY, NEW YORK, NY	11/16/95
SAVIGNE, JOSEPH BORY, BROOKLYN, NY	11/16/95
WILLIAMS, OLIVER K, III, W WORTHINGTON, OH	11/14/95
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BARRERA, ALFONSO, LEVITTOWN, NY	11/16/95
ORLANDO, JOSEPH A, SACO, ME	11/16/95
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
BAKER'S NORTHRIDGE DRUG STORE, DAYTON, OH	11/14/95
DEFAULT ON HEAL LOAN	
BUAHIN, KWAME G, SOUTHFIELD, MI	11/14/95
CHAVIS, DION D, INDIANAPOLIS, IN	11/14/95
COONEY, CAREY E, EUGENE, OR	11/16/95
EVANS, GARY W, STOCKTON, CA	11/16/95
GOVER-MENDEZ, BRYAN KARL, GAITHERSBURG, MD	11/16/95
HAVILAND, PHILIP F, ENGLEWOOD, CO	11/16/95
HENDRICKSON, RAYMOND T, CLEARLAKE, MN	11/14/95
HENKEN, EDMOND H, SAN CLEMENTE, CA	11/16/95
HILEMAN, KENT A, HOLLISTER, CA	11/16/95
JACOBS, DELORES A, SAN DIEGO, CA	11/16/95
JONES-BOOKER, WINIFRED M, BALTIMORE, MD	11/16/95
LAWLER, MATTHEW P, AMES, IA	11/14/95
MAJAUSKAS, RIKANTAS P, KALAHEO, HI	11/16/95
MANGUM, DONALD LANCE, SPRINGVILLE, UT	09/27/95
MATTSON, KENNETH D, CAREY, OH	11/14/95
MILLER, DAVID EDWARD, CLYDE, CA	11/16/95
PATTERSON, JOSEPH M, MEMPHIS, TN	11/16/95
PEREZ, HECTOR LUIS, BRONX, NY	11/16/95
REED, NELSON E, FORT WAYNE, IN	11/14/95
TAYLOR, TAMRA RAE, SAN CLEMENTE, CA	11/16/95
WEIR-WEVER, DIANNA J, LAS VEGAS, NV	11/16/95
WEST, CLIFTON B, CHICAGO, IL	11/14/95
WHITE, JUDITH U, COSTA MESA, CA	11/16/95

Subject City, State	Effective Date
SECTION 1128Aa	
AGUIRRE, MANUEL J, NORTH MIAMI, FL	10/30/95
KHURANA, NARENDRA, NEW ROCHELLE, NY	10/12/95

Dated: November 3, 1995

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudicotion.

[FR Doc. 95–28159 Filed 11–14–95; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

National Institute of Dental Research; Notice of Meeting of NIDR Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 6–8, 1995, in Building 30, Trendley Dean Conference Room, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on December 7 for the Laboratory of Oral Medicine presentations and from 8:45 a.m. to 9:00 a.m. on December 8 for a tour of the facilities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 6:00 p.m. until recess on December 6 and from 5:00 p.m. until recess on December 7 and from 9:00 a.m. until adjournment on December 8 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Director, Office of Planning, Evaluation, and Communications NIDR, NIH, Building 31, Room 2C34, Bethesda, Maryland 20892 (telephone: (301) 496–6705) (e-mail: JaquetB@OD31.nidr.nih.gov) will provide a summary of the meeting, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

Dated: November 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28207 Filed 11–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: November 28, 1995.

Time: 9 am to 4 pm.

Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIH, NIDCD, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate Exploratory/Developmental applications (R21).

The meeting, which will be conducted as a telephone conference call, will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: November 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28208 Filed 11–14–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 14, 1995.

Time: 12:30 p.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 9, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–28283 Filed 11–13–95; 9:31 am]

BILLING CODE 4140–1–M

Office of Science Education; Notice of Meeting

Notice is hereby given that the Office of Science Education (OSE), Office of the Director, National Institutes of Health (NIH), will hold a public meeting on November 20, 1995, from 8:30 a.m. to 4:30 p.m., at the Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

The purpose of this meeting is to give members of the public who are interested in the development of the NIH Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds (UGSP) an opportunity to express their views on how that program should be implemented. The UGSP is authorized under Public Law 103–43, U.S. Public Health Service Act § 487D. The UGSP will offer full-time undergraduate students enrolled or accepted for enrollment at accredited institutions of higher education, who are from disadvantaged backgrounds, scholarships of up to $20,000 per year, to pursue academic programs appropriate for careers in professions needed by the NIH. For each year of scholarship support, the recipient must serve at least 10 consecutive weeks of service as an employee at the NIH, and, within 60 days after obtaining the educational degree involved, the individual must begin serving full-time as an employee of the NIH. The service commitment will be one year of service for each academic year of support as outlined at U.S. Public Health Service Act § 487D(c).

Consultants to the OSE will be present to discuss the development of the UGSP. The information collected from these consultants, as well as any information collected from the public, will be used to assist the OSE to identify issues and strategies in the development of the UGSP.

This meeting is open to the public. However, attendance will be limited by seat availability. Information to be offered at the public meeting should be confined to comments relating to the recruitment and retention of disadvantaged students for the UGSP and the indicators of success for careers in biomedical research. If an individual is representing an organization, only one representative may present oral comments. Each speaker will be permitted 3–5 minutes for his/her presentation.

Oral presenters and interested individuals wishing to provide only written statements must send a copy of such oral comments to the attention of Ms. Muriel Levin, EEI, 66 Canal Center Plaza, Suite 200, Alexandria, VA 22314–1538, 703–683–4915 (FAX), mlevin@eei-alex.com (e-mail). Correspondence must be received by EEI no later than 5:00 p.m. (EST) on Thursday, November 16, 1995. The order of presentations during the meeting will be determined by the date and time letters of intent are received by EEI.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Kristin Kiser, NIH/OS/OSE, 7550 Wisconsin Avenue, Room 102, Bethesda, MD 20892–9015, 301–402–6424 (not a toll-free number), 301–480–5481 (FAX), kk10b@nih.gov (e-mail) in advance of 5:00 p.m., November 16, 1995.

For additional information, contact Marc S. Horowitz, J.D., Director, NIH Undergraduate Scholarship Program, Office of Science Education, 7550 Wisconsin Avenue, Room 102, Bethesda, MD 20892–9015, 301–402–5666 (not a toll-free number), 301–480–5481 (FAX), mh18k@nih.gov (e-mail).

Dated: November 8, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–28287 Filed 11–14–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors— Technical Reports Review Subcommittee on December 5, 1995, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on December 5 are draft Technical Reports of six two-year studies, listed alphabetically, along with supporting information in the attached table. All studies were done using Fischer 344 rats and B6C3F$_1$ mice. The order of review is given in the far right column of the table. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419).

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone, by FAX, or by mail no later than November 30, 1995, and provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members and staff and made available at the meeting for attendees. Written statements should supplement and may expand on the oral presentation. *Oral presentations should be limited to no more than five minutes.*

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3971; FAX 919/541–0719) will furnish agenda and a roster of Subcommittee members prior to the meeting. Summary minutes subsequent to the meeting will be available upon request to Central Data Management.

Dated: November 3, 1995.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY DATA FOR TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE

[December 5, 1995]

Chemical CAS No.	Technical Report No.	Primary Uses	Route/Exposure Levels	Review Order
D & C Yellow No. 11, 8003–22–3.	TR–463	Color additive used in cosmetic and externally applied to drugs. Contaminant of D&C Yellow 10, a compound which FDA is currently considering for approval for contact lenses.	Dosed-Feed (NIH–07): Rats: 0, 0.05, 0.17, OR 0.5%; 60/GROUP.	4
Molybdenum Trioxide, 1313–27–5.	TR–462	In manufacture of molybdenum metals; corrosion inhibitor; catalyst; chemical analysis reagent; alloying agent in steel; agricultural chemical; component of ceramics, enamel & pigments.	Inhalation (AIR): Rats & Mice: 10, 30, OR 100 MG/M3; 50/SEX/SPECIES/GROUP.	6

SUMMARY DATA FOR TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE—Continued

[December 5, 1995]

Chemical CAS No.	Technical Report No.	Primary Uses	Route/Exposure Levels	Review Order
Nitromethane, 75–52–5.	TR–461	Fuel additive and propellant. Cellulosic compound solvent. Intermediate for nitro and amino alcohols.	Inhalation (AIR): Rats: 0, 94, 188, OR 375 PPM; 50/GROUP. Mice: 0,188, 375, OR 750 PPM; 50/GROUP.	5
Phenolphthalein, 77–09–8.	TR–465	Laboratory reagent. Dyes. Cathartic drug in laxatives.	Dosed-Feed (NIH–07): Rats: 0, 1.2, 2.5, OR 5%; Mice 0, 0.3, 0.6, OR 1.2% (50/SEX/SPECIES/GROUP).	2
Sodium Xylene Sulfonate, 1300–72–7.	TR–464	Hydrotrope in liquid detergents, shampoos, degreasing compounds. Used in textile, paper, and leather industries.	Topical (ETHANOL): Rats: 0, 60, 120, OR 240 MG/KG Mice: 0, 182, 364, OR 727 MG/KG (50/SEX/GROUP.	3
Tetrafluoroethylene, 116–14–3.	TR–450	Monomer for polytetrafluoroethylene polymers. Preparation of propellants for food product aerosols. Chemical intermediate.	Inhalation (AIR): Mice & Female Rats: 0, 312, 625, OR 1250; Male Rats: 0, 156, 312, OR 625 PPM; 50/GROUP.	1

[FR Doc. 95–28209 Filed 11–14–95; 8:45 am]

BILLING CODE 4140–01–P–M

Program Support Center; Statement of Organization, Functions and Delegations of Authority

Part P, (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995) is amended to reflect establishment of Chapters PB, PC, PD, and PE within Part P, Program Support Center, Department of Health and Human Services (DHHS) as follows:

(1) Human Resources Service (PB).

(2) Financial Management Service (PC).

(3) Administrative Operations Service (PD).

(4) Information Technology Service (PE).

These Chapters are established to provide the major organizational components within the Program Support Center to carry out the wide range of administrative support services to components of DHHS and other Federal Departments.

Program Support Center

Under Part P, Section P–10 Organization, add the following at the end of the statement:

The Program Support Center shall consist of the following major components:

1. Office of the Director (PA).
2. Human Resources Service (PB).
3. Financial Management Service (PC).
4. Administrative Operations Service (PD).
5. Information Technology Service (PE).

Under Section P–20, Functions, after the title and statement for Chapter PA, Office of the Director, add the following titles and statements:

Human Resources Service (PB)

The Service: (1) Operates a servicing personnel office for a variety of customers; (2) provides human resource operating systems and management information to DHHS program managers and personnel offices; (3) operates and maintains a departmentwide centralized payroll system; (4) administers the Commissioned Corps personnel management system; (5) provides centralized common needs training; (6) provides technical assistance, guidance, and representation on labor relations and employee relations issues; and (7) provides Executive Secretariat services for the Board for Corrections of PHS Commissioned Corps Personnel Records.

Financial Management Service (PC)

The Service: (1) provides full accounting and fiscal services for a variety of DHHS customers; (2) provides a full range of debt management services; (3) operates a payment management system which provides for cash management, and grant and contract payments for DHHS and other Departments; and (4) reviews, negotiates and approves indirect cost rates, research patient care rates, fringe benefit rates, and other special rates for organizations receiving federally sponsored awards and approves state and local government cost allocation plans.

Administrative Operations Service (PD)

The Service provides to DHHS components and other Departments nationwide administrative and technical services which include: (1) Building operations, surplus real property, leasing, security, property management, warehousing, logistics, and space management services; (2) printing, duplicating, and typesetting; (3) operation of reference libraries; (4) mail distribution and handling; (5) claims services for PHS components nationwide under specific statutory authorities; (6) acquisition services; (7) pharmaceutical, medical, and dental supplies to Federal agencies and other related non-Federal customers; (8) technical graphics and photography services; and (9) a wide range of telecommunications services.

Information Technology Service (PE)

The Service: (1) Operates and manages the central computer facility in the Parklawn complex performing fee-for-service Information Technology (IT) and data telecommunications functions for DHHS and other Federal Departments; (2) provides technical support for scientific and administrative information systems; (3) provides information technology services to the PSC, DHHS, and to other Federal Departments; (4) reviews and makes recommendations on hardware, software, and service procurements by servicing agencies to assure compatibility; (5) designs, develops, and operates the Departmental Information Management Exchange System (DIMES), the Departmental nationwide data communications network; and (6) serves as the DHHS Executive Agent for Departmentwide connectivity.

After Section P–20, Functions, add the following Section P–30, Delegations of Authority:

Section P–30, Delegations of Authority.

All delegations and redelegations of authority to officers and employees of the Departmental components which were transferred to the Program Support Center, and which were in effect immediately prior to this reorganization will be continued in effect in them or their successors, pending further delegation, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

Dated: November 1, 1995.

John C. West,

Acting Director, Program Support Center.

[FR Doc. 95–28181 Filed 11–14–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1430–01: GP–6–0017]

Realty Action; Oregon

AGENCY: Bureau of Land Management, Lakeview District.

ACTION: Direct and Competitive Sale of Public Land in Lake County OR 36285, OR 49389, OR 51851, OR 51852, OR 51853.

The following parcels of public land are suitable for direct and competitive sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register**.

Legal description	Acreage	Sale price	Deposit
Parcel No. 1, OR 36285			
T.25S., R.19E., W.M., Oregon Section 28: NE¼	160	$9,600	$2,880
Parcel No. 2, OR 49389			
T.25S., R.14E., W.M., Oregon Section 24: S½; 25: All	960	86,000	8,600
Parcel No. 3, OR 51851			
T.26S., R.18E., W.M., Oregon Section 4: S½SE¼	80	6,900	2,070
Parcel No. 4, OR 51852			
T.25S., R.13E., W.M., Oregon Section 28: E½E½E½NE¼	20	1,500	450
Parcel No. 5, OR 51853			
T.25S., R.18E., W.M., Oregon Section 20: S½; 27: W½; 28: All; 29: NE¼, N½NW¼, E½SE¼.	1,600	88,000	8,800

The above described land parcels are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute for 270 days from the date of publication or until title transfers are completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first. This land will be offered for sale in accordance with a congressionally directed plan to restore and maintain the public/private ownership ratio in Lake County. The land is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

Sale parcel OR 51852 will be offered under direct sale procedures to Ray and Edna Wagner of Fort Rock, Oregon. Direct sale procedures are considered appropriate, in this case, to resolve a fence line location dispute and to avoid the future unauthorized use of the involved public land. Sale parcels OR 36285, OR 49389, OR 51851 and OR 51853 will be offered using competitive sale procedures. Both sale procedures are authorized under 43 CFR 2711.3–3. The land will be offered for sale at public auction beginning at 10:00 am PST, on February 21, 1996, and will be by sealed bid only. All sealed bids must be submitted to the BLM, Lakeview District Office at P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630, no later than 4:30 pm PST, February 20, 1996. A separate written bid must be submitted for each parcel desired and bids must be for not less than the appraised sale price indicated. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for not less than the bid deposit specified in this notice. All bids shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner,

Bid for Public Land Sale OR (*number*),

Lake County, Oregon, February 21, 1996.

The total purchase price for the land shall be paid within 180 days of the date of sale or the bid deposit will be forfeited and the parcel(s) will be reoffered to the public with the exception of sale parcel OR 51852 which will not be reoffered.

The terms, conditions and reservations applicable to the sales are as follows:

(1) Patents to all sale parcels will contain a reservation to the United States for ditches and canals.

(2) The sale parcels will be subject to all valid existing rights of record at the time of patent issuance.

(3) The mineral interests being offered for conveyance with sale parcels OR 49389, OR 51851 and OR 51853 have no known value. A deposit or bid to purchase these parcel(s) will also constitute an application for conveyance of the mineral estate with the following reservations;

(a) The oil and gas and geothermal resources will be reserved to the United States for sale parcels, OR 49389, OR 51851 and OR 51853, *except* the SW¼ of Section 28 of Parcel OR 49389 where the minerals are privately owned.

(b) All minerals relative to sale parcels OR 36285 and OR 51852 will be reserved to the United States.

The above mineral reservations are being made in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

All qualified bidder(s) must include with their bid deposit, for each parcel, a non-refundable $50.00 filing fee for conveyance of the mineral estate.

Federal law requires that all bidders must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located. Under competitive sale procedures, an apparent high bid will be declared at public auction. In the event of a tie, the tied bidders will be notified and given the opportunity to modify their original bids. The apparent high bidder will then be notified.

If the land identified in this notice, except parcel OR 51852, are not sold on the date of first sale offering, the unsold parcels will be available on an over-the-counter competitive sale basis. All over-the-counter sale parcels will be sold subject to the above terms and conditions and at no less than the indicated sale price. Sealed bids will be accepted on the unsold parcels at the Lakeview District Office during regular business hours (7:45 a.m. to 4:30 p.m. PST Monday through Friday) at the address shown below. All sealed bids received will be opened the first Wednesday of each subsequent month until the land is either sold or withdrawn from sale. Prospective buyers should inquire about unsold parcels after February 21, 1996.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 2, 1995.

Scott R. Florence,

Lakeview Resource Area Manager.

[FR Doc. 95–28113 Filed 11–14–95; 8:45 am]

BILLING CODE 4310–33–P

Minerals Management Service

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Minerals Management Service, Interior.

ACTION: Announcement of information collection; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Minerals Management Service (MMS) invites the general public and other Federal agencies to comment on a proposed collection of information on Social and Economic Adaptations by Fish Harvesters in the Santa Barbara Channel-Santa Maria Basin Area, California. MMS will submit the collection of information to the Office of Management and Budget (OMB) for approval.

DATES: Submit written comments by January 16, 1996.

ADDRESSES: Direct all written comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Piltz, Chief, Environmental Studies Section, Pacific OCS Region, Minerals Management Service, telephone (805) 389–7850.

SUPPLEMENTARY INFORMATION:

Title: Social and Economic Adaptations by Fish Harvesters in the Santa Barbara Channel-Santa Maria Basin Area, California.

Abstract: Utah State University, Department of Forest Resources will conduct a study under the MMS Environmental Studies Program. The study will provide an analysis of the social composition and the social and economic adaptations of commercial fish harvesters in the Santa Barbara Channel-Santa Maria Basin area. The research will be centered upon the commercial fish harvesters and their spouses working out of the ports of Morro Bay, Port San Luis, Santa Barbara, Ventura, and either Channel Islands or Port Hueneme. The research will require interviews with fish harvesters from each port with analysis and comparisons among ports and in the aggregate. The information collected under this study will aid MMS in assessing the actual or potential impacts of Outer Continental Shelf (OCS) gas and oil activities on the social organization of fish harvesters, the lives of fishing families, and the economics of fish harvesting.

Description of Respondents: Fish harvesters and spouses.

Frequency: One time (1 response per respondent).

Estimate of Burden: We estimate interviews with fish harvesters will average 53 minutes each; interviews with the spouses will average 30 minutes each.

Estimated Number of Respondents: 450 fish harvesters; 284 spouses.

Estimated Total Annual Burden on Respondents: 539.5 hours.

Type of Request: New.

OMB Number: N/A.

Form Number: N/A.

Comments: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), MMS specifically solicits responses to the following questions: (1) Is the proposed collection of information necessary for the proper performance of the functions of MMS and will it be useful? (2) Are the estimates of the burden of the proposed collection accurate and the methods and assumptions used valid? (3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected? (4) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology? MMS will summarize written responses to this notice for inclusion in the result for OMB approval. All comments will also become a matter of public record.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: November 7, 1995.

William S. Cook,

Acting Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–28174 Filed 11–14–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Carlsbad Caverns National Park, Draft General Management Plan/ Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Draft General Management Plan/ Environmental Impact Statement for Carlsbad Caverns National Park, Eddy County, New Mexico.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 the National Park Service announces the availability of the Draft General Management Plan/ Environmental Impact Statement (GMP/EIS) for Carlsbad Caverns National Park. This notice also announces a public meeting for the purpose of receiving public comments on the Draft GMP/EIS.

The purpose of the general management plan is to set forth the basic management philosophy and to provide the strategies for addressing issues and achieving management objectives over the next 10 to 15 years. This Draft GMP/EIS describes and evaluates three alternatives for the management of Carlsbad Caverns National Park.

Alternative 1

Alternative 1 describes the continuation of existing management direction at the park as described in current plans (the no-action alternative). The park would provide for visitor use and respond to resource management issues and concerns as funding allowed, but no major change in management direction would be initiated.

Alternative 2

Alternative 2 is the proposed action and National Park Service's preferred alternative. It would base resource management and visitor use decisions on expanded scientific research, inventory, and monitoring. Information would be gathered about how human activities and facilities are affecting park resources, especially cavern resources. A development concept plan would be undertaken once these studies had been completed to determine how to reduce or eliminate threats to subsurface resources, with measures possibly ranging from infrastructure improvements to the removal of certain facilities. Opportunities for visitors to enjoy and learn about significant park resources would be increased, special off-trail tours would be continued, the feasibility of opening Ogle Cave to tours would be studied, and additional surface trails would be provided. The visitor center would be remodeled to be more efficient, and a ranger residence would be provided near Slaughter Canyon.

Alternative 3

Alternative 3 proposes the removal of many surface functions and facilities above the cavern within five years to ensure the protection of subsurface resources. To replace these functions, a new visitor orientation/transit center and a park operations center would be developed at the base of the Guadalupe escarpment. Visitors would use a shuttle system for access to the existing visitor center, which would be modified to focus on interpretation and essential services. Visitor use of the cavern would be monitored and restricted to minimize further damage to cavern resources, and no special off-trail tours would be provided.

The environmental impact analysis indicates that alternatives 2 and 3 would better protect the park's significant resources than would alternative 1. Some potential threats to subsurface resources would remain under alternative 2, pending the completion of studies. Alternative 2 would increase visitor opportunities and provide more in-depth interpretation, while alternative 3 would limit the range of opportunities but improve interpretation. Alternative 2 and 3 would both have beneficial long-term socioeconomic impacts. The risk of an accident that could close the cave to public entry, thus affecting the local tourism industry, would continue over the long term under alternative 1 and over the short term under alternative 2; this risk would be reduced within the foreseeable future under alternative 3.

DATES: Comments on the Draft GMP/EIS should be received no later than January 16, 1996. The date and time for the public meeting regarding the draft GMP/EIS can be obtained by contacting the park at (505) 785–2232, extension 321.

ADDRESSES: Comments on the Draft GMP/EIS should be submitted to: Planning Team Leader, Carlsbad Caverns General Management Plan, National Park Service/Denver Service Center, Post Office Box 25287, Denver, Colorado 80225–0287.

SUPPLEMENTARY INFORMATION: Public review copies of the Draft GMP/EIS will be available at the following locations: Office of Public Affairs, National Park Service, 1849 C Street, NW, Washington, D.C.; Department of Interior Natural Resource Library, 1849 C Street, NW, Washington, D.C.; National Park Service, Southwest Systems Support Office, 1100 Old Santa Fe Trail, Santa Fe, New Mexico; Carlsbad Caverns National Park, 3225 National Parks Highway, Carlsbad, New Mexico; and local public libraries.

Dated: November 6, 1995.

Ernest W. Ortega,

Acting Superintendent, Southwest System Support Office.

[FR Doc. 95–28123 Filed 11–14–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 4, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 30, 1995.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ARKANSAS

Cleveland County

Wesley Chapel, AR 15, Woodlawn, 95001412

Phillips County

New Light Missionary Baptist Church (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), 522 Arkansas St., Helena, 95001410

Washington County

Walnut Grove Presbyterian Church, AR 170, Farmington vicinity, 95001411

COLORADO

Denver County

Bryant—Webster Elementary School, 3635 Quives St., Denver, 95001421

Pride of the Rockies Flour Mill, 2100 20th St., Denver, 95001420

FLORIDA

Brevard County

La Grange Church and Cemetery, 1575 Old Dixie Hwy., Titusville, 95001413

IDAHO

Bonner County

Priest River High School, 1020 W. Albeni Hwy., Priest River, 95001402

Canyon County

Caldwell Oregon Short Line Railroad Depot, 701 S. 7th St., Caldwell, 95001403

MICHIGAN

Ingham County

Goetsch—Winckler House, 2410 Hulett Rd., Meridian Township, Okemos, 95001423

Saginaw County

Bliss Park, SW o[c]jct. of Houghton St. and N. Michigan Ave., Saginaw, 95001424

NEW HAMPSHIRE

Hillsborough County

Goffstown Public Library, 2 High St., Goffstown, 95001426

NEW YORK

St. Lawrence County

Clarkson—Knowles Cottage, 37 Main St., Potsdam, 95001405

Ulster County

Kingston City Library, 399 Broadway, Kingston, 95001404

Yates County

Esperanza (Yates County MPS), NY 54A E of Keuka Lake, Jerusalem, 95001406

NORTH CAROLINA

Rutherford County

Main Street Historic District, Roughly bounded by Taylor, Court, Washington and W. Third Sts., Rutherfordton, 95001419

OHIO

Ashtabula County

Griggs Grange No. 1467, 1467 Brown Rd., Jefferson vicinity, 95001414

Columbiana County

Salem Downtown Historic District, Roughly bounded by Vine Ave., Ohio Ave., E. Pershing St., S. Ellsworth Ave. and Sugar Tree Alley, Salem, 95001416

Marion County

Marion Cemetery Receiving Vault, 620 Delaware Ave., Marion, 95001415

OKLAHOMA

Kiowa County

Hobart Rock Island Depot, 518 S. Main, Hobart, 95001418

McClain County

Hotel Love, 200 W. Main St., Purcell, 95001407

Pittsburg County

Aldridge Hotel, 200 E. Carl Albert Pkwy., McAlester, 95001408

Stephens County

Patterson Hospital, 929 W. Willow Ave., Duncan, 95001417

TENNESSEE

Fayette County

Williston Historic District, Roughly, along Hotel and Railroad Sts. and Walker Ave., Williston, 95001409

TEXAS

Bexar County

City Public Service Company Building, 201 N. St. Mary's St., San Antonio, 95001422

[FR Doc. 95–28116 Filed 11–14–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–310 (Sub-No. 1X), Utah Railway Company—Abandonment in Carbon County, Utah. EA available 11/2/95.

AB–310X, Utah Railway Company—Abandonment in Carbon County, Utah. EA available 11/2/95.

Comments on the following assessment are due 30 days after the date of availability:

AB–406 (Sub-No. 4X), Central Kansas Railway, Limited Liability Company—Abandonment Exemption—In Harper County, Kansas. EA available 11/2/95.

AB–454X, The Bay Line Railroad, L.L.C.—Abandonment Exemption—Rail Line Between Campbellton and Graceville, Florida. EA available 11/2/95.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28169 Filed 11–14–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP Number 1068]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

November 8, 1995.

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Tuesday, November 28, 1995, and ending at 3:00 p.m. on November 28, 1995. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the United States Department of Justice, located at 10th and Constitution Avenue, N.W., Conference Room 5111, Washington, D.C. 20530. The Coordinating Council, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. The public is advised that it must enter the building via the Constitution Avenue Visitors' Center. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business November 21, 1995. The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911. The public is further advised that a pictured identification is required to enter the building.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–28131 Filed 11–14–95; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Quarterly Determinations, Allowance Activities and Employability Services Under The Trade Act; and Training Waivers Issued and Revoked

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement of the collection of the Quarterly Determinations, Allowance Activities and Employability Services Under The Trade Act, Form ETA 563; and Training Waivers Issued and Revoked, Form ETA 9027.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before January 16, 1996. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Russell T. Kile, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Ave., N.W., Washington, D.C. 20210, 202–219–5555 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I: Background

The Trade Act of 1974, Section 236(d), as amended, requires the President to submit an annual report to the Congress on the trade agreements program which includes information on trade adjustment assistance for workers. The information from this collection of information is used by the Secretary of Labor to report to Congress quarterly regarding the amount of funds expended to provide training. Key workload data on the Trade Adjustment Assistance (TAA) and the North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA) programs is needed to measure program performance and to allocate program and administrative funds to State agencies administering the trade programs for the Secretary.

The Trade Act of 1974, (Pub. L. 93–618), Section 231(c)(3), as amended by the Omnibus Trade and Competitiveness Act (OTCA) of 1988, requires the Secretary to report to the Congress annually, the number of training waivers issued and revoked. NAFTA legislation does not provide for the waiver of training. The Department has determined that it is important to ascertain not only the number of waivers issued, but the reasons why such waiver were issued following the guidelines provided by the Congress. Further, the Department determined that such information should be collected quarterly to assess the adequacy of the regulations and operating instructions issued to the State Agencies acting as an Agent of the United States when administering the Trade Act provisions.

II: Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for a reinstatement of collection of information previously approved and assigned OMB Control No. 1205–0016. There is no change in burden.

Type of Review: Reinstatement without change.

Agency: Employment and Training Administration, Labor.

Title: Quarterly Determinations, Allowance Activities and Employability Service Under The Trade Act; and Training Waivers Issued and Revoked.

OMB Number: 1205–0016.

Frequently: Quarterly.

Affected Public: State or Local Government.

Number of Respondents: ETA-563 = Estimated 17,100; ETA-9027 = Estimated 52.

Estimated Time Per Respondent: ETA-563 = 12 minutes per response; ETA-9027=15 minutes per response.

Total Estimated Cost: $46,380.

Total Burden Hours: 3,472.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 11, 1995.

Russell T. Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 95–28171 Filed 11–14–95; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

November 13, 1995.

The Department of Labor has submitted the following emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by November 13, 1995. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ([202] 219–5095). Comments and questions about the ICR listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 as soon as possible. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management, Office of Management and Budget, Room 10325, Washington, DC 20503 ([202] 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Agency: Office of the Secretary.

Title: Minimum Wage.

OMB Number: 1225–0new.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 100,000.

Estimated Time Per Respondent: 1 minute.

Total Burden Hours: 1,670.

Description: The Secretary of Labor is establishing a toil-free "800" number to solicit participation by minimum wage workers across the country in the national policy debate on proposals to increase the federally-established minimum wage. Participants are specifically being asked how a change in the minimum wage would affect the quality of their lives and the lives of their families. Minimum wage workers are usually not invited to policy debates, nor are they generally able to absorb the wages lost taking time off of work to engage in such activity. These low-income workers may also not be represented by collective bargaining and other organizations and therefore do not have an organized voice in such debates.

The Secretary is attempting, as a part of his role representing the concerns of American workers, to give these individuals an opportunity to have their stories heard. The Department believes that the use of toll-free telephone technology will allow workers to participate in the discussion at no cost to them and with the duration of the phone call being the only burden placed on their time.

The Secretary is often asked to speak on the subject of minimum wages and anticipates being asked to testify before congressional committees in the near future. The information obtained from participants in the toll-free number will be an important supplement to existing economic and other studies.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–28302 Filed 11–14–95; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

NACOSH HazCom Workgroup Meeting

Notice is hereby given that a workgroup of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on December 11 and 12, 1995, in N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW., Washington, DC. The meeting, which is open to the public, will run from 1 p.m. to 5 p.m. on December 11 and from 8 a.m. to 4 p.m. on December 12.

The Occupational Safety and Health Administration (OSHA) has asked NACOSH to form a workgroup to identify ways to improve chemical hazard communication and the right to know in the workplace. OSHA has asked the Committee to provide OSHA with recommendations in approximately six months to simplify material safety data sheets, reduce the amount of required paperwork, improve the effectiveness of worker training, and revise enforcement policies so that they focus on the most serious hazards.

Beginning at 1:00 p.m. on December 11 and continuing through December 12, members of the public who are impacted by OSHA's hazard communication standard are invited to address the workgroup. Presentations will be limited to 10 minutes with time allowed for questions from the workgroup members. Additional information and/or documentation may be submitted and will be entered into the record. A verbatim transcript will be made of the proceedings which will be available to the public in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500).

Those who wish to make presentations should notify, no later than December 1, Joanne Goodell, Directorate of Policy, OSHA, Room N–3641, 200 Constitution Avenue NW., Washington, DC, 20210, telephone (202) 219–8021, ext. 107, or FAX (202) 219–4383. Presenters must provide their name, the capacity in which they will appear, a brief outline of the content of the presentation, mail address, telephone and FAX numbers. Presenters' specific requests to appear on either the December 11 afternoon session or the December 12 session will be honored to the extent the schedule allows. If there is sufficient time, others who have not notified OSHA will be permitted to make presentations after all those on the schedule have been heard. In the event that the number of requests to make presentations exceeds the available time, those with the earliest documented requests will be honored.

Written data, views or comments for consideration by the workgroup may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Individuals with disabilities who need special accommodations should contact Tom Hall (202–219–8615) by December 7.

Additional Meeting Schedule

On January 10–11, 1996, in Room N3437 A–D, the HazCom Workgroup will meet from 10:00 a.m. to 5:00 p.m. on January 10 and from 8:00 a.m. to 4:00 p.m. on January 11. Presentations by specialists will be made on the following subjects: label comprehension, electronic access systems, training programs, and the American National Standards Institute (ANSI) experience in developing a standard for Hazardous Industrial Chemicals—Material Safety Data Sheets.

On February 7–9, the HazCom Workgroup will meet in Room N3437 A–D to review all issues and finalize the concept for the report. The meeting will run from 10:00 a.m. to 5:00 p.m. the second day.

On March 20, the HazCom Workgroup will meet from 10:00 a.m. to 4:00 p.m. in Room N3437 A–D to review the total report, make any necessary changes and obtain concurrences.

It is anticipated that the final product of this workgroup will be submitted to the full National Advisory Committee on Occupational Safety and Health in mid to late April.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue, NW., Washington, DC, 20210, telephone (202) 219–8021.

Signed at Washington, DC this 8th day of November, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–28170 Filed 11–14–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call Herman Fleming, NSF Clearance Officer at (703) 306–1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Study of Persons with Disabilities Majoring in Science, Engineering, Mathematics, and Technology (SEMT). Individuals with disabilities do not pursue academic majors in science engineering, mathematics and technology in numbers commensurate with their prevalence in the population. Further, they are underrepresented among individuals who pursue science-oriented careers. This underrepresentation in SEMT of students with disabilities represents a major loss for both those individuals and the nation's scientific labor force. Currently, serious information gaps and contradictory data hamper the creation of policy and direction to allow and encourage talented young persons with disabilities to pursue careers in SEMT.

To address this need for information the proposed project has the following objectives; (1) To determine the number and demographic characteristics of these students. (2) To examine issues related to their pursuit of a degree, including research experience, high school preparation, interest in SEMT, choice of college major, barriers, use of disability support service, critical incidents, and education and career goals. To address the research objectives, the proposed project involves an in-depth study of a sample (n=20) of different types of postsecondary educational institutions (research universities, 4-year colleges, disability-friendly universities, and community colleges). At each institution, three groups of students will be surveyed: students with disabilities majoring in SEMT, students with disabilities majoring in other fields, and students without disabilities majoring in SEMT. Interviews with SEMT faculty at each institution will also be conducted. This approach will allow for exploration of the ways in which students with disabilities majoring in SEMT are similar to and different from other groups of students, as well as the views of faulty toward students with disabilities. The project is planned as a one-time data collection what will occur in the spring of 1996. Burden estimates are as follows:

Respondents	Number of interviews	Estimated time in minutes	Total burden (hours)
SEMT students with disabilities	725	30	363
Non-SEMT students with disabilities	375	25	156
SEMT students without disabilities	375	25	156
SEMT faculty members	200	15	50

Send Comments to Herman Fleming, Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by January 15, 1996.

Dated: November 9, 1995.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 95–28241 Filed 11–14–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Niagara Mohawk Power Corporation (the licensee) to withdraw its September 1, 1994, application for proposed amendment to Facility Operating License No. DPR–63 for the Nine Mile Point Nuclear Station Unit No. 1, located in Oswego County, New York.

The proposed amendment would have revised the pressure/temperature limits in the plant technical specifications.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 12, 1994, (59 FR 51620). On September 22, 1995, the staff issued a denial of the amendment request which was noticed in the **Federal Register** on September 29, 1995, (60 FR 50650). However, by letter dated October 27, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 1, 1994, the staff's denial dated September 22, 1995, and the licensee's letter dated October 27, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 6th day of November 1995.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28155 Filed 11–14–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–6659]

Federal Register Notice of Amendment To Change Reclamation Milestone Date In Source Material License SUA–551 Held by Petrotomics Company for its Shirley Basin, Wyoming Uranium Mill

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–551 to change a reclamation milestone date.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Petrotomics Company's (Petrotomics') Source Material License SUA–551 for Shirley Basin Wyoming to change a reclamation milestone date. This amendment was requested by Petrotomics by letter dated September 5, 1995, and its receipt by NRC was noticed in the **Federal Register** on September 27, 1995.

The license amendment modifies License Condition 50 to change the completion date for a site-reclamation milestone. The new date approved by the NRC extends completion of placement of final radon barrier on the tailings pile by one year, and ten months. Petrotomics attributes the delays to (1) NRC's re-examination of cover design for performance with current standards and practices, and (2) short construction season at the Shirley Basin site. Based on review of Petrotomics' submittal, the NRC staff concludes that the delays are attributable to factors beyond the control of Petrotomics, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: Petrotomics' license, including an amended License Condition 50, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 7th day of November 1995.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–28156 Filed 11–14–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–344]

Portland General Electric Company, Trojan Nuclear Plant; Exemption

I.

Portland General Electric Company (PGE or the licensee) is the holder of Facility Operating (Possession Only) License No. NPF–1, which authorizes possession and maintenance of the Trojan Nuclear Plant (Trojan or the plant). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The plant is a permanently shutdown, defueled, pressurized light-water reactor undergoing the initial stages of decommissioning, which is located along the banks of the Columbia River in Columbia County, Oregon.

II.

Trojan received an operating license on November 21, 1975. On January 4, 1993, the Directors of PGE voted to accept the recommendation of the PGE management to permanently cease power operations at Trojan. The facility had been shut down since November 9, 1992, when a leak in the "B" steam generator was detected. PGE completed defueling of the reactor on January 27, 1993. On March 24, 1993, the NRC staff issued a confirmatory order to confirm a commitment by PGE not to move new or spent fuel into the reactor building without prior NRC approval. On May 5, 1993, the Commission issued Amendment No. 190 for Facility Operating License No. NPF–1, which converted the license to a possession-only license (POL).

Section 140.11(a)(4) of Title 10 of the Code of Federal Regulations, (10 CFR 140.11(a)(4)) requires each licensee to have and maintain primary nuclear liability insurance of $200 million. In addition, each licensee is required to maintain secondary financial protection in the form of private liability insurance under an industry retrospective plan. However, 10 CFR 140.8 allows the Commission, upon application of any interested person or upon its own initiative, to grant such exemptions from the requirements of Part 140 as it determines are authorized by law and are otherwise in the public interest.

In a letter dated April 6, 1995, the licensee requested a reduction in primary financial coverage and an exemption from participation in the industry retrospective rating plan requiring secondary level coverage requirements in 10 CFR 140.11(a)(4). The licensee requested that the exemption become effective on November 9, 1992, 3 years from the date of final shutdown of the reactors.

III.

The licensee justified the exemption request by citing existing NRC policy that provides for exemption from the requirements of 10 CFR 140.11(a)(4) for plants that have been permanently shut down, as presented in a staff requirements memorandum (SRM) dated July 13, 1993, on SECY–93–127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning." The licensee contends that as of November 9, 1995, no potential will exist for a reasonably conceivable accident at Trojan that could cause offsite damage resulting in liability claims exceeding $100 million. The licensee's conclusion is based on (1) Its analyses of operating events and design-basis accidents for Trojan in the permanently defueled condition described in the Trojan Defueled Safety Analysis Report; (2) the NRC staff's technical evaluation in SECY–93–127; and (3) the permanently shutdown status of the plant, including the significant period of elapsed time (3 years on November 9, 1995) in which the spent fuel decay heat will have had to dissipate.

The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shutdown reactors in SECY 93–127. In its evaluation, the staff concluded that the legislative history of the Price-Anderson Act establishes a legal framework and the discretionary authority to respond to licensee requests for a reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Depending on the plant-specific configuration and the amount of elapsed time since permanent shutdown, the staff also concluded that potential hazards may exist at permanently shutdown reactors for which financial protection is warranted. The staff further concluded that accidents and hazards insured against under the Price-Anderson Act go beyond design-basis accidents and beyond those accidents considered "credible" as that term is used in 10 CFR Part 100 and in cases interpreting the application of the regulation.

In the exercise of its discretionary authority, the Commission could, so long as a potential hazard existed at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time as the hazard is determined to no longer exist, the Commission may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Because the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design-basis accidents, and beyond-design-basis accidents for reactors that have been permanently defueled and shut down. The staff concluded that aside from the handling, storage, and transportation of spent fuel and radioactive materials, no potential exists for a reasonably conceivable accident that could cause significant offsite damage.

A severe transportation accident could cause local contamination requiring cleanup and offsite liabilities resulting from traffic disruption and damage to property. The possibility of this type of accident would warrant the licensee's maintaining some level of liability insurance. The liabilities and indemnification requirements associated with the transfer of spent fuel from the licensee to the Department of Energy will be evaluated on a case-by-case basis in the future, when spent fuel is shipped to a repository.

The most significant accident sequence for a permanently defueled and shutdown reactor involves the complete loss of water from a light-water reactor spent fuel pool. This beyond-design-basis accident sequence could result in a zirconium fuel cladding fire that could propagate through the spent fuel storage pool and result in significant offsite consequences. Although such an accident is beyond the design bases, it may be considered "reasonably conceivable" and could warrant requiring substantial financial protection. Such an accident is possible during the first year after reactor shutdown for a low-density spent fuel storage configuration and during the first 2 to 3 years after shutdown for spent fuel stored in certain high-density configurations.

Accident scenarios involving blockage of coolant channels in conjunction with loss of spent fuel pool water could hypothetically further extend the time at which a zirconium fuel cladding fire could occur. However, in addition to being less likely than loss of water, air flow to react with the zirconium and to disperse fission products would most likely be inhibited by such blockage. The staff believes that this sequence approaches the strictly hypothetical.

Once the requisite cooling period after reactor shutdown has elapsed, the zirconium fuel cladding fire sequence is no longer a concern because the fuel would air cool sufficiently to avoid zirconium fuel cladding combustion. Possible accident scenarios after these cooling periods have elapsed possess greatly reduced consequences but could result in small releases or precautionary evacuations that could result in offsite liability.

With respect to the Trojan plant-specific evaluation, the NRC staff independently evaluated the legal and technical justifications for the exemption presented by the licensee. The NRC recognizes the current condition of the Trojan plant, that is, permanently shut down and defueled, licensed for "possession-only," and under a confirmatory order that prohibits fuel movement from the spent fuel pool into the reactor building without approval of the Commission. The staff concurred with the licensee's evaluation of credible design-basis accidents and their minimal associated offsite consequences.

The staff also considered liability coverage needs associated with decommissioning activities, transportation of radioactive materials, design-basis accidents, and beyond-design-basis accidents as previously noted herein. The results of the staff's evaluation, as embodied in the staff requirements memorandum of July 13, 1993, on SECY 93–127 and in SECY 93–127, allow (after the requisite minimum spent fuel cooling period has elapsed) a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shut down. The Trojan plant was permanently shut down on November 9, 1992; therefore, as of November 9, 1995, 3 years will have elapsed since the permanent shutdown of the Trojan plant. This time period meets the criteria established in SECY 93–127 for relief from financial protection requirements.

IV.

On the basis of its independent evaluation as embodied in the staff requirements memorandum of July 13, 1993, on SECY 93–127 and in SECY 93–127, the staff concluded that sufficient bases exist for the Commission's approval of relief from the financial protection requirements for the Trojan plant. The staff also concluded that granting the proposed exemption does not increase the probability or consequences of any accidents or reduce the margin of safety at this facility.

V.

Based on Sections III. and IV. above, the Commission has determined that pursuant to 10 CFR 140.8, this exemption is authorized by law and is otherwise in the public interest. Therefore, the Commission grants an exemption from the requirements of 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100 million shall be maintained. An exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for the Trojan plant effective November 9, 1995, 3 years from the date of final shutdown of the reactor.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (60 FR 55741 dated November 2, 1995).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 2nd day of November 1995.

Brian K. Grimes,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28157 Filed 11–14–95; 8:45 am]

BILLING CODE 7590–01–P

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 1 to Regulatory Guide 1.153, and it is temporarily identified as DG–1042, "Criteria for Safety Systems." The guide will be in Division 1, "Power Reactors." This regulatory guide is being revised to provide current guidance on methods acceptable to the NRC staff for complying with the Commission's regulations with respect to the design, reliability, qualification, and testability of the power, instrumentation, and control portions of safety systems of nuclear power plants.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 12, 1996.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: Parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS,

703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact S.K. Aggarwal at the NRC, telephone (301) 415–6005; e-mail SKA@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301) 415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of October 1995.

For the Nuclear Regulatory Commission.

John W. Craig,

Deputy Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 95–28154 Filed 11–14–95; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of changes to systems of records, including proposed new and revised routine uses.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing several new and revised routine uses of records in its systems of records maintained pursuant to the Privacy Act of 1974, as amended, and is making a number of other technical and clarifying changes to those systems. The changes include dividing one system of records into two systems of records and deleting a system of records.

DATES: Comments on new and revised routine uses must be received on or before December 15, 1995. New and revised routine uses, the division of PBGC–5 into PBGC–5 and PBGC–12, and the deletion of PBGC–7 will become effective January 1, 1996, without further notice, unless comments result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or hand-delivered to Suite 340 at the above address between 9:00 a.m. and 5:00 p.m., Monday through Friday. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, Suite 240, at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4123 (202–326–4179 for TTY and TDD). For access to any of the PBGC's systems of records, contact E. William FitzGerald, Disclosure Officer, Communications and Public Affairs Department, at the above address, 202–326–4040. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC maintains 11 Privacy Act systems of records.[1] Each of these systems of records contains "routine uses" describing situations in which the PBGC may disclose information about an individual without his or her consent. In addition, the PBGC specifies general routine uses that apply to most systems of records. (This notice places a "G" in front of the general routine uses to distinguish them from the routine uses within the individual systems of records.)

This notice proposes several new routine uses of records, revises certain existing routine uses of records, and makes a number of technical and clarifying changes. For the convenience of the public, the revised systems of records are published in full below with changes, other than corrections and minor editing, italicized.

General Routine Uses

The PBGC is proposing several unrelated changes in the general routine uses. Under G2 ("Disclosure When Requesting Information"), the PBGC is expanding the sources to which it may disclose information for the purpose of obtaining information relevant to PBGC decisions concerning hiring or retention of employees, retention of security clearances and letting of contracts.

Under G3 ("Disclosure of Existence of Record Information"), the PBGC may disclose that a system of records includes information relevant to certain decisions of another federal agency, regardless of whether the other agency has requested information from the PBGC.

The PBGC will split general routine use 4 into G4 ("Disclosure in Litigation"), and G5 ("Disclosure to the Department of Justice in Litigation"), and clarify the conditions under which disclosure is permitted. Disclosure will be limited to proceedings before a court or other adjudicative body, but will no longer be limited to "litigation with the individual who is the subject of the record."

The PBGC has modified G8 ("Disclosure to Labor Organizations") to permit disclosure to an official of a labor organization only when "necessary" for the labor organization properly to perform its duties as the collective bargaining representative of PBGC employees. Disclosure is "necessary" when the information sought by the labor organization bears a logical and significant connection with subjects within the scope of collective bargaining and when no adequate alternative source of the information is available to the labor organization. The PBGC is also incorporating G8 by reference into PBGC–3, PBGC–4, PBGC–5, PBGC–7 and PBGC–11.

[1] PBGC–1, Correspondence Between PBGC and Persons Outside PBGC—PBGC; PBGC–2, Disbursements—PBGC; PBGC–3, Employee Payroll, Leave and Attendance Records—PBGC; PBGC–4, Employee Travel Records—PBGC; PBGC–5, Personnel Records—PBGC; PBGC–6, Plan Participant and Beneficiary Data—PBGC; PBGC–7, Equal Employment Opportunity Discrimination Complaints—PBGC; PBGC–8, Employee Adverse Action Files—PBGC; PBGC–9, Plan Participant and Beneficiary Address Identification File—PBGC; PBGC–10, Administrative Appeals File—PBGC; and PBGC–11, Call Detail Records—PBGC.

Systems of Records and Specific Routine Uses

The PBGC is dividing PBGC–5 into two systems of records, PBGC–5 (retitled Personnel Files—PBGC) and PBGC–12 (Personnel Security Investigation Records—PBGC). The PBGC's proposed rule amending 29 CFR Part 2607 to conform with this change appears elsewhere in today's **Federal Register**. The PBGC is deleting PBGC–7, Equal Employment Opportunity Records—PBGC, because it duplicates an existing governmentwide systems of records published by the EEOC (EEOC—GOVT–1, 56 FR 10900, March 14, 1991).

The PBGC is also proposing several changes in the specific routine uses applicable to the individual systems of records. In PBGC–6, the PBGC is amending routine use 5 to permit the PBGC to disclose information to the Federal Aviation Administration to obtain information relevant to a disability determination. Routine uses 6, 7, 8, 9, and 10 will permit disclosure of certain information needed to locate participants and beneficiaries to the Internal Revenue Service, the Social Security Administration, certain labor organizations, private locator services, the United States Postal Service, and to certain other participants and beneficiaries.

In PBGC–8, the PBGC proposes to permit disclosure to the Federal Labor Relations Authority ("FLRA") and the Equal Employment Opportunity Commission ("EEOC") to carry out their authorized functions.

In PBGC–10, routine use 5 will allow the PBGC's Appeals Board to disclose information to certain labor organizations to obtain information relevant to resolving an appeal.

In new PBGC–12, routine use 1 will permit certain disclosures about an investigation to obtain information from a source. Routine use 2 will permit disclosure of information to the Office of Personnel Management, the Merit Systems Protections Board, the FLRA, or the EEOC to carry out their authorized functions.

Technical and Clarifying Changes

The PBGC is also making a number of technical and clarifying changes to its existing systems of records. Among other things, the PBGC is: (1) updating certain record retention and disposal practices to reflect the PBGC's record control schedules and the National Archives and Record Administration's general records schedules; (2) changing certain system manager(s) and addresses to reflect organizational changes and the move of PBGC offices to a new address; and (3) providing for disclosure to consumer reporting agencies in certain systems in accordance with 31 U.S.C. 3711(f) (5 U.S.C. 552a(b)(12)).

Issued in Washington, DC this 8th day of November, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

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1. Correspondence Between the PBGC and Persons Outside the PBGC—PBGC.
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8. Employee Relations Files—PBGC.
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10. Administrative Appeals File—PBGC.
11. Call Detail Records—PBGC.
12. Personnel Security Investigation Records—PBGC.

Prefatory Statement of General Routine Uses

The following routine uses are incorporated by reference into various systems of records, as set forth below.

G1. Routine Use—Law Enforcement: In the event that a system of records maintained by the PBGC to carry out its functions indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be disclosed to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

G2. Routine Use—Disclosure When Requesting Information: A record from this system of records may be disclosed to a federal, state, or local agency *or to another public or private source* maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if *and to the extent* necessary to obtain information relevant to a PBGC decision concerning the hiring or retention of an employee, the *retention* of a security clearance, or the letting of a contract.

G3. Routine Use—Disclosure of *Existence of* Record Information: *With the approval of the Director, Human Resources Department (or his or her designee),* the fact that this system of records *includes information* relevant to a federal agency's decision in connection with the hiring or retention of an employee, the *retention* of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit may be disclosed to that federal agency.

G4. Routine Use—Disclosure in Litigation: A record from this system of records may be disclosed in a proceeding before a court or other adjudicative body in which the PBGC, an employee of the PBGC in his or her official capacity, or an employee of the PBGC in his or her individual capacity if the PBGC (or the Department of Justice ("DOJ")) has agreed to represent him or her is a party, or the United States or any other federal agency is a party and the PBGC determines that it has an interest in the proceeding, if the PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which the PBGC collected the information.

G5. Routine Use—Disclosure to the Department of Justice in Litigation: When the PBGC, an employee of the PBGC in his or her official capacity, or an employee of the PBGC in his or her individual capacity whom the PBGC has agreed to represent is a party to a proceeding before a court or other adjudicative body, or the United States or any other federal agency is a party and the PBGC determines that it has an interest in the proceeding, a record from this system of records may be disclosed to the DOJ if the PBGC is consulting with the DOJ regarding the proceeding or has decided that the DOJ will represent the PBGC, or its interest, in the proceeding and the PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which the PBGC collected the information.

G6. Routine Use—Disclosure to OMB: A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

G7. Routine Use—Congressional Inquiries: A record from this system of records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

G8. Routine Use—Disclosure to Labor Organizations: A record from this system of records may be disclosed to an official of a labor organization recognized under 5 U.S.C. Chapter 71 when necessary for the labor organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

PBGC–1

SYSTEM NAME:

Correspondence Between the PBGC and Persons Outside the PBGC—PBGC.

SYSTEM CLASSIFICATION:

Not Applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have corresponded with the PBGC and with components of the PBGC and individuals who have received replies in response to their correspondence with the PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing the name and address of the correspondent and other information regarding various aspects of the PBGC and Title IV of the Employee Retirement Income Security Act of 1974, as amended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

PURPOSE(S):

This system of records is maintained for programmatic and regulatory purposes (including use in adjudicatory proceedings).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Routine Uses G1 through G7 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders *and/or in automated form.*

RETRIEVABILITY:

Records are indexed by name of correspondent or plan.

SAFEGUARDS:

Manual records are kept in file cabinets in areas of restricted access that are locked after office hours; access to automated records is restricted.

RETENTION AND DISPOSAL:

General requests for information that do not involve administrative action, policy decisions, or special research are destroyed *1 year* after reply. Correspondence with regard to specific matters is transferred to the Washington National Federal Records Center 1 year after the end of the fiscal year in which the correspondence was received or sent, and destroyed when 15 years old. Correspondence with members of Congress is destroyed 1 year after the end of the fiscal year in which it is received or sent.

SYSTEM MANAGER(S) AND ADDRESS:

Correspondence is kept by the director of the department to which the correspondence was addressed or the director of the department who replied. These department directors are: General Counsel, Office of the General Counsel; Inspector General, Office of Inspector General; Director, Corporate Policy and Research Department; Director, Communications and Public Affairs Department; Director, Financial Operations Department; Director, Corporate Budget Department; Director, Procurement Department; Director, Contract and Controls Review Department; Director, Information Resources Management Department; Director, Insurance Operations Department; Director, Facilities and Services Department; Director, Human Resources Department; Director, Corporate Finance and Negotiations Department; and Director, Participant and Employer Appeals Department. Correspondence addressed to or replied to by the Office of the Executive Director is kept by the Deputy Executive Director and Chief Operating Officer. The PBGC's address is: 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Individuals writing to the PBGC and the PBGC's responses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–2

SYSTEM NAME:

Disbursements—PBGC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are consultants and vendors to the PBGC.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Payment vouchers, including SF 1082.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

PURPOSE(S):

This system of records is maintained for use in determining amounts to be paid and in effecting payments by the Department of the Treasury to consultants and vendors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be transmitted to the United States Department of Treasury to effect payments to consultants and vendors.

General Routine Uses G1 through G7 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f) (5 U.S.C. 552a(b)(12)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are kept in file cabinets in areas of restricted access that are locked after office hours.

RETENTION AND DISPOSAL:

Records created after June 30, 1975, are destroyed 6 years and 3 months after date of voucher.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operation *Department,* Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Individuals who are consultants and vendors to the PBGC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–3

SYSTEM NAME:

Employee Payroll, Leave, and Attendance Records—PBGC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; addresses; social security numbers and employee numbers; earnings records; leave status and data; jury duty data; military leave data; time and attendance records, including number of regular, overtime, holiday, and compensatory hours worked; co-owner and/or beneficiary of bonds; marital status and number of dependents; and notifications of personnel actions. The records listed herein are included only as pertinent or applicable to the individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

PURPOSE(S):

This system of records is maintained to perform functions involving employee leave, attendance, and payments, including determinations relating to the amounts to be paid to employees, the distribution of pay according to employee directions (for savings bonds and allotments, to financial institutions, and for other authorized purposes), and tax withholdings and other authorized deductions, and for statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to the United States Department of Labor to effect payments to employees.

General Routine Uses G1 through G8 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f) (5 U.S.C. 552a(b)(12)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and/or in automated form.

RETRIEVABILITY:

Records are indexed by name and/or employee or social security number.

SAFEGUARDS:

Manual records are kept in file cabinets in areas of restricted access that are locked after office hours; access to automated records is restricted.

RETENTION AND DISPOSAL:

Records are maintained for various periods of time, as provided in National Archives and Records Administration General Records Schedule 2.

System manager(s) and address:

Director, Financial Operations *Department,* Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individual and the Office of Personnel Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–4

SYSTEM NAME:

Employee Travel Records—PBGC.

SYSTEM CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the PBGC who have filed travel vouchers and related documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers and related documents filed by employees of the PBGC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 57; 29 U.S.C. 1302.

PURPOSE(S):

This system of records is maintained to perform functions related to travel on behalf of the PBGC, including determinations involving travel authorization and arrangements and documentation of travel advances and reimbursements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to the United States Department of Treasury to effect reimbursement of employees for travel expenses.

General Routine Uses G1 through *G8* (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f) (5 U.S.C. 552a(b)(12)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are kept in file cabinets in areas of restricted access that are locked after office hours.

RETENTION AND DISPOSAL:

Records are maintained for various periods of time, as provided in National Archives and Records Administration General Records Schedule 9.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations *Department,* Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

PBGC employee vouchers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–5

SYSTEM NAME:

Personnel *Files*—PBGC.

SYSTEM CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records that the PBGC maintains, including applications and related information for attorneys maintained by the Office of the General Counsel. (Records included in the permanent Official Personnel Folder are maintained as a system of records by the Office of Personnel Management (OPM/GOVT–1) and are not included in this system of records.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

PURPOSE(S):

This system of records is used in carrying out authorized personnel functions, including the evaluation of qualifications; determinations about status, eligibility, and rights and benefits under pertinent laws and regulations governing federal employment; and computations of length of service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Routine Uses G1 through G8 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and/or in automated form.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Manual records are kept in areas of restricted access that are locked after office hours; access to automated records is restricted.

RETENTION AND DISPOSAL:

Temporary personnel file records are destroyed when the employee leaves the PBGC or 1 year after the file was established, whichever is sooner. Applications for employment are destroyed after the receipt of an OPM inspection report or 2 years after date of application, whichever is sooner. Applications for training are destroyed 5 years after date of application. Records relating to claims for retirement and life insurance benefits are maintained for 1 year after a final determination on a claim for benefits and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Department, and *Administrative* Officer, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, present and past employers, and references given by any subject individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–6

SYSTEM NAME:

Plan Participant and Beneficiary Data—PBGC.

SYSTEM CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026 *and/or field benefit administrator, plan administrator, and paying agent worksites.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries in terminating and terminated pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, telephone numbers, sex, social security numbers and other Social Security *Administration* information, dates of birth, dates of hire, salary, marital status *(including domestic relations orders),* time of plan participation, *eligibility* status, pay status, benefit data, health-*related information,* insurance information where plan benefits are guaranteed by private insurers, *and initial and final PBGC determinations (29 CFR 2606.22 and 2606.60).* The records listed herein are included only as pertinent or applicable to the individual plan participant or beneficiary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. *1055, 1056(d)(3),* 1302, *1321,* 1322, *1322a,* 1341, *1342* and *1350.*

PURPOSE(S):

This system of records is maintained for use in determining eligibility for benefits under plans covered by Title IV of ERISA, including determinations as to the participants and beneficiaries entitled to benefits and the amounts of such benefits to be paid, and in making benefit payments and collecting benefit overpayments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, or trustees, *to make* benefit *payments* to plan participants and beneficiaries.

2. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to *a contributing sponsor (or other* employer who maintained the plan), including any predecessor or successor, and any member of the same controlled group.

3. A record from this system of records may be disclosed, *upon request for a purpose authorized under Title IV of ERISA,* to an official of a labor organization recognized as the collective bargaining representative of the individual about whom a request is made.

4. Names, addresses, and telephone numbers of participants and beneficiaries and information pertaining to debts owed by such participants and beneficiaries to the PBGC may be disclosed to a debt collection agency or firm to collect a claim. Disclosure shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

5. The name and social security number of a participant employed or formerly employed as a pilot by a commercial airline may be disclosed to the Federal Aviation Administration ("FAA") to obtain information relevant to the participant's eligibility or continued eligibility for disability benefits.

6. Names and social security numbers of plan participants and beneficiaries may be disclosed *to the Internal Revenue Service ("IRS") to obtain current addresses from tax return information* and to the Social Security Administration ("SSA") to obtain current addresses under the SSA's Letter Forwarding Service. *Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.*

7. Names and last known addresses may be disclosed to an official of a labor organization recognized as the collective bargaining representative of participants for posting in union halls or for other means of publication to obtain current addresses of participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

8. Names, social security numbers, last known addresses, and dates of birth and death may be disclosed to private firms and agencies that provide locator services, including credit reporting agencies and debt collection firms or agencies, to locate participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that binds the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the locating effort.

9. Names and last known addresses may be disclosed to licensees of the United States Postal Service ("USPS") to obtain current addresses under the USPS's National Change of Address Program. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that binds the licensee of the Postal Service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the locating effort.

10. Names and last known addresses may be disclosed to other participants in, and beneficiaries under, a pension plan to obtain the current addresses of individuals. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

General Routine Uses G1 and G4 through G7 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f) (5 U.S.C. 552a(b)(12)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and/or in automated form.

RETRIEVABILITY:

Records are indexed by plan and participant and/or beneficiary name.

SAFEGUARDS:

Manual records are *kept in areas of restricted access* that are locked after office hours; access to automated records is restricted.

RETENTION AND DISPOSAL:

Records for plan participants are *transferred to the Washington National Federal Records Center 6 months after either the final payment to a participant and/or beneficiary or the PBGC's final determination that a participant or beneficiary is not entitled to any benefits* and are destroyed 7 years after *such payment or determination.*

SYSTEM MANAGER(S) AND ADDRESS:

Director, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORDS PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Plan administrators, *participants and beneficiaries, the FAA,* the SSA, *labor organization officials, firms or agencies providing locator services, and USPS licensees.*

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–7

System deleted.

PBGC–8

SYSTEM NAME:

Employee *Relations* Files—PBGC.

SYSTEM CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees with respect to whom the PBGC has initiated a reduction in force or a disciplinary or performance-based action and PBGC employees who have initiated grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notices of reductions in force or disciplinary or performance-based actions and employees' replies to such notices, employees' notices of grievance and appeal, investigative reports, records of proceedings, appeal decisions, and related information. (*Records of actions proposed or taken in accordance with 5 CFR Part 315 (Subpart H or I) or Part 752 are maintained as a system of records by the Office of Personnel Management ("OPM") (OPM/GOVT–3) and are not included in this system of records.*)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

PURPOSE(S):

This system of records is maintained for use in decisionmaking involving grievances and appeals by PBGC employees regarding compensation, benefits, or other terms and conditions of employment, including terms and conditions of employment under an applicable collective bargaining agreement, and reductions in force and certain disciplinary and performance-based actions involving PBGC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to the OPM, the Merit Systems Protection Board, *the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission* to carry out its authorized functions (under 5 U.S.C. 1103, 1204, *7105*, and *42 U.S.C. 2000e–4*, in that order).

General Routine Uses G1 through G8 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are retained manually in file folders.

RETRIEVABILITY:

Records are indexed by employee name.

SAFEGUARDS:

Records are kept in lockable file cabinets that are locked after office hours in areas of restricted access.

RETENTION AND DISPOSAL:

Files are destroyed 4 years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Human Resources Department*, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Records in this system of records are provided by an affected employee, the employee's supervisors, and other PBGC employees and from investigations and interviews.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–9

SYSTEM NAME:

Plan Participant and Beneficiary Address Identification File—PBGC.

SYSTEM CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certain participants and beneficiaries in terminating and terminated pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, social security numbers, addresses, and names of pension plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 6103 *and 26 CFR 301.6103(l)(2)–3;* 29 U.S.C. *1055, 1056(d)(3)*, 1302, *1321*, 1322, *1322a*, 1341, *1342*, and *1350*.

PURPOSE(S):

This system of records is maintained to locate participants and beneficiaries under pension plans covered by Title IV of ERISA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed only to *a person to whom disclosure* is permitted by 26 U.S.C. 6103 and 26 CFR 301.6103(i)–1.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders *and/or in automated form.*

RETRIEVABILITY:

Records are indexed by participant or beneficiary name and social security number.

SAFEGUARDS:

Records are kept in locked file cabinets in areas of restricted access under procedures that meet IRS safeguarding standards.

RETENTION AND DISPOSAL:

Records of a participant *or beneficiary* who verifies the address are transferred to PBGC–6. All other records are retained for 2 years from the date the request was sent to the IRS and then are sent to the IRS for disposal or are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

PBGC–6 and the IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–10

SYSTEM NAME:

Administrative Appeals File—PBGC.

SYSTEM CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries in terminated pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended, who have filed *administrative* appeals with the PBGC's *Appeals Board* pursuant to 29 CFR 2606.1(b)(5), (6), (7), (8), or (9), Rules for Administrative Review of Agency Decisions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of pension plans, names of participants and beneficiaries, and personal information such as addresses, social security numbers, sex, dates of birth, dates of hire, salary, marital status *(including domestic relations orders)*, medical records, dates of commencement of plan participation or employment, statements regarding employment, dates of termination of plan participation or retirement, benefit payment data, pay status, Social Security Administration ("SSA") *information*, insurance claims and awards, workman's compensation awards, calculations of benefit amounts, calculations of amounts subject to recapture, correspondence *and other information* relating to appeals, and *initial and* final PBGC determinations (29 CFR 2606.22 and 2606.60). The records listed herein are included only as pertinent or applicable to the individual participant and/or beneficiary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. *1055, 1056(d)(3)*, 1302, *1321*, 1322, *1322a*, 1341, *1342*, 1345, and *1350*.

PURPOSE(S):

This system of records is maintained for use in appeals of matters specified in 29 CFR 2606.1(b)(5), (6), (7), and (8) and in subsequent agency actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to third parties who may be aggrieved by the decision of the Appeals Board under 29 CFR 2606.58, including disclosure to the *contributing sponsor* (or other employer who maintained the plan) including any predecessor or successor, and any member of the same controlled group.

2. A record from this system of records may be disclosed, *upon* request, to a representative who has a power of attorney for the subject individual, if necessary under 29 CFR 2606.6.

3. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, and trustees, *to make* benefit *payments* to plan participants and beneficiaries.

4. A record from this system of records may be disclosed to third parties, such as contractors and expert witnesses, *to obtain* expert analysis of *an issue necessary to resolve* an appeal.

5. The name and social security number of a participant may be disclosed to an official of a labor organization recognized as the collective bargaining representative of the participant to obtain information relevant to the resolution of an appeal.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAIN AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and/or in automated form.

RETRIEVABILITY:

Records are indexed by participant or beneficiary name, plan name, and appeal number or *extension request number.*

SAFEGUARDS:

Manual records are kept in lockable file cabinets that are locked after office hours in areas of restricted access; access to *automated* records is restricted.

RETENTION AND DISPOSAL:

Records for a closed appeal file are retained for *1 full fiscal year* after the Appeals Board's final determination. Thereafter, the closed appeal file is transferred to the Washington National Federal Records Center and destroyed 6 years later.

SYSTEM MANAGER(S) AND ADDRESS:

Clerk of the Appeals Board, *Participant and Employer Appeals Department*, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Information in this system of records may be received from the plan administrator, the *contributing sponsor (or* other employer who maintained the plan), *including any predecessor, successor, or member of the same controlled group*, the labor organization recognized as the collective bargaining representative of a participant, the SSA, *a third party affected by the decision*, and the participant or beneficiary.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–11

SYSTEM NAME:

Call Detail Records—PBGC.

SYSTEM CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contract employees and consultants of the PBGC, and officials of a labor organization representing PBGC employees who have made long distance or other toll calls from PBGC telephones *or by using telephone calling cards issued to the PBGC.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of PBGC telephones *and telephone calling cards* to place toll calls *and receive calls*; records indicating assignment of telephone extension numbers *and telephone calling cards* to employees and other covered individuals; records relating to location of telephone extensions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

PURPOSE(S):

This system of records is maintained to control the costs of operating the PBGC's telephone system by, among other things, monitoring telephone usage by PBGC employees and other covered individuals and obtaining reimbursement for unauthorized toll calls.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to contract employees and consultants of the PBGC and officials of a labor organization representing PBGC employees to determine individual responsibility for telephone calls, but only to the extent that such disclosures consist of comprehensive lists of called numbers and length of calls.

General Routine Uses G1, G3, G4, G5, G7, and G8 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency *in accordance with 31 U.S.C. 3711(f)* (5 U.S.C. 552a(b)(12)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and in *automated* form.

RETRIEVABILITY:

Records are retrieved by name of employee or other covered individual, telephone extension number, *telephone calling card number*, or telephone number called.

SAFEGUARDS:

Manual records are kept in areas of restricted access that are locked after office hours; access *to automated records is* restricted.

RETENTION AND DISPOSAL:

Records are retained for 2 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Facilities and Services Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Telephone *and telephone calling card* assignment records; call detail listings; private telephone billing information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–12

SYSTEM NAME:

Personnel Security Investigation Records—PBGC [formerly included within PBGC–5].

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory material regarding an individual's character, conduct, and behavior, including: records of arrests and convictions for violations of law; reports of interviews with the subject of the investigation and with persons such as present and former supervisors, neighbors, co-workers, associates, and educators; reports about the qualifications of an individual for a specific position; reports of inquiries to law enforcement agencies, employers, and educational institutions; reports of action after an Office of Personnel Management ("OPM") or Federal Bureau of Investigation field investigation; and other information or correspondence relating to or developed from the above.

This system of records is distinct from the OPM's Privacy Act system of records, OPM/Central-9 (Personnel Investigation Records), which covers records of personnel security investigations initiated by the OPM with respect to employees or applicants for employment with the PBGC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 5.2(c) and (d); 29 U.S.C. 1302.

PURPOSE(S):

This system of records is maintained to document investigations of individuals' character, conduct, and behavior. Records are used, in accordance with federal personnel regulations, in making determinations relating to an individual's suitability and fitness for PBGC employment, access to information, and security clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, or identify the type of information requested.

2. A record from this system of records may be disclosed to the OPM, the Merit Systems Protection Board, the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission to carry out its authorized functions (under 5 U.S.C. 1103, 1204, and 7105, and 42 U.S.C. 2000e-4, in that order).

General Routine Uses G1 through G8 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are kept in file cabinets in areas of restricted access that are locked after office hours.

RETENTION AND DISPOSAL:

Records in cases in which favorable determinations are made are destroyed promptly after the determination. Records of cases in which unfavorable determinations are made are destroyed 1 year after issuance if litigation has not been initiated and otherwise upon completion of litigation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the following sources: (a) applications and other personnel and security forms, (b) personal interviews with the individual that is the subject of the investigation, employers, references, neighbors, and associates, (c) investigative records and notices of personnel actions furnished by other federal agencies, (d) sources such as educational institutions, police departments, credit bureaus, probation officials, prison officials, and doctors, and (e) public records such as court filings and publications such as newspapers, magazines, and periodicals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system of records is exempt from the access and contest and certain other provisions of the Privacy Act (5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f)) to the extent that disclosure would reveal the identity of a source who furnished information to the PBGC under an express promise of confidentiality or, prior to September 27, 1975, under an implied promise of confidentiality (5 U.S.C. 552a(k)(5)).

[FR Doc. 95–28201 Filed 11–14–95; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

1996 Railroad Experience Rating Proclamations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board is required by paragraph (1) of section 8(c) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)), as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The Board is further required by section 8(c)(2) of the Act to publish the amounts so determined and proclaimed. Pursuant to section 8(c)(2), the Board gives notice of the following system-wide factors used in the computation of individual employer contribution rates for 1996:.

(1) The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 1995, is $184,398,531.65;

(2) The balance of any new loans to the Account, including accrued interest, is zero;

(3) The system compensation base in $2,818,188,567.38;

(4) The system unallocated charge balance is −$171,450,992.09;

(5) The pooled credit ratio is zero;

(6) The pooled charge ratio is zero;

(7) The surcharge rate is zero.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1995. The balance in notice (2) is based on data as of September 30, 1995. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Gerald E. Helmling, Chief of Experience Rating, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4567.

Dated: November 6, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–28112 Filed 11–14–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21484; 812–9826]

First American Investment Funds, Inc. and First Bank National Association; Notice of Application

November 8, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First American Investment Funds, Inc. ("FAIF") and First Bank National Association (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a), and pursuant to section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order under section 17(b) granting an exemption from section 17(a), and pursuant to section 17(d) and rule 17d–1 to permit the Stock Fund, a series of FAIF, to acquire all of the assets of the Limited Volatility Stock Fund, another series of FAIF. Because of certain affiliations, the two funds may not rely on rule 17a–8 under the Act.

FILING DATES: The application was filed on October 18, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: FAIF, 680 East Swedesford Road, Wayne, Pennsylvania 19087. The Adviser, First Bank Place, 601 Second Avenue South, Minneapolis, Minnesota 55480.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. FAIF is an open-end management investment company organized as a Maryland corporation and registered under the Act. FAIF currently offers twenty-two series of shares. The Adviser acts as investment adviser to each series. The Adviser is a wholly-owned subsidiary of First Bank System, Inc. ("FBS").

2. First Trust National Association ("First Trust") also is a wholly-owned subsidiary of FBS, and acts as custodian for FAIF. First Trust and its affiliates hold of record in their own name and in the name of their nominee more than 5% of the outstanding shares of the Limited Volatility Stock Fund and the Stock Fund, and they hold or share voting and/or investment discretion with respect to a portion of such shares. All such shares are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity. First Trust and its affiliates do not have any economic interest in any of the shares.

3. Applicants propose that the Limited Volatility Stock Fund (the "Acquired Fund") be combined with and into the Stock Fund (the "Acquiring Fund;" the Acquired Fund and the Acquiring Fund collectively are referred to as the "Funds") in a tax-free reorganization (the "Reorganization"). In the Reorganization, the Acquiring

Fund will acquire all of the assets and liabilities of the Acquired Fund in exchange for shares of the Acquiring Fund, which then will be distributed *pro rata* to former shareholders of the Acquired Fund.

4. The Acquiring Fund and the Acquired Fund both offer shares in three classes: Class A, Class B, and Class C. Each class of the Acquiring Fund has the same charges and fee structure as the corresponding class of the Acquired Fund. In the Reoganization, Class A shares of the Acquired Fund would be exchanged for Class A shares of the Acquiring Fund, Class B shares would be exchanged for Class B shares, and Class C shares would be exchanged for Class C shares. The number of Acquiring Fund shares to be issued in exchange for each Acquired Fund share of each class will be determined by dividing the net asset value of one Acquiring Fund share of such class by the net asset value of one Acquired Fund share of the same class as of the effective time of the Reorganization (before giving effect thereto).

5. At a meeting on September 13, 1995, the Board of Directors of FAIF, including the disinterested directors, and the findings required under rule 17a–8 and unanimously approved the proposed Reorganization. In doing so, the Board considered (a) the compatibility of the investment objectives, policies and restrictions of the Acquired Fund and the Acquiring Fund; (b) the expected advantages of the Reorganization to the Acquired Fund and the Acquiring Fund; (c) the tax-free nature of the Reorganization; (d) the terms and conditions of the Reorganization; (e) the costs associated with the Reorganization, and the agreement of the Adviser to bear such costs; (f) the investment advisory and rule 12b–1 fees, and the sales charges applicable to the Acquired Fund and the Acquiring Fund; and (g) the potential benefits to the Adviser of the Reorganization.

6. In considering the compatibility of the two Funds, the Board noted that the investment objectives of the Acquired Fund and the Acquiring Fund are similar, in that both Funds seek capital appreciation and income. The principal difference in objectives is that the Acquired Fund seeks to maintain a five-year historical performance relative to the S&P 500 at a beta level no greater than .95 and to provide current income at a level that exceeds that of the S&P 500, while the Acquiring Fund's objectives are not stated with such a degree of specificity. Nevertheless, the Board noted that during the five years ended June 30, 1995, the Acquiring Fund met the Acquired Fund's objective with respect to beta relative to the S&P 500. In addition, the investment policies and restrictions of the Fund are substantially similar.

7. The expected advantages to the Acquired Fund and Acquiring Fund that the Board considered include the expected benefits to shareholders of the Acquired Fund of the Acquiring Fund's lower expense ratio; the elimination of certain duplicative expenses of separate funds; the spreading of relatively fixed expenses across a larger asset base; and the facilitation of portfolio management. The potential benefits to the Adviser considered by the Board include potentially reduced expenses for advisory fee waivers to the extent that the total expense ratios before waivers of the combined Funds decrease as a result of the Reorganization. The Board found that the expected advantages to the Acquiring Fund and the Acquired Fund outweighed the potential benefits to the Adviser.

8. Applicants agree not to make any material changes to the Reorganization agreement that affect the application without the prior approval of the SEC. Applicants also agree not to waive, amend, or modify any provision of the Reorganization agreement that is required by state or federal law in order to effect the Reorganization.

9. A registration statement on Form N–14 with respect to the proposed Reorganization will be filed with the SEC. A special meeting of shareholders of the Acquired Fund will be held to consider and act upon the Reorganization.

10. As a result of the proposed Reorganization, former holders of Class A shares, Class B shares, and Class C shares of the Acquired Fund would become holders of classes of shares in the Acquiring Fund that are subject to the same sales charges, rule 12b–1 distribution and shareholder servicing fees, and investment advisory fees as the Acquired Fund shares that they formerly held. Shareholders who formerly held classes of shares of the Acquired Fund that were subject to a contingent deferred sales charge would receive credit for the period that they held such shares in calculating the time period with respect to the contingent deferred sales charge applicable to shares of the corresponding classes of the Acquiring Fund received in the Reorganization.

11. The Adviser currently waives its fee for both the Acquired Fund and the Acquiring Fund under certain circumstances. The Adviser represents that its current advisory fee waivers will remain in effect through January 31, 1996, which is the earliest date upon which the proposed Reorganization would take effect. The Adviser has not yet determined what fee waivers, if any, will be in effect after that date. However, if any waiver is made after that date, the Adviser intends that the total expense caps thereunder would be the same for the Acquired Fund and the Acquiring Fund. Thus, in no event will the shareholders of the Acquired Fund become subject to a less advantageous total expense cap as a result of the Reorganization. In addition, the differential among classes in the total expense cap agreed to by the Adviser will be equal to the differential in rule 12b–1 fees applicable to the respective classes.

Applicants' Legal Analysis

1. Section 2(a)(3) of the Act provides, in pertinent part, that any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of any other person is an affiliated person of that person.

2. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property.

3. Section 17(b) provides that the SEC may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Rule 17a–8 exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

5. As noted above, the Acquiring Fund and the Acquired Fund have a common investment adviser. Thus, the Reorganization would be exempt from the provisions of section 17(a) by virtue of rule 17a–8, but for the fact that the Acquiring Fund and the Acquired Fund may be affiliated for reasons other than those set forth in the rule. First Thrust, which is under common ownership and control with the Adviser, and its affiliates hold of record in their own name and in the name of their nominee more than 5% of the outstanding voting securities of the Acquiring Fund and the Acquired Fund and hold or share voting and/or investment discretion with respect to a portion of such shares. Because of this greater than 5% holding, the Acquiring Fund is an affiliated person of First Trust under section 2(a)(3)(B). First Trust, in turn, is an affiliated person of the Adviser under section 2(a)(3)(C) by virtue of their common ownership and control by FBS. The Adviser, in turn, is an affiliated person of the Acquired Fund under Section 2(a)(3)(E) by virtue of its investment advisory relationship with the Funds. Therefore, the Acquiring Fund is an affiliated person of an affiliated person of the Acquired Fund.

6. Section 17(d) prohibits any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of such a person, acting as principal, from effecting any transaction in which such registered company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such registered company on a basis different from, or less advantageous than, that of such other participant. Rule 17d–1 provides that no joint transaction covered by the rule may be consummated unless the SEC grants exemptive relief after considering whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act and the extent to which the participation is on a basis different from, or less advantageous than, that of other participants.

7. The proposed sale of assets by the Acquired Fund to the Acquiring Fund and the related transactions involved in the Reorganization might be deemed to be a joint enterprise or other joint arrangement in which a registered investment company and affiliated person of such company are participants.

8. Applicants submit that the Reorganization meets the standards for relief under section 17(b) and rule 17d–1, in that the terms of the Reorganization, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the Reorganization is consistent with the policy of the Acquired Fund and the Acquiring Fund; the Reorganization is consistent with the general purposes of the Act; the participation of the Acquired Fund and the Acquiring Fund in the Reorganization on the basis proposed is consistent with the provisions, policies, and purposes of the Act; and the extent to which such participation is on a basis different from or less advantageous than that of other participants does not outweigh the advantages of such participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28167 Filed 11–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36465; File No. SR–NYSE–95–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Revision of Equity Transaction Charges

Nobember 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 7, 1995 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE plans to implement, as of January 1996 trading, rate revisions to its equity transaction charges. Included in this revision are the elimination of all system credits, a reduction of charges for shares 5,000 and under, the elimination of charges for non-market maker system orders from 100 to 2,099 shares, the elimination of the growth limitation of 4% over 1988 levels, and the implementation of a monthly $400,000 transaction charge cap per firm. The text of the proposed rule change is set forth below [new text is italicized; deleted text is bracketed]:

Equity Transaction Charges	1995	1996
Per Share Charge—per transaction: System Orders from 100–2,099 shares [1]	$0.00265	No Charge
Floor Executed Trades and System Trades—greater than 2,099 shares: First 5,000 shares	$0.00265	$0.00190
5001 to 710,000 (previously 672,500)	$0.00010	$0.00010
Subsequent shares	No charge	No charge
System Credits: Credit per eligible order placed through CMS (100–2,099 shares)	$0.30	None
Additional credit—Individual or Agency Market order from 100–2,099 shares [(1)]	$1.30	None
Floor Brokerage: Credit on Floor Brokerage Paid Out (percent)	1.2	1.2
Fee Limitations: Equity Commissions (percent)	2	2
Percent Growth over 1988 (percent)	4	None
Monthly Fee [2]	None	$400,000

[1] Not inclusive of orders of a member or member organization trading as an agent for the account of a nonmember competing market maker.

Competing Market Maker: a specialist or market-maker registered as such on a registered stock exchange (other than the NYSE), or a market-maker bidding and offering over-the-counter, in a New York Stock Exchange-traded security.

[2] Monthly Fee Limitation will be removed January 1, 1999 and will be indexed annually to average daily volume.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

Sections A, B, an C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the change is to respond to the needs of the Exchange's constituents with respect to overall competitive market conditions and customer satisfaction.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)[2] that the Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[3] and subparagraph (e) of Rule 19b–4 thereunder.[4]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR–NYSE–95–38 and should be submitted by December 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28168 Filed 11–14–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f(b)(4).

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2813]

Florida; Declaration of Disaster Loan Area (Amendment #1)

The above numbered Declaration is hereby amended on October 25 and October 30, 1995, to include the Counties of Calhoun, Taylor, and Wakulla in the State of Florida as a disater area due to damages caused by Hurricane Opal which occurred October 4 through October 11, 1995.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Dixie, Jefferson, Lafayette, Leon, and Madison in Florida may be filed until the specified date at the previously designated location. Additionally, Dade County, which was inadvertently omitted from the original declaration is also a contiguous county.

All other information remains the same; i.e., the termination date for filing applications for physical damage is December 3, 1995, and for loans for economic injury, the deadline is July 5, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008

Dated: November 7, 1995

Herbert L. Mitchell

Deputy Associate Administrator for Disaster Assistance

[FR Doc. 95–28232 Filed 11–14–95; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2817]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 27, 1995, I find that Martin and Palm Beach Counties in the State of Florida constitute a disaster area due to damages caused by severe storms and flooding on October 13, 1995 and continuing. Applications for loans for physical damages may be filed until the close of business on December 26, 1995, and for loans for economic injury until the close of business on July 29, 1996 at the address listed below:

U.S. Small Business Administration
Disaster Area 2 Office One Baltimore Place, Suite 300 Atlanta, GA 30308

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Broward, Hendry, Okeechobee and St. Lucie.

Interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 2817068 and for economic injury the number is 867300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 7, 1995.

Herbert L. Mitchell

Acting Associate Administrator for Disaster Assistance

[FR Doc. 95–28231 Filed 11–14–95; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2818]

Pennsylvania (And a Contiguous County in New Jersey); Declaration of Disaster Loan Area

Monroe County and the contiguous counties of Carbon, Lackawanna, Luzerne, Northhampton, Pike, and Wayne in the State of Pennsylvania, and the contiguous county of Warren in the State of New Jersey constitute a disaster area as a result of damages caused by a fire which occurred on October 13–14, 1995. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on January 8, 1996 and for economic injury until the close of business on August 7, 1996 at the address listed below:

U.S. Small Business Administration,
Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, New York 14303

or other locally announced locations.

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 281805 for Pennsylvania and 281905 for New Jersey and for economic injury the numbers are 868400 for Pennsylvania and 868500 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 7, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28230 Filed 11–14–95; 8:45 am]

BILLING CODE 8025–01–P

First Legacy Fund, Inc.; Notice of Surrender of License

[License No. 03/03–0199]

Notice is hereby given that First Legacy Fund, Inc., 1400 34th St., NW, Washington, DC 20007 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). First Legacy Fund, Inc. was licensed by the Small Business Administration on July 14, 1994.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on October 26, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 7, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–28233 Filed 11–14–95; 8:45 am]

BILLING CODE 8825–01–P

Specialized Small Business Investment Company (SSBIC) Advisory Council; Public Meeting

The U.S. Small Business Administration, Investment Division (SBIC) Advisory Council will hold a public meeting on Friday, November 17, 1995 at 9:00 am at the U.S. Small Business Administration, 409 Third Street, S.W., Eisenhower Conference Room (Eighth Floor), Washington, D.C. 20416; to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Darryl K. Hairston, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, S.W., Suite 6300, Washington, D.C. 20416 (202) 205–6510.

Dated: November 8, 1995.

W. F. Combs,

Acting Director Office of Advisory Council.

[FR Doc. 95–28234 Filed 11–14–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2282]

United States International Telecommunications Advisory Committee (ITAC); Meeting Notice

The Department of State announces that a meeting of the United States International Advisory Committee (ITAC) will be held Wednesday, December 6, 1995, 9:30–11:30 a.m., in the East Auditorium of the Department of State, 2201 C Street, N.W., Washington, D.C. 20520.

The agenda of this meeting will include: (1) Review of preparations for the International Telecommunication Union's 1998 Plenipotentiary Conference to be held in Minneapolis, Minnesota; (2) consideration of organizational matters related to preparations; (3) discussion of private sector organization and activities in support of Plenipotentiary preparations; and, (4) general discussion of Plenipotentiary preparations with a view to ensuring efficiency and effectiveness.

Members of the general public may attend the meeting and join in the discussions, subject to the instructions of the chair and seating availability. In this regard, entry to the building is controlled. If you wish to attend, please call 202–647–5205 or send a fax to 202–647–5957 not later than 5 days before the scheduled meeting. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: November 3, 1995.

Richard C. Beaird,

Chairman, U.S. 1998 Plenipotentiary Committee.

[FR Doc. 95–28111 Filed 11–14–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–083]

Chemical Transportation Advisory Committee (CTAC); Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on CTAC.

DATES: Completed applications and resumes should be submitted to the U.S. Coast Guard before February 9, 1996.

ADDRESSES: Persons interested in applying for membership on CTAC may obtain an application form by writing to Commandant (G–MOS–3), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, or by

calling the points of contact listed in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Commander Kevin S. Cook, Executive Director, or Lieutenant Rick J. Raksnis, Assistant to the Executive Director, Commandant (G–MOS–3), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; telephone (202) 267–1217, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: CTAC provides advice and makes recommendations to the Chief, Office of Marine Safety, Security and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating U.S. positions prior to meetings of the International Maritime Organization.

The Committee meets at least once a year at U.S. Coast Guard Headquarters, Washington, DC. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

Applications will be considered for seven positions that expire or become vacant in June 1996. To be eligible, applicants should have experience in chemical manufacturing, marine transportation of chemicals, occupational safety and health, or environmental protection issues associated with chemical transportation. Each member serves for a term of three years. Members of the Committee serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the U.S. Department of Transportation's policy on ethnic and gender diversity, the U.S. Coast Guard is especially seeking applications from qualified women and minority group members.

Dated: November 6, 1995.

Joseph J. Angelo,

Associate Program Director, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–28178 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–14–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 3, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–779.

Date filed: October 31, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1995.

Description: Application of Midway Airlines Corporation, pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for certificate of public convenience and necessity, to provide scheduled foreign air transportation of persons, property and mail between Raleigh/Durham, North Carolina and Bermuda.

Docket Number: OST–95–781.

Date filed: October 31, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1995.

Description: Application of Canadian Airlines International Ltd., pursuant to 49 U.S.C. Section 41304, applies for amendment of its foreign air carrier permit to authorize it to provide those additional scheduled and charter foreign air transportation services available to it pursuant to the Air Transport Agreement between the Government of Canada and the Government of the United States.

Docket Number: OST–95–788.

Date filed: November 2, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 30, 1995.

Description: Application of Piedmont Aviation Services, Inc., pursuant to 49 U.S.C. Section 41101, and Sections 203.5, 302.1701, and Subpart Q of the Regulations, applies for a Fitness Determination and Issuance of a Certificate of Public Convenience and Necessity to engage in charter interstate, overseas and foreign air transportation of persons, property and mail.

Myrna F. Adams,

Chief (Acting), Documentary Services Division.

[FR Doc. 95–28225 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements filed during the Week Ending 11/3/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–784.

Date filed: November 1, 1995.

Parties: Members of the International Air Transport Association

Subject: TC1 Telex Mail Vote 759, Caribbean Revalidation Reso, Intended effective date: January 1, 1996.

Myrna F. Adams, Chief (Acting),

Documentary Services Division.

[FR Doc. 95–28226 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–42]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 5, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are

filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 9, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27432.
Petitioner: Daimler-Benz Aerospace
Sections of the FAR Affected: 14 CFR 25.562(c)(5).
Description of Relief Sought: To extend Exemption No. 5765, as amended, which allows temporary operation of D0328 aircraft with front row passenger seats that exceed the maximum HIC requirements of § 25.562(c)(5), until June 30, 1996.

Docket No.: 28366.
Petitioner: Mr. Donald E. Hubbard
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Hubbard to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Docket No.: 28372.
Petitioner: Cessna Aircraft Co.
Sections of the FAR Affected: 14 CFR 25.1305(d)(3).
Description of Relief Sought: To permit approval of type design changes on the Cessna Citation II Serial 550–0801 (Citation Bravo) without compliance with the requirements of § 25.1305(d)(3), regarding the installation of an indicator to indicate turbine engine rotor system unbalance.

Dispositions of Petitions

Docket No.: 21789.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.49.
Description of Relief Sought/Disposition: To extend Exemption No. 3474, as amended, which permits the airmen employees of Air Transport Association of America member airline, and similarly situated part 121 certificate holders, to apply for retesting without waiting 30 days after a second (or subsequent) failure of the written or flight test, provided that a part 121-authorized instructor has given that applicant additional flight or ground instruction, as appropriate, and finds that applicant competent to pass the test.
Grant, October 18, 1995, Exemption No. 3474G.

Docket No.: 26857.
Petitioner: Omniflight Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a).
Description of Relief Sought/Disposition: To permit appropriately trained and certificated pilots employed by Omniflight to perform daily engine rinses on the Allison C–28C–250 engines installed in Omniflight's BO–105LSA3 helicopters that are used in operations conducted under part 135.
Denial, October 17, 1995, Exemption No. 6188.

Docket No.: 26819.
Petitioner: Jet Flight International, Inc.
Sections of the FAR Affected: 14 CFR part 61.
Description of Relief Sought/Disposition: To rescind Exemption No. 5496, which permits Jet Flight International, Inc., (JFI) to use FAA approved simulators to meet certain flight experience requirements under part 61, subject to certain conditions and limitations. The FAA finds multiple discrepancies associated with JFI's adherence to various conditions and limitations attached to the current exemption.
Rescission, September 1, 1995, Exemption No. 5496A.

Docket No.: 27491.
Petitioner: Helicopter Association International and Association of Air Medical Services.
Sections of the FAR Affected: 14 CFR 135.213(b); 135.219; and 135.225(a)(1) and (2), (f), and (g)
Description of Relief Sought/Disposition: To permit helicopter emergency medical service departures, under IFR, in weather that is at or above VFR minimums, from airports or helicopters at which a weather report is not available from the U.S. National Weather Service (NWS), a source approved by the NWS, or a source approved by the Administrator.
Partial Grant, September 29, 1995, Exemption No. 6175.

Docket No.: 27575.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.133(c).
Description of Relief Sought/Disposition: To extend and amend Exemption No. 5922, which permits Delta Air Lines, Inc., (DAL) to utilize compact disc read-only memory (CD–ROM) technology to present certain maintenance information and instructions pertinent to aircraft operated by DAL in lieu of printed page form or microfilm. The amendment allows DAL to utilize methods in addition to CD–ROM technology for digital storage and use of certain maintenance information and instructions pertinent to aircraft operated by DAL.

[FR Doc. 95–28224 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on November 29, 1995, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Louis C. Cusimano, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS–800), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8452; FAX: (202) 267–5094.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on November 29, 1995, at 1:00 p.m., at the Helicopter Association International, 1635 Prince Street, Alexandria, VA. The agenda for this meeting will include status reports from the part 103 (Ultralight Vehicles) Working Group and the IFR Fuel Requirements/ Destination and Alternate Weather Minimums Working Group. In addition, the VHF Navigation and Communications Working Group will present a status report that may include the working group's decision to declare the task complete.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on November 7, 1995.

Mr. Louis C. Cusimano,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–28223 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 1995, there were six applications approved. Additionally, two approved amendments to previously approved applications are listed as is one application approved in September but inadvertently left off the September 1995 listing.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of San Jose, California.
Application Number: 95–05–C–00–SJC.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $9,094,000.
Estimated Charge Effective Date: May 1, 1997.
Estimated Charge Expiration Date: January 1, 1999.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators exclusively filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Jose International Airport.
Brief Description of Projects Approved for Collection and Use:
Runway 30L reconstruction (B to C), Runway 30L reconstruction (C to L), Runway 30L reconstruction (J to L), Taxiways Y and K reconstruction.
Decision Date: September 1, 1995.
For Further Information Contact: Joseph Rodriguez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.
Application Number: 95–04–I–00–MDW.
Application Type: Impose a PFC.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $191,119,328.
Charge Effective Date: August 1, 1998.
Estimated Charge Expiration Date: July 1, 2007.
Class of Air Carriers Not Required to Collect PFC's: Air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Midway Airport.
Brief Description of Project Approved for Collection: Midway terminal development.
Decision Date: October 2, 1995.
For Further Information Contact: Louis H. Yates, Chicago Airports District Office, (708) 294–7335.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.
Application Number: 95–04–C–00–HSV.
Application Type: Impose and use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $16,174.
Estimated Charge Effective Date: November 1, 2008.
Estimated Charge Expiration Date: December 1, 2008.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operator, certified air carrier, and certified route air carriers operating at Huntsville International—Carl T. Jones Field (HSV) and having fewer than 500 annual enplanements at HSV.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at HSV.
Brief Description of Projects Approved for Collection and Use of PCF Revenue:
Lighting control,
Security vehicle.
Decision Date: October 13, 1995.
For Further Information Contact: Elton E. Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: City of Philadelphia, Pennsylvania.
Application Number: 95–04–U–00–PHL.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $116,700,000.
Charge Effective Date: September 1, 1992.
Estimated Charge Expiration Date: September 1, 1997.
Class of Air Carriers Not Required to Collect PFC's: The City of Philadelphia was previously approved to exclude a class of air carriers from the requirement to collect the PFC. This decision does not affect that ruling.
Brief Description of Projects Approved for Collection and Use of PCF Revenue: Rescue boat facility.
Decision Date: October 13, 1995.
For Further Information Contact: L. W. Walsh, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Port of Pasco, Pasco, Washington.
Application Number: 95–02–C–00–PSC.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $260,000.
Charge Effective Date: September 1, 1997.
Estimated Charge Expiration Date: May 1, 1998.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Project Approved for Use: Planning study—airport master plan.
Decision Date: October 13, 1995.
For Further Information Contact: Paul Johnson, Seattle Airports District Office, (206) 227–2655.

Public Agency: City of Fayetteville, Arkansas.
Application Number: 95–01–C–00–FYV.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $2,584,339.
Estimated Charge Effective Date: January 1, 1996.
Estimated Charge Expiration Date: August 1, 1999.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Project Approved in part for Collection and Use of PCF Revenue:
Master plan update,
Airfield safety area improvements,
Terminal expansion,
Land acquisition/easements,
Airfield safety improvements,
PFC application administrative costs.
Decision Date: October 24, 1995.
For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Onslow County, Jacksonville, North Carolina.
Application Number: 95–01–C–00–OAJ.
Application Type: Impose and use a PFC.
PFC Level: $3.00.

Total Approved Net PFC Revenue: $674,041.
Charge Effective Date: January 1, 1996.
Estimated Charge Expiration Date: October 1, 1998.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use of PCF Revenue:
Preparation of PFC application,
Aircraft rescue and firefighting maintenance bay,
Terminal emergency auxiliary power,
Rehabilitate airport beacon,
High intensity runway lights,
Runup aprons,
Rehabilitate service road,
Sanitary sewer line to municipal facility.
Brief Description of Projects Approved in part for Collection and Use of PCF Revenue: Recover local share of Airport Improvement Program (AIP) grants numbers 10, 11, 12, and 13.
Determination: Approved in part. The AIP 10 portion of this project, as well as items in the AIP 11 portion of this project, received notices to proceed prior to November 5, 1990; therefore, costs associated with those items are not PFC eligible in accordance with section 158.3.
Brief Description of Withdrawn Projects: Airport interactive training system, National storm water pollution prevention plan.
Determination: These projects were withdrawn for the PFC application by letter dated August 28, 1995.
Decision Date: October 30, 1995.
For Further Information Contact: Walter Bauer, Atlanta Airports District Office, (404) 305–7142.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–04–ORD/94–02–U–01–ORD, Chicago, IL	10/02/95	$484,035,066	$481,806,170	09/01/98	09/01/98
92–01–C–02–STL, Saint Louis, MO	10/10/95	97,297,850	84,607,850	03/01/96	04/01/96

Issued in Washington, D.C. on November 7, 1995.

Donna P. Taylor,
Manager, Passenger Facility Charge Branch.

[FR Doc. 95–28219 Filed 11–14–95; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–90; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 Lincoln Mark VII Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Lincoln Mark VII passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Lincoln Mark VII that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 15, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1992 Lincoln Mark VII passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992 Lincoln Mark VII that was manufactured in the United States and certified by its manufacturer, Ford Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Lincoln Mark VII to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Lincoln Mark VII, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Lincoln Mark VII is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 108 *Lamps, Reflective Devices, and Associated Equipment,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 110 *Tire Selection and Rims* 111 *Rearview Mirrors,* 114 *Theft Protection,* 115 *Vehicle Identification Number,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems* 201 *Occupant Protection in Interior Impact* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1992 Lincoln Mark VII complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet Standard No. 208 *Occupant Crash Protection,* in the following manner: (a) Replacement of the driver's side air bag with a U.S.-model component and (b) installation of a U.S.-model knee bolster. The petitioner states that the vehicle is equipped at each front designated seating position with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button. The petitioner further states that the vehicle is equipped at the rear outboard designated seating positions with a lap and shoulder restraint that releases by means of a single push button.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 9, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–28158 Filed 11–14–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986). The current list reflects a decision to remove Jordan as a result of its recent accords with Israel.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: November 6, 1995.

Joseph Guttentag,

International Tax Counsel.

[FR Doc. 95–28130 Filed 11–14–95; 8:45 am]

BILLING CODE 4810–25–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Investment and Services Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the December 7, 1995 meeting of the Investment and Services Policy Advisory Committee will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will be open to the public from 1:15 p.m. to 2:00 p.m.

SUMMARY: The Investment and Services Policy Advisory Committee will hold a meeting on December 7, 1995 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:15 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for December 7, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Jefferson Hotel at 16th and M streets N.W., Washington D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–28188 Filed 11–14–95; 8:45 am]

BILLING CODE 3190–01–M

Notice of Meeting of the Advisory Committee on Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the November 30, 1995 meeting of the Advisory Committee on Trade Policy and Negotiation will be held from 10 a.m. to 2 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. The meeting will be open to the public from 1:30 p.m. to 2 p.m.

SUMMARY: The Advisory Committee on Trade Policy and Negotiation will hold a meeting on November 30, 1995 from 10 a.m. to 2 p.m. The meeting will be closed to the public from 10 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States government in trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:30 p.m. to 2 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for November 30, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Sheraton Carlton Hotel, located at 923 16th Street, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–28189 Filed 11–14–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 220
Wednesday, November 15, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 1–96

NOTICE OF MEETINGS

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Mon., Nov. 27, 1995 at 2:00 p.m.

SUBJECT MATTER: Consideration of Proposed Decisions on claims against Albania.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on November 13, 1995.

Judith H. Lock,

Administrative Officer.

[FR Doc. 95–28380 Filed 11–13–95; 3:36 pm]

BILLING CODE 4410–01–P

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 56091.

PREVIOUSLY ANNOUNCED TIME AND DATES: A meeting of the Legal Services Corporation Board of Directors Operations and Regulations Committee will be held on November 17–18, 1995. The meeting will commence at 10 a.m. on November 17, 1995, and at 9 a.m. on September 18, 1995.

PREVIOUS ANNOUNCED LOCATION OF MEETING: The Legal Services Corporation, 750 First Street NE., Washington, DC 20002, 202–336–8800.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, 202–336–8810.

Upon request, meeting notices will be made in alternate formats to accommodate visual and hearing impairments.

Dated: November 13, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–28384 Filed 11–13–95; 3:54 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 13, 20, 27, and December 4, 1995.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of November 13

Wednesday, November 15

10:00 a.m.
Briefing on Accident Sequence Precursor Program (Public meeting)
(Contact: Patrick O'Reilly, 301–415–7570)
2:00 p.m.
Briefing on Measures to Ensure Integrity of Research Data (Public meeting)
(Contact: Owen Gormley, 301–415–6793)

Thursday, November 16

10:00 a.m.
Briefing by Commonwealth Edison (Public meeting)
2:00 p.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public meeting)
(Contact: John Larkins, 301–415–7360)

Week of November 20—Tentative

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

There are no meetings scheduled for the Week of November 27.

Week of December 4—Tentative

Friday, December 8

1:00 p.m.
Discussion on Full Power Operating License for Watts Bar (Public meeting)
(Contact: Fred Hebdon, 301–415–2024)
3:15 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public meeting)
(Contact: John Larkins, 301–415–7360)

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: November 9, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–28320 Filed 11–13–95; 12:16 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
November 15, 1995

Part II

Department of Housing and Urban Development

24 CFR Part 29

Nonjudicial Foreclosure of Single Family Mortgages; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 29

[Docket No. FR–3799–F–02]

RIN 2501–AB86

Nonjudicial Foreclosure of Single Family Mortgages

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final, with changes, the proposed amendments to title 24 CFR by the addition of a new part 29 that concerns nonjudicial foreclosure of single family mortgages. A proposed rule was published on April 7, 1995 (60 FR 17968). The rule implements the Single Family Mortgage Foreclosure Act of 1994 (the Act), codified at 12 U.S.C. 3751–3768, which authorizes the Secretary of Housing and Urban Development, as a matter of Federal law, to exercise a statutory nonjudicial power of sale with respect to any defaulted single family mortgage held by the Secretary under title I or II of the National Housing Act or under section 312 of the Housing Act of 1964.

It is important to note that the section numbers that are provided in this final rule differ from the section numbers that appeared in the proposed rule due to the abbreviation of the final rule so as not to duplicate provisions already set forth in the Act.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of the General Counsel, Room 9258, Department of Housing and Urban Development, Washington, DC 20410, (202) 708–0303. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259.

SUPPLEMENTARY INFORMATION: In the preamble to the proposed rule, the Department stated that it would give consideration to issuing a much briefer final rule to implement the Act. The Department has decided to publish an abbreviated final rule. Rather than repeat the provisions of the statute, the final rule contains only those provisions that are necessary for clarification of the statutory procedures, or provisions that address those areas that give the Secretary discretion to act. Of course, the statutory requirements apply whether they are repeated in the rule or not, and removal of the statutory requirements from the regulation does not affect their applicability. In addition to resulting in a more streamlined regulation, the removal of statutory requirements makes rulemaking to update the language of the regulation whenever there is a change in the statutory language unnecessary.

The combined statutory and regulatory procedures for conducting nonjudicial foreclosures, which were contained in the proposed rule, have been placed in an appendix to this final rule and incorporate changes made in response to the comments received. The final rule will be codified in the Code of Federal Regulations; the appendix will not be codified. However, the appendix will be included in information to be provided to foreclosure commissioners, and which will be available to the public. HUD is striving to keep communications about requirements as clear, simple and timely as possible, and the guide in the appendix presents such a format.

By a delegation of authority published elsewhere in this issue of the **Federal Register**, the authority under the Act to appoint a foreclosure commissioner or commissioners and to fix the compensation of commissioners has been delegated to the General Counsel of HUD. This delegation of authority has been redelegated to the Field Assistant General Counsel.

By a "Notice of Application—Foreclosure Commissioners," which will be published at the same time as this rule or as soon thereafter as possible, the Department requests applications from parties who seek approval for designation to act as foreclosure commissioners under the Single Family Mortgage Foreclosure Act of 1994. The Department will also perform additional outreach in order to encourage interested parties to apply.

I. Changes Made at Final Rule Stage

In addition to removing text of the proposed rule that only repeated statutory language, a number of changes are made in this final rule. The definitions of "record" and "recorded" are clarified to include within their meaning the terms "file" and "filed." The requirement in § 29.101(d) of the proposed rule, that a copy of the designation of the foreclosure commissioner must be mailed with the Notice of Default and Foreclosure Sale, is removed. One item added by this final rule at § 29.103 to the information required to be provided in the notice is the recordation date of the mortgage. The presale reinstatement provisions of this rule, at § 29.107, are revised for consistency to use the term "adjourned" instead of "postponed." The date of the recording of the mortgage that was foreclosed is added to the required recitals in the record of foreclosure and sale (§ 29.121).

II. Public Comments

The Department received nine public comments on the proposed rule during the 60 day comment period that ended on June 7, 1995. The comments were from two law firms, two financial institutions, two bar associations, one legal services organization, one title insurers' trade association, and one foreclosure trustees' association. The following discussion summarizes the comments and provides HUD's responses to those comments.

Comment: Support for the Act/ Favoring the rule. One commenter stated that the proposal to create a uniform foreclosure remedy appeared to be in the best interest of all concerned parties. Another commenter supported the concepts outlined in the proposed rule, but felt that the rule could benefit from some "fine tuning."

Response: No response is necessary.

Comment: Scope of the final rule. One commenter commented that the final rule that is published should be a complete and final rule, rather than an abbreviated one. The commenter stated that there has been considerable confusion in the legal community about the codification of the nonjudicial foreclosure statute, given its enactment in an appropriations bill. The commenter said that while a HUD guidebook with the procedures for foreclosure commissioners to follow would be useful, the commenter believed that a complete and substantial final rule is justified because of the magnitude of changes embodied in this new procedure, the pre-emption of State law, and the national basis on which the statute is to be implemented.

Response: The Department is sensitive to the need for clear instructions in a format that is easily accessible. At the same time, the Department is concerned about excessive and unnecessary regulations, and is taking steps to contain the growth of regulations and reduce the number of regulations. The proposed rule repeated, for the most part, the authority granted to the Secretary in the statute. The Department has decided to publish an abbreviated final rule, which will be codified in the Code of Federal Regulations. However, to ensure adequate guidance to the public, an appendix to this final rule is also being published. The appendix will reflect the proposed rule, revised to incorporate comments.

Regarding concerns over the method of the statute's promulgation, the effectiveness and the codification of this

nonjudicial foreclosure statute in the United States Code are not affected because of the statute's promulgation in an appropriations act.

Comment: Title insurance. One commenter stated that requests to provide title insurance will be denied for properties where mortgages had been foreclosed under the provisions of the Act if, in reliance upon the statute, the State-imposed redemption period was ignored. Because of this, the commenter advised against implementation of this statutory authority.

Response: It is well settled that the Congress has the power to enact such pre-emptive statutes. Section 814(e) of the Act (12 U.S.C. 3763(e)) specifically provides that there shall be no right of redemption or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed under the provisions of the Act. Pre-emption of the right of redemption is not new to foreclosures of Secretary-held mortgages. For example, section 204(l) of the National Housing Act, as amended, already pre-empts the right of redemption for those situations where a Secretary-held mortgage is foreclosed by the Secretary. The Department notes that title insurance is available under the Multifamily Mortgage Foreclosure Act (MMFA), which also pre-empts redemption rights.

Comment: Borrower protection/ Process time. Three commenters noted that the period of time after sending the Notice of Default and Foreclosure Sale prior to the date of foreclosure was not sufficient time for a response from the mortgagor and for the default to be corrected. One commenter thought that what he found to be a brief period of time seemed to conflict with the preamble statement that "foreclosure will be commenced only after extensive attempts to correct the default." One commenter raised concerns that the rule had very few safeguards to protect affected borrowers, and recommended distinguishing between occupied and abandoned properties, which have differing degrees of deterioration. One commenter stated that there was no opportunity to dispute the claimed amount owed.

Response: The time from the sending of the Notice until the foreclosure is not unfair to the mortgagor, and does not preclude the mortgagor from correcting a default. In each case with a Title I, Title II or section 312 mortgage, the mortgagor has had ample opportunity to correct the default and avoid foreclosure. Prior notice has been sent to the mortgagor, a payment plan may have been entered into, and the mortgagor has had the opportunity to contest the amount owed and been given the opportunity to convey the property to HUD without proceeding with foreclosure. The Notice of Default and Foreclosure Sale is only the culmination of a process whereby HUD has attempted to work with the debtor to resolve the default and to work out arrangements whereby foreclosure could be avoided.

A more detailed discussion, which follows, of the acquisition and servicing of Secretary-held mortgages illustrates the effort that the Department undertakes to assist homeowners avoid foreclosure.

Most Title II mortgages are acquired pursuant to section 230 of the National Housing Act. Under this section, a mortgagor who has defaulted on his mortgage due to circumstances outside his control may seek to have his mortgagee assign the mortgage to HUD to avoid foreclosure and attempt to save his home. If HUD finds that certain criteria are met, the mortgagee assigns the mortgage to HUD and collects the mortgage insurance benefits. Among the criteria is the requirement that the mortgagor be able to resume full monthly mortgage payments no later than the 37th month after the assignment, and must be able to pay the mortgage in full at the end of the mortgage term, which may be extended up to ten years to cover the arrearage. If the mortgagor cannot resume and continue making full monthly payments after 36 months, or fails to perform under the terms of a forbearance agreement, the Department initiates foreclosure. A mortgagor under this program who faces foreclosure has not just recently defaulted on his mortgage. Rather, he may have been in default for more than three years. The Department has been in contact with each such mortgagor to work out a solution to the default. When no resolution is worked out, it will be no surprise to the mortgagor that HUD is foreclosing.

A Title I home improvement loan that is secured by a security interest in the secured property is assigned to the Department for the payment of insurance benefits after default by the borrower. After a default, the lender attempts to work with the borrower to collect the delinquent payments. If the loan cannot be brought current, the loan balance is accelerated and the note and mortgage are assigned to HUD. It is important to note that the lender has a choice—it can proceed against the security and forego submitting a claim to HUD, or it can assign the loan to HUD and receive insurance benefits. Once HUD acquires the loan, it is sent to a HUD Debt Management Center for collection activities. The Department attempts to work out payment plans with all Title I debtors, including those where HUD has a junior lien interest securing the Title I loans. Prior to issuing a Notice of Intent to Foreclose to a Title I debtor, the Debt Management Center has taken numerous steps to attempt to collect the delinquent debt. A series of demand letters is sent to the debtor requesting payment. The Debt Management Center reviews the account to see if a realistic payment plan can be implemented, or if assets are available that could liquidate the debt. Based on its review, the Debt Management Center may accept a compromise offer from the debtor. Again, because there have been numerous contacts with the mortgagor, it cannot be said that attempts at collection culminating with foreclosure surprise the Title I mortgagor and deprive him of the means to work out the problem.

Section 312 mortgage loans are serviced by a contract servicer, who also maintains close contact with the mortgagors. As with the Title I and Title II mortgagors, there are opportunities to work out default problems, and it is not until four official notices have been issued to the borrower over a 90-day period and all attempts to work with the borrower have failed, that the process begins for referral to the foreclosure commissioner. A delay of 30 to 60 days will occur before the section 312 loan reaches the foreclosure commissioner, during which time the borrower may have an opportunity to reinstate. Therefore, the borrower may have up to 150 days prior to the 21 day notice in which to bring the loan current or negotiate a forbearance agreement.

In short, internal procedures that the Department has in place which are used prior to initiating foreclosure provide that the mortgagor will have had numerous attempts to address the default under the mortgage, both with HUD staff and with the prior mortgagee. In addition, under the Title I, Title II and Section 312 servicing procedures, there are continuing opportunities to raise and resolve disputed amounts.

Comment: Time of notice. One commenter recommended that the mailing date of the notice should be closer to the date of the search of the records rather than the 45 days before the scheduled sale date, as provided in the proposed rule, to allow for adequate notice of lienholders who may file a lien between the 45 days (maximum time for search) and the 21 days (minimum time for notice to be sent).

Response: If the lienholder of such a lien does not receive notice, the lien

would remain and would have to be cleared. The Department believes that the occurrences of such liens during this time frame would be rare. Should experience show that this becomes a recurrent issue, the Department can request the foreclosure commissioners to make additional searches of the records prior to the 21 day mailing of the notices. The Department also notes that searches actually may be conducted less than 45 days before the sale and the notice may be sent further in advance than 21 days. HUD may also adjust the number of days in the Instructions to be issued to foreclosure commissioners.

Comment: Due process/Retroactive effect of statute. One commenter attached a memorandum from a Title Insurance Company that expressed concerns about the applicability of the Act to mortgages executed prior to the Act's enactment as well as to the absence of a requirement for a hearing before an impartial tribunal prior to foreclosure.

Another commenter raised questions about the retroactive application of the statute. The commenter felt that retroactive application would hurt mortgagors who relied on the availability of their State's foreclosure procedures when entering into their mortgages, and that failure to honor those procedures could raise due process concerns. In addition, the commenter said that persons most adversely affected are those who requested HUD assignments of their mortgage before the new regulation, relying on HUD foreclosure procedures identical to those in their State.

Response: Regarding the retroactive application of the statute, the Department notes that similar questions were raised with regard to multifamily mortgages foreclosed pursuant to the Multifamily Mortgage Foreclosure Act of 1981 (MMFA). The MMFA's retroactive effect has been upheld in court. In addition, the Department emphasizes that it is clear that Congress intended that the Act have retroactive effect. For example, the Act covers the foreclosure of section 312 loans made by the Secretary, although the authority to make such loans was repealed by section 289 of the Cranston-Gonzalez National Affordable Housing Act in 1990.

With regard to the comment about mortgagors relying on certain foreclosure procedures, the Department questions whether mortgagors, upon entering into mortgage contracts, actually consider what foreclosure procedures will be used in the event of default. Furthermore, the Department emphasizes that mortgagors whose mortgages are in default and that are assigned to the Department under section 230 of the National Housing Act (and it is these mortgages that constitute almost all of the mortgages that will be foreclosed under this Act and regulation) generally receive forbearance relief for a number of years that greatly exceeds the amount of time that would be expended if the mortgages had not been assigned and had been foreclosed earlier by mortgagees using the State foreclosure procedures.

Regarding the comment that the mortgagor should have an informal hearing before a foreclosure is initiated under these procedures, the Department is not insensitive to the need to deal with mortgagors fairly and to give them opportunities to correct deficiencies and to question the amount owed. As discussed previously, foreclosure of a Secretary-held mortgage does not come as a surprise to any mortgagor. A mortgagor whose mortgage is held by HUD has been in contact with the Department in regard to forbearance, reduced payment plans and other assistance before foreclosure is initiated. A foreclosure occurs only as a last resort when the mortgagor is unable or unwilling to make mortgage payments.

Comment: Notice of new procedures. One commenter urged that if the statute and rule are to be applied retroactively, mortgagors who have HUD-insured mortgages should be given actual notice of the new procedure immediately and again, if there is a default, at the time information about the assignment program is provided. The commenter urged that HUD wage an aggressive public information campaign, including a bilingual information booklet.

Response: The Department plans to give notice of the new foreclosure procedures to all single-family mortgagors whose mortgages are held by the Secretary. The Department also intends to inform each mortgagor accepted into the Title II Assignment program that this new procedure may be used to foreclose the HUD-held mortgage if foreclosure becomes necessary. The Department also intends to require new language to be added to the Title II security instruments used by mortgagees to provide that if the Department acquires the mortgage, the nonjudicial foreclosure procedures may be used. The Department will not separately notify all Title II mortgagors whose existing mortgages are insured (rather than held) by HUD–FHA of the new procedures, but those mortgagors will be informed if they default on their insured mortgage loans and are accepted into the assignment program.

Comment: Other foreclosure procedures. One commenter asserted that the rule would increase the amount of time, add requirements, and increase the costs associated with a foreclosure in the commenter's State, where a nonjudicial procedure for foreclosure is already in place under State law. The commenter stated that the rule would adversely affect lending practices in his State. The commenter urged that the new procedures should be limited to judicial foreclosure States, and should only apply to HUD-held loans, and not insured loans.

Response: The commenter has expressed a common misconception about this rule. The Act, and hence the rule, applies to mortgage loans that were previously insured, and are held by HUD as a result of an assignment in exchange for the payment of insurance benefits. The rule also applies to secured Title I loans, Section 312 mortgage loans and some Title II loans that were made with the Secretary as mortgagee. It does not apply to mortgages presently insured by HUD. In addition, the statute gives the Secretary the option of using this new procedure or using any other procedures available under State or Federal law.

Comment: Reinstatement. One commenter stated that the pre-sale reinstatement as a matter of right should not be limited to a single instance, but should be permitted at any time before the sale.

Response: The authority for this regulatory provision is contained in the statute, *see* 12 U.S.C. 3759(a)(2). As previously noted, the mortgages in question are in default, and have been in default for long periods of time. The mortgagors in such instances have been informed previously by the Department that HUD would foreclose unless their accounts were brought current, or their accounts had been brought current and then fell behind again repeatedly. The statute seeks to curb such abuses.

Comment: Deficiency judgment. A commenter raised the concern that a borrower would have to take action to set aside an unfair deficiency judgment.

Response: The deficiency judgment provisions in the statute and the regulations are not automatic. The Secretary has discretion about referring a case for a deficiency judgment action.

Comment: Fees. The Department was urged to conduct a study to determine what would be a reasonable fee for outside services in conducting foreclosures of HUD-held mortgages. The commenter noted that on two previous occasions, the Department had contracted for management of its foreclosure processes and had accepted

bids that were unreasonably low, with unsatisfactory results.

Response: Under a Delegation and Redelegation of Authority published elsewhere in this issue of the **Federal Register**, HUD's Field Assistant General Counsel will have authority to designate foreclosure commissioners under the Act and to determine compensation. It is anticipated that the foreclosure commissioners will generally be local law firms or other entities. Compensation will be determined by each Field Assistant General Counsel based upon information received and recommendations made to them about what constitutes reasonable compensation for handling foreclosures in particular geographic areas. In these and other ways, procedures under the Act are considerably different from procedures referred to by the commenter that were previously used for HUD's single family mortgage foreclosures.

Comment: Guidebook availability. One commenter stated that making a guidebook available to the public would be invaluable inasmuch as questions would arise concerning why the foreclosure was not being done in conformity with State law, and would serve as the only viable resource of information for anyone who wished to learn about the HUD nonjudicial foreclosure process.

Response: The Department believes that such a guidebook is not necessary because the guidelines are contained in the appendix to this final rule.

Comment: Definitions. One commenter felt that the definition of "owner" was too broad, and suggested that the term should be limited to a recorded interest in the property.

Response: The definition in the proposed rule is derived from the statute.

Comment: Designation of foreclosure commissioner. One commenter recommended selecting foreclosure commissioners from the U.S. Foreclosure Network, an organization whose members must meet certain criteria of professionalism.

Response: Members of this organization may apply pursuant to the procedures established under the Notice of Application that is being published in the **Federal Register**.

Comment: Natural person as foreclosure commissioner. Concern was expressed by one commenter about having a natural person act as a foreclosure commissioner and potential problems arising, such as death or illness. The commenter recommended using a natural person only if another type of qualified legal entity was not available.

Response: The statute authorizes the designation of a natural person or an entity that is not a natural person, and the Department will proceed accordingly in designating foreclosure commissioners. Other statutory provisions set forth procedures for designating substitute foreclosure commissioners, if necessary. Should a foreclosure commissioner who is a natural person die, become ill, or should another problem arise, the Field Assistant General Counsel may always designate a substitute foreclosure commissioner.

Comment: Copy of designation. Two commenters observed that attaching a copy of the designation of the foreclosure commissioner to the Notice of Default and Foreclosure Sale does not seem necessary and involves additional costs.

Response: Attachment of a copy of the designation is not a statutory requirement. Because the Notice of Default and Foreclosure Sale must include the name, address and telephone number of the foreclosure commissioner, HUD will not require attachment of the designation with each notice.

Comment: Notice of Default and Foreclosure Sale. One commenter asked if the notice should set forth the name of the trustee if the security instrument being foreclosed is a deed of trust.

Response: The foreclosure commissioner named by HUD will function as a substitute trustee in the place of any previously named trustee.

Comment: One commenter recommended that the notice should indicate that the sale is made without covenant or warranty.

Response: This will be included in the Instructions to the foreclosure commissioner.

Comment: A commenter suggested that the notice should state the recording date of the mortgage rather than the "date of the mortgage."

Response: The statute provides at 12 U.S.C. 3757(5) that the Notice of Default and Foreclosure shall contain "the date of the mortgage * * *." Providing the recordation date as well as the execution date may be useful, and this requirement has been added to the abbreviated rule (§§ 29.103 and 29.121) and appendix (Secs. 7 and 17).

Comment: A commenter suggested that there should be clarification of the words "earliest principal installment remaining wholly unpaid," noting that most installments are principal and interest, and it would seem that even a partially unpaid installment should be reflected.

Response: Statutory language provides for "the due date of the earliest installment payment remaining *wholly* unpaid * * *." (emphasis added).

Comment: A commenter suggested that the amount or percentage of the deposit that would be required, and the time that the winning bidder has to pay the balance of the purchase price, should be specified in the final rule.

Response: These points will be covered in other guidance that is to be given to the foreclosure commissioners and to HUD Field Offices. It is not covered in the final rule, which is an abbreviated rule.

Comment: Service of Notice of Default and Foreclosure. One commenter noted that in paragraph (a) of § 29.109 of the proposed rule, the term "filing" appears to refer to recording. Since the term "recording" is used later, it should be used consistently. The commenter also pointed out that there may be a question whether the Notice of Default would be filed "in the manner authorized for filing a notice of an action."

Response: The statute uses the terms "filed" and "filing" and in this context, they are used interchangeably with "record" and "recorded." Nevertheless, to avoid confusion, the terms "record" and "recorded" are used in the Appendix.

Comment: A commenter noted that in paragraph (b)(1)(i) of § 29.109 of the proposed rule, the "last known address" should be defined as the last address known to the Secretary or the foreclosure commissioner.

Response: "Last known address" is statutory language. The meaning has been clarified, as suggested, in the appendix which follows this final rule.

Comment: A commenter noted in subparagraph (b)(1)(ii) of § 29.109 of the proposed rule, that sending notice to "all subsequent mortgagors of record" would be unnecessary since they would no longer have an interest and a current address would not be available.

Response: The statute at 12 U.S.C. 3758(2)(A)(ii) requires notice to "[a]ll mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt * * *." This provision is contained in the appendix, and HUD will request foreclosure commissioners to attempt to effectuate service of notice by mail to the original mortgagor and subsequent mortgagors of record, unless HUD has released them from any obligation under the note and mortgage.

Comment: A commenter stated that notice to senior lienholders would seem unnecessary.

Response: The statute at 12 U.S.C. 3758(2)(A)(iv) provides that service of notice of the foreclosure sale shall be served upon all persons holding liens of record upon the secured property as the record existed 45 days before that date originally set for the foreclosure sale.

Comment: The commenter suggested that consistently posting a notice of the foreclosure sale on the property would avoid questions of proper notice, rather than the limited posting required if the property contains multiple dwelling units or the occupants of the security property are unknown.

Response: HUD is concerned that posting notice on the property for every foreclosure might lead to vandalism and increased deterioration of the property. The posting provisions are contained in the statute to ensure additional notice under limited circumstances. This same issue arose when this statutory language was drafted and it was noted that posting of notice is not a universal requirement.

Comment: A commenter raised concerns about the proof of mailing date. The commenter stated that proof of mailing would be difficult to establish if the commissioner used a postage meter. It was suggested that the commissioner could be required to prepare an affidavit of mailing.

Response: Under 12 U.S.C. 3758(2)(A), "[t]he notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid and return receipt requested * * *." The post office stamped receipt of the mailing, with the postal date stamp, is adequate proof of the mailing of the notice.

Comment: One commenter raised concerns about the cost of publishing the Notice of Default and Foreclosure Sale, and questioned whether publication accomplished any purpose.

Response: This is a statutory requirement.

Comment: *Presale reinstatement.* One commenter observed that paragraph (b) of § 29.111 of the proposed rule refers to a sale postponement of 14 days and says that notice of the rescheduled sale shall be served as described in § 29.109 of the proposed rule. However, § 29.109 requires three weeks of publication. The commenter suggested that § 29.115 of the proposed rule, which deals with adjournment or cancellation of a sale, should be referenced rather than § 29.109, which deals with service of the Notice of Default and Foreclosure Sale.

Response: The commenter is correct and an appropriate change has been made to § 29.107(d) of this final rule, which also specifies that the sale may be cancelled in addition to being postponed. Conforming changes have been made to the appropriate provisions contained in the appendix.

Comment: *Adjournment or Cancellation of Sale.* One commenter suggested eliminating the cost of publication required by paragraph (c) of proposed § 29.115 by providing for an oral postponement as well as mail notification to bidders who had submitted sealed bids.

Response: This is a statutory requirement.

Comment: One commenter noted that paragraph § 29.115(c) of the proposed rule uses the word "adjourned," instead of "postponed," which is the term used in § 29.111(b) of the proposed rule.

Response: This provision is now contained in both § 29.107(d) and the appendix, and "adjourned" has been substituted for "postponed".

Comment: *Disposition of Sale Proceeds.* One commenter questioned the use of surplus funds from the sale in paragraph (a)(3) of § 29.121 of the proposed rule for payments of liens that are prior to the mortgage being foreclosed. The commenter stated that this would seem to conflict with the provisions of many security documents and probably is not what would be considered to be normal practice.

Response: This is a statutory requirement. In many cases, these prior liens will be in the nature of taxes, water and sewer liens, and the like. For Title I loans that are foreclosed, the liens may be senior mortgages.

Comment: A commenter suggested that a period of time for which records of the sale should be kept should be specified.

Response: The department's instructions to the foreclosure commissioners may specify the period of time for record retention.

Comment: Record of Foreclosure and Sale. One commenter noted that in subparagraph (a)(3) of § 29.127 of the proposed rule, the date the mortgage was recorded should be used rather than the date of the mortgage.

Response: This requirement is statutory; *see* 12 U.S.C. 3764(a)(2). However, the Department agrees that this additional information would be useful, and this is included in this final rule at § 29.121 and in the appendix.

Comment: One commenter suggested that it seems to be unnecessary to attach the names and addresses of the parties to whom notice was mailed, as set forth in subparagraph (a)(4) of § 29.127 of the proposed rule, as long as a recital relative to the proper mailing of notices is included in the other recitals.

Response: This is a statutory requirement. *See* 12 U.S.C. 3764(a)(3).

Comment: Recordation of affidavit and addendum. One commenter stated that the recitations contained in § 29.127(a) of the proposed rule should be recorded in the public records. The current language of the proposed rule may be interpreted to read that the commissioner can make the recitations in an affidavit or addendum, which need not be recorded with the deed. The commenter recommended that this language should be clarified to make it clear that the information should be recorded in the public records, in the deed or an affidavit or addendum to the deed.

Response: It is the Department's intent that this information be recorded, whether contained in the deed itself, or an affidavit or addendum. This will be clarified in the instructions to the commissioners.

Comment: Effect of sale. Section 29.127(c) of the proposed rule provides that a sale made and conducted under the provisions of the Act shall bar the interest of any person whose interest was not docketed or recorded before the date on which the notice of the foreclosure sale "was first served by publication." One commenter suggested that for consistency, this wording might be replaced with the wording set forth in § 29.109(b)(1).

Response: This is a statutory requirement. *See* section 816(3) of this Act.

III. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and, by approving it, certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The final rule is limited to implementation of statutory authority for the nonjudicial foreclosure of HUD-held single family mortgages, and there are no unusual procedures that would need to be complied with by small entities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this final rule would not have potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The final rule implements procedures for the nonjudicial foreclosure of HUD-held single family mortgages. These procedures would impact those families who would be required to vacate more quickly than under other procedures. However, this impact is expected to be small, and would be offset by the benefit to families to the extent that these procedures decrease the risk to single-family housing of vandalism, fire loss, depreciation, and damage and waste, and the attendant adverse effects on the neighborhoods in which the properties are located.

Executive Order 12512, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that although this final rule would have an effect on States or their political subdivisions, and the relationship between the Federal government and the States, the provisions of this final rule do not have "federalism implications" within the meaning of the Order because the authorizing statute provides for the preemption of State law.

List of Subjects in 24 CFR Part 29

Foreclosures, Mortgages.

Accordingly, title 24 CFR is amended by adding a new part 29, consisting of subparts A and B, to read as follows:

PART 29—NONJUDICIAL FORECLOSURE OF SINGLE FAMILY MORTGAGES

Subpart A—General

Sec.
29.1 Purpose, scope and applicability.
29.3 Definitions.

Subpart B—Procedures

29.101 Designation of foreclosure commissioner and substitute commissioner.
29.103 Notice of default and foreclosure sale.
29.105 Service of Notice of Default and Foreclosure Sale.
29.107 Presale reinstatement.
29.109 Conduct of sale.
29.111 Adjournment or cancellation of sale.
29.113 Foreclosure costs.
29.115 Disposition of sales proceeds.
29.117 Transfer of title and possession.
29.119 Redemption rights.
29.121 Record of foreclosure and sale.
29.123 Deficiency judgment.

Authority: 12 U.S.C. 1715b, 3751–3768; 42 U.S.C. 1452b, 3535(d).

Subpart A—General

§ 29.1 Purpose, scope and applicability.

(a) *Purpose.* The purpose of this part is to implement requirements for the administration of the Single Family Mortgage Foreclosure Act of 1994 (the Act), 12 U.S.C. 3751–3768, that clarify, or are in addition to, the requirements contained in the Act.

(b) *Scope.* The Secretary may foreclose on any defaulted single family mortgage described in the Act regardless of when the mortgage was executed.

(c) *Applicability.* The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law. This part applies only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

§ 29.3 Definitions.

The definitions contained in the Act (at 12 U.S.C. 3752) shall apply to this part, in addition to and as further clarified by the following definitions. As used in this part—

Act means the Single Family Mortgage Foreclosure Act of 1994.

County means a political subdivision of a State or Territory of the United States, created to aid in the administration of State law for the purpose of local self government, and includes a parish or any other equivalent subdivision.

Mortgage is as defined in the Act except that the reference to property as "(real, personal or mixed)" means "any property (real or mixed real and personal)."

Mortgage Agreement is as defined in the Act, and also means any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument.

Mortgagor is a defined in the Act, except that the reference to "trustee" mean "trustor."

Record; Recorded means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without knowledge, and includes "register" and "registered" in the instance of registered land, and "file" and its variants in the context of entering documents in public land records.

Secretary means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

Security Property is as defined in the statute except that the reference to property as "(real, personal or mixed)" means "any property (real or mixed real and personal)."

Subpart B—Procedures

§ 29.101 Designation of foreclosure commissioner and substitute commissioner.

(a) The Secretary may designate foreclosure commissioners, including substitute commissioners, as set forth in the Act.

(b) The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the Secretary. The execution of a designation pursuant to this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary. The designation is effective upon execution.

§ 29.103 Notice of default and foreclosure sale.

(a) The foreclosure commissioner shall commence the foreclosure under the procedures set forth in the Act.

(b) The Notice of Default and Foreclosure Sale (Notice) shall include, in addition to the provisions as required by the Act:

(1) The foreclosure commissioner's telephone number;

(2) The legal description of the security property as contained in the mortgage instrument;

(3) The date the mortgage was recorded;

(4) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be paid if the mortgage is to be reinstated, the due date of the earliest principal installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness; and

(5) The bidding and payment requirements for the foreclosure sale, including the time and method of payment of the balance of the purchase price, that all deposits and the balance of the purchase

price shall be paid by certified or cashier's check, and that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

§ 29.105 Service of Notice of Default and Foreclosure Sale.

(a) The Notice of Default and Foreclosure Sale shall be served in accordance with the provisions of the Act. When notice is sent by mail, multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units. The date of the receipt for the postage paid for the mailing may serve as proof of the date of mailing of the notice.

(b) Notice need not be mailed to any mortgagors who have been released from all obligations under the mortgage.

§ 29.107 Presale reinstatement.

(a) The foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only in accordance with the provisions of the Act and as more fully provided in this section, in regard to presale reinstatements.

(b) To obtain a presale reinstatement in cases involving a monetary default, there must be tendered to the foreclosure commissioner before public auction is completed all amounts which would be due under the mortgage agreement if payments under the mortgage had not been accelerated and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in the Act, and the foreclosure commissioner must find that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to this paragraph if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this part or otherwise, to be canceled by curing a default.

(c) To obtain a presale reinstatement in cases involving a nonmonetary default:

(1) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, must find that all nonmonetary defaults are cured and that there are no monetary defaults; and

(2) There must be tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding all amounts which would be due under the mortgage agreement if the mortgage payments had been accelerated), including all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment would be made from the proceeds of foreclosure as provided in the Act.

(d) Before withdrawing the security property from foreclosure, the foreclosure commissioner shall notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and shall also provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property shall not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be adjourned for 14 days, during which time it may be cancelled. Notice of the re-scheduled sale, if any, shall be served as described in § 29.111.

§ 29.109 Conduct of sale.

(a) The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Default and Foreclosure Sale and in accordance with the provisions of the Act.

(b) The foreclosure commissioner shall attend the foreclosure sale in person or, if the commissioner is not a natural person, through a duly authorized employee. If more than one commissioner has been designated, at least one shall attend the sale.

(c) In addition to bids made in person at the sale, the foreclosure commissioner shall accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The foreclosure commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale. Before the close of the sale the commissioner shall announce the amount of the high bid and the name of the successful bidder. If the successful bidder fails to comply with the terms of the sale, the HUD Field Office representative will provide instructions to the commissioner about offering the property to the second highest bidder, or having a new sale, or other instruction at the discretion of the HUD representative.

(d) *Prohibited participants.* Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent or promptly to correct, the offensive conduct of the other entity.

(e) *Auctioneers.* If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

§ 29.111 Adjournment or cancellation of sale.

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale in accordance with the provisions of the Act. The publication of Notice of Default and Foreclosure Sale, revised pursuant to the Act, may be made on any of three consecutive days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the date to which the sale has been adjourned. The commissioner shall, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(b) When a substitute commissioner is designated by the Secretary to replace a previously designated foreclosure commissioner, the sale shall continue without prejudice unless the substitute commissioner finds, in that commissioner's sole discretion, that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel or adjourn the sale.

§ 29.113 Foreclosure costs.

A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 29.115 Disposition of sales proceeds.

The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed, and otherwise to enable the Secretary to audit the foreclosure commissioner's disposition of the sale proceeds.

§ 29.117 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs of tax liens and prior liens, as set forth in 12 U.S.C. 3762 (a)(2) and (a)(3). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(b) The register of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations required under the Act (12 U.S.C. 3764) in an affidavit or an addendum to the deed, the affidavit or addendum shall be accepted along with the deed for recordation. The Clerk of the Court or other appropriate official shall cancel all liens as requested by the foreclosure commissioner.

§ 29.119 Redemption rights.

Only for purposes of redemption rights under the Act, a foreclosure shall be considered completed upon the date and at the time of the foreclosure sale.

§ 29.121 Record of foreclosure and sale.

The statements regarding the foreclosed mortgage required to establish a sufficient record shall include the date the mortgage was recorded. The statements regarding the service of the Notice of Default and Foreclosure Sale shall include the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, the name of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

§ 29.123 Deficiency judgment.

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after disposition of sale proceeds in accordance with the order of priority provided under the Act, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, unless such an action is specifically prohibited by the mortgage.

Dated: October 20, 1995.

Henry G. Cisneros,

Secretary.

[The following appendix to part 29 will not be codified in title 24 of the Code of Federal Regulations.]

Appendix to Part 29: Nonjudicial Foreclosure of Single Family Mortgages—Guide

Item

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1. Purpose

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements of the Single Family Mortgage Foreclosure Act of 1994 (the Act), 12 U.S.C. 3751–3768. Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR part 29, is the primary, governing source for regulatory requirements, and the Act is the primary, governing source for statutory requirements.

The Act creates a uniform Federal remedy for foreclosure of certain single family mortgages which are held by the Secretary of Housing and Urban Development pursuant to Title I of the National Housing Act, 12 U.S.C. 1702 *et seq.*, Title II of the National Housing Act, 12 U.S.C. 1707 *et seq.*, or Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b (as it existed before repeal). The Secretary's powers under the Act to appoint a foreclosure commissioner or commissioners and substitute commissioners, and to fix the compensation of commissioners have been delegated to the HUD General Counsel.

The availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Department, will ameliorate the negative consequences of the disparate State laws under which mortgages covering one- to four-family residential properties are foreclosed on behalf of HUD. The long periods of time that are required under State law to complete foreclosure of such mortgages lead to deterioration in the condition of the properties involved, necessitate substantial Federal holding expenditures, increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties, and adversely affect the neighborhoods in which the properties are located. These consequences seriously impair the ability of HUD to protect Federal financial interests in the properties and frustrate attaining the objectives of the underlying Federal program authority. Use of this nonjudicial foreclosure procedure will also reduce unnecessary litigation, which contributes to already overcrowded court calendars, by removing many foreclosures from the courts.

2. Scope and Applicability

(a) Scope. Under the Act, HUD may foreclose on any defaulted single family mortgage (as defined in section 3 of this appendix), encumbering real estate in any State regardless of when the mortgage was executed.

(b) Applicability. HUD, at its discretion, may use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law.

3. Definitions

As used in this guide—

Act means the Single Family Mortgage Foreclosure Act of 1994.

Bona fide purchaser means a purchaser for value in good faith and without notice of any adverse claim, and who acquires the security property free of any adverse claim.

County means a political subdivision of a State or Territory of the United States, created to aid in the administration of state law for the purpose of local self-government, and includes a parish or any other equivalent subdivision.

Mortgage means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real or mixed real and personal), or any interest in property

(including leaseholds, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

Mortgage agreement means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the debtor, obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

Owner means any person who has an ownership interest in the property and includes heirs, devisees, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

Record; Recorded means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without actual knowledge, and includes "register" and "registered" in the instance of registered land, and "file" and its variants in the context of entering documents in public land records.

Secretary means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

Security property means the property (real or mixed real and personal) or an interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable law), together with fixtures and other interests subject to the lien of the mortgage under applicable law.

Single family mortgage means a mortgage that covers property on which there is located a 1- to 4-family residence, and that:

(1) Is held by the Secretary pursuant to title I or title II of the National Housing Act (12 U.S.C. 1701 et seq.); or

(2) Secures a loan obligated by the Secretary under section 312 of the Housing Act of 1964 as it existed before the repeal of that section by section 289 of the Cranston-Gonzalez National Affordable Housing Act. A mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling is not subject to foreclosure under the Act.

State means:

(1) The several States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) The United States Virgin Islands;

(5) Guam;

(6) American Samoa;

(7) The Northern Mariana Islands; and

(8) Indian tribes, meaning any Tribe, band, group or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

4. Designation of Foreclosure Commissioner

(a) The Secretary may designate a person or persons to serve as a foreclosure commissioner for the purpose of foreclosing single family mortgages, and such a foreclosure commissioner has a nonjudicial power of sale as provided under the Act.

(b) The foreclosure commissioner, if a natural person, must be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is determined by the Secretary to be responsible, financially sound, and competent to conduct a foreclosure. The method of selection and determination of the qualifications of the foreclosure commissioner are at the discretion of the Secretary, and the execution of a designation pursuant to the Act is conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary.

(c) The Secretary designates a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such a person may be designated by his or her unique title or position instead of by name. The designation is effective upon execution.

(d) The Secretary may designate, with or without cause, a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by the procedure contained in paragraph (c) of this item.

(1) A substitution of the foreclosure commissioner may be made at any time prior to the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding must be in writing. If the substitute commissioner makes such a finding, the substitute commissioner will cancel the foreclosure sale, or adjourn the sale as explained in item 11 of this appendix.

(2) If a substitute commissioner is designated, a copy of the written notice of the designation referred to in paragraph (c) of this item must be served:

(i) By mail, as described in item 8 of this appendix, (except that the minimum time periods between mailing and the date of the foreclosure sale do not apply); or

(ii) In any other manner which, in the substitute foreclosure commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

5. Prerequisites to Foreclosure

(a) The Secretary may commence foreclosure of a single family mortgage under the Act upon the breach of a covenant or condition in the mortgage agreement.

(b) No foreclosure under the Act may be commenced unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage in a manner other than under the Act has been withdrawn, dismissed, or otherwise terminated.

(c) The Secretary will not institute any separate foreclosure proceeding concerning a property while it is the subject of a foreclosure pursuant to the Act.

(d) The Act does not preclude the Secretary from enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment, or foreclosing under the Act if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement.

6. Commencement of Foreclosure

If the Secretary determines that the prerequisites to foreclosure set forth in item 5 of this appendix are satisfied, the Secretary may direct the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner will commence foreclosure of the mortgage in accordance with item 7 of this appendix.

7. Notice of Default and Foreclosure Sale

The commissioner commences the foreclosure by serving a Notice of Default and Foreclosure Sale. The Notice sets forth the name, address and telephone number of the foreclosure commissioner and the date on which the Notice was issued, along with the following information:

(a) The current mortgagee (that is, the Secretary), the original mortgagee (if other than the Secretary), and the original mortgagor.

(b) The street address or a description of the location of the security property and the legal description of the security property as contained in the mortgage instrument.

(c) The date of the mortgage, the date the mortgage was recorded, the office in which the mortgage is recorded, and the liber and folio numbers or other appropriate description of the location of recordation of the mortgage.

(d) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be paid if the mortgage is to be reinstated, the due date of the earliest principal installment payment remaining wholly unpaid as of the date on which the Notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness.

(e) The date, time, and location of the foreclosure sale.

(f) A statement that the foreclosure is being conducted in accordance with the Act.

(g) A description of the types of costs, if any, to be paid by the purchaser upon transfer of title.

(h) The bidding and payment requirements for the foreclosure sale, including the amount and method of deposit to be required at the foreclosure sale, and the time and method of payment of the balance of the foreclosure purchase price. The Notice must state that all deposits and the balance of the purchase price must be paid by certified or cashier's check. The Notice must also state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(i) Any other appropriate terms of sale or information as the Secretary may determine.

8. Service of Notice of Default and Foreclosure Sale

The foreclosure commissioner will serve the Notice of Default and Foreclosure Sale upon the following persons and in the following manner, and no additional notice will be required to be served, notwithstanding any notice requirements of any State or local law:

(a) Filing the notice. The Notice of Default and Foreclosure Sale must be filed not less than 21 days before the date of the foreclosure sale in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located, or if none, in the manner authorized by Section 3201 of title 28, United States Code.

(b) Notice by mail. (1) The Notice must be sent by certified or registered mail, postage prepaid, return receipt requested, to the following (except that multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units):

(i) The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Act. The Notice must be mailed not less than 21 days before the date of the foreclosure sale to the current owner at the last address known to the Secretary or the foreclosure commissioner or, if none, to address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of the current owner.

(ii) The original mortgagor and all subsequent mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the Notice describes a sale adjourned as provided in the Act, except that the Notice need not be mailed to any mortgagors who have been released from all obligations under the mortgage. Notice under paragraph (b) of this item must be mailed not less than 21 days before the date of the foreclosure sale to the last known address of the mortgagors or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such mortgagors.

(iii) All dwelling units in the security property, whether or not the Notice describes a sale adjourned as provided in this part. Notice under paragraph (b) of this item shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or if the security property has more than one dwelling, the Notice must be posted at the security property not less than 21 days before the foreclosure sale.

(iv) All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Act. Notice under this paragraph (b) of this item must be mailed not less than 21 days before the date of the foreclosure sale to each such lienholder's address of record, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(2) Notice by mail is deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned. The date of the receipt for the postage paid for the mailing may serve as proof of the date of mailing of the notice.

(c) Publication. (1) A copy of the Notice of Default and Foreclosure Sale must be published once a week during three successive calendar weeks before the date of the foreclosure sale. Such publication must be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located is a newspaper having general circulation for the purposes of this paragraph.

(2) If there is no newspaper of general circulation published at least weekly in the county or counties in which the security property being sold is located, copies of the Notice of Default and Foreclosure Sale must be posted, not less than 21 days before the date of the foreclosure sale, at the courthouse of any county or counties in which the security property is located and at the place where the sale is to be held.

9. Presale Reinstatement

(a) Except as provided in paragraph (d) of item 4 of this appendix, paragraph (b) of this item, and item 11 of this appendix, the foreclosure commissioner will withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary directs the foreclosure commissioner to do so before or at the time of the sale; or

(2) The foreclosure commissioner finds, upon application of the mortgagor not less than three business days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the Notice of Default and Foreclosure Sale; or

(3) In the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed all amounts that would be due under the mortgage agreement if payments under the mortgage had not been accelerated, all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in item 13 of this appendix, and the foreclosure commissioner finds that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to this subparagraph if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to the Act or otherwise, to be canceled by curing a default; or

(4) In the case of a foreclosure involving a nonmonetary default:

(i) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults are cured and that there are no monetary defaults; and

(ii) There is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding all amounts which would be due under the mortgage agreement if the mortgage payments had been accelerated), including all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment would be made from the proceeds of foreclosure.

(b) Before withdrawing the security property from foreclosure under paragraphs (a)(2), (a)(3), or (a)(4) of this item, the foreclosure commissioner must notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and must also provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary has ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property will not be withdrawn from foreclosure. The Secretary will provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale will automatically be adjourned for 14 days, during which time it may also be canceled. Under these circumstances, notice of the rescheduled sale, if any, will be served as described in item 11(c) of this appendix.

(c) If the foreclosure commissioner cancels the foreclosure, the mortgage will continue in effect as though acceleration had not occurred.

(d) Cancellation of a foreclosure sale will have no effect on the commencement of a subsequent foreclosure proceeding.

(e) The foreclosure commissioner must file a notice of cancellation in the same place and

manner provided for filing the Notice of Default and Foreclosure Sale as provided in item 8 of this appendix.

10. Conduct of Sale

(a) The foreclosure sale will be conducted in a manner and at a time and place as identified in the Notice of Foreclosure and Sale and more fully described in this item. The sale will be scheduled for a date 30 or more days after the due date of the earliest unpaid installment as described in item 7(d) of this appendix, or the earliest occurrence of a nonmentary default. The sale will be held at public auction and must be scheduled to being at a time between the hours of 9:00 a.m. and 4:00 p.m. local time. The sale will be scheduled for a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold in located, or at a courthouse therein, or at or on the property to be sold. If the security property is situated in two counties, the sale may be held in any one of the counties in which any part of the security property is situated.

(b) The foreclosure commissioner will conduct the foreclosure sale in a manner that is fair to both the mortgagor and the Secretary (see item 12 of this appendix), and consistent with the provisions of the Act.

(c) The foreclosure commissioner will attend the foreclosure sale in person or, if the commissioner is not a natural person, through a duly authorized employee. If more than one commissioner has been designated, at least one must attend the sale.

(d) In addition to bids made in person at the sale, the foreclosure commissioner will accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The foreclosure commissioner will announce the name of each bidder and the amount of the bid. The commissioner will accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale. Before the close of the sale, the commissioner will announce the amount of the high bid and the name of the successful bidder.

(e) Notwithstanding the provisions of paragraph (d) of this item, neither the foreclosure commissioner nor any relative, related business entity, or employee is permitted to bid in any manner on the security property subject to the foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf. Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(f) The commissioner may serve as an auctioneer, or the commissioner may employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate an auctioneer from the proceeds of the commission described in item 13(e) of this appendix.

(g) The foreclosure commissioner may require a bidder to make a deposit in an amount or percentage set by the foreclosure commissioner and stated in the Notice of Default and Foreclosure Sale before the bid is accepted.

(h) A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, will be liable to the Secretary for any costs incurred as a result of such failure. If the successful bidder fails to comply with the terms of the sale, the HUD Field Office representative will provide instructions to the commissioner about offering the property to the second highest bidder, or having a new sale, or other instruction at the discretion of the HUD representative.

11. Adjournment or Cancellation of Sale

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the foreclosure commissioner determines, in the foreclosure commissioner's discretion, that:

(1) Circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary, or

(2) Additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in item 9 of this appendix.

(b) The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting, at the original place of sale, the new time and place of the foreclosure sale, which must be held between 9 a.m. and 4 p.m. at the original place of sale.

(c) Except as provided in paragraph (b) of this item, the foreclosure commissioner may adjourn a foreclosure sale for not less than 9 and not more than 31 days, in which case the foreclosure commissioner must serve a Notice of Default and Foreclosure Sale that is revised to state that the foreclosure sale has been adjourned to a specified date between the hours of 9:00 a.m. and 4:00 p.m. The revised Notice may include any other information the foreclosure commissioner deems appropriate. Such Notice must be served by publication and mailing as provided in item 8 of this appendix, except that publication may be made on any of three consecutive days prior to the revised date of foreclosure sale, as long as the first publication is made at least seven days before the revised sale date. Mailing may be made at any time at least seven days before the date to which the foreclosure sale has been adjourned. The commissioner must also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

12. Validity of Sale

Any foreclosure sale held in accordance with the Act and its regulations is conclusively presumed to have been conducted in a fair, legal, and reasonable manner. The sale price is conclusively presumed to be reasonable and equal to the fair market value of the property.

13. Foreclosure Costs

The following foreclosure costs are paid from the sale proceeds, or from other available sources if sales proceeds are insufficient, before satisfaction of any other claim to the sale proceeds:

(a) Advertising costs and postage expenses incurred in giving notice described in items 8 and 11 of this appendix.

(b) Mileage by the most reasonable road distance for posting notices described in item 8 of this appendix, and for the foreclosure commissioner's or auctioneer's attendance at the sale. The mileage is paid at the rate provided in 28 U.S.C. 1821.

(c) Reasonable and customary costs incurred for title and lien record searches.

(d) The necessary out-of-pocket costs incurred by the foreclosure commissioner for recording documents.

(e) A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure in an amount to be determined by the Secretary. A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

14. Disposition of Sale Proceeds

(a) The proceeds of the foreclosure sale are paid out in the following order:

(1) To cover the costs of foreclosure described in item 13 of this appendix.

(2) To pay valid tax liens or assessments on the security property as provided in the Notice of Default and Foreclosure Sale.

(3) To pay any liens recorded before the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale.

(4) To pay service charges and advances for taxes, assessments, and property insurance premiums which were made under the terms of the foreclosed mortgage.

(5) To pay the interest due under the mortgage debt.

(6) To pay the unpaid principal balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided in the mortgage agreement).

(7) To pay any late charges or fees.

(b) Any surplus proceeds from a foreclosure sale will be applied, after payment of the items described in paragraph (a) of this item, in the order as follows:

(1) To pay any liens recorded after the foreclosed mortgage in the order of priority under the law of the State in which the security property is located.

(2) To pay the surplus to the mortgagor.

(c) If the person to whom surplus proceeds are to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds disagrees with the foreclosure commissioner's proposed disposition of the disputed proceeds, the foreclosure commissioner may deposit the disputed funds with a legally authorized official or court. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action are deductible from the disputed funds.

(d) The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed, and otherwise to enable the Secretary to audit the foreclosure commissioner's disposition of the sale proceeds.

15. Transfer of Title and Possession

(a) If the Secretary is the successful bidder, the foreclosure commissioner will issue a deed to the Secretary upon receipt of the amount needed to pay the costs of tax liens and prior liens. See items 14(a)(2) and (a)(3) of this appendix.

(b) If the Secretary is not the successful bidder, the foreclosure commissioner will issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(c) The deed or deeds issued by the foreclosure commissioner shall be without warranty or covenants to the purchaser or purchasers. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner is a conveyance of the property and constitutes passage of good and marketable title to the mortgaged property. No judicial proceedings are required ancillary or supplementary to the procedures provided under the Act and its regulations to assure the validity of the conveyance or confirmation of such conveyance. The purchaser of property under the Act is presumed to be a bona fide purchaser.

(d) A purchaser at a foreclosure sale held pursuant to the Act is entitled to possession upon passage of title under paragraph (c) of this item, subject to any interest or interests that are not barred, as described in item 19 below. Any person remaining in possession of the property after the passage of title is deemed a tenant at sufferance subject to eviction under applicable law.

(e) If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner will execute and deliver the deed to a legal representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate will have the same effect as if accomplished during the lifetime of the purchaser.

(f) When the foreclosure commissioner conveys the property to the Secretary, no tax may be imposed or collected with respect to the foreclosure commissioner's deed, including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property.

(g) The register of deeds or other appropriate official in the county where the property is located must, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted include, but are not limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations described in item 17(a) of this appendix, in an affidavit or an addendum to the deed as described in item 17(b) of this appendix, the affidavit or addendum must be accepted for recordation. Failure to collect or pay a tax as described in paragraph (f) of this item are not grounds for refusing to record such instruments, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such instruments and their provisions in any State or Federal Court.

(h) The Clerk of the Court or other appropriate official must cancel all liens as requested by the foreclosure commissioner.

16. Redemption Rights

(a) There is no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to the Act. In regard to the pre-emption of State laws regarding rights of redemption, a foreclosure is considered completed upon the date and at the time of the foreclosure sale.

(b) Section 204(l) of the National Housing Act, 42 U.S.C. 1710(l), and section 701 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 1452c, do not apply to mortgages foreclosed under the Act.

17. Record of Foreclosure and Sale

(a) The foreclosure commissioner must include in the recitals of the deed to the purchaser, or in an affidavit or addendum to the deed, the following items:

(1) The date, time, and place of the foreclosure sale.

(2) A statement that the foreclosed mortgage was held by the Secretary.

(3) The date of the foreclosed mortgage, the date of the recording of the mortgage that was foreclosed, the office in which the mortgage was recorded, and the liber and folio numbers or other appropriate description of the recordation of the mortgage.

(4) The details of the service of the Notice of Default and Foreclosure Sale, including the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, the name of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

(5) The date and place of filing the Notice of Default and Foreclosure Sale.

(6) A statement that the foreclosure was conducted in accordance with the provisions of the Act and with the terms of the Notice of Default and Foreclosure Sale.

(7) The name of the successful bidder and the amount of the successful bid.

(b) The foreclosure commissioner may, in his or her discretion, make the recitations in paragraph (a) of this item in the deed or in an affidavit or addendum to the deed, either of which is to be recorded with the deed as provided in the Act.

(c) The items set forth in paragraph (a) of this item are prima facie evidence of the truth of such facts in any Federal or State court and evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice. Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

18. Effect of Sale

A sale made and conducted as prescribed in the Act to a bona fide purchaser bars all claims upon, or with respect to, the property sold for the following persons:

(a) Any person to whom the Notice of Default and Foreclosure Sale was mailed as provided under the Act, and the heir, devisee, executor, administrator, successor or assignee claiming under any such person.

(b) Any person claiming any interest in the property subordinate to that of the mortgage if such person had actual knowledge of the foreclosure sale.

(c) Any person claiming any interest in the property whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as described in item 8(c) of this appendix, and the executor, administrator, or assignee of such a person.

(d) Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of the foregoing paragraphs.

19. Computation of Time

Periods of time provided for in the Act are calculated in consecutive calendar days including the day or days on which the actions or events occur, or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

20. Deficiency Judgment

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such

property after deducting payments in the order described in item 14 of this appendix, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, the only limitation on such action being a prohibition against pursuit of a deficiency that is specifically set forth in the mortgage.

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federal register

Wednesday
November 15, 1995

Part III

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51843; FRL–4979–4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN), polymer exemption notices and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from March 22, 1995 to June 22, 1995.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51843]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51843]. No Confidential Business information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION" of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs, polymer exemption notices and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51843]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMNs, polymer exemptions requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; (II) Polymer exemptions received; (III) and Notices of Commencement to manufacture/import.

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–0935	03/22/95	06/20/95	Dow Corning	(S) Abrasion resistant coating .	(G) Acrylate-functional silica
P–95–0936	03/22/95	06/20/95	Dow Corning	(S) Abrasion resistant coating .	(G) Acrylate-functional silica
P–95–0937	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate.	(G) Pyridimidine salt
P–95–0938	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate.	(G) Pyrimidine salt
P–95–0939	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate.	(G) Organophosphate
P–95–0940	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate.	(G) Amidine
P–95–0941	03/213/95	06/21/95	Percy International, Ltd	(G) Carbonate bis (-*N*-ethyl, 2-isopropyl-, 3-oxozolane).	(S) Catalyst for use in moisture-curing urethane coatings and sealants.
P–95–0942	03/23/95	06/21/95	CIBA-Geigy Corporation	(G) Textile dye	(G) Substituted phenyl azo substituted naphthalene amino triazinyl amino substituted propane
P–95–0943	03/23/95	06/21/95	CBI	(G) Polymer processing aid	(G) Styrene-acrylic polymer
P–95–0944	03/23/95	06/21/95	CBI	(G) Chlorosilane	(G) Organochlorosilane
P–95–945	03/24/95	06/22/95	Elf Atochem North American, Inc..	(G) Amine oxide	(G) Intermediate for commercial product.
P–95–0946	03/23/95	06/21/95	Mitsui Petrochemicals (America), Ltd..	(G) Lubricant	(G) Reaction product of 3-alkoxy-2,2,-dialkylpropanol,2-(alkylphenoxy)ethanol and dialkycarbonate
P–95–0947	03/27/95	06/25/95	Dow Chemical Company	(S) Intermediate	(G) Aromatic sulfonyl chloride
P–95–0948	03/27/95	06/25/95	Dow Chemical Company	(S) Magnetic media lubricant ..	(G) Aromatic sulfonamide
P–95–0949	03/27/95	06/25/95	Dow Chemical Company	(S) Magnetic media lubricant ..	(G) Aromatic sulfonamide
P–95–0950	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0951	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid alcohol
P–95–0952	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0953	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0954	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0955	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0956	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0957	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0958	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0959	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0960	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0961	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic bamic acid and alcohol
P–95–0962	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic bamic acid and alcohol

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–0963	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0964	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0965	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0966	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0967	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0968	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0969	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0970	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0971	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0972	03/27/95	06/25/95	General Polymers West	(S) Architectural Coatings	(G) Polyurethane
P–95–0973	03/28/95	06/26/95	VPN, Inc.	(S) Sprayed on foilage of plants to promote growth.	(G) Vanadium compound
P–95–0974	03/27/95	06/25/95	Hoechst Celanese Corporation	(G) Binder in paints	(S) A polymer of: adipic acid; 1,6-hexandiol; succinic acid anhydride; neopentyl glycol; isophorone; diisocyanate diethanolamine; bishydroxymethyl; propionic acid; *N,N*-dioethylethanolamine; dibutyl tin oxide
P–95–0975	03/27/95	06/25/95	Exxon Chemical Company	(S) Polymerization catalyst	(G) Aluminum organometallic compound
P–95–0976	03/27/95	06/25/95	Para-Chem Southern, Inc.	(S) Latex thickner	(S) Sodium salt of methyl acrylate and methacrylic acid co-polymer
P–95–0977	03/28/95	05/29/95	Henkel Corporation	(G) Dispersant	(G) Acrylate polymer salt
P–95–0978	03/28/95	06/26/95	High Point Chemical Corporation.	(G) Industrial cleaning	(S) Poly(oxy-1,2-ethanediyl), alpha.-(carboxymethyl)-.omega.-ethanediyl).Alpha.-(carboxymethyl)-.omega.-carbxymethyl—=.omega.)-[2-ethykhexyl)oxy)-(9Cl)
P–95–0979	03/28/95	06/26/95	E.I. Du Pont De Nemours & Company, Inc..	(G) Enclosed destructive use ..	(G) Fluorinated carboxylic acid, alkali metal salt
P–95–0980	03/28/95	06/26/95	E.I. Dupont De Nemours & Company, Inc..	(G) Enclosed destructive use ..	(G) Fluorinated carboxylic acid, alkali metal salt
P–95–0981	03/28/95	06/26/95	E.I. Du Pont De Nemours & Company, Inc..	(G) Enclosed destructive use ..	(G) Fluorinated caboxylic acid, alkali metal salt
P–95–0982	03/28/95	06/26/95	Hercules-Sanyo Incorporated ..	(S) Binder resin for printing inks.	(G) Metal resinate
P–95–0983	03/28/95	06/26/95	Hercules-Sanyo Incorporated ..	(S) Binder resin for printing inks.	(G) Metal resinate
P–95–0984	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0985	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0986	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0987	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–0988	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0989	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0990	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0991	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0992	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0993	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0994	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0995	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0996	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0997	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0998	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–0999	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1000	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1001	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1002	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1003	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1004	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1005	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1006	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1007	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1008	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive.	(G) Polyamide resin salt
P–95–1009	03/28/95	06/26/95	CBI	(G) Coating resin	(G) Acrylic polymer
P–95–1010	03/28/95	06/26/95	3M Company	(S) Surfactant	(G) Perfluoroalkyl carboxylate salt
P–95–1011	03/29/95	06/27/95	Xerox Corporation	(G) Reprographic pigment dispersant.	(G) Vinyl copolymer
P–95–1012	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sports floors.	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1013	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sports floors.	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1014	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sports floors.	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1015	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sports floor.	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1016	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sports floors.	(G) Polyurethane based on polyisocyanates, polyols and polyamines
P–95–1017	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sport floors.	(G) Polyurethane based on polyisocyanates, polyols and polyamines
P–95–1018	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sports floors.	(G) Polyurethane based on polyisocyanates, polyols and polyamines

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1019	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other sports floors.	(G) Polyurethane based on polyisocyanates, polyols and polyamines
P–95–1020	03/29/95	06/27/95	CBI	(G) Colorant	(G) Polymeric colorant
P–95–1021	03/29/95	06/27/95	CBI	(G) Colorant	(G) Polymeric colorant
P–95–1022	03/29/95	06/27/95	CBI	(G) Open, non-dispersive use .	(G) Polyester silane
P–95–1023	03/29/95	06/27/95	Xerox Corporation	(G) Reprographic pigment	(G) Phthalocyanine pigment
P–95–1024	03/30/95	06/28/95	CBI	(G) Open, Non-dispersive use	(G) Acrylosilane resin
P–95–1025	03/31/95	06/29/95	CBI	(S) Coatings	(G) Urethane modified melamine resin
P–95–1026	03/31/95	06/29/95	Eastman Kodak Company	(G) Chemical intermediate	(G) Substituted alkylaminodihaldobenzoic acid, ester
P–95–1027	03/31/95	06/29/95	CBI	(G) Processing additive	(G) Substituted metal sulfides
P–95–1028	03/30/95	06/28/95	Mycogen Corporation	(S) Biopesticides	(G) Bacillus thurgiensis delta entoxin genes
P–95–1029	03/30/95	06/28/95	Mycogen Corporation	(S) Biopesticides	(G) Bacillus thurgiensis delta entoxin genes
P–95–1030	04/03/95	07/02/95	CBI	(G) Dielectric fluid	(G) Orthoxylene compound
P–95–1031	04/03/95	07/02/95	Osakagodo America,Inc.	(S) Coloring agent for resin	(S) 7*H*-(1)Benzopyrano (3′,2,′;4)benzimidazole-6-carbonitrile 3-(diethylamino)-7-oxo-
P–95–1032	04/03/95	07/02/95	CBI	(G) Raw material for colorant ..	(S) Benzenesulfonic acid, 2-amino-4,5-dichloro-
P–95–1033	04/03/95	07/02/95	Dow Corning	(S) Silicone adhesive component.	(G) Organofunctional silica
P–95–1034	04/03/95	07/02/95	CBI	(G) Open, non-dispersive	(G) Aqueous polyester lyurethane polyester, polyurethane dispersive
P–95–1035	04/03/95	07/02/95	CBI	(G) Open, non-dispersive	(G) Aqueous aliphatic urethane stoving resin
P–95–1036	04/03/95	07/02/95	Shipley Company, Inc.	(S) Chemical intermediate used in the manufacture of a.	(G) Polynuclear polyhydroxy phenol of a photoactive compound
P–95–1037	04/03/95	07/02/95	Shipley Company, Inc.	(S) Chemical intermediate used in the manufacture of a.	(G) Naphthaquinone diazide sulfonyl ester mixture of a photo resist
P–95–1038	04/03/95	07/02/95	E.I. Du Pont De Nemours & Company, Inc..	(S) Release sheeting, protective cladding coatings.	(G) Polyvinyl fluoride copolymer
P–95–1039	04/03/95	07/02/95	E.I. Du Pont De Nemours & Company, Inc..	(S) Release sheeting, protective cladding coatings.	(G) Polyvinyl fluoride copolymer
P–95–1040	04/03/95	07/02/95	CBI	(G) Open, non-dispersive	(G) Acrylosilane resin
P–95–1041	04/03/95	07/02/95	CBI	(G) Destructive use	(G) Silane intermediate
P–95–1042	04/03/95	07/02/95	CBI	(G) Destructive use	(G) Silane intermediate
P–95–1043	04/04/95	07/03/95	CBI	(S) Paper dye	(G) Bis(substituted) carbomonocyclic azo)-carbomonocyclicol
P–95–1044	04/04/95	07/03/95	CBI	(S) Paper dye	(G) Bis(substituted) carbomonocyclic azo)-carbomonocyclicol
P–95–1045	04/04/95	07/03/95	CBI	(S) Paper dye	(G) Bis(substituted) carbomonocyclic azo)-carbomonocyclicol
P–95–1046	04/04/95	07/03/95	CBI	(S) Antioxidant/stabilizer in polymers.	(G) Aryl alkyl phosphite
P–95–1047	04/04/95	07/03/95	Reichhold Chemicals, Inc.	(S) Wood coating	(G) Anionic aliphatic polyurethane dispersion
P–95–1048	04/04/95	07/03/95	CBI	(S) Electrical insulation coating	(G) Polyamideimide resin
P–95–1049	04/04/95	07/03/95	CBI	(S) Electric insulation coating ..	(G) Polyamideimide resin
P–95–1050	04/04/95	07/03/95	CBI	(G) Paper strenght additive	(G) Modified cationic acrylamide polymer
P–95–1051	04/04/95	07/03/95	CBI	(G) Paper strenght additive	(G) Modified cationic acrylamide polymer
P–95–1052	04/05/95	07/04/95	CBI	(G) Raw material of surfactant of surfactant for metal cleaning.	(S) Dehyrogenated product from C_{12-14} linear chained random secondary alcohols
P–95–1053	04/04/95	07/03/95	Hoechst Celanese	(G) Paint resin	(G) Water-soluble urethane alkyd

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1054	04/05/95	07/04/95	CBI	(G) Surfactant	(G) Condensates of methacrylic ester and aminosulfonic ester
P–95–1055	04/05/95	07/04/95	CBI	(G) Ink additive	(G) Closs linked acrylic random copolymer
P–95–1056	04/05/95	07/04/95	Lilly Industries, Inc	(G) Salt of electrocoat resin vehicle.	(G) Epoxy resin salt
P–95–1057	04/05/95	07/04/95	Lilly Industries, Inc	(G) Salt of electrocoat resin vehicle.	(G) Acrylic resin salt
P–95–1058	04/05/95	07/04/95	Lilly Industries Inc	(G) Salt of electrocoat resin vehicle.	(G) Epoxy resin salt
P–95–1059	04/06/95	07/05/95	Ciba-Geigy Corporation	(S) Intermediate for dye manufacture.	(G) Substituted pneyl azo substituted phenyl amino triazinyl substituteo naphthalene sulfonic acid derivative
P–95–1060	04/06/95	07/05/95	CBI	(G) Paint	(G) Polyurethqane/polyurea polymer
P–95–1061	04/06/95	07/05/95	CBI	(G) Paint	(G) Polyurethqane/polyurea polymer
P–95–1062	04/06/95	07/05/95	CBI	(S) Oil field corrosion inhibitor/asphalt emulsifier.	(G) Alkoxylated diamine
P–95–1063	04/06/95	07/05/95	CBI	(S) Oil field corrosion inhibitor/asphalt emulsifier.	(G) Alkoxylated diamine
P–95–1064	04/06/95	07/05/95	CBI	(S) Oil field corrosion inhibitor/asphalt emulsifier.	(G) Alkoxylated diamine
P–95–1065	04/06/95	07/05/95	CBI	(S) Paint, Ink	(G) Styrene modified polyester
P–95–1066	04/07/95	07/06/95	Catalyst Resources, Inc, ...	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1067	04/07/95	07/06/95	Catalyst Resources, Inc, ...	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1068	04/07/95	07/06/95	Catalyst Resources, Inc, ...	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1069	04/07/95	07/06/95	Catalyst Resources, Inc, ...	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1070	04/07/95	07/06/95	Catalyst Resources, Inc, ...	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1071	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1072	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1073	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1074	04/07/95	07/06/95	Catalyst Resources, Inc, ...	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1075	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1076	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1077	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1078	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1079	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1080	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1081	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1082	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1083	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1084	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1085	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1086	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1087	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A Magnesium, titanium organo-complex compound
P–95–1088	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1089	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A Magnesium, titanium organo-complex compound
P–95–1090	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1091	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1092	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1093	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1094	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1095	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1096	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1097	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst.	(G) A magnesium, titanium organo-complex compound
P–95–1098	04/07/95	07/06/95	Cytec Industries	(G) Crosslinking resin	(G) Tris carbamoyl triazine
P–95–1099	04/07/95	07/06/95	CBI	(G) Open, non-dispersive	(G) Styrene, divinylbenzene copolymer with trialkyl ammonium groups in OH form
P–95–1100	04/07/95	07/06/95	3M Company	(G) Resin	(G) Polymer of 1,2-ethanediol and aromatic esters
P–95–1101	04/07/95	07/06/95	3M Company	(G)Aromatic ester	(G) Polymer of 1,2-ethanediol and aromatic ester
P–95–1102	04/07/95	07/06/95	CBI	(G) Circuit fabrication	(G) Substituted resorcinol
P–95–1103	04/07/95	07/06/95	CBI	(G) Circuit fabrication	(G) Substituted resorcinol
P–95–1104	04/07/95	07/06/95	CBI	(G) Circuit fabrication	(G) Substituted resorcinol
P–95–1105	04/07/95	07/06/95	CBI	(G) Reagent for specialty industrial chemicals.	(G) Mixed carboxylic acids, branched
P–95–1106	04/10/95	07/09/95	Ausimont USA, Inc.	(G) Synthesis intermediate	(S) 2,2,4-Trifluoro-5-trifluoromethoxy-1,3-Dioxole
P–95–1107	04/10/95	07/09/95	CBI	(S) Coatings	(G) Amino urethane/urea crosslinking resin salted with organic acid
P–95–1108	04/10/95	07/09/95	CBI	(S) Coatings	(G) Amino urethane/urea crosslinking resin salted with organic acid
P–95–1109	04/10/95	07/09/95	CBI	(S) Coatings	(G) Amino urethane/urea crosslinking resin salted with organicacid
P–95–1110	04/10/95	07/09/95	CBI	(G)	(G) Acrylate/methacrylate copolymer
P–95–1111	04/10/95	07/09/95	ICI Fiberite	(S) An epoxy resin reinforced with carbon fibers for " aerospace structures".	(G) Functionalized elastomeric-epoxy copolymer
P–95–1112	04/10/95	07/09/95	Gelest, Inc.	(S) Liquid Chromatography	(S) 3-Cyanaopropyl(diisopropyl) chlorosilane
P–95–1113	04/10/95	07/09/95	E.I. Du Pont De Nemours & Company, Inc..	(S) Molding resin	(G) Butylene terephthalate copolymer
P–95–1114	04/10/95	07/09/95	E.I. Du Pont De Nemours & Company, Inc..	(S) Molding resin	(G) Butylene terephthalate copolymer
P–95–1115	04/10/95	07/09/95	Sequia Chemical Corporation .	(S) Textile finishing resin	(S)1,3-Bis(1-hydroxy-2,2-dimethoxyethyl)-2-imidazolidinone
P–95–1116	04/13/95	07/12/95	Jowat Corporation	(G) Raw material for adhesives	(G) Modified vinylacetate copolymer
P–95–1117	04/10/95	07/09/95	CBI	(G) Surfactant intermediate	(G) Alkyletherhydroxy-propyl-amine
P–95–1118	04/10/95	07/09/95	NOF America Corporation	(S) Compatibilizing agent for polymer blends.	(G) Compatibility agent
P–95–1119	04/10/95	07/09/95	CBI	(G) Surfactant indermediate	(G) Alkylether hydroxy- propyl-amine
P–95–1120	04/11/95	07/10/95	CBI	(S) Electrical insulting coating .	(G) Polyamine resin

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1121	04/11/95	07/10/95	CBI	(G) Crosslinking agent for coatings.	(G) Diisocyanate-polyol adduct, oxime-blocked
P–95–1122	04/12/95	07/11/95	CBI	(G) Water-borne coating	(S) Aqueous polyurethane dispersion
P–95–1123	04/13/95	07/12/95	CBI	(G) Open, non-dispersive use .	(G) Silane functional diluent
P–95–1124	04/13/95	07/12/95	CBI	(G) Infra-red absorber	(G) Aryl substituted copper phthalocyamine
P–95–1125	04/14/95	07/13/95	Hoechst Celanese	(S) Stoving industrial Paints	(G) Modified alkyd resin
P–95–1126	04/14/95	07/13/95	NOF America Corporation	(S) Compatibilizing agent for polymer blends.	(G) Compatibility agent
P–95–1127	04/14/95	07/13/95	The C.P. Hall Company	(G) Adhesives/coatings	(G) Polyalkyl pentanedioate polyester
P–95–1128	04/14/95	07/13/95	Great Lakes Chemical Corporation,	(G) Flame retardant for"forms" and polymers.	(G) Brominated atomatic ester
P–95–1129	04/17/95	07/16/95	3M Company	(G) Adhesive	(G) Acrylate copolymer
P–95–1130	04/17/95	07/16/95	CBI	(G) Photoresist	(G) Acryal resin
P–95–1131	04/17/95	07/16/95	CBI	(G) Coloring agent for resin by pure C.I. solvent red 196 or fluorescent pigment.	(G) Acryal resin
P–95–1132	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1133	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1134	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1135	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1136	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1137	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1138	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1139	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1140	04/18/95	07/17/95	CBI	(G) Open, non-dispersive use .	(G) Dikertone aluminum chelate
P–95–1141	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1142	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1143	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1144	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1145	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1146	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1147	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1148	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1149	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1150	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1151	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1152	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1153	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1154	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1155	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1156	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1157	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1158	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1159	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1160	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1161	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1162	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1163	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1164	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1165	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1166	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1167	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1168	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1169	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1170	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1171	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1172	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1173	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1174	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1175	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1176	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1177	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1178	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1179	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1180	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1181	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1182	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1183	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1184	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1185	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1186	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1187	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1188	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1189	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1190	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1191	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1192	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1193	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1194	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1195	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1196	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized clay
P–95–1197	04/19/95	07/18/95	Lilly Industries, Inc.	(G) Electrocoat resin vehicle	(G) Modified epoxy resin
P–95–1198	04/19/95	07/18/95	Lilly Industries, Inc.	(G) Salt for electrocoat vehicles.	(G) Acrylic resin salt
P–95–1199	04/19/95	07/18/95	CBI	(G) Open, non-dispersive	(G) Aqueous emulsion of octyltriethoxysilane
P–95–1200	04/18/95	07/17/95	CBI	(G) A Component of the material for IC fabrication.	(G) Novolac-resin from substituted phenols and formaldehyde
P–95–1201	04/18/95	07/17/95	3M Company	(S) Adhesive	(G) Acrylate polymer
P–95–1202	04/20/95	07/19/95	Angus Chemical Company	(G) Chemical intermediate	(G) Alkanolamine
P–95–1203	04/20/95	07/19/95	Austin Powder Company	(S) Emulsifier in manufacturer of emulsion explosives.	(S) A polymer of: *N,N*-diethylethanolamine (DEEA) 2-diethylaminoethanol: poly(isobutyl: poly(isobutylene)-succinic anhydride
P–95–1204	04/20/95	07/19/95	CBI	(G) Quality control agent	(G) Alkoxy-alkyl-carbopolycycle
P–95–1205	04/20/95	07/19/95	CBI	(G) Quality control agent	(G) Disubstituted benzene

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1206	04/19/95	07/18/95	Hoechst Celanese	(S) Binder for industrial paints	(G) Modified alkyd resin
P–95–1207	04/19/95	07/18/95	CBI	(G) Hydrocarbon process stream additive; lube oil additive..	(G) Poly(alkylmethyacrylate)
P–95–1208	04/21/95	07/20/95	DIC Trading (USA) INC.	(G) Soil repellent	(G) Fluorinated acrylic copolymer
P–95–1209	04/21/95	07/20/95	CBI	(G) Open, non-dispersive	(G) Polyester resin
P–95–1210	04/21/95	07/20/95	CBI	(G) Polymer support resin	(G) Carboxy terminated amide functional, polymer of aliphatic diols, aromatic acrbocylic acid/anhydride, tall oil fatty acid dimer, and ethoxylated polyarylphenol ammonium salt
P–95–1211	04/21/95	07/20/95	CBI	(G) Polymer support resin	(G) Carboxy terminated amide functional, polymer of aliphatic diols, aromatic acrbocylic acid/anhydride, tall oil fatty acid dimer, and ethoxylated polyarylphenol ammonium salt
P–95–1212	04/21/95	07/20/95	The C.P. Hall Company	(G) Plasticizer	(S) Dibutoxypropyl adipate
P–95–1213	04/21/95	07/20/95	CBI	(G) Hydroxy terminated polyester.	(G) Hydroxy terminated polyester intermediate for polyurethane
P–95–1214	04/21/95	07/20/95	CBI	(G) Adhesive to flexible substrates.	(G) Polyether/polyester/aromatic polyurethane
P–95–1215	04/21/95	07/20/95	CBI	(G) Adhesive to flexible substrates.	(G) Polyether/polyester/aromatic polyurethane
P–95–1216	04/21/95	07/20/95	E.I. Du Pont De Nemours & Company Inc.	(G) Paper fluoridizer	(G) Polysubstituted methacrylic copolymer
P–95–1217	04/25/95	07/24/95	Shipley Company, Inc.	(S) Chemical intermediate used in the manufacture of photoresist.	(G)Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol
P–95–1218	04/25/95	07/24/95	Hoechst Celanese	(S) Binder for industrial paints, stoving enamels.	(S) 1,6-hexanediol; 1,4-cyclohexanedimethanol;isophthalic acid; trimellitic anhydride phenol, 4,4'-(1-Methylethylidene)bis-polymer with (chloromethyl) oxirane: phosphoric acid; castor oil;
P–95–1219	04/25/95	07/24/95	The Dexter Hysol Aerospace, Inc.	(G) Component of structural material.	(G) Epoxy resin
P–95–1220	04/25/95	07/24/95	CBI	(S) Thixotropic agent for heavy duty paint and primers.	(G) Fatty acid diamide
P–95–1221	04/25/95	07/24/95	3M Company	(G) Coating component	(G) Polyurethane polymer derivative
P–95–1222	04/26/95	07/25/95	CBI	(G) Coating component	(G) Styrene, polymer with substituted alkenoic acid and polycarboxyalkene derivative
P–95–1223	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18} -unsaturated
P–95–1224	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18} -unsaturated
P–95–1225	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18} -unsaturated
P–95–1226	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18} -unsaturated
P–95–1227	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18} -unsaturated
P–95–1228	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18} -unsaturated

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1229	04/26/95	07/25/95	CBI	(G) Open, non-dispersive	(G) Polyether polyurea urethane
P–95–1230	04/26/95	07/25/95	CBI	(G) Open, non-dispersive	(G) Polyether polyurea urethane
P–95–1231	04/26/95	07/25/95	CBI	(G) Open, non-dispersive	(G) Polyether polyurethane
P–95–1232	04/27/95	07/26/95	Reichhoid Chemicals, Inc.	(S) Industrial maintenance coatings.	(G) Epoxy curing agent
P–95–1233	04/27/95	07/26/95	Sachem, Inc.	(S) Raw material for conversion to another chemical.	(S) Ethanaminium, *N*-ethyl-*N*-*N*,*N*-*N*-Dimethyl-, Chloride
P–95–1234	04/27/95	07/26/95	Sachem, Inc.	(S) PH adjustment for chemical processing/catalyst for.	(S) Ethanaminuium, *N*-ethyl-*N*,*N*-*N*-dimethyl-, hydroxide
P–95–1235	04/28/95	07/27/95	CBI	(G) Open, non-dispersive	(G) Azo dyestuff
P–95–1236	04/28/95	07/27/95	Ausimont USA, Inc.	(S) Powder coatings; extrusion; injection molding coatings sheet;.	(S) Polymer of ethylene, chlorotriethylene and perfluoromethoxydioxide
P–95–1237	04/28/95	07/27/95	Ausimont USA, Inc.	(S) Powder coatings; extrusion; injection molding coatings sheet;.	(S) Polymer of ethylene, chlorotriethylene and perfluoromethoxydioxide
P–95–1238	04/28/95	07/27/95	CBI	(G) Marking ink. open, non-dispersive.	(G) Cobalt chelated salt
P–95–1239	04/28/95	07/27/95	CBI	(G) Marking ink, open, non-dispersive.	(G) Cobalt chelated salt
P–95–1240	04/28/95	07/27/95	Charkit Chemical	(G) Electro plating additive	(G) Organo sulfide compound
P–95–1241	04/28/95	07/27/95	CBI	(S) Electrostatic paint primer; anti-electrified paint.	(G) Potassium titanate
P–95–1242	05/01/95	07/30/95	CBI	(S) Acid dye for the coloring of leather.	(G) Chromate(3-), Bis 2-[[substituted-3-[(5-Sulfo-1-naphthaleny-l)azo)phenyl)azo)substituted monocycle(3-))-, trisodium
P–95–1243	05/01/95	07/30/95	CBI	(G) Specialty additive	(G) Substituted alkylbenzene
P–95–1244	05/02/95	07/31/95	Eastman Kodak Company	(G) Contained use in article	(G) Heterocyclic substituted amido halogenated benzoic acid ester
P–95–1245	05/02/95	07/31/95	CBI	(S) Purge compound for industrial hot-melt adhesives.	(G) Modified polyester polymer
P–95–1246	05/02/95	07/31/95	CBI	(S) Purge compound for industrial hot-melt adhesives.	(G) Modified polyether polymer
P–95–1247	05/02/95	07/31/95	Hoechst Celanese	(S) Coatings for corrosion protection, cement concrete.	(G) Diglycidyl ether, polymer with oxirane and methyloxirane, 5- amimo-1,3,3-trimethylcyclohexane and 1,3-benzenedimethaneamine
P–95–1248	05/02/95	07/31/95	Hoechst Celanese	(S) Binder for industrial paints	(G) Waterborne alkyd resin
P–95–1249	05/02/95	07/31/95	CBI	(G) Open, non-dispersive	(G) Polyester resin
P–95–1250	05/02/95	07/31/95	CBI	(S) Powder coating ingredient	(G) Saturate polyester resin
P–95–1251	05/02/95	07/31/95	CBI	(S) Powder coating ingredient	(G) Saturate polyester resin
P–95–1252	05/02/95	07/31/95	CBI	(S) Powder coating ingredient	(G) Saturate polyester resin
P–95–1253	05/03/95	08/01/95	CBI	(G) Contained use; open, non dispersion use; moisture cure adhesive for structureal lamination.	(G) Aromatic isocyanate-polyether based urethane prepolymer moisture cure adhesive
P–95–1254	05/03/95	08/01/95	Eastman Chemical Company	(S) Chemical intermediate	(S) Benzoic acid, 4-methyldiethyl phosphite, methyl ester
P–95–1255	05/03/95	08/01/95	Eastman Chemical Company	(S) Chemical intermediate	(S) Benzoic acid, 4-methyldiethyl phosphonate, methyl ester
P–95–1256	05/03/95	08/01/95	Eastman Chemical Company	(S) Chemical intermediate	(S) Benzoic acid, (1,2-ethylene) bis, dimethyl ester
P–95–1257	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1258	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1259	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1260	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1261	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1262	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1263	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1264	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1265	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1266	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1267	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1268	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1269	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1270	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1271	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1272	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1273	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1274	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1275	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1276	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1277	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1278	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1279	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1280	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1281	05/03/95	08/01/95	CBI	(S) Flotation reagent for use in mining.	(G) Fatty amine, compounds with organic acids
P–95–1282	05/03/95	08/01/95	CBI	(S) Pigment for use in paints, coatings and polymers.	(G) Disazo pigment
P–95–1283	05/05/95	08/03/95	Ciba-Geigy Corporation	(S) General industrial adhesive	(S) A Polymer of: triethylene glycol dimercaptan; epoxy phenolic novola● resin; bisphenol a epoxy resin; trimethyl aminoethyl piperazine
P–95–1284	05/05/95	08/03/95	CBI	(S) Reactive diluent for high performance coatings.	(G) An aceto acetic ester of an aliphatic glycol
P–95–1285	05/05/95	08/03/95	CBI	(G) Pen, non-dispersive	(G) polycarbonate
P–95–1286	05/05/95	08/03/95	CBI	(G) Open, non-dispersive	(G) Polycarbonate
P–95–1287	05/05/95	08/03/95	Ciba-Geigy Corporation	(S) Flame retardant laminates for printed wiring boards.	(G) Phenol, 4,4′-(1-methylethylidene)bis[2,6-dibromo-, polymer with (chloromethyl)oxirane, an isocyanate and 4,4′-(1-methylethylidene)bis[phenol]
P–95–1288	05/05/95	08/03/95	CBI	(G) Destructive use chemical intermediate.	(S) 2-Naphthalenol, octyl
P–95–1289	05/05/95	08/03/95	CBI	(S) Coloration of high sulfur diesel fuel.	(G) 2-Naphthalenol [(phenylazo) phenyl] azo alkyl derivatives
P–95–1290	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1291	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1292	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1293	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1294	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1295	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1296	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1297	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1298	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1299	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1300	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1301	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1302	05/05/95	08/03/95	CBI	(G) Destructive use	(G) Alkylated phenol
P–95–1303	05/05/95	08/03/95	CBI	(S) Epoxy curing agent for water-based epoxy resins.	(G) Polyaminoamide
P–95–1304	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1305	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1306	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1307	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1308	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1309	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1310	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1311	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1312	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1313	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1314	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1315	05/05/95	08/03/95	CBI	(G) Component of coating with open use.	(G) Modified urethane with alkyl alcohols
P–95–1316	05/05/95	08/03/95	CBI	(G) Process intermediate-destructive use.	(G) Chlorofluorocarbon
P–95–1317	05/05/95	08/03/95	CBI	(G) Process intermediate-destructive use.	(G) Hydrochlorofluorocarbon
P–95–1318	05/08/95	08/06/95	Eastman Kodak Company	(G) Contained use in article	(G) Polymer of substituted benzene, alkyl propenoate, and a subolymer of substituted benzene, alkyl propenoate, and a substituted ammonium salt
P–95–1319	05/08/95	08/06/95	Eastman Kodak Company	(S) Chemical intermediate	(G) Substituted aromatic amine
P–95–1320	05/08/95	08/06/95	Eastman Kodak Company	(S) Chemical intermediate	(G) Substituted aromatic nitrile
P–95–1321	05/08/95	08/06/95	Eastman Kodak Company	(S) Chemical intermediate	(G) Substituted aromatic nitrile
P–95–1322	05/08/95	08/06/95	Eastman Kodak Company	(S) Dye	(G) Substituted phthalocyanine
P–95–1323	05/08/95	08/06/95	CBI	(S) Epoxy curing agent for water-based epoxy resins.	(G) Polyaminoamide
P–95–1324	05/08/95	08/06/95	CBI	(S) Epoxy curing agent for water-based epoxy resins.	(G) Polyaminoamide
P–95–1325	05/09/95	08/07/95	CBI	(S) Intermediate for dye production.	(G) Substituted naphthalene disulfonic acid alkali salt
P–95–1326	05/09/95	08/07/95	Gelest, Inc.	(S) Treatment of laminates for printed circuit boards/.	(S) 1,3-Bis(triethoxysilyl)ethane
P–95–1327	05/09/95	08/07/95	CBI	(G) Lubricant additive	(G) Polyhydroxyester of epoxidized soybean oil with anlky-aryl sulphonic acids
P–95–1328	05/09/95	08/07/95	CBI	(S) Resin for printing ink	(G) Hydrocarbon modified rosin resin
P–95–1329	05/09/95	08/07/95	Fritz Industries, Inc.	(S) Oilfield phosphate scale inhibitor for downhole AP.	(G) Mixed calcium and magnesium salt
P–95–1330	05/09/95	08/07/95	E.I. Du Pont De Nemours & Company, Inc..	(G) Dispersive and non-dispersive use.	(G) Hydrofluorocarbon

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1331	05/09/95	08/07/95	Ciba-Geigy Corporation	(G) Textile dye	(G) Substituted phenyl azo substituted naphthalenesulfonic acid azo phenyl amino substituted naphthalenesulfonic acid derivative
P–95–1332	05/09/95	08/07/95	Bedoukian Research, Inc.	(S) Chemical intermediate product use information.	(G) Secondary aliphatic alcohol
P–95–1333	05/09/95	08/07/95	Esprit chemical company	(S) Brazing of aluminum	(S) A mixture of potassium fluoroaluminate known as fl-7 containing 15–25% dipotassium pentafluoro aluminate monohydrate and 75–85% potassium aluminum fluoride
P–95–1334	05/09/95	08/07/95	CBI	(S) Coating additve	(G) Organomodified polydimethylsiloxane
P–95–1335	05/09/95	08/07/95	Diaz Chemical Corporation	(S) A raw material for production of 3,5-dibromoanisole.	(S) Benzene, 1,3-dibromo-5-fluoro
P–95–1336	05/09/95	08/07/95	Diaz Chemical Corporation	(S) Pharmaceutical	(S) 1,3-Dibromo-5-methoxybenzene
P–95–1337	05/11/95	08/09/95	CBI	(G) Paint ingredient	(G) (3,4-Epoxycyclohexyl)methyl acrylate
P–95–1338	05/11/95	08/09/95	Hoechst Celanese	(S) Site limited intermediate	(S) 1-(4-Hydroxyphenyl) ethanone oxime
P–95–1339	05/12/95	08/10/95	CBI	(G) Inhibitor	(G) Ethoxylated fatty imidazoline salt
P–95–1340	05/12/95	08/10/95	Urethane Technologies Inc.	(S) Polymer intermediate	(S) A polymer of: isophorone diisocyanate monomer; isophorone diisocyanate trimer; 2000 mn polyether polyol pg-55-56
P–95–1341	05/12/95	08/10/95	Urethane Technologies Inc.	(S) Polymer intermediate	(S) A polymer of: isophorone diisocyanate monomer; isophorone diisocyanate trimer; 2000 mn polyether polyol pg-2056
P–95–1342	05/12/95	08/10/95	Urethane Technologies Inc.	(S) Polymer intermediate	(S) A polymer of: isophorone diisocyanate monomer; isophorone diisocyanate trimer; 4500 mn polyether polyol pg-85-36
P–95–1343	05/12/95	08/10/95	Ciba-Geigy Corporation	(G) Intermediate for textile dye	(G) Benzenesulfonic acid, amino substituted phenyl compound
P–95–1344	05/12/95	08/10/95	Siltech Inc.	(G) The compound is added to formulated products for US.	(G) Dimethicone copolyol ester
P–95–1345	05/12/95	08/10/95	Alox Corporation	(S) Hydrotope/corrosion inhibitor/cleaner/lubricant.	(G) Triethanolamine salts of fatty acids
P–95–1346	05/15/95	08/13/95	CBI	(G) Open, non-dispersive	(G) Aliphatic polyisocyanate
P–95–1347	05/15/95	08/13/95	CBI	(G) Open, non-dispersive	(G) Aliphatic polyisocyanate
P–95–1348	05/15/95	08/13/95	Eastman Kodak Company	(S) Plasticizer	(S) Glycerides, C_{8-21} and C_{8-21} unsaturated mono- and di-, acetates
P–95–1349	05/15/95	08/13/95	Hoechst Celanese	(S) Dye for microelectronics processing solutions.	(G) Heterocyclic aromatic ester
P–95–1350	05/15/95	08/13/95	Hoechst Celanese	(S) Dye for microelectronics processing solutions.	(G) Heterocyclic aromatic ester
P–95–1351	05/16/95	08/14/95	CBI	(G) Open dispersive and non-dispersive uses.	(G) Substituted polyoxyalkylene colorant
P–95–1352	05/16/95	08/14/95	CBI	(G) Open dispersive and non-dispersive uses.	(G) Substituted polyoxyalkylene colorant
P–95–1353	05/16/95	08/14/95	CBI	(G) Polymeric material; open, non-dispersive.	(G) Polyamide alloy
P–95–1354	05/16/95	08/14/95	Hoechst Celanese	(S) Dispersing agent	(G) Polycondensation compound
P–95–1355	05/16/95	08/14/95	Hoechst Celanese	(S) Air drying industrial paints	(G) Modified alkyldresin, salt with dimethyl ethanol amine
P–95–1356	05/16/95	08/14/95	CBI	(G) Moisture curable polymer	(G) Silylated polyurethane (spu)

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1357	05/17/95	08/15/95	Mitsubishi Chemical Industries, Inc..	(S) Papercoating additive; flocculating agent for sewage.	(S) Hydrolyzed polymer of *N*-vinylformamide, with acrylonitrile and hydrochloric acid
P–95–1358	05/18/95	08/16/95	Exxon Chemical Company	(G) Adhesive component	(G) Aromatic modified aliphatic hydrocarbon resin, hydrogenated
P–95–1359	05/18/95	08/16/95	Exxon Chemical Company	(G) Adhesive component	(G) Aromatic modified aliphatic hydrocarbon resin, hydrogenated
P–95–1360	05/18/95	08/16/95	Dow Elanco	(G) Process raw material	(G) Substituted quinoline
P–95–1361	05/18/95	08/16/95	Max Marx Color & Chemical ...	(S) A pigment used in solvent or water based inks.	(S) Benzoic acid, 2-[(2-hydroxy-3,6-disulfo-1-1naphtaneyl)azo]-aluminum salt(1:1)
P–95–1362	05/18/95	08/16/95	Dow Elanco	(G) Process raw material	(G) Substituted quinoline
P–95–1363	05/15/95	08/13/95	CBI	(S) Manufacture of polyether based thermoplastic polyur.	(S) *M*-phenylenebis (diphenyl phosphate)
P–95–1364	05/18/95	08/16/95	CBI	(S) Resin for primer paints, coatings, inks, and adhesi.	(G) Copolymer of acrylic and methacrylic esters
P–95–1365	05/18/95	08/16/95	CBI	(S) Site limited intermediate for the production of acr.	(G) Ceteareth-25 mono itaconate
P–95–1366	05/22/95	08/20/95	OCG Microelectronic Materials, Inc..	(S) Photographic speed ehancer.	(G) Poly(hydroxyaryl)alkane
P–95–1367	05/22/95	08/20/95	OCG Microelectronic Materials, Inc..	(S) Photoactive compound	(G) Esters of poly(hydroxyphenyl)alkane and diazonaphthalene sulfonyl chloride
P–95–1368	05/19/95	08/17/95	OSI Specialties, Inc.	(S) Raw material	(S) Cyclohexane-1,2,4-triyltris(ethylene)
P–95–1369	05/19/95	08/17/95	CBI	(G) Ink thickener	(G) Anionic polyacrylamide
P–95–1370	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1371	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1372	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1373	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1374	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1375	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1376	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1377	05/19/95	08/17/95	CBI	(S) Coatings	(G) Amine salt of acrylic latex copolymer
P–95–1378	05/19/95	08/17/95	Hoechst Celanese	(S) Binder for varnish	(G) 2-Ethylhexylacrylate, polymer with methacrylic, acrylic acid, styrene and methylmethacrylate
P–95–1379	05/22/95	08/20/95	3M	(G) Adhesive	(G) Acrylate copolymer
P–95–1380	05/19/95	08/17/95	CBI	(G) Open, non-dispersive	(G) Aliphatic polyimine
P–95–1381	05/23/95	08/21/95	CBI	(G) Open, non-dispersive use and open, highly dispersive.	(G) Quarternary ammonium salt
P–95–1382	05/23/95	08/21/95	CBI	(G) Intermediate	(G) Polyalkoxylated amine
P–95–1383	05/23/95	08/21/95	Dow Elanco	(S) Intermediate	(G) Macro cyclic lactone
P–95–1384	05/23/95	08/21/95	Dow Elanco	(S) Intermediate	(G) Macro cyclic lactone
P–95–1385	05/23/95	08/21/95	Amoco Canada Marketing Corp..	(G)	(G) Polyglycidyl ester
P–95–1386	05/22/95	08/20/95	CBI	(G) Open, non-dispersive	(G) Modified diphenylmethane diisocyanate
P–95–1387	05/22/95	08/20/95	Shin-Etsu—Silicones of America, Inc.	(S) Treatment agent for powders; water repellent agent.	(G) Organopoolysiloxane
P–95–1388	05/22/95	08/20/95	Shin-Etsu—Silicones of America, Inc.	(S) Lubricant in coating agent .	(G) Organopolysiloxane
P–95–1389	05/22/95	08/20/95	OCG Microelectronic Materials, Inc..	(S) Photoactive compound	(G) Mixed esters of poly(hydroxyphenyl)alkane and diazonaphthalene sulfonyl chloride

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1390	05/23/95	08/21/95	Hoechst Celanese	(S) Dyestuff for automotive polyester fiber.	(G) 9*H*-carbazole-9-ethanol, 3-(substituted)azo-
P–95–1391	05/23/95	08/21/95	CBI	(G) A component of the material for IC fabrication.	(G) Substituted pyrogallol
P–95–1392	05/23/95	08/21/95	CBI	(G) A component of the material for IC fabrication.	(G) Substituted xylenol
P–95–1393	05/23/95	08/21/95	CBI	(G) Additive, open, non-dispersive use.	(G) fatty acids, dimers, reaction products with fatty acids, trimers and polyamine
P–95–1394	05/23/95	08/21/95	Dow Elanco	(S) Intermediate	(G) Macro cyclic lactone
P–95–1395	05/23/95	08/21/95	Dow Elanco	(S) Intermediate	(G) Macro cyclic lactone
P–95–1396	05/23/95	08/21/95	CBI	(S) Isolated intermediate	(G) Chloroformate of ethoxylated alcohol
P–95–1397	05/23/95	08/21/95	CBI	(G) Monomer used in specialty polymer.	(G) Amine sulfonate monomer
P–95–1398	05/23/95	08/21/95	CBI	(G) Functional vinyl chloride/vinyl acetate terpolymer.	(G) vinyl chloride, polymer with vinyl acetate and amine sulfonate monomer
P–95–1399	05/23/95	08/21/95	CBI	(G) Functional vinyl chloride/vinyl acetate terpolymer.	(G) Vinyl chloride, polymer with vinyl acetate and amine sulfonate monomer
P–95–1400	05/24/95	08/22/95	E.I. Du Pont De Nemours Company,Inc.	(S) Surface coating	(G) Emulsifier stabilized substituted alkylhydroxysilane emulsion
P–95–1401	05/24/95	08/22/95	CBI	(G) Charge control agent	(G) Pyrrolidinobenzimidazolium salt
P–95–1402	05/24/95	08/22/95	CBI	(S) Leather tanning and dyeing auxillary.	(G) Cationic formaldehyde-urea polymer
P–95–1403	05/24/95	08/22/95	CBI	(G) Open, non-dispersive	(G) Unsaturated polyester
P–95–1404	05/24/95	08/22/95	CBI	(G) Open, non-dispersive	(G) Unsaturated polyester resin
P–95–1405	05/24/95	08/22/95	CBI	(G) Open, non-dispersive	(G) Copolycarbonate
P–95–1406	05/24/95	08/22/95	CBI	(G) Open, non-dispersive	(G) Copolycarbonate
P–95–1407	05/24/95	08/22/95	Hercules-Sanyo Incorporated ..	(G) Industrial use-open non-dispersive use in adhesives.	(G) Aliphatic hydrocarbon resin
P–95–1408	05/24/95	08/22/95	Hercules-Sanyo Incorporated ..	(G) Industrial use-open non-dispersive use in adhesives.	(G) Aliphatic hydrocarbon resin
P–95–1409	05/24/95	08/22/95	CBI	(S) Coatings	(G) Polyester resin
P–95–1410	05/24/95	08/22/95	E.I. Du Pont De Nemours Company, Inc..	(S) Site limited intermediate for a surface coating.	(G) Polysubstituted alkylalkoxysilane
P–95–1411	05/25/95	08/23/95	CBI	(S) Light stabilizer for polymers, inc. polyolefins.	(G) Substituted malonic acid, bis (substituted-monoheterocycle) ester
P–95–1412	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1413	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1414	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1415	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1416	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1417	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1418	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1419	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1420	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1421	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1422	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1423	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyhydroxy polyphosphate ester salt
P–95–1424	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic amine salt

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1425	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic amine salt
P–95–1426	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1427	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1428	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1429	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1430	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1431	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1432	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1433	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1434	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1435	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1436	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic polymer
P–95–1437	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Hydroxy functional acrylic polymer
P–95–1438	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Hydroxy functional acrylic polymer
P–95–1439	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Hydroxy functional acrylic polymer
P–95–1440	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional acrylic resin
P–95–1441	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional arcylic resin
P–95–1442	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional arcylic resin
P–95–1443	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional arcylic resin
P–95–1444	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional arcylic resin
P–95–1445	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional arcylic resin
P–95–1446	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional arcylic resin
P–95–1447	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Acid functional arcylic resin
P–95–1448	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1449	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1450	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1451	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1452	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1453	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1454	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1455	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1456	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1457	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1458	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1459	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1460	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1461	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1462	05/25/95	08/23/95	CBI	(G) Neutralized water based acid functional polymer.	(G) Component of coating with open use
P–95–1463	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1464	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1465	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized water based acid functional polymer
P–95–1466	05/25/95	08/23/95	CBI	(G) Industrial intermediate, destructive use.	(G) Substituted aromatic aldehyde
P–95–1467	05/25/95	08/23/95	CBI	(G) Chealating agent, open, non-dispersive use.	(G) Substituted aromatic aldoxime
P–95–1468	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Neutralized polymer of styrene with alkyl acrylates and methacrylates
P–95–1469	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyurethane polyacrylic resin
P–95–1470	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Polyurethane polyacrylic resin
P–95–1471	05/25/95	08/23/95	CBI	(G) Component is an epoxy curative.	(G) Epoxy amine adduct
P–95–1472	05/25/95	08/23/95	CBI	(G) Component in an epoxy curative.	(G) Epoxy amine adduct
P–95–1473	05/25/95	08/23/95	CBI	(G) Intermediate	(G) Substituted isobenzofuranone
P–95–1474	05/25/95	08/23/95	CBI	(G) Additive, open, non-dispersive use.	(G) Styrene-maleic anhydride copolymer, reaction copolymer reaction products with alcoholic compounds, salt with alkanolamine
P–95–1475	05/25/95	08/23/95	Spies Hecker, Inc.	(S) Binder for wire enamels	(S) A Polymer of: 1,1′-methylenebis(isocyanatobenzene); 2,2-dihydroxymethyl-butanol-1; phenol
P–95–1476	05/25/95	08/23/95	CBI	(S) Ultra violet curable resin	(G) Silicone acrylate
P–95–1477	05/25/95	08/23/95	Spies Hecker, Inc.	(S) Binder for car repair paints	(G) Polyurethane dispersion
P–95–1478	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Triethylaminium salt of polyurethane polymer
P–95–1479	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Ammonium salt of polyurethane polymer
P–95–1480	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Sodium salt of polyurethane polymer
P–95–1481	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyurethane polymer
P–95–1482	05/26/95	08/24/95	CBI	(S) Fixing agent for direct dyeings of cellulose fiber.	(G) Polymeric quaternary ammonium compound alpha, omega, substituted
P–95–1483	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic acid amine salt
P–95–1484	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic acid amine salt
P–95–1485	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic acid amine salt
P–95–1486	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic acid amine salt
P–95–1487	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic acid amine salt
P–95–1488	05/25/95	08/23/95	CBI	(G) Component of coating with open use.	(G) Inorganic acid amine salt
P–95–1489	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1490	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1491	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1492	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1493	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1494	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1495	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1496	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1497	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1498	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1499	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1500	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1501	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1502	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1503	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1504	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1505	05/25/95	08/23/95	CBI	(S) Adhesive	(G) Polyester isocyanate prepolymer
P–95–1506	05/26/95	08/24/95	CBI	(G) Dye for cotton	(G) Triazinylamino-substituted sulfonated bisazobenzene compound
P–95–1507	05/26/95	08/24/95	CBI	(S) Adhesive for package manufacture.	(G) Modified diphenylmethane diisocyanate
P–95–1508	05/26/95	08/24/95	CBI	(G) Component of topcoat with open use.	(G) Acid functional acrylic latex
P–95–1509	05/26/95	08/24/95	CBI	(G) Component of topcoat with open use.	(G) Acid functional acrylic latex
P–95–1510	05/26/95	08/24/95	CBI	(G) Component of topcoat with open use.	(G) Acid functional acrylic latex
P–95–1511	05/30/95	08/28/95	Eastman Kodak Company	(G) Contained use in an article	(G) Monosubstituted tetrazole, salt
P–95–1512	05/30/95	08/28/95	Eastman Kodak Company	(G) Chemical intermediate	(G) Monosubstitutedtetrazole
P–95–1513	05/30/95	08/28/95	CBI	(S) A paint vehicle for pp substrates.	(G) Chlorinated polypropylene modified with acrylic polymers and polybutadiene
P–95–1514	05/31/95	08/29/95	Hoechst Celanese	(G) Destructive end use	(S) A polymer of: 2,5-furandione; amines, C_{14-18}-alkyl; octadecene; benzenesulfonic acid, 4-methyl; benzene carboperoxoic acid, 1,1-dimethylethyl ester
P–95–1515	05/31/95	08/29/95	CBI	(G) Additive, open, non-dispersive use.	(G) Fatty acids, unsaturated, reaction products with unsaturated, with unsaturated heterocycle
P–95–1516	05/31/95	08/29/95	CBI	(G) Additive, open, non-dispersive use.	(G) Fatty acids, unsaturated, reaction products with unsaturated, heterocycle compounds with alkanolamine
P–95–1517	05/31/95	08/29/95	CBI	(G) Additive, open, non-dispersive use.	(G) Fatty acids, unsaturated, reaction products with unsaturated, with unsaturated heterocycle
P–95–1518	05/31/95	08/29/95	CBI	(G) Additive, open, non-dispersive use.	(G) Fatty acids, unsaturated, reaction products with unsaturated, heterocycle and ethoxylated alkylamine
P–95–1519	05/31/95	08/29/95	CBI	(G) Paint additive used in open non dispersive use.	(G) Heterocycle amine

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1520	05/31/95	08/29/95	CBI	(G) Dye for fibers: open, nondispersive use.	(G) Disubstituted phenylaminodenzene azo substituted phenol
P–95–1521	05/31/95	08/29/95	CBI	(G) Dye for fibers: open, nondispersive use.	(G) Disubstituted phenylaminodenzene azo substituted phenol
P–95–1522	06/14/95	09/10/95	CBI	(G) Component of dispersively applied adhesive.	(G) Polyurethane polyurea dispersion
P–95–1523	06/14/95	09/12/95	CBI	(G) Component of dispersively applied adhesive.	(G) Polyurethane polyurea dispersion
P–95–1524	06/14/95	09/12/95	CBI	(G) Component of dispersively applied adhesive.	(G) Polyurethane polyurea dispersion
P–95–1525	06/14/95	09/12/95	CBI	(G) Component of dispersively applied adhesive.	(G) Polyurethane polyurea dispersion
P–95–1526	06/14/95	09/12/95	CBI	(G) Component of dispersively applied adhesive.	(G) Polyurethane polyurea dispersion
P–95–1527	06/14/95	09/12/95	CBI	(G) Component of dispersively applied adhesive.	(G) Polyurethane polyurea dispersion
P–95–1528	06/15/95	09/13/95	Engelhard	(S) As an organic pigment in plastics, coatings and ink.	(G) Metallized azo yellow pigment
P–95–1529	06/15/95	09/13/95	CBI	(G) Open, destructive use as a gas generant for automot.	(G) Gas generant
P–95–1530	06/15/95	09/13/95	International Business Machines Corporation.	(S) Base epoxy resin in microelectronic encapsulant for.	(S) 7-Oxabicyclo [4.1.0] heptane, 3,3'- [ethylidenebis (oxymethylene)bis-
P–95–1531	06/15/95	09/13/95	CBI	(G) Water-borne coating	(G) Water-borne polyurethane dispersion
P–95–1532	06/15/95	09/13/95	CBI	(G) Film forming polymer	(G) Diazo resin
P–95–1533	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1534	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1535	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1536	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1537	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1538	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1539	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1540	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1541	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1542	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1543	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1544	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1545	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1546	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1547	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1548	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1549	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1550	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1551	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1552	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1553	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1554	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1555	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1556	06/16/95	09/14/95	CBI	(G) Component of coating with dispersive use.	(G) Acyl aminomethylene phosphonate
P–95–1557	06/16/95	09/14/95	CBI	(G) Chemical intermediate with destructive use.	(G) Imine
P–95–1558	06/16/95	09/14/95	CBI	(G) Chemical intermediate with destructive use.	(G) Imine
P–95–1559	06/16/95	09/14/95	Ciba-Geigy Corporation	(S) Manufacturing intermediate to produce a light stabi.	(S) Phenol, 2-(1-methyl- 1 -phenylethyl)- 6 -[(nitrophenyl)azo]- 4 -(1,1,3,3,3- tetramethyl butyl)-
P–95–1560	06/15/95	09/13/95	CBI	(G) Water-borne coating	(G) Water-borne polyurethane dispersion
P–95–1561	06/20/95	09/18/95	Dow Chemical U.S.A.	(S) Chemical intermediate	(G) Stilbene bisphenol
P–95–1562	06/20/95	09/18/95	CBI	(S) Coatings	(G) Amine functional epoxy resin salted with an organic acid
P–95–1563	06/20/95	09/18/95	CBI	(S) Coatings	(G) Amine functional epoxy resin salted with an organic acid
P–95–1564	06/20/95	09/18/95	CBI	(S) Coatings	(G) Amine functional epoxy resin salted with an organic acid
P–95–1565	06/20/95	09/18/95	CBI	(S) Coatings	(G) Amine functional epoxy resin salted with an organic acid
P–95–1566	06/20/95	09/18/95	CBI	(S) Coatings	(G) Amine functional epoxy resin salted with an organic acid
P–95–1567	06/20/95	09/18/95	CBI	(S) Coatings	(G) Amine functional epoxy resin salted with an organic acid
P–95–1568	06/20/95	09/18/95	CBI	(G) Destructive use	(S) 1-Naph thaleneprop anol, alpha-ethenyl decahydro- alpha,5,5,8A-tetramethyl- 2 -methylene-, (S-1 alpha (S), 4beta,8AAlpha))-
P–95–1569	06/20/95	09/18/95	CBI	(G) Destructive use	(S) (5S,8R,9R,10S,13R)-8,20-Epoxy-13-hydroxy-14-labdane
P–95–1570	06/20/95	09/18/95	CBI	(G) Destructive use	(S) (5S,8R,9R,10S)-8,20-Epoxy-14,15-bisnorlabdan-13-one
P–95–1571	06/21/95	09/19/95	CBI	(G) Specialty additive	(G) Substituted-dialkyl benzenedi carboxylate
P–95–1572	06/21/95	09/19/95	Dow Chemical U.S.A.	(G) Additive for polyurethane elastomers.	(G) Polymeric isocyanate prepolymer
P–95–1573	06/13/95	09/11/95	CBI	(G) Quality control agent	(G) Substituted-dialkyl benzenedicar boxylate
P–95–1574	06/06/95	09/11/95	CBI	(G) Specialty additive	(G) Substituted-heteromonocycle, [[[[substituted] oxoalkyl] amino] substituted]-oxoalkyl-
P–95–1575	06/20/95	09/18/95	CBI	(S) Acid dye for the coloring of leather.	(G) Substituted monocycle)azo- (hydroxy-sulfonamidophenyl)azo-hydroxy-sulfonaphthalene, chromium complex, sodium salts
P–95–1576	06/20/95	09/18/95	CBI	(S) Acid dye for the coloring of leather.	(G) (substituted monocycle)azo- (hydroxy-sulfonamidophenyl)azo-hydroxy-sulfonaphthalene, chromium complex, sodium salts

I. 646 PREMANUFACTURE NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–95–1577	06/20/95	09/18/95	CBI	(S) Acid dye for the coloring of leather.	(G) (Substituted monocycle)azo- (hydroxy-sulfonamidophenyl)azo-hydroxy-sulfonaphthalene, chromium complex, sodium salts
P–95–1578	06/21/95	09/19/95	3M Company	(S) Chemical intermediate	(G) Hydrofluorocarbon
P–95–1579	06/22/95	09/20/95	Ciba-Geigy Corporation	(G) Textile dye	(G) Substituted naphthalene azo metal complex dye
P–95–1580	06/22/95	09/20/95	CBI	(G) Specialty additive	(G) Disubstituted aniline

II. 27 POLYMER EXEMPTION NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
Y–95–0081	05/26/95	05/08/95	Benjamin Moore Company	(G) Baked enamel finish	(G) Polyester resin
Y–95–0082	03/27/95	04/17/95	Asahi Chemical Industry America Inc..	(S) Hardener of polyurethane paint.	(S) Poly[oxy(1-oxo-1,6-hexanediyl)], .alpha.-hydro-.omega.-hydroxy-,ester with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, polymer with 1,6-diisocyanatohexane and 1,3,5-tris(6-isocyanatohexyl)1,3,5-triazine-2,4,6(1H,3H,5H)-trione, methylethylketone oxime-blocked
Y–95–0083	03/27/95	04/17/95	Asahi Chemical Industry America Inc..	(S) VCR Parts, copymachine parts, printer parts.	(S) Polyoxymethylene-block-polyoxypropylene
Y–95–0084	03/28/95	04/18/95	Eastman Kodak	(S) Powdered Coatings	(S) A polymer of: trans-1,4-cyclohexanedicarboxylic acid, dimethyl ester; 1,4-butanediol; 1,4-cyclohexanedicarboxylic acid; titnium tetraispropoxide
Y–95–0085	03/29/95	04/19/95	CBI	(G) Dehydration agent	(G) Propoxylated amine
Y–95–0086	04/03/95	04/24/95	Gencorp Polymer Products	(G) Coatings for use in paper and textile applications.	(G) An emulsion of styrene, butadiene, acrylic copolymer in water
Y–95–0087	04/04/95	04/25/95	Uniglobe Kisco, Inc.	(S) Binder material used on the surface of plastic prin.	(S) 1,3-Butadiene, homopolymer, hydrogenated hydroxy-terminated, fatty acids, montan wax diesters
Y–95–0088	04/04/95	04/25/95	Gencorp polymer products	(G) As a coating for use in paper and textile applicati.	(G) An emulsion of styrene-butadiene-acrylic copolymer in water
Y–95–0089	04/05/95	04/26/95	CBI	(G) Paint	(G) Polyurethane/polyurea polymer
Y–95–0090	04/10/95	05/01/95	Mitsubishi Gas Chemical America, Inc..	(G) Additive for plastics	(G) Modified polycarbonate
Y–95–0091	04/11/95	05/02/95	CBI	(G) Structural component for articles.	(G) Thermoplastic polyester urethane elastomer
Y–95–0092	04/11/95	05/02/95	CBI	(G) Structural component for articles.	(G) Thermoplastic polyester urethane elastomer
Y–95–0093	04/11/95	05/02/95	CBI	(G) Structural component for articles.	(G) Thermoplastic polyester urethane elastomer
Y–95–0094	04/14/95	05/05/95	Eastman Chemical Company ..	(S) Water-dispersible, hot melt adhesive.	(G) Water-dispersive sulfo polyester
Y–95–0095	04/18/95	05/09/95	CBI	(S) Molding resin	(S) Saturated polyester polymer
Y–95–0096	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrylic emulsion polymer
Y–95–0097	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrylic emulsion polymer
Y–95–0098	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrylic emulsion polymer
Y–95–0099	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrylic emulsion polymer
Y–95–0100	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrylic emulsion polymer

II. 27 POLYMER EXEMPTION NOTICES RECEIVED FROM: 03/22/95 TO 06/22/95.—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
Y–95–0101	05/02/95	05/23/95	CBI	(G) Open, non-dispersive use	(G) Copolymer of methacrylic acid and dimethyl siloxane
Y–95–0102	05/08/95	05/29/95	CBI	(S) Coatings	(G) Polyester resin
Y–95–0103	05/09/95	05/30/95	CBI	(S) Industrial mirror coating vehicle.	(G) Oil modified polyurethane alkyd resin
Y–95–0104	05/19/95	06/09/95	CBI	(S) Manufacturing use in textile printing of fabric.	(G) Acrylate/methacrylic acid coplymer
Y–95–0105	05/24/95		CBI	(G) Dispersant	(G) Ethylene alpha-olefin copolymer
Y–95–0106	05/31/95	06/21/95	CBI	(S) Injected molded parts; film/sheet.	(G) Cyclo olefinic copolymer
Y–95–0107	05/31/95	06/21/95	CBI	(G) Anti-static agent for resins (open, non-dispersive.	(G) Polyether-ester-amide block copolymer

III. 234 NOTICES OF COMMENCEMENT RECEIVED FROM: 08/31/93 TO 05/16/95.

Case No.	Received Date	Commencement/Import Date	Chemical
P–90–1895	08/31/93	08/08/93	(G) Polymethacrylate derivative with phenyl groups
P–86–457	08/20/93	08/11/93	(G)Halogenated, ethoxylated ester
P–86–460	08/20/93	08/11/93	(G)Quaternized fatty imidazoline
P–90–1915	08/20/93	07/23/93	(G)Magnesium salt
P–91–989	08/24/93	07/28/95	(G) Unsaturated polyester
P–90–1274	08/31/93	08/08/93	(G)Polymethacrylate derivative with octadecyl groups
P–90–1275	08/31/93	08/08/93	(G) Polymethacrylate derivative with phenyl groups
P–86–0002	09/03/93	07/14/93	(G) Perfluoroalkyl methacrylate copolymer latex
P–93–0822	11/29/93	11/09/93	(G)Mono substituted phenylazo di substituted benzene diazonium salt
P–90–1278	09/08/93	08/25/93	(G)Aromatic dibasic acid, polymer with alkanedisic acid, hydroxysubstituted alkane. cyclohexyl isocyanate and dialkene amine
P–92–1341	09/08/93	08/24/93	(G)Acetoacetylated
P–90–0261	09/15/93	09/01/93	(G)Modified fatty alcohols-alkoxylate
P–90–0262	09/15/93	09/01/93	(G) Fatty alcohol, alkoxylated
P–92–915	09/15/93	08/20/93	(G)Organodislazane
P–92–1226	09/20/93	08/30/93	(G)Modified styrenated acrylate methacrylate polymer
P–88–0600	09/21/93	09/06/93	(G) Disubstituted aniline derivative
P–94–2178	03/23/95	02/28/95	(G) Acrylic siloxane polymer
P–94–2179	03/23/95	03/03/95	(G) Acrylic siloxane polymer
P–94–2003	03/23/95	03/09/95	(G) Acrylonitrile-styrene-acrylate copolymer
P–94–1992	03/23/95	02/22/95	(G) Polymer of alkanediols; monocyclic dicarboxylic acid, dimethyl ester; monocyclic monosulfonated dicarboxylic acid, dimethyl ester, monosodium salt; and hydroxy alkoxyaldanesulfonic acid, sodium salt
P–92–1415	03/23/95	03/03/95	(G) Heterocyclic perylene pigment
P–95–0290	03/24/95	03/08/95	(S) Reaction products of: benzene, reaction products with chlorine and sulfur chloride (S2Cl2), chlorides; methanol, sodium salt; and phenol, 4,4′-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene)bis
P–94–1450	03/24/95	03/04/95	(G) Modified polyvinyl alcohol
P–95–0126	03/27/95	03/07/95	(G) Oil modified polyester or alkyd resin
P–94–1885	03/27/95	03/15/95	(S) A polymer of: 2,2 dimethyl-1,3-propanediol; terephthalic acid; glycerol; maleic anhydride
P–94–1771	03/27/95	03/10/95	(S) 1-Methoxy-2-propyl propionate
P–93–1616	03/28/95	03/18/95	(S) Polymer of: diethylene glycol; maleic anhydride; adipic acid; toluene diisocyanate; ethanol
P–95–0131	03/28/95	03/13/95	(G) Dicarboxylic acid ester
P–95–0141	03/28/95	03/01/95	(G) Polyhalomethyl substituted triazine derivative
P–95–0295	03/28/95	03/13/95	(G) Inorganic metal complex
P–95–0417	03/28/95	03/22/95	(G) Polycarbonate polyurethane
P–94–1845	03/29/95	03/13/95	(G) Fatty acid salt of alkyl diamine
P–94–2203	03/30/95	03/01/95	(G) Di-substituted bis[aminobenzene] derivative
P–93–0597	03/31/95	03/16/95	(G) Aliphatic amine-blocked polycycloaliphatic isocyanate
P–94–1751	03/31/95	03/12/95	(S) 2-Propenoic acid, 2-methyl-, 2-methylpropyl ester; siloxanes and silicones, di-me 3-mercaptopropyl; propanenitrile, 2,2–azobis[2-methyl-
P–94–1729	04/03/95	03/14/95	(G) Polyester polyol intermediate
Y–94–0038	04/03/95	03/28/95	(S) A polymer of: safflower oil; 1,2,3 propanetriol; 2,5- furandione; 4,7-methandiso benzofuran-1,3-dione, 4,5,6,7,8,8-hexachloro-3a,4,7,=7a-tetrahydro; stannane, dibutloxo
Y–93–0135	04/03/95	02/25/95	(G) Polyolefinic copolymer
P–91–0964	04/05/95	03/18/95	(G) Acrylic urethane modified epoxy ester polymer
P–94–1542	03/27/95	03/15/95	(S) A polymer of: isophorone diisocyanate; 2-ethyl-(2-hydroxymethyl) 1,3 propane diol; hydroxypropyl acrylate

III. 234 NOTICES OF COMMENCEMENT RECEIVED FROM: 08/31/93 TO 05/16/95.—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1553	03/31/95	03/27/95	(G) Polyalkyl substituted diphosphonate
P–95–0087	04/03/95	03/09/95	(G) Hydroxyl funcitonal polycarbonyl (polyalkylene oxide) polyurea oligomer
P–94–0254	04/04/95	03/27/95	(S) 2-Propenoic acid, 2-methyl-, cyclohexyl ester, polymer with 2-(diethylamino)ethyl 2-methyl-2-propenoate and 2-methylpropyl 2-methyl-2-propenoate
P–95–0343	04/04/95	03/15/95	(G) Diethanolamine salt of a phosphated polycaprolactone
P–95–0196	04/04/95	03/02/95	(G) Acrylic copolymer salt
P–95–0195	04/04/95	03/02/95	(G) Acrylic copolymer salt
P–94–1899	04/04/95	03/07/95	(G) Alkoxy-functional polydimethylsiloxane
P–94–1900	04/04/95	03/08/95	(G) Alkoxy-functional polydimethylsiloxane
P–95–0127	04/05/95	03/28/95	(G) Difunctonal ketoximino silane
P–93–1381	04/05/95	03/06/95	(G) Aliphatic ether
P–93–0686	04/06/95	03/03/95	(S) Carbamic acid, (3-isocyanato-4-methylphenyl)-2-ethylhexyl ester
P–95–0265	04/05/95	03/05/95	(S) A polymer of: linoleic acid; benzoic acid; glycerol; pentaerythritol; phthalic anhydride
P–92–1337	05/08/95	04/18/95	(G) Phenyl (disubstitutedpolycyclic)
P–93–0154	05/09/95	05/04/95	(G) Azo substituted naphthalene sulfonic acid
P–94–1820	05/05/95	04/27/95	(G) Double metal cyanide complex
P–94–1896	05/03/95	11/10/94	(G) Diisocyanate-based polymer blocked by oxime
P–94–1930	05/09/95	04/19/95	(G) Polyalkylenechlorosilanes
P–94–2175	05/09/95	04/13/95	(G) Modified hydrocarbon resin (cyclopentadiene type), as the basic polymer
P–94–2182	05/02/95	04/05/95	(G) Polyetheramine
P–93–1415	05/02/95	04/22/95	(G) Oxazolidene modified, epoxy-amine adduct diluted in butylglycol
P–95–0260	05/09/95	04/26/95	(G) Styrene-acrylic resin
P–95–0264	05/09/95	04/10/95	(G) Polyester resin
P–95–0345	05/09/95	04/21/95	(S) Siloxanes and silicones, di-me, reaction products with silicic acid trimethylsilyl ester and [(trimethylsilyl)oxy]-modified silica
P–95–0361	05/04/95	04/06/95	(G) 153965–54–9
P–95–0411	05/09/95	05/01/95	(S) Neodecaneperoxoic acid, 3-hydroxy-1, 1-dimethyl butyl ester
P–95–0461	05/08/95	05/02/95	(G) Reaction product of an epoxy resin and a phenol compound
P–95–0568	05/03/95	04/26/95	(G) Modified acrylic polymer
P–95–0437	04/27/95	04/24/95	(S) 3-(1,1-Dimethylethyl)cyclohexanol, acetate-
P–95–0403	04/25/95	04/12/95	(G) Complex reaction product of t-butyl, dihydroxycarbopolycycle and bis(dimethylaminosubstituted)carbomonocycle
P–95–0235	04/27/95	04/18/95	(G) Substituted benzoyl benzoic acid
P–95–0232	04/27/95	04/21/95	(G) Alkyl substituted indole
P–95–0443	05/02/95	04/10/95	(G) Polymeric quaternary ammonium compound
P–95–0353	04/28/95	04/21/95	(G) An azo monochloro triazine reactive dye
P–95–0415	05/02/95	04/21/95	(G) Mixed alkyl borate esters
P–95–0104	05/02/95	04/22/95	(S) A polymer of: 1,4-benzenedicarboxylic acid; 1,3 benzenedicarboxylic acid; 1,3-propanediol
P–94–2204	05/02/95	04/24/95	(S) Bis - 3,9 (2,4-bis [alpha, alpha, - dimethyl benzyl phenoxy] -2,4,8,10-tetraoxa 3,9 - diphosphaspiro [5.5] undecane
P–94–2130	04/28/95	03/26/95	(S) Magnesium formate (or formic acid, magnesium salt)
P–94–1810	04/28/95	04/13/95	(G) Amine/aldehyde condensate
P–94–1809	05/02/95	04/04/95	(G) Substituted dipyrrolo-diperimidine
P–94–1713	05/02/95	04/12/95	(G) Polyurethane polymer
P–94–1438	05/02/95	04/26/95	(G) Polyester resin solution
P–92–0458	04/28/95	04/11/95	(G) Copolyester resin of aryl/alky dibasic acids with alkanediols
Y–94–0156	04/19/95	03/30/95	(G) Aqueous acrylic polymer
P–95–0128	05/03/95	03/30/95	(G) Polysaccharide
P–95–0282	05/02/95	03/29/95	(G) Perfluoroalkylethylacrylate copolymer
P–95–0421	04/06/95	03/31/95	(S) Cyclohexanone, 2,6-bis[(4-azidophenyl)methylene]-4-ethyl-
P–95–0357	04/06/95	04/04/95	(G) Isophorone diisocyanate, polyester type polyurethane
P–94–1407	04/07/95	03/10/95	(G) Saturated polyester
P–93–1648	04/10/95	03/10/95	(G) Halogenated nitrile
P–94–0496	04/10/95	04/01/95	(G) 2-Propenoic acid, reaction products with oxirane, methyl oxirane, and alkyl tetrakisol
P–95–0463	04/10/95	04/07/95	(G) Benzoic acid derivative
P–94–1997	04/11/95	04/03/95	(S) A polymer of: pyridine, 4-ethenyl-, polymer with diethyl benzene; *P*-toluene sulfonic acid
P–94–2176	04/11/95	04/03/95	(G) Silicone polyurea
P–95–0012	04/11/95	04/01/95	(G) 2-Propenoic acid, reaction products with alkylene glycol
Y–95–0052	04/11/95	04/04/95	(G) Silicone polyester
P–95–0097	04/11/95	03/31/95	(G) Acyl phosphine oxide
P–92–0682	04/12/95	04/10/95	(G) Oil free polyester resin
P–95–0448	04/13/95	04/04/95	(G) Polyurethane based on polyols, polyisocyanates and polyamines
P–95–0143	04/13/95	03/28/95	(G) Alkylamine salt
P–94–1210	04/13/95	04/03/95	(G) Modified divinylbenzene/styrene/iminodiacetate copolymer, na ion form
P–95–0147	04/14/95	03/21/95	(G) Substituted sulfonamido substituted aromatic naphthalenecarboxamide
P–94–2212	04/14/95	03/13/95	(G) In-situ hydrophobized silica
P–94–2234	04/18/95	03/27/95	(S) Alkenes, C_{20-24}-alpha.-, polymers with maleic anhydride, reaction products with 2,2,6,6-tetramethyl-4-piperidinamine
P–94–2156	04/14/95	04/03/95	(G) Substituted benzenediamine salt
P–94–1951	04/14/95	03/31/95	(G) 1,2-Benzenedicarboxylic acid, butyl ethyl ester

III. 234 NOTICES OF COMMENCEMENT RECEIVED FROM: 08/31/93 TO 05/16/95.—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–0985	04/14/95	03/30/95	(G) Caprolactone modified acrylic compolymer
P–92–1260	04/18/95	03/09/95	(S) 4-Hexeneniitrile, 2-ethenyl-2,5-dimethyl-
P–93–0062	04/18/95	03/21/95	(G) Polyurethane
P–94–0401	04/18/95	04/12/95	(G) Substitute bis(phenyl)isobenzofuranone
P–94–1643	04/18/95	03/31/95	(G) Metallized azo dyestuff
P–94–1709	04/18/95	04/06/95	(G) Modified polyolefin
P–95–0080	04/18/95	03/30/95	(G) Polyarylphenol ethoxylate derivative
P–95–0093	04/18/95	03/31/95	(G) Hydrofluorocarbon
P–95–0096	04/18/95	03/23/95	(S) A polymer of: bisphenol a epoxy resin; bisphenol f epoxy resin; carboxy terminated vinyl copolymer
P–95–0351	04/18/95	03/24/95	(G) Alkyd polyether polyurethane
P–95–0360	04/18/95	03/31/95	(G) Mixed sodium/lithium salt of a substituted naphthalene disulfonic acid
P–95–0016	04/20/95	04/08/95	(G) Substituted phenyl azo substituted phenyl azo substittued naphthalenesulfonic acid derivative
P–93–1149	04/20/95	04/04/95	(G) Fatty acids, C18-unsatd., dimers, polymers with ethylenediamine, diamines, a dibasic acid and a monobasic acid
P–95–0445	04/21/95	04/14/95	(G) Compatibility agent
P–94–1838	03/31/95	01/26/95	(G) Organic polyurethane
P–91–0900	05/09/95	04/20/95	(G) Alkylnaphthalene sulfonic acid, isohexane diamine salt
P–95–0274	05/10/95	04/17/95	(G) Phenylenebis[imino(chlorotriazinyl)imino(substituted naphthyl)azo(substituted phenyl)azo, sodium salt
P–95–0119	05/10/95	05/03/95	(S) 3,6-nonadien-1-ol, (?,*Z*)-
P–93–0411	05/11/95	05/03/95	(G) Methacrylate/acrylate/styrene copolymer
P–95–0492	04/24/95	04/06/95	(G) Heterocyclic substituted sulfonamido substituted naphthalene carboxamide
P–94–0590	04/24/95	03/27/95	(G) Neopentyl glycol diesters with mixed fatty acids
P–94–1400	04/25/95	04/12/95	(G) Anthraquinone reactive dyestuff preparation
P–94–2183	04/25/95	04/05/95	(G) Polyether dimethylsiloxane copolymer
P–95–0359	04/25/95	03/31/95	(G) Polymerized trimethyl-1,2-dihydroquinoline reaction product
P–95–0418	04/25/95	03/24/95	(G) Polymethine dye
P–95–0737	04/28/95	04/26/95	(S) 2,7-Dimethoxy-1,4,5,8-tetrahydronaphthalene
P–94–1062	05/02/95	03/29/95	(G) Chloro alkene
P–94–0299	04/18/95	04/10/95	(G) Mixed acid ester alcohols
P–94–0300	04/18/95	04/10/95	(G) Mixed acid ester alcohols
P–94–0301	04/18/95	04/10/95	(G) Mixed acid ester alcohols
P–94–0302	04/18/95	04/10/95	(G) Mixed acid ester alcohols
P–94–0303	04/18/95	04/10/95	(G) Mixed acid ester alcohols
P–94–0304	04/18/95	04/10/95	(G) Mixed acid ester alcohols
P–93–1391	04/12/95	03/15/95	(G) C6 olefin, branched and linear
P–93–1392	04/12/95	03/15/95	(G) C6 oefins, branched and linear
P–94–2071	04/27/95	03/17/95	(G) Acrylmodified polysiloxane
P–94–2080	04/27/95	03/17/95	(G) Acrylmodified polysiloxane
P–94–2081	04/27/95	03/17/95	(G) Acrylmodified polysiloxane
P–93–1176	04/18/95	03/14/95	(G) Polyalphaolefins
P–93–1177	04/18/95	03/14/95	(G) Polyalphaolefins
P–93–1178	04/18/95	03/14/95	(G) Polyalphaolefins
P–95–0526	05/26/95	05/19/95	(G) Polyester resin
P–95–0609	06/08/95	06/01/95	(G) Dimethylamino ethylmethacrylate copolymer
P–95–0610	06/08/95	05/31/95	(G) Dimethylamino ethylmethacrylate copolymer
P–93–1327	05/18/95	04/28/95	(G) Alkoxylated melamine
P–93–1562	05/19/95	05/02/95	(G) Alkyl nitrile
P–94–0247	05/26/95	05/08/95	(G) Polyfluoroacyl peroxide
P–94–1847	05/25/95	05/16/95	(G) Polyester of aliphatic/cycloaliphatic dicarboxylic acids and aliphatic diols
P–94–2060	05/24/95	05/14/95	(S) A polymer of: 2-propenoic acid, 2-methyl-, methyl ester; benzene, ethenyl; 1,4 benzenedicarboxylic acid; 1,6 hexanediol; hexanedioic acid; 2-propenoic acid, 2-ethylhexyl ester; 1,3 propanediol, 2,2-dimethyl; soybean oil, epoxidized; 5-isobenzofurancarboxylic acid 1,3-dihydro-1,3-dioxo; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 1-propanol, 2-amino-2-methyl; 1,2-propanediol
P–94–2211	05/26/95	05/18/95	(G) Mixed polyalkenyl succinate ester/amine salt
P–95–0142	05/31/95	05/22/95	(G) Alkyl modified heptamethyltrisiloxane
P–95–0226	05/24/95	05/15/95	(G) Hydroxyl groups containing acrylic copolymer
P–95–0267	05/19/95	04/12/95	(G) Alkyl substituted heterocycle
P–95–0268	05/19/95	04/13/95	(G) Olefin catalyst
P–95–0338	05/31/95	04/24/95	(G) Acetylenic alcohol
P–95–0400	05/23/95	05/17/95	(G) Alkyl ether alcohol
P–92–0203	05/22/95	05/10/95	(G) Lithium alkylarylsulfonate
P–94–1884	05/23/95	05/24/95	(S) A polymer of: 1,6-hexanediol; cyclohexane, 1,1'-methylene bis [4-isocyanato-]; hexanedioic acid; 1,3-benzenedicarboxylic acid; 1,3-diisocyanato-2-methyl-benzene 2,4-diisocyanato-1-methyl-benzene; fatty acid, C18 unsatd,, dimer, hydrogenated; propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl; ethanamine, *N,N*-diethyl; 1,2-ethanediamine, *N,N*-bis (2-aminoethyl); dibutyloxo stannane
Y–95–0032	06/07/95	05/08/95	(G) Powder polyester polymer

III. 234 NOTICES OF COMMENCEMENT RECEIVED FROM: 08/31/93 TO 05/16/95.—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
Y–95–0033	06/07/95	05/08/95	(G) Powder polyester polymer
Y–95–0034	06/07/95	05/08/95	(G) Powder polyester polymer
Y–95–0035	06/07/95	05/08/95	(G) Powder polyester polymer
Y–95–0036	06/07/95	05/08/95	(G) Powder polyester polymer
Y–95–0037	06/07/95	05/08/95	(G) Powder polyester polymer
P–94–1102	06/05/95	05/22/95	(G) Rosin, maleated, polymer with an alkylphenol, carboxylic acids, formaldehyde and a polyol
P–94–1539	06/02/95	05/02/95	(S) A polymer of: 1,3-benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, sodium salt; 1,4-benzenedicarboxylic acid, dimethyl ester; 1,3-benzenedicarboxylic acid, dimethyl ester; 1,2-ethanediol; 2-oxepanone, polymer with 2,2'-oxybis(ethanol); antimoxy oxide; acetic acid, zinc salt
P–95–0404	06/02/95	05/27/95	(S) 2,2,3,3,5,5,6,6,-Octafluoro-4-(pentafluoroethyl)-morpholine
P–95–0444	06/07/95	05/29/95	(S) Polyester of terephtalic acid, isophthalic acid, adipic acid and 1,4 - butane diol
P–95–0480	05/24/95	05/12/95	(S) A Polymer of: siloxanes and silicones, di-me, me hydrogen; benzene, (1-methylethenyl)-; 1-octene
P–95–0516	05/26/95	04/30/95	(G) Rubber modified polyamide
P–95–0517	05/23/95	05/07/95	(G) Polyester resin
P–95–0519	05/19/95	04/24/95	(S) 1-Methoxypropan-2-oxyethanoic acid, sodium salt
P–95–0520	05/19/95	04/13/95	(S) (2-methoxymethylethoxy)propan-2-oxyethanoic acid sodium salt
P–95–0521	05/19/95	05/02/95	(S) 1-(1-methyl-2-propoxyethoxy)propan-2-oxyethanoic acid, sodium salt
P–95–0447	06/14/95	06/08/95	(S) Copolyamide (nylon-copolymer), polycondensated from adipic acid, sebacic with hexamethylene diamine and meta-xylene-diamine
P–95–0757	06/09/95	06/06/95	(S) A polymer of: .alpha.,.alpha.'-((1-methylethylidene)di-4,1-phenylene)bis(.omega.-hydroxypoly(oxy(methyl-1,2-ethanediyl))); .alpha.,.alpha.'-((1-methylethylidene)di-4,1-phenylene)bis(.omega.-hydroxypoly(oxy-,2-ethanediyl)); 2-butenedioic acid (*E*)-; 1,3-dihydro-1,3-dioxo-5-isobenzofurancarboxylic acid; hydroquinone
P–95–0758	06/09/95	06/06/95	(S) A polymer of: .alpha.,.alpha.'-((1-methylethylidene)di-4,1-phenylene)bis(.omega.-hydroxypoly(oxy(methyl-1,2-ethanediyl))); 1,4-benzenedicarboxylic acid; 2-butenedioic acid (*E*)-; hexanedioic acid; dibutylin oxide; hydroquinone
Y–95–0079	05/31/95	05/16/95	(G) Modified polyurethane
P–95–0578	05/19/95	05/10/95	(S) *N*-propanol, reaction products with ethylene oxide (4 or more moles)
P–95–0632	05/26/95	05/24/95	(G) Styrene-maleic anhydride copolymer, reaction products with amino compounds
P–95–0634	05/30/95	05/14/95	(G) Rosin modified phenolic resin
P–95–0649	05/23/95	05/18/95	(G) Polyimidesulfone
P–94–2139	05/13/95	02/28/95	(G) Amine salt of polyester aliphatic polyurethane
P–95–0597	05/09/95	05/04/95	(G) Reaction product of aluminum isopropoxide with 2-ethylhexanoic acid and an ester
P–95–0347	05/15/95	05/01/95	(G) Phenoic resin salt
P–95–0406	05/08/95	05/03/95	(G) 2-Anilino-5-cyano-3-(2-(substituted)-6-(substituted)-4-methylpyridine
P–95–0407	05/15/95	05/03/95	(G) 2-Anilino-5-cyano-3-(2-(substituted)-6-(substituted)-4-methylpyridine
P–94–1912	05/15/95	05/15/95	(G) Hydrocarbon modified resinate
P–95–0581	05/16/95	05/05/95	(G) Azo pigment
P–93–1649	05/16/95	04/21/95	(G) Alkylated urea
P–95–0457	05/16/95	04/19/95	(G) Starch, 2-carboxy-2-substituted-ether
P–95–0611	06/22/95	06/15/95	(G) Dimethylaminoethyl methacrylate polymer salt
P–95–0612	06/22/95	06/14/95	(G) Dimethylaminoethyl methacrylate polymer salt
P–95–0641	06/21/95	05/27/95	(G) Alkyd polymer
P–95–0570	06/16/95	05/24/95	(G) Naturalized waterborne acrylic polymer
P–94–1953	06/16/95	05/25/95	(G) Unsaturated aliphatic polyester
P–94–0456	05/16/95	05/07/95	(G) Substituted methine derivative, acetate salt
P–95–0591	05/16/95	05/08/95	(G) *N*-((substituted)alkylaminomonoheterocycle)-(substituted)phenylazo-hydroxy-amino-naphthalenesulfonic acid, sodium salt
P–95–0511	05/16/95	05/08/95	(G) Alkyl[(disubstituted phenyl) azo]-dihydro-hydroxy-alkyl-oxo-alkyl-substituted pyridine
P–95–0510	05/16/95	05/08/95	(G) [(Disubstituted phenyl) azo]-dihydro-hydroxy-alkyl-oxo-alkyl-substituted pyridine
P–95–0655	05/31/95	05/17/95	(G) Substituted phenyl azo substituted phenyl nitro alkyl ester
P–95–0671	06/05/95	05/27/95	(S) A polymer of 1,2-ethanediol; 1,4-benzenedicarboxylic acid; 2,6-naphthalenedicarboxylic acid, dimethyl ester
P–95–0582	06/07/95	05/04/95	(S) A polymer of: oxirane, 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)bis-,homopolymer; bisphenol a; styrene; methacrylic acid; ethyl acrylate; t-butyl perbenzoate; dimethylethanolamine
Y–95–0049	06/13/95	05/25/95	(S) A polymer of: tall oil acids; tall oil; rosin, fortified; trimethylol propane; isophthalic acid
P–94–1705	06/12/95	05/24/95	(G) Pentaerythritol ester
P–94–1715	06/13/95	05/16/95	(G) Modified triglyceride
P–95–0462	06/12/95	05/12/95	(G) Benzoic acid derivative
P–94–2174	06/15/95	05/23/95	(G) Petroleum hydrocarbon resin (cyclopentadiene type), as the basic polymer
P–93–1112	06/13/95	05/30/95	(G) Siloxanes and silicones,dime,epoxyalkyl terminated
P–95–0678	06/13/95	05/27/95	(G) Dimethyl hydrogen stopped polysiloxane resin
P–95–0679	06/13/95	06/30/95	(G) Epoxy alkyl stopped polysiloxane resin
P–93–1564	06/20/95	05/20/95	(G) Alkyl amine
P–94–0322	06/20/95	06/08/95	(G) Sodium polyfluorocarboxylate
P–94–0323	06/20/95	05/20/95	(G) Potassium polyfluorocarboxylate

III. 234 NOTICES OF COMMENCEMENT RECEIVED FROM: 08/31/93 TO 05/16/95.—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–0950	06/20/95	05/24/95	(S) An isophthalic acid, phthalic anhydride, neopentyl glycol, 2-butyl-2-ethyl-1,3 propanediol polyester
P–94–1217	06/21/95	05/25/95	(G) Alkoxylated polydimethylsiloxane
P–95–0011	06/20/95	05/20/95	(G) Branched poly ester/ether
P–95–0192	06/21/95	05/23/95	(G) Perfluoropolyether diacetate
P–95–0193	06/21/95	05/26/95	(G) Perfluoropolyether dimethylester
P–95–0416	06/20/95	05/30/95	(S) Docosanyl benzoate (behenyl benzoate)
P–95–0577	06/16/95	05/30/95	(G) Acrylic copolymer
P–95–0589	06/20/95	05/29/95	(G) Triazole derivative
P–95–0596	06/20/95	05/31/95	(G) Carboxylated vinyl acrylic copolymer
P–95–0733	06/14/95	06/02/95	(G) Polyurethane-urea
P–95–0783	06/21/95	06/08/95	(G) Substituted alkylaminohalobenzoic acid ester
P–94–1864	06/21/95	06/09/95	(G) Dialkyl amido imidazoline
P–94–1736	06/22/95	05/19/95	(G) Unsaturated polyester
P–95–0530	04/25/95	04/19/95	(S) A polymer of: tetrafluoroethene; trifluoro(trifluoromethoxy)ethene; 1,1,1,2,2,3,3,-heptafluoro-3-[(trifluoroethenyl)oxy]-propane
Y–95–0047	05/16/95	05/04/95	(G) Pentaerythritol polymeric ester with fatty and succinic acids

List of Subjects

Environmental protection, Premanufacture notices, Polymer exemptions, and Test marketing exemption applications.

Dated: October 6, 1995.

Frank V. Caesar,

Acting Director, Informotion Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–28185 Filed 11–14–95; 8:45 am]

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federal register

Wednesday
November 15, 1995

Part IV

Department of Housing and Urban Development

Delegation and Redelegation of Authority Under Single Family Mortgage Foreclosure Act of 1994; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of the General Counsel

[Docket No. FR–3951–D–01]

Delegation and Redelegation of Authority Under Single Family Mortgage Foreclosure Act of 1994

AGENCY: Office of the Secretary; Office of the General Counsel, HUD.

ACTION: Notice of delegation and redelegation of authority to appoint foreclosure commissioners and to fix compensation under the Single Family Mortgage Foreclosure Act of 1994.

SUMMARY: In this notice, the Secretary delegates to the General Counsel, who retains and redelegates this authority to HUD's Field Assistant General Counsel, the authority under the Single Family Mortgage Foreclosure Act of 1994 (the "Act"), 12 U.S.C. 3751–3768, to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, and to fix compensation for the foreclosure commissioners.

EFFECTIVE DATE: October 20, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of the General Counsel, U. S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708–1272. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754, authorizes the Secretary of HUD to designate a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, for the purpose of foreclosing on single family mortgages held by the Secretary pursuant to Title I or Title II of the National Housing Act or securing a loan obligated under Section 312 of the Housing Act of 1964, as further described in Section 803 of the Act (12 U.S.C. 3752). Section 812 of the Act, 12 U.S.C. 3761, authorizes the payment of a commission to the foreclosure commissioner as authorized by the Secretary. These responsibilities are being delegated by the Secretary to the General Counsel, who further redelegates them to HUD's Field Assistant General Counsel.

Accordingly, the Secretary delegates, and the General Counsel redelegates, authority as follows:

Section A. Authority Delegated and Redelegated

1. Under Section 805 of the Single Family Mortgage Foreclosure Act of 1994, 12 U.S.C. 3754, the power to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, is hereby delegated to the General Counsel, who retains this authority and redelegates it to HUD's Field Assistant General Counsel.

2. Under Section 812 of the Act, 12 U.S.C. 3761, the power to fix compensation is hereby delegated to the General Counsel, who retains this authority and redelegates it to HUD's Field Assistant General Counsel.

Authority: 12 U.S.C. 1715b, 12 U.S.C. 3751–3768, 42 U.S.C. 3535(d).

Dated: October 20, 1995.

Henry G. Cisneros,

Secretary.

Dated: October 16, 1995.

Nelson A. Díaz,

General Counsel—Housing and Urban Development.

[FR Doc. 95–28173 Filed 11–14–95; 8:45 am]

BILLING CODE 4210–32–P

federal register

Wednesday
November 15, 1995

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee and Research; Notice of Meeting and Proposed Actions Under the Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on December 4–5, 1995. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on December 4, 1995, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will reconvene on December 5, 1995, at approximately 8:30 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable recommendations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28244 Filed 11–14–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, amended 60 FR 20726).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, amended 60 FR 20726). Interested parties are invited to submit comments concerning these proposals. The proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on December 4–5, 1995. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by November 27, 1995, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its December 4–5, 1995, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX to 301–496–9839.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Black and Fakhrai

In a letter dated January 6, 1995, Drs. Keith L. Black and Habib Fakhrai of the University of California, Los Angeles, California, submitted a human gene transfer protocol entitled: A Study of the Safety of Injecting Cancer Patients with Genetically Modified Tumor Cells; Injection of Glioblastoma Patients with Irradiated Autologous Glioma Tumor Cells Genetically Modified to Express a TGF–β2 Antisense mRNA Alone or in Combination with Increasing Doses of Tumor Cells Which Have Been Genetically Modified to Secrete Interleukin-2 (IL–2): A Phase I Study to the Recombinant DNA Advisory Committee for formal review and approval during the March 6–7, 1995, meeting.

During the March 6–7, 1995, Recombinant DNA Advisory Committee meeting, a motion was made and seconded to defer the protocol submitted by Drs. Black and Fakhrai based on the lack of sufficient preclinical data. The investigators and the primary reviewers were to agree on a mutually acceptable experimental design to address the scientific questions posed by the Recombinant DNA Advisory Committee members. Once these studies have been conducted, the investigators are required to submit this data to the full Recombinant DNA Advisory Committee for review and approval. The protocol was deferred by a vote of 16 in favor, 0 opposed, and no abstentions.

On August 9, 1995, Dr. Fakhrai submitted an experimental design that was reviewed by a Recombinant DNA Advisory Committee primary reviewer. The experimental design was found to be mutually acceptable.

On October 10, 1995, Dr. Fakhrai submitted a revised protocol entitled: A Phase I Study of the Safety of Injecting Malignant Glioma Patients with Irradiated TGF–β2 Antisense Gene Modified Autologous Tumor Cells to the Recombinant DNA Advisory Committee for formal review and approval during the December 4–5, 1995, meeting.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Hortobagyi. Lopez-Berestein, Hung

In a letter dated July 11, 1995, Dr. Gabriel Hortobagyi, Gabriel Lopez-Berestein, and Mien-Chie Hung of the University of Texas, MD Anderson Cancer Center, Houston, Texas, submitted a human gene transfer protocol entitled: Phase I Study of E1A Gener Therapy for Patients with Metastatic Breast or Ovarian Cancer that Overexpress HER–2/neu to the Recombinant DNA Advisory Committee for formal review and approval during the September 11–12, 1995, meeting.

During the September 11–12, 1995, Recombinant DNA Advisory Committee meeting, a motion was made and seconded to disapprove the protocol submitted by Drs. Hortobagyi. The motion to disapprove the protocol (absence of relevant scientific data supporting the proposed study) failed by a vote of 4 in favor, 9 opposed, and 2 abstentions. Another motion was made and seconded to accept the protocol contingent on review and approval by a subcommittee of the Recombinant DNA Advisory Committee of a revised experimental design and additional preclinical data derived from additional experiments. A friendly amendment was made and accepted that the protocol be deferred pending review and approval by the full Recombinant DNA Advisory Committee of the revised experimental design and subsequent data derived from these experiments. The amended motion to defer was contingent on full Recombinant DNA Advisory Committee review of: (1) a revised experimental design (particularly relating to specific anatomical sites), (2) quantitative assessment of *ex vivo* transduction rate, (3) data demonstrating the level of sensitivity of *in vitro* assays, and (4) a revised Informed Consent document. The motion passed by a vote of 13 in favor, 1 opposed, and 1 abstention.

On October 9, 1995, Dr. Hortobagyi submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval during the December 4–5, meeting.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Batshaw

In a letter dated October 9, 1995, Dr. Mark Batshaw, Institute for Human Gene Therapy, University of Pennsylvania Medical Center, Philadelphia, Pennsylvania, submitted a human gene transfer protocol entitled: A Phase I Study of Adenoviral Vector Mediated Gene Transfer to Liver in Adults with Partial Ornithine Transcarbamylase Deficiency to the Recombinant DNA Advisory Committee for formal review and approval during the December 4–5, meeting.

IV. Proposed Amendments to the NIH Guidelines Regarding Semiannual/ Annual Data Reporting

In a letter dated June 16, 1995, Dr. Gary Nabel outlined the redundant and onerous reporting requirements of multiple Federal agencies and local institutions. At a minimum, amending the NIH Guidelines to accommodate annual data reporting requirements rather than semiannual reporting requirements should greatly reduce the burden currently placed on principal investigators of human gene transfer protocols.

In a letter dated August 16, Ms. Debra Knorr, NIH Office of Recombinant DNA Activities, submitted to the Recombinant DNA Advisory Committee the intent to submit proposed amendments to the NIH Guidelines regarding annual data reporting. During the September 12, 1995, Recombinant DNA Advisory Committee meeting, Dr. LeRoy Walters, Chair, invited members of the Recombinant DNA Advisory Committee and the public to provide comments on the proposed amendments. No comments on the proposed amendments have been submitted to the Office of Recombinant DNA Activities to date.

The proposed amendments read as follows:

"Section IV–B–~~4~~–e–(5) currently reads:

"Section IV–B–~~4~~–e–(5). Comply with semiannual data reporting and adverse event reporting requirements for NIH and FDA-approved human gene transfer experiments (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols)."

Section IV–B–~~4~~–e–(5) is amended to read:

"Section IV–B–~~4~~–e–(5). Comply with annual data reporting and adverse event reporting requirements for NIH and FDA-approved human gene transfer experiments (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols)."

Section IV–C–3–c currently reads:

"Section IV–C–3–c. Administering the semiannual data reporting requirements (and subsequent review) for human gene transfer experiments, including experiments that are reviewed solely by the FDA (see Appendix M–VI, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review);"

Section IV–C–3–c is amended to read.

"Section IV–C–3–c. Administering the annual data reporting requirements (and subsequent review) for human gene transfer experiments, including experiments that are reviewed solely by the FDA (see Appendix M–VI, Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review);"

Appendix M–VII currently reads:

"Appendix M–VII. Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review

"A proposal submitted under one of the following categories may be considered exempt from RAC review unless otherwise determined by NIH/ ORDA and the FDA on a case-by-case basis (see Appendix M–VI–A, Categories of Human Gene Transfer Experiments that Require RAC Review).

"Note: In the event that the submitted proposal is determined to be exempt from RAC review, the documentation described in Appendices M–I through M–V will be maintained by NIH/ORDA for compliance with semiannual data reporting and adverse event reporting requirements (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols). Any subsequent modifications to proposals that were not reviewed by the RAC must be submitted to NIH/ORDA in order to facilitate data reporting requirements."

Appendix M–VII is amended to read:

"Appendix M–VII. Categories of Human Gene Transfer Experiments that May Be Exempt from RAC Review

"A proposal submitted under one of the following categories may be considered exempt from RAC review unless otherwise determined by NIH/ ORDA and the FDA on a case-by-case basis (see Appendix M–VI–A, Categories of Human Gene Transfer Experiments that Require RAC Review).

"Note: In the event that the submitted proposal is determined to be exempt from RAC Review, the documentation described in Appendices M–I through M–V will be maintained by NIH/ORDA for compliance with annual data reporting and adverse event reporting requirements (see Appendix M–VIII, Reporting Requirements—Human Gene Transfer Protocols). Any subsequent modifications to proposals that were not

reviewed by the RAC must be submitted to NIH/ORDA in order to facilitate data reporting requirements."

Appendix M–VIII–A currently reads:

"Appendix M–VIII–A. Semiannual Data Reporting

"Investigators who have received approval from the FDA to initiate a human gene transfer protocol (whether or not it has been reviewed by the RAC) shall be required to comply with the semiannual data reporting requirements. Semiannual Data Report forms will be forwarded by NIH/ORDA to investigators. Data submitted in these reports will be evaluated by the RAC, NIH/ORDA, and the FDA and reviewed by the RAC at its next regularly scheduled meeting."

Appendix M–VIII–A is amended to read:

"Appendix M–VIII–A. Annual Data Reporting

"Investigators who have received approval from the FDA to initiate a human gene transfer protocol (whether or not it has been reviewed by the RAC) shall be required to comply with the annual data reporting requirements. Annual Data Report forms will be forwarded by NIH/ORDA to investigators. Data submitted in these reports will be evaluated by the RAC, NIH/ORDA, and the FDA and reviewed by the RAC at its next regularly scheduled meeting."

V. Presentation on Ethical Issues Associated With In Utero Gene Therapy/Dr. Fletcher

Dr. John C. Fletcher, Kornfeld Professor and Director of the Center for Biomedical Ethics, University of Virginia, Charlottesville, Virginia, will be giving a presentation concerning the ethical issues associated with the proposed use of in utero gene therapy.

VI. Proposed Discussion Regarding NIH Purview of Human Gene Transfer Experiments

In a letter dated November 2, 1995, Ms. Debra Knorr proposed a discussion regarding NIH purview of human gene transfer experiments for the December 4–5, 1995, Recombinant DNA Advisory Committee meeting. Analysis of human gene transfer oversight will be discussed in the context of the following:

1. The September 8, 1995, recommendations of the NIH RAC Ad Hoc Review Committee—Inder Verma, Ph.D., Chair;

2. Data Management—maintaining public accountability relevant to human gene transfer experiments; and

3. Factors to consider in implementation of streamlined review procedures.

The NIH Director defined a number of issues relevant to the development of the field of human gene therapy, including the quality of science, the fiscal resource being devoted to the field, the role of industry in the development of clinical trials, and the disparity between scientific accomplishments and the public perceptions of human gene therapy. As a result, Dr. Varmus established two separate ad hoc advisory committees to evaluate the field of human gene therapy research.

The Ad Hoc RAC Review Committee, chaired by Inder Verma, Ph.D., was charged with providing a comprehensive assessment of past and current RAC activities in an effort to develop recommendations regarding the future role of the RAC relevant to human gene transfer experiments. The September 8, 1995, Ad Hoc RAC Review Committee recommendations are included as follows:

"Dr. Harold Varmus, Director, National Institutes of Health, appointed an ad hoc review committee to review the activities of the NIH Recombinant DNA Advisory Committee (RAC). The Director asked the committee to provide recommendations about the changing role of the RAC, the ways it may need to modify its operations, and how it should function to coordinate and facilitate productive gene therapy research.

"The committee finds that:

"1. Gene therapy represents a special development in medical research because of its potential for modification of the human genome and for the creation and dissemination of novel transmissible pathogenic vectors. In addition, there is the possibility of controversial extensions of this work, such as modification of the germline or the use of gene transfer for enhancement purposes. Thus gene therapy differs in major ways from other clinical technologies in use or under development and is, therefore, deserving of continued public scrutiny.

"2. The RAC has served—and continues to serve—several important purposes for the scientific community, patients, and the general public. In particular, by focusing its attention on the emerging field of gene therapy research and helping to set appropriate scientific safety and informed consent guidelines for investigators. As a public forum of discussion, RAC has provided an enormous service not only to the general public, researchers at academic and similar institutions and within the biotechnology industry, but also to officials at the Food and Drug Administration (FDA). In addition, RAC continues to be a credible forum for airing a wide range of public concerns about this emerging field of medical research.

"Based on these findings, the committee recommends that:

"1. To avoid duplication of effort and unnecessary delay, RAC should no longer carry out case by case review of every clinical gene transfer protocol. This function is carried out by the FDA, which is required by statute to review all such protocols before approval.

"2. Review of protocols by the RAC in an open public forum should continue in several areas of concern in which a particular protocol or new technology represents a significant degree of departure from familiar practices. Such departures include, but are not limited to, the use of novel vectors, particularly in cases in which modified human pathogens (such as herpes viruses or lentiviruses) are being evaluated; gene transfer in utero, potential germ line modification, and other similar manipulations; and gene transfer in normal volunteers. In addition, review of protocols by the RAC is warranted in other situations which could lead to the formulation of significant new policy.

"3. The RAC should define the criteria and work out procedures for identifying specific protocols requiring public review.

"4. The RAC should continue to provide advice on policy matters revolving around gene therapy and other recombinant DNA issues to the NIH Director, individual members of the research community, institutional review boards, and the public. Moreover, that critical function should be extended, enabling RAC explicitly to provide advice and recommendations on policy matters to FDA. However, the committee recommended against reconstituting RAC or a comparable advisory body within the FDA, pointing out that several important policy functions of RAC are outside the mission of that agency.

"5. A mechanism should be devised to enable ORDA, NIH and the RAC to continue to be provided with the data needed for monitoring clinical gene transfer protocols. Hence, the committee recommends that the NIH Director urge the FDA Commissioner to exempt the broad area of gene therapy from many of the proprietary restraints reserved for ordinary therapeutic drug products and biologics that come under FDA review. Such a broad exemption, similar to the one now in place for products being developed for the treatment of individuals infected with HIV, would greatly expedite efforts to monitor and evaluate gene transfer protocols and, ultimately, would accelerate progress in the clinical application of gene therapy."

The Panel to Assess NIH Investment in Gene Therapy Research, chaired by Stuart J. Orkin, M.D. and Arno G. Motulsky, M.D., is charged with evaluating the current status of NIH-funded (directly and indirectly) gene therapy clinical trials and developing recommendations regarding future NIH investment in gene therapy research. The panel is currently preparing its recommendations which will be presented at the December 1995 Director's Advisory Committee meeting.

NIH invites written comments from industry, patient advocacy groups, other Federal agencies, and other interested parties.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: November 8, 1995.

Lana Skirboll,

Associate Director for Science Policy.

[FR Doc. 95–28245 Filed 11–14–95; 8:45 am]

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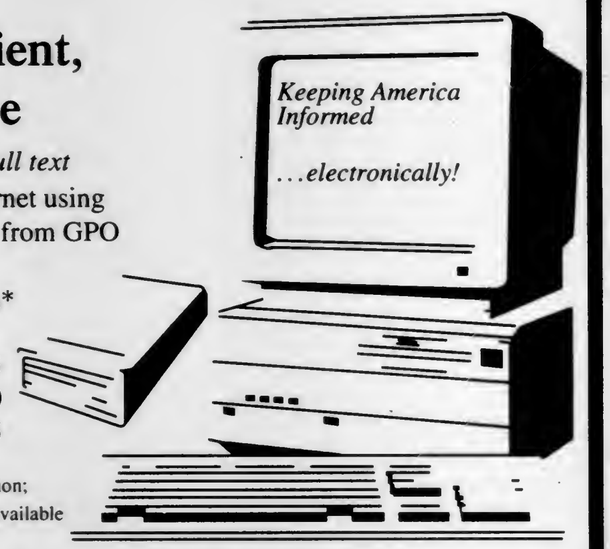
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December 5 at 9:00 am
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RESERVATIONS: 202–523–4538

LONG BEACH, CA
WHEN: December 12, 1995 at 9:00 am
WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV95–989–4FIR]

Raisins Produced From Grapes Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California raisins are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins handled during the 1995–96 crop year, which began August 1, 1995, and ends July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

The budget of expenses for the 1995–96 crop year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected acquisitions of California raisins. Because that rate will be applied to actual acquisitions, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met August 15, 1995, and unanimously recommended a 1995–96 budget of $1,500,000, which is $176,000 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Office salaries, $226,000 ($123,000), field and compliance salaries, $75,000 ($44,000), Payroll taxes, $32,000 ($30,000), group retirement, $23,000 ($20,000), employee benefit expense, $6,000 ($2,500), general insurance, $16,000 ($8,000), group medical insurance, $48,000 ($40,000), Committee members insurance, $385 ($350), equipment expense, $20,000 ($10,000), office travel, $20,000

($14,000), objective measurement survey, $15,500 ($14,750), and export program foreign administration, $385,000 ($357,000). The Committee also recommended $35,000 for export program trade activities and $23,000 for research and communications, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Executive salaries, $170,000 ($230,000), Committee travel, $50,000 ($75,000), and reserve for contingencies, $142,115 ($142,400).

The Committee unanimously recommended an assessment rate of $5.00 per ton, which is $1.00 more than last year. This rate, when applied to anticipated acquisitions of 300,000 tons, will yield $1,500,000 in assessment income, which will be adequate to cover anticipated administrative expenses. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected.

An interim final rule was published in the **Federal Register** on September 15, 1995 (60 FR 47860). That interim final rule added § 989.346 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through October 16, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 crop year began on August 1, 1995. The marketing order requires that the rate of assessment for the crop year apply to all assessable raisins handled during the crop year. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 60 FR 47860 on September 15, 1995, is adopted as a final rule without change.

Dated: November 8, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28323 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–02–P

National Agricultural Statistics Service

7 CFR Part 3600

Organization and Functions

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations of the National Agricultural Statistics Service (NASS) regarding Agency organization and functions of major operational units. This amendment is necessary to reflect changes in the organization of NASS due to an internal reorganization.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, NASS, U.S. Department of Agriculture, Room 4117 South Building, 12th and Independence Avenue, SW., Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act, 5 U.S.C. 552(a)(1), requires Federal Agencies to publish in the **Federal Register** descriptions of its central and field organizations. NASS is the agency within the U.S. Department of Agriculture primarily responsible for the development and dissemination of national and State agricultural statistics, statistical research, and coordination of the Department's statistical programs. This amendment to 7 CFR Part 3600 is necessary to reflect changes in the organization of NASS due to an internal reorganization.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

List of Subjects in 7 CFR Part 3600

Organization and functions.

Accordingly, 7 CFR Part 3600 is revised to read as follows:

PART 3600—ORGANIZATION AND FUNCTIONS

Sec.

3600.1 General.
3600.2 Organization.
3600.3 Functions.
3600.4 Authority to act for the Administrator.

Appendix A to Part 3600—List of State Statistical Offices

Authority: 5 U.S.C. 301 and 552: and 7 CFR 2.85.

§ 3600.1 General.

The National Agricultural Statistics Service (NASS) was established on April 17, 1986, by Secretary's Memorandum 1020–24, which renamed the Statistical Reporting Service concurrent with an internal restructuring. Primary NASS responsibilities are development and dissemination of national and State agricultural statistics, statistical research, and coordination of Department statistical programs.

§ 3600.2 Organization.

The headquarters organization consists of: The Administrator and Associate Administrator; Deputy Administrator for Field Operations; Four Divisions: Estimates, Survey Management, Research, and Systems and Information; and the Agricultural Statistics Board. In the field, each of the 45 State Statistical Offices, serving the 50 States, is under a State Statistician.

§ 3600.3 Functions.

(a) *Administrator.* The Administrator is responsible for the formulation of current, intermediate, and long-range policies and plans to carry out a broad statistical program for the agricultural

sector and Departmental functions and activities assigned to NASS. Specific functions are:

(1) Administering an agricultural statistics program which includes estimates of production, marketings, inventories, and selected economic characteristics of the U.S. agricultural and rural economy.

(2) Administering a methodological research program to improve agricultural data collection and processing, data management, estimation, and forecasting.

(3) Administering programs to conduct surveys for other agencies, improve statistics through statistical standards for the Department, and coordinate statistical methods and techniques within the Federal Government.

(4) Administering statistical programs jointly developed through cooperative agreements with State agencies, universities, private groups, and other Federal agencies.

(5) Administering selected international agricultural statistics programs which provide foreign technical assistance, training on statistical methodology for developing countries, and exchange of information.

(b) *Associate Administrator.* The Associate Administrator is responsible for advising and counseling the Administrator and high-level policy officials on matters related to programs of NASS. Major functions include:

(1) Chairing Agricultural Statistics Board activities, designating Board membership, presiding at Board sessions, and formulating specific procedures.

(2) Chairing the NASS Strategic Planning Council which coordinates long-range planning, information resources management, and research reviews.

(3) Chairing the Resource Management Council which coordinates NASS hiring, promotion, and training activities.

(c) *Deputy Administrator for Field Operations.* The Deputy Administrator manages and coordinates data collection and estimating programs carried out by State Statistical Offices. This includes supervision of statistical programs with cooperating State and private groups, universities, and other Federal agencies. Major functions include:

(1) Formulating policies and programs that relate to functions and responsibilities of State Statistical Offices.

(2) Directing agricultural statistics programs established through cooperative agreements with State Departments of Agriculture, Land-Grant colleges and universities, or appropriate private organizations.

(3) Establishing and maintaining relationships with respondents, producers, commodity groups, data users, and other interested groups to gain cooperation in providing useful, timely, and reliable information.

(d) *Director, Estimates Division.* The Director is responsible for NASS estimating and forecasting programs. Major functions include:

(1) Defining input and output requirements, estimators and variances to be utilized, statistical standards, editing and summarization requirements, and analytic procedures.

(2) Collaborating with the Chairperson of the Agricultural Statistics Board to establish the annual programs of statistical reports.

(3) Developing appropriate systems parameters; processing, summarizing, and presenting current survey and related historical data for Agricultural Statistics Board analysis; and preparing official estimates and forecasts.

(e) *Director, Survey Management Division.* The Director is responsible for application of survey design and data collection methodologies to the agricultural statistics program. Major functions include:

(1) Constructing and maintaining appropriate sampling frames for agricultural and rural surveys.

(2) Designing, testing, and establishing survey techniques and standards, including sample design, sample selection, questionnaires, data collection methods, survey materials, and training methods for NASS.

(3) Reviewing specifications for special data collection activities for programs of other Federal or State agencies.

(f) *Director, Research Division.* The Director is responsible for researching statistical methodology for survey design, data collection, processing, estimating, and forecasting. Major functions include:

(1) Conducting statistical research to develop new and improved sampling techniques, develop improved data collection methods, and identify methods of controlling sampling and nonsampling errors.

(2) Researching statistical computing methods and developing efficient uses of computer technology including telecommunications, networking, and other applications.

(3) Developing new statistical theory and models and solving statistical problems, including numerical methods involving advanced mathematical statistics.

(g) *Director, Systems and Information Division.* The Director is responsible for NASS information management system and processing services. Specific functions are:

(1) Designing, maintaining, and providing access to an integrated and standardized information management system containing sampling frames, survey data, estimates, and administrative records utilized by NASS.

(2) Providing appropriate support for assisting users of the information management system through documentation, evaluation, training, and resolution of information management problems.

(3) Designing and issuing all reports releasing official State and national estimates and forecasts from NASS.

(h) *Chairperson, Agricultural Statistics Board.* The Chairperson reviews, prepares, and issues on specific dates, following approval by the Secretary of Agriculture as provided by law (7 U.S.C. 411a) and Departmental Regulation, the official State and national estimates relating to crop production, livestock and livestock products, dairy and dairy products, poultry and poultry products, stocks of agricultural commodities, value of farm products, farm inputs, and other assigned agricultural aspects.

§ 3600.4 Authority to act for the Administrator.

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Deputy Administrator for Field Operations
Director, Estimates Division
Director, Survey Management Division
Director, Systems and Information Division
Director, Research Division

Appendix A to Part 3600—List of State Statistical Offices

Section 1. General

Information concerning NASS statistics programs and activities related to individual States may be obtained from the State Statistician, State Statistical Office, NASS, in the locations listed below.

Section 2. List of Addresses

Alabama, Sterling Centre, Suite 200, 4121 Carmichael Road, Montgomery, AL 36106–2872
Alaska, 809 South Chugach Street, Suite 4, Palmer, AK 99645
Arizona, 3003 North Central Avenue, Suite 950, Phoenix, AZ 85012
Arkansas, 3408 Federal Office Building, Little Rock, AR 72201

California, 1220 "N" Street, Room 243, Sacramento, CA 95814
Colorado, 645 Parfet Street, Suite W–201, Lakewood, CO 80215–5517
Delaware, Delaware Department of Agriculture Building, 2320 South Dupont Highway, Dover, DE 19901
Florida, 1222 Woodward Street, Orlando, FL 32803
Georgia, Stephens Federal Building, Suite 320, Athens, GA 30613
Hawaii, State Department of Agriculture Building, 1428 South King Street, Honolulu, HI 96814
Idaho, 2224 Old Penitentiary Road, Boise, ID 83712
Illinois, Illinois Department of Agriculture Building, 801 Sangamon Avenue, Room 54, Springfield, IL 62702
Indiana, 1148 AGAD Building, Purdue University, Room 223, West Lafayette, IN 47907–1148
Iowa, 833 Federal Building, 210 Walnut Street, Des Moines, IA 50309
Kansas, 632 S.W. Van Buren, Room 200, Topeka, KS 66603
Kentucky, Gene Snyder & Courthouse Building, 601 W. Broadway, Room 645, Louisville, KY 40202
Louisiana, 5825 Florida Boulevard, Baton Rouge, LA 70806
Maryland, 50 Harry S Truman Parkway, Suite 202, Annapolis, MD 21401
Michigan, 201 Federal Building, Lansing, MI 48904
Minnesota, 8 East 4th Street, Suite 500, St. Paul, MN 55101
Mississippi, 121 North Jefferson Street, Jackson, MS 39201
Missouri, 601 Business Loop West, Suite 240, Columbia, MO 65203
Montana, Federal Building & U.S. Court House, Room 398, 301 S. Park Avenue, Helena, MT 59626
Nebraska, 100 Centennial Mall N., Room 273 Federal Building, Lincoln, NE 68508
Nevada, Max C. Fleischmann Agriculture Building, Room 232, University of Nevada, Reno, NV 89557
New Hampshire, 22 Bridge Street, Room 301, Concord, NH 03301
New Jersey, Health and Agriculture Building, Room 205, CN–330 New Warren Street, Trenton, NJ 08625
New Mexico, 2507 North Telshor Boulevard, Suite 4, Las Cruces, NM 88001
New York, Department of Agriculture & Markets, 1 Winners Circle, Albany, NY 12235
North Carolina, 2 W. Edenton Street, Raleigh, NC 27601–1085
North Dakota, 1250 Albrecht Boulevard, NDSU, Room 448, Fargo, ND 58105
Ohio, 200 N. High Street, New Federal Building, Room 608, Columbus, OH 43215
Oklahoma, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105
Oregon, 1220 S.W. Third Avenue, Room 1735, Portland, OR 97204
Pennsylvania, 2301 N. Cameron Street, Room G–19, Harrisburg, PA 17110
South Carolina, 1835 Assembly Street, Room 1008, Columbia, SC 29201
South Dakota, 3528 S. Western Avenue, Sioux Falls, SD 57117
Tennessee, 440 Hogan Road, Holeman Office Building, Ellington Agricultural Center, Nashville, TN 37220–1626
Texas, 300 E. 8th Street, Federal Building, Room 504, Austin, TX 78701
Utah, 176 N. 2200 West—Suite 260, Salt Lake City, UT 84116
Virginia, 1100 Bank Street, Room 706, Richmond, VA 23219
Washington, 1111 Washington Street, SE, Olympia, WA 98504
West Virginia, 1900 Kanawha Boulevard E, Charleston, WV 25305
Wisconsin, 2811 Agriculture Drive, Madison, WI 53704
Wyoming, 504 W. 17th Street, Suite 250, Cheyenne, WY 82001

Done at Washington, D.C., this 2nd day of November, 1995.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 95–27678 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–20–M

7 CFR Part 3601

Availability of Information to the Public

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations of the National Agricultural Statistics Service (NASS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). This amendment is necessary to inform the public of the change of location and title of the FOIA coordinator for NASS delegated the authority to make initial determinations on FOIA requests.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, U.S. Department of Agriculture, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, (301) 344–2207.

SUPPLEMENTARY INFORMATION: Part 3601 of Title 7, Code of Federal Regulations, is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA. This amendment to §§ 3601.3 and 3601.4 is necessary to inform the public of the change in the location and title of the FOIA coordinator for NASS delegated the authority to make initial determinations on FOIA requests in accordance with 7 CFR 1.3(a)(3).

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 7 CFR Part 3601

Freedom of Information Act.

Accordingly, 7 CFR Part 3601 is amended to read as follows:

PART 3601—PUBLIC INFORMATION

1. The authority citation for Part 3601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 7 CFR 1.1–1.23 and Appendix A.

2. Part 3601 is amended by revising §§ 3601.3 and 3601.4 to read as follows:

§ 3601.3 Requests for records.

Requests for records of NASS shall be made in accordance with § 1.6 (a) and (b) of this title and addressed to: FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207, Facsimile (301) 344–2325, TDD (301) 344–2435. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 3601.4 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.8(a) of this title.

Done at Washington, D.C., this 2nd day of November, 1995.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 95–27679 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–20–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–064–2]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On September 27, 1995, the Animal and Plant Health Inspection Service published a direct final rule. (See 60 FR 49751–49752, Docket No. 95–044–1). The direct final rule notified the public of our intention to amend the animal importation regulations by adding Texas to the list of States approved to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8423.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111. 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 7th day of November 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28272 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038 and 9039

[Notice 1995–20]

Public Financing of Presidential Primary and General Election Candidates; Correction

AGENCY: Federal Election Commission.

ACTION: Technical Corrections to final rules.

SUMMARY: This document contains technical corrections to final rules published June 16, 1995 (60 FR 31854) regarding public financing of presidential primary and general election candidates.

EFFECTIVE DATE: August 16, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 16, 1995, the Commission published final rules revising its regulations governing public financing of presidential primary and general election candidates. 60 FR 31854 (June 16, 1995). These regulations implement provisions of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act.

Unfortunately, the June 16 final rule document contained a number of errors that could make the rules misleading and could cause problems when the rules are codified in the Code of Federal Regulations. Some of the errors reflect mistakes contained in the document submitted by the Commission to the Federal Register. Other errors occurred when the Federal Register typeset the document for publication.

Most of the errors are technical in nature. The Commission is publishing this document to correct these technical errors. These corrections are set out below. However, the June 16 final rule document also contains two errors of a more substantive nature that must be corrected. The Commission is publishing another document in today's edition of the **Federal Register** that corrects these errors. Readers interested in the Commission's public financing regulations should carefully review both notices.

Correction of Publication

Accordingly, the publication of final regulations on June 16, 1995 (60 FR 31854), which were the subject to FR Doc. 95–14667, is corrected as follows:

Explanation and Justification (Preamble) [Corrected]

1. On page 31860, in the third column, in the 19th line, "workable" should read "unworkable".

2. On page 31860, in the third column, in the 34th line, "selection" should read "election".

3. On page 31861, in the third column, in the last line, "not" should read "no".

4. On page 31869, in the second column, in the first paragraph after the italicized heading, in the 12th line, "(a)(1)(vi)" should read "(b)(1)(vi)".

5. On page 31870, in the first column, in the third paragraph after the headings, in the 12th line, "radio" should read "ratio".

6. On page 31870, in the second column, in the first and second lines, "is greater than zero and more accurately reflects the mix" should be removed.

§ 9003.3 Allowable contributions. [Corrected]

7. On page 31874, in the first column, in § 9003.3(b)(5), in the 11th line, "expendute" should read "expenditure".

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds. [Corrected]

8. On page 31874, in the third column, the amendatory language in instruction 8 should read "Section 9003.4 is amended by revising the last sentence of paragraph (a)(1), and adding a new sentence to the end of paragraph (a)(1), to read as follows:".

PART 9006—REPORTS AND RECORDKEEPING [CORRECTED]

9. On page 31877, in the third column, the authority citation following instruction 16 should read:

Authority: 2 U.S.C. 434 and 26 U.S.C. 9009(b).

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS [CORRECTED]

10. On page 31880, in the third column, the authority citation following instruction 24 should read:

Authority: 2 U.S.C. 437, 438(a)(8), 26 U.S.C. 9008, 9009(b).

PART 9034—ENTITLEMENTS

§ 9034.4 Use of contributions and matching payments. [Corrected]

11. On page 31882, in the first column, in § 9034.4(a)(3)(i), in the eighth line, insert a comma after "office supplies".

12. On page 31882, in the first column, in § 9034.4(a)(3)(iii), in the second line, insert a comma after "9035.1".

§ 9034.6 Expenditures for transportation and services made available to media personnel; reimbursements. [Corrected]

13. On page 31884, in the first column, in § 9034.6, in the heading of paragraph (c), "limitations" should read "limitation".

§ 9038.2 Repayments [Corrected]

14. On page 31886, in the second column, in instruction 44, "adding paragraphs (a)(4) and (i)" should read "adding paragraph (a)(4) and revising paragraph (h)".

15. On page 31886, in the second column, in § 9038.2(a)(3), in the fourth line, "given" should read "give".

16. On page 31887, in § 9038.2, in the third column, in the third line, the five asterisks following paragraph (g) should be removed, and in the fourth line, the paragraph designated as paragraph (i) should be designated as paragraph (h).

Dated: November 9, 1995.

Lee Ann Elliott,

Vice Chairman, Federal Election Commission.

[FR Doc. 95–28276 Filed 11–15–95; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Parts 9034 and 9038

[Notice 1995–19]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains final rules correcting promulgation errors made in final rules published June 16, 1995 (60 FR 31854) regarding public financing of presidential primary and general election candidates.

DATES: The Commission will announce an effective date for these rules after they have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c). This announcement will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 16, 1995, the Commission published final rules revising its regulations governing public financing of presidential primary and general election candidates. 60 FR 31854 (June 16, 1995). These regulations implement provisions of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act.

Unfortunately, there were a number of errors in the June 16 final rule document. The Commission is publishing two documents in today's edition of the **Federal Register** to correct these errors. Readers interested in the Commission's public financing regulations should carefully review these two documents.

Most of the errors were of a technical nature. A Commission document published elsewhere in today's **Federal Register** corrects these technical errors.

However, two of the errors in the June 16 final rule document were not purely technical in that they reflect errors made in approval of the final rules. Specifically, the June 16 final rules replaced § 9034.4(a)(3)(ii) with the version of that provision that was in effect before the public financing rules were last revised in 1991. 56 FR 35898 (July 29, 1991). This had the effect of eliminating language relating to candidates who continue to campaign after their dates of ineligibility. The June 16 final rules also removed the "continuing to campaign" reference from the heading in § 9034.4(a)(3).

In addition, the rules deleted language inserted in § 9038.2(b)(2)(iii). The deleted language reduces the amount of an ineligible candidate's repayment by shortening the time period during which the candidate's non-qualified campaign expenses would generate a repayment obligation.

The Commission never intended to make these revisions, as is evidenced by references to the deleted provisions that remain in other parts of the final rules. See, e.g., § 9034.4(a)(3)(iii). Consequently, the Commission is publishing this document to restore the deleted provisions. The corrected versions of these rules are set out below. Because the regulated community had an opportunity to comment on these rules before they were promulgated in 1991, the Commission believes an additional comment period is unnecessary. Therefore, in accordance with 5 U.S.C. 553(b)(B), the Commission is approving these corrections as final rules without seeking further comment. The explanation and justification for these rules is set out at 56 FR 35898 (July 29, 1991).

Section 9039(c) of Title 26, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on November 9, 1995.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities will be affected by these final rules. Furthermore, any small entities affected are already required to comply with the requirements of the Presidential Primary Matching Payment Account Act in these areas.

List of Subjects

11 CFR 9034

Campaign funds.

11 CFR 9038

Campaign funds.

For the reasons set out in the preamble, subchapter F of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 9034—ENTITLEMENTS

1. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

2. Section 9034.4 is amended by revising the heading in paragraph (a)(3), and by revising paragraph (a)(3)(ii), to read as follows:

§ 9034.4 Use of contributions and matching payments.

(a) * * *

(3) Winding down costs and continuing to campaign. * * *

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under paragraph (a)(3)(i) of this section.

Contributions received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR 9033.8.

* * * * *

PART 9038—EXAMINATIONS AND AUDITS

1. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

2. Section 9038.2 is amended by revising the last sentence in paragraph (b)(2)(iii)(B) to read as follows:

§ 9038.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(B) * * * In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to which the candidate was entitled, using the assumption that the last payment has been expended on a last-in, first-out basis.

* * * * *

Dated: November 9, 1995.

Lee Ann Elliott,

Vice Chairman, Federal Election Commission.

[FR Doc. 95–28275 Filed 11–15–95; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–81–AD; Amendment 39–9431; AD 95–23–11]

Airworthiness Directives; Aerostar Aircraft Corporation PA–60–600 (Aerostar 600) Series (Formerly Piper Aircraft Corporation) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Aerostar Aircraft Corporation (Aerostar) PA–60–600 series airplanes. This action requires repetitively inspecting the fuselage horizontal stabilizer attach fittings for cracks, and replacing any cracked fuselage horizontal stabilizer attach fitting. A report of several cracks found on the forward horizontal stabilizer attach spar fitting on an Aerostar Model PA–60–601P airplane prompted this action. The actions specified by this AD are intended to prevent undetected cracked fuselage horizontal attach fittings, which could result in the fuselage horizontal stabilizer separating from the airplane while in flight with subsequent loss of control of the airplane.

DATES: Effective November 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 30, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–81–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; telephone (509) 455–8872. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–81–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Simonson, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056; telephone (206) 227–2597; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report where several cracks were found in the fuselage forward horizontal stabilizer attach spar fitting on an Aerostar Model PA–60–601P airplane. Further investigation revealed that stress corrosion caused the cracks. This airplane had been inspected for cracks in the fuselage horizontal stabilizer attach spar fittings consistently at intervals of 200 hours time-in-service (TIS).

The affected airplane had a total usage time of 4,279 hours (TIS), which is considered about average for the fleet of approximately 600 Aerostar PA–60–600 series airplanes registered in the United States. Undetected cracked fuselage horizontal stabilizer attach fittings could result in the fuselage horizontal stabilizer separating from the airplane while in flight with subsequent loss of control of the airplane.

Aerostar has issued Service Bulletin SB600–130, dated September 26, 1995, which specifies procedures for inspecting fuselage horizontal stabilizer attach fittings on Aerostar PA–60–600 series airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service bulletin, the FAA has determined that AD action should be taken to prevent undetected cracked fuselage horizontal attach fittings, which could result in the fuselage horizontal stabilizer separating from the airplane while in flight with subsequent loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Aerostar PA–60–600 series airplanes of the same type design, this AD requires repetitively inspecting the fuselage horizontal stabilizer attach fittings for cracks, and replacing any cracked fuselage horizontal stabilizer attach fitting with a serviceable approved part of like design. Accomplishment of these inspections are in accordance with Aerostar Service Bulletin SB600–130, dated September 26, 1995. Any fuselage horizontal stabilizer attach fitting replacement that is required shall be accomplished in accordance with the applicable maintenance manual.

The compliance time of this AD is presented in calendar time and hours TIS. Cracking of the fuselage horizontal stabilizer attach fittings on the affected airplane is caused by stress corrosion, which starts as a result of stress loads incurred through operation. Corrosion can then develop regardless of whether the airplane is in flight. The cracks may not be noticed initially as a result of the stress loads, but could then develop through corrosion. In order to ensure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time (whichever occurs first) is utilized.

Since a situation exists (possible separation of the fuselage horizontal stabilizer separating from the airplane during flight) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and,

thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–81–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–23–11 Aerostar Aircraft Corporation: Amendment 39–9431; Docket No. 95–CE–81–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
PA–60–600 ..... Aerostar 600	60–0001–003 through 60–0933–8161262.
PA–60–601 ..... Aerostar 601	61–0001–004 through 61–0880–8162157.
PA–60–601P ..... Aerostar 601P	61P–0157–001 through 61P–0860–8163455.
PA–60–602P ..... Aerostar 602P	62P–0750–8165001 through 60–8365021

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially within the next 25 hours time-in-service (TIS) after the effective date of this AD or within the next 2 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS or 12 calendar months, whichever occurs first.

To prevent the fuselage horizontal stabilizer from separating from the airplane while in flight because of cracked attach fittings, which, if not detected and replaced, could result in loss of control of the airplane, accomplish the following:

(a) Inspect the upper and lower horizontal flanges on the left and right sides of the following parts for cracks in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin SB600–130, dated September 26, 1995.

(1) The part number (P/N) 210006–001 fitting (forward fuselage horizontal stabilizer attach fitting); and

(2) The P/N 210007–001 fitting (aft fuselage horizontal stabilizer attach fitting).

(b) Prior to further flight, replace any fuselage horizontal stabilizer attach fitting found cracked during any inspection required by paragraph (a) of this AD. Accomplish this replacement in accordance with the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenence Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) The inspections required by this AD shall be done in accordance with Aerostar Service Bulletin SB600–130, dated September 26, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9431) becomes effective on November 30, 1995.

Issued in Kansas City, Missouri, on November 8, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28147 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–210–AD; Amendment 39–9428; AD 95–23–08]

Airworthiness Directives; Avro Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Avro Model BAe 146 series airplanes. This action requires inspections to detect cracking and damage of the fastener holes in the butt strap at rib 2 at the lower surface of the right-hand wing; repair of discrepancies; and replacement of the fastener bolts. This amendment is prompted by a report that certain wings were manufactured with a reduction in the amount of edge margin between the fastener hole centers and the edge of the butt strap; this condition can result in a decrease in the long-term damage tolerance residual strength of the wing. The actions specified in this AD are intended to prevent cracking and other problems associated with a such decrease in the long-term damage tolerance residual strength of the wing.

DATES: Effective December 1, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 1, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Avro Model BAe 146 series airplanes. The CAA advises that four wing-sets, delivered from the vendor and installed on four airplanes, were manufactured with a marked reduction in the amount of edge margin between the fastener hole centers and edge of the rib 2 butt strap on the lower surface of the right-hand wing. (Edge margin is defined as the distance from the center of the fastener hole to the nearest edge of the part.) A reduction in edge margin could lead to a decrease in the long-term damage tolerance residual strength of the wing. This condition, if not corrected, could result in fatigue cracking and other damage occurring in the subject area at a time that is earlier than anticipated.

Avro International Aerospace has issued Service Bulletin 57–40, dated March 18, 1994. This service bulletin describes procedures for removing four specific fasteners from the rib 2 butt strap on the lower surface of the right-hand wing, and conducting an eddy current inspection to detect cracking of the vacant fastener holes. The service bulletin also describes procedures for conducting a visual inspection of the fastener holes to detect other damage, such as scoring that has resulted from removal of the bolts; and to check the diameter of each hole to determine if it is within the allowable tolerance. The service bulletin also contains procedures for repairing cracked, damaged, or incorrectly sized holes by oversizing them, and for installing new fastener bolts. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent cracking and other problems associated with a decrease in the long-term damage tolerance residual strength of the wing. This AD requires repetitive eddy current inspections to detect cracking of the 4 fastener holes at the rib 2 butt strap on the lower surface of the right-hand wing. It also requires repetitive visual inspections of the fastener holes to detect other damage, such as scoring that has resulted from removal of the bolts; and to check the diameter of each fastener hole to determine if it is within the allowable tolerance. If no cracking or damage is detected in a fastener hole, and if the hole's diameter is within tolerance limits, a new bolt must be installed. If any cracking or damage is detected, or if the hole's diameter is outside of tolerance limits, the hole must be oversized and cleaned, and a new bolt must be installed. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model BAe 146 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $480 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number

and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–210–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–23–08 Avro International Aerospace (Formerly British Aerospace): Amendment 39–9428. Docket 95–NM–210–AD.

Applicability: Model BAe 146 series airplanes; having constructors' numbers E2188, E2192, E3190, and E3194; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and other problems associated with a decrease in the long-term damage tolerance residual strength of the wing, accomplish the following:

(a) Prior to the accumulation of 36,000 total landings or within 3 months after the effective date of this AD, whichever occurs later, remove the 4 fasteners from the rib 2 butt strap on the lower wing surface of the right-hand wing and accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Avro Service Bulletin 57–40, dated March 19, 1994:

(1) Perform an eddy current inspection of each of the fastener holes to detect cracking.

(2) Perform a visual inspection of each of the fastener holes to detect evidence of damage, such as scoring that has resulted from removal of the bolts; and to check the diameter of each hole to determine if it is within the allowable tolerance specified in the service bulletin.

(b) If the fastener hole is free of cracks and damage, and if the hole's diameter is within the allowable tolerance, prior to further flight, install a new bolt in accordance with the service bulletin. Thereafter, repeat the inspections specified in paragraph (a) of this AD at intervals not to exceed 9,000 landings.

(c) If the hole is cracked or shows evidence of damage, or if the hole's diameter is outside the allowable tolerance, prior to further flight, oversize the hole, clean out the damage, and install a new bolt, in accordance with the service bulletin. Thereafter, repeat the inspections specified in paragraph (a) of this AD at intervals not to exceed 9,000 landings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Avro Service Bulletin 57–40, dated March 18, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 1, 1995.

Issued in Renton, Washington, on November 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27912 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

Cost Principles for State, Local and Tribal Governments; Clarification of Policy

AGENCY: Office of the Secretary, Interior.

ACTION: Clarification of applicability of policy.

SUMMARY: This document provides clarification of Departmental policy concerning the applicability of the final revision of OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments," published on May 17, 1995 (60 FR 26484–26507). It is the intent of the Department that this revised version of OMB Circular A–87 apply to awards made by the Department and its bureaus and offices as applicable.

EFFECTIVE DATE: The clarification of the applicability of the policy is effective November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman (Director, Procurement and Property Management Systems), (202) 208–3336.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget published a revised version of Circular A–87 on May 17, 1995 (60 FR 26484–26507). Paragraph 7, *Required Action*, of the final revision of the Circular requires that agencies issue codified regulations implementing the provisions of the Circular by September 1, 1995. The Department already has published permanent regulations incorporating the Circular. See 43 CFR 12.2(b)(1). 43 CFR 12.12(c) also makes any changes to the Circular published in the **Federal Register** a part of the regulation.

The Department adopted the Common Rule on "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" at 43 CFR Part 12, Subpart C. In addition, promulgation of the regulation, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations," in subpart F, implements OMB Circular A–110.

Both of these regulations refer to OMB Circular A–87 as being the applicable directive for cost principles for State and local governments. Neither regulation identifies the specific version of the Circular to which it is referring. Nevertheless, because the Department's regulatory language at 43 CFR 12.12(c) indicates that any changes published in the **Federal Register** apply, the Department interprets our regulation to mean that the May 17, 1995, publication of the revised OMB Circular A–87 applies, according to the conditions stated in the Circular.

Therefore, the Department is clarifying that the May 17, 1995, version of the Circular is adopted without any further promulgation of regulations. Until OMB issues another version, any reference to OMB Circular A–87 after the effective date for the Circular means the May 17, 1995, version.

Dated: October 28, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 95–28288 Filed 11–15–95; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 384

[FHWA Docket No. MC–93–9]

RIN 2125–AD70

State Compliance With Commercial Driver's License Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final Rule, Technical Amendment.

SUMMARY: The FHWA is changing the applicability date of 49 CFR 384.231(b)(2) from October 1, 1995, to May 18, 1997, in order to allow the States additional time to solve the problem of disqualifying commercial motor vehicle (CMV) operators convicted of a disqualifying offense or offenses who do not possess a commercial driver's license (CDL) and for whom the State cannot identify a social security number (SSN).

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, Driver Division, Office of Motor Carrier Research and Standards (202) 366–0647, or Ms. Grace Reidy, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (Pub. L. 99–570, 100 Stat. 3207–170, as amended; 49 U.S.C. 31302 *et seq.*) (the Act) to improve the safety of CMV drivers throughout the Nation. The goals of the Act are:

(1) Prevent CMV drivers from concealing unsafe driving records by carrying licenses from more than one State,

(2) Ensure that all CMV drivers demonstrate the minimum levels of knowledge and skills needed to safely operate CMVs before being licensed, and

(3) Subject CMV drivers to new, uniform sanctions for certain unsafe driving practices.

To accomplish these goals, Congress assigned responsibilities and deadlines to CMV drivers, employers, States, and the Secretary of Transportation. All responsibilities of the Secretary of Transportation in the Act were delegated to the FHWA. The responsibilities imposed on the States were enumerated in section 12009(a) of the Act (49 U.S.C. 31311). An additional requirement, bringing the number to 17, was later added to 49 U.S.C. 31311 by the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914).

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** (58 FR 34344) on June 24, 1993. It proposes standards which States would have to meet in order to be in compliance with the Act and avoid the loss of Federal-aid highway funds. This NPRM proposes amending title 49 of the Code of Federal Regulations to include a whole new part 384 in which to delineate all the compliance requirements imposed on the States by the Act. This part would also specify the State procedures for determining whether a State was in compliance with the Act.

A final rule reiterating these standards and procedures with some minor adaptations and clarifications was published in the **Federal Register** (59 FR 26029) on May 18, 1994. As a result of this rulemaking, the States are required by 49 CFR 384.231 (b) and (c) to disqualify expeditiously a person convicted of the offenses enumerated in 49 CFR 383.51(b)(2) (i) through(v). In addition, the State must make a record of the disqualification and provide certain specific personal identifier information on the convicted individual to the Commercial Driver's License Information System (CDLIS) (49 CFR 384.231(d)).

Petition: Mr. John Strandquist, President and Chief Executive Officer of the American Association of Motor Vehicle Administrators (AAMVA), filed a petition on August 23, 1995, asking that the effective date for 49 CFR 384.231(b)(2), regarding disqualification of non-CDL holders, be changed from October 1, 1995, to September 1, 1996. Mr. Strandquist explained that the CDLIS computer record specifications require that the State include the operator's SSN as part of the master pointer record. However, the current requirements in 49 CFR part 383 do not

require a non-CDL holder, operating a CMV, to provide his or her SSN to the State. Mr. Strandquist further pointed out that some consistent and universally agreed upon solution to address the problem of disqualifying CMV operators without a CDL, for whom the State cannot identify a SSN, must be developed by the States. In addition, the States would have to demonstrate that they could successfully operate using the yet to be developed solution. He estimated that it will take at least until September 1, 1996, for all the States to accomplish any solution that might be proposed.

Response: The requirements in 49 CFR part 384 are primarily directed toward State driver licensing administrators and other State officials with responsibility to develop, administer, and enforce the CDL program. The FHWA agrees with AAMVA that the States will not be able to comply with the provisions of 49 CFR 384.231(b)(2) by October 1, 1995. Consequently, the deadline will be extended to May 18, 1997. Traditionally the FHWA has given parties subject to motor carrier regulations at least 3 years in order to comply with new requirements, but the regulations at issue in this case were published on May 18, 1994, and the effective date specified for compliance with 49 CFR 384.321(b)(2) regarding disqualification of non-CDL holders was set as October 1, 1995. By pushing the deadline for compliance back to May 18, 1997, the FHWA is merely providing State officials, to whom 49 CFR Part 384 is principally directed, the customary three years in which to comply. For these reasons and since this rule imposes no additional burdens on the States, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without the 30-day delay in effective date under the Administrative Procedure Act.

Rulemaking Analyses and Notices

The FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). In addition, this final rule is effective upon publication because the FHWA finds that good cause exists for dispensing with the 30-day delay in effective date ordinarily required under 5 U.S.C. 553(d). The FHWA is not exercising discretion in a way that could be meaningfully affected by public comment. With this rulemaking, the FHWA is merely extending the deadline for compliance by the States with the requirements of 49 CFR 384.231(b)(2). Rather than imposing any additional burden on the States, this rule would actually lessen the burden of complying with these CDL requirements. The FHWA has concluded that it is necessary to provide additional time for States to implement the requirement that certain CMV drivers be disqualified from driving in light of the current lack of a consistent and mutually agreed upon method for recording drivers' SSNs.

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action under Executive Order 12866, or significant within the meaning of Department of Transportation regulatory policies and procedures. This regulatory action is not likely to have an annual effect on the economy of $100 million or more. In addition, it is not expected to cause an adverse effect on any sector of the economy because this rule will actually lessen the burden imposed by the regulation being amended. No serious inconsistency or interference with another agency's actions or plans will result because this rulemaking deals exclusively with the FHWA's CDL program. Although the rights and obligations of recipients of Federal grants will be affected because compliance with the regulation at issue is a condition for the States receiving Federal-aid highway funds, the rights of the States will not be materially affected. This rulemaking actually makes it easier for them to qualify for these funds. In light of this analysis, the FHWA finds that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601- 612), the agency has evaluated the effects of this rulemaking on small entities. This rulemaking changes the date by which the States must comply with a regulation regarding the States' disqualification of CMV drivers who do not possess a CDL. CMV operators who do not hold CDLs are not currently required to disclose their SSNs to the States; however, the regulation at issue in this rulemaking requires that the States record disqualifications of non-CDL holding CMV drivers on the CDLIS. This obligates the States to include the CMV driver's SSN. The deadline extension created by the rule at hand was intended to provide the States with time to develop a mutually agreed upon solution to this inconsistency. Thus, this rulemaking will have an impact on the States; however, it is unlikely that this impact will be significant in any way. Furthermore, States are not included within the definition of "small entity" set forth in 5 U.S.C. 601. Accordingly, the FHWA certifies that the action contained in this document will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule will merely delay the deadline for State compliance with an existing Federal regulation. It will not preempt any State law or State regulation and no additional costs or burdens will be imposed on the States. In fact, a regulatory burden will be lessened as a result of this rulemaking. In addition, this rule will not have a significant effect on the States' ability to discharge traditional State governmental functions even though the pre-existing regulation which this rule amends does deal with driver qualification. Driver qualification is an area over which the States have traditionally exercised their sovereign power. The rule at issue in the rulemaking at hand merely extends the deadline by which the States must comply with this pre-existing regulation of CMV driver qualification. Thus, an analysis of the Federalism issue raised by Federal regulation of CMV driver qualification, is not required for the purposes of this rulemaking. In any case, the Federal government's assertion of control over CMV driver qualification represents a justifiable response to the fact that CMV safety is a matter of national concern.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 384

Commercial driver's license documents, Commercial motor vehicles, Driver qualification, Highways and roads, Motor carriers licensing and testing procedures, and Motor vehicle safety.

Issued on: November 6, 1995.

Rodney E. Slater,

Federal Highway Administrator.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

1. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 49 U.S.C. 31301 *et seq.*, 31502; 49 CFR 1.48.

2. In 384.231, paragraph (b)(2) is revised to read as follows:

§ 384.231 Satisfaction of State disqualification requirements.

* * * * *

(b) * * *

(2) *Non-CDL holders applies on and after May 18, 1997.* A State shall satisfy the requirement of this subpart that the State disqualify a non-CDL holder who is convicted of an offense or offenses necessitating disqualification under § 383.51 by, at a minimum, implementing the limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such non-CDL holder from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

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[FR Doc. 95–28227 Filed 11–15–95; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040-5040-01; I.D. 110995A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment, request for comments.

SUMMARY: NMFS is redistributing the 1995 Pacific halibut bycatch allowances specified for the Pacific cod hook-and-line gear fishery and the other non-trawl gear fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to achieve the optimum yield from the groundfish fisheries.

DATES: Effective 12 noon, Alaska local time (A.l.t.), November 9, 1995, until 12 midnight, A.l.t., December 31, 1995. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 24, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, or be delivered to Room 457, Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Pursuant to § 675.21(a)(6) the prohibited species catch (PSC) limit of Pacific halibut caught while conducting any non-trawl fishery for groundfish in the BSAI during any fishing year is an amount of Pacific halibut equivalent to 900 metric tons (mt) of halibut mortality. In accordance with §§ 675.21(b)(2)(i) and (b)(4), the Final 1995 Harvest Specifications for the BSAI groundfish fisheries (60 FR 8479, February 14, 1995, and 60 FR 12149, March 6, 1995) apportioned this PSC limit among the non-trawl gear fishery categories defined at § 675.21(b)(2)(ii) as follows: (1) Pacific cod hook-and-line, 725 mt; (2) "other non-trawl," 175 mt; (3) jig gear (exempt for 1995), 0 mt; (4) groundfish pot gear fisheries, (exempt for 1995), 0 mt; (5) sablefish hook-and-line (exempt for 1995), 0 mt (60 FR 12149, March 6, 1995).

As of October 21, 1995, 90 mt of halibut mortality remains of the "other non-trawl" fishery bycatch allowance. This fishery category will require an additional 20 mt of halibut mortality during 1995, leaving 70 mt of Pacific halibut mortality uncaught. The Pacific cod hook-and-line gear fishery has 34 mt remaining of its halibut bycatch allowance, which is inadequate for harvesting the 9,000 mt of Pacific cod remaining in the allocation for hook-and-line or pot gear. The Pacific halibut bycatch allowance for the Pacific cod hook-and-line gear fishery needs to be augmented to promote achieving the optimum yield from the Pacific cod fishery.

Under § 675.20(e), the Regional Director is making an inseason adjustment to increase the Pacific halibut bycatch allowance specified for the Pacific cod hook-and-line gear fishery by 70 mt. The "other non-trawl" gear fishery≥s halibut bycatch is decreased by 70 mt. In accordance with § 675.20(e)(1)(iii), NMFS is redistributing the Pacific halibut bycatch mortality allowances of the non-trawl fisheries as follows: (1) Pacific cod hook-and-line, 795 mt; (2) "other non-trawl," 105 mt; (3) jig gear, 0 mt; (4) groundfish pot gear fisheries, 0 mt; (5) sablefish hook-and-line, 0 mt. This adjustment is necessary to prevent the underharvest of the BSAI Pacific cod total allowable catch pursuant to § 675.20(e)(2)(iii)

As required by § 675.20(f), all information relevant to this inseason adjustment, including the effect of overall fishing effort within the statistical area and economic impacts on affected fishing businesses, was considered. Current halibut bycatch allowances will cause a premature closure of the Pacific cod hook-and-line gear fishery and, therefore, will not promote optimum yield of groundfish and will result in economic harm to fishermen and processors who would otherwise participate in that fishery. Interested persons are invited to submit comment in writing to the previously cited address on or before November 24, 1995.

Classification

This action is taken under § 675.20(e)(1)(iii), (e)(2)(iii) and (e)(5) and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior public notice and comment on the inseason adjustment. Immediate effectiveness is necessary to prevent foregone revenue to the Pacific cod hook-and-line fishery, which would otherwise be prevented from conducting operations.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 9, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–28248 Filed 11–9–95; 4:13 pm]

BILLING CODE 3510–22–F

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50 CFR Part 676

[Docket No. 940683–4277; I.D. 110695C]

RIN 0648–AE79

Limited Access Management of Federal Fisheries In and Off of Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule that was published Friday, October 7, 1994. This document republishes the regulatory text describing a "qualified person" under the Individual Fishing Quota (IFQ) program for the fixed gear fishery for Pacific halibut and sablefish in and off of Alaska.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Under § 676.20, initial allocation of Pacific halibut and sablefish quota share (QS) is assigned to qualified persons based upon specified criteria (e.g., qualifying years, evidence of vessel ownership, evidence of vessel lease, evidence of legal landings, vessel categories). These criteria were published in the final rule implementing the IFQ system for Pacific halibut and sablefish, Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 20 to the FMP for Groundfish of the Gulf of Alaska (GOA), and appear at 58 FR 59406 (November 9, 1993).

The IFQ system was revised with the implementation of a Modified Block Proposal to clarify the transfer process for QS and to prevent excessive consolidation in the Pacific halibut and sablefish fisheries, Amendment 31 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 35 to the FMP for Groundfish of the Gulf of Alaska. The proposed rule was published June 28, 1994 (59 FR 33272) and the final rule was published October 7, 1994 (59 FR 51135). Neither Amendment 31 or 35 indicated that the criteria for a qualified person or the vessel categories under the original IFQ program were to be revised. Although there is some confusion in the proposed and final rule implementing Amendments 31 and 35, the preamble to the final rule (59 FR 51136, October 7, 1994) explicitly states:

> 1. The amendatory language to § 676.20 in the proposed rule was numbered in such a manner that existing paragraphs (a)(1) *Qualified persons* and (a)(2) *Vessel categories* would have been deleted. This was a technical oversight. Paragraphs (a)(1) and (a)(2) will remain as published on November 9, 1993 (59 FR 59375) and will not be amended by this final rule.

NMFS interpreted the final rule as stated above and circulated copies of the regulations with paragraphs (a)(1) and (a)(2) as published at 58 FR 59375 (November 9, 1993). Not withstanding the explicit statement in the preamble and NMFS' interpretation of this provision, the amending instruction for § 678.20 was not clear and could be construed as deleting paragraphs (a)(1) and (a)(2). See 59 FR 51138 (October 7, 1995). Consequently, NMFS is issuing this correction and republishing the criteria of § 676.20(a)(1) and (a)(2).

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

Accordingly, 50 CFR part 676 is amended by making the following correction:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 676.20, paragraphs (a)(1) and (a)(2) are added to read as follows:

§ 676.20 Individual allocations.

(a) * * *

(1) *Qualified person.* As used in this section, a "qualified person" means a "person," as defined in § 676.11 of this part, that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person is a qualified person also if (s)he leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person who owns a vessel cannot be a qualified person based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease. Qualified persons, or their successors-in-interest, must exist at the time of their application for QS. A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his interest in the dissolved partnership or corporation. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining whether a person is a qualified person.

(i) A QS qualifying year is 1988, 1989, or 1990.

(ii) Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(A) For vessels required to be documented under the laws of the United States, the U.S. Coast Guard abstract of title issued in respect of that vessel;

(B) A certificate of registration that is determinative as to vessel ownership; and

(C) A bill of sale.

(iii) Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

(iv) Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(v) As used in this section, a "legal landing of halibut or sablefish" means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of halibut or sablefish harvested, the IPHC regulatory area or groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting. State catch reports are Alaska, Washington, Oregon, or California fish tickets. Federal catch reports are weekly production reports required under §§ 672.5(c) and 675.5(c) of this chapter. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining qualification to receive QS, nor in calculating initial QS.

(2) *Vessel categories.* Vessel categories include:

(i) Category A—freezer vessels of any length;

(ii) Category B—catcher vessels greater than 60 feet (18.3 meters) in length overall;

(iii) Category C—catcher vessels less than or equal to 60 feet (18.3 meters) in length overall for sablefish, or catcher vessels greater than 35 feet (10.7 meters) but less than or equal to 60 feet (18.3 meters) in length overall for halibut; and

(iv) Category D—catcher vessels that are less than or equal to 35 feet (10.7 meters) in length overall for halibut.

* * * * *

[FR Doc. 95–28204 Filed 11–15–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 221
Thursday, November 16, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 950

[Docket No. FV95–950–1PR]

Irish Potatoes Grown in Maine; Proposed Termination of Marketing Order No. 950

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to terminate the Federal marketing order regulating the handling of Irish potatoes grown in Maine (order) and the rules and regulations issued thereunder. The Maine potato industry has not operated under the order for almost three decades and the current order does not reflect current industry structure and operating procedures. Thus, there is no need for the Department of Agriculture to continue this order.

DATES: Comments must be received by December 18, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 690–0464, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is governed by the provisions of section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act and § 950.84 of the order.

This regulatory action is being taken as a part of the National Performance Review to eliminate unnecessary regulations and to improve those that remain in force.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 750 producers. Some of them are also handlers who would be subject to seasonal handling regulations under the order, but no such regulations have been implemented since the 1967–68 season, and there is no indication that such regulations will again be needed. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than $5,000,000. The majority of the Maine potato producers and handlers may be classified as small entities.

The order was initially established on August 24, 1954, to help the industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Maine Potato Marketing Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Maine potatoes. The committee endeavored to achieve orderly marketing and improve acceptance of Maine potatoes through the establishment of minimum size and quality requirements. When regulated, fresh potato shipments consisted only of those grades and sizes desired by consumers.

Although the Department has not conducted interviews of current industry members with respect to the need for a marketing order, neither has it received recent inquiries from the industry asking for reactivation. The Maine potato industry has not operated under the marketing order for almost three decades. Regulations have not been applied to Maine potato handlers since the late 1960's and a committee to locally administer the marketing order has not been appointed since the early 1970's. In August 1954, when the marketing order was issued, there were almost 4,500 producers of Maine potatoes. Currently, there are about 750 producers.

While a sizeable potato industry remains active in Maine, there seems to be virtually no interest in a marketing order. Most of the members appointed to the last committee have retired from commercial potato production or handling.

Over the years, there have been periodic inquiries about reviving the marketing order, but no formal requests for reactivation have ever materialized. In any case, with the passage of time and changes in industry structure and operating practices since the order was formulated, a much revised marketing order would have to be established. The need for a new marketing order would have to be justified and supported by a large majority of current Maine potato producers. This would require a public hearing and a producer referendum. Thus, there is little justification to continue the current marketing order.

We believe that conducting a termination referendum would merely reaffirm the Maine potato industry's continued lack of interest in a marketing order and that conducting such a referendum would be wasteful of Departmental and public resources.

Therefore, pursuant to section 608c(16)(A) of the Act and § 950.84 of the order, the Department is considering the termination of Marketing Order No. 950, covering Irish potatoes grown in Maine. If the Secretary decides to terminate the order, trustees would not need to be appointed to continue in the capacity of concluding and liquidating the affairs of the former committee, since no funds or property remain to be distributed or liquidated.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress will be so notified upon publication of this proposed rule.

Based on the foregoing, the Administrator of the AMS has determined that this action would not have a significant impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 950

Marketing agreements, Reporting and recordkeeping requirements, Potatoes.

PART 950—[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR part 950 is proposed to be removed.

Dated: November 9, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–28324 Filed 11–15–95; 8:45 am]
BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 95–012–1]

Viruses, Serums, Toxins, and Analogous Products; Rabies Vaccine, Killed Virus and Rabies Vaccine, Live Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the standard requirements for establishing the immunogenicity of Rabies Vaccine, Killed Virus and Rabies Vaccine, Live Virus. The amendment would change and clarify alternate test procedures which may be used in animals other than carnivores. Under the proposed rule, when a reduced number of challenge animals is used in a rabies immunogenicity test, all vaccinates must survive challenge. If one or more of the challenged vaccinates die of rabies, all of the remainder of the vaccinates would have to be challenged or the test would be deemed unsatisfactory and terminated.

This proposed action would correct a problem associated with rabies immunogenicity tests in the regulations and make other changes deemed necessary for clarity and consistency.

DATES: Consideration will be given only to comments received on or before January 16, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–012–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–012–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 pertain to standard requirements for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service to determine that a veterinary biological product is pure, safe, potent, and efficacious and not worthless, dangerous, contaminated, or harmful.

The standard requirements for Rabies Vaccine, Killed Virus, and for Rabies Vaccine, Live Virus, appear in §§ 113.209 and 113.312, respectively. Sections 113.209(b)(4) and 113.312(b)(4) provide for an alternative immunogenicity test, for domestic species other than dogs and cats, that reduces the number of animals that must be challenged to a minimum of five vaccinates and five unvaccinated control animals. The regulations require that a minimum of 25 animals be vaccinated and blood be taken for serology at prescribed intervals postvaccination. All surviving test animals must be challenged 1 year after vaccination unless the alternative test is used. In the case of the alternative test for domestic species other than dogs or cats, the five vaccinates with the lowest rabies antibody titers at each of the last two bleedings, and all vaccinates with titers below 1:10, as determined by the mouse serum neutralization (SN) test or below 1:16 by the rapid-fluorescent-focus-inhibition test at any bleeding, must be challenged at 1 year after vaccination.

The following example illustrates how the current regulations can lead to different interpretations for the rabies immunogenicity test for species other than dogs and cats. The regulations in §§ 113.209(b)(3)(v) and 113.312(b)(3)(v) (applicable to all animal species) require that the statistical equivalent of 22 out of 25 or 26 out of 30 vaccinates remain well for 90 days after challenge. If only five vaccinates are challenged and three die of rabies, the test would be deemed unsatisfactory under §§ 113.209(b)(3)(v) and 113.312(b)(3)(v). The results would be considered unsatisfactory because survival of 2 of 5 animals is not statistically equivalent to survival of 22 of 25 or 26 of 30 animals.

Sections 113.209(b)(4) and 113.312(b)(4) (which apply to animals other than dogs and cats), however, state that all unchallenged vaccinates shall be considered protected for purposes of the test when evaluated for acceptance. The previous test would be considered satisfactory under §§ 113.209(b)(4) and 113.312(b)(4), since the unchallenged vaccinates would be deemed protected, meeting the requirement that 22 of the 25 vaccinates be protected for a satisfactory test. For this reason, the

regulations in §§ 113.209(b)(4) and 113.312(b)(4) need to be amended.

Sections 113.209(b)(4) and 113.312(b)(4) also need to be amended because serologic titer is not sufficiently correlated with efficacy to ensure that all of the unchallenged vaccinates in a reduced immunogenicity test would be protected after a real challenge.

The amendment would clarify which of the vaccinates should be challenged under §§ 113.209(b)(4) and 113.312(b)(4), and would require that all challenged vaccinates remain well for 90 days in order for the test to be satisfactory. The amendment would specify that the reduced immunogenicity test described in §§ 113.209(b)(4) and 113.312(b)(4) may not be used for carnivores (e.g., dogs, cats, and ferrets). The amendment would therefore exclude from a reduced challenge test species of animals that have a high potential for transmitting rabies.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule amending §§ 113.209 and 113.312 is necessary to clarify the regulations regarding the rabies immunogenicity test. The amendment would clarify which animals are to be challenged in a reduced immunogenicity study and the procedures to follow when one or more of the vaccinates die of rabies. The proposed amendment would require that additional vaccinates be challenged if one of the low titer vaccinates succumbs to rabies. In 7 of the last 10 rabies challenge tests of non-carnivores, firms elected to challenge 25 or more animals. In the remaining three cases in which a reduced number of animals were challenged in accordance with current § 113.209 or § 113.312, paragraph (b)(4), no additional animals were challenged and no additional animals would have been challenged under the proposed rule. The proposed amendment, therefore, would have minimal economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.209 would be amended by revising paragraph (b)(4) to read as follows:

§ 113.209 Rabies Vaccine, Killed Virus.

* * * * *

(b) * * *

(4) An alternative to challenging all surviving test animals in accordance with paragraph (b)(3)(iv) of this section may be used when the test animals are of species other than carnivores. Vaccinates shall be challenged at 1 year postvaccination. These shall include five vaccinates with the lowest SN titers at the 270th-day bleeding, five vaccinates with the lowest SN titers at the 365th-day bleeding, and all vaccinates with SN titers below 1:10 by the mouse SN test or below 1:16 by the rapid-fluorescent-focus-inhibition test at any bleeding. At least five SN-negative controls of each species shall be challenged at the same time as the vaccinates. All SN titers shall be titrated to an endpoint. All of the challenged vaccinates must remain well for a period of 90 days, and at least 80 percent of the controls must die of rabies for a satisfactory test without further challenge. If one or more of the vaccinates die from rabies, all the remaining vaccinates, regardless of titer, along with the five controls shall be challenged. The cumulative results from the two challenges shall be evaluated for acceptance as specified in paragraph (b)(3)(v) of this section.

3. Section 113.312 would be amended by revising the section heading and paragraph (b)(4) to read as follows:

§ 113.312 Rabies Vaccine, Live Virus.

* * * * *

(b) * * *

(4) An alternative to challenging all surviving test animals in accordance with paragraph (b)(3)(iv) of this section may be used when the test animals are of species other than carnivores. Vaccinates shall be challenged at 1 year postvaccination. These shall include five vaccinates with the lowest SN titers at the 270th-day bleeding, five vaccinates with the lowest SN titers at the 365th-day bleeding, and all vaccinates with SN titers below 1:10 by the mouse SN test or below 1:16 by the rapid-fluorescent-focus-inhibition test at any bleeding. At least five SN-negative controls of each species shall be challenged at the same time as the vaccinates. All SN titers shall be titrated to an endpoint. All of the challenged vaccinates must remain well for a period of 90 days, and at least 80 percent of the controls must die of rabies for a satisfactory test without further challenge. If one or more of the vaccinates die from rabies, all the remaining vaccinates, regardless of titer, along with the five controls shall be challenged. The cumulative results from the two challenges shall be evaluated for acceptance as specified in paragraph (b)(3)(v) of this section.

* * * * *

Done in Washington, DC, this 8th day of November 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28325 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AGL–17]

Proposed Establishment of Class E Airspace; Hettinger, ND, Hettinger Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Hettinger, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 30 has been developed for the Hettinger Municipal Airport. Controlled airspace extending upward from 700 feet above ground level (AGL) and from 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before December 29, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Hettinger, ND. This proposal would provide adequate Class E airspace for operators executing the GPS Runway 30 SIAP at Hettinger Municipal Airport. Controlled airspace extending upward from 700 feet AGL and 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instruments conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL ND E5 Hettinger, ND [New]
Hettinger Municipal Airport, ND
(Lat. 46°00'56"N, long. 102°39'20"W).

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Hettinger Municipal Airport and within 1.9 miles each side of the 136 bearing from the Hettinger Municipal Airport from the 6.4-mile radius to 8.9 miles southeast of the airport, and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at Lat. 462000N/Long. 1025800W, to Lat. 462000N/Long. 1024400W, to Lat. 454500N/Long. 1020900W, to Lat. 454500N./Long. 1025800W to point of beginning excluding that airspace previously described as Victor 491.

* * * * *

Issued in Des Plaines, Illinois on October 31, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–28344 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AGL–8]

Proposed Revision of Class E Airspace; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to revise Class E airspace to accommodate a Nondirectional Radio Beacon (NDB) for runway 19 approach at Rice Lake Municipal Airport, Rice Lake, WI. The NPRM is being withdrawn as a result of wrong geographical coordinates and airport name change.

DATES: This withdrawal is effective November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On August 4, 1995, a Notice of Proposed Rulemaking was published in the **Federal Register** to revise Class E airspace to accommodate a Nondirectional Radio Beacon (NDB) for runway 19 approach at Rice Lake Municipal Airport, Rice Lake, WI (60 FR 39893).

Subsequent to publication in the **Federal Register** it was discovered that the geographical coordinates and airport name were in error.

Conclusion

In consideration of the erroneous information, action to revise the Class E airspace serving Rice Lake Municipal Airport, Rice Lake, WI, has been withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 95–AGL–8, as published in the **Federal Register** on August 4, 1995, (60 FR 39893), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

* * * * *

Issued in Des Plaines, IL, on November 2, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–28343 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 423

Request for Comments Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on a proposed conditional exemption to its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods ("the Care Labeling Rule" or "the Rule"). The proposed conditional exemption would permit the use of certain care symbols in lieu of words on the permanently attached care label, as long as hangtags with explanatory language are used for the first 12 month period of symbol use. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

DATES: Written comments will be accepted until January 31, 1996.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about this conditional exemption to the Care Labeling Rule should be identified as "Conditional exemption for symbols, 16 CFR Part 423—Comment."

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2966.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 15, 1994, the Commission published a **Federal Register** notice ("FRN") requesting comment on various aspects of the Care Labeling Rule, including whether the Rule should be modified to permit the use of symbols in lieu of words. The Commission has now tentatively determined to permit the use of certain symbols, under certain conditions, and now seeks additional comment on the specifics of the proposal. The Commission will summarize other results of the regulatory review it conducted in a separate notice.

II. Background

The Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971), and amended on May 20, 1983, 48 FR 22733 (1983). The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating "what regular care is needed for the ordinary use of the product." (16 CFR 423.6(a) and (b)) The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. (16 CFR 423.6(c))

The "Terminology" section of the Rule, 16 CFR 423.2(b), currently requires that care instructions be stated in "appropriate terms," although it also states that "any appropriate symbols may be used on care labels or care instructions, *in addition to the required appropriate terms* so long as the terms fulfill the requirements of this regulation." (Emphasis added). Although the Rule does not specifically state that the instructions must be in English, they usually are in English. The FRN stated that the North American Free Trade Agreement ("NAFTA") "has created industry interest in being permitted to use symbols in lieu of words to provide care instructions, and the Commission seeks comment on the costs and benefits of such a change."

The FRN included the following questions on this issue:

(7) Should the Commission amend the Rule to allow care symbols to be used in lieu of language in care instructions? If so, is there an existing set of care symbols that would provide all or most of the information required by the current Rule? What are the advantages and disadvantages of the existing systems of care symbols?

(a) In particular, what are the advantages and disadvantages of the system of care symbols developed by the International Association for Textile Care Labeling ("Ginetex") and adopted by the International Standards Organization as International Standard 3758?

(b) What are the advantages and disadvantages of the system of care symbols developed by the American Society for Testing and Materials ("ASTM") and designated as ASTM D5489 Guide to Care Symbols for Care Instructions on Consumer Textile Products?

III. Analysis of Comments

Eighty-one comments were received.[1] Sixty-five of the comments discussed the use of symbols in lieu of written language to communicate care instructions; 60 of those favored the use of symbols.[2] Five comments opposed allowing symbols in lieu of written instructions.[3] Most comments stated that they favored symbols because symbols would make international trade easier.

Canada and Mexico currently allow the use of symbols to convey garment care instructions. Many comments focused on trade with Mexico and Canada, stating or implying that symbols that harmonize with those used in Mexico and Canada would further the goals of NAFTA.[4] Some of these comments stated or implied that, in addition to harmony with Canada and Mexico, whatever system is adopted should be in harmony with the symbol system used in Europe.[5] Other comments placed more importance on harmony with the European system than with NAFTA.[6]

Some comments said there would be some initial cost to changing to a symbol system, but they either stated or implied that the long-run cost savings would exceed these initial "change-over" costs. Some comments explained in more detail why the current Rule impedes trade within North America. One comment stated that the requirement that care instructions be written makes for very long labels because it "forces manufacturers and retailers wanting to sell products freely within the NAFTA territory to display care instructions in English, French and Spanish."[7] Many other comments stated that the use of symbols would cause production costs to decline because the size of labels would be reduced and smaller labels are less expensive.[8]

Several comments noted that the use of symbols would help U.S. consumers who cannot speak English (or whose primary language is not English) and consumers who cannot read (or cannot read well).[9] Some comments noted that smaller labels may improve consumer comfort.[10] Other comments stated that smaller labels would also make garments more attractive.[11] Several comments stated that savings from smaller labels could be passed on to consumers as reductions in the cost of apparel.[12]

Many comments that favored the use of symbols emphasized that the symbols should not be mandatory, but a voluntary option, and that the use of written care instructions should continue to be allowed, either as a supplement to symbols or alone.[13] Several comments noted that all possible care instructions cannot be conveyed by symbols; certain special handling instructions such as "remove promptly"; "double rinse for best results"; "wash inside out"; "wash with like garments"; or "wash before wearing" will probably have to be communicated in words.[14] But one comment noted that "symbols alone could easily accommodate 75–80% of the merchandise sold."[15]

In sum, most of the comments state that the use of symbols would benefit both manufacturers, by lowering production costs and increasing exports, and consumers, by communicating care instructions clearly and by potentially

[1] The commenters included cleaners; consumers; public interest-related groups; fiber, textile, or apparel manufacturers or sellers (or conglomerates); federal government entities; fiber, textile, or apparel manufacturers or retailers trade associations; two label manufacturers; one cleaning products manufacturer; one association representing the leather apparel industry; one Committee formed by industry members in the countries signatory to NAFTA; one appliance technician; one appliance manufacturers trade association; two standards-setting organizations; and two representatives from foreign nations. Each comment was assigned a number. The first time a comment is cited it is cited by the full name of the commenter and the assigned number; subsequently, it is cited by the number and a shortened form of the name. The comments are available for inspection in the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC, from 8:30 a.m. to 5:00 p.m., Monday through Friday, except federal holidays.

[2] These comments are: Benjamin Axleroad (1), Baby Togs, Inc. (2), Judith S. Barton (7), C.M. Offrey & Son, Inc. (9), The Schwab Company (10), Fieldcrest Cannon (11), Ardis W. Koester (12), University of Kentucky College of Agriculture (15), ASTM Committee D–13 on Textiles (16), Pittsfield Weaving Co. (17), European Union (GATT Secretariat) (18), Todd Uniform, Inc. (19), Acqua Clean System (20), Woolrich, Inc. (21), The Massachusetts Toxics Use Reduction Institute (23), Carter's (24), Braham Norwick (25), Oshkosh B'Gosh, Inc. (27), Ecofranchising, Inc. (28), Consumers Union (31), Clorox Company (32), The Warren Featherbone Company (33), Industry Canada (37), Business Habits, Inc. (38), Clothing Manufacturers Association of the United States of America (40), National Association of Hosiery Manufacturers (41), Paxar Corporation (42), Jo Ann Pullen (44), The Warren Featherbone Company (46), United States Apparel Industry Council (47), Dan River, Inc. (48), American Fiber Manufacturers Association, Inc. (49), The Leslie Fay Companies, Inc. (50), Springs Industries, Inc. (51), Salant Corporation (52), Association of Home Appliance Manufacturers (53), Milliken (54), Ruff Hewn (55), American Textile Manufacturers Institute (56), United States Association of Importers of Textiles and Apparel (57), Authentic Fitness Corporation (60), Warnaco (61), Salant Corporation (63), Fruit of the Loom (64), Drycleaners Environmental Legislative Fund (65), Angelica Corporation (66), Department of the Air Force (67), American Apparel Manufacturers Association (68), Trilateral Labeling Committee (69), J.C. Penney (70), Liz Claiborne, Inc. (71), Wemco, Inc. (72), Horace Small Apparel Company (74), Perry Manufacturing Company (75), Russell Corporation (76), Oxford Industries, Inc. (77), The GAP, Inc. (78), Haggar Apparel Company (79), Capitol Mercury Shirt Corp. (80), Bidermann Industries (81).

[3] Evelyn Borrow (4), Margaret Tilden (13), Capital Mercury Shirt Corp. (26), Ann Geerhart (29), and VF Corporation (36).

[4] Togs (2) p.1; Offray (9) p.1; Fieldcrest (11) p.2; Koester (12) p.2; Pittsfield (17) pp. 2–3; Mass. Toxics Reduction (23) p.2; Carter's (24) p.1; Featherbone (33) p.2; Industry Canada (37) p.3; Paxar (42) p.1; Featherbone (46) p.1; USAIC (47) p.2; Dan River (48) p.1; AFMA (49) p.1; Salant (52) p.1; AHAM (53) p.2; Milliken (54) p.2; Ruff Hewn (55) p.2; ATMI (56) p.1; USA–ITA (57) p.3; Authentic Fitness (60) pp. 1–2; Warnaco (61) pp. 1–2; Salant (63) pp. 1–2; Fruit (64) p.2; Angelica (66) p.6; AAMA (68) p.1; Trilateral Committee (69) pp. 1–2; Wemco (72) p.1; Horace Small (74) p.1; Russell (76) p.2; Oxford (77) p.1; Haggar (79) p.1; Bidermann (81) p.1.

[5] *E.g.*, Fieldcrest (11) p.2; Pittsfield (17) p.3.

[6] European Union (18) pp. 2–3; Leslie Fay (50) p.1; Gap (78) p.4. The Ginetex/ISO system is used in Europe.

[7] Fruit (64) p.2.

[8] Fieldcrest (11) p.2; Pittsfield (17) p.1; Mass. Toxics Reduction (23) p.2; Carter's (24) p.1; Norwick (25) p.1; Capital Shirt (26) p.1; Featherbone (33) p.2; VF Corp. (36) p.4; Industry Canada (37) p.2; Paxar (42) p.1; Pullen (44) p.4; USAIC (47) p.2; ATMI (56) p.3; USA–ITA (57) p.2; Salant (63) p.1; Fruit (64) p.2; Air Force (67) p.2; AAMA (68) p.2; Hagger (79) p.1.

[9] Togs (2) p.1; Koester (12) p.2; Pittsfield (17) p.2; Norwick (25) p.1; Pullen (44) p.2.

[10] A few comments mention that some labels are scratchy and irritate the skin. Axleroad (1) p.1; Borrow (4) p.1; Martin (8) p.1; Pittsfield (17) p.1; Featherbone (33) p.1; Salant (63) p.1; Capital Shirt (80) p.1.

[11] AAMA (68) p.2.

[12] Paxar (42) p.1, Fruit (64) p.2, Hagger (79) p.1.

[13] Oshkosh (27) p.1; USAIC (47) p.2; Springs (51) p.1; ATMI (56) p.2; Salant (63) pp. 1–2; Fruit (64) p.2; Air Force (67) p.2; AAMA (68) p.3; Trilateral Committee (69) p.2; Penny (70) p.2.

[14] Fieldcrest (11) p.3; Pittsfield (17) p.1; European Union (18) p.2, Woolrich (21) p.1, VF Corp. (36) p.4.

[15] Penney (70) p.2.

decreasing garment prices. Moreover, one comment stated that it "considers that the obligation of using mandatory language instructions would have the effect of creating unnecessary obstacles to international trade."[16] Another comment stated that the mandatory language requirement could function as a non-tariff barrier to trade which would "significantly impede the free flow of goods within the NAFTA territory in direct contravention of the NAFTA."[17]

The record contains persuasive evidence indicating that allowing care information to be conveyed by symbols would lower production costs and would also have benefits for consumers. Moreover, the record indicates that care symbols are used in many other countries, and presumably the symbols communicate the information they contain to the consumers in those countries. Nevertheless, many comments noted the need for consumer education and expressed confidence that U.S consumers could adapt to care symbols with appropriate education.[18] Some comments indicated that symbols should be used with words until the U.S. population understands the symbols.[19] Pittsfield, on the other hand, argued that consumer education based on dual disclosure—the use of symbols with accompanying written instructions on the label—will not work, as shown by the U.S. experience with the metric system.[20]

Section 18(g)(2)of the FTC Act, 15 U.S.C. 57a(d)(2)(B), provides that "[i]f * * * the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule." The record indicates that care information can be conveyed by means of symbols, but it also indicates that American consumers need to be educated—or to be provided with "decoding" charts or hangtags—in order to learn to use a particular symbol system. Consequently the Commission proposes to grant a conditional exemption from the "Terminology" section of the Care Labeling Rule. However, for the reasons discussed above, the Commission proposes that the conditional exemption state that care labels that use symbols instead of language to convey information must be accompanied by hangtags explaining the meaning of the symbols. If the symbols on the label are accompanied by explanatory hangtags, then an exemption from the requirement that words be used on the label is appropriate because words on the label are not necessary to "prevent the unfair or deceptive act or practice to which the rule relates."

IV. Symbol Systems That Were Considered

The Commission examined two existing symbol systems—the Ginetex system and the ASTM system—to identify which conveys all or most of the information the Rule requires to be conveyed and meets other important criteria. As explained below, the ASTM system best meets the needs of consumers and industry at the present time.

A. ISO/Ginetex System

Because the Ginetex system has been adopted by the International Standards Organization ("ISO") as International Standard 3758,[21] the Commission gave careful consideration to this system.[22] However, the ISO/Ginetex system does not provide symbols for some of the basic information the Rule requires to be conveyed. For example, if chlorine bleach would harm a product but non-chlorine bleach would not, section 423.6(b)(1)(iv) of the Rule requires that the label contain a warning such as "only non-chlorine bleach when needed." However, the ISO/Ginetex system contains no symbol for non-chlorine bleach.[23] Further, the system's symbols for reduced spin and reduced mechanical action, required under section 423.(b)(1)(v) ["Warnings"] of the Rule, are linked to temperature.[24] (ISO standard 3759 Table 1). This linkage is inconsistent with the technology of American washers.[25] Its temperature ranges for tumble drying (normal and low—ISO standard 3759 Table 5) are also inconsistent with American technology.[26] It has no symbols for natural drying, or the use of steam in ironing, which are care practices addressed by the Rule.[27]

For dry cleaning, the ISO/Ginetex system provides only a symbol (constituting an underlining of the circle) that means "strict limitations on the addition of water and/or mechanical action and/or temperature during cleaning and/or drying." (ISO standard 3759 Table 4). However, section 423.6(b)(2)(ii)(A) provides that, if a dry cleaning instruction is included on the label, it must also warn against any part of the dry cleaning process which consumers or dry cleaners could reasonably be expected to use that would harm the product or others being cleaned with it.[28] The ISO/Ginetex system does not have a method for providing warnings about whic. specific parts of the dry cleaning process should be avoided. Accordingly, the dry cleaning symbol in the ISO/Ginetex system does not satisfy the Rule's requirements for dry cleaning instructions.

Thus, the ISO/Ginetex system cannot convey all the information that the Commission has found to be necessary to prevent the unfair and deceptive

[16] European Union (18) p.1.

[17] Fruit (64) p.2. See also AHAM (53) p.2.

[18] Schwab (10) p.1; Fieldcrest (11) pp. 2–3; ASTM (16) p.8; Pittsfield (17) p.1; Woolrich (21) p.1; Carter's (24) p.2; Consumers Union (31) p.1; Clorox (32) p.4; Business Habits (36) p.4; Pullen (44) p.4; AHAM (53) p.2; Fruit (64) p.3; AAMA (68) p.3. Some comments stated that symbols should not replace words until a consumer education program has become effective. Consumers Union (31) p.1; VF Corp. (36) p.4; Gap (78) p.3. However, consumers do not need to memorize the symbols if they have "decoding" charts they can place in their laundry rooms and if such "decoding" charts, or hangtags, are available in retail stores.

[19] Consumers Union (31) p.1; Gap (78) p.3.

[20] Comment 17, p.2.

[21] Ginetex (Groupement International d'Etiquetage pour l'Entretien des Textiles, or International Association for Textile Care Labeling) is an organization composed of national member bodies, with a goal, among other things, of drawing up "guidelines and compulsory directives for the use of the uniform GINETEX symbols and to control their application." The Ginetex system was adopted as an international standard by the International Organization for Standardization (ISO) in 1991 as ISO Standard 3758.

[22] The Trade Agreements Act of 1979 states that any federal agency must, in developing standards, "take into consideration international standards and shall, if appropriate, base the standards on international standards." Trade Agreements Act of 1979, title IV, section 402, 93 Stat. 242 (1979) (codified as amended at 19 U.S.C. 2532(2)(A) (Supp. 1995)).

[23] Several comments noted this deficiency. Pittsfield (17) p.2; Clorox (32) p.4; V.F. Corp. (36) p.4; Pullen (44) p.5; ATMI (56) p.4; GAP (78) p.4. Consumer Union (31) stated, at p.2, that "we need a symbol pertinent to non-chlorine bleach as the industry plans to move away from chlorine bleach." The Trilateral Committee (69), at p.2, and ATMI (56), at p.2, both recommend that any care symbol system adopted by the U.S. include chlorine and non-chlorine bleach instructions.

[24] The system also indicates temperatures for washing in precise degrees Centigrade, but few washing machines in the United States have internal heating devices as European machines do.

[25] Pittsfield (17), at p.2, noted "technical inconsistencies such as the interconnection of temperature and cycle conditions"; Pullen (44), at p.5, noted the lack of a complete selection of symbols for all washing cycles and temperatures.

[26] ATMI (56) p.4; Penney (70), noting at p.2, that the Ginetex symbols are "technically incomplete for the American consumer's laundering practices."

[27] Section 423.6(b)(1)(ii) states that the label must state whether the product should be dried by machine or by some other method. Section 423.6(b)(1)(v) states that there must be a warning against any part of the prescribed procedure which consumers can reasonably be expected to use that would harm the product. However, without a symbol for steam ironing, it is impossible to warn against steam ironing.

[28] The Appendix to the Rule provides specific examples such as "short cycle," "low moisture," "do not tumble," and "no steam."

practices that the Rule was designed to prevent.[29] Moreover, the ISO/Ginetex system is inconsistent with American technology in several ways. The Trade Agreements Act explicitly identifies several reasons why basing a standard on an international standard may not be appropriate, including the prevention of deceptive practices and fundamental technological problems. 19 U.S.C. 2532(2)(B)(i) (1980). Accordingly, the Commission has concluded the use of ISO standard 3758 is not appropriate for the United States at this time.[30]

Another problem that weighed against the ISO/Ginetex system is the fact that Ginetex asserts trademark rights relating to the symbols. Annex A to ISO 3758 states that the symbols used in that standard are registered with the World Intellectual Property Organization (WIPO) and owned by Ginetex. Part A.2.1 of Annex A of ISO Standard 3758 constitutes an agreement between ISO and Ginetex that "GINETEX's ownership rights related to the marks are preserved under the terms of this agreement, as well as the structure, rights and obligations of its national committees." The Trilateral Committee (a committee formed by industry members from the countries signatory to NAFTA), those comments that explicitly supported its conclusions, and numerous other comments stated that they could only support a symbol system that was free of proprietary claims.[31] The Commission agrees with these comments.[32]

B. The System

ASTM is a scientific and technical organization that publishes voluntary consensus standards. Its Committee D–13 on Textiles contains a Subcommittee D13.62 on Care Labeling, which developed the voluntary consensus standard D5489 referenced in the FRN. A copy of Standard D5489 is attached to ASTM's comment. A copy of an explanatory or "decoding" chart can be found at the end of this notice.

The ASTM system provides symbols relating to the basic information required by the Rule. It includes machine and hand washing, with hand washing indicated by a hand in the washtub. It indicates permanent press cycle by underlining the washtub, and gentle cycle by underlining it twice. It includes chlorine and non-chlorine bleach instructions (the latter indicated by a shaded triangle), and tumble drying and natural drying instructions. It indicates dryer cycles by underlining, with single underlining for permanent press and double underlining for gentle cycle. The iron symbolizes ironing and pressing, and includes an indication as to whether steam can be used (an instruction that may be particularly important for commercial laundries). Temperature—for water, dryers, or ironing—is indicated by a series of dots, with one dot indicating cold, two indicating warm, three indicating hot, four indicating very hot. Five and six dots may be used for even higher temperatures. (Alternatively, temperature may be stated in degrees Celsius.)

For dry cleaning, it indicates short cycle, no steam finishing, reduce moisture, and low heat, respectively, by means of a line drawn under, above, to the left, or to the right of the circle. Finally, the ASTM system (in Standard section 5.10) allows for optional symbols that may be used for additional procedures or warnings (*e.g.*, do not wring).

More comments favored the ASTM system than the Ginetex system for a variety of reasons, including the fact that it is more comprehensive.[33] One comment noted that it is easier to add new symbols in the ASTM system.[34]

The Commission notes that ASTM has obtained a copyright for the entire Standard D5489, including an explanatory chart.[35] Several comments expressed concern over possible copyright licensing fees for the use of the chart.[36] However, ASTM recently submitted to the Commission a document entitled "Conditions for Republishing the ASTM D 5489 Care Symbol Chart" which states that ASTM will grant other organizations a royalty free license for the republication of the complete chart, or portions thereof, provided that the charts include a line crediting ASTM and providing that the copies are not sold separately from the products to which the copies are affixed.[37] This document may alleviate

[29] Section 423.5 describes the unfair or deceptive acts or practices the Rule was designed to prevent. Section 423.5(a)(2) states that it is an unfair or deceptive act or practice for a manufacturer or importer to fail to disclose instructions which prescribe a regular care procedure necessary for the ordinary use and enjoyment of the product. Section 423.5(a)(2) states that it is an unfair or deceptive act or practice to fail to warn a purchaser when any part of the prescribed regular care procedure, which a consumer or professional cleaner could reasonably be expected to use, would harm the product or others being cleaned with it.

[30] The European Union (GATT Secretariat), noting that the Ginetex system was adopted as international standard ISO 3758 in 1991, stated that Article 2.2 of the Agreement on Technical Barriers to Trade requires U.S. authorities to use international standards as a basis for technical regulations. Comment 18, pp.1–2. However, while Article 2.2 of the Agreement on Technical Barriers to Trade provides that "technical regulations shall not be more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create," it recognizes prevention of deceptive practices as a legitimate objective. It also states that, in assessing such risks, "relevant elements of consideration are, *inter alia:* available scientific and technical information, related processing technology or intended end-uses of products." Thus, the differences in U.S. and European technology provide a valid reason for the U.S. to adopt a system that is slightly different than the European system. Nevertheless, the Commission agrees with those comments that indicate that the creation of a system of care symbols appropriate for use worldwide is desirable. However, ISO Standard 3758, as it now exists, simply does not fulfill the legitimate objectives of the United States.

[31] Carter's (24) p.3; Oshkosh (27) p.1; AHAM (53) p.2; Milliken (54) p.2; ATMI (56) p.2; Authentic Fitness (60) p.2, Warnaco (61) p.2; Fruit (64) p.4; Drycleaners Fund (65) p.3; AAMA (68) p.4; Penney (70) p.1; Trilateral Committee (79) p.2; GAP (78) p.4. In addition, ATMI (56) objected, at p.4, to the fact that Ginetex requires that a national body in the country using the system register with Ginetex and monitor use of the system within the country. (See section A.1. of Annex A to ISO Standard 3758, which states, "Ginetex has delegated to its national committees, i.e., its members, the task of promoting the implementation of textile care labelling symbols, of granting the right to reproduce and use the symbols, and of monitoring their use.")

[32] Before the ISO subcommittee voted to make the Ginetex system an international standard, several countries (including the U.S.) objected to the use of a proprietary system as an international standard, but they were outvoted. Subsequent to the adoption of ISO 3758, the USA delegation to the ISO textile committee submitted to ISO a document entitled "USA Comments and Questions Related to ISO 3758" in which they stated, "The USA opposes any standard that requires royalty fees from any organization. Therefore, USA opposes 'ISO 3758–1991- Care labelling code using symbols' and recommends it be withdrawn as an ISO Standard." Attachment to ASTM comment (18).

[33] Togs (2) p.1; Fieldcrest (11) pp. 3–4; Koester (12) pp. 1–2; U. of Kentucky (15) p.2; ASTM (16) p.1; Pittsfield (17) p.2; Carter's (24) p.3; Norwick (25) p.3, Oshkosh (27) p.1, Clorox (32) pp. 3–4; Pullen (44) pp. 4–7, Salant (52) p.1; Milliken (54) pp. 1–2; ATMI (56) pp. 4–5; Air Force (67) p.2; J.C. Penney (70) p.2.

[34] VF Corp. (36), although not supporting the use of symbols without words, did note, at pp.4–5, that under Ginetex, "current symbols cannot be modified and additional symbols cannot be edded" and that an advantage of the ASTM system is that there "is a procedure to modify or add other symbols." According to the forward to the Annual Book of ASTM Standards, Section 7 Textiles, an ASTM standard "is subject to revision at any time by the responsible technical committee and must be reviewed every five years and if not revised, either reapproved or withdrawn."

[35] Letter of June 7, 1994, from Bode Buckley, Manager, Technical Committee Operations, ASTM, to Kay Villa, ATMI, attached to ATMI comment (56). The letter states that a fee will be established for the use of the chart. A copy of the chart was attached to the ASTM comment (16).

[36] Milliken (54), noting, at p.2, that "there is some concern that ASTM (the organization) has not completely followed the wishes of its volunteer members in making the symbol chart. . . freely available without copyright licensing considerations"; ATMI (56), asking, at p.5, that the FTC "obtain official information from the ASTM about this fee structure and assure that there would be no fee for use of the symbol chart prior to any adoption of the standard by the FTC"; AAMA (68), stating, at p.4, that "the most important reason for not accepting the ASTM system is the copyright issue."

[37] Moreover, it states that if the chart or symbols are modified, then they may not be represented as

Continued

concerns about ASTM's copyright and remove any impediments to the dissemination of explanatory materials about the system. However, the Commission seeks comment on this issue.

V. Use of the ASTM System in Canada and Mexico

Although the Commission's first criterion in considering a symbol system was whether it could fulfill the requirements of the Rule, an equally important criterion was whether the system could be harmonized with the symbol systems used in Canada and Mexico. NAFTA specifically requires the U.S. to attempt to harmonize its textile labeling requirements with those of Canada and Mexico. Article 906 of NAFTA states that "the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties." Article 913 requires the creation of a Committee on Standards-Related Measures, which shall include a Subcommittee on Labelling of Textile and Apparel Goods, in accordance with Annex 913.5.a–4. Annex 913.5.a–4. states that the Subcommittee on Labelling of Textile and Apparel Goods

shall develop and pursue a work program on the harmonization of labelling requirements to facilitate trade in textile and apparel goods between the Parties through the adoption of uniform labelling provisions. The work program should include the following matters: (a) pictograms and symbols to replace, where possible, required written information, as well as other methods to reduce the need for labels on textile and apparel goods in multiple languages; (b) care instructions for textile and apparel goods;

* * * * *

The Canadian and Mexican systems use the same five basic symbols that are used in the Ginetex and ASTM systems: a washtub to indicate washing (with a hand in the washtub to indicate hand washing), a triangle to indicate bleaching, a square to indicate drying (and a circle within a square to indicate machine drying), an iron to indicate ironing, and a circle to indicate dry cleaning. An "X" cancelling out the symbol warns against using the designated cleaning technique, *e.g.*, "do not dry clean."

One commenter suggested that the Commission adopt the Canadian system, which uses the five generic symbols and three colors (red, green, and yellow).[38] However, several comments noted that the use of color makes labels much more expensive.[39] In addition, neither the Canadian nor the Mexican system provides a method of communicating all the information required by the current Care Labeling Rule. For example, if chlorine bleach would harm a product but non-chlorine bleach would not, section 423.(b)(1)(iv) of the Rule requires that the label contain a warning such as "only non-chlorine bleach when needed." However, these systems do not address the use of non-chlorine bleach.[40] Moreover, with respect to dry cleaning, they do not have a method for providing warnings about parts of the dry cleaning process that might damage the garment.[41]

With respect to machine washing, the Mexican system does not convey any refinements, such as "gentle cycle," and the Canadian system does so by means of color (a yellow washtub means "gentle setting.") Neither system offers a means of referring to "permanent press cycle" in washing, or various cycles in dryers. Both offer symbols for natural drying (dry flat, hang to dry, and, in Canada, drip dry.) Both systems require that temperature for washing be indicated in Celsius in the washtub. For tumble drying, Mexico has no indication of temperature, and Canada uses a yellow symbol to mean "low temperature." In both systems, temperatures for ironing can be indicated by a system of three dots, one for low, two for medium, and three for high.

The Commission has concluded that the ASTM system basically is compatible with the Canadian and Mexican systems. Although there are differences among the systems, they do not pose insurmountable problems.[42] The ASTM system includes some refinements that are not a part of those systems (*e.g.*, underlining to indicate gentle or permanent press cycles in washers and dryers). The Commission has tentatively decided that consumer education would be more effective if the system was introduced as a whole, including the use of underlining.[43] Nevertheless, the Commission seeks comment on whether the ASTM system, with its use of underlining to reflect cycle variations, should be permitted or whether only the basic symbols, without refinements, should be allowed.

With respect to temperature indications, the ASTM system differs slightly from the Canadian and Mexican systems. Nevertheless, the dot system for temperature, which can be combined with the Celsius temperature as required for the washtub symbol in Mexico and Canada, seems the best compromise for temperature indications.[44]

The "do not bleach" symbol (a triangle with an "X" through it) represents the only instance in which a symbol in the ASTM system has a different meaning in Canada or Mexico. In Mexico, this symbol means "do not use chlorine bleach"; in the ASTM system, it means "do not [use any] bleach," chlorine or non-chlorine. To avoid this conflict, the Commission has tentatively decided to accept the ASTM system with one exception and addition - *i.e.*, the elimination of the triangle with an "X" through it and the substitution of a shaded triangle with an "X" through it for the "do not bleach" symbol. However, the Commission has been informed that members of the ASTM subcommittee that developed that care symbol system are considering making this modification to the system. If this change is made by ASTM prior to the final issuance by the Commission of a conditional exemption for the use of symbols, the Commission will simply reference the modified version of the ASTM system, without exceptions or additions.[45]

being the ASTM standard. By implication, however, modified charts could be distributed under some other title (e.g., Care Symbols Used in the U.S.) This document has been placed on the public record for examination by interested parties.

[38] Todd Uniform (19), p.1.

[39] Woolrich (21) p.1; Carter's (24) p.1. Fruit (64), at p.4, stated that it could not endorse a system which required the use of color, but, with that proviso, it endorsed the Canadian system.

[40] Several comments noted this deficiency. Pittsfield (17) p.2; Clorox (32) p.4; V.F. Corp. (36) p.4; Pullen (44) p.5; ATMI (56) p.4; GAP (78) p.4. Consumer Union (31) stated, at p.2, that "we need a symbol pertinent to non-chlorine bleach as the industry plans to move away from chlorine bleach." The Trilateral Committee (69), at p.2, and ATMI (56), at p.2, both recommend that any care symbol system adopted by the U.S. include chlorine and non-chlorine bleach instructions.

[41] For dry cleaning, section 423.(b)(2)(ii) of the Rule states that there must be a warning about any part of the normal dry cleaning process that would harm the product, and the Appendix provides examples such as "short cycle," "low moisture," "do not tumble," and "no steam." Canada uses a yellow circle to indicate "dry clean with caution," but that warning is too vague to satisfy the requirements of the Rule.

[42] The Canadian system is not mandatory; thus, the use of symbols without colors should be acceptable.

[43] Some comments expressed the concern that the ASTM system may be too complicated. USA–ITA (57) p.3; Fruit (64) p.4.

[44] The ASTM standard is not entirely clear as to whether temperature can be indicated by the use of dots and the Celsius temperature. The Commission solicits comment on this issue.

[45] The ASTM subcommittee recently voted on two additions to the symbols for machine drying: a circle in the square with no dots to indicate any heat; a blacked-in circle to indicate air dry only (no heat). These changes must still be submitted to the entire membership of ASTM. In addition, the subcommittee has discussed modifying the dry cleaning symbol so that lines indicating refinements to dry cleaning are placed next to the circle at an acute angle; if all four refinements were used, the symbol would consist of a circle surrounded by four lines in a diamond formation rather than a square. This avoids conflict with the symbol for machine drying (which is a circle in a square). These changes provide useful additional symbols, and, if these changes are adopted by ASTM, the Commission proposes adopting the ASTM system with these changes. However, if adopted, the conditional exemption will reference a specific version of the ASTM system.

[46] Schwab (10) p.1; Fieldcrest (11) pp. 2–3; ASTM (16) p.6; Pittsfield (17) p.1; Woolrich (21) p.1; Carter's (24) p.2; Consumers Union (31) p.1; Clorox (32) p.4; Business Habits (38) p.4; Pullen (44) p.4; AHAM (53) p.2; Fruit (64) p.3; AAMA (68) p.3. Some comments stated that symbols should not replace words until a consumer education program has become effective. Consumers Union (31) p.1; VF Corp. (36) p.4; Gap (78) p.3.

[47] Consumers Union (31) p.1; Gap (78) p.3.

[48] Comment 17, p.2.

[49] Fieldcrest (11) p.3; Pittsfield (17) p.2; Carter's (24) p.2; Fruit (64) p.3; AAMA (68) p.3.

[50] Attachment to Subcomm. D13.62 Minutes, attached to ASTM comment (16).

VI. Consumer Education

Many comments noted the need for education, although most expressed confidence that U.S consumers could adapt to care symbols with appropriate education.[46] Some comments indicated that symbols should be used with words until the U.S. population understands the symbols.[47] Pittsfield, on the other hand, argued that consumer education based on dual disclosure—the use of symbols with accompanying written instructions on the label—will not work, as shown by the U.S. experience with the metric system.[48]

The Commission agrees that the use of symbols with explanatory written instructions on the permanently attached label would probably not be an effective way to teach the symbol system. However, other comments suggested strategies that would allow consumers to use the symbols while learning them, such as hangtags on garments or charts placed on washing machines, product packaging, or on the back of detergent boxes.[49] ASTM, cognizant of this issue, formed a Task Group on Care Symbol Education that includes the Soap and Detergent Association, the Association of Home Appliance Manufacturers and numerous other trade associations and representatives from the USDA Extension Service.[50] The members of this task group are interested in educating consumers about the symbols. In addition, numerous commenters stated they would participate in a program of consumer education. The Commission seeks comment on the amount of time that would be needed to develop and disseminate consumer education and what forms consumer education might take. The Commission itself would be pleased to work with industry members on such campaigns if the Commission ultimately adopts the proposed conditional exemption.

The Commission believes, however, that although educational campaigns will be necessary and helpful, for at least for an initial 12 month period, manufacturers and importers who choose to use symbols without words should be required to attach explanatory hangtags to each such garment. This will ensure that consumers continue to have access to information about garment care when they make their purchases. Consumers who wish to do so could keep one or more of these hangtags in their laundry rooms. The Commission seeks comment on this proposed requirement of the exemption.

VII. Request for Comment

A. Terms of the Proposed Conditional Exemption

The Commission proposes a conditional exemption to the Rule to allow the use of certain care symbols without language. The proposed conditional exemption from the Care Labeling Rule simply expands the terminology that those covered by the Rule can use to convey the required information. Specifically, the proposed conditional exemption would (1) permit the use of the ASTM system of symbols with an exception and addition (i.e., the substitution of a different "do not bleach" symbol) and (2) require that, for a 12 month period, care labels with information conveyed only in symbols be accompanied by hangtags explaining the meaning of the symbols.

B. Questions on Proposed Conditional Exemption

The Commission specifically solicits written public comments on the following questions, as well as any other issues relevant to granting or denying the conditional exemption described above:

1. Will the underlining of the washtub or the machine drying symbol be confusing to Canadian and Mexican consumers? Will the underlining be confusing to American consumers? If so, should the Commission "except" this part of the ASTM system from the conditional exemption?[51] Will "excepting" the underlining of symbols reduce the benefit of symbols or impose costs on manufacturers?

2. Should the Commission specify the minimum size of the symbols or are existing requirements of legibility sufficient?[52]

3. Should explanatory hangtags providing care information in language be required for more than one year? Less than one year? How long would it take for hangtags to be prepared and affixed to garments?

4. What types of consumer education should be planned and to what extent are industry members willing to participate in such campaigns? How long would it take to develop and undertake such campaigns?

5. If the Commission were to grant a conditional exemption, when should it become effective?

6. Does ASTM's copyright pose a barrier to the use of the ASTM system?

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

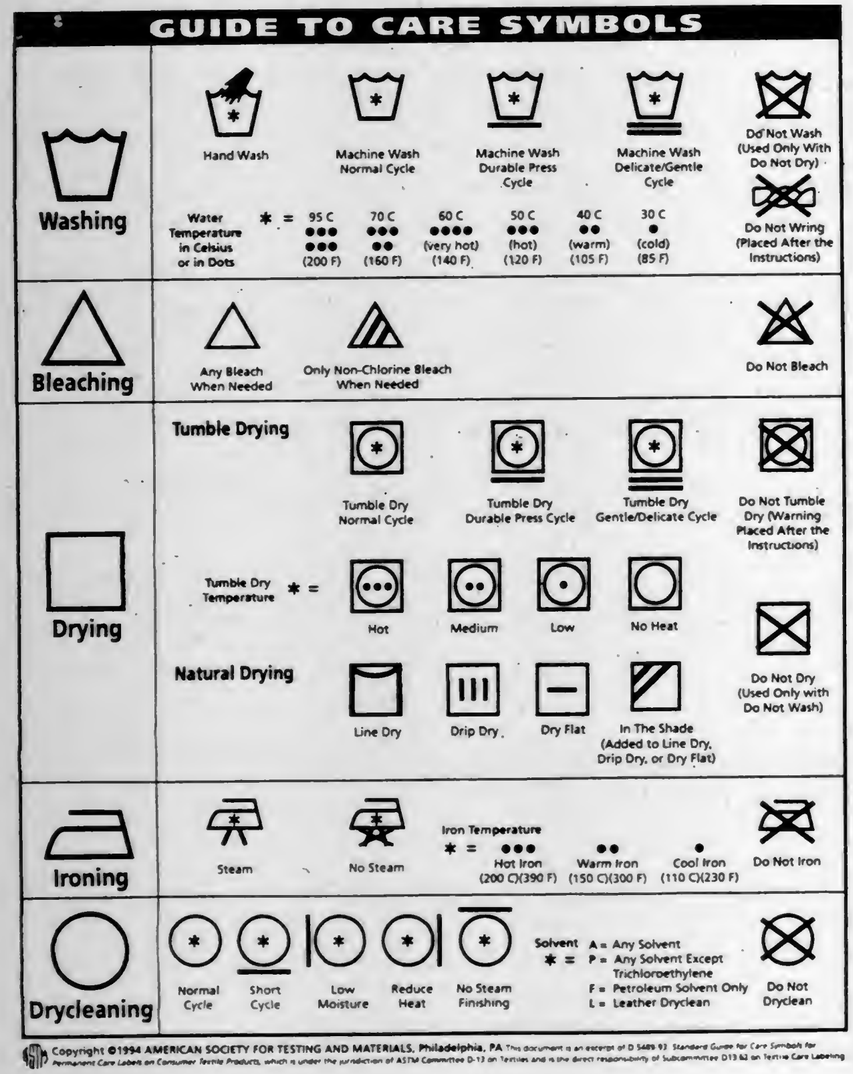
BILLING CODE 6750–01–P

[51] Mexico does not indicate cycles at all, and Canada does so by the use of color.

[52] Pittsfield, a woven label manufacturer, stated that "after surveying the label-producing industry, we would also recommend that care symbols on a label be a minimum of 5 mm in height to ensure legibility." Comment 17, p.3. Paxar, which described itself as the "world's largest manufacturer of various forms of identification for the textile and apparel industry," stated that woven label manufacturers may find it difficult to weave symbols clearly, but no problems should exist with printed labels. Comment 42, p.1. The Rule currently defines a "care label" as a permanent label or tag that "will remain legible during the useful life of the product." 16 CFR 423.1(a).

Commercial & Home Laundering and Drycleaning Symbols

THE FOLLOWING CHART illustrates the symbols to use for laundering and drycleaning instructions. As a minimum, laundering instructions shall include, in order, four symbols: washing, bleaching, drying, and ironing; and drycleaning instructions shall include one symbol. Additional symbols may be used to reduce language-dependent instructions.



Copyright ©1994 AMERICAN SOCIETY FOR TESTING AND MATERIALS, Philadelphia, PA This document is an excerpt of D 5489-93 Standard Guide for Care Symbols for Permanent Care Labels on Consumer Textile Products, which is under the jurisdiction of ASTM Committee D-13 on Textiles and is the direct responsibility of Subcommittee D13.62 on Textile Care Labeling

[FR Doc. 95–28290 Filed 11–15–95; 8:45 am]
BILLING CODE 6750–01–C

DEPARTMENT OF THE TREASURY

U.S. Customs Service

19 CFR Part 134

RIN 1515–AB82

Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to ease the requirement that whenever words appear on an imported article indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity to those words. Customs believes that, consistent with the statutory requirements of 19 U.S.C. 1304, the country of origin is only necessary to be in close proximity to the name of the other geographic location on the imported article if the name of the other geographic location may mislead or deceive the ultimate purchaser as to the actual country of origin of the imported article.

DATES: Comments must be received on or before January 16, 1996.

ADDRESSES: Comments (preferably in triplicate) must be submitted to the U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229 and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Anthony Tonucci, Office of Regulations and Rulings, 202–482–6980.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods are the product. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Section 134.46, Customs Regulations (19 CFR 134.46) provides that in any case in which the words "United States," or American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

A strict application of § 134.46 would require that in any case in which a non-origin locality reference appears on an imported article or its container, the actual country of origin of the article must appear in close proximity and in comparable size lettering to the locality reference preceded by the words "Made in," "Product of," or other words of similar meaning.

This document proposes to modify this regulation to reflect Customs application of the regulation consistent with 19 U.S.C. 1304. In practice, Customs has applied a less stringent standard in determining whether the country of origin marking appearing on an imported article or its container is acceptable. That is, Customs takes into account the question of whether the presence of words or symbols on an imported article or its container can mislead or deceive the ultimate purchaser as to the actual country of origin of the article. Consequently, if a non-origin locality reference appears on an imported article or its container, Customs applies the special marking requirements of § 134.46 only if it finds that the reference may mislead or deceive the ultimate purchaser as to the actual country of origin of the imported article. If it is concluded that the non-origin locality reference would not mislead or deceive an ultimate purchaser as to the actual country of origin of the imported article, Customs policy is that the special marking requirements of § 134.46 are not triggered, and the origin marking only needs to satisfy the general requirements of permanency, legibility and conspicuousness under 19 U.S.C. 1304 and 19 CFR Part 134. This less stringent application is evidenced in numerous Headquarters Customs Rulings.

For example, Customs has allowed a "design/decoration" exception for not applying the special marking requirements of § 134.46. In Headquarters Ruling Letter (HQ) 732412 of August 29, 1989, Customs considered whether jeans met the country of origin marking requirements of § 134.46. In that case, the jeans were labeled as follows:

"Kansas" appeared on a fabric label attached to the rear right pocket. "Kansas Jean" appeared on the rear pocket snaps. "Kansas" and "Kansas Jeans Navy Wear" were printed on a leather label attached to the front right pocket. And a stylized "K" and the words "J. Kansas" decorated the front button. The country of origin of the jeans appeared on a fabric label sewn into the waistband.

Noting that Customs often distinguished those special cases in which the circumstances were such that reference to a place other than the country of origin on an imported article would not confuse the ultimate purchaser as to the true country of origin, *i.e.*, design/decoration use of locality name and finding that the country of origin marking was conspicuous in that it appeared in a usual place, in lettering sufficient to be easily found and read, Customs determined that the United States references ("Kansas") did not trigger the marking requirements of § 134.46. See also HQ 723604 of November 3, 1983, in which "USA" letters on men's bikini-style swimming trunks did not trigger the marking requirements of 19 CFR 134.46 because such marking was used as a symbol or decoration and would not reasonably be construed as indicating the country of origin of the article.

In HQ 733833 of February 19, 1991, however, Customs found that the design/decoration exception to § 134.46 was not applicable to the letters "USA" printed alone next to the name "Brittania" on a leather-like pouch affixed to a pair of jeans because it could potentially mislead an ultimate purchaser and could be considered an indication of origin rather than part of the design of the jeans, thus triggering the special marking requirements of 19 CFR 134.46.

Section 134.46 was promulgated pursuant to the statutory authority of 19 U.S.C. 1304(a)(2), which provides that the Secretary of the Treasury may by regulations require the addition of any words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser.

Customs believes that the strict requirements of § 134.46 are not always necessary to "prevent deception or mistake as to origin of the article" in accordance with 19 U.S.C. 1304. Accordingly, Customs is proposing to modify § 134.46 as set forth below.

Proposal

Customs proposes to amend § 134.46 to reflect the fact that the special marking requirements of § 134.46 shall apply only if the non-origin reference is likely to mislead or deceive the ultimate purchaser as to the actual country of origin of the article.

This document also proposes to remove § 134.36(b), Customs Regulations (19 CFR 134.36(b)). This regulation provides that an exception from marking shall not apply to any article or retail container bearing any words, letters, names or symbols described in § 134.46 or § 134.47 which imply that an article was made or produced in a country other than the actual country of origin.

Since the special marking requirements of § 134.46, as proposed to be amended, would be triggered only when the marking appearing on an imported article or its container is capable of misleading or deceiving an ultimate purchaser as to the actual country of origin of the article, § 134.36(b) which serves the same purpose for the ultimate purchaser would be redundant and no longer needed.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

Regulatory Flexibility Act

Based on the analysis set forth in the preamble, it is certified under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the rule is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information: The principal author of this document was Janet L. Johnson, Regulations Branch, U. S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Labeling, Packaging and containers.

Proposed Amendments

It is proposed to amend Part 134, Customs Regulations (19 CFR Part 134), as set forth below.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for Part 134 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

2. It is proposed to amend § 134.36 by revising its heading to read "Inapplicability of Marking Exception for Articles Processed by Importer", removing the designation and heading of paragraph (a) and removing paragraph (b).

3. It is proposed to revise § 134.46 to read as follows:

§ 134.46 Marking when name of country or locality other than country of origin appears.

In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, which may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

Approved: September 6, 1995.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–28253 Filed 11–15–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Training of Lessee and Contractor Employees Engaged in Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of a public workshop and a pilot testing program.

SUMMARY: This notice announces a public workshop and a pilot testing program that Minerals Management Service (MMS) will conduct. The public workshop will assist MMS to acquire additional information and comments pertinent to the recently published training proposed rule and the pilot testing program. The purpose of the pilot testing program is to assess the drilling training and testing that lessee and contract employees receive.

DATES: MMS will conduct the public workshop on December 6, 1995, from 8:30 a.m. to 5:00 p.m., at the location listed in the **ADDRESSES** section.

ADDRESSES: MMS will hold the workshop in the MMS Gulf of Mexico Regional Office located at 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

FOR FURTHER INFORMATION CONTACT: Wilbon Rhome, Information and Training Branch, telephone (703) 787–1587 or FAX (703) 787–1575.

SUPPLEMENTARY INFORMATION: MMS recently published a proposed rule (60 FR 55683, November 2, 1995) concerning Subpart O—Training, in the **Federal Register**. New elements that provide more flexibility include alternative training methods and third-party training program accreditation (previously termed "certification"). In order to discuss the new elements of the training rule, MMS will conduct the workshop listed in the **ADDRESSES** section. The workshop will include a session on the proposal to allow third parties to accredit to accredit worker training programs. Currently, MMS accredits these programs.

MMS will also present a summary of the third-party accreditation comments received from the August 5, 1994, advance notice of proposed rulemaking (59 FR 39991). We will outline the range of options that we have identified for third-party accreditation. These options range from MMS accrediting third parties to having non-profit organizations accredit them. The workshop will provide an additional opportunity to discuss third-party options.

MMS has launched a pilot testing program that will initially cover the drilling well-control training that lessee and contract employees receive. Under the authority located at paragraph (b) of 30 CFR 250.215, MMS may test trainees at a training facility.

MMS has gathered sample test questions from various schools. These questions form the current data base that MMS is using to generate tests. MMS will randomly visit schools to administer a test to trainees in drilling. The test will take place after the trainees complete the course. Any trainee who does not pass the MMS-conducted test must pass a retest administered by the school to continue to work in drilling in the OCS.

MMS is currently administering a written test at a small sampling of schools. MMS will use the workshop as an opportunity to exchange ideas about the pilot testing program.

MMS encourages all interested parties to attend this workshop. The workshop will include presentations by MMS and an open comment period.

Registration: The workshop will not have a registration fee. However, to assess the probable number of participants, MMS requests participants to register by contacting Wilbon Rhome, Information and Training Branch, telephone (703) 787–1587 or FAX (703) 787–1575. Limited seating is available and will be on a first-come-first-seated basis.

Proceedings: MMS will have a service transcribe the proceedings and make copies available for purchase. We will supply the details during the workshop for obtaining copies of the proceedings.

Dated: November 3, 1995.

Thomas M. Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95–28175 Filed 11–15–95; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

43 CFR Part 2810

[WO–420–6310–00]

Tramroads and Logging Roads—Subpart 2812—Over O. and C. and Coos Bay Revested Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Land Management (BLM) plans to revise regulations governing logging roads over revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands (collectively known as the O&C lands). The changes will bring the existing cost-sharing road program under the regulatory framework of Section 502 of the Federal Land Policy and Management Act of 1976 (FLPMA) and incorporate environmental protection and other requirements for rights-of-way over public lands found in Title V of FLPMA. Another change will allow compensation for the use of roads and rights-of-way where the landowner has granted BLM rights of access for recreational purposes. In addition, the entire subpart will be revised, using a "plain English" approach, to remove obsolete terms and improve its clarity, organization, and readability. The purpose of this notice is to solicit comments to help guide preparation of the proposed rule. This notice presents only a general description of the actions being considered and includes no regulatory text.

DATES: Comments on this advance notice of proposed rulemaking must be received by December 18, 1995. Comments postmarked after this date may not be considered in the preparation of the proposed rule.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include "ATTN: O&C" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Styduhar, Oregon State Office, Bureau of Land Management, (503) 952–6454.

SUPPLEMENTARY INFORMATION: The BLM is responsible for the conservation and management of about two million acres of public forestlands in western Oregon, commonly referred to as the O&C lands. The O&C lands are generally intermingled with private lands in a checkerboard pattern which creates particular problems with respect to land management as each party must cross the lands of the other for access.

The Oregon and California Revested Lands Sustained Yield Management Act of August 28, 1937 (43 U.S.C. 1181a and 1181b) granted to the Secretary of the Interior the general authority to provide for the use, occupancy, and development of the O&C lands through permits and rights-of-way. The BLM has had a cost-share logging road right-of-way program in western Oregon under this authority since the early 1950's. The regulations for this program are contained in 43 CFR Subpart 2812. With the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), all right-of-way authorizations must be issued under the authority and requirements of Title V of FLPMA (43 U.S.C. 1761–1771). The Secretary was given specific authority to enter into cost-share agreements under Section 502 of the Act.

The BLM has continued the use of regulations in 43 CFR Subpart 2812 on an interim basis pending the preparation and publication of new cost-share regulations. Since the regulations contained in this subpart clearly represent a cost-share road agreement concept, it is proposed by the Secretary that these regulations be revised as necessary and adopted pursuant to the authority contained in Section 310 of FLPMA (43 U.S.C. 1740) for the purpose of implementing Section 502. Continuing the use of pre-existing regulations with only minor modifications and changes would provide for the orderly and continuous administration of all outstanding permits and agreements issued prior to the effective date of this rulemaking.

BLM has identified the following changes that it intends to include in the proposed rule and invites the public to submit information and comments:

1. Include as an authority Title V of FLPMA, thus bringing the authority section up to date.

2. Modify the definition of "management" to include the conservation of environmental resources. This will ensure that protection of the environment is

considered equally with all other management objectives.

3. Provide for reimbursement of reasonable costs incurred by the United States in considering right-of-way requests. The BLM currently charges no fees for processing right-of-way applications under this subpart.

4. Remove the restriction on granting permits to noncitizens since this restriction is no longer required under FLPMA.

5. Permit the collection of additional information that the Secretary deems necessary to determine whether a right-of-way should be granted, issued, or renewed, and what terms and conditions should be included in the right-of-way.

6. Remove the provision allowing construction in advance of the issuance of a permit, because there is no authority for it in Title V of FLPMA.

7. Allow either party to record legal instruments. As a practical matter, BLM rather than the applicant often records these instruments, and the regulation should be amended to authorize this practice.

8. Provide regulatory authority for the BLM to object to the location of a road right-of-way across public lands because of potential effects on species listed as threatened or endangered under the Endangered Species Act.

9. Add terms and conditions including environmental protection provisions and measures to protect cultural sites and objects. Include a reservation of the right of the government to permit compatible use of the right-of-way by others.

10. Add an abandonment provision providing that failure to use the right-of-way for a continuous 5-year period will be treated as abandonment. This presumption of abandonment would be rebuttable by the holder.

11. Establish terms and conditions whereby the government can exercise the rights received from a permittee for use by properly licensed hunters and fishermen and by other recreationalists to reach United States lands.

The public is invited to raise any additional issues or concerns related to the proposed rulemaking, including any other factors that should be considered in its development. BLM is particularly interested in ideas about how to reorganize, simplify, and clarify the existing regulations.

In accordance with the Paperwork Reduction Act of 1995, BLM is required to provide notice in the **Federal Register** concerning a proposed collection of information. The purpose of the notice is to solicit comments on whether the collection of information is necessary, the accuracy of BLM's estimate of the burden imposed by the collection, ways to enhance the quality and usefulness of the information, and ways to minimize the burden. Elsewhere in this issue of the **Federal Register**, BLM is publishing a notice concerning the form used by applicants for right-of-way permits.

The principal author of this advance notice of proposed rulemaking is John Styduhar, Oregon State Office, assisted by Pat Boyd, Regulatory Management Team, Washington Office.

Dated: November 13, 1995.

Annetta Cheek,

Regulatory Management Team.

[FR Doc. 95–28294 Filed 11–15–95; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 4]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; November Advisory Committee Public Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Notice; change of location of November Advisory Committee Meeting.

SUMMARY: This notice announces a change in the dates and location of the November meeting of NHTSA's Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming).

DATES: Tuesday–Thursday, November 28–30.

ADDRESSES: The November meetings of the Advisory Committee will be held at Maryland State Highway Administration, 7491 Connelly Drive, Hanover, Maryland 21076.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator:* Lynn Sylvester, Federal Mediation and Conciliation Service (phone: 202–606–9140; FAX: 202–606–3679).

SUPPLEMENTARY INFORMATION: In Notice 3 of Docket No. 95–28, the National Highway Traffic Safety Administration (NHTSA) announced that the November meetings of the Advisory Committee for the purposes of negotiating the contents of the preamble and a proposed amendment to 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to develop recommended specifications for adding a visual/optical aimability requirement for the lower beam headlamp, would be held on Tuesday/Wednesday November 28/29 beginning at 9:00 a.m. in room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, DC (60 FR 42496).

The Committee has decided to hold a third day of meetings, on Thursday, November 30, and to conduct all its November meetings at the offices of the Maryland State Highway Administration, 7491 Connelly Drive, Hanover, Md. This action is taken to facilitate a nighttime demonstration of headlamp aiming and visibility of overhead signs. The meeting on Tuesday, November 28 will begin at 12:30 p.m. The meeting on Wednesday, November 29 will begin at 10:00 a.m. The meeting on Thursday, November 30, will begin at 9:00 a.m.

The meetings are open to the public, except for the nighttime demonstration of headlamp aiming and visibility of overhead signs. For logistical reasons, this must be restricted to the Committee, and to State Highway Administration personnel involved in the demonstration.

As announced previously, the Committee will review the tentative schedule for meetings for January, February, and March 1996, at its November meeting, and a further notice will be published if there is any change in this schedule.

Issued: November 9, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28296 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 95–88, Notice 01]

RIN 2127–AG02

Federal Motor Vehicle Safety Standards; Brake Hoses; Whip Resistance Test

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: As the result of an inquiry from Earl's Performance Products, this document proposes to amend Standard No. 106, *Brake Hoses*, by revising the whip resistance test. Under the proposal, it would be permissible, for the purpose of the test, to mount such brake hose assemblies using a supplemental support. This proposal would serve to amend a provision that has the unintended consequence of prohibiting the manufacture and sale for use on the public roads of a type of brake hose that has significant safety advantages.

DATES: *Comments.* Comments must be received on or before January 16, 1996.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202–366–5274).

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 106, *Brake Hoses*, specifies labeling and performance requirements for motor vehicle brake hose, brake hose assemblies, and brake hose end fittings. The Standard includes several requirements, including one for whip resistance. Section S5.3.3, *Whip resistance*, specifies that "A hydraulic brake hose assembly shall not rupture when run continuously on a flexing machine for 35 hours." The purpose of the whip resistance requirement is to replicate the bending cycles that a brake hose experiences when mounted on a vehicle's front axle. The flexing machine simulates the turning of the front wheels combined with the jounce and rebound of the wheel on rough roads.

Section S6.3 specifies the test conditions for the whip resistance test, including the testing apparatus, test preparation, and test operation. The standard specifies that the testing apparatus is required to be equipped with capped end fittings that permit mounting at each end point. The present specifications requirements for the whip test apparatus are patterned after an existing Society of Automotive Engineers (SAE's) Recommended Practice, J1401, *Hydraulic Brake Hose Assemblies for Use with Nonpetroleum Based Hydraulic Fluids* (June 1990).

II. Request for Interpretation and NHTSA's Response

On December 8, 1994, Earl's Performance Products (Earl's) contacted the agency requesting an interpretation of the whip resistance requirements in Standard No. 106. Specifically, that company asked about the permissibility of using an alternative whip resistance test apparatus for testing hydraulic brake hose. Earl's is seeking permission to use the alternative fixture because it wishes to begin selling its armored brake hose for use on the public roads and its hose will not pass the present whip resistance test. The test fixture would provide a pivoted supplemental hose support for use with Earl's brake hose, which is armored with braided stainless steel. The alternative test fixture is based on the manner in which its brake hose is currently mounted on racing vehicles and in which it would be mounted on vehicles used on the public roads if the agency adopts the amendment requested by Earl's. The Standard specifies that the test sample be "mounted through bearings at each end * * *" (S6.3.1(a)) Earl's armored brake hoses are installed differently than conventional hoses, since Earl's hoses, unlike conventional hoses, are attached to the vehicle frame.

Earl's has manufactured its armored brake hose for use in off-road, high performance race cars since the 1960s. It claimed that its product is of very high quality and easily meets all of the requirements in Standard No. 106, except the whip resistance test. Its product fails the whip resistance test due to cyclic stress at the interface between the hose and the swaged collar at the fixed end of the hose assembly. Such cyclic stress occurs in the real world also, but does not pose a problem in that environment because the hose is protected by the supplemental support.

Earl's further indicated that it had successfully tested hose assemblies from 9 inches to 24 inches using its new test fixture. In describing its test fixture, that company stated that

> * * * the whip dampener consists of a spherical bearing enclosed in a machined housing. The housing clips into the OEM bracket where the OEM hard brake tubing joins to the flexible brake hose. The flexible brake hose of stainless armored teflon is inserted through the bearing on assembly and cannot be removed. Suitable threeded couplings * * * are provided at each end of the assembly to match the OEM threads at the end of the hard lines and at the caliper of the wheel cylinder * * *

On April 24, 1995, NHTSA responded to Earl's request for an interpretation, by stating that

> Section S6.3 cannot be interpreted to permit mounting the brake hose at the "whip dampener." S6.3.1 *Apparatus* specifies a test apparatus that mounts the brake hose at "capped end fittings" on one end and "open end fittings" on the other, and specifies no mounting points in between. Thus a test apparatus that mounts the brake hose at a "whip dampener," which is not an end fitting would not meet Standard No. 106.

The agency then stated that it would initiate rulemaking to further consider whether to amend the whip resistance test to permit a supplemental support.

III. Agency Proposal

After reviewing the issues raised in the letter from Earl's, NHTSA has decided to propose amending the whip resistance test of Standard No. 106. Under this proposal, section S6.3.2 would be amended to permit a pivoted supplemental support, thereby providing an optional way to mount certain brake hose assemblies during the test. Without such an amendment, those armored hoses would remain prohibited because they cannot comply with the current whip resistant test. The proposed amendment is intended to allow the mounting of Earl's brake hose assembly in the same way that it is mounted in the real world. The proposal applies to those brake hose assemblies that are fitted with a supplemental support which cannot be removed from the hose without destroying the hose. The supplemental support would be placed so that it is spaced in accordance with the recommendation of the brake hose assembly manufacturer. The agency invites comments about the appropriateness of the proposed modification to the whip resistance test.

NHTSA believes that the provision it proposes to amend has the unintended consequence of prohibiting the manufacture and sale for use on the public roads of a type of brake hose that has significant safety advantages. Among the safety advantages are the elimination of hose swell under pressure which results in a significant reduction in brake pedal travel and a much firmer brake pedal feel. The firmer pedal allows the driver to modulate braking force more precisely. These safety advantages are relevant in "typical road environments." The agency notes that armored brake hoses are designed to withstand operating conditions, such as those experienced in racing environments, that are significantly more severe than those experienced in typical road environments. Brake hoses of this type

are of higher quality and more expensive than those typically installed for use on the public roads.

Leadtime

The statute requires that each order shall take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. 49 U.S.C. 30111(d) NHTSA has tentatively concluded that there would be good cause not to provide the 180 day lead time given that this amendment would have no adverse effect on manufacturers. The proposal merely specifies an alternative method of testing certain brake hoses. Based on the above, the agency has tentatively concluded that there is good cause for an effective date 30 days after publication of the final rule. NHTSA requests comments about whether a 30 day effective date is appropriate or whether more leadtime is necessary.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have no mandatory effects. Instead, the proposed rule would permit the use of brake hoses which are designed to be installed using a supplemental support, such as those manufactured by the petitioner that are armored with braided stainless steel. Therefore, this rulemaking would not have any cost impacts.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake hose manufacturers typically would not qualify as small entities. Further, as noted above, the proposal would have minimal, if any impacts on costs or benefits. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 106, *Brake Hoses*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. § 571.121 would be amended by adding S6.3.2(d), which would read as follows:

§ 571.121 Standard No. 106; Brake Hoses.

* * * * *

S6.3.2 * * *

(d) For a brake hose assembly fitted with a supplemental support which cannot be removed from the hose without destroying the hose, the brake hose assembly may be mounted using a supplemental support. Mount the supplemental support in the same vertical and horizontal planes as the stationary header end of the whip test fixture described in S6.3.1(b). Place the supplemental support so that it is spaced in accordance with the recommendation of the brake hose assembly manufacturer for mounting the hose assembly on a vehicle.

* * * * *

Issued on: November 13, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28357 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 95–79; Notice 1]

RIN 2127–AG01

Federal Motor Vehicle Safety Standards; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to exclude certain vehicles from the application of the agency's standard on steering control rearward displacement. The excluded vehicles would be passenger cars and other light vehicles that are certified to comply with the frontal barrier crash test requirements of the agency's occupant crash protection standard by means of an air bag. The agency believes that the engineering considerations that go into designing a vehicle with air bags would ensure that the vehicle would have the same performance for steering control rearward displacement as is currently required by regulation.

DATES: *Comment Date:* Comments must be received by January 16, 1996.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, Office of Vehicle Safety Standards, NPS–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329. For legal issues: Mr. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1995 directive, "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, NHTSA has undertaken a review of all its regulations and directives. During the course of this review, the agency identified several regulations that are potential candidates for rescission or amendment. One of these regulations is Standard No. 204, *Steering Control Rearward Displacement*, which may be redundant for certain vehicles, given the actions which are separately required to be taken to comply with Standard No. 208, *Occupant Crash Protection*.

Standard No. 204 specifies requirements that limit the rearward motion of the steering column in a frontal crash. The standard specifies that the upper end of the steering column and shaft may not be displaced horizontally rearward more than 5 inches in a 30-mile-per-hour frontal barrier crash test. The standard applies to passenger cars and other light vehicles.

Standard No. 204 is one of the agency's original safety standards. In conjunction with Standard No. 203, *Impact Protection For The Driver From The Steering Control System*, the standard is intended to reduce the likelihood of chest, neck or head injuries in frontal impact accidents.

In 1975, NHTSA amended Standard No. 203 to exclude from its requirements vehicles that complied with the frontal barrier crash test requirements (S5.1) of Standard No. 208 by means other than safety belts, i.e., by air bags. 40 FR 17992, April 24, 1975. NHTSA stated at that time that redundant occupant crash protection offered by certain standards is justified for those situations where the primary occupant crash protection system fails or multiple collisions occur. However, NHTSA determined that the redundant protection of Standard No. 203 was not justified where it directly interfered with the development of a more advanced, convenient and effective occupant protection system, such as air bags.

In 1988, NHTSA denied a petition for rulemaking from Mitsubishi which requested that the agency amend Standard No. 204 to exclude vehicles that comply with the frontal barrier crash test requirements of Standard No. 208 by means other than safety belts. 53 FR 780, January 13, 1988. The agency stated:

> "The agency does not agree that the protection provided by Standard No. 204 is unnecessary for vehicles equipped with air bags. The standard essentially requires hardware to disconnect steering gear movement from the steering column under crash conditions. The standard provides protection to the driver of an air bag equipped vehicle against chest, neck or head injuries which could occur in frontal collisions at speeds below the deployment level of the vehicle's air bag, or in angular impacts where an air bag might not be as likely to deploy. NHTSA further believes that, in the absence of Standard No. 204, it is possible for a steering assembly to displace more than five inches in a situation where the injury criteria of Standard No. 208 were met. Thus, although the driver's impact with the assembly fell within the injury criteria of the latter standard, the rearward motion of the assembly might entrap the driver or make escape from the vehicle more difficult.

In the context of reviewing whether any of its requirements are no longer necessary, NHTSA believes it is appropriate to reconsider the position it took in denying the Mitsubishi petition. In particular, the agency believes that it should distinguish between whether it is possible for a steering assembly to displace more than five inches in a situation where an air-bag-equipped vehicle meets the injury criteria of Standard No. 208, and whether there is any reasonable likelihood of such an event.

NHTSA believes that one of the most fundamental engineering considerations that manufacturers take into account in designing an air-bag-equipped vehicle is to provide a secure platform for the air bag. This is because, in order to design an effective air bag, the designer must know the relative location of the air bag and the protected occupant. If the air bag platform were moving up or down, or backwards or forward during a crash, it could adversely affect performance. Since the driver air bag is located on the steering column, NHTSA believes that the engineering consideration of ensuring that the air bag platform remains secure will lead manufacturers to take steps that will also ensure that Standard No. 204's specified performance for steering control rearward displacement is satisfied, even in the absence of such standard.

NHTSA also believes that another important engineering consideration that manufacturers take into account in designing air-bag equipped vehicles is ensuring that the air bags are not too close to the vehicle occupants. This is an important consideration because a deploying air bag can injure a person who is sitting too close to the air bag.

The agency notes that the Motor Vehicle Manufacturers Association (now called the American Automobile Manufacturers Association) was sufficiently concerned about the issue of proper spacing between vehicle occupants and air bags to petition NHTSA to require a vehicle label that would, among other things, caution passengers not to sit unnecessarily close to the point from which the air bag will be deployed. As a result of this petition, the agency amended Standard No. 208

to require a label providing this information. See 57 FR 59043, December 14, 1992, and 58 FR 46551, September 2, 1993.

The agency believes that manufacturers take account of this same concern in designing their air-bag equipped vehicles. Hence, the consideration of ensuring that the driver air bag is not too close to the driver will lead manufacturers to limit rearward movement of the steering column in a crash, i.e., movement toward the driver, even in the absence of a regulation.

For the reasons discussed above, NHTSA has tentatively concluded that the requirements of Standard No. 204 are unnecessary for vehicles which are certified to comply with the frontal barrier crash test requirements of Standard No. 208 by means of air bags. The agency is accordingly proposing to exclude such vehicles from the applicability of Standard No. 204.

The agency emphasizes that the reason for its tentative conclusion that Standard No. 204 is unnecessary for these vehicles is its belief, discussed above, that the engineering considerations that go into designing a vehicle with air bags would ensure that the vehicle would have the same performance for steering control rearward displacement as is currently required by Standard No. 204. NHTSA continues to believe in the importance of limiting steering control rearward displacement, and specifically requests comments on its belief that Standard No. 208's air bag requirements will indirectly ensure this aspect of safety performance. Comments are specifically sought on whether a rescission of this requirement in Standard No. 204 could lead to an increase in injuries of a type not protected against in Standard No. 208.

The agency is proposing an effective date of 30 days after publication of a final rule. NHTSA believes that there would be good cause for such an effective date since the amendment would not impose any new requirements but instead reduce manufacturers' costs without any adverse impact on safety.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. NHTSA believes that there would be no gain or loss of benefits from Standards No. 204 as a result of excluding vehicles which are certified to comply with the frontal barrier crash test requirements of Standard No. 208 by means of air bags. This is because, for reasons discussed above, these vehicles would continue to have the same performance with respect to steering control rearward displacement as vehicles without air bags. Manufacturers would have minor, nonquantifiable cost savings as they would no longer have to certify compliance with this requirement.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rule would not impose any new requirements but would instead exclude from the applicability of Standard No. 204 those light vehicles that are equipped with air bags. The proposed rule, if made final, would likely result in small, nonquantifiable cost savings for motor vehicle manufacturers since they would not need to certify the vehicles to Standard No. 204. The cost savings would be too small to have any significant impact on vehicle prices. Therefore, small businesses, small organizations and small governmental units which purchase motor vehicles would not be significantly affected by the proposed rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.204 would be amended by revising S2 to read as follows:

§ 571.204 Standard No. 204; Steering control rearward displacement.

* * * * *

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks, and buses. However it does not apply to vehicles that conform to the frontal barrier crash protection requirement (S5.1) of Standard No. 208 (49 CFR 571.208) by means of an inflatable restraint system. It also does not apply to walk-in vans.

* * * * *

Issued on November 13, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28351 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 93–02; Notice 11]

RIN 2127–AF79

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Containers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a request by the Aluminum Association, this document proposes amending the specifications in FMVSS No. 304, *Compressed Natural Gas Fuel Container Integrity*, with respect to CNG containers made with aluminum alloys. The proposed changes, if adopted, would make FMVSS No. 304 consistent with the most recent voluntary standard issued by the aluminum industry.

DATES: Comments must be received on or before January 2, 1996.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Samuel Daniel, NPS–01.01, Special Projects Staff, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (Telephone 202–366–4921) (FAX 202–366–4329).

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone 202–366–2992) (FAX 202–366–3820) (internet mshaw@nhtsa.dot.gov)

SUPPLEMENTARY INFORMATION:

I. Final Rule Establishing FMVSS No. 304

On September 26, 1994, NHTSA published a final rule addressing the safe performance of compressed natural gas (CNG) containers [1] (59 FR 49010). The final rule established a new Federal motor vehicle safety standard (FMVSS) FMVSS No. 304, *Compressed Natural Gas Fuel Container Integrity*. The Standard specifies pressure cycling, burst, and bonfire tests for the purpose of ensuring the durability, initial strength, and venting of CNG containers. In addition, the Standard specifies labeling requirements for CNG fuel containers. FMVSS No. 304 took effect on March 27, 1995.

FMVSS No. 304 is patterned after the American National Standards Institute's (ANSI's) voluntary industry standard known as ANSI/NGV2. ANSI/NGV2 was developed by the Natural Gas Vehicle Coalition. ANSI/NGV2 and FMVSS No. 304 specify detailed material and other requirements for different types of CNG containers, including those made with aluminum alloys. For each type of container, ANSI/NGV2 and FMVSS No. 304 specify a unique safety factor for determining the internal hydrostatic pressure that the container must withstand during the burst test. In addition, a container must meet the applicable material and manufacturing requirements as well as the burst test.

FMVSS No. 304 specifies certain material and manufacturing characteristics for aluminum containers using alloy 6010 and alloy 6061. The material characteristics specify the percentage of various elements, including magnesium, silicon, copper, and manganese. The specifications for the two aluminum alloys listed in FMVSS No. 304 were patterned after the specifications set forth in ANSI/NGV2. In establishing the specifications applicable to aluminum alloys, the Natural Gas Vehicle Coalition relied on the *Aluminum Association Standards Data* document (Sixth Edition 1979).

On March 24, 1995, The Aluminum Association, Inc. (TAAI) submitted a letter to NHTSA, requesting several changes be made to FMVSS No. 304, with respect to specifications for aluminum alloys 6010 and 6061 which are used to make CNG fuel containers. TAAI stated that FMVSS No. 304 is inconsistent with the TAAI registered limits for materials used in these two aluminum alloys. That organization stated that because the 1979 document, on which the FMVSS No. 304 composition tables are based, has been superseded several times in recent years, the chemical compositions for aluminum alloys set forth in FMVSS No. 304 do not reflect the current compositions for these alloys, as accepted by the aluminum industry. TAAI provided a copy of the most recent document in which the industry aluminum alloy specifications are contained: The Registration Record of Aluminum Association Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys (Revised December 1993).

The discrepancies between the 1993 Registration Record and FMVSS No. 304 are as follows:

Alloy 6010:

*Chromium is shown in FMVSS No. 304 as an alloying element, as opposed to an impurity which it is, with a 0.05% minimum limit as well as the proper maximum limit of 0.10%

[1] When used as a motor fuel, natural gas is stored on-board a vehicle in cylindrical containers at a pressure of approximately 20,684 kPa (3,000 psi). Among the terms used to describe CNG fuel containers are tanks, containers, cylinders, and high pressure vessels. The agency will refer to them as "containers" throughout this document.

*Limits are defined for both Bismuth (0.003% maximum) and lead (0.003% maximum). These individual elements are properly covered or included in "Others Each" in TAAI's registration.

*Magnesium, silicon, copper, and manganese limits are shown to two decimal places, instead of one, for levels greater than 0.55%.

Alloy 6061

*Magnesium limits are specified in FMVSS No. 304 as 0.60 to 1.20%, as opposed to TAAI registered limits of 0.8 to 1.2%.

*Limits are defined for both bismuth (0.003%) and Lead (0.003%). These individual elements are properly covered in "Others Each" in TAAI's registration.

*Magnesium, silicon, and iron limits are all properly covered to two decimal places, instead of one, for levels greater than 0.55%.

After reviewing the information supplied by TAAI, NHTSA has decided to propose amending FMVSS No. 304 with respect to the aluminum alloy specifications for CNG containers. The proposed changes, if adopted, would make FMVSS No. 304 consistent with the most recent aluminum industry specifications for those materials.[2] The agency requests comments about the appropriateness and safety implications of adopting TAAI's request.

Leadtime

The statute requires that each order (i.e., final rule) shall take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. NHTSA has tentatively concluded that there would be good cause not to provide the 180 day lead time given that this amendment would have no adverse effect on manufacturers. The proposal merely proposes minor changes to the chemical compositions in FMVSS No. 304. Based on the above, the agency has tentatively concluded that there is good cause for an effective date 30 days after publication of the final rule. NHTSA requests comments about whether a 30 day effective date is appropriate or whether more lead time is necessary.

[2] The agency has already corrected the magnesium limits for alloy 6061 to the range of 0.80 to 1.20, based on a typographical correction provided by the American Gas Association. This was published on July 24 1995, as part of a final rule on petitions for reconsideration on FMVSS No. 304 (60 FR 37836).

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have no effect on costs or benefits, since the proposal adopts current industry specifications. The aluminum alloys 6010 and 6061 specified in FMVSS No. 304 have a slightly different composition than alloys manufactured in accordance with current specifications for these materials. TAAI did not identify any safety problems such as reduced strength, durability or resistance to environmental hazards that might result from this difference in aluminum specifications for CNG containers. The potential costs, benefits, and other impacts of not adopting this petition cannot be quantified at this time.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. CNG container manufacturers typically would not qualify as small entities. Further, as noted above, the proposed changes would not have more than a minimal impact on the costs or benefits associated with FMVSS No. 304. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 304, *Compressed Natural Gas Fuel Container Integrity*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.304 would be amended by revising S5.2.2 to read as follows:

§ 571.304 Standard No. 304, Compressed Natural Gas Fuel Container Integrity

* * * * *

S5.2.2 *Aluminum containers and aluminum liners.* (Type 1, Type 2 and Type 3) shall be 6010 alloy, 6061 alloy, and T6 temper. The aluminum heat analysis shall be in conformance with one of the following grades:

TABLE TWO.—ALUMINUM HEAT ANALYSIS

Grade element	6010 alloy percent	6061 alloy percent
Magnesium ..	0.6 to 1.0	0.8 to 1.2
Silicon	0.8 to 1.2	0.40 to 0.8
Copper	0.15 to 0.6 ...	0.15 to 0.40
Chromium	0.10 max	0.04 to 0.35
Iron	0.50 max	0.7 max
Titanium	0.10 max	0.15 max
Manganese ..	0.20 to 0.8 ...	0.15 max
Zinc	0.25 max	0.25 max
Others, Each (1).	0.05 max	0.05 max
Others, Total (1) (2).	0.15 max	0.15 max
Aluminum min.	Remainder ...	Remainder

(a) "Others" includes listed elements for which no specific limit is shown as well as unlisted metallic elements. The producer may analyze samples for trace elements not specified in the registration or specification. However, such analysis is not required and may not cover all metallic "other" elements. Should any analysis by the producer or purchaser establish that an "others" element exceeds the limit of "Each" or that the aggregate of several "others" elements exceeds the limit of "Total," the material shall be considered non-conforming.

(b) The sum of those "Others" metallic elements 0.10 percent or more each, expressed to the second decimal before determining the sum.

(Registration Record of Aluminum Association Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys, The Aluminum Association, Inc. Rev. Dec. 1993)

* * * * *

Issued on: November 13, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28358 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 60, No. 221
Thursday, November 16, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

November 9, 1995.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Consolidated Farm Services Agency

- *Title:* 7 CFR 719—Eminent Domain Acquisitions: Reallocating Allotments, Quotas, and Acreage Bases.

Summary: The Agricultural Adjustment Act of 1938 as amended provides for pooling allotments for any commodity for any land from which the owner is displaced because of acquisition of land by any federal, state or local agency having right of eminent domain.

Need and Use of the Information: The collection of information is necessary to determine eligibility for program benefits. The forms are used to establish the record of the producer's pooled allotments or bases, and to request a transfer of the pooled allotments or bases to other owned land.

Description of Respondents: Farms.

Number of Respondents: 3,000.

Frequency of Responses: Reporting—On occasion.

Total Burden Hours: 3,000.

Emergency processing of this submission has been requested by November 13, 1995.

- *Title:* Payment Limitation and Determination of Eligibility of Foreign Individuals or Entities to Receive Program Benefits—7 CFR parts 795, 1497, and 1498.

Summary: Regulation require an "actively engaged in farming" status determination be made for individuals or entities with respect to a particular farming operation in order for them to be considered a person eligible for program payments, from Price Support Programs, Production Adjustments, and Conservation Reserve Programs.

Need and Use of the Information: Information is needed so maximum payment eligibility can be determined for the Price Support Production Adjustments and Conservation Reserve Programs. The information collected will be used to determine eligibility and for general statistical purposes.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 356,800.

Frequency of Responses: Reporting—Annually.

Total Burden Hours: 307,985.

Emergency processing of this submission has been requested by November 14, 1995.

Donald Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–28322 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 95–076–1]

Plant Genetic Systems (America), Inc.; Receipt of Petition for Determination of Nonregulated Status for Corn Genetically Engineered for Male Sterility and Glufosinate Herbicide Tolerance as a Marker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Plant Genetic Systems (America), Inc., seeking a determination of nonregulated status for a corn line designated as event MS3 that has been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before January 16, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–076–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–076–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Team Leader, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On August 16, 1995, APHIS received a petition (APHIS Petition No. 95–228–01p) from Plant Genetic Systems (America), Inc., (PGS) of Des Moines, IA, requesting a determination of nonregulated status under 7 CFR part 340 for a male sterile, glufosinate tolerant corn line designated as transformation event MS3 (event MS3). The PGS petition states that corn event MS3 should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn event MS3 has been genetically engineered with a gene from *Bacillus amyloliquefaciens* encoding a ribonuclease called barnase, which inhibits pollen formation and results in male sterility of the transformed plants. Corn event MS3 also contains the *bar* gene isolated from the bacterium *Streptomyces hygroscopicus* that encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, inactivates glufosinate. Linkage of the *barnase* gene, which induces male sterility, with the bar gene, a glufosinate tolerance gene used as a marker, enables identification of the male sterile line before the plant begins to flower. Event MS3 was transformed via immature embryo electroporation in yellow dent corn material. Expression of the introduced genes is controlled in part by the P35S promoter derived from the plant pathogen cauliflower mosaic virus and the 3'nos sequence from the plant pathogen *Agrobacterium tumefaciens*.

PGS' corn event MS3 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains the above-mentioned gene sequences derived from plant pathogenic sources. The subject corn line has been evaluated in field trials conducted since 1992 under APHIS permits or notifications. In the process of reviewing the applications for field trials of the corn event MS3, APHIS determined that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, the EPA must approve the new or different use. In conducting such an approval, the EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of PGS' corn event MS3 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 8th day of November 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28326 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Wild and Scenic River Suitability Study for the South Platte River and the North Fork of the South Platte River in Douglas, Jefferson, and Park Counties, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare a wild and scenic river study report and legislative environmental impact statement (LEIS) to address the suitability of sections of the South Platte River and the North Fork of the South Platte River primarily within the Pike National Forest in Douglas, Jefferson, and Park counties, Colorado, for inclusion into the National Wild and Scenic Rivers System. The Forest Service invites written comments and suggestions on the management of these river sections and the scope of this analysis. The agency gives notice of the full environmental analysis and decision making process that will occur in this study so that interested and affected people are aware of how they may participate and contribute to the final recommendation to Congress.

DATES: Comments concerning the study of these rivers should be received by May 31, 1996. Send written comments and suggestions concerning the management of this river to Rick D. Cables, Forest Supervisor, Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands, 1920 Valley Drive, Pueblo, Colorado 81008.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft LEIS should be directed to Steve Davis, Wild and Scenic River Planning Team Leader, Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands, 1920 Valley Drive, Pueblo, Colorado 81008; telephone (719) 585–3714.

SUPPLEMENTARY INFORMATION: The Forest Service is studying these rivers as required under Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 (Pub. L. 90–542, 82 Stat. 906, as amended; 16 U.S.C. 1271–1287). Section 5(d)(1) allows for the study of new potential wild and scenic rivers not designated under Section 3(a) or designated for study under Section 5(a) of the Act. Section 5(d)(1) states "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national, wild, scenic, and recreational river areas". The study will consider a 22.8-mile segment of the South Platte River from below Elevenmile Dam to the high water line of Cheeseman Reservoir, a 23-mile segment of the South Platte River from below Cheeseman Dam to the high water line of Strontia Springs Reservoir, and a 23.1-mile segment of the North Fork of the South Platte River from the upstream boundary of the Berger property, near Insmont, downstream to its confluence with the South Platte River, to include lands within ¼ mile from each stream bank. Preliminary alternatives include a wild and scenic designation for each segment for the length of the proposal, and an unsuitable for designation alternative. Other appropriate alternatives may be considered.

Rick D. Cables, Forest Supervisor, Pike and San Isabel National Forests, Comanche and Cimmarron National Grasslands is the responsible official for preparing the suitability study. Dan Glickman, Secretary of Agriculture, U.S. Department of Agriculture, Room 200–A, Administration Building, Washington, DC 20250, is the responsible official for recommendations for wild and scenic river designation.

Public participation is especially important at several points in the study process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information comments, and assistance from Federal, State, and local agencies, individuals and organizations who may be interested in or affected by the proposed action. The public input will be used in preparation of the draft LEIS.

The draft LEIS is expected to be filed with the Environmental Protection Agency (EPA), and available for public review by October, 1996. At that time, the EPA will publish a notice of availability of the draft LEIS in the **Federal Register**.

The comment period on the draft LEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of this river participate at that time. To be the most helpful, comments on the draft LEIS should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft LEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft LEIS stage but that are not raised until after completion of the final LEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

After the comment period ends on the draft LEIS, comments will be analyzed and considered by the Forest Service in preparing the final LEIS. In the final LEIS, the Forest Service will respond to comments received (40 CFR 1503.4). The final LEIS is scheduled to be completed by the end of October 1997. The Secretary will consider the comments, responses, and consequences discussed in the LEIS, applicable laws, regulations, and policies in making a recommendation to the President regarding the suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: November 9, 1995.

Tom L. Thompson,

Deputy Regional Forester.

[FR Doc. 95–28319 Filed 11–15–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

1996 Integrated Coverage Measurement (ICM) Address Listing Activities

AGENCY: Bureau of the Census, Commerce.

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 16, 1996.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David C. Whitford, Bureau of the Census, Room 3771, Washington, DC 20233, (301) 457–4035.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census developed the ICM approach for measuring coverage during the decennial census. The Independent Listing will obtain a complete housing unit inventory of all addresses within the 1996 ICM test area just before the 1996 test census commences. There will be two Independent Listing forms, DT–1302 and DT–1302A. The DT–1302 will contain experimental questions designed to enhance our address listing procedures. We will compare the results using Form DT–1302 with those from a control listing form that did not contain the experimental questions, Form DT–1302A, to see if the experimental questions improved our coverage of addresses. For quality assurance purposes, a sample of each block will be advance listed (by observation) in the Quality Assurance Advance Listing Book, DT–1314. This quality assurance listing will not impose any respondent burden.

The listings will be matched to the census list of addresses; the unmatched cases will be sent to the field for reconciliation using the Housing Unit Follow-up Form, DT–1377. For quality assurance purposes, a sample of the follow-up cases will be verified to ensure that the follow-up enumerators visit the block clusters, resolve the cases, and correctly followed procedures. The resultant address listing will be used in the next phase of the ICM, the ICM Person Interview.

As part of our evaluation requirements, we will perform an independent rematch and reconciliation of a sample of the housing unit addresses. The quality assurance and evaluation operations will be conducted using the same form, DT–1377.

II. Method of Collection

Person to person interview.

III. Data

OMB Number: Not available.

Form Number: DT–1302 and DT–1302A, Independent Listing Forms; DT-1314, Quality Assurance Advance Listing Book; and DT–1377, Housing Unit Follow-up Form.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000 Housing units.

Estimated Time Per Response: 2 minutes (Independent Listing) and 5 minutes (Housing Unit Followup).

Estimated Total Annual Burden Hours: Total = 494 Hours. Independent Listing = 333 hours (2 minutes × 10,000 housing units); the Housing Unit Followup = 83 hours, (5 minutes × 1,000 housing units); the Housing Unit Follow-up Quality Assurance = 41 hours (5 minutes × 487 housing units); and the Housing Unit Follow-up Evaluation = 37 hours (5 minutes × 446 housing units).

Estimated Total Annual Cost: $289,749.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 9, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–28352 Filed 11–15–95; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under § 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than October 31, 1996.

	Period to be reviewed
Antidumping Duty Proceedings	
Italy:	
Pressure Sensitive Plastic Tape, A–59	
3M Italia S.p.A.	10/10/94–09/30/95
Japan:	
Tapered Roller Bearings, Four Inches or Less, and Certain Components Thereof, A–588–054	
Koyo Seiko Co., Ltd., Honda Motor Co., Ltd., Fuji Heavy Industries, Kawasaki Heavy Industries, Yamaha Motor Co., Ltd., Nigata Convertor Co., Ltd., Suzuki Motor Co., Toyosha Co., Ltd	10/01/94–09/30/95
Tapered Roller Bearing, Over Four Finished and Unfinished, and Parts Thereof, A–588–604	
Koyo Seiko Co., Ltd., Honda Motor Co., Ltd., Fuji Heavy Industries, Kawasaki Heavy Industries, Yamaha Motor Co., Ltd., Nigata Convertor Co., Ltd., Suzuki Motor Co., Toyosha Co., Ltd, NTN Corporation, Nittetsu Bolton, Showa Seiko Co., Ltd., Ichiyanagi Tekko, Sumikin Seiatsu	10/01/94–09/30/95

	Period to be reviewed
Malaysia:	
Extruded Rubber Thread, A–557–805	
Heveafil Sdn. Bhd., Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., Filati Lastex Elastofibre, Rubfil Sdn. Bhd	10/01/94–09/30/95
The People's Republic of China:	
CDIW Fittings and Glands, A–570–820	
Star Pipe Products, Inc	09/01/94–08/31/95
The People's Republic of China:	
Helical Spring Lock Washers, A–570–822	
Hangzhou Spring Washer Plant	10/01/94–09/30/95
Countervailing Duty Proceedings	
Brazil:	
Certain Agricultural Tillage Tools, C–351–406	
Marchesan Implementos Argicolas, S.A.	01/01/94–12/31/95
India:	
Certain Iron-Metal Castings, C–533–063	
Calcutta Ferrous, Carnation Enterprise Pvt. Ltd., Commex Corporation, Crescent Foundry Co. Pvt. Ltd., Delta Enterprises, Dinesh Bros., Kajaria Iron Castings Pvt. Ltd., Kejriwal Iron & Steel Works, Nandikeshwari Iron Foundry Pvt. Ltd., Orissa Metal Industries, R.B. Agarwalla & Company, R.B. Agarwalla & Co. Pvt. Ltd., RSI Limited, Serampore Industries Pvt. Ltd., Shree Ram Enterprise, Shree Uma Foundries, Siko Exports, Super Iron Foundry, Uma Iron & Steel, Victory Castings Ltd	01/01/94–12/31/94
Sweden:	
Certain Carbon Steel Products, C–401–401	
SSAB Svenskt Stal AB	01/01/94–12/31/94
Suspension Agreements	
Kazakhstan:	
Uranium, A–834–802	10/01/94–09/30/95
Krygzstan:	
Uranium, A–835–802	10/01/94–09/30/95
Russia:	
Uranium, A–821–802	10/01/94–09/30/95
Uzbekistan:	
Uranium, A–844–802	10/01/94–09/30/95

* This case was inadvertently omitted from the previous initiation notice.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: November 9, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28452 Filed 11–15–95; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

November 9, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port orcall (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit
410	1,546,704 square meters.
433	6,074 dozen.
435	3,997 dozen.
443	74,051 numbers.
624	1,794,108 square meters.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28355 Filed 11–15–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

November 9, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17331, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 16, 1995, you are directed to amend further the directive dated March 30, 1995 to adjust the limits for the following categories, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I 333/334/335/833/834/835.	245,472 dozen of which not more than 119,802 dozen shall be in Categories 333/335/833/835.
336/836	59,955 dozen.
338	316,237 dozen.
339	1,317,536 dozen.
340	308,948 dozen.
347/348/847	744,530 dozen.
351/851	69,690 dozen.
359–C/659–C [2]	382,152 kilograms.
359–V [3]	115,829 kilograms.
633/634/635	544,213 dozen.
638/639/838	1,669,200 dozen.
642/842	120,657 dozen.
647/648	549,495 dozen.
Sublevel in Group II 445/446	96,430 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28353 Filed 11–15–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced of Manufactured in Thailand

November 9, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17337, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 16, 1995, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
239	5,080,404 kilograms.
Levels in Group I	
218	17,174,292 square meters.
219	5,656,164 square meters.
300	4,242,123 kilograms.
301–P [2]	4,242,123 kilograms.
301–O [3]	848,425 kilograms.
314	41,980,800 square meters.
317/326	11,872,560 square meters.
369–S [4]	282,808 kilograms.
607	2,779,293 kilograms.
613/614/615	40,800,842 square meters of which not more than 24,503,389 square meters shall be in Category 614 and not more than 22,633,511 square meters shall be in Categories 613/615).
617	15,434,328 square meters.
620	6,363,184 square meters.
625/626/627/628/629	12,466,188 square meters of which not more than 9,898,286 square meters shall be in Category 625.
669–P [5]	5,964,655 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0000, 5205.22.0000, 5205.23.0000, 5205.24.0000, 5205.25.0000, 5205.41.0000, 5205.42.0000, 5205.43.0000, 5205.44.0000 and 5205.45.0000.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.95–28354 Filed 11–15–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

November 9, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant.to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The 1996 limits for Categories 338/339/638/639, 338–S/339–S/638–S/639–S, 350 and 351/651 have been reduced for carryforward used in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Memorandum of Understanding dated July 19, 1995 between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group 219, 313, 314, 315, 317, 326, 617, 625/626/627/628/629, as a group.	151,245,814 square meters of which not more than 34,562,752 square meters shall be in 219; 42,243,363 square meters shall be in 313; 24,577,957 square meters shall be in 314; 33,026,631 square meters shall be in 315; 34,562,752 square meters shall be in 317; 3,840,305 square meters shall be in 326; 23,041,836 square meters shall be in 617.
Sublevel in Fabric Group 625/626/627/628/629.	15,559,001 square meters of which not more than 6,223,600 square meters shall be in 625; 6,223,600 square meters shall be in 626; 6,223,600 square meters shall be in 627; 6,223,600 square meters shall be in 628; and 6,223,600 square meters shall be in 629.
Limits not in group	
200	1,458,336 kilograms.
300/301	7,100,535 kilograms.
335	306,579 dozen.
336/636	722,164 dozen.
338/339/638/639	4,244,264 dozen of which not more than 3,183,198 dozen shall be in Categories 338–S/339–S/638–S/639–S [1].
340/640	1,416,425 dozen of which not more than 402,850 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [2].
341/641	1,398,786 dozen of which not more than 489,575 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Categories 341–Y/641–Y [3].
342/642	803,919 dozen.
347/348	4,373,865 dozen of which not more than 1,521,420 dozen shall be in trousers in Categories 347–T/348–T [4].
350	430,368 dozen.
351/651	688,085 dozen.
352/652	2,332,000 dozen.
361	1,532,897 numbers.
369–S [5]	1,584,724 kilograms.
410/624	1,075,430 square meters of which not more than 695,866 square meters shall be in Category 410.
448	36,902 dozen.
604	1,829,236 kilograms.
611	45,761,766 square meters.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[4] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[5] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods January 1, 1995 through December 31, 1995 and March 28, 1995 through December 31, 1995 (Categories 352/652) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustments in the future pursuant to the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28356 Filed 11–15–95; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 96–C0001]

J.B.I., Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)-(h). Published below is a provisionally-

accepted Settlement Agreement with J.B.I., Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 1, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96-C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 8, 1995.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. J.B.I., Inc. ("J.B.I." or "Respondent") enters into this Settlement Agreement and Order with the staff of the Consumer Product Safety Commission pursuant to the procedures set forth in section 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"), 16 CFR 1118.20.

The Parties

2. The "Staff" is the staff of the Consumer Product Safety Commission ("the Commission" or "CPSC"), an independent regulatory agency of the United States government responsible for the enforcement of the CPSA, 15 U.S.C. 2051 *et seq.*

3. Respondent J.B.I. is a corporation organized and existing under the laws of the state of California with its principal corporate offices located in Long Beach, California.

Staff Allegations

The Staff contends, as set forth in paragraphs 4 through 9, that:

4. Between 1982 and 1987, J.B.I. manufactured approximately 1,200 units of Tug-N-Turn playground equipment exclusively for and together with a fast food restaurant operator. The Tug-N-Turns were installed at the fast food restaurants nationwide. J.B.I. is a "manufacturer" of the Tug-N-Turns as that term is defined in section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4).

5. The Tug-N-Turn is a ride designed and intended for use by children. A child can spin the ride by turning the steering wheel, or an individual can cause the ride to spin by pushing it from the outside. The Tug-N-Turn is a "consumer product" which was "distributed in commerce" as those terms are defined in sections 3(a) (1) and (11) of the CPSA, 15 U.S.C. 2052(a) (1) and (11).

6. The Tug-N-Turn created an unreasonable risk of serious injury or contained a defect which could create a substantial product hazard in that hardware protruded from the stationary center column of the unit, creating the possibility that children's shoe laces or pants cuffs could become entangled, causing serious injury. In cooperation with the CPSA staff investigation, J.B.I. voluntarily produced information showing that it became aware of approximately 70 reports of injuries between 1982 and 1991 involving the Tug-N-Turn, at least 40 of which allegedly were fractured legs or ankles.

7. On or about November 24, 1982, J.B.I. first became aware of an injury involving a Tug-N-Turn.

8. Both prior to and during the period in which J.B.I. received notice of injuries involving Tug-N-Turns, J.B.I. voluntarily attempted, without success, to remedy the protruding hardware problem.

9. Although J.B.I. obtained sufficient information to reasonably support the conclusion that the Tug-N-Turns, described in paragraphs five and six above, contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury, it failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). This is a knowing violation of section 15(b) of the CPSA, is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), and subjects Respondents to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

Response of J.B.I.

J.B.I. contends, as set forth in paragraphs 10 through 14, that:

10. The Tug-N-Turn does not contain a defect which creates or which could create a substantial product hazard or create an unreasonable risk of serious injury within the meaning of section 15 of the CPSA, 15 U.S.C. 2064.

11. The leg and ankle injuries reported to J.B.I. were sustained on Tug-N-Turns that were improperly installed or maintained, and where original hardware was substituted. As a result of improper installation or maintenance, children's clothing became entangled on hardware that protruded from the center column.

12. J.B.I. is unaware of any instance where a child was injured on a properly installed and maintained Tug-N-Turn unit as a result of clothing becoming entangled on hardware. A Tug-N-Turn that is properly installed and maintained neither creates a substantial product hazard nor an unreasonable risk of serious injury.

13. Between 1982 and 1991, J.B.I. voluntarily took significant actions to ensure proper installation of the Tug-N-Turn units, including the dissemination of Safety Notices, Warning Labels, and ultimately a Removal/Retrofit program.

14. Prior to receiving a letter from the CPSC in January 1992, J.B.I. was unaware of the reporting provisions of the CPSA. J.B.I. never "knowingly" failed to report to the Commission under section 15(b) of the CPSA, 15 U.S.C. § 2064(b), with respect to these Tug-N-Turn units.

Agreement of the Parties

15. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*

16. This Settlement Agreement and Order becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

17. J.B.I. waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty, and (5) to any claims under the Equal Access to Justice Act, 28 U.S.C. 2412.

18. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order, as stated herein.

19. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

20. The provisions of this Settlement Agreement and Order shall apply to J.B.I. and its successors and assigns.

21. J.B.I. shall inform the Commission if it learns of any additional Tug-N-Turn incidents not previously reported to the Commission or information indicating that any Tug-N-Turns in use are still capable of turning.

22. J.B.I. shall not contest a United States government subpoena for J.B.I. representatives to testify at a trial related to the Tug-N-Turn in any court in the United States. The government will provide fees and allowances to any subpoenaed witness in accordance with 28 U.S.C. 1821.

23. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)-(h). If the Commission does not to accept the Settlement Agreement and Order within 15 days of such publication, the Agreement and Order shall be deemed finally accepted and the Final Order shall issue on the 16th day.

24. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order.

25. A violation of the Order shall subject the parties to appropriate legal action.

J.B.I. Inc.

Jay Buchbinder,

President, J.B.I., Inc.

The Consumer Product Safety Commission

Eric A. Rubel,

General Counsel.

David Schmeltzer,

Associate Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: February 1, 1995.

Ronald G. Yelenik,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: February 1, 1995.

Jayme Rizzolo Epstein,

Attorney, Office of General Counsel.

Order

Upon consideration of the Settlement Agreement between the staff and Respondent, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further ordered, that Respondent upon final acceptance of the Settlement Agreement, shall pay to the U.S. Treasury a civil penalty in the amount of two hundred twenty five thousand dollars ($225,000), within twenty (20) days after service of this Final Order.

Provisionally accepted and Provisional Order issued on the 8th day of November, 1995.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–28347 Filed 11–15–95; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Construction and Operational Changes Associated With Realignment of F/A–18 Aircraft to Naval Air Station Oceana, Virginia Beach, VA From Naval Air Station, Cecil Field, FL

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the realignment of F/A–18 aircraft and their associated personnel to Naval Air Station (NAS) Oceana, located in Virginia Beach, Virginia. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), as implemented during 1995.

In accordance with congressional direction implementing the 1995 recommendations of the Defense Base Closure and Realignment Commission (BRAC 95), the Navy will close NAS Cecil Field, Florida, and realign F/A–18 aircraft, personnel, and ancillary activities associated with the existing F/A–18 aircraft, personnel, and ancillary activities associated with the existing F/A–18 missions. F/A–18 assets from NAS Cecil Field will be distributed to support the Navy's operational mission by use of existing infrastructure and capacity, elimination of substantial new construction, and maintenance of operational flexibility for deployment. For BRAC 95, two F/A–18 reserve squadrons are proposed to be sent to NAS Atlanta for integration with Naval Reserve Forces and two operational squadrons are proposed to be sent to MCAS Beaufort to establish joint operations capability with existing Marine Corps F/A–18 assets. These two moves will be addressed in separate NEPA documentation. The remainder of F/A–18 assets (up to ten squadrons) are proposed to be sent to NAS Oceana and is the subject of this EIS. The move to NAS Oceana includes approximately 175 aircraft, 3,600 military personnel, and 200 civilians. In order to accommodate this realignment, approximately 200,000 square feet of new/existing facilities will be constructed or modified. In addition, the realignment will result in a greater level of aircraft operations at NAS Oceana, at Naval Auxiliary Landing Field (NALF) Fentress, located in Chesapeake, Virginia, and within various aircraft training ranges and warning areas in and adjacent to Virginia and eastern North Carolina, including Dare County, BT–9 (Brant Island Shoal), and BT–11 (Piney Island).

The Navy intends to analyze the potential impacts of the realignment on the natural environment, including but not limited to air quality, plant and animal habitats, and water resources, such as streams and wetlands. It will also evaluate potential effects to the built environment, including land use patterns, cultural resources, transportation, housing, community services, and the regional economy. Further, the Navy will be preparing analyses of the projected operations of the incoming F/A–18 aircraft on the existing airspace range structure in Virginia and eastern North Carolina, and on aircraft noise exposure levels in and around NAS Oceana and NALF, Fentress, and training areas in Virginia and North Carolina.

In accordance with the Clean Air Act, as amended in 1990 (42 U.S.C. 7401–7661q), as implemented by the Environmental Protection Agency Regulations on Determining Conformity of General Federal Actions to Federal or State Implementation Plans (40 CFR Parts 6, 53, and 93), the Navy will conduct a conformity review, assessing whether total direct and indirect air emissions associated with the realignment are consistent or in compliance with all relevant requirements and milestones contained in the relevant State Implementation Plan (SIP). All required public comment periods, hearings and notices associated with the conformity review will be conducted concurrently with those associated with the EIS.

The Navy will initiate a scoping process for the purpose of determining the scope of significant issues to be addressed in the EIS related to the proposed action. The Navy will hold five public scoping meetings on the following dates: December 5, 1995 beginning at 7 p.m. at the Carteret County Courthouse, Courthouse Square,

U.S. Route 70, Beaufort, North Carolina 28516; December 6, 1995 beginning at 7 p.m. at the Pamlico County Courthouse, NC Highway 55 (near NC Highway 304), Bayboro, North Carolina 28515; December 7, 1995 beginning at 7 p.m. at the North Carolina Aquarium and Marine Resources Center, Main Auditorium, Airport Road (adjacent to the Dare County Airport), Manteo, North Carolina 27954; December 12, 1995 beginning at 7 p.m. at the Seatack Elementary School, Main Auditorium, 411 Birdneck Circle, Virginia Beach, Virginia 23454; and December 13, 1995 beginning at 7 p.m. at the Butts Road Intermediate School Gymnatorium, 1571 Mount Pleasant Road, Chesapeake, Virginia 23322.

Following a presentation on the EIS process and the Navy's proposed action, Navy representatives will be available at these meetings to receive comments from agencies and the public regarding issues of concern. It is important that federal, state, and local agencies and interested persons take this opportunity to identify environmental concerns that should be addressed in the EIS. In order to ensure adequate time for those wishing to make public comments, speakers will be limited to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe the specific issues or topics that the commenter believes the EIS should address. Please mail written comments no later than January 5, 1996 to: Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511, Attn: Code 2032DC (Mr. Dan Cecchini), telephone (804) 322–4891, fax (804) 322–4894.

Dated: November 13, 1995.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–28299 Filed 11–15–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of closed meeting by teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the meeting.

DATE: November 21, 1995.

TIMES: 11 a.m. to noon.

LOCATION: Room 604e, 555 New Jersey Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, Office of Educational Research and Improvement, 555 New Jersey Ave., NW., Washington, DC 20208–7579. Telephone: (202) 219–2065. Internet: john-christensen@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Executive Committee is closed to the public under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemption (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L 94–409; 5 U.S.C. 552b(c)(6)). The committee will discuss candidates for the position of executive director and touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. The meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act Pub. L. 94–409; 5 U.S.C. 552b(c). The Executive Committee will consider matters that relate solely to the internal rules and practices of the Board and personal qualifications and experience of potential candidates for the position of executive director, matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

The public is being given less than the required 15 days' notice because of the difficulty in accommodating the schedules of all members of the Executive Committee, which must complete its recommendations prior to the next full Board meeting on November 30.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., NW., Washington, DC 20208–7564.

Dated: November 9, 1995.

Sharon P. Robinson,

Assistant Secretary.

[FR Doc. 95–28252 Filed 11–15–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket No. CP95–35–000 and PRPB Docket No. 94–62–1219–JPM]

EcoEléctrica, L.P., Notice of Availability of the Draft Environmental Impact Statement/Preliminary Environmental Impact Statement for the Proposed EcoEléctrica LNG Import Terminal and Cogeneration Project in Guayanilla, Puerto Rico

November 9, 1995.

The staff of the Federal Energy Regulatory Commission (FERC) and the Puerto Rico Planning Board (PRPB) have prepared this joint draft environmental impact statement/preliminary environmental impact statement (DEIS/PEIS) on the natural gas facilities proposed by EcoEléctrica, L.P. (EcoEléctrica) in the above dockets.

The joint EIS was prepared to satisfy the requirements of the National Environmental Policy Act and Puerto Rico's law requiring an EIS under the Puerto Rico Environmental Quality Board Regulations (Article 4[c] of law No. 9). The FERC and PRPB believe, subject to public comment, that approval of the proposed project, with appropriate mitigation measures including receipt of necessary permits and approvals, would have limited adverse environmental impact. The joint EIS evaluates alternatives to the proposal.

The joint EIS assesses the potential environmental effects of the construction and operation of the proposed EcoEléctrica LNG Import Terminal and Cogeneration Project, which includes the following facilities:

- A marine terminal for unloading liquified natural gas (LNG) tankers, two 1,000,000-barrel LNG storage tanks, an LNG vaporization system, and a natural gas accumulator pipeline.
- A 461-megawatt electric cogeneration facility that would use the vaporized LNG as a fuel source. The power plant facility would consist of two gas turbines fueled by natural gas and one steam generator. The gas turbines could also use propane (LPG) as a secondary fuel and number 2 oil as an emergency fuel.
- A desalination facility that could generate up to 4,000,000 gallons of potable water per day. The multistage flash system would use the surplus heat from power production to produce freshwater. The power plant would require up to 1,000,000 gallons per day for operating needs. The surplus would be sold for public use.
- Other facilities necessary for operation of the cogeneration facility include a 2.3-mile-long, 230-kilovolt transmission line connecting the plant substation to an existing Puerto Rico Electric Power Authority (PREPA) substation; a 1.1-mile-long, 8-inch-diameter natural gas pipeline to the PREPA power plant; a 3.5-mile-long, 10-inch-diameter pipeline to supply LGP to the cogeneration facility; and a 1.2-mile-long, 8-inch-diameter water pipeline to connect to an existing offsite water supply or to outside delivery systems.

The joint EIS has been placed in the public files of the FERC and is available for public inspection at:

Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426–1119, (202) 208–1371

Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940, (809) 727–4444

Copies have been mailed to Federal, commonwealth and local agencies, public interest groups, interested individuals, public libraries, newspapers, and parties to this proceeding.

A limited number of copies of the joint EIS are available from either:

Mr. Chris Zerby, Federal Energy Regulatory Commission, FERC EIS Project Manager, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0111.

Mrs. María Gordillo, Puerto Rico Planning Board, PRPB EIS Project Manager, P.O. Box 41119, Santurce, Puerto Rico 00940–1119, (809) 727–4444

Any person wishing to comment on the joint EIS may do so. Written comments must reference FERC Docket No. CP95-35–000 and PRPB Docket No. 94–62–1219–JPM. Comments should be addressed to:

Secretary of the Commission, 888 First Street, NE., Washington, DC 20426

Luis Frías, Secretary, Secretary PRPB, P.O. Box 41119, Santurce, P.R. 00940–1119

Comments should be filed as soon as possible, but must be received no later than December 26, 1995,[1] to ensure consideration prior to a FERC or PRPB decision on this proposal. A copy of any comments should also be sent to Mr. Chris Zerby, FERC EIS Project Manager, or Mrs. María Gordillo, PRPB EIS Project Manager at the above addresses.

Comments will be considered by the FERC and PRPB but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the FERC's Rules of Practice and Procedure (18 CFR 385.214).

In addition to asking for written comments, we invite you to attend any of the joint public meetings the FERC and PRPB will conduct to solicit comments on the draft EIS. The locations and times for these meetings are listed below.

The public meetings will be designed to give you more detailed information and another opportunity to offer your comments on the proposed project. Those wanting to speak at the meetings can call the EIS Project Manager to preregister their names on the speaker list. Those people on the speaker list before the date of the meeting will be allowed to speak first. A second speaker list will be developed at each meeting. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded. This transcript will be available in both Spanish and English.

Schedule for Joint EIS Public Scoping Meetings

December 11, 1995 (10:00 am)
San Juan, Puerto Rico, Puerto Rico Planning Board, Minillas Building, 14th floor

December 12, 1995 (10:00 am)
Peñuelas, Puerto Rico, Alcaldia (Municipal Building)

December 13, 1995 (10:00 am)
Guayanilla, Puerto Rico, Centro Cultural Mariá Arzola

Additional information about this project is available from Mr. Chris Zerby, FERC EIS Project Manager, at (202) 208–0111. Information concerning the involvement of the Puerto Rico Planning Board can be obtained from Mrs. María Gordillo, PRPB EIS Project Manager at (809) 727–4444.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28286 Filed 11–15–95; 8:45 am]

BILLING CODE 6717–01–M

[1] The "to the party addressed" letter in the EIS stated that comments must be received by December 18, 1995. However, we are extending this date to December 26, 1995.

[Docket No. RP96–36–000]

CNG Transmission Corporation; Notice of Termination of Gathering Service

November 9, 1995.

Take notice that on November 2, 1995, CNG Transmission Corporation (CNG) filed pursuant to Section 4 of the Natural Gas Act and compliance with the Commission's direction in Docket No. CP93–200, a notice to terminate gathering service of uncertificated gathering lines on or after 30 days from the date of the filing. The uncertificated gathering lines to be abandoned in place or removed are listed in Appendix A attached to the filing.

It is asserted that no contract for transportation service with CNG would be canceled or terminated. The lines being abandoned solely served wells owned by CNG which are being plugged and abandoned. It is alleged that no default contract is being submitted because CNG believes that the nature of the abandonment of the gathering lines is one that does not require the use of a default contract. The uncertificated gathering lines are located in Elk, Clearfield, and Cameron Counties, Pennsylvania.

CNG requests that the order issued this proceeding, permit such termination of service and such waivers of the Commission's rules and regulations for the limited purpose of terminating service on the specified uncertificated gathering lines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28284 Filed 11–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–000 and RP95–197–001]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

November 9, 1995.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on November 28, 1995, at 10:00 a.m. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations, 18 CFR 385.214.

For additional information, contact Warren Wood at (202) 208–2091 or Donald Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28285 Filed 11–15–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability Council Meeting

November 13, 1995.

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the thirteenth meeting of the Network Reliability Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, December 13, 1995 at 1:00 p.m.

ADDRESSES: Federal Communications Commission, Room 856, 1919 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Kimball at (202) 418–2339.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability.

The agenda for the thirteenth meeting is as follows: (1) The final recommendations of Focus Group II, Network Interconnection and Focus Group III, New Technology, will be presented for consideration and adoption by the Council; (2) the Facilities Solutions Team will present its recommendations for mitigating facilities outages; and (3) there will be an update on network reliability. Other business may also be considered.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28298 Filed 11–15–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011259–011.

Title: United States/Southern and Eastern Africa Conference Agreement.

Parties: Empresa de Navegacao Internacional, Lykes Bros. Steamship Co, Inc., Mediterranean Shipping Company S.A., Safbank Line, Ltd.

Synopsis: The proposed amendment adds a new Sub-Article 7.2 to provide for associate membership to the Agreement. It also adds Wilhelmsen Lines AS and makes other nonsubstantive changes.

Dated: November 13, 1995.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–28291 Filed 11–15–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428.

Vessel: Jubilee.

Dated: November 13, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–28292 Filed 11–15–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Odyssey International Forwarding Services, 1216 39th Avenue, SE., Puyallup, WA 98374, Eloise Ann Brandstetter, Sole Proprietor

Able Freight Services Inc., 801 West Hyde Park Blvd. Inglewood, CA 90302, Officers: Scott Irvin Murray, President, Orlando Wong, Vice President

Willson International Inc., 250 Cooper Ave., Suite 102, Buffalo, NY 14150, Officers: Michael Dahm, President, R.C. Clendenning, Vice President

Phoenix International Business Logistics, Inc., Port Elizabeth, 1201 Corbin Street, Elizabeth, NJ 07201, Officers: Philip E. Hobson III, President, Stanley U. North, Secretary

Dated: November 13, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–28293 Filed 11–15–95; 8:45 am]

BILLING CODE 6730–1–M

FEDERAL RESERVE SYSTEM

Citizens Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 8, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Citizens Bancshares, Inc., Salineville, Ohio; to acquire 100 percent of the voting shares of Western Reserve Bank of Ohio, Lowellville, Ohio.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dakotah Bankshores, Inc., Fairmount, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Fairmount, North Dakota.

Comments on this application must be received no later than November 29, 1995.

Board of Governors of the Federal Reserve System, November 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28267 Filed 11–15–95; 8:45 am]

BILLING CODE 6210–01–F

Shirley A. Gruber; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 28, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Shirley A. Gruber, Barnard, Kansas; to acquire a total of 66.2 percent; Timothy J. Schroeder, Beverly, Kansas, to acquire an additional 15.4 percent, for a total of 15.7 percent; Michael N. Millikan, Salina, Kansas, to acquire a total of 15.7 percent, of the voting shares of Beverly Bankshares, Inc., Beverly, Kansas, and thereby indirectly acquire Beverly State Bank, Beverly, Kansas.

Board of Governors of the Federal Reserve System, November 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28268 Filed 11–15–95; 8:45 am]

BILLING CODE 6210–01–F

Republic Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than November 28, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Republic Bancorp, Inc., Owosso, Michigan; to acquire through its majority owned subsidiary, CUB

Funding, Calabasas, California, a 50.1 percent voting interest in Premier Partners-James R. Gary Realtors, Woodland Hills, California (a joint venture), and thereby engage in originating, funding, and servicing residential mortgage loans on a retail basis, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28269 Filed 11–15–95; 8:45 am]

BILLING CODE 6210–01–F

U.S. Trust Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. U.S. Trust Corporation, New York, New York; to engage *de novo* through its subsidiary, U.S. Trust Company of New Jersey, Princeton, New Jersey, in tax planning and tax preparation services for individuals, businesses and non-profit organizations, pursuant to § 225.25(b)(21) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28270 Filed 11–15–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission.

ACTION: Grant of partial exemption from the Commission's Fuel Rating Rule.

SUMMARY: The Commission has granted the petition of Gilbarco, Inc. ("Gilbarco"), a manufacturer of gasoline dispensers, on behalf of several major oil companies, requesting permission to post octane ratings by use of octane labels that differ from certain of the specifications contained in the Commission's Automotive Fuel Ratings, Certification and Posting Rule ("the Rule"). Pursuant to Rule 1.26 of the Commission's Rules of Practice, the Commission grants, for good cause, the requested relief without a notice and comment period because the Commission finds that such a procedure is unnecessary to protect the public interest in this case. The Commission previously has granted similar requests without notice and comment procedures.[1]

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–2982.

SUPPLEMENTARY INFORMATION: On March 30, 1979, the Commission published the Octane Posting and Certification Rule in the **Federal Register**. 44 FR 19160 (1979). The Rule established procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers. Pursuant to section 15.01 of the Energy Policy Act of 1992, 106 Stat. 2776, the Rule has been amended to include requirements for disclosing the automotive fuel rating of liquid alternative fuels, 58 FR 41372 (1993). The amended Rule became effective October 25, 1993.

Section 306.10 of the Rule provides that retailers must post at least one octane rating label on each face of each gasoline dispenser. Retailers who sell two or more kinds of gasoline with different octane ratings from a single dispenser must post separate octane rating labels for each kind of gasoline one each face of the dispenser. Labels must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per gallon of gasoline.

Section 306.12 of the Rule detail specifications for the labels. Labels must be 3 inches wide by 2½ inches long, and Helvetica type must be used for all text except the octane rating number, which must be in Franklin Gothic type. Type size for the text and numbers is specified, and the type and border must be process black on a process yellow background. The line "MINIMUM OCTANE RATING" must be in 12 point Helvetica bold, all capitals, with letter space set at 12½ points. The line "(R+M)/2 METHOD" must be in 10 point Helvetica bold, all capitals, with letter space set at 10½ points. The octane number must be in 96 point Franklin Gothic Condensed, with 1/8 inch spacing between the numbers. Section 306.12(d) of the Rule further states that no marks or information other than that called for by the Rule may appear on the label.

On August 3, 1988, the Commission granted Gilbarco a partial exemption to the Rule with respect to the same multi-blend gasoline dispensers that are the subject of this partial exemption. 53 FR 29277 (1988). There the Commission allowed Gilbarco to use an octane label that was 3 inches wide and 2.3 inches long that would be inserted inside plastic gasoline selection switches. The Commission also allowed Gilbarco to place the world "PRESS", in 16 point Helvetica type, beneath the octane number on the label.

Gilbarco's experience with the plastic gasoline selection switches has shown that the plastics which is prone to cracking or hazing over after prolonged exposure to gasoline vapors, reducing the clarity of the octane label. Gilbarco hypothesizes that consumers are using the metal nozzle tip of the dispenser hose to depress the selection switch and the repeated impact of the metal nozzle tip damages the protective coating on the switch. As a solution to this problem, Gilbarco has developed a metal replacement switch. The metal replacement switch has the same external dimensions as the plastic switch and avoids the need for special sheet metal replacement panels, new graphics, and changes to the internal mechanisms of the dispensers.

Although the external dimensions of the metal and plastic switches are the same, the design of the metal will require a slightly smaller octane label than that authorized for the plastic switch. The new label will sit in a depression or well on the face of the switch. Gilbarco proposes using an octane label that is 2.74 inches wide by 1.80 inches long, as opposed to the 3.00 inches wide by 2.30 inches long that is currently authorized. The type size of the octane number will be slightly smaller than the Rule requires.

The Commission has reviewed mock-ups of the metal replacement and the plastic switches and the proposed octane label and has decided that the proposed labeling scheme is adequate to meet the Rule's posting objective in that it provides clear and conspicuous disclosure of all information required by the Rule. In addition the partial exemption allows Gilbarco to implement the most economical repair for its selectors switch problem without adversely affecting the public interest. Therefore, the Commission is granting Gilbarco permission to use its proposed labeling system on its multi-blend dispensers, provided that Gilbarco also complies with the Rule's octane label specifications in all other respects.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–28340 Filed 11–15–95; 8:45 am]

BILLING CODE 6750–01–M

[1] See Octane Rule exemptions granted to Gilbarco, 53 FR 29277 (1988); to Exxon Corporation, 54 FR 14072 (1989); and to Dresser Industries, Inc., 56 FR 26821 (1991).

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 101095 AND 102095

Name of Acquiring Person, Name of Acquired Person, Name of Acquired entity	PMN No.	Date terminated
OrNda HealthCorp, Alan B. Miller, Universal Health Services, Inc	95–2613	10/10/95
Smiths Industries plc (a British corporation), Level 1 Technologies, Inc., Level 1 Technologies, Inc	95–2663	10/10/95
Tele-Communications, Inc., DMX, Inc., DMX, Inc	95–2685	10/10/95
Media General, Inc., Thomas E. Worrell, Jr., Worrell Enterprises, Inc., Antibes, Inc., Ivy Leasing C	95–2695	10/10/95
Citicorp, Burlington Northern Santa Fe Corporation, Burlington Northern Railroad Company	95–2740	10/10/95
North American Life Assurance Company (a Canadian Co.), The Manufacturers Life Insurance Company, The Manufacturers Life Insurance Company	95–2744	10/10/95
The Manufacturers Life Insurance Company, North American Life Assurance Company, North American Life Assurance Company	95–2745	10/10/95
Florida Progress Corporation, The Mutual Life Assurance Company of Canada, Continental Western Life Insurance Company	95–2752	10/10/95
Crown Crafts, Inc., The Red Calliope & Associates, Inc., The Red Calliope & Associates, Inc	95–2771	10/10/95
Nations Healthcare, Inc., Dr. H.C. Paul Sacher, Roche Professional Service Centers Inc	95–2779	10/10/95
Anheuser-Busch Companies, Inc., Herman Stock Trust Dated December 12, 1986, Bay Enterprises, Inc	95–2787	10/10/95
INDRESCO Inc., John O. Harry, Corrosion Technology Inc	95–2792	10/10/95
Tenneco Inc., Mid-Michigan Container Corp., Mid-Michigan Container Corp	95–2799	10/10/95
Insignia Financial Group, Inc., NPI Property Management Corporation, NPI Property Management Corporation & Assets	95–2815	10/10/95
Larry Addington, Addington Resources, Inc., Addington Mining, Inc	95–2307	10/12/95
Columbia/HCA Healthcare Corporation, Mid-America Hospitals, Inc., DHAL NEWCORP	95–2677	10/12/95
KCS Energy, Inc., David L. Hamilton, Natural Gas Processing Co	95–2681	10/12/95
DMX, Inc., Tele-Communications, Inc., TCI-Euromusic, Inc	95–2686	10/12/95
North Shore Health System, HIP Hospital, Inc., d.b.a. LaGuardia Hospital, HIP Hospital, Inc., d.b.a. LaGuardia Hospital	95–2696	10/12/95
North Shore Health System, HIP Hospital of Long Island Inc. d/b/a Syosset Comm Hosp, HIP Hospital of Long Island Inc. d/b/a Syosset Comm Hosp	95–2697	10/12/95
The Hain Food Group, Inc., Wilhelm Doerenkamp Foundation, The Estee Corporation	95–2703	10/12/95
Rush-Presbyterian—St. Luke's Medical Center, Illinois Masonic Medical Center, Illinois Masonic Medical Center	95–2729	10/12/95
The Bank of New York Company, Inc., NationsBank Corporation, NationsBank Corporation	95–2732	10/12/95
National Data Corporation, Meridian Bancorp, Inc., Meridian Bank	95–2742	10/12/95
Steven Dinetz, Trefoil Communications, Inc., Trefoil Communications, Inc	95–2743	10/12/95
Baxter International Inc., Baxter International Inc., Nextran	95–2757	10/12/95
Bay Networks, Inc., Xylogics, Inc., Xylogics, Inc	95–2762	10/12/95
Grand Casinos, Inc., Grand Gaming Corp., Grand Gaming Corp	95–2775	10/12/95
Grand Casinos, Inc., Gaming Corporation of America, Gaming Corporation of America	95–2778	10/12/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 101095 AND 102095—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired entity	PMN No.	Date terminated
SunAmerica Inc., Zenith National Insurance Corp., CalFarm Life Insurance Company	95–2781	10/12/95
Manor Care, Inc., Devon Manor Corporation, Devon Manor Corporation	95–2785	10/12/95
Tetra Tech, Inc., KCM, Inc., KCM, Inc	95–2786	10/12/95
BTG, Inc., Robert F. Roberts, Jr., Concept Automation, Inc. of America	95–2788	10/12/95
Chrysler Corporation, Pacific International Services Corp., Pacific International Services Corp	95–2789	10/12/95
North American Biologicals, Inc., Univax Biologics, Inc, Univax Biologics, Inc	95–2796	10/12/95
Volt Information Sciences, Inc., Information International, Inc., Information International, Inc	95–2413	10/13/95
Owens-Corning Fiberglas Corporation, Thomas E. Nelsen, Soltech, Inc	95–2665	10/13/95
Olsten Corporation, Memorial Medical Center, Inc., CareOne Health Alternatives, Inc	95–2700	10/13/95
Owens-Corning Fiberglas Corporation, Fiber-Lite Corporation, Fiber-Lite Corporation	95–2791	10/13/95
ENSERCH Corporation, Mobil Corporation, Mobil Producing Texas & New Mexico, Inc	95–2641	10/14/95
Veba AG, Eastech Chemical, Inc., Eastech Chemical, Inc	95–2816	10/16/95
Praxair, E.G. Coulter, Coulter Welding Supply, Inc	95–2711	10/17/95
Cablevision Systems Corporation, Cablevision of Boston Limited Partnership, Cablevision of Boston, Inc	96–0003	10/17/95
Intrawest Corporation (a Canadian Corporation), Mr. Fukusaburo Maeda, TDC (USA) Inc	96–0009	10/17/95
Global DirectMail Corp., Tiger Direct, Inc., Tiger Direct, Inc	96–0019	10/17/95
Stoneridge, Inc., Varity Corp., Kelsey-Hayes Company	96–0025	10/17/95
AirTouch Communications, Inc., Henry M. Zachs, Message Center USA, Inc. (MC–USA)	96–0026	10/17/95
BDM International, Inc., DMR Group Inc. (a Canadian company), DMR Group Inc	96–0030	10/17/95
Owosso Corporation, Stature Electric, Inc., Stature Acquisition Corporation	96–0032	10/17/95
Mr. S. Allan Luihn, PepsiCo, Inc., Taco Bell Corp	96–0039	10/17/95
Fleet Financial Group, Inc., Challenger International, Ltd., Savage Corporation	95–2802	10/18/95
Kenneth H. Hofmann, Estate of Walter J. Haas, Oakland Athletics Baseball Company	96–0011	10/18/95
Stephen C. Schott, Estate of Walter J. Haas, Oakland Athletics Baseball Company	96–0012	10/18/95
Consolidated Electrical Distributors, Inc., LCR Corporation, LCR Corporation	96–0036	10/18/95
Host Marriott Corporation, Francis Greenburger, Elteq Partners I Limited Partnership	96–0051	10/18/95
Metropolitan Life Insurance Company, New England Mutual Life Insurance Company, New England Mutual Life Insurance Company	95–2809	10/19/95
Aspect Telecommunications Corporation, Next plc, TCS Management Group, Inc., and Callscan, Inc	96–0041	10/19/95
Sears, Roebuck and Co., Saul Levy, Nationwise Automotive, Inc. (Debtor-in-Possession)	96–0057	10/19/95
Hospital Sisters Health System, Green Bay Health System Holding Corp., Green Bay Health System Holding Corp	95–2803	10/20/95
MedPartners, Inc., Mullikin Medical Enterprises, L.P., Mullikin Medical Enterprises, L.P	95–2805	10/20/95
Catholic Healthcare West, MedPartners/Mullikin, Inc., MedPartners/Mullikin, Inc	96–0014	10/20/95
Dr. Walter T. Mullikin, MedPartners/Mullikin, Inc., MedPartners/Mullikin, Inc	96–0015	10/20/95
John S. McDonald, MedPartners/Mullikin, Inc., MedPartners/Mullikin, Inc	96–0016	10/20/95
Norman Cloutier, Michael and Judith Funk, Mountain Peoples Warehouse, Inc	96/0033	10/20/95
Michael and Judith Funk, Norman Cloutier, Cornucopia Natural Foods, Inc	96–0034	10/20/95
Lowell W. Paxson, ValueVision International, Inc., VVI Bridgeport, Inc. and VVI Akron, Inc	96–0040	10/20/95
Pelican Companies, Inc., The Sunbelt Companies, Inc., The Sunbelt Companies, Inc	96–0056	10/20/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–28341 Filed 11–15–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F–0179]

Food Additives Permitted for Direct Addition to Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is in the final stages of its review of a food additive petition filed by Procter & Gamble Co., for the safe use of sucrose esterified with medium and long chain fatty acids (olestra) as a replacement for fats and oils. Accordingly, the agency is announcing that all data, information, and public comments on the petition must be filed with FDA on or before December 1, 1995. This measure will facilitate the agency's decisionmaking process and coming to closure on the petition by identifying precisely which data and information FDA will consider in making its decision on the petition.

DATES: Written comments by December 1, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3092.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of June 23, 1987 (52 FR 23606), FDA announced the filing of a petition (FAP 7A3997) by Procter & Gamble Co., 6071 Center Hill Rd., Cincinnati, OH 45224–1703, proposing that the food additive regulations be amended to provide for the safe use of sucrose esterified with medium and long chain fatty acids as a replacement for fats and oils. (The additive is commonly referred to as olestra.) Since its filing, FDA has had the petition under active review, and the agency is in the final stages of its safety review of the additive.

In the **Federal Register** of October 17, 1995 (60 FR 53790), FDA announced that a public meeting of the agency's Food Advisory Committee (FAC) and a working group of the FAC would be held on November 14 through 17, 1995. The working group will undertake a scientific discussion of the safety review that has been conducted for olestra for its intended use as a fat replacer in savory snacks. The working group will be asked to comment on whether all relevant issues associated with olestra have been addressed. The discussion will cover all aspects of the safety review, including nutrient effects and compensation, gastrointestinal effects, and labeling. The recommendation of the olestra working group will be formally referred to the agency, along with any amendatory comments of the FAC. The agency will make the final determination on the olestra food additive petition. (See 21 CFR 14.5).

Consistent with the Federal Advisory Committee Act (5 U.S.C. App. 2), and the agency's regulations in part 14 (21 CFR part 14), the meeting of the working group and the FAC will be open to the public. In addition, as provided for in § 14.25, there will be an opportunity for public participation, including an opportunity for members of the public to present their views on the safety review of olestra, before both the working group and the FAC.

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is required to announce the filing of a food additive petition (21 U.S.C. 348(b)(5)). Although public notice of a petition is required, the act is silent with respect to public comment on a petition, and thus, the act provides no defined period for such comments. Accordingly, the filing notice did not expressly request comments on Procter & Gamble's petition. Nevertheless, written comments could have been, and in fact, have been submitted to the agency.

As noted above, FDA is in the final stages of review of the olestra food additive petition. Unless significant new safety issues are raised or important new data are submitted in the course of the advisory committee process, the agency will very likely conclude its review and be prepared to render a decision on Procter & Gamble's petition within approximately 2 months of the conclusion of the FAC meeting. To facilitate this decisionmaking process and the agency's coming to closure on the petition, FDA believes that it is important to identify precisely which data and information the agency will consider in making its decision on the petition. Absent such boundaries, it will be difficult for FDA to reach a decision because the underlying data set could be shifting continuously. (See *Sierra Club* v. *Costle*, 657 F.2d 298, 399–400 (D.C. Cir. 1981) (a participant's mere wish for additional time to respond to documents in the record to which it already had opportunity to respond cannot force an agency to delay process because new information may be forthcoming; otherwise participants could delay the process indefinitely because new information continually comes to light on the subject of many proposed rules.))

Given the importance of reaching a decision and the clear public interest in a decision, FDA has determined that any data, information, or comments received after December 1, 1995, will not be considered by the agency in determining whether to approve the petition. Any data, information, or comments received after that date will be filed in an administrative file and will be evaluated along with any objections to the final decision filed under 21 U.S.C. 348(f).

FDA believes that it is appropriate for the agency to manage its administrative processes, see *Sierra Club* v. *Gorsuch*, 715 F.2d 653, 658 (D.C. Cir. 1983)) (agency has control over timetable of rulemaking and such decisions are entitled to considerable deference); *Cutler* v. *Hayes*, 818 F.2d 879, 896 n. 150 (D.C. Cir. 1987), citing *Natural Resources Defense Council, Inc.* v. *SEC*, 606 F.2d 1031, 1056 (D.C. Cir. 1979) (agency is cognizant of the most effective structuring and timing of proceedings to resolve competing demands over its resources), and that in these circumstances, such management through defining a comment period will not unnecessarily limit public participation in that process.

In particular, for over 8 years, since the June 1987 publication of the filing notice, the public has been aware that the food additive petition for olestra has been under consideration by FDA, and has had the opportunity to submit information and comments to the agency on Procter & Gamble's proposal. In addition, under the applicable regulations (21 CFR 171.1(h)(1)(i)), all safety and functionality data for olestra submitted during this period by Procter & Gamble have been available to the public for review and comment upon the submission of such data to the agency. Interested persons have utilized this opportunity to review these data and to provide the agency with their views by submitting written comments. Finally, the agency has announced a public advisory committee meeting on the olestra petition. This meeting will provide interested persons with the opportunity to hear an informed scientific discussion of the relevant safety issues, and to present data, information, and views relevant to the safety of olestra.

The agency believes that with the conclusion of the FAC meeting, there will have been more than a reasonable opportunity for the public to provide data and information and to comment on the olestra food additive petition. See *Forester* v. *CPSC*, 559 F.2d 774, 787 (D.C. Cir. 1977). Because there has been such an opportunity, FDA believes that it is appropriate and consistent with the public interest to define a specific period for the submission of data, information, and comments on the food additive petition. Defining boundaries for those data, information, and comments to be considered by FDA in rendering a decision on the petition will facilitate the agency's coming to closure on this petition. Therefore, the agency is establishing December 1, 1995, as the date by which all data, information, and comments on the olestra food additive petition, including comments on the proceedings before the FAC, must be submitted to the agency in order to be considered by the agency in its decision on the petition.

Any request for extension of this period for comments on the olestra food additive petition should conform to the provisions of 21 CFR 10.40(b).

Dated: November 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–28359 Filed 11–13–95; 4:16 pm]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration

Changes to the Testing Cutoff Levels for Opiates for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Notice of proposed revisions.

SUMMARY: The Department of Health and Human Services (HHS) is proposing to revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 59 FR 29916 (June 9, 1994).

Specifically, the Department is proposing to change the drug testing levels currently used to test for opiate metabolites in urine specimens collected as part of the Federal Workplace Drug Testing Program and to require the testing for a metabolite of heroin. The goals of the proposed new opiate testing policy are to substantially reduce the number of laboratory opiate positives that Medical Review Officers ultimately verify as negative, shift the emphasis of opiate testing back to the proper focus to deter and detect heroin use, and reduce any unnecessary/excessive costs to drug testing without compromising the original drug deterrent objectives.

DATES: Comments on these proposed revisions to the Mandatory Guidelines are invited and must be submitted by January 16, 1996.

ADDRESSES: Written comments should be addressed to Joseph H. Autry III, M.D., Director, Division of Workplace Programs, SAMHSA, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Dr. Donna M. Bush, Chief, Drug Testing Section, Division of Workplace Programs, SAMHSA/CSAP, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 443–6014.

SUPPLEMENTARY INFORMATION: The Department proposes increasing the initial and confirmatory testing cutoff levels for morphine and codeine from 300 ng/mL to 2,000 ng/mL and establishing a new requirement to test for 6-acetylmorphine (6-AM), a metabolite that comes only from heroin, using a 10 ng/mL confirmatory level for specimens that have tested positive on the initial test. When the Federal Workplace Drug Testing Program was established, HHS adopted the same 300 ng/mL testing levels for opiates that were used by the Department of Defense for testing service members. These levels were selected in an attempt to provide the greatest opportunity to identify anyone who may have used heroin; however, at the 300 ng/mL level, many who have not used heroin but had taken a prescribed codeine or morphine medication or eaten normal dietary amounts of poppy seeds have also tested positive. Since the purpose of the drug testing program is to deter or detect individuals using illicit drugs, establishing the testing cutoff levels for opiates at the proposed 2,000 ng/mL and adding the requirement to detect 6-AM will eliminate the identification of most persons legitimately using opiate-containing pharmaceuticals available by medical prescription or in over-the-counter preparations, or those who have ingested poppy seeds. The Department of Defense adopted similar increases in the testing cutoff levels for opiates effective April 1, 1994, because of similar concerns and its program experience over the last 5 years. Changing the levels for the Federal Workplace Drug Testing Program will have similar direct effect as evidenced by the results obtained from several Medical Review Officers and laboratories regarding the large number of laboratory positives that were verified negative by MROs. In addition, the results indicate that specimens screened positive at or above the proposed 2,000 ng/mL testing cutoff levels for opiates are the specimens most likely to contain 6-acetylmorphine, a metabolite of heroin.

The Department has evaluated results on over 1.1 million urine specimens tested for opiates in 5 certified laboratories and approximately 317,500 specimens that were reviewed by 3 different Medical Review Officer (MRO) groups. Each laboratory and MRO group was asked to furnish information on results reported from January 1, 1992, to March 31, 1993. Based on the information obtained from the MROs, 87% of all opiate positives reported by the laboratories were verified negative by the MRO based on the use of prescription medications, poppy seed consumption, no clinical evidence of heroin use, or other reason. It is clear that the current opiate testing cutoff levels are not properly identifying opiate drug abusers.

The results from the laboratories indicate that of the approximate 1.1 million specimens tested, 7294 specimens were reported positive for codeine and/or morphine. Of these positive specimens, 5931 had codeine and/or morphine concentrations less than 2,000 ng/mL. Within the group of 7294 opiate positives, 848 were also tested for 6-acetylmorphine (6-AM) with only 16 of these 848 being reported positive for 6-AM. Additionally, 14 of these 16 6-AM positives had morphine concentrations greater than 2,000 ng/mL.

When comparing information from other published studies, there was agreement that the presence of 6-AM is highly associated with morphine concentrations in excess of 2,000 ng/mL.

In light of these results, the Department is proposing to increase the initial test level for opiate metabolites to 2,000 ng/mL and the confirmatory test levels for morphine and codeine to 2,000 ng/mL. In addition, the Department is proposing to establish a requirement to test for 6-AM in specimens positive for opiates on the initial test using a 10 ng/mL confirmatory test level. 6-AM is a metabolite of heroin and no other medication or substance is known to produce it; therefore, its presence is positive proof of heroin use. Since 6-AM has a very short half-life (i.e., detectable for only a few hours after heroin use), it is essential that a laboratory use a sensitive analytical procedure to test for 6-AM. From the data available, it appears that 10 ng/mL is the lowest testing level that can reasonably be used to consistently and accurately identify and quantitate the presence of 6-AM. Additionally, the 10 ng/mL confirmatory test level for 6-AM is currently used by many laboratories that test for 6-AM after an MRO submits a request. The Department believes the proposed requirement to test for 6-AM will not increase the workload for a laboratory because setting the initial test level for opiate metabolites at 2,000 ng/mL will significantly reduce the number of specimens that will need to be confirmed for morphine, codeine, and 6-AM.

The Department believes that raising the testing levels for opiates and establishing a requirement to test for 6-AM does not reduce the deterrent value of the Federal Workplace Drug Testing Program, but rather shifts the emphasis of opiate testing back to the original focus to deter and detect use of illicit drugs, including heroin. A change in the testing cutoff levels, in conjunction with the addition of 6-AM testing, should provide more than adequate protection that heroin users will be detected. The cost to Federal agencies may be reduced since there will be fewer specimens screened positive hence, a reduction in the number of specimens sent to confirmatory testing. The laboratories will be reporting fewer opiate positives which will also reduce the time and cost for MROs to discuss use of legitimately obtained opiate containing preparations with individuals who have been tested positive by the laboratory.

The SAMHSA Drug Testing Advisory Board has discussed these results and has recommended adopting the new opiate testing cutoff levels described above.

INFORMATION COLLECTION REQUIREMENTS: There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

Dated: September 26, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Dated: November 6, 1995.

Donna E. Shalala,

Secretary.

The following amendments are proposed to the Mandatory Guidelines for Federal Workplace Drug Testing Programs published on June 9, 1994 (59 FR 29916):

Subpart B

1. Section 2.4(e)(1) is amended by changing the initial test level for opiate metabolites appearing in the table from "300" to "2,000" and deleting footnote 1.

2. Section 2.4(f)(1) is amended by changing the confirmatory test levels for morphine and codeine appearing in the table from "300" to "2,000."

3. Section 2.4(f)(1) is amended by adding in the table under opiates a confirmatory test level for 6-Acetylmorphine at "10 ng/mL."

[FR Doc. 95–28273 Filed 11–13–95; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3990–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelgates authority from the Assistant Secretary for Housing—Federal Housing Commissioner to certain positions within the Office of the Federal Housing Administration Comptroller, for the purpose of executing documents to effectuate the transfer of title to Title I loans sold by the Department of Housing and Urban Development.

EFFECTIVE DATE: November 7, 1995.

FOR FURTHER INFORMATION CONTACT: William Richbourg, Director, Management Control Staff, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5144, Washington, DC 20410, telephone (202) 401–0577. A telecommunications device for the hearing-impaired (TDD) is available at 202–708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On July 7, 1994, at 59 FR 34857, the Assistant Secretary for Housing-Federal Housing Commissioner redelegated to the Director, Office of Mortgage Insurance Accounting and Servicing, Office of the FHA Comptroller, at headquarters, and to each of the Directors of the three HUD FHA Debt Management Centers, in the field, certain authority with regard to debt arising from the payment of claims under Title I of the National Housing Act. Among other things, they were granted the authority to execute documents necessary to transfer or subordinate title in and to any debt, contract, claim or security instrument obtained by the Secretary, and to satisfy and/or execute deeds, liens and notes.

FHA is now in the process of engaging in a sale of approximately 16,000 Title I notes, based upon sealed bids which are to be opened November 7, 1995. In order to effectuate the transfer of these specified Title I loans, it is necessary to provide additional HUD employees with the authority to execute all of the necessary documents. Among other things, these employees will have the authority to execute powers of attorney to enable the purchaser(s) to assign the Title I loans to themselves. In addition, FHA may engage in future sales of Title I loans, which will again require the assistance of these HUD employees.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The Director, Office of Mortgage Insurance Accounting and Servicing; the Director, Title I Accounting and Servicing Division; the Deputy Director, Title I Accounting and Servicing Division; the Chief, Title I Operations Branch; the Chief, Title I Notes Branch; and the Director, Management Control Staff, all of the Office of the Federal Housing Administration Comptroller, are each redelegated the power and authority to execute all documents necessary to effectuate the transfer of title in and to Title I loans sold by the Department of Housing and Urban Development. This redelegation includes, but is not limited to, the authority to execute powers of attorney to enable the purchaser or purchasers of the loan to execute the necessary assignments of notes, and mortgages or deeds of trust.

Section B. Limited Authority to Further Redelegate

The authority granted in Section A., above, may be further redelegated in writing by the Director, Office of Mortgage Insurance Accounting and Servicing, pursuant to this redelegation. The authority granted in Section A. may not be further redelegated by any of the other officials listed within Section A.

Authority: Sec.7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).)

Dated: November 7, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–28281 Filed 11–15–95; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Policy Development and Research

[Docket No. FR–3825–N–03]

Announcement of Funding Awards for Fiscal Year 1995 Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1995 Community Outreach Partnership Centers Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to establish and operate Community Outreach Partnership Centers that will: (1) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (2) facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT: Marcia Marker Feld, Ph.D., Director, Office of University Partnerships, U.S. Department of Housing and Urban Development, room 8130, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3061. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers are not toll free.).

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership

Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and is administered by the Office of University Partnerships under the Assistant Secretary for Public Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: Research activities which have practical application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems in designated communities and neighborhoods. The specific problems that the local program must focus on are problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing. On December 22, 1994, HUD published a Notice of Funding Availability announcing the availability of $7 million in Fiscal Year 1995 funds for the Community Outreach Partnership Centers Program (59 FR 66124). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the fourteen applicants identified below, each in the amount of $500,000. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 1995 Community Outreach Partnership Centers Funding Competition, by Name and Address

New England

1. University of Massachusetts at Boston, Professor Edwin Melendez, University of Massachusetts at Boston, Gaston Institute, 100 Morrisey Boulevard, Boston, MA 02125, (617) 287–5790

Mid-Atlantic

2. Marshall University, Professor Ron L. Schelling, Marshall University, 1050 4th Avenue, Huntington, WV 25755, (304) 696–6249
3. George Mason University, Professor Hugh Sockett, George Mason University, Institute for Educational Transformation, 7946 Donegan Drive, Manassas, VA 22110, (703) 993–8320
4. University of Delaware, Professor Timothy Barnekov, University of Delaware, Office of the Vice Provost for Research, Newark, DE 19716, (302) 831–1690

Southeast/Caribbean

5. Georgia State University, Professor David A. Sjoquist, Georgia State University, Policy Research Center, University Plaza, Atlanta, GA 30303, (404) 651–3995
6. University of Alabama-Birmingham, Professor Craig Ramey, University of Alabama at Birmingham, Civitan International Research Center, 1719 Sixth Avenue South, Birmingham, AL 35294–0021, (205) 934–8900
7. University of Florida, Professor Marc Smith, University of Florida, 219 Grinter, Gainesville, FL 32611, (904) 392–7697
8. University of Memphis, Professor David N. Cox, University of Memphis, Political Science Department, Clement Hall, Room 427, Memphis, TN 38152, (901) 678–2794
9. University of Tennessee, Professor John Gaventa, University of Tennessee, Community Partnership Center, 1618 Cumberland Avenue, Knoxville, TN 37996–3300, (615) 974–4542

Midwest

10. DePaul University, Ms. Elizabeth Hollander, DePaul University, 243 South Wabash, Suite 9100, Chicago, IL 60604, (312) 362–6138
11. University of Illinois at Champaign, Professor Kenneth Reardon, University of Illinois at Urbana-Champaign, 907½ West Nevada, Urbana, Illinois 61801, Champaign, IL 61820, (217) 244–5384
12. Case Western Reserve University, Professor Arthur Naparstek, Case Western Reserve University, Mandel School of Applied Social Sciences, 10900 Euclid Avenue, Cleveland, OH 44106–7164, (216) 368–6947
13. University of Wisconsin-Milwaukee, Professor Robert A. Jones, University of Wisconsin at Milwaukee, The Graduate School, P.O. Box 340, Milwaukee, WI 53201, (414) 229–5920

Southwest

14. University of Texas-Austin, Professor Robert Wilson, University of Texas at Austin, P.O. Box 7726, Austin, TX 78713, (512) 471–8947

Dated: November 3, 1995.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 95–28279 Filed 11–15–95; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–3870–N–C3]

Announcement of Funding Awards for Fiscal Year 1995 Joint Community Development Program Centers for Community Revitalization

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 1995 Joint Community Development Program. Awards under the program are to be used to establish at institutions of higher education Centers for Community Revitalization, which will undertake large-scale, multi-phased, multi-year local community revitalization and community building activities in collaboration with local governments and community organizations. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Marcia Marker Feld, Ph.D., Director, Office of University Partnerships, U.S. Department of Housing and Urban Development, room 8130, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708–3061. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Joint Community Development Program was enacted in the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992). Initially administered by the Assistant Secretary for Community Planning and Development, the program was transferred August 15, 1994 to the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Joint Community Development Program provides special purpose grants to institutions of higher education or to States and units of general local government submitting applications with institutions of higher education to HUD to undertake Community Development Block Grant eligible activities. On April 7, 1995, HUD published a Notice of Funding Availability announcing the availability of $12 million ($6 million of which was appropriated for Fiscal Year 1994 and $6 million of which was appropriated for Fiscal Year 1995) for the Joint Community Development Program (60 FR 17960). Through this funding round, HUD is providing five institutions of higher education with grants of $2.4 million each, to support Centers for Community Revitalization at those institutions of higher education. For this funding round, HUD required institutions of higher education to apply on their own rather than submitting jointly with a State or unit of general local government. However, institutions of higher education were encouraged to form partnerships with units of general local government by making part of this funding available to these governments.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 1995 Joint Community Development Program, by Name and Address

New England

1. Clark University, Mr. Jack Foley
   Clark University, Office of the President, 950 Main Street, Worcester, MA 01610–1477, (508) 793–7444
2. Yale University, Professor Douglas Rae
   Yale University, 71 Livingston, New Haven, CT 06511, (203) 432–9899

Midwest

3. University of Illinois-Chicago, Professor Wim Wiewel
   University of Illinois at Chicago, Great Cities Office, 601 S. Morgan Street M/C 102, Chicago, IL, (312) 413–3375

Great Plains

4. Washington University, Ms. Suzanne Goodman
   Redevelopment Corporation at Washington University Medical Center, 11 South Newstead Avenue, St. Louis, Missouri 63108, (314) 652–4411

Pacific/Hawaii

5. University of California at Berkeley, Professor Victor Rubin
   University of California at Berkeley, University-Oakland Metropolitan Forum, 316 Webster Hall, Berkeley, CA 94720–1870, (510) 643–9103

Dated: November 3, 1995.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 95–28278 Filed 11–15–95; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–420–6310–00]

Tramroads and Logging Roads Over O. and C. and Coos Bay Revested Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Information Collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, BLM is announcing its intention to request approval for the collection of information from applicants for permits that allow access across Federal roads, rights-of-way and lands in western Oregon for logging activities.

DATES: Comments on the proposed information collection must be received by January 16. 1996 to be assured of consideration.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include "ATTN: O&C-Info" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 A.M. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd (202) 452–5030.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), the Bureau of Land Management (BLM) is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on—

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Accordingly, none of the information proposed to be collected as described below will be required until comments have been received and analyzed and approval has been obtained from OMB under 44 U.S.C. 3501 *et seq.* and a clearance number assigned.

In the advance notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, BLM is announcing its intention to revise its existing rules governing logging roads over revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands (collectively known as the O&C lands). The changes will bring the existing cost-sharing road program under the regulatory framework of Section 502 of the Federal Land Policy and Management Act of 1976 (FLPMA) and incorporate environmental protection and other requirements for rights-of-way over public lands found in Title V of FLPMA. Another change will allow compensation for the use of roads and rights-of-way where the landowner has granted BLM rights of access for recreational purposes. In addition, the entire subpart will be revised, using a "plain English" approach, to remove obsolete terms and improve its clarity, organization, and readability.

The Oregon and California Revested Lands Sustained Yield Management Act of August 28, 1937 (43 U.S.C. 1181a and 1181b) granted to the Secretary of the Interior the general authority to provide for the use, occupancy and development of the O&C lands through permits and rights-of-way. The BLM has had a cost-share logging road right-of-way program in western Oregon under this authority since the early 1950's. The regulations for this program are contained in 43 CFR Subpart 2812. With the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), all right-of-way authorizations must be issued under the authority and requirements of Title V of FLPMA (43 U.S.C. 1761–1771). The Secretary was given specific authority to enter into

cost-share agreements under Section 502 of the Act.

The BLM has continued the use of regulations in 43 CFR Subpart 2812 on an interim basis pending the preparation and publication of new cost-share regulations. Since the regulations contained in this subpart clearly represent a cost-share road agreement concept, it is proposed by the Secretary that these regulations be revised as necessary and adopted pursuant to the authority contained in Section 310 of FLPMA (43 U.S.C. 1740) for the purpose of implementing Section 502. Continuing the use of pre-existing regulations with only minor modifications and changes would provide for the orderly and continuous administration of all outstanding permits and agreements issued prior to the effective date of this rulemaking.

Applicants for permits to utilize logging roads on Federal land will be required to provide the following—

(a) Identifying information, including name; address; partnership agreement (for partnerships); and articles of incorporation, certificate of authority to do business in Oregon, and copy of bylaws (for corporations);

(b) Description of BLM lands or roads to be used and estimated period of use;

(c) Description of all lands or roads owned or controlled by the applicant that will be served by the right-of-way permit, including an estimate of timber or other materials that will be hauled on each portion;

(d) A map showing all roads to be used which are directly or indirectly controlled by the applicant;

(e) Description of any road construction that will be required on BLM lands;

(f) Description of any proposed improvements to BLM roads; and

(g) Whether any hazardous substances or solid waste will be transported within the right-of-way.

The information collected will allow BLM to determine the applicant's eligibility for a road use permit and whether it is in the Government's interest to enter into a reciprocal agreement with the applicant. A reciprocal agreement would require the applicant to grant BLM access across the applicant's roads, rights-of way or lands. The information is mandatory to obtain a benefit, use of BLM roads, rights-of-way and lands for access to timber.

The public reporting burden for this collection of information is estimated to average one hour per application. The respondents are individuals, partnerships, and corporations engaged in the logging business who desire access to timber across BLM lands. The estimated number of respondents is 200 per year. The estimated number of responses per respondent is one per year. The estimated total annual burden on respondents is 200 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: November 13, 1995.

Annetta Cheek,

Regulatory Management Team.

[FR Doc. 95–28295 Filed 11–15–95; 8:45 am]

BILLING CODE 4310–84–P

[ID–957–1420–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., November 6, 1995.

The supplemental plat prepared to correct the GPS value for the latitude at the corner of Tps. 9 and 10 S., Rs. 27 and 28 E., Boise Meridian, Idaho, was accepted, November 6, 1995.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 6, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–28271 Filed 11–15–95; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–808493

Applicant: Ms. Beatrix Schramm, Charles Darwin Research Station, Ecuador

The applicant requests a permit to import blood samples taken from captive-held Galapagos tortoise (*Geochelone nigra*) at the Charles Darwin Research Station and from wild tortoises as available on Santa Cruz Island, Ecuador, for the purpose of scientific research on reproductive cycles for propagation and survival of the species.

PRT–808566

Applicant: Darrell Judkins, Lakeville, MN.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–802429

Applicant: Christian Jackson, Metairie, LA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia to enhance the survival of the species.

PRT–802428

Applicant: Tamara Scott, Newark, CA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Nar. ibia to enhance the survival of the species.

PRT–792071

Applicant: Frank O'Brien, Wilkes-Barre, PA.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–800757

Applicant: Richard Edwards, Edmond, OK.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–797904

Applicant: Charles Cook, Centerville, OH.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–802244

Applicant: David Greenberg, Tucson, AZ.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) and slender-snout crocodile (*Crocodylus cataphractus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–794568

Applicant: Eugene Bergholz, Dousman, WI.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Zimbabwe to enhance the survival of the species.

PRT–788168

Applicant: Wilson Stout, Dallas, TX.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

PRT–788047

Applicant: Hossein Golabchi, Augusta, GA.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

PRT–788044

Applicant: Larry Battarbee, Dallas, TX.

The applicant requests a permit to import a sport-hunted brown hyena (*Hyaena brunnea*) trophy from South Africa to enhance the survival of the species.

PRT–808251

Applicant: Lynn F. Greenlee, Canon City, CO.

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mr. Frank Bowker, Thornkloof, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–808253

Applicant: Kenneth Moberg, Canon City, CO.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Frank Bowker, Thornkloof, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–808255

Applicant: Duke University Primate Center, Durham, NC.

The applicant request a permit to import three male and three female wild Broad-nosed Gentle Lemur (*Hapalemur simus*) three males and three females obtained from Department of Water and Forest, Kianjavato, Madagascar for the purpose of enhancement of the species through propagation.

PRT–808255

Applicant: Duke University Primate Center, Durham, NC.

The applicant request a permit to import one male and two female wild Diademed sifaka (*Propithecus diadema*) one male and two female obtained from Department of Water and Forest, Maramize, Madagascar for the purpose of enhancement of the species through propagation.

PRT–807797

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to export samples from various endangered and threatened animals to Friedrich-Schiller-University, Jena, Germany for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 9, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 95–28274 Filed 11–15–95; 8:45 am]

BILLING CODE 4310–55–P

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on December 14 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: December 14, 1995, 9:00 A.M.

ADDRESSES: The meeting will be held in Merida, Yucatan, Mexico, at a location yet to be determined. The North American Wetlands Conservation Council Coordinator is located at U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT:

Byron K. Williams, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (P.L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-Private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: November 9, 1995.

John G. Rogers,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–28314 Filed 11–15–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

None

Comments on the following assessment are due 30 days after the date of availability:

AB–6 (SUB-NO. 371X), Burlington Northern Railroad Company Abandonment between Shickley and Blue Hill, In Clay, Fillmore, Nuckolls and Webster Counties, Nebraska

Vernon A. Williams,

Secretary.

[FR Doc. 95–28303 Filed 11–15–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32783]

Allegheny Valley Railroad Company; Acquisition and Operation Exemption; Certain Lines of Consolidated Rail Corporation

Allegheny Valley Railroad Company (AVR), a noncarrier, has filed a notice of exemption to acquire and operate approximately 22.65 miles of rail line owned by Consolidated Rail Corporation (Conrail), between Pittsburgh and Arnold, in Allegheny and Westmoreland Counties, PA, as follows: (1) Valley Industrial Track—(a) between milepost 0.3 and milepost 4.7, (b) between milepost 2.7 and milepost 13.8, (c) between milepost 1.8 and milepost 2.7, and (d) between milepost 0.7 and milepost 2.3; (2) Coleman Secondary Track—between milepost 0.0 and milepost 2.5; (3) Indian Run Industrial Track—between milepost 0.0 and milepost 0.7; (4) Brilliant Industrial Track—(a) between milepost 2.3 and milepost 3.0, and (b) between milepost 0.0 and milepost 0.5; and (5) Plum Creek Industrial Track—between milepost 0.0 and milepost 0.25.[1] Consummation of the proposed transaction was scheduled to take place on October 26, 1995.

This transaction is related to a simultaneously filed notice of exemption in Finance Docket No. 32784, *Phillip C. Larson, Russell A. Peterson, and Dennis E. Larson—Continuance in Control Exemption—Allegheny Valley Railroad Company*, in which AVR's shareholders seek to continue in control of AVR, a class III shortline railroad, and other, non-contiguous class III shortline railroads when AVR becomes a carrier.

Any comments must be filed with the Commission and served on: Dennis E. Larson, P.O. Box 28096, Columbus, OH 43228.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 7, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28305 Filed 11–15–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32784]

Phillip C. Larson, Russell A. Peterson, and Dennis E. Larson; Continuance in Control Exemption; Allegheny Valley Railroad Company

Phillip C. Larson, Russell A. Peterson, and Dennis E. Larson have filed a notice of exemption to continue in control of Allegheny Valley Railroad Company (AVR), upon AVR becoming a class III rail carrier. AVR, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32783, *Allegheny Valley Railroad Company—Acquisition and Operation Exemption—Certain Lines of Consolidated Rail Corporation*, in which AVR seeks to acquire and operate approximately 22.65 miles of rail line owned by Consolidated Rail Corporation between Pittsburgh and Arnold, in Allegheny and Westmoreland Counties, PA. The parties intended to consummate this transaction on October 26, 1995.

The above individuals also control through stock ownership two other nonconnecting class III rail carriers: Camp Chase Industrial Railroad Corporation (CCIR), operating in Ohio, and Southwest Pennsylvania Railroad Company (SWP), operating in Pennsylvania. The shareholders' ownership in CCIR is 16 percent each for Phillip C. and Dennis E. Larson and 68 percent for Russell A. Peterson;[1] the stock ownership in SWP is 50.2 percent for Russell A. Peterson and 24.9 percent each for Phillip C. and Dennis E. Larson. The individuals jointly own 100 percent of the shares of AVR.

Also, Russell A. Peterson owns 33⅓ percent of the shares in another class III rail carrier, Gulf Coast Rail Service, Inc. d/b/a Orange Port Terminal Railway (OPTR), which operates in Texas. Two other parties who are not related to this transaction own the remainder of the stock of OPTR.[2]

The parties state that: (1) The railroads will not connect with each other or with any railroads in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Dennis E. Larson, P.O. Box 28096, Columbus, OH 43228.

Decided: November 7, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28304 Filed 11–15–95; 8:45 am]

BILLING CODE 7035–01–P

[1] AVR will operate these lines along the south shore of the Allegheny River, crossing the river on Conrail's former Brilliant Branch and terminating when it joins Conrail's track on the north shore of the Allegheny River. Interchange between Conrail and AVR will take place in Conrail's Island Avenue Yard by way of operating rights granted to AVR between the south end of the Brilliant Branch (Conrail's "CP Home") and Island Avenue Yard.

[1] In prior filings with the Commission, the distribution of ownership of CCIR was represented as 14 percent each for Phillip C. and Dennis E. Larson and 72 percent for Russell A. Peterson. The change in distribution indicated in this filing occurred on October 11, 1995, as a function of the shareholders agreement among the affected parties.

[2] Notice of a continuance in control was given by the Commission in *Russell A. Peterson—Continuance in Control Exemption—Gulf Coast Rail Service, Inc. d/b/a Orange Port Terminal Railway, Finance Docket No. 32782 (ICC served Oct. 20, 1995).*

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on November 28, 29, and 30. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, N.E., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, November 28, 1995

9:30 a.m.—Committee on Wages and Industrial Relations—Meeting Rooms 9 and 10, PSB

1. Update on COMP2000
2. Highlights from the Temporary Help Service Workers Release
3. Highlights from the Employee Benefits Survey of Small Establishments, and State and Local Governments
4. Other business

1:00 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Rooms 9 and 10, PSB

1. Review 1993 Survey of Occupational Injuries and Illnesses Bulletin tables
2. Discuss user access to occupational safety and health statistics
3. Review 1994 Census of Fatal Occupational Injuries data
4. Discuss combining case and demographic data across years
5. FY 1996 budget for the Occupational Safety and Health program

Wednesday, November 29, 1995

9:30 a.m.—Committee on Prices and Living Conditions—Meeting Rooms 9 and 10, PSB

1. Consumer Price Index update
2. Producer Price Index
3. Other business

1:00 p.m.—Committee on Productivity, Technology and Growth—Meeting Rooms 9 and 10, PSB

1. Discussion of the new BLS 1994–2005 projections
2. Report on recent developments in the Office of Productivity and Technology
3. Measurement of productivity growth in U.S. manufacturing

Committee on Foreign Labor Statistics

1. International comparisons of unemployment indicators: trends and levels
2. Comparison of multifactor productivity growth in manufacturing in the U.S., Germany and France

Thursday, November 30, 1995

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Rooms 9 and 10, PSB

1. Current Employment Statistics redesign issues
2. BLS and the new workforce legislation
3. New directions in the Mass Layoff Statistics Program
4. National Wage Record Database
5. Alternative measures of unemployment

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

Signed at Washington, D.C. this 9th day of November 1995.

Katharine G. Abraham,

Commissioner.

[FR Doc. 95–28300 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–31,463D]

Brown Shoe Co./Brown Group, Inc., Charleston, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 19, 1995, applicable to all workers at Brown Shoe Company/Brown Group, Incorporated located in Charleston, Missouri. The notice will soon be published in the **Federal Register.**

The Department reviewed the certification for workers of the subject firm. The findings show that on March 15, 1994, the Department issued a certification, petition number TA–W–29,481, to all workers at the subject firm. To avoid overlap in worker coverage under these certifications the Department is amending the impact date for TA–W–31,463D.

The amended notice applicable to TA–W–31,463D is hereby issued as follows:

All workers of Brown Shoe Company/Brown Group, Incorporated, Charleston, Missouri who became totally or partially separated from employment on or after March 15, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28257 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,462]

Brown Shoe Company/Brown Group, Inc., St. Louis, Missouri, Except the Jeff-Vander-Lou Plant; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 19, 1995, applicable to all workers at Brown Shoe Company/Brown Group, Incorporated located in St., Louis, Missouri. The notice will soon be published in the **Federal Register.**

The Department reviewed the certification for workers of the subject firm. The findings show that on May 19, 1995, the Department issued a certification, petition number TA–W–30,947, to all workers of Brown Shoe Company, Jeff-Vander-Lou Plant in St. Louis. To avoid overlap in worker coverage, the Department is amending the most recent certification to exclude the workers of the Jeff-Vander-Lou Plant.

The amended notice applicable to TA–W–31,462 is hereby issued as follows:

All workers of Brown Shoe Company/Brown Group, Incorporated, except the Jeff-Vander-Lou Plant, St. Louis, Missouri who became totally or partially separated from employment on or after September 12, 1994 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of October 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28263 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 395

Great American Knitting Mills, Scotland Neck, NC; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 5, 1995 in response to a worker petition which was filed on September 5, 1995 on behalf of workers at Great American Knitting Mills, Scotland Neck, North Carolina.

An active certification covering the petitioning group of workers remains in effect (TA–W–31,529). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC., this 3rd day of November, 1995

Russell T. Kile,

Acting Program Manger, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28262 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,341]

J. Hertling and Company, Inc.; Brooklyn, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 13, 1995, applicable to all workers of J. Hertling and Company, Incorporated, located in Brooklyn, New York. The notice was published in the **Federal Register** on October 27, 1995 (60 FR 55064).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some of the workers at J. Hertling had their unemployment insurance (UI) taxes paid to Hertling Industries, Morris Hertling Inc., and Morrison Mfg. Co., Inc. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of men's apparel.

The amended notice applicable to TA–W–31,341 is hereby issued as follows:

"All workers of J. Hertling and Company, Incorporated, a/k/a Hertling Industries, a/k/a Morris Hertling, Inc., and a/k/a Morrison Mfg. Co., Inc., Brooklyn, New York who became totally or partially separated from employment on or after August 1, 1994 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 6th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28260 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

TA–W–31,162]

Bergstein Oilfield Services, Inc.; Andrews, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 9, 1995, applicable to all workers of Bergstein Oilfield Services, Incorporated, now known as S&E Oilfield Services, Incorporated located in Andrews, Texas. The notice was published in the **Federal Register** on August 24, 1995 (60 FR 44079).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some of the workers at Bergstein Oilfield had their unemployment insurance (UI) taxes paid to D S W & T Services, Incorporated. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–31,162 is hereby issued as follows:

"All workers of Bergstein Oilfield Services, Incorporated, a/k/a D S W & T Services, Incorporated, and now known as S&E Oilfield Services, Incorporated, Andrews, Texas who became totally or partially separated from employment on or after May 10, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 6th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28264 Filed 11–15–94; 8:45 am]

BILLING CODE 4510–30–M

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center on the Loring AFB in Caribou, ME

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center on Loring AFB.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed plans for the new Loring AFB Job Corps Center will have no significant environmental impact, and this Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by December 18, 1995.

ADDRESSES: Any comment(s) are to be submitted to Amy Knight, Employment and Training Administration, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, (202)219–5468.

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Albert Glastetter, Director, Region I (One), Office of Job Corps, One Congress Street, 11th Floor, Boston, Massachusetts, 02114, (617)565–2167.

SUPPLEMENTARY INFORMATION: The proposed site, located in ten existing buildings on the Loring AFB, is comprised of approximately 30 acres. The site is part of the larger AFB complex which consists of approximately 8,317 acres, but which is to be down-sized pursuant to findings of the Defense Base Realignment and Closure Commission. Loring AFB has served in its military role since 1917. The proposed site is bordered by Texas Road to the north, Georgia Road to the east, Weinman Road to the south, and Cupp Road to the west.

The proposed Job Corps Center is designed to accommodate 392 full-time students with dormitories, educational/vocational facilities, food service facilities, medical/dental facilities, recreational facilities, administrative offices, storage and support. Approximately 268,759 gross square feet in the existing buildings will be rehabilitated, with the addition of 5,940 gross square feet of new structure. The proposed project is designed to be constructed in accordance with the local fire, building, and zoning code requirements.

The site is located in a rural setting with open space extending in all directions. To the west, across Cupp Road, there is a substantial ten-acre wetland, while to the south there is a large wooded area. Outdoor recreational facilities include nearby baseball and softball fields, tennis courts, basketball courts, a running track, and walking trails.

The new facilities associated with the Job Corps will make use of an existing roadway and infrastructure such as water and sewer lines, telephone poles, and stormwater drainage systems. The proposed building rehabilitation program will include the proper mitigation of all asbestos materials and lead-based paint, where necessary. Underground storage tanks and contaminated soils resulting from earlier fuel oil spills will be completed by the Air Force prior to Job Corps startup.

Conversion of this part of Loring AFB to a Job Corps Center would be a positive asset to the area in terms of environmental and socioeconomic improvements and long-term productivity. With the loss of Loring AFB as a significant employer, the City of Caribou will face an increased demand by its citizens for employment opportunities. The new Job Corps Center will be a new source of such employment opportunity. In addition, the Job Corps program, which provides basic education, vocational skills training, work experience, counseling, health care and related support services, is expected to graduate students ready to participate in the local economy and elsewhere.

The proposed project will not have any significant adverse impact on any natural system or resource. There are no "historically significant" buildings on the site and no areas of archaeological significance. There are no threatened or endangered species located on Loring AFB. Surface water, groundwater, woodlands, and wetlands would not be adversely affected because the rehabilitation, construction, and operational activities associated with the proposed project do not represent any increased significant change from the historical use of the site as a residential area with support facilities. The base-wide remediation of contamination, currently underway by the U.S. Air Force throughout Loring AFB, will minimize impacts from existing sources of contamination upon the natural systems and resources.

Based upon preliminary analyses, no significant levels of radon exist on the site. Analytical data describing the Loring AFB surface water supply documents that there are no levels of lead present in the drinking water. A corrosion protection system in place at the Loring AFB water treatment plant will mitigate any excess lead that may occur in drinking water supplied to the center. An asbestos assessment of the ten-building complex has been completed. Only one location in Building 5904 warranted repair or abatement of asbestos-containing duct insulation. Mitigation of asbestos-containing duct insulation will be addressed during rehabilitation. Lead-based paint is believed to exist in three buildings built prior to 1978. Mitigation measures will take place if the designated use of the building so warrants.

The proposed project will not have any significant adverse impact upon air quality, noise levels, and lighting. Air quality is good in the area and the proposed project would not be a source of air emissions. Noise levels in the area are consistent with rural/suburban areas and, with the exception of the construction period, the proposed project will not be a source of additional noise. Finally, street lights for the proposed project will be modified in the final design, if necessary, to ensure levels of illumination consistent with the utilization needs.

The proposed project will not have any significant adverse impacts upon the existing infrastructure represented by water, sewer, and stormwater systems. Adequate water is available to the site through the Loring AFB water supply system. Stormwater runoff is accommodated by an existing sewer system. The separate sanitary sewer collection system is in place and is deemed to be adequate. Wastewater treatment will be achieved at the nearby Loring AFB wastewater treatment plant on Sawyer Road. The treatment plant is operating under an existing NPDES permit and has been meeting its discharge limits.

The proposed site is surrounded by electrical power to its boundaries and an adequate distribution system on site. New distribution systems would not be required. The proposed demands on electric power are not expected to have a significant adverse affect on the environment. Similarly, traffic behavior patterns are not expected to change as a result of the proposed project. Adequate levels of service would be sustained at all intersections on the base and off on local access roads, so no significant adverse affects are expected.

There will be no significant adverse affects upon local medical, emergency, fire and police facilities, all of which are located in the towns of Limestone, Caribou, Fort Fairfield, and Presque Isle. One Job Corps complex building is to be remodeled, so as to include a new medical/dental facility to address normal demands. The new Job Corps facility will be supported by local medical facilities, including Cary Medical Center in Caribou and the complex of regional facilities managed from Aroostook Medical Center in Presque Isle. Emergency, fire, and police services will be provided through a cooperative arrangement with the towns of Limestone, Fort Fairfield, and Caribou.

The proposed project population will not have a significant adverse sociological effect on the surrounding community, which is characterized by a diverse ethnicity, and offers an abundance of recreational, educational and cultural opportunities. Similarly, the proposed project will not have a significant adverse affect on demographic and socioeconomic characteristics of the area. Rather, the implementation of the Job Corps will help to fill a void created by the closure of Loring AFB by providing jobs and educational opportunities for local residents.

The alternatives considered in the preparation of the EA were as follows: (1) The "No Build" alternative, (2) the "Alternative Sites" alternative, and (3) the "Continue as Proposed" alternative. The "No Build" alternative is considered inadequate because it would require fitting the Job Corps program into an existing building complex that is ill-equipped for its intended use and, due to the age of some buildings, contains old, out-of-date electrical, mechanical, and HVAC systems and potential sources of environmental contamination; e.g., asbestos, lead-based paint, contaminated soils. Alternative sites in New York City, New York and Camden, New Jersey were considered by the Department of Labor for the new Job Corps Center site, but did not meet the minimum selection criteria for locating a new Job Corp Center. After rehabilitating the ten existing buildings, and constructing the one new building, the proposed facilities will be suitable for their intended purpose in the Job Corps, will be environmentally safe, and will be consistent with current building codes and safety practices.

Based on the information gathered during the preparation of the EA for the Department of Labor, Employment and Training Administration, the Office of Job Corps finds that the location of a Job Corps Center on the Loring AFB in Caribou, Maine will not create any significant adverse impact on the environment and, therefore, recommends that the project continue as proposed. The proposed project is not considered to be highly controversial.

Dated: at Washington, DC, this 6th day of November, 1995.

Mary Silva,

Acting Director of Job Corps.

[FR Doc. 95–28256 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00565]

Jeld-Wen of Bend Including Pozzi Window and Bend Door Co.; Bend, OR; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, title II, of the

Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on September 22, 1995, applicable to all workers of Jeld-Wen of Bend, located in Bend, Oregon. The notice was published in the **Federal Register** on October 5, 1995 (60 FR 52214).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that workers of Pozzi Window and Bend Door Co. were inadvertently omitted from the certification. All manufacturing operations of Pozzi Window and Bend Door Co. are performed at the Jeld-Wen production facility in Bend, Oregon.

The intent of the Department's certification is to include all workers of Jeld-Wen adversely affected by increased imports of Canadian and Mexican commodity millwork.

The amended notice applicable to NAFTA–00565 is hereby issued as follows:

"All workers of Jeld-Wen of Bend, Pozzi Window and Bend Door Company, Bend Oregon who became totally or partially separated from employment on or after August 9, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC., this 3rd day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28261 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00629]

Pacific Personnel, Colville Branch, Colville, WA; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on October 3, 1995 in response to a petition filed on behalf of workers at Pacific Personnel, Colville Branch located in Colville, Washington. The workers produce lumber products for Vaagen Brothers Lumber Inc.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–00537). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28259 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00630]

Pacific Personnel, Colville Branch, Colville, WA; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on October 3, 1995 in response to a petition filed on behalf of workers at Pacific Personnel, Colville Branch located in Colville, Washington. The workers produce lumber products for John Chopot Lumber Company Incorporated.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–00517). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28258 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Health and Safety Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Permissible Exposure Limits Site Visits

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed new collection of information to develop the economic analysis for a Permissible Exposure Limit (PEL) rulemaking that the Agency is undertaking.

DATES: Written comments must be submitted on or before January 16, 1996. The Department of Labor is particularly interested in comments that:

evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

enhance the quality, utility, and clarity of the information to be collected; and

minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–95–1, U.S. Department of Labor, Room N–2625, 200 Constitution Ave, N.W., Washington, D.C. 20010, telephone (202) 219–7894 (not a toll-free number). Written comments of 10 pages or less may also be transmitted by facsimile to (202) 219–5046.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency proposed new permissible exposure limits (PELs) for more than 400 substances of 1988 (53 FR No. 109, June 7, 1989). Final PELs for these substances were published in 1989 (54 FR No. 12, January 19, 1989). The United States Court of Appeals, Eleventh Circuit, vacated the standard on July 7, 1992, stating that OSHA had not met its burden of establishing that the new exposure limits were either economically or technologically feasible; that existing limits presented a significant risk of material health impairment; or that the new limits would eliminate or substantially reduce the risk. OSHA has begun a new rulemaking effort to meet the burdens imposed by the Court. This rulemaking will set new PELs for fewer chemical substances than the original 1988–89 effort. To determine economic and technological feasibility for these substances, the Agency proposes to gather information from affected industries and other sources. The Agency proposes to conduct as many as 50 site visits to affected employers and to contact and interview by phone as many as 200 firms, trade associations, labor organizations, or experts.

II. Current Actions

The proposed collection of information consists of site visits to as many as 50 establishments within industries affected by the proposed standard and phone interviews with as many as 200 employers, trade associations, labor organizations, or experts in the field. Information to be sought by these site visits will consist of identifying processes that have exposures to the PEL substances; a description of the production technology, controls, and occupations of each process; occupational exposure levels of employees at those processes; potential new technologies or controls that may reduce exposures; estimates of costs of current technology as well as technology that could reduce exposure levels; other means used to control or reduce exposure levels such as administrative controls or work practices.

Type of Review: New.

Agency: Occupational Health and Safety Administration.

Title: Permissible Exposure Limit Site Visits.

OMB Number: None.

Agency Number: ICR–95–1.

Frequency: Once.

Affected Public: Private businesses, state and federal government.

Number of Respondents: 250.

Estimated time per Respondent: 30 hours, on average, for site visits; 1 hour on average for phone interviews.

Total Estimated Cost: $85,000.

For Further Information Contact: Anne C. Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW., Washington, DC 20210. Telephone (202) 219–8148. Copies of the information collection request are available for inspection and copying in the Docket Office and will be immediately mailed to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies, contact the Labor News bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/.

Dated: November 9, 1995.

Marthe Kent,

Director, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor.

Collection of information sought by OSHA for each substance in the proposed permissible exposure limit rulemaking:

1. Identification of processes or operations that may result in exposures to employees.

2. A description of the production process, its technology, and control technology.

3. A description of activities by occupation that result in worker exposures. How are employees exposed? During what work activities? What is the length and frequency of exposure?

4. How many employees work in each process with exposures to the substance in question? How many employees are in each occupation at that process?

5. What data is available of exposure levels of each occupation of the process? Is historical data available?

6. What technology or controls are capable of reducing exposures? What exposure levels could be achieved with other control technologies? Are there substitutes for the substance in question? Are there other technologies employed by the industry?

7. Are there changes in administrative controls or work practices that could affect employee exposures?

8. Estimates of the cost of the various means of reducing occupational exposure levels. Estimates of the cost of current controls.

9. General information from the establishment on number of employees, number of production employees, products and production levels.

10. Information about the technology, controls, and exposures for the rest of the industry.

11. What are the economic benefits of installing production technology that reduces exposures?

[FR Doc. 95–28301 Filed 11–15–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL MEDIATION BOARD

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Application for Mediation Services, and Application for Investigation of Representation Dispute

ACTION: Notice.

SUMMARY: The National Mediation Board, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden, (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Mediation Services, and the Application for Investigation of Representation Dispute.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before January 16, 1996.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Reba F. Streaker, Records Officer, National Mediation Board, 1301 K Street, NW.,

Suite 250 East, Washington, DC 20672. Telephone No. (202) 523–5627 and FAX No. (202) 523–1494.

SUPPLEMENTARY INFORMATION:

A. Application for Mediation Services, NMB–2

I. Background

Section 5, First of the Railway Labor Act, 45 U.S.C., 155, First, provides that both, or either, of the parties to the labor-management dispute may invoke the mediation services of the National Mediation Board. Congress has determined that it is in the nation's best interest to provide for Governmental mediation as the primary dispute resolution mechanism to resolve labor-management disputes in the railroad and airline industries. The Railway Labor Act is silent as to how the invocation of mediation is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.1, provides that applications for mediation services be made on printed forms which may be secured from the National Mediation Board. This section of the regulations provides that applications should be submitted in duplicate, show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, date and copy of notice served by the invoking party to the other and date of final conference between the parties. The application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act or by the chief executive of the labor organization, whichever party files the application.

II. Current Actions

The extension of this form is necessary considering the information provided by the parties is used by the Board to structure a mediation process that will be productive to the parties and result in a settlement without resort to strike or lockout. The Board has been very successful in resolving labor disputes in the railroad and airline industries. Approximately 97 percent of all labor disputes we have handled since 1934 have been resolved without a strike. This success ratio would possibly be reduced if the Board was unable to collect the brief information that it does in the application for mediation services.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Agency: National Mediation Board.

Title of Form: Application for Mediation Services.

OMB Number: 3140–0001.

Agency Number: NMB–2.

Frequency: Daily.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Number of Respondents: 123 annually.

Estimated Time Per Respondent: The burden on the parties is minimal in completing the Application for Mediation Services. There is no improved technological method for obtaining this information.

Total Estimated Cost: $1040.00.

Total Burden Hours: 43.

B. Application for Investigation of Representation Dispute, NMB–3

I. Background

Section 2, Fourth of the Railway Labor Act, 45 U.S.C. 152, Fourth, provides that railroad and airline employees shall have the right to organize and bargain collectively through representatives of their own choosing. When a dispute arises among the employees as to who will be their bargaining representative, the National Mediation Board is required by Section 2, Ninth to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative to the employer. The Board's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2 provides that requests to investigate representation disputes may be made on printed forms NMB–3. The application shows the name or description of the craft or class involved, the name of the invoking organization, the name of the organization currently representing the employees, if any, and the estimated number of employees in the craft or class involved. This basic information is essential to the Board in that it provides a short description of the particulars of dispute and the Board can begin determining what resources will be required to conduct an investigation.

II. Current Actions

The extension of this form is necessary considering the information is used by the Board in determining such matters as how many staff will be required to conduct an investigation and what other resources must be mobilized to complete our statutory responsibilities. Without this information, the Board would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Agency: National Mediation Board.

Title of Forms: Application for Investigation of Representation Dispute.

OMB Number: 3140–002.

Agency Number: NMB–3.

Frequency: Daily.

Affected Public: Union Officials, and employees of railroads and airlines.

Number of Respondents: 68 annually.

Estimated Time Per Respondent: The burden on the parties is minimal in completing the Application for Investigation of Representation Dispute. There is no improved technological method for obtaining this information.

Total Estimated Cost: $517.00.

Total Burden Hours: 24.50.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request, they will also become a matter of public record.

Dated: November 9, 1995.

Reba Streaker,

Records Officer/Paperwork Clearance Officer.

[FR Doc. 95–28266 Filed 11–15–95; 8:45 am]

BILLING CODE 7550–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory committee Act (Pub L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Galactic Astronomy Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 5–6(3). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1826.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28327 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 920463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities (#1193).

Date and Time: December 4, 1995 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Room 1150.

Contact Person(s): T.C. Ting & Rita Rodriguez, Program Directors, CISE/OCDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28328 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (#1193).

Date and Time: December 5, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150 and 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Harry G. Hedges, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Research Experiences for Undergraduates proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28329 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In according with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: December 8, 1995, 8:00 a.m.–5:00 p.m.

Place: Rooms 310, 340, 365, 370, 380, and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Warren DeVries and Dr. Kesh Narayanan, Manufacturing Processes and Equipment Program, Dr. Pius Egbelu, Operations Research and Production Systems Program, Dr. George Hazelrigg and Dr. Christina Gabriel, Design and Integration Engineering Program, and Mr. Warren Chernock, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Faculty Early Career Development (CAREER) proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals association with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Date: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28330 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geoscience

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geoscience.

Date and Time: December 8, 1995, 9:00 a.m.

Place: Room 730, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Richard W. West, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1579.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Shipboard Scientific Support Equipment proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28331 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: Monday, December 4–Tuesday, December 5, 1995; 8 a.m.–5 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.
Contact Person: Dr.'s Betty Ruth Jones & Alexandra King, Program Directors, HRD, Room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1633.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Comprehensive Partnerships for Minority Student Achievement proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(t), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28332 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).
Date and Time: December 4, 5, 7 and 8, 1995: 8:30 a.m.–5:00 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Rooms 880, 330 and 370, Arlington, VA.
Type of Meeting: Closed.
Contact Person: Dr. William McHenry, Program Director, Division of Human Resource Development, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1632.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Alliances for Minority Participation proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28333 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).
Date and Time: December 6, 1995—8:30 a.m.–5:00 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Room 970, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: William McHenry, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1632.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Alliances for Minority Participation proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28334 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development (#1199).
Date and Time: December 7 & 8, 1995—8:30 a.m.–5:00 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Lawrence Scadden & Mary Kohlerman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1636.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Programs for Persons with Disabilities proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28335 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (#1200).
Date and Time: December 7–8, 1995, 8:30 a.m. to 6:00 p.m.
Place: River Inn, 924 Twenty-Fifth Street, N.W., Washington, D.C. 20037.
Type of Meeting: Closed.
Contact Person: Dr. Maria Zemankova, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (301) 306–1926.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of e proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28336 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences.
Date and Time: December 4–6, 1995, 8:30 a.m. til 5:00 p.m.

Place: Rooms 340, 380, & 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Persons: Dr. Stephen Samuels and Dr. Sallie Keller-McNulty, Program Directors, Room #1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.
Purpose of Meeting: To provide advice to Program Officers concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals for the Statistics and Probability Program, as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28337 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Mathematical Sciences (#1204)
Date and Time: Friday December 8, 1995 (8:30 a.m. to 10:00 p.m.).
Place: O'Hare Hilton, O'Hare International Airport, Chicago, IL 60666.
Type of Meeting: Closed.
Contact Person: Dr. Keith Crank, Program Director, Division of Mathematical Sciences Room #1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1885.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Mathematical Sciences Postdoctoral Research Fellowship Program nominations/ applications as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28338 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Polar Programs. Code (1209).
Date and Time: December 5–6, 1995; 8:30 a.m.–5:00 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 770.
Type of Meeting: Closed.
Contact Person: Dr. Polly A. Penhale, Program Manager, OPP, Room 755 Telephone: (703) 306–1033
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Southern Ocean Joint Global Ocean Flux (JGOFS) proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28339 Filed 11–15–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District

Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of its regulations to Facility Operating License Number DPR–46. This license was issued to the Nebraska Public Power District (the licensee) for operation of the Cooper Nuclear Station (CNS) located in Nemaha County, Nebraska.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would allow the licensee to reschedule the licensed operator requalification examinations at CNS until after the current refueling outage. The requested exemption would extend the completion date for the examinations from December 22, 1995, until March 15, 1996. In the letter, the licensee indicated that licensed operators will continue to participate in the ongoing requalification training program, and that by assigning licensed operators to the outage organization, a reduction in overall shutdown risk could be realized.

The proposed action is in accordance with the licensee's application dated October 16, 1995, for an exemption from the requirements of 10 CFR 55.59.

The Need for the Proposed Action

The schedular exemption requested would extend the completion date for the administration of licensed operator examinations for the CNS requalification program from December 22, 1995, to March 15, 1996. This would move the examination period outside the current refueling outage, thereby allowing the assignment of licensed operators to refueling outage organization positions. The increased oversight of outage activities provided by the licensed operators would result in better shutdown risk management and provide a net benefit with regard to plant safety.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's request. The proposed exemption does not change the requirements for licensed operator training, as licensed operators at CNS will continue to participate in the ongoing requalification training program throughout the extension period. The affected licensed operators will continue to demonstrate and possess the required levels of knowledge, skills, and abilities needed to safely operate the plant. The proposed exemption would not change the existing CNS safety limits, safety settings, power operations, or effluent limits. The proposed exemption would allow increased oversight by licensed operators of outage activities with a resulting net benefit to safety.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable

individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested exemption. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar, but the proposed action could also result in a reduction in overall shutdown risk at CNS.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Cooper Nuclear Station dated February 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on November 3, 1995, the staff consulted with the Nebraska State official, Ms. Cheryl Rogers, Nebraska Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's request for an exemption dated October 16, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 9th day of November, 1995.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28310 Filed 11–15–95; 8:45 am]

BILLING CODE 7590–1–P

[Docket No. 50–352]

Philadelphia Electric Company, Limerick Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix J (hereafter referred to as Appendix J) to Facility Operating License No. NPF–39 issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Unit 1, located at the licensee's site in Chester and Montgomery Counties, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow an exemption from Appendix J, Section III.D.1.(a), which requires a set of three Type A tests (i.e., Containment Integrated Leakage Rate Test) to be performed at approximately equal intervals during each 10-year service period and specifies that the third test of each set be conducted when the plant is shutdown for the 10-year inservice inspection (ISI). The exemption would allow a one-time test interval extension from the current scheduled 62 months to approximately 89 months. It should also be noted that the licensee previously was granted a similar exemption on February 8, 1994 (59 FR 5758). This 1994 exemption allowed the licensee to perform it's third Type A test during the 10-year plant ISI refueling outage by extending the test interval 15 months. The licensee requested that the current exemption request supersede the previously granted exemption.

The proposed action is in accordance with the licensee's application for exemption dated June 20, 1995.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to realize cost savings and reduced worker radiation exposure. Subsequent to the licensee's submittal, a rulemaking was completed (see 60 FR 49495 September 26, 1995), which allows the Type A test to be performed at intervals up to once every 10 years (the actual period is based on historical performance of the containment). However, because the licensee's outage is scheduled to begin in January 1996, there is insufficient time for the licensee to implement the amended rule prior to the start of the outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and concludes that this action would not significantly increase the probability or amount of expected primary containment leakage; hence, the containment integrity would be maintained. The current requirement in Section III.D.1.(a) of Appendix J to perform the three Type A tests would continue to be met, except that the time interval between the second and third type A tests would be extended to approximately 89 months.

The licensee has analyzed the results of previous Type A tests to show good containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

Based on the information presented in the licensee's application, the proposed extended test interval would not result in a non-detectable leakage rate in excess of the value established by Appendix J, or in any changes to the containment structure or plant systems. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Accordingly, the Commission concludes that this proposed exemption would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This proposed exemption does not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Stations, Units 1 and 2, dated April 1984 as supplemented on August 1989.

Agencies and Persons Consulted

In accordance with its stated policy, on September 26, 1995, the staff consulted with the Pennsylvania State official, David Ney of the Bureau of Radiation Protection, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed exemption will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed action, see the licensee's letter dated June 20, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 9th day of November 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28311 Filed 11–15–95; 8:45 am]

BILLING CODE 7590–1–P

[Docket Nos. 50–220 and 50–410]

Niagara Mohawk Power Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–63 and NPF–69 issued to Niagara Mohawk Power Corporation for operation of the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, respectively, located in Oswego County, New York.

The proposed amendments would change position titles and reassign responsibilities at the upper management level.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment[s], will not involve a significant increase in the probability or consequence of an accident previously evaluated.

None of the accidents previously evaluated are affected by the proposed corporate management position title changes or by the reassignment of responsibilities. The revised organizational structure will not affect the design of systems, structures, or components; the operation of plant equipment or systems; nor maintenance, modification, or testing activities. The revised management reporting structure and assignment of responsibilities does not involve accident precursors or initiators previously evaluated and does not create any new failure modes that would affect any previously evaluated accidents. Therefore, operation in accordance with the proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment[s], will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised organizational structure will not affect the design of systems, structures, or components; the operation of plant equipment or systems; nor maintenance, modification or testing activities. The proposed position title changes and responsibility assignments do not create any new failure modes or conditions that would create a new or different kind of accident. Therefore, operation in accordance with the proposed amendment[s] will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment[s], will not involve a significant reduction in a margin of safety.

The proposed amendment[s] define the lines of authority, responsibility, and communication necessary to ensure operation of the facility in a safe manner. The present Executive Vice President—Nuclear will assume the responsibilities of Chief Nuclear Officer. The present Vice President—Nuclear Generation will assume the responsibilities of Vice President and General Manager—Nuclear. These assignments provide the highest level of management expertise and experience in the operation of Nine Mile Point Unit 1 [and Unit 2] and assure that adequate operational safety is maintained. Therefore, the proposed organizational restructuring will not involve a significant reduction in a margin of safety.

As determined by the analysis, the proposed amendment[s] involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendments involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 18, 1995, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment requests involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Ledyard B. Marsh: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendments dated October 25, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 7th day of November 1995.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28312 Filed 11–15–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36464; International Series Release No. 879; File No. SR–CBOE–95–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Currency Warrants Based on the Value of the U.S. Dollar in Relation to the Brazilian Real

November 8, 1995

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 13, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading currency warrants based upon the value of the U.S. dollar in relation to the Brazilian Real. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is permitted to list and trade currency warrants under CBOE Rule 31.5(E). The Exchange is now proposing to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Brazilian Real ("Brazilian Real warrants"). The listing and trading of currency warrants relating to the Brazil Real will comply in all respects with CBOE Rule 31.5(E).

1. Currency Warrant Trading

Brazilian Real warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars. The warrants will be either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the value of the Brazilian Real has declined in relation to the U.S. dollar below a pre-stated base price. Conversely, holders of a warrant structured as a "call" would, upon exercise, receive payment in U.S. dollars to the extent that the value of the Brazilian Real in relation to the U.S. dollar has increased above the pre-stated base price. Warrants that are out-of-the-money at the time of expiration will expire worthless.

2. Warrant Listing Standards and Customer Safeguards

In SR–CBOE–90–08,[1] the Exchange established generic listing standards for currency warrants, which are contained in CBOE Rule 31.5(E). On August 29, 1995, the Commission approved SR–CBOE–94–34,[2] which amended Rule 31.5(E) and established customer protection and margin requirements for currency warrants.

CBOE Rule 31.5(E) sets forth the criteria applicable to listing currency warrants. Any issue of Brazilian Real warrants will conform to the listing criteria under Rule 31.5(E) which provide that: (1) The issuer shall have minimum tangible net worth in excess of $150,000,000 and otherwise substantially exceed the size and earnings requirements in Rule 31.5(A); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have a minimum aggregate market value of $4,000,000. In addition, where an issuer has a minimum tangible net worth in excess of $150,000,000 but less than $250,000,000, the Exchange shall not list Brazilian Real warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer (and its affiliates) that are listed for trading on a national securities exchange or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ") exceeds 25% of the issuer's net worth.

Among the consequences of the recently approved rule amendments, Brazilian Real warrants may be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 9.7. Moreover, the suitability standards of Exchange Rule 9.9 apply to recommendations in currency warrants. Also the standards of Rule 9.10(a), regarding discretionary orders, will be applicable to currency warrants.

3. Margin Requirements

Recently approved SR–CBOE–94–34 also establishes margin requirements for currency warrants. New Exchange Rule 30.53 requires minimum margin on any currency warrant carried "short" in a customer's account to be 100% of the current market value of each such warrant plus an "add-on" percentage of the produce of the units of underlying currency per warrant and the spot price for such currency. The Exchange has calculated frequency distributions reflecting percentage price returns for all one (1) and five (5) day periods for the Brazilian Real for the period of September 1, 1992 through August 30, 1995. These distributions demonstrate that more than 97.5% of all five (5) day

[1] See Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990).

[2] See Securities Exchange Act Release No. 36169 (August 29, 1995), 60 FR 46644 (September 7, 1995).

returns for the three (3) year period would have been covered by 10.0% of the underlying Real value. Based upon these results, the Exchange is proposing to set the margin "add-on" percentage for Brazilian Real warrants at 10% for both initial and maintenance margin, with a minimum add-on for out-of-the money warrants of 2%. If as the result of the Exchange's routine monitoring of margin adequacy, the Exchange determines that a different percentage would be appropriate, CBOE will file a proposal with the Commission to modify the add-on percentages.

The Exchange believes that the listing and trading of Brazilian Real warrants is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular, because it will help remove impediments to a free and open securities market and facilitate transactions in securities by providing investors with a low-cost means to participate in the performance of the Brazilian economy or to hedge against the risk of investing in that economy.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–54 and should be submitted by December 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28249 Filed 11–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36486; File No. SR–NASD–95–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to Article II, Section 4 of the NASD By-Laws Relating to the Eligibility Provisions for Members and Associated Persons

November 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article II, Section 4 of the NASD By-Laws to conform these provisions to changes adopted by Congress. Below is the text of the proposed rule change. Proposed new language is italicized and deleted language is bracketed:

Article II, Section 4

Definition of Disqualification

Sec. 4. A person is subject to a "disqualification" with respect to membership, or association with a member, if such person:

[Commission and Self-Regulatory Organization Disciplinary Sanctions]

(a) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, *foreign equivalent of a self-regulatory organization, foreign or international securities exchange,* contract market designated pursuant to Section 5 of the Commodity Exchange Act, *or a foreign equivalent of a contract market designated pursuant to* [or futures association, registered under Section 17 of such Act, or] *any substantially equivalent foreign statute or regulation, or futures association registered under Section 17 of the Commodity Exchange Act or a foreign equivalent of futures association designated pursuant to any substantially equivalent foreign statute or regulation,* or has been *and is denied trading privileges on any such contract market or foreign equivalent;*

[(b) is subject to an order of the Commission or other appropriate regulatory agency denying, suspending for a period not exceeding twelve months, or revoking his registration as a broker, dealer, municipal securities dealer (including a bank or department or division of a bank), or government securities broker or dealer or barring or suspending him from being associated with a broker, dealer, or municipal securities dealer (including a bank or department or division of a bank), or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act;]

(b) is subject to—

(1) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority:

(i) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(ii) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;

(2) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(3) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(c) by his conduct while associated with a broker, dealer, municipal securities dealer [(including a bank or department or division of a bank)], [or] government securities broker, or *government securities* dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion or order of the character described in subsections (a) or (b) of this Section;

(d) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subsection (a) or (b) of this Section;

[(d)]*(e)* has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described in subsections (a), (b), [or] (c), *or (d)* of this Section;

[Misstatements]

[(e)]*(f)* has willfully made or caused to be made in any application for membership in a self-regulatory organization, or to become associated with a member of a self-regulatory organization, or in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

[Convictions]

[(f)]*(g)(1)* has been convicted within ten years preceding the filing of any application for membership in the Corporation, or to become associated with a member of the Corporation, or at any time thereafter, of any felony or misdemeanor *or of a substantially equivalent crime by a foreign court of competent jurisdiction* which:

(i)[(1)] involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, *any substantially equivalent activity however denominated by the laws of the relevant foreign government,* or conspiracy to commit any such offense;

(ii)[(2)] arises out of the conduct of the business of a broker, dealer, municipal securities dealer, [or] government securities broker [or] *government securities* dealer, investment adviser, bank, insurance company, fiduciary, *transfer agent, foreign person performing a function substantially equivalent to any of the above,* or any entity or person required to be registered under the Commodity Exchange Act *or any substantially equivalent foreign statute or regulation;*

(iii)[(3)] involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities; or *substantially equivalent activity however denominated by the laws of the relevant foreign government;* or

(iv)[(4)] involves the violation of Sections 152, 1341, 1342 or 1343 or Chapters 25 or 47 of Title 18, United States Code [;], or a violation of a substantially equivalent foreign statute;

(g)(2) has been convicted within ten years preceding the filing of any application for membership in the Corporation, or to become associated with a member of the Corporation, or at any time thereafter of any other felony;

[Injunctions]

[(g)]*(h)* is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, [or] *municipal securities dealer,* government securities broker, [or] *government securities* dealer, *transfer agent, foreign person performing a function substantially equivalent to any of the above,* or entity or person required to be registered under the Commodity Exchange Act, *or any substantially equivalent foreign statute or regulation,* [municipal securities dealer (including a bank or department or division of a bank)], or [government securities broker or dealer or] as an affiliated person or employee of any investment company, bank, insurance company, *foreign entity substantially equivalent to any of the above,* or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

(i) has been found by a foreign financial regulatory authority to have—

(1) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(2) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

(3) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who

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[3] 17 CFR 200.30–3(a)(12).

[1] The proposed rule change was originally submitted on October 3, 1995, but was subsequently amended on October 31, 1995. This notice incorporates the amendment of October 31, 1995. The amendment is available for inspection and copying in the Commission's Public Reference Room.

commits such a violation, if such other person is subject to his supervision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article II, Section 4 of the NASD By-Laws so that it will generally conform the NASD's eligibility criteria to changes adopted by Congress in 1990 to the statutory disqualification provisions found in Sections 3(a)(39) and 15(b)(4) of the Act. The NASD's eligibility criteria found in Article II, Section 4 of the By-Laws generally have followed the aforementioned statutory disqualification provisions in the Act. In November 1990, Congress amended the statutory disqualification provisions of the Act to include all felony convictions for ten years from the date of the conviction and to include various foreign regulatory actions.

The NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6) and 15A(g)(2) of the Act in that the proposed changes to the By-Laws will promote uniformity and consistency with existing provisions of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–45 and should be submitted by December 7, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Sections 15(b)(7), 15A(b)(6), 15A(b)(7), 15A(g)(2), 15A(g)(3)(A) and 15A(g)(3)(B) of the Exchange Act.[2] Section 15(b)(7) states that a registered broker or dealer may not effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets standards of operational capability, and such broker or dealer and all persons associated with such broker or dealer meet certain standards of training, experience, competence, and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. Section 15A(b)(6) requires, in relevant part, that the rules of a registered securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Section 15A(b)(7) requires that the rules of a registered securities association provide that its members and persons associated with its members be appropriately disciplined for violation of any provision of the Act, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from association with a member, or any other fitting sanction. Section 15A(g)(2) provides for a registered securities association to deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. Section 15A(g)(3)(A) permits a registered securities association to deny membership to, or condition the membership of a registered broker or dealer if such broker or dealer does not meet standards of financial responsibility or operational capability, or if such broker or dealer or any natural person associated with such broker or dealer does not meet standards of training, experience, and competence as are prescribed by the rules of the association, or has engaged, and there is a reasonable likelihood he will again engage, in acts or practices inconsistent with just and equitable principles of trade. Section 15A(g)(3)(B) permits a registered securities association to bar a natural person from becoming associated with a member or condition the association of such person with a member if the person does not meet such standards of training, experience, and competence as are prescribed by the rules of the association, or has engaged, and there is a reasonable likelihood he will again engage, in acts or practices inconsistent with just a equitable principles of trade.

The Commission believes that the amendment to Article II, Section 4 of the NASD By-Laws will help the NASD in its efforts to protect investors and the public interest. The NASD's attempt to more closely conform Article II, Section 4 to the definition of statutory disqualification in the Act will enhance the NASD's authority with respect to persons subject to statutory disqualification. The amendment will allow the NASD to use this authority over such persons to better protect the integrity of its members and persons associated with its members.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the amendment is modeled after the definition of statutory disqualification in the Act, and the importance of a self-regulatory organization's ability to exercise its authority over persons subject to statutory disqualification.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NASD–95–45 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28315 Filed 11–15–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78*o*(b)(7), 78*o*–3(b)(6), 78*o*–3(b)(7), 78*o*–3(g)(2), 78*o*–3(g)(3)(A), 78*o*–3(g)(3)(B).

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–36469; International Series Release No. 883; File No. SR–ODD–95–1]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Supplement to Options Disclosure Document Regarding Customized Foreign Currency Options With Customized Expiration Dates

November 8, 1995.

On October 26, 1995, the Options Clearing Corporation ("OCC"), on behalf of the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act"),[1] preliminary copies of a supplement ("Supplement") to the Options Disclosure ("ODD") which describes the special exercise and assignment procedures for foreign currency options with customized expiration dates ("Customized expiration date FCOs"). Five definitive copies of the Supplement were delivered to the Commission on November 7, 1995.[2]

The proposed Supplement to the ODD provides for disclosure of certain unique aspects of the Exchange's Customized expiration date FCO proposal, which has been submitted to the Commission separately.[3] This Supplement, which is to be read in conjunction with the more general ODD entitled "Characteristics and Ricks of Standardized Options," describes, among other things, the special exercise and assignment procedures for Customized expiration date FCOs. Pursuant to Rule 9b–1, the Supplement will have to be provided to investors in this product before their accounts are approved for transactions in Customized expiration date FCOs or their orders for Customized expiration date FCOs are accepted.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1. The Supplement is intended to be read in conjunction with the ODD, which discloses the characteristics and risks of flexibly structured foreign currency options generally. The Supplement provides additional information regarding Customized expiration date FCOs sufficient to describe the special characteristics and risks of these products with respect to their exercise and assignment.

Rule 9b–1 provides that an options market must file five copies of amendments to a disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors.[4] The Commission believes that it is consistent with the public interest and the protection of investors to allow distribution of the Supplement as of November 8, 1995, a date which is within 30 days of the date definitive copies of the Supplement were submitted to the Commission. Specifically, the Commission believes that, because the Supplement provides adequate disclosure of the special characteristics and risks of these products with respect to their exercise and assignment, thereby helping to ensure that customers engaging in Customized expiration date FCOs are cable of understanding the risks of such trading activity, it is consistent with the public interest for it to be distributed to investors before the planned commencement of, or simultaneously with, trading in Customized expiration date FCOs on the Exchange.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[5] that the proposed Supplement to the ODD (SR–ODD–95–1) to accommodate the Exchange's proposed trading of Customized expiration date FCOs is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28317 Filed 11–15–95; 8:45 am]

BILLING CODE 5010–01–M

[1] 17 CFR 240.9b–1 (1994).

[2] See letter from Jean M. Cawley, OCC, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated November 7, 1995.

[3] See Securities Exchange Act Release No. 36131 (August 22, 1995), 60 FR 44927 (August 29, 1995) (notice of File No. SR-PHLX-95–52).

[4] This provision is intended to permit the Commission either to accelerate or to extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[5] 17 CFR 240.9b–1 (1994).

[6] 17 CFR 200.30-3(a)(39) (1994).

[Release No. 34–36474; File No. SR–PSE–95–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Incorporated Relating to the Amendment of Its Minor Rule Plan To Include Certain Rules on Financial Reporting and Cooperation in Exchange Investigations and the Establishment of a Charge for the Late Filing of Periodic FOCUS Reports

November 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1995, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposed to amend its Minor Rule Plan to include certain rules on financial reporting and cooperation in Exchange investigations. The Exchange is also proposing to amend its rules to establish an administrative charge for the late filing of quarterly FOCUS Reports. The text of the proposed rule change is as follows [new text is italicized]:

Minor Rule Plan

Rule 10.13(a)–(i)—No change.

(j) Minor Rule Plan: Record Keeping and Other Minor Rule Violations.

(j)(1)–(j)(4)—No change.

(j)(5) Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Exchange. (Rule 2.12(a))

(j)(6) Deloying, impeding or failing to cooperate in an Exchange investigation. (Rule 10.2(b))

* * * * *

Minor Rule Plan Recommended Fine Schedule (Pursuant to Rule 10.13(f))

Rule 10.13(j).

RECORD KEEPING AND OTHER MINOR RULE VIOLATIONS

	1st violation	2nd violation	3rd violation
1–4—No change:			
5. Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Exchange. (Rule 2.12(a))	*$100*	*$250*	*$500*
6. Delaying, impeding or failing to cooperate in an Exchange investigation. (Rule 10.2(b))	*100*	*250*	*500*

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Financial Reports

Rule 2.12(b)(1). Each member organization shall file with the Exchange a Report of Financial Condition on SEC Form X–17A–5 as required by Securities and Exchange Commission Rules *17a–5 and* 17a–10. Any member who fails to file such Report of Financial Condition in a timely manner shall be subject to late filing charges as follows:

Number of days late	Amount of charge
1–30	$200.00
31–60	400.00
61–90	800.00

Repeated or aggravated failure to file such Report of Financial Condition or failure to file such report for more than ninety days will be referred to the Ethics and Business Conduct Committee for appropriate disciplinary action.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Minor Rule Plan ("MRP"),[1] set forth in PSE Rule 10.13, provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member or member organization, for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PSE Rule 10.13, subsections (h)–(j), sets forth the specific Exchange rules deemed to be minor in nature.

The Exchange is proposing to add the following provision to the MRP as PSE Rule 10.13(j)(5): "Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Exchange. (Rule 2.12(a))."[2] The Exchange is also proposing to amend its Recommended Fine Schedule to establish the following recommended fines for violations of PSE Rule 2.12(a): $100 for a first-time violation; $250 for a second-time violation; and $500 for a third-time violation.[3]

The Exchange is also proposing to add the following provision to the MRP as PSE Rule 10.13(j)(6): "Delaying, impeding or failing to cooperate in an Exchange investigation. (Rule 10.2(b))."[4] The Exchange is also proposing to amend its Recommended Fine Schedule to establish the following recommended fines for violations of PSE Rule 10.2(b): $100 for a first-time violation; $250 for a second-time violation; and $500 for a third-time violation.

The Exchange believes that the rules proposed to be added to the MRP are either objective or technical in nature and are easily verifiable, thereby lending themselves to the use of expedited proceedings. The Exchange further believes that violations of such rules may require sanctions more severe than a warning or cautionary letter, but that full disciplinary proceedings (pursuant to PSE Rule 10.3) would, in general, be unsuitable because they would be costly and time consuming in view of the minor nature of the violations. Nevertheless, the Exchange notes that if a rule violation is particularly egregious or if the individual situation warrants such action, the Exchange may proceed with formal disciplinary action pursuant to PSE Rule 10.3, rather than with the MRP procedures under PSE Rule 10.13.

In addition, the Exchange is proposing to amend PSE Rule 2.12(b)(1) to establish an administrative charge for member organizations that are late in filing their periodic FOCUS Reports with the Exchange.[5] The proposed rule change would add a reference to Rule 17a-5 to the text of PSE Rule 2.12(b)(1), making the late filing of periodic FOCUS Reports subject to the same "late charge" schedule that currently applies to the late filing of annual FOCUS Reports required by Rule 17a-10 under the Act.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and Sections 6(b)(5) and 6(b)(6), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to provide that members of the Exchange are appropriately disciplined for violations of Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–95–27 and should be submitted by December 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28318 Filed 11–15–95; 8:45 am]

BILLING CODE 8010–01–M

[1] The MRP was initially approved by the Commission in 1985. See Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (Nov. 27, 1985). Since 1985, the MRP has been amended several times. See, *e.g.*, Securities Exchange Act Release No. 36158 (August 25, 1995), 60 FR 45758 (September 1, 1995).

[2] PSE Rule 2.12(a) states: "Every member organization which is not a member of another national securities exchange or registered national securities association which is the Designated Examining Authority for that member organization shall file with the Exchange answers to Financial Questionnaires, Reports of Income and Expenses and additional financial information in the type, form, manner and time prescribed by the Exchange."

[3] For a discussion of the Exchange's Recommended Fine Schedule, see Securities Exchange Act Release No. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994).

[4] PSE Rule 10.2(b) states: "No member or person associated with a member shall impede or delay an Exchange investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange nor refuse to furnish testimony, documentary materials or other information requested by the Exchange during the course of its investigation. Failure to furnish such testimony, documentary materials or other information requested by the Exchange pursuant to this Rule on the date or within the time period required by the Exchange shall be considered obstructive of an Exchange inquiry or investigation and subject to formal disciplinary action."

[5] The Exchange's plan filed pursuant to Rule 17a–5(a)(4) under the Act require PSE member organizations that are not exempt from Rule 15c3-1 under the Act ("Net Capital Rule") to file periodic FOCUS Reports with the Exchange if the PSE is their designated examining authority ("DEA"). See 17 CFR 17a–5(a)(4); Securities Exchange Act Release No. 11935 (December 17, 1975), 40 FR 59706 (December 30, 1975) (order approving the PSE's plan pursuant to Rule 17a–5). In 1993, the SEC approved certain changes to the Net Capital Rule, including the elimination of an exemption for certain equity exchange specialists, effective as of April 1, 1994. See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993). Consequently, as of April 1, 1994, a number of Exchange specialists became obligated to file FOCUS reports with the Exchange. Prior to April 1994, no PSE member organizations were required to file such reports with the Exchange.

[6] 17 CFR 17a–10.

[7] 15 U.S.C. 78f(b).

[Release No. 34–36468; International Series Release No. 882; File No. SR–PHLX–95–52]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options With Customized Expiration Dates

November 8, 1995

I. Introduction

On July 27, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the trading of customized foreign currency options ("Customized FCOs") with customized expiration dates.

The proposed rule change appeared in the **Federal Register** on August 29, 1995.[3] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to proposal on September 14, 1995[4] and Amendment No. 2 on November 7, 1995.[5] This order approves the Exchange's proposal, as amended.

II. Background and Description

Pursuant to the proposed rule change, the PHLX would be able to offer its FCO participants the ability to trade Customized FCOs[6] with non-standardized expiration dates. In effect, the proposal adds an additional term, "expiration date," that can be tailored on a Customized FCO transaction. At present, pursuant to Exchange Rule 1012, FCO users can only trade Customized FCO contracts with expiration dates corresponding to those for non-Customized FCOs. Thus, Customized FCO contracts may only be traded with mid-month and end-of-month expirations at 1, 2, 3, 6, 9, 12, 18, and 24 months. The Exchange's proposal therefore revises this previously-standard term by allowing Customized FCO contracts to expire on any business day (excluding Exchange holidays, *e.g.*, Memorial Day, and Exchange-designated holidays, *e.g.*, Boxing Day) in any month up to two years from the date of its issuance. The Exchange represents that institutions and multinational corporations will thus be able to hedge their exchange rate exposure more accurately by trading a contract that expires on a trading day of their choosing.

Under the PHLX's proposal, any Customized FCO contract with a customized expiration date ("Customized expiration date FCOs") will cease trading at 9:00 a.m., Philadelphia time, on its expiration date, and will expire at 10:15 a.m., Philadelphia time, on that date. Customized FCOs with expiration dates established pursuant to PHLX Rule 1012 (*i.e.*, Customized FCOs with expiration dates corresponding to the expiration dates for non-Customized FCOs), however, will not follow this procedure. Instead, maintaining current practice,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 36131 (August 22, 1995), 60 FR 44927 (August 29, 1995).

[4] Amendment No. 1 to the proposed rule change: (1) Revises the language of Exchange Rule 1069(a) to specify that a FCO with a customized expiration date may only be created with an expiration date of up to two years from the date of its issuance; and (2) provides that with respect to FCOs with customized expiration dates, Exchange member organizations will be required to utilize a pro-rata method of assignment for its customers. This procedure is set forth in new subsection (k) to Rule 1069. *See* letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated September 14, 1995 ("Amendment No. 1").

[5] Amendment No. 2 to the proposed rule change establishes in new subsection (iv) to PHLX Rule 1000(b)(21) when a Customized expiration date FCO may expire. According to the PHLX's amendment, a Customized expiration date FCO will expire at 10:15 a.m., Philadelphia time, on its designated date provided that such date is not longer than two years from its date of issuance and is an Exchange business date (excluding regular mid-month and end of month expiration dates and days deemed invalid by the Exchange, such as Exchange holidays and Exchange-designated holidays). See letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated November 7, 1995 ("Amendment No. 2").

[6] Users of FCOs have been able to trade Customized FCOs on the PHLX since November 1994. See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (order approving File No. SR–PHLX–94–18) ("Securities Exchange Act Release No. 34925"). Through this mechanism, participants in the PHLX's Customized FCO market have the ability to customize their strike price and quotation method, and may choose any underlying and base currency combination from all Exchange-listed currencies.

these option contracts will cease trading at 2:30 p.m., Philadelphia time, on their expiration date, and expire at 11:59 p.m., Philadelphia time, on the same date, even if intentionally or unintentionally designated as a Customized FCO with a customized expiration date.

Under the PHLX's proposal, new series of Customized expiration date FCOs with "same day" expiration dates may not be opened. In contrast, new series of Customized FCOs with standardized expiration dates may be opened on their expiration dates. Previously opened positions, however, may continue to be reduced or increased on their expiration date until the end of the trading times noted above, regardless of whether the FCO contains a customized or standardized expiration date.

In all other respects, transactions in Customized FCOs containing a customized expiration date shall be treated identically to other Customized FCOs. Moreover, all existing Exchange rules and regulations, including those involving surveillance and sales practice, will be applicable to Customized expiration date FCOs.

In addition, under the PHLX's proposal, Exchange member organizations will be required to utilize a pro-rata FCO assignments. Lastly, it is contemplated that the pro-rata process being implemented by the Exchange and its member organizations will be identical to that which the Options Clearing Corporation ("OCC") will utilize for Customized expiration date FCO assignments.[7]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) and 11A.[8] Specifically, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product that may be more suitable to their investment needs. Moreover, consistent with Section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the PHLX to compete with the growing over-the-counter ("OTC") market in Customized FCOs. In this regard, the Commission notes, the OTC derivatives market in Customized FCOs has developed, in part, because it meets the needs of institutional investors who require increased flexibility in satisfying particular investment objectives. Accordingly, the Commission believes that the PHLX's proposal is a reasonable response to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their foreign currency hedging needs.

The Commission also believes that the PHLX's proposal will help to promote the maintenance of a fair and orderly FCO market, consistent with Sections 6(b)(5) and 11A, because the proposal extends the advantages of a listed, exchange market to Customized FCOs with customized expiration dates. The attributes of the Exchange's FCO market versus an OTC market include, but are not limited to, a centralized market center, transparency, and secondary market liquidity. Similarly, by having the OCC as the issuer and guarantor of Customized expiration date FCOs, concerns regarding contra-party creditworthiness and performance upon exercise are eliminated. Accordingly, the Commission believes that the PHLX's proposal to trade Customized expiration date FCOs is appropriate.

Furthermore, the PHLX's proposal offers increased flexibility to institutional investors without increasing the potential for market manipulation. As all existing Exchange rules and regulations regarding surveillance and sales practice will apply to Customized expiration date FCOs, the PHLX will be able to continue to adequately monitor Customized FCOs including Customized expiration date FCOs.[9]

Finally, the Commission finds that Customized expiration date FCOs are standardized options for purposes of Rule 9b–1 under the Act.[10] The Commission notes that its determination that Customized expiration date FCOs are standardized options for purposes of Rule 9b–1 is consistent with its initial decision regarding Customized FCOs.[11]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 to the PHLX's proposal merely clarifies the proposal by adding language to Rule 1069 that specifies the necessary procedures for exercise and assignment, and, particularly, the implementation of pro-rata assignment for the product. The proposed use of pro-rata assignment was adequately described in the PHLX's proposal and was subject to a full notice and comment period.[12] As a result, the Commission does not believe that the amendment raises any new or unique regulatory issues. Accelerated approval of the amendment will therefore permit the Exchange to begin offering these products without further delay to those investors who desire an exchange-traded product that includes a customized expiration date. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 to the PHLX's proposal merely serves to codify in PHLX rules the Exchange's stated proposal, that was subject to a full notice and comment period,[13] regarding the specific time and date that Customized FCOs expire. As a result, the Commission does not believe that the amendment raises any new or unique regulatory issues. Accelerated approval of the amendment will therefore permit the Exchange to begin offering these products without further delay to those investors who desire an exchange-traded product that includes a customized expiration date. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of this filing also will be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–95–52 and should be submitted by December 7 1995.

IV Conclusion

For the foregoing reasons, the Commission finds that the PHLX's proposal to trade Customized FCOs with customized expiration dates is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PHLX–95–52), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[7] The Commission notes that the PHLX has recommended to its member organizations that they adopt the same methodology as the OCC in determining pro-rata assignment for Customized expiration date FCO assignments. Moreover, if an Exchange member organization elects not to utilize the OCC's pro-rata procedures, member organizations have been instructed to notify the PHLX. Telephone Conversation between Michele R. Weisbaum, Associate General Counsel, PHLX, and Michael Walinskas, Branch Chief, OMS, Division, Commission, on November 1, 1995. See also Securities Exchange Act Release No. 36453 (November 2, 1995) (order approving OCC pro-rata allocation procedures for Customized expiration date FCO assignments).

[8] 15 U.S.C. 78f(b)(5) and 78k–1 (1988).

[9] The Commission notes that before trading in Customized expiration date FCOs may commence, the Commission must approve a supplement to the Options Disclosure Document ("ODD") regarding this product. See SR–ODD–95–1.

[10] 17 CFR 240.9b–1 (1994).

[11] See Securities Exchange Act Release No. 34925, *supra note* 6. The Commission also notes that it has approved the listing by certain of the options exchanges to trade flexible exchange options on broad/based indexes with customized expiration dates ("FLEX Options") See, e.g., Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (order approving listing and trading of FLEX Options on S&P 500 and 100 stock indexes).

[12] See supra note 3.

[13] See supra note 3.

[Release No. 34–36467; File No. SR–PHLX–95–33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Automatic Execution of National Over-the-Counter Index Options

November 8, 1995.

On May 11, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to limit the eligibility of National Over-the-Counter Index ("XOC") options for execution through the automatic execution ("AUTO–X") feature of the PHLX's Automated Options Market ("AUTOM") system. Specifically, the PHLX proposes to limit the AUTO–X eligibility of XOC options to XOC series where the bid is $10 or less. Under the proposal, XOC series where the bid is greater than $10 will no longer be AUTO–X eligible and will be executed manually.

Notice of the proposal appeared in the **Federal Register** on June 16, 1995.[3] No comment letters were received on the proposed rule change.

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[4] is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO–X,[5] which was approved as part of the AUTOM pilot program in 1990.[6] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.[7]

In 1991, the Commission approved a PHLX proposal to extend AUTO–X to all equity options.[8] According to the PHLX, the Exchange initially implemented AUTO–X for all equity and index options.[9] The PHLX now proposes to limit the use of AUTO–X for XOC orders to XOC series where the bid is at or below $10; under the proposal, only those XOC series where the bid is at or below $10 at the end of the trading day will be eligible for AUTO–X, effective the next trading day.[10] The PHLX states that these lower-priced XOC series generally receive the most interest from public customers (*i.e.*, "customers" who are not associated with broker-dealer organizations or subject to discretionary authorization by associated persons of broker-dealers).[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 35822 (June 8, 1995), 60 FR 31334.

[4] See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34), extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR–PHLX–91–33, permitting AUTO–X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all equity options); 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (order approving File No. SR–PHLX–94–40, codifying eligibility of index options for AUTO–X); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994).

[5] Orders for up to 500 contracts are eligible for AUTOM and, in general, public customer orders for up to 25 contracts are eligible for AUTO–X. Currently, public customer orders in XOC options for up to 20 contracts are eligible for AUTO–X. See Securities Exchange Act Release Nos. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving File No. SR–PHLX–95–30); and 32000 (March 15, 1993), 58 FR 15168 (March 19, 1994) (order approving File No. SR–PHLX–92–38). In USTOP 100 Index options, public customer orders for up to 50 contracts are eligible for executions through AUTO–X. See Securities Exchange Act Release No. 35781 (May 30, 1995), 60 FR 30131 (June 7, 1995) (order approving File No. SR–PHLX–95–29).

[6] See Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR–PHLX–89–03).

[7] See note 14, *infra*.

[8] See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR–PHLX–90–34).

[9] According to the PHLX, index options became AUTO–X eligible in March 1991. In October 1994, the Exchange codified its practice of using AUTO–X for index options. See Securities Exchange Act Release No. 34920 *supra* note 4.

[10] The PHLX periodically will notify members that only those XOC series where the bid is at or below $10 at the end of the trading day will be eligible for AUTO–X. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on November 7, 1995.

[11] For example, the PHLX states that on trade date January 25, 1995, 40 XOC transactions occurred, 38 of which involved a customer. Only two of these trades involved execution prices greater than $20, while 10 trades were above $10 but less than $20; 28 customer trades were below $10. The 28

Continued

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

Accordingly, the Exchange believes that these series are the most appropriate for automatic execution.

According to the PHLX, the proposal is also a response to recent volatility in the over-the-counter ("OTC") markets, which has made it increasingly difficult for specialists and market makers to monitor quotations to reflect changes in the markets for the underlying securities. The PHLX believes that market makers and specialists require sufficient time to adjust their quotations, particularly because participation in AUTOM and AUTO–X is mandatory.

In addition, the PHLX states that it is consistent with the practices of other options exchanges to limit automatic execution eligibility to certain series, such as near-term, at-the-money series.[12] Thus, for competitive reasons, the Exchange seeks to create a level playing field with respect to automatic execution parameters.

The Exchange notes that the proposal does not affect the AUTO–X eligibility of any other equity or index option. The PHLX intends to clearly communicate to its membership and AUTOM users, on a periodic basis, the proposed AUTO–X limitation for XOC options through an information circular.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[13] Specifically, the Commission believes that the proposal strikes a reasonable balance between preserving the benefits of AUTO–X for the XOC series traded most frequently by public consumers and providing PHLX market makers and specialists with sufficient time to update their quotations in higher-priced XOC series. In this regard, the PHLX has stated that most public customer orders in XOC options are for series where the bid is at or below $10. Thus, by maintaining the AUTO–X eligibility of such XOC orders, the proposal ensures that public customer orders in XOC options where the bid is at or below $10 will continue to receive the benefits of AUTO–X, including the guaranteed execution of public customer orders for up to 20 contracts in such XOC options at the displayed quote. Despite the change in AUTO–X eligibility for certain XOC series, the Commission notes that under PHLX rules public customer orders in XOC series where the bid is above $10 will continue to be guaranteed the best quoted bid or offer for at least 10 contracts.[14]

The continued availability of AUTO–X for those XOC series where the bid is $10 or less should help to maintain the depth and liquidity of the market for XOC options and minimize the number of XOC transactions that require manual execution on the Exchange floor, thereby providing the opportunity for increased efficiency in the handling of non-AUTOM orders. At the same time, requiring manual execution of orders in XOC series where the bid is greater than $10 should help to ensure that market makers and specialists have sufficient time to update their quotations to reflect changes in the markets for the underlying securities before executing an option order. Accordingly, the proposal should address the problems associated with the high volatility of the securities comprising the XOC, which has resulted in the need for PHLX specialists to frequently change quotes in the XOC.[15]

The Commission notes that the Chicago Board Options Exchange, Inc. ("CBOE") limits the availability of automatic execution to certain options series. Specifically, on the CBOE only the four most active puts and calls in the two near-term months in Nasdaq 100 Index options, Standard & Poor's ("S&P") 500 Index options, and S&P 100 Index options are eligible for the CBOE's Retail Automated Execution System ("RAES").[16] The Commission is not aware of any significant negative comments associated with the CBOE's RAES policy. Accordingly, the Commission believes that it is reasonable for the PHLX, like the CBOE, to limit the use of automatic execution to those series most actively used by public customers.[17]

Finally, the PHLX has represented that it will communicate the change in AUTO–X eligibility to its members and AUTOM users through an information circular prior to implementing the rule. The PHLX also will periodically notify members about the new rule. The Commission believes that this will provide PHLX members and AUTOM users with adequate notice of the change in the availability of AUTO–X for XOC options.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–PHLX–95–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28250 Filed 11–15–95; 8:45 am]

BILLING CODE 8010–01–M

customer trades represented 439 contracts out of a total of 531 contracts.

[12] See note 17, *infra*, and accompanying text.

[13] 15 U.S.C. § 78f(b) (1988 & Supp. V 1993).

[14] The Commission notes that under PHLX Rule 1033(a), "Bids and Offers—Premium," specialists and Registered Options Traders are required to fill public customer orders to a minimum depth of 10 contracts at the best quoted bid or offer. As a matter of policy, public customer orders in XOC options where the bid is at or below $10 that are executed manually will be filled to a depth of 20 contracts at the best quoted bid or offer.

[15] The Commission notes that it considered the volatility of the XOC, in addition to other factors, in approving a PHLX proposal to widen the maximum quote spread parameters for higher-priced XOC options. See Securities Exchange Act Release No. 34781 (October 3, 1994), 59 FR 51467 (October 11, 1994) (order approving File No. SR–PHLX–94–28) (approving quote spreads of $2.00 for XOC options with bids of $20.00 to less than $40.00 and $3.00 for XOC options with bids of $40.00 or more).

[16] Telephone conversation between Dan Hustad, CBOE, and Yvonne Fraticelli, Attorney, Options Branch, Division, Commission, on July 7, 1995.

[17] The Commission would be concerned about any proposal that would limit the availability of automatic execution systems to only out-of-the-money series. See The Division of Market Regulation, The October 1987 Market Break (February 1988) at 8–22.

[18] 15 U.S.C. 78s(b)(2) (1984).

[19] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–32A, Control of Products and Parts Shipped Prior to Type Certificate Issuance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–32A, Control of Products and Parts Shipped Prior to Type Certificate Issuance, for review and comments. The proposed AC 21–32A provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–32A, project number 94–031, and be received by December 30, 1995.

ADDRESSES: Copies of the proposed AC 21–32A can be obtained from and comments may be returned to the following: Federal Aviation Administration, Policy and Procedures Branch, AIR–230, Production and Airworthiness Certification Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Production and Airworthiness Certification Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8361.

Background

The proposed AC 21–32A provides information and guidance to FAA production approval and approved production inspection system holders concerning the control of products and parts shipped prior to the insurance of type certificate or supplemental type certificate.

Comments Invited

Interested persons are invited to comment on the proposed AC 21–32A listed in this notice by submitting such written data, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–32A may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on November 9, 1995.

Terry Allen,

Acting Manager, Production and Airworthiness Certification Division.

[FR Doc. 95–28345 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act, Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) to be held December 4 at 10:30 a.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC, in rooms 10234–10236.

The agenda for the final meeting of the CTRDAC will include:

(1) Discussion of the draft Civil Tiltrotor Development Advisory Committee Report

(2) Discussion of unresolved issues

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Karen Braxton, Staff Assistant to the Designated Federal Official on (202) 267–9451 prior to close of business on November 28. Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Noncomittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Braxton.

Members of the public may present a written statement to the Committee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton (202) 267–9451 at least seven days prior to the meeting.

Issued in Washington, D.C. on November 9, 1995.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–28346 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–71; Notice 2]

Bridgestone/Firestone, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Bridgetsone/Firestone, Inc. (Bridgestone/Firestone) of Nashville, Tennessee, has determined that some of its tires fail to comply with the labeling requirements of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Bridgestone/Firestone has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on August 21, 1995 (60 FR 43491). This notice grants the application.

In FMVSS No. 119, Paragraph S6.5(b) specifies that each tire shall be marked with "[t]he tire identification number required by Part 574 [Tire Identification and Recordkeeping] of this chapter." In Part 574.5, Paragraphs (a) through (d) specify the information which must be placed on the tire. Paragraphs (a) through (c) specify information relating to the identification of the manufacturer and tire size. Paragraph (d) specifies information relating to the specification of a code for the date of manufacture. Paragraph (d) states that the date code "shall immediately follow" the information specified in Paragraphs (a) through (c).

During the period of July 17, 1994 through April 24, 1995, Bridgestone/Firestone produced 19,563 tires which had incorrect serial numbers. The sizes of the subject tires are 8.25–20, 9.00–20, 10.00–20, and 11.00–20. In the incorrect serial numbers, the date code is at the beginning of the number rather than at the end, as required. The tires are labeled as "384 V52JEFD" instead of the required "V52JEFD 384." The date code is "384."

Bridgestone/Firestone supported its application for inconsequential noncompliance with the following:

First, all tires manufactured in the affected size/type meet all requirements of Standard 119 except tire markings pertaining to [S6.5(b)].

Second, if there would be a need for the consumer or manufacturer representative (BFS) to read the serial, sufficient information exists to define the manufacturing location as Bridgestone/Firestone, Inc., Mexico City, Mexico. This situation has been reviewed with our Registration company and can be adequately handled.

Thirdly, a principal need for tire serials is identification for recall purposes. In the event of any future recall of these tires, the recall letter would explain the transposed marking

No comments were received on the application.

The primary safety purpose of requiring serial information on tires is to enable identification of them for the purposes of notification and remedy in the event they are determined to be noncompliant or incorporate a safety-related defect. If it is necessary to recall the tires that are the subject of this application, enough information exists on them to trace the tires back to their plant of manufacture. Further, Bridgestone/Firestone would explain

the transposed marking in the recall letter to the owners so that they can properly identify the subject tires. Because the noncompliance does not cause the tires to be unidentifiable, NHTSA does not believe it will adversely affect safety.

In consideration of the forgoing, NHTSA finds that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on November 9, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28297 Filed 11–15–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

BACKGROUND: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. Proposed revisions to the following currently approved collections of information have received approval from the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, and are hereby published for comment. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the proposed revisions should be modified prior to the agencies' submission of them to OMB for review and approval. Comments are invited on: (a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the agencies' estimate of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 16, 1996.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219; Attention: Paperwork Docket No. 1557–0081 [FAX number (202) 874–5274; Internet address: reg.comments@occ.treas.gov]. Comments will be available for inspection and photocopying at that address.

Board: Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FDIC: Written comments should be sent to Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments will be available for inspection and photocopying in Room 7118, 550 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revisions to the collections of information may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Gates, OCC Clearance Officer, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Mary M. McLaughlin, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collections of information:

Title: Consolidated Reports of Condition and Income.

Form Number: FFIEC 031, 032, 033, 034.

For OCC:

OMB Number: 1557–0081.

Frequency of Response: Quarterly.

Affected Public: National Banks.

Estimated Number of Respondents: 2,900 national banks.

Estimated Time per Response: 38.02 burden hours.

Estimated Total Annual Burden: 441,024 burden hours.

For Board:

OMB Number: 7100–0036.

Frequency of Response: Quarterly.

Affected Public: State Member Banks.

Estimated Number of Respondents: 1,002 state member banks.

Estimated Time per Response: 44.01 burden hours.

Estimated Total Annual Burden: 176,392 burden hours.

For FDIC:

OMB Number: 3064–0052.

Frequency of Response: Quarterly.

Affected Public: Insured State Nonmember Commercial and Savings Banks.

Estimated Number of Respondents: 7,011 insured state nonmember commercial and savings banks.

Estimated Time per Response: 27.87 burden hours.

Estimated Total Annual Burden: 781,473 burden hours.

The estimated time per response varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices).

General Description of Report: This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract: Consolidated Reports of Condition and Income are filed quarterly with the agencies for their use in monitoring the condition and performance of reporting banks and the industry as a whole. The reports are also used by the FDIC to calculate banks' deposit insurance assessments.

Current Actions: The new items that would be added to the Call Report are necessary to enhance the supervisory process for monitoring regulatory capital ratios, liquidity ratios, sales of assets, off-balance sheet derivative contracts, and managed credit card receivables. A number of items would be consolidated or deleted.

Type of Review: Revisitation.

The proposed revisions to the Consolidated Reports of Condition and Income (Call Report) that are the subject of this notice have been approved by the FFIEC for implementation as of the March 31, 1996, report date. The proposed changes affect several existing Call Report schedules. Unless otherwise indicated, the Call Report changes apply to all four sets of report forms (FFIEC 031, 032, 033, and 034). Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31, 1996, report date, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available.

On August 2, 1995, the agencies jointly published for a 60-day public comment period a proposed Supervisory Policy Statement Concerning A Supervisory Framework for Measuring and Assessing Banks' Interest Rate Risk Exposure (60 FR 39495, August 2, 1995). That proposal included proposed Call Report schedules and draft instructions that would be implemented beginning with the March 31, 1996, report date, except by small banks that meet certain exemption criteria. Because comments were invited regarding the proposed Call Report interest rate risk reporting requirements and their paperwork implications, the proposed interest rate risk schedules are not covered by this notice.

The proposed revisions are summarized as follows:

Deletions and Reductions in Detail

The level of detail would be reduced in two areas for banks that file the FFIEC 031, 032, and 033 report forms (i.e., banks with $100 million or more in assets or with foreign offices). (Smaller banks that file the FFIEC 034 report forms do not provide these detailed data.) First, the breakdown of nontransaction accounts by type of depositor in the deposit schedule (Schedule RC–E) would contain fewer categories. The separate items for nontransaction accounts of "U.S. branches and agencies of foreign banks" and "Other commercial banks in the U.S." would be combined into a single item. Similarly, the separate items for nontransaction accounts of "Foreign branches of other U.S. banks" and "Other banks in foreign countries" would be combined.

Second, a single income statement item for trading revenue would replace the separate items for foreign exchange trading gains (losses) and other trading gains (losses). The memorandum items providing a four-way breakdown of trading revenue by risk exposure (interest rate, foreign exchange, equity, and commodity and other), which were added in March 1995, would continue to be collected. The sum of the memorandum items would equal the new single income statement item.

Call Report items in the four following areas would be deleted:

(1) Memorandum items for total deposits, total demand deposits, and total time and savings deposits (in domestic offices) that have been collected in the deposit schedule for deposit insurance assessment purposes (Schedule RC–E, Memorandum items 4, 4.a, and 4.b).

(2) A deposit schedule memorandum item for total deposits (in domestic offices) denominated in foreign currencies (Schedule RC–E, Memorandum item 1.d).

(3) An income statement memorandum item for foreign tax credits (Schedule RI, Memorandum item 3). (This item has been completed only by banks that file the FFIEC 031, 032, and 033 report forms, i.e., banks with $100 million or more in assets or with foreign offices.)

(4) An income statement memorandum item for the taxable equivalent adjustment to pretax income (Schedule RI, Memorandum item 4). (This item has been applicable only to banks with foreign offices and $1 billion or more in assets that file the FFIEC 031 report forms.)

New Items

Call Report items in the following areas would be added:

(1) Capital and Asset Amounts Used in Calculating Regulatory Capital Ratios

At present, the Call Report includes a variety of items in several schedules which the agencies use to calculate the leverage and risk-based capital ratios for individual banks. However, a comparison of the agencies' regulatory capital standards to the information currently reported in the Call Report reveals that the Call Report does not collect all of the information that the agencies need to calculate each bank's Tier 1, Tier 2, and total capital in strict accordance with the definitions in the agencies' capital standards. Nevertheless, according to informal input received from bankers, banks routinely calculate their regulatory capital ratios at least quarterly for internal management purposes.

Thus, rather than introducing new Call Report items for specific elements of the regulatory capital ratio calculations that are not currently reported so that further refinements can be made to the banking agencies' formulas for calculating capital ratios, banks would begin to report the end results of their own internal regulatory capital analyses. Six new items would cover Tier 1 capital, Tier 2 capital, total risk-based capital, total risk-weighted assets (the denominator of the risk-based capital ratio, i.e., net of deductions), the excess amount of the allowance for loan and lease losses (if any), and "average total assets" (the denominator of the leverage capital ratio, i.e., net of deductions).

Banks would not be required to go to greater lengths to identify and determine the amounts to be reported in the six new capital-related items than they are currently doing when they calculate their capital ratios for internal

management purposes. Beginning to collect the six regulatory capital items in 1996 may provide a basis for eliminating at a later date some items now reported in the Call Report solely for risk-based capital calculation purposes. To assist banks in accurately reporting these capital items, an optional regulatory capital worksheet would be developed, provided regularly to banks, and updated as necessary.

In addition, the agencies understand that bankers and other interested parties have found it difficult and time-consuming to calculate the regulatory capital ratios for other banks using existing Call Report data. Consequently, the addition of these six items should simplify bankers' calculations of other banks' capital ratios as well as calculations made by other public users of bank Call Reports.

(2) Short-Term Liabilities and Assets

The staffs of the agencies plan to revise the liquidity ratios in the Uniform Bank Performance Report (UBPR) to focus on short-term and total non-core liabilities (instead of so-called "volatile liabilities") as well as short-term assets and liabilities. As a result, changes would be made to the reporting of maturity and repricing data for certain categories of liabilities and assets.

Accordingly, the following changes would be implemented:

(a) Other borrowed money—On the Call Report balance sheet, the two-way breakdown of "Other borrowed money" based on the original maturity of the borrowing would be changed to a two-way breakdown based on remaining maturity (Schedule RC, item 16).

(b) Time deposits—A number of changes would be made in the reporting of these data.

First, the maturity and repricing data for open-account time deposits of $100,000 or more, which are currently included with the maturity and repricing data for time deposits of less than $100,000 (in Schedule RC–E, Memorandum item 5), would be switched so that these data are included with the maturity and repricing data for time certificates of deposit of $100,000 or more (in Schedule RC–E, Memorandum item 6). (Schedule RC–E, Memorandum items 5 and 6 are not applicable to FDIC-supervised savings banks that must complete the Call Report's supplemental Schedule RC–J.)

Second, the maturity and repricing data for fixed rate and floating rate time deposits of less than $100,000, which are currently reported on a combined basis (in Schedule RC–E, Memorandum item 5), would be split so that the remaining maturity of fixed rate time deposits of less than $100,000 would be reported separately from the repricing frequency of floating rate time deposits of less than $100,000. A new time interval would also be added for these time deposits. Fixed rate time deposits less than $100,000 would contain a maturity category of over 12 months and floating rate time deposits of less than $100,000 would include a repricing interval of less frequently than annually. (Schedule RC–E, Memorandum item 5 is not applicable to FDIC-supervised savings banks that must complete the Call Report's supplemental Schedule RC–J.)

Third, two new Memorandum items would be collected in the deposit schedule for floating rate time deposits of $100,000 or more with a remaining maturity of one year or less and for floating rate time deposits of less than $100,000 with a remaining maturity of one year or less. These items would be collected from commercial banks. For FDIC-supervised savings banks, two new Memorandum items would be collected in supplemental Schedule RC–J for time deposits of $100,000 or more with a remaining maturity of one year or less and for time deposits of less than $100,000 with a remaining maturity of one year or less.

(c) Brokered deposits and deposits in foreign offices—New Memorandum items would be created for (i) Brokered deposits issued in denominations of less than $100,000 with a remaining maturity of one year or less, (ii) brokered deposits issued in denominations of $100,000 or more with a remaining maturity of one year or less, and (ii) for banks that file the FFIEC 031 version of the Call Report, time deposits in foreign offices with a remaining maturity of one year or less.

(d) Loans—For commercial banks, a single Memorandum item for floating rate loans with a remaining maturity of one year or less would be added to the loan schedule (Schedule RC–C). For FDIC-supervised savings banks, a single Memorandum item for loans with a remaining maturity of one year or less would be added to supplemental Schedule RC–J.

(e) Debt securities—For FDIC-supervised savings banks, a single Memorandum item for debt securities with a remaining maturity of one year or less would be added to supplemental Schedule RC–J. Savings banks would begin to complete this new item instead of an existing Memorandum item in the securities schedule on floating rate debt securities with a remaining maturity of one year or less (Schedule RC–B, Memorandum item 6). Commercial banks would continue to complete existing Memorandum item 6 in Schedule RC–B. In the new Memorandum item for savings banks, held-to-maturity securities would be reported at amortized cost and available-for-sale securities would be reported at fair value, consistent with the method of reporting these two categories of securities in the Schedule RC–B Memorandum item.

(3) Small Business Obligations Sold With Recourse

The agencies have issued rules to implement section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. (For OCC: 60 FR 47455, September 13, 1995. For Board: 60 FR 45612, August 31, 1995. For FDIC: 60 FR 45606, August 31, 1995.) Section 208 provides that a qualifying insured depository institution that sells small business loans and leases on personal property with recourse is required to include only the amount of retained recourse in its risk-weighted assets when calculating its risk-based capital ratios, provided certain conditions are met. Section 208 also states that qualifying institutions should report these transactions in accordance with generally accepted accounting principles (GAAP) in the Call Report.

To be a qualifying institution, a bank must be well capitalized based on capital ratio calculations made without regard to the preferential capital treatment that Section 208 authorizes for these transactions. In addition, in general, for purposes of determining a bank's capital category under the prompt corrective action rules, the capital ratio calculations must be made without regard to the preferential Section 208 treatment.

The Call Report instructions for "sales of assets" will be revised to incorporate the GAAP reporting treatment for sales of small business obligations with recourse by qualifying institutions. Additionally, to enable the agencies to determine the capital ratios of institutions that have engaged in transactions covered by Section 208 on the "without regard to" basis mentioned above, Call Report items would be added for (i) the outstanding amount of small business obligations sold with recourse and (ii) the amount of retained recourse on such obligations.

(4) Credit Losses on Off-Balance Sheet Derivative Contracts

Banks that file the FFIEC 031 and 032 report forms (i.e., banks with $300 million or more in assets or with foreign offices) began to report information about past due derivatives in the Call Report in 1994. However, some banks have incurred credit losses on their derivative contracts, but the agencies cannot track these losses for individual institutions or for the industry as a whole. Therefore, a new item would be added in which those banks that are required to report past due derivative data would also report their year-to-date credit losses on derivatives.

On a related matter, the Call Report instructions for reporting amounts associated with derivatives that are past due 90 days or more would be revised so that banks would begin to also include information about derivatives that, while not technically past due, are with counterparties that are not expected to pay the full amounts owed to the institution under the derivative contracts.

(5) Change in Frequency of Reporting on Securitized Credit Card Receivables

In order to evaluate the financial performance of credit card banks and other banks with credit card operations that have securitized and sold credit card receivables, the volume of receivables on all of the credit card accounts managed or serviced by a bank, both on and off of the books, must be known. Banks that file the FFIEC 031 and 032 report forms (i.e., banks with $300 million or more in assets or with foreign offices) report annually as of September 30 the outstanding amount of "Credit cards and related plans" that have been securitized and sold without recourse with servicing retained. In contrast, these banks report the amount of "Credit cards and related plans" on their books each quarter. Given the growth in the volume of bank credit card securitizations, these banks would begin to report the outstanding amount of securitized credit card receivables that they service on a quarterly rather than annual basis.

Instructional Changes

The following changes, which may affect how some banks report certain information in the Call Report, would be made to the instructions.

(1) Reporting of low level recourse for risk-based capital purposes—The three banking agencies amended their risk-based capital standards earlier this year to incorporate the low level recourse rule. (For OCC: 60 FR 17986, April 10, 1995. For Board: 60 FR 8177, February 13, 1995. For FDIC: 60 FR 15858, March 28, 1995.) Under this rule, when a bank has transferred assets with recourse, the amount of risk-based capital that must be maintained is limited to the bank's maximum contractual exposure under the recourse agreement if this is less than the amount of capital that would have to be held against the outstanding amount of the transferred assets.

In the Call Report materials distributed to banks for the first three quarters of this year, interim guidance has been provided on how low level recourse transactions should be reported in the risk-based capital schedule (Schedule RC–R). Under this interim guidance, a bank's maximum contractual exposure in a low level recourse transaction is multiplied by a factor that is a function of the risk weight category applicable to the transferred assets. The resulting amount is then reported in the Schedule RC–R item for the applicable risk weight and would thereby be included in the bank's risk-weighted assets. This interim guidance would now be formally incorporated into the Call Report instructions.

(2) Reporting of quarterly averages in a quarter when push down accounting has been applied—The instructions for the quarterly average calculations in Schedule RC–K would be clarified to indicate that banks acquired in push down transactions should calculate quarterly averages using only amounts for the days since the acquisition in the numerator and the number of days since the acquisition in the denominator.

(3) Instructions for Schedule RC–R, item 8, "On-balance sheet asset values excluded from the calculation of the risk-based capital ratio"—Schedule RC–R, item 8, includes any positive fair values carried on the balance sheet for interest rate, foreign exchange, equity derivative, and commodity and other contracts that are treated as off-balance sheet instruments for risk-based capital purposes. Because the fair values of such contracts, if positive, are included in the calculation of their credit equivalent amounts for risk-based capital purposes, the reporting of these amounts in item 8 ensures that they are not "double counted" when the agencies calculate a bank's risk-weighted assets.

In contrast, the existing instructions indicate that accrued receivables associated with off-balance sheet derivative contracts are to be excluded from item 8 and assigned to the appropriate risk weight category in the same manner as other on-balance sheet items. However, consistent with GAAP, institutions may include accrued receivables related to derivative contracts in the fair value of such contracts. Thus, the instructions would be revised to permit institutions to report accrued receivables in item 8 when these amounts are included in a bank's credit equivalent amount calculations.

(4) Other—Instructions for mortgage servicing rights and trading accounts would be revised to bring them into conformity with GAAP. Clarifications or other conforming changes would also be made to several other instructions.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: November 8, 1995.

James F.E. Gillespie,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 7, 1995.

William W. Wiles,

Secretary of the Board.

Dated at Washington, DC, this 9th day of November 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–28251 Filed 11–15–95; 8:45 am]

BILLING CODES OCC: 4810–33–P 1/3; Board: 6210–01–P 1/3; FDIC: 6714–01–P 1/3

Customs Service

Country of Origin Marking Requirements for Wearing Apparel

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed change of practice; solicitation of comments.

SUMMARY: This notice advises the public that Customs proposes to change the practice regarding the country of origin marking of wearing apparel. Customs previously has ruled that wearing apparel, such as shirts, blouses, coats, sweaters, etc., must be marked with the name of the country of origin by means of a fabric label or label made from natural or synthetic film sewn or otherwise permanently affixed on the inside center of the neck midway between the shoulder seams or in that immediate area or otherwise permanently marked in that area in

some other manner. Button tags, string tags and other hang tags, paper labels and other similar methods of marking are not acceptable. The proposed change set forth herein would evaluate the marking of such wearing apparel on a case-by-case basis in order to determine whether the requirements of 19 U.S.C. 1304 are satisfied.

DATES: Comments must be received on or before January 16, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Monika Rice, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The primary purpose of the country of origin marking statute is to "mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States* v. *Friedlaender & Co.*, 27 CCPA 297, 302, C.A.D. 104 (1940). The clear language of section 1304 requires "permanent" and "conspicuous" marking, and to this end 19 CFR 134.41 provides, in part, that the degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article until it reaches the ultimate purchaser unless it is deliberately removed, and that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain.

In T.D. 54640(6), 93 Treas. Dec. 301 (1958), Customs determined that on and after October 1, 1958, wearing apparel, such as shirts, blouses, coats, sweaters, etc., must be legibly and conspicuously marked with the name of the country of origin by means of a fabric label or label made from natural or synthetic film sewn or otherwise permanently affixed on the inside center of the neck midway between the shoulder seams or in that immediate area or otherwise permanently marked in that area in some other manner. Button tags, string tags and other hang tags, paper labels and other similar methods of marking were not considered acceptable after October 1, 1958. The requirement in T.D. 54640(6) that the country of origin marking should appear on the inside center of the neck midway between the shoulder seams or in that immediate area is consistent with the Textile Fiber Products Identification Act as enforced by the Federal Trade Commission.

Subsequently, T.D. 55015(4), 95 Treas. Dec. 3 (1960), extended T.D. 54640(6), to allow the country of origin marking of reversible garments to be looped around the hanger. On the basis of this extension, Customs has allowed ladies reversible jackets to be marked with a cardboard hang tag affixed to the neck area by means of a plastic anchor tag. Customs noted that since the jacket was reversible, a fabric label sewn into the jacket could damage the jacket when the label was removed. Headquarters Ruling Letter (HRL) 731513 dated November 15, 1988. Similarly, in HRL 733890 dated December 31, 1990, Customs allowed women's reversible silk tank tops to be marked with a cloth label, showing the country of origin and other pertinent information sewn into a lower side seam, and a hang tag which also provided the required information attached at the neck. See also HRL 734889 dated June 22, 1993.

In order to allow more flexibility in achieving the objectives of the marking statute, Customs is now proposing to change its position and modify that portion of T.D. 54640(6) relating to the requirement of a fabric label or label made from natural or synthetic film sewn to the article, and the disallowance of button tags, string tags and other hang tags, paper labels and other similar methods of marking. Rather, Customs proposes to evaluate the country of origin marking of wearing apparel, such as shirts, blouses, coats, sweaters, etc., on a case-by-case basis to determine if it is conspicuous, legible, indelible, and permanent to a degree sufficient enough to remain on the shirt until it reaches the ultimate purchaser. The portion of T.D. 54640(6) relating to the requirement of placing the country of origin marking at the inside center of the neck of a shirt midway between the shoulder seams or in that immediate area, shall remain in effect.

It should be noted that this proposed change in practice does not exempt textile fiber products imported into the U.S. from the labeling requirements of the Textile Fiber Products Identification Act enforced by the Federal Trade Commission.

Authority

This notice is published in accordance with § 177.9, Customs Regulations (19 CFR 177.9).

Comments

Before adopting this proposed change in position, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Franklin Court, 1099 14th Street NW., Suite 4000, Washington, DC.

George J. Weise,

Commissioner of Customs.

Approved: October 24, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–28265 Filed 11–15–95; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Service

1996 Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing the schedule of fees to be charged in 1996 on the transfer of book-entry Treasury securities between depository institution accounts maintained at Federal Reserve Banks and Branches, as well as transfers to and from Federal Reserve Bank accounts.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, Room 534, E Street Building, Washington, D.C. 20239–0001, telephone (202) 219–3350.

Diane M. Polowczuk, Government Securities Specialist, Bureau of the Public Debt, Room 534, E Street Building, Washington, D.C. 20239–0001, telephone (202) 219–3350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee schedule for the transfer of Treasury book-entry securities between one book-entry account to another book-entry account of the same depository institution, and between the accounts of one depository institution and the accounts of another depository institution that maintain their accounts at Federal Reserve Banks and Branches. This fee schedule also applies to the book-entry transfer of securities between depositary institution accounts and Federal Reserve Bank accounts.

Based on the latest review of book-entry costs and volumes, the Treasury has decided that the fees for securities transfers in 1996 should remain unchanged from the levels currently in effect.

The fees described in this notice apply only to the transfer of Treasury book-entry securities. The Federal Reserve System assesses the fees to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate notice published by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will be effective January 1, 1996, for the Treasury book-entry transfer service:

1996 Fee Schedule

	Cost per transfer
On-line transfers originated	$1.65
On-line reversal transfers received	1.65
Off-line transfers originated	9.40
Off-line transfers received	9.40
Off-line reversal transfers received	9.40

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 95–28289 Filed 11–13–95; 1:59 pm]

BILLING CODE 4810–35–P

[Dept. Circ. 570, 1995 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds; Redomestication; Pacific Insurance Company, Limited

Pacific Insurance Company, Limited, has redomesticated from the state of Hawaii to the state of Connecticut effective January 26, 1995. This was accomplished through a merger with Pacific Insurance Company of Connecticut, Hartford, Connecticut, and a simultaneous name change to Pacific Insurance Company, Limited. The company was last listed as an acceptable surety on Federal bonds at 60 FR 34445, July 1, 1995.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 revision, on page 34445 to reflect this change in state of incorporation.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (FTS) 202–874–6507.

Dated: November 8, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–28349 Filed 11–15–95; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Central and Eastern European Training Program

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)-1 may apply to develop training programs in the areas of (1) local government/public administration, (2) independent media development, and (3) business administration. These projects should link the U.S. organization's international exchange interests with counterpart institutions and groups in Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic and Slovenia.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for the program cited above is provided through the Fulbright-Hayes Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–96–17.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, January 12, 1996. Faxed documents will not be accepted, nor will documents postmarked January 12, 1996, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. CEETP–6 grant activity should begin after July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Contact the Office of Citizen Exchanges, European Division, E/PE, Room 216, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5319, fax: 202–619–4530, e-mail address: (cminer@usia.gov) to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

VIA INTERNET: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher.usia.gov, under "New RFPs on Educational and Cultural Exchanges."

Please specify USIA Program Officer Christina Miner on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once

the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/P–96–17, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTAL INFORMATION:

Overview

Proposals must be for projects which encourage the growth of democratic institutions and political and economic pluralism. The project may include: short-term professional training workshops conducted in Central/Eastern Europe; four-to-ten week internships in the U.S.; and professional training programs and study tours in the U.S. All proposals should demonstrate in-depth, substantive knowledge of the issues of concern to the countries listed above and the capacity to organize and conduct the program, including appropriate orientation activities for the participants; detailed work plan for all phases of the project; tentative agendas for study tours, workshops, and internships; letters of commitment from internship hosts; and selection procedures.

USIA will give priority to proposals from U.S. organizations which have established connections with partner institutions in Central/Eastern Europe. The in-country partners are expected to assist logistically and contribute to the realization of program goals and objectives. Applicants should demonstrate partner relationships by providing copies of correspondence or other materials as appendices to the proposals. In-country partners are encouraged to provide cost sharing or significant in-kind contributions such as local housing, transportation, interpreting, translating, and other local currency costs and to assist with the organization of projects.

Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals.

Listed below in order of priority are the topics of interest for each of the countries included in the competition:

Albania: (1) Independent media development, including the development of reporters' investigative skills and editors' need to meet the consumers' desires for information about non-political social problems and issues; and (2) business administration.

Bosnia-Herzegovina: (1) Local government; (2) independent media development.

Bulgaria: (1) Independent media; (2) local government.

Croatia: (1) Independent media development, stressing management and organization; (2) local government; (3) business administration.

Czech Republic: (1) Independent media development; (2) local government.

Estonia: (1) Independent media development, particularly projects including U.S. internships; (2) business administration.

Hungary: (1) Business administration; (2) independent media development.

Latvia: (1) Independent media development, particularly investigative journalism, media ethics, photojournalism management, and business operations. Projects including U.S. internships are encouraged. (2) Business administration.

Lithuania: (1) Independent media development, specifically projects on reporting, implementation of fair media laws, management, advertising, and economic survival.

Macedonia: (1) Independent media development.

Poland: (1) Local government, particularly projects on the electoral system; (2) independent media development, especially projects focusing on the coverage of elections.

Romania: (1) Business administration; (2) local government.

Slovak Republic: (1) Independent media development, with an emphasis on training in management and advertising skills.

Slovenia: (1) Local government.

Guidelines

1. Proposals should limit their focus to one of the CEE countries and to one of the specified topics. Proposals for programs that are broader in scope will be eligible, but are less likely to receive USIA support. USIA will consider geographic distribution in selecting grantee institutions to ensure a wide distribution of the program.

2. All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. Note that participants in CEETP–6 programs should be professionals working in the fields of local government, media, or business administration and not members of university faculties. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to approve or reject participants recommended by the program institution. Programs must also comply with J–1 visa regulations.

3. Programs that include internships in the U.S. should provide letters tentatively committing host institutions to support the internships.

4. CEETP–6 grant projects should begin after August 1, 1996.

Note: Research projects or projects limited to technical issues are not eligible for support nor are film festivals or exhibits. Exchange programs for students or faculty or proposals that request support for the development of university curricula or for degree-based programs are also ineligible under this RFP. Proposals to link university departments or to exchange faculty and/or students are funded by USIA's Office of Academic Programs (E/EA) under the University Affiliation Program and should not be submitted in response to this RFP.

Funding

Proposals for less than $150,000 will receive preference.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable program costs include the following:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat 4140/day for program participants or the published U.S. federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. A pair of simultaneous interpreters is provided for every four participants. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants can be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions, including information on audit requirements and cost sharing.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of Eastern European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission. Program objectives should be reasonable, feasible, and flexible.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings, logistical capacity, and institution's ability to meet program objectives. Agenda and plan should adhere to the program overview and guidelines described above.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Cross Cultural/Area Expertise: Proposals should reflect the institution's expertise in the subject area and should address specific areas of concern facing countries involved in the project. Additionally, projects should show evidence of sensitivity to historical, linguistic and other cross cultural factors and should demonstrate how this sensitivity will be used in practical aspects of the program, such as pre-departure orientations or briefings of American hosts.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the project's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a sample of the questionnaire or other method of project assessment as well as a description of how outcomes will be linked to original project objectives. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures. Applicants will be notified of the results of the review process on or about June 10, 1996.

Dated: November 7, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–28342 Filed 11–15–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[Form Letter 40–12]

Proposed Information Collection Activity; Public Comment Request: Gravesite Reservation Survey; Virginia

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, National Cemetery System (NCS) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by January 16, 1996.

ADDRESSES: Direct all written comments to George Vogel, National Cemetery System (403C), Department of Veterans Affairs, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the NCS request for Office of Management and Budget (OMB) approval. In this document NCS is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0357.

Title and Form Number: Gravesite Reservation Survey, VA Form Letter 40–12.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form letter is used to determine whether individuals holding gravesite reservations in national cemeteries wish to continue the reservation and whether their eligibility for the reservation has been affected.

Current Actions: From the late 1940's until January 1962, the Department of the Army allowed active duty servicepersons and surviving spouses of deceased veterans interred in national cemeteries to reserve gravesites for their interments. Recurring gravesite reservation surveys are necessary as some holders become ineligible, are buried elsewhere, or cancel their reservation; therefore, reserved gravesites would exist forever without use.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: Biennially.

Estimated Number of Respondents: 10,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: November 7, 1995.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–28313 Filed 11–15–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 221

Thursday, November 16, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION ON PREVIOUS ANNOUNCEMENT: 60 Fed. Reg. 55085, Friday October 27, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, November 14, 1995.

CHANGE IN THE MEETING: The Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued November 14, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–28466 Filed 11–14–95; 11:08 am]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSIONS

FCC To Hold Open Commission Meeting, Monday, November 20, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Monday, November 20, 1995, which is scheduled to commence 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No. Bureau, and Subject

1—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation: Uniform Rate-Setting Methodology. Summary: The Commission will consider establishing a methodology under which cable operators may offer uniform services at uniform prices in multiple franchise areas.

2—Wireless Telecommunications and Mass Media—Title: Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures (WT Docket No. 95–5). Summary: The Commission will consider whether to replace the current antenna structure clearance process, which affects all licensees on such structures, with a simplified registration procedure affecting primarily structure owners and whether to amend Parts 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 to reflect revised FAA painting and lighting recommendations and to implement new statutory requirements, holding owners primarily responsible for painting and lighting antenna structures.

3—Common Carrier—Title: Access to Telecommunications Equipment and Services by Persons with Disabilities (CC Docket No. 87–124). Summary: The Commission will consider action concerning wireline telephone Hearing Aid Compatibility rules recommended by the Commission's Hearing Aid Compatibility Negotiated Rulemaking Committee.

4—International—Title: Market Entry and Regulation of Foreign-affiliated Entities (IB Docket No. 95–22, RM–8355, RM–8392). Summary: The Commission will consider action concerning standards for entry and regulation of foreign carriers seeking to provide services in the U.S. telecommunications market.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: November 13, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28467 Filed 11–14–95; 11:08 am]

BILLING CODE 6712–01–M

Corrections

Federal Register
Vol. 60, No. 221
Thursday, November 16, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-5325-6]

RIN 2060-AD93

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage 1)

Correction

In proposed rule document 95–27568 beginning on page 56133, in the issue of Tuesday, November 7, 1995, make the following correction:

On page 56133, in the second column, under **DATES:**, in the heading entitled "*Public Hearing.*", in the third line, "November 21, 1995." should read "November 17, 1995.".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28371]

Study of FAA Regulation and Certification Capabilities

Correction

In notice document 95–27229 beginning on page 55750, in the issue of Thursday, November 2, 1995, make the following correction:

On page 55750, in the third column, under **SUPPLEMENTARY INFORMATION:**, in the heading entitled "**Background**", in the first paragraph, in the second line from the bottom, "AA" should read "FAA".

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Thursday
November 16, 1995

Part II

Department of Transportation

Coast Guard

46 CFR Part 90, et al.
Offshore Supply Vessels; Interim Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90, 98, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 170, 174, and 175

[CGD 82–004 and CGD 86–074]

RIN 2115–AA77

Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Interim rule, with request for comments.

SUMMARY: The Coast Guard is publishing, as an Interim Rule, a complete set of regulations (a whole new subchapter L) applicable to new offshore supply vessels (OSVs), including liftboats, and is providing the opportunity for additional public comment. These regulations are needed to implement statutory changes to the certification and inspection of conventional OSVs, and the certification and inspection of hitherto-uninspected liftboats. They contain many changes to current regulations and policy governing conventional OSVs, contain first-time regulations for liftboats, and make specific revisions to accommodate these vessels' unique characteristics, their methods of operation, and their types of service. These regulations are intended to eliminate the practice of circumventing inspection of certain categories of OSVs and to improve the level of safety of all OSVs, including liftboats, which will now be certificated and inspected.

DATES: This Interim Rule becomes effective on March 15, 1996; comments must be received on or before February 14, 1996. OSVs certificated before March 15, 1996, may either comply with these regulations in their entirety or continue to comply with, and to be certificated under, current regulations and policy. The Director of the Federal Register approves the incorporation by reference of certain publications listed in the regulations as of March 15, 1996.

ADDRESSES: Comments should be mailed to Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 82–004 or CGD 86–074], U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. The comments and materials referred to in this notice will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council, U.S. Coast Guard, Room 3406, 2100 Second Street SW., Washington, DC 20593–0001. Comments may also be hand-delivered.

A Regulatory Assessment has been placed in the public docket for this rulemaking, and may be inspected and copied at the office of the Marine Safety Council, at the address listed above.

FOR FURTHER INFORMATION CONTACT: James M. Magill, Office of Marine Safety, Security, and Environmental Protection (G–MOS–2), Room 1208c, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

Because of the extended length of time from publication of the Notice of Proposed Rulemaking (NPRM) to publication of this interim rule, the Coast Guard encourages interested persons to participate in this rulemaking by submitting additional written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 82–004 and CGD 86–074) and the specific section of the rule or related documents to which each comment applies; and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard recognizes that there are some differences in format and minor differences in terminology between this Interim Rule and the Supplementary Notice of Proposed Rulemaking for Small Passenger Vessel Inspection and Certification (CGD 85–080). The Coast Guard will be examining these differences with the object of attaining uniformity in format and terminology where identical requirements are intended. Differences in requirements may also be reconciled when the final rules for these two projects are published. Comments are invited identifying instances where apparently identical requirements are expressed differently, or where different requirements are imposed that may be candidates for uniform treatment.

The Coast Guard will consider all comments received during the comment period. The rule may be changed in light of comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information: Several offices at Coast Guard Headquarters participated in drafting this interim rule, but the principal persons involved in drafting this rule are James M. Magill, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel.

Regulatory History

ANPRMs

Two Advance Notices of Proposed Rulemaking (ANPRMs) have appeared in this rulemaking.

On February 14, 1983, the Coast Guard published (48 FR 6636) an ANPRM, under CGD 82–004, to provide an early opportunity for public comment on a preliminary draft of a comprehensive set of requirements for inspection and certification applicable to new OSVs. Twenty-four comments were received, on various technical aspects of the proposal. Many of the recommendations from those comments were incorporated into the subsequent Notice of Proposed Rulemaking (NPRM) discussed below.

On April 16, 1987, the Coast Guard published (52 FR 12439) a second ANPRM, under CGD 86–074, asking for specific information to help the Coast Guard in developing specialized regulations for self-elevating OSVs (liftboats). Fourteen comments were received. Many of the recommendations from those comments were incorporated into the subsequent NPRM discussed below.

NPRM

On May 9, 1989, the Coast Guard published, under both CGD 82–004 and 86–074, an NPRM (54 FR 20006). The comment period had originally been scheduled to end on September 6, 1989, but on August 31, 1989 (54 FR 36040), it was extended until December 6, 1989. Included with the extension of the comment period was notice of a public hearing on the proposed rule, which hearing took place at New Orleans, Louisiana, on September 13, 1989. Twenty letters were received, containing one hundred and ninety-four comments on various technical aspects of the proposed rule. Many of the recommendations from those comments have been incorporated in this interim rule.

Discussion of This Interim Rule

Conventional OSVs have traditionally provided a wide range of supply and support to offshore industries extracting oil and minerals. Once, these vessels operated almost exclusively in the Gulf of Mexico; now, they operate worldwide.

Self-elevating OSVs, commonly known as liftboats, are more specialized in their service. These have built-in jacking-systems, which allow them to be "jacked up" above the ocean's surface and to become, in effect, stationary platforms for a temporary period. Once jacked up, these vessels render specific service, such as maintenance and construction, to adjacent offshore structures.

Conventional OSVs

Conventional OSVs are propelled by motor, measure less than 500 gross tons, and engage in short voyages. Until October 6, 1980, these vessels were—

(a) Inspected by the Coast Guard as cargo and miscellaneous vessels under 46 CFR subchapter I, if of over 15 and under 500 gross tons and carrying freight for hire;

(b) Inspected by the Coast Guard as small passenger-vessels under 46 CFR subchapter T, if of less than 100 gross tons and carrying more than six passengers for hire; or

(c) Not inspected by the Coast Guard, because they operated under "bareboat charters".

The vessels under subchapter I were known as "supply boats." Typically, they were of steel construction, carried large amounts of deck cargo, and carried up to 16 persons in addition to the crew on domestic voyages as permitted by 46 U.S.C. 3304 (formerly 46 U.S.C. 882).

The vessels under subchapter T were known as "crew boats." Typically, they were of aluminum or steel construction, were relatively swift, carried limited amounts of deck cargo, and carried a large number of passengers.

Pub. L. 96–378, enacted on October 6, 1980, made important changes to how conventional OSVs were to be inspected by the Coast Guard. (In 1983, the provisions of Pub. L. 96–378 were consolidated, without substantive change, and recodified in Title 46, U.S.C. Subtitle II. Its provisions are now contained principally in 46 U.S.C. 2101(19), 2101(21)(C), 3301(3), 3302(g), 3306, 3307, 3501, and 8301.) Among the changes mandated by Pub. L. 96–378 were the following:

(1) A controversial feature of the off-shore-support industry for many years had been its use of contractual arrangements, involving bareboat charters coupled with operating agreements, to circumvent a requirement for Certificates of Inspection from the Coast Guard. Pub. L. 96–378 eliminated this subterfuge by requiring all OSVs to be inspected.

(2) Pub. L. 96–378 defined an OSV as any vessel that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources, is propelled by machinery other than steam (is a motor vessel), is not a small passenger-vessel regulated under 46 CFR subchapter T, and is of between 15 and 500 gross tons. (This definition has persisted into 46 U.S.C. 2101(19).)

(3) Pub. L. 96–378 categorized conventional OSVs as follows:

(i) Pre-1979 OSVs—those (a) that were operating in support of the offshore industry on or before January 1, 1979, or (b) that were contracted for on or before that date and that entered into service before October 6, 1980.

(ii) All other OSVs. Since 1980, over 350 conventional OSVs have been certificated under subchapter I or T.

(4) Each conventional OSV, other than a pre-1979 OSV, is currently subject to inspection as follows:

(i) A vessel of more than 15 gross tons but less than 100 gross tons is subject to Coast Guard inspection under subchapter I or T, depending on the owner's preference and the vessel's principal use.

(ii) A vessel of 100 or more gross tons but less than 500 gross tons is subject to Coast Guard inspection under subchapter I.

(5) Each pre-1979 OSV continues to be subject to inspection under subchapter I or T as applicable. On October 20, 1980, the Coast Guard published (45 FR 69242) a final rule requiring that pre-1979 OSVs be registered with Officers in Charge, Marine Inspection, on or before January 6, 1981, and that they be certificated not later than two years from the date of registration. These vessels are not subject to existing regulations on major changes of structure or major replacements of equipment unless compliance is necessary to remove especially hazardous conditions. The legislative history of Pub. L. 96–378 states, in part, that OSVs should "conform as closely as possible to inspection standards applied to new vessels". However, Congress recognized that it would not be practicable to require major changes of structure or equipment on OSVs previously uninspected. Therefore, pre-1979 OSVs are not subject to standards that require those major changes unless the Coast Guard determines that those changes are necessary to remove unreasonable risks to the vessels or their crews. Note that 46 U.S.C. 2101 as amended now deems OSVs not to be tank vessels and, therefore, relieves them of having to meet requirements applicable to tank vessels for preventing oil pollution.

Liftboats

The high rate of casualties experienced by self-elevating OSVs (liftboats) requires the development of specific regulations that address liftboats' design, stability, construction, and operations. The Coast Guard anticipates that promulgation and enforcement of the regulations in this Interim Rule will render new liftboats substantially safer than their predecessors.

Again, on April 16, 1987, the Coast Guard published (52 FR 12439) an ANPRM, under CGD 86–074, asking for specific information to help the Coast Guard in developing specialized regulations for liftboats. As stated in this ANPRM, the need for regulations was based on the high incidence of casualties involving liftboats, and upon specific safety recommendations made by the National Transportation Safety Board (NTSB) in its review of those casualties.

The Coast Guard conducted its review of the available history of casualties from 1980 to 1987 in advance of the 1987 ANPRM. The review showed that over 20% of the approximately 250 liftboats in the fleet had been involved in reported casualties, resulting in 10 deaths, 33 serious injuries, constructive total loss of 13 vessels, and overall physical damage exceeding $20 million. Many of these casualties were directly attributable to inadequate design or improper operating procedures. The results of the 1987 review have been incorporated into the Regulatory Assessment referred to above under **ADDRESSES**. The review is also discussed, in more detail, in the following paragraphs.

Until 1988, the Coast Guard regulated liftboats primarily under 46 CFR subchapter C, which contains safety regulations for uninspected vessels. Virtually all liftboats were of under 300 gross tons and were, at that time, believed by the Coast Guard to provide mainly services under contract to the offshore industry; that is, these vessels and their crews were chartered by an operator to perform a particular function or task in support of offshore drilling or production. Since these vessels were of less than 300 gross tons and were not known or believed to be carrying goods and supplies in support of the offshore industry, they stood exempt from the

requirements for inspection and certification under the general provisions of Title 46, U.S.C. (Chapter 33 or Subtitle II).

The high incidence of casualties involving liftboats reflected in the 1987 review made it clear that the requirements in 46 CFR subchapter C were ineffective for promoting liftboats' safe operation. Further, the review showed that these vessels had been routinely carrying goods, supplies, equipment, and offshore workers to offshore structures, as well as performing their traditional function in support of construction and maintenance of offshore structures. Accordingly, the Coast Guard determined in 1988 to inspect liftboats as OSVs under 46 U.S.C. 3301(3). On March 23, 1988, the Coast Guard published guidance for the inspection of liftboats as Change 1 (CH–1) to Navigation and Vessel Inspection Circular 8–81 (NVIC 8–81), "Initial and Subsequent Inspection of Uncertificated Existing Offshore Supply Vessels under Public Law 96–378." On May 21, 1991, the Coast Guard published NVIC 8–91, interim guidance for applying the requirements of Subchapters I and T to existing liftboats, as appears more fully below. NVIC 8–91 cancelled NVIC 8–81 and its CH–1.

Specialized OSVs

The 1987 ANPRM proposed that regulations for liftboats and other specialized OSVs be pursued in two distinct phases: Phase I to address liftboats; phase II to address specialized OSVs engaged in support of diving, of painting and sand-blasting, and so on. An analysis of the histories of casualties and of the operation of these specialized OSVs, conducted as a part of the effort to prepare the NPRM and this interim rule, shows that no additional regulations are necessary for these vessels as they are for liftboats. The requirements for new conventional OSVs in this rule will also apply to these specialized OSVs and should be sufficient to promote their safe operation. Consequently, the Coast Guard does not intend to act further on phase II of the 1987 ANPRM.

Existing OSVs

The Coast Guard has historically tried to let owners and operators of existing vessels, first coming under inspection for certification, continue operation without being unduly penalized by newly promulgated regulations, provided their operations can be conducted safely. Existing conventional OSVs, including pre-1979 OSVs, had been inspected and certificated under guidance provided in NVIC 8–81, and by additional guidance for inspecting liftboats published as CH–1 to NVIC 8–81. This additional guidance was developed to address the hazards contributing to the high number of liftboat casualties.

CH–1 to NVIC 8–81 extended to liftboats the same consideration permitted for conventional OSVs: relaxation of certain provisions of 46 CFR subchapter I or T. The Coast Guard is conscious of the economic hardship potentially imposed upon owners and operators of existing vessels first coming under inspection for certification. Therefore, in keeping with the intent of Public Law 96–378, it treated existing liftboats differently from new liftboats. CH–1 to NVIC 8–81 did not address features that can be addressed only in the design stage, such as main-hull strength and damage stability, since modification of existing vessels to meet recognized standards in these and other features is very costly. Instead, it limited the areas and conditions of operation according to vessels' design, including leg strength and stability. Over 50 liftboats applied for and received initial inspection for certification under CH–1 to NVIC 8–81.

Recently the Coast Guard became aware of a large number of existing liftboats designed and operated on inland waters or on State waters of Texas and Louisiana. These vessels are typically operated closer to harbors of safe haven than are larger, ocean-going liftboats. In response to requests from representatives of these liftboats, the Coast Guard revisited the issue of initial inspection for certification of existing liftboats. The result was NVIC 8–91. NVIC 8–91 incorporates the guidance of NVIC 8–81 and its CH–1, and provides further guidance toward a level of safety for smaller, existing liftboats equivalent to that for larger, existing or new, liftboats.

NVIC 8–91 is available for inspection and copying in the public docket. Also, copies of it are available from the Commanding Officer, Marine Safety Center; 400 Seventh Street SW., Washington, DC 20590–0001; Attn: NVICs. NVIC 8–91 costs $1.75, payable, in advance, by check or money order to "Treasury of the United States".

Intent

This interim rule applies to new OSVs: OSVs contracted for after these regulations take effect. It also applies to existing OSVs, including pre-1979 OSVs, if the owners of these OSVs wish.

Many of the requirements in this interim rule are similar to corresponding requirements in 46 CFR subchapters I and T. The Coast Guard has made every effort to select the most appropriate of those. The Coast Guard, when able, has modified existing regulations to consider the unique operation of OSVs and to recognize many of the policies developed for these vessels throughout the years where equivalent levels of safety have been demonstrated. When existing regulations have seemed confusing or in any way not clear enough as they apply to OSVs, the Coast Guard has made editorial changes. To the extent that this rule addresses the same issues as NVIC 8–91, it addresses them in the same way. The large majority of existing vessels have been certificated for restricted service because of their original designs. However, new liftboats should enjoy a wider and less restrictive scope of operation than those certificated before establishment of these regulations because compliance with standards of structural strength and of stability will render them able to do more.

Associated Regulatory Projects

On February 13, 1990, the Coast Guard published (55 FR 5120) an NPRM, under CGD 89–037, entitled Stability Design and Operational Regulations. On September 11, 1992, it published (57 FR 41812) the final rule. This interim rule subsumes that one. Both incorporate, for inspected vessels, recently adopted amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS). Both seek to reduce the potential for vessels' capsizing caused by defective designs or operations. This interim rule adds §§ 131.220 (e), (f), and (g); 131.513; and 131.620(d) to 46 CFR part 131.

Discussion of Specific Provisions, Including Comments on and Changes to the NPRM of May 9, 1989

The Coast Guard sought comments on all aspects of these regulations—from owners, operators, architects, and builders of vessels; material vendors, insurers, surveyors, and other persons involved with OSVs; and interested members of the public. It invited and encouraged interested persons to participate in this rulemaking by submitting written views, data, or arguments. It received 20 letters, containing 194 comments. It evaluated all comments, and incorporated many of their recommendations into this interim rule. Comments received are discussed below. Where section numbers in this rule differ from their counterparts in the NPRM, the counterparts appear in brackets.

One commenter suggested that 46 U.S.C. 3301(3) is flag-blind, and questioned what standards would apply to foreign-flag OSVs. In general, the operation of foreign-flag OSVs would not be permitted, since U.S. Customs has determined that the carriage of goods between offshore platforms in U.S. waters constitutes "coastwise trade" and would, therefore, if accomplished by these OSVs, violate the Jones Act. No OSVs carry goods between platforms in U.S. waters and a foreign port or the U.S. Virgin Islands. Current industry practice and platform locations make such trade highly unlikely.

One commenter asked for clarification of the Coast Guard's intent regarding different rules for OSVs depending on when vessels were built. Vessels previously inspected under 46 CFR subchapter I or T would continue to be inspected under those rules, coming under this interim rule only at the owners' option.

Two commenters stated that applicability provisions should require a vessel to complete significant construction within a reasonable time, to prevent circumvention of the new standards. The Coast Guard agrees and has inserted new § 125.100(c), to require 24 months for construction of the vessel.

One commenter noted that the proposed rule did not adequately address the carriage of Noxious Liquid Substances (NLSs). The Coast Guard agrees and has added § 125.120. It has also updated the provisions of 46 CFR subpart 98.31 and moved them into this section to clarify the carriage of NLSs on OSVs.

Several comments concerned reference in § 125.150 (§ 125.140) to proposed 46 CFR subchapter W (CGD 84–069), Lifesaving Equipment. The manager of that project will consider them along with others related to that project. Rather than refer to lifesaving requirements proposed for subchapter W, this interim rule refers to those already in subchapter I. When proposed subchapter W is promulgated, those of its requirements that govern OSVs will likely go into subchapter L, where part 133 is reserved for them. The Coast Guard has revised § 125.150 (§ 125.140).

One commenter questioned the definition of "cargo gear" in (§ 125.150(d)) and asked how this Interim Rule would treat cranes. Since OSVs seldom carry cargo gear in the traditional sense, but often carry cranes, the Coast Guard enlarged this definition to specifically comprehend cranes. (§ 125.150(d)) has become § 125.160 Crane, which specifically comprehends cranes.

One commenter urged use of "offshore" in the definition of "Restricted Service" in § 125.160 (§ 125.150(w)), parallel to its use in the definition of "Offshore Supply Vessel" in § 125.160 (§ 125.150(s)). A review of the legislative history of applicable statutes discloses no congressional intent to create a regulation-free zone for OSVs operating "inshore or inland." "Offshore" as it figures in "offshore supply vessel" suggests the place where OSVs are designed and intended to operate, not where they happen to be operating at a particular moment. Accordingly, any OSV (including any liftboat)—operating on the navigable waters of the United States, and either carrying goods, supplies, or equipment, or providing service to or support of exploration, exploitation, or production of offshore mineral or energy resources—is subject to inspection. Section 125.160, therefore, does not include the use of "offshore" in the definition of "Restricted Service".

Two commenters indicated the practice of incorporation by reference in § 125.180 (§ 125.170) to be too troublesome and confusing. The practice is a procedure used by Federal agencies to regulate by reference to material already published and available elsewhere. This practice reduces the redundancy and bulk of the **Federal Register** and of the Code of Federal Regulations.

One commenter pointed out that the current edition, rather than an outdated edition, of the ABS's Rules for Mobile Offshore Drilling Units (MODUs) should be incorporated by reference in § 125.170. The NPRM of May 9, 1989, would indeed have incorporated by reference the Rules for MODUs from 1985. But later editions appeared in 1988 and 1991, and the parts of this final rule governing the leg strength and structural design of liftboats incorporate these instead. There has been considerable discussion in the Coast Guard and industry regarding the new "unity check" equation in the newer editions of the ABS's Rules, especially regarding its applicability to liftboat legs. This rule incorporates by reference the Rules for MODUs from 1994; but, as the preamble points out elsewhere, other forms of the "unity check" may be acceptable too.

One commenter suggested incorporating by reference in § 125.180 (§ 125.170) the standards of either the International Standards Organization (ISO 614, 1095, 3254, 3903, and 5779) or the British Standards Institute (BSI BS MA 24 & 25) for windows used in the side shell and in the deckhouse, and noted that either standard would affect proposed § 127.420. The Coast Guard does not agree. It has not evaluated either, to determine the impact of requiring their use. They are not known to most small U.S. shipyards, and casualty information has not demonstrated that such detailed standards are necessary. The Coast Guard may in any case accept compliance with them as demonstrating sufficient strength to satisfy the requirements in § 127.420. But it has not changed § 125.180 (§ 125.170).

One commenter suggested rewording (§ 125.180) to clarify the responsibility of the Marine Inspector regarding notice of deficiencies found. The responsibilities of the Marine Inspector are a matter of Coast Guard policy and appear in the Marine Safety Manual, NVICs, and Commandant Instructions. Because they are a matter of policy, because other subchapters concerning inspections leave policy to those sources, the Coast Guard has removed this section.

One commenter thought § 126.100 would give the Marine Inspector too much power to require tests and inspections. The Coast Guard does not agree. To ensure compliance with regulations, the Inspector needs flexibility to increase the scope of an inspection according to the conditions found when a vessel is boarded for whatever reason. The Inspector has to follow guidance from the cognizant OCMI; this, together with the appeal procedures available to the owner, keeps the Inspector from wielding excessive power.

One commenter suggested that § 126.110 require the owner or operator of a vessel to report an accident and make the vessel available for inspection afterward. Casualty reporting is already required under § 131.110, but the Coast Guard agrees that the burden to make the vessel available for inspection after a casualty or when important repairs or renewals are going on should rest with the owner or operator. It has changed § 126.110.

One commenter stated that the Permit to Proceed prescribed by § 126.120 should indicate whether the vessel may carry "goods, supplies, (and) equipment" as well as cargo and offshore workers. The Coast Guard agrees and has reworded § 126.120(c).

(§ 126.130), "Inspection of Cargo Gear", and (§ 126.140), "Cranes", have been merged in current § 126.130, "Cranes", because few OSVs carry any cargo gear except cranes.

One commenter urged the Coast Guard to revise § 126.140 (§ 126.150), to delegate drydockings for credit to classification societies' surveyors.

Under the Maritime Regulatory Reform Plan the Coast Guard may, in the future, further delegate responsibilities for inspections to classification societies' surveyors or other third parties. In the meantime in rare cases, considering them on their individual merits, the OCMI may accept alternatives, under the authority of § 125.170 (§ 125.160), if he or she is satisfied that they afford an equivalent level of safety.

On its own the Coast Guard realized that § 126.140 (§ 126.150) did not require an internal structural examination in conjunction with a drydocking for credit. For years it was standard practice to examine the internal structural members whenever a vessel was hauled out or placed on drydock. In 1988 the drydocking regulations in 46 CFR subchapter I changed; now they distinguish between "drydock" and "internal structural" examinations. To clarify the intent of this rule, the Coast Guard has revised § 126.140 (§ 126.150) to specifically require an internal structural examination at the same interval as drydocking, but not necessarily at the same time.

Several commenters asked that § 126.150 (§ 126.160) clarify which OCMI an owner should notify when repairs or alternations are due. The OCMI having jurisdiction in the zone where the repairs or alterations will occur is the one. Section 126.150(a) makes this explicit.

One commenter found confusing the separation of requirements in § 126.150 (§ 126.160) from similar requirements in (§ 131.220) and (§ 131.230), on reporting after certain accidents and reporting before certain repairs. The Coast Guard agrees and has combined all such requirements in § 126.150(a), eliminating (§ 131.220) and (§ 131.230).

One commenter stated that § 126.160(c)(1) (§ 126.170(c)(1)), should apply to a vessel under way and one in port but not to one in a shipyard or in a ship-repair facility, because these last two are subject to requirements of the Occupational Safety and Health Administration (OSHA) in 29 CFR part 1915. The Memorandum of Understanding between OSHA and the Coast Guard indicates, however, that the Coast Guard is the lead agency on inspected vessels. This section persists as proposed.

One commenter urged that the rule treat carriage of 36 or fewer offshore workers not as matter of applicability, as in (§ 125.100(a)(2)), but as an absolute limit, as in (§ 125.180). The Coast Guard agrees; it has shifted the burden of (§ 125.180) into current § 126.170 and eliminated (§ 125.100(a)(2)).

One commenter observed that § 126.170 (§ 126.180) does not address how offshore workers get on and off the vessel. The Coast Guard does not perceive this as a problem and knows of no statistical evidence to suggest that it is. This section persists as proposed.

Two commenters challenged (§ 126.180) over the number of offshore workers on OSV may carry. One commenter held a limit of 36 workers, at least when the vessel was operating overseas, too restrictive while the other held an allowance of more than 12, whatever the circumstances, too permissive. The Coast Guard does not agree with either commenter. The carriage of offshore worker is still limited to 16 on domestic voyages and 12 on international voyages, except aboard vessels designed and constructed to the stringent damage-stability requirements in current § 174.205. The actual number a vessel may carry will depend on the OCMI at the initial Inspection for Certification. The OCMI will consider space on the deck, sizes of the staterooms, availability of seating, number of bunks, number of toilets and washbasins, size of the vessel, and whether the offshore workers will be aboard for more than 24 hours. This section persists as proposed.

One commenter stated that Form CG–3752, "Application for Inspection", called out by (§ 126.230), needs revision. The commenter is right, and the Coast Guard will accomplish this in its next review of its information-collection budget for the Office of Management and Budget (OMB).

One commenter suggested revising § 126.240 to require all pages of the Certificate of Inspection to be visible when posted. The Coast Guard agrees and has reworded § 126.240 accordingly.

Form CG–858, "Certificate of Inspection Amendment", called out by § 126.270, has been discontinued. The Coast Guard has revised § 126.270 accordingly, and updated the Marine Safety Manual, volume II (change 3).

The Coast Guard wishes to emphasize that the inspections called for by § 126.340 and several other sections are the responsibility of the owner or operator in the first instance. Persons authorized by the Coast Guard carry out the inspections, but the owner or operator makes the vessel available without prompting.

One commenter stated that the inspections required by §§ 126.340 and 126.430 should specifically include liftboat legs. The Coast Guard agrees that some inspections should, and has added part 134 (reserved in the NPRM), which comprises added provisions for liftboats. The inspections required by current §§ 134.110, "Initial Inspection", and 134.120, "Inspection for Certification", specifically include liftboat legs.

Eight commenters stated that (§ 126.350) and (§ 126.440) were confusing, difficult to decipher, too detailed, and verbose. The Coast Guard agrees and has eliminated much of the original text. Section 126.350(b)(3) refers the reader to subpart 94.35 for guidance on the inspection of the installation of lifeboats, rescue boats, davits, and winches. Section 126.440 likewise refers the reader to § 91.25–15.

One commenter stated that the scope of reinspection in § 126.520 should be better defined. The Coast Guard does not agree. Once a vessel has passed inspection and received a Certificate of Inspection (COI), that vessel should be in compliance with the terms of its COI at all future times. To ensure this compliance, the Marine Inspector needs the flexibility to increase the scope of inspections according to conditions found. See the discussion of § 126.100, above.

On January 25, 1990, the Coast Guard published (55 FR 2525) alternative provisions for reinspection of OSVs in foreign ports under CGD 82–004a. These provisions now appear here, incorporated in § 126.530.

Two commenters stated that § 127.110(e), "Electrical engineering", should incorporate § 110.25 of this chapter both for vessels of under 100 gross tons and for vessels of 100 or more gross tons. The Coast Guard does not agree. The electrical requirements for vessels of under 100 gross tons are similar to the requirements in proposed subchapter T, which, in their current form, do not seem to have degraded the safety and reliability of electrical systems. This section persists as proposed.

Section 127.120(b) has changed to reflect the Marine Safety Center's new address.

Three commenters stated that § 127.240, "Means of escape", should require more. The first commenter urged adding that "at least two means of escape from the same deck lead directly to the outside of the deckhouse" and cited an accident where protective metal plates on windows were secured from the outside of the deckhouse. The second urged adding that "all exposed peripheries within five feet of the scuttle be provided with permanent rails or bulwarks". The third urged adding that vertical ladders be strong enough to support 1000 pounds. The Coast Guard disagrees with these additions, but has added § 127.440 to require that any covering or protection placed over a window or porthole be capable of being readily removed or opened without anyone's having to go onto a weather deck.

Two commenters considered § 127.250, "Ventilation for enclosed spaces", too broad and yet too sparse in detail on remote stopping of ventilation. The requirements for remote stopping appear at § 129.540; adding them to § 127.250 would be redundant.

One commenter found § 127.270(g), on separating crew members' and offshore workers' accommodations impracticable and unnecessary. The NPRM, however, had allowed approval of an alternative arrangement by the OCMI; this Interim Rule allows it also.

None commenters stated that § 127.280, now "Construction and arrangement of accommodations for crew members and offshore workers", needed reworking. The Coast Guard agrees and has made several changes. From § 127.280(b)(1) it has dropped the requirements that seating must not be intended for any other use and that seating with crew members is not acceptable. From § 127.280(b)(2) if has dropped the requirement for aircraft-style seating when offshore workers are aboard for more than 12 hours. From § 127.280(b)(4) it has dropped the requirement of separate toilets and washbasins for offshore workers. And from § 127.280(d) it has dropped the requirement that boundary bulkheads and decks separating crew members' and offshore workers' accommodations from machinery spaces must be of "A" class construction as defined by § 92.07–5 of this chapter for vessels of less than 100 gross tons.

One commenter wanted § 127.320, "Storm rails", revised to read that suitable storm rails must be installed in all passageways and at the deckhouse sides, "including in way of inclined ladders"—wherever persons aboard have normal access. The Coast Guard agrees and has corrected this section.

Two commenters stated that every covering or protection placed over a window or porthole during heavy weather should be capable of being readily removed or opened without anyone's having to go onto a weather deck. The Coast Guard agrees and has added § 127.440, "Operability of Window Coverings".

One commenter wanted § 127.420 to require windows and portlights to meet standards of the British Standards Institute if the vessel operated on oceans or partially protected routes. The Coast Guard disagrees because it has not evaluated these standards to determine the impact of their use, because they are not known to most small shipyards, and because reports and statistics on casualties have not demonstrated their necessity. This section persists as proposed.

One commenter stated that there is an enormous difference between vital systems for lifeboats and those for conventional OSVs and that § 128.130 should reflect this. The Coast Guard disagrees, respecting most vital systems. However, to affirm the stature of liftboat-jacking systems as vital systems it has moved its treatment of these from this section to part 134.

One commenter stated that the constraint on design ordained by (§ 128.310(b)), "the use of a fuel with a flashpoint of lower than 110 degrees F. must be specifically approved by Commandant (G–MMS), except in an engine for a gasoline-powered rescue boat", would be more appropriate in subpart I of part 131 as a constraint on operations. The Coast Guard does not agree. This constraint should influence the design, and the builder should seek the Commandant's approval, if necessary, early in design so any changes may occur before actual construction begins. This section persists as proposed.

One commenter stated that § 128.440 is too broad to establish minimum standards for designers and builders and that liftboats would have to meet the same requirements for bilge systems that MODUs already have to meet. The Coast Guard agrees in part. This section now contains paragraphs (a) and (b). Paragraph (a) reads, "Except as provided by this section, each bilge-system installation must comply with §§ 56.50–50 and 56.50–55 of this chapter". Paragraph (b) comprises the text proposed for § 128.440 as a whole.

One commenter believed that most switchboards aboard liftboats are too small for handrails as required by § 129.330(c). The Coast Guard does not agree. A non-conductive handrail is essential to the safety of crew members when operating the switchboard in any kind of seaway. This section persists as proposed.

One commenter stated that § 129.440(a) should also require emergency lighting in the engineroom. The Coast Guard agrees and has reworded the section to include working (machinery) spaces.

One commenter stated that § 129.530 should not exempt vessels of under 100 gross tons from installing a general alarm. The Coast Guard agrees and has reworded this section.

One commenter stated that § 129.540(a) should not exempt vessels of under 100 gross tons from installing remote stopping-systems. The Coast Guard does not agree. Elsewhere, this interim rule requires vessels of under 100 gross tons to have remote means of shutting down ventilation and a means of shutting down main propulsion machinery, both from the pilothouse. This section persists as proposed.

One commenter called redundant the requirement of § 130.120(c), that a vessel have a propulsion-control system operable from the pilothouse that shuts down main machinery independent of the remote stopping-system required by § 129.540(b)(1). The Coast Guard agrees and has changed § 130.120(c) so that a system in compliance with § 129.540 is also, by that fact, in compliance with § 130.120.

One commenter stated that § 130.120(d) should require most OSVs with controllable-pitch propellers to fail in the ahead mode since they normally back into rigs but should require most liftboats with controllable-pitch propellers to fail in the astern mode since they normally head into rigs. The Coast Guard disagrees. Statistics on accidents do not establish this as a problem. Maneuvering in a harbor or in close quarters with other vessels could prove disastrous if controllable-pitch propellers failed in any mode that causes the propulsion engine to over speed or the pitch of the propellers to increase. This section persists as proposed.

One commenter stated that § 130.130(j)(4) was unclear about the meaning of "materially equivalent". When a hydraulic-helm steering-system is installed with a duplicate power system for the main steering gear, the duplicate power system may be used to operate winch motors on deck or similar equipment if its hydraulic piping, for instance, is essentially identical to that of the steering system.

One commenter asked whether an "orbitrol-type" system counts as a hydraulic-helm steering-system according to § 130.140(a)(2). An orbitrol system is a type of hydraulic-helm steering-system.

One commenter stated that the reference by § 130.140(b)(15) to the "hydraulic helm unit" should be eliminated. The Coast Guard agrees, and has changed the section to read "Manual capability to center and steady the rudder if the vessel loses normal steering power."

One commenter stated that liftboats approach docks and offshore platforms head on and that, therefore, § 130.140 should not require after steering. After steering enters § 130.140(a)(1) by reference to subchapter F (§ 58.25–50), which does not require it if the steering

system complies with standards embodied in § 130.140(b) and if the vessel has adequate visibility when going astern. This section persists as proposed.

The requirement for gas masks in § 130.230 (§ 130.240) has given way to CGD 86–036, "Updating Approval and Carriage Requirements for Breathing Apparatus", published (57 FR 48320) as a final rule on October 23, 1992. Now a self-contained breathing apparatus (SCBA) is required for each refrigeration system exceeding 20 cubic feet of storage capacity and using ammonia or other hazardous gas, or exceeding 1000 cubic feet of storage capacity and using a fluorocarbon as refrigerant.

Two commenters called excessive the requirement in § 130.240 (§ 130.250), that liftboats comply with the ABS's rules for anchors. One commenter stated that the ABS's rules are an option for MODUs and should be for liftboats. The other stated that liftboats do not and would not use anchors often, and that this rule should allow smaller anchors than those allowed by the ABS's rules. The Coast Guard does not agree. Only MODUs that are not self-propelled and are towed from place to place are free to ignore those rules. Liftboats do not fit in that category; they need anchors in emergencies. They may, however, comply with rules from other classification societies instead of the ABS's rules, upon approval of the Commandant. This section persists as proposed.

One commenter stated that a new section should be added to require cargo fittings on weather decks to provide adequate lashing-points for deck cargo. The Coast Guard considers a uniform requirement on lashing an unnecessary economic burden and will leave the matter to the owners' desires.

One commenter found the requirements in §§ 130.310 for a marine radar and 130.320 for an electronic position-fixing device inadequate to assure navigational safety. The Coast Guard disagrees. There is a wide variety of radar and electronic position-fixing devices available, at many different prices. The Coast Guard does not prefer one to another. These sections persist as proposed.

Two commenters wanted a new section requiring Navtex receivers and fathometers. The Federal Communications Commission required on August 1, 1993 (47 CFR 80.1065(b)(1)), that OSVs of 300 or more gross tons carry Navtex receivers. The Coast Guard will not require that OSVs of under 300 gross tons do the same. OSVs are in constant contact with their bases or the offshore facilities they are serving. Using the required charts and electronic position-fixing devices, vessels will know depths of water well enough without fathometers. The Coast Guard considers a uniform requirement an unnecessary economic burden and will leave the matter to the owners' desires. No section was added.

One commenter wanted a new § 130.330(c) specifying that, "when operating in foreign waters, an OSV may carry an appropriate foreign equivalent of any" domestic item "required by paragraph (a) of this section." The Coast Guard agrees and has added this wording.

One commenter wanted a new subsection in § 130.440 to require a public-address system for announcing instructions, advisories, and emergencies from the pilothouse. The Coast Guard disagrees. A general alarm in accordance with § 129.530 should serve to alert crew members and offshore workers to emergencies. This section persists as proposed.

Two commenters wanted all voids covered by § 130.460(b)(1), which already requires sensors for the high-bilge-level alarm in each space below the deepest load waterline that contains pumps, motors, or electrical equipment. The Coast Guard disagrees. This would be an unnecessary economic burden because the flooding of voids without apparent reason and without crew members' knowledge has not been a cause of casualties to OSVs. This section persists as proposed.

One commenter wanted a new subsection in part 131, proposed subpart I, "Markings on Vessels", to require markings on main decks over integral fuel and buoyancy tanks, to alert personnel where not to use tack welds when securing deck cargo. The Coast Guard disagrees. Using tack welds to secure deck cargo is inconsistent with sound policy for welding and burning on inspected vessels. Proposed subpart I has become current subpart B; otherwise, the subpart persists as proposed.

One commenter stated that § 131.220(c) (§ 131.920(b)) did not clearly indicate the datum line for draft measurements. The Coast Guard disagrees. This section persists as proposed.

One commenter stated that § 131.340(a)(5) (§ 131.340(1)(v)) was unclear where offshore workers should sit and what "evenly distributed" means. The Coast Guard disagrees. The workers should be seated and evenly distributed in the area specified by § 127.280(b)(1) (§ 127.280(a)(1)). Section § 131.340(a)(5) (§ 131.340(1)(v) persists as proposed.

One commenter urged that the instruction in § 131.340(a)(6) (§ 131.340(1)(vii)) to don lifejackets and immersion suits should be reworded. The Coast Guard agrees. Only if immersion suits are required aboard should offshore workers have to don them. The Coast Guard has reworded this section.

One commenter recommended that the Coast Guard develop—instead of § 131.420(c)(2), under which the OCMI may permit persons practiced in the handling of liferafts to substitute for deck officers, able seamen, and certificate persons—an appropriate scheme of testing and endorsement for persons in charge of survival craft. The whole point of § 131.420(c)(2) is to require either persons tested and endorsed, or persons demonstrably competent by standards less rigid, to be in charge of survival craft. But the Coast Guard will consider this recommendation while developing a rule to revise 46 CFR part 12, "Certification of Seaman".

One commenter suggested that in § 131.505(a) the word "voyage" should be replaced by "away from shore". The Coast Guard agrees and has reworded this section.

One commenter stated that § 131.560 as written was directed mainly at liftboats and should be rewritten to be directed at OSVs in general. The Coast Guard disagrees. Every word applies with full force to OSVs in general. This section persists as proposed.

One commenter recommended that § 131.580 cover the servicing of inflatable buoyant apparatus. The Coast Guard agrees and has reworded this section.

One commenter suggested that in § 131.610(a) the words "Each OSV" should read "Each vessel". The Coast Guard disagrees. This subchapter deals only with OSVs, even though some are liftboats. This section persists as proposed.

The Coast Guard has reworded § 131.860(b) to eliminate both paragraph (1)—and with it a reference to SOLAS—and paragraph (2), and to clarify its intent on the length of the painter.

One commenter recommended that § 131.865 cover the marking of inflatable buoyant apparatus. The Coast Guard agrees and has reworded this section.

One commenter suggested that the markings prescribed by § 131.893 for watertight doors and hatches read "WATERTIGHT DOOR—KEEP CLOSED EXCEPT FOR PASSAGE" and "WATERTIGHT HATCH—KEEP CLOSED WHEN NOT IN USE". The Coast Guard agrees and has reworded this section.

One commenter recommended adding "operating a vessel while intoxicated" to the grounds of criminal liability set forth by § 131.905(a)(3) (§ 131.1005(a)(3)). The Coast Guard disagrees because the section already implies those grounds.

Several commenters expressed the concern that, considering the service of OSVs, hand-operated fire pumps were inadequate on OSVs under 65 feet in length. The Coast Guard disagrees. The requirements in § 132.100 are similar to those in proposed subchapter T, which are similar to those in current subchapter T which have caused no perceptible decline in safety. This section persists as proposed.

One commenter stated that § 132.120(j) could be construed to prohibit a ballast pump from use as a backup or standby fire pump. It can indeed be so construed, where a ballast pump is connected to a line for flammable or combustible liquid"; the Coast Guard wants it so construed, there—though not elsewhere. This section persists as proposed.

The Coast Guard has incorporated Chapter 4 of NFPA 10 into § 132.350(c)(1) as the standard to use when inspecting and testing portable fire extinguishers. It has deleted the requirements for portable fire extinguishers in proposed Table 132.350(a). It has combined the requirements for semiportable and fixed fire-extinguishing systems in proposed Tables 132.350 (a) and (b) into Table 132.350.

After reviewing spoken comments, made during the hearings in New Orleans, and written comments, the Coast Guard has consolidated items peculiar to liftboats spread throughout the NPRM into previously reserved part 134, now entitled "Added Provisions for Liftboats." Part 133 is reserved for "Lifesaving Systems".

Two commenters will applaud § 134.140(a)(1), which clarifies a matter left ambiguous by proposed § 127.210(b)(1): whether the main hull of a liftboat constitutes part of the "supporting structure". It does, and must comply with section 3.11 of the ABS's Rules for Building and Classing Mobile Offshore Drilling Units.

Five commenters found a "K" factor of 2 for leg strength in § 134.140(a)(3) (§ 127.210(b)(3)) too restrictive. A "K" factor of 2 is conservative and in any case is just a starting-point. Section 134.140(a)(3) (§ 127.210(b)(3)) remains as before. The Coast Guard realizes that there may be any number of ways to calculate leg strength, so it has retained § 134.140(b) (§ 127.210(c)), to allow use of the standards of any classification society, or other established standard acceptable to Commandant (G–MMS), in determining structural strength.

Four commenters found the requirement in § 134.150(a), (§ 128.460), for design of rack-and-pinion jacking-systems to the standard of American Gear Manufacturer's Association inappropriate because the systems operate in a low-duty-cycle, slow, non-reversing, nearly static condition. The Coast Guard agrees and has rewritten § 134.150(a) (§ 128.460) so that these systems must comply with sections 4/1.13.1 through 4/1.13.3 of ABS's Rules for Building and Classing Mobile Offshore Drilling Units.

Four commenters stated that the requirement in § 134.150(b) (§ 130.210), for a loss of power or a failure of any one component if the liftboat-jacking system to activate an alarm, is impracticable. The Coast Guard agrees and has revised § 134.150(b) to require a visible and audible alarm for loss of power, loss of pressure in the hydraulic system, or low hydraulic-fluid level at the operating station.

Three commenters suggested requiring a tilt-level alarm on liftboats. The Coast Guard disagrees. A liftboat constructed to these rules will enjoy an increased level of safety over existing liftboats, and a tilt-level alarm is not essential for vessel safety. Owners may or may not install a tilt-level alarm, according to their desires.

Section 134.170 revises the requirement in (§ 131.1085), that each liftboat carry an operating manual. For the reference to § 109.212(c) it substitutes its own list.

To address the unique operating characteristics of liftboats, the Coast Guard has added § 134.180. This requires piping for fire-main suction while a liftboat is elevated.

Ten commenters opposed, or raised questions concerning, the requirement in (§ 174.180), that liftboats meet the same criteria for stability, whether intact or damaged, as conventional OSVs. It was never the Coast Guard's intention to impose on liftboats criteria for stability of conventional ship-shaped hulls.

Liftboats inspected under subchapter L need not meet the criteria in current subpart G of part 174 of subchapter S. Liftboats in unrestricted service must now, according to § 174.250, meet the same criteria for intact, damaged, and on-bottom stability as MODUs in subpart C of part 174 of subchapter S. Liftboats in restricted service must now, according to § 174.255, meet the criteria for intact, damaged, and on-bottom stability in § 174.255 itself. Both sets of criteria for liftboats inspected under subchapter L—in unrestricted service, and in restricted service—closely follow guidelines of NVIC 8–91.

Three commenters opposed liftboats' having to meet criteria for damaged stability in §§ 174.195–205. As outlined above, these criteria for damaged stability in subchapter G do not now apply to liftboats, since now all criteria for damaged stability for liftboats is contained in subpart H.

Three commenters stated that designing vessels to the criteria for damaged stability in § 174.205 is too hard. The Coast Guard disagrees. Vessels have already been designed, and built, to these criteria. Anyway, more stringent criteria for survivability are warranted for vessels that carry more than 16 offshore workers, and § 174.205 applies only to vessels that do.

Two commenters stated that all OSVs, including liftboats, should have to meet the standards for survivability of § 174.205(e), whether they carry more than 16 offshore workers or not. The Coast Guard disagrees. Damaged stability is not necessary on small passenger-vessels or small miscellaneous vessels unless the number of people aboard causes special concern; at least no statistical or anecdotal evidence suggests that it is.

One commenter found the intent of proposed § 174.205(f) unclear. So, on a later look, did the Coast Guard. Section 174.205(f) now reads: "For paragraph (a) of this section, the buoyancy of any superstructure directly above the side damaged must be considered in the most unfavorable condition."

The dimension requirement in § 174.220(a)(1) for hatches extending above the weather deck has been changed from 12 inches to 17½ inches to conform with loadline regulations in § 42.15–25(a)(ii) of this chapter. Also the dimension requirement in § 174.220(d) for watertight coamings in conjunction with weathertight doors has been changed from 6 inches to 15 inches to conform with loadline regulations in § 42.15–10(b) of this chapter.

One commenter recommended adding a statement to § 174.255(c) (§ 174.250(e)), that unless a liftboat could endure 100 knots of wind under severe-storm conditions it would be limited to service within 12 hours of a harbor of safe refuge. The Coast Guard disagrees. The definition of "restricted service" in § 125.160 already imposes this limit. Another commenter stated that § 174.255(c) (§ 174.250(e)), requires the same on-bottom stability for a liftboat in restricted service as for a MODU, or for a liftboat in unrestricted service. A liftboat in restricted service must endure 70 knots of wind under normal operating-conditions through its

area of operation and 100 knots under severe-storm conditions in a safe location, if the safe location is other than a harbor of safe refuge. A MODU, or a liftboat in unrestricted service, must endure 70 knots of wind under normal operating-conditions everywhere and 100 knots under severe-storm conditions everywhere. To better clarify this, the Coast Guard has added to § 174.255(c): "* * * winds of 70 knots under normal operating-conditions and of 100 knots for severe-storm conditions when elevated in a safe location, if this location is other than a harbor of safe refuge."

One commenter suggested adding another section to § 174.255 (§ 174.250), requiring that a vessel show reserve leg-height while both jacked up and subject to 100 knots of wind if it would qualify for unrestricted service. The Coast Guard disagrees. It considers reserve leg-height in determining a route, given restricted service, not in determining whether a liftboat qualifies for unrestricted rather than restricted service.

One commenter called arbitrary a requirement in § 174.260 (§ 174.255), of 24 inches as minimum freeboard for liftboats. The Coast Guard disagrees. The requirement of 24 inches as minimum freeboard first appeared in CH–1 to NVIC 8–81 on March 23, 1988, and since then has become accepted by industry as prudent for avoiding the adverse effects of water on deck.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 125.180 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in § 125.180.

Units of Measure

This interim rule employs British units of measure throughout. Federal policy now favors "hard metric" throughout. In the absence of compelling reason to the contrary, the final rule will employ metric units of measure throughout.

Regulatory Assessment

This interim rule is a significant regulatory action under section 3(f) of Executive Order 12866 and is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034 (February 26, 1979)). It has been reviewed by the Office of Management and Budget under that Order. The Coast Guard has prepared a Regulatory Assessment and placed it in the rulemaking docket. The assessment may be inspected and copied at the address listed under **ADDRESSES**, above.

a. Costs for Conventional OSVs

As of December 1987, there were 584 OSVs certificated, 407 of which were of 100 or more gross tons. In evaluating the effect of this interim rule, the Coast Guard considered all costs and benefits of this rule in constant dollars.

The added cost to construct a conventional OSV under this rule, compared to that under existing regulations, expressed as a percentage of the initial construction cost for each OSV, comes to:

1. Around 2.3 percent for each conventional OSV of less than 100 gross tons.

2. Around 0.5 percent for each conventional OSV of 100 or more gross tons.

If 90 large OSVs and 50 small OSVs are built in the six years after the rule becomes effective, the cost of this rule to the industry will come to around $0.8 million a year.

Since 1987 there have been few, if any, OSVs built, because of the downturn in the offshore industry. For this reason the Coast Guard's assumption on the number of OSVs to be built in the next 6 years may be inappropriate. The Coast Guard encourages comments from industry on the current cost to construct an OSV and on the estimated number of OSVs that might be built in the next 6 years.

The principal benefits of this rule will be (1) a vessel better equipped, with the authorization to carry more than twice as many offshore workers and up to full capacity of the tanks for liquid drilling-fluid; (2) increased safety for crew members and offshore workers, due to the damage-stability requirements; (3) a vessel less likely to suffer damage resulting in total loss of the vessel; and (4) a crew better prepared to deal with emergencies. The economic value of these benefits is difficult to quantify, as it depends on a vessel's design, operational procedures, and contractual arrangements. However, even if this rule saves just 30% of the expense of damages due to casualties, the economic value—quite apart from the first, second, and fourth of the four "principal benefits"—of this rule will more than offset the economic costs.

b. Costs for Liftboats

This Interim Rule will affect small business-entities in the form of liftboats. (See Small Entities, below.) These vessels have not had to meet standards of Coast Guard inspections. Because the Coast Guard has seldom dealt with liftboats during design and construction, it has no accurate mechanism for determining additional costs that may be incurred by owners of new liftboats required to meet this rule. In the NPRM, the Coast Guard sought information concerning such costs that might be borne by owners and operators of liftboats resulting from newly imposed inspection requirements. One written comment did offer a few data associated with costs. Based upon those data, modifications to the draft regulatory evaluation came about.

The Coast Guard reached several designers, builders, and owners of liftboats as it prepared this final rule. These people estimated that a large liftboat (of less than 300 gross tons with legs 200 feet long) would cost between $2 and $4 million to design and build, while a liftboat of less than 100 gross tons would cost about $1 million to design and build. These people believe that, if design took account of this rule from the start, the non-recurring cost associated with construction of a liftboat would be minimal—not more than 5% above the current estimated construction cost. If it were 10% above, the non-recurring cost would come to $100,000 for a liftboat of less than 100 gross tons and between $200,000 and $400,000 for a liftboat of 100 or more gross tons. Elements of this non-recurring cost include:

1. Submittal of plans to the Coast Guard.

2. Preparation and submittal of a comprehensive operating manual to the Coast Guard.

3. Design and construction of a fail-safe jacking-system.

4. Piping for fire-main suction while the liftboat is elevated.

5. Compliance with stricter requirements for lifesaving equipment.

There would be no recurring cost associated with this rule. There is recurring cost associated with salaries of crew members, with periodic testing and drydocking, and with biennial inspections and reinspections, but this rule does not compound it.

The economic value due to the "principal benefits", of casualties and fatalities prevented, is the saving to the liftboat industry offered by this rule; it comes from the annual averages for the liftboat fleet, 1981 to 1986. The Coast Guard has reviewed the casualty and fatality records from 1987 through 1994 for liftboats and has deduced that the casualty and fatality statistics follow the same general trend as they did in previous years. Therefore, the average cost per casualty will not be affected by recent statistics. However, since 1987 there have been few, if any, liftboats built, because of the downturn in the offshore industry. For this reason the Coast Guard's assumption on the cost to build a liftboat may be inappropriate. The Coast Guard encourages comments from industry on the current cost to build a liftboat and on the estimated number of liftboats that might be built in the next few years. The Coast Guard believes that this rule will reduce the average cost of total losses in the liftboat fleet, compared to that of total losses in the fleet of conventional OSVs, by around 75–87 percent. This reduced cost of liftboat losses will amount to about $65,874 for a lifboat of less than 100 gross tons, which is less than the estimated $100,000 for a new liftboat in added costs of construction. Similarly, for liftboats of 100 or more gross tons, the reduced cost of casualties will be about $183,100, which is near the low end of the range estimated for a new liftboat in added costs of construction, $200,000–$400,000.

It is difficult to gauge the impact of this rule on the liftboat industry as a whole since those consulted know of no plans for construction of new liftboats and since the Coast Guard holds only informal estimates of the added costs of construction that may be incurred. New liftboats would enjoy some unquantifiable benefits heretofore limited to conventional OSVs (for example: carriage of unlimited quantities of Grade-E liquid drilling-mud and up to 36 offshore workers). These unquantifiable benefits, when added to the anticipated reductions in casualty costs discussed above, outweigh the estimated added cost of construction.

Environment

The Coast Guard considered the environmental impact of this Interim Rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation because of the inconsequential effects that it expects the rule to have on the environment. A Categorical Exclusi Determination is available in the do et for inspection or copying where indicated under **ADDRESSES.**

Compatibility With International Standards

The Coast Guard has adopted a policy to evaluate current and new rules and, as far as possible, to eliminate requirements that create an unwarranted differential between domestic rules and responsible international standards. The Coast Guard has therefore compared this interim rule to international standards. The Coast Guard has determined that this rule does not unnecessarily establish requirements in excess of international standards.

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria in Executive Order 12612, and has determined that the rulemaking does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. There were no comments submitted to the public docket addressing federalism.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard has considered whether this rulemaking is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

There are about 70 natural or corporate persons that own one conventional OSV apiece. (They account for about 12% of existing conventional OSVs.) The Coast Guard does not anticipate that there can be many more than 20 persons that will own one new conventional OSV apiece. (It reaches this figure by assuming that they would likewise account for about 12% of the anticipated 140 new conventional OSVs to be built in the next six years, or for about 3 a year.) Marginal, one-time, out-of-pocket expense for initial construction will not exceed 2.5%, as previously discussed, even if none of the operational improvements in safety or flexibility (or other unquantifiable benefits) are realized. Recurring operational expense will be nil.

There are 5 natural or corporate persons that own one liftboat apiece. (They account for about 2% of existing liftboats.) The Coast Guard does not anticipate that there can be many more than one person that own one new liftboat apiece. (It reaches this figure by assuming that they would likewise account for about 2% of the anticipated new liftboats to be built in the next six years.) Marginal, one-time, out-of-pocket expense for initial construction will not exceed 10% even if none of the operational improvements in safety or flexibility (or other unquantifiable benefits) are realized. Recurring operational expense will be nil.

Acting upon these estimates, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this interim rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains information-collection requirements in the following sections of 46 CFR:

126.120
126.140
126.150
126.160
126.230
126.240
126.260
126.270
126.320
126.330
126.420
126.510
126.530
127.100
127.110
127.210
128.120
128.210
128.220
128.240
129.220
129.320
129.375
130.130
130.330
130.480
131.110
131.210
131.220
131.230
131.310
131.320
131.330
131.340
131.350
131.505
131.510
131.515
131.520
131.525
131.530
131.535
131.545
131.550
131.565
131.570
131.590
131.610
131.620
131.630
131.730
131.805
131.810
131.815
131.820
131.825
131.830
131.835
131.840

131.845
131.850
131.855
131.860
131.865
131.870
131.875
131.880
131.885
131.890
131.893
131.896
131.899
131.930
131.945
131.950
131.955
132.110
132.130
132.210
132.220
132.360
134.130
134.140
134.160
134.170
174.210
174.255

The information-collection requirements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and approved under approval number 2115–0592.

List of Subjects

46 CFR Part 90

Administrative practice and procedures, Authority delegation, Cargo vessels, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Incorporation by reference, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 127

Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 128

Hazardous materials transportation, Main and auxiliary machinery, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 129

Electric power, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 130

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels, Vessel control and automation.

46 CFR Part 131

Hazardous materials transportation, Marine safety, Navigation (water), Offshore supply vessels, Oil and gas exploration, Operations, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 132

Fire prevention, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 134

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Provisions for liftboats, Vessels.

46 CFR Part 170

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Stability, Vessels.

46 CFR Part 174

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Stability, Vessels.

46 CFR Part 175

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Coast Guard amends chapter I of title 46 of the Code of Federal Regulations as follows:

PART 90—GENERAL PROVISIONS

1. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 90.05–20 is revised to read as follows:

§ 90.05–20 Applicability to offshore vessels

(a) Offshore supply vessels of 100 or more but of less than 500 gross tons, contracted for before March 15, 1996, are subject to inspection under this subchapter. Offshore supply vessels contracted for on or after March 15, 1996, are subject to inspection under subchapter L of this chapter.

(b) Each OSV permitted grandfathering under paragraph (a) of this section must complete construction and have a Certificate of Inspection by March 16, 1998.

3. Sections 90.10–40 (b) and (c) are revised to read as follows:

§ 90.10–40 Offshore supply vessels.

* * * * *

(b) An existing offshore supply vessel is one contracted for before March 15, 1996.

(c) A new offshore supply vessel is one contracted for on or after March 15, 1996.

§ 90.30–10 [Removed]

4. Section 90.30–10 is removed.

PART 98—[AMENDED]

§§ 98.31–5, 98.31–10 and 98.31–15 (Subpart 98.31) [Removed]

5. Subpart 98.31 consisting of §§ 98.31–5, 98.31–10, and 98.31–15, is removed.

6. Subchapter L consisting of Parts 125 through 136, is added to read as follows:

SUBCHAPTER L—OFFSHORE SUPPLY VESSELS

PART 125—GENERAL

Sec.
125.100 Applicability.
125.110 Carriage of flammable or combustible liquid cargoes in bulk.
125.120 Carriage of noxious liquid substances in bulk.
125.130 Carriage of packaged hazardous materials.
125.140 Loadlines.
125.150 Lifesaving systems.
125.160 Definitions.
125.170 Equivalents.
125.180 Incorporation by reference.
125.190 Right of appeal.

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; 49 CFR 1.46.

§ 125.100 Applicability.

(a) Except as provided by paragraph (c) of this section, this subchapter applies to each offshore supply vessel (OSV) of United States flag contracted for on or after March 15, 1996.

(b) Each OSV contracted for before March 15, 1996, must be constructed and inspected to comply with—

(1) The regulations in effect until March 15, 1996 (46 CFR subchapter I or subchapter T), as appropriate, as they existed at the time of construction; or

(2) The regulations in this subchapter.

(c) Each OSV permitted grandfathering under paragraph (b)(1) of this section must complete construction and have a Certificate of Inspection by March 16, 1998.

(d) Certain regulations in this subchapter apply only to limited categories of OSVs. Specific statements of applicability appear at the beginning of those regulations.

Note: Navigation and Vessel Inspection Circular 8–91, "Initial and Subsequent Inspection of Uncertificated Existing Offshore Supply Vessels, Including Liftboats", contains guidance on how to apply the regulations in 46 CFR subchapters I and T to OSVs.

§ 125.110 Carriage of flammable or combustible liquid cargoes in bulk.

(a) Except as provided by this section, no OSV may carry flammable or combustible liquid cargoes in bulk without the approval of the Commandant (G–MMS).

(b) An OSV may carry the following in integral tanks:

(1) Grade-D combustible liquids listed by § 30.25–1 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight; except that the vessel may carry drilling fluids and excess fuel oil, Grade-E as well as Grade-D, without limit.

(2) Grade-E combustible liquids listed by § 30.25–1 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight; except that the vessel may carry drilling fluids and excess fuel oil, Grade-D as well as Grade-E, without limit.

(c) An OSV may carry the following in fixed independent tanks on deck:

Grade-B and lower-grade fammable and combustible liquids listed by § 30.25–1 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight.

(d) An OSV may carry hazardous materials in portable tanks, in compliance with part 64 and subpart 98.30 of this chapter. A po5 portable tank may be filled or discharged aboard the vessel if authorized by an endorsement on the vessel's Certificate of Inspection.

§ 125.120 Carriage of noxious liquid substances in bulk.

(a) Except as provided by this section, no OSV may carry a noxious liquid substance (NLS) in bulk without the approval of the Commandant (G–MMS).

(b) An OSV may carry in integral and fixed independent tanks NLSs listed by § 153.2 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight.

(c) An OSV carrying NLSs in bulk in integral tanks or fixed independent tanks must—

(1) Meet the definition of oceangoing in 33 CFR 151.05(j);

(2) Have a Certificate of Inspection or NLS Certificate (issued by the Coast Guard) endorsed with the name of the NLS cargo; and

(3) Have the Cargo Record Book prescribed in § 153.490(a)(1) of this chapter.

(d) An OSV that does not meet the equipment requirements in §§ 153.470 through 153.491 of this chapter may not discharge NLS residues to the sea. The vessel's Certificate of Inspection or NLS Certificate will contain this restriction.

(e) An OSV that discharges NLS residue to the sea must meet—

(1) The equipment requirements in §§ 153.470 through 153.491 of this chapter; and

(2) The operating requirements in §§ 153.901, 153.903, 153.909, and 153.1100 of this chapter.

§ 125.130 Carriage of packaged hazardous materials.

An OSV may carry packaged hazardous materials, or hazardous materials in portable tanks, if the materials are prepared, loaded, and stowed in compliance with 49 CFR parts 171–179.

§ 125.140 Loadlines.

Each OSV subject to assignment, certification, and marking of loadlines under subchapter E of this chapter must comply with subchapter E as well as with this subchapter.

§ 125.150 Lifesaving systems.

Lifesaving appliances and arrangements must comply with part 133 of this subchapter.

§ 125.160 Definitions.

Each term defined elsewhere in this chapter for a particular class of vessel applies to this part unless a different definition is given in this section. As used by this subchapter:

Accommodation includes at least the following:
(1) A space used as a messroom.
(2) A lounge.
(3) A sitting area.
(4) A recreation room.
(5) Quarters.
(6) A toilet space.
(7) A shower room.

Approved means approved by the Commandant, unless otherwise defined.

Bulkhead deck means the uppermost deck to which transverse watertight bulkheads and the watertight shell extend.

Coast Guard District Commander or *District Commander* means an officer of the Coast Guard designated by the Commandant to command activities of the Coast Guard within a Coast Guard district described by 33 CFR part 3, whose duties include the inspection, enforcement, and administration of laws for the safety and navigation of vessels.

Coastwise refers to a route not more than 20 nautical miles offshore on any of the following waters:
(1) Any ocean.
(2) The Gulf of Mexico.
(3) The Caribbean Sea.
(4) The Gulf of Alaska.
(5) The Bering Sea.
(6) Such other, similar waters as may be designated by the District Commander.

Combustible liquid means the same as in § 30.10 of this chapter.

Commandant means the Commandant of the Coast Guard or an authorized staff officer at Coast Guard headquarters designated by § 1.01 of this chapter.

Commanding Officer, Marine Safety Center, means an officer of the Coast Guard designated by the Commandant to command activities of the Coast Guard within the Marine Safety Center, whose duties include review of plans for commercial vessels to ensure compliance with applicable laws and standards.

Crane includes at least masts, stays, booms, winches, and standing and running gear that form a part of the fixed shipboard equipment used in the lifting and moving of other equipment and supplies of the vessel.

Damp or wet space includes at least:
(1) A space exposed to the weather.
(2) A machinery space.
(3) A cargo space.
(4) A space within a galley, within a laundry, or within a public washroom or toilet room that has a bath or shower, if the space is normally exposed to splashing, water wash down, or other moisture.
(5) A space directly inside an access door to a weather deck unless the access door is protected against rain or spray by an overhanging deck or by other means.
(6) Other spaces with similar moisture levels.

Deadweight means, when measured in water of specific gravity 1.025, the difference in long tons between—

(1) The displacement of the vessel on even trim at "lightweight" as defined by subpart F of part 170 of this chapter; and

(2) The displacement of the vessel on even trim at the deepest load waterline.

Flammable liquid means the same as in § 30.10.22 of this chapter.

Gas-free means free from dangerous concentrations of flammable or toxic gases.

Hazardous material means the same as in § 153.2 of this chapter.

International voyage means a voyage between a country to which the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83) applies and a port outside that country.

Jacking system means any type of mechanical (including hydraulic) or electrical system used for elevating a liftboat.

Length, relative to a vessel, means the length listed on the vessel's certificate of documentation or the "registered length" as defined by § 69.53 of this chapter.

Liftboat means an OSV with movable legs capable of raising its hull above the surface of the sea.

Marine inspector means any person authorized by the Officer in Charge, Marine Inspection, to perform duties concerning the inspection, enforcement, and administration of laws for the safety and navigation of vessels.

Noxious liquid substance or *NLS* means the same as in § 153.2 of this chapter.

Ocean refers to a route more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean.
(2) The Gulf of Mexico.
(3) The Caribbean Sea.
(4) The Gulf of Alaska.
(5) The Bering Sea.
(6) Such other, similar waters as may be designated by the District Commander.

Officer in Charge, Marine Inspection, or *OCMI*, means any person of the Coast Guard so designated by the Commandant, to be in charge of an inspection zone for the performance of duties concerning the inspection, enforcement, and administration of laws for the safety and navigation of vessels.

Offshore supply vessel or *OSV* means a vessel that—

(1) Is propelled by machinery other than steam;

(2) Does not meet the definition of a passenger-carrying vessel in 46 U.S.C. 2101(22) or 46 U.S.C. 2101(35);

(3) Is more than 15 but less than 500 gross tons; and

(4) Regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Offshore worker means a person carried aboard an OSV and employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel, but does not include the master, or a member of the crew, engaged in the business of the vessel, who has contributed no consideration for carriage aboard and is paid for services aboard.

Quarters means any space where sleeping accommodations are provided.

Restricted service means service in areas within 12 hours of a harbor of safe refuge or in areas where a liftboat may be jacked up to meet the 100-knot-wind severe-storm criteria of § 174.255(c) of this chapter.

§ 125.170 Equivalents.

A substitution for fittings, materials, equipment, arrangements, calculations, information, or tests required by this subchapter may be accepted by the OCMI; by the Commanding Officer, Marine Safety Center; by the District Commander; or by the Commandant, if the substitution provides an equivalent level of safety.

§ 125.180 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register in compliance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved materials are on file at the Office of the Federal Register, Suite 700, 800 North Capitol Street NW., Washington, DC 20408, and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division, 2100 Second Street SW., Washington, DC 20593–0001, and are available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subchapter, and the sections affected, are:

American Bureau of Shipping (ABS), Two World-Trade Center, 106th Floor, New York, NY 10048
- Rules for Building and Classing Steel Vessels Under 61 Meters (200 Ft) in Length (1983)—§ 127.210
- Rules for Building and Classing Steel Vessels (1995)—§ 127.210, § 129.360
- Rules for Building and Classing Aluminum Vessels (1975)—§ 127.210
- Rules for Building and Classing Mobile Offshore Drilling Units (1994)—§ 133.140, § 133.150

American National Standards Institute (ANSI), 11 West 42nd St., New York, NY 10036
- B 31.1–1986—Code for Pressure Piping, Power Piping—§ 128.240
- Z 26.1–1977 (including 1980 Supplement)—Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways—§ 127.430

American Society of Mechanical Engineers (ASME), 345 East 47th St., New York, NY 10027
- Boiler and Pressure Vessel Code Section I, Power Boilers, July 1989 with 1989 addenda—§ 128.240

American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103
- D93–80—Standard Test Methods for Flash Point by Pensky-Martens Closed Tester—§ 128.310

American Yacht and Boat Council, Inc. (AYBC), 3069 Solomon's Island Rd., Edgewater, MD 21037–1416
- A–3–1993—Galley Stoves—§ 129.550
- A–7–1970—Recommended Practices and Standards Covering Boat Heating Systems—§ 129.550
- E–1–1972—Bonding of Direct-Current Systems—§ 129.120
- E–8–1994—Alternating-Current (AC) Electrical Systems on Boats—§ 129.120
- E–9–1990—Direct-Current (DC) Electrical Systems on Boats—§ 129.120

Institute of Electrical and Electronics Engineers (IEEE), 345 E. 47th St., New York, NY 10017
- No. 45–1977—Recommended Practice for Electric Installations on Shipboard—§ 129.340

International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, England
- Resolution A.658(16), "Use and Fitting of Retro-Reflective Materials on Lifesaving Appliances", dated November 20, 1989—§ 131.855, § 131.875
- Resolution A.760(18), "Symbols Related to Life-Saving Appliances and Arrangements", dated November 17, 1993—§ 131.875
- International Convention for the Safety of Life at Sea (SOLAS), Consolidated Edition, 1992—§ 126.170

National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269–9101
- NFPA 70—National Electrical Code, 1993 Edition—§ 129.320, § 129.340, § 129.370
- NFPA 306—Control of Gas Hazards on Vessels, 1993 Edition—§ 126.160
- NFPA 1963—Fire Hose Connections, 1993 Edition—§ 132.130
- NFPA 10—Standard for Portable Fire Extinguishers, 1994 Edition—§ 132.350
- NFPA 302—Fire Protection Standard for Pleasure and Commercial Motor Craft, 1994 Edition—§ 129.550

Underwriters Laboratories, Inc. (UL), 333 Pfingsten Rd., Northbrook, IL 60062
- UL 19–1992—Lined Fire Hose and Hose Assemblies—§ 132.130
- UL 486A–1992—Wire Connectors and Soldering Lugs for Use with Copper Conductors—§ 129.340
- UL 489–1995—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures—§ 129.380
- UL 57–1976—Electric Lighting Fixtures—§ 129.410
- UL 595–1991—Marine-Type Electric Lighting Fixtures—§ 129.410
- UL 1570–1995—Fluorescent Lighting Fixtures—§ 129.410
- UL 1571–1995—Incandescent Lighting Fixtures—§ 129.410
- UL 1572–1995—High Intensity Discharge Lighting Fixtures—§ 129.410
- UL 1573–1995—Stage and Studio Lighting Units—§ 129.410
- UL 1574–1995—Track Lighting Systems—§ 129.410

§ 125.190 Right of appeal.

Any person directly affected by a decision of action taken under this part, by or on behalf of the Coast Guard, may appeal from the decision or action in compliance with subpart 1.03 of this chapter.

PART 126—INSPECTION AND CERTIFICATION

Subpart A—General

Sec.
126.100 Inspector not limited.
126.110 Inspection after accident.
126.120 Permit to proceed to another port for repairs.
126.130 Cranes.
126.140 Drydocking.
126.150 Repairs and alterations.
126.160 Tests and inspections during repairs or alterations, or during riveting, (welding), burning, or other hot work.
126.170 Charriage of offshore workers.
126.180 Carriage of passengers.

Subpart B—Certificate of Inspection
126.210 When required.
126.220 Description.
126.230 How to obtain or renew.
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126.260 Temporary Certificate.
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Subpart C—Initial Inspection
126.310 Prerequisite to Certificate of Inspection.
126.320 When made.
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126.410 Prerequisite to reissuance of Certificate of Inspection.
126.420 When made.
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126.440 Lifesaving equipment.
126.450 Fire-extinguishing equipment.
126.460 Tanks for dry bulk cargo.
126.470 Marine-engineering systems.

Subpart E—Reinspection
126.510 When made.
126.520 Scope.
126.530 Alternative midperiod examination.

Authority: 46 U.S.C. 3306; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

Subpart A—General

§ 126.100 Inspector not limited.

The marine inspector may at any time require that an OSV and its equipment meet any test or inspection deemed necessary to determine whether the vessel is suitable for its intended service.

§ 126.110 Inspection after accident.

(a) The owner or operator of an OSV shall make the vessel available for inspection by a marine inspector—

(1) Each time an accident occurs, or a defect is discovered that affects—

(i) The safety of the vessel; or

(ii) The effectiveness or completeness of its lifesaving, fire-fighting, or other equipment; or

(2) Whenever any important repairs or renewals are made.

(b) The inspection is to determine—

(1) What repairs or renewals must be made;

(2) That the material and workmanship used to accomplish the repairs or renewals are satisfactory; and

(3) That the OSV complies with this subchapter.

§ 126.120 Permit to proceed to another port for repairs.

(a) When an OSV fails to comply with its Certificate of Inspection or with this subchapter, the OCMI may let the vessel proceed to another port for repairs if in the judgment of the OCMI the vessel can complete the trip safely even though the Certificate has expired or is about to expire.

(b) A "Permit to Proceed to another Port for Repairs", Form CG–948, will be issued by the OCMI to the owner, operator, or master of the OSV and states the conditions under which the vessel may proceed to another port. The Permit will be issued only upon the written application of the owner, operator, or master, and only after the surrender of the vessel's Certificate of Inspection to the OCMI.

(c) The Permit will state on its face the conditions under which it is issued and whether the OSV may carry cargo, goods, supplies, equipment, or offshore workers.

(d) The Permit must be readily available aboard the OSV.

§ 126.130 Cranes.

(a) Except as provided by paragraph (b) of this section, cranes, if installed, must comply with §§ 107.258—107.260, 108.601, 109.437, 109.439, 109.521, 109.525, and 109.527of this chapter.

(b) The manufacturer of a crane may have tests and inspections conducted in compliance with § 107.259 of this chapter, if the surveyor conducting them for the ABS or the International Cargo Gear Bureau certifies their conduct as required by § 107.259(c) of this chapter.

§ 126.140 Drydocking.

(a) Unless on one or more extensions authorized by the Commandant (G–MCO), each OSV must be placed in drydock or hauled out for examination twice each five years with no interval between examinations exceeding three years.

(b) The owner or operator shall notify the OCMI whenever the OSV is drydocked for any reason. The OCMI, upon notification, will determine whether to assign a marine inspector to examine the underwater hull of the vessel.

(c) The internal structural members of an OSV must be examined at the same intervals required for drydocking by paragraph (a) of this section.

(d) At each drydocking required by paragraph (a) of this section, for an OSV of 100 or more gross tons, a tailshaft survey must be conducted as required by § 61.20–15 of this chapter.

(e) At each drydocking required by paragraph (a) of this section, for an OSV of less than 100 gross tons, the propeller or tailshaft must be drawn for examination if the OCMI deems drawing it necessary.

§ 126.150 Repairs and alterations.

(a) Except in an emergency, no repairs or alterations to the hull or machinery, or to equipment that affects the safety of the OSV, may be made without notice to the OCMI in the inspection zone where the repairs or alterations are to be made. When the repairs or alterations have been made, notice must be given to that OCMI as soon as practicable.

(b) When emergency repairs or alterations have been made as permitted under paragraph (a) of this section, the master, owner, or operator must notify the OCMI as soon as practicable after the emergency.

(c) Except as provided by paragraphs (b) and (e) of this section, drawings of repairs or alterations must be approved, before work starts, by the OCMI or, when necessary, by the Commanding Officer, Marine Safety Center.

(d) When the OCMI deems inspection necessary, the repairs or alterations must be inspected by a marine inspector.

(e) Submission of drawings is not required for repairs in kind, but the applicable drawings approved under subpart A of part 127 of this subchapter must be made available to the marine inspector upon request.

§ 126.160 Tests and inspections during repairs or alterations, or during riveting, welding, burning, or other hot work.

(a) NFPA 306 must be used as a guide in conducting the examinations and issuances of certificates required by this section.

(b) Until an examination has determined that work can proceed safely, no riveting, welding, burning, or other hot work can commence.

(c) Each examination must be conducted as follows:

(1) At any port or site inside of the United States or its territories and possessions, a marine chemist certified by the NFPA must make the examination. If the services of such a chemist are not reasonably available, the OCMI, upon the recommendation of the contractor and the owner or operator of the OSV, may authorize another person to make the examination. If this indicates that a repair or alteration, or hot work, can be undertaken safely, the person performing the examination shall issue a certificate, setting forth the spaces covered and any necessary conditions to be met, before the work starts. The conditions to be met must include any requirements necessary to maintain safe conditions in the spaces covered and must include any necessary further examinations and certificates. In particular the conditions to be met must include precautions necessary to eliminate or minimize hazards caused by protective coatings or by cargo residues.

(2) At any port or site outside of the United States or its territories and possessions, where the services of a certified marine chemist or other person authorized by the OCMI are not reasonably available, the master, owner, or operator of the vessel shall make the examination and a proper entry in the OSV's logbook.

(d) The master shall obtain a copy of each certificate issued by the person making the examination described in paragraph (c)(1) of this section. The master, through and for the persons under his control, shall maintain safe conditions aboard the OSV by full observance of each condition to be met, listed in the certificate issued under paragraph (c)(1) of this section.

§ 126.170 Carriage of offshore workers.

(a) Offshore workers may be carried aboard an OSV in compliance with this subchapter. The maximum number of offshore workers authorized for carriage will be endorsed on the vessel's Certificate of Inspection; but in no case will the number of offshore workers authorized for carriage exceed 36.

(b) No more than 12 offshore workers may be carried aboard an OSV certificated under this subchapter when on an international voyage, unless the vessel holds a valid passenger-ship-safety certificate (Form CG–968) issued in compliance with the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83).

§ 126.180 Carriage of passengers.

No passengers as defined by 46 U.S.C. 2101(21)(B) may be carried aboard an OSV except in an emergency.

Subpart B—Certificate of Inspection

§ 126.210 When required.

Except as provided by §§ 126.120 and 126.260, no OSV may be operated without a valid Certificate of Inspection.

§ 126.220 Description.

The Certificate of Inspection issued to an OSV specifies the vessel, the route it may travel, the minimum manning it requires, the maximum fire-extinguishing and lifesaving equipment it must carry, the maximum number of offshore workers and of total persons it may carry, the name of its owner and operator, and such other conditions as the OCMI may determine.

§ 126.230 How to obtain or renew.

(a) A builder, owner, master, or operator may begin to obtain or to renew a Certificate of Inspection by submitting an "Application for Inspection of U.S. Vessel," Form CG–3752, to the OCMI of the marine inspection zone in which the inspection is to be made. Form CG–3752 is available from any Marine Safety or Marine Inspection Office of the U.S. Coast Guard.

(b) The application for initial inspection of an OSV being newly constructed or converted must be submitted before the start of construction or conversion.

(c) The construction, arrangement, and equipment of each OSV must be acceptable to the OCMI for the issuance of the initial Certificate of Inspection. Acceptance depends on the information, specifications, drawings, and calculations available to the OCMI, and on the successful completion of the initial inspection for certification.

(d) A Certificate of Inspection is renewed by the issuance of a new Certificate of Inspection.

(e) The condition of the OSV and its equipment must be acceptable to the OCMI for the renewal of the Certificate of Inspection. Acceptance depends on the condition of the vessel as found at the periodic inspection for certification.

§ 126.240 Posting.

The Certificate of Inspection must be framed under glass or other suitable transparent material and posted in a conspicuous place aboard the OSV so that each page is visible.

§ 126.250 Period of validity.

(a) A Certificate of Inspection is valid for two years.

(b) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter or other applicable laws.

§ 126.260 Temporary Certificate.

If necessary to prevent delay of the OSV, a "Temporary Certificate of Inspection," Form CG–854, containing information listed by § 126.220, may be issued pending the issuance and delivery of the regular Certificate of Inspection. A temporary Certificate must be carried in the same manner as the regular Certificate.

§ 126.270 Amendment.

(a) An amended Certificate of Inspection may be issued at any time by any OCMI. The amended Certificate of Inspection replaces the original, but the expiration date remains the same as that of the original. An amended Certificate of Inspection may be issued to authorize and record a change in the dimensions, gross tonnage, owner, operator, manning, offshore workers permitted, route permitted, conditions of operations, equipment of an OSV, or the like from that specified in the current Certificate of Inspection.

(b) A request for an amended Certificate of Inspection must be made to the cognizant OCMI by the owner or operator of the OSV at any time there is a change in the character of an OSV or in its route, equipment, ownership, operation, or similar factors specified in its current Certificate of Inspection.

(c) The OCMI may require an inspection before issuing an amended Certificate of Inspection.

Subpart C—Initial Inspection

§ 126.310 Prerequisite to Certificate of Inspection.

The initial inspection is a prerequisite to the issuance of the original Certificate of Inspection.

§ 126.320 When made.

(a) No initial inspection occurs until after receipt of the written application of the owner or builder of the OSV to the OCMI in whose zone the vessel is located. The application must be on Form CG–3752, "Application for Inspection of U.S. Vessel."

(b) The initial inspection occurs at a time and place agreed to by the party requesting the inspection and by the OCMI. The owner or the builder, or a representative of either, must be present during the inspection.

§ 126.330 Plans.

Before construction starts, the owner, operator, or builder shall develop plans indicating the proposed arrangement and construction of the OSV. (The list of plans to be developed and the required disposition of these plans appears in part 127 of this subchapter.)

§ 126.340 Scope.

The initial inspection normally consists of a series of inspections conducted during the construction of the OSV. This inspection determines whether the vessel was built to comply with developed plans and in compliance with applicable law. Items normally included in this inspection are all the items listed in § 126.430 of subpart D of this part, and in addition the marine inspector verifies that the arrangement of the vessel conforms to the approved plans, that acceptable material is used in the construction of the vessel, and that the workmanship meets required standards for marine construction. The owner or builder shall make the vessel available for inspection at each stage of construction specified by the OCMI.

§ 126.350 Specific tests and inspections.

(a) The applicable tests and inspections set forth in subpart D of this part must be made during the initial inspection.

(b) The following specific tests and inspections must also be conducted in the presence of the marine inspector:

(1) Installation of piping for gaseous fixed fire-extinguishing (see § 95.15–15 of this chapter).

(2) Hydraulic-helm steering-systems. These systems must be tested in the manual mode, with the hydraulic pumps secured, for smooth, efficient operation by one person.

(3) Installation tests and inspections of lifeboats, rescue boats, davits, and winches under subpart 94.35 of this chapter.

Subpart D—Inspection for Certification

§ 126.410 Prerequisite to reissuance of Certificate of Inspection.

An inspection for certification is a prerequisite to the reissuance of a Certificate of Inspection.

§ 126.420 When made.

No inspection for certification occurs until after receipt of the written application of the owner, builder, master, or operator of the OSV by the OCMI in whose zone the vessel is located. The application must be on the "Application for Inspection of U.S. Vessel", Form CG–3752.

§ 126.430 Scope.

The inspection for certification is made by a marine inspector to determine whether the OSV is in satisfactory condition and fit for its intended service. The owner or builder shall make the vessel and its equipment available for inspection, including the following items:

(a) Structure.
(b) Watertight integrity.
(c) Pressure vessels and their appurtenances.
(d) Piping.
(e) Main and auxiliary machinery.
(f) Steering apparatus.
(g) Electrical installations.
(h) Lifesaving equipment.
(i) Work vests.
(j) Fire-detecting and fire-extinguishing equipment.
(k) Pollution-prevention equipment.
(l) Sanitary condition.
(m) Fire hazards.
(n) Verification of validity of certificates required and issued by the Federal Communications Commission.
(o) Lights and signals as required by the applicable navigational rules.
(p) Tests and inspections of cranes in compliance with § 126.130.

§ 126.440 Lifesaving equipment.

At each inspection for certification, the tests and inspections specified by § 91.25–15 of this chapter must occur in the presence of a marine inspector, or as otherwise directed by the OCMI.

§ 126.450 Fire-extinguishing equipment.

At each inspection for certification the marine inspector determines whether the tests and inspections required by § 132.350 of this subchapter have been performed.

§ 126.460 Tanks for dry bulk cargo.

The owner shall ensure that tanks for dry bulk cargo that are pressure vessels are inspected for compliance with § 61.10–5(b) of this chapter.

§ 126.470 Marine-engineering systems.

The inspection procedures for marine-engineering systems contained in subchapter F of this chapter apply.

Subpart E—Reinspection

§ 126.510 When made.

(a) Except as provided by § 126.530 of this subpart, at least one reinspection must be made of each OSV holding a Certificate of Inspection. The owner, master, or operator shall arrange for the reinspection between the tenth and fourteenth months of the period for which the Certificate of Inspection is valid.

(b) The owner, master, or operator shall make the vessel available for the reinspection at a time and place acceptable to the OCMI, but no written application is necessary.

§ 126.520 Scope.

In general, the reinspection goes into less detail than that described by § 126.430 of this part for the inspection for certification, unless the OCMI or marine inspector determines that a major change has occurred since the last inspection.

§ 126.530 Alternative midperiod examination.

(a) The owner, master, or operator of an OSV of less than 400 gross tons, except a liftboat, may ask the cognizant OCMI to arrange an alternative midperiod examination. The request must go to the OCMI assigned responsibility for inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative midperiod examination, the vessel must meet the following requirements:

(1) The request must be in writing and be received by the OCMI before the end of the twelfth month of the period for which the Certificate of Inspection is valid.

(2) The vessel is likely to be continuously employed outside of the United States during the tenth through the fourteenth month of validity of its Certificate of Inspection.

(b) In determining whether to authorize the alternative midperiod examination, the OCMI considers the following:

(1) Information contained in previous examination reports on inspection and drydock, including the recommendation, if any, of the OCMI for

participation in the alternative midperiod examination.

(2) The nature, number, and severity of marine casualties or accidents, as defined by § 4.03–1 of this chapter, involving the OSV in the three years preceding the request.

(3) The nature, number, and gravity of any outstanding inspection requirements for the vessel.

(4) The owner's or operator's history of compliance and cooperation in such alternative midperiod examinations, including:

(i) The prompt correction of deficiencies.

(ii) The reliability of previously submitted reports on such alternative midperiod examinations.

(iii) The reliability of representations that the vessel would be, and was, employed outside of the United States for the tenth through the fourteenth month of validity of its Certificate of Inspection.

(c) The OCMI provides the applicant with written authorization, if any, to proceed with the alternative midperiod examination, including, when appropriate, special instructions.

(d) The following conditions must be met for the alternative midperiod examination to be accepted instead of the reinspection required by § 126.510 of this subpart:

(1) The alternative midperiod examination must occur between the tenth and fourteenth months of validity of the Certificate of Inspection.

(2) The reinspection must be of the scope detailed by § 126.520 of this subpart and must be made by the master, owner, or operator of the OSV, or by a designated representative of the owner or operator.

(3) Upon completion of the alternative midperiod examination, the person or persons making the examination shall prepare a comprehensive report describing the conditions found. This report must contain sufficient detail to let the OCMI determine whether the vessel is fit for the service and route specified on the Certificate of Inspection. This report must include subsidiary reports and receipts documenting the servicing of lifesaving and fire-protection equipment, and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing this report shall sign it and certify that the information in it is complete and accurate.

(4) Unless the master of the vessel participated in the alternative midperiod examination and the preparation of the comprehensive report, the master shall review the report for completeness and accuracy. The master shall sign the report to indicate review and shall forward it to the owner or operator of the vessel, who asked for the examination.

(5) The owner or operator of a vessel examined under this section shall review and submit the comprehensive report, required by paragraph (d)(3) of this section, to the OCMI. The report must reach the OCMI before the first day of the sixteenth month of validity of the Certificate of Inspection. The forwarding letter or endorsement must be certified and must contain the following information:

(i) That the person or persons who made the alternative midperiod examination acted on behalf of the vessel's owner or operator.

(ii) That the report was reviewed by the owner or operator.

(iii) That the discrepancies noted during the reinspection have been corrected, or will be within a stated time.

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the reinspection, or has conducted inquiries necessary, to justify forming a belief that the report is complete and accurate.

(e) The form of certification required under this section, for the alternative midperiod examination, is as follows:

I certify that to the best of my knowledge and belief the above is complete and accurate.

(f) Deficiencies and hazards discovered during the alternative midperiod examination made pursuant to this section must be corrected if practicable, before the submittal of the report to the OCMI in compliance with paragraph (d)(5) of this section. Deficiencies and hazards not corrected by the time the report is submitted must be noted in the report as "outstanding." Upon receipt of a report indicating any outstanding deficiency or hazard, the OCMI will inform the owner or operator of the OSV in writing of the time allowed to correct each deficiency and hazard and of the method for establishing that each has been corrected. When any deficiency or hazard remains uncorrected or uneliminated after this time allowed, the OCMI will initiate appropriate enforcement.

(g) Upon receipt of the report, the OCMI will evaluate it and determine:

(1) Whether the OCMI accepts the alternative midperiod examination instead of the reinspection required by § 126.510 of this subpart.

(2) Whether the OSV is in satisfactory condition.

(3) Whether the vessel continues to be reasonably fit for its intended service and route.

(h) The OCMI may require further information necessary for the determinations required by this section. The OCMI will inform the owner or operator of the OSV in writing of these determinations.

(i) If the OCMI, in compliance with paragraph (g) of this section, does not accept the alternative midperiod examination instead of the reinspection required by § 126.510 of this subpart, the OCMI will require reinspection of the OSV as soon as practicable. The OCMI will inform the owner or operator of the OSV in writing that the examination is not acceptable and that a reinspection is necessary. The owner, master, or operator shall make the vessel available for the reinspection at a time and place agreeable to the OCMI.

PART 127—CONSTRUCTION AND ARRANGEMENTS

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Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—Plan Approval

§ 127.100 General.

Plans listed by § 127.110 of this subpart must be submitted for approval after the owner or builder applies for inspection in compliance with § 126.320 of this subchapter.

§ 127.110 Plans and specifications required for new construction.

Each applicant for approval of plans and for an original Certificate of Inspection must submit three copies of the following:

(a) *General.*

(1) Specifications.

(2) General Arrangement Plans.

(3) Safety Plan (Fire-Control Plan).

(4) Lifesaving-Equipment Plan.

(b) *Hull structure.*

(1) Midship Section.

(2) Booklet of Scantling Plans.

(3) Arrangement of Ports, Doors, and Air ports.

(4) Hatch Coamings and Covers in Weather Decks and Watertight Decks.

(5) Scuppers and Drains Penetrating Shell-Plating.

(6) Booklet of Standard Details.

(c) *Subdivision and stability.* (For plans required for subdivision and stability, see subchapter S of this chapter.)

(d) *Marine engineering.*

(1) Piping diagrams of each Class I systems.

(2) Piping diagrams of the following Class II systems (the builder's certification of Class II non-vital piping systems must accompany the piping diagrams in compliance with § 128.220(c) of this subchapter):

(i) Systems for fill, transfer, and service of fuel oil.

(ii) Fire-main and fixed gaseous fire-extinguishing systems.

(iii) Bilge systems.

(iv) Ballast systems.

(v) Fluid-driven power and control systems.

(vi) Through-hull penetrations and shell connections.

(vii) Sanitary systems.

(viii) Vents, sounding tubes, and overflows.

(ix) Compressed-air systems.

(3) Steering and steering-control systems.

(4) Propulsion and propulsion-control systems.

(5) Piping diagrams of each system containing any flammable, combustible, or hazardous liquid including—

(i) Cargo-oil systems;

(ii) Systems for combustible drilling-fluid (such as oil-based liquid mud); and

(iii) Cargo-transfer systems for fixed independent or portable tanks.

(e) *Electrical engineering.*

(1) For each OSV of less than 100 gross tons, the following plans must be submitted:

(i) Arrangement of electrical equipment (plan and profile) with equipment identified as necessary to show compliance with this subchapter.

(ii) Electrical one-line diagram that includes wire types and sizes, overcurrent-device rating and setting, and type of electrical-equipment enclosure (drip-proof, watertight, or the like).

(iii) Switchboard plans required by paragraphs (e) and (f) of § 110.25–1 of this chapter.

(2) For each vessel of 100 or more gross tons, the plans required by § 110.25 of this chapter must be submitted.

(f) *Automation.* For each OSV of 100 or more gross tons, where automated systems are provided to replace specific personnel in the control and observation of the propulsion systems and machinery spaces, or to reduce the level of crew associated with the engine department, the following plans must be submitted:

(1) Plans necessary to demonstrate compliance with subpart D of part 130 of this subchapter.

(2) Automation-test procedure.

(3) Operations manual.

§ 127.120 Procedure for submittal of plans.

If an OSV is to be constructed, altered, or repaired in the United States, the plans, information, and calculations required by this part must be submitted to—

(a) The OCMI in the zone where the vessel is to be constructed, altered, or repaired; or

(b) The Commanding Officer, Marine Safety Center, 400 Seventh Street SW., Washington, DC 20590–0001.

Subpart B—Particular Construction and Arrangements

§ 127.210 Structural standards.

(a) Except as provided by paragraphs (b) and (c) of this section, compliance with the construction and structural rules established by the ABS and incorporated by reference in § 125.180 is acceptable for the design and construction of an OSV.

(b) The standard of any classification society, or any other established standard, acceptable to the Commandant (G–MMS) may be used.

(c) If no established standard for design is used, detailed design calculations must be submitted with the plans required by § 127.110 of this part.

(d) The plans required by § 127.110 of this part should specify their standard for design.

§ 127.220 General fire protection.

(a) Each OSV must be designed and constructed to minimize fire hazards, as far as reasonable and practicable.

(b) Exhausts of internal-combustion engines, galley uptakes, and similar sources of ignition must be kept clear of and insulated from woodwork and other combustible matter.

(c) Paint lockers and similar compartments must be constructed of steel or be wholly lined with steel.

(d) Except as provided by paragraph (e) of this section, when a compartment containing the emergency source of electric power, or vital components of that source, adjoins a space containing either the ship's service generators or machinery necessary for the operation of the ship's service generators, each common bulkhead and deck must be "A–60" Class construction as defined by § 72.05–10 of this chapter.

(e) The "A–60" Class construction required by paragraph (d) of this section is unnecessary if the emergency source of electric power is in a small, ventilated battery locker that—

(1) Is located above the main deck;

(2) Is located in the open; and

(3) Has no boundaries contiguous with other decks or bulkheads.

§ 127.230 Subdivision and stability.

Each OSV must meet the applicable requirements in subchapter S of this chapter.

§ 127.240 Means of escape.

(a) There must be at least two means of escape, exclusive of windows and portholes, from each of the following spaces:

(1) Each space accessible to offshore workers.

(2) Crew accommodations and each space where the crew may normally be employed.

(b) At least one of the two means of escape must—

(1) Be independent of watertight doors in bulkheads required by part 174 of this chapter to be watertight; and

(2) Lead as directly to the open deck as practicable.

(c) The two means of escape required by paragraph (a) of this section must be widely separated and, if possible, at opposite ends or sides of the space, to minimize the possibility that one incident will block both escapes.

(d) Except as provided by paragraph (e) of this section, a vertical ladder ending at a deck scuttle may not be either of the means of escape required by paragraph (a) of this section.

(e) A vertical ladder ending at a deck scuttle may be the second means of escape if the—

(1) Primary means of escape is a stairway or passageway;

(2) Installation of another stairway or passageway is impracticable;

(3) Scuttle is located where stowed deck cargo could not interfere;

(4) Scuttle is fitted with a quick-acting release, and with a hold-back to hold the scuttle open; and

(5) Scuttle meets the requirements for location, strength, and height of coaming in subchapter E of this chapter.

(f) Each vertical ladder must—

(1) Have rungs that are—

(i) At least 16 inches (410 millimeters) long;

(ii) At most 12 inches (300 millimeters) apart, uniform for the length of the ladder; and

(iii) At least 7 inches (180 millimeters) from the nearest permanent object in back of the ladder;

(2) Have at least 4½ inches (115 millimeters) of clearance above each rung;

(3) Be made of incombustible materials; and

(4) Have an angle of inclination with the horizontal, greater than 70 degrees but not more than 90 degrees.

(g) No means may be provided for locking any interior door giving access to either of the two required means of escape; except that a crash door or locking-device, capable of being easily forced in an emergency, may be employed if a permanent and conspicuous notice to this effect is attached to both sides of the door. A means may be provided for locking an exterior door to a deckhouse if the door is—

(1) Locked only by a key under the control of one of the OSV's officers; and

(2) Always operable from the inside.

(h) Each passageway or stairway must be wide enough to provide an effective means of escape for the number of persons having access to it even if each person is wearing a lifejacket. There must be no protrusions in the means of escape that could cause injury, ensnare clothing, or damage lifejackets.

(i) No interior stairway, other than within the machinery spaces or cargo holds, may be less than 28 inches wide. The angle of inclination of each stairway with the horizontal must not exceed 50 degrees.

(j) No dead-end passageway, or equivalent, may be more than 40 feet (13.1 meters) in length.

(k) Vertical access must be provided between the various weather decks by means of permanently inclined ladders. The angle of inclination of these ladders with the horizontal must not exceed 70 degrees.

§ 127.250 Ventilation for enclosed spaces.

(a) Each enclosed space within the OSV must be properly vented or ventilated. Means must be provided for closing each vent and ventilator.

(b) Means must be provided for stopping each fan in a ventilation system serving machinery and cargo spaces and for closing, in case of fire, each doorway, ventilator, and annular space around funnels and other openings into such spaces.

§ 127.260 Ventilation for accommodations.

(a) Each accommodation space must be adequately ventilated in a manner suitable for the purpose of the space.

(b) Each OSV of 100 or more gross tons must be provided with a mechanical ventilation system unless the OCMI is satisfied that a natural system, such as opening windows, portholes, or doors, will accomplish adequate ventilation in ordinary weather.

§ 127.270 Location of accommodations and pilothouse.

(a) Neither quarters for crew members or offshore workers nor the pilothouse may be located forward of the collision bulkhead required by § 174.190 of this chapter.

(b) Except as provided in paragraph (c) of this section, no part of any deck with accommodations for crew members or offshore workers may be below the deepest load waterline.

(c) Any deck with accommodations for crew members or offshore workers may be below the deepest load waterline if—

(1) The OSV complies with the damage-stability requirements in § 174.205 of this chapter;

(2) Each vertical ladder permitted by § 127.240 of this subpart is above the final-equilibrium waterline when the vessel is subject to the damage prescribed by § 174.205 of this chapter; and

(3) The overhead of at least one vertical ladder is at least 12 inches above the final-equilibrium waterline when the vessel is subject to the damage prescribed by § 174.205 of this chapter.

(d) No hawse pipe or chain pipe may pass through accommodations for crew members or offshore workers.

(e) There must be no direct access, except through solid, close-fitted doors or hatches, between accommodations for crew members or offshore workers and chain lockers, cargo spaces, or machinery spaces.

(f) No access openings, sounding tubes, or vents from fuel-oil or cargo-oil tanks may open into accommodations for crew members or offshore workers, except that access openings and sounding tubes may open into passageways.

(g) Accommodations for crew members must be separate from and independent of those for offshore workers unless the OCMI approves an alternative arrangement.

§ 127.280 Construction and arrangement of quarters for crew members and accommodations for offshore workers.

(a) The following requirements apply to quarters for crew members on each OSV of 100 or more gross tons:

(1) Quarters for crew members must be divided into staterooms none of which berths more than four members.

(2) Each stateroom for use by crew members must—

(i) Have clear headroom of at least 6 feet 3 inches; and

(ii) Contain at least 30 square feet of deck and at least 210 cubic feet of space for each member accommodated. The presence in a stateroom of equipment for use by the occupants does not diminish the area or volume of the room.

(3) There must be at least one toilet, one washbasin, and one shower or bathtub for every eight or fewer members who do not occupy a stateroom to which a private or a semiprivate facility is attached.

(b) The following requirements apply to accommodations for offshore workers on each OSV of 100 or more gross tons:

(1) Each offshore worker aboard must be provided with adequate fixed seating. The spacing of fixed seating must be sufficient to allow ready escape in case of fire or other emergency. The following are minimal requirements:

(i) Aisles 15 feet in length or less must not be less than 24 inches wide.

(ii) Aisles more than 15 feet in length must not be less than 30 inches wide.

(iii) Where the seating is in rows, the distance from seat front to seat front must not be less than 30 inches.

(2) If the intended operation of a vessel is to carry offshore workers aboard for more than 24 hours, quarters for them must be provided. Each stateroom for use by them must—

(i) Berth no more than six workers;

(ii) Have clear headroom of at least 6 feet 3 inches; and

(iii) Contain at least 20 square feet of deck and at least 140 cubic feet of space for each worker accommodated. The presence in a stateroom of equipment for use by the occupants does not diminish the area or volume of the room.

(3) Toilets and washbasins for use by offshore workers must meet the requirements of paragraph (a)(3) of this section.

(c) Each crew member and offshore worker aboard an OSV of less than 100 gross tons must be provided with accommodations of adequate size and construction, and with equipment for his or her protection and convenience suitable to the size, facilities, and service of the vessel.

(d) For each OSV of 100 or more gross tons, the bulkheads and decks separating accommodations for crew members and offshore workers from machinery spaces must be of "A" Class construction as defined by § 92.07–5 of this chapter.

(e) After reviewing the arrangement drawings required by § 127.110 of this part, the OCMI will determine and record on the OSV's Certificate of Inspection the number of offshore workers that the vessel may carry.

Subpart C—Rails and Guards

§ 127.310 Where rails required.

(a) Each OSV must have permanently installed efficient guard rails or bulwarks on decks and bridges. Each rail or bulwark must stand at least 39-½ inches from the deck except that, where this height would interfere with the normal operation of the vessel, the OCMI may approve a lesser height.

(b) At exposed peripheries of the freeboard and superstructure decks, each rail must consist of at least three courses, including the top. The opening below the lowest course must be no more than 9 inches with courses no more than 15 inches apart. On other decks and bridges each rail must consist of at least two courses, including the top, approximately evenly spaced.

(c) If satisfied that the installation of any rail of the required height is impracticable, the OCMI may accept a grab rail or a rail of a lesser height in its place.

§ 127.320 Storm rails.

Suitable storm rails must be installed in each passageway and at the deckhouse sides, including in way of inclined ladders, where persons aboard have normal access. They must be installed on both sides of passageways more than 6 feet wide.

§ 127.330 Guards in dangerous places.

Suitable hand covers, guards, or rails must be installed on each exposed and dangerous place, such as gears and machinery.

Subpart D—Construction of Windows, Visibility, and Operability of Coverings

§ 127.410 Safety-glazing materials.

Glass and other glazing material used in windows must be material that will not break into dangerous fragments if fractured.

§ 127.420 Strength.

Each window or porthole, and its means of attachment to the hull or the deckhouse, must be capable of withstanding the maximum expected load from wave and wind conditions, due to its location on the OSV and the authorized route of the vessel.

§ 127.430 Visibility from pilothouse.

(a) Windows and other openings at the pilothouse must be of sufficient size and properly located to provide adequate view for safe operation in any condition.

(b) Glass or other glazing material used in windows at the pilothouse must have a light transmission of at least 70 percent according to Test 2 of ANSI Z26.1, "Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," and must comply with Test 15 of ANSI Z26.1 for Class I Optical Deviation.

§ 127.440 Operability of window coverings.

Any covering or protection placed over a window or porthole must be able to be readily removed or opened. It must be possible to open or remove the covering or protection without anyone's having to go onto a weather deck.

PART 128—MARINE ENGINEERING: EQUIPMENT AND SYSTEMS

Subpart A—General

Sec.

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128.120 Plan approval.
128.130 Vital systems.

Subpart B—Materials and Pressure Design

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128.220 Class II non-vital systems—materials and pressure design.
128.230 Penetrations of hulls and watertight bulkheads—materials and pressure design.
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128.410 Ship's service refrigeration systems.
128.420 Keel-cooler installations.
128.430 Grid-cooler installations.
128.440 Bilge systems.
128.450 Liquid-mud systems.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General

§ 128.110 Equipment and systems.

(a) Except as provided by this part, the design, installation, testing, and inspection of materials, machinery, pressure vessels, and piping must comply with subchapter F of this chapter.

(b) This part contains requirements for equipment and systems commonly found on an OSV. If additional or unique systems, such as for low-temperature cargoes, are to be installed, they too must comply with subchapter F of this chapter.

§ 128.120 Plan approval.

The plans required by subchapter F of this chapter need not be submitted if the plans listed by § 127.110(d) of this subchapter have been submitted.

§ 128.130 Vital systems.

(a) Vital systems are those systems that are vital to a vessel's survivability and safety. For the purpose of this subchapter, the following are vital systems:

(1) Systems for fill, transfer, and service of fuel oil.

(2) Fire-main systems.

(3) Fixed gaseous fire-extinguishing systems.

(4) Bilge systems.

(5) Ballast systems.

(6) Steering systems and steering-control systems.

(7) Propulsion systems and their necessary auxiliaries and control systems.

(8) Systems for transfer and control of cargo, for integral tanks or fixed independent tanks, in compliance with § 125.110 of this subchapter.

(9) Ship's service and emergency electrical-generation systems and their auxiliaries.

(10) Any other marine-engineering system identified by the OCMI as crucial to the survival of the OSV or to the protection of the personnel aboard.

(b) For the purpose of this subchapter, a system not identified by paragraph (a) of this section is a non-vital system.

Subpart B—Materials and Pressure Design

§ 128.210 Class II vital systems—materials.

Except as provided by §§ 128.230 and 128.240 of this subpart, instead of complying with part 56 of this chapter, materials used in Class II vital piping-systems may be accepted by the OCMI or the Commanding Officer, Marine Safety Center, if shown to provide a level of safety equivalent to materials in § 56.60 of this chapter.

§ 128.220 Class II non-vital systems—materials and pressure design.

(a) Except as provided by §§ 128.230, 128.240, and 128.320 of this part, a Class II non-vital piping-system need not meet the requirements for materials and pressure design of subchapter F of this chapter.

(b) Piping for salt-water service must be of a corrosion-resistant material, be

hot-dip galvanized, or be at least of extra-heavy schedule in wall thickness.

(c) Each Class II non-vital piping-system must be certified by the builder as suitable for its intended service. A written certificate to this effect must be submitted with the plans required by § 127.110(d) of this subchapter.

(d) The OCMI will review the particular installation of each system for the safety hazards identified in paragraphs (a), (b)(1), and (c) through (k) of § 56.50–1 of this chapter, and will add requirements as appropriate.

§ 128.230 Penetrations of hulls and watertight bulkheads—materials and pressure design.

(a) Each piping penetration, in each bulkhead required by this subchapter to be watertight, must meet the requirements for materials and pressure design of subchapter F of this chapter.

(b) Each overboard discharge and shell connection, up to and including required shut-off valves, must meet the requirements for materials and pressure design of subchapter F of this chapter.

§ 128.240 Hydraulic or pneumatic power and control—materials and pressure design.

(a) Each standard piping component (such as pipe runs, fittings, flanges, and standard valves) for hydraulic or pneumatic power and control systems must meet the requirements for materials and pressure design of § 128.110, 128.210, or 128.220 of this part, as appropriate.

(b) Any non-standard hydraulic or pneumatic component (such as control valves, check valves, relief valves, and regulators) may be accepted by the OCMI or the Commanding Officer, Marine Safety Center, if the component is certified by the manufacturer as suitable for marine service and if—

(1) The component meets each of the requirements for materials and pressure design of subparts 56.60 and 58.30 of this chapter and if its service is limited to the manufacturer's rated pressure; or

(2) The service of the component is limited to ½ the manufacturer's recommended maximum allowable working pressure (MAWP) or 1/10 the component's burst pressure. Burst-pressure testing is described in ANSI B 31.1, Paragraph 104.7.A, and must be conducted to comply with Paragraph A–22, Section, I, ASME Boiler and Pressure Vessel Code. Written certification of results of burst-pressure testing must be submitted with the plans required by § 127.110(d) of this subchapter.

Subpart C—Main and Auxiliary Machinery

§ 128.310 Fuel.

(a) Except as provided by paragraph (b) of this section, each internal-combustion engine installed on an OSV, whether for main propulsion or for auxiliaries, must be driven by a fuel having a flashpoint of not lower than 110 degrees F. as determined by ASTM D93.

(b) The use of a fuel with a flashpoint of lower than 110 degrees F. must be specifically approved by the Commandant (G–MTH), except in an engine for a gasoline-powered rescue boat.

§ 128.320 Exhaust systems.

No diesel-engine exhaust system need meet the material requirements in § 58.10–5(d)(1)(i) of this chapter if the installation is certified as required by § 128.220(c) of this part.

Subpart D—Design Requirements for Specific Systems

§ 128.310 Ship's service refrigeration systems.

No self-contained unit either for air-conditioning or for refrigerated spaces for ship's stores need comply with § 58.20–5, 58.20–10, 58.20–15, 58.20–20(a), or 58.20–20(b) of this chapter if—

(a) The unit uses a fluorocarbon refrigerant allowed by part 147 of this chapter;

(b) The manufacturer certifies that the unit is suitable for its intended purpose; and

(c) Electrical wiring meets the applicable requirements in subchapter J of this chapter.

§ 128.420 Keel-cooler installations.

(a) Except as provided by this section, each keel-cooler installation must comply with § 56.50–96 of this chapter.

(b) Approved metallic flexible connections may be located below the deepest-load waterline if the system is a closed loop below the waterline and if its vent is located above the waterline.

(c) Fillet welds may be used in the attachment of channels and half-round pipe sections to the bottom of the OSV.

(d) Short lengths of approved non-metallic flexible hose fixed by metallic hose-clamps may be used at machinery connections if—

(1) The clamps are of a corrosion-resistant material;

(2) The clamps do not depend on spring tension for their holding power; and

(3) Two of the clamps are used on each end of the hose, except that one clamp may be used on an end expanded or beaded to provide a positive stop against hose slippage.

§ 128.430 Grid-cooler installations.

(a) Each hull penetration for a grid-cooler installation must be made through a cofferdam or at a seachest and must be provided with isolation valves fitted as close to the sea inlet as possible.

(b) Each grid cooler must be protected against damage from debris and grounding by protective guards or by recessing the cooler into the hull.

§ 128.440 Bilge systems.

(a) Except as provided by this section, each bilge system must comply with §§ 56.50–50 and 56.50–55 of this chapter.

(b) If the steering room, engine room, centerline passageway, forward machinery space, and compartment containing the dry-mud tanks are the only below-deck spaces that must be fitted with bilge suctions, the OSV may be equipped to the standards of §§ 56.50–50 and 56.50–55 of this chapter applicable to a dry-cargo vessel of less than 180 feet in length.

§ 128.450 Liquid-mud systems.

(a) Liquid-mud systems of piping may use resiliently seated valves of category A to comply with §§ 56.20–15 and 56.50–60 of this chapter.

(b) Tanks for oil-based liquid mud must be fitted with tank vents equipped with flame screens. Vents must not discharge to the interior of the OSV.

PART 129—ELECTRICAL INSTALLATIONS

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Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 129.100 General.

This part contains requirements for the design, construction, and installation of electrical equipment and systems including power sources, lighting, motors, miscellaneous equipment, and safety systems.

§ 129.110 Applicability.

(a) Except as specifically provided in this part, electrical installations on OSVs of 100 or more gross tons must comply with subchapter J of this chapter.

(b) Electrical installations on OSVs of less than 100 gross tons must meet the—

(1) Requirements of paragraph (a) of this section for vessels of 100 or more gross tons; or

(2) Applicable requirements of this part.

§ 129.120 Alternative standards.

(a) An OSV of 65 feet in length or less may meet the following requirements of the American Yacht and Boat Council Projects, where applicable, instead of § 129.340 of this part:

(i) E–1, Bonding of Direct Current Systems.

(ii) E–8, AC Electrical System on Boats.

(iii) E–9, DC Electrical Systems on Boats.

(b) An OSV with an electrical installation operating at a potential of less than 50 volts may comply with § 183.430 of this chapter instead of § 129.340 of this part.

Subpart B—General Requirements

§ 129.200 Design, installation, and maintenance.

Electrical equipment on an OSV must be designed, installed, and maintained to—

(a) Provide services necessary for safety under normal and emergency conditions;

(b) Protect crew members, offshore workers, and the OSV from electrical hazards, including fire, caused by or originating in electrical equipment and electrical shock;

(c) Minimize accidental personal contact with energized parts; and

(d) Prevent electrical ignition of flammable vapors.

§ 129.210 Protection from wet and corrosive environments.

(a) Electrical equipment used in the following spaces must be drip-proof:

(1) A machinery space.

(2) A space normally exposed to splashing, water wash down, or other wet conditions within a galley, a laundry, or a public washroom or toilet room that has a bath or shower.

(3) Every other space with similar wet conditions.

(b) Electrical equipment exposed to the weather must be watertight.

(c) Electrical equipment exposed to corrosive environments must be of suitable construction and must be resistant to corrosion.

§ 129.220 Basic safety.

(a) Electrical equipment and installations must be suitable for the roll, pitch, and vibration of the OSV under way.

(b) All equipment, including switches, fuses, and lampholders, must be suitable for the voltage and current used.

(c) Receptacle outlets of the type providing a grounded pole or a specific direct-current polarity must be of a configuration that does not permit improper connection.

(d) Electrical equipment and circuits must be clearly marked and identified.

(e) Any cabinet, panel, box, or other enclosure containing more than one source of power must be fitted with a sign warning persons of this condition and identifying the circuits to be disconnected.

Subpart C—Power Sources and Distribution Systems

§ 129.310 Power sources.

(a) (1) Each OSV that relies on electricity to power the following loads must be arranged so that the loads can be energized from at least two sources of electricity:

(i) Any system identified as a vital system in § 128.130(a) of this subchapter.

(ii) Interior lights.

(iii) Communication systems.

(iv) Navigational equipment and lights.

(v) Fire-protection equipment.

(2) An OSV with batteries of enough capacity for 3 hours of continuous operation to supply the loads specified in paragraph (a)(1) of this section, and with a generator or alternator driven by a propulsion engine, complies with paragraph (a)(1) of this section.

(b) Where a generator driven by a propulsion engine is used as a source of electrical power, no speed change, throttle movement, or change in direction of the propeller shaft of the OSV may interrupt power to any of the loads specified in paragraph (a)(1) of this section.

§ 129.315 Power sources for OSVs of 100 or more gross tons.

(a) The requirements of this section apply instead of those in subpart 111.10 of this chapter.

(b) If a generator provides electrical power for any system identified as a vital system by § 128.130(a) of this subchapter, at least two power-generating sets must be provided. At least one set must be independent of the main propulsion plant. A generator not independent of the main propulsion plant must comply with § 111.10–4(c) of this chapter. With any one generating set stopped, the remaining set or sets must provide the power necessary for the loads required by this section.

§ 129.320 Generators and motors.

(a) Each generator and motor must be—

(1) In an accessible space, adequately ventilated and as dry as practicable; and

(2) Mounted above the bilges to avoid damage by splash and to avoid contact with low-lying vapors.

(b) Each generator and motor must be designed for an ambient temperature of 50 degrees C. (122 degrees F.), except that—

(1) If the ambient temperature in the space where a generator or motor is does not exceed 40 degrees C. (104 degrees F.) under normal operating conditions, the generator or motor may be designed for an ambient temperature of 40 degrees C.; and

(2) A generator or motor designed for an ambient temperature of 40 degrees C. may be used in a location where the ambient temperature is 50 degrees C., if the generator or motor is derated to 80 percent of the full-load rating and if the rating or setting of the overcurrent

devices of the generator or motor is reduced accordingly.

(c) For each generator rated at 50 volts or more, a voltmeter and an ammeter used for measuring voltage and current while the generator is in operation must be provided. For each alternating-current generator, a means for measuring frequency must also be provided. To ensure satisfactory operation of each generator, additional control equipment and measuring instruments, if needed, must also be provided.

(d) Each generator must have a nameplate attached to it indicating—

(1) Name of manufacturer, type of generator, and designation of frame;

(2) Output in kilowatts, or horsepower rating;

(3) Kind of rating (continuous, overload, or other);

(4) Amperes at rated load, voltage, and frequency;

(5) Number of phases, if applicable;

(6) Type of windings, if DC:

(7) When intended for connection in a normally grounded configuration, the grounding polarity; and

(8) For a generator derated to comply with paragraph (b)(2) of this section, the derated capacity.

(e) Each motor must have attached to it a nameplate containing the information required by Article 430 of NFPA 70.

§ 129.323 Multiple generators.

If an OSV uses two or more generators to supply electricity for the ship's service loads, to comply with § 129.310(a) of this subpart, the following requirements must be met:

(a) Each generator must have an independent prime mover.

(b) The circuit breaker of a generator to be operated in parallel with another generator must comply with §§ 111.05–13, 111.12–11(f), 111.30–19(a), and 111.30–25(d) of this chapter.

(c) The circuit breaker of a generator not to be operated in parallel with another generator must be interlocked to prevent that generator from being connected to the switchboard simultaneously with another.

§ 129.326 Dual-voltage generators.

If a dual-voltage generator is installed on an OSV—

(a) The neutral of the dual-voltage system must be solidly grounded at the switchboard's neutral bus and be accessible for checking the insulation resistance of the generator to ground before the generator is connected to the bus; and

(b) Ground detection must be provided that—

(1) For an alternating-current system, complies with § 111.05–27 of this chapter; and

(2) For a direct-current system, complies with § 111.05–29 of this chapter.

§ 129.330 Distribution panels and switchboards.

(a) Each distribution panel or switchboard must be in a location as dry as practicable, accessible, adequately ventilated, and protected from falling debris and dripping or splashing water.

(b) Each distribution panel or switchboard must be totally enclosed and of the dead-front type.

(c) Each switchboard must have nonconductive handrails.

(d) Each switchboard must be fitted with a dripshield, unless the switchboard is of a type mounted deck to overhead and is not subject to falling objects or liquids from above.

(e) Each distribution panel and switchboard accessible from the rear must be constructed to prevent a person's accidental contact with energized parts.

(f) Working space must be provided around each main distribution panel and switchboard of at least 24 inches in front of the switchboard and, unless it is inaccessible from the rear, of at least 18 inches from the nearest bulkhead, stiffener, or frame behind the switchboard.

(g) Nonconductive mats or grating must be provided on the deck in front of each switchboard and, if the switchboard is accessible from the rear, on the deck behind the switchboard.

(h) Each uninsulated current-carrying part must be mounted on noncombustible, nonabsorbent, high-dielectric insulating material.

(i) Equipment mounted on a hinged door of an enclosure must be constructed or shielded so that no person will come into accidental contact with energized parts of the door-mounted equipment when the door is open and the circuit energized.

(j) Switchboards and distribution panels must be sized in accordance with § 111.30–19(a) of this chapter.

§ 129.340 Cable and wiring.

(a) If individual wires, rather than cables, are used in systems operating at a potential of greater than 50 volts, the wire and associated conduit must be run in a protected enclosure. The protected enclosure must have drain holes to prevent the buildup of condensation.

(b) Each cable and wire must—

(1) Have stranded copper conductors with sufficient current-carrying capacity for the circuit in which it is used;

(2) Be installed so as to avoid or reduce interference with radio reception and compass indication;

(3) Be protected from the weather;

(4) Be supported so as to avoid chafing or other damage;

(5) Be installed without sharp bends;

(6) Be protected by metal coverings or other suitable means, if in areas subject to mechanical abuse;

(7) Be suitable for low temperature and high humidity, if installed in refrigerated compartments;

(8) Be located outside a tank, unless it supplies power to equipment in the tank; and

(9) Have sheathing or wire insulation compatible with the fluid in a tank, when installed to comply with paragraph (b)(8) of this section.

(c) Cable and wire in power and lighting circuits must be #14 AWG or larger. Cable and wire in control and indicator circuits must be #22 AWG or larger, or be ribbon cable or similar, smaller, conductor-size cable recommended by the equipment manufacturer for use in circuits for low-power instrumentation, monitoring, or control.

(d) Cable and wire for power and lighting circuits must—

(1) Comply with Section 310–13 of the NEC (NFPA 70), except that no asbestos-insulated cable or dry-location cable may be used;

(2) Be listed by Underwriters Laboratories Inc. as UL Boat or UL Marine Shipboard cable; or

(3) Comply with § 111.60–1 of this chapter for cable, and § 111.60–11 of this chapter for wire.

(e) Cable and wire serving vital systems listed in § 128.130(a) of this subchapter or serving emergency loads must be routed as far as practicable from areas at high risk for fire, such as galleys, laundries, and machinery spaces.

(f) Cable or wire serving duplicated equipment must be separated so that a casualty that affects one cable does not affect the other.

(g) Each connection to a conductor or a terminal part of a conductor must be made within an enclosure and have a—

(1) Pressure-type connector on each conductor;

(2) Solder lug on each conductor;

(3) Splice made with a pressure-type connector to a flexible lead or conductor; or

(4) Splice soldered, brazed, or welded to a flexible lead or conductor.

(h) A connector or lug of the set-screw type must not be used with a stranded conductor smaller than No. 14 AWG, unless there is a nonrotating follower that travels with the set screw and

makes pressure contact with the conductor.

(i) Each pressure-type wire connector and lug must comply with UL 486A. No wire nuts may be used.

(j) Each terminal block must have terminal screws 6–32 or larger.

(k) Each wire connector used in conjunction with screw-type terminal blocks must be of the captive type such as the ring or the flanged-spade type.

(l) No cable may be spliced in—

(1) A hazardous location; or

(2) Another location, except—

(i) A cable installed in a subassembly may be spliced to a cable installed in another subassembly;

(ii) For a vessel receiving alterations, a cable may be spliced to extend a circuit;

(iii) A cable of large diameter or exceptional length may be spliced to facilitate its installation.

(iv) A cable may be spliced to replace a damaged section of itself if, before replacement of the damaged section, the insulation resistance of the remainder of the cable is measured, and the condition of the insulation is unimpaired.

(m) All material in a cable splice must be chemically compatible with other material in the splice and with the materials in the cable.

(n) Ampacities for conductors must comply with Section 310–15 of the NEC (NFPA 70), or with IEEE Standard 45, as appropriate.

(o) Each conductor must be sized so that the voltage drop at the load terminals does not exceed 10 percent.

(p) Each metallic covering of armored cable must—

(1) Be electrically continuous; and

(2) Be grounded at each end of the run to the—

(i) Hull (on a metallic OSV); or

(ii) Common ground plate (on a nonmetallic vessel); and

(3) Have final sub-circuits grounded at the supply end only.

(q) Each portable or temporary electric cord or cable must be constructed and used in compliance with the requirements of § 111.60–13 of this chapter for flexible electric cord or cable.

§ 129.350 Batteries—general.

(a) Wherever a battery is charged, there must be natural or induced ventilation to dissipate the gases generated.

(b) Each battery must be located as high above the bilge as practicable and be secured to protect against shifting due to roll, pitch, and heave motions or vibration of the OSV, and free from exposure to splash or spray of water.

(c) Each battery must be accessible for maintenance and removal.

(d) Each connection to a battery terminal must be made with a permanent connector, rather than with spring clips or other temporary clamps.

(e) Each battery must be mounted in a tray lined with, or constructed of, lead or other material resistant to damage by the electrolyte.

(f) Each battery charger must have an ammeter connected in the charging circuit.

(g) Unless the battery is adjacent to a distribution panel or switchboard that distributes power to the lighting, motor, and appliance circuits, the battery leads must have fuses in series with and as close as practicable to the battery.

(h) Each battery used for starting an engine must be located as close as possible to the engine or engines served.

§ 129.353 Battery categories.

This section applies to batteries installed to meet the requirements of § 129.310(a) for secondary sources of power to vital loads.

(a) *Large.* A large battery-installation is one connected to a battery charger having an output of more than 2 kw, computed from the highest possible charging current and rated voltage of the battery installed.

(b) *Small.* A small battery-installation is one connected to a battery charger having an output of 2 kw or less, computed from the highest possible charging current and rated voltage of the battery installed.

§ 129.356 Battery installations.

(a) *Large.* Each large battery-installation must be located in a locker, room, or enclosed box dedicated solely to the storage of batteries. Ventilation must be provided in accordance with § 111.15–10 of this chapter. Electrical equipment located within the battery enclosure must be approved by an independent laboratory for hazardous locations of Class I, Division 1, Group B, and must meet part 111, subpart 111.105, of this chapter.

(b) *Small.* Each small battery-installation must be located in a well-ventilated space and protected from falling objects. No small battery-installation may be in a closet, storeroom, or similar space.

§ 129.360 Semiconductor-rectifier systems.

(a) Each semiconductor-rectifier system must have an adequate heat-removal system to prevent overheating.

(b) If a semiconductor-rectifier system is used in a propulsion system or in another vital system, it must—

(1) Have a current-limiting circuit;

(2) Have external overcurrent protection; and

(3) Comply with sections 4/5.84.2 and 4/5.84.4 of the ABS's "Rules for Building and Classing Steel Vessels."

§ 129.370 Equipment grounding.

(a) On a metallic OSV each metallic enclosure and frame of electrical equipment must be permanently grounded to the hull. On a nonmetallic vessel each enclosure and frame of electrical equipment must be bonded to each other and to a common ground by a conductor not normally carrying current.

(b) Each metallic case of instruments must be grounded. So must each secondary winding of instrument transformers.

(c) Each equipment grounding conductor must be sized to comply with section 250–95 of NEC (NFPA 70).

(d) Each nonmetallic mast and topmast must have a lightning-ground conductor.

§ 129.375 System grounding.

(a) If a grounded distribution system is provided, there must be only one connection to ground, regardless of the number of power sources. This connection must be at the main switchboard.

(b) On each metallic OSV a grounded distribution system must be grounded to the hull. On each nonmetallic vessel the neutral of a grounded system must be connected to a common ground plate, except that no aluminum grounding conductors may be used.

(c) On each nonmetallic OSV with a grounded distribution system, the common ground plate must have—

(1) Only one connection to the main switchboard; and

(2) The connection to itself readily accessible for checking.

(d) On each nonmetallic OSV with a ground plate provided for radio equipment, the plate must be connected to the common ground plate.

(e) Each insulated grounding-conductor of a cable must be identified by one of the following means:

(1) Wrapping of the cable with green braid or green insulation.

(2) Stripping of the insulation from the entire exposed length of the grounding-conductor.

(3) Marking of the exposed insulation of the grounding-conductor with green tape or green adhesive labels.

(f) No OSV's hull may carry current as a conductor except for—

(1) An impressed-current cathodic-protection system; or

(2) A battery system to start an engine

(g) No cable armor may be used to ground electrical equipment or systems.

(h) Each receptacle outlet and attachment plug, for a portable lamp,

tool, or similar apparatus operating at 100 or more volts, must have a grounding-pole and a grounding-conductor in the portable cord.

§ 129.380 Overcurrent protection.

(a) Overcurrent protection must be provided for each ungrounded conductor, to open the electric circuit if the current reaches a value that causes an excessive or dangerous temperature in the conductor or its insulation.

(b) Each conductor of a control, interlock, or indicator circuit, such as a conductor for an instrument, pilot light, ground-detector light, or potential transformer, must be protected by an overcurrent device.

(c) Each generator must be protected by an overcurrent device set at a value not exceeding 115 percent of the generator's full-load rating.

(d) Circuits of control systems for steering gear must be protected against short circuit.

(e) Each feeder circuit for steering gear must be protected by a circuit breaker that complies with §§ 111.93–11 (a) and (b) of this chapter.

(f) Each branch circuit for lighting must be protected against overcurrent by either fuses or circuit breakers. Neither the fuses nor the circuit breakers may be rated at more than 30 amperes.

(g) Each conductor must be protected in accordance with its current-carrying capacity. If the allowable current-carrying capacity does not correspond to a standard size of device, the next larger overcurrent device may be used, unless it exceeds 150 percent of the conductor's current-carrying capacity.

(h) An overcurrent device must be installed to protect each motor conductor and control apparatus against overcurrent due to short circuit or ground fault. Each overcurrent device must be capable of carrying the starting current of the motor.

(i) An emergency switch must be provided in each normally ungrounded main supply conductor from a battery. The switch must be accessible from the battery and located as close as practicable to it.

(j) No grounded conductor of a circuit may be disconnected by a switch or circuit breaker unless the ungrounded conductors are all simultaneously disconnected.

(k) A means of disconnect must be provided on the supply side of and adjacent to each fuse, to de-energize the fuse for inspection and maintenance.

(l) A way for locking the means of disconnect open must be provided unless the means of disconnect for a fused circuit is within sight of the equipment that the circuit supplies.

(m) Each fuse must be of the cartridge type and be listed by Underwriters Laboratories (UL) or another independent laboratory recognized by the Commandant.

(n) Each circuit breaker must meet UL 489 and be of the manually-reset type designed for—

(1) Inverse delay;

(2) Instantaneous short-circuit protection; and

(3) Switching duty if the breaker is used as a switch.

(o) Each circuit breaker must indicate whether it is open or closed.

§ 129.390 Shore power.

Each OSV that has an electrical system operating at more than 50 volts and provides for shore power must meet the requirements of this section:

(a) A shore-power-connection box or receptacle must be permanently installed at a convenient location.

(b) A cable connecting the shore-power-connection box or receptacle to the switchboard or main distribution panel must be permanently installed.

(c) A circuit breaker must be provided at the switchboard or main distribution panel for the shore-power connection.

(d) The circuit breaker, required by paragraph (c) of this section, must be interlocked with the OSV's power sources so that shore power and the vessel's power sources may not operate simultaneously.

§ 129.395 Radio installations.

A separate circuit, with overcurrent protection at the switchboard, must be provided for each radio installation.

Subpart D—Lighting Systems

§ 129.410 Lighting fixtures.

(a) Each globe, lens, or diffuser of a lighting fixture must have a high-strength guard or be made of high-strength material, except in accommodations, the pilothouse, the galley, or similar locations where the fixture is not subject to damage.

(b) No lighting fixture may be used as a connection box for a circuit other than the branch circuit supplying the fixture.

(c) Each lighting fixture must be installed as follows:

(1) Each lighting fixture and lampholder must be fixed. No fixture may be supported by the screw shell of a lampholder.

(2) Each pendant-type lighting fixture must be suspended by and supplied through a threaded rigid-conduit stem.

(3) Each tablelamp, desklamp, floorlamp, or similar equipment must be so secured in place that it cannot be displaced by the roll, pitch, or vibration of the vessel.

(d) Each lighting fixture in an electrical system operating at more than 50 volts must comply with UL 595, "Marine Type Electric Lighting Fixtures." A lighting fixture in an accommodation space, radio room, galley, or similar interior space may comply with UL 57, "Electric Lighting Fixtures," UL 1570, "Fluorescent Lighting Fixtures," UL 1571, "Incandescent Lighting Fixtures," UL 1572, "High Intensity Discharge Lighting Fixtures," UL 1573, "Stage and Studio Lighting Units," or UL 1574, "Track Lighting Systems," as long as the general marine requirements of UL 595 are satisfied.

§ 129.420 Branch circuits for lighting on OSVs of 100 or more gross tons.

On each OSV of 100 or more gross tons, each branch circuit for lighting must comply with § 111.75–5 of this chapter, except that—

(a) Appliance loads, electric-heater loads, and isolated small-motor loads may be connected to a lighting-distribution panelboard; and

(b) Branch circuits, other than for lighting, connected to the lighting-distribution panelboard permitted by paragraph (a) of this section may have fuses or circuit breakers rated at more than 30 amperes.

§ 129.430 Navigational lighting.

(a) Each OSV of less than 100 gross tons and less than 65 feet in length must have navigational lighting in compliance with the applicable navigation rules.

(b) Each OSV of 100 or more gross tons, or 65 feet or more in length, must have navigational lighting in compliance with the applicable navigation rules and with § 111.75–17(d) of this chapter.

§ 129.440 Emergency lighting.

(a) An OSV of less than 100 gross tons must have adequate emergency lighting fitted along the line of escape to the main deck from accommodations and working (machinery) spaces below the main deck.

(b) The emergency lighting required by paragraph (a) of this section must automatically actuate upon failure of the main lighting. Unless an OSV is equipped with a single source of power for emergency lighting, it must have individual battery-powered lighting that is—

(1) Automatically actuated upon loss of normal power;

(2) Not readily portable;

(3) Connected to an automatic battery-charger; and

(4) Of enough capacity for 6 hours of continuous operation.

§ 129.450 Portable lighting.

Each OSV must be equipped with at least two operable, portable, battery-powered lights. One of these lights must be located in the pilothouse, another at the access to the engine room.

Subpart E—Miscellaneous Electrical Systems

§ 129.510 Lifeboat winches.

Each lifeboat winch operated by electric power must comply with subparts 111.95 and 160.015 of this chapter.

§ 129.520 Hazardous areas.

(a) No OSV that carries flammable or combustible liquid with a flashpoint of below 140 degrees F. (60 degrees C.), or carries hazardous cargoes on deck or in integral tanks, or is involved in servicing wells, may have electrical equipment installed in pump rooms, in hose-storage spaces, or within 10 feet of a source of vapor on a weather deck unless the equipment is explosion-proof or intrinsically safe under §§ 111.105–9 or 111.105–11 of this chapter.

(b) No electrical equipment may be installed in any locker used to store paint, oil, turpentine, or other flammable liquid unless the equipment is explosion-proof or intrinsically safe under §§ 111.105–9 or 111.105–11 of this chapter.

(c) Equipment that is explosion-proof and intrinsically safe must comply with subpart 111.105 of this chapter.

§ 129.530 General alarm.

Each OSV must be fitted with a general alarm that complies with subpart 113.25 of this chapter.

§ 129.540 Remote stopping-systems on OSVs of 100 or more gross tons.

(a) Except as provided by paragraph (b) of this section, each OSV must be fitted with remote stopping-systems that comply with subpart 111.103 of this chapter.

(b) The following remote stopping-systems may substitute for remote stopping-systems that must comply with subpart 111.103 of this chapter:

(1) For each propulsion unit, in the pilothouse.

(2) For each discharge pump for bilge slop or dirty oil, at the deck discharge.

(3) For each powered ventilation system, outside the space ventilated.

(4) For each fuel-oil pump, outside the space containing the pump.

(5) For each cargo-transfer pump for combustible and flammable liquid, at each transfer-control station.

(c) Remote stopping-systems required by this section may be combined.

§ 129.550 Power for cooking and heating.

(a) Equipment for cooking and heating must be suitable for marine use. Equipment designed and installed to comply with ABYC Standards A–3 and A–7 or Chapter 6 of NFPA 302 meets this requirement.

(b) The use of gasoline for cooking, heating, or lighting is prohibited.

(c) The use of liquefied petroleum gas for cooking, heating, or other purposes must comply with subpart 58.16 of this chapter.

(d) Each electric space-heater must be provided with a thermal cut-out to prevent overheating.

(e) Each element of an electric space-heater must be enclosed, and the case or jacket of the element made of a corrosion-resistant material.

(f) Each electrical connection for a cooking appliance must be drip-proof.

§ 129.560 Engine-order telegraphs on OSVs of 100 or more gross tons.

No OSV of 100 or more gross tons need carry an engine-order telegraph.

PART 130—VESSEL CONTROL, AND VARIOUS EQUIPMENT AND SYSTEMS

Subpart A—Vessel Control

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130.120 Propulsion control.
130.130 Steering on OSVs of less than 100 gross tons.
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Subpart B—Miscellaneous Equipment and Systems

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130.220 Design of equipment for cooking and heating.
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130.470 Fire alarms.
130.480 Test procedure and operations manual.

Authority: 46 U.S.C. 3306, 8105; 49 CFR 1.46.

Subpart A—Vessel Control

§ 130.110 Internal communications on OSVs of less than 100 gross tons.

Each OSV of less than 100 gross tons equipped with an independent auxiliary means of steering, as required by § 130.130(b) of this subpart, must have a fixed means of communication between the pilothouse and the place where the auxiliary means of steering is controlled.

§ 130.120 Propulsion control.

(a) Each OSV must have—

(1) A propulsion-control system operable from the pilothouse; and

(2) A means at each propulsion engine of readily disabling the propulsion-control system to permit local operation.

(b) Each propulsion-control system operable from the pilothouse must enable—

(1) Control of the speed of each propulsion engine;

(2) Control of the direction of propeller-shaft rotation;

(3) Control of propeller pitch, if a controllable-pitch propeller is fitted; and

(4) Shutdown of each propulsion engine.

(c) The propulsion-control system operable from the pilothouse may constitute the remote stopping-system required by § 129.540 of this subchapter.

(d) Each propulsion-control system, including one operable from the pilothouse, must be designed so that no one failure of the system allows the propulsion engine to over speed or the pitch of the propeller to increase.

§ 130.130 Steering on OSVs of less than 100 gross tons.

(a) Each OSV of less than 100 gross tons must have a steering system that complies with—

(1) Section 130.140 of this subpart; or

(2) This section.

(b) Except as provided by paragraph (i) of this section, each OSV must have a main and an independent auxiliary means of steering.

(c) The main means of steering (main steering gear) must be—

(1) Of adequate strength for, and capable of, steering the OSV at each service speed;

(2) Designed to operate at maximum astern speed without being damaged; and

(3) Capable of moving the rudder from 35 degrees on one side to 30 degrees on the other side in no more than 28 seconds with the vessel moving ahead at maximum service speed.

(d) Control of the main steering gear must be available from the pilothouse, including control of any necessary ancillary device (motor, pump, valve, or the like). If a power-driven main steering gear is used, a pilot light must be installed in the pilothouse to indicate operation of the power units.

(e) The auxiliary means of steering (auxiliary steering gear) must be—

(1) Of adequate strength for steering the OSV at navigable speed;

(2) Capable of steering the vessel at navigable speed; and

(3) Controlled from a place that—

(i) Can communicate with the pilothouse; or

(ii) Enables the master to safely maneuver the vessel.

(f) The steering gear must be designed so that transfer from the main steering gear or its control to the auxiliary steering gear or its control can be achieved rapidly. Any tools or equipment necessary for transfer must be readily available. Instructions for transfer must be posted.

(g) Each OSV must have instantaneous protection against short circuit for electrical-power circuits and control circuits, the protection sized and located to comply with §§ 111.93–11 (d) and (e) of this chapter.

(h) A rudder-angle indicator independent of the control of the main steering gear must be installed at the steering-control station in the pilothouse.

(i) No auxiliary steering gear need be installed if—

(1) The main steering gear, including power systems, is installed in duplicate; or

(2) Multiple-screw propulsion—with independent control of propulsion from the pilothouse for each screw and with a means to restrain and center the rudder—is installed, and if that control is capable of steering the OSV.

(j) Each OSV with duplicate (parallel but cross-connected) power systems for the main steering gear by way of compliance with paragraph (i)(1) of this section, may use one of the systems for other purposes if—

(1) Control of the subordinate parallel system is located at the steering-control station in the pilothouse;

(2) Full power is available to the main steering gear when the subordinate parallel system is not in operation;

(3) The subordinate parallel system can be isolated from the means of steering, and instructions on procedures for isolating it are posted; and

(4) The subordinate parallel system is materially equivalent to the steering system.

§ 130.140 Steering on OSVs of 100 or more gross tons.

(a) Each OSV of 100 or more gross tons must have a means of steering that meets the—

(1) Applicable requirements of subchapters F and J of this chapter; or

(2) Requirements for a hydraulic-helm steering-system in paragraph (b) of this section.

(b) Each hydraulic-helm steering-system must have the following:

(1) A main steering gear of adequate strength for, and capable of, steering the OSV at every service speed without being damaged at maximum astern speed.

(2) A hydraulic system with a MAWP of not more than 1800 psi, dedicated to steering.

(3) Piping materials that comply with Subchapter F of this chapter, and piping thickness of at least schedule 80.

(4) Each fore-and-aft run of piping located as far inboard as practicable.

(5) Rudder stops.

(6) Either—

(i) Two steering pumps in accordance with § 130.130(c)(3) of this part; or

(ii) A single hydraulic sump of the "cascading overflow" type with a centerline bulkhead open only at the top, if each half has enough capacity to operate the system.

(7) Control of the main steering gear from the pilothouse, including—

(i) Control from the helm;

(ii) Control of any necessary ancillary device (motor, pump, valve, or the like); and

(iii) Adequate visibility when going astern.

(8) Multiple-screw propulsion with independent control of propulsion from the pilothouse, complying with § 130.120 of this part and being capable of steering the vessel.

(9) Dual hydraulic cylinders arranged so that either cylinder can be readily isolated, permitting the other cylinder to remain in service and move each rudder.

(10) The steering alarms and indicators required by § 111.93–13 of this chapter, located in the pilothouse.

(11) Instantaneous protection against short circuit for electrical power, and control circuits sized and located as required by §§ 111.93–11 (d) and (e) of this chapter.

(12) A rudder-angle indicator, at the steering-control station in the pilothouse, that is independent of the control of the main steering gear.

(13) Means to locally start and stop the steering pumps.

(14) Means to isolate any auxiliary means of steering so as not to impair the reliability and availability of the control required by paragraph (b)(7) of this section.

(15) Manual capability to center and steady the rudder if the vessel loses normal steering power.

(c) For compliance with paragraph (b) of this section, one set of piping among pumps, helm, and cylinders is acceptable.

Subpart B—Miscellaneous Equipment and Systems

§ 130.210 Radiotelegraph and radiotelephone.

Each OSV must comply with 47 CFR part 80 as applicable.

§ 130.220 Design of equipment for cooking and heating.

(a) Doors on each cooking appliance must be provided with heavy-duty hinges and locking-devices to prevent accidental opening in heavy weather.

(b) Each cooking appliance must be installed so as to prevent its movement in heavy weather.

(c) Each grill or similar cooking appliance must have means to collect grease or fat and to prevent its spillage onto wiring or the deck.

(d) On each cooking appliance, grab rails must be installed when determined by the OCMI to be necessary for safety.

(e) On each cooking appliance, sea rails, with suitable barriers to prevent accidental movement of cooking pots, must be installed.

(f) Each heater must be constructed and installed so as to prevent the hanging from it of items such as towels and clothing.

§ 130.230 Protection from refrigerants.

(a) For each refrigeration system that exceeds 20 cubic feet of storage capacity if using ammonia or other hazardous gas, or exceeds 1000 cubic feet of storage capacity if using a fluorocarbon, as a refrigerant, there must be a self-contained breathing apparatus available.

(b) Each self-contained breathing apparatus must be stowed convenient to, but outside of, the space containing the refrigeration equipment.

(c) A complete recharge in the form of a spare charge must be carried for each self-contained breathing apparatus. The spare charge must be stowed with the equipment it is to reactivate.

(d) Each self-contained breathing apparatus must be of a type approved under subpart 160.011 of this chapter.

(e) The self-contained breathing apparatus in the fireman's outfit complies with this section.

§ 130.240 Anchors and chains.

(a) Each OSV must be fitted with anchors and chains meeting the applicable standards set by the ABS for Classed Vessels, including equipment, except as permitted by paragraphs (b) and (c) of this section.

(b) As well as the standards incorporated by paragraph (a) of this section, the following apply:

(1) Except as provided by paragraph (c) of this section, standards of the ABS relating to anchor equipment are mandatory, not precatory.

(2) Each vessel of under 200 feet (61 meters) in length and with an equipment number from the ABS of less than 150 may be equipped with either—

(i) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard; or

(ii) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard, if both anchors are ready for use at any time and if the windlass is capable of heaving in either anchor.

(c) Standards of other classification societies may be used, instead of those established by the ABS, upon approval of the Commandant.

Subpart C—Navigational Equipment

§ 130.310 Radar.

Each OSV of 100 or more gross tons must be fitted with a general marine radar in the pilothouse.

§ 130.320 Electronic position-fixing device.

Each OSV must be equipped with an electronic position-fixing device satisfactory for the area in which the vessel operates.

§ 130.330 Charts and nautical publications.

(a) Except as provided by paragraph (b) or (c) of this section, as appropriate for the intended voyage, each OSV must carry adequate and up-to-date—

(1) Charts of large enough scale to make safe navigation possible;

(2) U.S. Coast Pilot or similar publication;

(3) Coast Guard Light List;

(4) Tide Tables published by the National Ocean Service;

(5) Local Notice or Notices to Mariners; and

(6) Current Tables published by the National Ocean Service, or a river-current publication issued by the U.S. Army Corps of Engineers or by a river authority, or both.

(b) Any OSV may carry, instead of the complete publications listed in paragraph (a) of this section, extracts from them for areas it will transmit.

(c) When operating in foreign waters, an OSV may carry an appropriate foreign equivalent of any item required by paragraph (a) of this section.

§ 130.340 Compass.

Each OSV must be fitted with a compass suitable for the intended service of the vessel. Except aboard a vessel limited to daytime operation, the compass must be illuminated.

Subpart D—Automation of Unattended Machinery Spaces

§ 130.400 Applicability.

This subpart applies to each OSV of 100 or more gross tons where automated systems either replace specific personnel in the control and observation of the propulsion system and machinery spaces or reduce the level of crew associated with the vessel's engine department.

§ 130.410 General.

(a) Arrangements must be such that under any operating condition, including maneuvering, the safety of the OSV is equivalent to that of the same vessel with the machinery spaces fully tended and under direct manual supervision.

(b) Acceptance by the Coast Guard of automated systems to replace specific crew members or to reduce overall requirements for crew members depends upon the—

(1) Capabilities of the automated system;

(2) Combination of crew members, equipment, and systems necessary to ensure the safety of the OSV, personnel, and environment in each operating condition, including maneuvering; and

(3) Ability of the crew members to perform each operational evolution, including to cope with emergencies such as fire and failure of control or monitoring systems.

(c) Equipment, provided to eliminate crew members in particular or to reduce crew members in general, that in the judgment of the OCMI proves unsafe or unreliable must be immediately replaced or repaired; otherwise, the OCMI will require added crew members to compensate for the equipment's inadequacy.

§ 130.420 Controls.

Each piece of machinery under automatic control must have an alternative manual means of control.

§ 130.430 Pilothouse control.

Each OSV must have, at the pilothouse, controls to start a fire pump, charge the fire main, and monitor the pressure in the fire main.

§ 130.440 Communications system.

(a) Each OSV must have a communications system to immediately summon a crew member to the machinery space wherever an alarm is required by § 130.460 of this subpart.

(b) The communications system must be either—

(1) An alarm that—

(i) Is dedicated for this purpose;

(ii) Sounds in the crew accommodations and the normally manned spaces; and

(iii) Is operable from the pilothouse; or

(2) A telephone operated from the pilothouse that reaches the master's stateroom, engineer's stateroom, engine room, and crew accommodations that either—

(i) Is a sound-powered telephone; or

(ii) Gets its power from the emergency switchboard or from an independent battery continuously charged by its own charger.

§ 130.450 Machinery alarms.

(a) Each alarm required by § 130.460 of this subpart must be of the self-monitoring type that will both show visibly and sound audibly upon an opening or break in the sensing circuit.

(b) The visible alarm must show until it is manually acknowledged and the condition is corrected.

(c) The audible alarm must sound until it is manually silenced.

(d) No silenced alarm may prevent any other audible alarm from sounding.

(e) Each OSV must provide for testing each visible and audible alarm.

(f) Each OSV must provide battery power for the alarm required by § 130.460(a)(8) of this subpart.

§ 130.460 Placement of machinery alarms.

(a) Visible and audible alarms must be installed at the pilothouse to indicate the following:

(1) Loss of power for propulsion control.

(2) Loss of power to the steering motor or for control of the main steering gear.

(3) Engine-room fire.

(4) High bilge-level.

(5) Low lube-oil pressure for each main propulsion engine and each prime mover of a generator.

(6) For each main propulsion engine and each prime mover of a generator—

(i) High lube-oil temperature; and

(ii) High jacket-water temperature.

(7) For each reduction gear and each turbocharger with a pressurized oil system—

(i) Low lube-oil pressure; and

(ii)High lube-oil temperature.

(8) Loss of normal power for the alarms listed in paragraphs (a)(1) through (a)(7) of this section.

(b) Sensors for the high-bilge-level alarm required by paragraph (a)(4) of this section must be installed in—

(1) Each space below the deepest load waterline that contains pumps, motors, or electrical equipment; and

(2) The compartment that contains the rudder post.

(c) Centralized displays must be installed in the machinery spaces to allow rapid evaluation of each problem detected by the alarms required by paragraph (a) of this section.

Equipment-mounted gages or meters are acceptable for this purpose, if they are grouped at a central site.

§ 130.470 Fire alarms.

(a) Each fire detector and control unit must be of a type specifically approved by the Commandant (G–MMS).

(b) No fire-alarm circuit for the engine room may contain a fire detector for any other space.

(c) The number and placement of fire detectors must be approved by the OCMI.

§ 130.480 Test procedure and operations manual.

(a) A procedure for tests to be conducted on automated equipment by the operator and the Coast Guard must be submitted to comply with § 127.110 of this subchapter.

(b) The procedure for tests must—

(1) Be in a sequential-checkoff format;

(2) Include the required alarms, controls, and communications; and

(3) Set forth details of the tests.

(c) Details of the tests must specify status of equipment, functions necessary to complete the tests, and expected results.

(d) No tests may simulate conditions by misadjustments, artificial signals, or improper wiring.

(e) A detailed operations manual that describes the operation and indicates the location of each system installed to comply with this part must be submitted to comply with § 127.110 of this subchapter.

PART 131—OPERATIONS

Subpart A—Notice of Casualty and Records of Voyage

Sec.

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131.870 Lifefloats and buoyant apparatus.
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Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105, 10104; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—Notice of Casualty and Records of Voyage

§ 131.110 Notice and records.

Each OSV must meet the requirements of part 4 of this chapter for reporting marine casualties and retaining voyage records.

Subpart B—Markings on Vessels

§ 131.210 Hulls.

Each OSV must be marked as required by parts 67 and 69 of this chapter.

§ 131.220 Drafts.

(a) Each OSV must have the drafts of the vessel plainly and legibly marked upon the stem and upon the sternpost or rudderpost, or at any place at the stern of the vessel that may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) Each draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) When, because of raked stem or cutaway skeg, the keel does not extend forward or aft to the draft markings, the datum line from which the draft is taken must be the line of the bottom of the keel projected forward or aft, as the case may be, to where the line meets that of the draft markings projected downward.

(d) When a skeg or other appendage extends below the line of the keel, the draft at the end of the OSV adjacent to that appendage must be measured to a line tangent to the lowest part of the appendage and parallel to the line of the bottom of the keel.

(e) Drafts must be separated so that the projections of the marks onto a vertical plane are of uniform height, equal to the vertical spacing between consecutive marks.

(f) Marks must be painted in a color contrasting with that of the hull.

(g) Where marks are obscured because of operational constraints or by protrusions, the OSV must be fitted with a reliable draft-indicating system from which the drafts at bow and stern can be determined.

§ 131.230 Loadlines and decklines.

Each OSV assigned a loadline must have loadline markings and deck-line markings permanently scribed or embossed as required by subchapter E of this chapter.

Subpart C—Preparations for Emergencies

§ 131.310 List of crew members and offshore workers.

(a) The master of each OSV shall keep a correct list containing the name of each person that embarks upon and disembarks from the vessel.

(b) The list required by paragraph (a) of this section must be prepared before the OSV's departure on a voyage, and deposited ashore—

(1) At the facility from which the crew members and offshore workers embarked;

(2) In a well-marked place at the vessel's normal berth; or

(3) With a representative of the owner or managing operator of the vessel.

§ 131.320 Safety orientation for offshore workers.

(a) Before an OSV gets under way on a voyage, the master shall ensure that suitable public announcements are made informing each offshore worker of—

(1) In general terms, emergency and evacuation procedures;

(2) Locations of emergency exits and of embarkation areas for survival craft;

(3) Locations of stowage of lifejackets and immersion suits;

(4) With demonstration, proper method or methods of donning and adjusting lifejackets and immersion suits of the type or types carried on the vessel;

(5) Locations of the instruction placards for lifejackets and other lifesaving devices;

(6) Explanation that each offshore worker shall don an immersion suit and a lifejacket when the master determines that hazardous conditions do or might exist but that offshore workers may don lifejackets whenever they feel it necessary;

(7) Which hazardous conditions might require the donning of lifejackets and immersion suits;

(8) Types and locations of any other lifesaving device carried on the vessel;

(9) Locations and contents of the "Emergency Instructions" required by § 131.330;

(10) Survival craft to which assigned;

(11) Any hazardous materials on the vessel; and

(12) Any conditions or circumstances that constitute a risk to safety.

(b) The master of each OSV shall ensure that each offshore worker boarding the vessel on a voyage after the initial public announcement has been made as required by paragraph (a) of this section also hears the information in paragraph (a) of this section.

§ 131.330 Emergency instructions.

(a) Except as otherwise provided by this section, the master of each OSV shall prepare and post durable emergency-instruction placards in conspicuous locations accessible to the crew members and offshore workers.

(b) The instruction placards must contain the recommended "Emergency Instructions" listed in § 131.340 that, in the judgment of the OCMI, apply. The placards must be further designed to address the equipment, arrangement, and operation peculiar to each OSV.

§ 131.340 Recommended placard for emergency instructions.

The following is a recommended format and content of the placard for emergency instructions:

Emergency Instructions

(a) *Rough weather at sea, crossing of hazardous bars, or flooding.*

(1) Close each watertight and weathertight door, hatch, and air-port to prevent taking water aboard or further flooding in the OSV.

(2) Keep bilges dry to prevent loss of stability from water in bilges. Use power-driven bilge pump, hand pump, and buckets to dewater.

(3) Align fire pumps to serve as bilge pumps if possible.

(4) Check, for leakage, each intake and discharge line that penetrates the hull.

(5) Offshore workers remain seated and evenly distributed.

(6) Offshore workers don immersion suits (if required aboard) or lifejackets if the going becomes very rough, if the vessel is about to cross a hazardous bar, if flooding begins, or when ordered to by the master.

(7) Never abandon the vessel unless actually forced to, or ordered to by the master.

(8) Prepare survival craft—life floats, (inflatable) rafts, (inflatable) buoyant apparatus, and boats—for launching.

(b) *"Man overboard".*

(1) Throw a ring buoy into the water as close to the person overboard as possible.

(2) Post a lookout to keep the person overboard in sight.

(3) Launch the rescue boat and maneuver it to pick up the person overboard, or maneuver the OSV to pick up the person.

(4) Have a crew member put on an immersion suit or lifejacket, have a safety line made fast to the crew member, and have the crew member stand by to jump into the water to assist the person overboard if necessary.

(5) If the person overboard is not immediately located—

(i) Notify other vessels in the vicinity, and the Coast Guard; and

(ii) Continue searching until released by the Coast Guard.

(c) *Fire.*

(1) Cut off air to the fire: close hatches, ports, doors, manual ventilators, and the like and shut off the ventilation system.

(2) Deenergize electrical systems supplying the affected compartment.

(3) Immediately use a portable fire extinguisher aimed at the base of the flames. Never use water on electrical fires.

(4) If the fire is in machinery spaces, shut off the fuel supply and ventilation system and activate any fixed extinguishing-system.

(5) Maneuver the OSV to minimize the effect of wind on the fire.

(6) If unable to control the fire, notify other vessels in the vicinity, and the Coast Guard.

(7) Move offshore workers away from fire; have them don lifejackets and, if necessary, prepare to abandon the OSV.

§ 131.350 Station bill.

(a) The master of each OSV shall post a station bill if the vessel's Certificate of Inspection requires more than four crew members, including the master.

(b) The station bill must be posted in the pilothouse and in conspicuous places in crew members' and offshore workers' accommodations.

(c) The station bill must set forth the special duties and duty stations of each crew member for various emergencies. The duties must, as far as possible, be comparable to and compatible with the regular work of the member. The duties must include at least the following and should comprise any other duties necessary for the proper handling of a particular emergency:

(1) The closing of hatches, air-ports, watertights doors, vents, and scuppers,

and of intake valves and discharge lines that penetrate the hull; the stopping of fans and ventilating systems; and the operating of safety equipment.

(2) The preparing and launching of survival craft and rescue boats.

(3) The extinguishing of fire.

(4) The mustering of offshore workers, which includes—

(i) Assembling them and seeing that they are properly dressed and have donned their immersion suits and lifejackets; and

(ii) Directing them to their appointed stations.

§ 131.360 Responsibilities of licensed or certificated individuals.

Nothing in the emergency instructions or in any station bill required by this subpart exempts any licensed or certificated individual from the exercise of good judgment in an emergency.

Subpart D—Sufficiency and Supervision of Crew of Survival Craft

§ 131.410 Certificate of proficiency.

A merchant mariner's document with an endorsement of lifeboatman or another inclusive rating under part 12 of this title is evidence of training in survival craft and serves as a certificate of proficiency. For this subpart, a "certificated" person is a person holding a merchant mariner's document with such an endorsement.

§ 131.420 Manning and supervision.

(a) There must be enough trained persons aboard each survival craft to muster and assist untrained persons.

(b) Except as permitted by paragraph (c)(2) of this section, there must be enough deck officers, able seamen, or other certificated persons aboard each survival craft to manage the launching and handling of the survival craft.

(c) One person must be placed in charge of each survival craft to be used.

(1) Except as permitted by paragraph (c)(2) of this section, the person in command must be a deck officer, able seaman, or other certificated person.

(2) Considering the nature of the voyage, the number of persons permitted aboard, and the characteristics of the OSV, including gross tonnage, the OCMI may permit persons practiced in the handling of liferafts to be placed in charge of liferafts instead of persons required under paragraph (c)(1) of this section.

(3) A deck officer, able seaman, or other certificated person shall serve as second-in-command for each lifeboat either—

(i) Carried on a vessel in ocean service; or

(ii) Permitted to carry more than 40 persons.

(d) The person in charge and the second-in-command of each survival craft shall have a list of crew members and offshore workers assigned to the craft and shall see that the crew members are acquainted with their duties.

(e) Each motorized survival craft must have assigned a person capable of operating the engine and carrying out minor adjustments.

(f) The master shall ensure that the persons required under paragraphs (a), (b), and (c) of this section are equitably distributed among the OSV's survival craft.

Subpart E—Tests, Drills, and Inspections

§ 131.505 Steering gear, whistle, and means of communication.

(a) On each OSV expected to be away from shore for more than 48 hours, the master shall examine and test the steering gear, the whistle, and the means of communication between the pilothouse and the engine room 12 or fewer hours before departure. On every other vessel, the master shall do the same at least once a week.

(b) The date of each test and examination and the condition of the equipment must be noted in the OSV's logbook.

§ 131.510 Draft and loadline markings.

(a) The master of each OSV on an ocean or coastwise voyage shall enter in the vessel's logbook the drafts of the vessel, forward and aft, when leaving port.

(b) The master of each OSV subject to the requirements of subchapter E of this chapter shall, upon departure from port on an ocean or coastwise voyage, enter in the vessel's logbook a statement of the position of the loadline markings, port and starboard, relative to the surface of the water in which the vessel is then floating.

(c) If the master when recording draft compensates for the density of the water in which the OSV is floating, he or she shall note this density in the vessel's logbook.

§ 131.513 Verification of compliance with applicable stability requirements.

(a) After loading but before departure, and at other times necessary to assure the safety of the OSV, the master shall verify that the vessel complies with requirements in its trim-and-stability book, stability letter, Certificate of Inspection, and Loadline Certificate, whichever apply, and then enter a statement of the verification in the logbook. The vessel may not leave port until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements, the master shall ascertain the OSV's draft, trim, and stability as necessary; and any stability calculations made in support of the determination must remain aboard the vessel for the duration of the voyage.

§ 131.515 Periodic sanitary inspections.

(a) The master shall make periodic inspections of the quarters, toilet and washing spaces, serving pantries, galleys, and the like, to ensure that those spaces are maintained in a sanitary condition.

(b) The master shall enter in the OSV's logbook the results of these inspections.

§ 131.520 Hatches and other openings.

Before any OSV leaves protected waters, the master shall ensure that exposed cargo hatches and other openings in the hull are closed; made properly watertight by the use of tarpaulins, gaskets, or similar devices; and properly secured for sea.

§ 131.525 Emergency lighting and power.

(a) The master of each OSV shall ensure that fitted systems for lighting and power in emergencies are tested at least once each week that the vessel is operated, to verify that they work.

(b) The master shall ensure that emergency generators driven by internal-combustion engines run under load for at least 2 hours at least once each month that the OSV is operated.

(c) The master shall ensure that storage batteries driving fitted systems for emergency lighting and power are tested at least once each 6 months that the OSV is operated, to demonstrate the ability of the batteries to supply the emergency loads for the period specified by Table 112.05–5(a) of this chapter for cargo vessels.

(d) The date of each test and the condition and performance of the apparatus must be noted in the OSV's logbook.

§ 131.530 Abandon-ship training and drills.

(a) Material for abandon-ship training must be present on each OSV. The material must consist of a manual of one or more volumes, or audiovisual training aids, or both.

(1) The material must contain instructions and information about the lifesaving appliances aboard the vessel and about the best methods of survival. Any manual must be written in easily understood terms, illustrated wherever possible.

(2) If a manual is used, there must be a copy in each messroom and recreation room for crew members or in each stateroom for them. If audiovisual aids are used, they must be incorporated in the training sessions aboard under paragraph (d) of this section.

(3) The material must explain the—

(i) Method of donning immersion suits and lifejackets carried aboard;

(ii) Mustering at assigned stations;

(iii) Proper boarding, launching, and clearing of survival craft and rescue boats;

(iv) Method of launching survival craft by people within them;

(v) Method of releasing survival craft from launching-appliances;

(vi) Use of devices for protecting survival craft in launching-areas, where appropriate;

(vii) Illumination of launching-areas;

(viii) Use of each item of survival equipment;

(ix) Instructions for emergency repair of lifesaving appliances;

(x) Use of radio lifesaving-appliances, with illustrations;

(xi) Use of sea anchors;

(xii) Use of engine and accessories, where appropriate;

(xiii) Recovery of survival craft and rescue boats, including stowage and securing;

(xiv) Hazards of exposure and need for warm clothing;

(xv) Best use of survival craft for survival; and

(xvi) Methods of retrieving personnel, including use of helicopter-mounted rescue gear (slings, baskets, stretchers) and vessel's line-throwing apparatus.

(b) An abandon-ship drill must be held on each OSV in alternate weeks. If none can be held during the appointed week, because of bad weather or other unavoidable constraint, one must be held at the first opportunity afterward. If the crew changes more than once in any 2 weeks, one must be held as soon after the arrival of each crew as practicable.

(1) Any crew member excused from an abandon-ship drill must participate in the next one, so that each member participates in at least one each month. Unless more than 25 percent of the members have participated in one on that particular vessel in the previous month, one must be held before the vessel leaves port if reasonable and practicable; but, unless the Commandant (G–MMS) accepts arrangements as at least equivalent, one must be held not later than 24 hours after the vessel leaves port in any event.

(2) On a voyage likely to take more than 24 hours to complete:

(i) A muster of offshore workers must be held on departure. The master shall ensure that each worker is assigned to a survival craft and is told where to find it. Each person in charge of such a craft shall maintain a list of workers assigned to the craft.

(ii) On a voyage likely to take 24 or fewer hours to complete, the master shall call the attention of each offshore worker to the emergency instructions required by § 131.330.

(3) Each abandon-ship drill must include:

(i) Summoning of crew members and offshore workers to survival craft with the general alarm.

(ii) Simulation of an abandon-ship emergency that varies from drill to drill.

(iii) Reporting of crew members and offshore workers to survival craft, and preparing for, and demonstrating the duties assigned under the procedure described in the station bill for, the particular abandon-ship emergency being simulated.

(iv) Checking to see that crew members and offshore workers are suitably dressed.

(v) Checking to see that immersion suits and lifejackets are correctly donned.

(vi) Lowering of at least one lifeboat (far enough that the davit head has completed its travel and the fall wire of the lifeboat has begun to pay out) or, if no lifeboats are required, lowering of one rescue boat, after any necessary preparation for launching.

(vii) Starting and operating of the engine of the lifeboat or rescue boat.

(viii) Operation of davits used for launching liferafts.

(4) As far as practicable, at successive drills different lifeboats must be lowered to meet the requirements of paragraph (b)(3)(vi) of this section.

(5) As far as practicable, each abandon-ship drill must be conducted as if there were an actual emergency.

(6) Each lifeboat must be launched with its assigned crew aboard during an abandon-ship drill, and be maneuvered in the water, at least once each 3 months that the OSV is operated.

(7) Each rescue boat must be launched with its assigned crew aboard and be maneuvered in the water—

(i) Once each month that the OSV is operated, if reasonable and practicable; but

(ii) In any event, at least once each 3 months that the OSV is operated.

(8) If drills for launching lifeboats and rescue boats are carried out with the vessel making headway, the drills must, because of the danger involved, be practiced only in waters where the drills are safe, under the supervision of an officer experienced in such drills.

(9) At least one abandon-ship drill each 3 months must be held at night, unless the master determines it unsafe.

(10) Emergency lighting for mustering and abandonment must be tested at each abandon-ship drill.

(c) The master of each OSV carrying immersion suits shall ensure that—

(1) Each crew member either—

(i) Wears an immersion suit in at least one abandon-ship drill a month unless it is impracticable because of warm weather; or

(ii) Participates in at least one immersion-suit drill a month that includes donning an immersion suit and being instructed in its use;

(2) In each abandon-ship drill, each offshore worker aboard is instructed in the use of immersion suits; and

(3) Each offshore worker is told at the beginning of the voyage where immersion suits are stowed aboard and is encouraged to read the instructions for donning and using the suits.

(d) Each crew member aboard the OSV must be given training in the use of lifesaving appliances and in the duties assigned by the station bill.

(1) Except as provided by paragraph (d)(2) of this section, training aboard in the use of the vessel's lifesaving appliances, including equipment on survival craft, must be given to each crew member as soon as possible but not later than 2 weeks after the member joins the vessel.

(2) If a crew member is on a regularly scheduled rotating assignment to a vessel, training aboard in the use of the vessel's lifesaving appliances, including equipment on survival craft, must be given to the member not later than 2 weeks after the member first joins the vessel.

(3) Each crew member must be instructed in the use of the vessel's lifesaving equipment and appliances and in survival at sea during alternate weeks, normally in the weeks when abandon-ship drills are not held. If individual instructional sessions cover different parts of the vessel's lifesaving system, they must cover each part of the vessel's lifesaving equipment and appliances each 2 months. Each member must be instructed in at least—

(i) Operation and use of the vessel's inflatable liferafts;

(ii) Problems of hypothermia, first aid for hypothermia, and other appropriate procedures; and

(iii) Special procedures necessary for use of the vessel's lifesaving equipment and appliances in heavy weather.

(4) Training in the use of davit-launched inflatable liferafts must take place at intervals of not more than 4 months on each vessel with such

liferafts. Whenever practicable this must include the inflation and lowering of a liferaft. If this liferaft is a special one intended for training only, and is not part of the vessel's lifesaving system, it must be conspicuously so marked.

(e) Dates when musters are held, details of abandon-ship drills, drills on other lifesaving equipment and appliances, and training aboard must be entered in the OSV's official logbook. Each logbook entry must include the following, as applicable:

(1) Time and date.

(2) Length of drill or training session.

(3) Identification of survival craft used in drills.

(4) Subject of training session.

(5) Statement on the condition of the equipment used.

(6) Unless a full muster, drill, or training session is held at the appointed time, the circumstances and the extent of the muster, drill, or training session held.

§ 131.535 Firefighting training and drills.

(a) A fire drill must be held on each OSV, normally in alternate weeks, It must not be held as part of the abandon-ship drill, nor immediately before or after the abandon-ship drill. If none can be held on schedule, because of bad weather or other unavoidable constraint, one must be held at the next opportunity.

(b) Any crew member excused from a fire drill must participate in the next one, so that each member participates in at least one each month. Unless more than 25 percent of the members have participated in one on that particular OSV in the previous month, one must be held before the vessel leaves port if reasonable and practicable; but, unless the Commandant (G–MMS) accepts arrangements as at least equivalent, one must be held not later than 24 hours after the vessel leaves port in any event.

(c) Each fire drill must include:

(1) Summoning of crew members and offshore workers to their stations with the general alarm.

(2) Simulation of a fire emergency that varies from drill to drill.

(3) Reporting of crew members and offshore workers to stations, and preparing for, and demonstrating of the duties assigned under the procedure described in the station bill for, the particular fire emergency being simulated.

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is working right.

(5) Bringing out of each breathing apparatus and other item of rescue and safety equipment from the emergency-equipment lockers, and demonstrating of the use of each item by the person or persons that will make use of it.

(6) Operation of each watertight door.

(7) Operation of each self-closing fire door.

(8) Closing of each fire door and each door within the fire boundary.

(9) Closing of each ventilation closure of each space protected by a fixed fire-extinguishing system.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) The dates when fire drills are held, and details of training in fire fighting and of fire drills, must be entered in the OSV's official logbook. Each logbook entry must include the following, as applicable:

(1) Time and date.

(2) Length of drill or training session.

(3) Number and lengths of hose used.

(4) Subject of training session.

(5) Statement on the condition of the equipment used.

(6) Unless a full drill or training session is held at the appointed time, the circumstances and the extent of the drill or training session held.

§ 131.540 Operational readiness.

(a) Except as provided by § 131.545(e) of this subpart, each lifesaving appliance and each item of equipment for a lifeboat, liferaft, survival craft, rescue boat, life float, or buoyant apparatus must be in good working order and ready for immediate use before the OSV leaves port and at any time when the vessel is away from port.

(b) Each deck where a lifeboat, liferaft, survival craft, rescue boat, life float, or buoyant apparatus is stowed, launched, or boarded must be kept clear of obstructions that would interfere with the breaking out, launching, or boarding of the lifesaving appliance.

§ 131.545 Maintenance in general.

(a) For each lifesaving appliance, the manufacturer's instructions for maintenance of the appliances aboard must be aboard and must include the following:

(1) Checklists for use in the inspections required by § 131.565(a) of this subpart.

(2) Instructions for maintenance and repair.

(3) A schedule of periodic maintenances.

(4) A diagram of lubrication points with the recommended lubricants.

(5) A list of replaceable parts.

(6) A list of sources of spare parts.

(7) A log for records of inspections, maintenance, and repair.

(b) The master shall ensure that maintenance is carried out to comply with the instructions required by paragraph (a) of this section.

(c) For lifesaving appliances constructed on or before July 1, 1986, paragraph (a) of this section need be complied with only to the extent that appliances' manufacturers' instructions are available.

(d) The OCMI may accept, instead of the instructions required by paragraph (a) of this section, a program for planned shipboard maintenance that includes the items listed in that paragraph.

(e) If lifeboats and rigid liferafts are maintained and repaired while the OSV is under way, there must be enough lifeboats and rigid liferafts available for use on each side of the vessel to accommodate each person aboard the vessel.

(f) Except in an emergency, no extensive repairs or alterations may be made to any lifesaving appliance without advance notice to the OCMI. As far as possible, each repair or alteration must be made to comply with the requirements for the appliance in subchapter Q of this chapter. The OCMI may require each appliance that has been extensively repaired or in any way altered to undergo each pertinent test in subchapter Q.

(g) The master shall report each emergency repair or alteration to a lifesaving appliance, as soon as practicable, either to the OCMI in the next ports in the United States where the OSV calls or, if the OSV does not regulatory call at ports in the United States, to the OCMI responsible for the next foreign port where the vessel calls.

(h) No lifeboat or rigid liferaft may be repaired or reconditioned for use on an OSV other than the one it was originally built for, unless specifically permitted by the OCMI. The lifeboat or rigid liferaft must be so repaired or reconditioned under the supervision of the OCMI, unless the OCMI specifically allows otherwise.

§ 131.550 Maintenance of falls.

(a) Each fall used with a launching appliance must be turned end for end oat intervals of not more than 30 months.

(b) Each fall used with a launching appliance must be renewed either when necessary because of deterioration or after the passage of not more than 5 years, whichever occurs earlier.

(c) Each fall used with a launching appliance must have a corrosion-resistant tag permanently marked with—

(1) The date the new fall was installed; and

(2) The last date, if any, the fall was turned end for end.

§ 131.555 Spare parts and repair equipment.

Spare parts and repair equipment must be provided for each lifesaving appliance and component that either is subject to excessive wear or consumption or needs to be replaced regularly. These parts and equipment must be kept aboard the OSV, except that, if the vessel operates daily out of the same shore base, they may be kept at that base.

§ 131.560 Weekly tests and inspections.

The following tests and inspections must be carried out weekly:

(a) Each lifesaving appliance and launching appliance must be visually inspected to ensure that it is ready for use.

(b) Each engine of a lifeboat or a rescue boat must be run ahead and astern for not less than 3 minutes, unless the ambient temperature is below the minimal temperature required for starting the engine.

(c) The general alarm system must be activated.

(d) Each battery for starting the engine of a lifeboat or a rescue boat, or for energizing a searchlight, a fixed installation of a radio in a lifeboat, or a portable radio, must be brought up to full charge at least once a week if the battery is—

(1) Of a type that requires recharging; and

(2) Not connected to a device that keeps it continuously charged.

(e) The transmitter of each fixed installation of a radio in a lifeboat and that of each portable radio must be tried out at least once a week with a dummy antenna load.

§ 131.565 Monthly tests and inspections.

(a) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly against the checklist required by § 131.545(a)(1) of this subpart to ensure that it is aboard and in good order. A report of the inspection, including a statement on the condition of the appliance, must be entered in the OSV's logbook.

(b) Each emergency position indicating radio beacon (EPIRB) and each search and rescue transponder (SART), other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and the output indicator to determine that it works.

§ 131.570 Quarterly inspections.

(a) Each apparatus that controls a lifeboat winch, including motor controllers, emergency switches, master switches, and limit switches, must be inspected once each 3 months.

(b) The inspection must involve the removal of drain plugs and the opening of drain valves to ensure that enclosures are free of water.

(c) The date of the inspection required by this section and the condition of the equipment must be entered in the OSV's logbook.

§ 131.575 Yearly inspections and repair.

(a) Each lifeboat, rescue boat, rigid liferaft, buoyant apparatus, and life float must be stripped, cleaned, and thoroughly inspected and repaired as needed at east once a year. This procedure includes emptying and cleaning each fuel tank and refilling it with fresh fuel.

(b) Each davit, winch, fall, and other launching-appliance must be thoroughly inspected and repaired as needed once a year.

(c) Each item of survival equipment with an expiration date must be replaced during the annual inspection and repair if this date has passed.

(d) Each battery used in an item of survival equipment and clearly marked with an expiration date must be replaced during the annual inspection and repair if this date has passed.

(e) Except a storage battery used in a lifeboat or in a rescue boat, each battery used in an item of survival equipment and not clearly marked with an expiration date must be replaced during the annual inspection and repair.

(f) Compliance with the requirements of this section does not relieve the master or person in charge of the duty of compliance with requirements in § 131.540(a) of this subpart to keep the equipment ready for immediate use when the OSV is under way.

§ 131.580 Servicing of inflatable liferafts, inflatable lifejackets, inflatable buoyant apparatus, and inflated rescue boats.

(a) Each inflatable liferaft, inflatable lifejacket, inflatable buoyant apparatus, and hybrid inflatable lifejacket or work vest must be serviced within 12 months of—

(1) Its initial packing; and

(2) Each subsequent servicing, except when a servicing due after 12 months is delayed not more than 5 months until the next scheduled inspection of the OSV.

(b) Each inflatable liferaft and inflatable buoyant apparatus must be serviced—

(1) Whenever the container of the raft is damaged, or the straps or seal broken; and

(2) In compliance with subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in compliance with subpart 160.176 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in compliance with subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must follow the manufacturers' instructions. Each repair, except an emergency repair made aboard the OSV, must be made at servicing facilities approved by the Commandant (G–MMS).

§ 131.585 Periodic servicing of hydrostatic-release units.

(a) Except a disposable hydrostatic-release unit with an expiration date, each hydrostatic-release unit must be serviced—

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when a servicing due after 12 months is delayed not more than 5 months until the next scheduled inspection of the OSV; and

(2) In compliance with subpart 160.062 of this chapter.

(b) The springs of each spring-tensioned gripe used with a hydrostatic-release unit must be renewed when the unit is serviced and tested.

§ 131.590 Firefighting equipment.

(a) The master shall ensure that the OSV's required firefighting equipment is on board in the prescribed location and always ready for use, other than when the equipment is being serviced.

(b) The master shall, at least once each 12 months, ensure the performance of the tests and inspections of each portable fire extinguisher, semiportable fire extinguisher, and fixed fire-extinguishing system aboard described by Tables 132.350(a) and 132.350(b) of this subchapter.

(c) The master shall keep records of these tests and inspections, showing the dates of their performance, the number or other identification of each unit undergoing them, and the name of the person or company conducting them. The records must be made available to the marine inspector upon request and must be kept for the period of validity of the OSV's current Certificate of Inspection.

(d) The conducting of tests and inspections required by this section does not relieve the master of his responsibility to maintain the prescribed firefighting equipment in working order for use at any time when the OSV is under way.

Subpart F—Logs

§ 131.610 Logbooks and records.

(a) Each OSV must by statute, or by regulations in this subchapter, have certain logbooks or records. The master shall make specific entries required by statute, or by regulations in this subchapter.

(b) 46 U.S.C. 11301 states that a vessel of the United States, except one on a voyage from a port in the United States to a port in Canada, shall have an official logbook if the vessel is—

(1) On a voyage from a port in the United States to a foreign port; or

(2) Of at least 100 gross tons and on a voyage between a port in the United States on the Atlantic Ocean and one on the Pacific Ocean.

(c) The Coast Guard gratuitously furnishes to masters of vessels of the United States the official logbook as Form CG–706B or CG–706C, depending upon the number of persons employed as crew. The first several pages of this logbook list various acts of Congress governing logbooks and the entries required in them.

(d) When a voyage is completed, or after a specified time has elapsed, the master shall file the official logbook containing required entries with the OCMI at or nearest the port where the vessel may be.

(e) Unless an official logbook is required, the owner, operator, or master shall supply an alternative log or record for making entries required by law, including regulations in this subchapter. This log or record need not be filed with the OCMI, but must be kept available for review by a marine inspector for a year after the date that the latest entry concerns.

§ 131.620 Matters that must be logged.

The following matters must be entered in each OSV's logbook:

(a) Safety Orientation for Offshore Workers. As held. See § 131.320.

(b) Tests and inspection of Steering Gear, Whistle, and Means of Communication. Before departure. See § 131.505.

(c) Draft and Loadline Markings. Before leaving port. Ocean and coastwise voyages only. See § 131.510.

(d) Verification of Compliance with Applicable Stability Requirements. See § 131.513.

(e) Periodic Sanitary Inspections. After periodic sanitary inspections made by the master. See § 131.515.

(f) Hatches and Other Openings. Each opening and closing, or departure from port without closing (except by vessels on protected waters). See § 131.520.

(g) Tests of Emergency Lighting and Power. Weekly and twice-yearly. See § 131.525.

(h) Abandon-Ship Training and Drills, and Firefighting Training and Drills. As held. See §§ 131.530 and 131.535.

(i) Inspection of Lifeboat Winches. Once each 3 months. See § 131.570.

§ 131.630 Entries in official logbooks.

On each OSV required to have an Official Logbook, the items required by 46 U.S.C. 11301 must be entered in the logbook, as well as the items required by § 131.620.

Subpart G—Work Vests

§ 131.710 Approved work vests of unicellular plastic foam.

Each buoyant work vest carried aboard must be approved under subpart 160.053 of this chapter or, as a commercial hybrid personal flotation device, under subpart 160.077 of this chapter.

§ 131.720 Use.

(a) An approved buoyant work vest is an item of safety apparel and may be carried aboard for wear by a crew member when working near or over the water.

(b) The vest may not count against an OSV's complement of lifejackets.

(c) The vest may not be worn instead of a lifejacket during a drill.

§ 131.730 Shipboard stowage.

(a) The master shall ensure that no buoyant work vest is stowed where any lifejacket is stowed.

(b) Each space containing a vest must be marked "WORK VEST".

§ 131.740 Shipboard inspections.

Each buoyant work vest must be subject to examination by a marine inspector, to determine its serviceability. If found serviceable, it may continue in service; but no buoyant work vest is stamped as inspected. If not found serviceable, and if determined irreparable by the inspector, a buoyant work vest must be destroyed in the presence of the inspector.

Subpart H—Markings for Fire Equipment and Emergency Equipment

§ 131.800 General.

(a) This section prescribes markings necessary for the guidance of persons aboard in case of an emergency. The markings may be modified or omitted, if they are unnecessary because the OSV is small or particular circumstances warrant and if the OCMI approves.

(b) Each stateroom notice, directional sign, and the like must be printed in English and in other languages appropriate to the service of the OSV.

(c) Where this subpart specifies red letters, letters of a contrasting color on a red background are acceptable.

§ 131.805 General alarm bell, switch.

The switch in the pilothouse that activates the general alarm bell must be clearly and permanently identified either by letters on a metal plate or with a sign in red letters on a suitable background: "GENERAL ALARM."

§ 131.810 General alarm bell.

Each general alarm bell must be identified by red letters at least ½-inch high: "GENERAL ALARM—WHEN BELL RINGS GO TO YOUR STATION."

§ 131.815 Alarm for fixed gaseous fire extinguishing system.

Each alarm for a fixed gaseous fire extinguishing system must be conspicuously identified: "WHEN ALARM SOUNDS, LEAVE AT ONCE: [CARBON DIOXIDE] [HALON] BEING RELEASED."

§ 131.820 Branch lines of fire extinguishing system.

The valves of each branch line in the fire extinguishing system must be plainly and permanently marked, indicating the spaces served.

§ 131.825 Controls of fire extinguishing system.

Each control cabinet or space containing a valve or manifold for a fire extinguishing system must be distinctly marked in conspicuous red letters at least 2 inches high: "FIRE APPARATUS FOR [CARBON DIOXIDE] [HALON]".

§ 131.830 Fire hose stations.

Each fire station must be identified in red letters and figures at least 2 inches high: "FIRE STATION #1," "* * * 2," "* * * 3," and so on. Where the hose is not so stowed in the open or behind glass as to be readily seen, this identification must be so placed as to be readily seen from a distance.

§ 131.835 Portable fire extinguishers.

(a) Except as provided by paragraph (b) of this section, each portable fire extinguisher must be marked with a number, and the site of its stowage must be marked with a corresponding number at last ½-inch high.

(b) If only one type and size of portable fire extinguisher is carried, the number may be omitted.

§ 131.840 Emergency lighting.

Emergency lighting must be marked with a letter "E" at least ½-inch high.

§ 131.845 Instructions for shift of steering gear.

(a) Instructions, including diagrams, for a shift of steering gear and for a shift to the alternative steering stations must be on water-resistant material and posted at each steering station and in the steering-engine room, relating, in order, the different steps to take in either shift.

(b) The instructions must indicate each clutch or pin to be "in" or "out" and each valve or switch to be "open" or "closed" in a shift to any means of steering for which the OSV is equipped.

(c) The instructions must specify that each steering wheel or lever, and each rudder, must be amidships before any shift of steering gear or steering stations.

(d) Each clutch, gear, wheel, lever, valve, or switch used during any shift of steering gear or steering stations must be numbered or lettered on a metal plate or painted so that the numbers or letters are recognizable at a reasonable distance.

§ 131.850 Rudder orders.

At each steering station there must be installed a suitable notice on the wheel or lever, or in some other place directly in the helmsman's line of sight, to indicate the direction in which to turn the wheel or lever for "right rudder" and for "left rudder."

§ 131.855 Lifeboats and rescue boats.

(a) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 3 inches high and in a color contrasting to that of the boat:

(1) The name of the OSV.

(2) The number of the boat. (The boats on each side of the vessel must be numbered from forward to aft. If there are boats on both sides of the vessel, the odd numbers must be on the starboard side.)

(3) For each vessel in ocean service, the name of the port whose marking on the stern is required under subpart 67.13 of this chapter.

(b) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in letters and numbers at least 1½ inches high:

(1) The length and beam of the boat.

(2) The number of persons the boat will hold. This number must—

(i) Be the number of persons the boat is equipped for; and

(ii) Not be greater than the number of persons the boat is approved for, as shown on its nameplate.

(c) The following must be plainly marked or painted on each lifeboat and rescue boat, in at least two places visible from above the boat, in letters and numbers at least 3 inches high and in a color contrasting to that of the boat:

(1) The number of persons the boat will hold.

(2) The name of the OSV.

(d) The name of the OSV must be plainly marked or painted on each oar and paddle.

(e) Each lifeboat and rescue boat must be marked with Type II retro-reflective material approved under subpart 164.018 of this chapter. The arrangement of the retro-reflective material must comply with IMO Resolution A.658(16).

§ 131.860 Rigid liferafts.

(a) The following must be plainly marked or painted, near one entrance of each rigid liferaft, in letters and numbers at least 3 inches high and in a color contrasting to that of the raft:

(1) The name of the OSV.

(2) The number of the raft. (Rafts stowed on the sides of the vessel must be numbered as lifeboats must under § 131.855(a)(2).)

(3) For each vessel in ocean service, the name of the port whose marking on the stern of the vessel is required by subpart 67.13 of this chapter.

(b) The length of the painter must be plainly marked or painted, near one entrance of each rigid liferaft, in letters and numbers at least 1½ inches high and in a color contrasting to that of the raft.

(c) The number of persons the rigid liferaft is approved for must be plainly marked or painted, over each entrance to each raft, in letters and numbers at least 4 inches high and in a color contrasting to that of the raft. This number must—

(1) Be the number of persons the raft is equipped for; and

(2) Not be greater than the number of persons the raft is approved for, as shown on its nameplate.

(d) The name of the OSV must be plainly marked or painted on each paddle.

§ 131.865 Inflatable liferafts and inflatable buoyant apparatus.

The number of the inflatable liferaft or inflatable buoyant apparatus and the number of persons it is approved for must be marked or painted, in a conspicuous place in the immediate vicinity of each raft and each apparatus, in letters and numbers at least 1½ inches high and in a color contrasting to that of the raft or apparatus. Each raft or apparatus stowed on the side of an OSV must be numbered like a liferaft, in compliance with § 97.37–40 of this chapter. No letters or numbers may go on the raft or on the container of the apparatus.

§ 131.870 Life floats and buoyant apparatus.

(a) The name of the OSV must be plainly marked or painted on each life float or buoyant apparatus, and on each oar and paddle.

(b) The number of persons each life float or buoyant apparatus is approved for must be plainly marked or painted on each float or apparatus in letters and numbers at least 1½ inches high and in a color contrasting to that of the float or apparatus. This number must—

(1) Be the number of persons the float or apparatus is equipped for; and

(2) Not be greater than the number of persons the float or apparatus is approved for, as shown on its nameplate.

§ 131.875 Lifejackets, immersion suit, and ring life buoys.

(a) Each lifejacket immersion suit, and ring life buoy must be marked in block capital letters with the OSV's name.

(b) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 2 inches high with the number, identity or IMO symbol specified by IMO Resolution A.760(18), and size of the items stowed inside.

(c) Each ring life buoy on an OSV in ocean service must be marked in block capital letters with the name of the port whose marking on the stern of the vessel is required by subpart 67.13 of this chapter.

(d) Each stowage site for a ring life buoy must be marked "LIFE BUOY" or marked with the IMO symbol.

(e) Each lifejacket must be marked with Type I retro-reflective material approved under subpart 164.018 of this chapter. The arrangement of the retro-reflective material must comply with the IMO Resolution A.658(16).

(f) Each ring life buoy must be marked with Type I or II retro-reflective material approved under subpart 164.018 of this chapter. The arrangement of the retro-reflective material must comply with IMO Resolution A.658(16).

§ 131.880 Fire hoses and axes.

Each fire hose and axe must be marked with the OSV's name.

§ 131.885 Portable magazine chests.

Each portable magazine chest must be marked in letters at least 3 inches high: "PORTABLE MAGAZINE CHEST—FLAMMABLE: KEEP FIRE AND LIGHTS AWAY."

§ 131.890 EPIRBs and SARTs.

The name of the OSV must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB) and on each Search and Rescue Transponder (SART), except on an EPIRB or SART—

(a) In an inflatable liferaft; or

(b) Permanently installed in a survival craft.

§ 131.893 Watertight doors and watertight hatches.

Each watertight door in a bulkhead that must be watertight in compliance with the requirements in part 174 of this chapter, and each watertight hatch, must be marked on both sides in letters at least 2 inches high: "WATERTIGHT DOOR—KEEP CLOSED EXCEPT FOR PASSAGE" or "WATERTIGHT HATCH—KEEP CLOSED WHEN NOT IN USE".

§ 131.896 Remote stopping systems.

The remote stopping systems required by § 129.540 of this subchapter must be clearly marked to show what system each controls.

§ 131.899 Fire dampers.

Each fire damper installed within the boundary of a space protected by a fixed fire extinguishing system must be fitted with an indicator showing whether the damper is open or closed and be marked with red letters at least ½-inch high stating "FIRE DAMPER" and, as otherwise appropriate, identifying the space served by the fire damper.

Subpart I—Miscellaneous

§ 131.905 Statutory penalties.

(a) The marine-safety statutes and criminal statutes impose penalties for violating the applicable provisions of this subchapter. Penal proceedings include:

(1) Assessment and collection of civil monetary penalty.

(2) Criminal prosecution, where no loss of life results.

(3) Criminal prosecution for manslaughter, where loss of life results from violating marine-safety statutes or regulations or from misconduct, negligence, or inattention to duty.

(4) Libel against vessel.

(b) 46 U.S.C. Chapter 77 allows, in addition to the foregoing, the suspension or revocation of licenses, certificates, or documents issued by the Coast Guard, for incompetence, misconduct, or negligence or for violating marine-safety statutes or regulations.

§ 131.910 Notices to mariners and aids to navigation.

Each master and mate shall acquaint himself or herself with the latest information published by the Coast Guard and the U.S. Navy regarding aids to navigation in the area in which the OSV operates.

§ 131.915 Persons allowed in pilothouse and on navigational bridge.

No person may be in the pilothouse while the OSV is under way, unless connected with the navigation of the vessel or authorized for good cause by the master or mate on watch.

§ 131.920 Level of manning.

Each OSV must carry the personnel required by the Certificate of Inspection, as determined by the OCMI, based on an evaluation under part 15 of this chapter.

§ 131.925 Compliance with provisions of Certificate of Inspection.

The master of the OSV shall ensure compliance with each provision of the Certificate of Inspection. Nothing in this subchapter prevents the master's diverting the vessel from the route prescribed in the Certificate or taking other steps necessary and prudent to assist vessels in distress or to handle similar emergencies.

§ 131.930 Display of stability letter.

If the Coast Guard issues a stability letter under § 170.120 of this chapter, the letter must be readily available to the person on watch in the pilothouse of the OSV.

§ 131.935 Prevention of oil pollution.

Each OSV must be operated in compliance with, among others, 33 CFR parts 151, 155, and 156.

§ 131.940 Marine sanitation device.

Each OSV with installed toilet facilities must have a marine sanitation device in compliance with 33 CFR part 159.

§ 131.945 Display of plans.

Each OSV must have permanently exhibited, for the guidance of the master and crew members, general arrangement plans showing for each deck the various fire-retardant bulkheads together with particulars of the—

(a) Fire-detection systems;

(b) Manual-alarm systems;

(c) Fire-extinguishing systems;

(d) Fire doors;

(e) Means of ingress to the different compartments; and

(f) Ventilating-systems, including the—

(1) Positions of the dampers;

(2) Site of the remote means of stopping the fans; and

(3) Identification of the fans serving each section.

§ 131.950 Placard on lifesaving signals and helicopter recovery.

Each OSV must have readily available to the person on watch in the pilothouse a placard (Form CG–811) containing instructions—

(a) For the use of lifesaving signals set forth in Regulation 16, Chapter V, of SOLAS 74/83; and

(b) In helicopter recovery.

The signals must be employed by vessels or persons in distress when communicating with lifesaving stations and maritime rescue unit.

§ 131.955 Display of license.

Each master and licensed officer on an OSV shall conspicuously display his or her license in compliance with 46 U.S.C. 7110.

§ 131.960 Use of auto-pilot.

During the use of the automatic pilot, the master shall ensure that—

(a) It is possible to immediately establish manual control of the OSV's steering;

(b) A competent person is ready at any time to take over that control; and

(c) The shift from automatic control of the vessel's steering to manual and the reverse is made by, or under the supervision of, the master or officer of the watch.

§ 131.965 Sounding of whistle.

No OSV may sound its whistle within any harbor limits of the United States unless it needs to.

§ 131.970 Unauthorized lighting.

No master of an OSV may authorize or permit the OSV's carrying of any lighting not required by law that will interfere in any way with any other vessel's distinguishing the OSV's navigation lighting.

§ 131.975 Searchlights.

No person may flash, or cause to be flashed, the rays of a searchlight or other blinding light onto the bridge or into the pilothouse of any vessel under way.

§ 131.980 Lookouts and watches.

Nothing in this part exonerates any master or officer of the watch from the consequences of any neglect to keep a proper lookout or to maintain a proper fire watch, or of any neglect of any precaution that may be required by the ordinary practice of seamen, by general prudence, or by the special circumstances of the case. A master shall set added watches when necessary to guard against fire or other danger and to give an alarm in case of accident or disaster.

PART 132—FIRE-PROTECTION EQUIPMENT

Subpart A—Fire Main

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132.110 Piping.
132.120 Fire pumps.
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Subpart B—Portable and Semiportable Fire Extinguishers

132.210 Classification.
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132.310 Fixed fire-extinguishing systems for paint lockers.
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132.360 Fire axes.
132.370 Added requirements for fixed independent and portable tanks.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—Fire Main

§ 132.100 General.

(a) Except as provided by paragraphs (b) and (c) of this section, each OSV must be equipped with a fire main that complies with this subpart.

(b) Each OSV of less than 100 gross tons and not more than 65 feet in length may have, instead of a fire main that complies with this subpart, a hand-operated pump and a hose capable of providing an effective stream of water to each part of the vessel.

(c) A garden hose of nominal inside diameter of at least ⅝-inch complies with paragraph (b) of this section if the hose is—

(1) Of good commercial grade and is constructed of an inner rubber tube, plies of braided-fabric reinforcement, and an outer cover made of rubber or equivalent fire-resistant material; and

(2) Fitted with a commercial garden-hose nozzle of high-grade bronze or equivalent metal capable of providing a solid stream and a spray pattern.

§ 132.110 Piping.

(a) Except as provided for liftboats by § 134.180 of this subchapter, each fitting, flange, valve, and run of piping must meet the applicable requirements of part 128 of this subchapter. Piping must be—

(1) Hot-dip galvanized;

(2) At least extra-heavy schedule; or

(3) Of a suitable corrosion-resistant material.

(b) Each distribution cut-off valve must be marked in compliance with § 131.820 of this subchapter.

§ 132.120 Fire pumps.

(a) Except as provided by § 132.100(b) of this subpart, each OSV must be equipped with one self-priming power-driven fire pump capable of delivering a single stream of water from the highest hydrant, through the hose and nozzle at a Pitot-tube pressure of at least 50 psi (pounds a square inch).

(b) Each fire pump must be fitted on the discharge side with a pressure gauge.

(c) Each fire pump must be fitted on the discharge side with a relief valve set to relieve at either 25 psi in excess of the pressure necessary to maintain the requirements of paragraph (a) of this section or 125 psi, whichever is greater. The relief valve is optional if the pump is not capable of developing pressure exceeding the greater amount.

(d) If two propulsion engines are installed, the pump required by paragraph (a) of this section may be driven by one of the engines. If only one propulsion engine is installed, the pump must be driven by a source of power independent of the engine.

(e) If two fire pumps are installed, and if one pump remains available for service on the fire main at any time, the other pump may be used for other purposes.

(f) Each fire pump must be capable of providing the quantity of water required to comply with paragraph (a) of this section while meeting any other demands placed on it, as by a branch line connected to the fire main for washing the anchor or the deck.

(g) No branch line may be directly connected to the fire main except for fighting fires or for washing the anchor or the deck. Each discharge line for any other purpose must be clearly marked and must lead from a discharge manifold near the fire pump.

(h) When a fire monitor is connected to the fire main system, it must lead from a discharge manifold near the fire pump.

(i) The total cross-section of piping leading from a fire pump may not be less than that of the discharge of the pump.

(j) In no case may a pump connected to a line for flammable or combustible liquid be used as a fire pump.

§ 132.130 Fire stations.

(a) Except as provided by paragraph (b) of this section, fire stations must be so numerous and so placed that each part of the OSV accessible to persons aboard while the vessel is being operated, and each cargo hold, are reachable by at least two effective spray patterns of water. At least two patterns must come from separate hydrants. At least one pattern must come from a single length of hose.

(b) Each part of the main machinery space, including the shaft alley if it contains space assigned for the stowage of combustibles, must be reachable by at least two streams of water. Each stream must come from a single length of hose, from a separate fire station.

(c) Each fire station must be numbered in compliance with § 131.830 of this subchapter.

(d) Each part of the fire main on a weather deck must be either protected against freezing or fitted with cut-out valves and drain valves so that exposed parts of the piping may be shut off and drained in freezing weather. Except when closed against freezing, the cut-out valves must be sealed open.

(e) Each outlet at a fire hydrant must be 1½ inches in diameter and, to minimize the possibility of kinking, must be fitted so that no hose leads upward from it.

(f) Each fire station must be equipped with a spanner suitable for use on the hose there.

(g) Each fire station must have at least one length of fire hose. Each hose on the station must have a fire nozzle approved under subpart 162.027 of this chapter that can discharge both solid stream and water spray.

(h) Each pipe and fire hydrant must be placed so that the fire hose may be easily coupled to them. Each station must be readily accessible. No deck cargo may interfere with access to the stations; each pipe must run as far away from this cargo as practicable, to avoid risk of damage by the cargo.

(i) Each fire hydrant or "Y" branch must be equipped with a valve such that the fire hose may be removed while there is pressure on the fire main.

(j) Each fire hydrant connection must be of brass, bronze, or equivalent metal. The threads of fire hose couplings must be of brass or other suitable corrosion-resistant material and comply with NFPA 1963.

(k) Each fire hydrant must have a fire hose 1½ inches in diameter, 50 feet in length, connected to an outlet, for use at any time.

(l) No fire hose, when part of the fire equipment, may be used for any purpose except fire-fighting, fire drills, and testing.

(m) A suitable hose rack or other device must be provided for each fire hose. Each rack on a weather deck must be placed so as to protect its hose from heavy weather.

(n) Each section of fire hose must be lined commercial fire hose, or lined fire hose that meets Standard 19 of Underwriters Laboratories, Inc. (UL). Hose that bears the UL label as lined fire hose complies with this section.

Subpart B—Portable and Semiportable Fire Extinguishers

§ 132.210 Classification.

(a) Each portable fire extinguisher and semiportable fire extinguisher is classified by a symbol combining letter and number. The letter indicates the type of fire that the unit should extinguish; the number indicates the relative size of the unit.

(b) The types of fire are:

(1) "A"—fires in ordinary combustible materials, where the quenching and cooling effect of quantities of either water or solutions containing large percentages of water is essential.

(2) "B"—fires in flammable liquids, greases, and the like, where the blanketing effect of a smothering-agent is essential.

(3) "C"—fires in electrical equipment, where the use of nonconducting extinguishing-agent is essential.

(c) The sizes of units run from "I" for the smallest to "V" for the largest. Sizes I and II are portable fire extinguishers; sizes III, IV, and V, which exceed 55 pounds in gross weight, are semiportable fire extinguishers and must be fitted with suitable hose and nozzle or other practicable means to cover any part of the space involved. Typical portable and semiportable fire extinguishers are set forth by Table 132.210 of this section.

TABLE 132.210

Classification		Halon 1211,1301, and 1211–1301 mixtures, pounds	Foam, gallons	Carbon dioxide, pounds	Dry chemical, pounds
Type	Size				
A	II	.....	2½	.....	.....
B	I	2½	.....	4	2
B	II	10	2½	15	10
B	III	.....	12	35	20
B	IV	.....	20	50	30
B	V	.....	40	100	50
C	I	2½	.....	4	2
C	II	10	.....	15	10

(d) Each portable fire extinguisher and semiportable fire extinguisher must have permanently attached an identification plate that gives the name of the extinguishing-agent, the capacity of the agent in gallons or pounds, the classification of the extinguisher expressed by letter or letters indicating the type or types of fire for which it is intended, and the identifying mark of the manufacturer.

§ 132.220 Installation.

(a) Portable fire extinguishers approved under subpart 162.028 of this chapter and semiportable fire extinguishers approved under subpart 162.039 of this chapter must be installed in compliance with Table 132.220 of this section. The placement of the extinguisher must satisfy the OCMI. The OCMI may require such additional extinguishers as the OCMI deems necessary for the proper protection of the OSV.

TABLE 132.220.—CARRIAGE OF PORTABLE AND SEMIPORTABLE FIRE EXTINGUISHERS

Space	Classification (see § 132.210)	Number and placement
Safety areas:		
Communicating passageways	A–II	1 in each main passageway, not more than 150 feet apart (permissible in stairways).
Pilothouse	C–I	2 in vicinity of exit.
Service spaces:		
Galleys	B–III or C–II	1 for each 2,500 square feet or fraction thereof, suitable for hazards involved.
Paint lockers	B–II	1 outside space, in vicinity of exit.
Accessible baggage and storerooms	A–II	1 for each 2,500 square feet or fraction thereof, located in vicinity of exits, either inside or outside spaces.
Work shops and similar spaces	A–II	1 outside space in vicinity of exit.
Machinery spaces:		
Internal-combustion propulsion-machinery	B–II	1 for each 1,000 brake horsepower, but not fewer than 2 nor more than 6.
	B–III	1 required. (*), (**)
Electric propulsion motors or generators of open type.	C–II	1 for each propulsion motor or generator unit.
Auxiliary spaces:		
Internal combustion	B–II	1 outside space in vicinity of exit. (**)
Electric motors and emergency generators	C–II	1 outside space in vicinity of exit. (**)

(*) Not required where a fixed gaseous fire-extinguishing system is installed.
(**) Not required on OSVs of less than 300 gross tons.

(b) Each semiportable fire extinguisher must be mounted or otherwise placed in the open so as to be readily visible.

(c) Except as provided by paragraph (d) of this section, each portable fire extinguisher must be mounted or otherwise placed in the open or behind glass so as to be readily visible.

(d) A portable fire extinguisher may be mounted or otherwise placed in an enclosure together with the fire hose, if the enclosure is marked in compliance with § 131.830 of this subchapter.

(e) Each portable fire extinguisher and its station must be numbered to comply with § 131.835 of this subchapter.

(f) No portable or semiportable fire extinguisher with a nameplate indicating that it needs protection from freezing may be mounted or otherwise placed where freezing temperatures are foreseeable.

§ 132.230 Spare charges.

(a) Except as provided by paragraph (b) or (c) of this section, each OSV must carry 50% spare charges for portable fire extinguishers required by § 132.220 of this subpart.

(b) An OSV may—rather than comply with paragraph (a) of this section—carry one extra extinguisher of the same classification.

(c) If extinguishers of a particular classification cannot be readily recharged by crew members, an OSV must—rather than comply with paragraph (a) of this section—carry one more extinguisher of that classification.

(d) Each spare charge must be packaged so as to minimize the hazards to personnel recharging the extinguishers.

§ 132.240 Stowage of semiportable fire extinguishers.

The frame or support of each semiportable fire extinguisher of size III, IV, or V must be secured to prevent the extinguisher from shifting in heavy weather.

Subpart C—Miscellaneous

§ 132.310 Fixed fire extinguishing systems for paint lockers.

(a) Except as provided by paragraph (b) of this section, a fixed gaseous fire extinguishing system or another approved fixed fire extinguishing system must be installed in each paint locker.

(b) No fixed fire extinguishing system need be installed in a paint locker that is—

(1) Less than 60 cubic feet in volume;

(2) Accessible only from the weather deck; and

(3) Not adjacent to a tank for flammable or combustible liquid.

(c) Each fixed fire extinguishing system installed must comply with part 95 of this chapter or be approved by the Commanding Officer, Marine Safety Center.

§ 132.320 Helicopter-landing decks.

Each OSV with a helicopter-landing deck must meet the fire fighting requirements of part 108 of this chapter.

§ 132.330 Fire monitors.

(a) Each fire monitor of the fire main system must be fitted with a shut-off valve at the monitor and at the connection to the fire main discharge manifold required by § 132.120(h) of this part.

(b) Fire monitor piping must comply with § 132.110 of this part.

(c) Each fire monitor must be protected against over-pressure.

§ 132.340 Equipment installed although not required.

An OSV may install equipment for detection of and protection against fires beyond that required by this subchapter, unless the excess equipment in any way endangers the vessel or the persons aboard. This equipment must be listed and labeled by a nationally recognized testing laboratory.

§ 132.350 Tests and inspections of fire-extinguishing equipment.

(a) Each master of an OSV shall ensure that the tests and inspections, of fire-extinguishing equipment, described by paragraph (b) of this section are performed—

(1) Every 12 months; or

(2) Not later than the next inspection for certification, unless the total time from the date of the last tests and inspections exceeds 15 months.

(b) The master shall provide satisfactory evidence of the servicing of fire-extinguishing equipment, required by paragraph (c) of this section, to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance, and hydrostatic tests.

(c) The following tests and inspections of fire extinguishing equipment must be performed by the owner, operator, or master, or by a qualified servicing facility, to verify compliance with paragraph (a) of this section:

(1) Each portable fire extinguisher must be inspected, maintained, and hydrostatically tested as required by Chapter 4 of NFPA 10 with the frequency specified by NFPA 10. Carbon-dioxide and halon portable fire extinguishers must be refilled when the weight loss of net content exceeds that specified for fixed systems by Table 132.350. Further, each must be examined for excessive corrosion and for general condition. A tag issued by a qualified servicing facility, and attached to each extinguisher, will be acceptable evidence that the necessary maintenance has been conducted.

(2) Each semiportable fire extinguisher and each fixed fire-extinguishing system must be—

(i) Inspected and tested as required by Table 132.350 of this subpart;

(ii) Inspected, tested, and marked as required by §§ 147.60 and 147.65 of this chapter;

(iii) Inspected to ensure that piping, controls, and valves are in good general condition with no excessive corrosion; and

(iv) Inspected and tested to determine that alarms and ventilation shutdowns for each fire-extinguishing system operates properly.

TABLE 132.350.—TESTS OF SEMIPORTABLE AND FIXED FIRE-EXTINGUISHING SYSTEMS

Type of system	Test
Carbon dioxide	Weigh cylinders. Recharge if weight loss exceeds 10% of weight of charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Halon	Weigh cylinders. Recharge if weight loss exceeds 5% of weight of charge. If the system has a pressure gauge, also recharge if pressure loss (adjusted for temperature) exceeds 10%. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.

TABLE 132.350.—TESTS OF SEMIPORTABLE AND FIXED FIRE-EXTINGUISHING SYSTEMS—Continued

Type of system	Test
Dry chemical (cartridge-operated).	Examine pressure cartridge and replace if end is punctured or if cartridge has leaked or is in unsuitable condition. Inspect hose and nozzle to see that they are clear. Insert charged cartridge. Ensure that dry chemical is free-flowing (not caked) and that extinguisher contains full charge
Dry chemical (stored pressure).	See that pressure gauge is in operating range. If not, or if seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge if pressure is low or if dry chemical is needed.
Foam (stored pressure)	See that pressure gauge, if there is one, is in the operating range. If it is not, or if seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge if pressure is low or if foam is needed. Replace premixed agent every 3 years.

(3) The fire-main system must be operated, and the pressure checked at the remotest and highest outlets. Each fire hose must be subjected to a test pressure, equivalent either to the maximal pressure to which it may be subjected in service or to 100 psi, whichever is greater.

(4) All systems for detecting smoke and fire, including sensors and alarms, must be inspected and tested.

§ 132.360 Fire axes.

(a) Each OSV of less than 100 gross tons must carry one fire axe.

(b) Each OSV of 100 or more gross tons must carry two fire axes.

(c) Each fire axe must be so placed as to be readily available in an emergency.

(d) Each fire axe must be so placed in the open or behind glass that it is readily visible; except that, if the enclosure is marked in compliance with § 131.830 of this subchapter, the axe may be placed in an enclosure together with the fire hose.

§ 132.370 Added requirements for fixed independent and portable tanks.

(a) When carrying fixed independent tanks on deck or portable tanks in compliance with § 125.110 of this subchapter, each OSV must also comply with §§ 98.30–37 and 98.30–39 of this chapter.

(b) When carrying portable tanks in compliance with § 125.120 of this subchapter, each OSV must also comply with 49 CFR 176.315.

PART 133—RESERVED FOR LIFESAVING SYSTEMS

PART 134—ADDED PROVISIONS FOR LIFTBOATS

Sec.

134.100 Applicability.
134.110 Initial inspection.
134.120 Inspection for certification.
134.130 New construction.
134.140 Structural standards.
134.150 Liftboat-jacking systems.
134.160 Freeboard markings.
134.170 Operating manual.
134.180 Piping for fire-main suction.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

§ 134.100 Applicability.

This part, as well as parts 125 through 133 of this subchapter, applies to each liftboat of United States flag to which this subchapter applies.

§ 134.110 Initial inspection.

Liftboat jacking systems, liftboat legs, liftboat leg pads, and arrangements for supply of water to fire mains, as well as the items listed by § 126.340 of this subchapter, will normally be inspected during the initial inspection to determine whether the liftboat was built in compliance with developed plans and meets applicable regulations.

§ 134.120 Inspection for certification.

Liftboat jacking systems, liftboat legs, liftboat leg pads, and arrangements for supply of water to fire mains, as well as the items listed by § 126.430 of this subchapter, will normally be inspected during an inspection for certification to determine whether the liftboat is in satisfactory condition and fit for the service intended.

§ 134.130 New construction.

Each applicant for an original Certificate of Inspection and for approval of plans must submit, as well as three copies of those required by § 127.110 of this subchapter, three copies of the following plans:

(a) Operating Manual for Liftboats.

(b) Legs, details of supporting structure, and structural calculations.

§ 134.140 Structural standards.

(a) Except as provided by paragraph (b) of this section, each liftboat must comply with the ABS's "Rules for Building and Classing Mobile Offshore Drilling Units", assuming a steady wind speed of 100 knots, as follows:

(1) The main hull structure, legs, and supporting structure must comply with Section 3/4.3 of the Rules.

(2) The calculations required by Section 3/4.3 of the Rules must assume the vessel to be in the most adverse loading conditions described by Sections 3/2.1 and 3/4.1 of the Rules.

(3) The calculations on column-buckling required by Section 3/4.3 of the Rules, must employ an effective-length factor, "K", of not less than 2.0.

(4) The calculations on single-rack jacking systems required by Sections 3/2.1 and 3/4.1 of the Rules must include an extra bending moment caused by the most adverse eccentric loading of the legs.

(b) The standard of any classification society, or other established standard acceptable to the Commandant (G–MMS), may be used.

(c) Upon submittal of the plans required by §§ 127.110 and 133.130 of this subchapter, the standard used in the design must be specified.

(d) If no established standard is used in the design, detailed design calculations must be submitted with the plans required by §§ 127.110 and 133.130 of this subchapter.

§ 134.150 Liftboat-jacking systems.

(a) For this subchapter, liftboat jacking systems are vital systems and must comply with Sections 4/1.13.1 through 4/1.13.3 of the ABS's "Rules for Building and Classing Mobile Offshore Drilling Units" as well as meet the applicable requirements of Part 128 of this subchapter.

(b) Each control system for a liftboat jacking system must be designed so that loss of power, loss of pressure in the hydraulic system, or low hydraulic-fluid level will activate a visible and audible alarm at the operating station and will not result in the liftboat's uncontrolled descent.

§ 134.160 Freeboard markings.

Freeboard markings required by § 174.260 of this subchapter must be both permanently scribed or embossed and painted white or yellow on a dark background.

§ 134.170 Operating manual.

(a) Each liftboat must have aboard an operating manual approved by the Coast Guard as complying with this section.

(b) The operating manual must be available to, and written so as to be easily understood by, the crew members of the liftboat and must include:

(1) A table of contents and general index.

(2) A general description of the vessel, including—

(i) Major dimensions;

(ii) Tonnages; and

(iii) Load capacities for—

(A) Various cargoes;

(B) Crane hook; and

(C) Helicopter landing deck.

(3) Designed limits for each mode of operation, including—

(i) Draft;

(ii) Air gap;

(iii) Wave height;

(iv) Wave period;

(v) Wind;

(vi) Current;

(vii) Temperatures; and

(viii) Other environmental factors.

(4) The heaviest loads allowable on deck.

(5) Information on the use of any special cross-flooding fittings and on the location of valves that may require closure to prevent progressive flooding.

(6) Guidance on preparing the unit for heavy weather and on what to do when heavy weather is forecast, including when critical decisions or acts—such as leaving the area and heading for a harbor of safe refuge, or evacuating the vessel—should be accomplished.

(7) Guidance on operating the vessel while changing mode and while preparing the vessel to make a move, and information on how to avoid structural damage from shifting loads during heavy weather.

(8) Information on inherent operational limitations for each mode and on changing modes, including preloading instructions.

(9) Guidance on the proper procedures for discovering the flooding of a normally buoyant leg or leg pad, precautionary information concerning the effects on stability of flooded legs, and what to do upon discovering the flooding of a normally buoyant leg or leg pad.

(10) A description, a diagram, operating guidance for the bilge system, and an alternative method of dewatering.

(11) A general arrangement diagram showing the locations of—

(i) Watertight and weathertight compartments;

(ii) Openings in the hull and structure;

(iii) Vents and closures;

(iv) Shutdowns for mechanical and electrical emergencies, and for emergencies affecting ventilation;

(v) Alarms for flooding and for too-high and too-low levels;

(vi) Fire and gas detectors; and

(vii) Access to different compartments and decks.

(12) A list of shutdown locations for emergencies and guidance on restarting mechanical and electrical equipment and equipment for ventilation after shutdowns.

(13) A diagram of the hazardous locations (if applicable).

(14) A diagram of the emergency-power system.

§ 134.180 Piping for fire-main suction.

(a) Except as provided by paragraph (b) of this section, suction lines must comply with § 132.110 of this subchapter.

(b) Suction lines that extend below the main deck outside of the hull plating and that supply the fire pump with the liftboat in the elevated mode must be metallic, unless they comply with § 56.60–25(c) of this chapter for vital fresh-water and salt-water service.

PARTS 135 AND 136—[RESERVED]

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

7. The authority citation for Part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

8. Section 170.055(g) is revised, to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(g) "Downflooding angle" means, except as specified by §§ 171.055(f), 172.090(d), 173.095(e), 174.015(b), 174.035(b)(2), and 174.185 of this chapter, the static angle from the intersection of the vessel's centerline and waterline in calm water to the first opening that cannot be closed watertight and through which downflooding can occur.

PART 174—SPECIAL RULES PERTAINING TO VESSELS OF SPECIFIC TYPES

9. The authority citation for Part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

10. Paragraphs (g) and (h) are added to § 174.005, to read as follows:

§ 174.005 Applicability.

* * * * *

(g) Offshore supply vessel inspected under Subchapter L of this chapter.

(h) Liftboat inspected under Subchapter L of this chapter.

11. Subparts G and H are added to Part 174, to read as follows:

Subpart G—Special Rules Pertaining to Offshore Supply Vessels

Sec.

174.180 Applicability.
174.185 Intact stability.
174.190 Collision bulkheads.
174.195 Bulkheads in machinery spaces.
174.200 Damaged stability in machinery spaces.
174.205 Damaged stability in general.
174.210 Watertight doors in watertight bulkheads.
174.215 Drainage of weather deck.
174.220 Hatches and coamings.
174.225 Hull penetrations and shell connections.

Subpart H—Special Rules Pertaining to Liftboats

174.240 Applicability.
174.245 General.
174.250 Unrestricted service.
174.255 Restricted service.
174.260 Freeboard.

Subpart G—Special Rules Pertaining to Offshore Supply Vessels

§ 174.180 Applicability.

Each offshore supply vessel (OSV), except a liftboat inspected under subchapter L of this chapter, must comply with this subpart.

§ 174.185 Intact stability.

(a) Each OSV must be shown by design calculations to meet, under each condition of loading and operation, the minimal requirements for metacentric height (GM) in § 170.170 of this chapter, and in either § 170.173 of this chapter or paragraphs (b) through (e) of this section.

(b) The area under each righting arm curve must be at least 15 foot-degrees up to the smallest of the following angles:

(1) The angle of maximum righting arm;

(2) The downflooding angle; or

(3) 40 degrees.

(c) The downflooding angle must not be less than 20 degrees.

(d) The righting arm curve must be positive to at least 40 degrees.

(e) The freeboard at the stern must be equal to the freeboard calculated to comply with subchapter E of this chapter or to the value taken from Table 174.185, whichever is less.

(f) For paragraphs (b) and (d) of this section, at each angle of heel an OSV's righting arm is calculated after the vessel is permitted to trim free until the trimming moment is zero.

TABLE 174.185.—MINIMAL FREEBOARD AT THE STERN

LBP (feet)	Freeboard at stern (inches)
Less than 65	12
65 but less than 100	15
100 but less than 130	18
130 but less than 155	20
155 but less than 190	22
190 but less than 230	24
230 and greater	26

§ 174.190 Collision bulkhead.

(a) Each OSV must have a collision bulkhead in compliance with §§ 171.085(c)(1), (d), (e)(2), and (f) of this chapter.

(b) Penetration of the collision bulkhead by piping must be minimal, and, where fitted, piping must meet the requirements of §§ 56.50–1(b)(1) and (c) and 128.230 of this chapter.

§ 174.195 Bulkheads in machinery spaces.

(a) The bulkhead in each machinery space of each OSV must be watertight to the bulkhead deck.

(b) Each penetration of, and each opening in, a bulkhead in a machinery space must—

(1) Be kept as high and as far inboard as practicable; and

(2) Except as provided by § 174.210 of this subpart and by paragraph (c) of this section, have means to make it watertight.

(c) No penetration of a bulkhead in a machinery space by a ventilation duct need have means to make the bulkhead watertight if—

(1) Every part of the duct is at least 30 inches from the side of the OSV; and

(2) The duct is continuously watertight from the penetration to the main deck.

(d) Each penetration of a bulkhead in a machinery space by piping must meet the design requirements for material and pressure in subchapter F of this chapter.

§ 174.200 Damaged stability in machinery spaces.

Each OSV must be shown by design calculations to comply, under each condition of loading and operation, with §§ 174.205 (c) through (f) of this subpart in case of damage between any two watertight bulkheads in each machinery space.

§ 174.205 Damaged stability in general.

(a) *Calculations.* Each OSV carrying more then 16 offshore workers must be shown by design calculations to meet, under each afloat condition of loading and operation, the survival conditions in paragraph (e) of this section in case of the damage specified by paragraph (b) of this section.

(b) *Character of damage.* For paragraph (a) of this section, design calculations must show that the OSV can survive damage at any place other than either the collision bulkhead or a transverse watertight bulkhead unless—

(1) The transverse watertight bulkhead is closer than the longitudinal extent of damage, specified by Table 174.205(b), to the adjacent transverse watertight bulkhead; or

(iv) Watertight door in compliance with § 174.210 of this subpart; or

(v) Side scuttle of the non-opening type.

(2) *Angle of heel.* The angle of heel must not exceed 15 degrees.

(3) *Range of stability.* Through an angle of 20 degrees beyond its position of equilibrium after flooding, an OSV must meet the following conditions:

(i) The righting arm curve must be positive.

(ii) The righting arm must be at least 4 inches.

(iii) Each submerged opening must be weathertight. (A tank vent fitted with a ball check-valve is weathertight.)

(4) *Progressive flooding.* Piping, ducts, or tunnels within the assumed extent of damage must be either—

(i) Equipped with arrangements, such as stop check-valves, to prevent progressive flooding of the spaces with which they connect; or

(ii) Assumed in the calculations required by paragraph (a) of this section to permit progressive flooding of the spaces with which they connect.

(f) *Buoyancy of superstructure.* For paragraph (a) of this section, the buoyancy of any superstructure directly above the side damage must be considered in the most unfavorable condition.

(2) The transverse watertight bulkhead has a step or a recess, which must be assumed damaged, if it is both more than 10 feet in length and located within the transverse extent of damage specified by Table 174.205(b) of this section.

(c) *Extent of damage.* For paragraph (a) of this section, damage must consist of penetrations having the dimensions specified by Table 174.205(b) of this section, except that, if the most disabling penetrations are smaller than the penetrations specified by the Table, damage must consist of the smaller penetrations.

(d) *Permeability of spaces.* For paragraph (a) of this section, the permeability of a floodable space must be as specified by Table 174.205(d) of this section.

(e) *Survival conditions.* An OSV is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

(1) *Final waterline.* The final waterline, in the final stage of sinkage, heel, and trim, must be below the lower edge of an opening through which progressive flooding may take place, such as an air pipe, a tonnage opening, an opening closed by a weathertight door or hatch-cover, or a tank vent fitted with a ball check-valve. This opening does not include an opening closed by a—

(i) Watertight manhole-cover;

(ii) Flush scuttle;

(iii) Small hatch-cover for a watertight cargo-tank that maintains the high integrity of the deck;

(iv) Watertight door in compliance with § 174.210 of this subpart; or

(v) Side scuttle of the non-opening type.

(2) *Angle of heel.* The angle of heel must not exceed 15 degrees.

(3) *Range of stability.* Through an angle of 20 degrees beyond its position of equilibrium after flooding, an OSV must meet the following conditions:

(i) The righting arm curve must be positive.

(ii) The righting arm must be at least 4 inches.

(iii) Each submerged opening must be weathertight. (A tank vent fitted with a ball check-valve is weathertight.)

(4) *Progressive flooding.* Piping, ducts, or tunnels within the assumed extent of damage must be either—

(i) Equipped with arrangements, such as stop check-valves, to prevent progressive flooding of the spaces with which they connect; or

(ii) Assumed in the calculations required by paragraph (a) of this section to permit progressive flooding of the spaces with which they connect.

(f) *Buoyancy of superstructure.* For paragraph (a) of this section, the buoyancy of any superstructure directly above the side damage must be considered in the most unfavorable condition.

TABLE 174.205(b).—EXTENT OF DAMAGE

Collision Penetration	
Longitudinal extent (vessels with LBP not greater than 143 feet).	.1L or 6 feet, whichever is greater in length.
Longitudinal extent (vessels with LBP greater than 143 feet).	10 feet + .03L.
Transverse extent*	30 inches.

TABLE 174.205(b).—EXTENT OF DAMAGE—Continued

Vertical extent	From baseline upward without li

*The transverse penetration applies inb from the side of the vessel, at right angle the centerline, at the level of the deep st loadline.

TABLE 174.205(d).—PERMEABILITY OF SPACES

Spaces and tanks	Permeability
Storerooms	60 percent.
Accommodations	95 percent.
Machinery	85 percent.
Voids and passageways.	95 percent.
Dry-bulk tanks	0(*) or 95 percent.
Consumable-liquid tanks.	0(*) or 95 percent.
Other liquid tanks	0(*) 0(**) or 95 percent.

*Whichever results in the more disabling condition.

**If tanks are partly filled, the permeability must be determined from the actual density and amount of liquid carried.

§ 174.210 Watertight doors in watertight bulkheads.

(a) This section applies to each OSV with watertight doors in bulkheads made watertight in compliance with this chapter.

(b) Except as provided by paragraph (c) of this section, each watertight door must comply with subpart H of part 170 of this chapter.

(c) A Class-1 door may be installed at any place if—

(1) The door has a quick-acting closing-device operative from both sides of the door;

(2) The door is designed to withstand a head of water equivalent to the depth from the sill of the door to the bulkhead deck or 10 feet, whichever is greater; and

(3) The OSV's pilothouse contains a visual indicator showing whether the door is open or closed.

(d) Each watertight door must be marked in compliance with § 131.893 of this chapter.

(e) If a Class-1 door is installed, the OSV's stability letter will require the master to ensure that the door is always closed except when being used for access.

§ 174.215 Drainage of weather deck.

The weather deck must have open rails to allow rapid clearing of water, or must have freeing ports in compliance with § 42.15–70 of this chapter.

§ 174.220 Hatches and coamings.

(a) Each hatch exposed to the weather must be watertight, except that the following hatches may be only weathertight:

(1) Each hatch on a watertight trunk that extends at least 17½ inches above the weather deck.

(2) Each hatch in a cabin top.

(b) Each hatch cover must—

(1) Have securing-devices; and

(2) Be attached to the hatch frame or coaming by hinges, captive chains, or other devices to prevent its loss.

(c) Each hatch that provides access to quarters or to accommodation spaces for crew members or offshore workers must be capable of being opened and closed from either side.

(d) Except as provided by paragraph (e) of this section, a weathertight door with a permanent watertight coaming at least 15 inches high must be installed for each opening in a deckhouse or companionway that—

(1) Gives access into the hull; and

(2) Is in an exposed place.

(e) If an opening in a deckhouse or companionway has a Class 1 watertight door installed, the height of the watertight coaming need only accommodate the door.

§ 174.225 Hull penetrations and shell connections.

Each overboard discharge and shell connection except an engine exhaust must comply with §§ 56.50–95 and 128.230 of this chapter.

Subpart H—Special Rules Pertaining to Liftboats

§ 174.240 Applicability.

Each liftboat inspected under Subchapter L of this chapter must comply with this subpart.

§ 174.245 General.

Each liftboat must comply with §§ 174.210 through 174.225.

§ 174.250 Unrestricted service.

Each liftboat not limited to restricted service must comply with Subpart C of this part in each condition of loading and operation.

§ 174.255 Restricted service.

This section applies to each liftboat unable to comply with § 174.250 and limited to restricted service as defined by § 125.160 of this chapter.

(a) *Intact stability.* (1) Each liftboat must be shown by design calculations to meet, under each condition of loading and operation afloat, the following requirements:

(i) Those imposed by § 174.045, given a "K" value of at least 1.4.

(ii) A range of positive stability of at least 10 degrees extending from the angle of the first intercept of the curves of righting moment and wind healing moment, either to the angle of the second intercept of those curves or to the angle of heel at which downflooding would occur, whichever angle is less.

(iii) A residual righting energy of at least 5 foot-degrees between the angle of the first intercept of the curves of righting moment and wind heeling moment, either to the angle of the second intercept of those curves or to the angle of heel at which downflooding would occur, whichever angle is less.

(2) For this section, each wind heeling moment must be calculated as prescribed by § 174.055 of this part using winds of 60 knots for normal conditions of operation afloat and of 70 knots for severe-storm conditions of operation afloat.

(3) For paragraph (a)(1) of this section, the initial metacentric height must be at least 1 foot for each leg position encountered while afloat including the full range of leg positions encountered while jacking.

(b) *Damaged stability.* (1) Each liftboat must be designed so that, while it is in each of its normal operating conditions, its final equilibrium waterline will remain below the lowest edge of any opening through which additional flooding can occur if the liftboat is subjected simultaneously to—

(i) Damage causing flooding described by paragraph (b)(4) of this section; and

(ii) A wind heeling moment calculated in compliance with § 174.055(b) using a wind speed of 50 knots.

(2) Each liftboat must have a means of closing off each pipe, ventilation system, and trunk in each compartment described by paragraph (b)(4) of this section if any part of the pipe, ventilation system, or trunk is within 30 inches of the hull.

(3) For compliance with paragraph (b)(1) of this section, no compartment on the liftboat may be ballasted or pumped out to compensate for the flooding described by paragraph (b)(4) of this section.

(4) For compliance with paragraph (b)(1) of this section, each compartment within 30 inches of the hull, excluding the bottom of the liftboat, between two adjacent main watertight bulkheads and the uppermost continuous deck or first superstructure deck where superstructures are fitted must be assumed subject to simultaneous flooding.

(5) In the calculations required by paragraph (b)(1) of this section, the

permeability of a floodable space must be as listed by Table 174.205(b).

(c) *On-bottom stability.* Each liftboat must be shown by design calculations to exert a continuous downward force on each footing when the vessel is supported on the bottom with footings and is subjected to the forces of waves, currents, and winds of 70 knots under normal conditions of operation, and winds of 100 knots under severestorm conditions of operation when elevated in a safe place, if this place is other than a harbor of safe refuge. Waves and currents must be appropriate for the winds and place.

§ 174.260 Freeboard.

(a) Each liftboat not required to obtain and maintain a loadline in compliance with subchapter E of this chapter must place markings on each side of the vessel amidships. These markings must each consist of a horizontal line 18 inches in length and 1 inch in height. The upper edges of the markings must be at a distance equal to the authorized freeboard measured vertically below the intersection of the continuation outwards of the upper surface of the weather deck and the outer surface of the shell. This distance must be at least 24 inches.

(b) The markings required by paragraph (a) of this section may not be submerged in any condition of loading or operation.

PART 175—GENERAL PROVISIONS

12. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 175.01–3 also issued under the authority of 44 U.S.C. 3507.

13. Section 175.05–2 is revised to read as follows:

§ 175.05–2 Applicability to offshore supply vessels.

(a) Offshore supply vessels of more than 15 but less than 100 gross tons, contracted for before March 15, 1996, are subject to inspection under this subchapter. Offshore supply vessels of more than 15 but less than 100 gross tons, contracted for on or after March 15, 1996, are subject to inspection under subchapter L of this chapter.

(b) Each OSV permitted grandfathering under paragraph (a) of this section must complete construction and have a Certificate of Inspection by March 16, 1996.

14. Section 175.10–40 is revised to read as follows:

§ 175.10–40 Offshore supply vessel.

(a) An offshore supply vessel is a vessel that is propelled by machinery other than steam, that is of above 15 gross tons and of less than 500 gross tons, and that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(b) An existing offshore supply vessel is one that was contracted for before March 15, 1996.

(c) A new offshore supply vessel is one contracted for on or after March 15, 1996.

Subpart 175.35—[Removed]

15. Subpart 175.35, consisting of § 175.35–1, is removed.

Dated: November 3, 1995.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 95–27870 Filed 11–15–95; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

Single Family Mortgage Insurance—Special Forbearance Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. FR–3626–F–02]

RIN 2502–AG20

Single Family Mortgage Insurance—Special Forbearance Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule permits the mortgagee and the mortgagor to enter into a special forbearance agreement without obtaining the prior approval of HUD requiring the payment of the arrearage before maturity of the mortgage. It also eliminates the present gap in reimbursement of debenture interest that occurs if the mortgagor files a petition in bankruptcy after entering into a special forbearance agreement. The purpose of this change is to encourage mortgagees to make greater use of special forbearance procedures when the mortgagor is temporarily unable to make full regular mortgage payments. When special forbearance agreements are utilized, but subsequently fail, mortgagees are entitled to collect all unpaid interest on their claim, from the oldest unpaid installment to foreclosure initiation. Generally this provides for inclusion of at least two additional months of interest on the insurance claim reimbursement.

EFFECTIVE DATE: This final rule is effective on December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1672, or, for hearing and speech impaired, (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This rule revises current HUD regulations governing forbearance procedures in the context of the servicing of FHA insured single-family home mortgage loans. HUD currently has two special forbearance procedures. Under 24 CFR 203.614(a), the mortgagee must obtain prior approval from HUD for the special forbearance agreement to be valid. A special forbearance agreement with HUD approval may require increased payments prior to mortgage maturity. Under 24 CFR 203.614(b), the mortgagee may reduce or suspend the mortgagor's required payments during the forbearance period without HUD approval, but may not increase payments to recover arrearage until after mortgage maturity. This rule adds a new paragraph (c) to § 203.614, which will permit the mortgagee to reduce the required payments to an amount not less than 50% of the regular mortgage payments for a forbearance period of up to nine (9) months. On expiration of the forbearance period, but no sooner than four (4) months after the execution of the agreement, the mortgagee may, without HUD approval, increase the required payments to not more than one and one-half (1½) times the regular payment amount until all arrearages are repaid.

Limitations

The new procedure contains several limitations to keep arrearages from accumulating to an amount that the mortgagor cannot reasonably be expected to repay before loan maturity. These limitations include:

- The agreement must be executed not later than the due date of the seventh unpaid monthly installment;
- The monthly payments may be reduced but not suspended;
- The period of reduced payments may not exceed nine (9) months;
- The increase in payments may not be required earlier than four (4) months after execution of the agreement;
- The first payment may be any amount mutually agreed upon by the mortgagor and mortgagee, and must be due within 30 days of execution of the agreement; and
- The agreement is not considered a valid special forbearance agreement until the first required payment under the terms of the agreement is made.

If greater forbearance relief is needed, the mortgagee can utilize the existing forbearance procedures, or can provide a less restrictive work out plan under which the mortgagee may not be entitled to the payment of additional note interest on that portion of the claim covered by the special forbearance.

Conditions for New Procedures

The conditions for granting the new form of special forbearance relief are as follows:

(1) As under the existing regulations, the mortgagor must establish to the satisfaction of the mortgagee that the mortgagor does not own other property subject to an FHA-insured mortgage and that the default was caused by circumstances beyond the control of the mortgagor.

(2) During the forbearance period, the forbearance agreement must provide for payment of not less than 50 percent of the regular mortgage payments, nor more than the regular mortgage payments. The Secretary, by administrative instruction, may permit a different required minimum percentage, but in no event will it be more than 100 percent of the regular mortgage payment.

(3) The period of reduced payments may not exceed nine (9) monthly payments after execution of the forbearance agreement.

(4) The agreement must provide for an increase in payments, in order to recover arrearage accruing prior to and during the forbearance period. The increase in the payments is to begin no earlier than four (4) months after execution of the agreement.

(5) The increased payments may not exceed one and one-half (1½) times the regular mortgage installments.

(6) The agreement must provide for resumption of the regular mortgage payments after the total amount of arrearage is repaid.

(7) The agreement must be executed no later than the due date of the seventh full unpaid monthly payment.

(8) The agreement must require that the first payment is due within 30 days of the execution of the agreement.

(9) The agreement is not a valid special forbearance agreement until the first required payment under the terms of the agreement is made.

Other Changes

Current regulations have the effect that if State law, bankruptcy, or assignment considerations preclude a mortgagee from initiating foreclosure within 90 days after the mortgagor fails to meet the requirements of a special forbearance agreement, then neither mortgage nor debenture interest is paid on the insurance claim for the period from 90 days after the date of the mortgagor's failure to meet the requirements of a special forbearance agreement until the date foreclosure is initiated (§§ 203.402a and 203.410(a)(3)). This rule eliminates this lapse in interest payments by revising § 203.410(a)(3) to provide that debenture interest payments begin the day after the date to which mortgage interest is computed.

In addition, current regulations do not specifically identify mortgage assignment consideration as a possible reason for delaying foreclosure initiation; this rule has been expanded to do so.

Section 203.355 has been amended to add paragraph (h), which requires that, if the mortgagor fails to meet the requirements of a special forbearance agreement and the failure continues for a period of 60 days, the mortgagee must initiate foreclosure within the later of nine (9) months after the date of default, or 90 days following the mortgagor's failure to meet the special forbearance requirements.

Finally, the rule makes a conforming revision to § 203.355(c). This section currently requires mortgagees to commence foreclosure within 60 days after the expiration of any prohibition on foreclosure that is found in State law or Federal bankruptcy law when such prohibition did not permit commencement of foreclosure within prescribed time requirements. The rule also applies this 60-day requirement when such prohibitions do not permit the commencement of foreclosure after the mortgagor's failure to meet the requirements of a special forbearance agreement.

Public Comments

The Department published a proposed rule on January 23, 1995 at 60 FR 4391.

Six commenters responded to the proposed rule: one association, three mortgage lenders, one consultant and one provider of legal services. Three of the six generally supported the rule, but recommended certain changes. Another commenter fully agreed with the rule as proposed. Two of the comments took issue with the need for any amendment to the rule, indicating that the existing regulation already authorized some of the proposed rule's features. The Department is persuaded by those comments indicating that the proposed rule may have been too restrictive to encourage widespread use. Consequently, the final rule contains several revisions.

Below is a listing of the comments received and the Department's responses.

1. Two commenters indicated that any "reasonable" arrangement that would be acceptable to the mortgagee should qualify as a special forbearance, and the test of whether the agreement was "reasonable" should rest with a subsequent review of the file. HUD acknowledges that a mortgagee should and does have the flexibility to enter into any reasonable arrangement that is acceptable to that mortgagee to cure a default. However, with respect to such arrangement qualifying as a "special forbearance" agreement entitling the mortgagee to significant additional amounts on a claim payment, HUD has a responsibility to place such restrictions as are deemed appropriate to safeguard against the possibility of overpayments from the Insurance Funds. With regard to evaluating the appropriateness of the agreement through a post-claim review of the file, the rule is specifically intended to avoid this. If all the requirements of this new special forbearance rule are met, HUD does not intend to second-guess the mortgagee's decision after the fact.

2. One commenter indicated that the criterion requiring payments under the agreement to be not less than 50% had no intrinsic value and therefore should be modified. As the rule specifically provides for the ability of the Commissioner to adjust this criterion at any time through administrative instruction, HUD does not agree that this criterion should be removed. After the Department has had some practical experience with this regulation, a decision will be made as to whether an adjustment to the minimum acceptable payment is advisable.

3. One commenter indicated that requiring the execution of the agreement within four (4) months of delinquency may prove to be too restrictive and therefore counterproductive. The Department is persuaded by this argument and this criterion has been liberalized in the final rule. Agreements which are executed by the due date of the *seventh* unpaid monthly installment will meet the criteria for a valid special forbearance agreement.

4. One commenter indicated that the period during which reduced payments are allowed was too short and did not provide the mortgagee with sufficient flexibility. The Department is persuaded by this comment and has revised the final rule to extend the allowable period of reduced payments from six (6) to nine (9) months.

5. Several commenters indicated in general comments that the final rule could be made more useful if the eligibility criteria were revised to be less restrictive. As indicated above, the Department is persuaded by this general observation as evidenced by language contained in the final rule that eases some of the criteria contained in the proposed rule.

The following is a summary of the revisions contained in the final rule.

(1) The period within which an agreement may be entered has been extended from four (4) months to the due date of the seventh full unpaid installment.

(2) The period the mortgagee may provide forbearance has been extended from six (6) months to nine (9) months.

(3) The period of time the mortgagee must wait after executing the agreement before it can require increased payments has been reduced from six (6) months to four (4) months.

(4) The agreement can allow up to 30 days after execution before the initial payment is required, rather than requiring payment to be made at the time the agreement is executed.

6. Two of the commenters disagreed with the need for this rule, indicating that the existing regulation already enables mortgagees to increase payments under special forbearance agreements without HUD approval. In addition, both of these commenters indicated that the proposed rule would adversely affect the interest of mortgagees with respect to mortgages already insured or approved for insurance, and therefore should be prospective only, under the provisions of § 203.499. HUD has made a determination that the current regulation does not authorize the mortgagee to increase payments under a special forbearance agreement prior to the maturity date without HUD approval. HUD, therefore, disagrees that this rulemaking is unnecessary, and HUD maintains its position that this change is necessary to enable the mortgagee to increase payments under an agreement that qualifies as a "special forbearance" agreement, prior to the loan maturity date. HUD disagrees with the assertion that this rule would have a negative impact on loans already insured. The use of this additional special forbearance provision is completely elective on the part of the mortgagee; furthermore, HUD sees no adverse effect on loans currently insured. To the contrary, HUD believes this additional special forbearance provision provides a significant benefit to the mortgagee. Therefore, it is HUD's position that the prospectivity requirement of § 203.499 is not applicable to this rule.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 (a) and (l) of the HUD regulations, the policies and procedures contained in this rule relate only to loan terms and individual actions involving single-family housing and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to lenders and do not impinge upon the relationship between the Federal government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would permit, but would not require, use of a special forbearance procedure by mortgagees. In addition, the number of cases to which the procedure would apply is limited.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance program number is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and record keeping requirements, Solar energy.

Accordingly, part 203 of title 24 of the Code of Federal Regulations is amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

2. In § 203.355, the introductory text of paragraph (a) and paragraph (c) are revised and new paragraph (h) is added, to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Except as provided in paragraphs (b) through (h) of this section, upon default of a mortgage the mortgagee shall take one of the following actions. Such action shall be taken within nine (9) months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345, 203.346, or §§ 203.650 through 203.660:

* * * * *

(c) *Prohibiting of foreclosure within time limits.* If assignment consideration under §§ 203.650 through 203.660, the laws of the State in which the mortgaged property is located, or Federal bankruptcy law:

(1) Do not permit the commencement of foreclosure within the time limits described in paragraphs (a), (b), (g), and (h) of this section, the mortgagee must commence foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited; or

(2) Require the prosecution of a foreclosure to be discontinued, the mortgagee must recommence the foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited.

* * * * *

(h) *Special Forbearance.* If the mortgagor fails to meet the requirements of a special forbearance under § 203.614 and the failure continues for 60 days, the mortgagee must commence foreclosure within the later of nine (9) months after the date of default or 90 days after the mortgagor's failure to meet the special forbearance requirements.

3. Section 203.402a is revised to read as follows:

§ 203.402a Reimbursement for uncollected interest.

The mortgagee shall be entitled to receive an allowance in the insurance settlement for unpaid mortgage interest if the mortgagor fails to meet the requirements of a forbearance agreement entered into pursuant to § 203.614 and this failure continues for a period of 60 days. The interest allowance shall be computed to:

(a) The earliest of the applicable following dates, except as provided in paragraph (b) of this section:

(1) The date of the initiation of foreclosure;

(2) The date of the acquisition of the property by the mortgagee by means other than foreclosure;

(3) The date the property was acquired by the Commissioner under a direct conveyance from the mortgagor;

(4) Ninety days following the date the mortgagor fails to meet the requirements of the forbearance agreement, or such other date as the Commissioner may approve in writing prior to the expiration of the 90-day period; or

(5) The date the mortgagee sends the mortgagor notice of eligibility to participate in the Pre-Foreclosure Sale procedure; or

(b) The date foreclosure is initiated or a deed in lieu is obtained, or the date such actions were required by § 203.355(c), whichever is earlier, if the commencement of foreclosure within the time limits described in § 203.355(a), (b), (g), or (h) is precluded by:

(1) Assignment consideration under §§ 203.650–203.660;

(2) The laws of the State in which the mortgaged property is located; or

(3) Federal bankruptcy law.

4. In § 203.410, the heading of paragraph (a) is revised and paragraph (a)(3) is revised to read as follows:

§ 203.410 Issue date of debentures.

(a) *Conveyed properties, claims without conveyance, pre-foreclosure sales*—* * *

(3) As of the day after the date to which mortgage interest is computed as specified in § 203.402a, if the insurance settlement includes an allowance for uncollected interest in connection with a special forbearance.

* * * * *

5. In § 203.614, a new paragraph (c) is added, to read as follows:

§ 203.614 Conditions of special forbearance.

* * * * *

(c) The mortgagee may grant special forbearance relief providing for increased mortgage payments without the approval of the Secretary, subject to the following conditions:

(1) The conditions of paragraph (b)(1) of this section are met;

(2) The agreement is executed not later than the due date of the seventh full unpaid monthly payment;

(3) Within 30 days after the date of the execution of the agreement, the mortgagor must pay an amount agreed upon by the mortgagor and the mortgagee, but not less than the first monthly installment due under the agreement;

(4) The agreement is not valid until the full initial payment is made under the terms of the agreement.

(5) The written special forbearance agreement shall:

(i) Provide for the payment for a period not to exceed nine (9) months after execution of the agreement, of:

(A) Not less than 50 percent of the regular mortgage payments, but not more than the regular mortgage payment; or

(B) Such other percentage as the Secretary, by administrative instruction, may determine, but in no event more than the regular mortgage payment;

(ii) Provide for an increase of payments to not more than one and one-half (1½) times the regular mortgage payments, commencing no sooner than four (4) months after execution of the agreement; and

(iii) Provide for resumption of the regular mortgage payments after the total unpaid amount accruing prior to and during the forbearance period is repaid.

Dated: November 8, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–28306 Filed 11–15–95; 8:45 am]

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H.R. 1905/P.L. 104–46

Energy and Water Development Appropriations Act, 1996 (Nov. 13, 1995; 109 Stat. 402)

H.R. 2589/P.L. 104–47

To extend authorities under the Middle East Peace Facilitation Act of 1994 until December 31, 1995, and for other purposes. (Nov. 13, 1995; 109 Stat. 423)

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WASHINGTON, DC

[Two Sessions]

WHEN: November 28 at 9:00 am
December 5 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

LONG BEACH, CA

WHEN: December 12, 1995 at 9:00 am

WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802

RESERVATIONS: 310–980–3447

SEATTLE, WA

[Two Sessions]

WHEN: December 13, 1995 at 9:00 am and 1:00 pm

WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115

RESERVATIONS: 206–526–6507

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 943

[No. 95-40]

Pricing of Services

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation regarding the pricing of item processing services by the Federal Home Loan Banks (Banks). The amendment eliminates the requirement for Finance Board approval of prices for item-processing and other services authorized in this regulation and deletes the reference to a specifically designated office to act on behalf of the Finance Board regarding this section. The approval requirement is eliminated as it constitutes an unnecessary administrative burden.

EFFECTIVE DATE: November 17, 1995.

FOR FURTHER INFORMATION CONTACT: Edwin J. Avila, Financial Analyst, (202) 408–2871; Edward J. Reedy, Associate Director, (202) 408–2959, Regulatory Oversight Division; or Eric M. Raudenbush, Attorney-Advisor, (202) 408–2932, Office of General Counsel; Federal Housing Finance Board, 1777 F Street NW., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. General

Section 11(e)(2)(A) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1431(e)(2)(A), authorizes the Banks to engage in the collection and settlement of any negotiable or nonnegotiable items or instruments of payment drawn on or issued by Bank members or institutions eligible to apply for membership under section 4 of the Bank Act. *Id.* section 1424. In order to preclude the Banks' status as Government-Sponsored Enterprises from providing a competitive advantage over private institutions, section 11(e)(2)(B) of the Bank Act requires that the Banks make charges for these item-processing services that are to be determined and regulated by the Finance Board consistent with the statutory pricing principles established for Federal Reserve Banks. Section 943.6 of the Finance Board's regulations implements this requirement by providing that, in addition to covering operating expenses, service pricing must cover other costs that would have been borne, and reflect the imputed rate of return that would have been earned, if the Banks were private corporations. *See* 12 CFR 943.6. As currently written, § 943.6(a) requires that Banks charge for item-processing services in a manner "approved by the [Finance] Board or its designee." *Id.* § 943.6(a). More specifically, § 943.6(c) requires that the Director of the Finance Board's District Banks Directorate (DBD) at least annually review and approve Banks' prices for item-processing services, in accordance with the established pricing principles. *Id.* § 943.6(c). All prices for Bank services authorized by Part 943 must be published annually in the **Federal Register**. *Id.*

Pursuant to the Bank Act and the regulations, the Finance Board has established and promulgated a methodology for allocating the imputed costs and rates of return, whereby a cost of capital adjustment factor, commonly referred to as the Private Sector Adjustment Factor (PSAF), is applied to assets used in providing these services. *See* 58 FR 59468 (1993). Under the PSAF Methodology, the FHLBanks are required to impute debt, income taxes and a required return on equity (ROE), which are based on the average rates from a bank holding company (BHC) sample developed by the Federal Reserve Board for use in its PSAF calculation. If a Bank's prior year ROE from its item-processing services equals or exceeds the average ROE attained by the BHC sample group, then the Finance Board considers that Bank's prices for the current year to be in compliance with the regulation. Once a Bank's pricing has been determined to be in compliance with the regulation, any subsequent Finance Board approval is merely perfunctory and, therefore, constitutes an unnecessary administrative burden. The Bank Act does not require Finance Board "approval" of the Banks' prices.

Under current practice, approval of current prices is contingent upon and determined by compliance with the PSAF compliance test. Thus, the Finance Board need go no further than monitor for compliance with this test. The Finance Board is, therefore, amending §§ 943.6 (a) and (c) of its regulations to eliminate the requirement for approval of prices for item-processing and other services authorized in this section, although § 943.6(c) will continue to require Finance Board "review" of such prices for compliance with the regulation. Under the current PSAF Methodology, if a Bank fails the compliance test, it must submit for Finance Board review either: a revised pricing schedule for item processing services; a business plan designed to resolve the non-compliance; or an explanation of the unanticipated or temporary event which led to the failure. The Bank's proposal for dealing with the non-compliance requires the endorsement of the Finance Board or its designee prior to implementation. Accordingly, under the regulation as revised and the PSAF Methodology, explicit Finance Board approval of prices will be required only when a Bank has failed the compliance test.

In addition, the Finance Board is further amending § 943.6(c) to eliminate reference to the Director of DBD or his or her designee. Both the position and office have been changed since the last publication of the rule. The Finance Board finds it to be unnecessarily confusing and burdensome to revise the regulation every time the office or official changes, and believes that the naming of a specific office serves no useful purpose. Hence, the regulation will now refer simply to the Finance Board, as opposed to a specifically designated office within the agency.

II. Administrative Procedure Act

This rulemaking simply removes an existing provision of § 943.6 of the Finance Board regulations that is unnecessary and burdensome to both the agency and the Banks and deletes reference to a specifically designated office to act on behalf of the Finance Board. No additional reporting is required of the Banks. Since the Banks must still comply with the pricing

principles of the regulation, private providers of item processing services will not be adversely impacted. As a result, the Finance Board hereby finds that notice and public comment is unnecessary. Therefore, for good cause shown under 5 U.S.C. 553(b)(B), this rule is exempt from the notice and comment requirements of the Administrative Procedure Act, as well as from the 30-day delay in the effective date pursuant to 5 U.S.C. 553(d)(3).

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, et. seq., do not apply.

List of Subjects in 12 CFR Part 943

Federal home loan banks.

Accordingly, the Federal Housing Finance Board hereby amends chapter IX, title 12, *Code of Federal Regulations*, as set forth below.

PART 943—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

1. The authority citation for part 943 is revised to read as follows:

Authority: 12 U.S.C. 1430, 1431.

2. In Section 943.6, paragraphs (a) and (c) are revised to read as follows:

§ 943.6 Pricing of services.

(a) *General.* Federal Home Loan Banks shall charge for services authorized in this part in a manner consistent with the principles of section 11(A)(c) of the Federal Reserve Act (12 U.S.C. 248a(c)), as interpreted by this part.

* * * * *

(c) *Review and publication.* The Finance Board shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this part for compliance with the principles set forth in paragraphs (a) and (b) of this section. All prices for Bank services authorized in this part will be published annually in the **Federal Register.**

Dated: November 8, 1995.

By the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 95–28176 Filed 11–16–95; 8:45 am]

BILLING CODE 6725–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7241; 34–36479; 35–26407; IC–21500]

RIN 3235–AC48

Adoption of Updated EDGAR Filer Manual and Technical Rule Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is announcing the adoption of an updated EDGAR Filer Manual ("Filer Manual") and providing for its incorporation by reference into the Code of Federal Regulations. It also is adopting technical amendments to rules governing electronic filing on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.

EFFECTIVE DATE: The amendments to Regulation S–T and the new edition of the EDGAR Filer Manual (Release 4.40) will be effective on December 18, 1995. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of December 18, 1995.

FOR FURTHER INFORMATION CONTACT: With respect to the EDGAR Filer Manual, version 4.40: in the Office of Information Technology, David T. Copenhafer at (202) 942–8800; in the Division of Corporation Finance, Sylvia J. Reis or Serena C. Swegle at (202) 942–2940; in the Division of Investment Management, Anthony A. Vertuno or Ruth Armfield Sanders at (202) 942–0591. With respect to the technical rule amendments, in the Division of Corporation Finance, Barbara C. Jacobs or James R. Budge, Office of Disclosure Policy, at (202) 942–2910; in the Division of Investment Management, Anthony A. Vertuno or Ruth Armfield Sanders at (202) 942–0591.

SUPPLEMENTARY INFORMATION: The Commission is announcing the adoption of an updated EDGAR Filer Manual, version 4.40, and technical amendments to Rules 101 [1] and 301 [2] of Regulation S–T.[3]

I. Updated Edgar Filer Manual, Version 4.40

The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.[4] Compliance with the provisions of the Filer Manual is required to assure the timely acceptance and processing of filings made in electronic format.[5] Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[6]

Significant changes to the Filer Manual in this update are as follows: acceptable form types have been modified to accommodate filings made pursuant to Rule 462 [7] of Regulation C,[8] adopted in connection with the Commission's T+3 initiatives;[9] form types have been added to allow electronic filing of Forms 3, 4 and 5 [10] pursuant to Section 16 [11] of the Securities Exchange Act of 1934 [12] and notices of securities sales [13] filed pursuant to Rule 144 [14] under the Securities Act of 1933 ("Securities Act").[15] Rule 301 of Regulation S–T also is being amended to provide for the incorporation by reference of this version of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. As explained more fully below, the revised Filer Manual and the amendment to Rule 301 will be effective on December 18, 1995.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

II. Technical Amendments to Regulation S–T

In addition to the adoption of the updated Filer Manual, the Commission is adopting several technical amendments to the rules governing electronic filing.

A. Voluntary Electronic Filing of Notices of Exempt Preliminary Roll-up Communication

In connection with the adoption of rules implementing the Limited Partnership Rollup Reform Act of 1993,[16] the Commission adopted an exemption from the proxy filing requirements for preliminary communications among security holders for the purpose of determining whether to solicit proxies, consents or authorizations in opposition to a proposed roll-up transaction.[17] In certain instances, a short notice of such communications was required to be filed with the Commission. Release No. 33–7113 indicates that these documents are to be filed either in paper or electronically, at the filer's option, and that programming would be completed to accommodate their electronic submission. Programming was completed shortly after Release No. 33–7133 was issued, and the Commission now is amending Rule 101(b)(2) [18] of Regulation S–T to codify its position that Notices of Exempt Preliminary Roll-up Communications may be filed electronically, at the filer's option.

B. Voluntary Electronic Filing of Forms 3, 4, 5 and 144

When the Commission adopted Regulation S–T in connection with the EDGAR Interim Rules in 1993,[19] it indicated that reports filed pursuant to Section 16 of the Exchange Act, namely, Forms 3, 4 and 5, and notices of securities transactions (Form 144) filed pursuant to Rule 144 of the Securities Act would not initially be permitted to be filed electronically, but that accommodations for electronic submission of those documents would be contemplated at a later date.[20] Recently, the Commission announced that it had taken steps to initiate programming to allow voluntary electronic filing of these forms.[21] This programming has now been completed and the Commission is amending Rule 101(b) to provide that such documents may be filed electronically, at the filer's option.[22] With regard to Form 144, electronic filing initially will be limited to filings where the issuer of the securities is a public company, *i.e.*, a company subject to Securities Exchange Act of 1934 [23] reporting requirements. Filers who desire to file electronically should submit their Forms ID early in order to obtain the access codes they will need to make their filings on EDGAR.[24]

C. Certain Filings Made by the World Bank

The International Bank for Reconstruction and Development (the "World Bank") is required to file with the Commission periodic reports and reports with respect to issuances of primary obligations.[25] The World Bank has requested that it be permitted to file some or all of these reports in electronic format on a voluntary basis through the Commission's EDGAR system, and the Commission has agreed to accommodate this request. Consequently, Rule 101(b) is being amended to allow the voluntary electronic filing of these documents.

D. Documents To Be Submitted in Paper Only Under Sections 8(f), 17(g), and 33 of the Investment Company Act

It was not intended that certain submissions under the Investment Company Act of 1940 ("Investment Company Act") [26] be made in electronic format. Specifically, the EDGAR system was not programmed to accommodate the electronic submission of Form N–8F [27] and related documents under Section 8(f) [28] of, and Rule 8f–1 [29] under, the Investment Company Act; fidelity bonds and related documents submitted under Section 17(g) [30] of, and Rule 17g–1 [31] under, the Act; or litigation materials filed under Section 33 of the Act.[32] The Commission is amending paragraphs (a) and (c) of Rule 101 to reflect the fact that submissions under these sections of the Investment Company Act are to be made in paper format only.

III. Effective Date

Since the Filer Manual and technical rule amendments relate solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[33] It follows that the requirements of the Regulatory Flexibility Act [34] do not apply.

The effective date for the updated Filer Manual and the rule amendments is December 18, 1995. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), the Commission finds that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 4.40 on December 18, 1995. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to avoid confusion to EDGAR filers. In addition, the technical amendments to Regulation S–T do not impose new requirements on filers, but merely provide for additional voluntary means to file certain documents electronically. Therefore, it is not anticipated that any hardships will result from the establishment of an effective date of less than 30 days after publication.

IV. Cost-Benefit Analysis

It is anticipated that the amendments to the EDGAR rules adopted today will not impose any additional costs associated with filing documents with the Commission, since they primarily provide means to file specified documents electronically on a voluntary basis. Filers who choose to file these documents electronically may experience cost savings or additional

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[1] 17 CFR 232.101.

[2] 17 CFR 232.301.

[3] 17 CFR Part 232.

[4] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. Updates to the Filer Manual have been adopted as necessary since that time; the most recent update was adopted on May 22, 1995. Release No. 33–7169 (May 25, 1995) [60 FR 27691].

[5] *See* Rule 301 of Regulation S–T.

[6] *See* Release Nos. 33–6977 (February 23, 1993) [58 FR 14628], IC–19284 (February 23, 1993) [58 FR 14846], 35–25746 (February 23, 1993) [58 FR 14999], and 33–6980 (February 23, 1993) [58 FR 15009] for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. *See also* Release No. 33–7072 (July 8, 1994) [59 FR 36258], relating to implementation of Financial Data Schedules, and Release No. 33–7122 (December 19, 1994) [59 FR 67752], in which the Commission made the EDGAR rules final and applicable to all domestic registrants and adopted minor amendments to the EDGAR rules.

[7] 17 CFR 230.462.

[8] 17 CFR 230.400 to 230.497, inclusive.

[9] *See* Release No. 33–7168 (May 11, 1995) [60 FR 26604].

[10] 17 CFR 249.103, 249.104 and 249.105, respectively.

[11] 15 U.S.C. 78p.

[12] 15 U.S.C. 78a *et seq.*

[13] Form 144, 17 CFR 239.144.

[14] 17 CFR 230.144.

[15] 15 U.S.C. 77a *et seq.*

[16] Government Securities Act Amendments of 1993, Pub. L. 103–202, Title III, 107 Stat. 2344 (1993).

[17] *See* Release No. 33–7113 (December 1, 1994) [59 FR 63676], Rule 14a–6(n) and the Notice of Exempt Preliminary Roll-up Communication [17 CFR 240.14a–104].

[18] 17 CFR 232.101(b)(2).

[19] *See* n. 6, above.

[20] *See* Release No. 33–6977 (February 23, 1993) [58 FR 14628], Section III.C.

[21] *See* Release No. 33–7231 (October 5, 1995) [60 FR 53474].

[22] This functionality will be available as of December 18, 1995.

[23] 15 U.S.C. 78a *et seq.*

[24] Forms ID are available in the EDGAR Filer Manual; they also may be obtained from the Commission's publications unit by calling (202) 942–4046 and asking for Form ID (SEC 2084).

[25] *See* Section 15(a) of the Bretton Woods Agreements Act [22 U.S.C. 286k–1(a)] and Part 285 of Title 17 of the Code of Federal Regulations.

[26] 15 U.S.C. 80a–1 *et seq.*

[27] 17 CFR 274.218.

[28] 15 U.S.C. 80a–8(f).

[29] 17 CFR 270.8f–1.

[30] 15 U.S.C. 80a–17(g).

[31] 17 CFR 270.17g–1.

[32] 15 U.S.C. 80a–32.

[33] 5 U.S.C. 553(b).

[34] 5 U.S.C. 601–612.

costs, depending on their circumstances. Overall, the Commission expects benefits to accrue to both filers and the public at large in cases where filers choose to file in electronic format, primarily because of the promptness and breadth of dissemination associated with electronic filing.

V. Statutory Basis

The updated Filer Manual and the amendments to Regulation S–T are being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[35] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[36] Section 20 of the Public Utility Holding Company Act of 1935,[37] Section 319 of the Trust Indenture Act of 1939,[38] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[39]

List of Subjects in 17 CFR Part 232

Incorporation by reference; Investment companies; Registration requirements; Reporting and recordkeeping requirements; Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.101 is amended by revising paragraphs (a)(1)(iv) and (b)(2); redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(7) and (b)(8) and adding paragraphs (b)(4), (b)(5) and (b)(6); removing paragraph (c)(7) and redesignating paragraphs (c)(8) through (c)(21) as paragraphs (c)(7) through (c)(20); and revising newly redesignated paragraphs (c)(8) and (c)(13) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(iv) Documents filed with the Commission pursuant to Sections 8, 17, 20, and 30 of the Investment Company Act (15 U.S.C. 80a–8, 80a–17, 80a–20, and 80a–29); *provided, however* that in no event shall any submissions under Section 6(c), 8(f), or 17(g) of the Act (15 U.S.C. 80a–6(c), 80a–8(f), or 80a–17(g)) or documents related to applications for exemptive relief under any section of the Act, be made in electronic format; and

* * * * *

(b) *Permitted electronic submissions.* * * *

(1) * * *

(2) Notices of exempt solicitation furnished for the information of the Commission pursuant to Rule 14a–6(g) (§ 240.14a–6(g) of this chapter) and notices of exempt preliminary roll-up communications furnished for the information of the Commission pursuant to Rule 14a–6(n) (§ 240.14a–6(n) of this chapter);

(3) * * *

(4) Forms 3, 4 and 5 (§§ 249.103, 249.104 and 249.105 of this chapter);

(5) Form 144 (§ 239.144 of this chapter), where the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively);

(6) Periodic reports and reports with respect to issuances of primary obligations filed by the International Bank for Reconstruction and Development pursuant to Section 15(a) of the Bretton Woods Agreements Act [22 U.S.C. 286k–1(a)] and Part 285 of Title 17 of the Code of Federal Regulations;

* * * * *

(c) *Documents to be submitted in paper only.* * * *

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(8) Filings related to offerings exempt from registration under the Securities Act of 1933, including filings made pursuant to Regulation A (§§ 230.251–230.264 of this chapter), Regulation B (§§ 230.300–230.346 of this chapter), Regulation D (§§ 230.501–508 of this chapter) Regulation E (§§ 230.601–230.610a of this chapter) and Regulation F (§§ 230.651–230.656 of this chapter), as well as filings on Form 144 (§ 239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively);

* * * * *

(13) Submissions under Sections 6(c), 8(f), 17(g), and 33 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8(f), 80a–17(g), and 80a–32) and documents related to applications for exemptive relief under any section of the Act;

* * * * *

3. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The December 1995 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 4.40)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, NW., Washington, DC 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848–8199.

Dated: November 13, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28413 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 0–17

Title 38 CFR Parts 0 to 17; Republication

CFR Correction

Title 38 CFR parts 0 to 17, revised as of July 1, 1995, is being republished in its entirety. The earlier issuance inadvertently omitted text from §§ 1.554a through 1.602 inclusive. The omitted text should immediately precede § 1.603 on page 44.

BILLING CODE 1505–01–D

[35] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[36] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w and 78*ll*.

[37] 15 U.S.C. 79t.

[38] 15 U.S.C. 77sss.

[39] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 950426116–5264–03; I.D. 102595B]

RIN 0648–AG14

Atlantic Tuna Fisheries; Permit Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS corrects the final regulations governing the Atlantic tuna fisheries by removing Atlantic bonito from the list of species in 50 CFR 285.53(d) for which a private recreational vessel permit is required. When issuing the final regulations it was not the intent of NMFS to extend permit requirements to recreational vessels fishing for bonito and no other Atlantic tunas.

EFFECTIVE DATE: November 16, 1995.

ADDRESSES: Permit applications and reporting forms are available from NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Christopher W. Rogers, 301–713–2347; or Kevin B. Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 issued under the authority of the Atlantic Tunas Convention Act (ATCA). The ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA.

ICCAT requires that contracting parties implement information collection programs to monitor fishing effort and catch in commercial and recreational fisheries. By final rule, NMFS revised and extended the permitting/reporting requirements for the Atlantic tuna fisheries to apply to all Atlantic tunas (60 FR 38505, July 27, 1995). For ICCAT fishery data collection purposes, Atlantic tunas are defined under the regulations to mean: Bluefin tuna, yellowfin tuna, skipjack tuna, bigeye tuna, albacore tuna, and bonito. Atlantic bonito means the fish species *Sarda chiliensis* or *Sarda sarda*.

It was not the intention of NMFS to extend permit requirements to recreational vessels fishing solely for bonito and no other Atlantic tunas. The final rule inadvertently included Atlantic bonito in the list of species for which a recreational vessel permit is required (50 CFR 285.53(d)). This correcting amendment revises the final regulations by removing Atlantic bonito from that list. Removal will not compromise the collection of fishery information required by ICCAT.

This correction does not affect the requirement for vessel permits for operators engaging in the sale of Atlantic tunas (including bonito) nor the requirement for dealer permits for the purchase of Atlantic tunas. Commercial vessel owners taking Atlantic tunas, including charter/headboat operators, and Atlantic tuna dealers must obtain permits by November 15, 1995. Recreational vessels taking any Atlantic tuna other than bonito must obtain permits by January 1, 1996. Permit applications and reporting forms are available from NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799.

Classification

Because this amendment only corrects an error to make an existing set of regulations for which full prior notice and opportunity for comment have been given consistent with the regulatory intent, under 5 U.S.C. 553(b)(B), it is unnecessary to provide prior notice and opportunity for comment.

This amendment imposes no new requirements on anyone subject to these regulations, and removes or relieves an unintended restriction. Accordingly, under 5 U.S.C. 553(d), the correction is being made effective immediately.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is corrected by making the following correcting amendment:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.53 paragraph (d) is revised to read as follows:

§ 285.53 Vessel permits.

* * * * *

(d) *Recreational vessel permits.* Effective January 1, 1996, owners or operators of private recreational vessels are required to obtain vessel permits in order to fish for, catch, retain, or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas. Anglers aboard private recreational vessels must adhere to applicable daily catch limits. Atlantic tunas taken on board private recreational vessels may not be sold.

* * * * *

[FR Doc. 95–28362 Filed 11–16–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 625

[Docket No. 930832–3314; I.D. 110795A]

Summer Flounder Fishery; Commercial Quota Transfer From Maryland to New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of Maryland is transferring 50,000 lb (22,680 kg) of commercial summer flounder quota to the State of New York. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lucy Helvenston, 508–281–9347.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percentage allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1995 calendar year was set equal to 14,690,407 lb (6,663,456 kg), and the allocations to each state were published February 16, 1995 (60 FR 8958). At that time, Maryland was

allocated a quota of 299,551 lb (135,874 kg), and New York was allocated a quota of 1,123,374 lb (509,554 kg).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

Maryland has agreed to transfer 50,000 lb (22,680 kg) of commercial quota to New York. The Regional Director has determined that the criteria set forth in § 625.20(f)(1) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1995 are: Maryland, 249,551 lb (113,194 kg); and New York, 1,173,374 lb (532,233 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–28415 Filed 11–13–95; 4:50 pm]

BILLING CODE 3510–22–F

50 CFR Part 625

[Docket No. 950206038; I.D. 110395A]

Summer Flounder Fishery; Commercial Quota Transfer from North Carolina to Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 50,658 lb (22,978 kg) of commercial summer flounder quota to the Commonwealth of Virginia. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lucy Helvenston, 508–281–9347.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1995 calendar year was set equal to 14,690,407 lb (6,663,456 kg), and the allocations to each state were published February 16, 1995 (60 FR 8958). At that time, North Carolina was allocated a quota of 4,031,905 lb (1,828,841 kg), and Virginia was allocated a quota of 3,131,519 lb (1,420,433 kg). A transfer of commercial summer flounder quota of 7,229 lb (3,279 kg) between North Carolina and New Jersey reduced the summer flounder quota for North Carolina to 4,024,676 lb (1,825,562 kg) which was published August 30, 1995 (60 FR 45107).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 50,658 lb (22,978 kg) of commercial quota to Virginia. The Regional Director has determined that the criteria set forth in § 625.20(f)(1) have been met. The revised quotas for the calendar year 1995 are: North Carolina, 3,974,018 lb (1,802,584 kg); and Virginia, 3,182,177 lb (1,443,411 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–28414 Filed 11–13–95; 4:50 pm]

BILLING CODE 3510–22–F

50 CFR Part 642

[Docket No. 950725189–5260–02; I.D. 062795A]

RIN 0648–XX24

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces changes in the management measures applicable to the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of king mackerel, in accordance with the framework procedure for adjusting management measures for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This rule decreases the total allowable catch (TAC), commercial allocation, and recreational bag limit for Atlantic group king mackerel; increases the TAC and commercial allocation for Atlantic group Spanish mackerel; and changes the commercial vessel trip limits for Gulf group king mackerel. The intended effect is to protect king and Spanish mackerel from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on king and Spanish mackerel.

EFFECTIVE DATE: December 18, 1995, except for § 642.28(b)(2) which is effective November 22, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedure of the FMP, the Councils recommended, and NMFS published, a proposed rule to change certain management measures applicable to the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of king mackerel (60 FR 39698, August 3, 1995). That proposed rule described the FMP framework procedures through which the Councils recommended the specific changes, and described the need and rationale for them. Those descriptions are not repeated here.

The final rule adopts the proposed decrease in the TAC for Atlantic group king mackerel and the proposed increase in the TAC for Atlantic group Spanish mackerel. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. The TACs and their allocations for the fishing year that commenced April 1, 1995, under the established percentages are as follows:

Species	m. lb	m. kg
Atlantic Spanish Mackerel—TAC	9.40	4.26
Recreational allocation (50%)	4.70	2.13
Commercial allocation (50%)	4.70	2.13
Atlantic King Mackerel—TAC	7.30	3.31
Recreational allocation (62.9%)	4.60	2.09
Commercial allocation (37.1%)	2.70	1.22

Comments and Responses

Five letters were received during the comment period. One from the South Atlantic Fishery Management Council (South Atlantic Council) supported the actions proposed for the Atlantic groups of king and Spanish mackerel and requested full approval and expedient implementation. The other four—from a U.S. Congressman, a fisherman, a commercial fishermen's organization, and a seafood association—opposed the commercial trip limits proposed for the Atlantic group king mackerel, contending that the proposals would negatively impact Florida Keys fishermen and are inconsistent with National Standards 1, 2, 4, 5, and 7 of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as discussed below.

Inadequate information in the South Atlantic Council's analyses of impacts on the Florida Keys fishery, and the inadequate opportunity for public comment during the Council framework process, preclude NMFS from determining at this time, whether the proposed commercial trip limits for Atlantic group king mackerel are consistent with the national standards. Available information suggests that impacted fishermen were not provided timely notice of the South Atlantic Council's intent to take final action on the proposed trip limits through the FMP framework process at its April 1995 meeting. Previous notices indicated that the trip limits would be considered in Amendment 8, which is being developed by the South Atlantic Council and the Gulf of Mexico Council (Gulf Council). NMFS believes that if the South Atlantic Council been aware of these deficiencies, it may not have approved the trip limits. For these reasons, NMFS has decided not to implement the proposed trip limits at this time.

National Standard 1 and the FMP

Comment: The commenters state that implementation of the trip limits proposed for Atlantic group king mackerel during the 1995–96 season is unnecessary to reduce harvest and safeguard an overrun of the reduced commercial allocation, 2.70 million lb (1.22 million kg). They commented that the quota will not be reached anyway, and the trip limits would reduce harvest and preclude the taking of the annual commercial allocation and TAC and, thus, the achievement of optimum yield (OY).

Response: Information now available from fishery reporting specialists and the quota monitoring program indicates that the reduced commercial quota will not be reached and the fishery will not be closed during the 1995–96 fishing year, although that was not clear at the time the South Atlantic Council took action. To date, effort and harvest have not increased significantly off southeast Florida as had been expected by the Council; nevertheless, the likelihood of an increase in effort and harvest by presently unemployed fishermen still exists and corrective action may be needed as early as the 1996–97 fishing year. Currently, only a few new entrants, who were displaced from inshore fisheries that closed July 1, 1995, as a result of Florida's net ban or from closed northeast U.S. groundfish fisheries, have joined the fishery. Also, this year's production is paralleling that of the previous year, which totaled about 2.02 million lb (0.92 million kg). Thus, immediate implementation of trip limits appears unnecessary to reduce harvest off south and southeast Florida and prevent overrun of the commercial quota and closure of the commercial fishery before the Carolina fisheries have an opportunity to take their traditional fall/winter catch. Although the latest available information indicates that the approved 1995–96 commercial allocation of 2.70 million lb (1.22 million kg) for the Atlantic group king mackerel probably will not be reached this year that does not preclude future implementation of trip limits as a necessary device to keep landings within the quota and user groups within their allocations.

The FMP specifies that commercial trip limits only may be imposed under framework action when necessary to keep user groups within their allocations. Therefore, NMFS recommends that the Councils consider Amendment 8 as the most expedient vehicle to submit trip limits for review. As in a previous review of these proposed trip limits, NMFS affirms that proposals that potentially reallocate the quota and may affect access for certain fishery participants should be addressed through an FMP amendment. Given the complexity and controversial aspects of these trip limit proposals, NMFS believes they will be more appropriately reviewed and resolved under Amendment 8. The trip limit proposals

have been retained as a management option in Amendment 8, and the Gulf Council also has recommended a 125-fish trip limit as a management option for the Florida Keys fishery for Atlantic group king mackerel.

National Standard 2

Comment: The commenters also contend that the proposed commercial trip limits are inconsistent with the best available scientific information, which indicates that the stock is not overfished or in need of more conservative management measures to reduce mortality and prevent early closure and overharvest of the commercial allocation. They reference the 1995 stock assessment, which reports that Atlantic group king mackerel are not overfished. That report estimates the spawning potential ratio at 55 percent, well over the present 30 percent overfishing level defined in the FMP and the 20 percent level recently recommended by scientific advisers. Therefore, they argue that the implementation of trip limits is unnecessary to curtail harvest in the Florida Keys, inferring that the 40,000 to 50,000 lb (18,144 to 22,680 kg) of king mackerel generally taken there during the April season insignificantly affect the status of the Atlantic group king mackerel.

Response: For the reasons stated above in the response under National Standard 1, NMFS is unable at this time to determine whether the trip limits are based on the best available scientific information. However, increased effort and harvest in the future, coupled with lower estimates of acceptable biological catch (ABC) and a lower TAC, may necessitate future implementation of trip limits to prevent quota overruns and keep user groups within their allocations.

National Standard 4

Comment: The commenters believe that the proposed trip limits would unfairly and inequitably discriminate against participants in the Florida Keys fishery. A 50-fish trip limit would exclude many participants, and thus reallocate their traditional share of the quota to more northerly participants. This would inflict an unfair economic burden on dependent businesses and communities. Fishermen would not be able to operate in the April fishery near the Dry Tortugas, because 50 king mackerel would provide insufficient revenue to offset expenses and generate an acceptable profit per trip. Traditionally, fishermen in the Florida Keys take 3- to 5-day fishing trips ranging 30 to 85 nautical miles from their home landing port. The commenters believe that a 3500-lb (1588-kg) trip limit for Florida fishermen north of Brevard County, who take trips of similar distance and duration to harvest the same group of king mackerel, would be discriminatory. The 3500-lb (1588-kg) trip limit would provide an unfair opportunity for northern participants to harvest up to 7 times as many king mackerel per trip as could be harvested off the Florida Keys under a 50-fish trip limit.

Response: NMFS believes that inaccuracies in the analyses considered by the South Atlantic Council raise questions about the rationale for the trip limits. Specifically, it is unclear how the apparent disadvantage to Florida Keys fishermen that would result from a 50-fish trip limit would maximize overall benefits from the fishery as stated in the analyses. NMFS believes the proposed trip limits, including the 3500-lb (1,588 kg) proposal, have the potential to alter harvest geographically, redistribute catch, and reallocate quotas among user groups. Therefore, these proposals should be reanalyzed and reconsidered before submission for review.

National Standard 5

Comment: The commenters contend that the trip limits would not promote efficiency in the utilization of fishery resources for Florida Keys fishermen. The higher costs of production to harvest Atlantic group king mackerel from more distant fishing grounds require harvests greater than 50 fish per trip to operate efficiently and profitably. They note that the 3500-lb (1588-kg) trip limit proposal was offered only to fishermen operating in the Atlantic exclusive economic zone north of Florida's Brevard County, but not to those in the Florida Keys.

Response: In the Florida Keys fishery, a 50-fish trip limit would appear to decrease harvest while increasing the cost of harvest and operations. However, the impact of these localized inefficiencies on attaining OY or maximizing benefits for the overall fishery cannot be accurately determined based on the rationale and inaccurate analyses provided thus far. Therefore, NMFS at this time is unable to determine whether prosecution of the fishery under a 50-fish trip limit would promote wise and efficient use of natural resources in the fishery.

National Standard 7

Comment: The commenters also contend that the proposed trip limits would not minimize costs, place an undue economic and regulatory burden on Florida Keys fishermen, and add more micromanagement measures to an already highly regulated fishery that is not overfished or able to take its quota or achieve optimum yield. Consequently, the trip limits are inconsistent with a balanced management strategy and National Standard 7.

Response: See response to previous comment under National Standard 5. In addition, NMFS has advised the South Atlantic Council to reanalyze available information and consider resubmitting the proposed trip limits with supporting rationale specifically addressing the balance of costs and benefits, as part of Amendment 8.

Other Concerns

Comment: Three respondents opposed the 27 percent reduction in the TAC proposed for the Atlantic group king mackerel because of their belief that the reduction is not supported by the best available scientific information (i.e., 1995 Report of the Mackerel Stock Assessment Panel), which indicates that the group is not overfished; its spawning potential ratio is estimated well above the FMP-defined 30 percent overfishing level.

Response: The South Atlantic Council identified legitimate concerns in proposing a TAC at the lower limit of the ABC range, 7.3–15.5 million lb (3.3–7.0 million kg), calculated by the Stock Assessment Panel. The reduced TAC of 7.3 million lb (3.3 million kg) represents a conservative risk-averse strategy that reflects the South Atlantic Council's concern that next year's ABC estimate will be lower; calculation of the 1996 ABC estimate will include a more accurate estimate of juvenile mortality taken as bycatch in the south Atlantic shrimp fishery. The reduced TAC reflects concern for the resource, but still provides an ample harvest level that has been reached or exceeded only four times in the past nine years under FMP quota management. Accordingly, NMFS adopts the revised TAC of 7.30 million lb (3.31 million kg).

Comment: One respondent opposed the commercial trip limits proposed for the Gulf group king mackerel in the Florida west coast sub-zone because of a belief that they would discriminate against the more efficient and productive fishermen, would not resolve overcapitalization problems of too many boats chasing a very small quota, and would remain as a lingering feature in an already complex management system in lieu of implementing a permanent comprehensive solution, e.g., limited entry.

Response: The trip limits are intended to maintain traditional harvest in the Florida west coast commercial fishery for Gulf group king mackerel, thereby preventing disproportionate harvest of the quota by certain user groups that could result in a situation similar to that which required emergency remedial action during the 1994–95 fishing year. From February 1–21, 1995, the hook-and-line fishery in the Florida west coast sub-zone was reopened under a 300,000-lb (136,078-kg) emergency supplement. The fishery was reopened because northwest Florida fishermen harvested most of the quota before king mackerel migrated to traditional winter fishing grounds off the Florida Keys, where historically most of the quota had been taken. Accordingly, the final rule implements the trip limits.

Partial Approval/Deferral

Based on the most recent stock assessment and quota monitoring information, and on comments received during the public comment period, the 1995–96 preseason adjustments have been partially approved. At this time, NMFS is implementing all of the proposed changes except for the trip limits proposed for the commercial fishery for Atlantic group king mackerel. Implementation of those trip limits is being deferred due to inadequate and inaccurate analyses of their impacts on Florida Keys fishermen, insufficient justification for the proposed limits, and possible inconsistencies with the Magnuson Act and the FMP annual framework adjustment process as discussed above. Implementation of the proposed trip limits will be reconsidered if they are resubmitted with adequate and accurate analyses as a part of Amendment 8.

Changes From the Proposed Rule

For the reasons set forth above, the final rule does not implement commercial trip limits for Atlantic group king mackerel. Likewise, the final rule does not include the proposed prohibitions in § 642.27 corresponding to those trip limits. In addition, the final rule corrects an erroneous reference in § 642.7(t).

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons were published in the preamble to the proposed rule (60 FR 39698, August 3, 1995). As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, finds that good cause exists, under 5 U.S.C. 553(d)(3), to establish an effective date of less than 30 days after the date of publication for the trip limits for commercial hook-and-line vessels that harvest Gulf group king mackerel in the Florida west coast sub-zone. To avoid early closure of the fishery and disproportionate harvest of the quota by certain user groups, these trip limits are effective 5 days after the date of publication.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 9, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.7, paragraphs (s), (t), and (u) are revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(s) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.28(a), (b)(1), or (b)(2), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has on board a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(1)(ii)(A).

(u) In the Florida west coast sub-zone, on board a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, retain Gulf group king mackerel in or from the EEZ harvested with gear other than run-around gillnet, as specified in § 642.28(b)(1)(ii)(C).

* * * * *

3. In § 642.24, paragraph (a)(1)(ii)(A) is revised to read as follows:

§ 642.24 Bag and possession limits.

(a) * * *

(1) * * *

(ii) * * *

(A) *Northern area*—five per person through December 31, 1995; three per person thereafter.

* * * * *

§ 642.25 [Amended]

4. In § 642.25, in paragraph (a)(2), the numbers "3.71" and "1.68" are revised to read "2.70" and "1.22", respectively, and in paragraph (b)(2), the numbers "4.60" and "2.09" are revised to read "4.70" and "2.13", respectively.

§ 642.27 [Amended]

5. In § 642.27(b), the numbers "4.35" and "1.97" are revised to read "4.45" and "2.02", respectively.

6. In § 642.28, a sentence is added at the end of paragraph (a)(2); in paragraph (c), the phrase "the trip limit change specified in paragraph (a) of this section" is revised to read "the trip limit changes specified in paragraphs (a) and (b) (2) of this section"; and paragraph (b)(1), and paragraph (e) introductory text, are revised effective December 18, 1995, set forth below. Paragraph (b)(2) of § 642.28 is revised effective November 22, 1995, to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

(a) * * *

(2) * * * However, if 75 percent of the sub-zone's quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the sub-zone's quota is filled or until March 31, whichever occurs first.

(b) *Florida west coast sub-zone. (1) Gillnet gear.* (i) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a permit with a gillnet endorsement has been issued under § 642.4, from July 1, each fishing year, until a closure of the Florida west coast sub-zone's commercial fishery for vessels fishing with run-around gillnets has been effected under § 642.26—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(ii) In the Florida west coast sub-zone:

(A) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement;

(B) King mackerel from the west coast sub-zone landed by a vessel for which

such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(2); and

(C) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(2) *Hook-and-line gear.* In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel permitted under § 642.4(a)(1) and operating under the commercial hook-and-line gear quota in § 642.25(a)(1)(i)(B)(1):

(i) From July 1, each fishing year, until 75 percent of the sub-zone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day; and

(ii) From the date that 75 percent of the sub-zone's hook-and-line gear quota has been harvested until a closure of the west coast sub-zone's hook-and-line fishery has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

* * * * *

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a), (b)(1)(i), or (b)(2) of this section or a gear limitation specified in paragraph (b)(1)(ii)(A) of this section applies may not transfer at sea from one vessel to another a king mackerel:

* * * * *

[FR Doc. 95–28348 Filed 11–16–95; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 222
Friday, November 17, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 85 and 86

[AMS–FRL–5333–3]

RIN 2060–AF75

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Voluntary Standards for Light-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: This action extends the comment period for the notice of proposed rulemaking relating to the establishment of a National Low Emission Vehicle (NLEV) program published October 10, 1995 (60 FR 52734). EPA is extending the public comment period to December 1, 1995.

DATES: Written comments on the proposed rule must be received no later than December 1, 1995.

ADDRESSES: Materials relevant to this document are contained in Public Docket A–95–27. The docket is located at the above address in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

Comments on this document should be sent to Public Docket A–95–26, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (Telephone 202–260–7548; FAX 202–260–4000).

FOR FURTHER INFORMATION CONTACT: Michael Shields, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 260–7757. FAX (202) 260–6011.

SUPPLEMENTARY INFORMATION: EPA published a Notice of Proposed Rulemaking (NPRM) October 10, 1995 regarding the NLEV program. The public comment period was originally scheduled to end on November 9, 1995. A public hearing on the proposal was held on November 1, 1995 and the comment period is extended to December 1, 1995.

Dated: November 8, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–28388 Filed 11–16–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 210, 215, and 252

[DFARS Case 94–D003]

Defense Federal Acquisition Regulation Supplement Specifications and Standards

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense (DoD) has decided to withdraw a proposed rule published on December 23, 1994 (59 FR 66287). The rule proposed DFARS revisions to reflect DoD's commitment to minimizing the use of military and Federal specifications and standards and maximizing the use of performance specifications and non-Government standards. The DoD has determined that changes to DoD Instruction 5000.2 would result in more effective implementation of those commitments. Therefore, the proposed DFARS rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Melissa D. Rider, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–28432 Filed 11–16–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 213, 214, 215, and 242

[DFARS Case 95–D715]

Defense Federal Acquisition Regulation Supplement; Past Performance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the requirements of Section 1091 of the Federal Acquisition Streamlining Act of 1994 and the requirements of OFPP Policy Letter 92–5, Past Performance Information.

DATES: Comments on the proposed rule should be submitted in writing to the DFARS Secretariat at the address shown below on or before January 16, 1996 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: IMD 3D139, PDUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301–3062. Please cite DFARS Case 95–D715 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D. Rider, at (703) 602–0131. Please cite DFARS case 95–D715.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (FASA), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes in the acquisition process as a result of FASA implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

At the request of the Administrator, Office of Federal Procurement Policy, the DoD Past Performance Coordinating Council (PPCC) was tasked by the FASA DFARS Implementation Manager to develop DFARS coverage for implementing Section 1091 of FASA. There were no associated FAR changes that were published as a FASA-related rule, as the final FAR rule published in the **Federal Register** on March 31, 1995 (60 FR 16718) already complied with FASA requirements.

The following changes to DFARs were developed by the PPCC to implement OFPP Policy Letter 92–5, Past Performance Information, and Section 1091 of FASA:

1. DFARS Part 213 coverage has been added to provide guidance for actions using simplified acquisition procedures.

2. DFARS Part 214 coverage allows contracting officers to quantify past performance information (PPI) as a price-related factor.

3. DFARS Past 215 coverage accelerates the FAR phase-in schedule, taking two years to get to the $100,000 threshold; assures appropriate weighting of PPI; encourages (rather than mandates) use under $100,000; and requires validation of PPI before it is used.

4. DFARS 242.1502 provides requirements for preparing evaluations of performance on individual contracts; accelerates the preparation of the evaluation beyond the use requirements in 214 and 215; provides instructions for interim evaluations—this is the agency direction required by the FAR; and provides a list of required information for performing evaluations. Use of a standardized list will help the exchange of PPI among the DoD components. The list is based on the form in the OFPP Interim Guide to Best Practices for Past Performance, and has been tailored to meet the needs of DoD Components. This is not a standard form, but in the future may be an evaluation tool that can be readily accessible via electronic commerce/electronic data interchange (EC/EDI).

5. DFARS 242.1503(a) states the contracting officer specifies who provides performance evaluations (as a default, Defense Contract Management Command (DCMC) ACOs will fill out the form unless the contracting officer specifies otherwise); requires the evaluator to validate PPI with the contractor; addresses non-response by contractors who were asked for validation; and defines contract completion as the time all contract close-out actions are complete.

B. Regulatory Flexibility Act

The proposed DFARS changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*, because the requirements for use of past performance information in contract award decisions may preclude award to otherwise successful offerors. The extent of this impact is not known, although it is believed that the regulatory flexibility analysis performed for FAR Case 93–2, Past Performance Information (60 FR 16718, March 31, 1995), has already addressed the effects on small businesses. However, an Initial Regulatory Flexibility Analysis has been performed for this proposed DFARS rule. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D715 in correspondence.

C. The Paperwork Reduction Act

The proposed rule does not contain any information collection requirements which require the approval of Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213, 214, 215, and 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 213, 214, 215, and 242 be amended as set forth below:

1. The authority citation for 48 CFR parts 213, 214, 215, and 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. The heading of Part 213 is revised to read as set forth above.

3. Section 213.106–1 is added to read as follows:

213.106–1 Soliciting competition, evaluation of quotes, and award.

(b)(1) Use of past performance information is not mandatory for solicitations less than $100,000; however, it is encouraged.

PART 214—SEALED BIDDING

4. Section 214.201–8 is added to read as follows:

214.201–8 Price related factors.

(a) An offeror's record of past performance may be used as an indication of foreseeable costs and delays and may be evaluated where these costs can be reduced to a price-related evaluation factor. For example, where a poor performance record requires a preaward survey or where a record of delivering nonconforming parts would require source inspection, and a preaward survey or source inspection would not otherwise be required, an evaluation factor covering those additional costs may be applied. The method by which these price-related factors will be determined and applied shall be included in the solicitation.

PART 215—CONTRACTING BY NEGOTIATION

5. Section 215.605 is amended by redesignating paragraph (b) as paragraph (b)(2) and by adding paragraph (b)(1)(ii) to read as follows:

215.605 Evaluation factors.

(b)(1)(ii) Notwithstanding FAR 15.605(b)(ii), past performance shall be evaluated in all competitively negotiated acquisitions in excess of $1 million issued on or after July 1, 1995, in excess of $500,000 issued on or after July 1, 1996, and in excess of $100,000 issued on or after July 1, 1997. When past performance is evaluated, it should be a significant evaluation factor or significant subfactor. Although the use of past performance is not mandatory for solicitations less than $100,000, it is encouraged. Past performance information from contractor performance evaluations shall not be used in source selections until the requirements of 242.1503(b) have been met.

* * * * *

PART 242—CONTRACT ADMINISTRATION

6. Subpart 242.15 is added to read as follows:

Subpart 242.15—Contractor Performance Information

Sec.
242.1502 Policy.
242.1503 Procedures.

242.1502 Policy.

(a) Notwithstanding FAR 42.1502, contractor performance evaluations shall be prepared for all contracts in excess of $1 million effective July 1, 1995, and $100,000 effective July 1, 1996. For contracts exceeding 18 months, interim evaluations should be prepared annually.

(S–70) Agencies shall prepare an evaluation of contractor performance including the following information:

(1) Whether the report is a final or interim report;

(2) What period the report covers;

(3) The contractor's name, address, and telephone number;

(4) The contract number, value, award date, and completion date;

(5) The type of contract;

(6) A description of the requirement;

(7) An evaluation of the contractor's performance in the following areas, including a rating and supporting rationale:

(i) Quality of Product or Service;

(ii) Cost Control;

(iii) Timeliness of Performance;

(iv) Customer Satisfaction (Contracting/Business Relations);

(v) Customer Satisfaction (End User/Business Relations); and

(vi) Rater's Overall Assessment.

(8) An evaluation of key contractor personnel for services and R&D contracts;

(9) The evaluator's name, address, telephone number and dated signature;

(10) Whether the contractor provided comments, rebuttals or additional information. If such information was provided, it shall be attached to the Government evaluation;

(11) A resolution of contractor comments; and

(12) The final review authority's name, address, phone number, and dated signature.

(S–71) Evaluations completed in accordance with paragraph (S–70) of this section shall consider the following areas:

(1) Quality of product or service. This includes the following aspects of performance:

(i) Compliance with contract requirements;

(ii) Accuracy of reports;

(iii) Appropriateness of contractor personnel assigned to the contract; and

(iv) Technical excellence of delivered supplies or services.

(2) Cost Control. This includes the following aspects of performance:

(i) Current, accurate, and complete billings;

(ii) The relationship of negotiated cost to actuals;

(iii) Cost containment initiatives; and

(iv) The number and cause of change orders issued.

(3) Timeliness of Performance. This includes the following aspects of performance:

(i) Whether the contractor met interim milestones;

(ii) Contractor's responsiveness to technical direction;

(iii) Contractor's responsiveness to contract change orders and administrative requirements;

(iv) Whether the contract was completed on time, including wrap-up and contract administration; and

(v) Whether liquidated damages were assessed.

(4) Business Relations/Customer Satisfaction. This includes the following aspects of performance:

(i) Whether the contractor effectively managed the contract effort;

(ii) How responsive the contractor was to contract requirements;

(iii) How promptly the contractor notified the Government of problems;

(iv) Whether the contractor was reasonable and cooperative;

(v) How flexible the contractor was;

(vi) Was the contractor proactive;

(vii) How effective were contractor-recommended solutions; and

(viii) Did the contractor effectively implement socio-economic programs, including compliance with requirements of the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(S–72) The following adjectival ratings shall be used when rating each area described in paragraph (S–71):

(1) Unsatisfactory.

(i) Quality of Product or Service. Nonconformances are compromising the achievement of contract requirements, despite the use of Agency resources.

(ii) Cost Control. Cost issues are compromising performance of contract requirements.

(iii) Timeliness of Performance. Delays are compromising the achievement of contract requirements, despite the use of Agency resources.

(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is not effective and responsive.

(2) Poor.

(i) Quality of Product or Service. Nonconformances require major Agency resources to ensure achievement of contract requirements.

(ii) Cost Control. Cost issues require major Agency resources to ensure achievement of contract requirements.

(iii) Timeliness of Performance. Delays require major Agency resources to ensure achievement of contract requirements.

(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is marginally effective and responsive.

(3) Fair.

(i) Quality of Product or Service. Nonconformances require minor Agency resources to ensure achievement of contract requirements.

(ii) Cost Control. Cost issues require minor Agency resources to ensure achievement of contract requirements.

(iii) Timeliness of Performance. Delays require minor Agency resources to ensure achievement of contract requirements.

(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is somewhat effective and responsive.

(4) Good.

(i) Quality of Product or Service. Nonconformances do not impact achievement of contract requirements.

(ii) Cost Control. Cost issues do not impact achievement of contract requirements.

(iii) Timeliness of Performance. Delays do not impact achievement of contract requirements.

(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is usually effective and responsive.

(5) Excellent.

(i) Quality of Product or Service. There are no quality problems.

(ii) Cost Control. There are no cost issues.

(iii) Timeliness of Performance. There are no delays.

(iv) Business Relations Customer Satisfaction. Response to inquiries, technical service, and administrative issues is effective and responsive.

(6) Plus. The contractor has demonstrated an exceptional performance level in any of the four categories described in paragraph (S–71). It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance levels described as "excellent."

242.1503 Procedures.

(a) The contracting officer will determine who provides input on the contractor performance evaluations. Where the contract has been delegated for administration, the cognizant ACO shall complete performance evaluations unless otherwise advised by the PCO.

(b) (S–70) The agency preparing the performance evaluation shall be responsible for validating the past performance information.

(S–71) If the contractor does not respond within the period specified, th data may be assumed to be accurate and may be used in source selections.

(e) The date of completion of contract performance is the date of contract closeout.

[FR Doc. 95–28433 Filed 11–16–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567 and 568

[Docket No. 91–62, Notice 2]

RIN 2127–AE27

Meeting With Manufacturers of Vehicles Built in Two or More Stages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces a public meeting at which NHTSA will seek information from final stage and intermediate manufacturers of vehicles built in two or more stages, manufacturers of incomplete vehicles, and the public on certification of vehicles that are manufactured in stages. NHTSA is requesting suggestions for actions with respect to NHTSA's regulations and Federal Motor Vehicle Safety Standards that govern the certification of such vehicles. This notice also invites written comments on the same subject.

The meeting will be held on December 12, 1995 at 9:00 a.m. The agency is interested in obtaining the views of its customers both orally and in writing. An agenda for the meeting will be made based on the number of persons wishing to make oral presentations and will be available on the day of the meeting. Those wishing to make oral presentations at the meeting should contact Charles Hott, at the address or telephone number listed below, by November 24, 1995.

DATES: The meeting will be held on December 12, 1995 at 9:00 a.m.

Written comments. Written comments are due by January 12, 1996.

ADDRESSES: *Public meeting.* The public meeting will be held at the following location: Holiday Inn, Fair-Oaks Mall, 11787 Lee Jackson Memorial Highway, Fairfax, VA 22033, Tel: (703) 352–2525, Fax: (703) 352–4471.

Written comments. All written comments should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street, SW, Washington, DC 20590. Please refer to the docket number when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Charles Hott, Office of Vehicle Safety Standards, NPS–15, NHTSA, 400 7th Street, SW, Washington, DC 20590 (telephone 202–366–0247).

SUPPLEMENTARY INFORMATION:

Regulatory Reform

Calling for a new approach to the way Government regulate the private sector, President Clinton asked Executive Branch agencies to improve the regulatory process. Specifically, the President requested that agencies: (1) Cut obsolete regulations; (2) reward agency and regulator performance by rewarding results, not red tape; (3) create grassroots partnerships by meeting with those affected by regulations and other interested parties; and (4) use consensual rulemaking, such as regulatory negotiation, more frequently.

This is the first of NHTSA's announced meetings to create grassroots partnerships with regulated industries that do not deal with NHTSA on a daily basis. By meeting with these groups, NHTSA believes that it can build a better understanding of their needs and concerns. Other groups that the agency will have meetings with are school bus manufacturers, heavy truck manufacturers, child seat manufacturers, lamp/reflector manufacturers, and small volume manufacturers.

NHTSA recognizes that manufacturers who build vehicles in more than one stage are faced with somewhat different problems than manufacturers who build vehicles in a single stage, especially when it comes to certifying vehicles to meet the Federal Motor Vehicle Safety Standards (FMVSS). Therefore, the agency has decided to hold a public meeting to listen to the views of these groups and others with respect to improving the vehicle certification process.

The agency is interested in obtaining the views of incomplete, intermediate and final stage manufacturers on how the agency can improve its regulations that govern the manufacture of vehicles in more than one stage. Suggestions should be accompanied by a statement of the rationale for the proposed action and of the expected consequences of that action. Recommendations should address at least the following considerations:

administrative/compliance burdens
cost effectiveness
costs of the existing regulation and the proposed changes to consumers
costs of testing or certification to regulated parties
effects on safety
effects on small business
enforceability of the standard
whether the regulation reflects a "common sense" approach to solving the problem

Written statements should be as specific as possible and provide the best available supporting information. Statements also should specify whether any change recommended in the regulatory process would require a legislative change in NHTSA's authority.

Certification of Vehicles Manufactured in More Than One Stage

In *National Truck and Equipment Association* v. *NHTSA*, 919 F.2d 1148 (6th Cir. 1990), the 6th Circuit remanded a portion of a final rule that extended the requirements of FMVSS No. 204 to trucks and multipurpose passenger vehicles with gross vehicle weight ratings of up to 10,000 pounds. A majority of the court concluded that the final rule was not practicable for final stage manufacturers that cannot "pass through" the certification of the incomplete vehicle manufacturer. The court cited passages in the preamble in which NHTSA stated that most final stage manufacturers did not have the capability to perform dynamic testing or in-house engineering analysis, as well as the fact that "pass through" certification is not available unless the incomplete vehicle is a chassis cab.

In response to the court decision, on December 3, 1991, NHTSA published a Notice of Proposed Rulemaking (NPRM), 56 FR 61392, to amend the certification requirements that apply to incomplete vehicles. In the NPRM, the agency proposed to extend the certification labeling requirements that currently apply only to manufacturers of chassis-cabs to all incomplete vehicle manufacturers, and to permit all final stage manufacturers to "pass through" the certification of the incomplete vehicle.

Incomplete vehicles are vehicles that include at least a frame and chassis structure, power train, steering system, suspension system, and braking system, but need further manufacturing to become completed vehicles. Currently, incomplete vehicle manufacturers are required to provide a document with every incomplete vehicle that establishes guidelines for completing the vehicle. For chassis-cabs (incomplete vehicles with completed occupant compartments), incomplete vehicle manufacturers are currently required both to provide a guidance document and to affix a certification label to each chassis cab. If the intermediate and final stage manufacturers complete the chassis-cab in accordance with the guidelines provided in the guidance document, the final stage manufacturer is allowed to "pass through" the certification of the chassis-cab manufacturer, rather than itself certifying equipment or components manufactured by another manufacturer. Currently, manufacturers of incomplete vehicles that are not chassis cabs because they lack completed occupant compartments (e.g., "stripped chassis" or "bare chassis") are not required to certify the conformity of their vehicles to NHTSA safety standards. However, like the chassis-cab manufacturers, they are required to provide a guidance document with every vehicle that establishes guidelines for completing the vehicle. If the intermediate and/or final stage manufacturer follows the guidelines, the completed vehicle will conform to the applicable FMVSSs. The final stage manufacturer is required to place on the completed vehicle a certification label stating that the vehicle meets all applicable FMVSSs.

The NPRM proposing the amendments to the regulations governing certification of vehicles manufactured in two or more stages engendered considerable controversy and virtually no support. In the comments, there was a clear division in positions among the various segments of the multistage vehicle industry. The three major domestic manufacturers generally opposed the rule, although General Motors did propose some changes to the text and a delay of the effective date. The final stage manufacturers of commercial vehicles, represented by the National Truck Equipment Association (NTEA), favored the portion of the rule which provided for certification of incomplete vehicles other than chassis cabs, but stated that the proposed rule did not resolve the difficulties faced by numerous final stage manufacturers that depart from the guidelines set by the incomplete vehicle manufacturer. The Recreational Vehicle Industry Association (RVIA) responded that the proposed rule did not resolve the most serious problems faced by the final stage manufacturers which must certify compliance with standards that include dynamic testing.

The agency performed a limited study of the multistage vehicle manufacturing industry. The study was completed in August 1994 and has been placed in the docket. (Docket Number 91–62) The study concluded that final stage manufacturers lack timely information and guidance on how to comply when new standards or amendments are promulgated; that they rely primarily on customer needs and preferences in selecting incomplete vehicles, with particular emphasis on cost; and that they depend heavily on timely guidance and information from incomplete vehicle manufacturers and trade associations.

The study also concluded that most final stage manufacturers, with the exception of some very large van converters, must rely on outside engineering services if they are to conduct dynamic testing of completed vehicles. All rely heavily on their suppliers for certification and warranty. The contractor noted the consensus among final stage manufacturers who are van converters with respect to the difficulties they faced in conducting dynamic testing for compliance with FMVSS No. 208 during the 1992 model year launch, when that portion of the Standard first took effect for light trucks, vans and sport utility vehicles. They cited problems in obtaining critical dimensional data on each vehicle make and model from the incomplete vehicle manufacturers sufficiently in advance to be able to create the necessary equipment to perform testing prior to the effective date of the rule, and stated that this forced production delays and lost sales. They contend that it is unrealistic for final stage manufacturers to be held to the same effective dates as those imposed on single stage manufacturers.

The agency believes that multistage vehicle certification is an area in which negotiated rulemaking may be beneficial. Negotiated rulemaking is a process in which representatives of all interests are assembled to discuss the issue and all potential solutions, reach consensus, and prepare a proposed rule for consideration by the agency. After public comment on any proposal issued by the agency, the group reconvenes to review the comments and make recommendations for a final rule. This inclusive process is intended to make the rule more acceptable to all affected interests and prevent the petitions for reconsideration (and litigation) that often follow the issuance of a final rule. The agency is interested in the commenters' views on the feasibility of negotiated rulemaking on the subject matter of this notice.

Procedural Matters

The agency intends to conduct the meeting informally so as to allow for maximum participation by all who attend. Interested persons may ask questions or provide comments during any period after a party has completed its presentation on a time allowed basis as determined by the presiding official. If time permits, persons who have not requested time to speak, but would like to make a statement, will be afforded an opportunity to do so.

Those speaking at the public meeting should limit their presentations to 20 minutes. If the presentation will include slides, motion pictures, or other visual aids, please indicate so that the proper equipment may be made available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record.

A schedule of participants making oral presentations will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, Room 5219, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512.)

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket.

After the closing date, NHTSA will continue to file relevant information in the docket as it becomes available. It is therefore recommended that interested persons continue to examine the docket for new material.

Issued: November 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28461 Filed 11–14–95; 10:54 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[I.D. 110995B]

Atlantic Mackerel, Squid, and Butterfish Fisheries; Notice of Availability of Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) for Secretarial review and is requesting comments from the public. The amendment would revise the management program for Atlantic mackerel, squid, and butterfish. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Send comments to Dr. Andrew Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Atlantic Mackerel, Squid, and Butterfish Plan."

Copies of Amendment 5, the environmental impact statement, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the amendment.

Amendment 5 would eliminate joint ventures and directed foreign fishing for *Illex* and *Loligo* squid (squids) and butterfish; establish a moratorium on new entrants to the directed fisheries for the squids and butterfish; establish new permit requirements; establish a quota-setting process that includes recommendations made by a Technical Monitoring Committee; establish minimum mesh requirements for the *Loligo* fishery with exemptions for the sea herring fishery and the summer *Illex* fishery occurring outside the 50–fathom curve; require mandatory reporting for permitted vessels and dealers; revise certain biological reference points for Atlantic mackerel and *Loligo* squid; and specify conditions under which annual seasonal quotas may be established for the *Loligo* fishery.

The receipt date for this amendment was November 8, 1995. Proposed regulations to implement this amendment are scheduled to be published within 15 days of the receipt date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–28360 Filed 11–13–95; 4:39 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 222

Friday, November 17, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 5, 1995; December 12, 1995; December 19, 1995; and December 26, 1995, at 10 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rossyln, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: November 13, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–28378 Filed 11–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

AGENCY: Defense Department.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the current status of recommendations and requests for information generated at the 1995 DACOWITS Fall Conference, discuss other issues relevant to women in the Services and conduct business internal to the Committee. All meeting sessions will be open to the public.

DATES: December 11, 1995, 8:30 a.m.–4 p.m.

ADDRESSES: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Patricia Kersey, USAF, Office of DACOWITS and Military Women Matters, OUSD (Personnel and Readiness), The Pentagon, Room 3D769, Washington, DC 20301–4000, Telephone (703) 697–2122.

Dated: November 9, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–28377 Filed 11–16–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Logistics Agency

Privacy Act of 1974; Notice of a Computer Matching Program Between the Railroad Retirement Board and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Defense.

ACTION: Notice of a computer matching program between the Railroad Retirement Board (RRB) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between RRB and DoD that their records are being matched by computer. The record subjects are RRB delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by RRB so as to permit RRB to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 18, 1995, and the computer matching may proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and RRB have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that RRB can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between RRB and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Debt

Collection Officer, Railroad Retirement Board, Bureau of Fiscal Operations, 844 Rush Street, Chicago, IL 60611-2092. Telephone (312) 751-4963.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and a copy of this notice will be submitted for review to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE RAILROAD RETIREMENT BOARD AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *Participating agencies:* Participants in this computer matching program are the Railroad Retirement Board (RRB) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). RRB is the source agency, i.e., the activity disclosing the records for the purpose of the match. DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of an agreement, the RRB will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who may owe delinquent debts to the Federal Government under certain programs administered by the DOD. RRB will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the RRB of any employing Federal agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense; Section 101(1) of Executive Order 12731; 4 CFR ch. II, Federal Claims Collection Standards (General Accounting Office -Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); and 20 CFR part 367, Recovery of Debts Owed to the Railroad Retirement Board From Other Government Agencies.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

RRB will use personal data from the following Privacy Act record system for the match: RRB-42, entitled 'Uncollectible Benefit Overpayment Accounts' last published in the **Federal Register** at 49 FR 7900 on March 2, 1984 and amended as published in the **Federal Register** at 56 FR 47502 on September 19, 1991.

DMDC will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

Sections 5 and 10 of the Debt Collection Act authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *Description of computer matching program:* The RRB, as the source agency, will provide DMDC with a electronic file which contains the names of delinquent debtors in programs the RRB administers. Upon receipt of the computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the RRB file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of non-postal Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to the RRB. The RRB is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the RRB source file and for resolving any discrepancies or inconsistencies on an individual basis. The RRB will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The magnetic computer tape provided by the RRB will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 5,000 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide Federal civilian records of current and retired Federal employees.

DMDC will match the SSN on the RRB tape by computer against the DMDC database. Matching records, hits based on SSN, will produce data elements of the member's name, SSN, service or agency, and current work or home address.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated semiannually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between RRB and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 95–28374 Filed 11–16–95; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Notice of a Computer Matching Program Between the Federal Emergency Management Agency and the Defense Manpower Data Center of the Department of Defense

AGENCY: Def se Manpower Data Center, Defe Logistics Agency, Defense.

ACTION: Notice of a computer matching program between the Federal Emergency Management Agency (FEMA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between FEMA and DoD that their records are being matched by computer. The record subjects are FEMA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by FEMA so as to permit FEMA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 18, 1995, and the computer matching may proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and FEMA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that FEMA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between FEMA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Collection Officer, Federal Emergency Management Agency, Office of the Secretary, Office of Financial Management MS 7258 MIB, Washington, DC 20240. Telephone (202) 208–4703.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and a copy of this notice will be submitted for review to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *Participating agencies:* Participants in this computer matching program are the Federal Emergency Management Agency (FEMA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). FEMA is the source agency, i.e., the activity disclosing the records for the purpose of the match. DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of an agreement, the FEMA will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who may owe delinquent debts to the Federal Government under certain programs administered by the DOD. FEMA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the FEMA of any employing Federal agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Public Law 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense; section 101(1) of Executive Order 12731; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office -Department

of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 44 CFR 11.43 Salary Offset and 44 CFR 11.45 Administrative Offset (Federal Emergency Management Agency).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

FEMA will use personal data from the record system identified as FEMA/OC-2, entitled 'Debt Collection Files' last published in the **Federal Register** at 58 FR 63986 on December 3, 1993.

DMDC will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

Sections 5 and 10 of the Debt Collection Act authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *Description of computer matching program:* FEMA, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs the FEMA administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the FEMA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to the FEMA. FEMA is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the FEMA source file and for resolving any discrepancies or inconsistencies on an individual basis. FEMA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by FEMA will contain data elements of the debtor's name, Social Security Number, debtor status and debt balance, internal account numbers and the total amount owed on approximately 5,600 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide Federal civilian records of current and retired Federal employees.

DMDC will match the SSN on the FEMA electronic file by computer against the DMDC database. Matching records, hits based on SSN, will produce data elements of the member's name, SSN, service or agency, and current work or home address.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated semiannually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between FEMA and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 95–28375 Filed 11–16–95; 8:45 am]
BILLING CODE 5000–04–F

Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Justice and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Department of Justice (DOJ) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between DOJ and DoD that their records are being matched by computer. The record subjects are DOJ delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by DOJ so as to permit DOJ to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 18, 1995, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and DOJ have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that DOJ can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between DOJ and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Accounting Operations Group, Debt Collection Management, Department of Justice, P.O. Box 177, Ben Franklin Station, Washington, DC 20044.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 8, 1995, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *Participating agencies:* Participants in this computer matching program are the Department of Justice (DOJ) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DOJ is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of this agreement, DOJ will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who owe delinquent debts to the Federal Government, which are being litigated by or are payable directly to DOJ. DOJ will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by DOJ of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defenses 101(1) of Executive Order 12731; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); and 28 CFR part 11, Debt Collection Salary and Administrative Offset - DOJ.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

DOJ will use records from the Privacy Act record system identified as Justice/JMD-009, entitled 'Debt Collection Offset Payment System, Justice/JMD-009,' last published in the **Federal Register** at 59 FR 17111 on April 11, 1994.

DOD will use records from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 58 FR 10875 on February 22, 1993.

Sections 5 and 10 of the Debt Collection Act authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *Description of computer matching program:* DOJ will provide DMDC with a magnetic tape which contains the names and social security numbers of delinquent debtors. Upon receipt of the computer tape file of debtor accounts, DMDC will perform a computer match against a DMDC computer database, using all nine digits of the SSN, as well as the first four characters of the individuals' last names, of the DOJ file. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of non-postal Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN and last names, will produce the individual's name, service or agency, category of employee, and current work or home address. A magnetic tape containing the hits or matches will be furnished to DOJ.

DOJ is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with DOJ's source file and for resolving any discrepancies or inconsistencies on an individual basis. The DOJ Debt Accounting Operations Group (DAOG) will extract from the tape and send to each DOJ collection office (various U.S. Attorneys' offices around the country, DOJ litigating divisions and other DOJ collection components, e.g., BOP, INS, etc.) a hard copy listing of only those matches which come under the enforcement/collection jurisdiction of that particular office.

The magnetic computer tape provided by DOJ will contain data elements of the name and SSN, of approximately 50,000 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government

wide Federal civilian records of current and retired Federal employees.

DOD will match the SSN on the DOJ magnetic tape by computer against the DMDC database. Matching records, hits based on SSN, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on a six month basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between DOJ and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 95–28376 Filed 11–16–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 18, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 9, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Regular.
Title: Guaranty Agency Quarterly/Annual Report.
Frequency: Guaranty Agency Quarterly/Annual Report.
Affected Public: Business or other for-profit; state, local or tribal government.
Reporting Burden:
Responses: 270.
Burden Hours: 4,293.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Guaranty Agency Quarterly/Annual Report is submitted by 55 agencies operating a student loan Insurance program under agreement with the Department of Education. These reports are used to evaluate agency operations, make payments to agency as authorized by law, and to make reports to Congress.

Type of Review: Extension.
Title: Addendum to Federal Direct PLUS Loan Promissory Note Endorser.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 34,000.
Burden Hours: 17,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Applications for Federal Direct PLUS Loans who have adverse credit may obtain endorsers. The information collected on this form is used to check credit of endorsers. The respondents are endorsers.

Type of Review: Extension.
Title: Federal Direct PLUS Loan Application and Promissory Note.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 135,000.
Burden Hours: 67,500.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This information is used to determine applicant eligibility for Federal Direct PLUS Loans. The respondent are parents applying for benefits.

Type of Review: Extension.
Title: Federal Direct Stafford/Form Loan and Federal Direct Unsubsidized Stafford/Ford Loan Promissory Note and Disclosure.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 2,757,000
Burden Hours: 459,316
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This information is used to determine eligibility for Federal Direct Stafford/Ford Loans and/or Federal Direct Unsubsidized Stafford/Ford Loans. The respondents are students applying for benefits.

Office of Special Education and Rehabilitative Services

Type of Review: Regular.
Title: Supported Employment Augmentation to VR Longitudinal Study.
Frequency: Annually.
Affected Public: Individuals or households; not-for-profit institutions; state, local or tribal governments.
Reporting Burden:
Responses: 1.
Burden Hours: 260.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This augmentation to the VR Longitudinal Study will evaluate the effects of supported employment (SE) services on the economic and noneconomic outcomes of SE consumers, through interviews with a sample of SE consumers and extended services providers.

Type of Review: Regular.
Title: Performance Report—Training Personnel for the Education of Individuals with Disabilities.
Frequency: Annually.
Affected Public: Business or other for-profit; not-for-profit institutions; state, local or tribal governments.
Reporting Burden:
Responses: 869.
Burden Hours: 1,159.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: These Performance Reports collect information required of grantees receiving Federal funds under Part D of IDEA, requested by Pub. L. 101–476 and 102–119. Training data will be summarized in OSERS' Annual Report to Congress, including data on special education and related services personnel, as well as parents trained.

Type of Review: Regular.
Title: Part B Complaint Procedures.
Frequency: One time.
Affected Public: State, local or tribal governments.
Reporting Burden:
Responses: 1,079.
Burden Hours: 14,027.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: States are required to implement complaint procedures to process any complaints regarding a State (grantee) or a subgrantee that is participating in the program funded under Part B of the Individuals with Disabilities Education Act.

Type of Review: Regular.
Title: LEA Application Under Part B of the Individuals with Disabilities Education Act.
Frequency: Annually.
Affected Public: State, local or tribal governments.
Reporting Burden:
Responses: 15,376.
Burden Hours: 445,904.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: States must require local educational agencies to submit an approvable LEA application for a subgrant in order to distribute funds under Part B of the Individuals with Disabilities Education Act.

Office of Elementary and Secondary Education

Type of Review: Regular.
Title: Migrant Education Program State Performance Report.
Frequency: One time.
Affected Public: State, local, or tribal governments.
Reporting Burden:
Responses: 51.
Burden Hours: 4,080.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Information will be develop estimates for funding purposes of the number of migratory children resident in each State, and to assess and report on the effectiveness of the Migrant Education Program on an ongoing basis.

Type of Review: Regular.
Title: Statewide Family Literacy Program.
Frequency: One time.
Affected Public: State, local, or tribal governments.
Reporting Burden:
Responses: 50.
Burden Hours: 400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State and local government to plan and implement statewide family literacy initiatives to coordinate and integrate existing Federal, State, and local resources.

Office of Vocational and Adult Education

Type of Review: Regular.
Title: Financial Status Report for State-Administered Vocational Education Programs.
Frequency: Annually.
Affected Public: Federal Government; state, local or tribal governments.
Reporting Burden:
Responses: 53.
Burden Hours: 4,729.5.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This State Financial Status Report is needed to assist in determining each State's compliance with the enabling statute, to close out each year's grant and to provide information for the Secretaries Report to Congress on the status of vocational education. The respondents are the State Educational agencies.

Office of Educational Research and Improvement

Type of Review: Regular.
Title: "Final Performance Report for LSCA Title VI".
Frequency: Annually.
Affected Public: State, local or tribal government.
Reporting Burden:
Responses: 233.
Burden Hours: 1,165.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This report form is needed to obtain information on expenditures of grant funds and to evaluate project performance of grantees under the Library Literacy Program (Title VI of the Library Services and Construction act).

Type of Review: Regular.
Title: Assessment of the role of school and public libraries in support of the National Education Goals.
Frequency: Pretest.
Affected Public: Not for profit institutions; state, local or tribal government.
Reporting Burden:
Responses: 400.
Burden Hours: 279.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The library and education communities need to know more about the role of libraries in supporting education in order to plan for and direct resources. This data collection effort is the field test of the survey instruments. The respondents are librarians in public libraries and public and private schools.

Office of Bilingual Education and Minority Languages and Affairs

Type of Review: New.
Title: A Descriptive Study of ESEA Title VIII Educational Services for Secondary School Limited English Proficiency Students (LEP).
Frequency: One time.
Affected Public: State, local or tribal governments.
Reporting Burden:
Responses: 100.
Burden Hours: 65.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This study consists of a literature review and a survey of a sample of 100 Title VII grantees having 10 or more LEP secondary school students in grades 9–12. The survey will consist of a mail survey and a follow up telephone interview to verify, correct or add information available in the grantee applications monitoring reports and evaluation reports. This effort will help in future policy developments and demographic knowledge.

[FR Doc. 95–28277 Filed 11–16–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5276–029 New York]

Niagara Mohawk Power Corporation and Northern Electric Power Company, LP; Notice of Availability of Environmental Assessment

November 13, 1995.

An environmental assessment (EA) is available for public review. The EA is for an application for a temporary suspension of the minimum flow requirement for a period of 5 to 10 years at the Hudson Falls Project. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Hudson Falls project is located on the Hudson River, in Washington County, New York.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, 888 First Street NE., Washington, D.C. 20426.

For further information, please contact the project manager, Mr. Sean Murphy, at (202) 219–2964.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28420 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–10–000]

Transwestern Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed San Juan Expansion Project and Request for Comments on Environmental Issues

November 13, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the San Juan Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Transwestern Pipeline Company (Transwestern) proposes to:

- construct a 10,000-horsepower (hp) electric driven Bisti Compressor Station (C.S.) in San Juan County, New Mexico;
- add a 7,000-hp electric driven compressor to the existing Bloomfield C.S. in San Juan County, New Mexico;
- operate an existing 4,132-hp gas compressor at the Bloomfield C.S. originally certificated as a back-up compressor;
- adjust its capacity on its mainline and San Juan Lateral facilities on a flexible basis in response to market demands for San Juan gas. This would require changing the pressure in its mainline facilities from the current level of 950 pounds per square inch gauge (psig) to as low as 800 psig, to the extent required to meet reduced market demand for firm transportation capacity to California, but high demand for San Juan gas in Arizona, California and Transwestern's eastern markets; and
- purchase from Northwest Pipeline Corporation (Northwest) a 77.7 percent ownership interest in Northwest's south end mainline extension facilities extending from the Ignacio C.S. near Ignacio, Colorado to the Blanco Hub near Bloomfield, New Mexico.

The location of the facilities is shown in appendix 1.[2]

Transwestern would bring electrical power to the compressor stations to operate the electrical driven compressors.

Land Requirements for Construction

Construction of the new Bisti C.S. would require about 3.5 acres of land. Transwestern would fence about 2.1 acres for the compressor site facilities. No additional land would be required for the proposed facilities at the existing Bloomfield C.S.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- land use
- water resources, fisheries, and wetlands[3]
- cultural resources
- public safety
- air quality and noise
- endangered and threatened species

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified one issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by Transwestern:

[1] Transwestern Pipeline Company's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street NW., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] According to the applicant, the project will not affect any waters of the United States. We will report any potential impacts, or their absence, under this heading.

The proposed compressor station and additional compression proposed at the existing compressor stations may increase ambient noise levels.

Keep in mind that this is a preliminary issue. Issues may be added, subtracted, or changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426;
- Reference Docket No. CP96–10–000;
- Send a *copy* of your letter to: Mr. Herman K. Der, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., NE., 7th Floor (PR11.1), Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before December 20, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Herman K. Der at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Herman K. Der, EA Project Manager, at (202) 208–0896.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28426 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–167–000, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER96–167–000]

Take notice that on October 27, 1995, Cinergy Services, Inc. (CINERGY), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Electric Sales Agreement, dated September 1, 1995, between CINERGY, CG&E, PSI and PECO Energy Company (PECO).

The Electric Sales Agreement provides for the following service between CINERGY and PECO.

1. Service Schedule A—Emergency Service
2. Service Schedule B—System Energy
3. Service Schedule C—Negotiated Capacity and Energy

CINERGY and PECO have requested an effective date of November 1, 1995.

Copies of the filing were served on PECO Energy Company, the Pennsylvania Public Utility Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. National Gas & Electric L.P., Chicago Energy Exchange of Chicago, Inc., Louis Dreyfus Electric Power, Eastern Power Distribution, Inc., NorAm Energy Services, Inc., J.L. Walker & Associates, CMEX Energy, Inc.

[Docket No. ER90–168–023, Docket No. ER90–225–022, Docket No. ER92–850–013, Docket No. ER94–964–007, Docket No. ER94–1247–006, Docket No. ER95–1261–001, Docket No. ER94–1328–005 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On September 27, 1995, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On October 16, 1995, Chicago Energy Exchange of Chicago, Inc. filed certain information as required by the Commission's April 19, 1990, order in Docket No. ER90–225–000.

On October 27, 1995, Louis Dreyfus Electric Power filed certain information as required by the Commission's December 2, 1992, order in Docket No. ER92–850–000.

On October 27, 1995, Eastern Power Distribution, Inc. filed certain information as required by the Commission's April 5, 1994, order in Docket No. ER94–964–000.

On October 20, 1995, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1247–000.

On October 20, 1995, J.L. Walker & Associates filed certain information as required by the Commission's August 7, 1995, order in Docket No. ER95–1261–000.

On October 17, 1995, CMEX Energy, Inc. filed certain information as required by the Commission's June 4, 1994, order in Docket No. ER94–1328–000.

3. AES Power, Inc., Morgan Stanley Capital Group Inc., Engelhard Power Marketing, Inc., Aquila Power Corporation, Williams Power Trading Company, Hartford Power Sales, L.L.C., CL Power Sales 1, 2, 3, 4, 5, L.L.C.

[Docket No. ER94–890–007, Docket No. ER94–1384–007, Docket No. ER94–1690–006, Docket No. ER95–216–005, Docket No. ER95–305–003, Docket No. ER95–393–006, Docket No. ER95–892–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 25, 1995, AES Power, Inc. filed certain information as required by the Commission's April 8, 1994, order in Docket No. ER94–890–000.

On October 25, 1995, Morgan Stanley Capital Group Inc. filed certain information as required by the Commission's November 8, 1994, order in Docket No. ER94–1384–000.

On October 31, 1995, Engelhard Power Marketing, Inc. filed certain information as required by the Commission's December 29, 1994, order in Docket No. ER94–1690–000.

On October 26, 1995, Aquila Power Corporation filed certain information as required by the Commission's January 13, 1995, order in Docket No. ER95–216–005.

On October 30, 1995, Williams Power Trading Company filed certain information as required by the Commission's March 10, 1995, order in Docket No. ER95–305–000.

On October 30, 1995, Hartford Power Sales, L.L.C filed certain information as required by the Commission's February 22, 1995, order in Docket No. ER95–393–000.

On October 31, 1995, CL Powers Sales One, Two, Three, Four, Five, L.L.C filed certain information as required by the Commission's June 8, 1995, order in Docket No. ER95–892–000.

4. Valero Power Services Company, Western States Power Providers, Inc., Illinova Power Marketing, Inc., American Power Exchange, Inc., Gulfstream Energy, LLC, Imprimis Corporation, Associated Power Services, Inc.

[Docket No. ER94–1394–005, Docket No. ER95–1459–001, Docket No. ER94–1475–002, Docket No. ER94–1578–004, Docket No. ER94–1597–004, Docket No. ER94–1672–001, Docket No. ER95–7–005 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 26, 1995, Valero Power Services Company filed certain information as required by the Commission's August 24, 1994, order in Docket No. ER95–1394–000.

On October 20, 1995, Western States Power Providers, Inc. filed certain information as required by the Commission's October 10, 1995, order in Docket No. ER95–1459–000.

On October 30, 1995, Illinova Power Marketing, Inc. filed certain information as required by the Commission's May 18, 1995, order in Docket No. ER94–1475–000.

On October 24, 1995, American Power Exchange, Inc. filed certain information as required by the Commission's October 19, 1994, order in Docket No. ER94–1578–000.

On October 25, 1995, Gulfstream Energy, LLC filed certain information as required by the Commission's November 21, 1994, order in Docket No. ER94–1597–000.

On July 19, 1995, Imprimis Corporation filed certain information as required by the Commission's December 14, 1994, order in Docket No. ER94–1672–000.

On October 26, 1995, Associated Power Services, Inc. filed certain information as required by the Commission's December 16, 1995, order in Docket No. ER95–7–000.

5. J. Aron & Company, Koch Power Services, Inc., IEP Power Marketing, LLC, K N Marketing, Inc.

[Docket No. ER95–34–005, Docket No. ER95–218–003, Docket No. ER95–802–002, Docket No. ER95–869–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 27, 1995, J. Aron & Company filed certain information as required by the Commission's March 1, 1995, order in Docket No. ER95–34–000.

On October 30, 1995, Koch Power Services, Inc. filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–218–000.

On October 30, 1995, IEP Power Marketing, LLC filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–802–000.

On October 25, 1995, K N Marketing, Inc. filed certain information as required by the Commission's May 26, 1995, order in Docket No. ER95–869–000.

6. Northeast Utilities Service Company

[Docket No. ER96–168–000]

Take notice that on October 27, 1995, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities System Companies, filed an amendment to a Service Agreement for firm transmission service to MASSPOWER under NUSCO's Tariff No. 1. The amendment provides only for a change in a delivery point for a short period of time.

NUSCO states that copies of its submission have been mailed or delivered to MASSPOWER.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas & Electric Company

[Docket No. ER96–169–000]

Take notice that on October 27, 1995, Pacific Gas and Electric Company, tendered for filing a rate schedule change to Supplement No. 42 to Rate Schedule FERC No. 79, between PG&E, the Western Area Power Administration (Western), and the Trinity County Public Utilities District (TCPUD).

PG&E's filing submits an agreement entitled Agreement Between Trinity County Public Utilities District, Pacific Gas and Electric Company, and United States Department of Energy Western Area Power Administration (Letter Agreement) to the Commission. The Letter Agreement sets forth the mechanism under which TCPUD shall be served while PG&E performs scheduled maintenance on a segment of its transmission system starting November 2, 1995.

PG&E requested the appropriate waivers, seeking to have the rate schedule change become effective on November 2, 1995. The rate schedule is requested to be effective only until the completion of the scheduled maintenance.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–170–000]

Take notice that on October 27, 1995, Cinergy Services, Inc. (Cinergy Services), tendered for filing on behalf of its affiliated operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), (collectively Cinergy System Companies) a Non-Firm Power Sales Tariff, dated October 1, 1995.

The Non-Firm Power Sales Tariff provides for the following service by Cinergy.

1. Service Schedule A—Emergency Service
2. Service Schedule B—System Energy
3. Service Schedule C—Negotiated Capacity and Energy

Copies of the filing were served on the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–171–000]

Take notice that on October 27, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Koch Power Services (KPS), dated October 6, 1995. This Service Agreement specifies that KPS has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and KPS to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 6, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies to New Jersey and Pennsylvania.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Power, Inc.

[Docket No. ER96–172–000]

Take notice that on October 27, 1995, Entergy Power, Inc. (EPI), tendered for filing a Power Sales Agreement with Virginia Electric and Power Company.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission's notice requirements in § 35.11 of the Commission's regulations.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER96–173–000]

Take notice that on October 27, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Revision No. 21 to Exhibit A and B, Contract No. 14–06–400–2437, Contract for Interconnection and Transmission Service, between PacifiCorp and Western Area Power Administration (Western), PacifiCorp Rate Schedule FERC No. 45.

Exhibit A specifies the projected maximum integrated demand in kilowatts which PacifiCorp desires to have transmitted to its respective points of delivery by Western. Exhibit B specifies the projected maximum integrated demand in kilowatts which Western desires to have transmitted to its respective points of delivery by PacifiCorp.

PacifiCorp requests an effective date of January 1, 1996 be assigned to Revision No. 21 to Exhibit A and B, this date being consistent with the effective date of the revisions.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas and Electric Corporation

[Docket No. ER96–174–000]

Take notice that on October 27, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Industrial Energy Applications, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. UtiliCorp United Inc.

[Docket No. ES95–24–003]

Take notice that on November 2, 1995, UtiliCorp United Inc. (UtiliCorp) filed an amendment to its application in Docket Nos. ES95–24–000, ES95–24–001 and ES95–24–002 under § 204 of the Federal Power Act. By letter order dated May 1, 1995 (67 FERC ¶ 62,214), UtiliCorp was authorized to issue up to and including 5 million shares of Common Stock, par value $1.00 per share during the period May 1, 1995 through April 30, 1997. UtiliCorp requests that the authorization be amended to increase the number of shares from 5 million to 6 million.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. UtiliCorp United Inc.

[Docket No. ES96–10–000]

Take notice that on November 3, 1995, UtiliCorp United Inc. (UtiliCorp) filed an application under § 204 of the Federal Power Act seeking authorization to issue and sell up to and including $7.3 million of Pollution Control Bonds (PCBs). UtiliCorp indicates that the maturity date of the PCBs has not been determined but is anticipated to range from 19 to 35 years.

UtiliCorp also requests an exemption from the Commission's competitive bidding requirements.

Comment date: December 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28428 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1158–000, et al.]

Dayton Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

November 9, 1995.

Take notice that the following filings have been made with the Commission:

1. Dayton Power & Light Company

[Docket Nos. ER95–1158–000, ER95–1256–000, ER95–1532–000]

Take notice that on October 19, 1995, the Dayton Power and Light Company tendered for filing an amendment in the above-referenced dockets.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Powertec International, L.L.P.

[Docket No. ER96–1–000]

Take notice that on October 23, 1995, Powertec International, L.L.P. tendered for filing an amendment in the above-referenced docket.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket No. ER96–111–000]

Take notice that on October 18, 1995, Public Service Company of Colorado (Public Service) tendered for filing Revised Exhibits A and C to Contract No. 87–LAO–285, which sets forth the capacity entitlements, ownership, operating maintenance, replacement, and financial responsibilities of the parties associated with the Ault-Fort St. Vrain 230-Kv Transmission Line, the Fort St. Vrain Switchyard and other consolidated facilities with the Western Area Power Transmission Administration (Western), Tri-State Generation and Transmission Association, Inc. (Tri-State), Platte River Power Authority (PRPA), and Basin Electric Power Cooperative (Basin) as contained in Public Service's Rate Schedule FERC No. 67. Public Service states that these revisions reflect the reconfiguration of certain facilities and have no impact on rates.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Light Company

[Docket No. ER96–112–000]

Take notice that Central Illinois Light Company (CILCO) tendered for filing on October 18, 1995, a Service Schedule NC, Negotiated Capacity Service Schedule as part of its Coordination Sales Tariff approved in Docket No. ER95–602.

CILCO is requesting a waiver of the notice period to allow the revised tariff to be effective on November 1, 1995.

Copies of this filing were served on all parties and the Illinois Commerce Commission.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Kentucky Utilities Company

[Docket No. ER96–119–000]

Take notice that on October 13, 1995, Kentucky Utilities Company tendered for filing a Service Agreement for power sales service and a Service Agreement for transmission services between KU and Catex Vitol Electric L.L.C.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER96–120–000]

Take notice that on October 19, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide fully interruptible transmission service to Enron Power Marketing, Inc., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G power transmission system.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER96–122–000]

Take notice that on October 19, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Stand Energy Corporation and Virginia Power, dated October 12, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Appalachian Power Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Nordic Electric, L.L.C.

[Docket No. ER96–127–000]

Take notice that on November 1, 1995, Nordic Electric, L.L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, Public Service Company of New Hampshire

[Docket No. ER96–160–000]

Take notice that on October 27, 1995, Northeast Utilities Service Company (NUSCO), on behalf of Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (together, NU System Companies), tendered for filing, a System Power Sales Agreement between NUSCO and Rowley Municipal Light Plant (Rowley) and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Long-Term Firm Transmission Service No. 1 to amend and replace current unit sales agreements and transmission service agreements.

NUSCO states that a copy of this filing has been mailed to Rowley.

NUSCO requests that the Service Agreement become effective on November 1, 1995.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, Public Service Company of New Hampshire

[Docket No. ER96–162–000]

Take notice that on October 27, 1995, Northeast Utilities Service Company (NUSCO), on behalf of Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (together, the NU System Companies) tendered for filing, a Service Agreement with CNG Power Services Corporation (CNG) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

CNG also filed a Certificate of Concurrence as its relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to CNG.

NUSCO requests that the Service Agreement become effective sixty (60) days following the Commission receipt of the filing.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, Public Service Company of New Hampshire

[Docket No. ER96–163–000]

Take notice that on October 27, 1995, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (together, the NU System Companies) filed a Service Agreement for firm transmission service to the NU System Companies. The Service Agreement provides for the delivery of system power from the NU System Companies to Vermont Marble Power Division of Omya (VMPD).

NUSCO requests an effective date of November 1, 1995.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, Public Service Company of New Hampshire

[Docket No. ER96–164–000]

Take notice that on October 27, 1995, Northeast Utilities Service Company (NUSCO), on behalf of Connecticut Light & Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (together NU System Companies) tendered for filing, a Service Agreement with Coastal Electric Services Company (Coastal) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

Coastal also filed a Certificate of Concurrence as its relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to Coastal.

NUSCO requests that the Service Agreement become effective sixty days following the Commission's receipt of the filing.

Comment date: November 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–175–000]

Take notice that on October 27, 1995, PECO Energy Company (PECO) filed a Service Agreement dated October 19, 1995, with Kentucky Utilities Company (Kentucky Utilities) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Kentucky Utilities as a customer under the Tariff.

PECO requests an effective date of October 19, 1995 for the Service Agreement.

PECO states that copies of this filing have been supplied to Kentucky Utilities and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER96–176–000]

Take notice that on October 27, 1995, Carolina Power & Light Company (CP&L) filed, pursuant to Rule 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a revision to Exhibit IX of the Power Coordination Agreement (PCA) between Carolina Power & Light Company and North Carolina Electric Membership Corporation (NCEMC) which applies only to the rates charged to NCEMC under that agreement. CP&L has requested an effective date of October 1, 1995.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER96–177–000]

Take notice that on October 27, 1995, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER96–178–000]

Take notice that on October 27, 1995, South Carolina Electric & Gas Company (SCE&G), tendered for filing a letter agreement dated October 11, 1995 between SCE&G and the Southeastern Power Administration (SEPA) extending the agreement between them with respect to SEPA's marketing of capacity and energy from Federal projects in the Georgia-Alabama-South Carolina area.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER96–179–000]

Take notice that on October 27, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and National Fuel Resources (National) dated October 6, 1995, providing for certain transmission services to National.

Copies of this filing were served upon National and the New York State Public Service Commission.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Public Service Company

[Docket No. ER96–180–000]

Take notice that on October 27, 1995, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Koch Power Services, Inc. under its umbrella sales tariff.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company

[Docket No. ER96–181–000]

Take notice that on October 27, 1995, Northern States Power Company, Eau Claire, Wisconsin (NSPW), tendered for filing the following document:

An Amended and Restated Power and Energy Supply Agreement by and between the City of Wakefield, Michigan, Wisconsin, and NSPW dated August 30, 1995. The City currently purchases power and energy from NSPW under a power sales agreement dated April 12, 1993, as amended on May 9, 1994. The 1992 agreement as amended is superseded by the 1995 agreement. NSPW submitted a Certificate of Concurrence on behalf of the City of Wakefield.

NSPW requests an effective date of November 1, 1995. NSPW states that under this new agreement, the City of Wakefield will be entitled to discounts from NSPW's currently effective W–1 rate and that such discounts are being offered to all of its wholesale electric customers. The agreement contains a provision allowing the customer to obtain a negotiated rate upon two years, prior notice.

A copy of the filing was served upon the City of Wakefield and the State of Michigan Public Service Commission.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Enerserve, L.C.

[Docket No. ER96–182–000]

Take notice that on October 27, 1995, Enerserve, L.C. (Enerserve) tendered for filing pursuant to Rule 205, 18 CFR 385.205 an application for a blanket certificate and various other authorizations and waivers from the Commission, including approval of its FERC Electric Rate Schedule No. 1 to be effective December 26, 1995.

Enerserve proposes to engage in the wholesale electric power market as both a broker and a marketer buying and selling electric power. Specifically, Enerserve proposes to purchase electric energy and transmission capacity from public utilities and other power producers, and resell such energy and capacity to others. Enerserve anticipates that such transactions will vary in duration and quality of service relative to interruptibility. In addition, the price it proposes to charge for its services shall be negotiated, market-based rates. Enerserve states that it is not affiliated with any other company, nor does it own or operate electric power generation, transmission, or distribution

facilities, and therefore, it has no market power in the electric power market.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER96–183–000]

Take notice that on October 27, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Aquila Energy Marketing (Aquila) dated September 28, 1995, providing for certain transmission services to Aquila.

Copies of this filing were served upon Aquila and the New York State Public Service Commission.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER96–185–000]

Take notice that on October 27, 1995, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62525 tendered for filing a Power Sales (PS) Tariff, which provides for wholesale sales by Illinois Power at market-based rates. Illinois Power also filed amendments incorporating the PS Tariff into its interchange agreements with Central Illinois Public Service, Tennessee Valley Authority, Union Electric, Southern Illinois Power Cooperative, Kentucky Utilities, Central Illinois Light Company, Springfield City, Water, Light & Power, Iowa-Illinois Electric and Gas, Commonwealth Edison and Indiana-Michigan Power Company, so that Illinois Power can make wholesale sales at market-based rates under these agreements.

Illinois Power has requested an effective date of December 26, 1995.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28429 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–45–000, et al.]

Pacific Gas Transmission Company, et al.; Natural Gas Certificate Filings

November 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas Transmission Company

[Docket No. CP96–45–000]

Take notice that on November 2, 1995, Pacific Gas Transmission Company (PGT), 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP96–45–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.211) for approval to operate certain taps to serve entities other than the right-of-way grantor and/or provide service in excess of 200 MMBtu per day under PGT's blanket certificate authority issued in Docket No. CP82–530–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

PGT proposes to operate a total of eighteen taps along its Medford Extension to serve entities other than the right-of-way and/or provide service in excess of 200 MMBtu per day. PGT states that the taps in question were all installed at the request of WP Natural Gas Company (WP), the sole firm customer utilizing the line, pursuant to PGT's blanket certificate and the Commission's certificate order in Docket No. CP93–618–000. PGT indicates that it has come to PGT's attention that WP may use these taps to serve more than a single right-of-way grantor and/or provide service in excess of the volume limitations set forth in section 157.211(a)(1) of the Commission's regulations. It is indicated that PGT seeks authorization for such service.

Comment date: December 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. NorAm Gas Transmission Company

[Docket No. CP96–46–000]

Take notice that on November 3, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–46–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities in Franklin County, Texas under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a 1-inch tap and first-cut regulator on NGT's Line AM–54 in the Mark Caudle H.R.S., Franklin County, Texas to deliver gas to ARKLA, a distribution division of NorAm Energy Corporation (ARKLA). The estimated volumes to be delivered to this delivery tap are approximately 40,000 MMBtu annually and 1,080 MMBtu on a peak day. The estimated cost of construction of the tap and the first-cut regulator is $2,078 and ARKLA agrees to reimburse NGT for these cost.

Comment date: December 26, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP96–47–000]

Take notice that on November 3, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP96–47–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas transportation and exchange service for National Gas & Oil Corporation (National) which was authorized in Docket No. CP78–271, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon service for National under Columbia's Rate Schedule X–74. Columbia states that it was authorized to transport up to 300 Mcf of gas per day during the winter period from Novembe r 1 through March 31 of each year. Columbia adds this service was accomplished by National delivering gas to Columbia Gas of Ohio (COH) at existing interconnections in Newark and/or Zanesville, Ohio. COH would then reduce by equivalent volumes its receipt of gas from Columbia at existing interconnections near Newark and/or Zanesville, Ohio. Columbia then redelivered like volumes of gas to National at an existing point of delivery near Somerton, Ohio and at a specific point on Columbia's Line O–1463 near Batesville, Ohio. Columbia asserts that gas was last transported under X–74 in 1983 and there are no outstanding imbalances.

Comment date: November 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP96–49–000]

Take notice that on November 3, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96–49–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its storage service to Boston Gas Company (Boston Gas), Orange & Rockland Utilities, Inc. (O&R), Penn Fuel Gas, Inc. (Penn Fuel) and The Southern Connecticut Gas Company (S. Conn.), all as more fully set forth in the application on file with the Commission and open to public inspection.

National proposes to abandon the storage service it provides to Boston Gas, O&R, Penn Fuel and S. Conn. under National's SS–1 and SS–2 Rate Schedules, effective April 1, 1996. Specifically, 876,620 Mcf of annual storage service is provided to Boston Gas; 711,165 Mcf of annual storage service is provided to Penn Fuel; and 150,000 Mcf of annual storage service is provided to S. Conn. under the SS–2 Rate Schedule, and 1,500,000 Mcf of annual storage service is provided to O&R under the SS–1 Rate Schedule.

National states that all four customers, as provided in their service agreements, have submitted written notices of termination to National on or before March 31, 1995, requesting termination of their services effective April 1, 1996.

Comment date: November 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28430 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM96–1–1–001]

Alabama-Tennessee Natural Gas Company; Notice of Filing of Proposed Change in FERC Gas Tariff

November 13, 1995.

Take notice that on November 7, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1995:

Sub. Ninth Revised Sheet No. 4

According to Alabama-Tennessee, the purpose of this filing is to reflect a decrease in Alabama-Tennessee's Annual Charge Adjustment (ACA) clause brought about by the Commission's September 29, 1995 order in Docket Nos. TM96–1–000, et al.

Alabama-Tennessee states that copies of the tariff filing have been served upon the Company's affected customers and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants a party to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28417 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–20–003]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 13, 1995.

Take notice that on November 6, 1995, Algonquin Gas Transmission Company (Algonquin), filed revised tariff sheets reflecting a corrected Annual Charge Adjustment (ACA) surcharge of $0.0023 per MMBtu. Algonquin tendered for filing as part of its FERC Gas Tariff, the following tariff sheets:

Fourth Revised Volume No. 1

Sub Tenth Revised Sheet No. 21
Sub Tenth Revised Sheet No. 22
Sub Seventh Revised Sheet No. 23
Sub Seventh Revised Sheet No. 24
Sub Seventh Revised Sheet No. 25
Sub Seventh Revised Sheet No. 27
Sub Sixth Revised Sheet No. 29
Sub Sixth Revised Sheet No. 31
Sub Sixth Revised Sheet No. 35

Original Volume No. 2

Sub Seventh Revised Sheet No. 259
Sub Sixth Revised Sheet No. 343
Sub Fourth Revised Sheet No. 431

Algonquin asserts that the purpose of this filing is to increase its current ACA

surcharge by $0.0001 per MMBtu to $.0023 per MMBtu. This increase reflects a correction in the computation contained in Algonquin's August 31, 1995, ACA filing. Algonquin respectfully requests that these tariff sheets be accepted effective October 1, 1995.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28416 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–1–000]

El Paso Natural Gas Company; Notice of Tariff Filing

November 13, 1995.

Take notice that on November 2, 1995, El Paso Natural Gas Company (El Paso), tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission Regulations Under the Natural Gas Act, a revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1–A and updated procedures to ensure continued compliance with the Standards of Conduct pursuant to Section 161.3(i) of the Commission's Regulations as required by Order Nos. 497, et. seq., and 566, et. seq.

El Paso states that the tendered tariff sheet and procedures reflect the acquisition of Eastex Energy Inc. as a subsidiary of EL Paso and update the previously filed procedures.

El Paso respectfully requests that the Commission accept the tendered tariff sheet for filing and permit it to become effective on December 3, 1995, which is not less than 30 days after the date of the filing.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28421 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–1–000]

El Paso Natural Gas Company; Notice of Filing

November 13, 1995.

Take notice that on November 2, 1995, El Paso Natural Gas Company (El Paso) filed updated procedures to ensure continued compliance with the standards of conduct required by Order Nos. 497 *et al*[1] and Order Nos. 566 *et al*.[2]

El Paso states that copies of this filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28422 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–26–000]

Florida Gas Transmission Company; Notice of Filing

November 13, 1995.

Take notice that on October 27, 1995, Florida Gas Transmission Company (FGT) tendered for filing a report of Gas Research Institute (GRI) refunds for the period January 1, 1994 through December 31, 1994.

FGT states that on September 29, 1995, it received a GRI refund of $492,118, which FGT refunded to its eligible firm shippers on October 12, 1995. This refund is in compliance with the Commission's February 22, 1995 Order in Docket No. RP95–124–000. FGT states that it has allocated refunds of $492,118 to firm shippers on a pro rata basis based on amounts paid through GRI surcharges during 1994.

FGT states that copies of the filing have been served on all affected parties and interested state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 285.214). All such motions or protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28423 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc.* v. *FERC*, D.C. Cir No. 94–1745 (December 13, 1994).

[Docket No. RP95–458–001]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

November 13, 1995.

Take notice that on November 3, 1995, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with a proposed effective date of the earlier of April 1, 1995, or the date Ozark's firm customers leave its system:

Third Revised Sheet No. 20

Ozark states that the purpose of this filing is to correct the pagination of this tariff sheet in compliance with the Commission's directive in its October 27, 1995 "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions."

Ozark states that copies of the filing were served upon Ozark's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28418 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–56–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

November 13, 1995.

Take notice that on November 8, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed a prior-notice request with the Commission in Docket No. CP96–56–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to modify an existing meter station to serve as a delivery point in the Saturday Island Field, Plaquemines Parish, Louisiana, under Southern's blanket certificates issued in Docket Nos. CP82–406–000 and CP88–316–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Southern proposes to modify an existing meter station at or near milepost 0.0 on its 4-inch diameter Saturday Island Field pipeline in Plaquemines Parish, by reversing and replacing the existing 4-inch meter (which currently has the capability to receive gas from the field) with a 2-inch meter run in order to deliver gas to Hubco Exploration Inc. (Hubco). Southern states that Hubco would reimburse Southern for the estimated $23,603 cost of modifying the meter. Southern also proposes to abandon the 4-inch meter under Section 157.16(a) of the Regulations.

Southern states that it would deliver gas to Hubco under its FERC Rate Schedule IT via its Part 284, Subpart G blanket certificate. Southern would deliver 166 Mcf of natural gas per average day, 600 Mcf per peak day, and 60,000 Mcf annually on an interruptible basis for Hubco's gas lift operations in its oil production facilities. Southern indicates that Hubco's oil wells are currently shut-in and that without Southern's natural gas deliveries, Hubco would not be able to resume its production activities.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28424 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–197–007]

Tennessee Gas Pipeline Company; Notice To Make Tariff Sheet Into Effect

November 13, 1995.

Take notice that on November 6, 1995, Tennessee Gas Pipeline Company (Tennessee), filed to move the following revised tariff sheet into effect as of November 1, 1994:

First Revised Substitute Ninth Revised Sheet No. 30

Tennessee hereby re-submits First Revised Substitute Ninth Revised Sheet No. 30. Tennessee states that this sheet is being re-submitted to correct a pagination error from the December 15, 1994 filing.

Any person desiring to protect with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR Section 385.211. All such protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection..

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28419 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–760–019]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 13, 1995.

Take notice that on October 30, 1995, Transcontinental Gas Pipe Line Corporation (Transco) filed pursuant to Section 154.62 of the Commission's Regulations and in compliance with the Commission's October 16, 1995, 73 FERC ¶ 61,077, Order on Remand in Docket No. CP88–760–018, certain substitute tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and

Original Volume No. 2, which are included in Appendix A attached to the filing. The tariff sheets are proposed to be effective on various dates as indicated in Appendix A.

It is alleged that the October 16 order directed Transco to file within 15 days of the said order revised tariff sheets reflecting straight fixed-variable rates for Transco's Southern Expansion (SEP) firm transportation service effective November 1, 1990, in lieu of the November 1, 1991 effective date approved by the Commission's March 4, 1993, order in Docket No. CP88–760–012. 62 FERC ¶61,211.

Transco states that copies of the instant filing are being mailed to customers, State Commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28427 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–48–000]

Trunkline Gas Company, Texas Eastern Transmission Corporation; Notice of Application

November 13, 1995.

Take notice that on November 3, 1995, Trunkline Gas Company (Trunkline) and Texas Eastern Transmission Corporation (Texas Eastern), an affiliate, P.O. Box 1642, Houston, Texas, 77251–1642, (jointly referred as applicants), filed in Docket No. CP96–48–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon two exchange agreements between Applicants, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they are authorized to exchange natural gas pursuant to agreements dated February 27, 1970, as amended (Agreement A) and April 20, 1972 (Agreement B), respectively. Applicants indicate that these agreements are embodied in Trunkline's Rate Schedules X–1 and Texas Eastern's Rate Schedule X–30, respectively (Agreement A) and Trunkline's Rate Schedule E–9 and Texas Eastern's Rate Schedule X–63, respectively (Agreement B).

It is indicated that pursuant to Agreement A, Applicants agreed to exchange gas by mutual dispatching arrangements at interconnects in Williamson County, Illinois, and Allen and Beauregard Parishes, Louisiana. It is further indicated that two other exchange points for Agreement A are in Hidalgo and Colorado Counties, Texas. Applicants indicate that pursuant to Agreement B, they agreed to exchange gas by mutual dispatching arrangements in Brooks and Hidalgo Counties, Texas.

It is indicated that Applicants have exchanged termination agreements for each exchange agreement, dated April 17, 1995, and May 30, 1995, respectively. It is further indicated that no imbalances exist under the two exchange agreements.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 4, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with requirement of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28425 Filed 11–16–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5332–9]

Agency Information Collection Activities; EPA's Energy Star Buildings Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 17, 1996.

ADDRESSES: U.S. Environmental Protection Agency, Atmospheric Pollution Prevention Division, Mail Code: 6202J, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain additional information concerning the proposed information collection by contacting Michael L. Hadrick of EPA either via phone at (202) 233–9282, fax at (202) 233–9579, or by mail at the address above.

SUPPLEMENTARY INFORMATION: Affected entities: Entities affected by this action will be those that agree to participate in EPA's Energy Star Buildings Program, which is a voluntary program for increasing the energy efficiency of existing commercial and industrial buildings.

Title: Information Collection Activities Associated with EPA's Energy Star Buildings Program

Abstract: EPA's Energy Star Buildings Program is a voluntary, non-regulatory program for increasing the energy efficiency of existing commercial and industrial buildings. The program encourages corporations, state and local governments, and other organizations to participate in a partnership with EPA to make cost-effective energy-efficiency improvements in their buildings. In return, EPA provides technical support to help program participants apply proven technologies to achieve maximum efficiency at the lowest cost. EPA also publicly recognizes participants for their efforts and publicizes participant achievements. The overall goal of the program is to reduce utility-generated emissions by reducing the energy consumed in commercial and industrial buildings.

Participation in the program is initiated by completing and signing an Energy Star Buildings Memorandum of Understanding (MOU). The MOU outlines the responsibilities of the participant and EPA, and is used to establish participation in the program and agreement to the terms of participation. Other than the name of the organization, signature, and date, no other information is requested on the MOU. The Energy Star Buildings MOU is an addendum to the Green Lights MOU, which requests more detailed information. The burden associated with the Green Lights MOU was covered in ICR No. 1614 and is not covered in this ICR. Information from the MOU is entered into a data base that serves as a source of general information and as a mailing list.

As a condition of program participation, partners agree to complete and submit to EPA an annual facility report on each building undergoing energy efficiency improvements. On the annual reports, partners provide information such as stage of project completion, project cost, historical and current energy use and cost data, and ancillary information such as building name, location, and size. EPA reviews the annual facility reports to track project implementation efforts and to obtain data on the costs and benefits of the energy efficiency improvements being made. This information is used to calculate the amount of utility-generated emissions prevented, evaluate program effectiveness, and publicize partner achievements and program results.

EPA will also collect additional, project-specific technical information from some partners concerning the energy-efficiency improvements made. This collection will include information such as building age and construction, utility and fuel rates, financial and economic criteria used to evaluate and select investment opportunities, types and sources of project financing, project and equipment costs and rates of return, and technical details concerning the building's lighting, heating, ventilating, and air conditioning equipment and systems. EPA will use this information to evaluate and refine its technical strategies and implementation support tools.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates an average annual respondent burden of 4,362 hours for the information collection activities associated with the Energy Star Buildings program. The total burden is comprised of the following information collections:

(i) MOU: EPA estimates that, on average, 191 new partners will join the Energy Star Buildings program each year by completing and submitting an MOU. The total annual respondent burden for the MOU is 1,385 hours, or 7.25 hours per MOU.

(ii) Annual Facility Report: EPA estimates that, on average, a total of 565 annual facility reports will be submitted by 353 partners (respondents) each year, for a total annual respondent burden of 2,697 hours. This equates to 1.6 annual facility reports per partner, or 4.8 hours per report.

(iii) Additional Technical Information: EPA estimates that, on average, 35 partners (respondents) each year will submit additional technical information on their actual upgrade projects. The burden for this information collection is 280 hours, or 8 hours per response.

These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: November 2, 1995.

Jean Lupinacci,

Chief, Energy Star Commercial and Industrial Buildings Customer Support Branch.

[FR Doc. 95–28391 Filed 11–16–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5230–6]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed November 6, 1995 Through November 10, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950525, DRAFT EIS, BLM, UT, Natural Bridges National Monument, General Management Plan and Development Concept Plan, Implementation, Interpretive Prospectus, Wilderness Suitability Study and Wild and Scenic River Eligibility and Classification Study, San Juan County, UT, Due: January 16, 1996, Contact: Steve W. Chaney (801) 692–1234.

EIS No. 950526, FINAL EIS, UAF, GA, F–15 Fighter Aircraft Conversion at Dobbins Air Force Base (AFB), Marietta, GA to B–1B Bomber Aircraft at Robins AFB, Warner Robins, GA and Training Airspace Modifactions Servicing the Savannah Combat Readiness Training Center (CRTC) Area, GA, Due: December 18, 1995, Contact: Ltc. Steve Shiell (301) 981–8894.

EIS No. 950527, FINAL EIS, DOE, WY, Adoption—Kenetech/PacifiCorp Windpower Development Project, Construction of a 500–MW Windplant and 230 kV Transmission Line between Arlington and Hanna, Right-of-Way Grant, COE Section 404 Permit and Special-Use-Permit Issuance, Carbon County, WY, Contact: George Darr (503) 230–4386.

The US Department of Energy's, Bonneville Power Administration (BPA) has adopted the US Department of the Interior's, Bureau of Land Management FEIS #950392, filed with

the Environmental Protection Agency on 8–24–95. BPA is a cooperating agency on this project. Recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 950528, DRAFT EIS, FAA, MA, Boston Logan International Airport, Implementation, Alternative Turbojet Departure Procedures at Runway 27, City of Boston, MA, Due: January 02, 1996, Contact: John Silva (617) 238–7602.

EIS No. 950529, DRAFT EIS, FHW, AZ, AZ-260 Transportation Improvements, between Payson and Heber, Funding, NPDES and COE Section 404 Permits, Gila, Coconino and Navajo Counties, AZ, Due: January 10, 1996, Contact: Nathan M. Banks (602) 379–3646.

EIS No. 950530, FINAL EIS, FHW, IN, I–65 Reconstruction Project from the Ohio River to IN–311 at Sellersburg, Funding and COE Section 404 Permit, Clark County, IN, Due: December 18, 1995, Contact: Arthur Fendrick (317) 226–7481.

EIS No. 950531, DRAFT EIS, AFS, OR, Metolius Wild and Scenic River Management Plan, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR, Due: February 16, 1996, Contact: Ron Bonacker (503) 549–7730.

EIS No. 950532, FINAL EIS, AFS, WA, OR, Umatilla and Malheur National Forests Oil and Gas Exploration and Development, Lease Offerings, several counties, WA and OR, Due: December 18, 1995, Contact: Rene' Crompton (503) 676–9187.

EIS No. 950533, DRAFT EIS, NPS, ID, Hagerman Fossil Beds National Monument, General Management Plan, Implementation, Twin Falls and Gooding County, ID, Due: January 31, 1996, Contact: Rick Ernenwein (303) 969–2274.

EIS No. 950534, FINAL EIS, UAF, NY, Griffis Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY, Due: December 18, 1995, Contact: Jonathan D. Farthing (210) 536–3787.

EIS No. 950535, DRAFT EIS, COE, CA, San Diego County Water Authority Emergency Water Storage Project, Construction and Operation, COE Section 404 Permit and Permit Application, San Diego County, CA, Due: February 14, 1996, Contact: David A. Zoutendyk (619) 674–5384.

Amended Notices

EIS No. 950457, DRAFT EIS, COE, MN, Northwestern Minnesota Basin Flood Control Impoundments and Flood Damage Reduction Project, Construction and Operation, Red River, St. Paul District, MN, Due: December 22, 1995, Contact: Robert J. Whiting (612) 290–5264, Published FR 10–13–95—Review period extended.

Dated: November 13, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. 95–28395 Filed 11–16–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5333–1]

Public Meetings of the Urban Wet Weather Flows Advisory Committee and Storm Water Phase II Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is convening two separate public meetings: (1) the Urban Wet Weather Flows (UWWF) Advisory Committee meeting on December 4–5, 1995, and (2) the Storm Water Phase II Advisory Subcommittee meeting on December 6–7, 1995. These meetings are open to the public without need for advance registration. The UWWF Advisory Committee will focus on the issues papers being developed by the work groups on Storm Water Phase I Improvements, Water Quality Standards and Watershed Approach. The Committee's agenda will also include a status report on the SSO Subcommittee and the Storm Water Phase II Subcommittee. The Phase II Advisory Subcommittee will: (1) Discuss and adopt operating protocols; (2) review the "Storm Water Discharges Potentially Addressed By Phase II of the National Pollutant Discharge Elimination System Storm Water Program Report to Congress" and the National Water Quality Inventory (305(b)) Report in detail; (3) hear a number of case studies; and (4) review the progress of the work groups on the role of government, technical and programmatic options, and small construction sites and no exposure industries.

DATES: The UWWF Advisory Committee meeting will be held on December 4–5, 1995. On December 4, the meeting will begin at approximately 8:30 a.m. EST and run until about 5:00 p.m. On December 5, the meeting will run from about 8:30 a.m. until completion. The Phase II meeting will be held on December 6–7, 1995. The December 6 meeting will begin promptly at 9:00 a.m. EST and end at approximately 8:30 p.m. On December 7, the meeting will begin at 7:45 a.m. and end at approximately 4:15 p.m.

ADDRESSES: Both meetings will be held at the Resolve Center for Environmental Dispute Resolution, 2828 Pennsylvania Avenue NW., suite 402, Washington, DC 20007. The Resolve telephone number is (202) 944–2300. A block of 75 rooms per day has been reserved at a special rate (until November 13) at the St. James Hotel, 950 24th Street NW., Washington, DC, telephone (202) 457–0500. The block of rooms are reserved from Sunday, December 3 through Friday, December 8. The rooms are listed under "urban wet weather meeting."

FOR FURTHER INFORMATION: For the UWWF Advisory Committee meeting, contact William Hall, Urban Wet Weather Matrix Manager, Office of Wastewater Management, at (202) 260–1458, or Internet: hall.william@epamail.epa.gov. For the Phase II Subcommittee meeting, contact Pamela Mazakas, Storm Water Phase II Matrix Manager, Office of Wastewater Management, at (202) 260–6599.

Dated: November 3, 1995.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 95–28389 Filed 11–16–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5333–2]

Meeting; Clean Air Act Committee

The Mobile Sources Technical Advisory Subcommittee to the Clean Air Act Committee is convening a meeting on December 1 from 10–3 at the Ramada Detroit Metro Airport, 8270 Wickham Rd., Romulus, Michigan. There is some chance this meeting may have to be cancelled closer to the date if EPA's budget authority is not clarified; EPA is now operating under a Continuing Resolution which expires on November 13. This meeting will address primarily EPA's Heavy Duty Nox initiative. Questions can be addressed to Katherine McMillan, Designated Federal Official to the Subcommittee, at 202–260–3420.

Katherine McMillan,

Associate Director, Policy, Planning and Budget Division, Office of Mobile Sources.

[FR Doc. 95–28383 Filed 11–16–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–34084; FRL–4986–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 15, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 15 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names/active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 15, 1996 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1–Registrations with Requests for Amendments to Delete Uses in Certain Pesticide Registrations

EPA Reg No.	Product Name	Delete From Label
001812–00245	Linex 4L (Linuron)	Sweet corn
001812–00320	Linex 50 DF (Linuron)	Sweet corn, cotton
002724–00314	SAFROTIN Emulsifiable Concentrate Insecticide (Propetamphos)	Food processing (mills, dairies, etc.), meat & poultry plants, food packing (canning, bottling, etc.), food and/or feed warehouses
002724–00355	Zoecon RF-270 Emulsifiable Concentrate (Propetamphos)	Food processing (mills, dairies, etc.), meat & poultry plants, food packing (canning, bottling, etc.), food and/or feed warehouses
002724–00449	Zoecon 8718 EW (Propetamphos)	Food processing (mills, dairies, etc.), meat & poultry plants, food packing (canning, bottling, etc.), food and/or feed warehouses
005905–00494	Fluometuron 80WP Herbicide (Fluometuron)	Sugarcane use
037979–00001	ACECAP 97 Systemic Insecticide (Acephate)	Forests, golf courses, commercial landscaping
042750–00014	Albaugh MCPA Amine 4 (MCPA, dimethylamine salt)	Rice, Flax
048273–00003	Ametryne 80 WP (Ametryn)	Potatoes, citrus (grape fruit, oranges)
062719–00013	MCP Amine (MCPA, dimethylamine salt)	Flax, peas
062719–00059	MCP Ester (MCPA, isoocytl ester)	Flax
062719–00060	MCPA Acid Technical (MCPA)	Flax, peas
062719–00058	MCPA Na Salt (MCPA, sodium salt)	Grain sorghum, rice, flax, peas
062719–00062	MCPA Amine 5 Lb Concentrate (MCPA, dimethylamine salt)	Flax, peas
062719–00064	MCPA 2-Ethylhexyl Ester Technical (MCPA, isooctyl ester)	Flax

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2–Registrants Requesting Amendments to Delete Uses in Certain Pesticide Registrations

Company No.	Company Name and Address
001812	Griffin Corporation, P.O. Box 1847, Valdosta, GA 31603.
002724	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
037979	Creative Sales, Inc., P.O. Box 501, 222 No. Park ave., Fremont, NE 68025.
042750	Albaugh, Inc., 1517 N. Ankeny Blvd., Suite A, Ankeny, IA 50021.
062719	DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pest, Product registrations.

Dated: November 3, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–28393 Filed 11–16–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66219; FRL–4987–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by Febuary 15, 1996, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be canceled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 25 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1–Registrations With Pending Requests for Cancellation

Registration no.	Product Name	Chemical Name
000299–00221	Martin's Ear - Tix - Tox Ear Tick Control	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000352–00396	Dupont Benlate DF Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000655–00790	Prentox Larva-Lur	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
002393 OR–86–0008	Mylone 99G Soil Fumigant NC	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
002935–00416	Wilbur Ellis MCPA Sodium Salt.	Sodium 2-methyl-4-chlorophenoxyacetate
003125 CA–82–0103	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 CA–82–0104	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 CA–91–0029	Metasystox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 ID–77–0006	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 ID–78–0001	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 NM–79–0025	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
N/A	N/A	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
N/A	N/A	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 NV–77–0014	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 OH–89–0004	Metasystox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 OR–77–0019	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 OR–79–0067	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 WA–77–0014	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 WA–77–0058	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 WA–80–0077	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 WA–85–0003	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003125 WA–89–0033	Metasystox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
007056–00149	CSA Screwworm Spray	Dipropyl isocinchomeronate
N/A	N/A	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
010182 OR–88–0016	Fusilade 2000 Herbicide	Butyl (*R*)-2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate
010182 OR–90–0018	Fusilade 2000 Herbicide	Butyl (*R*)-2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate
050534–00028	75% Dimethyl T	Dimethyl tetrachloroterephthalate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2–Registrants Requesting Voluntary Cancellation

EPA Company no.	Company Name and Address
000299	C. J. Martin Co, Box 630009, Nacogdoches, TX 75963.

TABLE 2–Registrants Requesting Voluntary Cancellation—Continued

EPA Company no.	Company Name and Address
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000655	Prentiss Inc., 21 Vernon Street, C.B. 2000, Floral Park, NY 11001.
002393	Haco, Inc., Box 7190, Madison, WI 53707.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
007056	IQ Products Co, Attn: Marty York, 6212 State Hwy 249, Houston, TX 77086.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
050534	ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.

III. Procedures for withdrawal of request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before February 15, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide productswhich are currently in the United States and which have beenpackaged, labeled, and released for shipment prior to the effectivedate of the cancellation action. Unless the provisions of anearlier order apply, existing stocks already in the hands ofdealers or users can be distributed, sold or used legally untilthey are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pest, Product registrations.

Dated: November 3, 1995.

Frank Sanders,

Director, Program Management & Support Division, Office of Pesticide Programs.

[FR Doc. 95–28392 Filed 11–16–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0376]

Plascon, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 572–003

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the establishment license (U.S. License No. 572–003) and the product license issued to Plascon, Inc., doing business as Anderson Plasma Center, for the manufacture of Source Plasma. The proposed revocation is based on the firm's history of continued noncompliance with the applicable biologics regulations and the license standards.

DATES: The firm may submit a written request for a hearing to the Dockets Management Branch by December 18, 1995, and any data and information justifying a hearing by January 16, 1996. Other interested persons may submit written comments on the proposed revocation by January 16, 1996.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA is proposing to revoke the establishment license (U.S. License No. 572–003) and the product license issued to Plascon, Inc., doing business as Anderson Plasma Center, 2507 Nichol Ave., Anderson, IN 46011, for the manufacture of Source Plasma.

During preapproval and routine inspections conducted by FDA at Plascon, Inc., in 1989, 1991, 1992, and 1993, significant deviations from the applicable Federal regulations and the license standards were documented. Following each of these inspections, FDA provided to Plascon, Inc., written documentation of the deviations observed; FDA then requested that Plascon, Inc., indicate in writing what corrective action plan would be undertaken to remedy the deviations. Following the 1992 inspection, FDA issued a warning letter dated November 12, 1992, to Plascon, Inc., advising the firm that failure to promptly correct the deviations observed during the inspection could result in regulatory action by FDA without further notice.

In response to FDA's inspectional observations, in letters dated December 19, 1989, October 17, 1991, and January 6, 1993, Plascon, Inc., proposed corrective action plans. However, subsequent inspections of Plascon, Inc., by FDA continued to demonstrate that sufficient and effective long-term corrective action had not been achieved. Plascon, Inc.'s, cumulative inspectional history thus established a pattern of continued noncompliance with the applicable Federal regulations and license standards.

The most recent inspection, conducted from December 13 through December 17, 1993, revealed continuing significant deviations from the applicable regulations and the license standards. These deviations included, but were not limited to, the following: (1) Failure to adequately determine donor suitability (21 CFR 606.100(b)(1)

and 640.63(c)); (2) failure to investigate donor adverse reactions (21 CFR 606.170(a)); (3) failure to perform adequate donor physical examinations (21 CFR 640.63(b)(3) and 640.63(c)(9)); (4) failure to provide suitable facilities (21 CFR 606.40(a)(1)); (5) failure to perform and maintain records of quality control for equipment and reagents (21 CFR 606.60(a), 606.160(b)(5)(i), and 606.160(b)(7)(iv)); and (6) failure to maintain complete and accurate records and follow standard operating procedures (21 CFR 606.160(b)(1)(i), 606.160(b)(1)(ii), and 640.85(b)(3)).

Accordingly, due to the serious nature of the deviations, which the Commissioner of Food and Drugs determined to constitute a danger to health, FDA suspended the firm's licenses by letter dated January 11, 1994. In a letter to FDA dated January 20, 1994, Plascon, Inc., requested that revocation be held in abeyance and that a time extension be granted by which another corrective action plan would be submitted. By letter dated January 27, 1994, FDA granted the request for a time extension to submit in writing the corrective action plan. By letter dated January 28, 1994, Plascon, Inc., requested a second time extension for submission of the plan. By letter dated, February 10, 1994, FDA granted the second time extension. By letter dated February 21, 1994, Plascon, Inc., submitted the corrective action plan to FDA.

After consideration of Plascon, Inc.'s, submission, FDA sent a letter dated May 5, 1994, denying Plascon, Inc.'s, request that the license revocation be held in abeyance. FDA advised Plascon, Inc., that the most recent corrective action plan was incomplete and inadequate, and that Plascon, Inc.'s, claim that sufficient corrective actions would be implemented and sustained was not credible in light of the firm's careless disregard of the applicable regulations and standards. In accordance with § 601.5(b) (21 CFR 601.5(b)), FDA advised Plascon, Inc., that no additional time would be provided in which to demonstrate compliance with the regulations and standards before FDA would initiate proceedings to revoke Plascon, Inc.'s, licenses. Plascon, Inc., was offered the option of voluntarily requesting that the licenses be revoked. Plascon, Inc., was further advised that, should that option not be exercised, FDA would initiate proceedings to revoke the license by publishing in the **Federal Register** a notice of opportunity for a hearing on a proposal to revoke the licenses, pursuant to § 12.21(b) (21 CFR 12.21(b)), as provided in § 601.5(b). Plascon, Inc., did not respond to FDA's letter within the specified response period.

Thus, under § 12.21(b), FDA is issuing a notice of opportunity for a hearing on a proposal to revoke Plascon, Inc.'s, licenses. FDA has placed copies of letters between FDA and Plascon, Inc., concerned with the revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. These documents include the following: (1) November 12, 1992, warning letter from FDA to Plascon, Inc.; (2) January 6, 1993, response letter from Plascon, Inc., to FDA regarding FDA inspectional findings of inspection conducted between August 11, 1992, and October 21, 1992; (3) January 7, 1994, response letter from Plascon, Inc., to FDA regarding FDA inspectional findings of inspection conducted between December 13, 1993, and December 17, 1993; (4) January 11, 1994, letter from FDA to Plascon, Inc., suspending the firm's licenses; (5) January 20, 1994, letter from Plascon, Inc., to FDA requesting that license revocation be held in abeyance and that an extension of time be granted to submit another corrective action plan; (6) January 27, 1994, letter from FDA granting the request for an extension of time to submit in writing a corrective action plan; (7) January 28, 1994, letter from Plascon, Inc., requesting a second extension of time for submission of a corrective action plan; (8) February 10, 1994, letter from FDA to Plascon, Inc., granting the second extension of time; (9) February 21, 1994, letter from Plascon, Inc., submitting a corrective action plan to FDA; and (10) May 5, 1994, letter from FDA to Plascon, Inc., denying the firm's request that the revocation be held in abeyance and advising Plascon, Inc., that the corrective action plan submitted by letter dated February 21, 1994, was incomplete and inadequate and that FDA would institute license revocation proceedings. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Plascon, Inc., may submit a written request for a hearing to the Dockets Management Branch by December 18, 1995, and any data and information justifying a hearing must be submitted by January 16, 1996. Other interested persons may submit comments on the proposed revocation by January 16, 1996.

FDA procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data and information to justify a hearing on a proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there is not genuine and substantial issue of fact for resolution at a hearing, or if a request for a hearing is not made within the specified time, or in the required format or the required analyses, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351 (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 701 (21 U.S.C. 321, 351, 352, 355, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: November 8, 1995.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 95–28367 Filed 11–16–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. December 4, 1995, 8:30 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–594–5521, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Peripheral and Central Nervous System Drugs Advisory Committee, code 12543.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 28, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss product license application 95–0979 from Biogen, Inc., for Interferon Beta-1a (Avonex™), for treatment of relapsing forms of multiple sclerosis.

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. December 4 and 5, 1995, 8:30 a.m., DoubleTree Hotel, Conference Center, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 4, 1995, 8:30 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5:30 p.m.; open public hearing, December 5, 1995, 8:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 4 p.m.; Jeanne L. Rippere or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before November 24, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 4, 1995, the subcommittee will discuss data and information submitted to support the safety and effectiveness of hydrogen peroxide, sodium bicarbonate, and a combination of these two ingredients for use in the prevention and/or treatment of dental plaque and gingivitis. On December 5, 1995, if necessary, the subcommittee will continue its discussion of hydrogen peroxide and sodium bicarbonate. In addition, it will begin to discuss data and information submitted to support the safety and effectiveness of sanguinaria extract for use in the prevention and/or treatment of dental plaque and gingivitis.

Dermatologic and Ophthalmic Drugs Advisory Committee Subcommittee on Ophthalmic Drugs With Representation From the Antiviral Drugs Advisory Committee

Date, time, and place. December 8, 1995, 8:30 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m., Ermona B. McGoodwin or Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dermatologic and Ophthalmic Drugs Advisory Committee, code 12534.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 1, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time required to make their comments.

Open committee discussion. The committee will discuss data relevant to the new drug application (NDA) 20–569 ganciclovir intravitreal implant (Vitrasert® Sterile Intravitreal Implant, Chiron Vision Corp.) for treatment of cytomegalovirus retinitis. The committee will also discuss data relevant to NDA 20–597 latanoprost (Xalatan™ Sterile Ophthalmic Solution, Pharmacia, Inc.) a topical ophthalmic drug indicated for the reduction of elevated intraocular pressure in patients with open-angle glaucoma and ocular hypertension.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 13, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–28366 Filed 11–16–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–63]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 9, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–2828 Filed 11–16–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement and Receipt of an Application for the Proposed Issuance of a Permit To Allow Incidental Take of Threatened and Endangered Species on Plum Creek Timber Company, L.P., Lands in the I–90 Corridor, King and Kittitas Counties, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability; request for comments.

SUMMARY: This notice advises the public that Plum Creek Timber Company, L.P. (Applicant) has applied to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (together Services) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant has also requested unlisted-species and safe-harbor provisions in an Implementation Agreement (Agreement) to cover vertebrate species which may be found in the planning area. The application has been assigned permit number PRT–808398. The requested permit would authorize incidental take of currently listed threatened or endangered species that may occur within the planning area in King and Kittitas Counties, Washington, as a result of the Applicant's timber management activities. The unlisted-species provision provides for the issuance of further permits for the incidental take of species not presently listed under the Act, but which might become listed during the term of the proposed permit, and which might occur within the planning area.

The Services also announce the availability of a Draft Environmental Impact Statement (DEIS) for the proposed issuance of the incidental take permit and approval of the Agreement. All comments received will become part of the public record and may be released. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and DEIS should be received on or before January 7, 1996.

ADDRESSES: Comments regarding the application or DEIS, or requests for those documents, should be addressed to William Vogel, U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C—Suite 101, Olympia, Washington 98501; (360) 534–9330. Please refer to permit No. PRT–808398 when submitting comments. Individuals wishing copies of the documents for review should immediately contact the office listed above. Copies of the documents are also available at the following libraries:

Wenatchee Public Library, Attention: Joy, 310 Douglas Street, Wenatchee, Washington 98801

University of Washington Library, Attention: Carolyn Aamot, Government Publications Department, 170 Suzzallo Library, Seattle, Washington 98195–2900

Seattle Public Library, Attention: Jeanette Voiland, Government Publications Department, 1000 Fourth Avenue, Seattle, Washington 98104

Evergreen State College, Attention: Lee Lyttle, Library Campus Parkway—L23100H, Olympia, Washington 98505

Central Washington University, Attention: Dr. Patrick McLaughlin, Library Collection Development, Ellensburg, Washington 98926

King County Library System, Attention: Cheryl Standley, Documents Department, 1111 110th Avenue Northeast, Bellevue, Washington 98004

FOR FURTHER INFORMATION CONTACT: William Vogel, U.S. Fish and Wildlife Service, or Steve Landino, National Marine Fisheries Service, at the office listed above.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, "taking" of threatened and endangered species is prohibited. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are in 50 CFR 17.32 and 17.22.

The permit application includes a Habitat Conservation Plan (HCP) and the Agreement. In the HCP, the Applicant has addressed species conservation and ecosystem management on approximately 170,000 acres of its private land in the Cascade Mountains of Washington. The Applicant's ownership occurs in a "checkerboard" pattern in an area commonly referred to as the I–90 Corridor. The term "checkerboard" refers to alternate sections of public and private land. The "checkerboard" HCP planning area is approximately 419,000 acres in size. The term of the proposed permit is 50 years from the date of issuance, with a possible extension of an additional 50 years for safe-harbor provision purposes.

The Applicant is requesting a permit for the incidental take of northern spotted owls (Strix occidentalis caurina) (owls) which may occur as a result of timber harvest and related activities within a portion of the owl sites present on the Applicant's property. There are currently more than 100 owl sites that impact operations within the planning area. The Applicant plans to avoid the take of marbled murrelets (Brachyramphus marmoratus marmoratus), but has included murrelets in the incidental take permit application in case some incidental take occurs. The Applicant has also included grizzly bears (Ursus arctos = U.a. horribilis) and gray wolves (Canis lupus) in the permit application to cover the circumstance where these species may occur on the subject property in the future and may at some point be subject to take. The Applicant has addressed numerous other species in their HCP and is requesting the unlisted-species and safe-harbor provisions in the Agreement for vertebrate species which may be found in habitats within the planning area. At the time of termination for the HCP phase of the permit, the safe-harbor provision would provide the Applicant relief from regulatory restrictions on timber-management activities in habitats provided for listed species which are greater than the habitat amounts required under the HCP.

The HCP is designed to complement the Federal Northwest Forest Plan, and includes various forms of mitigation which are integral parts of the HCP. Mitigation includes a schedule of habitat amounts to be provided for each decade of the 50-year HCP. These habitats include eight stand-structure types (ranging from early-successional stages, such as stand initiation, to late-successional stages, such as old growth) and habitat for owls. Owl-habitat projections include projections for nesting, roosting, and foraging habitat, and for foraging and dispersal habitat. Mitigation for gray wolves and grizzly bears include avoidance of timber harvest and road construction in certain habitats, limits to road densities, provision of visual cover, and other specific management prescriptions. Minimum prescriptions are also provided for riparian and wetland areas, and Watershed Analysis will be completed on an accelerated basis. Specific prescriptions to minimize and mitigate impacts will also be implemented for other species and special habitats.

The DEIS considers four alternatives, including the Proposed Action and the No-action Alternatives. Under the No-action Alternative, the Applicant would avoid the take of all Federally listed species and no permit would be issued. Under the Riparian Alternative, emphasis for conservation of fish and wildlife species would be placed in riparian and wetland areas; other portions of the ownership would be managed for aggressive timber harvest. Under the Dispersal Alternative, riparian areas would be managed for fish and wildlife, but, in addition, upland areas would be managed to provide dispersal habitat for owls. The Proposed Action builds upon the benefits of the previous alternatives. It places emphasis for conservation on riparian and wetland areas, but, also, commits to implementation of the Applicant's Environmental Principles; provides for nesting, roosting, and foraging habitat for owls, and provides for habitat deferrals for owls and goshawks. The Proposed Action includes specific mitigation for other currently listed and unlisted wildlife species such as the gray wolf, grizzly bear, Larch Mountain salamander, and

other vertebrate species and special habitats.

Dated: November 6, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–27962 Filed 11–16–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Fort McHenry National Monument and Historic Shrine, MD; Concession Contract

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to issue a concession contract for operations currently conducted by Evelyn Hill Corporation authorizing the continuation of gift and souvenir sales for the public at Fort McHenry National Monument And Historic Shrine, Baltimore, Maryland, for a period of five (5) years from January 1, 1996 through December 31, 2000.

EFFECTIVE DATE: January 16, 1996.

ADDRESS: Interested parties should contact the Superintendent, Fort McHenry National Monument and Historic Shrine, Baltimore, Maryland 21230–5393, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1992, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, Section 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60) day following publication of this notice to be considered and evaluated.

Dated: November 2, 1995.

Warren Beach,

Acting Director, Northeast Field Area.

[FR Doc. 95–28363 Filed 11–16–95; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan/ Development Concept Plan, Draft Environmental Impact Statement, Natural Bridges National Monument, UT

AGENCY: National Park Service, Interior.

ACTION: Availability of draft environmental impact statement and general management plan/development concept plan for Natural Bridges National Monument.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement/ General Management Plan/Development Concept Plan (DEIS/GMP) for Natural Bridges National Monument, Utah.

DATES: The DEIS/GMP will remain available for public review until January 16, 1996. If any public meetings are held concerning the DEIS/GMP, they will be announced at a later date.

ADDRESSES: Comments of the DEIS/GMP should be sent to the Superintendent, Natural Bridges National Monument, Box 1—Natural Bridges, Lake Powell, Utah 84533–0101. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Natural Bridges National Monument, Box 1—Natural Bridges, Lake Powell, Utah 84533–0101, (801) 692–1234

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes two alternatives which are being considered to direct the management and development of Natural Bridges National Monument for a period of about ten years.

The alternatives include: (1) No Action—Under this alternative, existing facilities and management actions would remain unchanged; (2) Proposed Plan—Under the proposal, the administrative/visitor center would be expanded to provide 900–1,400 square feet of office and sales space; removal and rehabilitation of a small picnic area, the addition of a comfort station and benches for visitor comfort along the loop road; the addition of housing for 12 future employees; redesign of the visitor center parking area to improve vehicular circulation; and the addition of a garage and storage building in the maintenance area.

The DEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternative on water resources, flood plains, wetlands, geology, soils, vegetation, wildlife, threatened and endangered species, air quality, visual interpretation, socioeconomic data, health and safety, law enforcement, other agencies, management and operations, and cumulative impacts. The environmental consequences of the proposed action and alternative considered are fully disclosed in the DEIS/GMP/DCP.

FOR FURTHER INFORMATION: Contact Superintendent, Natural Bridges National Monument, at the above address and telephone number.

Dated: October 20, 1995.

Roy Everhart,

Intermountain Field Area, National Park Service.

[FR Doc. 95–28379 Filed 11–16–95; 8:45 am]

BILLING CODE 4310–70–P

Advisory Commission for the San Francisco Maritime National Historical Park; Meeting

Agenda for the December 7, 1995 Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park

Public Meeting, Fort Mason, Building C, Room 370, 9:30 am–12:15 pm

9:30 am—At Building C
Welcome—Neil Chaitin, Chairman,
Proclamation Presentation—Neil Chaitin, Chairman,
Opening Remarks—Neil Chaitin, Chairman
William G. Thomas, Superintendent
Old Business
Approval of Minutes
9:45 am—Orientation to Park Departments
Collections, Judy Hitzeman, Supervisory Archivist
Small Craft, William Doll, Curator of Small Craft
10:05 am—Update—Museum Accreditation San Francisco Maritime National Historical Park, Marc Hayman—Chief, Interpretation and Resource Management
10:15 am—Update—General Management Plan, William G. Thomas, Superintendent
10:30 am—Break.
10:45 am—FY–96 Ships Division Priorities, Acting Ships Manager
11:15 am—FY–96 Budget, William G. Thomas, Superintendent
11:30 am—Status Report—Disaster Planning, Marc Hayman, Chief, Interpretation & Resource Management
11:45 am—Public questions and comments
12:00 pm—Agenda Items/Date for next meeting.

Dated: November 3, 1995.

William G. Thomas,

Superintendent, San Francisco Maritime NHP.

[FR Doc. 95–28364 Filed 11–16–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume V

Kansas
KS950067 (Nov. 17, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ950002 (Feb. 10, 1995)
NJ950003 (Feb. 10, 1995)
NJ950004 (Feb. 10, 1995)
NJ950007 (Feb. 10, 1995)
NJ950009 (Feb. 10, 1995)
NJ950015 (Feb. 10, 1995)
New York
NY950003 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950006 (Feb. 10, 1995)
PA950026 (Feb. 10, 1995)
PA950030 (Feb. 10, 1995)
PA950031 (Feb. 10, 1995)
Virginia
VA950001 (Feb. 10, 1995)
VA950002 (Feb. 10, 1995)
VA950013 (Feb. 10, 1995)
VA950111 (Feb. 10, 1995)

Volume III

Alabama
AL950004 (Feb. 10, 1995)
AL950034 (Feb. 10, 1995)

Volume IV

Illinois
IL950001 (Feb. 10, 1995)
IL950002 (Feb. 10, 1995)
IL950003 (Feb. 10, 1995)
IL950004 (Feb. 10, 1995)
IL950005 (Feb. 10, 1995)
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IL950020 (Feb. 10, 1995)
IL950023 (Feb. 10, 1995)
IL950026 (Feb. 10, 1995)
IL950049 (Feb. 10, 1995)
Michigan
MI950030 (Feb. 10, 1995)

Volume V

Kansas
KS950003 (Feb. 10, 1995)
KS950004 (Feb. 10, 1995)
KS950005 (Feb. 10, 1995)
KS950014 (Feb. 10, 1995)
KS950061 (Feb. 10, 1995)
KS950063 (Feb. 10, 1995)
KS950064 (Feb. 10, 1995)
New Mexico
NM950001 (Feb. 10, 1995)

Volume VI

Colorado
CO950001 (Feb. 10, 1995)
North Dakota
ND950001 (Feb. 10, 1995)
ND950019 (Feb. 10, 1995)
ND950027 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 9th day of November 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–28151 Filed 11–16–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–101)]

NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Sciences and Applications Advisory Subcommittee.

DATES: December 15, 1995, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–3A, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Roger K. Crouch, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0818.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Program Status Report
—Space Station Resources and Utilization
—Committee on Microgravity Research Report
—Life and Microgravity Sciences Proposed Reorganization
—U.S.-Russian Science Cooperative Program
—NASA/MIR Station Program
—HEDS Metrics
—Informal Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 13, 1995.

Danalee Green,

Chief, Management Controls Office, National Aeronautics and Space Administration.

[FR Doc. 95–28373 Filed 11–16–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–100)]

NASA Advisory Council, Earth Systems Science and Applications Advisory Committee (ESSAAC), Earth Observing System Data and Information System Advisory Subcommittee (ESDAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth System Science and Applications Advisory Committee.

DATES: December 1, 1995, 9 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC–5A Conference Room, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: James L. Harris, Code YD, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2234.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The provisional agenda for the meeting is as follows:

—Discussion of NASA's Response to the Board on Sustainable Development Summer Study at LaJolla, CA
—Cost Modeling Progress
—Findings, Conclusions, and Recommendations.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 13, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–28372 Filed 11–16–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506

FOR FURTHER INFORMATION CONTACT: Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 1, 1995.
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications submitted to Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access Projects, for projects beginning after May 1, 1996.

Sharon I. Block,

Advisory Committee Management Officer.

[FR Doc. 95–28368 Filed 11–16–95; 8:45 am]

BILLING CODE 7536–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36475; File No. SR–CBOE–95–61]

November 9, 1995.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Arbitration Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions in Chapter XVIII, "Arbitration," of the Rules of the CBOE.[2] Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Chicago Board Options Exchange Inc.—Rules

* * * * *

Chapter XVIII—Arbitration

* * * * *

Procedure in Member Controversies

Rule 18.2 The following procedures shall apply in any dispute, claim or controversy between parties who are members or persons associated with a member which is submitted for arbitration pursuant to Rule 18.1(a):

(a) Selection of Arbitrators. The arbitration panel shall be selected by the [Chairman of the Arbitration Committee] *Director of Arbitration* and shall consist of not less than three members of the *Arbitration* Committee.

(b) [Peremptory] Challenges. Each party to the dispute may peremptorily challenge any person appointed to the arbitration panel. There shall be no fixed limit on the number of peremptory challenges by a party; however, no party may assert an unreasonable number of challenges. [The Chairman of the Arbitration Committee] *The Director of Arbitration* shall deny peremptory challenges if both [he and] the Director of Arbitration *and the Chairman of the Arbitration Committee* agree that the number of such challenges by a party has been unreasonable. *Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Rule 18.11 or Rule 18.22 (d) or (e), whichever comes first. There shall be unlimited challenges for cause.*

[(c) The minimum filing deposit and fee shall be $75.00. If the claim would require a higher filing deposit and fee under Rule 18.33, the higher amount shall be required. In the event that a matter is resolved prior to the hearing, a minimum of $50.00 of the filing deposit will be retained by the Exchange.]

[(d) *(c)* [Additional provisions relating to member controversies are set forth [beginning at] *in* Rule 18.34] *In any arbitration concerning the alleged failure to pay for floor brokerage services, the following additional provisions shall apply:*

(1) In order to commence such a proceeding, the claimant shall include with his statement of claim the following: (1) Copies of billing copies of order tickets relating to the unpaid brokerage; (ii) copies of monthly bills reflecting the unpaid brokerage; (iii) copies of evidence reflecting the claimant's post-billing efforts to collect the unpaid brokerage; and (iv) a certification of any efforts, not reflected in writing, made to collect the unpaid brokerage.

(2) If the arbitrators find that the respondent knowingly and purposefully failed to pay for floor brokerage services, and such failure was without sufficient justification or excuse, then the arbitrators have the authority to award up to two times the amount of the brokerage bill, in addition to whatever determinations the arbitrators may ordinarily make concerning arbitration fees, interest, and attorney's fees or other expenses.

[(e)] *(d)* General. Subject to the foregoing [exceptions] *provisions of this Rule* the [provisions] *other Rules* of [the Uniform Arbitration Code contained in Rules 18.5 through 18.33] *Chapter 18* shall apply *to arbitrations between members except for those provisions specifically applicable to arbitrations* [except insofar as such provisions specifically apply to matters] involving public customers.

* * * * *

[Payment for Floor Brokerage Services]

[Rule 18.34 In any arbitration between parties who are members or persons associated with a member concerning the alleged failure to pay for floor brokerage services, Chapter XVIII shall be supplemented by the following provisions:

(a) In order to commence such a proceeding, the claimant shall include with his statement of claim the following: (1) Copies of billing copies of order tickets relating to the unpaid brokerage; (2) copies of monthly bills reflecting the unpaid brokerage; (3) copies of evidence reflecting the claimant's post-billing efforts to collect the unpaid brokerage; and (4) a certification of any efforts, not reflected in writing, made to collect the unpaid brokerage.

(b) If the arbitrators find that the respondent knowingly and purposefully failed to pay for floor brokerage services,

[1] The CBOE has represented that this proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The CBOE also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act.

[2] *CBOE Guide*, Rules, Chapter XVIII (CCH) ¶¶2513–2540D.

and such failure was without sufficient justification or excuse, then the arbitrators have the authority to award up to two times the amount of the brokerage bill, in addition, to whatever determinations the arbitrators may ordinarily make concerning arbitration fees, interest, and attorney's fees or other expenses.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The purpose of this rule change is to revise certain Exchange rules governing arbitration procedures. First, the authority of the Director of Arbitration to appoint the arbitration panels in disputes between members will be codified. Currently, paragraph (a) of CBOE Rule 18.2 specifies that the Chairman of the Arbitration Committee shall appoint the arbitration panel. However, in practice, the Chairman of the Arbitration Committee delegates the authority to select the panel to the Director of Arbitration, the Exchange employee charged with administering CBOE's arbitration forum. Therefore, this change would conform the rule to current practice. It should also be noted that in disputes between non-members and members or persons associated with members, the Director of Arbitration is authorized, under Exchange Rules 18.4 and 18.10, to appoint a sole arbitrator and the members of an arbitration panel. Thus, this rule change will make the rules governing the selection of arbitrators consistent.

A second change would more closely conform Rule 18.2 with a rule governing arbitrations in non-member disputes. Rule 18.12, *Challenges*, authorizes the Director of Arbitration to award additional peremptory challenges and to extend the time for exercising peremptory challenges. Paragraph (b) of Rule 18.2 would be changed to grant the Director of Arbitration the right to deny peremptory challenges in member disputes, if both the Director and the Chairman of the Arbitration Committee agree that the number of such challenges has been unreasonable. In addition, paragraph (b) would set a five business day time limit for notifying the Director of Arbitration concerning peremptory challenges. Paragraph (b) would also state that there may be unlimited challenges for cause, consistent with Rule 18.12.

Existing paragraph (c) of Rule 18.2 is proposed to be deleted because the fees are already more completely governed by Rule 18.33, *Schedule of Fees*. In addition, the second sentence of existing paragraph (c) of Rule 18.2, which concerns the retention of $50 of the filing deposit, is superseded by and inconsistent with paragraph (a) of Rule 18.33 which states that the filing fee is non-refundable.

Rule 18.34 will be deleted, and its provisions will be incorporated into Rule 18.2 as new paragraph (c). This change will combine in a single rule, related provisions governing procedures in member controversies.

Finally, a few editorial revisions, for clarification purposes, are proposed to be made to current paragraph (e), and that paragraph will be re-lettered as paragraph (d).

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and the protection of investors and the public interest by improving the administration of an impartial arbitration forum for the resolution of disputes between members, persons associated with members and public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a "noncontroversial" rule change pursuant to paragraph (e)(6) of Rule 19b–4. Consequently, the rule change will become operative thirty days after the filing of this rule proposal.

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–95–61 and should be submitted by December 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28400 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36476; File No. SR–DTC–95–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Modification of DTC's Reclamation Procedures

November 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 23, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–16) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify DTC's reclamation procedures as part of the conversion of DTC's money settlement system to an entirely same-day funds settlement ("SDFS") system. The proposed rule change will affect reclamations that are processed in both the SDFS system and the next-day funds settlement ("NDFS") system.[2] The revisions include (1) extending the period DTC will match reclaims with deliveries from the business day the reclaim is submitted to the business day the reclaim is submitted and the prior business day and (2) processing unmatched reclaims instead of rejecting them.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC planned to implement modifications to its reclamation procedures in the second quarter of 1995, but the implementation was postponed until the third quarter of 1995 at the request of participants.[4] Some participants were concerned that the modified reclamation procedures would be implemented at a time when the number of reclamations might increase as a result of the implementation of the shortened settlement time frame required under Commission Rule 15c6–1, which became effective on June 7, 1995.[5]

Furthermore, after additional discussions with participants, The Cashiers Association of Wall Street, the Securities Lending Division of the Securities Industry Association, and the New York Clearing House Association, DTC revised the planned modifications to the reclamation procedures as discussed below. The revisions include (1) extending the period for matching reclaims with deliveries from the business day the reclaim is submitted to the business day the reclaim is submitted and the prior business day and (2) process unmatched reclaims instead of rejecting them.

The reclaim matching period is the period in which DTC's system will search for the original securities delivery or payment order being reclaimed in order to determine whether the reclaim should be processed as a matched reclaim or as an unmatched reclaim. The original version of the revised reclaim procedures provided for a reclaim matching period of sixty business days in certain cases. DTC later concluded that almost all reclaims are likely to be matched using two business days, and any complications presented by a longer period for matching reclaims are unnecessary. Therefore, under the porposed rule change DTC will attempt to match reclaims to transactions processed either on the same day the reclamation is entered or on the prior business day. All reclaims with a corresponding orginal transaction that completed on the current or the preceding business day will be processed as "matched reclaims."

Matched SDFS reclaims will not be subject to Receiver-Authorized Delivery ("RAD") processing, which means that the receiver of a matched SDFS reclaim will not have the opportunity to review and approve the reclaim before it is processed. All matched SDFS reclaims with a settlement value less than $15 million will not be subject to participants' risk management controls (*i.e.*, collateral monitor and net debit caps). Matched SDFS reclaims with a settlement value of $15 million or more will be subject to normal risk management controls.

The receiver of a matched reclaim will not be able to enter a reclaim reversal through DTC's automated reclamation facility. If a matched reclaim needs to be reversed, it must be entered through the free form mode and it will be treated as an unmatched reclaim.[6]

Under the proposed rule change, DTC will process unmatched reclaims subject to certain controls instead of rejecting them. Unmatched reclaims are those that cannot be matched to a completed original transaction. Unmatched reclaims also include partial reclaims, reclaims received by DTC during the night cycle, and reclaims of transactions that were processed more than one business day prior to the day on which the reclaim is submitted. All unmatched SDFS reclaims will be subject to RAD processing, which means the receiver of an unmatched reclaim will have an opportunity to review and approve the reclaim before it is processed. Unmatched SDFS reclaims also will be subject to participants' collateral and risk management controls regardless of the settlement value.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the processing of reclaims of securities deliveries and payment orders which were made through DTC's facilities. DTC believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody and control or for which it is responsible because the proposed rule change modifies DTC's existing reclamation procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC informed participants of the proposed revisions to the reclamation procedures by a DTC Important Notice dated June 22, 1995. No written comments have been received.

[2] The changes described in this notice and order apply to both NDFS and SDFS reclaims unless specified as otherwise.

[3] The Commission has modified the text of the summaries submitted by DTC.

[4] A reclaim is the return of a delivery order or a payment order by a participant.

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994) 59 FR 59137 (changing the effective date of Rule 15c6–1).

[6] A reclaim submitted in a free form mode refers to a reversal submitted as a deliver order or a payment order through either Mainframe Dual Host, Computer-to-Computer Facility, or Participant Terminal System and identified as a reclaim by its reason code, which returns the securities or payment order to the original delivering party.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[7] The Commission believes that DTC's reclamation procedures are consistent with DTC's obligations under section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposed procedures extend the period in which reclaims are matched and processed from one business day to two business days, which should reduce the number of unmatched or rejected reclaims. DTC believes that almost all reclaims will be processed within the two business day period. In addition, under the proposal DTC will process unmatched reclaims subject to certain risk management controls rather than rejecting them thus further reducing the number of rejected reclaims.

The Commission also believes the proposal is consistent with DTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible because the processing of matched reclaims with settlement values exceeding $15 million will be subject to DTC's risk management controls and unmatched reclaims will be subject to DTC's risk management controls and RAD processing. Matched reclaims with settlement values exceeding $15 million and all unmatched reclaims that violate receiving or delivering participants' net debit caps or collateral monitors will not be completed and will await processing until sufficient collateral or credits are applied to the participants' accounts. Unmatched reclaims also will be subject to RAD processing. Therefore, receiving participants will have the opportunity to review and approve unmatched reclaims of $15 million or more before they are processed.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow DTC participants to benefit from the expanded reclamation matching period and the processing of unmatched reclaims subject to certain controls immediately upon implementation of the necessary system changes. The Commission also believes that accelerated approval will provide DTC participants with ample time to become familiar with the new reclamation procedures prior to final implementation of SDFS on February 22, 1996.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File Number SR–DTC–95–16 and should be submitted by December 8, 1995.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28397 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21487; No. 812–9642]

AIM Variable Insurance funds, Inc., et al.

November 9, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an exemption pursuant to the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: AIM Variable Insurance Funds, Inc. ("Company"), AIM Advisors, Inc. ("AIM"), and certain life insurance companies ("Participating Insurance Companies") and their separate accounts ("Separate Accounts") that currently or in the future will invest in the Company.

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of the Company and shares of any other investment company that is offered as a vehicle to fund insurance products and for which AIM, or any of its affiliates, may serve as manager, investment adviser, administrator, principal underwriter or sponsor (such other investment companies, including any series thereof, together with the Company and each of its series, are the "Funds") to be sold to and held by: (a) Separate Accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated Participating Insurance Companies, and (b) qualified pension and retirement plans outside of the context of Separate Accounts ("Qualified Plans" or "Plans").

FILING DATE: The application was filed on June 22, 1995 and amended on October 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 4, 1995, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Applicants, c/o Nancy L. Martin, Esq., AIM Advisors, Inc., 11 Greenway Plaza, Suite 1919, Houston, Texas 97046–1173.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants; Representations

1. The Company is a Maryland corporation registered pursuant to the 1940 Act as an open-end management investment company. Currently, the Company's common stock is divided into nine separate series, each representing an interest in a separate investment portfolio with its own investment objectives, program, policies and restrictions.

2. AIM, a Delaware corporation organized in 1976, is registered with the Commission pursuant to the Investment Advisers Act of 1940 and serves as the investment adviser to each Fund. AIM is a wholly-owned subsidiary of AIM Management Group Inc.

3. Shares of the funds are currently offered and sold to Separate Accounts of Connecticut General Life Insurance Company ("CG"), Citicorp Life Insurance Company ("Citicorp Life") and First Citicorp Life Insurance Company ("First Citicorp," together with CG and Citicorp Life, the "Current Insurance Companies"), to fund benefits under variable annuity contracts ("VA Contracts") issued by these insurance companies, and to AIM and CG in connection with the initial capitalization of each Fund. Each of these Separate Accounts is registered as a unit investment trust pursuant to the 1940 Act.

4. Prior to obtaining the exemptive relief sought in the application, the Funds intend to offer and sell their shares to Separate Accounts of the Current Insurance Companies as well as other Participating Insurance Companies, affiliated or unaffiliated with the Current Insurance Companies, to fund benefits under VA Contracts issued by these insurance companies. After obtaining exemptive relief, the Funds intend to offer and sell their shares to Separate Accounts of Participating Insurance Companies, including the Current Insurance Companies and insurance companies that are affiliated or unaffiliated therewith, to fund benefits under VA Contracts as well as single premium, scheduled premium and flexible premium variable life insurance contracts ("VLI Contracts," together with VA Contracts, the "Contracts") issued by these insurance companies.

5. The Participating Insurance Companies, either directly or through affiliated persons ("affiliates"), may serve, or be deemed to serve, as investment advisers, principal underwriters and/or depositors of, as appropriate, their respective Separate Accounts and/or the Funds.

6. The Funds also intend to offer and sell their shares to a variety of Qualified Plans as permitted by applicable tax law. Depending on the type of Qualified Plan, shares of the Funds may be held in trust by one or more trustees pursuant to Section 403(a) of the Employee Retirement Income Security Act of 1974. In addition, depending on the terms of a Qualified Plan, one or more of the Funds may serve as the sole investment vehicle under the Plan or as one of several interest alternatives. Also, Plan participants may be given an investment choice depending on the terms of the Plan. AIM will not act as investment adviser to any of the Qualified Plans that purchase shares of any of the Funds, except to the extent permitted by applicable law. Fund shares held by any Qualified Plan will be voted in accordance with the terms of the Plan pursuant to applicable law.

Applicants' Legal Analysis

1. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies.

2. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act (collectively, the "Rules") provide separate accounts organized as unit investment trusts with partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act in connection with scheduled premium and flexible premium VLI Contracts, respectively.

3. The exemptions provided by the Rules, however, are subject to certain exclusivity requirements that prohibit mixed and shared funding in the case of Rule 6e–2, prohibit shared funding in the case of Rule 6e–3(T), and prohibit the offering of underlying fund shares to Qualified Plans under both Rules.

4. Applicants state that, because the relief under the Rules is available only where shares of the Funds are offered exclusively to Separate Accounts, additional exemptive relief is necessary if the shares of the Funds also are to be sold to Plans.

5. Applicants state that the promulgation of the Rules preceded the issuance of the Treasury Department Regulations that made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of the Rules.

6. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Accordingly, Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, issue an order granting exemptions to Participating Insurance Companies and their Separate Accounts (and any investment adviser, principal underwriter and depositor of such a Separate Account and/or a Fund) from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be sold to and held by (a) Separate Accounts funding VA Contracts and VLI Contracts issued by both affiliated and unaffiliated Participating Insurance Companies and (b) Qualified Plans, under the circumstances described in the application.

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Subject to certain exclusivity requirements, the Rules provide partial exemptions from Section 9(a) by limiting the disqualification to affiliated

individuals or companies that directly participate in the management or administration of the underlying investment company. The partial relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9(a) of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9(a) to that which is appropriate in light of the policy and purposes of the section. Applicants argue that the Rules reflect the Commission's recognition that it is unnecessary to apply Section 9(a) to the many individuals who may be involved in an insurance company complex, but have no connection with the investment company funding the separate accounts. Applicants further argue that Rule 6e–3(T) reflects the Commission's recognition that it is unnecessary to apply Section 9(a) to such individuals in the context of mixed funding.

9. Applicants are aware of no reason the exemptions from Section 9(a) provided by Rule 6e–2 should not be coextensive with that provided by Rule 6e–3(T) with regard to mixed funding. In addition, Applicants are aware of no reason to limit the availability of the exemptions provided by the Rules in the context of shared funding and are not aware of any instance where the Commission or its staff has applied the requirements of Section 9(a) fully in the context of a shared funding arrangement.

10. Applicants do not expect Participating Insurance Companies to play any role in the management or administration of the Funds. Therefore, it is unlikely that they will need to rely on the partial exemptions provided by the Rules. However, in the event Participating Insurance Companies find such relief necessary, no regulatory purpose would be served by applying the full monitoring requirements of Section 9(a). Indeed, applying these requirements would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, the level of administrative charges borne by Contract owners, which would reduce the net rates of return realized by Contract owners.

11. Applicants also submit that the proposed sale of shares of the Funds to Qualified Plans would not affect the relief requested. Applicants state that the Participating Insurance Companies would engage in the same level of monitoring regardless of whether shares of the Funds were sold to Qualified Plans. Qualified Plans are not subject to Section 9(a), because they are not investment companies.

12. Applicants request relief comparable to that provided by paragraphs (b)(4) and (b)(15) of Rules 6e–2 and 6e–3(T) to the extent necessary to provide exemptions from Section 9(a), in the context of mixed and shared funding, with respect to *variable annuity* Separate Accounts of Participating Insurance Companies.

13. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as principal underwriter or depositor for any registered unit investment trust, such as the Separate Accounts, if an affiliated person of that trust is subject to a disqualification enumerated in Section 9(a) (1) or (2). Paragraph (b)(4) of Rules 6e–2 and 6e–3(T) provides partial exemptions from Section 9(a) by limiting the disqualification to affiliated individuals or companies that directly participate in the management or administration of a registered unit investment trust separate account or in the sale of variable life insurance contracts funded by such separate account. Applicants argue that the partial relief provided by Rules 6e–2(b)(4) and 6e–3(T)(b)(4) parallels that provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), discussed above. Applicants assert that, like the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), the partial relief granted by Rules 6e–2(b)(4) and 6e–3(T)(b)(4), from the requirements of Section 9(a) of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9(a) to that which is appropriate in light of the policy and purposes of such Section.

14. The effect of the requested relief would be to exempt, from the automatic disqualification provisions of Section 9(a), the officers, directors and employees of Participating Insurance Companies, and their affiliates, who do not participate directly in the management or administration of variable annuity Separate Accounts or the Funds underlying Separate Accounts funding VA Contracts, or in the sale of VA Contracts funded by such Separate Accounts. Such relief would be the same as the relief available under Rules 6e–2(b)(4) and (b)(15) and 6e–3(T)(b)(4) and (b)(15) with respect to variable life insurance Separate Accounts.

15. Applicants are aware of no reason the exemptions from Section 9(a) provided by Rules 6e–2(b)(4) and (b)(15) and Rules 6e–3(T)(b)(4) and (b)(15) with respect to variable life insurance contracts should not apply also with respect to variable annuity contracts.

16. Applicants request exemptive relief to limit the scope of Section 9(a) to those officers, directors, and employees of Participating Insurance Companies, and their affiliates, who participate directly in the management or administration of variable annuity Separate Accounts or the Funds underlying such Separate Accounts or in the sale of VA Contracts funded by the Separate Accounts.

17. Section 13(a) of the 1940 Act provides that it is unlawful for any registered investment company to, unless authorized by the vote of a majority of its outstanding voting securities, change its subclassification as open-end or closed-end investment company; engage in certain transactions and investment practices unless they are in accordance with the recitals of policy contained in its registration statement; deviate from certain investment policies of other fundamental policies; or cease to be an investment company.

Section 15(a) of the 1940 Act provides certain requirements regarding any contract between a fund and its investment advisor, including the provision that such contract may be terminated at any time by vote of a majority of the outstanding voting securities of such fund.

18. Rules 6e–2(b)(15) (iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment advisor, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) ((B) and (C) of each rule.

19. Applicants submit that neither mixed nor shared funding compromises the goals of the state insurance regulatory authorities or of the Commission. Indeed, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and

potentially increases an investment company's assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale. Applicants do not perceive that the sale of shares of the Funds to Qualified Plans would have any impact on the relief requested in this regard.

20. Applicants submit that no increased conflicts of interest would be present if the Commission grants the exemptive relief requested in the application.

21. Applicants further submit that granting the requested relief would enable Participating Insurance Companies investing in the Funds to: (a) avoid the costs of organizing and operating a funding medium, particularly the costs of obtaining expertise with respect to investment management; (b) expand the variety of funding options available under existing or future Contracts; and (c) benefit not only from the investment advisory and administrative expertise of the Funds' investment adviser, but also from the costs efficiencies and investment flexibility afforded by a large pool of funds. Moreover, sales of shares of the Funds to Qualified Plans in addition to Separate Accounts should result in an increased amount of assets available for investment by such Funds. Such an increase in assets should inure to the benefit of Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new Funds more feasible. Applicants believe there is no significant legal impediment to permitting mixed and shared funding.

Applicants' Conditions

1. A majority of the Board of Directors ("Board") of each Fund will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all Separate Accounts and all Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance or other regulatory authority; (b) a change in applicable federal or state insurance, tax or securities law or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by VA Contract owners and VLI Contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instruction of Contract owners; or (g) a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, AIM (or any other investment adviser of a Fund), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (such a Plan being referred to hereafter as a "Participating Plan"), will report any potential or existing conflicts to the Board of the relevant Fund. Participating Insurance Companies, AIM (or any other investment adviser of a Fund), and Participating Plans will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of Participating Insurance Company or a Participating Plan to inform the Board whenever it has determined to disregard Contract owner, a Plan participant, voting instructions, respectively. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreements governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) withdrawing the assets allocable to some or all of the Separate Accounts and Participating Plans from the Funds and reinvesting such assets in a different investment medium, which may include another Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and Plan participants and, as appropriate, segregating the assets of any appropriate group (*i.e.*, VA Contract owners and/or VLI Contract owners of one or more Participating Insurance Companies, and/or participants of one or more Participating Plans) that votes in favor of such segregation, or offering to the affected Contract owners and Plan participants the option of making such a change; and (b) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company or Participating Plan to disregard Contract owner or Plan participant voting instructions, respectively, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company or Participating Plan may be required, at the election of the relevant Fund, to withdraw its Separate Account's investment or, in the case of a Participating Plan, its participants' investments, in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants. For purposes of this Condition Four, a majority of the disinterested directors of the Board will determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or AIM (or any other investment adviser of the Funds) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any

Contract if an offer to do so has been declined by vote of a majority of Contract owners materially and adversely affected by the material irreconcilable conflict. No Participating Plan shall be required by this Condition Four to establish a new funding medium for any Plan participant if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Participating Plan makes such decision without a Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to all Participating Insurance Companies and Participating Plans.

6. Participating Insurance Companies will provide pass-through voting privileges to Contract owners who invest in registered Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their registered Separate Accounts in a manner consistent with voting instructions timely received from Contract owners. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it (and to any unregistered Separate Accounts supporting Contracts for which no voting privileges have been granted to the owners thereof), in the same proportion as it votes shares for which it has received timely instructions. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts received by the Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participating Insurance Companies and Participating Plans of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) shares of the Fund are offered in connection with mixed and shared funding, and are offered to Plans; (b) mixed and shared funding may present certain conflicts of interest; (c) due to differences in tax treatment and other considerations, the interests of various Contract owners investing in Separate Accounts investing in the Funds, and the interests of Plan participants investing in the Funds, may conflict; and (d) the Board of the Fund will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the person having a voting interest in shares of the Fund), and, in particular, each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. If, and to the extent that, Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participating Insurance Companies, as appropriate, shall take such steps as necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Participating Insurance Companies, the Participating Plans, and/or AIM (or any other investment adviser of a Fund) shall submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in any Commission order. The responsibility to submit such reports, materials, and data to the Board shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

12. A Participating Insurance Company, or any affiliate, will maintain at its home office, available to the Commission, (i) a list of its officers, directors and employees who participate directly in the management or administration of any VA Separate Account organized as a unit investment trust or of the Funds and/or (ii) a list of its agents who, as registered representatives, offer and sell VA Contracts. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

13. If a Qualified Plan should ever become an owner of 10% or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with such Fund. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28401 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21494; 811–8018]

Nuveen Connecticut Premium Income Municipal Fund 2; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Connecticut Premium Income Municipal Funds 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On September 15, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28402 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21495; 811–8328]

Nuveen Equity Investment Fund; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Equity Investment Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On February 2, 1994, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28403 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21499; 811–8020]

Nuveen Florida Premium Income Municipal Fund 2; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Florida Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On September 15, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28407 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21490; 811–8026]

Nuveen Georgia Premium Income Municipal Fund 2; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Georgia Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On September 15, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation of administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28409 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21488; 811–8016]

Nuveen Massachusetts Premium Income Municipal Fund 2; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Massachusetts Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On September 15, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28399 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21498; 811–8022]

Nuveen Michigan Premium Income Municipal Fund 3; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Michigan Premium Income Municipal Fund 3.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On September 15, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28406 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21497; 811–7610]

Nuveen Minnesota Premium Income Municipal Fund; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Minnesota Premium Income Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On April 2, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28405 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21496; 811–7990]

Nuveen Municipal Investment Fund; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Municipal Investment Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On August 31, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28404 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21491; 811–8028]

Nuveen New Jersey Premium Income Municipal Fund 4; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen New Jersey Premium Income Municipal Fund 4.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On September 15, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28410 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21492; 811–8024]

Nuveen Pennsylvania Premium Income Municipal Fund 4; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Pennsylvania Premium Income Municipal Fund 4.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On September 15, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28411 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21493; 811–7110]

Nuveen Select Maturities Municipal Fund 3; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Select Maturities Municipal Fund 3.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On August 21, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28412 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21489; 811–7612]

Nuveen Tennessee Premium Income Municipal Fund; Notice of Application

November 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Tennessee Premium Income Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Robert Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On April 2, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N–8A and a registration statement under the Act and the Securities Act of 1993. Applicant's registration statement was never declared effective.

2. Applicant has never made a public offering of its shares.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28408 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35-26406]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 9, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 4, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Credit, Inc., et al. (70-7113/70-7218)

CSW Credit, Inc. ("CSW Credit"), a nonutility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, and CSW, both of 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

By order dated July 19, 1985 (HCAR No. 23767) ("1985 Order"), CSW was authorized, among other things, to organize CSW Credit to purchase the accounts receivable of the operating companies of CSW at a discount and to finance these purchases with the issuance and sale of debt. CSW Credit was authorized to borrow up to $320 million and CSW was authorized to make equity investments in CSW Credit of up to an aggregate of $80 million through December 31, 1986.

By order dated July 31, 1986 (HCAR No. 24157) ("1986 Order"), CSW Credit was authorized to expand its business to the factoring of accounts receivable of nonaffiliated electric utility companies. In order to finance such transactions, CSW Credit was authorized to borrow up to an additional $160 million and CSW was authorized to make additional equity investments in CSW Credit of up to an aggregate of $40 million, through December 31, 1988. The 1986 Order also required CSW Credit to limit its acquisition of utility receivables from nonassociate utilities so that the average amount of such receivables for the preceding twelve-month period outstanding as of the end of any calendar month would be less than the average amount of receivables acquired from CSW associate companies outstanding as of the end of each calendar month during the preceding twelve-month period ("50% Restriction"). Further, the 1986 Order extended the authority of the 1985 Order until December 31, 1988.

By order dated February 8, 1988 (HCAR No. 24575), CSW Credit was authorized, among other things, to borrow, through December 31, 1989, up to $320 million and $304 million to finance the factoring of affiliate and nonaffiliate receivables, respectively. CSW was authorized to make equity investments in CSW Credit of up to an aggregate of $80 million and $76 million in connection with the factoring of affiliate and nonaffiliate receivables, respectively. This authority was extended through December 31, 1990 by order dated December 27, 1989 (HCAR No. 25009).

By order dated August 30, 1990 (HCAR No. 25138), CSW Credit was authorized to lower its equity ration to no less than 5%.

By orders dated December 21, 1990 and December 24, 1991 ("1991 Order"), December 9, 1992, December 21, 1993 and December 16, 1994 (HCAR Nos. 25228, 25443, 25698, 25959, and 26190, respectively), CSW Credit's existing authority was extended through December 31, 1991, December 31, 1992, December 31, 1993, December 31, 1994 and December 31, 1995, respectively. In addition, the 1991 Order granted CSW Credit the authorization to borrow up to an additional $200 million to finance the factoring of associate receivables.

Pursuant to the orders summarized above, the following authority has been granted: (1) CSW Credit has been authorized to borrow $824 million, of which $520 million could be used to purchase receivables of affiliated companies and $304 million could be used to purchase receivables of nonaffiliated companies; and (2) CSW has been authorized to make equity investments in CSW Credit of up to an aggregate of $156 million, of which $80 million could be used to purchase receivables of affiliated companies and $76 million could be used to purchase receivables of nonaffiliated companies.

For the twelve months ended September 30, 1995, CSW Credit had average outstanding receivables purchased from affiliated companies of $376 million and from nonaffiliated companies of $31 million. The outstanding receivable purchases from nonaffiliated companies do not include the $335 million average receivable purchases for the 12 months ended September 30, 1995 from Houston Lighting and Power Company, authorized by order dated December 29, 1992 (HCAR No. 25720). As of September 30, 1995, the amount of remaining authority, including debt and equity, that CSW Credit had available to purchase receivables from affiliated and nonaffiliated companies was $224 million and $349 million, respectively.

CSW Credit and CSW now propose to extend the previously granted authorities through December 31, 1996.

New England Electric System, et al. (70-8675)

New England Electric System ("NEES"), a registered holding company, and two of its wholly-owned utility subsidiaries, Massachusetts Electric Company ("MEC") and New England Electric Power Company ("NEP"), each located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), and rules 43 and 45 thereunder.

Nantucket Electric Company ("NEC") is a non-affiliated corporation engaged in generating, transmitting and distributing electric power to approximately 8,600 customers on the island of Nantucket, Massachusetts. NEC is not currently connected to the mainland in order to receive electric power. NEES and NEC have agreed that NEES will acquire NEC for NEES's common shares based on a purchase price of $125 per share or $3.5 million, plus interest that will accrue on the total purchase price from March 22, 1995 until the date of closing. The interest rate on this amount will not exceed the Bank of Boston prime rate. The amount of interest owed will be reduced by an amount to offset dividends payable to NEC shareholders that accrued before the date the sale is consummated.

The acquisition is proposed to be accomplished through an exchange of NEES common shares for the 28,000 shares of outstanding common stock of NEC. The NEC common stock is $25 par value voting stock and comprises one class. To facilitate this transaction, NEES proposes to form a wholly-owned subsidiary ("Newsub"), which will be merged into NEC, with the surviving corporation ("Newco") having all the rights, interests and obligations of NEC. Shares of Newsub will be converted into shares of new common stock of Newco, making Newco a wholly-owned subsidiary of NEES. Finally, NEC stockholders will receive NEES shares equivalent to $125 per NEC common share outstanding, adjusted by the interest payment and accrued dividend offset described above. At a current price of $34 per share, NEES would have to issue approximately 103,000 shares to consummate the transaction, not taking the above-described interest payment and accrued dividend offset into account.

To finance the construction of an undersea cable and related facilities to be used by NEP to sell power to Newco, Newco will borrow from Massachusetts Industrial Finance Authority ("MIFA") up to $28 million ("Facilities Loan") through the use of tax-exempt bond financing. Newco will be operated as though it were a part of MEC and to provide assurances to MIFA, MEC has agreed to enter into a Credit and Operating Support Agreement with Newco ("Support Agreement") in order to provide additional revenues to Newco to cover its cost of service, including a return on common equity. NEES requests authority for Newco to assign its rights under the Support Agreement to MIFA as collateral for the Facilities Loan. Additionally, MEC requests authority to guarantee to MIFA Newco's obligations under the Facilities Loan. The Facilities Loan would mature in no more than forty years and bear an interest rate not to exceed ten percent per annum.

NEES also requests authority through October 31, 1997 for Newco to make short term borrowings from banks, and to borrow from and lend to the NEES system money pool ("Money Pool"), up to an aggregate principal amount of $5,000,000. The terms of Newco's participation in the Money Pool shall conform to the terms and conditions of the Money Pool. The proposed borrowings from banks will be evidenced by notes maturing in less than one year and bear an interest rate not to exceed 100 basis points over the greater of such bank's base or prime rate or the federal funds rate.

Southern Development and Investment Group, Inc. (70-8715)

Southern Development and Investment Group ("Development"), a wholly-owned nonutility subsidiary of The Southern Company, a registered holding company, both of 64 Perimeter Center East, Atlanta, Georgia 30346, has failed an application-declaration under sections 9(a) and 10 of the Act and rules 51 and 54 thereunder.

By order dated January 25, 1995 (HCAR No. 26221), the Commission authorized Development to engage in, among other activities, the preliminary investigation and study of new business ventures or investment opportunities, including business opportunities using new communications technologies and related facilities; energy and demand side management services to customers both within the Southern system service territory;[1] and the development, construction and operation of a prototype energy management communications network to use two-way, interactive customer-utility communications in connection with utility- and nonutility-related activities.

Development now requests authorization, pursuant to a Stock Purchase Agreement ("Purchase Agreement"), to acquire 250,000 shares, approximately 3%, of authorized but unissued common stock of ITC Holding Co., Inc. ("ITC"), a telecommunications holding company. ITC, through various subsidiaries, provides local telephone exchange, toll, cellular and teleconferencing services, and sells related products, primarily in the southeastern United States.

Specifically, ITC wholly owns Telecommunications Operations Group, which through its wholly-owned Interstate Telephone Co. and Valley Telephone Co., offers local telephone exchange services and related products, and InterCall, which provides audio-conferencing services primarily for businesses for sales meetings, board meetings, training sessions, investor relations and other multi-party communication. ITC also holds partial ownership interests in InterCel, which provides cellular telephone services in Georgia, Alabama and Maine; Interstate Fibernet Co., a wholesale transmission carrier that owns and operates a regional optical fiber transmission network in Mississippi, Alabama, Georgia, Louisiana, North Carolina, and South Carolina (its optical power ground wire is located along power companies transmission right of way—a portion of which is being constructed along certain Southern System Operating Companies' rights of way); and InterServ Services Corp., which provides outsourced customer services and business to business telemarketing services. A unit of InterServ provides customer satisfaction survey information to some Southern operating companies. ITC also holds minority interests in companies engaged in fiber, wireless cable television, caller i.d. equipment marketing, and other telecommunications related operations.

ITC and certain subsidiaries of Southern have previously entered into agreements under which portions of the optical fiber transmission network of an ITC subsidiary have been installed along the operating companies' utility right-of-way. Development and ITC have also engaged in discussions concerning possible joint development and experimentation with respect to the modernization of telecommunications in the southeastern United States, particularly with respect to the types of utility and utility-related communications services that Development is authorized to provide under the terms of the Commission's January 1995 Order, including but not limited to energy and demand-side management services and the build-out of communications network in various locations inside the Southern service territory to be used for such purposes.

Development states that its investment in ITC will enable it to have input into the strategic planning of a major regional telecommunications provider as it formulates plans for investment in the modernization of communications infrastructure, much of which will be in Southern's service area. Development also asserts that its investment in ITC will provide ITC with the informed insight of a major customer of ITC, thereby enabling it to address the communications needs of Southern's subsidiaries.

Under the Purchase Agreement, the purchase price for ITC's shares is $6,195,000, provided that if the closing has not occurred by January 25, 1996, the purchase price will bear interest at 8.75% per annum, starting from that date until closing. Southern will make a cash capital contribution to Development of approximately $7,000,000 to fund the purchase and pay other costs associated with the transaction. Southern will obtain the funds from sales of common stock, as authorized by the Commission in orders dated August 2 and 3, 1995 (HCAR Nos. 26347 and 26349, respectively), from borrowings, and/or issuance of commercial paper, as authorized by the

[1] Southern provides retail and wholesale electric service throughout Georgia, most of Alabama and parts of Florida and Mississippi.

Commission in an order dated August 1, 1995 (HCAR No. 26346), and from available cash, chiefly dividends from subsidiaries.

Under the Purchase Agreement, ITC will be obligated to use its best efforts for a period of three years to cause the election to the board of directors of ITC of a nominee of Development. Development states that neither it nor any associate company will, as a result of the ownership of the shares to be acquired and participation on ITC's board have the ability to control or dictate any corporate decisions or policies of ITC. In this regard, Development represents that ITC is a privately-held company that is controlled by its founder and chief executive officer and related family interest and certain other executive officers of the company.

Mississippi Power & Light Company (70–8719)

Mississippi Power & Light Company ("MP&L"), 308 East Pearl Street, Jackson, Mississippi 39201, an electric utility subsidiary of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d) and 12(e) of the Act and rules 44, 54, 62 and 65 thereunder.

MP&L seeks authorization to issue and sell not more than $530 million principal amount of (a) its general and refunding mortgage bonds ("Bonds") and (b) its debentures ("Debentures"), issued in one or more new series from time to time through December 31, 2000. Each series of Bonds and/or Debentures will be sold at such price, will bear interest at such rate, either fixed or adjustable, and will mature on such date as will be determined at the time of sale. One or more series of Bonds and/or Debentures may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years.

MP&L further proposes to issue and sell, from time to time through December 31, 2000, (a) one or more new series of the preferred securities of a subsidiary of MP&L ("Entity Interests") and (b) one or more new series of its preferred stock ("Preferred"), in a combined aggregate amount not to exceed $75 million. Each series of Entity Interests will have a stated per share liquidation preference and will be sold at such price and will be entitled to receive distributions at such rate, either fixed or adjustable, on such periodic basis as will be determined, along with the maturity, at the time of sale. One or more series of Entity Interests may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years. The price, exclusive of accumulated dividends, and the dividend rate for each series of Preferred will be determined at the time of sale. MP&L may determine that the terms of the Preferred should provide for an adjustable dividend rate thereon to be determined on a periodic basis, subject to specified maximum and minimum rates, rather than a fixed dividend rate. The terms of one or more series of the Preferred may include provisions for redemption, including restrictions on optional redemption, and/or a sinking fund designed to redeem all outstanding shares of such series not later than forty years after the date of original issuance. Depending upon market conditions, MP&L may sell one or more series of Preferred to underwriters for deposit with a bank or trust company ("Depositary"). The underwriters would then receive from the Depositary and deliver to the repurchasers in the subsequent public offering shares of depositary preferred stock ("Depositary Preferred"), each representing a stated fraction of a share of the new series of Preferred. Depositary Preferred would be evidenced by depositary receipts. Each owner of Depositary Preferred would be entitled proportionally to all the rights and preferences of the series of Preferred (including dividends, redemption and voting). A holder of Depositary Preferred will be entitled to surrender Depositary Preferred to the Depositary and receive the number of whole shares of Preferred represented thereby. A holder of Preferred will be entitled to surrender shares of Preferred to the Depositary and receive a proportional amount of Depositary Preferred.

MP&L may determine to amend its Restated Articles of Incorporation, as amended ("Articles"), to establish a new class of preferred stock having no par value or a nominal par value. It is expected that such class would rank *pari passu* with MP&L's existing class of preferred stock and would be identical with such class, except as to par value, variations among series, and voting entitlement in certain cases. In connection with any such amendment to the Articles, certain other amendments to the Articles unrelated to the new class of preferred stock, including, but not limited to, an amendment to increase the number of authorized shares of MP&L's existing class of preferred stock and/or amendments to clarify certain provisions with respect to issuance of preferred stock with market-based dividend rates and varying dividend payment periods, may also be adopted. Approval of outstanding stockholders of MP&L would be required to effect such an amendment to the Articles. In connection with such an amendment, MP&L would thus solicit proxies from holders of its outstanding Preferred and seek the consent of Entergy Corporation, the sole holder of its common stock.

MP&L proposes to use the net proceeds derived from the issuance and sale of Bonds and/or the Debentures and/or the Entity Interests and/or the Preferred for general corporate purposes, including, but not limited to, the possible acquisition of certain outstanding securities.

MP&L states that it presently contemplates selling the Bonds, Debentures, Entity Interests and Preferred either by competitive bidding, negotiated public offering or private placement.

MP&L also proposes to enter into arrangements to finance on a tax-exempt basis certain solid waste, sewage disposal and/or pollution control facilities ("Facilities"). MP&L proposes, from time to time through December 31, 2000, to enter into one or more leases, subleases, installment sale agreements, refunding agreements or other agreements and/or supplements and/or amendments thereto (each and all of the foregoing being referred to herein as the "Agreement") with one or more issuing governmental authorities (individually and collectively being referred to herein as the "Authority"), pursuant to which the Authority may issue one or more series of tax-exempt revenue bonds ("Tax-Exempt Bonds") in an aggregate principal amount not to exceed $35 million. The net proceeds from the sale of Tax-Exempt Bonds will be deposited by the Authority with the trustee ("Trustee") under one or more indentures ("Indenture") and will be applied by the Trustee to reimburse the Company for, or to permanently finance on a tax-exempt basis, the costs of the acquisition, construction, installation or equipping of the Facilities.

MP&L further proposes, under the Agreement, to purchase, acquire, construct and install the Facilities unless the Facilities are already in operation. Pursuant to the Agreement, MP&L will be obligated to make payments sufficient to pay the principal or redemption price of, the premium, if any, and the interest on Tax-Exempt Bonds as the same become due and payable. Under the Agreement, MP&L will also be obligated to pay certain fees incurred in the transactions.

The price to be paid to the Authority for each series of Tax-Exempt Bonds and the interest rate applicable thereto will be determined at the time of sale. The Agreement and the Indenture will provide for either a fixed interest rate or an adjustable interest rate for each series of Tax-Exempt Bonds. Each series may be subject to optional and mandatory redemption and/or a mandatory cash sinking fund under which stated portions of such series would be retired at stated times.

In order to obtain a more favorable rating and thereby improve the marketability of the Tax-Exempt Bonds, MP&L may (1) Arrange for one or more letters of credit from one or more banks (collectively, "Bank") in favor of the Trustee (in connection therewith, MP&L may enter into a Reimbursement Agreement pursuant to which MP&L would agree to reimburse the Bank for amounts drawn under the letters of credit and to pay commitment and/or letter of credit fees), (2) provide an insurance policy for the payment of the principal, premium, if any, interest and purchase obligations in connection with one or more series of Tax-Exempt Bonds, or (3) obtain authentication of one or more new series of Bonds ("Collateral Bonds") to be issued under MP&L's General and Refunding Mortgage on the basis of unfunded net property additions and/or previously retired First Mortgage Bonds or General and Refunding Mortgage Bonds and delivered and pledged to the Trustee and/or the Bank to evidence and secure MP&L's obligations under the Agreement and/or the Reimbursement Agreement. In addition, MP&L may grant to the Authority, the Bank or the Trustee a lien, subordinate to the liens of MP&L's First Mortgage and General and Refunding Mortgage, on the Facilities.

MP&L also proposes to acquire, through tender offers or otherwise, certain of its outstanding securities, including its outstanding first mortgage bonds, its general and refunding mortgage bonds, its outstanding preferred stock and/or outstanding pollution control revenue bonds issued for MP&L's benefit, at any time, prior to December 31, 2000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28398 Filed 11–16–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511 as amended (Public Law 104–13 effective 10/1/95), The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on October 27, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

OMB Desk Officer: Laura Oliven

SSA Reports Clearance Officer: Charlotte S. Whitenight

1. Psychiatric Review Techniques—0960–0413. The information on form SSA–2506 is used by the Social Security Administration to evaluate the severity of mental impairments in adults who have filed a claim for disability benefits. The affected public consists of State Disability Determination Agencies who are responsible for reviewing the claim from beneficiaries/recipients and who report their findings to SSA.

Number of Respondents: 54
Total Annual Responses: 854,375
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 213,594 hours

2. Questionnaire for Children Claiming SSI Benefits—0960–0499. The form SSA–3881 is used by the Social Security Administration to obtain information which is needed to evaluate disability in children claiming supplemental income payments. The respondents are such claimants whose alleged disability does not meet our medical listings.

Number of Respondents: 177,000
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 59,000 hours

Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB)
Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, D.C. 20503

(SSA)
Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: November 8, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–28165 Filed 11–16–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 8, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0507.
Form Number: ATF F 5300.26.
Type of Review: Revision.
Title: Federal Firearms and Ammunition Excise Tax Return.
Description: This information is needed to determine how much tax is owed for firearms and ammunition. ATF uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms of ammunition. Businesses, including small to large, and individuals may be required to use this form.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 937.
Estimated Burden Hours Per Respondent: 7 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 26,236 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–28436 Filed 11–16–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

November 7, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by November 20, 1995. To obtain a copy of this information collection, please write to the IRS Clearance Officer at the address listed below. Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 95–016–G.

Type of Review: Revision.

Title: 1. Information Mapping—Form 8829 Focus Group Interviews.

2. Tax Filing Behavior Focus Group Interviews.

Description: 1. IRS is exploring effective ways to reduce taxpayer burden in preparing tax returns by simplifying forms, instructions, and other technical guidance by using the Information Mapping method developed by Dr. Robert E. Horn. This method provides an organized, analytical approach to writing education and training material. IRS hopes to use the method to increase writing efficiency, organize material better, make important information more accessible to the reader, and eliminate inconsistencies.

2. The IRS recently found that there is a significant increase in the usage of return preparation software within the professional accounting community. The IRS is interested in exploring if similar changes are occurring in individual and small business taxpayers filing behavior and patterns. Information gathered in these focus groups will help IRS adapt their products and services to meet taxpayers changing needs.

Respondents:

1. Individuals or households.
2. Business or other for-profit.

Estimated Number of Respondents: 90.

Estimated Burden Hours Per Respondent:

Focus Group Interviews—2 hours.

Travel Time—1 hour.

Frequency of Response: Other.

Estimated Total Reporting Burden: 324 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–28437 Filed 11–16–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

November 7, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by November 20, 1995. To obtain a copy of this information collection, please write to the IRS Clearance Officer at the address listed below. Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 95–018–G.

Type of Review: Revision.

Title: Helena Customer Satisfaction and Employee Evaluation Survey.

Description: The Internal Revenue Service is committed to providing its customers (taxpayers), employees, and other stakeholders the opportunity to participate in and contribute to improving our systems and achieving customer satisfaction. In an effort to accomplish this, IRS' Helena District proposes to actively solicit taxpayers opinions through the utilization of a district-wide customer satisfaction/employee evaluation survey to measure the level of customer satisfaction and establish baselines for acceptable employee performance.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,441.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 322 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–28439 Filed 11–16–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

November 7, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by November 20, 1995. To obtain a copy of this

information collection, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 95–017–G.

Type of Review: Revision.

Title: Notice Redesign Focus Group Interviews.

Description: Focus group interviews will be conducted to obtain taxpayers' perceptions and attitudes regarding the clarity of current and redesignated notices, with emphasis placed on reducing burden and taxpayer contact as well as compliance and customer satisfaction. The results will be used to identify problem areas and guide editorial improvements.

Respondents: Individuals or households.

Estimated Number of Respondents: 72.

Estimated Burden Hours Per Respondent:

Focus Group Interviews—2 hours.

Travel Time—1 hour.

Frequency of Response: Other.

Estimated Total Reporting Burden: 260 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–28438 Filed 11–16–95; 8:45 am]

BILLING CODE 4830–01–M

Office of Thrift Supervision

[AC–57; OTS No. 4259]

Ashland Federal Savings & Loan Association of Ashland, Ashland, Kentucky; Approval of Conversion Application

Notice is hereby given that on November 9, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Ashland Federal Savings and Loan Association of Ashland, Ashland, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street NW., Washington, DC. 20552, and the Central Northeast Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: November 13, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–28371 Filed 11–16–95; 8:45 am]

BILLING CODE 6720–01–P

[AC–56; OTS No. 1820 and H–1926]

First Savings Capital, M.H.C., Lakewood, Colorado; Approval of Conversion Application

Notice is hereby given that on November 6, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Savings Capital, M.H.C., Lakewood, Colorado, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Dallas, Texas 75039–2010.

Dated: November 13, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–28370 Filed 11–16–95; 8:45 am]

BILLING CODE 6720–01–P

[AC–55; OTS No. 5481]

Little Falls Savings Bank, Little Falls, New Jersey; Approval of Conversion Application

Notice is hereby given that on November 3, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Little Falls Savings Bank, Little Falls, New Jersey, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 13, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–28369 Filed 11–16–95; 8:45 am]

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H.R. 1905/P.L. 104–46

Energy and Water Development Appropriations Act, 1996 (Nov. 13, 1995; 109 Stat. 402)

H.R. 2589/P.L. 104–47

To extend authorities under the Middle East Peace Facilitation Act of 1994 until December 31, 1995, and for other purposes. (Nov. 13, 1995; 109 Stat. 423)

Last List November 9, 1995

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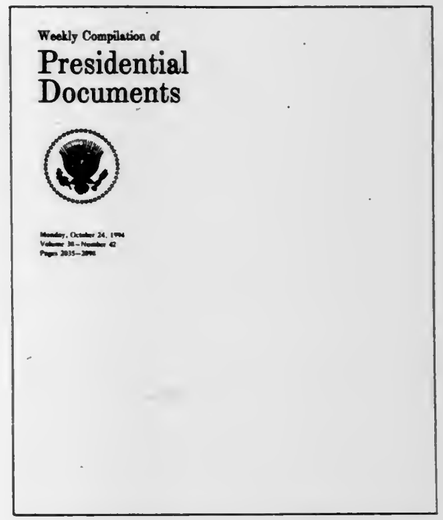
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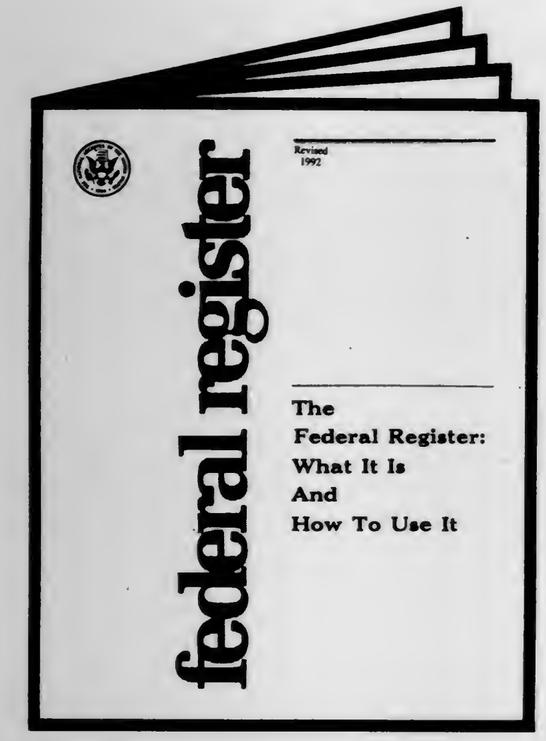
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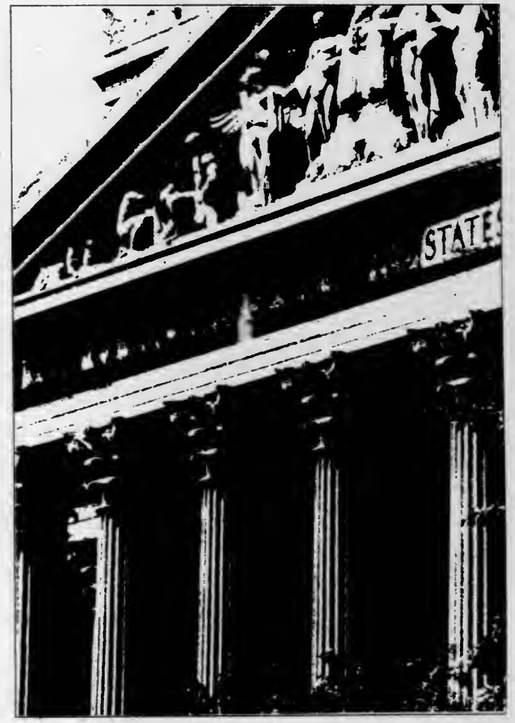
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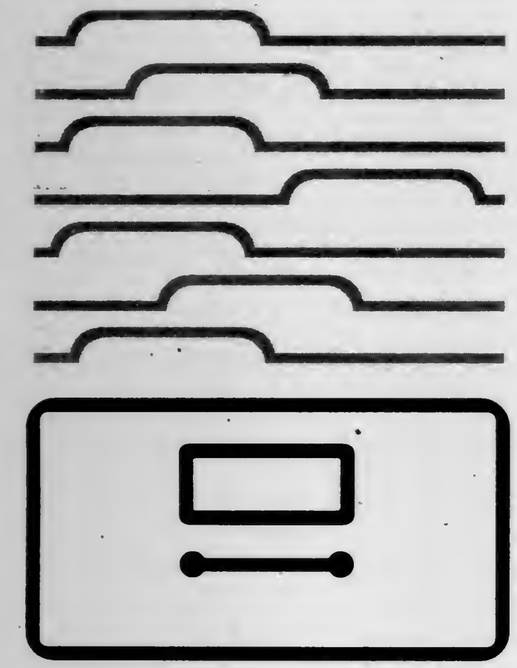
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Federal Register

Monday
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RESERVATIONS: 202–523–4538

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WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802

RESERVATIONS: 310–980–3447

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WHEN: December 13, 1995 at 9:00 am and 1:00 pm

WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115

RESERVATIONS: 206–526–6507

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Proposed Rules

Federal Register
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Monday, November 20, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 266, 268, 271, and 302

[SWH–FRL–5327–2]

RIN 2050–AD88

Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing, as hazardous wastes, three residuals from petroleum refining processes because certain disposal practices may present a risk to human health or the environment. EPA is also proposing not to list as hazardous eleven process residuals. This action proposes to add the toxic constituents found in the wastes to the list of constituents that serves as the bases for classifying wastes as hazardous.

This action is proposed pursuant to RCRA section 3001(b) and section 3001(e)(2), which direct EPA to make a hazardous waste listing determination for "refining wastes." The effect of this proposed regulation would be to subject these wastes to regulation as hazardous wastes under Subtitle C of RCRA. Additionally, this action proposes to designate the wastes proposed for listing as hazardous substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and to adjust the one-pound statutory reportable quantities (RQs) for these substances.

In support of the Agency's regulatory reinvention efforts, this action also proposes changes to the RCRA regulations to promote the environmentally sound recycling of oil-bearing residuals. Specifically, the Agency is proposing to broaden the existing exemption for certain wastes from the definition of solid waste. These include oil-bearing residuals from specified petroleum refining sources inserted into the petroleum refining process, and spent caustic from liquid treating operations when used as a feedstock. Today's proposal also would exempt from the definition of hazardous waste mixtures of clarified slurry oil (CSO) storage tank sediment and/or in-line filter/separation solids with tank wastewaters, provided that the waste is discharged to the oil recovery sewer before primary oil/water/solids separation, and ceramic support media separated from spent hydrotreating/hydrorefining catalysts.

Finally, EPA is proposing to apply universal treatment standards (UTS) under the Land Disposal Restrictions program to the Petroleum Refining Wastes proposed for listing in this rulemaking.

DATES: EPA will accept public comments on this proposed rule until February 20, 1996. Comments postmarked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by December 4, 1995.

ADDRESSES: The official record of this rulemaking is identified by Docket Number F–95–PRLP–FFFFF. The public must send an original and two copies (and a voluntary copy on a computer diskette) of their comments to: EPA RCRA Docket Clerk (5305W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Place the docket number F–95–PRLP–FFFFF on your comments. Through November 13, 1995, copies of materials relevant to this proposed rulemaking are located in the docket at the address listed above. The Agency plans to relocate the docket on November 14, 1995, and the docket will be physically closed from November 14, 1995 to November 26, 1995. Special arrangements for reviewing docket materials during this time can be made by calling (202) 260–9327. The Agency will be issuing a separate **Federal Register** notice explaining this change.

Starting November 27, 1995, the EPA RCRA Docket will be located at Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. Comments may be delivered to that location. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public can make an appointment to review docket materials by calling (202) 260–9327. Starting November 27, 1995, the new telephone number for the docket will be (703) 603–9230. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

Requests for a hearing should be addressed to Mr. David Bussard at: Hazardous Waste Identification Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, D.C. metropolitan area. For technical information on the RCRA hazardous waste listings, contact Maximo Diaz, Jr., Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C., 20460, (202) 260–4786.

For technical information on the CERCLA aspects of this rule, contact: Mr. Jack Arthur, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (703) 603–8760.

SUPPLEMENTARY INFORMATION: The contents of the preamble to this proposed rule are listed in the following outline:

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I. Legal Authority

Today's regulations are being proposed under the authority of sections 2002(a) and 3001(b)(1) and (e)(2) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), and 6921(b) and (e)(1), (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. Schedule Suit

In 1989, the Environmental Defense Fund (EDF) sued the Agency, in part, for failing to meet the statutory deadlines of section 3001(e)(2) of RCRA (EDF v. Browner; Civ. No. 89–0598 D.D.C.). To resolve most of the issues in the case, EDF and EPA entered into a consent decree which was approved by the court on December 9, 1994. The consent decree sets out an extensive series of deadlines for promulgating RCRA rules and for completing certain studies and reports. Paragraph 1.k of the consent decree obligates the EPA to promulgate a final listing determination on or before October 31, 1996, for the following petroleum refining process residuals: clarified slurry oil sludge [1] from catalytic cracking, crude storage tank sludge, catalyst from catalytic hydrotreating, process sludge from sulfur complex and H_2S removal facilities, off-spec product and fines from thermal processes, catalyst from catalytic reforming, unleaded storage tank sludge, catalyst from catalytic hydrorefining, catalyst and fines from catalytic cracking, catalyst from sulfur complex and H_2S removal facilities, spent caustic from liquid treating, catalyst from H_2SO_4 alkylation, sludge from HF alkylation, and sludge from H_2SO_4 alkylation. Today the EPA is proposing listing determinations for these residuals in accordance with the consent decree's deadline for this rulemaking proposal.

B. Existing Petroleum Refining Listings and Other Relevant Agency Actions

1. Listings

A number of wastes from petroleum refineries have been previously listed as hazardous. The Agency notes that today's proposal does not affect the scope of the existing hazardous waste listings (described below) or the applicability of CERCLA to these wastes. EPA is not soliciting comments concerning these listings and does not intend to respond to any such comments received.

In addition, EPA-classified listed hazardous wastes are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs), and include the listed hazardous wastes from petroleum refining in Table II–1.

[1] While the consent decree uses the term "sludge" to refer to any solid, semi-solid, or liquid residual, the term is defined more narrowly for RCRA Subtitle C (§ 260.10). Throughout today's proposal the Agency has used the term "sediment" to denote solid, semi-solid, or liquid residuals deposited from industrial process liquids.

TABLE II–1.—LIST OF CURRENTLY REGULATED RCRA WASTES AND CERCLA HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	Statutory RQ pounds (kg)	Final RQ pounds (kg)
K048—Dissolved air flotation (DAF) float from the petroleum refining industry	1(.454)	10(4.54)
K049—Slop oil emulsion solids from the petroleum refining industry	1(.454)	10(4.54)
K050—Heat exchange bundle cleaning sludge from the petroleum refining industry	1(.454)	10(4.54)
K051—API separator sludge from the petroleum refining industry	1(.454)	10(4.54)
F037—Petroleum refinery primary oil/water/solids sludge	1(.454)	1(.454)
F038—Petroleum refinery secondary (emulsified) oil/water/solids separation sludge	1(.454)	1(.454)

2. Definition of Solid Waste Exemptions

The jurisdictional boundaries of RCRA are established primarily by the definition of solid waste, i.e., materials are subject to regulation under RCRA only if they meet the regulatory definition of solid waste. Secondary materials, including those EPA today is proposing to list as hazardous, may be excluded from the definition of solid waste and therefore from regulation under RCRA if they are recycled in certain ways. Today's notice describes how each material is typically managed. The notice also discusses existing regulatory exclusions that may apply to a particular refining residual, depending on how that residual is managed.

It is important to note that EPA is currently evaluating the existing RCRA regulatory program, with emphasis on the need to clarify RCRA jurisdiction, particularly as it applies to secondary materials destined for recycling. Additionally, the Agency plans to develop a simpler, more streamlined approach to regulating hazardous waste recycling. One of the Agency's goals in revising the RCRA regulations is to address outstanding jurisdictional issues that specifically affect the petroleum refining industry. The petroleum industry poses unique regulatory issues largely because existing exclusions from the definition of solid waste generally do not apply to secondary materials used to produce fuels, the primary product of the refining industry.

The current definition of solid waste at 40 CFR 261.2 classifies secondary materials destined for recycling as solid wastes if the recycling is a form of waste management. Conversely, if the materials are recycled as part of an ongoing manufacturing process, they are not solid wastes. Accordingly, the existing rules specifically exclude secondary materials from the definition of solid waste that are: used directly (i.e., without reclamation) as ingredients in manufacturing processes to make new products; used directly as effective substitutes for commercial products; or returned directly to the original process from which they are generated as a substitute for raw material feed stock. These exclusions do not apply to materials that are either contained in, or used to produce fuels, however, and therefore do not generally apply to secondary materials recycled as part of the petroleum refining process. Petroleum industry representatives have long argued that oil-bearing secondary materials used as ingredients in the petroleum refining process to make fuel should be excluded from regulation under RCRA.

Today's proposal, which deals specifically with petroleum residuals, gives EPA the opportunity to address some larger, longstanding issues involving where the boundaries of RCRA should be drawn regarding jurisdiction over the petroleum industry. Therefore, in addition to addressing specific regulatory issues that may arise as a result of a decision to list an individual petroleum wastestream, the Agency is proposing more comprehensive revisions to the RCRA regulations relating to materials that are generated by and recycled within the petroleum industry. (See Section III.E.)

C. EPA's Hazardous Waste Listing Determination Policy

Today's listing determination proposal follows the elements of the Agency's hazardous waste listing determination policy. That policy was presented in the dyes and pigments listing determination proposal (59 FR 66072, December 22, 1994). Readers are referred to that notice for a description of EPA's listing policy. Also, Section III.F.2., "Risk Analysis," contains a discussion of how elements of EPA's listing policy were applied in today's listing determination.

III. Today's Action

A. Summary of Today's Action

1. Summary of Proposed Listing Determinations

In today's notice, EPA is proposing to add three wastes generated during petroleum refining operations to the list of hazardous wastes in 40 CFR 261.32. A summary of the waste groupings proposed for listing are provided below with their proposed corresponding EPA Hazardous Waste Numbers.

K170—Clarified slurry oil storage tank sediment and/or in-line filter/separation solids from petroleum refining operations.

K171—Spent hydrotreating catalysts from petroleum refining operations (As discussed in III.A.2 below, this listing does not include ceramic support media.)

K172—Spent hydrorefining catalysts from petroleum refining operations (As discussed in III.A.2 below, this listing does not include ceramic support media.)

EPA is proposing to list certain wastes in this rule because these materials meet the criteria set out in 40 CFR 261.11(a)(3) for listing a waste as hazardous. EPA assessed and considered the factors contained in these criteria primarily by incorporating them as elements in a risk assessment. Based on this assessment, EPA is proposing to list those wastes that pose a substantial present or potential hazard to human health or the environment when improperly managed.

Upon promulgation of these proposed listings, all wastes meeting the listing descriptions would become hazardous wastes and would require treatment, storage, or disposal at RCRA Subtitle C permitted facilities. Residuals from the treatment, storage, or disposal of the wastes included in this proposed listing also would be classified as hazardous wastes pursuant to the "derived-from" rule (40 CFR 261.3(c)(2)(I)). For example, ash or other residuals from treatment of the listed wastes would be subject to RCRA Subtitle C hazardous

waste regulations. Also, 40 CFR 261.3(a)(2)(iv) (the "mixture" rule) provides that, with certain limited exceptions, any mixture of a listed waste and a solid waste is itself a RCRA hazardous waste.

However, when these materials are recycled as described in 40 CFR 261.2(e)(1)(iii) or 261.4(a)(8), they are not solid wastes and are not subject to hazardous waste regulations. For example, if a material is collected and returned in a closed-loop fashion to the same process, it is not regulated. As discussed further in Section III.E of this notice, the Agency is proposing some modifications to these recycling exemptions.

This action also proposes not to list as hazardous eleven residuals generated from petroleum refining operations:

- Crude oil storage tank sediment.
- Unleaded gasoline storage tank sediment.
- Off-specification product and fines from thermal processes.
- Catalyst from reforming.
- Catalyst from H_2SO_4 alkylation.
- Sludge from H_2SO_4 alkylation.
- HF alkylation sludge.
- Spent caustic from liquid treating.
- Catalyst and fines from catalytic cracking.
- Catalyst from sulfur complex and H_2S removal facilities.
- Sludge from sulfur complex and H_2S removal facilities.

The Agency requests comments on the proposal not to list the above wastes. While the agency is proposing not to list crude oil storage tank sediment, the Agency specifically requests comment on the merits of listing this waste. Crude oil storage tank sediment could be finalized as a listing in response to comment. The Agency also requests comment on the data used in this proposal, the methodology and assumptions used in the risk assessment, the waste groupings chosen by the Agency, and other information and analyses supporting the proposed listings.

2. Summary of Definition of Solid Waste and Other Exemptions Proposed in Today's Notice

While the primary purpose of today's proposal is to present the Agency's findings with respect to the hazards posed by the 14 residuals identified in the consent decree, the Agency also conducted a parallel effort to analyze the applicability of the definition of solid waste to these residuals, and to identify appropriate exemptions to the proposed listings that reflect the Agency's investigation (i.e., the appropriate scope of the proposed listings) and that encourage responsible recycling activities. The proposed exemptions and scope limitations are summarized below and discussed in detail in the following sections.

a. Hazardous Petroleum Refinery Residuals Returned to Refinery Processes. The Agency is proposing to broaden the existing exemption in 40 CFR 261.4(a)(12) for oil-bearing residuals from specified petroleum refining sources that are inserted into the petroleum refining process. If finalized, the existing exemption would be expanded to allow for reinsertion of a broader array of residuals into more parts of the refinery, including the coking process. The exemption would continue to be limited to situations where inappropriate storage or accumulation does not occur, and to processes that do not result in coke products that exhibit any of the characteristics of hazardous waste. A detailed discussion of this proposal is provided in Section III.E.

b. Use of Spent Caustics as Feedstocks. Section III.G.6 describes the Agency's findings with respect to spent caustic from liquid treating operations and its status as a solid waste when used as a feedstock. A significant management practice for this residual is off-site use as a feedstock in the manufacture of naphthenic or cresylic acids. The Agency proposes an exclusion from the definition of solid waste in Section III.G.6, clarifying that spent liquid treating caustics from petroleum refineries and used as feedstock in the manufacture of naphthenic and cresylic acid products are not solid wastes.

c. Third Party Recycling of Spent Petroleum Catalysts. Section III.J describes the Agency's rationale for proposing an exclusion from the 40 CFR 266 Subpart H boiler and industrial furnace standards for spent hydrotreating and hydrorefining catalyst recovery furnaces. Spent hydrotreating and hydrorefining catalysts, two of the petroleum refining residuals proposed today for listing, are frequently regenerated for reuse or reclaimed off-site to recover nonprecious metals such as nickel, molybdenum, cobalt, and vanadium and other compounds sold as products (i.e., aluminum sulfate derived from the alumina substrate material).

d. Wastewaters. The turnaround of both crude oil storage tanks and clarified slurry oil storage tanks may result in the generation of process wastewaters. The scope of the Agency's listing determinations for crude oil storage tank sediment and CSO storage tank sediment and/or in-line filter/separation solids, as described in Section III.G.1 and 2, respectively, does not include these wastewaters. These sections also describe the limitation of the scope of the listings to sediments generated from tanks that are directly associated with petroleum refining operations, reflecting the Agency's lack of data regarding the nature of sediments generated from tankage at facilities that are not petroleum refineries.

In section III.K., the Agency proposes to exclude from the definition of hazardous waste mixtures of crude oil storage tank sediment (if listed) or of CSO storage tank sediment with tank wastewaters, provided the waste waters are discharged to the oil-recovery sewer before primary oil/water/solids separation.

e. Catalyst Support Balls. Upon removal from catalyst beds and/or during catalyst regeneration or reclamation, spent catalysts are separated from the support media that is used in the catalytic reactors to optimize mixing and flow within the reactor beds. The scope of the Agency's listing determinations for hydrotreating and hydrorefining catalysts, as described in Section III.J, does not include these ceramic support media.

f. Application of Existing Exemptions to the Residuals of Concern. Section III.G.5 describes EPA's findings with respect to spent sulfuric acid used as a catalyst in refinery alkylation processes. The Agency concluded that this residual is already managed in a way that is virtually exempt from the definition of solid waste under 40 CFR 261.4(a)(7).

B. Description of the Industry

Petroleum refineries are defined as "establishments primarily engaged in the production of gasoline, distillate fuel oils, residual fuel oils, naphtha, liquefied refinery gases, and lubricants through the integration of fractionation and/or straight distillation of crude oil, re-distillation of unfinished petroleum derivatives, cracking, or other processes" (Office of Management and Budget, 1987).

The refineries use a complex combination of interdependent operations to produce these petroleum-derived products. Depending upon the type of crude being processed, the type of product to be produced, and the process units present at a refinery, various combinations of processes may be employed to effect the separation of crude fractions. Petroleum refining operations and processes include desalting of crude, atmospheric and vacuum distillation, hydrotreating, catalytic cracking, thermal processing and upgrading of residual fuel oil, light hydrocarbon processing, hydrocracking, catalytic reforming, alkylation, extraction, isomerization, processing of lubricating oil, removal of sulfur, and blending of products. Additional processes may also be employed to produce additives or other desired products.

Today's proposal is based on the Agency's analysis of data characterizing the industry in 1992. In 1992, 185 operating refineries were reported by the U.S. Department of Energy's Petroleum Supply Annual, with a total distillation capacity of 15 million barrels of crude oil per calendar day.

C. Overview of EPA's Information Collection Activities

OSW's listing determination for the petroleum refining industry has been underway since 1992 and can be characterized in terms of two major avenues for information collection: field work and survey evaluation.

1. Field Investigations and Sampling

As part of the Agency's field work, engineering site visits, familiarization sampling, and record sampling were conducted. Twenty-five refineries were randomly selected for evaluation in the field program. The industry was stratified into large and small refineries and the 25 refineries were selected randomly (and proportionately) from the two strata so that any differences in waste generation and management practices could be observed. Engineering site visits were conducted at each of the targeted refineries, at which time the Agency conducted extensive discussions with the facilities and representatives of the American Petroleum Institute (API) to certify each of the potential sampling locations would result in samples that were representative of normal operating conditions and typical industry practices.

Sixty three record samples of the listing residuals of concern were collected and analyzed. All sample volumes were obtained in duplicate for the purpose of providing API with sample splits. Of the 63 samples collected, 46 were split directly with API; the remaining 17 were either split with the refinery (12 samples) or only collected as single EPA aliquot (5 samples). Of the 46 split samples, the analytical data for 31 were compared directly to the API data. The results of the comparison indicated good agreement. The sampling and analysis plans and analytical data reports that are not Confidential Business Information (CBI) are available in the docket for this rule (see **ADDRESSES** section), and provide detailed discussions regarding the identification and collection of samples. The Listing Background Document available in the docket provides additional information on the Agency's field program, including a more detailed discussion of EPA's site selection process.

EPA's approach to sample analysis is described generally in its Quality Assurance Project Plan (QAPjP), dated October 21, 1992 (describing the familiarization phase of this investigation) and September 22, 1993 (describing the record sampling phase of this investigation) available in the docket of today's rule. Target analytes were identified by compiling lists of target constituents used in previous OSW investigations, including the petroleum refining listing investigation conducted in the 1980s, the 1984 "Skinner List" (guidance issued by OSW for the characterization of wastes derived from petroleum refinery wastewater treatment sludge), and the Delisting Program. Additional constituents were added to reflect waste-specific concerns such as amines from sulfur-removal residuals, and fluorides from HF alkylation residuals. The Agency's contracted laboratory confirmed its ability to reliably and adequately quantify the target analytes during the analysis of six familiarization samples collected during the engineering site visits. Upon completion of the familiarization sample analysis effort, EPA finalized the target analyte list and QAPjP with a list of more than 180 target constituents. In addition, during both familiarization and record sampling and analysis, the Agency quantified the ten most abundant nontarget volatile and the 20 most abundant nontarget semi-volatile organics in each sample.

The Agency believes that the samples collected and analyzed under its field investigations are generally representative of residuals typically generated throughout the industry. This belief is based on (1) the extensive discussions between the Agency, the targeted facilities and API regarding the sampling protocol and sample representativeness; (2) the Agency's broader understanding of the residuals and the industry's array of management practices developed during extensive review of the industry-wide survey (described below); and (3) the fact that the toxicants that ultimately were found through risk assessment modeling to show significant risk and serve as the proposed basis for listing in today's notice are all common refinery constituents of concern (e.g., benzene, arsenic, polynuclear aromatic hydrocarbons (PAHs)) that are found in virtually all crudes and thus reasonably are expected to be present in refinery residuals across the Nation.

2. RCRA Section 3007 Survey

The survey effort included the development, distribution, and assessment of an extensive industry-wide section 3007 survey. The questionnaire covered topics such as crude oil and product information, facility and unit process flow diagrams, process descriptions, residual generation and management profiles, residual and contaminated soil and debris characterization, residual management unit and media characterization, general facility characterization (focussing on exposure pathway characterization), source reduction efforts, and certification.

The survey was distributed in September 1993 to all refineries identified as active in 1992 in the DOE Petroleum Supply Annual. Of the 185 surveys distributed, completed responses were obtained for 172 refineries. The remaining refineries notified EPA that they had stopped operations at some point in or after 1992 and thus were unable to complete the survey.

The Agency entered the completed surveys into a relational database known as the 1992 Petroleum Refining Database (PRDB). An exhaustive engineering review of each facility's response was then conducted, resulting in follow-up letters to most of the industry which sought clarifications, corrections, and additional data where needed. The responses to the follow-up letters were entered into the database. A wide variety of additional quality assurance checks were run on the data, with added emphasis on the listing residuals, to ensure that the residuals of concern were characterized as completely and accurately as possible. Follow-up telephone interviews were conducted as necessary to address remaining data issues. After extensive review, the Agency believes that the data are reliable and represent the industry's current residual generation and management practices.

D. Description of the Process Residuals in Comparison With the Consent Decree Language

The consent decree identifies fourteen residuals for which the Agency must make proposed listing determinations in this rulemaking. Upon investigation of the categories identified in the consent decree, the Agency determined that several of the categories should be split into distinct subcategories to allow the

Agency to differentiate between unique residuals. For example, the consent decree identified as one residual catalysts from sulfur complex and H_2S removal facilities. There are two major subcategories of catalysts used in refinery sulfur removal facilities: Claus catalysts (an alumina bauxite catalyst) and tail gas treating catalysts (typically a cobalt/molybdenum catalyst). These wastes are inherently different in their composition, application, and management, and thus were assessed separately in the Agency's risk assessment.

Table III–1 identifies the residuals in the consent decree, describes their coverage in the listing determinations proposed in today's rulemaking, and the action proposed.

TABLE III–1.—CONSENT DEGREE RESIDUALS

Residuals identified in the consent decree	Coverage in today's rulemaking
Crude oil storage tank sludge	Crude oil storage tank sediment.
Unleaded storage tank sludge	Unleaded gasoline storage tank sediment.
Clarified slurry oil sludge from catalytic cracking	Clarified slurry oil (CSO) storage tank sediment and/or in-line filter/separation solids.
Catalyst from catalytic hydrotreating	Non-precious metal hydrotreating catalysts.
Catalyst and fines from catalytic cracking	Equilibrium catalysts and catalyst fines were evaluated as individual subcategories based on differences in particle sizes and management practices.
Catalyst from catalytic hydrorefining	Non-precious metal hydrorefining catalysts.
Catalyst from catalytic reforming	Includes spent catalysts and fines.
Catalyst from H_2SO_4 alkylation	Spent sulfuric acid.
Sludge from H_2SO_4 alkylation	Same.
Sludge from HF alkylation	Neutralization sludges.
Off-spec product and fines from thermal processes	Same.
Spent caustic from liquid treating	Same.
Process sludge from sulfur complex and H_2S removal facilities	Sludges from amine-based sulfur removal systems, including turnaround sludges and filter cartridges.
Catalyst from sulfur complex and H_2S removal facilities	Claus catalyst, an alumina-based sulfur conversion catalyst. SCOT®-like catalyst, a cobalt/molybdenum tailgas treating catalyst.

E. Hazardous Oil-Bearing Residuals Returned to Refinery Processes

EPA is today proposing to exclude from the definition of solid waste oil-bearing residuals from specified petroleum industry sources that are inserted into the petroleum refining process (including the petroleum coker) along with normal process streams, if these materials are not stored in a manner involving placement on the land, or accumulated speculatively before being so recycled, and if the resulting coke product does not exhibit one or more of the characteristics of hazardous waste.

1. Background

a. January 8, 1988 Proposal. On January 8, 1988, EPA proposed rules to implement a decision by the District of Columbia Circuit Court regarding EPA's statutory authority to regulate recycled materials. See 53 FR 519, January 8, 1988. In its decision in *American Mining Congress* v. *EPA*, 824 F. 2d1177 (D.C. Cir. 1987) (*AMC I*), the D.C. Circuit Court held that EPA's rules defining the statutory term "solid waste" (RCRA Section 1004(27)) exceeded the Agency's statutory authority to the extent that the rules asserted jurisdiction over "materials that are recycled and reused in an ongoing manufacturing or industrial process." *Id.* at 1186 (emphasis original). The court held that "Because these materials have not yet become part of the waste disposal problem," *Id.*, they are not yet "discarded" within the meaning of Section 1004(27) and so cannot be considered to be "solid wastes."

In its January 1988 proposal, EPA responded to the *AMC I* decision specifically as it applied to petroleum refining industry operations. The Agency proposed to exclude from the regulatory definition of solid waste oil bearing petroleum residuals that are returned for further refining "as part of one continuous and ongoing process." (53 FR 525, January 8, 1988.) More specifically, EPA proposed to exclude oil-bearing residues from the refining process when those residues are generated on-site and reinserted on-site into the petroleum refining process (including the coker), provided that the residues were not speculatively accumulated or stored in a manner involving land placement.

Subsequent decisions have established that the decision in *AMC I* is relatively narrow. In particular, courts have rejected the argument that "potential reuse of a material prevents the Agency from classifying it as 'discarded'." *American Mining Congress v. EPA*, 907 F. 2d 1179, 1186 (D.C. Cir. 1990) (*AMC II*). The proper test as to when, as a matter of law, the Agency is foreclosed from classifying a material as a solid waste is when a material is "destined for *immediate reuse* in another phase of the industry's ongoing production process" and that "have not yet become part of the waste disposal problem." *Id.* at 1186. EPA retains considerable discretion in ascertaining how to apply this standard. For example, secondary materials generated by one industry and sent to another industry for reclamation could be classified as solid wastes (although EPA retains discretion as to whether to make that determination). (*American Petroleum Inst. v. EPA*, 906 F. 2d 726, 740–41 (D.C. Cir. 1990); *Ilco v. EPA*, 996 F. 2d 1126 (11th Cir. (1993); *Owen Electric Steel v. Browner*, 37 F. 3d 146 (4th Cir. 1994)). So can secondary materials generated on-site, stored in wastewater treatment impoundments, and reclaimed within the process which generated them. *AMC II*. EPA also must normally justify determinations that a secondary material being recycled is not a solid waste by showing how the determination is consistent with RCRA's objective to "establish a cradle-to-grave regulatory structure for the safe handling of hazardous wastes." *API*, 906 F. 2d at 741.

b. July 28, 1994 Final Recovered Oil Rule. On July 28, 1994, EPA finalized parts of the January 8, 1988 proposal pertaining to petroleum refining industry operations. The proposal was based on the Court's decision in *AMC I*. As noted, however, post-*AMC I* decisions make clear that the statute affords EPA great latitude to set the jurisdictional parameters of RCRA. As a consequence, the final exclusion is more narrow than the one proposed: it excludes a more limited set of materials, and imposes greater restrictions on where the materials can be inserted within the petroleum refining process.

In its January 1988 proposal, EPA did not distinguish between recovered oil and oil-bearing hazardous sludges, nor did it distinguish between the petroleum coker and other petroleum process units in defining the scope of the proposed petroleum refining exclusion. In contrast, in the July 28, 1994 rule, EPA limited the exclusion to recovered oil from petroleum refining, exploration and production that are inserted into the petroleum refining process prior to distillation and catalytic cracking. Also, the final exclusion thus does not apply to recovered oil reinserted into the petroleum coker. (§ 261.4(a)(12)).

(1) *Definition of Recovered Oil.* Recovered oil, as defined in § 261.4(a)(12), includes materials that are primarily oil and that are recovered from any phase of petroleum exploration, refining, production, and transportation. As explained in the July 28, 1994 rule, EPA limited the exclusion to recovered oil because recovered oil is equivalent to the raw materials normally used in the petroleum refining process in its composition and management.

The exclusion does not apply to hazardous oil-bearing sludges. EPA reasoned that these materials are typically unlike raw materials normally used in the petroleum refining process (i.e., crude oil). First, oil-bearing sludges are not normally composed primarily of oil. Additionally, the units in which they are managed (e.g., API separators, DAF units, land treatment units and surface impoundments) are not parts of the refining process, but instead function as waste holding and treatment units. Finally, EPA cited damage incidents associated with management of such materials as confirmation that these materials can be part of the waste disposal problem.

(2) *Limitation on Point of Insertion.* The final recovered oil exclusion does not apply to recovered oil or other hazardous oil-bearing secondary materials that are inserted into the petroleum coker. EPA decided not to exclude materials that are recycled in the petroleum coker because of concerns about the fate of the hazardous constituents that may be contained in the recovered oil. As stated in the preamble to the recovered oil rule, the Agency was concerned that toxic constituents could end up in the coke product in quantities that could be harmful to human health and the environment when the coke is burned as a fuel. See 59 FR 38542, July 28, 1994. EPA had limited data on the composition of hazardous oil-bearing residuals compared to normal coker feed and was concerned that additional toxic constituents (e.g., heavy metals) that may be present in these secondary materials could be discarded by simple incorporation into the coke product, in which case the coke could be part of the waste disposal problem when burned.

The Agency therefore retained jurisdiction over recovered oil, and other hazardous oil-bearing secondary materials that are inserted into the petroleum coker. Cokers that receive hazardous oil-bearing waste as a feedstock are currently not subject to regulation under RCRA, however. (59 FR 38542, July 28, 1994.) (See also May 3, 1995 letter to Ralph J. Colleli, API Counsel, from Michael Shapiro, Director, Office of Solid Waste).

2. Proposed Amendments To Address Hazardous Residuals Returned to the Refining Process.

a. Summary of Proposed Amendments. In the preamble to the final recovered oil rule, EPA indicated that the rulemaking was not necessarily its final disposition of jurisdictional issues relating to the petroleum industry, and that further exclusions might be warranted after additional study (59 FR 38536, and 38541, July 28, 1994). Since promulgation of the recovered oil rule, EPA has received numerous comments from petroleum industry representatives objecting to the Agency's decision to narrow the scope of the originally proposed exclusion. Industry representatives continue to assert that cokers are an integral part of the petroleum refining process and that the practice of recycling oil-bearing secondary materials (including recovered oil) as feed to petroleum cokers, or elsewhere to the refining process, falls outside of RCRA jurisdiction. In light of these comments, and as part of its continued efforts to define more clearly the scope of RCRA jurisdiction within the petroleum industry, EPA has reviewed its position regarding whether exclusions should apply only to recovered oil and whether reinsertion into petroleum cokers as well as earlier parts of the refining process should be excluded.

Accordingly, the Agency has reevaluated existing information on oil-bearing residuals and their use in the petroleum refining process. In particular, EPA has reviewed existing information on the composition of oil-bearing refinery residuals and the fate of toxic constituents contained in secondary materials that are reinserted into the coker. In addition, the Agency has obtained more detailed information from the petroleum refining industry on the coking process itself. The Agency's analysis, which is discussed in detail below, supports broadening the existing recovered oil exclusion. Therefore, EPA is today proposing to expand the recovered oil exclusion to cover all oil-bearing secondary materials that are generated within the petroleum refining industry and are reinserted into the petroleum refining process (including distillation, catalytic cracking, fractionation, or thermal cracking (i.e., coking)).

Under today's proposal, § 261.4(a)(12) would be revised to provide that oil-bearing residuals from specified petroleum industry sources that are inserted into the petroleum refining process (including the coker) along with normal process streams would be excluded from the definition of solid waste, if the material is not stored in a manner involving placement on the land, or accumulated speculatively before being recycled and (if insertion is into the coker) if the coke product does not exceed characteristically hazardous levels. More specifically, today's proposed exclusion would cover oil-bearing secondary materials that are generated on-site at refineries, transported intracompany from off-site, or received from any off-site facilities (intercompany transfers) in the following SIC codes: 1311, 1321, 1381, 1382, 1389 (oil and gas extraction), 2911 (petroleum refining), 4612 and 4613 (crude oil and refined petroleum pipelines), 4922 and 4923 (natural gas transmission and distribution), 4789 (independent pipeline operators), and 5171 and 5172 (petroleum product bulk stations and terminals). It should be noted that certain existing exclusions provided under § 261.6 that pertain specifically to petroleum refining wastes would become unnecessary as a result of today's proposal. The Agency will amend these provisions as necessary in its final rulemaking.

Today's proposal would not effect the current regulatory status of petroleum refinery wastewaters. EPA considers refinery wastewaters to be discarded materials and therefore solid wastes potentially subject to regulation under RCRA (59 FR 38539, July 28, 1994). Likewise, wastewater treatment systems in which RCRA hazardous wastes are managed would continue to be subject to regulation as hazardous waste management units or exempt under 40 CFR 264.1 under today's proposal.

Today's proposed exclusion would also be expanded to include recovered oil that is generated from certain organic chemical industry operations and inserted into a petroleum refining process along with normal process streams.

b. Rationale for Proposed Amendments. (1) Exclusion for Oil-Bearing Residuals Returned to Refining Process. Today's proposed exclusion applies to any oil-bearing residual material from any phase of petroleum exploration, refining, transport or marketing that is inserted directly into any part of the refining process. These materials are most likely to be inserted into the petroleum coker, and the basis for this proposed exclusion is discussed at length below. Materials inserted elsewhere into the refining process are likely to already be recovered oil, and hence to be excluded, or to so closely resemble recovered oil as to fit the rationale of the existing rule, if not its exact literal language. Thus, with respect to insertion into parts of the refining process other than coking, extending the exclusion to all oil-bearing materials largely avoids unproductive disputes about what is and is not recovered oil, and leaves refineries with maximum flexibility as to the best part of the process to reinsert oil-rich residuals.

(2) Proposed Exclusion for Oil-Bearing Materials Inserted into Petroleum Coking. *Role of the Petroleum Coker in the Petroleum Refining Process.* EPA decided in the July 1994 rule not to exclude hazardous oil-bearing secondary materials that are inserted into the coking process until the Agency studied further whether the coker may be functioning, at least in part, as a waste management unit in these cases (59 FR 38542, July 28, 1994). A more detailed review of the coking process has since convinced EPA that the coker is in fact an integral part of the petroleum refining process and is similar to other refining processes such as distillation and catalytic cracking. The coker is normally located on-site and typically processes oil-bearing materials that are generated on-site. The petroleum coker contributes significant revenue to the refinery primarily through upgrading of lower value hydrocarbons into light ends that are used to produce more valuable product fuels. While coke is a co-product of the coking process, the primary purpose of the coker is, in fact, to thermally convert longer-chain hydrocarbons to recover the more valuable middle and light end hydrocarbons that are used to produce high grade fuels (e.g., gasoline, kerosene, jet fuel, etc.). The typical coker yield is about 25%–30% petroleum coke and 70% light hydrocarbons that are returned to the refining process to produce high grade fuels. The importance of the coker to the refining process is illustrated by the fact that the coking operation may determine the economic viability of the refinery. Given that the coker is a crucial unit in the refining process, industry representatives assert and the Agency believes that it is highly unlikely that refinery owners or operators would allow any incompatible materials to be inserted into the coker for fear of interfering with proper operation of the coker. It is also significant that, consistent with EPA's finding that cokers are considered process units for purposes of today's proposed exclusion, cokers are also viewed as process units under recently issued Clean Air Act (CAA) regulations and that emissions from cokers are subject to regulations under the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (40 CFR 63 Subpart CC; 60 FR 43244, August 18, 1995).

Hazardous Oil-bearing Residuals Compared to Normal Coker Feed. EPA also initially decided not to exclude recovered oil and other oil-bearing hazardous materials used to produce petroleum coke because of concerns that toxic metals contained in these materials are being disposed of by incorporation into a coke product. At the time the recovered oil rule was published, the Agency had only limited data indicating that oil-bearing hazardous residuals do not contain significantly different amounts of toxic constituents from the heavy petroleum residuals that are normally fed to the petroleum coker, but was uncertain of the representativeness of the information. The Agency has since received some additional data on the composition of oil-bearing hazardous sludges relative to crude oil residuals that are typically fed to the coker which supports industry's claim that oil-bearing sludges generated during the refining process are substantially similar to normal coker feedstock material.[2] At this time, all of the data in EPA's possession indicates that the recycling of oil-bearing residuals can be accomplished without raising hazardous constituent (e.g., heavy metal) concentrations to levels of concern in the final coke product. To guard against this possibility, the Agency is limiting this exclusion to the production of coke which does not exhibit the characteristics of a hazardous waste. This is consistent with the thrust of RCRA § 3004(q)(2)(A) which subjects certain petroleum refinery wastes converted into petroleum coke to regulation if the resulting coke exhibits a characteristic.

Another significant consideration bearing on today's proposal is the fact that hazardous oil-bearing sludges constitute only a very small fraction of the total residual materials that are generated by the petroleum refining process and inserted back into the refinery for further processing. Due to process limitations, hazardous oil-bearing materials comprise only about 1–3% of the total amount of refining residuals that are routinely fed to the coker according to industry representatives.

Additionally, EPA has found that hazardous oil-bearing refinery sludges are managed in much the same way as are non-regulated crude oil residuals prior to insertion into the petroleum coker. In a typical petroleum refinery operation, refinery residuals (e.g., K048–52) that are inserted into petroleum cokers are transferred from wastewater treatment tanks to the coker via a closed system. The wastewater treatment tanks in which the residuals are initially stored are exempt from Subtitle C regulation. (See 40 CFR 264.1(g)(6).) The residuals are typically transferred from exempt wastewater treatment tanks via hard pipe or tank trucks to stationary tanks or containers where oil is recovered and/or the secondary materials are prepared for insertion into the coker. Since the residuals are not ordinarily stored in stand alone storage tanks but are instead transferred directly to process tanks and containers (i.e., centrifuge systems, desorption units, etc.) EPA does not believe that storage of the residuals prior to reinsertion into the refining process poses hazards to human health or environment. In addition, American National Standard Institute (ANSI) standards governing design, construction, operation, maintenance and inspection of petroleum terminal and tank facilities help to ensure environmentally protective management storage of the in-process residuals prior to reinsertion into the coker or other parts of the refinery.

Furthermore, data on the composition of the coke product indicate that use of oil-bearing secondary materials has little, if any, impact on the quality and/or properties of the resulting coke. In particular, EPA has information which indicates that levels of toxic metals in coke produced from oil-bearing sludges are comparable to those found in coke produced strictly from crude oil residuum.[3]

Finally, coke product is subject both to regulatory requirements and certain limited industry product specifications, a fact that serves to ensure the quality of the coke product. The statute and existing regulations provide that coke product derived from a hazardous waste which exhibits a hazardous characteristic (as determined by application of the Toxicity Characteristic Leaching Procedure) is subject to regulation as hazardous waste under RCRA. See RCRA § 3004(q)(2)(A) and 40 CFR 261.6(a)(3)(vii). EPA would retain this provision under today's proposal as a means of ensuring that reinsertion of these materials is not part of the waste disposal problem. See generally *AMC II, supra.* Coke is also subject to product standards established by the American Society for Testing of Materials' (ASTM) for volatile matter and ash content. Taken together, these controls help to ensure that coke product does not contain unsafe levels of toxic contaminants.

Restrictions on Land Placement and Speculative Accumulation. Today's proposed exclusions do not apply to oil-bearing hazardous secondary materials that are placed in land-based hazardous waste management units such as surface impoundments or land treatment units. The Agency considers materials placed in such units to be discarded, and hence solid wastes. Land-based units that contain hazardous oil-bearing residuals would remain subject to Subtitle C requirements under today's proposal. *AMC II,* 907 F. 2d at 1186–87. In addition, any material that spills from tanks and containers and is not expeditiously retrieved for reinsertion is a solid waste and, if listed or characteristic, a hazardous waste. See § 261.33(d) and 55 FR 22671, June 1, 1990.

Today's proposed exclusion also does not apply to oil-bearing secondary materials that are accumulated speculatively (as defined in § 261.1(c)(8)) before being recycled into a petroleum refining process. Under RCRA, secondary materials that are accumulated speculatively are considered to be discarded and hence solid waste. EPA applies this standard condition to otherwise excluded secondary materials to prevent risks from prolonged storage of the material before recycling. See 50 FR 634–635, 658–661, Jan. 4, 1985.

Restrictions on Petroleum Coke Produced From Hazardous Oil-Bearing Secondary Materials. Under the current regulations, petroleum coke produced from hazardous oil-bearing refinery wastes is excluded from regulation under RCRA provided that the resulting coke product does not exceed one or more of the characteristics of hazardous waste in part 261, Subpart C (§ 261.6(a)(3)(vii)). Under today's proposal, EPA would continue to regulate coke that exhibits a characteristic as hazardous if the coke is produced from oil-bearing residuals that are excluded from regulation because they are reinserted into the refining process, but are otherwise regulated as hazardous waste. In addition, EPA is proposing to condition the exclusion for oil-bearing residuals that are inserted into the coker on the requirement that coke produced from these materials *not* exceed characteristic levels. In other words, the exclusion would not apply to secondary materials that, if recycled, would result in coke that exhibits a characteristic. To do otherwise, as noted, would lead to situations where management of oil-bearing residues becomes part of the waste management problem by tainting the coke. EPA thus is proposing these conditions to ensure that coke produced from otherwise excluded oil-bearing secondary materials will not contain toxic constituents in quantities that could be harmful to human health and the environment when the coke is burned so as to assure that the proposed exclusion does not undermine RCRA's cradle-to-grave purpose. *API,* 906 F.2d at 741; RCRA § 3004(q)(2)(A). EPA requests comment on the adequacy of the TCLP for this purpose.

Materials That Are Deemed To Be Inherently Waste-Like. The existing regulations provide EPA with authority to designate as solid wastes materials that are inherently waste-like regardless of the mode of recycling. (See § 261.2(d).) Under current regulations, the Agency may designate materials as inherently waste-like either because they are typically disposed of or incinerated on an industry-wide basis or they contain toxic constituents not normally found in the raw materials or products for which they are being substituted (50 FR 637, January 4, 1985). Therefore, while EPA is proposing to generally exclude hazardous oil-bearing refinery residuals that are returned to the petroleum refining process, the Agency retains the authority to regulate specific waste-streams as "inherently waste-like" if it finds that particular petroleum refining residuals contain high levels of toxic constituents that are not ordinarily found in the normal coker feed and do not contribute to the product.

Regulatory Status of Petroleum Refinery Wastewater and Wastewater Treatment Operations. Under today's proposal petroleum refining wastewaters would continue to be subject to regulation as solid wastes under RCRA. Petroleum industry representatives have argued in public comments submitted in response to both the January 8, 1988 proposal and the July 28, 1994 final recovered oil rule, that plant wastewaters containing oil are not solid wastes. Industry representatives contend that primary wastewater treatment operations in which oil is skimmed and oil-bearing sludges are separated from plant waters are part of the ongoing refining process.

EPA has considered this argument but does not agree for the following reasons. First, petroleum refining wastewaters differ from both recovered oil and oily sludges that are separated from the wastewaters in that, unlike these secondary materials, the wastewaters themselves are not analogous in composition to normal petroleum refining feedstock material and consequently are not reinserted into the petroleum refining process to produce petroleum products. Instead, petroleum refining wastewaters from which oily materials have been removed are discharged, and are thus not eligible for exclusion as a petroleum refining process feed.

Second, as explained in the preamble to the recovered oil rule, primary wastewater treatment operations exist to treat plant wastewater. The main purpose of wastewater treatment is to purify discarded wastewaters from the refining process so that they can ultimately be discharged pursuant to Clean Water Act requirements, not to recover secondary materials for recycling back into an ongoing manufacturing or industrial process. See 59 FR 38539, July 28, 1994.

A final and equally important consideration in EPA's decision not to exclude refinery wastewaters from regulation is that regulation of these wastewaters ensures treatment of hazardous constituents in characteristic wastestreams that are managed in wastewater treatment impoundments (e.g., impoundments in which biological treatment occurs) in accordance with the land disposal restriction (LDR) requirements of Part 268. See 59 FR 38540.

Recovered Oil From Co-Located Petroleum Refineries and Petrochemical Facilities. EPA is also today proposing to add an exclusion at § 261.12(a)(13) for recovered oil that is generated by certain

[2] See October 8, 1993 and October 13, 1993 letters from Mark A. Smith (Unocal) to James R. Berlow.

[3] See February 2, 1993 data submission from Mobil Oil Corporation.

organic chemical industry operations and inserted into petroleum refining processes provided that the conditions discussed above are met (i.e., provided that the recovered oil is not stored in a manner involving placement on the land, or accumulated speculatively before being recycled and that (if insertion is into the coker) coke product does not exceed characteristically hazardous levels).

The final recovered oil exclusion does not currently apply to recovered oil from organic chemical industry operations except in cases where petrochemical and petroleum refining operations share a common wastewater treatment system (where wastewater from petrochemical processing units typically comprises only small percentage of the total refinery wastewater volume). In these cases, given the predominance of petroleum refining wastewater, the Agency believes that the recovered oil exclusion appropriately applies to oil recovered from shared petrochemical/petroleum refining wastewater treatment systems.[4] The Agency did not more broadly exclude recovered oil from organic chemical operations in its final recovered oil rule because of concerns about additional toxic constituents that may be present in oil recovered from petrochemical processing residuals (i.e., the exclusion is provided on the premise that the oil-rich materials in question contain the same constituents as normal refining process streams).

EPA is aware, however, that some petrochemical facilities recover oil separately from their process streams and send it to petroleum refineries for insertion into the refining process. This practice typically occurs between petroleum refineries and chemical operations that are either co-located or owned by the same company. The oil recovered from petrochemical operations typically comes from "dry" process streams, i.e., hydrocarbon streams with little or no water content that are recovered outside of wastewater treatment systems. It is generally composed of hydrocarbons that originate from, or are derived from, feedstocks supplied by the petroleum industry.

Since promulgation of the final recovered oil rule in July 1994, the Agency has received compelling information from the chemical manufacturing industry indicating that the recovered oil from these organic chemical industry operations is comparable to oil recovered from petroleum refining operations.[5] Based on this information, which is described in detail below, the Agency is proposing to exclude oil that is recovered from petrochemical operations and inserted into co-located or commonly owned petroleum refining operations.

The specific reasons for the proposed petrochemical exclusion are as follows. First, chemical industry representatives have argued and EPA agrees that the need to closely control petroleum product quality makes it unlikely that the recovered oil from the dry organic chemical plant streams covered by the proposed exclusion would contain toxic contaminants not otherwise found in petroleum feedstock. The presence of non-hydrocarbon contaminants in the recovered oil can jeopardize the integrity of the refined product. Product quality problems (e.g., solids or potential gum-forming problems in automobile fuel injection or carburetor systems) can, in turn, have a widespread impact both on customers and the refiners because of the extensive distribution network in the industry. In addition, quality of the recovered oil feedstock is important to the integrity of the refining process itself (e.g., some chemicals and metals can cause equipment fouling and costly downtime at refineries).

Precautions are therefore taken to ensure that recovered oil from petrochemical plants does not contain contaminants that may adversely affect the quality of refinery products or cause equipment and catalyst fouling process unit downtime within refineries. Recovered oil from organic chemical operations is segregated from other by-product or waste streams generated by petrochemical plants. In addition, the petrochemical recovered oil streams, which are generally aggregated on-site, are routinely analyzed before being sent to the petroleum refinery for use as a feedstock to ensure that the recovered oil does not include toxic contaminants beyond those found in normal petroleum refining process streams. Recovered oil quality parameters include bulk solids and water content, bromine number (an indicator of olefin content and potential fouling due to polymerization) and specific gravity.

Second, the Agency has received sampling and analytical data that supports industry's premise that recovered oil from petrochemical and petroleum refining operations is similar in composition and that, consequently, petrochemical recovered oil is suitable for insertion into the petroleum refining process. The data provides a comparison between recovered oil samples from co-owned petrochemical and petroleum refining operations on key parameters including specific gravity, distillation temperature ranges, flash point, hydrocarbon type, and sulfur, ash, and total chlorine content. The analysis indicates that the petrochemical recovered oil is comprised essentially of hydrocarbons that are within a refinery's distillation range and hydrocarbon type. The refinery and chemical plant recovered oil samples were also compared against the Agency's used oil fuel specification. The used oil specification includes levels for arsenic, cadmium, chromium, lead, and flash point. Used oil that is within the specified limits is considered by EPA to be comparable to crude oil for regulatory purposes. The analysis of all recovered oil samples indicates that arsenic, cadmium, chromium, lead and total halogen levels are well below the used oil fuel specification. The petrochemical recovered oil samples were below detection limits for the specified contaminants. Flash points of both types of recovered oil were also well below the used oil specification minimum.

EPA requests comment on today's proposed exclusion for recovered oil that is generated by organic chemical plants and inserted into co-located or commonly owned petroleum refining processes along with normal refining process streams. Today's proposal is based on a very limited set of data. To ensure that the data are representative of the industry, the Agency is soliciting additional data on the composition of recovered oil from petrochemical operations that is typically sent to petroleum refineries. Additionally, EPA may consider broadening the proposed exclusion to include recovered oil from plastic materials and resins manufacturers (SIC Code 2821), synthetic rubber manufacturers (SIC Code 2822), and cyclic crude and intermediate producers (SIC Code 2865) if the Agency receives sufficient analytical data to support such an extension. Finally, EPA also solicits additional information on refinery limitations that serve to preclude introduction of toxic constituents from recovered oil from chemical manufacturing operations.

F. Description of Health and Risk Assessments

In determining whether wastes generated from petroleum refining operations meet the criteria for listing a waste as hazardous as set out at 40 CFR 261.11, the Agency evaluated the potential toxicity and intrinsic hazard of constituents present in the wastes, the fate and mobility of these chemicals, the likely exposure routes, and the current waste management practices. A quantitative risk assessment was conducted for those wastes where the available information made such an assessment possible.

1. Human Health Criteria and Effects

The Agency uses health-based levels, or HBLs, as a means for evaluating the level of concern of toxic constituents in various media. In the development of HBLs, EPA first must determine exposure levels that are protective of human health and the environment, then apply standard exposure assumptions to develop media-specific levels. EPA uses the following hierarchy for evaluating human health effects data and health-based standards in establishing chemical specific HBLs:

- The Maximum Contaminant Level (MCL) is used as the HBL for the ingestion of the constituent in water, when it exists. MCLs are promulgated under the Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, and consider technology and economic feasibility as well as health effects.
- Agency-verified Reference Doses (RfDs) or Reference Concentrations (RfCs) are used in calculating HBLs for noncarcinogens and verified carcinogenic slope factors (CSFs) in calculating HBLs for carcinogens. Agency-verified RfDs, RfCs, and CSFs and the bases for these values are presented in the EPA's Integrated Risk Information System (IRIS).
- RfDs, RfCs, or CSFs are used which are calculated by standard methods but not verified by the Agency. These values can be found in a number of different types of Agency documents and EPA used the following hierarchy when reviewing these documents: Health Effects Assessment Tables (HEAST); Human Health Assessment Group for Carcinogens; Health Assessment Summaries (HEAs) and Health and Environmental Effects Profiles (HEEPs); and Health and Environmental Effects Documents (HEEDs).
- Use RfDs or CSFs that are calculated by alternative methods, such as surrogate analyses, including structure activity analysis, and toxicity equivalency.

a. 1,3,5-Trimethylbenzene. 1,3,5-Trimethylbenzene was identified in the record samples. EPA has adequate toxicological information to develop a provisional health benchmark (i.e., RfD). The Agency has developed a provisional RfD of 0.05 mg/kg/day for 1,3,5-trimethylbenzene using a subchronic oral rat study, along with other toxicological studies. In addition, the Agency has determined that the provisional RfD developed for 1,3,5-trimethylbenzene is an appropriate benchmark for 1,2,4-trimethylbenzene. These studies and the Agency's supporting analysis for the provisional RfD can be found in the docket supporting this rule. The Agency has conducted limited external peer review of the provisional RfD and it is therefore subject to change.

A number of assumptions and extrapolations are used to derive the provisional RfD, including extrapolating from short-term animal studies to a chronic human exposure, and the selection of the critical study on which to develop a health benchmark. The Agency requests comments on the appropriateness of the provisional RfD and requests any additional data on the toxicity of 1,3,5-trimethylbenzene.

b. Use of Structure-Activity Relationships. There are 15 constituents identified in the record samples for which EPA has found no reliable health effects data to calculate health benchmarks for carcinogenic and noncarcinogenic chemicals. Because of the lack of health effects data on these constituents, the Agency used a structure-activity analysis to identify surrogate chemicals, where possible, that have reliable health benchmarks for use in the risk assessment. The approach involves identifying a surrogate chemical that has similar chemical structure, physical properties, and health effects information as that of the constituent for which human health data and animal data are either lacking or inadequate. The Agency used the surrogate health benchmarks in the risk analysis to assess the potential impacts of the constituents without benchmarks found in the wastestreams for the following five constituents: 1-methylnaphthalene; t-butylbenzene; butylbenzene; sec-butylbenzene; and 2-hexanone. The risk analysis did not include an evaluation of potential impacts from the following constituents because no appropriate surrogates with health benchmarks could be found: indene; 2-methylnaphthalene; n-propylbenzene; bromobenzene; dibenzofuran; aluminum (+3); cobalt; magnesium hydroxide; magnesium oxide; and iron oxide. Based on this assessment none of these constituents were of concern in any of the listing decisions in today's proposal. Further discussion of this approach can be found in the docket supporting this rule. The Agency is planning to conduct a peer review of the surrogate analysis and, therefore, the health benchmark is subject to change. See **ADDRESSES** section. The Agency requests comment on this approach, and any additional toxicity information on these compounds.

c. Use of Relative Potencies for Polynuclear Aromatic Hydrocarbons (PAHs). The Agency has a verified cancer slope factor available for only one PAH, benzo(a)pyrene. For the remaining PAHs evaluated in the risk assessment supporting this rule, the Agency used two methods to quantitatively estimate the relative potencies of other PAHs. The first method, developed by EPA's Office of Health and Environmental Assessment, is interim guidance for the quantitative risk assessment of six PAHs. This guidance uses data from mouse studies to develop relative carcinogenic potency estimates relative to benzo(a)pyrene. A detailed description of the methodology and resulting rankings can be found in "Provisional Guidance for Quantitative Risk Assessment of Polycyclic Aromatic Hydrocarbons," included in the docket supporting today's rule. The second method the Agency used for the risk assessment is a semi-quantitative scoring exercise organized by the Office of Pesticides, Pollution Prevention and Toxic Substances. In this method, experts independently reviewed available data and reached consensus scoring on an additional 101 PAHs in terms of the compound's relative potency using benzo(a)pyrene as the reference compound. The Agency seeks comments on the uncertainties and limitations of both methods. A more detailed discussion of the two methods can be found in the docket supporting today's rule.

All HBLs and their bases for this listing determination are provided in a document entitled "Assessments of Risks from the Management of Petroleum Refining Waste: Background Document," which can be found in the RCRA docket for this rule at EPA Headquarters (see **ADDRESSES** section).

2. Risk Analysis

a. Risk Characterization Approach. The risk characterization approach follows the EPA Guidance on Risk Characterization (Habicht, 1992), and Guidance for Risk Assessment (EPA Risk Assessment Council, 1991), and Guidance for Risk Characterization (EPA Science Policy Council, 1995). These guidance documents specify that EPA risk assessments will be expected to include (1) the central tendency and high-end portions of the risk

[4] May 3, 1995 letter from Michael Shapiro (EPA) to Ralph J. Colleli, Jr. (API).

[5] September 13, 1995 letter to Becky Daiss (Office of Solid Waste) from Michael W. Steinberg (Morgan, Lewis & Bockius and July 31, 1995 letter to Steven E. Silverman (U.S. EPA, Office of General Counsel) from Michael W. Steinberg (Morgan, Lewis & Bockius).

distribution, and (2) important subgroups of the populations such as highly susceptible groups or individuals, if known, and (3) population risk. In addition to the presentation of results, these guidance documents also specifies that the results portray a reasonable picture of the actual or projected exposures with a discussion of uncertainties. These documents are available in the public docket for this action (see **ADDRESSES** section).

b. Individual Risk. Individual risk descriptors are intended to convey information about the risk borne by individuals within a specified population and subpopulations. These risk descriptors are used to answer questions concerning the affected population, and the risk for individuals within a population of interest. The approach used in this analysis for characterizing baseline individual risk included: (1) identifying and describing the population of concern for an exposure route; (2) determining the sensitivity of the model parameters used in the risk estimation; (3) estimating central tendency and high-end values for the most sensitive parameters in the risk estimation procedures; and (4) calculating individual risk for likely exposure pathways that provides a characterization of the central tendency and high-end risk descriptor.

Descriptors of population risk are intended to convey information about the risk borne by the population or population segment being studied. These risk descriptors are used to answer questions concerning the number of cases of a particular health effect that could occur within the population during a given time period, the number of persons or percent of the population above a certain risk level or health benchmark (e.g., RfD or RfC), and risk for a particular population segment.

The Agency performed a population risk analysis for impacts to the affected community surrounding the refineries across the country. The results of the analysis are discussed in Section VI.C.

c. Risk Assessment. The results of the risk assessment are presented in waste-specific risk tables in each of the basis for listing sections (Section III.G). The risk tables include the following information: constituents of concern; estimated human health central tendency and high-end risk for each constituent of concern associated with the management scenarios; high, low, and average concentrations of constituents found in this waste; the number of samples in which the constituent was detected; and notes regarding potential sources of uncertainty. In addition to assessing the risks associated with the individual constituents found in the waste, the Agency presents the combined potential risk of constituents that coexist in the waste, as described in "The Risk Assessment Guidelines of 1986," found in the docket supporting today's rule. However, where sampling data or the exposure analysis show compelling evidence that the constituents cannot or do not occur together in the waste stream or at the receptor, the Agency considered only the risk associated with the individual constituent.

In addition to those compounds presented in the waste-specific risk tables, the Agency's characterization data include other constituents found in these wastes. The risk tables presented in this preamble contain only those constituents which had adequate data for quantitative risk assessment and which were found to present a risk of concern. The complete list of constituents found in each of the wastes generated from petroleum refining operations, an explanation of the risk analysis process, and an explanation of EPA's development of the target analyte list are presented in the background documents for this rule, which are located in the RCRA Docket for this rulemaking (see **ADDRESSES** section).

(1) Selection of Waste Management Scenarios. EPA's regulations at 261.11(a)(3)(vii) require the Agency to consider the risk associated with "the plausible types of improper management to which the waste could be subjected" because exposures to wastes (and therefore the risks involved) will vary by waste management practice. The choice of which "plausible management scenario" (or scenarios) to use in a listing determination depends on a combination of factors which are discussed in general terms in EPA's general policy statement on hazardous waste listing determinations (59 FR 24530, December 22, 1994). EPA generally employed the elements of the policy in this listing determination.

The following discussion explains the selection of plausible management scenarios for the petroleum listing determination. The Agency requests comment on its choice of plausible management scenarios and on the possibility of using alternative plausible management scenarios.

EPA's basic approach to selecting which waste management scenarios to model for risk analysis in listing determinations is to examine current management practices and assess whether or not other practices are available and are reasonably expected to be used. Where a practice is actually reported used, that practice is generally considered "plausible" and may be considered for potential risk. EPA then evaluates which of these current or projected management practices for each wastestream are likely to pose significant risk based on an assessment of exposure pathways of concern associated with those practices. There are common waste management practices, such as landfilling, which the Agency generally presumes are universally plausible for solid wastes and will assess it for risk. There are other practices which are less common, such as land treatment, where EPA will consider them plausible only where the disposal methods have been reported to be practiced. In some situations, potential trends in waste management for a specific industry suggest the Agency will need to project "plausible" mismanagement even if it is not currently in use in order to be protective of potential changes in management and therefore in potential risk. Finally, there may be situations where analysis shows no need to model any scenarios because, although considered plausible management, no exposure potential exists.

In its study of the petroleum refining industry, EPA was able to develop a comprehensive database of existing waste management practices. All U.S. refineries that EPA was aware of were sent a RCRA section 3007 questionnaire and all the active ones responded. This allowed the Agency to conduct a careful analysis of how wastestreams were managed in 1992. Based on discussions with industry, the Agency also was able to project potential changes in these practices and thus determine whether or not to include unused or little used practices in the risk assessment.

Overall, the Agency found the reported waste management practices for the industry to be numerous and varied. This required an assessment of the existing (and potential) management of each wastestream to determine which of those practices should be modeled for that particular residual. Some wastestreams had special considerations (e.g., rarity of practice, volumes managed, existing regulatory coverage) associated with their management that had to be included in the decision-making process. The description of such considerations is included in the listing determination section for that wastestream.

Given the extensive amount of data collected for this industry, EPA did not find it necessary to quantitatively model all currently used waste management practices. Furthermore, for the reported management practices that were

assessed for risk, EPA conducted risk analysis based on the volumes of wastes reported to be managed by those practices in 1992. This is a modification of EPA's general policy to consider plausible (and model) all reported waste management practices. The reasons for the modification, discussed in more detail later in this section, are:

1. Some practices involve very small volumes or very few generators with a correspondingly low potential to cause unacceptable risk.

2. Some practices have proved in past listing determinations to pose less risk than those more common practices (e.g., landfilling) that were modeled. Therefore the modeled practices act as surrogates to the less common, less risky alternatives.

3. Most of the reported management practices selected for modeling are less expensive than other plausible alternatives (industry will usually select and continue to use the less costly option) and therefore there was no need to assess practices not currently used or only rarely used.

4. The Agency was unable to model every reported management practice for every metric ton of waste due to time and resource constraints. However, EPA believes it has evaluated the practices likely to be of most concern.

EPA's data show that the overwhelming volume of the wastestreams that were actually disposed of (as opposed to being recycled or reclaimed) involved three specific waste management practices: discharge to a wastewater treatment plant, landfilling, and land treatment. Each of these was reported to be currently in use by a number of refineries.

(2) *Disposal in Wastewater Treatment Plants.* Exposure pathways and potential risks associated with disposal of wastes to wastewater treatment plants, which in this industry generally represents combined wastestream treatment in tanks, are largely covered by regulation under the NPDES or air permit programs. Furthermore, sludges generated by refinery wastewater treatment systems, which could be affected by the discharge of the wastestreams of concern in this listing, are already listed hazardous wastes F037, F038, K048, and K051. The exception is activated biological treatment (ABT) sludge and sludges generated downstream of ABT units. These sludges can be disposed of in various ways, including surface impoundments. However, activated biological treatment sludge is not one of the residuals under consideration in this listing. In addition, the volumes managed in the wastewater treatment system of the residuals under consideration in this listing are relatively small in comparison to the volumes typically handled in refinery wastewater treatment systems. In addition, unlike most refinery process wastewaters, these volumes are generated on an intermittent (e.g., once a year) basis. The wastestreams of concern for this listing would be considerably diluted by the other wastestreams sent to the plant. Further, EPA has proposed that the risk associated with disposal of these ABT and downstream sludges be covered by the Phase IV Land Disposal Restrictions treatment requirements (60 FR 43654, August 22, 1995). For these reasons, discharge of wastes covered by the consent decree to wastewater treatment systems, although a practiced management scenario, was not modeled for risk.

(3) Disposal in Landfills and Land Treatment Units. The principal waste management practices chosen for modeling the residuals in this listing determination were off-site and on-site Subtitle D landfilling and treatment in off-site and on-site land treatment units (LTUs). These disposal practices were reported in the Section 3007 questionnaire survey to be in use by a large percentage of refineries and for a large proportion of the total volume discarded. Therefore, EPA modeled both direct and indirect exposure pathways associated with these two waste management practices.

For on-site landfills and LTUs, the Agency used the data submitted by industry in the Section 3007 questionnaire to characterize the units in terms of the waste quantities disposed, surface area of disposal units, and distances to receptors. For off-site landfills and LTUs, the Agency used characteristics based on a statistical analysis of existing Subtitle D land treatment facilities, from the Agency's "Industrial Subtitle D Facility Study" (October 20, 1986).

The Agency modeled the releases from the disposal of wastes in on-site and off-site land treatment units by partitioning the constituents of concern between several fate and transport processes. These releases include the following: volatilization to the air, leaching to ground water, erosion of soil and runoff of dissolved constituents to nearby land and surface water bodies, and biodegradation. For the screening or bounding estimates, the Agency assumed that no partitioning or biodegradation occurred, thus maximizing releases to all media; for example, for the groundwater pathway's bounding analysis, TCLP results were used as model inputs. For the central and high-end estimates of risk, the Agency modeled the partitioning of these releases from the land treatment units to derive annual concentrations in the media. Biodegradation losses were calculated using data on constituent half-life in the environment. The Agency's groundwater risk analysis used the estimated leaching concentrations from this analysis, instead of TCLP data, as the starting concentration in which to estimate groundwater concentrations at a receptor well. The TCLP data that the Agency collected estimate the concentration of the constituents leaching from the waste samples in a landfill management scenario. The Agency evaluated the land treatment scenario on a soil/waste mixture for which the Agency did not have TCLP data and, therefore, relied on the results of the partitioning analysis. A more detailed discussion of the release processes for land treatment units is presented in the "Assessment of Risks From the Management of Petroleum Refining Wastes: Background Document" in the docket supporting today's proposal.

(4) Other Disposal Practices Reported. There were other, less commonly employed waste management practices reported in the petroleum refining industry. Several residuals had ten or more different management practices reported as "in use." For most of them, EPA has concluded that although they are used in the petroleum refining industry, they are not management scenarios that need to be assessed for risk. For example, there were ten reported management practices for HF alkylation sludge. Four of these (representing 75% of the reported waste volume) involved land treatment or disposal in a landfill and were modeled for risk. One practice was on-site recovery in the coking unit (12% of reported waste volume), two others involved practices since terminated (10% of reported waste volume), and the remainder of management practices involved discharge to the wastewater treatment plant. These latter practices were not modeled. The factors the Agency considered in deciding whether or not the less common disposal practices should be modeled are:

i. Coverage of the characterization program. The comprehensive nature of EPA's petroleum refining database allowed the Agency to develop an in depth knowledge of the amounts of waste generated and the final management practices employed by the petroleum refining industry. In

particular, a very high percentage (more than 80 percent of the total volume) of these wastestreams either were reused, reclaimed, or recycled or were disposed of using landfilling or land treatment (more than 50 percent of the remaining volume), suggesting that there are financial and practical incentives to handle wastes using the methods reported. These incentives were assumed to be constraints.

Moreover, the information indicated that aside from recycling, landfilling, and land treatment, most reported management practices involved low volumes of waste that would be of significantly less concern in terms of risk. If possible given the potential risks involved, EPA tries not to base listing determinations on disposal practices employed by a very small segment of an industry producing low volumes of waste as this can penalize unnecessarily, without a concomitant benefit in actual risk reduction, the vast majority of generators who dispose of the bulk of the wastes generated in less risky ways. For example, if one plant reported one metric ton of a wastestream as used as dust suppressant, but thousands of tons of that wastestream were reported as landfilled by a number of other plants, EPA would likely conclude that dust suppression, although nominally in use, is not a practice that should be assessed for risk. In fact, EPA was unable, due to resource and time constraints, to cover all waste volumes reported with the plausible management scenarios selected for modeling. Therefore, there are some reported management practices that were not formally evaluated using predictive risk assessment models after EPA judged them unlikely to be significant. Less formal projections of potential risk were made for some management scenarios. Also, experience in previous listings has indicated some waste management practices show more risk than others. Therefore, if EPA calculates risk for the usually more risky management scenario, the risk from other scenarios will probably be lower.

ii. Effect of other regulatory programs. For some wastestreams and their reported waste management practices, EPA concluded that existing regulatory programs provided a level of regulatory coverage that rendered further assessment of risk unnecessary. Many of these wastestreams are often characteristically hazardous. In fact, the Agency concluded that many of the wastestreams that were disposed of in Subtitle C management facilities were sent there specifically because they were characteristically hazardous wastes. Therefore, EPA believes that the volumes sent to Subtitle C facilities would continue to be handled in that way.

iii. Management costs. Where one management practice is generally more expensive than another, cost becomes a factor in EPA's assessment of whether or not that practice should be considered plausible. In this industry, the Agency generally found that the lower cost management option was currently the one employed and that factor further suggested existing management practices would not change. The principal example is incineration, which is a higher cost option than landfilling or land treating. Little direct incineration of wastestreams was reported by the industry. EPA concluded there was a negative cost incentive for the industry to switch to incineration of these wastestreams. Additionally, the petroleum refining industry reported little disposal of these wastestreams in surface impoundments. Due to the industry's heavy investment in wastewater treatment tanks, there appears to be little incentive to switch to surface impoundments to treat and dispose of wastestreams. Therefore, EPA only modeled surface impoundments in its risk assessment for one wastestream.

Because of all of these factors, EPA determined it was unnecessary either to project unreported management scenarios or to model many of the infrequently reported management practices for this listing determination. Instead, EPA determined it more appropriate to estimate risk based on the most plausible, highest risk management practices and therefore focused risk assessment modeling on landfilling and land treatment.

During EPA's information collection process, it was pointed out to the Agency that leaking tanks and refinery piping have been problems for the petroleum industry and that exposures from such sources should be modeled. Although such unintentional spills are not management per se, exposures from such sources could be a concern. For the major liquid wastestreams evaluated in today's proposal (e.g., spent sulfuric acid and spent caustic), spills and leaks already fall under the hazardous waste management system because these wastes are typically characteristically hazardous. This obviates the need for conducting a risk assessment for such pathways. For other wastestreams, EPA concluded that the selection of unlined landfilling as a plausible management scenario could serve as a surrogate for such sources because the exposure scenario would be roughly similar. Leaks and spills of wastestreams would cause exposures similar to those caused by landfills (for potential groundwater contamination) or land treatment units (for runoff or windblown dust). Because EPA modeled those management scenarios, the Agency concluded additional modeling of leaks and spills is unnecessary. Furthermore, such leaks and spills are typically intermittent and should not present the long-term exposure potential presented by land disposal.

The Agency evaluated each of the residuals of concern to determine whether it was appropriate to model interim storage methods (e.g., tanks, containers, etc.) that are typically employed prior to final management (e.g., landfilling). In most cases, the Agency determined that the predominant exposure risks were expected to be associated with long-term final management methods and that it was unnecessary to model short-term interim storage. For example, many of the residuals of concern are generated infrequently: the typical generation frequency for tank sludges is once every ten years per tank and the catalyst residuals are only generated every 2 to 5 years. For these types of infrequently generated residuals, the residuals are typically stored on-site for a period of time comparable to the tank or unit turnaround. The Agency observed that these turnaround periods are often only 4 to 6 weeks in duration. Several factors contribute to the refineries' motivation to move the residuals out of short-term storage: (1) the residuals are often staged in the immediate vicinity of the process area, impeding movement for continued operations; (2) the containers used to transport the residuals (e.g., flo-bins, dumpsters, roll-off bins) are often rented and incur substantial cost during usage; and (3) turnarounds are often contracted out and the refineries are financially motivated to minimize the length of time that they must pay for contractor services and equipment, including storage units.

Because the on-site storage period is so short for many of the infrequently generated residuals of concern, the Agency felt that it was more appropriate to focus on assessing risk from long-term management of these types of residuals. For those residuals, however, that are generated on a more frequent basis, the Agency did model certain storage practices. For example, spent caustic is generated on a continual or frequent basis and is generally stored in tanks prior to further management. These tanks are in continual usage. The Agency modeled potential air releases from these spent caustic storage tanks because of the potential for continual

toxicant releases. Similarly, sludge from sulfur complex operations can be generated on a regular basis (e.g., weekly) and the Agency observed facilities that maintain storage areas in the process units for dumpsters used to accumulate filter cartridges. This practice also poses the potential for ongoing air emissions and was modeled in EPA's risk assessment.

Finally, the Agency notes that residuals from refining are, due to their very nature, often reusable. They can be recycled, sold, or transferred to other facilities. The disposition of these reusable wastes is described in Section III.E. of this preamble. Because these residuals are currently exempt or are proposed to be excluded from the hazardous waste management system, exposures associated with their management were not modeled in this listing determination. However, for the wastestreams managed in an exempt manner that were assessed in this listing determination, EPA has done qualitative risk analysis. Those qualitative risk evaluations are described in the listing decision rationales for the appropriate individual wastestream. Additionally, the Agency did model air pathways for certain wastestreams when on-site storage tanks were projected to be a potential source of air risk.

(5) Exposure Scenarios. The scenarios (i.e., receptors) included in the risk assessment include adult resident, child resident, subsistence fisher, recreational fisher, subsistence farmer, home gardener, and consumers of ground water.

Adult Resident Applicable exposure pathways for the adult resident include incidental ingestion of contaminated soil and direct inhalation of vapors and particulates.

Child Resident Exposure pathways for the child resident are identical to those for the adult resident. The rate of incidental soil ingestion for the child, however, is twice that for an adult.

Recreational Fisher Applicable exposure pathways for the recreational fisher include ingestion of contaminated fish, in addition to exposure pathways of an adult resident (i.e., incidental ingestion of contaminated soil, and direct inhalation of vapors and particulates). Risks calculated for the recreational fisher were found to be predominantly driven by the incidental ingestion of contaminated soil; risks estimated through the ingestion of contaminated fish were negligible by comparison. While the results for the recreational fisher are presented in the risk assessment background document, they are not presented in the preamble. The Agency is not using the subsistence fisher scenario to support the listing determination proposed today.

Subsistence Fisher Applicable exposure pathways for the subsistence fisher include ingestion of contaminated fish, in addition to exposure pathways of an adult resident (i.e., incidental ingestion of contaminated soil, and direct inhalation of vapors and particulates). The rate of ingestion of fish for the subsistence fisher is twice that for the recreational fisher. Risks calculated for the subsistence fisher were also found to be predominantly driven by the incidental ingestion of contaminated soil. The subsistence fisher risk assessment results are available in the risk assessment background document in the docket for this rule and are not presented in this preamble. The Agency is not using the subsistence fisher scenario to support the listing determination proposed today.

Subsistence Farmer Applicable exposure pathways for the subsistence farmer include ingestion of home-grown beef and milk, ingestion of home-grown fruits and vegetables, incidental ingestion of soil, and direct inhalation of vapors and particulates. The total amount of beef, milk, fruit, and vegetables that the subsistence farmer consumes is assumed to be contaminated.

In conducting the subsistence farmer risk assessment, the Agency determined that there is high uncertainty in the calculated plant-to-animal (primarily beef and dairy cattle) bioconcentration factors for the key constituents of concern, polynuclear aromatic hydrocarbons (PAHs). No empirical data were found for bioaccumulation of PAHs in mammals by this route; the model uses physical properties of constituents (K_{ow}) to predict transfer factors. For fish, empirical data show that using K_{ow} to predict bioconcentration overestimates fish tissue concentrations by several orders of magnitude. Based on these very high predicted bioconcentration factors, the beef and dairy product ingestion pathways are major contributors to cancer risk estimates for subsistence farmers. Because of the high uncertainty associated with these bioconcentration factors, the Agency is not using the subsistence farmer scenario to support the listing determinations proposed today. The subsistence farmer scenario risk assessment results are presented in the risk assessment background document in the docket for this proposal but are not presented in the preamble; the Agency requests comment and data regarding the uncertainty associated with the bioconcentration factors of concern.

Home Gardener Applicable exposure pathways for the home gardener include incidental ingestion of soil, direct inhalation of vapors and particulates, and ingestion of fruits and vegetables. Forty percent of the total amount of fruits and vegetables that the home gardener consumes is assumed to come from their home garden which is assumed to be contaminated.

Consumers of Ground Water These receptors are exposed only from ingestion of untreated ground water contaminated by the leaching of toxic constituents in the wastes being managed in land disposal units. The Agency used a ground water fate and transport model, the EPACMTP (EPA's Composite Model for Leachate Migration with Transformation Products), to project the concentrations reaching the receptor well. The EPACMTP is described in the background documents available in the docket for today's proposal. See **ADDRESSES** section.

Chemicals in the subsurface may be subject to a variety of biochemical transformation processes. EPACMTP accounts for transformations due to hydrolysis, however, none of the organic constituents considered in the present analysis are subject to breakdown by hydrolysis. Biodegradation may be a significant removal process for some of the constituents considered in the analysis. However, the data and parameters associated with biodegradation are subject to much greater uncertainty, vary over a wide range, and may be highly site-specific. For these reasons, the Agency developed a protocol for the determination of nationwide biodegradation rates, which was published on June 15, 1988 (53 FR 22300). The protocol requires biodegradation data from six sites that represent different regions of the country. To date, the Agency has not received a complete set of biodegradation rates for the constituents of concern (particularly benzene). Therefore, biodegradation is not considered directly in the groundwater pathway analysis. However, EPA evaluated the potential effect of biodegradation using the available information and best estimates.

Using the limited data available, EPA estimates that the benzene concentration in well water is reduced by less than a factor of two (reduction varies from 2 to 44 percent). Details of effects of benzene biodegradation rates on modeling results for the different waste streams are presented in

"Background Document for Groundwater Pathway Analysis" available in the docket. The Agency is soliciting comments on these rates and requesting any biodegradation data, consistent with our protocol, which can be used for nationwide modeling analyses.

3. Consideration of Uncertainty in Listing Determinations

One of the potential exposures of significant concern for this rulemaking is erosion of soil from a land treatment unit onto adjacent areas, including possible vegetable gardens. This type of exposure is what the Agency refers to as "indirect" exposure, meaning that the receptor (in this case a home gardener) is exposed to contaminants in the waste after these contaminants have been transported from the waste management area and have entered another environmental media (in this case soil and vegetables) at the receptor site.

The Agency has used indirect exposure assessments in a number of programs over the last several years. Some examples include the development of the sewage sludge regulations, the development of proposed standards for land application of paper mill sludge, and the development of pesticide standards. In the hazardous waste listing program, the Agency has considered indirect exposures for several proposed regulations (wood surface protection, carbamate pesticides, dyes and pigments) but has not based any final listing determinations on risks from indirect exposures. These examples apply to national regulations; in addition, the Agency has used indirect exposure analyses on a site-specific basis in the Superfund program and to develop hazardous waste combustion permit limits.

Despite its considerable experience with indirect exposure assessments, the Agency recognizes that there are still significant uncertainties associated with estimating the risks associated with some exposure routes. Therefore, the Agency requests comment on how it should factor in uncertainty in its listing determinations.

For example, if a risk estimate has a high degree of uncertainty associated with it, should the Agency consider listing the waste in question only if the calculated risk is near the high end of the risk range of 10–6 to 10–4? Should the calculated risk estimate be even higher? These questions imply that greater uncertainty generally results in making a risk assessment more conservative. Is that implication accurate? The Agency solicits comment on these questions and this issue in general.

4. Peer Review

A peer review of the risk assessment for non-ground water pathways has been performed. (The groundwater model was previously reviewed by the Agency's Science Advisory Board.) Particular emphasis was placed on the components that follow:

(1) Confidence in data on biotransfer factors for PAHs;

(2) Assumptions regarding design and operation of land treatment units, including methods used to prevent excess build-up of constituents in land treatment units;

(3) Methods used to predict soil concentrations at receptor locations, with particular emphasis on the contribution of soil run-off from land treatment units in which residuals are disposed and the maintenance of a mass balance of constituents at the receptor location; and

(4) Overall maintenance of mass balance of constituents among multiple exposure pathways.

Three academic experts on risk assessment issues such as these were selected to review the risk assessment for non-ground water pathways. Comments have been received from these peer reviewers and will be addressed concurrently with public comments on this proposed rule.

G. Waste-specific Listing Determination Rationales

1. Crude Oil Storage Tank Sediment

a. *Summary.* EPA is proposing to not list as hazardous tank sediment from the storage of crude oil at petroleum refineries. This wastestream does not meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous, because it does not pose a substantial or potential hazard to human health and the environment. The Agency identified limited risks to consumers of groundwater associated with releases from off-site Subtitle D landfilling due solely to a single constituent, benzene, which is already regulated under the Toxicity Characteristic (TC). Home gardeners and adult residents show low risks from polynuclear aromatic hydrocarbons (PAHs) potentially released from land treatment operations. The risk assessment results are summarized in Table III–2.

TABLE III–2.—WASTE CHARACTERIZATION AND RISK ESTIMATES—CRUDE OIL STORAGE TANK SEDIMENT

Constituents of concern	On-site land treatment*		Off-site land treatment*		Waste characterization				
	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts.	Notes
Home Gardener									
Benzo (a) pyrene	2E–9	9E–7	2E–9	1E–7	12.3	26.0	6.6	3 of 6	J(2), 1
Dibenz (a,h), anthracene	9E–10	3E–7	7E–10	3E–8	2.1	3.7		1 of 6	J(1), 1
Benzo (a) anthracene	4E–10	7E–8	3E–10	9E–9	11.5	31.0		1 of 6	1
Indeno (1, 2, 3-cd) pyrene	2E–10	7E–8	1E–10	8E–9	15.0	15.0	3.0	2 of 6	J(1)
Benzo (b) fluoranthene	3E–10	1E–7	3E–10	1E–8	11.4	29.0	5.9	2 of 6	J(1), 1, 2
Total Carcinogen Risk***	4E–9	1E–6	3E–9	2E–7					
Adult Resident									
Benzo (a) pyrene	4E–9	7E–7	3E–9	9E–8	12.3	26.0	6.6	3 of 6	J(2), 1
Dibenz (a, h) anthracene	2E–9	5E–7	2E–9	6E–8	2.1	3.7		1 of 6	J(1), 1
Total Carcinogen Risk***	8E–9	1E–6	6E–9	2E–7					

Notes:
1. Detection limits greater than the highest detected concentration are excluded from the average concentration calculations.
2. Concentration for combined benzo(b)fluoranthene and benzo(k)fluoranthene. J(#) Samples were estimated concentrations below quantitation limits, "#" indicates number of samples that are "J" values.

Only the combination of high-end factors resulting in the greatest overall carcinogen risk are presented.
* Scenario: high-end factors of quantity, duration of exposure for all scenarios.
** Scenario: high-end factors of small area, duration of exposure for all scenarios.
*** Total carcinogen risk includes risks from other PAHs not tabulated. The risks for the PAHs not presented in this table are lower than those that are presented.
All concentrations are in mg/kg.

WASTE CHARACTERIZATION AND RISK ESTIMATES, CRUDE OIL STORAGE TANK SEDIMENT

Constituents of concern	On-site land treatment		Off-site land treatment		Off-site landfill		Waste characterization				
	Central tendency	High end	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts	Notes
Groundwater											
Benzene	<1E–6	<1E–6	<1E–6	<1E–6	4E–7	3E–5	0.68	1.7	0.032	5 of 6	J(1)

Notes:
J(#) Samples were estimated concentrations below quantitation limits, "#" indicates number of samples that are "J" values.
All concentrations are TCLP leachate values in mg/L.

b. Discussion. Crude oil storage tank sediment is generated from the storage of crude oil where heavy hydrocarbons when basic sediment and water (BS&W) and entrapped oils settle in the bottom of storage tanks. A storage tank is drained for inspection and sediment removal on average once every 10 years. The results of the 1992 § 3007 petroleum refining survey showed that approximately 22,017 metric tons of crude oil storage tank sediment were generated.

The management scenarios selected for risk assessment included on-site land treatment units (12.1 percent of the sediment volume), off-site land treatment units (0.9 percent), and off-site Subtitle D landfills (10.5 percent). Other major management practices used included discharge to the wastewater treatment plant (9.5 percent), Subtitle C landfilling (17.1 percent), or on-site recovery in the crude unit, coker or catalytic cracker (43.5 percent).

The Agency collected six randomly selected samples of crude oil storage tank sediment. These samples are believed to be representative of typical sediments generated throughout the industry and the range of oil recovery techniques employed for crude oil storage tank sediment.

The risks given in Table III–2 show a high-end cancer risk of 3E–5 (3×10^{-5}) due to benzene for an adult consuming groundwater contaminated from an off-site landfill. The high-end carcinogenic risks from PAHs in the home gardener and adult resident pathways were 1E–6 for the on-site land treatment scenario. The central tendency estimates did not show significant risk for any exposure scenario.

The Agency conducted another level of analysis of its risk results to further evaluate the PAH risks that were identified for land treatment. One of the major assumptions in the Agency's run-off models for releases from land treatment units (LTUs) is that the unit does not have controls for run-on and run-off waters from precipitation. A significant portion of the predicted risk for the PAHs is associated with contaminated soils washing off of the LTU into residential areas. PAH risks are reduced below listing levels of concern if no run-on/run-off is assumed (i.e., the refinery diverts all run-on and collects all run-off). EPA's data collection effort showed most LTUs reported run-on/run-off controls to be in place. A survey of some state programs, however, showed that non-hazardous waste LTUs run-on/run-off controls were voluntary.[6] Permits were not required, nor were management standards (where developed) mandatory. The Agency believes that an assumption of complete run-on/run-off control would overstate reality in that existing controls for Subtitle D land treatment units may be inadequate to control all releases, including dike failures during severe storm events, and, more routinely, tracking wastes from the unit on trucks and earthmoving equipment. While the Agency does not have information on the actual effectiveness of land treatment units at controlling releases associated with run-on/run-off, the Agency believes the risks may lie somewhere between those posed by scenarios with and without controls. For crude oil storage tank sediment, LTU controls that reduced off-site run-off to nearby residential areas (e.g., by about 50%) would reduce the high-end risk from land treatment to below the 10^{-6} level.

The Agency believes the management practices of most concern (land treatment and landfills) were assessed, and that the other management practices would not serve as a basis for listing. The wastes being disposed of in Subtitle C landfills are already handled as hazardous and should not present significant risk. As described in Section II.F.2 ("Risk Analysis"), EPA believes that potential risks associated with disposal of wastes to wastewater treatment plants are largely covered by existing regulations. In addition to the existing NPDES or air programs: (1) Refinery sludges generated by wastewater treatment systems are already listed hazardous wastes (K048, K051, F037, F038); (2) the volumes of the crude oil storage tank residuals are relatively small compared to volumes in refinery wastewater treatment systems; and (3) residual risk associated with treatment would be covered by the proposed Phase IV Land Disposal Restrictions treatment requirements. Concerning on-site recovery for this waste, nearly all of this material is currently excluded from the definition of solid waste because it is reinserted into the refining process prior to distillation and catalytic cracking. See § 262.4(a)(12). A proposed expansion of this exclusion and its rationale are discussed in Section III.E. of this notice.

Today's listing determination is limited in scope to crude oil storage tank sediment that is generated from storage tanks associated with petroleum refineries, either on-site or at affiliated tank farms (e.g., tank storage areas owned or under contract to the refinery). The Agency is not attempting to evaluate sediments generated from the storage of crude oil at exploration

[6] See "Communications with State Authorities on Requirements for Land Treatment Units," U.S. EPA 1995.

and production sites or associated with pipelines or other crude oil transportation conveyances. The Agency has not collected data necessary to support a risk characterization of these non-refinery sediments and is not, at this time, making a determination whether to list these materials. Furthermore, these non-refinery materials are governed by special statutory provisions (i.e., the "Bevill" provisions), and are currently exempt from regulation as hazardous waste.

Under today's proposal, hazardous oil-bearing wastes that are inserted into the petroleum refining process (including the coker) would be excluded from the definition of solid waste, and thus from regulation, as a petroleum refining process feed under amended § 261.4(a)(12). This exemption allows refineries to continue a practice currently in use where crude oil storage tank sediment or oil recovered from crude oil storage tank sediment are returned to the refinery operations, whether or not the Agency lists this waste as hazardous. The Agency believes this is appropriate for many reasons (see Section III.E for the Agency's detailed rationale for this exemption), and also reasonable given the inherent similarity between crude oil feedstock, crude oil storage tank sediment, and recovered oil from crude oil storage tank sediments.

Based on an analysis of the risks associated with current management practices, EPA is proposing not to list crude oil storage tank sediment from petroleum refining operations as a hazardous waste. The Agency found essentially no significant risks arising from land treatment. The only risk of possible concern arises from management in landfills. However, even the landfill risks are within EPA's discretionary range for listing, and EPA believes that a number of additional factors argue for not listing this residual.

First, the only constituent of significant concern for this waste is benzene, and this constituent is already regulated under the Toxicity Characteristic (TC). Wastes which contain levels of mobile benzene above 0.5 mg/L (as measured by the TCLP) are already subject to regulation as D018. Therefore, the Agency believes that the TC captures as hazardous the crude oil storage tank sediment that contains benzene levels of concern.

For this waste, EPA is confident that constituents of most concern were identified, and that the risks are unlikely to be significantly higher. Several factors are compelling. First, the Agency compiled a comprehensive database on constituents found in crude oil storage tank sediments and concluded risks would be posed only by benzene. Uncertainty in potential risk levels from other toxicants or from unknown toxicants is low. Second, the Agency has employed a more accurate, realistic risk assessment approach, which the Agency believes accurately projects actual risks posed. Uncertainty in exposure analysis for crude oil storage tank sediments is also low. Finally, while the Agency did not factor biodegradation of benzene directly into its risk assessment, model runs using preliminary data suggest that the levels of benzene reaching a drinking water well will be reduced to some extent due to biodegradation. See Section III.F.2.c for further discussion of this point.

EPA considers the listing decision for this waste to be a case in which the decision on whether or not to list crude oil storage tank sediments was difficult to make. The risk levels projected for the single constituent of concern, benzene, are above the Agency's initial risk level of concern (10^{-5}). However, other factors can and were considered, which suggest the actual risk posed is not of concern. The Agency requests comment on the decision not to list crude oil storage tank sediments, and on other factors that may affect the final decision. EPA seeks comment on whether the TC effectively captures wastes of concern, whether the Agency adequately characterized the risk for this waste, and whether any other factors should be considered.

If comments on this proposal provide sufficient information to show that the TC is not effective in regulating the wastes of concern, or that the risks from this waste have not be adequately characterized by the Agency's analysis, EPA would consider making a final decision to list this residual. If listed, this waste would be identified as EPA Hazardous Waste Number K169—Crude oil storage tank sediment from petroleum refining operations, and benzene would be added to Appendix VII to Part 261—Basis for Listing for the K169 wastestream. In today's notice, the Agency is also including treatment standards, the CERCLA reportable quantity, and exemptions that would apply to this waste stream if the waste were to be listed. Certain background documents in the docket for this rule present elements involving costs and treatment standards EPA would use were this waste to be listed. Thus, final action may not be delayed by the need for additional proposals. If the waste were to be listed, the Agency also seeks comments on whether the listing description might be narrowed to exempt crude oil storage tank sediments that are treated or disposed of in certain ways (e.g., if deoiled). See Section III.H, "Request for Comment on Options for Conditional Exemptions," for a general discussion of possible approaches.

2. Clarified Slurry Oil (CSO) Tank Sediment and/or In-line Filter/ Separation Solids

a. Summary. EPA is proposing to list as hazardous sediment from the storage of clarified slurry oil and/or in-line filter/separation solids from the filtration of clarified slurry oil. This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential hazard to human health or the environment when mismanaged. The Agency has identified risks of concern associated with two of four selected management practices: on-site land treatment, and off-site land treatment. The home gardener and adult resident receptors showed potential risks of concerns, and the contaminants of concern are polynuclear aromatic hydrocarbons (PAHs). The risk assessment results are summarized in Table III–3.

TABLE III–3.—WASTE CHARACTERIZATION / RISK ESTIMATES: K170—CLARIFIED SLURRY OIL TANK SEDIMENT AND/OR IN-LINE FILTER/SEPARATION SOLIDS

[Assumes no run-off controls]

Constituents of concern	On-site land treatment*		Off-site land treatment**		Waste characterization				
	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts.	Notes
HOME GARDENER									
Benzo(a) pyrene	1E–7	1E–5	5E–7	7E–6	132.0	230.0	52.0	4 of 4	J(1).
Dibenz(a,h)anthracene	8E–8	6E–6	3E–7	3E–6	37.0	49.0		1 of 4	1.
3-Methylcholanthrene	2E–7	1E–5	7E–7	6E–6	23.8	27.0		1 of 4	J(1), 1.
Benzo(a)anthracene	3E–8	2E–6	1E–7	1E–6	203.0	390.0	360.0	2 of 4	
7, 12-Dimethylbenz (a)anthracene.	3E–7	3E–5	1E–6	4E–5	331.0	1,200 J		1 of 4	
Benzo(b)fluoranthene /Benzo(k)fluoranthene (total).	1E–8	1E–6	5E–8	5E–7	76.8	110 J	27.0	4 of 4	J(3),2.
Total Carcinogen Risk***	7E–7	6E–5	3E–6	5E–5					
ADULT RESIDENT									
Benzo(a)pyrene	2E–7	1E–6	9E–7	6E–6	132.0	230.0	52.0	4 of 4	J(1).
Dibenz(a,h)anthracene	2E–7	1E–5	7E–7	5E–6	37.0	49.0		1 of 4	1.
3-Methylcholanthrene	3E–7	1E–5	1E–5	6E–6	23.8	27.0		1 of 4	J(1),1.
7, 12-Dimethylbenz (a)anthracene.	7E–7	5E–5	3E–6	6E–5	331.0	1,200.0		1 of 4	
Benzo(b)fluoranthene	2E–8	1E–6	6E–8	4E–7	76.8	110.0	27.0	4 of 4	J(3)2.
Total Carcinogen Risk***	2E–6	9E–5	6E–6	8E–5					

Notes:
1. Detection limits greater than the highest detected concentration are excluded from the average concentration calculations.
2. Concentration for combined benzo(b)fluoranthene and benzo(k)fluoranthene.
J(#) Samples were estimated concentrations below quantitation limits, "#" indicates number of samples that are "J" values.
Only the combination of high-end factors resulting in the greatest overall carcinogen risk are presented:
* Scenario: high-end factors of quantity, duration of exposure.
** Scenario: high-end factors of distance to receptor, duration of exposure.
*** Total carcinogen risk includes risks from other PAHs not tabulated. The risks for the PAHs not presented in this table are lower than those that are presented.
All concentrations are in mg/kg.

b. Discussion. Clarified slurry oil wastes are generated from process unit residuals, and the storage or filtration of clarified slurry oil, which is the bottom distillation fraction from the Fluidized Catalytic Cracker (FCC) fractionator. CSO tank sediment is generated every 5 to 10 years during storage tank cleanout. Some refineries use in-line filters or separators to remove solids from CSO prior to storage. For example, cartridge filters can be used to remove catalyst fines entrained in the product CSO. Filter/separation solids may be generated once or twice a year depending on product volume.

The results of the 1992 § 3007 petroleum refining survey showed that approximately 24,010 metric tons of clarified slurry oil tank sediment and filter/separation solids were generated. The management scenarios selected for risk assessment focussed on known Subtitle D land disposal activities, which included on-site land treatment (12.1 percent of the CSO tank sediment and filter/separation solid volume), off-site land treatment (9.9 percent), on-site Subtitle D landfilling (2.8 percent), and off-site Subtitle D landfilling (47.2 percent). Other major management practices included Subtitle C landfilling (14.8 percent), on-site recovery or reuse (2.3 percent), discharge to the wastewater treatment plant (1.04 percent), transfer for use as fuel (7.7 percent), and on-site road material (1.7 percent).

For this infrequently generated waste, the Agency was able to collect four samples, including 3 tank sediment samples and 1 CSO filter solid. These randomly selected samples are believed to be representative of typical residuals generated throughout the industry.

The risks described in Table III–3 are significant for a variety of exposure routes and management scenarios. The high-end cancer risk arising from the home gardener exposure for on-site was 6E–5, and the central tendency risk was 7E–7. For off-site land treatment, the high-end risk for the home gardener was 5E–5, with a central tendency risks of 3E–6. The adult resident scenario also showed a significant high-end risk of 9E–5 for on-site land treatment, and a central tendency risk of 2E–6. For off-site land treatment, the high-end risk for the adult resident was 8E–5, and the centra tendency risk was 6E–6.

Similar to the analysis conducted for crude oil storage tank sediment, the Agency conducted another level of analysis of the CSO tank sediment and filter/separation solids risk results to further evaluate the impacts of run-on/run-off controls. While the Agency does not have information on the actual effectiveness of land treatment units at controlling releases associated with run-on/run-off, the Agency believes the risks lie somewhere between those posed by scenarios with and without controls. EPA believes that these results continue to warrant listing of the CSO wastes. In order for the high-end risks to be reduced to a 10–6 level, the Agency estimates that for both on-site and off-site LTUs, controls would need to be more than 90 percent effective in controlling releases to nearby fields.

The Agency believes the management practices of most concern (land treatment and landfills) were assessed for this residual, and that the other management practices would not serve as a basis for listing. EPA did not

attempt to model wastes discharged to the wastewater treatment system, disposed of in Subtitle C units, or recovered for use on-site, because wastewater treatment sludges are already listed as hazardous wastes (K048, K051, F037, and F037), and Subtitle C management and reuse activities are viewed as protective. The on-site road use scenario for this residual was not assessed because of the small volume and the small number of facilities using this practice. Additionally, the potential risks posed by the road use management scenario are likely to be less than those calculated for the land treatment scenario (using a much larger volume of >2,000 MT), which considered similar environmental pathways.

Today's listing is limited in scope to clarified slurry oil tank sediment and filter/separation solids that are generated from CSO filtration/ separation and storage tanks associated with petroleum refineries, either on-site or at affiliated tank farms. The Agency is not attempting to include sludges generated from the storage of clarified slurry oil at carbon black manufacturing facilities using clarified slurry oil as raw materials, or associated with transportation conveyances or other off-site storage of clarified slurry oil. The Agency has not collected data necessary to support a risk characterization of these non-refinery sludges and is not, at this time, making a determination regarding whether to list these materials.

Under today's proposal, hazardous oil-bearing clarified slurry oil tank sediment or filter/separation solids that is inserted into the petroleum refining process (including the coker) would be excluded from regulation as a petroleum refining process feed under amended § 261.4(a)(12). This exemption allows refineries to continue a practice currently in use where clarified slurry oil laded wastes or oil recovered from clarified slurry oil tank sediment or filter/separation solids are returned to the refinery operations. The Agency believes this is appropriate for the reasons described in Section III.E. of this preamble, and also reasonable given the inherent similarity between refinery feedstocks, clarified slurry oil tank sediment or filter/separation solids, and recovered oils from clarified slurry oil sediment or filter/separation solids.

Based on an analysis of the risks associated with current management practices, i.e., land treatment, EPA is proposing to list clarified slurry oil storage tank sediment and filter/ separation solids from petroleum refining operations as a hazardous waste, designated as EPA Hazardous Waste Number K170. However, the disposal of CSO storage tank sediment and in-line filter/separation solids in landfills was not associated with significant risks. Therefore, EPA is also proposing two alternative listing descriptions that either limit the listing to CSO residuals managed in land treatment units, or specifically exclude from the listing waste managed in a landfill. These proposals and other options are discussed in Section III.H, "Request for Comment on Options for Conditional Exemptions."

Due to the risks described above, the Agency is proposing to add the following constituents to Appendix VII to Part 261—Basis for Listing: benzo(a)pyrene, dibenz(a,h)anthracene, 3-methylcholanthrene, benzo(a)anthracene, 7,12-dimethylbenz(a)anthracene, benzo(b)fluoranthene, and benzo(k)fluoranthene.

3. Catalyst from Hydrotreating

a. Summary. EPA is proposing to list as hazardous spent catalysts from hydrotreating operations. This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential hazard to human health or the environment when mismanaged. The Agency has identified risks of concern associated with: off-site and on-site Subtitle D landfilling. Health risks are associated with benzene and arsenic releases to groundwater. The risk assessment results are summarized in Table III–4. In addition, this material presents a hazard because it has pyrophoric and self-heating properties, and is sometimes characteristically hazardous due to its ignitability, or benzene and/or arsenic leachability.

TABLE III–4.—WASTE CHARACTERIZATION AND RISK ESTIMATES—K171—SPENT CATALYST FROM HYDROTREATING

Constituents of concern	On-site landfill		Off-site landfill		Waste characterization				
	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts	Notes
GROUNDWATER									
Benzene	9E–7	9E–6	2E–7	1E–5	7.9	39.0	0.05	6 of 6	J(1).
Arsenic	8E–7	8E–6	2E–7	1E–5	1.1	4.9	1.5	2 of 6.	

Notes:
J(#) Samples were estimated concentrations below quantitation limits, "#" indicates number of samples that are "J" values.
All concentrations are TCLP leachate values in mg/L.

b. Discussion. Spent catalysts from hydrotreating are generated every 2 to 7 years during hydrotreater turnarounds and topping activities. Hydrotreating is used to remove sulfur and nitrogen compounds and to saturate olefins in naphthas, lube oils, and some middle distillates. The catalyst is typically nickel and molybdenum or cobalt and molybdenum on an alumina base. The catalyst is removed from the unit because its activity has been reduced below acceptable levels due to coking, metals poisoning, and/or particle degradation. As described further in the listing background document in the docket to this proposal, the Agency is defining hydrotreating to be hydroprocessing applied to lighter boiling stocks and to not include those catalysts with precious metals as their active catalytic metals. Note that in this notice the Agency is also proposing to list hydrorefining catalysts, which is one of two other major types of hydroprocessing catalysts used by the industry. Today's listing determinations, however, do not address catalysts from hydrocracking operations which the Agency is studying separately under the consent decree and which will not be addressed in this notice.[7]

[7] The Agency recognizes that the terms hydrotreating and hydroprocessing are used somewhat loosely within the industry and that various definitions have been posed by different sources of authority. One widely used set of definitions is used in the Oil and Gas Journal's annual report on worldwide refining, which establishes that hydrotreating includes processes where essentially no reduction in the molecular size of the feed occurs, that hydrorefining includes processes where 10 percent of the feed or less is reduced in molecular size, and that hydrocracking includes processes where 50 percent of the feed or more is reduced in molecular size. The Listing Background Document for this proposal discusses these definitions further.

In 1992, the petroleum refining industry reported generating 5,640 metric tons of spent hydrotreating catalyst. Of this total 2,236 metric tons were identified as hazardous, because the wastes were in most cases D018-benzene, D001-ignitable, or D004-arsenic. The management scenarios selected for risk assessment focussed on known Subtitle D landfilling activities, which included off-site Subtitle D landfilling (11.3 percent), and on-site landfilling (0.2 percent). Other major spent hydrotreating catalyst management practices included transfer for metals reclamation or regeneration (75.8 percent), or Subtitle C landfilling (11.3 percent).

The Agency collected six samples of spent hydrotreating catalysts. These samples are believed to be representative of the various types of applications and active metals used by the industry. The Agency observed that many refineries take great care to remove this residual from the process units under an inert atmosphere due to the potential for this residual to ignite spontaneously. On two occasions during sampling, the refineries determined that the risk associated with collecting catalyst samples from inert gas blanketed catalyst storage bins was too great to allow EPA to collect the samples directly. Specially trained refinery personnel collected these samples while being observed by EPA representatives. A third refinery also requested that EPA not collect a sample of their residual due to the risks presented by the spent catalyst.

When sufficient quantities of spent hydrotreating catalysts are stockpiled and exposed to air to allow self heating and self ignition to occur, harmful quantities of toxic sulfur dioxide, carbon monoxide, and other toxic constituents such as nickel carbonyl may be formed. The Agency has received reports of fires, building evacuations, and metals reclamation process disturbances attributed to the ignition of these spent catalysts.[8]

Due to the self-heating or self-ignition characteristics of spent hydrotreating catalysts, the spent catalysts frequently meet the Department of Transportation's (DOT) 49 CFR 173.124(b) definition of spontaneously combustible material, and must be shipped accordingly. A self-heating material is a material that once in contact with air and without an energy supply, is liable to self-heat. A material of this type may be classified as spontaneously combustible if the temperature of a test sample exceeds 200°C (392°F) during the 24-hour test period when tested in accordance with the DOT test in 49 CFR 173 Appendix E—Guidelines for the Classification and Packing Group Assignment of Class 4 Materials. Test data obtained by the Agency indicate that up to 60 percent of these spent hydrotreating catalysts reclaimed at one site are self-heating solids.[9] Furthermore, from the data collected by EPA in the § 3007 questionnaire, about 40 percent of this wastestream is characteristically hazardous, and a significant portion is classified as ignitable under RCRA.

The risk assessment results showed that the primary toxicants of concern for spent hydrotreating catalysts are benzene and arsenic. On-site landfilling results in a high-end cancer risk of 9E–6, and a central tendency risk of 9E–7 for benzene, and arsenic risks of 8E–6 and 8E–7 for high-end risk and central tendency risk, respectively. Off-site landfilling shows high-end modeled risks of 1E–5, and central tendency risks of 2E–7 for each constituent. The on-site groundwater risk is 18 times the MCL for benzene; the off-site risk is 30 times the MCL for benzene.

The Agency believes the management practices of most concern (off-site and on-site landfills) were assessed, and that the other management practices would not serve as a basis for listing. The wastes being disposed of in Subtitle C landfills are already handled as hazardous and should not present significant risk. As described in Section III.J. ("Third Party Regeneration/ Reclamation of Spent Petroleum Catalysts"), EPA believes that the regeneration and reclamation of spent hydrotreating/hydrorefining catalysts is an environmentally sound alternative to disposal, and is also proposing that these units be excluded from regulation as Boilers and Industrial Furnaces (BIFs). In summary, EPA does not believe that these off-site recycling activities present significant risk because: (1) much of the waste going to recycling is characteristically hazardous, and EPA has found that recycling facilities typically handle nominally nonhazardous waste in a protective manner due to its pyrophoric properties; and (2) a preliminary survey of reclaimers/regenerators showed that these units are already equipped with pollution control devices.[10] Therefore, EPA believes that any potential risks associated with regeneration and reclamation are unlikely to be significant, and would be less than the risks found to exist for the management practices modeled.

Based on an analysis of the risks associated with current management practices and the characteristically hazardous properties of the waste, EPA is proposing to list spent catalysts from hydrotreating from petroleum refining operations as a hazardous waste, designated as EPA Hazardous Waste Number K171. Note that as described further in Section III.J. of this preamble that this listing does not include ceramic support media that is separated from the spent catalyst prior to catalyst disposal or recycling.

For the reasons stated above, the Agency is proposing to add benzene and arsenic to Appendix VII to Part 261—Basis for Listing.

4. Catalyst from Hydrorefining

a. Summary. EPA is proposing to list as hazardous spent catalysts from hydrorefining operations. This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential hazard to human health or the environment when mismanaged. The Agency has identified risks of concern associated with: off-site and on-site Subtitle D landfilling. Health risks are associated with benzene and arsenic releases to groundwater. The risk assessment results are summarized in Table III–5. In addition, this material presents a hazard because it has pyrophoric and self-heating properties, and is sometimes characteristically hazardous due to its ignitability, or benzene and/or arsenic leachability.

[8] Ibid.

[9] See May 19, 1995 letter from John N. Glover (CRI–MET) to William F. Brandes (EPA).

[10] See "Survey of Spent Petroleum Catalyst Regenerators and Reclaimers," U.S. EPA 1995.

TABLE III–5.—WASTE CHARACTERIZATION AND RISK ESTIMATES—K172—SPENT CATALYST FROM HYDROREFINING

Constituents of concern	On-site landfill		Off-site landfill		Waste characterization				
	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	No. of pts	Notes
GROUNDWATER									
Benzene	1E–6	1E–5	2E–7	2E–5	1.5	4.2	0.1	3 of 3.	
Arsenic	4E–6	4E–5	8E–7	6E–5	13.7	34.0	0.2	3 of 3.	

All concentrations are TCLP leachate values in mg/L.

b. Discussion. Spent catalysts from hydrorefining are generated every 2 to 7 years during hydrorefiner turnarounds and topping activities. Hydrorefining is used to remove sulfur and nitrogen compounds and to saturate olefins in gas oil, residual oil, and some middle distillates. The catalyst is typically nickel and molybdenum or nickel and cobalt on an alumina base. The catalyst is removed from the unit because its activity has been reduced below acceptable levels due to coking, metals poisoning, and/or particle degradation. The Agency observed that many refineries take great care to remove this residual from the process units under an inert atmosphere due to the exposure hazards associated with this residual. Similar to hydrotreating catalysts, these hydrorefining catalysts also frequently exhibit the properties of spontaneously combustible materials. Two of the three refineries sampled insisted that refinery personnel collect the Agency's record samples due to potential risks. Similar to spent hydrotreating catalyst, the spent hydrorefining catalyst exhibits self-heating and spontaneously combustible properties (see discussion in Section III.G.3). Also like the hydrotreating residual, data collected by EPA in the § 3007 questionnaire showed that much of this wastestream (nearly 30 percent) is characteristically hazardous, and approximately 9 percent is classified as ignitable under RCRA.

In 1992, the petroleum refining industry reported generating 18,630 metric tons of spent hydrorefining catalyst. Approximately 5,028 metric tons (27 percent) were identified as hazardous because the waste exhibited a hazardous characteristic, primarily D018-benzene, D001-ignitable, or D004-arsenic. The management scenarios selected for risk assessment focussed on known Subtitle D landfilling activities, which included off-site Subtitle D landfilling (12.6 percent), and on-site land filling (3.8 percent). Other major spent hydrorefining catalyst management practices included transfer for metals reclamation or regeneration (82.4 percent), or Subtitle C landfilling (1.1 percent).

Due to sample availability, the Agency was only able to obtain three samples of spent hydrorefining catalysts during its data collection effort. These samples are believed to be representative of the various types of applications and active metals used by the industry.

In this notice, the Agency is also proposing to list hydrotreating catalysts, which is one of two other major types of hydroprocessing catalysts used by the industry. Today's listing determinations, however, do not address catalysts from hydrocracking operations which the Agency is studying separately under the consent decree and which will not be addressed in this notice. Note that as described further in Section III.J of this preamble, this listing also does not include ceramic support median that is separated from the spent catalyst prior to catalyst disposal or recycling.

The risk assessment results showed that the primary toxicants of concern for spent hydrorefining catalysts are arsenic and benzene. On-site landfilling results in a high-end cancer risk of 4E–5, and a central tendency risk of 4E–6. Off-site landfilling shows a modeled high-end risk of 6E–5 and central tendency risk of 8E–7.

The Agency believes the management practices of most concern (off-site and on-site landfills) were assessed, and that the other management practices would not serve as a basis for listing. See Section III.G.3. for a discussion explaining why EPA did not attempt to model disposal in Subtitle C units or regeneration and reclamation processes.

Based on an analysis of the risks associated with current management practices and the characteristically hazardous properties of the waste, EPA is proposing to list spent catalysts from hydrorefining from petroleum refining operations as a hazardous waste, designated as EPA Hazardous Waste Number K172.

For the reasons stated above, the Agency is proposing to add benzene and arsenic to Appendix VII to Part 261—Basis for Listing.

5. Catalyst From Sulfuric Acid Alkylation

a. Summary. The Agency is proposing not to list spent catalysts from sulfuric acid alkylation. This residual is currently managed almost entirely under an existing exemption from the definition of solid waste. In addition, this residual consistently exhibits the characteristic of corrosivity and already is subject to regulatory control if not returned to the production of virgin sulfuric acid.

b. Discussion. The sulfuric acid alkylation process contacts olefin and isobutane gases over concentrated sulfuric acid catalyst to synthesize alkylates for octane boosting. A portion of the acid catalyst is continuously bled from the reactor and replaced with fresh acid to maintain the reactor acid concentration at around 90 percent. The acid bleed stream is the spent catalyst of concern for this category. The industry reported the generation of almost 1,760,100 metric tons of spent catalyst in 1992. This residual consistently exhibits the characteristic of corrosivity.

The Agency previously has exempted from the definition of solid wastes (40 CFR 261.4(a)(7)) spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively (50 FR 614, January 4, 1985). In 1992, more than 99 percent of spent sulfuric acid generated was used to produce virgin sulfuric acid or reused on-site, and less than 1 percent was used to neutralize wastewaters prior to biological treatment. The Agency has reexamined the contaminants found in such spent acids and has found no materials which would likely be carried through production to the virgin acid. As noted in the preamble to the January 4, 1985, final rule on the definition of solid waste, the spent sulfuric acid recycling process more closely resembles a manufacturing operation than a reclamation process. (50 FR 642, January 4, 1985). Spent sulfuric acid is a hazardous waste if disposed (assuming it is corrosive or exhibits other hazardous waste characteristics), and could be a hazardous waste if recycled in some other manner (such as burning for energy recovery). The Agency finds no reason to change the existing regulatory structure for spent sulfuric acid used to produce virgin sulfuric acid and is taking no action in this area.

Waste survey data indicate that 155 metric tons of spent acid from spills were discharged to wastewater treatment units in 1992. The Agency believes that this small volume is unlikely to cause any significant risk, especially due to the existing regulation of primary treatment sludge as hazardous. Furthermore, spent acids which are used to neutralize other waste characteristics, forming a mixture which no longer exhibits a characteristic, remain subject to land disposal restrictions. The Agency has proposed in the Phase Three Land Disposal Restrictions Rule (60 FR 11702, March 2, 1995) that treatment is required not only to remove the characteristic, but also to treat any underlying hazardous constituents which may be present in the wastes, even though they are not what causes the characteristic property. EPA proposes to continue the current regulation of spent acids, which are not used to produce virgin acid, as characteristically hazardous waste when discarded. The Agency requests comment on this proposed decision.

6. Spent Caustic From Liquid Treating

a. Summary. The Agency is proposing not to list spent caustic from liquid treating as a hazardous waste. After analyzing potential exposure pathways, EPA concluded that with the exception of air exposure pathways from open tank storage, there were no potential risk pathways that needed to be modeled. This residual, however, will frequently exhibit the characteristic of corrosivity and/or toxicity due to cresol leachability (and sometimes ignitability) and is subject to all applicable regulatory controls when any of the hazardous waste characteristics are present. The Agency has identified certain management practices used for spent caustics for which the Agency is clarifying the application of the definition of solid waste, and in one case proposes a modification to the definition.

b. Discussion. Caustic is used to remove certain acidic compounds like mercaptans from liquid petroleum streams to reduce product odor and corrosivity as well as to meet product sulfur specifications. In 1992, the industry reported the generation of approximately 918,000 metric tons of spent caustic. Twenty-one separate management practices, most involving relatively small volumes, were employed. EPA's survey showed, however, that more than 99 percent of this wastestream is managed as follows: reused as an ingredient or substitute for virgin caustic (51 percent of the total volume or 470,400 metric tons); sent to wastewater treatment systems (29 percent or 266,200 metric tons); or used as a feedstock to production processes from which cresylic or naphthenic acids are obtained (17 percent or 153,000 metric tons). A much smaller volume is injected into underground wells.

The Agency collected six samples of spent caustic. The samples are considered representative because the sample profile reflected the distribution of the different categories of caustics in use and because spent caustics perform essentially the same function in refining processes. The samples collected by the Agency were found to consistently exhibit one or more of the characteristics of hazardous waste: corrosivity (D002) and/or toxicity for one or more cresols (D023, D024, D025, or D026).

Under current rules, spent materials are solid wastes whether reclaimed or abandoned, and, because they are characteristically hazardous, spent caustics from liquid treating are hazardous wastes under existing regulations. Today's proposal does not change the regulatory status of liquid treating caustic managed in this manner except as discussed in section (3.) below.

The Agency examined the various management techniques before concluding that, aside from tank storage, no exposure pathways needed to be modeled and therefore the residual should not be listed as hazardous. The analysis and conclusion are based on the following management practices reported.

1. Use as Ingredients or Substitutes. Spent caustics that are used as ingredients or reagent substitutes (e.g., use in pH control; sulfidic caustic used in the making of paper) are eligible for exclusion from the definition of solid waste under (§ 261.2(e)). This exclusion provides that secondary materials that are used or reused directly (i.e., without reclamation) as ingredients in an industrial process to make a product are not subject to regulation under RCRA and therefore not subject to any listing determination. EPA notes that characteristically hazardous spent materials that are reclaimed prior to reuse would still be hazardous wastes subject to pertinent management requirements.

2. Sent to Wastewater Treatment. The Agency considered whether there was a need to conduct a risk assessment of the wastewater treatment system but determined that the combination of the existing F and K sludge listings, the benzene NESHAP, the planned MACT standards for volatile organics emissions (assuming such standards would apply), and the proposed LDR Phase III (60 FR 11702, March 2, 1995) and Phase IV (60 FR 43654, August 22, 1995) rulemakings (if promulgated) would address any residual risk associated with spent caustics, mixed with other refinery wastewaters.

Wastewaters discharged under NPDES permits are generally excluded from RCRA at the point they are discharged to surface waters so the exposure pathways associated with discharge were not modeled. For wastewater treatment plant sludges, only the aggressive biological treatment (ABT) sludges and sludges generated downstream from ABT units are not already listed hazardous wastes. While these sludges could be contaminated by toxicants carried in spent caustics, in fact the majority of the toxicants would either be removed by biotreatment or fall out in the listed sludges upstream from the biotreatment units. The Agency also concluded that dilution with other refinery wastewaters would significantly reduce the concentrations involved. EPA estimates that spent caustic wastestreams receive significant dilution upon discharge to wastewater systems (to less than 3 percent of original concentration). Further, it would be virtually impossible to trace contaminants in ABT sludges to a spent caustic wastestream because the contaminants are common to many different influent streams. For these reasons, EPA did not model risk associated with sludge disposal.

Air exposure pathways from wastewater treatment systems treating spent caustics were not modeled because the Benzene NESHAP (55 FR 8292, March 7, 1990) and the MACT standards (60 FR 43244, August 18, 1995) for volatile organics emissions were considered to be the pertinent regulatory mechanisms for potential air emission sources. Furthermore, the Agency notes that bounding estimates for air emissions from storage tanks managing spent caustic show no significant risk from volatile emissions. The Agency specifically requests comment on this determination with regard to potential lapses in coverage due to emission volume cutoffs in CAA air rules and the adequacy of technology-based controls to control specific volatile organics from spent caustics that are discharged to wastewater treatment systems.

3. Use as a Feedstock. Some 153,000 metric tons/year of spent caustics are sold as feedstock to produce naphthenic and cresylic acid products (16.8 percent of reported 1992 generation). One reading of the existing regulations is that, because this production process arguably involves reclamation of the spent caustics, the spent caustics would be regulated as hazardous wastes. However, as an early finding in our effort to redefine "solid waste," EPA has concluded that spent caustic from liquid treating is not a waste when recycled in this manner even though it does have an element of reclamation associated with it. Rather, the spent caustic constitutes a valuable commercial feedstock which is used in the manufacture of commercial chemical products. The caustic in this case has been used to isolate an acidic cresylic or naphthenic fraction during the refining of petroleum crude oil. Spent caustic meeting the appropriate specifications is purchased from petroleum refineries (i.e., it has a positive economic value and is not accepted indiscriminately) and is managed as a valuable commodity (i.e., feedstock) to prevent loss en route to its use in the manufacturing process. The caustic solutions are individually shipped by the refiners like other petroleum products. They move to the plant in barges, railroad cars and tank trucks. Because this feedstock is corrosive, the transportation conveyances used are subject to applicable Coast Guard, Federal Railroad Administration, and Department of Transportation regulations. Consequently, the human health and environmental risk posed by the transportation of these products is expected to be comparable to risks posed by similar raw materials. The spent caustic which is currently used as a feedstock is managed in the following manner. Upon arrival at the production facility, the caustic solutions are directly loaded into storage tanks. The storage tanks are constructed of steel and are built with diked concrete containment systems for spill control and equipped closed vent headers that are tied into a fume incinerator. These factors would mitigate air emissions concerns presented by the handling of caustics in this manner. The storage tanks meet all applicable Federal and State air pollution regulations. From the storage tanks, the caustic is directly pumped into the plant's chemical manufacturing process. The facility in question has been in operation for close to 50 years. A review of recent release history indicates that there have been no reportable spills or releases associated with the handling and receipt of caustics used in this manner over the past ten years. Based on the manner in which these materials are routinely handled and processed, this recycling practice more closely resembles a manufacturing operation than a reclamation process.

EPA is therefore proposing to amend the regulations at 40 CFR 261.4(a)(14) to provide an exclusion from the definition of solid waste, clarifying that spent liquid treating caustics from petroleum refineries used as feedstock in the manufacture of naphthenic and cresylic acid products are not solid wastes. EPA may identify additional "commodity-like" materials as we proceed with other Agency efforts to redefine the definition of solid waste and revise the existing RCRA regulations.

4. Storage of Spent Caustic. Approximately 534,000 metric tons of spent caustic were reported stored on-site prior to further management. Storage is typically in covered tanks, however, EPA conducted a risk analysis of uncovered tanks under the assumption that uncovered tanks would pose the highest potential risk. A bounding maximum estimated risk assessment resulted in risk estimates of less than one additional cancer case in a population of one million (1E–6) and hazard quotients[11] less than one for the toxicants detected in this residual.

While RCRA hazardous wastes are subject to either 40 CFR 264 or 265 Subpart AA, BB, and CC Air Emission Standards, storage vessels associated with petroleum refining process units are subject to the recently promulgated 40 CFR 63 Subpart CC—National Emission Standards for Organic Hazardous Air Pollutants from Petroleum Refineries (60 FR 43244, August 18, 1995). Therefore (assuming such standards' enforceability), regardless of whether this secondary material is considered waste or feedstocks, regulations in place prohibit the open storage of these materials. The Agency does not believe the management of the spent caustics at the petroleum refinery (prior to transportation and use as a feedstock) poses a risk to human health and the environment.

5. Deep Well Injection. As noted above, this wastestream is typically characteristically hazardous. Spent caustics that are underground injected that are characteristic will be subject to LDR treatment requirements prior to injection. Furthermore, the spent caustic is usually neutralized and diluted before injection, further reducing any associated risks. Therefore, the Agency did not model this disposal practice.

7. Off-Specification Product and Fines from Thermal Processes

a. Summary. EPA is proposing not to list as hazardous off-spec product and fines from thermal processes. The Agency assessed the potential risks associated with two selected management practices: on-site Subtitle D landfilling and off-site Subtitle D landfilling. No risks of concern were identified.

b. Discussion. Thermal processes include all processes where feed is cracked solely by a thermal, rather than a catalytic, reaction mechanism. These processes convert heavy stocks to light hydrocarbon products. The most common thermal process is delayed coking; other typical thermal processes include visbreaking, fluid coking, thermal cracking and coke calcining. Only two generate residuals of concern for this listing, delayed coking and fluid coking; the other processes do not generate product coke. (See the Listing Background Document in the Docket for this proposal for additional details. See **ADDRESSES** section.)

The residual of concern for thermal processes consists of (1) off-spec products (e.g., non-salable products generated during process upsets, start ups, shut downs, turnarounds, or other conditions); and (2) fines (e.g., coke fines generated during coke drum drilling). The petroleum refining industry reported generation of almost 194,300 metric tons of off-spec product and fines. Approximately 87 percent of this material is collected and combined with product inventory to be sold.

Some cokers have been retrofitted to allow the refineries to process certain waste materials, including the listed refinery wastewater treatment sludges, as coker feeds. Hazardous waste-derived petroleum coke or coke fines which exhibit any of the characteristics of a hazardous waste are currently subject to RCRA requirements (see 40 CFR 261.6(a)(3)(vii)).

Coke fines are generated on a daily basis. Although most off-spec product and fines are sold with the refinery coke product, more than 7,250 metric tons (3.7 percent) are landfilled in on-site or off-site Subtitle D landfills. The Agency conducted its risk assessment on these disposal practices. Other management practices included recovery in the coker (4.8 percent), discharge to wastewater treatment (2.6 percent), and treatment in on-site boilers (1.1 percent). Smaller volumes went to Subtitle C units (0.5 percent) and land treatment (0.03 percent). The volume reported disposed of in land treatment units (almost 50 metric tons) is small in comparison to the volumes modeled for landfills, and was assumed to be of insignificant risk.

The Agency collected six samples of off-spec products and fines from thermal processes. Five were from the delayed coker, and one from a fluid coker; this corresponds to the dominance of delayed cokers in the industry. These samples are believed to be representative of the residual category as generated by the industry.

The Agency believes the management practices of most concern (off site and on-site landfills) were assessed, and that the other management practices would not serve as a basis for listing. Fines sent to wastewater treatment are insoluble and will be incorporated in the primary treatment sludges; these are already listed (K048, K051, F037 and F038). The volume reported going to an on-site boiler was somewhat misleading because this material was not isolated from the coking process. Rather, this volume is associated with fines entrained in off-gases from fluid cokers, which were sent directly to carbon monoxide boilers for air pollution control. Furthermore, this process was only relevant to fluid cokers, which are present at only 3 of the 76 facilities.

EPA did not model storage of fines from thermal processes (i.e., coke fines). The majority of coke fines are managed with coke product as product and thus are not within the jurisdiction of this rulemaking. The Agency did assess the potential for air releases during landfilling as a result of the frequent generation frequency and small particle size associated with this residual and believes that this assessment would be comparable to any potential risks associated with on-site storage prior to final management.

Based on an analysis of the risks associated with current management practices, EPA is proposing not to list off-spec products and fines from thermal processes from petroleum refining operations as a hazardous waste. Furthermore, EPA notes that most of the coke fines are sold with product coke, and that the coke product is statutorily exempt from regulation as hazardous, unless the material exhibits a hazardous waste characteristic (see RCRA § 3004(q)(2)(A)).

8. Catalyst and Fines From Catalytic Cracking

a. Summary. The Agency proposes not to list Fluidized Catalytic Cracking (FCC) catalyst and fines as hazardous wastes. The Agency characterized FCC catalysts and fines and modeled the risk associated with management in an on-site monofill. For the direct and indirect exposures from volatile and particulate emissions from monofills, bounding estimates showed no significant risk. The Agency also found no significant risk from the high-end analysis for the groundwater pathway.

b. Discussion. The Agency's evaluation of this category considered two subcategories: spent equilibrium catalyst and catalyst fines. The FCC reactor is a fluidized bed through which catalyst circulates and is regenerated. Equilibrium catalysts are removed from the unit on a routine basis (daily or weekly) and replaced with fresh catalysts to maintain a target activity and metals level. Catalyst fines are collected in the FCC off-gas air pollution control devices (which may include dry systems such as cyclones and electrostatic precipitators or wet scrubbers). Physically, the two subcategories differ primarily in their particle size. More than 70 percent of the equilibrium catalyst is reused or otherwise recycled, while 15 percent of the catalyst fines are recycled.

EPA chose to model the monofill and surface impoundment scenarios for these residuals because units dedicated to these materials were observed during the Agency's engineering site visits; in addition, these residuals are produced frequently and in sufficient quantities by numerous facilities to make a monofill or dedicated surface impoundment possible. The Agency observed several monofills and a dedicated surface impoundment during the 20 site visits performed as part of the listing determination; some of these monofills were referred to as "catalyst landfills" by facility personnel. EPA believes that this type of management will show greater risk than other plausible management practices that could have been modeled for these residuals (e.g., landfills that accept other non-hazardous waste), because the residual will not be mixed or diluted with other material in an unlined monofill.

The Agency did not model storage of FCC catalysts and fines, even though these residuals are generated frequently. FCC catalyst and fines are typically managed in pneumatic containers and hoppers prior to final management due to their particle size and large volumes generated. These storage vessels are designed to minimize dust emissions and control material losses. The Agency did model potential air releases in the modeled monofill scenario for FCC residuals. Thus, interim storage was not modeled because of the nature of the storage vessels typically used and the consideration of air pathway releases during long-term final management.

EPA collected six samples of catalysts and fines: two FCC catalyst samples, two dry samples of fines, and two samples of fines from wet scrubbers. Due to limited variation in feedstocks, catalyst-type, and use practices across the industry, EPA believes that these samples are representative of the different forms of FCC catalysts and fines.

1. FCC Catalyst. The industry reported the generation of more than 124,000 metric tons of spent FCC catalyst in 1992. Seventy percent of this volume was recycled to other FCC units or cement plants. Almost 19 percent was managed in off-site Subtitle D landfills and 2.3 percent was managed in on-site Subtitle D landfills. Less than 1 percent was managed in on- or off-site land treatment units. About 3 percent was managed in on-site Subtitle C landfills, however, facilities did not report these as characteristically hazardous, so the reason for Subtitle C management is unclear.

Bounding estimates for the direct and indirect exposures from volatile and particulate releases from monofills showed no risks of concern for the equilibrium catalyst. These bounding estimates were run under worst-case assumptions using multiple high-end assumptions for critical parameters. (More plausible high-end analyses would be expected to give even lower risks.) For the groundwater pathway, high-end analyses also showed no significant risks from the monofill scenario. The results are available in the Risk Assessment Background Document in the docket for today's proposal (see **ADDRESSES** section).

Spent FCC catalysts contain primarily silica, aluminum, iron, sodium, calcium, and some other trace metals. The constituents of concern found in other petroleum residuals evaluated in this listing determination (e.g., carcinogenic PAHs and benzene) were not detected in spent FCC catalysts. EPA did not pursue modeling for the relatively small volumes (less than 1 percent) of catalysts that were reported to go to land treatment. If the much larger volumes evaluated for monofills do not present a risk, it was considered highly unlikely that the land treatment risks will be significant.

2. FCC Fines. More than 67,500 metric tons of FCC fines were reported to be generated in 1992. Over 48 percent of this volume was managed in off-site Subtitle D landfills, 20 percent was recycled (primarily by cement plants), 12.6 percent was managed in on-site

[11] The hazard quotient is a ratio of exposure to the RFC or RfD, and is used as a measure of noncancer risk.

Subtitle D landfills, and 1.1 percent was managed in Subtitle C landfills. 10.4 percent of the volume was reported to be managed in surface impoundments, and almost 10 percent reportedly was not collected, but vented into the atmosphere in states where aggressive emissions controls were not required. 0.6 percent of the volume was managed in land treatment units.

Bounding estimates for the direct and indirect exposures from releases from monofills showed no risks of concern for FCC fines. For the groundwater pathway, high-end analyses also showed no significant risks from the monofill or surface impoundment scenarios. The results are available in the Risk Assessment Background Document in the docket for today's proposal (see **ADDRESSES** section).

Similar to FCC catalysts, EPA did not pursue modeling for the relatively small volumes (less than 1 percent) of fines that were reported to go to land treatment because the much larger volumes evaluated for monofills and surface impoundments were not found to present a risk above the level of concern.

3. Definition of Solid Waste Issues. A large fraction of the recycled FCC catalyst (over one-third) is only partially deactivated and may be reused without further reclamation in another FCC unit (generally at another refinery) that can utilize catalysts with the reduced activity. Because these materials are continuing to be used for their intended purpose, (i.e., as catalysts) they are not considered to be "spent materials" within the RCRA definition (50 FR 624, January 4, 1985). "Spent materials" as defined under RCRA do not include materials that are reused for their original purpose, provided that the materials do not undergo reclamation or reprocessing prior to their reuse. Therefore, as long as the partially deactivated catalyst does not undergo reclamation prior to its reuse as a catalyst, it would be considered a product excluded from jurisdiction under RCRA.

Some of the spent FCC material is legitimately recycled in cement plants, because the silica-alumina matrix, among other things, is useful as an ingredient in cement production. EPA did not attempt to model risks specifically from the recycling of FCC catalysts and fines in cement plants. However, given the low levels of any hazardous constituents in spent FCC catalysts and fines, the Agency does not believe the practice should present significant risks. Furthermore, the residuals are blended with other materials at the cement plant (typically up to 5% of the feed material), and the ultimate product (concrete) would tend to immobilize any trace metals present. While generators did not report that the catalyst or fines exhibited a characteristic, it should be noted that cement manufactured using a characteristically hazardous waste as an ingredient would result in regulation of the kiln as a BIF (56 FR 7185, February 21, 1991). Furthermore, cement produced from FCC catalysts that exhibit a hazardous characteristic would be considered a waste-derived product (see 40 CFR 266.20). Under RCRA, products that are derived-from hazardous wastes and are used in a manner constituting disposal (e.g., cement) may be marketed for the general public's use and used without further regulation, if they meet applicable LDR standards and if the hazardous constituents undergo a chemical change so as to be inseparable by physical means (50 FR 629, January 4, 1985).

9. Sludge From Hydrofluoric Acid Alkylation

a. Summary. EPA is proposing not to list as hazardous sludge from hydrofluoric acid alkylation processes. The Agency assessed the potential risks associated with: on-site Subtitle D landfilling, off-site Subtitle D landfilling, on-site land treatment, and off-site land treatment. Only marginal risk was identified for the ground-water ingestion exposure pathway in the modeled off-site landfill. The marginal risks identified in the Agency's risk assessment are summarized in Table III–7.

TABLE III–7.—WASTE CHARACTERIZATION AND RISK ESTIMATES: HF ALKYLATION SLUDGE

Constituents of concern	On-site land treatment		Off-site land treatment		On-site landfill	High end	Off-site landfill		Waste characterization				
	Central tendency	High end	Central tendency	High end	Central tendency		Central tendency	High end	Avg. con.	High conc.	Low conc.	# of pts	Notes
GROUNDWATER													
Benzene	<1E–6	<1E–6	<1E–6	<1E–6	1E–7	6E–7	5E–8	3E–6	0.08	0.2	.....	1 of 5	

All concentrations are TCLP leachate values in mg/L.

b. Discussion. The hydrofluoric acid (HF) alkylation process contacts olefin and isobutane gases over a hydrofluoric acid catalyst to synthesize alkylates for octane boosting. The hydrofluoric acid is managed in a closed-loop process, without leaving the unit for replacement or regeneration. As a result of neutralization of trace HF levels in product streams and certain process residuals, many refineries generate a calcium fluoride sludge. (See the Listing Background Document in the Docket for this proposal for additional details. See **ADDRESSES** section.) This sludge is the residual of concern for this category.

Sludge from hydrofluoric acid alkylation is generated every 3 to 6 months. The sludge is generally dewatered prior to final management and managed with other alkylation process unit wastewaters. The Agency collected five samples of sludge from hydrofluoric alkylation. These samples are believed to be representative of the sludges generated by the industry.

In 1992, the petroleum refining industry reported generating 11,288 metric tons of sludge from hydrofluoric acid alkylation. The management scenarios selected for risk assessment focussed on known Subtitle D land disposal activities, which included on-site land treatment (4.9 percent), off-site land treatment (6.1 percent), on-site landfilling (0.4 percent), and off-site Subtitle D landfilling (65.3 percent). Other major hydrofluoric acid sludge management practices reported in 1992 included on-site recovery in a coker (11.6 percent), off-site industrial furnace (7.3 percent), disposal in surface impoundment (2 percent), and discharge to wastewater (0.7 percent).

The Agency's risk assessment of HF alkylation sludge showed only marginal risk for one of the four management scenarios modeled—off-site landfilling. The exposure route of concern was limited to ground-water ingestion. The contaminant of marginal concern was benzene, with a high-end cancer risk of 3E–6 and a central tendency risk of 5E–8. EPA believes that this risk is not significant enough to warrant a listing because it is near the presumptive no-list level of 10–6, and the actual risk may be lower than the results indicate due to the possible biodegradation of benzene prior to reaching receptors. In addition, the frequency of detection in TCLP samples (one out of five) was low, further indicating that the risk attributed to this parameter would generally be lower.

The Agency did not attempt to model the volume of HF alkylation sludge going to an off-site industrial furnace because: (1) EPA determined the furnace was a cement kiln that was already subject to regulation (the kiln had applied for a permit as a Boiler and Industrial Furnace (BIF)), and (2) this was reported to occur by only one facility, and the refinery has since closed. Therefore, EPA believes treatment of this waste in a furnace is extremely rare and, considering the existing regulatory controls in place for BIFs, this management practice is not of concern.

EPA did not model the small volume (221 metric tons) reportedly disposed of in a surface impoundment, because this practice was rare (one facility). Furthermore, EPA determined that this facility has since ceased this practice entirely and closed the impoundment. Therefore, EPA believes that disposal in a surface impoundment is not a plausible management practice of concern for this waste.

Some refineries reported the discharge of their HF alkylation sludge to wastewater treatment. The Agency believes any hazardous materials contained therein would be largely removed during oil/water/solids separation as already listed hazardous waste (F037, F038, K048, and K051), or significantly diluted by other wastewaters. Therefore, the Agency did not model this management practice. Refineries also reported the transfer of this residual for processing in an on-site coker. The Agency did not model the risk associated with on-site coker recovery because the residual is managed in closed systems (i.e., vacuum trucks, tanks, and piping) which eliminate environmental pathways of concern. In addition, the HF alkylation sludge residuals processed in an on-site coker typically are oil-bearing materials which are being proposed for exclusion from the definition of solid waste in this rulemaking. See Section III.F.

Based on an analysis of the risks associated with current management practices, EPA is proposing not to list sludge from hydrofluoric acid alkylation from petroleum refining operations as a hazardous waste. The Agency requests comment on this proposed decision.

10. Sludge From Sulfur Complex and H_2S Removal Facilities

a. Summary. EPA is proposing to not list as hazardous sludge from sulfur complex and H_2S removal facilities. None of the plausible management practices identified and modeled by the Agency pose significant risk to human health and the environment.

b. Discussion. Virtually all crude oil contains sulfur which must be removed at various points in the refining process. A common method for treating light petroleum gases is amine scrubbing, followed by recovery of elemental sulfur, and tail gas treating. The Agency has defined the category of sludge from sulfur complex and H_2S removal facilities to capture sludge generated during amine scrubbing and recover.[12] Sludges accumulate in amine systems due to the formation of heat stable salts and other inert process system impurities. Control methods to remove these impurities include particulate filters, activated carbon, diatomaceous earth, regeneration, and/or caustic addition, depending on the type of amine used and petroleum stream being treated. These control methods (with the exception of caustic addition) generate sludge that meets the Agency's definition of sludge from sulfur complex and H_2S removal facilities.

More than 8,500 metric tons of sludge from sulfur complex and H_2S removal facilities were reported by the petroleum refining industry in 1992. Over 47 percent was managed in off-site Subtitle D landfills, and about 2 percent was managed in on-site Subtitle D landfills. Less than 2 percent was disposed of in on-site or off-site land treatment units. In addition, the Agency believes that a significant portion (almost 50 percent) of this residual is managed on-site intermediately in storage containers such as dumpsters prior to shipment or final disposal. The Agency conducted its risk assessment on these management practices. Other major management practices included discharge to wastewater treatment (40 percent), on-site incineration (0.1 percent), Subtitle C landfilling (2 percent), off-site carbon regeneration (1.2 percent), and miscellaneous recycling methods (3.0 percent).

The Agency collected five samples of this sludge. The samples represent sludges, sorbents, and filter media generated from amine systems. These samples are believed to be representative of the residual category as generated by the industry.

The Agency found no significant risks for any exposure pathway for this waste when disposed of in on-site or off-site landfills and land treatment units. Furthermore, no significant risks were found from potential air releases from storage in dumpsters.

EPA did not model the volumes of waste that were discharged to the wastewater treatment system, because the solids would be captured in the API separator or primary treatment sludge, which are already listed hazardous wastes (K048, K051, F037, F038). Incineration was also not modeled, because the volume was 197 metric tons, and nearly all of this volume (192 metric tons) was treated in a Subtitle C permitted incinerator. Therefore, neither scenario was expected to cause significant risk.

Based on an analysis of the risks associated with current management practices, EPA is proposing not to list sludge from sulfur complex and H_2S removal facilities as a hazardous waste.

11. Catalyst From Sulfur Complex and H_2S Removal Facilities

a. Summary. The Agency is not proposing to list any of the spent catalysts generated from H_2S removal and sulfur complex operations. The plausible management scenarios used for the two major subcategories of catalysts were modeled and found to pose no significant risk.

b. Discussion. The Agency subdivided this category into two distinct residuals of concern: spent Claus unit catalyst and spent SCOT® like tail gas catalyst. A Claus unit converts H_2S generated from the refinery sulfur removal system into elemental sulfur through the use of heat and an alumina catalyst. The SCOT® unit converts sulfur dioxide in exhaust gas from the Claus unit to H_2S using a cobalt/molybdenum catalyst. The H_2S either is concentrated using amine solutions and sent back to the Claus unit, or is converted directly into elemental sulfur. The Agency has evaluated Claus and SCOT® like catalysts separately because they differ in the point of generation and their composition also differs somewhat (the Claus catalyst is alumina, while the SCOT® catalyst's active metals are cobalt and molybdenum).

1. Claus Catalyst. The alumina Claus catalyst is generated during unit turnarounds every 1 to 3 years. The industry reported generation of over 3,800 metric tons in 1992. Almost 60 percent was reported to be managed in off-site Subtitle D landfills, and another

[12] Other residuals of interest to the Agency from the H_2S removal and sulfur complex include several residuals described elsewhere in today's notice (catalyst from Claus sulfur recovery, catalyst from SCOT tail gas treating), and several residuals to be addressed in the consent decree study (off-spec sulfur, off-spec treating solution).

10 percent was managed in on-site Subtitle D landfills. These management practices were evaluated in the Agency's risk assessment. Other management practices included recycling in cement plants (18.9 percent), disposal in Subtitle C landfills (7 percent), and off-site reclamation (3.5 percent); these practices were not evaluated for the same reasons discussed for the FCC catalyst and fines in Section III.G.8.

EPA was able to collect three samples of spent Claus catalysts. These are expected to be representative, because there are essentially no process variations with the Claus process; all units use alumina catalysts and all treat a purified stream of hydrogen sulfide.

For the direct and indirect pathways of volatile emissions and particulate emissions, as well as for the groundwater leachate pathway, the Agency found no significant risk from bounding estimates. Therefore, the Agency proposes not to designate spent Claus catalyst as a listed hazardous waste.

2. Tail Gas Treating Catalyst. Spent catalysts from tail gas treating are generated every 2 to 7 years during tail gas treater turnarounds and topping activities. Tail gas treating, as typified by the SCOT® process, is used to remove sulfur dioxide from Claus unit off-gases. The catalyst is typically cobalt and molybdenum on an alumina base. The catalyst is removed from the unit because its activity has been reduced below acceptable levels due to coking and/or particle degradation. This residual is similar to hydrotreating catalyst in its general composition and purpose in sulfur removal. However, tail gas treating catalysts are generally much less contaminated than hydrotreating catalysts because they are exposed to off-gases rather than hydrocarbon streams; thus, the tail gas catalysts are not subjected to metals deposition. Twenty three percent of the SCOT® catalyst volume generated in 1992 was reported to be managed as characteristically hazardous, primarily due to ignitability.

In 1992, the petroleum refining industry reported generating 361 metric tons of spent tail gas treating (e.g., SCOT®) catalyst. The management scenarios selected for assessment focussed on known Subtitle D landfilling activities, which included on-site (2.7 percent), and off-site Subtitle D landfills (13.8 percent). Other major management practices included transfer for metals reclamation or regeneration (52 percent), or Subtitle C landfilling (28.8 percent); these practices were not evaluated for the same reasons discussed for the hydrotreating catalyst in Section III.G.3.

The Agency was able to collect three samples of spent tail gas treating catalysts. These samples are believed to be representative of the SCOT® catalysts used by the industry, because there are essentially no process variations in the treating of tail gas.

The Agency found no significant risks associated with the disposal of this waste in landfills. The potential risks from ingestion of groundwater were below levels of concern. Furthermore, the extremely small volumes disposed of in landfills (60 metric tons total, average of 12 metric tons per facility), suggest that spent tail gas treating catalysts should not present any significant risks. Therefore, the Agency is proposing not to list this waste.

12. Unleaded Gasoline Storage Tank Sediment

a. Summary. EPA is proposing not to list as hazardous sediment from the storage of unleaded gasoline. The Agency assessed the potential risks associated with four selected management practices: on-site Subtitle D landfilling, off-site Subtitle D landfilling, on-site land treatment, and off-site land treatment. Only marginal risk was identified for the groundwater ingestion exposure pathway. The marginal risks identified in the Agency's risk assessment are summarized in Table III–8.

TABLE III–8.—WASTE CHARACTERIZATION AND RISK ESTIMATES: UNLEADED GASOLINE STORAGE TANK SEDIMENT

Constituents of concern	On-site land treatment		Off-site land treatment		On-site landfill		Off-site landfill		Waste characterization				
	Central tendency	High end	Central tendency	High end	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts	Notes
GROUNDWATER													
Benzene	3E–8	<1E–6	3E–8	<1E–6	3E–8	<1E–6	3E–8	2E–6	0.75	1.6	0.06	3 of 3	J(1)

Notes:
J(#) Samples were estimated concentrations below quantitation limits, "#" indicates number of samples that are "J" values.
All concentrations are TCLP leachate values in mg/L.

b. Discussion. Unleaded gasoline tank sediment is generated from the storage of unleaded gasoline and consists of tank scale and rust. The storage tanks are drained for inspection on average once every 10 years during which time sediment removal occurs. An integral part of unleaded tank turnarounds includes extensive water washing to reduce volatile organic concentrations to achieve a concentration less than the lower explosive limit in preparation for safe tank entry. This tank washing results in significant sediment scouring to the wastewater treatment plant. The results of the 1992 § 3007 petroleum refining survey showed that approximately 3,600 metric tons of unleaded gasoline tank sediment were generated.

The management scenarios selected for risk assessment focussed on known Subtitle D land disposal activities, which included on-site land treatment (3.1 percent of the total unleaded gasoline tank sediment volume), off-site land treatment (2.6 percent), on-site Subtitle D landfilling (0.2 percent), and off-site Subtitle D landfilling (17.4 percent). Other major unleaded gasoline tank sediment management practices included discharge to the wastewater treatment plant (58.4 percent), Subtitle C landfilling (3.0 percent), off-site incineration (4.9 percent), and other on-site disposal (0.5 percent). The remaining 7.6 percent was recovered on-site or transferred for use as fuel.

The Agency was able to collect three samples of unleaded gasoline storage tank sediment. These samples are believed to be representative of typical sediments generated throughout the industry. The Agency attempted to collect additional samples, but was unable to because several tank turnarounds were observed where little or no sediment to be sampled remained in the tanks following tank washing to reduce occupational benzene concentrations.

The Agency's risk assessment showed only marginal levels of concern for this residual. The Agency's models showed risk only for ground-water ingestion associated with off-site landfilling. The off-site landfill scenario showed high-end risk due to benzene levels at a cancer risk of 2E–6 and a central tendency risk of 3E–8. EPA believes that this risk is not significant enough to warrant a listing because it is very close to the presumptive no-list level of 10–6, and the actual risk may be lower than the results indicate due to the possible biodegradation of benzene prior to reaching receptors. The Agency also notes that the total volume of unleaded gasoline tank sediment is moderately small (<4,000 metric tons), and that the portion actually disposed of in landfills is even smaller (about 600 metric tons total, or an average of 28 metric tons per facility) due to the intermittent generation of this waste. Therefore, EPA believes that the small waste volumes disposed of, and the infrequent generation of this waste are other factors that support a decision not to list this waste.

The Agency notes that the industry reported that approximately 25 percent of these sediments are managed as hazardous for benzene under the toxicity characteristic (TC). In this case, the Agency believes that the TC will effectively capture wastes with high benzene levels, i.e., the only constituent that exhibited even marginal concern in this waste. The Agency requests comment on whether this factor should be used to support a positive listing determination.

EPA did not pursue modeling for the volume of sediment that was reportedly discharged to the wastewater treatment plant, because of the volumes concerned are small compared to other discharges and will have minimal impact of the treatment process. Furthermore, these waste solids would be incorporated in the API separator or primary treatment sludges, and these are already listed (K048, K051, F037 and F038). The Agency also did not try to assess risks associated with off-site incineration, because the practice was relatively rare and the volume was small (177 metric tons from 4 of 81 facilities). In addition, the off-site incinerators were reported to be hazardous waste incinerators that are already subject to regulatory control. Similarly, wastes disposed of in a Subtitle C landfill are already regulated as hazardous and should not present significant risk.

13. Catalyst From Reforming

a. Summary. EPA is proposing not to list spent catalysts from reforming operations as a hazardous waste. A principal component of reforming catalyst is platinum and the spent catalyst itself is extremely valuable. Ninety four percent of it is recycled due to its platinum content. The remaining 6 percent consists primarily of other materials generated during catalyst replacement (e.g., ceramic support media). The strict inventory controls the industry uses with spent platinum catalysts limit potential routes of exposure resulting from the management of these materials.

The only exposure pathway EPA examined was the air pathway from the combustion of the reforming catalyst prior to reclamation. EPA data show the presence of dioxins and furans in spent reforming catalysts that are believed to be generated during regeneration of the catalyst within the reforming reactor. A screening risk analysis of potential air release pathways for dioxins and furans at recycling facilities failed to show any significant risk.

b. Discussion. The purpose of the reforming process is to upgrade the octane value of naphtha feedstocks by the conversion of the naphtha to aromatics. The process is catalyzed by platinum chloride or a platinum/rhenium chloride combination. Agency survey data indicate that 94% of the approximately 3,600 metric tons of spent precious metal bearing reforming catalyst reported as generated in 1992 are currently recycled for their precious metal content. Because of the value of these materials (each drum of it is estimated to be worth several thousand dollars), the spent catalysts are controlled and tracked between the refinery and metals reclamation facilities to prevent loss. The Agency can foresee no generator site environmental release pathway for spent catalysts other than potential *de minimis* spills.

There are two separate management activities for reforming catalyst the Agency assessed in this listing determination: in-situ regeneration and off-site recycling.

Regeneration

Spent reforming catalysts are regenerated in-situ either on a cyclic, semi-regenerative, or continuous basis. Part of the purpose of regeneration is to redistribute the platinum into the catalyst. This involves the addition of chlorine or chlorinated compounds. Data collected by EPA shows that this regeneration step leads to the generation of dioxins and furans and the potential dioxin contamination of air pollution control scrubber waters as well as the release of these contaminants to the air. The EPA's Office of Water has collected limited data from five refineries and received addition voluntary data submissions from three refineries indicating that low levels of dioxins and furans are found in scrubber waters during the in-situ catalyst regeneration process. These scrubber waters are commonly discharged to the oil recovery sewer for transfer to wastewater treatment. Sludge data was obtained for three of the facilities. Two of the three samples were found to contain dioxins and furans. (The third sample was analyzed by two laboratories, and dioxins/furans were found by one of the laboratories; however, the presence of dioxins/furans could not be verified by EPA because the laboratory information was not complete.) Based on these limited data, the dioxins and furans appear to concentrate in wastewater treatment sludges generated during the regeneration process. (See Petroleum Refining Industry-Presence of Dioxins and Furans in Wastewater Generated by Reforming Operations, EPA, May 1994.) The primary oil/water/solids sludges are already listed hazardous wastes (K048, K051, F037, and F038).

The Agency is seeking data on API separator sludge and other oil-bearing wastes that have come into contact with discarded caustic scrubber waters from the regeneration of precious metal catalysts in the reforming process. In-situ regeneration of these catalysts typically occurs for a two to three day period from one to three times a year. EPA notes that the sampling was limited and that it is still unclear whether the samples would represent typical refinery operations. Therefore, EPA requests additional data on the dioxin/furan content of similar sludges, especially sludges generated during normal operations when regeneration is not occurring, and those sludges generated by facilities using a continuous reforming process that does not produce caustic scrubber waters. The Agency also requests comment on: (1) Opportunities for removing dioxin prior to discharge of scrubber water into WWT system, (2) opportunities to segregate this wastestream, and (3) potential health risk associated with insertion of dioxin-contaminated media back into the refining process (such as the coker).

Petroleum refining reformer units are specifically cited in the CAA for MACT standards, scheduled for proposal in 1996 (57 FR 44156, September 24, 1992). 2,3,7,8-Tetrachlorodibenzodioxin is a Hazardous Air Pollutant and would be assessed for potential controls under the air program. EPA may rely on the air program to protect human health and the environment from air emissions during the regeneration process. EPA currently lacks an adequate record to propose further regulation of the spent air pollution control caustic and sludge. Therefore, EPA is making no determination of the "listability" of

these spent caustic residuals at this time.

Recycling

Once spent reformer catalysts reach the recycler, EPA believes that the environmental pathways of potential significance are air emissions during the recycling process and any subsequent disposal of small quantities of support media separated from the spent catalyst. However, the support media is only a very small portion of the overall waste volume and, since it consists of inert ceramic material, it was not considered for risk assessment. Air emissions are scrubbed to capture and return precious metals to the process.

A variety of polychlorinated dioxins and furans were detected in samples of spent reformer catalyst. While the dioxin isomer of most concern 2,3,7,8-tertachlorodibenzodioxin (2,3,7,8-TCDD) was not detected, other 2,3,7,8-homologs of dibenzodioxin and dibenzofuran were detected in samples of the spent reformer catalyst at levels ranging from 0.03 to 9.8 ppt when expressed in terms of the 2,3,7,8-TCDD toxic equivalent value (TEQ). The median concentration was 0.12 ppt TEQ. A screening risk assessment was conducted to see if the concentrations of these toxicants in spent catalysts would produce possibly unacceptable risk from air releases during reclamation. The analysis showed the concentrations of dioxins and furans in spent reformer catalysts were below levels of concern.

Residuals from recycling processes were found to be considered by recyclers to still have precious metals value and are shipped to smelters for further metals recovery. As such, they would be eligible for a case-by-case variance from certain RCRA hazardous waste management requirements (notification and manifesting requirements) even if the catalyst were listed as hazardous. See 40 CFR 260.31(c).

Overall, the Agency's assessment of current management practices associated with recycling reforming catalyst fails to find any significant risks to human health or the environment.

The results of the Agency's analysis of 6 spent reformer catalyst samples, as well as further description of the reforming process and catalyst management are provided in the Listing Background Document in the public docket for this rule (see **ADDRESSES** section).

The Agency concludes that risk from the solid waste management of spent reformer catalysts are negligible because of the lack of release and exposure pathways associated with off-site precious metals recovery operations. Therefore, the Agency proposes not to designate spent reformer catalysts as a listed hazardous waste.

14. Sludge From Sulfuric Acid Alkylation

a. Summary. EPA is proposing not to list sludge from sulfuric acid alkylation as a hazardous waste. The Agency evaluated the plausible management practices used by the industry to manage this residual and found no significant risk to human health or the environment.

b. Discussion. Some refineries use a neutralization tank or pit in their sulfuric acid alkylation process areas to control the pH of alkylation wastewaters released to their wastewater treatment plants. Discharges to the pit may include spills, acid leaks, acid samples, and runoff from the process area. Refineries typically use caustic for any necessary neutralization. Over time, some sludge accumulates in the neutralization pit and periodically is removed for disposal. In the past refineries used lime for neutralization which resulted in a buildup of unreacted lime, scale, polymer, tars, and insoluble salts.[13] However, the current use of liquid caustics for neutralization produces largely soluble sulfates, minimizing sludge generation. The sludge is removed for disposal only once every three to five years.

Agency data indicate that 608 metric tons were generated in 1992 by 10 refineries. EPA selected the following practices for risk assessment modeling: on-site land treatment (46.0 percent of the residual volume generated), off-site land treatment (16.4 percent), and off-site landfilling (1.5 percent). 21.3 percent of this sludge is managed at the refinery wastewater treatment plant, 13.2 percent is transferred for reclamation, 1.2 percent is managed in Subtitle C landfills, and 0.2 percent is sent to off-site incineration.

Of the 45 facilities employing the H_2SO_4 alkylation process, the Agency was able to obtain only one sample of H_2SO_4 alkylation sludge during the sampling effort. This sample was found to be characteristically hazardous for chromium, but was derived from wastewaters from on-site acid reclamation, as well as the alkylation unit. As a result, the sample may not be completely representative of sludges from sulfuric acid alkylation alone. The Agency requests any additional waste characterization data.

The Agency conducted a bounding risk assessment of the analytical data available, using on-site and off-site land treatment and off-site Subtitle D landfilling as the baseline management scenarios. No significant risk was indicated.

The Agency did not attempt to model the volumes reported to be discharged to wastewater treatment plants because the primary treatment and API separator sludges resulting from the treatment of the residual are already listed hazardous waste (K048, K051, F037, F038). Off-site incineration was not modeled because the volume was extremely small (1 metric ton) to pose any threat to human health and the environment.

The Agency also believes, based on its examination of the process chemistry and the available analytical data, that this infrequently generated waste may exhibit the hazardous characteristic of corrosivity. Given the relatively small volumes and infrequent generation of this waste, the Agency proposes to regulate H_2SO_4 alkylation sludge within the existing framework of characteristic wastes, and not to list this process residual specifically. The Agency requests comment on this proposed decision.

H. Request for Comment on Options for Conditional Exemptions

As EPA was preparing the risk assessments used for this rulemaking, the Agency became aware that there were risk scenarios (such as land treatment of a waste), or specific risk pathways (run-off to off-site receptors from land treatment) that may pose significantly higher risk than other scenarios or exposure pathways. If there were relatively simple, enforceable, means of assuring that those scenarios or exposure pathways would not occur, and if EPA could conclude it had identified the highest risk reasonable management scenarios, comparable protection of human health and the environment could be achieved at a significantly lower regulatory cost.

Many Subtitle C requirements were written generically to address all hazardous wastes and, consequently, provide protection for those wastes that pose the greatest risks. Some are either explicitly or implicitly technology-based rather than risk-based. Some of these requirements are statutory and cannot easily be adjusted to take risk into account. Nevertheless, EPA

[13] The consent decree identified sulfuric acid alkylation sludge as a residual requiring a listing determination based on consideration of the large amount of sludge reported in the Agency's 1983 database (61,338 metric tons). Upon subsequent review of the 1983 volumes, the Agency determined that its original volume estimation was significantly overstated due to the misidentification of three large volume spent sulfuric acid catalyst residuals as an alkylation sludge. The corrected volume for the 1983 database is 482 metric tons.

generally believes that it would be desirable to tailor waste management requirements to more closely relate to risks. An initial significant step in this process would apply Subtitle C requirements only to those significant risk scenarios, leaving low risk scenarios subject only to less prescriptive federal and state controls for non-hazardous wastes.

EPA explored whether it would be possible to create additional exemptions from Subtitle C management standards to allow more flexible management of wastes found to be hazardous in one or more scenario, but not others, without compromising protection of human health and the environment. These options would be premised on the theory that a waste's risk is due not only to its chemical composition, but also the manner in which it is managed, which can greatly affect the amount of chemical constituents that ultimately reach a human or environmental receptor. The multipathway analysis prepared to support this listing determination shows that the risk to human health or the environment varies significantly with the type of management that a waste receives. The following discussion presents the legal framework for management-based or conditional listings, outlines the options EPA has begun to consider, and presents in more detail the options which EPA finds to be most promising.

1. Legal Basis for Conditional Exemptions

EPA's original approach to determining whether a waste should be listed as hazardous had been to focus on the inherent chemical composition of the waste and to assume that mismanagement would occur so that people or organisms would come into contact with the waste's constituents. See 45 FR 33113 (May 19, 1980). Based on more than a decade of experience with waste management, EPA questions whether it is appropriate to assume that worst-case mismanagement will occur, and EPA does not believe that such worst-case assumptions are compelled by the statute. Rather, in recent hazardous waste listing decisions, EPA has identified "mismanagement" scenarios that are reasonable, and looked at available data to then determine if any of these are unlikely for the specific wastes being considered, or if other scenarios are likely given available information about current waste management practices for the specific wastes. See the Carbamates Listing Determination (60 FR 7824, February 9, 1995) and the Dyes and Pigments Proposed Listing Determination (59 FR 66072, December 22, 1994). As a further extension of that logic, EPA believes it may be more appropriate to find that, where a mismanagement scenario is not likely or has been adequately addressed by other programs, EPA need not consider risk from that scenario in deciding whether to classify the waste as hazardous.

EPA believes that the definition of "hazardous waste" in RCRA section 1004(5) permits this approach to classifying wastes as hazardous. Section 1004(5)(B) defines as "hazardous" any waste which may present a substantial present or potential hazard to human health or the environment "when improperly * * * managed." EPA reads this provision to allow it to determine the circumstances under which a waste may present a hazard and to regulate the waste only when those conditions occur. Support for this reading can be found by contrasting section 1004(5)(B) with section 1004(5)(A), which defines certain inherently dangerous wastes as "hazardous" no matter how they are managed. The legislative history of Subtitle C of RCRA also appears to support this interpretation, stating that "the basic thrust of this hazardous waste title is to identify what wastes are hazardous in what quantities, qualities and concentrations, *and the methods of disposal which may make such wastes hazardous.*" H.Rep. No. 94–1491, 94th Cong., 2d Sess. 6 (1976), reprinted in *A Legislative History of the Solid Waste Disposal Act, as Amended,* Congressional Research Service, Vol.1, 567 (1991) (emphasis added).

EPA also believes that section 3001 provides it with flexibility to consider the need to regulate those wastes that are not managed in an unsafe manner as hazardous. (Section 3001 requires that EPA, in determining whether to list or otherwise identify a waste as hazardous waste, decide whether a waste "should" be subject to the requirements of Subtitle C.) EPA's existing regulatory standards for listing hazardous wastes reflect that flexibility by allowing specific consideration of a waste's potential for mismanagement. See § 261.11(a)(3) (incorporating the language of RCRA section 1004(5)(B)) and § 261.11(c)(3)(vii) requiring EPA to consider plausible types of mismanagement. Where mismanagement of a waste is implausible, the listing regulations do not require EPA to classify a waste as hazardous based on that mismanagement scenario.

Decisions by the U.S. Court of Appeals for the District of Columbia Circuit provide support for considering management controls in deciding whether a waste should be listed as hazardous waste. See, e.g., *Edison Electric Institute v. EPA, 2 F.3d 438,* (D.C. Cir. 1993) (remanding EPA's RCRA Toxicity Characteristic ("TC") as applied to certain mineral processing wastes because the TC was based on modeling of disposal in a municipal solid waste landfill, yet EPA had provided no evidence that such wastes were ever placed in municipal landfills or similar units).

2. Improvements in Risk Assessment Methodology

EPA's early regulations defining hazardous waste reached broadly to ensure that wastes presenting potential or actual hazards were quickly brought into the system. When EPA promulgated its first listings and characteristic rules in 1980, its knowledge of toxic constituents, constituent transport pathways, and waste management options was more limited than it is today.

Significant improvements in waste management have occurred since the early 1980's. Many states have established or strengthened industrial non-hazardous waste programs since that time. See EPA draft report "State Requirements for Industrial Non-Hazardous Waste Management Facilities," September 1994 in the docket. Industry has had more experience in managing wastes and has improved waste management under the incentives provided by factors such as the publicity from the implementation of the Emergency Preparedness and Community Right to Know Act, and the deterrent value of Superfund cleanups, RCRA corrective action and state cleanup programs.

EPA's ability to predict the risks that a waste may pose has also improved significantly. EPA has collected much more data on a variety of waste management units and other factors that impact the ability of waste constituents to reach a receptor. Models such as the EPACMTP and the models used in the multipathway analysis provide more sophisticated means of assessing the risks of a range of waste management options. As a result of all these changes, EPA is now in a position to begin to implement a more carefully tailored risk-based approach to regulating hazardous wastes.

3. Options for Conditional Exemptions

a. Conditional Exemption based on Specific Management Practice. Where EPA has characterized a specific waste, modeled the associated management practices and found specific management practices (and not others)

to present significant risks to human health or the environment, EPA could list as hazardous only those wastes managed in a manner that presents significant risk. Alternatively, EPA could list wastes unless they are managed by the method that does not exhibit significant risk. The Agency believes allowing use of exemptions tailored to waste management is a practical and appropriate way to allow waste to be exempt from Subtitle C without increasing risks, if the management practices identified are clear and very easily ascertainable (such as the difference between land treatment units and landfills), and the differences in risk presented by these practices are clearly defined.

Concerning the wastes examined in today's rule, EPA believes that an opportunity exists to fashion a conditional listing for CSO storage tank sediment and filter/separation solids (also referred to as CSO residuals). While disposal of CSO residuals in land treatment units was projected to pose significant risks (due to releases from run-off), the disposal in landfills was found to not result in significant risks (see discussion in Section III.G. "Waste-specific Listing Determination Rationales"). This arises because the constituents of most concern, PAHs, are relatively immobile in the groundwater pathway due to their low water solubility. Therefore, EPA believes a contingent management listing for this waste may be appropriate and is proposing three possible conditional listings for CSO storage tank sediment and filter/separation solids as alternatives to simply listing all CSO residuals generated. The Agency requests comments on these proposed alternatives to simply listing all CSO residuals. These alternatives have certain advantages and disadvantages, and EPA seeks comment on the relative merits of the different approaches.

Option (1)—The first option is to list CSO residuals as hazardous only if the waste is applied in a land treatment unit. Thus, the first alternative listing description would be:

K170—Clarified slurry oil storage tank sediment and/or in-line filter/separation solids from petroleum refining operations if the sediment and filter/separation solids are applied to the land in a land treatment unit.

Under this option, only the waste disposed of in the type of unit exhibiting unacceptable risk (land treatment) would be subject to Subtitle C regulation. EPA believes that the practical effect of this option would be that refineries would cease land treatment for these wastes, thereby eliminating the practice that was found to pose significant risks. EPA seeks comment on whether other possible management methods might present risks that warrant Subtitle C control.

Option 2—The second option would list CSO residuals as hazardous unless the waste was managed in a landfill. Thus, the second alternative listing description would be as follows:

K170—Clarified slurry oil storage tank sediment and/or in-line filter/separation solids from petroleum refining operations unless the sediment and filter/separation solids are disposed of in a landfill licensed or permitted by the State.

Under this option, the waste would be hazardous if managed by any method, except for disposal in a landfill. EPA believes that the effect of this type of listing would be to encourage disposal in landfills, rather than land treatment units. (If data were submitted showing similarly low risks from other management methods, the Agency would consider expanding the list of permissible disposal practices.) EPA seeks comment on the impact of such changes in waste management might have on the risks associated with this waste.

CSO residuals that are exempt due to contingent management would be considered as nonhazardous from the point of generation. As a result, the qualifying waste would not be subject to RCRA Subtitle C rules for generation, storage, transport, or disposal (including land disposal restrictions), if the waste is destined for disposal in a unit that is excluded from the listing because it does not pose unacceptable risk. (Of course, should the waste not be disposed of in such a unit, then the exemption would no longer be effective and full Subtitle C would apply). This approach is analogous to the existing exclusions from the definition of solid waste for materials that are to be recycled (see § 261.2(e)(1)), or to special standards applicable to used oil destined for recycling; the exclusions or special standards apply at the point of generation, provided that certain conditions are met (e.g., no speculative accumulation). However, under such an approach, it would be necessary for the Agency to have the ability to easily determine whether or not the exempted wastes are disposed of in the proper manner. As a result, some kind of notification or certification process may be appropriate.

EPA requests comment on whether the internal records typically kept by solid waste generators would be adequate, whether the usual Subtitle C recordkeeping and manifest requirements should apply, or if some other mechanism to document the destination of the waste would be desirable. Option 3 discussed below includes a specific mechanism that might be used.

Option 3—With regard to the second option in particular, EPA has considered what requirements would be appropriate to ensure proper disposal in accordance with the conditional exemption. EPA determined that CSO residuals present a hazard if applied on the land due to potential run-off to nearby residents. To be certain that the intermediate management of the waste would not cause a similar problem, EPA could put limits on the conditional exemption to ensure that the waste was handled properly until safely disposed of in a landfill. The generator could be required to maintain proof of disposal in an on-site landfill, or document what off-site landfill received the waste. In addition, to address concerns over the handling of the waste until it reaches the landfill, the generator could be required to store the waste in containers, or be restricted from placement on the ground. Therefore, Option 3 is similar to Option 2, except that it specifically requires certain conditions be met for the exemption to be effective.

One way to implement these restrictions would be to add conditions for the exemption directly to the listing description in § 261.32. Therefore, EPA seeks comment on adding conditions for the landfill exemption for CSO residuals to the listing definition for K170, as shown below, to promote proper disposal of the waste.

K170—Clarified slurry oil storage tank sediment and/or in-line filter/separation solids from petroleum refining operations unless the sediment and filter/separation solids meet the following conditions: (i) the waste does not exhibit any of the characteristics of a hazardous waste; (ii) the waste is stored in containers and disposed of in a Subtitle D or C landfill licensed or permitted by the state or federal government; and (iii) the generator maintains documentation showing that the waste was (A) disposed of in an on-site landfill, or (B) consigned to a transporter or disposal facility that has provided a written commitment to dispose of the waste in an off-site landfill identified by name and address. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all the exclusion requirements.

EPA seeks comment on whether the generator should also be required to file a one-time notification with EPA or authorized state (and update this if practices change), whether maintaining the on-site documentation is sufficient, and whether a documentation and/or notification certifying the ultimate disposal of the waste is an adequate guarantee that the waste is actually managed in a landfill, particularly if the waste leaves the generator's control. Since historic approaches to relying on the intent of the generator have proven extremely difficult, EPA seeks comment on what the regulatory status of the waste should be between the point of generation and the ultimate disposal in a landfill. Finally, EPA requests comment on whether there should be a clear prohibition for placement on the land (prior to reaching the landfill), rather than the proposed language to require intermediate storage of the waste in containers.

Implementation of any of the above options also assumes that there is a clear understanding precisely how a landfill and a land treatment unit can be distinguished. EPA believes that the definitions incorporated into the RCRA regulations (see 40 CFR 260.10) should be adequate. According to that definition, for example, a land treatment facility is a facility at which waste is "applied onto or incorporated into the soil surface." Furthermore, states typically define nonhazardous waste landfills clearly into several categories (industrial, municipal, debris), and issue permits or licenses. Therefore, EPA believes that States would be able to easily distinguish between landfills and land treatment. EPA seeks comment on whether the difference between landfills and land treatment units needs to be further defined.

One of the drawbacks of contingent management listings that link regulatory status to particular management practices is that contingent regulation may reduce the incentive for generators to explore pollution prevention opportunities. Thus, allowing disposal in a Subtitle D landfill may result in more waste being placed in Subtitle D landfills, because it is less expensive than Subtitle C management or recycling, and easier than implementing process changes that would result in reduced or eliminated waste volumes. However, EPA is also proposing in today's rule to allow generators to reinsert oil-bearing wastes such as these back into the refining process. Thus, in the case of CSO residuals, generators will still have an incentive to deoil or reuse these residuals, if possible, thereby resulting in increased recycling.

b. Conditional Exemption Based on Specific Management Standards. Another approach, but one about which EPA feels much more caution is required, is that EPA could use the multipathway methodology to determine whether imposing specific design or operating standards on particular unit types would result in adequate protection. In the case of the petroleum residuals evaluated in this rule, it might be possible to conclude that use of run-off controls would reduce releases sufficiently from land application units to warrant exemption. Failure to manage the waste in a unit meeting design and operating requirements would mean that the waste was not exempt.

Exemptions based on specific management standards could be used to more narrowly define listed waste. The listing for CSO residuals, for example, might apply only to wastes managed in a land treatment unit that does not have run-off controls approved by the State. Alternatively, CSO residuals might be listed, unless they are managed in a landfill or land treatment units with approved run-off controls.

However, as noted earlier in Section III.G.2. under the rationale for listing CSO residuals, the effectiveness of the run-on/run-off controls currently in place at land treatment units is unclear, and the level of control would have to be high to reduce risks to acceptable levels. EPA contacted the three States with the most land treatment units that receive CSO or crude oil tank residuals and found: none require permits for these nonhazardous waste units; run-off controls are usually voluntary; and that even voluntary controls appear variable. Therefore, more data are likely required before this approach could be implemented.

EPA requests comment on the general approach and on the run-off control measures most likely to have a significant impact on contaminant migration. EPA particularly asks for comments on whether there are unit design attributes that are easily ascertainable in a spot inspection versus those that require more detailed engineering review, or review or monitoring of operations. The more complex a judgement, the more appropriate EPA believes it may be that such determinations are made in the context of a permitting authority or prior approval rather than as a directly enforceable condition for a listing exemption.

I. Impacts on Idled Units

Many of the wastes proposed for listing in today's rule are normally generated on removal from the process unit during maintenance periods. These wastes may also become subject to hazardous waste regulation during periods of process shut down. If the proposed listings are finalized, wastes associated with idled units would become subject to RCRA regulation 90 days after the process ceases operation.

Regulations at 40 CFR 261.4(c) state: "A hazardous waste which is generated in a raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under parts 262 through 265, 268, 270, 271, and 124 of this chapter or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials."

EPA provided further clarification on this provision in the October 30, 1980 preamble to that rulemaking: "The 90-day accumulation period (§ 262.34) starts when the hazardous waste is removed from the tank, vessel, or unit, *except when in the case where a tank, vessel, or unit ceases to be operated for its primary purpose, in which case the period starts when operation ceases.*" 45 FR 72024 (Emphasis added.) Thus, the preamble states that for the owner/operator the accumulation period begins the day the manufacturing process unit is shut down.

It was not the Agency's intent to regulate wastes in these units unless the waste exits the unit or remains in the unit for more than 90 days after the unit is no longer in operation. Therefore, the Agency is changing its interpretation. The accumulation period for a tank, vessel, or unit that ceases to be operated for its primary purpose would begin either when the waste exits the unit, or if the waste remains in the unit for more than 90 days, the accumulation period would begin on day 91. Because the regulations delay application of Part 262 until 90 days after operation ceases, the Agency believes that the availability of the 90-day accumulation period in § 262.34 is more consistent with the plain language of the regulation. Thus, hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or associated non-waste-treatment-manufacturing unit, may remain in the unit for up to ninety days

after the unit has been shut down, and may then be stored for an additional ninety days in a tank, container, drip pad, or containment building in the compliance with the requirements of 40 CFR 262.34, without an RCRA storage permit.

J. Third Party Regeneration/Reclamation of Spent Petroleum Catalysts

1. Exemption Under Section 266.100(b)

Spent hydrotreating and hydrorefining petroleum catalysts are typically recycled either by being regenerated for reuse as catalysts or through the reclamation of valuable metals or metal-bearing products. Catalyst regeneration is a process by which spent catalysts are treated with heat and air to drive off impurities which have been deposited on the catalyst during use in the petroleum refining process. Once regenerated, the catalysts are returned for reuse within the petroleum industry. In metals recovery, various thermal treatment technologies are employed to extract valuable metals from the spent catalysts. There are currently four catalyst regeneration and five metals recovery facilities known by the EPA to be operating in the United States.

Spent hydrotreating and hydrorefining catalysts that exhibit a hazardous characteristic for benzene and/or ignitability are currently subject to regulation as RCRA hazardous wastes (and, under today's proposal, would become listed hazardous wastes). Because reclamation of metals from and regeneration of spent hydrotreating and hydrorefining catalyst involves thermal processing of RCRA hazardous wastes, there has been confusion regarding whether these catalyst recovery furnaces are subject to regulation as a type of industrial furnace (as defined in § 260.10 of the RCRA regulations).

The Agency is today proposing to clarify the regulatory status of these units by specifically excluding them from regulation as industrial furnaces under RCRA for the following reasons. First, EPA did not consider these units specifically in developing regulations governing burning of hazardous waste in boilers and industrial furnaces (BIFs). They do not readily fit within the list of thermal processing units specifically designated as industrial furnaces subject to regulation under the BIF rules (40 CFR 266 Subpart H). They also differ from the types of furnaces specifically considered in the BIF rule in that the process involves burning of hazardous waste solely for materials recovery as opposed to destruction or energy recovery. In this sense, spent petroleum catalyst recovery units are analogous to smelting, melting, and refining furnaces that process hazardous waste solely for metals recovery. Significantly, such smelting, melting, and refining furnaces are conditionally exempt from the Subpart H regulations because the process does not involve burning either partially or wholly for destruction or energy recovery. See 40 CFR 266.100(c).

In addition, EPA believes that spent catalyst regeneration and metals recovery operations provide an environmentally sound alternative to disposal of spent petroleum catalysts. Spent catalyst recycling has been practiced in the petroleum refining industry since the 1950's. According to 1992 Petroleum Refining Survey data, approximately 80% of spent petroleum catalysts are currently recycled. In developing today's proposal, the Agency solicited information on the extent to which petroleum catalyst recovery units are currently equipped with emission control devices and the adequacy/efficiency of existing controls. The Agency's preliminary findings indicate that these units are already equipped with pollution controls comparable to those required under the BIF rule such that further regulation may be unnecessary.

The Agency does not want to impose any unnecessary regulatory burden that may serve to discourage environmentally safe recycling of spent petroleum catalysts. Therefore, based on preliminary findings regarding existing emissions controls, and the fact that these units process spent catalyst solely for materials recovery, the Agency intends to formally exempt these units from regulation under the BIF rule and is proposing to amend the BIF regulations accordingly. However, the Agency has not yet fully evaluated the prevalence and adequacy of existing emission controls and the potential for uncontrolled emissions of toxic organic compounds, toxic metals, and particulate matter from spent hydrotreating and hydrorefining catalysts. EPA is therefore requesting additional information on control technologies currently being used to control toxic emissions from thermal treatment of spent petroleum catalysts. If, after further study, the Agency finds that emissions from these units pose a threat to human health and the environment, it will reconsider today's proposed exemption under § 266.100(b) and assess whether the BIF standards should instead be amended to specifically apply to spent petroleum catalyst recovery furnaces. In the interim, if necessary to protect human health and the environment, 3008(h) authority can be used to address air emissions from particular catalyst processing facilities. (Availability of these authorities assumes that the catalyst recovery facility either has a permit for hazardous waste storage, or interim status as a hazardous waste storage facility.)

It is important to note that today's proposed exemption applies only to the petroleum catalyst recycling furnace. The catalyst itself, if listed or characteristically hazardous, is subject to RCRA transportation and storage controls before introduction into the furnace. (See § 261.6(c).) EPA is not proposing any changes to the management standards applicable to hazardous petroleum catalysts that are sent for recycling at this time. However, as explained in section III.E. above, the Agency is working to develop a simpler, more streamlined approach to regulating secondary materials recycling under RCRA.

2. Catalyst Support Media

Hydrotreating and hydrorefining catalyst beds are kept in place in part by the use of screens and inert ceramic support media, which make up typically 6 to 8 percent by weight of the catalyst bed. The support media also functions to provide a mixing area at the inlet and outlet of the reactor vessel to lessen the back-pressure created by the more densely packed catalyst bed. These support media are commonly separated from the spent catalyst by screening the catalyst as it is removed or as the first step in catalyst regeneration or metals reclamation. The larger support media is readily distinguished from spent catalysts, and commonly is either reused or sent for cleaning prior to reuse. Because of its largely inert ceramic composition, the Agency has not specifically characterized catalyst support media.

Because the support media is generally an inert ceramic, is separate from the catalyst, and is commonly managed separately, the Agency believes it is appropriate to specifically exclude these catalyst support media from the definition of hazardous waste. The Agency believes the screening separation of support media from the spent catalyst to be discarded or separately reclaimed is exempt recycling. Paragraph (E) would be added to 40 CFR 261.3(c)(2)(ii) to read as follows:

§ 261.3(c)(2)(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more

of the characteristics of hazardous waste:

* * * * *

(E) Ceramic support media separated from one of the following wastes listed in § 261.32—Spent hydrotreating catalyst used in the refining of petroleum (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst used in the refining of petroleum (EPA Hazardous Waste No. K172).

* * * * *

3. Residuals Generated from Petroleum Catalyst Regeneration/Reclamation

Residuals generated from the metals reclamation process are in some cases used as ingredients to produce cement because they contain alumina, a primary component in cement. Under existing regulations, residues from metal recovery of listed hazardous wastes are considered to be derived from the treatment of hazardous waste and thus hazardous themselves (40 CFR 261.3(c)). Therefore, if EPA finalizes today's proposal to list spent hydrotreating and hydrorefining catalysts, the residuals from the reclamation of metals from these wastes will also be considered RCRA hazardous wastes subject to transportation and storage controls prior to their insertion into the cement kiln.

Today's proposal also has potential regulatory implications for cement produced from such petroleum catalyst reclamation residuals. Under 40 CFR 266.20, cement produced from hazardous waste is subject to regulation as a waste-derived product. Under RCRA, products that are produced from legitimately recycled hazardous wastes and are used in a manner constituting disposal (e.g., cement) may be marketed and used without further regulation, provided that they meet applicable land disposal restriction treatment standards and if the incorporated hazardous constituents are inseparable from the product by physical means. EPA is not proposing any changes to the existing RCRA regulations as they apply to waste-derived products that are placed on the land at this time. However, the Agency may propose changes to the regulations pertaining to waste-derived products that are land applied as part of future revisions to the RCRA regulations.

a. Status of Partially Reclaimed Metals. Some petroleum catalyst reclaimers achieve only partial reclamation of metals from the spent catalyst (i.e., the reclaimed metals are not fit for end use as products without further reclamation through smelting and refining). Under RCRA, materials that are partially reclaimed from listed hazardous wastes are themselves hazardous wastes (40 CFR 261.3(c)). Therefore, if today's proposal is finalized, metals that are partially reclaimed from hydrotreating and hydrorefining catalysts would be considered RCRA hazardous wastes subject to applicable transportation and storage controls until the reclamation process is complete or until a variance from the definition of solid waste is granted pursuant to 40 CFR 260.30. Under § 260.30(c), a partially-reclaimed hazardous waste that is more commodity-like than waste-like may be excluded from the definition of solid waste through a variance from the Administrator. This determination must be based on a series of factors set forth in 40 CFR 260.31(c). Variance considerations include: the degree of processing the material has undergone and the degree of further processing that is required; the value of the material after it has been reclaimed; the degree to which the reclaimed material is like an analogous raw material; the extent to which an end market for the reclaimed material is guaranteed; and the extent to which a material is managed to minimize loss.

The purpose of this variance is to allow partially-reclaimed recyclable materials that are more commodity-like than waste-like to be excluded from the definition of solid waste and applicable hazardous waste regulatory requirements. Because this is a variance, it is not self-implementing. Administrative approval by the appropriate regulatory authority (authorized State or EPA) is required to grant this variance.

Under existing regulations, variances for partially reclaimed materials must be granted on a case-by-case basis. However, the Agency would consider granting a generic exclusion for metals reclaimed from spent petroleum catalysts should it obtain data which indicates these partially reclaimed metals consistently meet the terms of the § 260.30(b) commodity-like variance. EPA is therefore requesting information relevant to determining the "commodity-like" nature of metals reclaimed from spent petroleum catalysts as defined under § 260.30(b) for possible use in developing a generic commodity-like exclusion, e.g., the typical composition and value of the reclaimed metals relative to analogous raw material, the manner in which the partially reclaimed materials are managed, etc.

K. Headworks Exemption

Because some refineries manage some of the residuals proposed for listing today in their wastewater treatment facilities (i.e., CSO storage tank sediment), and because others may scour residual sludge proposed for listing during process vessel cleaning or tank washing into the refinery wastewater treatment system, a consequence of potentially listing certain residuals as hazardous waste would be to cause all wastewaters and wastewater treatment sludges to be derived from those wastes. The Agency believes those listed petroleum refining residuals carried into the wastewater system would be removed during primary treatment as sludges that are already regulated hazardous wastes (e.g., K048, K051, F037, or F038), provided they are discharged to the oil recovery sewer system. Therefore, the Agency proposes to modify the definition of hazardous waste to exclude when mixed with wastewaters as indicated in italic:

§ 261.3(a)(2)(iv) * * *

(C) One of the following wastes listed in § 261.32, *provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation*—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), *and clarified slurry oil storage tank sediment and/or in-line filter/separation solids (EPA Hazardous Waste No. K170)*; or * * *

If the Agency makes a final decision to list crude oil tank sediment as hazardous waste (K169), this residual would also be added to this exemption.

IV. Waste Minimization

Over the past several years, EPA has emphasized pollution prevention as the preferred method of environmental protection over "end-of-pipe" treatment and disposal approaches. EPA seeks to avoid the generation of waste or environmental releases through pollution prevention by focusing on the relationship between air, land and water; viewing the environment as a whole, rather than individual segments. Finding opportunities to both reduce pollution at the source as well as recycle will result in more cost savings to industry and government, broader environmental protection, and more efficient implementation of the RCRA program as reflected in "The Waste Minimization National Plan," EPA530–R–94–045, November 1994.

Congress reinforced this approach by enacting the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et seq., Pub. L. 101–508, November 5, 1990) establishing a national policy on pollution prevention. PPA reinforces EPA's waste management options

hierarchy which lists, in order of importance, source reduction, recycling, treatment and disposal. Source reduction, the highest priority, includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

The petroleum refining industry and others have been working with EPA for several years to explore pollution prevention opportunities as part of this listing determination and other Agency efforts (i.e., a multimedia permitting initiative to foster pollution prevention opportunities at the Amoco Corporation refinery in Yorktown, VA).

Due to the nature of the residuals of concern (e.g., high oil content, metals content), the residuals are well suited for source reduction and recycling. Many refineries have already done much to reduce, recycle and/or recover valuable hydrocarbons and other commodities from these wastes. EPA believes the impact of this rule will be offset by further source reduction and recycling efforts by industry through economical incentives and through waste minimization efforts in which EPA has not been made aware.

Of the approximately 3 million tons represented by all the 14 residuals of concern, 86 percent was reused, recycled or reclaimed either on-site or off site. Most of these activities will continue unaffected by the proposed listings because of the proposed exemptions designed to allow appropriate source reduction and environmentally sound recycling efforts as discussed in Section II. The following summarizes the source reduction and recycling findings from the 1992 RCRA § 3007 Survey. The industry's source reduction efforts were not quantified in the survey (i.e., refiners were not asked to report the volumes reduced) so the information will be presented as techniques reported. The recycling methods will be presented quantitatively with the percentage of the total quantity generated for that residual. However, the quantity generated is likely to be higher than the quantities reported because some facilities are not able to provide EPA with the volumes of residuals recycled back to the process.

A. Crude Oil Storage Tank Sediment

Refiners use in-tank mixers to suspend the solids in the crude oil decreasing the amount of sediment that deposits on the bottom of the tank. Approximately 68 percent of crude oil storage tanks have mixers. Source reduction efforts for crude oil storage tank sediment were reported as equipment/technology modifications, process/procedure modifications and the installation of in-tank mixers.

Many refiners attempt to de-oil the tank sediment to recover additional hydrocarbons from the sediment prior to and after removal from the tank. De-oiling procedures include hot diesel washing or stream-stripping the sediment while in the tank, then filter-pressing or centrifuging any remaining oil from the sediment prior to final management. The Agency does, however, believe that sediment de-oiling is valuable and can be an important element of a refinery's waste minimization activities. De-oiling appears to reduce tank sediment volumes significantly; the average de-oiled sediment volume is approximately 65 percent lower than the average oily sediment volume. Approximately 30 percent of the crude oil storage tank sediment has gone through a de-oiling process prior to final management. Recovered oil is recycled to various points in the refinery process, increasing product yield and reducing waste volumes disposed. About 44 percent of the tank sediment was reported to be recycled to either the distillation unit, catalytic cracker, coker or asphalt production. De-oiling activities, whether in situ or ex situ, are considered recycling and thus are not subject to RCRA Subtitle C permitting requirements. The Agency anticipates that de-oiling usage will increase if this proposal is promulgated, reducing the cost of managing crude oil storage tank sediment as a listed waste.

B. Clarified Slurry Oil Tank Sediment and/or In-Line Filter/Separation Solids

Waste minimization efforts for CSO storage tank sediment were reported as equipment/technology modifications and the installation of in-tank mixers. Approximately 28 percent of CSO tanks have mixers.

Like the crude oil storage tank sediment, approximately 42 percent of the CSO storage tank sediment and filter/separation solid streams are de-oiled. Once removed from the tank, the sediment is filter-pressed or centrifuged with the recovered CSO being sent to the slop oil system or the catalytic cracking unit. Refiners reported recycling 2.4 percent to the catalytic cracker, coker, distillation unit, or asphalt production. CSO tank sediment was also used on-site as road material (2%) and transferred off-site for use as a fuel (8%).

C. Catalyst From Hydrotreating

Spent hydrotreating catalyst volumes were reported to be reduced through process/procedure modifications and by on-site regeneration and reuse. Refiners reported transferring approximately 77 percent off-site for metals reclamation or regeneration. Over 2 percent was reused on-site as replacement catalyst for another unit. Recycling choices for hydrotreating, hydrorefining, and SCOT®-like catalyst are affected by the metals' market.

D. Catalyst From Hydrorefining

The volume of spent hydrorefining catalysts was reported to be reduced through process/procedure modifications and by on-site regeneration and reuse. Refiners reported transferring approximately 83 percent off-site for metals reclamation or regeneration.

For source reduction and recycling information for the residuals of concern in which a no list decision was made, please refer to the "Listing Background Document for the 1992–1996 Petroleum Refining Listing Determination" available in the docket.

The Agency is soliciting any additional information on source reduction and recycling techniques for all of the residuals of concern. The types of waste minimization information the Agency desires includes process modifications, raw materials substitution, closed loop recycling, and commercially available alternative catalysts. Any information on the financial incentives for the implementation of these alternatives is also requested.

V. Applicability of the Land Disposal Restrictions Determinations

A. Request for Comment on the Agency's Approach to the Development of Land Disposal Restrictions

RCRA requires EPA to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984, within six months of the date of identification or final listing (RCRA Section 3004(g)(4), 42 U.S.C. 6924(g)(4)). EPA is also required to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Land disposal of wastes that meet treatment standards thus

established by EPA is not prohibited. Each waste being proposed for listing in this rule would be subject to all the land disposal requirements the same day their respective listing becomes effective.

A general overview of the Agency's approach in performing analysis of how to develop treatment standards for hazardous wastes can be found in greater detail in section III.A.1 of the preamble to the final rule that set land disposal restrictions (LDR's) for the Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated November 7, 1986 (51 FR 40572).

While the Agency prefers source reduction/pollution prevention and recycling/recovery over conventional treatment, inevitably, some wastes (such as residues from recycling and inadvertent spill residues) will be generated. Thus, standards based on treatment using Best Demonstrated Available Technology (BDAT) will be required to be developed for these wastes, if a final rule listing them as hazardous is promulgated.

Treatment standards typically are established based on the performance data from the treatment of the listed waste or wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards are established for both wastewater and nonwastewater forms on a constituent-specific basis. The constituents selected for regulation under the Land Disposal Restrictions Program are not necessarily limited to those identified as present in the listings proposed in this action, but include those constituents or parameters that will ensure that the technologies are operated properly.

Data on waste characteristics and current management practices for wastes proposed in this action have been gathered as part of the administrative record for this rule. The Agency has completed its evaluation of these data for the purpose of developing specific Land Disposal Determinations.

B. Treatment Standards for the Proposed Newly Listed Petroleum Refining Wastes

EPA is proposing to apply universal treatment standards (UTS) to the Petroleum Refining Wastes proposed for listing in today's rulemaking. EPA is also proposing that 40 CFR 268.45 provisions apply to hazardous debris materials cross contaminated with these petroleum refining wastes.

1. Identification of Wastes

K170—Clarified slurry oil storage tank sediment and/or in-line filter/separation solids from petroleum refining operations.

K171—Spent hydrotreating catalysts from petroleum refining operations (This listing does not include ceramic support media).

K172—Spent hydrorefining catalysts from petroleum refining operations (This listing does not include ceramic support media).

EPA is proposing to regulate specific constituents from each of these hazardous wastes. A list of the hazardous constituents proposed for regulation and the proposed treatment limits or technology can be found in Table V–1 (limits), Table V–2 (limits) as well as Table V–3 (technology) at the end of this preamble discussion and the proposed regulatory Table 268.40. These wastes are generated during the management of clarified slurry oil storage tank sediment or in-line filter/separation solids (K170), and management of spent catalysts from catalytic hydroprocessing operations (K171–K172). If EPA makes a final decision to list crude oil storage tank sediment as hazardous (K169), the constituents and standards given in Table V–1 would apply to this waste.

2. Proposed Treatment Standards

After reviewing the available characterization data and the available information on waste management practices for those petroleum wastes proposed for listing, EPA has determined that it is technically feasible to apply UTS to these wastes. Available information show that these wastes can be managed in treatment and reclamation units that routinely manage similar or as difficult to treat hazardous wastes that are currently prohibited from land disposal practices. It is believed that those wastes proposed for listing can be commingled with similar hazardous wastes prior to treatment or reclamation. In addition, some of these wastes may show corrosive, ignitable, reactive, and toxicity characteristics that can be managed in combustion treatment units or deactivation units that routinely manage hazardous wastes that show similar characteristics. Like some petroleum wastes currently subject to the land disposal restrictions, some of these petroleum wastes proposed for listing have also been managed in reclamation units that enable the recovery oil or fuel values from these wastes prior to disposal. The BDAT background document provides information on EPA's rationale for applying UTS to these wastes. Also see LDR Phase II final rule, 59 FR 47982, September 19, 1994, for further discussion of UTS.

EPA also requests comments on the performance of other thermal and non-thermal treatment or recovery technologies demonstrated on wastes similar to these petroleum refining wastes and the applicability of such technologies to these petroleum wastes. EPA has provided in the BDAT Background Document a review of other thermal and non-thermal technologies that could be optimized to meet the proposed UTS limits. Since EPA is proposing a concentration limit, the use of other technologies capable of achieving the proposed treatment standards is allowed except for those treatment or reclamation practices constituting land disposal or impermissible dilution.

In addition, EPA is proposing that the provisions in the 40 CFR 268.45 are also applicable for the treatment and disposal of hazardous debris cross-contaminated with K169 (if listed), K170, K171, and K172. Hazardous debris treated in accordance with the provisions of 40 CFR 268.45 may be allowed for land disposal in a Subtitle C or D facility, and waste residues will have to meet the applicable UTS limits proposed today. See 57 FR 37277, August 18, 1992, for additional information on the applicability, scope, and content of the hazardous debris provisions.

3. Determination of BDAT

a. Nonwastewaters. For nonwastewater forms of these petroleum wastes, the proposed treatment standards of each of the organic constituents are based on the combustion of wastes believed as difficult to treat as K170 (and K169, if listed). Table V–1, at the end of this section, provides a list of 13 organic constituents proposed for regulation.

Table V–1 shows that out of these 13 organic constituents proposed for regulation, there are 10 constituents that are routinely monitored as UTS constituents in specific petroleum refining wastes already prohibited from land disposal. The 10 specific UTS constituents are benz(a)anthracene, benzene, chrysene, ethylbenzene, fluorene (usually in wastewater forms of petroleum refining wastes), xylenes (measured as the sum of o-, m-, and p-isomers), naphthalene, phenanthrene, pyrene, and toluene. These constituents are also proposed for regulation in K170–K172 because EPA believe they can be found at concentrations of concern in each waste under listing

consideration and in K169, should EPA decide to list it as hazardous.

Like the 10 constituents identified above, EPA has also identified benzo(g,h,i)perylene, dibenz(a,h)anthracene, and ideno(1,2,3,-cd)pyrene at levels of regulatory concern. In addition, it appears that the regulation of just the 10 constituents may fail to ensure adequate treatment of benzo(g,h,i)perylene, dibenz(a,h)anthracene, and indeno(1,2,3,-cd)pyrene. For example, these three constituents often require higher temperatures to volatilize than the one required for the other 10 constituents proposed for regulation. These three constituents also show higher bond dissociation energies than needed for dissociating the other 10 hazardous compounds. As a result, EPA believes that the regulation of benzo(g,h,i) perylene, dibenz(g,h)anthracene, and indeno(1,2,3,-cd)pyrene is appropriate.

There were other UTS constituents present in K169–K172 that were above UTS limits, but EPA has determined that the 13 constituents proposed for regulation can ensure that they too are provided with adequate treatment. EPA believes that non-UTS constituents present in K169–K172 would also be regulated by the UTS constituents proposed for regulation in each one of the waste of concern.

EPA is requesting, however, comments on other appropriate indicator or surrogate constituents that would enable the regulation of non-UTS polynuclear aromatic and non-UTS aromatic hydrocarbons present in K172. Available data show that some non-UTS aromatic and non-UTS polynuclear aromatic constituents measured in K172 may have larger boiling points than the one of those constituents proposed for regulation. EPA examined the feasibility of setting one or various UTS polynuclear aromatic hydrocarbons as proposed constituents for regulation in K172 but none of the UTS polynuclear aromatic hydrocarbon constituents were above their applicable UTS limits. Other structural and functional UTS constituents such as phthalate and halogenated organics were also given consideration but EPA felt they may not serve as good performance indicator constituents for the destruction of non-UTS aromatics and non-UTS polynuclear aromatic hydrocarbons.

For metals in nonwastewater forms, EPA is proposing the regulation of arsenic, nickel, and vanadium in K171 and K172. EPA is also proposing to regulate antimony in K172. EPA has determined that High Temperature Metal Recovery (HTMR) and stabilization are BDAT for nickel, vanadium, and antimony and that vitrification is BDAT for arsenic. Table V–2, at the end of this section, summarizes the metals proposed for regulation and the applicable UTS limits.

Catalysts are routinely cleansed of organic contaminants via physical and thermal processes in order to regenerate the activity of the catalyst. Spent catalysts are also sent off site for the reclamation of molybdenum, nickel, and vanadium. The reclamation techniques practiced on these spent materials are based on pyrometallurgical, hydrometallurgical, or combinations of these techniques. Generally, recovered metals such as vanadium, molybdenum, and nickel/cobalt solutes are sold as products. A by-product of alumina is also produced and it is sold to cement kilns as one of the main process feeds to formulate portland cement. Nickel oxides are also recovered and reclaimed further in a nickel specialty HTMR facility. Residues from hydrometallurgical practices should be able to meet the proposed levels by stabilization. EPA thus requests comments on the TCLP and total concentration of those post-reclamation spent catalyst residues. Combusted or thermally desorbed spent catalyst should also be amenable to stabilization.

Vanadium is a BDAT constituent that is present in the crude oil and it is deposited in the spent hydrotreating and hydrorefining catalysts as an impurity. Vanadium concentrations in K171 and K172 are above the UTS for vanadium. EPA is thus proposing the regulation of this constituent.

Like vanadium, the presence of arsenic, antimony, and nickel in the spent catalyst is likely the direct result of entrained impurities from the crude oil. However, nickel can also be present as one of two or more components of the catalyst. Except for arsenic in K171, the concentrations of these metals are greater than their UTS concentration limits and EPA is requesting comments on their regulation.

EPA is also proposing to regulate arsenic in K171. Available data show that arsenic may reach up to 4.9 mg/L, as measured by the TCLP, in untreated nonwastewater forms of K171. This concentration is below the UTS and the hazardous characteristic level of arsenic wastes (D004). EPA believes, however, that the total concentrations of arsenic may increase in residues from the regeneration and reclamation of K171. It is likely that reclamation practices that involve reducing conditions for the recovery of valuable metals can leave behind arsenic species that are more mobile and thus, likely to exceed UTS and the characteristic limit for arsenic. EPA is thus proposing UTS limits for arsenic in K171. EPA is also requesting comments on the regulation of arsenic in K171 and in particular, data characterizing the residues from the reclamation and regeneration of hydrotreating and hydrorefining catalysts.

EPA also examined the need for regulating metals in K169, if it were listed as hazardous, and in K170. Based on the available data, EPA considered proposing the regulation of barium and chromium in K169, if listed, and the regulation of nickel in K170. However, EPA feels that regulation of metals in these two wastes may not be warranted at this time.

For instance, available data show that barium may be up to 2.4 ppm (as measured by the TCLP) in K169. This barium level is below barium's UTS limit of 7.6 ppm (as measured by the TCLP) as well as the TCLP hazardous characteristic limit of 100 ppm (as measured by the TCLP).

Chromium is another metal constituent present in K169 in concentrations up to 310 mg/kg (as measured by a total constituent analysis). K169 wastes did not have chromium concentrations above the UTS or characteristic levels. The total concentrations of barium and chromium are likely to increase, however, in combusted residues of K169. It is also likely that the mobility of chromium could increase above UTS limits in combusted K169 wastes. This premise is based on the observed behavior of chromium, and other metals, in K048–K052 treated by incineration and solvent extraction. EPA feels, however, that the regulation of barium and chromium may not be necessary at this time. Combusted residues of hazardous petroleum wastes currently prohibited from land disposal are routinely treated via stabilization in order to meet UTS levels for arsenic, chromium, and nickel prior to disposal. If K169 and K170 were promulgated as hazardous, these wastes will presumably be commingled with K048–K052, F037, and F038, and other characteristic wastes prior to treatment in combustion devices or prior to reclamation in recycling units. Therefore, the stabilization of petroleum refining wastes residues from the combustion or recycling of hazardous petroleum wastes should also provide metals in K169 and K170 with effective treatment. EPA requests comments on this determination and premise.

In addition, EPA has examined available data to assess the need for regulating other hazardous

characteristics in K169–K172. EPA believes that the ignitable and corrosive characteristics in K169, K170, K171, or K172 can be effectively controlled via the regulation of organics. These wastes are routinely managed in thermal processes that destroy organics and thus, leave behind residues free of the ignitable characteristic and other corrosive causing constituents. EPA has already proposed a list of organics that may provide these hazardous characteristics with effective treatment.

However, EPA is proposing to regulate the sulfide reactive characteristic in K171 and K172 via a treatment standard of deactivation to remove the reactive sulfide characteristic. First, these two wastes contain significant concentrations of reactive sulfides. The concentrations of iron sulfides and other metal sulfides complexes impart pyrophoric/self-heating properties to these two spent catalyst wastes. In addition to the D003 (reactivity), these wastes are also reported and managed as wastes that exhibit D001 (ignitability) and other hazardous constituent characteristics (primarily D004 and D018).

It appears that existing thermal processes that enable the regeneration and reclamation of spent catalysts may be effective in removing the reactive characteristic from these wastes. One thermal process, roasting, is designed to remove organic and sulfide impurities from these spent catalysts prior to the hydrometallurgical recovery of valuable metals. Another thermal process, calcination, reclaims molybdenum oxides from a byproduct of molybdenum triosulfides. Offgases from these thermal operations undergo further treatment and abatement prior to undergoing an environmental discharge. EPA requests comments that can support a determination that residues from HTMR, calciners, and roasters as well as other hydrometallurgical trains already meet the proposed deactivation standard for reactive iron/metal sulfides in K171 and K172.

Some residues from the regeneration and reclamation of K171 and K172 such as those from storage, feed processing, and other reclamation trains may still show the same sulfide reactive characteristic as the untreated wastes. These wastes can presumably be reclaimed on-site and available information suggests that this has been practiced. If not, EPA is proposing to regulate the sulfide reactivity in these wastes via a treatment standard expressed as Deactivation to Remove Reactive Sulfides. EPA is also requesting comments on whether the regulation of organics may also provide with effective treatment the reactive sulfides in K171 and K172. Additional discussion on the deactivation standard to remove the reactive sulfide characteristic is provided in "Best Demonstrated Available Technology (BDAT) Background Document for Newly Listed or Identified Wastes from Petroleum Refining." Available in the docket for today's proposal. See also Table V–3 and 268.40.

b. Wastewaters. Today's proposal emphasizes, for the most part, the listing of nonwastewater forms of petroleum wastes. EPA thus lacks data on the characterization of wastewater forms of these wastes. EPA anticipates, however, that if the proposed listings were finalized; the generation of wastewater forms of these wastes can occur during the management of leachates and groundwaters resulting from RCRA Corrective Orders and from the management of residues from units that store, treat, or reclaim these wastes in tanks or land disposal units.

EPA is proposing that the existing UTS for wastewaters in 268.40, are also applied to those wastewater forms described above. In order to apply UTS, EPA is proposing that the same list of hazardous constituents proposed for regulation in nonwastewater forms of these petroleum wastes is also adopted for wastewater forms of these wastes. The proposed UTS for each organic constituent are based on treatment technologies such as biological (aerobic or anaerobic) treatment systems, steam stripping, wet air oxidation, carbon adsorption, chemical assisted clarification or by a train of two or more of these wastewater treatment technologies.

The proposed treatment standards for metals in wastewater forms are based on lime addition followed by sedimentation and filtration for arsenic and antimony; chemical precipitation followed by sedimentation for nickel; and in electrochemical treatment followed by chemically assisted clarification for vanadium. See Table V–1, Table V–2, and Table V–3 for a summary of the proposed regulated constituents and the applicable UTS limits.

C. Capacity Determination for the Proposed Newly Identified Petroleum Refining Process Wastes

1. Introduction

In the land disposal restrictions (LDR) determinations, the Agency must demonstrate that adequate commercial capacity exists to manage the waste with BDAT standards before it can restrict the listed waste from further land disposal. The Agency performs capacity analyses to determine the effective date of the LDR treatment standards for the proposed listed wastes.

In general, EPA's capacity analysis methodology focuses on the amount of waste currently land disposed that will require alternative treatment as a result of the LDRs. The quantity of wastes that are not land disposed (e.g., discharges under NPDES or to a POTW, or treatment in an exempt tank) are not included in the quantities requiring additional treatment as a result of the LDRs. Also, land-disposed wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate technology) are excluded from the required capacity estimates. Land-disposed wastes requiring alternative treatment or recovery capacity that is available on-site or within the same company as the generator are also omitted from the required commercial capacity estimates. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, RCRA section 3004(h) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

To perform capacity analyses, the Agency needs to determine the volumes of the listed wastes that will require treatment prior to land disposal. The volumes of waste requiring treatment depend, in turn, on the waste management practices employed by the listed waste generators. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, as the regulatory process proceeds, generators may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus, EPA will update and monitor changes in management practices because these changes will affect the final volumes of waste requiring commercial treatment capacity. Therefore, EPA needs information on current and future waste management practices for these wastes, including the volumes and types of wastes that are recycled, wastes that are mixed with or co-managed with other waste, and residuals that are generated by the various management practices applicable to newly listed and identified wastes (e.g., treatment residuals).

The availability of adequate commercial treatment capacity for these wastes determines whether or not a

waste is granted a capacity variance under RCRA § 3004(h). EPA continues to update and monitor changes in available commercial treatment capacity because the commercial hazardous waste management industry is extremely dynamic. For example, national commercial treatment capacity changes as new facilities come on-line and as new units and new technologies are added at existing facilities. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or captive facility). To determine the availability of capacity for treating these wastes, the Agency needs to consider currently available data, as well as the timing of any future changes in available capacity.

Thus, to perform the necessary capacity analyses as a result of the LDR standards, the Agency needs reliable data on current waste generation, waste management practices, available alternative treatment capacity, and planned treatment capacity. Therefore, the Agency requests data on the annual generation volumes and characteristics of waste by each waste code, including wastewater and nonwastewater forms, soil or debris contaminated with these wastes, and waste that is stored, treated, recycled, or disposed due to any change of management practices. The Agency also requests data on the current treatment capacity of facilities capable of treating these wastes, facility and unit permit status related to treatment of the proposed listed wastes and any plans the facilities may have in the future to expand or reduce existing capacity. Furthermore, the Agency requests comments from companies that may be considering developing new hazardous waste treatment capacity. Specifically, the Agency requests information on the determining factors involved in making decisions to build new treatment capacity.

Of particular interest to the Agency are waste characteristics, such as pH level, BTU, anionic character, total organic carbon content, constituent concentrations, and physical form, that may limit the availability of certain treatment technologies. For these reasons, the Agency specifically requests data and comments on waste characteristics that might limit or preclude the use of any treatment technologies.

For previous LDR determinations, the Agency performed capacity analyses using data from national surveys including the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey), the 1987 National Survey of Hazardous Waste Generators (the Generator Survey), and the Biennial Reporting System (BRS). However, these surveys were not used or not the primary sources used to determine the volumes of proposed listed wastes requiring treatment, since these wastes were not included in the surveys. Additionally, these surveys may not contain adequate information on currently available capacity to treat newly identified wastes because the data do not reflect current capacity and do not include facility expansions or closures that have occurred since the data were obtained.

2. Capacity Analysis Results Summary

A brief summary of the capacity analysis performed to support this rule is presented below. For additional detailed information, please refer to the "Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Petroleum Refining Process Wastes (Proposed Rule)".

For this capacity analysis, EPA examined data on waste characteristics and management practices that have been gathered for the purpose of the petroleum refining hazardous waste listing determinations in the 1992 RCRA Section 3007 survey. The Agency has analyzed the capacity-related information from the survey responses and identified the following annualized quantities of newly identified wastes requiring commercial treatment: 11,100 tons of K170, 2,400 tons of K171, and 6,500 tons of K172; if the Agency decides to list crude oil storage tank sediment as hazardous (K169), the annualized volume of this waste requiring treatment would be 6,300 tons. The available data sources indicate that there are no quantities of K170–K172 (and K169, if listed) wastewaters that will require alternative commercial treatment, and therefore this volume is assumed to be zero. EPA estimates that 20,000 tons per year of K170–K172 will be managed off-site and require alternative commercial treatment (this would increase to 26,300 tons if K169 is listed). Also, the final affected waste volume requiring alternative commercial treatment may be subject to change due to the final listing determinations. The capacity analysis will be revised accordingly. This quantity may be smaller due to increased recycling activities. The Agency requests comments on current and future management practices and the volumes managed for K170–K172, and K169, if listed.

EPA is proposing to apply UTS to these wastes and the treatment standards for nonwastewaters containing organic constituents are based on combustion. The Agency estimated that the commercially available sludge and solid combustion capacity is 91,000 tons per year and sufficient to treat the proposed listed wastes. The Agency recognizes that the treatment residuals from these wastes may require additional treatment capacity (e.g., stabilization) to achieve the UTS for metal constituents. The Agency estimated that there is more than one million tons per year of commercial stabilization capacity. EPA also identified several metal recovery technologies that are commercially available and some of these technologies are being used currently by the petroleum refining industry to recycle K171 and K172. Therefore, EPA is proposing to not grant a national capacity variance for these proposed listed wastes. EPA is soliciting any updated or additional information that is pertinent to this determination. Since EPA is proposing a treatment concentration level for these wastes, the Agency does not exclude the use of other technologies capable of meeting the proposed treatment standard. EPA also requests comments on other commercially available thermal and non-thermal treatment or recovery capacity to meet UTS for the proposed listings.

For soil and debris contaminated with the proposed listings, the vast majority of the soil is already in-place (e.g., soil contaminated as a result of spills, etc., which has not been moved and soil associated with land treatment units). EPA's promulgated final rule addressing corrective action management units (CAMUs) and temporary units (TUs) (58 FR 8658, February 16, 1993) is likely to reduce the volume of wastes and soil subject to the land disposal restrictions by reducing the volume of waste and soil excavated and also by reducing the volume of waste managed off-site. Therefore, EPA is proposing to not grant a national capacity variance to hazardous soil and debris contaminated with the newly listed wastes covered under this proposal. EPA is requesting comments and data on hazardous soil contaminated with K170–K172 (and K169, if listed) that may be managed off-site. Based on the questionnaire, there are no data showing the mixed radioactive wastes with the proposed listings. EPA is proposing to not grant a national capacity variance for mixed radioactive wastes, i.e., radioactive wastes mixed with K169 (if listed), K170, K171, or K172. EPA is soliciting

comments on any information pertinent to these determinations.

TABLE V–1.—PROPOSED BDAT STANDARDS FOR ORGANICS IN K169*, K170, K171, & K172

[Wastewaters and nonwastewaters]

Constituent	Wastewaters maximum for any 24 hr. composite	Nonwastewaters maximum for any grab sample	Constituents proposed for regulation			
	Total composition (mg/L)	Total composition (mg/kg)	K169*	K170	K171	K172
Benz(a)anthracene	0.059	3.4	x	x	x	N/A
Benzene	0.14	10	x	x	x	x
Benzo(g,h,i)perylene	0.0055	1.8	x	x	N/A	N/A
Chrysene	0.059	3.4	x	x	x	N/A
Dibenz(a,h)anthracene	0.0055	8.2	N/A	x	N/A	N/A
Ethylbenzene	0.057	10	x	x	x	x
Fluorene	0.059	3.4	N/A	x	N/A	N/A
Indeno(1,2,3,-cd)pyrene	0.0055	3.4	x	x	N/A	N/A
Naphthalene	0.059	5.6	x	x	x	N/A
Phenanthrene	0.059	5.6	x	x	x	N/A
Pyrene	0.067	8.2	x	x	x	N/A
Toluene	0.080	10	x	x	x	x
Xylenes (total)	0.32	30	x	x	x	x

N/A—Not Applicable

* The proposed regulated constituent and UTS limits will apply, if EPA decides to list K169 as a hazardous waste in the final rule.

TABLE V–2.—PROPOSED BDAT STANDARDS FOR METALS IN K171 & K172

[Wastewaters and nonwastewaters]

Constituent	Wastewaters maximum for any 24 hr. composite	Nonwastewaters maximum for any grab sample	Constituents proposed for regulation	
	Total composition (mg/L)	(TCLP) (mg/L)	K171	K172
Antimony	1.9	2.1	N/A	x
Arsenic	1.4	5.0	x	x
Nickel	3.98	5.0	x	x
Vanadium	4.3	0.23	x	x

TABLE V–3.—PROPOSED BDAT STANDARDS FOR REACTIVE SULFIDES IN K171 & K172

[Wastewaters and nonwastewaters]

DEACTIVATION (DEACT)* to remove reactive sulfide characteristic (iron sulfides and other metal sulfide metals/complexes).	

* See section 268.40 for a list of applicable technologies that used alone or in combination can achieve this standard. See also in 268.42, Table 1—Technology Codes and Descriptions of Technology—Based Standards.

VI. Environmental Justice and Population Risk

A. Applicability of Executive Order 12898

EPA is committed to address environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. In response to Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Using 1990 U.S. Census Bureau data, the Agency created profiles of the populations surrounding petroleum refineries in the United States, as well as the smaller subset of facilities using land treatment or landfilling to manage the residuals proposed for listing in today's notice or estimated to have marginal risk. Statistics were generated regarding total population, population density (persons per square mile), white population, and population of color. Table VI–1 compares these population profiles with the overall national profile.

TABLE VI–1.—POPULATION PROFILES

	National population profile	Population profile surrounding U.S. petroleum refineries *	Population profile surrounding facilities landfilling or land treating proposed listing residuals *
Total population	249,402,000	651,757	195,693
White population	209,180,000	408,280	151,955
Percent white	83.9	62.6	77.6
Population of color	40,222,000	243,477	43,738
Percent people of color	16.1	37.4	22.3

* Population count does not double count persons living within 1 mile of more than one refinery.

The population profiles show that the populations in the vicinity of landfills and land treatment units that have been reported to manage the three residuals proposed for listing in today's notice are somewhat more likely to be minority populations than the National distribution. The effect of these listings, if finalized, will be to place these wastes under additional controls and reduce potential exposures to the surrounding populations.

B. Potential Effects

Today's proposed rule covers a number of wastes produced from petroleum refining facilities. The proposed rule involves not one particular site, but will possibly affect many facilities nationwide. Because of the locations of some of these facilities, the potential exists for impacts to minority or low-income communities. Today's rule is intended to reduce risks of hazardous and characteristic wastes as proposed, and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

The Agency is soliciting comment and input from all stakeholders, including members of the environmental justice community and members of the regulated community. The Agency encourages all interested parties to provide comments or further information that might be necessary on the data, analysis, and findings contained in this proposal. The Agency is interested in receiving additional information and/or comment on the following:

- Information on facilities that have evaluated potential ecological, human health (taking into account subsistence patterns and sensitive populations) impacts to minority or low-income communities.
- Information on facilities that have conducted human health analyses identifying multiple and cumulative exposures (populations at risk) from leaks, emissions, and waste management.
- Information on releases (leaks, emissions) that have occurred in the community and their health and environmental effects; and possible effects of exposure to the chemicals in the community.
- Information on hazardous materials stored, used, and transported in the community.

C. Population Risk

The Agency calculated population risks for individuals living in the vicinity of sites at which each of the three residuals proposed for listing in today's rule are managed. The populations surrounding each of the refineries and off-site land treatment and landfill units were enumerated using Census Bureau summary data for radii of 1, 2, and 5 miles. Further description of the population identification is presented in the "Listing Background Document for the 1992–1996 Petroleum Refining Listing Determination" in the docket for today's rule (see **ADDRESSES**).

Population risks were estimated for the following subpopulations: (1) adult residents and home gardeners exposed to PAHs in crude oil storage tank sediments, or clarified slurry oil storage tank sediments and/or filter/separation solids that are land treated, (2) consumers of ground water exposed to benzene and arsenic in hydrotreating and hydrorefining catalysts that are landfilled, and (3) consumers of ground water exposed to benzene from crude oil storage tank sediments that are landfilled. In estimating population risks from exposure of home gardeners and adult residents to PAHs, EPA evaluated exposures in which effective run-off controls were in place and exposures in which no run-off occurs. Under circumstances with effective run-off controls, home gardeners were estimated to be exposed by inhaling airborne particulates to which PAHs are adsorbed and ingesting soil, fruits, and vegetables contaminated by direct deposition of PAH-contaminated particulates; adult residents ingested only PAH-contaminated soil. Under circumstances where run-off occurs, additional contamination of soil, fruits, and vegetables with PAHs was estimated from erosion of PAH-contaminated soil from the land treatment site.

For the purpose of estimating population risks assuming effective run-off controls are in place at land treatment units, a radius of five miles from the land treatment unit was used as the distance within which concentrations of PAHs in air were averaged and exposed populations were enumerated. The Agency selected a radius of five miles for air pathways based on modeling results that indicated a dramatic decrease in concentrations of PAHs beyond this distance. For the purpose of estimating additional population risks assuming effective run-off controls are not in place, a distance of 300 meters from the land treatment unit was used as the distance within which populations were enumerated. This distance corresponds to the distance used for estimating central tendency individual risks from exposure of the home gardener and adult resident from all applicable exposure pathways.

For the purpose of estimating population risks for consumers of ground water, The Agency selected a one-mile radius down-gradient of the site to estimate 9-year average concentrations over the width of the plume. Exposures and risks to receptors located at distances greater than one mile were not considered because the exposure concentrations decrease as distance increases and there is a very long time period required for constituents to reach receptors outside a one-mile radius.

Steps for estimating non-ground water population risks assuming that no run-off occurs include: (1) Estimating the total population within 5 miles of the waste management unit; (2) determining the percentage of the total population that is the exposed population (e.g., the percentage of the total population that practices home gardening); (3) estimating the average concentration of PAHs in air, soil, fruits, and vegetables within 5 miles; (4) estimating the total lifetime average individual cancer risk based on the average media concentrations within 5 miles; and (5) estimating the total lifetime cancer incidence based on the product of the exposed population within 5 miles and the total lifetime cancer risk.

Steps for estimating the non-ground water population risks assuming that run-off occurs include: (1) Estimating average individual cancer risks to home gardeners and adult residents at a distance of 300 meters of the land treatment unit; (2) estimating the total population within a 300-meter downgradient of the land treatment unit based on the population density within a 1-mile radius and assuming uniform population density; (3) estimating the percentage of the total population within 300 meters that are home gardeners and adult residents; and (4) estimating the total lifetime cancer incidence based on the product of the exposed population within 300 meters and the total lifetime cancer risk. Additional details on estimating population risks for non-ground water pathways are provided in "Assessments of Risks from the Management of Petroleum Refining Wastes: Background Document."

The steps used by the Agency to estimate population risks for consumers of ground water include: (1) Conducting ground water modeling to estimate 9-year average concentrations over the width of the plume up to one mile down-gradient of the waste management unit at 400-meter intervals; (2) calculating the corresponding average individual risk from this average concentration; and (3) calculating the population served by the plume in each 400-meter interval. Additional details are provided in the "Background Document for Groundwater Pathway Analysis."

1. Results

The Agency conducted analyses of population risks for non-groundwater pathways for crude oil tank sediment and CSO sediment/solids. EPA also conducted analyses of population risks for groundwater pathways in crude oil tank sediment, hydrotreating catalyst, and hydrorefining catalyst. For both non-groundwater and groundwater pathways, the results suggested that the incremental risk in terms of cancer cases avoided would be near zero. However, the Agency believes that the high-end risks to individuals for these wastes support listing them as hazardous.

For non-groundwater exposure pathways to PAHs from land treatment units without run-off controls, the Agency estimated central tendency risks for crude oil tank sediment to be 3×10^{-9} for up to 274 home gardeners and 6×10^{-9} for up to 721 adult residents for off-site units. For the same scenario, the central tendency risks for CSO sediment/solids were 3×10^{-9} for up to 90 home gardeners, and 6×10^{-6} for up to 235 adult residents. For on-site land treatment, central tendency risks from PAHs in crude oil tank sediment were 4×10^{-9} for up to 120 home gardeners, and 8×10^{-9} for up to 316 adult residents. For on-site land treatment of CSO sediment/solids, central tendency risks from PAHs were 7×10^{-7} for up to 76 home gardeners, and 2×10^{-6} for up to 200 adult residents.

For the groundwater exposure pathway from landfills, the Agency estimated the total number of people exposed to constituent concentrations above health-based levels (at the 10^{-6} level) for off-site landfills. The number of individuals exposed above health-based levels for benzene in crude oil storage tank sediment, hydrotreating catalyst, and hydrorefining catalyst is 17, 300, and 3, respectively. The number of people exposed above health-based levels for arsenic in hydrotreating and hydrorefining catalyst is 12 and 25, respectively. For on-site landfills, the number of individuals exposed above health-based levels was less than one for all three wastes.

VII. Compliance Dates

A. Notification

Under the RCRA section 3010 any person generating, transporting, or managing a hazardous waste must notify EPA (or an authorized State) of its activities. Section 3010(a) allows EPA to waive, under certain circumstances, the notification requirement under section 3010 of RCRA. If these hazardous waste listings are promulgated, EPA is proposing to waive the notification requirement as unnecessary for persons already identified within the hazardous waste management universe (i.e., persons who have an EPA identification number under 40 CFR 262.12). EPA is not proposing to waive the notification requirement for waste handlers who have neither notified the Agency that they may manage hazardous wastes nor received an EPA identification number. Such individuals will have to provide notification under § 3010.

B. Interim Status and Permitted Facilities

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate the newly identified wastes listed under HSWA until States are authorized to regulate these wastes. Thus, once this regulation becomes effective as a final rule, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

VIII. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA; although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings proposed in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Because this proposal (with the exception of the actions proposed under CERCLA authority) will be promulgated pursuant to the HSWA, a State submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR Part 271) requires that states with final authorization modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of a final rule in accordance with section 271.21(e)(2). If the proposal is adopted as a final rule, Table 1 at 40 CFR 271.1 will be amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this proposed rule. These State regulations have not been assessed against the Federal regulations being proposed to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). This proposed rule, if finalized, is neither less stringent than nor a reduction in the scope or the current Federal program and, therefore, states would be required to modify their programs to retain authorization to implement and enforce these regulations.

IX. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of an RCRA hazardous waste (as defined in Sections 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). RQs are the minimum quantity of a hazardous substance that, if released, must be reported to the National Response Center (NRC) pursuant to CERCLA § 103.

The Agency is proposing to list the wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. In addition, the Agency proposes two alternative methods to adjust their one-pound statutory RQs. The first method, one traditionally utilized by the Agency, adjusts the RQ based on the lowest RQ of the most toxic substance present in each waste. The second method, as a part of the Agency's effort to review and re-evaluate its methods for CERCLA designation and RQ adjustment, adjusts the one-pound statutory RQ based upon the Agency's characterization and physical properties of the complex mixtures which comprise the wastes to be designated as K169 (if listed), K170, K171 and K172. The Agency invites comment on both methods, and may, based upon these comments and further information, decide to go forward with either method.

A. Reporting Requirements

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ must immediately notify the National Response Center of the release as soon as that person has knowledge thereof. The toll-free number of the NRC is 1–800–424–8802; in the Washington, D.C. metropolitan area, the number is (202) 267–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report releases of extremely hazardous substances and CERCLA hazardous substances to State and local authorities. EPCRA section 304 notification must be given immediately after the release of a RQ or more to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutory RQ of one pound unless and until the RQ is adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to new waste listings, the Agency is also proposing adjustments to the one-pound statutory RQs for these wastestreams.

B. Basis for RQs and Adjustments

EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxic properties of each hazardous constituent. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity, ignitability, reactivity, chronic toxicity, and potential carcinogenity.

Generally, for each intrinsic property, EPA ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using the various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria) is generally raised by one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. Table IX–1 presents the reportable quantity of each of the constituents of concern in the wastes to be identified as hazardous.

TABLE IX–1.—REPORTABLE QUANTITIES OF CONSTITUENTS OF CONCERN

Hazardous waste No.	Constituent of concern	RQ pounds (Kg)
K169 *	Benzo(a)pyrene	1(0.454)
	Dibenzo(a,h)anthracene	1(0.454)
	Benzo(a)anthracene	10(4.54)
	Indeno(1,2,3-cd)pyrene	100(45.4)
	Benzo(b)fluoranthene	1(0.454)
	Chrysene	100(45.4)
	Benzene	10(4.54)
K170	Benzo(a)pyrene	1(0.454)
	Dibenz(a,h)anthracene	1(0.454)
	Benzo(a)anthracene	10(4.54)
	Benzo(b)fluoranthene	1(0.454)
	Benzo(k)fluoranthene	5000 (2270)
	Chrysene	100(45.4)
	3–Methylcholanthrene	10(4.54)
	7,12–Dimethylbenz(a)anthracene	1(0.454)
	Indeno(1,2,3-cd)pyrene	100(45.4)
K171	Benzene	10(4.54)
	Arsenic	1(0.454)
K172	Benzene	10(4.54)
	Arsenic	1(0.454)

* If EPA makes a final decision to list crude oil storage tank sediment (K169) as hazardous, these RQs would apply.

The RQ adjustment methodology for mixtures of hazardous substances, used to adjust the RQs for RCRA hazardous wastestreams, differs somewhat from the methodology applied to individual hazardous substances. The procedure for assigning RQs is based on an analysis of the hazardous substance constituents of the wastestreams. The constituents of each RCRA hazardous wastestream are identified in 40 CFR 261, Appendix VII. The RQ of each constituent within the wastestream is determined, and the lowest RQ value of these constituents is established as the RQ for the wastestream. Because one or more of the constituents of concern in each waste has a final RQ of one pound, the Agency is proposing to assign one pound as the adjusted RQ for each of the newly designated wastestreams under this option.

The preceding discussion only describes the Agency's methodology for assigning RQs to the wastestreams. This discussion does not address whether particular releases of the wastestreams are reportable under various scenarios. The person in charge of a facility from which a release of any of the wastestreams occurs may apply the mixture rule on a case-by-case basis to determine if a particular release of the wastestream must be reported under CERCLA section 103 and EPCRA section 304. Essentially, the Agency's mixture rule (see 40 CFR 302.6(b)) provides that, if the quantity of each of the hazardous constituents in a particular wastestream is known, reporting is required only when an RQ or more of a constituent is released,

It is important to note that this provision only applies to the individual wastestream for which the quantities of all the constituents are known. RCRA wastes may be treated as mixtures only if all hazardous components and their concentrations in the mixture are known. Knowledge that the average quantities of hazardous constituents in a wastestream with the same RCRA identification number (e.g., K170) are below their respective hazardous constituent RQs is not a sufficient basis for applying this provision of the mixture rule to all wastestreams with that identification number. In addition, the Agency's mixture rule also provides that, if the quantity of one or more of the hazardous constituents is unknown, reporting is required where the total amount of the waste equals or exceeds the RQ for the hazardous constituent with the lowest RQ (CFR 302.6(b)(1)(ii)).

C. Alternative Method

The above proposal is for adjusting RQs utilizing the standard CERCLA methodology. In this rulemaking, the Agency also requests comment on the following alternative method for adjusting the RQs of the wastes in this proposal.

The Agency believes it has fully characterized the wastes to be identified as K169 (if listed), K170, K171 and K172, and based upon the maximum concentration observed, the Agency has calculated the amount of each waste necessary to contain the reportable quantity of each constituent of concern.

TABLE IX–2.—POUNDS REQUIRED TO CONTAIN RQ

Waste	Constituent	Max ppm	RQ (lb)	Pounds required to contain RQ	Adjusted RQ (lb)
K169 *	Benzo(a)pyrene	26	1	38,462	5000
	Dibenzo(a,h)anthracene	3.7	1	270,270	5000
	Benzo(a)anthracene	31	10	322,581	5000

TABLE IX–2.—POUNDS REQUIRED TO CONTAIN RQ—Continued

Waste	Constituent	Max ppm	RQ (lb)	Pounds required to contain RQ	Adjusted RQ (lb)
	Indeno(1,2,3-cd)pyrene	15	100	6,666,667	5000
	Benzo(b)fluoranthene	29	1	34,483	5000
	Chrysene	42	100	2,380,952	5000
	Benzene	220	10	45,455	5000
K170	Benzo(a)pyrene	230	1	4,348	1000
	Dibenzo(a,h)anthracene	49	1	20,408	5000
	Benzo(a)anthracene	390	10	25,641	5000
	Benzo(b)fluoranthene	110	1	9,090	5000
	Benzo(k)fluoranthene	110	5000	45,454,545	5000
	Chrysene	860	100	116,279	5000
	3–Methylcholanthrene	27	10	370,370	5000
	7,12–Dimethylbenz(a)anthracene	1200	1	833	100
	Indeno(1,2,3-cd)pyrene	26	100	38461.5	5000
K171	Benzene	500	10	20,000	5000
	Arsenic	1600	1	625	500
	Self-heating solid	.....	100	.....	100
K172	Benzene	100	10	100,000	5000
	Arsenic	730	1	1,370	5000
	Self-heating solid	.....	100	.....	100

*If EPA makes a final decision to list crude oil storage tank sediment (K169) as hazardous, these RQs would apply.

In this alternative method, the calculated amounts would determine the adjusted RQs. Specifically, for K169 wastes (if listed), over 5,000 pounds would be required to contain the RQ of any of the constituents of concern. Thus, under this alternative methodology, the Agency would adjust the RQ for K169 to 5,000 pounds, if K169 is finalized as a hazardous waste. For K170, over 800 pounds would be required to contain one pound of 7,12-dimethylbenz(a)anthracene (the constituent of concern with the highest concentration in this waste). Therefore, because 800 falls between the two possible RQ increments of 100 and 1000, under this alternative methodology, the Agency would adjust the RQ for K170 to 100 pounds. In the case of K171 and K172, quantities of these wastes in excess of 5000 pounds would also be required to contain the RQ of benzene or arsenic. However, these wastes frequently are spontaneously combustible materials. Because the RQ for wastes exhibiting the characteristic of ignitability is 100 pounds, the Agency would adjust the final RQ for K171 and K172 to 100 pounds.

X. Regulatory Requirements and Economic Analysis

The material covered in this section is described in detail in the background document entitled "Cost and Economic Impact of Listing Hazardous Wastes from the Petroleum Refining Industry", dated September 21, 1995, to be found in the EPA docket for this listing.

A. Regulatory Requirements

1. Executive Order 12866

E.O. 12866 requires that a determination be made as to whether this proposed regulatory action is "significant." While the proposal does not have an estimated annual effect of $100 million on the economy, interfere with actions planned by another agency, or materially alter budgetary impacts on parties named in the E.O., it does raise novel legal and possibly policy issues. Therefore, the Agency considers the action "significant" under the Executive Order and has gone beyond the minimal requirements for economic analysis required for "non-significant" rules, as explained in the discussion of economic analysis (Section B, parts 3–5, below).

2. The Regulatory Flexibility Act of 1980

This Act requires federal agencies to give full consideration to the effect a proposed rulemaking may have on "small entities." Section 603 of the Act requires that a screening analysis be performed to determine whether "small businesses, organizations and governmental jurisdictions" are impacted.

For the economic analysis performed for the Petroleum Refinery NESHAP, it was determined (under Title IV, Section 410H of the Clean Air Act) that a petroleum refinery is classified as a small business if it has less than 1500 employees or if its production is less than 50,000 barrels of oil per day. Based upon this production criterion, 63 refineries were determined to be small businesses in 1992. For SIC 2911, Petroleum Refining, Small Business Administration (SBA) rules define small businesses as those firms processing less than or equal to 75,000 barrels of crude oil) per day. Based upon this SBA cutoff, 49 refineries or approximately 30% of all refineries operating at the close of 1992 are considered "small entities."

Since either of the above measures denote a sizable percentage of "small entities," an industry impact analysis was conducted and the findings are presented in Section B.2. below.

3. The Paperwork Reduction Act (PRA)

Today's proposed rule may require reporting, notification or record keeping subject to OMB approval under Section 3504(b) of the PRA. Facilities will have to comply with Subtitle C recordkeeping with respect to the waste streams proposed for listing. Costs are included in compliance costs for this proposed listing insofar as they could be estimated by EPA.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L 104–4, establishes requirements for federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the URMA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not contain a federal mandate that will result in an expenditure of $100 million or more in any one year. The upper bound of the range of potential annual expenditure is well under $100 annually, as shown in Section B, below. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

B. Economic Analysis

1. Costs of Compliance

EPA has assessed the costs associated with the regulation of each of the three waste streams proposed to the listed in today's proposal. These are: clarified slurry oil storage tank sediment and/or in-line filter/separation solids, hydrotreating catalyst and hydrorefining catalyst. EPA has examined four cost alternatives; (1) Subtitle C landfill costs alone, (2) off-site incineration of tank sediments/off-site incineration and vitrification of catalysts, (3) a combination of on- and off-site incineration depending on the specific refinery, together with recycling/reclamation of catalysts, and (4) a contingent management composite alternative involving Subtitle D landfill for the CSO tank sediment and filter/separation solids together with recycling/reclaiming of catalysts.

The last named is clearly the least costly option of the options examined. It is important to note that the costs shown for all alternatives are not to be taken as precise. At the low end, especially, they are barely measurable in an industry of this size.

Each alternative is discussed below.

a. Alternative (1)—Subtitle C Landfill Costs Alone. After excluding the quantities exempt from regulation on the basis of the definition of solid waste, by ongoing reclamation, by headwaters exemption, and by the quantity already in compliance, as reported in the § 3007 survey previously referred to, the quantities impacted and the related Subtitle C annual costs of compliance are presented in Table X–1.

TABLE X–1.— ANNUAL COST OF COMPLIANCE

[1992$, millions]

	Costs (1992$, millions)
Clarified Slurry Oil Storage Tank Sediment and In-line Filter/Separation Solids	2.8
Hydrotreating Catalyst	1.3
Hydrorefining Catalyst	1.5
Add: RCRA Administrative costs	0.5
Total Annual Costs[1]	6.1

[1]The additional annual cost of compliance for potentially listing crude oil storage tank sediments is $2.2 million.

Costs per ton for Subtitle C compliance are also taken from the survey data as reported by the refineries. In that some uncertainty existed both for costs and for quantities, EPA tested the significance of variation in cost and in quantity by calculating the effect of a +/−25% adjustment in estimated costs, and a +/−50% adjustment in quantities, as reasonable bounding values. The range of total annual compliance costs using these worst case limits was $3.3 to $12.1 million in '92 dollars. ('92 dollars are used in that this was the date of the industry survey. Escalation to '95 or '96 dollars is of course possible, but would not change anything in the analysis.)

b. Alternatives (2) and (3)—Costs Including On- and Off-Site LDR Costs. If the costs associated with land disposal restrictions are included, the figures are as given below. The off-site alternative may be considered an unlikely upper bound in that those refiners finding it economical to continue on-site incineration of tank sediments in combination with recycling and reclaiming of catalysts will continue to do so, unless forced to off-site incineration and vitrification of the catalysts by added permitting costs.

TABLE X–2.—ANNUALIZED COSTS FOR PROPOSED REFINERY WASTE LISTINGS UNDER TWO LDR SCENARIOS

[1992$, millions]

	Off site incineration	On-site incineration
Clarified Slurry Oil Storage Tank Sediment and In-line Filter/Separation Solids	22.5	16.8
Hydrotreating Catalyst	5.0	2.4
Hydrorefining Catalyst	11.6	3.9
RCRA Administrative Costs	0.5	0.8
Total Annual Costs with LDR[1]	39.7	23.9

[1]The additional annual costs with LDR for potentially listing crude oil storage tank sediments is $21.6 million for off site incineration and $16.7 million for on-site incineration.

c. Alternative (4), Contingent Management—Subtitle D Landfill for the Storage Tank Sediments and CSO Filter/Separation Solids, and Recycling/Reclaiming of Catalysts. The costs shown include a credit for the revenues that would derive from waste minimization and reentry as added feedstocks for the two tank sediments, and the far lower (than Subtitle C) Subtitle D landfill costs. The negative number for the CSO tank sediment and filter/separation solids reflects the added net revenues in context of no added disposal costs.

It is important to reiterate that for an industry of this size, costs at this low level are difficult to measure. These costs should not be taken to be precise; they are estimates only and are small compared to the revenue/cost stream for the industry as a whole.

TABLE X–3.—ANNUALIZED COSTS FOR ALTERNATIVE (4)

[1992$, millions]

	Annualized costs (1992$, millions)
CSO Storage Tank Sediment and In-line Filter/Separation Solids	(0.5)
Hydrotreating Catalyst	2.3
Hydrorefining Catalyst	3.9
RCRA Administrative Costs	0.6
Total Alternative 4	6.3

[1]The additional annual costs of option 4 for potentially listing crude oil storage tank sediments is $17.4 million.

d. The Cost Reducing Potential of Offsetting Savings. As noted in Section 5, below, ("Other Benefits Considered,"

Subsection 5.e), EPA estimated the revenue impact of recycling previously listed waste into cokers, in accordance with the changes to the current recycling exemptions described elsewhere in this preamble.

These wastes include primary separation sludge (F038), secondary separation sludge (F039), dissolved air flotation float (K048), slop oil emulsion solids (K049), and API separator sludge (K051). As described in Section 5, such a practice is estimated to generate between $13 million and $26 million annually, depending on the volume not currently being recycled and other factors. Refineries would have to be individually evaluated to more accurately calculate this effect. Also, the costs associated with temporary on-site storage and processing, and transportation to a coker if a given refinery did not have a coker, would reduce this savings.

EPA has not directly applied this potential offset to any of the alternatives costed above, but it is important to note that this recycling practice, if directly associated with this proposed rulemaking, could combine to make the estimated cost of the rule as a whole approach zero under the contingent management option.

2. Economic Impact Analysis

EPA used a partial equilibrium model of the petroleum refining industry to estimate the effects of compliance on refiners. The model is the same as was used for the EPA NESHAP air contaminant analysis, for consistency. The major analytical variables are: market demand and supply (pre- and post compliance) for both domestic and foreign markets, market supply shifts, trade relationships as a function of elasticities, plant closures and other impacts, changes in economic welfare (consumer and producer surplus) and labor and energy effects. Baseline (pre-compliance) inputs and a complete model description may be found in the EPA docket for this proposed listing.

It is important to note that the use of this model represents a very sophisticated approach to the measurement of what are not high compliance costs relative to the size of this industry. More simplified approaches were considered, including analysis of standard financial ratios pre- and post compliance. EPA's judgement is that the use of a model as a computational device has three major advantages: (1) comparability with the NESHAP analysis, (2) comprehensiveness as measured against all known effects as compared to the simpler approaches and (3) a built in ability to sensitivity test quickly and easily as desired. The only disadvantage is one shared with the simpler approaches; a possible inability to measure small impacts on a large industry. The results are not to be construed as precise, but rather as approximate indicators of impact.

As shown in Table X–4, impacts on major variables are all less than one tenth of one percent, with almost no measurable impact on plant operations. As shown, plant closure potential is estimated as minimal. Hence, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), "the Administrator certifies that this rule will not have a significant economic impact on a substantial number of entities."

TABLE X–4.—IMPACTS ON MAJOR VARIABLES

	Lower bound	Midpoint	Upper bound
Average Price Increase (All products)	0.03%	0.08%	0.076%
Annual Production Decrease	0.03%	0.06%	0.59%
Plant Closures—Estimated	0–2	0–2	0–2
Jobs Lost	0.03%	0.06%	0.59%

3. Cost Effectiveness of Individual Risk Reduction

a. Crude Oil Storage Tank Sediment. Benzene groundwater risks for this waste exceed 10^{-5} (all risks referred to in this section are discussed in detail in other sections of this preamble) and total 10^{-6} for some pathways for polynuclear aromatic hydrocarbons (PAHs). At a cost of approximately $17.5 million under Alternative (4) these risks will be reduced if not eliminated. (Note: EPA has not translated these risk reductions into illness avoidance equivalents and monetary streams—see "Other Benefits Considered," below.)

b. Clarified Slurry Oil Storage Tank Sediment and In-Line Filter/Separation Solids. EPA is estimating significant indirect individual risks for PAHs in land treatment. The high-end adult resident individual lifetime cancer risks attributed to PAHs total 9×10^{-5} and 8×10^{-5} for on-site and off-site land treatment, respectively. These are very high individual environmental risks. At essentially zero cost for the contingent management option (or $16.8 million with reasonable LDR costs included) these major risks will be reduced if not eliminated.

c. Spent Hydrotreating and Hydrorefining Catalysts. Risks for these catalysts are due to benzene at the 10^{-5} lifetime cancer level. Again, the total annual cost to reduce or eliminate this risk is $6.2 million for all refineries under either the LDR or the contingent management scenario. This material is reused after treatment and there are no significant LDR costs. (Note: the practice of reclaiming is common now. The proposed listing would affect only amounts not now being reclaimed.)

4. Cost Effectiveness of Population Risk Reduction

EPA evaluated several approaches to measuring population risk as a function of multi-path exposure analysis. This is discussed in section VI.C. of this preamble. As with the individual risks, the exposed population risks would be minimized or disappear altogether if the relatively low cost measures specified above are taken.

EPA did not attempt to transform these cost effectiveness comparisons into monetary or commensurable measures both because of the uncertainties in such transformations and the absence of a statutory requirement to do so under either Executive Order 12866 or the UMRA (See Section A, above) as a function of the annual costs associated with the proposed listing. See also the discussion of other benefits, following.

5. Other Benefits Considered

As the analysis for today's proposed rule progressed, the Agency began to consider certain of the traditional benefits associated with RCRA rulemaking. It is well established that quantification of these benefits, in a manner acceptable to stakeholders and to the scientific community as a whole, is very difficult. In fact, for the most part, there is no agreement on the utility of quantification of these benefits in a decision making sense, especially with respect to long lasting soil and ground water contamination.

Still, because of the high visibility of the refinery industry and the potential for stakeholder reaction on both sides of this issue, EPA examined a range of benefits beyond the straightforward cost/effectiveness tradeoffs noted above, but did not attempt to transform these (as with the cost effectiveness measures noted above) into commensurable or monetary measures both because of the uncertainties involved and the absence of a clear statutory requirement to do so. (The UMRA does not require it and while Executive Order 12866 may be interpreted to do so, the Agency elected to not undertake such analysis at this time due to the relatively low cost of the proposed rule.)

Thus it is important to consider, given this relatively low cost, that the benefit factors enumerated below may have special relevance.

a. Additional Potential Benefits and Tradeoffs. (1) Jobs and Transaction Costs. The regulation of the cited waste steams may serve to encourage further reclaiming activity. To the extent this occurs, the capacity of this industry may increase, with concurrent increases in employment. Economic multiplier effects should be added in, as a function of plant locations. Further, refineries may be able to save tipping fees in some cases, and may even be paid something for wastes now disposed of at a cost to the refinery. Further recycling (e.g., de-oiling) of the nonmetallic-bearing wastes may also be considered both for economic reasons (product yield enhancement) and for waste minimization reasons.

(2) Landfill Cost Tradeoffs. Reclaiming and recycling may decrease landfill costs, but land disposal restrictions relating to the fraction of the waste stream that cannot be recycled or reclaimed may offset these.

(3) Land Value Benefits. While it is indisputable that land values are an inverse function of contamination, no clear cut rules for measuring these effects have been derived. Notions of contingent valuation, particularly in marginal cases, continue to be researched in the scientific community. For today's proposed listing, no analysis of this was conducted. This would be of relevance both to residential and commercial property in the vicinity of refineries. If this were done, it would be necessary to attempt to differentiate between effects attributable to these wastes and effects attributable to other causes.

(4) Ecological and Natural Resource Benefits. Ecological benefits will derive from the proposed listing. EPA has attempted to define and measure such benefits often over the years, most recently in the Hazardous Waste Identification Rule (HWIR) proposal. For HWIR, linkages between effect levels (human health as well as ecological) and exposure concentrations were developed (for air, soil, surface water, plants and animal products). The methodology embodied a "back-calculation" to determine permissible concentrations of contaminants at a predetermined risk level. As difficult as this is, a variant might be attempted for today's proposed rule, given adequate time and resources.

(5) Benefit From Extracting Oil Content From Prior Listings. EPA is proposing to expand the ability of petroleum refineries to recycle back into the process certain currently listed wastestreams: F037, F038, K048, K049, and K051. In each case, the oiled component of wastewater sludge could be fed back to a coker. A detailed analysis of the potential for savings (more accurately put, the potential for added feedstock resulting in revenue and for waste management cost avoided) was not possible in the time available given the mandated schedule, but EPA believes these benefits may be significant relative to the cost of the proposed listings. Offsetting these savings would be any cost associated with on-site storage and handling, and the cost associated with transport to cokers for refineries without cokers.

A survey of refineries would have to be undertaken to determine how widespread this practice is now. However, in general terms and based upon quantities taken from the 1993 Biennial Report System for the five wastes, at $18.00 per barrel nominal value, EPA estimates that the benefit of this practice is between $13 million and $26 million. This could substantially offset any cost associated with this proposed listing.

However, the Agency based these estimates on a number of assumptions that would need further assessment. EPA notes that there are uncertainties associated with such estimates and requests comment on the benefits associated with this action.

XI. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for newly listed wastestreams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–120 (ICR no. 1573, Part B Permit Application and Modification); 2050–120 (ICR 1571, General Facility Standards); 2050–0028 (ICR 261, Notification of Regulated Waste Activity); 2050–0034 (ICR 262, Part A Permit Application); 2050–0039 (ICR 801, Hazardous Waste Manifest); 2050–0035 (ICR 820, Generator Standards); and 2050–0024 (ICR 976, Biennial Report).

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 266

Environmental protection, Hazardous materials, Waste management, Boilers and industrial furnaces.

40 CFR Part 268

Environmental protection, Hazardous materials, Waste management, Reporting and recordkeeping requirements, Land Disposal Restrictions, Treatment Standards.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation,

Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Chapter I of title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.3 is amended by revising paragraph (a)(2)(iv)(C), and adding paragraph (c)(2)(ii)(E) to read as follows.

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(C) One of the following wastes listed in § 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation— heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), and clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste No. K170); or

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) Ceramic support media separated from one of the following wastes listed in § 261.32—Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172).

* * * * *

3. Section 261.4 is amended to revise paragraph (a)(12) and to add paragraphs (a)(13) and (a)(14) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12) Any hazardous oil-bearing secondary materials that are generated by SIC codes: 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171 and 5172 and are inserted into the petroleum refining process (SIC Code 2911) (including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) along with normal process streams, unless the material is placed on the land, or speculatively accumulated before being so recycled. Such secondary materials inserted into thermal cracking units are excluded provided that the coke product also does not exhibit a characteristic of hazardous waste.

(13) Recovered oil from an associated organic chemical manufacturing facility which is to be inserted into the petroleum refining process (SIC Code 2911) along with normal process streams, unless the material is placed on the land, or speculatively accumulated before being so recycled. An "associated organic chemical manufacturing facility (SIC Code 2869) is either a physically co-located facility or a facility under common ownership with the refinery at which the recovered oil is inserted into the petroleum refining process.

(14) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is accumulated speculatively as defined in § 261.1(c).

* * * * *

4. Section 261.32 is amended by adding in alphanumeric order (by the first column) the following wastestreams to the subgroup 'Petroleum refining' to read as follows.

§ 261.32 Hazardous waste from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
	. . . . .	
K170	Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations	(T)
K171	Spent Hydrotreating catalyst from petroleum refining operations (This listing does not include ceramic support media.)	(I, T)
K172	Spent Hydrorefining catalyst from petroleum refining operations (This listing does not include ceramic support media.)	(I, T)
	. . . . .	

* * * * *

5. Appendix VII to part 261 is amended by adding the following wastestreams in alphanumeric order (by the first column) to read as follows.

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
	. . . . .
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7,12-dimethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

6. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

7. Section 266.100 is amended by adding paragraph (b)(5) to read as follows:

§ 266.100 Applicability.

(b) * * *

(5) Catalyst recovery furnaces if the only hazardous wastes burned are spent hydrotreating catalyst from petroleum refining operations (EPA Hazardous waste No. K171), and/or spent hydrorefining catalyst from petroleum refining operations (EPA Hazardous waste No. K172).

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

8. The authority citation for part 268 continues to read as follows:

Authority: 42 U. S. C. 6905, 6912 (a), 6921, and 6924.

9. Section 268.31 is revised to read as follows:

* * * * *

Subpart C—Prohibitions on Land Disposal

§ 268.31 Waste specific prohibitions-petroleum refining wastes.

(a) Effective [*Date of Six Months from the Publication Date of the Final Rule for Listing as hazardous one or more of the proposed petroleum refining wastes in this rule.*], the waste specified in 40 CFR 261 as EPA Hazardous Wastes Numbers K170, K171, and K172, soils and debris contaminated with these wastes, and radioactive wastes mixed with these hazardous wastes, are prohibited from land disposal.

(b) Between [*Date of Six Months from the Publication of the Final Rule for Listing as hazardous one or more of the proposed petroleum refining wastes in this rule.*], hazardous wastes K170, K171, and K172; radioactive wastes mixed with EPA Hazardous waste numbers K170, K171, and K172, and soil and debris contaminated with these wastes, may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(c) The requirements of paragraph (a) of this section do not apply if:

(1) The waste meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The waste meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris that have met treatment standards in § 268.40 or in the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(d) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents (including underlying hazardous constituents in characteristic wastes that have been diluted to remove the characteristic) in excess of the applicable Universal Treatment Standard levels of § 268.48, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

10. Section 268.40 is amended by revising paragraph (e), and in the Table of Treatment Standards adding in alphanumerical order entries for K170, K171, and K172 to read as follows. The appropriate footnotes to the Table of Treatment Standards are republished without change.

§ 268.40 Applicability of treatment standards.

* * * * *

(e) For characteristic wastes subject to treatment standards in the following table "Treatment Standards for Hazardous Wastes," all underlying hazardous constituents (as defined in § 268.2(i)) must meet Universal Treatment Standards, found in § 268.40, Table UTS, prior to land disposal.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: concentration in mg/L [3]; or technology code [4]	Nonwastewaters: concentration in mg/kg [5] unless noted as "mg/L TCLP" or technology code
	. . .	. . .	. . .	. . .	. . .
K170	Clarified slurry oil sludge from petroleum refining operations.	Benz(a)anthracene	56–55–3	0.059	3.4
		Benzene	71–43–2	0.14	10
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.0055	8.2
		Ethyl benzene	100–41–4	0.057	10
		Fluorene	86–73–7	0.059	3.4
		Indeno(1,2,3,-cd)pyrene	193–39–5	0.0055	3.4
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	81–05–8	0.059	5.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/ regulatory subcategory [1]	Regulated hazardous constituent: Common name	CAS [2] No.	Wastewaters: concentration in mg/L [3]; or technology code [4]	Nonwastewaters: concentration in mg/kg [5] unless noted as "mg/L TCLP" or technology code
		Pyrene	129–00–0	0.067	8.2
		Toluene (Methyl Benzene)	108–88–3	0.080	10
		Xylene(s) (Total)	1330–20–7	0.32	30
K171	Spent hydrotreating catalyst from petroleum refining operations (This listing does not include ceramic support media.).	Benz(a)anthracene	56–55–3	0.059	3.4
		Benzene	71–43–2	0.14	10
		Chrysene	218–01–9	0.059	3.4
		Ethyl benzene	100–41–4	0.057	10
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	81–05–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Toluene (Methyl Benzene)	108–88–3	0.080	10
		Xylene(s) (Total)	1330–20–7	0.32	30
		Arsenic	7740–38–2	1.4	5 mg/L (TCLP)
		Nickel	7440–02–0	3.98	5.0 mg/L (TCLP)
		Vanadium	7440–62–2	4.3	0.23 mg/L (TCLP)
		Reactive sulfides	N/A	DEACT	DEACT
K172	Spent hydrorefining catalyst from petroleum refining operations (This listing does not include ceramic support media.).	Benzene	71–43–2	0.14	10
		Ethyl benzene	100–41–4	0.057	10
		Toluene (Methyl Benzene)	108–88–3	0.080	10
		Xylene(s) (Total)	1330–20–7	0.32	30
		Antimony	7740–36–0	1.9	2.1 mg/L (TCLP)
		Arsenic	7740–38–2	1.4	5 mg/L (TCLP)
		Nickel	7440–02–0	3.98	5.0 mg/L (TCLP)
		Vanadium	7440–62–2	4.3	0.23 mg/L (TCLP)
		Reactive Sulfides	N/A	DEACT	DEACT

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or part 265 subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

NOTE: NA means not applicable.

* * * * *

12. Appendix VI to Part 268 is amended by revising the text preceding the table to read as follows:

Appendix VI to Part 268—Recommended Technologies To Achieve Deactivation of Characteristics in § 268.40

The treatment standard for many subcategories of D001, D002, D003, and D011–D043 wastes as well as for K044, K045, K047, K171, and K172 wastes is listed in § 268.40 as "Deactivation and meet UTS." EPA has determined that many technologies, when used alone or in combination, can achieve the deactivation portion of the treatment standard. Characteristic wastes that also contain underlying hazardous constituents (see § 268.2) must be treated not only by a "deactivating" technology to remove the characteristic, but also to achieve the universal treatment standards (UTS) for underlying hazardous constituents. The following appendix presents a partial list of technologies, utilizing the five letter technology codes established in 40 CFR 268.42, Table 1, that may be useful in meeting the treatment standard. Use of these specific technologies is not mandatory and does not preclude direct reuse, recovery, and/or the use of other pretreatment technologies, provided deactivation is achieved and, if applicable, underlying hazardous constituents are treated to achieve the UTS.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

13. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

Subpart A—Requirements for Final Authorization

14. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Insert date of publication of final rule in the Federal Register].	Listing Wastes from the Petroleum Refining Processes, Land Disposal Restrictions for Newly Identified Wastes.	[Insert Federal Register page numbers].	[Insert effective date of final rule]

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
[*Insert date 90 days from date of publication of final rule*].	Prohibition on land disposal of newly listed and identified wastes.	3004(g)(4) (C) and 3004 (m).	[*Insert date of publication of final rule*]. [*Insert FR page numbers*].
[*Insert date 2 years from date of publication of final rule*].	Prohibition on land disposal of radioactive waste mixed with the newly listed or identified wastes, including soil and debris.	3004(m) ..... 3004(g)(4) (C) and 3004(m)	Do. Do. Do.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

17. The authority citation for part 302 continues to read as follows:

Option 1

§ 302.4 [Amended]

18. Table 302.4 in § 302.4 is amended by adding the following new entries to read as follows under option 1. The appropriate footnotes to Table 302.4 are republished without change.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code †	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
K170 Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations.	.....	.....	1*	4	K170	X	1(0.454)
K171 Spent hydrotreating catalyst from petroleum refining operations.	.....	.....	1*	4	K171	X	1(0.454)
K172 Spent hydrorefining catalyst from petroleum refining operations.	.....	.....	1*	4	K172	X	1(0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
. . . . .							

†—Indicates the statutory source as defined by 1, 2, 3, and 4 below.

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

Option 2

19. Table 302.4 in §302.4 is amended by adding the following new entries to read as follows under option 2. The appropriate footnotes to Table 302.4 are republished without change.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
. . . . .							
K170 ..... Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations.	.....	.....	1*	4	K170	B	100 (45.4)
K171 ..... Spent hydrotreating catalyst from petroleum refining operations.	.....	.....	1*	4	K171	B	100 (45.4)
K172 ..... Spent hydrorefining catalyst from petroleum refining operations.	.....	.....	1*	4	K172	B	B100 (45.4)
. . . . .							

†—Indicates the statutory source as defined by 1, 2, 3, and 4 below.

4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1*—indicates that the 1-pound RQ is a CERCLA statutory RQ.

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Notices

Federal Register
Vol. 60, No. 223
Monday, November 20, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: December 13, 1995 (8:30 a.m. to 5:00 p.m.)
Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance

The purposes of the meeting are: to be briefed on, and provide nongovernmental input regarding, the role of civil society and non-governmental organizations in sustainable development.

The meeting is free and open to the public. HOWEVER, NOTIFICATION BY DECEMBER 8, 1995, THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED. Persons wishing to attend the meeting must call Lisa Douglas-Watson (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: November 7, 1995.

John Grant,
Office Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.

[FR Doc. 95–28431 Filed 11–17–95; 8:45 am]
BILLING CODE 6116–01–M

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LIST OF PUBLIC LAWS

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H.R. 1905/P.L. 104–46

Energy and Water Development Appropriations Act, 1996 (Nov. 13, 1995; 109 Stat. 402)

H.R. 2589/P.L. 104–47

To extend authorities under the Middle East Peace Facilitation Act of 1994 until December 31, 1995, and for other purposes. (Nov. 13, 1995; 109 Stat. 423)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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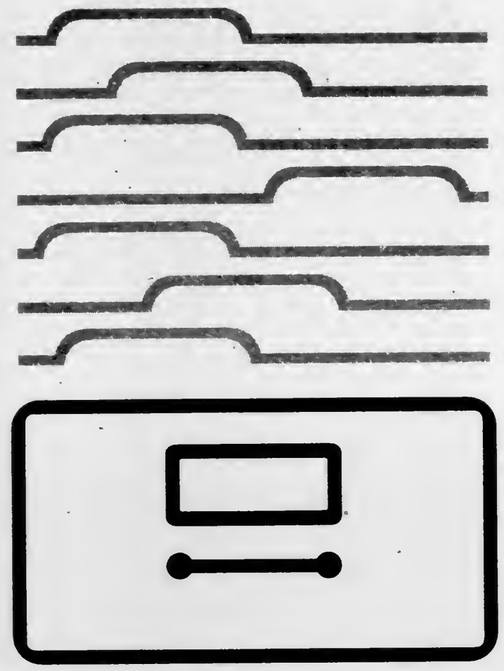
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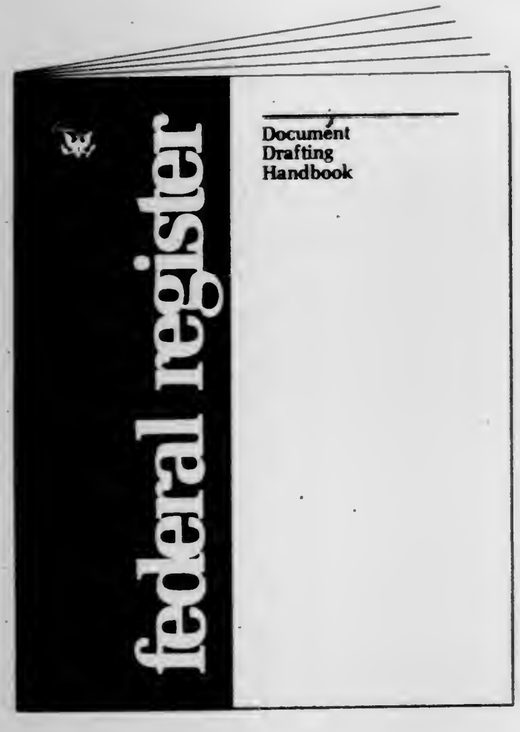
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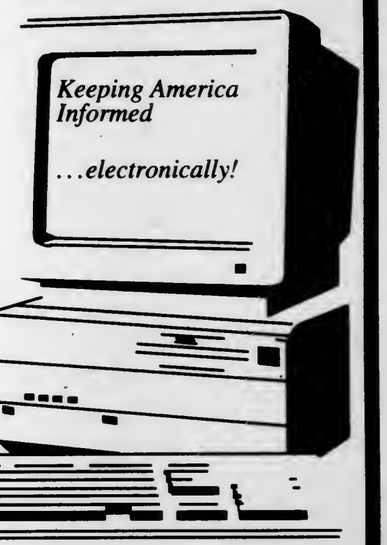
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Tuesday, November 21, 1995

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–39; Amendment 39–9423; AD 95–23–03]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6 series turbofan engines, that currently requires initial and repetitive ultrasonic and eddy current inspections of a certain population of high pressure compressor rotor (HPCR) stage 3–9 spools for cracks. This amendment retains the inspection requirements of the current AD, but would accelerate the inspection schedule for parts affected by the current AD, require initial and repetitive inspections of an expanded population of HPCR stage 3–9 spools installed on GE CF6–45/–50/–80A engines, include HPCR stage 3–9 spools installed on GE CF6–80C2 series engines, and require reporting to the FAA the results of inspections that equal or exceed the reject criteria. This amendment is prompted by recent field experience and the associated engineering investigation, which indicate that cracks are likely to develop in a larger population of parts than previously thought. The actions specified by this AD are intended to prevent HPCR stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage.

DATES: *Effective:* December 6, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On January 31, 1995, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 95–03–01, Amendment 39–9138 (60 FR 8930, February 16, 1995), applicable to General Electric Company (GE) CF6–45/–50/–80A series turbofan engines, to require initial and repetitive ultrasonic and eddy current inspections of a certain population of high pressure compressor rotor (HPCR) stage 3–9 spools for cracks. That action was prompted by a finding of several cracked parts in service. That condition, if not corrected, could result in HPCR stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage.

Since the issuance of that AD, the FAA has received a report of an in-service uncontained failure of an HPCR stage 3–9 spool. The investigation revealed that the uncontained failure was caused by a crack that developed from the same metallurgical condition which prompted the current AD. However, this spool was not part of the population required to be inspected by the current AD. Further investigation has indicated that the scope of the current AD should be expanded to include other HPCR stage 3–9 spools installed on GE CF6–45/–50/–80A engines, and also HPCR stage 3–9 spools installed on GE CF6–80C2 series engines, and that the inspection schedule for the spools affected by the current AD should be accelerated. This new inspection program is based on current field experience, knowledge of the manufacturing processes used to produce the HPCR stage 3–9 spools, and the operating conditions which these spools are exposed to in the different GE CF6 series engines. In addition, the FAA has determined that it is necessary to require operators to submit the findings of these inspections in order to further analyze this situation. The FAA may revise this AD based on the results of these inspections.

The FAA has reviewed and approved the technical contents of the following GE service bulletins (SB's): CF6–50 SB No. 72–1108, Original, dated November 6, 1995; CF6–80A SB No. 72–678, Original, dated November 6, 1995; CF6–80C2 SB No. 72–812, Original, dated November 6, 1995, and Table 801 of GE CF6–50 Shop Manual GEK 50481, Temporary Revision 05–0011, dated November 3, 1995. These SB's describe procedures for eddy current and ultrasonic inspections of HPCR stage 3–9 spools for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 95–03–01 to retain the inspection requirements of the current AD, but would accelerate the inspection schedule for parts affected by the current AD, require initial and repetitive inspections of an expanded population of HPCR stage 3–9 spools installed on GE CF6–45/–50/–80A engines, include HPCR stage 3–9 spools installed on GE CF6–80C2 series engines, and require reporting to the FAA the results of inspections that equal or exceed the reject criteria. The actions are required to be accomplished in accordance with the SB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–39." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9138 (60 FR 8930, February 16, 1995), and by adding a new airworthiness directive, Amendment 39–9423, to read as follows:

95–23–03 General Electric Company: Amendment 39–9423. Docket 95–ANE–39. Supersedes AD 95–03–01, Amendment 39–9138.

Applicability: General Electric Company (GE) CF6–45/–50/–80A/–80C2 series turbofan engines installed with High Pressure Compressor Stage 3–9 Spools, Part Numbers (P/Ns) 1333M66G01, 1333M66G03; 1333M66G07, 1333M66G09, 1781M52P01, 1781M53C01,1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06; 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G10, 9136M89G11, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27, 9253M85G01, 9253M85G02, 9273M14G01, 9331M29G01, and 9380M28P05 installed on, but not limited to, Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (o) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor rotor (HPCR) stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage, accomplish the following:

(a) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, with Part Numbers (P/N's) 9136M89G08, 9253M85G02, 9273M14G01, and 9331M29G01, with serial Numbers (S/N) listed in Table 801 of GE CF6–50 Shop Manual GEK 50481, Temporary Revision 05–0011, dated November 3, 1995; and with P/N's 9136M89G02 and 9136M89G06, installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 Service Bulletin (SB) No. 72–1108, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools with 3,000 or more cycles in service (CIS) on the effective date of this AD since last inspection in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2; or GE CF6–50 SB No. 72–1008, Original; or GE CF6–50 SB No. 72–1108, Original; inspect prior to exceeding 500 CIS after the effective date of this AD, or 4,000 CIS since last inspection, whichever occurs first.

(2) For HPCR stage 3–9 spools with less than 3,000 CIS since last inspection in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2, or GE CF6–50 SB No. 72–1008, Original; or GE CF6–50 SB No. 72–1108, Original; inspect at the earliest occurrence of the following after the effective date of this AD: the next piece-part exposure after accumulating 1,000 CIS since last inspection, the next shop visit after accumulating 2,000 CIS since last inspection, or prior to exceeding 3,500 CIS since last inspection.

(3) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2; or GE CF6–50 SB No. 72–1008, Original; or GE CF6–50 SB No. 72–1108, Original; on the effective date of this AD, inspect prior to exceeding 30 days from the effective date of this AD.

(4) Thereafter, reinspect HPCR stage 3–9 spools for cracks at intervals not to exceed the earliest occurrence of the following: the

next piece-part exposure after accumulating 1,000 CIS since last inspection, the next shop visit after accumulating 2,000 CIS since last inspection, or prior to exceeding 3,500 CIS since last inspection.

(5) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 SB No. 72–1108, Original, dated November 6, 1995, and replace with a serviceable part.

(b) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, with P/N's 9136M89G08, 9253M85G02, 9273M14G01, and 9331M29G01, with S/N not listed in Table 801 of GE CF6–50 Shop Manual GEK 50481, Temporary Revision 05–0011, dated November 3, 1995; and with P/N's 9136M89G03, 9136M89G07, 9136M89G09, 9136M89G17, 9136M89G18, and 9253M85G01, installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 SB No. 72–1108, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2; or GE CF6–50 SB No. 1008, Original; or GE CF6–50 SB No. 72–1108, Original; on the effective date of this AD, inspect either at the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 4,000 cycles since new (CSN), or the next shop visit after accumulating 2,000 CIS since last inspection and more than 4,000 CSN, whichever occurs first.

(2) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2; or GE CF6–50 SB No. 1008, Original; or GE CF6–50 SB No. 72–1108, Original; on the effective date of this AD, inspect at the next piece-part exposure after accumulating 1,000 CSN, or at the next shop visit after accumulating 4,000 CSN, whichever occurs first.

(3) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed either the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 4,000 CSN, or the next shop visit after accumulating 2,000 CIS since last inspection and more than 4,000 CSN, whichever occurs first.

(4) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 SB No. 72–1108, Original, dated November 6, 1995, and replace with a serviceable part.

(c) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, with P/N's 9136M89G19, 9136M89G21, 9136M89G22, and 9136M89G27, installed in GE CF6–45/–50 series engines, in accordance with GE CF6–50 SB No. 72–1108, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2; or GE CF6–50 SB No. 1008, Original; or GE CF6–50 SB No. 72–1108, Original; on the effective date of this AD, inspect at the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 4,000 CSN.

(2) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2; or GE CF6–50 SB No. 1008, Original, or GE CF6–50 SB No. 72–1108, Original; on the effective date of this AD, inspect at the next piece-part exposure after accumulating 1,000 CSN, or the next shop visit after accumulating 4,000 CSN, whichever occurs first.

(3) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 4,000 CSN.

(4) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–45/50 SB No. 72–1108, Original, dated November 6, 1995, and replace with a serviceable part.

(d) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, P/N 9136M89G10 with the following S/N's: MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, and MPON4253; installed in GE CF6–80A/–80A1/–80A2/–80A3 model engines. Perform the inspections in accordance with GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools with 3,000 or more CIS on the effective date of this AD since last inspection in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; inspect prior to exceeding 500 CIS after the effective date of this AD, or 4,000 CIS since last inspection, whichever occurs first.

(2) For HPCR stage 3–9 spools with less than 3,000 CIS on the effective date of this AD since last inspection in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; inspect at the earliest occurrence of the following after the effective date of this AD: the next piece-part exposure after accumulating 1,000 CIS since last inspection, the next shop visit after accumulating 2,000 CIS since last inspection, or prior to exceeding 3,500 CIS since last inspection.

(3) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; on the effective date of this AD, inspect prior to exceeding 30 days from the effective date of this AD.

(4) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence of the following: the next piece-part exposure after accumulating 1,000 CIS since last inspection, the next shop visit after accumulating 2,000 CIS since last inspection, or prior to exceeding 3,500 CIS since last inspection.

(5) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, and replace with a serviceable part.

(e) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, P/N 9136M89G10 with S/N's other than those listed in paragraph (d) of this AD, and P/N 9136M89G11, installed in GE CF6–80A/–80A2 model engines, in accordance with GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools that have been inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; inspect either at the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 5,000 CSN, or at the next shop visit after accumulating 1,500 CIS since last inspection and more than 5,000 CSN, whichever occurs first.

(2) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; on the effective date of this AD, inspect at the next piece-part exposure after accumulating 1,000 CSN, or the next shop visit after accumulating 5,000 CSN, whichever occurs first.

(3) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed either the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 5,000 CSN, or at the next shop visit after accumulating 1,500 CIS since last inspection and more than 5,000 CSN, whichever occurs first.

(4) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, and replace with a serviceable part.

(f) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, P/N 9136M89G10 with S/N's other than those listed in paragraph (d) of this AD, installed in GE CF6–80A1/–80A3 model engines, in accordance with GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools that have been inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; inspect either at the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 5,000 CSN, or at the next shop visit after accumulating 2,000 CIS since last inspection and more than 5,000 CSN, whichever occurs first.

(2) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; on the effective date of this AD, inspect at the next piece-part exposure after accumulating 1,000 CSN, or the next shop visit after accumulating 5,000 CSN, whichever occurs first.

(3) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed either the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 5,000 CSN, or at the next shop visit after accumulating 2,000 CIS since last inspection and more than 5,000 CSN, whichever occurs first.

(4) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, and replace with a serviceable part.

(g) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, P/N's 9136M89G20, 9136M89G21, 9136M89G22, and 9136M89G27, installed in GE CF6–80A/–80A1/–80A2/–80A3 model engines, in accordance with GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools that have been inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; inspect at the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 5,000 CSN.

(2) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; or GE CF6–80A SB No. 72–678, Original; on the effective date of this AD, inspect at the next piece-part exposure after accumulating 1,000 CSN, or the next shop visit after accumulating 5,000 CSN, whichever occurs first.

(3) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed the next piece-part exposure after accumulating 1,000 CIS since last inspection and more than 5,000 CSN.

(4) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Original, dated November 6, 1995, and replace with a serviceable part.

(h) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, P/N's 1781M52P01, 1854M95P02, 1854M95P05, and 9380M28P05, installed in GE CF6–80C2 series engines, in accordance with GE CF6–80C2 SB No. 72–812, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools that have not been previously inspected in accordance with GE CF6–80C2 SB No. 72–418, Original, Revision 1, Revision 2, or Revision 3; or GE CF6–80C2 SB No. 72–758, Original; or GE CF6–80C2 SB No. 72–812, Original; inspect at the next shop visit. However, no uninspected HPCR stage 3–9 spools with more than 8,000 CSN are to remain in service after May 15, 1996; and further no uninspected HPCR stage 3–9 spools with more than 3,500 CSN are to remain in service after May 15, 1997.

(2) For HPCR stage 3–9 spools that have been inspected in accordance with GE CF6–80C2 SB No. 72–418, Original, Revision 1, Revision 2, Revision 3, or GE CF6–80C2 SB No. 72–758, Original; or GE CF6–80C2 SB No. 72–812, Original; inspect at the earliest occurrence after the effective date of this AD of the following: the next piece-part or core module exposure after accumulating 1,000 CIS since last inspection, the next shop visit after accumulating 1,500 CIS since last inspection, or prior to exceeding 3,500 CIS since last inspection after May 15, 1997.

(3) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence of the following: the next piece-part or core module exposure after accumulating 1,000 CIS since last inspection, the next shop visit after accumulating 1,500 CIS since last inspection, or prior to exceeding 3,500 CIS since last inspection.

(4) For inspections accomplished in accordance with paragraphs (h)(1), (h)(2), or (h)(3) of this AD, at the first piece-part exposure, perform the inspection at the piece-part level. Otherwise the inspection may be performed at either the piece-part or the core module level.

(5) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 SB No. 72–812, Original, dated November 6, 1995, and replace with a serviceable part.

(i) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools, P/N's 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M53G01, 1854M95P01, 1854M95P03, 1854M95P04, and 1854M95P06, installed in GE CF6–80C2 series engines, in accordance with GE CF6–80C2 SB No. 72–812, Original, dated November 6, 1995, as follows:

(1) For HPCR stage 3–9 spools that have been inspected in accordance with GE CF6–80C2 SB No. 72–418, Original, Revision 1, Revision 2, Revision 3, or GE CF6–80C2 SB No. 72–758, Original; or GE CF6–80C2 SB No. 72–812, Original; inspect at the next piece-part or core module exposure after accumulating 1,000 CIS since last inspection and more than 3,000 CSN.

(2) For HPCR stage 3–9 spools that have not been inspected in accordance with GE CF6–80C2 SB No. 72–418, Original, Revision 1, Revision 2, Revision 3, or GE CF6–80C2 SB No. 72–758, Original; or GE CF6–80C2 SB No. 72–812, Original; on the effective date of this AD, inspect at the next piece-part or core module exposure after accumulating 1,000 CSN, or at the next shop visit after accumulating 3,000 CSN, whichever occurs first.

(3) Thereafter, reinspect HPCR stage 3–9 spools at intervals not to exceed either the next core module exposure or piece-part exposure after accumulating 1,000 CIS since last inspection and more than 3,000 CSN.

(4) For inspections accomplished in accordance with paragraph (i)(1), (i)(2), or (i)(3) of this AD, at the first piece-part exposure, perform the inspection at the piece-part level. Otherwise the inspection may be performed at either the piece-part or the core module level.

(5) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 SB No. 72–812, Original, dated November 6, 1995, and replace with a serviceable part.

(j) Report within 24 hours of inspection the results of inspections that equal or exceed the reject criteria to: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136, fax (617) 238–7199, as follows:

(1) Engine model in which the HPCR stage 3–9 spool was installed;
(2) P/N;
(3) S/N;
(4) Part CSN;
(5) Part CIS since last inspection; and
(6) Date and location of inspection.

Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(k) For the purpose of this AD, a serviceable part for installation in an engine is defined as an HPCR stage 3–9 spool with less than 1,000 CSN or with less than 1,000 CIS since last inspection in accordance with the following SB's, as applicable: GE CF6–50 SB No. 72–888, Revision 3, Revision 4, or Revision 5; GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2; GE CF6–50 SB No. 72–1108, Original; GE CF6–80A SB No. 72–500, Revision 3, Revision 4, or Revision 5; GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4; GE CF6–80A SB No. 72–678, Original; GE CF6–80C2 SB No. 72–418, Revision 2 or Revision 3; GE CF6–80C2 SB No. 72–758, Original; or GE CF6–80C2 SB No. 72–812, Original.

(l) For the purpose of this AD, core module exposure is defined as separation of the fan module from the engine.

(m) For the purpose of this AD, piece-part exposure is defined as disassembly and removal of the stage 3–9 spool from the HPCR.

(n) For the purpose of this AD, a shop visit is defined as the introduction of an engine into a shop where the separation of a major engine flange will occur after the effective date of this AD.

(o) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(p) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(q) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
GE CF6–50 SB No. 72–1108	1–6	Original ..	Nov. 6, 1995.
Total pages: 6.			
GE CF6–80A SB No. 72–678	1–6	Original ..	Nov. 6, 1995.
Total pages: 6.			
GE CF6–80C2 SB No. 72–812	1–6	Original ..	Nov. 6, 1995.
CF6–50 Engine Task Numbered Shop Manual Temporary Revision 05–0011	1–4	.....	Nov. 3, 1995.
Total pages: 4.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(r) This amendment becomes effective on December 6, 1995.

Issued in Burlington, Massachusetts, on November 13, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–28527 Filed 11–20–95; 8:45 am]

BILLING CODE 4910–13–U

Notices

Federal Register
Vol. 60, No. 224
Tuesday, November 21, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA No. 134F]

Controlled Substances: Established Initial 1996 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 1996.

SUMMARY: This notice establishes initial 1996 aggregate production quotas for some controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: This order is effective upon November 21, 1995.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On July 27, 1995, a notice of the proposed initial 1996 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (60 FR 38576). All interested persons were invited to comment on or object to the proposed aggregate production quotas on or before August 28, 1995. The following comments were received.

A company commented that the proposed initial 1996 aggregate production quotas for dihydrocodeine, hydrocone and noroxymorphone (for conversion), are insufficient to provide for the estimated medical needs of the United States, estimated export requirements and for the establishment and maintenance of reserve stocks. The company's comments are based on their actual 1995 and projected 1996 domestic sales and 1995 manufacturing quotas. After reviewing the company's current 1995 and forecasted 1996 sales and inventory levels, the DEA determined that the initial 1996 aggregate production quotas for dihydrocodeine, hydrocodone and noroxymorphone (for conversion) must be increased to meet the 1996 medical needs of the United States, and are adjusted accordingly.

Several companies commented that the proposed initial 1996 aggregate production quota for amphetamine is insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, estimated export requirements and for the establishment and maintenance of reserve stocks. The company comments are based on their actual 1995 sales, projected 1996 sales and exports, projected 1995 and 1996 inventories and 1996 research requirements.

Based on 1995 manufacturing quotas, the 1996 Food and Drug Administration estimate for amphetamine and projected 1996 inventories, the DEA increased the initial 1996 aggregate production quota for amphetamine. The DEA received no comments regarding the proposed aggregate production quotas for any other substances in schedule I or II.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action has no significant impact upon small entities whose interest must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufactures, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the 1996 initial aggregate production quotas, expressed in grams of anhydrous base, be established as follows.

[In grams]

Basic class	Established initial 1996 quotas
Schedule I:	
Acetylmethadol	7
Alphacetylmethadol	7
Aminorex	7
Cathinone	9
Difenoxin	14,000
Dihydromorphine	7

[In grams]

Basic class	Established initial 1996 quotas
2,5-Dimethoxyamphetamine	10,650,000
N,N-Dimethylamphetamine	7
Ethylamine Analog of Phencyclidine	5
N-Ethylamphetamine	7
Lysergic Acid Diethylamide	58
Mescaline	7
Methaqualone	17
Methacathinone	9
4-Methoxyamphetamine	17
4-Methylaminorex	2
3-Methylfentanyl	14
3,4-Methylenedioxyamphetamine	17
3,4-Methylenedioxy-N-ethylamphetamine	27
3,4-Methylenedioxymethamphetamine	42
Normethadone	7
Normorphine	7
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	55,100
Schedule II:	
Alfentanil	8,500
Amobarbital	15
Amphetamine (includes the d,1-, d- and 1- forms of amphetamine	1,863,200
Cocaine	550,040
Codeine (for sale)	58,395,000
Codeine (for conversion)	16,632,000
Desoxyephedrine (1,000,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product and 44,000 grams for methamphetamine)	1,044,000
Dextropropoxyphene	118,066,000
Dihydrocodeine	116,000
Diphenoxylate	1,063,000
Ecgonine (for conversion)	650,100
Ethylmorphine	12
Fentanyl	120,100
Hydrocodone (for sale)	10,575,000
Hydrocodone (for conversion)	2,800,000
Hydromorphone	448,000
Isomethadone	12
Levo-alpha-acetylmethadol	200,000
Levorphanol	14,300
Meperidine	10,822,000
Methadone (for sale)	4,551,000
Methadone (for conversion)	364,000
Methadone Intermediate (for conversion)	5,534,000
Methamphetamine (for conversion)	723,000
Methylphenidate	10,291,000
Morphine (for sale)	12,450,00
Morphine (for conversion)	76,735,000
Noroxymorphone (for sale)	2,000
Noroxymorphone (for conversion)	3,400,000
Opium	1,226,000
Oxycodone (for sale)	5,571,000
Oxycodone (for conversion)	37,300
Oxymorphone	11,200
Pentobarbital	15,100,000
Phencyclidine	40
Phenylacetone	5,280,000
1-Phenylcyclohexylamine	10
1-Piperidinocyclohexanecarbonitrile	12
Secobarbital	400,000
Sufentanil	1,000
Thebaine	9,217,000

Dated: November 16, 1995.
Stephen H. Greene,
Deputy Administrator.
[FR Doc. 95–28550 Filed 11–20–95; 8:45 am]
BILLING CODE 4410–09–M

Federal Register

Tuesday
November 21, 1995

Part II

The President

Proclamation 6850—National Great American Smokeout Day, 1995

Proclamation 6851—National Farm-City Week, 1995

Proclamation 6852—National Family Week, 1995

Executive Order 12980—Further Amendment to Executive Order No. 12852, as Amended

Federal Register
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Tuesday, November, 21, 1995

Presidential Documents

Title 3—

The President

Proclamation 6850 of November 15, 1995

National Great American Smokeout Day, 1995

By the President of the United States of America

A Proclamation

Children are our Nation's most precious resource and most sacred obligation. And all of us—whether parents or guardians, teachers or coaches, ministers or rabbis, friends or government officials—can play a role in nurturing young people and working to ensure their future health and happiness. Our children look to us for guidance, and we must do all we can to provide them with examples of personal responsibility and good citizenship.

Yet, every day, some 3,000 young Americans become regular smokers, falling victim to negative influences and provocative advertisements and putting themselves at risk of the diseases caused by nicotine addiction. Nearly 1,000 of these children will die prematurely, joining the more than 400,000 Americans who lose their lives to tobacco-related illnesses each year. For a country so deeply devoted to the protection of children, such numbers are a national tragedy.

Recognizing the vital need to reverse these devastating statistics, my Administration has proposed measures to limit children's access to tobacco products and to reduce tobacco's appeal. In seeking to protect our children, we join the countless caring citizens who are observing the "Great American Smokeout," a nationwide effort to raise av areness of nicotine addiction and the deadly risks associated with tobacco use. Working together on this day and every day throughout the year, we can create a brighter, healthier future for young Americans.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 16, 1995, as National Great American Smokeout Day. I call upon all Americans to join together in an effort to educate our children about the dangers of tobacco use, and I urge smokers and non-smokers alike to take this opportunity to begin healthier lifestyles that set a positive example for young people.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–28627
Filed 11–20–95; 11:46 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6851 of November 15, 1995

National Farm-City Week, 1995

By the President of the United States of America

A Proclamation

When America was a new country, farms were many and small. Farmers and their families used most of what they produced, and the rest was usually sold locally. Even in 1862, when Abraham Lincoln created the Department of Agriculture, 60 percent of our labor force gained their livelihood on the farm.

Today, while less than 2 percent of American workers are actually employed on farms, thanks to new approaches and advanced technologies, our farmers feed not only the people of the United States, but also much of the world. Agriculture remains our Nation's number one industry, generating $1 trillion in economic activity every year—over 15 percent of our gross domestic product—and it is our largest employer, providing 21 million jobs.

This prosperity is due in large part to farm-city partnerships. From the sowing of crops to the purchasing of food and fiber in urban supermarkets, a network of farmers, agribusiness industries, carriers and shippers, scientists, retail distributors, and consumers has cooperated to ensure that our food supply is safe, affordable, and nutritious. As we gather with family and friends during this special week, let us give thanks for the blessings of our lives, for America's agricultural richness, and for the collaboration among rural and urban communities that makes so much of this bounty possible.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in my by the Constitution and laws of the United States, do hereby proclaim November 17 through November 23, 1995, as National Farm-City Week. I call upon citizens in urban, suburban, and rural areas throughout the Nation to acknowledge the achievements of those who work together to promote America's agricultural abundance.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95-28628
Filed 11-20-95; 11:47 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6852 of November 15, 1995

National Family Week, 1995

By the President of the United States of America

A Proclamation

Blessed with an extraordinary diversity of people from every culture and nation around the globe, the United States has always drawn strength from our citizens' shared commitment to the importance of family life. The family is society's most basic unit, daily providing the acceptance, love, and reassurance that enable each of us to flourish and succeed. It creates the earliest and strongest bonds between individuals—bonds that we seek to build upon to improve our Nation as a whole.

Families are where we first learn important lessons about responsibility and where we absorb the ideals and traditions that define our unique American character. Yet we must do more to address the variety of troubles, such as substance abuse, domestic violence, and teenage pregnancy that have placed strains on the American family and threaten the well-being of our young people. At the same time, our efforts to combat crime and poverty cannot fully succeed until we rebuild our families and renew our commitment to their progress. A strong network of community, State, and national partnerships can also help families to face the challenges of everyday life.

This week, as young and old gather around the Thanksgiving table, it is crucial that we embrace and empower American families, offering them the opportunities they need to thrive and grow. Let us each take time to appreciate the value of our family relationships and rededicate ourselves to building essential ties of kinship among all people.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 19 through November 25, 1995, as National Family Week. I call upon Federal, State, and local officials to honor American families with appropriate ceremonies and programs; I encourage educators, community organizations, and religious leaders to celebrate the moral and spiritual strength to be drawn from family relationships; and I urge all the people of the United States to reaffirm their own familial bonds and to reach out to others in friendship and goodwill.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–2[illegible]9
Filed 11–20–9[illegible] 1:48 am]
Billing code 31[illegible]–01–P

Presidential Documents

Executive Order 12980 of November 17, 1995

Further Amendment to Executive Order No. 12852, as Amended

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to add four more members to the President's Council on Sustainable Development, it is hereby ordered that Executive Order No. 12852, as amended, is further amended by deleting the number "25" in section 1 of the order and inserting the number "29" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
November 17, 1995.

[FR Doc. 95-28630
Filed 11-20-95; 11:48 am]
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H.R. 1103/P.L. 104–48

Perishable Agricultural Commodities Act Amendments of 1995 (Nov. 15, 1995; 109 Stat. 424)

H.R. 1715/P.L. 104–49

Respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act. (Nov. 15, 1995; 109 Stat. 432)

H.R. 2002/P.L. 104–50

Department of Transportation and Related Agencies Appropriations Act, 1996 (Nov. 15, 1995; 109 Stat. 436)

S. 457/P.L. 104–51

To amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws. (Nov. 15, 1995; 109 Stat. 467)

H.R. 2020/P.L. 104–52

Treasury, Postal Service, and General Government Appropriations Act, 1996 (Nov. 19, 1995; 109 Stat. 468)

H.R. 2492/P.L. 104–53

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H.J. Res. 123/P.L. 104–54

Making further continuing appropriations for the fiscal year 1996, and for other purposes. (Nov. 19, 1995; 109 Stat. 540)

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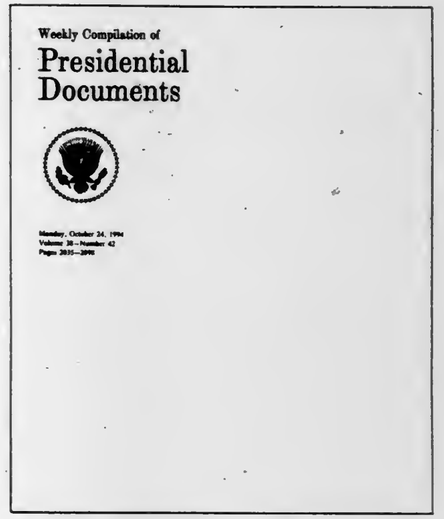
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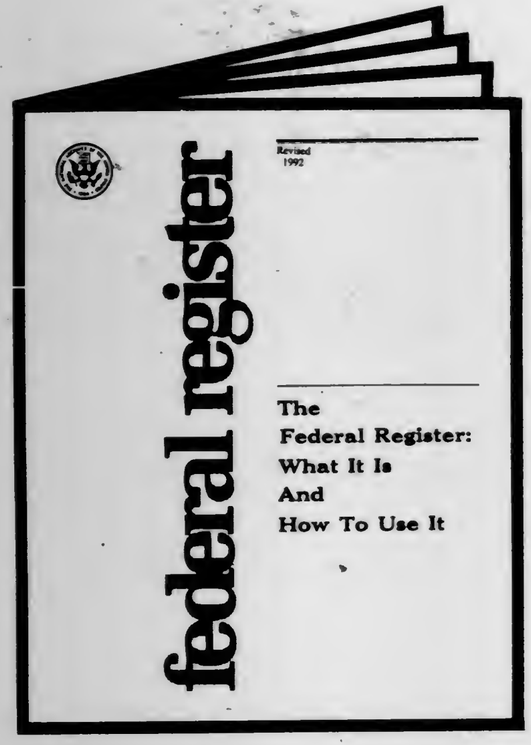
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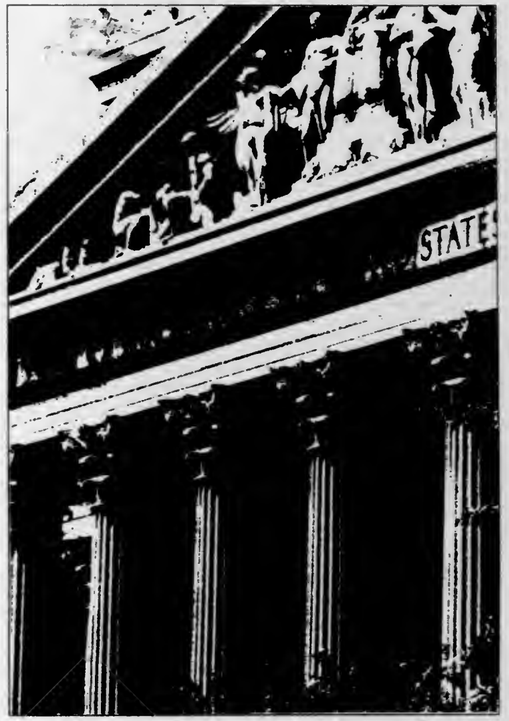
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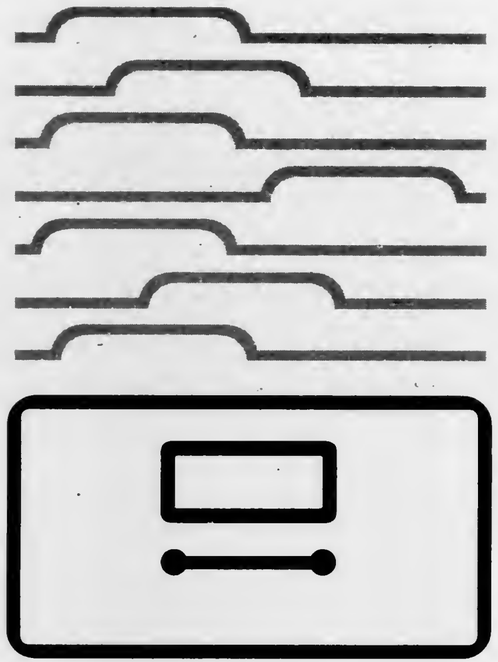
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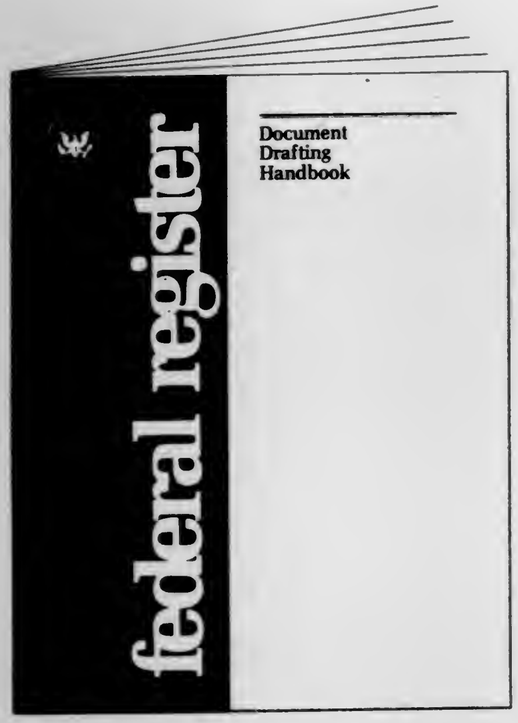
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 60, No. 225
Wednesday, November 22, 1995

Presidential Documents

Title 3—

The President

Presidential Determination No. 96–5 of November 13, 1995

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1994, part E of Title V, Foreign Relations Authorization Act, Fiscal years 1994 and 1995, Public Law 103–236, as amended, ("the Act"), I hereby:

(1) certify that it is in the national interest to suspend application of the following provisions of law until December 31, 1995:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2502); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization continues to abide by the commitments described in Section 583(b)(4) of the Act.

You are authorized and directed to transmit this determination to Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 13, 1995.

[FR Doc. 95–28765
Filed 11–20–95; 4:20 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 60, No. 225
Wednesday, November 22, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1416

RIN 0560–AD00

Voluntary Production Limitation Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the interim regulations which were published Wednesday, November 16, 1994, (59 FR 59280). This regulation relates to the provisions pertaining to the Voluntary Production Limitation Program (VPLP) concerning misrepresentation and scheme or device.

EFFECTIVE DATE: November 22, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Welch, USDA, Consolidated Farm Service Agency (CFSA), Room 3644–S, P.O. Box 2415, Washington, D.C. 20013–2415; telephone (202) 720–9884.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of this correction are applicable to the VPLP for the 1994 and 1995 crops of wheat and feed grains and set forth the terms and conditions under which producers of these commodities may enter into agreements with the Commodity Credit Corporation (CCC) to qualify for program benefits under the VPLP.

Need for Correction

As published, the interim regulations contain an error which may prove to be misleading and is in need of clarification.

List of Subjects in 7 CFR Part 1416

Voluntary Production Limitation Program.

Accordingly, 7 CFR Part 1416 is corrected by making the following correcting amendments:

1. The authority citation for Part 1416 continues to read as follows:

Authority: 7 U.S.C. 1444f, 1445b–3a, 15 U.S.C. 714b and 714c.

§ 1416.110 [Corrected]

2. In § 1416.110 the second paragraph (b) is redesignated as paragraph (c).

Signed at Washington, D.C., on November 15, 1995.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–28518 Filed 11–21–95; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–04–AD; Amendment 39–9436; AD 95–24–06]

Airworthiness Directives; Bell Helicopter Textron, a Division of Textron Canada, Model 206B and 206L Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, a Division of Textron Canada (BHT), Model 206B and 206L helicopters, that currently requires a revision to the Limitations section of the FAA-approved Supplemental Type Certificate (STC) Rotorcraft Flight Manual Supplement (RFMS) until replacement of the engine power-out warning sensor on BHT Model 206B and 206L helicopters equipped with Allison 250–C20R engines in accordance with certain supplemental type certificates. This amendment requires a revision to the Limitations section of the STC RFMS, but removes the requirement for replacement of the engine power-out warning sensor. This amendment is prompted by a reevaluation of the need for an engine power-out warning sensor based on the lack of reported operational occurrences of the false engine-out warnings. The actions specified by this AD are intended to maintain a heightened pilot awareness that false engine-out warnings may occur when practicing autorotations and could result in an unnecessary emergency autorotative landing.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of December 30, 1991 (56 FR 63631, December 5, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Soloy Corporation, 450 Pat Kennedy Way SW., Olympia, Washington 98501–7298. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Aerospace Engineer, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–2681, fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–23–15, Amendment 39–8084 (56 FR 63631, dated December 5, 1991), which is applicable to BHT Model 206B and 206L helicopters equipped with Allison 250–C20R engines in accordance with Supplemental Type Certificate No. SH4169NM, SH4179NM, or SH4729NM was published in the **Federal Register** on June 7, 1993 (58 FR 31916). That action proposed to require a revision to the Limitations section of the applicable STC RFMS in accordance with Soloy Corporation Service Bulletin 02–680, revised December 8, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of

the rule as proposed, except for some editorial changes and adding explanatory Note 1, relating to the scope of the applicability statement when modifications, alterations, or repairs have been made in the area subject to the requirements of the AD. Additionally, the FAA has revised the proposed estimated average labor rate from $55 per work hour to an estimated average labor rate of $60 per work hour in the preamble portion of this final rule. This revision will increase the estimated total cost impact of the AD from $1,045 to $1,140. Finally, the type certificate has been transferred to a new owner since the issuance of the proposal. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 19 helicopters of U.S. registry will be affected by this AD, that it will take approximately one work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,140.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety..

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8084 (56 FR 63631, December 5, 1991), and by adding a new airworthiness directive (AD), Amendment 39–9438, to read as follows:

AD 95–24–06 Bell Helicopter Textron, a division of Textron Canada (BHT): Amendment 39–9438. Docket No. 93–SW–04–AD. Supersedes AD 91–23–15, Amendment 39–8084.

Applicability: Model 206B and 206L helicopters, equipped with Allison 250–C20R engine power-out warning sensors, part number (P/N) 206–075–545–001, in accordance with Supplemental Type Certificate (STC) No. SH4169NM (applicable to Model 206L), SH4179NM (applicable to Model 206B), or SH4729NM (applicable to both Models 206B & L), certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To alert the pilot of a potential false engine-out warning when practicing autorotations that could result in an unnecessary emergency autorotative landing, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations section of the applicable FAA-approved STC Rotorcraft Flight Manual Supplement (RFMS) by adding the warning statement and note contained in the Description section of Soloy Corporation Service Bulletin 02–680, revised December 8, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(c) Special flight permits to accomplish the requirements of this AD will not be issued.

(d) The warning and note to be inserted into the Limitations section of the applicable STC RFMS are contained in Soloy Corporation Service Bulletin 02–680, revised December 8, 1992. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of December 30, 1991 (56 FR 63631, December 5, 1991). Copies may be obtained from Soloy Corporation, 450 Pat Kennedy Way SW., Olympia, Washington 98501–7298. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1995.

Issued in Fort Worth, Texas, on November 8, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–28517 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–SW–06–AD; Amendment 39–9425; AD 95–23–05]

Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company Model R22 series helicopters, that currently requires an inspection and repetitive visual checks for slippage of the tail rotor (T/R) drive and replacement of the T/R gearbox, if necessary. This amendment requires disassembly of the T/R gearbox to verify the installation of the input and output shaft keys (keys) between the input and output pinions and their respective shafts. This amendment is prompted by two incidents in which the key was not installed between the output shaft and the output pinion during assembly of the T/R gearbox at Robinson Helicopter Company. The actions specified by this AD are intended to prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5265, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–17–07, Amendment 39–9059 (59 FR 55203, November 4, 1994), which is applicable to Robinson Helicopter Company Model R22 series helicopters, was published in the **Federal Register** on May 26, 1995 (60 FR 27926). That action proposed to require an inspection and repetitive visual checks for slippage of the T/R drive until the T/R gearbox is disassembled to verify installation of the shaft keys. It also proposed to allow owner/operator daily preflight checks for misalignment of the alignment dots that are installed on the tail cone skin and the drive shaft flange. These checks do not require the use of tools, precision measuring equipment, training, pilot logbook endorsements, or the use of technical data not contained in the AD. Additionally, these checks are considered part of the normal pilot "Before Takeoff" and "After Landing" checks. These checks are additional measures to detect slippage of the T/R drive until installation of the keys is verified. These checks may be performed by an owner/operator holding at least a private pilot certificate, but must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The manufacturer was the only commenter, and it believes that AD 94–17–07, which required a one-time application of a 35-pound load to the tip of a tail rotor blade to induce slipping of the shaft and a daily "dot alignment" check for slippage, provides adequate safeguards to assure the safety of the helicopter. The manufacturer notes that proof tests were performed on various gearboxes with keys removed and the load required to cause slippage varied between 14 and 27 pounds. The load tests combined with no reports of additional defective gearboxes leads the manufacturer to assert that the one-time application of the 35-pound load should be the terminating action. The FAA does not agree. The FAA has determined that the one-time application of a 35-pound weight on the tip of the tail rotor blade to test for slippage of the shaft cannot be considered terminating action for Priority Letter 94–17–07. Slippage is a function of surface friction of the material(s) and the attaching hardware clamping pressure, which may vary due to the condition of the gearbox. A no-slippage condition does not ensure that the keys have been installed. Also, there is no assurance that the torque of the retaining nuts will be maintained until the next gearbox overhaul. Although no cases of slippage have been reported as a result of Priority Letter AD 94–17–07, there is no assurance that the keys have been installed.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for deleting proposed paragraph (a)(2) since this procedure is not necessary to check for the misalignment of dots, deleting the requirement to vibro-etch the AD number on the output cartridge since the requirement to vibro-etch the AD number on the input flange is sufficient to identify installation of the keys, exempting from the requirements of this AD 196 additional serial-numbered gearboxes that have been verified by the manufacturer to have both keys installed, adding certain non-substantive, descriptive, clarifying words, adding a clarifying figure, and making various editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 500 helicopters of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $150,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

Section 39.13 is amended by removing Amendment 39–9059 (59 FR 55203, November 4, 1994), and by adding a new airworthiness directive (AD), Amendment 39–9425, to read as follows:

AD 95–23–05 Robinson Helicopter Company: Amendment 39–9425. Docket No. 95–SW–06–AD. Supersedes AD 94–17–07, Amendment 39–9059.

Applicability: Model R22 series helicopters certified in any category, with tail rotor (T/R) gearboxes that were manufactured or overhauled by Robinson Helicopter Company prior to June 8, 1992. The following gearbox serial numbers have been determined to have the T/R input and output shaft keys installed and are therefore exempt from this AD: 0012, 0013, 0014, 0015, 0018, 0020, 0021, 0030, 0040, 0054, 0062, 0079, 0091, 0095, 0098, 0107, 0108, 0121, 0134, 0137, 0146, 0149, 0153, 0169, 0179, 0184, 0185, 0191, 0193, 0201, 0205, 0227, 0228, 0235, 0239, 0241, 0248, 0258, 0262, 0269, 0272, 0277, 0280, 0296, 0304, 0321, 0333, 0342, 0345, 0346, 0355, 0365, 0385, 0387, 0392, 0415, 0417, 0424, 0431, 0432, 0439, 0444, 0447, 0503, 0504, 0505, 0525, 0542, 0546, 0547, 0548, 0554, 0558, 0559, 0565, 0574, 0576, 0579, 0592, 0594, 0597, 0603, 0604, 0605, 0615, 0619, 0632, 0634, 0639, 0641, 0644, 0650,

0656, 0662, 0663, 0665, 0674, 0686, 0689, 0696, 0697, 0700, 0701, 0702, 0707, 0722, 0734, 0735, 0736, 0742, 0755, 0756, 0759, 0767, 0777, 0778, 0784, 0786, 0805, 0811, 0832, 0836, 0839, 0842, 0845, 0850, 0862, 0863, 0866, 0868, 0880, 0885, 0887, 0892, 0926, 0937, 0939, 0952, 0970, 0983, 0986, 0996, 0997, 0998, 0999, 1007, 1016, 1018, 1021, 1029, 1030, 1035, 1048, 1062, 1072, 1078, 1081, 1087, 1104, 1116, 1121, 1126, 1129, 1132, 1141, 1151, 1176, 1182, 1186, 1187, 1197, 1199, 1205, 1208, 1217, 1222, 1224, 1228, 1233, 1237, 1245, 1249, 1252, 1254, 1255, 1269, 1274, 1290, 1293, 1299, 1301, 1307, 1310, 1311, 1323, 1328, 1330, 1333, 1338, 1339, 1341, 1342, 1350, 1351, 1361, 1371, 1379, 1385, 1388, 1392, 1404, 1412, 1414, 1428, 1429, 1435, 1438, 1442, 1450, 1460, 1468, 1494, 1499, 1505, 1508, 1509, 1512, 1514, 1526, 1541, 1544, 1565, 1578, 1586, 1593, 1595, 1597, 1605, 1610, 1627, 1628, 1629, 1636, 1643, 1647, 1648, 1652, 1654, 1661, 1676, 1677, 1686, 1687, 1698, 1701, 1702, 1706, 1708, 1710, 1714, 1724, 1731, 1732, 1738, 1739, 1741, 1750, 1752, 1754, 1757, 1759, 1766, 1767, 1769, 1783, 1785, 1786, 1800, 1803, 1807, 1808, 1814, 1816, 1823, 1828, 1830, 1833, 1837, 1844, 1846, 1851, 1852, 1858, 1861, 1868, 1869, 1871, 1874, 1886, 1889, 1893, 1898, 1899, 1909, 1911, 1912, 1913, 1920, 1922, 1927, 1928, 1948, 1951, 1959, 1961, 1963, 1965, 1966, 1974, 1978, 1983, 1992, 1996, 2002, 2025, 2028, 2034, 2037, 2043, 2051, 2058, 2071, 2100, 2101, 2103, 2108, 2115, 2126, 2129, 2136, 2160, 2166, 2170, 2180, 2182, 2193, 2197, 2203, 2216, 2231, 2242, 2254, 2265, 2269, 2272, 2279, 2280, 2283, 2285, 2289, 2294, 2298, 2299, 2303, 2304, 2308, 2314, 2337, 2346, 2357, 2360, 2362, 2364, 2377, 2380, 2381, 2387, 2395, 2406, 2408, 2410, 2414, 2416, 2419, 2420, 2421, 2422, 2423, 2425, 2431, 2435, 2436, 2459, 2467, 2479, 2492, 2498, 2513, 2529, 2531, 2536, 2539, 2551, 2556, 2557, 2574, 2579, 2582, 2587, 2591, 2604, 2605, 2607, 2609, 2616, 2627, 2634, 2642, 2651, 2672, 2682, 2683, 2687, 2690, 2697, 2716, 2719, 2720, 2721, 2731, 2736, 2784, 2797, 2799, 2815, 2826, 2841, 2842, 2845, 2862, 2863, 2873, 2937, 2945, 3004, 3109.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, install alignment dots as follows: Remove the transparent inspection cover on the tail cone and rotate the T/R blades so that one blade leading edge is aligned with the tail cone centerline. Mark a dot on the tail cone skin aligned with the tip of the blade leading edge. With the same alignment, mark a dot on the centerline of the tail cone skin at the edge of the inspection hole, and mark a corresponding dot on the drive shaft flange (see figure 4).

(b) Conduct the following daily preflight checks for misalignment of the alignment dots until compliance with paragraph (c) of this AD has been accomplished: Check for misalignment of the alignment dots installed on the tail cone skin and the drive shaft flange by rotating the T/R blade so that the alignment dot is visible in the inspection window and the tip of the T/R blade leading edge aligns with the dot on the tail cone skin. Ensure that the drive shaft flange dot is aligned with the dot on the centerline of the tail cone skin at the edge of the inspection window. If any misalignment is detected, before further flight, replace the T/R gearbox with an airworthy one that has been determined to have both the input and output keys installed in accordance with paragraph (c) of this AD or other FAA-approved procedures, or is exempt from the requirements of this AD as listed in the applicability section of this AD. The daily preflight checks required by this AD may be performed by an owner/operator holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with paragraph (b) of this AD, in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(c) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, or at the next annual inspection, whichever occurs first, verify installation of both the input and output shaft keys as follows:

(1) Cut and remove the safety wire securing the chip detector to the sight gage on the T/R gearbox. Place a container under the T/R gearbox to catch the drained oil and remove the chip detector. Remove and discard the gasket on the chip detector.

(2) Remove the T/R gearbox from the helicopter in accordance with the applicable maintenance manual.

(3) Cut and remove the safety wire securing the filler vent plug to the sight gage on the T/R gearbox and remove the filler vent plug and sight gage. Remove and discard the gasket on the filler vent plug and sight gage.

(4) Remove and disassemble the output cartridge, P/N A111–1, from the T/R gearbox case, P/N A109–1 (see figure 1) as follows:

(i) Place a mark across the gear case, P/N A109–1, and output cartridge, P/N A111–1, with a felt pen or grease pencil to ensure proper reassembly.

(ii) Cut and remove the safety wire around the four MS20074–04–06 bolts securing the output cartridge to the gear case. Remove and retain each of the four bolts and their associated AN960–416L washer(s), noting the washer stacks for reassembly. Separate the output cartridge from the gear case (see figure 1).

(iii) Remove and discard the safety wire, MS16562–24 or 52–022–094–0437 roll pin, and MS14145L6 or LCN6M–624 retaining nut. Remove the AN960–616L washer(s) and the washer, P/N A141–2, noting the washer(s) location for reassembly. Do not damage the output shaft, P/N A107–1, or the shim(s), P/N A118–1 through -6, located next to the flange of the output cartridge when removing the retaining nut.

(iv) Visually inspect for the presence of the output shaft key, P/N A114–2, between the pinion gear, P/N A545–1, and the output shaft (see figure 2).

(v) If the output shaft key is missing, replace the T/R gearbox with an airworthy gearbox that has been determined to have the output key installed. Report any T/R gearbox that has a missing key within 10 days after the inspection to the Manager, Los Angeles Manufacturing Inspection Office, FAA, Northwest Mountain Region, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5290, fax (310) 627–5293. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(vi) If the output key is installed, reinstall the washer, P/N A141–2, and AN960–616L washer(s). Install an MS14145L6 or LCN6M–624 retaining nut, and torque to 225–275 in.-lbs. Install a MS16562–24 or 52–022–094–0437 roll pin, and safety wire using 0.032-inch stainless steel safety wire. The safety wire pigtail must be wrapped tightly around the retaining nut.

(5) Remove and disassemble the input cartridge, P/N A110–1, from the T/R gear case, P/N A109–1, as follows:

(i) Place two marks across the gear case, P/N A109–1, and input cartridge, P/N A110–1, with a felt pen or grease pencil to ensure proper reassembly.

(ii) Cut and remove the safety wire around the four MS20074–04–06 bolts securing the input cartridge to the gear case. Remove each of the four bolts and their associated AN960–416L washer(s), noting the washer stacks for reassembly. Separate the input cartridge from the gear case (see figure 1).

(iii) Secure the input cartridge to a block of wood through the two bolt holes in the input shaft assembly, P/N A116–1 (see figure 1). Place the block of wood in a vise. Remove and discard the safety wire, roll pin, and retaining nut. Remove the AN960–616L washer(s), and washer, P/N A141–1, noting the washer(s) location for reassembly. Do not damage the input shaft or shim(s), P/N A118–1 through -6, located next to the flange of the input cartridge.

(iv) Visually inspect for the presence of the input shaft key, P/N A114–1, between the gear, P/N A545–2, and the input shaft (see Note on figure 2).

(v) If the input shaft key is missing, replace the T/R gearbox with an airworthy gearbox that has been determined to have the input key installed. Report any T/R gearbox that has a missing key within 10 days after the inspection to the Manager, Los Angeles Manufacturing Inspection District Office, FAA, Northwest Mountain Region, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5290, fax (310) 627–5293. Reporting requirements have been approved by the Office of Management and Budget, and assigned OMB control number 2120–0056.

(vi) If the input key is installed, reinstall the AN960–616L washer(s) and washer, P/N A141–1. Install an MS14145L6 or LCN6M–624 retaining nut, and torque to 225–275 in.-lbs. Install a MS16562–24 or 52–022–094–0437 roll pin and safety wire using 0.032-inch stainless steel safety wire. The safety wire pigtail must be wrapped tightly around the retaining nut. Vibro-etch the final rule AD number on the input cartridge attachment flange.

(6) Reassemble the input and output cartridges to the T/R case as follows:

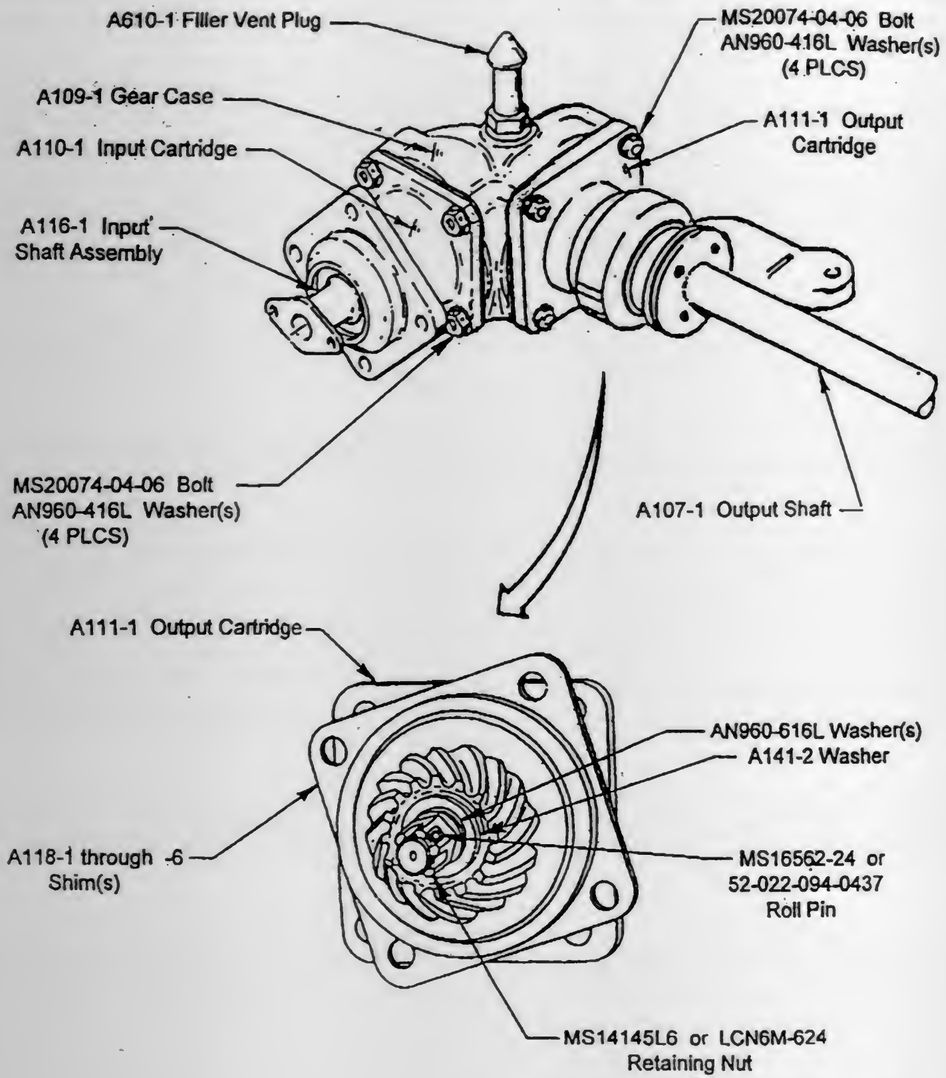
(i) Color the "X" marked on the pinion gear, P/N A545–1, (one tooth only) of the output cartridge and on the gear, P/N A545–2, (located on two consecutive teeth) of the input cartridge with a red marker to make reinstallation easier. Note that these three gear teeth may already be colored (see figure 3).

(ii) Visually inspect the edge of the chamfers in the gear case, making sure they are round and smooth so that the O-ring will not be damaged upon installation.

(iii) Remove and discard the O-ring on both the input cartridge and output cartridge. Replace the O-ring with National P/N AS142 B46–70, or Parker P/N 2–142 N674–70 O-ring. Lubricate the replacement O-ring with oil, P/N A257–2, and install an O-ring on each cartridge.

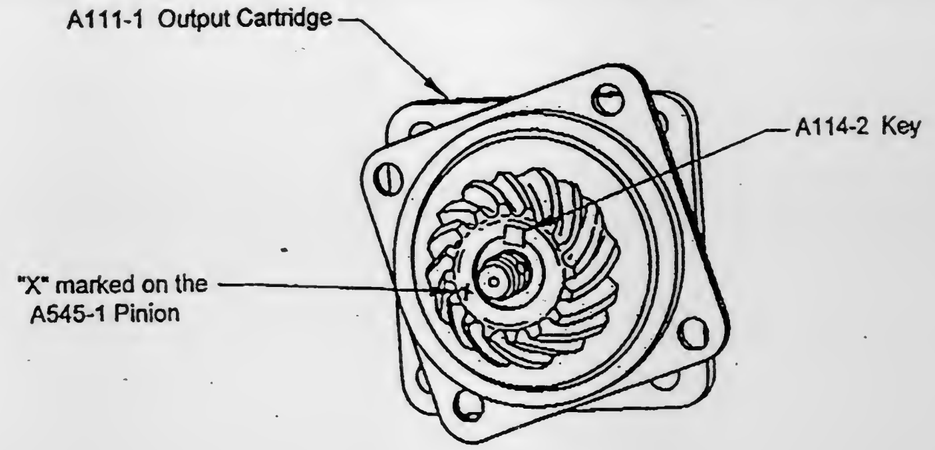
(iv) Reinstall the output cartridge on the gear case with the four MS20074–04–06 bolts and AN960–416L washer stacks that were removed in accordance with paragraph (c)(4)(ii). Reinstall the input cartridge on the gear case with the four MS20074–04–06 bolts and AN960–416L washer stacks that were removed in accordance with paragraph (c)(5)(ii). Do not torque the bolts at this time.

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Note: The safety wire has been removed for clarity

Figure 1



Note: The A114-1 Key for the A110-1 Input Cartridge is located similar to the A111-1 Output Cartridge depicted above

Figure 2

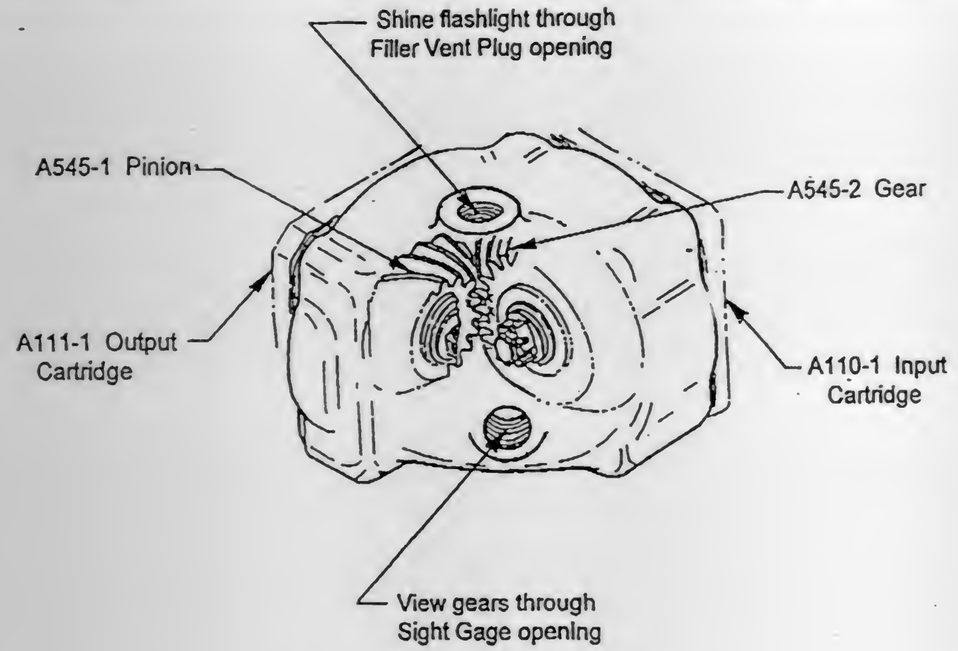


Figure 3

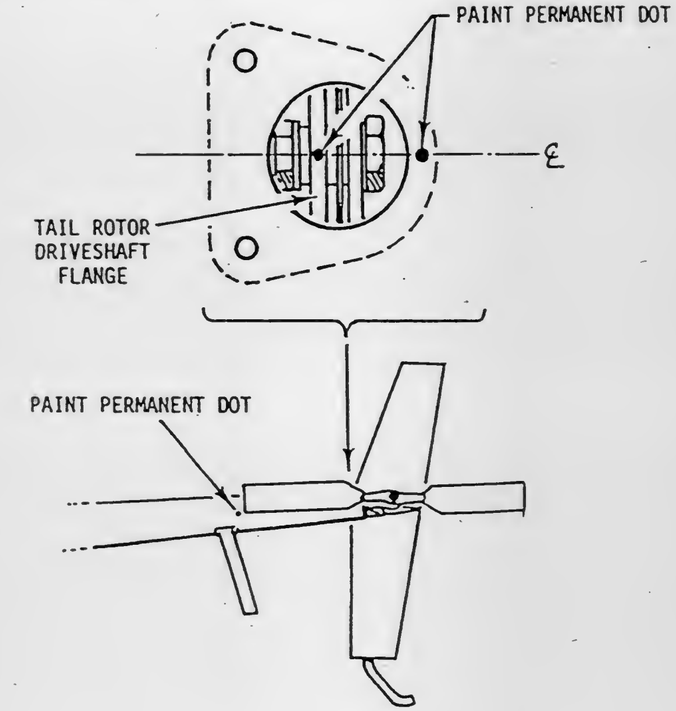


Figure 4

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(v) Look through the sight gage opening while using a flashlight pointed into the filler vent hole to verify the gears are meshed properly. Gears are properly meshed when the "X" marked on the pinion gear of the output cartridge is between the two "X's" marked on the gear of the input cartridge (see figure 3). Do not torque the MS20074–04–06 bolts until both cartridges are installed on the case and the gears are properly meshed. Torque the output cartridge bolts to 60 in.-lbs. first, then torque the input cartridge bolts to 60 in.-lbs. Safety wire with 0.032-inch stainless steel safety wire.

(vi) Reinstall sight gage with MS35769–11 or AN900–10 gasket. Oil threads to prevent threads from locking up. Torque to 200 in.-lbs.

(vii) Reinstall the chip detector with a MS35769–8 or AN900–9 gasket after lubricating the threads with oil. Torque the chip detector to 150 in.-lbs. Safety wire the sight gage to the chip detector using 0.032-inch stainless steel safety wire.

(viii) Fill the T/R gearbox with oil to the level indicated on the T/R sight glass decal. Reinstall the filler vent plug, P/N A610–1, with a MS35769–9 or AN900–8 gasket, after lubricating the threads with oil.

(ix) Inspect the T/R gearbox assembly to ensure that the shafts and gears rotate freely.

(7) Reinstall the T/R gearbox onto the helicopter in accordance with the applicable maintenance manual. Verify that the oil level of the T/R gearbox is at the recommended mark on the sight glass.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on December 27, 1995.

Issued in Fort Worth, Texas, on November 2, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–28537 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for three new animal drug applications (NADA's) from Vet-A-Mix, Inc., to Lloyd, Inc.

EFFECTIVE DATE: November 22, 1995.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Vet-A-Mix, Inc., 604 West Thomas Ave., P.O. Box A, Shenandoah, IA 51601, has informed FDA of a change of sponsor name for approved NADA's 92–836 (diethylcarbamazine citrate), 140–866 (yohimbine hydrochloride injectable), and 140–921 (prednisolone tablets) to Lloyd, Inc., 604 West Thomas Ave., Shenandoah, IA 51601. Accordingly, FDA is amending the regulations in 21 CFR 520.622c, 520.1880, and 522.2670 to reflect the change of sponsor name.

List of Subjects in 21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.622c [Amended]

2. Section 520.622c *Diethylcarbamazine citrate chewable tablets* is amended in paragraph (b)(3) by removing "011789" and adding in its place "061690".

§ 520.1880 [Amended]

3. Section 520.1880 *Prednisolone tablets* is amended in paragraph (b) by removing "011789" and adding in its place "061690".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

4. The authority citation of 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.2670 [Amended]

5. Section 522.2670 *Yohimbine injectable* is amended in paragraph (b) by removing "032998" and adding in its place "061690".

Dated: November 13, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–28542 Filed 11–21–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Selenium/Vitamin E Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Fort Dodge Laboratories. The ANADA provides for subcutaneous or intramuscular use of a selenium/vitamin E injection for prevention and treatment of selenium/tocopherol deficiency syndrome in weanling calves and breeding beef cattle.

EFFECTIVE DATE: November 22, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, 800 Fifth St. NW., P.O. Box 518, Fort Dodge, IA 50501, filed ANADA 200–109, which provides for subcutaneous or intramuscular use of Velenium™ (selenium, vitamin E) Injection for prevention and treatment of selenium/tocopherol deficiency syndrome in weanling calves and breeding beef cattle. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–109 for Fort Dodge's selenium/vitamin E injection is as a generic copy of Schering-Plough's Mu-Se® (selenium/vitamin E) injection in NADA 30–314. The ANADA is approved as of October 20, 1995, and the regulations are amended in 21 CFR 522.2100(d)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2100 is amended by revising paragraph (d)(2) to read as follows:

§ 522.2100 Selenium, vitamin E injection.

* * * * *

(d) * * *

(2) *Sponsors.* See Nos. 000061 and 000856 in § 510.600(c) of this chapter.

* * * * *

Dated: November 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–28543 Filed 11–21–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Sarafloxacin Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Abbott Laboratories. The NADA provides for use of sarafloxacin hydrochloride solution for injection in day-old broiler chickens for control of early mortality associated with *Escherichia coli* organisms susceptable to sarafloxacin.

EFFECTIVE DATE: November 22, 1995.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center For Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064–4000, filed NADA 141–018, which provides for use of SaraFlox® Injection (sarafloxacin hydrochloride solution for injection) to be used in day-old broiler chickens for control of early mortality associated with *E. coli* organisms susceptable to sarafloxacin. The NADA is approved as of October 12, 1995, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.2095 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning October 12, 1995, because the NADA contains reports of new clinical or field investigations and new human food safety studies essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2095 is added to read as follows:

§ 522.2095 Sarafloxacin solution for injection.

(a) *Specifications.* Each milliliter contains sarafloxacin hydrochloride equivalent to 50 milligrams of sarafloxacin in a 20 percent propylene glycol solution.

(b) *Sponsor.* See No. 000074 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.594 of this chapter.

(d) *Conditions of use.* Day-old broiler chickens:

(1) *Amount.* 0.1 milligram sarafloxacin per 0.2 milliliter dose.

(2) *Indications for use.* For control of early mortality in day-old broiler chickens associated with *Escherichia coli* organisms susceptable to sarafloxacin.

(3) *Limitations.* A single subcutaneous 0.2 milliliter injection in the neck. Dilute 1 milliliter of SaraFlox® with 100 milliliters of sterile water or physiologic saline to provide 0.1 milligram sarafloxacin in a 0.2 milliliter dose. Use entire contents of diluted solution within 24 hours. No preslaughter drug withdrawal period is required when the product is used as directed. Use in a manner other than that indicated or with dosages in excess of that recommended may result in illegal drug residues in edible tissues. Do not use in laying hens producing eggs for human consumption. Do not use in replacement layers or fowl intended for breeding

purposes. The effects of sarafloxacin on the reproductive function of treated fowl have not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–28544 Filed 11–21–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL135–1–7205(a); FRL–5332–7]

Approval of Section 112(l) Program of Delegation; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving, through "direct final" procedure, a request for delegation of the Federal air toxic program pursuant to section 112(l) of the Clean Air Act of 1990. The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority will occur automatically upon EPA's promulgation of the standards. This request for approval of a mechanism of delegation encompasses all sources not covered by the part 70 program.

DATES: This action is effective January 22, 1996, unless adverse or critical comments not previously addressed by the State or EPA are received by December 22, 1995, in which case this rulemaking action will be taken as the proposed rule published in the proposed rules section of this **Federal Register.** If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Jennifer Buzecky at (312) 886–3194 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzecky, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3194.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the CAA enables the EPA to approve state air toxic programs or rules to operate in place of the Federal air toxic program. The Federal air toxic program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxic program is granted by the EPA if the Agency finds that the State program: (1) Is "no less stringent" than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxic program can be implemented and enforced by State or local agencies, as well as EPA. Implementation by local agencies is dependent upon appropriate subdelegation.

On August 17, 1995, Illinois submitted to EPA a request for delegation of authority to implement and enforce the air toxic program under section 112 of the CAA. On September 8, 1995, EPA found the State's submittal complete. In this document EPA is taking final action to approve the program of delegation for Illinois.

II. Review of State Submittal

A. Program Summary

Requirements for approval, specified in section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under part 70 (40 CFR 70.4). On March 7, 1995, EPA promulgated a final interim approval under part 70 of the State of Illinois' Operating Permit Program. 60 FR 12478. Included in that notice was the approval of a mechanism for delegation of all section 112 standards for sources subject to the part 70 program. Sources subject to the part 70 program are those sources that are operating pursuant to a part 70 permit issued by the State, local agency or EPA. Sources not subject to the part 70 program are those sources that are not required to obtain a part 70 permit from either the State, local agency or EPA. Because Illinois' August 17, 1995, request for delegation encompasses all existing and future standards as they apply to sources NOT subject to part 70, this action supplements the earlier part 70 rulemaking in that Illinois can now implement and enforce the section 112 air toxic program regardless of a source's part 70 applicability.

The Illinois program of delegation for sources not subject to part 70 will not include delegation of section 112(r) authority. The program will, however, include the delegation of the 40 CFR part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State. Furthermore, Illinois' request for delegation includes the delegation of all existing National Emission Standards for Hazardous Air Pollutants (NESHAP) standards, 40 CFR part 61, with the exception of radionuclides.

An example of an existing NESHAP is the asbestos standard, 40 CFR part 61, subpart M. Implementation of this standard includes the primary responsibility for accepting asbestos notifications. Sources in Illinois subject to the asbestos standard should henceforth submit their notification forms to the Illinois Environmental Protection Agency (IEPA).

As stated above, this document constitutes EPA's approval of Illinois' program of straight delegation of all existing and future air toxic standards, except for section 112(r) standards as they pertain to non-part 70 sources. Straight delegation means that the State will not promulgate individual State rules for each section 112 standard promulgated by EPA, but will implement and enforce without changes the section 112 standards promulgated by EPA. The Illinois program of straight delegation will operate as follows: Upon promulgation of a section 112 standard, the State of Illinois automatically receives the authority and assumes responsibility for the timely implementation and enforcement required by the standard, as well as any further activities agreed to by IEPA and EPA. Some activities necessary for effective implementation of the standard include receipt of initial notifications, recordkeeping, reporting and generally assuring that sources subject to the standard are aware of its existence. When deemed appropriate, IEPA will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism are set forth in a series of letters between EPA and IEPA, copies of which are located in the docket associated with this rulemaking.

B. Criteria for Approval

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under Section 112(l) of the CAA. 40 FR 62262. That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval of a program to implement and enforce Federal section 112 rules as promulgated without changes are found at 40 CFR 63.91. The specific elements required for approval in § 63.91 were promulgated to address the procedures required for approval pursuant to section 112(l)(5) of the CAA. Any request for approval must meet all section 112(l) approval criteria, as well as all approval criteria of § 63.91. A more detailed analysis of the State's submittal pursuant to § 63.91 is contained in the Technical Support Document included in the docket of this rulemaking.

Under section 112(l) of the CAA, approval of a State program is granted by the EPA if the Agency finds that it: (1) Is "no less stringent" than the corresponding Federal program, (2) that the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

C. Analysis

EPA is approving Illinois' mechanism of delegation because the State's submittal meets all requirements necessary for approval under section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Illinois program is no less stringent than the corresponding Federal program or rule because the State has requested straight delegation of all standards unchanged from the Federal standards.

Second, the State has shown that it has adequate authority and resources to implement the program. The Illinois Environmental Protection Act authorizes IEPA to issue operating permits to part 70 and non-part 70 sources of regulated pollutants. 415 ILCS 5/1 et seq. The authority to issue permits includes the authority to incorporate permit conditions that implement Federal section 112 standards. Furthermore, Illinois has the authority to implement and enforce each section 112 regulation, emission standard or requirement (regardless of part 70 applicability), perform inspections, request compliance information, incorporate requirements into permits and to bring civil and criminal enforcement actions to recover penalties and fines. Adequate resources will be obtained through section 105 grant monies awarded to States by EPA and through any monies from the State's Title V program that can be used to fund acceptable Title V activities with respect to these non-part 70 sources.

Third, upon promulgation of a standard, Illinois will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirement and notifying these sources of the applicable requirement. Such schedule is sufficiently expeditious for approval.

Fourth, nothing in the Illinois program for straight delegation is contrary to Federal guidance.

D. Determinations

In approving this delegation, EPA expects that the State will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the Clean Air Act or 40 CFR parts 61 and 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

III. Final Action

The EPA is promulgating final approval of the August 17, 1995, request by the State of Illinois for straight delegation of section 112 standards unchanged from Federal standards because the request meets all requirements of 40 CFR 63.91 and section 112(l) of the CAA. Upon the effective date of this document, the following Federal standards are automatically delegated to the State of Illinois: (1) All existing NESHAPs, with the exception of radionuclides; (2) existing section 112 standards, excluding section 112(r), and (3) the part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State. Future delegation of the section 112 standards to the State will occur automatically upon EPA's promulgation of the standard.

Effective immediately, all notifications, reports and other correspondence required under section 112 standards and existing NESHAPs should be sent to the State of Illinois rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: Illinois Environmental Protection Agency, Bureau of Air, Permit Section, 2200 Churchill Road, P.O. Box 19506, Springfield, Illinois 62794–9506.

EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, the rulemaking will not be deemed final if timely unaddressed adverse or critical comments are filed. The "direct final" approval shall be effective on January 22, 1996, unless EPA receives such adverse or critical comments by December 22, 1995. EPA is now soliciting public comments on this action. Any parties interested in commenting on this action should do so at this time. In the proposed rules section of this **Federal Register**, EPA is publishing a separate document which constitutes a "proposed approval" of the requested delegation. If EPA receives timely comments adverse to or critical of the approval discussed above, which have not been addressed by the State or EPA, EPA will publish a **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document based on the proposed approval. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Copies of the State's submittal and other information relied upon for the final approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to the State's delegated air toxic program. EPA shall consider each request for revision to the State's delegated air toxic program in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603

and 604.) Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Straight delegation of the section 112 standards unchanged from the Federal standard does not create any new requirements, but simply allows the state to administer requirements that have been or will be separately promulgated. Therefore, because this delegation approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that the approval action promulgated today does not constitute a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The state voluntarily requested this delegation under section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by part 70. The delegation imposes no new Federal requirements. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the state.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 22, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Authority: 42 U.S.C. 7401, et seq.

Dated: November 2, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–28387 Filed 11–21–95; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Part 70

[GA–95–01; FRL–5333–7]

Clean Air Act Final Interim Approval of Operating Permits Program; Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the Georgia Department of Natural Resources, Environmental Protection Division for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 22, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, Georgia 30365, on the 3rd floor of the Tower Building. Interested persons wanting to examine these documents, contained in EPA docket number GA–95–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–3555, Ext. 4149.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal program.

On September 26, 1995, EPA proposed interim approval of the operating permits program for the State of Georgia. *See* 60 FR 49533. The September 26, 1995 notice also proposed approval of Georgia's interim mechanism for implementing section 112(g) and for delegation of section 112 standards as promulgated. EPA did not receive any comments on the proposal. In this action, EPA is promulgating interim approval of Georgia's operating permits program, and approving the section 112(g) and section 112(l) mechanisms noted above.

II. Final Action and Implications

A. Title V Operating Permits Program

The EPA is promulgating interim approval of the operating permits program submitted by the State of Georgia on November 12, 1993, and supplemented on June 24, 1994; November 14, 1994; and June 5, 1995. Georgia's program substantially, but not fully, meets the requirements of part 70 and meets the interim approval requirements under 40 CFR 70.4. The State must make the following changes to receive full approval: (1) Revise Rule 391–3–1(10)(d)1.(ii) to provide for the notification requirements and permit shield extension found in § 70.4(b)(12)(iii); and (2) correct all deficiencies in its insignificant activities regulation.

The scope of the State's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of Georgia, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until December 22, 1997. During this interim approval period, the State of Georgia is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State fails to submit a complete corrective program for full approval by June 23, 1997, EPA will start an 18-month clock for mandatory sanctions. If Georgia then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Georgia has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Georgia had come into compliance. In any case, if, six months after application of the first sanction, Georgia still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Georgia's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Georgia has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Georgia has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program.

Moreover, if EPA has not granted full approval to Georgia's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State upon interim approval expiration.

B. Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Georgia's preconstruction review program found in Rule 391–3–1–.03 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and Georgia's adoption of rules specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by Georgia to implement 112(g). The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the State with adequate time to adopt regulations consistent with Federal requirements.

C. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of Georgia's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA is approving the delegation of all existing standards and programs under 40 CFR parts 61 and 63. This program for delegation applies to both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval are contained in docket number GA–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for Georgia in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Georgia

(a) The Georgia Department of Natural Resources submitted on November 12, 1993, and supplemented on June 24, 1994; November 14, 1994; and June 5, 1995; interim approval effective on December 22, 1995; interim approval expires December 22, 1997.

(b) (Reserved)

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[FR Doc. 95–28385 Filed 11–21–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 586

[Docket No. 95–92, Notice 01]

RIN 2127–AF84

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment.

SUMMARY: This document deletes several obsolete sections of Standard 214, "Side Impact Protection." They relate to (1) the phase-in of dynamic side impact protection requirements for passenger cars, (2) the phase-in of quasi-static side door strength requirements for trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less (these vehicles are referred to as "LTVs"), and (3) the one-year delay of the quasi-static requirements for double opening cargo doors, doors with no windows, and certain contoured doors on LTVs. These sections are obsolete because the time periods and events to which they relate are all in the past. This document also removes from Part 586, "Side Impact Phase-In Reporting Requirements," the reporting requirements associated with the LTV phase-in. These amendments improve the clarity and conciseness of Standard 214 and Part 586.

DATES: Effective Date: This rule is effective December 22, 1995.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Dr. William Fan, Office of Vehicle Safety Standards, NPS–14, telephone (202) 366–4922. For legal issues: Ms. Deirdre Fujita, Office of Chief Counsel, NCC–20, (202) 366–2992. Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION: Pursuant to the President's March 4, 1995 directive, "Regulatory Reinvention Initiative," to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission. In reviewing Standard 214, the agency identified several obsolete sections relating to (1) the phase-in of dynamic side impact protection requirements for passenger cars, (2) the phase-in of quasi-static side door strength requirements for trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less (these vehicles are referred to as "LTVs"), and (3) a one year delay of the quasi-static requirements for double opening cargo doors, doors with no windows, and certain contoured doors on LTVs. These sections are obsolete because the time periods and events to which they relate are all in the past. To improve the clarity and conciseness of Standard 214, the agency is deleting these sections from the standard.

The obsolete sections of the standard relating to the phase-in of dynamic side impact protection requirements for passenger cars are in S8.1 and S8.2. S8.1 sets forth the phase-in requirements for passenger cars manufactured on or after September 1, 1993 and before September 1, 1994. (Roughly speaking, under S8.1, manufacturers had to ensure that not less than 10 percent of their annual production of passenger cars met the dynamic side impact standard.) S8.2 sets forth the requirements for passenger cars manufactured on or after September 1, 1994 and before September 1, 1995. (Under S8.2, manufacturers had to ensure that not less than 25 percent of their annual production met the standard.) Since the parts of the phase-in schedule to which S8.1 and S8.2 relate are over, the agency is deleting those sections.

(S8.3 and S8.4 are retained for now, since they contain current requirements. S8.3 sets forth phase-in requirements for passenger cars manufactured on or after September 1, 1995 and before September 1, 1996. Under S8.3, not less than 40 percent of a manufacturer's annual production of cars have to meet the dynamic test requirements. The phase-in ends September 1, 1996. On and after that date, all passenger cars must meet the requirements. S8.4 has provisions for calculating the average annual production of passenger cars for cars produced by more than one manufacturer.)

The obsolete sections of Standard 214 that relate to the phase-in of quasi-static side door strength requirements for LTVs are in S3(a)(3), S9, and S9.1 through S9.2.3. Since the phase-in is over, those sections need not be retained.

The one-year delay of the effective date of the LTV quasi-static requirements, until September 1, 1994, is in S3(e)(5), S3(e)(6) and S3(e)(7) for double opening cargo doors, doors with no windows, and certain contoured doors, respectively. These sections are obsolete since that date has passed and the quasi-static requirements are now in effect for these doors.

This rule also deletes reporting requirements in 49 CFR Part 586 that related to the phase-in of the quasi-static side door strength requirements for LTVs. The reporting requirements were needed for the agency to enforce the phase-in. The reporting requirements directed manufacturers to report certain information to NHTSA within 60 days after the end of the production year ending August 31, 1994. Since the deadline for the reports has passed, NHTSA is removing the requirement from the CFR. There remains, however, a recordkeeping requirement relating to the LTV phase-in. 49 CFR section 586.8 requires manufacturers to maintain records of certain vehicle identification number information until December 31, 1996. This rule does not affect that recordkeeping requirement.

NHTSA finds good cause to make this amendment effective 30 days after publication of this document. This amendment makes minor changes to Standard 214 and to the reporting requirements of Part 586 that clarify the standard and regulation without affecting their requirements.

NHTSA also finds for good cause that notice and an opportunity for comment on this document are unnecessary. This document does not impose any additional responsibilities on any manufacturer. Instead, this document simply removes outdated provisions of the standard and regulation.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, this action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. This rule removes outdated portions of Standard 214 and part 586 without changing any of the requirements in the standard and regulation. Because this rule does not affect any substantive requirement of the side impact standard or recordkeeping regulation, its impacts are so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, this rule simply removes outdated sections of Standard 214 and part 586. It has no effect whatsoever on the manufacture or sale of vehicles.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 586

Reporting and recordkeeping requirements.

In consideration of the foregoing, parts 571 and 586 of title 49 of the Code of Federal Regulations are amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.214 [Amended]

2. Section 571.214 is amended by removing S3(a)(3), S3(e)(5), S3(e)(6) and S3(e)(7), removing and reserving S8.1 and S8.2, and removing S8.1.1, S8.2.1, S9, S9.1, S9.1.1, S9.1.2, S9.2, S9.2.1, S9.2.2 and S9.2.3.

PART 586—[AMENDED]

3. The authority citation for part 586 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

4. 49 CFR part 586 is amended by revising § 586.1, § 586.3, § 586.4(a), removing and reserving § 586.7, and revising § 586.8, to read as follows:

§ 586.1 Scope.

This part establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report, concerning the number of passenger cars manufactured that meet the dynamic test procedures and performance requirements of Standard No. 214, *Side Impact Protection* (49 CFR 571.214), and it establishes requirements for manufacturers of trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less to maintain records related to the number of such vehicles that meet the side door strength requirements of Standard No. 214.

§ 586.3 Applicability.

This part applies to manufacturers of passenger cars and to manufacturers of trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured before September 1, 1994. However, this part does not apply to any manufacturers of trucks, buses and multipurpose passenger vehicles whose production consists exclusively of walk-in vans, vehicles which do not have any side doors that can be used for occupant egress, vehicles which exclusively have doors of the types specified in S3(e) of 49 CFR 571.214 or double cargo doors, doors without one or more windows, or doors for which the ratio of the width of the lowest portion of the door to the width of the door at its widest point is not greater than 0.5. (The width of the door is measured in a horizontal plane and on the outside surface of the door. The lowest portion of the door is that portion of the lower edge of the door which is lowest to the ground and which is essentially horizontal.) In addition, this section does not apply to vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

§ 586.4 Definitions.

(a) All terms defined in section 30102 of Title 49, U.S.C., Chapter 301 are used in their statutory meaning.

* * * * *

§ 586.8 Records—manufacturers of trucks, buses and multipurpose passenger vehicles.

Until December 31, 1996, each manufacturer shall maintain records of the vehicle identification number for each truck, bus and multipurpose passenger vehicle with a GVWR of 10,000 pounds or less produced in the production year ending August 31, 1994, that meets the side door strength requirements (S3.1 or S3.2) of Standard No. 214.

Issued on: November 13, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28350 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 60, No. 225
Wednesday, November 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–155–AD]

Airworthiness Directives; Boeing Model 737–200 and –200C Airplanes Equipped With dB Partners Hush Kits Installed in Accordance With Supplemental Type Certificate (STC) SA5730NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200 and –200C airplanes, that currently requires installation of fail-safe straps onto the engine inlet attach ring of the nose cowl. This action would require repetitive inspections to detect cracking of the attach ring of the nose cowl, and replacement of cracked attach rings. Replacement with a certain attach ring, if accomplished, would terminate the requirement to inspect the attach ring repetitively. This proposal is prompted by the development of an improved attach ring. The actions specified by the proposed AD are intended to prevent cracking of the attach ring of the nose cowl, which could result in separation of the nose cowl from the engine following failure of a turbine blade.

DATES: Comments must be received by December 22, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–155–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Nordam Group, 624 East 4th Street, Tulsa, Oklahoma 74120. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–155–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–155–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On April 5, 1995, the FAA issued AD 95–08–08, amendment 39–9197 (60 FR 19157, April 17, 1995), applicable to certain Boeing 737–200 and –200C airplanes, to require installation of fail-safe straps onto the attach ring of the nose cowl. The part number of the subject attach ring on the affected airplanes is part number (P/N) 65ND–54301–1. That AD action was prompted by reports of failure of reworked turbine blades, and subsequent failure of the engine inlet attach ring. The requirements of that AD are intended to prevent separation of the nose cowl from the engine following turbine blade failure.

In the preamble to AD 95–08–08, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of New Data

Nordam, the manufacturer of these nose cowls, has recently developed an attach ring having P/N 65ND–54301–5, which is made of forging material that is stronger and more impact resistant than the attach ring having P/N 65ND–54301–1. Installation of this improved attach ring eliminates the need for the installation of fail-safe straps (as is required by AD 95–08–08).

While the FAA considers that the improved attached ring will positively address the unsafe condition addressed by the existing AD, the FAA has a high degree of assurance that cracking of the attach ring having P/N 65ND–54301–1 will be detected prior to the nose cowl separating from the engine, provided visual inspections of the attach ring are performed following each incident of turbine blade failure. Operators using repetitive detailed visual inspection techniques should be able to detect cracking easily on that attach ring, which is easily accessible.

Explanation of Service Information

The FAA has reviewed and approved Nordham Service Bulletin 71–04, Revision 1, dated June 16, 1995, which describes procedures for replacing the attach ring, P/N 65ND–54301–1, of the nose cowl with the improved attach ring, P/N 65ND–54301–5.

The FAA also has reviewed and approved Nordham Service Bulletin 71–03, Revision 1, dated June 16, 1995, which describes procedures for installing fail-safe straps onto the attach ring, part number (P/N) 65ND–54301–1, of the nose cowl. The originally issued version of this service bulletin was referenced in AD 95–08–08 as the appropriate source of service information. Revision 1 is essentially identical to the originally issued version, but includes references to optional part-numbered items.

Explanation of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–08–08.

Paragraph (a) of the proposal would continue to require installation of eight fail-safe straps onto the attach ring, P/N 65ND–54301–1, of the nose cowl in accordance with Nordam Service Bulletin SB 71–03. This is the same requirement that was contained in AD 95–08–08. Revision 1 of the service bulletin is included as an additional source of appropriate service information.

Paragraph (b) of the proposal would require operators to perform a detailed visual inspection to detect cracking of the attach ring of the nose cowl, prior to further flight after each incident of turbine blade failure. If any cracked attached ring is detected, it would be required to be replaced with an attach ring having either P/N 65ND–54301–1 or 65ND–54301–5. Should an operator elect to replace a cracked attached ring with an attach ring having P/N 65ND–54301–1, that replacment would be required to be accomplished in accordance with Supplemental Type Certification (STC) SA5730NM. Should an operator elect to replace the cracked attached ring with an attach ring having P/N 65ND–54301–5, that replacement would be required to be accomplished in accordance with Nordam Service Bulletin SB 71–03.

Paragraph (c) of the proposal provides operators the opportunity to terminate the repetitive inspections by installing an attach ring having P/N 65ND–54301–5. For the reason discussed previously, the FAA is not proposing to mandate this installation, but provides it an an optional terminating action for the proposed inspection requirements of the AD.

Economic Impact

There are approximately 46 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD.

The replacement action that is currently required by AD 95–08–08 takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the cost impact of the currently required actions on the sole U.S. operator is estimated to be $480 per airplane.

The inspection that is proposed in this AD action would take approximately 10 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on the sole U.S. operator is estimated to be $600 per airplane per inspection cycle.

The cost impact figures discussed above are based on assumptions that no affected operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9197 (60 FR 19157, April 17, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–155–AD. Supersedes AD 95–08–08, Amendment 39–9197.

Applicability: Model 737–200 and –200C airplanes equipped with dB Partners Hush Kit having attach ring, part number 65ND–54301–1, installed in accordance with Supplemental Type Certificate (STC) SA5730NM, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the nose cowl from the engine following turbine blade failure, accomplish the following:

(a) Within 30 days after May 2, 1995 (the effective date of AD 95–08–08, amendment 39–9197), install fail-safe straps onto the attach ring, part number (P/N) 65ND–54301–1, of the nose cowl in accordance with Nordam Service Bulletin SB 71–03, dated March 17, 1995, or Revision 1, dated June 16, 1995.

(b) As of the effective date of this AD: Prior to further flight following each incident of turbine blade failure, perform a detailed visual inspection to detect cracking of the

attach ring of the nose cowl. Fail-safe straps must be removed to perform this inspection.

(1) If no cracking is detected, prior to further flight, reinstall the fail-safe straps in accordance with Nordam Service Bulletin 71–03, dated March 17, 1995, or Revision 1 dated June 16, 1995.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Replace the cracked attach ring with an attach ring having P/N 65ND–54301–1 in accordance with STC SA5730NM, and reinstall the fail-safe strap in accordance with Nordam Service Bulletin SB 71–03, dated March 17, 1995, or Revision 1, dated June 16, 1995. Repeat the visual inspection of the attach ring prior to further flight following each incident of turbine blade failure. Or

(ii) Replace the cracked attach ring with an attach ring having P/N 65ND–54301–5 in accordance with Nordam Service Bulletin 71–04, Revision 1, dated June 16, 1995. After this replacement is accomplished, the inspections required by this paragraph may be terminated.

(c) Installation of an attach ring having P/N 65ND–54301–5 constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(d) As of May 2, 1995 (the effective date of AD 95–08–08), fail-safe straps must be installed onto the attach ring, P/N 65ND–54301–1, of the nose cowl in accordance with Nordam Service Bulletin SB 71–03, dated March 17, 1995, or Revision 1, dated June 16, 1995, prior to installation of STC SA5730NM on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28546 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ASW–28]

Proposed Revision of Class E Airspace; Hobbs, NM

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) of Hobbs, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 30 at Lea County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 30 at Lea County Airport, Hobbs, NM.

DATES: Comments must be received on or before December 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manger, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region. Docket No. 95–ASW–28, Fort Worth, TX 76193–0530. The official docket maybe examined in the Office of the Assistant Chief Counsel Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours of the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, view, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenter wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 95–ASW–28." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Lea County Airport, Hobbs, NM. A new GPS SIAP to RWY 30 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 30 Hobbs, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * * *

ASW NM E Hobbs, NM [Revised]

Hobbs, Lea (nty Airport, NM
(Lat. 32°41 5" N., long. 103°13'02" W.)
Hobbs VORT/ C
(Lat. 32°38'18" N., long. 103°16'10" W.)
Lea County ILS Localizer
(Lat. 32°41'39" N., long. 103°12'27" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Lea County Airport, and within 1.5 miles each side of the 043° radial of the Hobbs VORTAC extending from the 6.7-mile radius to 9.7 miles northeast of the airport, and within 1.6 miles each side of the Lea County ILS Localizer northeast course extending from the 6.7-mile radius to 9.7 miles northeast of the airport, and within 1.6 miles each side of the ILS Localizer southwest course extending from the 6.7-mile radius to 10.6 miles southwest of the airport, and within 1.5 miles each side of the 222° radial of the Hobbs VORTAC extending from the 6.7-mile radius to 10.6 miles southwest of the airport, and 1.8-miles each side of the 125° bearing from the airport extending from the 6.7-mile radius 9.1 miles south east of the airport.

* * * * *

Issued in Fort Worth, TX on October 27, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–28477 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–27]

Proposed Revision of Class E Airspace; Deming, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Deming, NM. A new Global Positioning system (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 04 at Deming Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 04 at Deming Municipal Airport, Deming, NM.

DATES: Comments must be received on or before December 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–27, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System management Branch, Air Traffic division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to airspace Docket No. 95–ASW–27." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on this proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Deming Municipal Airport, Deming, NM. A new GPS SIAP to RWY 04 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 04 at Deming, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Deming, NM [Revised]

Deming Municipal Airport, NM
(Lat. 32°16'44" N., long. 107°43'14" W.)
Deming VORTAC
(Lat. 32°16'33" N., long. 107°36'20" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Deming Municipal Airport, and within 1.6 miles each side of the 081° radial of the Deming VORTAC extending from the 6.8-mile radius to 12.3 miles east of the airport, and within 1.8 miles each side of the 232° bearing from the airport extending from the 6.8-mile radius to 8.2 miles southwest of the airport.

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Issued in Fort Worth, TX on October 27, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–28478 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM95–8–000]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Agenda for Technical Conference and Potential Broadcast of Technical Conference

November 9, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; agenda for technical conference and notification of potential broadcast of technical conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is announcing the agenda and times for the Commission technical conference on comparability for power tools. The Commission also is notifying persons interested in this technical conference of the opportunity, for a fee, to receive the broadcast of the conference via satellite. This notice provides interested persons with the necessary information by which they may seek to receive the broadcast of the conference. The proposed rule in this proceeding was published April 7, 1995 (60 FR 17662).

DATES: Persons interested in the national broadcast of the conference must notify Shirley Al-Jarani or Julia Morelli at the Capitol Connection (703–993–3100) by November 16, 1995. The technical conference will be held on December 5 and 6, 1995.

ADDRESSES: 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lawrence Anderson, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0575, facsimile (202) 208–0180.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Commission previously announced that the Commission would be sponsoring a technical conference on comparability for power pools to be held on December 5 and 6, 1995. The conference will be held at the Commission, 888 First Street, NE., Washington, DC 20426.

Attached to this notice are the tentative agenda and times for this upcoming technical conference. Although the Commission reserves the right to make minor revisions to this agenda, announcing the tentative agenda at this time will help the parties focus on pertinent issues as early as possible.

In addition, please take notice that, for a fee, the Capitol Connection may broadcast via satellite the technical conference on December 5 and 6, 1995, to interested persons. The Capitol Connection does not intend to carry the technical conference on the Capitol Connection system in the Washington, DC area. Persons interested in receiving the national broadcast should contact Shirley Al-Jarani or Julia Morelli at the Capitol Connection (703–993–3100) no later than November 16, 1995.

Lois D. Cashell,

Secretary.

Power Pool Conference Agenda

December 5, 1995 1:30 pm–5:00 pm;
December 6, 1995 10:00 am–4:30 pm

December 5, 1995

1:30–1:45 Introduction—Elizabeth Moler, Chair

1:45–3:15 Power Pool Comparability

Panelists will address general power pool policy issues, including the benefits of pooling, the role of pools in a competitive market, how to provide comparable access for pool members and nonmembers, and whether the Commission should adopt a comparability policy for all pools or allow flexibility for each pool to offer comparability in its own way. Panelists will have 5 minutes each to make a presentation, followed by a discussion period.

David K. Owens, Edison Electric Institute
Steven J. Kean, Coalition for a Competitive Electric Market
Lisa Crutchfield, Pennsylvania Public Utility Commission
Kurt J. Conger, American Public Power Association
Robert A. O'Neil, TDU Systems

3:15–3:30 Break

3:30–5:00 Designing Comparability for Tight Pools

Panelists will address recent developments in the three tight pools, how to provide comparable transmission services in a tight pool, and how nonmembers could share the costs as well as the benefits of tight pool facilities and operations. Panelists will have 5 minutes each to make a presentation, followed by a discussion period.

Leon A. Allen, Jr., Member Systems of the New York Power Pool
Robert F. Wolff, Jr., NEPOOL Executive Committee
Pierre R.H. Landrieu, PJM Pool Members
Robert A. Levin, New York Mercantile Exchange
John B. Howe, Competitive Power Coalition of New England, Incorporated

December 6, 1995

10:00–11:15 Implementing Comparability for Tight Pools

Panelists will address issues of implementing comparability for tight pools, including the provision of pooled ancillary services and a real-time information network on a pool or member-by-member basis, the design of pro forma tariffs for tight pools, and poolwide pricing for members and nonmembers. Panelists will have 5 minutes each to make a presentation, followed by a discussion period.

Frederic Lee Klein, Northeast Utilities System Companies
James A. Lahtinen, Duquesne Light Company
Brian E. Forshaw, New England Public Power NEPOOL Review Committee
Harvey Happ, New York Public Service Commission
John F. Sipics, PJM Pool Members

11:15–11:30 Break

11:30–12:45 Loose Pools

Panelists will address issues related to comparability for loose pools, including what constitutes a power pool for purposes of the open access rule, membership criteria, comparable services and prices, provision of ancillary services, and the relation of loose pools to emerging RTGs. Panelists will have 5 minutes each to make a presentation, followed by a discussion period.

James W. Van Epps, Mid-Continent Area Power Pool
Carroll Waggoner, Sunflower Electric Power Corporation
Maude Grantham-Richards, Inland Power Pool
Ward Uggerud, Otter Tail Power Company
Nicholas A. Brown, Southwest Power Pool

12:45–2:00 Lunch Break

2:00–3:15 Holding Company Pools

Panelists will address how comparability policy for a holding company pool should be similar to or different from the policy for other power pools. Panelists will have 5 minutes each to make a presentation, followed by a discussion period.

William K. Newman, Southern Company Services, Incorporated
Paula G. Rosput, Associated Power Services, Incorporated
Don A. Ouchley, Public Utilities Board of the City of Brownsville, Texas
James Kenney, Entergy Services, Incorporated
Marvin Carraway, Transmission Access Policy Study Group

3:15–4:30 Other Entities that Pool Resources

Panelists will address issues related to comparability for other entities that pool their generating or transmission resources, such as an independent grid operator, gridco, or power exchange. Panelists will have 5 minutes each to make a presentation, followed by a discussion period.

Mike Apprill, Utilicorp United, Incorporated
Harvey L. Reiter, Vermont Department of Public Service
Richard C. Viinnikainen, Michigan Electric Coordinated Systems
Christopher T. Ellison, Independent Energy Producers Association
Alan Oneal, Enerex, Incorporated

[FR Doc. 95–28470 Filed 11–21–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Proposed Regulation for Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of extension of comment period.

SUMMARY: This document further extends the comment period for the proposed rule under Title I of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (the Act), relating to plans established or maintained pursuant to collective bargaining agreements for purposes of section 3(40) of the Act, 29 U.S.C. 1002(40). The proposed rule was set forth in a notice of proposed rulemaking published in the **Federal Register** at 60 FR 39208 (August 1, 1995). The first notice of an extension of the comment period for the proposed rule was published in the **Federal Register** at 60 FR 50508 (September 29, 1995).

DATES: The comment period for this proposed rule is extended through December 18, 1995.

ADDRESSES: Written comments (preferably three copies) concerning the proposed rule should be submitted to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Attention: Proposed Regulation Under Section 3(40). All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N–5669, 200 Constitution Avenue NW, Washington, DC 20210 (telephone (202) 219–8671) or Cynthia Caldwell Weglicki, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Rm N–4611, 200 Constitution Avenue NW, Washington, DC 20210 (telephone (202) 219–4592). Theses are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On August 1, 1995, the Department of Labor (the

Department) published a notice of proposed rulemaking in the **Federal Register** (60 FR 39208) regarding plans established or maintained pursuant to collective bargaining agreements for purposes of section 3(40) of the Act. In that notice the Department invited all interested persons to submit written comments concerning the proposed rule on or before October 2, 1995.

On September 29, 1995, the Department published a notice in the **Federal Register** (60 FR 50508) extending the comment period for the proposed rule through November 16, 1995. The Department has received requests from some members of the public for additional time to prepare comments due to the complexity of the issues involved in the proposed rule, and the Department believes that it is appropriate to grant such additional time. Accordingly, this notice extends the comment period during which comments on the proposed rule may be submitted through December 18, 1995.

Notice of Extension of Comment Period

Notice is hereby given that the comment period for the proposed rule relating to plans established or maintained pursuant to collective bargaining agreements for purposes of section 3(40) of the Act (proposed at 60 FR 39208, August 1, 1995, and extended at 60 FR 50508, September 29, 1995) is hereby further extended through Monday, December 18, 1995.

Signed at Washington, DC this 14th day of November 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–28462 Filed 11–21–95; 8:45 am]

BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL135–1–7205(b); AD–FRL–5332–8]

Approval of Section 112(l) Program of Delegation; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Illinois' request for delegation of the Federal air toxic program pursuant to section 112(l) of the Clean Air Act of 1990. In the Final Rules section of this **Federal Register**, EPA is fully approving the State's request for delegation as a direct final rule without prior proposal, because the EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule. If EPA receives timely comments adverse to or critical to the approval, which have not been addressed by the State or EPA, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before December 22, 1995.

ADDRESSES: Copies of the State submittal and EPA's analysis of it are available for inspection at: United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Buzecky, AR–18J, United States Environmental Protection Agency, Chicago, Illinois 60604, (312) 886–3194.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Authority: 42 U.S.C. 7401, et seq.

Dated: November 2, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–28386 Filed 11–21–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This notice denies Mr. Dennis G. Moore's petition for reducing the lens area requirement of amber turn signal lamps for large motor vehicles (motor vehicles whose overall width is 2032 mm or more). NHTSA's analysis of the petition concludes that this action could reduce safety.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Crash Avoidance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Medlin's telephone number is: (202) 366–5276. His facsimile number is (202) 366- 4329.

SUPPLEMENTARY INFORMATION: By letter dated July 31, 1995, Mr. Dennis G. Moore of Livermore, California wrote the NHTSA Chief Counsel asking that a situation in Federal Motor Vehicle Safety Standard No. 108 be corrected in order to promote a better international trade policy. He claimed that Europeans require significantly less area for lenses on rear amber turn signals and requested that the 12 square inch minimum lens area requirement of FMVSS No. 108 be reduced to 8 or 6 square inches. This, he stated, would give more practical rules for U. S. exports at no expense to safety. Mr. Moore stated that companies such as his, when asked to help balance the Nation's trade deficit are at a price disadvantage simply because of size of the lamp. The Acting Chief Counsel notified Mr. Moore in a letter dated September 20, 1995, that his request would be considered as a petition for rulemaking and it was so considered.

NHTSA adopted a requirement in 1990 that increased the minimum lens area for turn signal and stop lamps to 75 mm. (12 square inches) on vehicles 2032 mm. (80 inches) and wider. This was done in response to a petition from the Truck Safety Equipment Institute. The petition argued that the Society of Automotive Engineers (SAE) had determined that it was desirable to adopt separate standards for certain devices when used on wider vehicles, which because of their size should be more conspicuous and better delineated with larger lighting devices than small vehicles. Also of importance was SAE's rationale that the increased lens area for wider vehicles is necessary because of buildup of grime on signal lamps. The increase in lens area is necessary to offset the dimming effect of dirt. The agency concurred that the increase in lens area would enhance vehicle conspicuity and contribute to safety.

The area requirement was a part of SAE Standard J1395 APR85—*Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width*, and thus, already a consensus industry standard. NHTSA incorporated SAE J1395 by reference through a normal rulemaking proceeding with little opposition by vehicle or lighting manufacturers.

Mr. Moore did not present any justification, test results, or data to substantiate his assertion that no reduction in safety would occur if the lens area on turn signals for large motor vehicles were to be reduced. NHTSA has no basis for deciding that safety would remain unchanged with Mr. Moore's proposal. Harmonization of standards, as requested by Mr. Moore, at the possible expense of safety, is not an alternative available to NHTSA.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, it denies Mr. Moore's petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28463 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 60, No. 225

Wednesday, November 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Committee of Nine Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research, Education, and Extension Service announces the following meeting:

Name: Committee of Nine.
Date: December 5, 1995.
Time: 1:00 p.m., EST.
Place: USDA, CSREES, 14th & Independence Avenue, SW, Room 3851 South Building, Washington, D.C. 20250.
Type of Meeting: Conference Call. Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agriculture Experiment Stations.
Contact person for Agenda and more information: Dr. George E. Cooper, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research, Education, and Extension Service, 14th and Independence Avenue, SW., Room 3851, South Building, Washington, D.C. 20250, Telephone: 202–720–4088.

Done at Washington, D.C. this 31st day of October 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–28511 Filed 11–21–95; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 72–95]

Foreign-Trade Zone 21, Charleston, South Carolina Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority (SCSPA), grantee of Foreign-Trade Zone 21, Charleston South Carolina, requesting authority to expand its zone in the Charleston, South Carolina area, within the Charleston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 7, 1995.

FTZ 21 was approved on June 12, 1975 (Board Order 106, 40 FR 25613, 6/17/75) and expanded on February 28, 1995 (Board Order 734, 60 FR 12735, 3/8/95). The zone project includes 6 general-purpose sites in the Charleston, South Carolina area: *Site 1* (134 acres)—Tri-County Industrial Park, Summerville; *Site 2* (57 acres)—Cainhoy Industrial Park, Wando; *Site 3* (160 acres)—Crowfield Corporate Center, Goose Creek; *Site 4* (998 acres)—Low Country Regional Industrial Park, Early Branch; *Site 5* (2,017 acres)—SCSPA's terminal complex, Charleston; *Site 6* (19 acres)—Meadow Street Business Park, Loris; and, *Temporary Site* (Site 8) (23 acres; expires 12/31/97)—Wando Park, Mount Pleasant. An application is currently pending with the Board for an additional site (proposed Site 7) in Myrtle Beach, South Carolina (Docket No. 44–95, filed 8/15/95).

The applicant is now requesting authority to further expand the general-purpose zone to include an additional site (proposed *Site 9*—548 acres) at the 993-acre Charleston Business Park on Clements Ferry Road, Charleston. The property is owned by Jack Primus Partners, L.P.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 22, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 5, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 81 Mary Street, Charleston, South Carolina 29402
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: November 8, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95–28458 Filed 11–21–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–823–803]

Titanium Sponge From Ukraine; Preliminary Result of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from petitioners, Oregon Metallurgical Corporation (OREMET) and Titanium Metals Corporation (TIMET), the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on titanium sponge from Ukraine. This review covers sales of the subject merchandise to the United States from Ukraine during the period from August 1, 1992, through July 31, 1993. The review indicates that no shipments of the subject merchandise entered the commerce of the United States for consumption during the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 22, 1995.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Department of the Treasury published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (USSR)(33 FR 12138). In December 1991, the USSR divided into 15 independent states. To conform to these changes, the Department changed the original antidumping finding into 15 findings applicable to the Baltic states and the former Republics of the Soviet Union (57 FR 36070, August 12, 1992).

On August 3, 1993, the Department published a notice of "Opportunity to Request an Administrative Review" (58 FR 41239) of the antidumping finding on titanium sponge from Ukraine. Both OREMET and TIMET requested that an administrative review be conducted. The Department initiated the review on September 30, 1993 (58 FR 51053), covering the period August 1, 1992, through July 31, 1993. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The merchandise covered by this review is all imports of titanium sponge from Ukraine. Titanium sponge is chiefly used for aerospace vehicles, specifically in the construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines.

Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) item number 8108.10.50.10. The HTS item number is provided for convenience and Customs purposes; our written description of the scope of this finding is dispositive.

This review covers sales and entries by Ukrainian exporters, producers, sellers, and resellers of the subject merchandise during the period August 1, 1992, through July 31, 1993.

Preliminary Results of Review

Information maintained by the U.S. Customs Service established that titanium sponge from Ukraine for the period of review was only entered under temporary importation bond (TIB) procedures. *See* U.S. Note 1 of subchapter XIII, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS) (1994). Merchandise entered under TIB is not entered for consumption, and the AD/CVD laws restrict the assessment of duties and the collection of cash deposits to merchandise that is "entered, or withdrawn from warehouse, for consumption." *Titanium Metals Corp.* v. *United States*, Slip Op. 95–153 (CIT, Aug. 30, 1995).

Because TIB entries are not entries for consumption, they cannot be considered merchandise subject to the antidumping duty order and included within a determination resulting from a 751(a) administrative review. The statute provides that a determination in an administrative review must be based on the "United States price of each entry of merchandise subject to the antidumping duty order and included within that determination." Section 751(a)(2)(A). TIB entries do not satisfy this standard for inclusion in a review. Moreover, a review of TIB entries cannot serve as the "basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties," which is the purpose of an administrative review. Section 751(a)(2) of the Act. For these reasons, we have determined that there is no basis for conducting an administrative review of the Ukrainian respondent's TIB entries.

Accordingly, we have preliminarily determined to maintain the cash deposit rate at 83.96 percent, which is the rate established in the final results of the last review of the antidumping finding on titanium sponge from the USSR (52 FR 9323, March 24, 1987).

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any such written comments or hearing.

Furthermore, the cash deposit rate for entries of titanium sponge from Ukraine will be that rate established in the final results of this administrative review. This rate will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 8, 1995.

Susan G. Esserman,

Assistant Secretary, for Import Administration.

[FR Doc. 95–28456 Filed 11–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–804]

Carbon Steel Butt-Weld Pipe Fittings From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on carbon steel butt-weld pipe fittings from Thailand. We preliminarily determine the net subsidy to be 0.22 percent *ad valorem* for all companies for the period January 1, 1992 through December 31, 1992. In accordance with 19 CFR 355.7, any net subsidy less than 0.5 percent *ad valorem* is *de minimis*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Thailand exported on or after January 1, 1992, and on or before December 31, 1992. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 22, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1990, the Department published in the **Federal Register** (55 FR 1695) the countervailing duty order on carbon steel butt-weld pipe fittings from Thailand. On January 13, 1993, the Department published a notice of "Opportunity to Request an Administrative Review" (58 FR 4148) of this countervailing duty order. We received a timely request for review from the petitioner, the U.S. Fittings Group.

We initiated the review, covering the period January 1, 1992 through December 31, 1992, on March 8, 1993 (58 FR 12931). We conducted a verification of the questionnaire responses on July 20 through 27, 1995. The review covers two producers/exporters of the subject merchandise, Awaji Sangyo (Thailand) Co. (AST), and TTU Industrial Corp. (TTU), which account for virtually all exports of the subject merchandise from Thailand, and 15 programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of the Review

The merchandise subject to this review (hereinafter subject merchandise) is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (fourteen inches), imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings), as currently classifiable under the Harmonized Tariff Schedule (HTS). The products covered in this review are provided for under item number 7307.93.30 of the HTS. The HTS subheadings are provided for convenience and Customs purposes; our written description of the scope of this proceeding is dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Thai exports to the United States of subject merchandise, including all companies, even those with *de minimis* and zero rates. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was *de minimis*, as defined by 19 CFR 355.7(1994), no further calculations were necessary.

Analysis of Programs

I. Program Preliminarily Found To Confer Subsidies

Tax Exemptions Under Section 31 of the 1977 Investment Promotions Act (IPA)

In the investigation (55 FR 1695, January 18, 1990) and the first review of this order (57 FR 5248, February 13, 1992), section 31 of the IPA was found not to have been used. In its questionnaire response for this review, AST indicated that it claimed an exemption under this program on its tax return filed during the review period. TTU did not claim a section 31 exemption on its tax return filed during the review period.

The Thai Board of Investment (BOI) provides certain investment incentives to companies through the IPA in order to promote economic development in Thailand. Under section 31 of the IPA, companies can apply to receive a three to eight-year exemption from payment of corporate income tax on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exempt period. AST was approved for a five-year exemption, from 1987–1991, on income earned from all export sales of butt-weld pipe fittings, including both subject and non-subject merchandise.

On its tax return filed during the review period, AST claimed a tax exemption under section 31. Because benefits under this program are contingent upon export performance, we preliminarily determine that such benefits are countervailable. *See* § 355.43(a)(1), Proposed Regulations and Final Negative Countervailing Duty Determination; Disposable Pocket Lighters from Thailand, 60 FR 13961 (March 15, 1995).

To calculate the benefit received under section 31, we used as a numerator the value of the tax exemption claimed by AST during the review period. AST did not provide the Department with the value of total exports sales of pipe fittings during the review period. Therefore, to calculate the subsidy rate, we used as a denominator the value of AST's total export sales of subject merchandise during the same period. We then weight-averaged AST's and TTU's rates for this program, using as the weights each company's share of total Thai exports to the United States of subject merchandise, and summed the individual companies' weight-averaged rates to determine the subsidy rate for this program. On this basis, we preliminarily determine the subsidy from this program to be 0.22 percent *ad valorem* for the period January 1, 1992 through December 31, 1992.

II. Program Preliminarily Found Not To Confer Subsidies

Duty Drawback

The Thai duty drawback program was established by Section 19 bis of the Thai Customs Act. Under Section 19 bis, companies that import raw materials used in the production, mixing, assembling, or packaging of an exported product are eligible to receive a drawback of import duties and taxes on those materials. Upon importation of the materials, companies either pay a cash deposit or post a bank guarantee to cover the import duties and taxes. If the company subsequently provides documentation showing that the imported materials were used in the production, mixing, assembling, or packaging of a finished good that was exported within one year of the date of importation of the raw materials, the company's cash deposit is refunded or its bank guarantee released.

During the antidumping duty investigation of butt-weld pipe fittings from Thailand, petitioners alleged in their comments on the Department's preliminary determination that AST received excess duty drawbacks on imports of steel pipe that is physically incorporated into the subject merchandise, and that this constituted a countervailable subsidy. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand (Pipe Fittings AD Final), 57 FR 21065, 21069 (May 18, 1992). Based on petitioners' allegation, the Department examined the duty drawback program in this review, the first administrative review of the countervailing duty order since Pipe Fittings AD Final, to determine whether producers of the subject merchandise received a countervailable benefit during the review period. (For a more detailed explanation of the Department's decision to examine the duty drawback program, see the January 19, 1995 Memorandum to Barbara E. Tillman Regarding 1992 CVD Administrative Review—Subsidy Allegation, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce.)

During the antidumping investigation, AST acknowledged that the average yield ratio for its production of pipe fittings from imported pipe, calculated by the Thai Government to determine the amount of drawback on imported pipe, overstated the actual yield ratio in AST's favor. In this review, we examined the issue of the average yield calculated by the Thai Government. We verified that, during the review period, separate production formulas approved by Thai Customs were in effect for each type of pipe fittings sold by AST and TTU. Utilizing these production formulas, AST and TTU did not receive drawback of import duties and taxes in excess of the amount due on imported raw materials. Moreover, we confirmed that no drawback was received on materials incorporated into finished goods that were not exported within one year. (*See* October 3, 1995 Memorandum to Barbara E. Tillman Regarding Verification of Questionnaire Responses—1992 Administrative Review of the Countervailing Duty Order on Carbon Steel Butt-Weld Pipe Fittings from Thailind (Public Version) for Government of Thailand, AST, and TTU, which are on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). In accordance with Annex A (Illustrative List) to the 1979 Agreement of Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, the remission or drawback of import charges is a countervailable subsidy only to the extent that such remission or drawback is in excess of the import charges that are levied on imported goods that are physically incorporated in the exported product. See also 19 U.S.C. 1677(5)(A) and section 355.44 of the *Proposed Regulations*. Because producers of butt-weld pipe fittings did not receive excess drawback of import duties and taxes, we preliminarily determine that the duty drawback program did not confer countervailable benefits on exports of the subject merchandise to the United States during the review period.

III. Programs Preliminarily Found Not To Be Used

A. Tax Certificates for Exporters
B. Export Packing Credits
C. Tax and Duty Exemptions Under Section 28 of the (IPA)
D. Electricity Discounts for Exporters
E. Rediscount of Industrial Bills
F. International Trade Promotion Fund
G. Export Processing Zones
H. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
I. Additional Incentives under the IPA
   1. Goodwill and Royalties Tax Exemption
   2. Tax Deduction of Foreign Marketing Expenses and Foreign Taxes
   3. Exemption of Sales Taxes for Promoted Industries
   4. Exemption on Export Duties and Business Taxes on Products Produced or Assembled by Promoted Firms
   5. Deduction from Assessable Income of an Amount Equal to Five Percent of the Increase over the Previous Year of Income Derived from Exports

Preliminary Results of Review

For the period January 1, 1992 through December 31, 1992, we preliminarily determine the net subsidy to be 0.22 percent *ad valorem* for all companies. In accordance with 19 CFR 355.7, any net subsidy less than 0.5 percent *ad valorem* is *de minimis*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Thailand exported on or after January 1, 1992, and on or before December 31, 1992.

This countervailing duty order was determined to be subject to section 753 of the Act (as amended by the Uruguay Round Agreements Act of 1994). Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation, 60 FR 27,963 (May 26, 1995). Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation, the International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department has revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. Revocation of Countervailing Duty Orders, 60 FR 40,568 (August 9, 1995). Accordingly, the Department intends to order Customs to liquidate shipments exported during the period of review in accordance with the final results of this review and does not intend to issue further cash deposit instructions.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1)

of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 6, 1995.

Susan G. Esserman,

Assistont Secretary for Import Administration.

[FR Doc. 95–28457 Filed 11–21–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

November 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased by application of swing, reducing the limit for Category 315.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17319, published on April 5, 1995; and 60 FR 45145, published on August 30, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 14, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	18,689,687 square meters.
443	131,305 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28454 Filed 11–21–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import limits and guaranteed access levels.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On the request of the Government of the Dominican Republic, the U.S. Government agreed to increase the 1995 Guaranteed Access Levels for Categories 338/638 and 339/639. Also, the current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on November 14, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	802,864 dozen.
339/639	802,938 dozen.

Category	Adjusted twelve-month limit [1]
342/642	160,660 dozen.
347/348/647/648	1,798,758 dozen of which not more than 991,636 dozen shall be in Categories 647/648.
351/651	979,544 dozen.
433	24,249 dozen.
443	138,743 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The 1995 Guaranteed Access Levels (GALs) for Categories 342/642, 347/348/647/648, 351/651, 433 and 443 remain unchanged. The GALs for textile products in the following categories shall be increased:

Category	Guaranteed Access Level
338/638	1,550,000 dozen.
339/639	1,650,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28455 Filed 11–21–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Wool Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

November 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 21, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on June 13, 1995 (60 FR 31146) announces that if no solution is agreed upon in consultations between the Governments of the United States and the Former Yugoslav Republic of Macedonia on Category 434 the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 8,226 dozen for the twelve-month period beginning on May 26, 1995 and extending through May 25, 1996.

Inasmuch as no agreement was reached in recent consultations between the United States and the Former Yugoslav Republic of Macedonia, the United States Government is taking action under Section 204 of the Agricultural Act of 1956, as amended, to establish a limit for textile products in Category 434 for the period beginning on May 26, 1995 and extending through May 25, 1996 at a level of 8,226 dozen.

The United States remains committed to finding a solution concerning Category 434. Should such a solution be reached in consultations with the Government of the Former Yugoslav Republic of Macedonia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for th e Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 30, 1972, as amended, you are directed to prohibit, effective on November 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 434, produced or manufactured in Macedonia and exported during the period beginning on May 26, 1995 and extending through May 25, 1996, in excess of 8,226 dozen [1].

Textile products in Category 434 which have been exported to the United States prior to May 26, 1995 shall not be subject to the limit established in this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–28453 Filed 11–21–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Options on the 30-Day Fed Fund Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in options on its 30-day fed funds futures contract. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 22, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. Reference should be made to the CBT 30-day fed fund futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis,

[1] The limit has not been adjusted to account for any imports exported after May 25, 1995.

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CBT may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 13, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–28507 Filed 11–21–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

[FE Docket No. EA–97–A]

Application To Amend Electricity Export Authorization, Portland General Electric Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Portland General Electric Company (PGE) has applied for renewal of its authority to transmit electric energy from the United States to Canada.

DATES: Comments, protests or requests to intervene must be submitted on or before December 22, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Mike Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electric energy from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On April 29, 1994, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized PGE to transmit electric energy from the United States to the British Columbia Hydro and Power Authority on a non-firm basis at a maximum rate of transmission of 400 megawatts (FE Order No. EA–97). The term of the authorization was for a period of two years. On November 1, 1995, PGE filed an application with FE for renewal of this authority which expires on April 29, 1996. The exported energy would be delivered to Canada over transmission facilities owned by the Bonneville Power Administration.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–97. Consequently, DOE proposes to use the electric reliability review prepared in FE Docket EA–97 in satisfaction of the statutory requirements of section 202(e) of the Federal Power Act. Similarly, DOE believes that it has adequately satisfied its responsibility under the National Environment Policy Act of 1969 through the documentation of a categorical exclusion in the FE-Docket EA–97 proceeding.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Melinda J. Horgan, Portland General Electric Company Legal Department, 121 SW., Salmon Street, 1 WTC–13, Portland, Oregon 97204.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 9, 1995.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28492 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Consolidated Industries From the DOE Furnace Test Procedure (Case No. F–082)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to Consolidated Industries (Consolidated) from the existing Department of Energy (DOE or Department) test procedure regarding blower time delay for the company's USA and UCA series furnaces.

Today's notice also publishes a "Petition for Waiver" from Consolidated. Consolidated Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Consolidated seeks to test using a blower delay time of 30 seconds for its USA and UCA series furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than December 22, 1995.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–082, Mail Stop EE–43, Room 1J–108, Forestall Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forestall Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forestall Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The test procedure rules provide for a waiver process and allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR Part 430, § 430.27. The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver may be granted when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR Part 430, § 430.27(e). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On April 26, 1995, Consolidated filed an Application for Interim Waiver and a Petition for Waiver regarding blower time delay. Consolidated Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Consolidated requests the allowance to test using a 30-second blower time delay when testing its USA and UCA series furnaces. Consolidated states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an average furnace AFUE improvement of 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Consolidated asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993 (58 FR 44583), to amend the furnace test procedure, which addresses the above issue.

Previous Petitions for Waiver for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992; 59 FR 30577, June 14, 1994, and 59 FR 55470, November 7, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994, and 60 FR 100, January 3, 1995.

Thus, it appears likely that this Petition for Waiver for blower time delay will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Consolidated an Interim Waiver for its USA and UCA series furnaces. Consolidated shall be permitted to test its USA and UCA series furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(I) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a

stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Consolidated's Petition for Waiver requested DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Consolidated seeks to test using a blower delay time of 30 seconds for its USA and UCA series furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, November 13, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

April 26, 1995.

Assistant Secretary of Conservation and Renewable Energy,
U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

Gentlemen: This Petition for Waiver and Application for Interim Waiver is submitted in compliance with Title 10 CFR 430.27. This request is for modification to the Test Procedures for Measuring the Energy Consumption of Furnaces found in Appendix N to Subpart B of Part 430.

The current test procedure uses a 1.5 minute time delay between the burner start-up and the blower start-up. Consolidated Industries' USA series and UCA series furnaces utilize a 30 second nonadjustable fixed time delay between the burner ignition and blower start-up. For the USA series and UCA series furnaces, Consolidated Industries is requesting that the fixed time delay be substituted for the current test procedures' 1.5 minute time delay.

We submit that the test procedure using 1.5 minute blower start-up time delay requires a bypass of the furnace safety limit switch and does not represent the true product performance and efficiency. The USA and UCA series furnaces have lightweight, compact heat exchangers that were designed to heat up very quickly with an ensuing blower start-up time optimized at 30 seconds. The advanced heat exchanger design along with improved operating controls has improved the efficiency of this furnace in such a way that the current standard does not credit Consolidated Industries for the true efficiency improvements to this furnace. The product performance will be more accurately depicted using the proposed ASHRAE Standard 103–1993 that accounts for the design flexibility and improvement without the penalty incurred by using the current test procedure. The test results show an average of 1.0% improvement in AFUE using the 30 second fixed time delay.

Other manufacturers have been granted similar waivers for similar reasons.

Data and documentation can be supplied at your request.

This waiver request letter has been sent to GAMA and gas furnace manufacturers that market similar products.

Sincerely,

Gerald K. Gable,

Vice President of Engineering.

[FR Doc. 95–28552 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–85–NG]

Altresco Pittsfield, L.P.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Altresco Pittsfield, L.P. authorization to import up to 25.5 Bcf of natural gas and export up to 25.5 Bcf of natural gas from and to Canada over a two-year term beginning the date of first import or export delivery after October 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28495 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket Nos. 95–76–NG, 93–64–NG; ERA Docket No. 87–49–NG]

Associated Gas Services, Inc. and Associated Natural Gas, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada and Mexico, and Vacating Authorizations

AGENOY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order in FE Docket No. 95–76–NG granting blanket authorization to Associated Gas Services, Inc. (AGSI) to import and export natural gas, including liquefied natural gas (LNG), from and to Canada and Mexico. The volume imported would not exceed a combined total of 311 Bcf and the volume exported would not exceed a combined total of 400 Bcf. The term of the authorization is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

In addition, FE vacated an import and an export authorization which were held by an affiliate of AGSI, Associated Natural Gas, Inc. (ANGI). As a result of a corporate reorganization and acquisition of AGSI's parent company, Associated Natural Gas Corporation, by Panhandle Eastern Corporation, this import and export authority was no longer needed by ANGI. The two vacated orders are DOE/ERA Opinion and Order No. 210 (ERA Docket No. 87–49–NG), issued December 11, 1987 (1 ERA ¶ 70,741) and DOE/FE Opinion and Order No. 842 (FE Docket No. 93–64–NG), issued September 24, 1993 (1 FE ¶ 70,844).

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28502 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–83–NG]

Big Sky Gas Marketing L.L.C.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Big Sky Gas Marketing L.L.C. authorization to import up to 44 Bcf of natural gas and export up to 44 Bcf of natural gas from and to Canada over a two-year term beginning the date of first import or export delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28493 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 95–100–LNG]

Distrigas Corporation; Order Granting Long-Term Authorization To Import Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Distrigas Corporation long-term authorization to import from Trinidad and other countries, up to 100 Bcf per year of liquefied natural gas beginning on delivery of the first shipment of LNG.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 9, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy

[FR Doc. 95–28553 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–84–NG]

Inverness Petroleum Ltd., Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Inverness Petroleum Ltd. blanket authorization to import up to 3.65 Bcf of natural gas from Canada. This authorization to import natural gas is for a period of two years beginning on the date of the initial delivery. The gas would be sold on the spot market to customers in the State of California.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28494 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–86–NG]

Kimball Energy Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Kimball Energy Corporation blanket authorization to import up to 75 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after March 31, 1996. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28496 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–75–NG]

Maple View Energy Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Maple View Energy Inc. blanket authorization to import up to 42 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28501 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–81–NG]

Morgan Stanley Capital Group Inc., Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting blanket authorization to Morgan Stanley Capital Group Inc. (Morgan Stanley) to import and export natural gas, including liquefied natural gas (LNG), from and to Canada and Mexico. The volume imported and exported would not exceed a combined total of 150 Bcf. The term of the authorization is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28505 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–58–NG]

National Steel Corporation; Order Granting Authorization To Import and Export Natural Gas From and to Canada and Vacating Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting National Steel Corporation (National Steel) authorization to import up to 500 Bcf of natural gas each year from Canada, and to export up to 280 Bcf of natural gas each year to Canada. This import/export authorization shall extend for a period of ten years beginning on the date of the initial import or export delivery, whichever occurs first. In conjunction with this authorization, the import/export authorization previously granted to National Steel in DOE/FE Order No. 1017 (see 1 FE ¶ 70,071, issued October 30, 1994) has been terminated.

National Steel's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28500 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–84–NG]

Natural Gas Clearinghouse; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico and To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Natural Gas Clearinghouse authorization to import up to a combined total of 600 Bcf of natural gas from Canada and Mexico and to export up to a combined total of 330 Bcf of natural gas to Canada and Mexico. The term of this authorization is for a period of two years beginning on the date of the initial import or export delivery after October 31, 1995, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28499 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 95–90–NG]

Pacific Gas and Electric Company Gas Supply Business Unit; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pacific Gas and Electric Company, Gas Supply Business Unit, authorization to import up to 600 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after October 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28498 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–82–NG]

Sierra Pacific Power Company; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Sierra Pacific Power Company blanket authorization to import up to 70 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after December 31, 1995. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28506 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–77–NG]

Suncor Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Suncor Inc. (Suncor) authorization to import a total of up to 127.66 Bcf of natural gas from Canada. This import authorization shall extend for a period of two years beginning on the date of the first import delivery after December 31, 1995.

Suncor's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and

4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28503 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–88–NG]

Vermont Gas Systems, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Vermont Gas Systems, Inc. authorization to import up to 20 Bcf of natural gas and export up to 20 Bcf of natural gas from and to Canada over a two-year term beginning the date of first import or export delivery after December 22, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 2, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–28497 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–80–NG]

Williams Energy Systems Company; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Williams Energy Systems Company authorization to import up to 730 Bcf of natural gas from Canada and export up to 730 Bcf of natural gas to Canada over a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy

[FR Doc. 95–28504 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Boulder Canyon Project—Notice of Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This notice announces the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–70 and Rate Schedule BCP–F5 placing into effect the rate methodology for determining the Annual Revenue Requirement, Base Charge, Forecast Capacity Rate and Forecast Energy Rate, and Calculated Energy Rate for the Boulder Canyon Project (BCP) of the Western Area Power Administration (Western) on an interim basis. The rate methodology and the charges/rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until superseded.

DATES: Rate Schedule BCP–F5 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after November 1, 1995, and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis for a 5-year period, or until superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457 and (602) 352–2453 and

Mr. Joel K. Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: The proposed rate methodology is the result of Western, the Bureau of Reclamation (Reclamation), and the BCP Contractors [1] successfully concluding negotiations on the BCP Implementation Agreement which became effective February 17, 1995. The BCP Implementation Agreement resolved eleven issues (1) Replacements; (2) Visitor Facilities; (3) Amendment to Regulations; (4) Multi-Project Benefits and Costs; (5) Engineering & Operation Committee (E&OC) and Coordinating Committee; (6) Billing and Payment; (7) Operation Amount and Working Capital; (8) Audits; (9) Principal Payments; (10) Annual Rate Adjustments; and (11) Uprating Credits.

Four major changes are affecting the power rates for the BCP. The first change concerns the ratesetting methodology. Under the Implementation Agreement of February 17, 1995, the new rate methodology provides that the BCP Contractors will pay each year for the Annual Revenue Requirement. From the Annual Revenue Requirement, a Base Charge for both capacity and energy is calculated. The Base Charge is calculated by dividing the Annual Revenue Requirement equally between energy (Energy Dollar) and capacity (Capacity Dollar), with an adjustment (Capacity Credit) to resolve the historic revenue imbalance between energy and capacity. The Contractor's energy Base Charge each month will be the Rate Year's Energy Dollar multiplied by the Contractor's Firm Energy percentage multiplied by the Contractor's Monthly Energy Ratio. The Contractor's capacity Base Charge each month will be the Rate Year's Capacity Dollar divided by 12 multiplied by the Contractor's Contingent Capacity percentage.

For each Rate Year, Western will calculate a Forecast Capacity Rate and a Forecast Energy Rate. These rates will be applied to services such as: excess energy, unauthorized overruns, and water pump energy. Within 90 days after, the end of the Rate Year, a Calculated Energy Rate shall be calculated.

The second change concerns reducing the Annual Uprating Payments. The Uprating payments are payments due the BCP Schedule B Contractors for advancing funds to upgrade the BCP system. The Colorado River Commission

[1] The BCP Contractors include the Arizona Power Authority; Colorado River Commission of Nevada; City of Boulder City, Nevada; Department of Water and Power of the City of Los Angeles; The Metropolitan Water District of Southern California; Southern California Edison Company; and the Cities of Anaheim, Azusa, Banning, Burbank, Colton, Glendale, Pasadena, Riverside, and Vernon, California.

of Nevada requested and obtained approval from the BCP Engineering & Maintenance Committee to reduce their Uprating Credit Carryforward balance.

The third change concerns the projection of a large carryover balance in the Colorado River Dam Fund, which is proposed to be applied against FY 1996 expenses, reducing the need for FY 1996 revenue. In previous rate studies, no carryover balance was assumed available in the ratesetting year. However, implementing a provision of the BCP Implementation Agreement requires projecting *actual* FY 1996. This rate order assumes the full amount of the carryover is applied against FY 1996 expenses, offsetting the need for an equal amount of power revenue in FY 1996.

The fourth change affecting the BCP power rate is the assumed completion of the Hoover Dam Visitor Facilities in FY 1996. This increases the annual interest payment due in FY 1996 and subsequent years by nearly $10 million annually. Partially offsetting this increased expenses is an increase in revenue from visitors' fees assumed to begin in FY 1996. The "Other revenue" category is assumed to increase from $2.4 million in FY 1995 to $6.0 million in FY 1996.

The net effect of all these changes is to decrease the revenues that need to be collected through power bills in FY 1996 from $49.3 million to $45.2 million on an 8.4 percent decrease.

The existing rate, proposed Base Charge, Forecast Energy Rate, and Forecast Capacity Rate for the 5-year period are as follows:

	Existing rates (FY 1995)		Proposed[2] charges/rates (FY 1996)
Rate Schedule	BCP–F4/2		BCP–F5
		Base Charge[3] ($1,000):	
		Energy Dollar	$23,460
		Capacity Dollar	$21,737
Firm Energy Rate (mills per kilowatthour)	6.31	Forecast Energy Rate (mills per kilowatthour)	6.12
Firm Capacity Rate ($ per kilowatt-month)	1.07	Forecast Capacity Rate ($ per kilowatt-month)	$0.93
Composite Rate (mills per kilowatthour)	12.62	Composite Rate (mills per kilowatthour)	11.79

[2] New rates will be determined each year, based upon the proposed new rate setting methodology. These charges and rates represent FY 1996 only.

[3] The monthly charge for each Contractor is calculated as follows: (1) Energy Base Charge=Rate Year Energy Dollar multiplied by the Contractor's Firm Energy percentage multiplied by its Monthly Energy Ratio and (2) Capacity Base Charge=Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's contingent Capacity percentage. For FY 1996, upon the determination of the actual October 1995 energy and capacity charges, the monthly Energy Charge and Capacity Charge for the remaining months will be adjusted so the BCP Contractors will not pay more than the FY 1996 Annual Revenue Requirement.

Upon completion of the written procedures for the Uprating Credit Program and receipt of revised Uprating Credit Schedules, the FY 1996 Energy Dollar and Capacity Dollar will be adjusted by the difference over the remaining months of FY 1996 so the BCP Contractors will not pay more than the FY 1996 Annual Revenue Requirement.

Statement of Annual Base Charge

The annual Base Charge for both capacity and energy for the BCP will be based upon the estimated Annual Revenue Requirement contained in the annual power repayment spreadsheet study (PRSS). The Base Charge is comprised of the Energy Dollar (50-percent of the Annual Revenue Requirement plus the Capacity Credit) and Capacity Dollar (50-percent of the Annual Revenue Requirement minus the Capacity Credit). Differences between the estimated and the actual Annual Revenue Requirement for the Rate Year will be calculated at the end of each FY when final financial data becomes available and will be used in adjusting the next years' Annual Revenue Requirement.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

These power rates are established pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

During the 109-day comment period, Western received eight written comments. In addition, five speakers commented during the July 13, 1995, public comment forum. All comments and responses are addressed in the rate order.

Rate Order No. WAPA–70, confirming, approving, and placing the proposed rate methodology for determining the Annual Revenue Requirement, Base Charge, Forecast Capacity Rate, Forecast Energy Rate, and Calculated Energy Rate for the BCP into effect on an interim basis, is issued, and the Rate Schedule BCP-F5 will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, October 31, 1995.

Charles B. Curtis,

Deputy Secretary.

Department of Energy, Deputy Secretary

Order Confirming, Approving, and Placing the Boulder Canyon Project Firm Power Service Rate Into Effect on an Interim Basis

In the matter of: Western Area Power Administration Rate Adjustment for Boulder Canyon Project

[Rate Order No. WAPA–70]

November 1, 1995.

The rate methodology is established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation

Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

1941 General Regulations: General regulations for generation and sale of power in accordance with the Boulder Canyon Project Adjustment Act.

1984 Act: Hoover Power Plant Act of 1984, August 17, 1984 (43 U.S.C. 619 *et seq.*).

Adjustment Act: Boulder Canyon Project Adjustment Act, July 19, 1940 (43 U.S.C. 618 *et seq.*).

Annual Capacity Credit: The dollar amount used to adjust the Energy Dollar and Capacity Dollar in order to resolve the historic revenue imbalance between energy and capacity.

Annual Rate: A rate revision recommended to and approved by the Deputy Secretary of Energy for approval on an annual basis for the interim years of the 5-year period.

Annual Revenue Requirement: An amount used to calculate the Capacity Dollar and Energy Dollar equal to the estimated actual expenses for the Rate Year less the sum of (1) multi-project benefits; (2) carryover of funds from the prior FY; (3) estimated BCP water revenue; (4) estimated User Fees; and (5) funds from other sources, except revenue from the sale of capacity and energy.

Base Charge: The total charge paid by a Contractor for capacity and energy based on the Annual Revenue Requirement, pursuant to Section 13 of the BCP Implementation Agreement effective February 17, 1995. The Base Charge shall be composed of a capacity component and an energy component.

BCP: Boulder Canyon Project.

BCP Contractors: The BCP Contractors include the Arizona Power Authority; Colorado River Commission of Nevada; City of Boulder City, Nevada; Department of Water and Power of the City of Los Angeles, California; the Metropolitan Water District of Southern California; Southern California Edison Company; and the Cities of Anaheim, Azusa, Banning, Burbank, Colton, Glendale, Pasadena, Riverside, and Vernon, California.

BCP Implementation Agreement: An agreement which became effective February 17, 1995. The agreement resolved eleven issues (1) Replacements; (2) Visitor Facilities; (3) Amendment to Regulations; (4) Multi-Project Benefits and Costs; (5) Engineering & Operating Committee (E&OC) and Coordinating Committee; (6) Billing and Payment; (7) Operating Amount and Working Capital; (8) Audits; (9) Principal Payments; (10) Annual Rate Adjustments; and (11) Uprating Credits.

Calculated Energy Rate: This rate equals fifty percent (50%) of the Annual Revenue Requirement for each FY divided by the Energy Deemed Delivered in such FY.

Capacity Dollar: The amount of revenue to be billed for Project capacity sales for each Fiscal Year. Such amount shall be fifty percent (50%) of the Annual Revenue Requirement, adjusted for the Annual Capacity Credit in accordance with Section 13.9 of the BCP Implementation Agreement.

Colorado River Basin Project Act: The Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501 *et seq.*).

Contribution Charge: LCRBDF surcharge is part of the rate schedule and is expressed in mills per kWh; required by law to be included in the BCP rates.

Conformed Criteria: Conformed general consolidated power marketing criteria or regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984) beginning on June 1, 1987.

CRDF: Colorado River Dam Fund. A fund established by Section 2 of the Project Act which is to be used only for the purposes specified in the Adjustment Act, Colorado River Basin Project Act of 1968, and the 1984 Act.

DOE: Department of Energy.

DOE Order RA 6120.2: An order related to power marketing administration financial reporting.

$/kW-month: Dollars per kilowatt-month.

E&OC: Engineering and Operating Committee, consisting of members from BCP Contractors, Western, and Reclamation. Its function is to establish a regular review process of Western's and Reclamation's planned O&M, additions, and replacements.

Energy Deemed Delivered: The amount of energy scheduled, delivered, metered and calculated to be delivered to each Contractor, including M_L and S_L.

Energy Dollar: The amount of revenue to be billed for BCP energy sales for each FY. Such amount shall be fifty percent (50%) of the Annual Revenue Requirement, adjusted for the Annual Capacity Credit in accordance with Section 13.9 of the BCP Implementation Agreement.

FERC: Federal Energy Regulatory Commission.

Forecast Capacity Rate: This rate equals the Capacity Dollar divided by 1,951,000 kW.

Forecast Energy Rate: This rate equals the Energy Dollar divided by the lesser of the Total Master Schedule or 4,501.001 MWh.

FY: Fiscal Year.

Hoover Dam: The dam on the Colorado River which forms Lake Mead.

kW: Kilowatt.

kWh: Kilowatthour.

LCRBDF: Lower Colorado River Basin Development Fund—a fund established by the Colorado River Basin Project Act of 1968.

Ml and Sl: Motoring losses and system losses.

Master Schedule: This is an 18-month schedule of projected BCP hydrology.

mills/kWh: Mills per kWh.

Monthly Energy Ratio: The estimated amount of energy each Contractor is to receive each month in accordance with the final Master Schedule divided by the total energy that Contractor is to receive in that FY under the final Master Schedule.

NEPA: National Environmental Policy Act of 1969.

OMB: Office of Management and Budget.

O&M: Operation and maintenance.

Project Act: The Boulder Canyon Project Act authorizing the construction of Boulder Canyon Project dated December 21, 1928 (43 U.S.C. 617 *et seq.*).

PRSS: Power Repayment Spreadsheet Study.

Rate Year: The FY in which the Base Charge, Forecast Capacity Rate, and Forecast Energy Rate are determined and effective.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Replacements: A unit of property constructed or acquired as a substitute

for a existing unit of property for the purpose of maintaining the power features of a project or the joint features properly allocated to power.

Schedule B Contractors: The BCP Contractors that advanced funds to upgrade the BCP System.

Secretary: Secretary of Energy.

Treasury: Secretary of the Department of the Treasury.

Uprating Program: A program nonfederally financed by eleven (11) of the BCP Contractors. The purpose was to increase the capacity of the existing generating and associated electrical equipment at the BCP.

Western: Western Area Power Administration, U.S. Department of Energy.

Western's 1986 General Regulations: General Regulations for the Regulations: Charges for the Sale of Power from the Boulder Canyon Project, 10 CFR Part 904.

Working Capital Fund: Reserve of funds contributed by the Contractors to be used when the Colorado River Dam Fund has no money available.

Effective Date

The proposed rate methodology for determining the Annual Revenue Requirement, Base Charge, Forecast Capacity Rate, Forecast Energy Rate, and Calculated Energy Rate, will become effective on an interim basis beginning November 1, 1995, and remain in effect pending FERC's approval on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in developing the method of determining the Annual Revenue Requirement, Base Charge, Forecast Capacity Rate, Forecast Energy Rate, and the Calculated Energy Rate.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. Discussion of the proposed rate methodology was initiated at an informal BCP Contractor meeting held on April 13, 1995, in Phoenix, Arizona. At this informal meeting, Western and Reclamation representatives explained the need for a change in the Annual Revenue Requirements, Forecast Capacity Rate, Forecast Energy Rate, and answered questions from those persons attending.

2. A **Federal Register** notice was published on May 8, 1995 (60 FR 22575), officially announcing the proposed firm power rate adjustment process, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

3. On May 18, 1995 a letter was mailed from Western's Phoenix Area Office to all Boulder Canyon Project customers and other interested parties providing a copy of the Boulder Canyon Project Rate Brochure, dated May 1995, which included a copy of the **Federal Register** notice of May 8, 1995.

4. At the public information forum held on June 15, 1995, Western and Reclamation representatives explained the proposed rate methodology, a change in the proposed billing procedure, and outlined the reasoning for the overall decrease in the Annual Revenue Requirement for Rate Year 1996 in greater detail and answered questions.

5. On August 4, 1995, a letter was mailed from Western's Phoenix Area Office to all Boulder Canyon Project customers and other interested parties announcing the extension of the consultation and comment period through August 25, 1995.

6. A public comment forum was held on July 13, 1995, to give the public an opportunity to comment for the record. Five persons representing customers and customer groups made oral comments.

7. A **Federal Register** notice was published on August 21, 1995, announcing the extension of the consultation and comment period through August 25, 1995.

8. Eight comment letters were received during the 109-day consultation and comment period. The consultation and comment period ended August 25, 1995. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The BCP was authorized for construction by the Project Act. The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona-Nevada border. The dam was built for the expressed purposes of (1) controlling the flooding in the lower regions of the Colorado River drainage system; (2) improving navigation of the Colorado River and its tributaries; (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands; and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized the Treasury to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million was allocated to flood control.

Construction of the Hoover Dam, formerly known as Boulder Dam, began in 1930, and the first generating unit of the powerplant went into service in 1937. Upon completion of the project facilities, power sales commenced, in accordance with the provisions of the Project Act, to contractors in the states of Arizona, California, and Nevada.

The Project Act was modified in 1940 by the Adjustment Act. The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate and to put into effect power rates based upon a repayment period from June 1, 1937, to May 31, 1987; to reduce the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; to require annual payments to the states of Arizona and Nevada in lieu of taxes levied; and to defer without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

Subsequent and pursuant to the Adjustment Act, the Secretary of the Interior published and implemented the 1941 General Regulations for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, contr versy developed among the BCP contractors over renewal rights to the BCP power, and litigation resulted. Compromises were reached and embodied in the 1984 Act.

The 1984 Act authorized an increase in the capacity of the existing generating and associated electrical equipment at the BCP. The work to accomplish this increase, referred to as the Uprating Program, was funded initially by advances from certain BCP Contractors to Reclamation. Funds advanced would be returned to these contractors through credits on their monthly power bills. The 1984 Act provided for advances from the Treasury for the improvement of visitor facilities at the BCP. The 1984 Act also required that an additional charge of 4.5 mills/kWh be assessed on energy sales to Arizona and an additional charge of 2.5 mills/kWh be assessed on energy sales to California and Nevada; all revenue resulting from the Contribution Charge is to be transferred to the LCRBDF.

Under the 1984 Act, the BCP's power was sold to 15 contractors located in the states of Arizona, California, and Nevada, in accordance with the Conformed Criteria.

Due to the numerous requirements set out in the 1984 Act and the earlier separation of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies published new regulations governing their respective responsibilities at the BCP after June 1, 1987. These regulations are cited herein as Reclamation's 1986 General Regulations and Western's 1986 General Regulations, and they supersede the 1941 General Regulations, which terminated on May 31, 1987.

Power Repayment Spreadsheet Studies

A PRSS is prepared each FY to determine the power revenues required to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12b, requires that:

> In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects, or States.

The BCP PRSS has been used to determine the Annual Revenue Requirement, which includes the net of expenses (OM&R, payment to states, uprating credit payments, interest and principal payments, working capital) minus other revenue (prior year carryover balance, water revenue, and other revenue).

Existing and Provisional Rates

A comparison of the existing and provisional charges and rates follows:

	Existing charges/rates (FY 1995)		Proposed[5] charges/rates (FY 1996)
Rate Schedule	BCP–F4/2		BCP–F5
		Base Charge[6] ($1,000):.	
		Energy Dollar	$23,460
		Capacity Dollar	$21,737
Firm Energy Rate (mills per kilowatthour)	6.31	Forecast Energy Rate (mills per kilowatthour)	6.12
Firm Capacity Rate ($ per kilowatt-month)	1.07	Forecast Capacity Rate ($ per kilowatt-month)	$0.93
Composite Rate (mills per kilowatthour)	12.62	Composite Rate (mills per kilowatthour)	11.79

[5] New rates will be determined each year, based upon the proposed new rate setting methodology. These charges and rates represent FY 1996 only.

[6] The monthly charge for each Contractor is calculated as follows: (1) Energy Base Charge = Rate Year Energy Dollar multiplied by the Contractor's Firm Energy percentage multiplied by its Monthly Energy Ratio and (2) Capacity Base Charge = Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's contingent Capacity percentage. For FY 1996, upon the determination of the actual October 1996 energy and capacity charges, the monthly Energy Charge and Capacity Charge for the remaining months will be adjusted so the BCP Contractors will not pay more than the FY 1996 Annual Revenue Requirement.

Certification of Rate

Western's Administrator has certified that the rate methodology for determining the BCP Annual Revenue Requirement, Base Charge, Forecast Energy Rate, Forecast Capacity Rate, and Calculated Energy Rate placed into effect on an interim basis herein are the lowest possible, consistent with sound business principles. The rate methodology has been developed in accordance with administrative policies and applicable laws.

Discussion

Western is requesting approval to place into effect a new rate methodology. Each year the contractors will pay the BCP the total estimated Annual Revenue Requirement in return for up to 1,951,000 kW of capacity and 4,501.001 MWh of energy at the BCP. The capacity and energy, produced up to the above limits at the BCP, have been allocated to the contractors on a percentage basis. Western will prepare an annual PRSS which will identify the estimated annual revenue requirements for the next FY. The annual operation, maintenance, and replacement budgets will be presented to and approved by the BCP E&OC.

Upon completion of the Uprating Credit Procedures and receipt of revised Uprating Credit Schedules, the FY 1996 Energy Dollar and Capacity Dollar will be adjusted by the difference between the originally projected Annual Uprating Credit Payments and the revised Annual Uprating Credit Payments and spread over the remaining months of FY 1996 so the BCP Contractors will not pay more than the revised FY 1996 Annual Revenue Requirement.

Revenue Requirements

The existing and proposed Annual Revenue Requirements for the BCP are as follows:

	Estimated existing	FY 1996 proposed
Annual Revenue Requirements (rounded to nearest $1,000)	$57,720	$45,197

The methodology for determining the Annual Revenue Requirement will satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The Annual Revenue Requirement for the BCP is based upon Ratebase PRSS estimates of the Rate Year's annual costs less other revenues. Each FY's estimated Annual Revenue Requirement will be adjusted when actual financial data becomes available. The following table provides a summary of the revenue and related expenses through the 5-year provisional rate approval period.

BOULDER CANYON PROJECT PROJECTIONS OF 5–YEAR PERIOD REVENUES AND EXPENSES

[In thousands of dollars]

	Provisional annual revenue requirement PRSS 1996–2000	Existing annual revenue requirement PRSS 1996–2000	Difference
Total Revenues	$276,261	$269,702	$6,559
Revenue Distribution:			
O&M	131,051	110,664	20,387
Payment to States	3,000	3,000	0
Other Expenses	23,201	18,950	4,251
Annual Uprating Payments	74,699	76,888	−2,189
Annual Replacements	20,402	10,577	9,825
Working Capital Fund	653	0	653
Interest	62,577	53,996	8,581
Principal Payments	13,255	12,887	368
CRDF Carry-Over Balance	(13,317)	0	−13,317
Water Sales	(2,650)	(2,250)	−400
Other Revenue	(36,610)	(15,010)	−21,600
Annual Revenue Requirement (rounded to the nearest $1,000)	276,261	269,702	6,559

NOTE: The difference between the Annual Revenue Requirements for the existing rates and the provisional rates is because the existing rates are based upon the FY 1993 budget and the provisional rates are based upon the FY 1996 budget.

Basis for Rate Methodology—Boulder Canyon Project

The proposed rate methodology is the result of Western, Reclamation, and the BCP Contractors successfully concluding negotiations on the BCP Implementation Agreement which became effective February 17, 1995.

The FY 1996 Energy Dollar and Capacity Dollar are designed to maintain a 50/50 split between revenue earned from energy and revenue earned from capacity. The Capacity Credit revenue adjustment resolves the historic imbalance between revenues collected from capacity and energy. The cost to individual BCP Contractor will vary because of the differences in each BCP Contractor's entitlement.

Each Contractor shall be billed monthly a Base Charge comprised of (1) an energy charge equal to the Rate Year Energy Dollar multiplied by the Contractor's Firm Energy percentage multiplied by their Monthly Energy Ratio and (2) a capacity charge equal to the Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's Contingent Capacity percentage. The FY 1996 Rate Year's Energy Dollar and Capacity Dollar will be adjusted over the remaining 11 months of FY 1996, so that the BCP Contractors will not pay more than the estimated Annual Revenue Requirement for FY 1996. The monthly energy and capacity charge will be due and payable regardless of the amount of power and energy produced by the BCP.

In addition to the Contractor's monthly base charge, a Forecast Energy Rate and a Forecast Capacity Rate shall be calculated and will be applied, for (1) excess energy, (2) unauthorized overruns, and (3) water pump energy.

Within 90 days after the end of the FY and the Energy Deemed Delivered has been determined, Western shall determine the Calculated Energy Rate. If the Energy Deemed Delivered is greater than 4,501.001 MWh, Western shall then apply the Calculated Energy Rate to each Contractor's Energy Deemed Delivered to determine the Contractor's actual energy charge. Western shall then establish a credit or debit for each Contractor based on the difference between the Contractor's Energy Dollar and the Contractor actual energy charge. Such credit or debit shall be issued by Western against the Contractor in the month following the calculation or as soon as possible thereafter.

The preparation of each FY's PRSS shall include adjustments from estimates to actuals in the previous year's PRSS. Any adjustments required, whether resulting in an increase or decrease of the annual revenue requirement, will be carried forward and included in the estimated revenue requirement for the calculation of the next Rate Year.

Comments

During the 109-day comment period, Western received eight written comments either requesting information or commenting on the rate adjustment. In addition, five persons commented during the July 13, 1995, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Colorado River Commission of Nevada (Nevada)

Irrigation & Electrical Districts Association of Arizona (Arizona)

Mr. Northcutt Ely for Los Angeles, City of, Department of Water and Power and Southern California Edison Company (California) (2)

Metropolitan Water District of Southern California (California)

Overton Power District No. 5 and Valley Electric Association (Nevada)

R.W. Beck for the Arizona Power Authority (Arizona)

Vernon, City of (California)

Representatives of the following organizations made oral comments:

Arizona Power Authority (Arizona) (3 speakers)

Overton Power District No. 5 and Valley Electric Association (Nevada)

Los Angeles, City of, Department of Water and Power and Southern California Edison Company (California)

Most of the comments received at the public meetings and in correspondence dealt with the proposed rates, hydrology, cost containment, and working capital fund. All comments were considered in developing the proposed BCP rates.

The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Boulder Canyon Comments

Rates

Issue: Some customers are requesting a delay in the BCP rate process in order to allow the customers, Western, and Reclamation sufficient time to complete their current efforts; in particular, efforts of the uprating credits committee.

Response: Western and Reclamation believe a 30-day delay in the implementation of the proposed rate methodology until November 1, 1995, would be in the best interest of the BCP Contractors. The 30-day delay allowed the Colorado River Commission of Nevada (CRC) to obtain the August 16, 1995, approval by the BCP E&OC of a request concerning CRC's uprating credit carryforward balance and allow Western to incorporate the resulting changes from CRC's request into the PRSS. Also, in addition, the delay is taken in response to public comments for additional review and comment time and the delay in the enactment of the BCP Implementation Agreement. Upon completion of the current efforts on the uprating credit committee, Western believes that further changes to the uprating credit schedules can be incorporated into the PRSS and the FY 1996 Rate Year Annual Revenue Requirement can be adjusted accordingly at that time.

Issue: A customer suggested that if sufficient revenue reductions are achieved through the efforts of the current committees to potentially warrant a rate reduction for FY 96, Western should, instead, consider carrying these revenues over into FY 1997 in order to mitigate the effect of the Hoover Visitor Facilities on that year's rates.

Response: As under the existing rate methodology, the proposed rate methodology provides that any revenue over or under the Annual Revenue Requirement is carried forward into the next year and increases or decreases that year's Annual Revenue Requirement. The revenue carried forward in any given year lowers the total Annual Revenue Requirement for the next year, and does not act as a credit for any one specific item, such as the visitor facilities. Western cannot deviate from the methodology as agreed to by all the BCP Contractors in the BCP Implementation Agreement.

Issue: A customer does not agree that the savings which may come about as a result of an increase in generation of energy or a reduction in costs should be carried over into FY 1997.

Response: Western agrees. As indicated previously, any savings in 1 year, which result in excess revenue being collected, is automatically carried forward to the next year.

Issue: Some customers believe there is no need for a rate increase; instead, there should be a reduction for FY 1996. It is believed that Reclamation and Western can safely operate and maintain the BCP for FY 1996 using the rates currently in effect.

Response: Western agrees that a rate increase is not justified for FY 1996. Under the proposed rate methodology, Base Charge and forecasted rates will be a reduction to the existing rates. The FY 1995 Ratebase PRSS projects the FY 1996 Rate Year Base Charge to be less than the total energy and capacity revenues to be collected in FY 1995.

Issue: A customer asks the question whether it is necessary to calculate or display rates in view of the requirement introduced by the BCP Implementation Agreement that the amount collected for energy shall equal one-half of revenue requirements with adjustments to offset past imbalances irrespective of the quantities of energy produced. It believes that the calculation and promulgation of rates continues to be necessary as a consequence of provision of the regulations and contracts as well as for practical reasons.

Response: Western agrees that the calculation of rates should continue. The proposed rate methodology requires Western to calculate the Annual Revenue Requirement, Base Charge, Forecast Energy Rate, Forecast Capacity Rate, and Calculated Energy Rate. The forecasted or calculated rates would be applied to services such as unauthorized overruns, M_L and S_L, and excess energy.

Issue: Some customers support the proposal to adjust the rate upon the completion of the Uprating credit discussions.

Response: Western anticipates that the Uprating credits for FY 1996 will decrease upon completion of the Uprating credits discussions. The reductions are a result of the Uprating Program being declared complete, which releases excess bond funds and a revision to the calculation of the weighted average interest rate, used to determine the non-bonding contractors' Uprating credits. Western believes that the FY 1996 Base Charge can be adjusted upon completion of the Uprating credit discussions and receipt of the revised Uprating schedules.

Issue: Some customers request that the proposed rates be implemented as soon as possible.

Response: Western agrees that the new rate methodology needs to be implemented as soon as possible. It is Western's intention to proceed with the rate process and have the proposed rate methodology effective November 1, 1995, on an interim basis.

Issue: Some customers support the option where the Uprating credit carryforward balances are paid over a 3-year period.

Response: Western has incorporated this request into the FY 95 Rate Base PRSS. The process to request the FY 1995 payments has been initiated. It is to be noted that the payments incorporated in the PRSS do not address the issue of interest on the Uprating carryforward balance.

Issue: One customer believes that the proposed charges and rates should provide for repayment of all overdue Uprating credits payments with accrued interest.

Response: The Uprating credit procedures have not been completed. Western believes upon completion of the procedures and receipt of revised Uprating credit schedules this issue will be resolved.

Issue: One customer has offered to provide Western with expertise and assistance in the light of Western's reorganization, changes in budgets, and turnover.

Response: Western appreciates the offer for assistance. Western recognizes there are opportunities for developing partnerships with our customers and will be looking for opportunities through the transformation process.

Issue: A customer comments that existing legal requirements, if followed strictly, would result in an over collection of revenue as a result of increased energy generation, requiring a mid-year adjustment.

Response: The BCP Implementation Agreement provides that Western bill the BCP Contractors a monthly Base Charge, collecting no more than the Total Annual Revenue Requirement. Under the new methodology, revenue actually collected is not dependent upon the amount of energy generated or the rate charged. Western is reviewing the regulations to determine whether the customer's interpretation of the regulations is valid. Upon completion of the review, Western will followup with the Bureau of Reclamation and the BCP Contractors for further discussions on this issue.

Hydrology

Issue: A customer believes the Master Schedule distributed on June 15, 1995, should be corrected since it has no operative effect until October 1, 1995, as the power contracts provide in Section 5.58 for the revision of the Master Schedule.

Response: The BCP Implementation Agreement provides that Western will use the final Master Schedule, dated June of each year, to calculate the Forecast Energy Rate and provide each contractor's Monthly Energy Ratio used in calculating its monthly energy charge. Western believes that any deviation from the June final Master Schedule would have to be agreed to by all BCP Contractors, Western, and Reclamation. The agreement would require an amendment to the BCP Implementation Agreement.

Cost Containment

Issue: Reclamation's operation and maintenance, other expenses, and replacements costs have been steadily increasing. The BCP Implementation Agreement now ensures complete recovery of these costs. What is Reclamation doing to reduce these costs and to improve its efficiency?

Response: Reclamation is committed to improving its efficiency and minimizing the costs associated with operation and maintenance, other expenses, and replacements. To achieve this goal Reclamation is working closely with the Budget Review Subcommittee of the E&OC.

Issue: There are an inordinate number of supervisors and administrative employees in relation to the number of actual workers. What is Reclamation doing to reduce these administrative and overhead costs?

Response: Since the beginning of FY 1994, Reclamation has reduced layering from as many as five layers in some areas of the organization, to no more than two layers between any employee and the Regional Director in the Regional office, and no more than three layers between any employee and the Regional Director in the Area Offices. Supervisory-to-employee positions have been reduced from one supervisor to every 8 employees to one supervisor for every 15 employees. Several positions and functions have been eliminated. The Lower Colorado Region has reduced its FTE by 307 as of July 7, 1995, which represents an overall 22-percent reduction.

Issue: One customer requests that Western and Reclamation agree to not increase the total Annual Revenue Requirements for FY 1997 and FY 1998 above FY 1996 levels and set the goal to stabilize the charges over the next 3-years.

Response: The BCP Implementation Agreement provides for a collaborative budgetary review process through the E&OC. Western and Reclamation believe that this is the appropriate forum to address budgetary review by the BCP Contractors. When comparing the Annual Revenue Requirement for FY 1996 with FY 1997 and FY 1998, note that a $13 million carryover balance from FY 1995 is figured in the FY 1996 estimate. If the FY 1996 Annual Revenue Requirement (without adjustment for the carryover balance) was used as the ceiling for FY 1997 and FY 1998, Western and Reclamation would have to postpone replacements that are critical to operation of the project.

Working Capital

Issue: A customer believes there is no justification to have the working capital fund and should be eliminated from the PRSS.

Response: The BCP Implementation Agreement provides for the Working Capital to be adjusted to $3 million for the FY 1996 Rate Year. Under Section 14.7 of the BCP Implementation Agreement, the Coordinating Committee shall have the authority, pursuant to Section 11.4.3, to increase or decrease the Working Capital.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Availability of Information

Information regarding this rate adjustment, including PRSSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 85009–5313; Western Area Power Administration, Division of Power Marketing, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The charges and rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective November 1, 1995, Rate Schedule BCP–F5 for the Boulder Canyon Project. The rate schedule shall remain in effect on an interim basis, pending Federal Energy Regulatory Commission confirmation and approval of it or a substitute rate on a final basis, through September 30, 2000.

Issued in Washington, DC, October 31, 1995.

Charles B. Curtis,
Deputy Secretary.

Boulder Canyon Project Schedule of Rates for Firm Power Service

Effective: The first day of the first full billing period beginning on or after November 1, 1995, and remaining in effect through September 30, 2000, or until superseded.

Available: In the marketing area serviced by the Boulder Canyon Project (BCP).

Applicable: To power customers served by the BCP supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Condition of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Base Charge: Energy Charge: Each Contractor shall be billed monthly an energy charge equal to the Rate Year Energy Dollar multiplied by the Contractor's Firm Energy percentage multiplied by the Contractor's Monthly Energy Ratio as provided by contract.

Capacity Charge: Each Contractor shall be billed monthly a capacity charge equal to the Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's Contingent Capacity percentage as provided by contract.

Forecast Rates: Energy: Shall be equal to the Rate Year Energy Dollar divided by the lesser of the Total Master Schedule Energy or 4,501.001 megawatthours. This rate is to be applied for use of excess energy, unauthorized overruns, and water pump energy.

Capacity: Shall be equal to the Rate Year Capacity Dollar divided by 1,951,000 kilowatts, to be applied for use of unauthorized overruns.

Calculated Energy Rate: Within 90 days after the end of each Rate Year, a Calculated Energy Rate shall be calculated. If the Energy Deemed Delivered is greater than 4,501.001 megawatthours, then the Calculated Energy Rate shall be applied the each Contractor's Energy Deemed Delivered. A credit or debit shall be established based on the difference between the Contractor's Energy Dollar and the Contractor's Actual Energy Charge, to be applied the following month calculated or as soon as possible thereafter.

Lower Basin Development Fund Contribution Charge: The Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the Forecast Energy Rate and Forecast Capacity Rate. The Contribution Charge shall be applied also to each kWh of overrun.

Adjustments: None.

[FR Doc. 95–28534 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of an Extension

AGENCY: Western Area Power Administration, DOE.

SUMMARY: The Western Area Power Administration (Western) is announcing an extension of the consultation and comment period for the proposed rate adjustment for the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie). The date for the consultation and comment period was originally announced in the **Federal Register** on July 31, 1995, at 60 FR 38995–38996.

This action is taken in response to public comments requesting additional time to review and comment on requested changes to the Power Repayment Studies.

PROCEDURES: Concurrently with publication of this notice, a letter announcing the comment period extension will be distributed to the AC Intertie customers and other interested parties.

Customers and interested parties are invited to comment on the proposed rates and the methodology used to develop the rates. Comments already submitted will be given full consideration in this extended comment period and do not need to be resubmitted.

Following the close of the consultation and comment period, Western will prepare additional PRSs which will include any changes due to consideration of public comments. Western will recommend the results of those studies as the final proposed rates to the Deputy Secretary to be placed in effect on an interim basis prior to submission to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

EFFECTIVE DATE: The consultation and comment period will be extended through close of business November 27, 1995. Written comments should be received by the end of the consultation and comment period to be assured consideration. Comments may be sent to: Mr. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, PO Box 6457, Phoenix, AZ 85005–6457, (602) 352–2523.

SUPPLEMENTARY INFORMATION: Transmission rates for the AC Intertie are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7152(a)) through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project system involved were transferred to and vested in the Secretary of Energy.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

AVAILABILITY OF INFORMATION: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for transmission service are and will be available for inspection and copying at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona 85005.

Issued at Golden, Colorado, November 9, 1995.

J.M. Shafer,
Administrator.

[FR Doc. 95–28551 Filed 11–21–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5334–4]

Risk Assessment and Risk Management Commission; Revision of Earlier Notice of Public Meetings—1995; Cancellation of December 14 Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Risk Assessment and Risk Management Commission, established as an Advisory Committee under section 303 of the Clean Air Act Amendments of 1990, will not meet on December 14 at the Breakers Hotel in Florida. Unexpected budget problems prevent the Commission from meeting during the month of December.

This amends an earlier notice in the **Federal Register**.

Dated: November 9, 1995.

Gail Charnley,
Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 95–28490 Filed 11–21–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5334–5]

Gray PCB Site: Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Gray PCB Site, Hopkinsville, Christian County, Kentucky, with the city of Providence, Kentucky. EPA will

consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the settlements are available from:

Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Waste Management Division, Waste Programs Branch, Cost Recovery Section, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059, vmx. 6169.

Written comments must be submitted to Mr. Ray Strickland at the above address within thirty (30) days from the date of publication.

Dated: November 3, 1995.

Joseph R. Franzmathes,

Director, Waste Management Division.

[FR Doc. 95–28491 Filed 11–21–95; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission; Comments Requested

November 10, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before [insert date 60 days after date of publication in the Federal Register]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: None.

Title: Telecommunications Relay Services (TRS), CC Docket No. 90-571, MO&O (Coin Sent-Paid Order).

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 3060.

Estimated Time Per Response: 2.6 hours (avg.).

Total Annual Burden: 7980 hours.

Needs and Uses: In the Memorandum Opinion and Order issued in CC Docket No. 90-571 the Commission suspends enforcement of coin sent-paid requirement until August 26, 1997. The Commission requires that payphones be made accessible to TRS users during the suspension pursuant to the alternative plan. The Commission also requires, among other things, that Petitioners work with any other interested parties that wish to participate to prepare and file a joint status report with the Commission on August 26, 1996 and February 26, 1997. The status reports will help the Commission monitor technical developments, assess the effectiveness of the alternative plan in meeting the needs of TRS users, and determine the appropriate action to take regarding TRS coin sent-paid service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28469 Filed 11–21–95; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to OMB for Review

November 13, 1995.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). Comments concerning the Commission's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated information techniques, are requested. The Commission has requested an emergency OMB review of the Form 1240 with an approval by December 8, 1995.

DATES: Persons wishing to comment on this information collection should submit comments on or before December 8, 1995.

ADDRESS: Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561 or via internet at fain_t@a1.eop.gov, and Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. Copies may also be obtained via fax by contacting the Commission's Fax on Demand System. To obtain fax copies call 202–418–0177 from the handset on your fax machine, and enter the document retrieval number indicated below, when prompted.

SUPPLEMENTARY INFORMATION: On September 22, 1995, the Commission released a Thirteenth Order on Reconsideration ("Benchmark Cleanup Order"), FCC 95–397, MM Docket No. 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992. In the "Benchmark Cleanup Order", the Commission adopts a new optional rate adjustment methodology where cable operators will be permitted to make annual rate changes to their BSTs and CPSTs. Operators that elect to use this new methodology will adjust their rates once per year to reflect reasonably certain and reasonably quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the 12 months following the rate change. Because operators will be permitted to estimate cost changes that will occur in the 12 months following the rate filing, we expect that this methodology will limit delays in recovering costs that operators may experience under the current system. Any incurred cost that is underestimated or overestimated may be accrued with interest and added to rates at a later time. If actual and projected costs are different during the rate year, a "true up" mechanism is available to correct estimated costs with actual cost changes. The "true up" requires operators to decrease their rates or alternatively, permits them to increase their rates to make adjustments for over- or under- estimations of these cost changes. Operators would not lose the right to make a rate increase at a later date if they choose not to implement a rate adjustment at the beginning of the next rate year. Finally, in order that operators not feel compelled to make rate filings or increase rates when they otherwise would not, we will eliminate the "use or lose" requirement for operators that elect this methodology.

Filing Instructions for the Form 1240

If this is your first time filing Form 1240 (assuming your franchise area is already subject to regulation), and if your most recent Form 1210 does not incorporate changes through June 30, 1995, there are two circumstances under which you must file a Form 1210 which records the changes in your system's costs which have occurred between the last Form 1210 and June 30, 1995. The first is if you moved any channels between regulated tiers in this time period. The second is if you have added channels to your regulated tier(s) during this time period and you wish to claim Caps Method or Markup Method adjustments for these channels. Any Form 1210 you file to meet these two conditions should not be treated as a separate filing, but rather as an attachment to your Form 1240. If your most recent Form 1210 does incorporate changes through June 30, 1995, you do not have to perform this first step.

If this is your first time filing Form 1240 and you have never been subject to CPST regulation, in order to meet your burden of showing that your CPST rate is not unreasonable, you may have to provide details about your previous increases.

If your local franchising authority becomes certified to regulate the basic service tier ("BST", see the General Instructions section for a full definition), you are required to follow the Commission's existing rules and file a Form 1200, a Form 1205, and a Form 1210. Once those have been filed, you may switch to the annual filing system.

The Commission's rules recognize seven categories of external costs: retransmission consent fees, copyright fees, programming costs, certain cable specific taxes, franchise-related costs, franchise fees and Commission regulatory fees. You may adjust your maximum permitted rate for changes in these categories of costs except for franchise fees, which are not included in your permitted rates but rather are simply added to them.

Form 1240 must be filed with your local franchising authority at least 90 days before you plan to implement a change in your basic rates if your local franchising authority is certified to regulate basic rates. You must notify your local franchising authority of the annual filing date prior to filing Form 1240.

If the Commission found your cable programming service rates to be unreasonable less than one year ago, or if a complaint about a CPST rate is pending before the Commission, and you now wish to increase your CPST rates, you must submit FCC Form 1240 to the Commission at least 30 days before raising your rates.

The Commission's mailing address for Form 1240 filings is: Federal Communications Commission, Form 1240, P.O. Box 18658, Washington, DC 20036.

OMB Approval Number: New Collection.

Title: Annual Updating of Maximum Permitted Rates for Regulated Cable Services.

Form No.: FCC Form 1240.

Type of Review: New Collection.

Respondents: Business or other for-profit; State, Local or Tribal Governments.

Number of Respondents: 5,850.

Estimated Time Per Response: 15 hours.

Total Annual Burden: 116,438 hours.

Needs and Uses: The Commission has created the FCC Form 1240 Annual Updating of Maximum Permitted Rates for Regulated Cable Services as a filing alternative to the FCC Form 1210, which is filed quarterly. The Form 1240, like the Form 1210, is filed by cable operators seeking to adjust maximum permitted rates for regulated services to reflect changes in external costs. Cable operators will submit the Form 1240 to their respective local franchising authorities upon certification to regulate basic service tier rates and associated equipment; or with the Commission (in situations where the Commission has assumed jurisdiction). The Form 1240 will also be filed with the Commission when responding to a complaint filed with the Commission about cable programming service rates and associated equipment. The data will be used by the Commission and local franchising authorities to adjudicate permitted rates for regulated cable services and equipment, for the addition of new programming tiers and to acconnt for the addition and deletion of channels and the allowance for pass throughs of external costs and costs due to inflation.

Fax Document Retrieval Number: 601240.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28468 Filed 11–21–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION.**

The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 550 17th Street NW., Room H–11027, Washington, DC 20429. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims, Lakeland State Bank, #4235, Austin, Texas.

Dated: November 13, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–28460 Filed 11–21–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Perform Air International, Inc., 2111 Welch Street, #B222, Houston, TX 77019, Officers: Jean-Jacques Gouelle, President; Shlomit Shimrat, Secretary/Branch Manager

AFS, Inc., dba Denali International, 80 Yesler Way, Seattle, WA 98104, Officers: James L. Dodson, President; Pamela Held, Vice President

Summit Trade Specialists (U.S.), Inc., 4621 Grumman Drive, Medford, OR 97504, Officers: Dennis E. Schrank, President; Sidney Gould, Secretary.

Dated: November 13, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–28441 Filed 11–21–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[File No. 931–0097]

Dell Computer Corp.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Dell not to enforce patent rights against computer manufacturers using the VL-bus, a mechanism to transfer instructions between a computer's central processing unit and peripherals such as a video monitor, which had been accepted by the Video Electronics Standards Association (VESA) as the industry standard. The Commission had alleged that Dell, as a member of the VESA, did not disclose to other VESA members that it held patent rights to the VL-bus technology at the time the VESA standard for such technology was adopted and then later attempted to enforce those patent rights against certain VESA members, in an effort to unilaterally impose costs on its rivals.

DATES: Comments must be received on or before January 22, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Bureau of Competition, Federal Trade Commission, H–374, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. (202) 326–2932.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the Dell Computer Corporation ("Dell"), and it now appearing that Dell Computer Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated, and providing for other relief,

It is hereby agreed by and between the proposed respondent, by its duly authorized officer and its attorney and counsel for the Commission that:

1. Proposed respondent Dell is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2214 West Braker Lane, Austin, Texas 78758.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. Proposed respondent shall submit with this agreement an initial report signed by the proposed respondent setting forth in precise detail the manner in which the proposed respondent will comply with Paragraph IV of the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time such report is submitted, proposed respondent may request confidentiality for any portion thereof with a precise showing of justification therefor.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules of practice, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Dell" means Dell Computer Corporation, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Dell Computer Corporation, their successors and assigns, and their directors, officers, employees, agents and representatives.

B. "Designated representative" means the person appointed by Dell to the standard-setting organization who communicates respondent's position regarding respondent's patent rights related to any standard under consideration by the standard-setting organization.

C. "VESA" means the Video Electronics Standards Association, located at 2150 North First Street, Suite 440, San Jose, California, 95131.

D. "VL-bus" means the computer local bus design standard VESA established in August 1992 for the transmission of computer information between a computer's central processing unit and certain computer peripheral devices.

E. "'481 patent" means United States patent number 5,036,481.

F. "Commission" means the Federal Trade Commission.

II

It is further ordered that, within thirty (30) days after the date of this order becomes final, and until July 31, 2008, respondent shall cease and desist all efforts it has undertaken by any means, including without limitation the threat, prosecution or defense of any suits or other actions, whether legal, equitable, or administrative, as well as any arbitrations, mediations, or any other form of private dispute resolution, through or in which respondent has asserted that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed the '481 patent.

III

It is further ordered that, until July 31, 2008, respondent shall not undertake any new efforts to enforce the '481 patent by threatening, prosecuting or defending any suit or other action, whether legal, equitable, or administrative, as well as any arbitration, mediation, or other form of private dispute resolution, through or in which respondent claims that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed the '481 patent.

IV

It is further ordered that, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from enforcing or threatening to enforce any patent rights by asserting or alleging that any person's or entity's use or implementation of an industry design standard infringes such patent rights, if, in response to a written inquiry from the standard-setting organization to respondent's designated representative, respondent intentionally failed to disclose such patent rights while such industry standard was under consideration.

V

It is further ordered that, for a period of ten (10) years after this order becomes final, respondent shall maintain the procedure for assuring compliance with Paragraph IV of this order, as accepted by the Commission pursuant to Paragraph 4 of the Agreement Containing Consent Order to Cease and Desist.

VI

It is further ordered that respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of this order, complaint and the announcement shown in Appendix A to this order to VESA, to those members of VESA that Dell contacted regarding possible infringement of the '481 patent, and to any other person or entity to whom respondent has sent notice regarding its claim that the implementation of the VL-bus standard conflicts with or infringes the '481 patent.

B. Within thirty (30) days after the date this order becomes final, distribute a copy of this order, complaint and the announcement shown in Appendix A to this order to every officer and director of respondent, and to every employee of respondent whose responsibilities include acting as respondent's designated representative to any standard-setting organization, group or similar body of which respondent is a member.

C. For a period of five (5) years after the date this order becomes final, furnish a copy of this order and complaint to each new officer and director of respondent and to every new employee of respondent whose responsibilities will or do include acting as respondent's designated representative to any standard-setting organization, group or similar body of which respondent is a member. Such copies must be furnished within thirty (30) days after any such persons assume their position as an officer, director or employee. For purposes of this paragraph VI.C., "new employee" shall include without limitation any of respondent's employees whose duties change during their employment to include acting as respondent's designated representative to any standards-setting organization, group or similar body of which respondent is a member.

D. For a period of ten (10) years after the date this order becomes final, respondent shall furnish each standard-setting organization of which it is a member and which it joins a copy of the order and respondent shall identify to each such organization the name of the person who will serve as respondent's designated representative to the standard-setting organization.

VII

It is further ordered that respondent shall:

A. Within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to the respondent, require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order.

B. For a period of ten (10) years after the date this order becomes final, maintain and make available to

Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Paragraphs V and VI of this order.

C. Notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in respondent that may affect compliance obligations arising out of this order.

Appendix A

Announcement

Dell Computer Corporation has entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued an order on [Date] that prohibits Dell from enforcing its United States patent number 5,036,481 against any company for such company's use of the Video Electronics Standards Association's VL-bus standard.

For more specific information, please refer to the FTC order itself, a copy of which is attached for your information.

General Counsel,

Dell Computer Corporation.

Dell Computer Corporation, Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dell Computer Corporation ("Dell"), which is located in Austin, Texas. The agreement would settle charges by the Commission that the proposed respondent violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition related to VL-bus design standards for personal computing systems.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleged that Dell has engaged in acts and practices that have unreasonably restrained competition to use the VL-bus design for personal computers. The complaint alleges that in February 1992 Dell became a member of the Video Electronics Standards Association ("VESA"), a non-profit standards-setting association composed of virtually all major U.S. computer hardware and software manufacturers. At or about the same time, VESA began the process of setting a design standard for a computer bus design, later to be known as the VESA Local Bus or "VL-bus". Like all computer buses, the VL-bus carries information or instructions between the computer's central processing unit and the computer's peripheral devices such as a hard disk drive, a video display terminal, or a modem.

According to the complaint, by June 1992 VESA's Local Bus Committee, with Dell representatives sitting as members, approved the VL-bus design standard, which improved upon then-existing technology by more quickly and efficiently meeting the transmission needs of new, video-intensive software. One year earlier, in July 1991, Dell had received United States patent number 5,036,481 (the "'481 patent"), which, according to Dell, gives it "exclusive rights to the mechanical slot configuration used on the motherboard to receive the VL-bus card."

The complaint states that on July 20, 1992, Dell voted to approve the preliminary proposal for the VL-bus standard. As part of this approval, a Dell representative certified in writing that, to the best of his knowledge, "this proposal does not infringe on any trademarks, copyrights, or patents" that Dell possessed. After committee approval of the VL-bus design standard, VESA sought the approval of the VL-bus design standard by all of its voting members. On August 6, 1992, Dell's representative approved the final VL-bus design standard. As part of its approval, a Dell representative again certified in writing that, to the best of his knowledge, "this proposal does not infringe on any trademarks, copyrights, or patents" that Dell possessed. At no time during the standard-setting process did Dell disclose to VESA's Local Bus Committee the existence of the '481 patent.

The complaint alleges that after VESA's VL-bus design standard became very successful, having been included in over 1.4 million computers sold in the eight months immediately following its adoption, Dell informed certain VESA members who were manufacturing computers using the new design standard that their "implementation of the VL-bus is a violation of Dell's exclusive rights." Dell demanded that these companies meet with its representatives to "determine * * * the manner in which Dell's exclusive rights will be recognized * * *." Dell followed up its initial demands by meeting with several companies, and it has never renounced the claimed infringement.

The complaint also alleges that the purpose or effects of the challenged acts or practices have been to restrain competition unreasonably in the following ways:

(a) Industry acceptance of the VL-bus design standard was hindered because some computer manufacturers delayed their use of the design standard until the patent issue was clarified.

(b) Systems utilizing the VL-bus design standard were avoided due to concerns that patent issues would affect the VL-bus' success as an industry design standard.

(c) The uncertainty concerning the acceptance of the VL-bus design standard raised the costs of implementing the VL-bus design as well as the costs of developing competing bus designs.

(d) Willingness to participate in industry standard-setting efforts have been chilled.

If a company misrepresents its patent rights to a standard-setting-organization, thereby leading the organization to adopt a particular standard that may infringe on the company's patent rights, the company's later efforts to take advantage of market power resulting from the standard, rather than from some inherent value of the patent, constitutes a violation of Section 5. *Cf. Potter Instrument Co.* v. *Storage Technology Corp.*, 641 F.2d 190 (4th Cir.) (court would estop enforcement of patent where patent holder participated in a standard-setting process, intentionally failed to disclose the existence of its patent, and waited six years until the standard was widely adopted before seeking to enforce the patent), *cert. denied* 454 U.S. 832 (1981); III P. Areeda, *Antitrust Law* ¶ 707h at 141–42 (1978) (negligent misrepresentation to patent office can constitute exclusionary act for equitable antitrust purposes).

The Proposed Consent Order

Part I of the order covers definitions. These definitions make clear that the consent order applies to the directors, officers, employees, agents and representatives of Dell. The order also defines the terms VL-bus, VESA, and "designated representative," which means the person appointed by Dell to the standard-setting organization who communicates Dell's position regarding its patent rights related to any standard under consideration by the standard-setting organization.

Part II of the order requires Dell to cease and desist from all enforcement efforts where it has asserted that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed Dell's '481 patent.

Part III of the order prohibits Dell from undertaking any new efforts to enforce the '481 patent in which Dell would claim that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed the '481 patent.

Part IV of the order requires that for a period of ten (10) years after the date the order becomes final, Dell shall cease and desist from enforcing or threatening to enforce any patent rights by asserting or alleging that any person's or entity's use or implementation of an industry design standard infringes such patent rights if, in response to a written inquiry from the standard-setting organization to respondent's designated representative, Dell intentionally failed to disclose such patent rights while such industry standard was under consideration.

Part V of the order requires that for a period of ten (10) years after this order becomes final, Dell shall maintain the procedure for assuring compliance with Paragraph IV of the order consistent with a compliance procedure Dell has submitted to the Commission.

Part VI of the order requires Dell to distribute a copy of this order, complaint and an announcement to VESA, to those members of VESA that Dell contacted regarding possible infringement of the '481 patent, and to other persons respondent has sent notice regarding the '481 patent claim.

Part VI also requires that Dell distribute a copy of this order, complaint and the announcement to new officers and directors of Dell; to every employee of Dell whose responsibilities include acting as Dell's designated representative to any standard-setting organization, group or similar body of which respondent is a member; and to each standard-setting organization of which Dell is a member. Dell must also identify to each standard-setting organization it joins the name of the person who will serve as its designated representative to the standard-setting organization.

Part VII requires Dell to file compliance reports for five years.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Deli Computer Corp.

[File No. 931–0097]

Today, the Commission accepts for public comment a consent order that prohibits Dell Computer Corp. ("Dell") from attempting to enforce its "'481 patent" against anyone "using or applying VL-bus in its manufacture of computer equipment," because Dell failed to warn the Video Electronics Standards Association ("VESA") of Dell's intellectual property rights when VESA adopted its computer local bus design standard ("VL-bus"). Because the complain does not allege and the evidence does not support a violation of Section 5 of the FTC Act under any established theory of law, and because under any novel theory the competitive implications of the conduct alleged remain unclear, I dissent.

VESA Is a private standard-setting association, the members of which include both computer hardware and software manufacturers. In early 1992, a VESA committee developed a proposed standard for a computer bus to carry information between the central processing unit and the peripheral devices of a computer. In August 1992, VESA members, including Dell, voted to approve the proposed standard. The trade association's ballot required each member's authorized representative to VESA to sign a statement that "to the best of my knowledge," the proposal did not infringe the member company's intellectual property rights. Dell subsequently asserted that implementation of the VL-bus by others infringed Dell's patent rights.

One antitrust theory might be that Dell intentionally mislead VESA regarding the scope of its patent rights; that VESA, relying on Dell's misrepresentations, adopted a standard that conflicted with Dell's rights; and that as a result of the standard, Dell acquired market power. No evidence supports a finding of such intentional conduct, and the allegations in the complaint do not seem sufficient to support a finding of liability on the basis of this theory. I welcome comment on the factual showing that would be necessary and appropriate under this theory.

Another Section 5 theory might be that by participating in a private trade association's standard-setting activities, a firm assumes an affirmative duty to identify the boundaries of its intellectual property rights and to warn the association of any potential conflicts. Alternatively, the Commission might impose such a duty only if a firm returns a ballot with a certification like VESA's, so that a firm could escape antitrust exposure by simply not voting.

Adoption of this novel theory of liability may affect a range of standard-setting organizations. In creating a new antitrust-based duty of care for participants in the voluntary standard setting process, a host of questions need to be resolved. I welcome public comment on the appropriate nature and scope of any such duty, and I look forward to reassessing the case at the end of the comment period.

[FR Doc. 95–28459 Filed 11–21–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. December 5, 1995, 1:30 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Closed committee deliberations, 1:30 p.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Nancy Cherry or Sandy Salins, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to current and pending products. This portion of the meeting will be closed to permit discussion of this information (5 USC 552b(c)(4)).

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. December 11, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Gloria Williams, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:45 a.m., unless public participation does not last that long; open committee

discussion, 9:45 a.m. to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 1:30 p.m.; open committee discussion, 1:30 p.m. to 4:30 p.m.; John C. Monahan, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Radiological Devices Panel, code 12526.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues related to a premarket approval application for an ultrasound imaging device indicated for use on the breast in women with abnormalities based on prior mammography and/or physical examination. This device will be used to further evaluate solid mass characteristics in order to reduce the number of biopsies.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. December 11 and 12, 1995, 8:30 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, December 11, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, December 12, 1995, 8:30 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 1 p.m.; Stephen P. Pollitt, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anesthetic and Life Support Drugs Advisory Committee, code 12529.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 1, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the new drug application (NDA) 20–533, Naropin®, Astra Laboratories, for use as a local anesthetic and a report of the postmarket surveillance of NDA 27–428, Oralet®, Anesta.

Closed committee deliberations. On December 12, 1995, the committee will review trade secret and/or confidential commercial information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. December 14 and 15, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, December 14, 1995, 8 a.m. to 8:40 a.m.; open public hearing, 8:40 a.m. to 9:10 a.m., unless public participation does not last that long; open committee discussion, 9:10 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 3:30 p.m.; open public hearing, 3:30 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 5 p.m.; open committee discussion, December 15, 1995, 8 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700, FAX 301–594–6764, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Blood Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 8, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of December 14, 1995, the committee will hear agency updates on Creutzfeldt-Jakob Disease and blood safety, and Human Immune Deficiency Virus, Type 1 (HIV–1) antigen screening of donors; review the report of the FDA/Health Resources Services Administration contract study of the Tissue Procurement and Distribution System in the United States, and hear scientific presentations on testing for Chagas disease (infection with *Trypanosoma cruzi*) in blood donors. In the afternoon, the committee will hear a summary of the Workshop on Cord Blood Derived Hematopoietic Stem Cells and presentation on Peripheral Blood Derived Hematopoietic Stem Cell Products Intended for Transfusion. A draft document for discussion concerning the application of current statutory authorities to peripheral blood hematopoietic stem cell products intended for transfusion will be made available. On the morning of December 15, 1995, the committee will review and make recommendations on issues related to respiratory syncytial virus immune globulin intravenous, MedImmune. In the afternoon, the committee will review and discuss the site visit reports of the Laboratories of Molecular Virology and Immunochemistry, Division of Transfusion Transmitted Diseases.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 14, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–28521 Filed 11–21–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, December 7, 1995, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion include (1) Report from the Recombinant DNA Ad Hoc Committee; (2) Report and Recommendations from the Panel to Assesses the NIH Investment in Research on Gene Therapy; (3) Report from the Economics Roundtable; (4) Status Report from the Clinical Research Panel; and (5) Preliminary Report on the Study of Options Regarding the Clinical Center. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Program Assistant, Office of the Deputy Director, National Institutes of Health, 1 Center

Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than November 28, 1995.

Dated: November 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of the Health.

[FR Doc. 95–28442 Filed 11–21–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee A—Cancer Centers.

Date: December 8, 1995.

Time: 7:30 a.m.

Place: Bethesda Ramada Inn, Bethesda, MD 20814.

Contact Person: David E. Maslow, Ph.D., 6130 Executive Blvd., Room 643A, Bethesda, MD 20892, Telephone: 301–496–2330.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: November 13, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–28443 Filed 11–21–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institutes of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 29, 1995.

Time: 2 p.m.

Place: Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 1995.

Time: 11 a.m.

Place: Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 12, 1995.

Time: 1 p.m.

Place: Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the first meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 9, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–28444 Filed 11–21–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 11, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 7, 1995.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Cleburne County

Olmstead, T. E., & Son Funeral Home, 108 S. Fourth St., Heber Springs, 95001438

Poinsett County

Bacon Hotel, Homestead Rd. at jct. with RR tracks, SE corner, Whitehall, 95001437

MASSACHUSETTS

Worcester County

Brown—Davis—Frost Farm, 17 Whitney St., Town of Holden, Jefferson, 95001444

Hubbard—Dawson House, 925 Main St., Holden, 95001443

Manning—Ball House, 370 Manning St., Town of Holden, Jefferson, 95001442

Stony Farm, 428 Salisbury St., Holden, 95001441

NEW MEXICO

Lea County

Pyburn House, 203 Fourth St., Lovington, 95001429

NORTH CAROLINA

Guilford County

Deep River Friends Meeting House and Cemetery, 5300 W. Wendover Ave., High Point, 95001448

Wake County

Haywood, Dr. Hubert Benbury, House, 634 N. Blount St., Raleigh, 95001440

SOUTH DAKOTA

Bon Homme County

Scotland Residential Historic District, Roughly bounded by Chestnut, Fifth, Juniper and third Sts., Scotland, 95001439

Minnehaha County

Springer, R. D. and Mary, House, 201 W. 19th St., Sioux Falls, 95001436

TENNESSEE

Bradley County

Ocoee Street Historic District, 1455—1981 N. Ocoee St., Cleveland, 95001447

Williamson County

L'Overture, Toussaint, County Cemetery, Rio Pike at jct. with Hillsboro Rd., Franklin, 95001435

UTAH

Millard County

Deseret Relief Society Hall (Mormon Church Buildings in Utah MPS), 4365 S. 4000 W., Deseret, 95001431

Salt Lake County

University Neighborhood Historic District, Roughly bounded by 500 S., S. Temple, 100 E. and University St., Salt Lake City, 95001430

Tooele County

Grantsville School and Meetinghouse (Mormon Church Buildings in Utah MPS), 90 N. Cooley Ln., Grantsville, 95001432

Johnson, Alex and Mary Alice, House, 5 W. Main St., Grantsville, 95001433

Utah County

Pleasant Grove Historic District, Roughly bounded by 100 N., 500 S., 300 E. and 100 W., Pleasant Grove, 95001434

VERMONT

Bennington County

Wilson House, Jct. of Village St. and Mad Tom Rd., Town of Dorset, East Dorset, 95001427

Franklin County

Brigham Academy (Educational Resources of Vermont MPS), Jct. of VT 108 and Academy Rd., Bakersfield, 95001428

Rutland County

Pawlet Town Hall (Historic Government Buildings MPS), School St., Pawlet, 95001449

WASHINGTON

King County

Shafer Building, 523 Pine St., Seattle, 95001445

Yakima County

Grandview Road—Yellowstone Trail, Grandview Pavement Rd. between Mabton—Sunnyside Rd. and Apple Way, Grandview, 95001446

[FR Doc. 95–28451 Filed 11–21–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Organization, Functions, and Authority Delegations; Closure of Commission Offices Due to Furlough

AGENCY: International Trade Commission.

ACTION: Notice of closure of Commission offices due to furlough.

SUMMARY: The Commission is providing notice to the public that its offices will be closed on Friday, November 24, 1995, and Monday, November 27, 1995, because agency personnel will be on furlough. All filings due on those dates will be due on Tuesday, November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Donna R. Koehnke, Secretary, U.S. International Trade Commission, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Chairman:

Issued: November 20, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–28677 Filed 11–21–95; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (#1200).

Date and Time: December 14–15, 1995, 8:30 a.m. to 6 p.m.

Place: St. James Hotel, 950 2nd Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (301) 306–1926.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28473 Filed 11–21–95; 8:45 am]

BILLING CODE 7565–01–M

Special Emphasis Panel for Social, Behavioral, and Economic Research; Meeting

Name: Special Emphasis Panel for Social, Behavioral, and Economic Research (#1766).

Date and Time: December 1, 1995.

Place: National Science Foundation Arlington, VA Room 320.

Type of Meeting: Closed.

Contact Person: Bonney Sheahan, Program Manager for Cross Disciplinary Activities in the Division of Social, Behavioral, and Economics Research, National Science Foundation Room 995, 4201 Wilson Boulevard, Arlington VA 22230. Telephone: (703) 306–1757.

Purpose of Meeting: To provide advice and recommendations concerning the scope of REU Site proposals submitted to NSF for financial support in the Division of Social, Behavioral, and Economic Research.

Agenda: To review and evaluate proposal scope and criteria as part of the selection process for awards.

Reason for Closing: The information being reviewed includes information of proprietary or confidential nature. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging for a suitable meeting date for all of the panelists.

Dated: November 14, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–28472 Filed 11–21–95; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in New York: Railroad Accident

In connection with its investigation of the Rear End Collision of New York City Transit 0531–J Passenger Train With New York City Transit 0548–M Passenger Train on the Williamsburg Bridge, Between the Buroughs of Manhattan and Brooklyn, in the City of New York, on June 5, 1995, the National Transportation Safety Board will convene a public hearing at 9:00 a.m., (est) on November 29 and 30, 1995, at the Borough of Manhattan Community

College Conference Center, 30 West Broadway at the corner of Park Place, 14th Floor, in New York. For more information, contact Alan Pollock, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 382–0660.

Dated: November 17, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–28548 Filed 11–21–95; 8:45 am]

BILLING CODE 7533–01–P

POSTAL RATE COMMISSION

[Order No. 1087, Docket No. A96–3]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued November 15, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.

In the Matter of: Weston, Michigan 49289 (Donald Buehrer, Petitioner).

Docket Number: A96–3.

Name of Affected Post Office: Weston, Michigan 49289.

Name(s) of Petitioner(s): Donald Buehrer.

Type of Determination: Closing.

Date of Filing of Appeal Papers: November 7, 1995.

Categories of Issues Apparently Raised: 1. Effect on postal services [39 U.S.C. 404(b)(2)(C)]. 2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by November 22, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

November 7, 1995
Filing of Appeal letter
November 15, 1995
Commission Notice and Order of Filing of Appeal
December 1, 1995
Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]
December 12, 1995
Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]
January 2, 1996
Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]
January 16, 1996
Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]
January 23, 1996
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]
March 6, 1996
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–28519 Filed 11–21–95; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 22, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Anthony J. Marino, Director of Aviation, Baton Rouge Metropolitan Airport at the following address: Mr. Anthony J. Marino, Director of Aviation, Baton Rouge Metropolitan Airport, Suite 212, Terminal Building, Baton Rouge, LA 70807.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at the same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 27, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Baton Rouge Metropolitan Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 17, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Charge effective date: December 1, 1992.

Proposed charge expiration date: December 1, 1988.

Total estimated PFC revenue: 1,290,899.

PFC application number: 95–03–U–00–BTR.

Brief description of proposed project(s):

Projects to use PFC's: Terminal Concept Study, Terminal Design,

Acquire Parcels 5 (delete), and Acquire Parcel 6 (delete).

Proposed class or classes of air carriers to be exempted from collecting PFC's:

FAR Part 135 on-demand air taxis, fixed-wing and rotary, and Part 121 supplemental operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Baton Rouge Metropolitan Airport.

Issued in Forth Worth, Texas on November 9, 1995.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 95–28479 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Phoenix Sky Harbor International Airport, Phoenix, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose only, and impose and use PFC revenue from a PFC at Phoenix Sky Harbor International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 as recodified by Title 49 U.S.C. 40117 [C(3)]) and 14 CFR, part 158. On October 27, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the City of Phoenix was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 27, 1996.

DATES: Comments must be received on or before December 22, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA., 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Fred Simon, City of Phoenix, 3400 Sky Harbor Boulevard, Phoenix, Arizona, 85034. Comments from air carriers may be in the same form as provided to the City of Phoenix under section 158.23 of FAR part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only and impose and use the revenue from a PFC at the Phoenix Sky Harbor International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 as recodified by Title 49 U.S.C. 40117 [C(3)]) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On October 27, 1995, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the City of Phoenix was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 27, 1996.

The following is a brief overview of the application:

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: April 1, 1996.

Proposed Charge Expiration Date: January 31, 1998.

Total Estimated PFC Revenue: $80,978,000.

Brief description of the proposed projects—Impose and Use:

AWP–95–01–C–PHX
Build out Terminal 4 Concourse N–4—Total $7,000,000
Noise Mitigation Efforts—Total $4,000,000
Realign Taxiway F to Eliminate Jog—Total $1,250,000
Combined Third Runway Project—Total $66,853,000

Impose only:

AWP–95–01–C–PHX
Extend North Runway West End—Total $1,875,000

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO, Air Taxi/Commercial Operators: CAC, Commuters or Small Certificated Air Carriers with less than 7,500 enplanements each annually: CRAC, Large Certificated Route Air Carriers providing non-scheduled service with less than 7,500 enplanements each annually.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the City of Phoenix Aviation Administration Office.

Issued in Hawthorne, Calif., on November 1, 1995.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 95–28480 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Federal Transit Administration

[FHWA/FTA Docket No. 95–9]

Notification of FY 96 Reviews

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: On April 28, 1994, the FHWA and the FTA Administrators jointly issued guidance to their respective regional administrators on the implementation of the Federal certification of the metropolitan planning process in transportation management area (TMA) planning areas. This notice announces the schedule of FY 1996 reviews as known at this time. The FHWA and the FTA are planning approximately 60 certification and 3 enhanced planning (EPR) reviews for FY 1996. This will complete the first full cycle of certification reviews, of the approximately 140 TMA planning processes, under ISTEA. Additional EPRs and future planning certifications will be announced through the **Federal Register.** Interested parties are invited to submit comments on the individual planning processes to be reviewed.

DATES: Comments on metropolitan planning processes under review must be received within sixty (60) days of the scheduled site review in order to be considered during the certification review process. Where reviews have already been completed prior to the publication of this notice, parties

interested in commenting on these metropolitan planning processes should immediately contact Sheldon Edner (see following paragraph for phone number and address and further instructions). Where dates are to be announced, a supplemental notice announcing these dates will be issued when the specific dates are confirmed.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Sheldon Edner, Metropolitan Planning Division (HEP–20), (202) 366–4066 (metropolitan planning) or Mr. Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Ms. Deborah Burns, Metropolitan Planning Division (TPL–12), (202) 366–1637 or Mr. Scott Biehl, FTA Office of the Chief Counsel (TCC–40), (202) 366–4063. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

ADDRESSES: Submit written, signed comments to Docket Number 95–9, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at this address during the hours of 8:30 a.m. to 3:30 p.m., Monday through Friday. Those desiring notification of receipt of comments must enclose a self-addressed, stamped postcard.

SUPPLEMENTARY INFORMATION: Sections 1024, 1025, and 3012 of the Intermodal Surface Transportation Efficiency Act (ISTEA), Public Law 102–240, 105 Stat. 1914, 1955, 1962, and 2098, amended 23 U.S.C. 134 and 135 and Section 8 of the Federal Transit Act (now codified at 49 U.S.C 5303, 5304, and 5305) to require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. The FHWA and the FTA revised their previous metropolitan planning regulations to implement these changes and published the final regulations on October 28, 1993 (58 FR 58040).

General

Public Involvement in Certification Process

The FHWA and the FTA are soliciting public comment on the planning processes of the FY 1996 certification review sites identified below. The agencies are particularly interested in input regarding the strengths and weaknesses of the planning process in light of the requirements identified in 23 CFR part 450 subpart C. Additionally, the views of local officials and the public are welcomed regarding the use of the planning process in transportation investment decisions.

Schedule of FY 1996 Certification Reviews

The following schedule is subject to revision. Changes will be announced in the **Federal Register.** Parties interested in providing comments on the metropolitan transportation planning processes in the identified areas should submit them directly to FHWA/FTA Docket 95–9 identified above, clearly identifying the metropolitan area that the comments address. Except where the certification review was completed prior to the publication of this notice, comments on metropolitan planning processes under review must be received within 60 days of the scheduled review in order to be considered during the certification review process. Where the review was completed prior to publication of this notice, interested parties wishing to make comments on a particular certification must contact Sheldon Edner within two weeks of the date of publication of this notice to assure that their comments will be considered. Where dates for a planned certification review have not been established, please contact the appropriate FHWA Division office for the dates.

The site visits are intended to provide an opportunity for the FHWA and FTA review team to solicit information from the metropolitan planning organizations (MPO), State DOTs and transit agencies regarding the implementation of the planning process. In addition, the team will be experimenting with alternative mechanisms for soliciting public and local official input. Each relevant MPO is being asked to provide public notice, through its regular public notice processes, of the review and the opportunity to provide public input to the review team. Public officials should contact the appropriate MPO to identify processes set up to solicit local government input.

The results of the certification reviews will be made public through the regular MPO public information process at a time to be set by the MPO policy board.

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Region 1/2:												
Connecticut:												
Bridgeport-Milford						X						
Massachusetts:												
Boston	17/20											
Rhode Island:												
Providence-Pawtuck (RI lead)								X				
Providence-Pawtuck (MA lead)						X						
New York:												
Rochester				X								
New York:												
Northeast NJ									X			
Syracuse							X					
Region 3:												
Delaware:												
Wilmington DE-NJ-MD-PA						X						
District of Columbia:												
DC						X						
Pennsylvania:												
Harrisburg				25/26								
Philadelphia												
Pittsburgh							4/29–5/1					

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Virginia:												
Petersburg-Colonial Heights			11/14									
Region 4:												
Alabama:												
Birmingham	01/05											
Montgomery	23/27											
Florida:												
Daytona Beach (Volusia County)			11/15									
Fort Lauderdale (Broward County)		06/10										
Miami				22/23								
Jacksonville								13/16				
Sarasota						25/29						
Tampa-St. Petersburg (Pasco County)					5/16							
West Palm Beach									24/27			
Kentucky:												
Lexington								20/24				
North Carolina:												
Raleigh									17/21			
Fayetteville										22/26		
South Carolina:												
Columbia										15/19		
Tennessee:												
Chattanooga							15/19					
Knoxville	16/20											
REGION 5:												
Illinois:												
Chicago (EPR in December; certification in May)			11/15						X			
Peoria							X					
Indiana:												
NW Indiana (EPR in December)			X						X			
South Bend	X											
Michigan:												
Grand Rapids								X				
Lansing						X						
Minnesota:												
Minn./St. Paul							X					
Ohio:												
Cincinnati		X										
Cleveland					X							
Akron								X				
Dayton									X			
Wisconsin:												
Madison									X			
REGION 6:												
Louisiana:												
Baton Rouge						X						
New Orleans (EPR Week of November 6, 1995; certification Spring, 1996)		X										
Oklahoma:												
Tulsa							2/5					
Texas:												
Corpus Christi							22/26					
Dallas					X							
El Paso							5/9					
McAllen-Edinburg-Mission							2/27–3/1					
REGION 7:												
Iowa:												
Des Moines	10/13											
Missouri:												
Kansas City							01/05					
St. Louis							06/10					
REGION 8:												

Region/State/TMA	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Colorado:												
Colorado Springs		28/30										
Utah:												
Salt Lake City Ogden					X							
REGION 9:												
California:												
Bakersfield							X					
Oakland-San Francisco (EPA in early November; certification in early Spring)		10/30–11/3										
Modesto						X						
Sacramento						X						
Hawaii:												
Honolulu			X									
Nevada:												
Reno							X					
Las Vegas							X					
REGION 10:												
Alaska:												
Anchorage									X			
Washington:												
Seattle				X								

NOTE: "X" indicates month of certification review; dates are specified where they are scheduled.

Guidance and Responsibility

The FHWA and the FTA published guidance on the certification of planning processes (59 FR 42873). The guidance indicated that the primary responsibility for the certification process rested with the respective regional offices of the FHWA and the FTA. The preparatory work and analysis would be conducted by the appropriate division office of the FHWA, as a prelude to a site visit by representatives of both agencies to the metropolitan planning area to be certified. During the site visit, the FHWA and FTA representatives would, in addition to meeting with representatives of the MPO, State DOTs and transit agencies serving the metropolitan planning area, also provide an opportunity to meet with elected local officials of the principal local governments in the area and citizens. The purpose of these meetings is to afford the officials and citizens an opportunity to provide input to the certification decision in terms of the performance of the planning process.

As indicated above, the MPO and/or State DOT or transit operator may make arrangements for these meetings through their normal procedures. Other alternatives are acceptable based on arrangements between the Federal agencies and the appropriate transportation planning agencies. Officials and citizens wishing to obtain information regarding the process of providing input should contact the MPO for the metropolitan planning areas identified above. Alternatively, the Transportation Planner or Planning and Research Engineer for the appropriate Division office of the FHWA also can provide this information. Each FHWA Division office is located in or near the capitol of each State.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102–240, sections 1024, 1025, 3012; 105 Stat. 1914, 1955, 1962, and 2098.

Issued on: November 9, 1995.

Rodney E. Slater,

Federal Highway Administrator.

Gordon J. Linton,

Federal Transit Administrator.

[FR Doc. 95–28465 Filed 11–21–95; 8:45 am]

BILLING CODE 4910–22–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 225
Wednesday, November 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF INTERIOR

Blackstone River Valley National Heritage Corridor

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, December 7, 1995.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 pm at Blackstone Town Hall, 15 St Paul Street, Blackstone, MA for the following reasons:

1. Presentation by the Town of Blackstone
2. Annual Report
3. Commission Business

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,

Executive Director BRVNHCC.

[FR Doc. 95–28721 Filed 11–20–95; 3:11 pm]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting Scheduled For November 20, 1995, Cancelled

The Federal Communications Commission has cancelled the open meeting on the subjects listed below, previously scheduled for Monday, November 20, 1995, at 1919 M St. NW., Washington, DC.

Item No., Bureau, Subject

1—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation: Uniform Rate-Setting Methodology. Summary: The Commission will consider establishing a methodology under which cable operators may offer uniform services at uniform prices in multiple franchise areas.

2—Wireless Telecommunications and Mass Media—Title: Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures (WT Docket No. 95–5). Summary: The Commission will consider whether to replace the current antenna structure clearance process, which affects all licensees on such structures, with a simplified registration procedure affecting primarily structure owners and whether to amend Parts 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 to reflect revised FAA painting and lighting recommendations and to implement new statutory requirements, holding owners primarily responsible for painting and lighting antenna structures.

3—Common Carrier—Title: Access to Telecommunications Equipment and Services by Persons with Disabilities (CC Docket No. 87–124). Summary: The Commission will consider action concerning wireline telephone Hearing Aid Compatibility rules recommended by the Commission's Hearing Aid Compatibility Negotiated Rulemaking Committee.

4—International—Title: Market Entry and Regulation of Foreign-affiliated Entities (IB Docket No. 95–22, RM–8355, RM–8392). Summary: The Commission will consider action concerning standards for entry and regulation of foreign carriers seeking to provide services in the U.S. telecommunications market.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated November 20, 1995.

Federal Communication Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28723 Filed 11–20–95; 3:12 pm]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:47 a.m. on Tuesday, November 14, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports of the Office of Inspector General and (2) matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: November 14, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–28510 Filed 11–20–95; 9:20 am]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 16, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Thunder Basin Coal Co.*, Docket Nos. WEST 94–148–R, WEST 94–303. (Issues include whether the judge erred in concluding that section 109(a) of the Mine Act does not require mine bulletin board posting of an Order of Temporary Reinstatement.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / for toll free TDD Relay 1–800–877–8339.

Dated: November 9, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–28645 Filed 11–20–95; 3:09 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 22, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of a proposed rule concerning the definition of capital and surplus under section 23A of the Federal Reserve Act.

2. Any items carried forward from a previously announced meeting.

Discussion Agenda

Please Note That No Discussion Items Are Scheduled for This Meeting.

Note: If an item is moved from the Summary Agenda to the Discussion Agenda, discussion of the item will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28593 Filed 11–20–95; 10:33 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, November 22, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of automated data processing equipment within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28594 Filed 11–20–95; 10:33 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 27, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28595 Filed 11–20–95; 10:33 am]

BILLING CODE 6210–01–P

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: November 28, 1995, 3:00–6:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Closed session as provided in 22 CFR Part 1004.4(b).

MATTERS TO BE CONSIDERED: Executive Session on Personnel Implications in Fiscal Year 1996 (closed session).

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: November 16, 1995.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 95–28538 Filed 11–20–95; 8:45 am]

BILLING CODE 7025–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, November 28, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6465A—Safety Study: Aviation Safety in Alaska.

6530A—Highway Accident Report: Tractor Trailer Collision in Fog With Fire Near Menifee, Arkansas, January 9, 1995.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: November 17, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–28547 Filed 11–20–95; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 20, 27, December 4, and 11, 1995.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of November 20

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

There are no meetings scheduled for the Week of November 27.

Week of December 4—Tentative

Friday, December 8

1:00 p.m.
Discussion on Full Power Operating License for Watts Bar (Public Meeting) (Contact: Fred Hebdon, 301–415–2024)
3:15 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

Week of December 11—Tentative

Tuesday, December 12

10:00 a.m.
Briefing by DOE on Status of High Level Waste Program (Public Meeting)
2:00 p.m.
Briefing on Materials Events Data Base (Public Meeting)

Thursday, December 14

10:00 a.m.
Briefing on Industry Restructuring and Deregulation (Public Meeting)
2:00 p.m.
Briefing on EEO Program (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Restart of the Browns Ferry Nuclear Plant Unit 3" (Public Meeting) was held on November 15.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

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Dated: November 16, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–28596 Filed 11–20–95; 10:34 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

TIME AND DATE: Periodic meetings scheduled on short notice will be held between November 27, 1995 and January 12, 1996.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss and vote on issues in Docket No. MC95–1, Mail Classification Schedule, 1995—Classification Reform, I.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–28526 Filed 11–20–95; 8:45 am]

BILLING CODE 7710–FW–P

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Vol. 60, No. 225

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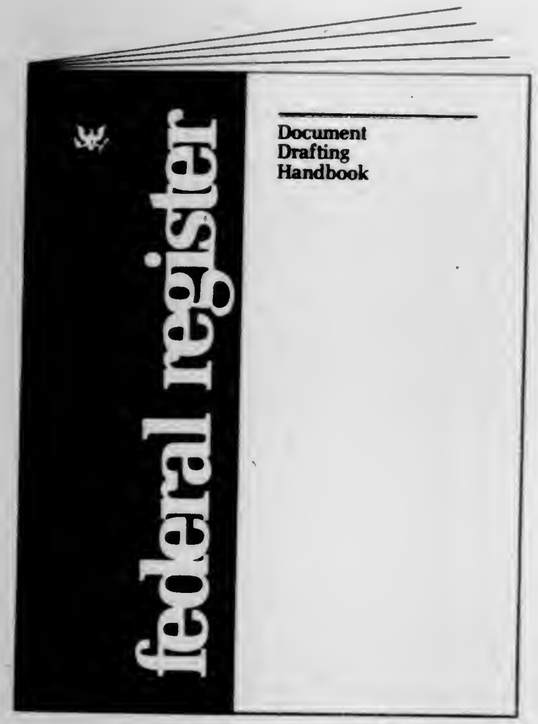
H.R. 436/P.L. 104–55

Edible Oil Regulatory Reform Act (Nov. 20, 1995; 109 Stat. 546)

H.J. Res. 122/P.L. 104–56

Making further continuing appropriations for the fiscal year 1996, and for other purposes. (Nov. 20, 1995; 109 Stat. 548)

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104th Congress, 2nd Session, 1996

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Friday
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federal register

Friday
November 24, 1995

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WHO: Sponsored by the Office of the Federal Register.

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[Two Sessions]

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December 5 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

LONG BEACH, CA

WHEN: December 12, 1995 at 9:00 am
WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802
RESERVATIONS: 310–980–3447

SEATTLE, WA
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WHEN: December 13, 1995 at 9:00 am and 1:00 pm
WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG53

Prevailing Rate Systems; Abolishment of Certain Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Federal Wage System special wage schedules for printing positions in the Los Angeles, California; San Diego, California; San Francisco, California; and Seattle-Everett-Tacoma, Washington, wage areas. Printing and lithographic employees in these wage areas will now be paid rates from the regular wage schedule for their respective wage area.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On September 6, 1995, OPM published an interim rule to abolish the Federal Wage System special wage schedules for printing positions in the Los Angeles, California; San Diego, California; San Francisco, California; and Seattle-Everett-Tacoma, Washington, wage areas. Printing and lithographic employees in these wage areas will now be paid rates from the regular wage schedule for their respective wage area.

The Department of Defense recommended to the Office of Personnel Management that these special wage schedules for printing positions be abolished and that the regular wage schedule for each area apply to printing employees. Federal employment in printing and lithographic occupations in these wage areas has declined in recent years. Only a small number of employees are now paid from these special wage schedules, and only a few of these employees actually benefit by being paid from the special rather than the regular wage schedule. Most of the covered employees are paid "floor rates" established under the 5 CFR 532.279 provision that no maximum rate on a special printing schedule may be less than the maximum rate for the corresponding grade on the regular wage schedule for the wage area. In addition, with the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process.

The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on September 6, 1995 (60 FR 46213), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–28714 Filed 11–22–95; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 950

RIN 3206–AG50

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the solicitation of Federal civilian and uniformed personnel for contribution to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982). Combined Federal Campaign (CFC) participants and OPM's Inspector General have indicated a need for clarifying or changing current procedures for soliciting Federal employees in the workplace. These changes improve procedural operations and accountability for the annual charitable solicitation campaign conducted by Federal personnel in their Government workplaces and set forth ground rules under which charitable organizations may receive contributions from Federal personnel through the CFC.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Lee, 202–606–2564.

SUPPLEMENTARY INFORMATION: These regulations are to implement a number of procedural changes to the operations of the Combined Federal Campaign (CFC). The final regulations contain most of the provisions proposed in the February 16, 1995 **Federal Register;** they include, but are not limited to:

More clearly defining the scope and meaning of workplace solicitations in the Federal Government;

Identification of the circumstances where the Director may authorize solicitations of Federal employees in the workplace outside of the CFC;

Clarification of procedural requirements for charitable organizations seeking participation in the CFC;

Expanding local eligibility by defining and enumerating criteria for organizations that provide services on a statewide basis;

Removing all general designation options not required by statute;

Expanding the solicitation methods and the pool of potential donors.

Other provisions contained in the proposed regulations were not retained in the final version. Several hundred comments were received and considered. The following provisions received overwhelming objections and were deleted:

Expanding the duration of a payroll allotment to an unlimited term or "perpetual pledge" proved to be administratively undesirable and potentially adverse;

Authorizing a fee of 15 percent of undesignated funds to the PCFO proved to create an appearance of conflict of interest;

Automatic ineligibility for organizations that exceed the 25 percent administrative and fundraising expenses cap for more than 2 years proved to be unreasonable given the totality of circumstances.

These regulations are consistent with the restrictions placed on OPM by section 618 of the Treasury, Postal Service, and General Government Appropriations Act for 1988.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it will only effect those charitable organizations that participate in the CFC.

Paperwork Reduction Act

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 3206–0131.

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employee, Military personnel, Nonprofit organizations, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is revising 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—General Provisions

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Subpart G—DoD Overseas Campaign

950.701 DoD overseas campaign.

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950.801 Campaign schedule.

Subpart I—Payroll Withholding

950.901 Payroll allotment.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

Subpart A—General Provisions

§ 950.101 Definitions.

Administrative Expenses, PCFO Expenses, Campaign Expenses, or *CFC Expenses* means all documented expenses identified in the PCFO application relating to the conduct of a local CFC and approved by the LFCC in accordance with these regulations.

Campaign Year means the calendar year in which Federal employees are solicited for contributions to the Combined Federal Campaign.

Combined Federal Campaign or *Campaign* or *CFC* means the charitable fundraising program established and administered by the Director of the Office of Personnel Management (OPM) pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and all subsidiary units of such program.

Designated Funds means those contributions which the contributor has designated to a specific charitable organization(s), federation(s), or general option(s).

Director means the Director of the Office of Personnel Management or his/her designee.

Domestic Area means the several United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Employee means any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service, uniformed service, foreign service, and the postal service.

Federation or *Federated Group* means a group of voluntary charitable human health and welfare organizations created to supply common fundraising, administrative, and management services to its constituent members.

International General Designation Option means that the donor wishes that his or her gift be distributed to all of the international organizations listed in the International Section of the campaign brochure in the same proportion as all of the international organizations received designations in the local CFC. This option will have the code IIII.

International Organization means a charitable organization that provides services either exclusively or in a substantial preponderance to persons in non-domestic areas.

Local Federal Coordinating Committee or *LFCC* means the group of Federal officials designated by the Director to conduct the CFC in a particular community.

Organization or *Charitable Organization* means a private, non-profit, philanthropic, human health and welfare organization.

Overseas Area means the Department of Defense (DoD) Overseas Campaign which includes all areas other than those included in the domestic area.

Principal Combined Fund Organization or *PCFO* means the federated group or combination of groups, or a charitable organization selected by the LFCC to administer the local campaign under the direction and control of the LFCC and the Director.

Solicitation means any action requesting money, either by cash, check or payroll deduction, on behalf of charitable organizations.

Undesignated Funds means those contributions which the contributor has not designated to a specific charitable organization(s), federation(s), or the International General Designation Option.

§ 950.102 Scope of the Combined Federal Campaign.

(a) The CFC is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations. A campaign may be conducted during a 6 week period, as determined by the LFCC, from September 1 through December 15 at

every Federal agency in the campaign community in accordance with these regulations. Except as provided in this section, no other solicitation on behalf of charitable organizations may be conducted in the Federal workplace. Upon written request, the Director may grant permission for solicitations of Federal employees, outside the CFC, in support of victims in cases of emergencies and disasters. Emergencies and disasters are defined as any hurricane, tornado storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world. No such permission will be granted for such solicitations during the period September 1 through December 15.

(b) These regulations do not apply to the collection of gifts-in-kind, such as food, clothing and toys, or to the solicitation of Federal employees outside of the Federal workplace as defined by the applicable Agency Head consistent with General Services Administration regulations and any other applicable laws or regulations.

(c) The Director exercises general supervision over all operations of the CFC, and takes all necessary steps to ensure the achievement of campaign objectives. Any disputes relating to the interpretation or implementation of this part may be submitted to the Director for resolution. The decisions of the Director are final for administrative purposes.

(d) Heads of departments or agencies may establish policies and procedures applicable to solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members. Such solicitations are not subject to these regulations, and therefore do not require permission of the Director.

§ 950.103 Establishing a local campaign.

(a) The Director establishes and maintains the official list of local campaigns and the geographical area each covers. There is no prerequisite regarding the Federal employee population needed to establish or maintain a CFC. However, rather than establishing or maintaining small campaigns, OPM encourages mergers and expansions of campaigns to promote efficiency and economy.

(b) The Director establishes an LFCC to govern the conduct of the local CFC. The LFCC will, whenever possible, be comprised of members of local Federal inter-agency organizations, such as Federal Executive Boards, Federal Executive Associations, Federal Business Associations or, in the absence of such organizations, self-organized associations of local Federal officials. These groups will include local Federal agency heads or their representatives. It may also include representatives of employee unions and other employee groups. Rotation of the LFCC Chair position among the LFCC members is encouraged. For continuity, each LFCC should appoint a Vice Chair who would be expected to serve at the conclusion of the Chair's term.

(c) The agency head at each Federal installation within a campaign area shall:

(1) Become familiar with all CFC regulations,

(2) Cooperate with the representatives of the LFCC and PCFO in organizing and conducting the campaign,

(3) Initiate official campaigns within their offices or installations and provide support for the campaign, and

(4) Assure the campaign is conducted in accordance with these regulations.

(d) Once a campaign has been established, agency heads may not discontinue solicitation of Federal employees within their organization without the written approval of the Director.

(e) Any change in the geographical boundaries of local campaigns may be made only upon the express written permission of the Director.

(f) Each year the LFCC must establish the 6 week time period to solicit employees. Each campaign should not be conducted for more than a 6 week period. However, in unusual circumstances the LFCC may extend the campaign as local conditions require. The solicitation may not begin before September 1 and in no event will it extend beyond December 15 of each year.

(g) Current Federal civilian and active duty military employees may be solicited for contributions using payroll deduction, checks, money orders or cash. Contractor personnel, credit union employees and other persons employed on Federal premises, as well as retired Federal employees, may make single contributions to the CFC through check or money order. These non-Federal employees may not be solicited, but are to be provided the opportunity to participate in the CFC.

(h) A Federal employee whose official duty station is outside the geographic boundaries of an established CFC may not be solicited in that CFC. A Federal employee may participate in a particular CFC only if that employee's official duty station is located within the geographic boundaries of that CFC.

§ 950.104 Local Federal Coordinating Committee responsibilities.

(a) All members of the LFCC should develop an understanding of campaign regulations and procedures. The LFCC is the central point of information regarding the CFC among Federal employees.

(b) The responsibilities of the LFCC include, but are not limited to, the following:

(1) Maintaining minutes of LFCC meetings and responding promptly to any request for information from the Director.

(2) Naming a campaign chairperson and notifying the Director when the chairperson changes.

(3) Determining the eligibility of local organizations that apply to participate in the local campaign. This is the exclusive responsibility of the LFCC and may not be delegated to the PCFO.

(4) Ensuring that the list of charities determined by the Director to be nationally eligible to participate in all local campaigns is reproduced in the local brochure in accordance with OPM instructions.

(5) Ensuring that the local brochure and pledge card are produced in accordance with these regulations and instructions from the Director.

(6) Encouraging local Federal agencies to appoint loaned executives to assist in the campaign. Federal agency heads are encouraged to grant administrative leave to all loaned executives appointed to assist in the conduct of the CFC. Federal loaned executives are prohibited from working on non-CFC fundraising activities during duty hours.

(7) Establishing a network of employee keyworkers and volunteers and participating in interagency briefing sessions and kick-off meetings.

(8) Ensuring that, to the extent reasonably possible, every employee is given the opportunity to participate in the CFC, and ensuring employee designations are honored.

(9) Ensuring that the PCFO includes in keyworker training instructions to encourage employees to designate the charitable organizations they wish to receive their donations and specific information on how general designation monies are distributed.

(10) Ensuring that contributions are distributed in accordance with the method described in these regulations.

(11) Ensuring that no employee is coerced in any way to participate in the campaign.

(12) Bringing allegations of coercion to the attention of the Director and the

employee's agency and providing a mechanism to review employee complaints of undue pressure and coercion in Federal fundraising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper channels for pursuing such complaints.

(13) Notifying the Director of any significant problems or controversies concerning the campaign that the LFCC cannot resolve by applying these regulations. The LFCC must abide by the Director's decisions on all matters concerning the campaign.

(14) Ensuring the PCFO does not use the services of consulting firms, advertising firms or similar business organizations to perform the policy-making or decisionmaking functions in the CFC. A PCFO may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its administrative tasks.

(15) Ensuring that the activities and functions required of the PCFO are kept separate from any non-CFC operations of the organization. The LFCC must verify that the PCFO keeps and maintains CFC financial records and interest bearing bank accounts separate from the PCFO's non-CFC financial records and bank accounts.

(16) Monitoring the work of the PCFO, and inspecting closely the annual audit required of the PCFO pursuant to § 950.105(d)(9) for compliance with these regulations.

(17) Authorizing to the PCFO reimbursement of only those campaign expenses that are legitimate CFC costs and are adequately documented. Total reimbursable expenses may not exceed the approved campaign budget by more than 10 percent.

(c) The LFCC must annually solicit applications for the PCFO via public notice no later than February 1 of each calendar year. The PCFO application period must be open a minimum of 14 calendar days. Cost incurred in providing the public notice should be added to the PCFO budget for the current campaign year as an administrative cost. The LFCC shall select a PCFO to act as its fiscal agent and campaign coordinator on the basis of presentations made to the local committee as described in § 950.105. The LFCC shall consider the efficiency and effectiveness of the campaign as the primary factors in selecting a PCFO.

§ 950.105 Principal Combined Fund Organization (PCFO) responsibilities.

(a) Only federations, charitable organizations or combinations thereof may serve as the PCFO.

(b) the primary goal of the PCFO is to conduct an effective and efficient campaign in a fair and even-handed manner aimed at collecting the greatest amount of charitable contributions possible. Therefore, PCFO's should afford federated groups and agencies with representatives in the local campaign area adequate opportunity to offer sugges'ions relating to the operation of the campaign, printed campaign material, and training. If requested in writing to either the LFCC or PCFO, federated groups and agencies must be given the opportunity to attend all campaign meetings, kick-off events, and training sessions. The PCFO must provide representatives of federated groups, agencies and the general public the opportunity to review at the PCFO office all reports, budgets, audits, training materials, and other records pertaining to the CFC.

(c) Any federation, charitable organization or combinations thereof wishing to be selected for the PCFO must submit a timely application in accordance with the deadline set by the LFCC, that includes:

(1) A written campaign plan sufficient in detail to allow the LFCC to determine if the applicant could administer an efficient and effective CFC. The campaign plan must include a CFC budget that details all estimated costs required to operate the CFC. The budget may not be based on the percentage of funds raised in the local campaign.

(2) A statement signed by the applicant's local director or equivalent pledging to:

(i) administer the CFC fairly and equitably,

(ii) conduct campaign operations, such as training, kick-off and other events, and fiscal operations, such as banking, auditing, reporting and distribution separate from the applicant's non-CFC operations, and

(iii) abide by the directions, decisions, and supervision of the LFCC and/or Director.

(3) A statement signed by the applicant's local director or equivalent acknowledging the applicant is subject to the provisions of § 950.403 and § 950.603.

(d) The specific responsibilities of the PCFO include but are not limited to:

(1) Honoring employee designations.

(2) Helping to ensure no employee is coerced in any way regarding participation in the campaign and that allegations of coercion are brought to the attention of the appropriate Federal officials.

(3) Training agency loaned executives, coordinators, and keyworkers in the methods of non-coercive solicitation. This training must be completely separate from training given for other types of charitable campaign drives. Additionally, keyworkers should be trained to check to ensure the pledge card is legible on each copy, verify arithmetical calculations, and ensure the block on the pledge card concerning the release of the employee's name and address is completed fully.

(4) Ensuring that no employee is questioned in any way as to his or her designation or its amount except by keyworkers, loaned executives, or other non-supervisory Federal personnel.

(5) Preparing pledge cards and brochures that are consistent with these regulations and instructions by the Director.

(6) Honoring the request of employees who indicate on the pledge card that their names not be released to the organization(s) that they designate.

(7) Maintaining a detailed schedule of its actual CFC administrative expenses with, to the extent possible, itemized receipts for the expenses. The expense schedule must be in a format that can be reconciled to the PCFO's budget submitted in accordance with paragraph (c)(1) of this section.

(8) Keeping and maintaining CFC financial records and interest-bearing bank accounts separate from the PCFO's internal organizational financial records and bank accounts. Interest earned on all CFC accounts must be distributed in the same manner as undesignated funds pursuant to § 950.501. All financial records and bank accounts must be kept in accordance with generally accepted accounting principles.

(9) Submitting to the LFCC an audit of collections and disbursements for each campaign managed no later than June 15 of the year in which the last disbursement is made. For example, for the 1994 CFC the audit of the 1994 campaign must be submitted to the LFCC no later than June 15, 1996. The audit must be performed by an independent certified public accountant in accordance with generally accepted auditing standards and OPM guidance.

(10) Absorbing the cost of any reprinting of campaign materials due to its noncompliance with these regulations, embezzlement, or loss of funds. A PCFO must also absorb campaign costs exceeding 10 percent of the approved budget.

(11) Designing and implementing CFC awards programs which are accessible to all employees and which reflect the Government's commitment to non-coercion. Awards to Federal agencies or employees by individual federations or organizations for CFC accomplishments is prohibited.

(12) Producing any documents or information requested by the LFCC and/or the Director within 10 calendar days of the receipt of that request.

(13) Responding in a timely and appropriate manner to reasonable inquiries from participating organizations.

(e) A federated group(s) or charitable organization may be barred from serving as PCFO for 1 year if determined by the Director to have violated these regulations. A federated group(s) or charitable organization serving as PCFO will be notified of the Director's intent to bar and have an opportunity to submit written comments prior to its becoming effective. The Director's decision as to debarment shall be communicated in writing to the LFCC and PCFO, and the LFCC shall not consider an application from such group(s) or organization to serve as the PCFO during terms of debarment.

§ 950.106 PCFO expense recovery.

(a) The PCFO shall recover from the gross receipts of the campaign its expenses, approved by the LFCC, reflecting the actual costs of administering the local campaign. The amount recovered for campaign expenses shall not exceed 10 percent of the estimated budget submitted pursuant to § 950.105(c)(1) unless approved by the Director.

(b) The PCFO may only recover campaign expenses from receipts collected for that campaign year. Expenses incurred preparing for and conducting the CFC cannot be recovered from receipts collected in the previous year's campaign. The PCFO may absorb the costs associated with conducting the campaign from its own funds and be reimbursed, or obtain a commercial loan to pay for costs associated with conducting the campaign. If the commercial loan option is used, the amount of a reasonable rate of interest is an allowable campaign expense, subject to the approval of the LFCC when the PCFO budget is submitted.

(c) The campaign expenses will be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts.

§ 950.107 Lack of a qualified PCFO.

There is no authority in statute or regulation for an LFCC or any Federal official or employee to assume the duties and responsibilities of the PCFO. In the event that there is no qualified PCFO, the LFCC Chairman will promptly inform the Director in writing. The Director will assist the LFCC in merging the campaign with an adjacent campaign that has a qualified PCFO or identifying an eligible organization to function as the campaign's PCFO. If the LFCC's of the adjacent campaigns elect not to merge and a qualified PCFO cannot be found, the local CFC will be canceled. No workplace solicitation of any Federal employee in the campaign area is authorized and payroll allotments cannot be accepted and honored during the duration of the cancellation of the CFC.

§ 950.108 Preventing coercive activity.

True voluntary giving is fundamental to Federal fundraising activities. Actions that do not allow free choices or create the appearance employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fundraising policy. Activities contrary to the non-coercive intent of Federal fundraising policy are not permitted in campaigns. They include, but are not limited to:

(a) Solicitation of employees by their supervisor or by any individual in their supervisory chain of command. This does not prohibit the head of an agency to perform the usual activities associated with the campaign kick-off and to demonstrate his or her support of the CFC in employee newsletters or other routine communications with the Federal employees.

(b) Supervisory inquiries about whether an employee chose to participate or not to participate or the amount of an employee's donation. Supervisors may be given nothing more than summary information about the major units that they supervise.

(c) Setting of 100 percent participation goals.

(d) Establishing personal dollar goals and quotas.

(e) Developing and using lists of non-contributors.

(f) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and allotments, and as allowed under § 950.601.

(g) Using as a factor in a supervisor's performance appraisal the results of the solicitation in the supervisor's unit or organization.

§ 950.109 Avoidance of conflict of interest.

Any Federal employee who serves on the LFCC, on the eligibility committee, or as a Federal agency fundraising program coordinator, must not participate in any decisions where, because of membership on the board or other affiliation with a charitable organization, there could be or appear to be a conflict of interest under any statute, regulation, Executive order, or applicable agency standards of conduct. Under no circumstances may an LFCC member affiliated with an organization applying for inclusion on the local list, participate in the eligibility determinations.

§ 950.110 Prohibited discrimination.

Discrimination for or against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation is prohibited in all aspects of the management and the execution of the CFC. Nothing herein denies eligibility to any organization, which is otherwise eligible under this part to participate in the CFC, merely because such organization is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

Subpart B—Eligibility Provisions

§ 950.201 National list eligibility.

(a) The Director shall annually:

(1) Determine the timetable and other procedures regarding application for inclusion on the national list,

(2) Determine which organizations among those that apply qualify to be part of the national list and then provide the national list of qualified organizations to all local campaigns.

(b) The national list shall be reproduced in all local brochures in accordance with these regulations. The list will include each organization's national list number code. These number codes must be faithfully reproduced in the local brochures.

(c) An organization on the national list may elect to be removed from the national list and have its local affiliate or subunit listed on the local list of organizations in its stead. For the local affiliate or subunit to be listed in lieu of the organization on the national list, the following procedures must be followed:

(1) The organization must send a letter to the local affiliate or subunit in that particular CFC waiving its listing on the national list so that its eligible local affiliate or subunit on the local list of organizations will appear as that organization's sole listing in the CFC brochure.

(2) The local affiliate or subunit will include in its application to the LFCC a copy of the letter authorizing the removal of the organization from the national list as well as all the required

materials for completing a local organization application.

(3) Upon finding the local organization eligible, the waiver letter from the organization on the national list authorizes the LFCC to delete that organization from the national list.

§ 950.202 National list eligibility requirements.

All organizations seeking national list eligibility must:

(a) Certify that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. This requirement cannot be met on the sole basis of services provided through an "800" telephone number or by sending materials via the U.S. Postal Service or a combination thereof. A schedule listing those states (minimum 15) or the foreign countries (minimum 1) where the program activities have been provided and a detailed description of the activities in each state or foreign country must be included with the application. While it is not expected that an organization maintain an office in each state or foreign country, a clear showing must be made of the actual services, benefits, assistance or activities provided in each state or foreign country.

(b) Certify that it is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170. A copy of the letter from the Internal Revenue Service granting tax-exempt status under the Internal Revenue Code, 26 U.S.C. 501(c)(3), must be included with the application.

(c) Certify that the organization has no expenses connected with lobbying and attempts to influence voting or legislation at the local, State, or Federal level or alternatively, that those expenses would classify the organization as a tax-exempt organization under 26 U.S.C. 501(h).

§ 950.203 Public accountability standards.

(a) To insure organizations wishing to solicit donations from Federal employees in the workplace are portraying accurately their programs and benefits, several standards and certifications must be met annually by each organization seeking national list eligibility. Each organization wishing to participate must:

(1) Certify that the organization is a human health and welfare organization providing services, benefits, or assistance to, or conducting activities affecting, human health and welfare. The organization's application must provide documentation describing the human health and welfare benefits provided by the organization within the previous year.

(2) Certify that it accounts for its funds in accordance with generally accepted accounting principles and that an audit of the organization's fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards. Such audit must show expenses by function. A copy of the organization's most recent annual audit must be included with the application. The audit must cover the fiscal year ending not more than 18 months prior to the January of the campaign year to which the organization is applying. For example, the audit included in the 1994 application must cover the fiscal period ending on or after June 30, 1992.

(3) Provide a completed copy of the organization's IRS Form 990, including signature, with the application regardless of whether or not the IRS requires the organization to file this form. IRS Forms 990EZ, 990PF, and comparable forms are not acceptable substitutes. However, smaller organizations that file the Form 990EZ may submit the 990EZ with pages 1 and 2 of the Form 990 attached. The IRS Form 990 and audit must cover the same fiscal period and, if revenue and expenses on the two documents differ, these amounts must be reconciled in an accompanying signed statement by the certified public accountant who completed the audit.

(4) Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990, submitted pursuant to § 950.203(a)(3), by adding the amount spent on "management and general" (line 14) to "fundraising" (line 15) and then dividing the sum by "total revenue" (line 12).

(i) If an organization's administrative and fundraising expenses exceed 25 percent of its total support and revenue, it must certify that its actual expenses for administration and fundraising are reasonable under all the circumstances presented. It must provide an explanation with its application and also include a formal plan to reduce these expenses below 25 percent.

(ii) The Director may reject any application from an organization with fundraising and administrative expenses in excess of 25 percent of total support and revenue, unless the organization demonstrates to the satisfaction of the Director that its actual expenses for those purposes and its plan to reduce them are reasonable under the circumstances.

(5) Certify that the organization is directed by an active and responsible governing body whose members have no material conflict of interest and, a majority of which serve without compensation.

(6) Certify that the organization's fundraising practices prohibit the sale or lease of its CFC contributor lists.

(7) Certify that its publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, and make no exaggerated or misleading claims.

(8) Certify that contributions are effectively used for the announced purposes of the charitable organization.

(9) Certify under which governmental entity the charitable organization is chartered, incorporated or organized (congressionally chartered or the state in which it is registered).

(10) Certify that the organization has received at least 20 percent of its total support and revenues from public sources as computed by adding lines 1a and 1b and dividing by line 12 from the IRS Form 990 submitted pursuant to § 950.203(a)(3).

(11) Certify that the organization prepares and makes available to the public upon request an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. A copy of the organization's annual report must be included with the application. The annual report must cover the fiscal year ending not more than 18 months prior to January of the campaign year to which the organization is applying. A more frequently published document, such as a quarterly newsletter, may be used to meet this requirement provided that such document is available to the general public upon request and describes the organization's activities and supporting services and identifies its directors and chief administrative personnel.

(12) Provide a statement that the certifying official is authorized by the organization to certify and affirm all statements required for inclusion on the national list.

(13) Provide a statement in 25 words or less describing the program activities of the charitable organization. The 25-word statement need not include the organization's name. In addition, organizations must provide a telephone number, dedicated solely for the organization's use, through which the donors may receive further information about the organization. Except as provided in § 950.401(k), this information will be included in the campaign brochure along with the organization's administrative and fundraising percentage computed pursuant to § 950.203(a)(3).

(b) The Director shall review these applications for accuracy, completeness, and compliance with these regulations. Failure to supply any of this information may be judged a failure to comply with the requirements of public accountability, and the charitable organization may be ruled ineligible for inclusion on the national list.

(c) The Director may request such additional information as the Director deems necessary to complete these reviews. An organization that fails to comply with such requests within 10 calendar days from receipt of the request may be judged ineligible.

(d) The required certifications and documentation must have been completed and submitted prior to the application filing deadline. Applications received that are incomplete may not be perfected during the appeal process described in § 950.205.

(e) The Director may waive any of these standards and certifications upon a showing of extenuating circumstances.

§ 950.204 Local list eligibility.

(a) The LFCC shall establish an annual application process consistent with these regulations for organizations that wish to be listed in the local brochure.

(b) The requirements for an organization to be listed in the local brochure shall include the following:

(1) An organization must demonstrate to the satisfaction of the LFCC, that it has a substantial local presence in the geographical area covered by the local campaign, a substantial local presence in the geographical area covered by an adjacent local campaign, or substantial statewide presence.

(i) Substantial local presence is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to members of the public seeking its services or benefits. The facility must be open at least 15 hours a week and have a telephone dedicated exclusively to the organization. The office may be staffed by volunteers. Substantial local presence cannot be met on the basis of services provided solely through an "800" telephone number or the U.S. Postal Service or a combination thereof.

(ii) Substantial statewide presence is defined as providing or conducting real services, benefits, assistance or program activities covering 30 percent of a state's geographic boundaries or providing or conducting real services, benefits, assistance or program activities affecting 30 percent of a state's population. Substantial statewide presence cannot be met on the basis of services provided solely through an "800" telephone number or the U.S. Postal Service or a combination thereof.

(2) An organization seeking local eligibility also must meet all requirements for national list eligibility in § 950.202 and § 950.203, with the following exceptions:

(i) Local charitable organizations are not required to have provided services or benefits in 15 states or a foreign country over the prior 3 years.

(ii) Local charitable organizations with annual revenue less than $100,000 are not required to be audited in accordance with generally accepted auditing standards and, hence, are not required to submit an audit report. Annual revenue is determined by line 12 of the IRS Form 990 covering the organization's most recent fiscal year ending not more than 18 months prior to the January of the campaign year to which the organization is applying.

(iii) Organizations seeking local eligibility in Puerto Rico or the U.S. Virgin Islands are exempt from the requirements of § 950.202(b). However, said organizations must include in their applications, the appropriate local forms demonstrating their status as charitable organizations.

(c) Family support and youth activities certified by the commander of a military installation as meeting the eligibility criteria contained in § 950.204(d) may appear on the list of local organizations and be supported from CFC funds. Family support and youth activities may participate in the CFC as a member of a federation at the discretion of the certifying commander.

(d) A family support and youth activity must:

(1) Be a nonprofit, tax-exempt organization that provides family service programs or youth activity programs to personnel in the Command. The activity must not receive a majority of its financial support from appropriated funds.

(2) Have a high degree of integrity and responsibility in the conduct of their affairs. Contributions received must be used effectively for the announced purposes of the organization.

(3) Be directed by the base Non-Appropriated Fund Council or an active voluntary board of directors which serves without compensation and holds regular meetings.

(4) Conduct its fiscal operations in accordance with a detailed annual budget, prepared and approved at the beginning of the fiscal year. Any significant variations from the approved budget must have prior authorization from the Non-Appropriated Fund Council or the directors. The family support and youth activities must have accounting procedures acceptable to an installation auditor and the inspector general.

(5) Have a policy and practice of nondiscrimination on the basis of race, color, religion, sex or national origin applicable to persons served by the organization.

(6) Prepare an annual report which includes a full description of the organization's activities and accomplishments. These reports must be made available to the public upon request.

(e) Local eligibility determinations. Within 15 business days after the closing date of the application period, the LFCC shall communicate its eligibility decisions via facsimile or U.S. Postal Service. Denial of the application by the LFCC must be sent via U.S. Postal Service certified or registered mail with a return receipt. Approvals may be sent via U.S. Postal Service regular first class mail or facsimile. LFCC's may authorize PCFO's to release eligibility determinations to applicant organizations via telephone. This has no effect on the deadline for LFCC's to receive local appeals. Applicants denied eligibility may appeal in accordance with § 950.205.

(f) No LFCC may print the campaign brochure while there are appeals of eligibility decisions from their campaign pending with the Director. LFCC's are obligated to check with OPM 21 calendar days after the mailing of the local appeal decision as to whether the Director is on notice of a pending timely appeal.

§ 950.205 Appeals.

(a) Organizations who apply and are denied eligibility for inclusion on the national list will be notified of the Director's decision by registered or certified mail of the U.S. Postal Service. Organizations may appeal the Director's decision by submitting a written request to reconsider the denial to the Director. This request must be received within 10 business days from the date of receipt of the Director's decision to deny eligibility and shall be limited to those facts justifying the reversal of the original decision. Requests for reconsideration may not be used to

supplement applications that had missing or outdated documents, and any such documents submitted with the request for reconsideration will not be considered.

(b) Applicants denied listing in the local brochure must first appeal in writing to the LFCC to reconsider its original decision. Such an appeal must be received by the LFCC within 7 business days from the date of receipt of the initial LFCC decision or 14 calendar days from the date the decision was mailed, whichever is earlier. The LFCC must consider all timely appeals and notify the appealing organization within a reasonable time period. Denial of the appeal by the LFCC must be sent via U.S. Postal Service certified or registered mail with a return receipt. Approval of local appeals may be sent via U.S. Postal Service regular first class mail or facsimile.

(c) A local applicant which is unsuccessful in its appeal to the LFCC may appeal to the Director. All appeals must:

(1) Be in writing;

(2) Be received by the Director within 10 business days of the date of receipt of the letter from the LFCC denying eligibility on appeal;

(3) Include a statement explaining the reason(s) why eligibility should be granted;

(4) Include a copy of the letter from the LFCC disapproving the original application, a copy of the organization's appeal to the LFCC, and a copy of the letter from the LFCC denying the appeal.

(d) If an organization fails to file a timely application or a timely appeal of an adverse eligibility determination in accordance with these regulations, such application or appeal to the Director will be dismissed as untimely.

(e) Appeals to the Director may not be used to supplement original applications that had missing or outdated documents. Any such supplemental documents will not be considered. Such appeals shall be limited to those facts justifying the reversal of the original decision.

(f) The Director's decision is final for administrative purposes.

Subpart C—Federations

§ 950.301 National federations eligibility.

(a) The Director may recognize national federations that conform to the requirements and are eligible to receive designations. The Director may from time to time place a moratorium on the recognition of national federations.

(b) By applying for inclusion in the CFC, federations consent to allow the Director complete access to it and its members' CFC books and records and to respond to requests for information by the Director.

(c) An organization may apply to the Director for inclusion as a national federation to participate in the CFC if the applicant has, as members of its proposed federation, 15 or more charitable organizations that meet the eligibility criteria of § 950.202 and § 950.203. The initial year an organization applies for federation status, it must submit the applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however, the applications of its member organizations need not accompany the annual federation application once an organization has obtained federation status, unless requested by the Director.

(d) After an organization has been granted federation status, it may certify that its member organizations meet all eligibility criteria of § 950.202 and § 950.203 to be included on the national list. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(e) An applicant for national federation status must annually certify and/or demonstrate:

(1) That all member organizations seeking participation in the CFC are qualified for inclusion on the national list. Applicants must provide a complete list of those member organizations it certified.

(2) That its financial records, practices and procedures conform to generally accepted accounting principles and that it is annually audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the audit must be included with the application. The audit must verify that the federation is honoring designations made to each member organization. The audit requirement is waived for newly created federations operating for less than a year.

(3) That it does not employ in its CFC operations the services of private consultants, consulting firms, advertising agencies or similar business organizations to perform its policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its administrative tasks.

(f) The Director will notify a federation if it is determined that the federation does not meet the eligibility requirements of this section. A federation may appeal an adverse eligibility decision in accordance with § 950.205.

(g) The Director may waive any eligibility criteria for federation status if it is determined that such a waiver will be in the best interest of the CFC.

(h) Two organizations—American Red Cross and United Service Organization—are exempt from the 15-member requirement of § 950.301(c).

§ 950.302 Responsibilities of national federations.

(a) National federations must ensure that only those member organizations that comply with all eligibility requirements included in these regulations are certified for participation in the CFC.

(b) The Director may elect to review, accept or reject the certifications of the eligibility of the members of the national federations. If the Director requests information supporting a certification of national eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 business days of the receipt of the request constitutes grounds for the denial of national eligibility of that member.

(c) The Director may elect to decertify for up to one campaign year a federation which makes a false certification, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. This presumption may be overcome by evidence presented at the hearing.

(d) The failure of a national federation to respond in a timely fashion to a request by the Director for required information or cooperation in an investigation or a settlement of disbursements may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign.

§ 950.303 Local federations eligibility.

(a) LFCC's must approve local federations that conform to the requirements.

(b) By applying for inclusion in the CFC, federations consent to allow the LFCC and Director complete access to it and its members' CFC books and records and to respond to requests for information by the LFCC and the Director.

(c) An organization may apply to the LFCC for inclusion as a local federation if the applicant has as members of its proposed federation, 15 or more charitable organizations that meet the eligibility criteria of § 950.202, § 950.203, and § 950.204. The initial year an organization applies for federation status, it must submit to the LFCC applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however, the applications of its member organizations need not accompany the annual federation application once an organization has obtained federation status.

(d) After an organization has been granted federation status, it may certify that its member organizations meet all eligibility criteria of §§ 950.202, 950.203, and 950.204 to be included on the Local List: While deference should be given to federation certifications, the LFCC, during the review process, may request independent evidence of individual member organization's eligibility. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(e) An applicant for local federation status must certify and/or demonstrate:

(1) That all member organizations seeking participation in the CFC are qualified for inclusion on the Local List and provide a complete list of those member organizations it certified.

(2) That its financial records, practices and procedures conform to generally accepted accounting principles and is annually audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the annual audit must be included with the application. The audit must verify that the federation is honoring designations made to each member organization. The audit requirement is waived for newly created federations operating for less than a year.

(3) That is does not employ, in its CFC operations, the services of private consultants, consulting firms, advertising agencies or similar business organizations to perform the policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its administrative tasks.

(f) The LFCC will notify a federation if it is determined that the federation does not meet the eligibility requirements of this section. A federation may appeal an adverse eligibility decision in accordance with § 950.205.

(g) The Director may waive any eligibility criteria for federation status if it is determined that such a waiver will be in the best interest of the CFC.

§ 950.304 Responsibilities of local federations.

(a) Local federations must ensure that only those member organizations that comply with all eligibility requirements included in these regulations are certified for participation in the CFC.

(b) If the LFCC requests information supporting a certification of local eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 business days of the receipt of the request constitutes grounds for the denial of local eligibility.

(c) The Director, upon recommendation by the LFCC, may elect to decertify a federation which makes a false certification for up to one campaign year, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the hearing.

(d) The failure of a local federation to respond in a timely fashion to a request by the Director or the LFCC for required information or cooperation in an investigation may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign.

Subpart D—Campaign Materials

§ 950.401 Campaign and publicity materials.

(a) The specific campaign and publicity materials, such as the official brochure, will be developed locally, except as specified in these regulations. All materials must be reviewed by the LFCC for compliance with these regulations and will be printed and supplied by the PCFO. All publicity materials must have the approval of the LFCC before being used. Federations must notify the PCFO in writing of their desire to participate in the development of campaign and publicity materials. The PCFO must respond in a timely manner to a federation's request to participate in the development of campaign and publicity materials. Federations must also respond in a timely fashion in the development of campaign and publicity materials.

(b) During the CFC solicitation period, participating CFC organizations may distribute bona fide educational materials describing its services or programs. The organization must be granted permission by the Federal agency installation head, or designee to distribute the material. CFC Coordinators, Keyworkers or members of the LFCC, are not authorized to grant permission for the distribution of such materials. If one organization is granted permission to distribute educational materials, then the Federal agency installation head must allow any other requesting CFC organization to distribute educational materials.

(c) Organizations and federations are encouraged to publicize their activities outside Federal facilities and to broadcast messages aimed at Federal employees in an attempt to solicit their contributions through the media and other outlets.

(d) Agency Heads are further authorized to permit the distribution by organizations of promotional pamphlets to Federal personnel in public areas of Federal workplaces in connection with the CFC, provided that the manner of distribution accords equal treatment to all charitable organizations furnishing such pamphlet for local use, and further provided that no such distribution shall utilize Federal personnel on official duty or interfere with Federal government activities. LFCC members and other campaign personnel are to be particularly aware of the prohibition of assisting any charitable organization or federated group in distributing any type of literature, especially during the campaign period. Nothing in this section shall be construed to require an LFCC to distribute or arrange for the

distribution of any material other than the Campaign brochure and the pledge card.

(e) The Campaign brochure and pledge card is the official CFC information package and shall be made available to all potential contributors. All CFC brochures must inform employees of their right to make a choice to contribute or not to contribute; to designate or not to designate; and to give a confidential gift in a sealed envelope.

(f) Campaign materials must constitute a simple and attractive package that has fundraising appeal and essential working information. The package should focus on the CFC without undue use of charitable organization symbols and logos or other distractions that compete for the donor's attention. Extraneous instructions concerning the routing of forms, tallying of contributor's receipt, and similar reports, which are primarily for keyworkers must be avoided.

(g) The following applies specifically to the campaign brochure:

(1) OPM will include in the annual distribution of the National List explicit instructions for the printing of the brochure and language to be printed verbatim in the introductory pages. The general information provided will include:

(i) a description of the CFC arrangement and explanation of the payroll deduction privilege.

(ii) a statement that the donor may only designate charitable organizations or federations that are listed in the brochure and that write-ins are prohibited.

(iii) instructions as to how an employee may obtain more specific information about the programs and the finances of the organizations participating in the campaign.

(iv) a description of employees' rights to pursue complaints of undue pressure or coercion in Federal fundraising activities.

(2) Following the introductory pages, the organization list will consist of three parts—the national, the international, and the local. The order of these three parts will be annually rotated in accordance with OPM instructions. In 1996 the Local part will be first followed by the National and finally the International. The national and international lists will consist of faithful reproductions of the lists of national and international organizations, including federations, provided by OPM. The third part, the local list, is determined by the LFCC. The order of listing of the federated and unaffiliated organizations within the three separate parts will be determined by random drawing. The order of organizations within each federation will be determined by the federation. The order within the national and local unaffiliated groups will be alphabetical. Absent specific instructions from OPM to the contrary, each participating organization and federated group listing must include a description, not to exceed 25 words, of their services and programs, plus a telephone number for the Federal donor to request further information about the group's services, benefits, and administrative expenses. Each listing will include a statement of the percentage of the organization's total receipts and revenues that are used for administration and fundraising. Neither the percentage of administrative and fundraising expenses, nor the telephone number count toward the 25-word statement.

(3) Each national federation and charitable organization will be assigned a code number by OPM. Local federations and local charitable organizations will be assigned code numbers by the LFCC. At the beginning of each federated group's listing will be the federation's name, code number, 25-word statement, percentage of administrative and fundraising expenses, and telephone number. The sections of the brochure where the unaffiliated agencies are listed will begin with the titles National Unaffiliated Organizations, International Unaffiliated Organizations and Local Unaffiliated Organizations respectively.

(h) Omission of an eligible charitable organization from the brochure may require that all brochures be reprinted and redistributed. Such omissions must be reported to OPM immediately upon discovery. The Director or LFCC may direct that the cost of such reprinting and redistribution be borne by the PCFO or charged to CFC administrative expenses.

(i) Dual listing. Listing of a national organization, as well as its local affiliate organization, is permitted. However, a national organization may waive its listing in the national section of the brochure in favor of its eligible local affiliate. The local affiliate must include in its application the written waiver from its national organization.

(j) Multiple listing. Each national or local organization must individually meet all of the eligibility criteria and submit independent documentation as required in § 950.202, § 950.203 or § 950.204. Once an organization is deemed eligible, it is entitled to only one listing in the CFC brochure, regardless of the number of federations to which that organization belongs.

(k) The LFCC may omit the 25-word program description from the CFC brochure if, in the immediately preceding campaign year, contributions received in the local CFC totalled less than $100,000.

§ 950.402 Pledge card.

(a) The Director will make available each campaign year at least one model pledge card which shall be reproduced at the local level.

(b) Campaigns may incorporate additional giving levels to the Director's authorized pledge card. Campaigns may also include their award recognition program. No further modifications to the pledge card are permitted unless approved in advance by the Director.

(c) An employee may not make a designation to an organization not listed in the brochure. In addition, an employee may not make a CFC contribution to an organization listed in the brochure of a campaign covering a geographic location different from the campaign where the employee works. Designations made to organizations not listed in the brochure are not invalid, but will be treated as undesignated funds and distributed accordingly.

(d) In the event the PCFO receives a pledge card that has designations that add up to less than the total amount pledged, the PCFO must honor the total amount pledged and treat the excess amount as undesignated funds. In the event that a PCFO receives a pledge card that has a total amount pledged that is less than the sum of the individual designations, the PCFO must honor the designations by assigning a proportionate share of the total gift to each organization designated. For example, if an employee indicates a total gift of $100 in the upper portion of the pledge card, but designates $25 each to five organizations in the lower part of the pledge card, the PCFO must adjust each organization's designation to $20.

§ 950.403 Penalties.

A PCFO's failure to comply with these regulations may result in either disqualification from future service as PCFO, disqualification as a participating federation, or both penalties. These penalties may only be imposed after a hearing on the record and communication of the Director's decision in writing.

Subpart E—Undesignated Funds

§ 950.501 Applicability.

(a) All undesignated funds shall be distributed to all of the organizations in the CFC brochure in the same proportion that they received designations in the campaign.

(b) The distribution of undesignated funds described in § 950.502 applies to all domestic area campaigns. It does not apply to the DOD Overseas Campaign.

(c) The Director may alter the distribution of undesignated funds as local campaign circumstances may require or to enforce the distribution method described herein.

Subpart F—Miscellaneous Provisions

§ 950.601 Release of contributor names.

(a) The pledge card, designed pursuant to § 950.402, must allow an employee to indicate if the employee does not wish his or her name and home address forwarded to the charitable organization or organizations designated. A PCFO's failure to honor an employee's wish may result in the decertification of the PCFO.

(b) The pledge card will direct an employee to provide his or her complete home address on the pledge card should he or she wish his or her name and home address released to organizations receiving their donations.

(c) It is the responsibility of the PCFO to forward the names and addresses of employees who have indicated that they wish their names be forwarded, to the recipient organization directly, if the organization is unaffiliated, and to the organization's federation if the organization is a member of a federation. The PCFO may not make any other use of these employees' names and addresses.

(d) Organizations must cooperate fully with OPM investigations into the care and appropriate use of these lists. Should an organization ignore or fail to respond to OPM's requests for cooperation or hamper an investigation, the Director may propose that the organization be suspended or expelled from the CFC. The Director will consider any response in issuing a decision.

§ 950.602 Solicitation methods.

(a) Employee solicitations shall be conducted during duty hours using methods that permit true voluntary giving and shall reserve to the individual the option of disclosing any gift or keeping it confidential. Campaign kick-offs, victory events, awards, and other non-solicitation events to build support for the CFC are encouraged.

(b) Special CFC fundraising events, such as, raffles, lotteries, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these regulations are permitted during the 6-week campaign period if approved by the appropriate agency head or government official, consistent with agency ethics regulations.

(c) In all approved special fundraising events the donor must have the option of designating to a specific participating organization or federation or be advised that the donation will be counted as an undesignated contribution and distributed according to these regulations.

§ 950.603 Sanctions.

(a) Sanctions not specifically provided for elsewhere in these regulations, may be imposed on an organization, federation or PCFO for violating any provisions, other applicable provisions of law, or any directive or instruction from the Director. The Director will determine the appropriate sanction, up to and including permanent expulsion from the CFC. In determining the appropriate sanction, the Director will consider all elements such as previous violations, harm to Federal employee confidence in the CFC, and any other relevant factors. The Director shall provide written notification to the organization, federation or PCFO regarding the alleged violation and the intent to impose a sanction. Prior to implementation of sanctions under this section, the organization, federation or PCFO shall be provided an opportunity to address in writing why the sanction should not be imposed. This submission must be received within 10 calendar days from the date of receipt of the Director's notification letter.

(b) At the Director's discretion, PCFO's and Federations may be directed to suspend distribution of current and future CFC donations from Federal employees to recipient organizations. Federations and PCFO's shall immediately place suspended contributions in an interest bearing account until directed to do otherwise.

§ 950.604 Records retention.

Federations, PCFO's and other participants in the CFC shall retain documents pertinent to the campaign for at least three campaign years. Documents requested by OPM must be made available within 10 business days of the request.

Subpart G—DoD Overseas Campaign

§ 950.701 DoD overseas campaign.

(a) A Combined Federal Campaign is authorized for all Department of Defense (DoD) activities in the overseas areas during a 6-week period in the fall. Organizations that may participate in the Overseas Campaign will consist of organizations determined nationally eligible by OPM.

(b) The DoD must select an organization or combination of organizations to serve as PCFO as it deems in the best interests of the overseas campaign.

(c) Federal civilian agencies with overseas personnel may elect to have these employees participate in the DoD campaign or in the National Capital Area campaign.

(d) The overseas campaign brochure shall not include the All International Organizations Designation Option-IIII.

(e) Family support and youth activities established in overseas locations may be supported from CFC funds.

(f) Undesignated funds contributed in the Overseas Campaign equal to up to 6 percent of the gross campaign contributions will be allocated to the Overseas family support and youth activities. No other funds may be used for this purpose. If the undesignated funds exceed 6 percent of the gross campaign contributions, this excess shall be distributed to all other organizations in the same proportions as designations.

(g) Overseas family support and youth activities shall not be charged any share of campaign costs. All other organizations participating in the Overseas Area CFC will be charged for campaign costs in the same proportion that they received gross campaign receipts, net of that amount of receipts set aside for family support and youth activities.

(h) The overseas campaign brochure must explain the allocation policy utilized by each of the military services to allocate funds received from the Overseas campaign to their overseas family support and youth activities.

Subpart H—CFC Timetable

§ 950.801 Campaign schedule.

(a) The Combined Federal Campaign will be conducted according to the following timetable.

(1) During one 30-calendar day period between January and March, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the national list.

(2) Within 35 calendar days of the closing of the receipt of applications, the Director will issue notices to each national applicant organization of the results of the Director's review.

(3) Local Federal Coordinating Committees must select a PCFO no later than March 15.

(4) The Director will issue a national eligibility list to all local campaigns by June 30.

(5) Local Federal Coordinating Committees must accept applications

from organizations seeking local eligibility for 30 calendar days as determined by the LFCC, and must issue notice of its eligibility decisions within 15 business days of the closing date for receipt of applications.

(b) The Director will annually issue a timetable for accepting and processing national applications.

Subpart I—Payroll Withholding

§ 950.901 Payroll allotment.

The policies and procedures in this section are authorized for payroll withholding operations in accordance with the Office of Personnel Management Pay Administration regulations in part 550 of this Title.

(a) Applicability. Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local CFC organizations.

(b) Allotters. The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a CFC when an appropriate official of the employing Federal agency determines that the employee will continue employment for a period to justify an allotment. This includes military reservists, National Guard, and other part-time and intermittent employees who are regularly employed.

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months).

(c) Authorization. Allotments will be totally voluntary and will be based upon contributor's individual authorization.

(1) The CFC Pledge Card, in conformance with § 950.402, is the only form for authorization of the CFC payroll allotment and may be printed or purchased from a central source by each PCFO. The pledge cards and official brochure will be distributed to employees when charitable contributions are solicited.

(2) The original copy of each pledge card (payroll allotment authorization) should be transmitted to the contributor's servicing payroll office as promptly as possible, preferably by December 15. However, if pledge cards are received after that date they should be accepted and processed by the payroll office.

(d) Duration. Authorization of allotments will be in the form of a term allotment. Term authorizations will be in effect for 1 full year—26, 24, or 12 pay periods depending on the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. Three months of employment is considered the minimum amount of time that is reasonable for establishing an allotment.

(e) Amount. Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(1) The minimum amount of the allotment will be determined by the LFCC but will not be less than $1 per payday, with no restriction on the size of the increment above that minimum.

(2) No change of amount will be authorized for term allotments.

(3) No deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the CFC allotment. No adjustment will be made in subsequent periods to make up for missed deductions.

(f) Remittance. One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point (CRP) at each local CFC location for which the payroll office has received allotment authorizations. The Director will provide a list of the authorized CRP's to Federal payroll offices.

(1) The check will be accompanied by a statement identifying the agency, the dates of the pay period, and the total number of employee deductions.

(2) There will be no listing of allotters included or of allotter discontinuances.

(g) Discontinuance. Term allotments will be discontinued automatically on expiration of the 1 year withholding period, or on the death, retirement, or seperation of the allotter from the Federal service, whichever is earlier.

(1) An allotter may revoke a term authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(2) A discontinued allotment will not be reinstated.

(h) Transfer. When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different Department or agency, his or her allotment authorization should be transferred to the new payroll office.

(i) Accounting. Federal payroll offices will oversee the establishment of individual allotment accounts, the deductions each pay period, and the reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(1) The PCFO shall notify the federated groups, national agencies, and local agencies as soon as practicable after the completion of the campaign, but in no case later than February 15, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them.

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit at least monthly for campaigns of $500,000 or more or quarterly if less than that amount, minus only the approved proportionate share for administrative cost reimbursement and the PCFO fee set forth in § 950.106(d). It shall remit the contributions to each organization or to the federated group, if any, of which the organization is a member. For campaigns with gross receipts in excess of $500,000, the PCFO will distribute all CFC receipts beginning April 1, and monthly thereafter. For campaigns with gross receipts of $500,000 or less, the PCFO will distribute all CFC receipts beginning June 1, and quarterly thereafter. At the close of each disbursement period, the PCFO's CFC account shall have a balance of zero.

(3) The PCFO may make one-time disbursements to organizations receiving minimal donations from Federal employees. The LFCC must determine and authorize the amount of these one-time disbursements. The PCFO may deduct the proportionate amount of each organization's share of the campaign's administrative costs and the average of the previous 3 years pledge loss from the one-time disbursement. This is the only approved application of adjusting for pledge loss.

(4) Federated and national charitable organizations, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution amount the charitable organizations of remittances from the PCFO; and

(ii) Arrangements for an independent audit conducted by a certified public accountant agreed upon by the participating charitable organizations.

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BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB08

General Administrative Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby amends its General Administrative Regulations, effective for the 1997 and succeeding reinsurance years, by revising the general qualifications for being awarded a Standard Reinsurance Agreement. The intended effect of this rule is to provide additional information and amended procedures so that FCIC can more accurately identify those insurance companies experiencing a significant weakening in financial conditions.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 31, 1999.

This rule has been determined to be "exempt" for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget ("OMB").

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various level of government.

This regulation will not have a significant impact on a substantial number of small entities. This action does not increase the paperwork burden on the reinsured company because the reinsured company must already provide the additional information required by this regulation to the state in which it is licensed. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions contained in the Standard Reinsurance Agreement must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Tuesday, June 14, 1994, FCIC published a proposed rule in the **Federal Register** at 59 FR 30533 proposing to amend the General Crop Insurance Regulations, subpart L, Reinsurance Agreement; Standards for Approval by revising the general qualification requirements for being awarded a Standard Reinsurance Agreement (Agreement).

Following publication of the proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: Two comments, one from an insurance company and one from a legal firm, stated that the proposed regulations would greatly increase the insurance company's paperwork burden and would have a significant adverse economic effect on a substantial number of small entities and should, therefore, require a Regulatory Flexibility Analysis and be subject to the provisions of the Regulatory Flexibility Act.

Response: The information required by these regulations is currently required by and filed with the state insurance departments where a company is licensed. With the exception of the requirements contained in § 400.171, financial reports not currently prepared by an insurance company will not be requested unless determined to be critical to the qualification process. This action will not have a significant economic impact on small entities and their ability to compete. These regulations are the basis of company financial condition evaluation to ensure that the obligations to both the policyholder and FCIC are met, regardless of the company's size.

Comment: Two comments, one from an insurance company and one from the parent company of an insurance company, objected to the required submission of an annual Generally Accepted Accounting Principles (GAAP) financial statement stating that this would be an additional burden and cost if the insurance company does not prepare financial statements in accordance with GAAP.

Response: FCIC agrees with the comment and has removed § 400.170(e)(5) and (6). As a result of this change, § 400.170(e)(7) is redesignated as § 400.170(e)(6). However, these and other statements may be requested by FCIC under § 400.170(e)(6).

Comment: One comment from a professional association stated that the definition of Annual Statutory Financial Statement in § 400.161(a) should be clarified as it appears that a new audit is required. They also stated that the term "certified" in § 400.171 should be replaced by "audited" and that "in accordance with generally accepted auditing standards" should be included when making reference to a Certified Public Accountant audit.

Response: FCIC has revised the definition of "Annual Statutory Financial Statement" and added § 400.170(e)(5) the "Annual Audited Financial Report" prepared by an independent Certified Public Accountant and filed with the state insurance department as prescribed in the National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions. The other recommended revisions have also been made.

Comment: One comment from a professional association stated that the requirement proposed in § 400.170(e)(6) for an "Audited Annual Report to Shareholders" should be restated as

"Annual Report to Shareholders" because the report itself is not audited but rather the financial statements included in the report.

Response: FCIC agrees with the comment and the requirement contained in § 400.170(e)(6) has been removed.

Comment: Four comments, two from insurance companies, one from a legal firm and one from the parent company of an insurance company, stated that proposed regulations favor large multiple line companies when there is no valid correlation between a company's size and its financial soundness. The ratio results for a company writing primarily crop insurance business may be adversely impacted due to the unique nature of crop insurance, compared to a company writing standard property and casualty lines for which these ratios were developed.

Response: FCIC disagrees with the comment. The proposed regulations incorporate the use of financial ratios which are calculated from the Annual Statutory Financial Statement. The ratios are a quantitative measure of potential financial weakness regardless of company size. FCIC is aware that the insurance lines of business a company writes may impact the ratio results and gives a company the opportunity to address this impact under § 400.172(a).

Comment: Two comments, one from an insurance company and one from a legal firm stated that the statement in § 400.170(d), "and comply with § 400.172." was illogical.

Response: The proposed language in § 400.170(d) contained a typographical error and has been changed to read "or comply with § 400.172."

Comment: Four comments, two from insurance companies, one from a legal firm and one from the parent company of an insurance company, questioned requiring the Gross Premium to Surplus ratio when the reinsured company does not have the option of rejecting MPCI business, and FCIC as a reinsurer is not considered a collection risk.

Response: FCIC agrees with the comment and has defined "Gross Premium" in the Gross Premium to Surplus ratio in § 400.162(c) as the company's gross premium adjusted to exclude MPCI premium assumed by FCIC. The reduction in a company's gross premium by the amount assumed by FCIC will give a more accurate measure of a company's reliance on commercial reinsurance.

Comment: Two comments, one from an insurance company and one from a legal firm, objected to requiring the two ratios—Gross Premium to Surplus of less than 900% and Net Premium to Surplus of less than 300%—stating that no single ratio should be weighted more than another.

Response: FCIC disagrees with the comment. The MPUL calculation determines the amount of MPCI premium and associated liability a company may retain based on policyholder surplus. The Gross Premium to Surplus and Net Premium to Surplus ratios measure the adequacy of surplus to absorb above-average losses considering the company's total book of business, exclusive and inclusive of the effects of reinsurance. A company's surplus exposure must be addressed considering its use in ratio and MPUL calculations.

Comment: Two comments, one from an insurance company and one from a legal firm, objected to the requirement that a company satisfy at least 10 of the 15 optional ratios, stating that a company "should have the opportunity to explain non-compliance and should not be automatically eliminated for failure to meet ten of the ratios."

Response: FCIC disagrees with the comment. Failure to meet the requirements of § 400.170(d) does not automatically eliminate a company from participating in the MPCI program. Section 400.172 allows a company the opportunity to address the ratios failed in § 400.170(d). If a company meets the requirements of § 400.172, the company may continue to participate in the MPCI program.

Comment: Three comments, one from an insurance company, one from a legal firm and one from the parent company of an insurance company, objected to the Maximum Possible Underwriting Loss (MPUL) calculation provided in § 400.170(c) and its interpretation by FCIC. They stated that using MPUL to determine adequate surplus level was inconsistent with basic insurance underwriting principles, and that revising the MPUL to maximum probable underwriting loss would be more reasonable.

Response: FCIC disagrees with the comment. The proposed MPUL calculation adequately considers MPCI loss potential, over-lapping of reinsurance years, and a company's geographic spread of risk.

Comment: Two comments, one from an insurance company and one from a legal firm, addressed FCIC's statement in the background section of the proposed rule referencing the current surplus requirement that, if a reinsured company underwrites only MPCI and crop hail insurance, both liabilities would be considered in calculating the minimum required surplus. They stated there was no rational basis for including crop hail liabilities in the MPUL calculation when a company writes only crop hail and MPCI business, while using only MPCI liabilities for companies writing multiple lines.

Response: FCIC agrees with the comment and will not consider crop-hail, or any other lines of business in the MPUL calculation. All other lines of business written by a company will be analyzed to determine their impact on the ratio results of § 400.170(d), and the company's overall financial condition.

In addition to the changes indicated in the responses to comments, FCIC has made the following changes:

1. The definition of "financial statement" contained in § 400.161 was not removed as proposed but revised to mean "any documentation submitted by a company as required by this subpart".

2. A definition for "Quarterly Statutory Financial Statement" was added to § 400.161 to facilitate its use in § 400.170(c).

3. The definitions of "Current Assets", "Current Liabilities", and "Non-affiliated Company" were removed from § 400.161 because these terms are no longer used in this subpart.

4. Section 400.163 has been revised to reflect that these regulations are "effective for the 1997 and subsequent reinsurance years".

5. In § 400.170(c) "MPUL for the gross premium" was replaced with "MPUL for the company's estimated retained premium" to be consistent with the MPUL definition.

6. In § 400.170(c) "all its reinsured gross premium" was replaced with "all its reinsured retained premium" to accurately represent geographic spread of risk.

7. The proposed §§ 400.162(d) and 400.170(d)(xii) were deleted after determining them to be non-essential.

Accordingly, the rule, "General Crop Insurance Regulations; Reinsurance Agreement—Standards for Approval" published at 59 FR 30533 as revised and set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation hereby amends 7 CFR part 400, subpart L of the General Administrative Regulations, effective for the 1997 and succeeding reinsurance years, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

1. The authority citation for 7 CFR part 400, subpart L is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. The heading for part 400, subpart L is revised as set forth above.

3. Section 400.161 is amended by removing paragraphs (c), (d) and (j); redesignating paragraphs (a) and (b), (e) through (i), (k) and (l), and (m) through (o), as paragraphs (b) and (c), (d) through (h), (i) and (j), and (l) through (n), respectively; and revising redesignated paragraph (e) and adding new paragraphs (a) and (k) to read as follows:

§ 400.161 Definitions.

* * * * *

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

* * * * *

(e) *Financial statement* means any documentation submitted by a company as required by this subpart.

* * * * *

(k) *Quarterly Statutory Financial Statement* means the quarterly financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

* * * * *

4. Section 400.162 is revised to read as follows:

§ 400.162 Qualification ratios.

The sixteen qualification ratios include:

(a) Eleven National Association of Insurance Commissioner's (NAIC's) Insurance Regulatory Information System (IRIS) ratios found in §§ 400.170(d)(1)(ii) and 400.170(d)(2) (i), (ii), (iii), (vi), (vii), (ix), (xi), (xii), (xiii), and (xiv) and referenced in "Using the NAIC Insurance Regulatory Information System" distributed by NAIC, 120 West 12th St., Kansas City, MO 64105–1925;

(b) Three ratios used by A.M. Best Company found in § 400.170(d)(2) (v), (viii), and (x) and referenced in Best's Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858–0700;

(c) One ratio found in § 400.170(d)(1)(i) is calculated the same as the Gross Premium to Surplus IRIS ratio, with Gross Premium adjusted to exclude the MPCI premium assumed by FCIC; and

(d) One ratio found in § 400.170(d)(2)(iv) which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period.

5. Section 400.163 is revised to read as follows:

§ 400.163 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1997 and subsequent reinsurance years or who continue with a prior years Standard Reinsurance Agreement into the 1997 and subsequent reinsurance years.

6. Section 400.170 is revised to read as follows:

§ 400.170 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be licensed or admitted in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent Annual or Quarterly Statutory Financial Statement, that is at least equal to the MPUL for the company's estimated retained premium proposed to be reinsured, multiplied by the appropriate Minimum Surplus Factor found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least two and one-half percent (2.5%) of all its reinsured retained premium is written in that state;

MINIMUM SURPLUS TABLE

Number of states in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiplied by MPUL)
1 through 10	2.5
11 or more	2.0

(d) Have and meet the ratio requirements of the Gross Premium to Surplus and Net Premium to Surplus required ratios and at least ten of the fourteen analytical ratios in this section based on the most recent Annual Statutory Financial Statement, or comply with § 400.172:

Ratio	Ratio requirement
(1) Required:	
(i) Gross Premium to Surplus.	Less than 900%.
(ii) Net Premium to Surplus.	Less than 300%.
(2) Analytical:	
(i) Two-Year Overall Operating Ratio.	Less than 100%.
(ii) Agents' Balances to Surplus.	Less than 40%.
(iii) One-Year Change in Surplus.	Greater than −10% and less than 50%.
(iv) Two-Year Change in Surplus.	Greater than −10%.
(v) Combined Ratio After Policyholder Dividends.	Less than 115%.
(vi) Change in Writing.	Greater than −33% and less than 33%.
(vii) Surplus Aid to Surplus.	Less than 15%.
(viii) Quick Liquidity.	Greater than 20%.
(ix) Liabilities to Liquid Asset.	Less than 105%.
(x) Return on Surplus.	Greater than −5%.
(xi) Investment Yield.	Greater than 4.5% and less than 10%.
(xii) One-Year Reserve Development to Surplus.	Less than 20%.
(xiii) Two-Year Reserve Development to Surplus.	Less than 20%.
(xiv) Estimated Current Reserve Deficiency to Surplus.	Less than 25%.

(e) Submit to FCIC all of the following statements:

(1) Annual and Quarterly Statutory Financial Statements;

(2) Statutory Management Discussion & Analysis;

(3) Most recent State Insurance Department Examination Report;

(4) Actuarial Opinion of Reserves;

(5) Annual Audited Financial Report; and

(6) Any other appropriate financial information or explanation of IRIS ratio discrepancies as determined by the company or as requested by FCIC.

7. Section 400.171 is revised to read as follows:

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the states where they are licensed from filing an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170 (a), (b), (c) and (d), submit an Annual Statutory Financial Statement audited by a Certified Public Accountant in accordance with generally accepted auditing standards, which if not exempted, would have been filed with the insurance department of any state in which it is licensed.

8. Section 400.172 is revised to read as follows:

§ 400.172 Qualifying with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements.

An insurer with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements in § 400.170(d) may qualify if, in addition to the requirements of § 400.170 (a), (b), (c) and (e), the insurer:

(a) Submits a financial management plan acceptable to FCIC to eliminate each deficiency indicated by the ratios, or an acceptable explanation why a failed ratio does not accurately represent the insurer's insurance operations; or

(b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

§ 400.173 [Reserved]

9. Section 400.173 is removed and reserved.

§ 400.174 [Amended]

10. In § 400.174, the words "financial statement" are revised to the plural form "financial statements".

§ 400.175 [Amended]

11. In § 400.175(a), the words "financial statement" are revised to the plural form "financial statements".

§ 400.177 [Reserved]

12. Section 400.177 is removed and reserved.

Done in Washington, D.C., on November 9, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–28558 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 945

[FV95–945–2IFR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes pack requirements and establishes marking requirements for Idaho-Eastern Oregon potatoes. These changes are expected to improve the marketing of such potatoes and increase returns to producers. These changes were recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order program. The interim final rule also includes several conforming changes which recognize that the marketing order regulates shipments of potatoes within the production area, as well as shipments outside the production area.

DATES: Effective November 24, 1995. Comments which are received by December 26, 1995 will be considered prior to the issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; FAX: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724 or FAX (503) 326–7440; or Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 205–2829, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 945 (7 CFR part 945), as amended, hereinafter referred to as the "order," regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of Idaho-Eastern Oregon potatoes that are subject to regulation under the order and approximately 1,600 producers in the production area. Small agricultural service firms, which include handlers of Idaho-Eastern Oregon potatoes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato handlers regulated under the order may be classified as small entities. The majority of producers may also be classified as small entities.

This rule would amend § 945.341 to: (1) Require that all cartons (except when used as a master container) be conspicuously marked as to potato size; (2) require for all varieties that when 50-pound containers of Idaho-Eastern Oregon potatoes are marked with a count, size, or similar designation, the potatoes contained therein must meet the count, average count, and weight ranges established within the handling regulation; and (3) specify that Idaho-Eastern Oregon potatoes packed in cartons (except when used as a master container) shall be U.S. No. 1 grade or better.

These changes were recommended by the Committee at its August 9, 1995, meeting. The Committee's recommended revisions are authorized pursuant to §§ 945.51 and 945.52 of the order. This action is expected to improve the marketing of Idaho-Eastern Oregon potatoes and improve returns to producers.

A recent order amendment (60 FR 29724, June 5, 1995), added authority to § 945.52 to require accurate and uniform marking and labeling of containers in which Idaho-Eastern Oregon potatoes are shipped. With this authority in the order, the Committee recommended requiring that all cartons shall be conspicuously marked as to potato size; i.e., marked so that the potato size is noticeable on the carton. The Committee recommended this requirement to reduce confusion in the marketplace as to the size of the potatoes in cartons. While most cartons already are marked as to size, the Committee reports that there have been many instances when product size in unmarked cartons has been misrepresented through the marketing chain (e.g., 100-count size potatoes in 50-pound cartons being represented as 90-count size). This type of misrepresentation can create market confusion, damage buyer acceptance, and depress prices.

In addition, this action changes the pack requirements in § 945.341(c). For several decades, the handling regulation has specified that when long varieties of potatoes in 50-pound containers are marked with a count, size or similar designation, the potatoes contained therein must meet the count, average count and weight ranges established within the handling regulation. This has been beneficial to buyers and sellers by reducing market confusion and misrepresentation related to the marking of count and weight ranges on 50-pound containers. In recent years, there has been an increase in the number of plantings of round varieties grown in the Idaho-Eastern Oregon production area. Therefore, the Committee recommended that this pack requirement, which the industry has found to be beneficial for long varieties, be extended to all varieties.

The second aspect of the change in pack requirements recommended by the Committee is the establishment of a requirement that all Idaho-Eastern Oregon potatoes packed in cartons of any size (except when used as a master container) shall be U.S. No. 1 grade or better. Currently, the handling regulation requires this of potatoes packed in 50-pound cartons (except when used as a master container). Some buyers have indicated that a smaller carton size is more desirable than the currently used 50-pound carton. These buyers indicate that they need a smaller carton that takes up less storage space and is easier to lift and handle. However, these buyers still want to be provided with the same quality of potatoes; i.e., U.S. No. 1 grade or better. Currently, the grade of potatoes packed in other than 50-pound cartons must be U.S. No. 2 grade or better. This change in the handling regulation reflects the industry's desire of providing a high quality product to users of potatoes, regardless of carton size desired.

Another order amendment revised § 945.9 to broaden the scope of the order to authorize regulating shipments of potatoes within the production area, as well as shipments outside the production area. Conforming changes are made in § 945.341(d)(3) regarding inspection and certification procedures so these procedures cover all shipments of potatoes, not only shipments made outside the area of production.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action was recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (2) the 1995–96 shipping season has begun and these changes should apply to as much of that season as possible; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.341 is amended by:

(1) Removing the words "On or after August 16, 1982," in the introductory text,

(2) Removing in paragraph (d)(3) the words "outside the area of production" in the first and second sentences and the words "outside the production area" in the last sentence, and

(3) Revising the heading of paragraph (c), the first sentence of the introductory text of paragraph (c)(1), paragraph (c)(2), and adding a new paragraph (c)(3) to read as follows:

§ 945.341 Handling regulation.

* * * * * *

(c) *Pack and marking.* (1) When 50-pound containers (except master containers) of potatoes are marked with a count, size or similar designation, they must meet the count, average count and weight ranges for the count designation listed below.

* * * * * *

(i) * * *

(ii) * * *

(2) Potatoes packed in cartons (except when used as a master container) shall be U.S. No. 1 grade or better. However, potatoes of U.S. Extra No. 1 Grade shall be no smaller than 110 size nor larger than 60 size.

(3) Size shall be conspicuously marked on all cartons (except when

used as a master container) consistent with § 51.1545 of the United States Standards for Grade of Potatoes (7 CFR 51.1540–51.1566).

* * * * *

Dated: November 20, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28695 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 966

[Docket No. FV95–966–2IFR]

Tomatoes Grown in Florida; Exemption of Specialty Packed Red Ripe Tomatoes From Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts shipments of specialty packed red ripe tomatoes from the container net weight requirements in the Florida tomato handling regulation. This exemption was unanimously recommended by the Florida Tomato Committee which locally administers the marketing order. This rule will allow handlers to ship specialty packed red ripe tomatoes in containers with different net weights than those currently authorized under the order. This will facilitate the movement of such tomatoes, further the development of this relatively new market, and is expected to improve returns to producers of Florida tomatoes.

DATES: Effective November 24, 1995; comments received by December 26, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883–2276; telephone: 941–299–4770, or FAX: 941–299–5169; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456: telephone: (202) 720–2431, or FAX: 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 handlers of tomatoes who are subject to regulation under the marketing order and approximately 90 producers of tomatoes in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Florida tomatoes may be classified as small entities.

Under the Florida tomato marketing order, tomatoes produced in the production area and shipped to fresh market channels outside of the regulated area are required to meet certain handling requirements specified in § 966.323. Current requirements include a minimum grade of U.S. No. 3 and a minimum size of 2$^{6}/_{32}$ inches in diameter. Pack and container specifications are also in effect. In addition, all lots are required to be inspected and certified as meeting these grade, size, pack and container requirements by authorized representatives of the Federal or Federal-State Inspection Service. The regulated area is defined as the portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except the panhandle. The production area is part of the regulated area.

This interim final rule revises paragraph (d) of § 966.323 to allow handlers to ship specialty packed red ripe tomatoes exempt from the container net weight requirements in § 966.323(a)(3)(i) and defines such tomatoes in paragraph (g) of § 966.323. This exemption is the same as the exemption currently provided for yellow meated tomatoes in paragraph (d) of § 966.323. The specialty packed red ripe tomatoes will still be subject to all other provisions of the handling regulation, including established grade, size, container marking, condition and inspection requirements. The Florida Tomato Committee (committee) met September 7, 1995, and unanimously recommended this exemption.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. Section 966.323(a)(3)(i) currently requires certain types of tomatoes packed by registered handlers to be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight of the contents cannot be less than the designated weight and cannot exceed the designated weight by more than two pounds. Section 51.1863 of the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855 through 51.1877, hereafter referred to as the "standards,") applies.

Specialty packed red ripe tomatoes are a product recently available from Florida. They are shipped in relatively small volume and marketed as a specialty item.

This rule defines specialty packed red ripe tomatoes as tomatoes which, at the time of inspection, are light red (#5 color) or red (#6 color) according to color classification requirements in the standards, have their calyx ends and stems attached, and are cell packed in a single layer container.

Cell packed tomatoes are placed in containers with fiber board on plastic compartments for such tomatoes to provide separation and reduce bruising during transport and handling. This is especially important in shipping tomatoes at an advanced stage of ripeness when tomatoes have their calyx ends and stems attached. The separation provided by the individual compartments permits the tomatoes from moving around inside the shipping container during transport and handling, thus ensuring arrival at destination with tomato calyx ends and stems attached and no tomato stem punctures.

Most tomatoes shipped from Florida are shipped at the mature green stage without calyx ends and stems, and are packed in volume fill containers. When volume fill containers are packed, the tomatoes are placed by hand or machine into the container until the required net weight is reached. Mature green tomatoes are not as susceptible to bruising and other damage during transport as red ripe tomatoes. These specialty tomatoes have to be packaged so that they do not touch each other. If volume fill containers were used by registered handlers in Florida to ship specialty tomatoes, serious product bruising and stem punctures would result, which would detract from the unique appearance and marketability of these tomatoes.

However, the cell pack method of packaging needed to ensure that these specialty tomatoes arrive at markets in good condition does not lend itself well when packing to meet a required net weight. Normally, such packs are used when the product is packed by count per container. The tomatoes have to be properly sized to fit snugly in the container.

During the harvesting season, the weight of equal size tomatoes or the shape of tomatoes of equal weight may vary dramatically. If the red ripe tomatoes are light in weight, handlers cannot add extra tomatoes because all cells are full, or if the tomatoes are heavier than normal, the removal of a tomato by a handler results in an empty cell. Because the buyer expects a full tray, empty cells are viewed suspiciously and a marketing problem results.

To overcome this problem and allow this market to be further developed, the committee unanimously recommended that shipments of specialty packed red ripe tomatoes as defined herein, be exempt from the container net weight requirements of the order. As stated earlier, all other order requirements will apply to such shipments.

This rule reflects the committee's and the Department's appraisal of the need to exempt specialty packed red ripe tomatoes from the net weight requirements for tomatoes grown in Florida. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow tomato handlers to make additional supplies of tomatoes available to meet consumer needs consistent with crop and market conditions.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action provides an exemption to container requirements currently in effect for tomatoes grown in Florida; (2) Florida tomato handlers are aware of this action that was unanimously recommended by the committee at a public meeting, and they will need no additional time to take advantage of the exemption; (3) Florida tomato shipments are currently in progress; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 915

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (d)(1) and the first sentence in paragraph (g) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(d) *Exemption*—(1) *For types.* The following types of tomatoes are exempt from these regulations: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes. Specialty packed red ripe tomatoes and yellow meated tomatoes are exempt from the container net weight requirements specified in paragraph (a)(3)(i) of this section, but must meet the other requirements of this section.

* * * * *

(g) *Definitions. Hydroponic tomatoes* means tomatoes grown in solution without soil; *greenhouse tomatoes* means tomatoes grown indoors; and *specialty packed red ripe tomatoes* means tomatoes which at the time of inspection are #5 or #6 color (according to color classification requirements in the U.S. tomato standards) with their calyx ends and stems attached and cell packed in a single layer container.* * *

Dated: November 20, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28697 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 997

[Docket No. FV95–997–1FIR]

Assessment Obligation for 1995–96 Crop Year Peanuts Under 7 CFR Part 997; Peanut Handlers Not Subject to Peanut Marketing Agreement No. 146

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without modification, the provisions of an interim final rule

which imposed administrative assessments on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The assessment rate for 1995–96 crop year peanuts continues at $.70 per net ton. The interim final rule also clarified which categories of farmers stock peanuts are assessable and established that non-signatory handlers shall submit their pro rata assessment to the Secretary of Agriculture. The assessment rate is the same as the administrative assessment established by the Department on handlers who are signers of the Agreement (signatory handlers).

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), and as further amended December 12, 1989; Public Law 101–220, section 4 (1), (2), 103 Stat. 1878, December 12, 1989; and Public Law 103–66, section 8b(b)(1), 107 Stat. 312, August 10, 1993.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department established a 1995–96 crop year assessment rate applicable to non-signatory handlers effective July 1, 1995–June 30, 1996. Farmers stock peanuts received or acquired by non-signatory handlers during that crop year are subject to the assessment. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim final rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations specified herein. There are also approximately 47,000 producers of peanuts, who potentially might do business with these handlers. The Small Business Administration now defines small agricultural service firms (13 CFR 121.601) as those having annual receipts of less than $5,000,000 and small agricultural producers as those whose annual receipts are less than $500,000. A majority of non-signatory handlers and peanut producers may be classified as small entities.

The Agreement was established in 1965 and plays a very important role in maintaining the industry's quality control efforts. The Peanut Administrative Committee (Committee) was established by the Agreement and works with the Department in administering the marketing agreement program. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the Agreement.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Agreement requirements provide that farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts destined for edible channels must be officially sampled and chemically tested for aflatoxin by Department laboratories or laboratories approved by the Committee.

Public Law 101–220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signatory handlers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signatory handlers.

Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49980). The regulations, which have been amended several times, are published in 7 CFR part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Under these provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the edible quality requirements of the Agreement. All amendments were made to ensure that the non-signer handling requirements remain the same as, or are equal to, the handling requirements applied to signatory handlers under the Agreement.

Public Law 103–66 (107 Stat. 312) provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

The Committee meets in February or March each year and recommends to the Secretary a per ton, administrative assessment of farmers stock peanuts received or acquired by signatory handlers for the upcoming crop year. The crop year covers the 12-month period from July 1 to June 30.

The Committee met on March 23, 1995, and unanimously recommended a $.70 administrative assessment per ton of 1995–96 crop year farmers stock peanuts received or acquired by signatory handlers. The Department published an interim final rule in the May 17, 1995, issue of the **Federal Register** (60 FR 28348) which imposed such an administrative assessment on signatory handlers.

Peanuts are assessed based on the rate applicable to the crop year in which the lot is presented for incoming inspection. Therefore, pursuant to Pub. L. 103–66, this final rule provides that, for the 1995–96 crop year, the Department will assess non-signatory handlers a $.70 administrative assessment per net ton of farmers stock peanuts received or acquired by non-signatory handlers.

The interim final rule clarified which categories of farmers stock peanuts are assessed. Segregation 1 peanuts are assessed under the Agreement and under this regulation. Until recently, all Segregation 2 and 3 peanuts were subject to assessment. However, the Committee recommended that signatory handler assessments should not be applied to Segregation 2 and 3 peanuts that are crushed for oil. Crushing represents the minimum market value that handlers can receive for poor quality peanuts. Thus, it is reasonable that Segregation 2 and 3 peanuts acquired by non-signatory handlers and disposed of to crushing shall not be assessed pursuant to § 997.51. Under some surplus market conditions, Segregation 1 peanuts may also be crushed for oil. However, such peanuts are not exempt from assessments.

The assessment will be applied to all such peanuts received or acquired for a handler's account, including the handler's own production. The assessment will continue to be based on: (1) Tonnage reported on incoming inspection certificates of each handler's Segregation 1 farmers stock peanuts received or acquired for the handler's account, and (2) Segregation 2 and 3 tonnage received or acquired for non-edible uses, except Segregation 2 and 3 peanuts sent to crushing.

Segregation 1 peanuts are defined as farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*. Segregation 2 peanuts are defined as farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*. Segregation 3 peanuts are defined as farmers stock peanuts with visible *Aspergillus flavus*.

Handling is defined in § 997.14 as engaging in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce. Handling does not include the sale or delivery of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handlers and the sale or delivery of peanuts by such intermediary to a handler.

Section 997.15 defines a non-signatory handler as "any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling: *provided*, that this term does not include handlers signatory to the Peanut Marketing Agreement."

Thus, for the 1995–96 crop year, a handler who receives or acquires 100,000 pounds of Segregation 1 farmers stock peanuts will pay an assessment of $35 (100,000 pounds is 50 tons, times 70 cents per ton, equals $35).

The assessment will continue to be applied, pro rata, on each non-signatory handler who is the first handler to receive or acquire an assessable lot of farmers stock peanuts. Only one assessment is applied to each farmers stock peanut lot. Assessments will not be applied on peanuts received or acquired from other handlers, speculators, buying points, brokers, or other entities who have paid assessments on the peanuts received or acquired.

Assessments will not be applied on peanuts received on behalf of an area association pursuant to a peanut receiving and warehouse contract.

Non-signatory producer/handlers who store peanuts of their own production ("farm-stored" peanuts) will, at some point prior to further handling, obtain incoming inspection on such peanuts. At the time of incoming inspection, such producer/handlers pay their pro rata administrative assessment on such farm stored peanuts.

Speculators, brokers, or other entities who take possession of farmers stock peanuts, submit such peanuts for incoming inspection, and subsequently enter such peanuts into edible and non-edible channels of commerce will pay assessments on such peanuts unless the peanuts are Segregation 2 or 3 peanuts crushed for oil.

A crop year's original assessment on non-signatory handlers may be increased by the Secretary if a similar increase is applied by the Secretary on signatory handlers. Such an increase will be applied on all assessable peanuts handled by non-signatory handlers during the crop year in which the increased assessment occurred.

Also pursuant to Pub. L. 103–66, this rule continues to require that non-signatory handlers pay their administrative assessment to the Secretary. The Secretary has begun billing non-signatory handlers on a monthly basis. Each non-signatory handler is responsible for remitting payment by the date specified. Payment in the form of a personal check, cashier's check, or money order shall be remitted to the Department. Audits of each handler's account may be conducted by the Department to reconcile farmers stock peanuts received or acquired and assessments paid.

Violation of this assessment regulation may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price of quota peanuts for the crop year during which the violation occurs. The support price for quota peanuts is determined under 7 U.S.C. 1445c–3.

The interim final rule was published in the **Federal Register** on August 21, 1995 (60 FR 43353). That rule invited interested persons to submit written comments through September 20, 1995. No comments were received and the Department is adopting as a final rule, without change, the provisions of the interim final rule.

This administrative assessment rate imposes some additional costs on non-signatory handlers. However, the costs are in the form of uniform assessments on all handlers who are not signatory to the Agreement as well as all signatory handlers.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities. This rule is required by law. This administrative assessment will be applied uniformly to all non-signatory handlers.

After consideration of all relevant matter presented, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Act requires collection of this assessment. Non-signatory handlers are aware of this requirement which was published in the August 21, 1995, issue of the **Federal Register**. The assessment applies to all assessable peanuts handled during the 1995–96 crop year, which began on July 1, 1995.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

Accordingly, the interim final rule amending 7 CFR part 997 which was published at 60 FR 43353 on August 21, 1995, is adopted as a final rule without change.

Dated: November 20, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28694 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 999

[FV95-999-1IFR]

Specialty Crops; Import Regulations—Exemption of Brine Dried Prunes From Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule exempts brine dried prunes from import requirements by specifying that brine dried prunes do not fall within the definition of prunes in the import regulation. This rule is implemented in accordance with section 8e of the Agricultural Marketing Agreement Act of 1937. Section 8e requires imports of prunes to meet the same or comparable requirements as those implemented under the Federal Marketing Order No. 993, regulating the handling of dried prunes produced in California. The Department has determined that brine dried prunes are different than those normally handled by California prune handlers and that such prunes shall not be subject to section 8e import requirements.

DATES: Effective November 24, 1995. Comments which are received by December 26, 1995 will be considered prior to the issuance of a final rule.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2829.

SUPPLEMENTARY INFORMATION: This interim final rule, exempting brine dried prunes from import requirements in § 999.200, is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act). Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Import regulations issued under section 8e of the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like prunes. Thus, import regulations also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 10 importers who may be affected by this interim final rule. Small agricultural service firms, which include importers of dried prunes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The majority of these importers may be classified as small entities.

Currently, sulfur-bleached prunes, commonly known as silver prunes, and high moisture plums are exempt from import requirements. The Department is issuing this rule to add brine dried prunes as an additional exemption under the import regulation. Brine dried prunes are different in form and character than those prunes handled by California handlers, and were never intended to be subject to section 8e import requirements. Therefore, it is appropriate that they be exempted from the dried prune import regulation specified in § 999.200. Brine dried prunes are imported under International Harmonized Tariff Schedule No. 0813.20.1000. All other prunes handled by California handlers are imported under Harmonized Tariff Schedule No. 0813.20.2000.

To exempt brine dried prunes from import regulation requirements, the definition of "prunes" in paragraph (a)(1) of § 999.200, is amended to add brine dried prunes as an exclusion from that definition. Brine dried prunes are defined as prunes that have been impregnated with brine or salt during the dehydration process to the extent that they have lost their form and character as prunes and cannot be reconstituted to permit economic use of the individual fruits as prunes, and are imported under International Harmonized Tariff Schedule No. 0813.20.1000.

In accordance with section 8e of the Act, the United States Trade Representative (USTR) has concurred with the issuance of this interim final rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced section have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0099.

After consideration of all relevant information presented, it is found that the issuance of this rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes requirements on importers of brine dried prunes; (2) the only known importer of brine dried prunes is aware of this action; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 999.200, paragraph (a)(1) is amended by removing the word "and" after the words, "silver prunes;", removing the period after the words, "other artificial means of preservation" and adding in its place the word "; and", and adding a new paragraph (a)(1)(iii) to read as follows:

§ 999.200 Regulation governing the importation of prunes.

* * * * *

(i) * * *

(ii) * * *

(iii) brine dried prunes that have been impregnated with brine or salt during the dehydration process to the extent that they have lost their form and character as prunes, and cannot be reconstituted to permit economic use of the individual fruits as prunes, and are imported under International Harmonized Tariff Schedule No. 0813.20.1000.

* * * * *

Dated: November 20, 1995.

Sharon Bomer Lauritsen,

Director, Fruit and Vegetable Division.

[FR Doc. 95–28696 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 95–037N]

Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule; affirmation of effective date.

SUMMARY: This document affirms the effective date of the Food Safety and Inspection Service (FSIS) direct final rule, "Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products" published on September 26, 1995. This direct final rule notifies the public that West Virginia will be administering a State poultry inspection program with requirements at least "equal to" those of the Federal Government under the Poultry Products Inspection Act (PPIA). FSIS is amending the poultry products inspection regulations by removing the State of West Virginia from the list of States designated to receive Federal inspection of poultry products with respect to intrastate operations and transactions. No adverse comments were received in response to the direct final rule.

EFFECTIVE DATE: This rule is effective on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Connie L. Bacon, Assistant Director, Federal-State Relations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–6313.

SUPPLEMENTARY INFORMATION: This notice affirms the effective date of the direct final rule, "Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products," that was published on September 26, 1995, at 60 FR 49494.

This direct final rule notifies the public that West Virginia has developed and will enforce State poultry inspection program requirements at least "equal to" those imposed by the Federal Government under sections 1 through 4, 6 through 10 and 12 through 22 of the PPIA (21 U.S.C. 451 *et seq.*) with respect to intrastate operations and transactions within the State. Therefore, the designation of the State of West Virginia to receive Federal inspection for poultry products intended for intrastate commerce under 9 CFR 381.221 is terminated. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to this rule. This rule is effective on November 27, 1995.

Done at Washington, DC, on: November 16, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–28556 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0901]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $54.0 million to $52.0 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board has increased from $4.2 million to $4.3 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $55.4 million to $57.0 million for nonexempt depository institutions and from $45.1 million to $46.4 million for exempt institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements while exempt institutions are those with total reservable liabilities not exceeding the amount exempted from reserve requirements.) Thus nonexempt institutions with total deposits of $57.0 million or more will be required to report weekly while nonexempt institutions with total deposits less than $57.0 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $46.4 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $46.4 million may report annually on form FR 2910a.

DATES: *Effective date.*: December 19, 1995.

Compliance dates. For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 19, 1995, and on the corresponding reserve maintenance period that begins Thursday, December 21, 1995. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 19, 1995, and on the corresponding reserve maintenance period that begins Thursday, January 18, 1996. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1996 to determine the reporting frequency for the twelve month period that begins in September 1996.

FOR FURTHER INFORMATION CONTACT: J. Ericson Heyke III, Attorney (202/452–3688), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $54.0 million. The decrease in the net transaction accounts of all depository institutions from June 30, 1994, to June 30, 1995, was 4.7 percent (from $828.1 billion to $789.3 billion). In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1996 by $2.0 million to $52.0 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461 (b)(11)(B)) provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions from June 30, 1994, to June 30, 1995, increased by 3.6 percent (from $1,573.9 billion to $1,631.0 billion). Consequently, the reservable liabilities exemption amount for 1996 under section 19(b)(11)(B) will be increased by $0.1 million to $4.3 million.[2]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1994, to June 30, 1995, is to decrease the low reserve tranche to $52.0 million, to apply a zero percent reserve requirement on the first $4.3 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective on the reserve computation period beginning Tuesday, December 19, 1995, and on the corresponding reserve maintenance period beginning Thursday, December 21, 1995. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective on the computation period beginning Tuesday, December 19, 1995, and on the reserve maintenance period beginning Thursday, January 18, 1995. In addition, all institutions currently submitting Form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set a single cutoff level for all depository institutions of $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels. The cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was raised from the indexed level of $44.8 million to $55.0 million. The deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), remained at the indexed level of $44.8 million.

From June 30, 1994, to June 30, 1995, total deposits increased 3.7 percent, from $3,831.6 billion to $3,973.6 billion. Accordingly, the nonexempt deposit cutoff level will increase by $1.6 million to $57.0 million and the exempt deposit cutoff level will increase by $1.3 million to $46.4 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.2 million to $4.3 million. Institutions with total deposits below $4.3 million are excused from reporting if their deposits can be estimated from other data sources. The $57.0 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $46.4 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.3 million level threshold for reporting will be used in the second quarter 1996 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1996.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1996, all other institutions that have reservable liabilities in excess of the exemption level of $4.3 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the nonexempt deposit cutoff level ($57.0 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve-month period starting September 1996. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($57.0 million) may file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($4.3 million) (known as exemptinstitutions) must file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($46.4 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($46.4 million) but at least equal to the exemption amount ($4.3 million) must file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.3 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

Notice and public participation. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $52 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, and contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $52 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for Part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $52.0 million	3 percent of amount.
over $52.0 million	$1,560,000 plus 10 percent of amount over $52.0 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

[1] Before deducting the adjustment to be made by the paragraph (a)(2) of this section.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of $4.3 million determined in accordance with § 204.3(a)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–28522 Filed 11–22–95; 8:45 am]

BILLING CODE 6210–01–P

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[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

[3] "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

RIN 3052–AB53

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Final Statement on Regulatory Burden.

SUMMARY: This is the second phase of an ongoing effort by the Farm Credit Administration (FCA) to reduce regulatory burdens on the Farm Credit System (FCS or System). Many System institutions responded to the FCA's request for comments by identifying regulations that they consider to be burdensome. The FCA deleted several unnecessary or obsolete regulations in the first phase of this project. This document informs the public of those regulations that the FCA will retain without amendment because they are necessary to: (1) Implement or interpret the Farm Credit Act of 1971, as amended (Act), or (2) protect the safety and soundness of the System. The FCA also identifies pending or future actions that will respond to the remaining regulatory burden issues.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT:

W. Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 1993, the FCA Board approved a Statement on Regulatory Burden (Statement) seeking public comment on the appropriateness of requirements that the FCA regulations impose on the FCS. See 58 FR 34003 (June 23, 1993). More specifically, the FCA asked the public to identify regulations that either duplicate other governmental requirements, are not effective, or impose a burden that is greater than the benefit derived. In response to the notice, System institutions or their trade associations requested that the FCA repeal or amend several regulations.

In the first phase of this project, the FCA reduced unnecessary regulatory burdens on the FCS by repealing several regulations and two Agency prior approval requirements. See 60 FR 20008 (Apr. 24, 1995); 60 FR 27401 (May 24, 1995).

Today, the FCA notifies the FCS and other interested parties of those regulations that it will retain without amendment. Although System institutions sought the repeal or modification of the regulations identified below, the FCA, consistent with its Statement on Regulatory Philosophy,[1] concludes that these regulations are either required by statute or are necessary for safety and soundness. For these reasons, the FCA will not delete or amend the following regulations: §§ 611.1122; 614.4070; 614.4165; 614.4335; 614.4336; 614.4337; and 615.5172. An explanation of the FCA's rationale for these particular regulatory requirements follows.

II. Regulations That Will Be Retained Without Revision

A. Merger Requirements

Two commenters suggested that the FCA revise § 611.1122, which establishes timing and disclosure requirements for the merger of FCS institutions. One of the commenters asserted that the regulation mandates excessive periods for review and consideration of merger applications. As a result, the commenters believe that § 611.1122 unnecessarily postpones the effective date of such mergers. The commenters suggested that the FCA develop new procedures to expedite mergers of FCS banks and associations. In addition, one of the commenters advised the FCA to revise § 611.1122 because it requires too many disclosures to members.

Section 7.11 of the Act requires the FCA to act upon merger applications within 60 days of their receipt. In the event that the FCA fails to act within the 60-day period, the affected institutions are authorized by section 7.11 of the Act to submit their merger or consolidation plan directly to their shareholders. The 60-day period provides the FCA with sufficient time to review: (1) Complex transactions, or (2) multiple mergers or consolidations that are being processed concurrently. Although the Act allows the FCA 60 days to consider a proposed merger between System institutions, the Agency does not always require 60 days to process each merger application. The FCA acts upon the vast majority of corporate restructuring applications within the prescribed time period. However, the FCA requires the flexibility offered by section 7.11 of the Act and § 611.1122 in order to process complex transactions. Although the FCA will not repeal the 60-day timeframe for processing corporate applications, it is considering approaches that could shorten the time for processing noncomplex or noncontroversial corporate applications.

Commenters claim that § 611.1122 requires too many disclosures to institution shareholders about pending consolidations and mergers. These commenters suggest that the FCA amend the regulation so it would require the merging or consolidating institutions to provide their shareholders with a brief summary of the proposed transaction. However, the commenters suggest that the regulation continue to require a complete disclosure to the FCA about such corporate restructurings.

In the FCA's view, a brief summary of the proposed transaction does not adequately protect the right of shareholders to make informed decisions about the future of their institutions. When two or more institutions combine, stockholders exchange their equity interest in the original institution for stock in a larger institution. As owners of each FCS bank or association, the shareholders/borrowers have a right to make informed decisions about the future of their institution. For this reason, the FCA will not amend the disclosure requirements in § 611.1122.

B. Chartered Territories

A Farm Credit Bank (FCB) and its Federal land bank associations (FLBAs) have requested that the FCA repeal § 614.4070 so that System institutions no longer have the authority to make or participate in loans outside their chartered territories. According to sections 1.5(6) and 2.2(13) of the Act, the lending authorities of FCS banks and associations are subject to FCA regulations. Furthermore, section 5.17(a)(9) of the Act authorizes the FCA to prescribe regulations that are necessary or appropriate for carrying out the Act, while section 5.17(a)(5) allows FCA regulations to confer approval upon certain actions of FCS institutions. In the absence of § 614.4070, FCS banks and associations would only be authorized to make or participate in loans inside their chartered territories.

The repeal of § 614.4070 would deprive System institutions of the flexibility, under certain conditions, to finance borrowers who conduct operations outside their chartered territories. The consent and notification requirements in § 614.4070 prevent unrestrained competition between System institutions. At this time, the FCA declines to modify or repeal § 614.4070 because it balances the needs of borrowers and System institutions.

C. Borrower Stock Requirements for Loans Sold Into Secondary Markets

Two commenters requested that the FCA repeal § 614.4335(a), which requires borrowers whose loans are destined for sale in a secondary market to purchase stock in System institutions. These commenters claim that this stock-purchase requirement places System lenders at a disadvantage with their competitors.

The FCA responds that the stock-purchase requirement in § 614.4335 derives from section 4.3A(c) of the Act. Section 4.3A(c) of the Act states that all System institutions must sell stock when they make loans to new borrowers "notwithstanding any other provision of this Act." Furthermore, section 4.3A(g) of the Act states that section 4.3A controls if it is inconsistent with any other provision of the Act except section 4.9A.

Prior to 1987, former sections 1.16(c) and 2.13(f) of the Act expressly waived the requirement that borrowers purchase stock for loans that were destined for sale to, or participation with, non-System lenders. However, sections 1.16(c) and 2.13(f) of the Act were repealed by the Agricultural Credit Act of 1987 (1987 Act).[2] Furthermore, section 301 of the 1987 Act consolidated the stock capitalization requirements for all Farm Credit banks and associations into section 4.3A of the amended Act, which indicates that all borrowers are required, without exception, to purchase stock in the System bank or association that makes their loans. The Act, as amended, no longer contains any provision that explicitly exempts borrowers whose loans are originated for sale from complying with the statutory stock-purchase requirement. The committee reports and the congressional debates to the 1987 Act are silent as to reasons why Congress amended the Act so it no longer exempts loans that are destined to secondary markets from the stock-purchase requirement. In fact, there is no indication in the legislation that Congress considered the impact section 4.3A of the Act would have on the: (1) Ability of FCS banks and associations to sell loans to non-System lenders; and (2) development of the Federal Agricultural Mortgage Corporation (Farmer Mac) as a secondary market for agricultural and rural home loans.

The FCA is aware that the stock-purchase requirement for loans destined to secondary markets causes inconvenience to System lenders and their borrowers. Nevertheless, § 614.4335(a) is consistent with the plain language of section 4.3A of the Act. However, the FCA observes that FCS banks and associations have flexibility within the confines of section 4.3A of the Act to devise practical solutions that will minimize the difficulties associated with the borrower stock requirements. For example, a recent FCA Bookletter, OE–403 (Dec. 23, 1994), concluded that FCS banks and associations are not required to sell stock if they "table fund" loans for non-System lenders that are certified Farmer Mac poolers.

D. Borrower Rights and Loan Sales

Two commenters requested that the FCA amend § 614.4336 so that borrower rights would not apply to loans that are sold to established secondary markets or non-System lenders. These commenters assert that borrower rights increase the transaction costs associated with the sale of loans to other lenders. More importantly, non-System institutions usually will not purchase loans that are subject to borrower rights requirements.

In order to fully respond to the commenters, the FCA has examined those provisions of the Act that govern borrower rights on FCS loans. According to sections 4.14A(a) (5) and (6) of the Act, borrower rights attach only to loans that System banks (other than banks for cooperatives), associations, and other financing institutions make to farmers, ranchers, and aquatic producers and harvesters. Furthermore, the disclosure requirements in section 4.13 of the Act do not apply to consumer loans that are subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* Thus, borrower rights requirements do not attach to home loans that System banks and associations make to rural residents who are not agricultural or aquatic producers. For this reason, the borrower rights provisions in title IV of the Act do not impede the sale of non-farm rural home loans to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Farmer Mac, or non-System lenders.

According to section 8.9(a) of the Act, borrower rights do not apply to agricultural mortgage loans that collateralize Farmer Mac securities. Furthermore, section 8.9(b) of the Act prescribes specific procedures for detaching borrower rights from agricultural mortgage loans that FCS lenders sell to Farmer Mac poolers. Two regulations, §§ 614.4336(a)(1) and 614.4367(b), implement these statutory authorities.

Some System institutions have expressed strong opposition to § 614.4336(a)(2), which prescribes two alternatives for resolving borrower rights when loans are sold to non-System lenders that are not Farmer Mac poolers. More specifically, § 614.4336(a)(2) requires the FCS lender to either: (1) Incorporate these statutory borrower rights into the loan agreement so that the purchaser assumes these obligations; or (2) obtain the borrower's signed, written consent to the sale, including the relinquishment of borrower rights. As noted earlier, System institutions assert that § 614.4336(a)(2) effectively precludes the sale of most loans to non-System lenders.

Some System lenders have opined that the sale of loans to non-System institutions automatically extinguishes borrower rights. The FCA fully responded to this claim when § 614.4336(a)(2) was adopted as a final regulation in 1992. See 57 FR 38237 (Aug. 24, 1992). From the FCA's perspective, the rationale for § 614.4336(a)(2) remains valid.

As explained in the preamble to § 614.4336(a)(2), the FCA finds no support in either the Act or its legislative history for the claim that the loan sale authorities of FCS institutions supersede the borrower rights provisions in title IV of the Act. In fact, the System's loan sale authorities already existed at the time that the Act was amended to guarantee certain protections to FCS borrowers. In this context, § 614.4336(a)(2) balances the statutory authority of System lenders to sell their loans with the borrower rights provisions of the Act. The FCA observes that § 614.4336(a)(2) prevents potential disputes that could erupt if borrower rights issues are left unresolved when loans are sold to non-System lenders who are not Farmer Mac poolers. Uncertainty over the status of borrower rights may also deter an informed non-System lender from purchasing loans from FCS banks and associations.

The approach advocated by the commenters would allow FCS institutions to unilaterally deprive borrowers of their statutory rights without their consent. Accordingly, the FCA will retain § 614.4336(a) because it implements the Act by equitably balancing borrower rights with the authority of FCS banks and associations to sell loans to non-System lenders.

Recently, the FCA has received inquiries about the application of borrower rights to loans that are guaranteed by other Federal agencies. This issue is currently under consideration at FCA.

E. Disclosures

Under § 614.4337(a), an FCS bank or association that sells a loan to another lender is required to disclose to the borrower specified information about the purchaser, the servicing agent, borrower rights, and changes in the loan terms. Two commenters suggested that the disclosure of loan sales and the corresponding reporting requirements in § 614.4337(a) are unnecessary because they should be handled by the purchaser of the loan, rather than the FCS institution.

The FCA believes that the disclosure requirements in § 614.4337(a) are the responsibility of the seller, not the purchaser, of System loans. As previously discussed, the Act imposes borrower stock and borrower rights requirements on loans that are originated by System banks and associations. These institutions are in the best position to explain the impact of the sale on these matters. Furthermore, disclosures concerning servicing rights were added to this regulation after a General Accounting

[1] See 60 FR 26034, May 16, 1995.

[2] Pub. L. 100–233, 101 Stat. 1568, (Jan. 6, 1988).

Office report criticized certain System loan sale practices that created hardships for many borrowers. See 57 FR 38237 (Aug. 24, 1992). As § 614.4337 addresses the obligations of System institutions that originate and subsequently sell the borrowers' loans, the FCA will not repeal this regulation.

F. Investment in Farmers' Notes

Several FCBs and associations requested that the FCA either eliminate or modify the full-recourse requirement in § 615.5172, which authorizes PCAs and ACAs to invest in Farmers' Notes. This regulation authorizes PCAs and ACAs, in accordance with the policies prescribed by the boards of their funding banks, to invest in notes and other obligations evidencing the purchase of farm equipment, machinery, and supplies by farmers and ranchers from private dealers and cooperatives. The regulation requires that the debtors on these Farmers' Notes must be eligible to borrow from PCAs and ACAs. More importantly, § 615.5172(d) states that "all notes in which the association invests shall be endorsed with full recourse against the cooperative or dealer."

Commenters claimed that this full-recourse requirement adversely impacts System competitiveness in the short-term credit market and restrains their business opportunities.

The commenters asserted that: (1) The recourse requirement should be a credit decision of the association, and (2) the full-recourse requirement is unrelated to safety and soundness.

Although the FCA realizes that the full-recourse requirement in § 615.5172(d) may deprive PCAs and ACAs of some profitable business opportunities, it implements several provisions of the Act. The Farmers' Notes program derives from section 2.2(10) of the Act, which authorizes associations to invest their funds, as approved by their funding bank, pursuant to FCA regulations. Therefore, the regulation implements the investment authorities, not the lending powers, of PCAs and ACAs. Because the full-recourse requirement precludes PCAs and ACAs from assuming any credit risk on Farmers' Notes, § 615.5172(d) ensures that these instruments are treated as investments rather than loans.

The full-recourse requirement prevents PCAs and ACAs from extending credit to an eligible borrower without complying with provisions of the Act that govern their lending authorities and capitalization requirements. Farm Credit banks and associations lack authority under sections 1.5(16) and 2.2(11) of the Act, respectively, to purchase operating loans from non-System lenders. Furthermore, the commenters' recommendation is incompatible with provisions of the Act that require: (1) System institutions to accord borrower rights on agricultural or aquatic loans, and (2) farmers to purchase voting stock when they obtain credit from a System lender. For these reasons, the FCA cannot delete or modify the full-recourse requirement in § 615.5172(d) without an amendment to the Act to allow System banks and associations to purchase loans from non-FCS lenders.

III. Future Efforts To Reduce Unnecessary Regulatory Burdens on FCS Institutions

All remaining regulatory burden issues that System institutions raised during the comment period are being addressed in separate regulatory projects that have already been assigned to specific FCA task forces. Within the past 2 years, the FCA has responded to some System concerns about regulatory burdens by adopting final investment and related services regulations. This summer, the FCA proposed new eligibility regulations that are designed to relieve unnecessary regulatory burdens on the FCS while simultaneously enforcing statutory requirements and promoting safety and soundness. The FCA work groups are considering possible amendments to existing regulations that govern: (1) General Financing Agreements; (2) Agency prior approvals; (3) quarterly reports to shareholders; (4) letters of credit for international trade; (5) credit underwriting standards and independent credit judgments on loan participation; and (6) the 10-day notification requirement for changes in interest rates. Separately, the FCA will review whether § 611.330 could be amended so that FCS institutions could, under certain conditions, use ballots containing identity codes in non-weighted elections without compromising voter secrecy and the integrity of the electoral process. The Agency also plans to reevaluate the regulatory timeframes associated with the reconsideration of mergers, consolidations, and other corporate restructurings that have been approved by an institution's shareholders under § 611.1122(k).

Sections 4.9 and 5.17(a)(3) of the Act specifically require reports about young, beginning, and small farmer programs at FCS institutions. The FCA has no latitude to grant relief from these statutory reporting requirements. However, the Agency is currently considering whether § 614.4165(d) is still necessary because other methods may be appropriate for ensuring compliance with the statutory reporting requirements for young, beginning, and small farmer programs.

As part of its strategic plan, the FCA is considering comprehensive revisions to the Loan Accounting and Reporting System (LARS) and Call Report requirements. As results are achieved from this strategic goal, unnecessary or duplicative LARS and Call Report requirements on System institutions will be eliminated. However, changes to these reporting requirements and further changes to regulatory requirements must be accomplished without any adverse impact on the ability of the FCA to discharge its safety and soundness responsibilities under the Act.

Except for the specific issues outlined above that may be addressed in ongoing regulation projects, the FCA considers this its final response to comments received pursuant to its regulatory burden request.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28583 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

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12 CFR Part 615

RIN 3052–AB66

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Global Debt

AGENCY: Farm Credit Administration.

ACTION: Interim rule; request for comment.

SUMMARY: The Farm Credit Administration (FCA) is issuing an interim regulation to clarify the Federal Farm Credit Banks Funding Corporation's (Funding Corporation) statutory authority to use more than one fiscal agent to facilitate the sale of Systemwide debt securities. The regulation permits the Funding Corporation to employ fiscal agents other than Federal Reserve Banks (FRBs) for issuance of dollar denominated Systemwide debt securities in foreign capital markets. Thus, the rule recognizes the authority of the Funding Corporation to issue, sell, and distribute Systemwide debt securities on behalf of the Farm Credit banks (banks) on a global basis. Updating existing FCA regulations allows the banks to engage in debt marketing practices used by other Government-Sponsored Enterprises (GSEs). In addition,

expanding debt marketing internationally may broaden the investor base for Systemwide debt securities and lead to lower funding costs.

DATES: The regulations shall become effective upon the expiration of 30 days after publication during which either or both Houses of Congress are in session. Written comments must be received on or before December 26, 1995. Notice of effective date will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The Farm Credit System (System) funds its lending operations through the sale of debt securities in the domestic capital markets. The banks currently offer Systemwide debt securities, primarily consisting of Consolidated Systemwide bonds, medium-term notes and discount notes.[1] The Funding Corporation, acting on behalf of the banks, issues, markets, and handles the debt obligations of the System. The Funding Corporation also has the responsibility for establishing, subject to FCA approval, the amount, maturities, rates of interest, and terms and conditions of participation by the several banks in each issue of Systemwide debt securities.[2]

The Funding Corporation uses a selling group of investment dealers and dealer banks to market Systemwide debt securities. Systemwide debt securities are generally issued in book-entry form.[3] The FRBs maintain the book-entry securities as agents of the banks.[4] Pursuant to FCA regulations, Systemwide debt securities clear and settle through the Federal Reserve Banks' Book-entry System (Fed book-entry system).[5] Foreign investors can purchase Systemwide debt securities through institutions and depositories that have appropriate accounts with an FRB. Currently, the banks do not issue securities through agents other than the FRBs either domestically or in foreign capital markets.

In contrast, other GSEs[6] have launched global debt issuance programs to expand the sale of their debt securities into foreign capital markets. While most GSEs have issued or sold debt securities denominated in United States dollars (U.S. dollars) outside the United States, three[7] also have issued debt securities denominated in foreign currencies. The global debt programs aim at increasing the depth and breadth of the market for the issuer's debt securities. The GSEs are seeking to diversify and control the cost of borrowing at a time when their overall funding needs are rising sharply. The foreign capital markets could provide the GSEs funding opportunities at rates that are attractive compared to domestic sources. Additionally, international debt sales may enhance the efficiency of GSE debt sales by expanding their sources of funding and reducing the burgeoning supply of GSE debt in the domestic market.

II. System Global Debt Program Proposal

The Funding Corporation proposes to establish a global debt marketing program for issuance of Systemwide debt securities similar to the other GSEs. The Funding Corporation has requested FCA's confirmation that the Farm Credit Act of 1971, as amended[8] (Act), allows the banks to issue Systemwide debt securities in foreign capital markets using fiscal agents other than the FRBs. The proposed System Global Debt Program (Program) contemplates three approaches to enter into foreign capital markets that vary in scope and complexity.

The first approach is designed to increase secondary market sales of Systemwide debt securities outside the United States. To accomplish this, the Funding Corporation would use international depositories and clearing systems for maintaining and servicing book-entry Systemwide debt securities. By expanding secondary market trading and safekeeping to accountholders in clearing systems beyond the Fed book-entry system, the Funding Corporation could increase and support demand by foreign investors. Primary issuances of dollar denominated Systemwide debt securities would continue to be issued through the FRBs in book-entry form.

The Program's second method to heighten the System's presence in foreign capital markets involves both primary issuance and secondary market sales of Systemwide debt securities outside the United States. Dollar denominated Systemwide debt securities would be issued through fiscal agents other than the FRBs, either exclusively outside the United States or simultaneously inside and outside the United States. Secondary market trading and safekeeping of the debt securities would be accomplished through international depositories and clearing systems.

Under the third approach, Systemwide debt securities would be denominated in foreign currencies and issued exclusively outside the United States through fiscal agents other than the FRBs. Secondary market trading and safekeeping would be handled through international clearing systems. Such non-dollar denominated Systemwide debt securities issued in foreign capital markets are the subject of an Advance Notice of Proposed Rulemaking also adopted by the FCA Board on November 16, 1995, and published elsewhere in today's issue of the **Federal Register**.

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[1] Systemwide debt securities are the joint and several obligations of the banks. *See* 12 U.S.C. 2155(a)(2) and 12 U.S.C 2153(d).

[2] *See* 12 U.S.C. 2160.

[3] Securities issued in book-entry form are assigned to an investor's account upon purchase. The investor receives a custody receipt from his or her bank or non-bank dealer instead of receiving a certificate. Payment of principal and interest on book-entry securities is credited to the investor's account and does not require presentation of a coupon or certificate. Investors may choose, as a custodian, any bank or other financial institution that maintains book-entry accounts with a member of the Federal Reserve System.

[4] *See* 12 CFR part 615, subpart O.

[5] The FRBs operate a book-entry system, which provides book-entry holding and settlement for all U.S. dollar denominated securities issued by the U.S. Government, certain agencies, instrumentalities (including GSEs), and international organizations of which the United States is a member. The Fed book-entry system enables specified depositories and other institutions, with an appropriate account with an FRB or Branch, to hold, make payments, and transfer securities and funds through the FRBs' Fedwire electronic funds transfer system.

[6] The Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Student Loan Marketing Association (Sallie Mae) and the Federal Home Loan Banks (FHLBs) have introduced global debt programs.

[7] Fannie Mae, Sallie Mae, and the FHLBs have issued non-dollar denominated debt securities.

[8] 12 U.S.C. 2001–227966–6.

III. Statutory and Regulatory Considerations

A. General

The Act grants broad authority to: (1) The banks to issue debt obligations to fund their operations; and (2) the FCA to approve the issuance of System debt in the capital markets. Under section 4.2, Systemwide debt obligations must be issued solely through the Funding Corporation, while section 4.9(b)(1) of the Act authorizes the Funding Corporation to "issue, market, and handle the obligations" of the banks. Under section 4.9(b)(2) of the Act, the Funding Corporation, acting for the banks and subject to FCA approval, "shall determine the amount, maturities, rates of interest, terms, and conditions of participation by the several banks in each issue of joint, consolidated, or System-wide obligations." Sections 4.2 and 5.17(a)(4) of the Act require FCA approval of the issuance of all System debt obligations.

B. Secondary Market Sales Outside the United States

In general, secondary market trading and sales of Systemwide debt securities have been limited to the United States market. However, secondary market sales of dollar denominated Systemwide debt securities outside the United States are compatible with current statutory and regulatory requirements. The initial issuance of such debt securities would be subject to the standard FCA approval process.[9]

C. Issuance of Systemwide Debt Outside the United States

The Act is silent concerning issuance of Systemwide debt outside the United States. No provision of the Act explicitly or implicitly prohibits the banks, acting through the Funding Corporation, from issuing debt obligations outside the United States. Furthermore, there appears to be no other Federal statute or judicial ruling that would prohibit the banks from issuing Systemwide debt securities outside the United States. Nevertheless, the laws of the various host countries may restrict some aspects of System debt issuances within their borders.

D. Use of Issuing and Servicing Agents Other Than the FRBs

Section 4.8(a) of the Act, which governs the issuance and sale of System obligations through fiscal agents, clearly contemplates that the banks can issue their debt obligations through one or more fiscal agents. Section 4.8(a) states:

> Each bank of the System * * * may provide for the sale of obligations issued by it, consolidated obligations, or System-wide obligations, through a *fiscal agent or agents*, by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate. (Emphasis added.)

Section 4.8(a) does not, however, identify a fiscal agent or agents that the banks are authorized to use for debt issuances.

The FCA regulations governing the issuance, maintenance, and servicing of Farm Credit securities refer only to the authority of FRBs to act as agents for the banks.[10] The absence of any reference in the regulations to fiscal agents other than the FRBs may appear to restrict the authority of the Funding Corporation to select a fiscal agent other than an FRB. In light of the apparent latitude permitted under section 4.8(a), the FCA believes the authority of the Funding Corporation to employ fiscal agents other than FRBs should be clarified.

IV. Need for Amended Regulations

The FCA regulations governing issuance of Systemwide debt securities were promulgated nearly 20 years ago. The existing regulations reflect a period when the FRBs served as the exclusive fiscal agents for GSE debt issuances in a predominantly domestic market. Since then, global debt markets and international clearing systems have evolved and become more closely integrated with the United States domestic securities market. Due to substantial increases in GSE debt issuances, the domestic GSE debt market has become highly competitive. As a result, the GSEs are seeking to expand their market horizon and lower their cost of funds by using international delivery systems to reach foreign investors.

The FRBs may not act as fiscal agents for GSE debt obligations that are issued outside of the United States. Therefore, GSEs that embark upon global debt programs must employ fiscal agents that have the capability of issuing, maintaining, and servicing international debt offerings. As noted, the Act does not restrict the issuance of Systemwide debt securities to domestic markets or the use of fiscal agents to the FRBs. To clarify this authority, the FCA is adopting a new subpart P in 12 CFR part 615 dealing with issuance of Global Systemwide debt securities. The FCA regulations governing the authority of the FRBs to issue book-entry Farm Credit securities are not affected by the new rules and remain in effect.[11]

The FCA believes the new regulations will preserve the flexibility provided to the banks under the Act by allowing them to pursue the most cost-effective and efficient method of raising funds in the capital markets. The FCA also recognizes the increasingly global nature of capital markets and supports the objectives of the proposed Program. By developing the capability to issue debt internationally, the System may increase its name recognition, broaden its investor base, diversify its sources of funding, and obtain more cost-effective financing.

The new subpart differentiates Systemwide debt securities distributed outside the United States from those issued through the FRBs under existing Funding Corporation programs. The regulation defines a Global agent as any fiscal agent, other than the FRBs, used by the Funding Corporation to facilitate the sale of global debt securities. Global debt securities are defined as obligations issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agent and distributed either exclusively outside the United States or simultaneously inside and outside the United States. Issuances of global debt securities will be subject to the standard FCA approval process.

The FCA believes that it is unlikely that any substantial operational or business risks to the System will be posed by clearance and settlement of transactions in the systems outside the Fed book-entry system. Systemwide debt securities issued internationally would likely be handled through established and interconnected international clearinghouses, all of which have book-entry systems available to distribute and settle primary sales and to transfer beneficial interests in secondary market sales among their respective holding institutions, participants, and accountholders. In general, book-entry systems are considered superior to other means for evidencing ownership and are universally accepted by investors in the global marketplace. All issuers of debt or equity securities must employ an entity to issue, hold, trade, and clear book-entry securities in the name of accountholders, unless the securities are issued in definitive (i.e., tangible) form to facilitate sales. To date, the

[9] *See* 12 U.S.C. 2153, 2252(a)(4).

[10] *See* 12 CFR part 615, subpart O which authorizes each FRB to issue and maintain book-entry Farm Credit securities, service book-entry Farm Credit securities by making payment of interest and payment at maturity or upon call, transfer or pledge Farm Credit securities to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with an FRB and provide other services as fiscal agent.

[11] *See* 12 CFR part 615, subpart O.

experience of the other GSEs engaged in global debt marketing programs also suggests that using international clearing systems is an acceptable business practice.

Nevertheless, the FCA believes that the operational risk inherent in the development of a global debt program is significant enough to warrant the requirement that the Funding Corporation Board of Directors approve each prospective global agent and clearing system. Additionally, the Funding Corporation must establish appropriate selection criteria for global agents. The FCA expects that selection criteria will be based on factors such as credit ratings, capital, reputation, experience, and management capabilities to ensure that the entity is suitable to assume and carry out the functions of a fiscal agent, including the appointment of subordinate agents if necessary.[12]

Promulgation of new subpart P of 12 CFR part 615 effectively approves the first two aspects of the proposed Program as previously outlined. Thus, the Funding Corporation may engage global agent(s) to issue and service dollar denominated global debt securities and facilitate their secondary market trading in foreign capital markets by using international clearing systems.

The FCA has decided that the third aspect of the proposed Program—issuance of non-dollar denominated Systemwide debt securities—presents issues that need to be addressed through conventional notice-and-comment rulemaking rather than in the present expedited rulemaking. The Act does not restrict the issuance of Systemwide debt securities to dollar denominated securities. However, issuance of non-dollar debt obligations could raise safety and soundness concerns for the banks, including currency and counterparty risks. The FCA, therefore, intends to explore these potential safety and soundness issues through an Advance Notice of Proposed Rulemaking prior to developing regulations.

V. Expedited Rulemaking Procedure

The Act permits the Funding Corporation to market debt securities on a global basis and use global agents to issue and service such securities. Moreover, marketing and issuance of dollar denominated debt by GSEs is an established practice that appears to present minimal safety and soundness risk. Accordingly, the FCA finds that pre-promulgation notice and comment on a new subpart P that merely clarifies existing authority is unnecessary and is not in the public interest.[13] Thus, this regulation shall take effect as a final regulation in accordance with section 5.17(c)(1) of the Act, upon the expiration of 30 days after publication in the **Federal Register**, during which either or both Houses of Congress are in session. The FCA solicits and will consider comments on whether the requirements of new subpart P need further clarification.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. Subpart P is added to read as follows:

Subpart P—Global Debt Securities

§ 615.5500 Definitions.

In this subpart, unless the context otherwise requires or indicates:

(a) *Global debt securities* means consolidated Systemwide debt securities issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agents and distributed either exclusively outside the United States or simultaneously inside and outside the United States.

(b) *Global agent* means any fiscal agent, other than the Federal Reserve Banks, used by the Funding Corporation to facilitate the sale of global debt securities.

§ 615.5502 Issuance of global debt securities.

(a) The Funding Corporation may provide for the sale of global debt securities on behalf of the Farm Credit banks through a global agent or agents by negotiation, offer, bid, or syndicate sale, and deliver such obligations by book-entry, wire transfer, or such other means as may be appropriate.

(b) The Funding Corporation Board of Directors shall establish appropriate criteria for the selection of global agents and shall approve each global agent.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28584 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

[12] Depending upon the agreement between the Funding Corporation and the entity acting as global agent, a global agent may only retain primary responsibility over certain fiscal functions and thus may need to appoint other agents, such as paying agent, transfer agent, calculation agent, exchange agent, or register agent to perform other functions necessary for clearance and settlement of transactions.

[13] *See* 5 U.S.C. 553(b)(B).

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12 CFR Parts 615 and 620

RIN 3052–AB60

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Director Elections

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts amendments to the regulations relating to the implementation of cooperative principles to allow greater flexibility in the method by which directors of Farm Credit System (System) associations and banks for cooperatives are elected, consistent with cooperative principles. The amendments permit regional election of directors.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Hays, Policy Analyst, Regulation Development, Office of Examination, (703) 883–4498, TDD (703) 883–4444; or Rebecca S. Orlich, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On June 9, 1995, the FCA Board published proposed amendments to its regulations governing the election of directors. *See* 60 FR 30470 (June 9, 1995). The FCA received 9 comment letters in response

to this proposal. A description of the existing and proposed regulations, comments on major issues, and the FCA's response follow.

I. Existing Regulation and Proposed Regulation

The existing regulation was promulgated by the FCA in 1988 to implement changes effected by the Agricultural Credit Act of 1987. It provided for the at-large election of directors of associations and banks for cooperatives (BCs) but permitted associations that, in 1988, had bylaws providing for regional elections of directors to continue to do so until January 1, 1993. These associations were districtwide associations that had been formed in the 1980s through mergers of most or all of the associations in a bank's district. In response to the desire for regional representation expressed in the comments to the existing regulations when they were proposed in 1988, the FCA placed no restrictions on the institution's ability to provide for geographic representation on the board by geographic designation of director positions; the Agency also provided for cumulative voting unless shareholders approved bylaws providing otherwise. However, the FCA decided to prohibit regional voting because of Agency concerns regarding director accountability and equitable voting power.

Subsequent to implementation of that regulation, and in response to requests from institutions to permit regional election of directors, the FCA reviewed its position and determined that its concerns could be addressed in a less burdensome way that would permit regional elections, consistent with cooperative principles.

The FCA proposed amendments to § 615.5230(a)(1)(ii) to permit the regional election of directors of associations and BCs subject to the following conditions:

1. To ensure that a director can be held accountable by all shareholders, institutions with bylaws providing for shareholder removal of directors must provide that each director may be removed by a majority vote of all voting shareholders and may not be removed by a vote of only the shareholders in his or her region; and

2. The bylaws provide for the apportionment of the institution's territory into voting regions with approximately equal numbers of voting shareholders and ensure equitable representation from each voting region through an annual evaluation by the institution's board of directors.

The FCA also proposed a conforming amendment to § 620.21(d)(1) of the FCA regulations to require disclosures regarding regional voting in the association's annual information statement.

II. Comments on Major Issues

Comments were received from the Farm Credit Council (FCC), representing the interests of its membership except for one bank; a Farm Credit Bank; five System associations; a law firm representing two pairs of jointly managed System associations (four associations); and one System association board member. The Farm Credit Bank stated its belief that it was not appropriate for a bank to express a position on the regulation of the internal affairs of associations. Two commenters fully supported the proposal, one commenter objected to the proposal, and others expressed varying degrees of support and/or criticism as described below:

1. *Shareholder approval of bylaw establishing regional elections.* An association objected to this requirement as being burdensome and costly, and a responsibility for association boards. The FCC stated that it strongly opposed this provision as being unnecessary, a matter for the association board to decide, prohibitively expensive for some associations, and a barrier to having regional elections before 1997.

2. *"Approximately equal number of voting shareholders" in each region.* This issue was commented on by the FCC and five others. The FCC asserted that, as a practical matter, this requirement would preclude the drawing of regional boundaries along state, county, or other political or geographic lines. The FCC asserted that it would likely result in the elimination or curtailment of certain "grass roots" programs, because regions based on equal numbers of shareholders would mean that some regions will be very large and the large size would make travel to the local meetings difficult, if not impossible. The FCC further stated that the number of shareholders per region should not be the controlling factor, or even necessarily of greater weight than other factors.

One association supported additional flexibility on this issue and asked for "board variance to the percent of stockholders located in each region in order to achieve clear understanding of each regions' boundaries." The law firm recommended that association boards be permitted to draw boundaries along county or territorial lines "consistent with standards provided in the bylaw to assure 'substantial parity' of voting control among shareholders across regions but without requiring coupling of non-contiguous counties into a single region." The comment does not suggest what the standard for "substantial parity" would or should be, other than that it must be provided for in the bylaws. Another association stated that "regions with disproportionate numbers of stockholders can be equitably served by differential numbers of director positions per region, resulting in reasonably balanced representation of stockholders per director." An association also suggested that "approximately equal" be defined to mean a shareholder variance of 10 percent more or less than other regions. Another association expressly supported the "approximately equal" standard.

3. *Annual evaluation to assure that regions remain approximately equal.* The FCC and three associations were critical of the annual evaluation requirement. The FCC pointed out that, since many or most associations elect directors on a staggered-term basis, the voting region electing a particular director could change while he or she is in office; it also said that an annual evaluation could result in frequent changes in regional boundaries. The law firm made a similar comment and stated that, "[t]o the extent there is now any sense of connection between a stockholder and a director from his or her region, it would certainly be lost in this shuffle." One association stated its belief that evaluations should be necessary only every 3 years. Two associations expressly supported the proposed annual evaluation.

III. FCA's Response to Comments

On the issue of shareholder approval to determine the method of electing their directors, the Board strongly believes that the right of shareholders to vote for all of the directors who owe them fiduciary duties should not be limited in any way without their consent. A regional voting bylaw, if adopted with the approval of only directors of the institution, could be viewed as serving primarily the interest of furthering director position and influence and disenfranchising shareholders. Shareholder ratification will serve to negate any such inference and assure concurrence by the owners of the association as to the benefits to be derived from the bylaw provision. The Board recognizes that there are costs associated with any shareholder vote but does not believe that the cost would be prohibitively expensive for any institution, as was asserted by a commenter. Therefore, after weighing the costs and benefits, the Board adopts the shareholder approval requirement as proposed.

In response to comments regarding the requirement to have an "approximately equal" number of voting shareholders per region, the Board has carefully considered the arguments against such standard. The Board has concluded that the equalization of the number of voters per region ensures democratic control of an association. The Board is not persuaded that "approximately equal" voting would reduce or curtail grass-roots participation in institution business, particularly since at present the directors are elected on an at-large basis.

However, in response to some of the comments received asserting that precise equalization would be overly burdensome, the Board has made several changes to this provision of the proposed regulations. First, the final regulation retains the "approximately equal" standard but specifies that the standard is met if no region contains more than 25 percent more voting shareholders than in any other region. After implementation, the institution must periodically count the number of voting shareholders in each region and, if the "approximately equal" standard is no longer being met, must adjust the boundaries or adjust the ratio of borrowers to directors in order to meet the standard. Second, the final regulation provides that the evaluation of the number of voting shareholders and any resulting adjustments must take place at least once every 3 years. This is a relaxation of the proposed regulation's requirement for an evaluation every year.

The Board is aware, as some commenters noted, that revisions of the regional boundaries, in cases where board members serve staggered terms, could be viewed as depriving some shareholders of representation who may, after a boundary change, be in the region of a board member for whom they did not have the opportunity to vote. Such a result would appear to be unacceptable in a situation where a board member is obligated to represent only the interests of shareholders from his or her region. However, that is not the case here. Institution board members have a fiduciary duty to represent the interests of *all* of the shareholders in the institution's territory, even when they are elected on a regional basis.[1] An institution may, of course, choose to elect all of its directors annually, or may decide not to have regional voting.

The Board has also made several clarifications to the proposed regulations. Proposed § 615.5230(a)(3)(ii) stated that, if there is a bylaw providing for shareholder removal of directors, it must give all voting shareholders the right to vote to remove a director and not limit the right to the shareholders in the director's region. In the Board's view, this language implied that the bylaws could deprive shareholders of the right to remove directors. It was not the intention of the Board to imply this, since stockholders have a common law right to remove directors for cause.[2] Therefore, to avoid any confusion on this issue, the Board has revised the proposal to provide, in the final regulations, that bylaws establishing regional voting must give all voting shareholders the right to vote in any shareholder vote to remove a director.

The Board has also added a clarifying amendment to § 620.21(d)(3). The existing regulation requires that, if an association's annual meeting is held in more than one session; the annual meeting information statement must contain a statement that nominations from the floor must be made at the first session. The clarifying amendment adds that, for associations that elect directors by region, there must be a statement that nominations from the floor for a director from a particular region must be made at the first session in that region if stockholders do not vote solely by mail ballot. If stockholders vote solely by mail ballot, the information statement must state that nominations from the floor may be made at any session of the annual meeting held in a region, unless the bylaws provide otherwise.

No specific comments were received on regional elections for BC directors or on the proposed conforming amendment to § 620.21(d)(1), the disclosure regulation. The disclosure provision is adopted as proposed.

List of Subjects

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recording requirements, Rural areas.

For the reasons stated in the preamble, parts 615 and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart I—Issuance of Equities

2. Section 615.5230 is amended by adding a new paragraph (a)(1)(iii) and revising paragraphs (a)(1)(ii) and (a)(3) to read as follows:

§ 615.5230 Implementation of cooperative principles.

(a) * * *

(1) * * *

(i) * * *

(ii) Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(a)(3), be accorded the right to vote in the election of each director (except for a director that is elected by the other directors);

(iii) Unless regional election of directors is provided for in the bylaws, or unless otherwise provided in the bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(2) * * *

(3) Regional election of directors is permitted under the following conditions:

(i) A bylaw establishing regional elections is approved by a majority of voting shareholders, voting in person or by proxy, prior to implementation;

(ii) The bylaw provides that all voting shareholders of the institution, whether or not they reside in the director's region, have the right to vote in any shareholder vote to remove each director;

(iii) There are an approximately equal number of voting shareholders in each of the institution's voting regions. The

[1] Moreover, the combination of yearly boundary revisions and directors with staggered terms may not be uncommon among cooperatives. *See, e.g.*, the model bylaw provision set forth in *Legal Phases of Farmer Cooperatives*, Information 100, Farmer Cooperative Service, U.S. Dept. of Agriculture (1976), at 572–73.

[2] *See* Harry G. Henn & John R. Alexander, *Laws of Corporations* § 205 (1983). Common law also provides that the board of directors may not remove a director for cause unless the bylaws so state; it appears that the board of directors cannot remove a director without cause. *Id.*

regions shall be deemed to have an approximately equal number of voting shareholders if no region contains more than 25 percent more voting shareholders than in any other region. At least once every 3 years, the institution shall count the number of voting shareholders in each region and, if the regions do not have an approximately equal number of shareholders, shall adjust the regional boundaries to achieve such result; and

(iv) An institution may provide for more than one director to represent a region. In such case, for purposes of determining whether the regions have an approximately equal number of voting shareholders, the number of voting shareholders in the region with more than one director shall be divided by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting shareholders in other regions.

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart D—Association Annual Meeting Information Statement

4. Section 620.21 is amended by adding the words "or elected" after the word "nominated" in the first sentence of paragraph (d)(1); and by revising paragraph (d)(3) to read as follows:

§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

* * * * *

(d) * * *

* * * * *

(3) State that nominations shall be accepted from the floor.

(i) If directors are not elected by region, the following shall apply:

(A) If the annual meeting is to be held in more than one session and mail balloting will be conducted upon the conclusion of all sessions, state that nominations from the floor may be made at any session or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions, state that nominations from the floor may be made only at the first session.

(ii) If directors are elected by region, the following shall apply:

(A) If more than one session of an annual meeting is held in a region, and if mail balloting will be conducted at the end of all sessions in a region, state that nominations from the floor may be made at any session in the region or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session held in the region.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions in a region, state that nominations from the floor may be made only at the first session held in the region.

* * * * *

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28587 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 128CE, Special Condition 23–ACE–83]

Special Conditions; Beech Model 58 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Beech Model 58 airplanes modified by ElectroSonics Division of AiRadio Corporation, Columbus, Ohio. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is on publication in the **Federal Register**. Comments must be received on or before December 26, 1995.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 128CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 128CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 128CE." The postcard will be date stamped and returned to the commenter.

Background

On September 25, 1995, ElectroSonics Division of AiRadio Corporation, P.O. Box 360436, Columbus International Airport, Columbus, Ohio 43236, made an application to the FAA for a supplemental type certificate (STC) for the Beech Model 58 airplanes. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beech Model 58 Airplanes is given in Type Certification Data Sheet No. 3A16 plus the following: § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

ElectroSonics Division of AiRadio Corporation, plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840

FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beech Model 58 Airplanes, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Models 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the **Federal Register.** However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Model 58 Airplanes:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on November 14, 1995.

Dwight Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28737 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM96–2–000; Order No. 584]

Correction of Annual Charges Formula

Issued November 14, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act (FPA). The amendment restores the *status quo ante* in the formulae for allocating annual charges among licensees, by correcting an error in a previous final rule.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Officer of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 2A, 888 First St. NE., Washington, DC 20426.

I. Introduction and Background

The Federal Energy Regulatory Commission (Commission) is amending its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act (FPA).[1] The amendment restores the *status quo ante* in the formulae for allocating annual charges among licenses, by correcting an error in a previous final rule.

On March 15, 1995, the Commission issued Order No. 576, a final rule [2] that amended Part 11 of the Commission's regulations.[3] One provision of Order No. 576 amended § 11.1 of the regulations [4] by substituting (in several subsections) kilowatts for horsepower in stating a project's authorized installed capacity. The Commission explained that the change "was designed to reflect modern usage in the rating of equipment used in hydropower projects."[5]

Order No. 576 added a new § 11.1(i) that defined "authorized installed capacity" in terms of kilowatts (kW) and related electrical concepts and terminology. The definition included a conversion factor (multiply by 0.75 kW/hp) for converting the capacity of a turbine stated in horsepower (hp).

The formulae for allocating annual charges among non-municipal licensees were set forth in the section of the regulations that Order No. 576 renumbered as § 11.1(c)(3). Order No. 576 deleted all references in that subsection to "horsepower," replacing them with references to "authorized installed capacity." As explained above, "authorized installed capacity" was now defined in terms of kilowatts, not horsepower. In making this change, however, the Commission inadvertently neglected to include the horsepower to kilowatt conversion adjustment in that part of the renumbered §§ 11.1(c)(3) (i) and (iii) that referred to generation. The effect of that inadvertent omission was to seriously distort the balance of capacity and generation in determining the allocation of certain annual charges.[6] No such distortion was intended. Indeed, in another part of Order No. 576 the Commission explicitly stated that although it had invited comment on the choice of capacity or generation (or both) in the allocation formulae, it had decided not to make any such changes.[7]

Inasmuch as the distortion in the ratio between generation and capacity is the inadvertent and unintended result of leaving out the horsepower to kilowatt conversion adjustment when substituting kilowatts for horsepower as the measure of capacity in §§ 11.1(c)(3)(i) and (iii), we will correct that omission in this final rule by adding that conversion adjustment to those subsections. That will restore the *status quo ante,* as we intended all along. The conversion factor will be incorporated into the formulae in §§ 11.1(c)(3)(i) and (iii) by substituting "112.5" for "150," as the generation multiplier, in each instance, and by substituting "75" for "100" in subsection (iii).

Finally, we will correct an inadvertent omission of a cross-reference in the definition of "authorized installed capacity" in § 11.1(i). At present, that section cross-references only to paragraph (c) of § 11.1. We will add a cross-reference to paragraph (d) as well, as was our original intent.

II. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description and analysis of proposed regulations that will have a significant economic impact on a substantial number of small entities.[9] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the final rule adopted herein will not have a significant economic impact on a substantial number of small entities.

III. Environmental Statement

Issuance of this final rule does not constitute a major federal action having a significant adverse impact on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act.[10] The final rule adopted herein is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[11]

IV. Information Collection Statement

The Office of Management and Budget's (OMB) regulations at 5 CFR Part 1320 require that OMB approve certain information and recordkeeping requirements imposed by an agency. The final rule adopted herein does not modify any collections of information.

Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

V. Effective Date

The Administrative Procedure Act (APA)[12] requires that a notice of proposed rulemaking be published in the **Federal Register** and that an opportunity for comment be provided when an agency promulgates regulations. The APA sets forth exemptions to the notice and comment requirements if the rule is, *inter alia,* a rule of agency organization, procedure, or practice, or if the Commission for good cause finds that notice and comment procedures thereon are impracticable, unnecessary, or contrary to the public interest.

For the reasons discussed above, this final rule corrects an error of omission in the final rule adopted in Order No. 576. Therefore, for good cause the Commission finds that notice and comment procedures are unnecessary.

This final rule is effective December 26, 1995, and is retroactive to the assessment of the annual charges for fiscal year 1995. This will ensure that no licensee will pay for fiscal year 1995 an assessment of annual charges greater than it would have paid had the formulae been correctly stated in Order No. 576.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 11 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In section 11.1, paragraphs (c)(3) (i) and (iii) and paragraph (i) are revised to read as follows:

§ 11.1 Costs of administration.

* * * * *

(c) * * *

(3) The annual charge factor for each such project shall be found as follows:

(i) For a conventional project the factor is its authorized installed capacity plus 112.5 times its annual energy output in millions of kilowatt-hours.

* * * * *

(iii) For a mixed conventional-pumped storage project the factor is its authorized installed capacity plus 112.5 times its gross annual energy output in millions of kilowatt-hours less 75 times the annual energy used for pumped storage pumping in million of kilowatt-hours.

* * * * *

(i) *Definition.* As used in paragraphs (c) and (d) of this section, *authorized installed capacity* means the lesser of the ratings of the generator or turbine units. The rating of a generator is the product of the continuous-load capacity rating of the generator in kilovolt-amperes (kVA) and the system power factor in kW/kVA. If the licensee or exemptee does not know its power factor, a factor of 1.0 kW/kVA will be used. The rating of a turbine is the product of the turbine's capacity in horsepower (hp) at best gate (maximum efficiency point) opening under the manufacturer's rated head times a conversion factor of 0.75 kW/hp. If the generator or turbine installed has a rating different from that authorized in the license or exemption, or the installed generator is rewound or otherwise modified to change its rating, or the turbine is modified to change its rating, the licensee or exemptee must apply to the Commission to amend its

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[1] 16 U.S.C. 792–823b.

[2] III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,016. Order No. 576 was published in the **Federal Register** on March 22, 1995, 60 FR 15040.

[3] 18 CFR Part 11.

[4] 18 CFR 11.1.

[5] III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,016 at p. 31,303.

[6] There is no problem in the formula in § 11.1(c)(3)(ii), because that formula is based entirely on capacity. For the same reason, there is no problem in the assessment formula for municipal licensees (see paragraph (d) of that subsection), which is also based solely on capacity. The distortion occurs only when the formula includes a ratio between factors for generation and capacity.

[7] III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,016 at pp. 31,307–08.

[8] 5 U.S.C. 601–612.

[9] Section 601(c) of the RPA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[10] *See* Order No. 486, 52 FR 47897 (Dec. 17, 1967), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[11] *See* 18 CFR 380.4(a)(1).

[12] 5 U.S.C. 552(a).

authorized installed capacity to reflect the change.

* * * * *

[FR Doc. 95–28559 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 92F–0086]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer containing up to 5 mole percent (7 weight percent) 1,4-cyclohexylene dimethylene terephthalate as a base sheet and base polymer for use in food-contact articles. This action is in response to a petition filed by Eastman Chemical Co.

DATES: Effective November 24, 1995; written objections and requests for a hearing by December 26, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 13, 1992 (57 FR 12831), FDA announced that a food additive petition (FAP 2B4318) had been filed by Eastman Chemical Co., P.O. Box 511, Kingsport, TN 37662. The petition proposed to amend the food additive regulations to provide for the safe use of copolyesters containing up to 5 mole percent (7 weight percent) 1,4-cyclohexylene dimethylene terephthalate as the base sheet and base polymer for use in food-contact articles.

FDA has evaluated the data and information in the petition and concludes that the proposed use of the additive as a base sheet and base polymer is safe. The agency also concludes that the additive is currently regulated under § 177.1315 *Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers* (21 CFR 177.1315) and that this new use should be regulated under the same name. Further, the agency concludes that both §§ 177.1315 and 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may, at any time on or before December 26, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1315 is amended in the table in paragraph (b) by adding new entry "3." to read as follows:

§ 177.1315 Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers.

* * * * *

(b) *Specifications*:

Ethylene 1,4-cyclohexylene dimethylene terephthalate copolymers	Inherent viscosity	Maximum extractable fractions of the copolymer in the finished form at specified temperatures and times (expressed in micrograms of the terephthaloyl moieties/square centimeter of food-contact surface)	Test for orientability	Conditions of use
3. Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate or terephthalic acid with a mixture containing 99 to 95 mole percent of ethylene glycol and 1 to 5 mole percent of 1,4-cyclohexanedimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	No test required .	For each corresponding condition of use, must meet specifications described in § 177.1630(f), (g), (h), or (j).	No test required	For each corresponding specification, may be used as a base sheet and base polymer in accordance with conditions of use described in § 177.1630(f), (g), (h), or (j).

* * * * *

3. Section 177.1630 is amended by revising paragraphs (a), (b), and the introductory text of paragraph (j) and by amending paragraph (e)(4)(ii) by alphabetically adding a new substance to the "List of Substances and Limitations" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(a) Polyethylene phthalate films consist of a base sheet of ethylene terephthalate polymer, ethylene terephthalate-isophthalate copolymer, or ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3), to which have been added optional substances, either as constituents of the base sheet or as constituents of coatings applied to the base sheet.

(b) Polyethylene phthalate articles consist of a base polymer of ethylene terephthalate polymer, or ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3), to which have been added optional substances, either as constituents of the base polymer or as constituents of coatings applied to the base polymer.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

Ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3).	* * * * *

(j) Polyethylene phthalate plastics, composed of ethylene terephthalate-isophthalate containing a minimum of 98 weight percent of polymer units derived from ethylene terephthalate, or ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3), conforming with the specifications prescribed in paragraph (j)(1) of this section, are used as provided in paragraph (j)(2) of this section.

Dated: November 10, 1995.

Fred R. Shank,

Director, Center for Food Sofety and Applied Nutrition.

[FR Doc. 95–28545 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 310, 355, and 369

[Docket No. 80N–0042]

RIN 0910–AA01

Anticaries Drug Products for Over-The-Counter Human Use; Final Monograph; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of October 6, 1995 (60 FR 52474). The document established conditions under which over-the-counter (OTC) anticaries drug products (products that aid in the prevention of dental cavities) are generally recognized as safe and effective and not misbranded. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION: In FR Doc. 95–24693, appearing on page 52474 in the **Federal Register** of Friday, October 6, 1995, the following corrections are made:

1. On page 52484, in the first column, in the first full paragraph, beginning in the 12th line from the bottom, the phrase "as the following: 'anticavity fluoride' (select one of the following" is corrected to read "as: (select one or both of the following: 'anticavity' or 'fluoride' ".

2. On page 52504, in the table, in the entry for "Sodium monofluorophosphate (1,500 ppm):", the designation "NM" is removed. § 355.50 [Corrected]

3. One page 52508, in the third column, in § 355.50 Labeling of anticaries drug products, in paragraph (a), beginning in line 4, the phrase "as the following: 'anticavity fluoride' (select one of the following" is corrected to read "as: (select one or both of the following: 'anticavity' or 'fluoride')".

Dated: November 16, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–28600 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Semduramicin; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations that reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The previous amendment, which appeared in the **Federal Register** of April 13, 1994 (59 FR 17476), provided for making a semduramicin Type A medicated article used to make a Type C medicated broiler chicken feed for the prevention of coccidiosis. The agency has since realized it needs to more accurately reflect both the assay limits for semduramicin Type A articles and the limitation for its use. This action is being taken to ensure the accuracy and consistency of the regulations.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Letonja, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1656.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 13, 1994 (59 FR 17476), FDA published a final rule to announce the approval of Pfizer's new animal drug application (NADA) 140–940. The NADA provides for use of Aviax™ (semduramicin sodium) Type A medicated article to make a semduramicin Type C medicated broiler chicken feed used for the prevention of coccidiosis. That document inadvertently failed to reflect the correct assay limits for Type A medicated articles in 21 CFR 558.4 and the correct limitation for use in 21 CFR 558.555(b)(1)(iii). This document corrects those errors. Due to these amendments, FDA is also providing an amended freedom of information (FOI) summary for public display. The FOI summary has been amended to reflect the correct assay limits and efficacy evaluation. The amended copy of the FOI summary is available at the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the "Category I" table in the entry for "Semduramicin" under the second column by removing "94–102" and adding in its place "90–110".

§ 558.555 [Amended]

3. Section 558.555 *Semduramicin* is amended in paragraph (b)(1)(iii) by removing the last sentence.

Dated: November 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–28598 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for use of a 20-percent lasalocid Type A medicated article in making a Type C medicated feed for rabbits used as a coccidiostat.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland Rd., Nutley, NJ 07110–1199, is the sponsor of NADA 96–298, which currently provides for the use of a Type A medicated article containing 20 percent (90.7 grams (g) per pound) of lasalocid sodium activity in making a 68- to 113-g per ton (g/t) Type C medicated feed for broiler or fryer chickens and growing turkeys, and a 113-g/t Type C medicated feed for chukar partridges; for prevention of coccidiosis. The firm has filed a supplemental NADA that expands the use of the Type A medicated article for use in making a 113-g/t Type C medicated feed for rabbits for the prevention of coccidiosis caused by *Eimeria stiedae*. Approval is based in part on data and information in Public Master File (PMF) 5042 established under the National Research Support Project (NRSP) 7 (formerly the Interregional Research Project No. 4 (IR–4)), Southern Region, University of Florida, Gainesville, FL 32610.

The supplemental NADA is approved as of October 20, 1995, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because no new clinical or field investigations (other than bioequivalence or residue studies) and no new human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplement were conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.311 is amended by revising paragraph (b)(7) and in the table in paragraph (e)(1) by adding new entry "(xv)" to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(7) 20 percent activity to No. 000004 for use as follows:

(i) Chukar partridges as in paragraph (e)(1)(xiii).

(ii) Turkeys as in paragraph (e)(1)(xiv).

(iii) Rabbits as in paragraph (e)(1)(xv).

* * * * *

(e) * * *

(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
•	•	•	•	•
(xv) 113 (0.0125 pct).		Rabbits; for prevention of coccidiosis caused by *Eimeria stiedae*.	Feed continuously as sole ration up to 6 1/2 weeks of age.	000004

* * * * *

Dated: November 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–28599 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1317

[NHTSA Docket No. 95–82; Notice 1]

RIN 2127–AG08

Highway Safety Innovative Project Grants Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule removes Part 1317 from title 23 of the Code of Federal Regulations (CFR). Part 1317 established criteria and administrative procedures for awards of innovative project grants to States and their political subdivisions, and to non-profit organizations including volunteer groups, in accordance with 23 U.S.C. 407. The regulation is being removed because it is unnecessary and obsolete. Funds for the section 407 program have not been authorized since 1981.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Butler, Office of State and Community Services, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–2121; or Ms. Sharon Y. Vaughn, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton directed all Federal Departments and agencies to take four steps to overhaul the nation's regulatory system. The first step was to conduct a page-by-page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. The review was to include careful consideration of a number of issues, including whether the regulation is obsolete, whether its intended goal can be achieved in more efficient less intrusive ways, or whether States or local governments can do the job (making Federal regulation unnecessary).

NHTSA conducted a thorough, page-by-page review of all agency regulations, including those that pertain to State and community highway safety programs.

As a result of these efforts, NHTSA has determined that Part 1317 should be removed from title 23 of the Code of Federal Regulations (CFR), because it is unnecessary and obsolete.

Part 1317 established criteria and administrative procedures for awards of innovative project grants to States and their political subdivisions, and to non-profit organizations including volunteer groups, in accordance with 23 U.S.C. 407. It was first published in the **Federal Register**, as 23 CFR Part 1217, on December 22, 1980 (45 FR 84037). It was redesignated as 23 CFR Part 1317 on March 22, 1984 (49 FR 10664).

Funds for the section 407 program have not been authorized since 1981. Because the regulation implements a program which is no longer active, and currently appears in the CFR among regulations that implement programs that continue to be active, its removal will avoid confusion for potential grant applicants.

Rulemaking Analyses and Notices

(a) Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

(b) Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. Based on the evaluation, the agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

(c) Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

(d) Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

(e) National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

(f) Executive Order 12778 (Civil Justice Reform)

This amendment to the regulation does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather simply removes from the regulation outdated and obsolete provisions that no longer apply. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Notice and Comment

Because the amendments relate to a grant program and are therefore not covered by the Administrative Procedure Act, and since they merely contain technical changes that remove outdated and obsolete provisions from the regulation and do not impose any additional requirements, the amendments are being made without prior notice and opportunity to comment.

List of Subjects in 23 CFR Part 1317

Grant programs, Highway safety.

Under the authority of 49 CFR Part 1.50, the Administrator of the National Highway Traffic Safety Administration amends Title 23 of the Code of Federal Regulations by removing Part 1317.

Issued on: November 20, 1995.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 95–28684 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 70

[OJP No. 1004; AG Order No. 1998–95]

RIN 1121–AA18

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; Correction

AGENCY: Department of Justice, Office of Justice Programs.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule, 28 CFR part 70, which was published in the **Federal Register** on Wednesday, July 26, 1995, (60 FR 38241). This regulatory clarification and correction document provides clarification on the Department of Justice implementation of the revised Office of Management and Budget Circular A–110 concerning "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" and corrects a number of typographical errors and section references in the text of the rule.

EFFECTIVE DATE: This correction document is effective November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Director, Financial Management Division, Office of the Comptroller, Office of Justice Programs at 202–307–3186.

SUPPLEMENTARY INFORMATION: This document serves to clarify and correct the Department of Justice (hereinafter "Department") Rule, 28 CFR part 70, which implements Office of Management and Budget (hereinafter "OMB") Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" (hereinafter "A–110" or "Circular"). The final rule was published in the **Federal Register** on Wednesday, July 26, 1995 at 60 FR 38241.

The Department implemented OMB's Circular A–110 by promulgating 28 CFR part 70 and in doing so incorporated most of its provisions. As appropriate, however, the Department has elaborated on, streamlined, or left out provisions of the Circular to make the rule pertain more directly to the Department's customers and their activities. For example, directives to the federal agencies and organizations not currently receiving funding from the Department were left out of the final rule so as not to include information that would make the rule confusing or cumbersome. For instance, A–110 ____.22 directed that no more than an original and two copies of any forms authorized for use under § 70.22 could be required of grantees. The Department abides by this, and other such requirements, but did not include these Agency-directed instructions in this rule. The Department will include the requisite instructions as part of any administrative guidance it provides. Requirements in addition to, or inconsistent with, those in A–110, will not be imposed on grantees unless specifically authorized by law, as directed in A–110 ____.1 and ____.25.

Specifically, regulatory language with respect to research and hospitals in A–110 ____.24 and ____.25 was not included in the Department's rule. The Department does not currently make awards for the type of research activities that A–110 was intended to cover. In addition, it does not make awards to hospitals, as defined in the Circular. If, in the future, however, the Department does make such awards, the Department's rule will be amended to incorporate all the provisions of A–110 that would apply. All organizations that currently have awards with the Department must comply with the provisions of this rule, as it is codified and modified by this correction notice.

The rule, as published in the **Federal Register**, included several typographical errors and incorrect section references. In some places reference was made to "DOS" instead of the "Department." Two incorrect section references in § 70.25 have been corrected to reflect the proper sections. Section 70.25(j) is also corrected by adding after "thirty" the words "calendar days from the date of receipt" which were left out of the original publication.

The fixed sum amount is being changed by this correction in the definition of "small awards" in § 70.2(ff) to reflect the "small purchase threshold" (renamed "simplified acquisition threshold") definition in 41 U.S.C. 403(11), which was recently increased from $25,000 to $100,000. A clause, inadvertently left out of section 70.33 on "exempt property", is being added for clarification. By adding the clause "[w]hen statutory authority exists" at the beginning of paragraph (b) in section 70.33, and changing "will" to "may" in that paragraph, the Department hopes to clarify that title to "exempt property" may only vest with the recipient when the requisite statutory authority exists.

Section 70.44 is corrected by replacing the first "must" that appears in paragraph (c) with a "may" to indicate that the type of procuring instrument used *may* be determined by the recipient, although such a determination is not required. Further, in section 70.52, the deadline for submission of the financial status reports should be 45 days rather than the 40 days that appeared in the final rule. The 45-day time period includes the 30 days provided for in A–110, with the addition of a 15 day grace period that the Department customarily provides its recipients for submission of these reports. The Department provides this 15 day grace period because of its strict policy to withhold funding to an organization when it becomes delinquent in its submission of these reports.

Need for Correction

As published in the **Federal Register** on July 26, 1995, (60 FR 38241), the final rule left out an important clause and contained typographical errors and incorrect section references that are misleading or incorrect. These errors are in need of correction.

Correction of Publication

Accordingly, the final rule, as published in the **Federal Register** on July 26, 1995, which was the subject of FR Doc. 95–18157, is corrected as follows:

§ 70.2 [Corrected]

Paragraph 1. On page 38244, in the first column, § 70.2, paragraph (ff) is corrected by amending "small purchase threshold" to read "simplified acquisition threshold" and amending the parenthetical statement "(currently $25,000)" at the end of the paragraph to read "(currently $100,000)".

§ 70.22 [Corrected]

Paragraph 2. On page 38246, in the third column, § 70.22, paragraph (h)(2), the reference "DOS" is corrected to read "the Department".

§ 70.25 [Corrected]

Paragraph 3. On page 38248, in the third column, § 70.25, paragraph (e) contains a reference paragraph "(h)". The reference to paragraph "(h)" is corrected to "(g)".

Paragraph 4. On page 38248, in the third column, § 70.25 paragraph (f) the reference to paragraph "(e)" is corrected to read "(f)".

Paragraph 5. On page 38248, in the third column, § 70.25, paragraph (j) is corrected in the first sentence by adding "calendar days from the date of receipt" after "thirty" in the first sentence.

§ 70.33 [Corrected]

Paragraph 6. On page 38250, in column one, § 70.33 paragraph (b) is corrected to read as follows:

* * * * *

(b) *Exempt property.* When statutory authority exists, the Department may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government when such property is "exempt property."

* * * * *

§ 70.36 [Corrected]

Paragraph 7. On page 38251, in the second column, § 70.36 paragraph (c) is corrected by adding "in" before "paragraphs".

§ 70.44 [Corrected]

Paragraph 8. On page 38252, in the second column, § 70.44 in paragraph (c) the first sentence is corrected by changing "must be determined" to "may be determined".

§ 70.51 [Corrected]

Paragraph 9. On page 38253, in column two, in § 70.51, paragraph (e) the reference to "DOS" is corrected to read "the department".

§ 70.52 [Corrected]

Paragraph 10. On page 38253, in column three, in § 70.52, paragraph (a)(1)(iii), the first sentence is corrected by inserting the word "five" after "forty".

§ 70.59 [Corrected]

Paragraph 11. On page 38254, in the first column, in § 70.53, paragraph (b)(3) is corrected by changing the reference to "DOS" to "the Department".

§ 70.62 [Corrected]

Paragraph 12. On page 38255, in column one, in § 70.62, paragraph (d), "DOS" is corrected to read "the Department".

Appendix A to Part 70, Section 6 [Corrected]

Paragraph 13. on page 38256, in column one, in § 6 of Appendix A to Part 70, the reference in the second sentence to "DOS" is corrected to read "Department".

Dated: November 9, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–28361 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Adding the following entry to Paragraph 15:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS BENFOLD	DDG 65	1.90 meters.

b. Adding the following entry to Paragraph 16:

Vessel	No.	Obstruction angle relative ship's headings
USS BENFOLD	DDG 65	101.86 thru 112.50°.

§ 706.2 [Amended]

3. Table Five of § 706.2 is amended by adding the following entry:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS BENFOLD	DDG 65	X	X	X	20.4

Dated: August 3, 1995.

Approved:

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–28685 Filed 11–22–95; 8:45 am]

BILLING CODE 3810–FF–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS GONZALEZ (DDG 66) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 26, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS GONZALEZ (DDG 66) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Adding the following entry to Paragraph 15: § 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS GONZALEZ.	DDG 66	1.90 meters.

b. Adding the following entry to Paragraph 16:

Vessel	No.	Obstruction angle relative ship's headings
USS GONZALEZ.	DDG 66	101.69 thru 112.50°.

§ 706.2 [Amended]

3. Table Five of § 706.2 is amended by adding the following entry:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS GONZALEZ	DDG 66	X	X	X	20.4

Dated: October 26, 1995.

Approved:

R.R. Pixa,

Capt., JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–28686 Filed 11–22–95; 8:45 am]

BILLING CODE 3810–FF–P

Department of the Air Force

32 CFR Part 818a

Personal Commercial Affairs

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; withdrawal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 818a, Personal Commercial Affairs. This rule is removed because the source document, AFR 211–16, was cancelled. This information is contained in DoD Directive 1344.7, published in the Code of Federal Regulations as 32 CFR Part 43.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIQ, 1610 Air Force Pentagon, Washington DC 20330–1610, telephone (703) 614–3488.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 818a

Federal buildings and facilities, Life insurance, Military personnel.

Authority: 10 U.S.C. 8013.

PART 818a—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 818a.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28663 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

32 CFR Part 892

Part-Time Career Employment Program

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; withdrawal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 892, Part-Time Career Employment Program. This rule is removed since the source document, AFR 40–340 was rescinded.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIQ, 1610 Air Force Pentagon, Washington DC 20330–1610, telephone (703) 614–3488.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 892

Government employees.

Authority: 10 U.S.C. 8013.

PART 892—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 892.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28662 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

Corps of Engineers, Department of the Army

33 CFR Part 334

Sinclair Inlet, Puget Sound, Bremerton, Washington, Naval Restricted Areas; Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to interim final rule.

SUMMARY: This document contains a correction to the interim final rule which was published Monday, August 21, 1995 (60 FR 43378–43379). The effective date was August 21, 1995, with the comment period expiring on October 20, 1995. These rules establish two restricted areas in the waters of Sinclair Inlet adjacent to the Puget Sound Naval Shipyard, Bremerton, Washington, to safeguard U.S. Navy vessels and Government facilities from sabotage and other subversive acts, accidents, or other incidents of a similar nature and to protect vessels and individuals from the dangers associated with the industrial waterfront facilities at the shipyard. Entry into this zone is prohibited unless otherwise authorized by these regulations or the Commander, Naval Base Seattle, Washington, or whomever he/she designates.

DATES: Effective November 24, 1995.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Freedom, Regulatory Branch, Seattle District at (206) 764–3495, or Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783.

SUPPLEMENTARY INFORMATION: As a result of a court decision affecting the regulations in 33 CFR 334.1240, the Commanding Officer, Puget Sound Naval Shipyard reviewed the physical security and safety conditions around the shipyard active piers and drydocks. Based on this review, the Commanding Officer requested that the restricted area regulations be amended to prohibit the trespassing of persons into the restricted areas at Sinclair Inlet; add a coordinate to a accommodate the extension of the south end of "mooring A" maintaining a buffer 100 yards south of the end of this mooring, and to change the geographic coordinates for the restricted area to conform to the 1983 re-esta. lishment of the National Geodetic Vertical Datum. These revisions were published by the Corps as interim final rules on August 21, 1995. All comments received in response to the interim final rule and the public notice issued by the Seattle District Engineer are being reviewed.

Need for Correction

As published, the interim final rules in Sec. 334.1240(a)(3)(ii) omitted the words "Area No. 2." at the beginning of the subparagraph. This correction clarifies that Area number two is for the exclusive use of the U.S. Navy.

Correction of Publication

Accordingly, the publication on August 21, 1995 of the interim final rule, which was the subject of 60 FR 43378–43379, is corrected as follows:

§ 334.1240 [Corrected]

On page 43379, in § 334.1240(a)(3)(ii) in the third column, in the first line following paragraph designation (ii), insert "Area No. 2.".

Dated: November 13, 1995.

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 95–28713 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–92–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 93–3A]

Cable and Satellite Carrier Royalty Refunds

AGENCY: Copyright Office; Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is adopting final rules with respect to certain royalty refund procedures for the cable and satellite carrier compulsory licenses. The Office is also implementing a "close-out" procedure for royalty accounts that will permit the Register of Copyrights to close-out the royalty payments account for a calendar year four years after the close of that year, and treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On June 28, 1993, the Copyright Office published a Notice of Proposed Rulemaking (NPRM) regarding certain refund procedures for the cable and satellite carrier compulsory licenses, 17 U.S.C. 111 and 119, respectively. 58 FR 34544 (June 28, 1993). Specifically, the Office's proposed rules involved three issues: (1) The appropriate date to begin the time period for requesting refunds; (2) the proper basis upon which a refund request may be made; and (3) the close-out of accounting period royalty pools after a specific time period.

Existing Copyright Office regulations specify the time periods within which parties seeking refunds of compulsory license royalties must submit their requests. In the case of the cable compulsory license, a cable operator has 60 days from the last day of the filing period for the Statement of Account in which to request a refund. 37 CFR 201.17 (j)(3). Under the satellite carrier compulsory license, the operator has 30 days from the last day of the filing period for the Statement of Account to request a refund. 37 CFR 201.11 (g)(3). These rules were based on refund requests being made after timely filing. In order to provide a refund request period for late and amended filings, the Office proposed in its NPRM that the 60 and 30 day periods be amended to run either from the applicable filing period or from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request. 58 FR 34545. Copyright Office regulations require that a request for a refund must be "in writing, must clearly identify its purpose," and must be received within the prescribed time period. 37 CFR 201.17(j)(3) and 201.11(g)(3). In practice, the Office has long interpreted its refund regulation to deny a request for a refund where there has been no clear overpayment of the statutory royalty. In order to confirm this practice, the NPRM proposes to amend the satellite carrier and cable regulations to require that refund requests must provide a "clear basis" upon which a request can be granted. 58 FR 34546.

Finally, the NPRM proposed a change to the Office's longstanding policy of making refunds only from the calendar year account in which the overpayment was made. The regulation would adopt language included in the Audio Home Recording Act of 1992 that allows the Register of Copyrights, in his or her discretion, to close out the royalty payments account for a calendar year four years after the close of that year, and to "treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year." *Id.*

Comments of the Parties

Four parties submitted comments on the NPRM: National Cable Television Association (NCTA); Providence Journal Company; Office of the Commissioner of Baseball ("Baseball");[1] and Copyright Owners (consisting of Program Suppliers, National Basketball Association, National Hockey League, the Music Claimants, the Devotional Claimants and National Public Radio).

Initiation of Time Period

As to when the time period to request refunds should begin, both Providence Journal and the NCTA support the proposed rule change. NCTA comments at 2; Providence Journal comments at 4. Copyright Owners, however, support the rule only for amended filings. "Copyright Owners suggest that the proposed language apply only to amended filings. This would provide predictability with respect to refund requests sought for original filings, while offering greater flexibility for refunds related to amended applications." Copyright Owners comments at 2. Copyright Owners additionally suggest that no refunds be permitted from a royalty year which has been closed out. *Id.* at 2–3. The effect of the Copyright Owners' proposal would be to deny a refund request period for any filings that are later than the sixty day period in the existing rule and only allow refunds for amended filings in accounting years which have not been closed out.

Clear Basis for Refund

Copyright Owners are supportive of the proposed rule requiring that refund requests provide a "clear basis" for granting the refund, but desire a voice in any refund request that raises a policy issue. They urge the Office to establish procedures that would permit interested parties to participate in formulating the policy. They further state that such policy should govern both "the specific refund request and any future requests asking for the same or similar relief." *Id.* at 4. Copyright Owners do not provide any description of the mechanics of the notice and comment procedure which they propose, beyond mentioning in a footnote that "The Office need not institute a rulemaking proceeding to answer such ad hoc questions. Copyright Owners envision a more

[1] Baseball's comments were submitted after the July 28, 1993, closing date of the comment period, but the Copyright Office has nonetheless included them in this proceeding.

informal and limited procedure to deal with these individual questions." *Id.* at 4 n.3.

NCTA opposes the requirement of a "clear basis" for refund, noting that "the statute and Copyright Office policy are not clear in their application to numerous fact situations faced by cable operators" and that cable operators "generally may not be aware" of existing Copyright Office policy. NCTA comments at 2. NCTA therefore proposes the opposite of the NPRM; a refund should be allowed unless there is a "clear basis" to deny it.

> [W]here there is ambiguity as to what the law requires or allows, operators should be entitled to a refund provided only that they make clear the interpretation of the law upon which they rely. So long as this interpretation is not clearly at odds with the law, the refund request should be granted. *Id.* at 3.

Close-Out of Accounting Period

Only the Copyright Owners and Baseball offered an opinion as to the third issue addressed in the NPRM: creation of a close-out procedure for accounting periods. While Copyright Owners agreed that close-out was preferable to the current policy of keeping open all previous year royalty funds, they offered several changes to the proposed rule. First, they suggested that the close-out period be changed from four years to seven years:

> Past experience suggests that a four-year closeout period may be too short in cases where large amounts of late payments are received. For example, many Gross Receipts Adjustment Schedule ("GRAS") payments related to 1986 and 1987–1 were not received until 1989 and 1990, which was three or four years after the original deadlines. Had the 1986 and/or 1987 royalty funds been closed out after four years, those GRAS payments might have been transferred to a different year's fund. That would have resulted in the distribution of those royalties to a different group of individual copyright owners from the copyright owners who received distribution of the timely 1986 and 1987 royalty payments.

Copyright Owners Comments at 5.

Second, Copyright Owners propose that the decision to close-out an accounting period not be left to the discretion of the Register of Copyrights, but that it be done as a matter of course unless "the Register, in his or her discretion, decid[es] that a closeout is inappropriate." *Id.* at 6. Copyright Owners believe this change will add certainty to the close-out process. *Id.*

Baseball proposes that the close-out of an accounting period be tied to the date of final distribution of a calendar year's royalties. "This would eliminate the administrative costs associated with multiple distributions which frequently contain (particularly for the non-MPAA copyright owners) relatively small amounts." Baseball comments at 1. Baseball does support the NPRM's proposal to give the Register discretion to close an accounting year. *Id.* at 2.

Decision of the Copyright Office

The Copyright Office has closely examined and reviewed the comments submitted in this proceeding and, pursuant to its rulemaking authority, formally adopts the regulations described in the NPRM without change. For the reasons described below, the Copyright Office concludes that the proposed rule changes are reasonable and administratively efficient.

1. Refund Requests

The Office is, therefore, amending 37 CFR 201.17(j)(3)(i), applicable to the cable license, and 37 CFR 201.11(g)(3)(i), applicable to the satellite carrier license, to begin the 60 and 30 day time periods, respectively, within which to request a refund from the "date of receipt at the Copyright Office of the royalty payment that is the subject of the request." This rule change maintains the same time period (30 and 60 days) within which to request a refund, which the Office has found to be appropriate and reasonable, see *NPRM* at 58 FR 34544, but allows cable and satellite operators who submit both late and amended payments to request a refund in accordance with the same time period which applies to the initial statement of account filings. As Providence Journal noted, errors are just as likely to occur in amended and late filings as they are with initial filings. Consequently, denying a refund period for amended and late filings would result in an unwarranted hardship to operators. Providence Journal comments at 3.

Copyright Owners suggested that the proposed refund request rule not apply to any late filings and payments, and that no refunds at all, either requested or made as a result of Office examination, be permitted from an accounting year fund which had been closed-out by the Register of Copyrights. Copyright Owners comments at 2. The Copyright Office is not adopting either suggestion. With respect to an effective denial of refund requests for most late filings and payments, the Office finds that such a rule would be unnecessarily punitive. The interest regulations applicable to both cable operators and satellite carriers already compensate copyright owners for the lost time value of royalties submitted after the close of a royalty filing deadline. 37 CFR 201.11(h) and 201.17(i)(2). Copyright Owners fail to present any arguments or evidence as to why further compensation is justified by denying refund requests for late filings and payments.

Nor do they offer any valid reason for denying refunds from closed-out accounting periods. Refunds can still be made from the succeeding accounting years which remain open. Where the potential for large refund requests remains high, as in 1987 and 1988 when satellite carriers submitted royalties under the cable compulsory license, the Register may keep those years open.

2. Clear Basis for Refunds

Both §§ 201.17(j)(3) and 201.11(g)(3) of the Copyright Office regulations establish the technical requirements for a refund request for the cable and satellite carrier compulsory licenses. The adopted amendments require cable and satellite carrier operators to provide a "clear basis" upon which a refund request can be granted. As the Office stated in the NPRM, these amendments confirm the longstanding administrative practice of denying a refund request where there has been no clear overpayment of the statutory royalty. 58 FR 34545.

NCTA objected to the "clear basis" requirement on the grounds that "Copyright Office policy on certain issues has developed on an informal basis, through correspondence or development of informal policies, and cable operators may not be aware of these interpretations." The Office finds this objection to be unpersuasive. The applicable law and policy which govern a refund request is freely and readily available from the Copyright Office. Statutory interpretation developed through rulemakings involving sections 111 and 119 of the Copyright Act are published in the **Federal Register**; policy decisions and interpretations made in response to specific refund requests are available to the public through the letter rulings of the General Counsel on file in the public reading room of the Licensing Division of the Copyright Office. Furthermore, access to the information contained in those letters may be obtained by contacting the Licensing Division, and inquiries may be made concerning Office administrative practice and policy by contacting directly either the Licensing Division or the General Counsel's Office. The information necessary for a cable or satellite operator to provide a "clear basis" for its refund request is therefore readily available, and lack of knowledge cannot therefore be a valid objection to the rule amendments.

The Copyright Office is not adopting the Copyright Owners' suggestion of permitting interested parties to play an active role in deciding refund requests. Congress specifically entrusted the Copyright Office, through its rulemaking authority, to interpret and apply the provisions of the compulsory license.[2] Additionally, the practical and legal implications of the Copyright Owner's proposed participation are in doubt. The Office processes an average of over 300 refunds a year, and the speed and efficiency of responding to these requests would be substantially impaired if the Office were required to solicit comment on each request. Furthermore, should a refund request involve sufficient policy issues to trigger a notice and comment procedure, it is seriously questionable whether the "informal and limited procedure" proposed by the Copyright Owners would satisfy the Administrative Procedure Act. The Copyright Owners did not provide any supporting evidence or precedent for their recommendation. If a procedure involves a significant policy shift or interpretation, the Office already provides an opportunity for notice and comment as it did in the instant case.

3. Close-Out of Royalty Funds

The Copyright Office is adopting the close-out of royalty funds regulation for the satellite carrier and cable compulsory licenses. The regulation is based on the statutory language of section 1005 of the Audio Home Recording Act of 1992, Public Law No. 102–563, that permits the Register to close-out the royalty payments account for a calendar year four years after the close of that year, and to apply remaining funds and subsequent deposits from that year to the succeeding calendar year.

Copyright Owners proposed a longer period of seven years to close-out so as to account for circumstances, such as the 1986–87 GRAS payments, *supra*, where large amounts of royalties may be submitted to the Office more than four years from their original due date. Copyright Owners comments at 5. Baseball proposed that close-out be tied to the date of final distribution of a calendar year's royalties. Baseball comments at 1. The Copyright Office does not believe a longer close-out period of seven years is necessary, since the Register has discretion in deciding whether to close a particular calendar year, and concludes that a tie-in to distribution is too unpredictable, since distributions do not occur at regular intervals.

In the situation of the GRAS payments described by Copyright Owners, the Register would not have closed the 1986–87 calendar years because of the obvious uncertainties surrounding the royalty fund for those years. While the Register will not be able to predict all possible effects on a royalty fund with absolute certainty, four years is adequate time to identify when a difficulty may exist. It is, therefore, unlikely that large sums of royalties will be submitted to the Copyright Office after the Register has closed-out an accounting period. The opposite is true of the approach advocated by Baseball. The time period necessary to reach a final distribution for a given royalty calendar year is highly unpredictable. Full settlement may result in quick distribution; however, it is impossible to predict a certain date for a final determination of distribution when there is a controversy. In the years where a full settlement is reached, a final distribution may occur so quickly as to limit the Register's ability to make a well-informed decision as to whether the royalty calendar year should be closed-out. The four year period proposed in the NPRM provides the uniformity, predictability and administrative efficiency not present in Baseball's proposal.

The Office is also not adopting Copyright Owner's suggestion that calendar years be closed-out automatically after four years unless the Register exercises discretion to keep them open. The presumption that an accounting year remains open incorporates current policy, which leaves all years open, and allows the Register to close-out only those years where changes to the royalty pool remain unlikely. Copyright owners would not be harmed if only some accounting years were closed-out, and would gain the benefit of distribution of remaining funds from those years. The Register's flexibility and ability to deal with situations like the 1986–87 GRAS payments is also better served by requiring an affirmative act to close an accounting year, rather than an affirmative act to keep it open.

List of Subjects in 37 CFR Part 201

Cable systems; Cable compulsory license; Satellite carrier statutory license; Satellite carriers.

Amended Regulations

In consideration of the foregoing, part 201 of 37 CFR ch. II is amended to read as follows.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

> **Authority:** 17 U.S.C. 702, 201.6 is also issued under 17 U.S.C. 408, 409 and 410; § 201.11 is also issued under 17 U.S.C. 119; § 201.16 is also issued under 17 U.S.C. 116; § 201.17 is also issued under 17 U.S.C. 111; § 201.19 is also issued under 17 U.S.C. 115; and § 201.24 is also issued under Pub. L. 101–650; 104 Stat. 5089, 5134;

2. In § 201.11, paragraph (c)(4) is added and the first sentence of paragraph (g)(3)(i) and the introductory text of paragraph (g)(3)(iii) are revised to read as follows:

§ 201.11 Satellite carrier statement of account covering statutory license for secondary transmissions for private home viewing.

* * * * *

(c) * * *

(4) In the Register's discretion, four years after the close of any calendar year, the Register may close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

* * * * *

(g) * * *

(3) * * *

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable Statement of Account filing period, or before the expiration of 30 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. * * *

* * * * *

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

* * * * *

3. In § 201.17, paragraph (c)(4) is added and the first sentence of paragraph (j)(3)(i) and the introductory text of paragraph (j)(3)(iii) are revised to read as follows:

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[2] *See* 17 U.S.C. 702; *see also Cablevision Systems Development Corp.* v. *Motion Picture Association of America, Inc.*, 836 F.2d 599, 610 (D.C. Cir.), *cert. denied*, 487 U.S. 1235 (1988)("We think Congress saw a need for continuing interpretation of section 111 and thereby gave the Copyright Office statutory authority to fill that role.").

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(c) * * *

(4) In the Register's discretion, four years after the close of any calendar year, the Register may, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

* * * * *

(j) * * *

(3) * * *

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, or before the expiration of 60 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. * * *

* * * * *

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

* * * * *

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–28321 Filed 11–22–95; 8:45 am]

BILLING CODE 1410–31–P

POSTAL SERVICE

39 CFR Part 955

Rules of Practice Before the Board of Contract Appeals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On September 13, 1995, the Postal Service published in the **Federal Register** (60 FR 47514–47515) for public comment a proposed rule to revise the rules of practice of the Postal Service Board of Contract Appeals (Board). The Postal Service is now issuing a final rule that revises certain rules of practice of the Postal Service Board. These revisions implement provisions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA), which amended sections 8(f) and 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601–613), under which the Board adjudicates contract disputes. These revisions increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims (expedited) and accelerated procedures of boards of contract appeals. Minor editorial revisions and corrections of typographical errors are also included in this final rule.

EFFECTIVE DATE: October 1, 1995.

Applicability: Pursuant to sections 10001 and 10002 of the FASA, the Board made the revised rules, as well as sections 2351(c–d) of the FASA, applicable to all pending appeals and to those appeals filed on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis E. Wiessner, Jr., Staff Counsel, Judicial Officer Department, 202–268–5438.

SUPPLEMENTARY INFORMATION: On September 13, 1995, the Postal Service published in the **Federal Register** (60 FR 47514–47515) for public comment a proposed rule to revise the rules of practice of the Postal Service Board of Contract Appeals (Board). The revisions implement certain provisions of the Federal Acquisition Streamlining Act of 1994 under which the Board adjudicates contract disputes. These revisions increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims (expedited) and accelerated procedures of the boards of contract appeals.

The proposed rule prescribed a 60-day comment period ending November 13, 1995, and invited comments from all interested parties. No comments were received during that period. Therefore, no changes, other than minor editorial revisions and correction of typographical errors, have been made in the final rule. The Postal Service is now publishing, as a final rule, the Rules of Practice before the Board of Contract Appeals, to be codified at part 955 of title 39 of the Code of Federal Regulations.

List of Subjects in 39 CFR Part 955

Administrative practice and procedure, Postal Service.

For the reasons set forth in the preamble, the Postal Service amends and revises part 955 as follows:

PART 955—[AMENDED]

1. The authority citation for 39 CFR part 955 is revised to read as follows:

Authority: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

§ 955.1 [Amended]

2. Section 955.1 is amended by revising the first sentence of paragraph (a), paragraph (b)(1), the first sentence of paragraph (b)(2), and paragraph (d)(5) to read as follows:

(a) *Jurisdiction for considering appeals.* The U.S. Postal Service Board of Contract Appeals (Board) shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. * * *

(b) *Organization and location of the Board.* (1) The Board is located in Washington, DC, and its mailing address is 475 L'Enfant Plaza, SW., Washington, DC 20260–6100.

(2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Administrative Judges of the Postal Service. * * *

* * * * *

(d) * * *

(5) *Place of filings.* Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its offices in the United States Postal Service Headquarters Building, 475 L'Enfant Plaza, SW., Washington, DC 20260–6100.

* * * * *

3. Section 955.9 is amended by revising the second sentence to read as follows:

§ 955.9 Hearing election.

* * * In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or accelerated procedure prescribed in § 955.13.

§ 955.13 [Removed]

4. Section 955.13 is removed.

5. Section 955.18 is amended by revising the first sentence to read as follows:

§ 955.18 Where and when held.

Hearings will ordinarily be held in the Washington, DC, area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. * * *

§ 955.35 [Removed]

6. Section 955.35 is removed.

§ 955.36 [Redesignated as § 955.13 and Amended]

7. Section 955.36 is redesignated as § 955.13 and amended by revising the first sentence of paragraphs (b)(1) and (b)(2); by revising paragraph (c)(1) and the first sentence of paragraph (c)(2)(ii) and the fourth sentence of paragraph (c)(4); by revising paragraph (d)(1) and the third sentence of paragraph (d)(3); by revising paragraph (e); and by adding paragraph (f), as follows:

§ 955.13 Optional small claims (expedited) and accelerated procedures.

* * * * *

(b) * * *

(1) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. * * *

(2) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring the decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. * * *

* * * * *

(c) * * *

(1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has elected the small claims (expedited) procedure.

(2) * * * (ii) within 5 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. * * *

* * * * *

(4) * * * Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion for reconsideration under § 955.30.

* * * * *

(d) * * *

(1) This procedure shall apply only to appeals where the amount in dispute is $100,000 or less as to which the appellant has made the requisite election.

* * * * *

(3) * * * Alternatively, in cases where the amount in dispute is $50,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. * * *

(e) Motions for Reconsideration in Cases Arising Under § 955.13. Motions for Reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(f) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

§ 955.37 [Redesignated as § 955.35]

8. Section 955.37 is redesignated as § 955.35.

9. Redesignated § 955.35 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 955.35 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring: * * *

* * * * *

§ 955.36 [Added]

10. New § 955.36 is added to read as follows:

§ 955.36 Effective Dates and Applicability.

The provisions of §§ 955.9 and 955.13 took effect on October 1, 1995. Pursuant to the Contract Disputes Acts of 1978 (41 U.S.C. 601–613), §§ 955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective dates.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–28365 Filed 11–22–95; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF DEFENSE

Department of the Air Force

41 CFR Chapter 132

Utilization and Disposal of Real Property

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Interim rule; withdrawal.

SUMMARY: On April 1, 1991, the Department of the Air Force amended Title 41 of the Code of Federal Regulations by establishing Chapter 132 and Part 132–47, Utilization and Disposal of Real Property, as an interim rule with request for comments (56 FR 13286).

On April 6, 1994, the Department of Defense published 32 CFR Part 90, Revitalizing Base Closure Communities—Base Closure Community Assistance. Upon publication of 32 CFR Parts 90 and 91, it was decided not to finalize the interim rule 41 CFR Part 132–47. Therefore, 41 CFR Chapter 132 consisting of Part 132–47 is withdrawn.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Gilbert Sailer, AFBCA/RP, 1700 N. Moore Street, Suite 2300, Arlington VA 22209–2803, telephone (703) 696–5566.

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Chapter 132

Real property utilization and disposal.

Authority: 10 U.S.C. 8013.

41 CFR CHAPTER 132—[REMOVED]

Accordingly, 41 CFR Chapter 132 consisting of Part 132–47 is removed.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28661 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7173

[ID–943–1430–01; IDI–04790 02]

Partial Revocation of Public Land Order No. 1703; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Public Land Order (PLO) insofar as it affects 34.98 acres of public land withdrawn by the Corps of Engineers' Albeni Falls

Project. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1703, which withdrew public land for the Corps of Engineers' Albeni Falls Project, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 56 N., R. 2 E.,
Sec. 29, lot 13.

The area described contains 34.98 acres in Bonner County.

2. At 9 a.m. on December 26, 1995, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 26, 1995, shall be considered as simultaneously filed at that time.

3. At 9 a.m. on December 26, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. The revocation of the withdrawal is made subject to the following flowage easement estate reserved to the Corps of Engineers:

Flowage Easement Estate

Reserve to the Government, a perpetual right, power, privilege and easement in, upon, and across the tract described as Tract R1903E–1 for the following purposes, to-wit:

a. Intermittently to overflow, flood and submerge with water of Lake Pend Oreille, the Pend Oreille River, and the tributaries of both, those portions of the said land lying above elevation 2062.5 feet above mean sea level, United States Coast and Geodetic Survey Datum and for any length of time to impound upon, overflow, flood and submerge with the said waters those portions of the said land lying below elevation 2062.5 above mean sea level, all in the construction, operation and maintenance of the Albeni Falls Dam Project, its appurtenances, reservoir and overflow areas.

b. To enter upon said land as may be necessary from time to time to inspect and improve water flow conditions; to remove natural or artificial obstructions, including underbrush and debris which, in the opinion of the representative of the United States in charge, may be detrimental to the operation of the project, to clear, improve, and maintain existing water courses, lake, streams and drainage channels; and to exercise any other rights and privileges incident to the easement hereby taken.

c. As to the described land in which an easement is taken, all rights and privileges therein and thereto that may be used and enjoyed without interfering with or abridging the easements and rights hereby taken, are specifically reserved to the respective owners; provided that no dwelling or other structure maintained for human habitation on the said land shall have a first floor elevation of less than 2067.5 feet above mean sea level.

Subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

The Grantee, for good and valuable consideration, does hereby release the United States of America, and its assigns, from all claims for damages that have accrued or may hereafter accrue to any or all of the above described land, by reason of the overflow of water occasioned by the construction and operation of the Albeni Falls Project on the Pend Oreille River, Idaho, or by the exercise of any or all of the rights, powers, privileges, and easements hereinabove granted.

Dated: November 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–28655 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

General Consolidation of Bureaus of Investigations and Hearing Counsel

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is consolidating the Bureau of Investigations ("BOI") and Bureau of Hearing Counsel ("BHC") and related delegated authorities into one bureau: the Bureau of Enforcement ("BOE").

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC 20573, (202) 523–5783.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is amending part 501 of title 46 of the Code of Federal Regulations to reflect the consolidation of BOI and BHC into one bureau: BOE. Notice and public procedure are not necessary prior to the issuance of this rule because it deals solely with matters of agency organization. Neither is a delayed effective date required. This action does not affect the substantive duties and functions of the bureaus formerly known as BOI and BHC.

List of Subjects in 46 CFR Part 501

Administrative practice and procedure; Authority delegations; Organization and functions; Seals and insignia.

For the reasons set out in the preamble, title 46, Code of Federal Regulations, part 501 is amended as set forth below.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub.L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

Subpart A—Organization and Functions

2. Section 501.3 is amended by removing and reserving paragraph (k) and revising paragraph (l) to read as follows:

§ 501.3 Organizational components of the Federal Maritime Commission.

* * * * *

(k) [Reserved]

(l) Bureau of Enforcement; District Offices.

(1) New York District
(2) Miami District
(3) Los Angeles District

* * * * *

3. Section 501.4 is amended by revising the first sentence of paragraph (b) and revising paragraph (c) to read as follows:

§ 501.4 Lines of responsibility.

* * * * *

(b) *Office of the Managing Director.* The Bureau of Economics and Agreement Analysis; Bureau of Tariffs, Certification and Licensing; Bureau of Enforcement; and Bureau of Administration report to the Office of the Managing Director. * * *

(c) *Bureau of Enforcement and District Offices.* The District Offices report to the Director, Bureau of Enforcement.

4. Section 501.5 is amended by revising paragraphs (f)(1)(i), (i) introductory text, (i)(3), and (i)(4); the heading of paragraph (j) is removed and reserved, paragraph (j)(1) is redesignated as paragraph (i)(5) and revised; paragraph (j)(2) is redesignated as paragraph (i)(6) and the introductory text thereof is revised; the first sentence of paragraph (l)(2) is revised. The revised text reads as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(f) The *Office of the Managing Director.*

(1) * * *

(i) As senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the operating Bureaus of Enforcement; Administration; Economics and Agreement Analysis; and Tariffs, Certification and Licensing, as more fully described in paragraphs (g) through (k) of this section, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman;

* * * * *

(i) *Bureau of Enforcement; District Offices.* Under the direction and management of the Bureau Director, the Bureau of Enforcement:

* * * * *

(3) Acts as staff counsel to the Managing Director and other bureaus and offices;

(4) Coordinates with other bureaus and offices to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with enforcement matters; and

(5) Conducts investigations leading to enforcement action, advises the Federal Maritime Commission of evolving competitive practices in international and domestic offshore commerce, assesses the practical repercussions of Commission regulations, educates the industry regarding policy and statutory requirements, assists in the resolution of disputes within the industry, and provides liaison, cooperation, and other coordination between the Commission and the maritime industry, shippers, and other government agencies.

(6) The activities performed by the Bureau and its District Offices, the latter under the direction and management of their respective District Directors, include the following:

* * * * *

(j) [Reserved]

* * * * *

(l) *Boards and Committees.* * * *

(2) The Committee on Automated Data Processing is chaired by a Commissioner designated by the Chairman, and is comprised of the Directors of the Bureaus of Economics and Agreement Analysis; Tariffs, Certification and Licensing; Administration; and Enforcement; the General Counsel; the Secretary; the Inspector General; the Director, Office of Equal Employment Opportunity; the Chief Administrative Law Judge; a representative of the Chairman's office; the Deputy Managing Director in charge of the Commission's Automated Tariff Filing and Information System; and the Director, Office of Information Resources Management, who serves as Committee Coordinator for the Committee Chairperson. * * *

* * * * *

Subpart C—Delegation and Redelegation of Authorities

5. Section 501.28 is revised to read as follows:

§ 501.28 Delegation to the Director, Bureau of Enforcement.

The authorities listed in this section are delegated to the Director, Bureau of Enforcement. Notwithstanding the provisions of § 501.21, the Director may delegate or redelegate, in writing, specific authority to individuals within the Bureau of Enforcement other than the Deputy Director.

(a) Authority to compromise civil penalty claims has been delegated to the Director, Bureau of Enforcement, by § 502.604(g) of this chapter. This delegation shall include the authority to compromise issues relating to the retention, suspension or revocation of ocean freight forwarder licenses. See also §§ 501.5(i) and 501.21.

(b) Authority to approve administrative leave for employees in District Offices.

§ 501.31 [Removed]

6. Section 501.31 is removed.

Subpart D—Public Requests for Information

7. In § 501.41, paragraph (c) introductory text is republished, paragraph (c)(6) is revised to read as set forth below, paragraph (c)(9) is removed and reserved, and paragraph (d) is revised to read as follows:

§ 501.41 Public requests for information and decisions.

* * * * *

(c) The Directors of the following bureaus and offices will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

* * * * *

(6) Bureau of Enforcement.

* * * * *

(9) [Reserved].

* * * * *

(d) The Directors of the New York, Los Angeles and Miami District Offices will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters, relating to the program activities of the District Offices as set forth in this part. The addresses of these offices are as follows:

New York District—Director, New York District, Federal Maritime Commission, 6 World Trade Center, suite 614, New York, New York 10048–0949.

Miami District—Director, Miami District, Federal Maritime Commission, 18441 N.W. 2nd Avenue, suite 302, Miami, Florida 33169.

Los Angeles District—Director, Los Angeles District, Federal Maritime Commission, 501 West Ocean Boulevard, Long Beach, California 90802.

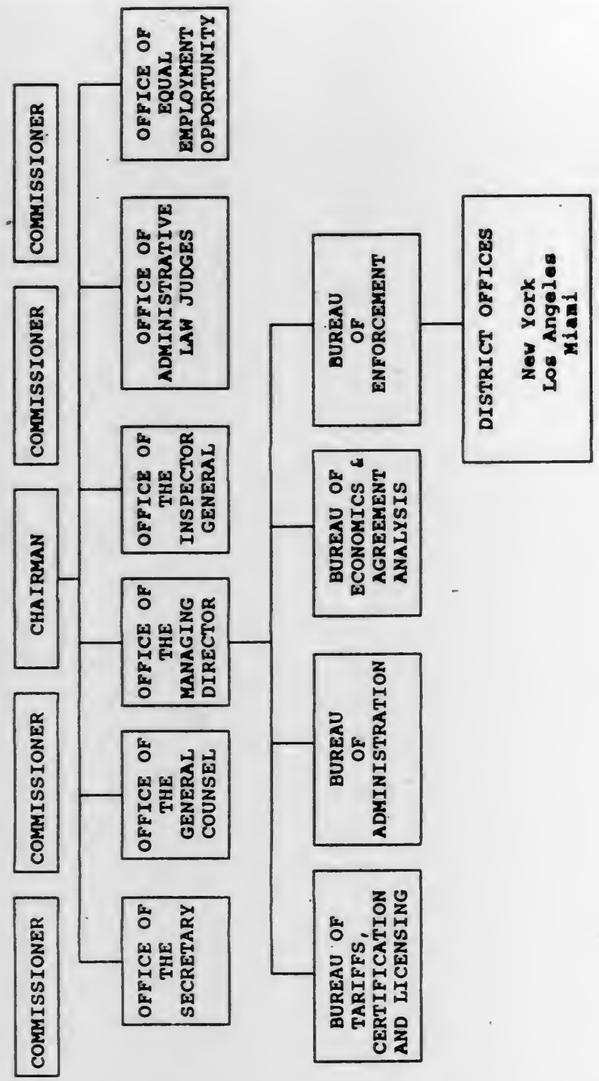
* * * * *

8. Appendix A to Part 501 is revised as follows:

BILLING CODE 6730–01–P

APPENDIX A

FEDERAL MARITIME COMMISSION
ORGANIZATION CHART



BILLING CODE 6730-01-C

By the Commission.
Joseph C. Polking,
Secretary.

[FR Doc. 95-28440 Filed 11-22-95; 8:45 am]
BILLING CODE 6730-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-02; Notice 12]

RIN 2127-AF14

Federal Motor Vehicle Safety Standards; Fuel System Integrity of Compressed Natural Gas Vehicles; Compressed Natural Gas Fuel Container Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*, and Standard No. 304, *Compressed Natural Gas Fuel Container Integrity*. It allows any appropriate fuel to be used for the bonfire test for compressed natural gas (CNG) containers and adds new labeling requirements for CNG vehicles and containers. This document also announces and explains the agency's decision to terminate rulemaking about additional performance requirements for CNG containers that the agency had proposed. Rulemaking may be resumed once revisions to the current voluntary industry standard for CNG containers are completed.

DATES: Effective date: The amendments in this document become effective September 1, 1996.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than December 26, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above mentioned docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: *For non legal issues:* Mr. Gary R. Woodford, NRM-01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone 202-366-4931 or FAX # 202-366-4329).

For legal issues: Mr. Marvin L. Shaw, NCC-20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-366-2992).

SUPPLEMENTARY INFORMATION:

I. Previous Agency Rulemakings
II. Comments to SNPRM
III. Agency Decision to Adopt Additional Labeling Requirements
A. Overview of Labeling Amendments
B. Vehicle Labeling
C. Container Labeling
1. Labeling Information
2. Labeling Character Size
3. Labeling Location
4. Other Container Label Issues
IV. Agency Decision to Amend the Bonfire Test
V. Agency Decision to Terminate Rulemaking to Adopt Additional Performance Requirements
VI. Other Container Issues
A. Reports by Manufacturers
B. Aluminum Containers
VII. Rulemaking Analysis and Notices

I. Previous Agency Rulemakings

NHTSA has recently established two Federal motor vehicle safety standards (FMVSSs) that affect motor vehicles fueled by compressed natural gas (CNG). On April 25, 1994, the agency published a final rule establishing Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*, which specifies tests and performance requirements for the fuel system of vehicles fueled by CNG. (59 FR 19648) On September 26, 1994, the agency published a final rule establishing Standard No. 304, *Compressed Natural Gas Fuel Container Integrity*, which specifies tests and performance requirements applicable to a CNG fuel container's durability, strength, and pressure relief. (59 FR 49010) The September 1994 final rule also specifies labeling requirements for CNG fuel containers. The CNG container requirements are based on specifications in ANSI/NGV2, a voluntary industry standard addressing CNG fuel containers which was adopted by the American National Standards Institute (ANSI).[1]

ANSI/NGV2 specifies four types of container designs. A Type 1 container is a metallic noncomposite container. A Type 2 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a hoop wrapped pattern over the liner's cylinder wall. A Type 3 container is a metallic liner over which an overwrap, such as carbon fiber or fiberglass, is applied in a full wrapped pattern over the entire liner, including the domes. A Type 4 container is a non-metallic liner over which an overwrap, such as carbon fiber or fiberglass, is applied in a full wrapped pattern over the entire liner, including the domes.

On December 19, 1994, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) to propose new labeling requirements applicable to CNG vehicles and additional ones for CNG containers. (59 FR 65299) Along with a proposal to modify the bonfire test which evaluates pressure relief, the agency also proposed additional performance requirements and tests to evaluate a CNG container's structural integrity. Among the proposed tests were environmental cycling tests, a low temperature impact test, a gunfire test, a flaw tolerance test, a pendulum impact test, and a drop test. Each of the proposed performance requirements and test procedures were modeled after provisions in ANSI/NGV2 or are similar to those requirements. The agency tentatively concluded that modeling the Federal standard after ANSI/NGV2 would be the best available way to regulate how a CNG container reacts to such conditions as corrosive substances, temperature extremes, external damage, and high energy impact.

II. Comments on the SNPRM

Fourteen commenters responded to the December 1994 SNPRM. The commenters included vehicle manufacturers (Ford and Navistar); CNG container manufacturers (EDO, Brunswick, Structural Composites Industries (SCI) and NGV Systems); trade associations interested in alternative fueled vehicles (the American Automobile Manufacturers Association (AAMA), the American Gas Association/Natural Gas Vehicle Coalition (AGA/NGVC) and the Compressed Gas Association (CGA)); and other organizations including Washington Gas, Taylor-Wharton Gas Equipment Division (Taylor-Wharton), Minnegasco, Toho Carbon Fibers, Inc. (Toho) and Futuretech Consultants (Futuretech).

The commenters generally had reservations about adopting the performance requirements since the CNG industry is currently revising ANSI/NGV2. They urged that the agency wait until the industry completes its revision. In addition, the commenters generally supported the specific labeling requirements but had reservations about various aspects of the proposed performance requirements.

[1] NGV2 was developed by an industry working group that included container manufacturers, CNG users, and utilities.

III. Agency Decision To Adopt Additional Labeling Requirements

A. Overview of Labeling Requirements

NHTSA has decided to amend FMVSS No. 303 and FMVSS No. 304 with respect to labeling CNG vehicles and containers. With respect to CNG vehicles, the agency has decided to require such vehicles to be labeled with information about the CNG container's service pressure and a statement about container inspection and service life. With respect to CNG containers, the agency has decided to require such containers to be labeled with the container type (e.g., Type 2), the statement "CNG only," information about container inspection, and container service life.

B. Vehicle Labeling

The April 1994 CNG vehicle final rule did not specify requirements for the labeling of CNG fueled vehicles. In the SNPRM, the agency proposed to amend FMVSS No. 303 to include two items of information:

S5.3.1 The statement: "Maximum service pressure _____ kPa (_____ psig)."

S5.3.2 The statement "See instructions on fuel container for inspection and service life."

The agency believed that the first item of information would help assure that CNG containers are not overfilled during refueling. The second item's purpose is to assure that vehicle owners and operators are informed about container inspection. In addition, the agency proposed that, for vehicles manufactured or converted prior to the first sale to the consumer, the manufacturer provide this information in writing to the consumer, either in the owner's manual or in a one page statement. The agency requested comments about the need for vehicle labeling and written information bearing this and other information.

AAMA, AGA/NGVC, SCI, Ford, and Minnegasco addressed the issue of vehicle labeling. AAMA, AGA/NGVC and SCI supported the proposed requirements. Ford's comments are somewhat contradictory in that it supports and participated in the preparation of AAMA's comments, but stated that it believes rulemaking on FMVSS No. 303 and FMVSS No. 304 is premature at this time since NGV2 is currently being upgraded.

NHTSA has decided to amend FMVSS No. 303 to include the vehicle labeling requirements that were proposed in the SNPRM for the reasons set forth in that document. The only exception is that instead of specifying "maximum service pressure" on the label, "service pressure" will be specified. This is consistent with the CNG container label. The rationale for this is discussed in section III.C.4 of this notice. With respect to Ford's comment, the agency notes that it is delaying rulemaking on the proposed amendments that address CNG containers. Since AGA/NGVC is revising NGV2 with respect to CNG containers and not vehicles, the agency believes that it is appropriate to adopt the amendments about the labeling of CNG vehicles.

C. CNG Containers

1. Labeling Information

In the September 1994 final rule, NHTSA decided to require that a CNG container manufacturer certify that each of its containers complies with the equipment requirements by permanently labeling the container with the following information: (1) The statement that "If there is a question about the proper use, installation, or maintenance of this container, contact [*CNG fuel container manufacturer's name, address, and telephone number*]"; (2) the month and year that the container was manufactured; (3) the maximum service pressure; and (4) the symbol "DOT" which certifies that the container complies with all the standard's requirements. The agency stated that labeling the container would provide vehicle manufacturers and consumers with assurance that they are purchasing containers that comply with the Federal safety standards. In addition, the agency believed that the requirement facilitates the agency's enforcement efforts by providing a ready means of identifying the container and its manufacturer. NHTSA further stated that it planned to propose additional labeling requirements patterned after ANSI/NGV2. The agency explained that it could not require these additional items of information at that time, since such information had not been proposed.

In the SNPRM, NHTSA proposed to amend S7.4 to require CNG containers to be labeled with the following additional information:

(1) The container designation (Type 1, 2, 3, or 4),

(2) The statement "CNG ONLY,"

(3) The statement: "This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months for damage and deterioration in accordance with the Compressed Gas Association (CGA) guidelines C–6 and C–6.1 for Type 1 containers and C–6.2 for Types 2, 3, and 4 containers."

(4) The statement: "Do Not Use After _____," inserting the year that is the 15th year beginning after the year in which the container is manufactured.

NHTSA stated that it would be in the interest of motor vehicle safety to add this information to the CNG container label. The agency requested comments about the need for each of these proposed items of information and alternative ways to specify this information.

NHTSA stated in the SNPRM that adding information about container type, e.g., Type 1, 2, 3 or 4, would be consistent with the agency's decision to adopt NGV2's manufacturing and material specifications in the CNG final rule. For instance, such information would facilitate oversight of compliance tests, since each type of container is required to undergo a hydrostatic burst test at a safety factor that varies according to container type.

NHTSA has decided to require that CNG containers be labeled with this information, for the reasons set forth in the SNPRM. The agency received no comments addressing whether CNG containers should be labeled with information about the container type.

NHTSA stated in the SNPRM that adding the phrase "CNG ONLY" would assure that CNG containers are used only for CNG and are not used for other fuels for which the containers were not designed, such as liquefied petroleum gas (LPG).

NHTSA has decided to require that CNG containers be labeled with this information, for the reasons set forth in the SNPRM. The agency received no comments addressing whether CNG containers should be labeled with the phrase "CNG Only."

NHTSA stated in the SNPRM that adding information about conducting periodic inspections in accordance with CGA pamphlets would help assure the safe use of CNG containers. The agency noted that the proposed requirement is consistent with ANSI/NGV2's guidelines for visual inspection of CNG containers after an accident or every 36 months. NHTSA sought comments about what the most appropriate interval would be and whether both a time interval and a mileage inspection interval should be specified.

CGA, SCI, and Brunswick addressed the specific pamphlets referenced in the proposed labeling requirement. CGA and SCI stated that CGA pamphlet C–6.2 does not address Type 4 containers. CGA and SCI also stated that the agency should refer to pamphlet C–6.4, which is being developed by the industry and is expected to address Type 2, 3, and 4 containers. Brunswick indicated that the agency should reevaluate the referenced CGA pamphlets, since they relate to CNG containers used in transport rather than CNG containers used to fuel motor vehicles.

NHTSA has decided to adopt a reference to the CGA C–6, C–6.1, and C–6.2 cylinder publications. The agency believes that the final rule must reference inspection information about the in-use safety of CNG containers. The agency believes that the current CGA pamphlets provide valuable inspection information to help assure fuel container safety for Type 1, 2, and 3 containers.[2] However, since the current CGA pamphlets do not apply to Type 4 containers, the agency believes that the label should not reference Type 4 containers. A representative of CGA has informed the agency that pamphlet C–6.4 should be completed this year. When that pamphlet is completed, the agency plans to propose modifying the standard to reference it.

Ford and Navistar addressed the issue of inspection interval. Ford recommended that the inspection statement include both time and mileage intervals, but did not specify the intervals. Navistar supported a regular container inspection interval of one year for exterior damage as well as inspection after an accident. In addition to visual inspection, Navistar recommended that each container undergo acoustic emission inspection and that containers not be removed from the vehicle or be over-pressurized, since these are actions that can reduce a container's life. Navistar did not state whether labeling should be required to indicate that an acoustic emission inspection should be done. Navistar also suggested that the Federal Highway Administration (FHWA) require periodic inspection of CNG fuel containers used for commercial vehicles.

NHTSA agrees with Navistar's recommendation to specify a one year inspection interval. A one year time interval reduces the possibility that damage caused by external factors would go undetected, a situation that could lead to container failure. This time interval is also consistent with the Natural Gas Vehicle Coalition's document titled "Natural Gas Vehicle Inspection Program," (1994), which recommended a visual container inspection interval of one year. NHTSA also agrees with Ford's recommendation that the inspection interval include both a time and a mileage component because apart from time, mileage exposure could be a factor in leading to premature container failure due to exterior damage. A 12 month or 12,000 mile interval is consistent with the recommended interval for many motor vehicle warranties and routine maintenance items. Based on the above considerations, the agency has decided to require that the container label specify inspection intervals of 12 months or 12,000 miles.

NHTSA believes that it would be inappropriate now to require the label to address acoustic emission testing. Such testing is still in its development phase. In response to Navistar's suggestion to have the FHWA inspect CNG containers on commercial vehicles, NHTSA has forwarded these comments to FHWA which will evaluate the merits of this recommendation.

Minnegasco stated that while providing information about the appropriate time interval for inspection is necessary, "properly using this information is non-enforceable or impractical" for several reasons. It stated that preventive maintenance is not performed on most public vehicles. It also stated that this requirement assumes that the tanks are installed so that everyone has access to copies of and understands the visual inspection criteria in the referenced CGA documents and that the failure modes can be visually detected before failure.

NHTSA agrees with Minnegasco that a time interval for inspection is necessary, since it informs vehicle owners and operators about important safety information on container inspection. While Minnegasco's concerns may be justified in the case of some vehicle owners, many others will benefit from this information. Accordingly, the agency has decided to require the label to contain information about inspections.

NHTSA proposed requiring information about the container's service life in the belief that the vehicle owner should remove a CNG container from service after its design service life expires. As commenters on the NPRM stated, this is especially important since there is a finite period during which CNG containers can be used safely. The agency proposed 15 years because CNG containers built to follow ANSI/NGV2 have a design service life of 15 years. Nevertheless, the agency stated that it would allow a manufacturer to specify the service life length appropriate to its particular containers, since containers may be built for a service life other than 15 years.

SCI, Brunswick, and AAMA commented about labeling a container with information about its service life. SCI and Brunswick recommended that the expiration month as well as the year be included in this statement. Brunswick stated that the revised ANSI/NGV2 document is proposing that containers be designed for a 20 year life. AAMA suggested that additional enforcement steps may be needed for users least likely to heed inspection and service life requirements, such as making vehicle registration contingent upon container inspection.

NHTSA has decided that the CNG container label should include the following statements about service life:

S7.4(h) The statement: "Do Not Use After _____/_____," inserting the month and year to reflect the end of the manufacturer's recommended service life for the container.

This requirement is consistent with the request by SCI and Brunswick to include the expiration month and year on the label. This will enhance vehicle safety by further increasing the likelihood that containers do not remain in service beyond their useful life. NHTSA has decided not to adopt the SNPRM's proposal to specify a service life of 15 years. Instead, the length of a container's recommended service life will be left to the container manufacturer's discretion.

As for AAMA's comment on vehicle registration, NHTSA does not have jurisdiction over this matter, which is a State function. If the AAMA wishes to pursue this matter, it should contact appropriate State authorities.

2. Label Character Size

The SNPRM proposed that the characters on the container label be at least 12.7 mm (½ inch) in height. This is the same as the lettering height that had been specified in the final rule establishing FMVSS No. 304 container label requirements.

AAMA, Ford, CGA, SCI, and Brunswick commented that the proposed lettering height is too large and recommended a smaller size. They were concerned that the ½ inch minimum character height requirement would result in unreasonably large labels that may wrap around small diameter containers. Commenters recommended lettering heights of 3/16 inch, ¼ inch, and 3 to 6 mm. Brunswick recommended that the label statements "CNG Only" and "Do Not Use After _____" should be in ½ inch

[2] With respect to Brunswick's comment, NHTSA acknowledges that there is a difference between CNG containers used in transport and those used to fuel motor vehicles. Nevertheless, the agency believes that there are enough important similarities between the types of containers to warrant providing this safety information.

characters but the other label statements should be smaller.

NHTSA recently addressed the issue of letter height in its notice responding to petitions for reconsideration of the label statement requirements in the final rule establishing FMVSS No. 304. (60 FR 37836; July 24, 1995) Several petitioners had requested that the label letter height of 12.7 mm (½ inch) be reduced. In the July 1995 notice, the agency decided to reduce the lettering height to 6.35 mm (¼ inch), which is more consistent with the label letter height recommended by commenters to the SNPRM. Since the agency continues to believe that this lettering size is appropriate, the agency has decided not to change the decision announced in the July 1995 notice which will help prevent oversized labels. The agency sees no reason to follow Brunswick's recommendation to highlight certain lettering with letters of larger size. Brunswick provided no rationale. The agency believes that none of the label information is of significantly greater importance than the other information.

3. Label Location

In the SNPRM, NHTSA proposed that the container label be located within 30.5 cm (12 inches) of the end of the container containing the fuel outlet valve.

SCI recommended that the location of the label on the container be left up to the container and vehicle manufacturer's discretion, or if this is not acceptable, that the label be centered on the longitudinal axis of the container where it would be least likely to be obscured by container mounting hardware. SCI stated that a label that is mounted within 12 inches of the outlet valve will most likely be obscured by container mounting hardware, or be on the curved section of long containers where mounting could be difficult. SCI also recommended that a duplicate label be located 180 degrees around the container to ensure one of the labels would be visible regardless of container orientation.

NHTSA has decided not to adopt the requirement in the SNPRM regarding container label location so as to allow container manufacturers to mount the labels in the location where they will be most likely to be visible. The agency believes that in most cases, container manufacturers will be familiar with the configurations in which their containers are installed and will therefore be able to best determine the location on their containers that will provide the best visibility when mounted on vehicles. In addition, manufacturers have the option to follow SCI's suggestion of placing a duplicate label on the opposite side of the container to improve its visibility. Allowing the manufacturer to choose the mounting location should avoid compelling the mounting of labels on a section of the container where permanent mounting of the label could be difficult because the container's radius is changing along the longitudinal axis. NHTSA encourages CNG vehicle manufacturers and fuel system installers to mount CNG containers in such a manner that the label is plainly visible without having to remove it from the vehicle.

4. Other Container Label Issues

The SNPRM stated that each CNG fuel container would be required to be "permanently" labeled. Also, the label would be required to include the "DOT" symbol, which would constitute a certification by the container manufacturer that the container complies with all requirements of this standard.

SCI requested that the term "permanent," as associated with fuel container labeling, be defined. SCI further stated that the "DOT" symbol without additional information is not meaningful, and suggested that the symbol be expanded to include the Standard number and the month and year of the Standard's effective date.

SCI, Ford, and Brunswick also commented that the word "maximum" in the FMVSS 304 label requirement for "maximum service pressure" could be confusing to vehicle operators since it is not commonly used in the industry, and urged that it be eliminated. The ANSI/NGV2 standard requires that the label include "service pressure" without the word "maximum."

NHTSA notes that each of these issues were also raised in the petitions for reconsideration to the final rule establishing FMVSS No. 304 and were addressed in the agency's recently published notice responding to the petitions. With respect to permanency, NHTSA explained in the notice that this term is intended to mean that "the label should remain in place and be legible for the manufacturer's recommended life of the container." With respect to references to "maximum service pressure," the agency decided to specify "service pressure" on the container label to reduce confusion. With respect to the "DOT" symbol, the agency decided not to expand the symbol. This decision is consistent with the symbol's use in other Federal motor vehicle safety standards for items of motor vehicle equipment. The reader should refer to that notice for a complete discussion of these issues.

In commenting on "maximum service pressure," Brunswick stated that the industry standard for units of pressure measurement is "bar" rather than "kPa" with "psig" as the alternate. FMVSS 304 currently specifies service pressure in units of kPa (psig).

NHTSA notes that "kPa" rather than "bar" is specified in FMVSS No. 304 because the agency has decided to use kPa for the metric fluid pressure measurement unit in all its safety regulations. Manufacturers are free to add the term "bar" if they so desire.

IV. Agency Decision To Amend the Bonfire Test

In the September 1994 final rule, NHTSA decided to specify that No. 2 diesel fuel be used to generate the fire in the bonfire test. As an interim measure, the agency specified No. 2 diesel fuel, despite knowledge that there are environmental problems associated with this type of fuel. The agency stated that it would study whether other fuels could be used for the bonfire test.

In the SNPRM, NHTSA decided to propose amending the bonfire test conditions to allow alternative types of fuel. Specifically, the agency proposed that the bonfire test could be conducted with any fuel that generates a flame temperature equivalent to that of No. 2 diesel fuel (i.e., any fuel that generates a flame temperature of 850 to 900 degrees C). NHTSA requested comments about the appropriateness of using flame temperature to define equivalence among fuel types.

Commenters addressing the issue of bonfire fuel generally supported the proposal. EDO and Brunswick favored allowing any fuel as long as the specified temperature is maintained. Ford commented that the proposal was appropriate, provided that the flame characteristics of different fuels are similar. AGA/NGVC also supported the proposal.

NHTSA has decided to amend section S8.3.6 to allow the bonfire test to be generated by any fuel that generates a flame temperature between 850 and 900 degrees C for the duration of the test. As discussed in the SNPRM, this modification will provide greater flexibility to those conducting the bonfire test. Moreover, it will eliminate the provision requiring the use of a fuel that poses significant environmental problems.

V. Agency's Decision To Terminate Rulemaking To Adopt Additional Performance Requirements

Most commenters requested that the agency delay adopting additional performance requirements for CNG containers until the industry completes revisions to its current voluntary standard for CNG containers, i.e., ANSI/NGV2, August 1992. The industry is revising and upgrading this standard in an effort to make it more performance based and to harmonize it with the Canadian Standards Association (CSA) standard for CNG fuel containers, B51—Part 2. The revisions are also intended to address additional safety concerns, particularly the failure of two CNG containers on General Motors pickup trucks which occurred in 1994. The commenters stated that these revisions, which will result in significant changes to the current industry standard, are expected to be completed this year.

Similarly, NHTSA received eleven petitions for reconsideration to the September 1994 final rule requesting that the agency delay further rulemaking until the industry completes its current revisions to ANSI/NGV2. The petitioners were Brooklyn Union Gas Company, CGA, Dual Fuel, Inc., Econogas Fleet Systems, Hercules Aerospace Company, AGA/NGVC, Public Service Electric and Gas Company, Natural Gas Pipeline Company of America, Southwest Research Institute, Washington Gas, and The Car Doctor, Inc.

NHTSA has decided to terminate further rulemaking on CNG container performance requirements since the agency anticipates that the new ANSI/NGV2 will be more performance oriented than the existing one on which the SNPRM was based. In addition, waiting until the industry completes its revisions will be consistent with international harmonization since the revisions are expected to make the standard more consistent with the Canadian standard on CNG containers. Waiting until the industry completes its revisions is also consistent with the President's directive on regulatory reform and the agency's efforts to implement that directive.

Once the industry's revisions are completed, the agency will evaluate the revisions and then propose their adoption, as appropriate. The agency believes that in the interim, the safety of CNG containers will not be significantly compromised by not adopting the additional performance requirements. Information gathered by the agency during the development of FMVSS No. 304 indicates that all container manufacturers that commented on the NPRM were either certifying or building their containers to meet the provisions of ANSI/NGV2, including those on which the supplemental performance requirements were based. Further, in its comments to this SNPRM, AAMA stated that available CNG containers already meet the ANSI/NGV2 requirements.

VI. Other Container Issues

A. Reports by Manufacturers

SCI requested that the agency add a requirement to FMVSS No. 304 mandating that container manufacturers report to NHTSA accidents involving their products. SCI stated that this would be similar to the requirement included in DOT exemptions issued by RSPA. SCI also requested that the agency explain its enforcement authority.

NHTSA has no authority to require manufacturers to report accidents involving its products. The agency, through its defect authority, can investigate such accidents to the fullest detail. In addition, NHTSA makes available to manufacturers its enforcement procedures for FMVSSs.

B. Aluminum Containers

FMVSS No. 304 requires that CNG containers be manufactured from materials specified in the standard. Two aluminum alloys are specified in the standard for fuel containers: 6010 and 6061. The Northwest Aluminum Company and Luxfer have petitioned the agency to amend the standard by adding two more aluminums. Northwest requested that alloy 6069 be added to the standard, and Luxfer requested an unspecified aluminum alloy from the 7000 series be included.

NHTSA has decided to delay rulemaking activities on these petitions until it can review the soon-to-be completed new version of the industry standard, ANSI/NGV2. As Luxfer noted in its petition, the new ANSI/NGV2 requirements for CNG fuel containers will be more performance oriented than the current version of the standard. It is possible that the new industry standard will not specify CNG container materials, thereby allowing manufacturers considerably more flexibility to improve container designs with respect to cost and performance. The agency notes that adopting some of the requirements of the new ANSI/NGV2 standard may eliminate the need to add the two new aluminum alloys to the current version of FMVSS No. 304.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, this action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. The agency has decided not to prepare a Final Regulatory Evaluation (FRE) because the impacts of these amendments are so minimal as not to warrant preparation of a full regulatory evaluation. The amendments made in today's final rule are requirements related to the labeling of CNG vehicles and containers, and as such do not result in significant increases in cost. In the FRE for FMVSS No. 304, the agency stated "The consumer cost for a label on each CNG fuel container certifying that the container meets the proposed equipment requirements is estimated to be in the range of $0.06 to $0.11 per label. This includes the cost of the label plus labor costs for attachment." This continues to be the case.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. The amendments will result in only a nominal cost increase resulting from costs associated with requiring some additional labeling information. Information available to the agency indicates that businesses manufacturing CNG fuel containers are not small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will have no adverse impact on the quality of the human environment. Allowing optional fuels in the bonfire test provides testing facilities with the ability to use less environmentally hazardous fuels.

E. Civil Justice Reform

This rulemaking does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor

vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 303; *Fuel System Integrity of Compressed Natural Gas Vehicles* and Standard No. 304; *Compressed Natural Gas Fuel Container Integrity*, Part 571 at Title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.303 is amended by adding S5.3, S5.3.1 and S5.3.2 and S5.4, to read as follows:

§ 571.303 Standard No. 303, Fuel System Integrity of Compressed Natural Gas Vehicles.

* * * * *

S5.3 Each CNG vehicle shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2 of this section. The information shall be visible to a person standing next to the vehicle during refueling, in English, and in letters and numbers that are not less than 4.76 mm (3/16 inch) high.

S5.3.1 The statement: "Service pressure _____ kPa (_____ psig)."

S5.3.2 The statement "See instructions on fuel container for inspection and service life."

S5.4 When a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, on a one-page document. The information shall be in English and in not less than 10 point type.

* * * * *

3. Section 571.304, is amended by revising S7.4, S8.3.2, S8.3.3, S8.3.4, S8.3.6, and S8.3.7 to read as follows:

§ 571.304 Standard No. 304, Compressed Natural Gas Fuel Container Integrity.

* * * * *

S7.4. *Labeling.* Each CNG fuel container shall be permanently labeled with the information specified in paragraphs (a) through (h) of this section. Any label affixed to the container in compliance with this section shall remain in place and be legible for the manufacturer's recommended service life of the container. The information shall be in English and in letters and numbers that are at least 6.35 mm (¼ inch) high.

(a) The statement: "If there is a question about the proper use, installation, or maintenance of this container, contact_____," inserting the *CNG fuel container manufacturer's name, address, and telephone number.*

(b) The statement: "Manufactured in _____," inserting the month and year of manufacture of the CNG fuel container.

(c) The statement: "Service pressure _____ kPa, (_____psig)."

(d) The symbol DOT, constituting a certification by the CNG container manufacturer that the container complies with all requirements of this standard.

(e) The container designation (e.g., Type 1, 2, 3, 4).

(f) The statement: "CNG Only."

(g) The statement: "This container should be visually inspected after a motor vehicle accident or fire and at least every 12 months or 12,000 miles, whichever comes first, for damage and deterioration in accordance with the Compressed Gas Association (CGA), Arlington VA, Guidelines C–6 and C–6.1 for Type 1 containers and C–6.2 for Types 2 and 3 containers."

(h) The statement: "Do Not Use After _____" inserting the month and year that mark the end of the manufacturer's recommended service life for the container.

* * * * *

S8.3.2 The CNG fuel container is positioned so that its longitudinal axis is horizontal. Attach three thermocouples to measure temperature on the container's bottom side along a line parallel to the container longitudinal centerline. Attach one at the midpoint of the container, and one at each end at the point where the dome end intersects the container sidewall. Subject the entire length to flame impingement, except that the flame shall not be allowed to impinge directly on any pressure relief device. Shield the pressure relief device with a metal plate.

S8.3.3 If the test container is 165 cm (65 inches) in length or less, place it in the upright position. Attach three thermocouples to measure temperature on the container's bottom side along a line which intersects the container longitudinal centerline. Attach one at the midpoint of the bottom of the container, and one each at the point where the dome end intersects the container sidewall. Subject the container to total fire engulfment in the vertical. The flame shall not be allowed to impinge directly on any pressure relief device. For containers equipped with a pressure relief device on one end, the container is positioned with the relief device on top. For containers equipped with pressure relief devices on both ends, the bottom pressure relief device shall be shielded with a metal plate.

S8.3.4 The lowest part of the container is suspended at a distance above the fire such that the container bottom surface temperatures specified in S8.3.6 are achieved.

* * * * *

S8.3.6 The fire is generated by any fuel that maintains a flame temperature between 850 and 900 C for the duration of the test, as verified by each of the three thermocouples in S8.3.2 or S8.3.3.

* * * * *

S8.3.7 The fuel specified in S8.3.6 is such that there is sufficient fuel to burn for at least 20 minutes. To ensure that the sides of the fuel container are exposed to the flame, the surface area of the fire on a horizontal plane is such that it exceeds the fuel container projection on a horizontal plane by at least 20 cm (8 inches) but not more than 50 cm (20 inches).

* * * * *

Issued on: November 16, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–28626 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 93–57; Notice 3]

RIN 2127–AF00

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle safety standard on lighting, to permit replaceable lenses on integral beam and replaceable bulb headlamps that incorporate on-board headlamp aimers, provided that such headlamps meet more rigorous environmental tests. The benefit of headlamps with replaceable lenses is that the lens or reflector could be replaced in the event of breakage of either without the present necessity to replace both components if only one is damaged.

DATES: The amendments are effective December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking, NHTSA (202–366–6346).

SUPPLEMENTARY INFORMATION: On August 12, 1993, NHTSA published a Notice of Request for Comments seeking views relevant to a decision on whether to proceed with rulemaking to amend Standard No. 108 to allow the lens to be replaceable on a replaceable bulb headlamp equipped with an on-vehicle aiming device (58 FR 42924). On the basis of comments received, NHTSA published a Notice of Proposed Rulemaking (NPRM) on November 21, 1994, to amend Standard No. 108 in the manner discussed in the Request for Comments, for both integral beam and replaceable bulb headlamps with the on-board aiming feature, provided that such headlamps meet more rigorous environmental tests (59 FR 59975). The reader is referred to those notices (Docket No. 93–57; Notices 1 and 2) for further information on the background of this rulemaking action.

Proposed Amendments

In Notice 2, NHTSA proposed redefinitions of "integral beam headlamp" and "replaceable bulb headlamp" to clarify that some types of these headlamps need not have a bonded lens reflector assembly, i.e., those with a vehicle headlamp aiming device (VHAD) conforming to Standard No. 108. Under the proposal, each replacement lens would also have to be accompanied by an appropriate replacement seal, and instructions to the user on how to remove and replace the lens, clean the reflector, and seal the lens to the lamp. Manufacturers of replacement lenses would mark them with a DOT symbol which would be the manufacturer's certification that installation of the lens on the headlamp for which it is intended would not create a noncompliance with Standard No. 108. A new section was proposed, S8.10, that would add chemical and corrosion resistance tests for reflectors of replaceable lens headlamps. NHTSA also asked specific questions related to these proposals.

Comments were received from Advocates for Highway and Auto Safety ("Advocates"), American Automobile Manufacturers Association ("AAMA"), Chrysler Corporation ("Chrysler"), Ford Motor Company ("Ford"), General Motors Corporation ("GM"), Koito Manufacturing, Inc. ("Koito"), Mercedes-Benz of North America ("Mercedes"), and Volvo of North America ("Volvo").

AAMA, Chrysler, Ford, GM, Volvo and Koito supported the proposal in its entirety. Because Mercedes offered a helpful suggestion (discussed below), NHTSA interprets its comment as one of support. Hella, Bosch and VW favored replaceable lenses but opposed requirements for improved reflector durability. Advocates opposed the proposal.

General Comments

In paragraph S8.10.1, NHTSA proposed a chemical resistance test for reflectors which would include lacquer thinner as one of the test fluids. Mercedes suggested that mineral spirits be substituted because lacquer thinner is becoming less common in shops, causes a fire hazard, and may damage plastic reflectors and other parts. NHTSA believes that lacquer thinner is still common in body shops which may be expected to perform lens replacements. However, it is not appropriate to expose the surface of the reflector to a substance likely to attack the plastic base material of the reflector and other lamp components. Therefore, in the final rule, NHTSA is substituting mineral spirits for lacquer thinner. However, it would be appropriate for a manufacturer's lens replacement instructions to warn against the use of cleaning agents that would harm lamp components.

Having conducted the proposed type of corrosion test on a production headlamp, Mercedes also asked that lamps be permitted to be used with replaceable lenses if the lamps either show no visible corrosion damage or continue to meet photometric requirements despite visible corrosion damage. This comment appears based upon the presumption that a one-day salt spray test is equivalent to a reasonable worst case of reflector exposure over the life of a vehicle. However, the agency has no evidence that reflectors which are subject to corrosion will not degrade in service to a greater degree or in more critical locations than do a limited number of samples which have undergone a one-day severe exposure test. If a reflector cannot meet the test criterion of no corrosion visible without magnification, in NHTSA's view there can be no assurance that such a reflector is essentially corrosion-proof for indeterminant exposures before lens replacement after the lens is broken.

Hella, Bosch, and VW opposed requirements for improved reflector durability. These commenters did not dispute the agency's assumption that the reflectors of present replaceable bulb headlamps may degrade when lens integrity is lost. However, they believe that new lenses will not be installed on lamps with degraded reflectors, because either the dealer will refuse to do so or the owner, guided by the operator's manual, will not seek it. For much the same reasons, VW doubts that an aftermarket demand for headlamp lenses will develop. NHTSA disagrees with these comments. The rationale behind this rulemaking is to afford a less expensive way of repairing headlamp damage, by replacement of the lens alone rather than the entire lens reflector assembly. The potential savings create an incentive on the part of the vehicle owner to minimize replacement costs, and on the part of dealers or repair shops to meet the vehicle owner's demands.

Advocates opposed the proposal. In its opinion, NHTSA's amendments of Standard No. 108 since 1983 have reduced headlamp safety and thus is reluctant to see another final rule which continues the trend. It states that "the agency has nothing in the record of this rulemaking assessing the safety consequences of its proposed amendment to permit replaceable lenses." Terming NHTSA's intended rulemaking effect as "safety-neutral", Advocates comments that the agency's arguments are speculative and that NHTSA assumes that "its additional testing requirements coupled with good-faith installation design innovations and directions to consumers will somehow offset any increase in detrimental safety consequences." Advocates argues that these assumptions are "devoid of support in the record and, therefore, would be considered by the courts to be

conclusory." In Advocates' view, "where a pending decision arguably has direct implications for vehicle and traffic safety, the agency must evaluate the issue with sufficient empirical evidence in the record to support its decision." In support of this argument, it cites *Advocates for Highway and Auto Safety* v. *Federal Highway Administration*, 28 F.3d 1288 (D.C. Cir. 1994) at 1294, quoting *Competitive Enterprise Institute* v. *Nat'l Highway Traffic Safety Admin.*, 956 F.2d 321 (D.C. Cir. 1992): "The (agency), however, cannot 'ma[ke] conclusory assertions that its decision have no safety impact at all'."

In responding to Advocates, NHTSA first observes that neither of the cases cited above construed the National Traffic and Motor Vehicle Safety Act, whose successor, 49 U.S.C. Chapter 301, is the authority for the present rulemaking. The former case involves actions of the Federal Highway Administration; the latter, actions under this agency's statutory provisions relating to fuel economy standards.

Under Chapter 301, NHTSA's Federal motor vehicle safety standards are "minimum standards for motor vehicle or motor vehicle equipment performance", and must "meet the need for motor vehicle safety." Federal Motor Vehicle Safety Standard No. 108 requires motor vehicles to have headlighting systems meeting specified safety performance levels. A headlamp system may consist of sealed beam headlamps (a manufacturer may choose between seven different systems), replaceable bulb headlamps (at least six different types at present), combination headlamp systems (a mixture of sealed beam and replaceable bulb headlamps), and integral beam headlamps (headlamps other than sealed beam or replaceable bulb types). The Standard formerly contained design specifications which restricted headlamps to two sizes of sealed beam headlamps. NHTSA has only permitted an additional type of headlamp system after first satisfying itself that the new system would provide at least the same minimum level of safety performance required of those existing systems that are certified as meeting Standard No. 108. In this sense, NHTSA's headlamp rulemakings have indeed been "safety neutral."

The present rulemaking carves out a very narrow exception to the existing requirement that replaceable bulb headlamps and integral beam headlamps have lenses bonded to the reflector assembly. To ensure that the amended standard continues to "meet the need for motor vehicle safety," NHTSA has imposed requirements to counter any potential negative effects upon safety. First, to ensure the ability of a headlamp to be aimed properly after lens replacement, the amendment is restricted to headlamps with on-board aiming devices. Second, to ensure the ability to install properly a replacement lens, the lens manufacturer is required to provide instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly. Finally, to ensure the integrity of the reflector after exposure in an unsealed environment, new durability tests are prescribed for the reflector.

NHTSA agrees that it does not have empirical evidence indicating how headlamps designed to conform to Standard No. 108 would perform with replaceable lenses. Such evidence is not available because headlamps with replaceable lenses have not been permitted in the United States. The agency believes that the requirements for on-board aiming devices, instructions, and durability testing contained in the final rule will result in an overall level of safety that is not less than the level of safety provided by headlamps with non-replaceable lenses. NHTSA believes that the discussions and analysis in this rulemaking action provide adequate support for the amendment.

The following discussion centers around four questions NHTSA asked in the proposal and the responses received. The discussion also indicates the points at which the final rule responds to these comments.

1. Whether the moisture of the ASTM B 117–73 salt spray test, when conducted for 24 hours, is sufficient to test the moisture resistance of headlamp reflectors. If not, what test would be sufficient?

Because a cracked lens frequently causes a lamp to partially fill with water, NHTSA proposed a salt spray test to be conducted on a headlamp with its lens removed. In its response to the previous request for comments (58 FR 42924), Ford cited separately the need to test for corrosion resistance and for moisture resistance. Since the corrosion test proposed by the agency features considerable moisture, NHTSA asked if that test would also satisfy the need for testing moisture resistance for aspects other than corrosion. Ford commented that the moisture content and duration of the proposed corrosion test was indeed sufficient to test for moisture resistance.

2. Whether the proposed corrosion test is also acceptable to demonstrate the abrasion resistance of headlamp reflectors.

The dust test that applies to replaceable bulb headlamps utilizes Portland cement as the agent. But it is conducted on the outside of lamps with the lens and bulbs in place. The abrasion of principal concern in this instance would occur when the reflector was being cleaned in the process of replacing the lens. In the belief that the proposed corrosion test would coat the reflector with salt deposits, and that the subsequent cleaning would provide the appropriate abrasion test, NHTSA asked whether, in fact, a 24-hour salt spray test would deposit enough salt for this purpose, and whether a particular method of salt removal should be specified or left to the manufacturer's instructions included with a replacement lens. The agency also asked whether both a Portland cement dust test and corrosion test should be conducted. It also asked whether a direct abrasion test would be more appropriate (contrasted with the indirect one of cleaning an agent from the reflector), and, if so, what procedure would be appropriate.

Ford concurred in the agency's belief that the salt spray test alone would be adequate to demonstrate abrasion resistance. It also commented that the salt should be removed according to the manufacturer's instructions to consumers for cleaning reflectors. Koito commented that the corrosion and chemical resistance tests could substitute for a dust test. Mercedes also concurred, with the comment that it found the deposited salts difficult to remove (and NHTSA found evidence of scratches on the reflector that Mercedes had cleaned). This comment confirms NHTSA's belief that the proposed test is adequate to demonstrate abrasion resistance of the reflector, and is amending the standard as proposed.

Although the standard is being amended to specify salt removal according to the manufacturer's instructions, the agency will reconsider the point if the instructions impose unrealistic burdens upon consumers or serve to defeat the intent of the test. Examples of such instructions are ones that would call for the removal of the headlamp from the vehicle for cleaning the reflector or for the use of methods, such as ultrasonic cleaning, which are unrealistically gentle.

3. Whether the duration of the proposed test is sufficient to test reflectors and the metal light shields sometime used; appropriate criteria for testing light shields; stains from corroded light shields.

Ford commented that it had no specific test data using the proposed corrosion test procedure for headlamp reflectors, but that it believed such a test would be sufficient to provide adequate assurance that the reflective surface is robust enough to withstand exposure to environmental conditions due to a cracked or otherwise damaged lens. The sufficiency of the proposed test appears borne out by the fact that the Mercedes lamp did not meet the test criterion after being subjected to the 24-hour salt spray and 48-hour drying time.

Ford commented that rusty water stains would most likely affect the bottom of the reflector which has little influence on the beam. However, NHTSA's random observation of headlamps on vehicles in use show clear examples in which a corroded light shield has deposited extensive rust stains over the active part of the reflector as well as at the bottom. Even a small puncture of the lens can result in sufficient water entering the headlamp to splash over and stain much of the reflector if rust is present. Thus, NHTSA is adopting its proposed prohibition on metal light shield corrosion.

Koito remarked that the beam is mostly insensitive to light shield corrosion and that corrosion within ⅛ inch of sharp edges should be discounted. Koito also asked that NHTSA define the optical surface of the reflector to exclude parts that do not contribute to the headlamp beam and parts which affect other lighting functions.

The agency agrees with Koito that the NPRM was not specific enough about the area of the reflector to be inspected for corrosion. Certainly the back of the reflector and parts covered by the lamp body have no optical role even though they may have a shiny plating. But it would be unwise to define the important parts of the reflector too narrowly. Parts that are blacked out, for example, would cause glare if their finish were lost to corrosion. A reasonable specification of the part of the reflector to be inspected includes all areas of the reflector exposed to light from the headlamp light source. Thus, with respect to integral beam headlighting systems, NHTSA is amending S7.4(g)(3) as proposed, but adding the requirement that after corrosion tests conducted in accordance with S8.10.2, "there shall be no evidence of corrosion or rust visible without magnification on any part of the headlamp reflector that receives light from a headlamp light source, on any metal light or heat shield assembly, or on a metal reflector of any other lamp not sealed from the headlamp reflector." The prohibitions against metal corrosion are intended to prevent the staining of otherwise satisfactory reflectors.

4. Whether the present salt spray test of replaceable bulb headlamps with lenses attached is sufficient to qualify reflectors for use with replaceable lenses without further environmental testing.

Ford commented that the present test is likely to be insufficient to replicate the possible exposure of lamps with damaged lenses prior to repair since it is conducted with the lens attached, thus sparing the reflector direct exposure to the elements. NHTSA agrees, and finds this a further reason in support of the corrosion and abrasion resistance tests adopted in the final rule.

Hella, Bosch, and VW commented that improved reflectors are not necessary because warnings placed in the owners manual and the actions of dealers are sufficient to prevent the releasing of degraded lamps. NHTSA disagrees with these comments; as was noted above, a vehicle owner is more likely to replace a lens than a lens reflector assembly because of cost savings. Therefore, an improved reflector is required to assure its ability to resist exposure to the environment during the period of lost lens integrity.

Advocates had criticized the minimum "above-horizontal" illumination requirements established by the agency for 1994 and newer model vehicle headlamps as providing poorer performance than that of sealed beam headlamps. It opposed lens replacement on the basis of a potential for a further reduction in "above-horizontal" illumination which it believed would result from deviations in lens alignment during replacement. Bosch submitted data demonstrating that repeated lens changes did not change the photometrics of the lamp; this should allay Advocates' concern, as should a comment by Osram Sylvania that headlamp photometry is not sensitive to the slight misalignments possible during lens replacement. Although Osram Sylvania had other criticisms of replaceable lenses, it reported that common design practices for replaceable bulb headlamps limit the sensitivity of photometric performance to lens misalignment and that replacement lenses need not be identical to original lenses to maintain equivalent photometric performance.

Effective Date

The effective date of the final rule is December 26, 1995. Because the final rule permits an option to an existing requirement, and an early effective date will permit the benefits of the final rule to be immediately available, it is hereby found for good cause shown that an effective date for the amendments to Standard No. 108 that is earlier than 180 days after their issuance is in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to afford a further optional means of compliance with the headlamp requirements of Standard No. 108. While the final rule may result in higher prices attributable to an improved reflector, NHTSA believes that this will not add more than a few dollars to the retail price of the type of headlamp which presently costs $250 to $600. This initial cost increase could be more than offset by reduced repair costs during the life of the vehicle or the headlamp. These cost impacts are so minimal that the preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that the final rule based will have a significant effect upon the environment. The design and composition of headlamps which take advantage of this option may change from those presently in production but it is anticipated that the kind of materials used will be the same.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. While the price of new vehicle equipment might be somewhat higher if the optional headlamp is used, the cost of repair of such equipment will be significantly lessened.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in

Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

This final rule has no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30163 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended as follows:

a. The definitions of "Integral Beam Headlamp" and "Replaceable Bulb Headlamp" in Paragraph S4 are revised as set forth below.

b. Paragraphs S5.8.11, S7.2(e), S8.10.1 and S8.10.2 are added to read as set forth below.

c. Paragraphs S7.4(g), S7.4(h)(2), S7.4(h)(3), S7.5(h), and S8.1 are revised to read as set forth below.

§ 571.108 Standard No. 108 Lamps, reflective devices, and associated equipment.

* * * * *

S4. *Definitions.*

* * * * *

Integral Beam Headlamp means a headlamp (other than a standardized sealed beam headlamp designed to conform to paragraph S7.3 or a replaceable bulb headlamp designed to conform to paragraph S7.5) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a headlamp incorporating a vehicle headlamp aiming device conforming to S7.8.5.2 may have a lens designed to be replaceable. An "integral beam headlamp" may incorporate light sources that are replaceable that are used for purposes other than headlighting.

* * * * *

Replaceable bulb headlamp means a headlamp comprising a bonded lens reflector assembly and one or two replaceable headlamp light sources, except that a headlamp incorporating a vehicle headlamp aiming device conforming to S7.8.5.2 may have a lens designed to be replaceable. A "replaceable bulb headlamp" may incorporate light sources that are replaceable that are used for purposes other than headlighting.

* * * * *

S5.8 *Replacement equipment.*

* * * * *

S5.8.11 A replacement lens for a replaceable bulb headlamp or an integral beam headlamp that is not required to have a bonded lens shall be provided with a replacement seal in a package that includes instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly.

S7 *Headlighting requirements.*

* * * * *

S7.2(a) * * *

* * * * *

(e) Each replacement headlamp lens with seal, provided in accordance with S5.8.11, when installed according to the lens manufacturer's instructions on an integral beam or replaceable bulb headlamp, shall not cause the headlamp to fail to comply with any of the requirements of this standard. Each replacement headlamp lens shall be marked with the symbol "DOT", either horizontally or vertically, to constitute certification. Each replacement headlamp lens shall also be marked with the manufacturer and the part or trade number of the headlamp for which it is intended, and with the name and/or trademark of the lens manufacturer or importer that is registered with the U.S. Patent and Trademark Office. Nothing in this paragraph shall be construed to authorize the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

* * * * *

S7.4 *Integral Beam Headlighting System.* * * *

* * * * *

(g) A headlamp with a glass lens need not meet the abrasion resistance test (S8.2). A headlamp with a nonreplaceable glass lens need not meet the chemical resistance test (S8.3). A headlamp with a glass lens and a non-plastic reflector need not meet the internal heat test of paragraph S8.6.2. A headlamp of sealed design as verified in paragraph S8.9 (sealing) need not meet the corrosion (S8.4), dust (S8.5), or humidity (S8.7) tests; however, the headlamp shall meet the requirements of paragraphs 4.1, 4.1.2, 4.4 and 5.1.4 for corrosion and connector of SAE Standard J580 DEC86 *Sealed Beam Headlamp Assembly.* An integral beam headlamp may incorporate light sources that are replaceable and are used for purposes other than headlighting.

(h) * * *

* * * * *

(2) After the chemical resistance tests of paragraphs S8.3 and S8.10.1, the headlamp shall have no surface deterioration, coating delamination, fractures, deterioration of bonding or sealing materials, color bleeding or color pickup visible without magnification, and the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

(3) After a corrosion test conducted in accordance with paragraph S8.4, there shall be no evidence of external or internal corrosion or rust visible without magnification. After a corrosion test conducted in accordance with paragraph S8.10.2, there shall be no evidence of corrosion or rust visible without magnification on any part of the headlamp reflector that receives light from a headlamp light source, on any metal light or heat shield assembly, or on a metal reflector of any other lamp not sealed from the headlamp reflector. Loss of adhesion of any applied coating shall not occur more than 0.125 in. (3.2 mm) from any sharp edge on the inside or outside. Corrosion may occur on terminals only if the current produced during the test of paragraph S8.4(c) is not less than 9.7 amperes.

* * * * *

S7.5 *Replaceable Bulb Headlamp System.* * * *

* * * * *

(h) The system shall be aimable in accordance with paragraph S7.8.

* * * * *

S8 *Tests and Procedures for Integral Beam and Replaceable Bulb Headlighting Systems.* * * *

S8.1 *Photometry.* Each headlamp to which paragraph S8 applies shall be tested according to paragraphs 4.1 and 4.1.4 of SAE Standard J1383 APR85 for meeting the applicable photometric requirements, after each test specified in paragraphs S8.2, S8.3, S8.5, S8.6.1, S8.6.2, S8.7, and S8.10.1 and S8.10.2, if applicable. A ¼ degree reaim is permitted in any direction at any test point.

* * * * *

S8.10 *Chemical and corrosion resistance of reflectors of replaceable lens headlamps.*

S8.10.1 *Chemical resistance.* (a) With the headlamp in the headlamp test fixture and the lens removed, the entire surface of the reflector that receives light from a headlamp light source shall be wiped once to the left and once to the right with a 6-inch square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 2 ounces of one of the test fluids listed in paragraph (b). The lamp shall be wiped within 5 seconds after removal of the cloth from the test fluid.

(b) The test fluids are:

(1) Tar remover (consisting by volume of 45% xylene and 55% petroleum base mineral spirits);

(2) Mineral spirits; or

(3) Fluids other than water contained in the manufacturer's instructions for cleaning the reflector.

(c) After the headlamp has been wiped with the test fluid, it shall be stored in its designed operating attitude for 48 hours at a temperature of 73°F ± 7° (23°C ± 4°) and a relative humidity of 30 ± 10 percent. At the end of the 48-hour period, the headlamp shall be wiped clean with a soft dry cotton cloth and visually inspected.

S8.10.2 *Corrosion.* (a) The headlamp with the lens removed, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing,* for 24 hours, while mounted in the middle of the chamber.

(b) Afterwards, the headlamp shall be stored in its designed operating attitude for 48 hours at a temperature of 73°F ± 7° (23°C ± 4°) and a relative humidity of 30 ± 10 percent and allowed to dry by natural convection only. At the end of the 48-hour period, the reflector shall be cleaned according to the instructions supplied with the headlamp manufacturer's replacement lens, and inspected. The lens and seal shall then be attached according to these instructions and the headlamp tested for photometric performance.

* * * * *

Issued on: November 16, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–28625 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 591

[Docket No. 89–5; Notice 16]

RIN 2127–AG13

Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This notice responds to a petition for reconsideration of a final rule which amended Part 591 to adopt a continuous entry bond as an alternative to the single entry bond that is otherwise required to accompany the permanent importation of nonconforming motor vehicles to ensure their eventual compliance with the Federal motor vehicle safety standards. The provisions regarding the new bond are amended in minor respects to reflect the bond's true nature as a bond covering more than one vehicle under a single entry.

DATES: The final rule is effective December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On October 14, 1994, NHTSA adopted a final rule on amendments to the entry bonds required by 49 CFR Part 591 to accompany the permanent importation of nonconforming motor vehicles to ensure their eventual compliance with the Federal motor vehicle safety standards (Docket No. 89–5; Notice 15, 59 FR 52095). That notice responded to a request for comments on an interim final rule published on June 20, 1994 (Docket No. 89–5; Notice 13, 59 FR 31558). The reader is referred to those notices for further information.

These rulemaking actions amended 49 CFR Part 591 to adopt a continuous entry bond with a value of up to $1,000,000 (Appendix B, 49 CFR Part 591) as an alternative to single entry bonds (Appendix A). Heretofore, each motor vehicle that was imported into the United States and that did not conform to all applicable Federal motor vehicle safety standards was admitted pursuant to a separate bond. To simplify importation procedures and the cost of doing business, Registered Importers asked NHTSA to allow entry of vehicles pursuant to a continuous entry bond. This would allow importation of an indeterminate number of vehicles under a single bond, thereby avoiding the necessity of having to obtain a separate bond for each vehicle. NHTSA agreed, and amended Part 591 in what it believed to be a manner responsive to the concerns expressed.

The Surety Association of America ("Surety"), which describes itself as "a service organization supported by more than 650 member companies which collectively write the majority of all surety bonds written in the United States", submitted a letter asking for clarification of Notice 15. In its view, the bond that NHTSA adopted was simply a "schedule" type bond, one that accommodates more than one vehicle on the same entry, rather than an "umbrella" type of bond covering multiple vehicles and multiple entries. Since the request was received during the period in which petitions for reconsideration could be submitted, and since the request asks for relief in the manner of a petition, the agency has treated the request as a petition for reconsideration.

Surety offered to assist NHTSA in developing a true blanket or continuous entry bond. At the agency's request, it presented one. The principal drawback to this type of bond, from NHTSA's viewpoint, is that it falls upon the Obligee (NHTSA) to monitor the bond to ensure that the aggregate sum, or ceiling, is not exceeded by the number of vehicles under its coverage at any single point in time. After review, NHTSA decided that this would increase the burden upon NHTSA's import compliance staff at a time when it is attempting to streamline the importation process and provide a more responsive service to importers, registered and otherwise. Neither Surety nor NHTSA are aware of any complaints from registered importers that the Appendix B bond is unsuitable for them in the form adopted. While a true continuous entry bond covers importations through any port of entry, the "schedule" bond relates to a single entry of a multiple number of vehicles through a single port. This appears to be the way that registered importers are doing business—importing vehicles through one port of entry. On balance, then, there appears to be no reason to adopt a true continuous entry bond when there is no demonstrated need for it and its adoption would impair the ability of NHTSA to process new entries in a timely manner.

Surety pointed out that the utility of the Appendix B Bond as a "schedule" or multiple vehicle type bond could be enhanced by a clearer indication on the bond form where the information identifying the vehicles should be inserted. It also called the agency's attention to a typographical error in

paragraph 3 of the "Now Therefore" clause, that the principal shall not release a vehicle before the 30th calendar day, if the principal has received written notice from the Administrator that "no" inspection is required. The correct word is "an". Appendix B is modified to reflect these two comments. Conforming amendments are also made to 49 CFR 591.6(c).

As written, both Appendix A and Appendix B permit a Registered Importer to import a single vehicle under their respective bond provisions (Appendix A also specifies the bond for individuals importing a single vehicle pursuant to a contract with a Registered Importer). Because this is redundant, and because the terms and obligations affecting the importation of a single vehicle by a Registered Importer are identical under both forms of bonds, NHTSA is also amending Appendix B to remove references to the importation of a single vehicle.

Effective Date

NHTSA has received no bonds in the form of Appendix B adopted in October 1994 and is therefore making this amendment effective 30 days after publication. Because of the need to ensure an uninterrupted flow of commerce, and because the rule imposes no additional burden upon any party, it is hereby found that an effective date earlier than 180 days after issuance is in the public interest, and the final rule is effective 30 days after publication in the **Federal Register**.

Rulemaking Analyses

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, NHTSA has determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The only substantive change that this final rule makes is to remove a redundancy in bond availability to registered importers. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. The RIs are small businesses within the meaning of the Regulatory Flexibility Act. However, for the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action would not have a significant economic impact upon "a substantial number of small entities." The removal of an option has no substantive effect since the obligation is identical whether or not the option exists. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming imported motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. A procedure is set forth in 49 U.S.C. 30161 for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 591 is amended as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117; delegation of authority at 49 CFR 1.50.

2. Section 591.4 is amended by revising the introductory text to read as follows:

§ 591.4 Definitions.

All terms used in this part that are defined in 49 U.S.C. 30102, 32101, 32301, 32502, and 33101 are used as defined in those sections except that the term "model year" is used as defined in part 593 of this chapter.

* * * * *

3. Section 591.6 is amended by revising paragraph (c) to read as set forth below:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to paragraph § 591.5(f), and under a bond for the entry of a single vehicle, shall be accompanied by a bond in the form shown in Appendix A, in an amount equal to 150% of the dutiable value of the vehicle, or, if under bond for the entry of more than one vehicle, shall be accompanied by a bond in the form shown in Appendix B and by Customs Form CF 7501, for the conformance of the vehicle(s) with all applicable Federal motor vehicle safety and bumper standards, or, if conformance is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

* * * * *

Appendix A—Section 591.5(f) Single Entry Bond

5. The title of Appendix A is revised to read as follows:

Appendix A—Section 591.5(f) Bond for the Entry of a Single Vehicle

6. Appendix B is revised to read as follows:

Appendix B—Section 591.5(f) Bond for the Entry of More Than a Single Vehicle

Department of Transportation—National Highway Traffic Safety Administration—Bond To Ensure Conformance With U.S. Federal Motor Vehicle Safety and Bumper Standards

(To redeliver vehicles, to produce documents, to perform conditions of release, such as to bring vehicles into conformance with all applicable U.S. Federal motor vehicle safety and bumper standards)

Know All People by These Presents That [principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation], as principal, and [surety's name, mailing address which includes city, state, ZIP code and state of incorporation] are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of [bond amount in words] dollars ($ [bond amount in numbers]) which represents 150% of the entered value of the following described motor vehicle(s) as determined by the U.S. Customs Service:

[model year, make, series, engine and chassis number of each vehicle]

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

WITNESS our hands and seals this _____ day of _____, 199____

WHEREAS, motor vehicles may be entered under the provisions of 49 U.S.C. 30112 and 49 U.S.C. 32506; and

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. 30112, the above-bounden principal desires to import permanently the motor vehicles described above, which are motor vehicles that were not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. 30112, the above bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety standards; and

WHEREAS, pursuant to 49 CFR part 593, a regulation promulgated under the provisions of 49 U.S.C. 30112, the Administrator of the National Highway Traffic Safety Administration has determined that each of the motor vehicles described above is eligible for importation into the United States; and

WHEREAS, the motor vehicles described above have been imported at the port of [name of port of entry], and entered at said port for consumption on entry No. _____ dated _____, 199___,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

(1) The above-bounden principal ("the principal"), in consideration of the permanent admission into the United States of the motor vehicles described above, voluntarily undertakes and agrees to have such vehicles brought into conformity with all applicable Federal motor vehicle safety and bumper standards within a reasonable time after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) For each vehicle described above ("such vehicle"), the principal shall then file, with the Administrator, a certificate that such vehicle complies with each Federal motor vehicle safety standard in the year that such vehicle was manufactured and which applies in such year to such vehicle, and that such vehicle complies with the Federal bumper standard (if applicable);

(3) The principal shall not release custody of any vehicle to any person, or license or register the vehicle, from the date of entry until 30 calendar days after it has certified compliance of such vehicle to the Administrator, unless the Administrator notifies the principal before 30 days that (s)he has accepted such certification and such vehicle and all liability under this bond for such vehicle may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of such vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation.

(4) And if the principal has received written notice from the Administrator that an inspection of such vehicle is required, the principal shall cause such vehicle to be available for inspection, and such vehicle and all liability under this bond for such vehicle shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, such vehicle and all liability under this bond for such vehicle shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that such certificate is false or contains a misrepresentation, such vehicle and all liability under this bond for such vehicle shall not be released until the Administrator is satisfied with such certification and any modification thereof;

(6) And if the principal has received written notice from the Administrator that such vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that such vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon such vehicle to the United States, or shall deliver such vehicle, or cause such vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of such vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator for the principal, the principal shall pay to the Administrator an amount equal to 150% of the entered value of such vehicle as determined by the U.S. Customs Service;

Then this obligation shall be void; otherwise it shall remain in full force and effect. [At this point the terms agreed upon between the principal and surety for termination of the obligation may be entered]

Signed, sealed and delivered in the presence of

_____

PRINCIPAL: (name and address)

_____

(Signature) (SEAL)

_____

(Printed name and title)

_____

SURETY: (name and address)

_____

(Signature)

_____

(Printed name and title)

Issued on: November 16, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–28539 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 95–0822210–5265–02; I.D. 081195A]

RIN 0648–AH94

Summer Flounder Fishery; Amendment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Summer Flounder Fishery. This amendment revises the fishing mortality rate reduction schedule for summer flounder, by extending for 2 years the time at which the final fishing mortality rate goal is reached. The rule continues the rebuilding of summer flounder stock abundance under a schedule that reduces short-term economic losses for participants in the fishery.

EFFECTIVE DATE: December 22, 1995.

ADDRESSES: Copies of Amendment 7, the environmental assessment, the regulatory impact review (RIR), and final regulatory flexibility analysis (FRFA) are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

Amendment 7 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. A proposed rule to implement the amendment was published in the **Federal Register** on September 5, 1995 (60 FR 46105). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

Background concerning the development of the management measures contained in Amendment 7 and the reasons they were adopted by

the Council were provided in the preamble of the proposed rule and are not repeated here.

NMFS approved Amendment 7, which revises the target fishing mortality rate (F) reduction schedule to allow for more stable landings from 1 year to the next. The amendment will reduce short-term economic burdens on the industry, yet slow the rate of stock rebuilding only slightly. The revised schedule for the fishing mortality rate reductions requires a reduction from the 1995 target (F = 0.53) to 0.41 in 1996, 0.3 in 1997, and F_{max} (0.23) in 1998 and beyond. In addition, this rule specifies that the quota for 1996 and 1997 may not exceed 18.51 million lb (8,396 mt). This cap on the quota could result in an F in 1996 and 1997 that is lower than 0.41 and 0.3, respectively, but could not exceed these values. A quota level above the cap could be set in 1996 or 1997, but only if the resulting quota had an associated F of 0.23.

Data from the updated stock assessment for summer flounder for 1995 from the 20th Stock Assessment Workshop (SAW) indicate that the stock is in better condition than it appeared in 1994. A strong year class in 1994 will allow a more rapid rebuilding of the spawning stock biomass while allowing moderate amounts of catch. As a result, the revised rebuilding strategy will provide some short-term relief to the industry without seriously compromising conservation.

Comments and Responses

Six comments were received from industry associations, state agencies, conservationist organizations, and various individuals in favor of the amendment. Five of those commenters opposed the 18.51 million lb (8,396 mt) quota cap. The Center for Marine Conservation (CMC) commented that they oppose the amendment.

Comment: The State of North Carolina supports the amendment because it strikes a balance between achieving the necessary fishing mortality reduction, alleviating economic hardship on the fishing industry, and lending stability to the fishery.

Response: NMFS agrees with this assessment.

Comment: The East Coast Fisheries Federation, the United National Fishermen's Association, the Seafarers International Union (SIU), Jones Inlet Packing Co., and the North Carolina Fisheries Association all support the amendment's reevaluation of the fishing mortality reduction schedule, but do not support the 18.51 million lb (8,396 mt) cap on the quota in 1996–97. Several commenters question the selection of 18.51 million lb (8,396 mt) as the cap value, and SIU notes that the cap value would be higher if new stock assessment information were used. One commenter added that 18.51 million lb (8,396 mt) should be set as the minimum quota level, rather than the maximum.

Response: The Council established the cap as a mechanism to provide the industry with stable and predictable landings over time, while still ensuring attainment of the target fishing mortality rate in 1998. The cap may be exceeded if the quota specified has an associated F of 0.23, that is, attains F_{max} prior to 1998.

The Council and ASMFC are aware that if the summer flounder stock size is larger than projected by the assessment, a cap of 18.51 million lb (8,396 mt) could result in an associated F that is lower than the targets established for 1996 and 1997. If good recruitment occurs in 1994, 1995, and 1996, and if the target F is reached in 1995 (0.53), the cap could result in a F of 0.23 as early as 1997. The Council established the cap with the intent that under these circumstances, quotas constrained by the cap will accelerate recovery of the summer flounder stock. This "banking" of fish will ensure that stock sizes will be large enough the following years to support stable quota levels even in the event of lower than expected recruitment.

The 18.51 million lb (8,396 mt) value was calculated during the development of Amendment 7 when the Council examined an alternative that called for a constant quota for the years 1996 through 1998 that will result in F_{max} (0.23) in 1998. This projection of 18.51 million lb (8,396 mt) was based on the best scientific information available at the time, the results of the 1994 summer flounder stock assessment. The Council realized that spawning stock biomass for summer flounder might increase after adoption of the cap, and the value chosen reflects its intention to better ensure that its final fishing mortality rate goal is reached by 1998, rather than sometime thereafter. According to guidelines of the national standards (50 CFR part 602), the Council is entitled to bring the development of an amendment to closure for submission purposes, even though new information will become available in the future.

The establishment of 18.51 million lb (8,396 mt) as a minimum quota level would be inconsistent with the use of target fishing mortality rates to achieve stock rebuilding. By setting a minimum quota level, the Council, in its recommendations, would be unable to address such circumstances as poor recruitment.

Comment: The SIU comments that there should be no cap on quota in 1996 or 1997 because the fishery is an alternative source of income for Georges Bank groundfish vessels, which face impending new restrictions.

Response: The quotas proposed through this amendment are designed to continue rebuilding the stock of summer flounder while moderating negative impacts on the industry. The Council has presented a plan to balance the biological and economic impacts of summer flounder management measures. While it is apparent that the Northeast multispecies fishery faces additional future restrictions, those vessels that qualified for the summer flounder moratorium permit will have to continue to share the burdens of the rebuilding plan for summer flounder. They will also share the future benefits of increased harvests from a recovered stock.

Comment: The East Coast Fisheries Federation comments that a higher quota would result in fewer discards rather than an increased mortality rate. They argue that many fish are discarded, not because they are undersized, but due to state quota management measures such as trip limits.

Response: NMFS agrees that state quota management measures may result in discard of fish larger than the minimum size. However, it does not follow that a higher quota would result in no increase in the overall mortality rate. Commercial landings represent the largest component of summer flounder mortality. The advisory report issued by the 20th Stock Assessment Workshop includes mean estimates of the components of the total catch (landings and discards) for the period 1982–94. Commercial discards represent 8 percent of the total while commercial landings represent 59 percent of the total (the remainder is recreational catch and discard). As the stock rebuilds, the number of larger, older fish in the population will increase and the fishery will become less dependent on younger, smaller fish. At that point, the contribution of discards to overall mortality would decrease.

Comment: The CMC opposes the amendment, stating that the relaxation of the mortality rate reduction schedule would serve to prolong overfishing, and risk undoing the stock benefits achieved by the existing management regime. CMC feels that, instead, improvements should be made in compliance, enforcement and data collection, as well as in the reduction of bycatch and mortality on small fish.

Response: While a relaxation of the mortality rate reduction schedule will slow the rate of stock rebuilding, projections indicate that the slowdown will be slight. In general, the total landing for all years (1996–2000) is nearly identical for all the alternatives. The difference between the options contained in the amendment is in how the landings are allocated over the 5 year time period. A postponement in the reduction to F_{max} (i.e., F greater than 0.23 in 1996 and 1997) will result in an increase in near term landings at the expense of future landings. The adopted option contained in this amendment (Option 5B) produces the most stable landings pattern with landings ranging from 18.5 to 26.7 million lb over the period. An alterative considered but not adopted (Option 1) would have resulted in the largest variability in landings from 1 year to the next with a 50 percent decline from 1995 to 1996 followed by a 50 percent increase from 1996 to 1997.

While the rate of spawning stock biomass (SSB) increase is slowed under Amendment 7, the rate of growth differs only slightly during any 1 year, and is ultimately statistically insignificant. The stock assessment indicates that as SSB rises, so does recruitment. Good levels of recruitment are associated with SSB levels in excess of 33 million lb (14,968 mt). The analysis associated with this amendment indicates an estimated SSB above 45 million lb (20,412 mt) in 1996, indicating that the risk of recruitment failure is minimal. As the stock rebuilds and the age structure becomes more evenly distributed, the fishery will become less dependent on new recruits and the likelihood of poor recruitment and stock collapse will become increasingly remote.

Classification

The Director, Northeast Region, NMFS, determined that Amendment 7 is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA as part of the RIR. A copy of this analysis is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 14, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 625.20, paragraph (a) introductory text is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee will review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.53 in 1993 through 1995, 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18.51 million lb (8,396 mt), unless such fishing levels have an associated F of 0.23:

* * * * *

[FR Doc. 95–28535 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 226
Friday, November 24, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-91-329]

United States Standards for Grades of Frozen Cauliflower

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current voluntary U.S. Standards for Grades of Frozen Cauliflower. Its effect would be to improve the standards by: Bringing the standards in line with current marketing practices and innovations in processing techniques; providing for the "individual attributes" procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects) being published in the standards; replacing dual grade nomenclature with single letter grade designations, such as "U.S. Grade A" or "U.S. Fancy," with "U.S. Grade A;" and providing a uniform format consistent with other recently revised U.S. grade standards by adopting definitions for terms and replacing textual descriptions with easy-to-read tables. This rule also includes conforming and editorial changes.

DATES: Comments must be received on or before January 23, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 0709, South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 0709, South Building, Washington, DC 20090–6456, Telephone: (202) 720–4693.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, Pub.L. 96–354 (5 U.S.C. 601 *et seq.*), the Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries, Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Western Technical Advisory Committee of the American Frozen Food Institute (AFFI) and the USDA Grade Standards Review Subcommittee of the National Food Processors Association (NFPA), requested that the USDA prepare a draft revision of the U.S. grade standards for frozen cauliflower in 1992. It was requested that the draft would allow for the use of mechanical trimming devices in cauliflower processing by de-emphasizing the importance of uniform shape and symmetry of cauliflower clusters in the standards because mechanical trimmers now perform processing operations previously done by hand. The mechanical trimming devices produce clusters which are less uniform in size, shape, and symmetry and remove, partially or completely, the bud portion of the unit. The absence of a uniform shape does not significantly affect the eating quality or nutritional value of frozen cauliflower.

It was also requested that the revised standards assign individual tolerances to each individual quality factor. The system of grading, referred to as "individual attributes," would provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the current grade standards.

The discussion draft incorporated the changes recommended by AFFI and NFPA. The proposal reflected USDA's policy of replacing dual grade nomenclature with single letter grade designations.

In the revision, "U.S. Grade A" (or "U.S. Fancy") and "U.S. Grade B" (or "U.S. Extra Standard") would have simply become "U.S. Grade A," and "U.S. Grade B."

The USDA prepared a discussion draft, incorporating the requested and editorial changes, and submitted it to AFFI and NFPA for comment. Minor changes were recommended for the draft revision.

In addition to these changes, the revision would have modified the standards to present them in a simplified easy-to-use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables would have replaced the textual descriptions. These changes were intended to facilitate better understanding and more uniform application of the grade standards.

Proposed Rule

A proposal to revise the U.S. Standards for Grades of Frozen Cauliflower was published in the

Federal Register on January 11, 1993 (58 FR 3816). A reopening and extension of the comment period to December 31, 1993, for the proposal was published in the **Federal Register** on May 25, 1993 (58 FR 29985). There were no public comments received during the comment period. However, USDA received comments from Patterson Frozen Foods, Inc. and the American Frozen Food Institute (AFFI) regarding the proposal, after the comment period closed. This action is a reproposal of the January 11, 1993, rule.

The following suggestions were offered for consideration in this revision. The two commenters suggested that the style name "Nuggets or Small Clusters" should be used instead of "Clusters for Limited Use" due to the terms familiarity in the industry and the marketplace. USDA agrees with the comment to change in style names to incorporate familiar names.

Both commenting parties requested a change in the proposed method of determining style in frozen cauliflower and the requirements. Both agreed that the method for determining style should be based on "weight" instead of "count" and Patterson Frozen Foods also suggested that the six millimeter minimum requirement for "Nuggets or Small Clusters" style be removed since there is no maximum size requirement for "Clusters" style.

Both parties suggested that determining "style" by "weight" instead of by "count" would make the standards more compatible with the industry's practice of using mechanical trimming devices which produce clusters that are less uniform in size, shape, and symmetry.

USDA conducted a study using imported and domestic samples in 10, 16, 20, 32 and 35 ounce package sizes to determine the average counts and weights of cauliflower clusters. Based on the information collected, USDA agrees with the suggested change to determine style "by weight" instead of "by count" for "Clusters Style" and with the recommended tolerance of 10 percent by weight.

The Department disagrees with the elimination of the minimum size requirement in "Nuggets or Small Clusters" style. The prerequisite of "appearance" was incorporated into this proposal to maintain present tolerances for small pieces of cauliflower (chaff) that affect the appearance and edibility of "Nuggets or Small Clusters" and "Clusters" style cauliflower. A definition for "chaff" was also incorporated into this proposal.

The study conducted by USDA showed that the average unit weight of "Nuggets or Small Clusters" was closer to two grams per unit than to three grams per unit as published in the proposal. The AQL's and acceptance numbers in Table II were adjusted to reflect this finding.

AFFI and Patterson Frozen Foods asked that the definitions for "ricey" and "fuzzy" character in the current standards be retained in the proposal. USDA agrees that maintaining the same definitions for "ricey" and "fuzzy" would reduce confusion within the industry. It was also requested that the term "mushy" character should be deleted and that its definition be incorporated into the definition for "soft" character. The industry believed this change would be less confusing and more accurate. The Department agrees and made these changes to clarify the standards based on industry practices.

A change in the definition of "color defect" was recommended by the commenters.

It was suggested that a definition differentiating "minor" and "major" color defects based on existing USDA inspection criteria should be incorporated into the "color defect" definition of the proposal. USDA agrees with this change and has incorporated it into the proposal. The incorporated changes from the inspection criteria would more accurately reflect the method used in the food industry to evaluate color defects.

Minor changes were suggested for the definitions of the terms "blemished, fragments, and mechanical damage" to help clarify their meaning. Both parties suggested the term "discoloration" should be removed from the definition of "blemished," and the phrase, "in the aggregate," should be added to the "minor blemished and major blemished" definition.

AFFI and Patterson Frozen Foods also suggested that the words "tough or fibrous" should be added to the definition of "fragments" and the words "seriously" and "excessive or" should be deleted from the definition of "mechanical damage."

The Department agrees with these changes and has incorporated them into this proposal.

It was requested that the classified quality factor, "mushy character," should be deleted from the standards since its definition has been incorporated into the definition of "soft character." The USDA has deleted the classified quality factor for "mushy character" and adjusted the tolerance for the quality factor, "soft character" to reflect the change.

Changes in the tolerances of several "classified quality factors" were suggested. For the quality factor of "ricey character," tolerances of 15 percent for "Grade A" and 30 percent for "Grade B" were preferred by AFFI and Patterson Frozen Foods because this defect is more common and less objectionable.

For "soft character", a tolerance of 5 percent rather than 10 percent was preferred because it is more preventable and more objectionable. The Department has adjusted the tolerances for "soft character" and "ricey character" and incorporated them into this proposal.

It was suggested that the quality factor of "color defect" be divided into "major color defects" and "total color defects." The comments suggested tolerances for the new factors should reflect this change with 3 percent for "major" and 8 percent for "total." We agree with the changes in the quality factor for color defects and with the 8 percent tolerance for "total color defects." We do not agree, however, with the change in the tolerance for "major color defects." Such a change would represent a significant deviation from the tolerance in the existing U.S. Standards for Grades of Frozen Cauliflower without valid justification as to why it should be changed.

It was also suggested that the tolerance for mechanical damage, in Nuggets style, should be increased to 10 percent for "Grade A" and 20 percent for "Grade B" to better reflect the use of mechanical trimming devices.

The Department agrees with this change and has incorporated it in this revision.

A copy of the initial proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information relevant to the possible effect of the proposed revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

The changes and issues raised by the comments regarding the first proposed rule supports publishing another Notice of Proposed Rulemaking to modify the standards. Based on all the information received, this proposed revision would modify the standards to present them in a simplified easy-to-use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables would replace the textual descriptions. This proposed rule is intended to facilitate better understanding and more uniform application of the grade standards.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to revise 7 CFR part 52 to read as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for part 52 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 52, Subpart—United States Standards for Grades of Frozen Cauliflower is revised to read as follows:

Subpart—United States Standards for Grades of Frozen Cauliflower

Sec.

52.721 Product description.
52.722 Styles.
52.723 Requirements for style.
52.724 Definitions of terms.
52.725 Grades.
52.726 Factors of quality.
52.727 Requirements for quality factors.
52.728 Sample size.
52.729 Acceptance criteria.

Subpart—United States Standards for Grades of Frozen Cauliflower

§ 52.721 Product description.

Frozen cauliflower is prepared from fresh flower heads of the cauliflower plant (*Brassica oleracea botrytis*) by trimming, washing, and blanching and is frozen and maintained at temperatures necessary for preservation of the product.

§ 52.722 Styles.

(a) *Clusters* mean individual segments of trimmed and cored cauliflower heads, which measure not less than 20 mm (0.75 in) in the greatest dimension across the top of the unit.

(b) *Nuggets or Small Clusters* mean individual segments of trimmed and cored cauliflower heads, which measure from 6 mm (0.25 in) to less than 20 mm (0.75 in) in the greatest dimension across the top of the unit.

§ 52.723 Requirements for style.

(a) *Clusters style.* A maximum of 10%, by weight, of clusters less than 20 mm (0.75 in) in the greatest dimension across the top of the unit are allowed.

(b) *Nuggets style.* A maximum of 20%, by weight, of clusters, 20 mm (0.75 in) or greater, and a maximum of 10%, by weight, of clusters less than 6 mm (0.25 in) in the greatest dimension across the top of the unit are allowed.

§ 52.724 Definitions of terms.

(a) *Acceptable quality level* (AQL) means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Appearance. Good appearance* means that the overall appearance or edibility of the cauliflower is not materially affected and; for clusters style, a maximum of 5%, by weight, of chaff is allowed for the sample unit. For nuggets style, a maximum of 10%, by weight, of chaff is allowed for the sample unit.

(c) *Blemished* means the cluster is affected or damaged by pathological injury, insect injury, or any other injury, which singly or in combination, affects the appearance or eating quality of the unit.

(1) *Minor blemished* means a unit with a dark blemish(s), which in the aggregate, exceeds the area of a circle 4 mm (0.16 in) in diameter but not 6 mm (0.25 in) or a light blemish(s), which in the aggregate, exceeds the area of a circle 6 mm (0.25 in) in diameter.

(2) *Major blemished* means a unit with a dark blemish(s), which in the aggregate, exceeds the area of a circle 6 mm (0.25 in) in diameter.

(d) *Chaff* mean individual segments of trimmed and cored cauliflower material, with and without head material, which measure less than 6 mm (0.25 in) in its greatest dimension.

(e) *Character* means the extent of firmness and compactness of the cluster and its degree of freedom from fuzzy, ricey and soft units.

(1) *Fuzzy character* means a cluster with sections of head that have elongated individual flowers (or pedicels) that result in a very fuzzy appearance.

(2) *Ricey character* means a cluster with sections of head on which the ultimate branches have become elongated, causing the flower clusters to separate and present a loose or open and sometimes granular appearance.

(3) *Soft character* means a cluster that is limp and flabby and the flesh yields readily when handled.

(f) *Color defect.*

(1) *Minor* means that after cooking, the cluster possesses a color that is more than slightly darker than light cream to dark cream.

(2) *Major* means that after cooking, the cluster possesses a color that is seriously darkened or discolored.

(g) *Core material* means the loose or attached center portion of the cauliflower head which is tough or fibrous.

(h) *Defect* means any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(i) *Fragment* means a stem or other cauliflower material without head material that is 6 mm (0.25 in) or greater in the greatest dimension (excluding tough or fibrous core material, loose leaves, and chaff).

(j) *Loose leaves* mean leaf material, exclusive of small tender leaves, that are detached from the stem.

(k) *Mechanical damage* means that the appearance of the unit is affected by trimming, or the unit is crushed or broken to the extent that the appearance is materially affected.

(l) *Normal flavor and odor* means that the cauliflower, before and after cooking, has a flavor and odor that is normal and is free from objectionable flavors and odors.

(m) *Sample unit* means the amount of product specified to be used for grading. For varietal characteristics, flavor and odor and appearance, a sample unit is the entire container. For blemishes, character, color, core material, fragments, mechanical damage and loose leaves, a sample unit is 100 grams for Nuggets Style and 50 units for Clusters Style. It may be:

(1) The entire contents of a container;

(2) A portion of the contents of a container; or

(3) A combination of the contents of two or more containers.

(n) *Tolerance* (TOL.) means the percentage of defective units allowed for each quality factor for a specific sample size.

(o) *Unit* means one cluster or piece of cauliflower.

§ 52.725 Grades.

(a) *U.S. Grade A* is the quality of frozen cauliflower that meets the following prerequisites in which the cauliflower:

(1) Has similar varietal characteristics,

(2) Has a normal flavor and odor, and

(3) Has a good appearance.

(4) Is within the limits for defects as specified in Tables I and II, of this subpart, as applicable for the style in § 52.727.

(b) *U.S. Grade B* is the quality of frozen cauliflower that meets the following prerequisites in which the cauliflower:

(1) Has similar varietal characteristics,

(2) Has a normal flavor and odor, and

(3) Has a good appearance.

(4) Is within the limits for defects as specified in Tables I and II, of this subpart as applicable for the style in § 52.727.

(c) *Substandard* is the quality of frozen cauliflower that fails to meet the requirements of U.S. Grade B.

§ 52.726 Factors of quality.

The grade of frozen cauliflower is based on meeting the requirements for the following factors.

(a) Prerequisites:

(1) Varietal characteristics,

(2) Flavor and odor, and

(3) Appearance.

(b) Classified Quality Factors:

(1) Major blemished,

(2) Total blemished (Major and Minor),

(3) Fuzzy character,

(4) Ricey character,

(5) Soft character,

(6) Major color defects,

(7) Total color defects (Major and Minor),

(8) Core material,

(9) Fragments,

(10) Loose leaves, and

(11) Mechanical damage.

§ 52.727 Requirements for classified quality factors.

TABLE I.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN CLUSTERS STYLE BASED ON 50 UNITS OF PRODUCT FOR 13 SAMPLE UNITS, 50×13=650 UNITS

Sample units × Sample unit size			1×50	3×50	6×50	13×50	21×50	29×50
Units of product			50	150	300	650	1050	1450
Defects	AQL	TOL						
	Grade A		Acceptance numbers					
Major Blemished	3.8	5.0	4	9	17	33	50	67
Total Blemished (Major & Minor)	8.2	10.0	7	18	33	65	101	137
Fuzzy Character	1.3	2.0	2	4	7	13	20	26
Ricey Character	8.2	10.0	7	18	33	65	101	137
Soft Character	0.612	1.0	1	2	4	7	10	14
Major Color Defect	0.612	1.0	1	2	4	7	10	14
Total Color Defect (Major & Minor)	6.4	8.0	6	15	26	52	80	108
Core Material	2.17	3.0	3	6	11	20	31	41
Fragments	3.8	5.0	4	9	17	33	50	67
Mechanical Damage	8.2	10.0	7	18	33	65	101	137
Loose Leaves (each piece)	2.17	3.0	3	6	11	20	31	41
	Grade B		Acceptance numbers					
Major Blemished	8.2	10.0	7	18	33	65	101	137
Total Blemished (Major & Minor)	13.0	15.0	10	26	48	98	154	209
Fuzzy Character	6.4	8.0	6	15	26	52	80	108
Ricey Character	13.0	15.0	10	26	48	98	154	209
Soft Character	2.9	4.0	3	8	13	26	39	53
Major Color Defect	3.8	5.0	4	9	17	33	50	67
Total Color Defect (Major & Minor)	13.8	16.0	11	27	51	104	163	221
Core Material	3.8	5.0	4	9	17	33	50	67
Fragments	8.2	10.0	7	18	33	65	101	137
Mechanical Damage	17.6	20.0	13	34	63	130	205	279
Loose Leaves (each piece)	6.4	8.0	6	15	26	52	80	108

TABLE II.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN NUGGETS OR SMALL CLUSTERS STYLE BASED ON 100 GRAMS OF PRODUCT FOR 13 SAMPLE UNITS, 100×13=1300 UNITS

Sample units × Sample unit size			1×100	3×100	6×100	13×100	21×100	29×100
Grams of product			100	300	600	1300	2100	2900
Defects	AQL	TOL						
	Grade A		Acceptance numbers (Grams)					
Major Blemished	3.8	5.0	7	17	31	61	94	127
Total Blemished (Major & Minor)	8.2	10.0	13	33	61	123	194	263
Fuzzy Character	1.3	2.0	3	7	12	23	36	48
Ricey Character	8.2	10.0	13	33	61	123	194	263
Soft Character	0.612	1.0	2	4	7	12	19	24
Major Color Defect	2.17	3.0	4	11	19	37	56	76
Total Color Defect (Major & Minor)	8.2	10.0	13	33	61	123	194	263
Core Material	2.17	3.0	4	11	19	37	56	76
Fragments	3.8	5.0	7	17	31	61	94	127
Mechanical Damage	8.2	10.0	13	33	61	123	194	263
Loose Leaves (each piece)	3.8	5.0	7	17	31	61	94	127
	Grade B		Acceptance numbers (Grams)					
Major Blemished	8.2	10.0	13	33	61	123	194	263

TABLE II.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN NUGGETS OR SMALL CLUSTERS STYLE BASED ON 100 GRAMS OF PRODUCT FOR 13 SAMPLE UNITS, 100×13=1300 UNITS—Continued

Total Blemished (Major & Minor)	13.0	15.0	18	48	91	189	298	407
Fuzzy Character	6.4	8.0	10	26	48	98	153	208
Ricey Character	13.0	15.0	18	48	91	189	298	407
Soft Character	2.9	4.0	6	13	24	48	74	99
Major Color Defect	6.4	8.0	10	26	48	98	153	208
Total Color Defect (Major & Minor)	13.8	16.0	19	51	96	200	316	430
Core Material	2.17	3.0	4	11	19	37	56	76
Fragments	3.8	5.0	7	17	31	61	94	127
Mechanical Damage	17.6	20.0	24	63	121	251	398	544
Loose Leaves (each piece)	6.4	8.0	10	26	48	98	153	208

§ 52.728 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Products" (7 CFR 52.1 through 52.83).

§ 52.729 Acceptance criteria.

(a) *Style.* A lot of frozen cauliflower, is considered as meeting the requirements for style if the requirements in § 52.723, as applicable, are not exceeded.

(b) *Quality Factors.* A lot of frozen cauliflower is considered as meeting the requirements for quality if:

(1) The prerequisites specified in § 52.726 are met; and

(2) The Acceptance Numbers in Table I or II in § 52.727, as applicable, are not exceeded.

(c) *Single Sample Unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting requirements for quality and style if:

(1) The prerequisites specified in § 52.726 are met; and

(2) The Acceptable Quality Levels (AQL's) in Tables I & II in § 52.723 and § 52.727, as applicable, are not exceeded.

Dated: November 20, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–28632 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB52

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend the regulations governing disclosure of loan information. The FCA proposes to remove the requirement that Farm Credit institutions give borrowers 10 days prior notification of a change in the interest rate on their variable rate loans and replace it with a 10-day post notification. This action would reduce the burden on institutions of a delay in interest rate changes while still providing borrowers with timely notice of a change. The proposed regulation would also make a technical amendment regarding eligible borrower stock.

DATES: Comments should be received on or before December 26, 1995.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Robert Child, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Joy E. Strickland, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4019, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 614.4367(c)(3)requires qualified lenders [1] to provide written notification to borrowers of a change in the interest rates on their adjustable rate loans. For decreases in rates, the notification must be provided not later than the effective date of the decrease. For increases in rates, the notice must be provided not later than 10 days before the effective date of the increase in the rate.

On June 23, 1993, the FCA Board published a "Statement on Regulatory Burden" (58 FR 34003) that requested comments regarding how the FCA could lessen the regulatory burden on Farm Credit institutions. In response, three institutions commented that the 10-day prior notification requirement was a burden that should be addressed by the Agency. One institution commented that the prior notification was a burden for variable rate loans that are tied to an external index, such as the prime rate, because borrowers have ready access to timely information about changes in such indexes. The other two commenters objected to the requirement for advance notification of borrowers for all variable rate loans, including those not tied to an external index.

The FCA is cognizant that delaying an adjustment in a variable interest rate can result in losses to an institution in situations in which an index increases or funding costs increase, but the institution is prohibited from increasing the interest rate charged to borrowers until a waiting period expires. In addition, the FCA recognizes that there are costs associated with mailing written notification of changes in interest rates. There may also be an unnecessary burden associated with the prior notice requirement where increases and decreases in loan rates are tied to indexes that are readily available in financial publications. The FCA considered these factors in attempting to balance the need of borrowers for timely information and the burden on Farm Credit institutions.

[1] A qualified lender is: (1) A Farm Credit institution that makes loans as defined by § 614.4366(e), except a bank for cooperatives; and (2) each other entity described in section 1.7(b)(1)(B) of the Farm Credit Act of 1971, as amended (Pub. L. 92–171), but only with respect to loans discounted or pledged under section 1.7(b)(1) of the Act. See, Act, § 614.4366(g).

In consideration of the competing aims of reducing burden and providing timely information to borrowers, the FCA proposes to modify the notification requirements in § 614.4367. The proposed amendment would require written notification to be provided to borrowers with adjustable rate loans not later than 10 days *after* a change in the interest rate on the loans. Thus, for decreases in rates, the proposal would change the notification from not later than the effective date of the change, to not later than 10 days after the decrease. More significantly, the proposal would change the notification requirements for increases in interest rates from 10 days advance notification to 10 days after the change in rates. The FCA is proposing to change the time period applicable to both notices of increases and decreases in order to have a single notification, and thus simplify the requirement for all changes in adjustable interest rates.

The FCA believes that a 10-day post notification will provide borrowers with timely information on rate changes and will significantly reduce the burden on institutions, including the costs associated with delaying interest rate changes. Savings to lenders ultimately may be passed on to borrowers in the form of lower interest rates; however, the absence of a prior notice is a disadvantage to individual borrowers because they will not be in a position to react as quickly to refinancing opportunities. The disadvantage should be minimal, however, because borrowers have ready access to changes in financial markets and trends in interest rates through the news media and other sources. Administered rate loans have historically followed changes in the prime rate because the costs of funds to the associations generally follow shifts in market rates. Borrowers who follow the interest rate market would seldom be surprised by a change in interest rates charged by associations.

Although the FCA believes that the proposal is an appropriate balance between the needs of the institutions and borrowers, the FCA seeks comment on several issues. First, the FCA seeks comment on whether notices of rate changes tied to publicly available external indexes should be required within 30 days, rather than 10 days as proposed. Specifically, would permitting a longer time for such notices accrue additional cost-savings to System lenders that would exceed the potential cost to borrowers of added delay in receiving notice of the rate increase? Such cost savings may occur, for example, if lenders regularly send monthly statements to a significant number of borrowers having variable rate loans tied to an external index. In these situations, the notification of rate increase could be incorporated in the monthly statement, thereby eliminating the need for a separate notice. Second, is a notice necessary for decreases in interest rates, and if so, is 10 days or 30 days a more appropriate time limit?

The FCA is also proposing a technical amendment to § 614.4367(a)(4) which addresses disclosures to purchasers of protected eligible borrower stock. Because only stock in existence at the time of enactment of the Agricultural Credit Act of 1987 (Pub. L. 100–233, Jan. 6, 1988) or stock issued within 9 months of enactment meets the definition of eligible borrower stock in section 4.9A of the Act, no further eligible borrower stock may be issued. Thus, all stock issued by Farm Credit institutions since 1988 is at risk. The proposal would delete the reference to eligible borrower stock in § 614.4367(a)(4) as unnecessary.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4014a, 4104b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9., 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2123, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart K—Disclosure of Loan Information

§ 614.4367 [Amended]

2. Section 614.4367 is amended by removing the words "Except with respect to eligible borrower stock under section 4.9A of the Act," and capitalizing the word "a" in paragraph (a)(4); and by removing the words "the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase" and adding in its place the words "10 days after the effective date of a change" in the second sentence of paragraph (c)(3).

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28586 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

12 CFR Part 615

RIN 3052–AB68

Funding and Fiscal Affairs, Loan Policies and Operations, Funding Operations; Foreign Denominated Debt

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA) requests public comment through an Advance Notice of Proposed Rulemaking (ANPRM) regarding the issuance of debt securities of the Farm Credit System (System) denominated in foreign currencies. The Federal Farm Credit Banks Funding Corporation (Funding Corporation), on behalf of the Farm Credit banks (banks), is considering offering Federal Farm Credit Banks Consolidated Systemwide debt securities (Systemwide debt securities) outside of the United States under a proposed Global Debt Program (Program). Under the Program, Systemwide debt issuances could be denominated in foreign currencies. The FCA specifically requests public comment regarding any safety and soundness risks that may be posed by the issuance of foreign denominated Systemwide debt securities.

DATES: Written comments must be received on or before January 31, 1996.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Senior Financial Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

In a separate action published elsewhere in today's issue of the **Federal Register**, the FCA issued an interim regulation to clarify the Funding Corporation's statutory authority to use more than one fiscal agent to facilitate the sale of Systemwide debt securities. The interim regulation permits the Funding Corporation to employ fiscal agents that are not Federal Reserve Banks for issuance of dollar denominated Systemwide debt securities in foreign capital markets. The interim regulation provides guidance on two components of the Funding Corporation's proposed three-part Global Debt Program.[1] This ANPRM requests comments regarding the final part of the Program, pursuant to which the banks could issue foreign denominated Systemwide debt securities. Under the Program, non-dollar denominated Systemwide debt would be issued exclusively outside the United States using fiscal agents other than the Federal Reserve Banks.[2] Secondary market trading and safekeeping would be handled through international clearing systems. Other GSEs have developed similar global debt programs, and have issued non-dollar denominated global debt, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Banks (FHLBs), and the Student Loan Marketing Association (Sallie Mae).[3]

II. Authority for Issuance of Foreign Currency Debt

As noted in the preamble discussion of the FCA's companion interim rule on Global Debt issuance, the Farm Credit Act of 1971, as amended, (Act)[4] provides no specific guidance on the issuance of Systemwide debt securities outside the United States, but grants the banks broad authority to issue Systemwide debt securities to fund their operations.[5] While no provision of the Act requires Systemwide debt securities to be denominated in U.S. dollars, an FCA rule specifies that Systemwide debt securities shall be issued in denominations of $1000 and $5000 or multiples thereof. *See* 12 CFR 615.5450. The specification of dollar denominations in this regulation can be interpreted to preclude the Funding Corporation from issuing foreign denominated Systemwide debt securities.

III. Assessment of Regulatory Needs

As demonstrated by its separate approval of global offerings of dollar denominated Systemwide debt securities, the FCA believes that the Act permits the agency latitude to recognize the increasing globalization of the capital markets and the needs of the System to adapt its funding techniques to changing markets. Moreover, absent overriding safety and soundness considerations, the FCA is disinclined to adopt a technical interpretation of its regulations that would prevent the banks from pursuing cost-effective and efficient methods of raising funds in the capital markets. This ANPRM is intended to assist the FCA in identifying potential safety and soundness risks in the issuance of foreign denominated Systemwide debt and in determining the need for regulatory guidance regarding this aspect of the Program.

IV. Potential Safety and Soundness Issues

The principal form of risk to an issuer of foreign denominated debt is foreign exchange risk. Before System banks and associations can loan the proceeds of sale of foreign denominated Systemwide debt securities to American farmers, ranchers, aquatic producers, rural homeowners, cooperatives, and rural utilities, the proceeds must be converted into U.S. dollars. Moreover, while the foreign denominated Systemwide debt securities are outstanding, the banks periodically must make payments in foreign currency of principal and interest to securityholders. In these instances when currency exchange transactions are necessary, fluctuations in currency exchange rates pose foreign exchange risks for the banks.

The banks may use various techniques to hedge against this foreign exchange risk. One commonly used technique is to execute a currency swap agreement under which another party agrees to supply the amount of foreign currency necessary to make future payments of principal and interest on debt obligations. While a currency swap agreement may provide an effective hedge against foreign exchange risk, the success of the currency swap depends on whether the counterparty will fulfill its obligations under the agreement. Thus, where foreign currency swap agreements are used to hedge against foreign exchange risk, "counterparty risk" becomes the most significant type of risk. Other techniques for hedging against foreign exchange risk, such as options and futures contracts, may present other risks that need to be identified.

In light of the potential exchange, counterparty, and other risks that may be involved in the issuance of foreign denominated Systemwide debt securities, the FCA is requesting additional information from the Funding Corporation, Farm Credit institutions, and other interested parties regarding the existence and containment of such risks. In particular, the FCA requests that comments address the following questions:

A. General

1. Under what economic and market scenarios will the banks consider it advantageous to assume the additional risks of issuing foreign denominated Systemwide debt securities instead of raising loan funds through the sale of dollar denominated debt?

2. How should the FCA adapt its current debt approval procedures to encompass foreign currency debt offerings?[6]

B. Currency Selection and Risk

1. What criteria should be used to determine suitability of particular foreign currencies for Systemwide debt issuances?

2. What internal procedures and approvals should the System use to apply such criteria?

3. Should there be limits on total System and individual bank exposure to each foreign currency?

4. How could total System and individual bank exposure to foreign currencies be monitored and who should have the responsibility within the System to do so?[7]

5. Describe any other controls that can be employed to minimize or manage foreign currency exposure?

C. Counterparty Risk

1. What standards should be used to establish, evaluate, and manage counterparty risk in currency swaps undertaken to offset foreign currency exposure?

2. What role should the Funding Corporation play in monitoring total System risk exposure to counterparties in currency swap transactions and otherwise?

3. What procedures should be established to demonstrate that the banks have adequate management expertise and internal controls to effectively evaluate counterparty risk prior to engaging in foreign currency deals?

D. Lead Managers and Performance Risk

After a foreign currency debt offering has been initiated and the securities have been allocated to the global dealers, performance risk becomes largely the responsibility of the "lead manager(s)" or lead global dealer(s). Lead managers can take back securities for their own account or reallocate them to other global dealers for sale.

Are there any risks unique to the selection of lead managers for non-dollar denominated debt offerings? If so, how should lead managers be selected for such offerings?

E. Other Risks of Non-dollar Denominated Offerings

There may be other risks of non-dollar denominated offerings, such as daylight overdrafts, market exposure, and performance of other agents (*e.g.*, paying, settlement, transfer, exchange, calculation agents).

1. How should such risks be managed and quantified?

2. What factors should be considered in developing criteria for selection and performance of other agents and who should approve their activities?

F. Other Comments and Information

The FCA invites any other pertinent comments and information that may assist it in developing appropriate guidance in the area of foreign denominated Systemwide debt security offerings.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration.

[FR Doc. 95–28585 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

[1] The proposed Global Debt Program is described in greater detail in connection with the interim regulation published separately in today's issue of the **Federal Register**.

[2] The Federal Reserve Banks may not act as fiscal agent for Government Sponsored Enterprise (GSE) debt obligations that are issued exclusively outside the United States.

[3] During the past year, FNMA and the FHLBs sold foreign debt securities in Deutche marks. Sallie Mae sold Japanese yen-denominated bonds.

[4] 12 U.S.C. 2001–2279bb–6.

[5] *See* sections 1.5(10), 3.1(10), and 4.2 of the Act.

[6] *See* 12 CFR 615.5101(d).

[7] The banks currently maintain, on a voluntary basis, a listing of investment credit exposures to financial and corporate institutions. This listing is prepared and published by the Funding Corporation.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 101, 133, and 135

Administration, Index to Approved SBA Reporting and Recordkeeping Requirements, and Intergovernmental Review of Small Business Administration Programs and Activities

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform directive, the Small Business Administration has completed a page-by-page and line-by-line review of all of its existing regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize all of present Parts 101, 133, and 135 and consolidate them into one new rule. As part of this streamlining process large portions of present Part 101 will be removed from the regulations and published in the U.S. Government Manual. Present Parts 133 and 135 will be revised, updated and consolidated with Part 101. Finally, the remaining sections have been rewritten into a straightforward "plain English" style of writing.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader (101), U.S. Small Business Administration, 409 3rd Street, SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cheri C. Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to Federal agencies directing them to simplify their regulations and eliminate those that are unnecessary. In response to this directive SBA completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated.

The proposed rule would revise, amend, reorganize, and consolidate all of present 13 CFR Parts 101, 133, and 135. This proposed new consolidated rule would reorganize Part 101 into four subparts and renumber all remaining sections to reflect this new configuration. Subpart "A" would cover the Agency's purpose, management, field office functions, use of its seal, the application of Federal law to SBA programs and activities, and what forms are authorized for public use. SBA proposes to update, streamline and revise these provisions. SBA proposes to eliminate the listing of specific program functions, field office locations and all internal delegations of authority from Part 101 as inappropriate for inclusion in regulatory form. The U.S. Government Manual (a special edition of the **Federal Register**) contains a listing of program functions. As required by the Freedom of Information Act, SBA proposes to periodically publish field office locations and all internal delegations of authority as a notice in the **Federal Register**. Consistent with this change SBA proposes to include in the list of internal delegations of authority its designation of a debarring/suspending official for contractors doing business directly with SBA. In addition, and pursuant to new OMB regulations (see the **Federal Register**, Vol. 60, No. 110, pp. 30438–30456) SBA proposes to eliminate the list of specific SBA reporting and recordkeeping requirements approved by the Office of Management and Budget (OMB) contained in present Part 133. In lieu of this Part, SBA proposes to periodically publish an amended list of OMB approved reporting and recordkeeping requirements utilized by SBA as a notice in the **Federal Register**.

SBA proposes to eliminate present § 101.6, "Litigation", as unnecessary and to amend present § 101.9, which waives or limits the use of certain existing exemptions to the public participation requirements of the Administrative Procedure Act (APA), has also been amended. SBA proposes to eliminate the waiver of the "agency management and personnel" exemption and the limitations placed on the use of the "good cause" exemption as unnecessary and overbroad. Congress has determined that agency management and personnel matters have no significant substantive impact on the public and has accordingly exempted them from the APA. By eliminating the agency management and personnel exemption, SBA proposes to act consistently with the Congressional determination. SBA will continue to have the right to use the public participation procedures of APA for management and personnel matters if the SBA deems it necessary or desirable. The limitations presently placed on the use of the "good cause" exemption are unnecessary since SBA does not promulgate the type of regulations that require the use of this exemption. However, SBA proposes to maintain the exemption for matters relating to "public property, loans, grants, benefits, or contracts" as necessary and appropriate.

Subpart "B" would cover and update the provisions concerning the employment of fee counsel by SBA. Subpart "C" would provide an overview of the authority of the SBA Inspector General under the Inspector General Act of 1978 and eliminate references to the investigatory powers of the Administrator under the Small Business Act. Congress transferred those powers

to the Inspector General's Office in 1978. Subpart "C" would also provide guidance on the service of Inspector General subpoenas consistent with current policy. SBA proposes to eliminate present sections 101.8–4 "Non-Public formal investigation proceedings," 101.8–5 "Right to copy of data or transcript of testimony," and 101.8–8 "Information obtained in investigations," as unnecessary and redundant. Regulations promulgated under the Privacy Act, the Freedom of Information Act, the Inspector General Act, and the Trade Secrets Act, as well as the Federal Rules of Civil and Criminal Procedure, already provide regulatory guidance on these matters. SBA proposes to eliminate present sections 101.8–6, 101.8–7, and 101.8–10 relating to counsel for witnesses and witness fees as outdated and obsolete.

Subpart "D" would cover intergovernmental partnership procedures under the Intergovernmental Cooperation Act. These provisions are currently contained in present Part 135. This proposed subpart would streamline present Part 135 and consolidated it into Part 101, but without changing existing procedures. SBA proposes to eliminate present section 135.2, the definition section, as repetitive and unnecessary with the exception of the definition of the word "state". SBA added that definition in proposed section 101.402. SBA proposes to eliminate present sections 135.4 and 135.5, relating to the responsibilities of the Administrator, were eliminated since they are internal to SBA (and are more appropriate for Agency Standard Operating Procedures) and simply repeat the provisions of Executive Order No. 12372, as amended. SBA also proposes to eliminate "reserved" sections.

SBA proposes to assign to change the numbers assigned to all sections in the new rule to conform to the other parts of Title 13, to rewrite the new rule in the more straightforward and customer-oriented "plain English" style of writing in order to assist the public in reading and better understanding SBA's regulations. Finally, the proposed rule establishes consistency in the use of certain titles. For example, SBA proposes to change references to "the Agency," "the Small Business Administration," and "the Administration," in present Part 101 to "SBA," and references to "Central Office," to "Headquarters." SBA has also established uniformity in punctuation and capitalization.

Section by Section Analysis

The following is an analysis of the new provisions of SBA's regulations and a discussion of the substantive effect of these changes, if any—

Proposed Section 101.100: SBA has expanded this provision from the present paragraph 101.1(a) to include a reference to SBA's role in providing financial, contractual, and business development assistance to small business concerns. The U.S. Government manual already publishes a detailed description of SBA's program functions and, therefore, the same information needs not be included in SBA's regulations.

Proposed Section 101.101: This provision would combine the description of management contained in present paragraph 101.1(c) with the list of the Administrator's responsibilities contained in present section 101.2. SBA proposes to rewrite the provision in plain English. SBA proposes to place the reference to the Deputy Administrator into a separate paragraph and to note that the Deputy is now appointed by the President.

Proposed Section 101.102: This section would set forth the current address of SBA's Headquarters in Washington, DC, which is presently in § 101.1(c).

Proposed Section 101.103: SBA proposes to abolish present section 101.3–1, which contains the list of SBA field offices, their addresses, phone numbers, and areas served. Instead, SBA will periodically publish this information as a notice in the **Federal Register**. The proposed provision refers the reader to the **Federal Register** and lists SBA's 800 number so customers can quickly and easily obtain the address and phone number of the SBA field office near them.

Proposed Section 101.104: This provision would be substantially the same as present section 101.3. However, SBA proposes to amend the text to reflect the regional offices' new limited role, the elimination of post-of-duty offices, and the existence of disaster area offices. SBA has rewritten proposed section in plain English.

Proposed Section 101.105: This provision is substantially the same as present section 101.5. However, SBA has added the Disaster Area Directors to the list of SBA officials with the authority to use SBA's official seal and rewritten the section in plain English.

Proposed Section 101.106: SBA has rewritten this provision, which is currently in § 101.1, in plain English and has made minor substantive changes to reflect recent case law concerning attempts to use state or local law to defeat liability incurred in obtaining or assuring SBA benefits or assistance. SBA has added contracts or agreements to which SBA is a party, unless explicitly provided otherwise (see proposed § 101.106(b)(4)) to the list of documents or transactions that are construed and enforced in accordance with Federal law.

Proposed Section 101.107: SBA has consolidated present section 101.4 with present 13 CFR Part 133 in this provision and has rewritten it in plain English. SBA proposes to eliminate present § 133.1(a), a statement of intent. Moreover, pursuant to new OMB regulations, SBA proposes to eliminate the list of specific SBA reporting and recordkeeping requirements approved by OMB (present § 133.1(c)). Instead, SBA will periodically publish an amended list as a notice in the **Federal Register**.

Proposed Section 101.108: This provision is an amended version of present § 101.9. Presently, through § 101.9, SBA has waived the exemptions to the public participation requirements of the Administrative Procedure Act (5 U.S.C. 553) contained in subparagraph (a)(2), for matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." Consistent with other Federal departments and agencies that have voluntarily waived exemptions to the Act, SBA has determined that the only exemption that should exclude substantive rule-making from the public participation procedures of the APA is the exemption relating to "agency management or personnel." Consequently, the proposed provision would maintain the waiver for matters relating to public property, loans, grants, benefits, or contracts, while elliminating the rest of present § 101.9.

Proposed Section 101.109: With the adoption of the plain English "question and answer" format for many SBA regulations, it was necessary to make it clear that each section heading is to be interpreted as a part of the regulation. This section would state so explicitly.

Proposed Section 101.200: SBA has substantially reduced this provision in size and scope from present § 101.7 (a) & (b), and rewritten it in plain English. SBA eliminated the references to the employment of full time SBA attorneys and the private representation of applicants and borrowers as unnecessary and inconsistent with the purpose of the section.

Proposed Section 101.201: SBA has rewritten this provision, which replaces present § 101.7 (c) & (d), in plain English. However, SBA has not changed the substance of the duties and compensation provisions of the present paragraphs.

Proposed Section 101.300: This provision replaces present section 101.8–1 which fails to mention the investigatory authority granted to the Inspector General of SBA under the Inspector General Act of 1978. This provision states that the Inspector General has full authority to provide policy direction for, and to conduct audits, investigations, and inspections concerning the administration of SBA programs and operations.

Proposed Section 101.301: This provision states that all information or allegations of waste, fraud, or abuse in regard to SBA programs and operations should be directed to the Office of Inspector General.

Proposed Section 101.302: This provision recites the scope of authority, or specific powers, the Inspector General possesses under the Inspector General Act and has been written in plain English.

Proposed Section 101.303: SBA has rewritten this provision in plain English and amended it to reflect current policy relating to the service of Inspector General subpoenas, but it is otherwise the same as present § 101.8–9.

Proposed Section 101.400: This provision is an amended version of present section 135.1, and states the purpose of the regulations contained in proposed Subpart D. SBA has rewritten it in plain English.

Proposed Section 101.401: This provision is the same as present section 135.3 with only minor changes.

Proposed Section 101.402: This provision is the same as present section 135.6 except that SBA has rewritten it in plain English and has defined "state" at the end of the section.

Proposed Section 101.403: This provision combines present sections 135.7 and 135.8 into one new section concerning the notice and comment procedures established by SBA under the Intergovernmental Cooperation Act. SBA has rewritten the proposed section in plain English.

Proposed Section 101.404: This provision is the same as present section 135.9 except that SBA has rewritten it in plain English.

Proposed Section 101.405: This provision is the same as present section 135.10 except that it has been rewritten in plain English.

Proposed Section 101.406: This provision is the same as present section 135.11 except that it has been rewritten in plain English.

Proposed Section 101.407: This provision is the same as present section 135.13 except that it has been rewritten in plain English.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order #12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule will consolidate three Parts of SBA's current regulations, move substantial amounts of general organizational information from SBA's regulations to the U.S. Government Manual, and rewrite the remaining provisions into plain English. Contracting opportunities and financial assistance for small business would not be affected by this proposed rule. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. § 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements. For purposes of Executive Order #12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order #12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 101

Administrative practice and procedure; Authority delegations (Government agencies); Investigations; Organization and functions (Government agencies); Reporting and recordkeeping requirements.

13 CFR Part 133

Reporting and recordkeeping requirements.

13 CFR Part 135

Intergovernmental relations.

For the reasons set forth above, SBA hereby proposes to amend 13 CFR Chapter I as follows:

1. Part 101 would be revised to read as follows:

PART 101—ADMINISTRATION

Subpart A—Overview

Sec.

101.100 What is the purpose of SBA?
101.101 Who manages SBA?
101.102 Where is SBA's Headquarters located?
101.103 Where are SBA's field offices located?
101.104 What are the functions of SBA's field offices?
101.105 Who may use SBA's official seal and for what purposes?
101.106 Does Federal law apply to SBA programs and activities?
101.107 What SBA forms are authorized for public use?
101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?
101.109 Do SBA regulations include the section headings?

Subpart B—Employment of Fee Counsel

Sec.

101.200 When does SBA hire fee counsel?
101.201 What are the minimum terms of fee counsel's employment?

Subpart C—Inspector General

Sec.

101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?
101.301 Who should receive information or allegations of waste, fraud, and abuse?
101.302 What is the scope of the Inspector General's authority?
101.303 How are Inspector General subpoenas served?

Subpart D—Intergovernmental Partnership

Sec.

101.400 What is the purpose of this subpart?
101.401 What programs and activities of SBA are subject to this subpart?
101.402 What procedures apply to the selection of SBA programs and activities?
101.403 What are the notice and comment procedures?
101.404 How does the Administrator receive comments?
101.405 How does the Administrator respond to comments?
101.406 What are the Administrator's responsibilities in interstate situations?
101.407 May the Administrator waive these regulations?

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386; sec. 306, Pub. L. 98–270, 98 Stat. 161; Pub. L. 96–511, sec. 5, 94 Stat. 2826 (44 U.S.C. 3512, as amended); 5 U.S.C. 552 as amended; sec. 3(1), Pub. L. 93–386, 88 Stat. 742 (15 U.S.C. 634(b)(11), as amended); Pub. L. 95–452, 92 Stat. 1101 (5 U.S.C. App. 3 secs. 2, 4(a), 6(a), and 9(a)(1)(T), as amended); Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec.

401, Pub. L. 90–577, 82 Stat. 1103 (31 U.S.C. 6506, as amended); unless otherwise noted.

PART 101—ADMINISTRATION

Subpart A—Overview

§ 101.100 What is the purpose of SBA?

The U.S. Small Business Administration (SBA) aids, counsels, assists, and protects the interests of small business concerns, and advocates on their behalf within the Government. It also helps victims of disasters. It provides financial assistance, contractual assistance, and business development assistance. For a more detailed description of the functions of SBA see The United States Government Manual, a special publication of the **Federal Register**, which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

§ 101.101 Who manages SBA?

(a) An Administrator, appointed by the President with the advice and consent of the Senate, manages SBA. The Administrator—

(1) Is responsible to the President and Congress for exercising direction, authority, and control over SBA.

(2) Determines and approves all policies covering SBA's programs to aid, counsel, assist, and protect the interests of the nation's small businesses.

(3) Employs or appoints employees necessary to implement the Small Business Act, as amended, the Small Business Investment Act, as amended, and other laws and directives.

(4) Delegates certain activities, by issuing regulations or otherwise, to Headquarters and field positions (see The United States Government Manual, a special publication of the **Federal Register**, which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

(b) A Deputy Administrator, appointed by the President with the advice and consent of the Senate, serves as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator.

§ 101.102 Where is SBA's Headquarters located?

The Headquarters of SBA is at 409 3rd Street, SW., Washington, DC 20416.

§ 101.103 Where are SBA field offices located?

A list of SBA's field offices with addresses, phone numbers and jurisdictions served is periodically published in the **Federal Register**. You can also obtain the address and phone number of an SBA office to serve you by calling 1–800–8–ASK–SBA or 1–800–827–5722.

§ 101.104 What are the functions of SBA field offices?

(a) *Regional offices.* Regional offices are managed by a Regional Administrator who is responsible to Headquarters. They are located in major cities and have geographical boundaries which cover multi-state areas. Regional offices exercise limited authority over field activities within their region.

(b) *District offices.* District offices are managed by a District Director and are located in cities within a region. District offices are responsible to Headquarters and to a regional office. Within their delegated authority, district offices have authority for—

(1) Conducting all program delivery activities within the district boundaries;

(2) Supervising all branch offices located within the district boundaries; and

(3) Providing subordinate branch offices with the technical capability necessary to execute assigned programs.

(c) *Branch offices.* Branch offices are managed by a Branch Manager and are located in cities within a district. Branch offices are responsible to the district office within whose boundaries it is located. Branch offices execute one or more elements of the business or disaster loan programs and have limited authority for program execution.

(d) *Disaster area offices.* Disaster area offices are managed by an Area Director and are located in cities within defined geographical areas. Disaster area offices are responsible to Headquarters and provide loan services to victims of declared disasters. Temporary disaster offices are often established in areas where disasters have occurred.

(e) *Responsibilities.* Each field office has responsibilities within a defined geographical area as periodically set forth in the **Federal Register**.

§ 101.105 Who may use SBA's official seal and for what purposes?

(a) The SBA's seal shall be in a manner and form set forth as follows:

Note: The seal is not published in this proposed rule, but will appear in the final rule.

(b) The Administrator, Deputy Administrator, General Counsel, Assistant Administrator for Administration, Assistant Administrator for Hearings and Appeals, Associate Administrator for Minority Enterprise Development, Regional Administrators, District Directors, Branch Managers, the Inspector General, and Disaster Area Directors are authorized to—

(1) Certify and authenticate originals and copies of any books, records, papers, or other documents on file within SBA, or extracts taken from them.

(2) Certify the nonexistence of records.

(3) Affix the Seal of SBA to all such certifications, including the purposes authorized by 28 U.S.C. 1733.

§ 101.106 Does Federal law apply to SBA programs and activities?

(a) SBA makes loans and provides other services that are authorized and executed under Federal programs adopted by Congress to achieve national purposes.

(b) The following are construed and enforced in accordance with Federal law—

(1) Instruments evidencing a loan;

(2) Security interests in real or personal property payable to or held by SBA or the Administrator such as promissory notes, bonds, guarantee agreements, mortgages, and deeds of trust;

(3) Other evidences of debt or security;

(4) Contracts or agreements to which SBA is a party, unless expressly provided otherwise.

(c) To the extent feasible, SBA uses local or state procedures, especially for recordation and notification purposes, in implementing and facilitating SBA's loan programs. This use of local or state procedures is not a waiver by SBA of any Federal immunity from any local or state control, penalty, tax, or liability.

(d) No person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, is entitled to claim or assert any local or state law to defeat the obligation incurred in obtaining or assuring such Federal benefit or assistance.

§ 101.107 What SBA forms are approved for public use?

(a) SBA utilizes forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), as amended. You may obtain approved forms for use by the public when applying for or obtaining SBA assistance, or when providing services for SBA, from any field office (*see* § 101.103). You may also use forms which you have prepared yourself, or have obtained from another source, if those forms are identical in every respect to the form approved by OMB for the same purpose.

(b) Any member of the public who has reason to believe any SBA office or agent is in violation of the Public Protection Clause of the Paperwork Reduction Act (44 U.S.C. 3512 and *see* 5 CFR 1320.6) should notify SBA. Direct such comments to the Assistant Administrator for Administration at 409 3rd Street, SW., Washington, DC 20416.

§ 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?

Yes. The public participation requirements prescribed by the Administrative Procedure Act, 5 U.S.C. 553, will be followed by SBA in rulemakings relating to public property, loans, grants, benefits, or contracts.

§ 101.109 Do SBA regulations include the section headings?

Yes. All SBA regulations must be interpreted as including the section headings.

Subpart B—Employment of Fee Counsel

§ 101.200 When does SBA hire fee counsel?

(a) *Business Loans.* SBA may hire fee counsel to represent it in regard to business loans when the volume of activity in an area is not sufficient to require a full-time SBA employee, or the area is too remote for economical use of a full-time SBA employee.

(b) *Disaster Loans.* SBA may hire fee counsel in regard to disaster loans when the disaster presents an emergency and a volume of activity that cannot be promptly and economically serviced by available SBA employees.

§ 101.201 What are the minimum terms of fee counsel's employment?

(a) Fee counsel must perform all requested work in compliance with SBA's regulations, policies, and instructions, and take such action as is legally required under the Small Business Act, the Small Business Investment Act, and other laws applicable to SBA.

(b) Fee counsel must adhere to the highest standards of professional conduct and maintain appropriate confidentiality proper to the attorney-client relationship.

(c) Fee counsel acts under the supervision of the SBA General Counsel (and designees.)

(d) Fee counsel usually is compensated at an hourly rate as approved by SBA. Contingency fee agreements may occasionally be used if approved by the General Counsel.

(e) Either party may terminate the employment upon written notice.

Subpart C—Inspector General

§ 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) authorizes SBA's Inspector General to provide policy direction for, and to conduct, supervise, and coordinate such audits, investigations, and inspections relating to the programs and operations of SBA as appears necessary or desirable.

§ 101.301 Who should receive information or allegations of waste, fraud and abuse?

The Office of Inspector General should receive all information or allegations of waste, fraud, or abuse regarding SBA programs and operations.

§ 101.302 What is the scope of the Inspector General's authority?

To obtain the necessary information and evidence, the Inspector General (and designees) have the right to:

(a) Have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to SBA and relating to SBA's programs and operations;

(b) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence;

(c) Administer oaths and affirmations or take affidavits; and

(d) Request information or assistance from any Federal, state, or local government agency or unit.

§ 101.303 How are Inspector General subpoenas served?

(a) Service of subpoenas may be effected by any of the following means—

(1) If by mail, a copy of the subpoena must be addressed to the person, partnership, corporation, or unincorporated association to be served at a residence or usual dwelling place, or a principal office or place of business, and mailed first class by registered or certified mail, (postage prepaid, return receipt requested), or by a commercial or U.S. Postal Service overnight or express delivery service.

(2) If by personal delivery, a copy of the subpoena must be delivered to the person to be served, or to a member of the partnership to be served, or to an executive officer or a director of the corporation or unincorporated association to be served, or to a person authorized by appointment or by law to receive process for the person or entity named in the subpoena.

(3) If by delivery to an address, a copy of the subpoena must be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association to be served, or at the residence or usual dwelling place of the person, member of the partnership, or officer or director of the corporation or unincorporated association to be served, with someone of suitable age and discretion.

(b) Proof of service—

(1) When service is by registered, certified, overnight, or express mail, it is complete upon delivery of the document by the Postal Service or commercial service.

(2) The return Postal Service receipt for a document that was registered or certified and mailed, the signed receipt for a document delivered by an overnight or express delivery service, or the Return of Service completed by the individual serving the subpoena by personal delivery shall be proof of service.

Subpart D—Intergovernmental Partnership

§ 101.400 What is the purpose of this subpart?

(a) This subpart implements section 401 of the Intergovernmental Cooperation Act. Section 401 creates intergovernmental partnership and strengthens Federalism by relying on state processes and state, area-wide, regional, and local coordination for the review of proposed Federal financial assistance and direct Federal development.

(b) While guiding SBA's management, this subpart does not create any right or benefit enforceable at law against SBA or its officers or employees.

§ 101.401 What programs and activities of SBA are subject to this subpart?

The Administrator publishes in the **Federal Register** a list of SBA's programs and activities that are subject to this subpart.

§ 101.402 What procedures apply to the selection of SBA programs and activities?

(a) A state may—

(1) Select any program or activity published in the **Federal Register** under § 101.401 for inter-governmental review (each state, before selecting programs and activities, should consult with local elected officials. A state adopting a process must notify the Administrator of the SBA programs and activities selected); and

(2) Notify the Administrator of changes in its selections at any time. For each change, the state submits to the Administrator an assurance that it

consulted with local elected officials regarding the change.

(b) SBA may establish deadlines by which states must inform the Administrator of changes in their program selections.

(c) After receiving notice of a state's selections, the Administrator uses a state's process as soon as feasible depending on individual programs and activities.

(d) "State" means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 101.403 What are the notice and comment procedures?

(a) The Administrator provides notice to directly affected state, area-wide, regional, and local entities in a state of proposed SBA financial assistance or direct SBA development if—

(1) The state has not adopted a process under Executive Order No. 12372; or

(2) The assistance or development involves a program or activity not selected for the state process.

(b) Notice may be made by publication in the **Federal Register** or other means as SBA deems appropriate.

(c) Except in unusual circumstances the Administrator gives state processes or directly affected state, area-wide, regional, and local officials and entities at least 60 days to comment on proposed SBA financial assistance or direct SBA development.

(d) In cases where SBA delegates the review, coordination, and communication authority under this subpart, this section also applies.

§ 101.404 How does the Administrator receive comments?

(a) The Administrator follows the procedures of § 101.405 if—

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 101.402(a).

(b)(1) The single point of contact is not obligated to transmit comments from state, area-wide, regional, or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, area-wide, regional, and local officials and entities may submit comments to SBA.

(d) If a program or activity is not selected for a state process, state, area-wide, regional, and local officials and entities may submit comments to SBA. In addition, if a state process recommendation for a non-selected program or activity is transmitted to SBA by the single point of contact, the Administrator follows the procedures of § 101.405.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under this subpart and for which the Administrator is not required to apply the procedures of § 101.405 when such comments are provided by a single point of contact directly to SBA by a commenting party.

§ 101.405 How does the Administrator respond to comments?

(a) If a state process provides a recommendation to SBA through its single point of contact, the Administrator

(1) Accepts the recommendation; or

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in a form the Administrator deems appropriate. The Administrator may also supplement the written explanation by telephone or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that—

(1) SBA will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) Because of unusual circumstances the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing.

§ 101.406 What are the Administrator's responsibilities in interstate situations?

The Administrator is responsible for—

(a) Identifying proposed SBA financial assistance and direct SBA development that have an impact on interstate areas;

(b) Notifying appropriate officials and entities in states which have adopted a process and selected an SBA program or activity;

(c) Making efforts to identify and notify the affected state, area-wide, regional, and local officials and entities in states that have not adopted a process or selected an SBA program or activity;

(d) Using the procedures of § 101.405 if a recommendation of a designated area-wide agency is transmitted by a single point of contact in cases in which the review, coordination, and communication with SBA has been delegated; and

(e) Using the procedures of § 101.405 if a state process provides a state recommendation to SBA through a single point of contact.

§ 101.407 May the Administrator waive these regulations?

The Administrator may waive any provision of §§ 101.400 through and including 101.406 in an emergency.

PARTS 133 AND 135—[REMOVED]

2. Parts 133 and 135 are removed.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28445 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Parts 102 and 137

Freedom of Information and Privacy Act of 1974

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would delete duplicative statutory and unnecessary language and rewrite the remainder in plain English. There are some substantive changes, as follows:

The proposed rule revises the Agency's regulations implementing Executive Order 12600 and would require SBA to give submitters of information the opportunity, at the time they submit the information, to identify information the disclosure of which would cause them substantial competitive harm.

The rule would establish a procedure for appealing FOIA fee determinations which parallels the procedure for appealing a decision to withhold information.

The rule would remove the Program Official from the Privacy Act management function and vest all responsibilities in Systems Managers and the Privacy Act Officer.

Part 137 deals with the treatment of classified information. Since SBA generates no such documents, SBA regulations need deal only with classified information which SBA acquires from other Agencies. The rule would place the needed portion of Part 137 in Part 102 and eliminate the remainder.

There are other, minor changes detailed below.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, (102), Small Business Administration, 409 3rd Street SW., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Timothy C. Treanor, Attorney Advisor, Office of General Counsel, at (202) 205–6885.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to all federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated.

SBA reorganized and simplified Part 102. A conversion table of distribution follows:

Present part 102	Proposed part 102
§ 102.1(a)	§ 102.1
§ 102.1(b)	deleted
§ 102.2	deleted
§ 102.3(a)	deleted
§ 102.3(b)	deleted
§ 102.3(c)	deleted
§ 102.3(d)	deleted
§ 102.3(e)	deleted
§ 102.3(f)	deleted
§ 102.3(g)	deleted
§ 102.3(h)	deleted
§ 102.3(i)	deleted
§ 102.3(j)	deleted
§ 102.3(k)	deleted
§ 102.3(l)	§ 102.10
§ 102.4(a)	deleted
§ 102.4(b)	§ 102.2(a)
§ 102.4(c)	§ 102.2(b)
§ 102.4(d)	deleted
§ 102.4(e)(1)	§ 102.3(a)
	§ 102.3(c)
§ 102.4(e)(2)	§ 102.4(b)
§ 102.4(e)(3)	§ 102.5
§ 102.5(a)	deleted
§ 102.5(b)(1)	§ 102.6(a)
§ 102.5(b)(2)	deleted
§ 102.5(b)(3)	§ 102.6(b)
§ 102.5(c)	deleted
§ 102.5(d)	§ 102.6(a)
	§ 102.6(d)(1)(i)
	§ 102.6(d)(2)(i)
§ 102.5(e)	§ 102.7
§ 102.5(f)	§ 102.6(d)(1)(ii)
	§ 102.6(d)(2)(ii)
§ 102.5(g)	§ 102.6(d)(4)
§ 102.5(h)	§ 102.6(f)
§ 102.5(i)(1)	§ 102.6(d)(1)(i)
	§ 102.6(d)(2)(i)
§ 102.5(i)(2)	§ 102.6(c)
§ 102.5(i)(3)	deleted
§ 102.5(i)(4)	deleted
§ 102.6(a)	deleted
§ 102.6(b)	§ 102.9(b)
§ 102.6(c)	§ 102.9(c)(1)
§ 102.6(d)	§ 102.9(a)
§ 102.6(e)(1)	§ 102.9(d)
§ 102.6(e)(2)	§ 102.9(f)(1)
§ 102.6(e)(3)	§ 102.9(e)
§ 102.7(a)(1)	deleted
§ 102.7(a)(2)	deleted
§ 102.7(a)(3)	deleted
§ 102.7(a)(4)	deleted
§ 102.7(a)(5)	§ 102.8(d)
§ 102.7(a)(6)	§ 102.8(b)(1)
§ 102.7(a)(7)	§ 102.8(b)(2)
§ 102.7(a)(8)	§ 102.8(b)(4)
§ 102.7(b)(1)	§ 102.8(a)(1)
§ 102.7(b)(2)	§ 102.8(a)(2)
§ 102.7(b)(3)	§ 102.8(a)(3)
§ 102.7(b)(4)	§ 102.8(a)(4)
§ 102.7(b)(5)(i)	§ 102.8(a)(5)
§ 102.7(b)(5)(ii)	§ 102.8(a)(6)
§ 102.7(b)(6)	§ 102.8(b)(uosp)
	§ 102.8(c)
	§ 102.8(e)
	§ 102.8(h)
§ 102.7(b)(7)	§ 102.8(g)
§ 102.7(c)(1)	§ 102.8(d)
§ 102.7(c)(2)	§ 102.8(b)(uosp)
	§ 102.8(b) (1–3)
§ 102.7(c)(3)	§ 102.8(b)(uosp)
	§ 102.8(b)(4)
§ 102.7(c)(4)	§ 102.8(c)
§ 102.7(d)(1)	§ 102.8(l)(1)
§ 102.7(d)(2)	§ 102.8(m)
§ 102.7(d)(3)	§ 102.8(n)
§ 102.7(d)(4)(i)	§ 102.8(i)
§ 102.7(d)(4)(ii)	§ 102.8(i)
§ 102.7(d)(4)(iii)	§ 102.3(c)
§ 102.7(d)(5)	deleted
§ 102.7(e)	§ 102.8(o)
§ 102.8	§ 102.13
§ 102.20(a)	§ 102.20(a)(1)
§ 102.20(b)	§ 102.20(a)(2)
§ 102.20(c)	§ 102.20(a)(3)
§ 102.20(d)	§ 102.20(b)
§ 102.20(e)	§ 102.20(c)
§ 102.21(a)	deleted
§ 102.21(b)	deleted
§ 102.21(c)	§ 102.26
§ 102.21(d)	deleted
§ 102.21(e)	§ 102.24
§ 102.21(f)	§ 102.25
§ 102.21(g)	deleted
§ 102.21(h)	deleted
§ 102.22(a)(1)	§ 102.32(b)
§ 102.22(a)(2)	§ 102.32(c)
§ 102.22(a)(3)	§ 102.32(d)
§ 102.22(a)(4)	§ 102.32(e)
§ 102.22(a)(5)	deleted
§ 102.22(a)(6)	deleted
§ 102.22(a)(7)	deleted
§ 102.22(b)(1)	§ 102.32(a)
§ 102.22(b)(2)	deleted
§ 102.22(b)(3)	deleted
§ 102.22(b)(4)	deleted
§ 102.22(b)(5)	deleted
§ 102.22(c)	deleted
§ 102.22(d)	§ 102.29
§ 102.23UOP	§ 102.22(a)
§ 102.23(a)	§ 102.22(b)
§ 102.23(b)	§ 102.22(c)
§ 102.23(c)	§ 102.22(d)
§ 102.23(d)	§ 102.22(e)
§ 102.23(e)	§ 102.22(f)
§ 102.23(f)	§ 102.22(g)
§ 102.23(g)	§ 102.22(h)
§ 102.23(h)	§ 102.22(i)
§ 102.23(i)	§ 102.22(j)
§ 102.23(j)	§ 102.22(k)
§ 102.23(k)	§ 102.22(l)
§ 102.24	§ 102.28
§ 102.25	deleted
§ 102.26(a)	deleted
§ 102.26(b)(UOP)	deleted
§ 102.26(b)(1)	deleted
§ 102.26(b)(2)	deleted
§ 102.26(b)(3)	§ 102.60
§ 102.26(b)(4)	§ 102.47(a)
	§ 102.47(b)
§ 102.26(c)	deleted
§ 102.27(a)	§ 102.61(a)
§ 102.27(b)(UOP)	§ 102.61(b)
§ 102.27(b)(1)	§ 102.61(a)
§ 102.27(b)(2)	§ 102.61(a)
§ 102.27(b)(3)	§ 102.61(a)
§ 102.27(c)	§ 102.61(a)
§ 102.27(d)	§ 102.61(a)
§ 102.27(e)	§ 102.61(a)
§ 102.27(f)	§ 102.61(a)
§ 102.27(g)	§ 102.61(a)
§ 102.28(a)	§ 102.34(a)
	§ 102.58
§ 102.28(b)	§ 102.34(b)
§ 102.28(c)	§ 102.34(c)
§ 102.28(d)	§ 102.36(b)
§ 102.28(e)	§ 102.35
	§ 102.36
§ 102.29(a)	§ 102.38(c)
§ 102.29(a)	§ 102.39
§ 102.29(b)	§ 102.41
§ 102.29(c)	§ 102.40
§ 102.29(d)	deleted
§ 102.30(a)	§ 102.42
§ 102.30(b)	§ 102.43
	§ 102.46
§ 102.30(b)	§ 102.47
§ 102.30(c)	deleted
§ 102.30(d)	§ 102.47(a)
	§ 102.47(b)
§ 102.31(a)	§ 102.48
	§ 102.49(c)
	§ 102.50
§ 102.31(b)	§ 102.51
§ 102.31(c)	§ 102.52
§ 102.31(d)	§ 102.52
§ 102.31(e)	§ 102.53(b)(1)
	§ 102.53(c)(2)
§ 102.31(f)	§ 102.58(b)(3)
	§ 102.58(c)(2)
§ 102.32(a)(1)	§ 102.21(a)
§ 102.32(a)(2)	§ 102.21(b)
§ 102.32(a)(3)	§ 102.55
§ 102.32(a)(4)	deleted
§ 102.32(b)	deleted
§ 102.32(c)	§ 102.32(f)

Present part 102	Proposed part 102
§ 102.33(a)	§ 102.23(a)
§ 102.33(b)	deleted
§ 102.33(c)	§ 102.56
§ 102.33(d)	deleted
§ 102.33(e)	§ 102.57
§ 102.33(f)	§ 102.58
§ 102.33(g)	§ 102.58(d)
	§ 102.58(e)
§ 102.33(h)	deleted
§ 102.34	§ 102.59
§ 102.35(a)	§ 102.27(d)(uosp)
§ 102.35(b)	§ 102.27(d) (1–3)
§ 102.35(c)	§ 102.27(e)
§ 102.36(a)	§ 102.27(a)
§ 102.36(b)	§ 102.27(b)
§ 102.36(c)	§ 102.27(c)
§ 102.37	§ 102.54

The principal substantive changes are as follows: (1) *Changes in Implementation of Executive Order 12600.* Under the present regulations, when someone requests business information even arguably exempt under 5 U.S.C. § 552(b)(4), SBA notifies the submitter and allows five working days to identify information the disclosure of which would cause substantial competitive harm. If SBA decides that it must disclose such information anyway, SBA must give the submitter an additional five working days to respond. The operation of this regulation makes it difficult for SBA to respond to FOIA requests within the statutory ten working day limit. To facilitate FOIA's ten working day requirement, SBA proposes to ask the submitter to identify this confidential information at the time of submission, and that the Agency thereafter would notify the submitter only if it intended to disclose information previously identified as confidential, or other information the release of which the Agency believed would cause substantial competitive harm. This proposed regulation would also provide that where SBA decided to release information the disclosure of which the submitter sought to prevent, SBA would give the submitter the "maximum notice possible before disclosure without violating the time constraints imposed by the Freedom of Information Act" rather than five working days. SBA proposes this change so that the Agency can assure that its responses to FOIA requests remain within the ten working day time limits imposed by the Freedom of Information Act itself.

(2) *Adoption of an Appeals Process for Fee Determinations.* This rule would establish a quick and simple appeal procedure for requesters who are dissatisfied with the fee SBA has charged for their FOIA requests. The procedure parallels the process by which requesters may appeal SBA decisions to withhold information. Interest would begin to accrue 31 days after SBA's response to the request, regardless of a fee appeal.

(3) *Elimination of Program Official from Privacy Act Regulations.* Under current Privacy Act regulations, Systems Managers function as the primary liaison with Privacy Act requesters, conveying requests to Program Officials and responses to the requesters. SBA has decided to streamline by empowering Systems Managers to assume the Program Official's responsibilities directly. Under the new rule, requesters will direct their requests to Systems Managers, who will make initial decisions as to access and amendment.

(4) *Elimination of Part 137.* SBA enacted Part 137 in 1984 in response to Executive Order 12356, which required Agencies to have regulations dealing with their handling of classified material. Since SBA has no classification authority, SBA has decided to repeal that portion of the existing regulation, maintaining only a provision (§ 102.12) which refers requests for any classified material in SBA's possession back to their originating agencies.

SBA also proposes some minor changes proposed to its fee structure. SBA currently waives fees less than $15; the proposed regulations would waive fees less than $25. SBA currently charges $18 an hour for professional record searches and $9 for clerical searches. Since SBA generally does not use clerical personnel to perform manual searches, and computer searches are billed separately, at cost, the proposed regulations eliminate the reference to clerical searches and bill all searches at $18 an hour.

Section By Section Analysis

Proposed § 102.1 describes the purpose of Subpart A: to describe SBA's compliance with the Freedom of Information Act.

Proposed § 102.2 describes what documents requesters can obtain by going to offices and what documents requesters must obtain through writing. Proposed § 102.2 directs the requester to the nearest District Office or to the Agency's FOIA office; either will forward the request to the proper office.

Proposed § 102.3 describes how long SBA may take to respond to a FOIA request. Paragraphs (a) and (c) set forth the statutory requirements and (with respect to the fee portion) OMB requirements for all Agencies (*See* 52 FR 10012). Paragraph (b), which provides that the clock does not begin to run until the proper office receives the request, replicates the present regulation.

Proposed § 102.4 describes possible responses to a FOIA request, including notices of appeal rights. Proposed § 102.5 makes it clear that SBA will supply only that information that is in the office as of the close of the day upon which the office receives the request. None of these proposed sections vary from the current regulations.

Proposed §§ 102.6 and 102.8 describe SBA's compliance with Executive Order 12600. Businesses submitting information after January 1, 1996 can designate items whose disclosure would cause them substantial competitive harm. If SBA proposes to release information so designated, or other information which SBA believes could cause such harm, SBA will give notice to the submitter and allow five business days to submit reasons why SBA should not release the information. If SBA decides to release the information over the submitter's objections, SBA then will give the submitter as much additional notice as feasible consistent with SBA's responsibilities under the Freedom of Information Act. With respect to information submitted prior to January 1, 1996, SBA's procedure will remain the same as it is now, except that the notice SBA gives in the event that it intends to release information over the submitter's objection will now be the maximum notice consistent with the Agency's obligations under FOIA, rather than five working days.

Proposed § 102.8 sets forth a fee schedule which, with two minor exceptions, remains the same: (1) A waiver of fees under $25, instead of the present regulation's $15; (2) A charge of $18 per hour for manual searches rather than $9 per hour for clerical searches and $18 per hour for professional searches. At SBA, professionals typically conduct manual searches. Computer searches are billed at SBA's actual cost and handled separately in the regulations. By setting all search fees at $18 per hour, SBA can simplify recordkeeping. The new regulation also codifies the present practice of charging the actual cost of certifying records and sending records (at the request of the FOIA requester) by other than first class mail. The remainder of the proposed regulation simply restates the current regulation.

Proposed § 102.9 sets forth a proposed appeal system for both denial of records and for fees which parallels the current system for appealing SBA decisions to withhold information.

Proposed § 102.10 matches the present regulations concerning the Public Index.

Proposed § 102.11 notes that if the requester asks for a document generated by another Agency, SBA will forward it to the Agency which generated the document. This process implements policy guidance which the Department of Justice has given Agencies on this issue.

Proposed § 102.12 deals with a particular sort of document generated from another Agency: classified documents. This section is all that remains of present Part 137. SBA had previously issued that Part to establish the system by which SBA would manage classified documents, as required by Executive Order 12356. However, SBA does not generate classified documents and has neither classification nor declassification authority. Accordingly, any classified documents in SBA's possession were generated by another Agency. SBA will refer any request for such a document to the generating Agency, just as it does with all documents generated by another Agency.

Proposed § 102.13 matches the present regulations concerning compulsory process against SBA, except that the Associate General Counsel for Litigation may under the proposed regulation delegate authority to resist a subpoena to field counsel.

SBA has substantially reorganized Subpart B, but without significant substantive changes. Proposed § 102.20 describes the purpose of the Privacy Act subpart. Proposed § 102.21 sets forth the basic principles of privacy maintenance. Proposed § 102.22 describes the circumstances, unchanged from the present, under which SBA will disclose records. In proposed § 102.23, SBA notes that personnel files are not governed by Part 102 but rather by 5 CFR Parts 293 and 297. It also notes that EEO Complaint files are governed by 29 CFR Part 1611. This is the state of the law; the proposed regulation corrects anachronistic references in present Part 102. Proposed §§ 102.24, 102.25, and 102.26 provide definitions for terms used in the regulations. Proposed § 102.27 describes records which are exempt from the Privacy Act under certain circumstances, or which are exempt on a regular basis from certain provisions of the Privacy Act for all purposes. This section replicates present §§ 102.35 and 102.36, with the single exception that the new regulation does not exempt EEO Complaint files, Litigation and Claims files, Standards of Conduct files, and Civil Rights Compliance files from the full range of Privacy Act provisions since they are not records maintained by the Inspector General. Proposed § 102.28 makes it clear that the Privacy Act does not give individuals access to records compiled for civil litigation.

Proposed §§ 102.29 through 102.33 establish the responsibilities of SBA employees who administer the Privacy Act. With one important exception, these responsibilities remain the same. The present regulations divide Privacy Act responsibilities among the Privacy Act Officer, the Program Official for each program or office, and the Systems Manager for each program or office. The new regulations eliminate Program Officials from Privacy Act responsibilities and allocate most of their responsibilities to the Systems Managers. This will free Program Officials to discharge their other substantive SBA duties.

Proposed §§ 102.34–102.41 provide instructions for a person who has records in an SBA system of records and who wants to look at those records. Proposed §§ 102.42–102.53 provide instructions for a person who wishes to have his SBA record amended. Proposed § 102.54 governs judicial review. None of these sections reflect any substantive changes from the present regulations.

Proposed §§ 102.55 through 102.60 group together miscellaneous commonly-asked Privacy Act questions which the regulations currently treat in disparate sections of Part 102. These proposed regulations do not enact any substantive changes in the answers to those questions, except that (1) SBA will no longer provide a first copy of files requested under the Privacy Act for free, (2) SBA will waive fees under $25 (instead of the current $15) for Privacy Act requests and, (3) noncustodial parents will not be allowed to obtain their children's records under the Privacy Act.

SBA's current regulations regarding the Computer Matching and Privacy Protection Act of 1988 are moved to § 102.61. Under the proposed regulation, the statutory provisions are incorporated by reference rather than separately set out.

The proposed regulations eliminate references to various recordkeeping and reporting requirements which have been mandated by statute; since the statute imposes those requirements on SBA it would be superfluous to restate them in regulations.

These proposed regulations eliminate many existing provisions of Part 102 either because they are duplicative or because they set forth in regulation provisions which are better governed by internal Agency guidance. For example, the proposed regulations do not detail the recordkeeping obligations of the Privacy Act Officer. This does not mean, of course, that SBA will not comply with the recordkeeping requirements of the Privacy Act. It simply indicates that it will be an Agency decision, not subject to the provisions of the Administrative Procedures Act, as to which of its employees discharges which of the recordkeeping responsibilities.

The elimination of an existing provision is not—except as noted above—meant to change substantive procedures. For example, the proposed regulations would eliminate those provisions of present § 102.3 which set forth what documents the SBA would routinely make available and what documents the SBA routinely withholds. This does not signal a change in SBA policy on withholding. SBA will continue to provide all required documents, along with such additional documents as it considers appropriate, but SBA sees no reason to give this unexceptional policy the weight of regulation.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed regulation would merely make the Agency's FOIA and PA procedures clearer. It will institute governmental efficiencies at no cost to small businesses. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 102

Freedom of information, Privacy.

13 CFR Part 137

Classified information.

For the reasons set forth above, SBA hereby proposes to amend Title 13 of the Code of Federal Regulations, as follows:

1. Part 102 would be revised to read as follows:

PART 102—RECORD DISCLOSURE AND PRIVACY

Subpart A—Disclosure of Information

Sec.

102.1 Purpose.
102.2 How can I get records from SBA?
102.3 How long will it take for SBA to respond to my request for records?
102.4 How will SBA respond to my request?
102.5 If SBA grants my request, which records will be supplied?
102.6 How will SBA respond to requests for business information?
102.7 Procedures for submitters of business information to SBA after January 1, 1996.
102.8 What fees will SBA charge?
102.9 How may I appeal a denial of my request for information or a fee determination?
102.10 How can I get the Public Index of SBA materials?
102.11 What happens if I ask SBA for a record that another Federal Agency generated?
102.12 What happens if I ask for classified records?
102.13 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding, or administrative proceeding?

Subpart B—The Privacy Act

102.20 What privacy rights does this subpart regulate?
102.21 How will SBA maintain records?
102.22 When will SBA disclose records?
102.23 Special rules about personnel and equal employment opportunity files.
102.24 What is a record?
102.25 What is a system of records?
102.26 What does this subpart mean by "person to whom a record pertains" or "you"?
102.27 What records are partially exempt from the provisions of the Privacy Act?
102.28 Information compiled for civil action.
102.29 Who administers SBA's responsibilities under the Privacy Act?
102.30 How can I write to the Privacy Act Officer?
102.31 Who appoints Systems Managers?
102.32 What do Systems Managers do?
102.33 How can I write to a Systems Manager?
102.34 How can I see records kept on me?
102.35 How long will it take SBA to respond to my request?
102.36 How will SBA respond to my request?
102.37 How may I appeal a decision to deny me access to my records?
102.38 To whom should my appeal be addressed?
102.39 When must I appeal to the Privacy Act Officer?
102.40 When will SBA respond to my appeal?
102.41 How will SBA respond to my appeal?
102.42 How can I get SBA to amend a record kept on me?
102.43 What should my petition say?
102.44 For what reasons will SBA amend my record?
102.45 Will SBA ask me for more information after I make my request?
102.46 When will SBA respond to my request?
102.47 How will SBA respond to my request?
102.48 How do I appeal a refusal to amend a record kept on me?
102.49 To whom should I address my appeal?
102.50 By when must I submit my appeal?
102.51 By what standards will the Privacy Officer review my appeal?
102.52 When will SBA respond to my appeal?
102.53 How will SBA respond to my appeal?
102.54 How can I obtain judicial review about an SBA Privacy Act decision?
102.55 What must SBA tell the individuals from whom it collects information?
102.56 Will SBA sell my name or address?
102.57 Do I have to give SBA my Social Security Number?
102.58 When will SBA show personnel records to my representative?
102.59 What fees will SBA charge me for my records?
102.60 May I be informed of disclosures made of my record?
102.61 Matching Program procedures.

Authority: 5 U.S.C. 552; 44 U.S.C. *et seq.*; 5 U.S.C 552a; 18 U.S.C. 4203 (a)(1); 31 U.S.C. 1 *et seq.*; 31 U.S.C. 67 *et seq.*; E.O. 12600, 3 CFR 1987 Comp. p. 235.

PART 102—RECORD DISCLOSURE AND PRIVACY

Subpart A—Disclosure of Information

§ 102.1 Purpose.

This subpart describes the procedures by which the Small Business Administration makes documents available under the Freedom of Information Act (5 U.S.C. 552).

§ 102.2 How can I get records from SBA?

(a) You can go to the SBA office at which the records are kept, and photocopy any final SBA decision, policy statement, or standard operating procedure.

(b) For copies of all other records, you must send a letter request to the SBA office at which the records are kept. The letter must describe specific records you want. If you don't know which SBA office keeps the records, you may send your letter to the nearest SBA District Office. You may also send your letter to the Chief, Freedom of Information Act and Privacy Act, 409 Third Street SW., Suite 5900, Washington D.C. 20416. The office receiving your letter will forward it to the correct office.

§ 102.3 How long will it take for SBA to respond to my request for records?

(a) If you have met the fee requirements of § 102.8, SBA will respond within ten working days after the correct office receives your request, except under unusual circumstances. Unusual circumstances include especially large numbers of records requested, records not located in the office handling the request, or the need to consult with more than one interested government office. If you make your request on behalf of another person, SBA will respond within ten working days after you present a document signed by that person authorizing you to request information on his behalf. If you make your request on behalf of another person without including such signed authorization, SBA will inform you of the requirements of this paragraph.

(b) If you send your request to the wrong office, that office will send it to the correct office within ten working days and will send you an acknowledgement letter.

(c) If SBA determines that it will be unusually difficult to comply with your request within ten working days, SBA will respond within twenty working days of the date upon which the correct office receives your request, and will notify you that the extra time is required.

§ 102.4 How will SBA respond to my request?

Within the time limit described in § 102.3, SBA will either:

(a) Give you the records you requested,

(b) Give you some or none of the records you requested, explain why SBA has decided not to comply fully with your request, citing specific exemptions where applicable, and explain how to appeal that decision, or

(c) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable.

§ 102.5 If SBA grants my request, which records will be supplied?

SBA will give you copies of all records or portions of records requested which are in the processing office as of the close of the day upon which that office received your request.

§ 102.6 How will SBA respond to requests for business information?

(a) *What is business information?* Business information is a trade secret, or commercial or financial information, contained in records provided to the SBA by any person and which may be protected from disclosure under Exemption Four of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

(b) *Who is the submitter of business information?* The submitter is the business entity to which the business information pertains and which submitted the information to SBA, either directly or through an intermediary such as a bank, SBIC licensee, or representative.

(c) *What if the business information has previously been released to the general public?* SBA will disclose such business information upon request and payment of any required fees.

(d) *What if the business information has not previously been released to the general public?* Except as provided in paragraph (e) of this section:

(1) *For all business information submitted prior to January 1, 1996:*

(i) Unless SBA intends to deny the request to disclose business information entirely, SBA will notify the submitter of the request upon receipt, and will describe or provide the submitter with a copy of the records it intends to disclose.

(ii) SBA will ask the submitter to identify business information which would likely cause substantial competitive harm if disclosed and why the harm would occur. The submitter will have 5 working days to provide its response.

(2) *For all business information submitted after January 1, 1996:*

(i) Upon receipt of the request, SBA will notify the submitter when it intends to release business information which previously has been identified by the submitter as confidential and likely to cause substantial competitive harm if disclosed. If other business information is requested which SBA believes may cause substantial competitive harm if disclosed, SBA will notify the submitter of that request as well.

(ii) SBA will ask the submitter to explain why the identified information would be likely to cause substantial competitive harm if disclosed. The submitter will have 5 working days to provide its response.

(3) SBA will carefully consider the submitter's objections to disclosure, if any, but will not be bound by it. If a submitter objects to the disclosure of information which SBA believes it must disclose, SBA will disclose that information.

(4) If SBA decides to disclose information which the submitter requested be withheld, SBA will give the submitter the maximum notice possible before disclosure without violating the time constraints imposed by the Freedom of Information Act. In this notice, SBA will tell the submitter what it intends to disclose, and when it intends to make disclosure.

(e) If SBA does not intend to release any business information it will not notify the submitter of the request.

(f) SBA will promptly notify the submitter of any suit filed against SBA to compel disclosure.

§ 102.7 Procedures for submitters of business information to SBA after January 1, 1996.

(a) Submitters may mark or identify business information at the time of submission which would likely cause them substantial competitive harm if disclosed.

(b) After ten years from submission SBA will regard the previous assertion as no longer in effect unless the submitter has renewed its assertion in writing that disclosure would likely cause substantial competitive harm.

§ 102.8 What fees will SBA charge?

(a) *Basic fees.* (1) *For manual record search.* SBA will charge $18 per hour.

(2) *For computer record searches.* SBA will charge the actual costs.

(3) *For review and disclosure determinations.* SBA will charge $18 per hour.

(4) *Duplication.* SBA will charge ten cents per page for photocopy duplication, and the actual cost of reproduction for other methods.

(5) *Certifying records.* SBA will charge actual costs.

(6) *For requested special types of delivery other than first-class mail.* SBA may charge the actual cost.

(b) *If you are a representative of an educational institution, a non-commercial scientific institution, or a member of the news media.* SBA will charge you only for the cost of duplication after the first 100 pages.

(1) *What is an educational institution?* A state-certified preschool, elementary or secondary school, an accredited college or university, an accredited institution of professional education, or any accredited or state-certified institute of vocational education which operates a program or programs of scholarly research.

(2) *What is a non-commercial scientific institution?* An organization which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(3) *What is a representative of an educational or non-commercial scientific institution?* A requester seeking records on behalf of that institution who is authorized by that institution to do so, and who is seeking those records for scholarly or scientific reasons, as long as there is no commercial purpose to the request for records.

(4) *What is a representative of the news media?* An individual who is actively gathering news for an entity that is organized and operated to disseminate information to the general public. To be considered "news media", this organization may provide information by subscription and may target its dissemination to a narrow section of the general public as long as any member of the general public may purchase information from it. If you are not employed by the news media, but have a reasonable expectation that you will sell the information you obtain to the news media, SBA may conclude that you are a representative of the news media. SBA will not consider you to be a representative of the news media if your request has a commercial purpose, beyond the commercial purpose of selling information to the general public.

(c) *Member of the general public.* If you are a member of the general public, SBA will not charge you for the first two hours of search time, the first hundred pages of photocopy duplication, or for review and disclosure determinations. The general public is anyone who is not a representative of an educational institution, a representative of the news media, or a commercial requester.

(d) *Commercial requester.* If you are a commercial requester you must pay all the basic fees set forth in paragraph (a) *of this section. A commercial requester is anyone seeking information for commercial, trade, or profit interests of the requester or someone he or she is trying to help.*

(e) *How does SBA determine what category of requester I am?* The SBA office processing your request will determine the appropriate category. If you are not a commercial requester, you must show us what category of requester you are.

(f) *Tell us how much you are willing to pay.* To get the quickest possible response, you must tell SBA how much money you are willing to pay in fees when you make your request for records.

(g) If you don't tell us how much you are willing to pay and SBA estimates that the fee will exceed $25.00, SBA

will estimate the fee and will not process your request until you tell SBA that you are willing to pay the estimated amount, or until you narrow the request so that the fee is less than $25.

(h) SBA will waive fees less than $25.

(i) *If the fee is more than $250, or if you have a history of failing to pay FOIA fees in a timely manner,* SBA will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *Who determines the fee?* The SBA office which processes your request.

(k) *When do you pay the fee?* You will be billed when SBA responds to your request and you must pay within thirty-one calendar days.

(l) *Failure to pay fees.* (1) After the thirty-first day following the date upon which you were billed, SBA will charge interest at the maximum rate allowed under Title 31 of the United States Code, section 3717.

(2) If you owe fees for previous FOIA responses, SBA will not respond to further requests unless you satisfy the amount due.

(3) If you do not pay the amount due within ninety calendar days of the date you must pay, SBA may notify consumer credit reporting agents of your delinquency.

(m) *Unsuccessful searches.* If SBA's search for records is unsuccessful, it will still bill you for the search.

(n) *Multiple requests.* If you make multiple requests at the same time, or at roughly the same time, SBA will aggregate your requests for records. In no case will SBA give you more than the first two hours of search time, or more than the first one hundred pages of duplication without charge.

(o) *Reduction of fees in the public interest.* If SBA determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information in your own commercial interests, SBA may waive or reduce the fee.

§ 102.9 How may I appeal a denial of my request for information or a fee determination?

(a) You must write to the Chief, Freedom of Information Act and Privacy Act Office at 409 Third Street SW., Suite 5900, Washington, D.C. 20416.

(b) The Chief must receive your written appeal within 45 calendar days of the date of the SBA fee determination from which you are appealing.

(c)(1) If you are appealing a denial of your request for information, the appeal must contain the following information:

(i) What records were denied.

(ii) The name and title of the individual responsible for denying the request and the address of his or her office.

(iii) Any other information you deem appropriate.

(2) If you are appealing a fee determination, the appeal must contain the following information:

(i) The address of the office which made the fee determination from which you are appealing.

(ii) The fee that office charged.

(iii) The fee, if any, you believe should have been charged.

(iv) The reasons you believe that your fee should be lower than the fee which the Agency charged.

(v) Any other information you deem appropriate.

(d) If anybody other than the Chief was the person who originally made the determination you are appealing, the Chief will decide your appeal. If the Chief was the person who originally made the determination you are appealing, SBA's Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) SBA will take no more than twenty working days from the date upon which it receives your appeal to decide it, unless unusual circumstances require a thirty working days response time.

(f)(1) If you are appealing a decision to deny your request for records, SBA will in response either:

(i) Give you the records you requested, or

(ii) Decline to give you the records you requested, tell you why SBA has concluded that the records were exempt from disclosure under the Freedom of Information Act, and tell you how to obtain judicial review of SBA's decision.

(2) If you are appealing a fee determination, SBA will in response either charge the fee you request or charge another fee and explain why SBA has concluded that the fee it has decided to charge is appropriate.

§ 102.10 How can I get the Public Index of SBA materials?

(a) The Public Index is a document which provides identifying information about official documents which SBA has issued.

(b) SBA has administratively determined, as permitted by the Freedom of Information Act, that periodic publication and distribution is unnecessary and impracticable.

(c) The Public Index is set forth in Appendix 3 of SBA Standard Operating Procedure 40 03. You can review and photocopy the Public Index, along with Standard Operating Procedure 40 03, at any SBA office.

§ 102.11 What happens if I ask SBA for a record that another Federal Agency generated?

Such a request is a request directed to the wrong office, as that term is used in § 102.3(b). SBA will forward your request to the generating Agency.

§ 102.12 What happens if I ask for classified records?

SBA does not have original classification authority. Therefore, any national security information or materials (as defined by Executive Order 12356) in SBA's possession must have been classified by another agency. If you ask for such material, SBA will forward that request to the agency which originally classified those materials, with its recommendations, if any.

§ 102.13 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding?

(a) If your subpoena requires either the testimony of an SBA employee or records within SBA's possession, the records themselves, or both, the person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will in turn obtain approval from the Associate General Counsel for Litigation. The Associate General Counsel may delegate the authorization for production of documents or testimony as appropriate to local SBA counsel.

(b) If SBA counsel approves of compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves of compliance with the subpoena, SBA will not comply, and will base such noncompliance on an appropriate legal basis such as privilege or a statute.

(d) A copy of a subpoena relating to a criminal matter should be provided by SBA counsel to SBA's Inspector General.

Subpart B—The Privacy Act

§ 102.20 What privacy rights does this subpart regulate?

This subpart establishes SBA's policy and procedures safeguarding an individual against an invasion of personal privacy.

(a) Except as otherwise provided by law or regulation, SBA will permit you to do the following:

(1) Determine what records pertaining to you are collected, maintained, used, or disseminated by the SBA;

(2) Object when records pertaining to you are obtained by SBA for a particular purpose and are proposed to be used or made available for another purpose without your consent; and

(3) Gain access to information pertaining to you in records, have a copy made of all or any portion of those records, and correct or amend such records as appropriate;

(b) SBA will collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(c) SBA will permit exemptions from the requirements of 5 U.S.C. 552a (Privacy Act of 1974) only where an important public policy need for such exemption has been determined by specific statutory authority.

§ 102.21 How will SBA maintain records?

SBA records will:

(a) Contain only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute, regulation, or by Executive Order of the President.

(b) Be comprised, to the maximum practical extent, of an individual's own statements when the information may result in an adverse determination about an individual's rights, benefits, or privileges under a Federal program.

§ 102.22 When will SBA disclose records?

SBA will not disclose to anyone any record which is contained in a system of records, except that it will disclose a record:

(a) To the person about whom the record is maintained, or to that person's agent, within the limits discussed in this subpart.

(b) To those employees of the Agency who have a need for the record to perform their duties;

(c) When required under 5 U.S.C. 552 (Freedom of Information Act);

(d) For a routine use of the record compatible with the purpose for which it was collected;

(e) To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity pursuant to Title 13, United States Code;

(f) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, where the record is transferred in a form that is not individually identifiable;

(g) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;

(h) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(1) The activity is authorized by law, and

(2) The head of the agency or instrumentality has made a written request to the Privacy Act Officer specifying the particular portion desired and the law enforcement activity for which the record is sought;

(i) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual. Upon disclosure notification will be transmitted to the last known address of such individual;

(j) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(k) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(l) Pursuant to the order of a court of competent jurisdiction; or

(m) To a consumer reporting agency in accordance with section 3711(f) of title 31.

§ 102.23 Special rules about personnel and equal employment opportunity files.

(a) All SBA files which the Office of Personnel Management determines are personnel files will be governed by the provisions of parts 293 and 297 of Title 5 of the Code of Federal Regulations.

(b) All Equal Employment Opportunity complaint files will be governed by the provisions of part 1611 of Title 29 of the Code of Federal Regulations.

§ 102.24 What is a record?

A record is information which SBA maintains on an individual and which includes either his name or some other symbol (such as a fingerprint, a social security number, or a photograph) by which he or she can be identified.

§ 102.25 What is a system of records?

A system of records is one or more records which SBA routinely keeps for official purposes, and from which SBA can retrieve records by using a name or personal identifier.

§ 102.26 What does this subpart mean by "person to whom a record pertains" or "you"?

When this subpart refers to the "person to whom a record pertains" or uses the pronoun "you", it refers to a United States citizen or a lawfully admitted alien. It does not refer to a corporation, partnership, or sole proprietorship.

§ 102.27 What records are partially exempt from the provisions of the Privacy Act?

(a) The following systems of records are exempt from certain provisions of the Privacy Act: Audit Reports (system of records #SBA 015), Litigation and Claims Files (#SBA 070), Personnel Security Files (#SBA 100), Security and Investigations Files (#SBA 120), Office of Inspector General Referrals (#SBA 125), Investigations Division Management Information System (#SBA 130), and Standards of Conduct Files (#SBA 140).

(b) The provisions of the Privacy Act from which these systems of records are exempt are subsections (c)(3)(Accounting of Certain Disclosures), (d)(Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f)(Agency Rules) of the Privacy Act.

(c) The systems of records described in paragraph (a) are exempt from the provisions of the Privacy Act described in paragraph (b) in order to:

(1) Prevent the subject of investigations from frustrating the investigatory process;

(2) Protect investigatory material compiled for law enforcement purposes;

(3) Fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information; or

(4) Prevent interference with law enforcement proceedings.

(d) In addition to the foregoing exemptions, the systems of records described in paragraph (a) of this section which are numbered as numbers SBA 015, 100, 120, 125 and 130 are fully exempt from the Privacy Act to the extent that they contain:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports associated with an identifiable individual compiled at any stage of the process of enforcement of

the criminal laws from arrest or indictment through release from supervision.

(e) The systems of records described in paragraph (d) are fully exempt from the Privacy Act to the extent described in that paragraph because they are records maintained by the Investigations Division of the Inspector General, which is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2). They are exempt in order to:

(1) Prevent the subjects of OIG investigations from using the Privacy Act to frustrate the investigative process;

(2) Protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I;

(3) Protect the confidentiality of other sources of information;

(4) Avoid endangering confidential sources and law enforcement personnel;

(5) Prevent interference with law enforcement proceedings;

(6) Assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems;

(7) Prevent the disclosure of investigative techniques; or

(8) Prevent the disclosure of classified information.

§ 102.28 Information compiled for civil action.

Nothing in the regulations in the subpart allows an individual access to any information compiled by the Agency in reasonable anticipation of a civil action or proceeding. In the event that there should be a question as to whether information should be disclosed pursuant to this section, the Systems Manager for the System of Records involved will obtain an opinion from Agency counsel, and will also consult with the Privacy Act Officer.

§ 102.29 Who administers SBA's responsibilities under the Privacy Act?

The Privacy Act Officer has overall responsibility for administering the Privacy Act for SBA, and the Systems Manager is responsible for administering the Privacy Act as to systems of records within an SBA Office.

§ 102.30 How can I write to the Privacy Act Officer?

You can write to the Privacy Act Officer at 409 Third Street S.W., Suite 5900, Washington, D.C. 20416.

§ 102.31 Who appoints Systems Managers?

The Senior official in each field office and each Headquarters program area designates himself or herself or appoints another as the Systems Manager for that office.

§ 102.32 What do Systems Managers do?

Systems Managers have the following responsibilities, among others, for the offices for which they are appointed:

(a) Acting as the initial contact person to individuals seeking access or amendment of their records.

(b) Responding to requests for information.

(c) Discussing the availability of records with individuals.

(d) Amending records in cases where amended information is not controversial and does not involve policy decision making.

(e) Informing individuals of any reproduction fees to be charged.

(f) Assuring that their systems of records contains no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity. First Amendment rights include, but are not limited to, freedom to follow religious and political beliefs, freedom of speech and of the press, and freedom of assembly and the right to petition government.

§ 102.33 How can I write to a Systems Manager?

You can write to a Systems Manager by writing to the SBA Office which maintains the record you are seeking. If you do not know which office that is, or you do not know the address of that office, you can write to the Privacy Act Officer at 409 3rd Street S.W., Suite 5900, Washington, D.C. 20416, who will forward your request to the proper Systems Manager.

§ 102.34 How can I see records kept on me?

(a) You may look at any information pertaining to yourself if it is contained in any SBA system of records, unless some law or regulation prohibits it.

(b) In order to see this information, you must ask for it in writing and the writing must identify what records you want. The writing should be addressed to the Systems Manager overseeing the system of records.

(c) The Systems Manager (or, when appropriate, the Privacy Act Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person about whom the information pertains.

§ 102.35 How long will it take SBA to respond to my request?

The Systems Manager will respond within ten working days.

§ 102.36 How will SBA respond to my request?

The Systems Manager will inform you that:

(a) Your request is denied, in which case he or she will set forth the reasons for denial and your rights to appeal; or

(b) Your request is granted and you may view your record, in which case he or she will set forth the time and date for you to review your record in the presence of an SBA employee; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.37 How may I appeal a decision to deny me access to my records?

Your appeal should be in writing and should set forth any information you think would show that you should have access to your records.

§ 102.38 To whom should my appeal be addressed?

(a) *Denial of a personnel file.* Address an appeal of a denial of a request for a personnel file to the Office of Personnel Management, 1900 E Street N.W., Washington, D.C. 20006.

(b) *Denial of an Equal Employment Opportunity Complaint File.* Address an appeal of a denial of an Equal Employment Opportunity Complaint File to the Equal Employment Opportunity Commission, 1801 L Street N.W., Washington, D.C. 20036.

(c) *All other appeals.* You may appeal to the Privacy Act Officer a decision to deny you access to any other record. *See* § 102.30, above.

§ 102.39 When must I appeal to the Privacy Act Officer?

Your appeal must reach the Privacy Act Officer on or before 30 calendar days after the date the denial was issued. If your appeal is based on the failure of the Systems Manager to answer your request, your appeal must reach the Privacy Act Officer on or before 90 calendar days after the date by which the Systems Manager should have responded under section 102.35.

§ 102.40 When will SBA respond to my appeal?

The Privacy Act Officer will respond to you within 30 working days of the date when your appeal was received.

§ 102.41 How will SBA respond to my appeal?

The Privacy Act Officer will inform you that:

(a) Your request is denied, in which case the reasons for denial will be set forth along with your rights to judicial review of SBA's decision; or

(b) Your request is granted and you may view your record, in which case the time and date for you to review your records in the presence of an SBA employee will be set forth; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.42 How can I get SBA to amend a record kept on me?

You can petition to have records kept on you amended by writing to the Systems Manager who oversees the system of records in which the record you wish amended is kept. If you are unable to determine who that Systems Manager is, you may send your petition to the Privacy Act Officer, who will forward it to the right Systems Manager. *See* § 102.30.

§ 102.43 What should my petition say?

Your petition should include the following:

(a) In what system of records the record you want amended is kept.

(b) What record you want amended.

(c) What specific information in that record you want amended.

(d) Why you want the record amended.

(e) Any information you have, including copies of evidence, which you think will persuade the Systems Manager to amend the record.

(f) What the record should say.

§ 102.44 For what reasons will SBA amend my record?

SBA will maintain only accurate, complete, and up-to-date records which are relevant to accomplish some purpose of the Agency required by law, regulation, or Executive Order of the President. There are four grounds for amending a record. They are:

(a) The record is not accurate.

(b) The record is not relevant to any legitimate SBA concern.

(c) The record is out-of-date. For example, there may have been events since the date of the record which have affected some of the information contained in the record.

(d) The record is incomplete. There may be relevant information about the material contained in the record which was not included in the record.

§ 102.45 Will SBA ask me for more information after I make my request?

The Systems Manager (or, when appropriate, the Privacy Act Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number, but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person about whom the information pertains.

§ 102.46 When will SBA respond to my request?

The Systems Manager will acknowledge receipt of your request within 10 working days and issue a written response within 30 working days.

§ 102.47 How will SBA respond to my request?

The Systems Manager will:

(a) Make the amendment you request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record, but not in complete accordance with your request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record and will, in addition, tell you why your request was not granted in full and tell you of your appeal rights; or

(c) Decline to amend the record, in which case he or she will tell you why your request was not granted and tell you of your appeal rights.

§ 102.48 How do I appeal a refusal to amend a record kept on me?

Your appeal should be in writing and include the following:

(a) All of the information contained in your original request to amend the record.

(b) The response of the Systems Manager, if any, including the reasons for denying your request, if any.

(c) Any information you wish to submit in response to the Systems Manager's findings.

§ 102.49 To whom should I address my appeal?

(a) *Personnel file.* Address your appeal to the Office of Personnel Management, 1900 E Street NW., Washington, DC 20006.

(b) *Equal Employment Opportunity Complaint File.* Address your appeal to the Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20036.

(c) *All other appeals.* Address your appeal to the Privacy Act Officer. *See* § 102.30.

§ 102.50 By when must I submit my appeal?

Your appeal must be received by the Privacy Act Officer within 30 calendar days of the date upon which the Systems Manager declined to amend your records, or within 90 calendar days of the date upon which the Systems Manager should have responded to your request under § 102.46 if the Systems Manager did not so respond.

§ 102.51 By what standards will the Privacy Officer review my appeal?

The Privacy Act Officer will decide your appeal using the criteria of accuracy, relevance, timeliness, and completeness described in § 102.44. The Privacy Act Officer will review all relevant information and may seek the views of other SBA personnel. The Privacy Act Officer may review information not available to or not used by the Systems Manager.

§ 102.52 When will SBA respond to my appeal?

The Privacy Act Officer will respond to your appeal within 30 working days of the date upon which it is received, unless the Administrator determines that unusual circumstances exist, in which case the Privacy Act Officer will notify you of the presence of these unusual circumstances within 30 working days of the date upon which he or she received your appeal, and will respond to your appeal within 60 working days of the date of receipt.

§ 102.53 How will SBA respond to my appeal?

The Privacy Act Officer will:

(a) Make the amendment you request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record, but not in complete accordance with your request, in which case he or she will

(1) Send all individuals who had previously received a copy of that record a copy of the amended record, and

(2) Tell you why your request was not granted in full and tell you of your rights to judicial review, and

(3) Mark the areas of dispute, include your statement of disagreement in the file, and, if appropriate, include a concise statement of why the Agency refused to amend the record in accordance with your request, and send this material to all individuals who had previously received a copy of that record; or

(c) Decline to amend the record in any respect, in which case he or she will

(1) Tell you why your request was not granted and tell you of your rights to judicial review, and

(2) Mark the areas of dispute, include your statement of disagreement in the file, and, if appropriate, include a concise statement of why the Agency refused to amend the record in accordance with your request, and send this material to all individuals who had previously received a copy of that record.

§ 102.54 How can I obtain judicial review about an SBA Privacy Act decision?

You may bring a civil action against SBA in a district court of the United States whenever the SBA:

(a) Makes a final determination not to provide you with access to or to amend your record in accordance with your request;

(b) Fails to maintain your records with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to you that may be made on the basis of such record, and consequently a determination is made which harms you, or

(c) Fails to comply with any other provisions of the Privacy Act (5 U.S.C. 552a) or the implementing regulations in this subpart, in such a way as to cause harm to you.

§ 102.55 What must SBA tell the individuals from whom it collects information?

When SBA collects information from an individual, it must, either on the form which collects the information or on a separate form which the individual may keep, state:

(a) Whether disclosure of the information is voluntary or mandatory;

(b) By what authority SBA is collecting the information;

(c) For what principal purpose or purposes SBA is collecting the information;

(d) What routine uses might be made of that information; and

(e) What will happen if the information isn't supplied.

§ 102.56 Will SBA sell my name or address?

SBA will not sell your name or address to anyone. Someone might acquire it, though, under the Freedom of Information Act (5 U.S.C. 552).

§ 102.57 Do I have to give SBA my Social Security Number?

(a) *No.* You need not give SBA your Social Security Number, even if SBA asks for it.

(b) If SBA asks you for your Social Security Number, it must also tell you under what authority it is seeking to know your Social Security Number, and for what purpose.

(c) SBA cannot withhold a benefit solely because you refuse to tell it your Social Security Number.

§ 102.58 When will SBA show personnel records to a representative?

(a) If you go to where the records are kept, SBA will permit one person of your choosing to inspect the records with you.

(b) If you want your representative to inspect the records without you, you must give SBA a written authorization.

(c) SBA will mail a copy of the record to your representative if you direct SBA to do so in writing.

(d) You may inspect the records of a minor if you present evidence that you are the custodial parent (including joint custodial parent) or legal guardian of that minor. An affidavit or declaration, signed by you under penalty of perjury, is normally sufficient evidence unless SBA has information to the contrary.

(e) You may inspect the records of an adult incompetent if you present evidence that you are the legal guardian of that person. A guardianship order is sufficient evidence of your guardianship. Other evidence may be considered.

§ 102.59 What fees will SBA charge me for my records?

SBA will charge you only for photocopying at the rate of ten cents per page. SBA will not charge you for finding or reviewing your records. Fees less than $25 will be waived.

§ 102.60 May I be informed of disclosures made of my records?

SBA will tell you what disclosures it made of your records if you ask us, except that SBA will not tell you about disclosures it made to another federal agency or government entity for law enforcement purposes.

§ 102.61 Matching Program procedures.

(a) SBA will comply with the Computer Matching and Privacy Protection Act of 1988. (Public Law 100–503, as amended). This Act establishes procedures federal agencies must use if they want to match their computer lists.

(b) If SBA adopts any procedures to supplement its compliance with the Computer Matching and Privacy Protection Act of 1988 which are not mandated in that Act, SBA will publish those procedures in Standard Operating Procedure (SOP) 40 04. You can get a copy of SOP 40 04 at any SBA Office.

(c) If SBA enters into an agreement with any Federal agency, contractor of any Federal Agency, State or Local Government, or agency of any State or Local Government to disclose records for purposes of a computer matching program, SBA will make a copy of that agreement available to the general public. You can get a copy of all such agreements by writing to the Privacy Act Officer.

PART 137—[REMOVED]

2. Part 137 is removed.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28446 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 103

Policies of General Application

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to streamline its regulations by eliminating many rules and simplifying and improving those that remain. This proposed rule would reorganize and streamline the entire Part 103, which covers the standards one must meet to conduct business with SBA. It makes the standards clearer and more understandable to those who are regulated, and easier for SBA to enforce.

DATES: Written comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments may be sent to David Kohler, Regulatory Reform Team Leader (103), Small Business Administration, 409 3rd Street SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael Dowd, Director, Office of Loan Programs, at (202) 205–6490.

SUPPLEMENTARY INFORMATION: 13 CFR Part 103 contains SBA's policies governing the standards for suspending or revoking the privileges of persons who conduct business with SBA on behalf of applicants or lenders. This proposed rule reorganizes and streamlines Part 103, making it easier to understand and enforce. It changes the title of the Part to "Standards for Conducting Business with SBA" to describe more clearly the scope of the regulations. The sections stating the statutory provisions underlying the Part and its purpose—103.13 and 103.13–1—are eliminated as unnecessary. The proposed rule renumbers the sections that remain: present §§ 103.13–2 through 10? 13–6 would become §§ 103.1–10 .5. The proposed rule clarifies the isting definitions of agents who a pear before SBA on behalf of applicants or assistance, adds definitions for "packagers" and "lender service providers," and provides that these two categories of agents are specifically covered by SBA's requirements governing conduct of business. It also amends, in certain respects, and adds greater specificity to the definition of "good cause" for which the Administrator may revoke or suspend the privilege for conducting business with SBA. It adds provisions prescribing the use and form of lender service provider agreements which must contain certain provisions regarding services to be provided and compensation, including a prohibition on secondary market premium sharing. In addition to these substantive changes, the proposed rule is written in clearer, more straightforward language than the present Part.

It is SBA's inte tion to require a" packagers, lender service provide nd agents to register with SBA for pu es of keeping track of who is perform such activities on behalf of applica s for assistance or lenders. SBA also intends to develop a code of ethical and professional responsibility based upon the substance of the proposed regulations which it will enforce with respect to all agents. Finally, SBA will provide training for anyone or any entity that wishes to represent applicants for SBA assistance or provide services to lenders. The development of these initiatives will take place over the next fiscal year, in consultation with representatives of the affected industries. To the extent that they require modifications of these proposed regulations, such modifications will ensue in later rulemakings.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. § 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.* It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Exe tive Order 12778, SBA certifies t t this rule is drafted, to the extent p acticable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 103

Standards for conducting business with SBA, procedures for suspension or revocation of privileges, compensation allowed to agents.

Accordingly, pursuant to the authority set forth in sections 5 and 13 of the Small Business Act, 15 U.S.C. §§ 634 and 642, SBA hereby proposes to revise part 103 of Title 13, Code of Federal Regulations (CFR), as follows:

Part 103 would be revised to read as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

103.1 Key Definitions.
103.2 Who may conduct business with SBA?
103.3 May SBA suspend or revoke an agent's privilege?
103.4 What is "good cause" for suspension or revocation?
103.5 How does SBA regulate an agent's fees and provision of service?

Authority: Secs. 5, 13, 72 Stat. 385, 394 (15 U.S.C. 634, 642).

§ 103.1 Key Definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, manufacturer's representative, packager, lender service provider or any other person representing an applicant or participant.

(b) The term *conduct business with SBA* means:

(1) preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

(2) preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf; and

(4) such other activity as SBA reasonably shall determine.

(c) *Applicant* means any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying for any type of assistance from SBA.

(d) *Lender Service Provider* means an agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a "lender service provider" on a loan-by-loan basis.

(e) *Packager* means an agent who is employed and compensated by an applicant or lender to prepare the applicant's application for financial assistance from SBA. SBA determines whether or not one is a "packager" on a loan-by-loan basis.

(f) *Participant* means an entity that is participating in any of the financial, investment, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

§ 103.2 Who may conduct business with SBA?

(a) If you are an applicant, a participant, a partner of an applicant or participant partnership, or serve as an officer of an applicant, participant corporation, or limited liability company, you may conduct business with SBA without a representative.

(b) If you are an agent, you may conduct business with SBA on behalf of an applicant, participant or lender, un ess representation is otherwise pr hibited by law or the regulations in

this or any other part of Title 13. For example, persons debarred under the SBA or Government-wide debarment regulations may not conduct business with SBA. SBA may request that any agent supply written evidence of his or her authority to act on behalf of an applicant, participant, or lender as a condition of revealing any information about the applicant's, participant's, or lender's current or prior dealings with SBA.

§ 103.3 May SBA suspend or revoke an agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any agent to conduct business with SBA. Part 134 of this chapter states the procedures for appealing the decision to suspend or revoke the privilege. The suspension or revocation remains in effect during the pendency of any administrative proceedings under Part 134 of this chapter.

§ 103.4 What is "good cause" for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business. This includes:

(a) Attempting to influence any employee of SBA or a lender, by gifts, bribes or other unlawful or unethical activity, with respect to any matter involving SBA assistance.

(b) Soliciting for the provision of services to an applicant by another entity when there is an undisclosed business relationship between the two parties.

(c) Violating ethical guidelines which govern the profession or business of the agent or which are published at any time by SBA.

(d) Implying or stating that the work to be performed for an applicant will include use of political or other special influence with SBA. Examples include indicating that the entity is affiliated with or paid, endorsed or employed by SBA, and advertising using the words *Small Business Administration* or *SBA* or its seal or symbol, and giving a "guaranty" to an applicant that the application will be approved.

(e) Charging or proposing to charge any fee that does not bear a necessary and reasonable relationship to the services actually rendered or expenses actually incurred in connection with a matter before SBA or which is materially inconsistent with the provisions of an applicable compensation agreement or lender service provider agreement. A fee based solely on a percentage of a loan or guarantee amount can be reasonable, depending on the circumstances of a case and the services actually rendered.

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including debarment, criminal conviction, or civil judgment within the last seven years for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, false claims, or obstruction of justice.

(g) Acting as both a lender service provider and a packager for an applicant on the same SBA business loan. A limited exception to this "two master" prohibition exists in the following circumstances:

(1) The lender service provider: is asked by the lender to perform packaging services on a loan, will be compensated solely by the lender, and provides a written disclosure to the applicant; or

(2) The packager: is first asked to package the loan by the lender, and is first asked to package the loan only after the lender has decided to make the loan and the terms of the loan have been established.

(h) Violating materially the terms of any compensation agreement or lender service provider agreement provided for in section 103.5.

(i) Violating or assisting in the violation of any SBA regulations, policies, or procedures of which the applicant has been made aware.

§ 103.5 How does SBA regulate an agent's fees and provision of service?

(a) Any applicant, agent, packager, or lender service provider must execute and provide to SBA a compensation agreement or lender service provider agreement governing the compensation charged for services rendered or to be rendered to the applicant or lender in any matter involving SBA assistance. SBA provides the form of compensation agreement and a suggested form of lender service provider agreement to be used by agents.

(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the agent, packager or lender service provider must: reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the applicant, and refrain from charging or collecting, directly or indirectly, from the applicant an amount in excess of the amount SBA deems reasonable.

(c) Each lender service provider must enter into a written agreement with each lender for whom it acts in that capacity. SBA will review all such agreements. Such agreements need not contain each and every provision found in the SBA's suggested form of agreement. However, each agreement must indicate that both parties agree not to engage in any sharing of secondary market premiums, that the services to be provided are accurately described, and that the agreement is otherwise consistent with SBA requirements. Subject to the prohibition on splitting premiums, lenders have reasonable discretion in setting compensation for lender service providers. Such compensation will generally be considered reasonable unless:

(1) The compensation is clearly excessive in light of industry standards and the services to be performed; and

(2) The excess compensation is adversely affecting the loan terms provided to applicants.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28447 Filed 11–22–95; 8:45 am]
BILLING CODE 8025–01–P

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13 CFR Part 121

Small Business Size Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would improve the Agency's size program by simplifying and clarifying language in the existing rules, conforming these rules to present SBA policies and practices, and providing some substantive modifications to streamline the delivery of services to the public. The revised regulations would be more understandable and much easier to use. The proposed rule would reduce the number of sections. It would make the definition of "affiliation" more concise. While no longer recognizing an absolute right to appeal size determinations, it would give the Office of Hearings and Appeals (OHA) discretionary authority to accept size appeals. The proposed rule would improve language, but would not change the existing size standards which apply to particular industries.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Initiative Team Leader, Attention: Part 121, Office of General Counsel, Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, at (202) 205–6645.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would amend SBA's regulations governing its size program which was authorized to be established by sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6). It is designed to streamline the size standards operation by simplifying and clarifying existing regulatory language and by eliminating unnecessary, irrelevant, or obsolete provisions. SBA examined the purpose of each section of the existing regulation in developing this proposal. Where appropriate, it eliminated, consolidated, or rewrote sections for ease of use and clarity. The proposed unnumbered substantive category headings would be: Provisions of General Applicability, Size Standards Used to Define Small Business Concerns, Size Eligibility Requirements for SBA Financial Assistance, Size Eligibility Requirements for Government Procurement, Size Eligibility Requirements for Sales or Lease of Government Property, Size Eligibility for the Minority Enterprise Development (MED) Program, Size Eligibility Requirements for the Small Business Innovation and Research (SBIR) Program, Size Eligibility Requirements for Paying Reduced Patent Fees, Size Eligibility Requirements for Compliance with Programs of Other Agencies, Procedures for Size Protests and Requests for Formal Size Determinations, Appeals of Size Determinations and SIC Code Designations, Eligibility of Organizations for the Handicapped for Small Business Set-asides, and Waivers of the Nonmanufacturer Rule. The proposed rule would amend office titles to reflect a previous reorganization of functions within the structure of SBA.

SBA has attempted to rewrite Part 121 in plain English in order to make the regulations more readable and less confusing. SBA has identified the following eight significant changes proposed by this rule.

Refine the definition of "affiliation." The proposed rule at § 121.103(a) would make the definition of "affiliation" more concise. The intent in revising the provisions pertaining to affiliation is to make the definition easier to understand.

Additional exclusions from "affiliation" coverage. Four additional exclusions from "affiliation" coverage are proposed in § 121.103(a)(2): (1) small businesses that are members of approved pools for a joint program of research and development, (2) concerns that lease employees from a concern whose principal business is leasing employees to other businesses, (3) mentor/protege firms participating in Federal Mentor-Protege programs, and (4) for purposes of eligibility for the Small Business Investment (SBIC) program only, certain investors in SBIC portfolio concerns, provided the investors do not control the concern other than to the extent that would be permitted for SBICs under the SBIC regulations (currently, § 107.801 of this title; in the revised SBIC regulations at § 107.865).

Revision of "annual receipts" definition. This definition would be simplified by incorporating figures already contained on a concern's Federal Income Tax return for purposes of calculating a concern's average annual receipts. In addition, amounts collected for another by a conference management services provider or an advertising agent would be excluded from a concern's annual receipts, similar to that of a travel agent.

Grant OHA discretionary authority to hear size determination appeals. Contracting officers for procuring agencies have cited unwelcome delays in the procurement process when small business size determinations are appealed to the Office of Hearings and Appeals (OHA). Under existing SBA regulatory guidelines, a party which is adversely affected by a size determination has the right to appeal the determination to OHA. However, Federal Acquisition Regulations (48 C.F.R. 19.302) provide that a contracting officer is not required to suspend award after a size determination is made even if the determination is appealed to OHA, and further provide that the OHA decision applies to a pending acquisition only if the decision is received before award. Therefore, if the OHA decision is to have relevance, it must be rendered prior to award. In an effort to streamline consideration of size determinations and bring more speed to the decision-making process, proposed § 12 .1101 would eliminate appeals to OHA as a matter of right and instead give OHA discretion to review such appeals. A size determination rendered by an authorized Agency official would be considered final unless OHA agreed to review the determination. This would give OHA the latitude to consider those cases which have precedential value or which might involve clear error of fact or law. Procedures for requesting discretionary review of size determinations would be set forth in part 134.

Change the time when size is determined for MED application purposes. Under the present regulations, an applicant to SBA's MED program is small if, at the time of its application, it is small under the size standard for its primary industry. The proposed regulation would change the time for determining the applicant's size to the time when SBA issues its eligibility determination. Thus, under the proposed regulation, a concern which was small when it applied but which became large during SBA's consideration of its application would not be permitted to enter the program. SBA does not believe that it should admit a concern to the MED program knowing that it is no longer small in its primary business. The concern could no longer obtain 8(a) or small business set-aside contracts in its primary industry, and the concern could be perceived to be other than disadvantaged because of that success. In addition, if that were the only business that the concern was in, SBA would be put in the awkward position of admitting the concern to the program one day, but initiating termination proceedings from the program the next.

Use of size standards for programs of other agencies. This proposed rule sets forth the limited circumstances under which the Secretary of a department or the head of a Federal agency may prescribe, for the use of such department or agency, a size standard other than one which has been established by SBA.

Individual waivers of the "Nonmanufacturer Rule." The proposed rule establishes procedures for granting waivers of the Nonmanufacturer Rule for individual products on specific solicitations. Procedures for granting individual waivers would be combined with provisions pertaining to class waivers.

Other changes to Part 121. This proposed rule would also make changes in the size eligibility requirements which are identified below in the section-by-section analysis. Several

typographical errors or inadvertent omissions would be corrected, and several obsolete or irrelevant references would be eliminated. The proposed rule would not make any changes in actual size standards applicable to specific industries.

Section-by-Section Analysis

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

The current § 121.101 is a policy statement reciting Congressional intent as set forth in the Small Business Act. SBA proposes to revise § 121.101 to state succinctly the purpose of small business size standards.

Section 121.102 would be deleted and the substance of the provision moved to the revised § 121.101.

Present § 121.201 would be deleted and the substance of subsection (a) consolidated with proposed § 121.101. Present subsection (b) is a philosophical statement relating to Federal assistance in general and would be eliminated as unnecessary. The general outline of SBA's size program, contained in § 121.202, would be deleted as unnecessary since revised § 121.101 would provide general guidance as to the purpose of size standards and how SBA establishes them. Revised § 121.201 would detail specific size standards, and revised §§ 121.301 through 121.903 would describe the relationship of size standards for specific types of Federal assistance. Procedures for size protests and requests for size determinations would be found in proposed § 121.1001. Appeals of size determinations and SIC code designations would be covered in proposed § 121.1100.

Section 121.102 would be amended to explain, in summary fashion, how SBA develops or revises an industry size standard. Two criteria for size standards have gained general acceptance since SBA's inception and are the most widely used definitions of small business. The first is the 500 employee size standard, which is the most common size standard among the manufacturing and mining industries. Instituted by the Smaller War Plants Administration and adopted with the formation of SBA, it applies to a majority of these industries. The second is the average annual receipts standard, which applies to most retail and service industries and also dates back to the inception of SBA. In 1953, a limit of $1.0 million in average annual receipts was applied to many of these industries. Over time, inflation and industry changes have increased that original level to $5 million. Size standards for particular industries deviate from these "anchor standards" depending on the structural characteristics of the industry and other factors described in SBA's rulemaking actions as important influences on an industry's structure. Proposed § 121.102 would identify the factors SBA considers in setting any size standard, including degree of competition in an industry, average firm size in the industry, start-up costs and entry barriers in the industry, and distribution of firms by size in the industry.

Section 121.203 would be deleted and the substance of the provision would be contained in revised § 121.1006(h)(3).

Section 121.204 would be deleted. The substance of the provision would be incorporated in revised §§ 121.1006(h)(3) and 121.1007.

Section 121.205 would be eliminated as unnecessary.

The subject of §§ 121.301(a) and 121.301(b) would be transferred to § 121.102(b), with the provision amended for relevance. Section 121.301(c) would be deleted as unnecessary since proposed § 121.201 would contain a statement that the general size standard for all industries not listed in the table in § 121.201 would be $5 million.

Sections 121.302 and 121.304 would be eliminated as unnecessary. The roles of the Office of General Counsel and OHA are described in Part 101 of SBA's regulations. Section 121.303 would be deleted, but the address of the Size Policy Board would be contained in the revised § 121.102(c).

Section 121.305 would be eliminated. SBA has materially changed the role of its regional offices, transferring to other SBA offices many of the functions formerly performed by regional offices. The descriptions of responsibilities with respect to size determinations and SIC code designations would be transferred to revised §§ 121.402 and 121.1002.

Definitions of terms, presently found in §§ 121.401 through 407, would be transferred to a new § 121.103. Changes in some definitions are proposed.

The definition of affiliation in current § 121.401 would be transferred to § 121.103(a) and revised for clarity. Subsection (a)(1) would be redesignated as § 121.103(a)(1)(iii). Subsections 121.401(a)(2)(i) and (ii) would be redesignated as subsection 121.103(a)(1)(i)(A) and (B). Provisions addressing "identity of interest" now found in §§ 401(a)(2)(iii) and 401(d) would be transferred to the policy statement contained in proposed § 121.103(a)(1)(i)(C). The term is a legitimate concept in characterizing affiliation among parties, but it is dependent on specific facts in its application and is subject to a high degree of subjectivity in much of its implementation. While simpler, the designation of a list of family relationships that would always cause an "identity of interest" would penalize a number of legitimate small concerns. Close familial relationships are at times offset by estrangement of the parties. Under the circumstances, SBA has determined that a flexible approach should be retained in the size regulations.

Section 121.401(b), pertaining to exclusions from the definition of affiliation, would be transferred to a new § 121.103(a)(2) which would list and describe seven exclusions.

In addition to the exclusion from affiliation for SBICs or Development Companies, the proposed rule would add a second exclusion, for purposes of SBIC assistance, for concerns owned by venture capital firms, pension funds, and certain charitable entities exempt from federal taxation under § 501(c) of the Internal Revenue Code. Like SBICs, these entities often make financial investments in small companies when they receive ownership positions which can be held for subsequent resale. The same control limitations imposed by SBA on SBICs would be imposed on the investors covered by this affiliation exclusion.

The exclusion for business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, or Native Hawaiian Organizations would be clarified so that affiliation would not be found solely by reason of such ownership, but still could be found where other grounds (e.g., common management) exist.

The exclusion for businesses owned or controlled by Community Development Corporations was added to SBA regulations on June 7, 1995, and would be retained with only minor editorial adjustments.

The proposed rule would add an exclusion be for small businesses that are members of pools approved by the Administrator, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, for a joint program of research and development. Concerns which are members of such pools would not be considered affiliated with other pool members solely by reason of their joint participation on pool approved activities. Such pools have been statutorily authorized for some time, but there has not been a corresponding exclusion from affiliation specifically recognized in the size regulations.

The proposed rule would also add an exclusion from affiliation for concerns that lease administrative and/or other employees from a concern whose principal business is leasing employees to other businesses. The two concerns would not be considered affiliated solely by reason of the leasing agreements.

Finally, the proposed rule would add an exclusion for firms participating in Federal Mentor-Protege Programs. Although affiliation would not be found based solely on such mentor-protege relationship, affiliation could be found to exist based on other factors.

Section 121.401(c), pertaining to the nature of control, would be eliminated in the revised affiliation rule. Affiliation by stock ownership and common management would be addressed in proposed §§ 121.103(c) and (d). The non-essential elements of affiliation expressed in current subsection 401(c) would be eliminated without sacrificing clarity or definitiveness.

Section § 121.401(e), redesignated as § 121.103(c), would be clarified.

Section 121.401(f), redesignated as § 121.103(d), would clarify what constitutes an agreement in principle, and make other minor editorial changes.

Section 121.401(g) now requires SBA to determine whether a voting trust was entered into primarily for a "legitimate purpose." Since such a requirement is unnecessary and overly subjective, it would be eliminated.

The proposed rule would redesignate § 121.401(h), pertaining to common management, as § 121.103(e), and clarify that common management must control both the firm whose size status is at issue and one or more other concerns in order to constitute affiliation. It would eliminate the references to key employees, but provide that affiliation can exist where the chief executive officer, one or more general partners, or one or more members of the board of directors, control the board of directors or management of another concern.

The proposed rule would eliminate §§ 121.401(i) and (j) as separate bases for affiliation. Most firms simply sharing common facilities do not act in concert, and SBA believes that there is little likelihood of abuse if this provision is eliminated. Similarly, the "newly organized concern" basis for affiliation seldom appears alone, and its elimination as a separate basis for affiliation would not eliminate the underlying reasons for finding affiliation on other grounds.

Section 121.401(k) would be eliminated as a separate basis for affiliation, but referenced as a factor that may cause affiliation under the totality of circumstances in proposed § 121.103(a)(2).

Affiliation through joint ventures would be moved from § 121.401(l) to § 121.103(f). The proposed rule would eliminate a specific definition of the term joint venture as unnecessary. The current regulations unintentionally define a joint venture as being formed for a single, specific contract. SBA believes it to be obvious that a joint venture may be formed to carry out more than one contract, and the regulation will be so implemented. The revision also would be reworded for brevity and clarity.

The provisions of §§ 121.401(l)(2) and (3) would be redesignated as §§ 121.103(f)(1) and (2), respectively. The provisions would be reworded for clarity, and provisions not affecting the substantive rule would be eliminated.

Section 121.401(l)(4) (proposed § 121.103(f)(3)) would be amended in two respects. It would clarify that whether a subcontractor should be considered a joint venturer depends on all circumstances pertaining to the subcontract arrangement between the parties and does not hinge solely on the percentage of subcontracted work. For example, the fact that a subcontractor is to perform a relatively large percentage of the total value of the contract might not cause SBA to consider the arrangement a joint venture where the prime contractor would be actively engaged in the performance of the contract and would exercise a supervisory role. In addition, subcontractors that supply materials may be distinguished from subcontractors that perform work. For example, a small business construction contractor would not be deemed an affiliate of a large subcontractor from which needed asphalt constituting more than 50 percent of the value of the contract was purchased where the large business was scheduled to perform no work on the contract other than the cost of the asphalt.

Section 121.401(l)(5) would be reworded for clarity and redesignated as § 121.103(f)(4).

The franchise rule in § 121.401(m) would be rewritten for clarity and redesignated as § 121.103(g).

The proposed rule would revise "annual receipts" in proposed § 121.104 (current § 121.402) to mean gross or total income plus cost of goods sold as reported on a concern's Federal income tax return. The term is meant to include revenue from the sale of products or services, interest, dividends, rents, royalties, fees, commissions, or other income. The same allowances and proceeds collected for another concern currently subtracted from receipts would continue to be subtracted in the proposed rule. Accordingly, the size of a concern would be based upon the information shown on the Federal income tax return, as opposed to the present requirement of utilizing its regular books of account. SBA specifically requests comments on this proposed definition. Because SBA would use a concern's income tax return to determine "receipts," the concern would not be required to restate its revenue under the accrual basis of accounting if its return was filed other than under the accrual method as is presently the case.

The proposed rule would also exclude from the calculation of annual receipts amounts collected for another by conference management services firms. This action is being taken to better measure the magnitude of operations of conference management services providers. In response to a decision of the United States District Court for the District of Columbia (Civil Action No. 91–1569), the proposed rule would also exclude such "pass-through" amounts would also be excluded for advertising agents.

The SBA reviews requests to exclude revenues of certain business activities on a case-by-case basis. In an August 25, 1992 proposed rule (*See* 57 FR 38452), SBA noted characteristics under which it might be appropriate to exclude from a concern's revenues certain funds received from a client firm to be transmitted to an unaffiliated third party. These include the following five characteristics:

(1) A broker or agent-like relationship between a firm and its third party provider exists that represents a dominant or crucial activity of firms in these industries.

(2) The pass-through funds associated with the broker or agent-like relationship is a significant proportion of total receipts.

(3) As the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee.

(4) Firms do not usually consider billings that are reimbursed to other firms as their own income, preferring instead to count only those receipts that are retained for their own use.

(5) Federal government agencies which engage in the collection of statistics and other industry analysts usually represent receipts of the firms on an adjusted receipts basis.

An analysis of the conference management services industry suggests that most of these characteristics are shared by concerns active in this industry. Conference management

services firms provide a range of services in support of organizing and facilitating conferences, such as travel, lodging, ground transportation, honoraria and other administrative support services. The sponsoring organization is responsible for developing the conference and its contents and for all conference expenses. The conference management service provider principally acts as an agent on behalf of the sponsoring organization by arranging for various support services in connection with the conference and provides few, if any, of the support services itself. The arrangements made through the conference management services provider to a third party provider are paid using the sponsoring organization's funds or by the conference management services provider and later reimbursed by the sponsoring organization. The pass-through monies paid to third-party providers generally account for a majority of the total expenses incurred by the conference management services provider. The conference management services provider's earnings are based on fees or commissions from these activities.

The scope of activities and business operations of conference management services providers appear to conform with the characteristics outlined above to support the exclusion of funds received in trust for an unaffiliated third party. The SBA believes that the revenues a conference management services provider received for a third party provider represents revenues intended for the third party. Accordingly, an exclusion of these types of revenues is warranted. The fees and commissions earned by the conference management services provider from its activities is also a more representative measure of the magnitude of operations of the firm and of the services provided.

Before a final decision is made on the exclusion of pass-through revenues for conference management services firms, the SBA would find additional information helpful on the practices of firms in the conference management services industry. In particular, the SBA seeks comments from the public concerning the typical relationship between clients of conference managers and conference management services providers themselves. Pertinent information would include:

(1) To what extent are funds passed through to other vendors in this industry, particularly the extent of booking costs for transportation, lodging and meeting room space?

(2) To what extent are funds "escrowed" in which the client firm provides an account to be used by the conference facilitator to "perform a condition" and meet ongoing expenses? What is the typical nature of these accounts in ownership and liability terms?

(3) Are conferences typically planned by the client firm or the independent conference planner? Who prepares the program and selects the speaker? Does the conference management services provider usually act as a mere facilitator or as a planner in which the entire production would be planned by the conference management services provider?

(4) How does the conference management services provider recover costs and make profits? Are arrangements normally on a cost-plus fixed-fee basis, a standard commission basis or fixed price?

This proposed rule does not change the current size standard of $5.0 million applicable to firms in SIC 8741, Management Services. However, if pass-through funds are excluded from the calculation of revenues for conference management services firms as proposed, it would effectively increase the size standard applicable to these type of firms. At this time, the SBA does not have available data to determine if the $5.0 million size standard continues to be appropriate for the conference management services industry. Accordingly, the SBA is also seeking information on the economic characteristics of conference management services firms, such as average firm size, the degree of concentration, the size distribution of firms, start-up costs and the difficulty of entry. Other information which may influence the size standard, and the need for a new size standard, may also be submitted. The SBA will consider this information to assess the appropriateness of the current size standard, which may lead to a future rulemaking proposing a different size standard than $5.0 million.

This proposed rule would also clarify that SBA may use all available information to determine annual receipts when making a size determination, especially if other information is available which disputes a firm's Income Tax returns.

Section 121.402(e)(i) would be redesignated as § 121.104(d) and amended to add language indicating that the annual receipts for a concern and its affiliates are calculated in accordance with proposed § 121.104(b) even though this may result in different time frames being used to calculate the concern's and affiliate's revenues.

Sections 121.403(a) and (b) would be redesignated as §§ 121.105(a) and (b), respectively, and revised for clarity. A new subsection (c) would be added to make it clear that if one entity is replaced by another having the same assets and liabilities, the successor firm is not a new entity for purposes of calculating annual receipts/employees.

The current definition of employees in § 121.404 would be combined with the definition of number of employees in § 121.407 into proposed § 121.106, and rewritten for clarity. The proposed rule would eliminate the list of numerous factors bearing on the issue of whether individuals are employees of a concern or employees of an independent employment contractor, and simply authorize SBA to look at all relevant factors concerning the issue.

The provisions of § 121.406 would be eliminated as unnecessary. Language indicating that dominance is taken into account in the setting of industry size standards would be added to proposed § 121.102.

The proposed rule would add a new § 121.107 which states the existence of statutory penalties for misrepresentations of size status.

The substance of § 121.601 would be redesignated as § 121.201, which would be amended to eliminate unnecessary language.

The size standards table identified by SIC industry would be greatly streamlined. The redesigned size standard table would list the size standard applying to each Division within the SIC System and each Major Group within that Division if different from the general Division size standard. Only those industries having a size standard different from the applicable Division or Major Group size standard, or those to which a footnote applies, would be specifically listed in the table by four-digit SIC code. This change would eliminate the duplication of listing four-digit SIC code after four-digit SIC code within a Division or Major Group with identical size standards.

The asterisks identifying new SIC codes for 1987 would also be eliminated from the table as no longer relevant or useful.

Many of the footnotes to the size standards in proposed § 121.201 would be clarified and simplified. Some footnotes have been deleted resulting in the need to renumber remaining ones as identified below. Size standards themselves would not be amended by this proposed rule.

Footnote 1 would be deleted as unnecessary. The Table of Size Standards itself, as well as the introductory language to the Table, indicates that size standards are in number of employees or average annual receipts unless otherwise specified.

Footnote 2, redesignated as footnote 1, would be clarified to indicate that the 40 percent requirement in the footnote applies to government procurement only.

Footnotes 3, 4, and 5, redesignated as footnotes 2, 3, and 4, respectively, would be reworded for clarity.

Footnote 6, redesignated as footnote 5, would be amended by replacing the words "which it manufactured worldwide" with the words "comprising its total worldwide manufacture" to clarify that SBA intended no difference in the application of those words.

The substance of footnote 7 would be transferred into the size standard table for SIC code 4212, and the footnote eliminated.

Footnote 8 would be incorporated into the Table, and eliminated as a separate footnote.

Footnote 9 would be eliminated as unnecessary.

Footnote 10, redesignated as footnote 6, would clarify that gross commissions of a travel, real estate or advertising agency are to be counted when determining such a concern's size, whether paid directly (e.g., through some sort of escrow account) or indirectly (i.e., received first by the agency and then paid to the individual) to individual agents of the concern. SIC codes relating to advertising agents (SIC codes 7311, 7312, 7313, and 7319) and that part of SIC code 8741 dealing with conference management service providers would be added to this footnote.

The substance of footnotes 11 and 12 would be incorporated into the size standard table for SIC codes 4212 and 5599 respectively, and the footnotes eliminated.

Footnote 13 would be deleted as duplicative of restrictions on financial assistance covered in Part 120.

Footnote 14, redesignated as footnote 6, would be revised to incorporate the substance of existing §§ 121.1402(a) and (b).

Footnote 15, redesignated as footnote 7, would be rewritten for clarity.

Footnote 16 would be eliminated and its substance combined with the statement at the beginning of the size standards chart dealing with the $5 million alternate size standard.

Footnotes 17, 18 and 20 would be clarified for ease of use and renumbered as footnotes 9, 10, and 12, respectively.

Footnotes 21 and 22 would be incorporated into the size Table, and eliminated as separate footnotes.

Footnote 23 would be redesignated as footnote 13.

Sections 121.801 and 121.802 (proposed §§ 121.301 and 121.302) would be amended for clarity and ease of use. The proposed rule would eliminate differentials in size standards for Redevelopment Areas. Differentials for Redevelopment Areas would be eliminated because almost all counties are so designated, and such designations tend to be permanent or long lasting designations once designated.

Section 121.803(a) (proposed § 121.303(a)) would be amended to clarify that the size of an applicant for financial assistance is determined as of the date the application for such assistance is received by SBA (or, in the case of the preferred lenders program, the date of approval of the loan by the Preferred Lender).

The current § 121.803(b) would be eliminated since it is covered in revised § 121.103(d).

Section 121.803(c), redesignated as § 121.303(b), would be rewritten for clarity.

Sections 121.804 through 121.806 (proposed §§ 121.304 through 121.306) would be rewritten for clarity and ease of use. SBA's Government Contracting Area Directors also would be substituted for staff in regional offices. They are familiar with size issues and principles because of their work in the government procurement area and have sufficient knowledge and expertise to make size determinations pertaining to financial assistance.

Proposed § 121.307 would clarify that a MED concern which qualifies for award of a specific 8(a) subcontract would be eligible for SBA financial assistance to finance the subcontract.

Section 121.901, redesignated as § 121.401, would clarify that it covers MED issues, but that additional size issues pertaining to the MED program are discussed in §§ 121.601 through 121.604.

Sections 121.902 and 121.903 would be redesignated as §§ 121.402 and 121.403, respectively, and revised for clarity.

Section 121.904, redesignated as § 121.404, would be rewritten for clarity and ease of use. The substance of subsection 121.904(b) has been transferred to proposed § 121.103(a)(4). Subsection (c) has been eliminated, and subsection (d) redesignated as subsection (b). This section would also call for determining size as of the date of best and final offers in negotiated procurements (rather than the date of self-certification) when a size protest alleges that a small business dealer is not supplying the product of a small business manufacturer or that a small business' subcontracting plan creates a joint venture that should be considered large. A concern's proposed supplier or subcontractors often will change during the process of negotiation, and it is unreasonable to expect subcontracting plans to be finalized at the time a concern self-certifies and submits its initial offer on the solicitation.

Sections 121.905 and 121.906, redesignated as §§ 121.405 and 121.406, respectively, would be amended for clarity and ease of use.

Section 121.907 would be redesignated as § 121.407, with the example deleted as unnecessary.

Section 121.908 would be redesignated as § 121.408. Subsections (a) and (b) would be consolidated and would clarify that a formal size determination is required if the size status of an applicant for a COC is at issue. Subsection (c) would be eliminated as duplicative (see § 121.404), and subsection (d) redesignated as subsection (b).

Section 121.909 would be redesignated as § 121.409.

Section 121.910 would be redesignated as § 121.410. Minor editorial changes and a corrected cross-reference would be made in subsections (a) and (b). Language referring to subcontracting for financial services under section 8(d) of the Small Business Act would be transferred to a new subsection (c).

Section 121.911 would be redesignated as § 121.411, and rewritten for clarity. Cross-references to sections would be corrected and a clarification made that prime contractors must notify unsuccessful offerors for Section 8(d) subcontracts of the apparent successful offeror to enable unsuccessful offerors to timely protest the size of the apparent successful offeror where appropriate.

A new § 121.412 would be added to the regulations to clarify that a concern must meet the applicable size standard only for that portion of a partial small business set-aside that is set-aside for small business. The concern is not required to qualify as a small business for that portion of a requirement that is open to both small and large business concerns. For instance, to be eligible as a small business concern for petroleum refining in SIC Code 2911, a concern is required to refine 90 percent of the petroleum from either crude oil or bona fide feedstocks. On a partial small business set-aside, a concern would have to meet this requirement on the portion of the offer that is set-aside, but would not have to meet this requirement on the unrestricted portion.

Sections 121.1001 through 121.1003 would be redesignated as §§ 121.501 through 121.503, and reworded for clarity.

Section 121.1004(a) would be redesignated as § 121.504, and reworded for clarity. The substance of subsection

(b) would be transferred to proposed § 121.103(a)(4).

Section 121.1005 would be redesignated as § 121.505, and reworded for brevity.

Proposed § 121.506 consolidates definitions (important for sales and leases of Government-owned timber) that are presently contained in different sections.

Section 121.1006, redesignated as § 121.507, clarifies that the Alaskan resale limitation applies when the original purchaser, and not necessarily the repurchaser, is an Alaskan business.

Sections 121.1006 through 121.1010 would be renumbered as §§ 121.507 through 121.511, and reworded for clarity and brevity.

Section 121.1011, redesignated as § 121.512, would clarify that SBA considers a concern's affiliates in determining the size of a stockpile purchaser.

Sections 121.1012 and 121.1013 would be redesignated as §§ 121.513 and 121.514, respectively, and amended for clarity and brevity.

Section 121.1101 would be eliminated as unnecessary.

Section 121.1102 would be reorganized for clarity. The substance of subsections (a)(1), (a)(2), and (b)(1) would be redesignated as §§ 121.601, 121.604(a), and 121.603, respectively. The substance of subsections (b)(2), (c) and (d) would be consolidated into § 121.402.

Section 121.1103 would be reorganized for clarity. The substance of subsections (a), (b), and (c) would be redesignated as §§ 121.602, 121.604(a), and 121.605, respectively. The substance of subsection (d) would be consolidated into § 121.404(b).

Section 121.1104 would be redesignated as § 121.604, and amended for clarity.

Sections 121.1105 and 121.1106 would be consolidated into §§ 121.405 and 121.406, respectively.

The substance of 121.1108 would be redesignated as § 121.605.

Section 121.1201 would be redesignated as § 121.701 and the definition of funding agreement in § 121.1202(b) would be moved to this section in order to keep definitions in one place.

Section 121.1202 would be redesignated as § 121.702 and the language would be simplified.

Section 121.1203 would be redesignated as § 121.703 and rewritten for clarity.

Section 121.1204 would be redesignated as § 121.704. The reference to a firm of more than 500 employees being ineligible for award would be deleted as duplicative of revised § 121.702. Section 121.1205 would be redesignated as § 121.705 and amended for clarity.

Sections 121.1301 through 121.1305 would be redesignated as §§ 121.801 through 805, respectively, with slight changes for clarity.

Sections 121.1401 through 121.1405 would be deleted as unnecessary since size eligibility of financial institutions for subcontracting purposes would be addressed in proposed § 121.410(c) and footnote 9 of proposed § 121.201.

Section 121.1501, redesignated as § 121.901 and rewritten for clarity, would address the procedures for size determinations and discretionary appeals currently set forth in § 121.1505.

Sections 121.1502 and 121.1503 would be consolidated into a new § 121.902.

A proposed amendment of § 121.1502 was published in the **Federal Register** (58 Fed. Reg. 44620) for public comment on August 23, 1993. It would have implemented Section 222 of Public Law 102–366, amending the Small Business Act, to delineate the limited circumstances under which a Federal department or agency may prescribe its own standard for determining whether an entity is a small business concern. After reviewing public comments, SBA has decided to publish for further comment a new proposal for the rule as part of this proposed rule.

After publication of the initial proposal, Congress modified Section 3(a)(2) of the Small Business Act further, thereby affecting two aspects of the proposed rule (*See* § 301, Public Law 103–403). Public Law 103–403 modified the time period for determining the size of a manufacturing concern from "over a period of not less than three years" to "a manufacturing concern's pay periods for the preceding 12 months." This modification makes the time period of measurement of a manufacturing concern's size consistent with the time period used by SBA in calculating the size of other business concerns subject to an employee-based size standard. Public Law 103–403 then expanded upon the types of size standard measures that could be used for certain industries. While § 301 requires that the number of employees be used to determine the size of a manufacturing concern, and gross receipts used to determine the size of concerns providing services, § 301 permits these or some other measure of size to be used for size standards for all other industry categories (e.g., retail trade, wholesale trade, and construction). Other measures of size standards could include net worth, net income, or some other quantitative measure that appropriately delineates business concerns by size. These statutory modifications have been incorporated into this final rule.

The current statutory provisions under Section 3(a)(2) of the Small Business Act establish certain requirements for the development of size standards by a Federal department or agency. Those requirements would be repeated in the regulations under this proposal: The head of a Federal department or agency may only prescribe a size standard different from that prescribed by SBA when it is for use in connection with a program of the department or agency, and other statutory criteria are met.

SBA proposes to adopt appropriate measures to implement this statutory authority. As stated in revised § 121.901, SBA applies the rules and procedures contained in this regulation when making size determinations for other agencies. This includes the definition of the size standard measure as well as all other criteria related to the size standard. SBA will consider the use of alternative definitions and other size related criteria by other agencies where appropriate. As required by statute, SBA also is publishing a list of non-SBA size standards currently in effect. The list contained in this proposed rule will be updated periodically by notices published in the **Federal Register** as non-SBA size standards become established or when additional existing non-SBA size standards are identified. The current list is as follows:

TABLE OF STATUTORY AND REGULATORY SIZE STANDARDS SET BY AGENCIES OTHER THAN SBA

Agency/Program	Size standard	Cite
Bureau of Land Management, Timber Sales	SBA size standards	43 CFR 5400.0–5
Department of Agriculture, SBIR program	Fewer than 500 employees; all requirements of 13 CFR 121.	7 CFR 3403.2(o)

TABLE OF STATUTORY AND REGULATORY SIZE STANDARDS SET BY AGENCIES OTHER THAN SBA—Continued

Agency/Program	Size standard	Cite
Department of the Air Force, Licensing Government-Owned Inventions.	SBA size standards	32 CFR 841.4
Department of the Army, Timber Sales	SBA size standards	32 CFR 644.509
Department of Commerce, International Trade Administration, Antidumping Duty Procedures.	"Small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. (19 USC 1339).	19 CFR 353.12
Department of Commerce, International Trade Administration, Countervailing Duty Procedures.	"Small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. (19 USC 1339).	19 CFR 355.12
Department of Commerce, Licensing Government-Owned Inventions.	SBA size standards	37 CFR 404.3
Department of Commerce, Patent Rights Clause	SBA size standards	37 CFR 401.14
Department of Commerce, Rights to Inventions	SBA size standards	37 CFR 401.2
Department of Defense, Business Type Certification—Commercial Items.	13 CFR part 121	48 CFR 252.211–7020
Department of Defense, Contract Goals for Small Disadvantaged Businesses.	Section 8(d) of the Small Business Act	10 USC 2323
Department of Defense, Notice of Partial Small Business Set-aside.	13 CFR part 121	48 CFR 252.219–7001
Department of Energy, Domestic Uranium Project	"[A]s defined by SBA"	10 CFR 760.1
Department of Energy, Electric and Hybrid Vehicle Research, Development, Demonstration and Production Loan Guaranties.	13 CFR 121.310	10 CFR 791.3
Department of Energy, Financial Assistance Rules	No dominant in its field; independently owned and operated; meets criteria of SBA.	10 CFR 600.3
Department of Energy, Financial Assistance Rules—Grants.	Not dominant in its field; independently owned and operated; meets criteria of SBA.	10 CFR 600.3
Department of Energy, Geothermal Loan Guaranty Program.	Not dominant in field; does not have assets in excess of $9 million or net worth in excess of $4 million; does not have average net income, after Federal income tax, for the preceding 2 years in excess of $400,000.	10 CFR 790.5
Department of Energy, Patent Rights of Grantees	13 CFR 121.3–8, 121.3–12	10 CFR 600.33
Department of Energy, State Energy Conservation Program.	SBA regulations	10 CFR 420.2
Department of Housing and Urban Development, Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects.	SBA size standards	24 CFR 135.5
Department of Labor, OSHA, Occupational Safety and Health Standards, Cadmium.	19 or fewer employees	29 CFR 1910.1027(p)(2)
Department of Transportation, Implementation of § 105(f) of the Surface Transportation Assistance Act of 1982.	Section 3 of the Small Business Act and SBA regulations, except that a small business concern will not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual(s) which has average annual gross receipts in excess of $15 million over the previous 3 fiscal years (amount is increased annually for inflation).	49 CFR 23.62
Department of Transportation, Size Standards for Airport Concessionaires.	See note below for size standards for specific airport concessionaires.	49 CFR 23.89
Department of Transportation, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.	Small business is a business having not more than 500 employees working at the site being acquired or displaced by a project or program, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business.	49 CFR 24.2(t)
Environmental Protection Agency, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions.	Section 3 of the Small Business Act	40 CFR 30.6015
Environmental Protection Agency, Issuance of Statements Required by § 7(g) of the Small Business Act.	SBA size standards	40 CFR 21.2
Environmental Protection Agency, Procurement Under Assistance Agreements.	Small Business Act	40 CFR 33.005
Environmental Protection Agency, Stationary Source Technical and Environmental Compliance Assistance Program.	100 employees	42 USC 7661(f)
Family and Medical Leave Act	Fewer than 50 employees	Public Law 103–1, § 101

TABLE OF STATUTORY AND REGULATORY SIZE STANDARDS SET BY AGENCIES OTHER THAN SBA—Continued

Agency/Program	Size standard	Cite
FAR, Patent Rights, Retention by Contractor (Short Form).	Section 2 of the Small Business Act and SBA regulations.	48 CFR 52.227–11
FAR, Patent Rights, Retention by Contractor (Long Form).	Section 2 of the Small Business Act and SBA regulations.	48 CFR 52.227–12
FAR, Patent Rights Under Government Contracts	16 USC 632 and SBA regulations	48 CFR 27.301
FAR, Size Standards	SBA size standards	48 CFR 19.102
FAR, Small Business Competitiveness Demonstration Program.	Emerging small business: size is no greater than 50% of numerical SIC size standard.	48 CFR 19.1002
FAR, Socioeconomic Programs	13 CFR 121 and not dominant in field	48 CFR 19.001
FAR, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	Section 3 of the Small Business Act and SBA regulations.	48 CFR 52.219–8
General Services Administration, Small Business Concern Representation.	13 CFR part 121	48 CFR 552.219–1
Internal Revenue Service, Dollar-value Method of Pricing LIFO Inventories.	Average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5 million.	26 CFR 1.472–8
Internal Revenue Service, Loss on Small Business Stock.	(1) Post-1978 stock: capital receipts of small business corporation may not exceed $1 million (capital receipts means aggregate dollar amount received by the corporation for its stock). (2) Pre-1978 stock: sum of aggregate amount to be paid for pre-1978 stock may not exceed $500,000.	26 CFR 1.1244(c)-2
Internal Revenue Service, S Corporation Defined	Fewer than 35 shareholders; no shareholder (other than an estate or trust) who is not an individual; no nonresident alien as shareholder; only one class of stock.	26 CFR 1.1361–1
Internal Revenue Service, Simplified Dollar-value LIFO Method for Certain Small Businesses.	Average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5 million.	26 USC 474
Internal Revenue Service, Subchapter S Corporation	Fewer than 35 shareholders; no shareholder (other than an estate or trust) who is not an individual; no nonresident alien as shareholder; only one class of stock.	26 USC 1361(b)(1)(A)
International Trade Commission, Trade Remedy Assistance.	SBA size standards	19 CFR 213.2
Interstate Commerce Commission, Negotiated Rates Act.	Small Business Act	49 USC 10701
NASA, Licensing of Inventions	13 CFR 121.3–8 and 121.3–12	14 CFR 1245.202
NASA, Patent Rights—Retention by Grantee	13 CFR 121.3–8 and 121.3–12	14 CFR 1260 App.
National Science Foundation, Patent Rights of Grantee	13 CFR 121.3–8 and 121.3–12	45 CFR 650.4
Patent and Trademark Office	13 CFR 121.12	37 CFR 1.9
Regulatory Flexibility Act	Section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.	5 USC 601
Securities & Exchange Commission, Integrated Disclosure System for Small Business Issuers.	Small business issuer-revenues less than $25 million; US or Canadian issuer; not an investment company; if a majority owned subsidiary, parent corporation must also be a small business issuer.	17 CFR 228.10
Securities & Exchange Commission Registration and Reporting.	Small business issuer-revenues less than $25 million; US or Canadian issuer; not an investment company; if a majority owned subsidiary, parent corporation must also be a small business issuer.	17 CFR 240.12b–2
Selective Service, Placement of Orders	500 employees	50 App. USC 468(a)
Federal Communications Commission, Licensing of Broadband Personal Communications Services.	$40 million in average annual gross revenues	47 CFR 24.720(b)(1)
Federal Communications Commission, Licensing of Narrowband Personal Communications Services.	$40 million in average annual gross revenues and $40 million in personal net worth.	47 CFR 24.320(b)
Federal Communications Commission, Licensing of Multipoint Distribution Services (Wireless Cable).	$40 million in average annual gross revenues	47 CFR 21.961(b)
Federal Communications Commission, Regulatory Relief for Small Cable Entities.	Small cable systems of 15,000 or fewer subscribers owned by cable companies with 400,000 or fewer subscribers.	47 CFR 76.901(c)
Nuclear Regulatory Commission, Regulatory Flexibility Analyses.	$5 million in average annual gross revenues for concerns providing services and 500 employees for manufacturing concerns.	10 CFR 2.810
Department of the Treasury, Office of the Comptroller of the Currency, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 25.22(b)(3)
Department of the Treasury, Office of Thrift Supervision, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 563e.22(b)(3)(iii)
Board of Governors of the Federal Reserve System, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 228.22(b)(3)(ii)
Federal Deposit Insurance Corporation, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 345.22(b)(3)(ii)
Department of Agriculture, Commodity Credit Corporation, Market Promotion Program.	SBA size standards	7 CFR 1485.11(oo)

Note for Airport Concessionaire Size Standards

Following is a list of the maximum average annual gross receipts in the preceding 3 years (in millions of dollars):

Concession	Amount
Food and beverage	30.00
Book stores	30.00
Auto rental	40.00
Banks	[1]100.00
Hotels and motels	30.00
Insurance machines and counters	30.00
Gift, novelty, and souvenir shop	30.00
Newsstands	30.00
Shoe shine stands	30.00
Barber shops	30.00
Automobile parking	30.00
Jewelry stores	30.00
Liquor stores	30.00
Travel agencies	30.00
Drug stores	30.00
Pastries and baked goods	30.00
Luggage cart rental	30.00
Coin-operated T.V.'s	30.00
Game rooms	30.00
Luggage and leather goods stores	30.00
Candy, nut, and confectionery stores	30.00
Toy stores	30.00
Beauty shops	30.00
Vending machines	30.00
Coin-operated lockers	30.00
Florists	30.00
Advertising	30.00
Taxicab	30.00
Limousines	30.00
Duty free shops	30.00
Pay telephones	[2]1,500
Gambling machines	30.00
Other concessions not shown above	30.00

[1] As measured by total assets.
[2] Number of employees.

SBA will briefly describe and respond to the comments received in response to its initial proposed rule regarding alternate size standards of other agencies. Several of the commenters, although supportive of the proposed rule, identified the following issues that they felt warranted further clarification or modification to the proposed procedures. These issues are identified below along with the SBA's response.

Definition and Calculation of Average Annual Receipts and Number of Employees: The commenters raised two questions concerning annual average receipts and number of employees—how are these terms defined and how are they calculated? As specified in revised § 121.901, the SBA utilizes its rules, standards and procedures when making size determinations for other agencies. For clarification on the definition and calculation of size standard measures, § 121.902(b)(1)(ii)(D) of this part has been added to incorporate, by reference, the SBA's criteria for defining and calculating gross receipts and number of employees. The SBA's policy of applying the criteria specified in this regulation to another agency's size standard does not preclude a department or agency from requesting a change to the definition of procedures regarding its size standard. Such request would be part of the SBA's review of the proposed size standard.

Size Standard Measures: Two commenters suggested that these regulations should permit the use of size standard measures other than gross receipts and number of employees, such as net worth, and permit the use of number of employees for non-manufacturing industries. For non-SBA size standards, the law clearly requires that the size standard for manufacturing concerns be established based on number of employees, and for concerns providing services that the size standards be established based on gross receipts. SBA believes that the statutory changes pursuant to § 301 of Public Law 103–403 permit an agency to request establishment of a size standard for all other types of concerns (e.g., agriculture, construction, retail trade) based on gross receipts, number of employees or another quantitative measure of size suitable for the purpose and industry under consideration, and this final rule allows a department or agency to make such a request.

Application of Size Standards to Programs: The comments reviewed reflected confusion about the application of non-SBA size standards to Federal government programs. Several commenters indicated that they were unsure if non-SBA size standards were only to be used within a specific department or agency, even though a program may be implemented across several agencies or departments. Second, some commenters appeared to be under the misunderstanding that individual agencies would be able to establish their own size standards for use in SBA programs within their agency.

These regulations allow departments and agencies to prescribe unique size standards only for programs under their responsibility. For example, this means that size standards established by the Department of Transportation for a program under its control are applicable to all departments or agencies that must also implement such a program. Similarly, the SBA size standards are applicable to all programs under the SBA area of cognizance, regardless of where implemented. This means that the SBA size standards must be used by all departments and agencies for the Small Business Set-Aside and MED Programs.

In another case, a statute may require the use of SBA's size standards or refer to small business as defined under the Small Business Act. An example is the Department of Defense's Small Disadvantaged Business Program. In those cases, the SBA size standards clearly must be used. However, if use of SBA's size standards has not been statutorily required, a Federal department or agency is free to either use the SBA's size standards or endeavor to obtain the approval of SBA to establish a different size standard.

Size Determinations and Appeals to Non-SBA Size Standards: A commenter raised the question of how size determinations and appeals would be made for non-SBA size standards in cases involving a dispute over the size status of a business concern. When requested, the SBA will provide size determinations for other Federal government agencies, even in cases where size standards are established by statute or the SBA has approved size standards different from its own size standards (See proposed § 121.1001(b)(6)). The SBA also provides a discretionary appeal process from such size determinations that would be available to other Federal agencies. The procedures regarding size appeals are contained in part 134 (See proposed § 121.1102).

Documentation for SBA Review of Non-SBA Size Standards: A commenter requested clarification on what

documentation must accompany its requests for approval of non-SBA size standards, particularly regarding submission of copies of comments received on the proposed rule. In order for the SBA to properly evaluate requests to issue proposed rules, an agency proposing a size standard shall provide the SBA with (1) the reasons for proposing a size standard different from the SBA's size standard, and (2) industry related data or other data supporting its proposed size standard. In order to properly evaluate each request for non-SBA size standards and approve the issuance of a final rule, the SBA shall also be provided with copies of all comments that relate to the establishment of the size standard, not just copies of all comments received on the proposed rule. The SBA has modified a provision of the proposed rule to specify that only comments related to the size standard need to be provided to the SBA as part of its review of an agency final rule.

Another commenter recommended modifying the requirement to provide the SBA with a copy of the final rule prior to approval by the SBA's Administrator. To expedite the SBA's review of the size standard at this stage of the rulemaking process, the commenter recommended that agencies be allowed to submit the intended size standard with an accompanying justification. The SBA agrees, and has modified this provision of the proposed rule. When possible, the requesting agency should submit a draft final rule and preamble. However, correspondence containing a justification for the intended size standard is acceptable, provided the agency furnishes the SBA a copy of the final rule and its preamble before submitting it for publication in the **Federal Register**.

Clarify "Other Factors" Considered by the SBA Administrator: Several commenters requested clarification on the information the SBA believes it should review when complying with the requirement to "consider other factors the Administrator deems to be relevant." When establishing or approving size standards, the SBA Administrator is required to ensure that size standards vary by industry to the extent necessary to reflect industry differences and to consider other relevant factors. The SBA generally evaluates the structural characteristics of an industry to determine the appropriate differences between industry size standards. These characteristics include, but are not limited to: average firm size, industry competition, the extent of industry dominance by large firms, the distribution of sales and employees by firm size, and start-up costs. Other relevant factors generally pertain to all other types of information that could influence the decision on the size standard. Although this may vary for each request, several important factors would include the goals and objectives of the program, the impact of the size standard on small businesses, conventional industry business practices, and the administration and application of size standard requirements.

Timeliness of SBA Decisions on Approval Process: Several commenters were concerned about the timeliness of the SBA approval process and what impact it might have on rulemaking. The SBA shares this concern and will make every effort to ensure that the regulatory process is not delayed. However, the SBA believes specifying a time frame for these reviews is impractical. Each request will likely have different implications. That makes estimating within this rule a definite completion date for a review inappropriate. The SBA will, as a matter of policy, respond to requests for non-SBA size standards within 30 days. Where the SBA cannot respond within 30 days, the agency will advise the requester as soon as possible.

SBA Reviews and Legislation Providing Authority to Establish Size Standard: One comment questioned the need for an agency to request the SBA's approval for a non-SBA size standard if the enabling legislation for a particular program specifically authorized the agency to establish a size standard without specifying a size standard.

The SBA believes that if the enabling legislation does not designate the size standard, the department or agency would be required to follow the approval procedures specified in the Small Business Act and these regulations. Only in instances in which legislation specifically establishes a size standard would an agency or department be exempted from these procedures.

Section 121.1504 would be redesignated as § 121.903, and reworded in plain English.

Section 121.1601 would be redesignated as § 121.1001 and reworded for clarity. The section would be revised to reflect the new names of offices under SBA's reorganization. References to the Agency's regional offices would be changed to the offices of SBA Government Contracting Area Director or SBA District Director, as appropriate. Reference to any inactive assistance program would be deleted. In addition, proposed § 121.1001(b)(1)(iv) would be amended by expanding the first sentence to clarify existing policy. The regulations currently state that a large business may initiate a size protest as an interested party if only one offer was received. This change would clarify that this does not include a concern that is found to be other than small for a particular procurement protesting the size of the only remaining offeror.

Proposed § 121.1001(b)(5) (present § 121.1601(a)(5)) would be amended to clarify that SBA will make size determinations when a procurement is unrestricted, and that the Office of Hearings and Appeals (OHA) will issue decisions on size appeals and Standard Industrial Classification (SIC) code appeals on unrestricted procurements. This change is necessary because OHA has issued decisions in the past that the SBA regional offices have no jurisdiction to make size determinations when a procurement is unrestricted, and that OHA has no jurisdiction over size appeals or SIC Code appeals when a procurement is unrestricted. SBA disagrees with OHA's interpretation of the existing regulations, and therefore proposes to clarify the regulations. OHA has said that small business status is beneficial only for small business set-aside contracts. This is not true. Small business status is beneficial in unrestricted procurements as well for the following reasons, among others:

1. Small Businesses receive the contract award in the case of a tie bid with a large business.
2. Small businesses are eligible to apply for a Certificate of Competency when a contracting officer makes a determination of non-responsibility.
3. Small businesses are exempt from the Cost Accounting Standards.
4. Small businesses may receive accelerated progress payments.
5. Small businesses are exempt from submitting subcontracting plans.

In the January 1, 1990, revision to 13 CFR Part 121, SBA attempted to clarify this issue by providing the example of the tie bids and the Certificate of Competency eligibility. It was not SBA's intention to limit size determinations and size appeals to just those two examples when a procurement is unrestricted. However, after publication of the revised regulations, OHA ruled that it would not make a decision on a size determination appeal unless there were tie bids or the contracting officer made a determination of non-responsibility. There are many benefits to being a small business in unrestricted procurements. It is SBA's policy to make size determinations when a protest is received on any unrestricted procurement, regardless of whether there is an apparent benefit at the time the protest is received. Additionally, SBA is attempting to clarify that OHA has jurisdiction to issue decisions concerning SIC appeals on unrestricted procurements. Currently, a concern has no recourse when a contracting officer issues an unrestricted solicitation with an incorrect SIC Code.

The revised § 121.1001 would be further amended to use the term "headquarters" in lieu of the term "principal office" in referring to a concern's primary headquarters. SBA believes the term "headquarters" more accurately describes the location where a firm's business or corporate records are maintained and business decisions are made.

Section 121.1602 would be redesignated as § 121.1002, rewritten for clarity, and amended to provide for changes in offices responsible for making formal size determinations as a result of the Agency's reorganization. The Government Contracting Area Director would assume the responsibilities formerly held by SBA regional administrators for making size determinations. The term "headquarters" would be used instead of "principal offices" when describing the primary location of a concern's executive office.

Section 121.1603 would be broken out into proposed §§ 121.1003 through 121.1006 for ease of use and clarity. Individual sections would be created relating to where a protest should be filed, what time limits apply to size protests, how a protest must be filed with the contracting officer, and referral of a size protest to the appropriate SBA Government Contracting Area Office.

Proposed § 121.1004 would clarify that although a protest filed by a contracting officer is timely whether filed before or after award, such a protest will be dismissed by SBA as premature if filed before the selection of the apparent successful offeror. This change would prohibit a contracting officer from protesting the size of several concerns at once (e.g., all firms found to be in the competitive range) and would authorize a protest only after the apparent successful offeror has been selected.

Section 121.1604(a) and (b) would be redesignated as § 121.1007(b) and (c), reworded for clarity, and the examples deleted. A portion of present § 121.1601(a)(1)(iv) would be added to proposed § 121.1007 as subsection (a) for the purpose of clarifying that a protest not pertaining to a particular procurement or sale would not be acted upon by SBA. Subsection (c) which pertains to appeals of dismissals would be eliminated as unnecessary in this section addressing size determinations.

Section 121.1605 would be redesignated as § 121.1008 and would be reworded for clarity and user ease. In addition, the revised § 121.1008(a) would be amended to allow any overnight mail delivery service that provides proof of receipt to be used in the size determination process. This change is necessary in order that size determinations may be made in a timely manner.

Section 121.1606 would be redesignated as § 121.1009. Its provisions would be reworded for clarity. The revision would permit use of any overnight mail delivery service that provides proof of receipt to be used in the size determination process. The change would assist SBA in making size determinations in a timely manner. Paragraph (g)(3) would be further amended to provide that a concern which had self certified as small on a pending procurement or assistance application would have to provide notice of any adverse size determination to officials responsible for the pending procurement or assistance request. Subsection (h) would be added to permit the SBA office that performed a formal size determination to reopen that determination in the limited instance where the size determination contains clear administrative error or a clear mistake of fact, provided that no appeal has been taken to OHA and that no contract has been awarded. This provision would permit SBA to correct the error or mistake without requiring the filing of an appeal at OHA.

Section 121.1607 would be redesignated as § 121.1010. The proposed provision would be reworded for ease of use and clarity.

Section 121.1701 would be amended and the substance of subsections (a) and (b) redesignated as § 121.1101 and § 121.1103, respectively. Proposed § 121.1101 would materially alter the right of a party adversely affected by a size determination to appeal the adverse determination to OHA and further provide that OHA has the unfettered discretion to select and review formal size determinations. There would no longer be a right to appeal a size determination. SBA believes that this amended procedure will simplify and speed the final consideration of size status issues. Unless a petition for review is accepted by OHA, the size determinations made by Government Contracting offices and disaster area offices would be final Agency decisions and would end the size determination process. Under the revised procedures, the procurement process generally would not be delayed because of size determination appeals to OHA. OHA could elect to consider any size determination appeal request.

Section 121.1702 has been eliminated. Part of proposed § 121.1101 simply references procedures for discretionary OHA reviews as contained in part 134.

Section 121.1703(a) would be incorporated into § 121.1101. Sections 121.1703 (b) and (c) would be incorporated into §§ 121.1103, and 121.1703(d) would be eliminated.

Section 121.1704 would be incorporated into § 121.1103. The revised section would address procedures for appealing SIC code designations. The revision would provide that appeal procedures would be those outlined in FAR 19–303.

Sections 121.1705 through 121.1722 would be eliminated and their substance transferred to part 134.

Sections 121.2001 through 121.2005 would be redesignated as §§ 121.1201 through 121.1206. The sections would be revised to reflect better clarity and organizational content. The substance of these provisions would remain substantially unaffected. Minor editorial changes would be made, for example, to eliminate outdated information such as procurement funding levels for prior years. The content of the current § 121.2004 would be rearranged in a more logical sequence. Where organizational titles have changed, the revisions would adopt the new titles.

Sections 121.2101 through 121.2104 would be redesignated as §§ 121.1301–121.1304, respectively, § 121.2105 would be incorporated into proposed § 121.1304, and § 121.2106 would be redesignated as § 121.1305. Minor editorial changes pertaining to class waivers would be made for ease of reading and use.

In addition, SBA is proposing to incorporate in these sections procedural rules pertaining to individual waivers of the Nonmanufacturer Rule for specific solicitations. On November 15, 1988, the enactment of Public Law 100–656 incorporated into the Small Business Act the previously existing SBA requirement that recipients of small business set-asides or SBA 8(a) subcontracts for manufactured products that are not the actual manufacturers (nonmanufacturers) be themselves small business regular dealers. This legislation specifies that regular dealers may provide only the product of domestic small business manufacturers or processors on small business set-asides and 8(a) procurements. This requirement is commonly known as the

Nonmanufacturer Rule. Section 303(h) of Public Law 100–656 authorized the Administrator of the SBA to grant a waiver of the Nonmanufacturer Rule for a product or class of products for which there are no small business manufacturers or processors in the Federal market. The requirement that a small business supplier provide a product manufactured or processed by a small business concern in the U.S. under a contract set-aside for small business or under an SBA 8(a) subcontract is found in SBA regulations at §§ 121.406(b). On June 15, 1989, Public Law 101–37 renumbered the elements in the Nonmanufacturer Rule and added the requirement that a small business concern must meet the numerical size standard for the Standard Industrial Classification code assigned to the contract solicitation on which the offer is being made. Further, on November 15, 1990, Public Law 101–574 modified the wording of the waiver provision. The new wording allowed the Administrator of the SBA to waive the requirement for any product or class of products for which there is no small business manufacturer or processor "available to participate in the Federal procurement market." The law also added a provision which allows the Administrator to waive the requirements of the Nonmanufacturer Rule after receiving a determination by the contracting officer stating that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specification, including period of performance, required of an offeror on a solicitation.

On September 21, 1993, SBA published in the **Federal Register** proposed procedural rules for individual waivers of the Nonmanufacturer Rule. SBA received two sets of comments in response to the proposed rule. Due to the passage of time since the proposed rule was originally published, SBA is not issuing final regulations pertaining to individual waivers but is again proposing revised regulations taking into account the comments received. The first commenter was the United States Department of the Interior, Geological Survey (DOI). Its first comment was a request to include in the regulations a definition of "nonmanufacturing." Since this term is not used in the proposed regulations, a definition is unnecessary.

DOI's second comment was a request to clarify the language of the regulation by shortening word and sentence lengths. SBA reviewed the regulation and, where possible, reduced the length of the sentences and the size of the words.

The second commenter was a small business wholesaler who submitted four comments. The first comment was that SBA should review and grant class waivers for individual items. The statute authorizing waivers does permit class waivers for products for which there are no small business manufacturers available to participate in the Federal procurement market and current SBA regulations already address this. Consequently, no action on the comment is necessary.

The small business wholesaler's second comment was that a SBA Business Opportunity Specialist should be allowed to request waivers for individual procurements. Waivers for individual procurements are routinely granted for both small business set-asides and SBA 8(a) subcontracts. SBA believes that the best procedure to maintain administrative consistency is to allow only the procuring agencies' contracting officers to request individual waivers for both set-asides and 8(a) awards. We believe that the procuring agency contracting officer ultimately responsible for contract award is the most qualified individual to determine whether small business products are available and/or meet the specifications of a particular solicitation.

The small business wholesaler's third comment was that SBA state procurement center representatives should be allowed to request individual waivers of the Nonmanufacturer Rule. Public Law 101–574, Section 210, is explicit in its language allowing only contracting officers to request individual waivers. Therefore, SBA has no authority to allow anyone other than contracting officers to request individual waivers of the Nonmanufacturer Rule.

The fourth comment by the small business wholesaler was that SBA 8(a) subcontractors should be allowed to request individual waivers of the Nonmanufacturer Rule. As with the commenter's third comment, Public Law 101–574, Section 210, is explicit in its language allowing only contracting officers to request individual waivers.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is would clarify SBA's procedural and definitional size rules, but would not change the size standard for any particular industry. As such, size eligibility for the various SBA programs should not be affected by this proposal. The rule would have no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, pursuant to the authority set forth in sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), SBA hereby proposes to revise part 121 of Title 13, Code of Federal Regulations (CFR), to read as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

Provisions of General Applicability

Sec.
121.101 What are SBA size standards?
121.102 How does SBA establish size standards?
121.103 What is affiliation?
121.104 How does SBA calculate annual receipts?
121.105 How does SBA define "business concern or concern"?
121.106 How does SBA calculate number of employees?
121.107 How does SBA determine a concern's "primary industry"?
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Size Standards Used To Define Small Business Concerns

6121.201 What size standards has SBA identified by Standard Industrial Classification codes?

Size Eligibility Requirements for SBA Financial Assistance

6121.301 What size standards are applicable to financial assistance programs?
6121.302 When does SBA determine the size status of an applicant?
6121.303 What size procedures are used by SBA before it makes a formal size determination?
6121.304 What are the size requirements for refinancing an existing SBA loan?
6121.305 What size eligibility requirements exist for obtaining business loans relating to particular procurements?

Size Eligibility Requirements for Government Procurement

6121.401 What procurement programs are subject to size determinations?
6121.402 What size standards are applicable to procurement assistance programs?
6121.403 Are SBA size determinations and SIC code designations binding on parties?
6121.404 When does SBA determine the size status of a business concern?
6121.405 May a business concern self-certify its small business size status?
6121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or MED procurements?
6121.407 What are the size procedures for multiple item procurements?
6121.408 What are the size procedures for SBA's Certificate of Competency Program?
6121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?
6121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?
6121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?
6121.412 What are the size procedures for partial small business set-asides?

Size Eligibility Requirements for Sales or Lease Of Government Property

6121.501 What programs for sales or leases of Government property are subject to size determinations?
6121.502 What size standards are applicable to programs for sales or leases of Government property?
6121.503 Are SBA size determinations binding on parties?
6121.504 When does SBA determine the size status of a business concern?
6121.505 What is the effect of a self-certification?
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6121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage timber)?
6121.508 What are the size standards and other requirements for the purchase of Government-owned Special Salvage Timber?
6121.509 What is the size standard for leasing of Government land for coal mining?
6121.510 What is the size standard for leasing of Government land for uranium mining?
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Size Eligibility Requirements for the Minority Enterprise Development (MED) Program

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6121.602 At what point in time must a MED applicant be small?
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Size Eligibility Requirements for the Small Business Innovation Research (SBIR) Program

6121.701 What SBIR programs are subject to size determinations?
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6121.703 Are formal size determinations binding on parties?
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Size Eligibility Requirements for Paying Reduced Patent Fees

6121.801 May patent fees be reduced if a concern is small?
6121.802 What size standards are applicable to reduced patent fees program?
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Size Eligibility Requirements for Compliance With Programs of Other Agencies

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Subpart B—Other Eligibility Provisions

Eligibility of Organizations for the Handicapped for Small Business Set-asides

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121.1202 What is an organization for the handicapped?
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Waivers of the Nonmanufacturer Rule for Classes of Products

121.1301 What is the Nonmanufacturer Rule?
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121.1305 How is a list of previously granted class waivers obtained?

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

Provisions of General Applicability

§ 121.101 What are SBA size standards?

SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the Standard Industrial Classification (SIC) System. The SIC System is described in the "Standard Industrial Classification Manual" published by the Office of Management and Budget, Executive Office of the President, and sold by the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. The SIC System assigns four-digit SIC codes to all economic activity within ten major divisions. Section 121.201 describes the size standards now established. A full table matching a size standard with each four-digit SIC code is also published annually by SBA in the **Federal Register**.

§ 121.102 How does SBA establish size standards?

(a) SBA considers economic characteristics comprising the structure of an industry, including degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size. It also considers technological changes, competition from other industries, growth trends, historical activity within an industry, unique factors occurring in the industry which may distinguish small firms from other firms, and the objectives of its programs and the impact on those programs of different size standard levels.

(b) As part of its review of a size standard, SBA will investigate if any concern at or below a particular standard would be dominant in the industry. SBA will take into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence on a national basis in which a number of business concerns are engaged. Size standards seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.

(c) Please address any requests to change existing size standards or establish new ones for emerging industries to the Assistant Administrator for Size Standards, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

§ 121.103 What is affiliation?

(a) *General Principles of Affiliation.* (1) Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

(2) SBA considers factors such as ownership, management, and contractual relationships, in determining whether affiliation exists.

(3) Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, may be treated as one party with such interests aggregated.

(4) SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.

(b) *Exclusion from affiliation coverage.* (1) Business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, are not considered affiliates of such investment companies or development companies.

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

(3) Business concerns which are part of a SBA approved pool of concerns for a joint program of research and development as authorized by the Small Business Act are not affiliates of one another because of the pool.

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses are not affiliated with the leasing company solely on the basis of a leasing agreement.

(5) For financial, management, or technical assistance under the Small Business Investment Company program, an applicant concern will not be affiliated with the following investors, provided the investors do not control the concern other than to the extent that would be permitted under § 107.865 of this chapter:

(i) Venture capital operating companies as defined in the U.S. Department of Labor Regulations found at 29 CFR 2510.3–101(d);

(ii) Employee benefit or pension plans established and maintained by the Federal government or by any state, their political subdivisions, or any agency or instrumentality thereof for the benefit of employees;

(iii) Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974; or

(iv) Charitable trusts, foundations, endowments, or similar organizations exempt from Federal income taxation under Section 501(c) of the Internal Revenue Code of 1986.

(6) A protege firm is not an affiliate of a mentor firm solely because the protege firm receives assistance from the mentor firm under Federal Mentor-Protege programs.

(c) *Affiliation based on stock ownership.* (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock.

(2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

(d) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Since stock options, convertible debentures, and agreements to merge (including agreements in principle) affect the power to control a concern, SBA treats them as though the rights granted have been exercised (except that an affiliate cannot use them to appear to terminate control over another concern before it actually does so). SBA gives present effect to an agreement to merge or sell stock whether such agreement is unconditional, conditional, or finalized but unexecuted. Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and, thus, are not given present effect.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern.

(f) *Affiliation based on joint venture arrangements.* (1) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.

(2) Concerns bidding on a particular procurement or property sale as joint venturers are affiliated with each other with regard to performance of that contract.

(3) A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

(4) For size purposes, a concern must include in its revenues its proportionate share of joint venture receipts.

(g) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the latter has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

§ 121.104 How does SBA calculate annual receipts?

(a) *Definitions.* In determining annual receipts of a concern:

(1) *Receipts* is defined as gross or total income, plus cost of goods sold, as reported on a concern's Federal Income Tax return. However, the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(2) *Completed fiscal year* means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

(3) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

(b) *Period of measurement.* (1) Annual receipts of a concern which has been in business for 3 or more completed fiscal years means the receipts of the concern over its last 3 completed fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than 3 complete fiscal years means the receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Annual receipts of a concern which has been in business 3 or more complete fiscal years but has a short year as one of those years means the receipts for the short year and the two full fiscal years divided by the number of weeks in the short year and the two full fiscal years, multiplied by 52.

(c) *Use of information other than the Federal tax return.* Where other information gives SBA reason to regard Federal Income Tax returns as false, SBA may base its size determination on such other information.

(d) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before small business self-certification, the annual receipts in determining size status include the receipts of both firms. Furthermore, this aggregation applies for the entire applicable period used in computing size rather than only for the period after the affiliation arose. Receipts are determined for the concern and its affiliates in accordance with paragraph (b) of this section even though this may result in different periods being used to calculate annual receipts.

(2) The annual receipts of a former affiliate are not included as annual receipts if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.

§ 121.105 How does SBA define "business concern or concern"?

(a) A business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

(c) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size.

§ 121.106 How does SBA calculate number of employees?

(a) Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. SBA will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the concern in question.

(b) Where the size standard is number of employees, the method for determining a concern's size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

(2) Part-time and temporary employees are counted the same as full-time employees.

(3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(4) The treatment of employees of former affiliates or recently acquired affiliates is the same as for size determinations using annual receipts in § 121.104(d).

§ 121.107 How does SBA determine a concern's "primary industry"?

In determining the primary industry in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal

year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.

§ 121.108 What are the penalties for misrepresentation of size status?

In addition to other laws which may be applicable, section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs. Section 16(a) of the Act also provides, in part, for criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way the actions of the Agency.

Size Standards Used to Define Small Business Concerns

§ 121.201 What size standards has SBA identified by Standard Industrial Classification codes?

The size standards described in this section apply to all SBA programs unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. The following is a listing of size standards for industries under the SIC System. Size standards are listed by Division and apply to all industries in that Division except those specifically listed with separate size standards.

SIZE STANDARDS BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
DIVISION A—AGRICULTURE	
MAJOR GROUP 01—AGRICULTURAL PRODUCTION-CROPS	0.5
MAJOR GROUPS 02—LIVESTOCK AND ANIMAL SPECIALTIES	0.5
EXCEPT:	
0211 Beef Cattle Feedlots (Custom)	1.5
0252 Chicken Eggs	9.0
MAJOR GROUP 07—AGRICULTURAL SERVICES	5.0
MAJOR GROUP 08—FORESTRY	5.0
MAJOR GROUP 09—FISHING, HUNTING, AND TRAPPING	3.0
DIVISION B—MINING	
MAJOR GROUP 10—METAL MINING	500
MAJOR GROUP 12—COAL MINING	500
MAJOR GROUP 13—OIL AND GAS EXTRACTION AND MAJOR GROUP 14—MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS.	500
EXCEPT:	
1081 Metal Mining Services	5.0
1241 Coal Mining Services	5.0
1382 Oil and Gas Field Exploration Services	5.0
1389 Oil and Gas Field Services, N.E.C.	5.0
DIVISION C—CONSTRUCTION	
MAJOR GROUP 15—GENERAL BUILDING CONTRACTORS	17.0
MAJOR GROUP 16—HEAVY CONSTRUCTION, NON BUILDING	17.0
EXCEPT:	
1629 (Part) Dredging and Surface Cleanup Activities	13.5[1]
MAJOR GROUP 17—CONSTRUCTION—SPECIAL TRADE CONTRACTORS	7.0
DIVISION D—MANUFACTURING[2]	500
EXCEPT:	
2032 Canned Specialties	1,000
2033 Canned Fruits, Vegetables, Preserves, Jams and Jellies	500[3]
2043 Cereal Breakfast Foods	1,000
2046 Wet Corn Milling	750
2052 Cookies and Crackers	750
2062 Cane Sugar Refining	750
2063 Beet Sugar	750
2076 Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2079 Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C	750
2085 Distilled and Blended Liquors	750
2111 Cigarettes	1,000
2211 Broadwoven Fabric Mills, Cotton	1,000
2261 Finishers of Broadwoven Fabrics of Cotton	1,000
2295 Coated Fabrics, Not Rubberized	1,000
2296 Tire Cord and Fabrics	1,000
2611 Pulp Mills	750
2621 Paper Mills	750
2631 Paperboard Mills	750
2656 Sanitary Food Containers, Except Folding	750
2657 Folding Paperboard Boxes, Including Sanitary	750

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
2812 Alkalies and Chlorine	1,000
2813 Industrial Gases	1,000
2816 Inorganic Pigments	1,000
2819 Industrial Inorganic Chemicals, N.E.C	1,000
2821 Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822 Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823 Cellulosic Manmade Fibers	1,000
2824 Manmade Organic Fibers, Except Cellulosic	1,000
2833 Medicinal Chemicals and Botanical Products	750
2834 Pharmaceutical Preparations	750
2841 Soap and Other Detergents, Except Specialty Cleaners	750
2865 Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869 Industrial Organic Chemicals, N.E.C	1,000
2873 Nitrogenous Fertilizers	1,000
2892 Explosives	750
2911 Petroleum Refining	1,500[4]
2952 Asphalt Felts and Coatings	750
3011 Tires and Inner Tubes	1,000[5]
3021 Rubber and Plastics Footwear	1,000
3211 Flat Glass	1,000
3221 Glass Containers	750
3229 Pressed and Blown Glass and Glassware, N.E.C	750
3241 Cement, Hydraulic	750
3261 Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3275 Gypsum Products	1,000
3292 Asbestos Products	750
3296 Mineral Wool	750
3297 Nonclay Refractories	750
3312 Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313 Electrometallurgical Products, Except Steel	750
3315 Steel Wiredrawing and Steel Nails and Spikes	1,000
3316 Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317 Steel Pipe and Tubes	1,000
3331 Primary Smelting and Refining of Copper	1,000
3334 Primary Production of Aluminum	1,000
3339 Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750
3351 Rolling, Drawing, and Extruding of Copper	750
3353 Aluminum Sheet, Plate, and Foil	750
3354 Aluminum Extruded Products	750
3355 Aluminum Rolling and Drawing, N.E.C	750
3356 Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357 Drawing and Insulating of Nonferrous Wire	1,000
3398 Metal Heat Treating	750
3399 Primary Metal Products, N.E.C	750
3411 Metal Cans	1,000
3431 Enameled Iron and Metal Sanitary Ware	750
3482 Small Arms Ammunition	1,000
3483 Ammunition, Except for Small Arms	1,500
3484 Small Arms	1,000
3511 Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519 Internal Combustion Engines, N.E.C	1,000
3531 Construction Machinery and Equipment	750
3537 Industrial Trucks, Tractors, Trailers, and Stackers	750
3562 Ball and Roller Bearings	750
3571 Electronic Computers	1,000
3572 Computer Storage Devices	1,000
3575 Computer Terminals	1,000
3577 Computer Peripheral Equipment, N.E.C	1,000
3578 Calculating and Accounting Machines, Except Electronic Computers	1,000
3585 Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment	750
3612 Power, Distribution, and Speciality Transformers	750
3613 Switchgear and Switchboard Apparatus	750
3621 Motors and Generators	1,000
3624 Carbon and Graphite Products	750
3625 Relays and Industrial Controls	750
3631 Household Cooking Equipment	750
3632 Household Refrigerators and Home and Farm Freezers	1,000
3633 Household Laundry Equipment	1,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description		Size standards in number of employees or millions of dollars
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3641	Electric Lamp Bulbs and Tubes	1,000
3651	Household Audio and Video Equipment	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks	750
3661	Telephone and Telegraph Apparatus	1,000
3663	Radio and Television Broadcasting and Communications Equipment	750
3669	Communications Equipment, N.E.C	750
3671	Electron Tubes	750
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines	750
3695	Magnetic and Optical Recording Media	1,000
3699	Electrical Machinery, Equipment, and Supplies, N.E.C	750
3711	Motor Vehicles and Passenger Car Bodies	1,000
3714	Motor Vehicle Parts and Accessories	750
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C	1,000[9]
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000
	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian.	1,000
	Ships Repair (Including Overhauls and Conversion) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian.	1,000
3743	Railroad Equipment	1,000
3761	Guided Missiles and Space Vehicles	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Units Parts	1,000
3769	Guided Missiles and Space Vehicle Parts and Auxiliary Equipment, N.E.C	1,000
3795	Tanks and Tank Components	1,000
3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	750
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C	750

DIVISION E—TRANSPORTATION, COMMUNICATIONS ELECTRIC, GAS, AND SANITARY SERVICES

MAJOR GROUP 40—RAILROAD TRANSPORTATION		1500
EXCEPT:		
4013	Railroad Switching and Terminal Establishments	500
MAJOR GROUP 41—LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY AND PASSENGER TRANSPORTATION.		5.0
MAJOR GROUP 42—MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING		18.5
EXCEPT:		
4212 (Part)	Garbage and Refuse Collection, Without Disposal	6.0
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	5.0
MAJOR GROUP 44—WATER TRANSPORTATION		500
EXCEPT:		
4491	Marine Cargo Handling	18.5
4492	Towing and Tugboat Services	5.0
4493	Marinas	5.0
4499	Water Transportation Services, N.E.C.	5.0
	Offshore Marine Water Transportation Services	20.5
MAJOR GROUP 45—TRANSPORTATION BY AIR		1500
EXCEPT:		
4522	Air Transportation, Nonscheduled	1500
	Offshore Marine Air Transportation Services	20.5
4581	Airports, Flying Fields, and Airport Terminal Services	5.0
MAJOR GROUP 46—PIPELINES, EXCEPT NATURAL GAS		1500
EXCEPT:		
4619	Pipelines, N.E.C.	25.0
MAJOR GROUP 47—TRANSPORTATION SERVICES		5.0
EXCEPT:		
4724	Travel Agencies	1.0[6]
4731	Arrangement of Transportation of Freight and Cargo	18.5
4783	Packing and Crating	18.5
MAJOR GROUP 48—COMMUNICATIONS:		
4812	Radiotelephone Communications	1,500
4813	Telephone Communications, Except Radiotelephone	1,500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description		Size standards in number of employees or millions of dollars
4822	Telegraph and Other Message Communications	5.0
4832	Radio Broadcasting Stations	5.0
4833	Television Broadcasting Stations	10.5
4841	Cable and Other Pay Television Services	11.0
4899	Communications Services, N.E.C.	11.0
MAJOR GROUP 49—ELECTRIC, GAS, AND SANITARY SERVICES		5.0
EXCEPT:		
4911	Electric Services	4 million megawatt hrs.
4924	Natural Gas Distribution	500
4953	Refuse Systems	6.0
4961	Steam and Air-Conditioning Supply	9.0
DIVISION F—WHOLESALE TRADE		100
(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)		
DIVISION G—RETAIL TRADE		5.0
(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)		
5271	Mobile Home Dealers	9.5
5311	Department Stores	20.0
5331	Variety Stores	8.0
5411	Grocery Stores	20.0
5511	Motor Vehicle Dealers (New and Used)	21.0
5521	Motor Vehicle Dealers (Used Only)	17.0
5541	Gasoline Service Stations	6.5
5599	Automobile Dealers, N.E.C.	5.0
	Aircraft Dealers, Retail	7.5
5611	Men's and Boy's Clothing and Accessory Stores	6.5
5621	Women's Clothing Stores	6.5
5651	Family Clothing Stores	6.5
5661	Shoe Stores	6.5
5722	Household Appliance Stores	6.5
5731	Radio, Television, and Consumer Electronics Stores	6.5
5734	Computer and Computer Software Stores	6.5
5812	Food Service, Institutional	15.0
5961	Catalog and Mail-Order Houses	18.5
5983	Fuel Oil Dealers	9.0
DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE		5.0
EXCEPT:		
6021–6082	National and Commercial Banks, Savings, Institutions and Credit Unions	100 Million in assets[7]
6331	Fire, Marine, and Casualty Insurance	1,500
6515	(Part) Leasing of Building Space to Federal Government by Owners	15.0[8]
6531	Real Estate Agents and Managers	1.5[6]
DIVISION I—SERVICES		5.0
EXCEPT:		
7211	Power Laundries, Family and Commercial	10.5
7213	Linen Supply	10.5
7216	Drycleaning Plants, Except Rug Cleaning	3.5
7217	Carpet and Upholstery Cleaning	3.5
7218	Industrial Launderers	10.5
7311	Advertising Agencies	5.0[6]
7312	Outdoor Advertising Services	5.0[6]
7313	Radio, Television, and Publishers' Advertising Representatives	5.0[6]
7319	Advertising, N.E.C.	5.0[6]
7349	Building Cleaning and Maintenance Services, N.E.C.	12.0
7371	Computer Programming Services	18.0
7372	Prepackaged Software	18.0
7373	Computer Integrated Systems Design	18.0
7374	Computer Processing and Data Preparation and Processing Services	18.0
7375	Information Retrieval Services	18.0
7376	Computer Facilities Management Services	18.0
7377	Computer Rental and Leasing	18.0
7378	Computer Maintenance and Repair	18.0
7379	Computer Related Services, N.E.C.	18.0
7381	Detective, Guard, and Armored Car Services	9.0
7382	Security Systems Services	9.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
7389 Business Services, N.E.C.	5.0
Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services	3.5
7513 Truck Rental and Leasing, Without Drivers	18.5
7514 Passenger Car Rental	18.5
7515 Passenger Car Leasing	18.5
7534 Tire Retreading and Repair Shops	10.5
7699 Repair Shops and Related Services, N.E.C.	5.0[9]
7812 Motion Picture and Video Tape Production	21.5
7819 Services Allied to Motion Picture Production	21.5
7822 Motion Picture and Video Tape Distribution	21.5
8299 Flight Training Services	18.5
8711 Engineering Services	2.5
Military and Aerospace Equipment and Military Weapons	20.0
Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	20.0
Marine Engineering and Naval Architecture	13.5
8712 Architectural Services (Other Than Naval)	2.5
8713 Surveying Services	2.5
8721 Accounting, Auditing, and Bookkeeping Services	6.0
8731 Commercial Physical and Biological Research	500[10]
Aircraft	1,500
Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
8741 (Part) Conference Management Services	5.0[6]
8744 Facilities Support Management Services	5.0[11]
Base Maintenance	20.0[12]
Environmental Remediation Services	500[13]

Footnotes:

[1] SIC code1629—Dredging: To be considered small for purpose of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

[2] SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a "manufacturer" although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

[3] SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in § 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

[4] SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[5] SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that: (1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and (3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

[6] SIC codes 4724, 6531, 7311, 7312, 7313, 7319, and 8741: As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

[7] A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *Assets* for the purposes of this size standard means the assets defined according to the Federal Financial Institution Examinations Council 034 call report form.

[8] SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

[9] SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC 3728.

[10] SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(3) Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

[11] Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

[12] SIC code 8744: (1) If one of the activities of base maintenance, as defined below, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) "Base Maintenance" requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as "Base Maintenance."

[13] SIC code 8744: (1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Size Eligibility For SBA Financial Assistance

§ 121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant must not exceed the size standard for the industry in which:

(1) The applicant combined with its affiliates is primarily engaged; and

(2) The applicant alone is primarily engaged.

(b) For Development Company programs, an applicant must meet one of the following standards:

(1) Including its affiliates, net worth not in excess of $6 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of $2 million; or

(2) The same standards applicable under paragraph (a) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) Including its affiliates, net worth not in excess of $18 million average and net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years not in excess of $6 million; or

(2) The same standards applicable under paragraph (a) of this section.

(d) For Surety Bond Guarantee assistance—

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if its average annual receipts do not exceed $5.0 million.

(2) Any concern not specified in paragraph (d)(1) of this section must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged.

(e) The applicable size standards for the purpose of all SBA financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25 percent whenever the applicant agrees to use the assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication called "Area Trends."

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size of an applicant for SBA financial assistance is determined as of the date the application for such financial assistance is received by SBA, except for the Disaster Loan and Preferred Lenders programs.

(b) For the Preferred Lenders program, size is determined as of the date of approval of the loan by the Preferred Lender.

(c) For disaster loan assistance (other than physical disaster loans), size status is determined as of the date the disaster commenced, as set forth in the Disaster Declaration.

(d) Changes in size subsequent to the applicable date when size is determined will not disqualify an applicant for assistance.

§ 121.303 What size procedures are used by SBA before it makes a formal size determination?

(a) A concern that submits an application for financial assistance is deemed to have certified that it is small under the applicable size standard. SBA may question the concern's status based on information supplied in the application or from any other source.

(b) A small business investment company, a development company, a surety bond company, or a preferred lender may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

(c) Size is initially considered by the individual with final financial assistance authority. This is not a formal size determination. A formal determination may be requested prior to a denial of eligibility based on size.

(d) An applicant may request a formal size determination when assistance has been denied for size ineligibility. Except for disaster loan eligibility, a request for a formal size determination must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. For disaster loan assistance, the request for a size determination must be made to the Area Director for the Disaster Area Office which denied the assistance.

(e) There are no time limitations for making a formal size determination for purposes of financial assistance. The official making the formal size determination must provide a copy of the determination to the applicant, to the requesting SBA official, and to other interested SBA program officials.

§ 121.304 What are the size requirements for refinancing an existing SBA loan?

If natural growth (as distinguished from merger, acquisition or similar management action) since the date of original financing causes a firm to exceed its applicable size standard, it will still be small for the purpose of refinancing an existing SBA loan or guarantee. Otherwise, the firm and its affiliates must be small at the time of application for refinancing.

§ 121.305 What size eligibility requirements exist for obtaining business loans relating to particular procurements?

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

Size Eligibility Requirements for Government Procurement

§ 121.401 What procurement programs are subject to size determinations?

The requirements set forth in §§ 121.401–121.412 cover all procurement programs for which status as a small business is required, including the small business set-aside program, SBA's Certificate of Competency Program, SBA's Minority Enterprise Development program, the Small Business Subcontracting program authorized under section 8(d) of the Small Business Act, and federal Small Disadvantaged Business programs.

§ 121.402 What size standards are applicable to procurement assistance programs?

(a) A concern must meet the size standard for the SIC code specified in the solicitation.

(b) The procuring agency contracting officer, or authorized representative, designates the proper SIC code and size standard in a solicitation, selecting the SIC code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the SIC Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. Other factors considered include previous Government procurement classifications of the same or similar products or services, and the classification which would best serve the purposes of the Small Business Act. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value.

(c) The SIC code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns a SIC code or size standard as provided in paragraph (d) of this section.

(d) An unclear, incomplete or missing SIC code designation or size standard in the solicitation may be clarified, completed or supplied by SBA in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by a SIC code designation or size standard designation may appeal the designations to OHA under Part 134 of this chapter.

§ 121.403 Are SBA size determinations and SIC code designations binding on parties?

Formal size determinations and SIC code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

§ 121.404 When does SBA determine the size status of a business concern?

Generally, SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price. The following are two exceptions to this rule:

(a) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(b) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the ostensible subcontractor rule set forth in § 121.103(f)(3) is determined as of the date of the best and final offer.

§ 121.405 May a business concern self-certify its small business size status?

(a) A concern must self-certify it is small under the size standard specified in the solicitation, or as clarified, completed or supplied by SBA pursuant to § 121.402(d).

(b) A contracting officer may accept a concern's self-certification as true for the particular procurement involved in the absence of a written protest by other offerors or other credible information which causes the contracting officer or SBA to question the size of the concern.

(c) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001–121.1009.

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or MED procurements?

(a) *General.* In order to qualify as a small business concern for a small business set-aside or 8(a) contract to provide manufactured products, an offeror must either:

(1) Be the manufacturer of the end item being procured (and the end item must be manufactured or produced in the United States); or

(2) Comply with the requirements of paragraphs (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Simplified Acquisition Procedures.

(b) *Nonmanufacturers.* (1) A concern may qualify for a requirement to provide manufactured products as a nonmanufacturer if it:

(i) Does not exceed 500 employees;

(ii) Is primarily engaged in the wholesale or retail trade and normally sells the items being supplied to the general public; and

(iii) Will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

(2) For size purposes, there can be only one manufacturer of the end item being acquired. The manufacturer is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item must possess characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semifinished as a raw material to be used in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers of the end item. SBA will evaluate the following factors in determining whether a concern is the manufacturer of the end item:

(i) The proportion of total value in the end item added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit; and

(ii) The importance of the elements added by the concern to the function of the end item, regardless of their relative value.

(3) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section under the following two circumstances:

(i) The contracting officer has determined that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period for performance) required by a particular solicitation and SBA reviews and accepts that determination; or

(ii) SBA determines that no small business manufacturer or processor of the product or class of products is available to participate in the Federal procurement market.

(4) The two waiver possibilities identified in paragraph (b)(3) of this section are called "individual" waivers and "class" waivers respectively, and the procedures for them are contained in § 121.1301.

(5) Any SBA waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

(c) *Kit assemblers.* (1) Where the manufactured item being acquired is a kit of supplies or other goods provided by an offeror for a special purpose, the offeror cannot exceed 500 employees, and 50 percent of the total value of the components of the kit must be manufactured by business concerns in the United States which are small under the size standards for the SIC codes of the components being assembled. The offeror need not itself be the manufacturer of any of the items assembled.

(2) Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such item shall be excluded from the calculation of total value in paragraph (c)(1) of this section.

(d) *Simplified Acquisition Procedures.* Where the procurement of a manufactured item is processed under Simplified Acquisition Procedures, as defined in § 13.101 of the Federal Acquisition Regulation (FAR) (48 CFR 13.101), and where the anticipated cost of the procurement will not exceed $25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States, and the offeror does not exceed 500 employees. The offeror need not itself be the manufacturer of any of the items acquired.

§ 121.407 What are the size procedures for multiple item procurements?

If a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, the offeror must meet the size standard for each end item or service item for which it submits an offer. If the procurement calls for more than one specific end item or type of service and an offeror is required to submit an offer on all items, the offeror may qualify as a small business for the procurement if it meets the size standard of the item which accounts for the greatest percentage of the total contract value.

§ 121.408 What are the size procedures for SBA's Certificate of Competency Program?

(a) A firm which applies for a COC must file an "Application for Small Business Size Determination" (SBA Form 355). If the initial review of SBA Form 355 indicates the applicant, including its affiliates, is small for purposes of the COC program, SBA will process the application for COC. If the review indicates the applicant, including its affiliates, is other than small, SBA will initiate a formal size determination as set forth in § 121.1009. In such a case, SBA will not further process the COC application until a formal size determination is made.

(b) A concern is ineligible for a COC if a formal SBA size determination finds the concern other than small.

§ 121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?

For the purpose of receiving a Certificate of Competency in an unrestricted procurement, the applicable size standard is that corresponding to the SIC code set forth in the solicitation. For a manufactured product, a concern must also furnish a domestically produced or manufactured product, regardless of the size status of the product manufacturer. The offeror need not be the manufacturer of any of the items acquired.

§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?

For subcontracting purposes pursuant to section 8(d) of the Small Business Act, a concern is small:

(a) For subcontracts of $10,000 or less which relate to Government procurements, if its number of employees (including its affiliates) does not exceed 500 employees. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1992 have the same size standard as Military and Aerospace Equipment and Military Weapons under SIC code 8711;

(b) For subcontracts exceeding $10,000 which relate to Government procurements, if its number of employees or average annual receipts (including its affiliates) does not exceed the size standard for the product or service it is providing on the subcontract; and

(c) For subcontracts for financial services, if the concern (including its affiliates) is a commercial bank or savings and loan association whose assets do not exceed $100 million.

§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?

(a) Prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS), or equivalent data base maintained or sanctioned by SBA, as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Even though a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

(b) Upon determination of the successful subcontract offeror for a competitive subcontract, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror.

(c) The self-certification of a concern subcontracting or proposing to subcontract under section 8(d) of the Small Business Act may be protested by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

§ 121.412 What are the size procedures for partial small business set-asides?

A firm is required to meet size standard requirements only for the small business set-aside portion of a procurement, and is not required to qualify as a small business for the unrestricted portion.

Size Eligibility Requirements for Sale or Lease of Government Property

§ 121.501 What programs for sale or lease of Government property are subject to size determinations?

Sections 121.501–121.512 apply to small business size determinations for the purpose of the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and the sale of Government petroleum, coal and uranium.

§ 121.502 What size standards are applicable to programs for sale or lease of Government property?

(a) Unless otherwise specified in this part—

(1) A concern primarily engaged in manufacturing is small for sale or lease of Government property if it does not exceed 500 employees;

(2) A concern not primarily engaged in manufacturing is small for sale or lease of Government property if it has annual receipts not exceeding $2 million.

(b) Size status for such sales and leases is determined by the primary industry of the applicant business concern.

§ 121.503 Are SBA size determinations binding on parties?

Formal size determinations based upon a specific Government sale or lease, or made in response to a request from another Government agency under § 121.901, are binding upon the parties. Other SBA opinions provided to contracting officers or others are only advisory, and are not binding or appealable.

§ 121.504 When does SBA determine the size status of a business concern?

SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the Government as part of its initial offer including price where there is a specific sale or lease at issue, or as set forth in § 121.903 if made in response to a request of another Government agency.

§ 121.505 What is the effect of a self-certification?

(a) A contracting officer may accept a concern's self-certification as true for the particular sale or lease involved, in the absence of a written protest by other offerors or other credible information which would cause the contracting officer or SBA to question the size of the concern.

(b) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001–121.1009.

§ 121.506 What definitions are important for sales or leases of Government-owned timber?

(a) *Forest product industry* means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw materials.

(b) *Logging of timber* means felling and bucking, yarding, and/or loading. It does not mean hauling.

(c) *Manufacture of logs* means, at a minimum, breaking down logs into rough cuts of the finished product.

(d) *Sell* means, in addition to its usual and customary meaning, the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber.

(e) *Significant logging of timber* means that a concern uses it own employees to perform at least two of the following: felling and bucking, yarding, and loading.

§ 121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?

(a) To be small for purposes of the sale of Government-owned timber (other than Special Salvage Timber) a concern must:

(1) Be primarily engaged in the logging or forest products industry;

(2) Not exceed 500 employees, taking into account its affiliates; and

(3) If it does not intend at the time of the offer to resell the timber—

(i) Agree that it will manufacture the logs with its own facilities or those of another business which meets the requirements of paragraphs (a)(1) and (a)(2) of this section;

(ii) Agree that if it eventually resells the timber, it will resell no more than 30% of the sawtimber volume to other businesses which do not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(iii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume to businesses which do meet the requirements of paragraphs (a)(1) and (a)(2) of this section; or

(4) If it intends at the time of offer to resell the timber—

(i) Agree that is will not sell more than 30% of such timber (50% of such timber if the concern is an Alaskan business) to a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(ii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume (or at least 50% of the sawtimber volume, if it is an Alaskan business) to businesses which meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(b) For a period of three years following the date upon which a concern purchases timber under a small business set-aside (other than through the Special Salvage Timber Sale program), it must maintain a record of:

(1) The name, address and size status of every concern to which it sells the timber or sawlogs; and

(2) The species, grades and volumes of sawlogs sold.

(c) For a period of three years following the date upon which a concern purchases timber, it must by contract require all small business repurchasers of the sawlogs or timber it purchased under the small business set-aside to maintain the records described in paragraph (b) of this section.

§ 121.508 What are the size standards and other requirements for the purchase of Government-owned Special Salvage Timber?

(a) In order to purchase Government-owned Special Salvage Timber from the United States Forest Service or the Bureau of Land Management as a small business, a concern must:

(1) Be primarily engaged in the logging or forest product industry;

(2) Have, together with its affiliates, no more than twenty-five employees during any pay period for the last twelve months; and

(3) If it does not intend at the time of offer to resell the timber—

(i) Agree that it will manufacture a significant portion of the logs with its own employees; and

(ii) Agree that it will log the timber only with its own employees or with employees of another business which is eligible for award of a Special Salvage Timber sales contract; or

(4) If it intends at the time of offer to resell the timber, agree that it will perform a significant portion of timber logging with its own employees and that it will subcontract the remainder of the timber logging to a concern which is eligible for award of a Special Salvage Timber sales contract.

§ 121.509 What is the size standard for leasing of Government land for coal mining?

A concern is small for this purpose if it:

(a) Together with its affiliates, does not have more than 250 employees;

(b) Maintains management and control of the actual mining operations of the tract; and

(c) Agrees that if it sublease the Government land, it will be to another small business, and that it will require its sublessors to agree to the same.

§ 121.510 What is the size standard for leasing of Government land for uranium mining?

A concern is small for this purpose if it, together with its affiliates, does not have more than 100 employees.

§ 121.511 What is the size standard for buying Government-owned petroleum?

A concern is small for this purpose if it is primarily engaged in petroleum refinancing and meets the size standard for a petroleum refining business.

§ 121.512 What is the size standard for stockpile purchases?

A concern is small for this purpose if:

(a) It is primarily engaged in the purchase of materials which are not domestic products; and

(b) Its annual receipts, together with its affiliates, do not exceed $42 million.

Size Eligibility Requirements for the Minority Enterprise Development (MED) Program

§ 121.601 What is a small business for purposes of admission to SBA's Minority Enterprise Development (MED) program?

An applicant must be small under the size standard corresponding to its primary industry classification in order to be admitted to SBA's Minority Enterprise Development (MED) program.

§ 121.602 At what point in time must a MED applicant be small?

A MED applicant must be small for its primary industry at the time SBA certifies it for admission into the program.

§ 121.603 How does SBA determine whether a Participant is small for a particular MED subcontract?

(a) *Self certification by Participant.* A MED Participant must certify that it qualifies as a small business under the SIC code assigned to a particular MED subcontract as part of its initial offer including price to the procuring agency. The Participant also must submit a copy of its offer, including its self-certification as to size, to the appropriate SBA district office at the same time it submits the offer to the procuring agency.

(b) *Verification of size by SBA.* Within 30 days of its receipt of a Participant's size self-certification for a particular MED subcontract, the SBA district office serving the geographic area in which the Participant's principal office is located will review the Participant's self-certification and determine if it is small for purposes of that subcontract. The SBA district office will review the Participant's most recent financial statements and other relevant data and then notify the Participant of its decision.

(c) *Changes in size between date of self-certification and date of award.* (1) Where SBA verifies that the selected Participant is small for a particular procurement, subsequent changes in size up to the date of award, except those due to merger with or acquisition by another business concern, will not affect the firm's size status for that procurement.

(2) Where a Participant has merged with or been acquired by another business concern between the date of its self-certification and the date of award, the concern must recertify its size status, and SBA must verify the new certification before award can occur.

(d) *Finding Participant to b- other than small.* (1) A Participant may request a formal size determination (pursuant to §§ 121.1001–121.1009) with the SBA Government Contracting Area Office serving the geographic area in which the principal office of the Participant is located within 5 working days of its receipt of notice from the SBA district office that it is not small for a particular MED subcontract.

(2) Where the Participant does not timely request a formal size determination, SBA may accept the procurement in support of another Participant, or may rescind its acceptance of the offer for the MED program, as appropriate.

§ 121.604 Are MED Participants considered small for purposes of other SBA assistance?

A concern which SBA determines to be a small business for the award of a MED subcontract will be considered to have met applicable size eligibility requirements of other SBA programs where that assistance directly and primarily relates to the performance of the MED subcontract in question.

Size Eligibility Requirements for the Small Business Innovation Research (SBIR) Program

§ 121.701 What SBIR programs are subject to size determinations?

(a) These sections apply to size status for award of a funding agreement pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97–219, 15 U.S.C. 638(e) through (k)).

(b) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(c) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such work includes:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible to compete for award of funding agreements in SBA's Small Business Innovation Research (SBIR) program, a business concern must:

(a) Be at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

(b) Not have more than 500 employees, including its affiliates.

§ 121.703 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions based upon a specific funding agreement, and are binding upon the parties. Other SBA opinions provided to funding agreement officers or others, are only advisory, and are not binding or appealable.

§ 121.704 When does SBA determine the size status of a business concern?

The size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards.

§ 121.705 Must a business concern self-certify its size status?

(a) A firm must self-certify it is small in its SBIR funding proposal.

(b) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the size of the concern.

(c) Procedures for protesting an offeror's self-certification are set forth in §§ 121.1001–121.1009.

Size Eligibility Requirements for Paying Reduced Patent Fees

§ 121.801 May patent fees be reduced if a concern is small?

Sections 121.801–121.805 apply to size status for the purpose of paying reduced patent fees authorized by Pub. L. 97–247. The eligibility requirements for independent inventors and nonprofit organizations for the purpose of paying reduced patent fees are set forth in regulations of the Patent and Trademark Office of the Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.802 What size standards are applicable to reduced patent fees programs?

A concern eligible for reduced patent fees is one:

(a) Whose number of employees, including affiliates, does not exceed 500 persons; and

(b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this section.

§ 121.803 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties. Other SBA opinions provided to patent applicants or others are only advisory, and are not binding or appealable.

§ 121.804 When does SBA determine the size status of a business concern?

Size status is determined as of the date of the patent applicant's written verification of size.

§ 121.805 May a business concern self-certify its size status?

(a) A concern verifies its size status with its submission of its patent application.

(b) Any attempt to establish small size status improperly (fraudulently, through gross negligence, or otherwise) may result in remedial action by the Patent and Trademark Office.

(c) In the absence of credible information indicating otherwise, the Patent and Trademark Office may accept the verification by the concern as a small business as true.

(d) Question concerning the size verification are resolved initially by the Patent and Trademark Office. If not verified as small, the applicant may request a formal SBS size determination.

Size Eligibility Requirements for Compliance With Programs of Other Agencies

§ 121.901 Can other Government agencies obtain SBA size determinations?

Upon request by another Government agency, SBA will provide a size determination, under SBA rules, standards and procedures, for its use in determining compliance with small business requirements of its statutes, regulations or programs.

§ 121.902 What size standards are applicable to programs of other agencies?

(a) *SBA size standards.* The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and SBA.

(b) *Special size standards.* (1) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not appropriate, then agency heads may establish a small business definition for the exclusive use of such program which is more appropriate, but only when:

(i) The size standard is first proposed for public comment pursuant to the Administrative Procedure Act, 4 U.S.C. 553;

(ii) The proposed size standard provides for determining size measured by average number of employees over 12 months for manufacturing concerns, average annual revenues over three years for concerns providing services, and data over a period of not less than three years for all other concerns (unless approved by SBA, "annual receipts" and "number of employees" must be determined in accordance with §§ 121.104 and 121.106, respectively); and

(iii) The proposed size standard is approved by SBA's Administrator.

(2) In order to receive the approval of SBA's Administrator, the agency head must:

(i) Request approval prior to publishing the proposed rule containing the size standard. The request must include: an explanation of the contemplated industry size standard, the reasons the SBA size standard is not appropriate, and the reasons the proposed size standard would be appropriate; and a certification that there will be compliance with the criteria set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(ii) Agree to provide written notice to SBA's Administrator prior to publishing the contemplated size standard as a final rule. The notice must include: a copy of the intended final rule, including the preamble, or a separate written justification for the intended size standard followed by a copy of the intended final rule and preamble prior to its publication; copies of all public comments relating to the size standards received in response to the proposed rule; and any other supporting documentation relevant to the size standard and requested by SBA's Administrator.

(3) When approving any size standard established pursuant to paragraph (b) of this section, SBA's Administrator will ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(4) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

§ 121.903 When does SBA determine the size status of a business concern?

For the purpose of compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

Procedures for Size Protests and Requests for Formal Size Determinations

§ 121.1001 Who may initiate a size protest or a request for formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, the following entities may file a size protest in connection with a particular procurement or sale:

(i) Any offeror;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates, or the Associate Administrator for Government Contracting; and

(iv) Other interested parties. Other interested parties include large businesses where only one concern submitted an offer for the specific procurement in question. A concern found to be other than small in connection with the procurement is not an interested party unless there is only one remaining offeror after the concern is found to be other than small.

(2) For SBA's Subcontracting Program, the following entities may protest:

(i) The prime contractor;

(ii) The contracting officer;

(iii) Other potential subcontractors;

(iv) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting; and

(v) Other interested parties.

(3) For SBA's Small Business Innovation Research (SBIR) Program, the following entities may protest:

(i) A prospective offeror;

(ii) The funding agreement officer;

(iii) The responsible SBA Government Contracting Area Director or the Assistant Administrator for Technology; and

(iv) Other interested parties.

(4) For the Department of Defense's Small Disadvantaged Business (SDB) Program, and any other similar program of another Federal agency, the following entities may file a protest in connection with a particular SDB procurement:

(i) Any offeror for the specific SDB requirement;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the Associate Administrator for Government Contracting, or the Associate Administrator for MED.

(5) For any unrestricted Government procurement in which status as a small business may be beneficial, including, but not limited to, the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business, and SDB price evaluation preferences, the following entities may protest in connection with a particular procurement:

(i) Any offeror;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the Associate Administrator for Government Contracting, or the Associate Administrator for MED.

(b) *Request for Size Determinations.* (1) For SBA's Financial Assistance Programs, the following entities may request a formal size determination:

(i) The applicant for assistance; and

(ii) The SBA official with authority to take final action on the assistance requested.

(2) For SBA's MED program—

(i) Concerning initial MED eligibility, the following entities may request a formal size determination:

(A) The MED applicant concern; and

(B) The Director of the Division of Program Certification and Eligibility or the Associate Administrator for MED.

(ii) Concerning individual 8(a) subcontract awards, whether sole source or competitive, the following entities may request a formal size determination:

(A) The MED concern nominated by SBA for the particular sole source 8(a) award or the apparent successful offeror for the particular competitive 8(a) award;

(B) The SBA program official with authority to execute the 8(a) subcontract; and

(C) The SBA District Director in the district serving the area in which the headquarters of the MED concern is located, regardless of the location of a parent company and affiliates, or the Associate Administrator for MED.

(3) For SBA's Certificate of Competency Program, the following entities may request a formal size determination:

(i) The offeror who has applied for a COC; and

(ii) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting.

(4) For SBA's sale or lease of government property, the following entities may request a formal size determination:

(i) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting; and

(ii) Authorized officials of other Federal agencies administering a property sales program.

(5) For eligibility to pay reduced patent fees, the following entities may request a formal size determination:

(i) The applicant for the reduced patent fees; and

(ii) The Patent and Trademark Office.

(6) For purposes of determining compliance with small business requirements of another Government agency program not otherwise specified in this section, an official with authority to administer the program involved may request a formal size determination.

§ 121.1002 Who makes a formal size determination?

The responsible Government Contracting Area Director or designee makes all formal size determinations in response to either a size protest or a request for a formal size determination, with the exception of size determinations for purposes of the Disaster Loan Program, which will be made by the Disaster Area Office Director or designee responsible for the area in which the disaster occurred.

§ 121.1003 Where should a size protest be filed?

A protest involving a government procurement or sale must be filed with the contracting officer for the procurement or sale, who must forward the protest to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested concern is located, regardless of the location of any parent company or affiliates.

§ 121.1004 What time limits apply to size protests?

(a) *Protests by entities other than contracting officers or SBA—(1) Non-negotiated procurement or sale.* A protest must be received by the contracting officer prior to the close of the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening.

(2) *Negotiated procurement.* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee.

(3) *Multiple award schedule.* On a multiple award schedule procurement set aside for small business, protests will be considered timely if received by SBA at any time prior to the expiration of the contract period (including renewals).

(b) *Protests by contracting officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section.

(c) *Effect of contract award.* A timely filed protest applies to the procurement in question even though a contracting officer awarded the contract prior to receipt of the protest.

(d) *Untimely protests.* A protest received after the allotted time limits must still be forwarded to SBA. SBA will dismiss untimely protests.

(e) *Premature protests.* A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer will be dismissed as premature.

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, FAX, or telephone. If a protest is made by telephone, the contracting officer must later receive a confirming letter either within the 5-day period in § 121.1004 (b)(1) or postmarked no later than one day after the date of the telephone protest.

§ 121.1006 When will a size protest be referred to an SBA Government Contracting Area Office?

(a) A contracting officer who receives a protest (other than from SBA) must forward the protest promptly to the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(b) A contracting officer's referral must contain the following information:

(1) The protest and any accompanying materials;

(2) A copy of the self-certification as to size;

(3) Identification of the applicable size standard;

(4) A copy of the solicitation;

(5) Identification of the date of bid opening or notification provided to unsuccessful offerors;

(6) The date on which the protest was received; and

(7) A complete address and point of contact for the protested concern.

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

(a) *Particular procurement.* A protest challenging the size of a concern which does not pertain to a particular procurement or sale will not be acted on by SBA.

(b) *A protest must include specific facts.* A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. No particular form is prescribed for a protest. Where materials supporting the protest are available, they should be submitted with the protest.

(c) *Non-specific protests will be dismissed.* Protests which do not contain sufficient specificity will be dismissed by SBA.

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) When a size protest is received, the SBA Government Contracting Area Director, or designee, will promptly notify the contracting officer, the protested concern, and the protestor that a protest has been received. In the event the size protest pertains to a requirement involving SBA's SBIR Program, the Government Contracting Area Director will advise the Assistant Administrator for Technology of the receipt of the protest. SBA will provide a copy of the protest to the protested concern along with a blank SBA Application for Small Business Size Determination (SBA Form 355) by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to respond to the allegations of the protestor.

(b) When SBA receives a request for a formal size determination in accord with § 121.1001(b), SBA will provide a blank copy of SBA Form 355 to the concern whose size is at issue.

(c) The protested concern or concern whose size is at issue must return the completed SBA Form 355 and all other requested information to SBA within 3 working days from the date of receipt of the blank form from SBA. SBA has discretion to grant an extension of time to file the form. The firm must attach to the completed SBA Form 355 its answers to the allegations contained in the protest, where applicable, together with any supporting material.

(d) If a concern does not submit a completed SBA Form 355, answers to the protest allegations, or other requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the form, any information missing from it, or other missing information would show or tend to show that the concern is other than a small business.

§ 121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* After receipt of a protest or a request for a formal size determination, SBA will make a formal size determination within 10 working days, if possible.

(b) *Basis for determination.* The size determination will be based primarily on information supplied by the protestor or the entity requesting the size determination and the subject concern. The determination, however, may also be based on other grounds not raised in the protest or request for size determination. SBA may utilize other information in its files and may make inquiries including requests to the protestor, the protested concern and any alleged affiliates, or other persons for additional specific information.

(d) *Burden of persuasion.* The concern whose size is under consideration has the burden of establishing its small business size.

(e) *Weight of evidence.* SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(f) *Formal size determination.* The SBA will base its formal size determination upon the record, including reasonable inferences from the record, and will state in writing the basis for its findings and conclusions.

(g) *Notification of determination.* SBA will promptly notify the contracting officer, the protestor, and the protested offeror, as well as each affiliate or alleged affiliate, of the size determination. The notification will be by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt.

(h) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed by OHA, or unless the concern is formally recertified as a small business by SBA.

(2) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(3) A concern determined to be other than small for a particular size standard is ineligible for any procurement or assistance authorized by the Small Business Act or the Small Business Investment Act of 1958, requiring the same or a lower size standard, unless recertified as small pursuant to § 121.1010. Following an adverse size determination, a concern cannot again self-certify as small within the same or a lower size standard unless it is recertified as small by SBA. If it does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on another assistance application, the concern must immediately inform the officials responsible for the pending procurement or other requested assistance of the adverse size determination.

(i) *Limited reopening of size determinations.* In cases where the size determination contains clear administrative error or a clear mistake of fact, the SBA office that made the size determination may, in its sole discretion, reopen the size determination to correct the error or mistake, provided the case has not been accepted for review by OHA.

§ 121.1010 How does a concern become recertified as a small business?

(a) A concern may request SBA to recertify it as small at any time by filing an application for recertification with the Government Contracting Area Office responsible for the area in which the headquarters of the applicant is located, regardless of the location of parent companies or affiliates. No particular form is prescribed for the application; however, the request for recertification must be accompanied by a current completed SBA Form 355 and any other information sufficient to show a significant change in its ownership, management, or other factors bearing on its status as a small concern.

(b) Recertification will not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) A denial of an application for recertification is a formal size determination and may be reviewed by OHA at the discretion of that office.

(d) The granting of an application for recertification has future effect only. While it is a formal size determination, notice of recertification is required to be given only to the applicant.

Appeals of Size Determinations and SIC Code Designations

§ 121.1101 Are formal size determinations subject to appeal?

There is no right of appeal of a size determination. OHA, however, may, in its sole discretion, review a formal size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office. Unless OHA accepts a petition for review of a formal size determination, the size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office is the final decision of SBA. The procedures for requesting discretionary reviews by OHA of formal size determinations are set forth in part 134 of this chapter.

§ 121.1102 Are SIC code designations subject to appeal?

Appeals may be made to OHA, which has exclusive jurisdiction to determine appeals of SIC code designations pursuant to part 134 of this chapter.

§ 121.1103 What are the procedures for appealing a SIC code designation?

(a) Generally, any interested party who has been adversely affected by a SIC code designation may appeal the designation to OHA. However, with respect to a particular MED contract, only the Associate Administrator for MED may appeal.

(b) Procedures for perfecting SIC code appeals with OHA are contained in § 19.303 of the Federal Acquisition Regulations, 48 CFR 19.303.

Subpart B—Other Eligibility Provisions

Eligibility of Organizations for the Handicapped for Small Business Set-asides

§ 121.1201 May handicapped organizations be awarded Federal procurements set aside for small business?

Section 15 of the Small Business Act, 15 U.S.C. 644(c), provides that public or private organizations for the handicapped are eligible to participate in Federal procurements which are set aside for small business.

§ 121.1202 What is an organization for the handicapped?

An organization for the handicapped means a public or private entity:

(a) Which is organized under the laws of the United States or any state and operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; and

(b) Which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor.

§ 121.1203 Who are handicapped individuals?

A handicapped individual means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

§ 121.1204 What are the eligibility requirements for organizations for the handicapped to receive awards of contracts set aside for small business?

Organizations for the handicapped are eligible if at least 75 percent of the direct labor performed on each item being produced under the contract, or performed in providing each type of service under the contract, is performed by handicapped individuals, and the statutory maximum allowable amount of such awards for the applicable fiscal year has not been reached.

§ 121.1205 What are the procedures for filing protests of the status of handicapped organizations?

(a) *Who may protest.* A responsive offeror, the affected contracting officer, or SBA may file a protest.

(b) *Procedure to protest and time frame.* A protest must be delivered to the contracting officer by hand, telegram, or be placed in the U.S. mail prior to the close of business on the fifth working day after bid opening, or, in the case of a negotiated procurement, the fifth working day after receipt of notification of the identity of the apparent successful offeror.

(c) *Protest must be specific.* Protests must allege specific information tending to show that the protested organization does not meet the eligibility criteria.

(d) *Receipt of protest by SBA from contracting officer.* The contracting officer who received the protest must promptly forward it to the Associate Administrator for Government Contracting, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

(e) *Notice to the protested organization.* SBA will notify the protested organization in writing of the protest and request documentation addressing the allegations supporting the protest.

(f) *Required response from protested organization.* Within three business days of receipt of written notification of the protest from SBA, the protested organization must provide SBA with required documentation, including any other documentation or information it wishes SBA to consider. Failure to submit required documentation may be grounds for a finding against the protested organization.

(1) Except as provided in paragraph (f)(2) of this section, the following documentation, where applicable, must be provided to SBA in order to demonstrate the eligibility of an organization:

(i) A copy of the articles of incorporation of the protested organization showing the date of filing and the signature of an appropriate State official.

(ii) A copy of the bylaws of the protested organization.

(iii) If the articles of incorporation or bylaws do not include a statement to the effect that no part of its net income may inure to the benefit of any shareholder or other individual, one of the following documents:

(A) A certified copy of the State statute under which the organization was incorporated which includes wording to the effect that no part of its net income may inure to the benefit of any shareholder or other individual;

(B) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation, to the effect that no part of its net income may inure to the benefit of any shareholder or other individual; or

(C) A copy of the Internal Revenue Service certificate, duly executed during the prior twelve months, indicating that the corporation has been accepted as a non-profit agency for taxation purposes.

(2) A State-owned or State-operated workshop for the blind or other severely handicapped shall demonstrate its eligibility by submitting the following documents:

(i) A certified copy of the State statute establishing or authorizing the establishment of a workshop for the handicapped; and

(ii) In the case of a wholly-owned State corporation, a certified copy of the corporate bylaws; and, in the case of a State agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the workshop, or other similar documents.

(3) If the protested organization is a workshop participating under the Javits-Wagner-O'Day Program, the required documentation may be delivered by the Committee for Purchase from the Blind and Other Severely Handicapped which maintains workshop eligibility documentation on file in its offices. Delivery may be made by hand, telegram or placement in the U.S. Postal Service.

(g) *Required consultation.* The Associate Administrator for Government Contracting will consult with the Executive Director of the Committee for Purchase from the Blind and other Severely Handicapped before rendering a determination.

(h) *Notice of decision.* SBA shall, within ten business days of receipt of a protest, notify all parties of its decision. Notification will be considered complete upon hand delivery, receipt of a telegram, or placement in the U.S. Postal Service.

(i) *Final SBA decision.* The Associate Administrator for Government Contracting makes the final Agency decision.

§ 121.1206 How does SBA handle appeals of economic impact?

A proposed award of a small business set-aside to an organization for the handicapped may be appealed to SBA if a small business concern has experienced or is likely to experience severe economic injury as the result of the proposed award.

(a) *Who may appeal.* An appeal may be filed by a small business concern making an offer on the solicitation which:

(1) Is or was the incumbent contractor on a predecessor contract for the services or products being solicited; or

(2) Was the apparent otherwise successful offeror on a prior small business set-aside contract that was awarded to an organization for the handicapped.

(b) *Grounds for appeal.* (1) An incumbent contractor must show that:

(i) Absent competition by organizations for the handicapped, it is likely to receive the instant award; and

(ii) The dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year.

(2) Offerors appealing on the grounds of prior small business set-aside contract awards to organizations for the handicapped must show that:

(i) Absent competition by organizations for the handicapped, it is likely to receive the instant award;

(ii) The dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year; and

(iii) The dollar amount of the prior small business set-aside contract awarded to an organization for the handicapped for which the concern was the apparent otherwise successful offeror represented at least 25 percent of its annual receipts for the fiscal year in which the contract was awarded. If the fiscal year in which the prior contract was awarded to an organization for the handicapped is not yet completed, the award must represent at least 25 percent of the concern's most recently completed fiscal year.

(c) *Procedure for appeal.* (1) Appeals must be submitted to the contracting officer who must promptly forward them to the Associate Administrator for Government Contracting, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416. The Associate Administrator makes the final Agency decision.

(2) Appeals must be delivered by hand, telegraph, or placed in the United States mail, by the close of business of the tenth calendar day after opening of bids or, in the case of negotiated procurements, after receipt of notification of the identity of the apparent successful offeror.

(3) The Associate Administrator will consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped and will decide the appeal within ten working days after its receipt.

(4) The Associate Administrator will notify the appellant and contracting officer of SBA's decision and require the contracting officer to proceed with award or to make an award without regard to offers by organizations for the handicapped.

Waivers of the Nonmanufacturer Rule for Classes of Products

§ 121.1301 What is the Nonmanufacturer Rule?

The Nonmanufacturer Rule is set forth in § 121.406(b).

§ 121.1302 When will a waiver of the Nonmanufacturer Rule be granted for a class of products?

(a) A waiver for a class of products (class waiver) will be granted when there are no small business manufacturers or processors available to participate in the Federal market for that class of products.

(b) *Federal market* means acquisitions by the Federal Government from offerors located in the United States, or such smaller area as SBA designates if it concludes that the class of products is not supplied on a national basis.

(1) When considering the appropriate market area for a product, SBA presumes that the entire United States is the relevant Federal market, unless it is clearly demonstrated that a class of products cannot be procured on a national basis. This presumption may be particularly difficult to overcome in the case of manufactured products, since such items typically have a market area encompassing the entire United States.

(2) When considering geographic segmentation of a Federal market, SBA will not necessarily use market definitions dependent on airline radius, political, or SBA regional boundaries. Market areas typically follow established transportation routes rather than jurisdictional borders. SBA examines the following factors, among others, in cases where geographic segmentation for a class of products is urged:

(i) Whether perishability affects the area in which the product can practically be sold;

(ii) Whether transportation costs are high as a proportion of the total value of the product so as to limit the economic distribution of the product;

(iii) Whether there are legal barriers to transportation of the item;

(iv) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary has been stable over time; and

(v) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

(c) *Available to participate* in the context of the Federal market means that contractors exist that have been awarded or have performed a contract to supply a specific class of products to the Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or who have submitted an offer on a solicitation for that class of products within that time frame.

(d) *Class of products* is an individual subdivision within a four-digit Industry Number as established by the Office of Management and Budget in the SIC Manual.

§ 121.1303 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

An individual waiver for a product in a specific solicitation will be approved when the SBA Associate Administrator for Government Contracting reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

§ 121.1304 What are the procedures for requesting and granting waivers?

(a) *Waivers for classes of products.* (1) SBA may, at its own initiative, examine a class of products for possible waiver of the Nonmanufacturer Rule.

(2) Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed or hand-carried to the Associate Administrator of Government Contracting, Small Business Administration, 409 3rd Street S.W., Washington, D.C.

(3) Requests for a waiver of a class of products need not be in any particular form, but should include a statement of the class of products to be waived, the applicable SIC code, and detailed information on the efforts made to identify small business manufacturers or processors for the class.

(4) If SBA decides that there are small business manufacturers or processors in the Federal procurement market, it will deny the request for waiver, issue notice of the denial, and provide the names, addresses, and telephone numbers of the sources found. If SBA does not initially confirm the existence of small business manufacturers or processors in the Federal market, it will:

(i) Publish notices in the Commerce Business Daily and the **Federal Register** seeking information on small business manufacturers or processors, announcing a notice of intent to waive the Nonmanufacturer Rule for that class of products and affording the public a 15-day comment period; and

(ii) If no small business sources are identified, publish a notice in the **Federal Register** stating that no small business sources were found and that a waiver of the Nonmanufacturer Rule for that class of products has been granted.

(5) An expedited procedure for issuing a class waiver may be used for emergency situations, but only if the contracting officer provides a determination to the Associate Administrator for Government Contracting that the procurement is proceeding under the authority of FAR (48 CFR 6.302–2 for "unusual and compelling urgency," or provides a determination materially the same as one of unusual and compelling urgency. Under the expedited procedure, if a small business manufacturer or processor is not identified by a PASS search, the SBA will grant the waiver for the class of products and then publish a notice in the **Federal Register**. The notice will state that a waiver has been granted, and solicit public comment for future procurements.

(6) The decision by the Associate Administrator for Government Contracting to grant or deny a waiver is the final decision by the Agency.

(7) A waiver of the Nonmanufacturer Rule for classes of products has no specific time limitation. SBA will, however, periodically review existing class waivers to the Nonmanufacturer Rule to determine if small business manufacturers or processors have become available to participate in the Federal market for the waived classes of products and the waiver should be terminated.

(i) Upon SBA's receipt of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver will be terminated by the Associate Administrator for Government Contracting. This evidence may be discovered by SBA during a periodic review of existing waivers or may be brought to SBA's attention by other sources.

(ii) SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the **Federal Register**, asking for comments regarding the proposed termination.

(iii) Unless public comment reveals that no small business manufacturer or process in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the **Federal Register**.

(b) *Individual waivers for specific solicitations.* (1) A contracting officer's request for a waiver of the Nonmanufacturer Rule for specific solicitations need not be in any particular form, but must, at a minimum, include:

(i) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

(ii) The solicitation number, SIC code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items (the determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers for the items and that no small business manufacturer or processor can reasonably be expected to offer the required items); and

(iv) For contracts expected to exceed $500,000, a copy of the Statement of Work.

(2) Requests should be addressed to the Associate Administrator for Government Contracting, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

(3) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Associate Administrator for Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the request. Either decision represents a final decision by SBA.

§ 121.1305 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted will be maintained in SBA's Procurement Automated Source System (PASS). A list of such waivers may also be obtained by contacting the Office of Government Contracting at the Small Business Administration, Washington, D.C. 20416, or at the nearest SBA Government Contracting Area Office.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28449 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize the entire regulation 123 covering the disaster loan program to make it more clear and easier to use.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Initiative Team Leader (123), Small Business Administration, 409 Third Street, SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Disaster Assistance, at (202) 205–6734.

SUPPLEMENTARY INFORMATION: Part 123 of Chapter I, 13 CFR contains policies governing the eligibility of disaster victims to obtain low-cost loans to restore their damaged property to its pre-disaster condition. This proposed rule would reorganize the entire Part 123 to make it more clear and easier to use. It would eliminate references to disasters which occurred years ago, and it would eliminate Subpart D—Persian Gulf Troop Deployment Economic Injury Loans because the authority for that loan program has expired. A conversion table follows:

Existing section	Action	New section
123.1	Revise	123.1
123.2	Revise	123.101
123.3	Revise	123.3, 123.4, 123.5, 123.10, 123.101
123.4	Revise	123.5
123.5	Delete	
123.6	Revise	123.8
123.7	Revise	123.3
123.8	Delete	
123.9	Revise	123.101, 123.104, 123.105
123.10	Delete	
123.11	Revise	123.11
123.12	Revise	123.13
123.13	Revise	123.16, 123.104
123.14	Revise	123.101
123.15	Delete	
123.16	Delete	
123.17	Revise	123.201
123.18	Revise	123.12
123.19	Revise	123.9
123.20	Delete	
123.21	Revise	123.100, 123.200
123.22	Revise	123.3
123.23	Revise	123.3
123.24	Revise	123.6, 123.7, 123.12, 123.101, 123.105, 123.106, 23.107, 123.201, 123.202
123.25	Revise	123.15, 123.105
123.26	Revise	123.202, 123.203
123.27	Delete	
123.28	Revise	123.202
123.29	Delete	
123.40	Delete	
123.41	Revise	123.14, 123.301, 123.302, 123.303
123.60–69	Delete	

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5.U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866, or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting preparation of the federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, pursuant to the authority set forth in sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, SBA hereby proposes to revise Part 123 of Title 13 of the Code of Federal Regulations to read as follows:

PART 123—DISASTER LOAN PROGRAM

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

Overview

Sec.

123.1 What do these rules cover?
123.2 What are disaster loans and disaster declarations?
123.3 How are disaster declarations made?
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Overview

§ 123.1 What do these rules cover?

This part covers the disaster loan programs authorized under the Small Business Act, 15 U.S.C. 636(b), (c), and (f). Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change these rules, without advance notice, by publishing interim emergency regulations in the **Federal Register**.

§ 123.2 What are disaster loans and disaster declarations?

SBA offers low interest, fixed rate loans to disaster victims, enabling them to repair or replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses to help them recover from economic injury caused by such disasters. Disaster declarations are official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riots, civil disorders, or industrial accidents such as oil spills. These disasters are sudden events which cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion or gradual land settling. Sudden physical events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim's property. Past examples include ocean conditions causing significant displacement (major ocean currents) or closure (toxic algae blooms) of customary fishing waters, as well as contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victims.

§ 123.3 How are disaster declarations made?

(a) There are four ways in which disaster declarations are issued which make SBA disaster loans possible:

(1) The President declares a Major Disaster and authorizes Federal assistance, including individual assistance (temporary housing and Individual and Family Grant Assistance).

(2) SBA makes a physical disaster declaration, based on the occurrence of at least a minimum amount of physical damage to buildings, machinery, equipment, inventory, homes and other property. Such damage usually must meet the following tests:

(i) In any county or other smaller political subdivision of a State or U.S. possession, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions, must each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower; or

(ii) In any such political subdivision, at least three businesses each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower, and, as a direct result of such physical damage, 25 percent or more of the work force in their community would be unemployed for at least 90 days; and

(iii) The Governor of the State in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA (OMB Approval No. 3245–0121). This request should be delivered to the SBA Disaster Area Office serving the region where the disaster occurred within 60 days of the date of the disaster.

(3) SBA makes an economic injury disaster declaration in response to a determination of a natural disaster by the Secretary of Agriculture.

(4) SBA makes an economic injury declaration in reliance on a state certification that at least 5 small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivisions in which the disaster occurred, and must be delivered (with supporting documentation) to the servicing SBA Disaster Area Office within 120 days of the disaster occurrence.

(b) SBA publishes notice of any disaster declaration in the **Federal Register**. The published notice will identify the kinds of assistance available, the date and nature of the disaster, and the deadline and location for filing loan applications. SBA will accept applications after the announced deadline only when SBA determines that the late filing resulted from substantial causes essentially beyond the control of the applicant. Additionally, SBA will use the local media to inform potential loan applicants where to obtain loan applications and otherwise to assist victims in applying for disaster loans.

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical and economic injury assistance. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.

§ 123.5 What kinds of loans are available?

SBA offers three kinds of disaster loans: physical disaster home loans, physical disaster business loans, and economic injury business loans. SBA makes these loans directly or in participation with a financial institution. If a loan is made in participation with a financial institution, SBA's share in that loan may not exceed 90 percent.

§ 123.6 What does SBA look for when considering a disaster loan applicant?

There must be reasonable assurance that you can repay your loan out of your personal or business cash flow, and you must have satisfactory credit and character. SBA will not make a loan to you if repayment depends upon the sale of collateral through foreclosure or any other disposition of assets owned by you. SBA is prohibited by statute from making a loan to you if you are engaged in the production or distribution of any product or service that has been determined to be obscene by a court.

§ 123.7 Are there restrictions on how disaster loans can be used?

You must use disaster loans to restore or replace your primary home (including a mobile home used as primary residence) and your personal or business property as nearly as possible to their condition before the disaster occurred, and within certain limits, to protect damaged or destroyed real property from possible future similar disasters.

§ 123.8 Does SBA charge any fees for obtaining a disaster loan?

SBA does not charge points, closing, or servicing fees on any disaster loan.

You will be responsible for payment of any closing costs owed to third parties, such as recording fees and title insurance premiums. Also, if your loan is made in participation with a financial institution, SBA will charge a guaranty fee to the financial institution and the financial institution may recover the guaranty fee from you.

§ 123.9 What happens if I don't use loan proceeds for the intended purpose?

(a) When SBA approves each loan application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply these proceeds, you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication. Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization. If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use also is considered a wrongful misapplication of the proceeds.

(b) If SBA learns that you may have misapplied your loan proceeds, SBA will notify you at your last known address, by certified mail, return receipt requested. You will be given at least 30 days to submit to SBA evidence that you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds. If SBA finds a wrongful misapplication, it will cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty. You may also face criminal prosecution.

§ 123.10 What happens if I cannot use my insurance proceeds to make repairs?

If you must pay insurance proceeds to the holder of a recorded lien or encumbrance against your damaged property instead of using them to make repairs, you may apply to SBA for the full amount needed to make such repairs. If you voluntarily pay insurance proceeds to a recorded lienholder, your loan eligibility is reduced by the amount of the voluntary payment.

§ 123.11 Does SBA require collateral for any of its disaster loans?

Generally, SBA will not require that you pledge collateral to secure a disaster home loan or a physical disaster business loan of $10,000 or less, or an economic injury disaster loan of $5,000 or less. For loans larger than these amounts, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal property, or both.

(a) Sometimes a borrower, including affiliates as defined in Part 121 of this chapter, will have more than one loan after a single disaster. In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed $10,000 and all economic injury disaster loans to see if they exceed $5,000.

(b) SBA will not decline a loan if you lack a particular amount of collateral as long as it is reasonably sure that you can repay your loan. If you refuse to pledge available collateral when requested by SBA, however, SBA may decline or cancel your loan.

§ 123.12 Are books and records required?

You must retain complete records of all transactions financed with your SBA loan proceeds, including copies of all contracts and receipts, for a period of 3 years after you receive your final disbursement of loan proceeds. If you have a physical disaster business or economic injury loan, you must also maintain current and accurate books of account, including financial and operating statements, insurance policies, and tax returns. You must retain applicable books and records for 3 years after your loan matures including any extensions, or from the date when your loan is paid in full, whichever occurs first. You must make available to SBA or other authorized government personnel upon request all such books and records for inspection, audit, and reproduction during normal business hours and you must also permit SBA and any participating financial institution to inspect and appraise your assets. (OMB Approval No. 3245–0110.)

§ 123.13 What happens if my loan application is denied?

(a) If SBA denies your loan application, SBA will notify you in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan is declined for reasons other than not being a small business (size) has the right to present information to overcome the reason or reasons for the denial and to request reconsideration. (OMB Approval No. 3245–0122.)

(b) Any decline due to size can only be appealed as set forth in Part 121 of this chapter.

(c) Any request for reconsideration must be in writing and must be delivered to the SBA office that declined the original application within six months of the date of the notice of the denial. After six months, a new loan application is required.

(d) A written request for reconsideration must contain all significant new information that you rely on to overcome SBA's denial of your original loan application. Your request for reconsideration of a business loan application must also be accompanied by current business financial statements.

(e) If SBA declines your application a second time, you have the right to appeal to the Area Director's Office. All appeals must be in writing and be received by the office that processed and declined the prior reconsideration within 30 days of the decline action. Your request must state that you are appealing, and must contain your written justification for believing that the decline action should be reversed.

(f) The decision of the Area Director is final unless:

(1) The Area Director does not have authority to approve the requested loan;

(2) The Area Director refers the matter to the Associate Administrator for Disaster Assistance; or

(3) The Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to him or her for final consideration. Special circumstances may include, but are not limited to, policy considerations, alleged improper acts by SBA personnel or others in processing the application, and conflicting policy interpretations between two Area Offices.

§ 123.14 Application of the Federal Debt Collection Procedures Act of 1990.

(a) Under the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(e)), a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States is generally not eligible to receive physical and economic injury disaster loans. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction against receiving disaster loans upon a demonstration of good cause. Good cause means a written representation by you under oath which convinces SBA that:

(1) The declared disaster was a major contributing factor to the delinquency which led to the judgment lien, regardless of when the original debt was incurred; or

(2) The disaster directly prevented you from fulfilling the terms of an agreement with SBA or any other Federal Government entity to satisfy its pre-disaster judgment lien; in this situation, the judgment creditor must certify to SBA that you were complying with the agreement to satisfy the judgment lien when the disaster occurred; or

(3) Other circumstances exist which would justify a waiver.

(b) The waiver determination by the Associate Administrator for Disaster Assistance, or designee, is a final, non-appealable decision. The granting of a waiver does not include loan approval; a waiver recipient must then follow normal loan application procedures.

§ 123.15 What if I change my mind?

If SBA required you to pledge collateral for your loan, you may change your mind and rescind your loan pursuant to the Consumer Credit Protection Act, 15 U.S.C. 1601, and Regulation Z of the Federal Reserve Board, 12 CFR Part 226. Your note and any collateral documents signed by you will be canceled upon your return of all loan proceeds and your payment of any interest accrued.

§ 123.16 Loan Administration and Servicing.

(a) If you obtained your disaster loan from a participating lender, that lender is responsible for closing and servicing your loan. If you obtained your loan directly from SBA, your loan will be closed and serviced by SBA. The SBA rules on servicing are found in part 120 of this chapter.

(b) If you are unable to pay your SBA loan installments in a timely manner for reasons substantially beyond your control, you may request that SBA suspend your loan payments, extend your maturity, or both.

§ 123.17 Application of Federal requirements relating to flood insurance, environmental considerations, and other matters.

As a condition of disbursement, you must be in compliance with certain requirements relating to flood insurance, lead-based paint, earthquake hazards, coastal barrier islands, and child support obligations, as set forth in §§ 120.170 through 120.175 of this chapter.

Home Disaster Loans

§ 123.100 Am I eligible to apply for a home disaster loan?

(a) You are eligible to apply for a home disaster loan if you:

(1) Own and occupy your primary residence and have suffered a physical loss to your primary residence, personal property, or both; or

(2) Do not own your primary residence, but suffered a physical loss to your personal property. Family members residing in the same household are eligible if they are not dependents of the owners of the residence.

(b) Losses may be claimed only by the owners of the property at the time of the disaster, and all such losses will be verified by SBA. SBA will consider beneficial ownership as well as legal title (for real or personal property) in determining who suffered the loss.

§ 123.101 When am I not eligible for a home disaster loan?

You are not eligible for a home disaster loan if:

(a) You have been convicted, during the past year, of a felony during and in connection with a riot or civil disorder or other declared disaster;

(b) You acquired voluntarily more than a 50 percent ownership interest in the damaged property after the disaster, and no contract of sale existed at the time of the disaster;

(c) Your damaged property can be repaired or replaced with the proceeds of insurance, gifts or other compensation, including condemnation awards (with one exception, these amounts must either be deducted from the amount of the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan (OMB Approval No. 3245–0124). The one exception applies to the Individual and Family Grant Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan);

(d) SBA determines that you assumed the risk (for example, by not maintaining flood insurance as required by an earlier SBA disaster loan when the current loss is also due to flood);

(e) Your damaged property is a secondary home (although if you rented the property out before the disaster and the property would not constitute a "residence" under the provisions of Section 280A of the Internal Revenue Code, you may be eligible for a physical disaster business loan);

(f) Your damaged property is the type of vehicle normally used for recreational purposes, such as motorhomes, aircraft, and boats;

(g) Your damaged property consists of cash or securities;

(h) The replacement value of your damaged personal property is extraordinarily high and not easily verified, such as the value of antiques, artworks, or hobby collections;

(i) You or other principal owners of the damaged property are presently incarcerated, or on probation or parole following conviction for a serious criminal offense;

(j) Your only interest in the damaged property is in the form of a security interest, mortgage, or deed of trust;

(k) The damaged building, including contents, was newly constructed or substantially improved on or after February 9, 1989, and (without a significant business justification) is located seaward of mean high tide or entirely in or over water; or

(l) You voluntarily decide to relocate outside the business area in which the disaster has occurred, and there are no special or unusual circumstances leading to your decision (Business area means the municipality which provides general governmental services to your damaged home or, if not located in a municipality, the county or equivalent political entity in which your damaged home is located).

§ 123.102 What circumstances would justify my relocating?

SBA may approve a loan if you intend to relocate outside the business area in which the disaster has occurred if your relocation is caused by such special or unusual circumstances as:

(a) Demonstrable risk that the business area will suffer future disasters;

(b) A change in employment status (such as loss of job, transfer, lack of adequate job opportunities within the business area or scheduled retirement within 18 months after the disaster occurs);

(c) Medical reasons; or

(d) Special family considerations which necessitate a move outside of the business area.

§ 123.103 What happens if I am forced to move from my home?

If you must relocate inside or outside the business area because local authorities will not allow you to repair your damaged property, SBA considers this to be a total loss and a mandatory relocation. In this case, your loan would be an amount that SBA considers sufficient to replace your residence at your new location, plus funds to cover losses of personal property and eligible refinancing.

§ 123.104 What interest rate will I pay on my home disaster loan?

If you can obtain credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you cannot obtain credit elsewhere, your interest rate is one-half the statutory rate, but will not exceed 4 percent per annum. Credit elsewhere means that, with your cash flow and disposable assets, SBA believes you could obtain financing from non-federal sources on reasonable terms. If you cannot obtain credit elsewhere, you also may be able to borrow from SBA to refinance existing recorded liens against your damaged real property. Under prior legislation, some SBA disaster loans had split interest rates. On any such loan, repayments of principal are applied first to that portion of the loan with the lowest interest rate.

§ 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

(a) For all disasters occurring on or after October 26, 1993, there are limits on how much money you can borrow for particular purposes:

(1) $40,000 for repair or replacement of household and personal effects;

(2) $200,000 for repair or replacement of a primary residence (including upgrading in order to meet minimum standards of safety and decency or current building code requirements). Repair or replacement of landscaping and/or recreational facilities can not exceed $5,000;

(3) $200,000 for eligible refinancing purposes; and

(4) 20 percent of the loan amount (not including refinancing) up to a maximum of $48,000 for mitigation.

(b) You may not use loan proceeds to repay any debts on personal property, secured or unsecured, unless you incurred those debts as a direct result of the disaster.

(c) SBA determines the loan maturity and repayment terms based on your needs and your ability to pay. Generally, you will pay equal monthly installments of principal and interest, beginning five months from the date of the loan, as shown on the Note securing the loan. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. The maximum maturity for a home disaster loan is 30 years. There is no penalty for prepayment of home disaster loans.

§ 123.106 What is eligible refinancing?

(a) If your home (primary residence) is totally destroyed or substantially damaged, and you do not have credit elsewhere, SBA may allow you to borrow money to refinance recorded liens or encumbrances on your home. Your home is totally destroyed or substantially damaged if it has suffered uninsured or otherwise uncompensated damage which, at the time of the disaster, is either:

(1) 40 percent or more of the home's market value or replacement cost at the time of the disaster, including land value, whichever is less; or

(2) 50 percent or more of its market value or replacement cost at the time of the disaster, not including land value, whichever is less.

(b) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of $200,000, or the physical damage to your primary residence after reductions for any insurance or other recovery.

§ 123.107 What is mitigation?

Mitigation means specific measures taken by you to protect against recurring damage in similar future disasters. Examples include retaining walls, sea walls, grading and contouring land, relocating utilities and modifying structures. The money that you can borrow for mitigation is limited to the lesser of the cost of mitigation, or 20 percent of your loan to repair or replace your damaged primary residence and personal property. SBA will not accept a request for a loan increase for mitigation filed after final disbursement of your original loan unless you can show that your request was late because of substantial reasons beyond your control.

Physical Disaster Business Loans

§ 123.200 Am I eligible to apply for a physical disaster business loan?

(a) Almost any business concern or charitable or other non-profit entity whose real or tangible personal property is damaged in a declared disaster area is eligible to apply for a physical disaster business loan. Your business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your business' size (average annual receipts or number of employees) is not taken into consideration in determining your eligibility for a physical disaster business loan. If your damaged business occupied rented space at the time of the disaster, and the terms of your business' lease require you to make repairs to your business' building, you may have suffered a physical loss and can apply for a physical business disaster loan to repair the property. In all other cases, the owner of the building is the eligible loan applicant.

(b) Damaged vehicles, of the type normally used for recreational purposes, such as motorhomes, aircraft, and boats, may be repaired or replaced with SBA loan proceeds if you can submit evidence that the damaged vehicles were used in your business at the time of the disaster.

§ 123.201 When am I not eligible to apply for a physical disaster business loan?

(a) You are not eligible for a physical disaster business loan if your business is an agricultural enterprise or if you fit into any of the categories in § 123.101. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries.

(b) Sometimes a damaged business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your damaged business is not an agricultural enterprise, you may apply for a physical disaster business loan, but loan proceeds may not be used, directly or indirectly, for the benefit of your agricultural enterprises, even if they also suffered damage.

(c) If your business is going to relocate voluntarily outside the business area in which the disaster occurred, you are not eligible for a physical disaster business loan. If, however, the relocation is due to uncontrollable or compelling circumstances, SBA will consider the relocation to be involuntary and eligible for a loan. Such circumstances may include, but are not limited to:

(1) The elimination or substantial decrease in the market for your products or services, as a consequence of the disaster;

(2) A change in the demographics of your business area within 18 months prior to the disaster, or as a result of the disaster, which makes it uneconomical to continue operations in your business area;

(3) A substantial change in your cost of doing business, as a result of the disaster, which makes the continuation of your business in the business area not economically viable;

(4) Location of your business in a hazardous area such as a special flood hazard area or an earthquake-prone area;

(5) A change in the public infrastructure in your business area which occurred within 18 months or as a result of the disaster that would result in substantially increased expenses for your business in the business area;

(6) Your implementation of decisions adopted and at least partially implemented within 18 months prior to the disaster to move your business out of the business area; and

(7) Other factors which undermine the economic viability of your business area.

§ 123.202 How much can my business borrow with a physical disaster business loan?

(a) Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the greater of the uncompensated physical loss and economic injury or $1.5 million. Physical disaster loans may include amounts to meet current building code requirements. If your business is a major source of employment, SBA may waive the $1.5 million limitation. A major source of employment is a business concern which has one or more locations in the disaster area which:

(1) Employed 10 percent or more of the entire work force within the commuting area of a geographically identifiable community (no larger than a county), provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employed 5 percent of the work force in an industry within the disaster area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the disaster area, or if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or

(3) Employed no less than 250 employees within the disaster area.

(b) SBA will consider waiving the $1.5 million loan limit only if:

(1) Your damaged location or locations are out of business or in imminent danger of going out of business as a result of the disaster, and a loan in excess of $1.5 million is necessary to reopen or keep open the damaged locations in order to avoid substantial unemployment in the disaster area; and

(2) You have used all reasonably available funds from your business, its affiliates and its principal owners (20% or greater ownership interest) and all available credit elsewhere (as described in Section 123.104) to alleviate your physical damage and economic injury.

(c) Physical disaster business borrowers may request refinancing of liens on both damaged real property and machinery and equipment, but for an amount reduced by insurance or other compensation. To do so, your business property must be totally destroyed or substantially damaged, which means:

(1) 40 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (including land) and damaged machinery and equipment; or

(2) 50 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (excluding land) and damaged machinery and equipment.

(d) Loan funds allocated for repair or replacement of landscaping or recreational facilities may not exceed $5,000 unless the landscaping or recreational facilities fulfilled a functional need or contributed to the generation of business.

§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

(a) SBA will announce interest rates with each disaster declaration. If your business, together with its affiliates and principal owners, have credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you do not have credit elsewhere, your interest rate will not exceed 4 percent per annum. The maturity of your loan depends upon your repayment ability but cannot exceed 3 years if you have credit elsewhere. Otherwise, the maximum maturity is 30 years.

(b) Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the Note. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

Economic Injury Disaster Loans

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (as described in § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include—

(1) Small nurseries affected by a drought disaster designated by the Secretary of Agriculture (nurseries are commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod);

(2) Small agricultural cooperatives; and

(3) Producer cooperatives.

§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

Your business is not eligible for an economic disaster loan if you fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in gambling, lending, multi-level sales distribution, loan packaging, speculation, or investment (except for real estate investment with property held for rental when the disaster occurred);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative; or

(d) Not a small business concern.

§ 123.302 What is the interest rate on an economic injury disaster loan?

Your economic injury loan will have an interest rate of 4 percent per annum or less.

§ 123.303 How can my business spend my economic injury disaster loan?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to the disaster event; or

(2) Make payments on loans owned by another federal agency (including SBA)

or a Small Business Investment Company licensed under the Small Business Investment Act; or

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter; or

(4) Repair physical damage; or

(5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

Dated: November 11, 1995.

Philip Lader,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–25]

Proposed Establishment of Class E Airspace; Stuart, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Stuart, FL. GPS RWY 11 and GPS RWY 29 Standard Instrument Approach Procedures (SIAP's) have been developed for Witham Field. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAP's and for instrument flight rules (IFR) operations at Witham Field. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAP's.

DATES: Comments must be received on or before January 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–25, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Stuart, FL. GPS RWY 11 and GPS RWY 29 SIAP's have been developed for Witham Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAP's and for IFR operations at Witham Field. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAP's. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Stuart, FL [New]

Witham Field, FL
(lat. 27°10'51" N, long. 80°13'19" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Witham Field.

* * * * *

Issued in College Park, Georgia, on November 8, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

FR Doc. 95–28738 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–24]

Proposed Amendment to Class E Airspace; Jasper, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Jasper, GA, to include the Cherokee County Airport at Canton, GA, which has a NDB RWY 4 Standard Instrument Approach Procedure (SIAP). Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the Cherokee County Airport.

DATES: Comments must be received on or before December 31, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–24, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Jasper, GA, to include the Cherokee County Airport at Canton, GA, which has a NDB RWY 4 SIAP. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the Cherokee County Airport. Class E Airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective

September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Jasper, GA [Revised]

Jasper/Pickens County Airport, GA
(lat. 34°27'05" N, long. 84°27'24" W)
Canton/Cherokee County Airport
(lat. 34°18'38" N, long. 84°25'26" W

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Jasper/Pickens County Airport and within an 8.5-mile radius of the Canton/Cherokee County Airport.

* * * * *

Issued in College Park, Georgia, on November 8, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–28739 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AGL–19]

Modification of Class E Airspace; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E5 airspace to accommodate a Very High Frequency Omnidirectional Range (VOR) for runway 1/19 approach and a Nondirectional Radio Beacon (NDB) for runway 19 approach at Rice Lake Regional-Carl's Field Airport, Rice Lake, WI. Additional controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed for aircraft executing the approach at Regional-Carl's Field Airport.

DATES: Comments must be received on or before December 23, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The Official docket may be examined in the office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region; Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E5 airspace to accommodate a Very High Frequency Omnidirectional Range (VOR) for runway 1/19 approach and a Nondirectional Radio Beacon (NDB) for runway 19 approach at Rich Lake Regional-Carl's Field Airport, Rice Lake, WI. Additional controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach at Regional-Carl's Field Airport. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designation and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Rice Lake, WI [Revised]

Rice Lake Regional-Carl's Field Airport, WI
(lat. 45°25'14" N, long. 91°46'25" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Rice Lake Regional-Carl's Field Airport, excluding that airspace within the Cumberland, WI, airspace area.

* * * * *

Issued in Des Plaines, Illinois on November 8, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–28740 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–NM–95–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require inspections of the handrail assembly at the main entrance door to detect loose or missing rivets, abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly, and cracks on the handrail pivot-tube. It would also require repair or replacement of the assembly, if necessary. This proposal is prompted by a report indicating that fatigue cracks and loose rivets were found on the handrail assembly of the main passenger entrance door on an in-service airplane. The actions specified by the proposed AD are intended to prevent these conditions, which can lead to the failure of the door handrail assembly; such failure could allow the door to fall free and subsequently cause injury to people on the airplane or on the ground.

DATES: Comments must be received by January 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–95–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–95–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–95–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that cracks and loose rivets have been found on the handrail assembly of the main passenger entrance door. These conditions are the result of fatigue stress. If such cracking were to lead to complete failure of the handrail assembly, the entrance door, which is hinged on the bottom, could fall free. This condition, if not corrected, could result in injury to passengers, flightcrew, or groundcrew.

Description of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41–A52–036, dated June 13, 1994, which describes procedures for conducting repetitive inspections of the handrail assembly at the main entrance door to detect:

1. loose or missing rivets,
2. abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly, and
3. cracks on the handrail pivot-tube.

If the inspection reveals evidence of loose or missing rivets or abnormal movement between the handrail pivot-tube and the spigot, the service bulletin calls for removing the rivets and conducting inspections for elongation of the rivet holes and for cracks in the pivot tube under the cross-tube fitting and pivot rod.

If the inspection reveals evidence of elongation of the rivet holes, the service bulletin calls for drilling the holes to a certain maximum diameter and installation of new rivets.

If any of the inspections reveal evidence of cracking in the assembly, the service bulletin calls for installing either:

1. a standard handrail assembly;
2. an interim reinforcement of the handrail assembly, or
3. structural improvements to the door and door support, and a completely redesigned handrail assembly.

If a standard handrail assembly is installed, the repetitive inspections must continue. If the interim reinforcement is installed, or if the

structural improvements and redesigned handrail assembly are installed, the repetitive inspections are no longer needed.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Jetstream also has issued Service Bulletin J41–52–041–42619, dated June 13, 1994, which describes procedures for installing an interim reinforcement of the handrail assembly (Customer Option Kit No. JK2619). The reinforcement entails installing a new improved pivot trunnion and handrail pivot tube to strengthen the main handrail sub-assembly. The CAA classified this service bulletin as optional.

Additionally, Jetstream Service Bulletin J41–52–041–42619 refers to Flight Refuelling Service Bulletin 6020303–52–1, dated June 10, 1994, which contains detailed instructions for installing the interim reinforcement of the handrail assembly, identified as "Flight Refuelling Modification No. 60291." When the reinforcement is installed, the part number of the handrail assembly is changed to "Flight Refuelling Part Number 6020203 Issue D."

Jetstream also has issued Service Bulletin J41–52–025, dated February 11, 1994, which describes procedures for installing structural improvements of the door and door support, and a completely redesigned handrail assembly (Modification No. JM41224A). Once all of these items are installed, the resulting assembly is stronger and has improved fatigue life. The CAA also classified this service bulletin as optional.

Additionally, Jetstream Service Bulletin J41–52–025 refers to Flight Refuelling Service Bulletin 6020303–52–2, Revision 1, dated December 10, 1993, which contains detailed instructions for installing the completely redesigned handrail assembly, specified as Flight Refuelling Part No. 6020205. The redesigned handrail assembly includes a new latch mechanism and tensator spring to secure (safety) the overcenter lock. It also includes new gas struts that have better reliability.

Description of the Proposed Rule

The Jetstream Model 4101 airplane is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections of the handrail assembly at the main entrance door to detect loose or missing rivets; abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly; and cracks on the handrail pivot-tube.

If evidence of loose/missing rivets or abnormal movement is detected, operators would be required to accomplish various corrective procedures. If cracking is detected, operators would be required to correct the discrepancy by either:

1. replacing the handrail assembly with a serviceable like part, and continuing with the repetitive inspections; or

2. installing an interim reinforcement of the handrail assembly, which would constitute terminating action for the repetitive inspections; or

3. installing structural improvements of the door and door support, and a completely redesigned handrail assembly, which would constitute terminating action for the repetitive inspections.

The proposed actions would be required to be accomplished in accordance with the Jetstream service bulletins described previously.

Economic Impact

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD. To accomplish the proposed inspections, it would take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $240, or $60 per airplane, per inspection.

This cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream: Docket 95–NM–95–AD.

Applicability: Model 4101 airplanes; equipped with handrail assembly, Part No. 6020203 Issue C, with Modification No. JM41179 (reference Jetstream Alert Service Bulletin J41–A52–009); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the entrance door handrail assembly, which subsequently could result in injury to passengers, flightcrew, or groundcrew, accomplish the following:

(a) Within 50 landings after the effective date of this AD, conduct a detailed visual inspection of the handrail assembly at the main entrance door to detect loose or missing rivets, abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly, and cracks on the handrail pivot-tube, in accordance with Jetstream Alert Service Bulletin J41–A52–036, dated June 13, 1994.

(b) If no cracks or other discrepancies are detected during the inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service.

(c) If evidence of any loose or missing rivet is revealed, or if abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly is detected, as a result of any of the inspections required by this AD, prior to further flight, accomplish the procedures specified in paragraph 2.B.(4) of Jetstream Alert Service Bulletin J41–A52–036, dated June 13, 1994. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service.

(d) If evidence of cracking is revealed as a result of any of the inspections required by this AD, prior to further flight, accomplish the requirements of either paragraph (d)(1), (d)(2), or (d)(3) of this AD:

(1) Install a new handrail assembly, Part No. 6020203 Issue C standard, as specified in paragraph 2.B.(5)(d) of Jetstream Service Bulletin J41–A52–036, dated June 13, 1994. After installation, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service. Or

(2) Install the interim reinforcement of the handrail assembly (Customer Option Kit. No. Jk42619) in accordance with Jetstream Service Bulletin J41–52–041–42619, dated June 13, 1994. Such installation constitutes terminating action for the inspections required by this AD. Or

Note 2: Jetstream Service Bulletin J41–52–041–42619 refers to Flight Refuelling Service Bulletin 6020303–52–1 for additional installation information.

(3) Install the structural improvements of the door and door support, and the completely redesigned door handrail assembly, in accordance with Jetstream Service Bulletin J41–52–025, dated February 11, 1994. Such installation constitutes terminating action for the inspections required by this AD.

Note 3: Jetstream Service Bulletin J41–52–025 refers to Flight Refuelling Service Bulletin 6020303–52–2 for additional installation information.

(e) Terminating action for the inspections required by this AD consists of installation of the item(s) specified in either paragraph (e)(1) or (e)(2) of this AD:

(1) Installation of the interim reinforcement of the handrail assembly (Customer Option Kit. No. Jk42619) in accordance with Jetstream Service Bulletin J41–52–041–42619, dated June 13, 1994. Or

(2) Installation of the structural improvements of the door and door support, and the completely redesigned door handrail assembly, in accordance with Jetstream Service Bulletin J41–52–025, dated February 11, 1994.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on November 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28524 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 208, 314, and 601

[Docket No. 93N–0371]

RIN 0910–AA37

Prescription Drug Product Labeling; Medication Guide Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 22, 1995, the comment period for the proposed rule for Prescription Drug Product Labeling; Medication Guide Requirements, which appeared in the **Federal Register** of August 24, 1995 (60 FR 44182). FDA is taking this action in response to several requests for an extension of the comment period.

DATES: Written comments by December 22, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Louis A. Morris, Center for Drug Evaluation and Research (HFD–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6818.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1995 (60 FR 44182), FDA published a proposed rule for Prescription Drug Product Labeling; Medication Guide Requirements. Interested persons were given until November 22, 1995, to submit comments on the proposal. In response to the proposal, FDA received several requests for an extension of the comment period for an additional 90 days. Requestors specified that this extension would allow sufficient time to adequately review and analyze the proposal by various organization members, in order to formulate and submit comments. After careful consideration, FDA is granting a 30-day extension. Accordingly, the comment period is extended to December 22, 1995.

Interested persons may, on or before December 22, 1995, submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–28520 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

22 CFR Part 89

[Public Notice 2283]

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the Immigration and Nationality Act of 1952, the Department of State is issuing a proposed rule updating the list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country.

DATES: Interested parties are invited to submit comments in triplicate by December 26, 1995.

ADDRESSES: Comments may be mailed to the Office of Maritime and Land Transport (EB/TRA/MA), Room 5828, Department of State, Washington, DC 20520–5816.

FOR FURTHER INFORMATION CONTACT: Richard T. Miller, Office of Maritime and Land Transport, Department of State, (202) 647–6961.

SUPPLEMENTARY INFORMATION: Section 258(d) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1288, as amended by the Immigration Act of 1990, Pub. L. 101–649, directs the Secretary of State (hereinafter the Secretary) to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The Attorney General will use the list to determine whether to permit an alien crewmember to perform an activity constituting longshore work in the United States or its coastal waters, in accordance with the conditions set in the Act.

The Department of State (hereinafter the Department) published such a list as a final rule on December 27, 1991 (56 FR 66970), corrected on January 14, 1992 (57 FR 1384). An updated list was last published on December 13, 1993 at 57 FR 65118. On March 24, 1994, an Advance Notice of Proposed Rulemaking (59 FR 13904) gave notice that the list would be updated and invited comments on the subject, particularly with respect to the Department's interpretation of Section 258.

Methodology

The Department bases the lists on reports from U.S. diplomatic posts abroad and submissions from interested parties in response to the notice-and-comment process. At the request of the Committee on Foreign Affairs of the House of Representatives, the Government Accounting Office (hereinafter the GAO) reviewed the Department's criteria and methodology for compiling the list. See U.S. General Accounting Office, State Department: Problems in Compiling List of Countries Restricting Longshore Activities (1994) (hereinafter GAO Report). Noting that the criteria and methodology followed by the Department in the past have tended to limit the number of countries placed on the list, the GAO concluded that the Department can "significantly improve its data collection and decision-making procedures." The GAO also concluded that the language of Section 258, particularly the phrase "in practice," is susceptible to differing interpretations.

The GAO made five recommendations to improve data collection and decision-making procedures:

1. Clearly and thoroughly state the criteria for determining which countries to place on the list.

—Standards for the reciprocity exception are discussed below.

2. Determine specific data requirements and develop appropriate questions designed to solicit required information. [and]

3. Design a standardized reporting format to facilitate analysis.

—In response to these two recommendations and to ensure greater consistency in reports from U.S. diplomatic posts abroad, the Department has drafted a more detailed questionnaire about different types of restrictions in foreign countries on longshore work by U.S. mariners. To the maximum extent possible, the questions can be answered with a yes or no. The questionnaire covers general requirements for work permits, laws and regulations specifically relating to longshore work and collective bargaining agreements.

4. Obtain information on all seaport countries or clearly identify in the **Federal Register** those countries for which no information was obtained and the reason why.

—To determine which areas had ports, the Department consulted "The World Factbook," published annually by the Central Intelligence Agency. According to "The World Factbook," 172 geographic entities have ports, including dependent areas associated in some way with another country.

—The Department did not collect information about areas with a population of less than 5,000 inhabitants. In addition, the following entities with ports were not included in the instructions sent to posts: Anguilla (a dependent territory of the United Kingdom), Mayotte (a territorial collectivity of France), and Wallis and Fortuna (an overseas territory of France). According to "The World Factbook," none of these entities has a ship registry.

—U.S. Embassies did not receive any replies from host country officials about the Cook Islands (a self-governing state in free association with New Zealand), Macau (an overseas territory of Portugal), Norfolk Island (a territory of Australia) and the French dependencies surveyed: The French Antilles, French Guiana, French Polynesia, New Caledonia, Reunion, and St. Pierre and Miquelon. According to "The World Factbook," none of the French dependencies have separate ship registers; for the purposes of this rulemaking, ships of these areas will be considered as French ships.

—The Department does not have information at this time sufficient to determine the status of Albania, Antigua, Gambia, Guinea-Bissau, Lebanon, St. Kitts, Sao Tome and Principe, and Somalia.

—The following countries were excluded from this rulemaking procedure because their vessels are currently prohibited from calling at U.S. ports: Cuba, Iran, Iraq, North Korea, Libya, Sudan, and Syria. In addition, Serbia and Montenegro was excluded because of the effects of UN economic sanctions.

5. Develop a follow-up procedure to ensure that reports are received from all tasked overseas post and to obtain any necessary clarification.

—The Department has set up a data base to track the status of replies and requests for clarification. At regular intervals, reminders are sent to posts with replies outstanding.

In addition to the recommendations listed above, the GAO recommended that the Secretary add to the list those countries with restrictions on longshore work that were previously omitted on the basis that no U.S. ships had called on their ports within the previous year or that they did not enforce their restrictions. The Department has followed this recommendation and added countries to the list accordingly.

Public Comments

In response to the notice published on March 24, 1994 at 59 FR 13904, twelve parties submitted comments. In general, ocean carriers, port administrators and shippers expressed support for the Department's previous application of Section 258, while representatives of organized labor argued that the Department's previous application was inappropriate.

In a letter dated April 11, 1994, Icicle Seafoods, Inc. supported the original definition of practice and stated that any expansion of this definition would be detrimental and confusing to its business.

In a letter dated April 19, 1994, the International Longshoremen's Association took the position that the Department's definition of "in practice" was improper and inaccurate and should have included collective bargaining agreements and other local practices irrespective of whether they were sanctioned by governmental authorities. The Association urged implementation of the recommendations from the GAO Report and agreed with the GAO position that various interpretations of the term "in practice" were legally supportable. It enclosed and referred to a previous letter to Undersecretary of State Joan Spero in which the Association argued that Congress intended the legislation to cover private as well as government restrictions.

In a letter dated April 19, 1994, the Council of European & Japanese National Shipowners' Associations submitted that the Department had correctly interpreted the language and intent of the Act and that the Department should not change its original interpretation.

In a letter dated April 20, 1994, the Federation of American Controlled Shipping stated that the Department had properly construed the statutory phrase "in practice" as requiring some degree of involvement by a foreign government. It asserted that denying reciprocity to countries in which the foreign government plays no role in restrictive labor practices is akin to holding the U.S. government responsible for practices privately negotiated by unions in this country. Since the law defers to U.S. collective bargaining agreements, it would, the Federation argued, be inconsistent to treat similar foreign agreements as impermissible. Finally, the Federation stated that any other interpretation would be unrealistic from the point of view of administrative practicality and cost effectiveness.

In a letter dated April 21, 1994, the Lake Carriers Association expressed its support for regulations in which the Department confined the list to countries in which crew members of U.S. vessels were precluded from performing longshore work by virtue of specific laws, regulations, or government imposition or approval of collective bargaining agreements.

In a letter dated April 22, 1994, the International Longshoremen's & Warehousemen's Union expressed its disagreement with the Department's previous rulemaking on this issue. The Union stated that the reciprocity exception was intended by Congress to be narrow, and that the term "in practice" should cover any restrictive practice, irrespective of whether a foreign government had prompted, adopted or approved it. It noted that the language in the statute refers to restrictions in the country rather than by the country. The Union also argued that the original interpretation of the exception was deemed wholly inconsistent with a major policy underlying immigration laws, the protection of the interests of the American workforce. It cited Congressional support for these views and provided an extensive discussion of the GAO Report in support of its position.

In a letter dated April 22, 1994, American Great Lakes Ports saw no reason to change the interpretation of the statute. It noted the GAO's determination that while section 258(d) is susceptible to differing interpretations, the interpretation that restrictions should apply only in those cases where a foreign country has actively imposed or approved restrictions is a legally supportable reading of the law.

In a letter dated April 22, 1994, CANAMCO fully and unequivocally supported the Department's original interpretation. It cited the GAO's conclusion that the interpretation is legally supportable and stated that nothing has occurred that requires a change. CANAMCO expressed the view that a broader interpretation of section 258(d) to include all restrictive practices would present the Department with an impossible definitional and administrative undertaking.

In a letter dated April 25, 1994, the Shipping Federation of Canada noted that the terms of many Canadian and other nations' collective bargaining agreements restrict certain work to unionized longshoremen, and that a change in interpretation of the statute to include such agreements would cause these nations to lose their reciprocity exemption. It stated that a change would result in significant new cargo handling costs and delays at U.S. ports and urged retention of the Department's original interpretation.

In a letter dated April 25, 1994, Cargill, Incorporated supported the original interpretation and described the language enacted by Congress as a carefully crafted compromise designed to keep U.S. exports competitive by limiting the unnecessary escalation of costs at U.S. ports and fostering the use of innovative technology in cargo-handling operation. Cargill argued that a revised definition of reciprocity would cause cargos to be diverted to ports outside the United States and provide a gain in long-term competitive advantage for foreign agricultural and industrial exporters.

In a letter dated April 25, 1994, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) described the purpose of the law as to preserve and protect longshore work for United States longshore workers. It noted that Congress was capable of excluding private restrictions from consideration if it had wanted to, but had not chosen to do so. It drew a parallel between the reciprocity exception and the separate "prevailing practice" exception for U.S. ports where foreign crewmembers normally perform longshore work, noting that the prevailing practice exception takes collective bargaining agreements into account. The AFL–CIO contended that there is no legal barrier to a change in interpretation, citing the GAO Report in this regard, and concluded that a wider interpretation would be neither unbalanced nor unfair, reflecting the most natural meaning of reciprocity.

In a letter dated April 1994, the Maritime Trades Department of the AFL–CIO described the original interpretation as unwarranted and an egregious wrong to U.S. longshore workers. It argued that the interpretation had led to the loss of thousands of jobs in an industry already suffering from widespread unemployment as a result of containerization and other technological advancements. It expressed the view that the reciprocity exception was intended to accommodate only a relatively few countries.

Standards for Reciprocity Exception

Laws and Regulations

The Department previously listed those countries where restrictions on longshore activities by crewmembers of U.S. ships are imposed by law or

regulation of the foreign government on a national basis or by law or regulation of a regional or local government, provided the laws and regulations were actually enforced on U.S. ships which called at ports in those countries. Taking note of the recommendations of the GAO, the fact that "general practice" was the standard set forth in the legislative conference report, and the practical difficulties of determining the extent to which laws are enforced, the Department has chosen to alter its consideration of "laws and regulations" for purposes of section 258. Countries are now listed based on the existence of restrictions imposed by national, regional or local laws or regulations, provided such restrictions are pervasive enough to constitute general practice, irrespective of whether the laws are actually or consistently enforced or whether U.S. ships call at ports in the country in question.

Practices

In earlier rulemakings, in addition to the countries listed because of restrictive laws and regulations, the Department listed only those countries with restrictions arising through collective bargaining agreements directly negotiated by a foreign government with other parties, or through restrictions in collective bargaining agreements imposed or approved by a foreign government. In its study of the Department's implementation of the legislation, the GAO concluded that the statutory phrase "in practice" is susceptible to differing interpretations. The GAO found that the Department's interpretation was legally supportable, but noted that the language and legislative history could support an interpretation under which privately negotiated collective bargaining agreements would disqualify a country for a reciprocal exception. The Department accepts the GAO's conclusion that either interpretation is legally supportable.

In the absence of unequivocal statutory language, the Department must interpret the "in practice" provision. Upon consideration of the legislative history, comments from interested parties, the basic policy reflected in the statutory scheme, and U.S. economic interests, the Department has concluded that a longshore activity by alien crewmembers cannot qualify for the reciprocity exception in section 258(d) if U.S. mariners are prohibited from performing that activity in the country of the foreign vessel due to restrictive practices, e.g. private collective bargaining agreements, irrespective of governmental involvement in those restrictions.

The purpose of section 258 is to protect U.S. longshore workers by restricting foreign crewmembers from performing longshore work in the United States, the performance of which had not been explicitly prohibited prior to the enactment of the statute in 1990. Section 258 prohibits such work in general, and then provides limited exceptions to that prohibition. The Department was guided by this basic purpose and recognizes that to apply the exception to countries in which longshore activity by U.S. mariners is restricted in any way would not further that purpose. For example, applying the exception in such a case could conceivably create a situation in which all longshore work in a country was foreclosed to U.S. mariners by collective bargaining agreements, but mariners from that country were permitted to engage in longshore activity in the United States.

The Department also notes the "prevailing practice" exception of section 258(c), which applies to private practices, whether or not any governmental action requires or sanctions those practices. Likewise, the Department recognizes that the statute emphasizes conditions that actually prevail in ports, as well as formal governmental actions.

As observed by the GAO, the Department's original interpretation tended to maximize the number of countries granted a reciprocity exception. While the result may have been a benefit to shipping companies, those benefits came at the expense of U.S. longshore workers. The Department has concluded that, in the context of the statutory scheme created by Congress, the benefits gained by U.S. longshore workers through this new interpretation outweigh any benefits to U.S. businesses under the Department's previous interpretation.

The Department has chosen this manner of applying section 258(d) after thorough consideration of its previous position and the practical difficulties of applying the statute accordingly. As a practical matter, the Department's previous application required an often difficult determination of the extent of government involvement in restrictive labor practices. This inquiry was cumbersome and, in many cases, indeterminate, since there was no guidance as to the level of government involvement which would place a country on the list. Under the Department's new position, however, the level of government involvement need not be established. Thus, this manner of application lends consistency and predictability to the process of listing countries in which longshore work is restricted "in practice."

Voluntary Commercial Practice

Several comments submitted in connection with the original rulemaking on this subject observed that carriers may use local longshore workers as a matter of commercial choice. In the absence of restrictive laws, regulations, collective bargaining agreements or restrictions consistently imposed by national custom or practice as described above, the Department does not list countries based on U.S. carriers' voluntary commercial decisions.

Compensation of Port Workers

In several countries, the Department has found that the performance of longshore work by U.S. crewmembers is permitted, but the ship is required to pay for the services of local longshore workers even if crewmembers are actually doing the work. In previous rulemaking the Department considered such practices restrictive only if the compensation exceeded ordinary market wages. However, because the Department has found that such monetary charges, at whatever wage level, have both a negative economic impact on the U.S. carrier and a deterrent effect on the performance of such work by U.S. crewmembers, the Department has decided to consider such practices as restrictive for purposes of this rulemaking and to place countries where such practices are in effect on the list.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore Work.

For the reasons set out in the preamble, 22 CFR Chapter I is amended as follows:

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

1. The authority for part 89 is maintained to read as follows:

Authority: 8 U.S.C. 1288, Public Law 101–649, 104 Stat. 4878.

2. Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Algeria

(a) All longshore activities.

Angola

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of ship's gear.

Argentina

(a) All longshore activities.
(b) Exceptions:
(1) Cargo tiedown and untieing,
(2) When a disaster occurs,
(3) Provision of vessel supplies, and
(4) Opening and closing of hatches.

Australia

(a) All longshore activities.
(b) Exceptions:
(1) When shore labor cannot be obtained at rates prescribed by collective bargaining agreements,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Bahamas

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment on board the ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Use of specialized equipment which port workers cannot handle alone, with the concurrence of the local longshore union.

Bangladesh

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the vessel when there is a shortage of port workers able to operate the equipment and with the permission of the port authority, and
(2) Opening and closing of hatches.

Barbados

(a) All longshore activities.

Belgium

(a) All longshore activities.

Belize

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches and
(3) Rigging of ship's gear.

Benin

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment.
(2) Opening and closing of hatches and
(3) Rigging of ship's gear.

Bermuda

(a) Loading and discharge of cargo using cranes and loading equipment situated on the docks or wharves.
(b) Line handling on the docks.

Brazil

(a) All longshore activities at public terminals.

Bulgaria

(a) All longshore activities.
(b) Exceptions
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Mooring and line handling, and
(5) Operation of special equipment and discharge of dangerous cargo, with the preliminary authorization of the Port Administration and Harbor Master.

Burma

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of ship's gear.

Cameroon

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of ship's gear.

Canada

(a) All longshore activities.
(b) Exceptions in connection with bulk cargo at Great Lakes ports only:
(1) Handling of mooring lines on the dock when the vessel is made fast or let go,
(2) Moving the vessel to place it under shoreside unloading equipment,
(3) Moving the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems, and
(4) Operation of cargo related equipment integral to the vessel.

Cape Verde

(a) All longshore activities.

China

(a) Handling of mooring lines.

Colombia

(a) All longshore activities.
(b) Exceptions: When local workers are unable or unavailable to provide longshore services.

Comoros

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Other activities, with government authorization.

Costa Rica

(a) Operation of equipment fixed to the ground.

Cote d'Ivoire

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of automated ship's gear.

Croatia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment on board the ship when outside of port, and
(2) Operation of specialized unloading equipment.

Cyprus

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Djibouti

(a) All longshore activities.
(b) Exception: Operation of cranes aboard ship.

Dominica

(a) All longshore activities.

Dominican Republic

(a) All longshore activities.
(b) Exception: Operation of equipment with which local port workers are not familiar.

Ecuador

(a) All longshore activities.

Egypt

(a) Cargo loading and unloading activities not on board the ship.

El Salvador

(a) All longshore activities.

Eritrea

(a) All longshore activities.

Estonia

(a) All longshore activities.
(b) Exceptions:
(1) On-board mooring activities,
(2) Replacement of lines,
(3) Lifting and movement of ladders,
(4) Movement of vessel's equipment,
(5) Loading of food and vessel's equipment by cargo-related equipment of the vessel, and

(6) Securing of general cargo, vehicles and containers to the vessel.

Fiji

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment, except for discharging cargo,
(2) Opening and closing hatches, and
(3) Rigging of ship's gear.

Finland

(a) All longshore activities.
(b) Exceptions, when not related to cargo loading and discharge:
(1) Operation of cargo related equipment,
(2) Opening and closing hatches, and
(3) Rigging of ship's gear.

Gabon

(a) All longshore activities.

Georgia

(a) All longshore activities.

Germany

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Ghana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Greenland

(a) Cargo handling activities on shore.
(b) Exception: Loading and discharging of cargo between vessel and dock by use of ship's gear.

Guatemala

(a) All longshore activities.

Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Guyana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Haiti

(a) All longshore activities.

Honduras

(a) All longshore activities.
(b) Exceptions:
(1) Operations of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Hong Kong

(a) Operation of equipment on the pier.

Iceland

(a) All longshore activities.
(b) Exception: Operation of shipboard equipment and cranes.

India

(a) All longshore activities
(b) Exception: Operation of shipboard equipment that local port workers cannot operate.

Indonesia

(a) All longshore activities.
(b) Exceptions:
(1) With the permission of the port administrator, when no local port workers with requisite skills are available, and
(2) In the event of an emergency.

Ireland

(a) All longshore activities.

Israel

(a) All longshore activities.

Jamaica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of equipment integral to the vessel,
(2) Opening and closing of hatches, jointly with local port workers, and
(3) Rigging of ship's gear, jointly with local port workers.

Japan

(a) All longshore activities.

Jordan

(a) All longshore activities.

Kenya

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear,
(3) In an emergency declared by the port authority, and
(4) Direct transfer of cargo from one ship to another.

Korea

(a) All longshore activities.

Kuwait

(a) All longshore activities.
(b) Exception, when activities are declined by the port workers:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Liberia

(a) Longshore activities on shore.

Lithuania

(a) The following activities in harbor:
(1) Loading and discharge of cargo,
(2) Maintenance of port equipment,
(3) Receiving and fixing of dock ropes to harbor equipment,
(4) Transportation of cargo within the port, and
(5) Warehousing and security.
(b) Exception: Opening and closing of hatches.

Madagascar

(a) All longshore activities.

Malaysia

(a) Longshore activities on shore.
(b) Exception: Loading and discharge of hazardous materials.

Maldive Islands

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Other longshore activities within port limits, when authorized by the port authority in cases when the port authority is unable to provide longshore workers.

Malta

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Mauritania

(a) All longshore activities on shore.

Mauritius

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Mexico

(a) All longshore activities.

Micronesia

(a) All longshore activities.
(b) Exceptions:
(1) Operation and rigging of gear which local port workers cannot do, and
(2) When no qualified citizens are available.

Morocco

(a) All longshore activities.

(b) Exceptions:
(1) Operation of ship's gear which port workers cannot operate,
(2) Opening and closing of hatches,
(3) Rigging of gear aboard ship, and
(4) Fastening and unfastening containers.

Mozambique

(a) All longshore activities on shore.

Namibia

(a) Longshore activities on shore.

Nauru

(a) All longshore activities.

Netherlands

(a) All longshore activities.
(b) Exception: Regular crew activities on board ship, including operation of cargo related equipment, opening and closing of hatches and rigging of ship's gear.

Netherlands Antilles

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

New Zealand

(a) All longshore activities.

Nicaragua

(a) All longshore activities.

Pakistan

(a) Longshore activities on shore.
(b) Handling of mooring lines.
(c) Exception: Operation of equipment which dock workers are not capable of operating.

Panama

(a) All longshore activities.
(b) Exceptions:
(1) Rigging of ship's gear,
(2) Cargo handling operations with ship's gear, when port authority equipment is not available to load or unload a vessel.

Papua New Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Peru

(a) All longshore activities.
(b) Exceptions:
(1) Handling of certain types of hazardous cargo, and
(2) Operation of shipboard equipment requiring special training.

Philippines

(a) All longshore activities.
(b) Exceptions:
(1) Activities on board ship, except for loading and discharge of cargo,
(2) Longshore activities for hazardous or polluting cargoes, and
(3) Longshore activities on government vessels.

Poland

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Portugal (including Azores)

(a) All longshore activities.
(b) Exceptions:
(1) Military operations,
(2) Operations in an emergency, when under the supervision of the maritime authorities,
(3) Security or inspection operations,
(4) Loading and discharge of supplies for the vessel and its crew,
(5) Loading and discharge of fuel and petroleum products at special terminals,
(6) Loading and discharge of chemical products if required for safety reasons,
(7) Placing of trailers and similar material in parking areas when done before loading or after discharge,
(8) Cleaning of the vessel, and
(9) Loading, discharge and disposal of merchandise in other boats.

Qatar

(a) All longshore activities.

Romania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized shipboard equipment, and
(2) Loading and discharge of cargo requiring special operations.

St. Lucia

(a) All longshore activities.

St. Vincent and the Grenadines

(a) All longshore activities.

Saudi Arabia

(a) All longshore activities.

Senegal

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Cargo handling when necessary to ensure the safety or stability of the vessel.

Seychelles

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Slovenia

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Solomon Islands

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

South Africa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Spain

(a) All longshore activities.

Sri Lanka

(a) Longshore activities on shore.

Sweden

(a) Loading and discharge of cargo.
(b) Rigging of cargo nets, straps and wires to make ready for loading by the crane.
(c) Cargo handling.
(d) Line handling on the dock.

Taiwan

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment which local longshoremen cannot operate, and
(2) Opening and closing of hatches operated automatically.

Tanzania

(a) All longshore activities.

Thailand

(a) Longshore activities on shore.
(b) Exception: Longshore activities in private ports.

Togo

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment on board the ship, and
(2) Opening and closing of hatches, upon the agreement of the port officer on duty.

Trinidad and Tobago

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, if done automatically, and

(2) Rigging of ship's gear.

Tunisia

(a) All longshore activities.
(b) Exception: When the number of local dock workers is insufficient or when the workers are not qualified to do the work.

Uruguay

(a) Stowing, unstowing, loading and discharge, and related activities on board ships in commercial ports.
(b) Cargo handling on the docks and piers of commercial ports.
(c) Exception: Activities usually performed by the ships crew, including operation of cargo related equipment, opening and closing of hatches and rigging of ship's gear.

Vanuatu

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Venezuela

(a) Longshore activities in private ports and terminals.

Western Samoa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Yemen

(a) All longshore activities.

Zaire

(a) All longshore activities.
(b) Exception: Operation of cargo related equipment, when authorized by the Port Authority.
(8 U.S.C. 1288, Pub. L. 010–649, 104 Stat, 4878)

Dated: October 27, 1995.

Daniel K. Tarullo,

Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 95–28052 Filed 11–22–95; 8:45 am]

BILLING CODE 4710–07–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Chapter XIV

Older Workers Benefit Protection Act of 1990 (OWBPA)

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Initial Meeting of Negotiated Rulemaking Advisory Committee.

SUMMARY: EEOC announces the date of the first meeting of the "Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act" (the Committee). A Notice of Intent to form the Committee was published in the **Federal Register** on August 31, 1995, 60 FR 45388, and a Notice of Establishment of the Committee was published in the **Federal Register** on October 20, 1995, 60 FR 54207.

DATES: The first meeting will be held on December 6–7, 1995, beginning at 10:00 a.m. on December 6. It is anticipated that the meeting will last for two days.

ADDRESSES: The meeting will be held at the EEOC headquarters, 1801 L Street NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street NW., Washington, DC 20507, (202) 663–4692.

SUPPLEMENTARY INFORMATION: Pursuant to General Services Administration regulations, at 41 CFR 101–6.1015(b)(2), I certify that exceptional circumstances exist that permit EEOC to give notice less than 15 days prior to the date of the meeting: this notice has been delivered to the **Federal Register** prior to the governmental furlough of November 14–19, 1995, but because of the furlough the notice could not be published until today. Participants had already made plans to attend the December meeting, and rescheduling would have caused substantial burden and delay.

The Committee membership list is attached as Addendum A. All Committee meetings, including the meeting of December 6–7, 1995, will be open to the public. Any member of the public may submit written comments for the Committee's consideration, and may be permitted to speak at the meeting if time permits. In addition, all Committee documents and minutes will be available for public inspection in EEOC's Library (6th floor of the EEOC Headquarters).

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD). Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disks, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice), (202) 663–4399 (TDD).

Purpose of Meeting/Summary of Agenda

At the first meeting, the Committee will establish Committee procedures, define the scope of Committee action, and begin to discuss the unsupervised waiver legal issues that will be considered by the Committee.

Dated: November 9, 1995.

Gilbert F. Casellas,

Chairman.

Addendum A—EEOC OWBPA Title II Negotiated Rulemaking Committee Roster

Elizabeth M. Barry—Harvard University
William H. Brown—Schnader, Harrison, Segal & Lewis
Joseph N. Cleary—Assistant Legal Counsel, EEOC
John C. Dempsey—American Federation of State, County and Municipal Employees
Raymond C. Fay—Bell, Boyd & Lloyd
Burton D. Fretz—National Senior Citizens Law Center
Peter Kilgore—National Restaurant Association
Lloyd C. Loomis—Atlantic Richfield Company
Benton J. Mathis—Drew, Eckl & Farnham
Douglas S. McDowell—Equal Employment Advisory Council
Thomas R. Meites—Meites, Frackman, Mulder & Burger
Niall A. Paul—Spilman, Thomas & Battle
Markus L. Penzel—Garrison, Phelan, Levin-Epstein & Penzel
L. Steven Platt—Arnold & Kadjan
Pamela S. Poff—Paine Webber
Michele C. Pollak—American Association of Retired Persons
Jaime Ramon—McKenna & Cuneo
Patrick W. Shea—Paul, Hastings, Janofsky, & Walker
Paul H. Tobias—Tobias, Kraus & Torchia
Ellen J. Vargyas—Legal Counsel, EEOC

[FR Doc. 95–28435 Filed 11–21–95; 9:41 am]

BILLING CODE 6570–06–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

RIN 1010–AB57

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established an Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

DATES: The Committee will have meetings on the dates and the times shown below:

Tuesday, December 5, 1995-9:30 a.m. to 5 p.m.
Wednesday, December 6 , 1995-8 a.m. to 5 p.m.
Thursday, December 7, 1995-8 a.m. to 5 p.m.
Tuesday, January 23, 1996-9:30 a.m. to 5 p.m.
Wednesday, January 24, 1996-8 a.m. to 5 p.m.
Thursday, January 25, 1996-8 a.m. to 5 p.m.

ADDRESSES: The December meetings will be held in the 45th floor meeting room at Holme Roberts & Owen LLC, 1700 Lincoln Street, Suite 4100, Denver, Colorado 80203–4524.

The January meetings will be held in the Building 85 Auditorium at the Denver Federal Center, located at West 6th Avenue and Kipling Streets, Lakewood, Colorado.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3100, Denver, CO 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days after each meeting at the Denver Federal Center address. In addition, the materials received to date during the input sessions are available for inspection and copying at the Denver Federal Center address.

Dated: November 20, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–28852 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5333–8]

Notice of Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate the Phase II rule to reduce air emissions from small nonroad engines. Small nonroad engines are engines which are spark ignited gasoline engines less than 25 horsepower. The meeting is open to the public without advance registration. Agenda items for the meeting include discussion of the emissions standard and standard structure. The Committee is hoping to finalize a series of recommendations to EPA regarding the control of emissions in Phase II of the rule.

DATES: The committee will meet on December 13, 1995 from 10 a.m. to 6 p.m., December 14, 1995 from 9 a.m. to 5 p.m.

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snapp, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668–4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505 982–9805.

Dated: November 13, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–28394 Filed 11–22–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 70

[KY–JEFF–95–01; FRL–5334–6]

Clean Air Act Proposed Full Approval of Operating Permits Program; Jefferson County, Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval, or proposed interim approval in the alternative.

SUMMARY: EPA proposes to grant full approval to the Operating Permits Program submitted by the Jefferson County, Kentucky Air Pollution Control District (District) located in the geographic area of Jefferson County, Kentucky. Alternatively, EPA proposes to grant interim approval if specified changes are not adopted prior to final promulgation of this rulemaking. The Jefferson County, Kentucky program was submitted for the purpose of complying with Federal requirements which mandate that state and local agencies develop, and submit to EPA programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by December 26, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below.

Copies of the District's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555 extension 4196.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act Amendments of 1990 (Clean Air Act ("Act") sections 501–507), EPA has promulgated rules that define the minimum elements of an approvable operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state or local agency operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require states or authorized local agencies to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states or authorized local agencies develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the state's or authorized local agency's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. EPA received the District's title V operating permit program submittal on February 1, 1994. The District provided EPA with additional materials in supplemental submittals dated November 15, 1994; May 3, 1995; and July 14, 1995. Because these supplements materially changed the District's title V program submittal, EPA extended the review period and will work expeditiously to promulgate a final decision on the District's program.

EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permits program.

II. Proposed Action and Implications

A. Analysis of District Submission

The District has requested full approval of its part 70 operating permits program, which covers the partial geographic area of Jefferson County, Kentucky within the Commonwealth of Kentucky. EPA has concluded that the operating permit program submitted by the District meets the requirements of title V and part 70, and proposes to grant full/interim approval to the program.

What follows are brief explanations indicating how the submittal meets the requirements of part 70. The reader may consult the Technical Support Document (TSD) contained in the docket at the address noted above for a more detailed explanation of these topics.

1. Program Support Materials

Pursuant to section 502(d) of the Act, the Governor of each state must develop and submit to the Administrator an operating permits program under state or local law or under an interstate compact meeting the requirements of title V of the Act. The Governor of the Commonwealth of Kentucky, Brereton C. Jones, requested full approval of the District's operating permits program through the Commonwealth's title V submittal. The Air Pollution Control Board of Jefferson County has full authority to administer the District's program for the geographic area of Jefferson County, Kentucky.

The District's part 70 program submittal includes section II entitled "Complete Program Description" which addresses the requirements of 40 CFR 70.4(b)(1) by describing how the District intends to carry out its responsibilities under the part 70 regulations. The program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the state/local air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The District submitted a legal opinion from the Commissioner of the Department of Law at the Kentucky Natural Resources and Environmental Protection Cabinet and a supplemental legal opinion demonstrating adequate legal authority as required by Federal law. See section V of the District's submittal dated January 31, 1994, and section II.2 of the submittal dated July 14, 1995.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the District's implementation of its permit program. Section II of the District submittal dated January 31, 1994, includes the permit application forms and permit forms. It has been determined that the application forms and the permit forms meet the requirements of 40 CFR 70.5 and 40 CFR 70.6, respectively.

2. Regulations and Program Implementation

The District has submitted regulation 2.16 entitled "Title V Operating Permits" and Regulation 2.08 entitled "Emissions Fees, Permit Fees, And Permit Renewal Procedures" for implementing the part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption is included in Section I of the District's title V program submittal. Copies of all applicable state statutes and regulations which authorize the part 70 program, including those governing the District administrative procedures, were submitted with the District's program.

The District's operating permits regulations closely follow the Federal part 70 regulations. The following requirements set out in the part 70 program are met by the District's program and are specifically addressed in the following sections of Regulation 2.16: (A) applicability requirements, (40 CFR 70.3(a)): Section 1; (B) permit applications requirements, (40 CFR 70.5): Section 3, (c) provisions for permit content, (40 CFR 70.6): Section 4; (D) operational flexibility provisions,(40 CFR 70.4(b)(12)): Section 5.8; (E) permit review by EPA and affected states, (40 CFR 70.8): Section 5; (F) provisions for permit issuance, renewals, reopenings and revisions, (40 CFR 70.7): Section 5.

Regarding the District's rules for permit revisions, it is EPA's understanding that any changes that affect a federally enforceable term or would change a federally enforceable term must be processed through the "Minor Permit Revision" provisions as specified in the District's Regulation 2.16, and therefore would be federally approvable. EPA further understands the District's regulations provide for emissions trading under federal enforceable permit caps, as required by 70.4(b)(12)iii.

The District has established an enforcement agreement with the Commonwealth of Kentucky to carry out provisions for the enforcement authority requirements of 40 CFR 70.11. The Commonwealth's KRS 77.235 and 77.240, satisfy the requirements of part 70. The District has also established Regulation 2.07, which satisfies the requirements of 40 CFR 70.7(h), for the public participation requirements.

Section 70.4(b)(2) requires state and local agencies to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state or local program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state or local agency must request and EPA may approve as part of that state or local's program any activity or emission level that the state or local wishes to consider insignificant. Part 70, however does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs as reasonable.

The District established Regulation 2.02, section 2, entitled "Exemptions" which specifically provide for certain exemptions for emission units and activities, as listed in this regulation, from application and permit requirements. Notwithstanding Regulation 2.02, the District's Regulation 2.16 requires title V permit applications to include all information needed to determine the applicability of or to impose an applicable requirement. Information is also required for the collection of any permit fees owed under the approved fee schedule. For insignificant activities which are exempt because of size or production rate, a list of such insignificant activities must be included in the permit application according to Regulation 2.16. The District has defined insignificant activities as: "those facilities exempted from permitting requirements pursuant to Regulation 2.02, provided that such facilities are not subject to an affected facility category-specific applicable requirement." EPA has determined that the District's insignificant activities provisions will not interfere with implementation of an adequate title V program.

Part 70 requires prompt reporting of deviations from any permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define "prompt" for purposes of administrative efficiency and clarity, an acceptable alternative is to define "prompt" in each individual permit. EPA believes that "prompt" should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, "prompt" reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations.

The District's Regulation 1.07 "Emissions During Shutdowns, Malfunctions, Startups, and Emergencies" specifies how a source should notify the District in the event of a planned shutdown or startup, malfunction, and/or emergency. Prompt reporting for a planned shutdown or startup is required three days prior to a planned event. If a shutdown or startup is required by a facility where the owner or operator could not reasonably notify the District three days before the event then the facility is required to report such an event to the District no later than one day after such an event has begun. During emergency or malfunction events a facility is required to report by telephone to the District no later than one hour following the start of the malfunction or emergency. Additionally, the District should also be notified in writing of a malfunction or emergency within two days of such event.

The provisions addressing shutdowns, malfunctions, startups, and emergencies in Regulation 1.07, section 2.1, provide sources the legal mechanism of affirmative defense, to address enforcement actions brought about as a result of excess emissions from shutdowns, startups, or malfunctions which temporarily exceed standards. However, 40 CFR 70.6(g) only allows sources to use the legal mechanism of affirmative defense when excess emissions are emitted from a source during an emergency situation. Based on the District's deviation from the Federal requirements, EPA will not recognize or approve the affirmative defense provisions in the District's Regulation 1.07, section 2.1. However, the District has committed to the adoption of language which clarifies Regulation 1.07, section 2.1 by only allowing sources to use the affirmative defense in situations where excess emissions are a result of emergency situations, as specified in 40 CFR 70.6(g).

Additionally, Regulation 1.07, section 2.2 provides for the classification of excess emissions from emergencies to be deemed not in violation of specified standards. However, 40 CFR Part 70 requires any emissions not permitted at a source to be in violation of permit terms and conditions. Specifically, 40 CFR 70.6(g) classifies excess emissions due to emergency situations as a violation of an existing permit. Based on the District's deviation from this Federal requirement in part 70, EPA will not recognize or approve the classification of emergency emissions as not in violation of a permit within the District's Regulation 1.07, section 2.2. However, the District has committed to the adoption of language which clarifies Regulation 1.07, section 2.2 by classifying excess emissions due to emergencies as violations in section 2.2.

Based on the District's proposed adoption of changes to Regulation 1.07 which were outlined in a letter to EPA dated November 6, 1995, and as a condition of full approval, the District plans to expeditiously adopt the proposed changes to Regulation 1.07, prior to EPA's final action on the District's title V program. Alternatively, the District will be required to modify Regulation 1.07 during the specified interim approval period.

In accordance with procedures specified in the Commonwealth of Kentucky KRS 77.225–77.230 and 77.245–77.270, and as specified in the District's State Implementation Plan (SIP) Regulation 1.08, section 4, entitled "Variance Procedures," the District maintains authority to grant individual variances. This authority may be exercised by the District upon request by any person or if the time necessary to correct unlawful emissions is anticipated to exceed 30 days. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no

action on this provision of the District's regulations. The EPA has no authority to approve provisions of the District's law, such as the variance provisions referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may also be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements in which it is based."

The District's title V program submittal and TSD are available for review for more detailed information. The aforementioned TSD contains the detailed analysis of the District's program and describes the manner in which the program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer a title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (tpy), as adjusted annually for inflation. The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum."

The District has elected to assess the annual presumptive minimum fee as adjusted by the CPI each year beginning in the year of program approval by EPA. The total assessed fee will be calculated by multiplying the presumptive minimum amount by the total actual emissions of a source. For the fiscal year of 1996 (July 1, 1995, through June 30, 1996) a presumptive amount of $37.70 shall be used to calculate emissions fees. A maximum of 4,000 tpy of actual emissions of a single pollutant will be counted toward the total emissions of a source. EPA has determined that the District's assessed fees will adequately fund the anticipated cost of the program consistent with the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. In its program submittal, the District has demonstrated adequate legal authority to implement and enforce section 112 requirements through the title V permit. The District has also committed to "adopt Federal rule or standard when the Federal rule is promulgated." EPA has determined that this commitment, in conjunction with the District's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. For further rationale on this interpretation, please refer to the TSD.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states and local agencies time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of the implementing District regulations.

EPA is aware that the District lacks a program designed specifically to implement section 112(g). However, the District currently has a preconstruction program that can serve as an adequate implementation vehicle during the transition period because it would allow the District to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of the District's preconstruction program found in Regulation 2.03 under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a District rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state and local air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until District regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the District to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of the District's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal requirements as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the District's operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the District in the development of its radionuclide program to ensure that permits are issued in a timely manner.

The District has informed EPA that it intends to accept the delegation of future section 112 standards using the mechanisms of adoption-by-reference and case-by-case delegation. The details of the District's use of these delegation mechanisms are set forth in a letter dated August 9, 1995, submitted by the District as a title V program addendum.

d. Commitment to Implement Title IV of the Act. On June 21, 1995, the District's acid rain rule for the Phase II permitting of acid rain sources became District-effective. The District incorporated by reference 40 CFR part 72 into Regulation 6.47 and 7.82, which was submitted to EPA on July 11, 1995. The District has also committed to the incorporation of amendments or additions to the Federal Acid Rain rule as promulgated by EPA.

B. Proposed Actions

1. Full Approval

EPA proposes to fully approve the operating permits program submitted to EPA by the Jefferson County, Kentucky Air Pollution Control District, if appropriate revisions consistent with 40 CFR 70.6(g) are incorporated into the District's Regulation 1.07, sections 2.1 & 2.2, and adopted prior to the final promulgation of this rulemaking. EPA has determined that the District's program is otherwise adequate to meet the minimum elements of the part 70 requirements for an operating permits program in a partial geographic area.

2. Interim Approval

Alternatively, EPA is proposing to grant interim approval under 40 CFR 70.4(d) to the District's operating permits program if the changes required for full approval, as described above, are not made prior to final promulgation of this rulemaking. EPA can grant interim approval because the District's program substantially meets the requirements of part 70 as discussed in section II(A) of this notice. The interim approval issues noted above will not prevent the District from issuing permits that are consistent with the part 70 program.

If EPA grants interim approval to the District's program, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the District. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if District fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiencies by submitting a complete corrective program.

3. Other Actions

EPA proposes to approve the District's preconstruction review program found in Regulation 2.03, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of the District's regulation implementing EPA's section 112(g) regulations.

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91, to the District's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA proposes to delegate existing standards and programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

IV. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed full/interim approval. Copies of the District's submittal and other information relied upon for the proposed full/interim approval are contained in docket number KY–JEFF–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full/interim approval. The principal purposes of the docket are:

To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

To serve as the record in case of judicial review. EPA will consider any comments received by December 26, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–28489 Filed 11–22–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–170; RM–8721]

Radio Broadcasting Services; Campton, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James P. Wagner proposing the allotment of Channel 279A at Campton, Kentucky, as the community's first local aural transmission service. Channel 279A can be allotted to Campton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 279A at Campton are North Latitude 37–44–06 and West Longitude 83–32–48.

DATES: Comments must be filed on or before January 5, 1996 and reply comments on or before January 22, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James P. Wagner, P.O. Box 201, Alexandria, Kentucky 41001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–170, adopted October 31, 1995, and released November 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–28610 Filed 11–22–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–15; Notice 18]

RIN 2127 AB87

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment; Performance-Oriented Roadway Illumination Headlighting Compliance Alternative

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking action on the effort known as the Vehicle-Based Roadway Illumination Performance Requirement. It was begun as an attempt to move toward a more performance-oriented, less design-restrictive regulatory solution for assuring safe roadway environment illumination. The agency has not been able to adequately explore the myriad solutions to this problem to the extent necessary to satisfy the public's demand for achieving an objective decision on performance. As a consequence, the agency has decided to temporarily cease rulemaking in this area.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Van Iderstine, 400 Seventh Street, SW, Washington, DC 20590. Mr. Van Iderstine's telephone number is: (202) 366–5275. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: On May 9, 1989 (54 FR 20084) the Agency published a proposal to establish an alternative means of compliance with headlighting safety regulations. This proposal was known as the Vehicle-Based Roadway Illumination Performance Requirement or Performance-Oriented Roadway Illumination. The goal was to achieve a more performance-oriented, less design-restrictive regulatory solution for assuring safe roadway environment illumination. Because the outcome of this action had the potential to be so different from any known means of specifying headlighting performance, commenters to the proposal were skeptical that any solution would be usable and that even if it were, the perceived regulatory burdens of it would not be commensurate with the uncertain potential benefits to public safety. This concern occurred because the proposal had the effect of requiring substantially more illumination than was available from contemporary headlighting systems. It was viewed as not practicable by many of the commenters. As a consequence, commenters suggested that all the assumptions underlying the proposal be justified to assure that the significant increase in illumination would at least maintain safety, and that any solution (that might someday be mandated) would be practicable and cost-beneficial. If these criteria could not be achieved, then any solution, even if it were at the manufacturer's option, would have little likelihood of being used on motor vehicles.

The challenge of responding to these comments led NHTSA on a path to attempt to develop a computer-based methodology for quickly solving hundreds of mutually exclusive illumination conditions that occur every second of nighttime driving. Trade-offs are necessary to resolve these mutually exclusive illumination conditions. These conflicting needs exist because, for example, providing the high levels of light that may be needed to see pedestrians on the right side of a straight stretch of road may create glare for oncoming drivers around the next right hand curve in the road. Should the standard require that sufficient light be provided to ensure every pedestrian can be seen, that all glare to other drivers be eliminated, or that some more mutually satisfactory (or unsatisfactory) shared risk solution be achieved? Safety must be achieved both by balancing and by reducing the risks that occur in driving. It must be done in a cost-effective manner. A computer-based tool for analyzing the assumptions for making trade-offs in a more objective manner than NHTSA originally used is necessary to do this and resolve commenters' concerns. Without such a tool, such sensitivity analyses would take years of iteration of data and solutions.

The Agency has been unable to develop a practical tool for reliably performing sensitivity studies of the multitude of assumptions necessary for achieving a regulatory solution. This fact is presented in the final report documenting the effort: "a considerable amount of work must still be accomplished before the goal of a safety-based device-free photometric standard may be implemented." Reports about this development effort are available as DOT HS 807 697 (PB 91181651) Development of a headlight system performance evaluation tool; cost $17.00, and DOT HS 808 041 (PB 94125762) Development of headlight system performance criteria; cost $19.50. The source is the National Technical Information Service, Springfield, VA 22161. These reports also are available for reading in the agency's Technical Information Library.

Without the ability to perform these sensitivity studies in a timely and resource-effective manner, the Agency is not able to examine in detail the effects of each of the trade-offs that must be made. Because of this inability, the Agency cannot make the decisions on the necessary tradeoffs between safe illumination for the myriad targets in the field of view of drivers at night. Further, this inability prevents the Agency from giving commenters the information that they desire to assess the merits of the proposal. In the past, such decisions relied on the empirical results of more than eighty years of world-wide research for guiding rational decisions on headlamp illumination trade-offs. The results have been codified in the national laws of countries around the world. With NHTSA's proposal being such a significantly different way of specifying roadway lighting performance, it is easy to understand the reluctance and concern of commenters to accept a new way of dealing with it, without having a complete and objective explanation and understanding. Because the Agency will not be able to assess and make the trade-offs, there appears to be no reason to continue this rulemaking action. However, should the agency be able to develop such information, it would reopen rulemaking at that time.

Additionally, while interest on the part of lighting and vehicle manufacturers in the proposal was high because of the potential for less regulatory burden and greater styling freedom, it would appear that the need for moving away from the traditional "headlamp on the front corner of each vehicle" approach to styling is blocked by many technological and regulatory unknowns. There continues to be talk in the popular press of development of distributive or centralized headlighting systems (that may use fiber optic light pipes to channel light to multiple headlamps from a remotely mounted light bulb), and adaptive headlighting with multiple beams (that may alter the beam patterns and light distribution on the road depending on the perceived needs of the driver). It appears that none of these concepts is sufficiently developed for lighting and vehicle manufacturers to decide how the present lighting regulations help or hinder the future application of these new lighting technologies to motor vehicles and thus determine what amendments should be sought. The vehicle-based roadway illumination performance requirement was one way (albeit, a bold new way) to address the need for accommodating new technology and preserving or improving safety.

Thus, someday, should the vehicle industry need such design and regulatory freedom as the Vehicle-Based Roadway Illumination Performance Requirement had the potential to offer or should there be other regulatory solutions available, the Agency would likely be enthusiastic about addressing them. But, it would probably choose a less resource-intensive route than the one being abandoned, unless there were some obvious and significant safety value to the public to be achieved from the potentially large expenditure. Also, it is likely that such a solution might best be achieved through the regulatory negotiation process, given the difficulty of detailing the merits of the trade-offs.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 17, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28683 Filed 11–22–95; 8:45 am]

BILLING CODE: 4910–59–P

Notices

Federal Register
Vol. 60, No. 226
Friday, November 24, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise a Currently Approved Information Collection

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to revise a currently approved information collection in support of Authorizations to use the 4–H Club Name and/or Emblem.

DATES: Comments on this notice must be received on or before January 31, 1996.

ADDITIONAL INFORMATION OR COMMENTS: Contact Dr. Alma C. Hobbs, Deputy Administrator, Families, 4–H and Nutrition, Cooperative State Research, Education, and Extention Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–0925, (202) 720–2908.

SUPPLEMENTARY INFORMATION:

Title: Application for authorization to use the 4–H Name and/or Emblem.

OMB Number: 0524–0034 (formerly 0527–0009).

Expiration Date of Approval: January 31, 1996.

Type of Request: Intent to revise and extend currently approved information collection.

Abstract: Use of the 4–H Name and/or Emblem by anyone other than the 4–H Clubs and those duly authorized by them, representatives of the Department of Agriculture, the Land-Grant colleges and universities, and persons authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary of Agriculture has delegated authority to the Administrator of the Cooperative State Research, Education, and Extension Service to authorize others to use the 4–H Name and Emblem. The Administrator has promulgated regulations at 7 CFR Part 8 that govern such use. The regulatory requirements for use of the 4–H Name and/or Emblem reflect the high standards of 4–H and its educational goals and objectives. Anyone requesting authorization from the Administrator to use the 4–H Name and Emblem is asked to describe in a formal application the proposed use. The collection of this information is used to determine whether the applicant's proposed use will meet the regulatory requirements and whether an authorization for use should be granted.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response.

Responsents: Individuals or households, business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 40

Estimated Number of Responses per Respondent: 2

Estimated Total Annual Burden on Respondents: 20 hours

Copies of this information collection can be obtained from Dr. Jon E. Irby, Interim Assistant Deputy Administrator, 202–720–6925.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Dr. Alma C. Hobbs, Deputy Administrator, Families, 4–H & Nutrition, Cooperative State, Research, Education, and Extension Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–0925, (202) 720–6925.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, November 18, 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–28698 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on December 11 and December 12, 1995 at the Six Rivers National Forest Conference Room, 1330 Bayshore Way, Eureka, California. The meeting will begin at 10:00 a.m. on December 11 and adjourn at 5:00 p.m. The meeting will reconvene at 8:00 a.m. on December 12 and continue until 4:00 p.m. Agenda items to be covered include: (1) forest health/stewardship contract (recommendation from the Salvage Subcommittee); (2) watershed analysis selection criteria/process; (3) the role of fire in the Klamath Province; (4) management direction and guidelines for salvage in Key Watersheds and LSRs; (5) standing committee reports; and (6) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Jim Anderson, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1300.

Dated: November 8, 1995.

Barbara Holder,

Designated Federal Official.

[FR Doc. 95–28644 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Hohokam Watershed, Pinal County, Arizona

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hohokam Watershed, Pinal County, Arizona.

FOR FURTHER INFORMATION CONTACT: Michael Somerville, State Conservationist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, Arizona 85012. Telephone: (602) 280–8808.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mike Somerville, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are agricultural water management and includes a mixture of land treatment and management practices to conserve irrigation water. The planned works of improvement include irrigation land leveling, suitable irrigation water conveyance, structures for turnouts and water measurement for irrigation water management, and plant, and fertility management practices (not cost-shared) including irrigation water management, crop residue use, conservation cropping sequence, appropriate erosion control practices as needed, nutrient management and pest management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on the file and may be reviewed by contacting Don Paulus, at (602) 280–8780.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: November 1, 1995.

Michael Somerville,

State Conservationist.

[FR Doc. 95–28674 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–16–M

Rural Utilities Service

United Power Association; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by United Power Association (UPA), of Elk River, Minnesota. The proposed project consists of relocating a portion of an existing 230 kV transmission line in the vicinity of Minnewaukan and Devils Lake in Benson and Ramsey Counties, North Dakota. The line must be relocated to avoid areas flooded by the rising waters of Devils Lake. The planned reroute will move the line one mile north from its present location. This will require about 8.5 miles of new line construction. The new line will be located along the North side of Highway 19 in Townships 153 and 154 North, Ranges 66 and 67 West, Benson and Ramsey Counties, North Dakota.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, Rural Utilities Service, Agriculture South Building, Washington, DC 20250–1569, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that UPA prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from the Federal, State, and local agencies, has been adopted as RUS's Environmental Assessment for the project in accordance with 7 CFR Section 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project will not affect any known properties listed or eligible for listing in the National Register of Historic Places. An archaeological resource survey for the transmission line was conducted and it found no known properties listed or eligible for listing in the National Register of Historic Places. However, if previously unknown resources are discovered during project construction, UPA will halt construction while the significance of the find and proper mitigation is determined. Given these procedures, the project will not have any significant effect on cultural resources. The project also should have no significant impact on floodplains, water quality, federally listed or proposed for listing threatened or endangered species or their critical habitat, important farmland or wetlands.

Alternatives considered to the project as proposed were no action, rebuilding the flooded section of the line at its present location, and relocating the flooded section. RUS has considered these alternatives and concluded that the project as proposed will allow UPA to provide adequate and reliable electric service to the customers in the State of North Dakota with a minimum of adverse impact.

Copies of the BER and FONSI are available for review at RUS at the aforementioned address, or may be reviewed at or obtained from the offices of UPA, 17845 Highway 10 East, Elk River, Minnesota 55330, telephone (612) 441–3121.

Dated: November 14, 1995.

Wally Beyer,

Administrator.

[FR Doc. 95–28536 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 11:30 a.m. on Tuesday, December 12, 1995, at the Southwest Gas Corporation, Building B, 5421 Spring Mountain Road, Las Vegas, Nevada 89193. The purpose of the meeting is to review current civil rights developments in the State, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich, 702–329–0958, or Thomas V. Pilla, Acting Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 9, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–28659 Filed 11–22–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 3:00 p.m. on Friday, December 8, 1995, at the Omni Hotel, 1000 Omni Boulevard, Newport News, Virginia 23606. The purpose of the meeting is to plan for a factfinding meeting concerning civil rights issues in the Tidewater area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Mrs. Jessie M. Rattley, 804–247–6771, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 9, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–28658 Filed 11–22–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act. An emergency review is being requested.

Agency: Bureau of Export Administration (BXA).

Title: Customer Survey on Electronic Access to BXA Information.

Agency Form Number: None assigned.

OMB Approval Number: None.

Type of Request: New Collection — EMERGENCY REVIEW.

Burden: 480 hours.

Number of Respondents: 1,150.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The Commerce Department's Bureau of Export Administration has been very active in the Administration's National Performance Review efforts to reduce the regulatory burden on U.S. exporters and those involved in international trade. One of its accomplishments is the simplification of the Export Administration Regulations (EAR) which are scheduled to be issued in mid–February of 1996. BXA, working with the National Technical Information Service (NTIS), intends to publish these regulations in both paper and electronic form. In order to design the electronic system in a way that ensures the broadest access for the public, BXA is seeking an emergency clearance of a customer survey to determine the best way to distribute this information electronically.

Affected Public: Exporters, freight forwarders, and those involved with international trade.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: November 13, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–28728 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–CW–F

Office of the Secretary

Government Information Locator Service (GILS) Board Meeting

AGENCY: Office of Systems and Telecommunications Management, Office of Administration, Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Office of Systems & Telecommunications Management (OSTM) announces a meeting of the Government Information Locator Service (GILS) Board. The GILS Board will evaluate the development and operation of GILS and recommend enhancements to GILS to meet user information needs.

DATES: The public meeting of the GILS Board is scheduled for December 6, 1995, from 10 a.m. until noon.

ADDRESSES: The Board meeting will be held in the Department of Commerce Auditorium, Herbert C. Hoover Building, 14th & Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Squier, OSTM, Office of the Secretary, (202) 482–2855.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, and Office of Management and Budget (OMB) Bulletin 95–01 establish the Government Information Locator Service (GILS) to help the public and agencies locate and access information throughout the U.S. Government. Utilizing network-based information services, GILS will identify information resources throughout the Executive Branch, describe the information available and provide assistance in how to obtain the information.

The PRA and OMB Bulletin 95–01 also establish the GILS Board to oversee the implementation and subsequent operations of GILS. Membership on the Board includes representatives of the Director, Office of Management and Budget, the Secretary of Commerce, the Secretary of the Interior, the Archivist of the United States, and the Administrator of General Services. The Public Printer and the Librarian of Congress will be invited to participate. The Board may ask the heads of other agencies to designate representatives to serve on the Board or on task forces and seek input from other sources on GILS operations including the public.

The GILS Board meeting is open to the public. A one-half hour time period at the end of the meeting has been allocated for questions and discussion. Interested persons or organizations wishing to speak or to deliver materials should call the contact to make arrangements prior to the meeting.

Dated: November 13, 1995.

Ronald P. Hack,

Director, Office Systems & Telecommunications Management, Office of Administration, Office of the Secretary, U.S. Department of Commerce.

[FR Doc. 95–28729 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–583–023]

Clear Sheet Glass From Taiwan, Revocation of the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on clear sheet glass from Taiwan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Roy Unger or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–0651.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

On August 1, 1995, the Department published in the **Federal Register** (60 FR 39153) its notice of intent to revoke the antidumping finding on clear sheet glass from Taiwan (August 21, 1971). Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on clear sheet glass from Taiwan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR § 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of clear sheet glass from Taiwan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 7004.90.25 and 7004.90.40. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of clear sheet glass from Taiwan entered, or withdrawn from warehouse, for consumption on or after August 1. Entries made during the period August 1, 1994, through July 31, 1995, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: November 13, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28730 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway: Termination of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of new shipper antidumping duty administrative review.

SUMMARY: On May 23, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 27273) the notice of initiation of the administrative review of the antidumping duty order on fresh and chilled Atlantic salmon From Norway. This review has now been terminated as a result of withdrawal of the request for review by Cocoon, Ltd. A/S (Cocoon), the last remaining respondent that requested a new shipper review.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington D.C. 20230, telephone: (202) 482–4195.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1995, Cocoon requested a new shipper administrative review of the Antidumping duty order on fresh and chilled Atlantic salmon from Norway for the period November 1, 1994, through April 30, 1995, pursuant to 19 USC 1675 (a)(2)(B). On May 23, 1995, the Department published in the **Federal Register** (60 FR 27273) the notice of initiation of that new shipper administrative review.

Cocoon withdrew its request for review on October 20, 1995, pursuant to 19 CFR 353.22(a)(5). There were no other requests for review. As a result, the Department has terminated this review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22.

Dated: November 2, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28731 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–504]

Porcelain-on-Steel Cooking Ware From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from two manufacturers/exporters, Esmaltaciones San Ignacio, S.A. (San Ignacio), and Cinsa, S.A. de C.V. (Cinsa), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on porcelain-on-steel cooking ware (POS cooking ware) from Mexico on January 13, 1995 (60 FR 3192). San Ignacio has withdrawn its request for review and we have published a notice of termination in-part separately. The Department has conducted a review of Cinsa for the period December 1, 1993 through November 30, 1994.

We have preliminarily determined that Cinsa has made sales below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois, or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 62710) of the antidumping duty order on POS cooking ware (51 FR 43415, December 2, 1986). On December 28, 1994, the petitioner requested an administrative review of Cinsa and San Ignacio. On December 30, 1994, Cinsa also requested an administrative review. We initiated an administrative review of Cinsa, covering December 1, 1993, through November 30, 1994, on January 13, 1995 (60 FR 3192). San Ignacio has withdrawn its request for review and we have published a notice of termination in-part separately.

Applicable Statute and Regulations

The Department has conducted this administrative review in accordance with section 751 of the Tariff Action 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as the existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by the respondent, Cinsa, by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification report.

Depreciation and Employee's Profit Sharing

As we did in the 1990–1991 review, we calculated depreciation on a revalued basis. We also treated employee's profit sharing as a direct labor expense. *See Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review.* (January 9, 1995, 60 FR 2378).

Related Parties

We have found that another company which produces subject merchandise, Esmaltaciones de Norte America, S.A. de C.V. (ENASA), was related to Cinsa during the period of review (POR).

The Department will apply a single antidumping duty margin to two or more related companies where those companies have production facilities for similar or identical products that would not require retooling at either facility to implement a decision to restructure manufacturing priorities, and where the Secretary concludes that there is a strong potential for price or production manipulation. In identifying a strong potential for price or production manipulation, the factors the Secretary may consider include:

(i) the level of common ownership;

(ii) whether managerial employees or board members of one sit on the board of directors of the related company; and

(iii) whether operations are intertwined, such as through sharing of sales information, involvement in production and pricing decisions, sharing of facilities or employees, or significant transactions between the related parties.

In our verification the Department determined that ENASA produces only heavy-gauge cooking ware while Cinsa produces only light-gauge cooking ware because both kinds of cooking ware cannot be produced using the same machinery. A shift in production from light-gauge to heavy-gauge or vice-versa could not be accomplished without fundamental and expensive retooling. Therefore, we determined that although Cinsa and ENASA are related parties, Cinsa and ENASA should not be collapsed because the two companies do not have production facilities that can make similar merchandise without fundamental and expensive retooling.

Product Matching

Cinsa changed the product codes from those used in 1990/1991 and earlier reviews. In this review the product code also incorporates color. Cinsa reported and we verified cost of production and constructed value data for every product sold in the United States. Based on that data, we determined that color caused a difference in the cost of manufacture. Therefore, we used Cinsa's product codes for product matching.

United States Price (USP)

We calculated the USP based on purchase price for Cinsa as all U.S. sales were made to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act.

We calculated purchase price based on packed f.o.b. port or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for U.S. and foreign brokerage, bank charges, U.S. duty, foreign inland freight, credit costs, and rebates in accordance with section 772(d)(2) of the Act.

In addition, we adjusted USP for taxes in accordance with our practice outlined in the following section on Value Added Taxes.

No other adjustments were claimed or allowed.

Value Added Taxes

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Cost of Production Analysis

In the most recent review of Cinsa we disregarded below cost sales in the home market. Therefore, the Department had reasonable grounds to believe or suspect that sales below the COP may have occurred during this review. Accordingly, in this review we also initiated a cost of production (COP) analysis.

After computing COP, we compared it to the VAT-neutral reported home market prices net of movement charges and discounts. In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of Section 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home market sales during the POR were made a prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced below COP, provided that they were made over an extended period of time. For each model for which 90 percent of more of the home market sales during the POR were priced below COP and made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See e.g., Mechanical Transfer Presses from Japan, Final Results Antidumping Duty Administrative Review*, 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months which that model was sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 64720, 64729 (December 8, 1993).

Because Cinsa provided no indication that its below-cost sales were at prices that would permit recovery of all costs within a reasonable period time and in the normal course of trade, we disregarded those sales of models within the "10 to 90 percent" category which were made below cost over an extended period of time. In addition, we based FMV on CV for all U.S. sales for which there were insufficient sales of the home market model at or above COP.

Foreign Market Value

In calculating foreign market value (FMV) for Cinsa, the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market, at or above the cost of production (COP), to provide a basis of comparison. Home market price was based on the packed, ex-factory or

delivered price to unrelated purchasers in the home market.

We made deductions, where appropriate, for discounts, freight, and direct selling expenses. Since packing expenses were the same in both market we made no adjustments for packing. We also made a circumstance-of-sale adjustment, where appropriate, for differences in credit expenses and commissions.

We made difference-in-merchandise adjustments, where appropriate, based on differences in the variable cost of manufacture. Finally, we adjusted for Mexican consumption taxes in accordance with our decision in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994.*

No other adjustments were claimed or allowed.

We used constructed value for models for which there were insufficient home market sales at or above the COP. Constructed value consisted of the sum of materials, fabrication, overhead, general expenses, profit, and U.S. packing. In accordance with section 773(e)(1)(B), we used the actual amount of general expenses because these amounts were more than the statutory minimum of ten percent. We used eight percent for profit because Cinsa's profit was less than the statutory minimum of eight percent.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the period December 1, 1993, through November 30, 1994:

Manufacturer/Producer/Exporter	Margin Percent
Cinsa	6.36

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of its analysis of issues raised in a case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed company will be those rates established in the final results of this review;

(2) The cash deposit rate for subject merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or in the original LTFV investigation, will be based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) The cash deposit rate for subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final results or determination, will be based upon the most recently published company-specific rate for that manufacturer; and

(4) The cash deposit rate for merchandise exported by all other manufacturers and exporters, who are not covered by these or any previous administrative review conducted by the Department, will be the "all others" rate established in the less than fair value investigation.

Because this proceeding is governed by an antidumping duty order, the "all others" rate will be 29.52 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: November 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–28732 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–479–601]

Tapered Roller Bearings From Yugoslavia, Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on tapered roller bearings from Yugoslavia because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On August 1, 1995, the Department published in the **Federal Register** (60 FR 39153) its notice of intent to revoke the antidumping duty order on tapered roller bearings from Yugoslavia (August 14, 1987). Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order each domestic interested party on th service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on tapered roller bearings from Yugoslavia is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of tapered roller bearings from the territory within the geographical boundries of Yugoslavia at the time the order was issued. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8482.20.00, 8482.91.00.50, 8482.91.00.60, 8482.99.15, 8482.99.30, 8482.99.35, 8482.99.45, 8482.99.65.90, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.60.60, 8708.99.24, 8708.99.40.00, 8708.99.49.60, 8708.99.80.15, and 8708.99.80.80. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of tapered roller bearings (from the territory within the geographical boundries of Yugoslavia at the time the order was issued) entered, or withdrawn from warehouse, for consumption on or after August 1, 1995. Entries made during the period August 1, 1994, through July 31, 1995, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1995, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28733 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Monterey Bay National Marine Sanctuary Advisory Council; Open Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Friday, December 1, 1995, from 9:00 until 3:00. The meeting will be held at the Hudson House on Point Lobos State Reserve, Highway One, Carmel, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, a review of Advisory Council proposal endorsement policies, and a discussion about the Central California Regional Water Recycling Project.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 16, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–28557 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–08–M

COMMODITY FUTURES TRADING COMMISSION

Advisory; Customer Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing an Advisory concerning customer orders transmitted to and reported from exchange trading pits in an extremely rapid manner. The purpose of this Advisory is to inform the exchanges that, for such orders, an exchange will be deemed to have demonstrated good faith towards meeting the objectives of Section 5a(b)(3) of the Commodity Exchange Act ("Act"), provided that certain recordkeeping and enforcement provisions are met.

DATES: The Advisory is to be effective January 23, 1996.

FOR FURTHER INFORMATION CONTACT: De' Ana H. Dow, Special Counsel, or Rachel F. Berdansky, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is hereby issuing guidance concerning all customer orders that are transmitted to and reported from the trading pit in an extremely rapid manner through hand signals or verbally ("flashed orders"). An exchange must satisfy the standards set forth in this Advisory to demonstrate compliance with Commission Regulation 1.35(a–1)(2)(i) and 1.35(a–1)(4), as well as good faith compliance with Section 5a(b)(3).

Commission Regulation 1.35(a–1)(2)(i) and 1.35(a–1)(4) provides that order tickets, among other things, must be timed upon receipt on the trading floor ("entry time") and when the execution price is reported from the floor ("exit time"). Section 5a(b)(3) of the Act sets forth heightened audit trail standards, including a heightened audit trail for customer orders. The enhanced standards go into effect in October 1995, in accordance with the terms thereof.

The Commission has taken several steps with respect to implementation of Section 5a(b)(3) of the Act. Specifically, the Commission issued a Report to Congress on Futures Exchange Audit Trails that assessed the progress of each exchange in complying with current and future audit trail requirements, and

stated that improvements to existing audit trail systems could demonstrate good faith efforts to comply with enhanced audit trail requirements. The Commission also has completed comprehensive testing on four large exchanges to determine, among other things, the status of their audit trails towards meeting the enhanced trade timing and sequencing standards. Based on the test results, each of those exchanges has been informed as to the specific actions that would be needed to demonstrate good faith towards meeting Section 5a(b)(3). In addition, the Commission evaluates exchange systems on a routine basis when conducting rule enforcement reviews. As mandated by Section 5a(b)(5)(A)(i) of the Act, the Commission is in the process of exempting from the requirements of Section 5a(b)(3), small exchanges that have effective trade monitoring systems.

This Advisory on flashed orders is a further step towards achieving exchange compliance with existing statutory and regulatory requirements. The Commission is concerned that the exchanges sometimes are not adequately enforcing the requirements with respect to flashed orders. Among other things, Commission staff has identified instances in which an entry timestamp apparently was recorded after an order was flashed, resulting in an inconsistency between the order ticket timestamp and the pertinent time and sales print. Such action is a direct violation of Commission Regulation 1.35(a–1)(2)(i), which specifically requires that an entry timestamp be recorded on an order ticket before the order is flashed to a broker.

II. Current Flashed Order Practices

The Commission has observed that the precise mechanics involved in flashing orders vary from firm to firm and exchange to exchange. For example, in Chicago, where flashing is most common, flashed orders usually are transmitted to the floor broker by hand-signal.[1] In New York, most flashed orders are transmitted through verbal communication. There is also some variation in how exchanges define flashed orders. Specifically, one exchange considers all orders hand-signalled into a trading pit to be flashed orders, while another exchange considers only those orders that are hand-signalled into the trading pit immediately upon receipt at the trading desk to be flashed orders. Further, not all exchanges currently have recordkeeping procedures to distinguish flashed orders from other paper orders for audit trail purposes.

In the recent notification by the Commission to the CBT and CME concerning the audit trail test results, the Commission recommended, among other things, that each Exchange require a trade submission indicator for flashed orders. Both Exchanges now require clearing firms to enter a special indicator into the clearing system for flashed orders. The Commission also recommended that the Exchanges aggressively enforce timestamping procedures for flashed orders. The Commission has not made similar recordkeeping or enforcement recommendations for the New York exchanges, where flashed orders are much less common. However, because of the Commission's concern that the exchanges are not always rigorously enforcing existing timestamp requirements for flashed orders, the Commission is setting forth in this Advisory its interpretation of relevant audit trail requirements and its expectations for all exchanges subject to Section 5a(b)(3) of the Act.

III. Standards for Flashed Orders to Comply With the Objectives of Section 5a(b)(3) of the Act

Any exchange subject to Section 5a(b)(3) of the Act, seeking to have its audit trail deemed in good faith compliance with Section 5a(b)(3), must assure compliance with the following standards:

(1) In accordance with Commission Regulation 1.35(a–1)(2)(i), an entry timestamp must be recorded on an order ticket before an order is flashed into a trading pit.

(2) In accordance with Commission regulation 1.35(a–1)(4), upon report of an order fill from the trading pit, an exit timestamp must be immediately recorded on the corresponding order ticket.

(3) Each flashed order must be identified as a flashed order on the corresponding order ticket. Identification of these orders will distinguish them from other paper orders and improve the audit trail for flashed orders.[2]

(4) Maintain effective surveillance and enforcement procedures, including without limitation, floor surveillance, periodic review of trading documents, and disciplinary action as necessary.

(5) Order tickets must accurately reflect the customer's instructions when received, including whether the order is a market or price order.

Dated: November 16, 1995.

By the Commission:

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–28700 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–M

[1] Flashing is most prevalent in the Chicago financial markets because of the need for instantaneous trade execution. Trading in the financial markets on the Chicago exchanges comprises 67 percent of all trading volume in the United States and 49 percent of all world volume. The CBT has stated that nearly 100 percent of the customer orders executed in its financial markets are flashed to the broker. Similarly, the CME estimates that 80–100 percent of the customer orders in its interest rate markets and 60–80 percent of customer orders in its currency markets are flashed.

[2] The Commission believes that identification of flashed orders on the trade register required under Commission Regulation 1.35(a) would further enhance the audit trail and exchange trade surveillance, and thus, should be a goal of all exchanges subject to Section 5a(b)(3) of the Act.

Chicago Mercantile Exchange Options on the Butter Futures Contract, and Amendments to the Dormant Butter Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity option contract and amendments to the underlying futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in options on its butter futures contract. In addition, the CME proposes to amend the dormant butter futures contract that would underlie the proposed contract, and it has filed a request to list butter futures and option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME butter futures option contract and the request to reactivate trading in the butter futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581, telephone 202–418–5273.

SUPPLEMENTARY INFORMATION: The amended butter futures contract would call for the delivery of 40,000 pounds of Grade AA fresh or storage butter, packaged to conform to the requirements of the Commodity Credit Corporation for bulk butter, in carload lots containing only 25-kilogram or 68-pound net capacity boxes. Butter would be deliverable in store in Exchange-approved warehouses (not including plant storage facilities) within the 48 contiguous states. Delivery would be at par in Chicago and at location differentials to be determined by the Exchange at locations outside Chicago.

Trading would be conducted in the contract months of January, March, May, July, September, and November. Prices would be quoted in dollars and cents per pound. The minimum price fluctuation would be $0.00025 per pound. The maximum price fluctuation would be $0.025 per pound, which could be expanded to $0.05 per pound under certain conditions.

Delivery could be made on any business day of the contract month on or after the third business day following the first Friday of the contract month. Trading in an expiring contract month would end on the business day immediately preceding the last five business days of that month.

Butter options would trade in the same months as the futures contract, but would expire on the first Friday of the contract month. Thus, delivery on the futures contract would not be made until after the corresponding option had expired. Strike prices for the option would be listed at 2¢ per pound intervals above and below the previous day's closing price.

Speculative traders of the futures and option contracts would be subject to a combined position limit of 900 futures and futures equivalent option contracts net long or short in any contract month. In addition, futures positions held by speculative traders after the first Friday of expiring contract months would be subject to a limit of 300 contracts.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 15, 1995.

John R. Mielke,

Acting Director.

[FR Doc. 95–28701 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–P

New York Mercantile Exchange Proposed Futures Contract in Permian Basin Natural Gas

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity options contract.

SUMMARY: The Commodity Futures Trading Commission previously published in the **Federal Register** a proposal of the New York Mercantile Exchange (NYMEX or Exchange) for designation as a contract market in Permian Basin natural gas futures (60 *Fed. Reg.* 53913). The Commission has determined, in this instance, to extend the comment period.

DATE: Comments must be received on or before December 18, 1995.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Reference should be made to the NYMEX Permian Basin natural gas futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone 202–418–5275.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 16, 1995.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–28702 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–M

Customer Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is defining a specified category of customer orders transmitted to and reported from exchange trading pits in an extremely rapid manner. With regard to such orders, an exchange can demonstrate substantial compliance with the objectives of Section 5a(b)(3)(B) of the Commodity Exchange Act ("Act") without its audit trail recording a transmittal timestamp on the order ticket.

DATES: This Order is to be effective January 23, 1996.

FOR FURTHER INFORMATION CONTACT: De'Ana H. Dow, Special Counsel, or Rachel F. Berdansky, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, Commission Regulation 1.35(a–1)(2)(i) requires that order tickets accurately reflect order receipt time on the trading floor ("entry time"). Similarly, Commission Regulation 1.35(a–1)(4) provides that order tickets also must accurately record a timestamp reflecting when the fill price is reported from the trading floor ("exit time").[1] In October 1995, the heightened audit trail standards set forth in Section 5a(b)(3)(B) of the Act become effective to the extent deemed practicable by the Commission. Section 5a(b)(3)(B) includes a provision that exchanges' audit trail systems shall record, in addition to the entry and exit times already required by Commission regulation, the time that each customer order is received by a floor broker for execution (or when such order is transmitted in an extremely rapid manner to the broker).

The Commission has issued a Flashed Order Advisory ("Advisory") that clearly sets forth the standards for customer orders that are transmitted to and reported from the trading pit in an extremely rapid manner through hand signals or verbally ("flashed orders") to be deemed in good faith compliance with Section 5a(b)(3). The Commission has concluded that immediately executable flashed orders will not now require the additional transmittal timestamp, provided that such orders are in compliance with the Commission's Advisory and that appropriate recordkeeping and enforcement procedures are in place. Immediately executable flashed orders satisfying the Advisory's standards and the terms of this Order will be deemed in substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act.

Exchanges subject to Section 5a(b)(3)(B) of the Act have informed the Commission that they cannot yet fully implement the systems necessary to capture broker receipt times on the trading floor or transmittal times for customer orders. The exchanges, however, have taken several steps in anticipation of the additional timestamp requirement. Among other things, one exchange has already expanded its computer fields and trade records in order for clearing firms to input the additional timestamp data. Further, the exchanges are pursuing the development of electronic systems, including order routing systems, and portable time clocks that eventually will provide audit trails with the capability to accurately record such broker receipt and transmittal times for all customer orders to the extent determined practicable by the Commission. The Commission intends to gather more information from the exchanges and brokers concerning their progress toward this goal and practicability. The Commission will then further assess, based on information obtained from the improved audit trail implemented by October 1995, distribution of order types (including market, limit, and stop orders), and data on order routing and booth processing systems.

II. Background

A. Legislative History

In a report to Congress prior to the enactment of the heightened audit trail standards found in Section 5a(b)(3) of the Act, the General Accounting Office ("GAO") stated that:

> [C]omplete timing of trades, including the time the floor participant receives and executes trades, could help reconstruct the history of each trade, not only to detect potential abuses, but also to prove that they occurred.

The GAO report further stated that for audit trail purposes, it is crucial to capture the time when brokers receive customer orders because a time is then established when the floor broker assumes responsibility for promptly and competitively executing the order. GAO noted that without complete timing information, the history of each order is incomplete. GAO further stated that floor trade practice abuses could occur without detection and customers could be defrauded.[2]

In addition, a futures commission merchant ("FCM") testified before the Senate Committee on Agriculture, Nutrition, and Forestry in support of capturing broker receipt times:

> [T]he biggest problem with audit trail isn't when did the order get filled. The biggest question we have is * * * what exact moment in time did the broker get the order? That's the key ingredient to a better audit trail.[3]

The FCM explained that efforts to determine the accuracy of customer fills are impeded by the window of time between when an order reaches the floor and is executed, which is generally about two minutes but can range up to three and one-half minutes.

The Futures Industry Association ("FIA") also testified before the Senate Committee on Agriculture, Nutrition and Forestry in general support of the enhanced audit trail standards. However, the FIA expressed concern that the new standards effectively would eliminate order entry methods such as "flashing" orders.[4] Congress responded to this concern and adopted the specific language found in Section 5a(b)(3)(B) of the Act addressing rapidly transmitted orders. Second 5a(b)(3)(B) of the Act, specifically provides that for customer trades, among other things, exchange audit trails must record the entry and exit time for each order and the time that each order "is received by the floor broker for execution *(or when such order is transmitted in an extremely rapid manner to the broker)* * * *" (emphasis added).[5] Thus, for flashed orders, audit trails can capture transmittal time at the floor trading desk rather than broker receipt time.

The Commission believes that the broker receipt or transmittal timestamp would add a valuable component to exchanges' audit trails. This information would assist in market reconstruction for trade practice investigation purposes, particularly in identifying dual trading-related abuses such as trading ahead of customer orders, and resolving customer complaints about bad fills. The additional time also would narrow the timing window within which a trade execution could have occurred, thus providing another means of verifying the accuracy of one-minute execution times.

The legislative history of Section 5a(b)(3) of the Act contemplates that flashed orders can meet the objectives of Section 5a(b)(3)(B) without the additional transmittal timestamp. The same FCM who testified concerning the importance of recording broker receipt times, also testified that it is critical to distinguish between conventional paper orders and flashed orders because flashed orders present few audit trail problems due to the speed at which they are filled. For such orders, the FCM believed that order entry and order fill are likely to occur in the same minute.

The FCM further testified that a second or a few seconds can be critical in a fast-moving market and that an additional timestamping requirement could have a negative impact on customers and the futures market by reducing the speed and liquidity that are well-established advantages of the futures markets.[6] Section 5a(b)(5)(A)(ii) of the Act, therefore, requires that the Commission afford special treatment to flashed orders to the extent that substantial compliance with the objectives of Section 5(a)(b)(3) can otherwise be achieved.

B. Immediately Executable Flashed Orders

The Commission has determined that flashed orders that are immediately executable are capable of substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act without an exchange's audit trail recording the transmittal time on an order ticket. Provided that, those exchanges where brokers do not record customer fill information on sequenced trading cards must require that any trade record prepared by a broker or his clerk reflecting the fill for flashed orders and the order ticket be retained together.[7]

Flashed orders permit firms to relay customer orders into, and order fills out of, trading pits in an extremely rapid fashion. In most cases where flashed orders are immediately executable, the entry time, the time the order is flashed and received by the floor broker, and the execution time should be virtually contemporaneous. Thus, the "immediately executable" requirement ensures that the orders are executed within a very narrow time window and obviates the need for an additional timestamp.[8]

"Immediately executable" is intended to encompass only those flashed orders that are transmitted as a whole to a single broker and are immediately executed. This definition of "immediately executable" is intended to include a flashed order executed opposite multiple brokers or traders, provided that all portions of the order are immediately executed.[9] Further, a flashed order partially filled according to the customer's original instructions and the remaining portion executed immediately pursuant to new instructions would be within the scope of this Order.[10]

Order Relating to Flashed Orders: The Commission's Flashed Order Advisory provides guidance concerning the necessary elements for a flashed order to be deemed in good faith compliance with Section 5a(b)(3). The Commission has now determined that an exchange's audit trail system can demonstrate substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act for immediately executable flashed orders.

Accordingly, the Commission Hereby Orders:

That it is appropriate to find that an exchange subject to Section 5a(b)(3) of the Act is in substantial compliance with the objectives of Section 5a(b)(3)(B), without requiring the additional transmittal timestamp, for those flashed orders that are:

(1) Capable of immediate execution when received at a floor trading desk;

(2) Immediately transmitted from a floor trading desk to a floor broker or floor broker's clerk in a trading pit through hand signals or verbal communication; and

(3) Filled immediately upon receipt by the floor broker receiving the order.

Provided that, the exchange meets the current audit trail standards under Section 5a(b)(2) of the Act, complies with the standards set forth in the Commission's Flashed Order Advisory, and ensures that trade records prepared by a broker or his clerk reflecting order fill are retained together with the order ticket.

The Commission will be providing further guidance concerning the practicability of requiring the additional broker receipt or transmittal timestamp referred to in Section 5a(b)(3)(B) of the Act for types of customer orders other than those addressed by this Order. The Commission's guidance will be based upon its review of exchange practices, as well as information the Commission expects to obtain concerning the current status of order routing systems and practicability as a result of the exchanges' good faith implementation of the October 1995 enhanced audit trail standards.[11]

Dated: November 16, 1995.

By the Commission:

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–28699 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Lawrence Systems, Inc., a corporation of the State of Ohio, an exclusive license under: United States Patent Application Serial No. 08/481,945 filed in the name of Lawrence Jacknin et al for a "Virtual Navigator, An Inertial Angular Measurement System."

The license described above will be granted unless an objection thereto,

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[1] These entry and exit timestamp requirements now are codified under Section 5a(b)(3)(B) of the Act.

[2] Futures Markets—Strengthening Trade Practice Oversight, United States General Accounting Office Report to the Chairman and the Ranking Minority Member, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate (September 1989).

[3] Hearings on S. 1729 before the Senate Committee on Agriculture, Nutrition, and Forestry, 101st Cong., 1st Sess. (1989) (statement of Barry J. Lind, Chairman of Lind-Waldock & Company).

[4] *Id.* (Statement of John M. Damgrad, President, FIA). The order entry method is quite different for paper orders and flashed orders. A paper order is written down by a phone clerk and taken by a runner to a broker in the trading pit. Paper orders are filled when the market hits the appropriate price, consistent with the written order instructions. Flashed orders also are written down on order tickets by a phone clerk but are hand-signalled or shouted into the pit to a broker or his clerk, and the order usually is filled immediately.

[5] Without the parenthetical in Section 5a(b)(3)(B) of the Act, it would be difficult, if not impossible, for audit trails to capture broker receipt time for orders that are rapidly transmitted via hand-signal or verbally to a floor broker. Because the order ticket will remain at a floor trading desk until after execution, the floor broker cannot record order receipt time contemporaneously on the written order.

[6] Hearings on S. 1729, *supra* note 4 to 4.

[7] Retaining such trade records together with the order ticket will provide a complete record of how the order was filled and will assist exchanges, as well as Commission staff, in reconstructing trades as needed for trade practice investigations.

[8] Both the entry time and the transmittal time for immediately executable flashed orders are analogous to the time that a written order is received by a floor broker for execution.

[9] Thus, flashed orders that are filled in increments over a period of time will not come within this Order. Without the additional timestamp, the audit trail for such orders would be impaired because it would be difficult to relate particular timestamps to the time at which a broker received a specific portion of the order to execute. Orders that are held at the trading desk and then flashed when the market reaches the desired price also are excluded from this Order. Of course, for such orders, the initial retention at the trading desk must be in accordance with their terms. The enhanced order ticket timestamping requirement for such orders will be addressed at a later time.

[10] For example, an order for fifty contracts could be flashed into the pit to be purchased at a particular price which is near the prevailing market price. The broker may only fill forty contracts at that price before the market moves. Upon flash of that fill to the desk, the remaining ten contracts are then flashed back into the pit at the new price, executed and flashed back to the desk. If this all occurs virtually instantaneously, these transactions will be within the scope of this Order. Further, flashed orders that are flashed back to the desk as completely unfilled which are then immediately flashed back to the pit with new instructions also would be considered "immediately executable" for purposes of this Order.

[11] As part of the Commission's effort to implement Section 5a(b)(3) of the Act, it has already gathered information on order routing systems and the progress of the exchanges towards implementing those systems.

together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, AFLSA/JACNP, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, telephone (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28651 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Proposal To Change Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP–1A) Governing Carrier's Entitlement to Detention Charges

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed change.

SUMMARY: The Military Traffic Management Command is proposing changes to Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP–1A) governing carrier's entitlement to detention charges. The changes increase the amount of free time available for loading or unloading and state when free time shall begin and how detention is properly documented.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: All comments concerning the proposed rule changes should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP–T–NI, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Leon N. Patton, Jr., or John Alexander, (703) 681–6871.

SUPPLEMENTARY INFORMATION: Military shippers have requested that detention rules require detention to be documented by the carrier and the installation. The purpose of this is to avoid billing problems. Military shippers have also requested that carriers provide more free time, up to 7 hours, to reduce the number of detention instances. The proposed rules below implement these changes. New material is marked between left and right arrows (◆ ◆). Deleted material is marked between left and right brackets ([ ]). The proposed rule changes, if finalized, will be published in a future revision of MFTRP–1A.

ITEM 85 DETENTION: VEHICLES WITH POWER UNITS (DP)

(See NOTES 1 and 2 herein and NOTE 2, ITEM 90)

When carrier's vehicle with power unit (straight truck, tractor-trailer combination, or dromedary box) is delayed or detained for loading or unloading on the premises of consignor, consignee, or other premises approved by them, and such delay or detainment is attributable to the consignor or consignee, the shipment (or the combined weight of multiple shipments) being loaded or unloaded will be subject to the following provisions:

1. Free time: Carriers will allow the free time periods listed below for loading or unloading carrier's vehicle:

Type of shipment(s)	Free time
a. Vehicles loaded on Motor Vehicle Transport Trailers (Equipment Code A20)	1 hour (waiting time to begin loading or unloading).
b. Vehicles loaded on flat-bed equipment	3 hours.
c. Fully palletized shipments, 20,000 lbs. and over	2 hours (Note 1).
Actual weight in pounds per vehicle stop, not palletized, subject to Note 1:	
d. Less than 3,000 lbs.	1 hour.
e. 3,000 lbs. but less than 10,000 lbs.	2 hours.
f. 10,000 lbs. but less than 20,000 lbs.	3 hours.
g. 20,000 lbs. ◆but less than 28,000 lbs.	4 hours.◆
◆h. 28,000 lbs. but less than 36,000 lbs.◆	5 hours.
◆i 36,000 lbs. but less than 44,000	6 hours.◆
◆j. 44,000 lbs. and over	7 hours◆.

[Free time shall begin from the time carrier's employee notifies a responsible representative of the consignor or consignee that the vehicle is available and ready for loading or unloading, and it is within the consignor's or consignee's normal operating hours, or acceptance hours as annotated on the bill of lading.]

◆2. Free time shall begin when the following three conditions are met:◆

◆a. The vehicle is cleared and approved (inspection and administrative) for loading and unloading,◆

◆b. the vehicle is positioned at the loading/unloading dock, and◆

◆c. it is within the consignor's or consignee's normal operating hours as published or acceptance hours as annotated on the bill of lading.◆

The computation of time, in paragraph (1) above, is to be made within the normal business (shipping) day at the designated premises at the place of pickup or delivery, except if a carrier or its representative is permitted to work beyond this period, such working time shall also be included. When loading or unloading is not completed at the end of such day, time will be resumed at the beginning of the next work day, or when work the next day is actually begun by the carrier or its representative, if earlier.

[A shipment will be considered as "fully pallatized" when at least 90% of the shipment weight (exclusive of pallet weight) is loaded on pallets.]

◆When a scheduled time has been designated for the carrier's equipment to begin loading and the carrier arrives late, without prior notification to the consignor, the free time will not begin until an equal amount of time has passed; e.g., the carrier was supposed to be there at 0800; arrived at 1100; free time would start at 1400. Maximum detention paid for a late arriving carrier will be limited to 2 hours per day regardless of actual weight of the shipment.◆

◆3. Charges:◆ If loading or unloading extends beyond the allowable free time, the charge will be ◆(in dollar and cents) DP (1)$. ◆ for each hour, or fraction thereof, the vehicle is delayed beyond the allowable free time, until released by the shipper or consignee. Detention charges provided herein will be assessed during normal business hours only.

4. This rule will also apply: When shipper or consignee requires that the tractor be disconnected from the trailer during loading or unloading, and parked elsewhere on the shipper's or consignee's premises; or when shipper or consignee directs that the trailer be left overnight and the tractor be parked at other than shipper's or consignee's premises.

◆5. Documented Detention: Detention must be documented when it occurs by the carrier's representative and the installation Transportation Officer responsible. This must be accomplished prior to the driver exiting the installation following either pick-up or delivery of freight. A copy of the documentation will be forwarded along with the invoice for payment. Carrier must provide form for documentation which will include as a minimum:◆

◆a. Government bill of lading and/or carrier's freight waybill number(s).◆

◆b. Signatures of carrier and installation Transportation Officers.◆

◆c. Vehicle identification numbers including tractor and trailer numbers as applicable.◆

◆d. Exact date and time the vehicle was spotted for loading or unloading and date and time the vehicle was released to the driver.◆

◆e. Shipment weight, whether shipment is palletized and percent palletized, and whether material handling equipment was used by installation if applicable.◆

◆f. Reason for the delay.◆

Note 1: If ◆90% or more of◆ the material (boxes, crates, pieces, parts, etc.) comprising [the] ◆a◆ nonpalletized shipment is unloaded or loaded by pallet jack, fork lift, or other type of material handling equipment—without use of pallets—then the free time allowed [(not to exceed 2 hours)] will be one-half of the free time allowed for shipments not palletized ◆or 3.5 hours, whichever is less.◆ [To be eligible for this exception, at least 90% of the weight must be loaded or unloaded in the manner described.] Fully palletized shipments weighing less than [20,000] ◆44,000◆ pounds will be allowed one-half the free time in 1(d), 1(e), 1(f), ◆1(g), 1(h), 1(i), or 1(j). However, in no case will free time for loading or unloading explosive shipments be less than one hour.◆

Note 2: [Authorization for waiver of charges (effective December 17, 1986) contained in interim change letter dated December 23, 1986, is now contained in ITEM 10 of this publication. ITEM 85 amendments filed according to this letter do not have to be refiled to conform with the revised instructions in ITEM 10, unless a carrier wishes to do so.] ◆A shipment will be considered as "fully palletized" when at least 90% of the shipment weight (exclusive of pallet weight) is loaded on pallets.◆

ITEM 90—DETENTION: VEHICLES WITHOUT POWER UNITS (DW)

(See NOTES 1 and 2)

Subject to the availability of equipment and carrier's approval, carriers may spot vehicles without power units (empty or loaded trailers) for loading or unloading on the premises of the consignor or consignee, or on other premises designated by them. When such vehicles are delayed or detained, and the delay is attributed to the consignor or consignee, the shipment (or the combined weight of multiple shipments) being loaded or unloaded will be subject to the following provisions:

1. Free time:

(a) Trailers spotted for loading or unloading will be allowed 24 hours of free time for loading/unloading, which will commence when the trailer is spotted for loading or unloading.

(b) When any portion of the free time extends into a Saturday, Sunday or holiday, the computation of free time will resume at 12:01 a.m. on the next day which is neither a Saturday, Sunday or holiday.

(c) Free time shall not begin on a Saturday, Sunday or holiday, but at 8:00 a.m. on the next work day which is not a Saturday, Sunday, or holiday.

2. Dual transactions: When a trailer is both unloaded and reloaded, each transaction will be treated independently of the other. Free time for loading shall not begin until free time for unloading has elapsed.

3. End of detention: Detention will end when consignor or consignee notifies carrier by telephone that loading or unloading has been completed and that the trailer is available for pickup.

[a. After loading/unloading has been complete and the carrier has been notified, carrier must connect and pull his equipment in a timely manner. Carrier's equipment is considered released after carrier has been notified by the shipper or consignee.]

[b. If loading/unloading has not extended beyond the free time, but the carrier has failed to connect and move his equipment in a timely manner after being notified by the consignor or consignee, neither consignor nor consignee will not be subject to any detention charges. Also, carriers credits earned on equipment held cannot be used by the carrier to offset debits chargeable on his equipment awaiting to be moved.]

4. Charges: Charges for detention of vehicles without power units will be:

a. For each of the first and second 24-hour periods or fraction thereof that vehicle is detained beyond the allowable free time, the charge will be ◆(in dollars and cents) DW(1)$. ◆ per 24-hour day or fraction thereof.

b. For each of the third and fourth 24-hour periods or fraction thereof that vehicle is detained beyond the allowable free time, the charge will be ◆(in dollars and cents) DW(2)$. ◆ per 24-hour day or fraction thereof. For the fifth and each succeeding 24-hour period or fraction thereof that vehicle is detained beyond allowable free time, the charge will be ◆ (in dollars and cents) DW(3)$. ◆ per 24-hour day or fraction thereof.

◆5. Documented Detention: Detention must be documented, when it occurs by the carrier's representative and the installation responsible. This must be accomplished prior to the driver exiting the installation, following either pick-up or delivery of freight. A copy of the documentation will be forwarded along with the invoice for payment. The documentation will include as a minimum:◆

◆a. Government bill of lading and/or carrier's freight waybill number(s).◆

◆b. Signatures of carrier and installation Transportation Officers.◆

◆c. Vehicle identification numbers including tractor and trailer numbers as applicable.◆

◆d. Exact date and time the vehicle was spotted on the premises for loading or unloading and date and time the carrier was notified that the vehicle was released for pickup.◆

◆e. Shipment weight, whether shipment is palletized and percent palletized, and whether material handling equipment was used by installation if applicable.◆

◆f. Reason for the delay.◆

Note 1: Certain Government installations have specific agreements for storing and relocating carrier equipment for loading and unloading and/or detention charges. (See ITEMS 600 and 605 for application)

Note 2: Installations incurring charges under ITEMS 85 and/or ITEM 90 will be billed direct. SEE ITEM 78 herein.

[**Note 3:** Authorization for waiver of charges (effective December 17, 1986) contained in interim change letter dated December 23, 1986, is now contained in ITEM 10 of this publication. ITEM 85 amendments filed according to this letter do not have to be refiled to confirm with the

revised instruction in ITEM 10, unless a carrier wishes to do so.]

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28588 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–08–P

Transloading Shipments of Arms, Ammunition, and Explosives

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed rule change.

SUMMARY: The Military Traffic Management Command is proposing to change Item 48 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP 1A) to read as follows:

"Transloading shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives will be conducted as follows:

a. Truckload shipments will not be off-loaded or transferred to another vehicle enroute, except in emergencies (as defined in 49 CFR 390.5).

b. Loading and unloading of less-than-truckload (LTL) shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives will be accomplished only in a carrier terminal. For the purposes of this rule, a carrier terminal is defined as one which is equipped to safely handle the loading and unloading of Division 1.1, 1.2, and 1.3 ammunition and explosives from a commercial motor vehicle. In addition, when the transloading of Division 1.1, 1.2, and 1.3 ammunition and explosives occurs at a carrier terminal other than that of the carrier of record, as indicated on the Government Bill of Lading, prior written approval must be received from a company official or the carrier terminal manager. All Federal, State, and local guidelines for handling Division 1.1, 1.2, and 1.3 ammunition and explosives will apply when transloading occurs. The carrier accepts liability for the integrity of the shipments, to include proper blocking and bracing.

c. Transloading of ammunition and explosives on a military installation must be approved by the installation commander."

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: All comments concerning the proposed rule change should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. David Foreman, (703) 681–6293, Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: This proposed rule changes the existing rule to clarify where and under what circumstances transloading of shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives is permitted. Clarification of this rule responds to concerns by munition motor carriers that the existing rule is too vague and thus difficult to follow and enforce. The objective of the proposed rule is to ensure that the handling of ammunition and explosives occurs *only* in locations where the proper equipment and facilities are available to protect the public safety. Compliance with the proposed rule will be a matter of review by MTMC safety inspection. Violation of the rule may result in administrative sanctions, to include non-use or disqualification. If approved as a final rule, the proposed rule will be published in a future revision of MFTRP 1A.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28589 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of Infrared Flare Composition Technology

AGENCY: Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or non-exclusive licenses under the above technology. In addition, the following related patent application is available for licensing: Serial Number 08/530,403, sent for filing on 9/12/95, Docket # DAR–42–94, by Paul Ase, Alan Snelson and Ezra Shoua. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, Telephone Number (201) 724–6950.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 30 days from the date of publication of this notice in the **Federal Register.**

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28590 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Permit for Proposed Offshore Oil and Gas Development for the Northstar Unit in the Alaskan Beaufort Sea

AGENCY: U.S. Army Corps of Engineers, Alaska District.

ACTION: Notice of intent.

SUMMARY: The Corps is evaluating issuance of a permit to BP Exploration (Alaska), Inc. for activities to develop an off-shore oil and gas facility in State waters of the Beaufort Sea north of the Prudhoe Bay oilfields through an Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Carpenter, Regulatory Branch, Corps of Engineers, Alaska District, Post Office Box 898, Anchorage, Alaska 99506; telephone (907) 753–2712, or in Alaska 1–(800)–478–2712.

SUPPLEMENTARY INFORMATION: BP Exploration proposes to develop the Northstar reservoir from an off-shore structure in about 40 feet of water, 2–7 miles north of the Kuparuk River Delta, and a pipeline to the shore. An on-shore pipeline would connect to existing facilities for further transportation. Placement of structures and/or fill material would require issuance of a permit under Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. Other permits and authorizations may be required from the Environmental Protection Agency (EPA), the Minerals Management Service (MMS), the National Marine Fisheries Service (NMFS), the Fish and Wildlife Service (FWS), State agencies, and the North Slope Borough. BP Exploration proposes a start-up date of 1997 for construction.

A preferred alternative has not been proposed by BP Exploration. Alternatives will be identified and evaluated throughout the EIS process with a preferred alternative identified in the Draft EIS. Some options that will be considered include (1) whether produced fluids will be processed at the off-shore facility with only oil transported to shore, partially processed, or transported in 3-phase (oil, gas, water) to on-shore facilities for processing, (2) the means of transporting produced fluids (buried or drilled subsea pipeline, raised pipeline, tankering), (3) the route of a pipeline to shore, and (4) the spill-detection system to be employed. It is estimated that the DEIS will be available to the public by July 1996.

The Corps began early scoping with federal and state agencies in June 1995. EPA, the FWS, the NMFS, and MMS will be cooperating federal agencies for the EIS. State agencies, the North Slope Borough, Borough residents, and the general public will be contacted during the scoping process. A third-party contractor will prepare the EIS under direction by the Corps; the contractor is expected to be identified by December 1, 1995.

Significant issues that have been identified for the DEIS include oil spill risk and spill response plans, effects on bowhead whale migration and subsistence hunting of whales and other marine mammals, effects on denning polar bears and human interactions with polar bears, discharge of wastes from the facility that may affect air and water quality and marine food chains, navigation, and bird strikes on structures. The Corps is inviting comments from the public, agencies (Federal, State and local), Native interests, and other interested parties in order to consider and evaluate the impacts of the proposed activities.

Scoping meetings are tentatively planned for the following dates and locations:

Barrow, Alaska—late-January or February 1996

Nuiqsut, Alaska—late-January or February 1996

Anchorage, Alaska—late-January or February 1996

Fairbanks, Alaska—late-January or February 1996

Further information about these public meetings will be published locally and can be obtained by contracting the Corps as described above.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28592 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–NL–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Mississippi River Sediment Nutrient and Freshwater Redistribution Feasibility Study; Louisiana

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: This study will investigate the Federal involvement in the redistribution of Mississippi River flows at various locations between the Old River Control Structure and Head of Passes. River water will provide sediments, nutrients, and freshwater to offset wetlands loss resulting from subsidence and saltwater intrusion.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed study can be answered by Mr. Tim Axtman, (504) 862–1921, and questions concerning the DEIS can be answered by Mr. Michael Saucier, (504) 862–2525, U.S. Army Corps of Engineers, Planning Division (CELMN–PD), P.O. Box 60267, New Orleans, Louisiana 70160–0267.

SUPPLEMENTARY INFORMATION:

1. Authority

This study is being funded as specified in the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA, PL 101–646). At the direction of the CWPPRA Task Force, the study is being led and managed by the U.S. Army Corps of Engineers. Members of the Task Force are the Secretary of the Army who serves as chairman, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, the Secretary of Commerce, Secretary of the Interior, and the Governor of Louisiana. The other members of the Task Force will provide input to the proposed study.

2. Proposed Action

The objective of this study is the maximization of the available resources of the Mississippi River for use in creation, restoration, protection, and enhancement of coastal wetlands in Louisiana.

3. Alternatives

Alternatives for addressing wetland loss will include, but are not limited to, freshwater diversion through siphons over the river levee, freshwater diversion through structures built in the river levee, sediment diversion through structures built in the river levee, and freshwater and sediment diversion through crevasse construction in the natural river bank. These alternatives will be compared to the No-Action alternative.

4. Public Involvement and Scoping

a. Three scoping meetings will be held within the study area to identify the desires of the public. Members of the CWPPRA Task Force Environmental Work Group will participate as facilitators in the scoping meetings, organized by the Corps of Engineers. Participants in the scoping meetings will be requested to make comments on alternatives, significant issues, or impacts of alternatives for inclusion in the DEIS. Comments received as a result of this process will be compiled and analyzed, and a Scoping Document summarizing the results will be made available to all participants.

b. Significant issues to be addressed in the DEIS currently include: extent of wetland loss under current conditions and if no remedial action is taken, environmental benefits of proposed alternatives, relocations required, and effects on fish and wildlife, endangered species, cultural resources, recreation, and socio-economic concerns.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS. Coordination will be maintained with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service concerning endangered and threatened species. We will prepare a Section 404(b)(1) evaluation for review by the U.S. Environmental Protection Agency and other interested parties. Coordination will be maintained with the Advisory Council on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the State's Coastal Resources Program. Application for a State Water Quality Certificate will be made with the Louisiana Department of Environmental Quality.

d. A 45-day public review period will be allowed so that all interested agencies, groups, and individuals will have an opportunity to review and comment on the DEIS.

5. Meeting Schedule

The public will be informed of the dates and locations of the scoping meetings when scheduled. A public meeting will be held during the review period to receive comments on the DEIS.

6. Availability

The DEIS is scheduled to be available to the public in November 1997.

Dated: October 30, 1995.

Kenneth H. Clow,

Colonel, U.S. Army, District Engineer.

[FR Doc. 95–28591 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–84–M

Department of the Navy

Notice of Public Hearing for Draft Environmental Impact Statement on Realignment to Marine Corps Air Station Camp Pendleton, CA

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National

Environmental Policy Act, the Marine Corps has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for realignment of Marine Corps Air Station Camp Pendleton, California.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on December 1, 1995, beginning at 6 pm, in the Fallbrook Community Center, located at 341 Heald Lane, Fallbrook, California 92028.

The public hearing will be conducted by the Marine Corps. Federal, State, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weights will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by December 17, 1995, to become part of the official record.

The DEIS has been distributed to various Federal, State, and local agencies, elected officials, and civic associations and groups. A limited number of single copies are available at the address listed at the end of this notice.

In accordance with the Defense Base Closure and Realignment Act of 1990 and the specific base closure and realignment decisions approved by the president and accepted by Congress in September 1995, the proposed action is the realignment of Marine Corps Air Station Camp Pendleton. The proposed action relocates aircraft and associated assets from MCAS Tustin and MCAS El Toro, which are closing, to MCAS Camp Pendleton.

Alternatives considered in the DEIS include: no action, development alternatives (alternative site configurations) at MCAS Camp Pendleton, and use of other military installations. The proposed action will have impacts on noise, endangered species, cultural assets, and air quality.

Additional information concerning this notice may be obtained by contacting Chief Warrant Officer Harry Roberts or Mr. Bruce Shaffer, Base Closure and Realignment Office, Marine Corps Air Station El Toro, Santa Ana, CA 92709, telephone (714) 726–3383.

By direction of the Commandant of the Marine Corps.

Dated: November 20, 1995.

Kim G. Weirick,

Assistant Head, Land Use and Military Construction Branch Facilities and Services Division, Installations and Logistics Department.

[FR Doc. 95–28609 Filed 11–22–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Disposition of Surplus Highly Enriched Uranium Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The Department of Energy is announcing an extension until January 12, 1996 of the comment period for the Disposition of Surplus Highly Enriched Uranium Draft Environmental Impact Statement (draft HEU EIS).

DATES: The Notice of Availability and invitation to comment on the draft HEU EIS was originally published in the **Federal Register** on October 27, 1995 [60 FR 55021]. In response to requests from the public, the Department is extending the close of the comment period for the draft HEU EIS from December 11, 1995 to January 12, 1996.

ADDRESSES AND FURTHER INFORMATION: Copies of the draft HEU EIS and requests for information should be directed to: Office of Fissile Materials Disposition (MD–4), Attention: HEU EIS, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, 1–800–820–5134. Written comments on the draft HEU EIS should be mailed to the following address: DOE—Office of Fissile Materials Disposition, P.O. Box 23786, Washington, DC 20026–3786. Comments may also be submitted orally (to a recording machine) or by fax to 1–800–820–5156.

For information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–4600 or leave a message at 1–800–472–2756.

Issued in Washington, DC, November 15, 1995.

Gregory P. Rudy,

Acting Director, Office of Fissile Materials Disposition.

[FR Doc. 95–28533 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting: Environmental Management Advisory Board.

DATE AND TIMES: Thursday, November 30, 1995, 8:30 a.m.–5:00 p.m.

PLACE: U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 1E–245, Washington, DC 20585, (202) 586–4400.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management Program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Thursday, November 30, 1995

8:30 a.m. Co-Chairmen Open Public Meeting, Mr. Alvin Alm and Mr. Douglas Costle

8:35 a.m. Opening Remarks, Mr. Thomas Grumbly, Assistant Secretary for Environmental Management

9:30 a.m. Presentation and Board Discussion of the Environmental Management Strategic Plan, Mr. James Werner, Director, Office of Strategic Planning & Analysis

10:15 a.m. Presentation and Board Discussion of Technology Development & Transfer Committee Findings, Dr. Edgar Berkey, Chair, Technology Development & Transfer Committee

12:15 p.m. Working Lunch—Board Discussion

2:00 p.m. Departmental Response to the Board's Risk and Budget Recommendations, Progress Report, Update and Board Discussion, Dr. Carol Henry, Science & Policy Director, Office of Integrated Risk Management, Mr. Eli Bronstein, Director, Office of Financial Management

2:45 p.m. Presentation and Board Discussion on the Worker Health & Safety Committee Findings and Recommendation, Dr. Glenn Paulson, Chair, Worker Health & Safety Committee

3:15 p.m. Presentation on the Cost Effective Committee Regulatory Streamlining Findings, Mr. Jeff Breckel, Member, Cost Effective Cleanup Committee

3:30 p.m. Presentation and Board Discussion of the NEPA Committee Findings, Mr. Brian Costner, Chair, NEPA Compliance Practices Committee

3:50 p.m. Board Business, Mr. Alvin Alm and Mr. Douglas Costle, Co-Chairs, Environmental Management Advisory Board

4:00 p.m. Presentation and Board Discussion of the Programmatic Environmental Impact Statement (PEIS) Committee Progress Report, Mr. Ben Smith, Co-Chair, PEIS Committee

4:30 p.m. Public Comment Session

5:00 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should either contact James T. Melillo at the address or telephone number listed above, or call 1–(800) 736–3282, the Center for Environmental Management Information and register to speak during the public comment session of the meeting. Individuals may also register on November 30, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of meeting due to programmatic issues that had to be resolved prior to publication.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 14, 1995.

Gail R. Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–28530 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee To Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Federal Advisory Committee to Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management (FAC-DOIT).

Date and Time: Tuesday, December 12, 1995; 9:00 a.m.–12:00 p.m.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT: Dr. Clyde Frank, Deputy Assistant Secretary, Technology Development, EM–50, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6382.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The FAC-DOIT serves as the primary vehicle for implementing the Memorandum of Understanding (MOU) regarding cooperative technology development for environmental restoration and waste management in western states. This MOU was signed in 1991 by representatives of the Department of Defense, Department of Interior, Energy, the Environmental Protection Agency and the Western Governors' Association (WGA), the latter representing 20 western states and territorial governors. The DOIT Committee's purpose is to improve Federal environmental restoration and waste management efforts by identifying technology needs at Federal facilities in western states; identifying/assessing emerging technologies within the Federal and private sectors; identifying regulatory, institutional or other governmental barriers to technology development; and identifying workforce planning and educational requirements.

Tentative Agenda

9:00 a.m. Meeting opens, introductory remarks by Dr. Clyde Frank, Designated Federal Official for the Advisory Committee;

—Discussion on DOIT Accomplishments and Activities

—Discussion on DOIT Committee Mixed Waste Working Group Model Solicitation;

—Discuss Progress of DOIT Committee Interstate Technology and Regulatory Cooperation Working Group

—Discussion on Proper Closure of DOIT

11:30 a.m. Open time for public comment

12:00 p.m. Meeting adjourns

A final agenda will be available at the meeting.

Public Participation. The meeting is open to the public. Written Statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda items should contact Dr. Clyde Frank's office at the address or telephone numbers listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Executive summaries of reports presented and recommendations made will be available at the meeting.

Minutes. The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal Holidays.

Issued at Washington, DC on November 13, 1995.

Gail R. Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–28531 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the High Energy Physics Advisory Panel.

DATES: Monday, December 11, 1995; 9:00 a.m. to 6:00 p.m.; and Tuesday, December 12, 1995; 9:00 a.m.—4:00 p.m.

ADDRESSES: Fermi National Accelerator Laboratory, Kirk and Pine Road, Wilson Hall, 15th Floor, Batavia, IL 60510.

FOR FURTHER INFORMATION CONTACT: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Germantown, Maryland 20874, Telephone: (301) 903–4829.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, December 11, 1995 and Tuesday, December 12, 1995

Discussion of Department of Energy High Energy Physics Programs
Discussion of National Science Foundation Elementary Particle Physics Programs
Discussion of High Energy Physics at Fermi National Accelerator Laboratory
Discussion of Status of Large Hadron Collider Project and U.S. Participation
Discussion of University-based High Energy Physics Programs
Reports on and Discussions of Topics of General Interest in High Energy Physics
Public Comment (10 minute rule)

Public Participation: The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on November 15, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–28532 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–1781–000, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER95–1781–000]

Take notice that on October 23, 1995, Montana Power Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. National Gas & Electric L.P., et al.

[Docket Nos. ER90–168–024, ER94–6–001, ER94–1329–005, ER95–430–003, ER95–748–001, ER95–878–002, and ER95–1021–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 31, 1995, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On October 31, 1995, InterCoast Power Marketing Company filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–6–000.

On October 30, 1995, Midcon Power Services Corporation filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On October 29, 1995, Phibro, Inc. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–430–000.

On November 1, 1995, Western Gas Resources Power Marketing Company filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On October 31, 1995, Audit Pro Incorporated filed certain information as required by the Commission's June 2, 1995, order in Docket No. ER95–878–000.

On October 31, 1995, Energy Services, Inc. filed certain information as required by the Commission's June 13, 1995, order in Docket No. ER95–1021–000.

3. DC Tie, Inc., et al.

[Docket Nos. ER91–435–017, ER94–108–005, ER94–152–007, ER94–968–010, ER94–1402–004, ER94–1450–007, and ER95–252–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 2, 1995, DC Tie, Inc., filed certain information as required by the Commission's July 11, 1991, order in Docket No. ER91–435–000.

On October 31, 1995, Heartland Energy Services, Inc., filed certain information as required by the Commission's August 9, 1994, order in Docket No. ER94–108–000.

On October 30, 1995, North American Energy Conservation, Inc., filed certain information as required by the Commission's February 10, 1994, order in Docket No. ER94–152–000.

On October 31, 1995, Electric Clearinghouse, Inc., filed certain information as required by the Commission's April 7, 1994, order in Docket No. ER94–968–000.

On October 30, 1995, Cenergy, Inc., filed certain information as required by the Commission's December 7, 1994, order in Docket No. ER94–1402–000.

On October 31, 1995, Coastal Electric Services Company, filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1450–000.

On November 2, 1995, Howard Energy Company, filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–252–000.

4. Tenaska Power Services Company, et al.

[Docket Nos. ER94–389–005, ER94–1188–007, ER94–1352–005, ER94–1478–005, ER94–1593–004, ER95–692–002, and ER95–1441–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 8, 1995, Tenaska Power Services Company filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000.

On November 1, 1995, LG&E Power Marketing, Inc. filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–1188–000.

On November 2, 1995, R.J. Dahnke & Associates filed certain information as required by the Commission's August 13, 1994, order in Docket No. ER94–1352–000.

On October 30, 1995, Electrade Corporation filed certain information as required by the Commission's October 12, 1994, order in Docket No. ER94–1478–000.

On November 7, 1995, National Power Exchange filed certain information as required by the Commission's October 7, 1994, order in Docket No. ER94–1593–000.

On October 27, 1995, Transcanada Northridge Power Ltd. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–692–000.

On November 1, 1995, Conoco Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

5. Texican Energy Ventures, Inc., et al.

[Docket Nos. ER94–1362–002, ER94–1612–005, ER94–1685–005, ER95–74–003, ER95–362–003, ER95–300–004, and ER95–1034–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 8, 1995, Texican Energy Ventures, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1362–000.

On October 26, 1995, Destec Power Services, Inc. filed certain information as required by the Commission's January 20, 1995, order in Docket No. ER94–1612–000.

On October 31, 1995, Citizens Lehman Power Sales filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER94–1685–000.

On October 31, 1995, Mesquite Energy Services, Inc. filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–74–000.

On October 31, 1995, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–362–000.

On October 30, 1995, Mock Electric Power Marketing filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–300–000.

On November 8, 1995, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

6. Vermont Electric Power Company, Inc.

[Docket No. ER96–194–000]

Take notice that on October 31, 1995, Vermont Electric Power Company, Inc. (VELCO), tendered for filing proposed changes to its Rate Schedule FERC No. 246. VELCO states that the filing is being made solely to recover amounts related to the provision for post-retirement benefits other than pensions being recorded pursuant to the requirement of SFAS No. 106. VELCO states that the rate change proposed would result in an increase of VELCO's revenue requirement of $67,331.10 during 1993, which will remain unfunded, and similar increases in subsequent years which will be funded by contributions to an IRC Section 401(h) subaccount in its pension plan.

VELCO states that copies of its filing have been provided to its customers and to the Vermont Public Service Board.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–195–000]

Take notice that on October 31, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly carrying charges. Con Edison has requested that this decrease take effect as of November 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER96–196–000]

Take notice that on October 31, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an Interchange Service Contract between Southern Companies and Enron Power Marketing, Inc. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on behalf of Monongahela Power Company, et al.

[Docket No. ER96–197–000]

Take notice that on October 26, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 5 to add two (2) Customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and emergency service to these Customers on an hourly, daily, weekly, monthly or yearly basis. The following new Customers are added by this filing. The Cincinnati Gas & Electric Company and PSI Energy, Inc. The APS Companies request a waiver of notice requirements to make service available as of October 25, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER96–198–000]

Take notice that on October 31, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Energy Services, Inc. and Municipal Energy Agency of Mississippi (MEAM). Entergy Services states that the TSA sets out the transmission arrangements under which the Energy Operating Companies provide MEAM firm transmission service under their Transmission Service Tariff.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER96–201–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities Service Companies, filed Service Agreements for firm transmission service to Massachusetts Municipal Wholesale Electric Company (MMWEC) and Pascoag Fire District (Pascoag) under NUSCO's Tariff No. 1. The Service Agreements provide for delivery of Eastern MA Municipals and Pascoag's allocations of New York Power Authority hydropower from

November 1, 1995 through October 31, 2003.

NUSCO requests an effective date of November 1, 1995 for both agreements.

NUSCO states that copies of its submission have been mailed or delivered to MMWEC and Pascoag.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER96–202–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a unit sale agreement between NUSCO, on behalf of The Connecticut Light and Power Company and Western Massachusetts Electric Company, and Vermont Electric Generation & Transmission Cooperative, Inc. (VEG&T).

NUSCO states that a copy of this filing has been mailed to VEG&T.

NUSCO requests that the Agreement become effective on November 1, 1995.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Multi-Energies U.S.A. Inc.

[Docket No. ER96–203–000]

Take notice that on October 31, 1995, Multi-Energies U.S.A. Inc. (MEI), tendered for filing pursuant to 18 CFR Part 385, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Electric Power Company, Inc.

[Docket No. ES96–11–000]

Take notice that on November 9, 1995, Maine Electric Power Company, Inc., filed an application under § 204 of the Federal Power Act seeking authorization to issue and renew short-term notes, from time to time, in an aggregate principal amount not to exceed $9.5 million outstanding at any one time, on or before December 31, 1997, with a maturity of one year or less.

Comment date: December 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28634 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–2–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

November 17, 1995.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado and Southwestern Public Service Company

[Docket No. EC96–2–000]

Take notice that on November 9, 1995, Public Service Company of Colorado (PSCo), on behalf of itself and its subsidiary, Cheyenne Light, Fuel and Power Company (Cheyenne), and Southwestern Public Service Company (SPS) (together "Applicants") filed, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations, a Joint Application requesting authorization of their merger and reorganization and the resulting consolidation of facilities subject to the Commission's jurisdiction.

Applicants state that PSCo and SPS will form a new holding company, temporarily named M–P New Co., which will be a registered holding company under the Public Utilities Holding Company Act (PUHCA). PSCo, SPS, and Cheyenne will be subsidiaries of M–P New Co., and will continue to operate in their respective service territories, as they do today. The reorganization will be effected through an exchange of common stock.

Applicants have submitted the direct testimony of six witnesses who describe the merger and its projected benefits and analyze the effects of the merger on competition in the relevant markets.

Applicants have requested that the Commission expedite consideration of the Joint Application and approve it without an evidentiary hearing.

Comment date: December 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket Nos. ER96–200–000, ER96–233–000, ER96–234–000, ER96–235–000, ER96–236–000, ER96–237–000, and ER96–238–000]

Take notice that on October 31, 1995, New England Power Company (NEP) tendered for filing the following documents in the above-referenced dockets:

(1) A second revised page No. 1 to the service agreement between NEP and Hingham Municipal Lighting Plant entered into under NEP's FERC Electric Tariff, Original Volume No. 4;

(2) A first revised page No. 1 to the service agreement between NEP and Hull Municipal Lighting Plant entered into under NEP's FERC Electric Tariff, Original Volume No. 4;

(3) Second revised page Nos. 6 and 7 to the service agreement between NEP and Groveland Municipal Light Department entered into under NEP's Electric Tariff, Original Volume No. 1;

(4) Second revised page Nos. 6 and 7 to the service agreement between NEP and Merrimac Municipal Light Department entered into under NEP's Electric Tariff Original Volume No. 1;

(5) A first revised Page No. 3 to the service agreement between NEP and Norwood Municipal Light Department entered into under NEP's Electric Tariff, Original Volume No. 1;

(6) A long-term service agreement between NEP and the Massachusetts Municipal Wholesale Electric Company, dated as of September 29, 1995 and entered into under NEP's FERC Electric Tariff, Original Volume No. 8 (Tariff No. 8 Service Agreement); and

(7) A distribution wheeling agreement between NEP and the Massachusetts Municipal Wholesale Electric Company, dated as of September 29, 1995 (Wheeling Agreement)

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER96–210–000]

Take notice that on October 31, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of Rate Schedule 246.41.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–212–000]

Take notice that on October 31, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and New England Power Company (NEPC), dated October 27, 1995. This Service Agreement specifies that NEPC has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and NEPC to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 27, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Yankee Atomic Power Company

[Docket No. ER96–213–000]

Take notice that on October 31, 1995, Maine Yankee Atomic Power Company, tendered for filing proposed changes in its FERC Electric Service Tariff No. 1. The proposed changes would decrease revenues from jurisdictional sales and service annually by $412,670 in 1996. This is a 00.197 percent decrease over 1995 rates.

Maine Yankee is making a limited Section 205 filing solely for amounts to fund post-retirement benefits other than pensions (PBOPs) pursuant to the requirement of SFAS 106.

Copies of the limited Section 205 filing were served upon Maine Yankee's jurisdictional customers, secondary customers, and Massachusetts Department of Public Utilities, Vermont Public Service Board, Connecticut Public Utilities Control Authority, Maine Public Utilities Commission, New Hampshire Public Utilities Commission, Office of the Public Advocate, State of Maine and Rhode Island Division of Public Utilities and Carriers.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER96–214–000]

Take notice that on October 31, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing an amendment to the contract for the purchase of electricity for resale (the Amendment) between Virginia Power and North Carolina Electric Membership Corporation (NCEMC). The Amendment provides for the continuation of the requirements service previously received by NCEMC, with certain changes in the terms and conditions. The principal changes involve defining specific exceptions to NCEMC's requirements service and pricing a portion of NCEMC's capacity requirements based on the costs of peaking capacity.

Virginia Power requests that the Amendment become effective on January 1, 1996.

Virginia Power states that copies of the filing have been served upon NCEMC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER96–215–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, on behalf of The Connecticut Light and Power Company, a rate schedule for sale of power to Citizens Lehman Power Sales. NUSCO requests that the charges in rate schedules become effective on January 1, 1996.

NUSCO states that copies of its submission have been mailed or delivered to Citizens Lehman Power Sales.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER96–216–000]

Take notice that on October 31, 1995, Boston Edison Company (Edison), tendered for filing, a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Engelhard Power Marketing, Inc. (Engelhard). Boston Edison requests that the Service Agreement become effective as of October 5, 1995.

Edison states that it has served a copy of this filing on Engelhard and the Massachusetts Department of Public Utilities.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER96–217–000]

Take notice that on October 31, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Sonat Power Marketing, Inc. (Sonat). Boston Edison requests that the Service Agreement become effective as of October 5, 1995.

Edison states that it has served a copy of this filing on Sonat and the Massachusetts Department of Public Utilities.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, et al. The Potomac Edison Company West Penn Power Company (the APS Companies)

[Docket No. ER96–220–000]

Take notice that on October 26, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a Standard Transmission Service Agreement to add The Cincinnati Gas & Electric Company and PSI, Energy, Inc. as Customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the rate schedule is October 25, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison

[Docket No. ER96–221–000]

Take notice that on November 1, 1995, Southern California Edison Company (Edison), tendered for filing a change in rate for scheduling and dispatching services as embodied in Edison's agreements with the following entities:

Entity	FERC rate schedule No.
City of Anaheim.	130, 246.6, 246.8, 246.13, 246.29, 246.32.1, 246.33.1, 246.36.
City of Azusa .	160, 247.4, 247.6, 247.8, 247.24, 247.29.
City of Banning.	159, 248.5, 248.7, 248.9, 248.24, 248.29.
City of Colton .	162, 249.4, 249.6, 249.8, 249.24, 249.29.
City of Riverside.	129, 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, 250.35.
City of Vernon	149, 154.07, 172, 207, 272, 276, 338.
Arizona Electric Power Cooperative.	132, 161.
Arizona Public Service Company.	185.
California Department of Water Resources.	112, 113, 181, 342.
City of Burbank.	166.
City of Glendale.	143.
City of Los Angeles Department of Water and Power.	102, 118, 140, 163, 188.
City of Pasadena.	158.
Coastal Electric Services Company.	347.
Imperial Irrigation District.	259, 268.
Metropolitan Water District of Southern California.	292.
M-S-R Public Power Agency.	153, 339.
Northern California Power Agency.	240.
Pacific Gas and Electric Company.	117, 147, 256, 318.
PacifiCorp	275.
Rainbow Energy Marketing Corporation.	346.
San Diego Gas & Electric Company.	151, 247, 302.
Western Area Power Administration.	120.

Edison requests that the revised rate for these services be made effective January 1, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER96–222–000]

Take notice that on November 1, 1995, Southern California Edison Company (Edison), tendered for filing a Network Integration Service Transmission Tariff and a Point-to-Point Transmission Service Tariff. The tariffs set forth the terms and conditions under which Edison will provide open access transmission service on its transmission system. Edison requests that an effective date of January 1, 1996 be assigned to the tariffs.

Copies of the filing were served upon the Public Utilities Commission of the State of California and Edison's existing transmission customers.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power & Light Company

[Docket No. ER96–223–000]

Take notice that on November 1, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission two Service Agreements (the Agreements) between PP&L and Virginia Power Company, dated October 18, 1995, and (2) New England Power Company, dated October 20, 1995.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993). PP&L requests the Commission to make the Agreement effective as of the date of execution of each, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 C.F.R. 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER96–224–000]

Take notice that on November 1, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 174 between Niagara Mohawk and the City of Watertown, New York (The City) dated October 30, 1995.

Rate Schedule No. 174 provides for certain transmission and distribution services to The City. The proposed change revises the rates charged to The City with a requested effective date of January 1, 1996.

Copies of this filing were served upon The City and the New York State Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER96–225–000]

Take notice that on November 1, 1995, Virginia Electric and Power Company tendered for filing an agreement pursuant to which it will provide transmission service to Appalachian Power Company. Virginia Power requests that the agreement be accepted for filing and made effective on January 1, 1996.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER96–226–000]

Take notice that on November 1, 1995, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing the existing Exhibit VII and revised Exhibits VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Exhibit VII sets forth the specification of the rate of return on common equity to determine the overall cost of capital. The return on common equity for calendar year 1996 is the same as that used for 1995.

Exhibit VIII sets forth the specification of average monthly coincident peak demands for calendar year 1996 for each of the Companies. A statement of the impacts of these coincident peak demands on each company has been filed. These coincident peak demands were determined upon three years' data consisting of 18 months of actual and 18 months of projected peak demands. The change from the use of the average of the 12 monthly peak demand allocation method to the use of the 36 months was approved in Docket No. ER87–279–000.

Exhibit IX sets forth a specification of depreciation rates certified by the Wisconsin Public Service Commission (PSCW) and the Minnesota Public Utilities Commission (MPUC). A statement of the impact of the depreciation rates on each company has been filed.

The NSP Companies request an effective date of January 1, 1996, for this filing. Copies of the filing letter and Exhibits VII, VIII and IX have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have been mailed to the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER96–227–000]

Take notice that on November 1, 1995, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Agreement between APS and the Town of Wickenburg (Wickenburg) (APS-FERC Rate Schedule No. 74) and revised Exhibit A to the Transmission Service Agreement between APS and Wickenburg (APS-FERC Rate Schedule No. 170) (collectively Exhibits and Agreements). The Exhibits list ranges of Maximum and Contract Demands applicable under the Agreements.

APS states no change from the currently effective rate or revenue levels as proposed herein.

APS further states no new facilities are required as a result of this revision.

A copy of this filing has been served on Wickenburg and the Arizona Corporation Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER96–228–000]

Take notice that Northeast Utilities Service Company (NUSCO) on November 1, 1995, tendered for filing a Service Agreement with North American Energy Conservation Inc. (NAEC) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NAEC also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to NAEC.

NUSCO requests that the Service Agreement become effective sixty (60) days following the Commission's receipt of the filing.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Company

[Docket No. ER96–229–000]

Take notice that on November 1, 1995, Boston Edison Company (Edison) filed a standstill agreement between itself and Montaup Electric Company (Montaup) extending the one-year claims limitation provision in Montaup's Pilgrim power purchase contract (Boston Edison's FPC Rate Schedule No. 69) with regard to disputes over 1993 and 1994 billings. The purpose of the standstill agreements is to allow the parties to achieve a settlement agreement regarding 1993 and 1994 billing disputes. The standstill agreement makes no other changes to the rates, terms and conditions of the contract between Montaup and Edison.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER96–230–000]

Take notice that on November 1, 1995, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an Agreement for System Power Transactions with PECO Energy Company, dated October 12, 1995. This initial rate schedule will enable Ohio Edison and Pennsylvania Power to sell capacity and energy in accordance with the terms in the Agreement.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER96–231–000]

Take notice that on November 1, 1995, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an agreement for System Power Transactions with Louis Dreyfus Electric Power, Inc. dated October 30, 1995. This initial rate schedule will enable the parties to purchase and sell capacity and energy in accordance with the terms set forth in the Agreement.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Pacific Gas and Electric Company

[Docket No. ER96–240–000]

Take notice that on November 2, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing an Interconnection Agreement between PG&E and the Port of Oakland (Port) dated October 31, 1995 (Interconnection Agreement). The Interconnection Agreement supersedes the current power sale contract between Port and PG&E (PG&E Rate Schedule FERC No. 95).

Port and PG&E (the Parties) entered into the Interconnection Agreement to define their new relationship after the termination of Rate Schedule FERC No. 95. The most important change under the Interconnection Agreement is the Port, which will become an Interconnection customer of PG&E instead of a full-requirements customer. Port will purchase wholesale electric service to become in essence a full-requirements customer of Destec Power Services, Inc. (DPS). This change will reduce PG&E's yearly revenues from Port by approximately $3.5 million.

Copies of this filing have been served upon Port and the California Public Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Virginia Electric and Power Company

[Docket No. ER96–241–000]

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Entergy Power, Inc. and Virginia Power, dated October 15, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered

Service Agreement Virginia Power agrees to provide services to Entergy Power, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Virginia Electric and Power Company

[Docket No. ER96–242–000]

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between NorAm Energy Services, Inc. and Virginia Power, dated October 20, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to NorAm Energy Services, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Long Island Lighting Company

[Docket No. ER96–243–000]

Take notice that Long Island Lighting Company (LILCO) on November 2, 1995, tendered for filing an Interconnection Construction Agreement and (ICA) between LILCO and Associated Universities, Inc. at Brookhaven National Laboratory (BNL).

The ICA provides, among other things, for the installation and initial construction of a new 69 KiloVolt interconnection between LILCO's electric system and BNL. It also provides for the engineering, design, procurement, construction, installation, testing, ownership and maintenance of such interconnection. LILCO requests a waiver of the Commission's notice requirements to permit the ICA to become effective on November 3, 1995 (one day after filing).

LILCO states that copies of this filing have been served by LILCO on the New York State Public Service Commission, the New York Power Authority, and Associated Universities, Inc.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Virginia Electric and Power Company

Docket No. ER96–246–000

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Heartland Energy Services, Inc. and Virginia Power, dated October 19, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Heartland Energy Services, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Virginia Electric and Power Company

Docket No. ER96–247–000

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between South Carolina Electric & Gas Company and Virginia Power, dated October 12, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to South Carolina Electric & Gas Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the South Carolina Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Virginia Electric and Power Comapny

Docket No. ER96–248–000

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Phibro Inc. and Virginia Power, dated October 18, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Phibro Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

Docket No. ER96–249–000

Take notice that on November 1, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the "GPU Operating Companies"), filed an executed Service Agreement between GPU and National Fuel Resource Inc., dated October 6, 1995. This Service Agreement specifies that National Resource Inc. has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and National Fuel Resource Inc. to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service. GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of September 8, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Electric and Gas Company

[Docket No. ER96–258–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on November 2, 1995, tendered for filing an agreement for the sale of energy and capacity to KOCH Power Services, Inc. (KPSI).

PSE&G requests the Commission to waive its notice requirements and permit the Energy Sales Agreement to become effective as of November 3, 1995.

Copies of the filing have been served upon KPSI.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. Portland General Electric

[Docket No. ER96–262–000]

Take notice that on November 2, 1995, Portland General Electric Company (PGE) tendered for filing the 1995–1996 One Year Share-the-Storage Agreement (the Agreement), among the following parties: Idaho Power Company; The Montana Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Power & Light Company; The Washington Water Power Company; Bonneville Power Administration; Public Utility District No. 1 of Chelan County; Public Utility District No. 1 of Cowlitz County; Public Utility District No. 2 of Grant County; Public Utility District No. 1 of Pend Oreille County; Public Utility District No. 1 of Snohomish County, The Eugene Water & Electric Board; City of Seattle acting by and through its City Light Department; City of Tacoma acting by and through its Public Utilities Department.

PGE states that the Agreement relates to service for the purpose of alleviating energy shortages of one or more of the parties to the Agreement and to help ensure that all of the parties can meet their obligations to serve their respective retail customer loads. A copy of the filing was served upon the parties to the Agreement.

The Parties request that the Commission allow the Agreement to become effective January 2, 1996.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. Wisconsin Electric Power Company

[Docket No. ER96–263–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on November 2, 1995, tendered for filing an Electric Service Agreement between itself and Industrial Energy Applications, Inc. (IEA). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on IEA, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

33. Illinois Power Company

[Docket No. ER96–268–000]

Take notice that on November 2, 1995, Illinois Power Company (IPC) tendered for filing an Interchange Agreement between IPC and Engelhard Power Marketing, Inc., (Engelhard). IPC states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between IPC and Engelhard.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28637 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL96–9–000, et al.]

The Cleveland Electric Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

November 16, 1995

Take notice that the following filings have been made with the Commission:

1. The Cleveland Electric Illuminating Company

[Docket No. EL96–9–000 Company]

Take notice that on November 3, 1995, The Cleveland Electric Illuminating Company (CEI), filed a Petition for Declaratory Order that Company is not required to provide requested transmission service.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company, et al.

[Docket Nos. EC95–16–000, ER95–1357–000, and ER95–1358–000]

Take notice that on October 10, 1995, Wisconsin Electric Power Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and Cenergy, Inc. (collectively, the "Applicants") filed a joint answer to various pleadings filed in the above-docketed proceedings. Contained in the joint answer are additional commitments made by the Applicants relating to their request for approval to merge and their proposed transmission tariffs. The Applicants explain that the additional commitments are intended to eliminate any ability or incentive the Applicants' may have to manipulate the transmission system.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Utah Associated Municipal Power Systems v. PacifiCorp

[Docket No. EL96–10–000]

Take notice that on November 2, 1995, Utah Associated Municipal Power Systems tendered for filing a complaint against PacifiCorp to establish a refund effective date in Docket No. ER96–8–000.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Generating Company

[Docket No. ER95–64–002]

Take notice that on October 27, 1995, South Carolina Generating Company tendered for filing its refund report in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER95–457–002]

Take notice that on November 1, 1995, Florida Power Corporation tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Energy Marketing, Inc.

[Docket No. ER95–976–002]

Take notice that on October 30, 1995, Southern Energy Marketing, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER95–1596–000]

Take notice that on November 3, 1995, the American Electric Power Service Corporation (AEPSC), on behalf of the AEP Companies, submitted an Amendment to the Power Sales Tariff (Tariff) previously filed in this Docket, and a Service Agreement under said Tariff.

The Amendment revised the Emission Allowance cost recovery language contained at Page 7 of the Tariff to conform to the policy accepted by the Commission in Docket No. ER95–497–000. Waiver of minimum notice requirements was requested to permit designation of October 1, 1995, or an earlier effective date.

A copy of the filing was served upon parties of record, the eligible entities listed in Appendix II and the affected state regulatory commissions.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas & Electric Company

[Docket No. ER95–1722–000]

Take notice that on November 3, 1995, Southern Indiana Gas & Electric Company (SIGECO) filed a supplement to the interchange agreement with Catex Vitol Electric, L.L.C. previously submitted in this proceeding.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas & Electric Company

[Docket No. ER95–1723–000]

Take notice that on November 3, 1995, Southern Indiana Gas & Electric Company (SIGECO) filed a supplement to the interchange agreement with Electric Clearinghouse, Inc. previously submitted in this proceeding.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Union Electric Company

[Docket No. ER95–1788–000]

Take notice that on October 23, 1995 and October 27, 1995, Union Electric Company (UE) submitted a request to withdraw its filing of delivery point charges and extraordinary maintenance expenses dated September 15, 1995 between Associated Electric Cooperative, Incorporated and UE and terminate this docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Mid-Continent Power Pool

[Docket No. ER95–1849–000]

Take notice that on October 20, 1995, Mid-Continent Power Pool tendered for filing an amendment in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Dayton Power & Light Company

[Docket No. ER95–1856–000]

Take notice that on October 31, 1995, Dayton Power and Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER96–79–000]

Take notice that on November 6, 1995, MidAmerican Energy Company (MidAmerican), tendered for filing a First Amended Notice of Cancellation, effective on June 30, 1995, of Rate Schedule FERC No. 1, as supplemented, which became effective on March 19, 1984 and was filed with the Commission in docket No. ER84–325–000 by ENEREX, a partnership, and its member companies. The filing includes a Certificate of Concurrence of IES Utilities Inc. (IES), the other surviving partner of the ENEREX partnership.

MidAmerican further states that Rate Schedule FERC No. 1 is being cancelled because the ENEREX partners have entered into a Dissolution of ENEREX Partnership Agreement which provides for the dissolution of the partnership effective on June 30, 1995, and pursuant to Section 4.01 of the Interchange Agreement which constitutes Rate Schedule FERC No. 1, the Interchange Agreement shall terminate upon termination of the ENEREX partnership.

MidAmerican requests an effective date of June 30, 1995 for the cancellation of Rate Schedule FERC No. 1, as supplemented, and a waiver of the provisions of Section 35.15 requiring the Notice of Cancellation to be filed at least 60 days prior to such date.

Copies of the filing were served on IES, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER96–121–000]

Take notice that on November 3, 1995, New England Power Company (NEP) filed an amendment to its October 19, 1995, submittal in this docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Great Bay Power Corporation

[Docket No. ER96–192–000

Take notice that on October 30, 1995, Great Bay Power Corporation (Great Bay) tendered for filing a service agreement between Montaup Electric Company (Montaup) and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective November 1, 1995. Great Bay states that it plans to amend the Tariff shortly and agrees to make the service agreement subject to the outcome of the docket in which the Tariff is revised.

Comment date: November 30, 1995, in, accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER96–193–000]

Take notice that on October 30, 1995, New England Power Company (NEP) submitted for filing a service agreement and certificate of concurrence with Boston Edison Company entered into under NEP's FERC Electric Tariff, Original Volume No. 6.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER96–199–000]

Take notice that on October 31, 1995, Public Service Company of New Mexico tendered for filing an amendment to the San Juan Project Operating Agreement with Tucson Electric Power Company.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER96–204–000]

Take notice that on October 31, 1995, Arizona Public Service Company (APS), tendered for filing a revised Exhibit applicable under the Plains Electric Generation and Transmission Cooperative, Inc. Wholesale Power Supply Agreement, APS–FERC Rate Schedule No. 82.

Current rate levels are unaffected, and no other change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on Plains, the Arizona Corporation Commission, and the New Mexico Public Service Commission.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Central Vermont Public Service Corporation

[Docket No. ER96–205–000]

Take notice that on October 31, 1995, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Phibro, Inc. under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on November 1, 1995.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. The Montana Power Company

[Docket No. ER96–206–000]

Take notice that on October 31, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination for Montana Rate Schedule FERC No. 178, a Firm Energy Purchase and Transmission Service Agreement, dated April 10, 1989, between Montana and PacifiCorp.

A copy of the filing was served upon PacifiCorp.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Northeast Utilities Service Company

[Docket No. ER96–207–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Toledo Edison Company (Toledo) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to Toledo.

NUSCO requests that the Service Agreement become effective on November 1, 1995.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER96–208–000]

Take notice that on October 31, 1995 Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Cleveland Electric Illuminating Company (Cleveland) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to Cleveland.

NUSCO requests that the Service Agreement become effective on November 1, 1995.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. The Montana Power Company

[Docket No. ER96–209–000]

Take notice that on October 31, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Firm Transmission Agreement between Montana and Western Area Power Administration (Western).

A copy of the filing was served upon Western.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–211–000]

Take notice that on October 31, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Northeast Utilities Service Company (NUSC), dated October 27, 1995. This Service Agreement specifies that NUSC has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and NUSC to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 27, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. William H. Downey

[Docket No. ID–2922–000]

Take notice that on November 8, 1995, William H. Downey (Applicant) tendered for filing an application under section 305(b) to hold the following positions:

Vice President—Commonwealth Edison Company

Director—Bank One, Rockford, N.A.

Comment date: December 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Citizens Utilities Company

[Docket No. TX96–1–000]

Take notice that on November 8, 1995, Citizens Utilities Company (Citizens) filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Swanton Village, Vermont to provide transmission services to Citizens pursuant to section 211 of the Federal Power Act.

The transmission service sought by Citizens in the Applications is as follows:

- The firm point-to-point transmission service which Swanton formerly provided to Citizens, for a period in excess of fifteen years, immediately prior to December, 1994 to accommodate Citizens' obligation to serve present and future retail loads in the Highgate Springs area;
- From Swanton's interface with the VELCO-Highgate substation (Point of Receipt) to the Highgate Springs substation (Point of Delivery) over

Swanton's "H–12" 48–kV radial transmission line and Swanton's interconnected 12.5 kV line;

• Commencing as soon as possible and continuing as necessary to serve present and future Highgate Springs loads;

• With a curtailment priority equal to that of Swanton's area retail loads;

• At embedded costs rates, based on the existing cost-of-service formula and utilizing the peak responsibility method for cost allocation and billing determinants based on Citizens' contribution to maximum demand, as recalculated based on updated load information and cost data; and

• With Citizens supplying its own losses, as before, from the VELCO-Highgate substation (the Point of Receipt) to the Highgate Springs substation (Citizens' Point of Delivery) at a rate of 3 percent.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28636 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2794–004 Idaho]

Silver King, Ltd.; Notice of Availability of Environmental Assessment

November 16, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a license surrender application for the Warren Hydroelectric Project, No. 2794–004. The Warren Hydroelectric Project is located on Slaughter Creek in Idaho County, Idaho. The licensee is applying for a surrender of the license because the project is no longer economically viable. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street NE., Washington, DC 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. Please affix Project No. 2794–004 to all comments. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219–0038.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28561 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

Union Water Power Co.; Notice of Scoping Meeting Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

[Project No. UL94–1 Maine]

November 17, 1995

Pursuant to the Energy Policy Act of 1992, and as part of the license application, the Union Water Power Company (Union) intends to prepare an Environmental Assessment (EA) to file with the Federal Energy Regulatory Commission for the Upper and Middle Dam Storage Projects. Two public scoping meetings will be held, pursuant to the National Environmental Policy Act of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, Union will summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although Union's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

All interested individuals, organizations, and agencies are invited and encouraged to attend and assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus the discussions, a scoping document was sent out on November 7, 1995, as part of the Initial State Consultation Document (ISCD). Copies of the Scoping Document and ISCD will also be available at the meetings.

Union will conduct a scoping meeting on Wednesday, December 13, 1995, at 6:30 p.m. at the Rangley Inn, Main Street, in Rangley, Maine. A scoping meeting for federal, state and local resource agencies and non-governmental organizations will be held at the Ramada Inn, 490 Pleasant Street, Lewiston, Maine at 9:30 a.m. on Thursday, December 14, 1995. Scoping meetings are open to all interested parties.

Meeting Procedures

The meeting will be conducted according to the procedures used at Commission scoping meetings. The Commission will not conduct another NEPA scoping meeting when the application and EA are filed with the Commission in early 1999. Instead, Commission staff will attend the meeting held on December 13 and 14, 1995.

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings on the Upper and Middle Dam Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be mailed to Union Water Power Company, 150 Main Street, P.O. Box 12215, Lewiston, Maine 04243–1225. All correspondence should clearly show the following caption on the first page: Scoping Comments, Upper and Middle Dam Project. FERC No. UL 94–1, Maine.

For further information, please contact Laurence E. Perkins at (207) 784–4501 (Union Water Power Company) or Mark Pawlowski at (202) 219–2795.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28562 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1528–001, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 13, 1995

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER95–1528–001]

Take notice that on October 23, 1995, Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin tendered for filing its First Revised Sheet No. 122 to its comparable service transmission tariff, FERC Original Volume No. 7, pursuant to the Commission's order issued October 10, 1995 in the captioned proceeding. WPSC states that it has served the filing upon the recipients of the original filing.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power & Light Co., Enron Power Marketing, Inc., Equitable Power Services Co., CNG Power Services Corp., Power Exchange Corp., Tenneco Energy Marketing Co., Hinson Power Co.

[Docket No. ER89–401–024, Docket No. ER94–24–010, Docket No. ER94–1539–007, Docket No. ER94–1554–006, Docket No. ER95–72–003, Docket No. ER95–428–003, Docket No. ER95–1314–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 31, 1995, Citizens Power & Light Company filed certain information as required by the Commission's August 8, 1989 order, in Docket No. ER89–401–000.

On November 1, 1995, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 2, 1993 order, in Docket No. ER94–24–000.

On November 2, 1995, Equitable Power Services Company filed certain information as required by the Commission's September 8, 1994 order, in Docket No. ER94–1539–000.

On October 31, 1995, CNG Power Services Corporation filed certain information as required by the Commission's October 25, 1994, order in Docket No. ER94–1554–000.

On November 2, 1995, Power Exchange Corporation filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER95–72–000.

On October 31, 1995, Tenneco Energy Marketing Company filed certain information as required by the Commission's March 30, 1995, order in Docket No. ER95–428–000.

On November 1, 1995, Hinson Power Company filed certain information as required by the Commission's August 29, 1995, order in Docket No. ER95–1314–000.

3. Illinois Power Co.

[Docket Nos. ER95–764–002 and ER95–1543–002]

Take notice that on October 13, 1995, Illinois Power Company tendered for filing modifications to its proposed Transmission tariffs in the above-referenced dockets.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Texas Utilities Electric Co.

[Docket No. ER95–1725–000]

Take notice that on October 24, 1995, Texas Utilities Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER95–1792–000]

Take notice that on October 19, 1995, PacifiCorp tendered for filing an amendment to its filing in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Co.

[Docket No. ER96–19–000]

Take notice that on October 30, 1995, Wisconsin Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Coral Power, Inc.

[Docket No. ER96–25–000]

Take notice that on October 31, 1995, Coral Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. U.S. Power & Light, Inc.

[Docket No. ER96–105–000]

Take notice that on November 2, 1995, U.S. Power & Light Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Co.

[Docket No. ER96–123–000]

Take notice that on October 19, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Potomac Electric Power Company and Virginia Power, dated September 22, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Appalachian Power Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the District of Columbia Service Commission, the Maryland Public Service Commission, and the North Carolina Utilities Commission.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Co.

[Docket No. ER96–144–000]

Take notice that on October 24, 1995, Boston Edison Company (Edison) filed a standstill agreement between itself and Commonwealth Electric Company (Commonwealth) tolling the one-year claims limitation provision in Commonwealth's Pilgrim power purchase contract with regard to disputes over the 1993 and 1994 bills. The purpose of the standstill agreement is to allow the parties to negotiate a settlement agreement regarding 1993 and 1994 billing disputes. The standstill

agreement makes no other changes to the rates, terms and conditions of the contract between Commonwealth and Edison.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Vermont Electric Transmission Company, Inc.

[Docket No. ER96–184–000]

Take notice that on October 27, 1995, Vermont Electric Transmission Company, Inc. tendered for filing a Petition for Waiver of Section 35.13 of the Commission's filing requirements.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Co.

[Docket No. ER96–186–000]

Take notice that on October 30, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its FERC Rate Schedule No. 58.

Wisconsin Electric requests an effective date of November 1, 1995, in order to implement the Agreement's modifications, which do not result in revenue increases.

Comment date: November 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Co.

[Docket No. ER96–187–000]

Take notice that on October 30, 1995, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 11, 1995, between KCPL and Industrial Energy Applications, Inc. (IEA). KCPL proposes an effective date of October 11, 1995, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and IEA.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–188–000]

Take notice that on October 30, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Phibro, Inc. (Phibro).

Con Edison states that a copy of this filing has been served by mail upon Phibro.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER96–189–000]

Take notice that on October 30, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Atlantic Electric (AE) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to AE.

NUSCO requests that the Service Agreement become effective on December 1, 1995.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER96–190–000]

Take notice that on October 30, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with GPU Service Corporation (GPU) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to GPU.

NUSCO requests that the Service Agreement become effective on December 1, 1995.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER96–191–000]

Take notice that on October 30, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the annual facilities charge calculation under, PacifiCorp Rate Schedule FERC No. 298.

PacifiCorp requests that an effective date of December 31, 1995 be assigned to the annual facilities charge calculation.

Copies of this filing were supplied to Southern California Edison Company, Pacific Gas & Electric Company, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Kamine/Besicorp Syracuse L.P., Kamine/Besicorp Beaver Falls L.P.

[Docket Nos. QF88–269–005 and EL96–4–000, Docket Nos. QF91–172–002 and EL96–5–000 (Not Consolidated)]

Take notice that on October 11, 1995, as completed on November 2, 1995, Kamine/Besicorp Syracuse L.P. and Kamine/Besicorp Beaver Falls L.P. (together Kamine), tendered for filing a request for limited waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Kamine requests the Commission to temporarily waive the operating and efficiency standard for qualifying cogeneration facilities as set forth in Section 292.205 of the Commission's Regulations, implementing Section 201 of PURPA, as amended, 18 CFR 292.205, with respect to its 79.9 MW cogeneration facility located in the Town of Geddes, New York (the Syracuse facility) and with respect to its 79.9 MW cogeneration facility located in the Hamlet of Beaver Falls, County of Lewis, New York (the Beaver Falls facility). Specifically, Kamine requests waiver of the operating and efficiency standard for each calendar year through and including the calendar year ending December 31, 2000, to the extent required by the facilities and Niagara Mohawk Power Corporation to realize the benefits of stand-by operating status pursuant to their power purchase agreements.

Comment date: On or before December 11, 1995.

Standard Paragraph

E. Any person desiring to be heard and granting notices of intervention and unopposed timely filed motions to intervene pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214)) to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28563 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Intent To File Application for New License

November 14, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing*: Notice of Intent to File Application for New License.

b. *Project No.*: 2722.

c. *Date filed*: August 21, 1995.

d. *Submitted by*: PacifiCorp, current licensee.

e. *Name of project*: Hat Creek.

f. *Location*: On the Odgen River, in Weber County, Utah.

g. *Filed pursuant to*: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license*: September 1, 1950.

i. *Expiration date of original license*: August 31, 2000.

j. The project consists of: (1) a flowline; (2) a surge tank; (3) a 6-foot-diameter and 4,000-foot-long riveted steel penstock; (4) a brick powerhouse with two 2,500-kW generating units and step up transformers; and (5) a tailrace canal about 3,000 feet long.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Stanley A. deSousa, Director, Hydro Resources, PacifiCorp, 920 S.W. 6th Avenue, Portland, OR 97204, (503) 464–5343.

l. *FERC contact*: Hector M. Perez, (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28564 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST96–1–000 et al.]

Natural Gas Pipeline Company of America; Notice of Self-Implementing Transactions

November 14, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's Regulations and Section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's Regulations and Section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's Regulations and Section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's Regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local/distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's Regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's Regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–1	Natural Gas P/L Co. of America.	National Gas & Electric L.P.	10–02–95	G–S	1,000	N	F	09–01–95	09–30–95
ST96–2	Natural Gas P/L Co. of America.	Perry Gas Companies, Inc.	10–02–95	G–S	2,000	N	I	09–02–95	Indef.
ST96–3	Natural Gas P/L Co. of America.	Interenergy Gas Services Corp.	10–2–95	G–S	50,000	N	I	09–01–95	Indef.
ST96–4	Pacific Gas Transmission Co.	Jonan Gas Marketing.	10–02–95	G–S	45,000	N	I	07–17–95	Indef.
ST96–5	Pacific Gas Transmission Co.	Inland Pacific Energy Services Corp.	10–02–95	G–S	100,000	N	I	08–01–95	Indef.
ST96–6	Pacific Gas Transmission Co.	Coastal Gas Marketing Co.	10–02–95	G–S	20,000	N	F	09–01–95	Indef.
ST96–7	Pacific Gas Transmission Co.	Petro-Canada Hydrocarbons, Inc.	10–02–95	G–S	30,000	N	I	09–13–95	Indef.
ST96–8	Pacific Gas Transmission Co.	Sacramento Municipal Utility Dist.	10–02–95	G–S	100,000	N	I	07–23–95	Indef.
ST96–9	Pacific Gas Transmission Co.	Paramount Resources U.S. Inc.	10–02–95	G–S	20,000	N	I	07–31–95	Indef.
ST96–10	Transcontinental Gas P/L Corp.	Columbia Energy Services Corp.	10–02–95	G–S	500,000	N	I	09–01–95	Indef.
ST96–11	Transcontinental Gas P/L Corp.	Cenergy, Inc	10–02–95	G–S	100,000	N	I	09–01–95	Indef.
ST96–12	Transcontinental Gas P/L Corp.	Eagle Natural Gas Co.	10–02–95	G–S	40,000	N	I	09–01–95	Indef.
ST96–13	El Paso Natural Gas Co.	Chevron U.S.A. Inc.	10–02–95	G–S	7,724	N	F	09–01–95	10–01–95
ST96–14	El Paso Natural Gas Co.	Nevada Power Co.	10–02–95	G–S	13,450	N	F	09–01–95	10–01–95
ST96–15	El Paso Natural Gas Co.	Nevada Power Co.	10–02–95	G–S	7,726	N	F	09–01–95	10–01–95
ST96–16	Florida Gas Transmission Co.	Coronet Industries, Inc.	10–03–95	G–S	1,000	N	F	09–01–95	Indef.
ST96–17	Florida Gas Transmission Co.	Midcon Gas Services Corp.	10–03–95	G–S	100,000	N	I	09–01–95	Indef.
ST96–18	Egan Hub Partners, L.P.	Tennessee Gas Pipeline Co.	10–04–95	C	25,000	N	F	09–01–95	05–01–96
ST96–19	Egan Hub Partners, L.P.	East Ohio Gas Co.	10–04–95	C	60,000	N	F	09–01–95	04–01–08
ST96–20	Eagan Hub Partners, L.P.	Texas Gas Transmission Corp.	10–04–95	C	80,000	N	F	09–01–95	04–01–06
ST96–21	Egan Hub Partners, L.P.	Northern Indiana Public Service Co.	10–04–95	C	50,000	N	F	09–01–95	04–01–16
ST96–22	Egan Hub Partners, L.P.	Texas Gas Transmission Corp.	10–04–95	C	10,000	N	F	09–01–95	03–01–99
ST96–23	Egan Hub Partners, L.P.	Texas Gas Transmission Corp.	10–04–95	C	N/A	N	I	09–01–95	02–01–96
ST96–24	El Paso Natural Gas Co.	Nevada Power Co.	10–04–95	G–S	16,480	N	F	08–01–95	09–01–95
ST96–25	El Paso Natural Gas Co.	Nevada Power Co.	10–04–95	G–S	14,420	N	F	08–01–95	09–01–95
ST96–26	El Paso Natural Gas Co.	GPM Gas Corp	10–04–95	G–S	48,925	N	I	09–15–95	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–27	Public Service Co. of New Mexico.	Transwestern Natural Gas Co., et al.	10–05–95	G–HT	100,000	N	I	09–24–95	Indef.
ST96–28	K N Interstate Gas Trans. Co.	Northwestern Public Service Co.	10–05–95	G–S	25,500	N	I	07–01–95	06–30–10
ST96–29	El Paso Natural Gas Co.	Catex Vitol Gas, Inc.	10–05–95	G–S	30,000	N	F	03–01–95	03–03–95
ST96–30	El Paso Natural Gas Co.	Cenergy, Inc	10–05–95	G–S	10,000	N	F	04–01–95	05–01–95
ST96–31	El Paso Natural Gas Co.	Fina Natural Gas Co.	10–05–95	G–S	10,000	N	F	04–01–95	Indef.
ST96–32	El Paso Natural Gas Co.	Cenergy, Inc	10–05–95	G–S	10,000	N	F	05–01–95	04–01–96
ST96–33	El Paso Natural Gas Co.	Norman Energy Services, Inc.	10–05–95	G–S	10,000	N	F	04–01–95	04–01–96
ST96–34	El Paso Natural Gas Co.	Catex Vitol Gas, Inc.	10–05–95	G–S	30,000	N	F	03–03–95	03–01–96
ST96–35	El Paso Natural Gas Co.	Noram Energy Services, Inc.	10–05–95	G–S	10,000	N	F	04–01–95	04–01–96
ST96–36	Noram Gas Transmission Co.	Seagull Marketing Services, Inc.	10–05–95	G–S	6,650	N	F	10–01–95	10–31–95
ST96–37	Noram Gas Transmission Co.	Hadson Gas Systems, Inc.	10–05–95	G–S	5,005	N	F	10–01–95	10–31–95
ST96–38	Noram Gas Transmission Co.	Boyd Rosene and Associates, Inc.	10–05–95	G–S	2,083	N	F	10–01–95	10–31–95
ST96–39	Noram Gas Transmission Co.	Amoco Energy Trading Corp.	10–05–95	G–S	30,300	N	F	10–03–95	10–31–95
ST96–40	Noram Gas Transmission Co.	Tetco Gas Marketing Co.	10–05–95	G–S	5,740	N	F	10–01–95	10–31–95
ST96–41	Noram Gas Transmission Co.	Noram Energy Services, Inc.	10–05–95	G–S	60,000	Y	F	10–01–95	10–31–95
ST96–42	Noram Gas Transmission Co.	Amoco Energy Trading Corp.	10–05–95	G–S	9,000	N	F	10–03–95	10–31–95
ST96–43	Noram Gas Transmission Co.	Noram Field Services Corp.	10–05–95	G–S	55,000	N	Y	10–01–95	12–31–95
ST96–44	Noram Gas Transmission Co.	Energy Source, Inc.	10–05–95	G–S	5,438	N	F	10–01–95	10–31–95
ST96–45	Noram Gas Transmission Co.	Tidewest Trading & Transport Co.	10–05–95	G–S	23,500	N	F	10–01–95	10–31–95
ST96–46	Noram Gas Transmission Co.	NGC Transportation, Inc.	10–05–95	G–S	50,000	N	F	10–01–95	09–30–96
ST96–47	Noram Gas Transmission Co.	Pennunion Energy Services, L.L.C.	10–05–95	G–S	5,000	N	F	10–01–95	10–31–95
ST96–48	Noram Gas Transmission Co.	Noram Energy Services, Inc.	10–05–95	G–S	8,309	Y	F	10–01–95	10–31–95
ST96–49	Noram Gas Transmission Co.	Associated Gas Services, Inc.	10–05–95	G–S	10,000	N	F	10–01–95	09–30–96
ST96–50	Williams Natural Gas Co.	Western Resources, Inc.	10–05–95	G–S	198	N	F	10–01–95	Indef.
ST96–51	Midwestern Gas Transmission Co.	Southern Indiana Gas & Electric Co.	10–06–95	G–S	14,566	N	F	10–01–95	Indef.
ST96–52	Williston Basin Inter. P/L Co.	Hadson Gas Systems, Inc.	10–06–95	G–S	75,000	A	I	09–08–95	07–31–97
ST96–53	Washington Gas Light Co.	Eastern Group	10–06–95	C	26,953	N	I	09–06–95	09–06–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–54	Transcontinental Gas P/L Corp.	Pinnacle Energy Co.	10–06–95	G–S	40,000	N	I	09–07–95	Indef.
ST96–55	Algonquin Gas Transmission Co.	Boston Edison Co.	10–10–95	B	100	N	F	10–01–95	Indef.
ST96–56	Tennessee Gas Pipeline Co.	Valero Gas Marketing Co.	10–10–95	G–S	8,333	N	F	10–01–95	Indef.
ST96–57	Tennessee Gas Pipeline Co.	Cranberry Pipeline Corp.	10–10–95	G–S	10,000	N	F	10–01–95	Indef.
ST96–58	Tennessee Gas Pipeline Co.	American Energy Management, Inc.	10–10–95	G–S	5	N	F	10–01–95	Indef.
ST96–59	Colorado Interstate Gas Co.	Wyoming Gas Co.	10–10–95	G–S	366	N	I	10–01–95	Indef.
ST96–60	Mojave Pipeline Co.	Eastex Energy Co.	10–10–95	G–S	3,000	N	I	10–01–95	07–18–96
ST96–61	Texas Gas Transmission Corp.	Louisiana Land and Exploration Co.	10–10–95	G–S	150,000	N	I	09–29–95	Indef.
ST96–62	Transtexas Gas Corp.	Florida Gas Trans. Corp., et al.	10–11–95	C	20,000	N	I	08–16–95	Indef.
ST96–63	Transcontinental Gas P/L Corp.	Apache Corp	10–11–95	G–S	13,000	N	I	09–01–95	Indef.
ST96–64	El Paso Natural Gas Co.	Westar Transmission Co.	10–11–95	B	1,545	N	I	09–27–95	Indef.
ST96–65	K N Interstate Gas Trans. Co.	Amgas Corp	10–11–95	G–S	6,000	N	F	06–01–95	09–30–05
ST96–67	Tennessee Gas Pipeline Co.	Anadarko Trading Co.	10–11–95	G–S	4	N	F	10–01–95	Indef.
ST96–68	Tennessee Gas Pipeline Co.	Midcon Gas Services Corp.	10–11–95	G–S	4	N	F	09–16–95	Indef.
ST96–69	Tennessee Gas Pipeline Co.	CNG Energy Services Corp.	10–11–95	G–S	10,000	N	F	10–01–95	Indef.
ST96–70	Tennessee Gas Pipeline Co.	Southern Indiana Gas & Electric Co.	10–11–95	G–S	5	N	F	10–01–95	Indef.
ST96–71	Tennessee Gas Pipeline Co.	Latrobe Steel Co.	10–11–95	G–S	2,040	N	F	10–01–95	Indef.
ST96–72	Trunkline Gas Co.	Conoco, Inc	10–12–95	G–S	51,750	N	I	10–01–95	Indef.
ST96–73	Trunkline Gas Co.	KNG Energy, Inc.	10–12–95	G–S	10,000	N	I	10–01–95	Indef.
ST96–74	Trailblazer Pipeline Co.	Williams Gas Marketing Co.	10–13–95	G–S	2,830	N	F	09–01–95	09–30–95
ST96–75	Questar Pipeline Co.	Barrett Resources Corp.	10–13–95	G–S	10,000	N	F	10–03–95	Indef.
ST96–76	Questar Pipeline Co.	Vesgas Co	10–13–95	G–S	10,000	N	F	10–02–95	Indef.
ST96–77	Oasis Pipe Line Co.	El Paso Natural Gas Co., et al.	10–13–95	C	50,000	N	I	08–23–95	Indef.
ST96–78	Oasis Pipe Line Co.	El Paso Natural Gas Co., et al.	10–13–95	C	50,000	N	I	08–01–95	Indef.
ST96–79	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	10–16–95	G–HT	10,000	N	I	10–01–95	11–30–95
ST96–80	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	10–16–95	G–HT	5,000	N	I	10–01–95	12–31–95
ST96–81	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	10–16–95	G–HT	2,000	N	I	10–01–95	10–10–95
ST96–82	Panhandle Eastern Pipe Line Co.	Vesta Energy Co.	10–18–95	G–S	10,000	N	F	10–01–95	10–31–96
ST96–83	Panhandle Eastern Pipe Line Co.	American Cyanamid Co.	10–18–95	G–S	3,500	N	F	10–01–95	04–30–97
ST96–84	Panhandle Eastern Pipe Line Co.	Anadarko Petroleum Corp.	10–18–95	G–S	25,000	N	F	10–01–95	10–31–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–85	Panhandle Eastern Pipe Line Co.	Natural Gas Clearinghouse.	10–18–95	G–S	25,738	N	F	10–01–95	10–31–95
ST96–86	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	10–18–95	G–S	70,000	N	F	10–01–95	10–31–95
ST96–87	Panhandle Eastern Pipe Line Co.	Boyd Rosene and Associates, Inc.	10–18–95	G–S	75,000	N	I	10–01–95	04–30–98
ST96–88	Panhandle Eastern Pipe Line Co.	Teco Gas Marketing Co.	10–18–95	G–S	25,000	N	I	10–01–95	09–30–97
ST96–89	Panhandle Eastern Pipe Line Co.	Vesta Energy Co.	10–18–95	G–S	9,000	N	F	10–01–95	10–31–95
ST96–90	Texas Eastern Transmission Corp.	Enron Field Services Co.	10–19–95	G–S	40,000	N	I	9–19–95	Indef.
ST96–91	Trunkline Gas Co.	Tejas Power Corp.	10–19–95	G–S	51,750	N	I	10–07–95	Indef.
ST96–92	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	10–19–95	G–S	60,000	N	I	10–01–95	09–25–97
ST96–93	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	10–19–95	G–S	5,670	N	F	10–01–95	10–31–95
ST96–94	Panhandle Eastern Pipe Line Co.	AIG Trading Corp.	10–19–95	G–S	15,000	N	F	10–01–95	10–31–95
ST96–95	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	10–19–95	G–S	13,818	N	F	10–01–95	10–31–95
ST96–96	Panhandle Eastern Pipe Line Co.	Transcanada Gas Services Inc.	10–19–95	G–S	30,000	N	I	10–01–95	09–30–97
ST96–97	Noram Gas Transmission Co.	Tenneco Gas Marketing Co.	10–19–95	G–S	2,500	N	F	10–10–95	10–31–95
ST96–98	Noram Gas Transmission Co.	Williams Energy Services Co.	10–19–95	G–S	17,000	N	F	10–08–95	10–31–95
ST96–99	Noram Gas Transmission Co.	Williams Energy Services Co.	10–19–95	G–S	20,000	N	F	10–05–95	10–31–95
ST96–100	Noram Gas Transmission Co.	Vastar Gas Marketing, Inc.	10–19–95	G–S	40,000	N	F	10–04–95	10–06–95
ST96–101	Panhandle Eastern Pipe Line Co.	Associated Gas Services, Inc.	10–19–95	G–S	280	Y	F	10–01–95	10–31–95
ST96–102	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	10–18–95	C	750	N	I	07–01–95	07–31–96
ST96–103	Arkansas Western Pipeline Co.	Associated Natural Gas Co.	10–18–95	B	750	Y	I	07–01–95	07–31–96
ST96–104	Public Service Co. of Colorado.	Northwest Pipeline Corp., et al.	10–20–95	G–LT	3,000	N	I	09–27–95	Indef.
ST96–105	Transcontinental Gas P/L Corp.	Transport Gas Corp.	10–20–95	G–S	20,000	N	I	09–20–95	Indef.
ST96–106	Sea Robin Pipeline Co.	Mobil Natural Gas Corp.	10–20–95	G–S	16,000	Y	F	10–01–95	09–20–00
ST96–107	Sea Robin Pipeline Co.	Enserch Exploration, Inc.	10–20–95	G–S	40,000	Y	F	09–20–95	09–20–00
ST96–108	Southern Natural Gas Co.	City of Cochran	10–20–95	G–S	59	N	F	09–21–95	10–31–95
ST96–109	Southern Natural Gas Co.	NGC Transportation Inc.	10–20–95	G–S	60,000	N	I	10–01–95	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–110	Columbia Gulf Transmission Co.	Seagull Marketing Services, Inc.	10–20–95	G–S	5,000	N	F	10–01–95	10–31–95
ST96–111	Columbia Gulf Transmission Co.	H&N Gas, Ltd ..	10–20–95	G–S	5,000	N	F	10–01–95	10–31–95
ST96–112	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	10–20–95	G–S	6,000	N	F	10–01–95	02–28–97
ST96–113	Panhandle Eastern Pipe Line Co.	Cerro Copper Casting Co.	10–20–95	G–S	100	N	F	10–09–95	01–31–96
ST96–114	Delhi Gas Pipeline Corp.	Koch Gateway Pipe Line Co. et al.	10–23–95	C	75,000	N	I	10–01–95	Indef.
ST96–115	Sabine Pipe Line Co.	Energy Source Inc.	10–23–95	G–S	20,000	N	I	10–04–95	Indef.
ST96–116	Kern River Gas Transmission Co.	Amoco Energy Trading Corp.	10–23–95	G–S	25,000	N	F	09–26–95	10–31–95
ST96–117	Mojave Pipeline Co.	Tehachapi-Cummings Co. Water Dist.	10–23–95	G–S	3,000	N	I	10–01–95	01–25–96
ST96–118	CNG Transmission Corp.	Willamette Industries, Inc.	10–23–95	G–S	6,600	N	F	10–01–95	10–31–95
ST96–119	Delhi Gas Pipeline Corp.	El Paso Natural Cas Co., et al.	10–23–95	C	800	N	I	10–01–95	Indef.
ST96–120	Public Service Co. of Colorado.	Northwest Pipeline Corp., et al.	10–20–95	G–LT	5,000	N	I	05–14–92	Indef.
ST96–121	El Paso Natural Gas Co.	Noram Energy Services, Inc.	10–24–95	G–S	103,000	N	I	10–01–95	Indef.
ST96–122	El Paso Natural Gas Co.	Lone Star Gas Co.	10–24–95	B	1,545	N	I	10–01–95	Indef.
ST96–123	El Paso Natural Gas Co.	Lone Star Gas Co.	10–24–95	B	40,000	N	I	10–03–95	Indef.
ST96–124	Transwestern Pipeline Co.	San Diego Gas and Electric Co.	10–24–95	G–S	5,400	N	F	09–01–95	09–30–95
ST96–125	Transwestern Pipeline Co.	Williams Gas Marketing Co.	10–24–95	G–S	20,000	N	F	09–01–95	09–30–95
ST96–126	Transwestern Pipeline Co.	Mobil Natural Gas Inc.	10–24–95	G–S	4,000	N	F	09–01–95	09–30–95
ST96–127	Transwestern Pipeline Co.	Amoco Energy Trading Corp.	10–24–95	G–S	12,141	N	F	09–01–95	09–30–95
ST96–128	Transwestern Pipeline Co.	Chevron USA Production Co.	10–24–95	G–S	26,095	N	F	09–01–95	09–30–95
ST96–129	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	10–24–95	G–S	20,266	N	F	09–01–95	09–30–95
ST96–130	Transwestern Pipeline Co.	Enron Capital and Trade Resources.	10–24–95	G–S	40,000	Y	F	09–01–95	09–30–95
ST96–131	Transwestern Pipeline Co.	NGC Transportation, Inc.	10–24–95	G–S	6,000	N	F	09–01–95	09–30–95
ST96–132	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	10–24–95	G–S	24,000	N	F	09–01–95	09–30–95
ST96–133	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	10–24–95	G–S	20,000	N	F	09–01–95	09–30–95
ST96–134	Transwestern Pipeline Co.	Enron Capital and Trade Resources.	10–24–95	G–S	20,000	Y	F	09–01–95	09–05–95
ST96–135	Transwestern Pipeline Co.	Delhi Gas Pipeline Corp.	10–24–95	B	15,000	N	F	09–01–95	09–30–95
ST96–136	Florida Gas Transmission Co.	City of Live Oak	10–25–95	G–S	1,768	N	F	10–01–95	Indef.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–137	Florida Gas Transmission Co.	Palatka Gas Authority.	10–25–95	G–S	5,543	N	F	10–01–95	Indef.
ST96–138	Florida Gas Transmission Co.	City of Defuniak Springs.	10–25–95	G–S	1,500	N	F	10–01–95	Indef.
ST96–139	Florida Gas Transmission Co.	City of Perry	10–25–95	G–S	3,000	N	F	10–01–95	Indef.
ST96–140	Florida Gas Transmission Co.	City of Sunrise .	10–25–95	G–S	6,000	N	F	10–01–95	Indef.
ST96–141	Florida Gas Transmission Co.	Noram Energy Services, Inc.	10–25–95	G–S	100,000	N	I	09–29–95	Indef.
ST96–142	El Paso Natural Gas Co.	Williams Gas Marketing Co.	10–26–95	G–S	30,900	N	I	08–16–95	Indef.
ST96–143	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	10–26–95	C	5,000	N	I	10–06–95	Indef.
ST96–144	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	10–26–95	G–S	234,000	N	F	10–01–95	11–30–95
ST96–145	Panhandle Eastern Pipe Line Co.	BP Oil Co	10–26–95	G–S	20,000	N	F	10–01–95	03–31–96
ST96–146	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	10–27–95	C	5,000	N	I	10–01–95	Indef.
ST96–147	Mississippi River Trans. Corp.	Tenneco Gas Marketing Co.	10–27–95	G–S	150,000	A	F	09–29–95	Indef.
ST96–148	Tennessee Gas Pipeline Co.	Seitel Gas & Energy Corp.	10–30–95	G–S	5,000	N	I	10–01–95	Indef.
ST96–149	Tennessee Gas Pipeline Co.	Hadson Gas Systems Inc.	10–30–95	G–S	4,000	N	F	10–01–95	Indef.
ST96–150	Tennessee Gas Pipeline Co.	Stand Energy Corp.	10–30–95	G–S	831	N	F	10–01–95	Indef.
ST96–151	Tennessee Gas Pipeline Co.	Tenneco Gas Marketing Co.	10–30–95	G–S	351	A	I	10–01–95	Indef.
ST96–152	Midwestern Gas Transmission Co.	American Energy Management Inc.	10–30–95	G–S	8,016	N	F	10–01–95	Indef.
ST96–153	Great Lakes Gas Trasmission L.P.	UMC Petroleum Corp.	10–30–95	G–S	35,000	N	F	10–01–95	10–31–02
ST96–154	Northern Natural Gas Co.	Chevron USA Inc.	10–30–95	G–S	10,000	N	F	10–06–95	10–31–95
ST96–155	Northern Natural Gas Co.	Tristar Gas Marketing Co.	10–30–95	G–S	20,000	N	F	10–01–95	10–31–95
ST96–156	Northern Natural Gas Co.	Noram Energy Services, Inc.	10–30–95	G–S	10,000	N	F	10–01–95	10–31–95
ST96–157	Northern Natural Gas Co.	NGC Transportation, Inc.	10–30–95	G–S	11,824	N	F	10–01–95	10–31–95
ST96–158	Northern Natural Gas Co.	Koch Gas Services.	10–30–95	G–S	5,200	N	F	10–01–95	10–31–95
ST96–159	Northern Natural Gas Co.	Hugoton Capital Limited Partnership.	10–30–95	G–S	10,000	N	F	10–01–95	10–31–95
ST96–160	Northern Natural Gas Co.	Koch Gas Services.	10–30–95	G–S	5,200	N	F	10–01–95	10–31–95
ST96–161	Northern Natural Gas Co.	Tartan Energy Resources, L.C.	10–30–95	G–S	25,000	N	I	10–07–95	Indef.
ST96–162	Northern Natural Gas Co.	Watertown Municipal Utilities Dept.	10–30–95	B/G–S	2,000	N	F	10–01–95	10–31–95
ST96–163	Iroquois Gas Trans. System, L.P.	Renaissance Energy (U.S.) Inc.	10–30–95	G–S	10,000	N	F	10–01–95	10–01–96

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–164	Natural Gas P/L Co. of America.	Feagan Gathering Co.	10–31–95	B	1,500	N	F	10–01–95	09–30–96
ST96–165	Florida Gas Transmission.	Cenergy, Inc	10–31–95	G–S	4,000	N	I	10–01–95	Indef.
ST96–166	Florida Gas Transmission.	Geneva County Gas District.	10–31–95	G–S	3,527	N	F	10–01–95	Indef.
ST96–167	Florida Gas Transmission.	Utilities Board of Florala.	10–31–95	G–S	500	N	F	10–01–95	Indef.
ST96–168	Florida Gas Transmission.	CNB Olympic Gas Services.	10–31–95	G–S	1,000	N	F	10–01–95	12–31–98
ST96–169	Florida Gas Transmission.	Torch Gas, LC	10–31–95	G–S	25,000	N	I	10–01–95	Indef.
ST96–170	Florida Gas Transmission.	Crescent City Natural Gas.	10–31–95	G–S	1,170	N	F	10–01–95	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

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[Docket No. CP94–751–004, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

November 16, 1995.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP94–751–004]

Take notice that on October 13, 1995, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251–1188 filed an amendment (Amendment) to its original application in Docket No. CP94–751–000, as amended, which was filed pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain facilities. Transwestern states that the Amendment requests that the Commission modify the abandonment authorization granted for certain of the facilities in Docket No. CP94–751–000 by the Commission's July 27, 1995, Order Approving Contested Settlement, 72 FERC ¶ 61,085, to allow such facilities to be transferred to non-jurisdictional third parties, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transwestern states that its original application in Docket No. CP94–751–000, requested authorization to abandon certain compressors, treater plants, meters, dehydration units and associated facilities. According to Transwestern, it amended its application to set forth certain corrections and to reflect the sale to third parties of certain of the facilities, the determination that certain of the facilities already had been abandoned, and the determination that gas was flowing through certain wellhead facilities.

Transwestern proposed to abandon the facilities in the original application through removal or abandonment in place because such facilities were no longer used or useful in its operations, or were uneconomical or otherwise unnecessary for continued operation of its pipeline. It is stated that the order authorized abandonment of such facilities subject to Transwestern's compliance with certain environmental conditions set forth in Appendix D to the order.

Transwestern states that, currently, certain non-jurisdictional third parties seek to acquire some of those facilities for their operations. Accordingly, Transwestern requests that the Commission modify its order to provide that such facilities for which abandonment was granted may be transferred to third parties, and, in such case, Transwestern is not required to comply with the environmental conditions of Appendix D, which would apply if Transwestern abandoned in place or removed such facilities. Transwestern contends that such third parties are the same entities identified in the order as acquiring related facilities for which abandonment authorization was granted in Docket No. CP95–70–000: Mobil Producing Texas and New Mexico, Inc., Agave Energy Company, Highlands Gathering and Processing Company and Enron Oil & Gas Company.

According to Transwestern, it would be economically wasteful for Transwestern to undertake the burden and expense of disposing of such facilities only to have third parties undertake the burden and expense of replacing them. Transwestern contends that the purpose of Appendix D is to protect the environment. However, in the case of the facilities the third parties wish to acquire, Transwestern argues that it would be much more disruptive to the environment to comply with Appendix D and remove such facilities, only to have the third parties reinstall them, than to simply convey the facilities to the third parties in the first place.

Given that abandonment already has been authorized for such facilities, Transwestern states that no other change to the order is required or proposed, in order to allow the transfer of such facilities rather than removal or abandonment in place under Appendix D. Transwestern states that it would receive no additional payment as the result of its transfer of such facilities and proposes that there would be no additional change in the accounting treatment for such facilities approved in the July 27, order.[1] Further, it is stated that such facilities would be subject to the default gathering contract applicable to the other related facilities transferred to third parties for which abandonment

[1] Transwestern states that, inasmuch as the accounting treatment for the abandoned assets is an integral part of the Settlement rates and revenues as approved in Docket No. RP95–271–000 and to the exten deemed necessary by the Commission, Transwestern requests waiver of the Commission's regulations in order to obtain the authorization requested herein with no change in the accounting treatment approved in the order.

was authorized in Docket No. CP95–70–000.

Comment date: December 7, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP96–44–000]

Take notice that on November 2, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–44–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Pecos County, Texas, which will permit it to transport and deliver gas to Transok Inc., (Transok) on an interruptible basis for West Texas Utilities Company (WTU) for delivery to the WTU Rio Pecos Power Plant, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

By a letter agreement dated June 2 1995, Transok, acting as WTU's agent and El Paso agreed that El Paso would install a new delivery point on El Paso's Puckett Line. Transok would construct the pipeline connecting El Paso's proposed delivery point to WTU's Rio Pecos Power Plant. El Paso states that WTU intends to use the gas to fuel its Rio Pecos Power Plant. On August 30, 1995, El Paso and WTU entered into a Transportation Service Agreement which provided for interruptible transportation service from any receipt point on El Paso's system to the proposed delivery point. Accordingly, El Paso is seeking authorization to construct and operate the proposed delivery point which is to be known as the Rio Pecos Power Plant Meter Station.

El Paso proposes to construct one 8" O.D. tap and valve assembly, one 8" O.D. senior orifice meter run, EFM, telecommunications equipment, and almost 80 feet of 8" O.D. pipe, all with appurtenances, at approximately milepost 29.8 on its 20" O.D. Puckett Line in Section 87, Block 11, H&GN RR Co. Survey, Pecos County, Texas. The total estimated cost of the proposed facilities, including respective overhead and contingency fees, is $119,700. Transok, pursuant to the June 26, 1995 letter agreement, will reimburse El Paso for the costs related to the Rio Pecos Power Plant Meter Station construction.

The natural gas volumes transported to the Rio Pecos Power Plant Meter Station is estimated to be 10,950,000 Mcf annually, or an average of 30,000 Mcf per day, during the third calendar year of operation. The maximum peak day requirement during the third calendar year of service is estimated to be 35,000 Mcf.

El Paso states that the establishment of the Rio Pecos Power Plant Meter Station is not prohibited by its existing tariff and that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. NE Hub Partners, L.P.

[Docket No. CP96–53–000]

Take notice that on November 7, 1995, NE Hub Partners, L.P. ("NE Hub") located at Two Riverbend at Lansdowne, 44084 Riverside Parkway, Suite 340, Leesburg, Virginia 22075, tendered for filing an application pursuant to Section 7(c) of the Natural Gas Act and Parts 157 and 284 of the Commission's regulations requesting that the Commission (1) issue NE Hub a certificate of public convenience and necessity pursuant to Subpart A of Part 157 to permit NE Hub to construct and operate natural gas facilities necessary to provide storage and transportation services at market-based rates; (2) issue NE Hub a blanket transportation certificate pursuant to Subpart G of Part 284 to permit NE Hub to provide storage and transportation services on behalf of others; (3) issue NE Hub a blanket construction certificate pursuant to Subpart F of Part 157 to permit NE Hub to construct, acquire, and operate additional facilities following initial construction of the facilities for which authorization under Subpart A of Part 157 is being sought in the application; and (4) issue NE Hub a blanket sales certificate pursuant to Subpart J of Part 284 to provide unbundled sales service for the limited purpose of disposing of gas in storage that shippers may fail to remove.

NE Hub further requests approval of its pro forma FERC Gas Tariff included at Exhibit P to the application. NE Hub also requests that if its request for approval of market-based rates is granted, the Commission (1) waive the requirements of section 284.8(d) of its regulations, which require that rates be designed using a straight fixed-variable rate design methodology; (2) waive the requirements of section 157.14 of its regulations to permit NE Hub to omit Exhibits K, N, and O to the application; and (3) waive the accounting and reporting requirements under Part 201 and section 260.2 of the Commission's regulations.

Further, NE Hub requests that the Commission grant confidential treatment to the cultural resources report that accompanies the application.

The storage and transportation facilities which NE Hub seeks to construct and operate will be located in Tioga County, Pennsylvania. The storage facilities will consist of underground storage caverns that will be developed from a salt bed formation located underneath an existing gas storage field that is owned and operated by CNG Transmission Corporation (CNG) and North Penn Gas Company (North Penn). Each cavern to be developed by NE Hub will have approximately 2.5 to 3.0 Bcf of working gas capacity. NE Hub requests that the Commission authorize NE Hub to leach up to ten salt caverns, construct appurtenant facilities to be used to store natural gas, and construct pipeline facilities to interconnect the storage caverns with third-party pipelines (CNG, Tennessee Gas Pipeline Company and possibly North Penn) that currently provide service in interstate commerce.

While NE Hub is requesting authorization to construct all ten caverns in this proceeding, it is requesting that the Commission only approve the first two caverns for natural gas storage service at this time and that the remaining caverns only be authorized for natural gas storage service after NE Hub makes certain filings in the future showing, among other things, evidence of market demand for additional natural gas storage serine. NE Hub states that the first cavern will be available for service for the 1997–98 winter heating season and a second cavern will be available for the 1999–2000 winter heating season.

The storage and transportation services to be offered by NE Hub will be available on a firm and interruptible basis, based upon terms and conditions that are consistent with the requirements of Order No. 636. The proposed terms and conditions, as well as rate schedules on which services will be offered, are included in the pro forma tariff attached to the application. NE Hub requests that it be permitted to charge and collect market-based rates for these storage and transportation services.

Comment date: December 7, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP96–68–000]

Take notice that on November 14, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–68–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate facilities under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to operate an existing delivery tap for deliveries to ARKLA, a distribution division of NorAm Energy Corporation (ARKLA), for ARKLA's service to a customer other than the right-of-way grantor for whom the tap was originally installed.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28638 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP94–96–013 and RP94–213–010]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1995.

Take notice that on November 14, 1995, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1995:

Seventh Revised Sheet No. 31
Thirteenth Revised Sheet No. 32
Thirteenth Revised Sheet No. 33
Sixth Revised Sheet No. 34
Eighth Revised Sheet No. 35
Eighth Revised Sheet No. 36
Second Revised Sheet No. 37

CNG states that the purpose of its filing is to implement a voluntary rate reduction, effective November 1, 1995, to reflect the Appendix A rates set forth in the June 28, 1995 Stipulation and Agreement filed in the captioned proceedings. CNG seeks to avoid unnecessarily collecting amounts in rates that will be refunded upon approval of the Stipulation, which has been certified to the Commission and is pending approval as an uncontested settlement. CNG states that the documentation and workpapers in support of the proposed rate reduction have been provided to the Commission, at Appendix A of the June 28 Stipulation.

CNG states that copies of this letter of transmittal and enclosures are being mailed to parties to the captioned proceeding and to CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the approrpriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28565 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MB95–7–001]

Cove Point LNG Limited Partnership; Notice of Filing

November 14, 1995.

Take notice that on November 6, 1995, Cove Point LNG Limited Partnership (Cove Point) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] Cove Point states that it is revising its standards to incorporate the changes required by the Commission's October 6, 1995, Order on Standards of Conduct.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28566 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–39–000]

Cove Point LNG Limited Partnership; Petition for Waiver of Tariff Provision

November 14, 1995.

Take notice that on November 7, 1995, Cove Point LNG Limited Partnership (Cove Point) filed pursuant to Section 209 of the Commission's Rules of Practice and Procedure, 18 CFR 385.209, a petition for waiver of the timing provisions of Section 4(a) of Cove Point's General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Cove Point states that the waiver of the 30-day posting requirement for notice of available capacity is necessary in order to make excess peaking capacity available for the 1995–96 winter Withdrawal Season. Cove Point states it has additional peaking capacity available for this winter, but that if it posted the capacity for the 30 days provided under its tariff, it would not be able to liquefy the gas prior to the commencement of the Withdrawal Season (December 15, 1995).

Finally, Cove Point states that it has provided notice of the available capacity to its customers and has posted the notice on its electronic bulletin board. The notice provides that the capacity is available for five days (commencing November 6, 1995), and that the awarding of the capacity thereunder is subject to any necessary Commission waivers

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28567 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–325–001]

El Paso Natural Gas Company; Notice of Compliance Filing

November 16, 1995.

Take notice that on November 13, 1995, El Paso Natural Gas Company (El Paso), submitted for filing schedules detailing the flow-through of GRI over-collections for the period January 1, 1994 through June 30, 1995.

El Paso states that the purpose of this filing is to comply with the Commission's October 31, 1995, order at Docket No. RP95–325–000 which conditionally accepted El Paso's May 31, 1995, filing and required El Paso to file revised schedules within fifteen days of the order that allocated the GRI over-collections solely to Releasing Shippers.

El Paso states that on November 7, 1995, El Paso distributed to the affected Releasing Shippers over-collections received from GRI totalling $2,667,623.41, consisting of $1,848,012.51 attributable to GRI over-collections for the calendar year 1994 and $819,610.90 attributable to GRI over-collections for the period January 1, 1995 through June 30, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28568 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–66–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

November 17, 1995.

Take notice that on November 14, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–66–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade the existing Martin North Meter Station in Martin County, Florida under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that the proposed construction was requested to give Florida Power and Light Company (FPL) more deliverability options at the Martin North Meter Station. The proposed upgrade will not increase the certificated level of service or contractual gas quantities which FGT is currently providing FPL. FGT's peak day and annual deliveries would not be impacted, there is sufficient capacity to accommodate service without detriment or disadvantage to FGT's existing customers and FGT's existing tariff does not prohibit the proposed upgrading.

FGT proposes to install an additional 12-inch meter tube and appurtenant facilities to accommodate a total gas measurement of up to 8,500 Mcf per hour at 250 psig. The estimated cost is

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remond ond extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 14, 1994).

[3] 73 FERC ¶ 61,045 (1995).

$75,000, inclusive of tax gross-up, and FPL will reimbruse FGT for all direct and indirect costs. The location of the proposed upgrade is Section 14, Township 38 South, Range 40 East, Martin County, Florida.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28569 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–4–000]

Granite State Gas Transmission, Inc., Proposed Changes in FERC Gas Tariff

November 14, 1995.

Take notice that on November 7, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, containing changes in rates to take effect on January 1, 1996:

Sixth Revised Sheet No. 21
Seventh Revised Sheet No. 22
Sixth Revised Sheet No. 23

According to Granite State, the above revised tariff sheets reflect the Gas Research Institute surcharges approved by the Commission in Opinion No. 402, effective January 1, 1996, as applied to Granite State's rate schedules for firm and interruptible transportation services.

Granite State further states that copies of its filing have been served on its firm and interruptible transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28570 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

Kentucky West Virginia Gas Company; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. TM96–2–46–000]

November 15, 1995.

Take notice that on November 9, 1995 Kentucky West Virginia Gas Company (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective January 1, 1996:

Second Revised Sheet No. 162

Kentucky West states the revised tariff sheet amends its Gas Research Institute (GRI) funding change to place in effect on January 1, 1996, the new Gas Research Institute funding unit of $0.0088 per Dth on all applicable nondiscounted commodity units and nondiscounted one-part rates for transportation service. Additionally, there will be a $0.26 per Dth per month demand or reservation surcharge on all firm transportation entitlements for customers with load factors exceeding 50% and $0.16 per Dth per month for Customers with load factors of 50% or less. A surcharge of $0.02 per Dth will be assessed to all VTS Customers. This funding unit was approved by the FERC in Opinion No. 402, issued on October 13, 1995, under Docket No. RP95–374–000.

Kentucky West states that a copy of its filing has been served upon each of its jurisdiction customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28571 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–14–000]

Mid-Georgia Cogen, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

November 17, 1995.

On November 9, 1995, Mid-Georgia Cogen L.P. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365.

Applicant is a Delaware limited partnership formed to develop, own and operate a nominal 280 MW natural gas-fired cogeneration facility to be located in Kathleen, Georgia.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before November 24, 1995 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28572 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–004]

MIGC, Inc; Notice of Report of Refund

November 16, 1995.

Take notice that on October 27, 1995, MIGC, Inc. tendered for filing a refund report. The report documents the refund of amounts pertaining to FTS–1 and ITS–1 service due customers under MIGC's settlement in Docket No. RP93–89.

MIGC, Inc. states that it is filing the refund report pursuant to Article IV of the Settlement filed on May 17, 1995, in the above referenced docket. Additionally, in accordance with section 154.67(c)(2)(iii) of the Commission's Regulations, MIGC, Inc. states that interest is included on the refund amount.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28573 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–456–001]

Mississippi River Transmission Corporation; Notice of Compliance Filing

November 17, 1995.

Take notice that on November 13, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing to become part its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, with a proposed effective date of October 1, 1995:

Substitute Fourteenth Revised Sheet No. 5
Substitute Fourteenth Revised Sheet No. 6

MRT states that the tariff sheets reflected above are being filed in compliance with the Commission's October 25, 1995 Order in the above referenced proceeding. MRT also states that the filing reflects a recalculation of the interest on Pricing Differentials and includes explanations and justification for the prior period adjustments reflected in the September 29, 1995 filing.

MRT states that a copy of the filing excluding the voluminous documentation for the prior period adjustments has been mailed to each of its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28574 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–42–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1995.

Take notice that on November 15, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1996:

Fifth Revised Sheet Number 156
Sixth Revised Sheet Number 157
First Revised Sheet Number 162
Fifth Revised Sheet Number 500
Eighth Revised Sheet Number 501

Northern Border states that the purpose of this filing is to (i) Revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1; (ii) provide flexibility concerning use of financial statements for IT–1 Shipper credit support; and (iii) reflect housekeeping changes.

Northern Border states that the herein proposed changes do not result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border proposes to increase the Maximum Rate from 4.074 cents per 100 Dekatherm-Miles to 4.213 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 2.335 cents per 100 Dekatherm-Miles to 2.091 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1. Northern Border also will provide flexibility in accepting IT–1 Shipper's unaudited financial statements in conjunction with audit based statements.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to the proceeding, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28575 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–57–000]

Northern Natural Gas Company; Notice of Application

November 17, 1995.

Take notice that on November 9, 1995, Northern Natural Gas Company (Northern), 1111 South 103d Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–57–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act requesting permission and approval to abandon compressor station facilities and authorization to construct and operate compression, pipeline and measuring station facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern proposes to increase the capacity of its mainline system by approximately 46,400 Mcf per day by extending its 30-inch "C-line" loop by approximately 2.24 miles and replacing the 10,600 horsepower at its Owatonna compressor with similarly rated horsepower approximately 22 miles downstream at a new station near Faribault, Minnesota. Northern proposes to abandon the units at the Owatonna compressor station in-place. In addition, Northern proposes to increase the capacity of its Elk River system by extending the existing 20-inch Elk River branchline loop approximately 3.30 miles in Anoka County, Minnesota.

Northern also proposes to increase the capacity of its St. Cloud system by installing the following branchline loops: (a) approximately 3.07 miles of 4-inch St. Michael branchline loop in Wright County, Minnesota; b) approximately 5.01 miles of 8-inch Princeton branchline loop in Mille Lacs and Sherburne Counties, Minnesota; c) approximately 1.96 miles of 4-inch Monticello branchline loop in Wright County, Minnesota; and d) approximately 14.52 miles of 6-inch Paynesville to Watkins tie-over connecting the Paynesville branchline and the Watkins branchlines. Additonally, Northern proposes to upgrade the metering instruments at the following TBSs: New Richmond, Mondovi, Coon Rapids #1B, Lexington #1, Lexington #1A, Annandale #1 and Maple Lake #1.

Northern estimates the cost of the proposed facilities to be $18.5 million, which Northern states will be financed with internally generated funds. Northern states these facilities will allow Northern to provide incremental firm transportation service to LSP-Cottage Grove, L.P., Northern States Power-Minnesota, Minnegasco, a Division of NorAm Energy Corp., Great Plains Natural Gas Company, Midwest Natural Gas Company, and Natural Gas Inc. Northern requests a determination that rolled-in rate treatment is appropriated for these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 8, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28576 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–20–000 (CP92–184–013)]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1995.

Take notice that on October 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective November 1, 1995:

Ninth Revised Sheet No. 34A

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's orders issued March 17, 1995 and June 6, 1995 in Docket No. CP92–184, *et al.*

Texas Eastern states that on August 29, 1994 in Docket No. CP92–184–009, Texas Eastern filed an application pursuant to Section 7(c) of the NGA to amend its July 1993 ITP certificate to, *inter alia*, modify the facility configuration for changing customer requirements and to revise the initial rates authorized for its 1995 and 1996 ITP service. In the March 17, 1995 order, the Commission approved Texas Eastern's application and amended Texas Eastern's ITP certificate as requested.

Texas Eastern states that it is filing Ninth Revised Sheet No. 34A to implement 1995 ITP service.

Texas Eastern states that copies of the filing were served upon the firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protested said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426 in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28577 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–21–000 (CP94–654–003)]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1995.

Take notice that on October 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective November 1, 1995:

Original Sheet No. 34C
Fifth Revised Sheet No. 211
Third Revised Sheet No. 212
Third Revised Sheet No. 431
Fifth Revised Sheet No. 463
Sixth Revised Sheet No. 631
Sixth Revised Sheet No. 633

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued July 31, 1995 in Docket Nos. CP94–654–000 and CP94–654–001.

Texas Eastern states that the tariff sheets listed above are filed in compliance with the Commission's July 31, 1995 "Order Issuing Certificate" in Docket Nos. CP94–654–000 and –001 (July 31 Order) to implement as of November 1, 1995 the approved incremental rates for new firm transportation service to UGI Utilities, Inc. (UGI) and PECO Energy Company (PECO). Service for UGI is scheduled to commence on November 1, 1995, and service for PECO is scheduled to commence on November 17, 1995.

Texas Eastern states that in compliance with the July 31 Order, Texas Eastern in filing initial rates pursuant to its Part 284 blanket transportation certificate for service associated with the incremental facilities as authorized in the July 31 Order. The initial rates shall consist of a Reservation Charge of $11.1390/dth and a Usage-2 Charge of $0.3662/dth as set forth on Original Sheet No. 34C. Pursuant to Ordering Paragraph (C) of the July 31 Order, the Reservation Charge rate components are: (1) Transmission of $10.896; and (2) Non-Spot Fuel charge of $0.243. Under Texas Eastern's PCB Settlement which was approved on March 18, 1992, PCB costs are only allocated to firm services which exist as of December 1 of each year. Thus the new service contemplated here will be rendered without a PCB component for approximately two weeks.

Texas Eastern is also proposing other limited revisions to its FERC Gas Tariff, Sixth Revised Volume No. 1. Fifth Revised Sheet No. 211 and Third Revised Sheet No. 212 incorporate appropriate modifications to reflect inclusion of Sheet No. 34C. Third Revised Sheet No. 431, Fifth Revised Sheet No. 463, Sixth Revised Sheet No. 631 and Sixth Revised Sheet No. 633 revised Sections 1, 3.14, 15.4 and 15.5 of the General Terms and Conditions, respectively also to reflect inclusion of Original Sheet No. 34C.

Texas Eastern states that copies of the filing were served upon the firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426 in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28578 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–4–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 16, 1995.

Take notice that on November 13, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A to the filing. Such tariff sheets are proposed to be effective December 13, 1995.

Transco states that the instant filing is being made in compliance with the Commission's letter order issued on October 26, 1995 in Docket No. RP96–4–000 (October 26 Order). The October 26 Order directed Transco to file, within 15 days of such order, additional information and, if necessary, revised tariff sheets responding to the concerns of certain parties raised in their comments and protests to Transco's October 2, 1995 filing in RP96–4–000. Transco states that the instant filing provides additional information and explanations, including revised tariff sheets, in compliance with the Commission's directive.

Transco states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28579 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1995.

Take notice that on November 13, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate or fuel changes attributable to (1) storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (2) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and (3) storage service purchased from CNG under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule GSS. This tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS, Section 4 of Transco's Rate Schedule FT–NT, and Section 3 of Transco's Rate Schedule GSS.

Transco states that Appendices B through D attached to the filing contain explanations of the rate or fuel changes and details regarding the computation of the revised LSS, FT–NT, and GSS rates, respectively.

Transco states that copies of the filing are being mailed to each of its LSS, FT–NT, and GSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28580 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–2–000]

Transok, Inc.; Notice of Petition for Rate Approval

November 16, 1995.

Take notice that on November 1, 1995, Transok, Inc. (Transok), filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable rates for firm and interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) on Transok's Traditional System.

Transok proposes a two-part maximum firm rate, consisting of a reservation charge of $2.736 per MMBtu and a commodity charge of $0.1751 per MMBtu delivered. The proposed maximum rate for interruptible service is $0.2650 per MMBtu delivered. Transok also proposes to charge each shipper its pro rata share of compressor fuel consumed and 0.5% per volumes delivered for system losses.

Transok states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Oklahoma. Transok proposes an effective date of November 1, 1995.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 1, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28581 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–437–002]

WestGas InterState, Inc.; Notice of Compliance Filing

November 16, 1995.

Take notice that on November 13, 1995, WestGas InterState, Inc. (WGI) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective November 1, 1995:

2 Sub Second Revised Sheet No. 5

WGI asserts that the purpose of this filing is to comply with the Commission's order issued October 27, 1995, in Docket Nos. RP95–437–000 and RP95–437–001.

WGI states that the Commission in its October 27, 1995 Letter Order directed WGI to file revised firm transportation rates based on the certificated level of service of 13,300 Dth/d. The above tariff sheet reflects a revised maximum reservation charge of $1.1272 per Dth for firm transportation service under Rate Schedule FT and a revised maximum commodity charge of $0.371 per Dth for interruptible transportation service under Rate Schedule IT. WGI states that the revised FT rate reflects the originally-certificated system design capacity of 13,300 Dth/d and the revised IT rate reflects the 100-percent load factor derivative FT rate.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28582 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–5230–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed November 13, 1995 Through November 17, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950536, Final EIS, AFS, ID, Idaho Panhandle National Forests Noxious Weed Management Projects, Implementation, Bonners Ferry Ranger District, Boundary County, ID, Due: December 26, 1995, Contact: Bob Klarich (208) 267–5561.

EIS No. 950537, Draft EIS, FHW, TN, TN 840 North from I–40 East near Lebanon in Wilson County to I–40 West in Dickson County, Construction, COE Section 404 and CGD Permits, Wilson, Dickson, Sumner, Robertson, Montgomery and Cheatham Counties, TN, Due: January 08, 1996, Contact: Dennis C. Cook (615) 736–5394.

EIS No. 950538, Draft EIS, SFW, WA, Plum Creek Timber Sale, Issuance of a Permit to Allow Incidental Take and Habitat Conservation Plan (HCP) for Threatened and Endangered Species, Implementation, Eastern and Western Cascade Provinces in the Cascade Mountains, King and Kittitas Counties, WA, Due: January 08, 1996, Contact: William O. Vogel (360) 534–9330.

EIS No. 950539, Draft EIS, FRC, Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Service by Public Utilities (RM95–8–000) and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities (Docket No. RM–94–7–001, Proposed Rulemaking, Due: January 08, 1996, Contact: William Meroney (202) 208–1371.

EIS No. 950540, Final EIS, FHW, AK, Whittier Access Project, Construction between Port of Whittier and Seward Highway, Funding, Right-of-Way Agreement and COE Section 10 and 404 Permits, Chugach National Forest, Municipality of Anchorage, City of Whittier, AK, Due: December 26, 1995, Contact: Phillip Smith (907) 586–7428.

EIS No. 950541, Final Supplement, COE, TX, Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Additional Information, Funding and Implementation, Galveston and Harris Counties, TX, Due: December 26, 1995, Contact: Robert Bass (409) 766–3037.

EIS No. 950542, Final EIS, FHW, OR, Port of the Dalles (Chenoweth) Columbia River Highway, Construction of New Interchange North of Hostetler Street near Second and Division Streets, Funding and COE Section 404 Permit, Wasco County, OR, Due: December 26, 1995, Contact: John H. Gernhauser (503) 399–5749.

EIS No. 950543, Draft Supplement EIS, FTA, NJ, Hudson River Waterfront Transportation Corridor Improvements, (officially now referred to as Hudson-Bergen Light Rail Transit System), Funding, Jersey City, Hudson and Bergen Counties, NJ, Due: January 08, 1996, Contact: Anthony Carr (212) 264–8973.

EIS No. 950544, Draft Supplement EIS, FTA, NJ, Hudson-Bergen Light Rail Transit System, Bayonne Extension, Improvements, Funding, Hudson and Bergen Counties, NJ, Due: January 08, 1996, Contact: Anthony Carr (212) 264–8973.

EIS No. 950545, Final EIS, AFS, OR, Sandy River Delta Plan, Implementation, Special Management Area (SMA), Columbia River Gorge National Scenic Area (NSA), Several Permits for Approval, US Coast Guard Bridge Permit and COE Section 404 Permit, Multnomah County, OR, Due: January 08, 1996, Contact: Virginia Kelly (503) 366–2333.

Dated: November 21, 1995

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–28856 Filed 11–22–95; 8:45 am]

BILLING CODE 6560–50–U

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, December 7, 1995, at 9:30 a.m. to 12 noon. The meeting will be held at EX–IM Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Lundine/Key Linkages Report; Roundtable Discussion on "Final Small Business Plan: Marketplace Feedback"; and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Cheryl Conlin, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3955, not later than December 6, 1995. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 30, 1995, Cheryl Conlin, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3955 or TDD: (202) 565–3377.

FURTHER INFORMATION: For further information, contact Cheryl Conlin, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3955.

Stephen G. Glazer,

Acting General Counsel.

[FR Doc. 95–28827 Filed 11–22–95; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2113]

Petition for Reconsideration of Actions in Rulemaking Proceedings

November 14, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed December 11, 1995. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Pike Road and Ramer, AL) (MM Docket No. 93–244, RM–8315, RM–8401)

Number of Petition Filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Cadiz and Oak Grove, KY) (MM Docket No. 93–314, RM–8396)

Number of Petition Filed: 1

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation. (MM Docket No. 92–266)

Number of Petitions Filed: 2

Subject: Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation. (CC Docket No. 94–1)

Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28727 Filed 11–22–95; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Public Scoping

SUMMARY: The U.S. General Services Administration (GSA), Rocky Mountain Region, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential effects of implementing the Master Site Plan of the Denver Federal Center (DFC) in Lakewood, Colorado. The purpose of the Master Site Plan of the DFC is to adequately plan for the efficient use and potential future development of the DFC. To ensure that all significant issues related to the proposed action are identified, the GSA will conduct a public scoping meeting.

ADDRESSES: Comments may be mailed or delivered to GSA at the following address: U.S. General Services Administration, Ms. Lisa Morpurgo, Asset Manager, Portfolio Management, P.O. Box 25546, Building 41, Denver Federal Center, Denver, Colorado, 80225–0546.

FOR FURTHER INFORMATION CONTACT: U.S. General Services Administration: Ms. Lisa Morpurgo, (303) 236–7131 ext. 250, or Mr. Lyle Marsh, (303) 236–7131 ext. 246.

SUPPLEMENTARY INFORMATION: GSA will prepare an EIS on implementing a Master Site Plan of the DFC in Lakewood, Colorado. Several development alternatives proposed in the Master Site Plan will be evaluated in the EIS, including the No Action Alternative (continuation of current development objectives and policies). The environmental review of the Master Site Plan will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, et seq.), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), U.S. General Services Administration regulations (PBS P 1095.4 B), and all applicable Federal, state and local government laws, regulations and policies.

Public Scoping Meeting

GSA solicits public comments for consideration in the Draft EIS through a public scoping meeting on the proposed action. To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified early in the process, comments and suggestions are invited from all interested and/or potentially

affected parties. These individuals or groups are invited to attend a public scoping meeting that will be conducted at 7 p.m. on Thursday, December 7, 1995, at the City of Lakewood City Council Chambers, 445 South Allison Parkway, Lakewood, Colorado. Written comments will be accepted for 30 days thereafter until January 8, 1995.

Dated: November 2, 1995.

Polly Baca,

Regional Administrator, General Services Administration, Rocky Mountain Region.

[FR Doc. 95–28664 Filed 11–22–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0366]

Cord Blood Stem Cells: Discussion of Procedures for Preparation and Storage; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss procedures for preparation and storage of cord blood stem cells. The purpose of this scientific workshop, sponsored by FDA and the National Heart, Lung, and Blood Institute, National Institutes of Health, is to identify and discuss the steps for the collection, processing, and storage of cord blood for transplantation and to identify areas in need of further research. The scientific information presented at this workshop will aid FDA in regulating cord blood stem cells and identifying product standards.

DATES: The public workshop will be held on December 13, 1995, from 8 a.m. to 4:30 p.m. Preregistration is recommended because seating is limited. Registration is requested by December 7, 1995.

ADDRESSES: The public workshop will be held at the National Institutes of Health, Natcher Conference Center, 9000 Rockville Pike, Bldg. 45, conference room E, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT:

Regarding information on registration: Wanda Keyes, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, MD 20852, 301–468–6555, or FAX 301–770–5164.

Regarding information on this document: Liana Harvath, Center for Biologics Evaluation and Research (HFM–335), Food and Drug Administration, 8800 Rockville Pike, Bldg. 29, rm. 321, Bethesda, MD 20892, 301–496–2577.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to identify and discuss, insofar as present technology permits, steps for collection, processing, and storage of cord blood stem cells for transplantation and to identify what additional scientific data is needed in this area.

Topics to be discussed include the following: informed consent, medical history, screening of the donor's mother and cord blood stem cells for infectious agents, collection location, collection containers, anticoagulants, red blood cell depletion methods, short-term and long-term storage conditions, freezing methods, histocompatibility testing, development of cord blood product standards, and a quality assurance program.

FDA intends to make available at this workshop a draft document discussing the regulatory approach FDA believes is appropriate for placental umbilical cord blood stem cell products for transplantation and, shortly thereafter, will publish in the **Federal Register** a notice of availability for the draft document. FDA will solicit written comments on its draft document. Written comments received will be reviewed and considered in determining whether amendments to, or revisions of, the approach are warranted.

Dated: November 20, 1995.

William K. Hubbard,

Associate Commissioner for Policy.

[FR Doc. 95–28838 Filed 11–21–95; 11:32 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) and Skilled Nursing Facility Health Care Complex Cost Report; Form No.: HCFA–2540; Use: The Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report is the cost report is to be used by freestanding SNFs to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. Frequency: Annually; Affected Public: Business or other for profit, not for profit institutions, and State, local, or tribal government; Number of Respondents: 7,000; Total Annual Responses: 7,000; Total Annual Hours Requested: 1,372,000.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 6, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 95–28669 Filed 11–22–95; 8:45 am]

BILLING CODE 4120–03–P

Public Information Collection Requirements Submitted for Public Comment and Recommendations

Agency: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; Title of Information Collection: Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and the Clinical Laboratory Improvement Act (CLIA) Exemption Under State Laboratory Programs; *Form No.:* HCFA R–185; *Use:* The information required is necessary to determine whether a private accreditation organization/State licensure program standards and accreditation/licensure process is equal to or more stringent than those of CLIA; *Frequency:* Other (initial application/as needed); Affected Public: Not-for-profit institutions, State, local, or tribal government; *Number of Respondents:* 22; *Total Annual Hours:* 2,112.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 8, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–28671 Filed 11–22–95; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Health Resources and Services Administration (HRSA) publishes a list of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of these documents, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

1. Health Professions Student Loan Program and Nursing Student Loan Program Debt Management Report—Extension and Revision—The Debt Management Report is used by three programs (Health Professions Student Loan (HPSL) Program, Nursing Student Loan (NSL) Program, and Loans for Disadvantaged Students (LDS) Program) to monitor the fiscal activities of participating schools. Data are requested on collection activities, investment income, return of excess cash, compliance with performance standards, and the return of the Federal share of monies collected. The report is submitted electronically once a year. No substantive changes in the data elements are proposed; reporting frequency has been reduced by the elimination of the 3-month report previously required of closing schools. Burden estimates are as follows:

Type of form	Number of respondents	Responses per respondent	Average burden per response
Debt Management Report	1,503	1	1

Estimated Total Annual Burden: 1,503 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 13, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 95–28611 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Cooperative Geologic Mapping Program Advisory Committee; Notice of Reestablishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), 5 U.S.C. App. (1988). Pursuant to Public Law 102–285, the Geologic Mapping Act of 1992, the United States Geologic Survey (USGS) gives notice of the reestablishment of the Advisory Committee for the National Cooperative Geologic Mapping Program.

The Committee is established to (a) review and critique the draft implementation plan prepared by the Director; (b) review the scientific progress of the geologic mapping program; and (c) submit an annual report to the Secretary that evaluates the progress of the Federal and State mapping activities and evaluates the progress made toward fulfilling the purposes of the Geologic Mapping Act of 1992. The panel will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act at least 15 days from the date of publication of this notice.

Further information regarding the Advisory Committee may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the Advisory Committee for the National Cooperative Geologic Mapping Program is necessary and in the public interest in connection with performance of duties imposed on the Department of the Interior by 43 U.S.C. 31 and Sec. 4 of P.L. 102–285 (the National Geologic Mapping Act of 1992).

Dated: November 3, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–28687 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Notice of Availability of a Final Environmental Impact Statement for the Yellowstone Pipeline Easement Renewal Across Trust and Allotted Lands on the Flathead Indian Reservation, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Final Environmental Impact Statement (FEIS) for the proposed easement renewal on tribal and allotted lands on the Flathead Indian Reservation, Montana, for an existing petroleum products pipeline from Billings, Montana, to Spokane and Moses Lake, Washington, is now available for public review. This notice is furnished in accordance with Council on Environmental Quality Regulations, 40 CFR 1503 and 1506.9.

DATES: The public comment period closes on December 24, 1995.

ADDRESSES: Comments may be addressed to: Mr. Ernest Moran, Superintendent, Flathead Agency, Box A, Pablo, MT 59855. Copies of the FEIS are also available at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Moran at the above address, by telephone at (406) 675–7200 ext. 260, or toll-free at (800) 695–9305.

SUPPLEMENTARY INFORMATION: The Yellowstone Pipe Line Company (YPL) had a lease agreement with the Confederated Salish and Kootenai Tribes of the Flathead Nation (CSKT) for an easement from April 21, 1975, to April 21, 1995, across trust lands. The Bureau of Indian Affairs (BIA), which acts as the federal trustee for the lands, approved the lease. The YPL wishes to renew the lease in order to continue using the pipeline through the year 2016. The FEIS describes the proposed action, alternatives and affected environment, and evaluates potential impacts.

The Proposed Action, is the renewal of YPL's existing easement across trust lands, with added pipeline safety improvements. The action would allow the YPL to continue serving the needs of military and civilian consumers in the greater Spokane area for petroleum products. The 10-inch pipeline currently supplies approximately 34 percent of all consumer gasoline and diesel fuel to the Spokane market, 100 percent of the military jet fuel to the Fairchild Air Force Base, and 100 percent of the commercial jet fuel to the Grant County Airport, which supports the Boeing Aircraft and the Japan Air Lines pilot test programs.

The FEIS includes two alternatives, No Action and a Modified Existing Route Alternative. The No Action alternative would not renew the easement. Petroleum products would thus have to be transported to the Spokane markets by means which cost more and pose more risk to the environment than would the upgrading and use of the existing pipeline.

The Modified Existing Route Alternative has safety improvements similar to those for the Proposed Action, but re-routes the pipeline around areas where it may be unusually vulnerable to rupture from natural hazards, and where the concentration of people and resources that a pipeline rupture would adversely affect is unusually high. The BIA has designated this as the Preferred Alternative.

The BIA has afforded the public the opportunity to participate in the preparation of this FEIS. The Notice of Intent to prepare an EIS was published in the **Federal Register** on September 15, 1994. Seven scoping meetings followed between September 29, 1994, and November 21, 1994, in Pablo, Arlee, Frenchtown, St. Ignacious, Missoula and Hot Springs, Montana, and Spokane, Washington.

While the Draft EIS was being prepared, four open houses and four workshops were held during the week of February 20, 1995. These focused on the alternative-route-screening analysis and the work plans for the EIS studies. Information on these topics was also mailed to interested individuals via newsletter, and distributed to information centers in the vicinity of the study area. In addition, the EIS study team made presentations to both the CSKT Tribal Council and Cultural Committees.

The Notice of Availability for the Draft EIS was published in the **Federal Register** on April 26, 1995, with a 60 day public comment period ending on June 24, 1995. During this period, five open house meetings were held to inform the public about the Draft EIS alternatives, study methods and results and to provide additional opportunity for public comment.

Dated: November 7, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–28612 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CO–050–1220–00]

Emergency Closure of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure order.

SUMMARY: Notice is hereby given that effective November 20, 1995 certain public lands along Fremont County Road 3 (Temple Canyon Road), Fremont County, Colorado, are closed to all vehicle access and travel. Authority for this action is found in 43 CFR 8341.2 and 43 CFR 8364.1 and the Federal Land Policy and Management Act of 1976. This closure affects about 15 acres of public land located 3 miles southwest of Canon City, Colorado. The closure is in response to concerns of public health and safety on public land and adjacent private land, illegal dumping, and resource degradation.

DATES: This closure is effective November 20, 1995 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Details of the closure and a map of the affected area can be obtained from the Area Manager, Royal Gorge Resource Area, 3170 East Main Street, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT:

Area Manager at the above address, or call (719) 275–0631.

SUPPLEMENTARY INFORMATION: The public lands affected by this closure are located at:

6th Principal Meridian

T. 19 S., R. 70 W., Section 7: SW¼SW¼, that portion lying west of Fremont County Road 3 (Temple Canyon Road).

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. A copy of this **Federal Register** notice and a map showing the closed area is posted in the Canon City District Office. Violation of this order is punishable by fine and/or imprisonment as defined in 18 USC 3571.

Donnie R. Sparks,

District Manager.

[FR Doc. 95–28668 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–JB–M

[CA–020–5101–10–B039; CACA–31406, NVN–57250]

Notice of Availability of a Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior, Susanville District Office, California.

SUMMARY: The Bureau of Land Management (BLM) and the California Public Utilities Commission (CPUC) have prepared a final Environmental Impact Report/Statement (EIR/S) for the Alturas 345 kilovolt (KV) transmission line project proposed by Sierra Pacific Power Company (SPPCo) in BLM application number CACA–31406. The final EIR/S has been prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

The BLM and CPUC believe that approval of the proposed project, with appropriate mitigation measures, has the potential to significantly impact the environment. The final EIR/S includes an evaluation of the proposed project. The final EIR/S assesses the environmental impacts of the approval, construction, operation and maintenance of a 345KV overhead electric power transmission line approximately 165 miles long, from the vicinity of Alturas, California through Modoc, Lassen, and Sierra Counties, California, through Washoe County, Nevada to the vicinity of Reno, Nevada. The proposed project would affect Federal, State and private lands. The proposed project also includes the construction of two new electrical substations, one northwest of Alturas and one in Sierra County, California, just west of Border Town, Nevada, and the expansion of SPPCo's existing North Valley Roa Substation.

The fina R/S responds to public and agency comments received on the draft EIR/S. The final EIR/S has been placed in the public files of the CPUC and the BLM, and is available for public inspection at:

California Public Utilities Commission, Central Files, 505 Van Ness Avenue, San Francisco, CA 94102, (415) 703–2045

Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, CA 96130, (916) 257–5381

Copies of the final EIR/S are also available for inspection at BLM offices in Alturas and Susanville, California, in Carson City, Nevada, and Washington, D.C.; at the Modoc National Forest in Alturas and the Toiyabe National Forest in Sparks, NV; at public libraries in Alturas, Susanville and Reno, and at the City Hall in Loyalton. Copies have also been sent to interested Federal, State and local agencies, as well as interested groups and individuals. An Executive Summary of the key issues and impacts addressed in the EIR/S will be available upon request.

DATES AND ADDRESSES: Request for the Executive Summary should be addressed to: Peter Humm, Project Manager; Bureau of Land Management; 705 Hall Street, Susanville, California 96130.

FOR FURTHER INFORMATION CONTACT: This Federal Notice of Availability of a Final EIR/S is issued by the Eagle Lake Area Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. For further information write to the Area Manager or call Peter Humm, BLM Project Manager, at (916) 257–0456.

Dated: November 13, 1995.

Linda D. Hansen,

Area Manager.

[FR Doc. 95–28676 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–40–M

[(WY–060–1320–01), WYW127221]

Notice of Intent to Prepare an Environmental Impact Statement on the North Rochelle Tract coal lease application (originally named the North Roundup Tract) in the decertified Powder River Federal Coal Production Region, Wyoming

SUMMARY: SMC Mining Company has applied for a coal lease for approximately 1,439 acres (approximately 140 million tons of coal) in an area adjacent to the North Rochelle Mine in Campbell County, Wyoming. The Bureau of Land Management (BLM) has recommended that approximately 81 additional acres containing approximately 9 million tons of coal be included in the tract to avoid a potential bypass situation in the future. The BLM has determined that an Environmental Impact Statement (EIS) must be prepared to evaluate the environmental impacts of coal mining which would result from issuance of this lease. The application will be processed according to the coal lease by application (LBA) regulations at 43 CFR 3425.

DATES: As part of this process a public scoping meeting has been scheduled on Tuesday, December 5, 1995, at 7 PM at the Tower West Lodge, 109 North U.S. Highway 14–16, in Gillette, Wyoming. In order to insure that comments will be considered in the draft EIS they should be received by the BLM at the address below by December 31, 1995.

ADDRESSES: Questions, comments or concerns should be addressed to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs, phone: 307–261–7600 or at the above address.

SUPPLEMENTARY INFORMATION: SMC Mining Company filed a coal lease application on July 22, 1992, with the BLM pursuant to the provisions of 43 CFR 3425.1 as a maintenance tract LBA for the following lands, which contain an estimated 140 million tons of coal:

T. 42 N., R. 70 W., 6th P.M., Wyoming

Sec. 4: Lots 5–16, 19, and 20;
Sec. 5: Lots 5–16;
Sec. 9: Lot 1;

T. 43 N., R. 70 W., 6th P.M., Wyoming

Sec. 32: Lots 9–11, 14–16;
Sec. 33: Lots 11–14.
Containing 1439.92 acres, more or less.

The BLM has recommended that the following additional lands containing an additional estimated 9 million tons of coal reserves be included in the application:

T. 43 N., R. 70 W., 6th P.M., Wyoming

Sec. 32: Lots 12 and 13.
Containing 81.16 acres, more or less.

The tract as amended by the BLM contains a total of 1521.08 acres and approximately 149 million tons of coal. The lease application area is west of and contiguous with SMC Mining Company's existing North Rochelle Mine and Thunder Basin Coal Company's Black Thunder Mine. The North Rochelle Mine began producing coal in 1990. There are currently no mine facilities or rail facilities at the North Rochelle Mine. Coal is produced by truck and shovel and the produced coal is hauled by truck from the mine site to a contracted buyer. The company has applied to lease the proposed North Rochelle Tract (initially called the North Roundup Tract) as a maintenance tract for the North Rochelle Mine.

The North Rochelle Mine has an approved mining and reclamation plan and an air quality permit allowing it to mine up to 8 million tons of coal per year. The potential impacts of the North Rochelle Mine, including construction of mine facilities and a rail loop, were previously analyzed in an EIS completed in 1983 by the Office of Surface Mining (OSM). The EIS to be prepared to evaluate the impacts of the maintenance lease application will include an evaluation of the impacts of starting up a full-scale mining operation at this time.

The U.S. Forest Service (USFS) will be a cooperating agency in the preparation of the EIS because the surface of some of the lands included in the tract is owned by the Federal government and administered by the USFS as part of the Thunder Basin National Grasslands. The OSM will also be a cooperating agency in the preparation of the EIS, because it is the Federal agency that administers surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977.

The major issues, identified to date, revolve around air quality, hydrology, reclamation, and socio-economics as they relate to facilities and rail construction, and the start-up of a full-scale mining operation. If other issues or concerns are known, please address them in writing to the above individuals, or verbally at the public scoping meeting scheduled on December 5 in Gillette, Wyoming. Written comments will be accepted by the BLM at the address shown above from the date of publication of this Notice in the **Federal Register**, through December 31, 1995.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 95–28654 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–22–P

[D–930–1020–01]

Notice of Intent To Simultaneously Modify all Idaho Management Framework Plans (MFPs) and Resource Management Plans (RMPs) and To Prepare an Environmental Impact Statement (EIS) To Adopt Standards for Rangeland Health and Guidelines for Grazing Management in Idaho and To Include Ecosystem-Based Management Strategies From the Upper Columbia River Basin (UCRB) EIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to modify land use plans and to prepare an Environmental Impact Statement (EIS) to adopt standards for rangeland health and guidelines for grazing management in Idaho and to adopt ecosystem-based management strategies from the Upper Columbia River Basin (UCRB) EIS.

The Challis proposed RMP/Draft EIS currently in progress will be published in the winter of 1995 and the Bennett Hills, and Owyhee Proposed RMPs currently in progress are scheduled for draft EIS publication in the spring of 1996. Notice is given that Standards for Rangeland Health and Guidelines for Grazing Management will be included in these respective plans.

SUMMARY: The Bureau of Land Management (BLM) in Idaho intends to modify all existing MFPs and RMPs in the State and to prepare an Environmental Impact Statement (EIS) for adoption of Standards Rangeland Health (terrestrial and riparian) and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100). In addition, all Land Use Plans would be amended to include ecosystem-based management strategy from the Upper Columbia River Basin (UCRB) EIS and the Interior Columbia Basin Ecosystem Assessment. This strategy will include standards, specific objectives, and management guidelines focusing on restoring the health of forest, range, aquatic, and riparian ecosystems. Public comment is sought on the issues and alternatives to be considered, and on proposed standards and guidelines.

DATES: Comments concerning the scope of the analysis should be received in writing within 30 days following the date of the last scoping meeting to receive full consideration in the development of alternatives. Dates of those meetings will be published in local and regional newspapers.

FOR FURTHER INFORMATION CONTACT: J. David Brunner, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706; Phone 208–384–3056.

SUPPLEMENTARY INFORMATION: The BLM's new grazing administration regulations (43 CFR part 4100 59FR) which became effective August 21, 1995, require the development of Standards for Rangeland Health and Guidelines for Grazing Administration. In Idaho, BLM intends to develop these standards and guidelines through a public process and incorporate them into MFPs/RMPs. Incorporating standards and guidelines into existing plans will require some form of plan modification, ranging from simple plan maintenance to plan amendment.

Management Framework Plans (MFPs) to be modified are as follows: Kuna, Bruneau, Owyhee, Twin Falls, Malad, Big Lost, Little Lost Birch Creek, Big Desert, Ellis-Pahsimeroi, Challis, Mackay, Sun Valley, Bennett Hills, Timmerman, Magic, Emerald Empire and Chief Joseph (Bennett Hills, Challis and Owyhee are scheduled to be replaced by RMPs which are currently under development). Resource Management Plans (RMPs) to be modified are as follows: Cacasde, Jarbridge, Cassia, Medicine Lodge, Pocatello, Lemhi and Monument.

At this point, it uncertain what level of plan modification will be needed; plan maintenance or plan amendment.

This notice invites Public comment on the proposal to develop standards and guidelines and issues to be addressed and alternatives to be considered in the EIS or other NEPA analysis.

Issues preliminarily identified include: the effect that adoption of the standards will have on uses of public land, the effect that adoption of the proposed guidelines will have on grazing management and livestock operations, and riparian and aquatic ecosystems and the need for flexibility in standards and guidelines. Additional issues have been identified in the UCRB EIS. It is expected that the ecosystem management strategy being analyzed in the UCRB EIS will provide a broad framework within which Healthy Reangelands Standards and Guides will be developed.

The NEPA analysis will be conducted using an interdisciplinary team that includes persons trained in archaeology, economics, plant ecology, forestry, hydrology, soil science, range management, recreation and fish and wildlife management.

Three preliminary alternatives have been identified: the continuation of current management (no action alternative) as provided for in existing land use plans, application of the fall back standards and guidelines contained in the regulations, and the adoption of standards and guidelines developed locally and in consultation with Idaho BLM's three Resource Advisory Councils.

Dated: November 13, 1995.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 95–28689 Filed 11–22–95; 8:45 am]

BILLING CODE 1020–GG–M

[ID–030–1030–00]

Intent to Prepare Forest Plan Amendments to the Deep Creek Management Framework Plan and the Pocatello Resource Management Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare Forest Plan Amendments to the Deep Creek Management Framework Plan and The Pocatello Resource Management Plan.

SUMMARY: Pursuant to 43 CFR 1610.3–1 (d), notice is hereby given that the Idaho East Zone Forestry Program of the Bureau of Land Management intends to conduct an Environmental Assessment Record (EAR) to provide a systematic and analytical evaluation of the potential environmental impacts of proposed forest management practices in the Malad and Pocatello Resource Areas.

FOR FURTHER INFORMATION CONTACT: Ray Brainard, East Zone Forester, Bureau of Land Management, 1111 N. 8th St., Pocatello, Idaho 83201, (208) 236–6860.

SUPPLEMENTARY INFORMATION: The Environmental Assessment Record (EAR) will provide proposals and alternatives regarding silvicultural practices in the Malad and Pocatello Resource Areas, i.e., reforestation/species selection, controlled fire, commercial and non-commercial thinning, calculation of allowable sale quantities, etc. The EAR will not preclude or eliminate detailed, site specific environmental assessments. All forest practice initiatives will continue to require a site specific EA in addition to compliance with the proposed EAR. Issues anticipated from the proposal include; increasing road densities, C–2 candidate species, wildlife habitat, etc. The following resources will be considered in preparing the EAR: wildlife, soils, hydrologic, cultural, and recreation. The times and schedules for public meetings and written comments will be announced in local news media and to individuals and groups through the postal service. Relevant documents will be available for public review at the BLM, Malad Resource Area Office, Malad City, Idaho and the Pocatello Resource Area Office, Pocatello, Idaho.

Dated: November 7, 1995.

W. Bernard Jansen,

Operations Manager.

[FR Doc. 95–28673 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–P

Bureau of Land Management

[ID–990–06–1020–00]

Notice of Meeting

SUMMARY: The Lower Snake River District Resource Advisory Council will meet to review concepts of rangeland ecology and discuss processes for preparing statewide standards for rangeland health and guidelines for managing livestock grazing on public lands. A public comment period will be held at 1 p.m. on December 15.

DATES: December 14 and 15, 1995; beginning at 8:15 a.m.

ADDRESSES: The meetings will be held at the regional headquarters office of the Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office, 3948 Development Avenue, Boise, Idaho 83705, (208) 384–3393.

Dated: November 6, 1995.

Jerry L. Kidd,

District Manager.

[FR Doc. 95–28688 Filed 11–22–95; 8:45 am]

BILLING CODE 1784–GG–P

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council will be held as indicated below. The agenda includes a field trip, approval of minutes of the previous meeting, continuation of council orientation, and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending of the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES, TIMES: Dates are December 7 and 8, 1995. A field trip will be held for the Resource Advisory Council members on December 7. The council members will depart from the Las Vegas District Office at 7:30 a.m. and return at approximately 5 p.m. The itinerary for the field trip will be made available prior to departure. Members of the public who wish to accompany the council members must provide their own transportation and meals. On Friday, December 8, 1995, the council will meet at the Desert Research Institute located at 755 E. Flamingo Rd., Las Vegas, NV, at 8:30 a.m. The public comment period will begin at 3:30 p.m.

SUPPLEMENTAL INFORMATION: The purpose of the councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Dated: November 6, 1995.

Michael F. Dwyer,

District Manager.

[FR Doc. 95–28643 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–HC–M

Noxious, Weeds and Invasive Plant Problems; Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, meeting on noxious weeds and invasive plants.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 CFR 101–6, 1015(a). The Department of the Interior hereby gives notice of a public meeting to be held from 8:15 a.m. on November 30 through 12:30 p.m. on December 1, 1995. The meeting will take place at the Sheraton Yankee Trader Hotel in Ft. Lauderdale, Florida. The meeting is to discuss noxious weeds and invasive plant problems of the Eastern and Tropical United States.

Dated: November 13, 1995.

Bruce Babbit,

Secretary of the Interior.

[FR Doc. 95–28488 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–84–M

[NV–930–1430–01; N–59217]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Henderson, Nevada, Clark County, Nevada has been examined and found suitable for lease/

conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The City of Henderson proposes to use the land for a park site.

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E., sec. 34, S½N½NW¼.

Containing 40 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement in favor of the City of Henderson for roads, public utilities and flood control purposes.

2. Those rights for roadway purposes which have been granted to the Federal Highway Administration by Permit No. N–42699 under the Act of August 27, 1958 (23 U.S.C. 317).

3. Those rights for transmission line purposes which have been granted to Nevada Power Company by Permit No. Nev–043455 under the Act of February 15, 1901 (43 U.S.C. 959).

4. Those rights for sewerline purposes which have been granted to Clark County Sanitation District by Permit No. Nev– 059856 under the Act of February 15, 1901 (43 U.S.C. 959).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a park site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 6, 1995.

Mark R. Chatterton,

Acting District Manager, Las Vegas, NV.

[FR Doc. 95–28652 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–HC–P

[CA–017–06–1220–00]

Supplementary Rules for the Travertine Hot Springs Area of Critical Environmental Concern and the Bodie Bowl Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Establishment of supplemental rules for management of public lands within the Travertine Hot Springs Area of Critical Concern and the Bodie Bowl Area of Critical Concern, Bishop Resource Area, Bakersfield District, California.

SUMMARY: On public lands within the Travertine Hot Springs Area of Critical Environmental Concern and the Bodie Bowl Area of Critical Environmental Concern, the following special regulations apply:

1. Overnight camping is prohibited within the boundaries of the Travertine Hot Springs Area of Critical Environmental Concern and the Bodie Bowl Area of Critical Environmental Concern.

2. Campfires are prohibited within the boundaries of the Travertine Hot Springs Area of Critical Concern and the Bodie Bowl Area of Critical Concern.

3. Discharge of firearms is prohibited within the boundaries of the Travertine Hot Springs Area of Critical Concern and the Bodie Bowl Area of Critical Concern. For the purpose of this order, a firearm is defined as under Title 18. U.S.C., Chapter 44, section 921(a)(3). Federal, State, and local law enforcement officers are exempt from this order in the course of their official duties.

DATES: These supplemental rules to take effect on December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Genivieve D. Rasmussen, Bishop Resource Area Manager, Bishop Resource Area Office, 785 N. Main St., Suite E, Bishop, California 93514. Telephone: (619) 872–4881.

SUPPLEMENTARY INFORMATION: The purpose of these supplemental rules is to eliminate camping, campfires, and firearms use from these sensitive areas. These rules are designed to improve the natural conditions of each of the Areas of Critical Concern. The public may still enjoy these areas during daily visits.

Authority for these supplemental rules is contained in Title 43 of the CFR, Chapter II, Part 8365, Subpart 8365.1–6.

Any person who fails to comply with these supplemental rules may be subject to a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

Dated: November 5, 1995.

Genivieve D. Rasmussen,

Area Manager.

[FR Doc. 95–28650 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–40–M

[ID–957–1420–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 7, 1995.

The supplemental plat prepared to correct the GPS value for the latitude and longitude at the ¼ section corner of sections 12 and 13, T. 9 N., R. 42 E., Boise Meridian, Idaho, was accepted, November 3, 1995.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 7, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–28690 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–M

[OR–957–00–1420–00: G6–0019]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 22 S., R. 6 W., accepted October 3, 1995
T. 23 S., R. 6 W., accepted October 17, 1995
T. 24 S., R. 6 W., accepted October 17, 1995
T. 24 S., R. 7 W., accepted October 17, 1995
T. 27 S., R. 11 W., accepted October 20, 1995
T. 39 S., R. 13 W., accepted October 20, 1995
T. 34 S., R. 14 W., accepted October 6, 1995

Washington

T. 34 N., R. 2 W., accepted September 29, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: November 7, 1995.

Tempe T. Berggren,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–28691 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–33–M

[ID–957–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, ID, effective 9:00 a.m., November 9, 1995.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and subdivision of section 14, T. 12 N., R. 1 E., Boise Meridian, ID, Group No. 898, was accepted, November 9, 1995.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and subdivision of section 31, T. 12 N., R. 2 E., Boise Meridian, ID, Group No. 898, was accepted, November 9, 1995.

These surveys were executed to meet certain administrative needs of the USDA Forest Service, Region IV.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

Dated: November 9, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–28672 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: review and status of the activities of the CALFED Bay-Delta Program and the alternative formation process. BDAC members are also invited to attend an informal educational session on hydrologic and ecological functions of the Bay-Delta system. Both the informal education session and the meeting are open to the public. For the meeting, interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council informal educational session will be held from 7:30 pm to 9:30 pm on Tuesday, December 5, 1995. The BDAC meeting will be held from 9 am to 4 pm on Wednesday, December 6, 1995.

ADDRESSES: The Bay-Delta Advisory Council educational session and meeting will be held at the Beverly Garland Hotel, 1780 Tribute Road (at Exposition Boulevard/West), Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort will be carried out under the policy direction of CALFED. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the

Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC will also provide a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 9, 1995.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 95–28734 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Overseas Private Investment Corporation (OPIC) on December 18, 1995. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 18, 1995, and will begin promptly at 2 p.m. Prospective participants must submit to OPIC before close of business December 7, 1995, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, NW, 12th Floor, Washington, DC. Notices and prepared statements should be sent to Harvey Himberg, Investment Development Department, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

PROCEDURE: (a) Attendance; Participation. The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 7, 1995. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 14, 1995. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verbatim transcript of the hearing will be compiled and published. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy and the environment of the project country. OPIC is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: Harvey A. Himberg, Investment Development Department, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527 (202) 336–8614 or by facsimile at (202) 408–9862.

Dated: November 15, 1995.

Richard C. Horanburg,

Department of Legal Affairs.

[FR Doc. 95–28633 Filed 11–22–95; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–55 (Sub-No. 516X), CSX Transportation, Inc. Abandonment in Floyd County, KY. EA available 11/17/95.

AB–369 (SUB-NO. 4X), Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—In Clearfield County, PA. EA available 11/17/95.

Comments on the following assessment are due 30 days after the date of availability:

None.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28639 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32800]

Columbus and Steens Junction Railway, Inc.; Trackage Rights Exemption; Columbus and Greenville Railway Company

Columbus and Steens Junction Railway, Inc. (CSJ), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire local trackage rights over a 8.54-mile line of railroad,[1] owned by Columbus and Greenville Railway Company (C&G). The trackage rights include: (1) The rail line of C&G lying between the north boundary line of U.S. Highway No. 182 (milepost 0.5) and the western terminus of the former main line track of C&G (milepost 6.54), a distance of 6.04 miles, and (2) the main tracks in C&G's Columbus, MS, rail yard between the yard limits on the north and east (milepost 935.0) and South Seventh Avenue on the south, a distance of 2.5 miles, including wye tracks adjacent to the C&G shop, in Lowndes County, MS.[2] The trackage rights were scheduled to become effective on November 2, 1995, the effective date of the exemption.

Any comments must be filed with the Commission and served on: Eric M. Hocky, 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 17, 1995.

[1] The class exemption at 49 CFR 1150.31 is properly invoked here, as 49 U.S.C. 10901 governs an acquisition of trackage rights by a noncarrier.

[2] C&G states that, under the trackage rights agreement, CSJ will have the nonexclusive right to serve all industrial side tracks and team tracks appurtenant to the subject line as well as the right to use its existing rail terminals located along or adjacent thereto. If the industrial, side, and team tracks that CSJ intends to acquire trackage rights over are an integral part of a continuous movement in interstate commerce, then the tracks are not covered by 49 U.S.C. 10907(b)(1) and the Commission has jurisdiction over the transaction. Accordingly, the exemption here applies to such track if it is used in interstate commerce.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28640 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub-No. 1153X)]

Consolidated Rail Corporation—Abandonment Exemption—In Niagara County, NY

Consolidated Rail Corporation (Conrail) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 3.5 miles of rail line at or near Lockport, in Niagara County, NY. The involved lines are (1) the Gulf Line Industrial Track, between milepost 25.30± and the end of the track at milepost 26.60±, and (2) the Lockport Industrial Track between milepost 24.50± and the end of the track at milepost 26.70±.

Conrail has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective December 20, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1995. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on John J. Paylor, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 24, 1995. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28529 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 515X)]

CSX Transportation, Inc.—Abandonment Exemption—in Jefferson County, FL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152, Subpart F—*Exempt Abandonments* to abandon its 1.85-mile line of railroad extending between milepost SPB–772.15 and milepost SPB–774.0 at the end of the track, in Drifton, Jefferson County, FL.

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 21, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 1, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 16, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28528 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–39 (Sub-No. 19X)]

St. Louis Southwestern Railway Company—Abandonment Exemption—in Smith County, TX

St. Louis Southwestern Railway Company (Cotton Belt) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.54-mile line of railroad, known as the Lufkin Branch, from milepost 549.46 near rail station Lufkin Junction, to the end of the line at milepost 553.0, in Tyler, Smith County, TX. Cotton Belt proposes to consummate the abandonment on December 22, 1995.[1]

Cotton Belt has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic is non-existent since this is a stub-end of a branchline; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by December 4, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 14, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laakso, One Market Plaza, Room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Cotton Belt has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 29, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28462 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of December 21, 1995. Because the verified notice was not filed until November 2, 1995, consummation should not have been proposed to take place before December 22, 1995. Applicant's representative has subsequently agreed that the proposed consummation date is December 22, 1995.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Commander Oil Corporation, et al.*, Civil Action No. 95–4489 (JM), was lodged on November 2, 1995, with the United States District Court for the Eastern District of New York. The Consent Decree addresses the hazardous waste contamination at the Pasley Solvents and Chemicals Superfund Site ("Pasley Site") in the Town of Hempstead, Nassau County, New York. The Consent Decree requires Defendant Commander Oil Corporation ("Commander") to implement the remedial action selected by the Environmental Protection Agency in the Record of Decision dated April 24, 1992 and the Amended Record of Decision dated May 22, 1995. Commander is also required to reimburse the United States for $750,000 in U.S. EPA past costs at the Pasley Site. Additionally, sixteen other defendants are required to pay $1,849,127.71 into the Pasley Solvents and Chemicals Superfund Site Remedial Trust, which will be used by Commander to implement the remedial action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commander Oil Corporation, et al.*, DOJ Ref. #90–11–2–762.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of New York, 1 Pierrepont Plaza, Brooklyn, New York, 11201; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Beverly Kolenberg); and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $29.50 (25 cents per page reproduction costs) for the Consent Decree, and $50.50 for the Attachments to the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28680 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *Roger J. Gautreau*, Civ. Act. No. 95–1859–A–M1 (M.D. La.), was lodged with the United States District Court for the Middle District of Louisiana on October 27, 1995. The proposed decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of fill materials onto approximately 2.75 acres of wetlands by Roger J. Gautreau ("Gautreau"), in St. Amant, Ascension Parish, Louisiana.

The Consent Decree provides for the payment of a $2,500.00 civil penalty to the United States and requires partial restoration of the violation site in accord with a partial restoration plan approved by the United States Environmental Protection Agency ("EPA").

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Jeffrey K. Lee, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Roger J. Gautreau*, DJ Reference No. 90–5–1–1–4276.

The proposed consent decree may be examined at the Office of the United States Attorney for the Middle District of Louisiana, Russell Long Federal Building, Suite 208, 777 Florida Street, Baton Rouge, Louisiana 70801; the offices of Region VI of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.75 for a copy of the consent decree with attachments.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 95–28681 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on October 31, 1995, a proposed Consent Decree in *United States* v. *Kaiser Aluminum & Chemical Corporation*, Civil Action No. CS–95–0468–JLQ, was lodged with the United States District Court for the Eastern District of Washington. This consent decree represents a settlement of claims by the United States against Kaiser Aluminum for violations of the Clean Air Act.

Under the settlement, Kaiser Aluminum will pay the United States a civil penalty of $500,000. In addition, the Consent Decree requires Kaiser Aluminum to come into compliance with the Clean Air Act. More specifically, the Consent Decree requires Kaiser Aluminum to complete a program of plant improvements and operational changes in order to bring stack emissions from its melter and holder furnaces into compliance with the opacity standard in the federally-approved Washington State Implementation Plan or SIP by February 28, 1997, including installation of a baghouse emission control system, new burners and computerized combustion controls and new mass flow controls on the holders; utilization of a new molten metal charging system and new skimming procedures on the melters;

and limitations on chlorine use. Stipulated penalties may be imposed in the event Kaiser Aluminum does not comply with the requirements of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Kaiser Aluminum & Chemical Corporation*, D.J. Ref. 90–5–2–1–94–A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Washington, Suite 300, United States Courthouse, West 920 Riverside, Spokane, Washington 99210 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 95–28668 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2) as well as Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *The New Piper Aircraft, Inc.* ("Piper"), Civil Action No. 95–14309 was lodged with the United States District Court for the Southern District of Florida on November 7, 1995. Under this Decree, the settling defendant, Piper, will construct and operate a remedial action at its aircraft manufacturing facility located in the City of Vero Beach, Florida. The remedial action requires that Piper extract contaminated groundwater from the surficial aquifer beneath its site, threat it, and discharge the treated water to surface waters. The remedial action is designed to prevent the further migration of contaminants in the aquifer and to lower concentrations of contaminants within the aquifer to levels specified in the Consent Decree. The Consent Decree also requires that Piper reimburse EPA for costs incurred and to be incurred at the site.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The New Piper Aircraft, Inc.*, DOJ # 90–11–2–759A.

The Decree may be examined at the offices of the United States Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 2005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $18.00 (25 cents per page reproduction costs) for the Decree only or $58.00 for the Decree plus technical appendices payable to Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28665 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement in In Re Pacific Wood Treating Corp. and In Re Niedermeyer-Martin Co.

Notice is hereby given that a proposed Settlement Agreement among, *inter alia*, the United States on behalf of the United States Environmental Protection Agency ("EPA") and the Department of the Interior ("DOI"), State of Washington, Trustees of the bankruptcy estates in *In re Pacific Wood Treating Corp.* and *In re Niedermeyer-Martin Co.* was lodged on November 6, 1995, with the United States Bankuptcy Court for the District of Oregon in *In re Pacific Wood Treating Corp.* and *In re Niedermeyer-Martin Co.*, No. 393–34766–p7, 393–34767–p7 (Bankr. D. Ore.) Under the Agreement, Debtor Pacific Wood Treating Corp. ("PWT") will pay EPA $190,000 and EPA will be paid 55% of the net proceeds for general unsecured creditors in the PWT bankruptcy estate, and DOI will be paid 5% of such net proceeds. EPA will also be paid 40% of the net proceeds for general unsecured creditors in the Niedermeyer-Martin Co. ("N–M") bankruptcy estate, and DOI will be paid 5% of such net proceeds. Any payments received by EPA will be used to implement response action at or near the Pacific Wood Treating Facility in Ridgefield, Washington or relating to any migration of hazardous substances or wastes from the Facility under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, or by the State of Washington, Department of Ecology, pursuant to a cooperative agreement with EPA, to implement response action pursuant to state law. Any payments received by DOI will be used to restore, replace, or acquire natural resources or assess natural resource damages at or near the Pacific Wood Treating Facility or relating to any migration of hazardous substances or wastes from the Facility. The Settlement Agreement also resolves the United States' proofs of claim on behalf of EPA filed under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*

The Department of Justice will receive comments relating to the proposed Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Pacific Wood Treating Corp.* and *In re Niedermeyer-Martin Co.*, D.J. Ref. No. 90–7–1–743A, B. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the District of Oregon, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the Settlement Agreement without attachments, please enclose a check in the amount of $6.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28667 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on November 9, 1995, a proposed Consent Decree was lodged with the United States District Court for the District of Oregon in *United States* v. *Southern Pacific Transportation Company*, Civil Action No. 94–6176–HO. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency ("EPA") and the Secretary of the Department of Transportation, in a Complaint filed on April 26, 1994. In its complaint the United States sought assessment of a civil penalty pursuant to 33 U.S.C. 1321(b)(7) of the Clean Water Act ("the CWA"), 33 U.S.C. 1321(b)(7), injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. 1319(b), and reimbursement of the United States' removal costs pursuant to Section 1002(a) of the Oil Pollution Act, of 1990 ("OPA"), 33 U.S.C. 2702(a), or alternatively, Section 311(f) of the CWA, 33 U.S.C. 1321(f). The United States alleged that the violations occurred when a Southern Pacific train derailed near Yoncalla, Oregon on January 27, 1993 and spilled diesel fuel into the Yoncalla Creek and onto the adjacent shoreline.

Under the proposed Consent Decree, Southern Pacific will pay a civil penalty of $58,300 to the United States. Southern Pacific will also pay $200,000 of the United States' removal costs incurred in responding to the Yoncalla Spill. In return for the payments by Southern Pacific, the proposed Consent Decree provides that the settlement resolves the claims alleged by the United States in its complaint, as well as any claims for damages to natural resources arising out of the Yoncalla Spill pursuant to Section 311(f) of the CWA, 33 U.S.C. 1321(f), or Section 1002 of the Oil Pollution Act of 1990, 33 U.S.C. 2702. The covenant not to sue for natural resource damages is based in part on Southern Pacific's earlier settlement with the Oregon Department of Environmental Quality (ODEQ), under which Southern Pacific agreed to pay ODEQ approximately $215,000 for restoration of resources injured by this oil spill. The U.S. Department of the Interior and ODEQ have entered into a Memorandum of Agreement for joint selection of restoration projects.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Southern Pacific Transportation Co.*, D.J. Ref. No. 90–5–1–1–5057.

The proposed Consent Decree may be examined at the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28682 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: November 28, 1995, 2 pm–4 pm, U.S. Department of Labor, Room S–3215 A/B, 200 Constitution Avenue, NW., Washington, DC 20210.

PURPOSE: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, DC, this 13th day of November 1995.

Andrew Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 95–28706 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–28–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue

current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, D.C. 20210.

Due to the recent suspension of Government Activities resulting from the funding interruption, there were no Published Wage Determination Actions.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 20th day of November 1995.

Philip Gloss,

Director, Division of Wage Determinations.

[FR Doc. 95–28613 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1995.

The petitions filed in this cases are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of October, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 10/30/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,575	Alcoa Fujikura LTD (Wkrs)	San Antonio, TX	10/10/95	Air Bag Wire Harnesses.
31,576	Byron Jackson Pump (Wkrs)	Fresno, CA	10/04/95	Large Vertical Pumps.
31,577	Cummins Southern Plains (Wkrs)	Duncan, OK	10/10/95	Sales, Service and Repair—Diesel Engines.
31,578	SCI, Inc./Digital Equip. (Wkrs)	Augusta, ME	10/12/95	Circuit Boards.
31,579	Indian Refining (Wkrs)	Lawrenceville, IL	10/05/95	Liquid and Gas Hydrocarbon Fuels.
31,580	MFC Group (Wkrs)	Telford, PA	10/11/95	Textile Hook and Loop Fastners.
31,581	New River Industries, Inc. (Wkrs)	Radford, VA	10/05/95	Broad Woven Fabrics.
31,582	Somerville Mills, Div. of (Wkrs)	Somerville, TN	10/06/95	Ladies' Underwear.

APPENDIX—Continued

[Petitions instituted on 10/30/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,583	Ethicon, Inc. (ACTWU)	Chicago, IL	10/19/95	Gut Sutures for Surgeons.
31,584	R&R Sportswear (UNITE)	Exeter, PA	10/17/95	Children's Sportswear.
31,585	Fad Manufacturing, Inc. (UNITE)	Swoyersville, PA	10/17/95	Children's Sportwear.
31,586	Benton Fashions (UNITE)	Benton, PA	10/17/95	Bridal Gowns.
31,587	Master Package Company (UPIU)	Owen, WI	10/17/95	Fibre Shipping Drums.
31,588	Century Place, Inc. (Wkrs)	Salisbury, NC	10/16/95	T-Shirts.
31,589	Coopers Animal Health, Inc. (UFCW)	Kansas City, KS	10/20/95	Animal Health Products.
31,590	Greif Brothers Corp. (USWA)	Niagara Falls, NY	10/20/95	Steel Drums for Chemicals.
31,591	Georgia Pacific (Wkrs)	Canutillo, TX	10/16/95	Wood Moulding.
31,592	Kentile, Inc. (Co.)	Chicago, IL	10/09/95	Vinyl Floor Tiles.
31,593	Kentile, Inc. (Co.)	So. Plainfield, NJ	10/09/95	Vinyl Floor Tiles.
31,594	Reservoirs, Inc. (Co.)	Midland, TX	10/19/95	Geologic Services.
31,595	Thompson River Lumber (Wkrs)	Thompson Falls, MT	10/20/95	Softwood Lumber.
31,596	Mr. T's Apparel of Wesson (Co.)	Wesson, MS	10/19/95	Men's, Ladies' and Childrens' Blue Jeans.
31,597	Niedner, Inc. (Co.)	York, PA	10/12/95	Fire Hoses.
31,598	CMC Manufacturing, Inc. (Wkrs)	Corinth, MS	10/17/95	Telephones.
31,599	Fruit of the Loom (Wkrs)	Bowling Green, KY	10/18/95	Men's Crew Neck T-Shirts.
31,600	Palm Beach (UNITE)	Eastaboga, AL	10/24/95	Men's Slacks.

[FR Doc. 95–28707 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October & November, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,506; Highland Pumps, Evi Highland, Midland, TX

TA–W–31,520; Reynolds Metals Co., Can Division, Fulton, NY

TA–W–31,470; Pennsylvania Electric Motor Service, Inc., Eric, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,452; Montello Products Co., Montello, WI

TA–W–31,420; Eaton Corp., Crystal Lake, IL

TA–W–31,558; Hill Phoenix Southwest Div., New Braunfels, TX

TA–W–31,509; Johnson Controls, Inc., Vincennes, IN

TA–W–31,538; McInnes Steel Co., Corry, PA

TA–W–31,411; Enpak, Inc. (Formerly Owned by GNB Technologies, Inc.), Memphis, TN

TA–W–31,390; Bailey Corp., Portland, IN

TA–W–31,393; Bethlehem Steel Corp., Including the Following Divisions: Bethlehem Structural Products Corp., Bethforge, Inc., Bethlehem Foll Corp., PN & NE Subsidiary Railroad Co., Bethlehem, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,441; AT & T Network Systems Rolling Meadows, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–31,511; Montana Power Co., Colstrip, MT

The investigations revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles producted by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,386; Huffy Bicycle Co., Celina, OH: August 18, 1994.

TA–W–31,481; Brittany Fashions, Inc., Jersey City, NJ: September 20, 1994.

TA–W–31,546; Bethlehem Steel Corp., Bethship, Sabine Yard, Port Arthur, TX: October 11, 1994.

TA–W–31,476; ATAPCO Office Products Group, Kosciusho, MS: September 19, 1994.

TA–W–31,384; VSD, Inc., Florence, SC: August 11, 1994.

TA–W–31,589; Coopers Animal Health, Inc., dba Mallinckrodt Veterinary, Inc., Kansas City, KS: November 20, 1994.

TA–W–31,422; Concord Fabrics, Inc., Washington, GA: August 28, 1994.

TA–W–31,504; Diamond Offshore Drilling, Inc., Houston, TX & Operating at Various Locations in the Following States: A; ATX, B; AL,

C; FL, D; LA, E; MS: September 10, 1994.
TA-W-31,588; Century Place, Inc., Sewing Div., Salisbury, NC: October 16, 1994.
TA-W-31,442; AJD, Inc., Richmond, VA: August 21, 1994.
TA-W-31,544; Chadco, Inc., Corinth, MS: September 29, 1994.
TA-W-31,483; Elsan Fashions, Inc., East Newark, NJ: September 20, 1994.
TA-W-31,572; Reidbord Brothers Co., Elkins, WV
TA-W-31,573; Reidbord Brothers Co., Philippi, WV
TA-W-31,574 & A & B; Reidbord Brothers Co., Buckhannon, WV, Pittsburgh, PA, Apollo, PA; September 28, 1994
TA-W-31,508; Johnson Controls, Inc., Goshen Facility, Goshen, IN: September 19, 1994.
TA-W-31,564; W.R. Grace Co., Construction Products Div., West Chicago, IL: October 12, 1994.
TA-W-31,494; I. Appel Corp., New York, NY: June 30, 1994.
TA-W-31,482; Clara Fashions, Inc., Jersey City, NJ: September 20, 1994.
TA-W-31,464; Canton Manufacturing Co., Canton, IL: September 19, 1994.
TA-W-31,408; Columbus Energy Corp., Denver, Co: August 23, 1994.
TA-W-31,542; TA-W-31,543; Oshkosh B'Gosh, NcEwen, TN & Hermitage Spring, TN: October 3, 1994.
TA-W-31,397 A & B; Gold Medal, Inc., Crewe, VA, Sparks, NV & Richmond, VA: August 21, 1994.
TA-W-31,461 & A, TA-W-31,462, TA-W-31,463 & A,B,C,D; Brown Shoe Co/Brown Group, Pocahontas, AR (Shoe Factory) & (Cutting Factory), St. Louis, MO, Cabool, MO, Federicktown, MO, Steelville, MO, Benton, MO, Charleston, MO: September 12, 1994.
TA-W-31,473, TA-W-31,474; Brown Co/Brown Group, Dyer, TN Lesington, TN: September 20, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October & November, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely.

(3) That imports from Mexico or Canada or articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00649; Reynolds Metals Co., Can Division, Fulton, NY
NAFTA–TAA–00625; Johnson Controls, Inc., Vincennes, IN
NAFTA–TAA–00621; Kay's Caps, Inc., Valley Stream, NY
NAFTA–TAA–00623; Ozark Electronics, dba Oeca, Inc., Sony Department, Cullman, AL
NAFTA–TAA–00632; McDonnell Douglas Corp., McDonnell Douglas Aerospace—Productions Operations, St. Louis, MO
NAFTA–TAA–00616; Montana Power Co., Colstrip, MT
NAFTA–TAA–00599; Pennsylvania Electric Motor Service, Inc., Erie, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None

Affirmative Determination NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00620; I. Appel; Corp., New York, NY: September 20, 1994.
NAFTA–TAA–00617; Johnson Controls, Inc., Goshen Facility, Goshen, IN: September 19, 1994.
NAFTA–TAA–00627, A & B; Reidbord Bros. Co., Inc., Buckhannon, WV, Elkins, WV, Philippi, WV: September 28, 1994.
NAFTA–TAA–00619; Reidbord Bros. Co., Inc. Pittsburgh, PA, Apollo, PA: September 21, 1994.
NAFTA–TAA–00615; Montello Products Co., Montello, WI: August 28, 1994.
NAFTA–TAA–00645; Alcoa Fujikura Ltd., Automotive Div., San Antonio, TX: October 16, 1994.
NAFTA–TAA–00650; W.R. Grace and Co., Construction Products Div., West Chicago, IL: October 17, 1994.
NAFTA–TAA–00635; Emerson Electric Co., Emerson Specialty Motor Div., Independence, KS: October 9, 1994.
NAFTA–TAA–00640; Bethlehem Steel Corp., Bethship, Sabine Yard, Port Arthur, TX: October 11, 1994.
NAFTA–TAA–00647; Cominco American, Inc., Spokane, WA: October 10, 1994.

I hereby certify that the aforementioned determinations were issued during the months of October & November, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 9, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28708 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00537]

Vaagen Brothers Lumber Inc. Colville, Washington; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 28, 1995, applicable to all workers at Vaagen Brothers Lumber Inc. located in Colville, Washington. The notice was published in the **Federal Register** on September 19, 1995 (60 FR 48526).

The Department reviewed the certification for workers at the subject firm. Based on new findings, the Department is amending the certification to include leased workers from the Colville Branch of Pacific Personnel located in Colville, Washington engaged in the production of softwood dimensional lumber for the subject firm.

The intent of the Department's certification is to include all workers of Vaagen Brothers Lumber adversely affected by increased imports from Mexico and Canada.

The amended notice applicable to NAFTA–00537 is hereby issued as follows:

"All workers of Vaagen Brothers Lumber Inc., Colville, Washington, and workers of Pacific Personnel, Colville Branch, Colville, Washington, engaged in the production of softwood dimensional lumber for Vaagen Brothers Lumber Inc. who became totally or partially separated from employment on or after July 22, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 7th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28711 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00517]

John Chopot Lumber Company, Incorporated, Colville, Washington; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 18, 1995, applicable to all workers at John Chopot Lumber Company, Incorporated located at Colville, Washington. The notice was published in the **Federal Register** on September 1, 1995 (60 FR 45746).

The Department reviewed the certification for workers at the subject firm. Based on new findings, the Department is amending the certification to include leased workers from the Colville Branch of Pacific Personnel located at Colville, Washington engaged in the production of softwood dimensional lumber for the subject firm.

The intent of the Department's certification is to include all workers of John Chopot Lumber adversely affected by increased imports from Mexico and Canada.

The amended notice applicable to NAFTA–00517 is hereby issued as follows:

"All workers of John Chopot Lumber Company, Incorporated, Colville, Washington, and workers of Pacific Personnel, Colville Branch, Colville, Washington, engaged in the production of softwood dimensional lumber for John Chopot Lumber Company, Incorporated who became totally or partially separated from employment on or after July 3, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 24th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28709 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00642]

McInnes Steel Company, Corry, Pennsylvania; Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

In order to make an affirmative determination and issue a certification of eligibility to apply for NAFTA–TAA, the following group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) And that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

The investigation was initiated on October 11, 1995 in response to a petition filed on behalf of former workers at McInnes Steel Company, Corry, Pennsylvania. The workers produce steel forgings.

The investigation revealed that criteria (3) and (4) were not met.

Investigative findings show that there were no unsuccessful bids submitted by the subject firm for steel forgings that were lost to foreign manufacturers during the relevant period. The findings also show that there was no shift in production from the workers' firm to Mexico or Canada.

Conclusion

After careful review, I determine that all workers of McInnes Steel Company, Corry, Pennsylvania are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC. this 6th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28710 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on December 13, 1995, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to

the public and will begin at 9:00 a.m. lasting until approximately 4:00 p.m.

Agenda items will be devoted to an extensive overview of all of the new initiatives of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH). Focus will be on how the various elements fit together and how they are in consonance with each Agency's objectives. There will also be a report from the HazCom workgroup and a brief legislative update.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Ms. Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by December 6 at the address indicated below.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500).

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW., Washington, DC, 20210, telephone (202) 219–8021.

Signed at Washington, DC, this 20th day of November 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–28712 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–103]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee (MBRAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: December 6, 1995, 9 a.m. to 4 p.m.

ADDRESSES: George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Building 4200, Room P106, Marshall Space Flight Center, AL 35812–0001

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Washington, DC 20546 (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Reading of Minutes
—Update on NASA SDB Program
—Public Comment
—Proposed MBRAC Recommendations
—Subcommittee Reports
—Administrator Actions
—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 14, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–28735 Filed 11–22–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–102]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that VivoRx, Inc., of Santa Monica, California, has requested a partially exclusive license to practice the inventions described in: U.S. Patent No. 5,153,132 entitled "Three-Dimensional Co-Culture Process"; U.S. Patent No. 5,308,764 entitled "Multi-Cellular Three-Dimensional Living Mammalian Tissue"; U.S. Patent No. 5,155,034 entitled "Three-Dimensional Cell to Tissue Assembly Process"; U.S. Patent No. 5,330,908 entitled "High Density Cell Culture System"; U.S. Patent No. 4,839,046 entitled "Bio-Reactor Chamber"; and U.S. Patent No. 5,002,890 entitled "Spiral Vane Bio-Reactor"; and the inventions disclosed in the following patent applications: Serial No. 08/170,488, Three-Dimensional Co-Culture Process"; Serial No. 08/066,292, "Process for Complex Three-Dimensional Co-Culture of Normal Human Small Intestine"; Serial No. 08/227,827, "Horizontal Rotating Oxygentator for High-Density Cell Culture"; Serial No. 08/172,962, "Process for Developing High-Fidelity Three Dimensional Tumor Models for Human Bladder Carcinoma"; Serial No. 08/366,065, "Horizontal Rotating-Wall Vessel Propagation in Vitro Human Tissue Models"; and Serial No. 08/291,791, "Recombinant Protein Production and Insect Cell Culture and Process"; all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. James M. Cate, Patent Attorney, NASA Johnson Space Center.

DATES: Responses to this notice must be received by January 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Cate, NASA Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone number (713) 483–1001.

Dated: November 9, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–28736 Filed 11–22–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: IAEA Form N–71—Design Information Questionnaire
2. Current OMB approval number: 3150–0056
3. How often the collection is required: Once.
4. Who is required or asked to report: NRC licensed or certified facilities on the U. S. eligible list who have been notified in writing by the Commission to submit the form.
5. The number of annual respondents: One.
6. The number of hours needed annually to complete the requirement or request: 360.
7. Abstract: NRC licensed or certified facilities that appear on the U. S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71, to provide information concerning their installation for use of the International Atomic Energy Agency.

Submit, by January 23, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem, at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at bjs1@nrc.gov.

Dated at Rockville, Maryland, this 14th day of November 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–28607 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York (Indian Point Nuclear Generating Unit Nos. 1 and 2); Exemption

I

Consolidated Edison Company of New York, Inc., (the licensee) is the holder of Facility Operating License No. DPR–26 which authorizes the operation of Indian Point Nuclear Generating Unit No. 2 and Provisional Operating License (POL) No. DPR–5 which authorizes the operation of Indian Point Nuclear Generating Unit No. 1. The operating authority of POL DPR–5 for Indian Point Nuclear Generating Unit No. 1 was revoked by Commission Order dated June 19, 1980. The operating licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility comprises two pressurized-water reactors at the licensee's site in Westchester County, New York.

II

The Code of Federal Regulations at 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

Paragraph (1), "Access Requirements," of 10 CFR 73.55(d), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance into the protected area and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated August 10, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, employee and contractor identification badges/keycards, are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Indian Point Nuclear Generating Unit Nos. 1 and 2 site. Station security personnel are required to maintain control of the badges/keycards while the individuals are offsite. This practice has been in effect at Indian Point Nuclear Generating Unit Nos. 1 and 2 since the operating licenses were issued. Security personnel retain each identification badge/keycard when not in use by the authorized individual, within appropriately designed storage receptacles. An individual who meets the access authorization requirements is issued an individual picture badge/keycard which allows entry into preauthorized areas of the station. While entering the plant in the present

configuration, an authorized individual is "screened" by the required detection equipment and by the issuing security officer. Having received the picture badge/keycard, the individual proceeds to the access portal, inserts the picture badge/keycard into the card reader, and passes through the turnstile which unlocks if the preset criteria are met.

This present procedure is labor intensive since security personnel are required to verify badges/keycards issuance, ensure badges/keycards retrieval, and maintain the badges/keycards in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges/keycards from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges/keycards offsite instead of returning them when exiting the site.

Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge/keycard. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge/keycard, the requested exemption would allow employees and contractors to keep their badges/keycards at the time of exiting the protected area. The process of verifying badge/keycard issuance, ensuring badge/keycard retrieval, and maintaining badges/keycards could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge/keycard, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area.

Authorized individuals insert their picture badges/keycards into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badges/keycards and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge/keycard by an individual, as a result of taking the badge/keycard offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges/keycards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges/keycards will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at the site.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Consolidated Edison Company of New York, Inc. an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges/keycards upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges/keycards offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 56357). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of November 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28608 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–155]

Consumers Power Company (Big Rock Point Plant); Exemption

I

Consumers Power Company (CPCo, the licensee) is the holder of Facility Operating License No. DPR–6 which authorizes operation of the Big Rock Point Plant. The facility consists of a boiling water reactor located at the licensee's site in Charlevoix County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

Section 50.54(o) of 10 CFR requires that all licensees meet the requirements of Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors. Paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 requires that containment air locks be tested at an internal pressure not less than peak pressure (P_a), which is 23 psig for Big Rock Point.

III

By letter dated October 4, 1994, as supplemented September 27, 1995, Consumers Power Company (the licensee) requested an exemption from the Appendix J requirement to test the air lock (escape lock) at P_a. Currently, the containment emergency (or escape) air lock at Big Rock Point is tested at a pressure of 2 psig. Therefore, the explicit requirement of paragraph III.D.2(b)(i) of Appendix J is not met. The requested exemption is required because of the emergency air lock manufacturer's restrictions on internal pressurization and the Big Rock Point design which necessitates frequent personnel entries. The licensee stated

that the escape air lock internal pressurization is limited by the manufacturer to 2 psig without a strongback and 5 psig with a strongback in place, thereby making pressurization to peak pressure impossible for local leak rate tests. In addition, the licensee stated that the required use of a strongback for the 5-psig test and its positioning on the inside of the lock which tends to assist the door in sealing is less conservative than the 2-psig test for the inner door. The 5-psig test has no significant increase in value. Therefore, the licensee believes that the escape air lock's performance is demonstrated with the local leak rate test at 2 psig.

As stated above, due to the manufacturer's restriction on internal pressurization, Big Rock Point has been conducting the local leak rate test of the escape air lock at 2 psig. In addition, since the reduced-pressure test is employed, the results of the 2-psig leakage test are extrapolated to the equivalent P_a test results to determine acceptability, as required by the Big Rock Point Technical Specifications. Moreover, the as-found leakage observed during the past 4 years' tests has been acceptably low. Based on the above, the staff concludes that testing the escape air lock at 2 psig, in accordance with the manufacturer's recommendations, would provide an acceptable alternative to strict compliance with the applicable Appendix J requirements. The conclusion is further supported by the past good leakage rate performance. The alternative actions proposed by the licensee in the exemption request provide reasonable assurance that airlock leakage will not exceed acceptable levels. Therefore, granting this exemption does not significantly affect the risk of facility accidents.

Thus, the staff concludes that an exemption from the requirements of paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 should be granted. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirement to perform leakage rate testing of escape air lock at P_a is to measure leakage at conditions representative of the design basis accident. The escape air lock internal pressurization at Big Rock Point is limited to the manufacturer recommendation of 2 psig. In addition, the 2-psig leakage tests are extrapolated to the equivalent P_a test results to determine acceptability, as required by the Big Rock Point Technical Specifications. The testing history and the structural capability of the containment establish that there is significant assurance that testing the emergency air lock at 2 psig will not adversely impact the leak tight integrity of the containment and that test is representative of the design basis accident. Therefore, the emergency air lock at P_a is not necessary to achieve the underlying purpose of Appendix J.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption. Therefore, the Commission hereby grants an exemption from the requirement of paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 to the extent that the containment emergency air lock test will be conducted at 2 psig.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant effect on the quality of the human environment (60 FR 57025).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of November 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28603 Filed 11–22–95; 8:45am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company, et al. (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would modify Section 6.0, "Administrative Controls," of the licensee's Catawba, McGuire, and Oconee nuclear stations, which have been submitted as a joint application. A summary description is provided as follows.

The requested amendments remove the specific assignment of responsibilities for the review, distribution, and approval activities contained in the Technical Review and Control Section of each station's Technical Specifications. The proposed specifications state that these activities will be performed by a knowledgeable individual/organization. Approval of the affected documents is to be at the appropriate manager/superintendent level as specified in Duke administrative controls.

The requested amendments move the requirement for the review of proposed changes in the stations' Technical Specifications and Operating Licenses by the Duke Nuclear Safety Review Board (NSRB) to Duke administrative procedures (Selected Licensee Commitments documents) and change the wording of the requirements covering NSRB meeting frequency.

The requested amendments add Technical Review and Control Program implementation and Plant Operations Review Committee (PORC) implementation to the list of required procedures and programs for each nuclear station.

The requested amendments change or clarify certain Technical Specification administrative requirements covering technical review and control activities or records retention requirements.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: (It should be noted that the licensee submitted a combined

analysis that covers McGuire, Catawba, and Oconee nuclear stations.)

Standard #1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The provisions of these proposed amendments concern administrative changes in the stations' Technical Specifications involving the Technical Review and Control, Procedures and Programs/Station Operating Procedures, and Records Retention/Station Operating Records portions of the Administrative Controls Section. The requested changes primarily affect review and control activities, but also include other administrative changes affecting the approval of station procedures (Oconee only), records retention, and definition of the term ODCM [offsite dose calculation manual] (McGuire and [Catawba]). The provisions of the proposed amendment[s] primarily involve the relocation of existing Technical Specifications review, distribution, or approval requirements to internal Duke administrative controls. However, implementation of the proposed amendment[s] [do] involve changes to several review/distribution activities. These review/distribution activities are primarily for: 1) Proposed changes to the stations' Technical Specifications, 2) Proposed tests and experiments which affect nuclear safety and are not addressed in the stations' FSAR [Final Safety Analysis Report] or Technical Specifications, 3) Environmental radiological procedures, 4) Reportable events documentation and reports of violations of Technical Specifications, 5) Reports of special reviews and investigations, and 6) Reports of unplanned onsite releases of radiological material to the environs. Planned implementation of the proposed Technical Specifications amendments utilizing Selected Licensee Commitments will result in the above items being reviewed/received by a different organizational unit in the future. The organizational unit is to be either the recently initiated Plant Operations Review Committee (PORC) or the General Manager, Environmental Services. Personnel serving on the PORC, and the General Manager, Environmental Services will be qualified based upon education and experience to review the operational and technical considerations involved with the applicable items listed above. No required reviews are being eliminated by the requested amendments, only the organizational units responsible for performing the reviews will be changed. Future reviews of these items under the auspices of the PORC or the General Manager, Environmental Services will maintain a quality level equivalent to that being currently achieved by Duke's Qualified Reviewer Program, the Station Managers, or the Duke Nuclear Safety Review Board as applicable. Consequently, merely changing the organizational units performing future reviews, or making the additional administrative changes described above, results in no increase in the probability or consequences of an accident previously evaluated because the review function will continue to be conducted in an equivalent manner.

The implementing SLC will also permit proposed amendments to the stations' Technical Specifications and Operating Licenses to be approved for the Station Manager by a designee. However, this individual will occupy a position equivalent to, or higher, in the Duke organization as the Station Manager.

Additionally, the proposed changes do not directly impact the design or operation of any plant systems or components any more so than the review and approval processes currently being conducted in accordance with existing approved Technical Specifications.

Standard #2. The proposed amendments will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and primarily cover the review, distribution, and/or approval function performed for items identified in existing Technical Specifications. The quality level of the future reviews will not decrease and the ability of Duke to identify the possibility for the occurrence of new or different kinds of accidents prior to implementation will be maintained. Of specific interest in the consideration of Standard #2 is the review of proposed tests and experiments which affect station nuclear safety and are not addressed in the FSAR or Technical Specifications. The Technical Specifications required reviews of these tests and experiments are not being proposed for removal by these requested amendments. Only the organizational unit conducting the review of proposed tests and experiments is being changed by the requested amendments. The PORC, instead of the Station Manager, is being assigned the responsibility for conducting the reviews of proposed tests and experiments in the future. It is believed that the combined expertise of the PORC membership will enhance Duke's ability to identify potential situations which could possibly involve a new, or different, kind of accident.

Standard #3. The proposed amendments will not involve a significant reduction in any margin of safety.

The changes contained in the requested amendments are administrative in nature and do not impact the design capabilities or operation of any plant structures, systems, or components. There will be no reduction in margin of safety as a result of implementing these requested amendments. Impact upon margin of safety is a consideration primarily included in the 10 CFR 50.59 evaluation process conducted for station procedures, procedure changes, and nuclear station modifications. The 10 CFR 50.59 evaluation process is conducted under the auspices of the Duke Qualified Reviewer Program and is not affected by these requested amendments. The impact on margin of safety for future Technical Specifications and Operating License changes will be reviewed by the PORC, but these reviews will be equivalent in quality to the reviews presently conducted by the Qualified Reviewers.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 18, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 12, 1995, as supplemented by letter dated June 29, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 15th day of November 1995.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28605 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company (the licensee) to withdraw its December 7, 1994, application for proposed amendments to Facility Operating Licenses NPF–9 and NPF–17 for the McGuire Nuclear Station, Unit Nos. 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would have revised the Technical Specifications to modify the action statement concerning the Control Room Air Intake at times when the radiation monitors (EMF–43A and 43B) were inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on February 1, 1995 (60 FR 6299). However, by letter

dated October 26, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated December 7, 1994, and the licensee's letter dated October 26, 1995, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina.

Dated at Rockville, Maryland, this 9th day of November 1995.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28602 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–390]

Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority; Notice of Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–20 (the license) to Tennessee Valley Authority (the licensee). This license authorizes operation of the Watts Bar Nuclear Plant, Unit 1 (the facility), by the licensee at reactor core power levels not in excess of 170 megawatts thermal (5% of design thermal power) in accordance with the provisions of the license, the Technical Specifications (Appendix A to the license), and the Environmental Protection Plan (Appendix B to the license).

Watts Bar Nuclear Plant, Unit 1, is a pressurized-water nuclear reactor located at the licensee's site on the west bank of Chickamauga Lake in Rhea County, Tennessee.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on December 27, 1976 (41 FR 56244).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (NUREG–0498), and Supplement 1, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the issuance of exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on April 18, 1985 (50 FR 15516) and April 25, 1995 (60 FR 20291).

For further details with respect to this action, see (1) Facility Operating License No. NPF–20 with appendices stated above; (2) the Commission's Safety Evaluation Report (NUREG–0847) dated June 1982, and Supplements 1 through 19; (3) the licensee's Final Safety Analysis Report as amended to Amendment No. 91; (4) The licensee's Environmental Report and supplements thereto; and (5) the Commission's Final Environmental Statement (NUREG–0498) dated December 1978 and Supplement 1 dated April 1995. These items are available at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20555, and at the local public document room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of the Facility Operating License No. NPF–20 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report (NUREG–0847) and Supplements 1–19, and the Final Environmental Statement (NUREG–0498) and Supplement 1 may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954 (telephone no. 202–783–3238). All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland, this 9th day of November, 1995.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II.

[FR Doc. 95–28601 Filed 11–22–95; 8:45 am]

BILLING CODE: 7590–01–P

[Docket Nos. STN 50–529 and STN 50–530]

Arizona Public Service Company, et al., Palo Verde Nuclear Generating Station, Unit Nos. 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–51 and NPF–74, issued to Arizona Public Service Company, et al. (the licensee), for operation of the Palo Verde Nuclear Generating Station, Unit Nos. 2 and 3, located in Maricopa County, Arizona.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete provisions added by previous amendments as a result of previous sale and leaseback arrangements entered into by El Paso Electric Company. El Paso Electric Company would re-obtain full ownership rights and continue to receive electric output from Palo Verde at its proportionate share. The requested rescission is part of a reorganization plan being pursued by El Paso Electric Company under a pending case before the U.S. Bankruptcy Court for the Western District of Texas subsequent to its filing for protection under Chapter 11 of the U.S. Bankruptcy Code on January 8, 1992.

The proposed action is in accordance with the licensee's application for amendment dated October 3, 1995.

The Need for the Proposed Action

The proposed action in the form of an amendment is needed for approval by the U.S. Bankruptcy Court for the Western District of Texas of a reorganization plan being pursued by El Paso Electric Company in a proceeding under Chapter 11 of the U.S. Bankruptcy Code initiated on January 8, 1992.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no changes to the facility or to the operating, maintenance, engineering or other nuclear-related personnel as a result of the proposed reorganization and license amendment. No changes resulting from the reorganization are expected with regard to the following: lines of authority and responsibility, essential nuclear support functions provided to Palo Verde, effectiveness of the organization, priorities and ongoing plant improvement projects, technical qualifications, and corporate financial resources presently available in support of Palo Verde operations.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3," dated February 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on November 9, 1995, the staff consulted with the Arizona State official, Mr. William Wright of the Arizona Radiation Regulatory Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 3, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 12 N. Central, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 15th day of November 1995.

For the Nuclear Regulatory Commission.

Charles R. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28604 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: Scientific Activities in the ESF, Repository Design Issues, Program Priorities, Use of Expert Judgment, Defense Waste Impact Issues, and Response to NAS Standards Report Top List for January 1996 Meeting in Las Vegas

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its winter meeting on January 10 and 11, 1996, in Las Vegas, Nevada. The meeting will be held at the Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada 89109; (Tel) 702–369–4400; (Fax) 702–369–3770. The meeting is open to the public and will begin at 8:30 a.m. both days.

Presentations during the meeting will cover a variety of subjects. Scientific activities taking place in the exploratory studies facility and repository design issues top the list. Fiscal year 1996 program priorities within the Office of Civilian Radioactive Waste Management and the use of expert judgment are also key issues that will be reviewed. Additional topics planned for the two-day meeting include: deposition of surplus weapons plutonium; defense waste planning for Yucca Mountain; reactions from the Environmental Protection Agency, the Nuclear Regulatory Commission, and the Department of Energy (DOE) to the National Academy of Sciences report on the technical bases for Yucca Mountain standards; waste management efforts in the People's Republic of China and the United Kingdom; and the DOE's technical basis report on surface processes.

Time will be set aside on the agenda for public comment and questions. To ensure that everyone wishing to speak is provided time to do so, the Board encourages those who have comments to sign the Public Comment Register, which will be located at the sign-in table. Those registering are advised that, depending on the number of people wishing to speak, a speaking time limit may have to be set on the length of individual remarks. However, written comments of any length may be submitted for the record.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning February 26, 1996. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (Tel) 703–235–4473; (Fax) 703–235–4495.

Dated: November 16, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–28656 Filed 11–22–95; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the forty-seventh

meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATE: December 12, 1995, at 10:00 a.m.

ADDRESS: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–28716 Filed 11–22–95; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Verification of Railroad Unemployment and Sickness Claims

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board (RRB) is announcing a change in the number of days provided for railroad employers to submit information about claims for unemployment and sickness benefits prior to the agency's decision to pay or deny benefits. For a one-year period, employers will be allowed 3 business days, rather than 7 calendar days, from the date of the RRB's notice of a claim to submit information about the claim before the agency decides to pay or deny benefits. For purposes of this action, a "business day" is defined as any of the days Monday through Friday which are not observed as official holidays by the United States Government.

DATES: The test program announced by this notice will commence January 2, 1996.

ADDRESSES: Comments concerning this action may be submitted within 30 days from the date of publication to John L. Thoresdale, Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: John L. Thoresdale, Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, 312–751–4800.

SUPPLEMENTARY INFORMATION: Section 5(b) of the Railroad Unemployment Insurance Act (45 U.S.C. 355(b)) provides, in part, that "When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim." Section 3256 of the Board's regulations authorize the establishment of procedures to obtain information about benefit claims from railroad employers. These procedures have allowed employers 7 calendar days for submission of information before the RRB decides to pay or deny benefits.

The Joint Committee on Rail Labor and Rail Management recently requested the RRB to reduce the time period allowed for employers to respond to notices of claims from 7 days to 3 days. At the conclusion of the test period, the Board will determine whether to implement the 3-day verification period for the future.

Dated: November 8, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–28670 Filed 11–22–95; 8:45 am]

BILLING CODE 7905–01–M

COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

Notice of Meeting

This notice announces the fifth in a series of public meetings of the Commission on Protecting and Reducing Government Secrecy. Pursuant to Title IX of Public Law 103–236, dated April 30, 1994, the Commission consists of twelve members, four appointed by the President, two each by the Speaker of the House and the House Minority Leader, and two each by the Senate Majority and Minority Leaders. The Commission will remain in effect for two years from the date of its first meeting.

Time and Date: 10:00 a.m., December 6, 1995.

Place: S–116, Committee on Foreign Relations Hearing Room, The Capitol.

Status: Open.

Agenda: 1. Mr. Peter D. Saderholm, Director, Security Policy Board Staff, on Board structure and activities, including implementation of Executive Orders 12958 and 12968 and recommendations of the Joint Security Commission.

Contact Person for more Information: Eric R. Biel, Staff Director, Commission on Protecting and Reducing Government Secrecy, (202) 776–8725; FAX: (202) 776–8773.

Eric R. Biel,

Staff Director, Commission on Protecting and Reducing Government Secrecy.

[FR Doc. 95–28657 Filed 11–22–95; 8:45 am]

BILLING CODE 6820–ER–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21501; 812–9678]

Fortis Advantage Portfolios, Inc., et al.; Notice of Application

November 13, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Fortis Advantage Portfolios, Inc., Fortis Equity Portfolios, Inc., Fortis Fiduciary Fund, Inc., Fortis Worldwide Portfolios, Inc., Fortis Growth Fund, Inc., Fortis Money Portfolios, Inc., Fortis Securities, Inc., Fortis Series Fund, Inc., Fortis Tax-Free Portfolios, Inc., Fortis Income Portfolios, Inc., Special Portfolios, Inc. (collectively, the "Funds"), and Lazard Frères & Co. LLC ("Lazard Frères").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 thereunder.

SUMMARY OF APPLICATIONS: Applicants request an exemption to permit each Fund to use certain securities dealers that are affiliated persons of affiliated persons ("second-tier affiliates"), solely because of subadvisory relationships with one or more other Funds, to engage in principal transactions with the Fund. The order also would permit a Fund to use second-tier affiliates as brokers in connection with certain principal transactions and to pay commissions to such brokers without complying with the monitoring and recordkeeping requirements set forth in rule 17e–1.

FILING DATES: The application was filed on July 24, 1995 and amended on September 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on December 8, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 500 Bielenberg, St. Paul, Minnesota, 55125.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are Minnesota corporations. Except for Fortis Securities, the Funds are open-end management investment companies registered under the Act. Fortis Securities is a closed-end management investment company registered under the Act. Fortis Advisers, a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as investment adviser to each of the Funds.

2. Applicants request that the relief sought in the application also apply to any other registered investment company, or separate portfolio thereof, that in the future (a) is a member of the Fortis group of investment companies as defined in rule 11a–3 under the Act, and (b) either (i) is advised by Fortis Advisers or any entity controlling, controlled by, or under common control with Fortis Advisers, or (ii) has its shares distributed by Fortis Investors, Inc. or any entity controlling, controlled by, or under common control with Fortis Investors.

3. Lazard Frères is registered as an investment adviser under the Advisers Act and as a broker-dealer under the Securities Exchange Act of 1934. Lazard Frères Asset Management, a separate operating division of Lazard Frères, Morgan Stanley Asset Management Limited, and Warburg Investment Management International Ltd. (collectively, the "Subadvisers") have contracted with Fortis Advisers to serve as subadvisers for three of the portfolios within Fortis Series Fund.

4. Applicants request relief to permit an "Eligible Dealer," a hereinafter defined, to engage in principal transactions with a Fund in the ordinary course of business. An Eligible Dealer is a person that subadvises one or more Funds or Fund portfolios not engaging in the relevant principal transaction that conducts advisory and securities dealer operations via the same legal entity that is a second-tier affiliate of the Fund or Fund portfolio engaging in the transaction solely by reason of being a subadviser of one or more of the other Funds. An Eligible Dealer is not (a) an affiliated person of the Fund or Fund portfolio engaging in the transaction, (b) Fortis Advisers, or any other entity that in the future serves as investment adviser to the Fund or Fund Portfolio engaging in the transaction, or an affiliated person thereof, or (c) an officer, director, employee, promoter, or principal underwriter of any Fund or Fund portfolio, or an affiliated person of such officer, director, employee, promoter, or principal underwriter.

5. Applicants also request an exemption that would permit each Fund to use an "Eligible Broker," as hereinafter defined, as broker in connection with the sale of securities to or by such Fund or Fund portfolio on a securities exchange. An Eligible Broker is a subadviser of one or more Funds or Fund portfolios that are not parties to the transactions, conducts advisory and brokerage operations through the same legal entity, and is a second-tier affiliate of the Fund or Fund portfolio engaging in the transaction solely by reason of subadvising one or more other Funds or Fund portfolios. The requested relief would permit the Fund or Fund portfolio engaging in the transaction to pay commissions, fees, or other remuneration to the Eligible Broker without complying with the requirements set forth in rules 17e–1(b)(3) and 17e–1(c).

6. With the exception of Lazard Frères Asset Management, each broker-dealer that is affiliated with a subadviser to a Fund is a separate legal entity from the subadviser. Lazard Frères Asset Management is a separate operating division of Lazard Frères. As the only subadviser that conducts its advisory operations through the same legal entity, Lazard Frères is currently the only entity that satisfies the definitions of Eligible Dealer and Eligible Broker.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act. Section 17(a), among other things, prohibits an affiliated person of a registered investment company, or affiliated person of such person, acting as principal, from selling to or purchasing from such registered company any security or other property.

2. Section 2(a)(3) of the Act defines "affiliated person." Under this definition, each subadviser would be a second-tier affiliate of each Fund and Fund portfolio it does not manage, to the extent the Funds and Fund portfolios are deemed to be under common control with, and therefore an affiliated person of, each other Fund and each other portfolio of the Funds. Accordingly, relief from section 17(a) is required for an Eligible Dealer to engage in principal transactions with a Fund.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. For the reasons discussed below, applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

4. Applicants believe that no element of self-dealing would be involved in the proposed transactions because the subadviser recommending the transaction would be dealing with an entity that in economic reality is a competitor of the subadviser. Applicants state that each transaction between a Fund and an Eligible Dealer would be the product of arms-length bargaining and that the subadviser recommending the transaction can neither lose nor gain financially on the basis of whether the transaction is beneficial or detrimental to the Eligible Dealer. Because the pecuniary interests of a subadviser would be solely and directly aligned with those of the Fund it subadvises, applicants argue, it is reasonable to conclude that the consideration to be paid to or received by such Fund in connection with a

principal transaction with an Eligible Dealer will be reasonable and fair.

5. Applicants also request relief under sections 6(c) and 17(b) for an exemption from section 17(a) to permit Lazard Frères to engage in principal transactions with registered investment companies, or portfolios of any registered investment company, of which Lazard Frères is, or becomes in the future, a second-tier affiliate solely because of its advisory or subadvisory relationship with other portfolios of that investment company or other investment companies under common control with that investment company.

6. Applicants furthermore request relief under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 thereunder. Section 17(e)(2)(A) provides in relevant part that it shall be unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as broker in connection with the sale of securities to or by such company, to receive from any source a commission for effecting such transaction which exceeds the usual and customary broker's commission if the sale is effected on a securities exchange. When a subadviser is a second-tier affiliate of a Fund and conducts brokerage operations via the same legal entity, the brokerage component also is a second-tier affiliate of the Funds not subadvised by the subadviser. Consequently, transactions involving a Fund that are brokered by an Eligible Broker are subject to section 17(e)(2).

7. Rule 17e–1 provides that, for purposes of section 17(e)(2)(A), a commission shall be deemed as not exceeding the usual and customary broker's commission, if certain specified procedures are followed. These procedures include the requirement in rule 17e–1(b)(3) that a registered investment company's board of directors, including a majority of disinterested directors, determines, no less frequently than quarterly, that all transactions effected pursuant to the rule comply with procedures reasonably designed to provide that the brokerage commission is consistent with the standards set forth in the rule. The procedures also include the requirement in rule 17e–1(c) under the Act that the investment company maintain and preserve certain written records about each transaction effected pursuant to the rule.

8. Applicants believe that the proposed transactions raise no possibility of self-dealing or any concern that the Funds would be managed in the interest of the Eligible Brokers. A subadviser who recommends that an Eligible Broker act as broker to a particular transaction would neither lose nor gain financially on the basis of whether or not the transaction benefits the Eligible Broker, because the subadviser's only pecuniary interest in the transaction is its advisory fee, which is based on net assets under management. Accordingly, the subadviser would have no interest in benefitting Lazard Frères or any future Eligible Broker at the expense of the Fund or Funds it subadvises.

9. Applicants believe that under the circumstances the monitoring and recordkeeping provisions of rule 17e–1 would be unduly burdensome to the Funds. Applicants believe that the situations contemplated by the relief are similar to the arms-length bargaining that normally prevails when an investment adviser acts on behalf of an investment company. Accordingly, applicants believe that the proposed transactions meet the standards of section 6(c) because they are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

10. Applicants also request relief under section 6(c) from section 17(e) and rule 17e–1 to permit Lazard Frères to receive commissions from any registered investment company or portfolio thereof for which Lazard Frères is, or becomes in the future, a second-tier affiliate solely because of its advisory or subadvisory relationship with other portfolios of the same investment company or other investment companies under common control with the investment company, without compliance with the requirements of 17e–1 (b)(3) and (c). For the reasons discussed above, applicants believe that the proposal meets the section 6(c) standard.

Applicants' Condition

Applicants agree that the requested order is subject to the condition that, with respect to any brokerage transactions conducted in reliance on the requested order, applicants will comply with all of the provisions of rule 17e–1 except those of rule 17e–1 (b)(3) and (c).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28615 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21502; International Series Release No. 885; 812–8654]

Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.; Notice of Application

November 13, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Merrill Lynch, Pierce, Fenner, & Smith Incorporated ("Merrill Lynch"), Smith Barney Inc., Prudential Securities Incorporated, Dean Witter, Reynolds Inc., PaineWebber Incorporated, Corporate Income Fund, Equity Income Fund, The Fund of Stripped ("Zero") U.S. Treasury Securities, Government Securities Income Fund, International Bond Fund, The Merrill Lynch Fund of Stripped ("Zero") U.S. Treasury Securities, The Mortgage-Backed Income Fund, Defined Asset Funds, Municipal Investment Trust Fund, and The Tax-Exempt Mortgage Fund.

RELEVANT ACT SECTIONS: Order requested under section 6(c) from section 26(a)(2)(D) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the trustees for certain unit investment trusts to deposit trust assets in the custody of foreign banks and securities depositories.

FILING DATE: The application was filed on October 27, 1993 and amended on May 23, 1995, August 10, 1995, and October 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, Unit Investment Trusts, P.O. 9051, Princeton, New Jersey 08543–9051.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Research Branch.

Applicants' Representations

1. Corporate Income Fund, Equity Income Fund, The Fund of Stripped ("Zero") U.S. Treasury Securities, Government Securities Income Fund, International Bond Fund, The Merrill Lynch Fund of Stripped ("Zero") U.S. Treasury Securities, The Mortgage-Backed Income Fund, Defined Asset Funds, Municipal Investment Trust Fund, and The Tax-Exempt Mortgage Fund (the "Funds") are registered investment companies made up of one or more series (the "Series") of separate unit investment trusts registered or to be registered under the Securities Act of 1933. Each Series is created by a trust indenture (an "Indenture") among its sponsors and a trustee and is sponsored by one or more of the following: Merrill Lynch, Smith Barney Inc., Prudential Securities Incorporated, Dean Witter Reynolds Inc., and PaineWebber Incorporated (the "Sponsors"). Pursuant to powers of attorney executed by each of the other Sponsors, Merrill Lynch acts as agent for the Sponsors for purposes of taking action under the Indentures (including, among other things, selecting securities to be deposited or liquidated). Applicants request that any order granted pursuant to the application extend to any future unit investment trust sponsored by one or more of the Sponsors that becomes a party to an Indenture, and any future sponsor of one or more of the Series that becomes a party to an Indenture and for which Merrill Lynch acts as agent for purposes of taking action under the Indentures.

2. In 1987, the SEC issued an order (the "Euroclear Order")[1] that permits any trustee of a Series to deposit securities and other assets of any such Series with Morgan Guaranty Trust Company of New York, Brussels office, as operator of the Euroclear System ("Euroclear") or Central de Livraison de Valeurs Mobilieres, S.A. ("Cedel").[2] However, as discussed below, various Series of Corporate Income Fund, Equity Income Fund, and International Income Fund now invest in foreign securities that either are not eligible for settlement through Euroclear or Cedel or for which those depositories are not used in the ordinary course of settling securities transactions in those securities. Applicants thus request an order to permit the trustees for the Funds to deposit Fund assets in the custody of all foreign banks and securities depositories that meet the requirements described below.

3. Increasingly, transactions in foreign securities must be settled by book entry through specified clearing systems with related securities depositories. Without the requested relief, effecting a trade in securities held in those depositories means that the securities must be physically transported in certificate form for deposit with a foreign branch of a U.S. bank and then retransported and redeposited upon sale.

4. In addition, certain countries by law or regulation mandate use of a particular depository as the only means of holding a security. In other markets, maintaining securities outside a depository is not consistent with prevailing custodial practices. In some markets, anticipated time delays, as well as the costs, of maintaining securities with the nearest foreign branch of a U.S. bank, have led the Sponsors to determine not to invest Fund assets in those markets.

5. The authority to use the custodial services of foreign banks will permit the Funds to invest in countries in which U.S. banks are not authorized to operate or in which U.S. banks are not members of the depository in which the desired securities are held. Even if a U.S. bank is available, there may be settlement advantages to using a local bank.

Applicants' Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1), the trustee of a unit investment trust must be a bank that is subject to regulation by the U.S. government or one of the states. Section 26(a)(2)(D) requires that the trust indenture provide that the trustee "shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust." Under these sections, the only foreign entity that qualifies as a unit investment trust custodian is an overseas branch of a U.S. bank.[3]

2. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. The Sponsors and the Funds request an order under section 6(c) exempting them and any bank that acts as trustee (a "Trustee")[4] for any Series from section 26(a)(2)(D) to the extent necessary to permit a Trustee to deposit, or to cause or permit the deposit of, foreign securities (as defined in rule 17f–5, and any amendments thereto), cash, and cash equivalents in amounts reasonably necessary to effect foreign securities transactions of any Series with (1) any company that is an "eligible foreign custodian" as defined in rule 17f–5 or any amendments thereto and (2) any other company (a "Qualifying Custodian") that fails to meet the definition of eligible foreign custodian solely because it does not meet the shareholders' equity requirement of rule 17f–5(c)(i) or (ii), whichever is applicable. Under the proposed arrangement, each Trustee would provide custody services pursuant to arrangements that would be the same as those applicable to registered management investment companies except that (i) the Trustee would perform the duties that, under rule 17f–5, are assigned to the boards of directors of management investment companies; (ii) the Trustee would provide indemnification against losses due to negligence of the foreign custodian; and (iii) in the case of foreign custodians that fail to meet the shareholders' equity requirements of the rule, the Trustee or an affiliated person of the foreign custodian would provide indemnification against losses due to

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[1] Merrill Lynch, Pierce, Fenner & Smith Incorporated, Investment Company Act Release Nos. 15739 (May 14, 1987) (notice) and 15813 (June 16, 1987) (order).

[2] As conditions to the Euroclear Order, the Funds agreed to include in their trust indentures provisions for custody arrangements that (i) assign to the Trustee the supervisory and monitoring duties which, under rule 17f–5, are assigned to the boards of directors of management investment companies and (ii) require the Trustee to indemnify the Funds against losses occurring by reason of the gross negligence, bad faith, or willful misconduct of Euroclear or Cedel.

[3] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 21259 (July 27, 1995).

[4] The current Trustees are The Bank of New York, The Chase Manhattan Bank, N.A. (each acting as sole trustee), and the Bank of New York and Shawmut Bank, N.A. (acting as co-trustees for certain Series). The Sponsors may use other trustees in the future.

bankruptcy or insolvency of the foreign custodian.

4. Applicants believe that the requested exemption is closely analogous to, and appropriate in light of, the foreign custodial arrangements available to management companies under rule 17f–5. Rule 17f–5 permits management companies to use foreign banks that meet the rule's capital requirements, transnational securities depositories, and securities depositories that operate the central system for handling securities or equivalent book-entries in a particular country. In addition, applicants believe that securities held by a foreign custodian, subject to the conditions listed below, will be at least as effectively protected as the same securities would be if directly deposited with a foreign branch of a United States bank, or shipped to the United States for custody. Applicants also believe that the exposure to certain custodial risks is reduced when securities are held through certain foreign securities depositories rather than through a foreign branch of a United States bank since securities held in those depositories do not have to be physically transported in certificate form for deposit outside the system to effect a trade and then retransported and redeposited upon sale.

5. Applicants believe that the use of eligible foreign custodians and Qualifying Custodians would result in efficiencies, cost savings, and enhanced liquidity of the Funds' foreign securities. Substantial costs and inefficiencies currently arise, in part, because all sales of certain depository-eligible portfolio securities must be settled only through that depository. Thus, since a unit investment trust that purchases securities that must be settled through the depository must also hold those securities outside of the depository, the unit investment trust must withdraw the securities from the depository, send them out for registration, and then transport them to an eligible sub-custodian (*i.e.*, a foreign branch of a United States bank). In order to subsequently resell the portfolio securities, they must be transported back to the depository for redeposit.

6. During the delay due to sending securities out for registration, corporate action information is not readily available. This could lead, for example, to delays in the crediting of dividends to the Trust for the benefit of unit holders. In addition, the delay could give rise to significant liquidity problems if sales of securities were needed to meet redemptions.

7. If a trust were permitted to hold securities in the foreign depository, this delay would be virtually eliminated. This is because securities held in the depository are automatically reregistered in the name of the depository common nominee and participants may continue to settle their delivery obligations according to sufficiency of their book-entry balances in their depository stock clearing accounts, even when the underlying certificates have been submitted to share registrars for registration.

8. The Trustees will be required to exercise reasonable care in selecting foreign custodians, and each Trustee will maintain written records regarding the basis for the choice or continued use of each foreign custodian. In addition, the prospectus of each Series will provide appropriate disclosure regarding foreign securities and foreign custody. Applicants believe that in view of the cost savings and increased efficiency and liquidity described above, and the proposed indemnification and oversight by the Trustees, the requested exemption is appropriate and should be granted.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

I. Conditions Applicable to All Foreign Custodians

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Series against any loss occurring as a result of willful misfeasance, bad faith, or negligence by the foreign custodian in the performance of its duties or by reason of the foreign custodian's reckless disregard of its duties.

2. The Indenture will contain provisions under which the Trustee agrees to be liable to the Series for any loss occurring as a result of the Trustee's willful misfeasance, bad faith or negligence in the performance of its duties under the Indenture or by reason of its reckless disregard of those duties.

3. The Indenture will contain provisions under which the Trustee agrees to perform all of the duties assigned by rule 17f–5, as now in effect or as it may be amended in the future, to boards of directors of management companies. A Trustee's duties under this condition will not be delegated.

4. The Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N–1A and N–2.

5. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the unit investment trust was terminated, the first two years in an easily accessible place. Such records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the SEC or its staff.

II. Condition Applicable to Foreign Custodians With Insufficient Shareholders' Equity

1. Any foreign custodian that fails to meet the definition of "eligible foreign custodian" solely because it does not meet the shareholders' equity requirement of rule 17f–5(c)(2) (i) or (ii), whichever is applicable, shall not be given custody of the assets of any Series unless and until the Trustee of that Series has entered into one of the following contractual agreements, which will remain in effect at all times during which the foreign custodian fails to have the minimum shareholders' equity specified in rule 17f–5(c)(2):

a. An agreement between the Series, the Trustee, the Sponsors, and the foreign custodian, which provides that the Trustee will indemnify the Series against any loss arising out of or in connection with the bankruptcy or insolvency of the foreign custodian; or

b. An agreement between the Series, the Trustee, the Sponsors, the foreign custodian, and an affiliated person of the foreign custodian that (i) is a bank (as defined in section 2(a)(5) of the Act) or bank holding company or (ii) meets the definition of "eligible foreign custodian" under rule 17f–5(c)(2)(i), which provides that the affiliated person will indemnify the Series against any loss arising out of or in connection with the bankruptcy or insolvency of the foreign custodian.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28616 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Ocelot Energy Inc., Class B Subordinate Voting Shares No Par Value) File No. 1–12076

November 13, 1995.

Ocelot Energy Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the America Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the security from listing and registration include the following:

The Company has determined that the trading volumes of the Security on the Amex do not justify the costs of maintaining a listing on the Amex. The Security will continue to trade on the Toronto Stock Exchange.

Any interested person may, on or before December 5, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–28614 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Solitron Devices, Inc., Common Stock, $.01 Par Value) File No. 1–4978

November 16, 1995.

Solitron Devices, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange Incorporated ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, they no longer meet the PSE's continued listing requirements. Currently, the Security is traded on the Nasdaq electronic bulletin board.

Any interested person may, on or before December 7, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–28618 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36481; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Partially Approving Amendment No. 6 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

November 13, 1995.

On November 13, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")[1] submitted to the Commission proposed Amendment No. 6 to a joint transaction reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan insofar as the proposal requests an extension of the effectiveness of the Plan. The Commission, however, is partially approving the proposal by approving operation of the Plan and trading pursuant to the Plan on a temporary basis to expire on December 12, 1995, and not through the entire period requested which would have been through December 29, 1995.

I. Background

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Consequently, the pilot period commenced on July 12, 1993. As requested by the Participants in Amendment Nos. 1, 2, 3, 4, and 5 to the Plan, the Commission has extended the effectiveness of the Plan five times. Accordingly, the effectiveness of the Plan was scheduled to expire on November 12, 1995.[4]

As originally approved by the Commission, the Plan required the

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges ("UTP") to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. § 78*l* (1991) (as amended 1994). Prior to the amendment, Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange ("OTC/UTP"), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements operated in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Approval Order"). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 4.

[4] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 ("1994 Extension Order"). *See also* Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 ("January 1995 Extension Order"), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 ("August 1995 Extension Order"), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 ("September 1995 Extension Order"), and Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 ("October 1995 Extension Order").

Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995, and since that time the Commission has expected the Participants to conclude their financial negotiations promptly (at that time, before January 31, 1995), and to submit a filing to the Commission that reflected the results of the negotiations.[5] To date, the Participants have not completed their financial negotiations.

Proposed Amendment No. 6 to the Plan would have extended the effectiveness and the negotiation period through December 29, 1995. In light of the lack of progress that has been made by the Participants in finalizing their negotiations, as evidenced by their failure to file a proposed amendment for revenue sharing under the Plan, the Commission believes it is appropriate only to approve the proposal partially by extending the effectiveness of the pilot program for an additional month. This should serve to continue the pilot program in place while the Commission awaits the requisite filing.[6]

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on November 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. While the Participants have requested that these exemptions be extended through December 29, 1995, this order extends these exemptions only through December 12, 1995. Further, this extension will remain in effect only if the Plan continues in effect through that date pursuant to a Commission order.[7]

The Commission continues to believe that exemptive relief from these provisions is appropriate through December 12, 1995.

III. Comments on the Operation of the Plan

In the January 1995 Extension Order, the August 1995 Extension Order, the September 1995 Extension Order, and the October 1995 Extension Order, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by December 15, 1995.

V. Conclusion

The Commission finds that proposed Amendment No. 6 to the Plan to extend the operation of the Plan and the financial negotiation period, but only for an additional month, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extensions of the exemptive relief through December 12, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and with more information to evaluate the effects of and proposed course of action for the pilot program. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

The Commission currently believes, however, that extension beyond December 12, 1995, of the effectiveness of the Plan and the related exemptive relief is not necessary or in furtherance of the Act because such an extension would not maximize the incentives for the Participants to complete their negotiations and file a financial amendment to the Plan, as described above. Thus, the Commission believes that partial approval of the proposal by limiting the effectiveness of the present approval order through December 12, 1995, is appropriate.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 6 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby partially approved and trading pursuant to the Plan is hereby approved on a temporary basis through December 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28621 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* January 1995 Extension Order, *id*, at n. 6.

[6] The NASD, in its letter attached to the present filing, states that all Plan Participants have made a good faith effort to reach a final agreement on revenue sharing under the Plan, but that the Chx has requested a limited amount of time to conclude internally its consideration of the most recent draft of the financial plan amendment. *See* letter from Robert E. Aber, NASD, to Jonathan Katz, Commission, dated November 9, 1995. The Participants are reminded that they currently are in violation of the Commission's August 1995 Extension Order that required the Participants to submit a filing concerning revenue sharing on or before August 31, 1995. The Commission continues to urge the Participants to comply with the Commission's request for the filing promptly.

[7] In the October 1995 Extension Order, the Commission extended these exemptions from October 12, 1995, through November 12, 1995. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions but only from October 12, 1995, through November 12, 1995. *See* letter dated November 9, 1995, *id*.

[Release No. 34–36486; File No. SR–MSRB–95–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Municipal Securities Rulemaking Relating to Arbitration Rules

November 16, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1995, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board proposes to amend Board rule G–35[1] ("Arbitration Code") by amending Section 25 of the Arbitration Code in order to conform that Section to its counterpart in the Uniform Code of Arbitration ("Uniform Code") developed by the Securities Industry Conference on Arbitration ("SICA").

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G–35. Arbitration.

* * * * *

Section 25. Interpretation of Arbitration Code.

The [panel of] arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Arbitration Code and *to take appropriate action to obtain compliance with any ruling by the arbitrator(s).* [any s] *S*uch interpretations [or determination] *and actions to obtain compliance* shall be final and binding upon the parties.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Section 25 of the Arbitration Code in order to conform it to section 22 of the Uniform Code. Consistent with the Uniform Code, the Board proposes to amend Section 25 in order to clarify and codify the arbitrators' existing authority to enforce their rulings in the event of non-compliance by a party. Appropriate arbitral action under this provision could include the assessment of fees or costs, preclusion of documents or witnesses, or initiation of a disciplinary referral. Currently, such sanctions for non-compliance with the arbitrator's rulings are infrequently ordered or requested because the arbitrators and parties may be unaware of an arbitrator's power. It is expected that the arbitrators will exercise such power primarily in the area of failure to comply with discovery requests. As amended, Section 25 will specify that such arbitral rulings, as well as interpretations of the Uniform Code, will be final and binding upon the parties.

The proposed rule change is consistent with Sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Act. Section 15B(b)(2)(C) requires, in pertinent part, that the Board's rules be designed:

> to promote just and equitable principles of trade . . . to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

Section 15B(b)(2)(D) provides that the Board shall, if it deems appropriate:

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

The proposed rule change will facilitate the just and timely resolution of disputes between customers and dealers, thereby furthering the Board's statutory mandate to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposed rule change should be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. In that regard, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of Sections 15B(b)(2)(C) and 15B(b)(2)(D) thereof. Specifically, the Commission concludes that accelerated effectiveness of the proposal is appropriate because the substantive amendments proposed in this rule change were previously proposed by other self-regulatory organizations ("SROs"), were not the subject of public comment, and have been approved by the Commission.[2] Because the proposal is designed to protect investors and the public interest by providing for uniformity in the rules governing the administration of arbitration facilities offered by the SROs, the Commission finds good cause for approving the foregoing rule change on an accelerated basis prior to the thirtieth day after the date of publication thereof in the **Federal Register**.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of MSRB. All submissions should refer to file number SR–MSRB–95–16 and should be submitted by December 15, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[3] that the proposed rule change SR–MSRB–95–16, amending Section 25 of the Arbitration

[1] *MSRB Manual*, General Rules, Rule G–35 (CCH) ¶3671.

[2] *See, e.g.*, Securities Exchange Act Release No. 35263 (Jan. 23, 1995), 60 FR 5741 (Jan. 30, 1995) (order granting accelerated approval to SR–CBOE–94–51); Securities Exchange Act Release No. 34344 (July 11, 1994), 59 FR 36453 (July 18, 1994) (order approving SR–MSE–93–9); Securities Exchange Act Release No. 31464 (Nov. 16, 1992), 57 FR 55011 (Nov. 23, 1992) (order approving SR–NASD–92–33).

[3] 15 U.S.C. 78s(b)(2).

Code in order to conform that Section to the Uniform Code, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28623 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36490; File No. SR–NASD–95–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Gross Income Assessments for Member Firms

November 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 3, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act, the NASD is herewith filing a proposed rule change to Section 1(c) of Schedule A to the NASD By-Laws to revise the credit allowed to members against the annual assessment on their gross income. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1—Assessments

Each member shall pay an annual assessment composed of:

* * * * *

(c) Members shall receive a credit against the annual assessment on gross income stated in paragraph (a) above as follows:

(i) Portion of assessment > $5,000 − [25]*23*%

(ii) Portion of assessment > $25,000 − [5]*4*% additional

(iii) Portion of assessment > $50,000 − 5% additional

(iv) Portion of assessment > $100,000 - [5]*4*% additional

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to Article VI of the By-Laws of the Corporation, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1 to the By-Laws ("Schedule A"). NASD members are required under Section 1(a) of Schedule A to pay an amount equal to the greater of $850.00 or the total of a specified percentage of their annual gross income from securities transactions.[1] NASD members also receive, pursuant to Section 1(c) of Schedule A, a credit against the annual assessment on their gross income imposed under Section 1(a) of Schedule A. The Schedule A, Section 1(c) credit to members is calculated by a tiered discount structure that is intended to address, to some extent, the regulatory subsidy provided by larger NASD firms.

The NASD recently has reviewed its fee structure in order to further align revenues with the cost of providing particular services to members. The proposed rule change would amend Section 1(c) of Schedule A to revise the credit allowed to members against the annual assessment on their gross income under Section 1(a) of Schedule A as follows:

(i) Portion of assessment > $5,000 − [25]*23*%

(ii) Portion of assessment > $25,000 − [5]*4*% additional

(iii) Portion of assessment > $50,000 − 5% additional

(iv) Portion of assessment > $100,000 − [5]*4*% additional

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule change equitably adjusts fees and assessments to conform to the NASD's projected 1995 budget.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

[1] Schedule A, Section 1(a) requires NASD members to pay an amount equal to the greater of $850.00 or the total of: (i) 0.125% of annual gross revenue from state and municipal securities transactions; (ii) 0.125% of annual gross revenue from other over-the-counter securities transactions; (iii) 0.125% of annual gross revenue from U.S. Government securities transactions; and (iv) with respect to members whose books, records and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the SR–NASD–95–52 and should be submitted by December 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28617 Filed 11–22–95; 8:45 am]

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[Release No. 34–36489; File No. SR–NYSE–95–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to a Pilot Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

November 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 6, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 16, 1995, the NYSE filed Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of additional descriptions of the pilot program whereby the Exchange will test and evaluate a means of calculating and displaying, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.[2] Initially, the Exchange expects to work with Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") in testing and evaluating the proposed methodology. Assuming the results of the pilot program are successful, the Exchange will make this program available to all its member organizations in January 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As noted in the Pilot Filing, the purpose of the six month pilot program is to develop, test, and evaluate a methodology and program for calculating and displaying, on an execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any way affect the actual execution of orders. The Exchange refers to this calculated dollar savings as the "NYSE PRIME SM."

In the Pilot Filing, the Exchange presented several examples of how NYSE PRIME is intended to work. Herein, the Exchange is providing an additional example as to how NYSE PRIME will operate in situations when an order is stopped against the prevailing bid or offer and then exposed at a better price in an effort to obtain price improvement for the order.

Assume the NYSE market quote is 50–50⅜, with 500 shares bid and 10,000 offered, and that the best offer displayed in the National Market System is 50¼ for 200 shares. A market order to buy 1,000 shares, entered on the NYSE is stopped at 50⅜, meaning it is guaranteed to buy at 50⅜ or a better price. The order is subsequently executed at 50¼ on the NYSE. Because in this situation there is not complete price improvement, there would be no representation of NYSE PRIME price improvement on the execution report.

The NYSE PRIME program operates in the same manner when an order is not stopped, but is executed at a price equal to the best price displayed in the National Market System if that quotation size is 200 shares or more.[3]

2. Statutory Basis

The basis under the Act for this rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the NYSE PRIME program can reasonably be expected to enhance competition by disclosing to investors the amount of savings they may realize as a result of the price improvement their orders may receive when executed on the NYSE.

[1] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, SEC, dated November 16, 1995. Amendment No. 1 modified the original filing by removing the Exchange's proposal to calculate price improvement based on siz[illegible] Amendment No. 1 also modified the pilot to mak[illegible] program available to all NYSE member organ[illegible]ations starting in January 1996.

[2] *See* Securities Exchange Act Release No. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (notice of filing and immediate effectiveness of proposed rule change by the NYSE relating to a six-month pilot program to display price improvement on the execution report sent to the entering firm) (File No. SR–NYSE–95–35) ("Pilot Filing").

SM NYSE is a service mark of the New York Stock Exchange.

[3] The Commission notes that this filing initially proposed to modify the program, as soon as practicable, to reflect price improvement on 800 shares in the above example, whether or not the order was stopped. In Amendment No. 1, the NYSE indicated that it will not modify the PRIME program to represent price improvement as initially proposed in this filing, *See supra* note 1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act, and paragraphs (e)(5)(i), (ii), and (iii) of Rule 19b–4 thereunder. The NYSE PRIME program will entail enhancements to the Exchange's CMS (common message switch), SuperDOT and Post Trade systems. This program does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not have the effect of limiting access to or availability of any Exchange order entry or trading system. As such, this rule change, as amended on November 16, 1995,[4] may take effect immediately upon filing with the Commission, to modify the program described in SR–NYSE–95–35.[5] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–37 and should be submitted by December 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28624 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[4] *See supra* note 1.

[5] *See supra* note 2.

[Release No. 34–36473; International Series Release No. 884; File No. SR–PHLX–95–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Selective Quoting Facility for Foreign Currency Options

November 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Commentary .04 to PHLX Rule 1012, "Series of Options Open for Trading," and Floor Procedure Advice ("Advice") F–18, "FCO Expiration Months and Strike Prices," establish the Selective Quoting Facility ("SQF") for foreign currency options ("FCOs"). The SQF, a feature of the Exchange's Auto-Quote system, categorizes each FCO series as either an "update strike" or a "non-update strike." Update strikes, for which PHLX quotes must be made available for continuous dissemination to the public throughout the trading day include, at the minimum: (1) The four strike prices below and the four strike prices above the underlying price for American-style options[1] with expiration dates of the three nearest mid-month expirations and the three nearest month-end expirations; and (2) any other European-style[2] or American-style series where there is open interest as of the commencement of that date. In addition, update series may be activated intra-day at the initiative of the PHLX or in response to a request from either the respective specialist or from an FCO floor official. The PHLX proposes to amend Exchange Rule 1012, Commentary .04 and Advice F–18 to (1) categorize series which maintain open interest but have not traded within the previous five days as non-update series;[3] and (2) amend the definition of update series, which are set at the commencement of each trading day, to include the 10, 20, 30, 40 and 50 delta[4] strikes below and above the underlying price rather than the four strike prices above and below the underlying price. The proposal to amend the definition of update series to include the 10, 20, 30, 40, and 50 delta strikes below and above the underlying price will not result in additional strike price intervals; rather, it will identify the existing strike prices which will be classified as update series.[5]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] An American-style option can be exercised on any business day prior to its expiration date and on its expiration date.

[2] A European-style option can only be exercised during a specified period before it expires.

[3] For non-update series, continuous dissemination of Exchange quotes to the public is not required. Although the proposal classifies series which maintain open interest but have not traded within the previous five trade days as non-update series, the proposal also provides that such series must have one bid/ask quote disseminated at the close of each trade day.

[4] Delta is a measure of how an option premium changes in relation to the price of the underlying instrument. For example, a delta of 50 means that for every one point move in the spot price of an underlying foreign currency, the option premium moves ½.

[5] Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation, Commission, on October 6, 1995.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend the SQF, contained in PHLX Rule 1012, Commentary .04, and in Advice F–18, to reduce the number of FCO strike prices continuously updated and disseminated by the Exchange. Advice F–18 establishes criteria to determine for each FCO series whether its bid/ask quotation is eligible for processing through the Options Price Reporting Authority ("OPRA") for off-floor dissemination to vendors. The Exchange proposes to eliminate updating and disseminating strike prices in FCO series of no immediate investment interest to customers.

Currently, the SQF, which is a feature of the Exchange's Auto-Quote system, categorizes certain FCO strikes as "non-update" or "inactive" strikes, which are disseminated with the OPRA indicator "I" and zeroes (*e.g.*, 000–000) in lieu of a market. In contrast, "update" or "active" strikes include at a minimum: (1) Around-the-money strikes in near-term American-style options; and (2) strikes with open interest. Update series may also be added at the initiative of the Exchange or in response to a request by the specialist or an FCO floor official.

When a series is added to the inactive category, those bids and offers are no longer updated in the Exchange's Auto-Quote system for dissemination; however, if interest is voiced in any such series, it can be activated immediately upon establishment of a quote in that series. Because inactive series are not continuously updated and disseminated, quotation processing times are shortened so that quotes of interest are updated and disseminated to customers much more quickly. According to the PHLX, approximately 40% of the Exchange's 10,000 FCO strike prices are currently inactive.

At this time, the Exchange proposes to amend the SQF to recategorize certain active strikes as inactive. Specifically, the PHLX proposes to categorize as non-update FCO strikes with open interest that have not traded within the previous five days. The PHLX believes that this should reduce the number of strikes continuously updated and disseminated and thereby further expedite the processing and dissemination times of those strike prices in which there is apparent customer interest. In addition to being disseminated with zeroes and an "I" intra-day, these strikes with open interest will also be quoted once at the close of trading each day for purposes of mark-to-market of positions and general day-end valuations for the benefit of the position holders.

Further, instead of defining around-the-money strikes as those four above and four below the spot price, the proposal provides that the five options with an approximate 10, 20, 30, 40 and 50 delta will be considered around-the-money. The PHLX notes that because deltas change, the designation of active strikes will also be changed automatically throughout the trade day. Thus, the requirement that active strikes remain active throughout the trade day will also be eliminated.

According to the PHLX, recent volatility in the foreign currency markets has caused fluctuating and dramatic movements in foreign currency exchange rates. This, in turn, has created the addition of considerably more strike prices as the spot price moves to accommodate the new trading ranges of the underlying currencies. The PHLX notes that these conditions have been particularly pronounced for Japanese yen options.[6] The Exchange believes that these market conditions now impose an onerous burden on FCO specialists to maintain updated markets in strike prices for which, on occasion, there is little or no customer interest. The purpose of the proposal is to alleviate this burden and, thus, to improve the timeliness and accuracy of FCO quotes.

According to the PHLX, the SQF was adopted in 1994 with the goal, similar to that of the current proposal, of reducing the number of strike prices for which markets are continuously updated and disseminated.[7] In adopting the SQF, the PHLX established criteria to provide more timely and accurate FCO quote displays by eliminating quote change disseminations in series with no probable public investor interest. The PHLX states that eliminating such quote changes reduces dissemination delays caused by thousands of quote changes in volatile trading periods.

In analyzing different approaches to alleviating this burden, the PHLX considered the impact on customers, floor traders, Exchange staff, and vendors, among others, to achieve a solution. For instance, the PHLX states that simply deleting strikes with no open interest creates confusion for customers when gaps in the sequential orders of strike prices result.[8] Further, the PHLX notes that delisting and re-listing strikes as the spot price fluctuates imposes administrative and systems burdens on both the Options Clearing Corporation ("OCC") and vendors displaying FCO quotes.

Therefore, the PHLX proposes to make certain changes to the SQF, which are intended to reduce the number of FCO series subject to continuous quote change dissemination. First, under the proposal, update series will no longer include series with open interest if such series did not trade within the previous five trading days; a closing quotation will nevertheless be disseminated in such series. The Exchange believes this change will eliminate a significant number of quote changes, because in many series a small number of FCO positions create open interest, which remains without fluctuation or additional trading volume. The PHLX notes that public customers, like all market participants, continue to be protected by the SQF feature which requires a quotation to be disseminated before a trade can be entered.[9] In addition, the PHLX believes that the proposal protects public investors because one quote will be disseminated at the end of the trading day for any inactive series with open interest. The purpose of this quote is to provide option holders with an indication of the market for that option as well as to provide OCC with a closing value to mark the market for margin and capital purposes.[10]

Second, the proposal redefines active strikes as those with an approximate 10, 20, 30, 40, or 50 delta around the underlying price. According to the PHLX, the purpose of this change is to categorize strike prices in the terminology used by FCO market participants. The PHLX notes that, in some instances, the fourth strike price below the spot price could be a 30 delta option, so that the activated around-the-money series do not include a 40 or 50 delta option. The Exchange believes that it is important to include strike prices with a delta up to 50 because these represent the most active, volatile

[6] *See* Securities Exchange Act Release No. 36239 (September 15, 1995), 60 FR 49032 (September 21, 1995) (File No. SR–PHLX–95–47) (notice of filing of proposal to widen the quote spread parameters for Japanese yen options).

[7] *See* Securities Exchange Act Release No. 33067 (October 19, 1993), 58 FR 57658 (October 26, 1993) (order approving File No. SR–PHLX–92–23) ("SQF Approval Order").

[8] Thus, although the Exchange is committed to delisting unnecessary strike prices, the effectiveness of this policy is limited by the potential for customers confusion and inconsistency among series.

[9] *See* SQF Approval Order, *supra* note 7. In the SQF Approval Order, the Commission noted that public customers are protected by the feature of the SQF which requires a quotation to be disseminated after an options series is activated but before a trade can be entered.

[10] *See* PHLX Rule 722(e)(i). *See also* SEC Rule 15c3–1.

options, for which the dissemination of quotes is meaningful.

The PHLX recognizes that redefining active strikes in terms of a delta figure may result in a greater number of strikes as well. Further, the Exchange notes that the delta associated with a strike changes as the spot price changes, so that different strikes become the 10–50 delta strikes, and, thus, the active series. Therefore, the PHLX proposes to amend the SQF to "deactivate" strikes intra-day that no longer fit the definition of active. For instance, those series which are no longer around-the-money based on a delta change would be de-activated. New around-the-money strikes, in response to market changes, will be updated and disseminated. However, a former update strike may qualify as an update strike due to, for example, open interest and trading volume.[11]

Thus, the Exchange believes that enhancing the SQF should address the strike price and quote change situation in a volatile FCO market. As an estimate, the PHLX anticipates these steps will reduce the number of strike prices currently disseminated each day by approximately 15%, or 1,000 strikes, which will improve the Exchange's ability to provide timely and accurate quotes, including quotes in new FCO products that may be traded on the Exchange in the future.

The Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest. Specifically, the Exchange believes that the proposal should promote just and equitable principles of trade by facilitating speedier dissemination of FCO markets. The PHLX states that the proposal is also designed to facilitate coordination between the Exchange and OCC, OPRA, and securities information vendors. The PHLX notes that the protections of the SQF will include an end-of-day quote for inactive series with open interest, consistent with the protection of investors and the public interest. In sum, the PHLX believes that the proposed changes to the SQF should facilitate the specialists' ability to focus on active series, which should, in turn, result in tighter, more liquid markets, consistent with Section 6(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 15, 1995.

[11] Under the proposal, update strikes are defined to include not only the 10, 20, 30, 40, and 50 delta strikes, but also any other series where there is open interest at the commencement of the day, if that series has traded within the previous five trade dates.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28619 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36369A; File No. SR–Phlx–95–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Accelerated Approval of Amendment Nos. 1, 2, 3, 4, and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Phlx Super Cap Index; Correction

November 13, 1995.

In notice document 95–26004 beginning on page 54274 in the issue of Friday, October 20, 1995, make the following correction:

On page 54276, in footnote number 25, in the third column, the first sentence should read as follows:

[25] Pursuant to proposed amendment to Phlx Rule 1047A, the opening rotation for Super Cap Index options *may* be held after underlying securities representing 75% of the current index value of all the securities underlying the index have opened for trading on the primary market.

In footnote number 25 of the initial approval order for this proposed rule change, the Commission inadvertently stated that opening rotations for industry index options also require that 75% of the securities underlying the index have opened for trading on the primary market. In all other respects, the approval order is unchanged.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28820 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36482; File No. SR–PHLX–95–73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to New Organizational Structures for Members

November 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[12] 17 CFR 200.30–3(a)(12) (1994).

[1] 17 CFR 200.30–3(a)(12) (1994).

("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 4, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 11, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change,[1] and on November 1, 1995, the Exchange submitted Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend the definition of "member firm" found in Article I, Section 1–1(c) of its By-Laws and Rule 3 of the Rules of the Board of Governors to include within such definition newly recognized business entities which are essentially similar to those forms of business concerns (*i.e.*, partnerships and corporations) already allowed to become member organizations. The Exchange also proposes to amend Article I, Section 1–1(c) and Rule 3 to make the provisions in its By-Laws and Rules that pertain to partners of partnership member firms applicable to those persons performing similar functions in non-partnership member firms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] *See* Letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 2, 1995. Amendment No. 1 renumbered the rule filing.

[2] *See* Letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 25, 1995. *See infra* notes 6 and 7 for a description of Amendment No. 2.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, Pennsylvania law and the laws of 46 other jurisdictions have recognized the existence of new legal entities such as limited liability companies ("LLCs"),[3] limited liability partnerships ("LLPs"),[4] and business trusts.[5] As of February 5, 1995, Pennsylvania has authorized the existence of LLCs and LLPs. Presently, the Exchange's By-Laws and Rules recognize two types of member organizations: partnerships under the term "member firm" and corporations under the term "member corporation."

The proposed rule change would allow the Exchange to recognize these new legal entities as Phlx member firms by amending the definitions of "member firm" found in Article I, Section 1–1(c) of the By-Laws and Rule 3 to encompass organizations that are essentially similar to member firms including, but not limited to, LLCs, LLPs, and business trusts.[6]

The Exchange also proposes to amend Article I, Section 1–1(c) and Rule 3 to make provisions in the Phlx By-Laws and Rules which pertain to general, special or limited partners in partnership member firms applicable, as appropriate, to those persons who perform essentially similar functions as such partners in non-partnership member firms.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange solicited comment from its membership for the proposed change to its By-Laws in Phlx Circular 120–95 (July 20, 1995). No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent

[3] An LLC combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entity's obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. *See* Robert R. Keatinge et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 Bus. Law. 378 (1992).

[4] An LLP differs from a traditional partnership entity in two significant ways. First, in an LLP the liability of a partner or the partnership is no longer joint and several among the partners; instead, a partner generally will be personally liable only for his or her own conduct and that of those under his or her direct supervision. Second, an LLP is treated as a pass-through entity for federal income tax purposes. *See* Sharon Kanovsky, *LLPs: A New Form of Organization*, 25 Tax Advisor 409 (1994).

[5] The term "business trust" is generally used to describe a trust in which the managers are principals and the shareholders are cestuis que trust. Its essential attribute is that property is placed in the hands of trustees who manage and deal with it for the use and benefit of beneficiaries. *Black's Law Dictionary* 180 (5th ed. 1979).

[6] In Amendment No. 2 other Exchange stated that Phlx staff will review each exchange member firm application of any entity, such as an LLC, LLP, or business trust on a case by case basis, and prior to approving such entity for membership, the staff will satisfy itself that: (a) Such entity would be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act; (b) the Phlx would legally have appropriate jurisdiction over such entity; and (c) the permanency of such entity's capital is consistent with that required of other member firms.

[7] Amendment No. 2 added this provision to the proposed rule change. Amendment No. 2 also withdrew a proposed change to Rule 902 that would have required a member intending to form a non-partnership member firm to submit certain specified documentation to the Exchange, as the proposed change to Rule 3 gives the Exchange the authority to require the submission of such documentation under the current Rule 902.

[8] 15 U.S.C. 78f(b)(5).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washigton, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-95-73 and should be submitted by December 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-28622 Filed 11-22-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2820]

Maryland; Declaration of Disaster Loan Area

The City of Baltimore and the contiguous counties of Baltimore and Anne Arundel in the State of Maryland constitute a disaster area as a result of damages caused by a fire at the Holland Street Exchange which occurred on November 10, 1995. Applications for loans for physical damage may be filed until the close of business on January 16, 1996 and for economic injury until the close of business on August 16, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	8.000%
Businesses and non-profit organizations without credit available elsewhere	4.000%
Others (including non-profit organizations) with credit available elsewhere	7.125%
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000%

The numbers assigned to this disaster are: for physical damage, 282005 and for economic injury the number is 868600.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 16, 1995.

Philip Lader,

Administrator.

[FR Doc. 95-28745 Filed 11-22-95; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice No. 2279]

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector, ITAC Ad Hoc Committee—Rights and Obligations; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) ad hoc Committee for Rights and Obligations will meet on December 4, 1995 at 9:30 a.m. to 3:00 p.m. in Room 1408 at the U.S. Department of State, 2201 C Street, NW. Washington, D.C. 20520.

This announcement cancels the ITAC Ad Hoc Committee for Rights and Obligations meeting previously scheduled for November 28, 1995, 9:30 a.m. to 3:00 p.m., Room 1205 at the Department of State. It is necessary to make this change because those individuals needed to conduct the business of the meeting will not be available on November 28, 1995.

This U.S. ITAC ad hoc committee for Rights and Obligations will finalize U.S. preparations for the upcoming Geneva December 11–15 meeting of the ITU Review Committee (Rev/Con) after a review of the comments already received by the Committee.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: November 7, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95-28693 Filed 11-22-95; 8:45 am]

BILLING CODE 4710-45-M

[Public Notice No. 2285]

Advisory Committee on International Law; Notice of Meeting

A meeting of the Advisory Committee on International Law will take place on Wednesday, December 13, 1995, from 2:00 to approximately 5:00 p.m., as necessary, in Room 1408 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Conrad K. Harper, and will be open to the public up to the capacity of the meeting room. The meeting will focus on a review of current International Court of Justice litigation, current legislative developments bearing on international law, International Court of Justice and International Law Commission elections during 1996, and other current developments.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by December 11, 1995, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. The above includes government and non-government attendees. All attendees must use the "C" Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

Dated: November 3, 1995.

John R. Crook,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee on International Law.

[FR Doc. 95-28692 Filed 11-22-95; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice No. 2288]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Thursday, December 14, 1995, in room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to report on the outcome of the 41st session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) and prepare for the 42nd session which is scheduled for July 15–19, 1996, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Role of the human element in maritime casualties
—Routing of ships, ship reporting and related matters
—Navigational aids and related matters
—Revision of SOLAS chapter V
—Electronic chart display and information systems
—Performance standards for navigational equipment
—Roll-on roll-off (Ro-Ro) ferry safety
—Prevention of strandings at sea
—International Code of Signals
—Automatic ship identification transponder systems
—Worldwide navigation system
—Review of World Meteorological Organization (WMO) handbooks on navigation in areas affected by sea-ice
—IMO Standard maritime communication phrases
—Removal of wrecks and towage of offshore installations, structures, and platforms
—Development of complementary measures to the Code for Safe Carriage of Irradiated Nuclear Fuel (INF Code)
—Operational aspects of Wing in Ground (WIG) craft
—Safety of passenger submersible craft
—Code for safe navigation and watchkeeping
—Review of reporting requirements in IMO instruments

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NVT–3), Room 1409, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: November 13, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95-28660 Filed 11-22-95; 8:45 am]

BILLING CODE 4710-07-M

Office of the Secretary

[Public Notice 2293]

Extension of the Restriction on the Use of the United States Passport for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area ". . . where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, all United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: November 13, 1995.

Warren M. Christopher,

Secretary of State.

[FR Doc. 95-28749 Filed 11-21-95; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 11/11/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–800.
Date filed: November 7, 1995.
Parties: Members of the International Air Transport Association.

Subject: TC31 Reso/P 1076 dated October 3, 1995, TC3 (exc. Japan)—N. America/Caribbean r-1 to r-18, TC31 Reso/P 1077 dated October 3, 1995, TC3—Central/South America, r-19 to r-31, TC31 Reso/P 1078 dated October 3, 1995, Areawide Resos r-32 to r-36, Intended effective date: April 1, 1996.

Docket Number: OST–95–801.
Date filed: November 7, 1995.
Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1701 dated November 3, 1995, North/Mid/South Atlantic-Africa Reso 002a R–1, TC12 Reso/P 1702 dated November 3, 1995, North Atlantic-Africa Expedited Reso 002t R–2, Intended effective date: expedited January 1, 1996.

Docket Number: OST–95–802.
Date filed: November 7, 1995.
Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1696 dated October 27, 1995, North Atlantic-Middle East Resos R–1 to R–16, TC12 Meet/P 0565 dated November 3, 1995—Minutes, TC12 Fares 0489 dated October 31, 1995—Table, TC12 Reso/P 1700 dated November 3, 1995—Correction, Intended effective date: April 1, 1996.

Docket Number: OST–95–810.
Date filed: November 9, 1995.
Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1813 dated November 3, 1995 r-1—r-4, TC2 Reso/P 1814 dated November 3, 1995 r-5-r-7, TC2 Reso/P 1815 dated November 3, 1995 r-8-r-10, TC2 Reso/P 1816 dated November 3, 1995 r-11-r-22, TC2 Reso/P 1817 dated November 3, 1995 r-23-r-24, TC2 Reso/P 1818 dated November 3, 1995 r-25-r-28, TC2 Reso/P 1819 dated November 3, 1995 r-29–R–30, TC2 Reso/P 1820 dated November 3, 1995 r-31-r-33, TC2 Reso/P 1821 dated November 3, 1995 r-34-r-39, TC2 Reso/P 1822 dated November 3, 1995 r-40, TC2 Reso/P 1823 dated November 3, 1995 r-41-r-42, TC2 Reso/P 1824 dated November 3, 1995 r-43-r-44, TC2 Reso/P 1825 dated November 3, 1995 r-45-r-46, Within Europe Expedited Resolutions, Intended effective date: various dates in January 1996.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95-28541 Filed 11-22-95; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 11, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–796.
Date filed: November 6, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 1995.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41101 and 41108, applies for a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation between Cincinnati, Ohio and Montreal, Quebec, Canada.

Docket Number: OST–95–797.
Date filed: November 6, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 1995.

Description: Application of Target Airways Ltd. d/b/a Great American Airways, pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Myrna F. Adams,
Acting Chief, Documentary Services Division.
[FR Doc. 95–28540 Filed 11–22–95; 8:45 am]
BILLING CODE 4910–62–P

Office of the Secretary

[Notice of Order to Show Cause (Order 95–11–30); Docket OST–95–403]

Application of Eagle Jet Charter, Inc., d/b/a Eagle Jet for Certificate Authority

AGENCY: Department of Transportation.
SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Eagle Jet Charter, Inc. d/b/a Eagle Jet fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.
DATES: Persons wishing to file objections should do so no later than December 4, 1995.
ADDRESSES: Objections and answers to objections should be filed in Docket OST–95–403 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.
FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2337.

Dated: November 17, 1995.
Patrick V. Murphy,
Deputy Assistant Secretary for Aviation and International Affairs.
[FR Doc. 95–28726 Filed 11–22–95; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Jacksonville International Airport, Jacksonville, Florida, and Impose a Passenger Facility Charge (PFC) at Craig Municipal Airport, Jacksonville, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport, and impose a PFC at Craig Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Herbert Godfrey, Director of Aviation of the Jacksonville Port Authority at the following address: Jacksonville International Airport, 2400 Yankee Clipper Drive, Jacksonville, Florida 32226.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jacksonville Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Owen, Program Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827–5397, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport, and impose a PFC at Craig Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Jacksonville Port Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 15, 1995.

The following is a brief overview of the PFC Application No. 96–02–C–00–JAX.

Level of the proposed PFC: $3.00.
Proposed charge effective date: April 1, 1996.
Proposed charge expiration date: March 31, 2000.
Total estimated PFC revenue: $25,199,225.
Brief description of proposed projects:

1. Install Runway 25 Glideslope/MALSR
2. Airfield Pavement Reconstruction—Phases I & J
3. Install Taxiway Guidance Signs (Part 139)
4. Runway 13/31 Lighting Improvements
5. Construct Aircraft Rescue and Fire Fighting (ARFF) Facility
6. Federal Inspection Station Facility Improvements
7. Planning for Terminal Facilities Improvements
8. Purchase of 3000 gallon ARFF Vehicle
9. Airfield Pavement Reconstruction—Phase II
10. Airfield Drainage Improvements
11. Obstruction Removal for Runways 7/25 & 13/31
12. Construct Inner Taxiway System for Runways 14/32 & 5/23 at Craig Municipal

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jacksonville Port Authority.

Issued in Orlando, Florida on November 16, 1995.
Charles E. Blair,
Manager, Orlando Airports District Office, Southern Region.
[FR Doc. 95–28742 Filed 11–22–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–02–C–00–HDN) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yampa Valley Regional Airport, Submitted by Routt County, Hayden, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Yampa County Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Nancy J. Stahoviak, Chairperson, Routt County Board of Commissioners at the following address: Routt County, P.O. Box N, Hayden, CO 81639.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yampa Valley Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–C–00–HDN) to impose and use PFC revenue at Yampa Valley Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 14, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Routt County, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 22, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Actual charge effective date: May 1, 1996.
Proposed charge expiration date: November 30, 1999.
Total estimated PFC revenues: $685,544.00.

Brief description of proposed project: Terminal building capacity improvements; Runway safety improvements—overlay and groove Runway 10/28; Airfield capacity and safety improvements—rehabilitate the aircraft parking apron and construct the west portion of parallel Taxiway "A"; and Acquire new snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Yampa Valley Regional Airport.

Issued in Renton, Washington on November 14, 1995.
David A. Field,
Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.
[FR Doc. 95–28743 Filed 11–22–95; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–58; OTS No. 5141]

Broadway Federal Savings and Loan Association, Los Angeles, California; Approval of Conversion Application

Notice is hereby given that on November 13, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Broadway Federal Savings and Loan Association, Los Angeles, California, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: November 17, 1995.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 95–28647 Filed 11–22–95; 8:45 am]
BILLING CODE 6720–01–P

[AC–59; OTS No. 5080]

First Federal Savings and Loan Association of Peekskill, Peekskill, New York; Approval of Conversion Application

Notice is hereby given that on November 13, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Peekskill, Peekskill, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 17, 1995.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 95–28648 Filed 11–22–95; 8:45 am]
BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 226
Friday, November 24, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below.

TIME AND DATE: 9:00 a.m., December 6, 1995.

PLACE: Holiday Inn, Livermore, Knight Room, 720 Las Flores Road, Livermore, CA 94550.

STATUS: Open.

MATTERS TO BE CONSIDERED: Board members will review with Department of Energy and its contractors the status of public health and safety issues pertaining to safety in defense nuclear research and development activities at the Lawrence Livermore National Laboratory.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: November 20, 1995.
John T. Conway,
Chairman.
[FR Doc. 95–28805 Filed 11–21–95; 3:12 pm]
BILLING CODE 3670–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95–27973.

PREVIOUSLY ANNOUNCED DATES AND TIMES:

Tuesday, November 14, 1995 at 10:00 a.m. Meeting Closed to the Public.
Thursday, November 16, 1995 at 10:00 a.m. Meeting Open to the Public.

Due to extraordinary circumstances, Government Shut-Down, these meetings were cancelled.

DATE AND TIME: Tuesday, November 28, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, November 30, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1995–38: Jeffrey C. Smith on behalf of the Washington Policy Associates, Inc.
Additional Information—Petition of the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc. and the Bush-Quayle '92 Compliance Committee, Inc. to Stay Repayment Pending Appeal (LRA #425).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.
[FR Doc. 95–28903 Filed 11–21–95; 3:15 pm]
BILLING CODE 6715–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, December 4, 1995, and at 8:30 a.m. on Tuesday, December 5, 1995, in Washington, DC.

The December 4 meeting is closed to the public. (See 60 FR 57271, November 14, 1995) The December 5 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

December 4—1:00 p.m. (Closed)

1. Consideration of a Funding Request for Truck Tractors and Spotters. (Allen R. Kane, Vice President, Operations Support)

Tuesday Session

December 5—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 6–7, 1995.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Postal Inspection Service Semiannual Report. (Kenneth J. Hunter, Chief Postal Inspector)
4. Consideration of FY 1995 Audited Financial Statements. (Vice Chairman del Junco and Michael J. Riley, Chief Financial Officer)
5. Final FY 1997 Appropriation Request. (Mr. Riley)
6. Capital Investments.
   a. Issaquah, Washington, Main Post Office [final consideration]. (Rudolph K. Umscheid, Vice President, Facilities)
   b. Jacksonville, Florida, BMC Expansion [informational briefing]. (David C. Bakke, Vice President, Southeast Area Operations)
   c. Associate Office Infrastructure, R&D [informational briefing]. (Richard D. Weirich, Vice President, Information Systems)
7. Tentative Agenda for the January 8–9, 1996, meeting in Washington, DC.

David F. Harris,
Secretary.
[FR Doc. 95–28872 Filed 11–21–95; 3:14 pm]
BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 60, No. 226
Friday, November 24, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Proposed Priorities

Correction

In notice document 95–27508 beginning on page 56192 in the issue of November 7, 1995, make the following correction:

On page 56192, in the first column, in the **DATES** section, in the sixth line, "December 7, 1996" should read "December 7, 1995".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-17-000]

Florida Gas Transmission Company; Notice of Transition Cost Recovery Report

Correction

In notice document 95–27179 appearing on page 55712 in the issue of Thursday, November 2, 1995, the Docket number should appear as set forth above.

BILLING CODE 1505–01–D

federal register

Friday
November 24, 1995

Part II

Department of Education

34 CFR Part 371

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 371

RIN 1820–AB32

Vocational Rehabilitation Service Projects for American Indians With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Vocational Rehabilitation Service Projects for American Indians with Disabilities program authorized under Title I, Part D, section 130 of the Rehabilitation Act of 1973, as amended (Act). Changes are needed to implement section 130(b)(3) of the Act to provide greater funding continuity for tribal projects that are performing effectively by extending the normal 36-month project period for up to 24 additional months. Changes are also needed to conform the purpose and outcome of the program, consistent with section 100(a)(2) of the Act as revised by the 1992 Amendments, from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

EFFECTIVE DATE: These regulations take effect December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara M. Sweeney, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3225, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–9544. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement, in part, section 130(b)(3) of the Act, which authorizes the Secretary to prescribe regulations that would extend the project period for certain tribal projects beyond the maximum 36 months specified in the Act. The Secretary may grant, on a case-by-case basis, extensions of up to 24 months to tribal projects that meet the requirements established in a new § 371.5. In order to receive an extension of its project period, a tribal grantee must submit a written request for extension that contains an assurance of compliance with all program requirements and that provides satisfactory evidence that there is a continuing need for the project and that the project has been effective in meeting the rehabilitation needs of the American Indians it has served, including achieving employment outcomes that are consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

The program supports the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On July 27, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (60 FR 38608). Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 26 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. The comments have been grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Gainful Employment (Section 371.1)

Comments: Twelve parties commented on the proposed change of the purpose and outcome of the program from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. All twelve parties requested that the term "suitable employment" be retained. Some of these commenters were concerned that "gainful employment" was synonymous with competitive employment and would require that individuals be placed in jobs paying at least the minimum wage. Competitive employment opportunities, according to these commenters, might not be available on many reservations, thus forcing some individuals to leave the reservation to achieve this kind of employment goal. Other commenters were concerned that this change would lessen individual choice in the selection of a vocational goal and would preclude certain kinds of employment outcomes, such as subsistence employment or placement in a small family-operated business, that are available on reservations, culturally appropriate, and meet individual needs.

Discussion: This change in the regulations is necessary to conform the purpose and outcome of the program with new legislative language in section 100(a)(2) of the Act. This change does not restrict the range of employment outcomes that are permissible under the program, which continue to include, as appropriate to the needs of the individual, outcomes such as supported employment, self-employment, extended employment, homemaker, or farm or family work for which payment may be in kind rather than cash. The Secretary interprets the term "gainful employment" to be any employment outcome that is consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. "Gainful employment" is not synonymous with competitive employment; the term includes, but is not limited to, competitive employment. The Secretary believes that the new legislative language, as reflected in the regulations, strengthens consumer choice of a vocational goal under the program rather than diminishing it as some commenters feared.

Changes: None.

Length of the Project Period (Section 371.5)

Comments: There were thirteen comments received on the proposed extension of the normal 36-month project period for up to 24 additional months and on the requirements for submitting an extension request. All commenters supported the proposal to extend the project period. There were no comments proposing any changes to the content requirements of an extension request.

Discussion: None.

Changes: None.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

List of Subjects in 34 CFR Part 371

Education, Grant programs—education, Vocational rehabilitation, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.250 Vocational Rehabilitation Service Projects for American Indians With Disabilities)

Dated: November 20, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends Part 371 of Title 34 of the Code of Federal Regulations as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

1. The authority citation for Part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

2. Section 371.1 is revised to read as follows:

§ 371.1 What is the Vocational Rehabilitation Services Program for American Indians with Disabilities?

This program is designed to provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Secs. 100(a)(2) and 130(a) of the Act; 29 U.S.C. 720(a)(2) and 750(a))

3. A new § 371.5 is added to Subpart A to read as follows:

§ 371.5 What is the length of the project period under this program?

(a) The Secretary approves a project period of up to three years.

(b) The Secretary may extend a grant for up to two additional years if the grantee includes in its extension request—

(1) An assurance that the project is in compliance with all applicable program requirements; and

(2) Satisfactory evidence that—

(i) The project has made substantial and measurable progress in meeting the needs of American Indians with disabilities on the reservation or reservations it serves;

(ii) American Indians with disabilities who have received project services have achieved employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice; and

(iii) There is a continuing need for the project.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: Section 130(b)(3) of the Act; 29 U.S.C. 750(b)(3))

[FR Doc. 95–28744 Filed 11–22–95; 8:45 am]

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federal register

Friday
November 24, 1995

Part III

Department of Transportation

Federal Transit Administration

Fiscal Year 1996 Apportionments and Allocations; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 1996 Apportionments and Allocations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1996 (Pub. L. 104–50), signed into law by President Clinton on November 15, 1995, provides fiscal year 1996 appropriations for the Federal Transit Administration transit assistance programs. Based upon this Act, this Notice contains a comprehensive list of apportionments/allocations of the various transit programs.

This Notice includes the apportionment of fiscal year 1996 funds for the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Capital Program for Fixed Guideway Modernization, the Metropolitan Planning Program and the State Planning and Research Program, based on the 1996 DOT Appropriations Act and Federal transit laws. This Notice also contains the allocations of funds for the New Starts and Bus categories under the Capital Program. Statutory limitations on the use of operating assistance are also included in this Notice. For the first time, this Notice also includes the funding level authorized by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for each program.

In addition, the FTA policy regarding pre-award authority to incur project costs, as well as other pertinent information, is included in this Notice.

Public Law 103–272, signed by President Clinton on July 5, 1994, codifies Federal transit laws under title 49, chapter 53, of the United States Code. This Notice uses the codified citations.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant specific information and issues; Janet Lynn Sahaj, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program (49 U.S.C. 5307), the Nonurbanized Area Formula Program (49 U.S.C. 5311), the Elderly and Persons with Disabilities Program (49 U.S.C. 5310), or the Capital Program (49 U.S.C. 5309); or Sam Zimmerman, Director, Office of Planning Operations, (202) 366–2360, for general information concerning the Metropolitan Planning Program (49 U.S.C. 5303) and State Planning and Research Program (49 U.S.C. 5313(b)).

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I. Codification of Federal Transit Laws

On July 5, 1994, President Clinton signed Public Law 103–272, which codifies Federal transit laws at title 49, chapter 53 of the United States Code. The enactment of Public Law 103–272 repeals the FT Act of 1992, as amended (the Act), without substantive changes to programs. The original meaning of the Act's provisions are unchanged by this codification, even though the new Public Law 103–272 language, in some instances, differs from that of the Act. The codification now includes laws enacted through July 5, 1994.

Additional provisions enacted after that date, and revisions to title 49, chapter 53, will be reflected in subsequent legislation now being drafted in Congress. This Notice accordingly uses the new form of citation. Listed below are the most commonly used citations:

Subject	49 U.S.C. section	Former Federal Transit Act citation
Capital Program	5309	Section 3
Metropolitan Planning Program	5303	Section 8
Urbanized Area Formula Program	5307	Section 9
Transit Employee Protective Certification	5333(b)	Section 13(c)
National Transit Database*	5335	Section 15
Elderly and Persons with Disabilities Program	5310	Section 16
Nonurbanized Area Formula Program	5311	Section 18
Rural Transit Assistance Program (RTAP)	5311(b)(2)	Section 18(h)
State Planning and Research Program	5313(b)	Section 26(a)(2)

II. Background

Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to the Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to the Governors for capital and operating assistance in nonurbanized areas. The Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to the Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization Formula funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. Funds appropriated for the Metropolitan Planning Program are apportioned by a statutory formula to the Governors for allocation by them to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. Appropriated funds for the State Planning and Research Program also are apportioned to States by a statutory formula. New Start funds identified for specific projects in the 1996 DOT Appropriations Act and all Bus fund allocations in its accompanying Conference Report are also included in this Notice.

III. Overview of Appropriations for Grant Programs

A. General

In fiscal year 1996, the appropriation for the Urbanized Area Formula Program and the Nonurbanized Area Formula Programs is $2,001,315,905. Of this amount, 94.50 percent ($1,891,243,530) is made available to the Urbanized Area Formula Program, and 5.50 percent ($110,072,375) is made available to the Nonurbanized Area Formula Program. The other program appropriations contained in this Notice are as follows: $4,500,000 for the Rural Transit Assistance Program (RTAP); $51,609,095 for the Elderly and Persons with Disabilities Program; $39,500,000 for the Metropolitan Planning Program; $8,250,000 for the State Planning and Research Program; and $1,665,000,000 for the Capital Program. Of the Capital Program amount, $666,000,000 is for Fixed Guideway Modernization, $666,000,000 is for New Starts, and $333,000,000 is for Bus.

Table 1 displays the amounts appropriated for these programs, including adjustments and final apportionment/allocation amounts. The text following this table provides a narrative explanation for the funding levels and other factors affecting these apportionments/allocations.

B. ISTEA Authorized Program Levels

For the first time, FTA is publishing the formula apportionment and allocation tables that compare the maximum program level proposed in the ISTEA authorization law for fiscal year 1996 and the actual program funds appropriated by Congress for fiscal year 1996. The first set of columns shows the actual appropriation as apportioned for this fiscal year, and the second set of columns shows the authorization level. The funding level available to an urbanized area or State for obligation is the appropriated amount as apportioned to the area. The authorized level does not represent funds that are actually available during the fiscal year. Rather, it reflects the maximum dollar amount authorized in ISTEA for which funds can be appropriated by Congress for a particular fiscal year.

C. Project Management Oversight

49 U.S.C. 5327 allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available under the Capital Program, the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the National Capital Transportation Act, as amended, and an additional one-quarter of one percent of Capital Program funds, to contract with any person to oversee the construction of any major project under these statutory programs and to conduct safety, procurement, management and financial reviews and audits. Therefore, one-half of one percent of the funds appropriated for the Urbanized Area Formula Program, the Nonurbanized Area Formula Programs and the National Capital Transportation Act, as amended, for fiscal year 1996, and three-quarters of one percent of Capital Program funds have been reserved for these purposes before apportionment of the funds.

IV. Departmental Initiatives

A. Livable Communities Initiative

The FTA developed the Livable Communities Initiative to encourage a stronger link between transit and communities. FTA is promoting the development of community-sensitive transit facilities and services in order to increase transit ridership, improve personal mobility and enhance the quality of life in communities. Active community involvement in the planning and design process is essential in developing more community-sensitive transit, and planning methods need to be more responsive to community concerns.

Community-sensitive transit is customer-friendly, community-oriented and designed to function effectively within the community. Customer-friendly transit provides readily available information, safety and security measures. Real time customer information, monitoring devices, help zones and improved lighting are illustrative characteristics. Community-oriented transit makes its transfer points both origins and destinations of trips through the provision of on-site services such as child care, public safety, health care and retail conveniences. Well

designed transit, from the perspective of more livable communities, improves pedestrian access, increases the person-carrying capacity of local transportation networks, and reflects the aesthetic and historic character of communities. More community-sensitive transit may result in increased transit ridership, reduced single occupant vehicle trips and improved air quality. In fiscal year 1995, FTA awarded a number of capital grants to implement projects which reflected the characteristics of community-sensitive transit.

The Livable Communities Initiative recognizes the important role that local land use and transportation policy can play in improving the effectiveness of transit. These are important tools in promoting transit facilities and services which help to make communities more livable. Mixed use development around transportation nodes combined with parking management, priority access for transit vehicles and transit pass programs can significantly reduce auto trips and increase transit ridership. FTA is asking transit agencies to work with local governments, employers and the business community in implementing transit supportive land use and transportation strategies through the metropolitan planning process.

FTA urges grantees to incorporate the concepts of the Livable Communities Initiative into the planning and capital projects financed with Federal assistance identified in this Notice and funds transferred as permitted by the flexible funding provisions of ISTEA. In addition, FTA urges grantees to consider incorporating quality design and art into transit projects funded with FTA assistance. FTA Circular C9400.1A, Design and Art and Transit Projects, June 9, 1995 provides more detail on this matter.

B. Intelligent Transportation Systems

The Department of Transportation is actively promoting the development of Intelligent Transportation Systems (ITS) which apply advanced computer, communication, information and navigation technologies to surface transportation systems. ITS technologies improve customer service and make accurate information available to the traveling public, thus enabling travelers to make more informed transportation decisions, thereby improving the operational efficiency of transit services.

Customer services are improved through real-time information on bus and train arrival, reducing the stress of waiting for vehicles to arrive; in-vehicle signs and enunciator systems which inform passengers of upcoming stops and other relevant information; hold notification to vehicles at change-mode points; emergency response systems which decrease delays in responding to problems; and easier access through the use of electronic fare cards which eliminate specialized passes, cash fares or tokens. For example, the Milwaukee County Transit Authority reports on-time schedule adherence improved from 90 percent to 94 percent, thus increasing customer service reliability.

Operational efficiency of transit operations can also be improved using these technologies. Automatic Vehicle Location technology has helped the Kansas City Area Transit Authority decrease capital costs by approximately $1.8 million and operating costs by $400,000 annually. The planned introduction of Smart Cards in the Metropolitan Atlanta Rapid Transit Authority rail stations as estimated will save approximately $2.4 million in annual cash handling costs.

It is important that transit agencies consider the application of these more advanced technologies as current planning and capital programs are developed. Authorities planning to purchase equipment such as radios, in-vehicle signs, etc. should consider the inclusion of state-of-the-art technologies in their programs.

Applications of these technologies are fully enhanced if the transit systems are compatible with similar technologies introduced in traffic management systems being acquired by city traffic departments. Traveler information systems for all customers are enhanced by providing both transit and highway information. Such systems include data which is readily and freely shared between the transit and highway ITS systems.

By integrating these systems, a "Core Infrastructure" of technology will be created providing maximum benefits to all travelers, and specifically to those who use transit within metropolitan areas. Elements of these systems are currently being purchased.

As requests for funding assistance are received by the FTA and other USDOT modal administrations, they will be reviewed with an intent toward ensuring that all surface transportation modes using or planning ITS systems share data to realize the fullest advantages of these systems. Metropolitan Planning Organizations, state Departments of Transportation, and transit authorities are encouraged to cooperate in the planning of ITS systems to ensure that they are able to share data and are expandable to accept new applications with minimal additional cost. It is important that decision makers keep their options open in specifying and procuring ITS systems so future enhancements may be readily added onto systems without costly conversion or modification.

To achieve the full benefits of ITS in metropolitan areas, it is important that the component elements be able to "talk" with each other and thereby share data.

In specifying and procuring ITS systems FTA urges grantees to incorporate the ability to share data between highway and transit elements and to keep future expansion options open.

For further information, please contact the appropriate FTA Regional Administrator.

C. Expanded Capital Eligibility

Bus Overhaul: Effective March 31, 1996, bus overhauls will be eligible for capital assistance. At FTA's request, the 1996 DOT Appropriations Act amended 49 U.S.C 5302(a)(1)(B) and (C) to remove the requirement that bus rehabilitation or bus remanufacturing must extend the economic life of the bus. This change is intended to encourage the maintenance and improvement of bus rolling stock assets. Such overhaul work can be contracted out or performed directly by transit personnel, and will apply to all revenue service buses. FTA intends to issue guidance regarding the implementation of bus overhauls as a capital expenditure.

Associated Capital Maintenance Items: FTA has revised the procedure for determining whether spare parts to be acquired under the Urbanized Area Formula Program and the Capital Program are eligible for capital funding. Under 49 U.S.C. 5307(b)(4), certain spare parts are considered an eligible capital expense if these items cost at least one-half of one percent of the current fair market value of the rolling stock on which the items are to be used. Previously, FTA required that the current fair market value of rolling stock for which the equipment is to be used was the cost of new rolling stock. Consistent with the statute, FTA has revised the method of determining the current fair market value of rolling stock that serves as the basis for the spare parts eligibility calculation. It is now based on the current average vehicle value of a recipient's fleet of vehicles. Spare parts to be purchased for a bus fleet are eligible for capital funding if they cost at least one-half of one percent of the straight line depreciated value of the average fleet vehicle or the depreciated value of a comparable bus of the same age and type.

D. FTA Home Page on the Internet

FTA in its efforts to provide better customer service and broaden the availability of FTA information has established an FTA Home Page on the Internet. This apportionment Notice as well as recently issued FTA circulars (Section 5309 Capital Program: Grant Application Instructions—C9300.1, September 29, 1995; Grant Management Guidelines, C5010.1B, September 7, 1995; and Third Party Contracting Requirements, C4220.1C, October 1, 1995) will be contained therein.

The FTA Home Page may be reached through the DOT Home Page at the following address: http://www.dot.gov. Once in the DOT Home Page, click on the "Browse the DOT Administrations" button and then scroll down to FTA and click. The FTA Home Page may also be accessed by using the worldwide web (www). The FTA direct www address is: http://www.dot.gov/dotinfo/fta/index.html.

V. Urbanized Area Formula Program (49 U.S.C. 5307)

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 1996 Urbanized Area Formula funds of $1,891,243,530, the apportionment also includes $1,030,920 in deobligated funds authorized by 49 U.S.C. 5308 which have become available for reapportionment for the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

Table 2 displays the amount apportioned for the Urbanized Area Formula Program. After the one-half percent for oversight is reserved ($9,456,21[illegible] the amount appropriated for this program is $1,881,787,312. The funds to be reapportioned, described in the previous paragraph, were then added. Thus, the total amount apportioned for this program is $1,882,818,232.

B. Data Used for Urbanized Area Formula Apportionments, and Fiscal Year 1995 Apportionment Adjustment

Data from the 1994 National Transit Database (49 U.S.C. 5335) Report Year submitted in late 1994 and early 1995 have been used to calculate the fiscal year 1996 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

An adjustment has been made to the apportionment for one urbanized area because of a correction to data from the 1993 National Transit Database that were used to compute the fiscal year 1995 Urbanized Area Formula apportionments published in the **Federal Register** of October 12, 1994 (59 FR 51758). The difference between the corrected apportionment and the previously published apportionment resulted in a decrease, and the necessary adjustment has been made to the area's apportionment for fiscal year 1996.

C. Adjustments for Energy and Operating Efficiencies

49 U.S.C. 5336(b)(2)(E) provides that, if a recipient of Urbanized Area Formula Program funds demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce revenue vehicle miles but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under 49 U.S.C. 5336(b)(2)(A)(i) shall not be reduced as a result of such actions. One recipient has submitted data acceptable to FTA in accordance with this provision. Accordingly, the revenue vehicle miles used in the Urbanized Area Formula database to calculate the fiscal year 1996 Urbanized Area Formula apportionment reflect the amount the recipient would have received without the reductions in mileage.

D. Repayment of Temporary Matching Fund Waivers

In accordance with the Temporary Matching Fund Waiver provision authorized by 49 U.S.C. 5307(i)(3) grantees were able to request a Federal share of 100 percent up to the area's total apportionment. Four grants or amendments were awarded which employed the temporary waiver of local matching funds for Urbanized Area Formula grants approved in fiscal years 1992 and 1993. The local share amounts for these grants were to be repaid by March 30, 1994. If not repaid, the amount owed would be deducted from the area's fiscal years 1995 and 1996 Urbanized Area Formula apportionments.

All affected grantees opted to have their future apportionments reduced rather than repay funds. The local share payment amount for each project was determined by dividing the project's total disbursement amount through September 30, 1994, by the project's total Federal capital obligations. The calculated percentage was then applied to the amount of the project's original local share that was waived. Of the calculated amount determined for repayment, 50 percent was deducted from the fiscal year 1995 Urbanized Area Formula apportionment. The remaining 50 percent is deducted from fiscal year 1996. The dollar amounts published in this Notice reflect these fiscal year 1996 adjustments, and the affected areas have been so advised.

E. Urbanized Area Formula Fiscal Year 1996 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each State is shown on Table 2. Table 2 also contains the total apportionment amount attributable to each of the urbanized areas within the State. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below in Section H, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

F. Urbanized Area Formula Operating Assistance Limitations

The fiscal year 1996 limitations on the amount of Urbanized Area Formula funds that may be used for operating assistance are shown on Table 2 with the fiscal year 1996 apportionment.

The operating assistance limitations for all urbanized areas have been adjusted by 49 U.S.C. 5336(d)(2) to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar years. *The CPI Detailed Report*, December 1994, published by the Department of Labor (DOL), establishes that the calendar year 1994 CPI increase for all urban consumers is 2.7 percent. This increase was applied against the base operating assistance limitation calculated in accordance with 49 U.S.C. 5336(d)(2).

This adjustment results in an overall national fiscal year 1996 authorized operating assistance limitation level of $1,112,922,445. However, the 1996 DOT Appropriations Act limits the nationwide availability for operating assistance to a maximum of $400,000,000. Further, it maintains the level of transit operating assistance to urbanized areas of less than 200,000 in population at seventy-five percent of the amount of operating assistance such areas received in fiscal year 1995. Accordingly, the operating assistance limitation published in this Notice takes into account both the 1996 DOT Appropriations Act and Federal transit laws. Therefore, the higher operating assistance limitation as authorized under Federal transit laws

($1,112,922,445) was reduced to the $400,000,000 required by the 1996 DOT Appropriations Act by taking a pro rata reduction across all categories of grantees. Further, the operating assistance limitation to urbanized areas less than 200,000 in population was adjusted to $92,949,803 or seventy-five percent of the amount of their fiscal year 1995 level of $123,933,070. The remaining $307,050,197 of the $400,000,000 was prorated to urbanized areas above 200,000 in population, as authorized by the 1996 DOT Appropriations Act.

Consistent with the 1996 Conference Report, the Secretary hereby directs each area of 1,000,000 or more in population to give priority consideration to the impact of reductions in operating assistance on smaller transit authorities operating within the area, and to consider the needs and resources of such transit authorities when the limitation is distributed among all transit authorities operating in the area.

G. Statewide Operating Assistance Limitations

49 U.S.C. 5307(f) specifies that in any case in which a statewide agency or instrumentality is responsible under State laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of FTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. However, the amount of operating assistance provided for another State or local transportation agency within the affected urbanized areas may not be reduced.

H. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. 5305. These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160), signed by the Federal Highway Administrator and the Federal Transit Administrator. Additional areas may be designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. As of October 1, 1995, two additional TMAs have been formally designated: Petersburg, Virginia, comprised solely of the Petersburg, Virginia, urbanized area; and Santa Barbara, Santa Maria, and Lompoc, California, which were combined and designated as one TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries which have been established by the MPO for the designated TMA also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate urbanized area formula program "Governor's Apportionment" funds for urbanized areas with less than 200,000 in population is restricted.

As required by 49 U.S.C. 5307(a)(2), a recipient(s) must be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those urbanized areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This would include those urbanized areas with less than 200,000 in population that may receive TMA designation independently, or those with less than 200,000 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor would only have discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future **Federal Register** notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590, no later than July 1 of each fiscal year. To date, FTA has been notified of the following urbanized areas with less than 200,000 in population that are included within the planning boundaries of designated TMAs:

Designated TMA	Small urbanized area included in TMA boundaries
Baltimore, Maryland	Annapolis, Maryland.
Dallas-Fort Worth, Texas	Denton, Texas; Lewisville, Texas.
Houston, Texas	Galveston, Texas; Texas City, Texas.
Philadelphia, Pennsylvania	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania	Monessen, Pennsylvania; Steubenville-Weirton, OH-WV-PA (PA portion).
Seattle, Washington	Bremerton, Washington.
Washington, DC-MD-VA	Frederick, Maryland (MD portion).

I. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA, except for those amounts which can be used for the payment of operating expenses, are also available for highway projects if the following three conditions are met: (1) such use must be approved by the MPO after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act (ADA) of 1990; and (3) funds may be available for highway projects under title 23, U.S.C., only if funds used for the State or local share of such highway projects are eligible to fund either highway or transit projects.

Urbanized Area Formula funds which are designated for highway projects will be transferred to and administered by the Federal Highway Administration (FHWA). The MPO should notify FTA of its intent to program FTA funds for highway purposes.

VI. Nonurbanized Area Formula Program (49 U.S.C. 5311) and Rural Transit Assistance Program (RTAP) (49 U.S.C. 5311(b)(2))

A. Nonurbanized Area Formula Program

The fiscal year 1996 Nonurbanized Area Formula apportionments total $111,152,194. The Governor's apportionments are displayed on Table 3. A total of $110,072,375 is appropriated for the Nonurbanized Area Formula Program. After deducting the one-half percent for oversight ($550,362), the fiscal year 1996 apportionment also includes $1,630,181 in prior year deobligated funds which have become available for reapportionment under this program. These funds provide capital, operating and administrative assistance for areas less than 50,000 in population.

The population figures used in calculating these apportionments are from the 1990 Census. The apportionments for the States of Illinois and Oklahoma have been adjusted to compensate for incorrect population figures used in the fiscal year 1995 apportionments.

Each State must spend no less than 15 percent of its fiscal year 1996 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met. Fiscal year 1996 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor.

B. RTAP Program

The fiscal year 1996 RTAP allocations to the States totaling $4,571,903 are also displayed on Table 3. This amount includes $4,500,000 in fiscal year 1996 appropriated funds, and $71,903 in prior year deobligated funds which have become available for reallocation for this program. The funds are allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the States' administration of the Nonurbanized Area Formula Program.

VII. Section 5310 Elderly and Persons With Disabilities Program

A total of $51,703,234 is apportioned to the States for fiscal year 1996 for the Elderly and Persons with Disabilities Program. In addition to the fiscal year 1996 appropriation of $51,609,095, the fiscal year 1996 apportionment also includes $94,139 in prior year unobligated funds which have become available for reapportionment for the Elderly and Persons with Disabilities Program. The apportionment for Connecticut is adjusted to restore fiscal year 1995 funds which were not obligated due to an administrative error. Table 4 shows each State's apportionment.

The formula for apportioning these funds uses 1990 Census population data for persons aged sixty-five and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the State that non-profit organizations in the area are not readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year. 3

VIII. Surface Transportation Program "Flexible" Funds Used for Transit Purposes (Title 23, U.S.C.)

A. Transfer Process

"Flexible" DOT funds, such as Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, or others, which are designated for use in transit projects, are transferred from the FHWA to FTA after which FTA approves the project and awards a grant. Flexible funds designated for transit projects must result from the local and state planning and programming process, and must be included in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. In order to initiate the transfer process, the grantee must submit a completed application to the FTA Regional Office, and must notify the state highway/transportation agency that it has submitted an application which requires a transfer of funds. Once the state highway/transportation agency determines that the state has sufficient obligation authority, the State agency notifies FHWA that the funds are to be used for transit purposes and requests that the funds be obligated by FHWA as a transfer project to FTA. The flexible funds transferred to FTA will be placed in an urbanized area or state account for one of the three existing formula programs—Urbanized Area, Elderly and Persons with Disabilities, or Nonurbanized Area.

The flexible funds are then treated as FTA formula funds, although they retain a special identifying code. They may be used for any purpose eligible under these FTA programs except for operating expenses. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA formula funds in a single annual grant application.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in States with large areas of Indian and certain public domain lands, and National Forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA. The third instance includes the 100 percent Federal safety projects; however, these are subject to a nationwide ten percent program limitation.

C. Other Funds Transferred to FTA

Certain demonstration projects authorized in Title 23 are specified to be used for transit projects and are more appropriately administered by FTA. In such cases, FHWA has transferred the funds to FTA for administration. Since these funds are not STP flexible funds, they are transferred into the appropriate Capital Program category (Bus, New

Starts, or Fixed Guideway Modernization) for obligation and are administered as Capital projects.

IX. Capital Program (49 U.S.C. 5309)

A. Fixed Guideway Modernization

Fixed Guideway Modernization funds are allocated by formula. Statutory percentages were established to allocate the first $497,700,000 to 11 fixed guideway areas. The next $70,000,000 is allocated one-half to these 11 urbanized areas and one-half to other urbanized areas with fixed guideways which are at least seven years old on the basis of the Urbanized Area Formula Program fixed guideway tier formula factors. The remaining funds are allocated to all of these urbanized areas as one universe. For fiscal year 1996, $666,000,000 was appropriated for fixed guideway modernization. After deducting the three-quarter percent for oversight ($4,995,000), $661,005,000 is available for apportionment to the specified urbanized areas for Fixed Guideway Modernization funding.

Table 5 displays these apportionments. Fixed Guideway Modernization funds apportioned for this section must be used for capital projects to modernize or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the National Transit Database reporting system to ensure that all eligible fixed guideway data is included in the calculation of these apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under the National Transit Database are not included.

B. New Starts

The fiscal year 1996 appropriation for New Starts is $666,000,000. In addition, Congress reprogrammed $21,361,250 in unobligated New Start funds originally provided in fiscal year 1993, for a total of $687,361,250. The entire amount was allocated to projects specified within the 1996 DOT Appropriations Act. The actual amount of unobligated fiscal year 1993 New Start funds available for reprogramming is only $18,361,250, thereby reducing the total amount available in fiscal year 1996 to $684,361,250. This amount is further reduced by $4,995,000 (three quarter percent of $666,000,000 for oversight), leaving $679,366,250 available for allocation to areas. The reductions were prorated against all projects. Table 6 displays the allocations by area and also shows prior year unobligated allocations for New Starts.

C. Bus

a. Fiscal Year 1996 Allocations

The fiscal year 1996 appropriation for Bus is $333,000,000 for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. After deducting the three-quarter percent for oversight ($2,497,500), $330,502,500 remains available for projects. The Conference Report accompanying the 1996 DOT Appropriations Act earmarked all of the fiscal year 1996 Bus funds to specified states or localities for bus and bus-related projects. In three instances where funds were earmarked to States, the funds were further suballocated to local entities within these states. The Conference Report also includes the multi-year ISTEA earmarks. In addition, the conferees direct those transit systems in the State of New York receiving Bus discretionary allocations in areas over 200,000 population for the express purpose of providing fixed-route transit services, to purchase alternative fueled buses.

Because the three-quarter percent for oversight was subtracted from the amount appropriated, each bus project identified in the Conference Report receives three-quarter percent less than the funding level contained in the report. No funds remain available for discretionary allocation by the Federal Transit Administrator. Table 7 displays the allocations of the fiscal year 1996 Bus funds by area and also shows prior year unobligated earmarks for the Bus Program.

b. Fiscal Year 1997 FTA Priorities for Allocation of Discretionary Bus Funds

FTA is opposed to the congressional earmarking of the discretionary bus program because it tends to favor certain areas year after year and limits the ability of the Administration to focus these resources to address critical national bus needs, including a backlog of grant applications to the FTA for discretionary bus funding totalling over $488 million. The FTA has established two priority areas for the use of capital bus funds, and as future funds are available for allocation, the FTA Administrator will follow these priorities: (1) Bus replacement for transit systems with significantly overaged transit fleets; and (2) projects that would assist areas in meeting the fixed route bus and paratransit requirements under the ADA.

Overaged Bus Transit fleets. The Federal useful life standard for full sized transit buses is 12 years, meaning that the FTA will not participate in the replacement of a standard transit bus that has not met its 12 year useful life. The national average age for bus fleets is 8.3 years, which is well above the six year national average required to maintain the national transit bus fleet at 12 years. Some individual transit systems are operating bus fleets significantly above the national average. It is an Administration priority to use discretionary resources to assist such areas where formula capital resources available are also being used for bus replacement purposes but are insufficient to meet all of the bus replacement needs.

ADA Requirements for Bus Systems. It is also an Administration priority to assist public transit systems to come into full compliance with the ADA. This means using bus capital funds to purchase accessible fixed-route buses as well as paratransit vehicles. This emphasis is particularly important in light of the January 26, 1997, deadline for full compliance with the ADA paratransit service requirements.

Other Considerations. In the allocation of funding according to the priorities discussed above, consideration will be given to applications which are complete and have met all Federal requirements and to areas that have programmed all of their formula resources. Consideration will also be given to an equitable distribution of funds among areas of different sizes, as well as to a geographic distribution of funding.

Fiscal Year 1997 Capital Bus Funding Requests. FTA invites transit authorities to submit applications for fiscal year 1997 capital bus funding during fiscal year 1996, with the realization that funds appropriated by Congress in FY 1997 may again be fully earmarked. The information acquired by FTA in this application process will be fully shared with appropriations committees during the fiscal year 1997 appropriations process to assist them in their decision-making.

D. Capital Program Circular

FTA has issued a new circular (Section 5309 Capital Program Grant Application Instructions, C9300.1, September 29, 1995) to provide program information and guidance in the preparation of grant applications for the Capital Program.

X. Unit Values of Data for the Section 5307 Urbanized Area Formula and Section 5311 Nonurbanized Area Formula Programs, and Section 5309(m)(1)(A) Fixed Guideway Modernization Formula

For technical assistance purposes, the dollar unit values of data derived from the computations of the Urbanized Area Formula and Nonurbanized Area Formula Programs, and the Fixed Guideway Modernization Formula apportionments are included in this Notice on Table 9. To determine how a particular apportionment amount was developed, areas may multiply their population, population density, and data from the National Transit Database by these unit values.

XI. Metropolitan Planning Program (49 U.S.C. 5303) and State Planning and Research Program (49 U.S.C. 5313(b))

A. Metropolitan Planning Urbanized Area Program

The fiscal year 1996 Metropolitan Planning apportionments to States for MPOs to be used in urbanized areas total $39,500,000. A basic allocation of 80 percent of this amount ($31,600,000) is distributed to the States based on the State's urbanized area population for subsequent State distribution to each urbanized area, or parts thereof, within each State. A supplemental allocation of the remaining 20 percent ($7,900,000) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 8 contains the final State apportionments for the combined basic and supplemental allocations. Each State, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the State. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each State formula must include a provision for the minimum MPO allocation. Where the State and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

B. State Planning and Research Program

The fiscal year 1996 apportionments for the State Planning and Research Program total $8,250,000. Final State apportionments for this program are also contained on Table 8. This is the fifth year of a consolidated program which is apportioned to the States for the purpose of such activities as planning, technical studies and assistance, demonstrations, management training and cooperative research. In addition, a State may authorize a portion of these funds to be used to supplement planning funds allocated by the State to its urbanized areas as the State deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each State by administrative formula in fiscal year 1991 was used as a "hold harmless" base in calculating funding to each State.

D. Planning Emphasis Areas (PEAs)

The PEAs are aids to the States and MPOs in the development of planning work programs. They are advisory and are intended to serve FTA, FHWA, and the rest of the Department as a means of helping to meet national transportation needs and implementing national transportation policy. The last PEAs were issued by the FTA and the FHWA on July 11, 1994, for Federal fiscal years 1994 and 1995. These remain in effect until changed, which is expected some time during the first quarter of fiscal year 1996.

The PEAs currently under development will address common problems that have been identified during ongoing reviews of metropolitan (and State) planning processes and will also highlight program objectives identified in FTA and FHWA strategic plans. These include, but are not limited to, financial planning/innovative financing, public participation/environmental justice, transportation data/modeling, Intelligent Transportation Systems, multimodalism, and the need for community sensitive transportation that considers social, environmental, economic, land-use and other quality of life factors early in the transportation planning and development process.

XII. Period of Availability of Funds

The funds apportioned under the Urbanized Area Formula Program, Fixed Guideway Modernization Formula, Metropolitan Planning and State Planning and Research Programs in this Notice will remain available to be obligated by FTA to recipients for three (3) fiscal years following fiscal year 1996. Any of these apportioned funds unobligated at the close of business on September 30, 1999, will revert to FTA for reapportionment under these respective programs. Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two (2) fiscal years following fiscal year 1996. Any such funds remaining unobligated at the close of business on September 30, 1998, will revert to FTA for reapportionment among the States under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this Notice must be obligated by September 30, 1996. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the States under the Elderly and Persons with Disabilities Program. The 1996 DOT Appropriations Act includes a provision requiring that fiscal year 1996 New Starts and Bus funds not obligated for their original purpose as of September 30, 1998, shall be made available for other discretionary projects within the respective categories of the Capital Program. Similar provisions in the 1994 and 1995 DOT Appropriations Acts required that fiscal year 1994 Bus and New Start funds that are not obligated by September 30, 1996, shall also be made available for other discretionary Bus or New Start projects, respectively, and fiscal year 1995 Bus and New Start funds unobligated by September 30, 1997, shall be made available for other discretionary Bus or New Start projects, respectively.

XIII. Notice of Pre-Award Authority to Incur Project Costs

A. Background

FTA is engaged in an ongoing effort to streamline and simplify the administration of its programs. To this end, the agency has expanded the authority extended to grantees to incur costs for operating assistance projects prior to grant award to cover planning and capital costs as well. In fiscal year 1994 FTA extended this authority to non-operating projects funded with current year apportioned formula funds. This automatic pre-award spending authority permitted a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Because this provision worked so well to reduce the paperwork burden on both the grantee and FTA regional offices in

fiscal year 1995, FTA further broadened this authority.

B. Current Coverage

In fiscal year 1996, authority to incur costs for Fixed Guideway Modernization Formula, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, and State Planning and Research in advance of possible future Federal participation applies to fiscal year 1996 FTA funds apportioned in this Notice for the programs listed above, as well as funds to be apportioned in fiscal year 1997. Carryover amounts for these programs are also included in this authority. This pre-award authority is also extended to projects intended to be funded with STP or CMAQ funds transferred to FTA in fiscal years 1996 and 1997, provided that the projects are included in a Federally approved STIP. The flexible funds do not have to be transferred to FTA before the authority can be used. This pre-award authority also applies to Bus funds identified in this Notice. The pre-award authority does not apply to Capital New Start funds.

C. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1). This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that the FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2). All FTA statutory, procedural, and contractual requirements must be met.

(3). No action will be taken by the grantee which prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4). Local funds expended by the grantee pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if the FTA later makes a grant for the project(s) or project amendment(s).

(5). The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal-local match ratio at the time the funds are obligated.

(6). For funds to which this authority applies, the authority expires with the lapsing of fiscal year 1997 funds.

D. Environmental and Other Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA). Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed *before* state or local funds are advanced for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771) the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 51) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a transportation improvement program, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented thereby. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for activities requiring funding beyond fiscal year 1997, it must first obtain a written LONP from the FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

XIV. Electronic Grant Making and Management Initiatives: Fiscal Year 1996 and Beyond

A. Background

As a result of the National Performance Review and the FTA strategic planning process, the FTA is implementing a series of automation improvements in the grant making and management process which are designed to improve customer service and efficiency of program delivery. Known as the Electronic Grant Making and Management (EGMM) initiative, steps are underway to provide a streamlined electronic interface between grantees and FTA which will allow complete electronic application submission, review, approval, and management of all grants. The ultimate goal is to have in place a fully electronic, paperless process for awarding and managing Federal transit assistance programs involving grants and cooperative agreements.

B. On-Line Grantee Program

The On-Line Grantee Program is now available to all grantee agencies to enable them to access the FTA Grants Management Information System (GMIS) data base via a toll free telephone connection. This program was initially designed to permit grantees to inquire about the status of grants only, but has now been expanded to all registered grantees for filing their required quarterly financial status and narrative progress reports and to make annual certifications and assurances through GMIS. Over 470 of FTA's approximately 700 grantees are currently "on line".

C. Electronic Grant Making and Management (EGMM)

This initiative streamlines the entire FTA grant making and management process through a paperless electronic grant application, review, approval, acceptance and management process. The Department of Labor has agreed to participate in the program and receive requests for Transit Employee Protective Certification of projects, as well as issue the Transit Employee Protective Certifications electronically for the EGMM pilot program participants.

During fiscal year 1995, 22 grantee agencies participated in the FTA EGMM pilot program. The pilot grantees successfully tested and utilized the EGMM system to electronically develop, submit, and manage their grants during the full life cycle of the grant via grantee computer station connections to the FTA GMIS computer using a modem and toll free telephone connection. FTA is continuing to implement the EGMM system during fiscal year 1996 through the inclusion of additional grantee agencies. Any transit agency interested in participating in any aspect of the EGMM program should contact the appropriate FTA Regional Office.

D. Electronic Signature of Certifications and Assurances

The FTA is required by 49 U.S.C. 5307 as well as other laws and regulations to obtain specific certifications and assurances for its programs. In fiscal year 1995, FTA compiled the certifications and assurances applicable to the FTA programs into one document published in the **Federal Register**. Grantees are now able to sign one document annually certifying to all the certifications and assurances applicable to FTA grants. During fiscal year 1996, all EGMM grantee participants and on-line grantee participants will be able to provide this certification electronically, completely eliminating paper certification.

E. Future EGMM Expansion

FTA has several activities under consideration to expand the functional content of EGMM, including the following: an enhanced distributive PC-based system, a mechanism to facilitate electronic submission, review, approval and management of statewide transportation improvement programs; electronic development, review, approval and management of unified planning work programs; and a more comprehensive electronic library system.

Through these initiatives, FTA hopes to more effectively and efficiently serve our customers. We appreciate and look forward to the continued support of our grantee agencies as we look for additional ways to improve delivery of the mass transit program.

XV. Quarterly Approval of Grants

The FTA has established a quarterly approval and release cycle for processing grants. All Urbanized Area Formula, Nonurbanized Area Formula, Elderly and Persons with Disabilities, Capital, Metropolitan Planning, and State Planning and Research grants are processed on a quarterly basis. This includes grants using STP or CMAQ funds.

If completed applications are submitted to the appropriate FTA Regional Office no later than the first business day of the quarter, FTA will award grants by the last business day of the quarter.

In order to expedite the grant approval process within the quarterly approval structure, grants which are complete and have received the required Transit Employee Protective Certification will be approved before the end of the quarter. There are only two factors which would delay FTA approval of the project beyond the end of a quarter. First is a failure by DOL to issue a Transit Employee Protective Certification where such certification is a prerequisite to a grant approval, and second is the failure of FHWA to actually transfer flexible funds.

For an application to be considered complete, all required activities such as inclusion of the project in a locally approved Transportation Improvement Program (TIP), a Federally approved State Transportation Improvement Program (STIP), intergovernmental reviews, environmental reviews, all applicable civil rights, anti-drug, clean air requirements and submission of all requisite certifications and documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the labor protection certification which is issued by DOL. Incomplete applications will not be processed, but if the missing components are supplied, applications will be considered in the next quarter.

It is the policy of FTA to expedite grant application reviews and speed program delivery by reducing the number of grant applications. To this end, FTA strongly encourages grant applicants to submit only one application per fiscal year for each formula program. The single application should contain the fiscal year's capital (including flexible funds), planning and operating elements.

Applications for the first quarter should be submitted to the FTA Regional Office within five business days of this Notice. The first-quarter grants will be released on or before December 30, 1995.

XVI. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. Formula grant applications should be prepared in conformance with the following FTA Circulars: Urbanized Area Formula—C9030.1A, September 18, 1987; Nonurbanized Area Formula—C9040.1C, November 3, 1992; Elderly and Persons with Disabilities—C9070.1C, December 23, 1992; and Section 5309 Capital Program: Grant Application Instructions—C9300.1, September 29, 1995. Applications for STP "flexible" fund grants should be prepared in the same manner as the apportioned funds under the Urbanized Area Formula, Nonurbanized Area Formula, or Elderly and Persons with Disabilities Programs. Guidance on preparation of applications for Metropolitan Planning, and State Planning and Research funds may be obtained from each FTA Regional Office. Also available are newly revised editions of the Grant Management Guidelines, C5010.1B, September 7, 1995; and Third Party Contracting Requirements, C4220.1C, October 1, 1995. Copies of circulars are available from FTA Regional Offices, and revised circulars are also available on the FTA Home Page on the Internet.

Issued on November 17, 1995.

Gordon J. Linton,

Administrator.

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TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 1996 APPROPRIATIONS AND ISTEA AUTHORIZATIONS FOR GRANT PROGRAMS

SOURCES OF FUNDS	FY 1996 APPROPRIATIONS	*AUTHORIZED LEVELS*
SECTION 5307 URBANIZED AREA FORMULA PROGRAM AND SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$2,001,315,905	*$2,796,375,000*
SECTION 5307 URBANIZED AREA FORMULA PROGRAM	$1,891,243,530	*$2,642,574,375*
94.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (1/2%)	(9,456,218)	
Reapportioned Funds Added	1,030,920	
Total Apportioned	$1,882,818,232	
Operating Assistance Limitation	$400,000,000	*$1,112,922,445*
SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$110,072,375	*$153,800,625*
5.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (1/2%)	(550,362)	
Reapportioned Funds Added	1,630,181	
Total Apportioned	$111,152,194	
SECTION 5311(b) RTAP PROGRAM	$4,500,000	*$7,687,500*
Reapportioned Funds Added	71,903	
Total Apportioned	$4,571,903	
SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES PROGRAM	$51,609,095	*$68,675,000*
Reapportioned Funds Added	94,139	
Total Apportioned	$51,703,234	
SECTION 5309 CAPITAL PROGRAM	$1,665,000,000	*$2,050,000,000*
SECTION 5309(m)(1)(A) FIXED GUIDEWAY MODERNIZATION	$666,000,000	*$820,000,000*
Less Oversight (3/4%)	(4,995,000)	
Total Apportioned	$661,005,000	
SECTION 5309(m)(1)(B) NEW STARTS	$666,000,000	*$820,000,000*
Less Oversight (3/4%)	(4,995,000)	
Reprogrammed Funds	18,361,250	
Total Allocated	$679,366,250	
SECTION 5309(m)(1)(C) BUS	$333,000,000	*$410,000,000*
Less Oversight (3/4%)	(2,497,500)	
Total Allocated	$330,502,500	
SECTION 5303 METROPOLITAN PLANNING PROGRAM	$39,500,000	*$69,187,500*
SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM	$8,250,000	$14,625,000
TOTAL (Above Grant Programs)	$3,770,175,000	$5,006,550,000

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TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA SIZE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
OVER 1,000,000 IN POPULATION	$1,384,566,927	$239,872,374	*$1,943,169,586*	*717,669,717*
200,000-1,000,000 IN POPULATION	317,068,794	67,177,823	*445,112,204*	*200,988,088*
50,000-200,000 IN POPULATION	181,182,511	92,949,803	*254,292,585*	*194,264,640*
NATIONAL TOTAL	$1,882,818,232	$400,000,000	*$2,642,574,375*	*$1,112,922,445*

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
Amounts Apportioned and Authorized to Urbanized Areas Over 1,000,000 in Population:				
Atlanta, GA	$26,839,796	$2,817,569	*$37,659,460*	*$8,429,834*
Baltimore, MD	23,224,123	4,509,748	*32,586,040*	*13,492,632*
Boston, MA	50,684,051	8,467,028	*71,119,774*	*25,332,346*
Chicago, IL-Northwestern IN	127,782,235	23,457,893	*179,385,792*	*70,183,237*
Cincinnati, OH-KY	9,072,460	2,442,814	*12,728,284*	*7,308,611*
Cleveland, OH	16,046,638	4,469,540	*22,513,571*	*13,372,334*
Dallas-Fort Worth, TX	24,363,705	4,008,037	*34,180,861*	*11,991,571*
Denver, CO	14,536,961	2,736,257	*20,394,878*	*8,186,535*
Detroit, MI	24,001,631	9,922,644	*33,673,043*	*29,687,373*
Ft Lauderdale-Hollywood-Pompano Bch, FL	13,996,500	3,403,116	*19,638,115*	*10,181,720*
Houston, TX	28,784,046	4,211,604	*40,385,072*	*12,600,620*
Kansas City, MO-KS	6,512,147	2,069,850	*9,136,002*	*6,192,747*
Los Angeles, CA	124,287,559	26,465,555	*174,376,805*	*79,181,805*
Miami-Hialeah, FL	25,707,774	3,887,455	*36,068,679*	*11,630,806*
Milwaukee, WI	11,829,319	2,532,863	*16,595,934*	*7,578,026*
Minneapolis-St. Paul, MN	16,652,932	3,377,190	*23,364,328*	*10,104,152*
New Orleans, LA	10,810,730	3,063,597	*15,167,698*	*9,165,919*
New York, NY-Northeastern NJ	407,163,089	61,292,372	*571,334,032*	*183,379,517*
Norfolk-Virginia Beach-Newport News, VA	7,898,757	1,946,012	*11,454,972*	*5,822,236*
Philadelphia, PA-NJ	73,238,333	14,754,704	*102,764,882*	*44,144,326*
Phoenix, AZ	14,050,740	2,182,056	*19,712,901*	*6,528,452*
Pittsburgh, PA	20,396,244	4,404,259	*28,616,176*	*13,177,022*
Portland-Vancouver, OR-WA	14,759,223	2,040,724	*20,707,309*	*6,105,605*
Riverside-San Bernardino, CA	11,159,496	1,166,383	*15,657,893*	*3,489,679*
Sacramento, CA	8,573,242	1,613,097	*12,028,302*	*4,826,195*
San Antonio, TX	13,055,968	2,122,548	*18,317,041*	*6,350,412*
San Diego, CA	23,453,384	3,386,799		*10,132,901*
San Francisco-Oakland, CA	74,755,286	9,017,750		[illegible]
San Jose, CA	19,034,030	3,063,813		[illegible]
San Juan, PR	18,655,885	3,482,258		*502*
Seattle, WA	32,689,692	2,861,557		*061,438*
St. Louis, MO-IL	15,896,099	4,446,206		*13,302,520*
Tampa-St. Petersburg-Clearwater, FL	10,841,506	2,420,798	*15,20[illegible]*	*7,242,742*
Washington, DC-MD-VA	63,813,346	7,828,278	*89,541,627*	*23,421,282*
TOTAL	$1,384,566,927	$239,872,374	*$1,943,169,586*	*$717,669,717*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
Amounts Apportioned and Authorized to Urbanized Areas 200,000 to 1,000,000 in Population :				
Akron, OH	$3,739,754	$1,068,223	$5,246,517	$3,195,998
Albany-Schenectady-Troy, NY	4,869,154	1,036,860	6,831,213	3,099,768
Albuquerque, NM	3,696,147	715,983	5,185,359	2,142,135
Allentown-Bethlehem-Easton, PA-NJ	2,934,820	1,083,235	4,116,172	3,240,910
Anchorage, AK	1,513,460	353,514	2,123,266	1,057,671
Ann Arbor, MI	2,389,025	454,205	3,351,583	1,358,927
Augusta, GA-SC	1,311,735	361,822	1,840,243	1,082,528
Austin, TX	7,400,768	681,375	10,382,794	2,038,593
Bakersfield, CA	2,387,166	444,280	3,349,018	1,329,233
Baton Rouge, LA	1,926,805	593,692	2,702,028	1,776,257
Birmingham, AL	3,328,335	1,090,569	4,669,430	3,262,854
Bridgeport-Milford, CT	4,044,866	946,815	5,674,112	2,832,758
Buffalo-Niagara Falls, NY	8,289,472	2,779,198	11,629,745	8,315,030
Canton, OH	1,321,944	523,119	1,854,554	1,565,111
Charleston, SC	2,000,854	495,970	2,807,111	1,483,884
Charlotte, NC	4,026,919	597,902	5,649,825	1,788,851
Chattanooga, TN-GA	1,643,938	450,735	2,306,325	1,348,546
Colorado Springs, CO	2,401,466	447,449	3,369,077	1,338,714
Columbia, SC	1,900,596	506,333	2,666,382	1,514,889
Columbus, GA-AL	1,225,022	379,379	1,718,591	1,135,057
Columbus, OH	7,513,761	2,015,697	10,541,344	6,030,728
Corpus Christi, TX	2,374,232	398,138	3,330,884	1,191,182
Davenport-Rock Island-Moline, IA-IL	1,942,898	518,039	2,725,708	1,549,913
Dayton, OH	8,176,922	1,341,289	11,472,822	4,012,977
Daytona Beach, FL	1,452,502	359,735	2,037,747	1,076,285
Des Moines, IA	1,781,444	504,542	2,499,267	1,509,529
Durham, NC	1,814,220	370,789	2,545,215	1,109,355
El Paso, TX-NM	5,843,067	825,225	8,197,797	2,468,977
Fayetteville, NC	1,007,412	341,222	1,413,313	1,020,897
Flint, MI	2,832,232	701,838	3,973,425	2,099,817
Fort Myers-Cape Coral, FL	1,493,715	262,047	2,095,575	784,015
Fort Wayne, IN	1,285,722	500,447	1,803,737	1,497,278
Fresno, CA	3,467,394	673,470	4,864,463	2,014,943
Grand Rapids, MI	2,767,813	711,831	3,883,002	2,129,714
Greenville, SC	1,456,978	344,063	2,044,023	1,029,397
Harrisburg, PA	1,525,415	519,625	2,140,034	1,554,657
Hartford-Middletown, CT	6,146,451	1,054,496	8,623,501	3,154,927
Honolulu, HI	15,040,461	1,305,970	21,102,923	3,907,308
Indianapolis, IN	5,712,839	1,754,741	8,014,723	5,249,977
Jackson, MS	1,274,183	414,816	1,787,549	1,241,080
Jacksonville, FL	5,314,870	929,739	7,455,330	2,781,669
Knoxville, TN	1,493,973	413,520	2,095,901	1,237,204
Lansing-East Lansing, MI	2,192,584	533,804	3,075,997	1,597,078
Las Vegas, NV	7,508,897	633,660	10,534,707	1,895,834
Lawrence-Haverhill, MA-NH	2,320,366	392,260	3,255,656	1,173,595
Lexington-Fayette, KY	1,316,539	595,036	1,846,979	1,780,276
Little Rock-North Little Rock, AR	1,775,840	475,798	2,491,350	1,423,532

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
Amounts Apportioned and Authorized to Urbanized Areas 200,000 to 1,000,000 in Population (continued):				
Lorain-Elyria, OH	$861,005	$358,920	$1,207,899	$1,073,846
Louisville, KY-IN	7,321,902	1,792,128	10,272,196	5,361,835
Madison, WI	3,345,638	457,794	4,693,870	1,369,666
McAllen-Edinburg-Mission, TX	915,901	380,331	1,284,911	1,137,906
Melbourne-Palm Bay, FL	2,333,000	323,361	3,273,082	967,456
Memphis, TN-AR-MS	6,173,837	1,660,925	8,660,467	4,969,290
Mobile, AL	1,578,497	462,840	2,214,498	1,384,762
Modesto, CA	1,963,767	455,526	2,754,997	1,362,880
Montgomery, AL	1,031,791	470,960	1,447,506	1,409,056
Nashville, TN	3,592,225	770,071	5,039,626	2,303,961
New Haven-Meriden, CT	6,228,653	1,063,941	8,739,705	3,183,185
Ogden, UT	1,982,134	321,567	2,780,789	962,090
Oklahoma City, OK	3,422,333	1,065,815	4,801,241	3,188,792
Omaha, NE-IA	3,874,785	1,093,065	5,435,970	3,270,320
Orlando, FL	8,193,216	804,301	11,494,612	2,406,374
Oxnard-Ventura, CA	3,705,962	623,767	5,199,617	1,866,236
Pensacola, FL	1,277,158	348,591	1,791,743	1,042,942
Peoria, IL	1,507,444	485,694	2,114,804	1,453,139
Providence-Pawtucket, RI-MA	10,583,742	2,183,415	15,125,851	6,532,519
Provo-Orem, UT	1,714,979	374,328	2,405,971	1,119,946
Raleigh, NC	1,821,556	335,902	2,555,543	1,004,980
Reno, NV	2,555,303	387,233	3,584,907	1,158,555
Richmond, VA	4,059,523	889,706	5,695,206	2,661,896
Rochester, NY	4,915,213	1,426,222	6,895,637	4,267,087
Rockford, IL	1,307,952	446,955	1,834,945	1,337,236
Salt Lake City, UT	8,702,591	1,128,032	12,209,205	3,374,937
Sarasota-Bradenton, FL	2,512,287	582,302	3,524,501	1,742,178
Scranton-Wilkes-Barre, PA	2,091,063	800,237	2,933,565	2,394,214
Shreveport, LA	1,846,482	484,985	2,590,538	1,451,018
South Bend-Mishawaka, IN-MI	1,602,438	529,802	2,248,102	1,585,105
Spokane, WA	3,898,958	514,098	5,469,922	1,538,120
Springfield, MA-CT	4,009,137	934,026	5,624,496	2,794,494
Stockton, CA	2,045,651	616,738	2,869,852	1,845,208
Syracuse, NY	3,462,323	875,658	4,857,382	2,619,865
Tacoma, WA	6,834,378	715,757	9,588,373	2,141,460
Toledo, OH-MI	3,752,175	1,034,105	5,263,977	3,093,920
Trenton, NJ-PA	3,287,120	913,035	4,611,950	2,731,693
Tucson, AZ	5,725,089	764,985	8,031,994	2,288,745
Tulsa, OK	3,074,489	724,300	4,313,254	2,167,019
West Palm Bch-Boca Raton-Delray Bch, FL	8,709,875	762,335	12,221,104	2,280,817
Wichita, KS	2,127,154	626,604	2,984,214	1,874,726
Wilmington, DE-NJ-MD-PA	4,017,483	926,743	5,636,438	2,772,705
Worcester, MA-CT	2,239,136	534,935	3,141,292	1,600,463
Youngstown-Warren, OH	1,682,473	824,093	2,360,335	2,465,588
TOTAL	$317,068,794	$67,177,823	$445,112,204	$200,988,088

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
Amounts Apportioned and Authorized to State Governors for Urbanized Areas 50,000 to 200,000 in Population:				
ALABAMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,403,269	$1,970,561	$4,776,314	$4,118,462
Anniston, AL	328,268	231,980	460,708	484,838
Auburn-Opelika, AL	263,370	129,622	369,626	270,908
Decatur, AL	300,586	152,422	421,857	318,561
Dothan, AL	252,468	133,304	354,326	278,604
Florence, AL	351,728	235,002	493,633	491,153
Gadsden, AL	310,868	233,057	436,287	487,089
Huntsville	986,837	504,984	1,384,975	1,055,414
Tuscaloosa, AL	609,144	350,190	854,902	731,895
ALASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$0	$0	$0	$0
ARIZONA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$540,377	$206,966	$758,391	$432,557
Yuma, AZ-CA (AZ)	540,377	206,966	758,391	432,557
ARKANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,300,294	$798,674	$1,824,896	$1,669,225
Fayetteville-Springdale, AR	358,858	168,344	503,638	351,838
Fort Smith, AR-OK (AR)	488,504	275,251	685,591	575,274
Pine Bluff, AR	330,121	269,436	463,308	563,120
Texarkana, TX-AR (AR)	122,811	85,643	172,359	178,992
CALIFORNIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$19,917,670	$6,801,253	$27,953,433	$14,214,586
Antioch-Pittsburg, CA	1,126,392	345,636	1,580,833	722,378
Chico, CA	491,805	185,098	690,224	386,855
Davis, CA	597,024	213,010	837,893	445,190
Fairfield, CA	725,103	255,671	1,017,646	534,351
Hemet-San Jacinto, CA	604,950	195,698	849,016	409,007
Hesperia-Apple Valley-Victorville, CA	771,736	265,938	1,083,092	555,810
Indio-Coachella, CA	365,797	126,070	513,377	263,485
Lancaster-Palmdale, CA	1,298,088	162,437	1,821,800	339,492
Lodi, CA	508,197	175,169	713,228	366,103

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
CALIFORNIA (Continued):				
Lompoc, CA	$312,109	$107,558	$438,029	$224,795
Merced, CA	554,873	188,067	778,736	393,059
Napa, CA	579,782	266,728	813,694	557,460
Palm Springs, CA	722,306	180,689	1,013,720	377,639
Redding, CA	417,649	149,645	586,149	312,757
Salinas, CA	1,099,062	423,192	1,542,477	884,469
San Luis Obispo, CA	520,478	179,409	730,464	374,964
Santa Barbara, CA	1,700,301	700,123	2,386,286	1,463,254
Santa Cruz, CA	879,200	376,707	1,233,912	787,316
Santa Maria, CA	799,910	227,014	1,122,633	474,457
Santa Rosa, CA	1,550,935	449,066	2,176,658	938,546
Seaside-Monterey, CA	1,042,196	521,884	1,462,669	1,090,736
Simi Valley, CA	986,513	306,429	1,384,520	640,434
Vacaville, CA	598,886	206,423	840,506	431,423
Visalia	684,059	225,542	960,042	471,382
Watsonville, CA	376,859	129,889	528,903	271,467
Yuba City, CA	601,319	236,597	843,921	494,486
Yuma, AZ-CA (CA)	2,141	1,564	3,005	3,269
COLORADO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,670,024	$1,839,230	$5,150,691	$3,843,983
Boulder, CO	816,637	412,508	1,146,108	862,140
Fort Collins, CO	680,178	294,588	954,595	615,688
Grand Junction, CO	387,265	189,586	543,507	396,068
Greeley, CO	544,019	283,630	763,503	592,785
Longmont, CO	495,760	170,885	695,774	357,148
Pueblo, CO	746,165	488,113	1,047,204	1,020,155
CONNECTICUT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$12,192,072	$4,543,229	$17,110,538	$9,495,326
Bristol, CT	578,451	297,793	811,826	622,385
Danbury, CT-NY (CT)	2,052,677	492,382	2,880,724	1,028,909
New Britain, CT	1,083,147	626,111	1,520,141	1,308,568
New London-Norwich, CT	871,611	533,937	1,223,262	1,115,926
Norwalk, CT	2,173,486	676,464	3,050,274	1,413,806
Stamford, CT-NY (CT)	2,755,374	1,016,038	3,866,924	2,123,514
Waterbury, CT	2,677,326	900,584	3,757,387	1,882,217

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
DELAWARE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$276,875	$95,414	$388,580	$199,416
Dover, DE	276,875	95,414	388,580	199,416
FLORIDA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,438,549	$3,152,975	$11,843,073	$6,589,702
Deltona, FL	280,578	96,684	393,778	202,069
Fort Pierce, F	672,119	205,216	943,284	428,900
Fort Walton Beach, FL	651,532	258,405	914,392	540,065
Gainesville, FL	834,982	351,847	1,171,855	735,358
Kissimmee, FL	388,909	134,839	545,814	280,142
Lakeland, FL	853,604	345,542	1,197,990	722,181
Naples, FL	561,788	146,868	788,440	306,954
Ocala, FL	377,378	147,105	529,631	307,449
Panama City, FL	566,341	234,999	794,831	491,148
Punta Gorda, FL	370,353	127,629	519,772	266,745
Spring Hill, FL	283,115	97,565	397,338	203,911
Stuart, FL	493,989	170,246	693,288	355,813
Tallahassee, FL	951,837	393,861	1,335,854	823,167
Titusville, FL.	271,470	93,895	382,398	196,240
Vero Beach, FL	345,873	118,916	484,293	248,533
Winter Haven, FL.	534,481	230,158	750,117	481,028
GEORGIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,694,609	$2,169,758	$5,185,196	$4,534,784
Albany, GA.	457,623	316,131	642,251	660,712
Athens, GA.	438,756	197,454	615,772	412,678
Brunswick, GA	252,489	87,007	354,355	181,844
Macon, GA.	828,221	542,798	1,151,138	1,134,446
Rome, GA.	257,398	149,674	361,245	312,819
Savannah, GA	1,073,169	689,903	1,506,138	1,441,893
Warner Robins, GA	394,953	186,791	554,297	390,393
HAWAII:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$981,936	$475,852	$1,378,096	$994,529
Kailua, HI	981,936	475,852	1,378,096	994,529

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
IDAHO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,943,421	$809,759	$2,727,492	1,692,392
Boise City, ID	1,189,287	469,898	1,668,991	982,083
Idaho Falls, ID	426,308	146,933	598,301	307,090
Pocatello, ID	327,906	192,928	460,200	403,219
ILLINOIS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,901,852	$5,371,412	$12,493,289	11,226,225
Alton, IL	481,881	372,784	675,172	779,118
Aurora, IL	1,347,372	723,464	1,890,967	1,512,035
Beloit, WI-IL (IL)	61,486	25,498	86,292	53,290
Bloomington-Normal, IL	775,827	382,645	1,087,711	799,726
Champaign-Urbana, IL	1,093,716	616,763	1,534,974	1,289,032
Crystal Lake, IL	439,137	151,340	616,306	316,301
Decatur, IL	615,654	446,782	864,038	933,771
Dubuque, IA-IL (IL)	14,341	8,765	20,127	18,319
Elgin, IL	971,930	636,793	1,364,054	1,330,894
Joliet, IL	1,123,830	953,579	1,577,238	1,992,976
Kankakee, IL.	441,072	262,596	619,021	548,825
Round Lake Beach-McHenry, IL-WI (IL)	640,834	209,575	898,254	438,011
Springfield, IL.	897,172	580,828	1,259,135	1,213,927
INDIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$5,191,946	$3,063,742	$7,286,630	$6,403,206
Anderson, IN	419,655	303,284	588,965	633,863
Bloomington, IN	626,233	287,968	878,886	601,851
Elkhart-GosheN, IN	627,641	288,585	880,862	602,973
Evansville, IN-KY (IN)	1,162,783	712,185	1,631,794	1,488,464
Kokomo, IN	422,610	265,091	593,111	554,040
Lafayette-West Lafayette, IN	840,174	439,016	1,179,141	917,542
Muncie, IN	617,633	435,588	866,816	910,377
Terre Haute, IN	475,297	332,105	667,055	694,097
IOWA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,826,428	$1,777,815	$3,966,747	$3,715,625
Cedar Rapids, IA	878,360	542,576	1,232,733	1,133,981
Dubuque, IA-IL (IA)	427,531	302,695	600,018	632,631
Iowa City, IA	506,089	287,305	710,271	433,267
Sioux City, IA-NE-SD (IA)	467,423	311,588	656,004	651,218
Waterloo-Cedar Falls, IA	547,025	413,651	767,721	864,528

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FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
KANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,372,321	$759,970	*$1,925,983*	*$1,588,334*
Lawrence, KS	519,670	217,653	*729,331*	*454,895*
St. Joseph, MO-KS (KS)	4,290	3,866	*6,020*	*8,081*
Topeka, KS	848,361	538,451	*1,190,632*	*1,125,359*
KENTUCKY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,081,613	$635,567	*$1,517,989*	*$1,328,331*
Clarksville, TN-KY (KY)	131,978	73,054	*185,225*	*152,683*
Evansville, IN-KY (KY)	162,067	45,056	*227,453*	*94,166*
Huntington-Ashland, WV-KY-OH ((KY)	323,189	218,446	*453,579*	*456,550*
Owensboro, KY	464,379	299,011	*651,732*	*624,931*
LOUISIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,203,290	$1,868,922	*$4,495,650*	*$3,906,039*
Alexandria, LA	467,451	326,140	*656,043*	*681,632*
Houma, LA	328,804	192,233	*461,459*	*401,767*
Lafayette, LA	808,805	428,989	*1,135,116*	*896,585*
Lake Charles, LA	649,698	413,989	*911,817*	*865,235*
Monroe, LA	617,764	393,577	*866,999*	*822,574*
Slidell, LA	330,768	113,994	*464,216*	*238,246*
MAINE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,394,127	$908,464	*$1,956,587*	*$1,689,686*
Bangor, ME	286,469	152,758	*402,045*	*319,264*
Lewiston-Auburn, ME	332,873	215,633	*467,170*	*450,672*
Portland, ME	711,761	409,648	*998,921*	*856,162*
Portsmouth-Dover-Rochester, NH-ME (ME)	63,024	30,425	*88,451*	*63,589*
MARYLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,550,341	$751,514	*$2,175,825*	*$1,570,661*
Aanapolis, MD	504,949	228,635	*708,670*	*477,846*
Cumberland, MD-WV (MD)	268,559	180,307	*376,908*	*376,842*
Frederick, MD	364,345	125,567	*511,340*	*262,434*
Hagerstown, MD-PA-WV (MD)	412,488	217,005	*578,907*	*453,540*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
MASSACHUSETTS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$6,140,074	$4,010,979	*$8,617,280*	*$8,382,926*
Brockton, MA	1,121,609	966,707	*1,574,121*	*2,020,412*
Fall River, MA-RI (MA)	1,093,936	628,972	*1,535,283*	*1,314,548*
Fitchburg-Leominster, MA	443,308	265,581	*622,160*	*555,064*
Hyannis, MA	316,568	109,085	*444,288*	*227,987*
Lowell, MA-NH (MA)	1,388,378	997,173	*1,948,517*	*2,084,087*
New Bedford, MA	1,203,099	695,995	*1,688,486*	*1,454,626*
Pittsfield, MA	286,569	211,988	*402,185*	*443,053*
Taunton, MA	286,607	135,478	*402,238*	*283,149*
MICHIGAN:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$5,239,687	$3,283,763	*$7,353,632*	*$6,863,049*
Battle Creek, MI	437,612	313,820	*614,166*	*655,881*
Bay City, MI	488,884	343,896	*686,123*	*718,741*
Benton Harbor, MI	353,622	211,224	*496,291*	*441,457*
Holland, MI	396,876	136,779	*556,996*	*285,868*
Jackson, MI	488,615	327,621	*685,745*	*684,726*
Kalamazoo, MI	1,055,142	614,106	*1,480,837*	*1,283,478*
Muskegon, MI	643,592	414,697	*903,249*	*866,717*
Port Huron, MI	423,562	218,257	*594,447*	*456,156*
Saginaw, MI	951,782	703,363	*1,335,778*	*1,470,026*
MINNESOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,867,271	$1,090,931	*$2,620,618*	*$2,280,041*
Duluth, MN-WI (MN)	454,385	358,439	*637,706*	*749,136*
Fargo-Moorhead, ND-MN (MN)	262,731	152,384	*368,729*	*318,315*
Grand Forks, ND-MN (MN)	57,582	37,533	*80,813*	*78,444*
La Crosse, WI-MN (MN)	28,207	12,455	*39,587*	*26,031*
Rochester, MN	512,504	287,183	*719,273*	*600,211*
St. Cloud, MN	551,862	243,017	*774,510*	*507,903*
MISSISSIPPI:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,603,085	$906,680	*$2,249,847*	*$1,894,956*
Biloxi-Gulfport, MS	992,517	552,169	*1,392,946*	*1,154,030*
Hattiesburg, MS	309,338	166,061	*434,140*	*347,066*
Pascagoula, MS	301,230	188,450	*422,761*	*393,860*

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FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
MISSOURI:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,209,877	$1,205,239	$3,100,327	$2,518,944
Columbia, MO	436,128	222,473	612,083	464,968
Joplin, MO	306,282	158,607	429,851	331,488
Springfield, MO	1,028,877	512,465	1,443,976	1,071,049
St. Joseph, MO-KS (MO)	437,790	311,694	614,417	651,439
MONTANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,470,589	$965,821	$2,063,897	$1,809,562
Billings, MT	567,146	332,854	795,961	695,665
Great Falls, MT	528,877	324,442	742,252	678,081
Missoula, MT	374,566	208,525	525,684	435,816
NEBRASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,634,847	$783,698	$2,294,424	1,637,737
Lincoln, NE	1,564,126	747,115	2,195,171	1,561,466
Sioux City, IA-NE-SD (NE)	70,721	36,493	99,253	76,270
NEVADA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$0	$0	$0	$0
NEW HAMPSHIRE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,976,286	$930,889	$2,786,248	1,945,554
Lowell, MA-NH (NH)	4,063	1,136	5,703	2,375
Manchester, NH	832,265	425,529	1,168,041	889,354
Nashua, NH	656,535	270,768	934,044	565,903
Portsmouth-Dover-Rochester, NH-ME (NH)	483,423	233,456	678,460	487,922
NEW JERSEY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,504,218	$1,162,152	$2,111,093	$2,428,892
Atlantic City, NJ	1,084,198	913,408	1,521,616	1,909,019
Vineland-Millville, NJ	420,020	248,744	589,477	519,874
NEW MEXICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$819,128	$346,371	$1,149,605	723,913
Las Cruces, NM	455,029	185,079	638,610	386,814

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FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
NEW MEXICO (Continued):				
Santa Fe, NM	$364,099	$161,292	$510,995	$337,099
NEW YORK:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,544,794	$2,887,397	$6,378,383	$6,034,647
Binghamton, NY	1,140,763	753,963	1,601,002	1,575,780
Danbury, CT-NY (NY)	15,462	4,225	21,700	8,830
Elmira, NY	468,433	328,474	657,422	686,509
Glens Falls, NY	322,133	163,510	452,097	341,736
Ithaca, NY	325,123	112,051	456,293	234,186
Newburgh, NY	422,181	283,473	592,509	425,258
Poughkeepsie, NY	886,848	630,599	1,244,645	1,317,950
Stamford, CT-NY (NY)	105	109	147	227
Utica-Rome, NY	963,746	690,993	1,352,568	1,444,171
NORTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$7,378,023	$3,807,386	$10,354,680	$7,957,418
Asheville, NC	569,489	313,739	799,248	655,713
Burlington, NC	413,116	238,562	579,787	498,594
Gastonia, NC	604,900	363,832	848,947	758,736
Goldsboro, NC	314,139	162,993	440,878	340,654
Greensboro, NC	1,301,026	686,529	1,825,923	1,434,845
Greenville, NC	361,699	124,657	507,625	260,532
Hickory, NC	344,959	173,702	484,133	363,036
High Point, NC	581,730	357,277	816,429	746,708
Jacksonville, NC	561,638	285,812	788,231	428,475
Kannapolis, NC	405,454	287,368	569,034	433,397
Rocky Mount, NC	324,112	111,702	454,875	233,456
Wilmington, NC	530,128	259,914	744,008	543,219
Winston-Salem, NC	1,065,633	602,897	1,495,562	1,260,053
NORTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,433,544	$694,941	$2,011,905	$1,452,424
Bismarck, ND	413,373	217,383	580,147	454,162
Fargo-Moorhead, ND-MN (ND)	597,844	285,401	839,044	596,487
Grand Forks, ND-MN (ND)	422,327	192,237	592,714	401,775
OHIO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,941,572	$2,454,959	$5,531,795	$5,130,852
Hamilton, OH	814,689	413,830	1,143,375	864,904
Huntington-Ashland, WV-KY-OH (OH)	207,463	123,238	291,164	257,566
Lima, OH	445,253	296,760	624,890	620,226

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
OHIO (Continued):				
Mansfield, OH	$429,874	$297,105	$603,306	$620,948
Middletown, OH	560,141	286,086	786,129	597,918
Newark, OH	341,288	171,899	478,980	359,268
Parkersburg, WV-OH (OH)	50,537	31,162	70,926	65,129
Sharon, PA-OH (OH)	33,325	20,995	46,770	43,880
Springfield, OH	647,935	453,628	909,343	948,079
Steubenville-Weirton, OH-WV-PA (OH)	233,102	194,158	327,147	405,789
Wheeling, WV-OH (OH)	177,965	166,098	249,765	347,145
OKLAHOMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$613,484	$386,416	$860,994	$807,607
Fort Smith, AR-OK (OK)	10,762	6,655	15,104	13,908
Lawton, OK	602,722	379,761	845,890	793,699
OREGON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,199,315	$1,425,107	$4,490,075	$2,978,467
Eugene-Springfield, OR	1,585,988	725,646	2,113,577	1,516,596
Longview, WA-OR (OR)	10,815	5,369	14,056	11,221
Medford, OR	465,419	194,556	653,192	406,622
Salem, OR	1,217,893	499,536	1,709,250	1,044,028
PENNSYLVANIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,363,573	$5,129,718	$11,737,846	10,721,085
Altoona, PA	571,348	408,851	801,858	852,824
Erie, PA	1,469,783	929,251	2,062,766	1,942,131
Hagerstown, MD-PA-WV (PA)	5,035	3,855	7,066	8,057
Johnstown, PA	526,872	437,207	739,438	913,760
Lancaster, PA	1,328,871	607,678	1,865,002	1,270,044
Monessen, PA	361,637	211,581	507,539	442,204
Pottstown, PA	343,175	118,272	481,628	247,188
Reading, PA	1,551,229	1,108,504	2,177,070	2,316,765
Sharon, PA-OH (PA)	240,254	184,335	337,184	385,259
State College, PA	500,829	250,976	701,765	524,539
Steubenville-Weirton, OH-WV-PA (PA)	1,746	681	2,451	1,424
Williamsport, PA	419,158	277,812	588,267	580,626
York, PA	1,044,436	591,515	1,465,812	1,236,263
PUERTO RICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$7,726,196	$3,312,130	$10,843,303	$6,922,336
Aguadilla, PR	675,935	245,837	948,641	513,799
Arecibo, PR	631,577	284,696	886,386	595,014

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
PUERTO RICO (Continued):				
Caguas, PR	$1,654,016	$615,765	$2,321,327	$1,286,946
Cayey, PR	489,031	168,563	686,331	352,295
Humacao, PR	423,246	145,877	594,004	304,852
Mayaguez, PR	909,345	453,778	1,276,219	948,394
Ponce, PR	2,023,581	1,056,142	2,839,973	2,207,331
Vega Baja-Manati, PR	919,465	341,472	1,290,422	713,675
RHODE ISLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$491,793	$246,288	$690,206	514,740
Fall River, MA-RI (RI)	112,740	54,179	158,225	113,234
Newport, RI	379,053	192,109	531,981	401,506
SOUTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,082,677	$1,013,149	$2,922,932	$2,117,477
Anderson, SC	280,103	158,795	393,111	331,881
Florence, SC	288,108	166,525	404,345	348,036
Myrtle Beach, SC	302,135	104,116	424,031	217,603
Rock Hill, SC	320,803	149,201	450,231	311,829
Spartanburg, SC	559,230	319,995	784,851	668,787
Sumter, SC	332,298	114,517	466,363	239,341
SOUTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,034,113	$523,345	$1,451,325	$1,093,789
Rapid City, SD	329,349	177,805	462,224	371,611
Sioux City, IA-NE-SD (SD)	9,234	4,219	12,960	8,817
Sioux Falls, SD	695,530	341,321	976,141	713,361
TENNESSEE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,600,470	$887,865	$2,246,176	$1,855,633
Bristol, TN-Bristol, VA (TN)	149,596	90,241	209,950	188,602
Clarksville, TN-KY (TN)	364,740	167,264	511,894	349,581
Jackson, TN	276,074	148,661	387,455	310,701
Johnson City, TN	420,826	228,788	590,607	478,166
Kingsport, TN-VA (TN)	389,234	252,911	546,270	528,583
TEXAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$14,818,915	$7,687,065	$20,797,591	$16,065,929
Abilene, TX	525,749	322,174	737,862	673,342
Amarillo, TX	975,152	544,163	1,368,575	1,137,297

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
TEXAS (Continued):				
Beaumont, TX	$670,691	$436,937	$941,280	$913,196
Brownsville, TX	974,832	343,413	1,368,127	717,732
Bryan-College Station, TX	652,977	248,808	916,420	520,007
Denton, TX	352,719	121,550	495,024	254,039
Galveston, TX	374,156	263,556	525,109	550,830
Harlingen, TX	479,101	213,740	672,394	446,716
Killeen, TX	916,390	322,616	1,286,107	674,267
Laredo, TX	1,157,373	440,079	1,624,314	919,762
Lewisville, TX	407,184	140,316	571,462	293,260
Longview, TX	400,618	205,890	562,247	430,310
Lubbock, TX	1,140,942	634,745	1,601,253	1,326,614
Midland, TX	499,903	258,553	701,588	540,374
Odessa, TX	554,572	408,081	778,314	852,888
Port Arthur, TX	684,956	418,221	849,024	874,080
San Angelo, TX	519,838	269,195	729,566	562,616
Sherman-Denison, TX	260,211	197,337	365,193	412,433
Temple, TX	295,412	147,551	414,596	308,381
Texarkana, TX-AR (TX)	238,374	142,859	334,546	298,574
Texas City, TX	633,643	308,822	889,286	645,437
Tyler, TX	495,493	272,311	695,400	569,129
Victoria, TX	343,487	202,360	482,066	422,931
Waco, TX	748,295	436,203	1,050,194	911,662
Wichita Falls, TX	596,847	387,585	837,644	810,051
UTAH:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$296,183	$102,073	$415,678	$213,332
Logan, UT	296,183	102,073	415,678	213,332
VERMONT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$519,715	$244,385	$729,393	$510,764
Burlington, VT	519,715	244,385	729,393	510,764
VIRGINIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,449,838	$2,010,460	$4,841,670	$4,201,851
Bristol, TN-Bristol, VA (VA)	106,501	54,597	149,469	114,108
Charlottesville, VA	496,053	258,207	696,186	539,650
Danville, VA	281,697	182,428	395,347	381,273
Fredericksburg, VA	330,721	113,974	464,149	238,206
Kingsport, TN-VA (VA)	20,107	15,609	28,219	32,622
Lynchburg, VA	471,917	290,441	662,312	607,020
Petersburg, VA	598,264	414,079	839,632	865,423
Roanoke, VA	1,144,578	681,125	1,606,356	1,423,548

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
WASHINGTON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,260,161	$1,441,915	$4,575,468	3,013,595
Bellingham, WA	384,111	178,042	539,080	372,107
Bremerton, WA	744,095	218,876	1,044,300	457,450
Longview, WA-OR (WA)	325,020	172,874	456,148	361,304
Olympia, WA	578,911	220,296	812,472	460,417
Richland-Kennewick-Pasco, WA	603,931	328,900	847,586	687,400
Yakima, WA	624,093	322,927	875,882	674,917
WEST VIRGINIA				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,505,599	$1,811,406	$3,516,480	$3,785,830
Charleston, WV	1,007,960	668,361	1,414,621	1,396,872
Cumberland, MD-WV (WV)	12,055	10,483	16,919	21,909
Hagerstown, MD-PA-WV (WV)	3,045	2,443	4,273	5,106
Huntington-Ashland, WV-KY-OH (WV)	565,909	434,965	794,224	909,075
Parkersburg, WV-OH (WV)	363,952	275,348	510,789	575,476
Steubenville-Weirton, OH-WV-PA (WV)	156,588	128,467	219,763	268,495
Wheeling, WV-OH (WV)	396,090	291,339	555,891	608,897
WISCONSIN:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$6,859,182	$3,935,089	$9,626,514	8,224,316
Appleton-Neenah, WI	1,256,040	655,709	1,762,788	1,370,429
Beloit, WI-IL (WI)	269,233	155,628	377,856	325,262
Duluth, MN-WI (WI)	117,931	94,707	165,510	197,938
Eau Claire, WI	491,973	237,885	690,459	497,178
Green Bay, WI	953,966	506,229	1,338,843	1,058,016
Janesville, WI	362,064	194,329	508,139	406,146
Kenosha, WI	659,249	483,440	925,223	1,010,386
La Crosse, WI-MN (WI)	523,367	276,146	734,519	577,144
Oshkosh, WI	456,753	282,563	641,030	590,554
Racine, WI	1,018,213	621,866	1,429,010	1,299,697
Round Lake Beach-McHenry, IL-WI (WI)	382	99	536	206
Sheboygan, WI	430,344	238,772	603,965	499,033
Wausau, WI	319,667	187,716	448,636	392,326
WYOMING:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$718,888	461,199	$1,007,800	$963,904
Casper, WY	329,485	247,399	462,303	517,063
Cheyenne, WY	388,683	213,800	545,497	446,841
TOTAL	$181,182,511	$92,949,803	$254,292,585	$194,264,640

TABLE 3

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS, AND ISTEA AUTHORIZED LEVELS

STATE	FY 1996 SECTION 5311 APPORTIONMENT	FY 1996 RTAP ALLOCATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5311 APPORTIONMENT	RTAP ALLOCATION
Alabama	$2,652,238	$97,295	$3,671,980	$171,702
Alaska	395,506	57,053	547,571	68,148
America Samoa	56,372	11,005	78,046	12,587
Arizona	1,216,348	71,690	1,684,014	105,814
Arkansas	2,120,354	87,810	2,935,895	147,296
California	5,175,093	142,282	7,164,831	287,468
Colorado	1,104,676	69,699	1,529,405	100,890
Connecticut	1,002,845	67,868	1,387,315	95,981
Delaware	249,986	54,458	346,102	61,471
Florida	3,326,778	109,323	4,605,870	202,655
Georgia	3,877,855	119,150	5,368,828	227,942
Guam	160,478	12,862	222,179	17,364
Hawaii	435,230	57,761	602,569	68,971
Idaho	878,064	65,658	1,215,665	90,291
Illinois	3,589,344	113,923	4,925,597	213,252
Indiana	3,436,672	111,283	4,758,015	207,698
Iowa	2,210,501	89,418	3,060,402	151,433
Kansas	1,758,384	81,356	2,434,453	130,686
Kentucky	2,982,798	101,761	4,018,751	183,196
Louisiana	2,400,749	92,810	3,323,798	160,162
Maine	1,158,455	70,658	1,603,962	103,158
Maryland	1,446,276	75,790	2,002,345	116,365
Massachusetts	1,549,968	77,639	2,145,905	121,123
Michigan	4,197,578	124,251	5,811,478	242,613
Minnesota	2,415,464	93,873	3,344,170	160,838
Mississippi	2,357,179	92,833	3,263,476	158,163
Missouri	2,813,393	100,168	3,895,097	179,097
Montana	711,301	62,684	984,784	82,639
Nebraska	1,073,263	69,138	1,485,915	99,248
Nevada	350,484	56,248	485,129	66,079
New Hampshire	927,778	66,544	1,284,493	92,573
New Jersey	1,326,526	73,655	1,836,553	110,870
New Mexico	1,042,850	68,596	1,443,809	97,853
New York	4,669,530	133,267	6,464,887	264,269
North Carolina	4,968,420	138,454	6,867,620	277,617
North Dakota	526,039	59,300	728,292	74,138
Northern Marianas	52,240	10,932	72,326	12,397
Ohio	5,050,053	144,053	6,991,715	281,730
Oklahoma	2,190,596	88,900	2,988,886	149,062
Oregon	1,714,142	80,567	2,373,202	128,656
Pennsylvania	5,633,387	150,455	7,799,331	308,498
Puerto Rico	1,483,433	90,019	2,330,686	127,247
Rhode Island	215,650	53,845	298,565	68,895
South Carolina	2,482,715	94,272	3,437,278	163,924
South Dakota	641,200	61,434	887,731	79,423
Tennessee	3,284,902	107,150	4,437,133	197,062
Texas	6,766,441	170,658	9,368,019	360,492
Utah	486,065	58,668	672,949	72,304
Vermont	573,288	60,223	793,708	76,306
Virgin Islands	122,783	12,188	169,980	15,630
Virginia	2,841,456	100,669	3,933,949	180,385
Washington	1,990,972	85,503	2,756,468	141,359
West Virginia	1,692,900	80,188	2,343,792	127,682
Wisconsin	2,925,133	102,161	4,049,799	184,225
Wyoming	409,113	57,295	566,410	68,773
TOTAL	$111,152,194	$4,571,983	$153,800,625	$7,687,800

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

STATE	FY 1996 SECTION 5310 APPORTIONMENT	ISTEA FY 1966 AUTHORIZED LEVELS
		SECTION 5310
Alabama	$895,886	$1,188,857
Alaska	170,310	187,529
America Samoa	51,784	52,462
Arizona	793,996	1,048,244
Arkansas	636,433	830,799
California	4,699,994	6,438,691
Colorado	623,654	813,164
Connecticut	763,496	931,731
Delaware	239,377	282,845
District of Columbia	237,859	280,750
Florida	3,182,846	4,344,961
Georgia	1,151,384	1,541,455
Guam	130,934	133,189
Hawaii	295,052	359,680
Idaho	301,135	368,074
Illinois	2,069,766	2,808,862
Indiana	1,102,462	1,473,940
Iowa	681,581	893,107
Kansas	577,019	748,806
Kentucky	860,030	1,139,374
Louisiana	862,700	1,143,058
Maine	367,816	460,097
Maryland	866,616	1,148,462
Massachusetts	1,232,927	1,653,988
Michigan	1,775,854	2,403,250
Minnesota	878,344	1,164,648
Mississippi	619,295	807,149
Missouri	1,117,527	1,494,731
Montana	279,152	337,737
Nebraska	417,081	528,084
Nevada	319,191	392,992
New Hampshire	303,464	371,288
New Jersey	1,473,234	1,985,622
New Mexico	371,002	464,494
New York	3,367,982	4,600,457
North Carolina	1,304,673	1,753,000
North Dakota	242,798	287,567
Northern Marianas	51,629	52,249
Ohio	2,158,526	2,931,355
Oklahoma	746,937	983,300
Oregon	696,866	914,200
Pennsylvania	2,581,056	3,514,464
Puerto Rico	662,858	867,267
Rhode Island	331,207	409,574
South Carolina	723,158	950,484
South Dakota	259,417	310,501
Tennessee	1,051,541	1,403,667
Texas	2,664,541	3,629,678
Utah	348,101	432,889
Vermont	220,476	256,762
Virgin Islands	132,534	135,397
Virginia	1,092,517	1,460,215
Washington	983,413	1,309,647
West Virginia	537,787	694,663
Wisconsin	1,003,285	1,337,072
Wyoming	192,733	218,474
TOTAL	$51,703,234	$68,675,000

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(A) FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

AREA	FY 1996 SECTION 5309 (m) (1) (A) APPORTIONMENT	*ISTEA FY 1996 AUTHORIZED LEVELS SECTION 5309(m)(1)(A)*
AZ Phoenix	$430,648	*$737,988*
CA Los Angeles	6,615,338	*10,884,462*
CA Sacramento	767,811	*1,226,898*
CA San Diego	1,593,503	*2,507,902*
CA San Francisco	43,212,203	*53,887,831*
CA San Jose	3,065,766	*5,117,792*
CO Denver	348,697	*564,945*
CT Hartford	394,463	*668,180*
CT Southwestern Connecticut	30,625,453	*33,909,183*
DE Wilmington	249,238	*415,917*
DC Washington	13,984,659	*21,759,041*
FL Ft. Lauderdale	904,437	*1,507,903*
FL Jacksonville	28,705	*45,514*
FL Miami	2,536,810	*3,999,325*
FL West Palm Beach	693,955	*1,149,236*
GA Atlanta	5,798,258	*8,821,106*
HI Honolulu	198,564	*344,614*
IL Chicago/Northwestern Indiana	93,730,447	*111,641,249*
LA New Orleans	1,970,462	*2,245,579*
MD Baltimore	2,199,246	*3,464,153*
MD Baltimore Commuter Rail	11,265,859	*14,538,404*
MA Boston	46,806,426	*55,848,740*
MA Lawrence-Haverhill	379,171	*632,251*
MI Detroit	146,476	*224,810*
MN Minneapolis	1,038,5 7	*1,703,063*
MO Kansas City	15,859	*26,846*
MO St. Louis	779,988	*1,241,800*
NJ Northeastern New Jersey	59,571,625	*69,837,170*
NJ Trenton	444,762	*679,835*
NY Buffalo	333,695	*525,524*
NY New York	226,842,214	*286,244,341*
OH Cleveland	10,195,655	*10,980,941*
OH Dayton	1,302,116	*2,189,873*
PA Philadelphia/Southern New Jersey	68,178,208	*78,754,380*
PA Pittsburgh	14,520,301	*15,502,563*
PR San Juan	672,231	*1,077,415*
OR Portland	$17,199	*1,289,131*
RI Providence	779,570	*1,267,260*
TN Chattanooga	16,174	*27,093*
TX Dallas	231,097	*385,211*
TX Houston	1,752,065	*2,892,435*
VA Norfolk	357,986	*610,399*
WA Seattle	4,868,138	*8,050,515*
WA Tacoma	149,557	*256,172*
WI Madison	192,168	*315,010*
TOTAL	$661,905,000	*$820,000,000*

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(B) NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	FY 1996 SECTION 5309(m)(1)(B) ALLOCATION	PRIOR YEAR UNOBLIGATED ALLOCATION	TOTAL AVAILABLE
CA	Los Angeles- Metrorail- MOS-3	$83,978,341	$0	$83,978,341
CA	Los Angeles - San Diego (LOSSAN)	8,397,834	0	8,397,834
CA	Orange County Transitway	0	20,346,250	20,346,250
CA	Sacramento- LRT Extension	1,975,961	0	1,975,961
CA	San Diego Mid-Coast Extension	0	948,000	948,000
CA	San Francisco- BART Extension to SFO/Tasman	9,879,805	33,235,246	43,115,051
CA	San Jose to Gilroy Commuter Rail	0	4,000,000	4,000,000
FL	Fort Lauderdale- Tri-County Commuter Rail	9,879,805	0	9,879,805
FL	Jacksonville- Automated Skyway Express	9,603,788	0	9,603,788
FL	Miami- North 27th Avenue	1,975,961	0	1,975,961
FL	Tampa-Lakeland Commuter Rail	493,990	496,250	990,240
GA	Atlanta- North Springs	41,900,252	0	41,900,252
IL	Chicago- Wisconsin Central Commuter Rail	14,226,919	0	14,226,919
LA	New Orleans- Canal Street Corridor	4,939,902	7,734,800	12,674,702
MA	Boston- South Boston Piers (MOS-2) Transitway	19,818,888	0	19,818,888
MA	New Bedford-Fall River Commuter Rail	0	744,375	744,375
MD	Baltimore- Central Corridor Extensions	15,130,921	0	15,130,921
MD	MARC- Commuter Rail	9,879,805	0	9,879,805
MI	Detroit LRT Project	0	5,110,000	5,110,000
MN	Twin Cities Central Corridor	0	4,962,500	4,962,500
MO	St. Louis- Metrolink LRT Project	12,349,756	5,955,000	18,304,756
NJ	Urban Core (Secaucus)	79,285,433	0	79,285,433
NJ	Burlington-Gloucester Line	0	1,488,750	1,488,750
NJ	Hawthorne-Warwick Commuter Rail	0	21,559,000	21,559,000
NY	New York- Queens Connection	125,201,949	0	125,201,949
NY	New York- Staten Island-Midtown Ferry	0	375,000	375,000
NY	New York- Whitehall Ferry Terminal	2,469,951	2,481,250	4,951,201
OH	Cincinnati- Northeast/Northern Kentucky Rail	987,981	0	987,981
OH	Cleveland- Dual Hub	0	4,023,030	4,023,030
OH	Canton-Akron-Cleveland [Northeast Ohio] Com	4,198,917	0	4,198,917
OR	Portland- Westside LRT	128,575,779	0	128,575,779
PA	Pittsburgh- Busway	22,357,998	0	22,357,998
PR	San Juan- Tren Urbano	7,409,854	0	7,409,854
TN	Memphis- Regional Rail Plan	1,234,976	0	1,234,976
TX	Dallas- Ft. Worth RAILTRAN	5,927,883	2,977,500	8,905,383
TX	Dallas- North Central LRT Ext.	2,963,941	1,281,250	4,245,191
TX	Dallas- South Oak Cliff Line	16,737,377	0	16,737,377
TX	Houston- Regional Bus Plan	22,357,998	0	22,357,998
UT	Salt Lake City- South LRT	9,642,195	0	9,642,195
VT	Burlington-Charlotte Commuter Rail	5,582,090	0	5,582,090
WI	Milwaukee- East-West Corridor	0	3,000,000	3,000,000
WA	Seattle-Tacoma Commuter Rail	0	3,952,375	3,952,375
WA	Seattle-Tacoma Commuter Rail	0	0	0
	TOTAL	$679,366,250	$124,670,576	$804,036,826

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(C) BUS ALLOCATIONS

STATE/AREA	PURPOSE	SUB-ALLOCATION	FY 1996 SECTION 5309(m)(1)(C) ALLOCATION
AR Statewide	Buses and intermodal and bus related facilities		$6,153,500
Arkansas Hwy. & Transp. Dept.		$496,250	
Central Arkansas Transit		794,000	
Hot Springs Transit		397,000	
Pine Bluff Transit		198,500	
South Central Arkansas		297,750	
Southeast Arkansas Transit		794,000	
University of Arkansas		3,176,000	
CA Coachella Valley	Sunline bus facility		496,250
CA Long Beach	Bus replacement and parts		1,488,850
CA Los Angeles	Gateway intermodal center		7,940,000
CA San Diego	San Ysidro intermodal center		4,962,500
CA San Francisco	Buses		6,689,450
CA San Francisco	Bart ADA compliance/paratransit		2,213,375
CA San Gabriel Valley	Foothill bus facilities		9,676,875
CA San Joaquin	RTD bus replacement		5,240,400
CA Santa Cruz	Bus facility		1,488,750
CA Sonoma County	Park and ride facility		1,240,625
CA Ventura County	Bus facility		595,500
CA Yolo County	Buses		1,488,750
CO Fort Collins and Greeley	Buses		1,240,625
CT Norwich	Intermodal center		1,488,750
DE State	Buses		1,339,875
FL Metropolitan Dade County	Buses		9,925,000
FL Orlando Lynx	Buses and bus operating facility		4,218,125
FL Palm Beach County	Bus facilities		1,985,000
FL Volusia County	Buses and park and ride facility		1,240,625
GA Atlanta	Buses		3,721,875
HI Honolulu, Oahu	Kuakini medical center parking facility		3,970,000
IL Statewide*	Replacement buses and transit facilities		16,723,625 *
Champaign-Urbana	Replacement buses	1,573,113	
Chicago Transit Authority	New bus communications system	5,955,000	
Decatur	Replacement buses	524,040	
Madison County	Replacement buses	2,272,825	
Pace	Replacement buses	1,652,513	
Peoria	Transfer facility	714,600	
Quincy	Replacement buses	524,040	
Rockford	Replacement buses	524,040	
Rock Island	Replacement buses	873,400	
South Central MTD	Bus facilities	794,000	
Springfield	Replacement buses	1,064,953	
IN State	Buses and bus facilities		6,451,250
IN Gary and Hammond	Buses		258,050
IN South Bend	Intermodal facility		2,481,250
IA State	Buses, equipment and facilities		4,247,900
IA Ames, Marshalltown, Ottumwa	Bus and bus facilities		2,332,375
IA Cedar Rapids	Hybrid electric bus consortium		1,191,000
IA Waterloo	Intermodal bus facility		664,975
KY Lexington	Buses		992,500
LA New Orleans	Buses		5,955,000
LA New Orleans	Bus facility		2,977,500
LA Saint Bernard Parish	Intermodal facility		1,488,750
MD MTA	Buses		12,902,500
MA Worchester	Intermodal Center		1,985,000

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(C) BUS ALLOCATIONS

STATE/AREA	PURPOSE	SUB-ALLOCATION	FY 1996 SECTION 5309(m)(1)(C) ALLOCATION
MI Statewide	ISTEA set-aside requirement		9,925,000
Flint	Buses and bus facilities	2,999,831	
Grand Rapids	Buses and bus facilities	2,999,831	
Lansing	Intermodal facility	925,507	
Suburban Mobility Auth. for Reg. Transp		2,999,831	
MI Lansing	Intermodal transportation center		2,074,325
MN MTC Minnesota	Articulated buses		7,443,750
MO State	Buses and bus facilities		6,947,500
MO Kansas City	Union Station intermodal		6,451,250
MO St. Louis	Metrolink bus purchase		3,473,750
NV Clark County	Buses and bus facility		16,872,500
NJ Garden State Parkway	Park-n-ride at Interchange 165		1,141,375
NJ Hamilton Township	Intermodal facility/bus maintenance		12,406,250
NY Albany	Buses		4,962,500
NY Buffalo	Transit station		496,250
NY Long Island	Buses, paratransit, and equipment		1,488,750
NY New Rochelle	Intermodal facility		744,375
NY New York City	Natural gas buses/fueling station		4,962,500
NY Rensselaer	Intermodal station		7,443,750
NY Rochester-Genessee	Buses		$694,750
NY Syracuse	Buses		992,500
NY Syracuse	Intermodal terminal		992,500
NY Utica	Buses		2,977,500
NY Westchester County	Bus facility		2,233,125
NC State	Buses and bus facilities		4,962,500
OH State	Buses		14,887,500
OH Cleveland	Triskett bus facility		1,240,625
OR Eugene Lane Transit District	Radio system		645,125
OR Wilsonville	Transit vehicles		248,125
PA Allegheny County	Busway system		8,932,500
PA Altoona	ISTEA set-aside requirement		992,500
PA Beaver County	Bus facility		2,431,625
PA Erie	Intermodal complex		3,970,000
PA North Philadelphia	Intermodal center		2,977,500
PA Philadelphia	Buses		1,488,750
PA Philadelphia	Chestnut Street/alternative fueled vehicles		992,500
PA Philadelphia	Lift equipped buses		7,443,750
TN Nashville	Electric buses		297,750
TX Corpus Christi	Buses, dispatching system and facilities		2,431,625
TX El Paso	Bus equipment		5,161,000
UT Utah Transit Authority	Buses		1,736,875
VA Richmond	Downtown intermodal station		4,962,500
VT State	Buses and bus facilities		2,977,500
VT Marble Valley	Bus upgrades		992,500
WA Everett	Intermodal center		3,473,750
WA Pierce County	Tacoma Dome station		4,962,500
WA King County/Seattle	Seattle metro bus purchase		6,203,125
WA Seattle	Metro/King County multimodal		1,985,000
WI State	Buses		9,925,000
TOTAL			$330,502,500

* Of the total amount allocated to the State of Illinois, $251,101 is not included in the suballocations.

TABLE 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 (m) (1) (C) BUS ALLOCATIONS

	STATE/AREA	PRIOR YEAR SECTION 5309(m)(1)(C) UNOBLIGATED ALLOCATION
FY 1995		
	AK Marine Highway System	$2,000,000
	AR Little Rock	1,000,000
	CA San Francisco	3,878,288
	CA Santa Cruz	1,000,000
	CO Eagle County	1,000,000
	CT Norwich	2,000,000
	FL Orlando	828,400
	HI Kauai	1,500,000
	IL Statewide	4,724,000
	IA Cedar Rapids	3,000,000
	LA New Orleans	2,000,000
	MI Detroit	4,000,000
	MI Southeast (SMART)	9,000,000
	MO Kansas City	5,000,000
	NJ Camden	150,000
	NM Albuquerque	3,750,000
	NY Bronx	1,000,000
	NY Buffalo	800,000
	NC State	3,600,000
	OR Albany	366,000
	OR Salem	1,000,000
	PA Philadelphia	2,500,000
	TX El Paso	9,000,000
	VA Northern Virginia-Dulles	950,000
	WA Edmonds	400,000
	WI Milwaukee	1,000,000
FY 1994		
	AR Little Rock	2,100,000
	CA Lake Tahoe	1,944,000
	CA San Francisco	956,400
	CA Santa Barbara	3,000,000
	HI Kauai	1,510,000
	IL Statewide	1,857,600
	IN South Bend	3,428
	KS Topeka	768,000
	ME Statewide	433,612
	MD Silver Spring	1,500,000
	NJ Camden	800,000
	NM Albuquerque	1,750,000
	OR Salem	3,800,000
	PA Philadelphia	1,000,000
	PR San Juan	2,500,000
	TX El Paso	3,057,902
FY 1992		
	AR Eureka Springs	32,100
	CA San Francisco	1,250,000
	TOTAL	$93,649,730

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS, AND ISTEA AUTHORIZED LEVELS

STATE	FY 1996 SECTION 5303 APPORTIONMENT	FY 1996 SECTION 5313(b) APPORTIONMENT	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5303	SECTION 5313(b)
Alabama	$343,637	$90,327	$606,010	$160,124
Alaska	158,000	41,250	276,750	73,125
Arizona	615,559	130,387	1,102,152	231,140
Arkansas	158,000	41,250	276,750	73,125
California	6,632,289	1,250,167	11,795,754	2,216,212
Colorado	512,345	116,731	900,201	206,932
Connecticut	451,330	120,554	808,806	213,709
Delaware	158,000	41,250	276,750	73,125
District/Col	211,644	41,250	373,110	73,125
Florida	2,101,510	499,635	5,772,728	885,716
Georgia	751,237	160,071	1,335,556	283,763
Hawaii	158,000	41,250	276,750	73,125
Idaho	158,000	41,250	276,750	73,125
Illinois	2,305,044	416,231	4,042,806	737,864
Indiana	564,428	132,187	981,466	234,332
Iowa	175,738	46,276	310,471	82,035
Kansas	202,032	50,005	358,914	88,645
Kentucky	245,039	62,683	429,910	111,119
Louisiana	438,000	109,377	742,908	193,895
Maine	158,000	41,250	276,750	73,125
Maryland	920,920	175,819	1,606,285	311,679
Massachusetts	1,115,798	232,221	1,959,166	411,665
Michigan	1,470,219	285,343	2,523,938	505,835
Minnesota	584,145	116,393	1,024,858	206,332
Mississippi	158,000	41,250	276,750	73,125
Missouri	695,407	136,609	1,133,113	242,170
Montana	158,000	41,250	276,750	73,125
Nebraska	158,000	41,250	276,750	73,125
Nevada	170,271	44,727	300,077	79,289
New Hampshire	158,000	41,250	276,750	73,125
New Jersey	1,949,100	325,454	3,429,974	576,941
New Mexico	158,000	41,250	276,750	73,125
New York	3,962,781	692,977	6,965,133	1,228,460
North Carolina	461,482	123,360	827,635	218,684
North Dakota	158,000	41,250	276,750	73,125
Ohio	1,371,909	326,801	2,384,316	579,328
Oklahoma	251,281	66,487	446,065	117,863
Oregon	285,601	69,713	501,053	123,582
Pennsylvania	1,909,473	353,827	3,092,394	627,238
Rhode Island	165,658	41,250	276,750	73,125
South Carolina	261,905	70,041	469,910	124,163
South Dakota	158,000	41,250	276,750	73,125
Tennessee	412,851	108,885	730,521	193,024
Texas	2,652,169	558,280	4,701,219	989,679
Utah	241,365	64,779	434,606	114,835
Vermont	158,000	41,250	276,750	73,125
Virginia	864,477	188,008	1,546,353	333,286
Washington	695,722	157,816	1,232,499	279,765
West Virginia	158,000	41,250	276,750	73,125
Wisconsin	557,792	120,997	862,913	214,494
Wyoming	158,000	41,250	276,750	73,125
Puerto Rico	421,842	104,332	749,930	184,952
TOTAL	$39,500,000	$8,250,000	$69,187,500	$14,625,000

TABLE 9

Federal Transit Administration - Unit Values of Data
Fiscal Year 1996 Formula Grant Apportionments

Section 5307 Urbanized Area Formula Program - Bus Tier
Urbanized Areas Over 1,000,000:

Population	$1.99324342
Population x Density	$0.00051123
Bus Revenue Vehicle Mile	$0.28862414

Urbanized Areas Under 1,000,000:

Population	$1.80134018
Population x Density	$0.00079330
Bus Revenue Vehicle Mile	$0.37097557

Bus Incentive (PM denotes Passenger Mile):

Bus PM x Bus PM = Operating Cost	$0.00320813

Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier

Fixed Guideway Revenue Vehicle Mile	$0.39174360
Fixed Guideway Route Mile	$23,272
- Commuter Rail Floor	$4,075,663

Fixed Guideway Incentive:

Fixed Guideway PM x Fixed Guideway PM = Operating Cost	$0.00040064
- Commuter Rail Incentive Floor	$187,137

Section 5307 Urbanized Area Formula Program - Areas Under 200,000

Population	$3.25726661
Population x Density	$0.00162770

Section 5311 Nonurbanized Area Formula Program
Areas Under 50,000

Population	$1.20591027

Section 5309(m)(1)(A) Capital Program - Fixed Guideway Modernization

	Tier 3	Tier 4
Legislatively Specified Areas:		All Areas:
Revenue Vehicle Mile	$0.0306232	$0.0692831
Route Mile	$2,120.67	$4,042.86
Other Areas:		
Revenue Vehicle Mile	$0.17216962	
Route Mile	$5,323.40	

[FR Doc. 95–28803 Filed 11–21–95; 11:07 am]
BILLING CODE 4910–57–C

federal register

Friday
November 24, 1995

Part IV

Department of Transportation

Federal Transit Administration

Grants and Cooperative Agreements; Fiscal Year 1996 Annual List of Certifications and Assurances; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 1996 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the fiscal year 1996 certifications and assurances to be used in connection with all Federal assistance programs administered by FTA during fiscal year 1996. (See Appendix A.) These certifications and assurances include all annual certifications required by 49 U.S.C. 5307(d)(1) for FTA's Urbanized Area Formula Program as well as other certifications and assurances needed for compliance with various other Federal statutes and regulations affecting FTA's assistance programs.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Watkins Sorkin, Office of the Chief Counsel, Federal Transit Administration, (202) 366–1936; or contact FTA staff in the appropriate Regional Office listed below.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts. Telephone # 617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands. Telephone # 212–264–8162

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia. Telephone # 215–656–6900

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico. Telephone # 404–347–3948

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio. Telephone # 312–353–2789

Region 6: Dallas/Ft.Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. Telephone # 817–860–9663

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska. Telephone # 816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota, Arizona [1], and Nevada [1]. Telephone # 303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, American Samoa, and the Northern Mariana Islands. Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska. Telephone # 206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the applicant must provide to FTA all certifications and assurances required by Federal laws and regulations for the applicant or its project.

This Notice provides the text of certifications and assurances that may be required by law for the various Federal assistance programs administered by FTA including the Capital Program, the Urbanized Area Formula Program; the Nonurbanized Area Formula Program, the Metropolitan Planning Program, the Rural Transit Assistance Program, the Elderly and Persons With Disabilities Program, the Human Resource Program, the National Training Institute Program, the State Planning and Research Program, and the National Planning and Research Program, all codified at 49 U.S.C. chapter 53. When administering Federal assistance programs authorized by other Federal statutes, such as Title 23, United States Code, FTA uses these same certifications and assurances during Federal fiscal year 1996.

This Notice also provides the applicant with a single Signature Page on which the applicant and its attorney certifies compliance with all certifications and assurances applicable to each grant or cooperative agreement for which the applicant wishes to apply in Federal Fiscal Year 1996. (See Appendix B.)

FTA is expanding the use of the two electronic programs for applicants introduced last year. The On-Line Program is offered to applicants through the Grant Management Information System (GMIS). This is a computerized system designed to assist the FTA grantee or recipient of a cooperative agreement in managing its FTA assisted projects and their budgets. All applicants are encouraged to participate in the On-Line Program, which includes the opportunity to certify compliance electronically for all certifications and assurances selected among those in Appendix A. The Electronic Grant Making and Management initiative (EGMM) pilot program initiated in Federal Fiscal Year - 1995 has proved so successful in reducing time and paper that EGMM will continue to be offered to more applicants. Applicants may contact their Regional Office shown above for more information.

This 1996 Annual Certifications and Assurances document contains changes to the previous year's **Federal Register** publication. Specifically, the separate Category selection for Procurement has been eliminated. In its place, paragraph "H" has been added to Category I. This affects each applicant which is now required by FTA Circular 4220.1C, "Third Party Contracting Requirements" dated October 1, 1995, to self-certify its procurement system's compliance. Three additional changes have been made to the Annual Certifications and Assurances. One is the Urbanized Area Formula Program certification requirement for sole source purchases of associated capital maintenance items, which has been added as paragraph C. in Category XI. FTA has also redrafted the previous transit security and intercity bus expenditure requirements to remove the need for the Applicant to indicate whether or not it will expend the percentage of funds at issue, with the result that the applicant is no longer required to indicate which option it has selected. This decision can be made at a later date and documentation may then be made available to FTA when requested. See paragraph A(10) of Category XI and paragraph P of Category XIII. These changes eliminate previous options under Categories XI and XIII, now permitting the applicant to signify compliance with all Categories by placing a single "X" in the appropriate space at the top of the Signature Selection Page in Appendix A.

FTA directs your attention to FTA Circular 9300.1; "Capital Program Grant Application Instructions," which was published on September 29, 1995. That circular contains a previous draft version of the Annual Certifications and Assurances which includes some but not all of the most current and valid changes. Therefore the provisions of this Notice supersede conflicting statements in that circular. Note especially that the Applicant must use the most current Signature Pages shown in this F[illegible]al **Register** document or provided concurrently through the EGMM initiative discussed above.

[1] Transportation projects for these states are administered by Region 8 but are geographically in Region 9.

Background

Last year, with the publication of the Federal fiscal year 1995 counterpart of this Notice, certifications and assurances for Federal assistance programs administered by FTA were for the first time consolidated into one document. This marked the beginning of an effort to assist applicants in reducing time and paper work in certifying compliance with various Federal laws and regulations. It coincided with the On-Line Program and the EGMM initiative described above, which also reduced the time and paper required to process an application.

This publication of certifications and assurances therefore continues to supersede the requirements of FTA Circular 9100.1B, dated July 1, 1988, "Standard Assurances for Urban Mass Transportation Administration Applications," which was rescinded. Other FTA circulars affected by this Notice will be revised accordingly. These annual certifications and assurances with the Signature Page also continue to supersede a Statement of Continued Validity now no longer required. However, the applicant's Attorney Affirmation continues to be required as indicated on the Signature Page at the end of Appendix B.

FTA intends to continue publishing this document annually with any changes or additions specifically highlighted, in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds in accordance with the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Procedures

Following is a detailed compilation of Certifications and Assurances (Appendix A), followed by a Signature Page (Appendix B). The Signature Page is to be signed by the applicant's authorized representative and its attorney (the attorney's current affirmation may be on file in some instances), and sent to the appropriate FTA Regional office by: (1) the first-quarter application submission date published in FTA's Federal fiscal year 1996 apportionment announcement; or (2) with the applicant's first Federal assistance application in Federal fiscal year 1996.

The Signature Page, when properly signed and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program involved. Both sides of the Signature Page must be completed, first by marking where appropriate with an "X" on the category selection side, and then signifying compliance by signing the signature side. (See Appendix B.)

An applicant participating in the On-[illegible]ine Program or the EGMM Program [illegible]escribed above, may submit its [illegible]ignature Page (both the selection side and the signature side) electronically. The applicant should not hesitate to consult with the appropriate Regional Office or Headquarters Office before submitting its certifications and assurances.

References

49 U.S.C. chapter 53, Title 23 U.S.C., 42 U.S.C. 4151, Title VI and Title VII of the Civil Rights Act, FTA regulations under 49 CFR, and FTA Circulars.

Issued: November 17, 1995.

Gordon J. Linton,

Administrator.

BILLING CODE 4910–57–P

Appendix A

FEDERAL FISCAL YEAR 1996 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

Each Applicant is requested to provide as many of the following certifications and assurances as possible to cover the various types of Federal assistance programs for which the Applicant intends to seek Federal assistance from FTA in Federal Fiscal Year 1996. A state making certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients as necessary for the state to make informed certifications and assurances. The thirteen categories of certifications and assurances are listed by Roman numerals I through XIII on the other side of the Signature Page document. Categories II through XIII will apply to some, but not all applicants. The categories correspond to the following descriptions of circumstances mandating submission of specific certifications, assurances, or agreements:

I. CERTIFICATIONS AND ASSURANCES REQUIRED OF EACH APPLICANT

Each Applicant for Federal assistance awarded by FTA must make all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting Category I on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:
(1) Execute and file the application for Federal assistance on behalf of the Applicant,
(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and
(3) Execute grant and cooperative agreements with FTA on behalf of the Applicant.

B Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any grant or cooperative agreement awarded by FTA. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative agreement issued for its approved project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

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C. Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:
(1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals:
(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph (2) of this certification; and
(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.
(2) The Applicant also certifies that if, later, it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to FTA.
(3) If the Applicant (Primary Participant) is unable to certify to the statements within paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

D. Drug-Free Workplace Certification

As required by U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29.630, the Applicant certifies that it will provide a drug-free workplace by:
(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against its employees for violation of that prohibition;
(2) Establishing an ongoing drug-free awareness program to inform its employees about: (a) the dangers of drug abuse in the workplace; (b) the Applicant's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;
(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);
(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will: (a) abide by the terms of the statement, and (b) notify the employer (Applicant)

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in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;
(5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, which is the employer of any convicted employee must provide notice, including position title, to every project officer or other designee on whose project activity the Applicant's convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.
(6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted: (a) by taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (b) by requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;
(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above.
The Applicant has or will provide to FTA a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702 1, "Title VI Program Guidelines for Federal Transit Administration Recipients"; and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:
(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

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(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.
(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.
(4) The Applicant assures that it will make any changes in its 49 U.S.C 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.
(5) As required by 49 CFR 21.7(a)(2), the Applicant will include appropriate clauses in each third party contract or subagreement to impose the requirements of 49 CFR part 21 and 49 U.S.C. 5332, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, and any later amendments thereto, at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

H. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1C, "Third Party Contracting Requirements," and other implementing guidance or manuals FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

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II. LOBBYING CERTIFICATION REQUIRED FOR EACH APPLICATION EXCEEDING $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement; and (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. PUBLIC HEARING CERTIFICATION REQUIRED FOR EACH PROJECT (EXCEPT URBANIZED AREA FORMULA PROJECTS) THAT WILL SUBSTANTIALLY AFFECT A COMMUNITY OR ITS TRANSIT SERVICE

An Applicant for Capital Program assistance or other Federal assistance (except Urbanized Area Formula Program assistance), that will substantially affect a community or its transit service must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category III on the Signature Page.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

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B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined the project to be consistent with official plans for developing the urban area.

IV. CERTIFICATION OF PRE-AWARD AND POST-DELIVERY ROLLING STOCK REVIEWS REQUIRED FOR EACH APPLICANT SEEKING TO PURCHASE ROLLING STOCK FINANCED WITH FEDERAL ASSISTANCE AWARDED BY FTA

An Applicant seeking FTA assistance to purchase rolling stock must make the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category IV on the Signature Page.

As required by 49 U.S.C. 5323(l), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663; in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

V. BUS TESTING CERTIFICATION REQUIRED FOR NEW BUSES

An Applicant seeking FTA assistance to acquire new buses must make the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category V on the Signature Page.

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

VI. CHARTER BUS AGREEMENT

An Applicant seeking FTA assistance to acquire buses must enter into the following charter bus agreement. FTA may not provide assistance for bus projects until the Applicant enters into this agreement by selecting Category VI on the Signature Page.

A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and its recipients will: (1) provide charter service that uses equipment

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or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and (2) comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VII. SCHOOL BUS AGREEMENT

An Applicant seeking FTA assistance to acquire transportation facilities and equipment must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category VII on the Signature Page.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will: (1) engage in school bus operations in competition with private school bus operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and (2) comply with the requirements of 49 CFR part 605 before providing any school bus service using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. awarded by FTA for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school bus service it provides, the definitions of 49 CFR part 605 apply to this school bus agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. CERTIFICATION REQUIRED FOR THE DIRECT AWARD OF FTA ASSISTANCE TO AN APPLICANT FOR ITS DEMAND RESPONSIVE SERVICE

An Applicant seeking Federal assistance directly to support its demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category VIII on the Signature Page.

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37 77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, its service for persons with disabilities is provided in the most integrated setting feasible and is equivalent

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with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

IX. SUBSTANCE ABUSE CERTIFICATIONS REQUIRED BY JANUARY 1, 1996

An Applicant required by Federal regulations to provide the following substance abuse certifications, must do so by January 1, 1996. FTA may not provide Federal assistance until an Applicant required to provide the following certifications by January 1, 1996 has selected Category IX on the Signature Page.

A. Alcohol Testing Certification

As required by FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," at 49 CFR 654.83, the Applicant certifies that it has or will have, before January 1, 1996, established and implemented an alcohol misuse prevention program complying with the requirements of 49 CFR part 654; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," at 49 CFR 653.83, the Applicant certifies that it has or will have, before January 1, 1996, established and implemented an anti-drug program and has conducted employee training complying with the requirements of 49 CFR part 653; and if the Applicant has employees regulated by FRA, the Applicant also certifies that it has for those employees an anti-drug program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

X. ASSURANCES REQUIRED FOR PROJECTS INVOLVING REAL PROPERTY

The Applicant must provide the following assurances in connection with each application for Federal assistance to acquire (purchase or lease) real property. FTA may not award Federal assistance for a project involving real property until the Applicant provides these assurances shown by selecting Category X on the Signature Page.

A. Relocation and Real Property Acquisition Assurance

As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210

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and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act), 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 et seq., and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24 including, but not limited to the following:

(1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(4) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's costs of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;

(8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(9) The Applicant agrees to make this document part of and incorporate it by reference in any third party contract or subagreement, or any supplements and amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

B Flood Insurance Coverage

As required by section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), the Applicant assures that in the course of implementing each project financed with Federal assistance, the Applicant will obtain appropriate insurance for any real estate acquired or construction undertaken thereon within any special flood hazard area as identified by the Federal Insurance Administrator. The Applicant understands that such insurance is available in the participating area through the U.S. Federal Emergency Management Agency's National Flood Insurance Program

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C. Seismic Assurance

As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), the Applicant assures that before it accepts delivery of any building financed with Federal assistance provided by FTA, the Applicant will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

XI. CERTIFICATIONS REQUIRED FOR THE URBANIZED AREA FORMULA PROGRAM

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XI on the Signature Page.

A. Certifications Required by Statute

As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(1) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(2) It has or will have satisfactory continuing control over the use of the equipment and facilities;

(3) It will adequately maintain the equipment and facilities;

(4) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself under title II or title XVIII of the Social Security Act (42 U.S.C. 401 et seq. or 42 U.S.C. 1395 et seq.), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 not more than 50 percent of the peak hour fare;

(5) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(6) It has complied or will comply with the requirements of 49 U.S.C. 5307(c); specifically, it has or before submitting its application it will: (a) make available to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and the program of projects it proposes to undertake with those funds; (b) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed; (c) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (d) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (e) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services

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assisted by another Federal Government source; (f) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (g) make the final program of projects available to the public;
(7) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);
(8) It will comply with: (a) 49 U.S.C. 5301(a) (requirements to develop transportation systems that maximize mobility and minimize fuel consumption and air pollution); (b) 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); (c) 49 U.S.C. 5303 through 5306 (planning requirements); and (d) 49 U.S.C. 5310(a) through (d) (programs for the elderly and persons with disabilities);
(9) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and
(10) As required by 49 U.S.C. 5307(d)(1)(J), it will expend at least one percent of the amount of Federal assistance it receives for this fiscal year apportioned by 49 U.S.C. 5336 for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system; unless it has decided that it is not necessary to expend one percent of that Federal assistance this fiscal year for transit security projects.

B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," 49 CFR at 639.15(b)(1) and 639.21, to the extent that the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 to acquire any capital asset by lease, the Applicant certifies that.
(1) It will not use Federal assistance authorized for 49 U.S C. 5307 to finance the cost of leasing any capital asset until it undertakes calculations demonstrating that it is more cost-effective to lease the capital asset than to purchase or construct similar assets;
(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and
(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection

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XII. CERTIFICATIONS AND ASSURANCES FOR THE ELDERLY AND PERSONS WITH DISABILITIES PROGRAM

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications. FTA may not award assistance for this program until the Applicant provides these certifications and assurances by selecting Category XII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:
A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.
B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.
C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.
D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.
E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.
F. The state assures that its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located.
G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.
H. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (Category I, G. "Certifications and Assurances Required of Each Applicant.")
I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.
J. The state will comply with all existing Federal requirements regarding transportation of the elderly and persons with disabilities. The subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance. (Category I, F "Certifications and Assurances Required of Each Applicant.") If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the

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subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category VIII "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service.") This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

K. The subrecipient has certified to the state that it will comply with applicable provisions of 49 CFR part 605 pertaining to school bus operations. (See Category VII, "School Bus Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all certifications and assurances currently required, including, but not limited to: a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits to verify compliance with the foregoing requirements and stipulations.

XIII. CERTIFICATIONS AND ASSURANCES FOR THE NONURBANIZED AREA FORMULA PROGRAM

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must submit the following certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XIII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program

Appendix A

authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.

D. The state assures that its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

G. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I, G, "Certifications and Assurances Required of Each Applicant.")

H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs.

I. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance in Category I of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category I, F , "Certifications and Assurances Required of Each Applicant.") This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions and restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability. (See Category VIII, "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service.")

J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.

K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA

Appendix A

assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school bus operations. (See Category VI, "Charter Bus Agreement," and Category VII, "School Bus Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all certifications and assurances currently required, including but not limited to: a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; a lobbying certification for each application exceeding $100,000; and if required by FTA, an anti-drug program certification and an alcohol testing certification.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen percent of the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

##

Selection and Signature Pages follow

Appendix A

FEDERAL FY 1996 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories I - XIII. ____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

I.	Certifications and Assurances Required of Each Applicant. (Previous Category II, Procurement, is now Category I, paragraph H.)	____
II.	Lobbying Certification.	____
III.	Public Hearing Certification for Major Projects with Substantial Impacts.	____
IV.	Certification for the Purchase of Rolling Stock.	____
V.	Bus Testing Certification.	____
VI.	Charter Bus Agreement.	____
VII.	School Bus Agreement.	____
VIII.	Certification for Demand Responsive Service.	____
IX.	Substance Abuse Certifications Required by January 1, 1996.	____
X.	Assurances Projects Involving Real Property.	____
XI.	Certifications for the Urbanized Area Formula Program.	____
XII.	Certifications for the Elderly and Persons with Disabilities Program.	____
XIII.	Certifications for the Nonurbanized Area Formula Program.	____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

Appendix A

FTA CERTIFICATIONS AND ASSURANCES FOR FEDERAL FISCAL YEAR 1996

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), declare that I the Applicant has duly authorized me to make these certifications and assurances on the Applicant's behalf and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 1996.

FTA intends that the certifications and assurances the Applicant selects on the other side of this form, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 1996.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq., as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Date: _____ a. _____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant I hereby affirm that the Applicant has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or threatened that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant and FTA.

Date: _____ b. _____
Applicant's Attorney

Date: _____ c. _____

The Applicant's legal counsel is required to affirm the legal capacity of the Applicant, except that an Applicant seeking only an FTA university and research training grant authorized by 49 U.S.C. 5312(b) need not submit an Attorney's Affirmation. The Attorney's Affirmation used for a previous FTA project generally may be used in Fiscal Year 1996, provided the Applicant's circumstances have not changed in a way that makes the certifications invalid and the Attorney's Affirmations remains on file in the Applicant's offices readily available to FTA. In that case, line "b" should remain blank, and the same Authorized Representative signs "a" and "c." See Procedures in introduction section.
Note: FTA, however, reserves the right to require an Attorney's signature on line "b."

[FR Doc. 95–28804 Filed 11–21–95; 11:07 am]
BILLING CODE 4910–57–C

federal register

Friday
November 24, 1995

Part V

Federal Emergency Management Agency

Privacy Act of 1974; Computer Matching Program; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency gives notice that FEMA and the United States Postal Service (USPS) propose to conduct a computer matching program with FEMA as the source agency and USPS as the recipient agency. The matching program will compare FEMA debtor and USPS payroll records to identify postal employees delinquently indebted to the Federal Government under the Disaster Relief Program, the National Flood Insurance Program, and any employee programs administered by FEMA.

DATES: We invite comments on this notice, which must be received no later than 30 days from November 24, 1995.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Richard S. Buck, Recorder, FEMA Data Integrity Board, (202) 646–4091.

SUPPLEMENTARY INFORMATION: Section 552a(e) of the Privacy Act, as amended by the Computer Matching & Privacy Protection Act of 1988, as amended, by § 3(a) of Pub. L. 100–503, 5 U.S.C. 552(e)(12), requires agencies to publish advance notice of computer matching programs as a means of informing benefit recipients/employees of plans to conduct computer matches. FEMA and USPS propose to conduct a computer matching program with FEMA as the source agency and USPS as the recipient agency. The matching program will compare FEMA debtor and USPS payroll records to identify postal employees delinquently indebted to the Federal Government under the Disaster Relief Program, the National Flood Insurance Program, and any employee programs administered by FEMA. When voluntary repayment is not forthcoming, FEMA will request offset of those debts under the salary offset provisions of the Debt Collection Act of 1982, 5 U.S.C. 5514 note.

This is the first year that FEMA has had a debt collection computer match. Prior experience with manual matches shows that approximately 1.5 percent of FEMA's delinquent debtors that the Agency referred to the Internal Revenue Service (IRS) for Federal income tax refund offset were either Federal employees/retirees, uniformed services active duty members/retirees, or Postal Service employees. The proposed match for 1995 will compare approximately 5,500 debtor records, representing approximately $14 million in outstanding debt and is expected to show a similar number of matches (1.5 percent).

FEMA estimates that in the 1996 tax year debt collections will be approximately $207,500 by taking salary and retirement offsets from debtors whose records have been identified by computer matching. Set forth below is a description of the computer matching program proposed by this notice in compliance with OMB Bulletin No. 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management & Budget (OMB), Congress and the Public."

Report of Computer Matching Program—United States Postal Service and the Federal Emergency Management Agency (Comparing USPS Payroll and FEMA Debt Collection Records)

A. Participating Agencies

The United States Postal Service (USPS) is the recipient agency and will perform the computer match with debt collection records provided by the Federal Emergency Management Agency, the source agency in this matching program.

B. Purpose of the Matching Program

This matching program will compare USPS payroll and the FEMA delinquent debtor files to identify postal employees who may owe delinquent debts to the Federal Government under programs administered by FEMA. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 if voluntary payment is not made.

C. Legal Authorities Authorizing Operation of the Match

This matching program will be undertaken under the authority of the Debt Collection Act of 1982, 5 U.S.C. 5514 note; 31 U.S.C. 3711, Collection and Compromise, and § 3716, Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office—Department of Justice), 5 CFR §§ 550.1101—550.1108, Collection by Offset from Indebted Government Employees; 44 CFR 11.45, Collection by Salary Offset, which authorizes federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States.

D. Categories of Individuals Matched and Identification of Records Used

The systems of records maintained by the participant agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a note, from which records will be disclosed for this matching program are:

1. USPS will disclose records from its system "Finance Records—Payroll System, USPS 050.020" containing payroll records for approximately 800,000 current employees. Disclosure will be made pursuant to routine use no. 24 of USPS 050.020, which last appeared at 57 FR 57515, dated December 4, 1992.

2. Federal Emergency Management Agency will provide extracts from a Privacy Act system of records (FEMA Debt Collection Files (FEMA/OC–2) containing records on approximately 5,500 debtors. A full description of these files was last published in the **Federal Register** (58 FR 63986–63988) on December 3, 1993. Disclosures will be made from FEMA Debt Collection Files (OC–2/FEMA) pursuant to the first and third listed but unnumbered routine uses.

E. Description of the Matching Program

Federal Emergency Management Agency will provide to USPS a computer disk containing the names and social security numbers (SSN) of FEMA's debtors. By computer, the USPS will compare that information with its payroll file, establishing matched individuals (i.e., "hits") on the basis of like SSN's. For each matched individual the USPS will provide to FEMA the name, SSN, home address, date of birth, work location, and employee type (permanent or temporary). The identity and debtor status of an individual will be verified by FEMA by manually comparing the "hit" file with FEMA's debtor files, by conducting independent inquiries when necessary to resolve questionable identities, and by reviewing records of the suspected debtor's account to confirm that the debt is still in a non-pay status without resolution.

Due process procedures will be provided by FEMA to matched individuals consisting of: (1) verification of the debt; (2) 30-day written notice to the debtor explaining the debtor's rights; (3) provision for the debtor to examine and copy FEMA's documentation of the debt; (4) provision for the debtor to seek FEMA's review of the debt; (5) opportunity for a hearing before an individual who is not under the supervision or control of the Director of FEMA; and (6) opportunity for the debtor to enter into a written agreement satisfactory to FEMA for repayment. Only after FEMA has afforded the debtor these opportunities and certified over the signature of an authorized agency official that all due process procedures have been followed will steps be taken to effect involuntary salary offset.

F. Beginning and Ending Dates of the Matching Program

The matching program is expected to begin in December 1995 and continue in effect for a period not to exceed 18 months. The agreement may be extended for one additional year beyond that period if, within three months prior to the actual expiration date of the matching agreement, the Data Integrity Boards of both the USPS and FEMA find that the computer matching program can be conducted without change and each party certifies that the matching program has been conducted in compliance with the matching agreement.

Dated: November 22, 1995.

Gary D. Johnson,

Chief Financial Officer and Member, FEMA Data Integrity Board.

[FR Doc. 95–28951 Filed 11–22–95; 9:55 am]

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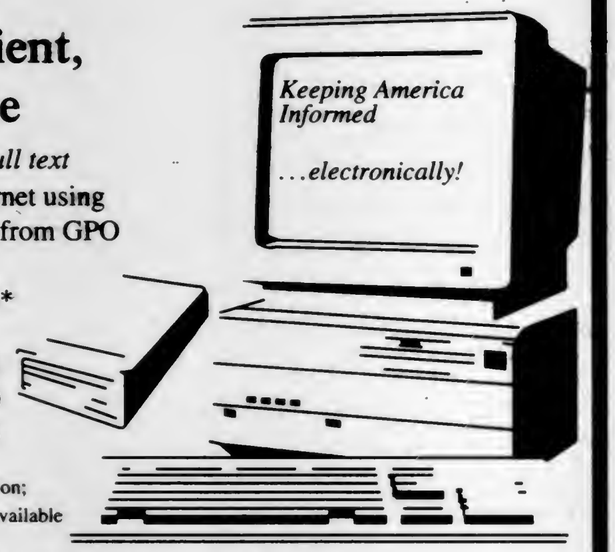
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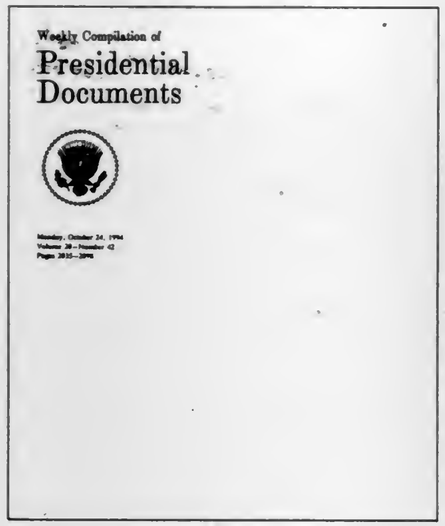
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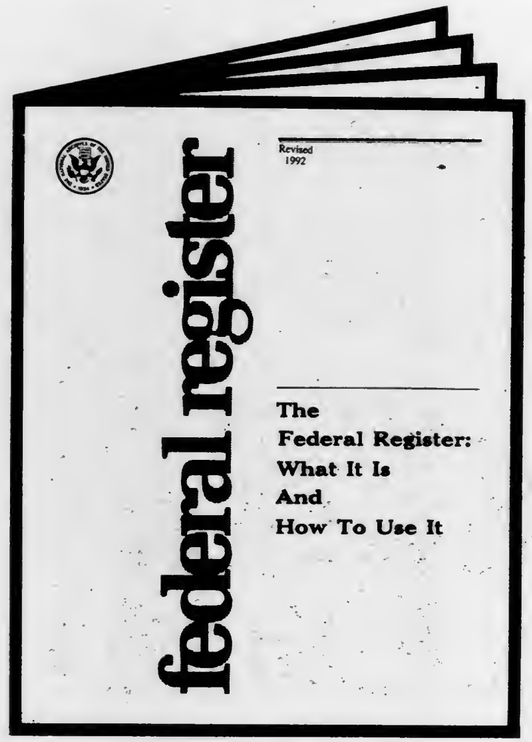
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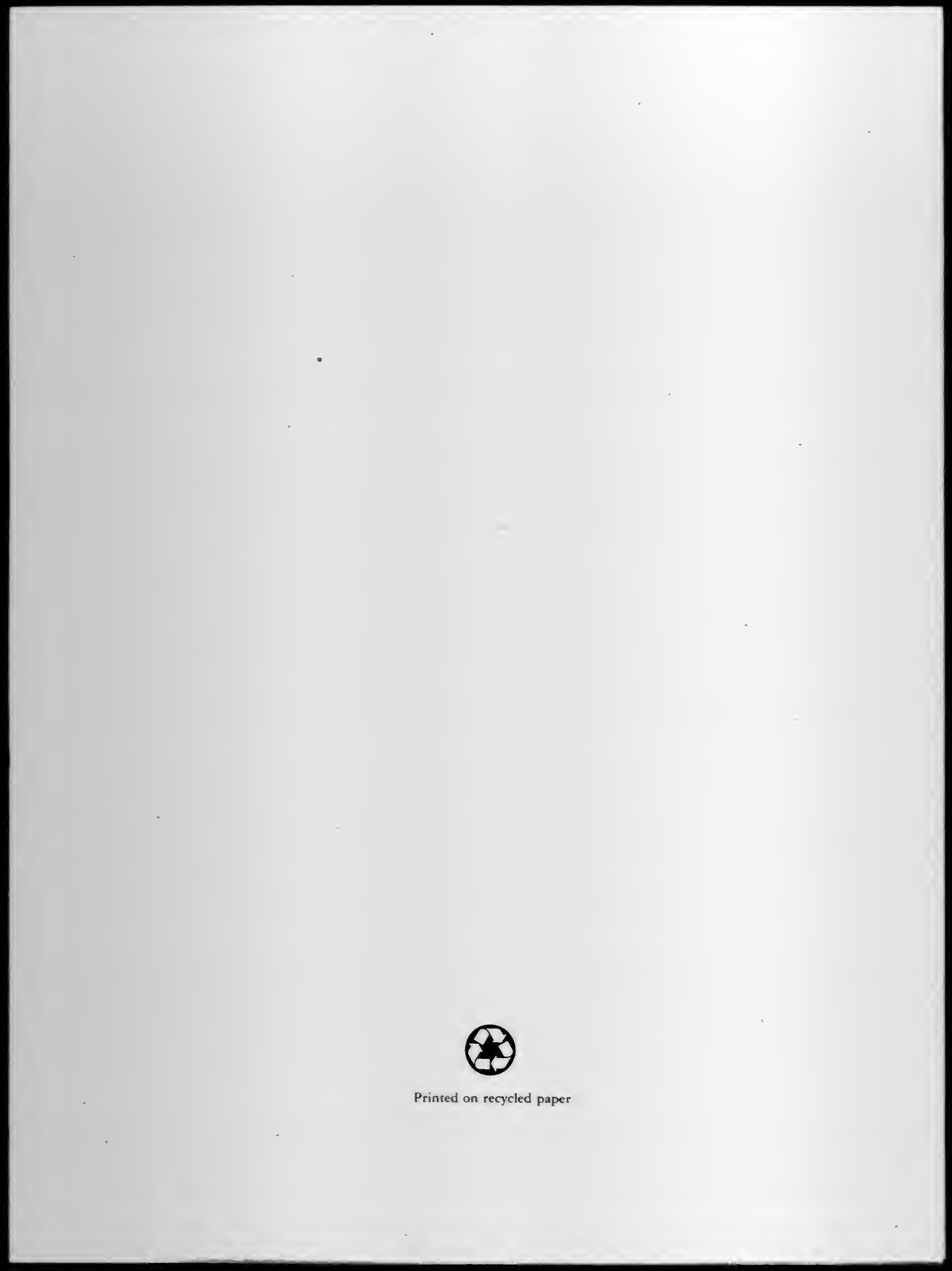
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55 and 59

[Docket No. PY–93–001]

Voluntary and Mandatory Egg and Egg Products Inspection; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule published on September 21, 1995 (60 FR 49166–49171) which amended the voluntary and mandatory egg and egg products inspection regulations.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, Poultry Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

As published, the final rule contained changes to the voluntary and mandatory egg and egg products inspection programs authorized by the Agricultural Marketing Act of 1946, as amended, and the Egg Products Inspection Act in response to new technology and current production and processing practices within the egg products industry.

Need for Correction

The final rule that is the subject of this correction inadvertently capitalized the word "salmonella" everywhere it appeared in part 59.

Correction of Publication

As published, the final rule contained an error in amendatory language number 13, on page 49168, third column revising § 59.5 which may prove to be misleading and is in need of clarification and new amendatory language number "13a." is added to read as follows.

§ 59.5 [Corrected]

13. Section 59.5 is amended by revising the definition for the term "Dirty egg" or "Dirties" and by adding alphabetically two new terms to read as follows:

* * * * *

§§ 59.575 and 59.580 [Corrected]

13a. In § 59.575 paragraphs (c) and (d)(6) and in § 59.580, paragraph (b), the word "salmonellae" is removed and the word "Salmonellae" is added in its place everywhere it appears.

Dated: November 20, 1995.

D. Michael Holbrook,

Director, Poultry Division.

[FR Doc. 95–28772 Filed 11–24–95; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 927

[FV95–927–2FIR]

Winter Pears Grown in Oregon, Washington, and California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which reduced the reporting requirements for handlers who have shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season. This action decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program. This rule was recommended by the Winter Pear Control Committee (Committee), the agency responsible for the local administration of the marketing order for winter pears.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5331; or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Wash ington, and California, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears subject to regulation under the order and approximately 1,800 producers of winter pears in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of winter pear handlers and producers may be classified as small entities.

This rule finalizes changes in the reporting requirements prescribed under the winter pear marketing order. The Winter Pear Control Committee (Comittee) meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for winter pears which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Committee met on June 2, 1995, and unanimously recommended revising § 927.125 of the winter pear marketing order. This section governs the reporting requirements for handlers of winter pears.

Section 927.70 authorizes the Committee, subject to the approval of the Secretary, to request information from handlers necessary to perform its duties under the order. Section 927.125 provides that each handler shall furnish to the Committee, as of every other Friday, a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report" containing information used by the Committee for the collection of assessments and the development of statistical data.

This rule revises the reporting requirements to allow handlers who have shipped less than 2,500 standard western pear boxes during any two-week period of the shipping season to report less frequently while maintaining the information collection necessary for the efficient operation of the program.

The interim final rule was issued on September 11, 1995, and published in the **Federal Register** (60 FR 47858, September 15, 1995), with an effective date of September 15, 1995. That rule amended § 927.125(d) of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended October 16, 1995. No comments were received.

Prior to implementation of the interim final rule, handlers were required to submit the "Handler's Statement of Pear Shipments" and the "Handler's Packout Report" every other Friday regardless of the quantity of pears shipped in the preceding two-week reporting period. Industry members have acknowledged that this can be burdensome for small handlers, who have shipments of less than 2,500 standard western pear boxes, to report every two-weeks.

The Committee also determined that submission of such winter pear shipment data of less than 2,500 standard western pear boxes is not necessary on a biweekly basis for the efficient administration of the program. As an alternative, handlers may, at their option, not report until their accumulated shipments reach 2,500 standard western pear boxes, provided that they submit the following: a "Handler's Packout Report" at the end of harvest which includes a preliminary packout estimate; a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report" after completion of shipments from regular storage (i.e., non-Controlled Atmosphere storage), at mid-season for Controlled Atmosphere storage, and at the completion of shipments. If the preliminary packout estimate varies from the actual shipments, an explanation of the difference will be required with the final shipment report. The two final reports shall be marked "final report" and include an explanation of the actual shipments versus the original estimate, if different.

Information collection requirements will continue to be periodically reviewed by the Committee to ensure that they place a minimal burden on handlers required to file the information. Committee procedures will also continue to be reviewed and streamlined to assure efficiency in administering information collections. The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0089.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of winter pears.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule without change as published in the **Federal Register** (60 FR 47858, September 15, 1995) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 927 which was published at 60 FR 47858 on September 15, 1995, is adopted as a final rule without change.

Dated: November 20, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28773 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 965

[Docket No. FV95–965–1FR]

Tomatoes Grown in the Lower Rio Grande Valley in Texas; Termination of Marketing Order 965

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This document terminates the Federal marketing order for tomatoes grown in the Lower Rio Grande Valley in Texas (order) and the rules and regulations issued thereunder. In recent years, this industry has declined significantly in numbers of producers and handlers. Thus, there is no need for the Department of Agriculture to continue operation of the order.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2170, or Fax (202) 720–5698, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone (210) 682–2833, or Fax (210) 682–5942.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act and § 965.84 of the order.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

The termination of the order has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 producers, 5 of which are also handlers who would be subject to seasonal handling regulations under the order, but none have been recommended since the early 1970's. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the remaining South Texas tomato producers and handlers may be classified as small entities.

The order was initially established in March 1959, to help the industry solve its marketing problems and maintain orderly marketing conditions. It was the responsibility of the Texas Valley Tomato Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of tomatoes. The committee endeavored to achieve orderly marketing and improve acceptance of Texas tomatoes through establishment of minimum size and quality requirements. When regulated, fresh tomato shipments consisted only of those grades and sizes desired by consumers, thus, tending to increase returns to producers and handlers.

During the first year the order was in effect, there were 2,488 producers and 61 handlers of South Texas tomatoes. Over the years, commercial production and handling of tomatoes grown in South Texas have declined significantly. As a consequence, handling requirements have not been applied since the early 1970's and there is no indication that the industry will be revived or that regulations will be needed.

In September 1994, the Department conducted interviews with former and remaining industry members to determine whether they expected a revival of South Texas tomato production in the next two years. Industry members did not give any indication that the industry would be revived. Former industry members that were interviewed stated that they did not plan to resume tomato production. They reported that the decline in the industry was caused by a lack of new tomato varieties adaptable to South Texas, which could make it more competitive with Mexico and Florida.

Further, as stated above, there are currently only 10 producers, 5 of which are also handlers. Without an adequate number of producers and handlers, the Department cannot appoint the required committee of members and alternates, or otherwise continue the operation of the order.

The committee holds a certificate of deposit in the amount of $3,868.35, which matures on September 23, 1995, and a savings account that totals $524.08. At the last meeting in 1991, the committee chairperson suggested that any funds exceeding the expense of termination should be donated to an institution that conducts research for agriculture in the Lower Rio Grande Valley in Texas.

On June 26, 1995, the Department published a proposed rule in the **Federal Register** (60 FR 32922) to terminate the order and invited public comment through July 26, 1995. No comments were received.

Therefore, based on the foregoing, pursuant to section 608c(16)(A) of the Act and § 965.84 of the order, it is found that Marketing Order No. 965, covering tomatoes grown in the Lower Rio Grande Valley in Texas, does not tend to effectuate the declared policy of the Act and is hereby terminated. The Secretary hereby appoints former chairperson of the committee, Heino Brasch of Donna, Texas; and Belinda G. Garza and James B. Wendland, both of the Marketing Order Administration Branch, as trustees to continue in the capacity of concluding and liquidating the affairs of the former committee, until discharged by the Secretary.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified on September 8, 1995.

Based on the foregoing, the Administrator of the AMS has determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 965

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

PART 965—TOMATOES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS [REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR part 965 is removed.

Dated: November 20, 1995.

Shirley R. Watkins,

Acting Assistant Secretary Marketing and Regulatory Programs.

[FR Doc. 95–28771 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 95–055–2]

Change in Disease Status of Germany Because of Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Germany free of swine vesicular disease. As part of this action, we are adding Germany to the list of countries that, although declared free of swine vesicular disease, are subject to restrictions on pork and pork products offered for importation into the United States. There have been no confirmed outbreaks of swine vesicular disease in Germany since 1981. This rule relieves certain restrictions on the importation of pork and pork products into the United States from Germany. However, because Germany shares common land borders with countries affected by swine vesicular disease, imports pork products from countries affected by swine vesicular disease, and is still considered to be affected with hog cholera, the importation into the United States of pork and pork products from Germany will continue to be restricted.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On August 29, 1995, we published in the **Federal Register** (60 FR 44785–44786, Docket No. 95–055–1) a proposal to amend the regulations by adding Germany to the list in § 94.12(a) of countries declared free of SVD. We further proposed to add Germany to the list in § 94.13 of countries that have been declared free of SVD, but from which the importation of pork and pork products is restricted. These actions would relieve certain restrictions on the importation of pork and pork products into the United States from Germany.

We solicited comments concerning our proposal for 60 days ending October 30, 1995. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves certain restrictions on the importation of pork and pork products into the United States from Germany. We have determined that approximately 2 weeks are needed to ensure that the Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations in part 94 by adding Germany to the list of countries that have been declared free of SVD. This action relieves certain restrictions on the importation of pork and pork products into the United States from Germany. However, other requirements continue to restrict the importation of live swine and pork and pork products.

Because of the continued presence of hog cholera in Germany, nearly all of the current U.S. restrictions on the importation of pork and pork products remain unchanged. The only area of pork importation that may be affected by this rule is cured and dried pork imports. A lengthy curing and drying period is required at present for pork and pork products originating from countries with SVD (see 9 CFR 94.17). The restriction for hog cholera is much shorter, requiring that the meat be thoroughly cured and fully dried for a period of not less than 90 days so that the product is shelf stable without refrigeration (see 9 CFR 94.9).

A shorter and less costly curing and drying period for pork and pork products may lead to Germany's increased participation in the U.S. market, depending on the competitiveness of the market for imported cured and dried pork and pork products. However, the impact for U.S. importers and consumers is not expected to be significant. In the fiscal year 1993–94, Germany exported 232 tons of prepared or preserved pork to the United States, which amounted to only 0.25 percent of the total quantity imported into the United States. The effect of this rule on U.S. domestic prices or supplies or on U.S. businesses, including small entities, is expected to be negligible.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.12 [Amended]

2. In § 94.12, paragraph (a) is amended by adding "Germany," immediately after "Finland,".

§ 94.13 [Amended]

3. In § 94.13, the introductory text, the first sentence is amended by adding "Germany," immediately after "Denmark,".

Done in Washington, DC, this 20th day of November 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28763 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is broadening loan participation authority by removing the requirement that the participation agreement precede the originating loan's disbursement. Deleting this requirement will provide federal credit unions (FCUs) more flexibility to manage liquidity.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The rule proposed by the Board would delete the current requirement that the participation agreement precede any disbursement of the originating loan's proceeds. 60 FR 39273 (August 2, 1995). The proposal required the "originating lender" to use the same underwriting standards it uses for loans that are not being sold as participation loans unless there is a participation agreement in place prior to the disbursement of the loan. If a participation agreement is in place prior to disbursement, all of the participating credit unions will have agreed on underwriting standards. The originating lender would reflect those standards either in its loan policies or the participation agreement. Also, the proposal required the purchaser of a participation interest to have a policy in place prior to entering into a participation agreement. Current Section 701.22(b)(2), as well as the proposed rule, allow either the board of directors or the investment committee to execute the participation agreement.

Summary of Comments

The NCUA received 35 comments on the proposed rule: 27 from credit unions; 3 from credit union trade groups; 4 from credit union leagues; and 1 from an attorney. All 35 commenters support deleting the requirement that the loan participation agreement precede the loan disbursement. Some of the recurring reasons given in support were that it will: enable credit unions to increase their loan-to-share ratios if they desire; enable credit unions with high loan-to-share ratio to sell loans and increase service to members by originating more loans; enable small credit-unions to better service their members; be used by credit unions as a liquidity management tool; and enable credit unions to help each other.

Comments were requested on two specific issues. The first issue is whether the rule should require that an agreement be in place either prior to the disbursement of the loan if that loan is intended for a participation or prior to the sale if the loan was originally made to hold in portfolio. Five commenters supported a requirement that the participation agreement be executed prior to disbursal of the loan if the loan is intended for participation. However, as one commenter noted, it would be difficult to determine the intent of the lender at the time the loan is made. As the rule requires the originating lender to use the same underwriting standards it uses for its nonparticipation loans, unless it has a participation agreement in place, the Board does not believe the additional requirement is necessary.

Six commenters said that the rule should require a participation agreement to be in place prior to the sale of the loan. This requirement is in the proposed rule and we have adopted it in the final rule. Section 701.22(b)(2) has been modified in the final rule to clarify that the loans must be identified prior to their sale and that the identification need not occur in the master participation agreement but may be in an addendum to the agreement in a format to be determined by the participating credit unions.

The second specific request for comment was whether the final rule should be amended to limit execution of the participation agreement to the board of directors. The current Section 701.22(b)(2), as well as the proposed rule, permit the board of directors to determine whether they or the investment committee will execute a participation agreement. Of the 17 commenters that responded to the issue, all agreed that the authority to execute should not be limited to the board of directors and some suggested expanding the authority to include management. The commenters noted that Section 701.22(b) limits the formulation of a participation policy to the board of directors. Those executing the agreement would be acting within policies established by the board of directors. With these safeguards in place, the Board agrees that the credit union board of directors should have this greater flexibility to delegate execution of the master participation agreement to either the investment committee or senior management.

One commenter suggested that the final rule require "no less stringent underwriting standards for participation loans than for non-participation loans." As stated in the preamble to the proposal, credit unions are expected to "exercise due diligence before entering into participation agreements * * *." 60 FR 39273 (August 2, 1995). The amendments will allow a small credit union which, for example, has liquidity problems and limits on loan amounts, to enter into a participation agreement with a larger credit union which sets unique loan participation underwriting standards. The participation agreement may provide for higher loan amounts because the small credit union is assured that a portion of the loan will be purchased by the larger credit union.

A few commenters asked the Board to consider relaxing current Section 701.22(c)(2) which requires the originating lender to maintain a ten percent interest in the loans it sells. This provision is mandated by Section 107(5)(E) of the Federal Credit Union Act (12 U.S.C. 1757(5)(E)) which the Board may not amend by a regulation.

Final Rule

The final rule adopts with minor modifications the proposed rule published on August 2, 1995. 60 FR 39273.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a potential number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the final rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the requirement to establish a written participation policy and agreement in connection with loan participations constitutes a collection of information under the Paperwork Reduction Act. The Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB) require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information. 60 FR 44978 (August 29, 1995). The requirement to have a participation agreement exists under the current rule. 12 C.F.R. 701.22(b)(2). NCUA estimates that no more than 1000 federal credit unions will seek to implement a loan participation program. It is NCUA's view that the time spent developing a policy and agreement is not a burden created by this regulation but rather is necessary to establish a safe and sound loan participation program. The paperwork burden created by this rule is the requirement that such policy and agreement be put in writing. NCUA estimates that it should take three hours to prepare the participation policy and one hour to put a participation agreement in written form. Therefore, 4000 total burden hours are required to comply with the collection requirement.

The NCUA Board invites comment on: (1) Whether the collection of information is necessary for the proper performance of the functions of NCUA, including whether the information will have practical utility; (2) the accuracy of NCUA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information. Send comments to Suzanne Beauchesne, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Comments should be postmarked by January 26, 1996.

After 60 days, NCUA will submit the paperwork requirement to OMB for review under the Paperwork Reduction Act and will publish a notice to that effect in the **Federal Register**. NCUA will also publish a document in the **Federal Register** once OMB takes action on the submitted request. Until NCUA receives an OMB control number indicating approval of the requirement that participation policies and agreements be put in writing, a credit union is not required to comply with that requirement.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 16, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.22 is amended by revising paragraphs (a)(1), (b)(2), (c)(4) and (d)(1) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(1) *Participation loan* means a loan where one or more eligible organizations participates pursuant to a written agreement with the originating lender.

* * * * *

(b) * * *

(2) a written master participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors, or if the board has so delegated in its policy, the investment committee or senior management official(s) and retained in the Federal credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement or directly in the master agreement, the participation loan or loans prior to their sale; and

* * * * *

(c) * * *

(4) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

(d) * * *

(1) Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

* * * * *

[FR Doc. 95–28704 Filed 11–24–95; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 95–ANE–42; Notice No. SC–95–04–NE]

Special Conditions: Allison Engine Company Model 250–C40 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Allison Engine Company (AE) Model 250–C40 turboshaft engine. This engine will have novel or unique engine ratings that are not defined by the applicable airworthiness regulations. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATES: December 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (617) 238–7115; Fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1993, Allison Engine Company applied for an amendment to type certificate E1GL to include a new model 250–C40 turboshaft engine. On March 30, 1995, Allison Engine Company applied for 30-Second one engine inoperative (OEI) and 2-Minute OEI ratings for the engine. The AE Model 250–C40 turboshaft engine will be rated at 30-Second OEI, 2-Minute OEI, 30-Minute OEI, Continuous OEI, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI and 2-Minute OEI rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

Type Certification Basis

Under the provisions of section 21.101 of the FAR, Allison Engine Company must show that the AE Model 250–C40 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application. The applicable regulations for this engine are FAR part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–4.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the AE Model 250–C40 turboshaft engine because of the new and unique engine ratings. Therefore, the Administrator prescribes special conditions under the provisions of section 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with section 11.49 of the FAR after public notice and opportunity for comment, as required by sections 11.28 and 11.29(b), and become part of the type certification basis in accordance with section 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. Two commenters from a domestic company and a foreign airworthiness authority provided the Federal Aviation Administration (FAA) with comments to the special conditions, addressing numerous issues. The comments are grouped according to the applicable special condition paragraphs and are discussed below.

Section 33.4 Instructions for Continuous Airworthiness

One commenter states that there is no requirement in the proposed special conditions stating the use of 2-Minute and 30-Second OEI ratings must be followed by mandatory inspections and maintenance actions. The commenter suggests that the proposed addition to section 33.4 be changed by adding a sentence to state those requirements.

The FAA agrees that the requirements for mandatory inspections and maintenance action after the use of 2-Minute and 30-Second OEI ratings need to be addressed in the proposed special conditions. However, it is more appropriate to set such requirements out in section 33.7, Engine Ratings and Operational Limitations, instead of in the instruction for continuous airworthiness section. The rating definition of 2-Minute and 30-Second OEI is thereby modified by adding inspection and maintenance requirements.

Section 33.27 Turbine, Compressor, Fan, and Turbo-Supercharger Rotors

One commenter states that the first sentence of the proposed additional test requirement does not clearly state whether the 2-Minute and 30-Second OEI conditions are intended to be treated the same as other ratings, when complying with all or with only some parts of the current section 33.27 for non-failure mode cases. One commenter states that the 2-Minute and 30-Second OEI rating concept was originally initiated by industry as a means of safety utilizing the reserve power inherent in a turbine engine for a brief controlled period of time during a critical flight phase, OEI emergency situation. The commenter recommends that a 5 percent reduction in the test margin be made for the non-failure mode cases when section 33.27(c)(2) (i), (ii), (iii) or (iv) applies. The commenter argues that this recommendation has been adopted by the Aviation Rulemaking Advisory Committee's Harmonization Working Group (ARAC–HWG) on Rotor Integrity, and therefore, should be included in the proposed special conditions.

The FAA does not agree. The 5 percent reduction in test margin compared to the current requirements for no-failure cases is still in the drafting stage of the ARAC–HWG deliberations, and has yet to be published for public comment. The FAA has determined that the same test and post-test inspection requirements that appeared in the Supplemental Notice of Proposed Rulemaking (SNPRM) No. 89–27A on the subject of OEI ratings for rotorcraft engines, should be applied to these special conditions for 33.27(c)(2) (i), (ii), (iii) or (iv).

One commenter states that the additional test requirements in this section which impose a demonstration at 100 percent of the rotor speed under failure conditions when operating at 2-Minute and 30-Second OEI ratings are not warranted, and believes that the basis for such demonstration at the OEI conditions should be the probability of occurrence of failures that lead to the use of OEI ratings, in combination with the probability of a rotor failure involving the operating engine.

One commenter states that a five-minute test should be conducted at a combination of the maximum 2-Minute OEI or 30-Second OEI operating temperature, and a speed equal to 105 percent of the highest overspeed that would result from a single failure when operating at 2-Minute OEI or 30-Second OEI conditions. The test results from the overspeed demonstration should be acceptable if the rotor having the minimum material properties and the most adverse dimensional tolerances does not burst.

The FAA does not agree with the use of a probability of occurrence in lieu of a test for compliance of section 33.27 requirements, and does not agree that the test should be at a speed equal to 105 percent of the overspeed resulting from a single failure when operating at the 2-Minute and 30-Second OEI ratings. The FAA bases its determination on the potential severity of failure conditions due to disk burst, the probability of occurrence of the failure condition because of the lower utilization rate of these ratings, and the mandatory post flight inspections and maintenance associated with 2-Minute OEI and 30-Second OEI that actually discourage use of those OEI ratings. In considering the lower combined probability of occurrence of failures that involve the use of 2-Minute OEI or 30-Second OEI rating and a failure occurrence in the operating engine, a 5 percent reduction in test speed, that is

required for the traditional OEI ratings of 2½ minutes or longer, is therefore adopted in this special conditions. In addition, these special conditions require an acceptable growth criteria, in addition to no burst of a minimum strength rotor after it has been subjected to the combined effects of maximum operating temperature and 100 percent of the maximum overspeed resulting from the most critical single failure when operating at 2-Minute OEI or 30-Second OEI operating condition. The conditions imposed by the acceptable growth criteria would minimize the potentially hazardous conditions if the rotor has been operating in an engine. Therefore, the additional rotor test requirements for failure conditions in the final special conditions will remain the same as the proposed special conditions. In summary, the requirements for 2-Minute and 30-Second OEI ratings in the final special condition are appropriate standards for rotor integrity in the context of utilizing the inherent overspeed margin in this engine model without compromising safety. The ARAC's HWG may continue to discuss these issues and propose changes to rules of general applicability, as opposed to dealing with this particular engine design.

One commenter asks the meaning of the term "the structural integrity of the rotor is maintained" for the post rotor test requirements.

The FAA disagrees that these special conditions should provide a definition of that phrase for general application. For this engine model, however, the rotor should not burst and not develop, through damage or disk growth, a condition that would prevent safe operation of the engine. The ARAC–HWG continues to work on a proposal for a rule of general application for the 30-second and 2-minute OEI ratings, and on guidance material that would help future applicants in meeting the certification requirements for those ratings.

Section 33.29 Instrument Connection

One commenter states that the proposed additional requirements do not match the relevant needs of FAR 29.1305(a) (24) and 25(l), and recommends the following additions to section 33.29: In addition to the requirements of section 33.29, the engine must provide for a means to:

(a) Indicate and alert the pilot when the engine is at the 30-Second and 2-Minute OEI power levels when any such event begins and when the permitted time interval expire;

(b) Determine, in a positive manner after flight that the engine has been operated at either or both of these power levels; and

(c) Determine, after flight, the elapsed time of operation at each of these power levels.

The FAA agrees that the section should be modified to clarify the additional requirements to section 33.29. While not adopting the commenters recommendations word-for-word, the FAA has changed section 33.29 of these special conditions to reflect the commenters' changes.

Section 33.67 Fuel System

One commenter states the engine test runs must be performed to demonstrate the means for automatic control of 30-Second OEI ratings in addition to the automatic availability of those ratings.

The FAA agrees. This section is modified as recommended.

Section 33.83 Vibration Test

One commenter states that the last sentence of these proposed additional requirements is not satisfactory because the vibration survey is required to cover the 2-Minute OEI operation for speeds beyond the maximum permitted within the OEI flight envelope. The last sentence states that the survey may need to be extended to even higher speeds if there is any indication of a stress peak arising at the upper end of the survey speed, that conflicts with compliance with section 33.63 which would not require the survey to cover maximum rotational speeds beyond the operating range. The commenter suggests that the last sentence of the proposed addition to section 33.83 be changed to read: "If there is any indication of a stress peak arising at the highest of those physical and corrected rotational speeds, the surveys shall be extended sufficiently to reveal the maximum stress values present except that the extension need not cover more than a further 2 percent point beyond those speeds."

One commenter states that vibration survey be tested to 100 percent of the 30-Second OEI and 2-Minute OEI rotor speeds and any further speed margin requirements beyond the test speeds be addressed based upon requirements to further evaluate any stress peak arising at the maximum rotor speed.

The FAA does not agree with the test speed of 100 percent for the 2-Minute OEI rating, but agrees with the recommended 2-percentage point extension beyond the required test speeds. The purpose of survey speed extension is intended to cover inherent variations in vibratory response due to engine manufacturing and build tolerances that can result in peak stresses occurring at slightly different rotor speeds between engines and engine parts. This section is therefore changed as recommended.

Section 33.85 Calibration Test

One commenter states that the proposed additional requirement is not clear regarding the "applicable endurance test" definition under the proposed special conditions and recommends the following changes to read as: "In addition to the requirements of section 33.85, tests performed at * * * during the applicable additional endurance test prescribed in section 33.87 as amended by these special conditions may be used. * * *"

The FAA agrees. For clarification, this section is changed as recommended.

Section 33.88 Engine Overtemperature Test

One commenter questions the logic for allowing shorter test duration of four minutes instead of five minutes for engines that incorporate a means for temperature limiting, but not for the engines without such a device. The commenter recommends that the overtemperature test duration should be four minutes for all engine models having the 30-Second OEI and 2-Minute OEI ratings.

The FAA does not agree. Since this engine has the added protection of a temperature limiter, an overtemperature condition of 75 degrees Fahrenheit and five-minute duration cannot reasonably be expected, and an overtemperature test at that level is considered excessively severe. However, the engines equipped and qualified to the 35 degrees Fahrenheit (19 degrees Celsius) and 4-minute test conditions will need provisions for predispatch operational status checking of the temperature limiters. The rational for 5 minutes and 75 degrees Fahrenheit overtemperature test conditions to engines not equipped with a temperature limiter is to apply the existing rule requirements.

Section 33.93 Teardown Inspection

One commenter states that the proposed additional requirements lack a requirement equivalent to the proposed section 33.93(b)(1) of SNPRM 89–27A, and suggests that the second sentence of the proposed additions to section 33.93 be changed to read: "The engine must comply with section 33.93(a), but it may exhibit deterioration in excess of that permitted in section 33.93(b) and may * * *".

The FAA agrees. The proposed change is an implied requirement of the additional requirements in this section, and the recommendation is adopted accordingly.

After careful review of the available data and the comments noted above; the FAA determined that air safety and the public interest require the adoption of the special conditions with the changes described previously.

Conclusion

This action affects only certain novel or unusual design features on one model engine. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air Transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704, 14 CFR 21.16, 14 CFR 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Allison Engine Company (AE) Model 250–C40 turboshaft engine:

§ 33.4 Instructions for Continued Airworthiness.

In addition to the requirements of section 33.4, the mandatory inspection and maintenance actions required following the use of the 30-Second or 2-Minute OEI rating must be included in the airworthiness limitations section of the appropriate engine manuals.

§ 35.7 Engine Ratings and Operating Limitations.

In addition to the requirements of section 33.7, the following ratings are defined as:

(a) Rated 30-Second one engine inoperative (OEI) power: The approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under part 33 and this special conditions, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, no longer than 30 seconds each, in any one flight, and followed by mandatory inspection and prescribed maintenance action.

(b) Rated 2-Minute OEI power: The approved brake horsepower, developed under static conditions at specified altitudes and temperatures, within the operating limitations established for the engine under part 33 and this special conditions, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, of no longer than 2 minutes each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

§ 33.27 Turbine, Compressor, Fan, and Turbo-supercharger Rotors.

In addition to the requirements of section 33.27(a) and (b), the following tests must be conducted for the most critically stressed rotor component of each turbine and compressor including integral drum rotors and centrifugal compressor, as determined by analysis or other acceptable means for 2-Minute and 30-Second OEI conditions:

(a) Test for a period of two and one-half minutes—

(1) At the maximum operating temperature except as provided in paragraph (c)(2)(iv) of this section; and

(2) At the highest speed determined, in accordance with section 33.27(c)(2)(i through (iv).

(3) This test may be performed using a separate test vehicle as desired.

(b) The following additional test requirements must be considered under 33.27(e)(2)(v) and (vi):

(1) Test for a period of 5 minutes—

(i) At 100 percent of the highest speed that would result from failure of the most critical component of each turbine and compressor or system in a representative installation of the engine when operating at 30-Second and 2-Minute OEI rating conditions.

(ii) The test speed must take into account minimum material properties, maximum operating temperature, and the most adverse dimensional tolerances.

(c) Following the test, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted for 30-Second and 2-Minute OEI rating only, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

§ 33.29 Instrument Connection.

In addition to the requirements of section 33.29, the engine must have a provision for a means to:

(a) Alert the pilot when the engine is at the 30-Second OEI and a 2-Minute OEI power levels;

(b) Determine, in a positive manner, that the engine has been operated at each rating; and

(c) Determine the elapsed time of operation of each rating.

§ 33.67 Fuel System.

In addition to the requirements of section 33.67, the engine must provide for a means for automatic availability and automatic control of the 30-Second OEI power; and engine test runs must be performed to demonstrate automatic functioning of both of these means.

§ 33.83 Vibration Test.

In addition to the requirements of section 33.83, the following additional test requirements must be considered under 33.83(a):

For 30-Second and 2-Minute OEI rating conditions, the vibration survey shall cover the ranges of power, and both the physical and corrected rotational speeds for each rotor system, corresponding to operations throughout the range of ambient conditions in the declared flight envelope, from the minimum rotor speed up to 103 percent of the maximum rotor speed permitted for 2-Minute OEI rating, and up to 100 percent of the maximum rotor speed permitted for 30-Second OEI rating speed. If there is any indication of a stress peak arising at the highest physical or corrected rotational speeds, the surveys shall be extended sufficiently to reveal the maximum stress values present except that the extension needs not cover more than a further 2 percent beyond those speeds.

§ 33.85 Calibration Test.

In addition to the requirements of section 33.85, tests performed at the 30-Second and 2-Minute OEI ratings, during the applicable additional endurance test prescribed in section 33.87 as amended by these special conditions, may be used to show compliance with the requirements of section 33.85.

§ 33.87 Endurance Test.

In addition to the requirements of section 33.87, an engine test must be conducted four times, using the following test sequence, for a total of not less than 120 minutes:

(a) Takeoff Power—three minutes at rated takeoff power.

(b) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(c) 2-Minute OEI Power—two minutes at rated 2-Minutes OEI Power.

(d) 30-Minute OEI, Continuous OEI, or Maximum Continuous power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum Continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes.

(e) 50 Percent takeoff power—one minute at 50 percent takeoff power.

(f) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(g) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(h) Idle power—one minute at idle power.

§ 33.88 Engine Overtemperature Test.

In addition to the requirements of section 33.88, the following must be performed:

(a) For engines that do not provide a means for temperature limiting; conduct a test for a period of five minutes at the maximum permissible power-on RMP, with the gas temperature at least 75 degrees fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(b) For engines that provide a means for temperature limiting; conduct a test for a period of four minutes at the maximum permissible power-on RPM, with the gas temperature at least 35 degrees fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(c) A separate test engine may be used for each test.

(d) Following the test, rotor assembly growth and distress beyond serviceable limits for an overtemperature condition is permitted, provided the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

§ 33.93 Teardown Inspection.

In addition to the requirements of section 33.93, this special condition requires that the engine be completely disassembled after completing the additional testing of section 33.87. The engine must comply with section 33.93(a), but it may exhibit deterioration in excess of that permitted in section 33.93(b), and may include some engine parts and components that may be unsuitable for further use. It must be shown by procedures approved by the Administrator that the structural integrity of the engine, including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on November 16, 1995.

Jay J. Pardee,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–28842 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–CE–01–AD; Amendment 39–9441; AD 95–24–11]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft SA226 and SA227 series airplanes. This action requires installing foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Two incidents of objects falling through openings in the cockpit floor and jamming the elevator controls and the yoke prompted this action. The actions specified by this AD are intended to prevent airplane flight control jammings caused by objects falling through the cockpit floor openings.

DATES: Effective January 3, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes was published in the **Federal Register** on June 15, 1995 (60 FR 14235). The action proposed to require installing foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Accomplishment of the proposed action would be in accordance with Fairchild Service Bulletin (SB) 226–53–012, Fairchild SB 227–53–005, or Fairchild SB CC7–53–002, all Issued: September 22, 1994, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter is in favor of the substance of the proposed rule, but feels that the FAA should have issued a final rule; request for comments, instead of a notice of proposed rulemaking (NPRM). Under current regulations, the FAA must issue an NPRM prior to issuing a final rule to allow the public the opportunity to comment, unless the FAA demonstrates that the unsafe condition is an urgent safety of flight condition. After reviewing all information related to this subject, the FAA made the determination prior to issuing the NPRM that the unsafe condition was not an urgent safety of flight conditon, and thus did not require final rule; request for comments, AD action. The AD is unchanged as a result of this comment.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 855 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $247,950. This figure is based on the assumption that no affected airplane owner/operator has incorporated the required modification and that parts have not been distributed to any owner/operator of the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ Section 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–24–11 Fairchild Aircraft: Amendment 39–9441; Docket No. 95–CE–01–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
SA226–T	All serial numbers.
SA226–T(B) ...	All serial numbers.
SA226–AT	All serial numbers.
SA226–TC	All serial numbers.
SA227–AT	All serial numbers.
SA227–AC	All serial numbers.
SA227–BC	All serial numbers.
SA227–TT	All serial numbers.
SA227–CC	CC784 and CC790 through CC863
SA227–DC	DC784 and DC790 through DC863

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent airplane flight control jammings caused by objects falling through the cockpit floor openings, accomplish the following:

(a) Install foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Accomplish this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either Fairchild Service Bulletin (SB) 226–53–012, Fairchild SB 227–53–005, or Fairchild SB CC7–53–002, all Issued: September 22, 1994, as applicable.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) The installation required by this AD shall be done in accordance with Fairchild Service Bulletin 226–53–012, Fairchild Service Bulletin 227–53–005, or Fairchild Service Bulletin CC7–53–002, all Issued: September 22, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9441) becomes effective on January 3, 1996.

Issued in Kansas City, Missouri, on November 17, 1995.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28794 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–83–AD; Amendment 39–9434; AD 95–24–02]

Airworthiness Directives; Boeing Model 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, that requires modification of the escape slide/raft on Door 2 of the airplane. This amendment is prompted by reports indicating that the escape slide/raft on Door 2 deployed onto the wing of the airplane and did not inflate automatically. The actions specified by this AD are intended to ensure that the escape slide/raft on Door 2 inflates automatically so that passengers are able to exit the airplane through Door 2 in the event of an emergency evacuation.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Monica Nemecek, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2773; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747SP series airplanes was published in the **Federal Register** on August 10, 1995 (60 FR 40783). That action proposed to require modification of the escape slide/raft on Door 2 of the airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 45 Model 747SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $259 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,548, or $379 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-24-02 Boeing: Amendment 39-9434. Docket 95-NM-83-AD.

Applicability: Model 747SP series airplanes equipped with BFGoodrich evacuation systems identified in BFGoodrich Service Bulletin 7A1255-25-275, dated February 25, 1994, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the ability of passengers to exit the airplane through Door 2 in the event of an emergency evacuation, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the escape slide/raft on Door 2 in accordance with BFGoodrich Service Bulletin 7A1255-25-275, dated February 25, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 7A1255-25-275, dated February 25, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-28795 Filed 11-24-95; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 95-NM-49-AD; Amendment 39-9435; AD 95-24-03]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -30, and -40 Series Airplanes, and KC-10 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10, -30, and -40 series airplanes, and KC-10 (military) airplanes, that requires inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. This amendment also requires eventual modification of the horizontal stabilizer, which terminates the inspection requirements. This action is prompted by reports indicating that corrosion, caused by water entrapment, was found on the horizontal stabilizer. The actions specified by this AD are intended to prevent water entrapment and subsequent damage to the horizontal stabilizer, which could result in reduced controllability of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (310) 627-5322; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10, -30, and -40 series airplanes, and KC-10 (military) airplanes was published in the **Federal Register** on June 13, 1995 (60 FR 31124). That action proposed to require repetitive visual inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. That action also proposed to require the eventual modification of the lower front spar cap and the lower front skin panel of the horizontal stabilizer, which would constitute terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 286 Model DC-10-10, DC-10-30, and DC-10-40 airplanes, and KC-10 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 142 airplanes of U.S. registry will be affected by this AD, that it will take approximately 26 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $221,520, or $1,560 per airplane.

The FAA estimates that it will take approximately 241 work hours per airplane to accomplish the terminating modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $124,906 per airplane. Based on these figures, the cost impact of the terminating modification is estimated to be $19,789,972, or $139,366 per airplane.

Based on the figures discussed above, the estimated cost impact of the requirements of this AD is expected to total $20,011,492, or $140,926 per airplane. This estimated cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-24-03 McDonnell Douglas: Amendment 39-9435. Docket 95-NM-49-AD.

Applicability: Model DC-10-10, -30, and -40 airplanes, and KC-10 (military) airplanes; as listed in McDonnell Douglas Service Bulletin 55-14, Revision 6, dated January 11, 1993, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to a damaged horizontal stabilizer, accomplish the following:

(a) Within one year after the effective date of this AD, perform a visual inspection to detect corrosion or cracking of the lower front spar cap and skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC-10 Service Bulletin 55-14, Révision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993.

(1) If no corrosion or cracking is found during this inspection, repeat this inspection thereafter at intervals not to exceed one year, until the modification required by paragraph (b) of this AD is accomplished.

(2) If any corrosion or cracking is found during this inspection, prior to further flight,

repair the corrosion and/or cracking, and add drain holes, in accordance with Table 1 of the service bulletin. Accomplishment of these repairs and modification constitutes terminating action for the repetitive inspection requirements of this AD.

(b) Perform the modification of the lower front spar cap and the skin panel of the horizontal stabilizer in accordance with McDonnell Douglas Service Bulletin 55–14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993, at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(1) For Model DC–10–10 airplanes: Accomplish the modification prior to the accumulation of 42,000 total landings, or within five years after the effective date of the AD, whichever occurs later.

(2) For Model DC–10–30 and DC–10–40 airplanes: Accomplish the modification prior to the accumulation of 30,000 total landings, or within five years after the effective date of this AD, whichever occurs later.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with McDonnell Douglas Service Bulletin 55–14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28796 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–50–AD; Amendment 39–9433; AD 95–24–01]

Airworthiness Directives; McDonnell Douglas Model DC–10–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–10–10 series airplanes, that requires inspections of the wings to detect cracks in the aft spar lower cap, in certain stringer butterfly clips on the bulkheads, and in certain fastener holes; and repair, if necessary. This amendment also requires modification of those areas of the wings, which terminates the repetitive inspection requirements. This amendment is prompted by reports indicating that, during fatigue testing of the wing structure, cracks developed in the aft spar lower cap, in certain stringer butterfly clips, and in certain fastener holes due to fatigue-related stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could lead to the failure of the aft spar cap and consequently could reduce the structural integrity of the wing.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas DC–10–10 series airplanes was published in the **Federal Register** on June 16, 1995 (60 FR 31649). That action proposed to require repetitive eddy current inspections of the wings to detect cracks in the aft spar lower cap; in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000; and in the fastener holes of the access doors of the inboard upper surface. That action also proposed to require modification of those areas of the wings, which would constitute terminating action for the required repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 53 Model DC–10–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 262 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $125,609 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,490,437, or $141,329 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–24–01 McDonnell Douglas: Amendment 39–9433. Docket 95–NM–50–AD.

Applicability: Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections and modifications required by paragraphs (g) and (h) of AD 94–23–01, amendment 39–9063, accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–10 Service Bulletin 57–123, dated June 8, 1993, or McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 6, dated February 25, 1991, are considered acceptable for compliance with the applicable inspections and modifications required by this amendment for the affected structure.

To prevent fatigue-related cracking, which could lead to the failure of the aft spar cap and subsequent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 15,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992.

(1) If no cracks are detected, repeat the inspection thereafter at intervals not to exceed 2,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 42,000 total landings or within 5 years after the effective date of this AD, whichever occurs later, modify the aft spar lower cap, the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and the fastener holes of the access doors of the inboard upper surface of the wings, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirement of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, repair, and modification shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28797 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–04–AD; Amendment 39–9431; AD 95–24–04]

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300 and A300–600 series airplanes, that requires repetitive eddy current inspections to detect cracks at the aft spar web of the wings, and repair, if necessary. This amendment is prompted by reports indicating that cracks have been found in the rear spar web of the wings between ribs 1 and 2 of an in-service airplane and during testing on the fatigue test wing; the cracking occurred due to fatigue-related high shear stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the wing.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300 and A300–600 series airplanes was published in the **Federal Register** on May 4, 1995 (60 FR 22011). That action proposed to require repetitive eddy current inspections to detect cracks at the aft spar web of the wings, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 89 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,020, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–24–04 Airbus Industrie: Amendment 39–9436. Docket 95–NM–04–AD.

Applicability: All Model A300 and Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking in the rear spar web of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For Model A300 B2 series airplanes: Prior to the accumulation of 18,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(b) For Model A300 B4–103, and B4–2C series airplanes: Prior to the accumulation of 19,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(c) For Model A300 B4–200 series airplanes: Prior to the accumulation of 17,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(d) For Model A300–600 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, and F4–605R series airplanes: Prior to the accumulation of 21,600 flight cycles, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–6059, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(e) If any crack is detected during any inspection required by this AD, prior to further flight, repair the crack in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994, or Airbus Service Bulletin A300–57–6059, dated August 12, 1994, as applicable; or in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and repairs shall be done in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994, or Airbus Service Bulletin A300–57–6059, dated August 12, 1994, as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28798 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–114–AD; Amendment 39–9427; AD 95–23–07]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles of the wing pylons, and repair of any cracked upper spar angles. This amendment requires eddy current inspections to detect cracking of the upper spar angles on the left and right sides of the wing pylons, and replacement of the spar angles as terminating action for the inspections. This amendment is prompted by the development of a modification that positively addresses the unsafe condition. The actions specified by this AD are intended to prevent loss of load-carrying and fail-safe capability of the upper inboard spar cap of the wing pylon, which could subsequently reduce the structural integrity of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the **Federal Register** as of December 27, 1995.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995, listed in the regulations, was approved previously by the Director of the **Federal Register** as of March 17, 1995 (60 FR 11623, March 2, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–04–15, amendment 39–9167 (60 FR 11623, March 2, 1995), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** on August 21, 1995 (60 FR 43415). The action proposed to continue to require visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons. However, the action also proposed to require eddy current inspections to detect cracking on the forward end of the left and right sides of the upper spar angles on the number 1 and number 3 wing pylons, and replacement of the upper spar angles on the left and right sides of the number 1 and number 3 wing pylons.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 123 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD.

The visual inspections that are currently required by AD 95–04–15 and retained in this new AD take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $28,200, or $600 per airplane, per inspection.

The eddy current inspections that are required by this new AD will take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $28,200, or $600 per airplane.

The new requirement to replace the spar angle that is required in this AD action will take approximately 440 work hours to accomplish the replacement of one spar angle per wing pylon (with two wing pylons per airplane), or 550 work hours to accomplish the replacement of two spar angles per wing pylon (with two wing pylons per airplane), at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the replacement requirement is estimated to be $26,400 to replace one spar angle per wing pylon (or $52,800 per airplane), or $33,000 to replace two spar angles per wing pylon (or $66,000 per airplane).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9167 (60 FR 11623, March 2, 1995), and by adding a new airworthiness directive (AD), amendment 39–9427, to read as follows:

95–23–07 McDonnell Douglas: Amendment 39–9427. Docket 95–NM–114–AD. Supersedes AD 95–04–15, Amendment 39–9167.

Applicability: Model MD–11 series airplanes, certificated in any category, that are listed in the following service bulletins:

—McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995, identified as Groups II, III, and IV airplanes; and

—McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of load-carrying and fail-safe capability of the upper inboard spar cap of the wing pylon, which could subsequently reduce the structural integrity of the airplane, accomplish the following:

(a) For Groups II, III, and IV airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995: Within 30 days after March 17, 1995 (the effective date of AD 95–04–15, amendment 39–9167), or within 60 days after accomplishing the immediately preceding visual inspection required by paragraph (b) of AD 95–04–15, whichever occurs later, perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, part numbers (P/N) AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995; or McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995. Repeat this inspection thereafter, prior to further flight, following each incident of excessive maneuver, turbulence overload (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–01), or hard landing (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–03).

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 60 days or 300 landings, whichever occurs earlier, until the requirements of paragraph (d) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Paragraph (a) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph (b) of AD 95–04–15. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 95–04–15, paragraph (a) of this AD requires that the next scheduled inspection be performed within 60 days or 300 landings, whichever occurs earlier, after the last inspection performed in accordance with paragraph (b) of AD 95–04–15.

(b) For Groups II, III, and IV airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 30 days after the effective date of this AD, or within 60 days after accomplishing the immediately preceding visual inspection required by paragraph (a) of this AD, whichever occurs later: Perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, P/N's AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995. Repeat this inspection thereafter, prior to further flight, following each incident of excessive maneuver, turbulence overload (as defined in MD–11 Aircraft Maintenance Manual, Chapter 05–51–01), or hard landing (as defined in MD–11 Aircraft Maintenance Manual, Chapter 05–51–03).

(i) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 60 days or 300 landings, whichever occurs earlier, until the requirements of paragraph (d) of this AD are accomplished.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(2) Within 15 months after the effective date of this AD, perform an eddy current inspection to detect cracking of the left and right angles of the upper spar angles on the forward end, P/N AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995.

(i) If no cracking is detected, repeat the eddy current inspection thereafter at intervals not to exceed 15 months, until the requirements of paragraph (d) of this AD are accomplished.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(c) For Groups II, III, and IV airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995: At the applicable time specified in either paragraph (c)(1) or (c)(2) of this AD, submit a report of the results (positive findings only) of the inspections required by paragraph (b) of this AD to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax the report to (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501et seq.) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished after the effective date of this AD: Submit a report of positive findings within 10 days after performing any of the inspections required by paragraph (b) of this AD.

(2) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(d) For airplanes listed in McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995, accomplish the requirements of paragraphs (d)(1) and (d)(2) of this AD.

(1) For pylons on which no cracking of the upper spar angles has been detected during the inspections required by either paragraph (a) or (b) of this AD: Within 5 years after the effective date of this AD, replace the spar angles with new spar angles in accordance with McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; or McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995.

(2) For pylons on which cracking of the upper spar angles has been repaired in accordance with Rohr Service Bulletin MD11 54–190, dated March 3, 1995: Within 15 months after accomplishment of the repair, replace the spar angles with new spar angles in accordance with McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; or McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995.

(e) Replacement of the spar angles in accordance with McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; or McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995; McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995; McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; and McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995. The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995, was approved previously by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 17, 1995 (60 FR 11623, March 2, 1995). The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28190 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–29–AD; Amendment 39–9432; AD 95–23–12]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Model PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft, Inc. (Piper) Model PA–46–350P airplanes. This action requires installing a placard (to the right of the manifold pressure gauge in full view of the pilot) that specifies manifold pressure limits, and incorporating a revision into the Limitations section of the Pilot's Operating Handbook (POH). The actions specified by this AD are intended to prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits.

DATES: Effective January 8, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–29–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Model PA–46–350P airplanes was published in the **Federal Register** on June 5, 1995 (60 FR 29511). The action proposed installing a placard (to the right of the manifold pressure gauge in full view of the pilot) that specifies manifold pressure limits. The proposed action would also require incorporating revised page 2–16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB–1332 into the Limitations Section of the PA–46–350P POH. Piper Service Bulletin (SB) No. 982, dated April 3, 1995, contains the placard, and instructions on installing the placard and incorporating the POH revision. The proposed AD will allow an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) to perform these actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). Although the unsafe condition can develop as a result of airplane usage, it cannot develop unless the manifold pressure limits specified in the required action are exceeded. Therefore, to ensure that all owners/operators of the affected airplanes incorporate the manifold pressure limits in a reasonable amount of time, a compliance based on calendar time is utilized.

The FAA estimates that 189 airplanes in the U.S. registry will be affected by this AD and that it will take approximately 1 workhour per airplane to accomplish the required action. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the only impact this action would have upon the public is the time it takes each owner/operator to install the placard and incorporate the POH revision. Accomplishment of the required action would be in accordance with Piper SB No. 982, dated April 3, 1995, which contains the placard, and instructions on installing the placard and incorporating the POH revision.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–23–12. The New Piper Aircraft, Inc., (formerly Piper Aircraft Corporation): Amendment 39–9432; Docket No. 95–CE–29–AD.

Applicability: Model PA–46–350P airplanes, serial numbers 4622001 through 4622189, certificated in any category.

NOTE 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 2 calendar months after the effective date of this AD, unless already accomplished.

To prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits, accomplish the following:

(a) Install a placard (to the right of the manifold pressure gauge in full view of the pilot) that specifies the following manifold pressure limits:

DO NOT EXCEED
36" MP
BELOW 2400 RPM
32" MP
BELOW 2300 RPM

Accomplish this installation in accordance with Piper Service Bulletin (SB) No. 982, dated April 3, 1995. This placard is included with the referenced service bulletin.

(b) Incorporate revised page 2–16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB–1332 into the Limitations Section of the PA–46–350P Pilot's Operating Handbook (POH). Piper SB No. 982, dated April 3, 1995, contains the instructions for incorporating this POH revision.

(c) Installing the placard and incorporating the POH revision as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) The installation and incorporation required by this AD shall be done in accordance with Piper Service Bulletin (SB) No. 982, dated April 3, 1995. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the **Federal Register**, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9432) becomes effective on January 8, 1996.

Issued in Kansas City, Missouri on November 8, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28847 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–209–AD; Amendment 39–9439; AD 95–24–07]

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that requires modification of the aileron support frame of the wings. This amendment is prompted by reports indicating that tensile cracks have been found at a certain mounting hinge of the aileron support frame during full scale fatigue testing of the test article due to fatigue-related stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes was published in the **Federal Register** on June 16, 1995 (60 FR 31651). That action proposed to require modification of the aileron support frame of the wings.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 54 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $31,481 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $173,605, or $34,721 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–24–07 Airbus Industrie: Amendment 39–9439. Docket 94–NM–209–AD.

Applicability: Model A320–111, –211, and –231 series airplanes, serial numbers 005 though 043 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking at the mounting hinge of the aileron support frames of the wings, which could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane, accomplish the following:

(a) Prior to the accumulation of 14,000 flight cycles or within 500 flight cycles after the effective date of this AD, whichever occurs later, modify the aileron support frames of the wings, in accordance with Airbus Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Airbus Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28523 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–141–AD; Amendment 39–9440; AD 95–24–08]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires replacement of the check valves of the thrust reverser with modified valves on certain airplanes and the replacement of the manual control valves of the thrust reverser with modified valves on certain other airplanes. This amendment is prompted by recent engineering analysis, which revealed that, if the non-return valve installed on the hydraulic return line of the thrust reverser were to jam in the closed position, it could cause pressurization of the Hydraulic Control Unit (HCU). The actions specified by this AD are intended to prevent such pressurization of the HCU due to jamming of the non-return valve in the hydraulic return line, and consequent deployment of a thrust reverser during flight; this condition, if not corrected, could adversely affect the controllability of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on November 14, 1994 (59 FR 56433). That action proposed to require replacing the thrust reverser check valves with modified valves on Engine 1 and Engine 2 of airplanes equipped with CFM series engines. It also proposed to require replacing the thrust reverser manual control valves with modified valves on the Engine 1 and Engine 2 of airplanes equipped with International Aero Engines (IAE) engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposal.

Just prior to the publication of the proposal, Airbus issued Service Bulletin A320–29–1048, Revision 2, dated September 1, 1994. This revision is essentially identical to Revision 1, which was cited in the proposal as the appropriate source of service information; it differs only in the listing of the current operators of affected airplanes. The FAA has revised the final rule to include Revision 2 of the service bulletin as an additional source of service information.

Additionally, as a result of communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,540, or $180 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–24–08 Airbus: Amendment 39–9440. Docket 94–NM–141–AD.

Applicability: Model A320 series airplanes; as listed in Airbus Industrie Service Bulletin A320–29–1048, Revision 1, dated December 4, 1992, and Revision 2, dated September 1, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser during flight, which could adversely affect the controllability of the airplane, accomplish the following:

(a) Within 5 months after the effective date of the AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Airbus Industrie Service Bulletin A320–29–1048, Revision 1, dated December 4, 1992, or Revision 2, dated September 1, 1994.

(1) For airplanes equipped with CFM series engines: Replace the Engine 1 and Engine 2 check valves of the thrust reverser in the nacelle with modified valves as specified in the service bulletin.

(2) For airplanes equipped with International Aero Engines (IAE): Replace the Engine 1 and Engine 2 manual control valves of the thrust reverser on the pylon with modified valves as specified in the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacements shall be done in accordance with the following Airbus service bulletins, which contain the specified list of effective pages:

Service bulletin No. and date	Page No.	Revision level shown on page	Date shown on page
A320–29–1048, Revision 2, September 1, 1994	1–5	2	September 1, 1994.
	7–8, 11,	1	December 4, 1992.
	6, 9–10, 12–15	Original	April 7, 1992.
A320–29–1048, Revision 1, December 4, 1992	1–3, 5, 7–8, 11,	1	December 4, 1992.
	4, 6, 9–10, 12–15	Original	April 7, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28525 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 670

[Docket No. 950825218–5263–02; I.D. 073195A]

RIN 0648–AE47

Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Initial Regulations; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures of the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). This rule restricts the taking of coral reef resources in or from the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands. NMFS disapproved two measures of the FMP that would have adopted state permit and reporting requirements, because the state permit systems are not yet fully developed, and the state regulations authorizing these permits, where they exist, do not satisfy the requirements of the Administrative Procedure Act, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable laws. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections. The intended effect of this rule is to protect important marine resources.

EFFECTIVE DATES: December 27, 1995, except for § 670.23(b), which becomes effective March 1, 1996.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Caribbean Fishery Management Council (Council) under the authority of the Magnuson Act.

The background and rationale for the measures in the FMP, and the rationale for disapproval of two measures that would have adopted state permit and reporting requirements, were included in the proposed rule (60 FR 46806, September 8, 1995) and are not repeated here.

Comments and Responses

Comments were received from the U.S. Coast Guard (USCG), the U.S. Fish and Wildlife Service (USFWS), and the Center for Marine Conservation (CMC). The USCG noted that it was involved in the development of the FMP and had no enforcement or safety concerns.

Comment: USFWS offered its "strongest possible support for the measures" and recommended that the Commonwealth of Puerto Rico work closely with the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, and the U.S. Customs Service, in its enforcement and implementation of compatible permit and enforcement programs.

Response: NMFS agrees with this comment.

Comment: USFWS notes that the FMP specifically addresses the aquarium trade in live organisms but does not fully address the collection of coral reef resources for the curio trade. USFWS points out that some mollusks such as triton's trumpet (*Charonia variegata*) and helmet shells (*Cassis* spp.) may become increasingly rare due to commercial shell collecting.

Response: Although some coral reef resources are used in local handicrafts, most organisms sold as curios and used in handicrafts in Puerto Rico are imported, primarily from the Philippines. Commercial shell collecting does not appear to be a problem, at least not in Puerto Rico. However, the FMP's restrictions on taking of coral reef resources apply equally to harvest and sale of live organisms and harvest and sale of organisms taken for eventual use in the curio trade.

Comment: USFWS recommended that specific information on scientific and other permitting procedures be included as part of the FMP.

Response: NMFS agrees and has advised the Council to incorporate this information through an amendment to the FMP once the states have completed the development of their respective permit systems.

Comment: CMC supports the rule and further notes the importance of live rock as fishery habitat. CMC believes that harvest of coral reef resources can threaten local economies that may be dependent on healthy reef systems for fishing and nonconsumptive uses.

Response: NMFS agrees with the CMC's comments.

Classification

The Regional Director, Southeast Region, NMFS, determined that the FMP is necessary for the conservation and management of coral reef resources of Puerto Rico and the U.S. Virgin Islands and that it is consistent with the Magnuson Act and other applicable law, with the exception of those measures that were previously disapproved. (See the proposed rule (60 FR 46806, September, 8, 1995) for a discussion of the disapproved measures.)

This action has been determined to be not significant for purposes of E.O. 12866.

The Council prepared a final environmental impact statement (FEIS) for the FMP; a notice of availability for public comment was published on August 8, 1995 (60 FR 40340. According to the FEIS, the restrictions in the FMP would benefit the natural environment by prohibiting activities that damage live bottom habitat areas.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule (60 FR 46806, September 8, 1995). As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains two collection-of-information requirements subject to the PRA. The first is the requirement for vessel identification. The second is a documentation of origin of prohibited species that are for sale in Puerto Rico or the U.S. Virgin Islands. These collections have been approved by OMB under OMB control numbers 0648–0306 and 0303. The public reporting burdens for these collections of information are estimated to average 15 minutes and 45 minutes per response, respectively. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate, or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 670

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 20, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding in the left column under 50 CFR, in numerical order,"670.6" and "670.23", and in the right column, in corresponding positions, the control numbers "- 0306." and "–0303."

50 CFR Chapter VI

3. Part 670 is added to read as follows:

PART 670—CORAL REEF RESOURCES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.

670.1 Purpose and scope.
670.2 Definitions.
670.3 Relation to other laws.
670.4 Permits. [Reserved]
670.5 Recordkeeping and reporting.
670.6 Vessel identification.
670.7 Prohibitions.
670.8 Facilitation of enforcement.
670.9 Penalties.

Subpart B—Management Measures

670.20 Fishing year.
670.21 Harvest limitations.
670.22 Gear restrictions.
670.23 Restrictions on sale or purchase.
670.24 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 670.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of coral reef resources in or from the EEZ around Puerto Rico and the U.S. Virgin Islands. "EEZ" in this part refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

§ 670.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Coral reef resource means one or more of the following, or a part thereof, whether living or dead:

Sponges—Class Demospongiae

Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona sp., Finger sponge
Myriastra sp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta

Hydrocorals—Class Hydrozoa

Hydroids—Order Athecatae

Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals

Anthozoans—Class Anthozoa

Soft corals—Order Alcyonacea

Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.

Gorgonians—Order Gorgonacea

Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis sp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari

Hard Corals—Order Scleractinia

Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agariciidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet

Black Corals—Order Antipatharia

Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral

Anemones—Order Actiniaria

Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone

Colonial Anemones—Order Zoanthidea

Zoanthus spp., Sea mat

False Corals—Order Corallimorpharia

Discosoma spp. (formerly *Rhodactis*), False coral
Ricordia florida, Florida false coral

Polychaetes—Class Polychaeta

Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm

Gastropods—Class Gastropoda

Family Elysiidae

Tridachia crispata, Lettuce sea slug
Family Olividae
Oliva reticularis, Netted olive
Family Ovulidae
Charonia tritonis, Atlantic triton trumpet
Cyphoma gibbosum, Flamingo tongue
Family Strombidae, Winged conchs
Strombus spp. (except Queen conch, *S. gigas*)

Bivalves—Class Bivalvia

Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster

Cephalopods—Class Cephalopoda

Octopuses—Order Octopoda

Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris*)

Crustaceans—Class Crustacea

Decapods—Order Decapoda

Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. codenati, Red reef hermit
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus,, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus,, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp

Bryozoans—Phylum Bryozoa

Starfish—Class Stelleroidea

Analcidometra armata, Swimming crinoid
Astropecten spp., Sand stars
Astrophyton muricatum, Giant basket star
Davidaster spp., Crinoids
Linckia guildingii, Common comet star
Nemaster spp., Crinoids
Ophidiaster guildingii, Comet star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
Oreaster reticulatus, Cushion sea star

Sea Urchins—Class Echinoidea

Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg

Sea Cucumbers—Class Holothuroidea

Holothuria spp., Sea cucumbers

Tunicates—Subphylum Urochordata

Green Algae—Phylum Chlorophyta

Caulerpa spp., Green grape algae
Halimeda spp., Watercress algae
Penicillus spp., Neptune's brush
Udotea spp., Mermaid's fan
Ventricaria ventricosa, Sea pearls

Red Algae—Phylum Rhodophyta

Sea grasses—Phylum Angiospermae

Holodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Gorgonian means a coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea.

Live rock means a coral reef resource attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Prohibited species means a gorgonian, a live rock, or a stony coral, or a part thereof.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813-570-5301; or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761; or a designee.

Scientific, educational, or restoration purpose means the objective of gaining knowledge for the benefit of science, humanity, or management of coral reef resources or restoring a disturbed habitat as closely as possible to its original condition.

Stony coral means a coral reef resource—

(1) Of the Class Hydrozoa (fire corals and hydrocorals); or

(2) Of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

§ 670.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

§ 670.4 Permits. [Reserved]

§ 670.5 Recordkeeping and reporting.

A person possessing a coral reef resource in or from the EEZ is required upon request to make such coral reef resource available for inspection by the Science and Research Director or an authorized officer.

§ 670.6 Vessel identification.

(a) *Official number.* A vessel that fishes for or possesses coral reef resources in or from the EEZ must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of a vessel that fishes for or possesses coral reef resources in or from the EEZ must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number from an enforcement vessel or aircraft.

§ 670.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to make a coral reef resource in or from the EEZ available for inspection, as specified in § 670.5.

(b) Falsify or fail to display and maintain vessel identification, as required by § 670.6.

(c) Fish for or possess a prohibited species in or from the EEZ, as specified in § 670.21.

(d) Use an explosive to harvest a coral reef resource in the EEZ or possess dynamite or a similar explosive substance on board a vessel, as specified in § 670.22(a).

(e) Use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ, as specified in § 670.22(b).

(f) Harvest a coral reef resource in the EEZ other than as specified in § 670.22(c).

(g) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a prohibited species harvested in the EEZ, as specified in § 670.23(a).

(h) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a coral reef resource.

(i) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 670.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 670.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 670.20 Fishing year.

The fishing year for coral reef resources begins on January 1 and ends on December 31.

§ 670.21 Harvest limitations.

No person may fish for or possess a prohibited species in or from the EEZ. The taking of a prohibited species in the EEZ as incidental catch will not be considered unlawful possession of a prohibited species provided it is returned immediately to the sea in the general area of fishing.

§ 670.22 Gear restrictions.

(a) An explosive may not be used to harvest a coral reef resource in the EEZ. Dynamite or a similar explosive substance may not be possessed on board a vessel that possesses a coral reef resource in or from the EEZ.

(b) No person may use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ.

(c) A coral reef resource in the EEZ may be harvested only with a hand-held dip net or slurp gun, or by hand in a manner that does not injure or destroy a coral reef resource or its habitat. For the purposes of § 670.7(f) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber.

§ 670.23 Restrictions on sale or purchase.

(a) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a prohibited species harvested in the EEZ.

(b) Effective March 1, 1996, a prohibited species that is sold or exchanged, or offered for sale or exchange, in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the EEZ unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel, or the name and address of the individual, harvesting the prohibited species;

(3) The port and date of landing the prohibited species; and

(4) A statement signed by the person selling or exchanging, or offering for sale or exchange, the prohibited species attesting that, to the best of his or her knowledge, information, and belief, such prohibited species was harvested other than in the EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 670.24 Specifically authorized activities.

The Regional Director may authorize the harvest and possession of a prohibited species in or from the EEZ for a scientific, educational, or restoration purpose and may authorize activities otherwise prohibited by the regulations in this part for the acquisition of information and data.

[FR Doc. 95–28882 Filed 11–24–95; 8:45 am]
BILLING CODE 3510–22–F

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

RIN 0960–AE33

Social Security Programs: Fraud and Abuse; Establishment of New Part 498 to Address Civil Monetary Penalties, Assessments and Exclusions

AGENCY: Office of the Inspector General (OTG), SSA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new part 498, which will serve as a repository for the Social Security Administration's existing civil monetary penalty authorities and which will reflect and implement new civil monetary penalty authorities provided under the Social Security Independence and Program Improvements Act of 1994. In the first phase of this process, the Social Security Administration in this final rule will relocate its existing regulations for misuse of Social Security program words, letters, symbols, and emblems to part 498. In addition, the existing regulations will be updated in this final rule to reflect nondiscretionary changes made by the Social Security Independence and Program Improvements Act of 1994.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Judith A. Kidwell, Office of the Inspector General, (410) 965–9750 or Glenn Sklar, Office of the General Counsel, (410) 965–6247.

SUPPLEMENTARY INFORMATION:

Background

Section 101 of Public Law (Pub. L.) 103–296, the Social Security Independence and Program Improvements Act of 1994 (SSIPIA), established the Social Security Administration (SSA) as an independent agency in the Executive Branch effective March 31, 1995. Previously, SSA had been a component of the Department of Health and Human Services (HHS).

In creating an independent SSA, the SSIPIA also established an independent Office of the Inspector General (OIG) within SSA, and authorized the Commissioner of Social Security (Commissioner) to delegate authority to impose certain civil monetary penalties (CMPs). In order to properly reflect its delegated authority with respect to CMPs, the OIG is establishing 20 CFR part 498. This part will: (1) Incorporate existing CMP authorities for misuse of Social Security program words, letters, symbols, and emblems which had previously been located in 42 CFR part 1003; (2) establish a new location for newly designated and future CMP provisions; (3) set forth the basis for any OIG penalty authorities and the factors to be considered in determining penalty amounts; and (4) detail the hearing process to be utilized in the imposition of these CMP provisions.

New Authorities for SSA Inspector General

Section 1129 of the Social Security Act

Section 206(b) of the SSIPIA provided expanded authority for SSA to impose CMPs and assessments against persons who make false statements or representations for use in determining any initial or continuing right to or amount of benefit payments under title II or title XVI of the Social Security Act (the Act), if such person knew or should have known that the statement was false, misleading or omitted a material fact. Section 206(b) of the SSIPIA added section 1129 to the Act, effective October 1, 1994, and section 108 of the SSIPIA made additional conforming amendments effective March 31, 1995. This section 1129 authority to impose CMPs, including the authority to issue implementing rules, was delegated to

the Inspector General (IG) of Social Security by the Commissioner on June 28, 1995. Because the regulations implementing section 1129 will involve discretionary issues they will be developed in a separate notice of proposed rulemaking. We have reserved certain sections in this final rule to accommodate the regulations reflecting and implementing section 1129 and will finalize them after we have received and considered public comments.

Section 1140 of the Social Security Act

The SSIPIA also includes several changes to section 1140 of the Act that require us to alter the scope and content of the existing misuse of program words, letters, symbols, and emblems penalty regulations currently located at 42 CFR 1003. Specifically, section 312 of the SSIPIA amended section 1140 of the Act by adding several provisions which broaden existing deterrents against misleading mailings and advertisements directly involving the SSA. Section 312 of the SSIPIA: (1) Broadened the list of prohibited words, symbols and acronyms subject to a violation; (2) revised the standard of conduct for determining a violation; (3) exempted any State agency (or any instrumentality or political subdivision of the State) from the prohibited use of these program words, letters, symbols, or emblems where such use serves to identify these entities; (4) specifically defined a violation in regard to mailings; (5) eliminated the annual penalty cap of $100,000; (6) eliminated the use of a disclaimer as a defense to a violation under this provision; and (7) repealed the provision that required a formal declination to be obtained from the Department of Justice before pursuing a CMP case under section 1140 of the Act.

Section 312 of the SSIPIA also includes a prohibition against reproducing, reprinting, or distributing forms, applications, or other publications of the SSA for a fee, unless the person has obtained written authorization in accordance with regulations prescribed by the Commissioner. These regulations will involve discretionary issues and will be published in a separate notice of proposed rulemaking.

Hearing Process

The Act mandates that all individuals subject to the imposition of a CMP be provided with the opportunity for a hearing. We are reserving 20 CFR 498.200 *et seq.* to address the CMP hearing process which will be developed at a future date.

The Handling of Dual Violations

The SSA/OIG and the HHS/OIG may make separate and independent determinations in regard to violations of section 1140 of the Act and impose separate CMPs against individuals, entities or organizations who make prohibited use of both the SSA and HHS program words, letters, symbols, or emblems in the same advertisement or solicitation.

Regulatory Procedures

Waiver of Proposed Rulemaking

When developing our regulations, we follow the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures in this case. Good cause exists because this rulemaking reflects the statutory amendments to section 1140 of the Act, with no issues of policy discretion. Therefore, opportunity for prior comment is unnecessary and we are issuing these changes to our regulations as a final rule.

Waiver of 30-Day Delay in Effective Date

We find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, the only substantive changes we are making merely reflect legislation and involve no discretionary policy. Thus, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis consistent with Pub. L. 96–354, the Regulatory Flexibility Act, unless the IG certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some sanctions and penalties provided for under the Act may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. Therefore, we have concluded, and the IG certifies, that a regulatory flexibility analysis is not required for this final rule.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 498

Administrative practice and procedure, Fraud, Penalties.

Approved: October 10, 1995.

June Gibbs Brown,

Inspector General.

20 CFR chapter III is amended by adding part 498 to read as follows:

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

Sec.

498.100 Basis and purpose.
498.101 Definitions.
498.102 Basis for civil monetary penalties.
498.103 Amount of penalty.
498.104 [Reserved]
498.105 [Reserved]
498.106 Determinations regarding the amount or scope of penalties.
498.107 [Reserved]
498.108 Penalty not exclusive.
498.109 Notice of proposed determination.
498.110 Failure to request a hearing.
498.114–498.125 [Reserved]
498.126 Settlement.
498.127 Judicial review.
498.128 Collection of penalty.
498.129 [Reserved]
498.132 Limitations.
498.200 [Reserved]

Authority: Secs. 702(a)(5) and 1140 of the Social Security Act (42 U.S.C. 902(a)(5) and 1320b–10).

§ 498.100 Basis and purpose.

(a) *Basis.* This part implements section 1140 of the Social Security Act (42 U.S.C. 1320b–10).

(b) *Purpose.* This part provides for the imposition of civil monetary penalties against persons who—

(1) [Reserved]

(2) Misuse certain Social Security program words, letters, symbols, and emblems.

§ 498.101 Definitions.

As used in this part:

Agency means the Social Security Administration.

Commissioner means the Commissioner of Social Security or his or her designees.

Department means the U.S. Department of Health and Human Services.

General Counsel means the General Counsel of the Social Security Administration or his or her designees.

Inspector General means the Inspector General of the Social Security Administration or his or her designees.

Penalty means the amount described in § 498.103 and includes the plural of that term.

Person means an individual, organization, agency, or other entity.

Respondent means the person upon whom the Commissioner or the Inspector General has imposed, or intends to impose, a penalty.

Secretary means the Secretary of the U.S. Department of Health and Human Services or his or her designees.

SSA means the Social Security Administration.

SSI means Supplemental Security Income.

§ 498.102 Basis for civil monetary penalties.

(a) [Reserved]

(b) The Office of the Inspector General may impose a penalty against any person whom it determines in accordance with this part has made use of certain Social Security program words, letters, symbols, or emblems in such a manner that they knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that an advertisement or other item was authorized, approved, or endorsed by the Social Security Administration, or that such person has some connection with, or authorization from, the Social Security Administration.

(1) Civil monetary penalties may be imposed for misuse, as set forth in § 498.102(b), of—

(i) The words "Social Security," "Social Security Account," "Social Security Administration," "Social Security System," "Supplemental Security Income Program," or any combination or variation of such words; or

(ii) The letters "SSA," or "SSI," or any other combination or variation of such letters; or

(iii) A symbol or emblem of the Social Security Administration (including the design of, or a reasonable facsimile of the design of, the Social Security card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Social Security Administration), or any other combination or variation of such symbols or emblems.

(2) Civil monetary penalties will not be imposed against any agency or instrumentality of a State, or political subdivision of a State, that makes use of any symbol or emblem, or any words or letters which identify that agency or instrumentality of the State or political subdivision.

(c) The use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs, or any other agency or instrumentality of the United States Government, will not be considered as a defense in determining a violation of section 1140 of the Social Security Act.

§ 498.103 Amount of penalty.

(a) [Reserved]

(b) Under section § 498.102(b), the Office of the Inspector General may impose a penalty of not more than $5,000 for each violation resulting from the misuse of Social Security Administration program words, letters, symbols, or emblems relating to printed media, and a penalty of not more than $25,000 in the case of such misuse related to a broadcast or telecast.

(c) For purposes of paragraph (b) of this section, a violation is defined as—

(1) In the case of a direct mailing solicitation or advertisement, each separate piece of mail which contains one or more program words, letters, symbols, or emblems related to a determination under § 498.102(b); and

(2) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 498.102(b).

§ 498.104 [Reserved]

§ 498.105 [Reserved]

§ 498.106 Determinations regarding the amount or scope of penalties.

(a) [Reserved]

(b) In determining the amount of any penalty in accordance with § 498.103(b), the Office of the Inspector General will take into account—

(1) The nature and objective of the advertisement, solicitation, or other communication, and the circumstances under which they were presented;

(2) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(3) The prior history of the individual, organization, or entity in their willingness or refusal to comply with informal requests to correct violations;

(4) The history of prior offenses of the individual, organization, or entity in their misuse of program words, letters, symbols, and emblems;

(5) The financial condition of the individual or entity; and

(6) Such other matters as justice may require.

(c) In cases brought under section 1140 of the Social Security Act, the use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs will not be considered as a mitigating factor in determining the amount of a penalty in accordance with § 498.106.

§ 498.107 [Reserved]

§ 498.108 Penalties not exclusive.

Penalties imposed under this part are in addition to any other penalties prescribed by law.

§ 498.109 Notice of proposed determination.

(a) If the Office of the Inspector General seeks to impose a penalty, it will serve written notice of the intent to take such action. The notice will include:

(1) Reference to the statutory basis for the penalty;

(2) A description of the incident(s) with respect to which the penalty is proposed;

(3) The amount of the proposed penalty;

(4) Any circumstances described in § 498.106 that were considered when determining the amount of the proposed penalty; and

(5) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing, and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty without right of appeal.

(b) Any person upon whom the Office of the Inspector General intends the imposition of a penalty may request a hearing on such proposed penalty.

(c) If the respondent fails to exercise the respondent's right to a hearing, within the time permitted under this section, any penalty becomes final.

§ 498.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 498.109, the Office of the Inspector General may seek the proposed penalty, or any less severe penalty. The Office of the Inspector General will notify the respondent by certified mail, return receipt requested, of any penalty that

has been imposed and of the means by which the respondent may satisfy the amount owed.

§§ 498.114–498.125 [Reserved]

§ 498.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without the consent of the administrative law judge or the Commissioner, at any time prior to a final determination. Thereafter, the Commissioner or his or her designee has such exclusive authority.

§ 498.127 Judicial review.

Section 1140 of the Social Security Act authorizes judicial review of a penalty that has become final. Judicial review may be sought by a respondent only in regard to a penalty with respect to which the respondent requested a hearing under § 498.200ff of this part, unless the failure or neglect to urge such objection is excused by the court because of extraordinary circumstances.

§ 498.128 Collection of penalty.

(a) Once a determination has become final, collection of any penalty will be the responsibility of the Commissioner or his or her designee.

(b) [Reserved]

(c) In cases brought under section 1140 of the Social Security Act, a penalty imposed under this part may be compromised by the Commissioner or his or her designee and may be recovered in a civil action brought in the United States district court for the district where, as determined by the Commissioner, the:

(1) Violation referred to in § 498.102(b) occurred; or

(2) Respondent resides; or

(3) Respondent has its principal office; or

(4) Respondent may be found.

§ 498.129 [Reserved]

§ 498.132 Limitations.

The Office of the Inspector General may initiate a proceeding in accordance with § 498.109 of this part to determine whether to impose a penalty within 6 years from the date on which the violation was committed.

§ 498.200 [Reserved]

[FR Doc. 95–28308 Filed 11–24–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626 and 632

Job Training Partnership Act: Indian and Native American Programs Under Title IV–A

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor, in consultation with the Native American Employment and Training Council, is amending its regulations for the Indian and Native American program under title IV–A of the Job Training Partnership Act (JTPA or Act) by providing for waivers of regulatory requirements. These changes provide additional program flexibility to JTPA section 401 grantees, so that they may tailor their individual programs to better facilitate provision of services to those most in need of JTPA services, to enhance the quality of services provided and program outcomes in relation to labor market needs, to strengthen and better define fiscal and program accountability, to improve grantees' ability to provide services to their client populations by reducing or eliminating burdensome Federal requirements, and to foster a comprehensive and coherent system of human resource services.

DATES: *Effective date*: This interim final rule is effective on December 27, 1995.

Comments: Written comments are invited on this interim final rule. To be most useful in the development of the Final Rule, however, comments in response to this notice should be submitted in writing and received by January 26, 1996. However, such comments will be considered at any time up to the publication of the Final Rule.

ADDRESSES: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Employment and Training Administration, Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Paul A. Mayrand, Director, Office of Special Targeted Programs. Commenters wishing acknowledgment of receipt of their comments shall submit them by certified mail, return receipt requested.

Comments received will be available for public inspection during normal business hours at the Division of Indian and Native American Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4641, Washington, DC 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call (202) 219–5500 (VOICE) or (202) 326–2577 (TDD) (these are not toll-free numbers).

Copies of this interim final rule are available on computer disk or in a large-type edition which may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–8502 (VOICE) or (202) 326–2577 (TDD) (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration of the Department of Labor (Department or DOL) is amending its regulations at 20 CFR part 632 for Indian and Native American employment and training programs to implement a general waiver provision similar to the one appearing in the JTPA title II–A regulations at 20 CFR 627.201. In the absence of other revisions in the section 401 program regulations, this waiver provision will allow individual section 401 grantees the same latitude as the States to request waivers to current program regulations which they feel inhibit or obstruct their ability to provide employment and training services to their client populations.

Regulatory Certifications

This interim final rule is designed to allow individual JTPA section 401 grantees the flexibility to structure their job training programs to better meet the needs of their constituents. It does not fundamentally change the delivery system for providing services under JTPA title IV–A. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12866, 58 FR 51735, October 4, 1993.

This rule was not preceded by a proposed rule and is not, therefore, a rule under the Regulatory Flexibility Act. Nevertheless, the Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that, pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), this interim final rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed on such entities by the interim final rule.

The Department has decided that it is in the best interests of the grantees to enact this interim final rule as quickly as possible. The Department intends to publish in the near future proposed and final regulations to implement the 1992 amendments to JTPA. It is likely, however, that final regulations will not be published in time to be implemented for the next program cycle. This interim final rule will permit grantees to make meaningful plans for the next program cycle. In the past, grantees have consistently sought this waiver provision. Members of the Council unanimously support this regulatory waiver capability as being in the best interests of the section 401 grantees. There are no mandatory requirements imposed on section 401 grantees as a result of this interim final rule. The decision to request or not request a specific waiver is up to the individual grantee, and will be considered by the Department on an individual basis. General input from the grantee community at large is strongly in favor of this interim final rule, because it will enable grantees to seek, and the Department to grant, relief from regulations which are currently not subject to waiver of any kind. It is broadly construed as being of benefit to the government and to all section 401 grantees.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.251, "Native American Employment and Training Programs".

Paperwork Reduction

This interim final rule contains no new collection of information requirements.

List of Subjects

20 CFR Part 626

Grant programs—labor, Manpower training programs.

20 CFR Part 632

Grant programs—Indians,—Grant programs—labor, Indians Manpower training programs, Youth.

Interim Final Rule

Accordingly, 20 CFR Chapter V is amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation for Part 626 is revised to read as follows:

Authority: 29 U.S.C. 1579(a).

2. In § 626.4, the consolidated table of contents is amended by adding a section heading for 632.70 under Part 632 to read as follows:

§ 626.4 Table of contents for the Job Training Partnership Act regulations.

* * * * *

PART 632—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

* * * * *

Subpart E—Program Design and Management

632.70 Waiver of regulations under Parts 632 and 636.

* * * * *

3. The authority citation for Part 632 is revised to read as follows:

Authority: 29 U.S.C. 1579(a).

4. Subpart E of Part 632 is amended by adding a new § 632.70 to read as follows:

§ 632.70 Waiver of regulations under Parts 632 and 636.

(a) A Native American section 401 grantee may request, and the Assistant Secretary of Labor for Employment and Training may grant, a waiver of specific provisions of 20 CFR Parts 632 and 636, or of any applicable administrative issuance, to the extent that such request is consistent with the provision of the Act.

(b)(1) In requesting a waiver under this section, the Native American section 401 grantee shall demonstrate how it will enhance the provision of services or outcomes to participants, which may include, but are not limited to, the following purposes: improving the targeting of services to the hard-to-serve; increasing the level of basic and occupational skills training provided by the JTPA program; contributing to the provisions of academic enrichment services to youth; promoting coordination of JTPA programs with other human resources programs; or substantially improving the job placement outcomes of the JTPA program.

(2) The request shall describe the regulatory requirements to be waived and demonstrate how such requirements impede the enhancement of the services and outcomes described in paragraph (b)(1) of this section.

(3) The waiver request shall indicate how the grantee will modify its planning documents as a result of the waiver.

(c) A waiver shall not be granted for:

(1) Any statutory requirement;

(2) The formula for allocation of funds;

(3) Eligibility requirements for services as provided in this part;

(4) Requirements for public health or safety, labor standards, civil rights, occupational safety or health, or environmental protection; or

(5) Prohibitions or restrictions relating to construction of buildings or facilities.

(d) Waivers granted shall be effective for no more than four years from the date the waiver is granted.

Signed at Washington, DC, this 13th day of November 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–28434 Filed 11–24–95; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 95N–0186]

Antibiotic Drugs; Cefpodoxime Proxetil, Cefpodoxime Proxetil Tablets, and Cefpodoxime Proxetil Granules for Oral Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to include accepted standards for a new antibiotic drug, cefpodoxime proxetil, and its use in two dosage forms, cefpodoxime proxetil tablets and cefpodoxime proxetil granules for oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 27, 1995; written comments, notice of participation, and request for a hearing by December 27, 1995; data, information, and analyses to justify a hearing by January 26, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, cefpodoxime proxetil, and its use in two dosage forms, cefpodoxime proxetil tablets and cefpodoxime proxetil granules for oral suspension. The agency has concluded that the data supplied by the manufacturer concerning these antibiotic drugs are adequate to establish their safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR parts 430, 436, and 442 to include accepted standards for these products.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because, when effective, it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective December 27, 1995. However, interested persons may, on or before December 27, 1995, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 27, 1995, a written notice of participation and request for a hearing, and (2) on or before January 26, 1996, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Parts 436 and 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR part 430 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 357, 371); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. Section 430.4 is amended by adding new paragraph (a)(70) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(70) *Cefpodoxime proxetil.* Cefpodoxime proxetil is an antibiotic substance having the chemical structure described by the following name: (±)-1-Hydroxyethyl(+)-(6*R*,7*R*)-7-[2-(2-amino-4-thiazolyl)glyoxylamido]-3-(methoxymethyl)-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylate,7²-(*Z*)-(*O*-methyloxime), isopropyl carbonate (ester).

* * * * *

3. Section 430.5 is amended by adding new paragraphs (a)(105) and (b)(107) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(105) *Cefpodoxime proxetil.* The term "cefpodoxime proxetil master standard" means a specific lot of the (R) isomer of cefpodoxime proxetil that is designated by the Commissioner as the standard of comparison in determining the potency of the cefpodoxime proxetil working standard.

(b) * * *

(107) *Cefpodoxime proxetil.* The term "cefpodoxime proxetil working standard" means a specific lot of a homogeneous preparation of cefpodoxime proxetil.

4. Section 430.6 is amended by adding new paragraph (b)(107) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(107) *Cefpodoxime proxetil.* The term "microgram" applied to cefpodoxime proxetil means the cefpodoxime (potency) contained in 1.304 micrograms of the cefpodoxime proxetil master standard when dried.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

5. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. Section 436.215 is amended by alphabetically adding a new entry to the table in paragraph (b) and by adding new paragraph (c)(19) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate[1]	Sampling times(s)	Apparatus
Cefpodoxime proxetil tablets	900 mL pH 3.0 glycine buffer	75	30 min	2

[1] Rotation rate of basket or paddle stirring element (revolutions per minute).

(c) * * *

(19) *Cefpodoxime proxetil*—(i) *Dissolution fluid: 0.04 molar glycine buffer, pH 3.0*—(A) *Stock solution.* Dissolve 54.5 grams of glycine (aminoacetic acid) and 42.6 grams of sodium chloride in about 500 milliliters of deionized water in a 1-liter volumetric flask. Add cautiously, and with swirling, 14.2 milliliters of concentrated hydrochloric acid. Cool to room temperature. Dilute to volume with deionized water and mix. Check the pH of the solution obtained by diluting 50 milliliters of the stock solution to 900 milliliters with deionized water. The pH should be 3.0±0.1. If necessary, adjust the pH of the stock solution with 50 percent sodium hydroxide or concentrated hydrochloric acid. Recheck that the pH of the working solution is 3.0±0.1.

(B) *Working solution.* Dilute 50 milliliters of stock solution to 900 milliliters with deionized water.

(ii) *Preparation of the working standard solutions.* Accurately weigh approximately 28 milligrams for the 100-milligram tablets and 56 milligrams for the 200-milligram tablets of the cefpodoxime proxetil working standard and dissolve in 10 milliliters of methanol. Dilute to 200 milliliters with dissolution fluid. Prepare fresh daily.

(iii) *Sample solutions.* Filter the sample solutions through a 0.45-micron filter before use. Use the sample solution as it is removed from the dissolution vessel without further dilution.

(iv) *Procedure.* Using a suitable spectrophotometer and water as the blank, determine the absorbance of each standard and sample solution at the absorbance peak at approximately 259 nanometers. Determine the exact position of the absorption peak for the particular instrument used.

(v) *Calculations.* Determine the percent of label dissolved as follows:

Percent dissolved = $(A_{sam}/A_{std}) \times (C_s/L) \times V \times P \times F1$

where:

A_{sam} = Absorbance of the sample at 259 nanometers;

A_{std} = Absorbance of the working standard solution at 259 nanometers;

C_s = Concentration of the working standard preparation in milligrams per milliliter;

L = Tablet strength, in milligrams per tablet;

P = Purity of the reference standard in percent;

V = Volume of dissolution fluid used in milliliters (900); and

$F1$ = 0.7666 (conversion factor to free acid equivalents).

PART 442—CEPHA ANTIBIOTIC DRUGS

7. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

8. New § 442.54 is added to subpart A to read as follows:

§ 442.54 Cefpodoxime proxetil.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefpodoxime proxetil is (±)-1-hydroxyethyl(+)-(6*R*,7*R*)-7-[2-(2-amino-4-thiazolyl)glyoxylamido]-3-(methoxymethyl)-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylate,7²-(*Z*)-(*O*-methyloxime), isopropyl carbonate (ester). It is so purified and dried that:

(i) Its potency is not less than 690 micrograms and not more than 804 micrograms of cefpodoxime activity per milligram, on an anhydrous basis.

(ii) The ratio of its R-epimer to total cefpodoxime is not less than 0.5 and not more than 0.6.

(iii) Its moisture content is not more than 3 percent.

(iv) It gives a positive identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefpodoxime potency, isomer ratio, moisture, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.216 of this chapter, using a suitable thermostatted column heating mechanism to maintain a column temperature of 40 °C, an ultraviolet detection system operating at a wavelength of 254 nanometers, a 15 centimeter X 4.6 millimeter (i.d.) column packed with microparticulate (5 micrometers in diameter) reversed phase packing material such as octadecyl silane bonded to silicas, a flow rate of 0.8 milliliter per minute, and a known injection volume of 2 microliters. The retention time for the S-epimer is approximately 22 minutes and the retention time for R-epimer is approximately 28 minutes. The internal standard (propylparaben) has a retention time of 34 minutes. Mobile phase, dilution solvent, resolution solution, internal standard solution, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Mobile phase.* The mobile phase consists of 420 milliliters of methanol, 580 milliliters of deionized water, and 230 milligrams of *L*-histidine hydrochloride. The pH is adjusted to 2.5±0.1 using 2*N* sulfuric acid. The mobile phase must be at room temperature for a correct pH measurement. The methanol concentration may be adjusted to achieve comparable retention times from column to column. Increasing methanol reduces retention times. Filter the mobile phase through a suitable filter capable of removing particulate matter 0.5 micron in diameter and degas it just before its introduction into the chromatograph.

(ii) *Dilution solvent.* Prepare a solvent for dilution by thoroughly mixing 495 milliliters of deionized water, 495 milliliters of acetonitrile, and 10 milliliters of acetic acid in an appropriate container.

(iii) *Resolution solution.* Prepare a 1 milligram per milliliter solution of any bulk containing ANTI–A in dilution solvent. Use this solution to determine the resolution between ANTI–A and the

later-eluting drug epimer (R-epimer). Alternately, the resolution factor can be determined between the R and S isomers.

(iv) *Internal standard solution.* Prepare a solution of propylparaben in dilution solvent at a concentration of 10 milligrams per milliliter.

(v) *Preparation of working standard solutions.* Accurately weigh approximately 42 milligrams of the cefpodoxime proxetil working reference standard add 3 milliliters of internal standard solution and 25 milliliters of dilution solvent. The standard solution is stable for at least 48 hours. Refrigeration is not recommended.

(vi) *Sample solution.* Accurately weigh approximately 42 milligrams of the sample, add 3 milliliters of internal standard and 25 milliliters of dilution solvent. The sample solution is stable for at least 48 hours. Refrigeration is not recommended.

(vii) *System suitability requirements*—(A) *Asymmetry factor.* The asymmetry factor (A_s) is satisfactory if it is not less than 0.8 and not more than 1.1 for the R-epimer of cefpodoxime peak.

(B) *Efficiency of the column.* The absolute efficiency (h_r) is satisfactory if it is not more than 5 for the R-epimer peak.

(C) *Resolution factor.* The resolution factor (R) between the peak for ANTI–A and the peak for the R-epimer is satisfactory if it is not less than 1.3. Alternately, the resolution factor (R) between the peak for the R-epimer and the peak for the S-epimer of cefpodoxime is not less than 11.

(D) *Coefficient of variation (Relative standard deviation).* The coefficient of variation (S_R in percent of 5 replicate injections) is satisfactory if it is not more than 2 percent.

(E) *Capacity factor (k').* The capacity factor (k') for the R-epimer of cefpodoxime is satisfactory if it is not less than 10.4 and not more than 15.6.

(F) If the system suitability parameters in this paragraph (b)(1)(iv) have been met, then proceed as described in § 436.216(b) of this chapter.

(viii) *Calculations.* Calculate the micrograms of cefpodoxime proxetil per milligram of sample on an anhydrous basis as follows:

$$\text{Micrograms of cefpodoxime proxetil per milligram} = \frac{R_u \times P_s \times 100}{R_s \times C_u \times (100-m)}$$

where:
R_u = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak response in the sample solution;
R_s = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak response in the working standard solution;
P_s = Cefpodoxime proxetil activity of the working standard solution in micrograms per milliliter;
C_u = Milligrams of sample per milliliter of sample solution; and
m = Percent moisture content of the sample.

(2) *Isomer ratio.* Using the procedure described in paragraph (b)(1) of this section, calculate the ratio of the R-epimer (Ab) to the sum of the S-epimer and R-epimer (Aa and Ab), by the equation

Isomer Ratio = Ab/(Aa + Ab)

where:

Aa = Area of the early eluting S-epimer peak; and

Ab = Area of the late eluting R-epimer peak.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter, except use 30 milliliters of solvent C instead of 20 milliliters of solvent A.

(4) *Identity.* Proceed as directed in § 436.211 of this chapter, using the mineral oil mull prepared as described in paragraph (b)(2) of that section.

9. New §§ 442.154, 442.154a, and 442.154b are added to subpart B to read as follows:

§ 442.154 Cefpodoxime proxetil oral dosage forms.

§ 442.154a Cefpodoxime proxetil tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefpodoxime proxetil tablets are composed of cefpodoxime proxetil and one or more suitable and harmless diluents, binders, lubricants, colorings, and coating substances. Each tablet contains cefpodoxime proxetil equivalent to either 100 milligrams or 200 milligrams of cefpodoxime. Its cefpodoxime proxetil content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of cefpodoxime that it is represented to contain. Its loss on drying is not more than 5 percent. It passes the dissolution test. It passes the identity test. The cefpodoxime proxetil used conforms to the standards prescribed by § 442.54(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefpodoxime proxetil used in making the batch for potency, isomer ratio, moisture, and identity.

(B) The batch for content, loss on drying, dissolution, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefpodoxime proxetil used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay*—(1) *Cefpodoxime content.* Proceed as directed in § 442.54(b)(1), preparing the sample solution and calculating the cefpodoxime content as follows:

(i) *Preparation of sample solution.* Obtain the average tablet weight of at least 20 tablets. Grind the tablets using a mortar and pestle. Weigh approximately 660 milligrams into a suitable container. Add 30 milliliters of internal standard solution. Shake for 30 minutes using a horizontal platform shaker or equivalent. Centrifuge for about 10 minutes at 3,000 revolutions per minute until the particulate matter has settled. Withdraw a 1 milliliter aliquot of the supernatant and dilute with 9 milliliters of dilution solvent. The sample solutions are stable for at least 48 hours. Refrigeration is not recommended.

(ii) *Calculations.* Calculate the cefpodoxime content as follows:

$$\text{Milligrams of cefpodoxime per tablet} = (R_{sam}/R_{std}) \times (W_{std}/W_{sam}) \times (F_1/F_3) \times F_2 \times F_4 \times P$$

where:
R_{sam} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the sample preparation;
R_{std} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the standard preparation;
W_{std} = Weight of cefpodoxime proxetil reference standard, in milligrams;
W_{sam} = Weight of sample, in milligrams;
F_1 = Volume of internal standard used in the sample preparation, in milliliters;
F_2 = 0.766; The ratio of molecular weight for free-acid cefpodoxime over the molecular weight of cefpodoxime proxetil (427.46/557.61);
F_3 = Volume of internal standard used in the standard preparation, in milliliters;
F_4 = Average tablet weight, i.e., weight of tablets used in sample preparation divided by the number of tablets; and
P = Purity of the cefpodoxime proxetil reference standard, expressed as a decimal.

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, except dry the sample at a temperature of 80 °C and a pressure of 5 millimeters of mercury or less for 16 hours.

(3) *Dissolution test.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of cefpodoxime activity dissolved) is 70 percent within 30 minutes.

(4) *Identity.* Using the high-performance liquid chromatographic procedure described in paragraph (b)(1) of this section, the retention times for the peaks of the active ingredients must be within 2 percent of the retention times for the peaks of the corresponding reference standards.

§ 442.154b Cefpodoxime proxetil granules for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefpodoxime proxetil granules for oral suspension is cefpodoxime proxetil and one or more suitable and harmless preservatives, sweeteners, suspending agents, buffers, and flavorings. When constituted as directed in the labeling, each milliliter contains the equivalent of either 10 or 20 milligrams cefpodoxime activity. Its cefpodoxime proxetil content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of cefpodoxime that it is represented to contain. Its loss on drying is not more than 0.5 percent. When constituted as described in the labeling, the pH of the suspension is not less than 4 and not more than 5.5. It passes the identity test. The cefpodoxime proxetil used conforms to the standards prescribed by § 442.54(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefpodoxime proxetil used in making the batch for potency, isomer ratio, moisture, and identity.

(B) The batch for content, loss on drying, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefpodoxime proxetil used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 10 intermediate containers.

(b) *Tests and methods of assay*—(1) *Cefpodoxime content.* Proceed as directed in § 442.54(b)(1), preparing the sample solution and calculating the cefpodoxime content as follows:

(i) *Preparation of sample solution.* Reconstitute as directed in the labeling. Immediately before sampling the suspension, shake vigorously for several seconds. Into a suitable container, accurately weigh out 6 grams of the 50 milligrams per 5 milliliters suspension, or 3 grams of the 100 milligrams per 5 milliliters suspension. Add 5 milliliters of internal standard solution and 25 milliliters of dilution solvent. Shake for 30 minutes using a horizontal platform shaker or equivalent. Centrifuge for about 10 minutes at 3,000 revolutions per minute until the particulate matter has settled. Withdraw a 1 milliliter aliquot of the supernatant and dilute with 1 milliliter of dilution solvent. The sample solutions are stable for at least 48 hours. Refrigeration is not recommended.

(ii) *Calculations.* Calculate the cefpodoxime content as follows:

$$\text{Milligrams of cefpodoxime per 5 milliliters of suspension} = (R_{sam}/R_{std}) \times (W_{std}/W_{sam}) \times (F_1/F_3) \times (F_2/F_4) \times F_5 \times P$$

where:
R_{sam} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the sample preparation;
R_{std} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the standard preparation;
W_{std} = Weight of cefpodoxime proxetil reference standard, in milligrams;
W_{sam} = Weight of sample, in grams;
F_1 = Volume of internal standard used in the sample; preparation, in milliliters;
F_2 = 0.766; The ratio of molecular weight for free-acid cefpodoxime over the molecular weight of cefpodoxime proxetil (427.46/557.61);
F_3 = Volume of internal standard used in the standard preparation, in milliliters;
F_4 = 0.2; Factor to convert to 5 milliliters;
F_5 = Specific gravity of suspension for milligram per 5 milliliter calculated on the air-free basis (specific gravity is determined on a sample of suspension that has been shaken gently on a platform shaker under vacuum for 2 hours); and
P = Purity of the cefpodoxime proxetil reference standard, expressed as a decimal.

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, except dry the sample at a temperature of 80 °C and a pressure of 5 millimeters of mercury or less for 16 hours.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug constituted as directed in the labeling.

(4) *Identity.* Using the high-performance liquid chromatographic procedure described in paragraph (b)(1) of this section, the retention times for the peaks of the active ingredients must be within 2 percent of the retention times for the peaks of the corresponding reference standards.

Dated: November 13, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–28893 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8600]

RIN 1545–AE86

Definition of an S Corporation; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8600] which were published in the **Federal Register** for Friday, July 21, 1995 (60 FR 37578). The final regulations relate to the definition of an *S corporation.*

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Laura Howell, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1361 of the Internal Revenue Code.

Need for Correction

As published, TD 8600 contains a typographical error that is in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95–17914, is corrected as follows:

§ 1.1361–1 [Corrected]

On page 37587, column 1, § 1.1361–1 (which was corrected at 60 FR 49976, Sept. 27, 1995), paragraph (k)(1), paragraph (ii) of *Example 1.*, in the last sentence of the paragraph, the date "July 27, 1997" is corrected to read "July 28, 1997".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–28801 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–016–FOR]

Kansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kansas regulatory program (hereinafter referred to as the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977. Kansas proposed revisions to its approved revegetation success guidelines pertaining to an additional measurement technique that could be used to determine woody stem density. The amendment is intended to improve operational efficiency.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002, Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.10, 916.12 and 916.15.

II. Submission of the Proposed Amendment

By letter dated August 9, 1995 (Administrative Record No. KS–600), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment at its own initiative to improve its program efficiency. Kansas proposes to modify its requirements for determining the productivity success of trees and shrubs by amending its approved revegetation success guidelines entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success" to include an alternative sampling method for determining woody stem density.

OSM announced receipt of the proposed amendment in the September 12, 1995, **Federal Register** (60 FR 47314), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. KS–603). The public comment period ended on October 12, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Woody Stem Density

Kansas proposes to amend its revegetation success guidelines by adding an alternative method for measurement of woody stem density. This would apply to any land use where trees or shrubs would be required to be planted as part of the approved reclamation and revegetation plan. The approved guidelines currently only allow for a 100 percent count of trees and shrubs in the proposed release area. The proposed amendment would still require that 100 percent counts are necessary when the reclamation plan calls for less than 300 stems per acre and less than 10 acres. When the reclamation plan calls for more than 300 stems per acre or the release area is larger than 10 acres, the permittee has the option of either doing a 100 percent count or collecting a statistically valid sample utilizing randomly selected 1/50th acre circular plots.

The Kansas program regulations concerning statistically valid sampling methods for measuring revegetation success are found at Kansas Administrative Regulation (KAR) 47–9–1(c)(42) and adopt by reference 30 CFR 816.116, as in effect on July 1, 1990.

These regulations are essentially identical to the counterpart Federal regulations. Kansas is adding an alternative measurement technique for the determination of woody stem density for any land use where the approved reclamation plan would require the planting of trees or shrubs. The method must meet the State and Federal requirement that this measurement technique be a statistically valid sampling technique as required at 30 CFR 816/817.116(a). The Director finds that by requiring random sampling where sample adequacy is established and utilizing a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error), the proposed method is no less effective than the Federal regulations at 30 CFR 816/817.116(a).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Kansas program.

The U.S. Department of the Interior, Fish and Wildlife Service, responded on September 12, 1995, and provided its concurrence that the implementation of the proposed revision should adequately ensure successful revegetation of reclaimed areas and had no objection to the proposal (Administrative Record No. 602). The U.S. Department of Agriculture, Natural Resources Conservation Service, responded on September 25, 1995, but did not offer any substantive comments (Administrative Record No. KS–604).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kansas proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to § 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. KS–605). EPA did not respond to the request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. Since the proposed amendment would not have any effect on historic properties, OSM did not solicit comment from the SHPO or ACHP.

V. Director's Decision

Based on the above finding, the Director approves Kansas' proposed amendment as submitted on August 9, 1995, concerning the Kansas alternative method for measurement of woody stem density.

The Director approves the revision as proposed by Kansas with the provision that it is fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 916, codifying decisions concerning the Kansas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended by adding paragraph (p) to read as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(p) The revision to the Kansas Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success, concerning the alternative for measuring woody stem density as submitted to OSM on August 9, 1995, is approved effective November 27, 1995.

[FR Doc. 95–28865 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS COLE (DDG 67) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 26, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS COLE (DDG 67) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Four of § 706.2 is amended by:

a. Adding the following entry to Paragraph 15:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS COLE	DDG 67	1.90 meters.

b. Adding the following entry to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS COLE	DDG 67	101.83 thru 112.50°.

3. Table Five of § 706.2 is amended by adding the following entry:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS COLE	DDG 67	X	X	X	20.4

Dated: October 26, 1995.

Approved: _____

R. R. Pixa,

CAPT, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–28799 Filed 11–24–95; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5333–4]

RIN 2060–AA35, RIN 2060–AB55

Standards of Performance for New Stationary Sources: Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations and Reactor Processes; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This document contains amendments to the standards of performance for new, modified, and reconstructed distillation operations in the synthetic organic chemical manufacturing industry (SOCMI) (Subpart NNN) published on June 29, 1990, and for new, modified, and reconstructed reactor processes in the synthetic organic chemical manufacturing industry (SOCMI) (Subpart RRR) published on August 31, 1993. Amendments are made to the spelling of certain chemical names, the CAS numbers for certain chemicals, and some cross-reference drafting errors. A clarifying sentence is also being added to certain paragraphs to avoid inadvertent duplication of report requirements.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: For further information about this correction contact Mr. Warren Johnson, (919) 541–5124, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

This document amends §§ 60.665 and 60.667 of Subpart NNN, and §§ 60.700, 60.704, 60.705 and 60.707 of Subpart RRR of 40 CFR Part 60. These sections deal with the applicability, test methods and procedures, recordkeeping and reporting requirements for the standards of performance for new, modified, and reconstructed distillation operations (Subpart NNN) and reactor processes (Subpart RRR) in the SOCMI industry.

As published, the final regulations contain spelling and CAS number errors for certain chemicals listed in § 60.667 Chemicals affected by Subpart NNN, and in § 60.667 Chemicals affected by Subpart RRR, respectively. This document serves to amend these errors.

As published, Subpart RRR, § 60.700 Applicability and designation of affected facility, contains some inadvertent cross-referencing errors which cause confusion in determining what is to be reported semiannually regarding exemptions for total resource effectiveness (TRE) greater than 8, production units with total design capacity of less than 1,100 tons per year, and facilities with low vent stream flow rates (0.011 scm/min). This document serves to amend these errors to language and meaning originally intended by the regulation.

As published on August 31, 1993 (58 FR 45948), Subpart RRR, § 60.704 Test methods and procedures, contains a calculation error in the TRE equation and some inadvertent cross-referencing errors which cause confusion in determining TRE and compliance procedures. The calculation error occurs in § 60.704(e)(1), which provides the equation for calculating the TRE index value. In this equation the first "0.88" is intended to be superscript, as it correctly appeared in the proposed rulemaking in the **Federal Register**, June 29, 1990 (55 FR 26945). The cross-referencing errors occur in § 60.704(f)(1) where notification is required for a recalculated TRE index value and § 60.704(h)(3) where method 18 is used to qualify for the total organic compound (TOC) low concentration exclusion. This document serves to amend these errors to language and meaning originally intended by the regulation.

As published, the reporting and recordkeeping requirements of Subparts NNN and RRR, in §§ 60.665 and 60.705, contain language that unintentionally infers duplication of process change reporting requirements. To eliminate this duplication, a sentence is being added to each of the §§ 60.665(l) (5) and (6) in Subpart NNN, and §§ 60.705(l) (4), (5), and (8) in Subpart RRR to clarify that these reports may be submitted either in conjunction with semiannual reports or as a single separate report. In addition, § 60.705(l)(1), which is a missing cross-reference causing confusion in determining appropriate reporting requirements for monitored exceedances, is also being amended to be consistent with the proposed rulemaking in the **Federal Register**, June 29, 1990 (55 FR 26978). This document serves to amend the text to language and meaning originally intended by the regulation.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Metallic minerals, Nonmetallic minerals, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, part 60 of chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

2. In § 60.665 paragraphs (l)(5) and (l)(6) are both amended by adding a new sentence after the second sentence in each paragraph to read as follows:

§ 60.665 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(5) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

(6) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

* * * * *

§ 60.667 [Amended]

3. Section 60.667 is amended in the table as follows:

a. By removing "6-Ethyl-1,2,3,4-tetrahydro-9,10-antracenedione" from the first column and by adding "6-Ethyl-1,2,3,4-tetrahydro-9,10-anthracenedione" in its place.

b. By removing "Isobytyraldehyde" from the first column and by adding "Isobutyraldehyde" in its place.

c. By revising the CAS number in the second column for Nonyl alcohol to read "143–08–8".

Subpart RRR—Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

§ 60.700 [Amended]

4. Section 60.700 is amended as follows:

a. In paragraph (c)(2) by revising "§ 60.705 (g), (l) and (t)" to read "§ 60.705 (g), (l)(1), (l)(6) and (t)".

b. In paragraph (c)(3) by revising "paragraphs (i), (l)(6) and (n) of § 60.705" to read "§ 60.705 (i), (l)(5) and (n)".

c. In paragraph (c)(4) by revising "paragraphs (h), (l)(5), and (o) of § 60.705" to read "§ 60.705 (h), (l)(4) and (o)".

5. Section 60.704 is amended as follows:

a. In paragraph (e)(1) introductory text by revising the equation to read as follows:

§ 60.704 Test methods and procedures.

* * * * *

(e) * * *

(1) * * *

$$TRE = \frac{1}{E_{TOC}}\left[a + b(Q_s)^{0.88} + c(Q_s) + d(Q_s)(H_T) + e(Q_s)^{0.88}(H_T)^{0.88} + f(Y_s)^{0.5}\right]$$

* * * * *

b. In paragraph (f)(1) by revising "§ 60.702(a)" to read "§ 60.702 (a) or (b)".

c. In paragraph (h)(3) by revising "§ 60.704(b)(4) (i) and (vii)" to read "§ 60.704(b)(4) (i) and (iv)".

§ 60.705 [Amended]

6. Section 60.705 is amended in paragraph (l)(1) by revising "§ 60.705 (c) and (g)" to read "§ 60.705 (c), (f) and (g)".

7. In Section 60.705 paragraphs (l)(4), (l)(5) and (l)(8) are all amended by adding a new sentence after the second sentence in each paragraph to read as follows:

§ 60.705 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(4) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

(5) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

* * * * *

(8) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

* * * * *

§ 60.707 [Amended]

8. Section 60.707 is amended in the table as follows:

a. By removing "6-Ethyl-1,2,3,4-tetrahydro-9,10-antracenedione" from the first column and by adding "6-Ethyl-1,2,3,4-tetrahydro-9,10-anthracenedione" in its place.

b. By removing "Isobytyraldehyde" from the first column and by adding "Isobutyraldehyde" in its place.

c. By revising the CAS number in the second column for Butylbenzyl phthalate to read "85–68–7".

d. By revising the CAS number in the second column for Nonyl alcohol to read "143–08–8".

[FR Doc. 95–28381 Filed 11–24–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5333–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Woodbury Chemical Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces the deletion of the Woodbury Chemical Site, Princeton, Florida, from the National Priorities List (NPL). The NPL constitutes Appendix B which is 40 CFR part 300 the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

EFFECTIVE DATE: November 27, 1995.

ADDRESSES: Joe Franzmathes, Director, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365. Comprehensive information on this Site is available through the Region IV public docket, which is available for viewing at the Woodbury Chemical information repositories at two locations. Locations and phone numbers are: U.S EPA Record Center, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 347–0506, and South Dade Regional Library, 10750 SW 211th Street, Cutler Ridge, Florida 33189, (305) 233–8140.

FOR FURTHER INFORMATION CONTACT: Joe Franzmathes, (404) 347–3454.

SUPPLEMENTARY INFORMATION: The Woodbury Chemical Site in Princeton, Florida, is being deleted from the NPL.

A Notice of Intent to Delete for this site was published on August 21, 1995 (60 FR 43424). The closing date for comments on the Notice of Intent to Delete was September 20, 1995. EPA received no comments and therefore did not prepare a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 301.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 4, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under Florida by removing the Site "Woodbury Chemical Co. (Princeton Plant)".

[FR Doc. 95–28390 Filed 11–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AA81

Health Care Programs: Fraud and Abuse; Revisions to the Civil Money Penalty Provisions Relating to the Misuse of Certain Names, Symbols and Emblems

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: In accordance with amendments to section 1140 of the Social Security Act, resulting from the Social Security Independence and Program Improvements Act of 1994, this final rule makes a number of revisions to the civil money penalty authority regulations relating to the misuse of certain symbols, emblems and names. Among other revisions, this rule eliminates the annual cap on penalties, includes the words and letters of the Department and Medicaid under the prohibition, and redefines a violation with regard to mailings. In addition, this final rule serves to remove references to Social Security and the Social Security Administration (SSA) from the HHS/OIG penalty regulations. The penalty regulations addressing the misuse of certain words, letters, symbols and emblems for SSA and its programs are being set forth in a new part of the Code of Federal Regulations published elsewhere in this edition of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Management and Policy, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1991, the Department of Health and Human Services' (HHS') Office of Inspector General (OIG) published final rulemaking in the **Federal Register** that implemented new section 1140 of the Social Security Act (the Act), as established by section 428(a) of Public Law 100–360 (56 FR 42532). The rulemaking set forth final OIG regulations for imposing civil money penalties (CMPs) for the use—in advertising, solicitations or other communications—of certain words, letters, symbols and emblems associated with the Department's Social Security and Medicare programs in a manner that the user knows, or should know, would convey a false impression that (1) the communicated item was approved, endorsed or authorized by the Department or its programs; or (2) the responsible person or organization has some connection with, or authorization from, the Department or these programs.

Specifically, the rulemaking was designed to assist in protecting citizens from misrepresentations concerning the services offered and the programs administered by the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) by imposing CMPs against individuals and entities that make false use of—

- The words "Social Security," "Social Security Account," "Social Security Administration," "Social Security System," "Medicare," and "Health Care Financing Administration," or any combination or variation of such words;
- The letters "SSA" or "HCFA," or any combination or variation of such letters; or
- Any symbols or emblems of SSA or HCFA, or any combination or variation of such symbols or emblems.

In accordance with section 1140 of the Act, the regulations established CMPs of up to $5,000 for each violation of this prohibition relating to printed media, and up to $25,000 per violation in the case of a misleading broadcast or telecast. In the case of a direct mailing solicitation, the regulations stated that each group mailing of an identical, non-personalized, generic letter or solicitation sent at the same time on the same day would be considered to be a single violation. Each unique or personalized letter or solicitation, such as with the individual's name and address appearing in the body of the advertisement or on the mailing envelope or covering would be treated as a separate and single violation. With respect to multiple violations consisting of substantially identical communications or productions, total penalties could not exceed $100,000 per year.

The regulations set forth six mitigating or aggravating factors to be used in determining the amount of penalty to be imposed with respect to a violation, including any efforts by the individual, entity or organization to include a clear, prominent and conspicuously-placed disclaimer of Government association on the mailing envelope, the first page, or in the beginning of the solicitation or offering.

II. Changes Resulting From Public Law 103–296

The passage and enactment of Public Law 103–296, the Social Security Independence and Program Improvements Act (SSIPIA) of 1994, has resulted in several refinements to the HHS/OIG penalty regulations that should be significant in their impact but present no apparent policy discretion in their implementation. However, as discussed below, section 312(a) of SSIPIA made one change to the statute regarding the reproduction, reprinting or distribution of official forms, applications or other publications that may require the exercise of policy discretion in its implementation and thus is not addressed in this final rule.

Social Security Administration as an Independent Agency

First and foremost, section 101 of SSIPIA established the Social Security Administration as an independent agency in the Executive Branch, with the duty to administer the old-age, survivors and disability insurance program under title II of the Act and the supplemental security income program under title XVI of the Act. In creating an independent SSA, Public Law 103–296 also established an independent Office of Inspector General within that agency, with separate and autonomous authority for levying certain CMPs. As a result, a newly-established 20 CFR part 498 has been developed by the SSA/OIG, and is being published elsewhere in this issue of the **Federal Register**, setting forth the basis for any new SSA/OIG penalty authorities, the mitigating and aggravating factors to be used in

assessing penalty amounts, and the due process and hearing and appeals mechanism to be utilized in the imposition of those CMP provisions. The direct effect of this action is the transfer of all references to CMPs for the misuse of the words, letters, symbols and emblems relating to SSA and its programs out of 42 CFR part 1003 and into the new 20 CFR part 498.

Amendments to Section 1140 of the Social Security Act

In addition, section 312 of SSIPIA amended section 1140 of the Act through several provisions designed to broaden the existing deterrents against misleading mailings and advertisements directly involving Social Security and the Department's health care programs. Among other changes, section 312 of SSIPIA: (1) broadened the list of prohibited words, symbols and acronyms subject to a violation; (2) revised the standard of knowledge for determining a violation; (3) exempted any State agency (or any instrumentality or political subdivision of the State) from the prohibited use of these words, letters, symbols or emblems where such use serves to identify these entities; (4) specifically defined a violation with regard to mailings; (5) eliminated the annual penalty cap; and (6) eliminated the use of a disclaimer as a factor in determining a violation under this provision. As indicated above, these changes and their effect on violations specifically involving SSA and its programs are being addressed in new and separate rulemaking by the SSA/OIG to be codified in 20 CFR part 498.

Section 312 of SSIPIA also amended section 1140 of the Act by indicating that no individual, organization or entity may, for a fee, reproduce, reprint or distribute any form, application or other publication of the Department unless prior authorization and approval is obtained for such activity from the Secretary. The prohibition of unauthorized reproduction, reprinting or distribution for a fee of certain official HHS and program documents goes beyond the scope of these regulations. While one option may be the placement of a written statement on certain forms, applications or other publications allowing for their reproduction, reprinting or distribution, we believe formalized policies and procedures addressing this new requirement must be developed through separate rulemaking prescribed by the Secretary. We will be working with the Department and its programs in the near future to develop proposed rulemaking and seek public comment on how best to implement this new authority.

III. Revisions to 42 CFR Part 1003

As a result of Public Law 103–296, we are amending the HHS/OIG civil money penalty regulations at 42 CFR part 1003 as follows:

- *References to SSA*—Current references in §§ 1003.100(b)(1)(v) and 1003.102(b)(7) to the words "Social Security," "Social Security Account," "Social Security Administration," and "Social Security System," and the letters "SSA," are being deleted.
- *Expanded list of prohibited words and letters*—In addition to the words "Health Care Financing Administration" and "Medicare," and the letters "HCFA," we are amending § 1003.102(b)(7) to prohibit the misuse of the words "Department of Health and Human Services," "Health and Human Services," and "Medicaid;" the letters "DHHS" and "HHS;" and the symbols and emblems of the Department, including the Medicare card.
- *Conduct for determining a violation*—The current standard for determining a violation under this provision is that the individual, entity or organization "knew, or should have known" that their use of certain words, letters, symbols or emblems would convey the false impression that the advertisement or solicitation was authorized, approved or endorsed by the Department or HCFA. In accordance with the amendments to section 1140 of the Act, § 1003.102(b)(7) is being revised to further prohibit the inclusion of these designated words, letters, symbols and emblems where they are used in a manner that could be "reasonably interpreted or construed as conveying" a relationship with the Department or HCFA.
- *State agency exemptions*—We are further amending § 1003.102(b)(7) by adding a new paragraph stating that any State agency (or instrumentality or political subdivision of the State) will be exempt from the prohibited use of these words, letters, symbols and emblems if these items are used to identify the State agency, instrumentality or subdivision.
- *Definition of a mailing violation*—The current regulations at § 1003.103(d)(2)—that define each group mailing of an identical, non-personalized, generic letter or solicitation sent at the same date and time as a single violation—are being revised in accordance with the statute to indicate that each individual piece of mail or each individual solicitation in a mass mailing or distribution will now be viewed as an individual and independent violation.
- *Removal of annual cap on penalties*—Reference to the annual penalty cap of $100,000 for violations resulting from this provision, currently set forth in § 1003.103(d)(1), is being deleted in accordance with the statutory rescission.
- *Elimination of use of a disclaimer as a mitigating factor*—We are revising § 1003.106(a)(3) to indicate that the use of disclaimer of affiliation with the Government, the Department or its programs will no longer be considered as a mitigating factor in determining a violation and the amount of penalty under this provision.

In addition to these revisions resulting from Public Law 103–296, we are further revising § 1003.106(a)(3) to include the financial condition and degree of culpability of the individual, organization or entity as factors that the OIG will consider in determining the amount of any penalty in accordance with this violation. This technical revision is consistent with section 1128A(d)(2) of the Act, which was incorporated into section 1140, and was inadvertently omitted in the original rulemaking.

IV. The Handling of Dual Violations

The HHS/OIG and the SSA/OIG may make separate and independent determinations with regard to violations of section 1140 of the Act—and levy separate CMPs—against individuals, entities or organizations who make prohibited use of words, letters, symbols or emblems of *both* the Department and SSA in the same advertisement or solicitation.

V. Waiver of Proposed Rulemaking

In developing our regulations, we follow the notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures in this case. Specifically, this rulemaking comports and is consistent with the revised statutory authority set forth in section 1140 of the Act, with no issues of policy discretion. As a result, we believe that opportunity for prior comment is unnecessary and we are issuing these revised regulations as a final rule that will apply to all pending and future cases under this authority.

VI. Regulatory Impact Statement

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866 and determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions contained in this final rulemaking set forth the revised authorities for levying CMPs against those individuals, entities and organizations that misuse specific Departmental and HCFA program words, letters, symbols and emblems. These revisions are as a result of statutory changes to section 1140 of the Social Security Act, and serve to clarify departmental policy with respect to the imposition of CMPs against those who violate the statute. We believe that the great majority of individuals, organizations and entities do not engage in such prohibited activities and practices discussed in these regulations. As a result, we believe that the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statute. As such, this final rule should have no direct effect on the economy or on Federal or State expenditures.

Regulatory Flexibility Act

In addition, we generally prepare a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some sanctions and penalties may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. Therefore, we have concluded, and the Secretary certifies, that a regulatory flexibility analysis is not required for this final rule.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Accordingly, 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by republishing paragraph (b)(1) introductory text, and by revising paragraph (b)(1)(v) to read as follows:

§ 1003.100 Basis and purpose.

* * * * *

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(v) Misuse certain Departmental and Medicare and Medicaid program words, letters, symbols or emblems;

* * * * *

3. Section 1003.102 is amended by republishing paragraph (b) introductory text, and revising paragraph (b)(7) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(7) Has made use of the words, letters, symbols or emblems as defined in paragraph (b)(7)(i) of this section in such a manner that such person knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that an advertisement, solicitation or other item was authorized, approved or endorsed by the Department or HCFA, or that such person or organization has some connection with or authorization from the Department or HCFA. Civil money penalties—

(i) May be imposed, regardless of the use of a disclaimer of affiliation with the United States Government, the Department or its programs, for misuse of—

(A) The words "Department of Health and Human Services," "Health and Human Services," "Health Care Financing Administration," "Medicare," or "Medicaid," or any other combination or variation of such words;

(B) The letters "DHHS," "HHS," or "HCFA," or any other combination or variation of such letters; or

(C) A symbol or emblem of the Department or HCFA (including the design of, or a reasonable facsimile of the design of, the Medicare card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Department or HCFA) or any other combination or variation of such symbols or emblems; and

(ii) Will not be imposed against any agency or instrumentality of a State, or political subdivision of the State, that makes use of any symbol or emblem, or any words or letters which specifically identifies that agency or instrumentality of the State or political subdivision.

* * * * *

4. Section 1003.103 is amended by revising paragraph (d) to read as follows:

§ 1003.103 Amount of penalty.

* * * * *

(d)(1) The OIG may impose a penalty of not more than $5,000 for each violation resulting from the misuse of Departmental, HCFA, Medicare or Medicaid program words, letters, symbols or emblems as described in § 1003.102(b)(7) relating to printed media, and a penalty of not more than $25,000 in the case of such misuse related to a broadcast or telecast, that is related to a determination under § 1003.102(b)(7).

(2) For purposes of this paragraph, a violation is defined as—

(i) In the case of a direct mailing solicitation or advertisement, each separate piece of mail which contains one or more words, letters, symbols or emblems related to a determination under § 1003.102(b)(7);

(ii) In the case of a printed solicitation or advertisement, each reproduction, reprinting or distribution of such item related to a determination under § 1003.102(b)(7); and

(iii) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 1003.102(b)(7).

* * * * *

5. Section 1003.106 is amended by revising paragraph (a)(3) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* * * *

(3)(i) In determining the amount of any penalty in accordance with § 1003.102(b)(7), the OIG will take into account—

(A) The nature and objective of the advertisement, solicitation or other communication, and the degree to which it has the capacity to deceive members of the public;

(B) The degree of culpability of the individual, organization or entity in the use of the prohibited words, letters, symbols or emblems;

(C) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(D) The prior history of the individual, organization or entity in its willingness or refusal to comply with informal requests to correct violations;

(E) The history of prior offenses of the individual, organization or entity in its misuse of Departmental and program words, letters, symbols and emblems;

(F) The financial condition of the individual, organization or entity involved with the violation; and

(G) Such other matters as justice may require.

(ii) The use of a disclaimer of affiliation with the United States Government, the Department or its programs will not be considered as a mitigating factor in determining the amount of penalty in accordance with § 1003.102(b)(7).

* * * * *

Approved: October 13, 1995.

June Gibbs Brown,

Inspector General.

[FR Doc. 95–28307 Filed 11–24–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the addresses listed in 43 CFR 4.413(c) for the Office of the Solicitor and updates the identification of the States served by the Office of the Solicitor as listed in 43 CFR 4.1109(a).

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: Because this action reflects agency management and changes of address that have already taken place, the Department has determined that the provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b), (d), allowing for public notice and comment as well as a thirty-day delay in a rule's effective date, are unnecessary and impracticable.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Therefore, under the authority of the Secretary of the Interior contained in 5 U.S.C. 301, § 4.413(c) in Subpart E, and § 4.1109(a) in Subpart L, both in Part 4 of Title 43 of the Code of Federal Regulations, are amended as follows:

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

1. The authority citation for Part 4 continues to read:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.413 is amended by revising paragraphs (c)(1) and (c)(2) introductory text; revising the addresses following paragraphs (c)(2) (i), (ii) and (iv); removing the address following paragraph (c)(2)(v) and adding in its place paragraphs (c)(2)(v) (A) and (B); and revising the addresses following paragraphs (c)(2) (vi), (vii), (ix), (xi) and (xii) to read as follows:

§ 4.413 Service of notice of appeal and other documents.

* * * * *

(c)(1)(i) If the appeal is taken from a decision of the Director, Minerals Management Service, the appellant will serve the Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.

(ii) If the appeal is taken from a decision of the Director, Bureau of Land Management, the appellant will serve:

(A) The Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended;

(B) The Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of mineral resources.

(c)(2) If the appeal is taken from a decision of other Bureau of Land Management (BLM) offices listed below (see § 1821.2–1(d) of this title), the appellant shall serve the appropriate official of the Office of the Solicitor as identified:

(i) * * *

Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, AK 99508–4626;

(ii) * * *

Field Solicitor, U.S. Department of the Interior, One Renaissance Square, Two North Central, Suite 1130, Phoenix, AZ 85004–2383;

* * * * *

(iv) * * *

Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225;

Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215;

(v) * * *

(A) The Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended;

(B) The Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of mineral resources.

(vi) * * *

Field Solicitor, U.S. Department of the Interior, Federal Building & U.S. Courthouse, 550 West Fort Street, MSC 020, Boise, ID 83724;

(vii) * * *

Regular U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107–1394;

Other Delivery Services: Field Solicitor, U.S. Department of the Interior, 316 North 26th Street, Room 3004, Billings, MT 59101;

* * * * *

(ix) * * *

Regular U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, NM 87504–1042;

Other Delivery Services: Field Solicitor, U.S. Department of the Interior, 150 Washington Avenue #207, Santa Fe, NM 87501;

* * * * *

(xi) * * *

Field Solicitor, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138–1180;

(xii) * * *

Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225;

Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215;

* * * * *

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

3. Section 4.1109 is amended by revising paragraph (a) to read as follows:

§ 4.1109 Service.

(a)(1) Any p. . initiating a proceeding in . A under the Act shall, on the date of fi ng, simultaneously serve copies of the initiating documents on the officer in the Office of the Solicitor, U.S. Department of the Interior, representing OSMRE in the state in w ich the mining operation at issue is lo ted, and on any other statutory p. ties specified under § 4.1105 of this part.

(2) The jurisdictions, addresses, and telephone numbers of the applicable officers of the Office of the Solicitor to be served under paragraph (a)(1) of this section are:

For mining operations in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Texas, and Virginia: Field Solicitor, U.S. Department of the Interior, 530 S. Gay Street, Room 308, Knoxville, Tennessee 37902; Telephone: (615) 545–4294; FAX: (615) 545–4314.

For mining operations in Maryland, Massachusetts, Michigan, Ohio, Pennsylvania, Rhode Island, and West Virginia: Field Solicitor, U.S. Department of the Interior, Ten Parkway Center, Room 385, Pittsburgh, Pennsylvania 15220; Telephone: (412) 937–4000; FAX: (412) 937–4003.

For mining operations in Colorado, Montana, North Dakota, South Dakota, and Wyoming, including mining operations located in Indian lands within those States: Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225; Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

For mining operations in Arizona, California, and New Mexico, including mining operations located on Indian lands within those States except for the challenge of permitting decisions affecting mining operations located on Indian lands in those states: Regional Solicitor, Southwest Region, U.S. Department of the Interior, 2400 Louisiana Blvd. N.E., Building One, Suite 200, Albuquerque, NM 87110–4316; Telephone: (505) 883–6700; FAX: (505) 883–6711.

For challenge of permitting decisions affecting mining operations located on Indian lands within Arizona, California, and New Mexico: Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225; Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

For mining operations in Alaska, Idaho, Oregon, Utah, and Washington, except for the challenge of permitting decisions affecting mining operations in Washington: Field Solicitor, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138–1180; Telephone: (801) 524–5677; FAX: (801) 524–4506.

For the challenge of permitting decisions affecting mining operations in Washington: Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105, Denver Federal Center, Denver CO 80225; Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

(3) Any party or other person who subsequently files any other document with OHA in the proceeding shall simultaneously serve copies of that document on all other parties and persons participating in the proceeding.

* * * * *

Dated: November 5, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 95–28649 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–79–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 93–133, FCC 95–447]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* to broaden, update, and clarify general exemptions from the radiotelegraph equipment requirements of the Communications Act for large cargo vessels, and from the radiotelegraph and radio communication requirements of the Communications Act and Safety Convention, respectively, for small passenger vessels. These amendments decrease regulatory burdens on operators of large cargo ships as well as small passenger vessels, while maintaining safety of life at sea.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Roger S. Noel of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted October 27, 1995, and released November 8, 1995. The full text of this action is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In this action, the Commission made two distinct changes to the rules. First, the Commission broadened the general exemption for large oceangoing cargo vessels (those 1,600 gross tons and over) to permit domestic voyages to Alaska and United States possessions in the Caribbean, within 150 nautical miles of land. Further, the revised exemption includes vessels equipped with Global Maritime Distress and Safety System (GMDSS) radio installations, in lieu of radiotelegraph equipment. Therefore,

this action will eliminate the administrative burdens associated with preparing and processing individual exemption requests for such vessels, without decreasing safety of life at sea. Cargo vessels operating under the general exemption will equip with redundant, state-of-the-art radio communications equipment, rather than manual morse code installations.

2. Second, the Commission also broadened the general exemption from the radio communications requirements of the Communications Act and Safety Convention for small passenger vessels operated on certain domestic voyages, including short international voyages. This includes short international voyages (not more than 20 nautical miles from land or, alternatively, not more than 200 nautical miles between consecutive ports) to: the Bahamas; islands in the Caribbean Sea as far south as Venezuela; Baja California, Mexico; and British Columbia, Canada. Such voyages do not present a greater safety concern than those already authorized under the current general exemption. Thus, this action will eliminate administrative burdens associated with preparing and processing individual exemption requests for such vessels, without decreasing safety of life at sea. The short international voyages authorized under the broadened general exemption keep vessels well within reliable VHF or MF radio range while navigating.

3. The rules are set forth at the end of this document.

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

5. This *Report and Order* is issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Final Regulatory Flexibility Analysis

Need and Purpose of This Action

This *Report and Order* seeks to broaden, update and clarify the general exemptions found in the Commission's maritime service rules for large oceangoing cargo vessels and small passenger vessels. This action will reduce unnecessary economic and administrative burdens on vessel operators, while maintaining the current level of access to maritime safety communications.

Summary of the Issues Raised by the Public Comments in Response to the Initial Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered

No significant alternative to this action was contained in the *Notice* or suggested by commenters. The action represents the best means to achieve the regulatory objective of minimizing the regulatory burden on the public.

List of Subjects in 47 CFR Part 80

Marine safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Title 47 of the Code of Federal Regulations, Part 80, is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1968, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.836 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 80.836 General exemptions.

(a) General small passenger vessel exemptions, applicable to certain U.S. passenger vessels of less than 100 gross tons, are contained in subpart S of this part.

* * * * *

(c) Prior to February 1, 1999, cargo ships of 1600 gross tons and upward are exempt from the radiotelegraph requirements of Part II of Title II of the Communications Act, if the following criteria (paragraphs (c)(1) and (c)(2) of this section and either paragraph (c)(3) or (c)(4) of this section) are met:

(1) The ship operates on domestic voyages only. For purposes of this paragraph, the term domestic voyages includes ports in Alaska, U.S. possessions in the Caribbean, and along the coasts of the 48 contiguous states, so long as the vessel does not make port at a foreign destination;

(2) The routes of the voyage are never more than 150 nautical miles from the nearest land; and

(3) The ship complies fully with the requirements for the Global Maritime Distress & Safety System (GMDSS) contained in subpart W of this part; or

(4) The ship complies fully with all of the following conditions. The ship must:

(i) Be equipped with a satellite ship earth station providing both voice and telex, which has been type accepted for GMDSS use;

(ii) Be equipped with a VHF and MF radiotelephone installation which complies fully with subpart R of this part and has the additional capability of operating on the HF frequencies listed in § 80.369(b) for distress and safety communications (this capability may be added to the MF radiotelephone installation);

(iii) Be equipped with a narrow-band direct-printing radiotelegraph system with SITOR meeting the requirements of § 80.219;

(iv) Be equipped with at least two VHF transceivers capable of being powered by the reserve power supply (one of the VHF transceivers may be the VHF required by paragraph (b)(4)(ii) of this section);

(v) Be equipped with a Category 1, 406 MHz EPIRB meeting the requirements of § 80.1061;

(vi) Be equipped with a NAVTEX receiver meeting the requirements of § 80.1101(c)(1);

(vii) Be equipped with three two-way VHF radiotelephone apparatus and two radar transponders in accordance with § 80.1095;

(viii) In addition to the main power source, be equipped with an emergency power source which complies with all applicable rules and regulations of the U.S. Coast Guard (the satellite earth station, the narrow-band direct-printing equipment and the 500 kHz autoalarm receiver must be capable of being powered by the main and emergency power sources);

(ix) Be equipped with a 500 kHz autoalarm receiver and a means of recording or decoding any distress signal received for relay to the Coast Guard or a public coast station;

(x) Participate in the AMVER system when on voyages of more than twenty-four hours and have the capability of operating on at least four of the AMVER HF duplex channels;

(xi) Carry at least one licensed operator to operate and maintain all the ship's distress and safety radio communications equipment in accordance with §§ 80.159(c) and 80.169; and

(xii) Maintain a continuous watch on 2182 kHz and 156.8 MHz, in accordance with § 80.305(b), when navigated.

* * * * *

3. Section 80.933 is amended by revising the section heading and paragraph (b), redesignating paragraph (c) as paragraph (e), and adding new paragraphs (c) and (d) to read as follows:

§ 80.933 General small passenger vessel exemptions.

* * * * *

(b) All U.S. passenger vessels of less than 100 gross tons, not subject to the radio provisions of the Safety Convention, are exempt from the radiotelegraph provisions of Part II of Title III of the Communications Act, provided that the vessels are equipped with a radiotelephone installation fully complying with subpart S of this part.

(c) Prior to February 1, 1999, U.S. passenger vessels of less than 100 gross tons are exempt from the radiotelepraph requirements of Part II of Title III of the Communications Act and the MF radiotelephone requirements of this subpart as well as Regulations 7 to 11 of Chapter IV of the Safety Convention if the following criteria are fully met:

(1) The ship is equipped with a VHF radiotelephone installation meeting the requirements of this subpart;

(2) While navigating more than three nautical miles from the nearest land, the ship is equipped with:

(i) A Category 1, 406 MHz EPIRB meeting the requirements of § 80.1061;

(ii) A NAVTEX receiver meeting the requirements of § 80.1101(c)(1); and

(iii) Three two-way VHF radiotelephone apparatus and two radar transponders meeting the requirements of § 80.1095.

(3) The ship remains within communications range of U.S. Coast Guard or public coast stations operating in the band 156–162 MHz;

(4) The routes of the voyage are never more than 20 nautical miles from the nearest land or, alternatively, not more than 200 nautical miles between two consecutive ports, and are limited to the following domestic and international voyages:

(i) In waters contiguous to Hawaii, the Bahama Islands and the islands in the Caribbean Sea, including the Greater Antilles, Lesser Antilles, and the coastal waters of Venezuela between the Mouth of the Orinoco River and the Gulf of Venezuela;

(ii) In waters contiguous to the coast of Southern California from Point Conception south to Cape San Lucas, Mexico; the islands of San Miguel, Santa Rosa, Santa Cruz, Anacopa, San Nicolas, Santa Barbara, Santa Catalina and San Clemente are considered to be within these waters; and,

(iii) In waters of the Pacific Northwest between Tacoma, Washington and the waters of British Columbia, Canada, as far north as Queen Charlotte Strait, never in the open sea.

(d) Prior to February 1, 1999, U.S. passenger vessels of less than 100 gross tons are exempt from the radiotelegraph requirements of Part II of Title III of the Communications Act, as well as Regulations 7 to 11 of Chapter IV of the Safety Convention, if the following criteria are fully met:

(1) The ship is equipped in accordance with paragraphs (c)(1) and (c)(2) of this section;

(2) The ship is equipped with a MF radiotelephone installation meeting the requirements of this subpart;

(3) The routes of the voyage are never more than 20 nautical miles from the nearest land or, alternatively, not more than 100 nautical miles between two consecutive ports, and are limited to international voyages between Florida and the Bahama Islands.

* * * * *

4. Section 80.1065 is amended by revising paragraph (b)(5)(iii) to read as follows:

§ 80.1065 Applicability.

* * * * *

(b) * * *

(5) * * *

(iii) The requirements of either § 80.836 or § 8.933.

* * * * *

[FR Doc. 95–28826 Filed 11–24–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 111495D]

Atlantic Swordfish Fishery; Bycatch Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: This inseason action adjusts the longline bycatch limit for Atlantic swordfish. Aboard a vessel using or having aboard a longline and not having aboard harpoon gear, no more than six swordfish per trip as bycatch may be possessed in the North Atlantic Ocean to avoid exceeding the total allowable catch and reducing the potential for discard waste.

EFFECTIVE DATE: 0001 hours, local time, December 5, 1995, through 2400 hours, local time, December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo, 301-713- 2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*).

The implementing regulations at 50 CFR 630.25(c)(2)(ii) establish a bycatch of 15 swordfish that may be harvested by longline vessels during the non-directed fishery and provide that the Assistant Administrator for Fisheries, NOAA may modify the bycatch limits based upon the length of the directed fishery closure as well as the estimated catch per vessel in the non-directed fishery.

Considering reported landings to date, projections of total catch based on recent landings data and estimates of bycatch during the directed fishery closure since October 31, 1995, it has been determined that with a 15–fish bycatch limit, the bycatch quota for 1995 will be reached before December 31, 1995. Under 50 CFR 630.25(a)(2), NMFS is required to close the longline bycatch fishery for swordfish when its quota is reached, or is projected to be reached, by filing a document at the Office of the Federal Register at least 14 days before the closure is to become effective. Given the prolonged closure in the directed longline fishery for Atlantic swordfish, a closure of the bycatch fishery would require that all swordfish taken by longliners be discarded.

To avoid a bycatch closure and reduce potential discard waste, the longline fishery bycatch for Atlantic swordfish is reduced to six fish per trip. By reducing the longline bycatch limit to six fish for the month of December, it is projected that it is less likely that the 1995 bycatch quota will be exceeded.

During the bycatch fishery, aboard a vessel using or having aboard a longline and not having aboard harpoon gear, a person may not fish for swordfish from the North Atlantic swordfish stock and no more than six swordfish per trip as bycatch may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. This bycatch limit adjustment is effective from 0001 hours December 5, 1995, through 2400 hours December 31, 1995.

The directed fishery closure remains in effect through December 31, 1995.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Dated: November 20, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–28875 Filed 11–21–95; 4:45 pm]

BILLING CODE 3510–22–F

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50 CFR Part 697

[Docket No. 950605148–5261–02; I.D. 060195C]

RIN 0648–AH58

Atlantic Coast Weakfish Fishery; Moratorium in Exclusive Economic Zone (EEZ)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule prohibiting the possession in or harvest from the exclusive economic zone (EEZ) of Atlantic coast weakfish (weakfish) from Maine through Florida. The intent of the rule is to provide protection for the overfished stock of weakfish, to ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

EFFECTIVE DATE: December 21, 1995.

ADDRESSES: The Final Environmental Impact Statement/Regulatory Impact Review prepared for this rule is available from William Hogarth, 301–713–2339 or NMFS, F/CM3, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301–713–2339.

SUPPLEMENTARY INFORMATION:

Background

The background and rationale for this rule were contained in the preamble to the proposed rule (60 FR 32130, June 20, 1995) and are not repeated here.

Comments and Responses

NMFS held 9 public hearing to gather public comments on the proposed rule and the Draft Environmental Impact Statement and Draft Regulatory Impact Review (DEIS/RIR) documents. The hearings were held on the following dates at the below listed localities:

Morehead City, North Carolina 7/10/95
Fall River, Massachusetts 7/10/95
Manteo, North Carolina 7/12/95
Setauket, New York 7/12/95
Salisbury, Maryland 7/12/95
Cape May Court House, New Jersey 7/12/95
Mayport, Florida 7/13/95
Newport News, Virginia 7/17/95
Dover, Delaware 7/18/95

A total of 226 individuals attended the hearings. Most of the individuals commenting at the hearings from Massachusetts through New Jersey were in favor of the rule. Some of the individuals at the Setauket, New York hearing wanted a 16–inch size limit. One person at the Cape May, New Jersey hearing opposed the rule as proposed. Commenters at the Salisbury, Maryland hearing were in favor of some Federal action, but not necessarily the preferred alternative. At the Newport News, Virginia hearing, a number of individuals were for or against the rule. In North Carolina, there was strong opposition against the rule at the Manteo hearing, and an equal number of comments for and against the rule at the Morehead City hearing. At the Florida hearing, most individuals commented on a recent ban on commercial net fishing imposed by the state.

Written comments were received from the following states and organizations: The Atlantic States Marine Fisheries Commission (Commission); New England, Mid-Atlantic and South Atlantic Regional Fishery Management Councils; U.S. Fish and Wildlife Service; U.S. Environmental Protection Agency (EPA); Delaware Division of Fish and Wildlife; New York State Department of Environmental Conservation Division of Marine Resources; Commonwealth of Massachusetts Division of Marine Fisheries; North Carolina Division of Marine Fisheries; Georgia Department of Natural Resources; North Carolina Fisheries Association, Inc.; Center for Marine Conservation; Salt Water Sportsman; Chesapeake Bay Foundation; Shelter Rock Rifle and Pistol Club; Atlantic Coast Conservation Association of Virginia; National Audubon Society Living Oceans Program; American Sportfishing Association; Maryland Saltwater Sportfishermen's Association, Inc.; Huntington Anglers Club; Virginia Citizens Coalition-Good Government; Imperial Sportsmen's Club, Inc.; Bay Shore Tuna Club; Oakdale Sportsmans Club; Virginia Anglers Club; Suffolk County Senior Citizens Fishing Club; East Islip Anglers and Boating Association, Inc.; and the New York Sportfishing Federation. Of the states and organizations that submitted written comments, all support the proposal except the State of North Carolina and the North Carolina Fisheries Association. The Georgia Department of Natural Resources and the U.S. EPA both supported the proposal and recommended changes and/or clarifications that are addressed in this document.

In addition, written comments were received from 645 individuals from Virginia; 16 from North Carolina; 56 from Maryland; 8 from Delaware; 6 from Pennsylvania; 5 from New York; 5 from New Jersey; and one each from West Virginia, the District of Columbia, South Carolina, Indiana and Michigan for a total of 746 individuals of which 740 supported and 6 opposed the proposed rule.

In summarizing comments, it was difficult to differentiate between comments addressing the proposed rule, the DEIS/RIR, or both. Therefore, comments and responses on the two documents are listed together. A more detailed description of comments and NMFS responses is included in the Final Environmental Impact Statement and Regulatory Impact Review (FEIS/RIR) published by EPA in the **Federal Register** on October 6, 1995.

1. *Comment*: NMFS should be commended for taking actions to protect the declining weakfish fishery. The preferred alternative, to prohibit the harvest and possession of weakfish in the EEZ, seems appropriate since it is easy to understand and enforce. Why was the exemption for the possession of weakfish in the Block Island Sound area included? The FEIS/RIR should include an explanation for the Block Island exemption.

Response: The exemption in the DEIS/RIR was to allow fishermen from Block Island, Rhode Island, to transport weakfish through the EEZ to land at ports in Rhode Island. Currently, there are few weakfish landings from the Block Island Sound area, and comments received from the States of Massachusetts and Rhode Island agreed with your comment that the exemption should not be implemented. NMFS concurs and the exemption is deleted in the FEIS/RIR.

2. *Comment*: Several commenters called into question the findings on the status of the weakfish stock, contending that the DEIS/RIR used inaccurate assumptions, and/or did not include 1994 data.

Response: The 1994 data were not available when the DEIS/RIR was drafted. NMFS extended the comment period and during the extension worked through the Commission to obtain the 1994 data. Since publishing the DEIS/RIR, 1994 data and a preliminary stock assessment analysis have been made available to NMFS by the Commission's weakfish stock assessment scientists. NMFS is satisfied that the assumptions used in the stock assessment are valid. Analysis of the 1994 data has shown that there has been some reduction in fishing mortality, but the mortality rate is still too high to allow rebuilding, and the stock is expected to decline unless further conservation measures are taken. NMFS still finds the weakfish stock severely overfished and in need of the conservation measures in this rule.

3. *Comment*: Under 50 CFR part 602, a Federal fishery management plan must specify a point in time by which an overfished stock must be rebuilt. A rebuilding schedule should be established for weakfish based on the life history of the species (e.g., one or one and a half generation time frame). The Commission's Weakfish Technical Committee should be consulted regarding an appropriate rebuilding time-line for weakfish. Additionally, what, if any, trigger is provided for reopening the EEZ to harvest of weakfish? Language similar to that found in the South Atlantic Fishery Management Council's Red Drum FMP should be included. Specifically, NMFS should maintain the prohibition of harvest and possession of weakfish in or from the EEZ until a specified SSB per recruit is attained and until such time as a TAC is specified by regulatory notice, the Secretary, or whatever the appropriate mechanism is that provides for harvest in the EEZ.

Response: NMFS agrees. It is our understanding that Amendment 3 to the Commission's weakfish plan will include a rebuilding schedule in addition to the target F. NMFS believes that a realistic rebuilding schedule would be 2–5 years after a moratorium is put in place and the states adhere to the Commission requirements. The target for removal of the moratorium would be a SSB per recruit of 20 percent, which is the current long term rebuilding level used by the Commission.

4. *Comment*: In Section 4.2(1) of the DEIS/RIR there is discussion of the impact of the alternative on the discard mortality of undersize weakfish in the directed fishery, but there is no mention of the impacts related to discard mortality of weakfish caught as bycatch in other fisheries. In its current form, the preferred alternative does not provide any additional gain in terms of reducing discard mortality in non-directed fisheries in the EEZ, especially the shrimp fishery. The relationship of the preferred alternative to bycatch reduction plans currently under development by the South Atlantic states and by the South Atlantic Fishery Management Council (SAFMC) needs to be clarified. Will the SAFMC's Shrimp FMP Amendment 2, pertaining specifically to bycatch, supersede this proposed Secretarial action as it relates to shrimp trawl bycatch in the EEZ?

Response: NMFS has further addressed bycatch and discards in the FEIS/RIR and in other responses to written comments on bycatch. The SAFMC's Shrimp FMP could control the bycatch requirements in the EEZ along with the Commission requirements, if the shrimp plan is amended properly, as they relate to reduction requirements and gear. However, the possession of weakfish in the EEZ will be controlled by the weakfish rule.

5. *Comment*: A number of commenters were concerned that implementing the rule would increase the bycatch (discards) of weakfish in non-directed EEZ fisheries and in directed and non-directed state fisheries.

Response: The rule would reduce some bycatch of small weakfish in the EEZ because there would be no directed EEZ fishery, and, therefore, bycatch from directed weakfish trips would be eliminated. The rule would not eliminate the discard mortality of undersize weakfish, as well as other species such as spot and Atlantic croaker, in the non-directed fisheries in the EEZ and in state waters. NMFS recognizes that a major problem with managing weakfish is how to reduce or control the bycatch of weakfish in other fisheries. The Commission is requiring states from North Carolina to Florida to implement bycatch reduction devices (BRDs) in shrimp trawls to reduce bycatch of weakfish by 50 percent. North Carolina met this requirement approximately 3 years ago.

In addition, the SAFMC is holding public hearings on several alternatives that will lead to an amendment to the Council's shrimp management plan that will address finfish bycatch. Several states, including Virginia and North Carolina, are experimenting with finfish escape panels for pound nets and haul seines. Bycatch can be minimized by implementing season closures and/or closed areas, and gear restrictions and modifications.

The NMFS rule to prohibit the harvest and possession of weakfish in the EEZ is aimed at complementing the Commission's weakfish plan and the individual state fishing plans approved by the Commission. The Commission's plan requires states to adopt mesh restrictions and retain these as part of their approved fishing plans until March 1996. NMFS believes that the problem of bycatch presently is being addressed by the states and Councils and that the measures they have put in place, or that they will implement, should reduce the major sources of bycatch mortality.

NMFS is aware that, even with the implementation of state regulations, there will still be some discards and the problem could increase as the stock rebuilds and larger fish enter the population. Some discards are unavoidable, but are acceptable to achieve the long term gains to the stock that will occur from closing the EEZ to weakfish harvest and possession. NMFS will reconsider the moratorium when the spawning stock biomass reaches 20 percent, the Commission rebuilding goal. NMFS is also aware that there is the possibility that some of the effort will simply move inshore to state waters. However, through the Commission's plan, states will continue to implement their approved state fishing plans, and require mesh sizes for gear used to take weakfish that correspond to the minimum weakfish size that has been chosen in their plans. This will reduce total bycatch and discards.

NMFS will monitor the effectiveness of the rule including the bycatch and discard mortality and take additional actions to reduce weakfish bycatch if they are necessary to rebuild the stock.

6. *Comment*: A closure by NMFS in the EEZ violates the intent of Amendment 1 of the Commission's weakfish plan by removing the flexibility given to the states.

Response: The closure in the EEZ supports the Commission's effort to reduce fishing mortality. The need to protect a seriously declining stock overrides the desire to maintain flexibility in the EEZ fishery. Fisheries will continue in state waters and states are allowed flexibility as long as their regulations are approved by the Commission.

7. *Comment*: States can impose their own regulations in the EEZ and these landings can be enforced by the Coast Guard with a "Memorandum of Understanding" (MOU).

Response: In the absence of Federal rules, states may regulate only their own citizens when fishing in the EEZ. However, the states' rules to implement the Commission's weakfish plan are not identical among states, therefore, making enforcement of such rules in the EEZ among many states' fishermen impracticable. Also, not all states have

a MOU with the Coast Guard to carry out enforcement of their rules in the EEZ.

8. *Comment*: There are no accurate data that divide EEZ and state water catches. The importance of tabulating the EEZ catch is that the North Carolina fishermen are complying with the Commission's plan.

Response: NMFS concedes that landings from the EEZ are difficult to verify. However, NMFS considers the landings information accurate enough to estimate that a considerable amount of the fishery for weakfish takes place in the EEZ. Overall State and Federal landings were used in the stock assessment. Compliance with the Commission's plan in state waters by North Carolina fishermen is assumed as part of the cooperative management program on weakfish.

9. *Comment*: The statement in the document that the flynet fishery continues to catch thousands of weakfish as bycatch to obtain "10's" of salable fish is wrong.

Response: NMFS agrees with this statement. A review of the document has shown that the statement should have said "10,000's of salable fish." However, NMFS is concerned over the large number of small fish taken in the flynet fishery. A review of North Carolina flynet data has shown that the flynet fishery takes a large portion of small fish, many of which are discarded at sea.

10. *Comment*: Less than 20 percent of the flynet landings are less than 10 inches in length.

Response: Although less than 20 percent of the flynet landings are 10 inches in length, there are discards at sea of large numbers of fish smaller than 10 inches that are not landed. In addition, see North Carolina Division of Marine Fisheries flynet discussion on page 8 of the FEIS/RIR.

11. *Comment*: Several commenters said that the assumption that there would be an insignificant initial impact on very few fisherman with minimal cost to the government is false. Also, one commenter wanted a complete "regulatory flexibility analysis" prepared.

Response: NMFS concedes that there will be impacts to fishermen; however, for impacts to be considered significant under the DEIS/RIR they must exceed $100 million. NMFS does not expect impacts of the rule to exceed the $100 million level. No regulatory flexibility analysis is required unless there is a significant impact on a substantial number of small entities. Although directed fisheries are conducted for weakfish in the EEZ, the entire commercial landings from the EEZ in recent years has been valued at less than 2 million dollars.

12. *Comment*: The assumption that the enforcement of the rule is clear is wrong.

Response: NMFS assumption that enforcement of the rule will be clear is based on the fact that the rule imposes a complete prohibition on fishing and possession of weakfish in the EEZ. NMFS has no reason to assume that enforcement of the rule will not be easily understood by fishermen and law enforcement officials.

13. *Comment*: North Carolina harvested over 65 percent by weight of the weakfish landings. Why isn't the South Atlantic Council writing a weakfish plan?

Response: Historical landings show that weakfish were an important Mid-Atlantic fishery and weakfish had been under consideration for management planning by the Mid-Atlantic Fishery Management Council. However, because of workloads on other species, the Mid-Atlantic Council has requested that NMFS assist the Commission's effort to manage the species.

14. *Comment*: The rule does not take into account and allow for variations among and contingencies in fisheries, fishery resources, and catches. A moratorium would take away the ability of North Carolina to redirect its fisheries through regulations or adapt to changes in fish populations or Commission guidelines.

Response: The rule is designed to deal with a severely depressed stock so options to rebuild the fishery are limited. Since the rule does not include state waters, it leaves flexibility for states, through the Commission, to address interactions with other fisheries and conduct some controlled fishing in state waters.

15. *Comment*: The states' and the Commission's actions are beginning to stabilize the weakfish population. NMFS needs to allow more time for these management measures to take effect before proposing more restrictive measures.

Response: The recent updated stock assessment (1994) shows that the weakfish population continues to be overfished and that recruitment of young fish to the fishery may be in jeopardy. The Commission's Weakfish Management Board has endorsed NMFS' efforts to implement the rule. Therefore, NMFS sees no reason to delay action.

16. *Comment*: If the rule is trying to protect a few year classes of fish to allow them to spawn, then why is there any harvest at all allowed in the spring in spawning areas?

Response: Spring spawning takes place in state waters. Under the current Commission's plan, states are allowed, within limits, to take weakfish as long as the long term fishing mortality reductions are accomplished. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, NMFS has no authority to implement regulations in state waters, except moratoria if states do not comply with the Commission's plan. Fishermen have to work through the Commission and state fisheries agencies to influence regulations in state waters.

17. *Comment*: Several commenters proposed using a 12–inch size limit in the EEZ because it is enforceable, reduces conflict in state and internal waters, and saves more weakfish than a complete closure.

Response: NMFS disagrees. A minimum size limit would still allow for a directed fishery which would provide an economic incentive to harvest. A moratorium negates all economic incentive to harvest, thereby limiting fishing mortality to the maximum extent possible.

18. *Comment*: To reduce recreational weakfish mortality, NMFS should reduce the minimum size to 12 inches. This will reduce catch and release mortality by allowing anglers to keep fish that would have to be thrown back dead.

Response: The rule is designed to reduce fishing pressure on weakfish in the EEZ to the maximum extent. Under the rule, directed fishing for weakfish will not be allowed and weakfish caught incidental to other recreational fishing must be immediately returned to the water. Allowing take and possession of 12–inch and over fish would encourage more fishing, not reduce fishing mortality.

19. *Comment*: NMFS should establish a no-trawl-zone at the mouth of large estuaries such as the Delaware and Chesapeake Bays. The closed area should be within a twelve mile radius centered at the mouth of each bay on the demarcation line. An alternative that has been suggested would be to extend the EEZ out to the twelve mile line all along the Mid-Atlantic coast and designate the waters inside of the 12 miles as a special management zone. The plan would still allow other types of fishing as long as the vessel is not trawling or using gear that would damage bottom structure.

Response: Establishing a no-trawl-zone out to twelve miles at the mouth of major estuaries would not protect weakfish from other fishing gears within the closed trawl zone and would not reduce fishing effort on weakfish because fishing effort could be increased in the rest of the EEZ. The proposed alternative suggestion of designating all Mid-Atlantic waters out to 12 miles as a special management zone would be complicated to enforce and would not protect weakfish throughout the EEZ.

20. *Comment*: The closure will increase fishing efforts in state waters.

Response: NMFS concedes that there may be some shift in fishing effort to state waters. However, states allow fishing in their waters under the guidance of the Commission's plan, which is designed to control fishing effort.

21. *Comment*: Incidental weakfish bycatch should be allowed. Throwing back dead weakfish taken while fishing for other species is wasteful.

Response: NMFS believes it would be too difficult to determine that weakfish were caught as unwanted bycatch in a non-directed fishery. Allowing retention of dead fish may encourage directed fishing. It would also make the rule difficult to enforce.

22. *Comment*: The assumption that bycatch problems still exist in the South Atlantic shrimp fisheries lacks basis. The DEIS/RIR ignores the ongoing work by the shrimp industry to reduce by catch.

Response: States are required through the Commission's weakfish plan to reduce weakfish bycatch by 50 percent by the 1996 shrimping season. While the use of Turtle Excluder Devices (TEDs) and experimental programs is reducing some bycatch, only North Carolina has an approved Commission weakfish bycatch reduction program implemented in its waters. NMFS believes that bycatch of weakfish in South Atlantic shrimp fisheries will continue to be a problem until approved bycatch programs are implemented throughout the south Atlantic area.

23. *Comment*: There will be long term economic impacts because of the shift in effort of fishing vessels to other stressed species in inshore waters.

Response: NMFS acknowledges that some vessels may shift effort to other species or into inshore waters. Because the stock is severely overfished, the need to protect and rebuild the fishery takes precedent over the immediate economic impacts. Since there still is some recruitment, this rule, when enacted with companion Commission actions, should rebuild the fishery in 2–5 years.

24. *Comment*: A lack of regulatory management is not a problem off the North Carolina Coast.

Response: Because of the poor condition of the stock, NMFS considers weakfish in need of more management along the entire Atlantic Coast, including the EEZ off of North Carolina.

25. *Comment*: The commercial industry in North Carolina has concerns over the credibility of the process being followed for the DEIS/RIR. The same staff that developed the DEIS/RIR are also taking and reviewing comments and making recommendations on the closure to higher NMFS officials.

Response: NMFS Headquarters, Northeast and Southeast Regional and Science Center staff have cooperated in the preparation of the DEIS/RIR and responses to the comments. These personnel are the most familiar with the weakfish fishery and are, therefore, the most qualified to review comments and make recommendations to higher NMFS officials, who also provide some measure of oversight.

26. *Comment*: The rule does not provide for maximum protection of weakfish because only 27 percent of all fishing mortality on weakfish results from directed recreational and commercial fishing gears.

Response: The rule gives maximum protection for weakfish in the EEZ employing available conservation and management measures because fishing for and/or possession is not allowed.

27. *Comment*: Alternative C states that this alternative "would increase the harvest of weakfish." North Carolina harvests over 50 percent of the weakfish in the EEZ with a 10–inch size limit. Consequently, moving to a 12–inch size limit with appropriate mesh sizes and maintaining the closure south of Cape Hatteras to flynets will not increase the harvest.

Response: Alternative C, if implemented with a 12–inch size limit with appropriate mesh, would reduce catch in North Carolina waters, but it would also increase catch off of other states that now have minimum size limits over 12 inches. Also, Alterative C, with a 12–inch size limit off of North Carolina, would be too difficult to enforce because there are other size limits and different companion weakfish regulations in place off of other states.

28. *Comment*: Implementing the proposed rule would create an increased effort in state waters that may increase contacts with marine mammals and sea turtles, an incident that could jeopardize all fishing in coastal waters.

Response: Implementing the rule may increase fishing effort in state waters, but fishermen would still be required to fish under Federal and State laws that protect marine mammals and sea turtles. A biological opinion issued by NMFS concluded that the proposed weakfish regulation may affect, but will not likely jeopardize the continued existence of endangered and threatened sea turtles, marine mammals, and fish under NMFS jurisdiction. In addition, state biologists from New Jersey, Maryland, New York, and Virginia have stated that due to state regulations, they do not expect effort to shift inshore. If North Carolina keeps the area south of Cape Hatteras closed to flynet fishery, this will reduce potential impacts to endangered species as well.

National Standard Comments and Responses

NMFS received a number of comments that claimed that the proposed rule did not meet the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The comments and responses are listed below:

National Standards - General

29. *Comment*: If the EEZ is closed, the bycatch and resulting waste will violate all of the National Standards in the Magnuson Act.

Response: The overriding need to protect the severely declining weakfish stock necessitates the EEZ closure (See response to comment 21). NMFS believes the measures in the rule are consistent with the Magnuson Act. If bycatch of weakfish contributes to significant mortality so as to negate stock rebuilding, NMFS will consider further measures.

National Standard 1

30. *Comment*: Closing the EEZ does not promote optimum yield.

Response: The proposed rule does promote the objectives of optimum yield because it is designed to rebuild stocks so that fisheries can eventually be reopened with healthier stock.

National Standard 2

31. *Comment*: The scientific information used to support the proposed rule has been changed to show a different age length at spawning composition.

Response: NMFS delayed publishing the FEIS until the 1994 stock assessment was completed. Upon a review of this stock assessment, it was determined to be consistent with and re-enforced the data on which NMFS had based its decision; the stock continues to be severely overfished and the biological indicators remain lower than the long-term averages. The 1994 assessment has incorporated several changes since the

last assessment, which should improve the accuracy of the assessment and better reflect the weakfish fishery. These include: revision of the catch-at-age-matrix to reflect the "new" Marine Recreational Fisheries Statistics Survey (MRFSS) methodology; new shrimp bycatch estimates which have been re-estimated and linked to shrimp fishery effort; additional fishery independent survey data which were unavailable in past assessments; new recreational fishery dependent citation data from Virginia, North Carolina, Maryland and Delaware; changes in the maturation schedule to reflect a 90 percent maturation at age one rather than the 50 percent used in the past; and a new Virtual Population Analysis (VPA) Model which is more consistent with the changing regulations in the weakfish fishery. However, the bottom line remains the same; weakfish stock continues to be severely overfished.

National Standard 3

32. *Comment*: Since the rule only includes measures for the EEZ, it does not manage the weakfish throughout its range.

Response: The proposed rule does manage weakfish throughout its range because it covers the entire range of weakfish in the EEZ and supports the Commission's effort to manage weakfish when they are in state waters.

33. *Comment*: Closing the EEZ, while the states have a different form of management, is not close coordination of management.

Response: The rule was developed in close coordination with the states through the Commission, which is also attempting to reduce fishing mortality on weakfish in state waters. The rule implements a measure that is consistent with the various regulations of the states.

National Standard 4

34. *Comment*: The rule does not meet National Standard 4 because it would only affect commercial fishing since most commercial fishing in some states takes place in the EEZ.

Response: The rule is consistent with National Standard 4 because a complete closure to fishing in the EEZ treats all fishermen fishing in the EEZ equally and therefore does not discriminate between residents of different states.

35. *Comment*: The rule is not fair and equitable because its intent is to stop North Carolina fishermen from harvesting weakfish so that there will be harvest in other states, especially in New England.

Response: The purpose of the rule is to reduce fishing mortality on weakfish in the EEZ. With the weakfish stock in a depressed state, the species geographic range is constricted to the central areas of population density (mostly off of North Carolina and to a lesser extent through Delaware). Therefore, the major fishery is presently conducted by North Carolina fishermen. Fishing mortality can not be significantly reduced unless restrictions are placed in the areas where the fishery operates. In order for the rule to be effective, it must include the EEZ off North Carolina. The same restriction also applies to the EEZ off other east coast states. The intent of the rule is to rebuild the weakfish fishery along its entire historical range (Massachusetts through Florida), including waters off North Carolina.

36. *Comment*: Closing the EEZ to commercial fishing to allow sportfishing to increase landings is discriminatory.

Response: The rule is not discriminatory because it closes the EEZ to both commercial and recreational fishing and is designed to rebuild stocks so that both commercial and recreational fisheries will benefit.

37. *Comment*: The closure was not reasonably calculated to promote conservation.

Response: The rule is reasonably calculated to promote conservation because a closure gives protection to weakfish stocks in the EEZ.

38. *Comment*: No attempt was made to partition fishing mortality by state. The impression is that these regulations would be added to North Carolina in addition to existing regulations.

Response: Because weakfish migrate throughout most of the east coast EEZ, a closure of the waters off a selected state(s) would not be effective since gains made in reducing fishing mortality in one area could be negated by fishing in other areas. The rule's effects are additive to state regulations because the rule is design to complement the fishing reduction mortality program in the Commission's weakfish fisheries management plan that is implemented in state waters.

National Standard 5

39. *Comment*: The rule does not promote efficiency because throwing back fish caught incidentally in the EEZ is not efficient.

Response: NMFS concedes that some fish may be thrown back dead. However, allowing some fish to be kept would only encourage more fishing for weakfish. The overriding need to protect the depressed stock takes precedence.

40. *Comment*: The rule is a move by NMFS to increase the landing size to 12 inches, therefore, allocating the resource to those who take larger fish.

Response: The proposed rule does not have economic allocation as its purpose since all fishermen are treated the same. The rule has no size limit. It is a prohibition on the take and possession of weakfish in the EEZ, without regard to the size of the fish.

National Standard 6

No comments received.

National Standard 7

41. *Comment*: Most states are in compliance with the Commission's regulations. Therefore, the rule is an unnecessary duplication.

Response: The rule is not a duplication because it supports the Commission's effort to reduce fishing mortality on weakfish by insuring that there will be a comprehensive program to reduce fishing mortality on weakfish as they migrate throughout their State and Federal range.

Changes from the Proposed Rule

The definition section, § 697.2, of the proposed rule contained 14 definitions. Eleven of these definitions were already defined in § 620.2 of title 50 of the CFR. Any terms defined in § 620.2 are common to all domestic fishing regulations appearing in parts 630 through 699. Therefore, the eleven definitions were removed from the final rule to avoid duplication. In addition, eleven prohibitions listed in the proposed rule were reduced to four since seven of these prohibitions already appeared in § 620.7 and again would have been duplicative.

Classification

The final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. This certification remains valid for this final rule. The reasons were published in the proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: November 21, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, part 697 is added to 50 CFR chapter VI to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—Atlantic Coast Weakfish Fishery

Sec.

697.1 Purpose and scope.
697.2 Definitions.
697.3 Prohibitions.
697.4 Relation to the Magnuson Act.
697.5 Civil procedures.
697.6 Specifically authorized activities.

Subpart B—[Reserved]

Authority: 16 U.S.C. 5101 *et seq.*

Subpart A—Atlantic Coast Weakfish Fishery

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and govern fishing for and possession of Atlantic Coast weakfish in the EEZ.

§ 697.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Act means the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*

Atlantic Coast weakfish means members of stocks or populations of the species *Cynoscion regalis*, found in the waters of the Atlantic Ocean north of Key West, FL.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

§ 697.3 Prohibitions.

In addition to the prohibitions set forth in § 620.7 of this chapter, the following prohibitions apply. It is unlawful for any person to do any of the following:

(a) Fish for Atlantic Coast weakfish in the EEZ;

(b) Harvest any Atlantic Coast weakfish from the EEZ;

(c) Possess any Atlantic Coast weakfish in or from the EEZ;

(d) Fail to return to the water immediately, with the least possible injury, any Atlantic Coast weakfish taken within the EEZ; or

(e) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, shipping, transporting, selling, offering for sale, purchasing, importing or exporting, or transferring of any Atlantic Coast weakfish.

§ 697.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson Act.

§ 697.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations in this part.

§ 697.6 Specifically authorized activities.

NMFS may authorize for the acquisition of information and data, activities that are otherwise prohibited by these regulations.

Subpart B—[Reserved]

[FR Doc. 95–28876 Filed 11–21–95; 4:45 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 227
Monday, November 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 225

RIN: 0584–AC04

Removal of the "Cheese Alternate Products" Specifications From the National School Lunch Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed Rule; Reopening of comment period.

SUMMARY: This proposed rule reopens the comment period established in the National School Lunch Program (NSLP) proposed rule issued by the Department on September, 27, 1995 (60 FR 49807). This action is being taken in order to provide interested parties additional time to provide comments on the proposed rule "Removal of the Cheese Alternate Product" specifications from the NSLP.

DATES: To be assured of consideration, comments must be postmarked on or before December 27, 1995.

ADDRESSES: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, (703)305–2556.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1995 the Department published at 60 FR 49807, a proposed rule to remove the specifications for cheese alternate products from the National School Lunch Program. That rule provided for a public comment period to run through November 13, 1995. Comments were expected from both the institutions currently utilizing the cheese alternate products as well as the manufacturers of the cheese alternates. A national trade organization requested an extension of the comment period. The Department believes that any additional comments would be beneficial in developing a final rule in this area. Accordingly, the Department is reopening the public comment period found in the September 27, 1995 regulations through December 27, 1995.

Dated: November 14, 1995.

William E. Ludwig,

Administrator, Food and Consumer Services.

[FR Doc. 95–28767 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 1160

[DA–96–01]

Fluid Milk Promotion Program; Notice of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be held to determine whether fluid milk processors favor the continuation of the Fluid Milk Promotion Order. The National Fluid Milk Processor Board, which administers the order, requested the action. The order will remain in effect if it is favored by at least 50 percent of the fluid milk processors who marketed at least 60 percent of the fluid milk products sold in the United States.

DATES: The referendum will be held on February 29 through March 7, 1996. The representative period for establishing voter eligibility will be September 1995.

FOR FURTHER INFORMATION CONTACT: Lance Jervis, Referendum Agent, USDA/AMS/Dairy Division, Room 2759, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–3869.

SUPPLEMENTARY INFORMATION: This document announces that a referendum will be conducted on February 29 through March 7, 1996, among fluid milk processors to determine whether the Fluid Milk Promotion Order should continue. The Order is authorized by the Fluid Milk Promotion Act of 1990, as amended by the Fluid Milk Promotion Amendments Act of 1993. The program is funded by a mandatory 20-cent assessment on processors whose monthly marketing exceeds 500,000 pounds of fluid milk products sold in the United States.

The Fluid Milk Promotion Order, which became effective December 10, 1993, provides that the Secretary shall conduct a continuation referendum at the request of the Board or any group of fluid milk processors which represents 10 percent or more of the fluid milk products marketed in the United States. The order specifies that this continuation referendum should be held not later than June 10, 1996, which is 30 months after the order's effective date.

The Fluid Milk Promotion Order will continue if the Secretary determines that it is favored by at least 50 percent of the processors voting in the referendum who during the representative period (as determined by the Secretary) marketed at least 60 percent of the volume of fluid milk products sold in the United States. The month of September 1995 is hereby determined to be the representative period for the conduct of such referendum. Fluid milk processors who wish to participate in the referendum will have to register to vote by certifying that they were processors during the month of September 1995. Those handlers processing and marketing more than 500,000 pounds of fluid milk products during the month of September will be eligible to vote in the referendum, provided they are fluid milk processors at the time of voter registration and during the time the referendum is conducted.

It is hereby directed that a referendum be conducted during the period of February 29 through March 7, 1996, in accordance with the procedure for the conduct of referenda (7 CFR 1160.600 et seq.), to determine whether the Fluid Milk Promotion Order is approved by fluid milk processors, who during the representative period were engaged in the distribution of fluid milk products within the 48 contiguous United States and the District of Columbia.

Lance Jervis is hereby designated as the agent of the Secretary to conduct such referendum.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are

included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

List of Subjects in 7 CFR Part 1160

Milk, Fluid milk products, Promotion.

Authority: 7 U.S.C. 6401–6417.

Dated: November 20, 1995.

Shirley R. Watkins,

Acting Assistant Secretary Marketing and Regulatory Programs.

[FR Doc. 95–28769 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1208

[FV–95–702PR]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order—Postponement of Payment of Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule specifies general rules and regulations to be established under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order (Order). The Order is authorized under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993. This rule would implement a provision of the Order concerning the postponement of the payment of assessments. This action would create a form and establish procedures for qualified handlers to request the postponement of the payment of up to six months of assessments to the National PromoFlor Council. In addition, in accordance with the Paperwork Reduction Act of 1995, this proposed rule specifies the public reporting burden for the collection of information for requesting a postponement of payment of assessments.

DATES: Comments must be received by January 26, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (Pub. L. 103–190), (7 U.S.C. 6801 *et seq.*) hereinafter referred to as the Act.

This proposed rule has been issued in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8 of the Act, a person subject to the order may file a petition with the Secretary stating that the order or any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Only those wholesale handlers, retail distribution centers, producers, and importers who have annual sales of $750,000 or more of cut flowers and greens and who sell those products to exempt handlers, retailers, or consumers are considered qualified handlers and assessed under the Order. There are approximately 900 wholesaler handlers, 150 importers, and 200 domestic producers who are qualified handlers.

The majority of these qualified handlers would be classified as small businesses. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5 million. Statistics reported by the National Agricultural Statistics Service show that 1994 sales at wholesale of domestic cut flowers and greens total approximately $559.6 million while the value of imports during 1994 was approximately $382 million. The leading States in the United States producing cut flowers and greens, by wholesale value, are California, which produces approximately 59 percent of the domestic crop, followed by Florida, Colorado, and Hawaii. Major countries exporting cut flowers and greens into the United States, by value, are Columbia, which accounts for approximately 60 percent, followed by The Netherlands, Mexico, and Costa Rica.

The Administrator of the AMS has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

While this proposed rule would impose certain recordkeeping requirements on qualified handlers that request a postponement of the payment of assessments, most of the information required under the proposed rule could be compiled from records currently maintained. Thus, any added burden resulting from increased recordkeeping would not be significant when compared to the benefits that should accrue to such businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), a form to request the postponement of the payment, "Application for Postponement of Payment of PromoFlor Assessment", has been submitted to OMB for approval.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each qualified handler requesting a postponement of payment of assessment.

Respondents: Qualified handlers as defined in the Act.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.25 hours.

Copies of this information collection can be obtained from Sonia N. Jimenez at (202) 720–9916 or at the address listed above.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national cut flowers and greens promotion and consumer information program. The program is funded by an assessment of ½ percent of gross sales of cut flowers and greens which is levied on qualified handlers.

This proposed rule would provide rules and regulations needed to implement provisions of the Order. Section 1208.55 of the Order provides for postponement of collections (7 CFR 108.55; 59 FR 67139). That section provides that the Council may grant a postponement of the payment of an assessment for any qualified handler that establishes that it is financially unable to make the payment.

Section 1208.100 of this rule would provide that the definitions for this subpart are the same as those prescribed in §§ 1208.1 through 1208.24 of the Order.

Section 1208.150 would provide for the postponement of the payment of assessments under certain circumstances. The Order provides for the postponement of the payment of assessments by a qualified handler if the payment of such assessment is determined to be a financial burden for the handler. Section 1208.55 of the Order states that "The Council may grant a postponement of an assessment under this subpart for any qualified handler that establishes that it is financially unable to make the payment * * *" In addition, the Order establishes that the Council shall develop forms and procedures for a qualified handler to request and for the Council to grant the postponement of the payment of assessments.

The Council met on September 11, 1995, and determined that, in order for a request for the postponement of assessments to be granted, the requester should comply with the following: (1) Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessment when due and (2) submit copies of the last three years' federal tax returns. These two requirements are needed to verify that the qualified handler is financially unable to make the payment of the assessments due and that the postponement of payment, if granted, complies with the requirements set forth in the Order. In addition, the requester should submit to the Council a form "Application for Postponement of Payment of PromoFlor Assessments." This collection of information would be authorized under OMB number 0581–0093 and would have an expiration date of January 31, 1997.

The period for which the postponement of the payment of the assessments is requested may not exceed six (6) months. Within that period of six (6) months, the qualified handler would be exempt from paying assessments beginning with the month for which the request for postponement is filed with the Council and for no more than six (6) months. The handler must provide a reason for the request as well as detailed information concerning the handler's name, address, telephone and fax numbers, the month(s) for which the request is made, the percent of the outstanding debt to be paid by month after the postponement of payment is granted, and the starting date for the payment. Furthermore, an authorized individual must sign and return the form to the Council's office.

Any late payment would make the agreement null and all assessments due would need to be paid in their entirety at that time. In addition, the Council agrees to forgo any late fee charges and interest for the duration of the agreement.

The request must be made no later than 30 days after the assessments were due. In addition, after the postponement period has concluded, the requester must pay the percentage of the outstanding debt agreed to be paid by month and the assessments due for the current month. Assessments due after the postponement of payment is completed would not be postponed unless an extension of time for payment is granted. If an extension of time is requested, new documentation must be provided for the Council to determine whether to grant the extension of time for the postponement of the payment of assessments. The same procedures used for the initial request must be used to grant an extension.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter. All responses regarding the information collection will be summarized and included in the request for OMB approval.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements—Cut flowers, Cut greens, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1208 is proposed to be amended as follows:

PART 1208—FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION ORDER

1. The authority citation for 7 CFR Part 1208 continues to read as follows:

Authority: 7 U.S.C. 6801 et seq.

2. In Part 1208 a new subpart B is added to read as follows:

Subpart B—Rules and Regulations

Definitions

Sec.

1208.100 Terms defined.

Assessments

1208.150 Procedures for postponement of assessments.

Subpart B—Rules and Regulations

Definitions

§ 1208.100 Terms defined.

Unless otherwise defined in this subpart, definitions or terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order.

Assessments

§ 1208.150 Procedures for postponement of collections.

(a) For a request for postponement of the payment of assessments to be granted the qualified handler must comply with the following: Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessments when due and submit copies of the last three years' federal tax returns. The request must be in writing no later than 30 days after the assessments for which the postponed payment is requested are due. The period for which the postponement of the payment of assessments is requested may not exceed six (6) months. The written request must specify:

(1) A reason for the request;

(2) Detailed information concerning the qualified handler's name, address, and telephone and fax numbers;

(3) The month(s) for which the request is made;

(4) Total assessments due;

(5) The percent of the outstanding debt to be paid each month after the postponement of payment is granted; and

(6) The starting date for the payment of assessments due.

(b) At the end of the postponement period, the qualified handler must pay the percentage of assessments due specified per month and the current month assessment due. If an extension of time is requested, new documentation must be provided for the Council to determine whether to grant the extension. The same procedures used for the initial request will be used to grant any extension.

Dated: November 20, 1995.

Robert C. Kenny,

Director, Fruit and Vegetable Division.

[FR Doc. 95–28770 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 93–128–1]

Viruses, Serums, Toxins, and Analogous Products; Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Standard Requirement for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, by specifying requirements for killed Venezuelan equine encephalomyelitis vaccines and revising the standard potency test for eastern and western encephalomyelitis vaccines. The effect of the proposed amendment would be to require the use of Vero 76 cells in the test to evaluate the potency of Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus, and to establish minimum antibody titers which must be elicited by each of the indicated fractions, as determined by a plaque reduction, serum neutralization assay in which Vero 76 cells are used.

DATES: Consideration will be given only to comments received on or before January 26, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–128–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–128–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202)-690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations contained in 9 CFR part 113, standard requirements are prescribed for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service to help ensure that veterinary biological products are pure, safe, potent, and efficacious.

The standard requirement for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, in § 113.207, specifies minimum potency requirements for such products. A serial of Eastern and Western equine encephalomyelitis vaccine must induce at least minimum antibody titers in guinea pigs specific for each fraction. The current standard requirement states that titers are to be determined in a plaque reduction, serum neutralization test but does not specify the cell type to be employed in the test. Primary duck embryo fibroblasts (DEF) were once considered the cells of choice; however, difficulties in producing acceptable DEF cultures are often encountered and results obtained with such cultures are not always consistent. These problems are not seen with cells of the Vero (African green monkey kidney) 76 cell line.

This proposed rule would revise the standard requirement in § 113.207 to require that cells of the Vero 76 cell line be used in encephalomyelitis vaccine potency tests. It would also revise the standard requirement by changing the minimum specific antibody titers from 1:4 to 1:40 for Eastern equine encephalomyelitis virus (EEV) and 1:32 to 1:40 for Western EEV. Extensive correlation work performed by the National Veterinary Services Laboratories (NVSL) indicates these new minimum specific antibody titers as measured using Vero 76 cells are equivalent to those currently specified in the standard requirement as measured with DEF.

In addition, the proposed rule would revise the standard requirement to establish standard test requirements for Encephalomyelitis Vaccine, Venezuelan, Killed Virus, and set 1:4 as the minimum specific antibody titer such vaccines must obtain to pass the potency test. The Agency has determined that a product that induces an anti-Venezuelan equine encephalomyelitis virus titer (as measured using Vero 76 cells) in guinea pigs of 1:4 or greater should protect horses against disease caused by that virus.

This proposed rule would establish uniform test requirements for all killed vaccines for the prevention of Venezuelan equine encephalomyelitis and would revise the current potency test to make it more reliable and consistent. Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would revise the standard requirement in § 113.207 for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, by specifying a different cell type for use in the potency test assay and specifying different minimum specific antibody titers that must be achieved for a satisfactory test. In addition, the proposed rule would revise the standard requirement so that it would also apply to Encephalomyelitis Vaccine, Venezuelan, Killed Virus. The Agency believes the titers given in the standard requirement are adequately correlated with claimed efficacy and that they would be readily obtained by all relevant vaccines currently licensed. We do not expect any increase in cost to the biologics manufacturers affected by this proposed rule. The changes should actually decrease costs for most impacted manufacturers, since fewer repeat tests will be needed and obtaining Vero 76 cells should prove less expensive than procuring primary DEF.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 113.207, the section heading, the introductory text, the introductory text of paragraph (b), and paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) would be revised to read as follows:

§ 113.207 Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus.

Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Each serial or subserial shall meet the requirements prescribed in this section and the general requirements prescribed in § 113.200, except those in § 113.200(d). Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

* * * * *

(b) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency in accordance with the two-stage test provided in this paragraph. For each fraction contained in the product—Eastern type, Western type, or Venezuelan type—the serological interpretations required in this test shall be made independently. A serial or subserial found unsatisfactory for any of the fractions shall not be released.

(1) * * *

(2) Fourteen to 21 days after the second injection, serum samples from each vaccinate and each control shall be tested by a plaque reduction, serum neutralization test using Vero 76 cells.

(3) If the control serum samples show a titer of 1:4 or greater for any fraction, the test is inconclusive for that fraction and may be repeated: *Provided,* That, if four or more of the vaccinate serum samples show a titer of less than 1:40 for the Eastern type fraction, less than 1:40 for the Western type fraction, or less than 1:4 for the Venezuelan type fraction, the serial or subserial is unsatisfactory without further testing.

(4) If two or three of the vaccinate serum samples show a titer of less than 1:40 for the Eastern type fraction, less than 1:40 for the Western type fraction, or less than 1:4 for the Venezuelan type fraction, the second stage of the test may be used for the relevant fraction(s): *Provided,* That, if a fraction is found acceptable by the first stage of the test, the second stage need not be conducted for that fraction.

(5) If the second stage is used and four or more of the vaccinate serum samples show a titer of less than 1:40 for the Eastern type fraction or the Western type fraction, or less than 1:4 for the Venezuelan type fraction, the serial or subserial is unsatisfactory.

* * * * *

Done in Washington, DC, this 20th day of November 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28764 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–63]

Peter G. Crane, Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Mr. Peter G. Crane. The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–63. The petitioner requests that the NRC amend its regulations concerning emergency planning to include a requirement that emergency planning protective actions include sheltering, evacuation, and the prophylactic use of potassium iodide, which prevents thyroid cancer after nuclear accidents. The request would amend one of the 16 planning standards in 10 CFR 50.47 by which licensee emergency plans are evaluated in order to assure that the option of using potassium iodide is included in emergency planning.

DATES: Submit comments by February 12, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For information on submitting comments electronically, see "Electronic Access" under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–6534, or Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on this rulemaking also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll-free number 800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using the ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "rules menu" option from the "NRC main menu." Users will find the "FedWorld On-line User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet: fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC on-line main menu. The NRC on-line area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC on-line main menu. However, if you access NRC at FedWorld by using NRC's toll-free number, although you will not have access to the main FedWorld system, you will have full access to all NRC systems.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploading files is not allowed; you will only see a list of files without descriptions (normal gopher look). An index file listing all files within a subdirectory and descriptions of those files, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the Worldwide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Background

The NRC received a petition for rulemaking dated September 9, 1995, submitted by Mr. Peter G. Crane on his own behalf. The petition was docketed as PRM–50–63 on September 12, 1995. The petitioner requests that the NRC amend its regulations in 10 CFR Part 50 that govern emergency planning. Specifically, the petitioner is seeking to amend one of the 16 planning standards in 10 CFR 50.47 to include the use of potassium iodide (KI) as one action to be considered in emergency situations under licensee emergency plans.

Potassium Iodide

The petitioner discusses KI and its uses. Specifically, KI protects the thyroid gland, which is highly sensitive to radiation, from the radioactive iodine that would be released in extremely serious nuclear accidents. By saturating the gland with iodine in a harmless form, KI prevents any inhaled or ingested radioactive iodine from lodging in the thyroid gland, where it could lead to thyroid cancer or other illnesses. The drug itself has a long shelf life—at least five years—and causes negligible side effects.

The petitioner further states that, in addition to preventing deaths from thyroid cancer, KI prevents radiation-caused illnesses. The petitioner indicates that thyroid cancer, curable in 90–95 percent of cases, generally means surgery, radiation treatment, and a lifetime of medication and monitoring. The petitioner asserts that the changes in medication that go with periodic scans put many patients on a physiological and psychological rollercoaster. The petitioner states that hypothyroidism can cause permanent retardation in children and, if undiagnosed, can condemn adults to a lifetime of fatigue, weakness, and chills.

Three Mile Island

The petitioner discusses the U.S. policy with regard to KI before the Three Mile Island (TMI) accident. In December 1978, the Food and Drug Administration (FDA) announced that it had determined that potassium iodide was safe and effective for thyroid protection in nuclear accidents. The issue attracted little attention and the NRC and the Federal Government as a whole took no public position on the drug.

Three months after the FDA announcement, on March 28, 1979, the TMI accident began to unfold. After two days of unsuccessful efforts to bring the reactor under control, it was still uncertain whether a major release of radioactivity could be averted. The petitioner states that Federal and State officials, searching for supplies of KI in case it should be needed, discovered that there was none to be had. A supply had to be manufactured, literally overnight. The petitioner indicates that at 3 am on Saturday, March 31, an FDA official arranged with the Mallinckrodt Chemical Company for the immediate production of 250,000 doses of KI. Without a written contract or a purchase order, the company began production and the first shipment of the drug arrived in Pennsylvania 24 hours later.

The petitioner also discusses that after the accident, President Carter appointed John Kemeny to head a commission to investigate the accident. The Kemeny Commission report, issued in October 1979, was strongly critical of the failure to stockpile KI. Among the Kemeny Commission's major recommendations was that an adequate supply of the radiation protective agent, potassium iodide for human use, should be available regionally for distribution to the general population and workers affected by a radiological emergency. The report also explained that different types of accidents might require different kinds of emergency response, particularly that in some accident situations, evacuation may not be the emergency planning measure of choice.

Potassium Iodide Policy

The petitioner states that Federal agencies initially supported the Kemeny Commission recommendation. In NUREG–0632, "NRC Views and Analysis of the Recommendations of the President's Commission on the Accident at TMI," issued in November 1979, the NRC agreed with the findings of the Commission and planned to require nuclear power plant licensees to have adequate supplies of KI available for nuclear power plant workers and the general public as part of a State emergency response plan.

According to the petitioner, the three agencies most concerned, the FDA, NRC, and Federal Emergency Management Agency (FEMA), all favored the stockpiling KI for the next several years. The petitioner states that the Atomic Industrial Forum, a nuclear industry trade association, declared itself against the stockpiling of KI in May 1982.

The petitioner indicates that the NRC staff was strongly in favor of KI stockpiling as late as September 27, 1982, when the staff issued a memorandum to the Commissioners proposing that the NRC agree with a draft interagency policy statement supporting KI stockpiling. The petitioner further states that on October 15, 1982, less than three weeks after sending the draft policy statement to the Commission for approval, the staff sent a supplementary paper withdrawing the memorandum of September 27. The later memorandum informed the Commissioners that NRC's Office of Nuclear Regulatory Research could, by January 1, 1983, produce a paper showing that KI was significantly less cost beneficial than previously assumed. The staff proposed sending this document to the FDA and FEMA with the recommendation not to stockpile and distribute KI.

The petitioner indicates that the NRC staff briefed the Commissioners on the staff's proposal to take a strong position against KI in November 1983. A policy statement was later issued that disposed of, once and for all, the Kemeny Commission's recommendation in favor of stockpiling KI. According to the petitioner, only a year later, the Chernobyl accident would give tangible proof of the value of the drug in radiological emergencies.

Effects of Chernobyl

The petitioner states that during the Chernobyl accident of 1986, the damaged reactor spewed radioactive iodine over a wide area of what was then the Soviet Union and Poland. The petitioner further states that in Russia and the Ukraine, and also in Belarus, where the distribution of KI was inadequate and untimely, they are now experiencing extraordinarily high levels of childhood thyroid cancer; however, in Poland, where KI was administered to 97 percent of the nation's children, there has been no similar increase in thyroid cancer. The petitioner believes that Poland is a proof-positive example of the benefits of a well-prepared KI program.

The petitioner describes the U.S. Government spending to study radiation-caused thyroid cancer in Ukraine and Belarus. Announcing a $15 million 15-year program that will follow 70,000 children in Ukraine, the Department of Energy (DOE) declared in a press release that the studies provide a unique opportunity to understand the thyroid cancer risk of exposure to radioiodine. The DOE press release explained: "The release of radioiodine is likely to figure prominently in any nuclear power plant disaster and knowledge of its carcinogen potency is inadequate, especially in children." In addition, the petitioner further states that the U.S. Government has spent generously to bring Ukrainian doctors to the United States for training in thyroid surgery because mishandled operations can result in damaged nerves and larynxes, and children rendered permanently mute.

The petitioner discusses post-Chernobyl developments on KI policy. He states that the Chernobyl accident demonstrated that KI worked and that countries that failed to stockpile and distribute it are finding themselves with serious public health problems.

Potassium Iodide Reconsidered

In June 1989, the NRC reconsidered the KI issue after the petitioner filed a differing professional opinion urging a change in policy. On November 27, 1989, the American Thyroid Association wrote to the NRC Commission urging KI stockpiling on a nationwide basis, and in 1990, the NRC announced that it was reconsidering the existing Federal policy. In April 1992, a contractor, under the sponsorship of the NRC Office of Nuclear Regulatory Research, issued a report that included a revised cost-benefit analysis of the use of KI. The petitioner describes the report as concluding that stockpiling continued not to be cost-effective, but that the difference between costs and benefits was narrower than had been calculated by the NRC staff in the early 1980s. Then the petitioner indicates that, in December 1993, an industry trade group, the Nuclear Management and Resources Council, sent a report entitled, "Review of Federal Policy on Use of Potassium Iodide," to the Commission arguing against any change in current KI policy.

The petitioner states that in March 1994, the NRC staff declared its support for KI stockpiling. However, the NRC staff proposal for a change in policy was blocked when the Commissioners voted 2 to 2 in May 1994. Under NRC procedures, a tie vote on a proposal means that it fails.

Additional Support

The petitioner describes a September 1994 FEMA publication proposing a "Federal Radiological Emergency Response Plan" that envisions the use of KI during radiological emergencies. According to the petitioner, this implies that the authors of the plan recognize the drug's usefulness. Under the plan, the NRC would be the lead Federal agency during emergencies at nuclear power plants and would advise State and local governments (based on advise received from an interagency panel); the States and localities would then administer the KI, if necessary.

The petitioner also indicates that in 1994, the Board of Governors of the International Atomic Energy Agency, with U.S. Government support, adopted new "International Basic Safety Standards." These standards represent the consensus of the world's experts on radiation safety. With regard to emergency planning, they provide, among other things: "Intervention levels of immediate protective actions, including sheltering, evacuation, and iodine prophylaxis, shall be specified in emergency plans * * *" thus the international radiation protection, like the Kemeny Commission in 1979 and the short-lived draft Federal policy statement of 1982, recognize that effective preparedness for radiological emergencies meant having three items to consider.

Discussion of the Petition

The NRC is soliciting public comment on Mr. Cranes's petition, which requests the changes to the regulations in 10 CFR part 50.

The petitioner has submitted this petition for rulemaking because he believes the NRC should implement the recommendation of the President's Commission on the Accident at Three Mile Island, known as the Kemeny Commission, that the United States maintain the option of using the drug potassium iodide for thyroid protection during nuclear accidents. The petitioner requests that the Commission definitively review and decide on the issue rather than simply have the NRC staff decide not to propose it to the Commission.

The petitioner states that evacuation is not necessarily the protective measure of choice in every emergency, and even when it is the preferred option, it is not always feasible. The Kemeny Commission report explained that different types of accidents, and the particular circumstances presented, may call for different protective measure. The petitioner believes maintaining a KI option ensures that responsible authorities have an additional type of protection at their disposal.

The petitioner indicates that NRC has made it clear that a finding of adequate emergency planning does not translate into a guarantee that the entire affected public can be evacuated necessarily, but that evacuation is generally feasible. The petitioner believes that sometimes, either by choice or necessity, authorities may be sheltering people or telling them to remain indoors rather than evacuating them. The petitioner believes that it may be desirable to administer KI any time people are sheltered or told to stay indoors when evacuation routes take people through areas of radiological contamination and when there is a large airborne release high in the atmosphere.

The petitioner believes that the decision on stockpiling KI should turn on whether, given the enormous consequences of being without it in a major accident, the drug is a prudent measure; not on whether it will necessarily pay for itself over time. The petitioner further believes that KI represents a kind of catastrophic-coverage insurance policy, offering protection for events which, while they occur only rarely, have such enormous consequences that it is sensible to take special precautions.

The petitioner states that the estimates of KI's cost-effectiveness depend on estimates that are no more than informed guesses about the probability of severe accidents. The NRC's cost-benefit analysis of the early 1980's was based on the assumption that a severe accident with a major release of radioactivity could occur in this country only once every thousand years.

The petitioner believes that if it were really true that serious accident with a release of radioactivity were so unlikely, there would be good reason not only to reject stockpiling of KI but also to dispense with all the rest of emergency planning. The petitioner also states that if KI is not cost-effective, then the rest of nuclear emergency planning is probably not cost-effective either. If serious accidents are really possible only every one or two thousand years, it is unlikely that any element of current nuclear emergency planning could be found cost-effective.

The petitioner believes that cost-benefit analysis is a technique that should be applied with good sense, especially where public health measures are concerned. According to the petitioner, the cost-benefit analysis of KI proceeded from the assumption that there was no difference in desirability between prevention of radiation-caused thyroid disease and cure; thus the only factor to be considered in evaluating KI was the difference in cost. The petitioner also believes that the U.S. Government determined that instead of spending money to prevent radiation-caused thyroid disease, society should spend its money treating the disease if and when it occurs.

The petitioner believes that the existing policy on KI was defective from the start because it was based, in part, on inaccurate information provided to the NRC Commissioners. He states that the information provided to the NRC Commissioners seriously understated the significance of radiation-caused thyroid disease and thereby understated to an equal degree the value of KI.

The petitioner also believes that it was not clear that the Commission had any idea of the real nature of post-accident thyroid disease at the time they adopted an anti-KI position.

The petitioner states that existing policy purports to leave the judgment on stockpiling KI to the States; however this policy also ensures that the States do not have an adequate basis for making informed decisions. He believes that the Federal Government, and NRC in particular, has failed to provide the States with sound technical advice on the subject. The petitioner also believes that without accurate and current information on KI—including the Chernobyl experience and the consensus of international experts—States cannot make an informed judgment.

The petitioner mentions a letter to the Commissioners from Senators Simpson and Lieberman sent in April 1994. This letter stated that the Federal Government has a moral responsibility to provide the public with complete and accurate information regarding the risks from Federally-licensed activities and ways in which those risks may be reduced. The petitioner also mentions FEMA's Federal Emergency Response Plan of September 1994. The plan provides that, in an emergency at a nuclear power plant, an interagency advisory team will provide guidance on KI to the NRC, and the NRC will provide advice to State and local governments on measures that they should take to avoid or reduce exposure to the public, including sheltering, evacuation, and prophylactic use of iodine.

The petitioner believes that no State or local official or member of the public could imagine that in a real emergency, there would be no iodine to administer. The petitioner raises the question: If KI stockpiling is not worthwhile, why is administration of the drug one of the protective measures identified in the plan? He also questions that if KI is worthwhile, as the plan implies, then why isn't something being done to make sure that it is available?

The petitioner believes that the Federal Government should either change the 1985 policy and make the use of KI a viable option in a real emergency, or it should explain why the United States has decided that KI will not be an option.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR Part 50 be amended to include language taken from FEMA's Federal Radiological Emergency Response Plan of September 1994 and recommends the following revision to the regulations:

The petitioner proposes that § 50.47 be amended by revising paragraph (10) to read as follows:

§ 50.47 Emergency plans.

(a) * * *

(10) A range of protective actions, including sheltering, evacuation, and prophylactic use of iodine, have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * *

The petitioner believes that if this change is adopted, the plan will become an accurate description of emergency preparedness for radiological emergencies; the recommendation of the Kemeny Commission will at last be implemented; and the United States will be in compliance with the International Basic Safety Standards.

The petitioner suggests that the NRC, either on its own or jointly with other agencies, issue a policy statement declaring that KI stockpiling is a sensible and prudent measure that is necessary to ensure that the drug will be available in the event of a major accident. The petitioner believes that this statement would clarify that KI can be used in conjunction with evacuation and sheltering to maximize protection to the public.

The petitioner also believes that the policy statement would state the willingness of the NRC to provide a stockpile of the drug to States and localities upon request, and would support the Kemeny Commission's recommendation for the creation of regional stockpiles of the drug as a backup for emergencies.

Dated at Rockville, Maryland, this 20th day of November, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–28832 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct and Other Employee Responsibilities

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its regulations governing employee standards of conduct. The proposed amendment repeals provisions that are superseded by the Office of Government Ethics (OGE) Uniform Standards of Conduct for Employees of the Executive Branch (5 CFR part 2635); amends two provisions by including participating lender status in the definition of SBA Assistance and adding the Associate General Counsel for General Law as an Assistant Standards of Conduct Counselor; and renumbers the remaining provisions with several minor technical amendments.

DATES: Comments must be received on or before December 27, 1995.

ADDRESSES: Please send comments to David R. Kohler, Regulatory Reform Team Leader (105), Suite 13, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robinson S. Nunn, Chief Counsel for Ethics, Office of the General Counsel, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 205–6867, or Martin D. Teckler, Deputy General Counsel (202) 205–6642.

SUPPLEMENTARY INFORMATION: The Small Business Administration is proposing to repeal numerous provisions of its existing standards of conduct regulations at 13 CFR Part 105 which were superseded by the Office of Government Ethics' (OGE) uniform Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635); eliminated by other regulatory authority; or determined to be inappropriate for continued inclusion in this part. SBA proposes to repeal the following sections of 13 CFR Part 105: 105.101 through 105.301; 105.401; 105.402; 105.405; 105.406 through 105.408; 105.501 through 105.505; 105.506 except paragraph (g)(1); 105.507 through 105.515; 105.518 through 105.521 and 105.901. The remaining provisions of 13 CFR Part 105 would be renumbered and renamed "Standards of Conduct and Employee Restrictions and Responsibilities."

In place of SBA's former standards at 13 CFR part 105, SBA would issue a residual cross reference provision at new 13 CFR 105.101 to refer to the uniform Standards of Conduct and financial disclosure regulations for Executive Branch employees and SBA's Supplemental Standards of Conduct regulation. Additionally, SBA would reissue, in the new 13 CFR part 105, several provisions regarding other employee responsibilities.

Section-by-Section Analysis.

Section 105.101 Cross Reference to Employee Ethical Conduct Standards and Financial Disclosure Regulations.

This section will notify SBA employees that the Standards of Ethical Conduct for Executive Branch employees are codified at 5 CFR Part 2635, the uniform financial disclosure regulation for Executive Branch employees is codified at 5 CFR Part 2634, and the Agency Supplemental Standards of Conduct are to be codified at 5 CFR Chapter XLIV.

Sec. 105.201 Definitions

This section provides definitions unique to SBA which are applicable throughout this part. Some definitions have been deleted from the former 13 CFR 105.201, as not needed for an understanding of this part. The definition of "SBA Assistance" was amended to include all participating lenders, including banks as recipients of SBA Assistance.

Sec. 105.202 Employment of Former Employee by Person Previously the Recipient of SBA Assistance

This section is the first of two sections which would provide restrictions relating to former SBA employees. Section 105.202 is based on a provision of the Small Business Act (15 U.S.C. 642) and sets forth conditions under which only a former SBA employee who occupied a position involving discretion or who exercised discretion with respect to the granting of SBA Assistance or the administration of such assistance, would be prohibited from accepting or retaining a position as employee, partner, or otherwise, with a concern which has received this specific SBA Assistance, for a period of two years following the the granting or administration of such assistance. It is anticipated that as was the case with former § 105.403, this prohibition will apply only to those SBA employees who had final discretionary authority over the making or administration of specific SBA Assistance. It would not apply to those whose responsibilities extended only to provision of advice or recommendations on the granting or administering of Assistance or performance of ministerial acts with respect to its administration. Section 105.202 was formerly located at 13 CFR 105.403.

Sec. 105.203 SBA Assistance to Person Employing Former SBA Employee

This section is based on the same provision of the Small Business Act as § 105.202. It would prohibit SBA from providing assistance to any person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor, or debtor, any individual who, within one year prior to the request for such assistance, was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor.

Additionally, this section sets forth the criteria to be used in reviewing such applications for SBA Assistance. Section 105.203 was formerly located at 13 CFR 105.404.

Sec. 105.204 Assistance to SBA Employees or Members of Their Household

This section explains that prior written approval of the Standards of Conduct Committee is required before any SBA Assistance, other than Disaster Loans, as defined in subparagraphs (1) and (2) of section 7(b) of the Small Business Act, can be provided to a person whose sole proprietor, partner, officer, director, or significant stockholder is an SBA employee or a member of his or her household. Section 105.204 was formerly located at 13 CFR 105.506(g)(1).

Sec. 105.205 Duty to Report Irregularities

This section explains the requirement that employees report acts of malfeasance or misfeasance to the Inspector General. This section was formerly located at 13 CFR § 105.516.

Sec. 105.206 Applicable Rules and Directions

This section explains the requirement that employees follow Agency rules, regulations, operating procedures, instructions and other proper directions in the performance of official functions. This section was formerly located at 13 CFR 105.517.

Sec. 105.207 Politically Motivated Activities With Respect to the Minority Small Business Program

This section sets forth prohibitions, on certain SBA employees, and remedial measures for violations of those prohibitions with regard to the programs or activities conducted pursuant to sections 8(a) and 7(j) of the

Small Business Act. This section is based on sec. 8(a)(19) of the Small Business Act (15 U.S.C. 637(a)(19)).

Paragraph (a) of § 105.207 prohibits employees, who have authority to take, direct others to take, recommend, or approve any action with respect to transactions undertaken pursuant to section 7(j) of the Small Business Act, from exercising or threatening to exercise such authority on the basis of the political activity or affiliation of any party. Furthermore, subsection (a) requires all employees to "expeditiously report" to SBA's Inspector General any such action for which the employee's participation has been solicited or directed.

Paragraph (b) asserts that the penalty for violations of this section may consist of separation from service, reduction in grade, suspension, or reprimand and shall be imposed by the Administrator.

Paragraph (c) notes that this section does not apply to any action taken as a penalty or other enforcement of a violation of any law, rules, or regulations prohibiting or restricting political activity. This section was formerly located at 13 CFR 105.522.

Sec. 105.208 Penalties

This section states that any employee found guilty of violating these regulations may be subject to disciplinary action, including dismissal or suspension from SBA employment. This provision was formerly located at 13 CFR 105.701.

Sec. 105.301 Assistance to Officers or Employees of Other Government Organizations

This section requires a prior written statement from the appropriate department or military service before any SBA Assistance may be granted to a person whose sole proprietor, general partner, officer, director, or stockholder with a 10% or more interest is an employee of another Government agency or department, having a grade of GS–13 or its equivalent or higher, in the case of civilian employees, or the rank of major or lieutenant commander, or its equivalent or higher, in the case of military personnel.

Additionally, this section provides that, except in special circumstances, approved by the Standards of Conduct Committee, SBA will not enter into a contract with a person when its principal, or member of his or her household, is an employee of a Government agency.

Finally, this section requires similar Standards of Conduct Committee approval before granting SBA Assistance, other than Disaster Loans, to persons whose principal, or member of their household, is a member of Congress, an appointed official, or an employee of the legislative or judicial branch of the Government. This provision was formerly located at 13 CFR 105.601.

Sec. 105.302 Assistance to Employees or Members of Quasi-Government Organizations

This section discusses the requirement of Standards of Conduct Committee approval for SBA Assistance to members of employees of Small Business Advisory Councils, SCORE volunteers, or members of their household. This section was formerly located at 13 CFR 105.602.

Sec. 105.401 Standards of Conduct Committee

This section sets forth the functions and responsibilities of the SBA Standards of Conduct Committee. The Committee's responsibilities include advising and giving direction in the administration of standards of conduct regulations and making decisions on specific requests for guidance from Agency management, in connection with matters related to standards of conduct.

This section also delineates the composition of the Standards of Conduct Committee: the General Counsel or Deputy General Counsel in his or her absence; the Associate Deputy Administrator for Management and Administration or the Assistant Administrator for Administration, in his or her absence; and the Director of Personnel or the Deputy Director of Personnel in his or her absence.

This provision was formerly located at 13 CFR 105.801.

Sec. 105.402 Standards of Conduct Counselors

This section designates the Deputy General Counsel as SBA Standards of Conduct Counselor and the Associate General Counsel for General Law as an Assistant Standards of Conduct Counselor, and outlines the duties and responsibilities of those positions. This provision was formerly located at 13 CFR 105.402, except that the current § 105.802 has been amended to add the Associate General Counsel as an Assistant Standards of Conduct Counselor and to delete Regional Standards of Conduct Counselors. The section also amends the standards of conduct Counselors' responsibilities for review of employees Confidential Financial Disclosure Reports (Standard Form 450) instead of the previous requirement to review Statements of Employment and Financial Interests (SBA Form 703).

Sec. 105.403 Designated Agency Ethics Official

This section designates the Deputy General Counsel as SBA's Designated Agency Ethics Official, authorizes the appointment of Alternate Ethics Officials, and outlines the duties and responsibilities for those positions. This provision was formerly located at 13 CFR 105.403, except that the current section has been amended to permit the appointment of more than one Alternate Agency Ethics Official.

Compliance With Executive Orders 12612, 12778 and 12866; the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35

SBA certifies that this proposed rule will not be considered a significant rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

For purposes of Executive Order 12612, SBA certifies that this proposed rule would not have federalism implications.

For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Paperwork Reduction Act, SBA certifies that this proposed rule, if promulgated in final, would impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 105

Conflict of interest.

For the reasons set forth above, SBA is amending Title 13 of the Code of Federal Regulations as follows:

Part 105 of Title 13, Code of Federal Regulations, is revised to read as follows:

PART 105—STANDARDS OF CONDUCT AND EMPLOYEE RESTRICTIONS AND RESPONSIBILITIES

Standards of Conduct

Sec.

105.101 Cross reference to employee ethical conduct standards and financial disclosure regulations.

Restrictions and Responsibilities Related to SBA Employees and Former Employees

105.201 Definitions.
105.202 Employment of former employee by person previously the recipient of SBA Assistance.

105.203 SBA Assistance to person employing former SBA employee.
105.204 Assistance to SBA employees or members of their household.
105.205 Duty to report irregularities.
105.206 Applicable rules and directions.
105.207 Politically motivated activities with respect to the Minority Small Business Program.
105.208 Penalties.

Restrictions on SBA Assistance to Other Individuals

105.301 Assistance to officers or employees of other Government organizations.
105.302 Assistance to employees or members of quasi-Government organizations.

Administrative Provisions

105.401 Standards of Conduct Committee.
105.402 Standards of Conduct Counselors.
105.403 Designated Agency Ethics Officials.

Authority: 5 U.S.C. 7301; 15 U.S.C. 634; 15 U.S.C. 637(a)(18) and (a)(19), 642, and 645(a).

Standards of Conduct

§ 105.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

In addition to this Part, Small Business Administration (SBA) employees should refer to the uniform Standards of Ethical Conduct for Executive Branch employees at 5 CFR Part 2635, the SBA Supplemental Standards of Ethical Conduct at 5 CFR Chapter XLIV, and the uniform Financial Disclosure regulation for Executive Branch employees at 5 CFR Part 2634.

Restrictions and Responsibilities Related to SBA Employees and Former Employees

§ 105.201 Definitions.

(a) *Employee* means an officer or employee of the SBA regardless of grade, status or place of employment, including employees on leave with pay or on leave without pay other than those on extended military leave. Unless stated otherwise. Employee shall include those within the category of Special Government Employee.

(b) *Special Government Employee* means an officer or employee of SBA, who is retained, appointed or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

(c) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(d) *Household member* means spouse and minor children of an employee, all blood relations of the employee and his any spouse who reside in the same place of abode with the employee.

(e) *SBA Assistance* means financial, contractual, grant, managerial or other aid, including size determinations, section 8(a) participation, licensing, certification, participating lender status, and other eligibility determinations made by SBA. The term also includes an express decision to compromise or defer possible litigation or other adverse action.

§ 105.202 Employment of former employee by person previously the recipient of SBA Assistance.

(a) No former employee, who occupied a position involving discretion over, or who exercised discretion with respect to, the granting or administration of SBA Assistance may occupy a position as employee, partner, agent, attorney or other representative of a concern which has received this SBA Assistance for a period of two years following the date of granting or administering such SBA Assistance if—

(1) The date of granting or administering such SBA Assistance was within the period of the employee's term of employment, or;

(2) The date of granting or administering such SBA Assistance was within one year following the termination of such employment.

(b) Failure of a recipient of SBA Assistance to comply with these provisions may result, in the discretion of SBA, in the requirement for immediate repayment of SBA financial Assistance, the immediate termination of other SBA Assistance involved or other appropriate action.

§ 105.203 SBA Assistance to person employing former SBA employee.

(a) SBA will not provide SBA Assistance to any person who has, as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, any individual who, within one year prior to the request for such SBA Assistance was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision; otherwise, his or her decision is final.

(b) In reviewing requests for approval, the Standards of Conduct Counselor will consider:

(1) The relationship of the former employee with the applicant concern;

(2) The nature of the SBA Assistance requested;

(3) The position held by the former employee with SBA and its relationship to the SBA Assistance requested; and

(4) Whether an apparent conflict of interest might exist if the SBA Assistance were granted.

§ 105.204 Assistance to SBA employees or members of their household.

Without the prior written approval of the Standards of Conduct Committee, no SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person when the sole proprietor, partner, officer, director or significant stockholder of the person is an SBA employee or a household member.

§ 105.205 Duty to report irregularities.

Every employee shall immediately report to the SBA Inspector General any acts of malfeasance or misfeasance or other irregularities, either actual or suspected, arising in connection with the performance by SBA of any of its official functions.

§ 105.206 Applicable rules and directions.

Every employee shall follow all agency rules, regulations, operating procedures, instructions and other proper directions in the performance of his official functions.

§ 105.207 Politically motivated activities with respect to the Minority Small Business Program.

(a) Any employee who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to section 8(a) or section 7(j) of the Small Business Act, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees shall expeditiously report to the SBA Inspector General any such action for which such employee's participation has been solicited or directed.

(b) Any employee who willfully and knowingly violates this section shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(c) This section shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rules, or regulation prohibiting or restricting political activity.

(d) The prohibitions of and remedial measures provided for under this section with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

§ 105.208 Penalties.

Any employee guilty of violating any of the provisions in this Part may be disciplined, including removal or suspension from SBA employment.

Restrictions on SBA Assistance to Other Individuals

§ 105.301 Assistance to employees of other Government organizations.

(a) SBA must receive a written statement of no objection by the pertinent Department or military service before it gives any SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person when its sole proprietor, partner, officer, director or stockholder with a 10 percent or more interest, or a household member, is an employee of another Government Department or Agency having a grade of at least GS–13 or its equivalent.

(b) The Standards of Conduct Committee must approve an SBA contract with an entity if a sole proprietor, general partner, officer, director, or stockholder with a 10 or more percent interest (or a household member of such individuals) is an employee of a Government Department or Agency. See also 48 CFR Subpart 3.6.

(c) The Standards of Conduct Committee must approve SBA Assistance, other than disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest (or a household member of such individual) is a member of Congress or an appointed official or employee of the legislative or judicial branch of the Government.

§ 105.302 Assistance to employees or members of quasi-Government organizations.

(a) The Standards of Conduct Committee must approve SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest (or a household member) is a member or employee of a Small Business Advisory Council or is a SCORE volunteer.

(b) In reviewing requests for approval, factors the Standards of Conduct Committee may consider include whether the granting of the SBA Assistance might result in or create the appearance of giving preferential treatment, the loss of complete independence or impartiality, or adversely affect the confidence of the public in the integrity of the Government.

Administrative Provisions

§ 105.401 Standards of Conduct Committee.

(a) The Standards of Conduct Committee will:

(1) Advise and give direction to SBA management officials in the administration of this Part and any other rules, regulations or directives dealing with conflicts of interest and ethical standards of SBA employees; and

(2) Make decisions on specific requests when its approval is required.

(b) The Standards of Conduct Committee will consist of:

(1) The General Counsel or, in his or her absence, the Deputy General Counsel or, in his or her absence, the Acting General Counsel who shall act as Chairman of the Committee;

(2) The Associate Deputy Administrator for Management and Administration, or in his or her absence, the Assistant Administrator for Administration; and

(3) The Director of Human Resources, or in his or her absence the Deputy Director of Human Resources.

§ 105.402 Standards of Conduct Counselors.

(a) The SBA Standards of Conduct Counselor is the Deputy General Counsel. The Associate General Counsel for General Law (AGC) is an Assistant Standards of Conduct Counselor, and other Assistants may be designated by the Standards of Conduct Counselor.

(b) The Standards of Conduct Counselors and Assistants:

(1) Provide general advice, assistance and guidance to employees concerning this Part and the regulations referred to in § 105.101.

(2) Monitor the Standards of Conduct Program within their assigned areas and provide required reports thereon;

(3) Review Confidential Financial Disclosure Reports as required under 5 CFR Part 2634, Subpart I and provide an annual report on compliance with filing requirements to the SBA Standards of Conduct Counselor as of February 1 of each year; and

(4) Provide Outside Employment decisions pursuant to 5 CFR § 5401.104.

(c) Each employee will be periodically informed of the name, address and telephone number of the Assistant Standards of Conduct Counselor to contact for advice and assistance.

(d) Employee requests for advice or rulings should be directed to the appropriate Standards of Conduct Counselor for appropriate action.

§ 105.403 Designated Agency Ethics Officials.

(a) The Designated Agency Ethics Officials, pursuant to the Ethics in Government Act of 1978, is the Deputy General Counsel. He or she may, in turn, appoint one or more an Alternate Designated Agency Ethics Officials. The Alternates will assist the Designated Agency Ethics Official and act for him or her whenever absent.

(b) The Designated Agency Ethics Officials and Alternates administer the program for Financial Disclosure Statements under 5 CFR 2634.201, receive and evaluate these statements, and provide advice and counsel regarding matters relating to the Ethics in Government Act of 1978 and its implementing regulations. The duties and responsibilities of the Designated Agency Ethics Officials and Alternates are set forth in more detail in 5 CFR 2638.203, which is promulgated and amended by the Office of Government Ethics.

Philip Lader,

Administrator.

[FR Doc. 95–28513 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 115

Surety Bond Guarantee

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to revise the rules governing the Surety Bond Guarantee Program. It seeks to eliminate inconsistencies, clarify procedures, accommodate program experience and industry changes, and provide for more efficient program operation. It also seeks to clarify and shorten regulations where appropriate, eliminate redundant provisions, consolidate and reorganize sections, and clarify ambiguous language.

DATES: Written comments must be submitted on or before December 27, 1995.

ADDRESSES: Comments should be sent to David R. Kohler, Regulatory Reform Initiative Team Leader (115), U.S. Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C., 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Office of Surety Guarantees; (202) 205–6540.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to all federal agencies, directing them to simplify their regulations. In response to this

directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. As a result of its review of the regulations governing the Surety Bond Guarantee Program, SBA is proposing to eliminate obsolete or redundant regulations, substantively revise others, and reorganize all of Part 115 in a more readable format.

As background, the following analysis discusses the anticipated effect of this proposed rule on SBA's current regulations.

Changes to Part 115 are being proposed which would reorganize and re-word some of the sections, and consolidate others. Sections, as well as subsections within the sections, have been reordered into a more logical sequence so that they are easier to follow. The major consolidations consist of (1) combining §§ 115.39 and 115.62 from Subparts B and C, respectively, and moving the new section to Subpart A (where provisions are applicable to both the Prior Approval and Preferred Surety Bond Programs) as new § 115.18 "Refusal to issue further guarantees" and (2) combining §§ 115.40 and 115.63 and moving the new section to Subpart A as new § 115.21 "Audits and investigations."

Substantive changes are also proposed. The most significant change is an increase in the fees paid to SBA by participating sureties and principals. This is being proposed in an attempt to make the program self-financing to overcome uncertainties and fluctuations in the funding of the program. In addition, all increases in the contract or bond amount will require the payment of additional fees by the principal and the surety, and the $40.00 threshold under which fees do not need to be paid is proposed to be eliminated. Conversely, all decreases in the contract or bond amount will require SBA to reimburse the proportionate amount of fees paid by the principal and the surety. A brief summary of the primary changes follows.

Proposed § 115.10, which sets forth definitions of terms used in this part, eliminates some current definitions, adds definitions, and changes others. "Investment Act" is added as a defined term for the Small Business Investment Act of 1958, as amended. "Amount of contract" is eliminated as a defined term and moved to § 115.12(e). "Approval or approved" is proposed to be deleted. "Contract" is clarified to mean a *written* obligation and could include an agreement to cover defective workmanship, but not defective materials, unless agreed to by SBA. "Contractor" is eliminated and replaced in the text of the regulations by "Principal," which is already defined in the current regulations. "Issuance or issued" is proposed to be deleted because the meaning is vague, and replaced with "Execution" which more clearly pinpoints the time at which a certain action is taken. In the proposed regulations, conforming changes are made throughout the text.

The definition of "Obligee" would make clear that the addition of co-obligees does not increase the liability of the surety under the bond. A new term, "Prior Approval Surety," would be added to refer to those sureties that are participants in SBA's program requiring prior SBA approval on guarantees. Two new definitions would be added for the guarantee agreements in the Prior Approval Program and the PSB Program: "Prior Approval Agreement" would be defined as the guarantee agreement (Current SBA Form 990) entered into between a Prior Approval Surety and SBA for a specific bond; "PSB Agreement" would be defined as the agreement authorizing a PSB Surety to participate in the PSB program.

Proposed § 115.11, "Applying to participate in the Surety Bond Guarantee Program," is a new section which provides general guidance about applying to the Prior Approval and PSB programs.

Proposed §§ 115.12 (c) and (d) are currently found in § 115.10(c). The latter is proposed to be rewritten into two subsections, one concerning the "Eligibility of Sureties" and the other, the "Guarantee agreement."

Proposed § 115.12(e), "Amount of Contract," is proposed to be moved from current § 115.11. This would eliminate the phrase as a defined term although the substantive provisions remain the same. Within this section, the term "issuance" is replaced with "Execution" since this substitution of terms is proposed in § 115.10.

Proposed § 115.12(f) would be a new provision which prohibits the sale or transfer of surety files or accounts. This is proposed to maintain SBA's control over the accounts in accordance with its guarantee agreement with the surety. Without this prohibition, in the event of a transfer of files or accounts, SBA might have no control over a purchaser's methods of recovery.

Proposed § 115.13(c) clarifies that a principal must certify that a bond is expressly required by the bid solicitation or the original contract.

Proposed § 115.13(e) clarifies the concept that SBA will not guarantee bonds for principals who are primarily brokers or construction managers, replacing the term "packagers."

Proposed § 115.13(g) is a new provision which reflects current practice. This provision states that SBA will not issue a guarantee on bonds where the surety, or any of its affiliates, close relatives or members of its household, owns 10% or more of the principal.

The substance of proposed § 115.14 "Loss of Principal's eligibility for future assistance," is derived from current § 115.34, but is re-worded, and several other instances whereby a principal will be ineligible for guaranteed bonds are added. It is relocated to Subpart A so that it will apply to both the Prior Approval and the PSB Surety Bond Guarantee Programs.

Proposed § 115.15(a), currently § 115.32(a), specifies the underwriting standards to be adhered to by sureties rather than requiring sureties to consult the SOP as the current regulation does.

Proposed § 115.15(b), currently § 115.32(b) concerning servicing, imposes a new requirement that sureties monitor the progress of principals on bonded contracts guaranteed by SBA to insure that additional guarantees are not issued if there are problems with the work on hand.

Proposed § 115.16, "Calculation of Loss," is a new section bringing together all provisions dealing with loss amount. "Loss after excess contract amount" is eliminated as a defined term and the substantive provisions moved to new §§ 115.31(d) and 115.61. "Loss adjustment expense," "Loss from litigation cost" and "Loss from attorneys' fees and damages" are restructured into two paragraphs setting forth the expenses included in the calculation of loss and those that are not. The new paragraphs specify that allowable expenses must be itemized and documented and must be attributable solely to the loss under the guaranteed bond. In addition, overhead and mark-up on expenses are explicitly excluded.

Proposed § 115.17(a), currently § 115.37(a), is rewritten and relocated to Subpart A to apply to both the Prior Approval and Preferred Programs. There are also some new provisions. One prohibits sureties from separately collateralizing the non-guaranteed portion of the bond. Without this provision, a surety would have no incentive to pursue recovery since it might be able to recoup 100% of its losses from SBA and the collateral securing the unguaranteed portion. Sureties would also be prohibited from entering into an agreement by which they indemnify a principal since such an agreement would create a conflict of interest; nor could an indemnity agreement be obtained from an agent or other representative of the surety.

Proposed § 115.17(b), currently § 115.37(c), makes clear that SBA is entitled to its guaranteed share of all salvage and recovery related to the guaranteed bond or any other bond provided by the surety on behalf of the principal.

Proposed § 115.18, "Refusal to issue further guarantees," would be a consolidation of current §§ 115.39 and 115.62. In addition, the provisions in current §§ 115.39(a) and 115.62(a) that a surety may file a petition for review of certain agency actions is proposed to be modified to provide that only suspensions and terminations of surety bond guarantee participants are reviewable by the SBA Office of Hearings and Appeals.

Grounds on which SBA may deny liability are scattered throughout the current regulations. Proposed § 115.19, "Denial of liability," consolidates these provisions (currently found at §§ 115.10(g), 115.13, 115.31(c)(2) and 115.64(b)), and some new ones are added. Proposed § 115.19(a), "Excess Contract or bond amount," adds, as a new reason for denial of liability, the circumstance where the bond amount exceeds the contract amount.

Current §§ 115.13 (d) and (e)(2) provide that regulatory violations or alterations to a bond or contract by a surety which cause an increase in the bond liability by more than 25% or $50,000 in the aggregate, whichever is less, are grounds on which SBA may deny liability under its guarantee. Proposed §§ 115.19 (d) and (e)(2) would provide that such actions which cause an increase in bond liability of *at least* 25% or $50,000 are grounds for denying liability. Also proposed § 115.19(e)(2) provides that the sanction applies when the increase occurs *at one time* rather than in the aggregate.

Current § 115.13(c) provides that material breaches which cause an increase in the bond liability in the stated amount are grounds for denial. Proposed §§ 115.19 (c), (d) and (e) would change current §§ 115.13 (c), (d) and (e) by adding, as grounds for denial, enumerated actions which cause an increase in the *contract* amount of at least 25% or $50,000.

Proposed § 115.19(e) rewords current § 115.13(e) and allows SBA to deny liability if the surety acquiesces to a material change in the *contract*, in addition to such changes in the bond, as currently provided. Proposed § 115.19(e)(2) makes clear that this applies only to Prior Approval sureties since PSB sureties do not need SBA's approval to make alterations causing increases in the bond liability or contract amount.

Proposed §§ 115.19 (f) and (g) are moved from current §§ 115.10(g) and 115.31(c)(2), respectively. Proposed § 115.19(f) also allows SBA to deny liability if the bond was executed prior to the date of SBA's guarantee. The term "Executed" is used in place of "issuance" to conform to the changes made in proposed § 115.10 "Definitions."

Proposed § 115.19(h) sets forth "other regulatory violations" as a basis for SBA to deny liability. These provisions are moved from current § 115.64(b) and made applicable to both the Prior Approval and PSB programs.

Proposed § 115.20, "Insolvency of Surety," expands on the provision currently in § 115.10(a) concerning insolvent sureties. The proposed section would provide that in the event of a surety's insolvency, any rights or benefits conferred on a surety under a valid Surety Bond Guarantee Agreement (either Prior Approval or PSB) would accrue only to the trustee or receiver of the surety and to no other party. This provision is currently stated on SBA Form 990. The proposed section would also add a new requirement that the trustee or receiver submit quarterly status reports to SBA concerning funds received and settlements under consideration. This is necessary in order to properly monitor claims and recovery situations handled by persons other than the surety.

Proposed § 115.21 is a consolidation of current §§ 115.40 and 115.63, both titled "Audits and investigations." This section is placed in Subpart A since it is applicable to both Surety Bond Guarantee Programs. In addition, the provisions in current §§ 115.40(a) and 115.63(a) that a surety may file a petition for review of certain agency actions is proposed to be modified and moved into proposed § 115.18. It would provide that only suspensions and terminations of PSB sureties are reviewable by the SBA's Office of Hearings and Appeals.

Current § 115.30(b), "Application for guarantee," is proposed to be deleted from the regulations and issued as internal guidance. In addition, a change would be made to require that an approved form (Current Form 1624—Lower Tier Certification form regarding debarment, etc.) be submitted for a principal with each application for a bond guarantee, not just the initial application. This change is being made to reflect the current practice and to be consistent with Part 146 of this Title (governing lobbying activities) which mandates the submission of information relative to any proposal submitted in connection with a lower tier covered transaction.

Current § 115.30(c), which provides information on the different guarantee percentages provided by SBA under the Prior Approval program, would be moved to its own section—proposed § 115.31. Section 115.31(a)(2), which would provide for a 90% guarantee for concerns owned and controlled by disadvantaged individuals, refers the reader to Part 124 of SBA regulations for information on social and economic disadvantage.

Proposed § 115.30(d) (currently §§ 115.31(c) and 115.36(f)) consolidates the time deadlines and information to be submitted to SBA when a final bond has been issued under the Prior Approval program, including bonds issued under a bonding line. The Prior Approval Agreement (SBA Form 990) would be required, rather than the Surety Bond Guarantee Review Update (Form 994C), which is currently suggested to be used when final bonds are issued under a bonding line. Because Form 990 asks for the amount of the premium being charged, and Form 994C does not, SBA can use the Form 990 for information it needs to determine the fee to be charged to the surety. This change would formalize current practice. In the case of final bonds issued other than under a bonding line, the deadline for submission of the forms would be changed from 45 days from award of the contract or issuance of the bond, to 45 days from execution of the bond. Forms for bonds issued under a bonding line would be required to be submitted within 15 days of execution. This is a technical correction to current § 115.31(c) which provides for a 45 day deadline. (The current provision is contrary to current § 115.36(f), which provides 15 days for submission to SBA of final bonds issued under a bonding line).

Proposed § 115.31(b), currently § 115.30(c)(2), clarifies that the 80% guarantee applies to contracts, not bonds, of more than $100,000.

The definition of "Loss after excess contract amount" which is currently under § 115.11, is proposed to be moved to § 115.31(d) and renamed "Contract increase to over $1,250,000."

Proposed § 115.31(e), "Contract decrease to $100,000 or less," would be a new subsection that provides for an increase in SBA's guarantee percentage if the surety demonstrates that the contract amount has decreased to $100,000 or less.

Most of the provisions found at current § 115.33 are proposed to be deleted since the concepts are covered under proposed § 115.15, "Underwriting and servicing standards." The prohibition against guaranteeing forfeiture bonds is proposed to be incorporated within the definition of "Bid Bond."

Proposed § 115.32(b), current § 115.35(b), has several changes. First, the fee charged to principals would be raised from $6.00 to $8.00 per thousand dollars of the contract amount. Because of uncertainties and fluctuations in SBA's budget, an attempt is being made to make this program self-financing. Another change involves the rounding of the principal's guarantee fee. Currently the contract amount is rounded and the fee calculated from that figure. SBA proposes to calculate the fee and then round that figure to the nearest dollar. This will eliminate cents in the fee and simplify the accounting process.

Proposed § 115.32(c), currently § 115.35(c)(1), would likewise raise the surety fee from 20% to 25% of the bond premium. In addition, § 115.32(d) would revise the notification requirement concerning increases and decreases in the contract or bond amount. The surety would be required to notify SBA of every increase or decrease, and each increase would require payment of additional fees, unlike the current requirement which mandates payment of increased fees only when the increases reach a certain threshold. When the original contract or bond amount increases at one time by more than 25% or $50,000, whichever is less, the prior written approval of the authorized SBA officer would be required on a supplemental Form 990. Approval would be conditioned on the surety's payment of the additional principal's fee. Whether there is an increase or decrease, the proposed rules eliminate the current $40.00 threshold before payment is required or reimbursed. The threshold is proposed to be eliminated for administrative convenience.

Current § 115.36(c) is proposed to be moved from the regulations as not needed and issued in internal guidance.

Proposed § 115.33(d)(1) is new. It would require sureties to submit a "Surety Bond Guarantee Underwriting Review" (Current Form 994B) to SBA for approval within 15 business days after execution of a bid bond under a bonding line. If this deadline is not met, this section provides that SBA's guarantee is void from its inception unless SBA determines otherwise upon a showing that a valid reason exists for the delay.

Proposed § 115.33(d)(2), which sets forth a 15 day deadline for submission of what is now Form 994B (or 994C if 994B is already on file) on final bonds, is moved from current § 115.36(f).

Proposed § 115.33(e), "Cancellation," is moved from current § 115.36(h) and clarifies that the surety is required to notify SBA of any adverse information concerning a principal. Upon receipt, SBA may cancel the principal's bonding line.

Proposed § 115.34(a), "Imminent Breach," would provide that the aggregate of payments made by SBA to a surety to avoid imminent breach cannot exceed 10% of the contract price. This would be a change from current § 115.37(b)(1) which provides that no payment by SBA to avoid imminent breach will exceed 10%. The current provision that the Administrator can approve payments exceeding 10%, and that in no event will SBA pay an amount exceeding its guaranteed share of the bond penalty, is likewise changed to reflect that amounts will be aggregated in determining when the Administrator's approval is needed and when SBA's guaranteed share of the bond penalty will be exceeded.

Proposed § 115.34(b), "Salvage and recovery," (currently § 115.37(c)) adds a new requirement. If a surety recommends settlement to SBA or recommends that pursuit of salvage or recovery be discontinued, the surety would have to certify that pursuing recovery is neither economically feasible nor a viable strategy in maximizing recovery.

Proposed § 115.35 "Claims for Losses," is based on current §§ 115.38 and 115.34, but also adds some new provisions. First, there is a requirement that the surety notify SBA within 30 days of acquiring knowledge of specified adverse circumstances concerning a principal. Another subsection requires the surety to take action to mitigate losses and expenses due to such adverse circumstances and to handle claims and suits arising from a defaulted bond. The requirement that the surety submit semiannual status reports on claims is retained, but a requirement that SBA also be notified immediately of any substantial changes, is added. Lastly, proposed § 115.35(e) provides that payment by SBA on a claim submitted by a surety does not waive or invalidate the terms of the Prior Approval Agreement or any defenses SBA may have. In addition, if SBA determines that it should not have paid any portion of a claim, the surety must reimburse SBA that amount within 30 days of being so notified.

Proposed § 115.36, "Indemnity settlements and reinstatement of Principal," has two subsections taken from current § 115.34 concerning conditions for reinstatement of a principal that has become ineligible for further bond guarantees, and guidance on underwriting for a principal after reinstatement. It also has a new section on indemnity settlements, requiring a Prior Approval surety to provide SBA with certain documents relevant to making a determination on a settlement proposal. The surety would also have to obtain SBA's concurrence before agreeing to a settlement. This section retains the provision in current § 115.38 that the surety must pay SBA its *pro rata* share of the settlement amount within 90 days of receipt. A new provision is proposed which would require the surety to certify that SBA has received its share of all indemnity recovery before closing the file.

Current § 115.39, "Refusal to Issue further guarantees," is proposed to be combined with § 115.62, "Qualifications of surety," and moved to Subpart A and renumbered § 115.18.

Current § 115.40, "Audits and investigations," is proposed to be combined with § 115.63, and moved to Subpart A and renumbered § 115.21.

The information on applying to be a PSB surety currently found at § 115.60(a) is proposed to be moved to new §115.11 which sets forth information on applying to either the Prior Approval or PSB program.

Proposed §§ 115.60 (a), (c) and (d) set forth under Subpart C the provisions stated at current §§ 115.10 (d), (e) and (f) regarding the selection of sureties for the PSB program, duration of the program and prohibition of PSB sureties against participating in the Prior Approval program. This also serves to consolidate certain information concerning the preferred program found currently in Subpart A. The sunset provision at proposed § 115.60(c) has been changed to September 30, 1997, which is when the PSB program is currently set to expire unless extended by Congress.

Proposed § 115.60(e), "Allotment of guarantee authority," is moved from current § 115.60(b). The proposed subsection clarifies that where a bid bond is executed by the PSB surety and (1) the contract is awarded for an amount other than the bid amount, (2) the bid is withdrawn or (3) the bond has expired, the allotment will be debited or credited accordingly. Where the surety did not execute a related bid bond, a new provision provides that the guarantee percentage of the penal sum of a guaranteed final bond will count against the allotment.

Proposed § 115.60(f), "Timeliness," is new, and provides that a PSB surety may not execute a bond after commencement of work under a contract unless the surety receives the written approval of the Associate Administrator for Surety Guarantees.

Proposed § 115.60(g)(1), currently § 115.60(c)(1), concerning the retention of certifications and records for inspection by SBA, has a new provision requiring such documents to be retained for the term of the bond, plus time required to settle claims and an additional three years thereafter. This requirement corresponds with the current document retention requirement for purposes of SBA-conducted audits. (See current §§ 115.40(b) and 115.63(b), and proposed § 115.19(b)). The proposed section also provides that documentation must be retained until any unresolved audit findings are resolved.

Proposed § 115.60(g)(4), currently § 115.60(c)(3), would raise the PSB surety's fee and principal's guarantee fee to 25% of the premium and $8.00 per thousand dollars of the contract amount, respectively. As with the Prior Approval program, these fee increases are being recommended in an attempt to make the program self-financing.

The proposed rules at § 115.60(g)(5)(i) would eliminate the provision at current § 115.60(c)(6)(i) which requires payment of additional fees only when aggregate increases of the bond liability exceed 25% or $50,000, whichever is less. Instead, additional fees will be required to be paid on any amount of increase. Correspondingly, under proposed § 115.60(g)(5)(ii), any amount of decrease in fees will be reimbursed by SBA. These sections also make clear that the provisions apply to increases in either the contract or bond amount.

Whether there is an increase or decrease in the fees, the proposed rules eliminate the current $40.00 threshold (see current §§ 115.60(c)(6)(i) and (6)(ii)) before payment is required or reimbursed. The threshold is proposed to be eliminated for administrative convenience.

The substance of proposed § 115.61 is moved from current § 115.64(a), "Percentage of indemnification," given its own section number and renamed "Guarantee percentage."

Current § 115.62 is proposed to be consolidated with current § 115.39, moved to Subpart A and renumbered as § 115.18.

Proposed § 115.62, "Imminent Breach," is moved from current § 115.61(b) and given its own section number. A provision would be added limiting SBA's aggregate payments to PSB sureties to avoid imminent breach to 10% of the contract price. Also added is a provision that the Administrator could approve payments exceeding the 10% ceiling, and that in no event would SBA reimburse imminent breach payments in an aggregate amount exceeding its guaranteed share of the bond penalty. These are added to conform to the limitations set by statute. The current provision that SBA's guaranteed share of the aggregate of imminent breach payments and of indemnification against loss is limited to SBA's guaranteed share of the bond penalty, is proposed to be deleted. This provision is unnecessary in light of the restrictions on imminent breach payments discussed above.

Current § 115.63 is proposed to be consolidated with current § 115.40, moved to Subpart A and renumbered as § 115.21 "Audits and investigations."

Proposed § 115.63, "Claims for Losses," would have two new subsections, taken from the Prior Approval program. Subsection (b) directs the surety to take the necessary steps for mitigation of losses and expenses and to take charge of claims and suits arising from defaulted bonds, both in a manner consistent with the surety's practices on non-guaranteed bonds. This is consistent with current practice. Subsection (c) provides that payment by SBA on a claim submitted by a surety does not waive or invalidate the terms of the PSB Agreement or any defenses SBA may have. This subsection also provides that if SBA determines that it should not have paid any portion of a claim, the surety must reimburse SBA that amount within 30 days of being so notified.

Proposed § 115.64, "Denial of liability," would be moved from current § 115.64(b) and given its own section number. Redundant provisions would be deleted.

Compliance With Executive Orders 12778, 12612 and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA certifies that this proposed rule, if adopted, would not constitute a significant regulatory action for purposes of Executive Order 12866, since it is not likely to result in an annual effect on the economy of $100 million or more.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 604, SBA has determined that these rules would *not* have a significant impact on a substantial number of small entities. Although fee increases are proposed, it is SBA's opinion that the increases would not have a significant impact on either the principals or the sureties. The fees paid by principals (small business contractors requiring guaranteed bonds) would increase from $6.00 to $8.00 per thousand dollars of the contract to be bonded. Under this increase, an average contract of $161,251 would impose a fee of $1290 rather than $968, a $322 increase. A surety company typically charges a contractor a bond premium of 2.15% of the bond amount. SBA currently charges the surety 20% of the premium for SBA's guarantee. It is proposed that this fee be raised to 25%. On an average final bond, SBA's charge to the surety would increase from $694 to $867, a $173 increase.

There are no reporting, recordkeeping and other compliance requirements not approved by the Office of Management and Budget which would come under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of Executive Order 12778.

SBA certifies that these rules do not warrant the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 115

Small business, Surety bonds.

For the above reasons, SBA proposes to revise Part 115, Title 13 of the Code of Federal Regulations, as follows:

PART 115—SURETY BOND GUARANTEE

115.1 Overview of regulations.
115.2 Savings clause.

Subpart A—Provisions For All Surety Bond Guarantees

115.10 Definitions.
115.11 Applying to participate in the Surety Bond Guarantee Program.
115.12 Program Provisions.
115.13 Eligibility of Principal.
115.14 Loss of Principal's eligibility for future assistance.
115.15 Underwriting and servicing standards.
115.16 Determination of Loss.
115.17 Minimization of Surety's Loss.
115.18 Refusal to issue further guarantees; suspension and termination of PSB status.
115.19 Denial of liability.
115.20 Insolvency of Surety.
115.21 Audits and investigations.

Subpart B—Guarantees Subject to Prior Approval

115.30 Submission of Surety's guarantee application.
115.31 Guarantee percentage.

115.32 Fees and Premiums.
115.33 Surety bonding line.
115.34 Minimization of Surety's Loss.
115.35 Claims for reimbursement of Losses.
115.36 Indemnity settlements and reinstatement of Principal.

Subpart C—Preferred Surety Bond (PSB) Guarantees

115.60 Procedures for PSB Program.
115.61 Guarantee percentage.
115.62 Imminent Breach.
115.63 Claims for reimbursement of Losses.
115.64 Denial of liability.

Authority: Title IV, Part B, and sections 310(a) and 311, of the Small Business Investment Act of 1958, as amended (15 U.S.C. 687b and c, 694a, 694b), the Inspector General Act of 1978 (5 U.S.C. app. 3), Pub. L. 100–590, Title II, and Pub. L. 101–574, Sec. 216.

§ 115.1 Overview of regulations.

The regulations in this part cover the SBA's Surety Bond Guarantee Programs under Part B of Title IV of the Small Business Investment Act of 1958, as amended (the Investment Act). Subpart A contains regulations common to both the program requiring prior SBA approval of each bond guarantee (the Prior Approval Program) and the program not requiring prior approval (the PSB Program). Subpart B contains the regulations applicable only to the Prior Approval Program. Subpart C contains the regulations applicable only to the PSB Program.

§ 115.2 Savings clause.

Transactions affected by this Part 115 are governed by the regulations in effect at the time they occur.

Subpart A—Provisions for all Surety Bond Guarantees

§ 115.10 Definitions.

AA/SG means SBA's Associate Administrator for Surety Guarantees.

Affiliate is defined in part 121.

Ancillary Bond means a bond incidental and essential to the performance of a Contract for which there is a guaranteed Final Bond.

Bid Bond means a bond conditioned upon the bidder on a Contract entering into the Contract, and furnishing the required Payment and Performance Bonds. The term does not include a forfeiture bond unless it is issued for a jurisdiction where statute or settled decisional law requires forfeiture bonds for public works.

Contract means a written obligation of the Principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment, or construction. The term does not include a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee (e.g., a contract requiring any payment by the Principal to the Obligee), warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond). It can include an agreement of 2 years or less solely to cover defective workmanship. It can also include an agreement to cover defective workmanship which is ancillary to another Contract described in this paragraph if it must be performed by the same Principal, is customarily required in the relevant trade or industry, and SBA's written approval has been obtained.

Execution means signing by a representative or agent of the Surety with the authority and power to bind the Surety.

Final Bond means a Performance Bond or a Payment Bond.

Imminent Breach means a threat to the successful completion of a bonded Contract which, unless remedied by the Surety, makes a default under the bond appear to be inevitable.

Investment Act means the Small Business Investment Act of 1958, as amended.

Loss has the meaning set forth in § 115.16.

Obligee means:

(1)(i) In the case of a Bid Bond, the Person requesting bids for the performance of a Contract; or

(ii) In the case of a Final Bond, the Person who has contracted with a Principal for the completion of the Contract and to whom the primary obligation of the Surety runs in the event of a breach by the Principal.

(2) In either case, no Person (other than a Federal department or agency) may be named co-Obligee or Obligee on a bond or on a rider to the bond unless that Person is bound by the Contract to the Principal (or to the Surety, if the Surety has arranged completion of the Contract) to the same extent as the original Obligee. In no event may the addition of one or more co-Obligees increase the aggregate liability of the Surety under the bond.

OSG means SBA's Office of Surety Guarantees.

Payment Bond means a bond which is conditioned upon the payment by the Principal of money to persons who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies for use in the performance of the Contract.

Performance Bond means a bond conditioned upon the completion by the Principal of a Contract in accordance with its terms.

Person means a natural person or a legal entity.

Premium means the amount charged by a Surety to issue bonds. The Premium is determined by applying an approved rate (see §§ 115.32(a) and 115.60(a)) to the bond or contract amount. The Premium does not include surcharges for extra services, whether or not considered part of the "premium" under local law.

Principal means, in the case of a Bid Bond, the Person bidding for the award of a Contract. In the case of Final Bonds and Ancillary Bonds, Principal means the Person primarily liable to complete the Contract, or to make Contract-related payments to other persons, and is the Person whose performance or payment is bonded by the Surety. A Principal may be a prime contractor or a subcontractor.

Prior Approval Agreement means the Surety Bond Guarantee Agreement (SBA Form 990) entered into between a Prior Approval Surety and SBA under which SBA agrees to guarantee a specific bond.

Prior Approval Surety means a Surety which must obtain SBA's prior approval on each guarantee and which has entered into one or more Prior Approval Agreements with SBA.

PSB Agreement means the Preferred Surety Bond Guarantee Agreement entered into between a PSB Surety and SBA.

PSB Surety means a Surety that has been admitted to the Preferred Surety Bond (PSB) Program.

Surety means a company which

(1)(i) Under the terms of a *Bid Bond*, agrees to pay a sum of money to the Obligee if the Principal breaches the conditions of the bond;

(ii) Under the terms of a *Performance Bond*, agrees to pay a sum of money or to incur the cost of fulfilling the terms of a Contract if the Principal breaches the conditions of the Contract; and

(iii) Under the terms of a *Payment* or an *Ancillary Bond*, agrees to make payment to all who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies in the performance of the Contract.

(2) The term Surety includes an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of the Surety.

§ 115.11 Applying to participate in the Surety Bond Guarantee Program.

Sureties interested in participating as Prior Approval Sureties or PSB Sureties should apply in writing to the AA/SG at 409 3rd Street, SW, Washington, DC 20416. OSG will determine the eligibility of the applicant considering its standards and procedures for underwriting, administration, claims recovery, and whether it is a corporation listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts.

§ 115.12 Program provisions.

(a) *Description of Surety Bond Guarantee Programs.* SBA guarantees Sureties participating in the Surety Bond Guarantee Programs against a portion of their Losses incurred and paid as a result of a Principal's breach of the terms of a Bid, Payment, Performance or Ancillary Bond, on any eligible Contract. A Contract must not prohibit a Surety from performing the Contract upon default of the Principal. In the Prior Approval Program, the Surety must obtain SBA's approval before a guaranteed bond can be issued. In the PSB Program, selected Sureties may issue, monitor, and service SBA guaranteed bonds without further SBA approval.

(b) *Eligibility of bonds.* Bid, Performance, and Payment Bonds (other than bonds in the nature of a financial guarantee) are eligible for an SBA guarantee if they are executed in connection with a Contract and are of a type listed in the "Contract Bonds" section of the current Rating Manual of the Surety Association of America (100 Wood Avenue South, Iselin, New Jersey 08830). Ancillary Bonds may also be eligible for SBA's guarantee. A Payment Bond cannot be issued unless a Performance Bond is issued at the same time. A Performance Bond must not prohibit a Surety from performing the Contract upon default of the Principal.

(c) *Expiration of Bid Bond Guarantee.* A Bid Bond guarantee expires 120 days after Execution of the Bid Bond, unless the Surety notifies SBA in writing before the 120th day that a later expiration date is required. The notification must include the new expiration date.

(d) *Guarantee agreement.* The terms and conditions of SBA's bond guarantee agreements, including the guarantee percentage, may vary from Surety to Surety, depending on past experience with SBA. If the guarantee percentage is not fixed by the Act, it is determined by OSG after considering, among other things, the rating or ranking assigned to the Surety by recognized authority, and the Surety's Loss rate, average Contract amount, average bond penalty per guaranteed bond, and ratio of Bid Bonds to Final Bonds, all in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program (Prior Approval or PSB) to a comparable degree. Any guarantee agreement under this part is made exclusively for the benefit of SBA and the Surety, and does not confer any rights (such as a right of action against SBA) or benefits on any other party.

(e) *Amount of Contract.* (1) *Statutory ceiling.* The amount of the Contract to be bonded must not exceed $1,250,000 in face value at the time of the bond's Execution.

(2) *Aggregation of Contract amounts.* The amounts of two or more Contracts for a "single project" are aggregated to determine the Contract amount unless the Contracts are to be performed in phases and the prior bond is released before the beginning of each succeeding phase. A bond may be considered released even if the warranty period it is covering has not yet expired. For purposes of this paragraph, a "single project" means one represented by two or more Contracts of one Principal or its Affiliates with one Obligee or its Affiliates for performance at the same locality, irrespective of job title or nature of the work to be performed.

(3) *Service and supply contracts.* A service or supply Contract covering more than a 1 year period is eligible if the annual Contract amount and the penal sum of the bond do not exceed $1,250,000 at any time.

(f) *Transfers or sales by Surety.* Sureties must not sell or otherwise transfer their files or accounts, whether before or after a default by the Principal has occurred. A violation of this provision is grounds for termination from participation in the program.

§ 115.13 Eligibility of Principal.

In order to be eligible for a bond guaranteed by SBA, the Principal must comply with the following requirements:

(a) *Size.* Together with its Affiliates, it must qualify as a small business under part 121 of this title.

(b) *Character.* It must possess good character and reputation. A Principal meets this standard if each owner of 20% or more of its equity, and each of its officers, directors, or general partners possesses good character and reputation. Good character and reputation is presumed absent when:

(1) Any such Person is under indictment for, or has been convicted of a felony, or a final civil judgment has been entered stating that such Person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships; or

(2) A regulatory authority has revoked, canceled, or suspended a license of such Person which is necessary to perform the Contract; or

(3) Any such Person has obtained a bond guarantee by fraud or material misrepresentation (as described in § 115.18(b)), or has failed to keep the Surety informed of unbonded contracts or of a contract bonded by another Surety as required by a bonding line commitment under § 115.33.

(c) *Need for bond.* It must certify that a bond is expressly required by the bid solicitation or the original Contract in order to bid on the Contract or to serve as a prime contractor or subcontractor.

(d) *Availability of bond.* It must certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance.

(e) *Partial subcontract.* It must certify the percentage of work under the Contract to be subcontracted. SBA will not guarantee bonds for Principals who are primarily brokers or construction managers.

(f) *Debarment.* It must certify that the Principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any Federal department or agency, under governmentwide debarment and suspension rules.

(g) *Conflict of interest.* Neither the Surety, nor an Affiliate of the Surety, or a close relative or member of the household of the Surety or Affiliate can own, directly or indirectly, 10% or more of the Principal. This prohibition also applies to ownership interests in any of the Principal's Affiliates. Where such ownership equals or exceeds 10%, SBA will not issue a guarantee.

§ 115.14 Loss of Principal's eligibility for future assistance.

(a) *Ineligibility.* A Principal and its Affiliates lose eligibility for further SBA bond guarantees if any of the following occurs:

(1) Legal action under the guaranteed bond has been initiated.

(2) The Obligee has declared the Principal to be in default under the Contract.

(3) The Surety has established a claim reserve for the bond in excess of $100.

(4) The Surety has requested reimbursement for Losses incurred under the bond.

(5) The guarantee fee has not been paid by the Principal.

(6) The Principal has committed fraud or material misrepresentation in obtaining a guaranteed bond.

(b) *Reinstatement.* Prior Approval Sureties should refer to § 115.36(b) for provisions on reinstatement of the Principal's eligibility.

§ 115.15 Underwriting and servicing standards.

(a) *Underwriting.* Sureties must evaluate the credit, capacity, and character of a Principal using standards generally accepted by the surety industry and in accordance with SBA's principles and practices and the Surety's principles and practices on unguaranteed bonds. There must be a reasonable expectation that the Principal will successfully perform the Contract to be bonded. The terms and conditions of the bond and the Contract must be reasonable in light of the risks involved and the extent of the Surety's participation. The Principal must satisfy the eligibility requirements set forth in § 115.13. The bond must satisfy the eligibility requirements set forth in § 115.12(b). The Surety and SBA must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the Contract. The Contract should be the same in type and size as those contracts previously completed by the Principal. Contracts for those who have not previously had SBA guaranteed bonds should not exceed 150% of that Principal's largest successfully completed contract. The work to be performed should be within the Principal's normal geographical area of operations and area of expertise.

(b) *Servicing.* The Surety must ensure that the Principal remains viable and eligible for SBA's Surety Bond Guarantee Program, must monitor the Principal's progress on bonded Contracts guaranteed by SBA, and must obtain job status reports from Obligees of Final Bonds guaranteed by SBA.

§ 115.16 Determination of Loss.

(a) *Loss under Bid Bond* is the lesser of the penal sum or the amount which is the difference between the bonded bid and the next higher responsive bid. In either case, the Loss is reduced by any amounts recovered by reason of the Principal's defenses against the Obligee's demand for performance by the Principal and any sums recovered from indemnitors and other salvage.

(b) *Loss under Payment Bond* is, at the Surety's option, the sum necessary to pay all just and timely claims against the Principal for the value of labor, materials, equipment and supplies furnished for use in the performance of the bonded Contract and other covered debts, or the penal sum of the Payment Bond. In either case, the Loss includes interest (if any), but Loss is reduced by any amounts recovered (through offset or otherwise) by reason of the Principal's claims against laborers, materialmen, subcontractors, suppliers, or other rightful claimants, and by any amounts recovered from indemnitors and other salvage.

(c) *Loss under Performance Bond* is, at the Surety's option, the sum necessary to meet the cost of fulfilling the terms of a bonded Contract or the penal sum of the bond. In either case, the Loss includes interest (if any), but Loss is reduced by any amounts recovered (through offset or otherwise) by reason of the Principal's defenses or causes of action against the Obligee, and by any amounts recovered from indemnitors and other salvage.

(d) *Loss under Ancillary Bond* is the amount covered by such bond which is attributable to the Contract for which guaranteed Payment or Performance Bonds were Executed.

(e) *Loss includes* the following expenses if they are itemized, documented and attributable solely to the Loss under the guaranteed bond:

(1) Amounts actually paid by the Surety which are specifically allocable to the investigation, adjustment, negotiation, compromise, settlement of, or resistance to a claim for Loss resulting from the breach of the terms of the bonded Contract. Any cost allocation method must be reasonable and must comply with generally accepted accounting principles; and

(2) Amounts actually paid by the Surety for court costs and reasonable attorney's fees incurred to mitigate any Loss under paragraphs (a) through (e)(1) of this section including suits to obtain sums due from Obligees, indemnitors, Principals and others.

(f) *Loss does not include* the following expenses:

(1) Any unallocated expenses, or any mark-up on expenses or any overhead of the Surety, its attorney, or any other party;

(2) Expenses paid for any suits, cross-claims, or counterclaims filed against the United States of America or any of its agencies, officers, or employees unless the Surety has received, prior to filing such suit or claim, written concurrence from SBA that such suit may be filed;

(3) Attorney's fees and court costs incurred by the Surety in a suit by or against SBA or its Administrator; and

(4) Fees, costs, or other payments, including tort damages, arising from a successful tort suit or claim by a Principal or any other Person against the Surety.

§ 115.17 Minimization of Surety's Loss.

(a) *Indemnity agreements and collateral.* (1) *Requirements.* The Surety must take all reasonable action to minimize risk of Loss including, but not limited to, obtaining from each Principal a written indemnity agreement which covers actual Losses under the Contract and Imminent Breach payments under § 115.34(a) or § 115.62. The indemnity agreement must be secured by such collateral as the Surety or SBA finds appropriate. Indemnity agreements from other Persons, secured or unsecured, may also be required by the Surety or SBA.

(2) *Prohibitions.* No indemnity agreement may be obtained from the Surety, its agent or any other representative of the Surety. The Surety must not separately collateralize the portion of its bond which is not guaranteed by SBA.

(b) *Salvage and recovery.* (1) *General.* The Surety must pursue all possible sources of salvage and recovery. Salvage and recovery includes all payments made in settlement of the Surety's claim, even though the Surety has incurred other losses as a result of that Principal which are not reimbursable by SBA.

(2) *SBA's share.* SBA is entitled to its guaranteed percentage of all salvage and recovery from a defaulted Principal, its guarantors and indemnitors, and any other party, received by the Surety in connection with the guaranteed bond or any other bond issued by the Surety on behalf of the Principal. The Surety must reimburse or credit SBA (in the same proportion as SBA's share of Loss) within 90 days of receipt of any recovery by the Surety.

(3) *Multiple Sureties.* In any dispute between two or more Sureties concerning recovery under SBA guaranteed bonds, the dispute must first be brought to the attention of OSG for an attempt at mediation and settlement.

§ 115.18 Refusal to issue further guarantees; suspension and termination of PSB status.

(a) *Improper surety bond guarantee practices.* (1) SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety, by written notice stating all reasons for such decision and the effective date. Reasons for such a decision include, but are not limited to, a determination that the Surety (in its underwriting, its efforts to minimize Loss, its claims or recovery practices, or its documentation related to SBA guaranteed bonds) has failed to adhere to prudent standards or practices, including any standards or practices required by SBA, as compared to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree. Acts of wrongdoing such as fraud, material misrepresentation, breach of the Prior Approval or PSB Agreement, or regulatory violations (as defined in §§ 115.19(d) and 115.19(h)) also constitute sufficient grounds for refusal to issue further guarantees, or in the case of a PSB Surety, termination of preferred status.

(2) The failure of a Surety to consent to SBA's audit or to maintain and produce records constitutes grounds for SBA to refuse to issue further guarantees for a Prior Approval Surety, to suspend a PSB Surety from participation, and to refuse to honor claims submitted by a Prior Approval or PSB Surety until the Surety consents to the audit.

(3) SBA may also require the renegotiation of the guarantee percentage and/or SBA's charge to the Surety if a Surety experiences excessive Losses on SBA guaranteed bonds relative to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(b) *Lack of business integrity.* A Surety's participation in the Surety Bond Guarantee Programs may be denied, suspended, or terminated upon the occurrence of any event in paragraphs (b) (1) through (5) of this section involving any of the following Persons: the Surety or any of its officers, directors, partners, or other individuals holding at least 20% of the Surety's voting securities, and any agents, underwriters, or any individual empowered to act on behalf of any of the preceding Persons.

(1) If a State or other authority has revoked, canceled, or suspended the license required of such Person to engage in the surety business, the right of such Person to participate in the SBA Surety Bond Guarantee Program may be denied, terminated, or suspended, as applicable, in that jurisdiction or in other jurisdictions. Ineligibility or suspension from the Surety Bond Guarantee Programs is for the duration of the license suspension.

(2) If such Person has been indicted or otherwise formally charged with a misdemeanor or felony bearing on such Person's fitness to participate in the Surety Bond Guarantee Programs, the participation of such Person may be suspended pending disposition of the charge. Upon conviction, participation may be denied or terminated.

(3) If a final civil judgment is entered holding that such Person has committed a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, participation may be denied or terminated.

(4) If such Person has made a material misrepresentation or willfully false statement in the presentation of oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim, or committed a material breach of the Prior Approval or PSB Agreement or a material violation of the regulations (all as described in § 115.19), participation may be denied or terminated.

(5) If such Person is debarred, suspended, voluntarily excluded from, or declared ineligible for participation in Federal programs, participation may be denied or terminated.

(c) *Notification requirement.* The Prior Approval or PSB Surety must promptly notify SBA of the occurrence of any event in paragraphs (b) (1) through (5) of this section, or if any of the Persons described in paragraph (b) does not, or ceases to, qualify as a Surety. SBA may require submission of a Statement of Personal History from any of these Persons.

(d) *SBA proceedings.* Decisions to suspend, terminate, deny participation in, or deny reinstatement in the Surety Bond Guarantee program are made by the AA/SG. A Surety may file a petition for review of suspensions and terminations with the SBA Office of Hearings and Appeals (OHA) under part 134. SBA's Administrator may, pending a decision pursuant to Part 134, suspend the participation of any Surety for any of the causes listed in paragraphs (b) (1) through (5) of this section.

(e) *Effect on guarantee.* A guarantee issued by SBA before a suspension or termination under this section remains in effect, subject to SBA's right to deny liability under the guarantee.

§ 115.19 Denial of liability.

In addition to equitable and legal defenses and remedies under contract law, the Act and the regulations in this part, SBA is not liable under any actual or purported Prior Approval or PSB Agreement if any of the circumstances in paragraphs (a) through (h) exist.

(a) *Excess Contract or bond amount.* The total Contract amount at the time of Execution of the bond(s) exceeds $1,250,000 in face value (see § 115.12(e)), or the bond amount at any time exceeds the total Contract amount as established at the time of the bond's Execution.

(b) *Misrepresentation or fraud.* The Surety obtained the Prior Approval or PSB Agreement, or applied for reimbursement for losses, by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made. Material misrepresentation also includes the adoption by the Surety of a material misstatement made by others which the Surety knew or under generally accepted underwriting standards should have known to be false or misleading. The Surety's failure to disclose its ownership (or the ownership by any owner of at least 20% of the Surety's equity) of an interest in a Principal or an Obligee is considered the omission of a statement of material fact.

(c) *Material breach.* The Surety has committed a material breach of one or more terms or conditions of its Prior Approval or PSB Agreement. A material breach is considered to have occurred if:

(1) Such breach (or such breaches in the aggregate) causes an increase in the Contract amount or in SBA's bond liability of at least 25% or $50,000, whichever is less; or

(2) One of the statutory conditions is not met.

(d) *Substantial regulatory violation.* The Surety has committed a "substantial violation" of SBA regulations. For purposes of this paragraph, a "substantial violation" is one which causes an increase in the Contract amount or SBA's bond liability of at least 25% or $50,000 in the aggregate, whichever is less, or is contrary to the purposes of the Surety Bond Guarantee Programs.

(e) *Alteration.* Without obtaining prior written approval from SBA (which may be conditioned upon payment of additional fees), the Surety agrees to or acquiesces in any material alteration in the terms, conditions, or provisions of the Contract or bond, including but not limited to the following acts:

(1) Naming as an Obligee or co-Obligee any Person that does not qualify as an Obligee under § 115.10; or

(2) In the case of a Prior Approval Surety, acquiescing in any alteration to the Contract or bond which would increase the Contract amount or SBA's bond liability by at least 25% or $50,000, whichever is less.

(f) *Timeliness.* (1) The bond was Executed prior to the date of SBA's guarantee; or

(2)(i) The bond was Executed (or approved, if the Surety is legally bound by such approval) after the work under the Contract had begun, unless SBA executes a "Surety Bond Guarantee Agreement Addendum" after receiving all of the following from the Surety:

(A) Satisfactory evidence, including a certified copy of the Contract (or a sworn affidavit from the Principal) showing that the bond requirement was

contained in the original job Contract, or other documentation satisfactory to SBA, showing why a bond was not previously obtained and is now being required;

(B) Certification by the Principal that all taxes and labor costs are current, and listing all suppliers and subcontractors, indicating that they are all paid to date, and attaching a waiver of lien from each; or an explanation satisfactory to SBA why such documentation cannot be produced; and

(C) Certification by the Obligee that all payments due under the Contract to date have been made and that the job has been satisfactorily completed to date.

(ii) For purposes of this paragraph (f)(2), work under a Contract is considered to have begun when a Principal takes any action at the job site which would have exposed its Surety to liability under applicable law had a bond been Executed (or approved, if the Surety is legally bound by such approval) at the time. For purposes of this paragraph (f), the Surety must maintain a contemporaneous record of the Execution and approval of each bond.

(g) *Principal fee.* The Surety has not remitted to SBA the Principal's payment for the full amount of the guarantee fee within the time period required under § 115.30(d) for Prior Approval Sureties or § 115.60(g)(4) for PSB Sureties. SBA may reinstate the guarantee upon a showing that the Contract is not in default and that a valid reason exists why a timely submission was not made.

(h) *Other regulatory violations.* (1) The Principal on the bonded Contract is not a small business;

(2) The bond was not required under the bid solicitation or the original Contract;

(3) The bond was not eligible for guarantee by SBA because the bonded contract was not a Contract as defined in § 115.10;

(4) The loss occurred under a bond that was not guaranteed by SBA;

(5) The loss incurred by the Surety was not a Loss as determined under § 115.16; or

(6) The Surety's loss did not result from the Principal's breach or Imminent Breach of the Contract for which the guaranteed bond was approved.

§ 115.20 Insolvency of Surety.

(a) *Successor in interest.* If a Surety becomes insolvent, all rights or benefits conferred on the Surety under a valid and binding Prior Approval or PSB Agreement will accrue only to the trustee or receiver of the Surety. SBA will not be liable to the trustee or receiver of the insolvent Surety except for the guaranteed portion of any Loss incurred and actually paid by such Surety or its trustee or receiver under the guaranteed bonds.

(b) *Filing requirement.* The trustee or receiver must submit to SBA quarterly status reports accounting for all funds received and all settlements being considered.

§ 115.21 Audits and investigations.

(a) *Audits.* (1) *Scope of audit.* SBA may audit in the office of a Prior Approval or PSB Surety, the Surety's attorneys or consultants, or the Principal or its subcontractors, all documents, files, books, records, tapes, disks and other material relevant to SBA's guarantee, commitments to guarantee a surety bond, or agreements to indemnify the Prior Approval or PSB Surety. See § 115.18 for consequences of failure to comply with this section.

(2) *Frequency of audits.* Each PSB Surety is audited at least once each year by examiners selected and approved by SBA.

(b) *Records.* The Surety must maintain the records listed in this paragraph for the term of each bond, plus such additional time as may be required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related records until the findings are resolved. The records to be maintained include the following:

(1) A copy of the bond;

(2) A copy of the bonded Contract;

(3) All documentation submitted by the Principal in applying for the bond;

(4) All information gathered by the Surety in reviewing the Principal's application;

(5) All documentation of any of the events set forth in § 115.35(a) or § 115.60(g)(6);

(6) All records of any transaction for which the Surety makes payment under or in connection with the bond, including but not limited to claims, bills (including lawyers' and consultants' bills), judgments, settlement agreements and court or arbitration decisions, consultants' reports, Contracts and receipts;

(7) All documentation relating to efforts to mitigate Losses, including documentation required by § 115.34(a) or § 115.62 concerning Imminent Breach;

(8) All records of any accounts into which fees and funds obtained in mitigation of Losses were paid and from which payments were made under the bond, and any other trust accounts, and any reconciliations of such accounts; and

(9) All documentation relating to any collateral held by or available to the Surety.

(c) *Purpose of audit.* SBA's audit will determine, but not be limited to:

(1) The adequacy and sufficiency of the Surety's underwriting and credit analysis, its documentation of claims and claims settlement procedures and activities, and its recovery procedures and practices;

(2) The Surety's minimization of Loss, including the exercise of bond options upon Contract default; and

(3) The Surety's loss ratio in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(d) *Investigations.* SBA may conduct investigations to inquire into the possible violation by any Person of the Small Business Act or the Investment Act, or of any rule or regulation under these Acts, or of any order issued under these Acts, or of any Federal law relating to programs and operations of SBA.

Subpart B—Guarantees Subject to Prior Approval

§ 115.30 Submission of Surety's guarantee application.

(a) *Legal effect of application.* By submitting an application to SBA for a bond guarantee, the Prior Approval Surety certifies that the Principal meets the eligibility requirements set forth in § 115.13 and that the underwriting standards set forth in § 115.14 have been met.

(b) *SBA's determination.* SBA's approval or decline of a guarantee application is made in writing by an authorized SBA officer. The officer may provide telephone notice before the Prior Approval Surety's receives SBA's guarantee approval form if the officer has already signed the form. In the event of a conflict between the telephone notice and the written form, the written form controls.

(c) *Reconsideration-appeal of SBA determination.* A Prior Approval Surety may request reconsideration of a decline from the SBA officer who made the decision. If the decision on reconsideration is negative, the Surety may appeal to an individual designated by the AA/SG. If the decision is again adverse, the Surety may appeal to the AA/SG, who will make the final decision.

(d) *Notice and payment to SBA.* When the Surety has Executed a Final Bond, including a Final Bond under a bonding line, the Surety must complete the Prior Approval Agreement, and submit the form, together with the Principal's payment for its guarantee fee (see § 115.32(b)) to SBA within 45 days, or in the case of a bonding line, within 15 business days (see § 115.33(d)) after Execution of the bond.

§ 115.31 Guarantee percentage.

(a) *Ninety percent.* SBA reimburses a Prior Approval Surety for 90% of the Loss incurred and paid if:

(1) The total amount of the Contract at the time of Execution of the bond is $100,000 or less; or

(2) The bond was issued on behalf of a small business concern owned and controlled by socially and economically disadvantaged individuals. See part 124 of this title for applicable definitions and criteria.

(b) *Eighty percent.* SBA reimburses a Prior Approval Surety in an amount not to exceed 80% of the Loss incurred and paid on bonds for Contracts in excess of $100,000 which are executed on behalf of non-disadvantaged concerns.

(c) *Contract increase to over $100,000.* Where the Contract amount, after Execution of the bond, increases to more than $100,000, the guarantee percentage decreases by one percentage point for each $5,000 of increase or part thereof, but it does not decrease below 80%. This provision applies only to guarantees which qualify under paragraph (a)(1) of this section.

(d) *Contract increase to over $1,250,000.* Where the Contract amount, after Execution of the bond, increases beyond the statutory limit of $1,250,000, SBA's share of the Loss is limited to that percentage of the increased Contract amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For example, if a Contract amount increases to $1,375,000, SBA's share of the Loss under an 80% guarantee is limited to 72.73% [1,250,000 / 1,375,000 = 90.91% × 80% = 72.73%].

(e) *Contract decrease to $100,000 or less.* Where the Contract amount, after Execution of the bond, decreases to $100,000 or less, SBA's guarantee percentage increases to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested.

§ 115.32 Fees and Premiums.

(a) *Surety's Premium.* A Prior Approval Surety must not charge a Principal an amount greater than that authorized by the appropriate insurance department. The Surety must not require the Principal to purchase casualty or other insurance or any other services from the Surety or any Affiliate or agent of the Surety. The Surety must not charge non-Premium fees to a Principal unless the Surety performs other services for the Principal, the additional fee is permitted by State law, and the Principal agrees to the fee.

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee of $8 per thousand dollars of the Contract amount (unless SBA agrees otherwise in writing). The fee is rounded to the nearest dollar. Example: If the Contract amount is $100,100, the Principal's guarantee fee is $801.00 (.008 times $100,100, or $800.80, rounded off to $801.00). The Principal's fee is to be remitted to SBA by the Surety together with the notice required under § 115.30(d). See paragraph (d) of this section for additional requirements when the Contract amount changes.

(c) *SBA charge to Surety.* SBA does not charge Sureties application or Bid Bond guarantee fees. Subject to § 115.17(a)(2), the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond), computed at 25% of the bond Premium, in the ordinary course of business. The fee is rounded to the nearest dollar. SBA does not receive any portion of a Surety's non-Premium charges. See paragraph (d) of this section for additional requirements when the bond obligation or the Contract amount changes.

(d) *Contract or bond increases/decreases.* (1) *Notification and approval.* The Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount as soon as the Surety acquires knowledge of the change. Whenever the original Contract or bond amount increases by a change order of at least 25% or $50,000, whichever is less (see § 115.18(e)), the prior written approval of such increase by SBA is required on a supplemental Prior Approval Agreement and is conditioned upon payment by the Surety of the increase in the Principal's guarantee fee as set forth in paragraph (d)(2) of this section.

(2) *Increases; fees.* Notification of increases in the Contract or bond amount under this paragraph (d) must be accompanied by payment of the increase in the Principal's guarantee fee of $8 per thousand dollars of increase in the Contract amount. The Surety's check for payment of the increase in the Surety's guarantee fee of 25% of the increase in the bond Premium may be submitted in the ordinary course of business.

(3) *Decreases.* Whenever SBA is notified of a decrease in the Contract or bond amount, SBA will refund to the Principal a proportionate amount of the Principal's guarantee fee and rebate to the Surety a proportionate amount of SBA's Premium share in the ordinary course of business. Upon receipt of the refund, the Surety must promptly pay a proportionate amount of its Premium to the Principal.

§ 115.33 Surety bonding line.

A surety bonding line is a written commitment by SBA to a Prior Approval Surety which provides for the Execution of multiple bonds for a specified small business strictly within pre-approved terms, conditions and limitations. In applying for a bonding line, the Surety must provide SBA with information on the applicant as requested. In addition to the other limitations and provisions set forth in this part 115, the following conditions apply to each surety bonding line:

(a) *Underwriting.* A bonding line may be issued by SBA for a Principal only if the underwriting evaluation is satisfactory. The Prior Approval Surety must require the Principal to keep it informed of all its contracts, whether bonded by the same or another surety or unbonded, during the term of the bonding line.

(b) *Bonding line conditions.* The bonding line contains limitations on the following:

(1) The term of the bonding line, not to exceed 1 year subject to renewal in writing;

(2) The total dollar volume of the Principal's bonded and unbonded work on hand at any one time, including outstanding bids, during the term of the bonding line;

(3) The number of such contracts during the term of the bonding line;

(4) The maximum dollar amount of any single guaranteed bonded Contract;

(5) The timing of Execution of bonds under the bonding line—bonds must be dated and Executed before the work on the underlying Contract has begun, or the Surety must submit to SBA the documentation required under § 115.18(f)(2); and

(6) Any other limitation related to type, specialty of work, geographical area, or credit.

(c) *Excess bonding.* If, after a bonding line is issued, the Principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, the Surety must submit an application to SBA under regular procedures.

(d) *Submission of forms to SBA.* (1) *Bid Bonds.* Within 15 business days

after the Execution of any Bid Bonds under a bonding line, the Surety must submit a "Surety Bond Guarantee Underwriting Review" to SBA for approval. If that form is already on file with SBA and no new financial statements are required or have been received from the Principal, a "Surety Bond Guarantee Review Update" may be submitted instead. If the Surety fails to submit either form within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that a valid reason exists why the timely submission was not made.

(2) *Final Bonds.* Within 15 business days after the Execution of any Final Bonds under a bonding line, the Surety must submit a signed Prior Approval Agreement and a "Surety Bond Guarantee Underwriting Review" to SBA for approval. If that form is already on file with SBA and no new financial statements are required or have been received from the Principal, a "Surety Bond Guarantee Review Update" may be submitted instead. If the Surety fails to submit these forms together with the Principal's payment for its guarantee fee within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that the Contract is not in default and a valid reason exists why the timely submission was not made.

(3) *Additional information.* The Surety must submit any other data SBA requests.

(e) *Cancellation of bonding line.* (1) *Optional cancellation.* Either SBA or the Surety may cancel a bonding line at any time, with or without cause, upon written notice to the other party. Upon the receipt of any adverse information concerning the Principal, the Surety must promptly notify SBA, and SBA may cancel the bonding line.

(2) *Mandatory cancellation.* Upon the occurrence of a default, whether under a contract bonded by the same or another surety or an unbonded contract, the Surety must immediately cancel the bonding line.

(3) *Effect of cancellation.* Cancellation of a bonding line by SBA is effective upon receipt of written notice by the Surety. Bonds issued before the effective date of cancellation remain guaranteed by SBA. Upon cancellation by SBA or the Surety, the Surety must promptly notify the Principal in writing.

§ 115.34 Minimization of Surety's Loss.

(a) *Imminent Breach.* (1) *Prior approval requirement.* SBA will reimburse its guaranteed share of payments made by a Surety to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond only if the payments were made with the prior approval of OSG. The Surety must demonstrate to SBA's satisfaction that the breach is, in fact, imminent and that there is no other recourse to prevent such breach.

(2) *Amount of reimbursement.* The aggregate of the payments by SBA to avoid Imminent Breach cannot exceed 10% of the Contract price, unless the Administrator finds that a greater payment (not to exceed the guaranteed share of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment pursuant to this or any other provision of this part 115.

(3) *Recordkeeping requirement.* The Surety must keep records of payments made to avoid Imminent Breach.

(b) *Salvage and recovery.* A Prior Approval Surety must pursue all possible sources of salvage and recovery until SBA concurs with the Surety's recommendation for a discontinuance or for a settlement. The Surety must certify that continued pursuit of salvage and recovery would be neither economically feasible nor a viable strategy in maximizing recovery. See also § 115.17(b).

§ 115.35 Claims for reimbursement of Losses.

(a) *Notification requirements.* (1) *Events requiring notification.* A Prior Approval Surety must notify OSG of the occurrence of any of the following:

(i) Legal action under the bond has been initiated.

(ii) The Obligee has declared the Principal to be in default under the Contract.

(iii) The Surety has established a claim reserve for the bond.

(iv) The Surety has received any adverse information concerning the Principal's financial condition or possible inability to complete the project or pay laborers or suppliers.

(2) *Timing of notification.* Notification must be made in writing at the time the Surety applies for a guarantee on behalf of an affected Principal or, if no guarantee application is being filed, within 30 days of the date the Surety acquires knowledge, or should have acquired knowledge, of any of the listed events.

(b) *Surety action.* The Surety must take all necessary steps to mitigate Losses resulting from any of the events in paragraph (a) of this section, including the disposal at fair market value of any collateral held by or available to the Surety. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle and defend such suits. The Surety must handle and process all claims under the bond and all settlements and recoveries as it does on non-guaranteed bonds.

(c) *Claim reimbursement requests.* (1) Claims for reimbursement for Losses which the Surety has paid must be submitted (together with a copy of the bond, the bonded Contract, and any indemnity agreements) with the initial claim to OSG on a "Default Report, Claim for Reimbursement and Record of Administrative Action", within 1 year from the time of each disbursement. Claims submitted after 1 year must be accompanied by substantiation satisfactory to SBA. The date of the claim for reimbursement is the date of receipt of the claim by SBA, or such later date as additional information requested by SBA is received.

(2) The Surety must also submit evidence of the disposal of all collateral at fair market value.

(3) SBA may request additional information prior to reimbursing the Surety for its Loss.

(4) Subject to the offset provisions of part 140, SBA pays its share of Loss within 90 days of receipt of the requisite information.

(5) Claims for reimbursement and any additional information submitted are subject to review and audit by SBA, including but not limited to the Surety's compliance with SBA's regulations and the requirements of governing SBA forms.

(d) *Status updates.* The Surety must submit semiannual status reports on each claim 6 months after the initial default notice and then every 6 months. SBA must be notified immediately of any substantial changes in the status of the claim or the amounts of Loss reserves.

(e) *Reservation of SBA rights.* The payment by SBA of a Surety's claim does not waive or invalidate any of the terms of the Prior Approval Agreement, the regulations set forth in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must remit the specified amounts to SBA.

§ 115.36 Indemnity settlements and reinstatement of Principal.

(a) *Indemnity settlements.* (1) An indemnity settlement occurs when a defaulted Principal and its Surety agree upon an amount, less than the actual loss under the bond, which will satisfy the Principal's indebtedness to the Surety. Sureties must not agree to any indemnity settlement proposal or enter into any such agreement without SBA's concurrence.

(2) All settlement proposals submitted for SBA's consideration must include current financial information, including financial statements, tax returns, and credit reports, together with the Surety's written recommendations. It should also indicate whether the Principal is interested in further bonding.

(3) The Surety must pay SBA its *pro rata* share of the settlement amount within 90 days of receipt. Prior to closing the file on a Principal, the Surety must certify that SBA has received its *pro rata* share of all indemnity recovery.

(b) *Conditions for reinstatement.* At any time after a Principal becomes ineligible for further bond guarantees under § 115.36, the Surety may recommend that such Principal's eligibility for further bond guarantees be reinstated. OSG may agree to reinstate the Principal if:

(1) The Principal's guarantee fee has been paid to SBA and SBA receives evidence that the Principal has paid all delinquent amounts due to the Surety (including amounts for Imminent Breach); or

(2) The Surety has settled its claim with the Principal for an amount and on terms accepted by OSG; or

(3) The Principal contests a claim and provides collateral acceptable to the Surety and SBA, which has a liquidation value of at least the amount of the claim including related expenses; or

(4) The Principal's indebtedness to the Surety is discharged by operation of law (e.g., bankruptcy discharge); or

(5) OSG and the Surety determine that further bond guarantees will assist in the prevention or elimination of Loss to SBA.

(c) *Underwriting after reinstatement.* A guarantee application submitted after reinstatement of the Principal's eligibility is subject to a very stringent underwriting review.

Subpart C—Preferred Surety Bond (PSB) Guarantees

§ 115.60 Procedures for PSB Program.

(a) *Selection of sureties for the PSB program.* SBA's selection of PSB Sureties will be guided by, but not limited to, these factors:

(1) An underwriting limitation of at least $1,250,000 on the U.S. Treasury Department list of acceptable sureties;

(2) An agreement to charge Principals no more than the advisory premium rates of the Surety Association of America;

(3) Premium income from contract bonds guaranteed by any government agency (Federal, State or local) of no more than one-quarter of the total contract bond premium income of the Surety;

(4) The vesting of underwriting authority for SBA guaranteed bonds only in employees of the Surety;

(5) The vesting of final settlement authority for claims and recovery under the PSB program only in employees of the Surety's permanent claims department; and

(6) The rating or ranking designations assigned to the Surety by recognized authority.

(b) *Execution of PSB Agreement.* A Surety admitted to the PSB program must execute a PSB Agreement before approving SBA guaranteed bonds. No SBA guarantee attaches to bonds approved before the AA/SG or designee has countersigned the agreement.

(c) *Duration of PSB program.* The PSB program terminates on September 30, 1997, unless extended by legislation. SBA guarantees effective under this program on or before September 30, 1997, will remain in effect after such date.

(d) *Prohibition on participation in Prior Approval program.* Neither a PSB Surety nor any of its Affiliates is eligible to submit applications under subpart B of this part.

(e) *Allotment of guarantee authority.* (1) *General.* SBA allots to each PSB Surety a periodic maximum guarantee authority. No SBA guarantee attaches to bonds approved by a PSB Surety if the bonds exceed the allotted authority for the period in which the bonds are approved. No reliance on future authority is permitted. An allotment can be increased only by prior written permission of SBA.

(2) *Execution of Bid Bonds.* When the PSB Surety Executes a Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the estimated penal sum of the Final Bond SBA would guarantee if the Contract were awarded. If the Contract is then awarded for an amount other than the bid amount, or if the bid is withdrawn or the Bid Bond has expired (see definition in § 115.11), SBA debits or credits the Surety's allotment accordingly.

(3) *Execution of Final Bonds.* If the PSB Surety Executes a guaranteed Final Bond, but not the related Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the Final Bond. SBA will debit the allotment for increases, and credit the allotment for decreases, in the bond amount.

(4) *Release and non-issuance of Final Bonds.* The release of Final Bonds upon completion of the Contract does not restore the corresponding allotment. If, however, a PSB Surety approves a Final Bond but never issues the bond, SBA will credit the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the bond. In that event, the Surety must notify SBA as soon as possible, but in no event later than 5 business days after the non-issuance has been determined. Until the Surety has so notified SBA, it cannot rely on such credit.

(f) *Timeliness.* A PSB Surety may not Execute or approve a bond after commencement of work under a Contract unless the Surety submits a completed "Surety Bond Guarantee Agreement Addendum", together with the evidence and certifications described in § 115.18(f)(2), and obtains written approval from the AA/SG.

(g) *Operations.* (1) *Retention of information.* A PSB Surety must comply with all applicable SBA regulations and obtain from its applicants all the information and certifications required by SBA. The PSB Surety must document compliance with SBA regulations and retain such certifications in its files, including a contemporaneous record of the date and time of approval and Execution of each bond. The certifications and other information must be made available for inspection by SBA or its agents and must be available for submission to SBA in connection with the Surety's claims for reimbursement. The PSB Surety must retain the certifications and other information for the term of the bond, plus such additional time as may be required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related certifications and other information until the findings are resolved. See also § 115.19(f).

(2) *Usual staff and procedures.* A PSB Surety must approve, Execute and administer SBA guaranteed bonds in the same manner and with the same staff as the Surety's activity outside the PSB program. The Surety must request job status reports from the Obligees in accordance with its own procedures.

(3) *Notification to SBA.* A PSB Surety must advise SBA by electronic transmission or monthly bordereau, as agreed between the Surety and SBA, of all approved Bid and Final Bonds, and of the Surety's approval of increases and

decreases in the Contract or bond amount. The notice must contain the information specified from time to time in agreements between the Surety and SBA. SBA may deny liability with respect to Final Bonds for which SBA has not received timely notice.

(4) *Fees.* The PSB Surety must pay SBA 25% of the Premium it charges on Final Bonds. The fee is rounded to the nearest dollar. The PSB Surety must also remit to SBA the Principal's payment for its guarantee fee of $8 per thousand dollars of the Contract amount. This fee is also rounded to the nearest dollar. The Surety must remit SBA's Premium share and the Principal's guarantee fee with the bordereau listing the related Final Bond, as required in the PSB Agreement.

(5) *Increases/decreases in Contract or bond amount.* (i) The PSB Surety must process Contract or bond amount increases within its allotment in the same manner as initial guaranteed bond issuances (see paragraph (g)(3) of this section). The Surety must present checks for additional fees due from the Principal and the Surety on the increases (computed under paragraph (g)(4) of this section), and attach such payments to the respective monthly bordereau.

(ii) If the Contract or bond amount is decreased, SBA will refund to the Principal a proportionate amount of the guarantee fee, and adjust SBA's Premium share accordingly in the ordinary course of business.

(6) *Events requiring notification.* The PSB Surety must advise SBA within 30 calendar days of the name and address of a Principal against whom legal action on the bond has been instituted, or when the Obligee has declared a default, or when the Surety has established a claim reserve. The Surety must also notify SBA within 30 days of the recovery of any amounts on the guaranteed bond, or if the Surety determines to bond such Principal again.

§ 115.61 Guarantee percentage.

SBA reimburses a PSB Surety in an amount not to exceed 70% of the Loss incurred and paid. Where the Contract amount, after the Execution of the bond, increases beyond the statutory limit of $1,250,000, SBA's share of the Loss is limited to that percentage of the increased Contract amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For an example, see § 115.31(d).

§ 115.62 Imminent Breach.

(a) *No prior approval requirement.* SBA will reimburse a PSB Surety for the guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond. The PSB Surety does not need SBA approval to make Imminent Breach payments.

(b) *Amount of reimbursement.* The aggregate of the payments by SBA cannot exceed 10% of the Contract price, unless the Administrator finds that a greater payment (not to exceed the guaranteed portion of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment pursuant to this or any other provision of the regulations in this part.

(c) *Recordkeeping requirement.* The PSB Surety must keep records of payments made to avoid Imminent Breach.

§ 115.63 Claims for reimbursement of Losses.

(a) *How claims are submitted.* A PSB Surety must submit claims for reimbursement on a form approved by SBA no later than 1 year from the date the Surety paid the amount. Loss is determined as of the date of receipt by SBA of the claim for reimbursement, or as of such later date as additional information requested by SBA is received. Subject to the offset provisions of part 140, SBA pays its share of Loss within 90 days of receipt of the requisite information. Claims for reimbursement and any additional information submitted are subject to review and audit by SBA.

(b) *Surety action.* The PSB Surety must take all necessary steps to mitigate Losses when legal action against a bond has been instituted, when the Obligee has declared a default, or when the Surety has established a claim reserve. When the Surety disposes of any collateral, it must do so at fair market value. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle or defend the suits. The Surety must handle and process all claims under the bond and all settlements and recoveries in the same manner as it does on non-guaranteed bonds.

(c) *Reservation of rights.* The payment by SBA of a PSB Surety's claim does not waive or invalidate any of the terms of the PSB Agreement, the regulations in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must pay the specified amounts to SBA.

§ 115.64 Denial of liability.

In addition to the grounds set forth in § 115.19, SBA may deny liability to a PSB Surety if:

(a) The PSB Surety's guaranteed bond was Executed in an amount which, together with all other guaranteed bonds, exceeded the allotment for the period during which the bond was approved, and no prior SBA approval had been obtained;

(b) The PSB Surety's loss was incurred under a bond which was not listed on the bordereau for the period when it was approved; or

(c) The loss incurred by the PSB Surety is not attributable to the particular Contract for which an SBA guaranteed bond was approved.

Dated: November 16, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28549 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 125

Government Contracting Assistance

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated. This proposed rule would eliminate seven sections which are currently contained in 13 CFR Part 125 pertaining to SBA's procurement assistance programs. The Part would be retitled Government Contracting Assistance.

DATES: Comments must be submitted on or before December 27, 1995.

ADDRESS: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, (125), Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, at (202) 205–6645.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to Federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated. 13 CFR Part 125 is presently titled "Procurement Assistance" and consists of 12 sections. This proposed rule would change the title to "Government Contracting Assistance" and would reduce the number of sections to six. SBA's regulatory review indicated that seven sections could be eliminated as unnecessary (repeating statutory provisions), obsolete, or inappropriate.

Section-by-Section Analysis

The following is a section-by-section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

Current § 125.1 is a statement of policy paraphrased from the Small Business Act (the Act). SBA proposes to eliminate this language as being unnecessary and duplicative and replace it with a brief description of the programs included in Part 125.

Current § 125.2 contains definitions such as "Administrator," "SBA," and "procurement." The proposed rule would eliminate these definitions as unnecessary. Revised regulations on the Prime Contracting Assistance program, now found at § 125.6, would become § 125.2. These regulations have been simplified to eliminate a lengthy list of duties performed by SBA procurement center representatives and breakout procurement center representatives, which are already contained in the Act and the Federal Acquisition Regulation (FAR). In addition, the set-aside and breakout appeals procedures have been shortened to incorporate the procedures already set forth in the FAR.

Section 125.3 is presently an introduction. The proposed rule would eliminate this as unnecessary and replace it with revised regulations on the Subcontracting Assistance program now found at § 125.9. The revised subcontracting assistance regulations have been clarified and rewritten in plain language for ease of use, but no substantive changes are proposed.

Current § 125.4 is a summary of statutory provisions contained in the Act. SBA proposes to eliminate this summary as being unnecessary and duplicative. Revised regulations on the Government Property Sales Assistance program, now found at § 125.8, would become § 125.4. These regulations have been clarified and rewritten in plain language for ease of use, but no substantive changes are proposed.

The proposed rule would eliminate that portion of the current regulation which deals with size standards and rules for timber sales, since those rules are already set forth in Part 121 of this title.

On August 21, 1992, SBA published in the **Federal Register** (57 FR 37909) a proposed revision of 13 CFR § 125.5, SBA's regulations on the Certificate of Competency (COC) program. Due to the passage of time, and after review of all previous comments, SBA is again proposing revised regulations for comment.

The proposed rule would also make further technical changes to COC rules. It would eliminate referrals to SBA for eligibility determinations under the Walsh-Healey Public Contracts Act (WHPCA) (previously proposed § 125.5(d)). Section 7201 of the Federal Acquisition Streamlining Act of 1994 (FASA) repealed the "regular dealer" or "manufacturer" eligibility requirements imposed by WHPCA for offerors on contracts subject to the Act.

This proposed rule would change the $25,000 threshold (under which a contracting officer has no right to appeal an initial affirmative COC decision to SBA Headquarters) referenced in § 125.5(b)(11) of the previously proposed COC regulation to dollar values that coincide with either contracting actions valued under $100,000, or the use of Simplified Acquisition Threshold (SAT) procedures implemented under FASA.

The proposed rule would also make some minor technical edits to SBA's earlier proposed rule dealing with the COC program. The following substitutions have been made from the rule as originally proposed: (1) references to the Office of Procurement Assistance have been changed to the Office of Government Contracting; (2) references to the Associate Administrator for Procurement Assistance have been changed to the Associate Administrator for Government Contracting; (3) references to Regional Administrators have been deleted; (4) references to the Assistant Regional Administrator for Procurement Assistance have been changed to Area Director for Government Contracting.

The proposed rule would also make several changes to the Prime Contractor Performance Requirements (Limitations on Subcontracting), which were earlier proposed as part of the COC regulatory package published for public comment on August 21, 1992 (57 FR 37909). This proposed rule would separate those provisions into a separate section 125.6, since the provisions have applicability outside the COC process. The comments, however, relate back to the COC proposal as published on August 21, 1992.

A commenter to that rule suggested that SBA make it clear that this section applies to both the DoD Small Disadvantaged Business (SDB) set aside program, including the SDB 10% evaluation preference, and SBA's MED (8(a)) program. SBA agrees and has revised the earlier proposed regulation accordingly.

Another comment suggested clarification of the applicability of this requirement to sealed bidding situations. Since the "limitations on subcontracting" requirement applies to negotiated and formally advertised procurements as well as to procurements under the Simplified Acquisition Threshold, SBA considers it unnecessary to state this again in the regulation. In the case of a formally advertised procurement, compliance with the requirement will be determined after bid opening and before contract award through the procuring agency's preaward evaluation procedures. This requirement applies only to small business set-asides or that portion of a procurement set aside for small business.

A comment suggested that the regulation address the need for SBA to evaluate compliance with this requirement for the base period and all option periods of a contract. SBA has not revised the regulation since a failure to comply with the requirement in the course of contract performance is considered to be a material breach of contract. Contracting officers already have remedies to assure compliance with the requirement.

Another comment suggested that SBA clarify that the term "materials" includes purchases made by a small business which are "normal commercial practices within the industry." SBA has revised the regulation to include normal commercial practices within the industry.

Another comment suggested that SBA clarify whether Government-specified sources referenced within a solicitation are included in the definition of "cost of materials." SBA has not changed the regulation in response to this comment because the definition of "subcontracting" in § 125.5(c)(4)(vii) states that where the prime contractor has been directed by the Government to utilize a specific source, the costs associated with such a purchase will be considered as the cost of materials.

One commenter suggested that a separate definition for "off-the-shelf" items should be added to this section. SBA has adopted this suggestion.

Finally, a commenter suggested that SBA clarify the use of "part-time" employees in the definition of "personnel" in this section rather than reference § 121.404 of this Title. SBA has not adopted this suggestion because the definition of "employee" in SBA's size regulations at part 121 includes part-time employees.

SBA proposes to eliminate in its entirety current § 125.7 which deals with Defense Production Pools. Although such Pools continue to be authorized by statute, their formation is such a rare event that it is unnecessary to have a separate regulation on the subject when it can be adequately dealt with on a case-by-case basis.

SBA also proposes to delete in its entirety current § 125.10 dealing with the Procurement Automated Source System (PASS). Since this computerized information data base on small business contractors is governed by contractual provisions, it is unnecessary to have a separate regulation on the topic.

The proposed rule would eliminate § 125.11 which describes the Technology Assistance Program. This program has been administratively discontinued and is no longer in operation.

Current § 125.12 describes the Natural Resources Development Program or "tree-planting program." SBA would eliminate this section as obsolete since Congress no longer provides funds for this program.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U. S. C. 601, et seq. This rule would eliminate seven sections of SBA's regulations that SBA has determined to be obsolete, unnecessary, or duplicative. The remaining regulations have been rewritten for clarity and ease of use. No contracting opportunities for small business would be affected by this proposed rule. Therefore, it is not likely to have an annual economic impact of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 125

Government contracts; Government procurement; Reporting and recordkeeping requirements; Small businesses; Technical assistance.

For the reasons set forth above, SBA proposes to revise Part 125 of Title 13 of the Code of Federal Regulations as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

Sec.

125.1 Programs included.
125.2 Prime contracting assistance.
125.3 Subcontracting assistance.
125.4 Government property sales assistance.
125.5 Certificate of Competency program.
125.6 Prime contractor performance requirements (limitations on subcontracting).

Authority: 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9702.

§ 125.1 Programs included.

The regulations in this part relate to the Government contracting assistance programs of SBA. There are four main programs: Prime contracting assistance; Subcontracting assistance; Government property sales assistance; and the Certificate of Competency program. The objective of the programs is to assist small businesses in obtaining a fair share of Federal Government contracts, subcontracts, and property sales.

§ 125.2 Prime contracting assistance.

(a) *Traditional PCR responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside would be appropriate. In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal to the secretary of the department or head of the agency. The procedures and time limits for such appeals are set forth in § 19.505 of the Federal Acquisition Regulation (FAR). (48 CFR 19.505).

(2) PCRs review and evaluate the small business programs of Federal agencies and buying activities and make recommendations for improvement. They also recommend small business, small women-owned business, and small disadvantaged business sources for use by contracting activities and assist these businesses in obtaining Federal contracts and subcontracts. Other authorized duties of a PCR are set forth in the FAR in 48 CFR 19.402(c) and in the Small Business Act in Section 15(a) (15 U.S.C. 644(a)).

(b) *BPCR responsibilities.* (1) SBA is required by section 403 of Public Law 98–577 to assign a breakout PCR (BPCR) to major contracting centers. A major contracting center is a center that, as determined by SBA, purchases substantial dollar amounts of other than commercial items, and which has the potential to achieve significant savings as a result of the assignment of a BPCR.

(2) BPCRs advocate full and open competition in the Federal contracting process and recommend the breakout for competition of items and requirements which previously have not been competed. They may appeal the failure by the buying activity to act favorably on a recommendation in accord with the appeal procedures set forth in § 19.505 of the FAR (48 CFR 19.505). BPCRs also review restrictions and obstacles to competition and make recommendations for improvement. Other authorized functions of a BPCR are set forth in 48 CFR 19.403(c) of the FAR and Section15(l) of the Small Business Act (15 U.S.C. 644(l)).

§ 125.3 Subcontracting assistance.

(a) The purpose of the subcontracting assistance program is to achieve maximum utilization of small business by major prime contractors. The Small Business Act requires other than small firms awarded contracts by the Federal Government in excess of $500,000, or $1 million for construction of a public facility, to submit a subcontracting plan to the contracting agency. The FAR sets forth the requirements for subcontracting plans in 48 CFR subpart 19.7 and 48 CFR 52.219–9.

(b) Upon determination of the successful subcontract offeror, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror. This is applicable to all subcontracts over $10,000.

(c) SBA Commercial Market Representatives (CMRs) facilitate the process of matching large prime contractors with small, small disadvantaged, and small women-owned subcontractors. CMRs identify, develop, and market small businesses to the prime contractors and assist the small firms in obtaining subcontracts.

(d) Each CMR has a portfolio of prime contractors and conducts periodic compliance reviews and needs assessments of the companies in this portfolio. CMRs are also required to perform opportunity development and source identification. Opportunity development means assessing the current and future needs of the prime contractors. Source identification means identifying those small, small disadvantaged, and small women-owned firms which can fulfill the needs assessed from the opportunity development process.

(e) CMRs offer additional assistance to small businesses: (1) Advice to representatives of small firms interested in obtaining subcontracts from Federal prime contractors;

(2) Information and assistance on how to identify subcontract opportunities and what opportunities are currently available; and

(3) Information and assistance on the qualifications required to become eligible for inclusion on potential source listings of large firms for future subcontract requirements.

(f) CMRs also perform the following duties:

(1) Assisting both Government agencies and prime contractors in the formulation of subcontracting plans and providing contractors with potential sources to help them comply with their plans;

(2) Assisting PCRs, upon request, in reviewing subcontracting plans submitted by prime contractors prior to contract award;

(3) Evaluating compliance by contractors with the contract clause entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns";

(4) Recommending small, small disadvantaged, and small women-owned firms to prime contractors and Government agencies for performance of subcontract requirements; and

(5) Maintaining liaison and contact with prime contractors to assist in advance procurement planning and to foster increased utilization of small businesses.

§ 125.4 Government property sales assistance.

(a) The purpose of SBA's Government property sales assistance program is to:

(1) Insure that small businesses obtain their fair share of all Federal real and personal property qualifying for sale or other competitive disposal action; and

(2) Assist small businesses in obtaining Federal property being processed for disposal, sale, or lease.

(b) SBA property sales assistance primarily consists of two activities:

(1) Obtaining small business set-asides when necessary to insure that a fair share of Government property sales are made to small businesses; and

(2) Providing advice and assistance to small businesses on all matters pertaining to sale or lease of Government property.

(c) The program is intended to cover the following categories of Government property:

(1) Sales of timber and related forest products;

(2) Sales of strategic material from national stockpiles;

(3) Sales of royalty oil by the Department of Interior's Minerals Management Service;

(4) Leases involving rights to minerals, petroleum, coal, and vegetation; and

(5) Sales of surplus real and personal property.

(d) SBA has established specific small business size standards and rules for the sale or lease of the different kinds of Government property. These provisions are contained in §§ 121.501 through 121.514 of this title.

§ 125.5 Certificate of Competency Program.

(a) *General.* (1) The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that one or more named small business concerns possess the responsibility to perform a specific Government procurement (or sale) contract. The COC Program is applicable to all Government procurement actions.

(2) A contracting officer must, upon determining a low responsive small business offeror to be nonresponsible, refer that small business to SBA for a possible COC, even if the next low responsive offeror is also a small business.

(3) A small business offeror referred to SBA as nonresponsible may apply to SBA for a COC.

(b) *COC Eligibility.* (1) The offeror seeking a COC has the burden of proof to demonstrate its eligibility for COC review. To be eligible for the COC program, a firm must meet the following criteria:

(i) It must qualify as a "small business concern" under the size standard applicable to the procurement. Where the solicitation fails to specify a size standard or Standard Industrial Classification (SIC) code, SBA will assign the appropriate size standard to determine COC eligibility. SBA determines size eligibility as of the date described in § 121.404 of this title.

(ii) A manufacturing, service, or construction concern must demonstrate that it will perform a significant portion of the proposed contract with its own facilities, equipment, and personnel. The contract must be performed or the end item manufactured within the United States, its territories, possessions, or the Commonwealth of Puerto Rico.

(iii) A non-manufacturer making an offer on a small business set-aside contract for supplies must furnish end items that have been manufactured in the United States, its territories, possessions, or the Commonwealth of Puerto Rico by a small business. Non-manufacturing concerns may apply for a waiver of this requirement under §§ 121.1301 through 121.1305 of this title for either the type of product being procured or the specific contract at issue.

(iv) A non-manufacturer submitting an offer on a procurement utilizing simplified acquisition threshold procedures with a cost that does not exceed $25,000, or on any unrestricted procurement, must furnish end items manufactured in the United States, or its trust territories, possessions, or the Commonwealth of Puerto Rico. Any COC shall apply to the responsibility of the non-manufacturer, not to that of the manufacturer.

(v) A offeror intending to provide a kit consisting of finished components or other components provided for a special purpose, is eligible if:

(A) It meets the Size Standard for the SIC code assigned to the procurement; and

(B) More than 50% of the total dollar value of the components of the kit were manufactured by small businesses under the size standard applicable to the component provided. The offeror need not itself be the manufacturer of any of the components of the kit. Each component comprising the kit must be produced or manufactured in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico. Where the Government has specified any item for the kit which is not manufactured by a small business, then such item shall be excluded from the determination of total value for the purposes of this section.

(2) SBA will determine a concern ineligible for a COC if the concern, or any of its principals, appears in the "Parties Excluded From Federal Procurement Programs" section found in the U.S. General Services Administration Office of Acquisition Policy Publication: List of Parties Excluded From Federal Procurement or Nonprocurement Programs. If a principal is unable to presently control the applicant concern, and appears in

the Procurement section of the list due to matters not directly related to the concern itself, responsibility will be determined in accordance with paragraph (c)(9) of this section.

(3) An eligibility determination will be made on a case by case basis, where a concern or any of its principals appears in the Nonprocurement Section of the publication referred to in paragraph (b)(2) of this section.

(c) *Referral of nonresponsibility determination to SBA.* (1) A contracting officer who determines that an apparently successful offeror that has certified itself to be a small business with respect to a specific Government contract lacks any element of responsibility (including competency, capability, capacity, credit, integrity or tenacity or perseverance) must refer the matter in writing to the SBA Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located. The referral must include a copy of the following:

(i) Solicitation;

(ii) Offer submitted by the concern whose responsibility is at issue for the procurement (as of Best and Final Offers for a negotiated procurement, and as of bid opening for a sealed bid procurement);

(iii) Abstract of Bids, where applicable, or the Contracting Officer's Price Negotiation Memorandum;

(iv) Preaward survey, where applicable;

(v) Contracting officer's written determination of non-responsibility;

(vi) Technical data package (including drawings, specifications, and Statement of Work); and

(vii) Any other justification and documentation used to arrive at the nonresponsibility determination.

(2) Contract award must be withheld by the contracting officer for a period of 15 working days (or longer if agreed to by SBA and the contracting officer) following receipt by the appropriate Area Office of a referral which includes all required documentation.

(3) The COC referral must indicate that the offeror has been found responsive to the solicitation, but at the same time must identify the reasons for the nonresponsibility determination.

(d) *Application for COC.* (1) Upon receipt of the contracting officer's referral, the SBA Area Office will inform the concern of the contracting officer's negative responsibility determination, and offer it the opportunity to apply to SBA for a COC by a specified date.

(2) The COC application must include all information and documentation requested by SBA and any additional information which the firm believes will demonstrate its ability to perform on the proposed contract. The application should be returned as soon as possible, but no later than the date specified by SBA.

(3) Upon receipt of a complete and acceptable application, SBA may elect to visit the applicant's facility to review its responsibility. Where a service or construction contract will be performed outside the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico, SBA will rely solely on documentation and other relevant information obtained within the United States. SBA personnel may obtain clarification or confirmation of information provided by the applicant by directly contacting suppliers, financial institutions, and other third parties upon whom the applicant's responsibility depends.

(e) *Incomplete applications.* If an application for a COC is materially incomplete or is not submitted by the date specified by SBA, SBA will close the case and so notify the contracting officer. The basis for its decision will be specified in a declination letter sent to both the concern and the contracting officer.

(f) *Reviewing an application.* (1) The COC review process is not limited to the areas of nonresponsibility cited by the contracting officer. SBA may, at its discretion, independently evaluate the COC applicant for all elements of responsibility, but it may presume responsibility exists as to elements other than those cited as deficient. SBA may deny a COC for reasons of nonresponsibility not originally cited by the contracting officer.

(2) A small business will be rebuttably presumed nonresponsible if any of the following circumstances are shown to exist:

(i) Within three years before the application for a COC, the concern, or any of its principals, has been convicted of an offense or offenses that would constitute grounds for debarment or suspension under FAR subpart 9.4 (48 CFR Subpart 9.4), and the matter is still under the jurisdiction of a court (e.g., the principals of a concern are incarcerated, on probation or parole, or under a suspended sentence); or

(ii) Within three years before the application for a COC, the concern or any of its principals has had a civil judgment entered against it or them for any reason that would constitute grounds for debarment or suspension under FAR subpart 9.4 (48 CFR Subpart 9.4).

(g) *Decision by Area Director.* After reviewing the information submitted by the applicant and the information gathered by SBA, the Director will make a determination, either final or recommended as set forth in the following chart:

Contracting actions	SBA official or office with authority to make decision	Finality of decision; options for contracting agencies
$100,000 or less, or in accordance with Simplified Acquisition Threshold procedures.	Director may approve or deny	Final. The Director will notify both the applicant and contracting agency in writing of the decision.
Between $100,000 and $25 million.	(1) Director may deny. (2) Director may approve, subject to right of appeal and other options.	(1) Final. (2) Contracting agency may proceed under paragraph (h) or paragraph (1) of this section.
Exceeding $25 million	(1) Director may deny (2) Director must refer to SBA Headquarters recommendation for approval.	(1) Final. (2) Contracting agency may proceed under paragraph (j) of this section.

(h) *Notification of intent to issue on a contract with a value between $100,000 and $25 million.* Where the Director determines that a COC is warranted, he or she will notify the contracting officer of the intent to issue a COC, and of the reasons for that decision, prior to issuing the COC. At the time of notification, SBA will give the contracting officer the following options:

(1) Accept the Director's decision to issue the COC and award the contract to the concern (the issuance letter will include as an attachment a detailed rationale of the decision); or

(2) Ask the Director to suspend the case:

(i) for a specified period of time, and to forward a detailed rationale for the decision to the contracting officer; or

(ii) to afford the contracting officer the opportunity to meet with the Area Office to review all documentation contained in the case file; or

(iii) to submit any information which the contracting officer believes SBA has not considered (at which time, SBA will establish a new suspense date mutually agreeable to the contracting officer and SBA); or

(iv) to permit resolution of an appeal by the contracting agency to SBA Headquarters under pargraph (i) of this section.

(3) After any discussions under paragraph (h)(2) of this section, the Director will issue the determination.

(i) *Appeals of Area Director determinations.* For COC actions with a value exceeding $100,000, contracting agencies may appeal a Director's decision to issue a COC to SBA Headquarters by filing an appeal with the Area Office processing the COC application. The Area Office must honor the request to appeal if the contracting officer agrees to withhold award until the appeal process is concluded. Without such an agreement from the contracting officer, the Director will issue the COC. When such an agreement has been obtained, the Area Office will immediately forward the case file to SBA Headquarters.

(1) The intent of the appeal procedure is to allow the contracting agency the opportunity to submit to SBA Headquarters any documentation which the contracting officer believes the Area Office has not considered.

(2) SBA Headquarters will furnish written notice to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) at the secretariat level of the procuring agency (with a copy to the contracting officer), that the case file has been received and that an appeal decision may be requested by an authorized official at that level. If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its Director, OSDBU, within 10 working days (or a time period agreed upon by both agencies) of its receipt of the notice under paragraph (h) of this section. The appeal and any supporting documentation must be filed within 10 working days (or a different time period agreed to by both agencies) after SBA receives the request for a formal appeal. The SBA Associate Administrator for Government Contracting (AA/GC) will make a final determination, in writing, to issue or to deny the COC.

(j) *Decision by SBA Headquarters where contract value exceeds $25 million.* (1) Prior to taking final action, SBA Headquarters will contact the contracting agency at the secretariat level or agency equivalent and afford it the following options:

(i) Ask SBA Headquarters to suspend the case so that the agency can meet with Headquarters personnel and review all documentation contained in the case file; or

(ii) Submit to SBA Headquarters for evaluation any information which the contracting agency believes has not been considered.

(2) After reviewing all available information, the AA/GC will make a final decision to either issue or deny the COC. If the AA/GC's decision is to deny the COC, the applicant and contracting agency will be informed in writing by the Area Office. If the decision is to issue the COC, a letter certifying the responsibility of the firm will be sent to the contracting agency by Headquarters and the applicant will be informed of such issuance by the Area Office. Except as set forth in paragraph (l) of this section, there can be no further appeal or reconsideration of the decision of the AA/GC.

(k) *Notification of denial of COC.* The notification to an unsuccessful applicant following either an Area Director or a Headquarters denial of a COC will briefly state all reasons for denial and inform the applicant that a meeting may be requested with appropriate SBA personnel to discuss the denial. Upon receipt of a request for such a meeting, the appropriate SBA personnel will confer with the applicant and explain the reasons for SBA's action. The meeting does not constitute an opportunity to rebut the merits of the SBA's decision to deny the COC, and is for the sole purpose of giving the applicant the opportunity to correct deficiencies so as to improve its ability to obtain future contracts either directly or, if necessary, through the issuance of a COC.

(l) *Reconsideration of COC after issuance.* (1) An approved COC may be reconsidered and possibly rescinded, at the sole discretion of SBA, in the following circumstances:

(i) If, after issuance of a COC, but before award of any contract in reliance upon such COC, SBA discovers that:

(A) the COC applicant submitted false or omitted material information; or

(B) new materially adverse information has appeared relating to the current responsibility of the applicant concern; or

(ii) Where the contract for which a COC has been issued has not been awarded within 60 days (in which case SBA may investigate the firm's current circumstances).

(2) Where SBA reaffirms the COC, the procedures under paragraph (h) of this section do not apply.

(m) *Effect of COC Certification.* By the terms of the Small Business Act, a COC is conclusive as to responsibility. Where SBA issues a COC on behalf of a small business with respect to a particular contract, contracting officers are required to award the contract without requiring the firm to meet any other requirement with respect to responsibility.

(n) *Non-Certification.* Denial of a COC by SBA does not preclude a contracting officer from awarding a contract to the referred firm.

(o) *Monitoring performance.* Once a COC has been issued and a contract awarded on that basis, SBA will monitor contractor performance.

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

(a) In order to be awarded a small business set-aside, a partial set-aside, an 8(a) contract, or an unrestricted procurement where a concern has claimed a 10 percent SDB price evaluation preference, a small business concern must agree that:

(1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees.

(2) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials).

(3) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials).

(4) In the case of a contract for construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(b) *Definitions.* The following definitions apply to this section:

(1) *Cost of the Contract.* All allowable direct and indirect costs allocable to the contract, excluding profit or fees.

(2) *Cost of contract performance incurred for personnel.* Direct labor costs and any overhead which has only

direct labor as its base, plus the concern's General and Administrative rate multiplied by the labor cost.

(3) *Cost of manufacturing.* Those costs incurred by the firm in the production of the end item being acquired. These are costs associated with the manufacturing process, including the direct costs of fabrication, assembly, or other production activities, and indirect costs which are allocable and allowable. The cost of materials, as well as the profit or fee from the contract, are excluded.

(4) *Cost of materials.* Includes costs of the items purchased, handling and associated shipping costs for the purchased items (which includes raw materials), off-the-shelf items (and similar proportionately high-cost common supply items requiring additional manufacturing or incorporation to become end items), special tooling, special testing equipment, and construction equipment purchased for and required to perform on the contract. In the case of a supply contract, the acquisition of services or products from outside sources following normal commercial practices within the industry are also included. In addition, where the services of a public or private utility company are obtained for the lease and use of distribution facilities such as telecommunications circuits, petroleum or natural gas pipelines, or electric transmission lines in connection with the performance of a contract, the acquisition of those services will also be considered as cost of materials.

(5) *Off-the-shelf item.* An item produced and placed in stock by a manufacturer, or stocked by a distributor, before orders or contracts are received for its sale. The item may be commercial or may be produced to military or Federal specifications or description. Off-the-shelf items are also known as Nondevelopmental Items (NDI).

(6) *Personnel.* Individuals who are "employees" under § 121.106 of this title.

(7) *Subcontracting.* That portion of the contract performed by a firm, other than the concern awarded the contract, under a second contract, purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available off-the-shelf, and which are manufactured in accordance with drawings, specifications, or designs furnished by the contractor, or by the government as a portion of the solicitation. Raw castings, forgings, and moldings are considered as materials, not as subcontracting costs. Where the prime contractor has been directed by the Government to use any specific source for parts, supplies, components subassemblies or services, the costs associated with those purchases will be considered as part of the cost of materials, not subcontracting costs.

(c) SBA will determine compliance with the Prime Contractor Performance Requirements (Requirements) as of the following dates:

(1) In a sealed bid procurement, as of the date the bid was submitted;

(2) In a negotiated procurement, as of the date the concern submits its best and final offer. If a concern is determined not to be in compliance at the time it submits its best and final offer, it may not come into compliance later for that procurement by revising its subcontracting plan.

(d) The Requirements will be considered an element of responsibility and not a component of size eligibility.

(e) The base contract period (excluding any options) will be used to determine compliance with the Requirements.

(f) Work to be performed by subsidiaries or other affiliates of a concern is not counted as being performed by the concern for purposes of determining whether the concern will perform the required percentage of work.

(g) The procedures of § 125.5 apply where the contracting officer determines non-compliance with the requirements applicable to small business set-aside or SDB-related procurements, and refers the matter to SBA for a COC determination.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28515 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Parts 132 and 134

Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. The regulations proposed here would reorganize all but one of the regulations pertaining to procedures before the Office of Hearings and Appeals ("OHA") and consolidate them in one part. In addition, the proposed regulations would clarify, simplify, and significantly shorten the existing regulations governing OHA. Finally, a number of substantive changes are proposed.

DATES: Comments must be submitted on or before December 27, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, Attention: Part 134, U.S. Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Gary Fox, Chief Counsel for Special Litigation, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to Federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would consolidate all the existing regulations governing proceedings before OHA into part 134 with the exception of proceedings under the Program Fraud Civil Remedies Act, which would be covered in part 142 of this chapter. It would also clarify, simplify and revise the current rules, reorganize sections for ease of use, and eliminate unnecessary provisions.

As background, the following analysis discusses the anticipated effect of this proposed rule on SBA's current regulations.

The proposed rule would be divided into four subparts. Subpart A would contain general rules (currently subpart A). Subpart B (currently subpart B and §§ 124.210 and 124.211 (d) through (i)) would contain rules of practice applicable to all cases before OHA except size and SIC code appeals and proceedings under the Program Fraud Civil Remedies Act. Subpart C would contain the rules applicable to size and SIC code appeals (currently §§ 121.1701–1722). Subpart D would contain the rules for implementation of the Equal Access to Justice Act, currently contained in part 132. Proceedings covered by the Program Fraud Civil Remedies Act would continue to be contained in part 142 of this chapter.

A number of policy changes are also proposed. OHA's jurisdiction would be expanded to include cases brought under the Age Discrimination Act. At the same time, its jurisdiction would be narrowed to exclude contractor debarment and suspension proceedings, employee formal stage grievances, arbitrations concerning labor agreements, and certain civil rights cases.

The service and filing requirements would be simplified considerably. Certification requirements and format requirements would be eliminated. The requirement that submissions be filed and served by certified or registered mail would be deleted, and the time limits for filing petitions and answers would be simplified and made uniform for all types of proceedings to the extent possible. In addition, the reviewing official on requests for review of all initial OHA decisions would be SBA's Administrator or his or her designee.

The proposed rule would expand the rights of parties in a number of ways. The rule would stay the time to answer a petition when a motion for summary decision is filed. The section on intervention would be broadened. The use of alternative dispute resolution procedures would be authorized where all parties consented. Finally, a number of time limits would be enlarged for the benefit of the public.

The proposed rule would also modify the rights of parties in a number of respects in the interests of efficiency and uniformity, and to conserve limited resources. For proceedings other than size and SIC code appeals, an oral hearing would not be granted unless there was a genuine dispute as to a material fact that could not be resolved except by the taking of testimony and the confrontation of witnesses. Oral hearings would not be permitted at all in SIC code appeals, and would be permitted in size appeals only under extraordinary circumstances. Discovery would be permitted in cases other than size, SIC code, and certain MED appeals only where a showing of good cause was made. No discovery would be permitted in size or SIC code appeals, and limited discovery would be permitted in certain MED appeals. There would no longer be an absolute right to review by OHA of a size determination. Instead, OHA would decide in its discretion whether to consider the appeal. Evidence would not be admitted in size appeals unless directed by the Judge. A size determination by an Area Office would be upheld unless the Judge found clear error of fact or law. Finally, the right to file motions for reconsideration of a Judge's decision in size and SIC code cases would be eliminated.

Subpart D would be reorganized, condensed, and rewritten in plain language. The text would be presented in a question and answer format for clarity and ease of use. Minimal substantive changes are proposed to clarify existing ambiguities and eliminate obsolete directions or references.

Section-by-Section Analysis

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

Proposed § 134.101 would provide that the rules in this part would govern the conduct of cases before OHA.

Proposed § 134.102 would provide definitions applicable to all subparts within part 134. Many of the definitions in current § 134.2 would be shortened and simplified. Some definitions would be deleted as unnecessary; others would be added with the incorporation of portions of parts 121 and 124 into part 134. Minor language changes would also be made. The definition of "hearing" would clarify that a hearing may or may not include live testimony or argument. The definition of "Judge" would be expanded to include the Assistant Administrator for Hearings and Appeals ("AA/OHA") when acting in the capacity of an Administrative Judge. The definition of "pleading" would be narrowed to include only the petition, appeal, answer, or any supplement or amendment to these documents. The current rule defines "pleading" to include all submissions other than documentary or testimonial evidence.

Proposed § 134.103 would list proceedings over which OHA has jurisdiction and would amend current § 134.3. Paragraph (a) of the current rule would be deleted because contractor debarment and suspension proceedings can be more appropriately handled by the program office.

Current § 134.3(d) would be amended to delete all proceedings except those under the Rehabilitation Act of 1973 (29 U.S.C. § 794, as amended). Proceedings under the Age Discrimination Act (42 U.S.C. §§ 6101 *et seq.*) would be added. The remainder of the proceedings in current § 134.3(d) can be more appropriately conducted in other forums.

Current §§ 134.3(e) and (f) would be deleted. Thus, employee formal stage grievances and arbitrations arising under a pertinent labor agreement no longer would be under OHA's jurisdiction.

Proceedings to determine allowance of fees and expenses under the Equal Access to Justice Act (5 U.S.C. § 504), size and SIC code appeals, and proceedings pursuant to the Program Fraud Civil Remedies Act against persons who make false claims or statements would be added to the jurisdictional section.

Section 134.104 would restate in clear language the statutory limit on OHA's jurisdiction over certain types of MED appeals. Those limitations are currently set forth in § 124.210(d).

Proposed § 134.105 would restate in clear language the rules for computing time (current § 134.2(b)(2)) and modifying time limits (current § 134.4(a)). Paragraph (b) of current § 134.4 would be deleted.

Proposed § 134.201 would explain the scope of subpart B. Subpart B would cover all cases over which OHA has jurisdiction, except appeals from size determinations and SIC code designations, which would be covered in subpart C, and proceedings under the Program Fraud Civil Remedies Act, which would be covered in part 142.

Proposed § 134.202 would explain how to commence a case, and would provide revised time limits for filing petitions for various types of proceedings. The current regulation contains seven different rules pertaining to time limits for filing petitions, depending on the type of case. The proposed rule would provide that, with two exceptions, all petitions must be filed no later than 45 days from the date of service of the SBA action or determination to which the petition relates.

Proposed § 134.203 would specify the information required in a petition and provide that insufficient petitions may be dismissed. It would also incorporate the rules for filing petitions in certain MED appeals currently contained in § 124.210(b).

Proposed § 134.204 would amend the current rule on service and filing (§ 134.14). It would delete the requirement that multiple copies of pleadings be filed, and would add a provision permitting service and filing by facsimile transmission, United States express mail, or commercial delivery service. It is intended that "commercial delivery service" includes overnight or other expedited delivery by private business concerns. In cases where the filing is sent by first-class United States mail, it would change the date of filing with OHA from date of receipt to date of mailing, as determined by the postmark. It would also provide that in cases where the postmark is illegible or incomplete, the submission would be presumed to have been mailed five days prior to receipt. Finally, it would add a requirement that any filing by personal delivery or commercial delivery service must be made between the hours of 8:30 AM and 5:00 PM.

Current § 134.14(d), on waiver of rights to service, and current § 134.15, on format requirements, would be

deleted, as would the requirement that a certification be made as to the truth and accuracy of a filing. Under proposed § 134.209(b), a person's signature on a document would represent an express certification.

Proposed § 134.205 (currently § 134.11(c)) would be written in simpler language. The time limit for serving and filing a motion for a more definite statement would be increased from 15 to 20 days after service of a petition or order to show cause, so as to allow sufficient time in light of proposed § 134.204(e) pertaining to service. The rule would clarify that, where a motion for a more definite statement is filed, the Judge would establish the time for serving and filing an answer.

Proposed § 134.206, on answers, corresponds to § 134.12 of the current regulation. The current rule provides that answers for some types of cases must be filed within 30 days and others within 45 days after the filing of a petition. The proposed rule would provide that all answers must be filed no later than 45 days after the service of a petition, with the exception of debt collection proceedings for which a 30-day time limit would apply. The provision on notification to the Office of General Counsel of the docketing of a case would be deleted because it is an internal administrative procedure. Paragraph (d) of the current rule would be deleted. Proposed paragraphs (d) and (e) would clarify that SBA must submit the administrative record to OHA, and that the Judge can direct its compliance if necessary.

Proposed § 134.207, on amendments and supplemental pleadings, would not change the current rule substantially other than to simplify, shorten and reorganize it. It would limit the filing of amendments and supplements to pleadings in certain MED appeals to cases where a showing of good cause is made, with the Judge determining the time to answer. Current § 134.13(b), on conformance to evidence, would be deleted.

Proposed § 134.208, concerning representation in cases before OHA, would shorten the current section on appearances. Paragraphs (b) and (e) of current § 134.16 would be deleted as unnecessary practices. Paragraph (d) would also be eliminated since attorneys are presumed to know the ethical standards under which they must practice.

Proposed § 134.209 would adopt the signature requirements found elsewhere in the current rule, and would provide that the signing of a submission by a party or its counsel attests that the submission is true and is not being filed for delay or harassment. This provision would replace the requirement in current § 134.15 requiring a separate, express certification.

Proposed § 134.210, on intervention, would eliminate the distinction between intervention as of right and discretionary intervention, and would broaden and simplify the current rule by adding a provision permitting intervention at the Judge's discretion to protect the moving party's interests. The proposed rule would provide SBA a right to intervene at any time until final decision.

Proposed § 134.211 would state in summary form the requirements of motion practice. Paragraph (d) of the current rule relating to the disposition of motions when the assigned Judge is unavailable would be deleted. The response time in the proposed rule would be enlarged to 20 days after the service of a motion to allow sufficient time in light of proposed § 134.204(e) pertaining to service.

Proposed § 134.212 would summarize the current provision on summary decision (current § 134.22) with some minor revisions. Current paragraph (d) relating to the content of the Judge's order when a motion is granted would be deleted. A new paragraph (d) would be added to stay the response time for filing an answer when a motion for summary decision has been filed, and to provide that the Judge would determine the response time for answering any claims remaining after a decision on the motion is rendered.

Proposed § 134.213 would require the establishment of good cause as a prerequisite to discovery in non-MED matters. Current § 124.210(h)(3)(i), governing discovery in certain MED program appeals, would be incorporated in this proposed rule. Current § 134.18(c), *Protective orders*, and current § 134.26, *Motions to compel*, would be summarized and incorporated in the proposed rule on discovery.

Proposed § 134.214, on subpoenas, would modify the current rule with respect to both application requirements and service. While the current rule permits a party to apply for a subpoena both orally on the record and *ex parte* by written application, the proposed rule would limit all subpoena requests to written applications. Service in the proposed rule would be limited to personal delivery only, eliminating service by certified mail. The proposed rule would require the subpoena and the affidavit of service to be filed with OHA within two days of service. The time for response to a motion to quash would be enlarged in the proposed rule. Finally, the rule would clarify that a Judge can issue a subpoena on his or her own initiative.

Proposed § 134.215 would simplify the current procedure for interlocutory appeals by designating the AA/OHA or his or her designee as the reviewing official for purposes of all interlocutory appeals. The time for filing a motion to certify a ruling for an interlocutory appeal would be enlarged. The proposed rule also would make it clear that if the Judge declined to certify a ruling for interlocutory appeal, the affected party would be able to raise the adverse ruling in a subsequent request for review under § 134.228.

Proposed § 134.216 is new. This provision would permit the use of alternative dispute resolution techniques, such as arbitration and mediation, to resolve cases before OHA and would provide that, when such procedures are employed, the Judge would stay the proceedings before OHA as appropriate.

Proposed § 134.217 would shorten the current rule on settlements considerably. Cumulative information would be deleted and the requirements concerning the content of the agreement would be eliminated. The proposed rule would allow for partial settlements by eliminating paragraph (5) of the current rule. The remainder of the rule, while reorganized, would not be substantially revised.

Proposed § 134.218 would both shorten and modify current § 134.18 on Judges. It would require that an Administrative Law Judge be assigned to all proceedings under the Administrative Procedure Act. It would clarify that the AA/OHA could assign any other proceeding to himself or herself, provided that he or she is a duly licensed attorney. The duties and powers of the Judge would be stated broadly, clarifying that they can take such action as may be required to regulate proceedings and issue decisions. The proposed rule would eliminate paragraph (c) because protective orders are covered in proposed § 134.204(g), *Service and filing requirements*, and in § 134.213(d), *Discovery*. The proposed rule would also eliminate paragraph (e) on interference, which would be covered in proposed § 134.220, *Prohibition against ex parte communications*. The current paragraph on recusal would be rewritten in summary form. Paragraph (f), *Substitution of Judges*, would be eliminated because OHA's substitution procedures are consistent with court practice.

Proposed § 134.219 would modify the current rule on sanctions to clarify the type of conduct for which sanctions might be imposed and to clarify that no sanctions imposing fees, costs, or monetary penalties can be ordered by the Judge. The rest of the rule would be more broadly stated, but its scope would not be substantively expanded.

Proposed § 134.220 would adopt the summary language of § 121.1715, now deleted, which also deals with the topic of *ex parte* communications. Rather than list the duties and obligations of a Judge as in current § 134.38, the proposed rule would incorporate by reference the Administrative Procedure Act, 5 U.S.C. § 557(d)(1). This statute contains explicit instructions for Judges who have been contacted *ex parte*. The proposed rule would reiterate current § 134.38 in emphasizing that prohibited communications may result in the imposition of sanctions.

Proposed § 134.221 would be shortened and rewritten in summary format instead of listing possible matters to be considered in a prehearing conference.

Proposed § 134.222, on oral hearings, would restate in clear language the intention of the current rule to leave oral hearings to judicial discretion. In the proposed rule, the Judge could permit an oral hearing in a non-MED matter only if he or she concluded that confrontation of witnesses was necessary to resolve a genuine dispute as to a material fact. The proposed rule would eliminate the provision in current § 134.19(a) restricting the time period within which a motion requesting an oral hearing may be submitted. However, current § 124.210(h)(3), which restricts the ability to request an oral hearing in certain MED program appeals, would be incorporated in § 134.222. Section 124.210(g) would also be modified and incorporated in this proposed rule. Selection of the location for all oral hearings would be committed to judicial discretion. Current §§ 124.211(e) and 124.211(h), relating to hearings on MED suspensions, would be incorporated in this part and expanded to provide that, for good cause, a Judge may waive the requirement that an oral hearing commence no more than 20 days after the ruling granting such hearing. Current paragraphs (c) and (d) of § 134.19, which track common federal court practices, would be eliminated, and current paragraphs (e)-(g) would be summarized for brevity's sake.

Proposed § 134.223, on evidence, would clarify OHA's use of the Federal Rules of Evidence as a general guide in its proceedings. Accordingly, paragraphs (b), (c), (d), (e), (f), and (g) of the current rule would be eliminated or shortened both for the sake of brevity, and because these paragraphs track the federal rules. Current § 124.210(h)(1) would be revised and incorporated in paragraph (c) and in proposed § 134.224, *Standards for decision*. Current § 124.210(h)(3)(i) would be reorganized for clarity and moved to this section, insofar as it relates to the submission of evidence, and to § 134.211(b), insofar as it relates to discovery. Section 124.210(h)(2) would also be incorporated in paragraph (d) of the proposed rule, clarifying that the Judge would retain jurisdiction during any remand.

Proposed § 134.224, on standards for decision, would set forth the burden of proof in factual matters arising in cases before OHA. This language is currently set forth in § 134.31, *Contents of decisions*. It would also incorporate current § 124.210(h)(1), which provides the standard of review in cases involving MED program appeals. The scope of review would not change from the current rule.

Proposed § 134.225, dealing with the record, would be shortened considerably. The proposed rule would refer to the "record", instead of the "docket file", which would comport with the terminology used in the Administrative Procedure Act. Information relating to the internal administration of OHA would be deleted. The proposed rule would incorporate portions of current § 134.31, which would be deleted in its entirety. The remaining sections of the current rule on records would be eliminated or summarized for the sake of brevity.

Proposed § 134.226 would require that all decisions pertaining to the collection of debt owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter, must be rendered within 60 days after a petition is filed. Further it would incorporate, without modification, § 124.210(j), relating to decisions in certain MED proceedings, and would amend current § 124.211(i) to eliminate the requirement that a decision be rendered at the close of a suspension hearing, where one is held. It would also adopt the remaining portions of § 134.31, *Contents of decisions*.

Proposed § 134.227, on finality of decisions, would be rewritten to reflect the jurisdictional changes in § 134.103. Since OHA would no longer have jurisdiction over employee formal stage grievances or arbitrations involving labor agreements, current paragraphs 134.31(a)(1) and (a)(2) would be deleted. Paragraph (b) would be rewritten consistent with the jurisdictional changes in proposed § 134.103. Because OHA would no longer have jurisdiction in contractor debarment and suspension proceedings, former paragraph (c) would also be eliminated. The remaining portions of paragraphs (a) and (b) would be rewritten for clarity.

Proposed § 134.228, on review of initial decisions, is based upon current § 134.34, but would permit the filing of a request for review directly with OHA. The term "agency reviewing official" would be eliminated. Upon a request for review, SBA's Administrator or his or her designee would review the initial decision and could set aside a decision if it were found to be based upon an erroneous finding of fact or an erroneous interpretation of case law, statute, regulation, or SBA policy. Time frames for filing a response to a petition for review would be enlarged.

Proposed § 134.229 would be rewritten for clarity.

Proposed § 134.301 would define the scope of subpart C. Subpart C would cover the rules on appeals from size determinations and SIC code designations currently found in §§ 121.1701 *et seq.* It would shorten and simplify current § 121.1701, deleting any reference to Regional Offices since authority to make size determinations has been transferred from Regional Offices to Government Contracting Area Offices.

Proposed § 134.302 corresponds to current § 121.1703 and would specify who may appeal a size determination or SIC code designation. This section would delete the reference to the Regional Administrator (since Regional Offices are no longer involved in size determinations), and clarify that the procuring agency contracting officer responsible for the relevant procurement has an appeal right.

Proposed § 134.303 would incorporate a policy decision to make the review of size appeals by OHA a matter of its discretion. This change would conserve limited resources and avoid the necessity of deciding cases where the regulation or case precedent is clear.

Proposed § 134.304 would specify the time limits for appeal, simplifying the current rule considerably. Time limits for appealing size determinations would now run from the date of service of the determination rather than from the date of receipt. The time periods for filing would be lengthened for certain types of appeals and shortened for others. Time limits for appeals from SIC code designations would run from the date the solicitation is issued. The current time limits for appeals of SIC code designations run backwards from the bid opening date or deadline for submitting proposals or quotations and are complex and difficult to use. The

rule on counting Saturdays, Sundays and holidays would be amended to conform to the rule for other OHA proceedings and would be incorporated in § 134.105. The remainder of the current section would be reorganized, but not substantively changed.

Proposed § 134.305 concerning the appeal petition would simplify current § 121.1706. A telefaxed notice would no longer need to be confirmed by next day mailing of a written notice. A signed certification as to the truth and accuracy of the appeal petition would no longer be required. In size appeals, the appellant would no longer be required to serve a copy of the appeal petition on all alleged affiliates of the concern whose size is at issue. The requirement would provide separate requirements for service of an SIC code appeal petition as opposed to a size appeal petition. A provision would be added clarifying that appeals may be dismissed if they do not contain all the required information.

Proposed § 134.306 would restate current § 121.1706(b) concerning transmission of the case file from the office that made the size determination to OHA.

Proposed § 134.307 would incorporate by reference proposed § 134.204. The rule for service and filing of submissions for size and SIC code appeals would be the same as that for filing petitions under subpart B, with the rule in subpart B incorporated by reference. The requirement in the current rule (§ 121.1712) that service be made by certified or registered mail would be deleted to ease the burden on the public. The current requirement that an express certification be made as to the truth and accuracy of any submission to OHA would be deleted. Under proposed § 134.209 (incorporated by reference), any person signing a document attests to its truth and accuracy. Proposed § 134.307 would incorporate by reference a rule on determining the date of service or filing. Proposed § 134.105 would incorporate the rule on modification of time limits in current § 121.1712(e).

Proposed § 134.308 is new and would provide that evidence not presented to the SBA official whose size determination is being appealed would only be considered when ordered by the Judge. A new provision would also be added to provide that the Judge could draw adverse inferences against parties who do not submit evidence in their possession when directed to do so.

Proposed § 134.309, concerning responses to the appeal petition, corresponds to current § 121.1708. It would be reorganized for clarity, would enlarge the time to file a response to an appeal from 5 to 10 days, and would clarify that replies to responses would not be permitted unless directed by the Judge.

Proposed § 134.310 on discovery would incorporate the current policy of OHA not to permit discovery in either size or SIC code proceedings.

Proposed § 134.311 would provide that oral hearings not be held in SIC code appeals, and be held in size appeals only under exceptional circumstances. In SIC code cases, short time frames make the use of oral hearings impracticable. Moreover, there is rarely a need to confront witnesses in an SIC code appeal. Under exceptional circumstances, oral hearings may be appropriate in size determination appeals. In such instances, the proceedings would be conducted in accordance with those rules in subpart B deemed appropriate by the Judge.

Proposed § 134.312 would incorporate by reference certain paragraphs in § 134.223 for cases where evidence is admitted. There is no separate rule on evidence in the current regulations relating to appeals from size determinations and SIC code designations.

Proposed § 134.313 would incorporate by reference certain other provisions in subpart B. The rules for amendments to pleadings, representation, signature, intervention, motions, subpoenas, Judges, sanctions, and the prohibition against *ex parte* communications, would be identical to those for other proceedings before OHA. For the sake of brevity and simplicity, these sections would be incorporated by reference in subpart C rather than repeated verbatim.

The proposed rule on amendments to pleadings does not appear in the current rule and would permit parties to amend pleadings if permitted by the Judge. The proposed rule on representations does not appear in the current rules and would limit the types of persons who could represent parties in proceedings before OHA. The current rule on intervention (§ 121.1709) would be broadened to permit OHA to allow an interested person to intervene if the Judge determines that the person's participation in the proceedings would likely assist in the efficient, prompt, and fair determination of the case. The proposed rule on signatures would include a provision that by signing a submission a person attests to its truth and accuracy. This would replace the requirement in current § 121.1712(d) that an express certification be made as to the truth and accuracy of a document. The proposed section on motions is new and would clarify what is required when filing a motion in these proceedings. The section on Judges would be shortened considerably. The current rule on Judges (§ 121.1713) lists all the various powers of a Judge in OHA. The proposed rule would state the duties and powers of the Judge in broad terms. The current section on *ex parte* communications (§ 121.1715) would not be substantially changed except that the Administrative Procedure Act would be cited with regard to a Judge's duty to disclose *ex parte* communications. The provision on sanctions (current § 121.1713(p)) would be shortened, and the list of the types of sanctions that could be imposed would be deleted.

Proposed § 134.314 would provide that the standard of review in size and SIC code appeals would be whether the determination was based on clear error of law or fact. In cases where new evidence was submitted, it is recognized that clear error of law or fact could be found as a result of such new evidence.

Proposed § 134.315, concerning the record, would incorporate by reference certain paragraphs in § 134.225, and would add a sentence providing that the contents of the record would also include the file submitted to OHA by the Area Office and any materials submitted by the contracting officer.

Proposed § 134.316, on the decision, corresponds to current § 121.1720. The current rule would be shortened considerably. References to hearings and post-hearing procedures would be eliminated. The statement concerning oral notification of the ultimate determination would be eliminated. Judges may provide oral notice of the decision as a matter of practice under their powers as Judges.

Proposed § 134.317 is new and would clarify that OHA's jurisdiction would terminate upon the issuance of the decision.

Proposed § 134.318 would inform the public that the case file would be returned to the transmitting Area Office upon termination of OHA's jurisdiction.

A number of sections in the current rules would be deleted or incorporated elsewhere. The definitions in current § 121.1702 would be incorporated in proposed § 134.102, the definitional section for all of part 134. Current § 121.1704 would be incorporated in proposed § 134.204 on service and filing requirements. Current § 121.1710 would be substantially incorporated in proposed § 134.225. Current § 121.1711 would be deleted since the assignment of a Judge is an internal administrative procedure. The right to request reconsideration in current § 121.1712 would be eliminated in order to streamline the appellate process.

Current § 121.1716, on subpoenas, would be deleted since proposed § 134.313 would incorporate by reference proposed § 134.214. Current § 121.1717, concerning *in camera* orders, would be deleted since proposed § 134.307 would incorporate by reference proposed § 134.204(g), and proposed § 134.315 would incorporate by reference proposed § 134.225(b). Current § 121.1719, concerning post-hearing procedures, would be eliminated since oral hearings would no longer be held in SIC code appeals, and only rarely in size appeals. Current § 121.1722, concerning the delegation of authority when a Judge is not available, would be deleted since it is an internal procedure and is a matter of general practice in administrative and judicial forums.

Proposed § 134.401 corresponds to existing § 132.101. There are no substantive changes in the proposed section. This section, and the sections which follow, are organized in question and answer format to make the information more accessible.

Current § 132.102 which discusses the sunset of the Equal Access to Justice Act (the "Act") would be deleted because Public Law 99–80 enacted August 5, 1984 reauthorized the Act.

Proposed § 134.402 describes generally the types of proceedings under which you may apply for reimbursement. This proposed section corresponds to current §§ 132.101, 132.103, and 132.105.

Proposed § 134.403 corresponds to existing § 132.103. The proposed section defines which types of proceedings conducted by OHA are "agency adversary adjudications" covered by the Act. The proposed section would revise the current section to be consistent with § 134.103 in subpart A of this rule, which lists the types of proceedings in which OHA has jurisdiction. Note that only a few categories of OHA proceedings qualify as "agency adversary adjudications": proceedings concerning the revocation or suspension of SBIC licensees, cease and desist orders, and the removal or suspension of SBIC directors and officers; proceedings under the Debt Collection Act of 1982; and MED eligibility appeals relating to admission, termination, graduation, and waiver denials under § 124.317.

Proposed § 134.404 is new. It describes generally the type of benefits you may claim.

Proposed § 134.405 corresponds to existing § 132.105. The material is revised in the proposed rule to provide clarification of certain terms used in the current section, such as "position of the agency". The proposed section would incorporate the clarified definition added to the Act in the 1984 amendment at 5 U.S.C. § 504(b)(1)(E) and in the amended Model Rule at 1 C.F.R. § 315.105(a). The definition now includes the position taken by the agency in the administrative proceeding, as well as the agency's position in the underlying action which triggered the administrative proceeding. The proposed section would also provide that although no presumption arises that SBA's position was not substantially justified simply because it did not prevail in a proceeding, nonetheless, upon the assertion that the position of SBA was not substantially justified, SBA would be required to establish that its position was reasonable in fact and law.

Proposed § 134.406(a) clarifies the definition of eligible party found in current § 132.104. The current section does not define "party" but instead refers to the definition in 5 U.S.C. § 551(3). This reference is confusing because the definition of "party" in that statute could include federal agencies. Federal agencies are not parties eligible for reimbursement under the Act. The proposed new section actually defines an eligible party in a manner consistent with the Act. Proposed § 134.406(b) corresponds to existing § 132.104(h).

Proposed § 134.407 corresponds to existing §§ 132.104(b), (c), (d) and (e), which describe eligibility criteria. The proposed section summarizes the material on eligibility in the form of a chart and revises it to reflect the amendment to the Act which increased the net worth eligibility ceiling.

Proposed § 134.408 corresponds to existing subsections 132.104(f) and (g). The reorganized material summarizes all the special rules for calculating eligibility in one section.

Proposed § 134.409 describes the difference between fee and expense.

Proposed § 134.410 describes the limitations on reimbursement of professional fees and expenses found in current §§ 132.201 and 132.202. That portion of the proposed section pertaining to fees presents the information in more succinct form, but does not substantively revise it. That portion of the proposed section relating to expenses revises the current rule so that it will be consistent with the proposed rule relating to fees. The current section would not otherwise be substantively revised.

Proposed § 134.411 corresponds to existing § 132.301. The proposed section reorganizes material relating to applications and conforms the service and filing requirements to the requirements of § 134.204. The lengthy requirements of the current section would be revised and summarized for ease of reference. A chart would be added to clarify what each type of party must attach as exhibits to the petition.

Proposed § 134.412 corresponds to existing § 132.302. The proposed section reorganizes material relating to net worth exhibits and presents it in simplified form. The text is significantly condensed. Redundant information is deleted.

Proposed § 134.413 corresponds to existing § 132.303. The proposed section sets forth the requirements of the current rule in a clearer format for ease of reference. Additional specificity is provided in the proposed section respecting the submission of statements or invoices for expenses. This language was added so that the requirements for expense invoices would be consistent with the requirements for fee statements.

Proposed § 134.414 corresponds to existing §§ 132.301 and 132.402. The proposed section reorganizes material relating to the filing deadline of applications. The proposed section also effectuates the stay language in the Act, at 5 U.S.C. § 504(a)(2), which provides for a stay of award requests if the SBA or another party appeals the underlying decision. The Act requires award requests to be stayed until a final unreviewable decision is rendered in the underlying adjudication. This information is not contained in the current SBA regulations although it is both in the Act and in the Model Rule for Implementation of the Equal Access to Justice Act at 1 CFR § 315.204.

Proposed § 134.415 incorporates the procedural requirements of subpart B by reference.

Proposed § 134.416 corresponds to existing §§ 132.402(a) and 132.403. The proposed section reorganizes the material relating to the ALJ's decision. The current text would be condensed and summarized in the proposed rule, but not otherwise revised.

Proposed § 134.417 corresponds to existing § 132.404. The proposed section clarifies the avenues available to an applicant to seek review of an ALJ's decision on an award, and the time frames which must be observed. The proposed section adds new language to current § 134.404 as to what type of SBA decision is a "determination" under the Act for purposes of judicial review.

Proposed § 134.418 corresponds to existing § 132.501. The proposed section would add the SBA's address for Financial Operations to expedite payment of awards but would not otherwise revise the section.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. §§ 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* This rule would reorganize and simplify the rules governing procedures before SBA's Office of Hearings and Appeals. Contracting opportunities and financial assistance for small business would not be affected by this proposed rule. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects

13 CFR Part 132,

Claims, Equal Access to Justice, Lawyers.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

For the above reasons, and under the authority of 15 U.S.C. 634(b)(6), SBA proposes to amend 13 CFR Chapter I as follows:

1. Part 134 would be revised to read as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Subpart A—General Rules

Sec.

134.101 Scope of the rules in this part 134.
134.102 Definitions used in this part 134.
134.103 Jurisdiction of OHA.
134.104 Limitation on the jurisdiction of OHA.
134.105 Rules applicable to time periods provided in this part 134.

Subpart B—Rules of Practice for Most Cases

134.201 Scope of the rules in subpart B.
134.202 Commencement of cases.
134.203 The petition.
134.204 Service and filing requirements.
134.205 Motion for a more definite statement.
134.206 The answer.
134.207 Amendments and supplemental pleadings.
134.208 Representation in cases before OHA.
134.209 Requirement of signature.
134.210 Intervention.
134.211 Motions.
134.212 Summary decision.
134.213 Discovery.
134.214 Subpoenas.
134.215 Interlocutory appeals.
134.216 Alternative dispute resolution procedures.
134.217 Settlement.
134.218 Judges.
134.219 Sanctions.
134.220 Prohibition against *ex parte* communications.
134.221 Prehearing conferences.
134.222 Oral hearing.
134.223 Evidence.
134.224 Standards for decision.
134.225 The record.
134.226 The decision.
134.227 Finality of decisions.
134.228 Review of initial decisions.
134.229 Termination of jurisdiction.

Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

134.301 Scope of the rules in subpart C.
134.302 Who may appeal.
134.303 No absolute right to an appeal from a size determination.
134.304 Commencement of appeals from size determinations and SIC code designations.
134.305 The appeal petition.
134.306 Transmission of the case file.
134.307 Service and filing requirements.
134.308 Limitation on the submission of new evidence in appeals from size determinations.
134.309 Response to an appeal petition.
134.310 Discovery.
134.311 Oral hearings.
134.312 Evidence.
134.313 Applicability of subpart B provisions.
134.314 Standard of review.
134.315 The record.
134.316 The decision.
134.317 Termination of jurisdiction.
134.318 Return of the case file.

Subpart D—Implementation of the Equal Access to Justice Act

134.401 What is the purpose of this subpart?
134.402 Under what circumstances may I apply for reimbursement?
134.403 What is an agency adversary adjudication?
134.404 What benefits may I claim?
134.405 Under what circumstances are fees and expenses reimbursable?
134.406 Who is eligible for possible reimbursement?
134.407 How do I know which eligibility requirement applies to me?
134.408 What are the special rules for calculating net worth and number of employees?
134.409 What is the difference between a fee and an expense?
134.410 Are there limitations on reimbursement for fees and expenses?
134.411 What should I include in my application for an award?
134.412 What must a net worth exhibit contain?
134.413 What documentation do I need for fees and expenses?
134.414 What deadlines apply to my petition for an award and where do I send it?
134.415 How will proceedings relating to my application for fees and expenses be conducted?
134.416 How will I know if I receive an award?
134.417 May I seek review of the ALJ's decision on my award?
134.418 How are awards paid?

Authority: 5 U.S.C. 504; 15 U.S.C. 634(b)(6) and 637(a).

Subpart A—General Rules

§ 134.101 Scope of the rules in this part 134.

The rules in this part 134 govern the conduct of all proceedings before OHA except those governed by part 142 of this chapter.

§ 134.102 Definitions used in this part 134.

As used in this part:

AA/OHA means the Assistant Administrator for OHA.

Address means the primary home or business address of a person or entity, including the street location or postal box number, city or town, state, and postal zip code.

Area Office means a Government Contracting Area Office or a Disaster Area Office of the Small Business Administration.

Day means a calendar day, unless a Judge specifies otherwise.

Hearing means the presentation and consideration of argument and evidence. A hearing may or may not include live testimony or argument.

Judge means an Administrative Law Judge or an Administrative Judge of OHA, or the AA/OHA when he or she acts in the capacity of an Administrative Judge.

OHA means the Office of Hearings and Appeals.

Party means the petitioner, respondent, or intervenor.

Person means an individual, or a partnership, association, corporation, or other business entity.

Petition means a written complaint, a written notice of appeal from an SBA determination, or a written request for the initiation of proceedings before OHA.

Petitioner means any person or governmental agency which has brought a proceeding before OHA.

Pleading means a petition, an order to show cause commencing a case, a notice of appeal, or an answer, as well as any amendment or supplement to those documents.

Respondent means any person or governmental agency against which a case has been brought before OHA.

SBA means the United States Small Business Administration.

SIC code means Standard Industrial Classification code.

Size determination means a formal size determination made by an Area Office.

§ 134.103 Jurisdiction of OHA.

OHA has authority to conduct proceedings in the following types of cases:

(a) The revocation or suspension of Small Business Investment Company licenses, cease and desist orders, and the removal or suspension of directors and officers of licensees, under the Small Business Investment Act of 1958, 15 U.S.C. 681 *et seq.* and part 107 of this chapter;

(b) Alleged violations of the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.* and part 112, subparts A and B, of this chapter, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and part 112, subpart C, of this chapter;

(c) The revocation of the privilege of any applicant or agent to conduct business with SBA under the Small Business Act, 15 U.S.C. 634 and 642 and part 103 of this chapter;

(d) The eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in SBA loan programs under the Small Business Act, 15 U.S.C. 634 *et seq.* and part 120 of this chapter;

(e) The suspension or termination of surety bond program participants under 15 U.S.C. 694a *et seq.* and part 115 of this chapter;

(f) The rights, privileges, or obligations of development companies under sections 501, 502, 503, and 504 of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.* and part 120, subpart H, of this chapter;

(g) Allowance of fees and expenses under the Equal Access to Justice Act, 5 U.S.C. 504 and subpart D of this part;

(h) Debarment from appearance before the SBA because of post-employment restrictions under 18 U.S.C. 207 and part 105 of this chapter;

(i) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter;

(j) Appeals from the following SBA determinations involving the MED program under the Small Business Act, 15 U.S.C. 637 and part 124 of this chapter:

(1) Denial of program admission based solely on a negative finding as to social disadvantage, economic disadvantage, ownership or control; program termination; program graduation; or denial of a waiver of the requirement to perform to completion a MED contract; and

(2) Program suspension;

(k) Appeals from size determinations and SIC code designations under part 121 of this chapter;

(l) The imposition of civil penalties and assessments against persons who make false claims or statements to SBA under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812 and part 142 of this chapter; and

(m) Any other hearing, determination, or appeal proceeding referred to OHA by the Administrator of SBA.

§ 134.104 Limitation on the jurisdiction of OHA.

A Judge considering a MED program appeal arising under § 134.103(j)(1) of this part must not accept jurisdiction if:

(a) The appeal does not allege facts that, if true, would warrant reversal or modification of the determination; or

(b) The appeal is not filed on time and in accordance with the requirements of this part; or

(c) The matter has been decided or is the subject of a pending case before a court.

§ 134.105 Rules applicable to time periods provided in this part 134.

(a) *Computing time.* In computing time, the day from which the time is computed is not counted. The last day of the time period is counted, unless it is a Saturday, Sunday, or Federal holiday, in which event the next business day is counted.

(b) *Modification of time limits.* At the Judge's discretion, or upon the motion of a party showing good cause, the Judge may modify any of the time limits set forth in this part, other than those established by statute and those governing when a case may be commenced. However, any motion to extend a time limit must be filed and served before the expiration of that time limit.

Subpart B—Rules of Practice for Most Cases

§ 134.201 Scope of the rules in subpart B.

The rules of practice in subpart B of this part apply to all proceedings over which OHA has jurisdiction, except for appeals from size determinations and SIC code designations and proceedings governed by part 142 of this chapter.

§ 134.202 Commencement of cases.

(a) *Commencement of a case by a person.* A case may be commenced by a person by filing a written petition within the following time periods:

(1) Except as otherwise provided by this paragraph, no later than 45 days from the date of service of the SBA action or determination to which the petition relates;

(2) In the case of debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(3) In the case of applications for an award of fees pursuant to subpart D of this part, no later than 30 days after the decision to which it applies becomes final.

(b) *Commencement of a case by SBA.* A case may be commenced by SBA by filing a written order to show cause.

§ 134.203 The petition.

(a) *Required contents of a petition.* A petition must contain the following information:

(1) The basis of OHA's jurisdiction over the case;

(2) A clear and concise statement of the factual basis of the case and, if the case is a MED program appeal arising under § 134.103(j)(1) of this part, the reasons why the determination is alleged to be arbitrary, capricious, or contrary to law;

(3) The relief being sought; and

(4) The name, address, telephone number, and signature of the petitioner or its attorney.

(b) *Dismissal of insufficient petitions.* A petition which does not contain all of the information required by paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of the respondent.

§ 134.204 Service and filing requirements.

(a) *Service.* Each party is responsible for the service of its pleadings and other submissions upon all other parties or their attorneys. Unless otherwise ordered by the Judge, service is made by providing each party, or its attorney, with a copy of the pleading or other submission by personal delivery, first-

class United States mail, United States express mail, facsimile transmission, or commercial delivery service. If service is to be by first-class United States mail or United States express mail, it must be accomplished as follows:

(1) By mailing to a party's last-known residence or business address if it has not yet appeared in the case, or by mailing to the address of a party which has appeared as shown in its submission;

(2) If a party has appeared in the case through an attorney, by mailing to the address of the attorney shown in the party's submission or in a notice of appearance;

(3) If to SBA, unless an attorney is specified in SBA's submissions to OHA, by mailing to: Office of General Counsel, Small Business Administration, 409 Third Street, S.W.—Seventh Floor, Washington, D.C. 20416.

(b) *Filing.* (1) All pleadings and other submissions must be filed with OHA by personal delivery, first-class United States mail, United States express mail, facsimile transmission, or commercial delivery service. Filing may only be accomplished at the following address: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, S.W.—Mail Code 2441, Washington, D.C. 20416.

(2) If filing is to be by personal delivery or commercial delivery service, such filing must be accomplished between the hours of 8:30 a.m. and 5:00 p.m. If filing is to be by facsimile transmission, the telephone number to be used may be obtained by calling OHA in Washington, D.C.

(c) *Number of copies which must be filed.* Only the original of a pleading or other submission must be filed with OHA. In the case of a document offered as evidence, an authenticated copy may be filed instead of the original.

(d) *Certificate of service.* A signed certificate stating how and when service was made on all parties must be attached to each pleading or other submission filed with OHA.

(e) *Date of service and filing.* Unless otherwise specified by the Judge, the date of service or filing is as follows:

(1) In the case of service or filing by facsimile transmission, the date of transmission;

(2) In the case of service or filing by first-class United States mail, the date of postmark; and

(3) In the case of service or filing by personal delivery, United States express mail, or commercial delivery service, the date of receipt.

(f) *Presumption relating to the date of service or filing by first-class United States mail.* Where the determination of the date of service or filing is dependent upon the date of postmark, and the postmark is illegible or incomplete, there will be a rebuttable presumption that the postmark was dated five days prior to the date of receipt.

(g) *Treatment of confidential information.* Any information in pleadings or other submissions that is believed by the submitting party to constitute proprietary or confidential information need not be served upon other parties so long as the deletions are clearly identified and generally described in the documents which are served. Upon motion, the Judge may direct that the withheld information be provided to other parties, subject to any appropriate protective order.

§ 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 20 days after service of the petition or order to show cause, the respondent may serve and file a motion requesting a more definite statement by the petitioner of particular allegations in the petition or order to show cause identified by the respondent. Where the respondent makes a reasonable showing that a response cannot be made in the absence of further detail by the petitioner, the Judge will issue an order directing the petitioner to serve and file a more definite statement.

(b) *Stay.* The serving and filing of a motion for a more definite statement stays the time for serving and filing an answer. In the order determining the motion for a more definite statement, the Judge will establish the time for serving and filing an answer.

§ 134.206 The answer.

(a) *Time due.* A respondent must serve and file an answer within 45 days after the service of a petition or order to show cause, except that debt collection proceeding answers are due within 30 days.

(b) *Required contents of an answer.* The answer must contain the following:

(1) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(2) Any affirmative defenses; and

(3) The name, address, telephone number, and signature of the respondent or its attorney.

(c) *Failure to deny.* Allegations in the petition or order to show cause which are not answered in accordance with paragraph (b)(1) of this section will be deemed admitted unless injustice would occur.

(d) *Submission of the written administrative record.* Upon an appeal from an SBA determination concerning the MED program, SBA must serve and file the written administrative record pertaining to that determination within the same time period applicable to the service and filing of its answer. If SBA fails to serve and file the written administrative record within the appropriate time period, the Judge will issue an order directing SBA to serve and file the administrative record by a specified date.

(e) *Default.* If the respondent fails to serve and file an answer within the time period set forth in paragraph (a) of this section, or within any extended time period granted by the Judge, that failure will constitute a default. Following such a default, the respondent will be prohibited from participating further in the case, except to serve and file the written administrative record in accordance with paragraph (d) of this section. The Judge will then proceed to issue a decision.

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendment of pleadings.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of amendments to pleadings. However, an amendment will not be permitted if it would cause unreasonable delay in the determination of the matter.

(b) *Supplemental pleadings.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading.

(c) *Limitation applicable to MED program appeals arising under § 134.103(j)(1) of this part.* In MED program appeals arising under § 134.103(j)(1) of this part, amendments to pleadings and supplemental pleadings will be permitted by the Judge only upon a showing of good cause.

(d) *Answer to a petition or order to show cause which has been amended or supplemented.* In an order permitting the serving and filing of an amended or supplemented petition or order to show cause, the Judge will establish the time for serving and filing an answer.

§ 134.208 Representation in cases before OHA.

(a) *Representation pro se or by an attorney.* A party to a case before OHA may represent itself, or be represented by a duly licensed attorney. A member of a partnership may represent the partnership, and an officer may represent a corporation, trust, or association.

(b) *Notice of appearance.* An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA, must serve and file a written notice of appearance.

(c) *Withdrawal of appearance.* An attorney seeking to withdraw from a case must serve and file a motion for the withdrawal of his or her appearance.

§ 134.209 Requirement of signature.

(a) *Requirement of signature.* Every written submission to OHA, other than evidence, must be signed by the party filing that submission, or by the party's attorney.

(b) *Meaning of signature.* By signing a submission to OHA, a party or its attorney attests that the statements and allegations in that submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment.

§ 134.210 Intervention.

(a) *Intervention by SBA.* SBA may intervene as of right at any time in any case until final decision.

(b) *Intervention by interested persons.* Any individual, partnership, association, corporation, trust, or governmental agency may move to intervene at any time until final decision by serving and filing a motion to intervene containing a statement of the movant's interest in the case and the necessity for intervention, to protect such interest. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

§ 134.211 Motions.

(a) *Contents.* All motions must state the relief being requested, as well as the grounds and any authority for that relief.

(b) *Response.* No later than 20 days after the service of a motion, all non-moving parties must serve and file a response or be deemed to have consented to the relief sought. Unless the Judge directs otherwise, the moving party will have no right to reply to a response, nor will oral argument be heard on the motion.

(c) *Service of written orders.* OHA will serve upon all parties any written order issued in response to a motion.

§ 134.212 Summary decision.

(a) *Grounds.* A party may move for summary decision at any time as to all, or any portion of, the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(b) *Contents of motion.* The motion must include a statement of the material facts believed not to be disputed, and relevant law. Supporting affidavits may also be included.

(c) *Cross-motions.* In its response to a motion for summary decision, a party may cross-move for summary decision in its own favor. The initial moving party may serve and file a response to any cross-motion for summary decision within 20 days after the service of that cross-motion.

(d) *Stay.* A motion for summary decision stays the time to answer. If appropriete, the Judge will establish the time for serving and filing an answer in the order determining the motion for summary decision.

§ 134.213 Discovery.

(a) *Discovery in cases other than those involving MED program appeals arising under § 134.103(j)(1) of this part.* In cases other than those involving MED program appeals arising under § 134.103(j)(1) of this part, a party may obtain discovery only upon motion, and for good cause shown.

(b) *Discovery in MED program appeals arising under § 134.103(j)(1) of this part.* In MED program appeals arising under § 134.103(j)(1) of this part, discovery will be permitted only upon motion, and only if it is determined by the Judge that the requesting party has made a substantial showing, based upon credible evidence, and not mere allegation, that the SBA determination in question may have resulted from bad faith or improper behavior. Any permitted discovery will be limited to facts relating to the alleged bad faith or improper behavior asserted by the party seeking discovery.

(c) *Forms of permissible discovery.* The forms of discovery which a Judge can order under paragraphs (a) and (b) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(d) *Limitations upon discovery.* Discovery may be limited in accordance with the terms of a protective order. Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(e) *Motions available to resolve a discovery dispute.* If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may serve and file a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance, undue burden or expense, privilege, or confidentiality.

§ 134.214 Subpoenas.

(a) *Availability of subpoenas.* At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring a witness to appear and testify, or to produce particular documents, at a specified time and place.

(b) *Requests for the issuance of a subpoena.* A request for the issuance of a subpoena must be written, served upon all parties, and filed. The request must clearly identify the witness and any documents to be subpoenaed, and must set forth the relevance of the testimony or documents sought.

(c) *Service.* A subpoena may only be served by personal delivery. The individual making service shall prepare an affidavit stating the date, time, and place of the service. The party which obtained the subpoena must serve upon all other parties, and file with OHA, a copy of the subpoena and affidavit of service within 2 days after service is made.

(d) *Motion to quash.* A motion to limit or quash a subpoena must be served and filed within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be served and filed within 10 days after service of the motion, unless a shorter time is specified by the Judge. No oral argument will be heard on the motion unless the Judge directs otherwise.

§ 134.215 Interlocutory appeals.

(a) *General rules.* A motion for leave to take an interlocutory appeal from a Judge's ruling will not be entertained in those proceedings in which OHA issues final decisions. In all other cases, an interlocutory appeal will be permitted only if, upon motion by a party, or upon the Judge's own initiative, the Judge certifies that his or her ruling raises a question which is immediately appealable. Interlocutory appeals will be decided by the AA/OHA or a designee.

(b) *Motion for certification.* A party must serve and file a motion for certification no later than 20 days after issuance of the ruling to which the motion applies. A denial of the motion does not preclude objections to the ruling in any subsequent request for review of an initial decision.

(c) *Basis for certification.* The Judge will certify a ruling for interlocutory appeal only if he or she determines that:

(1) The ruling involves an important question of law or policy about which

there is substantial ground for a difference of opinion; and

(2) An interlocutory appeal will materially expedite completion of the case, or denial of an interlocutory appeal would cause undue hardship to a party.

(d) *Stay of proceedings.* A stay of the proceedings, while an interlocutory appeal is pending, will be at the discretion of the Judge.

§ 134.216 Alternative dispute resolution procedures.

At any time during the pendency of a case, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution procedures to assist in resolving the matter. If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution procedures.

§ 134.217 Settlement.

(a) *Contents of a Settlement Agreement.* At any time during the pendency of a case, the parties may submit a settlement agreement, signed by all settling parties, to the Judge.

(b) *Admissibility.* Settlement negotiations, and rejected settlement agreements, are not admissible into evidence.

§ 134.218 Judges.

(a) *Assignment of Judges.* The AA/OHA will assign all cases subject to the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, to an Administrative Law Judge. The AA/OHA will assign all other cases before OHA to either an Administrative Law Judge or an Administrative Judge, or, if the AA/OHA is a duly licensed attorney, to himself or herself.

(b) *Authority of a Judge.* Except as otherwise limited by this part, or by statute or other regulation, a Judge has the authority to take all appropriate action to ensure the efficient, prompt, and fair determination of a case, including, but not limited to, the authority to administer oaths and affirmations and to subpoena and examine witnesses.

(c) *Recusal.* Upon the motion of a party, or upon the Judge's own initiative, a Judge will promptly recuse himself or herself from further participation in a case whenever disqualification is appropriate due to conflict of interest, bias, or some other significant reason. A denial of a motion for recusal may be immediately appealed to the AA/OHA, or to the Administrative Law Judge if the AA/OHA is the Judge, but that appeal will not stay proceedings in the case.

§ 134.219 Sanctions.

A Judge may impose appropriate sanctions, except for fees, costs, or monetary penalties, which he or she deems necessary to serve the ends of justice, if a party or its attorney:

(a) Fails to comply with an order of the Judge;

(b) Fails to comply with the rules set forth in this part;

(c) Acts in bad faith or for purposes of delay or harassment;

(d) Submits false statements knowingly, recklessly, or with deliberate disregard for the truth; or

(e) Otherwise acts in an unethical or disruptive manner.

§ 134.220 Prohibition against ex parte communications.

No person shall consult or communicate with a Judge concerning any fact, question of law, or SBA policy relevant to a case before that Judge except on prior notice to all parties, and with the opportunity for all parties to participate. In the event of such prohibited consultation or communication, the Judge will disclose the occurrence in accordance with the Administrative Procedure Act, 5 U.S.C. 557(d)(1), and may impose such sanctions as he or she deems appropriate.

§ 134.221 Prehearing conferences.

Prior to a hearing, the Judge, at his or her own initiative, or upon the motion of any party, may direct the parties or their attorneys to appear, by telephone or in person, in order to consider any matter which may assist in the efficient, prompt, and fair determination of the case. The conference may be recorded verbatim at the discretion of the Judge, and, if so, a party may purchase a transcript, at its own expense, from the recording service.

§ 134.222 Oral hearing.

(a) *Availability of an oral hearing.* At his or her own initiative, or upon the motion of any party, the Judge may order an oral hearing if he or she concludes that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses. However, in MED program appeals arising under § 134.103(j)(1) of this part, an oral hearing will not be permitted unless the Judge determines that there has been a substantial showing, based upon credible evidence, that the SBA determination in question may have resulted from bad faith or improper behavior.

(b) *Place and time of oral hearings.* The place and time of oral hearings is within the discretion of the Judge, who shall give due regard to the necessity and convenience of the parties, their attorneys, and witnesses. The Judge may direct that an oral hearing be conducted by telephone. In cases arising from a MED program suspension determination, any oral hearing granted by the Judge must commence as soon as possible, but not more than 20 days after the ruling granting the oral hearing except upon a showing of good cause.

(c) *Public access to oral hearings.* Unless otherwise ordered by the Judge, all oral hearings are public.

(d) *Payment of witnesses subpoenaed to attend oral hearings.* A party which obtains a witness's presence at an oral hearing by subpoena, must pay to that witness the fees and mileage costs to which the witness would be entitled in the Federal Courts.

(e) *Recording of an oral hearing.* Oral hearings will be recorded verbatim. A transcript of a recording may be purchased by a party, at its own expense, from the recording service.

§ 134.223 Evidence.

(a) *Applicability of the Federal Rules of Evidence.* Unless contrary to a particular rule in this part, or it is otherwise ordered by the Judge, the Federal Rules of Evidence will be used as a general guide in all cases before OHA.

(b) *Admissibility of hearsay.* Hearsay evidence is admissible if it is deemed by the Judge to be relevant and reliable.

(c) *Certain decisions based upon the written administrative record.* Unless it is determined by the Judge, upon motion, that there has been a substantial showing, based upon credible evidence, that the SBA determination in question may have resulted from bad faith or improper behavior, any MED program appeal arising under § 134.103(j)(1) of this part will be decided solely on a review of the written administrative record.

(d) *Remand for further consideration.* If, upon a MED program appeal arising under § 134.103(j)(1) of this part, the Judge determines that, due to the absence in the written administrative record of the reasons upon which the determination in question was based, the administrative record is insufficient to decide whether the determination is arbitrary, capricious, or contrary to law, the Judge will remand the case for further consideration. The Judge will retain jurisdiction of the matter during the period of remand.

§ 134.224 Standards for decision.

The decision of a Judge in cases other than those involving MED program appeals arising under § 134.103(j)(1) of this part will be based upon a preponderance of the evidence. In MED program appeals arising under § 134.103(j)(1) of this part, the determination will be sustained unless it is found to be arbitrary, capricious, or contrary to law.

§ 134.225 The record.

(a) *Contents of record.* The record of a case before OHA will consist of all pleadings, motions, and other non-evidentiary submissions, all admitted evidence, all orders and decisions, and any transcripts of proceedings in the case.

(b) *Public access.* Except for information subject to a protective order, proprietary or confidential information withheld in accordance with this part, or any other information which is excluded from disclosure by law or regulation, the record will be available at OHA for public inspection during normal business hours. Copies of the documents available for public inspection may be obtained by the public upon payment of any duplication charges.

(c) *Closure of the pre-decisional record.* The Judge will set the date upon which the pre-decisional record of the case will be closed, and after which no additional evidence or argument will be accepted.

§ 134.226 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of relevant law, reasons for such findings and conclusions, and any relief ordered. The contents of the record will constitute the exclusive basis for a decision.

(b) *Time limit for certain decisions.* Decisions pertaining to the collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter must be rendered within 60 days after a petition is filed. Decisions pertaining to MED program appeals arising under § 134.103(j)(1) of this part will be rendered, insofar as practicable, within 90 days after a petition is filed.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.227 Finality of decisions.

(a) *Final decisions.* A decision on the merits shall be a final decision, upon issuance, in the following cases:

(1) Proceedings concerning the collection of debts owed to SBA and the United States, under the Debt Collection Act of 1982 and part 140 of this chapter; and

(2) Appeals from determinations relating to SBA's MED program.

(b) *Initial decisions.* All decisions on the merits other than those set forth in paragraph (a) of this section are initial decisions. However, unless a request for review is filed pursuant to § 134.228(a), an initial decision shall become the final decision of SBA 30 days after its issuance.

§ 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision, any party, or SBA's Office of General Counsel, may serve and file with OHA a request for review. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

(b) *Response to a request for review.* Within 20 days after the service of a request for review, any party so served, or SBA's Office of General Counsel, may serve and file with OHA a response. A party must serve its response upon all other parties and upon SBA's Office of General Counsel.

(c) *Transfer of the record to the Administrator for review.* Upon receipt of all possible responses, but in no case later than 30 days after the filing of a request for review, OHA will transfer the record of the case to the Administrator. The Administrator, or his or her designee, will then review the record.

(d) *Standard of review.* Upon review, the Administrator, or his or her designee, will sustain the initial decision unless it is based on an erroneous finding of fact or an erroneous interpretation or application of case law, statute, regulation, or SBA policy.

(e) *Order.* After consideration of the record, the Administrator, or his or her designee, will:

(1) Affirm, reverse, or modify the initial decision, which determination will become the final decision of the SBA upon issuance; or

(2) Remand the initial decision to the Judge for appropriate further proceedings.

§ 134.229 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision by a Judge resolving all material issues of fact and law unless the case is subsequently remanded for appropriate further proceedings, pursuant to § 134.228(e)(2) of this part.

Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

§ 134.301 Scope of the rules in subpart C.

The rules of practice in subpart C of this part apply to all appeals to OHA from:

(a) Formal size determinations made by an SBA Government Contracting Area Office, under part 121 of this chapter, or by a Disaster Area Office, in connection with applications for disaster loans; and

(b) SIC code designations, pursuant to part 121 of this chapter.

§ 134.302 Who may appeal.

Appeals from size determinations and SIC code designations may be filed with OHA by the following, as applicable:

(a) Any person adversely affected by a size determination;

(b) Any person adversely affected by a SIC code designation. However, with respect to a MED contract, only the Associate Administrator for Minority Enterprise Development may appeal a SIC code designation;

(c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; and

(d) The procuring agency contracting officer responsible for the procurement affected by a size determination.

§ 134.303 No absolute right to an appeal from a size determination.

It is within the discretion of the Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, he or she will issue an order denying review, and specifying the reasons for the decision.

§ 134.304 Commencement of appeals from size determinations and SIC code designations.

(a) *When appeals must be commenced.* Appeals from size determinations and SIC code designations must be commenced by serving and filing a notice of appeal as follows:

(1) If appeal is from a size determination in a pending procurement or pending Government property sale, then the notice of appeal must be served and filed within 15 days after service of the size determination;

(2) If appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the notice of appeal must be served and filed within 30 days after service of the size determination;

(3) If appeal is from a SIC code designation, then the notice of appeal must be served and filed within 10 days after the issuance of the initial invitation for bids or initial request for proposals or quotations.

(b) *Untimely appeals.* An untimely appeal will be dismissed. However, an appeal which is untimely under paragraph (a)(1) of this section, with respect to a pending procurement or sale, may, if timely under paragraph (a)(2) of this section, proceed with respect to future procurements or sales.

§ 134.305 The appeal petition.

(a) *Form.* There is no required format for an appeal petition. However, it must include the following information:

(1) The Area Office which issued the size determination, or the contracting office which designated the SIC code;

(2) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(3) A full and specific statement as to why the size determination or SIC code designation is alleged to be in error, together with argument supporting such allegations; and

(4) The name, address, telephone number, and signature of the appellant or its attorney.

(b) *Who must be served with a size determination appeal petition.* The appellant must serve the appeal petition upon each of the following:

(1) The SBA official who issued the size determination;

(2) The contracting officer responsible for the procurement affected by a size determination;

(3) The business concern whose size status is at issue;

(4) All persons who filed protests; and

(5) SBA's Office of General Counsel.

(c) *Who must be served with a SIC code appeal petition.* The appellant must serve the contracting officer who made the SIC code designation.

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate identifying each person or governmental agency which was served with the notice of appeal, and how and when each of those persons or governmental agencies was served.

(e) *Dismissal of insufficient appeal petitions.* An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.

§ 134.306 Transmission of the case file.

Upon receipt of an appeal petition pertaining to a size determination, the Area Office which issued the size determination must immediately send to OHA the entire case file relating to that determination. Upon receipt of an appeal petition pertaining to a SIC code designation, the contracting officer who designated the SIC code must immediately send to OHA the solicitation relating to that designation.

§ 134.307 Service and filing requirements.

The provisions of § 134.204 of this part apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.308 Limitation on the submission of new evidence in appeals from size determinations.

(a) *When new evidence may be submitted.* Evidence not previously presented to the Area Office which issued the size determination being appealed will not be considered by a Judge unless:

(1) The Judge, on his or her own initiative, orders the submission of such evidence; or

(2) A motion is served and filed establishing good cause for the submission of such evidence.

(b) *Adverse inference resulting from the failure to comply with an order to submit evidence.* If the submission of evidence is ordered by a Judge, and the party in possession of that evidence does not submit it, the Judge may draw adverse inferences against that party.

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, or any other interested person, may serve and file a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits for serving and filing a response.* Unless otherwise specified by the Judge, a respondent must serve and file a response within 10 days after service of the appeal petition upon it.

(c) *Who must be served.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.305 of this part.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.310 Discovery.

Discovery will not be permitted in appeals from size determinations or SIC code designations.

§ 134.311 Oral hearings.

Oral hearings will not be held in appeals from SIC code designations, and will be held in appeals from size determinations only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

§ 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of §§ 134.223 (a) and (b) apply.

§ 134.313 Applicability of subpart B provisions.

The following sections from subpart B apply to an appeal under this subpart: § 134.207(a) (pertaining to amendments to pleadings); § 134.208 (Representation in cases before OHA); § 134.209 (Requirement of signature); § 134.210 (Intervention); § 134.211 (Motions); § 134.214 (Subpoenas); § 134.218 (Judges); § 134.219 (Sanctions); and § 134.220 (Prohibition against *ex parte* communications).

§ 134.314 Standard of review.

The standard of review is whether the size determination or SIC code designation was based on clear error of fact or law.

§ 134.315 The record.

Where relevant, the provisions of §§ 134.225 (a), (b), and (c) apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.306.

§ 134.316 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(b) *Finality of the decision.* The decision is the final decision of the SBA and becomes effective upon issuance.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.317 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision.

§ 134.318 Return of the case file.

Upon termination of jurisdiction, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

Subpart D—Implementation of the Equal Access to Justice Act

§ 134.401 What is the purpose of this subpart?

The Equal Access to Justice Act, 5 U.S.C. 504, establishes procedures by which prevailing parties in certain administrative proceedings may apply for reimbursement of fees and other expenses. Eligible parties may receive awards when they prevail over SBA, unless SBA's position in the proceeding was "substantially justified" or special circumstances make an award unjust. The rules of this subpart which follow explain which OHA proceedings are covered, who may be eligible for an award of fees and expenses, and how to apply for such an award.

§ 134.402 Under what circumstances may I apply for reimbursement?

You may apply for reimbursement under this subpart if you meet the eligibility requirements in § 134.406 and you prevail over SBA in a final decision in:

(1) The type of administrative proceeding which qualifies as an "agency adversary adjudication" under § 134.403; or

(2) An ancillary or subsidiary issue in that administrative proceeding that is sufficiently significant and discrete to merit treatment as a separate unit; or

(3) A matter which the agency has designated in its order for hearing as an "agency adversary adjudication" under 5 U.S.C. 554.

§ 134.403 What is an agency adversary adjudication?

For purposes of this subpart, agency adversary adjudications are administrative proceedings before OHA which involve SBA as a party and which are required to be conducted by an Administrative Law Judge ("ALJ"). These adjudications ("administrative proceedings") include those proceedings listed in §§ 134.103(a), 134.103(i), and 134.103(j)(1), but do not include other OHA proceedings such as those listed in § 134.103(k). In order for an administrative proceeding to qualify, SBA must have been represented by counsel or by another representative who enters an appearance and participates in the proceeding.

§ 134.404 What benefits may I claim?

You may seek reimbursement for certain reasonable fees and expenses incurred in prosecuting or defending a claim in an administrative proceeding.

§ 134.405 Under what circumstances are fees and expenses reimbursable?

(a) If you are a prevailing eligible party, you may receive an award for reasonable fees and expenses unless the position of the agency in the proceeding is found by the ALJ to be "substantially justified", or special circumstances exist which make an award unjust. The "position of the agency" includes not only the position taken by SBA in the administrative proceeding, but also the position which it took in the action which led to the administrative proceeding. No presumption arises that SBA's position was not substantially justified simply because it did not prevail in a proceeding. However, upon your assertion that the position of SBA was not substantially justified, SBA will be required to establish that its position was reasonable in fact and law.

(b) The ALJ may reduce or deny an award for reimbursement, if you have unreasonably protracted the administrative proceeding or if other circumstances would make the award unjust.

(c) Awards for fees and expenses incurred before the date on which an administrative proceeding was initiated are allowable only if you can demonstrate that they were reasonably incurred in preparation for the proceeding.

§ 134.406 Who is eligible for possible reimbursement?

(a) You are eligible for possible reimbursement if:

(1) You are an individual, sole proprietorship, partnership, corporation, association, organization, or unit of local government; and

(2) You are identified as a party in a petition or order to show cause; and

(3) You are the prevailing party; and

(4) You meet certain net worth and employee eligibility requirements set forth in § 134.407.

(b) You are not eligible for possible reimbursement if you participated in the administrative proceeding only on behalf of persons or entities that are ineligible.

§ 134.407 How do I know which eligibility requirement applies to me?

Follow this chart to determine your eligibility. You should calculate your net worth and the number of your employees as of the date the administrative proceeding was initiated.

If your participation in the proceeding was:	Eligibility requirements:
For individual or personal interests	Personal net worth may not exceed 2 million dollars.
As sole owner of an unincorporated business	Personal net worth may not exceed 7 million dollars and No more than 500 employees.
As a partnership, corporation, association, organization, or unit of local government.	Business net worth may not exceed 7 million dollars and No more than 500 employees.
As a charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).	No net worth limitations and No more than 500 employees.
As a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).	No net worth limitations and No more than 500 employees.

§ 134.408 What are the special rules for calculating net worth and number of employees?

(a) Your net worth must include the value of any assets disposed of for the purpose of meeting an eligibility standard, and must exclude any obligation incurred for that purpose. Transfers of assets, or obligations incurred, for less than reasonably equivalent value will be presumed to have been made for the purpose of meeting an eligibility standard.

(b) If you are a sole owner of an unincorporated business, or a partnership, corporation, association, organization, or unit of local government, your net worth must include the net worth of all of your affiliates. "Affiliates" are corporations or other business entities which directly or indirectly own or control a majority of the voting shares or other ownership interests in the applicant concern. "Affiliates" are also corporations or other business entities in which the applicant concern directly or indirectly owns or controls a majority of the voting shares or other ownership interests.

(c) Your employees include all those persons regularly working for you at the time the administrative proceeding was initiated, whether or not they were at work on that date. Part-time employees must be included on a proportional basis. You must include the employees of all your affiliates in your total number of employees.

§ 134.409 What is the difference between a fee and an expense?

A fee is a charge to you for the professional services of attorneys, agents, or expert witnesses rendered in connection with your case. An expense is the cost to you of any study, analysis, engineering report, test, project, or similar matter prepared in connection with your case.

§ 134.410 Are there limitations on reimbursement for fees and expenses?

(a) Awards will be calculated on the basis of fees and expenses actually incurred. If services were provided by one or more of your employees, or were made available to you free, you may not seek an award for those services. If services were provided at a reduced rate, fees and expenses will be calculated at that reduced rate.

(b) In determining the reasonableness of the fees for attorneys, agents or expert witnesses, the ALJ will consider:

(1) That provider's customary fee for like services;

(2) The prevailing rate for similar services in the community in which that provider ordinarily performs services;

(3) The time actually spent in representing you; and

(4) The time reasonably spent in light of the difficulty and complexity of the issues.

(c) An award for the fees of an attorney or agent may not exceed $75 per hour, and an award for the fees of an expert witness may not exceed $25 per hour, regardless of the rate charged.

(d) An award for the reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on your behalf may not exceed the prevailing rate payable for similar services, and you may be reimbursed only if the study or other matter was necessary to the preparation of your case.

§ 134.411 What should I include in my application for an award?

(a) Your application must be in the form of a written petition which is served and filed in accordance with § 134.204 of this part. It must contain the following information:

(1) A statement that OHA has jurisdiction over the case pursuant to § 134.103(g);

(2) An identifying reference to the administrative proceeding for which you are seeking an award;

(3) A statement that you have prevailed, and a list of each issue in which you claim the position of SBA was not substantially justified;

(4) Whether you are an individual, sole proprietorship, partnership, corporation, association, organization, or unit of local government;

(5) Your net worth and number of employees as of the date the administrative proceeding was initiated, or a statement that one or both of these eligibility requirements do not apply to you;

(6) The amount you are seeking;

(7) A description of any affiliates (as that term is defined in § 134.408), or a statement that no affiliates exist;

(8) A statement that the petition and any attached statements and exhibits are true and complete to the best of your knowledge and that you understand a false statement on these documents is a felony punishable by fine and imprisonment under 18 U.S.C. 1001; and

(9) Your name, address, and telephone number, and the signature of you or your attorney.

(b) You should follow this chart to determine which attachments must be included with your petition:

Party	Required attachment
Individual	Net worth exhibit and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Sole owner of unincorporated business or Partnership, corporation, association, organization, or unit of local government.	Net worth exhibit and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Organization qualified as tax exempt under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).	Copy of a ruling by the Internal Revenue Service that you qualify as a 501(c)(3) organization or Statement that you were listed in the current edition of IRS Bulletin 78 as of the date the administrative proceeding was initiated, and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Tax exempt religious organization not required to obtain a ruling from the Internal Revenue Service on its exempt status.	Description of your organization and the basis for your belief you are exempt and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).	Copy of your charter or articles of incorporation and Copy of your bylaws and Statement of fees and expenses for the services of each provider for which you seek reimbursement.

§ 134.412 What must a net worth exhibit contain?

(a) A net worth exhibit may be in any format, but it must:

(1) List all assets and liabilities for you and each affiliate in detail sufficient to show your eligibility;

(2) Aggregate net worth for you and all affiliates; and

(3) Describe any transfers of assets or obligations incurred by you or your affiliates within one year of the initiation of the administrative proceeding which have reduced your total net worth below the eligibility ceiling, or state that no such transfers occurred.

(b) The net worth exhibit must be filed with your petition, but will not be part of the public record of the proceeding. Further, in accordance with the provisions of § 134.204(g), you do not have to serve your net worth exhibit on other parties.

§ 134.413 What documentation do I need for fees and expenses?

You must submit a separate itemized statement or invoice for the services of each provider for which you seek reimbursement. All expenses claimed must be verifiable. Each separate statement or invoice must contain:

(a) The hours worked in connection with the proceeding by each individual providing a billable service;

(b) A description of the specific services performed by these individuals;

(c) The rate at which fees were computed for each individual working on your case;

(d) Where applicable, a description of any study, analysis, report, test, project, or other similar matter prepared in connection with your case;

(e) The total charged by the provider on that statement or invoice; and

(f) The provider's verification that the statement or invoice is true to the best of his or her knowledge and that he or she understands that a false statement is punishable by fine and imprisonment under 18 U.S.C. 1001.

§ 134.414 What deadlines apply to my petition for an award and where do I send it?

After you have prevailed in an administrative proceeding or in a discrete unit thereof, you must serve, and file with OHA, your written petition for an award, and its attachments, no later than 30 days after the decision in the administrative proceeding becomes final under § 134.227 of this part. The deadline for filing a petition for an award may not be modified. If SBA or another party requests review of the decision in the underlying administrative proceeding, your request for an award for fees and expenses may still be filed, but it will not be considered by the ALJ until a final decision is rendered.

§ 134.415 How will proceedings relating to my application for fees and expenses be conducted?

Proceedings will be conducted in accordance with the provisions in subpart B of this part.

§ 134.416 How will I know if I receive an award?

The ALJ will issue an initial decision on the merits of your request for an award which will become final in 30 days unless a request for review is filed under § 134.228 of this part. The decision will include findings on your eligibility, on whether SBA's position was substantially justified, and on the reasonableness of the amount you requested. Where applicable, there will also be findings on whether you have unduly protracted the proceedings or whether other circumstances make an award unjust, and an explanation of the reason for the difference, if any, between the amount requested and the amount awarded. If you have sought an award against more than one federal agency in the administrative proceeding, the decision will allocate responsibility for payment among the agencies with appropriate explanation.

§ 134.417 May I seek review of the ALJ's decision on my award?

You may request review of the ALJ's decision on your award by filing a request for review in accordance with § 134.228. A request for review must be filed within 30 days of service of the ALJ's initial decision. You may also seek judicial review of the decision of the ALJ as provided in 5 U.S.C. 504(c)(2). For purposes of judicial review, the initial decision of the ALJ is not an appealable "determination" under that statute until it becomes a final decision as provided in § 134.227. Judicial review of the ALJ's decision on your award must be requested within 30 days of the final decision.

§ 134.418 How are awards paid?

If you are seeking payment of an award, you must submit a copy of the ALJ's final award to SBA along with your certification that you are not seeking review of the ALJ's decision in the award proceeding. The request must be sent to the Chief Financial Officer, Office of Financial Operations, SBA, P.O. Box 205, Denver, CO 80201–0205. SBA will pay you the amount awarded within 60 days of receipt of your request unless it is notified that you or another party has sought judicial review of the ALJ's decision on the award or of the decision in the underlying administrative proceeding.

PART 132—[REMOVED]

2. Part 132 is hereby removed.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28508 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 142

Program Fraud Civil Remedies Act Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would renumber, reorganize, condense and rewrite in plain language the existing regulation implementing the program "Fraud Civil Remedies Act of 1986". The goal of the plain language style is to eliminate cumbersome wording, redundancies and ambiguities. The goal of the reorganization and revision is to make this part consistent in practice and procedure with other parts of this title and to clarify requirements under this regulation and applicable statutes of the United States.

DATES: Comments must be submitted on or before December 27, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, (142) Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Cheri Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to each federal agency, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule reorganizes and partially redrafts former provisions for clarity and user-friendliness. Extensive renumbering was necessary for

reorganization, simplification and clarification of existing provisions. No substantive changes to existing provisions are proposed.

Section By Section Analysis

As background, the following section by section analysis discusses each provision of Part 142 that would be affected by this proposed rule:

Proposed section 142.1, "Overview of Regulations," corresponds to section 142.1 of the existing part. The proposed section is revised to reflect the intent of the revisions to this Part. Modifications to the text are intended to eliminate confusion as to the purpose of the part and the proposed revision as a whole, and do not represent substantive change.

Proposed sections 142.2–142.6 correspond to the definitions found in existing sections 142.2 and 142.3. The proposed rules would renumber and rewrite in plain language the definitions and explanations applicable to this Part. Duplication is avoided in this section, and practice and procedure under this Part are made more consistent with practice and procedure under other Parts of this title.

Proposed sections 142.7–142.8 and 142.40, correspond to existing sections 142.4 and 142.5. The proposed rule would be renumbered and revised. The section is condensed and rewritten in plain language.

Proposed sections 142.90 and 142.11, correspond to existing section 142.7. The proposed rule would be renumbered and revised. The sections are condensed and rewritten in plain language.

Proposed section 142.10, corresponds to existing section 142.6. The proposed rule would be renumbered and revised. The section is condensed and rewritten in plain language.

Proposed section 142.12, corresponds to existing section 142.9. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.13, corresponds to existing section 142.10. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.14, corresponds to existing section 142.12. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.15, corresponds to existing section 142.13. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.16, corresponds to existing section 142.17. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.17, corresponds to existing section 142.18. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.18, corresponds to existing section 142.16. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.19, corresponds to existing section 142.28. The proposed rule would be renumbered and revised. The section would be moved, condensed and rewritten in plain language.

Proposed section 142.20, corresponds to existing sections 142.8 and 142.26. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.21, corresponds to existing sections 142.30 and 142.35. The proposed rule would be renumbered and revised, condensed and rewritten in plain language.

Proposed section 142.22, corresponds to existing sections 142.33 and 142.34. The proposed rule would be renumbered and revised. The sections would be moved, condensed and rewritten in plain language.

Proposed section 142.23, corresponds to existing sections 142.20 and 142.21. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.24, corresponds to existing sections 142.23 and 142.25. The proposed rule would be partially renumbered and revised. The sections are condensed and rewritten in plain language.

Proposed section 142.25, corresponds to existing section 142.24. The proposed rule would be revised, condensed and rewritten in plain language.

Proposed section 142.26, corresponds to existing section 142.15. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.27, corresponds to existing section 142.29. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.28, corresponds to existing section 142.32. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.29, corresponds to existing section 142.22. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.30, corresponds to existing section 142.37. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.31, corresponds to existing section 142.38. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed sections 142.32 through 142.36, correspond to existing subsections of section 142.39. The proposed rule would be renumbered and revised. The old section is broken into separate subgroups and then rewritten in plain language.

Proposed section 142.37, corresponds to existing section 142.42. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.38, corresponds to existing section 142.46. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.39, corresponds to existing sections 142.43 and 142.44. The proposed rule would be renumbered and revised. The sections are moved, condensed and rewritten in plain language.

Proposed section 142.40, corresponds to existing sections 142.4 and 142.5. The proposed rule would be renumbered and revised. The sections are moved, condensed and rewritten in plain language.

Proposed section 142.41, corresponds to existing section 142.14. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Existing sections 142.2, 142.11, 142.19, 142.31, 142.36, 142.40, 142.45 and 142.47 are deleted in their current form as duplicative and confusing.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule would renumber, reorganize and rewrite the existing regulation for clarity and ease of use. Contracting opportunities and financial assistance for small business would not be affected by this proposed rule. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure; Claims; Fraud; Penalties.

For the above reasons, SBA proposes to revise Part 142 of Title 13 of the Code of Federal Regulations as follows:

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Overview and Definitions

142.1 Overview of regulations.
142.2 What kind of conduct will result in program fraud enforcement?
142.3 What is a claim?
142.4 What is a statement?
142.5 What is a false claim or statement?
142.6 What does the phrase "know or have reason to know" mean?

Procedures Leading to Issuance of a Complaint

142.7 Who investigates program fraud?
142.8 What happens if program fraud is suspected?
142.9 When will SBA issue a complaint?
142.10 What is contained in a complaint?
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Procedures Following Service of a Complaint

142.12 How does a defendant respond to a complaint?
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Hearing Provisions

142.15 What kind of hearing is contemplated?
142.16 At the hearing, what rights do the parties have?
142.17 What is the responsibility and authority of the ALJ?
142.18 Can the reviewing official or the ALJ be disqualified?
142.19 How are issues brought to the attention of the ALJ?
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142.21 How will the hearing be conducted and who has the burden of proof?
142.22 How is evidence presented at the hearing?
142.23 Are there limits on disclosure of documents or discovery?
142.24 Can witnesses be subpoenaed?
142.25 Can a party or witness object to discovery?
142.26 Can a party informally discuss the case with the ALJ?
142.27 Are there sanctions for misconduct?
142.28 Where is the hearing held?
142.29 Are witness lists exchanged before the hearing?

Decisions and Appeals

142.30 How is the case decided?
142.31 Can a party request reconsideration of the initial decision?
142.32 When does the initial decision of the ALJ become final?
142.33 What are the procedures for appealing the ALJ decision?
142.34 Are there any limitations on the right to appeal to the Administrator?
142.35 How does the Administrator dispose of an appeal?
142.36 Can I obtain judicial review?
142.37 What judicial review is available?
142.38 Can the administrative complaint be settled voluntarily?
142.39 How are civil penalties and assessments collected?
142.40 What if the investigation indicates criminal misconduct?
142.41 How does SBA protect the rights of defendants?

Authority: 15 U.S.C. 634(b), 31 U.S.C. 3803(g)(2).

Overview amd Definitions

§ 142.1 Overview of regulations.

(a) *Statutory basis.* This Part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 ("the Act"). The Act provides SBA and other federal agencies with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this Part.

(b) *Possible remedies for program fraud.* In addition to any other penalty which may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than $5,000 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by SBA. If SBA has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it is also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by SBA because of the false claim.

§ 142.2 What kind of conduct will result in program fraud enforcement?

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to SBA is subject to program fraud enforcement. A person means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced SBA to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several.

(c) No proof of specific intent to defraud is required to establish liability under this Part.

§ 142.3 What is a claim?

(a) Claim means any request, demand, or submission—

(1) Made to SBA for property, services, or money;

(2) Made to a recipient of property, services, or money from SBA or to a party to a contract with SBA for property or services, or for the payment of money. This provision applies only when the claim is related to the property, services or money from SBA or to the contract with SBA; or

(3) Made to SBA which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes SBA guaranteed loans made by participating lenders. A claim is made when it is received by SBA, an agent, fiscal intermediary, or other entity acting for SBA, or when it is received by the recipient of property, services, or money, or the party to the contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 142.4 What is a statement?

Statement means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from SBA. SBA must provide some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or be potentially liable to another party for any portion of the money or property under such contract, loan, grant, or

benefit. A statement is made, presented, or submitted to SBA when it is received by SBA or an agent, fiscal intermediary, or other entity acting for SBA.

§ 142.5 What is a false claim or statement?

(a) A claim submitted to SBA is a false claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to SBA is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement

(1) Asserts a material fact which is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

§ 142.6 What does the phrase "know or have reason to know" mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Procedures Leading to Issuance of a Complaint

§ 142.7 Who investigates program fraud?

Allegations that a false claim or statement has been made are investigated by the Inspector General, or his designee. As the investigating official, the Inspector General, or his designee, has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978, as amended, to issue administrative subpoenas for the production of records and documents. The methods for serving a subpoena are set forth in Part 101 of this title.

§ 142.8 What happens if program fraud is suspected?

If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his designee. If, based on the report of the investigating official, the reviewing official determines there is adequate evidence to believe that a person submitted a false claim or statement under this Part, the reviewing official transmits to the Attorney General a written notice of the reviewing official's intention to refer the matter for adjudication. This notice will include the reviewing official's statements concerning:

(a) The reasons for the referral;

(b) The claims or statements upon which liability would be based;

(c) The evidence that supports liability;

(d) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(e) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(f) The likelihood of collecting the proposed penalties and assessments.

§ 142.9 When will SBA issue a complaint?

SBA will issue a complaint:

(a) If the Attorney General or his designee approves the referral of the allegations for adjudication and,

(b) In a case of submission of false claims, the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed $150,000. A group of related claims submitted at the same time includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted simultaneously as part of a single request, demand, or submission.

§ 142.10 What is contained in a complaint?

(a) A complaint is notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to SBA is referred to as the defendant.

(b) The reviewing official may join in a single complaint false claims or statements that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that SBA is seeking to impose civil penalties, assessments, or both, against the persons named in the complaint and will also include:

(1) The allegations of liability against the defendant, including the statutory basis for liability, identification of the claims or statements that are the basis for the alleged liability, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments requested and for which the defendant may be held liable;

(3) A statement of a defendant's rights to request a hearing by filing an answer and to be represented by an attorney;

(4) Instructions for filing an answer to request a hearing;

(5) A statement that failure of a defendant to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments.

(d) The reviewing official will serve a complaint on the defendant and provide a copy to the Office of Hearings and Appeals (OHA). If a hearing is requested, an Administrative Law Judge (ALJ) from OHA will serve as the Presiding Officer.

§ 142.11 How will the complaint be served?

(a) The complaint must be served on a person alleged to be liable, or to a general partner of a partnership alleged to be liable, or to an executive officer or a director of a corporation or unincorporated association alleged to be liable, or to a person authorized by appointment or by law to receive process for the person named in the complaint.

(b) Service of a complaint may be effected by either of the following means:

(1) By mail. The complaint must be addressed to the Defendant at his or her residence or usual dwelling place, principal office or place of business, and must be sent by registered or certified mail (return receipt requested).

(2) By personal delivery.

(c) The complaint may be served by anyone 18 years of age or older.

(d) Service is complete when made in accordance with the preceding provisions.

(e) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(f) Proof of service—

(1) When service is by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is by personal delivery, an affidavit of the individual serving the complaint or written acknowledgment of receipt by the individual actually served or the defendant or a representative will serve as proof of service.

(g) At the same time the reviewing official serves the complaint, the defendant will be served with a copy of this Part and 31 U.S.C. §§ 3801–3812.

Procedures Following Service of a Complaint

§ 142.12 How does a defendant respond to the complaint?

(a) A defendant may request a hearing by filing an answer with the reviewing official and the Office of Hearings and Appeals within 30 days of service of the complaint. An answer will be considered a request for a hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint. A failure to deny an allegation is considered an admission;

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability and requesting a hearing. In addition, the general answer may include a request for an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with OHA and a copy must be served on the reviewing official.

§ 142.13 What happens if a defendant fails to file an answer?

(a) If a defendant does not file an answer within 30 days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the defendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) If, at any time before an initial decision becomes final, a defendant files a motion with the ALJ asking that the case be reopened and stating that extraordinary circumstances prevented the defendant from filing an answer, the initial decision is stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If, in his motion to reopen, a defendant demonstrates extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision, and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to review or reconsideration.

§ 142.14 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he must file the complaint and the answer with the ALJ, along with a designation of a representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of hearing upon the defendant and the representative for SBA. The notice of hearing is served in the same manner as the complaint, service of which is described in § 142.11.

(c) The notice shall include:

(1) The tentative time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for SBA; and

(6) Such other matters as the ALJ deems appropriate.

Hearing Provisions

§ 142.15 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and argue that he is not liable for the imposition of civil penalties, assessments, or both.

§ 142.16 At the hearing, what rights do the parties have?

(a) The parties to the hearing shall be the defendant and SBA. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 142.17 What is the responsibility and authority of the ALJ?

The Presiding Officer at the hearings described herein and in 31 U.S.C. § 3803(d)(2)(B), is an Administrative Law Judge (ALJ). The ALJ has the authority set forth in § 134.218(b) of this Title.

§ 142.18 Can the reviewing official or ALJ be disqualified?

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ in a particular case may be disqualified provided that:

(1) The motion is supported by an affidavit containing specific facts that support the party's belief that personal bias or other reason for disqualification exists, including the time and circumstances of the party's discovery of such facts;

(2) The motion and affidavit are promptly filed when the party discovers grounds for disqualification, or such objection will be deemed waived; and

(3) The party, or representative of record, certifies in writing that the motion is made in good faith.

(c) Once such a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until the matter of disqualification is resolved. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

§ 142.19 How are issues brought to the attention of the ALJ?

Any application to the ALJ for an order or ruling is by motion. Motions must state the relief sought, the authority relied upon, and the facts alleged. Procedures for filing motions under this section are governed by section 134.211 of this Title.

§ 142.20 How are papers served?

Except for service of a complaint or a notice of hearing under section 142.11 and section 142.14(b) respectively, service of all papers is made by the manner prescribed by section 134.204 of this Title.

§ 142.21 How will the hearing be conducted and who has the burden of proof?

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for a decision by the ALJ.

(b) SBA must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 142.22 How is evidence presented at the hearing?

(a) Witnesses at the hearing must testify orally under oath or affirmation unless otherwise ordered by the ALJ. At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition, a copy of which must be provided to all other parties, along with the last known address of the witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

(b) The ALJ determines the admissibility of evidence in accordance with § 134.223 (a) and (b).

§ 142.23 Are there limits on disclosure of documents or discovery?

(a) Upon written request to the reviewing official, the defendant may review all non-privileged, relevant and material documents, records and other material related to the allegations contained in the complaint. After paying SBA a reasonable fee for duplication, the defendant may obtain a copy of the records described.

(b) Upon written request to the reviewing official, the defendant may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. If the document would otherwise be privileged, only the portion of the document containing exculpatory information must be disclosed. As used in this section, the term "information" does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(d) Other discovery is available only as ordered by the ALJ and includes only those methods of discovery allowed by section 134.213(c) of this Title.

§ 142.24 Can witnesses be subpoenaed?

A party wishing to procure the appearance and testimony of any individual and/or documents and records at the hearing may request that the ALJ issue a subpoena. A written request for a subpoena must be filed with the ALJ not less than 15 days before the scheduled hearing date unless otherwise allowed by the ALJ for good cause. A subpoena shall be issued by the Presiding Officer, in the manner specified by section 134.214 of this Title.

§ 142.25 Can a party or witness object to discovery?

A party or prospective witness may file a motion to quash a subpoena or to limit discovery or the disclosure of evidence. Motions to limit discovery or to object to the disclosure of evidence are governed by § 134.213 (d) and (e) of this title. Motions to limit or quash subpoenas are governed by § 134.214(d) of this Title.

§ 142.26 Can a party informally discuss the case with the ALJ?

No. The proscription against and rules concerning ex parte communications with the ALJ are set forth in section 134.220 of this Title. This provision does not prohibit a party from communicating with any other employee of OHA solely for the purpose of inquiring about the status of a case or asking routine questions concerning administrative functions and procedures.

§ 142.27 Are there sanctions for misconduct?

The ALJ may sanction a person, including any party or representative, pursuant to the rules set forth at section 134.219 of this Title.

§ 142.28 Where is the hearing held?

The hearing is held in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made, presented or submitted to SBA; or

(c) As agreed upon by the defendant and the ALJ.

§ 142.29 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party unless the ALJ finds good cause for the omission or that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

Decisions and Appeals

§ 142.30 How is the case decided?

(a) The ALJ issues an initial decision based only on the record, which will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ serves the initial decision on all parties within 90 days after close of the hearing or after the time for submission of any post-hearing briefs, if permitted has expired. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this Part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator.

§ 142.31 Can a party request reconsideration of the initial decision?

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the Initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must set forth each matter claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Any response to a motion for reconsideration must be filed within 20 days of receipt of the motion for reconsideration.

(d) The ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, that party may not file another motion for reconsideration.

§ 142.32 When does the initial decision of the ALJ become final?

(a) The initial decision of the ALJ becomes the final decision of SBA, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false claim or statement timely appeals to the SBA Administrator, as set forth in § 142.33.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of SBA 30 days after the order is issued, unless a defendant adjudged to have submitted a false claim or statement timely appeals to the Administrator, as set forth in § 142.33, within 30 days of the ALJ's order.

§ 142.33 What are the procedures for appealing the ALJ decision?

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the Administrator, at any time within the 30 day period following the issuance of an initial decision. At the same time, a copy of the notice of appeal must be served on all parties and the ALJ.

(c) If another party files a timely motion for reconsideration with the ALJ, the defendant's appeal will not be considered until the motion for reconsideration has been resolved.

(d) If a motion for reconsideration is timely filed, a notice of appeal may be filed at any time within the 30-day period following the ALJ's denial of the motion for reconsideration or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying the reasons why the defendant believes the initial decision should be reversed or modified.

(f) SBA's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's notice of appeal and supporting brief.

(g) The Administrator may extend the initial 30-day period for not more than an additional 30 days if the defendant files a request for an extension within the initial 30-day period and shows good cause.

(h) If a defendant timely files a notice of appeal, and the time for filing motions for reconsideration has expired, the ALJ forwards the record of the proceeding to the Administrator.

§ 142.34 Are there any limitations on the right to appeal to the Administrator?

(a) A defendant has no right to appear personally, or through a representative, before the Administrator.

(b) There is no right to appeal any interlocutory ruling by the ALJ.

(c) The Administrator will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing defendant demonstrates to the satisfaction of the Administrator that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the Administrator will remand the matter to the ALJ for consideration of the additional evidence.

§ 142.35 How does the Administrator dispose of an appeal?

(a) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The Administrator will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 142.36 Can I obtain judicial review?

If the initial decision is appealed, the decision of the Administrator is the final decision of SBA and is not subject to judicial review unless the defendant files a petition for judicial review within 60 days after the date on which the Administrator serves the defendant with a copy of the final decision.

§ 142.37 What judicial review is available?

31 U.S.C. § 3805 authorizes judicial review of the final SBA decision imposing penalties or assessments hereunder, by the appropriate United States District Court and specifies the procedures for such review. If a defendant fails to file a judicial petition for review in a timely fashion, the final SBA decision is no longer subject to judicial review.

§ 142.38 Can the administrative complaint be settled voluntarily?

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this Part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle a case under this Part at any time after the date on which the ALJ issues an initial

decision and before the initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise a case under this Part while any judicial review or any action to recover penalties and assessments are pending.

(e) The investigating official may recommend settlement terms for the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Administrator or the Attorney General, as appropriate.

§ 142.39 How are civil penalties and assessments collected?

31 U.S.C. 3806 and 3808(b) authorize the Attorney General to bring actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions. Actions to collect civil penalties and assessments may include administrative offset under 31 U.S.C. 3716. The penalties and assessments may not, however, be administratively offset against an overpayment of federal taxes (then or later owed) to the defendant by the United States.

§ 142.40 What if the investigation indicates criminal misconduct?

(a) This Part does not preclude or limit an investigating official's discretion to:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this Part limits the requirement that SBA employees report suspected violations of criminal law to the SBA Office of Inspector General or to the Attorney General.

§ 142.41 How does SBA protect the rights of defendants?

The procedures implemented in this Part completely separate the functions of the investigating official, reviewing official, and the ALJ. In accordance with 31 U.S.C. § 3801, each of these officials fall under a separate organizational authority. Moreover, except for the purposes of settlement, the investigating official, reviewing official, and any employee or agent of SBA who takes part in investigating, preparing, or presenting a particular case may not in such case, or a factually related case, participate or advise in the initial decision or the review of the initial decision by the Administrator, except as a witness or a representative in public proceedings. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for SBA may be employed in the offices of either the investigating official or the reviewing official.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28516 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

November 17, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; availability of draft environment impact statement.

SUMMARY: The staff of the Federal Energy Regulatory Commission has prepared a draft environmental impact statement for the proposed rulemaking in this proceeding to satisfy the requirements of the National Environmental Policy Act.

DATES: Comments are due on or before January 8, 1996.

ADDRESSES: 888 First Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Mr. William Meroney, DEIS Project Manager, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street NE., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 or (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The staff of the Federal Energy Regulatory Commission has prepared a draft environmental impact statement (DEIS) for the proposed rulemaking referenced above to satisfy the requirements of the National Environmental Policy Act.

On July 12, 1995, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Notice of Proposed Rulemaking and Request for Comments on Environmental Issues (NOI) (60 FR 36752, July 18, 1995).[1] The NOI described proposed cases for examination and established a procedure for public comments. Thirty-six comments were received in response to the NOI. A public meeting was held on September 8, 1995, in Washington, D.C. The most frequently raised issue involves air quality impacts, particularly the possible transport of nitrogen oxides (NOx) emissions by Midwestern generating plants to airsheds in the Northeast and the resulting impacts on ozone non-attainment areas in the Northeast.

Based on the comments and a careful analysis of the major issues, the staff developed a study that addresses the key potential environmental impacts of the rulemaking. The staff used a modeling approach that includes a detailed representation of the transmission grid. The model results and other analyses allow the staff to examine a series of other issues, including visibility; impacts on land, water and waste; and some potential mitigation options.

The DEIS has been placed in the public files of the FERC and is available for public inspection at:

[1] The proposed rule in this proceeding was published April 7, 1995 (60 FR 17662).

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, (202) 208–1371.

Copies of the DEIS have been mailed to Federal agencies and individuals who requested copies of the DEIS in response to the NOI.

The DEIS will be available to the public on the Commission Posting System (CIPS). CIPS is an electronic bulletin board service which provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 or (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit.

Written comments are welcome on the DEIS. Please take notice that all written comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before January 8, 1996, reference Docket Nos. RM95–8–000 and RM94–7–001, and be addressed to:

Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

A copy of any comments should also be sent to:

Mr. William Meroney, DEIS Project Manager, Office of Economic Policy, 888 First Street NE., Washington, DC 20426.

In addition, commenters are asked to submit their written comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

After the comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the DEIS.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28846 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

RIN 0960–AE23

Civil Monetary Penalties, Assessments and Recommended Exclusions

AGENCY: Office of the Inspector General (OIG), SSA.

ACTION: Proposed rule.

SUMMARY: We propose to add new rules that would establish procedures to impose civil monetary penalties and assessments against certain Old-Age, Survivors, and Disability Insurance beneficiaries, Supplemental Security Income recipients, third parties, physicians, medical providers, and other individuals and entities who make false statements or representations for use in determining any right to or amount of title II or title XVI benefits under the Social Security Act. These proposed rules would implement the civil monetary penalty provisions of section 206(b) of the Social Security Independence and Program Improvements Act of 1994.

DATES: To be sure that your comments are considered, we must receive them no later than January 26, 1996.

ADDRESSES: Comments should be submitted in writing to the Inspector General of the Social Security Administration, c/o Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov" or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Judith A. Kidwell, Office of the Inspector General, (410) 965–9750 or Glenn Sklar, Office of the General Counsel, (410) 965–6247.

SUPPLEMENTARY INFORMATION:

Background

These proposed rules would implement the civil monetary penalty (CMP) provisions of section 206(b) of the Social Security Independence and Program Improvements Act of 1994, Public Law (Pub. L.) 103–296, which added section 1129 of the Social Security Act (the Act), effective October 1, 1994. Section 108 of Pub. L. 103–296 made additional conforming amendments to section 1129, effective March 31, 1995, to reflect the Social Security Administration's (SSA) new status as an independent agency.

Section 206 provides expanded authority for SSA to prevent, detect, and terminate fraudulent claims for Old-Age, Survivors, and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) benefits. The new CMP provision contained in section 1129 of the Act is intended to deter applicants, beneficiaries, employees, employers, interpreters, physicians, medical providers, recipients, representative payees, representatives, translators, and other individuals and entities from providing false or misleading information, or omitting material information in connection with benefit claims.

Previously, the SSA relied on provisions of the Civil False Claims Act (CFCA) or the Program Fraud Civil Remedies Act (PFCRA) for imposing CMPs against persons who submitted fraudulent claims to SSA. These statutory provisions have been of limited usefulness in imposing CMPs for SSA fraud, inasmuch as the CFCA requires the Department of Justice to initiate civil action in Federal court to impose penalties, and the applicability of PFCRA is restricted to fraudulent action on initial benefit applications in some circumstances. The new CMP and assessment authority provides an alternative censure in cases not acceptable for action under the CFCA or the PFCRA.

Section 1129 of the Act provides that the Commissioner may delegate authority under this section to the Inspector General of the Social Security Administration (IG). On June 28, 1995, the Commissioner delegated to the IG authority under the CMP provisions in section 1129. However, the Commissioner has retained the authority to conduct hearings and to review initial hearing decisions related to the imposition of administrative sanctions.

Provisions of the Proposed Rule

These proposed regulations reflect and implement section 1129 of the Act. Section 1129 provides the Agency with direct authority, after approval by the Department of Justice, to impose a CMP and assessment against any individual, organization, agency, or other entity that knowingly makes or causes to be made a statement or representation of a

material fact for use in determining initial or continuing rights to OASDI or SSI benefit payments when such statement or representation is false, misleading, or omits a material fact. Under section 1129, each offense is subject to a penalty of not more than $5,000 and an assessment, in lieu of damages, of not more than twice the amount of benefits paid as a result of such statement, representation or omission. In addition, medical providers or physicians who commit an offense described in section 1129 may be subject to exclusion from participation in the Medicare program (title XVIII of the Act). Specifically, section 1129(a)(1) provides that the Commissioner may make a determination, as part of the same proceeding in which penalties and assessments are determined, to recommend that the Secretary of Health and Human Services (Secretary) exclude as provided in section 1128 of the Act, such medical providers or physicians from participating in the Medicare program. Because of policy issues that need to be addressed and coordinated with the Department of Health and Human Services, we are reserving this issue at this time.

The criteria for exclusions of physicians and medical providers are in many instances discretionary and involve policy issues within the Department of Health and Human Services. The SSIPIA amended section 1128 of the Act to provide that fraud under section 1129 of the Act constitutes a basis for exclusion from the Medicare and Medicaid programs by the Secretary.

We are discussing these issues with the Department of Health and Human Services and have decided to reserve the issue of recommended exclusions in the regulations at this time. However, as provided in section 1129 of the Act, we will notify the Secretary upon a final determination to impose a penalty or assessment with respect to a physician or medical provider.

A CMP may be imposed for misrepresentation of a material fact. Section 1129(a)(2) defines a material fact as one which the Agency may consider in evaluating whether an applicant has initial or continuing entitlement to or eligibility for OASDI or SSI benefit payments.

Section 1129(b) provides that after a violation has occurred, the IG has six years to initiate a proceeding, in accordance with Rule 4 of the Federal Rules of Civil Procedure, to determine whether to impose a CMP or assessment. Department of Justice authorization must be obtained before such a proceeding may be initiated. The IG must give the respondent written notice and an opportunity for the determination to be made on the record after a hearing at which the respondent is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses. Persons who have previously been convicted of a Federal or State crime charging fraud or false statement(s) are estopped from denying the elements of the criminal offense.

The IG will determine the amount or scope of the penalty and assessment after considering, as provided in section 1129(c), the nature of the statements or representations and the circumstances under which they occurred, the degree of culpability, the history of prior offenses, the financial condition of the person who committed the offense, and other matters as justice may require.

These proposed rules would implement the notice requirements of section 1129(b) by providing in § 498.109 that, if the IG proposes to impose a penalty or assessment in accordance with this part, the IG must send written notice to the respondent of the IG's intent to take such action. Under the proposed rules, the notice will describe the statutory basis for the penalty or assessment. The notice will also provide instructions for responding and will explain the respondent's hearing rights. The IG's detailed CMP hearings and appeal procedures will be published in the **Federal Register** in the near future, and will be located at 20 C.F.R. § 498.200 et seq.

These proposed CMP regulations have been modeled after longstanding regulations in 42 C.F.R. part 1003 which implement similar statutory CMP provisions for false claims in the Medicare and Medicaid programs.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We have determined that no regulatory impact analysis is required for these proposed regulations. While the penalties and assessments which the IG could impose as a result of section 1129 of the Act and these regulations might have a slight impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Based on our determination, the IG certifies that these proposed regulations would not have a significant economic impact on a substantial number of small business entities. Any impact on small businesses would primarily be a result of the legislation rather than these regulations. Therefore, we have not prepared a regulatory flexibility analysis.

Effect of NPRM on Pending Actions

Until the promulgation of final regulations, the IG intends that these proposed regulations shall provide guidance with respect to the imposition and adjudication of the CMPs and assessments.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income Program)

List of Subjects in 20 CFR part 498

Administrative practice and procedure, Fraud, Penalties.

Approved: October 10, 1995.

June Gibbs Brown,

Inspector General.

For the reasons set out in the preamble, part 498 of chapter III of title 20 of the Code of Federal Regulations would be amended as set forth below.

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

1–2. The authority citation for part 498 is revised to read as follows:

Authority: Secs. 702(a)(5), 1129, and 1140 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8, and 1320b–10).

3. Section 498.100 is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 498.100 Basis and purpose.

(a) *Basis.* This part implements sections 1129 and 1140 of the Social Security Act (42 U.S.C. 1320a–8 and 1320b–10).

(b) *Purpose.* This part provides for the imposition of civil monetary penalties and assessments, as applicable, against persons who—

(1) Make or cause to be made false statements or representations, or omissions of material fact for use in determining any right to or amount of benefits under title II or benefits or payments under title XVI of the Social Security Act; or

* * * * *

4. Section 498.101 is amended by adding the following definitions and revising the definition of "Respondent" to read as follows:

§ 498.101 Definitions.

* * * * *

Assessment means the amount described in § 498.104, and includes the plural of that term.

* * * * *

Material fact means a fact which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II or eligible for benefits or payments under title XVI.

* * * * *

Respondent means the person upon whom the Commissioner or the Inspector General has imposed, or intends to impose, a penalty and assessment.

* * * * *

5. Section 498.102 is amended by revising the section heading and adding paragraph (a) to read as follows:

§ 498.102 Basis for civil monetary penalties and assessments.

(a) The Office of the Inspector General may impose a penalty and assessment against any person whom it determines in accordance with this part—

(1) Has made, or caused to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or amount of:

(i) Monthly insurance benefits under title II of the Social Security Act; or

(ii) Benefits or payments under title XVI of the Social Security Act; and

(2)(i) Knew, or should have known, that the statement or representation—

(A) Was false or misleading; or

(B) Omitted a material fact; or

(ii) Made such statement with knowing disregard for the truth.

* * * * *

6. Section 498.103 is amended by adding paragraph (a) to read as follows:

* * * * *

§ 498.103 Amount of penalty.

(a) Under section § 498.102(a), the Office of the Inspector General may impose a penalty of not more than $5,000 for each false statement or representation.

* * * * *

7. Section 498.104 is added to read as follows:

§ 498.104 Amount of assessment.

A person subject to a penalty determined under § 498.102(a) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments paid as a result of the statement or representation which was the basis for the penalty. An assessment is in lieu of damages sustained by the United States because of such statement or representation.

8. Section 498.106 is amended by adding paragraph (a) to read as follows:

§ 498.106 Determinations regarding the amount or scope of penalties and assessments.

(a) In determining the amount or scope of any penalty and assessment in accordance with § 498.103(a) and § 498.104, the Office of the Inspector General will take into account:

(1) The nature of the statements and representations referred to in § 498.102(a) and the circumstances under which they occurred;

(2) The degree of culpability of the person committing the offense;

(3) The history of prior offenses of the person committing the offense;

(4) The financial condition of the person committing the offense; and

(5) Such other matters as justice may require.

* * * * *

9. Section 498.108 is revised to read as follows:

§ 498.108 Penalty and assessment not exclusive.

Penalties and assessments imposed under this part are in addition to any other penalties prescribed by law.

10. Section 498.109 is revised to read as follows:

§ 498.109 Notice of proposed determination.

(a) If the Office of the Inspector General seeks to impose a penalty and assessment, as applicable, it will serve written notice of the intent to take such action. The notice will include:

(1) Reference to the statutory basis for the penalty and assessment, as applicable;

(2) A description of the false statements, representations, and incidents, as applicable, with respect to which the penalty and assessment, as applicable, are proposed;

(3) The amount of the proposed penalty and assessment, as applicable;

(4) Any circumstances described in § 498.106 that were considered when determining the amount of the proposed penalty and assessment, as applicable; and

(5) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing; and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty and assessment, as applicable, without right of appeal.

(b) Any person upon whom the Office of the Inspector General has proposed the imposition of a penalty and assessment, as applicable, may request a hearing on such proposed penalty and assessment.

(c) If the respondent fails to exercise the respondent's right to a hearing, within the time permitted under this section, any penalty and assessment, as applicable, becomes final.

11. Section 498.110 is revised to read as follows:

§ 498.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 498.109(a), the Office of the Inspector General may seek the proposed penalty and assessment, as applicable, or any less severe penalty and assessment. The Office of the Inspector General shall notify the respondent by certified mail, return receipt requested, of any penalty and assessment, as applicable, that has been imposed and of the means by which the respondent may satisfy the amount owed.

12. Section 498.114 is added to read as follows:

§ 498.114 Collateral estoppel.

In a proceeding under section 1129 of the Social Security Act that—

(a) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime charging fraud or false statements; and

(b) Involves the same transactions as in the criminal action, the person is estopped from denying the essential elements of the criminal offense.

13. Section 498.127 is revised to read as follows:

§ 498.127 Judicial review.

Sections 1129 and 1140 of the Social Security Act authorize judicial review of any penalty and assessment, as applicable, that has become final. Judicial review may be sought by a respondent only in regard to a penalty and assessment, as applicable, with respect to which the respondent requested a hearing, unless the failure or neglect to urge such objection is excused by the court because of extraordinary circumstances.

14. Section 498.128 is amended by revising paragraph (a) and adding paragraphs (b), (d), and (e) to read as follows:

§ 498.128 Collection of penalty and assessment.

(a) Once a determination has become final, collection of any penalty and assessment will be the responsibility of the Commissioner or his or her designee.

(b) In cases brought under section 1129 of the Social Security Act, a penalty and assessment imposed under this part may be compromised by the Commissioner or his or her designee, and may be recovered in a civil action brought in the United States district court for the district where the statement or representation referred in § 498.102(a) was made, or where the respondent resides.

* * * * *

(d) As specifically provided under the Social Security Act, in cases brought under section 1129 of the Social Security Act, the amount of a penalty and assessment when finally determined, or the amount agreed upon in compromise, may also be deducted from:

(i) Monthly title II or title XVI payments, notwithstanding section 207 of the Social Security Act as made applicable to title XVI by section 1631(d)(1) of the Social Security Act; or

(ii) A tax refund to which a person is entitled to after notice to the Secretary of the Treasury under 31 U.S.C. 3720A; or

(iii) By authorities provided under the Debt Collection Act of 1982, as amended, 31 U.S.C. 3711, to the extent applicable to debts arising under the Act; or

(iv) Any combination of the foregoing.

(e) Matters that were raised or that could have been raised in a hearing before an administrative law judge or in an appeal to the United States Court of Appeals under sections 1129 or 1140 of the Social Security Act may not be raised as a defense in a civil action by the United States to collect a penalty and assessment under this part.

15. Section 498.129 is added to read as follows:

§ 498.129 Notice to other agencies.

As provided in section 1129 of the Social Security Act, when a determination to impose a penalty and assessment with respect to a physician or medical provider becomes final, the Office of the Inspector General will notify the Secretary of the final determination and the reasons therefore.

16. Section 498.132 is revised to read as follows:

§ 498.132 Limitations.

The Office of the Inspector General may initiate a proceeding in accordance with § 498.109(a) to determine whether to impose a penalty and assessment only—

(a) In cases brought under section 1129 of the Social Security Act, after receiving authorization from the Attorney General pursuant to procedures agreed upon by the Inspector General and the Attorney General; and

(b) Within 6 years from the date on which the violation was committed.

[FR Doc. 95–28309 Filed 11–24–95; 8:45 am]
BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 95N–0342]

Export Requirements for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations for investigational devices to streamline requirements for persons seeking to export unapproved medical devices. The proposed rule would establish that FDA approval of an investigational device exemption application (IDE) constitutes an agency determination that the export of the unapproved device is not contrary to the public health or safety. The proposed rule would also consider a country as approving importation of an unapproved device if the country has notified FDA that it approves of the importation of unapproved devices with an approved IDE into their countries. Thus, for devices with an FDA-approved IDE, the proposal would eliminate the need for FDA to make independent determinations either that exportation is not contrary to the public health or safety or that an importing country approves the importation of a specific device. The proposed rule is intended to codify and to simplify export requirements for certain unapproved devices pursuant to the President's and Vice-President's "National Performance Review," as reflected in the April 1995 report titled, "Reinventing Drug & Medical Device Regulations." The agency is also requesting comments on other ways of improving the export process for medical devices.

DATES: Written comments by February 12, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 801(e)(1) (21 U.S.C. 381(e)(1)) of the Federal Food, Drug, and Cosmetic Act (the act) states, in part, that a device intended for export shall not be deemed to be adulterated or misbranded if it: (1) meets the specifications of the foreign purchaser; (2) is not in conflict with the laws of the country to which it is intended for export; (3) is labeled on the outside of the shipping package that it is intended for export; and (4) is not sold or offered for sale in domestic commerce. Section 801(e)(1) of the act does not apply, however, to any device that does not comply with an applicable requirement under sections 514 (21 U.S.C. 360d) (performance standards) or 515 (21 U.S.C. 360e) (premarket approval) of the act, a device which, under section 520(g) of the act (21 U.S.C. 360j(g)), is exempt from sections 514 and 515 of the act, or to a banned device, unless, in addition to the requirements in section 801(e)(1), the agency "has determined that exportation of the device is not contrary to the public health and safety and has the approval of the country to which it is intended for export." (See section 801(e)(2) of the act.) This statutory scheme requires parties to submit requests to FDA for exportation of certain unapproved devices and also requires FDA to approve such requests if the requirements in section 801(e) of the act are met.

To enable FDA to determine whether the exportation of a particular device is not contrary to the public health or safety, FDA generally asks that the person seeking to export the device submit, along with the export request, information or data regarding the device's safety. However, if the device is the subject of an IDE approved by FDA and will be marketed or used in clinical trials for the same intended use in the foreign country, FDA does not require submission of safety data with the export request because those safety data are already contained in the IDE.

To determine whether a foreign country has approved importation of a device, a person who intends to export an unapproved device usually provides FDA a letter from a foreign government official stating that the foreign government does not object to the importation of the device. The letter must identify the device and its intended use and state that the device is not in conflict with the laws of the foreign country (or that there is no objection to importation of the device), that the foreign government has full knowledge of the device's regulatory status in the United States, and that importation is permitted. FDA has recently stated that, for devices with a "CE" mark from the European Union, an additional letter from any importing country within the European Economic Area would not be needed.

Each year, FDA receives hundreds of requests for permission to export unapproved devices. In 1992, FDA handled 695 requests, and each request required an average of 91 days to process. In 1993, FDA processed 501 requests, but improved its average processing time to 65 days. In 1994, the agency processed 635 requests, and improved its average processing time significantly further, to 16 days. From January to September, 1995, the agency processed over 570 requests with an average processing time of 10 days.

Yet, even though the average processing time for export requests has significantly improved in recent years, FDA is aware that the domestic industry continues to believe that the agency's export approval obligations may affect a firm's ability to compete in international markets and may represent an unnecessary regulatory barrier. Consequently, in April 1995, FDA, as part of the President's and Vice-President's "National Performance Review," announced that it would propose two new means by which unapproved devices could be exported. First, the agency proposed permitting the export of unapproved devices to certain advanced industrialized countries without prior FDA review and approval, provided that the device complies with the importing country's laws. FDA would seek the necessary legislative changes and would consult Congress on the list of advanced industrialized countries. In August, 1995, the Senate Committee on Labor and Human Resources unanimously reported a bill (S. 593, as amended) that would simplify export requirements for devices. If such legislation is enacted, the agency will amend this rule if necessary.

Second, the National Performance Review report stated that FDA would initiate administrative changes to permit exports to countries that are not on the list of advanced industrialized countries "if the exporter has an Investigational Device Exemption (IDE) permitting testing on humans in the United States, the importing country has given FDA a letter providing blanket approval for IDE-type devices, and the device is in compliance with the importing country's laws."

This proposed rule would implement the second half of the Administration's initiative on reinventing device exports and is the part of the initiative that FDA can achieve under current law. The proposal would simplify and streamline the agency's export approval process for certain unapproved devices. The agency requests comments on other ideas for improving the export process for medical devices.

II. Description of the Proposed Rule

Currently, the only FDA regulation on device exports, § 812.18(b), states that, "A person exporting an investigational device subject to [part 812] shall obtain FDA's prior approval as required by section 801(d) [sic] of the act." [1] The proposed rule would amend § 812.18(b) to state that a person that wishes to export an investigational device subject to part 812 must comply with the requirements at section 801(e)(1) of the act, and proposed § 812.18(b)(1) would state that, for purposes of section 801(e)(2) of the act, prior FDA approval is unnecessary if the investigational device to be exported is the subject of an IDE approved by FDA and "will be marketed or used in clinical trials in the foreign country for the same intended use as that in the approved IDE and is to be exported to a country that has expressed its approval of the importation of investigational devices that are the subject of FDA-approved IDE's." However, if the device is the subject of an FDA-approved IDE and has received a "CE" mark from the European Union, the device may be exported to any country in the European Economic Area. Proposed § 812.18(b)(1) would also state that the agency would make available a list of countries that have approved the importation of investigational devices that are the subjects of IDE's approved by FDA. The agency expects to maintain this list electronically in the Center for Devices and Radiological Health through the electronic docket administered by the Center's Division of Small Manufacturer's Assistance.

Under § 812.2(b)(1), a nonsignificant risk (NSR) device is considered to have an approved IDE as long as the sponsor complies with the requirements of § 812.2(b)(1)(i) through (vii). Therefore, the streamlined requirements set forth in proposed § 812.18(b)(1) also would apply to NSR devices that comply with § 812.2(b)(1).

Proposed § 812.18(b)(2) would require FDA approval to export an investigational device if FDA withdraws approval of the IDE (under § 812.30(b)) or the sponsor terminates any or all parts of investigations because unanticipated adverse device effects present an unreasonable risk to subjects (under § 812.46(b)). FDA approval to export an investigational device in these situations is required under section 801(e)(2) of the act.

III. Legal Authority

As noted earlier, section 801(e)(2) of the act prohibits the export of certain unapproved devices and banned medical devices unless FDA determines that exportation of the device: (1) Is not contrary to the public health or safety; and (2) has the approval of the country to which it is intended for export. This section was added to the act as part of the Medical Device Amendments of 1976 (Pub. L. 94–295) and the legislative history for the Medical Device Amendments indicates that Congress considered two distinct export provisions. One provision suggested by the House of Representatives would have permitted export of an unapproved device to any foreign country that had an "appropriate" health agency where such agency had reviewed and approved the device. FDA would receive notice of the export, but would not be required to approve exportation. In contrast, the Senate provision would have authorized export of unapproved devices if FDA determined that exportation "was in the interest of public health and safety" and the device had the approval of the country to which it was being exported. Thus, unlike the House provision, the Senate provision would have required the agency to make certain determinations before the device could be exported. Congress ultimately enacted a provision that was very similar to the Senate version.

The proposed rule is consistent with the legislative history and section 801(e)(2) of the act. FDA would still determine whether exportation of the device was contrary to the public health

[1] When FDA originally issued 21 CFR § 812.18(b), the export authority for devices was at section 801(d) of the act. However, Congress renumbered the export provision as section 801(e) of the act when it added a new section 801(d) as part of the Prescription Drug Marketing Act of 1987. Thus, § 812.18(b) contains an obsolete reference to section 801(d) of the act, and the proposed rule would correct this error.

or safety and whether the foreign country receiving the device approves of the device's importation. The principal difference between the current device export approval process and the proposed rule is that, under the proposed rule, FDA would consider the existence of an FDA-approved IDE to be FDA's determination that exportation of the device is not contrary to the public health or safety. Additionally, the list of countries that FDA would maintain would represent the agency's determination that, for those countries on the list, the country approves of the importation of investigational devices. By making these determinations in advance, through the IDE process and the list of countries, no separate export approval would be required, and so the device export process would be much simplified and streamlined.

Courts have routinely upheld similar "blanket" determinations or findings made by administrative agencies. For example, in *Weinberger* v. *Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609 (1973), the Supreme Court examined, among other things, whether FDA was required to conduct individual hearings for each manufacturer of similar drug products before it could withdraw those drug products from the market. The Court declined to require individual hearings because "many hearings would be an exercise in futility" and "To require separate judicial proceedings to be brought against each * * * would be to create delay where in the interest of public health there should be prompt action." (Id. at pp. 621, 624–625.)

Similarly, in *In re Permion Basin Area Rate Cases*, 390 U.S. 747 (1968), the Supreme Court declined to require an agency to engage in individual proceedings, upholding the agency's ability to use a comprehensive and practical regulatory approach. The Court recognized that, "[C]onsiderations of flexibility and practicality are certainly germane to the issues before us * * * We cannot, in these circumstances, conclude that Congress has given authority inadequate to achieve with reasonable effectiveness the purpose for which it acted." (Id. at p. 777 (citations omitted).) (See also *Phillips Petroleum Company* v. *U.S. Environmental Protection Agency*, 803 F.2d 545, 562 (10th Cir. 1986) (The Environmental Protection Agency was "well within its discretion to use a generic streamlined approach or procedure" instead of case-by-case determinations as to the necessity of a mechanical integrity test).)

This proposed rule is consistent with these court decisions because FDA is making its determination that an approved IDE provides a satisfactory basis for its required determination that exportation of a device is not contrary to public health or safety. The agency is making this determination through this rulemaking, providing an opportunity for comment to all interested persons. Assuming that the agency issues a final rule, there will be no need for the agency to make case-by-case determinations that such devices do not present a public health or safety concern. Similarly, the need to make an individual determination that a foreign country has approved the device's importation is eliminated where such country has already indicated that it will permit the importation of all FDA-approved IDE devices. Requiring the submission and FDA review of the same information that the agency already has, in these cases, would unnecessarily consume agency and industry resources and delay exportation.

The proposed rule, therefore, is authorized by sections 520(g) and 801(e)(2) of the act and the general rulemaking authority under section 701(a) of the act and is consistent with judicial decisions upholding an agency's authority to develop streamlined, efficient procedures to make determinations applicable to a group or class of persons or products, rather than proceeding on a case-by-case basis.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This proposed rule meets the definition of a significant regulatory action in the Executive Order in that it raises novel legal and policy issues arising from Presidential priorities, and so has been reviewed by OMB under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule, if finalized, would simplify and lessen regulatory burdens on persons seeking to export unapproved devices that are the subjects of approved IDE's and that are to be exported to a country that has given a blanket approval to importation of devices that are the subjects of FDA-approved IDE's, the agency certifies that the proposed rule would not impose any additional regulatory burdens on small entities, and so, under the Regulatory Flexibility Act, no further analysis is required.

V. Environmental Impact

The agency has determined, under 21 CFR § 25.24(a)(8), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before February 12, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This proposed rule would simplify and streamline the device export process, and does not impose any new information collection requirements. The existing information collection requirements in 21 CFR part 812 have been approved under OMB control no. 0910–0078 which expires on May 31, 1996.

List of Subjects

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21 of the Code of Federal Regulations be amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for part 812 is revised to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 721, 801, 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 393); secs. 215, 301, 351, 352, 353–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263, 263a–263n).

2. Section 812.18 is amended by revising paragraph (b) to read as follows:

§ 812.18 Import and export requirements.

* * * * *

(b) *Exports.* A person exporting an investigational device subject to this part shall comply with section 801(e)(1) of the act, and shall obtain FDA's prior approval, as required by section 801(e)(2) of the act. However, if the investigational device to be exported is the subject of an investigational device exemption application (IDE) approved by FDA:

(1) No prior approval shall be necessary provided that the investigational device to be exported will be marketed or used in clinical trials in the foreign country for the same intended use as that in the approved IDE and is to be exported to a country that has expressed its approval of the importation of investigational devices that are the subjects of FDA-approved IDE's. (For devices that have received a "CE" mark from the European Union, the valid granting of a CE mark for a device that is the subject of an FDA-approved IDE shall constitute approval of the device for importation into any country in the European Economic Area.) A list of countries that have approved the importation of investigational devices that are the subjects of IDE's approved by FDA is available from the Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(2) If FDA withdraws approval of the IDE or the sponsor terminates any or all parts of investigations because unanticipated adverse device effects present an unreasonable risk to subjects, exportation of the investigational device may continue only with FDA approval in accordance with section 801(e)(2) of the act.

Dated: November 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–28894 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–01–

DEPARTMENT OF THE TREASURY

27 CFR Parts 5, 19, 24, 25, 70, and 250

[Notice No. 816]

RIN 1512–AB40

Registration of Formulas and Statements of Process for Certain Domestically Produced Wines, Distilled Spirits and Beer (95R–019P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to require the registration, rather than approval, of formulas and statements of process for certain domestically produced wines, distilled spirits, and beer. ATF believes that the proposed regulations will provide greater flexibility to the industry by enabling proprietors to commence production in a more expeditious manner.

The proposed amendments are part of the Administration's Reinventing Government effort to reduce burden and streamline requirements.

DATES: Written comments must be received on or before January 26, 1996.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 816.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Under the current regulations, approved formulas or statements of process are required for certain domestically produced distilled spirits, wines, and beer. Pursuant to regulations in 27 CFR Part 5, an approved formula on ATF Form 5110.38 (Formula For Distilled Spirits Under The Federal Alcohol Administration Act) is required to blend, mix, purify, refine, compound, or treat distilled spirits in a manner which results in a change of character, composition, class or type of the spirits. The formula requirement applies to: (1) Proprietors of distilled spirits plants qualified as processors under 27 CFR Part 19; (2) Persons in Puerto Rico who manufacture distilled spirits products for shipment to the United States in accordance with 27 CFR Part 250; and (3) Persons who ship Virgin Islands distilled spirits products into the United States in accordance with 27 CFR Part 250.

As it relates to wine, the regulations in 27 CFR Part 24 provide that a proprietor must, before commencing production, obtain approval of the formula and process by which special natural wine, agricultural wine, and certain other than standard wines (e.g., Spanish type blending sherry) are to be made. An approved formula is also required under certain conditions in the production of an effervescent (sparkling) wine. Wine formulas are filed on ATF Form 5120.29, Formula And Process For Wine.

With regard to beer, the regulations in 27 CFR Part 25 require that a brewer file a statement of process for any fermented beverage which the proprietor intends to produce and market under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor." The statement of process, which is contained in the Brewer's Notice, ATF Form 5130.10, includes the name or designation of the product, the kinds and quantities of materials to be used, the method of manufacture, and the approximate alcohol content of the finished product.

ATF reviews approximately 1,700 formulas and statements of process annually. The Bureau examines the formulas and statements of process to ensure that, among other things, the ingredients used are not only approved by the Food and Drug Administration (FDA), but are used within prescribed limitations established by the FDA. The average turnaround time for processing a formula or statement of process is approximately 3 weeks.

The majority of formulas and statements of process that ATF examines are approved without any substantive changes. The Bureau attributes this, in part, to its continued efforts at providing guidance and information to members of the alcoholic beverage industry. Through the publication of industry circulars and other publications, such as the "Compliance Matters" bulletin, ATF is able to apprise the industry of policies or procedures which might affect them. With regard to formulas for wine and distilled spirits, specifically, the Bureau recommends that proprietors review Industry Circular 89–3. This circular clarifies and provides information and guidelines for the completion and submission of formulas. This circular can also be utilized by brewers in the

preparation of statements of process for flavored malt beverage products.

Proposed Registration of Formulas and Statements of Process

ATF is proposing to amend the regulations to provide for the registration, rather than approval, of formulas and statements of process. ATF believes that a registration system will provide greater flexibility to the industry by enabling proprietors to commence production in a more expeditious manner. As indicated, ATF's current average turnaround time for processing a formula or statement of process is 3 weeks. Under a registration system, the turnaround time would be less than 1 week. The proposed amendments are part of the Administration's Reinventing Government effort to reduce burden and streamline requirements.

Registration merely indicates that a formula or statement of process is on file with ATF. For formulas and statements of process registered on or after the effective date of the final rule, registration does not mean that ATF has determined that the formula or statement of process complies with the laws and regulations enforced by ATF.

If the proposed regulations are adopted, the forms which are currently used by proprietors for filing distilled spirits and wine formulas (ATF F 5110.38 and ATF F 5120.29, respectively) will be revised accordingly. No additional information will be required on the revised forms. With regard to distilled spirits and wine, the procedures for filing the revised forms will be the same as is currently required. For beer products, the statement of process will no longer be included as part of the Brewer's Notice, Form 5130.10. Rather, brewers will prepare the statement of process on letterhead stationery, in triplicate. The statement will be filed with the Chief, Product Compliance Branch.

Once received, ATF will register the formula or statement of process and include the date of registration. The registered formula or statement of process will then be forwarded to the proprietor. Production may commence upon the receipt by the proprietor of a registered formula or statement of process.

With the exception of special natural wines, ATF will register all formulas for distilled spirits and wine as well as statements of process for beer. In the case of special natural wine, section 5386 of the Internal Revenue Code of 1986, 26 U.S.C. 5386, requires that such wine be made pursuant to an approved formula. Therefore, ATF will continue to approve formulas for special natural wine filed on ATF Form 5120.29.

Each applicant submitting a formula or statement of process for registration should ensure that such formula or statement of process is properly completed. In addition to following the guidelines presented in Industry Circular 89–3, the instructions on the reverse side of the forms should be followed carefully. ATF will continue to provide guidance to proprietors, as needed, through the publication of its "Compliance Matters" bulletin and through other methods.

Previously approved formulas and statements of process will not have to be submitted to ATF for registration. These will continue to be valid and, except for special natural wines, will automatically be deemed and included as registered formulas and statements of process for all purposes. When a change is made in the registered formula or statement of process (including those previously approved), the new formula or statement of process must be registered. When a change is made in an approved special natural wine formula, the new formula must be approved.

Cancellation of Registered Formulas and Statements of Process

The proposed regulations also set forth the procedures for the cancellation of registered formulas and statements of process (including those previously approved). These procedures will appear in 27 CFR Part 70, Procedure and Administration. The establishment of these procedures in the regulations will ensure that all industry members are aware of this practice and will afford due process of a notice and opportunity to present their position before their registered formula or statement of process is cancelled. The proposed cancellation procedures do not apply to approved formulas for special natural wines. ATF is considering whether these procedures should apply to such approved formulas and is interested in comments on this question.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Regulotory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposed rule is liberalizing in nature in that domestic proprietors will be able to commence production in a more timely manner for those wines, distilled spirits, and beers which require a registered formula or statement of process. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under the following control numbers: 1512–0045, 1512–0058, 1512–0059, 1512–0192, 1512–0198, 1512–0203, 1512–0204, 1512–0205, 1512–0206, 1512–0207, 1512–0216, 1512–0250, 1512–0298, 1512–0352, 1512–0461, 1512–0462, 1512–0503. These control numbers were in effect on October 1, 1995, the effective date of the Paperwork Reduction Act of 1995. Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information:

The author of this document is James P. Ficaretta, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

Part 19 q02

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, U.S. possessions, Warehouses, and Wine.

Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, and Wine.

Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic funds transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, and Transportation.

Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Authority delegations, Cancellations, Claims, Government employees, Informal conferences, Law enforcement, and Law enforcement officers.

Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, and Wine.

Authority and Issuance

27 CFR Parts 5, 19, 24, 25, 70, and 250 are amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 2. Section 5.11 is amended by adding a definition for "registered formula" to read as follows:

§ 5.11 Meaning of terms.

* * * * *

Registered formula. A distilled spirits formula which has been filed with the Director and bears the signature of the Director or the Director's delegate.

* * * * *

Par. 3. Section 5.26 is revised to read as follows:

§ 5.26 Formula requirements.

(a) *General.* A registered formula is required to blend, mix, purify, refine, compound, or treat spirits in a manner which results in a change of character, composition, class or type of the spirits. Form 5110.38 (formerly 27–B Supplemental) shall be filed with the Director in accordance with the instructions on the form and shall designate all ingredients and, if required, the process used. Any approved formula on Form 27–B Supplemental and any approved or registered formula on Form 5110.38 shall remain in effect until canceled, superseded, or voluntarily surrendered. Any existing qualifying statements as to the rate of tax or the limited use of drawback flavors appearing on a Form 27–B Supplemental are obsolete.

(b) *Registration of formulas approved before (effective date of final rule).* Any formula on Form 27–B Supplemental or Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by paragraph (a) of this section, without any resubmission by the holder of the approved formula or notification by ATF.

(c) *Change in formula.* Any change in a registered formula shall require the filing of a new Form 5110.38. After a change in a formula has been registered, the original formula shall be surrendered to the Director.

(d) *Cancellation of registered formula.* The procedures for the cancellation of a registered formula are prescribed in 27 CFR Part 70, Subpart E.

Par. 4. Section 5.28 is revised to read as follows:

§ 5.28 Adoption of predecessor's formulas.

The adoption by a successor of registered Forms 5110.38 shall be in the form of an application filed with the Director. The application shall clearly show that the predecessor has authorized the use of its previously approved or registered formulas by the successor. The application shall list the formulas for adoption by:

(a) Formula number,

(b) Name of product, and

(c) Date of registration (or original date of approved formula, if any).

PART 19—DISTILLED SPIRITS PLANTS

Par. 5. The authority citation for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 6. Section 19.11 is amended by adding a definition for "registered formula" to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Registered formula. A distilled spirits formula which has been filed with the Director and bears the signature of the Director or the Director's delegate.

* * * * *

Par. 7. Section 19.187(a) is revised to read as follows:

§ 19.187 Adoption of formulas.

(a) *Forms 5110.38.* The adoption by a successor of registered Forms 5110.38 shall be in the form of an application, filed with the Director. The application shall list the formulas for adoption by formula number, name of product, and date of registration (or original date of

the approved formula, if any). The application shall clearly show that the predecessor has authorized the use of its previously registered formulas by the successor.

* * * * *

Par. 8. Section 19.324(b), under the undesignated center heading "FORMULA", is revised to read as follows:

Formula

§ 19.324 Statement of production procedure or Form 5110.38.

* * * * *

(b) As provided in 27 CFR 5.27, a registered formula on Form 5110.38 is required for the redistillation of spirits in the production account. Any formula on Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by this paragraph, without any resubmission by the holder of the approved formula or notification by ATF. The procedures for the cancellation of a registered formula are prescribed in 27 CFR Part 70, Subpart E.

* * * * *

Par. 9. Section 19.331 is revised to read as follows:

§ 19.331 General.

Distillers or processors may redistill spirits, denatured spirits, articles, and spirits residues. Certain products may only be redistilled pursuant to a registered formula on Form 5110.38, as specified in 27 CFR 5.27. Any formula on Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by this paragraph, without any resubmission by the holder of the approved formula or notification by ATF. The procedures for the cancellation of a registered formula are prescribed in 27 CFR Part 70, Subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

Par. 10. Section 19.378, under the undesignated center heading "FORMULAS", is revised to read as follows:

Formulas

§ 19.378 Formula requirements.

A registered formula on ATF Form 5110.38 must be secured for spirits for domestic use or export as provided in 27 CFR 5.26–5.27 before processors may blend, mix, purify, refine, compound or treat spirits in any manner which results in a change of character, composition, class or type of the spirits including redistillation as provided in § 19.331, and the production of gin or vodka by other than original and continuous distillation. Any formula on ATF Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by this paragraph, without any resubmission by the holder of the approved formula or notification by ATF. The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, Subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1395, as amended (26 U.S.C. 5201, 5555))

Par. 11. Section 19.596(b)(6) is amended by removing the words "an approved" and adding the words "a registered" in their place.

Par. 12. Section 19.723(c)(2) is amended by removing the word "approved" and adding in its place the word "registered" in the first sentence.

Par. 13. Section 19.778(b) is amended by removing the word "approved" and adding in its place the word "registered".

PART 24—WINE

Par. 14. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 15. Section 24.10 is amended by adding the words "or registered" after the word "approved" in the definition for "formula wine" and by adding a definition for "registered formula" to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Registered formula. A wine formula which has been filed with the Director and bears the signature of the Director or the Director's delegate.

* * * * *

Par. 16. Sections 24.80, 24.81, and 24.82, under the designated heading "FORMULAS", are revised and new section 24.83 is added to read as follows:

Formulas

§ 24.80 General.

The proprietor shall, before production, register the formula and process by which agricultural wine and other than standard wine (except distilling material or vinegar stock) are to be made. Any formula for an agricultural wine and other than standard wine that was approved before (effective date of final rule) is included as a registered formula, as required by this section, without any resubmission by the holder of the approved formula or notification by ATF. For special natural wine, the proprietor shall, before production, obtain approval of the formula and process by which such wine is to be made. The formula shall be prepared and filed with the Director on ATF F 5120.29, Formula and Process for Wine, in accordance with the instructions on the form. A nonbeverage wine formula shall show the intended use of the finished wine or wine product. Any formula registered or approved under this section shall remain in effect until revoked, cancelled, superseded, or voluntarily surrendered. Except for research, development, and testing, no special natural wine, agricultural wine or, if required to be covered by a registered formula, other than standard wine may be produced prior to approval or registration by the Director of a formula covering each ingredient and process (if the process requires approval or registration) used in the production of the product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1386, as amended, 1395, as amended (26 U.S.C. 5361, 5367, 5386, 5387, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.81 Filing of formulas.

The proprietor shall designate on each formula filed all ingredients and, if required, describe each process used to produce the wine. The addition or elimination of ingredients, changes in quantities used, and changes in the process of production or any other change in an approved or registered formula shall require the filing of a new ATF F 5120.29. After a change in formula is approved or registered, the original formula shall be surrendered to the Director. The proprietor shall serially number each formula, commencing with "1" and continuing thereafter in numerical sequence. Nonbeverage wine formulas shall be prefixed with the symbol "NB." The Director or the regional director (compliance) may at any time require the proprietor to file a statement of process in addition to that required by the ATF F 5120.29 or any other data to determine whether the formula should be approved, registered, revoked, or cancelled.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.82 Samples.

The Director or the regional director (compliance) may, at any time, require the proprietor to submit samples of any wine or wine product made in accordance with an approved or registered formula or of any materials used in production.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5351, 5361, 5362))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.83 Cancellation of registered formulas.

The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, subpart E.

Par. 17. Section 24.127 is revised to read as follows:

§ 24.127 Adoption of formulas.

The adoption of approved or registered formulas by a successor proprietor shall be in the form of an application, filed with the Director. The application shall list the formulas for adoption by formula number, name of product, and date of approval or registration (or original date of the approved formula for an agricultural wine or other than standard wine, if any). The application shall clearly show that the outgoing proprietor has authorized the successor proprietor's use of the approved or registered formulas.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

Par. 18. Section 24.192 is amended by removing the word "approval" in the third sentence and by adding in its place the word "registration".

Par. 19. Section 24.201 is revised to read as follows:

§ 24.201 Formula required.

Before producing any agricultural wine, the proprietor shall register with the Director the formula and process by which it is to be made pursuant to the provisions of § 24.80. Any change in a formula shall be registered in advance as provided by § 24.81. The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5387))

(Approved by the Office of Management and Budget under control number 1512–0059)

Par. 20. Section 24.211 is revised to read as follows:

§ 24.211 Formula required.

A proprietor who desires to produce other than standard wine shall first register the formula by which it is to be made, except that no formula is required for distilling material or vinegar stock. The formula shall be filed with the Director as provided by § 24.80. Any change in the formula shall be registered in advance as provided by § 24.81. The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

(Approved by the Office of Management and Budget under control number 1512–0059)

Par. 21. Section 24.214 is amended by removing the words "an approved" in the fourth sentence and by adding in its place the words "a registered".

Par. 22. Section 24.303(b) is amended by adding the words "or registered" after the word "approved".

PART 25—BEER

Par. 23. The authority citation for 27 CFR part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 24. Section 25.11 is amended by adding definitions for "Chief, Product Compliance Branch" and "registered statement of process" to read as follows:

§ 25.11 Meaning of terms.

* * * * *

Chief, Product Compliance Branch. The ATF official responsible for registering statements of process under this part.

* * * * *

Registered statement of process. A statement of process under § 25.67 which has been filed with ATF and bears the signature of the Chief, Product Compliance Branch or his or her delegate.

* * * * *

Par. 25. Section 25.62 is amended by removing paragraph (a)(7) and by redesignating paragraphs (a)(8) through (a)(12) as paragraphs (a)(7) through (a)(11).

Par. 26. Section 25.67 is amended by revising paragraphs (a) and (c), and by adding new paragraph (d) to read as follows:

§ 25.67 Statement of process.

(a) A statement of process shall be prepared on letterhead stationery, in triplicate, and filed and registered with the Chief, Product Compliance Branch for any fermented beverage which the brewer intends to produce and market under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor." Each statement of process shall include a serial number and shall identify each of the brewer's breweries for which it is filed. The brewer may not commence production of such beverages until the statement of process has been registered. Any statement of process that was approved before (effective date of final rule) is included as a registered statement of process, as required by this paragraph, without any resubmission by the holder of the approved statement of process or notification by ATF.

* * * * *

(c) The base product for any fermented beverage (other than sake or cereal beverage) requiring a statement of process shall have the characteristics of beer as defined in § 25.11.

(d) The procedures for the cancellation of a registered statement of process are prescribed in 27 CFR part 70, Subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1388, as amended (26 U.S.C. 5052, 5401))

Par. 27. Section 25.71(b)(2) is revised to read as follows:

Changes After Original Qualification

§ 25.71 Amended or superseding notices.

* * * * *

(b) * * *

(2) If the information required by § 25.62(a)(4), (5), (6), (8), and (9) is on file as part of an approved Form 5130.10 and is current, the brewer may incorporate by reference those documents as part of any superseding notice.

* * * * *

Par. 28. Section 25.76 is revised to read as follows:

§ 25.76 Change in statement of process.

When there is a change in the information in a statement of process required by § 25.67 for any fermented beverage produced and marketed under a name other than "beer," "ale," "porter," "stout," "lager," or "malt liquor," the brewer shall file and register an amended statement of process with the Chief, Product Compliance Branch prior to using such changed statement.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

PART 70—PROCEDURE AND ADMINISTRATION

Par. 29. The authority citation for 27 CFR Part 70 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 30. Section 70.11 is amended by adding definitions for "Chief, Alcohol and Tobacco Programs Division", "Chief, Product Compliance Branch", "registered formula", and "registered statement of process" to read as follows:

§ 70.11 Meaning of terms.

* * * * *

Chief, Alcohol and Tobacco Programs Division. The Bureau official responsible for deciding appeals of cancellations of registered formulas and registered statements of process under this part.

Chief, Product Compliance Branch. The Bureau official responsible for issuing cancellations of registered formulas and registered statements of process under this part.

* * * * *

Registered formula. A distilled spirits or wine formula which has been filed with the Bureau and bears the signature of the Director or the Director's delegate.

Registered statement of process. A statement of process under 27 CFR 25.67 which has been filed with the Bureau and bears the signature of the Chief, Product Compliance Branch or his or her delegate.

* * * * *

Par. 31. Sections 70.421 through 70.428, under the new undesignated center heading "CANCELLATION OF REGISTERED FORMULAS OR STATEMENTS OF PROCESS FOR DISTILLED SPIRITS, WINES AND BEER", are added to Subpart E to read as follows:

Cancellation of Registered Formulas or Statements of Process for Distilled Spirits, Wines and Beer

§ 70.421 Cancellation of registration.

(a) *Cancellation of registered formulas or statements of process.* Formulas registered on ATF Form 5110.38 or ATF Form 5120.29 and registered statements of process, may be cancelled by the Chief, Product Compliance Branch, upon a finding that the formula or statement of process is not in compliance with the applicable laws or regulations.

(b) *Notice of proposed cancellation.* Except as provided in section 70.422(a), when the Chief, Product Compliance Branch, determines that a formula or statement of process which has been registered is not in compliance with the laws or regulations, he or she shall issue to the holder of the formula or statement of process a notice of proposed cancellation which shall set forth the basis for the proposed cancellation. The notice of proposed cancellation will advise the holder of the formula or statement of process that he or she has 45 days from the date of the notice in which to present written arguments or evidence as to why the cancellation should not occur. If the holder of the formula or statement of process does not respond to the notice of proposed cancellation within 45 days of such notice, the holder will be deemed to concur with the finding of non-compliance, and the formula or statement of process will be cancelled. In either case, the right of appeal afforded in paragraph (d) of this section applies.

(c) *Decision after notice of proposed cancellation.* After considering any written arguments or evidence presented by the holder of the registered formula or statement of process, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to cancel the registered formula or statement of process, a letter shall be issued explaining the basis for the cancellation and the specific laws or regulations relied upon in determining that the registered formula or statement of process was not in conformance with law or regulations. If the decision is to withdraw the proposed cancellation, a letter to that effect shall be sent to the holder of the registered formula or statement of process. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

§ 70.422 Cancellation of registration by operation of law or regulation.

(a) *Cancellation by operation of law or regulation.* The Bureau will not individually notify all holders of registered formulas or statements of process that such registrations have been canceled in situations where such cancellation occurs by operation of law or regulation. Where changes in requirements are made as a result of amendments or revisions to the law or regulations, it is the responsibility of the holder of the registered formula or statement of process to surrender voluntarily all registered formulas or statements of process which are no longer in compliance and to submit new formulas and statements of process that are in compliance with the new requirements; *Provided,* that in certain circumstances, the Bureau may announce that the submission of new formulas or statements of process for registration is not necessary in order to implement a new requirement in the law or regulations. In such circumstances, it is the responsibility of the holder of the registered formula or statement of process to ensure that formulas and statements of process are in compliance with the requirements of the new regulations or law, notwithstanding the fact that registration of new formulas or statements of process was not required.

(b) *Notice of cancellation.* If the Bureau determines that a holder of a registered formula or statement of process is using such registered formula or statement of process when it is no longer in compliance due to amendments or revisions in the law or regulations, the Chief, Product Compliance Branch, will notify the holder of the registered formula or statement of process in writing that the subject formula or statement of process has been canceled by operation of law or regulations, with a brief description of the grounds for such cancellation.

(c) *Appeal of notice of cancellation.* Within 45 days after the date of a notice of cancellation by operation of law or regulations, the holder of a registered formula or statement of process may file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The appeal should set forth the reasons why the holder of the registered formula or statement of process believes that the regulation or law at issue does not require the cancellation of the registered formula or statement of process.

(d) *Decision after appeal.* After considering all written arguments and evidence submitted by the holder of the registered formula or statement of process, the Chief, Alcohol and Tobacco Programs Division, shall issue a decision regarding the cancellation by operation of law or regulation of the registered formula or statement of process. If the decision is that the law or regulation at issue requires the cancellation of the registered formula or statement of process, a letter shall be issued explaining the basis for the cancellation and citing the specific laws or regulations which required the cancellation of the registered formula or statement of process. If the decision is that the law or regulation at issue does not require the cancellation of such registered formula or statement of process, a letter to that effect shall be sent to the holder of the registered formula or statement of process. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

§ 70.423 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of proposed cancellation, notice of cancellation by operation of law or regulations, or a decision of the Chief, Product Compliance Branch, to cancel a registered formula or statement of process, a holder of a registered formula or statement of process may file a written request for an informal conference with the Chief, Alcohol and Tobacco Programs Division. The decision whether to hold an informal conference is at the sole discretion of the Chief, Alcohol and Tobacco Programs Division.

(b) *Informal conference procedures.* If the Chief, Alcohol and Tobacco Programs Division determines that the holding of an informal conference would be beneficial, he or she shall inform the holder of the registered formula or statement of process and a date shall be agreed upon. The informal conference is for purposes of discussion only and no transcript shall be made. If the holder of the registered formula or statement of process wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the Chief, Alcohol and Tobacco Programs Division.

§ 70.424 Effective dates of cancellations.

With the exception of cancellations occurring pursuant to section 70.422(a), the Bureau shall allow at least 45 days between the issuance of a decision to cancel a registered formula or statement of process and the actual cancellation of the registered formula or statement of process. The deciding official may, at his or her discretion, allow the holder of the registered formula or statement of process a longer period of time in which to use the registered formula or statement of process. The decision to allow such a "use-up" period and the length of the "use-up" period allowed are matters committed entirely to the discretion of the deciding official, based on the circumstances of the case.

§ 70.425 Effect of cancellations.

(a) *General.* On the effective date of a final decision which has been issued by the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, to cancel a registered formula or statement of process, the holder of the registered formula or statement of process shall be asked to surrender the original of such registered formula or statement of process to the Bureau for manual cancellation. Whether or not the original registered formula or statement of process has been manually cancelled, the formula or statement of process shall be null and void after the effective date of the cancellation of the registered formula or statement of process. It shall be a violation of this section for any holder of a registered formula or statement of process to present a registered formula or statement of process to an official of the United States Government as a valid registered formula or statement of process if the holder of the registered formula or statement of process has been previously notified that such registered formula or statement of process has been cancelled by the Bureau or the formula or statement of process was cancelled by operation of law or regulation.

(b) *Use of registered formula or statement of process during period of appeal.* If a holder of a registered formula or statement of process files a timely appeal after receipt of a notice of cancellation from the Chief, Product Compliance Branch pursuant to section 70.421(c), he or she may continue to use the registered formula or statement of process at issue until the effective date of a final decision issued by the Chief, Alcohol and Tobacco Programs Division. However, the effective date of a notice of cancellation by operation of law or regulations, issued pursuant to section 70.422(b), is not stayed during the pendency of an appeal.

§ 70.426 Service on holder of registered formula or statement of process.

Notices of proposed cancellation and notices of cancellation shall be served on a holder of a registered formula or statement of process by first class mail or by personal delivery. When service is by mail, a signed duplicate original copy of the document shall be mailed to the holder of the registered formula or statement of process at the address stated on the registered formula or statement of process or at the last known address. If authorized by the holder of the registered formula or statement of process, the signed duplicate original copy of the document may be mailed to a designated representative. Where service is by personal delivery, a signed duplicate original copy of the document shall be delivered to the holder of the registered formula or statement of process or to a designated representative or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof or to its attorney of record.

§ 70.427 Representation before the Bureau.

A holder of a registered formula or statement of process may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau as provided in 31 CFR Part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms) if he or she has otherwise complied with the applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities).

§ 70.428 Computation of time.

(a) *Computation.* In computing any period of time prescribed or allowed by sections 70.421 through 70.425, the day of the act, event or default after which the designated period of time is to run is not to be included. The last day of the period to be computed is to be included, unless it is a Saturday, Sunday, or legal

holiday, in which event the period runs until the next day which is neither a Saturday, Sunday, or legal holiday. Papers or documents which are required or permitted to be filed under the aforementioned sections of regulations must be received for filing at the appropriate office within the time limits, if any, for such filing.

(b) *Extensions.* For good cause shown, the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, may grant extensions as to any time limits prescribed in sections 70.421 through 70.425.

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 32. The authority citation for 27 CFR Part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 33. Section 250.50 is amended by revising paragraph (b) and by adding new paragraph (c) to read as follows:

§ 250.50 Formula for liquors.

* * * * *

(b) *Wine.* Persons in Puerto Rico who ship wine to the United States shall comply with the formula requirements of 27 CFR Part 24. If any wine contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 5120.29, in accordance with § 250.54.

(c) *Cancellation of registered formulas.* The procedures for the cancellation of a registered distilled spirits or wine formula are prescribed in 27 CFR Part 70, Subpart E.

* * * * *

(Approved by the Office of Management and Budget under control number 1512–0204)

Par. 34. Section 250.51(b)(2) is revised to read as follows:

§ 250.51 Formulas for articles, eligible articles and products manufactured with denatured spirits.

* * * * *

(b) * * *

(2) Products made with specially denatured spirits shall be made in accordance with a general-use formula approved as provided in Part 20 of this chapter, or an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or registered on 27–B Supplemental.

* * * * *

Par. 35. Sections 250.53 and 250.54 are amended by adding the words "or registered" after the word "approved" wherever it appears.

Par. 36. Section 250.55 is revised to read as follows:

§ 250.55 Previously approved formulas.

(a) Any formula on Form 27–B Supplemental that was approved before (effective date of final rule) is included as a registered formula as required by 27 CFR 5.26(a) and shall remain in effect until cancelled or voluntarily surrendered. Except as provided in paragraph (b) of this section, any person holding such a formula is not required to submit a new formula.

(b) Any change in a registered formula shall require the filing of a new Form 5110.38. After a change in a formula has been registered, the original formula shall be surrendered to the Director.

(c) If a registered formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.52 shall not apply.

Par. 37. Section 250.173(b)(4) is amended by adding the words "or registered" after the word "approved".

Par. 38. Section 250.197 is amended by removing the word "approved" and adding in its place the word "registered", and by adding a second sentence to read as follows:

§ 250.197 Furnishing formula to consignee.

* * * Any formulas that were approved before (effective date of final rule) are included as registered formulas, without any resubmission by the holder of the approved formula or notification by ATF.

* * * * *

Par. 39. Sections 250.205(a)(4) (i) and (ii) are amended by adding the words "or registered" after the word "approved".

Par. 40. Section 250.220 is amended by revising paragraph (b) and by adding new paragraph (c) to read as follows:

§ 250.220 Formulas for liquors.

* * * * *

(b) *Wine.* Persons in the Virgin Islands who ship wine to the United States shall comply with the formula requirements of Part 24 of this chapter. If any wine contains liquors made outside of the Virgin Islands, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 5120.29, in accordance with § 250.224.

(c) *Cancellation of registered formulas.* The procedures for the cancellation of a registered distilled spirits or wine formula are prescribed in 27 CFR Part 70, Subpart E.

Par. 41. Section 250.221(b)(2) is revised to read as follows:

§ 250.221 Formulas for articles, eligible articles and products manufactured with denatured spirits.

* * * * *

(b) * * *

(2) Products made with specially denatured spirits shall be made in accordance with a general-use formula approved as provided in Part 20 of this chapter, or an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or registered on 27–B Supplemental.

* * * * *

Par. 42. Sections 250.223 and 250.224 are amended by adding the words "or registered" after the word "approved" wherever it appears.

Par. 43. Section 250.225 is revised to read as follows:

§ 250.225 Previously approved formulas.

(a) Any formula on Form 27–B Supplemental that was approved before (effective date of final rule) is included as a registered formula as required by 27 CFR 5.26(a) and shall remain in effect until cancelled or voluntarily surrendered. Except as provided in paragraph (b) of this section, any person holding such a formula is not required to submit a new formula.

(b) Any change in a registered formula shall require the filing of a new Form 5110.38. After a change in a formula has been registered, the original formula shall be surrendered to the Director.

(c) If a registered formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.222 shall not apply.

Par. 44. Section 250.309(b)(4) is amended by adding the words "or registered" after the word "approved".

Signed: October 17, 1995.

John W. Magaw,

Director.

Approved: October 24, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–28471 Filed 11–24–95; 8:45 am]

BILLING CODE 4810–31–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Appropriateness of Requested Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board.

ACTION: Notice of extension of time for filing comments to proposed rulemaking.

SUMMARY: The National Labor Relations Board gives notice that it is extending the time for filing comments on the proposed rulemaking on the appropriateness of requested single location bargaining units in representation cases.

DATES: The comment period which presently ends at the close of business on November 27, 1995, is extended to the close of business on January 22, 1996.

ADDRESSES: Comments on the proposed rulemaking should be sent to: Office of the Executive Secretary, 1099 14th Street, NW., Room 11600, Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT:

John J. Toner, Acting Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The Board's notice of proposed rulemaking on the appropriateness of requested single location bargaining units in representation cases was published in the **Federal Register** on September 28, 1995 (60 FR 50146). The notice provided that all responses to the notice of proposed rulemaking must be received on or before November 27, 1995. However, the Board has recently received two requests that the time limit be extended. For this reason, and in view of the recent shutdown of operations due to lack of appropriated funds, the Board has decided to extend the period for filing responses to the notice of proposed rulemaking until the close of business on Monday, January 22, 1996.

Dated: Washington, DC, November 20, 1995.

By direction of the Board.

John J. Toner,

Acting Executive Secretary.

[FR Doc. 95–28858 Filed 11–24–95; 8:45 am]

BILLING CODE 7545–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–039–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter the "Maryland program" under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Maryland rules and statutes pertaining to remining. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4:00 p.m. E.S.T. December 27, 1995. If requested, a public hearing on the proposed amendment will be held on December 22, 1995. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T., on December 12, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101. Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532. Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Description of the Proposed Amendment

By letter dated October 26, 1995 (Administrative Record No. MD–573.00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. The remining provisions of the Annotated Code of Maryland (Code) and the Code of Maryland Regulations (COMAR) that Maryland proposes to amend are: Sections 7–501, 7–505, and 7–511 of the Code which implements the provisions of House Bill 1136 pertaining to lands eligible for remining and COMAR 08.20.14—Release of Bonds on Remining Areas.

Specifically, Maryland proposes to: (a) Limit the period of operator responsibility for successful revegetation to two full years on lands eligible for coal remining and five full years for any reported area other than lands eligible for coal remining, (b) define "land eligible for remining" as "any land that would otherwise be eligible for expenditures under subtitle 9 of this title," (c) prohibit the issuance of a strip mining permit on slopes of 20 degrees or more from the horizontal except in the case of a land eligible for remining when the land could be restored to its original contour, (d) delete definitions of "net project construction cost" and "project construction cost," and (e) establish regulations for the release of bonds on remining areas.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on December 12, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1995.

David G. Simpson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–28863 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

[VA–104–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of five explanatory statements written to clarify and assist the implementation of, and compliance with, recent changes to §§ 480–03–19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to address a required program amendment at 30 CFR 946.16(a).

DATES: Written comments must be received by 4:00 p.m., E.S.T. on December 27, 1995. If requested, a public hearing on the proposed amendment will be held on December 22, 1995. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on December 12, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia proposed to amend section 480–03–19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The amendment was submitted to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

Virginia's submittal of the amendment to section 480–03–19.816/817.102(e) was accompanied by a detailed explanation of the intended implementation and scope of the proposed amendment. OSM approved the amendment on August 8, 1995 (60 FR 40271) to the extent that the amendments are implemented as explained by Virginia in its October 31, 1994, submittal letter. In addition, OSM also required (at 30 CFR 946.16(a)) that Virginia further clarify the implementation of the changes by amending the Virginia program as follows:

(1) Define the term "suitable;"

(2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;

(3) Add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled.

(4) Define the term "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope;

(5) Add a requirement that whenever coal refuse is placed on preexisting benches for the purpose of returning the benches to approximate original contour (AOC), the performance standards for the placement of excess spoil on preexisting benches will be followed.

By letter dated October 13, 1995 (Administrative Record No. VA–865), Virginia submitted its response to the required amendments at 30 CFR 946.16(a). The amendment consists of five statements that are attached to a letter to be sent to coal operators, consultants, Virginia Division of Mined Land Reclamation (DMLR) personnel, and other interested parties. The five statements are intended to clarify the intended implementation and scope of the recently approved amendments to section 480–03–19.816/817.102(e). The proposed amendments are as follows:

1. Clarification of the Term "Suitable"

The Department of Mines, Minerals, and Energy (DMME) has not promulgated a regulatory definition for the term "suitable" as used at 480–03–19.816/817.102(e) since the ordinary usage (Webster—satisfactory for a use or purpose) is intended. DMME will consider material suitable provided it is satisfactory for the purpose of meeting the Virginia program performance standards for each site specific circumstance. For an example, the physical cohesive property of a given waste material under specific site conditions will be considered suitable provided the required (1.3) static safety factor can be achieved and landslides prevented (see 480–03–19.816/817.102(a) and (f)). Waste material is considered suitable provided the host site conditions, the material's chemical and physical characteristics, and the disposal techniques collectively demonstrate compliance with the Virginia program performance standards, including sections 480–03–19.816/817.41, 480–03–19.816/817.74, 480–03–19.816/817.81, 480–03–19.816/817.95, 480–03–19.816/817.97, 480–03–19.816/817.111–116, and 480–03–19.816/817.133.

2. Seeps, Springs, or Other Discharges in the Backfill

The Division of Mined Land Reclamation (DMLR) finds it necessary for the applicant to determine and identify in the application the location of seeps, springs, or other discharges in any area proposed for backfilling with coal mine waste. Such information is crucial to the applicant's site selection and backfill design as well as to DMLR's environmental impact analysis. DMLR has initiated the process to revise its regulations to be more specific with regard to seeps and springs in such backfills. In the meantime, DMLR interprets 480–03–19.780.21 (f) and (h) and 480–03–19.784.14 (e) and (g) as authority for this requirement.

3. Permit Condition/Quarterly Analysis—Clarification

The Virginia regulations at 480–03–19.773.17(b) provide authority for DMLR to impose permit conditions in addition to those mandated by this section. When the physical or chemical characteristics of coal mine waste used as backfill material are subject to change, DMLR will specify a condition in the permit approval document requiring the appropriate sampling and analysis necessary to ensure continued compliance with the performance standards. (Examples of circumstances in which DMLR requires periodic analysis of coal mine refuse, and/or backfill include, but is not limited to: Refuse produced by preparation plant serving several operations; refuse produced over a large areal extent at a single operation; refuse produced by several operations; and refuse of varying quality produced at several locations within one operation.)

4. "Small Area"—Clarification

At 480–03–19.816/817.102(e), the Virginia regulations provide that a variance to the requirement at 480–03–19.816/817.83(a)(2) may be approved by DMLR provided "the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

DMLR intends to consider areas *small* provided the drainage area is 500 feet or less as measured along the slope. However, DMLR will grant such a variance only when there are no channeled flows, and if during storm events, there is only sheet flow.

5. Preexisting Benches—Clarification

DMLR will approve an application to place coal refuse on preexisting benches for the purpose of returning the benches

to the approximate original contour provided the performance standard for the placement of excess spoil on preexisting benches will be followed. The preexisting bench standard are found at 480–03–19.816/817.74.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Witten Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments relieved after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. by close of business on December 12, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act.

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1995.

David G. Simpson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–28864 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC–2, Notice No. 9]

RIN 2130–AA80

Locomotive Visibility; Notice of Proposed Rulemaking, Public Hearing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: Under the authority of 49 U.S.C. 20103, 20143, and 20701, FRA will hold a public hearing in the format of a technical conference on November 28, 1995, in order to hear comments on the Locomotive Visibility Notice of Proposed Rulemaking (NPRM). This NPRM, published on August 28, 1995, at 60 FR 44457, would change headlight regulations for locomotives by requiring two auxiliary lights that would be placed on the front of the locomotive to form a triangle with the headlight. FRA believes this arrangement will increase locomotive visibility and help reduce grade crossing accidents and trespasser injuries. The meeting will be open to any interested person who wishes to attend.

The docket for this rulemaking will be immediately reopened for written comments. This extension will end and the comment period will close on December 12, 1995.

DATES: The public hearing will be held on Tuesday, November 28, 1995, beginning at 9:30 a.m. FRA anticipates that this public hearing will conclude at 12:00 p.m.

ADDRESSES: The public hearing will be held in room 3288, Nassif Building, 400 7th Street, SW., Washington, DC 20595.

FOR FURTHER INFORMATION CONTACT: Program Person: Gordon Davids, Program Manager, Office of Safety Assurance and Compliance, FRA, Washington, DC 20590. Telephone: (202) 366–0466. Principal Attorney: Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366–0635.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 95–28816 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior

ACTION: Reopening of the comment period for the proposed special rule

SUMMARY: On February 17, 1995, the Fish and Wildlife Service (Service) published a proposed special rule in the **Federal Register** (60 FR, 9484, February 17, 1995) pursuant to section 4(d) of the Endangered Species Act (Act), to replace the blanket prohibitions against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California. The comment period was scheduled to end on November 24, 1995. The intent of this document is to reopen the comment period to January 26, 1996.

DATES: The comment period for written comments is reopened until January 26, 1996.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecoregion, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (360/534–9330); or Mr. Ron Crete, Manager, Habitat Protection and Restoration, Office of Technical Support-Forest Resources, P.O. Box 3623, Portland, Oregon 97204–3623 (503/326–6700).

SUPPLEMENTARY INFORMATION:

Background

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act of 1973, as amended (Act), for endangered wildlife, except when a "special rule" promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina*, was listed as a threatened species in 1990, the Service did not promulgate a special section 4(d) rule and therefore, all of the section 9 prohibitions, including the "take" prohibitions, became applicable to the species. To replace the blanket prohibitions against take of spotted owls, the Service published a proposed special rule, 50 CFR Part 17, on February 17, 1995, in the **Federal Register**, pursuant to section 4(d) of the Act, which proposes a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: November 20, 1995.

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 95–28851 Filed 11–24–95; 8:45am]

Billing Code 4310–55–P

Notices

Federal Register
Vol. 60, No. 227
Monday, November 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Collection Requirements Submitted for Public Comment: 7 CFR Part 246, Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request an extension for and revision to a currently approved information collection in support of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

DATES: Comments on this notice must be received by January 26, 1996, to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Barbara Hallman, Branch Chief, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR Part 246), Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

OMB Number: 0584–0043.

Expiration Date of Approval: November 30, 1995.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The purpose of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is to provide supplemental foods, nutrition education, and health care referrals to low income, nutritionally at risk pregnant, breastfeeding and postpartum women, infants, and children up to age 5. Currently, WIC operates through State health departments in 50 States, the District of Columbia, Puerto Rico, Guam, America Samoa and the Virgin Islands. Additionally, 32 Indian tribal bands and organizations serve as State agencies.

This information collection is for the reporting and recordkeeping burdens associated with the WIC Program regulations. This request is being made to extend the current information collection for an additional three years. The information reporting and recordkeeping burdens are necessary to ensure appropriate and efficient management of the WIC Program.

State Plans are the principal source of information about how each State agency WIC Program operates. Local agency applications and vendor agreements are necessary to delineate responsibility, and ensure the accountability of State agencies, local agencies, and vendors. Certification data provide the basis for determining the eligibility of program applicants. Local agency nutrition education plans facilitate the provision of quality nutrition education by local agencies and allows FCS and the State agency to assess the quality and quantity of nutrition education provided to participants. The vendor monitoring report enables FCS to evaluate vendor trends and assess State agency efforts to control vendor fraud and abuse. Documentation of participant and vendor complaints enables FCS and the State agency to identify problems at the local agency level. The requirements that the State agency: identify the disposition of food instruments; request approval for specified costs; justify the carry-over and backspending of funds; submit preliminary and final closeout reports; submit financial, participation, and food delivery reports to FCS; develop funding procedures for local agencies; report the status of participant claims, and request waivers for development of alternate cost containment systems, ensure the accountability of Federal funds and promote efficient program management. The requirement for State agency corrective action plans ensures the problem areas of program management are rectified. Submission of information to FCS for the biennial report to Congress ensures FCS compliance with Federal law. The food delivery requirements assist in controlling vendor fraud and abuse and promoting the integrity of State agency food delivery systems.

The information collected is used by FCS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .095 hours per response.

Respondents: The respondents are State and local governments, individuals or households, and businesses.

Estimated Number of Respondents: 7,045,927 respondents.

Estimated Number of Responses per Respondent: 1.71.

Estimated Total Annual Burden on Respondents: 1,151,971 hours.

Copies of this information collection can be obtained from Cato Watson, Agency Information Collection Coordinator, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: November 10, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–28768 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

St. Joe Weed Control Project; Idaho Panhandle National Forests, Benewah, Shoshone and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of noxious weed treatment on the St. Joe Ranger District. Treatment sites would be located at various locations across the district and are within the St. Maries River, St. Joe River, and North Fork of the Clearwater River Ecosystems, St. Joe Ranger District, Idaho Panhandle National Forests, Benewah, Shoshone and Latah Counties, Idaho. Most treatment sites are located near or along forest roads, trails or developed recreation sites.

The proposed action to control populations of noxious and undesirable weeds on certain travel corridors and areas is designed to prevent the spread of these weeds and promote the retention and health of native and/or desirable plants within these ecosystems. The proposed action would use an integrated pest management approach to control weeds. This approach includes mechanical, biological, cultural and chemical control.

Over 28 established, new or potential species of weed will be considered for control. The major species considered for control include spotted knapweed (Centaurea maculosa), diffuse knapweed (Centaurea diffusa), orange hawkweed (Hieracium aurantiacum), meadow hawkweed (Hieracium pratense), purple loosestrife (Lythrum salicaria), dalmation toadflax (Linaria dalmatica), sulfur cinquefoil (Potentilla recta L.), yellow starthistle (Centaurea solstitialis), hound's-tongue (cynoglossum officinale) and common tansy (Tanacetum vulgare).

This project level EIS will tier to the Idaho Panhandle National Forests Weed Pest Management EIS, October 1989, the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan), September 1987, and the Final EIS Noxious Weed Management Projects, Bonners Ferry Ranger District, September 1995.

DATES: Written comments and suggestions should be received on or before January 11, 1996.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on project mailing list to Brad J. Gilbert, District Ranger, St. Joe Ranger District, P.O. Box 407, St. Maries, ID 83861.

FOR FURTHER INFORMATION CONTACT: Mary Laws, EIS Team Leader, St. Joe Ranger District, phone number 208–245–4517.

SUPPLEMENTARY INFORMATION: Weed control is proposed on 131 sites that have been identified on Joe Ranger District. These sites range in size from approximately 0.10 acre to 35 acres and total approximately 3,360 gross acres. These sites represent less than 0.47% of the 720,000 acres of National Forest System Lands on the St. Joe Ranger District.

There are a variety of purposes for weed control on the St. Joe Ranger District. The primary purposes are: (1) To protect the natural condition and biodiversity of the St. Maries River, St. Joe River and North Fork of the Clearwater River ecosystems by preventing the spread of aggressive, non-native species that displace native vegetation; (2) prevent or limit the spread of weeds to areas identified as weed free; (3) reduce weed seed sources along main travel routes; while also complying with Federal and State Laws regulating management of noxious weeds; and cooperating with other agencies and private individuals concerned with the management of weeds.

The treatment sites are located across the district. The greatest number of sites are located in the St. Joe Ecosystem. Other sites are located in the St. Maries River and North Fork of the Clearwater River Ecosystems. The Idaho Panhandle National Forests Land and Resource Management Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The Forest Plan directed that forest pests be managed by an integrated pest management approach.

The decision to be made is what actions, if any, should be taken to control weeds in these ecosystems, where treatment should be applied, and what type of treatment(s) should be used.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed treatment activities would be implemented. Additional alternatives will represent the range of control methods currently available for treatment of weeds, including non-chemical methods.

Public participation is an important part of the analysis and will play an important role in developing the alternatives. The initial scoping process (40 CFR 1501.7) will occur during November and December, 1995. The mailing list for public scoping will be developed from response to this NOI and to the Idaho Panhandle National Forest Quarterly Schedule of Proposed Actions, October, 1995. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. Public meetings may be held, but have not been scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., cumulative effects).

Some public concerns have already been identified from initial interdisciplinary review of the weed control proposal. The following significant issues have been identified so far:

1. Current and potential impacts of noxious weeds on ecosystem communities and processes; threatened, endangered, and sensitive plants and animals; soils; water quality; aesthetics; wildlife and fish; and recreational opportunities.
2. Potential impacts of week control.
3. Potential effects upon human health from the application of herbicides.

This list will be verified, expanded, or modified based on public scoping and interdisciplinary review of this proposal.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March, 1996. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register.** The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental

statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is St. Joe Ranger District, P.O. Box 407, St. Maries, ID, 83861.

Dated: November 6, 1995.

Bradley J. Gilbert,

District Ranger.

[FR Doc. 28774 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–11–M

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on December 7, 1995, at the Monarch Hotel, 12566 SE 93rd Avenue, Clackamas, Oregon 97015. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on December 7 and continue until 4:30 p.m. Agenda items to be discussed include, but are not limited to: (1) Discussions on the Joint Planning Team charter for the RCERT/IAC; (2) a progress report on riparian reserve evaluation methods and techniques; (3) an update on Rescission Bill analysis; (4) a proposal for the 1996 IAC meeting schedule; (4) a discussion of IAC performance during 1995; (5) recommendations for proposed data standards and their implementation by the IRICC Vegetation Strike Team; and (6) a Forest Ecosystem Management Assessment Team presentation. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: November 14, 1995.

Ranotta K. McNair,

Acting Director.

[FR Doc. 95–28653 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Change in the 1996 Distance Learning and Telemedicine Application Submission Date

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Status of FY 1996 Distance Learning and Telemedicine Grant Program.

SUMMARY: The Rural Utilities Service (RUS) is announcing the status of the 1996 Distance Learning and Telemedicine Grant Program.

SUPPLEMENTARY INFORMATION: On October 21, 1995, the RUS Distance Learning and Medical Link Grant Program (DLMLGP) was reauthorized by Congress and appropriated $7.5 million in grant funding.

RUS is currently revising the DLMLGP's governing regulations to, among other things, further clarify the criteria for ranking grant applications. Due to these revisions, a FY 1996 grant application filing date has not been established. Applicants wishing to submit an application should postpone their submissions until new final regulations are available. It is expected that revised proposed regulations will be published for public comment by the end of this calendar year. With this schedule, the final rule could be available by the Spring of 1996. All applications received by RUS prior to publication of the final regulations will be returned to the applicants.

For additional information, please contact Barbara L. Eddy, Deputy Assistant Administrator, Telecommunications Program at (202) 720–9556.

Dated: November 20, 1995.

Wally Beyer,

Administrator.

[FR Doc. 95–28766 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–15–P

ARCTIC RESEARCH COMMISSION

Meeting

November 8, 1995.

Notice is hereby given that the Arctic Research Commission will hold its 41st Meeting in Moss Landing, California, on December 11–12, 1995. On Monday, December 11, a Business Session open to the public will convene at 9:00 a.m. at the Moss Landing Marine Laboratory. Agenda items include: (1) Agency Reports, (2) Reports from Congressional Liaisons, (3) A report on the Engineering Workshop held in Anchorage, Alaska in November, (4) Reports of Task Force Activities.

On Tuesday, December 12, the Business Session will reconvene at 9:00 a.m. Agenda items for this session include: (1) Reports on Recent Research Activities, (2) Travellers Reports, (3) Correspondence.

An Executive Session will follow the close of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 95–28857 Filed 11–24–95; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950807204–5204–01]

Standards for Address Lists: Public Law 103–430

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Final Program.

SUMMARY: In accordance with Public Law (Pub. L.) 103–430, "The Census Address List Improvement Act of 1994," the Census Bureau will accept address lists from States,[1] tribal governments, and local units of general purpose government,[2] as well as from metropolitan planning organizations and other regional planning agencies (referred to hereafter as "tribal and local governments") for the purpose of building and updating a nationwide address list called the Master Address File (MAF). The Census Bureau is developing the MAF to document the address of every living quarters in the United States and its territories and will use it to implement the full range of Census Bureau statistical programs. The Census Bureau will begin accepting address lists from tribal and local governments ("address lists") in October 1995. Following Census Bureau review and processing of these address lists, the Census Bureau will provide detailed information to the submitting tribal or local government documenting the actions taken regarding each address. The program for using address lists to build the MAF and keep it up to date is referred to as the Program for Address List Supplementation (PALS). The Census Bureau issued a Notice of Proposed Program and Request for Comments in the **Federal Register**, (60 FR 45137) on Wednesday, August 30, 1995. That notice solicited comments on the proposed Standards for Address Lists. The Census Bureau did not receive comments on the **Federal Register** Notice and now invites tribal and local governments to participate in the PALS.

FOR FURTHER INFORMATION CONTACT: Vic Meiller, Geography Division, Bureau of the Census, Washington, D.C., telephone (301) 457–1106, or e-mail to "vic.meiller@census.gov."

SUPPLEMENTARY INFORMATION: Later in the decade, the Census Bureau will provide relevant portions of the MAF to "Census Liaisons" designated by tribal and local governments for their review and concurrence in conjunction with the 2000 census (a process herein referred to as "MAF review"), consistent with the confidentiality provisions of Title 13, United States Code, as specified in Pub. L. 103–430. Further, the Office of Information and Regulatory Affairs within the Federal Office of Management and Budget, in consultation with the Census Bureau, will develop an appeals process for Pub.L. 103–430 activities. Because the plan for these future activities is under development, the timetable for the activities described in this notice is tentative. Future notices (to be published by late 1996) will announce and seek comments on a detailed timetable for all address list improvement activities, information on Census Bureau processes for verifying addresses, and the substantive details of the appeals process.

The Census Bureau will begin accepting and processing address lists containing city-style addresses (such as, those with house number-street name addresses) beginning in October 1995. The Census Bureau will publish standards and a timetable for processing lists containing noncity-style addresses (those with rural route and box number, P.O. Box number, or general delivery addresses) in a future notice (to be published by late 1996). As address lists change due to deletions, corrections, and additions, the Census Bureau will accept second and subsequent submissions on a continuous basis, and process them as resources permit.

The Census Bureau will attempt to use the most recent address information provided by a tribal or local government to conduct each subsequent census and survey, regardless of when that government provides it. Before the 2000 decennial census, the Census Bureau will seek to reach agreement with tribal and local officials—through processes of list matching, address verification, MAF review by the designated Census Liaisons, and Census Bureau feedback on results—about the inventory of living quarters addresses within their jurisdictions. Addresses on address lists submitted to the Census Bureau by mid-calendar year 1998 (exact date to be determined and announced later) will be included in the full set of processes for MAF review described above. This MAF review process will provide an important opportunity for the designated Census Liaisons to check the Census Bureau's geographic assignment of each residential address within governmental unit boundaries and individual census blocks. Addresses on address lists submitted to the Census Bureau by the first quarter of 1999 (exact date to be determined and announced later) also will be eligible for the appeals process called for in Pub. L. 103–430. Between the first quarter of 1999 and the date for the 2000 census, the Census Bureau will accept and process address lists only to the extent they can be verified in other 2000 census operations. Addresses on lists submitted after that date will not be eligible for the Pub. L. 103–430 appeals process. These late submissions will be most productive in helping the Census Bureau include in the census all housing units in existence as of the census date when tribal and local governments have previously submitted address lists.

To effectively use the addresses contained on address lists to build and update the MAF, and to provide meaningful feedback to the tribal and local list providers, the Census Bureau must determine a geographic location for each address. The Census Bureau will do this through an automated match to its geographic support system, the Topologically Integrated Geographic Encoding and Referencing [TIGER] data base. If the Census Bureau is unable to determine a geographic location for an address, it will request that the submitting tribal or local government supply an address range and street location for the individual address. The Census Bureau can provide maps for this purpose. For new addresses submitted after the first quarter of 1999 and before the date for the 2000 census, the Census Bureau requests that the tribal or local government provide this map location information for all such new addresses at the time the address lists are submitted.

The Census Bureau will conduct procedures to independently verify all addresses it adds to the MAF from address lists (for example, through matches to address information from the U.S. Postal Service, other independent sources, or its own field operations) and will remove from the MAF those addresses for which it cannot find confirming evidence.

The Census Bureau will treat all address information received from tribal and local governments as confidential, pursuant to Title 13, United States Code, in accordance with Public Law 103–430; this does not limit in any manner the right of the tribal or local government to use its own address information, nor does it preclude the Census Bureau from providing detailed feedback to the submitting jurisdiction about the Census Bureau's disposition of addresses on its lists.

Standards for Address Lists Used in Conjunction With Public Law 103–430

The basic standards proposed in Section 1, below, describe the address list characteristics that will enable the Census Bureau to use the tribal and local address information. Address lists that also meet the supplemental standards specified in Section 2, below, will improve the Census Bureau's

[1] The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and any other territory or possession of the United States.

[2] As defined in Section 184 of Title 13, United States Code, the term "local units of general purpose government" means the government of a county, municipality, township, Indian tribe, Alaska Native villege, parish, borough, or other unit of government other than a state.

ability to process the information in a timely manner and will improve the match rate between the addresses on those lists and the addresses in the MAF. Along with other factors, such as when the address lists are received, the Census Bureau will consider the extent to which each address list meets these standards in setting priorities for processing.

1. Basic Standards

The following basic standards apply to all address lists that a tribal or local government plans to submit to the Census Bureau as part of the PALS.

a. Addresses must accurately reflect residential units existing at the time of submission. The definition of "residential unit" includes housing units in single- or multiple-occupancy structures and in group living quarters where unrelated individuals share the facilities of a structure. Group living quarters include residential units such as college dormitories, orphanages, nursing homes, military barracks, prisons, and large rooming or boarding houses.

A housing unit is a house, an apartment, a group of rooms, or a single room that is occupied as a separate living quarters or, if vacant, intended for occupancy as a separate living quarters. A separate living quarters is one in which the occupants live and eat separately from other people in the building and for which the occupants have direct access from outside the building or through a common hall.

b. City-style addresses must show the basic street address (such as, house number and street name). The street name must include applicable street directional and street type indicators (for example, "105 S MAIN ST NW").

c. For jurisdictions that have converted from a rural-style to a city-style address system, or that have replaced one city-style system with another city-style system, the addresses must reflect the current system. (See also related non-mandatory standards.) File documentation and the address list must indicate whether the current address system is recognized for mail delivery by the U.S. Postal Service (USPS).[3]

d. If the address list includes both residential and nonresidential addresses, it must distinguish between the two. (If an address is used to identify a unit used for both residential and nonresidential purposes, it should be identified as "residential" or "mixed use" for purposes of this standard.)

e. For jurisdictions that include addresses in more than one ZIP Code, each address record must include the correct and current 5-digit ZIP Code.

f. Addresses in a multiunit structure must include a unit designation for each housing unit (for example, "101 MAIN ST, APT A") and a tally of the total number of individual dwelling units located within the multiunit structure. In addition to (but not instead of) the basic street address, it is useful for the Census Bureau to receive the building, apartment, and complex names as well.

If individual unit designations are not available, each address record must include descriptive information that identifies the addresses for multiunit structures separately from those addresses for single-unit structures. The options described below are in preferential order.

(1) When the address list has in its inventory only one record representing a multiunit structure:

i. Include as part of each address record a tally of the total number of individual dwelling units located within the multiunit structure.

ii. Include as part of each address record a single character signifying that it represents a multiunit structure (for example, "M").

(2) When the address list includes a unique record for every individual unit, but does not contain distinguishing unit designations, mark each such record with a single character flag signifying that it represents an individual unit in a multiunit structure (for example, "I").

g. Tribal and local governments must provide with each address list documentation describing the file specifications, record layout (including field names, descriptions, character positions, and/or field delimiters), and data elements for each record in the address list, along with a description of the source of the address information.

2. Supplemental Standards

The following supplemental standards set forth desirable characteristics for address lists that a tribal or local government plans to submit to the Census Bureau as part of the PALS.

a. Address lists are most useful when they are submitted in a computer-readable format, using one of the following media: PC floppy disk, CD–ROM, 8-mm tape, or 9-track magnetic tape (no label with 1,600 or 6,250 BPI density). All media casings should have external labels that clearly identify the data contained and the name of the tribal or local government.

b. Computer-readable address lists are most useful when they are submitted using the file specifications and content format specified below:

(1) ASCII files with fixed length records.

(2) Separate records for each residential unit with an end-of-record indicator appropriate to the submitting government's operating system.

(3) Arrange the file content as:

Character position	Field
1–5	5-digit ZIP Code.
6–77	Street Address, including house number, street name, and within-structure designation.
78	Multiunit Indicator (a flag signifying whether or not the address record pertains to a multiunit structure; use for the situation represented by Item 1f(1)ii OR 1f(2)).
79–82	Multiunit Tally, right justified (the total number of units sharing the basic street address represented on the record; see Item 1f(1)i).
Optional Fields, With Suggested Positioning	
83–102 ...	Post Office Name.
103–104 .	2-character USPS State Abbreviation or 2-digit FIPS State Code.
105–107 .	3-digit FIPS County Code.
108–111 .	USPS Plus-4 add-on code.
112-end ..	Other Descriptive Information (for example, a single character indicator that distinguishes between addresses used for mail delivery and those that are not (Item 1c); a single character indicator that distinguishes between residential, nonresidential, and "mixed use" (Item 1d); a building name address (Item 2b(5)); the superseded address where a new address system has been put in place (Item 2b(6)); a single-character indicator that distinguishes between address records that are corrections, deletions, and additions (item 2g); and for those address records incorporating a correction from a previous address list submission, the old information (item 2g)).

The Street Address field (character positions 6–77) can be shortened if no address record requires the full allotted space. In order to save space, the tribal or local government may shorten each address record by reducing the size of the Street Address field, eliminating the optional fields, or repositioning the optional fields. Regardless of data format used, basic standard 1g requires that the tribal or local government document the file specifications, record layout, and data elements for each record in the address list.

The Street Address field should contain only the indicated information. It is highly desirable that this field NOT include person-name information, post office name, or state abbreviations.

(4) Files that have the components of the Street Address stored in separate fields should include documentation that defines the subfields within the Street Address field (character positions 6–77) and the position of each component of the address in their appropriate subfields. Please ensure that the documentation accurately describes the field arrangement.

(5) For residential units that are identified by both a house number-street name address and a building name address, it is most useful to have the house number-street name address in the Street Address field and the equivalent building name address in the Other Descriptive Information field. When the house number-street name address is unavailable, either place the building name address in the Street Address field or in the Other Descriptive Information field. Whichever is the case, please ensure that the documentation accurately describes the file content arrangement.

(6) In addition to providing computerized address list and documentation, it is very helpful for the tribal or local government to submit a hard-copy document containing a representative sample of address records.

c. For jurisdictions in which all addresses are in a single 5-digit ZIP Code, each address record should include the 5-digit ZIP Code.

d. Append the 4-digit USPS Plus-4 add-on code, along with the 5-digit ZIP Code, to each address record, if available.

e. If a tribal or local government is submitting information from more than one address list, it should consolidate and unduplicate the address lists before submitting them to the Census Bureau. Otherwise, the submitting government should specify the sequence in which the Census Bureau should process the multiple lists.

f. For jurisdictions that have changed address systems during the preceding five years, each address record should include both the current address and the superseded address.

g. For second or subsequent address list submissions, it is preferable that the new address lists include only additions, deletions, and corrections to the original list(s). Provide an indicator (diagnostic flag) that will distinguish between the new address records (for example, "N"), records from an earlier list that now should be deleted (such as, "D"), and the corrected records (such as, "C"). For address records requiring corrections, provide the original depiction of the address in the Other Descriptive Information space allotment (character positions 112-end); this will significantly help the Census Bureau's efforts to identify and remove the superseded version of the address and avoid delivery of more than one questionnaire to the same household.

Dated: November 13, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–28854 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–07–P

[3] For address lists wherein the city-style addresses are not recognized for mail delivery, the feedback provided by the Census Bureau will be on a different schedule and will lack the same level of detail as where the addresses are used for mail delivery.

International Trade Administration

[A–588–602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Japan; Negative Final Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Negative Final Determination of Circumvention of Antidumping Duty Order.

SUMMARY: On September 20, 1995, the Department of Commerce (the Department) published a negative preliminary determination of circumvention of the antidumping duty order on certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from Japan, with respect to imports of Awaji Sangyo (Thailand) Co., Ltd. (AST).

We provided interested parties an opportunity to comment on our negative preliminary determination. We did not receive any comments. The final determination is unchanged from the preliminary determination.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1987, the Department published in the **Federal Register** the antidumping duty order on butt-weld pipe fittings from Japan (52 FR 4167). On March 22, 1994, the Department received a petition from the U.S. Fittings Group (the petitioner) requesting that the Department conduct a circumvention inquiry on the antidumping duty order on butt-weld pipe fittings from Japan. The Department initiated a circumvention inquiry on October 31, 1994 (59 FR 54433). On September 20, 1995, the Department published in the **Federal Register** the negative preliminary determination of circumvention of the antidumping duty order on butt-weld pipe fittings from Japan (60 FR 48686). The Department has now completed this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Circumvention Inquiry

The products covered by this inquiry are certain carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written product description remains dispositive.

Induction pipe bends classifiable under subheading 7307.93.30 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope of this inquiry.

The inquiry covers one manufacturer/exporter of butt-weld pipe fittings, AST. The period of inquiry is October 1, 1993 through September 30, 1994.

Negative Final Determination Of Circumvention Inquiry

We invited interested parties to comment on the preliminary determination. We received no comments. The final determination is therefore unchanged from the preliminary determination, and we determine that no circumvention of the antidumping duty order is occurring

within the meaning of section 781(b) of the Act.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

This negative final determination of circumvention is in accordance with section 781(b) of the Act (19 U.S.C. 1677j(b)) and 19 C.F.R. 353.29(f).

Dated: November 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–28888 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–DS–P

Dartmouth College, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–056. *Applicant:* Dartmouth College, Hanover, NH 03755-3571. *Instrument:* MAT 252 Mass Spectrometer Upgrade. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 39711, August 3, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated September 22, 1995, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–28890 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–100. *Applicant:* Florida International University, University Park, Miami, FL 33199. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to provide transmission electron microscopy analysis for several research projects including the following:

(1) determining phases and crystal structures of the alloys (NiTi, NiTi-Hf, NiTi-Zr) at different temperatures,

(2) determining the role of dislocation on the two-way shape memory alloys,

(3) study of precipitate nucleation, growth, crystal structure transformation, and

(4) micro-composition analysis – distribution for designing new types of high temperature shape memory alloys.

In addition, the instrument will be used for educational purposes as a teaching and research tool for graduate students, professors and research associates working with students. *Application Accepted by Commissioner of Customs:* October 12, 1995.

Docket Number: 95–102. *Applicant:* State University of New York at Buffalo, 330 Bonner Hall, Amherst, NY 14260. *Instrument:* Electron Microscope, Model JEM-2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for the study of the microstructure of metals, alloys, ceramics, intermetallic compounds, composites and polymers to identify crystalline/particle size, morphology, crystal structure, chemical composition and to analyze crystal defects and d-spacings of crystallographic planes. The instrument will also be used to provide valuable educational and practical experience to graduate students with hands on training and data interpretation. *Application Accepted by Commissioner of Customs:* October 17, 1995.

Docket Number: 95–103. *Applicant:* University of Virginia, P.O. Box 9010, Charlottesville, VA 22906. *Instrument:* SIR Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to measure the natural abundance stable isotope compositions of nitrogen and carbon in order to determine the authenticity and history of the organic constituent. In addition, the instrument will be used in a variety of existing courses and student investigations in ecology, geochemistry, hydrology and atmospheric sciences. *Application Accepted by Commissioner of Customs:* October 17, 1995.

Docket Number: 95–104. *Applicant:* Duke University Medical Center, Durham, NC 27110. *Instrument:* Stopped-Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of enzymes such as sulfite oxidase, carbonic anhydrase and dimethyl sulfoxide reductase. Experiments will involve mixing enzyme and substrate in the rapid flow reaction analyser, stopping the flow at various times after the dead time of about 1.5 msec for the mixing and monitoring changes of the light absorption of the enzyme at specific wavelength in the ultraviolet or visible range of light. *Application Accepted by Commissioner of Customs:* October 17, 1995.

Docket Number: 95–105. *Applicant:* University of Washington, Department of Physiology & Biophysics, Box 357290, Seattle, WA 98195-7290. *Instrument:* Stopped-Flow Spectrometer, Model SX.17. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for investigations of subunits of a regulatory protein in cardiac and skeletal muscle, troponin and measurements on the proteins when reconstituted into muscle fibers. The objective of the investigations is to understand the molecular mechanism of regulation of muscle contraction in cardiac and skeletal muscle by calcium. *Application Accepted by Commissioner of Customs:* October 19, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–28891 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–DS–F

University of Michigan, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–072. *Applicant:* University of Michigan, Ann Arbor, MI 48109-1063. *Instrument:* ICP Multicollector Mass Spectrometer, Model Plasma 54. *Manufacturer:* Fisons Elemental, United Kingdom. *Intended Use:* See notice at 60 FR 48506, September 19, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a double focusing magnetic sector design with extended geometry, (2) a block of nine Faraday collectors, (3) a Daly detector with ion counting and (4) a laser probe for spatial work.

This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–28892 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–DS–F

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U. S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold its fifth plenary meeting. The ETTAC was created on May 31, 1994, to promote a close working-relationship between government and industry and to expand export growth in priority and emerging markets for environmental products and services.

DATES AND PLACE: December 6, 1995, from 9:00 a.m to 5:30 p.m. and December 7, 1995, from 8:45 a.m. to 12:30 p.m. The meeting will take place in Room 6808 of the Department of Commerce, 14th Street and Constitution Ave., NW., Washington DC 20230.

The Committee will request the participation of several major environmental trade associations on questions of export enhancement for this industry. At the request of the ETTAC, representatives from the Department of Defense, the Export-Import Bank of the United States, the Department of Energy and the U.S.-Asia Environmental Partnership have been invited to discuss their roles and programs that support international environmental technologies trade. The Committee will also hear progress reports from each of its Subcommittees: Communications; Interagency Coordination; Finance; and Privatization; and be briefed by its Coordinators on cross-cutting issues: small business; services exports; and products exports.

This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Room 1002, Washington DC 20230. Seating is limited and will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665, TDD 1–800–833–8723.

Dated: November 20, 1995.

Anne Alonzo,

Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 95–28904 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–DR–P

North American Free Trade Agreement Article 1904 Binational Panel Reviews: Applications of Individuals to Serve on Binational Dispute Settlement Panels for Review of Antidumping and Countervailing Duty Matters

AGENCY: North American Free Trade Agreement Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Invitation for applications from U.S. candidates for nomination to the roster of persons eligible to serve on binational panels convened to review antidumping and countervailing duty matters under Chapter 19 of the North American Free Trade Agreement.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals unaffiliated with the U.S., Canadian or Mexican Governments who are willing to serve on binational panels convened to review: (1) final determinations in U.S., Canadian or Mexican antidumping or countervailing duty (AD/CVD) proceedings involving imports from other countries party to NAFTA; and (2) amendments to a NAFTA Party's antidumping or countervailing duty statutes. This notice invites applications from U.S. citizens wishing to be considered for inclusion on the roster of candidates eligible to be selected to serve on such panels and summarizes eligibility criteria for roster members and panelists.

DATE FOR SUBMISSIONS: Eligible citizens are encouraged to apply by December 11, 1995 to be considered for nomination to the roster in January 1996.

FOR FURTHER INFORMATION CONTACT: For further information concerning the form of the application, contact Sybia Harrison, Legal Assistant, Office of the General Counsel, Office of the U.S. Trade Representative (USTR) at (202) 395–3432. For information concerning Chapter 19 or the duties involved, contact Amelia Porges, Associate General Counsel, USTR, (202) 395–7305, James Southwick, Assistant General Counsel, USTR, (202) 395–6800, or James R. Holbein, U.S. Secretary, NAFTA Secretariat (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the NAFTA provides for review by binational panels of final determinations in U.S., Canadian and Mexican antidumping and countervailing duty (AD/CVD) proceedings involving imports from another NAFTA Party, and for review of amendments to U.S., Canadian and Mexican AD/CVD statutes.

(1) Review of AD/CVD Determinations

Final administrative determinations under the AD/CVD laws of the NAFTA Parties (Canada, Mexico and the United States) are subject to review by binational panels, rather than by

national courts, if requested by an appropriate U.S., Canadian or Mexican party to the proceeding, to the extent that such determinations involve products of a NAFTA Party. Binational panels decide whether such determinations are in accordance with the relevant national law, using the standards of review that would have been applied by a national court in such circumstances. A panel may uphold the determination or remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a binational "Extraordinary Challenge Committee" composed of current and former judges. The United States, Canada and Mexico are obligated under Chapter 19 to give effect to final panel decisions. Chapter 19 does not affect the right of NAFTA Parties to impose AD/CVD duties in accordance with their national laws, including against products of other NAFTA Parties.

(2) Review of Amendments to AD/CVD Statutes

Chapter 19 also provides that at the request of the United States, Canada or Mexico, a binational panel will review and issue a declaratory opinion concerning whether an amendment to another NAFTA Party's AD/CVD statutes made after entry into force of the NAFTA is inconsistent with the provisions of the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, any successor agreements to which all three Parties are a party, or the object and purposes of the NAFTA.

Composition of Panels

Chapter 19 provides for the development of a roster of at least 75 potential panelists, with each government selecting at least 25 individuals. A separate five-person panel will be formed for each review of an AD/CVD administrative determination or statutory amendment. To form a panel the two governments involved will each appoint two panelists, normally by drawing upon individuals from the roster. If the governments cannot agree upon the fifth panelist, they will decide by lot which of them shall select the fifth panelist from the roster. The majority of individuals on each panel must be lawyers in good standing, and the chair of the panel must be a lawyer.

Criteria for Eligibility

Chapter 19 sets out a number of criteria for determining the eligibility of individuals to be included on the roster. Roster members must be U.S., Canadian or Mexican citizens, and must be of good character and of high standing and repute. They are to be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Panelists may not be affiliated with any of the three governments. Judges and retired judges are particularly encouraged to apply.

Selection Criteria and Procedures

Section 402 of the NAFTA Implementation Act and the accompanying Statement of Administrative Action establish U.S. implementing procedures and requirements for the selection of U.S. members of the roster. Section 402 provides that U.S. roster members are to be selected in accordance with the eligibility criteria set out in Chapter 19 of the FTA and without regard to political affiliation. Individuals who would have a conflict of interest in the exercise of the duties of a panelist will not be selected as roster members.

Under section 402, an interagency group, chaired by the United States Trade Representative (the USTR) must prepare a list of candidates qualified to be chosen by the United States as roster members. After consulting with the Senate Committee on Finance and the House Committee on Ways and Means in accordance with the requirements and schedule set out in section 402, the USTR will select the final list of U.S. candidates to serve on the roster.

Remuneration

Panelists will be remunerated at the rate of 400 Canadian dollars per day (approximately US$295 at current exchange rates) for each day of actual service, if they are chosen to serve on a panel.

Procedures for Applications

Applications must be typewritten and submitted along with 10 copies by December 11, 1995 to: Section 402 Committee, Room 223, Office of the General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506. Applications should be headed "Application for Inclusion on FTA Chapter 19 Roster of Panelists" and must include the following information:

1. Name of the applicant.
2. Business address, telephone number and, if available, fax number.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities.
7. Relevant professional affiliations and certifications, including current bar admissions, if any.
8. List of publications, testimony and speeches, including a single copy (not 10 as in the application itself) of speeches and publications concerning subsidies or antidumping or countervailing duty law. Judges or former judges should list relevant judicial decisions.
9. Summary of any current and past employment by, or consulting or other work for, the U.S., Canadian or Mexican Governments.
10. List of proceedings brought under U.S., Canadian or Mexican antidumping or countervailing duty laws regarding imports of U.S., Canadian or Mexican products in which applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
11. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's: (a) familiarity with international trade law; and (b) willingness and ability to make time commitments necessary for service on panels.
12. Names, addresses, telephone and, if available, fax number of three individuals willing to provide information to USTR concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws, character, reputation, reliability, and judgment.

Note: Information provided by applicants in response to the above questions will be used by the Interagency group for the purpose of initial screening of candidates. Further information regarding financial interests and affiliations may be requested from prospective candidates at a later stage of the selection process for purposes of assessing conflicts of interest, and the appearance of such conflicts, in respect to service on panels. Individuals selected as roster members will be required to make additional, specific disclosures in regard to conflicts and appearances of conflicts in connection with their appointment to particular panels. Copies of publications and speeches submitted under item 8 above will be returned to the applicant upon request. Information submitted will be subject to public disclosure. Any information that should not be disclosed to the public should be clearly indicated as such on each page of the submission.

Current Members

Current members of the Chapter 19 roster who are interested in continuing to serve on Chapter 19 panels should reapply in response to this notice. Current members who are no longer interested in serving on panels need not notify USTR as they will be automatically removed from the list. Individuals who have previously applied but have not been selected for a final candidate list may reapply.

False Statements

Pursuant to section 402(c)(5) of the Act, false statements by an applicant to USTR regarding their personal or professional qualification, or financial or other relevant interests, which bear on the applicant's suitability for placement on rosters and appointment to panels are subject to criminal sanctions under 18 U.S.C. 1001.

Dated: November 20, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–28889 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 110795G]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold its 88th meeting.

DATES: The meeting will be held on December 6–8, 1995. The Council's Standing Committees will meet from 8:00 a.m. to 5:00 p.m. on December 6. The full Council will meet from 9:00 a.m. to 5:00 p.m. on December 7–8. There will be a Fishermen's Forum from 4:00 to 6:00 p.m. on December 7.

ADDRESSES: The meeting will be held at the Kauai Coconut Beach Resort in Kapaa, Kauai, HI; telephone: (808) 822–3455.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Council will discuss and may take action on the following agenda items:

1. Report from the islands;
2. Reports from fishery agencies and organizations, including enforcement agencies;
3. Crustaceans, including:
(a) Status of Amendment 9, and
(b) Report on experimental fishing trip (including administration and enforcement, field observations, and summary of catch data);
4. Ecosystems and habitat, including a review of the humpback whale sanctuary draft Environmental Impact Statement;
5. Pelagic fishery issues, including:
(a) Longline permit actions, status of Longline Observer Program,
(b) Status of observer program year 1 evaluation,
(c) Status of NMFS intent to require industry to fund observer program and to shift program responsibility to an outside contractor, and
(d) Status of request for single-Council designation for management of domestic pelagic fisheries in the Pacific;
6. Bottomfish issues, including:
(a) Implementation of the Northwestern Hawaiian Islands (NWHI) catch reporting system,
(b) State of Hawaii progress with a management plan for Main Hawaiian Islands Onaga and Ehu, and
(c) Reconsideration of NWHI management system;
7. Native rights and indigenous fishing issues, including:
(a) Status of relevant Magnuson Conservation and Management Act amendments, and
(b) Kahoolawe Ocean Management Plan;
8. Program planning, including:
(a) Fishery development potential in the Marianas Archipelago,
(b) Status of joint Departments of Interior-Commerce working group legislation changing Federal fisheries policy in the Pacific,
(c) Councils' involvement in the Saltonstall-Kennedy grants program,
(d) Status of Western Pacific Fisheries Information Network, and
(e) Status of education outreach program;
9. Administrative matters;
10. Election of officers; and
11. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: November 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–28760 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110795F]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Western Pacific Fishery Management Council will hold its 61st meeting.

DATES: The meeting will be held December 4–5, 1995, from 9:00 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Kauai Coconut Beach Resort in Kapaa, Kauai, HI; telephone: (808) 822–3455.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may take action on the following agenda items:

1. Humpback Whale Sanctuary, including a review of the draft Environmental Impact Statement;
2. Hawaii bottomfish issues, including:
(a) State of Hawaii progress with a management plan for Main Hawaiian Islands Onaga and Ehu, and
(b) Reconsideration of the Northwestern Hawaiian Islands (NWHI) management system;
3. NWHI lobster management, including:
(a) Results of August experimental fishing trip,
(b) Status of Amendment 9, and
(c) NMFS lobster research plan;
4. Pelagic fishery issues, including:
(a) Update on the Pelagic Fisheries Research Program,
(b) Review of the NMFS evaluation of year 1 of the Longline Observer Program,
(c) Status of the NMFS proposal to shift Longline Observer Program responsibility to an outside contractor,
(d) Status of the NMFS proposal to shift the burden of observer funding to

the longline industry (including a review of the draft Regulatory Impact Review),

(e) Status of the Council's request for single-Council designation to manage domestic pelagic fisheries in the Pacific, and

(f) Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: November 13, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–28759 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 111495C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research/monitoring permit (P45U) and a scientific research/enhancement permit (P45V).

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service in Sacramento, CA (FWS) has applied in due form for permits to take adult and juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) for the purposes of scientific research, population monitoring, and hatchery-generated enhancement.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before December 27, 1995.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: FWS requests permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227). FWS requests the permits to continue the projects for which a take of listed salmon is currently authorized under permit 747. Permit 747 will expire on December 31, 1995.

FWS requests a 5-year scientific research/monitoring permit (P45U) for a take of adult and juvenile, listed salmon associated with five projects being conducted by the Northern Central Valley Fish and Wildlife Office (NCVFWO) in Red Bluff, CA and a project being conducted by the Sacramento/San Joaquin Estuary Fishery Resource Office (SSJFRO) in Stockton, CA. The five projects being conducted by NCVFWO are: A census of juvenile salmonid downstream migration, the radio-tracking of spawning adults, the entrainment of juveniles at the Red Bluff Diversion Dam downstream migrant fish protection facilities, egg incubation temperature tolerance studies, and run differentiation using fish ladder counts. The project being conducted by SSJFRO is aimed at updating the knowledge of the factors influencing young salmon abundance, distribution, and survival in the estuary.

FWS requests a 5-year scientific research/enhancement permit (P45V) for a take of adult and juvenile, listed salmon associated with the propagation and captive broodstock programs at FWS's Coleman National Fish Hatchery. The objective of the propagation program is to supplement the listed, naturally-produced salmon population. Listed adult salmon are proposed to be captured and spawned in a protected hatchery environment to increase the survival of the resultant eggs and juvenile fish. The progeny of the captured adults will then be released into the wild. The purpose of the captive broodstock program is to maintain the genetic integrity of the listed salmon species in a hatchery environment. The objectives of the captive broodstock program are to provide: Protection against loss of genetic material, a source of gametes for the propagation program, a source of progeny to supplement the naturally-produced fish, security until habitat conditions in the Sacramento River improve, egg and fry for experimental purposes, and a potential tool to assist in the recovery of the species.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: November 15, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28883 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 103095B]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit (P523A).

SUMMARY: Notice is hereby given that Dr. Adam Frankel, Cornell University, Bioacoustic Research Program, 159 Sapsucker Road, Ithaca, NY 14850 has been issued a permit to take (harass) several species of marine mammals and sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: On August 8, 1995, a document was published in the **Federal Register** (60 FR 40346) that a request for a scientific research had been submitted by the above-named individual. The request was to take (harass) several species of marine mammals and sea turtles over a 5-year period, during sound playback studies in the waters off the Kohala coast of Hawaii. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits (50 CFR parts 217–227).

Issuance of this Permit as required by the ESA of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 20, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28885 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

Economics and Statistics Administration

2000 Census Advisory Committee; Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409), we are giving notice of a meeting of the 2000 Census Advisory Committee. The meeting will convene on Thursday, December 7, 1995. at 8:30 a.m. at the Bureau of the Census Conference Center, Room 1630, Federal Building 3, and adjourn on Friday, December 8 at 12 noon.

The Advisory Committee is composed of a Chair, Vice Chair, and twenty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: On Thursday, December 7, 1995, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Friday, December 8, 1995, the meeting will begin at 8:30 a.m. and adjourn at 12 noon.

ADDRESSES: The meeting will take place at the Bureau of the Census, Room 1630, Federal Building 3, The Conference Center, Suitland, Maryland.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, D.C. 20233, telephone: (301) 457–2308.

SUPPLEMENTARY INFORMATION: A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brenda Williams on (301) 457–2308.

Dated: November 20, 1995.

Everett M. Ehrlich,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 95–28886 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–EA–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 27, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 34235) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service challenging the fair market price established for the service, the capability of the designated nonprofit agency to perform the service, and the impact on the current contractor. The contractor also questioned the amount of time it took for the final materials supporting the proposed addition to the Procurement List to be provided to the Committee.

The contractor questioned the fair market price established for this service because it is nearly 60 percent above the price which the contractor claimed to have been paid in its last contract year. The contracting officer informed us, however, that the contractor is being paid somewhat more than it told the Committee, and that the frequency of performance of most tasks to be done in providing the service has been increased substantially from that required of the commenting contractor. The fair market price is within the Committee's guidelines for the work to be performed and has been accepted by the contracting officer.

The contractor's challenge to the capability of the designated nonprofit agency mentioned three factors: the existence of a year-long phase-in of workers with severe disabilities to reach the final ratio of disabled to nondisabled workers; the nonprofit agency's total lack of experience in performing contracts of this type and size; and the length of time it took after the proposal to add this service to the Procurement List was published in the **Federal Register** for the Committee to receive the information it needed from the central nonprofit agency to satisfy the regulatory requirements of an addition to the Procurement List. The contractor also questioned the lack of detail in the central nonprofit agency's description of how the designated nonprofit agency would perform the tasks required for this service.

The nonprofit agency's plan to take a year to move from its initial ratio of disabled to nondisabled direct labor to the final projected ratio is well within the Committee's procedures for startup of a project of this type. The procedures are intended to guarantee that quality performance is maintained during the longer training period which people with severe disabilities require to perform janitorial functions. The process does not reflect a shortage of workers with severe disabilities as the contractor assumed. The nonprofit agency will offer to retain many of the current workers during this phase-in period, which is consistent with the industry practice of retaining direct

labor employees of a previous contractor.

As the contractor noted, the designated nonprofit agency does not have experience in contracts of this type. However, this is not an unusual situation in the Committee's program, which is intended to create jobs for people with severe disabilities by encouraging the nonprofit agencies which employ these people to engage in new businesses. The central nonprofit agency which is providing technical support to the producing nonprofit agency has extensive experience in assisting similar nonprofit agencies perform such services, and it has demonstrated to the Committee that this addition to the Procurement List has very close parallels with other successful additions. The nonprofit agency intends to employ the contractor's project supervisor to provide knowledge of the work site's requirements, including the hospital grade/aseptic cleaning requirements noted by the commenting contractor, and how to fulfill them.

The Committee does not agree with the contractor's contention that the length of time spent developing the project after its announcement in the **Federal Register** is an indication the nonprofit agency is incapable of performing the service. The changes in the Statement of Work for the service in July 1995 required a reassessment of the labor needed to perform the service, and revision of the pricing proposal which is the basis of the Committee's establishment of a fair market price. These tasks required more time and negotiations with the contracting officer than was contemplated when the proposed addition was published in the **Federal Register**.

In contending that addition of this service to the Procurement List would have a severe economic impact on the company, the contractor noted that losing the ability to provide this service to the Government would cause the contractor to abandon two commercial contracts in the same area which its Government contract supports. However, the contractor did not provide information on the value of these contracts. The contractor also noted that its sales have declined substantially in the past year, and it is in a Chapter 11 bankruptcy.

The Committee's information on the contractor's current sales, based on an August 1995 projection by the company, shows that the contract for this service is less than five percent of its total sales. It should also be noted that a Chapter 11 bankruptcy is a reorganization with the intent of continuing the company in business, and in this case appears to have been initiated for technical reasons. Accordingly, the Committee does not agree with the contractor that the proposed addition of the service to the Procurement List threatens the contractor's viability and, thus, does not believe that the addition will have a severe adverse impact on the contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on the current contractor for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial Shaw Air Force Base, South Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–28879 Filed 11–24–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 27, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 10, June 16, August 18, September 22, 29 and October 6, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 7945, 31706, 43125, 49263, 50559 and 52388) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pallet, Runner
3990–01–415–6951
Folder, File
7530–00–663–0031
(Requirements for the Stockton, CA depot only)
Paprika, Ground
8950–01–079–6942

Services

Janitorial/Custodial, Centers for Disease Control and Prevention, Atlanta, Georgia
Janitorial/Custodial, Buildings 595 and 472, Kirtland Air Force Base, New Mexico
Janitorial/Custodial, Naval and Marine Corps Reserve Center, Training Building, Portland, Oregon
Janitorial/Custodial, Clarksburg Memorial U.S. Army Reserve Center, Route 19 South, Clarksburg, West Virginia
Janitorial/Custodial, Clarksburg AMSA, 6 Armory Road, Clarksburg, West Virginia
Mailroom Operation, Immigration and Naturalization Service, Administrative Center and Western Operations Region, Laguna Niguel, California
Switchboard Operation, Department of Veterans Affairs Medical Center, Palo Alto, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–28880 Filed 11–24–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 27, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Riser, Assembly
1670–01–375–2098
NPA: Cottonwood Incorporated, Lawrence, Kansas
Napkin, Junior Dispenser
8540–01–350–6419
NPA: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi

Services

Janitorial/Custodial for the following Anniston, Alabama locations:
Federal Building and U.S. Courthouse, 1129 Noble Street
Social Security Administration, 301 East 13th Street
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama
Janitorial/Custodial, James A. Haley Veterans Hospital, 13000 Bruce B. Downs Boulevard, Tampa, Florida
NPA: The Harbor Behavioral Health Care Institute New Port Richey, Florida
Operation of Postal Service Center Andrews Air Force Base, Maryland
NPA: Lt. Joseph P. Kennedy Institute Washington, DC

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–28881 Filed 11–24–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Information Collection Available for Public Comment (Shipping Rates)

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(e)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The movement of military members results in over 600,000 shipments of personal property each year. Section 10721 of the Interstate Commerce Act exempts such shipments from ICC rate requirements and allows competitive bidding by carriers. The large volume of shipping contracts has caused the DOD Military Traffic Management Command (MTMC) to process contractor information systematically. By following specific procedures contractors are solicited, bids evaluated, and contractors selected. The legal authority for collection of this information in 37 USC, Section 406.

Title, Applicable Forms, and OMB Control Number: Tender of Service and Letter of Intent for Personal Property, Household Goods and Unaccompanied Baggage Shipments, DD Form 619, OMB Control Number 0702–0022.

Needs and Uses: Since household goods (HHG) move at Government expense, data is needed to choose the best service at least cost and to know when accessorial services are chargeable to the Government. Information serves as a bid for contract to transport HHG. Best-service-for-least-cost carrier receives the contract.

Affected Public: Business or other for profit.

Annual Burden Hours: 1,889,857.
Number of Respondents: 2,404.
Responses Per Respondents: 601.
Average Burden Per Response: 5 minutes.
Frequency: On occasion.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to HQDA Military Traffic Management Command, 5611 Columbia Pike, ATTN: MTIM–P (MS. SCHUTTER) Falls Church, Virginia 22041–5050. Considerations will be given to all comments received within 60 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 95–28809 Filed 11–24–95; 8:45 am]
BILLING CODE 3710–08–M

Proposed Information Collection Available for Public Comment (Transportation Rates)

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(e)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Code of Federal Regulations, Title 49, Section 10721, allows the carrier industry to provide free or reduced rates to the Government for movement of personal property. Department of Defense requires Headquarters, Military Traffic Management Command to analyze and determine the reasonableness of rates for transportation and related services which are submitted voluntary by bid.

Title, Applicable Forms, and OMB Control Number: Uniform Tender of Rates and/or Charges for Domestic Transportation Services (DOD/USCG Sponsored HHG), MT–HQ FORM 43–R, OMB Control Number 0702–0018.

Needs and Uses: DOD-approved household goods carriers file voluntary rates to engage in the movement of DOD and USCG sponsored shipments within CONUS. HQ MTMC evaluates the rates and awards traffic to low rate responsible carriers whose rates are responsive and most advantageous to the Government. The low rate carrier is offered 50% of the traffic at an installation and carriers that meet this rate share in the remaining 50%.

Affected Public: Business or other for profit.
Annual Burden Hours: 2,701.
Number of Respondents: 1,268.
Responses Per Respondents: 4.
Average Burden Per Response: 30 minutes.
Frequency: on occasion.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to HQDA Military Traffic Management Command, 5611 Columbia Pike, ATTN: MTIM–P (MS. SCHUTTER) Falls Church, Virginia 22041–5050. Considerations will be given to all comments received within 60 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 95–28810 Filed 11–24–94; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0067]

Request for Public Comments Regarding OMB Clearance Entitled Incentive Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OME clearance (9000–0067).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Incentive Contracts. This OMB clearance currently expires on April 30, 1996.

DATES: *Comment due date:* January 26, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Incentive contracts are normally used when a firm fixed-priced contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor—such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for which final prices have not been established—is needed to negotiate the final prices of incentive-related items and services.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,000*; Responses per respondent, *1*; total annual responses, *3,000*; preparation hours per response, *1*; and total response burden hours, *3,000*.

Dated: November 9, 1995.

Beverly Fayson,
FAR Secretariat.
[FR Doc. 95–28717 Filed 11–24–95; 8:45 am]
BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Proposed Middle Rio Grande Flood Protection Project, Bernalillo to Belen, New Mexico, Belen East and West Units

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: 1. *Proposed Action:* The Middle Rio Grande Flood Control Project was authorized by the U.S. Congress with the passage of the Water Resources Development Act of 1986 (Public Law 99–662). The project entails the replacement of existing embankments along both sides of the Rio Grande with structurally competent levees capable of containing high volume, short duration flows up to the design discharge of 42,000 cubic feet per second (cfs), as well as low volume, long duration flows. In the Belen East Unit, levee reconstruction would begin near the New Mexico Highway 147 bridge on Isleta Pueblo and extend southward approximately 22 miles along the east side of the Rio Grande to a point 0.75 miles downstream of the Atchison, Topeka and Santa Fe (AT&SF) Railroad bridge, south of Belen. In the Belen West Unit, on the west side of the Rio Grande, levee rehabilitation would begin south of Isleta Marsh, and extend approximately 19 miles southward to a point 2.2 miles downstream of the AT&SF Railroad bridge. The average height of the reconstructed levee would increase by approximately four feet. Seventy-five acres of wetland creation and 200 acres of riparian woodland restoration have been authorized to mitigate for unavoidable losses of fish and wildlife habitat. An Environmental Impact Statement was completed in 1979, and a General Design Memorandum was completed in 1986.

In 1994, the U.S. Army Corps of Engineers initiated a Limited Reevaluation study for the Belen East and West Units. The purpose of the study is to reaffirm the appropriate plan of flood protection and re-evaluate economic benefits and costs. Since 1979, population and urban development with the project area have increased substantially. Additionally, in light of newly listed endangered and threatened species, and an increased knowledge of riparian and riverine values and functions, potential environmental effects of the proposed project will be re-evaluated in a Supplemental Environmental Impact Statement. Coincident objectives are the preservation and conservation biological, recreational, social, cultural and aesthetic values.

2. *Alternatives Considered:* Alternatives developed and evaluated during previous studies consisted of levee construction (2%-, 1%-, 0.37%-, and 0.16%-chance flood events), flood and sediment control dams, local levees, floodproofing and zoning, partial levee replacement, and no action.

3. *Public Involvement Process:* Coordination is ongoing with both public and private entities having jurisdiction or an interest in land and resources in the middle Rio Grande Valley of New Mexico. These entities include the general public, local governments, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the New Mexico Department of Game and Fish, the Pueblo of Isleta, and the Interstate Stream Commission. Coordination will continue throughout development of the SEIS through scoping letters, meetings and field visits, and if requested, scoping meetings. All interested parties including Federal, state, tribal, and public entities will be invited to submit comments on the draft SEIS when it is circulated for review.

The planning effort also is being coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1972 and the Endangered Species Act of 1973, as amended. Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Officer is ongoing pursuant to the National Historic Preservation Act of 1966.

4. *Significant Issues to be Analyzed:* Significant issues to be analyzed in the development of the SEIS include the effect of the recommended plan on endangered or threatened species and their critical habitat; floodplain development; water quality; riparian ecological systems; social welfare; human safety; cultural resources; and aesthetic qualities. Development of mitigation measures will be undertaken for any unavoidable impacts.

5. *Public Review:* The estimated date that the draft Limited Reevaluation Report will be completed and the draft SEIS circulated for public review is December, 1996.

6. *Further Information:* Questions or comments regarding the study and the SEIS may be directed to: Mr. William DeRagon, U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, New Mexico 87103–1580; phone (505) 766–3111.

Dated: November 9, 1995.

Lloyd S. Wagner,
Lieutenant Colonel, EN, District Engineer.
[FR Doc. 95–28807 Filed 11–24–95; 8:45 am]
BILLING CODE 3710–KK–M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Upper Mississippi River—Illinois Waterway System Navigation Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice intent.

SUMMARY: A DEIS will be prepared to address the Upper Mississippi River-Illinois Water System Navigation Study.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Ken Barr; (309) 794–5349; Commander, U.S. Army Engineer District, Rock Island, ATTN: CENCR–PD–E, Clock Tower Building, P.O. Box 2004, Rock Island, Illinois 610204–2004.

SUPPLEMENTARY INFORMATION: The Upper Mississippi River-Illinois Waterway System Navigation Study is being conducted under the authority of Section 216 of the Flood Control Act of 1970. The 9-foot navigation project is being reviewed for changed physical and economic conditions that may warrant structural or operational modifications to reduce congestion of commercial navigation traffic.

1. During reconnaissance studies, the primary problem identified with the navigation system was lockage delays, especially in the downstream portions of the systems.

2. Navigation improvements to reduce lockage delays identified to date include large- and small-scale measures.

Combinations of these, along with the "No Action" alternative, are being evaluated to form an array of alternatives which will eventually result in a recommended plan.

3. Significant issues and concerns identified to date include: system-wide impacts from potential navigation improvements and traffic increases; site-specific impacts from construction; effects on threatened and endangered species; defining and describing the "future without-project" condition; secondary effects; cumulative impacts, including the cumulative effects of the operation and maintenance of the existing navigation system; and the future condition and management of the river system.

4. Scoping for the Environmental Impact Statement builds on a knowledge base resulting from the history of navigation on the Upper Mississippi and Illinois Waterway Navigation Systems and includes interagency coordination, interagency meetings, and public meetings. The "Plan of Study" which evolved from the 2nd Lock at Lock and Dam 26 (Replacement) project provided a starting point for planning environmental studies. Interagency coordination and a "Reconnaissance Resolution Conference" held in December 1992 contributed further to an existing environmental study plan. A "Public Involvement" component of the study, and environmental, economic, engineering, and a "Governor's Liaison" committees have promoted dialogue and coordination. A study newsletter with a mailing list of approximately 9,500 is mailed out 3 times a year. Public meetings were held in the last quarter of 1993 and 1994, and open houses are scheduled for the last quarter of 1995. Interested Federal, State, and local agencies, Indian tribes, and other interested private organizations and parties are invited to participate.

5. Environmental studies will continue through 1997, followed by analysis and synthesis of data which is anticipated to be provided to the public in a DES in June 1999.

Dated: November 15, 1995.

Charles S. Cox,

Colonel, EN, Commanding.

[FR Doc. 95–28808 Filed 11–24–95; 8:45 am]

BILLING CODE 3710–HV–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 27, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Office, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday, through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 20, 1995.

Gloria Parker,

Director, Information Resources Group

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Application for the National Assessment of Educational Progress Data Reporting Program.
Frequency; Annually.
Affected Public: Business or other for-profit; Not for Profit institutions; State, Local or Tribal Government.
Reporting and Recordkeeping Burden:
Responses: 15.
Burden Hours: 360.
Abstract: This form will be used by State Educational agencies to apply for funding under the National Assessment of Educational Progress Data Reporting Program. The Department will use the information to make grant awards.

[FR Doc. 95–28859 Filed 11–24–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 26, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.
Title: Evaluation of School-to-Work Implementation.
Frequency: Biennially.
Affected Public: Individual or households; State, Local or Tribal Governments, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 2,770.
Burden Hours: 2,770.
Abstract: the School-to-Work opportunities (STW) Act of 1994 directs the Secretaries of Education and Labor to evaluate progress made by States and local communities in establishing systems to promote effective school-to-work transitio Information will be collected throu surveys of local STW partnerships, c studies and surveys of high school seniors. Data collected will be used in reports to Congress and to others interested in school-to-work programs.

[FR Doc. 95–28860 Filed 11–24–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.237]

Office of Special Education and Rehabilitative Services; Program For Children and Youth With Serious Emotional Disturbance

ACTION: Correction notice.

PURPOSE: On August 10, 1995, the Secretary published in the **Federal Register** (60 FR 40956) a combined application notice (CAN) inviting applications for new awards for fiscal year 1996 under a number of the Department's direct grant and fellowship programs. Included in the CAN was one competition under the Program for Children and Youth with Serious Emotional Disturbance. The purpose of this notice is to correct the project period for that competition. The project period for the Nondiscriminatory, Culturally Competent, Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems competition, CFDA No. 84.237G, is for up to 36 months.

FOR FURTHER INFORMATION CONTACT: Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, S.W., room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8110. FAX: (202) 205–8105. Internet:

Tom—Hanley@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Authority: 20 U.S.C. 1426, 34 CFR 328.

Dated: November 20, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehobilitative Services.

[FR Doc. 95–28806 Filed 11–24–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–40–000]

Colorado Interstate Gas Company; Notice of Filing

November 20, 1995.

Take notice that on November 13, 1995, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Fifth Revised Sheet No. 9

CIG states it is adjusting the rates for Rate Schedules FS–1 and IS–1 resulting from the currently effective Average Thermal Content of Gas in Storage (ATC) posted on CIG's electronic bulletin board on October 15, 1995 pursuant to Section 1.2 of the General Terms and Conditions of this tariff. Further, CIG states the combination of the revised ATC and storage rates will not change the current customer storage reservation payments.

CIG states that copies of this filing have been served on CIG affected jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 FR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28780 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–32–000]

Colorado Interstate Gas Company; Notice of GRI Charge Filing

November 20, 1995.

Take notice that on November 14, 1995, Colorado Interstate Gas Company (CIG) tendered for filing to become part

of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1996:

Fifth Revised Sheet No. 10
Fourteenth Revised Sheet No. 11
First Revised Sheet No. 336
First Revised Sheet No. 337

CIG states that the filing is being made pursuant to Commission Opinion No. 402, issued October 13, 1995, in Docket No. RP95–374–000, reflecting the revised Gas Research Institute (GRI) rates effective as of January 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28781 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL87–51–007 and ER88–477–007]

Gulf States Utilities Company; Notice of Filing

November 20, 1995.

Take notice that on November 1, 1995, Gulf States Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28782 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1101–001]

Kansas City Power & Light Company; Notice of Filing

November 20, 1995.

Take notice that on November 13, 1995, Kansas City Power & Light Company tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 285.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28783 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–41–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERN Gas Tariff

November 20, 1995.

Take notice that on November 13, 1995, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 11
Original Sheet No. 11A
First Revised Sheet No. 13
First Revised Sheet No. 51
First Revised Sheet No. 53
First Revised Sheet No. 88
Second Revised Sheet No. 93
First Revised Sheet No. 118
Second Revised Sheet No. 121
Second Revised Sheet No. 122
First Revised Sheet No. 123
First Revised Sheet No. 420
First Revised Sheet No. 433
First Revised Sheet No. 434
First Revised Sheet No. 435
First Revised Sheet No. 436
First Revised Sheet No. 437
Original Sheet No. 438–439
First Revised Sheet No. 877
First Revised Sheet No. 878

Kern River proposes an effective date of January 1, 1996, but requests suspension of the filing's effective date until March 1, 1996.

Kern River states that the revised tariff sheets make certain minor changes to Kern River's tariff to reflect Kern River's implementation of an interactive transportation services computer system, known as the "Real-Time Automated Pipeline Integrated Data System," or "RAPIDS II." Kern River is also revising the capacity release provisions of its tariff to reduce the notice period required for a Releasing Shipper to recall capacity from a defaulting Replacement Shipper.

Kern River states that copies of the filing were served upon Kern River's jurisdictional customers and all affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell

Secretary.

[FR Doc. 95–28784 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–72–000]

Lee 8 Storage Partnership, Notice of Application

November 20, 1995.

Take notice that on November 15, 1995, Lee 8 Storage Partnership (Lee 8), P.O. Box 729, Monroe, Michigan 48161, filed in Docket No. CP96–72–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing Lee 8 to transport natural gas under Section 284.224 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Lee 8 is a partnership of Howard Energy Co., Inc. (Howard), MG Ventures Storage, Inc. (MG Ventures) and Panhandle Storage Company (Panhandle Storage). It is further stated that Howard is an independent energy production and marketing company, located in Michigan; MG Ventures is a wholly-owned subsidiary of UtiliCorp United Inc., an electric and gas utility and energy marketing company, also located in Michigan; and that Panhandle Storage is an affiliate of Panhandle Eastern Pipe Line Company, an interstate natural gas pipeline.

It is asserted that Lee 8 owns and operates a natural gas storage facility located in Lee Township, Calhoun County, Michigan. It is explained that the facilities consist of a gas storage reservoir, gas processing and metering equipment, 2 1,200 horsepower compressors and 12.5 miles of pipeline connecting Lee 8's facilities to Panhandle Eastern's interstate pipeline. It is further asserted that Lee 8 will connect its facilities to the system of Michigan Gas Utilities (MGU), a local distribution company affiliated with MG Ventures.

Lee 8 asserts that it is a Hinshaw pipeline within the meaning of the NGA and qualified for an exemption from Commission regulation under Section 1(c) of the NGA. It is explained that Lee 8 is engaged in interstate commerce for the purpose of providing flexible and competitive storage services for consumers in Michigan. It is further explained that all of Lee 8's facilities are located within the state of Michigan and that Lee 8 receives all of its gas within or at the boundaries of the state of Michigan, and the gas is consumed within the state of Michigan. It is asserted that Lee 8 is subject to regulation by the Michigan Public Service Commission (MPSC), with gas transactions regulated as to rates, terms and conditions of service.

Lee 8 states that it will use its rates and tariffs on file with the MPSC for the services rendered under the blanket certificate requested in the subject application. Lee 8 further states that it will comply with all applicable conditions contained in paragraph (e) of § 284.224 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rule.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Lee 8 to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28785 Filed 11–24–95;8:45am]

BILLING CODE 6717–01–M

[Docket No. CP96–65–000]

Natural Gas Pipeline Company of America; Notice of Application

November 20, 1995.

Take notice that on November 13, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP96–65–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission to abandon a firm natural gas transportation service for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it proposes to abandon a firm transportation service authorized in Docket No. CP85–308–000 and performed under Natural's Rate Schedule X–140. Natural further states that under the arrangement, Texas Gas made available up to 60,000 MMBtu of natural gas per day to Natural on a firm basis (plus interruptible overrun volumes) in High Island Block A–489, offshore, Texas which Texas Gas purchased in High Island Block A–462, offshore, Texas.[1] Natural indicates it would redeliver such gas in High Island Block A–498,[2] offshore, Texas to High Island Offshore System for further transportation.

Natural states that by a letter agreement dated September 1, 1995, Natural and Texas Gas agreed to terminate the agreement and Natural's Rate Schedule X–140 effective January 1, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 5, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

[1] Texas Gas owns an offshore line running from High Island Block A–462 to High Island Block A–489, both offshore Texas.

[2] Natural would redeliver such gas by utilizing its capacity in a jointly-owned line which Natural owns with Koch Gateway Pipeline Company, ANR Pipeline Company and Transcontinental Gas Pipe Line Corporation constructed in Docket No. CP79–327.

Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28786 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–31–000]

New England Power Company; Notice of Filing

November 20, 1995.

Take notice that on November 15, 1995, New England Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28787 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–60–000]

Northwest Pipeline Corporation; Notice of Application

November 20, 1995.

Take notice that on November 13, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an ownership interest in certain of it facilities by sale to Transwestern Pipeline Company (Transwestern), certain related transportation agreements and operation of the facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to (1) abandon, by sale to Transwestern, an undivided 77.7 percent ownership interest in Northwest's existing and planned facilities extending from the outlet of its La Plata "B" compressor near Ignacio, Colorado southward to the jointly owned Blanco Hub near Bloomfield, New Mexico (La Plata Facilities); (2) abandon, by assignment of the underlying agreements to Transwestern, existing firm transportation between receipts point on the La Plata Facilities, which has been authorized under Northwest's blanket certificate; and (3) abandon its certificated operation of the La Plata Facilities and two third-party meter stations connected to the La Plata Facilities, in favor of Transwestern assuming such operation.

Northwest states that its exiting La Plata Facilities include the La Plata "A" Compressor Station near Ignacio, approximately 33 miles of 30-inch pipeline from that station to the Blanco hub and various receipt or delivery facilities at third-party interconnections with the La Plata pipeline. It is stated that the planned additions to the La Plata Facilities, which will be installed under Northwest's blanket certificate authority as a necessary precursor to the proposed abandonment, include a new meter station between Northwest's La Plata "B" compressor outlet and La Plata "A" compressor inlet and a new meter station, with approximately 600 feet of 24-inch piping, from the Williams Gas processing Company Ignacio Plant to the La Plata "A" compressor inlet.

It is stated that pursuant to a Purchase and Sale Agreement dated November 3, 1995, Transwestern will acquire the proposed 77.7 percent ownership interest in the La Plata Facilities at a price equal to 77.7 percent of the net book value on the closing date. If the closing were to occur at year end 1996, Northwest contends that the total net book value of the La Plata Facilities, including the planned facility additions, is projected to be approximately $25.6 million, resulting in a purchase price of about $19.9 million.

Northwest states that the 22.3 percent ownership in the La Plata Facilities to be retained by Northwest will provide 212,788 Dth per day of north flow capacity from various La Plata Facility receipt points to Northwest's wholly-owned mainline, plus 23,811 Dth per day of south flow capacity from Northwest's mainline to a La Plata Facility delivery point. Northwest contends that these retained capacities are the quantities required for Northwest to continue accommodating existing long-term firm contract obligations to provide transportation to and from the La Plata Facilities.

It is stated that Northwest will operate the La Plata Facilities pursuant to the terms and conditions of an Ownership and Operating Agreement dated November 3, 1995. Northwest and Transwestern will share the operating expenses of the La Plata Facilities and will each treat its respective ownership interest in the La Plata Facilities as an integral part of its own pipeline system, with transportation transactions thereon subject to the applicable owner's open-access transportation tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28788 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–71–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 20, 1995.

Take notice that on November 15, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP96–71–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a new delivery point to permit delivery of gas to Channel Industries Gas Company (Channel) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to establish a new delivery point on Tennessee's system, within the station yard of Channel's existing compressor station No. 402–C, in Brooks County, Texas. Tennessee will install, own, operate and maintain a tap assembly and electronic gas measurement equipment (EGM) at approximate M.P. 403.1+.09. In addition, Tennessee will install, complete with appurtenances, either a 16-inch mainline valve or an actuator on existing Mainline Value 403-1. Channel will own and maintain the measurement and regulation facilities, and will install, own, operate and maintain the tie-in assembly and interconnecting pipe, as integral parts of its existing intrastate pipeline facilities. Tennessee will install and operate the measurement and regulation facilities. Tennessee will be fully reimbursed by Channel for the facilities Tennessee installs.

Tennessee states that the purpose of this delivery point is to establish an interconnection between its system and that of Channel. At this point, Tennessee will deliver gas to Channel for redelivery to Mobile Gas Services Inc. (Mobil) for processing at Mobil's LaGloria Gas Processing Plant (La Gloria) in Brooks County, Texas. Tennessee's deliveries will be made under Tennessee's Part 284 blanket transportation certificate. Channel will transport the gas from the proposed interconnection with Tennessee to LaGloria pursuant to Section 311(a)(2) of the the Natural Gas Policy Act of 1978 (NGPA) and Subpart C of Part 284 of the Commission's Regulations. Tennessee states that no facilities modifications are required to allow gas processed at LaGloria to be returned to Tennessee's system; such a connection is already in place.

Tennessee states that the total quantities to be delivered to Channel after the delivery point is installed will not exceed the total quantities authorized prior to this request. Tennessee asserts that the establishment of the proposed delivery point is not prohibited by Tennessee's tariff and that it has sufficient capacity to accomplish deliveries at the proposed new point without detriment or disadvantage to any of Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28789 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1386–000]

Wisconsin Public Service Corporation; Notice of Filing

November 20, 1995.

Take notice that on October 23, 1995, Wisconsin Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28790 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

Monroe City Corporation; Notice of Intent To Prepare an Environmental Assessment and Notice of solicitation of Written Scoping Comments

[Project No. 1517–008]

November 20, 1995.

The Federal Energy Regulatory Commission (Commission) has received an application from the Monroe City Corporation (Monroe City) to relicense the Upper Monroe Hydroelectric Project No. 1517–008. The 250-kilowatt project is located partially within Fishlake National Forest, on Shingle Creek, Serviceberry Creek, the First Lefthand Fork of the Monroe Creek, and Monroe Creek, near the town of Monroe City, in Sevier County, Utah.

The original license for this project was issued to Monroe City on May 31, 1939, and expired on June 30, 1990. they have been operating on a series of annual licenses since that date.

The Commission staff intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by Monroe City, analyze both site-specific and cumulative environmental impacts of the project as well as economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

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We are asking agencies, Indian tribes, special interest groups, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us

with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the environmental coordinator, whose number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Upper Monroe Hydroelectric Project, FERC No. 1517–008.

Intervenors are reminded of the Commission's Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Michael Strzelecki, environmental coordinator, at (202) 219–2827.

Lois D. Cahsell,

Secretary.

[FR Doc. 95–28779 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–3–000 and Docket No. RM95–4–000]

Notice of Change in Date of Informal Technical Conference

November 20, 1995.

In the matter of Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs; and Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies.

Take notice that the date for the technical conference to be convened pursuant to the orders issued in Docket Nos. RM95–3–000 and RM95–4–000 has been changed to *Friday, December 5, 1995.*[1]

The date has been moved to assure the largest possible attendance. Many participants from the industry, as well as Commission staff, had scheduling conflicts on the previous date.

The conference will begin at 9:00 a.m., on Friday, December 1, 1995, in a Hearing Room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28778 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–50–000, et al.]

NorAm Gas Transmission Company et al.; Natural Gas Certificate Filings

November 15, 1995.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP96–50–000]

Take notice that on November 6, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP96–50–000 pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for permission to abandon five inactive taps, authorized in blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to abandon five inactive 1-inch domestic taps on their Line R in Caddo Parish, Louisiana. NGT installed these taps in the early 1950's to deliver gas to customers served by Arkla, a division of NorAm Energy Corporation (Arkla). Arkla notified NGT in writing that these taps are no longer active and is in agreement to their abandonment. NGT states that the cost of the facilities proposed to be abandoned would be $5,009.00. NGT further states that the taps would be removed and capped.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP96–51–000]

Take notice that on November 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP96–51–000 a request pursuant to Sections 157.205 and 157.211 of the Commissions' Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to continue the present operation of a previously installed tap in Ramsey County, North Dakota under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to commence receipt of natural gas through the subject tap pursuant to a request by Montana-Dakota Utilities Company for up to 250 Mcf per day for the Noodles By Leonardo plant near Devils Lake, North Dakota. Williston Basin states that it would provide for the deliveries under its Rate Schedules FT–1 and/or IT–1. Williston Basin further states that the continued operation of the subject tap would have no significant effect on its peak day or annual requirements and that the volumes proposed to be delivered would be within the contractual entitlements of the customer.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP96–54–000]

Take notice that on November 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–54–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon Natural's interruptible transportation service for Enron Industrial Natural Gas Company (Enron Industrial) performed under Natural's Rate Schedule X–139, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that pursuant to a gas transportation agreement between Natural and Enron Industrial, formerly Industrial Natural Gas Company and HNG Industrial Natural Gas Company, it had received for the account of Enron Industrial up to 150,000 MMBtu of natural gas per day on an interruptible basis from Transok, Inc. in Bryan County, Oklahoma and redelivered such gas to Houston Pipe Line Company in Lamar County, Texas.

Natural states further that the gas transportation agreement expired by its own terms on June 1, 1995 and that by a letter agreement dated September 13, 1995, Natural and Enron Industrial agreed to terminate the gas transportation agreement effective June 1, 1995. Natural, it is said is therefore requesting authorization to abandon the transportation service.

Comment date: December 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP96–61–000]

Take notice that on November 13, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–61–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the facilities necessary to establish thirteen additional points of delivery to existing customers for firm transportation service under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the necessary facilities to establish thirteen new points of delivery for firm transportation services under Part 284 of the Commission's regulations. Columbia would provide the services pursuant its blanket certificate issued in Docket No. CP86–240–000 under existing authorized Rate Schedules and within certificated entitlements, as follows:

Customer	No. of end users		Estimated design day quantity	Estimated annual quantity
	Residential	Commercial	(Dth/d)	(Dth)
Columbia Gas of Kentucky, Inc	1	.....	1.5	150
Columbia Gas of Ohio, Inc	2	.....	3	300
Moutaineer Gas Company, West Virgina	9	1	19.5	1,950

Columbia states that the quantities proposed to be provided through the new delivery points would be within Columbia's authorized level of services. Columbia estimates that the cost to install the new taps would be approximately $150 per tap and would be treated as an Operation and Maintenance Expense. Columbia further states that for each of the thirteen delivery points the customer would install a meter within Columbia's existing right-of-way to provide service to the end user.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Koch Gateway Pipeline Company

[Docket No. CP96–63–000]

Take notice that on November 13, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–63–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility, a two-inch delivery tap placed in service under Section 311(a) of the Natural Gas Policy Act (NGPA) and Section 284.3(c), under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the facilities are located in Washington Parish, Louisiana on Koch Gateway's four-inch Franklinton line designated as Index 301–04–02 and were constructed to provide service to TEC Minerals on behalf of Entex, Inc. (Entex), a local distribution company. Koch Gateway states that certification of these facilities will provide Entex with the additional flexibility of being able to use these facilities as a delivery point on Entex's blanket transportation agreements with Koch Gateway. Koch Gateway states that Entex reimbursed Koch Gateway for the total cost of the tap, estimated to be approximately $8,254.

Koch Gateway states that it currently provides interruptible Section 311 transportation service to Entex as reported in FERC Docket No. ST89–2309. Koch Gateway states that once these facilities are certificated, Koch Gateway will also provide transportation services pursuant to Koch Gateway's blanket transportation certificate (FERC Docket No. CP88–6–000). Koch Gateway states that Entex proposes to add this delivery point to its existing firm transportation agreement with Koch Gateway which was filed with the Commission as Docket No. ST95–1843 and provides for an estimated maximum daily quantity of 105,000 MMBtu. Koch Gateway states that Entex estimates that its peak day requirement at this point will be 1,500 MMBtu, and states that the volume delivered to this point under the firm agreement will be within the certificated entitlement of that existing service.

Koch Gateway further states that it will operate the facilities in compliance with 18 CFR, Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

[1] Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995), 72 FERC ¶61,300 (1995); and, Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), 72 FERC ¶61,601 (1995). The notice setting this conference for November 30, 1995, was issued November 6, 1995 (60 FR 56997, November 13, 1995).

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28635 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–95–06]

Qualified Bidders and Bidding Instructions for November 13, 1995 MDS Auction

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice, released November 7, 1995, announced the qualified bidders for the upcoming MDS auction scheduled to begin November 13, 1995, and provided additional bidding instructions. The Public Notice also included a list of the unqualified bidders. This Public Notice is directed toward the Commission's goal of efficiently distributing the unused MDS spectrum through competitive bidding, and is designed to assist prospective bidders in preparing for the upcoming MDS auction.

FOR FURTHER INFORMATION CONTACT: Stacey Reuben-Mesa at (202) 418–0654, John Spencer at (202) 418–0660 or Sharon Bertlesen at (202) 416–0892.

The complete text of the Public Notice dated November 7, 1995 follows. Copies of this item are available for public inspection in Room 207, 2033 M Street, N.W., Washington, D.C. and may also be obtained from the FCC copy contractor, ITS, Inc. at (202) 418–0620, and the FCC auction contractor, Tradewinds International, Inc. at (202) 637–FCC1 (637–3221).

Report No. AUC–95–06, Auction No. 6

November 7, 1995.

This Public Notice identifies applicants who have been found qualified to bid in the auction for 493 authorizations in the single channel and Multichannel Multipoint Distribution Service (collectively MDS), scheduled to begin November 13, 1995. This Notice also provides bidding instructions and other important information regarding the auction.

Qualified Bidders

Each entity listed on Attachment A has filed a timely short-form application to participate in the auction (FCC Form 175–M) that has been accepted for filing, and has timely submitted an amount sufficient to qualify it to bid on at least one authorization for which it has applied. (A small number of applicants did not submit their payments by cashier's check or wire transfer; for this auction only we are treating these as qualified bidders conditioned on the immediate collection of funds.) Each entity listed on Attachment B has been found not qualified to bid in this auction.

In order to participate effectively in the auction, qualified bidders should refamiliarize themselves with the auction rules and other information contained in the MDS Bidder Information Package, particularly pages 35–47 and 60–62. The following information provides additional guidance.

Registration

Qualified bidders have been automatically registered for the auction. For security reason, the Commission will confirm registration by two separate mailings of registration materials, both sent to the contact person at the address identified in the applicant's FCC Form 175–M. The two mailings will include the bidder's identification number, login code, login password and the telephone number for telephonic bidding. By Thursday, November 9, 1995, each bidder should be in possession of the following information:

- FCC account number (self-assigned on the FCC Form 175–M, and listed on Attachment A).
- Bidder identification number (supplied by FCC mailing).
- Login code (supplied by FCC mailing).
- Login password (supplied by FCC mailing).
- Telephone numbers for bidding (supplied by FCC mailing).

Any applicant listed as a qualified bidder in Attachment A to this Public Notice, who has not received both registration mailings by Thursday, November 9, 1995, should contact the FCC's auction contractor, Tradewinds International, Inc., at (202) 637–3221. It is each applicant's responsibility to ensure that all registration information has been received.

Lost login codes, login passwords and bidder identification numbers can be replaced only at the FCC Auction Headquarters, located at 2 Massachusetts Avenue NE., Washington, D.C. 20002. If a replacement is necessary, either an authorized representative or the certifying official (as designated on the applicant's FCC Form 175–M) must appear in person with two forms of identification, one of which must be a photo identification.

Electronic Bidding

Each qualified bidder that wishes to bid electronically must purchase electronic bidding software. Bidders may duplicate the software for backup or for use by authorized representatives at different locations (though not concurrently). However, the FCC Remote Bidding System will not accept electronic bids from qualified bidders who are not registered purchasers of the bidding software.

The FCC Remote Bidding System requires access to a 900 telephone line. Bidders should verify in advance that the telephone systems they will be using to submit electronic bids permit access to 900 telephone numbers, and should consult their telephone administrators if they need assistance.

Bidding Schedule

One round of bidding will be conducted on each of the first two days of the auction. The schedule for Monday, November 13, and Tuesday, November 14, 1995 will be as follows:

10:00 a.m.–2:00 p.m. EST—Bid Submission Period
2:00 p.m.–2:30 p.m. EST—Submission Round Results
2:30 p.m.–3:00 p.m. EST—Bid Withdrawal Period
3:00 p.m.–3:30 p.m. EST—Withdrawal Round Results

Two rounds of bidding will be conducted on each of the third through the fifth days of the auction. The schedule for Wednesday, November 15, Thursday, November 16, and Friday, November 17, 1995, will be as follows:

9:00 a.m.–11:00 a.m. EST—Bid Submission Period
11:00 a.m.–11:30 a.m. EST—Submission Round Results
11:30 a.m.–12:00 noon EST—Bid Withdrawal Period
12:00 noon–12:30 p.m. EST—Withdrawal Round Results
2:00 a.m.–4:00 p.m. EST—Bid Submission Period
4:00 p.m.–4:30 p.m. EST—Submission Round Results
4:30 p.m.–5:00 p.m. EST—Bid Withdrawal Period
5:00 p.m.–5:30 p.m. EST—Withdrawal Round Results

The FCC will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. Generally, at the end of each week of the auction, the FCC will announce the bidding schedule for the following week.

Auction Stages

The FCC will also give ample notice of stage transitions. Stage transitions increase the minimum required activity levels (from 50 to 80 percent, and from 80 to 95 percent of total eligibility). Bidders who are inattentive to these stage transitions may inadvertently lose either activity rule waivers or, if waivers are exhausted, bidding units (also known as "activity units").

Attachment A

Messages and Announcements

The FCC will post pertinent auction information as messages and announcements on the FCC Remote Bidding System, on its Internet site and on its Bulletin Board System (BBS). Bidders should read this information carefully.

Bidder Questions During the Auction

FCC auction officials, technical support staff and others will be available during the course of the auction to answer questions from bidders. Help can be obtained through the following telephone numbers:

- FCC Bidder Line—Use telephone bid number supplied in registration mailing.
- FCC Technical Support Hotline (202) 414–1260.

News Media contact: Stacey Reuben-Mesa at (202) 418–0654
FCC Auctions contact: John Spencer at (202) 418–0660
Mass Media contact: Sharon Bertelsen at (202) 416–0892

Federal Communications Commission.

William F. Caton,

Acting Secretary.

FCC Multipoint Distribution Srvc Auction

Qualified Bidders–Public Notice

Auction ID: 6

(Sorted by Applicant)

Date of Report: 11/7/95.

The following Applicants have been found 'Qualified':

FCC account No.	Name
0943221309	Alaska Wireless Cable, Inc. The following License(s): B136–
8034488125	Albert D. Ervin. The following License(s): B147– B312– B436–
5127081514	Allen Leeds. The following License(s):

FCC account No.	Name
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0954394011	Wireless Enterprises, Inc. The following License(s): ALL.
5049267778	Wireless One of North Carolina, L.L.C. The following License(s): B020– B062– B074– B141– B165– B174– B176– B177– B189– B214– B284– B316– B324– B368– B377– B382– B478–
0721256021	Wirless One, Inc. The following License(s): B006– B009– B016– B017– B022– B024– B026– B032– B034– B042– B044– B047– B048– B049– B052– B058– B059– B066– B067– B072– B076– B081– B083– B085– B091– B092– B093– B094– B096– B098– B102– B107– B108– B115– B120– B125– B135– B146– B147– B151– B152– B154– B158– B159– B160– B175– B178– B180– B186– B195– B196– B197– B198– B210– B211– B212– B219– B229– B232– B236– B237– B238– B239– B246– B252– B257– B260– B263– B265– B269– B271– B273– B289– B290– B292– B293– B295– B302– B304– B305– B308– B312– B313– B314– B315– B320– B326– B334– B335– B336– B338– B339– B340– B343– B348– B359– B384– B408– B410– B415– B419– B423– B436– B439– B440– B441– B449– B450– B452– B454– B455– B456– B467– B469– B474– B491–
0232743641	Wireless Telecommunications, Inc. The following License(s): B116– B124– B179– B181– B201– B227– B240– B249– B252– B266– B313– B342– B357– B360– B370– B398– B405– B406– B408– B483–
4076827104	World Wide Wireless, L.P. The following License(s): All.

Attachment B

FCC Multipoint Distribution Srvc Aucti

Non-Qualified Bidders

Auction ID: 6

(Sorted by Applicant)

Date of Report: 11/7/95

FCC account No.	Name
0541746373	AGL Inc.
0370703673	Adams Telcom. Inc.
0860786531	Altron Communications, L.C.
2028610106	American Car Telephone Co., Inc.
5108064131	Bidco.
5184478300	CS Wireless, Inc.
7139642782	CableNet Group, (USA), Ltd.
3103932741	California Shopping Network Partners.
0660494090	Canbbean Wirless Systems, Inc.
9164582195	Charter & Myers, G.P.
3044752309	Crystal Vision Communications, Inc.
2174834038	Custom Strategies, Inc.
3037565600	FP Broadcasting, Inc.
0630090050	Gulf Coast Services, Inc.
0541597273	Hardin and Associates, Inc.
0570337423	Horry Telephone Cooperative, Inc.
7178464738	ICC.
0954494609	Interactive America Corporation.
0731315508	J & B LTD.
0421387946	METRO BUSINESS JOURNAL, INC.
2025887500	Macon Wireless Partnership.
0222741313	Magnavision Corporation.
6153339288	Nashville Wireless Cable Television, Inc.
0030330109	New England Wireless, Inc.
8045232549	Phoenix Data Communications, Inc.
0660177812	Puerto Rico Telephone Company.
0582136614	SWCC, Inc.
8024763426	Sanguinetti Investment Corp.
2173410721	Sheridan Ruggles.
0421367457	Starcom, Inc.
0760183743	Stephan L. Honore.
0411787309	The Corcoran Group Inc.
0003476562	USLink, Inc.
8097227815	WHTV Broadcasting Corp.
0541499768	Wave International, Inc.

[FR Doc. 95–28121 Filed 11–24–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011375–020.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line
Cho Yang Shipping Co. Ltd.
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A, de C.V.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment provides for additional time to conclude negotiations and administrative processing of service contracts.

Agreement No.: 203–011519.

Title: Tricon/Hanjin Transpacific Agreement.

Parties:

Cho Yang Shipping Co. Ltd.
DSR-Senator Lines
Hanjin Shipping Co., Ltd.

Synopsis: The proposed Agreement authorizes the parties to charter space from one another and to rationalize sailings in the trade between U.S. West Coast ports (Oakland/Long Beach range) and East Coast ports (Key West, FL./Bangor, Me. range), and between ports in Asia (Singapore/Japan range). In addition, the parties may discuss policy with regard to membership in any agreements between or among other carriers serving the Trade, or any sector of the Trade to which any party may be a member. Adherence to any agreement reached is voluntary.

Agreement No.: 203–011520.

Title: Columbus Line/Hapag-Lloyd Slot Charter and Sailing Agreement.

Parties:

Hamburg Sudamerikanische Dampfschiffahrts Gessellschaft Eggert & Amsinck
Hapag-Lloyd AG

Synopsis: The proposed Agreement permits the parties to consult and agree upon the deployment and utilization of vessels, to charter space from one another, and to rationalize sailings in the trade between ports on the West Coast of South America, on the one hand, and ports on the Atlantic Coast of the United States, on the other hand. In addition, the parties may discuss and agree upon rates, rules, service items, terms and conditions of service contracts and tariffs maintained by either party or by any conference to which any party may be a member. Adherence to any agreement reached is voluntary.

Agreement No.: 232–011521.

Title: Tricon/Hanjin Far East Services Slot Charter Agreement.

Parties:

Hanjin Shipping Co., Ltd. ("Hanjin")
Tricon Parties, Cho Yang Shipping Co. Ltd., DSR-Senator Lines

Synopsis: The proposed Agreement would permit Hanjin to charter space from the Tricon Parties and to maintain a fixed day weekly service in the trade between ports in the Far East and U.S. Atlantic and East Coast ports. The parties have requested a shortened review period.

Agreement No.: 224–200961.

Title: Jacksonville Port Authority/Blue Star (North America) Ltd. Wharfage Agreement.

Parties:

Jacksonville Port Authority ("JAXPORT")
Blue Star (North America) Ltd. ("Blue Star")

Synopsis: The proposed Agreement sets wharfage rates for Blue Star at JAXPORT.

Agreement No.: 224–200962.

Title: Port of Galveston/Suderman Contracting Stevedores, Inc. Terminal Agreement

Parties:

Port of Galveston
Suderman Contracting Stevedores, Inc. ("Suderman")

Synopsis: The proposed Agreement authorizes Suderman to provide labor to maintain and repair cranes and other container yard equipment at the East End General Marine Terminal.

By Order of the Federal Maritime Commission.

Dated: November 21, 1995.

Joseph C. Polking,

Secretary.

FR Doc. 95–28873 Filed 11–24–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Grupo Financiero Banamex Accival, S.A. de C.V.; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-467) published on pages 1400 and 1401 of the issue for Monday, January 10, 1994.

Under the Federal Reserve Bank of San Francisco heading, the entry for Grupo Financiero Banamex Accival, S.A. de C.V., is revised to read as follows:

1. Grupo Financiero Banamex Accival, S.A., de C.V., Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico, D.F., Mexico, and thereby indirectly acquire Banamex US Bancorp, Los Angeles, California.

In connection with this application, Applicant proposes to acquire ACCI Securities, Inc., New York, New York, and thereby engage in full service securities brokerage activities, pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y. Applicant also proposes to engage in the following activities which the Board previously has determined by order to be closely related to banking: (1) acting as agent in the private placement of all types of securities; and (2) acting as a riskless principal in the purchase and sale of all types of securities on the order of investors. Applicant has stated that it will conduct the proposed activities within the limitations and prudential guidelines established by the Board in its previous orders. *See Bank of Nova Scotia*, 76 Federal Reserve Bulletin 545 (1990); *J.P. Morgan & Co., Incorporated*, 76 Fed. Res. Bull. 26 (1990); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989).

Comments on this application must be received by December 2, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28821 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Pioneer Community Group, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-27777) published on pages 56600 and 56601 of the issue for Thursday, November 9, 1995.

Under the Federal Reserve Bank of Richmond heading, the entry for Pioneer Community Group, Inc., is revised to read as follows:

1. Pioneer Community Group, Inc., Iaeger, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Iaeger, Iaeger, West Virginia.

Comments regarding this application must be received not later than November 29, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28824 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 11, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corporation, Princeton, New Jersey; to acquire 100 percent of the voting shares of Flemington National Bank and Trust Company, Flemington, New Jersey.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Norwood Financial Corp., Honesdale, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Wayne Bank, Honesdale, Pennsylvania.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community First Bancorp, Inc., Reynoldsville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Reynoldsville, Reynoldsville, Pennsylvania.

D. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Calvin B. Taylor Bankshares, Inc., Berlin, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Calvin B. Taylor Banking Company of Berlin, Maryland, Berlin, Maryland.

2. Highlands Bankshares, Inc., Abingdon, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Highlands Union Bank, Abingdon, Virginia.

E. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Bancshares of Mississippi, Inc. ESOP, Forest, Mississippi; and Community Bancshares of Mississippi, Inc., Forest, Mississippi, to acquire 100 percent of the voting shares of Coast Community Bank, Biloxi, Mississippi, a *de novo* bank.

2. First Hardee Holding Corporation, Wauchula, Florida; to become a bank holding company by acquiring 85.32 percent of the voting shares of First National Bank of Wauchula, Wauchula, Florida.

F. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. ISB Financial Corp., Iowa City, Iowa; to acquire 100 percent of the voting shares of W.S.B., Inc., Washington, Iowa, and thereby indirectly acquire Washington State Bank, Washington, Iowa.

G. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sharon Bancshares, Inc., Sharon, Tennessee; to merge with Weakley County Bancshares, Inc., Dresden, Tennessee, and thereby indirectly

acquire Weakley County Bank, Dresden, Tennesse.

2. The Templar Fund, Inc., St. Louis, Missouri; to acquire an additional 4.0 percent, for a total of 21.70 percent, of the voting shares of Truman Bank, Clayton, Missouri, which is controlled by Truman Bancorp, Inc., St. Louis, Missouri.

H. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BNCCORP, Inc., Bismarck, North Dakota; to acquire 100 percent of the voting shares of BNC National Bank of Minnesota, Minneapolis, Minnesota, a *de novo* bank.

2. First Manistique Corporation, Manistique, Michigan; to acquire 100 percent of the voting shares of South Range State Bank, South Range, Michigan.

3. Private Bancorporation, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Private Bank Minnesota, Minneapolis, Minnesota, a *de novo* bank.

I. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Admiral Steel Corporation, Alsip, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Munden Bankshares, Inc., Munden, Kansas, and thereby indirectly acquire Munden State Bank, Munden, Kansas.

2. Ameribank Corporation, Shawnee, Oklahoma; to acquire 94 percent of the voting shares of United Oklahoma Bankshares, Inc., Del City, Oklahoma, and thereby indirectly acquire United Bank, Del City, Oklahoma.

3. Archer, Inc., Osceola, Nebraska; parent of Osceola Insurance, Inc., Osceola, Nebraska, to retain 15.31 percent, and to acquire an additional 2 percent for a total of 17.31 percent, of the voting shares, of Guaranty Corporation, Denver, Colorado, and thereby indirectly acquire Guaranty Bank & Trust Company, Denver, Colorado.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28817 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

American National Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-27629) published on pages 56337 and 56338 of the issue for Wednesday, November 8, 1995.

Under the Federal Reserve Bank of Kansas City heading, the entry for American National Corporation, is revised to read as follows:

1. American National Corporation, Omaha, Nebraska; to acquire 100 percent of the voting shares of Else Investment Company, Fairbury Nebraska, and thereby indirectly acquire Fairbury State Bank, Fairbury, Nebraska.

Comments on this application must be received by December 1, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28818 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

American Financial Group, Inc., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 11, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. American Financial Group, Inc., Cincinnati, Ohio, and its subsidiaries, Great American Insurance Co., and Great American Life Insurance Company, both of Cincinnati, Ohio; to acquire an additional 12.5 percent, for a total of 16.1 percent, of the voting shares of Provident Bancorp, Inc., Cincinnati, Ohio, and thereby indirectly acquire Provident Bank, Cincinnati, Ohio. and Provident Bank of Kentucky, Alexandria, Kentucky.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael L. Schnell, Spearman, Texas, to acquire an additional 6.84 percent, for a total of 18.05 percent; Robert C. Schnell, Spearman, Texas, to acquire an additional 5.05 percent, for a total of 13.30 percent, Peyton S. Gibner, Houston, Texas, to acquire an additional 11.84 percent, for a total of 31.26 percent; Lea Ann Schrader, Fritch, Texas, to acquire an additional 11.84 percent, for a total of 31.26 percent, of the voting shares of First State Bankshares, Inc., Spearman, Texas, and thereby indirectly acquire First State Bank, Spearman, Texas.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28819 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Campbellsville Bancorp, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-27629) published on pages 56337 of the issue for Wednesday, November 8, 1995.

Under the Federal Reserve Bank of St. Louis heading, the entry for Campbellsville Bancorp, Inc., is revised to read as follows:

1. Campbellsville Bancorp, Inc., Campbellsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Campbellsville National Bank, Campbellsville, Kentucky.

Comments on this application must be received by December 11, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28820 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Banknorth Group, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Banknorth Group, Inc., Burlington, Vermont; to engage *de novo* through its subsidiary, The Stratevest Group, National Association, Burlington, Vermont, in trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Progressive Growth Corp., Gaylord, Minnesota; to engage *de novo* through its subsidiary, Synectic Solutions, Inc., Gaylord, Minnesota, in data warehousing, computer network integration services, communications services related to the transmission of economic and financial data, database management services, and other data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. Progressive Growth Corp., Gaylord, Minnesota; to engage *de novo* through its subsidiary, Progressive Technologies, Inc., Gaylord Minnesota, in data warehousing, computer network integration services, communications services related to the transmission of economic and financial data, database management services, and other data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Community Bancshares, Inc., Knob Noster, Missouri; to engage *de novo* through its subsidiary, First Mortgage Co., Inc., Knob Noster, Missouri, in the origination and servicing of real estate mortgages and resale of the same in the secondary market, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Neighborhood Bancorp, San Diego, California; to engage *de novo* through its subsidiary Neighborhood Capital Advisors, San Diego, California, in community development activities, pursuant to § 225.25(b)(6); and acting as investment or financial advisor, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. Neighborhood Bancorp, San Diego, California; to engage *de novo* through its subsidiary Neighborhood Housing Development Corporation, San Diego, California, in community development activities, pursuant to § 225.25(b)(6); making and servicing loans, pursuant to § 225.25(b)(1), and providing consumer financial counseling, pursuant to § 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28823 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Reliance Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Reliance Bancshares, Inc., Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Reliance Savings Bank, Milwaukee, Wisconsin.

In connection with this application, Applicant also has applied to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to acquire, through its wholly owned subsidiary, Eleven Acquisition Corp., Minneapolis, Minnesota, 100 percent of the voting shares of First Interstate Bancorp, Los Angeles, California, and thereby indirectly acquire First Interstate Bank of California, Los Angeles, California, First Interstate Bank of Montana, National Association, Kalispell, Montana, First Interstate Bank, Ltd., Los Angeles, California, First Interstate Bank of Englewood, National Association, Englewood, Colorado, First Interstate Bank of Alaska, National Association, Anchorage, Alaska, First Interstate Bank of Arizona, National Association, Phoenix, Arizona, First Interstate Bank of Denver, National Association, Denver, Colorado, First Interstate Bank of Idaho, National Association, Boise, Idaho, First Interstate Bank of New Mexico, National Association, Santa Fe, New Mexico, First Interstate Bank of Nevada, National Association, Las Vegas, Nevada, First Interstate Bank of Oregon, National Association, Portland, Oregon, First Interstate Bank of Texas, National Association, Houston, Texas, First Interstate Bank of Utah, National Association, Salt Lake City, Utah, First Interstate Bank of Washington, National Association, Seattle, Washington, First Interstate Bank of Wyoming, National Association, Casper, Wyoming, and First Interstate Central Bank, Calabasas, California.

In connection with this application, First Bank System, Inc., also has applied to acquire First Interstate Resource Finance Associates, Newport Beach, California, a venture capital firm, and thereby engage in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

First Bank System also has applied to exercise an option to acquire up to 19.9 percent of the voting shares of First Interstate Bancorp.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28825 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

National Westminster Prima Limited, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 11, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. National Westminster Prima Limited, London, England; to acquire Infinet Payment Services Inc., Hackensack, New Jersey, and thereby engage in data processing, pursuant to § 225.25(b)(7) of the Board's Regulation Y and Board Order (*The Bank of New York Company, Inc., BayBanks, Inc.*, 80 Fed. Res. Bull. 1107 (1994)); Natwest Securities Corporation, New York, New York, and thereby engage in securities activities, including securities brokerage and financial and investment advisory activities, both separately and on a combined basis, for institutional customers, pursuant to § 225.25(b)(15) of the Board's Regulation Y and Board Order (72 Fed. Res. Bull. 584 (1986)); NatWest International Securities Inc., New York, New York, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; Westminster Research Associates Inc., New York, New York, and thereby engage in certain securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; NatWest Investment Management, Inc., Boston, Massachusetts, and thereby engage in investment advisory activities, pursuant to § 225.25(b)(4) and § 225.25(b)(19) of the Board's Regulation Y; NatWest Markets Leasing Corporation, New York, New York, and thereby engage in lending and leasing activities, pursuant to §§ 225.25(b)(1) and 225.25(b)(5) of the Board's Regulation Y; NatWest Equity Corporation, New York, New York, and thereby engage in lending activities, pursuant to § 225.25(b)(1) the Board's Regulation Y; and NatWest Leasing Corporation, New York, New York, and thereby engage in lending and leasing activities, pursuant to §§ 225.25(b)(1) and 225.25(b)(5) of the Board's Regulation Y. Applicant will be a subsidiary of National Westminster Bank, plc, London, England, and NatWest Holding Inc., New York, New York. The activities will be conducted worldwide.

2. Saban, S.A., Gilbralter, New York, *RNYC Holdings LTD.*, Gilbralter, New York, and *Republic New York Corporation*, New York, New York; to acquire Brooklyn Bancorp, Inc., Brooklyn, New York, and thereby indirectly acquire its subsidiary, Crossland Federal Savings Bank, Brooklyn, New York, and thereby engage in operation a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Monarcy Bancshares, Inc., Taneytown, Maryland; to acquire Royal Oak Savings Bank, F.S.B., Randallstown, Maryland, and thereby engage in operating a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to acquire 100 percent of the voting shares of Republic Mortgage Corporation, Salt Lake City, Utah, and Republic's 45 percent of the voting shares in World Mortgage, Logan, Utah, a Utah general partnership, and Republic's 51 percent interest in Republic Mortgage II L.C., Salt Lake City, Utah, a Utah limited liability company, and thereby engage in making and servicing mortgage loans, pursuant to §225.25(b)(1) of the Board's Regulation Y.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Banterra Corp, Eldorado, Illinois; to acquire through its subsidiary, Banterra Insurance Services, Inc., Eldorado, Illinois, certain assets of Tanner Insurance Agency, Galatia, Illinois, and thereby engage in general insurance activities in a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28822 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Daniel P. Bednarik, Ph.D., Centers for Disease Control and Prevention (CDC): Based on an investigation conducted by the Division of Research Investigations, ORI found that Daniel P. Bednarik, Ph.D., engaged in scientific misconduct by fabricating and falsifying research data in two scientific manuscripts that were submitted for publication to the journal Nucleic Acids Research and to the journal AIDS. One paper, entitled "Expression of the human (cytosine-5) methyltransferase is regulated by alternative mRNA splicing," was not accepted and the other, entitled "Indirect evidence for an EBV–HIV hybrid virus: Human immunodeficiency virus type 1 and Epstein-Barr virus genome association," was withdrawn before review. Dr. Bednarik is a former employee of CDC, and the research was done while he was employed by CDC.

Dr. Bednarik and ORI have entered into a Voluntary Exclusion Agreement, which the parties agreed shall not be construed as an admission of liability or wrongdoing on the part of Dr. Bednarik. Dr. Bednarik has agreed not to appeal ORI's jurisdiction or its findings and has further voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government, as defined in 45 CFR Part 76 and 48 CFR Subparts 9.4 and 309.4 (Debarment Regulations) for a period of two (2) years, beginning on October 30, 1995;

(2) That any institution employing the Respondent be required to submit, in conjunction with each application for PHS funds or report of PHS funded research in which the Respondent is involved, a certification that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application or report for a period of one (1) year following his exclusion;

(3) That any institution that submits an application for PHS support for a research project that proposes the Respondent's participation or that uses the Respondent in any capacity on PHS supported research, must concurrently submit a plan for supervision of the Respondent's duties, designed to ensure the scientific integrity of Dr. Bednarik's research, for a period of one (1) year following his exclusion; and

(4) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigation, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–28839 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–17–P

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Pub. L. 100–175 as amended by Pub. L. 102–375 and Pub. L. 103–171, that the 1995 White House Conference on Aging Policy Committee will hold a meeting on Wednesday, December 13, 1995, in Washington, DC. The general meeting will begin at 1 pm and end at approximately 4 pm. The meeting will be held in room 106 of the Dirksen Senate Office Building at C and First Streets, NE.

The general meeting of the Committee shall be open to the public. The proposed agenda includes a vote on the final report of the Conference which is to be transmitted to the President and the Congress.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street, SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: White House Conference on Aging, 501 School Street, SW., 8th Floor, Washington, DC 20024; telephone (202) 245–7116.

Fernando M. Torres-Gill,

Assistant Secretary for Aging.

[FR Doc. 95–28848 Filed 11–24–95; 8:45 am]

BILLING CODE 4130–02–M

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment.

Type of Information Collection Request: New; *Title of Information Collection:* Medicare Carrier Provider/Supplier Enrollment Application; *Form No.:* HCFA–R–186; *Use:* This information is needed to enroll providers/suppliers by identifying them, verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims

correctly; *Frequently:* Initial application; *Affected Public:* Business or other for profit, Federal Government; *Number of Respondents:* 160,000; *Total Annual Hours:* 240,000.

To request copies of the proposed paperwork collection referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Zaneta Davis, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 14, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 95–28758 Filed 11–24–95; 8:45 am]

BILLING CODE 4120–03–M

Health Standards and Quality Bureau; Statement of Organization, Functions, and Delegations of Authority; Correction

AGENCY: Health Care Financing Administration, HHS.

ACTION: Correction.

SUMMARY: In notice document 95–20692, page 43603 in the first column, in the issue of Tuesday, August 22, 1995, the functional statement for the Survey Training Improvement Team (FLH1) did not accurately reflect the current functions. The new functional statement will read as follows:

a. Survey Training Improvement Team (FLH1)

- Develops and implements the national survey training system.
- Directs and coordinates development, measurement and improvement of an integrated survey training program for HCFA regional office and State agency personnel on interpretation of regulations, survey protocols, procedures and techniques and certification issues.
- In conjunction with the specific program centers, insures that training schedules, materials and techniques are current and comprehensive and meet the needs of HCFA regional office and State agency personnel.
- Serves as the focal point for development of HCFA's distance learning network.
- Evaluates program-related data, including customer service and systems performance data, and develops approaches for improvements to program management, operations and training.
- Manages mission specific contracts.
- Serves as the focal point for administering the certification of Continuing Education Units under the auspices of the International Association for Continuing Education and Training.

Dated: November 7, 1995.

William F. Broglie,

Director, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–28871 Filed 11–24–95; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Gontran Lamberty, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18–A55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Dated: November 21, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–28895 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–15–P

Announcement of Technical Assistance Workshops for Programs Administered by the Division of Disadvantaged Assistance, Bureau of Health Professions

SUMMARY: The Health Resources and Services Administration (HRSA) announces that technical assistance workshops will be held for potential applicants for the FY 1996 competitive grant cycles for the Health Careers Opportunity Program, Centers of Excellence, and the Minority Faculty Fellowship Program.

FOR FURTHER INFORMATION CONTACT: William S. Brooks, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–17, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4493.

SUPPLEMENTARY INFORMATION: The Division of Disadvantaged Assistance will be conducting application preparation technical assistance workshops for potential applicants for the FY 1996 competitive grant cycles for the Health Careers Opportunity Program, Centers of Excellence, and the Minority Faculty Fellowship Program. The workshops are scheduled as follows:

Crowne Plaza Hotel, 4445 Main Street, Kansas City, Missouri 64111, (816) 531–3000, December 4 and 5.

Radisson Hotel San Diego, 1433 Camino del Rio South, San Diego, California 92109, (619) 260–0111, December 7 and 8.

Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852, (301) 468–1100, December 11 and 12.

Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2100 January 4 and 5, 1996.

The program will commence at 9 a.m. each day. Attendees must make their own hotel reservations. Please reference the "Disadvantaged Health Professions Grant Technical Assistance Meeting." Expenses incurred by the attendees will not be supported by the Federal Government. Participation in the technical assistance meetings does not assure approval and funding of applications submitted for competitive review.

Dated: November 21, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–28837 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Family Heart Study (FHS).
Date: December 13–14, 1995.
Time: 7:30 p.m.
Place: DoubleTree Hotel, Rockville, Maryland.
Contact Person: Anthony M. Coelho, Jr., Ph.D., Rockledge II, Room 7182, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0277.
Purpose/Agenda: To review and evaluete grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.387, Heart and Vascular Diseases Research; 93;838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: November 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28752 Filed 11–24–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: November 27, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4192, Telephone Conference.
Contact Person: Dr. Lynwood Jones, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4192, Bethesda, Maryland 20892, (301) 435–1153.
Name of SEP: Behavioral and Neurosciences.
Date: November 28, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5190, Telephone Conference.
Contact Person: Dr. Herman Teitelbaum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5190, Bethesda, Maryland 20892, (301) 435–1254.
Name of SEP: Biological and Physiological Sciences.
Date: November 28, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5202, Telephone Conference.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.
Name of SEP: Microbiological and Immunological Sciences.
Date: November 28, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4198, Telephone Conference.
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 4198, Bethesda, Maryland 20892, (301) 435–1218.
Name of SEP: Biological and Physiological Sciences.
Date: November 29, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4192, Telephone Conference.
Contact Person: Dr. Lynwood Jones, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4192, Bethesda, Maryland 20892, (301) 435–1153.
Name of SEP: Biological and Physiological Sciences.
Date: November 29, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.
Name of SEP: Biological and Physiological Sciences.
Date: November 30, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.
Name of SEP: Clinical Sciences.
Date: November 30, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.
Name of SEP: Biological and Physiological Sciences.
Date: December 1, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4204, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4204, Bethesda, Maryland 20892, (301) 435–1221.
Name of SEP: Biological and Physiological Sciences.
Date: December 1, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.
Name of SEP: Biological and Physiological Sciences.
Date: December 1, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.
Name of SEP: Microbiological and Immunological Sciences.
Date: December 1, 1995.
Time: 11 a.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.
Name of SEP: Clinical Sciences.
Date: December 4, 1995.
Time: 12 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.
Name of SEP: Microbiological and Immunological Sciences.
Date: December 4, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.
Name of SEP: Microbiological and Immunological Sciences.
Date: December 4, 1995.
Time: 3 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892. (301) 435–1146.
Name of SEP: Clinical Sciences.
Date: December 5, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892. (301) 435–1787.
Name of SEP: Behavioral and Neurosciences.
Date: December 5, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892. (301) 435–1247.
Name of SEP: Biological and Physiological Sciences.
Date: December 5, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892. (301) 435–1017.

This notice is being published less than 15 days prior to the above meetings due to the

urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: December 6, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 5202, Telephone Conference.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892. (301) 435–1260.

Name of SEP: Multidisciplinary Sciences.
Date: December 6, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5114, Telephone Conference.
Contact Person: Dr. Gerald Becker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5114, Bethesda, Maryland 20892. (301) 435–1170.

Name of SEP: Clinical Sciences.
Date: December 6, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4140, Telephone Conference.
Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, Maryland 20892. (301) 435–1214.

Name of SEP: Biological and Physiological Sciences.
Date: December 7, 1995.
Time: 1 p.m.
Place: Sheraton Inn, Crystal City, Virginia.
Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892. (301) 435–1016.

Name of SEP: Biological and Physiological Sciences.
Date: December 8, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892. (301) 435–1017.

Name of SEP: Clinical Sciences.
Date: December 11, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Chemistry and Related Sciences.
Date: December 12, 1995.
Time: 9 a.m.
Place: NIH, Rockledge 2, Room 4156, Telephone Conference.
Contact Person: Dr. Ronald DuBois, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, Maryland 20892, (301) 435–1722.

Name of SEP: Clinical Sciences.
Date: December 13, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4140, Telephone Conference.
Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, Maryland 20892, (301) 435–1214.

Name of SEP: Clinical Sciences.
Date: December 14, 1995.
Time: 12 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Behavioral and Neurosciences.
Date: November 30, 1995.
Time: 8:30 a.m.
Place: Bethesda, Marriott, Bethesda, Maryland.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28753 Filed 11–24–95; 8:45 a.m.]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, As amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of Minority Applications (K14s).
Date: December 12–13, 1995.
Time: 8:00 p.m.
Place: Holiday Inn Bethesda, Bethesda, Maryland.
Contact Person: Dr. Eric Brown, Rockledge II, Room 7204, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0299.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Dieases Research; and 93.839, Blood Diseeses and Resources Research, National Institutes of Health.)

Dated: November 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28754 Filed 11–24–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Research and Demonstration Projects for Indian Health

AGENCY: Indian Health Service.

ACTION: Notice of single source cooperation agreement with the American Indian Health Care Association, Inc. (AIHCA).

SUMMARY: The Indian Health Service (IHS) announces the award of a cooperative agreement to the American Indian Health Care Association, Inc. (AIHCA) for a demonstration project for urban Indian health care advocacy, consultation, health data dissemination, training, and technical assistance. The project is for a one year project period effective September 30, 1995, to September 29, 1996. Funding for the project is $200,000.

The award is issued under the authority of the Public Health Service Act, sec. 301, and is listed under Catalog of Federal Domestic Assistance number 93.933.

The specific objectives of the project are:

1. To develop model financial management systems for use by the Title V urban Indian health programs.
2. To provide advice to and consult with Title V urban Indian health programs to develop a plan to address the needs of urban programs.
3. To maintain relationship with and document support of the Title V urban Indian health programs.

Justification for Single Source

This project has been awarded on a non-competitive single source basis. AIHCA is the only nationwide Indian organization which is specifically established to address the health needs of American Indians living in urban areas. Furthermore, it is the only nationwide organization of urban Indians supporting the growth of the urban Indian health care delivery system, and providing education, training, and technical assistance to the urban Indian programs.

Use of Cooperative Agreement

A cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. Substantial programmatic involvement is as follows:

1. IHS staff will attend at least one Board meeting or national meeting annually. The purpose will be to present the IHS perspective on current health care and legislative issues affecting the urban Indian people.
2. IHS staff will provide input and approve model management policies and procedures developed by AIHCA.
3. IHS staff will receive copies of articles submitted for publication in the National Indian Health Board newsletter.
4. IHS staff will participate in the redesign planning process.
5. IHS staff will be involved in the selection and approval process for hiring key personnel. Key personnel include the Executive Director and consultants. AIHCA must submit Executive Director selection criteria to IHS for approval.

Contacts

For program information, contact Mr. Elmer Brewster, Chief, Urban Programs, Office of Health Programs, Indian Health Service, Room 5A–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852 (301) 443–4680. For grants management information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, Suite 100, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204.

Dated: November 13, 1995.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 95–28896 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 46621, September 7, 1995) is amended to reflect the reorganization of the Office of the Director, National Institute of Child Health and Human Development (NICHD) (HNT). The reorganization consists of the following: (1) Retitle the Office of Science Policy and Analysis (HNT14) to the Office of Science Policy, Analysis and Communication (OSPAC) and revise its functional statement and (2) transfer the functions of the Office of Research Reporting (ORR) (HNT13) to OSPAC (HNT14) and abolish ORR. This reorganization improves the ability of the NICHD to fulfill its mission by restructuring the OD/NICHD and thereby improving the integration of related program areas and streamlining operations.

Section HN-B, Organization and Functions is amended as follows: (1) Under the heading *Office of Research Reporting (HNT13),* delete the title and functional statement in their entirety.

(2) Under the heading *Office of Science Policy and Analysis (HNT14),* delete the title and the functional statement and substitute the following:

Office of Science Policy, Analysis and Communication (HNT14). (1) Conducts or assimilates studies on emerging science or policy issues within the fields of population research; the health of mothers, children, and families; and medical rehabilitation; (2) collects, classifies, summarizes, analyzes, and interprets research and research training data, scientific literature, and technical reports; (3) develops and maintains a comprehensive communications program, disseminating information to the lay and professional publics, the media, voluntary organizations, and other constituencies; (4) develops and issues reports, briefing materials, and other compilations of the Institute's activities, programs, and policies for use in preparation for congressional hearings and program planning and implementation; (5) tracks, analyzes, and reports scientific, administrative, and fiscal data on Institute programs; (6) serves as Institute legislative liaison, maintaining an awareness of ongoing legislative activities, and coordinating the planning and preparation of legislative proposals for the Institute; (7) coordinates activities leading to the selection of program objectives and the development of plans reflecting Institute priorities; (8) serves as Institute referral office; (9) sponsors consensus conferences and conducts analyses for the Institute technology assessment and transfer activities; (10) prepares and maintains comprehensive multi-year program plans; (11) develops mechanisms to coordinate all office functions with other relevant agencies; and (12) advises staff on application of the Freedom of Information Act to NICHD's programs.

Dated November 8, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–28755 Filed 11–24–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 48518, September 19, 1995), is amended to reflect the reorganization of the Office of the Director, National Heart, Lung, and Blood Institute (NHLBI) (HNH) as follows: retitle the Office of Program Planning and Evaluation (HNH12) to the Office of Science and Technology and revise its functional statement.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *National Heart, Lung, and Blood Institute (HNH12), Office of Program Planning and Evaluation (HNH12),* delete the title and functional statement in their entirety and substitute the following:

Office of Science and Technology (HNH12)

(1) Advises the Director, NHLBI, on program policies; (2) assists the Director, NHLBI, in establishment of Institute goals and in development of programs to meet these goals; (3) coordinates and assesses progress on cardiovascular, lung, and blood diseases; blood resources; and sleep disorders for use in program reports, development of policy, and operations; (4) coordinates presentation of Institute activities in reports and presentations to the Director, NIH, the Secretary, DHHS, the Congress, and the public; (5) coordinates and tracks legislation and prepares Congressional testimony materials; (6) coordinates and enhances NHLBI minority and women health activities; (7) develops and coordinates NHLBI automated office systems and data processing; (8) develops and maintains comprehensive and accurate computerized information systems and (9) coordinates and provides guidance concerning international cooperative research activities.

Dated: November 8, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–28756 Filed 11–24–95; 8:45 am]

BILLING CODE 4140–01–M

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part HB, (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 60 FR 55723, November 2, 1995 is amended to reflect the addition of the Refugee Health Program:

Under HB–20, Organization and Functions amend the functional statements for the Bureau of Primary Health Care (HBC), by adding the following:

Division of Immigration Health Services (HBC9). Serves as the primary focal point for planning, management, policy formulation, program coordination, direction and liaison for all health matters pertaining to aliens detained by the Immigration and Nationalization Service (INS). Additionally, the Division is responsible for provision of direct primary health care at all INS Service Processing Centers throughout the Nation. Specifically: (1) works with the INS to plan, manage, formulate policy, coordinate programs, and provide direction and liaison for health matters pertaining to aliens detained by the INS, (2) manage INS direct primary care facilities and assist in oversight of care provided in contract facilities;; (3) provides direct primary health care to the detained alien population; (4) develops and implements policy and guidelines relating to detained alien health and mental health screening and care; (5) provides liaison between INS, other Department of Justice activities, and other DHHS components on all issues involving health care of detained aliens and INS employees; (6) provides medical support for deportation and repatriation transportation of aliens by the INS; (7) reviews and evaluates all INS alien health activities in terms of unmet needs, operational improvement, and health and safety of both the health care facilities and detention environments; (8) compiles statistical data of the health status of detained alien population and the cost of care within the Division of Immigration Health Services and the care purchased outside of the INS.

Delegation of Authority

All delegations and redelegations of authorities to offices and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective upon the date of signature.

Dated: November 9, 1995.

Ciro V. Sumaya,

Administrator, Health Resources and Services.

[FR Doc. 95–28897 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR 3991–N–01]

Notice: Request for Proposals (RFP) and Program Guidelines for Assignment of Grant Responsibilities Under the Innovative Homeless Initiatives Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice: Request for Proposals (RFP) and Program Guidelines for Assignment of Grant Responsibilities under the Innovative Homeless Initiatives Demonstration Program.

SUMMARY: This Request for Proposals (RFP) solicits proposals to receive assignment of and to assume the obligations of the Recipient under Innovative Demonstration Program Project No. NY36I94–0628, a funded project in New York City designed to serve homeless persons in the Midtown area, in particular the many homeless persons who reside in or near Grand Central Station.

DATES: An original and one copy of the proposal are due no later than December 18, 1995, at the following address: Department of Housing and Urban Development, Community Planning and Development Division, 26 Federal Plaza, New York, New York, 10278–0068, Attention: Joseph D'Agosta, Director. Proposals may not be sent by facsimile.

FOR FURTHER INFORMATION CONTACT: Kate Brennan, Office of Community Planning and Development, 451 Seventh Street SW., Washington DC 20410–7000, telephone (202) 708–1234 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

A. Introduction

This Request for Proposals (RFP) solicits proposals to receive assignment of and to assume the obligations of the Recipient under Innovative Demonstration Program Project No. NY36I94–0628, a funded project in New York City designed to serve homeless persons in the Midtown area, in particular the many homeless persons who reside in or near Grand Central Station. The specific responsibilities under the grant are summarized in section C "Scope of Work." HUD will consent to the assignment to and assumption by the selectee, however, the assignment and assumption agreement will be between the original Recipient and the selectee. The term of the assigned grant shall be the term remaining from the original two year grant, which as of the date of publication is approximately 12 months.

The additional sections of this RFP are:

B. Funding
C. Scope of Work
D. Proposal Contents
E. Evaluation Factors
F. Contract Award

Note: An original and one copy of the proposal are due no later than December 18, 1995, at the following address: Department of Housing and Urban Development, Community Planning and Development Division, 26 Federal Plaza, New York, New York, 10278–0068, Attention: Joseph D'Agosta, Director. Proposals may not be sent by facsimile.

B. Funding

Funding will be approximately $480,000, which represents the remaining amount awarded under Project Number NY36I94–0628.

C. Scope of Work

The selected proposal will operate a private shelter bed initiative and a start up loan program as described in the original application, Project Number NY36I94–0628. The activities include: (1) developing transitional housing programs in cooperation with churches and synagogues in the metropolitan New York city area, in particular in the area of Grand Central Station, that are interested in helping move homeless persons to independent living, but that may lack the capacity or funding to undertake this; and (2) a "loan" program to provide funds to homeless persons residing in this same area, to assist in their permanent housing search. The loans could be used for such things as security deposits and first month's rent and be paid back in cash or through volunteer work in the organization's homeless facility.

Copies of the original application and grant agreement are available from the Community Planning and Development Division of the HUD New York Field Office on (212) 264–2885. Written requests may be addressed to the attention of Joseph D'Agosta, Director, Community Planning and Development Division, US Department of Housing and Urban Development, 26 Federal Plaza, New York, NY, 10278–0068.

The proposal selected under this RFP will operate under the assigned grant, which is subject to the HUD Demonstration Act of 1993 (Pub. L. 103–120, signed on October 27, 1993) and the Notice of Fund Availability (NOFA) published December 21, 1993 in the **Federal Register**, which governed the original competition. Copies of both will also be available from the Field Office for review.

D. Proposal Contents

The proposal must be submitted by a state, metropolitan city, urban county, unit of general local government, Indian tribe or a nonprofit organization, as defined in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302). Each proposal must include all information requested in this section. A newly-formed organization may substitute a description of the experience and knowledge of its principal officers and employees where a description of its own experience is requested below.

The following are required contents of a written proposal to be submitted no later than 21 days after publication in the **Federal Register**:

I. Description of experience. Submit a narrative description of experience in assisting homeless persons and in running programs similar to those proposed in the application. Also include a description of the qualifications of key staff who will be carrying out the program and a description of staff organization.

II. Proof of Eligibility. If the proposal is from a nonprofit it must contain either documentation showing that the applicant is a certified United Way member agency; or a copy of their IRS ruling providing tax-exempt status under Section 501(c)(3) of the IRS Code of 1986, as amended.

III. Project description. Submit a narrative description of the organization's specific plan for carrying out the proposed activities. Include specific designs for (1) enlisting churches and synagogues in the development of transitional housing and the type of assistance your organization will provide to them in the development of such housing, and (2) developing a loan program that meets the needs of homeless persons seeking permanent housing. The project described should be based as closely as possible on the original application.

IV. Certifications. Submit the certifications printed here as Appendix A to this RFP. The document may be removed or photocopied (do not re-type), and must be signed by the official authorized to act on behalf of the applicant.

E. Evaluation Factors

A proposal will be selected based on the extent to which the prospective assignee demonstrates in the written submission the capacity to implement a program that achieves the purpose of this RFP including the speed with which the project and activities will become operational.

The following are the factors for evaluation which will receive equal consideration in the selection process:

(1) *Capacity of the organization.* The extent to which the organization demonstrates that it, or its subcontractors, has the capacity to carry out the proposed activities based on (a) the past experience of the organization in the proposed activities; and (b) the qualifications of key staff.

(2) *Timeliness.* The extent to which the organization demonstrates that the proposed activities will begin in a timely manner and will be carried out efficiently and expeditiously.

(3) *Relevance of project activities.* (a) The extent to which the proposed project mirrors the activities as described in the original application; and (b) the overall quality of the project.

F. Contract Award

Award will be made to the proposal which HUD determines is most responsive to the evaluation factors above. HUD reserves the right to reject all proposals.

Dated: November 20, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Appendix A—Applicant Certifications

The Applicant hereby assures and certifies that:

1. It will comply with:

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance, and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

b. The Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing. For Indian tribes, it will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), instead of Title VI and the Fair Housing Act and their implementing regulations.

c. Executive Order 11063 on Equal Opportunity in Housing, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp. p. 652 and 3 CFR, 1980 Comp. 307) and the implementing regulations at 24 CFR part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

d. Executive Order 11246 on Equal Opportunity in Employment (3 CFR 1964–1965, Comp., p. 339) and the implementing regulations at 41 CFR part 61, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

e. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)), and the implementing regulations at 24 CFR part 135, which require that to the greatest extent feasible, employment, training and contract opportunities arising in connection with the expenditure of HUD assistance covered by section 3 be given to the low-income persons and the business concerns identified in the part 135 regulations.

f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and the implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities.

g. The Age Discrimination Act of 1975 (42 U.S.C. 6101–07), as amended, and the implementing regulations at 24 CFR part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

h. Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.

If persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested persons can obtain information concerning the assistance.

i. The reasonable modification and accommodation requirements of the Fair Housing Act and, as appropriate, the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

2. It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an ongoing drug-free awareness program to inform employees about—

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a;

d. Notifying the employee in the statement required by paragraph a that, as a condition of employment under the grant, the employee will—

(1) abide by the terms of the statement; and

(2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d(2), with respect to any employee who is so convicted—

(1) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a, b, c, d, e, and f;

h. Providing the street address, city, county, state, and zip code for the site or sites where the performance of work in connection with the grant will take place. For some applicants who have functions carried out by employees in several departments or offices, more than one location may need to be specified. It is further recognized that States and other applicants who become grantees may add or change sites as a result of changes to program activities during the course of grant-funded activities. Grantees, in such cases, are required to advise the HUD Field Office by submitting a revised "Place of Performance" form. The period covered by the certification extends until all funds under the specific grant have been expended.

3. It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR part 24.

4. It will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR part 35.

5. It will (i) not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of an environmental review in accordance with 24 CFR part 50 and HUD's approval of the application; (ii) supply HUD with information necessary for HUD to perform any applicable environmental review when requested; and (iii) carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

6. The applicant certifies that:

a. No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and of more than $100,000 for each such failure.

7. For private nonprofit applicants, the applicant certifies that members of its Board of Directors serve in a voluntary capacity and receive no compensation, other than reimbursement for expenses, for their services.

8. The applicant certifies that it and its principals (see 24 CFR 24.105(p)):

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.110) by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the applicant is unable to certify to any of the statements in this certification, the applicant shall attach an explanation behind this page.

Signature of Authorized Certifying Official:

Title:

Applicant:

Date:

[FR Doc. 95–28946 Filed 11–24–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. (PSDT) on Saturday, December 2, 1995, at the County of Inyo Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), independence, California to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including the preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Ms. Sue Kunitomi Embrey, Chairperson
Mr. William Michael, Vice Chairperson
Mr. Keith Bright
Ms. Martha Davis
Mr. Ronald Izumita
Mr. Gann Matsuda
Mr. Vernon Miller
Mr. Mas Okui
Mr. Glenn Singley
Mr. Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) Review of the draft park General Management Plan.

(3) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(4) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after January 31, 1996. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, California 93526.

Dated: November 7, 1995.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 95–28885 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32803]

Belvidere & Delaware River Railway—Acquisition and Operation Exemption—Consolidated Rail Corporation

Belvidere & Delaware River Railway, a noncarrier, has filed a notice of exemption to acquire from Consolidated Rail Corporation and operate approximately 16.96 miles of the former Delaware Secondary Track between milepost 50.60 at Phillipsburg and milepost 33.64 at Milford, in Warren and Hunterdon Counties, NJ. The parties expected to consummate the transaction on November 10, 1995, the effective date of the exemption.

Any comments must be filed with the Commission and served on: John K. Fiorilla, Watson, Stevens, Fiorilla & Rutter, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28641 Filed 11–24–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–57 (Sub–No. 37X)]

Soo Line Railroad Company—Abandonment Exemption—in Milwaukee County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the regulatory requirements of 49 U.S.C. 10903–04 the abandonment by Soo Line Railroad Company (Soo) of 0.56 miles of rail line in Milwaukee, Milwaukee County, WI, subject to the standard

employee protective conditions and to an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 27, 1995. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by December 7, 1995; petitions to stay must be filed by December 12, 1995; requests for a public use condition must be filed by December 18, 1995; and petitions to reopen must be filed by December 22, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 37X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Larry D. Starns, Esq., 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: November 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28855 Filed 11–24–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated August 10, 1995, and published in the **Federal Register** on August 17, 1995, (60 FR 42904), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Division Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 16, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–28877 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated June 29, 1995, and published in the **Federal Register** on July 6, 1995, (60 FR 35226), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

A registered manufacturer filed a comment requesting that Penick's application be denied for consideration of the public interest and United States' international commitments. The commentor further stated that there is no evidence that Penick is in business or capable of entering the business of importing controlled substances. The Drug Enforcement Administration (DEA) has conducted inspections of Penick and found that the firm has complied with the public interest requirements of the Controlled Substances Act (CSA). Penick's current application was filed to renew an importer registration which the firm has maintained for several years and under which the firm has imported controlled substances in the past in conformance with the CSA and DEA regulations. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: November 16, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–28878 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–09–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7 and 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *City of Minot, North Dakota,* Civil Action No. *A4–95–141,* was lodged on October 26, 1995, with the United States District of North Dakota, Northwestern Division. A complaint was also filed on October 26, 1995. The State of North Dakota ("State") is a party to the Consent Decree.

The proposed consent decree requires the former Site operator, the City of Minot Landfill Site ("Site") located in Ward County, North Dakota, as required by the Record of Decision signed by the U.S. Environmental Protection Agency ("EPA") on or about June 21, 1993, including (a) implementing institutional controls to prohibit construction on the landfill and the use of water beneath the landfill or in the immediate vicinity of the landfill for drinking water purposes; (b) extracting and treating landfill leachate in the City's wastewater treatment facility; (c) consolidating contaminated soil in the vicinity of leachate seeps under the landfill cap and to improve the cap to limit precipitation infiltration and to control stormwater runoff; (d) monitoring ground-water to detect future releases of contaminants to the ground water; and (e) collecting and dispersing landfill gas by using an active collection system and a tall stack; (2) to pay the United States $100,000.00 in reimbursement of past and future response costs; and (3) to pay, upon demand by the State after the entry of the Consent Decree, those response costs incurred by the State in a manner not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, to conduct Site oversight. The North Dakota Department of Health and EPA have agreed to share oversight of certain of the City's work associated with the remedy.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Minot, North Dakota,* DOJ Ref. #90–11–3–951.

The proposed consent decree may be examined at the Office of the United States Attorney, District of North Dakota, 219 Fed. Bldg. & U.S. Cthse., 655 1st Ave. No., Fargo, North Dakota 58102; the Region VIII Office of the Environmental Protection Agency, 999 18th Street—Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the proposed decree and attachments, please refer to the referenced case and enclose a check in the amount of $46.00 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28762 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

[OJP Number 1070]

Cancellation of the Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

November 21, 1995.

AGENCY: Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of cancellation of the meeting.

SUMMARY: The meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention announced on November 15, 1995 (60 FR 57456) and scheduled to take place in the District of Columbia, beginning at 1:00 p.m. on Tuesday, November 28, 1995, and ending at 3:00 p.m. on November 28, 1995 is hereby canceled. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at a later date to be announced by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The point of contact at OJJDP is Gina Wood, Director, Concentration of Federal Efforts Program who can be reached at (202) 616–9159.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–28949 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations;

AGENCY: Hazardous Waste Operations and Emergency Response (OMB No. 1218–0202).

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the paperwork requirements of 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (HAZWOPER).

DATES: Written comments must be submitted on or before January 26, 1996.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–95–2, U.S. Department of Labor, Room N–2625, 200 Constitution Ave, NW, Washington, DC 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies, contact the Labor New Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in 29 CFR 1910.120. That approval will expire on June 30, 1996 unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

As part of OMB's and OSHA's continuing paperwork reduction effort, OSHA seeks to reduce the paperwork burden hours in 29 CFR 1910.120 based

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

upon input from parties interested in the regulatory scope of that regulation. The purpose of this notice is to solicit public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's existing estimates, which are based upon information available during rulemaking, and to comment on their accuracy or appropriateness in today's workplace situation. OSHA bases its existing estimates upon information made available to the Agency during the initial rule making effort for 29 CFR 1910.120 (August 10, 1987; 52 FR 29620) and believes that this data may be outdated.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response.

Type of Review: Extension of existing approval with one typographic correction. The current total burden hours should be 18,726,849 instead of 18,726,049. The eight in the hundreds spot was read previously as a zero.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).

OMB Number: 1218–0202 (Previously 1218–0138).

Agency Number: Docket No. ICR–95–2.

Frequency: On occasion.

Affected Public: Business or other for-profit, Federal government, and State, Local or Tribal governments.

Number of respondents: 35,118.

Estimated Time Per Respondent: Varies.

Total Estimated Cost: $374,536,981.00.

Total Burden Hours: 18,726,849.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request: they will also become a matter of public record.

Dated: November 20, 1995.

Thomas H. Seymour,

Acting Director, Director of Safety Standards Programs.

[FR Doc. 95–28861 Filed 11–24–95; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–10031]

Proposed Class Exemption To Permit Certain Authorized Transactions Between Plans and Parties in Interest

AGENCY: Pension and Welfare Benefits Administration (PWBA), Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The proposed class exemption would apply to certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to exemptions previously granted by the Department. If granted, the proposed exemption would affect plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 11, 1996.

ADDRESSES: All written comments (at least three copies) and requests for a public hearing should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attn: D–10031). Comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U. S. Department of Labor, room N–5638, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams, Mr. Ronald Willett, or Mr. Louis Campagna, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor, telephone (202) 219–8971 (This is not a toll-free number.); or Mr. William Taylor, Plan Benefits Security Division, Office of Solicitor, U. S. Department of Labor (202) 219–4592. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code.

The Department is proposing the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990).[1]

Paperwork Reduction Act Analysis

The collection of information contained in this proposed class exemption has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. 44 U.S.C. 3507(d). For copies of the OMB submission, contact Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N–1301, 200 Constitution Ave. NW, Washington, D.C. 20210, 202–219–5095 or via internet to tomalley@dol.gov. Comments are solicited on the Department's need for this information, specifically to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Persons wishing to comment on the collection of information should direct their comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, NEOB, Washington, D.C. 20503, Attn: Desk Officer for PWBA. Comments must be filed with the Office of Management and Budget within 60 days of this publication. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Department: Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N–1301, 200 Constitution Ave. NW, Washington, D.C. 20210. For further information, contact Gerald B. Lindrew at 202–219–4782.

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

Title: Class Exemption To Permit Certain Authorized Transactions Between Plans and Parties in Interest

Summary: Certain parties in interest to ERISA covered pension and welfare benefit plans have the opportunity to seek approval on an accelerated basis of otherwise prohibited transactions by providing the Department and interested persons with information demonstrating that the proposed transaction is substantially similar to at least two individual exemptions previously granted by the Department, and in some cases show that the interests of the participants and beneficiaries are adequately represented and protected by an independent fiduciary.

Needs and Uses: ERISA requires that the Department make a finding that the proposed exemption meets the statutory requirements of section 408(a) before granting the exemption. The Department therefore finds it necessary to receive certain information from the applicants, and that participants and beneficiaries receive notice and an opportunity to comment on the proposed transaction.

Respondents and proposed frequency of response: The Department staff estimates that approximately 25 applicants will seek to take advantage of this class exemption in any given year. The respondents will be plans and parties in interest to plans.

Estimated annual burden: Based on past experience, the staff believes that none of the materials required to be submitted under this exemption will be prepared by the respondents; rather, the respondents are expected to contract with service providers such as attorneys, accountants, and third-party administrators to prepare the material. Therefore, the Department asks that 1 hour be inserted as the estimated burden, in light of the current requirements that time spent by service providers not be included in the hourly burden estimate. The annual cost of using service providers for this collection of information is estimated to be $19,537.50.

Background

The Department is proposing the class exemption contained in this notice as part of a continuing effort to facilitate the administration of the rules for proposing and granting exemptions from the prohibited transactions provisions of ERISA. The rules set forth in section 406 of ERISA prohibit various transactions between employee benefit plans covered by title I of ERISA and certain related parties, unless a statutory or administrative exemption applies to the transaction. These related parties, such as plan fiduciaries, sponsoring employers, unions and service providers are defined as parties in interest in section 3(14) of ERISA, and, in the absence of an exemption, may not engage in transactions described in section 406 of ERISA with a plan.

Specifically, section 406(a)(1) prohibits a fiduciary of a plan from causing the plan to engage in a transaction that constitutes a direct or an indirect: sale, exchange or leasing of any property between the plan and a party in interest; lending of money or other extension of credit between the plan and a party in interest; furnishing of goods, services or facilities between the plan and a party in interest; transfer to, or use by or for the benefit of a party in interest of any assets of the plan or acquisition on behalf of the plan of any employer security or real property in violation of section 407(a) of ERISA. Section 406(a)(2) provides that no fiduciary who has authority or discretion to control or manage plan assets shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a) of ERISA. Section 406 (b)(1) and (b)(2) prohibits a fiduciary, with respect to a plan, from dealing with the assets of the plan in his own interest or for his own account; and acting in his individual capacity or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of the participants or beneficiaries. In addition, such transactions that involve plans described in section 4975(e)(1) of the Code are generally subject to taxation under section 4975 of the Code.

In the past, the Department has frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions from the restrictions imposed by section 406 of ERISA where it has been able to find that the statutory criteria have been met.[2] This process has been helpful in providing exemptive relief for transactions which were prohibited, but were otherwise in the interests of the plans, participants and beneficiaries.

The Department has promulgated an exemption procedure[3] which provides, among other things, that an exemption will not be granted until a notice of pendency has been published in the **Federal Register**, and interested persons have been given an opportunity to comment on the proposed transaction. Following consideration of the entire record, the Department then makes its final determination whether to grant the exemption. If the Department contemplates not granting the requested exemption, the procedure also provides an applicant with the right to a conference.

Typically, the Department grants individual exemptions for specific transactions involving particular plans and parties in interest. Such exemptions are generally made at the request of the parties involved. In certain cases, however, the Department believes that an exemption applicable to a class of transactions would be appropriate in order to eliminate the need for individual exemptions.

In this regard, the Department granted Prohibited Transaction Exemption (PTE) 79–15 to permit parties in interest to engage in transactions or activities that are specifically authorized or required, prior to the occurrence of such transactions or activities, by a court order of the United States District Court, provided that the transaction is specifically described in such order or settlement, and the Secretary of Labor or the Internal Revenue Service is a party to the litigation.[4] PTE 79–15 was granted in recognition of the fact that under these circumstances the court has the benefit of the views of the Department and the Internal Revenue Service as to the propriety of rendering a judgment which approves a settlement contemplating transactions which might be prohibited under ERISA and the Code.

The Department recently granted PTE 94–71 to permit parties to engage in prospective transactions or activities which are specifically authorized by a non-judicial settlement resulting from an investigation of a plan by the Department.[5] The exemption recognizes

[2] Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless a finding is made that such exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of such plan.

[3] See 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

[4] 44 FR 26979 (May 8, 1979).

[5] 59 FR 51216 (October 7, 1994).

that in authorizing a transaction that would otherwise be prohibited as part of a settlement, the Department will give appropriate consideration to whether such transaction is in the interests of plan participants and beneficiaries.

Based on its experience in considering exemption applications for over twenty years, the Department has observed that many of the applications present routine transactions involving terms, conditions and circumstances which are substantially similar to those described in previously granted individual exemptions. In fact, many exemption applicants have made it a practice to consult previously granted exemption files in the preparation of their submissions. Such applicants often submit applications containing nearly identical transactions, terms and conditions to those previously granted. Since the enactment of ERISA, the Department has exempted a large number of recurring transactions, including loans, leases and sales of real property. As a result, standard terms and conditions have developed over time which assure that the transaction is protective of the plan's interests.

The Department believes that further action would be appropriate in order to expedite consideration of those routine transactions which are similar to those that have been previously considered by the Department in prior exemption proceedings, without sacrificing the interests of the plan participants and beneficiaries. Accordingly, the exemption proposed in this notice would be available to the party proposing to engage in a prohibited transaction, if the party can demonstrate to the Department that such transaction and the material terms, conditions and representations therein are substantially similar to at least two individual exemptions previously granted by the Department.

Discussion of the Proposed Exemption

Proposed Conditions

The proposal contains conditions, as discussed below, which the Department views as necessary to support a finding that the proposed exemption meets the statutory standards of section 408(a) of ERISA.

Under section I of the proposed exemption, relief is provided for transactions, as discussed below, from certain of the restrictions described in section 406(a) of ERISA. In this regard, section I(a) requires that the transaction be substantially similar to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60 month period ending on the date a written submission is filed. "Substantially similar" is defined in section IV(a) as alike in all material respects as determined by the Department in its sole discretion.

Section I(b) of the proposed exemption requires that there be little, if any, risk of abuse or loss to the plan as a result of the transaction. Section I(c) further provides that prior to the execution of a transaction, the authorizing requirements of section III must be satisfied (as discussed below). The Department notes that, in light of the broad scope of relief provided under the proposal, the class exemption is only available with respect to prospective transactions.

Under section II of the proposal, additional relief is provided from certain of the restrictions described in sections 406(b)(1) and 406(b)(2) of ERISA provided that: (a) the transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60 month period ending on the date of filing of the written submission; (b) there is little, if any, risk of abuse or loss to the plan as a result of the transaction; and (c) prior to its execution, the transaction has met the requirements described in section III (as discussed below).

In considering the availability of this proposed class exemption, the party who is to engage in the transaction should carefully determine whether the contemplated transaction contains terms and conditions which closely parallel the transaction delineated in the prior exemptions granted by the Department and the material facts and representations supporting such exemptions. Further, the party seeking to take advantage of the proposed class exemption should determine whether the relief provided from section 406 by the prior exemptions granted by the Department is identical to the relief necessary for the contemplated transaction.

In addition, section II (d) and (e) require that, prior to execution of such transaction, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries, and later represents the interests of the plan in the execution of the transaction. Under section II(f) of the proposal, for those transactions that are continuing in nature, such as leases and loans, the independent fiduciary must: (1) represent the interests of the plan for the duration of the transaction; (2) monitor the transaction on behalf of the plan; (3) enforce compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and (4) ensure that the transaction remains in the interests of the plan.[6]

The Department notes that the independent fiduciary should be knowledgeable and experienced with respect to the type of transaction. The Department encourages parties to consider, when retaining an independent fiduciary, any unique qualifications of the independent fiduciaries utilized in the substantially similar transactions.

Section III of the proposal contains the authorization requirements for a transaction. In view of the broad scope of relief provided under the proposal, the Department believes that it must participate in the proceeding in order to determine in its sole discretion whether prior to its execution a proposed transaction is substantially similar to previously exempted transactions and presents little if any risk of abuse or loss to the plan. Section III(a)(1) requires that the party who will be engaging in such transaction file a written submission with the Department containing a specific statement that the party intends to demonstrate compliance with the conditions of the class exemption. The written submission must clearly indicate to the Department that it is made pursuant to the class exemption rather than under the Department's procedures for considering individual exemptions.[7]

Section III(a)(2) requires that the submission include all information that is otherwise required to be submitted with an individual exemption application. This condition will permit such submission to be considered under the Department's exemption procedures in the event that Department is unable to conclude from the written submissions that the conditions of the class exemption would be met. Further, this condition will assure a full and comprehensive file upon which the Department can base its conclusions

[6] The Department expects that the written submission referred to section III will include specific information regarding the methods proposed by the independent fiduciary for: monitoring the transaction; enforcing compliance with all the conditions and obligations imposed on the parties dealing with the plan; and ensuring that the transaction remains in the interests and protective of the participants and beneficiaries of the plan.

[7] See 29 CFR part 2570, subpart B.

concerning the availability of this class exemption.

Under section III(a)(3), the party who will be engaging in the transaction must demonstrate that the proposed transaction presents little or no opportunity for abuse or risk of loss by the plan given the terms and conditions of the transaction. Section III(a)(4) requires that the party compare the proposed transaction to those previously exempted transactions identified by the party as substantially similar. In this regard, any comparison must include a description of any material differences between the proposed transaction and the identified exemptions. The Department notes that it is the party's burden to provide the Department with the citations to the identified exemptions.

Section III(a)(5) requires that a complete and accurate draft of the notice which will be distributed to interested persons be submitted to the Department. The purpose of the notice requirement is to afford interested persons with the opportunity to provide the Department with relevant information to assist the Department in its consideration of the proposed transaction. "Notice" is defined in section IV(b) as a written notification to interested persons which includes an objective description of the transaction, the approximate date on which the transaction will occur, a statement that the proposed transaction has met the requirements for tentative authorization under this class exemption, a statement apprising interested persons of their right to comment, and the **Federal Register** citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction. The Department cautions that a notice that does not objectively and accurately characterize the transaction and its material terms and conditions will fail to comply with section IV(b) of the proposal. The notice must also contain a statement directing interested persons to submit comments to the Department for consideration.

With respect to a transaction described in section II of this exemption, section III(b) provides that the written submission must also contain the following additional information: (1) the identity of the independent fiduciary; (2) a description of such fiduciary's independence from the parties in interest involved in the subject transaction; (3) a statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and beneficiaries of the plan; (4) an agreement by the independent fiduciary to represent the interests of the plan; and (5) a description of the procedure for replacement of the independent fiduciary, if necessary, during the term of the transaction.

The written submissions will be closely reviewed by the Department to ensure that the conditions of this class exemption are met. In this regard, the Department notes that the burden is on the party who is to engage in the transaction to demonstrate compliance with the conditions of the class exemption. If a party fails to do so, the Department will notify the party that the transaction is not eligible for authorization under the terms of the class exemption, and the written submission will be considered pursuant to the Department's exemption procedure for individual exemptions.

The proposal requires, under section III(c), that the transaction meet the requirements for tentative authorization. "Tentative authorization" is defined under section IV(c) as occurring at the expiration of the forty-five day period following acknowledgement by the Department of the receipt of the written submission with respect to the proposed transaction, unless the Department has notified the party who is to engage in the transaction during this period that the transaction is not eligible for authorization under the terms of this class exemption.

Section III(d) provides that, following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons. The proposed exemption does not specify the manner in which written notice must be provided to interested persons. However, section III(d) requires that notice be given in a manner that is reasonably calculated to result in the receipt of such notice by interested persons. It is the responsibility of the party who is to engage in the transaction to promptly distribute notice after tentative authorization is obtained, because the 25 day comment period, as defined under section IV(e), will not commence until the notification to all interested persons is complete. It is also the responsibility of the party to inform the Department of the date upon which notification was completed. The notice must inform interested persons of the date of expiration of the comment period. Because the date of completion of the notification is within the control of the party who is to engage in the transaction, the expiration date of the comment period is thus dependent upon completion of notification. The Department expects the party who provides written notice to take this into account in determining the expiration date of the comment period.

In addition, section III(d) requires that the party who is to engage in the transaction resolve all substantive adverse comments submitted to the Department to the satisfaction of the Department. The term "substantive adverse comments," as defined in section IV(f), means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department. The Department wishes to emphasize that the party who is to engage in the transaction must fully resolve those issues received during the comment period to the satisfaction of the Department.

"Final authorization" is defined in section IV(d) as the end of the 5 day period immediately following the expiration of the comment period unless the Department notifies the party within that period that the transaction is not eligible for authorization, or the expiration of a period of time extending beyond the 5 day period as mutually agreed to by the Department and the party in order to resolve any substantive adverse comments submitted to the Department. The 5 day period between the expiration of the comment period and final authorization is intended to allow consideration by the Department of comments received within the 25 day comment period. If mutual agreement between the Department and the party who is to engage in the transaction is not reached regarding the period of time in which such comments must be resolved, the party will be notified that the transaction fails to comply with the conditions of the class exemption, and the written submission will be considered by the Department in accordance the Department's exemption procedures at 29 CFR 2570, subpart B.

In this regard, the Department will not consider a proposed transaction to satisfy the conditions of this proposed class exemption unless the material facts and representations contained in the written submission and in any materials and documents submitted in support of the written submission are true and complete. Accordingly, applicants are cautioned against engaging in transactions shortly after final authorization, since the Department may continue to receive comments for several days following expiration of the comment period. Such comments may potentially challenge the truth and/or completeness of the

original written submission and cause the Department to reexamine its previous determination that the proposed transaction had met the conditions of the proposal.[8]

The Department notes that the proposed exemption should not be construed as a substitute for compliance with the statutory requirements of ERISA and the Code. Individuals desiring to engage in any transaction which is prohibited under section 406 of ERISA, and which is not the subject of an existing statutory or administrative exemption (including as a result of failure to satisfy the terms of this class exemption) must seek exemptive relief in accordance with the Department's exemption procedure at 29 CFR 2570, subpart B. Lastly, the proposed exemption provides no relief for transactions entered into prior to final authorization as described in section IV(d).

The application of the exemption proposed in this notice may be illustrated by the following examples:

Example (1): An exemption application is submitted to the Department by applicant X, the sponsor of plan Y, for a lease of office space by plan Y to X. The transaction proposed is similar in all material respects to four other exemptions granted by the Department within the last five years. Applicant X, however, does not make a specific declaration that the application is submitted with the intention of demonstrating compliance with the class exemption, and there is no information which otherwise complies with sections I, II and III of the proposed class exemption. The application will be considered by the Department pursuant to individual exemption procedures unless the applicant amends its original written submission and provides the required information. At that point, the Department will acknowledge receipt of the written submission requesting expedited authorization under the class exemption proposal.

Example (2): In 1994, two exemptions were granted for loans by pension plans to Corporation A and Corporation B, respectively, the sponsoring employers. The loan to Corporation A was for $50,000. The loan to Corporation B was for $75,000. Among the conditions and material representations contained in both exemptions were the following: the loans would be approved and monitored by an independent fiduciary; the term of the loans could extend no more than five years; regular installment payments of principal and interest had to be made during the term; the collateral consisting of real property had to be maintained at all times at a loan-to-value ratio of at least 150 percent; and no more than 25 percent of the assets of the plan would be involved in loans to the sponsoring employer. In 1996, X Corporation makes a written submission pursuant to the class exemption with respect to a proposed loan from its plan. The proposed transaction, including the terms and conditions of the loan and the creditworthiness of the borrower, is substantially similar to the exemptions granted to Corporation A and Corporation B, except that the loan is for $400,000 and the term is seven years. X Corporation cites the previously granted exemptions in its submission and demonstrates that the 25 percent limitation on the amount of assets involved in loans to the employer would be met. These differences in dollar amounts and loan term would not cause the transaction to fail the "substantially similar" test under section I(a) and X's proposed transaction may be eligible for relief under the class exemption.

If, however, in addition to these differences (i.e., dollar amounts and loan term), the loan transaction proposed by X Corporation also included different repayment provisions requiring monthly payments of interest only during the loan term and a balloon payment of principal at the end of the term, the relief afforded by the class exemption would not be available because the terms of the proposed loan are not alike in all material respects within the meaning of section I(a) to the previous loan exemptions granted by the Department and cited by the applicant.

Example (3): In 1994, Investment Adviser X is granted a conditional exemption which permits plans for which it provides investment management services to purchase units of a limited partnership for which X is the general partner. In 1996, the assets of X are sold to Y. Y subsequently makes a written submission pursuant to the class exemption for the same transactions which were the subject of the exemption granted to X. In addition to the exemption granted to X, Y cites in its submission one other similar exemption granted by the Department within the last five years. The relief afforded by the exemption would be available because the terms and conditions of the transaction are substantially similar to previous exemptions granted by the Department.

Example (4): Firm C makes a written submission pursuant to the class exemption for the sale of property by its plan to C. Forty-five days elapse from the acknowledgment of the receipt of the submission by the Department without notification from the Department as to the availability of the class exemption for the proposed transaction. Pursuant to the exemption, C proceeds to distribute notice to interested persons. On the 24th day following completion of notice, the Department receives a comment from an interested person raising significant factual concerns regarding the sale. At this point, the Department and C can mutually agree, pursuant to section IV(d) of the exemption, to a date beyond the expiration of the 25 day comment period, at which time the comment must be resolved to the Department's satisfaction in order for the transaction to be authorized under the terms of the exemption. If the Department and C cannot agree to an extended date, the transaction will not receive final authorization and the exemption will not be available for such transaction.

Notice to Interested Persons

Because many participants, plans, fiduciaries and parties in interests with respect to plans could conceivably be considered interested persons, the only practical form of notice of the proposed exemption is publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. This exemption does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code.

(3) Before this exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and of participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address above and within the time period set forth above. Comments received will be made part of the record and will be available for public inspection at the above address.

Proposed Exemption

The Department has under consideration the granting of the following class exemption, under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

Section I—General Exemption. Effective (date of grant of this class exemption), a restriction described in section 406(a) of ERISA, and the taxes imposed by sections 4975 (a) and (b) of the Code, by reason of a parallel provision described in sections 4975(c)(1) (A) through (D) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60 month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little, if any, risk of abuse or loss to the plan as result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

Section II—Specific Exemption. Effective (date of grant of this class exemption), a restriction described in sections 406(b)(1) and 406(b)(2) of ERISA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60 month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little if any risk of abuse or loss to the plan as a result of the transaction;

(c) Prior to its execution, the transaction has met the requirements described in section III;

(d) An independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries;

(e) The independent fiduciary represents the interests of the plan in the execution of the transaction; and

(f) If the transaction is continuing in nature, the independent fiduciary—

(i) represents the interests of the plan for the duration of the transaction and monitors the transaction on behalf of the plan;

(ii) enforces compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and

(iii) ensures that the transaction remains in the interests of the plan.

Section III—Authorization Requirements. The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) a separate written declaration by the party who is to engage in the transaction that the written submission is made with the intention of demonstrating compliance with the conditions of this class exemption;

(2) all information required to be submitted with an individual exemption application in accordance with the procedures set forth in 29 CFR 2570 subpart B;

(3) a specific statement demonstrating that the proposed transaction poses little, if any, risk of abuse or loss to the plan;

(4) a comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department within a sixty month period ending on the date of the filing of the written submission and an explanation as to why any differences should not be considered material for purposes of this exemption; and

(5) a complete and accurate draft of the notice (as defined in section IV(b)) prepared for distribution to interested persons and a description of the proposed method of distribution for such notice.

(b) With respect to transactions described in section II of this exemption, the written submission referred to in section (a) above contains the following additional information:

(1) the identity of the independent fiduciary;

(2) a description of such fiduciary's independence from the parties in interest involved in the subject transaction;

(3) a statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and beneficiaries of the plan(s) involved;

(4) an agreement by the independent fiduciary to represent the interests of the plan(s) involved in the transaction; and

(5) a description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction.

(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons, informs interested persons of the date of the expiration of the comment period, and resolves all substantive adverse comments (as defined in section IV(f)) to the satisfaction of the Department.

(e) The transaction meets the requirements for final authorization (as defined in section IV(d)).

[8] See 29 CFR 2570.49 (55 FR 32886, August 10, 1990).

Part IV: Definitions

(a) The term "substantially similar" means alike in all material respects as determined by the Department, in its sole discretion.

(b) The term "notice" means written notification to interested persons which includes—

(1) an objective description of the transaction, including all material terms and conditions,

(2) the approximate date on which the transaction will occur,

(3) a statement that the proposed transaction has met the requirements for tentative authorization under this exemption,

(4) a statement apprising interested persons of their right to comment to the Department on the proposed transaction, and

(5) the **Federal Register** citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction.

(c) For purposes of this exemption, "tentative authorization" occurs upon the expiration of the forty-five (45) day period following an acknowledgement by the Department of receipt of the written submission with respect to the transaction under this exemption unless the Department has notified the party who is to engage in the transaction during that period that the transaction is not eligible for authorization under the terms of this exemption.

(d) For purposes of this exemption "final authorization" occurs upon the expiration of:

(1) the five (5) day period immediately following the comment period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this exemption, and

(2) if necessary in order to resolve any substantive adverse comments received by the Department from interested persons within the comment period, a period of time extending beyond the five day period immediately following the comment period as mutually agreed between the Department and the party.

(e) The term "comment period" means the twenty-five (25) day period following the completion of distribution of the notice to interested persons by the party who is to engage in the transaction.

(f) The term "substantive adverse comments" means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department in its sole discretion.

Signed at Washington, D.C., this 21st day of November 1995.

Alan D. Lebowitz,

Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–28909 Filed 11–24–95; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Grant Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients Beginning As Early As January 1, 1996, or As Soon Thereafter As Feasible, Consistent With Pending Congressional Appropriations

AGENCY: Legal Services Corporation.

ACTION: Announcement of Grant Awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients beginning as early as January 1, 1996, or as soon thereafter as feasible consistent with pending Congressional appropriations.

DATES: All comments and recommendations must be received on or before the close of business on December 27, 1995.

ADDRESSES: Office of Program Services, Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, D.C. 20002–4250.

FOR FURTHER INFORMATION CONTACT: Patricia M. Hanrahan, Office of Program Services, 202/336–8846.

SUPPLEMENTARY INFORMATION: Pursuant to the Corporation's announcement of funding availability on September 21, 1995 (60 FR 48951), the LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
LGL SVCS OF NORTH-CENTRAL ALABAMA	AL–2.
LGL. SVCS. OF METRO BIRMINGHAM, INC	AL–3.
LSC OF ALABAMA	AL–1, MAL.
ALASKA LEGAL SERVICES CORPORATION	AK–1, NAK–1.
COCONINO LEGAL AID	AZ–2.
DNA-PEOPLE'S LEGAL SERVICES, INC	AZ–4.
PINAL & GILA COUNTIES LAS	AZ–1, NAZ–1.
PAPAGO LEGAL SERVICES, INC	NAZ–3.
SOUTHERN ARIZONA LEGAL AID, INC	AZ–4, NAZ–4.
COMMUNITY LEGAL SERVICES	AZ–3, NAZ–2, MAZ.
OZARK LEGAL SERVICES	AR–2.
L.S. OF NORTHEAST ARKANSAS, INC	AR–3.
WESTERN ARKANSAS LEGAL SERVICES	AR–4.
EAST ARKANSAS LEGAL SERVICES	AR–5.
CENTER FOR ARKANSAS LEGAL SERVICES	AR–1, AR–6, MAR.
CENTRAL CALIFORNIA LEGAL SERVICES	CA–3.
GREATER BAKERSFIELD LEGAL ASST INC	CA–2.
LEGAL AID FOUNDATION OF LONG BEACH	CA–4.
LA FOUNDATION OF LOS ANGELES	CA–5.
LEGAL AID SOCIETY OF ALAMEDA COUNTY	CA–7.
CHANNEL COUNTIES LEGAL SERVIC ASSOC	CA–8.
SAN FERNANDO VALLEY NEIGHBORHOOD LS	CA–9.
LEGAL SERVICES PROGRAM	CA–10.
LAS OF SAN MATEO COUNTY	CA–11.
CONTRA COSTA LS FOUNDATION	CA–12.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
INLAND COUNTIES LEGAL SERVICES, INC	CA–13.
LEGAL SERVICES OF NORTHERN CALIF	CA–14.
LEGAL AID SOCIETY OF SAN DIEGO, INC	CA–15.
SAN FRAN NEIGHBORHOOD LA FOUNDATION	CA–17.
COMMUNITY LEGAL SERVICES, INC	CA–18.
LEGAL AID OF MARIN	CA–6, CA–19.
LEGAL AID SOCIETY OF ORANGE COUNTY	CA–20.
MONTEREY COUNTY LEGAL SERVICES	CA–21.
TULARE/KINGS COUNTIE LEGAL SERVICES	CA–22.
LEGAL AID SOC OF SANTA CRUZ CTY	CA–23.
REDWOOD LEGAL ASSISTANCE	CA–24.
CALIFORNIA INDIAN LEGAL SERVICES	CA–1, NCA–1.
CALIFORNIA RURAL LEG ASSTANCE, INC	CA–2, CA–16, CA–21, CA–22, MCA.
PIKES PEAK LEGAL SERVICES	CO–1.
LAS OF METROPOLITAN DENVER, INC	CO–3.
PUEBLO COUNTY LEGAL SERVICES, INC	CO–4.
COLORADO RURAL LEGAL SERVICES, INC	CO–2, NCO–1, MCO.
STATEWIDE LS OF CONNECTICUT, INC	CT–1, CT–2, CT–3, MCT.
COMMUNITY LEGAL AID SOCIETY, INC	DE–1.
LEGAL SERVICES CORP OF DELAWARE, INC	DE–1.
NEIGHBORHOOD L.S. PROG. OF THE D.C	DC–1.
CENTRAL FLORIDA LEGAL SERVICES, INC	FL–1.
LA SERVICE OF BROWARD COUNTY, INC	FL–2.
JACKSONVILLE AREA LEGAL AID	FL–4.
LS OF GREATER MIAMI, INC	FL–5.
LEGAL SERVICES OF NORTH FLORIDA, INC	FL–6.
GREATER ORLANDO AREA LEGAL SERVICES	FL–7.
BAY AREA LEGAL SERVICES, INC	FL–8.
WITHLACOOCHEE AREA LEGAL SVC., INC	FL–9.
THREE RIVERS LEGAL SERVICES, INC	FL–10.
NORTHWEST FLORIDA LGL SERVICES, INC	FL–11.
GULFCOAST LEGAL SERVICES, INC	FL–12.
FLORIDA RURAL LEGAL SERVICES, INC	FL–3, MFL.
ATLANTA LEGAL AID SOCIETY	GA–1.
GEORGIA LEGAL SERVICES PROGRAM	GA–2, MGA.
NATIVE HAWAIIAN LEGAL CORPORATION	NHI–1.
LEGAL SERVICES OF HAWAII	HI–1, MHI.
IDAHO LEGAL AID SERVICES	ID–1, NID–1, MID.
COOK COUNTY LEGAL ASSISTANCE FOUND	IL–1.
JONES, WARE & GRENARD	IL–2.
LAND OF LINCOLN LA FOUNDATION, INC	IL–3.
PRAIRIE STATE LEGAL SERVICES, INC	IL–4.
WEST CENTRAL ILLINOIS LEGAL ASSIST	IL–5.
LGL ASSIST FOUNDATION OF CHICAGO	IL–2, MIL.
LEGAL SERVICES OF MAUMEE VALLEY	IN–1.
LEGAL SERVICES OF NORTHWEST INDIANA	IN–2.
LGL SCVS PROGRAM OF NORTHERN INDIAN	IN–4.
LGL SVCS ORGANIZATION OF INDIANA	IN–3, MIN.
LAS OF POLK COUNTY IOWA, INC	IA–2.
LEGAL SERVICES CORP. OF IOWA	IA–1, MIA.
KANSAS LEGAL SERVICES	KS–1, MKS.
NORTHERN KENTUCKY LEGAL AID SOCIETY	KY–1.
LEGAL AID SOCIETY	KY–2.
CENTRAL KY LEGAL SERVICES, INC	KY–3.
NORTHEAST KENTUCKY LEGAL SERVIC, INC	KY–4.
CUMBERLAND TRACE LEGAL SERVICES, INC	KY–6.
WESTERN KENTUCKY LEGAL SERVICES, INC	KY–7.
APPA RESEARCH & DEFENSE FUND OF KY	KY–5, MKY.
CAPITAL AREA LEGAL SERVICES CORP	LA–1.
DELE A ADEBAMIJI & ASSOCIATES	LA–1.
MARK S. SMITH	LA–1.
SW LOUISIANA LGL SVC SOCIETY, INC	LA–2.
LILLIAN T DUNLAP	LA–3.
NORTH LOUISIANA LEGAL ASSIST. CORP	LA–3.
NEW ORLEANS LEGAL ASSISTANCE CORP	LA–4.
NORTHWEST LOUISIANA LS, INC.	LA–5.
KISATCHIE LEGAL SERVICES CORP	LA–7.
SOUTHEAST LOUISIANA LS CORPORATION	LA–8.
ACADIANA LEGAL SERVICES CORP	LA–6, MLA.
PINE TREE LEGAL ASSISTANCE, INC	ME–1, NME–1, MME.
LEGAL AID BUREAU, INC	MDE, MD–1, MMD.
GREATER BOSTON LEGAL SERVICES	MA–1.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
CAMBRIDGE AND SOMERVILLE L.S	MA–2.
SOUTH MIDDLESEX LEGAL SERVICES, INC	MA–3.
L.S. FOR CAPE COD & ISLANDS, INC	MA–4.
MERRIMACK VALLEY LEGAL SERVICES, INC	MA–5.
NEIGHBORHOOD LEGAL SERVICES, INC	MA–6.
SOUTHEASTERN MASSACHUSETTS LAC	MA–7.
LEGAL ASSIST. CORP OF CENTRAL MASSA	MA–9.
WESTERN MASSACHUSETTS LEGAL SERVICE	MA–8, MMA.
L.S. OF SOUTHEASTERN MICHIGAN, INC	MI–1.
LGL SVCS ORG.OF SOUTHCENTRAL MI	MI–2.
WAYNE COUNTY NEIGHBORHOOD LEGAL SVC	MI–3.
LEGAL SERVICES OF EASTERN MICHIGAN	MI–4.
LEGAL AID OF CENTRAL MICHIGAN	MI–5.
LAKESHORE LEGAL SERVICES, INC	MI–6.
OAKLAND LIVINGSTON LEGAL AID	MI–7.
BERRIEN COUNTY LEGAL SERVICES	MI–8.
LGL SVCS OF NORTHERN MICHIGAN, INC	MI–9.
LEGAL AID OF WESTERN MICHIGAN	MI–10.
LEGAL AID BUREAU OF SW MICHIGAN, IN	MI–11.
MICHIGAN INDIAN LEGAL SERVICES, INC	NMI–1.
MICHIGAN MIGRANT LA PROJECT, INC	MMI.
MICRONESIAN LEGAL SERVICES CORP	MP–1.
L.A.S. OF NORTHEASTERN MINNESOTA	MN–1.
JUDICARE OF ANOKA COUNTY, INC	MN–2.
CENTRAL MINNESOTA LEGAL SERVICES	MN–3.
LEGAL SERV. OF NORTHWEST MINNESOTA	MN–4.
ANISHINABE LEGAL SERVICES	NMN–1.
JUDICARE OF MISSISSIPPI, INC	MS–2.
NORTH MISSISSIPPI RURAL LS	MS–2.
SOUTH MISSISSIPPI LEGAL SERVICES	MS–3.
SOUTHEAST MISSISSIPPI LEGAL SERVICE	MS–5.
JUDICARE OF MISSISSIPPI, INC	MS–1, MS–2, MS–3, MS–4, MS–5, MS–6.
SOUTHWEST MISSISSIPPI LGL SVCS CORP	MS–6.
EAST MISSISSIPPI LEGAL SERVICES	MS–4, NMS–1.
CENTRAL MISSISSIPPI LEGAL SERVICES	MS–1, MMS.
SOUTHEAST MISSOURI LEGAL SERVICES	MO–1.
MERAMEC AREA LGL AID CORPORATION	MO–2.
LEGAL SVC. OF EASTERN MISSOUR, INC	MO–4.
MID-MISSIOURI LEGAL SERVICES CORP	MO–5.
LEGAL AID OF SOUTHWEST MISSOURI	MO–6.
LEGAL AID OF WESTERN MISSOURI	MO–3, MMO.
MONTANA LEGAL SERVICES ASSOCIATION	MT–1, NMT–1, MMT.
LS OF SOUTHEAST NEBRASKA	NE–1.
LEGAL AID SOCIETY, INC	NE–1, NE–2, NNE–1.
WESTERN NEBRASKA LEGAL SERVICES, INC	NE–3, MNE.
NEVADA LEGAL SERVICES, INC	NV–1, NV–2, NNV–1, MNV.
NEW HAMPSHIRE LEGAL SERVICES, INC	NH–1.
CAPE-ATLANTIC LEGAL SERVICES, INC	NJ–1.
WARREN COUNTY LEGAL SERVICES	NJ–2.
UNION COUNTY LEGAL SERVICES CORP	NJ–4.
HUNTERDON COUNTY LGL. SVCS. CORP	NJ–5.
BERGEN COUNTY LEGAL SERVICES	NJ–6.
HUDSON COUNTY LEGAL SERVICES CORP	NJ–7.
ESSEX-NEWARK LEGAL SERVICES	NJ–8.
MIDDLESSEX COUNTY LGL SVC CORP	NJ–9.
PASSAIC COUNTY LEGAL AID SOCIETY	NJ–10.
SOMERSET SUSSEX LEGAL SERVICES CORP	NJ–11.
OCEAN-MONMOUTH LEGAL SERVICES, INC	NJ–12.
LEGAL AID SOCIETY OF MERCER COUNTY	NJ–13.
LEGAL AID SOCIETY OF MORRIS COUNTY	NJ–14.
CAMDEN REGIONAL LEGAL SERVICES	NJ–3, MNJ.
LAW OFFICE OF LYNN KENNEALLY	MNJ.
INDIAN PUEBLO LEGAL SERVICES	NNM–3.
LEGAL AID SOCIETY OF ALBUQUERQUE	NM–2.
NORTHERN NEW MEXICO LEGAL SERV., INC	NM–4.
DNA-PEOPLE'S LEGAL SERVICES, INC	AZ–2, NAZ–5, NM–1, NNM–2.
SOUTHERN NEW MEXICO LEGAL SERVICES	NM–3, NNM–1, MNM.
L.A.S. OF NORTHEASTERN NEW YORK	NY–1.
OAK ORCHARD LEGAL SERVICES, INC	NY–2.
LEGAL AID FOR BROOME AND CHENANGO	NY–3.
NEIGHBORHOOD LEGAL SERVICES, INC	NY–4.
CHAUTAUQUA COUNTY LEGAL SVC, INC	NY–5.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
CHEMUNG COUNTY NEIGHBORHOOD LEG SVC	NY–6.
NASSAU SUFFOLK LAW SERVICES	NY–7.
LEGAL SERVICES FOR NEW YORK CITY	NY–9.
NIAGARA CTY LEGAL AID SOCIETY	NY–10.
L.A.S. OF ROCKLAND COUNTY, INC	NY–8, NY–11.
MID-HUDSON LEGAL SERVICES, INC	NY–11.
ORANGE COUNTY PRO BONO LGL SVC., INC	NY–11.
MONROE COUNTY LEGAL ASSISTANCE CORP	NY–12.
LEGAL SERVICES OF CENTRAL NEW YORK	NY–13.
LEGAL AID SOCIETY OF MID-NY, INC	NY–14.
WESTCHESTER/PUTNAM LEGAL SERVICES	NY–15.
NORTH COUNTRY LEGAL SERVICES, INC	NY–16.
PUBLIC UTILITY LAW PROJ OF NY, INC	NY–1, NY–2, NY–3, NY–4, NY–5, NY–6, NY–7, NY–8, NY–9, NY–10, NY–11, NY–12, NY–13, NY–14, NY–15, NY–16, NY–17.
SOUTHERN TIER LEGAL SERVICES	NY–17.
FARMWORKER LGL SERVICES OF NY, INC	MNY.
LS OF SOUTHERN PIEDMONT, INC	NC–2.
NORTH CENTRAL LGL ASST. PROGRAM	NC–3.
LAS OF NORTHWEST CAROLINA, INC	NC–4.
LEGAL SERVICE OF NORTH CAROLINA, INC	NC–1, NNC–1, MNC.
NORTH DAKOTA LEGAL SERVICES	ND–2, NND–2.
LEGAL ASSISTANCE OF NORTH DAKOTA	ND–1, NND–1.
SOUTHERN MINNESOTA REGIONAL L.S	MN–5, MMN, MND.
WESTERN RESERVE LEGAL SERVICES	OH–1.
STARK COUNTY LEGAL AID SOCIETY	OH–2.
LEGAL AID SOCIETY OF CINCINNATI	OH–3.
LEGAL AID SOCIETY OF CLEVELAND	OH–4.
THE LEGAL AID SOCIETY OF COLUMBUS	OH–5.
OHIO STATE LEGAL SERVICES ASSOC	OH–6.
LEGAL AID SOCIETY OF DAYTON	OH–7.
LEGAL AID SOCIETY OF LORAIN COUNTY	OH–8.
BUTLER-WARREN LEGAL ASST. ASSOC	OH–9.
ALLEN CTY BLACKHOOF AREA L.S. ASSOC	OH–10.
CENTRAL OHIO LEGAL AID SOCIETY, INC	OH–11.
TOLEDO LEGAL AID SOCIETY	OH–13.
WOOSTER-WAYNE LEGAL AID SOCIETY, INC	OH–14.
NORTHEAST OHIO LEGAL SERVICES	OH–15.
RURAL LGL AID SOCIETY OF W CTR OHIO	OH–16.
ADVOCATES FOR BASIC LEGAL EQUALITY	OH–12, MOH.
LS OF EASTERN OKLAHOMA, INC	OK–2.
OKLAHOMA INDIAN LEGAL SERVICES, INC	NOK–1.
LEGAL AID OF WESTERN OKLAHOMA, INC	OK–1, MOK.
LANE COUNTY LEGAL SERVICES, INC	OR–2.
MULTNOMAH COUNTY LEGAL AID SERVICE	OR–3.
MARION-POLK LEGAL AID SERVICE, INC	OR–4.
OREGON LEGAL SERVICES	OR–1, NOR–1, MOR.
LEGAL SERVICES, INC	PA–1.
DELAWARE COUNTY LGL. ASST. ASSN	PA–2.
BUCKS COUNTY LEGAL AID SOCIETY	PA–3.
LAUREL LEGAL SERVICES, INC	PA–4.
SOUTHERN ALLEGHENYS LEGAL AID, INC	PA–5.
CENTRAL PENNSYLVANIA LEGAL SERVICES	PA–6.
NEIGHBORHOOD LEGAL SERVICES ASSOC	PA–8.
NORTHERN PENNSYLVANIA LGL SERVICES	PA–9.
KEYSTONE LEGAL SERVICES, INC	PA–10.
SOUTHWESTEN PENN LGL AID SOCIETY	PA–11.
LEGAL AID OF CHESTER COUNTY, INC	PA–12.
LEGAL SERVICES OF NE PENNSYLVANIA	PA–13.
SUSQUEHANNA LEGAL SERVICES	PA–14.
NORTHWESTERN LEGAL SERVICES	PA–15.
BLAIR COUNTY LEGAL SERVICES CORP	PA–16.
LEHIGH VALLEY LEGAL SERVICES	PA–17.
MONTGOMERY COUNTY LEGAL AID SERVICE	PA–18.
SCHUKILL COUNTY LEGAL SERVICES, INC	PA–19.
PHILADELPHIA LEGAL ASSISTANCE CTR	PA–7, MPA.
COMMUNITY LAW OFFICE, INC	PR–2.
PUERTO RICO LEGAL SERVICES, INC	PR–1, MPR.
RHODE ISLAND LEGAL SERVICES, INC	RI–1, MRI.
PALMETTO LEGAL SERVICES	SC–2.
CAROLINA REGIONAL LEGAL SERVICES	SC–3.
LGL SVCS AGENCY OF WESTERN CAROLINA	SC–4.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
PIEDMONT LEGAL SERVICES, INC	SC–5.
LGL SVC OF THE 4TH JUDICIAL CIRCUIT	SC–6.
NEIGHBORHOOD LGL ASSIS. PROGRAM	SC–1, MSC.
UPSTATE LEGAL SERVICES CORPORATION	SC–5, SC–6, MSC.
EAST RIVER LEGAL SERVICES CORPO	SD–2.
DAKOTA PLAINS LEGAL SERVICES	SD–3, NSD–1.
BLACK HILLS LEGAL SERVICES, INC	SD–1, MSD.
SOUTHEAST TENNESSEE LEGAL SERVICES	TN–1.
KNOXVILLE LEGAL AID SOCIETY, INC	TN–3.
MEMPHIS AREA LEGAL SERVICES, INC	TN–4.
L.A.S. OF MIDDLE TENNESSEE	TN–5.
RURAL LS OF TENNESSEE, INC	TN–6.
WEST TENNESSEE LEGAL SERVICES	TN–7.
LS OF SOUTH CENTRAL TENNESSEE, INC	TN–8.
LEGAL SVC OF UPPER EAST TENNESSEE	TN–2, MTN.
LEGAL AID SOCIETY OF CENTRAL TEXAS	TX–1.
COASTAL BEND LEGAL SERVICES	TX–2.
LEGAL SERVICES OF NORTH TEXAS	TX–3.
EL PASO LEGAL ASSISTANCE SOCIETY	TX–4.
WEST TEXAS LEGAL SERVICES	TX–5.
GULF COAST LEGAL FOUNDATION	TX–6.
LAREGO LEGAL AID SOCIETY, INC	TX–7.
BEXAR COUNTY LEGAL AID ASSOC., INC	TX–8.
HEART OF TEXAS LEGAL SERVICES	TX–9.
EAST TEXAS LEGAL SERVICES, INC	TX–11.
TEXAS RURAL LEGAL AID, INC	TX–10, NTX–1, MTX.
UTAH LEGAL SERVICES, INC	UT–1, NUT–1, MUT.
LS LAW LINE OF VERMONT, INC	VT–1, MVT.
L.S. OF NORTHERN VIRGINIA, INC	VA–1.
CHARLOTTESVILLE-ALBEMARLE LAS	VA–2.
RAPPAHANNOCK LEGAL SERVICES, INC	VA–3.
SOUTHWEST VIRGINIA LEGAL AID SOC	VA–4.
CENTRAL VIRGINIA LEGAL AID SOCIETY	VA–6.
LAS OF NEW RIVER VALLEY, INC	VA–7.
THE LEGAL AID SOC. OF ROANOKE VALL	VA–8.
TIDEWATER LEGAL AID SOCIETY	VA–9.
VIRGINIA LEGAL AID SOCIETY	VA–10.
SOUTHSIDE VIRGINIA LEGAL SERVICES	VA–11.
BLUE RIDGE LEGAL SERVICES, INC	VA–12.
CLIENT CTR LGL SVC OF SW VA,INC.	VA–13.
PENINSULA LEGAL AID CENTER, INC	VA–5, MVI.
NORTHWEST JUSTICE PROJECT	WA–1, WA–2, WA–3, NWA–1, MWA.
APPALACHIAN RESEARCH & DEFENCE FUND	WV–1.
LEGAL AID SOCIETY OF CHARLESTON	WV–2.
WEST VIRGINIA LGL. SVCS. PLAN, INC	WV–3, WV–4, MWV.
L.S. OF NORTHEASTERN WISCONSIN, INC	WI–3.
WESTERN WISCONSIN LEGAL SERVICES	WI–4.
WISCONSIN JUDICARE, INC	WI–2, NWI–1.
LEGAL ACTION OF WISCONSIN, INC	WI–1, MWI.
LGL SVC FR SOUTHEASTERN WYOMING, INC	WY–3.
WIND RIVER LEGAL SERVICES	WY–1, NWY–1.
LEGAL AID SERVICES, INC	WY–1, WY–2, WY–3, NWY–1, MWY.

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42U.S.C. 2996e(a)(1)). Awards will be made so that each service area indicated is served by one of the organizations listed above, although each of the listed organizations is not necessarily guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 1996, or as soon as thereafter as possible, consistent with pending Congressional appropriations.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 95–28845 Filed 11–24–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before January 11, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Health and Human Services, Administration for Health Care Policy and Research (N1–510–94–2). Hardcopy data collected for the Medical Treatment Effectiveness Program.

2. Department of Housing and Urban Development (N1–196–95–1). Public Housing Administration Legal Opinions, 1937–1971, relating to administrative matters.

3. Department of the Interior, Bureau of Reclamation (N1–115–94–4). General administrative records pertaining to the Bureau's research, testing, and technical program.

4. Department of State, Bureau of Population, Refugees, and Migration (N1–59–95–23). Routine, facilitative, and duplicative records.

5. Department of the Treasury, Internal Revenue Service (N1–58–95–4). Comprehensive schedule for the Martinsburg Computer Center.

6. Advisory Committee on Human Radiation Experiments (N1–220–95–9). Duplicative electronic records that do not meet the National Archives requirements for transfer.

7. Interstate Commerce Commission (N1–134–83–1). Public Dockets (a selection of which are designated for preservation).

8. President's Committee on Consumer Interests (N1–220–95–13). Consumer correspondence, 1969–1970.

Dated: November 8, 1995.

James W. Moore,

Assistant Archivist for Records Administrative.

[FR Doc. 95–28751 Filed 11–24–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences April-June, 1995; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (AOs) (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the second quarter of CY 1995, the following incidents at NRC licensed facilities were determined to be AOs and are described below, together with the remedial actions taken. Each event is also being included in NUREG–0090, Vol. 18, No. 2, ("Report to Congress on Abnormal Occurrences: April-June 1995"). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

95–2 Reactor Coolant System Blowdown at Wolf Creek Nuclear Generating Station

One of the AO reporting guidelines notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an AO.

Date and Place—September 17, 1994; Wolf Creek Nuclear Generating Station, a Westinghouse-designed pressurized water reactor nuclear power plant, operated by Wolf Creek Nuclear Operating Corporation and located about 5.63 kilometers (3.5 miles) northeast of Burlington, Kansas.

Nature and Probable Consequences—An inadvertent blowdown of approximately 34,868 liters (9200 gallons) of reactor coolant through the residual heat removal (RHR) system to the refueling water storage tank (RWST) occurred because of incompatible, concurrent RHR valve manipulations. At the time of the event, the reactor had been shutdown for 28 hours and was on RHR cooling (2413 kPa gauge and 149 C [350 psi gauge and 300 F]). The event was successfully terminated in 1 minute by operator intervention. There was only minimal interruption to heat removal processes, and no core damage or fission product release occurred. However, if the blowdown continued, the licensee estimated that RHR cooling could have failed in about 3.5 minutes, the RWST header could have filled with steam in about 6 minutes, and uncovering of the core could have begun in about 30 minutes.

All of the emergency core cooling system (ECCS) pumps take their suction from the RWST header line. If the ECCS pumps were started to mitigate the blowdown after the RWST header filled with steam, a common-mode failure of all ECCS pumps could have occurred as a result of steam binding. The ECCS pumps could also have failed as a result of pressure pulses caused by cold RWST

water collapsing the steam in the RWST and RWST header. If they failed, successful mitigation of such an event would depend on the control room operators' cognitive abilities to establish core heat removal via the steam generators.

If core damage did occur, then a possibility for a significant offsite release existed because the blowdown path in place at the time bypassed the reactor containment.

Cause or Causes—This event was attributed to the following three causes:

(1) *Unrecognized design vulnerability*—An RHR-RWST connecting line was designed to provide operational convenience for refilling the RWST after a refueling outage, but not for safety purposes. The inappropriate use of this line while on RHR cooling could result in a rapid blowdown event and a subsequent common-mode failure of all ECCS pumps.

(2) *Inappropriate use of the RHR-RWST connecting line*—The licensee inappropriately used the RHR-RWST connecting line to increase the boron concentration of the RHR train. (Other boration paths existed that would not have resulted in an inadvertent blowdown.)

(3) *Inadequate work control*—The licensee was deficient in the control of maintenance and operational evolutions by allowing incompatible activities to occur simultaneously. The control room crew had ample warning of the potential adverse effects of these activities just prior to the event, but failed to limit the concurrent manipulation of selected RHR valves.

The licensee also had previous warnings of blowdown events from its experience at Wolf Creek and from the following NRC Information Notices: 90–55, "Recent Operating Experience on Loss of Reactor Coolant Inventory While in a Shutdown Condition"; and 91–42, "Plant Outage Events Involving Poor Coordination Between Operations and Maintenance Personnel During Valve Testing and Manipulations." The licensee's response to these warnings was that its administrative controls adequately addressed the concerns.

Actions Taken to Prevent Recurrence

Licensee—The licensee implemented the following actions: (1) Chain locked the isolation valve in the RHR-RWST connecting line, and made the plant manager and operations manager solely responsible for access to this valve; (2) removed the use of the RHR-RWST connecting line from the RHR boration procedures; and (3) approached the Westinghouse Owners Group to address the issue generically.

NRC—NRC issued Information Notice No. 95–03, "Loss of Reactor Coolant Inventory and Potential Loss of Emergency Mitigation Functions While in a Shutdown Condition," to inform all reactor licensees of the circumstances and potential consequences associated with the Wolf Creek event.

95–3 Previously Unidentified Path for the Potential Release of Radioactivity at Millstone Nuclear Power Station Unit 2

One of the AO reporting guidelines notes that a loss of plant capability to perform essential safety functions, such that a potential release of radioactivity in excess of 10 CFR Part 100 guidelines could result from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system), can be considered an AO.

Date and Place—December 6, 1994; Millstone Nuclear Power Station Unit 2, a Combustion Engineering-designed pressurized water reactor nuclear power plant, operated by Northeast Nuclear Energy Company and located about 5.15 kilometers (3.2 miles) west-southwest of New London County, Connecticut.

Nature and Probable Consequences—While the plant was in a refueling outage, a systems engineer employed by the licensee identified a condition that established a potential unfiltered release path to the atmosphere that could have resulted in offsite doses in excess of 10 CFR Part 100 guidelines in the event of a postulated loss-of-coolant accident (LOCA). The licensee immediately declared the enclosure building inoperable and promptly reported the condition to NRC.

The Millstone Unit 2 design includes an Enclosure Building around the reactor Containment Building to collect all leakage out of the containment during a postulated LOCA. The Enclosure Building Ventilation System contains a charcoal bed filtration unit to remove radioactive iodine prior to discharging the Enclosure Building air out of the 114.4-meter (375-foot) high Unit-1 stack. The condition identified on December 6, 1994, was that the ventilation system associated with the Hydrogen Analyzer cabinet and waste gas sample hood fan, located within the East Electrical Penetration Room of the Enclosure Building, would not isolate in the event of a LOCA. During a postulated accident, this ventilation system, which does not contain a charcoal filter unit, would draw Enclosure Building air (contaminated with any containment leakage) from the East Penetration Room and discharge it through the 45.8-meter (150-foot) high Unit 2 vent. The lack of a charcoal filter and the lower release point would significantly increase the potential of a thyroid dose in excess of the 10 CFR Part 100 guideline at the exclusion area boundary.

The Technical Specifications for Millstone Unit 2 require that the Enclosure Building integrity be maintained to ensure that the Enclosure Building Ventilation System limits the site boundary doses to within 10 CFR Part 100 guidelines following a postulated design basis accident. NRC performed a design basis dose calculation which took into account the lack of charcoal filtration and the lower elevation release path which would result from the noted design deficiency. This calculation indicated that an exclusion area boundary dose to the thyroid greater than the 10 CFR Part 100 guideline of 3000 millisievert (mSv) (300 rem) would occur. It also indicated that the whole body dose would not exceed the 250 mSv (25 rem) 10 CFR Part 100 guideline. The NRC calculation was very conservative in that it assumed that all of the designed allowable containment leakage, following the design basis accident, would be through the penetrations in the East Electrical Penetration Room and released from the Enclosure Building through the Hydrogen Analyzer Ventilation system.

Cause or Causes—The cause of this condition was an original design deficiency of the hydrogen analyzer cabinet exhaust system.

Actions Taken to Prevent Recurrence

Licensee—The licensee modified the design to route the exhaust path from the hydrogen analyzer cabinet into the enclosure building ventilation system, thereby going through the appropriate filtration, in order to reduce any post-LOCA radioactive release to below 10 CFR Part 100 guidelines. The waste gas sample sink was relocated from the enclosure building to the auxiliary building. This design modification was implemented prior to the start up of Millstone Unit 2.

NRC—On February 16, 1995, NRC exercised enforcement discretion and did not issue a violation. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) then set out at 10 CFR Part 2, Appendix C, this design deficiency would normally be categorized as a Severity Level III violation and enforcement action would normally be considered because it involved a violation of the Technical Specifications and could have resulted in 10 CFR Part 100 guidelines being exceeded in the event of a LOCA. However, the exercise of discretion for the apparent Severity Level III violation was determined to be warranted in this instance because: (1) The condition was identified by the licensee's staff as a result of a questioning attitude by a system engineer and was promptly reported to the NRC; (2) the condition, which existed since initial startup, was difficult to discover and such identification was not likely by routine inspection, surveillance and quality assurance activities; (3) comprehensive corrective actions were taken within a reasonable time period that involved an adequate root cause determination and a review for failures caused by similar root causes; and (4) the condition was caused by an old performance failure that is not reasonably linked to present performance.

This event was determined to be plant specific due to the unique design of the ventilation system.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

95–4 Medical Brachytherapy Misadministration at the University of Virginia, in Charlottesville, Virginia

One of the AO reporting guidelines notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place—March 14, 1995; University of Virginia Medical Center; Charlottesville, Virginia.

Nature and Probable Consequences—A patient was prescribed a manual brachytherapy procedure using cesium-137 (Cs-137) sources loaded in an applicator, for a total gynecological treatment dose of 3000 centigray (cGy) (3000 rad).

During insertion of the applicator into the patient, one of the sources fell onto the patient's bed and was unnoticed by the licensee staff involved in performing the procedure. A nurse found the source in the bed on March 15 and removed it. The source was reloaded into the applicator and the physician revised the prescribed dose to 2500 cGy (2500 rad). The licensee estimated that the source remained at approximately 10 centimeters (4 inches) from the patient's foot for 18 hours and delivered a dose of about 13 cGy (13 rad) to the foot.

The licensee notified the referring physician and the patient of the misadministration. An NRC medical consultant was obtained who concluded that the patient was receiving appropriate follow-up care. In addition, the licensee and the medical consultant concluded that the patient will not experience any adverse health effects as a result of the misadministration.

Cause or Causes—The licensee's staff involved in the brachytherapy procedure were not familiar with handling of the applicator that contained the Cs-137 sources. Also, because of anatomic characteristics of the patient, the physician had difficulty inserting the source carrier into the applicator. The design of the afterloading device allows the source to slide out of the carrier if any unusual manipulation of source carrier is required. The difficulty experienced by the physician in inserting the source in the applicator and the design of the source carrier resulted in the source falling out of the carrier during the insertion process.

Actions Taken to Prevent Recurrence

Licensee—The licensee provided training for its staff, involved in brachytherapy procedures, concerning the precautions which must be taken when handling an applicator such as the one used in the subject procedure. Also, emphasis was placed on the need to be more attentive during the source insertion process in order to account for all prescribed sources.

NRC—NRC conducted a special inspection on March 23–24, 1995, to review the circumstances surrounding the misadministration. The inspection report was issued on May 2, 1995. Enforcement action will be taken as appropriate.

95–5 Medical Therapeutic Radiopharmaceutical Misadministration of Iodine-131 at Massachusetts General Hospital in Boston, Massachusetts

One of the AO reporting guidelines notes that administering a therapeutic dose of a radiopharmaceutical differing from the prescribed dose by more than 10 percent and the actual dose is greater than 1.5 times the prescribed dose can be considered an AO.

Date and Place—May 9, 1995; Massachusetts General Hospital; Boston, Massachusetts.

Nature and Probable Consequences—A patient was prescribed a 296 megabecquerel (MBq) (8 millicurie [mCi]) dosage of iodine-131 (I–131) for hyperthyroidism; however, a dosage of 1106.3 MBq (29.9 mCi) was administered.

Representatives of the hospital informed the referring physician and the patient of the misadministration. An NRC medical consultant was obtained to evaluate the event and stated that the higher dosage given to the patient will result in a more likely achievement of the intended therapeutic goal to eliminate the patient's hyperthyroidism. Additionally, the consultant determined that it is unlikely that the patient is at significant risk of experiencing long-term consequences from receiving the higher dosage beyond the risk associated with the prescribed dosage. Therefore, the impact on the patient's health is expected to be negligible with no expected long-term disability. (The intent of the prescribed dose was to ablate the portion of the thyroid remaining after surgery and then support the patient with thyroid supplement the rest of her life. This did not change with the administered dose.)

Cause or Causes—The licensee stated that this event occurred because of a human error. The technologist involved in this procedure inadvertently switched the labeled lids on the vial shields containing the I–131 dosages prescribed for different patients. Additionally, the technician failed to check for the correct dosage on the vial label, and the wrong dose was administered to the intended patient.

Actions Taken to Prevent Recurrence

Licensee—The licensee instituted a procedure for checking the vial label before giving a dose. In addition, the licensee is obtaining a second dose calibrator which will be used in the out-patient dosing room of the Thyroid Clinic. Each dose will be re-assayed immediately before the I–131 is administered to the patient, rather than relying on the assay which was performed in the Thyroid Lab before the dose was transported to the out-patient dosing room.

NRC—NRC performed an inspection on May 12, 1995, to learn about the event and determined that it constituted a misadministration as defined in 10 CFR 35.2. NRC determined that this was an isolated violation of the licensee's Quality Management Program and issued a Notice of Violation at the Severity Level IV on June 26, 1995.

95–6 Multiple Medical Brachytherapy Misadministrations at Madigan Army Medical Center in Fort Lewis, Washington

One of the AO reporting guidelines notes that administering a therapeutic dose from a sealed source such that the treatment dose differs from the prescribed dose by more than 10 percent and the event (regardless of health effects) affects two or more patients at the same facility can be considered an AO.

Date and Place—February 1994 through May 1995; Madigan Army Medical Center (MAMC); Fort Lewis, Washington.

Nature and Probable Consequences—Four patients were prescribed brachytherapy procedures, using iridium-192 seeds of different source strengths, and received doses other than those prescribed because of the same computer input error. (The same computer input error could cause either underdoses or overdoses because the algorithm used was dose dependent.) Details of the misadministrations are as follows:

Patient A: The patient was prescribed a dose of 2800 centigray (cGy) (2800 rad) for a gynecological brachytherapy treatment, but received a dose of about 1680 cGy (1680 rad) instead.

Patient B: Event 1—The patient was prescribed a dose of 1600 cGy (1600 rad) for lung treatment, but received a dose of about 2128 cGy (2128 rad) instead.

Event 2—On another day, the same patient was prescribed a dose of 1500 cGy (1500 rad) for lung treatment, but received a dose of about 2350 cGy (2350 rad) instead.

Patient C: The patient was prescribed a dose of 3000 cGy (3000 rad) for gynecological treatment, but received a dose of about 5142 cGy (5142 rad) instead.

Patient D: The patient was prescribed a dose of 1500 cGy (1500 rad) for a biliary tract treatment, but received a dose of about 2050 cGy (2050 rad) instead.

The licensee does not expect the patients to experience any adverse health effects as a result of the misadministrations.

Cause or Cause$—Based upon NRC's initial review of the misadministrations, it appears that the probable causes of the treatment errors were failures to: (1) independently review or check the data input to the computerized treatment planning system, and (2) perform an independent check of dose rate calculations generated by the treatment planning system.

Actions Taken to Prevent Recurrence

Licensee—The physics staff at MAMC promptly corrected the data entered into the computer treatment planning computer, recalculated the doses received by the patients, and took steps to ensure that appropriate data will be used for future treatment plans.

NRC—NRC initiated an inspection on June 6, 1995, to review the circumstances associated with the misadministrations and to review the licensee's corrective actions. (As of the date of this report, the inspection is ongoing.) An NRC medical consultant will review each case in order to provide an independent assessment of the potential consequences of the overdoses.

Dated at Rockville, MD this 20th day of November, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–28835 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–31765–CivP EA 94–006 ASLBP No. 95–708–01–CivP]

Atomic Safety and Licensing Board; In the Matter of Oncology Services Corporation (Harrisburg, Pennsylvania, Byproduct Materials License No. 37–28540–01); Notice of Hearing (Staff Order Imposing Civil Monetary Penalties)

November 20, 1995.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. George C. Anderson, Dr. A. Dixon Callihan.

On April 24, 1995, the NRC staff issued an order imposing civil penalties in the amount of $280,000 on Oncology Services Corporation (OSC) for alleged regulatory violations relating to activities under Byproduct Materials License No. 37–28540–01. (60 Fed. Reg. 21,560.) That license authorized OSC to possess and use certain byproduct materials under specified conditions at six facilities in Pennsylvania.[1] The violations at issue were identified during a December 3–18, 1992 NRC inspection regarding a November 1992 misadministration incident at OSC's Indiana (Pennsylvania) Regional Cancer Center, and December 8, 1995 inspections of OSC facilities in Exton and Lehighton, Pennsylvania.

The April 1994 order provided that on or before May 24, 1995, OSC could submit a request for a hearing regarding the staff's civil penalty determination. On May 18, 1995, OSC filed a timely hearing request regarding the civil penalty order. The Commission referred OSC's submission to the Atomic Safety and Licensing Board Panel on May 25, 1995, for the appointment of a presiding officer to conduct any necessary proceedings. On May 30, 1995, the Acting Chief Administrative Judge of the Panel appointed this Atomic Safety and Licensing Board pursuant to the Commission's referral. (60 Fed. Reg. 29,901.) The Board consists of Dr. George C. Anderson, Dr. A. Dixon Callihan, and G. Paul Bollwerk, III, who will serve as Chairman of the Board.

Pursuant to the Board's June 12, 1995 initial prehearing order, on August 23, 1995, OSC and the staff submitted a prehearing report in which they individually or jointly identified some 259 "central" issues for litigation in this proceeding. Two days later, OSC filed a motion with the Board requesting that the proceeding be stayed pending the resolution of an open staff investigation of OSC, the termination of which OSC asserted could result in settlement of this proceeding. The staff opposed OSC's stay request. After entertaining party arguments on the motion during an October 11, 1995 prehearing conference, by unpublished memorandum and order issued October 30, 1995, the Board denied the stay request and established a schedule for filing prediscovery dispositive motions regarding the "central" litigation issues identified by the parties.

Please take notice that a hearing will be conducted in this proceeding. The parties to the hearing are the NRC staff and OSC. The hearing will be governed by the procedures set forth in 10 C.F.R. Part 2, Subpart G (10 C.F.R. 2.700–.790).

During the course of this proceeding, the Board may hold additional prehearing conferences or oral arguments, as provided in 10 C.F.R. 2.752, 2.755. The public is invited to attend any prehearing conference or oral argument, as well as any evidentiary hearing that may be held pursuant to 10 C.F.R. 2.750–.751. The Board will establish the schedules for such sessions at a later date, through notices to be published in the **Federal Register** and/or made available to the public at NRC Public Document Rooms.

In accordance with 10 C.F.R. 2.715(a), any person not a party to this proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or the parties in the definition of the issues being considered. Written limited appearance statements should be sent to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. The Board will make a determination at a later date whether oral limited appearance statements will be entertained.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037.

Dated: November 20, 1995.

For the Atomic Safety and Licensing Board.

G. Paul Bollwerk, III,

Chairman, Administrative Judge.

[FR Doc. 95–28833 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

[1] License No. 37–28540–01 was due to expire on August 31, 1995. On December 13, 1993, OSC requested that license be terminated and replaced with individual licenses issued to the facilities named as locations of use on that license. On August 24, 1994, License No. 37–28540–01 was terminated and the agency subsequently issued separate licenses for five of the six facilities. See *Oncology Servs. Corp.*, LBP–94–29, 40 NRC 123, 124 n.1 (1994).

Nominations of New Member of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission is inviting nominations, of individuals who are qualified as nuclear medicine physicians, for a position on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due January 26, 1996.

ADDRESSES: Submit nominations to: The Office of Personnel, ATTN: Ms. Jude Himmelberg, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION, CONTACT: Josephine M. Piccone, Ph.D., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–7270.

SUPPLEMENTARY INFORMATION: The ACMUI advises the NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing, inspection, and enforcement cases.

Committee members possess the medical and technical skills needed to address evolving issues. Currently the membership of the ACMUI consists of five practicing physicians; a physician representing the U.S. Department of Health and Human Services, Food and Drug Administration; one nuclear pharmacist; one medical physicist; one representative with the States' perspective; one patients' rights and care advocate; and one health care administrator. The specialties of the physicians on the ACMUI are: nuclear cardiology (one); therapeutic radiology, with expertise in teletherapy and brachytherapy (two); nuclear medicine research (one); and nuclear medicine (one). The term of the current nuclear medicine physician member is scheduled to end September 1996. Nominations for the position of radiation therapy technologist/medical dosimetrist and medical physicist with expertise in radiation therapy are currently being evaluated.

NRC is soliciting nominations of persons who are qualified as nuclear medicine physicians. Persons having the aforementioned qualifications are encouraged to apply.

Nominees must include four copies of their resume, describing their educational and professional qualifications, and provide their current address and telephone number.

All new cmommittee members will serve a 2-year term, with possible reappointment to two additional 2-year terms.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses. Nominees will undergo a security background check and will be required to complete financial disclosure statements, to avoid conflict-of-interest issues.

Dated at Washington, DC, this 20th day of November, 1995.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer, Office of the Secretary of the Commission.

[FR Doc. 95–28834 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No: 040–08948 040–07397]

Information Meeting Concerning the Development of an Environmental Impact Statement for the Shieldalloy Metallurgical Corporation, Cambridge, Ohio, Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public of a meeting to discuss the U. S. Nuclear Regulatory Commission's process for decommissioning nuclear facilities and the development of an environmental impact statement (EIS) for the Shieldalloy Metallurgical Corporation (SMC), Cambridge, Ohio, facility, one of the key steps in this process. A brief status report will also be provided for the remediation of properties, in the Cambridge, Ohio, area, that contain slag that may have been removed from the Shieldalloy facility. Interested individuals are invited to attend this meeting. NRC, SMC, Cyprus Foote Mineral Company (CFMC), State and local officials, and citizen groups will share information concerning these topics in a facilitated roundtable discussion.

Background

The SMC facility processes ores for the production of metal alloys. The SMC license (SMB–1507) authorizes the possession of the radionuclides uranium and thorium as contaminants in slag from previous operations at this site. The previous owners (Vanadium Corporation of America, now Newmont Mining Corporation, and Foote Mineral Company (FMC), now Cyprus Foote Mineral Company) had processed an ore containing licensable quantities of natural uranium and thorium, and radionuclides resulting from their radioactive decay. The processing of this ore started in the late 1950s and ended in the early 1970s. In processing this ore to produce metal alloys, the radioactive material contained in the ore was segregated into slag. The waste slag is currently in a dense, rock-like form and stored in two piles on the site. In 1987, SMC purchased the facility from FMC. SMC continues to process ores for the production of metal alloys. However, these ores do not contain licensable quantities of radioactive material. With the exception of radioactive contamination that exists in, or originated from, the two slag piles, SMC has remediated the radioactive contamination at the site. NRC staff is developing an EIS to evaluate alternatives associated with decommissioning the slag piles.

In a possibly related matter, it was determined, in 1993, that slag from the site, when it was owned by FMC, may have been used as fill at offsite locations. Radiation surveys and slag analyses that NRC conducted in 1994 indicate that the slag does not pose an immediate health and safety risk to residents. However, some action may be necessary at specific locations, to minimize the long-term risk associated with the slag. In a letter dated January 25, 1995, SMC requested that the EIS be modified to include an analysis of the relocation of the offsite slag to the SMC, Cambridge, Ohio, site.

In addition to the issues that fall under NRC's jurisdiction, there are other environmental issues, associated with decommissioning the Cambridge site,

that are regulated by State and other Federal agencies, including the U.S. Environmental Protection Agency, the Ohio Environmental Protection Agency, and the Ohio Department of Health. As a result of these other environmental issues, SMC and CFMC are conducting a remedial investigation/feasibility study (RI/FS) for the SMC, Cambridge, Ohio, facility. In a letter dated July 5, 1995, SMC requested that the EIS be further expanded to examine the impacts of depositing, on one of the slag piles, contaminated soils and sediments resulting from site remediation under the RI/FS.[1]

A notice of intent to revise the scope of this EIS—to consider the impacts of depositing soils and sediments on the West Slag Pile and relocating slag from offsite—was published in the **Federal Register** on August 21, 1995 (60 FR 43477). In addition, SMC has stated that some of the slag may have a commercial use. Further information is needed from SMC to evaluate the impacts of this use. An additional expansion in scope may be needed to include this alternative.

The NRC hopes to accomplish three main objectives at the December 5, 1995, meeting;

- To describe NRC's overall decommissioning process for a nuclear facility, with an emphasis on opportunities for public involvement and participation, and the EIS portion of the process.
- To provide a status report on the EIS, including the additional alternatives of returning offsite slag and contaminated soils and sediments to the existing slag piles for permanent disposal.
- To provide a brief status report on the offsite slag situation.

NRC anticipates that the information provided at the public meeting will stimulate additional public comment. NRC will keep the roundtable participants, and the general public, informed of its decision-making process on this issue, and provide opportunities for public comment, including additional meetings such as this.

NRC recently prepared a preliminary draft of the EIS for the Cambridge facility and requested agencies cooperating in its development (Ohio Environmental Protection Agency, Ohio Department of Health, and the U.S. Environmental Protection Agency) to provide comments on this preliminary draft, consistent with their responsibilities under law. This is a preliminary draft that will be revised, based on these agencies' comments, and issued in the spring of 1996 as a draft for public comment. NRC will be soliciting public comments on the EIS at that time, after consideration and resolution of the cooperating agencies' comments.

Conduct of Meeting

The meeting will be held on December 5, 1995, in the Pritchard-Laughlin Civic Center, Cambridge, Ohio. The meeting will begin at 7:00 p.m. and will end at 10:00 p.m. The meeting will be facilitated by F.X. Cameron, NRC's Special Counsel for Public Liaison. The purpose of this meeting is to discuss, with representative stakeholders and the public, information concerning NRC's decommissioning process. The meeting will involve invited representatives from the following groups: NRC, SMC, CFMC, State and local officials, local citizen groups, and the public. These representatives will participate in a facilitated round-table discussion. An agenda for the meeting will be prepared and distributed to all invited representatives, as well as placed in the local public document room, in advance of the meeting. The public will be present during the meeting and time will be provided for public comment. Future information meetings will be held periodically concerning other issues relating to the decommissioning of the Shieldalloy facility and the remediation of offsite contamination.

FOR FURTHER INFORMATION, CONTACT: James E. Kennedy, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop T-7-F-27, Washington, D.C., 20555, telephone (301) 415-6668.

Dated at Rockville, MD this 17th day of November, 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95-28828 Filed 11-24-95; 8:45 am]

BILLING CODE 7590-01-P

[1] Related documents (letters and reports) are available for public review at the Guernsey County District Public Library, 800 Steubenville Avenue, Cambridge, Ohio.

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on November 28 and 29, 1995, at the General Electric Nuclear Energy (GENE) Headquarters, 175 Curtner Avenue, San Jose, California.

Most of the meeting will be closed to public attendance to discuss GENE proprietary information pursuant to 5 U.S.C. 552b(c)(4), with the exception of an approximately two-hour session that will be open to the public beginning at 8:30 a.m. on November 28, 1995.

The agenda for the subject meeting shall be as follows:

Tuesday, November 28, 1995–8:30 a.m. until the conclusion of business.

Wednesday, November 29, 1995–8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the GENE Test and Analysis Program being conducted in support of the Simplified Boiling Water Reactor (SBWR) passive plant design certification. Discussion topics will include: Revision C of the GENE Test and Analysis Program description document and the SBWR scaling analysis report. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer(s) named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of GENE, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415-8065) between 7:30 a.m. and 4:15 p.m. (EST) (after November 16, 1995, contact Dr. Medhat El-Zeftawy at 301/415-6889). Persons planning to attend this meeting are urged to contact the above named individual(s) one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: November 13, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95-28829 Filed 11-24-95; 8:45 am]

BILLING CODE 7590-01-P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 6, 1995, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 6, 1995—2:00 P.M. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 15, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95-28830 Filed 11-24-95; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Individual Plant Examinations/Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Individual Plant Examinations (IPEs) and on Probabilistic Risk Assessment (PRA) will hold a joint meeting on December 14 and 15, 1995, in Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 14, 1995–8:30 a.m. until the conclusion of business.

Friday, December 15, 1995–8:30 a.m. until the conclusion of business.

The Subcommittees will continue to discuss topics related to Risk Based Regulatory Applications (RBRA), including identification of the models, analysis and regulatory issues that are currently amenable to risk based regulatory approach, and other related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415-6889) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: November 11, 1995

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 95-28831 Filed 11-24-95; 8:45 am]

BILLING CODE 7590-01-P

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 7-8, 1995, in Conference Room T-2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Tuesday, August 22, 1995 (60 FR 43619).

Thursday, December 7, 1995

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–10:15 A.M.: Proposed Final Generic Letter on Inadequate Testing of Safety-Related Logic Circuits (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final Generic Letter on Inadequate Testing of Safety-Related Logic Circuits.

Representatives of the industry will participate, as appropriate.

10:30 A.M.–12:00 Noon: Multiple System Responses Program (MSRP)

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the resolution of the MSRP issues.

1:30 P.M.–3:00 P.M.: Meeting with the Director of the Office of Nuclear Reactor Regulation (NRR) (Open)—The Committee will hear presentations by and hold discussions with Mr. William Russell, NRR Director, on items of mutual interest, including the following: Risk/Performance-Based Regulations, Risk-Based Inspection Program, Activities of the Nuclear Industry in Support of the Risk/ Performance-Based Regulations, AP600 and SBWR review status, and ASME piping code review.

3:00 P.M.–3:30 P.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

3:45 P.M.–4:15 P.M.: Future ACRS Activities (Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

4:15 P.M.–4:30 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses of the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. These responses are expected to be received from the EDO before the meeting.

4:30 P.M.–6:45 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report on resolution of Generic Safety Issue-78, "Monitoring of Fatigue Transient Limits for the Reactor Coolant System".

Friday, December 8, 1995

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:15 A.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

9:30 A.M.–10:00 A.M.: Preparation for Meeting with the NRC Chairman (Open)—The Committee will select items that may be discussed with the NRC Chairman.

10:00 A.M.–11:00 A.M.: Meeting with the NRC Chairman (Open)—The Chairman will meet with the Committee to discuss her regulatory agenda and philosophy, and other items of mutual interest.

11:15 A.M.–12:15 P.M.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will prepare for meeting with the NRC Commissioners to discuss items of mutual interest including, Rulemaking to amend 10 CFR 50.48, Fire Protection, Nondestructive Examination Techniques, and National Academy of Sciences/National Research Council Study on Digital Instrumentation and Control.

1:30 P.M.–3:00 P.M.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North, to discuss items of mutual interest including those noted above.

3:15 P.M.—3:45 P.M.: Election of Officers for Calendar Year 1996 (Open)—The Committee will elect Chairman and Vice Chairman to the ACRS, and Member-at-Large to the Planning and Procedures Subcommittee for Calendar Year 1996.

3:45 P.M.–5:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

The ACRS meeting dates for Calendar Year 1996 are provided below:

ACRS meeting No.	1996 ACRS meeting dates
428	February 8–10, 1996
429	March 7–9, 1996
430	April 11–13, 1996
431	May 23–25, 1996
432	June 20–22, 1996
433	August 8–10, 1996
434	September 12–14, 1996
435	October 10–12, 1996
436	November 7–9, 1996
437	December 5–7, 1996

Dated: November 20, 1995.

Andrew L. Bates

Advisory Committee Management Officer

[FR Doc. 95–28836 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 28, 1995, through November 9, 1995. The last biweekly notice was published on Wednesday, November 8, 1995 (60 FR 56361).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 27, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director):* petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: October 20, 1995.

Description of amendment request: The proposed one-time amendment would revise the Calvert Cliffs Nuclear Power Plant, Unit No. 1, (CC–1) Technical Specifications (TSs) by extending certain 18-month instrument surveillance intervals by a maximum of 39 days to March 31, 1996. The instruments involved are included in the reactor protective system, engineered safety features actuation system, power-operated relief valves, low-temperature overpressure protection system, remote shutdown instruments, post-accident monitoring, radiation monitoring, and containment sump level instruments.

The Commission issued Amendment No. 208 to Facility Operating License No. DRP–53 and Amendment No. 186 to Facility Operating License No. DRP–69 for the CC–1/2, respectively. The amendments permanently extended the surveillance intervals for the instruments described above from 18 months to 24 months after a specified number of the instruments had been replaced. The amendments were effective immediately and to be implemented on CC–2 within 30 days, but not implemented on CC–1 until its restart after the spring 1996 refueling outage. All of the instruments identified for replacement on CC–2 have been replaced, but those identified for replacement on CC–1 have not been replaced, thus, the reason for the later implementation date. The proposed one-time amendment is needed prior to Amendment No. 208 being implemented because of a change in the refueling schedule. The licensee has provided technical justification to allow operation for an additional short-time period of up to a maximum of 39 days.

CC–1 was initially scheduled to begin its refueling outage on February 16, 1996, which would have been within the time frame necessary to perform the required 18-month instrument surveillances currently required for the instruments identified above. The licensee has recently rescheduled the refueling outage for CC–1 to start March 15, 1996, several months after the initial amendment request and after consultation with the Pennsylvania-New Jersey-Maryland power pool. The revised schedule will allow the maximum use of the available fuel in the CC–1 reactor core and will also allow the unit to operate for an additional period of about 1 month during a period of potentially high power demand. In addition, the delay will allow more time to plan and prepare for the upcoming refueling outage. Performing the required instrument surveillances at power would present an unwarranted personnel safety risk and, in some cases, the surveillances cannot be done during power operation because they would cause a unit trip. This proposed one-time amendment will be superseded by Amendment No. 208 when it is implemented.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one-time change would extend 18-month instrument surveillance intervals by a maximum of 39 days to March 31, 1996, for specific Reactor Protective System (RPS), Engineered Safety Features Actuation System (ESFAS), Power-Operated Relief Valve, Low Temperature Overpressure Protection (LTOP), Remote Shutdown, Post-Accident Monitoring (PAM), Radiation Monitoring, and Containment Sump Level instruments.

The purpose of the RPS is to effect a rapid reactor shutdown if any one or a combination of conditions deviates from a pre-selected operating range. The system functions to protect the core and the Reactor Coolant System (RCS) pressure boundary. The purpose of the ESFAS is to actuete equipment which protects the public and plant personnel from the accidental release of radioactive fission products if an accident occurs, including a loss-of-coolant accident, main steam line break, or loss of feedwater event. The safety features function to localize, control, mitigete, and terminate such incidents in order to minimize radiation exposure to the general public. The PAM instruments provide the Control Room operators with primary information necessary to take manual actions, as necessary, in response to design basis events, and to verify proper system response to plant conditions and operator actions. The purpose of the Remote Shutdown System is to provide plant parameter indications to operators on a Remote Shutdown Panel to be used while placing and maintaining the plant in a safe shutdown condition in the event the Control Room is uninhabitable. The indications are used to verify proper system response to plant conditions and operator actions. The LTOP System protects against RCS overpressurization at low temperatures by a combination of administrative controls and hardware. Power-Operated Relief Valves are set to lift before pressurizer safety valves, and subsequently reseat to minimize the release of reactor coolant from the RCS. The Containment Sump High Level Alarm System provides an alarm in the Control Room to provide one of the available indications of excessive RCS leakage during normal plant operation. The Containment Area High Range Radiation Monitoring System provides an indication of high radiation levels in containment.

Failure of any of these systems is not an initiator for any previously evaluated accident. Therefore, the proposed change would not involve an increase in the probability of an accident previously evaluated.

Surveillance and maintenance history has demonstrated good capability for identifying adverse operation by individual instruments. Baltimore Gas and Electric Company has the capability to respond to an inoperable instrument by following the Technical Specification Actions for an inoperable instrument or by performing a channel calibration with the Unit at full power. However, calibration of all the instruments at power is not desirable because of personnel safety, personnel radiation protection goals, and plant reliability concerns.

These factors provide assurance that the requested surveillance extension will not adversely affect our ability to detect degradation of the instruments. Also, either analysis is available to show the instruments will operate properly during the requested surveillance extension, or the surveillance program has shown that problems will be identified and addressed appropriately. Therefore, these channels will be able to perform the functions assumed in the safety analysis, and there is no significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed Technical Specification changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requested increase in surveillance interval for RPS, ESFAS, Power-Operated Relief Valve, LTOP, Remote Shutdown, PAM, Radiation Monitoring, and Containment Sump Level instrument surveillances does not involve a significant change in the design or operation of the plant. No plant hardware is being modified as part of the proposed change. The proposed chenge also does not involve any new or unusual actions by plant operators. Therefore, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The RPS, ESFAS, Power-Operated Relief Valve, LTOP, Remote Shutdown, PAM, Radiation Monitoring, and Containment Sump Level instruments are designed to provide actuation signals and/or indications to ensure appropriate action is taken in response to design basis accidents. Channel checks, channel functional tests and routine comparison of the redundant and independent parameter indications provides a reliable indication of instrument operation. Also, either analysis is available to show the instruments will operate properly during the requested surveillance extension, or instrument surveillance program has shown that problems will be identified and addressed appropriately. During the requested extension, these systems will be available to perform the functions assumed in the Safety Analysis. Surveillance and maintenance history have demonstrated good capability for identifying adverse operation by individual instruments. Baltimore Gas and Electric Company has the capability to respond to such adverse operation, including performing channel calibrations at power. However, such work on all the instruments is not desirable because of personnel safety, personnel radiation protection goals, and plant reliability concerns. Extending the surveillance interval provides additional possibility for instrument components to malfunction by means such as drift or instrument failure, which could allow plant parameters to exceed design bases assumptions. We have determined that the effect of the surveillance interval extension on safety is small, and operation of the instruments in the extended interval would not invalidate any assumption in the plant licensing basis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of amendment request: October 3, 1995.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) for both stations to implement 10 of the line item TS improvements recommended in Generic Letter (GL) 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993. The proposed changes also include editorial changes on the affected TS pages.

The proposed changes from GL 93–05 are the following: (1) TS 4.1.3.1.2 (GL 93–05, Item 4.2), extending the interval for checking the operability of each full-length rod not fully inserted in the core from 31 days to 92 days; (2) Table 4.3–3 (GL 93–05, Item 5.14), extending the interval for the digital channel operational test for radiation monitoring instrumentation in the table from monthly to quarterly; (3) TS 4.4.3.2 (GL 93–05, Item 6.6), extending the interval between current tests of the required groups of pressurizer heaters from 92 days to each refueling outage; (4) TS 4.4.6.2.2.b (GL 93–05, Item 6.1), extending the time the plant may be in cold shutdown before pressure isolation valve testing is required, prior to entry into Operational Mode 2, from 72 hours to 7 days; (5) TS 4.5.1.1.b (GL 93–05, Item 7.1), revising the requirement to verify the boron concentration in an accumulator within 6 hours of any volume increase to the accumulator (greater than or equal to 70 gallons) so that the verification is not required when the volume increase is from the refueling water storage tank (RWST) and the RWST has not been diluted since verifying that the boron concentration of the RWST is within the concentration limits for the accumulators; (6) TS 4.6.2.1 (GL 93–05, Item 8.1), extending the interval between tests to verify each containment spray nozzle is unobstructed from 5 years to 10 years; (7) TS 4.6.4.1 (GL 93–05, Item 5.4), extending the interval for testing each hydrogen monitor for combustible gas control from 31 days to 92 days for the analog channel operational test, and from 92 days to each refueling outage for channel calibration; (8) TS 4.6.4.2 (GL 93–05, Item 8.5), extending the interval between tests to demonstrate operability of the hydrogen recombiner system from 6 months to once each refueling outage; (9) TS 4.7.1.2.1.a (GL 93–05, Item 9.1), extending the interval between tests of the auxiliary feedwater pumps from 31 days to 92 days on a staggered test basis; and (10) TS 4.11.2.6 (GL 93–05, Item 13), extending the interval for determining the quantity of radioactivity contained in each gas decay tank, when radioactivity is being added to the tanks, from 24 hours to 7 days, with the 24-hour frequency maintained during the primary coolant degassing operation. The editorial changes are the following: (1) TS 4.4.6.2.1.c, changes the word "from" to the word "to," (2) TS 4.5.1.1.c, the

change clarifies that the motor control center compartment is for each accumulator isolation valve, (3) TS 4.5.1.2, deletes the footnote because the operating cycle in the footnote is over for each unit, and (4) TS 4.7.1.2.1.a.2 and 4.7.1.2.1.c, renumbers and rephrases (only TS 4.7.1.2.1.a.2) other surveillance requirements for the auxiliary feedwater pumps because of the proposed change to TS 4.7.1.2.1.a to implement GL 93–05, Item 9.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are consistent with GL 93–05 and NUREG–1366 ["Improvements to Technical Specifications Surveillance Requirements," December 1992. In GL 93–05, the staff stated that it concluded, in performing the study documented in NUREG–1366, that safety can be improved, equipment degradation decreased, and an unnecessary burden on licensee personnel eliminated by reducing the frequency of certain testing required in the Technical Specifications during power operation]. The changes eliminate testing that is likely to cause transients or excessive wear of equipment. An evaluation of these changes indicates that there will be a benefit to plant safety. The evaluation, documented in NUREG–1366, considered (1) unavailability of safety equipment due to testing, (2) initiation of significant transients due to testing, (3) actuation of engineered safety features that unnecessarily cycle safety equipment, (4) importance to safety of that system or component, (5) failure rate of that system or component, and (6) effectiveness of the test in discovering the failure.

As a result of the decrease in the testing frequencies, the risk of testing causing a transient and equipment degradation will be decreased, and the reliability of the equipment will not be significantly decreased.

The initial conditions and methodologies used in the accident analyses remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accident analyses results are not impacted. Appropriate testing will continue to assure that equipment and systems will be capable of performing the intended function.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes either modify allowable intervals between certain surveillance tests, delete surveillance requirements, or alter an action statement with regard to the required testing. The proposed changes do not affect the design or operation of any system, structure, or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability of any structure, system, or component reduced by the revised surveillance or testing requirements.

Appropriate testing will continue to assure that the system is capable of performing its intended function. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed. Since there is no change to the facility or operating procedures, and the safety functions and reliability of structures, systems, or components are not affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

All of the proposed technical specification changes are compatible with plant operating experience and are consistent with the guidance provided in GL 93–05 and NUREG–1366. The changes eliminate unnecessary testing that increases the risk of transients and equipment degradation. There is no impact on safety limits or limiting safety system settings.

The remaining proposed changes are administrative in nature and have no impact on the margin of safety of any technical specification. They do not affect any plant safety parameters or setpoints.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–373, LaSalle County Station, Units 1, LaSalle County, Illinois

Date of amendment request: October 2, 1995

Description of amendment request: The proposed amendments would revise Section 3.4.2 to change the safety/relief valve (SRV) safety function lift setting tolerances from +1%, −3% to plus or minus 3% and include as-left SRV safety function lift setting tolerances of plus or minus 1%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated will not increase as a result of this change, because the only changes are the tolerances for the SRV opening setpoints and the speed of the reactor core isolation cooling system (RCIC) turbine and pump. Changing the maximum allowable opening setpoint for the SRVs does not cause any accident previously evaluated to occur, or degrade valve or system performance in any way so as to cause an accident to occur with an increased frequency. In addition, the increased speed of the RCIC turbine and pump are within the design limits of the system. RCIC operability and failure probabilities are not impacted by this change.

The consequences of an ASME Overpressurization Event are not significantly increased and do not exceed the previously accepted licensing criteria for this event. General Electric (GE) has calculated the revised peak vessel pressure for LaSalle Station to be 1341 psig, which is well below the 1375 psig criterion of the ASME Code for upset conditions, referenced in Section 5.2.2, Overpressurization Protection, of the Updated Final Safety Analysis Report (UFSAR), and NUREG–0519 (Safety Evaluation Report related to the operation of LaSalle County Station, Units 1 and 2, March 1981), and Section 15.2–4, Closure of Main Steam Isolation Valves (BWR) of NUREG–0800 (Standard Review Plan).

GE has also performed an analysis of the limiting Anticipated Transient Without Scram (ATWS) event, which is the Main Steam Isolation Valve (MSIV) Closure Event. This analysis calculated the peak vessel pressure to be 1457 psig, which is sufficiently below the 1500 psig criterion of the ASME Code for emergency conditions.

Per NUREG–0519, listed above, Section 5.4.1, and Technical Specification 4.7.3.b, the RCIC pump is required to develop flow greater than or equal to 600 gpm in the test flow path with a system head corresponding to reactor vessel operating pressure when steam is supplied to the turbine at 1000 +20, −80 psig. Increasing the turbine and pump speed ensures these criteria will still be met and the consequences of an accident will not increase.

Therefore, there is not a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The only physical changes are to increase the allowable tolerances for SRV opening setpoints and to increase the RCIC pump and turbine speeds. These changes do not result in any changed component interactions. The SRVs and RCIC will still provide the functions for which they were designed. Since all of the other systems evaluated will continue to function as intended, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

While the calculated peak vessel pressures for the ASME Overpressurization Event and the MSIV closure ATWS Event are larger than that previously calculated without the proposed setpoint tolerance increases, the new peak pressures remain sufficiently below the respective licensing acceptance limits associated with these events. In addition, the actual L1C8 reload analysis of the ASME Overpressurization Event will be verified to be within the licensing acceptance limit for that event prior to Unit 1 Cycle 8 startup, as required in the normal reload 10 CFR 50.59 process. These licensing acceptance limits have been previously evaluated as providing a sufficient margin of safety. For other accidents and transients, the increased setpoint tolerances have a negligible effect on the results, so the margin of safety is preserved.

The staff has reviewed the amendment request and the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 17, 1995.

Description of amendment request: The proposed amendment would modify the Palisades Facility Operating License to reference 10 CFR Part 40, allow the use of source materials as reactor fuel, delete references to specific amendments and specific revisions in the listed titles of the Physical Security Plan Suitability Training and Qualification Plan and the Safeguards Contingency Plan, delete paragraph 2.F on reporting requirements, and make minor editorial changes. In addition, the Technical Specifications (TS) would be modified as follows: (1) TS 3.1.2 would be modified to change the pressurizer cooldown limit from 100 °F to 200 °F/hour; (2) the shield cooling system requirements would be relocated to the Palisades Final Safety Analysis Report (FSAR); (3) several minor editorial changes to various sections of the TS are proposed; and (4) revisions to several TS bases pages are proposed.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Administrative Changes

Since these changes have no effect on the physical plant or its operation, they cannot involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in a margin of safety.

Technical Changes

The following evaluation supports the finding that operation of the facility in accordance with the two non-administrative changes would not:

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

Use of Source Material as reactor fuel: The use of depleted or natural uranium, defined as "Source Material" by 10 CFR 40.4, in addition to the currently allowed "slightly enriched uranium" would not affect the physical plant or its operation in any way which could increase the probability of any previously evaluated accident. Its use would not introduce any new kind or additional amount of fission product material. Therefore, use of source material as reactor fuel would not affect the consequences of an accident previously evaluated.

Restoration of the Pressurizer Cooldown Rate Limit: The Palisades Technical Specifications contain a single limit, item 3.1.2 b, for both heatup and cooldown rates for the pressurizer. The October 5, 1994 change request proposed changing that limit from 200°F/hour to 100°F/hour solely due to its inconsistency with the pressurizer design analysis. Fatigue calculations in the pressurizer design analysis assumed a heatup rate of 100°F/hour and a cooldown rate of 200°F/hour. Until issuance of Amendment 163, the Technical specifications contained a single limit for both heatup and cooldown rates of 200°F/hour. Although the installed equipment is not capable of exceeding the 100°F/hour heatup limit, the October 5, 1994 change request proposed a revised limit to assure that the Technical Specification limit was not less restrictive than the design analysis. The higher pressurizer cooldown rate does not affect the results of our analyses which determined the PCS Pressure-Temperature limits or the [Loss of Temperature Overpressurization] LTOP setting requirements of the Technical Specifications.

When the change was proposed, it was not realized that the more limiting cooldown rate might adversely, and unnecessarily, affect plant operation. This proposed change to the Technical Specifications would separate the limits for heatup rate and cooldown rate, returning the specified cooldown rate to the original value which was consistent with plant design. The current heatup rate limit, which is also consistent with the design, would be retained. The proposed pressurizer cooldown rate will allow depressurizing of the primary coolant system [PCS] and flooding the pressurizer steam space without undue restriction. The more rapid depressurization would be important in the event of a steam generator tube rupture.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.*

Use of Source Material as reactor fuel: The use of depleted or natural uranium, defined as "Source Material" by 10 CFR 40.4, in addition to the currently allowed "slightly enriched uranium" would not affect the design (other than the fuel enrichment), configuration, or operation of the plant. Therefore this change cannot create the possibility of a new or different kind of accident from any previously evaluated.

Restoration of the Pressurizer Cooldown Rate Limit: The proposed change to the Technical Specifications would bring the plant within the assumptions of the design documents for the pressurizer and in line with the Accident analysis for the rapid reduction of the primary coolant system pressure. With the lower rate specified in the present technical specification, the depressurization of the PCS will be delayed to maintain the lower pressurizer cooldown rate.

Therefore, operation of the facility in accordance with the proposed change to the

Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. *Involve a significant reduction in a margin of safety.*

Use of Source Material as reactor fuel: The use of depleted or natural uranium, defined as "Source Material" by 10 CFR 40.4, in addition to the currently allowed "slightly enriched uranium" would not affect the Safety Limits, Limiting Conditions for Operation or other operating limits, or the safety analyses which they support. Therefore, the margin of safety is unaffected.

Restoration of the Pressurizer Cooldown Rate Limit: The proposed change to the Technical Specifications would bring the plant in line with the design analysis. This will not reduce the margin of safety since the higher rate is the basis for the present margin of safety.

Therefore, the proposed change to the Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Brian E. Holian, Acting.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: September 20, 1995.

Description of amendment request: The proposed amendment would allow a one-time extension of the 18-month surveillance intervals contained in the Technical Specifications (TS) related to system testing, instrumentation calibration, component inspection, component testing, response time testing and logic system functional tests for various systems, components and instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed TS changes involve a one-time only change in the surveillance testing intervals to facilitate a one-time only change in the Fermi 2 operating cycle. The proposed TS changes do not physically impact the plant nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS changes do not significantly degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed TS changes affect only the frequency of the surveillance requirements and do not impact the TS surveillance requirements themselves. In addition, the proposed TS changes do not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the change in the frequency of surveillance testing. Also, the proposed TS changes do not significantly affect the availability of equipment or systems required to mitigate the consequences of an accident because of other, more frequent testing or the availability of redundant systems or equipment. Furthermore, a historical review of surveillance test results support the above conclusions. Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. *The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed TS changes involve a one-time only change in the surveillance testing intervals to facilitate the one-time only change in the Fermi 2 operating cycle. The propose TS changes do not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, the surveillance test requirements themselves will remain unchanged. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. *The proposed TS changes do not involve a significant reduction in a margin of safety.*

Although the proposed TS changes will result in an increase in the interval between some surveillance tests, the impact, if any, on system availability is small based on other, more frequent testing or redundant systems or equipment, and there is no evidence of any time dependent failures that would impact the availability of the systems. Therefore, the assumptions in the licensing basis are not impacted, and the proposed TS changes do not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Brian E. Holian, Acting.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 8, 1995.

Description of amendment request: The amendments would revise Technical Specification Section 3/4.4.8, Table 4.4–4, Table Notations, to allow the reactor coolant system gross specific activity measurement method to be changed from the current degassed method to a non-degassed, or pressurized dilution, method.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendments will have no effect on the probability of the occurrence of any accident. It has been demonstrated that the results obtained by the pressurized dilution technique are statistically similar to results obtained by the degassed technique. Therefore, implemention of the new method will have no effect insofar as the accuracy of the NC [reactor coolant system] system specific activity determination is concerned. Therefore, there will be no effect upon any accident dose consequences.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No accident causal mechanisms will be affected by installation of the sampling equipment required by the pressurized dilution technique. Operation of the NC system itself will not be affected by the proposed change in sampling technique. All procedure changes required for implementation of the new sampling method will be made according to the provisions of 10 CFR 50.59. No impact on other areas of plant operations will be generated as a result of the new sampling method.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No impact on any safety limits will result from the change in sample method from the degassed technique to the pressurized dilution technique. Several benefits will result from the change, including fewer opportunities for valve mispositionings to occur, as well as reduced radiation exposure to Chemistry technicians. The proposed amendment is consistent with a similar amendment approved by the NRC for McGuire Nuclear Station (Amendment Nos. 66 and 47 for McGuire Units 1 and 2, respectively).

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 7, 1995.

Description of amendment request: The proposed change would revise Technical Specification 3/4.5.1 SAFETY INJECTION TANKS (SITs) by increasing the specified range associated with SIT water level and nitrogen cover pressure.

The current limiting conditions for operation (LCO) for the SIT requires that four SITs be operable with a water volume in the range of 1679 cubic feet (78%) to 1807 cubic feet (83.8%) and a nitrogen cover pressure between 600 psig to 625 psig. The proposed change requests an expanded range of 925.6 cubic feet (40%) to 1807 cubic feet (83.8%) for SIT level and 600 psig to 670 psig for SIT pressure indicators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with this change does not involve an increase in the probability of any accident. The SITs are used to mitigate the consequences of an accident and are not accident initiators.

The proposed change would actually decrease the consequence of events such as LOCA [loss of coolant accident] which would result in rapid RCS [reactor coolant system] depressurization.

By reducing SIT level, the initial nitrogen gas volume is increased which results in an increase in the SIT flow rate into the RCS for a given RCS pressure transient. This decreases the time required to fill the reactor vessel lower plenum after the end of blowdown. During refill, fuel cladding temperature increases rapidly due to insufficient cooling which is provided solely by rod to rod thermal radiation. Decreasing the refill time therefore, results in lower cladding temperature at the start of core reflood which results in lower Peak Cladding Temperature (PCT) during reflood.

Increasing the nitrogen cover pressure would also result in increased SIT flow rate and would be beneficial as described above.

Therefore, the proposed change will not involve a significant increase in the probability or consequence of any accident.

The proposed change will not create any new system connections or interactions. Thus, no new modes of failure are introduced. The increased range for SIT pressure and level is actually beneficial in maintaining lower PCT following a LOCA.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The impact of the proposed changes on the Waterford 3 FSAR [Final Safety Analysis Report] analyses have been evaluated. The AOR [Analysis of Record] shows that PCT and maximum cladding oxidation would increase slightly as a result of this change. However, they both remain below the acceptance criteria values of 2200 degrees fahrenhit and 17% for PCT and maximum cladding oxidation, respectively. The system capabilities to mitigate the consequences of accidents will be the same as they were prior to these changes.

Therefore, the proposed changes do[es] not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street NW, Washington, DC 20005–3502.

NRC Project Director: William D. Beckner.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 10, 1995

Description of amendment request: This amendment would incorporate certain improvements into the Three Mile Island, Unit 1 Technical Specifications consistent with the Standard Technical Specifications for Babcock and Wilcox plants. The requested changes would affect the reactor building isolation instrumentation, sampling frequency for the sodium hydroxide tank, and the surveillance requirements for the plant vital bus batteries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment involves changes to the TMI–1 Technical Specifications [TS] which are consistent with the [Babcock & Wilcox] B&W Standard Technical Specifications ([R]STS), NUREG–1430. This change does not involve any change to system or equipment configuration. The proposed amendment revises certain surveillance requirements, or extends certain surveillance intervals. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Therefore, this change does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The change only involves changes to surveillance requirements that are consistent with RSTS or deletion of requirements which are not appropriate for TS. No new failure modes are created and thus the changes are bounded by accidents previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. These proposed changes involve deletions of requirements or changes in surveillance requirements consistent with the B&W RSTS. No operating limits are affected and no reduction in the margin of safety is involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: October 24, 1995.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Surveillance Requirement of Section 4.4.5.1, "Steam Generators" and the Bases for Section 3/4.4.5, "Steam Generators." Typographical errors in Section 4.4.5.1.3.c.1 and Table 4.4–6 are also proposed to be corrected. The proposed amendment would defer the next required surveillance to inspect steam generator tubes from October 20, 1996, to the next refueling outage or no later than October 20, 1997, whichever is earlier.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

Pursuant to 10 CFR 50.92, NNECO [the licensee] has reviewed the proposed one-time change to extend the maximum allowable inspection interval for steam generator tubes from 24 months to 36 months. NNECO concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria in 10 CFR 50.92(c). That is, the proposed changes do *not*:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

This change involves one-time deferment of the eddy current inspection of the steam generator tubes until the end of the next refueling outage following the thirteenth fuel cycle, but no longer than 12 months beyond the original due date for the inspection. The steam generator tubes have only been exposed to one operating cycle and are made of thermally treated Alloy 690, one of the most corrosion resistant material currently used in recirculating steam generators. Following the first full fuel cycle of operation, the steam generator tube inspection found the tubes to be in excellent condition (i.e., no repairs were required and there was no evidence of an active degradation mechanism). Accordingly, no significant tube degradation is expected by the end of the thirteenth fuel cycle. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

This one-time change, allowing the steam generator tubes to be examined at the end of the refueling outage following Cycle 13 does not alter the physical design, configuration, or method of operation of the plant. The extension of the inspection interval is not expected to result in significant steam generator tube degradation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

Steam generator tube degradation occurs primarily during operation. The change to extend the maximum allowable inspection interval for steam generator tubes from 24 months to 36 months will not significantly increase the total operating time during Cycle 13 (the plant was in an outage for at least 10 months of the 12 month extension). Therefore, there is no significant effect on the extent and severity of tube degradation. The improved corrosion resistance of the steam generators tubes (thermally treated Alloy 690) minimizes the threat of primary- and secondary-side corrosion. No indications of corrosion have been identified in inspections performed so far. Based on our assessment of the inspection data and corrosion potential, all tubes are expected to be within the Regulatory Guide 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," limits by the end of Cycle 13. Also, correction of the typographical errors will improve the fidelity of the specification. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 1, June 14 and 29, July 14, 17, 18, and 26, 1995 with supplemental information provided by letter dated October 20, 1995.

Description of amendment request: Each proposed amendment would change the surveillance requirement frequency from the current once per 18-month interval to once per 24-month which is the current length of a Millstone Unit 3 refueling cycle. The changes pertain to the following equipment:

May 1, 1995, Flow Paths—Operating; Position Indication System; Rod Drop Time; Seismic Monitoring System; Loose Part Detection System; Quench Spray System; Containment Recirculation Spray System; Containment Isolation Valves. This notice supersedes the notice published in the **Federal Register** on June 6, 1995 (60 FR 29882) relating to containment isolation valves.

May 1, 1995, Steam Generator Tube Inspections; 10CFR50, Appendix J, Type B and Type C Tests.

June 14, 1995, AC Sources Operating; DC Sources Operating; Containment Penetration Conductor Overcurrent Protective Devices; Motor-Operated Valves Thermal Overload Protection.

June 29, 1995, Electric Hydrogen Recombiners; Auxiliary Feedwater System; Reactor Plant Component Cooling Water System; Service Water System; Snubbers.

July 14, 1995, ECCS Subsystems—Tavg Greater Than or Equal to 350 °F; pH Trisodium Phosphate Storage Baskets.

July 17, 1995, Supplementary Leak Collection and Release System; Control Room Emergency Ventilation System; Control Room Envelope Pressurization System; Auxiliary Building Filter System; Fuel Building Exhaust Filter System.

July 18, 1995, Reactor Coolant System.

July 26, 1995; Reactor Trip System Instrumentation; ESFAS Instrumentation; Remote Shutdown Instrumentation; Accident Monitoring Instrumentation; RCS Total Flow Rate; Process and Radiation Monitoring Instrumentation.

In addition, the specifications are changed from a five-column to a one-column format.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to surveillance requirements of the Millstone Unit No. 3 Technical Specifications extend the frequency for checking the operability of the affected components/equipment. The proposal would extend the frequency from at least once per 18 months to at least once each refueling interval (i.e., nominal 24-months).

Changing the frequency of surveillance requirements from at least once per 18 months to at least once each refueling interval does not change the basis for the frequency. The frequency was chosen because of the need to perform this verification under the conditions that apply during a plant outage, and to avoid the potential of an unplanned transient if the surveillances were conducted with the plant at power.

The proposed changes do not alter the intent or method by which the surveillances are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes in the frequency of surveillance requirements will not degrade the ability of the equipment/components to perform its safety function.

Additional assurance of the operability of the components/equipment is provided by additional surveillance requirements (e.g., monthly or quarterly surveillances).

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of surveillance requirements. This evaluation included a review of surveillance results, preventive maintenance records, and the frequency and type of corrective maintenance. It concluded that there is no indication that the proposed extension could cause deterioration in the condition or performance of any of the subject components.

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the probability or consequences of accidents.

Since the proposed changes only affect the surveillance frequency for safety systems that are used to mitigate accidents, the changes cannot affect the probability of any previously analyzed accident. While the proposed changes can lengthen the intervals between surveillances, the increases in intervals has been evaluated and it is concluded that there is no significant impact on the reliability or availability of the safety system and consequently, there is no impact on the consequences on any analyzed accident.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to surveillance requirements of the Millstone Unit No. 3 Technical Specifications extend the frequency for verifying the operability of the affected components/equipment. The proposal would extend the frequency from at least once per 18 months to at least once each refueling interval (nominal 24 months).

Changing the frequency of surveillance requirements from at least once per 18 months to at least once each refueling interval does not change the basis for the frequency. The frequency was chosen because of the need to perform this verification under the conditions that apply during a plant outage, and to avoid the potential of an unplanned transient if the surveillances were conducted with the plant at power.

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the probability or consequences of accidents.

3. The changes do not involve a significant reduction in a margin of safety.

The proposed changes to surveillance requirements of the Millstone Unit No. 3 Technical Specifications extend the frequency for verifying the operability of the components/equipment. The proposal would extend the frequency from at least once per 18-months to at least once each refueling interval (24-months).

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the margin of safety.

The proposed changes to surveillance frequency are still consistent with the basis for the frequency, and the intent or method of performing the surveillance is unchanged. Further, the current inservice testing requirements and the previous history of reliability of the system provides assurance that the changes will not affect the reliability of the auxiliary feedwater system. Thus, it is concluded that there is no impact on the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 29, 1995.

Description of amendment requests: The amendments would add a one-time footnote to the Technical Specifications regarding the emergency diesel generator diesel fuel oil storage and transfer system to permit the existing storage tanks to be replaced with double walled tanks and piping that comply with new California regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither the emergency diesel generators (EDGs) nor the diesel fuel oil (DFO) storage and transfer system is an accident initiator. When performing the modifications to the

DFO storage tanks and transfer piping, administrative compensatory measures will be taken to reduce the potential challenge to the EDGs and to verify the operability of the DFO transfer system. A probabilistic risk assessment (PRA) was performed and demonstrates that the change in core damage frequency associated with taking each DFO storage tank and its associated suction transfer piping out of service for 60 days (total of 120 days for both trains) is not significant considering the compensatory measures which will be taken during the tank replacement period.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither the EDGs nor the DFO storage and transfer system is an accident initiator. Temporary DFO storage will be onsite during tank replacement. The fire protection guidelines in Appendix 9.5B of the Updated Final Safety Analysis Report will be complied with in order to ensure temporary DFO storage without risk to plant systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes considering implementation of the compensatory measures has been shown to not impair safe operation of the plant. Having one DFO storage tank and associated piping out of service does not reduce the margin of safety since temporary storage of DFO will be maintained onsite and administrative compensatory measures will be taken to minimize the potential impact of this condition. Additionally, delivery of DFO to the site is available within 24 hours if needed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: October 4, 1995.

Description of amendment requests: The amendments would relocate the requirements in ten sub-sections of the Technical Specifications to licensee controlled documents in accordance with the guidance in the Commission's Final Policy Statement and the Commission's revisions to 10 CFR 50.36 (60 FR 36959, July 19, 1995) on the content of Technical Specifications and the Standard Technical Specifications, Westinghouse Plants, NUREG–1431, Rev. 1, dated April 1995. The ten sub-sections which the licensee proposes to relocate, without changes to the requirements, to the Updated Final Safety Analysis Report or other controlled documents relate to: boration system flow path, position indication system, rod drop time, seismic instrumentation, chlorine detection system, turbine overspeed protection, containment leakage, containment structural integrity, electrical equipment protective devices and containment penetration conductor overcurrent protective devices.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes simplify the Technical Specifications (TS), meet regulatory requirements for relocated TS, and implement the recommendations of the Commission's Final Policy Statement on TS Improvements and revised 10 CFR 50.36. Future changes to these requirements will be controlled by 10 CFR 50.59. The proposed changes are administrative in nature and do not involve any modifications to any plant equipment or effect plant operation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, do not involve any physical alterations to any plant equipment, and cause no change in the method by which any safety-related system performs its function. Also, no changes to the operation of the plant or equipment are involved.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes involve relocating TS requirements to a licensee-controlled document. The requirements to be relocated were identified by applying the criteria endorsed in the Commission's Final Policy Statement, which is included in the new revision of 10 CFR 50.36, and are consistent with NUREG–1431, Rev. 1 (Reference 2). Thus, the proposed changes do not alter the basic regulatory requirements and do not affect any safety analysis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 2, 1995.

Description of amendment request: The proposed amendment would revise Section 5.0, Administrative Controls, of the Trojan Nuclear Plant Technical Specifications, Appendix A to License NPF–1, to reflect changes in the organization of the Portland General Electric Company (PGE) as they apply to oversite and management of the Trojan Nuclear Plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. The requested license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes in management titles and reporting relationships are administrative in nature, do not alter the intent of the Possession Only License, and do not modify the present plant systems or adminstrative controls necessary to preserve and protect the integrity of the nuclear fuel at the Trojan Nuclear Plant. The Trojan Site Executive and Plant General Manager will be located at the site and will continue to provide senior management attention to each of the functional areas in the Trojan Nuclear Plant organization during decommissioning of the facility.

The general classification of accidents for the permanently defueled condition are limited. The three classifications are (1) radioactive release from a subsystem or component, (2) fuel handling accident, and (3) loss of spent fuel decay heat removal capability. The probability of occurrences of consequences from these accidents remain unchanged and are bounded by the current accident analysis. Therefore, the requested changes do not involve a significant increase in the probability or occurrence of an accident previously evaluated.

2. The requested license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested amendment is administrative in nature, does not affect the manner in which systems and components are operated or maintained, and does not alter the intent of the Possession Only License. The accident scenarios associated with the permanently defueled condition are limited to (1) radioactive release from a subsystem or component, (2) fuel handling accident and (3) loss of spent fuel decay heat removal capability. There are no new accident scenarios or failure modes created by the requested administrative changes. Therefore the requested change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The requested license amendment does not involve a significant reduction in a margin of safety.

The requested amendment is administrative in nature, does not affect the manner in which systems and components are operated or maintained, does not alter the intent of the Possession Only License, nor does it adversely impact previously accepted margins of safety. Therefore, the requested amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRR Project Director: Seymour H. Weiss.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 7, 1995 as supplemented by letter dated October 27, 1995.

Description of amendment request: The proposed change to Hope Creek Technical Specifications (TSs) 4.8.1.1.2, "A.C. Sources—Operating", would replace the reference to a voltage and frequency band for the 10 second starting time test with a minimum required voltage and frequency that must be attained within 10 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident [* * *] previously evaluated.

Since no change is being made to the offsite power supplies, or to any system or component that interfaces with the offsite power supplies, there is no change in the probability of a Loss of Offsite Power Accident.

Since the proposed change still ensures the surveillance requirements meet the licensing basis and since the full spectrum of loading, unloading and standby testing performed at the 18 month frequency continues to demonstrate the capability of the diesel generators to satisfy onsite power requirements during simulated accident conditions while the monthly testing demonstrates availability, there is no change in the consequences of an accident.

Since the proposed change will eliminate unnecessary adjustments to the governor controls, the probability of malfunction is potentially reduced.

This change ensures the surveillance requirements reflect the design basis and provide a basis for consistent timing methodology. Since the proposed change is consistent with the intent of the existing specifications, and with the design basis of the system and since no physical changes are being proposed, no action will occur that will increase the probability or consequences of an accident or malfunction of equipment important to safety. The diesel generators will continue to function as stated in the UFSAR [Updated Final Safety Analysis Report].

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not result in any design or physical configuration changes to the offsite power supplies or to the diesel generators. Operation in accordance with the proposed change will not impair the diesel generators ability to perform as provided in the design basis. By eliminating unnecessary adjustments to the diesel generator governor control, performance during any accident is potentially enhanced. The diesel generators will continue to function as stated in the UFSAR. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

Since the proposed change does not involve the addition or modification of plant equipment, is consistent with the intent of the existing Technical Specifications, meets the intent of applicable Regulatory Guides, and is consistent with the design basis of the diesel generators and the UFSAR, no action will occur that will involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: M.J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 29, 1995.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3/4.4.3, Safety Valves and Pilot Operated Relief Valve—Operating, and associated Bases 3/4.4.2 and 3/4.4.3, Safety Valves, to increase the lift setting of the pressurizer code safety valves (PSVs) to [equal to or less than] 2575 psig, which corresponds to a lift setting tolerance of +3% of the nominal lift pressure. Increasing the upper bound of the lift setting tolerance of the PSVs from +1% to +3% will allow normal surveillance testing of the PSVs to be within +3% of the nominal lift setpoint of 2500 psig, which is still acceptable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1 in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because increasing the PSV lift tolerance from +1% to +3% only affects the as-found tolerance of the PSVs. The initial setting tolerance will still be limited to +1%. No hardware modification will be done to the valves which could affect any accident initiators.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because increasing the PSV lift tolerance from +1% to +3% does not affect the radiological releases of any accident previously evaluated in the [Updated Safety Analysis Report] USAR. This is not a hardware modification and the reactor coolant pressure boundary integrity is unaffected.

2. Not create the possibility of a new kind of accident from any previously evaluated because increasing the PSV lift tolerance from +1% to +3% allows the PSVs to protect the reactor coolant pressure boundary from overpressure transients. This change only affects the allowable lift tolerance. The initial lift setting tolerance is still less than +1%. This change does not modify the valve hardware or alter the operation of the valves. The possibility of the valves spuriously opening during power operation will not be changed. The valve setpoint with a −3% lift tolerance is well above the normal operating conditions and the [reactor coolant system] RCS high pressure trip setpoint.

3. Not involve a significant reduction in a margin of safety because at the +3% lift tolerance the RCS pressure and the reactor thermal power are still within the USAR acceptance criteria for a control rod withdrawal at low power. This change ensures the Technical Specification lift setpoint tolerances are consistent with the requirements given in the [American Society of Mechanical Engineers] ASME Boiler and Pressure Vessel Code.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 21, 1994, as amended by letter dated October 23, 1995.

Description of amendment request: The proposed amendment would relocate the review and audit requirements of the On-site Review Committee (ORC) and Nuclear Safety Review Board (NSRB) contained in TS 6.5.1, TS 6.5.2 and TS 6.5.3 to the Operational Quality Assurance Manual (OQAM). In addition, the proposed amendment would delete reference to the Manager, Nuclear Safety and Emergency Preparedness in TS 6.2.3. A revision to the Index was proposed to reflect the relocations. This amendment request was previously published in the **Federal Register** on August 31, 1994 (59 FR 45036).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are administrative and equivalent descriptions and requirements for these oversight committees are contained in the OQAM.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not involve any physical alterations to the plant. There is no new type of accident or malfunction created and the method and manner of plant operation will not change. The changes are administrative and equivalent descriptions and requirements for these oversight committees are contained in the OQAM.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety remains unaffected since no design change is made and plant operation remains the same. The changes are administrative and equivalent descriptions and requirements for these oversight committees are contained in the OQAM.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: William H. Bateman.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 17, 1995.

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the North Anna Power Station, Unit No. 2 (NA–2). Specifically, the proposed change would reduce from two to one the minimum number of steam generators (SGs) required to be opened for inspection during the first refueling outage following an SG replacement. TS surveillance requirements 4.4.5.0 through 4.4.5.5 for inspection of the SG tubes ensure that the structural integrity of this portion of the Reactor Coolant System will be maintained. Accordingly, the purpose of TS 4.4.5.1 is to require periodic sample inspections of SGs. The initial inspection after SG replacement combined with the subsequent inservice inspections serve to provide reasonable assurance of detection of structural degradation of the tubes. The proposed TS change does not affect or change this basis. However, the requirement that two SGs would be opened and inspected during the first refueling outage after SG replacement is considered unnecessary.

The NA–2 SGs were replaced during the first quarter of 1995. The purpose of SG replacement was to restore the integrity of the SG tubes to a level equivalent to new SGs. In reality, replacement SG components incorporate a large number of design improvements which reflect the "state-of-the-art" technology that currently exists for SG design. These design improvements will improve the long-term maintainability and reliability of the replacement SGs. These enhancements do not adversely affect the mechanical or thermal-hydraulic performance of the SGs. Thus, the replacement SGs are considered superior to the original SGs in terms of design and materials.

The proposed TS change does not affect or change any limiting conditions for operation (LCO) or any other surveillance requirements in the TS and the Basis for the surveillance requirement remains unchanged. An inspection of the minimum required number of tubes will still be performed prior to returning the SGs to service. Although the proposed change reduces the number of SGs required to be opened for inspection, the minimum number of tubes required to be examined during the inspection is not being changed. Thus, the minimum inspected tube population size would not be changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed change against the criteria described in 10 CFR 50.92 and concluded that the proposed Technical Specifications change does not pose a significant hazards consideration.

[1] The proposed Technical Specifications change does not affect the assumptions, design parameters, or results of any UFSAR [Updated Final Safety Analysis Report] accident analysis and the proposed amendment does not add or modify any existing equipment. Therefore, the proposed Technical Specifications change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2] The proposed change to the Technical Specifications does not involve modifications to any of the existing equipment or affect the operation of any existing systems. The absence of any hardware or software changes means that the accident initiators remain unaffected, so no unique accident possibility is created. Therefore, the proposed Technical Specifications change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3] Although the proposed change will reduce the minimum number of steam generators required to be opened for inspection during the first refueling outage following steam generator replacement, the revised Technical Specification surveillance will continue to ensure that a sampling of steam generator tubes will be inspected. The operability of the steam generators will also continue to be verified by periodic inservice inspections. Therefore, since equipment reliability will be maintained, the proposed Technical Specifications change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 18, 1995.

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) 3.4, "Steam and Power Conversion System," by modifying and clarifying the operability requirements for the main steam safety valves (MSSVs), the auxiliary feedwater (AFW) System, and the condensate storage tank system.

The proposed amendment would eliminate inconsistencies within TS Section 3.4 and provide the basis for acceptable operation of the Auxiliary Feedwater System below 15% reactor power. The proposed amendment supersedes in its entirety a previously submitted proposed amendment dated May 20, 1994, which was noticed in the **Federal Register** on September 28, 1994 (59 FR 49442).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) 3.4.a "Main Steam Safety Valves"

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Currently, TS 3.4.a.1.A.2 requires five MSSVs to be operable prior to heating the reactor > 350 °F. The proposed change requires a minimum of two MSSVs per steam generator to be operable prior to heating the reactor coolant system > 350 °F, and five MSSVs per steam generator to be operable prior to reactor criticality. If these conditions cannot be met within 48 hours, within 1 hour action shall be initiated to achieve hot standby within 6 hours, achieve hot shutdown within the following 6 hours, and achieve and maintain the reactor coolant system temperature < 350 °F within an additional 12 hours.

The MSSVs are relied upon to function in each of the following USAR analyzed accidents: Reactor Coolant Pump Locked Rotor, Loss of External Electrical Load, Loss of Normal Feedwater, Uncontrolled Rod Cluster Control Assembly Withdrawal, Steam Generator Tube Rupture, and Anticipated Transients without Scram.

In a subcritical condition, two operable MSSVs are capable of relieving the maximum steam generated during these anticipated design basis transient events. Because this proposed TS requires all MSSVs to be operable prior to reactor criticality, there will be no adverse effect on the health and safety of the public.

In all cases, the relieving capacity of the MSSVs is sufficient to maintain steam pressures within safety analysis acceptable criteria, and reactor criticality is not permitted unless all MSSVs are operable. Therefore, there is no adverse effect on the health and safety of the public and no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The USAR safety analysis assumes five MSSVs per steam generator are operable. However, as shown above, this change results in no steam generator overpressure event or increase in the radiological dose. Therefore, this change will not involve a reduction in the margin of safety.

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) 3.4.b "Auxiliary Feedwater System"

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Current TS 3.4.a.1.A.1 and TS 3.4.b governing auxiliary feedwater flow to the steam generators are being combined and titled, "Auxiliary Feedwater System." This change is consistent with the format of "Westinghouse Standard Technical Specifications," NUREG–1431. In addition to the formatting changes, a number of technical changes are being proposed. These are:

The correction of an inconsistency between current TS 3.4.a.1.A.1 and current TS 3.4.b.2.A.

The addition of a seven (7) day Limiting Condition for Operation (LCO) action statement for one inoperable steam supply to the turbine driven auxiliary feedwater pump.

A specification is being added to permit any of the following conditions with reactor power less than 15%, without declaring the corresponding AFW train inoperable: the AFW pump control switches located in the control room to be in the "pullout" position, flow control valves AFW–2A and AFW–2B to be in a throttled or closed position, and train cross-connect valves AFW–10A and AFW–10B to be in the closed position.

An inconsistency currently exists between current TS 3.4.a.1.A.1 and current TS

3.4.b.2.A. TS 3.4.a.1.A.1 requires the system piping and valves directly associated with providing auxiliary feedwater flow to the steam generators to be operable, with a corresponding 48 hour limiting condition for operation (LCO) action statement if this requirement is not met. TS 3.4.b.2.A allows one auxiliary feedwater pump to be inoperable for 72 hours. This arrangement can cause a conflict regarding which TS is applicable depending on which component in the auxiliary feedwater flowpath to the steam generators is inoperable. By moving all TS action statements to TS 3.4.b, the inconsistency between TS 3.4.a.1.A.1 and TS 3.4.b.2.A will be eliminated. The requirement to maintain the operability of the system piping and valves directly associated with providing auxiliary feedwater flow to the steam generators remains, but is being modified to prevent the removal of both AFW supply headers from service.

Proposed TS 3.4.b.2.C is being added to allow one steam supply to the turbine driven auxiliary feedwater pump to be inoperable for seven days. This addition is consistent with "Westinghouse Standard Technical Specifications," NUREG–1431. The seven day completion time is reasonable based on the redundant steam supplies to the pump, the availability of the redundant motor-driven AFW pumps, and the low probability of an event occurring that requires the inoperable steam supply to the turbine driven AFW pump. For these reasons, this change will have no adverse effect on the health and safety of the public.

Proposed TS 3.4.b.6.A and B permit the AFW Pump control switches located in the control room to be placed in the "pull out" position and valves AFW–2A and AFW–2B to be in a throttled position when below 15% reactor power without declaring the corresponding AFW train inoperable. This change is proposed to resolve concerns regarding the cycling of the AFW pumps and the throttling of valves AFW–2A and AFW–2B during plant startups and shutdowns. Analysis shows that control room operators have a minimum of ten minutes to initiate auxiliary feedwater flow after a design basis accident with no steam generator dryout or core damage.

All accidents which rely on AFW flow for mitigation were reanalyzed to support this change. These analyses were completed assuming an initial power of 100%. However, a 15% reactor power restriction has been imposed on placing the AFW pump control switches located in the control room in the "pull out" position and throttling valves AFW–2A and AFW–2B. This restriction in effect limits use of TS 3.4.b.6 to plant startups, shutdowns and other low power operating conditions.

This change alters the assumptions of the safety analysis for the Small-Break Loss of Coolant Accident, the Steam Generator Tube Rupture and the Loss of Normal Feedwater due to their dependence on the AFW system to start and supply AFW for heat removal. To support this change, the Westinghouse Electric Corporation performed an analysis of the Small-Break Loss-of-Coolant Accident using the NOTRUMP code assuming ten minutes for operator action to initiate auxiliary feedwater. This analysis resulted in a Peak Cladding Temperature (PCT) of 1053 °F from an initial power level of 100%. In addition, all other acceptance criteria of 10 CFR 50.46 were met. This large margin to the 2200 °F PCT limit supports ten minutes for operator action to initiate auxiliary feedwater.

Furthermore, WPSC has analyzed the Loss of Normal Feedwater and the Steam Generator Tube Rupture Accident assuming delays in the initiation of auxiliary feedwater. The Loss of Normal Feedwater Accident with a ten minute delay in the initiation of Auxiliary Feedwater does not result in any adverse condition in the core. It does not result in water relief from the pressurizer safety valves, nor does it result in uncovering the tube sheets of the steam generators. Also, at all times the Departure from Nucleate Boiling Ratio (DNBR) remained greater than 1.30. The Steam Generator Tube Rupture Accident with no auxiliary feedwater flow was also analyzed. The results of this analysis indicate that neither steam generator empties of liquid and at least 20 °F of reactor coolant system subcooling is maintained throughout the transient. Also, there is no increase in the radiological dose to the public.

Ten minutes is an acceptable time for operator action because four independent alarms in the control room would initiate operator action to place the AFW pump control switches to the "auto" position and initiate AFW flow to the steam generators when necessary. These include two steam generator lo level alarms (one per steam generator), and two steam generator lo-lo level alarms (one per steam generator). Provisions also exist to add additional low level alarms on the plant process computer. In addition to these alarms, control room operators have twelve other indications of insufficient, or no, AFW flow to the steam generators. These indications include three auxiliary feedwater pump low discharge pressure alarms (one per AFW pump), two auxiliary feedwater flow meters (one per steam generator), two AFW pump motor amp meters (one per motor-driven AFW pump), two "ESF in Pullout" alarms (one per Engineered Safety Features train) and three pump running lights (one per AFW pump). The ten minutes for operator action was discussed in a telephone conversation between WPSC and Mr. R. Laufer (NRR). Ten minutes for operator action is further supported by Branch Technical Position EISCB 18. Scenarios have been completed on the KNPP simulator to support ten minutes for operator initiation of AFW flow. In all cases, operators manually initiated AFW flow within the allowed ten minutes.

Proposed TS 3.4.b.6.C permits valves AFW–10A and AFW–10B to be in the closed position when below 15% reactor power without declaring the turbine-driven AFW train inoperable. This change is being proposed to allow operational flexibility of the AFW system during startups and shutdowns. As described below, the operability of the turbine-driven auxiliary feedwater train is independent of the position of the valves AFW–10A and AFW–10B. However, the operability of this train is dependent on the ability of these valves to reposition.

The operability of the AFW system following a main steam line break (MSLB) was reviewed in our response to IE Bulletin 80–04. As a result of this review, requirements for the turbine-driven AFW pump were originally added to the Technical Specifications.

For all other design basis accidents, the two motor-driven AFW pumps supply sufficient redundancy to meet single failure criteria. In a secondary line break, it is assumed that the pump discharging to the intact steam generator fails and that the flow from the redundant motor-driven AFW pump is discharging out the break. Therefore, to meet single failure criteria the turbine-driven AFW pump was added to Technical Specifications.

The cross-connect valves (AFW–10A and AFW–10B) are normally maintained in the open position. This provides an added degree of redundancy above what is required for all accidents except for a MSLB. During a MSLB, one of the cross-connect valves will have to be repositioned regardless if the valves are normally open or closed. Therefore, the position of the cross-connect valves does not affect the operability of the turbine-driven AFW train. However, operability of the train is dependent on the ability of the valves to reposition.

For these reasons, this change will have no adverse effect on the health and safety of the public or significantly increase the probability or consequences of an accident previously evaluated in the USAR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The auxiliary feedwater system is required to mitigate the consequences of an accident. The auxiliary feedwater system is not an accident initiator. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

This change alters the assumptions of the safety analysis for the Small-Break Loss-of-Coolant Accident, the Steam Generator Tube Rupture and the Loss of Normal Feedwater due to their dependence on the AFW system to start and supply AFW flow for heat removal. To support this change the Westinghouse Electric Corporation has performed an analysis of the Small-Break Loss-of-Coolant Accident using the NOTRUMP code assuming ten minutes for operator action to initiate auxiliary feedwater. This analysis resulted in a Peak Cladding Temperature (PCT) of 1053° F from an initial power level of 100%. In addition, all other acceptance criteria of 10 CFR 50.46 were met. This large margin to the 2200° F PCT limit supports ten minutes for operator action to initiate auxiliary feedwater.

Furthermore, WPSC has analyzed the Loss of Normal Feedwater and the Steam Generator Tube Rupture Accident assuming delays in the initiation of auxiliary feedwater. The Loss of Normal Feedwater Accident with a ten-minute delay in the initiation of Auxiliary Feedwater does not result in any adverse condition in the core. It does not result in water relief from the pressurizer safety valves, nor does it result in uncovering the tube sheets of the steam generators. Also, at all times the Departure from Nucleate Boiling Ratio (DNBR) remained greater than 1.30. The Steam Generator Tube Rupture Accident with no Auxiliary Feedwater flow was also analyzed. The results of this analysis indicate that neither steam generator empties of liquid and at least 20 °F of reactor coolant system subcooling is maintained throughout the transient. Also, there is no increase in the radiological dose to the public. For these reasons, these changes will not adversely affect the health and safety of the public or involve a significant reduction in the margin of safety.

As discussed in the safety evaluation, the operability of the turbine-driven AFW train is independent of the position of valves AFW–10A and AFW–10B. However, the operability of the train is dependent on the ability of these valves to be repositioned. Therefore, the proposed change has no impact on the accident analysis and no effect on the margin of safety.

Significant Hazards Determination for Proposed Administrative Changes to Section TS 3.4, "Steam and Power Conversion System"

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

Additionally, the proposed change is similar to example C.2.e(i) in 51 FR 7751. Example C.2.e.(i) states that changes which are purely administrative in nature; i.e., to achieve consistency throughout the Technical Specifications, correct an error, or a change in nomenclature, are not likely to involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, PO Box 1497, Madison, Wisconsin 53701–1497.

NRC Project Director: Gail H. Marcus.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 18, 1995.

Description of amendment request: This license amendment would replace the current fuel oil volume requirement in the emergency diesel generator (EDG) day tank in Technical Specifications 3.8.1.1.b.1) and 3.8.1.2.b.1) with a fuel oil level requirement. Associated Surveillance Requirement 4.8.1.1.2.a.1) would also be changed to replace the requirement to visually check the fuel oil level in the day tank with a requirement to verify that the fuel oil transfer pump starts on low level in the day tank standpipe.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will increase the minimum amount of diesel fuel oil that the current specifications require to be maintained in the EDG day tanks for standby operation. This change reflects the level that has been administratively maintained since the beginning of plant operation. The proposed change will not affect the way the EDG is operated and does not affect the ability of the EDGs to perform their safety function. The surveillance requirement change is being made to more thoroughly reflect the method used to assure the tank level is being properly maintained. The proposed change will not require the EDG to be operated in a manner different than that for which it was designed. Therefore, the proposed change will not significantly increase the consequences of an accident or malfunction of equipment important to safety previously evaluated in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no active components being added whose failure could prevent the EDG from functioning. There is no new type of accident or malfunction being created and the method and manner of plant operation remains unchanged. The safety design bases in the USAR have not been altered. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes. The method of operation of the EDGs is not being altered, and the fuel oil transfer pumps will continue to perform the same function they currently perform. Therefore, the possibility of a new or different kind of accident other than those already evaluated will not be created by this change.

3. The proposed change does not involve a significant reduction in a margin of safety.

There are no changes being made to any safety limits or safety system settings that would adversely impact plant safety. Although the minimum required amount of fuel oil specified in the Technical Specifications is being revised, this amount of fuel oil has been administratively controlled since the beginning of commercial operation. Thus, the operability of the emergency diesel generators has never been affected by this issue. Neither the method of operation of the EDGs nor their safety function are being altered by the proposed change. Therefore, the proposed change would not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 24, 1995.

Description of amendment request: This license amendment request proposes to revise Surveillance Requirement 4.7.6.e.4 to reflect a design change, scheduled to be installed during the next refueling outage, that would change the output rating of the charcoal filter adsorber unit heater in the pressurization portion of the control room emergency ventilation system (CREVS) from 15 kW to 5 kW. Proposed revisions to Surveillance Requirements 4.7.6.c.2 and 4.7.6.d are included which would change the acceptance criteria for the testing of carbon samples from the CREVS charcoal adsorbers. The proposal would adapt ASTM D 3803–1989 as the laboratory testing standard with the testing to be performed at 30 degrees Centigrade and 70 percent

relative humidity for a methyl iodide penetration of 2 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design function of the filter adsorber unit heater in the pressurization system portion of CREVS is to reduce the relative humidity of the air entering the charcoal filter beds to 70% relative humidity. Although the original design specified a heater with a rating of 15 kW, review of the design basis calculation for this system indicates that only 2.09 kW is actually required (including applicable margins to allow for voltage variations). The proposed change to the CREVS heaters' output rating from 15 kW to 5 kW will not affect the method of operation of the system, and the new heater capacity will still exceed filter operational requirements and safety margin. Neither the heater change nor the charcoal testing protocol changes will affect system operation or performance, nor do they affect the probability of any event initiators. These changes do not affect any Engineered Safety Features actuation setpoints or accident mitigation capabilities. Therefore, the proposed changes will not significantly increase the consequences of an accident or malfunction of equipment important to safety previously evaluated in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested change to the CREVS heaters' output rating and the changes to the charcoal sample testing protocol will not affect the method of operation of the system, and the new heater capacity will still exceed filter operational requirements and safety margin by a significant amount. The proposed changes only affect the heater size in the system and the testing criteria for the charcoal samples. No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes. Therefore, the possibility of a new or different kind of accident other than those already evaluated will not be created by this change.

3. The proposed change does not involve a significant reduction in a margin of safety.

The requested change to the CREVS heaters' output rating will reduce the heater output of the system, but the new heater capacity will still exceed filter operational requirements and safety margin by a significant amount. In addition, the reduction in heat load output from the heater will increase the design margin between the cooling capacity of the system air conditioning units and the building heat load. The new charcoal adsorber sample laboratory testing protocol is more stringent than the current testing practice and more accurately demonstrates the required performance of the adsorbers following a design basis LOCA [loss-of-coolant accident]. Therefore, these changes will not reduce the margin of safety of the CREVS filter operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 20, 1995.

Description of amendment request: The proposed amendment would modify the Appendix A Technical Specifications for the Engineered Safety Features Actuation System (ESFAS) Instrumentation. Specifically, the proposed amendment would revise the Seabrook Station Technical Specifications to relocate Functional Unit 6.b, "Feedwater Isolation—Low RCS T_{avg} Coincident with a Reactor Trip" from Technical Specification 3.3.2. "Engineered Safety Features Actuation System Instrumentation" to the Seabrook Station Technical Requirements Manual which is a licensee controlled document.

Date of publication of individual notice in **Federal Register:** October 24, 1995 (60 FR 54524).

Expiration date of individual notice: November 24, 1995.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 25, 1994, as supplemented by letter dated September 11, 1995.

Brief Description of amendments: proposed amendments change the Technical Specifications to relocate the remaining Environmental Technical Specifications to other licensee-controlled documents and delete the 30-day reporting requirement for inoperable meteorological instrumentation.

Date of issuance: November 2, 1995.

Effective date: November 2, 1995.

Amendment Nos.: 179 and 210.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 7, 1994 (59 FR 63113). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 13, 1993 as supplemented August 11 and September 20, 1995.

Brief description of amendments: The amendments revised Section 3/4.6.1.7 of the Technical Specifications, Containment Purge Ventilation System, to allow the simultaneous opening of the 8-inch miniflow purge supply and exhaust valves to ensure the containment atmosphere is conducive to human occupants and to maintain their dose as low as reasonably achievable.

Date of issuance: November 2, 1995.

Effective date: November 2, 1995.

Amendment Nos.: 76, 76, 68, and 68.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48379). The August 11 and September 20, 1995, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 1, 1995, as supplemented on September 1 (two letters), September 2, September 4, September 8, September 15, September 19, September 20, September 22, October 3, October 7, October 11 (two letters), October 13 (three letters), October 23 and October 26, 1995.

Brief description of amendments: The amendments revise the steam generator (SG) repair criteria in the Byron, Unit 1 and Braidwood, Unit 1 Technical Specifications. These revisions add a set of voltage-based SG tube repair criteria different from those previously added by License Amendment No. 66, dated October 24, 1994, to the Byron 1 TSs and by License Amendment No. 54, dated August 18, 1994, to the Braidwood 1 TSs. The present set of voltage repair limits which are being added to the Byron 1 and Braidwood 1 TSs are applicable only for a specific form of SG tube degradation identified as outer diameter stress corrosion cracking (ODSCC) which is confined entirely within the thickness of the tube support plates (TSPs) in the SGs. The voltage-based repair criteria for the cold-leg side of the SGs for SG tubes with ODSCC indications and for SG tubes on the hot-leg side which show significant denting, are consistent with those provided in the NRC staff's guidance contained in Generic Letter 95–05, dated August 3, 1994.

The lower voltage repair limit for the SG tubes with ODSCC indications on the hot-leg side of the SGs have been raised from 1.0 to 3.0 volts as measured by a bobbin coil. All bobbin indications below 3.0 volts will be allowed to remain in service and all bobbin indications above this limit will be either repaired or removed from service by plugging.

This revision to the voltage repair limits on the hot-leg side reflects a methodology which is significantly different than that contained in GL 95–05. The principal difference between the methodology being applied for the 3.0 volt criteria on the hot-leg side is that the Commonwealth Edison Company (ComEd) is taking credit for the constraint provided by the TSPs to reduce the probability of SG tube burst in the event of a severe accident (i.e., a main steamline break). This constraint is assured by modifying a limited number of SG tubes so that they provide additional stiffness to the TSPs, thereby reducing to a small amount, their deflection under MSLB blowdown loads.

Additionally, inspection and reporting requirements are being added to the Byron 1 and Braidwood 1 TSs in support of the revised voltage-based repair criteria. Further, the maximum permissible value of the iodine-131 concentration in the primary coolant in the Byron 1 TSs is reduced from 1.0 to 0.35 microcuries per gram of coolant. This is the same value for the iodine-131 primary coolant concentration in the Braidwood 1 TSs. Finally, the Bases sections in the Byron 1 and Braidwood 1 TSs are revised to provide a concise description of the methodology proposed by ComEd in support of its proposed revision of the voltage-based SG tube repair criteria.

Date of issuance: November 9, 1995.

Effective date: November 9, 1995.

Amendment Nos.: 77, 77, 69, and 69.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 1995 (60 FR 49963).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 1995. The supplemental submittals listed above provide clarifying technical information that does not affect the initial No Significant Hazards Consideration Determination.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 5, 1995.

Brief description of amendment: This amendment revises Section 6.0 of the Technical Specifications to incorporate several administrative controls and editorial changes to the Training, Plant Review Committee, and Plant Safety and Licensing staff sections.

Date of issuance: November 3, 1995.

Effective date: November 3, 1995.

Amendment No.: 170.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39435).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 10, 1995.

Brief description of amendments: The amendments revise the required number of operable hydrogen igniters to allow removal of two hydrogen igniters serving the lower reactor cavity and incore instrument cable tunnel.

Date of issuance: October 30, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 136 and 130.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 1995 (60 FR 49932).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 13, 1995.

Brief description of amendments: The amendments modify the notation for the overpower delta temperature reactor trip heatup setpoint penalty coefficient as delineated in Note 3 in Technical Specification Table 2.2–1 in order to make the nomenclature consistent with the Standard Technical Specifications and to facilitate a modification to reduce the reactor coolant system hot leg temperature as planned during the Catawba Unit 2 end-of-cycle 7 refueling outage.

Date of issuance: October 31, 1995.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 137 and 131.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 1995 (60 FR 49933).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 1, 1995, as supplemented October 17, 1995.

Brief description of amendments: The amendments revise Technical Specification (TS) 6.9.1.9 to include references to updated or recently approved methodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report. The subject references have been reviewed and approved by the NRC staff.

Date of issuance: November 2, 1995.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 138 and 132.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 1995 (60 FR 49932). The October 17, 1995, letter provided clarifying information that did not change the scope of the September 1, 1995 application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 13, 1994, as supplemented by letters dated August 15, 1994, March 23, April 18, July 21, and September 22, 1995.

Brief description of amendments: The amendments revise the Technical Specifications to increase the initial fuel enrichment limit and establish new loading patterns for new and irradiated fuel in the spent fuel pool to accommodate this increase.

The March 23, 1995, supplement, which provided additional information that modified the June 13, 1994, application's no significant hazards consideration determination, also revises the TS to (1) change the surveillance requirement for boron concentration in the spent fuel pool (SFP), (2) remove the option to use alternate storage configurations in the SFP and replace it with footnotes, (3) add information contained in the Bases to the footnotes, and (4) change the Bases to discuss the option to use specific analyses on alternate fuel.

Date of issuance: November 6, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 159 and 141.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 15, 1995 (60 FR 8746); and May 8, 1995 (60 FR 22590). The April 18, July 21, and September 22, 1995, letters provided additional clarifying information that did not change the scope of the June 13, 1994, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 6, 1995, and Environmental Assessment dated August 17, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: May 17, 1995.

Brief description of amendment: The amendment will extend the applicability of the current Reactor Coolant System (RCS) Pressure/Temperature Limits and maximum allowed RCS heatup and cooldown rates to 23.6 Effective Full Power Years (EFPY) of operation. In addition, administrative changes were proposed for TS 3.1.2.1 (Boration Systems Flow Paths-Shutdown) and TS 3.1.2.3 (Charging Pump-Shutdown) to clarify the conditions for which a High Pressure Safety Injection pump may be used.

Date of Issuance: October 27, 1995.

Effective Date: October 27, 1995.

Amendment No.: 141.

Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32362).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 28, 1994.

Brief description of amendments: The amendments delete the minimum frequency criteria prescribed for quality assurance audits from Administrative Controls sections 6.5.2.8 and 6.8.4 of the Technical Specifications (TS). Audit periodicity will thereby be controlled by the program described in the Florida Power and Light Company (FPL) Topical Quality Assurance Report.

Date of Issuance: October 25, 1995.

Effective Date: October 25, 1995.

Amendment Nos.: 140 and 80.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17599).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995.

Brief description of amendments: These amendments revise selected line items from NRC Generic Letter 93–05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Date of issuance: October 17, 1995.

Effective date: October 17, 1995.

Amendment Nos.: 177 and 171.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47617).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 10, 1993.

Brief description of amendment: The amendment revises the Cooper Nuclear Station Technical Specifications to change the reporting frequency of the Radioactive Materials Release Report from semiannual to annual and to extend the reporting frequency of the Annual Design Change Report from annual to annually or along with the Updated Safety Analysis Report updates required by 10 CFR 50.71(e). This change reflects revised requirements contained in 10 CFR 50.36a and 10 CFR 50.59(b).

Date of issuance: November 3, 1995.

Effective date: November 3, 1995.

Amendment No.: 172.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7691).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Novemver 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 28, 1995.

Brief description of amendment: The amendment revises the Cooper Nuclear Station Technical Specifications to increase the required reactor pressure vessel boron concentration, to modify the surveillance frequency for standby liquid control system pump operability testing from monthly to quarterly, and to make editorial changes.

Date of issuance: November 8, 1995.

Effective date: November 8, 1995.

Amendment No.: 173.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39441).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 5, 1995.

Description of amendment request: The amendment modifies the Appendix A Technical Specifications (TSs) for the Turbine Cycle Safety Valves. Specifically, the amendment changes Seabrook Station Appendix A Technical Specification Table 3.7–1 to reduce the Maximum Allowable Power Range Neutron Flux—High Setpoints with Inoperable Main Steam Safety Valves (MSSVs) and Table 3.7–2 to reduce the opening setpoints of the MSSVs. Bases Section 3/4.7.1.1 is changed to include the algorithm used for determining the new setpoint values.

Date of issuance: November 2, 1995.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 43.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 2, 1995 (60 FR 51505).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 21, 1994, as supplemented February 22, 1995.

Brief description of amendment: The amendment revises the License Condition C.(3), Fire Protection, and certain of the Technical Specifications (TS) related to fire protection requirements. The amendment changes the TS by relocating them to another controlled document, the Technical Requirements Manual referenced in the Final Safety Analysis Report.

Date of issuance: November 3, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 191.

Facility Operating License No. DPR–65: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6303) The February 22, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 31, 1995.

Brief description of amendment: The amendment revises the Technical Specifications to remove the phrase "other than Millstone Unit No. 2" from the Administrative Controls Section 6.3.1, Item (a). This relates to Amendment No. 178 that changed the Technical Specifications to require an individual who serves as the Operations Manager to either hold a Millstone Unit 2 Senior Reactor Operator (SRO) license or have held an SRO license at another pressurized water reactor other than the Millstone Unit No. 2. If the Operations Manager does not hold a Millstone Unit No. 2 SRO license, then an individual serving as the Assistant Operations Manager would be required to possess an SRO license at Millstone Unit 2.

Date of issuance: November 2, 1995.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 190.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 1995 (60 FR 49941).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: January 27, 1995.

Brief description of amendments: The amendments change the Limerick Generating Station Units 1 and 2 Technical Specifications (TS) by eliminating the TS active safety function designation of eight (i.e., four per unit) Drywell Chilled Water System valves.

Date of issuance: October 30, 1995.

Effective date: October 30, 1995.

Amendment Nos.: 103 and 67.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20524).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 23, 1994, as supplemented by letter dated August 31, 1995.

Brief description of amendment: The proposed changes to the Technical Specifications (TSs) revise TS 4.8.2.1, "Electrical Power Systems—D.C. Sources," Surveillance Requirements, and associated Bases Section 3/4.8.2.

Date of issuance: October 31, 1995.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 87.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39449). The August 31, 1995, letter provided additional and clarifying information that did not change the scope of the November 23, 1994, application and the initial proposed no significant consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 28, 1994.

Brief description of amendment: This amendment revises the technical specifications for the Reactor Coolant System recirculation flow upscale trip function to change the trip setpoint and allowable value to reflect 105% of rated core flow, item one of the above application.

Date of issuance: October 31, 1995.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 86.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 2, 1995 (60 FR 39450).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 30, 1995, as supplemented August 18, 1995.

Brief description of amendments: The amendments eliminate the defined term CONTROLLED LEAKAGE, remove Controlled Leakage flow from the Reactor Coolant System Operational Leakage Limiting Condition for Operation (LCO) and establish a new Seal Injection Flow LCO.

Date of issuance: October 30, 1995.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 178 and 159.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24918). The August 18, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: August 1, 1995, as supplemented by letter dated October 18, 1995.

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," Table 3.3–3. Table 3.3–3 includes the requirements for the minimum number of toxic gas isolation system (TGIS) trains operable. These amendments are a one-time-only change to extend the allowed TGIS outage times during the replacement of the existing TGIS instrumentation.

Date of issuance: November 2, 1995.

Effective date: November 2, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—Amendment No. 126; Unit 3—Amendment No. 115.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47625). The October 18, 1995, supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 30, 1993 (TS–337).

Brief Description of amendment: The amendments revise the operating license to reflect issuance of a safety evaluation dated November 2, 1995 accepting the revised Appendix R Safe Shutdown Program to accommodate simultaneous power operation of Browns Ferry Units 2 and 3.

Date of issuance: November 2, 1995.

Effective Date: November 2, 1995.

Amendment Nos.: 226, 241 and 200.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 5, 1994 (59 FR 629).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: January 4, 1995 (TS 355).

Brief Description of amendment: The amendments revise applicability and surveillance requirements for the intermediate power range monitor, average power range monitor (APRM), and APRM Inoperative Trip functions.

Date of issuance: November 2, 1995.

Effective Date: November 2, 1995.

Amendment Nos.: 227, 242 and 201.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29888).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: June 2, 1995 (TS 361/371).

Brief Description of amendment: The amendments revise the operability definition for residual heat removal service water components for use as a standby coolant supply. The amendments also incorporate related changes to the technical specification Bases which were submitted on October 2, 1995.

Date of issuance: November 2, 1995.

Effective Date: November 2, 1995.

Amendment Nos.: 225, 240 and 199.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 1995 (60 FR 42610).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: May 19, 1995; revised September 11, 1995 (TS 95–13).

Brief description of amendment: The amendment modifies License Condition 2.C.(17) by extending the required surveillance interval to May 18, 1996, for Surveillance Requirement 4.3.2.1.3 for certain specified engineered safety features response time tests.

Date of issuance: October 30, 1995.

Effective date: October 30, 1995.

Amendment No.: 204.

Facility Operating License No. DPR–79: Amendment revises the operating license.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32372); renoticed September 27, 1995 (60 FR 49948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 15th day of November 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28606 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21506; International Series Release No. 886; File No. 812–9704]

Banque OBC—Odier Bungener Courvoisier and ABN AMRO Bank N.V.; Notice of Application

November 17, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Banque OBC—Odier Bungener Courvoisier ("Banque OBC") and ABN AMRO Bank N.V. (the "Bank").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Banque OBC, a subsidiary of the Bank, to act as custodian for investment company assets in The Netherlands.

FILING DATE: The application was filed on August 3, 1995 and amended on October 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 12, 1995 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants, Banque OBC—Odier Bungener Courvoisier, 57 Avenue D'Iena, 75116 Paris, France; ABN AMRO Bank N.V., Foppingadreef 22, 1102 BS Amsterdam, The Netherlands, c/o Edward G. Eisert, Schulte Roth & Zabel, 900 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Bank is a Netherlands banking organization. ABN AMRO Holding N.V. ("Holding") is the parent company of the Bank, and together with their other domestic and international subsidiaries and affiliates, they constitute the "ABN AMRO Group." As of December 31, 1994, Holding held approximately 100% of the share capital of the Bank, and the Bank accounted for approximately 100% of the total assets of Holding. Both Holding and the Bank are regulated in The Netherlands by De Nederlandsche Bank N.V., the Dutch Central Bank, on behalf of The Netherlands Minister of Finance. At July 31, 1994, Holding ranked 18th in the world, 6th in Europe and 1st in The Netherlands in terms of assets among bank holding companies. At December 31, 1994, Holding had shareholders' equity of approximately U.S. $11.9 billion.

2. Banque OBC, a wholly-owned subsidiary of the Bank, is a French banking institution providing commercial banking, private banking, asset management and merchant banking services to a clientele composed of high net worth individuals, large and medium sized corporations and foreign institutions. Banque OBC is governed by the French Banking Law and is authorized to act, and is monitored by, the Minestere de l'Economie et des Finances, the Banque de France (France's Central Bank) and the Commission Bancaire (France's banking commission). Banque OBC does not meet the minimum shareholders' equity requirement of rule 17f–5.

3. Applicants request an order to permit Banque OBC to maintain custody of securities ("Securities") of investment companies registered under the Act other than those registered under section 7(d) of the Act ("U.S. Investment Companies"). As used herein, the term "Securities" does not include securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof, or any agency thereof, or by any entity organized under the laws of the United States or any state thereof (other than certificates of deposit, evidences of indebtedness and other securities, issued or guaranteed by an entity so organized which have been issued and sold outside the United States).

4. Banque OBC would accept deposits of Securities in France only in accordance with a three-party contractual agreement (the "Agreement"). Each Agreement will be a three-party agreement among (a) the Bank, (b) Banque OBC, and (c) a U.S. Investment Company or its custodian. The Agreement would provide that Banque OBC would provide custodial or sub-custodial services, and the Bank would be liable for any loss to the same extent as if the Bank had been required to provide custody services under such Agreement.

Applicants' Legal Analysis

1. Section 17(f) of the Act provides that a registered investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. Banque OBC does not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 under the Act permits certain entities located outside the United States to serve as custodians for investment company assets. Rule 17f–5(c)(2)(i) defines the term "Eligible Foreign Custodian" to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. $200 million.

3. The Bank qualifies as an eligible foreign custodian under rule 17f–5. Banque OBC, however, does not qualify as an eligible custodian because it does not meet the minimum shareholders' equity requirement. Accordingly, Banque OBC is not an eligible foreign custodian and, absent exemptive relief, could not serve as a custodian for U.S. Investment Company Securities.

4. Applicants request an order under section 6(c) of the Act that would exempt them from section 17(f) to the extent necessary for Banque OBC to maintain custody of U.S. Investment Company Securities. Applicants believe that the exemption is necessary and appropriate in the public interest because it would permit U.S. Investment Companies and their custodians to have direct access to the custody services of Banque OBC, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because the Agreement provides U.S. Investment Companies with the safety and security of an eligible foreign custodian under section 17(f) and rule 17f–5.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements with Banque OBC will comply with the provisions of rule 17f–5 in all respects, except those provisions relating to the minimum shareholders' equity requirement for eligible foreign custodians.

2. The Bank satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

3. A U.S. Investment Company or a custodian for a U.S. Investment Company will deposit Securities with Banque OBC only in accordance with an Agreement that will remain in effect at all times during which Banque OBC fails to meet the requirement of rule 17f–5 relating to minimum shareholders' equity. Each Agreement will be a three-party agreement among (a) the Bank, (b) Banque OBC, and (c) a U.S. Investment Company or the custodian of the Securities of the U.S. Investment Company. Under the Agreement, Banque OBC will undertake to provide specified custodial or sub-custodial services. The Agreement will further provide that the Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Banque OBC of its responsibilities under the Agreement to the same extent as if the Bank had been required to provide custody services under such Agreement. Under the Agreement, neither Banque OBC nor the Bank would be liable for any losses that result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risks of loss (excluding the bankruptcy or insolvency of Banque OBC) for which Banque OBC would not be liable under rule 17f–5 (*e.g.*, despite the exercise of reasonable care, loss due to acts of God, nuclear incident, and the like).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28791 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21505; 811–6583]

International Growth Trust; Notice of Application

November 17, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICNAT: International Growth Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on August 14, 1995, and amended on October 31, 1995 and November 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 12, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 99 Park Avenue, New York, New York 10016.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company formed as a trust under New York law. Applicant is a "master fund" in a "master/feeder fund" complex and has two shareholders: a "feeder" fund, the International Growth Fund (the "Fund"), and applicant's investment adviser, VanEck Associates Corporation (the "Adviser").

2. SEC records indicate that applicant registered under the Act on March 3, 1992 by filing a notification of registration on Form N–8A pursuant to section 8(a) of the Act. Also on that date, applicant filed a registration statement on Form N–1A pursuant to section 8(b) of the Act. No registration was made under the Securities Act of 1933 (the "Securities Act") because applicant's beneficial interests were issued solely in private placement transactions that did not involve any "public offering" within the meaning of section 4(2) thereof. All of applicant's investors were "accredited investors" within the meaning of Regulation D under the Securities Act.

3. At a meeting held on October 18, 1994, applicant's board of trustees approved a plan of liquidation. The Fund's proxy materials indicate that,

because the Fund was applicant's only feeder fund, and because sales of the Fund's shares dropped dramatically, applicant liquidated.

4. Proxy materials were filed with the SEC and mailed to shareholders. The Fund's shareholders approved the liquidation plan at the meeting on December 19, 1994.

5. On December 30, 1994, applicant redeemed the units held by the Fund and the Adviser, satisfied the known obligations, and distributed the liquidation value in cash to the Fund and the Adviser. The liquidation was based on net asset value.

6. The Adviser paid applicant's unamortized organization expenses and the expenses relating to applicant's liquidation. No brokerage commissions were paid in connection with the liquidation.

7. Applicant has no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant will file a Certificate of Dissolution and/or other appropriate documentation, as required by New York law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28792 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26411]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 17, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc., et al. (70–8471)

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company; Columbia Gas of Maryland, Inc. ("Columbia Maryland"), 200 Civic Center Drive, Columbus, Ohio 43215, a natural gas subsidiary company of Columbia; eighteen other subsidiary companies of Columbia;[1] and twelve subsidiary companies of TriStar Ventures[2] have filed a post-effective amendment to the application-declaration previously filed under sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201) ("Order"), Columbia Maryland was authorized through 1996 to sell to Columbia securities ("Installment Notes") in an aggregate amount of up to $5.5 million. Columbia and Columbia Maryland now propose to change the type of securities Columbia Maryland will sell to Columbia ("New Notes") and, in order to refinance all previously issued Installment Notes, increase the amount of New Notes to be sold to $19.5 million.

Columbia and Columbia Maryland seek Commission authorization (i) for the sale of New Notes by Columbia Maryland to Columbia on or around December 31, 1995, the proceeds of which will be used to refund the Installment Notes and (ii) for the future issuance of New Notes to meet the capital needs of Columbia Maryland in 1996. The New Notes will be issued under a loan agreement between Columbia Maryland and Columbia.

On or around December 31, 1995, Columbia Maryland will refund all Installment Notes sold to Columbia, which total approximately $14.0 million. Columbia Maryland will refund the Installment Notes before New Notes are sold under the Order.

Based on current interest rates, the New Notes will have a weighted average interest rate lower than the weighted average interest rate of the Installment Notes currently outstanding. The maturities and interest rates of the New Notes will mirror those for the debentures issued by Columbia upon emergence from bankruptcy. The Commission approved Columbia's reorganization plan in Holding Co. Act Release No. 26361. The New Notes will be issued pursuant to a loan agreement in certificated form, will be secured or unsecured, and will be dated the date of their issue.

Columbia Maryland plans to finance part of its 1996 capital expenditure program with the sale of the New Notes. The interest rate and maturity on the New Notes will be equal to the weighted average cost of any long-term fixed rate financing issued by Columbia issued during the calendar quarter prior to an issuance of New Notes by Columbia Maryland ("Columbia Rate").

If Columbia does not issue long-term fixed rate financing during a calendar quarter prior to an issuance of New Notes, the interest rate will default to the Benchmark Rate defined in the original application-declaration. The Benchmark Rate would be used for all New Notes issued in the subsequent quarter. The New Notes will be repaid over a term not exceeding thirty years. All of the New Notes will be purchased by Columbia on or before December 31, 1996.

[1] Columbia Gas of Pennsylvania, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co., 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corp., One Riverway, Houston, Texas 77056; Columbia Natural Resources, Inc., 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp., 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp., 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp., 800 Moorefield Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc., 800 Moorefield Park Drive, Richmond, Virginia 23236; TriStar Ventures Corp. ("TriStar Ventures"), 20 Montchanin Road, Wilmington, Delaware 19807; TriStar Capital Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia LNG Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; and Columbia Energy Marketing Corp., 2581 Washington Road, Pittsburgh, Pennsylvania 15241.

[2] TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Montchanin Road, Wilmington, Delaware 19807.

Cinergy Corporation (70–8477)

Cinergy Corporation ("Cinergy"), 139 East Fourth Street, Cincinnati, Ohio, 45202, a registered holding company, has filed a post-effective amendment to the declaration previously filed under sections 6(a), 7, and 12(b) of the Act and rules 45 and 54 thereunder.

By order dated November 18, 1994 (HCAR No. 26159) ("1994 Order"), Cinergy was authorized to issue and sell up to eight million shares of common stock, $.01 par value ("Shares"), from time to time through December 31, 1995. Cinergy proposed to sell the Shares (i) through solicitation of proposals from underwriters or dealers, (ii) through underwriters or dealers on a negotiated basis, (iii) directly to a limited number of purchasers or to a single purchaser, and/or (iv) through agents. Cinergy also proposed to contribute up to $160 million of the net proceeds to the equity capital of its Indiana utility subsidiary, PSI Energy, Inc. ("PSI").

Cinergy proposed to have PSI use the funds for general corporate purposes, including the repayment of short-term indebtedness incurred for construction financing. Cinergy also proposed to use the balance of the net proceeds from the sale of the Shares for general corporate purposes, provided that it would not acquire interests in exempt wholesale generators ("EWGs") or foreign utility companies ("FUCOs") under sections 32 and 33 of the Act without separate authorization from the Commission.

On December 19, 1994, pursuant to an effective shelf registration statement for the sale of the Shares, Cinergy (i) publicly issued and sold 7,089,000 of the Shares at a price of $23.25 per share, less underwriting discounts and commissions of $0.68 per share, to underwriters, and (ii) pursuant to the terms of the underwriting agreement, received net proceeds of $159,998,730, all of which Cinergy contributed to the equity capital of PSI.

By order dated September 21, 1995 (HCAR No. 26376) ("1995 Order"), Cinergy was authorized to apply up to $115 million in proceeds from sales of the Shares to acquire interests in EWGs and FUCOs through May 31, 1998. As of October 1, 1995, an aggregate of 867,385 of the Shares remained available for issuance under the 1994 Order ("Remaining Shares").

Cinergy now requests authorization to issue and/or sell the Remaining Shares from time to time through December 31, 1997 by any of the means detailed in the 1994 Order. Cinergy will apply the net proceeds from sales of the Remaining Shares to general corporate purposes, including repayment of short-term indebtedness, investments in subsidiaries, and acquisitions of interests in EWGs and FUCOs pursuant to the 1995 Order.

In addition, Cinergy may issue some or all of the Remaining Shares, on one or more occasions through December 31, 1997, to Cinergy system employees, including officer employees.

Eastern Edison Co., et al. (70–8713)

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, Mass., 02403; Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Mass., 02107; Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island, 02865; EUA Service Corporation ("EUA Service"), P.O. Box 2333, Boston, Mass., 02107; Newport Electric Corporation ("Newport"), 12 Turner Road, P.O. 4128, Middletown, Rhode Island, 02840; and EUA Ocean State Corporation ("Ocean State"), P.O. Box 2333, Boston, Mass., 02107, all subsidiaries of Eastern Utilities Associates ("EUA"), a registered holding company, have filed a declaration under sections 6(a) and 7 of the Act.

Eastern, Montaup, Blackstone, EUA Service, Newport and Ocean State ("Applicants") request authorization through December 31, 1997 to issue and sell short-term notes ("Notes") to banks in aggregate amounts not to exceed $20 million for Eastern, $20 million for Montaup, $15 million for Blackstone, $5 million for EUA Service, $12 million for Newport and $5 million for Ocean State. The Notes will be issued to banks and might be renewed prior to December 31, 1997, provided no such notes will mature after September 30, 1998.

Notes will be issued to banks pursuant to informal credit line arrangements at a floating prime rate or at available fixed money market rates. Notes will mature within one year of issuance. Notes bearing interest at the floating prime rate will be subject to prepayment at any time without premium. Notes bearing interest at available money market rates, which in all cases will be less than the prime rate, will not be prepayable.

Credit lines with banks are subject in some cases to commitment fees. The existing bank credit lines expire on June 30, 1996 and their continued availability is subject to continuing review by the banks involved. Bank credit lines and arrangements may be increased or decreased or changed and additional lines may be obtained from other banks.

The existing credit line arrangements provide for borrowing at the prime rate or money market rates together with a commitment fee equal to 3/16 of 1% multiplied by the line of credit. Any such commitment fee will be allocated among the six applicants and other EUA system companies who have access to system lines of credit pursuant to applicable regulatory authority, in proportion to their respective borrowing authorizations.

The funds to be borrowed by Applicants from the issuance of the Notes will be applied, together with other funds available to these companies, to (i) renew outstanding notes payable to banks, (ii) finance their respective 1996 and 1997 cash construction expenditures, (iii) provide funds to meet certain sinking fund, and retirements or redemptions of outstanding securities, (iv) provide funds to meet working capital requirements, and, (v) for other corporate purposes.

The Notes issued to banks will be repaid through (i) the issuance of new notes, (ii) the internal generation of funds, and/or (iii) the issuance and sale of long-term debt and equity securities.

Gulf States Utilities Company (70–8721)

Gulf States Utilities Company ("GSU"), 350 Pine Street, Beaumont, Texas 77701, and elecrtric utility subsidiary of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(d) of the Act and rules 42, 44 and 54 thereunder.

GSU seeks authorization through December 31, 2000 to issue and sell (a) one or more new series of GSU's First Mortgage Bonds ("Bonds"), (b) one or more new sub-series of the Medium Term Note Series of its First Mortgage Bonds ("MTNs") , and/or (c) one or more new series of debentures, ("Debentures"), in an aggregate principal amount of up to $900 million, excluding the Collateral Securities (defined below) and debentures issued by GSU to support the obligations of special purpose subsidiaries issuing preferred securities referred to below ("Entity Subordinated Debentures"). Each series of Bonds, sub-series of MTNs and/or series of Debentures (other than the Entity Subordinated Debentures) will be sold at such price, will bear interest at such rate or rates and will mature on such date (not more than 40 years from the first day of the month of issuance) and have such other

terms as will be determined at the time of sale.

GSU requests an exception from the Commission's Statement of Policy Regarding First Mortgage Bonds for any series of Bonds, sub-series of MTNs and/or Debentures with respect to the use of a sinking fund and a maintenance and operating fund, and with respect to redemption, dividend and other terms.

GSU further proposes to issue and sell, from time to time through December 31, 2000, (a) through special purpose subsidiaries ("Issuing Entities"), one or more new series of the preferred securities of a subsidiary of GSU ("Entity Interests"), (b) one or more new series of its preferred stock ("Preferred"), and (c) one or more new series of its preference stock ("Preference"), in a combined aggregate amount not to exceed $400 million.

Either GSU or special purpose subsidiaries will acquire all voting interests in the Issuing Entities, whose sole business will be to issue the Entity Interests. Proceeds from the sale by an Issuing Entity of Entity Interest, together with equity contributions made directly or indirectly by GSU to that Issuing Entity, will be used to purchase Entity Subordinated Debentures to be issued by GSU to that Issuing Entity.

Obligations of an Issuing Entity under Entity Interests it has issued will be supported by GSU's obligations under the Entity Subordinated Debentures issued to that Issuing Entity, and will mirror the terms of those Entity Subordinated Debentures. Each series of Entity Subordinated Debentures will not exceed in aggregate principal amount aggregate stated amount of the related Entity Interests and will mature not more than 50 years from its date of issuance. Additionally, GSU may guarantee obligations of each Issuing Entity under the Entity Interests if has issued.

Entity Subordinated Debentures will be expressly subordinated to certain senior indebtedness of GSU, and may also provide for the deferral of interest for specified periods. Accordingly, each Issuing Entity will have the right to defer distributions on its Entity Interests for a specified period, but only if and to the extent that GSU defers the interest payments on the Entity Subordinated Debentures pursuant to the subordination provisions of those Debentures.

Each share of Preferred may or may not have par value and may deviate from the Commission's Statement of Policy Regarding Preferred Stock ("Preferred Stock SOP") with respect to redemption and other provisions. Each share of Preference will have no par value and may deviate from the Preferred Stock SOP with respect to redemption and other provisions.

GSU proposes to use the net proceeds derived from the issuance and sale of Bonds, the MTN's, the Debentures, the Entity Interests, the Preferred, and the Preference for general corporate purposes, including, but not limited to, the possible acquisition of certain outstanding securities.

GSU also proposes to enter into arrangements to finance on a tax-exempt basis certain pollution control facilities ("Facilities"). GSU proposes, from time to time through December 31, 2000, to enter into one or more leases, subleases, installment sale agreements, refunding agreements or other agreements and/or supplements and/or amendments thereto (each and all of the foregoing being referred to herein as the "Agreement") with one or more issuing governmental authorities (individually and collectively being referred to herein as the "Authority"), pursuant to which the Authority may issue one or more series of tax-exempt revenue bonds ("Tax-Exempt Bonds") in an aggregate principal amount not to exceed $250 million. Pursuant to the Agreement, GSU will be obligated to make payments sufficient to pay the principal or redemption price of, the premium, if any, and the interest on Tax-Exempt as the same become due and payable. Under the Agreement, GSU will also be obligated to pay certain fees incurred in the transactions.

Each series of the Tax-Exempt Bonds will mature no later than forty years from the date of issuance. Each Agreement and indenture ("Indenture") under which the Tax-Exempt Bonds will be issued will provide for either a fixed interest rate or an adjustable interest rate for each series of Tax-Exempt Bonds. The Tax-Exempt Bonds may be subject to optional redemption by the issuing Authority, at the direction of the GSU, in whole or in part.

In order to obtain a more favorable rating and thereby improve the marketability of one or more series of the Tax-Exempt Bonds, GSU may: (a) Arrange for one or more letters of credit with one or more banks (collectively, "Bank") in favor of the trustees under the indentures for one or more such series (collectively, "Trustee'), (b) provide an insurance policy for the payment of the principal, interest and/or premium in connection with one or more such series, or (c) issue and pledge one or more new series of its first mortgage bonds ("Collateral Securities") to the Trustee and/or the Bank to evidence and secure GSU's obligations under the Agreement and/or the reimbursement agreements underlying the letters of credit, in a combined aggregate principal amount not to exceed $275 million.

GSU also proposes to acquire, through tender offers or otherwise, of up to $1.55 billion in aggregate principal amount of certain of its outstanding securities, including its outstanding first mortgage bonds, medium-term notes, preferred stock, preference stock, and/or pollution control or industrial revenue bonds issued for GSU's benefit, at any time, prior to December 31, 2000.

Fidelity Management & Research Company, et al. (70–8735)

Fidelity Management & Research Company ("FMR Co."), an investment adviser registered under section 203 of the Investment Advisers Act of 1940, as amended, and Fidelity Management Trust Company ("FMTC"), a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, as amended, both located at 82 Devonshire Street F7D, Boston, Massachusetts 02109–3614, have filed an application for an order granting exemption under section 3(a)(4) from all provisions of the Act except section 9(a)(2). Alternatively, they request an order of exemption under section 3(a)(3).[3] (FMR Co. and FMTC are hereafter collectively referred to as "Fidelity" or the "Applicant.")

Fidelity is principally engaged in the business of investment management, with approximately $373.6 billion of assets under management as of August 31, 1995.[4] Neither the Applicant nor any of its affiliates is currently a "public utility company" or "holding company" under the Act.

As part of Fidelity's distressed investment business, various funds and accounts under Fidelity's management have purchased outstanding lease obligation bonds, secured leases obligation bonds and unsecured debt of El Paso Electric Company ("El Paso"), a public utility company which filed for

[3] FMR Co. and FMTC are each Massachusetts corporations and wholly-owned subsidiaries of a third Massachusetts corporation, FMR Corp. If an exemption is granted to the subsidiaries, the parent, FMR Corp., and its controlling shareholders, will claim exemption from regulation under the Act, pursuant to rule 10(a)(2).

[4] FMR Co. provides investment advisory services to investment companies registered under section 8 of the Investment Company Act of 1940, as amended, and serves as investment adviser to certain other funds which are generally offered to limited groups of investors. FMTC serves as trustee or investment manager for various private investment accounts, primarily employee benefit plans. Fidelity affiliates are also involved in various other lines of business including, but not limited to, venture capital asset management, securities brokerage, transfer and shareholder servicing, and real estate development.

relief under Chapter 11 of the United States Bankruptcy Code on January 8, 1992.[5] At present, approximately fifteen funds and accounts managed by Fidelity hold, in the aggregate, outstanding lease obligation bonds and secured lease obligation bonds of El Paso with face value of approximately $224 million and approximately $83 million of El Paso's unsecured debt. Fidelity states that these debt securities were acquired for investment purposes, continue to be held exclusively for such purposes and, at current market value, represent approximately six one hundredths of a percent (0.06%) of the assets under its management and have produced a comparable percentage of its income since their acquisition.

Applicant states that negotiations between El Paso and its creditors, including Fidelity, have produced a Fourth Amended Plan of Reorganization, dated October 27, 1995 ("Fourth Plan of Reorganization"),[6] pursuant to which, among other things, eighty-five percent (85%) of the common stock or reorganized El Paso would be distributed to these creditors in exchange for the debt they now hold of the existing El Paso. In the event of such a distribution, the various funds and accounts managed by Fidelity would receive, in the aggregate, up to thirty percent (30%) of the common stock of reorganized El Paso. Applicant states that Fidelity would hold these El Paso voting securities for investment purposes only and would reduce its aggregate interest to less than ten percent (10%) of the outstanding voting securities of reorganized El Paso as soon as it is financially reasonable to do so, consistent with its fiduciary obligations to its investors.

Applicant anticipates confirmation of the Fourth Plan of Reorganization on January 9, 1996, and states that it is a condition precedent to confirmation that Fidelity not be required to register as a holding company under the Act and reorganized El Paso not be deemed to be a subsidiary company of a registered holding company.

Applicant states that the voting securities of El Paso that would be distributed to Fidelity's various funds and accounts pursuant to the Fourth Plan of Reorganization would be held by approximately fifteen (15) separate entities, none of which would hold ten percent (10%) or more of such voting securities. It asserts that Fidelity would not be a holding company within the meaning of section 2(a)(7) of the Act unless such interests are aggregated and contends that fidelity will not exercise such a controlling influence over the management or policies of reorganized El Paso as to make it necessary or appropriate to aggregate and so subject Fidelity to regulation as a holding company.[7]

Positioning solely for purposes of this application that the voting interests should be aggregated so as to render Fidelity a holding company, Fidelity states that it would nonetheless be entitled to an exemption under section 3(a)(4) or section 3(a)(3) of the Act. Applicant asserts that it is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted. Fidelity requests an exemption under section 3(a)(4) for a period of up to three years from the date of acquisition of the El Paso voting securities to enable it to reduce its holdings in reorganized El Paso in an orderly fashion, consistent with market conditions and its fiduciary obligations to its investors.[8] Applicant also asserts that it is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company. Applicant further asserts that granting Fidelity an exemption under section 3(a)(4) or 3(a)(3) will not result in detriment to the public interest or the interest of investors or consumers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28793 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[5] El Paso generates and distributes electricity in El Paso, Texas and in an area of the Rio Grande Valley in western Texas and southern New Mexico. It also sells electricity to wholesale customers in southern California, New Mexico, Texas, and Mexico. Its interconnected system serves approximately 271,000 customers and covers an estimated population of 818,000. El Paso had revenues of approximately $550 million in 1994.

[6] Previous efforts to structure three different plans of reorganization were unsuccessful.

[7] As a member of the Official Committee of Unsecured Creditors (the "Creditors' Committee") in the El Paso Chapter 11 proceeding, Fidelity has participated in the negotiation of the Fourth Plan of Reorganization. As one of three co-chairs of the Creditors' Committee, Fidelity serves on a five member committee that will nominate nine new members of the Board of Directors of reorganized El Paso, and recommend one of those new members for the position of Chief Executive Officer of the reorganized El Paso. The other four members will be existing members of the current Board. All of these selections will be subject to the approval of the Current Board of Directors of El Paso. The Creditors' Committee will be dissolved at the close of business on the effective date of the Fourth Plan of Reorganization. Thereafter, Fidelity will vote to protect its interests as a shareholder, but it will not be represented on the Board by any of its directors, officers, or other employees. As a large shareholder, Fidelity may be invited to attend meetings of reorganized El Paso's Board of Directors as an observer, on a non-voting basis.

[8] Fidelity states that, if despite its good faith efforts, it is unable to reduce its holdings in reorganized El Paso voting securities to an aggregate of less than ten percent (10%), in a manner that is consistent with its fiduciary obligations, it will seek an order extending the period of the exemption.

[Rel. No. IC–21501A; 812–9678]

Fortis Advantage Portfolios, Inc., et al.; Extension of Notice Period

November 21, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Application for exemption under the Investment Company Act of 1940 (the "Act"); extension of notice period.

APPLICANTS: Fortis Advantage Portfolios, Inc., Fortis Equity Portfolios, Inc., Fortis Fiduciary Fund, Inc., Fortis Worldwide Portfolios, Inc., Fortis Growth Fund, Inc., Fortis Money Portfolios, Inc., Fortis Securities, Inc., Fortis Series Fund, Inc., Fortis Tax-Free Portfolios, Inc., Fortis Income Portfolios, Inc., Special Portfolios, Inc., and Lazard Frères & Co. LLC.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

On November 13, 1995, a notice was issued giving interested persons until December 8, 1995 to request a hearing on an application filed by applicants (Investment Company Act Release No. 21501). The notice was assigned a release number under the Act on November 13, 1995 but was not published in the Federal Register at that time. Since the notice is now being published, the period for interested persons to request a hearing on the matter is being extended to December 18, 1995.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28866 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21502A; International Series Release No. 885A; 812-8654]

Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.; Extension of Notice Period

November 21, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Application for exemption under the Investment Company Act of 1940; extension of notice period.

APPLICANTS: Merrill Lynch, Pierce, Fenner, & Smith Incorporated, Smith Barney Inc., Prudential Securities Incorporated, Dean Witter Reynolds Inc., PaineWebber Incorporated, Corporate Income Fund, Equity Income Fund, the Fund of Stripped U.S. Treasury Securities, Government Securities Income Fund, International Bond Fund, The Merrill Lynch Fund of Stripped U.S. Treasury Securities, The Mortgage-Backed Income Fund, Defined Asset Funds, Municipal Investment Trust Fund, and The Tax-Exempt Mortgage Fund.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942-0582, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

On November 13, 1995, a notice was issued giving interested persons until December 8, 1995 to request a hearing on an application filed by applicants (Investment Company Act Release No. 21502; International Series Release No. 885). The notice was assigned release numbers on November 13, 1995 but was not published in the **Federal Register** at that time. Since the notice is now being published, the period for interested persons to request a hearing on the matter is being extended to December 18, 1995.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-28867 Filed 11-24-95; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Ocelot Energy Inc., Class B Subordinate Voting Shares, No Par Value) File No. 1-12076; Extension of Comment Period

November 20, 1995.

Due to a delay in the publication of the **Federal Register**, the Commission is extending the comment period concerning Ocelot Energy Inc.'s application to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. Any interested person may, on or before December 12, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95-28869 Filed 11-27-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36492; File No. SR-MSRB-95-13]

Self-Regulatory Organizations; Notice of Amendment to Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fee Assessments and Reporting of Sales or Purchases, Pursuant to Rules A-13, A-14, and G-14

November 20, 1995.

Pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(2), notice is hereby given that on November 13, 1995, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 1 to a proposed rule change (File No. SR-MSRB-95-13). Notice of the filing had previously been provided in Securities Exchange Act Release No. 36150 (Aug. 23, 1995), 60 FR 45197 (Aug. 30, 1995). The Commission received 13 comment letters in response to publication of the original notice. The comments are discussed subsequently in this document. The amendment to the proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to its proposed rule change SR-MSRB-95-13, relating to certain changes in the fees assessed to brokers, dealers and municipal securities dealers ("dealers"). The proposed rule change, as amended, comprises an amendment to rule A-13 on Underwriting Assessments, a corollary amendment to rule G-14 on Reports of Sales and Purchases, and an amendment to rule A-14 on the Annual Fee. The Board requests that the amendment to rule A-14 be effective for the Board's fiscal year 1996 (October 1, 1995-September 30, 1996, referred to herein as "FY96"). Since $100 already has been collected from each dealer for FY96, upon approval of the proposed rule change, the Board would bill each dealer an additional $100 for FY96.

Because of the Board's immediate need for the additional revenue that would be raised by the proposed fee on transactions included in the amendment to rule A-13, the Board requests that the A-13 amendment and the corollary amendment to rule G-14 become effective on January 1, 1996. The Board requests that the Commission approve the proposed rule change prior to that date, so that needed revenues can be collected in a timely manner.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

The initial filing of the proposed rule change on August 11, 1995 (File No. SR-MSRB-95-13 as filed, referred to herein as the "August 1995 filing") proposed three changes in the fees assessed by the Board on dealers: (i) The annual fee of $100 assessed under rule A-14 would be raised to $200; (ii) the underwriting assessment of $.03 per $1,000 par value, assessed on primary offerings of most long-term municipal securities under rule A-13, would be decreased to $0.2 per $1,000 par value; and (iii) rule A-13 would include a new transaction fee of $.01 per $1,000 par value of inter-dealer sales transactions.

As amended, the proposed rule change would result in the following fees: (i) The annual fee would be increased to $200, as proposed in the August 1995 filing; (ii) the underwriting assessment of $.03 per $1,000 par value would remain at its current level of $.03 and thus would no longer be included as part of the proposed rule change; and (iii) the proposed transaction fee would be assessed at $.005 per $1,000 par value—one half the rate originally proposed.

In the August 1995 filing, the Board discussed the reasons for the proposed rule change, the Board's philosophy that fees should be assessed upon dealers based upon the level of the dealers' participation in the market, and the Board's need for additional revenues. These stated purposes of the proposed rule change also apply to the proposed rule change, as amended.

Because the proposed transaction fee has been halved by the amendment, the estimated revenue from the proposed transaction fee also is halved, from approximately $4 million per year to approximately $2 million per year. However, the underwriting fee will remain at $.03 per $1,000 par value of primary offerings, so that revenues from this source are projected to be approximately $3.9 million. This approximately $1.3 million more than was projected under the August 1995 filing, which contemplated an underwriting fee of $.02 per $1,000. The proposed rule change, as amended, will provide the Board with approximately $700,000 per year less in revenue than the proposed rule change as initially filed. In addition, the Board is requesting a January 1, 1996 effective date for the transaction fee, which means that the first three months of FY96 will pass without any revenue from the proposed transaction fee.

The Board believes that the reduced revenues from the proposed rule change, as amended, will be sufficient to meet the Board's requirements because, among other reasons, the Board now anticipates that a lower level of expenditure will be required for the Board's transaction reporting program during FY96. The lower level of expenditures is now expected because the Board recently decided to combine Phase II of the program (the reporting of institutional customer transactions for transparency and audit trail purposes) and Phase III of the program (reporting of retail transactions) into one phase. This combined "customer transaction reporting phase" is expected to become operational in January 1998. Previously, Phase II was scheduled to become operational during FY96, which would have required greater FY96 expenditures on the program than are now required.[1]

The Board noted in the August 1995 filing that, although inter-dealer transaction volume is an acceptable measure of dealer participation in the market for purposes of fee assessment, the Board intends, in future years, to review the possible use of customer transaction data, provided by the Board's transaction reporting program, as an additional way to measure dealer participation in the market. The Board continues to view customer transaction volume as an appropriate measure of dealer participation in the market and will review the use of customer transaction information for fee assessment purposes once it becomes available. Due to revisions in the schedule for the customer transaction phase, it will not be possible to use customer transactions as a basis for fee assessment until sometime in the second half of the Board's 1998 fiscal year. This date is somewhat later than the Board anticipated when the August 1995 filing was made.

The Board understands that the proposed transaction fee would have a substantial impact on participants whose transaction activity is primarily or exclusively in the interdealer market. In recognition of this fact, the Board concluded to leave the $.03 per $1,000 underwriting assessment in rule A-13 at its current level and to reduce the proposed transaction fee by 50 percent to $.005 per $1,000 par value in the proposed rule change, as amended.

In its August 1995 filing of the proposed rule change the Board noted that it was proposed pursuant to the Section 15B(b)(2)(J) of the Act, which requires, in pertinent part, that the Board's rules shall:

> provide that each municipal securities broker and municipal securities dealer shall pay to the board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The same statutory basis applies to the proposed rule change, as amended. It would provide reasonable fees, based upon dealer involvement in the municipal securities market, that are necessary to defray Board expenses.

B. Self-Regulatory Organization's Statement on Burden on Competition

In the August 1995 filing, the Board discussed why it believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The board believes that the same rationale applies to the proposed rule change, as amended.

In the August 1995 filing, the Board noted that, for dealers that previously have not engaged in underwriting activities, the proposed transaction fee may constitute a substantial net increase in fees paid to the Board. The Board noted at that time its belief that the proposed transaction fee, at a level of $.01 per $1,000 par value, did not represent an undue burden on those dealers since the fee would directly reflect the dealers' participation in the inter-dealer market. At the revised level of $.005 per $1,000 par value, the proposed transaction fee would require these dealers to pay only half the amount of fees to the Board that was originally proposed and so any burden on these dealers would be commensurately reduced. The Board, therefore, believes that the proposed rule change, as amended, does not place any undue burden on dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not request comment on the August 1995 filing or on the proposed rule change, as amended. The board understands, however, that the Commission received 13 comment letters on the August 1995 filing, from the following:

Barr Brothers & Co. Inc. ("Barr Brothers")
Cantor Fitzgerald Partners ("Cantor Fitzgerald")
Chapdelaine & Co. ("Chapdelaine")
R.W. Ellwood & Co. ("Ellwood")
EMR Securities Inc. ("EMR")
J.F. Hartfield & Co., Inc. ("Hartfield")
J.J. Kenny Drake Co., Inc. ("Kenny")
Municipal Partners Inc. ("MPI")
The Public Securities Association (the "PSA")
R.W. Smith & Associates, Inc ("R.W. Smith")
Smith Peters & Stark ("Smith Peters")
Sonoma Securities Corporation ("Sonoma") (sent via the Board)
Tullett and Tokyo Securities, Inc. ("Tullett")

In addition to these comment letters regarding the August 1995 filing, the Board also has received two letters

[1] A description of the revised plan for the transaction reporting system is included in SR-MSRB-95-17, filed with the Commission on November 13, 1995.

proposing alternative fee structures.[2] The comments received by the Commission on the August 1995 filing and the two alternative proposals are discussed below.

Broker's Brokers

All commentators on the August 1995 filing except three[3] identified themselves as municipal securities broker's brokers ("broker's brokers"). All broker's brokers commenting on the August 1995 filing specifically criticized the transaction fee and opposed its application to broker's brokers, as did one other commentator.[4]

A broker's broker is a dealer that deals exclusively with other dealers and not with public investors or issuers. Broker's brokers are heavily involved in the inter-dealer market for municipal securities, working with other dealers who wish to buy or sell specific municipal securities issues. A broker's broker avoids taking inventory positions in municipal securities and does not execute an order for a purchase or sale unless an offsetting order or orders can be executed at the same time. Broker's brokers are subject to Board rules, as are all other dealers, based upon the municipal securities activities which they undertake.

The exact number of broker's brokers operating in the municipal securities market is unknown. The commentators give estimates ranging from 15[5] to 21.[6] The Board has identified 19 dealers who are known to have advertised themselves as broker's brokers.[7]

Broker's brokers execute offsetting purchase and sale transactions and would be assessed transaction fees based upon their sale transactions.

Some commentators suggest that the proposed rule change results in an inappropriate double assessment of transactions because it assesses the sale transactions of broker's brokers and also assesses the transactions of those dealers that sell securities through the use of broker's brokers.[8] These commentators state that a sale transaction executed by a broker's broker should not be viewed as a separate transaction, but rather as part of one trade between two other dealers, with the broker's broker "in the middle."

Transactions executed by a broker's broker may be executed either at the direction of a dealer that wishes to sell a quantity of securities or a dealer that wishes to purchase a quantity of securities. Broker's brokers work at the direction of the selling dealer most of the time. In such cases, the selling dealer agrees that the broker's broker will buy a quantity of securities from the selling dealer at a specific price and simultaneously sell the securities to one or more purchasing dealers at a price (or prices) that allow the broker's broker to make an agreed-upon sum on the transaction(s). The offsetting purchase and sale transactions by broker's brokers are confirmed and submitted for clearing as separate purchase and sale transactions. The difference between the purchase and sale prices represents the compensation to the broker's broker.[9] When the broker's broker works for the purchasing dealer, the situation generally is the same except that the agreement on prices and compensation is reached with the purchasing dealer. In all cases, the broker's broker maintains strict anonymity between the selling and purchasing dealers. Even the dealer directing the broker's broker to execute a transaction cannot learn the identity of the broker's broker's contra-party.

Accordingly, even though the transactions of broker's brokers are executed at the direction of other dealers, the transactions reasonably can be viewed as separate, offsetting purchase and sale transactions. For purposes of the proposed transaction fee, the Board believes that this is the correct analysis. A broker's broker with a high transaction volume should be assessed proportionately more in transaction fees than a broker's broker with a low transaction volume. Were the transactions of broker's brokers found not to be separate transactions, broker's brokers would not be subject to the proposed transaction fee at all.

The total transaction fees levied against all broker's brokers would be exactly proportionate to the total inter-dealer transaction volume of all broker's brokers.

A number of commentators stated opposition to the proposed transaction fee because the total fees that would be generated by broker's brokers transactions would be disproportionate to the percentage of broker's brokers in the overall dealer population.[10] The Board estimates that approximately 35% of the par value of inter-dealer transactions reported to it under rule G–14 have a broker's broker on the sale side of the transaction and therefore 35% of the transaction fee would be derived from broker's brokers. That this percentage would be disproportionate to the percentage of dealers who are broker's brokers is not surprising since broker's brokers execute comparatively high numbers of inter-dealer municipal securities transactions, *i.e.*, they participate very heavily in this portion of the market. In contract, broker's brokers do no underwriting and consequently would pay zero percent of the underwriting assessment.

Under the proposed rule change, as amended, broker's brokers would contribute less than 11 percent of Board revenues.[11] This latter percentage shows the effect of blending the heavy participation of broker's brokers in the inter-dealer market, the nil participation in the underwriting market and the payment of $200 per broker in annual fees. As discussed more fully below, given the available options for allocating fees among dealers based upon their participation in the market, the Board does not believe this result to be unreasonable.

The proposed rule change is not tied to the profitability of specific categories of dealers, but rather applies in an identical manner to all inter-dealer transactions.

Several commentators opposing the proposed rule change noted that broker's brokers' profit margins on inter-dealer transactions are smaller than those of other dealers and that broker's brokers generally do not provide municipal securities services other than the execution of inter-dealer transactions.[12] These commentators accordingly believe that the proposed transaction fee would reduce the profits of broker's brokers more than those of other dealers. Some commentators further suggested that, as a result, the proposed transaction fee would cause some broker's brokers to exit the business, reducing liquidity in the municipal securities market.[13]

Although the proposed transaction fee would represent a new cost of doing business for broker's brokers, the Board does not believe that, at a rate of $.005 per $1,000 par value, it would be a major factor in the ongoing viability of broker's brokers. The transaction fee would be imposed on all dealers at the same rate. It would apply to all broker's brokers in exactly the same way and thus would have no impact on broker's brokers competing with each other. Moreover, given that certain broker's brokers state that they will be unable to pass the transaction fee on to purchasing or selling dealers,[14] the Board does not believe the proposed fee would provide any disincentive to the use of broker's brokers.

As a matter of policy, the Board does not believe that it would be advisable to exempt or to set lower rates for transactions executed by a specific category of dealers such as broker's brokers. The Board nevertheless is sensitive to the profitability concerns of broker's brokers and acknowledges that, on average, the profits earned by borker's brokers in proportion to their inter-dealer transactions may be lower than for other dealers. Broker's brokers execute all of their transactions on a "riskless" basis, *i.e.*, they only execute orders when there already exists an offsetting order. The compensation to dealers for executing such "riskless" transactions normally is lower than the compensation received for transactions sold from inventory, where market risk has been undertaken. Any dealer may execute riskless transactions. The Board did not and could not propose a lower transaction fee for "riskless" transactions because there is no mechanism for reliably identifying an inter-dealer transaction as "riskless." It should be noted, however, that if such a mechanism were to become available, and a lower fee were established for "riskless" transactions, it would be necessary to raise Board fees in other areas to compensate for the reduction in revenue.

Need for Additional Revenue

Some commentators suggested that the Board does not need the additional revenue that would be raised by the proposed rule change,[15] that the Board should consider scaling back operations and expenses in a period of industry contraction,[16] or that the Board has not considered how changes in underwriting volume or other factors may affect Board revenues in the future.[17]

The Board has budgeted approximately $7.5 million in operating expenditures and $200,000 in capital expenditures in FY96 and expects its FY97 operating budget to be approximately $8.4 to $8.7 million, with capital expenditures of about $1 million. While these projections do represent substantial increases over actual operating expenditures in FY95 (which were approximately $6.6 million, unaudited), the Board does not agree with the commentators' suggestion that the Board should scale back its regulatory functions and projects during cyclical periods of market contraction. In fact, there may be a need for increased regulatory vigilance during these periods. In addition, many ongoing Board projects affecting the budget—such as completion of the Board's Transaction Reporting System, the continued operation of the Official Statement/Advance Refunding System, and the planned Job Delineation Survey for professional qualification examinations—are long-range projects which are critical to regulation of the market and are not logically related to cyclical market activity.

The Board's policy is to maintain cash and liquid assets equal to six months' to one year's operating expense. This reserve amount at the end of the Board's 1995 fiscal year (September 30, 1995) was approximately $6.3 million (unaudited). Without the proposed rule change, the Board would start FY97 below the minimum level of reserves required by Board policy and would be expected to exhaust almost all reserves by the end of FY97. With the proposed rule change, cash and liquid assets at the end of FY96 are projected to be within the range established by the Board's policy. The Board reviews projected new-issue volume regularly, along with other budgetary matters, and in doing so, reviews and sets fee levels to meet the Board's policy. Under the proposed rule change, the Board would regularly review transaction volume as well.

Proposed Alternative Fee Structures

A number of commentators suggested that Board fees should be imposed based upon the revenues earned by dealers, rather than transaction volume.[18] There also have been suggestions that the Board raise its annual fee or impose flat fees for dealer categories to obtain needed revenue.[19] The Board has considered these and a number of other suggestions, but continues to believe that the combination of annual fees, underwriting assessments and transaction fees included in the proposed rule change represents the best available, auditable, fee structure.

There is no source of "municipal securities revenue" that could be used to produce an auditable fee structure for the Board.

The Board has considered carefully whether Board fees should be linked in some way to the "municipal securities revenues" of dealers. Based on the advice of its outside auditors, the Board has concluded that it could not adopt a fee based on the "municipal securities revenue" unless this term is clearly defined and uniformly and computed by dealers *and* unless such computations are independently audited prior to being reported to the Board. Without these requirements being met, the Board would be in danger of having its own audited financial statements qualified if it were to assess fees linked to "municipal securities revenue."

The Board has been unable to locate any source of audited information that

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[2] These are a September 19, 1995 letter from Kenny ("Kenny II") and a November 1, 1995 letter from the PSA ("PSA II").

[3] The exceptions are Barr Brothers, the PSA and Sonoma.

[4] The PSA was the non-broker's broker that opposed the transaction fee and its application to broker's brokers. In addition, Barr Brothers commented to suggest a revenue-based fee system and Sonoma opposed the increase in the annual fee. These issues are discussed below.

[5] EMR.

[6] Hartfield.

[7] They are Associated Bond Brokers, Butler Larsen Pierce & Co., Cantor Fitzgerald, Chapdelaine, Cowen & Co., EMR, Ellwood, Hammond & Botzum, Hartfield, Kenny, O'Brien & Shepard, MPI, Murphy & Durieu, Schmidt Securities, R.W. Smith, Smith Peters, Titus & Donnelly, Tullett, and Wolfe & Hurst Bond Brokers.

[8] Cantor, Chapdelaine, Kenny and PSA.

[9] For example, the broker's broker might confirm to the selling dealer at a dollar price of $99.90 and confirm to the purchasing dealer at a price of par. The difference between the two prices is the compensation to the broker's broker. In some cases, the broker's broker purchases one block of securities from the selling dealer and sells the securities to two or more other dealers, in smaller blocks, at different prices. In these cases, the transaction with the selling dealer is confirmed and cleared as one transaction at a specific price, while the offsetting sale transactions are confirmed separately at the prices agreed upon.

[10] Cantor, Chapdelaine, Ellwood, EMR, Hartfield, Kenny, PSA, and Tullett. One commentator, for example, notes that "[i]t is . . . inequitable for twenty brokers' brokers who compose less than 1% of the over 2700 broker-dealers registered with the MSRB to pay twenty-five to thirty-three percent of the new transaction fee" (PSA).

[11] The 11 percentage figure is based upon the following assumptions: $400 billion in interdealer sales transactions during the year, generating $2 million in transaction fees for the year; the transaction fee effective for the entire year; broker's brokers paying an estimated 35 percent of transaction fees; $130 billion in new issuance, generating $3.9 million in underwriting fees; and 2,700 dealers generating $540,000 in annual fees. In FY96, the transaction fee would be in effect only for the last nine months, reducing the total amount of revenue to the Board and the portion of revenue obtained through the transaction fee. Accordingly, in FY96, the percentage of fees paid by broker's brokers is estimated to be less than 9 percent of total Board revenues.

[12] Cantor, Kenny, MPI, and R.W. Smith.

[13] Kenny and PSA.

[14] Chapdelaine and Kenny.

[15] Hartfield. In addition, one commentator suggested that the Board would raise more from the transaction fee than the Board has projected. The Board has estimated $400 billion in annual transaction volume based upon nine months of actual sell-side trade data submitted to the Board under rule G–14, from January 1995 through September 1995. This commentator estimates the annual level at closer to $700 billion, based in part upon reports of $48 billion in "compared municipal transactions" for July 1995. This July figure apparently was provided to the commentator by National Securities Clearing Corporation. Since the July figure given is approximately double the sales transactions tracked by the Board for July, it appears that the numbers being used by the commentator represent the par value of each buy-side and sell-side added together. The fee under the proposed rule change, however, would be assessed for only the sell-side of transactions. (The commentator was Kenny.)

[16] Kenny.

[17] R.W. Smith.

[18] Barr Brothers, Cantor Fitzgerald, Hartfield, MPI, and the PSA.

[19] *E.g.*, PSA and PSA II.

uniformly calculates and identifies "municipal securities revenue" earned by securities firms and dealer banks. Even if he Board were, by rule, to define "municipal securities revenue," establish accounting rules for its computation, and require each dealer to use these rules to perform these calculations, it also would be necessary for each dealer to obtain an independent audit of the calculation before the figures could be used to generate fee assessments. The Board believes that the high cost to the dealer community of achieving compliance with these requirements would make this method of fee assessment impractical.

Increasing annual fees above the proposed $200 level, or the creation of "dealer categories" with relatively large assessments for low-volume dealers, would create barriers to participation in the municipal securities market by low-volume dealers.

The Board also has considered the suggestion of a commentator[20] that the annual fee could be increased to $1,000. The Board currently receives annual fees from approximately 2,700 dealers. The commentator therefore estimates that a $1,000 fee would raise $2.7 million and could be implemented in lieu of the proposed transaction fee.

Of the approximately 2,700 dealers currently paying the Board annual fees, only approximately 850 have reported any inter-dealer transactions to the Board since January 1995.[21] Given that the remaining dealers have not reported any inter-dealer transactions, the Board believes that the remaining entities either: (1) Are merely executing occasional municipal securities transactions as an accommodation to customers requesting them to do so; or (ii) are not active at all in the inter-dealer market, but wish to remain capable of executing municipal securities transactions in the future. Raising the annual fee to $1,000 likely would result in the list of dealers eligible to execute transactions in municipal securities dropping in size from 2,700 to substantially under 1,000. This would decrease the revenue expectations for a $1,000 annual fee to $1 million—only $460,000 more than is expected from the proposed $200 annual fee.

In amending the proposed rule change, the Board carefully considered whether it should increase the $100 annual fee at all, since a larger annual fee might constitute a barrier to low-volume dealers participating in the market. In fact, a low-volume dealer has commented in opposition to the proposed $100 increase in annual fee.[22] The Board has concluded that the proposed $200 annual fee is not a significant barrier for dealer participation in the market; however, the Board is concerned that a much more substantial barrier would be created by a $1,000 fee and accordingly believes that a $200 annual fee should be the maximum at this time.

The Board also has considered suggestions that categories of dealers be created based upon market indicators such as underwriting volume and transaction volume, and that all dealers in a specific category be annually assessed the same flat fee ("flat fee proposals").[23] The flat fee proposals reviewed by the Board are similar to the proposals to raise annual fees to $1,000 in that each depends heavily upon obtaining a higher percentage of board revenue from dealers having a relatively low percentage of market activity. As noted above, however, dramatically raising fees for dealers with little or no market activity is unlikely to have the desired revenue effect because lower-volume dealers simply will drop out of the market when faced with high annual fees. In addition, the Board is concerned that relatively high annual fees for low-volume dealers may constitute an inappropriate barrier to participation in the market by these dealers.

In effect, the proposed rule change does "categorize" dealers based on their market activity by assessing separate fees based on underwriting activity and transaction volume, and assessing a flat $200 annual fee for all dealers. Each dealer pays a particular fee amount based on its own underwriting and transaction volume. The Board does not believe that it would be appropriate to re-adjust the allocation of fees by creating other categories, merely to shift fee burdens to lower volume dealers.

Using Dealer Participation in the Market for Measuring Fee Assessment

In proposing alternative fee structures, several commentators criticized the general concept of levying fees based heavily upon measures of dealer participation in the municipal securities market such as underwriting volume and transaction activity. In addition to the suggestions that much higher annual fees be assessed, or that "municipal securities revenues" be used for fee assessment, another criticism was made that assessing dealers based on their transaction activity does not fit within "value-added tax methodologies" that look to the value added to a product to determine a tax to be paid, rather than the activity of market participants.[24]

The Board has carefully considered suggestions for a totally different approach in its fee assessment structure, but has concluded that assessments based upon objective measures of participation in the market still represent the best method for funding Board operations. After closely examining the various alternative measures of dealer participation in the market—including the suggestions for using "municipal securities revenue"—the Board has concluded that underwriting activity and inter-dealer transaction volume are the best available and auditable means upon which to base fees. These measures of dealer activity are admittedly imperfect because they do not track every important activity in the market, *e.g.*, customer transactions. There is, however, currently no available source of customer transaction data. The Board is working on expanding the transaction reporting system to obtain customer transaction data and this component of the program is now expected to be in place in early 1998. The Board will review the use of customer transaction activity as a means of assessing fees when additional reliable information becomes available. The Board believes that, until that time, the proposed rule change presents a reasonable, practical and fair fee structure for funding Board operations.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board is requesting the Commission to make the proposed change to rule A–14 on the Annual Fee effective for Board fiscal year 1996, *i.e.*, that it become effective as of October 1, 1995, for reasons discussed above. The Board is requesting that the proposed change to rule A–13 on fee assessments, and the corollary change to rule G–14 on reports of sales and purchases, be made effective on January 1, 1996, also for reasons discussed above.

[20] PSA II.

[21] This figure, which is obtained from the Board's Transaction Reporting System, is approximate because reporting of executing dealer identities (as contrasted with clearing dealer identities) became mandatory only in July 1995. The figure nevertheless fits well with other estimates of the number dealers that execute inter-dealer transactions.

[22] Sonoma.

[23] Kenny II and PSA II.

[24] R.W. Smith.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–13 and should be submitted by December 18, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28868 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Minneapolis/St. Paul Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Minneapolis/St. Paul District Advisory Council will hold a public meeting on Friday, December 8, 1995 at 11:30 am at the Decathlon Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403 (612) 370–2306.

Dated: November 20, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–28870 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice No. 2287]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1996 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Eastern Europe and the independent states of the former Soviet Union. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1996 under a program administered by the Department of State.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by January 19, 1996.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) a legibly dated U.S. Postal Service postmark.

(2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) a dated shipping label, invoice, or receipt from a commercial center.

(4) any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, 2201 C Street, N.W., Washington, D.C. Please phone first (202) 736–4572) to ensure access to the building.

The Advisory Committee staff will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. EST daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise" depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The program provides financial support for

advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Eastern Europe and the independent states of the former Soviet Union, the program contributes to the overall objectives of the FREEDOM Support and SEED programs.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kazakstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Tajikistan, Turkmenistan, Urkraine, Uzbekistan, Bosnia and Herzegovina, Slovenia, Croatia, Serbia, Montenegro, and the Former Yugoslav Republic of Macedonia. (No funds may actually be spent in Serbia.)

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on the independent states of the former Soviet Union and the countries of Eastern Europe and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral levels, and must have demonstrated a likely career commitment to the study of Eastern Europe and/or the independent states of the former Soviet Union.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Eastern Europe and/or the independent states of the former Soviet Union by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) National programs which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) National programs which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) National programs which provide advanced training and research on a reciprocal basis in the countries of Eastern Europe and the independent states of the former Soviet Union by facilitating access for American specialists to research facilities and resources in those countries;

(5) National programs which facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Eastern Europe and the independent states of the former Soviet Union in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Publications.* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library Activities.* Funds may be used for certain library activities which clearly strengthen research and training on the countries of Eastern Europe and the independent states of the former Soviet Union and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

—*Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the independent states of the former Soviet Union and the less commonly taught languages of the East European countries. Support provided for Russian Language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above which has appropriate peer group review mechanisms.

—*Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Eastern Europe and the independent states of the former Soviet Union. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure.

—*Support for Transitions.* The Advisory Committee encourages support for activities which, while building expertise among U.S. specialists on the region, *also* may promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Eastern Europe and the independent states of the former Soviet Union. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $7.5 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1995, the Congress appropriated to the program $7.5 million from the Agency for International Development budget.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date, depending upon the source of the appropriation.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one-page executive summary, a budget, and vitae of key professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully. The one-page summary and budget should precede the narrative in the proposal.

Proposed programs should be described fully, including benefits for the fields. All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amount of anticipated awards.

Applicants who have received a grant from this program in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant received support prior to the last competition, a summary of those awards also should be included.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Proposals from national organizations involving language instruction programs should provide for those programs supported in the past year information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices must be included in the application.

Applications should include certifications of compliance with the provisions of:

(1) the Drug-Free Workplace Act (Pub. L. 100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and

(2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Since funds provided by AID would come separately from its East Europe (including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, "Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education . . . Uniform Administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) a detailed program budget indicating direct expenses by program element, by region (the independent states of the former Soviet Union or Eastern Europe), indirect costs, and the total amount requested. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) the applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) the organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address, and point of contact of the audit agency.

All payments will be made to grant recipients through the Department of State.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) responsiveness to the substantive provisions set forth above in *Part II, Program Information* (45 points);

(2) the professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Eastern Europe and the independent states of the former Soviet Union (35 points); and

(3) budget presentation of cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520. Telephone: (202) 736–4573 or 736–4386, fax: (202) 736–4851.

Dated: November 8, 1995.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 95–28775 Filed 11–24–95; 8:45 am]

BILLING CODE 4710–32–M

[Public Notice No. 2289]

Notice of Briefing

The Department of State announces that Under Secretary for Economic, Business and Agricultural Affairs Joan Spero will host the first of what are anticipated to be quarterly briefings on U.S. foreign policy economic sanctions programs. The briefing will be held on Monday, December 18, 1995, from 2:00 p.m. until 3:30 p.m., in State Department conference room 1912, 2201 C Street NW, Washington, D.C.

This briefing will cover the sanctions regimes overseen by the State Department's Bureau of Economic and Business Affairs, with a focus on Iran, Cuba, and narcotics-related programs. Country and regional desk officers will be on hand to address inquiries regarding programs operating in other countries as well.

Please Note: Persons intending to attend the December 18 briefing must announce this not later than 48 hours before the briefing, and preferably further in advance, to the Department of State by sending a fax to 202–647–3953 (Office of the Coordinator for Business Affairs). The announcement must include name, company or association name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the C Street Main Lobby.

Dated: November 13, 1995.

David A. Ruth,

Senior Coordinator for Business Affairs.

[FR Doc. 95–28777 Filed 11–24–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

[Docket OST–95–852]

Programmatic Environmental Impact Statement; Commercial Expendable Launch Vehicle Operations

AGENCY: Office of Commercial Space Transportation (OCST), Department of Transportation.

ACTION: Notice of intent and request for comments.

SUMMARY: The Office of Commercial Space Transportation (OCST) intends to prepare a programmatic environmental impact statement (EIS) to address the environmental impact of commercial expendable launch vehicle operations. This action is necessary to update an environmental assessment the Office prepared in 1986. An EIS will encompass topics not previously addressed.

DATES: Comments must be submitted no later than December 27, 1995.

ADDRESSES: Written comments should be sent to Docket Clerk, Docket OST–95–852, Department of Transportation, 400 Seventh Street SW., Room PL–401, Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Nikos Himaras, Office of Commercial Space Transportation, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–2929.

SUPPLEMENTARY INFORMATION: The Commercial Space Launch Act of 1984, as recodified at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. §§ 70101–70119 (1994) (the Act) grants the Secretary of Transportation the authority to license and regulate commercial launches of launch vehicles and the operation of launch sites within the United States or as carried out by its citizens. The Secretary has delegated this authority to the Office of Commercial Space Transportation (OCST).

Because licensing constitutes a major Federal action, section 415.31 of OCST's licensing regulations (14 CFR ch III) states that the potential environmental impacts of licensing commercial launch activities must be considered by the Office in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA), the Council on Environmental Quality (CEQ) regulations, 40 C.F.R. §§ 1500–1508, and Department of Transportation Procedures for Considering Environmental Impacts, DOT Order 5610.1C.

A programmatic environmental assessment (EA) of commercial expendable launch vehicle programs (Programmatic EA) was prepared by OCST in February 1986, and has served as a basis for licensing determinations for commercial launches to date. Commercial expendable launch vehicle operations encompass a variety of launch vehicle technologies and a number of launch sites and systems. Expendable launch vehicles are one-use launch systems utilized to carry payloads to orbit or to suborbital trajectories. They include such launch vehicles as the Black Brant, Atlas, Delta, Pegasus, and Taurus families of rockets. They employ liquid fueled engines and solid rocket motors as booster stages. They also utilize on-board guidance systems which rely on chemical batteries and power cells. Ground-controlled, flight/thrust termination systems containing explosives and powered by batteries, are also integral parts of launch vehicles. These systems are used to protect persons and property on the surface of the earth from errant launch vehicles. Launch vehicle payloads usually contain propulsion and power systems similar to those found on launch vehicles.

Several factors warrant the preparation of a programmatic EIS to replace the 1986 EA. The commercial launch industry has grown significantly since 1986, and this trend is projected to continue. New launch vehicle technologies, propulsion systems, and associated fuels and oxidizers have been introduced and are under development. Additionally, environmental regulations have been issued or amended since the publication of the Programmatic EA in 1986. Lastly, significant research discoveries have been made since 1986 concerning ozone. These developments merit the more expansive review of an EIS. This review will allow OCST to continue to evaluate commercial applications for licenses for launch activities and ensure that the information used as a basis for a license determination is current.

The programmatic EIS for commercial expendable launch vehicle operations will evaluate a broader range of launch vehicle technologies, their propulsion systems, fuels, and oxidizers. Potential environmental impacts to terrestrial, water, and particularly atmospheric environments from launches, combustion by-products, noise, and other effects will be assessed. The programmatic EIS will examine potential environmental impacts from commercial launches broadly, without site-specific consideration of launch locations. Analysis of potential environmental impacts from construction and launch operations at the proposed commercial launch sites will be completed through site-specific environmental assessments or impact statements.

Alternatives to the proposed commercial launch actions include either a total ban to launch activity or less restrictive approaches such as limits on the number of launches, the size or performance of the launch vehicles, and restrictions to launch mission profiles designed to limit the scope of environmental consequences of commercial launch activities. Constraints would be designed to mitigate the potential impacts on air, water, and land resources, biotic resources and affected communities both adjacent to and downrange from the launch site. The Programmatic EA of Commercial Expendable Launch Vehicle Programs issued in 1986, identified conditions which might result in potentially significant impacts. It addresses, for example, the effects of expendable launch vehicle exhaust products to the upper atmosphere, the release of liquid propellants to the marine environment and the leaching of contaminants from a launch facility to ground water. The Office will address any reasonable alternatives presented during the scoping process and subsequent comment periods. OCST requests that written comments on significant environmental issues be provided by interested parties. No public scoping meeting is scheduled at this time.

The content of comments from the public will determine whether this meeting is convened. Copies of the 1986 Programmatic Environmental Assessment may be obtained from the Office.

Issued in Washington, DC on November 13, 1995.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 95–28812 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

DATES: The meeting will be held on December 14, 1995 at noon.

ADDRESSES: The meeting will be held at the Regional Airlines Association, second floor presentation room, 1200 19th St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Judi Citrenbaum, (202) 267–9689, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW., Washington, DC 20591 or Ms. Regina Jones, (202) 267–9822 of the same office.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualifications issues. This meeting will be held December 14, 1995, at noon, at the Regional Airlines Association. The agenda for this meeting will include a progress report from the Aircraft Dispatcher Working Group. In addition, ARAC will vote on whether to accept a task the FAA assigned in November 1994 in which ARAC was requested to evaluate and recommend a course of action regarding comments received on the Operator Flight Attendant English Language Advance Notice of Proposed Rulemaking [59 FR 1845; April 18, 1994].

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on November 16, 1995.

H. Jan Demuth,

Acting Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–28741 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–03–I–00–SUN) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Friedman Memorial Airport, Submitted by Friedman Memorial Airport Authority, Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Friedman Memorial Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 27, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard T. Baird, Airport Manager at the following address: Friedman Memorial Airport Authority, P.O. Box 929, Hailey, ID 83333.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Friedman Memorial Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Simmons, (206) 227–2656; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–03–I–00–SUN) to impose and use at Friedman Memorial Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 17, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Friedman Memorial Airport Authority, Hailey, Idaho, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: May 1, 1996.
Proposed charge expiration date: August 31, 1999.
Total estimated PFC revenues: $621,000.00.
Brief description of proposed project: Upgrade runway safety areas.
Class or classes of air carriers which the public agency has requested not be required to collect PFC's: FAA Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, in aircraft with a seating capacity of 10 seats or less.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Friedman Memorial Airport.

Issued in Renton, Washington on November 17, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–28843 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–89; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Mercedes-Benz SL280 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Mercedes-Benz SL280 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for decision that a 1994 Mercedes-Benz SL280 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 27, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 U.S.C. Part 592. As specified in 49 U.S.C. 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Liphardt & Associates, Inc. of Ronkonkoma, New York ("Liphardt") (Registered Importer R–90–004) has petitioned NHTSA to decide whether 1994 Mercedes-Benz SL280 (Body Style 129) passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1994 Mercedes-Benz SL320. Liphardt has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1994 Mercedes-Benz SL320, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 1994 Mercedes-Benz SL280 to the 1994 Mercedes-Benz SL320, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the 1994 Mercedes-Benz SL280, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1994 Mercedes-Benz SL320 that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1994 Mercedes-Benz SL280 is identical to the certified 1994 Mercedes-Benz SL320 with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1994 Mercedes-Benz SL280 complies with the Bumper Standard found in 49 U.S.C. Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and sidemarkers; (b) installation of U.S.-model taillamp assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (c) installation of a knee bolster to augment the vehicle's passive restraint system.

Standard No. 214 *Side Impact Protection:* installation of reinforcing tubes.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 20, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–28800 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Office of Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on November 20, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	01/01/1996
10606–N	General Oil Equipment Co., Inc., Tonawanda, NY	4	01/15/1996
10664–N	EFIC Corporation, San Jose, CA	1, 3, 4	01/30/1996
10704–N	Liquid Air Corporation, Walnut Creek, CA	1, 4	12/01/1995
10740–N	CSXT/BIDS, Philadelphia, PA	4	01/01/1996
10760–N	Applied Companies, San Fernando, CA	1	12/15/1995
10778–N	Liquid Carbonic Specialty Gas Corporation, Chicago, IL	1, 4	08/15/1995
10915–N	Luxfer USA Limited, Riverside, CA	1, 3, 4	01/15/1996
10945–N	Structural Composites Industries, Pomona, CA	1, 3, 4	01/15/1996
10996–N	AeroTech, Inc. & Industrial Solid Propulsion, Inc., Las Vegas, NV	1, 3	01/01/1996
10997–N	HR Textron, Inc., Pacoima, CA	3, 4	01/15/1996
11098–N	Alcan Smelters and Chemicals Ltd., Montreal, CN	3	01/15/1996
11117–N	Champion International Corporation, Hamilton, OH	4	01/15/1996
11151–N	SET Environmental, Inc., Wheeling, IL	4	12/01/1995
11153–N	SET Environmental, Inc., Wheeling, IL	4	12/01/1995
11157–N	Northwest Ohio Towing & Recovery, Beaverdam, OH	4	01/15/1996
11193–N	U.S. Department of Defense, Falls Church, VA	4	01/01/1996
11194–N	Pressure Technology, Inc., Hanover, MD	3, 4	01/15/1996
11249–N	UOP Shreveport, LA	4	01/15/1996
11284–N	Webb Chemical Service Corp., Muskegon, MI	4	01/15/1996
11302–N	Stolt Tank Containers Limited, Hull, North Humberside, EN	4	01/01/1996
11307–N	Jacx Enterprises, Highlands, TX	4	01/15/1996
11315–N	Southern Pacific Lines, Houston, TX	4	01/15/1996
11322–N	Hydra Rig, Inc., Ft. Worth, TX	1	01/15/1996
11340–N	McCain Foods, Inc., Easton, MA	4	01/15/1966
11380–N	Western Atlas International, Houston, TX	4	12/15/1995
11393–N	Hoechst Celanese Corp, Charlotte, NC	4	01/15/1996

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11395–N	Dart Polymers, Inc., Leola, PA	4	03/31/1996
11396–N	Laidlaw Environmental Services, LaPorte, TX	4	03/31/1996
11397–N	Speer Products Inc., Memphis, TN	4	12/01/1995
11401–N	Hewlett Packard Co., Santa Clara, CA	4	03/15/1996
11409–N	Pure Solve, Inc., Irving, TX	1	03/15/1996
11411–N	National Propane Gas Association, Arlington, VA	4	01/15/1996
11413–N	Dow Chemical, NA, Midland, MI	4	03/15/1996
11424–N	Midwest Corporate Air, Inc., Bellefontaine, OH	4	03/15/1996
11426–N	Laidlaw Environmental Services Inc., LaPorte, TX	4	01/01/1996
11427–N	Georgia Gulf Corp., Paquemine, LA	4	03/15/1996
11434–N	Fisher Scientific Company, Fair Lawn, NJ	4	03/15/1996
11435–N	Air Products & Chemicals, Inc., Allentown, PA	4	01/22/1996

MODIFICATIONS TO EXEMPTIONS

Application	Applicant	Reason for delay	Estimated date of completion
6922–M	Halocarbon Products Corp., N. Augusta, SC	3	02/15/1996
7073–M	Ethyl Corporation, Baton Rouge, LA	4	12/01/1995
9001–M	Chesterfield Cylinders Limited, Chesterfield, Derbyshire, EN	3	08/15/1995
9164–M	Farbicated Metals, Inc., San Leandro, CA	4	02/15/1996
10227–M	Caire, Inc., Bloomington, MN	4	01/15/1996
10463–M	Allied Universal Corp., Miami, FL	1	12/15/1995
10997–M	HR Textron Inc., Pacoima, CA	3, 4	01/15/1996

PARTIES TO EXEMPTION APPLICATIONS WITH MODIFICATION

Application no.	Applicant	Reason for delay	Estimated date of completion
11249–PM	Ashland Chemical Company, Columbus, OH	4	03/01/1996

[FR Doc. 95–28815 Filed 11–24–95; 8:45 am]
BILLING CODE 4910–60–M

Improving the Hazardous Materials Safety Program; Public Meetings Related to Regulatory Review and Customer Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting in Long Beach, California, to seek information from the public on regulatory reform and improved customer service for RSPA's hazardous materials safety program. This meeting replaces the meeting previously scheduled for November 16, 1995, in San Diego, California, which was canceled due to a lapse in funding for the Department of Transportation.

ADDRESSES: See Supplementary Information for specific time, location, and agenda.

DATES: January 25, 1996.

FOR FURTHER INFORMATION CONTACT: Edmund J. Richards, Interagency Hazardous Materials Program Coordinator, (202) 366–0656; or Suezett Edwards, Training and Information Specialist, (202) 366–4900; Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order promotes continuing reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector. RSPA is seeking information from individuals and businesses impacted by its hazardous materials safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

An initial series of outreach meetings to address these two topics was held in April and May of this year in San Francisco, California; Chicago, Illinois; Clearwater and Tampa, Florida; Houston, Texas, and Minneapolis, Minnesota. Many participants requested that these meeting be continued on a regular basis and scheduled in areas of the country not previously covered. As a result, a second series of meetings is being held. Meetings have been held in Cambridge, Massachusetts; Philadelphia, Pennsylvania; Seattle, Washington; and Charlotte, North Carolina. The meeting to be held in Long Beach, California, will complete the second series.

Areas of Regulatory Concern

In calling on agencies to review, revise, and, when necessary, cut obsolete regulations, the President directed each agency to consider the following issues:

- Is the regulation obsolete?
- Could its intended goal be achieved in more efficient, less obtrusive ways?
- Are there private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the states or local governments doe the job, making Federal regulation unnecessary?
- Can certain regulatory provisions be relaxed without unduly impacting safety?

Improvements to Customer Service

At the meeting, RSPA will solicit comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the hazardous materials safety program. RSPA will use the comments received to establish service standards and measure results against them; provide choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide a means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the HMR and processing exemptions, approvals, registrations, grant applications and enforcement actions. Other customer services include conduct of multimodal hazardous materials seminars, operation of the Hazardous Materials Information Exchange (HMIX) electronic bulletin board, and development and dissemination of training and information materials.

Conduct of the Meeting

The meeting will be informal and is intended to produce a dialogue between agency personnel and those persons directly affected by the hazardous materials safety programs, regulations and customer services. The meeting officer may find it necessary to limit the time allocated each speaker to ensure that all participants have an opportunity to speak. Conversely, the meeting may conclude before the time scheduled if all persons wishing to participate have been heard.

The meeting will be held on January 25, 1996, from 9:00 a.m. to 4:00 p.m. in the 7th Floor Conference Room of the Glenn Anderson Federal Building (11th Coast Guard District), 501 West Ocean Boulevard, Long Beach, California. A picture ID may be required to enter the building.

Issued in Washington, D.C. on November 20, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–28813 Filed 11–24–95; 8:45 am]
BILLING CODE 4910–60–M

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the eleventh session of the United Nation's Sub-Committee on Exports on the Transport of Dangerous Goods (UNSCOE).

DATES: December 20, 1995 at 9:30 a.m.

ADDRESS: Room 6200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to review the progress made by the eleventh session of the UNSCOE held from December 4, to 15, 1995 and to prepare for the next meeting of the UNSCOE to be held in July 1996. Topics to be covered include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, infectious substances and international harmonization of classification criteria.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the eleventh session of the UN Sub-Committee meeting may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by contacting RSPA's Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center, 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time. The HMIX may also be accessed via the Internet at hmix.dis.anl.gov.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council, Suite 301, 1101 Vermont Ave., N.W., Washington, DC 20005; telephone number (202) 289–4550.

Issued in Washington, DC, on November 20, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–28814 Filed 11–24–95; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–97]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: Notice is hereby given that on October 25, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.45(a) of the Customs Regulations, as amended (19 CFR 111.45(a)), ordered the revocation of license (No. 6884) issued to John V. Urbano to conduct Customs business.

Dated: November 20, 1995.

Anne K. Lombardi,

Deputy Director, Trade Compliance.

[FR Doc. 95–28725 Filed 11–24–95; 8:45 am]
BILLING CODE 4820–02–P

Office of Foreign Assets Control

List of Specially Designated Terrorists Who Threaten to Disrupt the Middle East Peace Process

AGENCY: Office of Foreign Assets Control, Treasury

ACTION: Notice of Blocking

SUMMARY: The Treasury Department is adding the name of an individual to the

list of blocked persons who have been found to have committed, or to pose a risk of committing, acts of violence that have the purpose of disrupting the Middle East peace process or have assisted in, sponsored, or provided financial, material or technological support for, or service in support of, such acts of violence, or are owned or controlled by, or to act for or on behalf of other blocked persons.

EFFECTIVE DATE: November 27, 1995 or upon prior actual notice.

FOR FURTHER INFORMATION: Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220; Tel. (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem dial 703/321–3339, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

On January 24, 1995, President Clinton signed Executive Order 12947, "Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process" (the "Order" or "E.O. 12947"). The Order blocks all property subject to U.S. jurisdiction in which there is any interest of 12 Middle East terrorist organizations included in an Annex to the Order. In addition, the Order blocks the property and interests in property of persons designated by the Secretary of State, in coordination with the Secretary of Treasury and the Attorney General, who are found (1) to have committed or to pose a significant risk of disrupting the Middle East peace process, or (2) to assist in, sponsor or provide financial, material, or technological support for, or services in support of, such acts of violence. The order further blocks all property and interests in property subject to U.S. jurisdiction in which there is any interest of persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of any other person designated pursuant to the Order (collectively "Specially Designated Terrorists" or "SDTs").

The order further prohibits any transaction or dealing by a United States person or within the United States in property or interests in property of SDTs, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons.

Designations of persons blocked pursuant to the Order are effective upon the date of determination by the Secretary of State or his delegate, or the Director of the Office of Foreign Assets Control acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of publication in the **Federal Register**, or upon prior actual notice.

The following name is added to the list of Specially Designated Terrorists:

SHALLAH, Dr. Ramadan Abdullah (a.k.a. ABDALLAH, Ramadan) (a.k.a. ABDULLAH, Dr. Ramadan) (a.k.a. SHALLAH, Ramadan Abdalla Mohamed); Damascus, Syria; Secretary General of the PALESTINIAN ISLAMIC JIHAD; DOB: January 1, 1958; POB: Gaza City, Gaza Strip; Passport No. 265 216 (Egypt); SSN 589–17–6824.

Deted: November 6, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 6, 1995.

Dennis M. O'Connell

Acting Deputy Assistant Secretary (Regulatory, Toriff & Law Enforcement).

[FR Doc. 95–28724 Filed 11–21–95; 4:10 pm]

BILLING CODE 4810–25–F

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Chief Inspector are as follows:

Michael Dolan, Deputy Commissioner, Chair
James Donelson, Acting Chief, Taxpayer Service
David Mader, Chief, Management and Administration
Dennis Schindel, Deputy Assistant Inspector General for Audit Operations, Department of the Treasury

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–28898 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Regional Commissioners are as follows:

Michael Dolan, Deputy Commissioner, Chair
Philip Brand, Chief Compliance Officer
James Donelson, Acting Chief, Taxpayer Service
David Mader, Chief, Management and Administration

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,

Commissioner of Internal Revenue

[FR Doc. 95–28899 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Commissioner and Appeals are as follows:

Michael Dolan, Deputy Commissioner, Chair
Gary Bell, Chief Inspector
Philip Brand, Chief Compliance Officer
David Mader, Chief, Management and Administration

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–28900 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Performance Review Board

AGENCY: Internal Revenue Service (IRS). Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Chief Officers, Regional Commissioners and senior executives in Inspection and the Office of the Commissioner are as follows:

Michael Dolan, Deputy Commissioner, Chair
Gary Booth, Regional Commissioner, Midstates Region
Marilyn Day, Regional Commissioner, Western Region
James Donelson, Acting Chief, Taxpayer Service
Herma Hightower, Regional Commissioner, Northeast Region
Walter Hutton, Acting Chief Information Officer
Robert Johnson, Regional Commissioner, Southeast Region

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–28901 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register

Vol. 60, No. 227

Monday, November 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 30, 1995, 9:30 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

(Meeting was previously scheduled for Friday, November 17, 1995. Due to the Government Shutdown, the meeting was canceled.)

Matters to be Considered

1. CPSC Vice Chairman

The Commission will elect a Vice Chairman.

2. FY 1996 Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1996.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 21, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–29078 Filed 11–22–95; 3:34 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

DATE & TIME: Friday, December 1, 1995, 9:30 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter to be Considered

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 21, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–29079 Filed 11–22–95; 3:34 pm]

BILLING CODE 6355–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Wednesday, November 22, 1995

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Wednesday, November 22, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Mass Media—*Title:* Broadcast Applications of CBS and Westinghouse. *Summary:* The Commission will consider the applications of CBS, Inc. and Westinghouse Electric Corporation for the transfer of control of the CBS broadcast stations to Westinghouse.

The prompt and orderly conduct of Commission business requires that the meeting be held with less than 7-days notice.

Action by the Commission November 21, 1995. Commissioners Hundt, Chairman; Quello, Barrett, Ness and Chong voting to consider this item.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: November 21, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28988 Filed 11–22–95; 11:38 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Tuesday, November 28, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 28, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Cable Services—*Title:* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation: Uniform Rate-Setting Methodology. *Summary:* The Commission will consider establishing a methodology under which cable operators may offer uniform services at uniform prices in multiple franchise areas.

*The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

2—Wireless Telecommunications and Mass Media—*Title:* Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures (WT Docket No. 95–5). *Summary:* The Commission will consider whether to replace the current antenna structure clearance process, which affects all licensees on such structures, with a simplified registration procedure affecting primarily structure owners and whether to amend Parts 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 to reflect revised FAA painting and lighting recommendations and to implement new statutory requirements, holding owners primarily responsible for painting and lighting antenna structures.

3—Common Carrier—*Title:* Access to Telecommunications Equipment and Services by Persons with Disabilities (CC Docket No. 87–124). *Summary:* The Commission will consider action concerning wireline telephone Hearing Aid Compatibility rules recommended by the Commission's Hearing Aid Compatibility Negotiated Rulemaking Committee.

4—International—*Title:* Market Entry and Regulation of Foreign-affiliated Entities (IB Docket No. 95–22, RM–8355, RM–8392). *Summary:* The Commission will consider action concerning standards for entry and regulation of foreign carriers seeking to provide services in the U.S. telecommunications market.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: November 21, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28987 Filed 11–22–95; 11:38 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, November 21, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate and supervisory activities.

Application of The Hudson City Savings Institution, Hudson, New York, an insured State-chartered mutually-owned savings bank and Bank Insurance Fund member, for consent to merge, assume assets, liabilities, and certain obligations of Valatie Savings and Loan Association, Valatie, New York ("Valatie Savings"), an insured State-chartered mutually-owned savings and loan association and Savings Insurance Fund member; and for consent to participate in an optional conversion transaction.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6, (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: November 21, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–28985 Filed 11–22–95; 11:38 am]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 57885, November 22, 1995.

PREVIOUSLY ANNOUNCED TIME:

TIME AND DATE: 10:00 a.m., Thursday, November 16, 1995.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGE IN THE MEETING: The discussion of the item listed has been canceled. *Thunder Basin Coal Co.*, Docket Nos. WEST 94–148–R, etc.

It was determined by a unanimous vote of Commissioners that this meeting be canceled and no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: November 21, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–29077 Filed 11–22–95; 3:33 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 29, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28986 Filed 11–22–95; 11:38 am]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–027]

TIME AND DATES: December 5, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–724 (Final) (Manganese Metal from the People's Republic of China)—briefing and vote.
5. Outstanding action jackets:
   1. CO69–95–001: Proposal on delegation of budget authority.
   2. EC–95–011: Institution of investigation under section 332 of the Tariff Act of 1930 on U.S. Interests in APEC Trade Liberalization.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 22, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–29052 Filed 11–22–95; 2:09 pm]

BILLING CODE 7020–02–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 57271, November 14, 1995]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: November 14, 1995.

CHANGE IN MEETING: Cancellation.

The closed meeting scheduled for Thursday, November 16, 1995, at 10:00 a.m., has been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 22, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–28991 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

federal register

Monday
November 27, 1995

Part II

Department of Housing and Urban Development

Office of the General Counsel; Notice of Application—Foreclosure Commissioners

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel Notice of Application—Foreclosure Commissioners

[Docket No. FR–3950–N–01]

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of application—foreclosure commissioners.

SUMMARY: This notice requests applications from parties who seek approval to act as foreclosure commissioners under the Single Family Mortgage Foreclosure Act of 1994 (the "Act"), 12 U.S.C. 3751–3768.

DATES: Applications may be submitted after the publication of this notice to HUD's Field Assistant General Counsel serving the geographic area in which the party proposes to serve as commissioner. A listing of Field Assistant General Counsel is included at the end of this notice. Applications may not be submitted by facsimile (FAX).

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708–1272. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for emergency review and approval under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number under this section, when approved, will be announced by separate notice in the **Federal Register**.

Background

Section 804 of the Single Family Mortgage Foreclosure Act of 1994 (the Act), 12 U.S.C. 3753, authorizes the Secretary of HUD (the Secretary) to exercise a statutory nonjudicial power of sale with respect to any single family mortgage held by the Secretary pursuant to Title I or Title II of the National Housing Act or securing a loan obligated under Section 312 of the Housing Act of 1964, as further described in Section 803 of the Act (12 U.S.C. 3752). Upon a determination that a defaulted Secretary-held mortgage should be foreclosed, the Act permits the Secretary to name a foreclosure commissioner to conduct the foreclosure and sale. The commissioner may be an individual (including an official of State or local government), a group of individuals, an association, a partnership, a corporation or an organization (12 U.S.C. 3752(7) and 12 U.S.C. 3754). The Act further provides that if the foreclosure commissioner is a natural person, he is to be a resident of the State in which the security property is located; if not a natural person, the designee must be authorized to transact business under the laws of the State in which the security property is located. In order to be designated a commissioner, a person must be responsible, financially sound and competent to conduct a foreclosure.

The Secretary's power to designate a commissioner and to designate a substitute commissioner to replace a previously designated commissioner has been delegated to the HUD General Counsel. Regulations implementing the Act were published on November 15, 1995 (60 FR 57484).

By this notice, the General Counsel invites applications from all qualified parties who wish to be designated as foreclosure commissioners. The requested information will be used to determine if an applicant is responsible, financially sound, and competent to conduct a foreclosure. Each party submitting an application will be notified if its application has been accepted or rejected. All parties whose applications are accepted will be placed on a list of designated commissioners approved to act in a specific geographic area. When HUD determines that a particular mortgage should be foreclosed under the Act, the case will be referred to a designated foreclosure commissioner for foreclosure. Designation as a commissioner, however, does not necessarily provide any assurance that all commissioners so designated will subsequently have cases referred by HUD for foreclosure. Also, in some States HUD may decide to continue to foreclose under State law or other Federal law.

Each party seeking designation as a foreclosure commissioner must submit the current information, as listed below, to HUD's Field Assistant General Counsel serving the geographic area in which the party proposes to serve as commissioner. Those Field Assistant General Counsel are also listed below.

Current Information to be Submitted

1. Name
2. Business Address
3. Geographic area in which the applicant wishes to conduct foreclosures. (List only States or areas in States in which the applicant is a resident or is duly authorized to transact business.)
4. If the applicant is not a natural person, the names and business addresses of the people who would actually perform the commissioner's duties.
5. Description of the applicant's experience in conducting mortgage foreclosures or in related activities which would qualify the applicant to serve as a foreclosure commissioner.
6. Evidence of the applicant's financial responsibility.

Any party that has been designated as a foreclosure commissioner for HUD-held multifamily mortgages may submit a letter to the appropriate Field Assistant General Counsel requesting designation as a foreclosure commissioner for single family mortgages. This letter of interest would be acceptable in lieu of the preceding information, unless any of the information requires updating.

Assistant General Counsel to Receive Applications

For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 10 Causeway St., Room 375, Boston, Massachusetts 02222–1092.

For New Jersey and New York:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 26 Federal Plaza, New York, New York 10278–0068.

For Delaware, Maryland, Pennsylvania, Virginia, West Virginia and Washington, D.C.:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 100 Penn Square East—The Wanamaker Building, Philadelphia, Pennsylvania 19107–3390.

For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Puerto Rico:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 75 Spring St. S.W.—Richard Russell Federal Bldg., Atlanta, Georgia 30303–3388.

For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 77 West Jackson Blvd.—Ralph Metcalfe Federal Bldg., Chicago, Illinois 60604–3507.

For Arkansas, Louisiana, New Mexico, Oklahoma and Texas:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 1600 Throckmorton—P.O. Box 2905, Fort Worth, Texas 76113–2905.

For Iowa, Kansas, Missouri, and Nebraska:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 400 State Avenue—Gateway Tower II, Kansas City, Kansas 66101–2406.

For Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 633 17th St.—First Interstate Tower North, Denver, Colorado 80202–3607.

For Arizona, California, Hawaii, and Nevada:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 450 Golden Gate Ave.—Phillip Burton Federal Bldg., P.O. Box 36003, San Francisco, California 94102–3448.

For Alaska, Idaho, Oregon and Washington:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 909 1st Ave.—Seattle Federal Office Bldg., Seattle, Washington 98104–1000.

Authority: 12 U.S.C. 1715b, 12 U.S.C. 3751–3768, 42 U.S.C. 3535(d).

Dated: October 20, 1995.

Nelson A. Díaz,

General Counsel

[FR Doc. 95–28747 Filed 11–24–95; 8:45 am]

BILLING CODE 4210–01–P

Federal Register

Monday
November 27, 1995

Part III

Department of Housing and Urban Development

24 CFR Parts 103 and 125
Fair Housing Initiatives Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 103 and 125

[Docket No. FR–3480–F–03]

RIN 2529–AA62

Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Fair Housing Initiatives Program (FHIP) regulation at 24 CFR part 125 to provide for the implementation of statutory amendments pertaining to private enforcement initiatives; the funding of fair housing organizations; and the implementation of national (including national fair housing month), regional and local, and community-based education and outreach programs. In addition, it corrects a cross-reference contained in part 103.

DATES: Effective date: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Maxine Cunningham, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in § 125.105 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2529–0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

A. Program Authority and Description

The Fair Housing Act—Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19—charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing, and in other real estate-related transactions. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws, and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987 (1987 Act), 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), substantially amends section 561 of the Housing and Community Development Act of 1987. On April 1, 1993, the Department published an Advance Notice of Proposed Rulemaking (ANPR) (58 FR 17172) requesting comment on HUD's implementation of section 905 of the Housing and Community Development Act of 1992. The Department received three comments in response to the ANPR.

On August 29, 1994, HUD published a proposed rule to amend the Fair Housing Initiatives Program (59 FR 44596). HUD invited public comments for consideration in drafting a final rule. During the comment period, which ended October 28, 1994, HUD received 15 public comments, 7 from individuals (6 of these being identical form comments submitted in support of comments submitted by an individual broker), 5 from fair housing enforcement organizations, 1 from an organization representing realtors, 1 from an organization representing lenders, and 1 from a lending firm. These comments are discussed in the following section.

B. Public Comments on the Proposed Rule

The public commenters focused on the following issues, listed with their proposed rule section numbers:

1. Definition of Expert Witness: § 125.103.
2. Definition of Meritorious Claims: § 125.103.
3. Waivers: § 125.106.
3. Eligible Activities: § 125.303.
4. Funding for Regionally Produced and Locally Produced Media Programs: §§ 125.303(b)(1) & 125.303(c).
5. Additional Points for Cooperating with Real Estate Industry Organizations: § 125.303(b)(2)(i).
6. Community-based programs: § 125.303(d).
7. Coordination of Activities: § 125.303(f).
8. Multi-year Grants Subject to Annual Performance Evaluation: § 125.401.
9. Guidelines for Private Enforcement Testing: § 125.405.
10. Continued Development of Existing Organizations: § 125.502.
11. Operating Budget Limitations: § 125.502(c).
12. Establishing New Organizations: § 125.503.
13. Awarding Funding to Most Resource-Poor Applicant.
14. Distribution of FHIP Funds According to an Allocation Formula.
15. Impact on Small Entities—Regulatory Flexibility Act.
16. Other Miscellaneous Comments.

Definitions of Expert Witness and (Qualified) Fair Housing Organization: Proposed Section 125.103

One commenter supported the definition of *expert witness* that would permit reimbursement for expert witness fees in cases that settle before the experts testify, and the requirement in the definitions of *fair housing enforcement organization* and *qualified fair housing enforcement organization* that eligible organizations must have conducted complaint investigation, testing and enforcement activities for prescribed periods of time.

Department's response: No response is necessary, since this comment agrees with the proposed rule.

Definition of Meritorious Claims: Proposed Section 125.103

In § 125.103 of the proposed rule, the Department defines *meritorious claims* to mean "enforcement activities that resulted in lawsuits, consent decrees, legal settlements, HUD conciliations and agency initiated settlements with the outcome of monetary awards for compensatory and/or punitive damages to plaintiffs or complaining parties, or affirmative relief and monitoring."

Two commenters with six concurring commenters objected to the proposed rule replacing "bona fide allegation" with the "meritorious claim" standard. These commenters asserted that the proposed rule change will allow fair housing organizations to engage in harassing behavior, and that the meritorious claim standard will make any business that has made an economic decision to settle out of court an instant target of fair housing groups.

One commenter also felt that the definition in the proposed rule is too broad since almost every claim falls into the proposed definition. This comment recommended that the Department change the definition of *meritorious claim* to read: "enforcement activities that resulted in a monetary award for compensatory or punitive damages, or a settlement for an amount significantly in excess of the normal costs of defense."

In contrast, two commenters supported the Department's decision to define *meritorious claims*, but suggested that "affirmative relief and monitoring" require more than an agreement with a real estate company, lender or insurance company to "promote" Fair Housing. These commenters recommended that HUD define affirmative relief to mean developing an explicit marketing program to gain customers, building or renovating a branch office, providing below market rate loans to targeted neighborhoods, hiring minority employees, and changing the compensation basis for commissioned loan officers.

Department's response: Some of these comments have misinterpreted the role of "meritorious claims" in the FHIP regulation. This definition is used for the purpose of defining the terms *fair housing enforcement organization* and *qualified fair housing enforcement organization*. To qualify as one of these organizations, it is necessary, under the statute, to be "engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of *meritorious claims*" (emphasis added).

As for the commenters that suggested additional definition of the phrase "affirmative relief and monitoring" as used in *meritorious claims*, the Department believes that, taken as a whole, the proposed rule's definitions of *fair housing enforcement organization* and *qualified fair housing enforcement organization* are sufficiently stringent to ensure that only experienced organizations qualify. *Meritorious claims*" is only one element in these definitions, which also include the elements of complaint intake, complaint investigation, and testing for fair housing violations.

This definition is clarified in the final rule to include conciliationsith substantially equivalent agencies (under 24 CFR 115.6).

Waivers: Proposed Section 125.106

Two commenters objected to the waiver provision of § 125.106. One commenter recognized the need for flexibility, but suggested that any waiver to the rule should be subject to public comment.

Department's response: The very purpose of the waiver provision is to provide needed flexibility that would be lost by subjecting each waiver to public comment. Such a waiver provision is a common feature of many HUD rulemakings (see the notice, "Waiver of Regulations and Directives Issued by HUD; Supersession of Redelegations of Authority," at 56 FR 16337, April 22, 1991). The waiver provision at § 125.106 is modified by adding the phrase "Upon determination of good cause," and provides that the waiver be issued by the Assistant Secretary.

As part of its overall process of reinventing regulations, the Department is developing a separate waiver provision rule that would apply to every HUD regulation. When this cross-cutting regulation becomes effective, this program-specific waiver provision will be eliminated.

Eligible Activities: Proposed Section 125.203

One commenter suggested adding the following activities to § 125.203: (1) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices; (2) discovering and providing remedies for discrimination in the public and private real estate markets and real estate related transactions, including, but not limited to, making or purchasing of loans or the provision of other financial assistance sales and rentals of housing and housing advertising; and (3) carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under the Fair Housing Act.

Department's response: Applications for the activities listed would not be excluded from consideration, even without being specifically listed. The preface to the list of eligible activities at § 125.203 stated that eligible activities "may include (but are not limited to) the following:". By only suggesting activities that would be acceptable without attempting to provide an exhaustive or exclusive list, this approach may have caused some confusion by seeming to confer exclusive status on the listed activities. To prevent such problems, and as a part of the Department's efforts to streamline its rules and eliminate unnecessary regulatory verbiage, such advisory, non-exclusive lists are being eliminated from the final rule. The final rule provides at § 125.104(d) that eligible activities will be announced in Notices of Funding Availability published in the **Federal Register**.

Funding for Regionally Produced and Locally Produced Media Programs: Proposed Sections 125.303(b)(1) & 125.303(c)

Two commenters objected to permitting regional and local education and outreach funds to be used to develop radio, television and print public service announcements. One of these argued that it is not an efficient expenditure of limited funds, since money will be wasted duplicating what should be developed and produced on a national level. This commenter suggested that funds should be used to develop a high quality national media campaign, and HUD should provide remaining resources to other groups to disseminate the campaign.

Department's response: A complete ban on the development of regional and local media materials is not appropriate. The Department seeks to encourage innovation while avoiding duplication in its award of FHIP funds.

Additional Points for Cooperating with Real Estate Industry Organizations: Proposed Section 125.303(b)(2)(i)

One commenter supported the proposed rule's giving an applicant preference points if the applicant demonstrates cooperation with real estate industry organizations.

In contrast, two commenters objected to HUD encouraging cooperation with the real estate industry by awarding "preference points" to applicants which cooperate with the real estate industry. One of these commenters argued that industry would not cooperate or otherwise support an effort that would encourage people to file complaints against members of the industry.

Department's response: Although HCDA 1992 section 905, the statutory amendment and expansion of FHIP, acknowledges (in subsection 905(a), Findings) the evidence of continuing and pervasive discrimination in housing markets, it also recognizes that "continuing educational efforts by the real estate industry are a useful way to increase understanding by the public of their fair housing rights and responsibilities". Later, in subsection 905(d)(1), the statute provides that, "The Secretary shall encourage cooperation with real estate industry organizations in the national education

and outreach program." The Department wishes to encourage every effort to reach the goal of compliance with the letter and the spirit of the Fair Housing Act, and believes, along with the Congress, that the real estate industry can make valuable contributions to achieving this goal. The two comments disagreeing with the preference for cooperation with the industry assume, justifiably, that persons aware of their rights would more likely act to enforce those rights when they are violated. However, this assumption does not lead to the conclusion that the industry charged with observing those rights would be uncooperative in informing the public and its individual members of the industry's responsibilities. To the contrary, the industry would benefit through reduced compliance costs from active engagement in informing the public of their rights and the resulting greater awareness of its own responsibilities. Further, it would be fair to assume that the national goals of the Fair Housing Act can be more quickly and efficiently achieved with the active, positive participation of industry than without it.

Community-Based Programs: Proposed Section 125.303(d)

One commenter objected to HUD's interpretation of the term "community based activities" in the authorizing statute to allow HUD to set aside a special funding for community based neighborhood groups. This commenter argued that Congress intended the term "community based activities" to mean that education and outreach activities could be developed for local communities by fair housing organizations or other eligible applicants.

Department's response: Although this comment is not relevant to the rule itself, which does not address special funding for community based groups, the Department agrees that education and outreach activities could be developed for local communities by fair housing organizations or other eligible applicants. However, this comment provides yet another opportunity for the Department to stress that in order to be flexible and responsive to diverse needs, the FHIP will be administered so as to permit the targeting of funds in NOFAs to specific types of activities, locations, and recipients.

The description of activities that are "community-based" in scope is also modified in the final rule to use the more familiar term "neighborhood" rather than "geographic area."

Coordination of Activities: Proposed Section 125.303(f)

One commenter suggested expanding § 125.303(f) to require that a private FHO provide evidence with the application that it has consulted with State and/or local public enforcement agencies to coordinate activities to be funded under the *Private Enforcement Initiative* with existing and/or planned public enforcement efforts.

Department's response: The Department disagrees with this comment. Consultation and coordination of public and private efforts could have a negative impact on an applicant's ability to maintain the confidentiality of proposed testing targets and strategies.

Multi-Year Grants Subject to Annual Performance Evaluation: Proposed Section 125.401

Five commenters supported making funding of PEI multi-year grants subject to a performance review of the previous year's activities. One of these commenters suggested that HUD solicit comments from interested parties, including those involved as defendants to FHIP funded testing complaints, when conducting the performance review. Two of these commenters also suggested that HUD continue funding if HUD fails to complete the review in a timely fashion since a recipient may not have the cash reserves to maintain staff until a review is completed. These two commenters also suggested that HUD consider four year funding cycles since many enforcement actions require up to four years or more to complete litigation, or monitor requirements of consent decrees or HUD conciliations.

Department's response: Each of these comments may be implemented by the Department in a NOFA or through its own internal procedures. HUD has already initiated multi-year funding in its FHIP NOFAs and intends to continue to do so. HUD will not discontinue funding if it is at fault for not completing a performance review in a timely fashion, but if the Department is unable to complete its review due to recipient deficiencies (such as inadequate accounting for funds and activities), funds may be discontinued. Interested parties may contact the Department at any time with information relevant to its evaluation of FHIP-funded recipients. With respect to comments from those involved as defendants as a result of FHIP-funded testing, while these persons are free to comment, their status as defendants in a pending action would normally preclude the Department from acting on their comments while the action is pending.

Eligible Applicants Under the Private Enforcement Initiative: Proposed Section 125.402

One commenter objected to awarding PEI funds to non-testing groups. Only groups with at least one year of experience in complaint intake, investigation, testing, and enforcement should get PEI awards.

Department's response: The Department agrees with this and related comments. Please refer to the discussion under the heading, "Continued Development of Existing Organizations: Proposed 125.502", below.

Guidelines for Private Enforcement Testing: Proposed Section 125.405

Section 125.405 is currently entitled, "Guidelines for private enforcement testing." The proposed rule would remove the testing guidelines in § 125.405, but a new § 125.107 would prohibit testers from having prior felony convictions or convictions of crimes involving fraud or perjury, and would require that testers receive training or be experienced in testing procedures and techniques.

Three commenters with six concurring commenters objected to the absence of a consistent standard for conducting testing under the proposed rule. In general, these commenters criticized the Department for removing most of § 125.405, and stressed the need for regulatory controls to ensure that testers are objective and credible. These commenters also stressed the need for the Department to ensure that grantees do not have any conflicts of interest which might interfere with testing.

One of these commenters with six concurring commenters asserted that HUD erroneously assumes that an established fair housing organization knows how to conduct valid testing and/or has the integrity to conduct valid testing. These commenters also alleged that not all reports are accurate and true, and recommended that HUD more closely scrutinize information submitted by fair housing organizations in grant applications and quarterly reports. They agreed the final rule should prohibit a fair housing organization receiving FHIP funding from owning a for-profit subsidiary which directly competes with licensed real estate brokers, and that at a minimum, a for-profit subsidiary of a fair housing organization should not have any access to the "set-aside" apartments that are included in a settlement agreement with a fair housing organization.

Three commenters made suggestions as to specific criteria which should be contained in the final rule. One commenter suggested that the final rule require the following: (1) Grantees of FHIP testing and enforcement funds must demonstrate that testers have the training or experience to properly conduct tests; (2) Testers must objectively report their findings; (3) Grantees may not compromise the integrity of tests and tester reports; (4) Grantees must ensure that potential conflicts of interest do not interfere with the design, conduct or evaluation of tests; and (5) Grantees will file complaints/lawsuits as a result of testing only if there is a reasonable cause to believe that a violation of the Fair Housing Act occurred.

This commenter further objected to general testing where no bona fide allegation of discrimination exists, stating that general testing poses a hardship on the industry by taking valuable time for the testing to determine whether discrimination exists and takes resources away from testing those situations where there is an allegation of discrimination. This commenter opined that the purposes of the FHIP program support requiring a bona fide allegation prior to commencement of testing.

One commenter with six concurring commenters recommended that HUD require the following before initiating any action: (1) Fair housing organizations submit for HUD review and approval detailed documentation concerning any "bona fide" allegation of fair housing violations; (2) HUD give written approval to a fair housing organization before commencement of testing; and (3) once the fair housing organization begins testing, the fair housing organization submits to HUD detailed activity logs and written test conclusions.

Similarly, yet another commenter suggested that HUD maintain the following in the final rule: (1) Recipients of HUD FHIP funding may not have an economic interest in the outcome of the test for discrimination, have a specific bias toward the business tested, be a licensed competitor of the respondent, be related to one of the parties in the case, or have any other specific bias or conflict of interest which would prevent or limit his or her objectivity; (2) Testers may not communicate their test results with one another; and (3) Testers must report all relevant information.

In contrast, three commenters supported the removal of testing guidelines. One of these commenters reasoned that federal courts and HUD ALJs are in the best position to determine the validity of testing procedures. This commenter also stated that testing is continually evolving to accommodate changing discriminatory practices identified in the market place, and suggested that the rule should be flexible enough to accommodate changing practices. However, the commenter suggested that the final rule provide that HUD will scrutinize applicants that have little or no legal administrative results for enforcement activities.

Department's response: HUD agrees with the commenters who recommend conflict of interest provisions be maintained in the rule, and most of the conflict provisions at § 125.405(c)(3) of the current rule are included with the tester provisions at § 125.107 of this final rule.

HUD also agrees with the commenter who stated that testing is continually evolving to accommodate changing discriminatory practices identified in the market place, and that the rule should be flexible enough to accommodate changing practices. For these reasons, the Department is not including additional specific requirements for testing in this final rule, including the requirement for a bona fide allegation prior to testing.

Continued Development of Existing Organizations: Proposed Section 125.502

Two commenters objected to HUD making the third category of applicants ("(n)onprofit groups organizing to build their capacity to provide fair housing enforcement") eligible to receive FHIP funding under § 125.502. One of the commenters suggested that funding for this category is already available under § 125.503, Establishing New Organizations, and that funding for "capacity building" should only be used to assist existing groups. This commenter also felt that since all of the activities under private enforcement are eligible for funding, HUD is undermining the intent of the statute to promote high quality enforcement activities. The commenter warned that HUD should consider the practical risks of providing enforcement funds to organizations with no proven track record. This commenter further disagreed with HUD that making this category of nonprofit groups eligible for funding will increase the number of private non-profit fair housing organizations, and suggested that qualifications are more important than numbers. Finally, this commenter argued that mere status as a nonprofit organization should not qualify the organization to receive funds for fair housing enforcement since many nonprofits opposing fair housing efforts will be eligible.

Department's response: The Department does not agree with these comments. Section 905 specifically includes nonprofit groups organizing to build their capacity to provide fair housing enforcement as eligible for continued development funding. If continued development funding were limited to fair housing organizations, it would not differ from the Private Enforcement Initiative, and there would be no need for this separate category of FHIP activities. As distinct from activities under proposed § 125.503, which are specifically intended to result in the establishment of new organizations, the activities funded under proposed § 125.502 are intended to permit existing organizations, whether or not they are already fair housing organizations, to build their capacity to provide fair housing enforcement. The argument that nonprofits opposing fair housing efforts will be funded is not valid, since funds are competitively awarded after an evaluation of the proposed activities. Activities that oppose fair housing efforts would not be funded, and any grantee who did engage in activities opposing fair housing activities would be liable for misuse of funds.

To preserve the distinct characters of the Private Enforcement Initiative and the Fair Housing Organization Initiative highlighted by these comments, and in response to a comment discussed above (Eligible Applicants under the Private Enforcement Initiative: Proposed § 125.402), the final rule limits eligible applicants for PEI funding to qualified fair housing organizations (QFHOs) and fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

Establishing New Organizations: Proposed Section 125.503

One commenter suggested that the final rule contain criteria that an applicant must satisfy to establish a new organization. The commenter suggested that an applicant should have a firm grasp of all federal, state and local fair housing laws, successful experience in investigating, testing, conciliating and litigating fair housing complaints or access to training to receive high quality assistance in the development of the new organization.

With regard to targeted areas (§ 125.503(c)), this commenter also

suggested that HUD should consider funding applicants if the applicant demonstrates the need—the existence of a FHAP or QFHO within the state should never outweigh the documented need for private enforcement activities.

Department's response: The Department initially reasoned, in the proposed rule, that addressing the national need for private fair housing enforcement organizations would best be served by making this category of funding for establishing new organizations broadly available. The commenter emphasizes the broad range of specialized knowledge and experience that would be necessary to establish a successful, efficient enforcement organization, and the Department agrees with the validity of these observations. In order to accommodate both concerns (national need and specialized knowledge), the final rule provides that QFHOs, FHOs, and other organizations with at least three years of experience in complaint intake, complaint investigation, and enforcement of meritorious claims involving the use of testing evidence are eligible applicants for funding to establish new organizations. This will maximize the pool of eligible applicants, while still limiting it to those with substantial fair housing enforcement experience.

The Department also agrees with the comment that the rule should permit funding applications for areas with a demonstrated need for a fair housing organization. The Department, in its FHIP NOFA published annually in the **Federal Register**, may identify targeted unserved and underserved areas that will receive priority for funding under the Establishing New Organizations component of the Fair Housing Organizations Initiative. The final rule provides that an applicant may also seek funding to establish a new organization in a locality not identified as a target area, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations or as containing large concentrations of protected classes.

Awarding Funding to Most Resource-Poor Applicant

In the preamble of the proposed rule, the Department specifically solicited public comment on whether it should award FHIP funds to the applicant that is most resource-poor when choosing between two otherwise equally deserving applicants. The Department received three public comments on this issue. All three commenters objected to using the "resource-poor" factor to award funding in the event of a tie between two applicants.

Two commenters stated that a QFHO or FHO may have solid funding for particular activities, but the specific activity for which it seeks FHIP funds may be one that its local funder will not support. These commenters also suggested that HUD's objective should not be to distribute the funds in the most efficient manner, but rather in a manner that will have the greatest impact on fair housing enforcement.

Another commenter supported funding resource-poor organizations, but felt that funding for more substantial organizations was more critical.

Department's response: The Department will provide for tie-breaking criteria in individual NOFAs, and in that way, it will be able to use a variety of factors, such as the term of the proposed activities and the amount of funding requested, as appropriate in the context of the priorities identified for a particular funding round.

Distribution of FHIP Funds According to an Allocation Formula

One comment in response to the ANPR suggested that HUD fund FHIP as a noncompetitive, entitlement category to provide general operating funds. In the proposed rule, HUD responded that with the present level of FHIP funding, entitlement funding would not be an efficient method of implementing FHIP. However, HUD stated that it might consider such an approach in the future, depending upon the amount of future appropriations, and the number of QFHOs. HUD also requested public comment on the issue of distributing FHIP funds according to an allocation formula, and on what criteria might be used to provide for the fair and equitable distribution of funds on such a basis.

The Department received three comments from the public on this issue. One commenter recommended that FHIP funding should be an entitlement program, and that HUD should give preference to fair housing groups which have been in existence for more than 5 years, with a history of litigation.

Two commenters supported the concept of FHIP as an entitlement program, and offered to work with HUD in developing an equitable formula. However, no criteria for distribution were suggested.

Department's response: Although the comments received on this issue favored a formula distribution, the lack of suggestions for specific distribution criteria; and the continuing limiting factor of the amounts made available for funding require that funding continue on a competitive basis.

Miscellaneous Comments

One commenter with six concurring commenters suggested that HUD adopt the following as part of the final rule: (1) The Department should provide an administrative procedure for members of the public to file complaints against fair housing organizations that engage in questionable practices, and if an ALJ determines that the litigation is baseless, then HUD should deny further FHIP funding to the offending fair housing group for 5 years from the date of the ALJ's determination; (2) HUD should require that each fair housing organization submit its entire budget to HUD to ensure that FHIP funds do not constitute more than 50% of its total budget pursuant to section 125.502(c)(1); (3) Fair housing groups should have the same monetary award limitations as HUD has: $10,000 for the first offense, $25,000 for the second offense, and $50,000 for the third offense; and (4) HUD should require that each fair housing organization file a detailed report with HUD on the disbursements of any settlement award, and that this report be available for public inspection.

Department's response: (1) Aggrieved parties may call HUD's attention to misconduct on the part of its grantees at any time. However, as a general rule, the Department will not act on any matter which involves a pending action before a court or other tribunal. Because of the broad range of possible findings, the Department does not consider a funding ban for any fixed term an appropriate remedy to be set in a rule. In reviewing applications, the Department currently considers an applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past and current FHIP or other civil rights projects. Any past misconduct by an applicant is taken into account during this review.

(2) The Department's FHIP NOFAs currently require applicants to submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. This is required so that the 50% budget determination pursuant to proposed section 125.502(c)(1) may be made. To memorialize this requirement under a rule is not necessary.

(3) Because the authorizing statute does not set monetary award limitations on fair housing groups, HUD will not impose them administratively without a clear mandate to do so.

(4) The laws under which non-profits are organized require them to file annual reports, including financial information, which is a matter of public record. Beyond this extent, the Department will not require additional disclosure.

One commenter suggested that all privately enforced Fair Housing Act actions be reviewed by the Attorney General through use of a similar declaration process as in qui tam litigation. This commenter further suggested some sort of governmental review/approval of FHIP-funded litigation counsel and regulatory control/cap for FHIP-funded legal fees. In addition, the commenter suggested that the final rule address HUD's own liability for frivolous lawsuits brought by private litigants under Rule 11 of the Federal Rules of Civil Procedure, and contain regulatory protection of proprietary information disclosed with the expectation of confidence during the litigation process.

Department's response: Review by the Attorney General through use of a declaration process is beyond the scope of the Department's rulemaking and would have to be pursued through a legislative amendment. The Department is not liable under Rule 11 of the Federal Rules of Civil Procedure for lawsuits brought by private litigants. Protection of proprietary information should be pursued under the rules of the forum in which an action is brought, and the Department declines to address this issue in its rule.

One commenter supported the continued eligibility of real estate organizations to receive educational and outreach funds, but urged HUD to make real estate organizations eligible in their own right to receive FHIP Educational and Outreach funds. The commenter stated that real estate organizations do carry out programs to prevent and eliminate discriminatory housing practices. The commenter also asserted that real estate organizations provide essential education to both real estate professionals and the public on fair housing rights and responsibilities, and are in the unique position of having direct contact with members of the public at the time of sale, lease or purchase.

Department's response: Real estate organizations are eligible to receive educational and outreach funds, in accordance with section 905, as "public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices". Section 905 recognized the value of real estate organizations in continuing educational efforts to increase understanding by the public of their fair housing rights and responsibilities, and the Department agrees.

Finally, one commenter recommended that FHIP place emphasis on enforcement over education; that FHIP deadlines should be reasonable (90 days to apply and staggered for each Initiative); that NOFA criteria should be more explicit; and that non-funded proposals should be given feedback.

Department's response: Because of the way the FHIP program is organized, it does place more emphasis on enforcement over education. Three of the Initiatives basically fund enforcement activities; only the Education and Outreach Initiative funds strictly educational activities. Issues as to deadlines and criteria are addressed in NOFAs, in which the Department makes every effort to assure the efficient and equitable distribution of funds. Feedback on proposals is a Departmental administrative issue that is outside the scope of this rule. Such a service is heavily dependent on the availability of resources to the Department.

III. Reinvention of the FHIP Final Rule

As mentioned in the discussion of the comments on the proposed rule, the Department is taking advantage of the publication of this final rule to streamline the FHIP rule in accordance with its overall effort to reinvent regulations. Rather than amending individual sections within part 125, the entire part has been re-drafted to eliminate extraneous material such as language that only repeats the statutory language, or provisions that are only advisory (rather than binding) or non-exclusive, such as lists of suggested activities. The rule is not substantively changed beyond those issues addressed in the proposed rule and in response to the comments submitted on the proposed rule. The result sought is a program that will be more responsive and administratively flexible to address the needs recognized in the authorizing statute.

IV. Technical Correction to Part 103

Presently, 24 CFR 103.405(b)(3) makes reference to actions that are to be taken "in accordance with 24 CFR 104.40". There is no such section, and the correct reference should be to 24 CFR 104.410(a). The correction is made in this final rule.

V. Findings and Certifications

Regulatory Planning and Review.

This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Environmental Review.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The purpose of the rule is to provide funding for fair housing investigation and enforcement, and education and outreach activities.

Federalism Impact.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule is limited to implementing statutorily required revisions to the existing Fair Housing Initiatives Program Regulation.

Impact on the Family.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has potential for a beneficial, although indirect, impact on family formation, maintenance, and general well-being. By promoting the values of fair housing, the rule would benefit families by seeking to end discrimination as a factor in the availability of housing. Accordingly,

since the impact on the family is beneficial, although indirect, no further review is considered necessary.

List of Subjects

24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 125

Fair housing, Grant programs—housing and community development, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Numbers for the Fair Housing Initiatives Program are 14.408, 14.409, 14.410 and 14.413.

Accordingly, the Department amends parts 103 and 125 of title 24 of the Code of Federal Regulations as follows:

PART 103—FAIR HOUSING-COMPLAINT PROCESSING

1. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3601–3619; 42 U.S.C. 3535(d).

2. In § 103.405, paragraph (b)(3) is revised to read as follows:

§ 103.405 Issuance of charge.

* * * * *

(b) * * *

(3) Serve the charge and notifications in accordance with 24 CFR 104.410(a); and

* * * * *

3. Part 125 is revised to read as follows:

PART 125—FAIR HOUSING INITIATIVES PROGRAM

Sec.

125.103 Definitions.
125.104 Program administration.
125.105 Applications requirements.
125.106 Waivers.
125.107 Testers.
125.201 Administrative Enforcement Initiative.
125.301 Education and Outreach Initiative.
125.401 Private Enforcement Initiative.
125.501 Fair Housing Organizations Initiative.

Authority: 42 U.S.C. 3616 note; 42 U.S.C. 3535(d).

§ 125.103 Definitions.

In addition to the definitions that appear at section 802 of title VIII (42 U.S.C. 3602), the following definitions apply to this part:

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

Department means the Department of Housing and Urban Development (HUD).

Expert witness means a person who testifies, or who would have testified but for a resolution of the case before a verdict is entered, and who qualifies as an expert witness under the rules of the court where the litigation funded by this part is brought.

Fair housing enforcement organization (FHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

The Department may request an organization to submit documentation to support its claimed status as an FHO.

FHIP means the Fair Housing Initiatives Program authorized by section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note).

Meritorious claims means enforcement activities by an organization that resulted in lawsuits, consent decrees, legal settlements, HUD and/or substantially equivalent agency (under 24 CFR 115.6) conciliations and organization initiated settlements with the outcome of monetary awards for compensatory and/or punitive damages to plaintiffs or complaining parties, or other affirmative relief, including the provision of housing.

Qualified fair housing enforcement organization (QFHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

For the purpose of meeting the 2-year qualification period for the activities included in paragraph (2) of this definition, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 2 years. It is also not necessary for the activities to have been conducted for 2 consecutive or continuous years. An organization may aggregate its experience in each activity over the 3 year period preceding its application to meet the 2-year qualification period requirement.

The Department may request an organization to submit documentation to support its claimed status as a QFHO.

Title VIII means title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3600–3620), commonly cited as the Fair Housing Act.

§ 125.104 Program administration.

(a) FHIP is administered by the Assistant Secretary.

(b) FHIP funding is made available under the following initiatives:

(1) The Administrative Enforcement Initiative;

(2) The Education and Outreach Initiative;

(3) The Private Enforcement Initiative; and

(4) The Fair Housing Organizations Initiative.

(c) FHIP funding is made available in accordance with the requirements of the authorizing statute (42 U.S.C. 3616 note), the regulation in this part, and Notices of Funding Availability (NOFAs), and is awarded through a grant or other funding instrument.

(d) Notices of Funding Availability under this program will be published periodically in the **Federal Register**. Such notices will announce amounts available for award, eligible applicants, and eligible activities, and may limit funding to one or more of the Initiatives. Notices of Funding Availability will include the specific selection criteria for awards, and will indicate the relative weight of each criterion. The selection criteria announced in Notices of Funding Availability will be designed to permit the Department to target and respond to areas of concern, and to promote the purposes of the FHIP in an equitable and cost efficient manner.

(e) All recipients of FHIP funds must conform to reporting and record maintenance requirements determined appropriate by the Assistant Secretary. Each funding instrument will include provisions under which the Department may suspend, terminate or recapture

funds if the recipient does not conform to these requirements.

(f) Recipients of FHIP funds may not use such funds for the payment of expenses in connection with litigation against the United States.

(g) All recipients of funds under this program must conduct audits in accordance with part 44 or part 45, as appropriate, of this title.

§ 125.105 Application requirements.

Each application for funding under the FHIP must contain the following information, which will be assessed against the specific selection criteria set forth in a Notice of Funding Availability.

(a) A description of the practice (or practices) that has affected adversely the achievement of the goal of fair housing, and that will be addressed by the applicant's proposed activities.

(b) A description of the specific activities proposed to be conducted with FHIP funds including the final product(s) and/or any reports to be produced; the cost of each activity proposed; and a schedule for completion of the proposed activities.

(c) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

(d) An estimate of public or private resources that may be available to assist the proposed activities.

(e) A description of the procedures to be used for monitoring conduct and assessing results of the proposed activities.

(f) A description of the benefits that successful completion of the project will produce to enhance fair housing, and the indicators by which these benefits are to be measured.

(g) A description of the expected long term viability of project results.

(h) Any additional information that may be required by a Notice of Funding Availability published in the **Federal Register**.

(Approved by the Office of Management and Budget under control number 2529–0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.)

§ 125.106 Waivers.

Upon determination of good cause, the Assistant Secretary may waive, in a published Notice of Funding Availability or other **Federal Register** notice, any requirement in this part that is not required by statute.

§ 125.107 Testers.

The following requirements apply to testing activities funded under the FHIP:

(a) Testers must not have prior felony convictions or convictions of crimes involving fraud or perjury.

(b) Testers must receive training or be experienced in testing procedures and techniques.

(c) Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(1) Have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury;

(2) Be a relative of any party in a case;

(3) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(4) Be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

§ 125.201 Administrative Enforcement Initiative.

The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws recognized by the Assistant Secretary under § 115.6 of this subchapter as providing rights and remedies which are substantially equivalent to those provided in title VIII.

§ 125.301 Education and Outreach Initiative.

(a) The Education and Outreach Initiative provides funding for the purpose of developing, implementing, carrying out, or coordinating education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of fair housing laws.

(b) Notices of Funding Availability published for the FHIP may divide Education and Outreach Initiative funding into separate competitions for each of the separate types of programs (i.e., national, regional and/or local, community-based) eligible under this Initiative.

(c) National program applications, including those for Fair Housing Month funding, may be eligible to receive, as provided for in Notices of Funding Availability published in the **Federal Register**, a preference consisting of additional points if they:

(1) Demonstrate cooperation with real estate industry organizations; and/or

(2) Provide for the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988.

(d) Activities that are regional are activities that are implemented in adjoining States or two or more units of general local government within a state. Activities that are local are activities whose implementation is limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are community-based in scope are those which are primarily focused on a particular neighborhood area within a unit of general local government.

(e) Each non-governmental recipient of regional, local, or community-based funding for activities located within the jurisdiction of a State or local enforcement agency or agencies administering a substantially equivalent (under part 115 of this subchapter) fair housing law must consult with the agency or agencies to coordinate activities funded under FHIP.

§ 125.401 Private Enforcement Initiative.

(a) The Private Enforcement Initiative provides funding on a single-year or multi-year basis, to investigate violations and obtain enforcement of the rights granted under the Fair Housing Act or State or local laws that provide rights and remedies for discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Fair Housing Act. Multi-year funding may be contingent upon annual performance reviews and annual appropriations.

(b) Organizations that are eligible to receive assistance under the Private Enforcement Initiative are:

(1) Qualified fair housing enforcement organizations.

(2) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims. For the purpose of meeting this 1 year qualification period, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 1 year. It is also not necessary for the activities to have been conducted for a continuous year. An organization may aggregate its experience in each activity over the 2-year period preceding its application to meet this 1 year qualification period requirement.

§ 125.501 Fair Housing Organizations Initiative.

(a) The Fair Housing Organizations Initiative of the FHIP provides funding to develop or expand the ability of existing eligible organizations to

provide fair housing enforcement, and to establish, on a single-year or multi-year basis contingent upon annual performance reviews and annual appropriations, new fair housing enforcement organizations.

(b) *Continued development of existing organizations.*

(1) *Eligible applicants.* Eligible for funding under this component of the Fair Housing Organizations Initiative are:

(i) Qualified fair housing enforcement organizations;

(ii) Fair housing enforcement organizations; and

(iii) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(2) *Operating budget limitation.* (i) Funding under this component of the Fair Housing Organizations Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year.

(ii) For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(c) *Establishing new organizations.*

(1) *Eligible applicants.* Eligible for funding under this component of the Fair Housing Organizations Initiative are:

(i) Qualified fair housing enforcement organizations;

(ii) Fair housing enforcement organizations; and

(iii) Organizations with at least three years of experience in complaint intake, complaint investigation, and enforcement of meritorious claims involving the use of testing evidence.

(2) *Targeted areas.* FHIP Notices of Funding Availability may identify target areas of the country that may receive priority for funding under this component of the Fair Housing Organizations Initiative. An applicant may also seek funding to establish a new organization in a locality not identified as a target area, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations or as containing large concentrations of protected classes.

Dated: August 17, 1995.

Elizabeth K. Julian,

Acting Deputy, Assistant Secretary for Policy and Initiatives, Fair Housing and Equal Opportunity.

[FR Doc. 95–28746 Filed 11–24–95; 8:45 am]

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federal register

Monday
November 27, 1995

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 15

Testimony, Production, and Disclosure of Material or Information by HUD Employees; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 15

[Docket No. FR-3948-F-01]

RIN 2501-AC83

Testimony, Production, and Disclosure of Material or Information by HUD Employees

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations regarding the testimony and production of information by HUD employees. This rule will include former HUD employees within the scope of these regulations. The amendment is necessary in order to correct the inadvertent exclusion of former employees from coverage under the regulations.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: George Weidenfeller, Deputy General Counsel for Operations, Department of Housing and Urban Development, 451 7th St., SW, Room 10240, Washington, DC 20410; telephone (202) 708-2864, TDD (202) 708-3259. These numbers are not toll-free.

SUPPLEMENTARY INFORMATION: HUD's regulations for the disclosure of information and production of material in its possession or acquired by employees as a part of the performance of their official duties or because of their official status are contained in 24 CFR part 15. These regulations address the terms on which HUD employees may testify, describing the situations in which the Secretary will permit the testimony of HUD employees in judicial, quasi-judicial, and legislative proceedings. The regulations also prohibit, subject to waiver by the Secretary, any employee from being called, by any party other than the United States, as an expert or opinion witness as to matters related to the employee's duties or the functions of HUD.

HUD employees may acquire certain sensitive information or documentation through the course of their employment at HUD, and HUD expects such information and documentation to be covered by its testimony approval regulations in part 15. However, on April 15, 1987, in an attempt to streamline these regulations, HUD published a final rule in the **Federal Register** that removed the references to former HUD employees (52 FR 12159). HUD did not intend this change to exclude former employees from coverage; rather HUD expected that the Standards of Conduct regulations covered the testimony and production of information by former HUD employees. As the Standard of Conduct regulations do not cover this area, this rule amends subparts H and I of part 15 to reinsert the coverage of former employees. This rule also brings HUD's regulations back into general conformity with the regulations of several other Federal agencies, such as the Departments of Justice, Education, and Transportation (see 28 CFR part 16, 34 CFR part 8, and 49 CFR part 9, respectively).

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The subject matter of this final rule involves HUD's internal practices and procedures. Therefore, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, this rule relates only to internal administrative procedures which are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule relates to internal procedures regarding former employees and does not affect Federalism issues. As a result, this rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 15 is amended as follows:

PART 15—TESTIMONY, PRODUCTION AND DISCLOSURE OF MATERIAL OR INFORMATION BY HUD EMPLOYEES

1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 552; Freedom of Information Reform Act of 1986 (Pub. L. 99-570); 42 U.S.C. 3535(d).

2. Section 15.71 is amended by revising the second sentence to read as follows:

§ 15.71 Purpose and scope.

* * * For purposes of this subpart, the term *employee of the Department* includes current and former officers and employees of the United States appointed by or subject to the supervision of the Secretary, but does not include officers and employees covered by part 2004 of this title.* * *

3. Section 15.81 is amended by revising paragraph (b) to read as follows:

§ 15.81 Purpose.

* * * * *

(b) For purposes of this subpart, the term *employee of the Department* includes current and former officers and employees of the United States appointed by or subject to the supervision of the Secretary, but does not include officers and employees covered by part 2004 of this title.

Dated: September 8, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95-28748 Filed 11-24-95; 8:45 am]

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federal register

Monday
November 27, 1995

Part V

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council meeting will be held on Tuesday, December 12 and Wednesday, December 13, 1995 from 9:00 a.m. until 4:30 p.m. Eastern Time.

ADDRESSES: The NII Advisory Council meeting will take place at the National Education Association, 1201 16th Street, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

SUPPLEMENTARY INFORMATION:

Agenda

December 12

9:00 a.m.—Review of Draft Policy Document

4:00 p.m.—Public Comment

4:30 p.m.—Other Discussion (Legacy Projects, KickStart Outreach Events, Final NIIAC Event, Other Business)

December 13

Continuation of Previous Days' Discussion

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Elizabeth Lyle at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–28811 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–60–P

Federal Register

Monday
November 27, 1995

Part VI

Department of Justice

Office of the Attorney General

28 CFR Part 35

Nondiscrimination on the Basis of Disability in State and Local Government Services; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 35

[Order No. 1999–95]

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Justice regulation implementing Title II of the Americans with Disabilities Act to clarify the requirement for installation of curb ramps at existing pedestrian walkways. The proposal would extend the time period for compliance to January 26, 2000, for curb ramps serving State and local government facilities, transportation, places of public accommodation, other places of employment, and at the residences of individuals with disabilities. It would extend the time period for providing curb ramps at existing pedestrian walkways in other areas until January 26, 2005, and it would require public entities to include a schedule for the implementation of these requirements in their transition plans.

DATES: To be assured of consideration, comments must be in writing and must be received on or before January 26, 1996. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: Comments on this proposed rule should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Rulemaking Docket 007, P.O. Box 65485, Washington, DC 20035.

Comments may also be sent to the Civil Rights Division via the Internet. Comments should be addressed to: Comments__ADA@justice.usdoj.gov. If your comment is transmitted in a word processing file, please specify the format. Flat ASCII files are preferred.

Comments submitted to the Department of Justice will be available for inspection in the offices of the Disability Rights Section, 1425 New York Avenue NW., Washington, DC from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays from December 13, 1995, until the Department publishes the rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or magnification devices.

To be included in the record of this rulemaking, comments must include the name and address of the commenter. Commenters who choose to transmit their comments via the Internet should include their name and address in the text of the comment. Electronically transmitted comments that identify the commenter by screen name only will not be included in the record.

FOR FURTHER INFORMATION CONTACT: Janet Blizard, (202) 307–0663. The ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (800) 514–0301 (voice), (800) 514–0383 (TDD). These telephone numbers are toll-free numbers.

SUPPLEMENTARY INFORMATION:

Availability of Accessible Format

Copies of this rule are available in the following accessible formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Disability Rights Section at the telephone numbers listed above. The rule is also available on the Civil Rights Division's electronic bulletin board at (202) 514–6193. This telephone number is not a toll-free number. The rule is also available on the Internet. It can be accessed with gopher client software (gopher.usdoj.gov), through other gopher servers using the University of Minnesota master gopher (under North America, USA, All, Department of Justice), with World Wide Web software (http://www.usdoj.gov), or through the White House WWW server (http://www.whitehouse.gov).

Background

The Department of Justice's (Department) regulation implementing title II of the Americans with Disabilities Act of 1990, Pub. L. 101–336, 42 U.S.C. 12131–12134 (ADA), provides that a public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. 28 CFR 35.149. Under this regulation, maintenance of pedestrian walkways by public entities is a covered program that is required to be made accessible by the installation of curb ramps where pedestrian walkways cross curbs. Because of the unique and significant capital expenses involved in the installation of curb ramps where existing pedestrian routes cross curbs, Senators Bob Dole, Tom Harkin, Orrin Hatch, Edward Kennedy, and John McCain, who were among the principal Senate sponsors of the ADA, have asked the Department to amend the title II regulation to provide additional time for public entities to meet their obligation to provide access to public pedestrian walkways. The Department considers the suggested extension to be a reasonable and appropriate modification and accordingly is issuing this proposed rule.

On July 26, 1991, the Department published its final rule implementing subtitle A of title II of the ADA. 56 FR 35694. This regulation was codified at 28 CFR Part 35. Subtitle A of title II protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all covered public entities. It extends the prohibition of discrimination established by section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, to all activities of State and local governments, including those that do not receive federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability from titles I, III, and V of the ADA.

This proposed rule would revise the program accessibility requirements currently published at 28 CFR 35.150 to incorporate specific guidance with respect to the installation of curb ramps at intersections that are not otherwise being altered. This proposed rule would not affect the requirements of 28 CFR 35.151(e), which requires that if walkways are provided, curb ramps or other sloped areas must be installed at all newly constructed or altered streets, roads, highways, and street-level pedestrian walkways. Thus, the ADA would continue to require that, whenever a State or local government puts in a new street or alters an existing street, it must also construct curb ramps at any intersection that has curbs that bar entry from a pedestrian walkway.

This proposed rule is distinct from the Department's June 20, 1994 (59 FR 31808) proposal to amend 28 CFR 35.151. The Department's June 1994 proposal would adopt, as the ADA Standards for Accessible Design, the ADA Accessibility Guidelines for Buildings and Facilities, revised and published in an interim final rule of the same date by the Architectural and Transportation Barriers Compliance Board (Access Board). Comments on the Department's proposed rule and the Access Board's interim final rule are now being considered. This proposal to amend 28 CFR 35.150 does not affect the Department's June 20, 1994, notice of proposed rulemaking or the Access Board's interim final rule.

Program Accessibility

Title II of the ADA prohibits discrimination on the basis of disability in any of the services, programs, or activities of a covered public entity.

Subpart D of the title II regulation, Program Accessibility, provides that a public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all programs operated in existing facilities by a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

In addition, a public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

Installation of curb ramps to provide access to existing pedestrian walkways on existing streets that are not otherwise being altered may be necessary in order to provide access to the "program" of using public streets and walkways. As explained in the preamble to the final title II regulation—

> The legislative history of title II of the ADA makes it clear that, under title II, "local and state governments are required to provide curb cuts on public streets." Education and Labor report at 84. As the rationale for the provision of curb cuts, the House report explains, "The employment, transportation, and public accommodation sections of * * * [the ADA] would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." Id. Section 35.151(e), which establishes accessibility requirements for new construction and alterations, requires that all newly constructed or altered streets, roads, or highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, and all newly constructed or altered street level pedestrian walkways must have curb ramps or other sloped areas at intersections to streets, roads, or highways. A new paragraph (d)(2) has been added to the final rule to clarify the application of the general requirement for program accessibility to the provision of curb cuts at existing crosswalks. This paragraph requires that the transition plan include a schedule for providing curb ramps or other sloped areas at existing pedestrian walkways, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, public accommodations, and employers, followed by walkways serving other areas. Pedestrian "walkways" include locations where access is required for use of public transportation, such as bus stops that are not located at intersections or crosswalks.
>
> 56 FR 35710.

The Department further explained the application of the concept of program accessibility in its Title II Technical Assistance Manual, which advises that:

> Public entities that have responsibility or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walkways cross curbs. Public entities must give priority to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employees, followed by walkways serving other areas. This schedule must be included as part of a transition plan. * * *
>
> To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb. However, public entities are not necessarily required to construct a curb ramp at every such intersection.
>
> Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burdens limitations may limit the number of curb ramps required.
>
> To achieve or maintain program accessibility, it may be appropriate to establish an ongoing procedure for installing curb ramps upon request in areas frequented by individuals with disabilities as residents, employees, or visitors.
>
> Section II–5.3000.

The title II regulation requires public entities to achieve program accessibility by January 26, 1992. Where structural changes to existing facilities are required to provide program accessibility, section 35.150(c) provides that such structural changes must be made as expeditiously as possible, but in no event later than January 26, 1995, unless the public entity can demonstrate that meeting this deadline would result in a fundamental alteration of its program or would impose undue financial and administrative burdens.

This proposed amendment responds to concern expressed by Senators Dole, Harkin, Hatch, Kennedy, and McCain that the requirement to provide program accessibility to existing intersections by installing curb ramps requires structural alterations to a substantial portion of the existing infrastructure of most cities, and imposes an obligation that many jurisdictions were unable to meet by January 26, 1995. After due consideration, the Department has concluded that modification of the regulation to permit additional time for public entities to achieve compliance is appropriate. This proposed rule would therefore revise 28 CFR 35.150(c) to extend to January 26, 2000, the time period for compliance with the requirements for structural alterations to provide curb ramps in pedestrian walkways to provide access to State and local government facilities, transportation, places of public accommodation, other places of employment, and the residences of individuals with disabilities. The proposed rule would extend the deadline for providing access to existing pedestrian walkways in other residential and non-commercial areas to January 26, 2005. It is the Department's hope that this extension will provide the additional flexibility necessary for State and local governments to comply with the ADA in light of strained fiscal resources, and that it will actually increase the number of curb ramps that will be installed on this nation's streets.

The Department seeks comments from State and local governments on the difficulties caused by the present deadline for curb ramps. While anecdotal evidence is useful, the Department would like to receive comprehensive information about the fiscal impact of the curb ramp requirement on the budgets of State and local governments, including the cost of installing curb ramps on existing pedestrian walkways, the number of curb ramps installed, the number of curb ramps that are planned to be added, and the amount of funds used for this requirement, both in terms of gross numbers and percentage of the State or local government budget.

The Department also requests information from people with disabilities and the organizations that represent them on the effect that this proposal will have on their ability to travel in their communities. We would profit from hearing specific, detailed reports, rather than generalized statements.

This proposed rule would require public entities to ensure that providing curb ramps serving the residences of individuals with disabilities shall be given priority over the installation of curb ramps in other residential or non-

commercial areas by requiring the former category of curb ramps to be installed by January 26, 2000. After that date, if a public entity receives a request from an individual with a disability for a curb ramp serving that individual's residence, installing a curb ramp in response to that request should take precedence over the installation of other curb ramps serving residential or non-commercial areas.

It has been suggested that this proposed rule should require public entities to establish a formal process through which individuals with disabilities may request the installation of curb ramps at pedestrian walkways serving their residences, and should further require that curb ramps requested through this process be installed within one year of the request. This would represent a significant change from the Department's current policy, which recommends, but does not require, the development of a request procedure, and does not require the installation of curb ramps at the residences of individuals with disabilities to be given priority over the installation of curb ramps serving public and commercial facilities.

The Department recognizes that it may be beneficial to individuals with disabilities to be assured that they will be able to have curb ramps installed in the public pedestrian routes serving their residences. However, the Department is concerned, given the limitations on available public funds, that the imposition of a requirement to provide curb ramps at private residences within a year of a request may inhibit the ability of a public entity to give priority to installing curb ramps on more heavily traveled routes serving public and commercial facilities.

The Department is specifically seeking public comment on this issue to assist us in determining whether the installation of curb ramps at private residences should be given priority over the installation of curb ramps in public and commercial areas. The Department also invites recommendations about ways in which such a process could be implemented fairly and efficiently.

Concern has been expressed about the possible effect of this rule on the usability of transportation systems because bus stops may lack curb ramps for a longer period of time. It is feared that a lack of accessible municipal bus stops may defeat transportation providers' efforts to make their systems accessible. The Department is specifically seeking comments regarding the impact of this rule on such systems and suggestions regarding how to address that impact.

Finally, the proposed rule requires public entities with 50 or more employees that choose to take advantage of this extension of time to amend their transition plans to establish specific schedules for providing access to public pedestrian walkways in compliance with the deadlines established by this proposed rule.

This proposed rule, while extending the deadline for constructing curb ramps necessary to provide program access, expressly provides that access to pedestrian walkways shall be provided as expeditiously as possible. By requiring public entities that take advantage of the new deadlines to develop a transition plan with a specific compliance schedule, the Department anticipates that public entities will not use the extension as a means of delaying compliance, but will view their obligation to provide access to public pedestrian walkways as an ongoing process that will result in a steady improvement in the accessibility of public pedestrian routes.

In developing a revised transition plan, public entities must comply with 28 CFR 35.150(d)(1), which requires public entities to provide an opportunity for interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. Public entities should be aware that individuals with disabilities who rely on curb ramps to enable them to use the public walkways may provide valuable insight on the accessibility of public programs, activities, and services. For example, individuals with mobility impairments may be the best source of information about locations where existing curbs constitute significant barriers to their use of public streets and pedestrian walkways.

Regulatory Process Matters

This proposed rule has been drafted in accordance with the principles of Executive Order 12866. The Department has determined that it is a significant regulatory action. Accordingly, it has been reviewed and approved by the Office of Management and Budget.

Executive Order 12875 prohibits executive departments and agencies from promulgating any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless certain conditions are met. This proposed rule creates no new mandates. Consistent with the spirit of Executive Order 12875, this regulation modifies an existing regulatory requirement to provide flexibility to covered public entities in meeting their obligations under title II of the ADA.

The Department has also determined that this proposed rule would not have a significant economic impact on a substantial number of small entities because it imposes no new obligations. Instead, it provides greater flexibility in the implementation of requirements now established in 28 CFR 35.150. Therefore, it is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–611.

The transition plan required by this proposed rule is an information collection that is subject to the Paperwork Reduction Act and the regulations established by the Office of Management and Budget in 5 CFR part 1320. Therefore, the Department has submitted this proposed information collection to the Office of Management and Budget for its review and approval.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Buildings and facilities, Civil rights, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, State and local governments.

Accordingly, Part 35 of Chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

1. The authority citation for 28 CFR Part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Title II, Pub. L. 101–336 (42 U.S.C. 12134).

2. In § 35.150, paragraphs (c) and (d)(2) are revised to read as follows:

§ 35.150 Existing facilities.

* * * * *

(c) *Time period for compliance.* (1) Except as provided in paragraph (c)(2) of this section, where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made no later than January 26, 1995, but in any event as expeditiously as possible.

(2)(i) A public entity shall comply with the obligations of this section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at locations serving State and local government offices and facilities, transportation, places of public accommodation, employers, and the residences of individuals with disabilities no later than January 26, 2000, but in any event as expeditiously as possible.

(ii) A public entity shall comply with the obligations of this section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at areas not subject to paragraph (c)(2)(i) of this section no later than January 26, 2005, but in any event as expeditiously as possible.

(d) * * *

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a specific schedule for the installation of curb ramps or other sloped areas where pedestrian walkways cross curbs that complies with the requirements of paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

* * * * *

Dated: November 10, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–28679 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–01–M

federal register

Monday
November 27, 1995

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 12

Seizure and Forfeiture Procedures; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 12

RIN 1018–AC89

Seizure and Forfeiture Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to revise its seizure and forfeiture procedures. These regulations will establish procedures relating to property seized or subject to administrative forfeiture under various laws enforced by the Service. This amendment is intended to provide uniform guidance for the bonded release, appraisement, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service.

This amendment of the Service's seizure and forfeiture procedures is also intended to more clearly explain the procedures used in administrative forfeiture proceedings and to make the process more efficient and provide for greater consistency of the Service's seizure and forfeiture procedures with those of the U.S. Customs Service.

DATES: Comments must be submitted on or before January 26, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, u.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank S. Shoemaker Jr., Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, telephone (703) 358–1949.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) has oversight responsibilities under Federal wildlife conservation statutory and regulatory authorities to provide uniform rules, conditions, and procedures for the seizure and forfeiture of property. The regulations in 50 CFR 12, establish procedures relating to property seized or subject to forfeiture under various laws enforced by the Service.

Forfeiture may be defined as "the divestiture without compensation of property used in a manner contrary to the laws of the sovereign". Forfeiture as a form of legal action has been enlarged by case law to include the divestiture of property acquired in an illegal manner. The mere fact, however, that property has been used or acquired illegally will not automatically provide the government with the authority to confiscate and condemn it. Property may be forfeited only when such forfeiture is specifically authorized by statute. Federal administrative forfeiture, as a particular class of forfeiture action, is the process by which property may be forfeited to the United States by the Federal agency that seized it in accordance with proscribed administrative procedures. This class of forfeiture will, therefore, take place in the absence of ordinary judicial procedure. For such non-judicial divestiture to occur, it must be specifically permitted by statute. The statutory language authorizing administrative forfeiture has been codified within the Customs laws at Title 19, United States Code § 1602–21.

The Service, in accordance with its oversight responsibility is proposing the following changes to 50 CFR 12, in order to update and revise its procedures to provide greater uniformity with the procedures used by the U.S. Customs Service. Section 12.2 entitled, Scope of Regulations, sets forth the statutory authority under which the Service is empowered to seize and administratively forfeit property. This section is being updated to delete outdated references to legal authorities and to include several additional legal authorities which are administered by the Service. Specifically, changes have been made to Section 12.2 to: eliminate the outdated reference to The Black Bass Act which was incorporated into the Lacey Act in 1981; add the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq*; and add the Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq*. These statutes which have been newly referenced in this section all contain administrative forfeiture provisions.

Section 12.3, entitled Definitions, is being revised to include within the existing definition of disposal at 12.3(a)(2), the authorized disposal of seized wildlife items by transferring them to the Fish and Wildlife Service. National Forfeited and Abandoned Wildlife Repository (National Repository).

Additional changes to Part 12.3 include the revision of the definition of the word "Solicitor." This definition is being revised to include "any person designated by the Solicitor to initiate and prosecute a civil penalty or administrative forfeiture proceeding". This change is intended to prevent any confusion by the public as to who is authorized to act in forfeiture or civil penalty proceedings.

Section 12.5, entitled Seizure by other agencies, is being revised to indicate the current titles of responsible Service officials, the "Assistant Regional Director—Law Enforcement". The Assistant Regional Director—Law Enforcement being duly authorized to receive property seized by other agencies under laws administered by the Service. This change will be in keeping with the 1988 revision in 50 CFR Part 10.22 which references the Assistant Regional Director.

Section 12.6, entitled Bonded release, describes the process and requirements for the Service's acceptance of a bond for the release of seized property. The Service in the past has generally used this procedure in special cases such as when live wildlife requires specialized care or when property is liable to perish or become greatly reduced in price or value in storage. Additional text has been added to this section to require the monetary value of seized items to be established as of the time and place of release. The rationale for such a change is the Service's concern that in many importations of wildlife or wildlife products, the actual value of items declared by the importer are ordinarily understated. This undervaluation is often associated with foreign invoice values made on Customs declarations which do not realistically reflect actual domestic market values. When the Service accepts a bond based solely upon foreign or declared value and the goods are returned to the claimant, there can be an unintended incentive for the claimant to sell the goods at the higher domestic market value and forfeit the bond. The text of Section 12.6 has been revised to allow the Service the discretion to specify in what form, cash, check, or certified bank check, a bond may be posted. This change is due in large part to the many comments received from Service employees expressing concern about the difficulty encountered in the liquidation of posted surety bonds or other security instruments, where the bond has been forfeited by the claimant but the necessary preconditions for the bonds liquidation have not been satisfied.

The requirements of the "appraisement" Section 12.12 have also been revised. This section provides guidance for the determination of value of both saleable and unsalable property seized by the Service. Section 12.12 has been revised to provide the Service with an additional method of determining the market value of items, that can have no legitimate or lawful value because they are in fact illegal to possess in virtually all circumstances. This section has therefore been revised to allow for "other reasonable means" to be used when determining value of seized property.

The appraisement section is also revised by the elimination of the list of applicable statutes and by the addition of the statement; "any statute administered by the Service". This change will eliminate the redundant listing of laws administered by the Service. Similar changes have been made to Sections 12.22, 12.23(a) and 12.24(a).

Several administrative changes have been made to § 12.22, entitled, Civil actions to obtain forfeiture. This section outlines the Service's authority to initiate civil actions to obtain forfeiture of property seized under any statutory authority administered by the Service. Although this course of action is generally not preferred by the Service, several statutes expressly require the initiation of civil actions for the forfeiture of property. Section 12.22 has, therefore, been revised to clarify that, "For the purposes of section 3(a) of the Lacey Act (16 U.S.C. 3372(a)), the importation of a marine mammal or marine mammal product * * * the importation of a migratory bird * * * or the importation of any species of wildlife pursuant to 18 U.S.C. 42, is deemed to be a transportation of wildlife." This additional text is added to facilitate forfeiture of wildlife without penalty assessment.

Under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, the Service is required to assess a civil penalty prior to the initiation of forfeiture proceedings involving marine mammals or marine mammal products. In instances of importations made by tourists entering the United States, of marine mammal products in violation of the MMPA, or migratory birds in violation of the Migratory Bird Treaty Act (MBTA), the Service may simply seek forfeiture of the item without the assessment of monetary fine. Products made from endangered species or species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and imported contrary to the provisions of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, are routinely forfeited under those provisions with no prior assessment of a civil penalty. The legislative history of the ESA indicates a Congressional intent to provide for simple forfeiture in cases involving noncommercial tourist. The MMPA allows the Service to accept voluntary abandonment of marine mammal products in noncommercial cases involving tourists. If the importer will not voluntarily abandon the item, however, the Service will then be forced to seek assessment of a civil penalty in order to seek forfeiture.

In order to avoid penalty assessment for these items when not warranted, and initiate administrative forfeiture, the Service frequently uses the Lacey Act, 16 U.S.C. 3372(a). The Lacey Act does not, however, require the prior assessment of a penalty as a prerequisite to forfeiture. Therefore, in order for the Service to remain consistent in cases involving innocent possession and importation of marine mammal products and migratory bird parts, the Service is revising Section 12.22 to clarify forfeiture under the Lacey Act. For this reason the words "importation is deemed to be a transportation" are being inserted at the end of Section 12.22. This wording is similar to that used in the Wild Exotic Bird Conservation Act (16 U.S.C. 4912(c)). The intent of these changes is to clarify for the public the process used to forfeit items under the MMPA and the MBTA, and enable the Service to treat similar violations in a similar fashion.

The administrative forfeiture Section at 12.23 has also been revised. This section is intended to: explain the process of administrative forfeiture; describe what a Notice of Proposed Forfeiture should contain; set a maximum value limit on property subject to administrative forfeiture; and explain how and with whom interested parties can file a claim and bond in order to stop the forfeiture proceeding. In revision of this Section, the Service is attempting to eliminate unnecessary paperwork, to minimize the number of certified mailings and publications required, to clarify the forfeiture process, and to bring the regulations up to date with current Customs regulations.

Specific changes to 50 CFR 12.23(a) will raise the upper value limit of property subject to administrative forfeiture from $100,000 to $500,000 to bring Part 12 into uniformity with applicable Customs requirements. The Service is also adding the words "or without regard to the value of the wildlife, if the importation of the wildlife is prohibited", to the text of this section. This change is intended to be consistent with current Customs regulations, and is to have the effect of reducing the number of uncontested forfeitures that the Solicitor will need to refer to the United States Department of Justice. The basis for making this change is that under current regulations, all forfeiture actions involving seized property valued at over $100,000 were referred to the Department of Justice even when such importations were specifically prohibited. The burden of preparing forfeiture cases for presentation to the Department of Justice has been substantial. The Service, therefore, is revising this section to reduce the number of referrals in uncontested forfeiture cases.

Section 12.23(b)(1)(A), entitled, Publication is revised to adjust the value of property to which the Service is required to provide notice of forfeiture to the public by newspaper publication. The Service is adjusting the stated value from $1000 to $2500 respectively. This change will allow the Service to post notices of forfeiture at Service enforcement offices, U.S. District courthouses, or U.S. customhouses, for property valued up to $2500. This revision will bring the Service into uniformity with current Customs regulations, reduce the costs generally associated with publication and adjust this limit for changes to the comparable value of money since the last revision of this section.

Several other changes have been made to Section 12 in an effort to bring the Service's requirements into uniformity with current Customs regulations and to improve and clarify the notification process. The Service will no longer require that a notice of proposed forfeiture be made in the same form as a Federal Judicial complaint. The Service is also adding additional text to the section stating that "articles included in two or more seizures may be advertised as one unit". This change will allow the Service to use "one unit" advertising and will thereby reduce the number of advertisements needed to provide notice of proposed forfeiture for items of relatively minimal value. This change is expected to result in a significant cost saving for the Service in both advertising expenses and in costs associated with the issuance of multiple notices of proposed forfeiture.

Other changes to section 12.23(b)(1)(B) have been made to clarify the process by which interested persons may file a petition for remission of forfeiture. Section 12.23(b)(1)(B) has been revised to state that a petition for remission shall be filed with the "Solicitor's Office", in accordance with "and within the time limits set forth in section 12.24." This change will assist the public in knowing where, and within what time limits, they may file a petition. Additional wording has also been added to this section to clarify the

affects on claimants for the failure to file a timely claim with cost bond.

The Service is also revising its procedures to provide a single Notice of Proposed Forfeiture. Upon notice interested parties may respond by filing a claim with cost bond and/or a petition for remission within the required time limits. A potential claimant may, therefore, either stop the forfeiture proceeding by filing a petition or claim and bond, or allow the forfeiture to occur automatically by not responding. It should be noted, that in most forfeiture actions undertaken by the Service, the forfeitures are contested. The Service for this reason is interested in abolishing the redundant "Declaration of Forfeiture" notice currently required under section 12.23(c). The Service is proposing to use a single Notice of Proposed Forfeiture procedure which can result in automatic forfeiture if a claim or a petition for remission have not been filed within the appropriate time. In addition, as is the current practice, a Declaration of Forfeiture would not be issued. The Service is revising the contents of the notice of proposed forfeiture, as well as the text of the summary forfeiture section as follows: "The notice shall further provide that if the claim and costs bond are not timely received, that all claimants are deemed to admit the truth of the allegations of the notice and the property is summarily forfeited to the United States".

The Service is also making changes to Section 12.23(b)(2). This section outlines the requirements of filing a claim and bond by persons claiming rights to property seized by the Service. This section has been incorrectly interpreted by many individuals to pertain only to "bonds" as financial instruments. The Service, therefore, proposes to revise this section by deleting the word "bond", and by replacing it with the words "non-refundable certified or bank check made payable to Clerk, United States District Court." This new wording will also clarify for the public the essential "non-refundable" nature of such certified or bank check. A bond in generally required in order to provide for the payment of costs, and is therefore nonrefundable. The regulations will continue to require a bond in the amount of $5000 or ten per centum of the value of the claimed property, whichever is less, but not less than $250.

A second change to the text of subsection (B)(2) has been made to clarify the regulation and explain the affects of filing a bond for seized property. The addition of the words "Such filing only stops the summary forfeiture proceeding", is intended to emphasize that the mere filing of a bond will not ordinarily entitle the claimant or other person to possession of the property. This additional text will also provide conformity with current applicable Customs requirements.

The Service is revising Section 12.23(b)(4), entitled, Motion for Stay, in order to clarify the intent of its requirements. In certain instances forfeiture claimants, who are the subjects of ongoing criminal investigations, or criminal charges, have attempted to use the broad range of civil discovery to obtain information about the Service's criminal investigation. Use of civil discovery in this fashion has allowed individuals access to information they would not otherwise be entitled to receive. A Motion for Stay is considered a necessary addition to Part 12, however, in order to provide for circumstances in which a claimant defending a forfeiture action might be forced to make statements against their interest, which could eventually be used against them if they were also charged criminally for the same violation. In general, the United States Attorneys are generally cognizant of this issue and such forfeiture actions are often purposefully delayed pending resolution of the underlying criminal case. Since the existing text of the regulation does not indicate that a Motion for Stay is limited in the circumstances of its use, claimant's attorneys have often filed, or sought to file, such motions. Therefore, in order to more clearly explain the purpose of such motions, the additional words, "A Motion for Stay will be considered only if the owners of the property are also charged with a criminal violation based upon the same illegal act", have been added to the beginning of this section for clarification. The effect of this revision is to reduce the number of inappropriate motions filed, and ensure compliance with Rule 26 of the Federal Rules of Criminal Procedure.

The existing text to Section 12.23(c) entitled, Summary Forfeiture, has been substantially revised. This provision provided for the issuance of a written declaration of forfeiture and specifies the contents of such declarations. These requirements have been substantially eliminated. The proposed new text of this section is intended to be consistent with the changes being made in Section 12.23(b)(1)(B) and is made on the same basis. The Service is thereby eliminating the current practice of issuing a Service Declaration of Forfeiture, in favor of "automatic forfeiture", when a claim and bond have not been filed. To effect this change a new Section 12.23(c), entitled, "Institution of forfeiture proceedings before completion of other administrative proceedings", is being added to Part 12. This new section will simply state that "nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of penalty assessment or remission procedures." The basis for this change is that the Service has in the past sought civil penalties prior to forfeiting wildlife products when, for example, products were imported into the United States in violation of the Endangered Species Act. Several judicial decisions have caused the Service to revise its procedures in regards to the length of time the Service may hold property prior to the initiation of forfeiture proceedings, without incurring problems of a Due Process nature. The Service in most cases will generally seek forfeiture before initiating civil penalty proceedings, unless forfeiture proceedings have been delayed or remitted through a filing of a petition or a claim and bond. The Service, therefore, is seeking through this revision, a means of providing for such cases where the institution of forfeiture proceedings is made before the completion of other administrative proceedings. This change is also intended to conform with current Customs procedures.

Section 12.24, entitled, Petition for Remission of Forfeiture, has been revised by the Service. In addition to the elimination of certain redundant statutory citations in paragraph (a), the Service is proposing to modify paragraph 12.24(c). This paragraph currently requires that a petition be signed by the petitioner or the petitioners attorney at law. The Service proposes the addition of the word "or representative" after "attorney at law" in order to avoid an erroneous interpretation that a petitioner must act alone or through an attorney. The effect of this change will therefore be to clarify for the petitioner, that they may designate a representative, other than an attorney, to act on their behalf.

Changes reflecting the new Disposal definition are proposed at Sections 12.24 (b) and (e). Under paragraph (b), a petition for remission must be received prior to disposal of the property. Paragraph (e) will now require the Solicitor to determine if the property has been disposed of prior to deciding whether or not to grant relief.

The addition of a new section under Subpart C to be designated Section 12.26, and entitled, Summary Sale of Perishable and Other Property, is being proposed by the Service. This section will allow the Service to sell any live wildlife, plant, or other seized property subject to forfeiture, when such item(s) have been determined likely to perish, deteriorate, decay, or likely to waste, provided that the item(s) seized can otherwise be lawfully sold. The proceeds of such sale will then become the object of the subsequent forfeiture action. The Service is proposing this new section for a variety of reasons based upon its past experience with such live or perishable seizures. Under the current disposal regulation at Section 12.33(c)(1), the Service cannot dispose or sell live or perishable property until such property has been forfeited or abandoned. The Service is currently required to petition a competent United States District Court of competent jurisdiction to allow a summary sale of the perishable items if they are not yet forfeited. This has resulted in substantial delays which in practice defeat the intent of the desired sale. These delays in the disposition of perishable items may also cause substantial storage and handling problems while summary sale or forfeiture is being sought. Attempting to place live wildlife in a suitable facility to prevent the animals (or plants) perishing while awaiting forfeiture has proven to be a difficult task, particularly when dealing with more common species. This task is often made more difficult because such placements may be only temporary in duration, due to the possibility of remission of forfeiture. To risk live wildlife perishing due to the lack of suitable placement while awaiting forfeiture would be inconsistent with the mission of the Service.

In the past the Service has attempted to prioritize administratively the destruction of abandoned property that was either perishable, constituted a health hazard to employees, or posed a threat of contamination to other more valuable seized property. This process is made difficult and time consuming when the property has not be forfeited or abandoned. The Service, therefore, is seeking a means by which perishable items can be sold immediately with the forfeiture action being directed against the proceeds of that sale. The addition of this section under Subpart C will also provide for conformity with Customs regulations, alleviate some of the burden placed upon law enforcement personnel in storing perishable items or finding placement for live wildlife, to minimize the risk of live and sometimes rare wildlife perishing, and to minimize the need for Judicial involvement in requests for summary sale.

Section 12.33 is also revised by the addition of a new paragraph (e). This new paragraph will include, as an accepted method of disposal of forfeited fish, wildlife or plants, the transfer of such wildlife items to the Fish and Wildlife Service, National Forfeited and Abandoned Wildlife Repository. The rationale for this change is to provide a means for the seizing official to address all issues surrounding remission, or return, of the seized item prior to disposal, and for the seizing official or evidence custodian to address issues concerning prior illegality, as outlined in Section 12.32, prior to disposal. An example of a prior illegality is non-compliance with the requirements of a Department of Agriculture quarantine regulation affecting the importation of exotic birds. The Service in making this change, is of the belief that such issues are best left to be addressed by the seizing official. Changes relating to Disposal are also made at Sections 12.24 (b) and (e), as well as in Section 12.33.

In addition to the administrative advantages of this proposed change, as outlined in the prior discussion, the Service is seeking to resolve problems involving requests for remission, and to examine goods long after forfeiture has taken place. Under the current regulation at section 12.24(b) a petition for remission can be filed at any point prior to disposal. Since the National Repository is part of the Service, items transferred there were considered to still be in the possession of the Service and not "disposed of". This resulted in the filing of numerous petitions and requests for examination long after the items had been forfeited. The Service believes that the proper time for filing for remission, or dealing with other concerns of the owner, is before items are transferred to the National Repository. The Customs regulations establish a time limit, after which, if no petition for remission or claim and bond are filed, the proceeds of the forfeiture are dispersed. The Service has decided against proposing an arbitrary time limit on the filing of petitions, and instead, decided to make the National Repository a means of disposal in itself. This will alleviate the unnecessary burden of tracking time limits on each forfeited item of property, and ensure that all issues surrounding remission are resolved by the seizing official. The majority of forfeited property being handled by the Division of Law Enforcement is transferred to the National Repository since it was the intent in its establishment to make it the normal repository for such items.

Background

On Thursday, November 14, 1991, (56 FR 57873) the Service published a Notice of Intent to Review 50 CFR Part 12 and requested that all interested parties submit written comments. The Service received comments from a total of 66 individuals and organizations.

Specifically, written comments were received from 36 individuals, 11 representatives of government agencies, 8 sportsman associations, 1 American Indian Tribe, 3 scientific associations, and 7 wildlife management and conservation associations. Only 7 of the comments to a Notice of Intent to Review Parts 12, 13, 14, 20, 21 and 22 pertained to Part 12. The Service has carefully considered all comments received in proposing these changes to Part 12. Public comments submitted in response to the Notice of Intent to Review that were directed at Parts 13, 14, 20, 21 and 22 will be addressed as each individual Part is proposed for revision.

Summary of Comments and Information Received

In general, the comments recommended that the Service provide in its revision of Part 12 additional procedural safeguards in the regulations governing "Seizure and Forfeiture Procedures". Additional procedural safeguards were requested for the resolution of disputes in cases involving the identification of specimens seized, for determining when the forfeiture of an appearance bond or other security to the Service is warranted in lieu of seizure, and to set out in the regulations the "specific notices" and other required documentation necessary in seizure and forfeiture procedures. Other comments regarding this section ranged from requests to have the section thoroughly reviewed, to the addition of lengthy text pertaining to the detention of property.

Comments Pertaining to 50 CFR 12.6

Bonded Release

Several commenters suggested revising Part 12 to give the Service greater flexibility to require and liquidate performance bonds for the release of seized property. The Service's authority to accept bonded release of wildlife is authorized by the Endangered Species Act. Bonded release pertains to the discretionary release by the Service of wildlife or wildlife products after an importer or owner has produced cash, certified check, or other security to ensure the products return and availability to the Service. Liquidation of the bond may occur if the

conditions of the bond have not been satisfied. The Service recognizes that there have been problems in the liquidation of corporate surety bonds when the preconditions for their release have not been satisfied. The Service has addressed this problem in this revision by specifying within the applicable section, that a cash bond or certified bank check can under certain circumstances be an option available for bonded release.

One commenter noted that an important justification for the use of bonded release was to ensure proper specialized care for scientific specimens. Specialized care is often necessary to maintain scientific specimens and is an important reason for using bonded release. Situations requiring bonded release include cases where there is live wildlife that the Service can not reasonably care for, or other cases involving live falconry birds.

One commenter expressed concern regarding live falconry birds and requested that the Service ensure that such bird be bonded back to the falconer's custody, because as the commenter termed, the falconer can best care for such bird. The Service's regulations already provide for this in Section 12.6(b).

One commenter representing a sportsman's organization expressed concern about possible spoilage or death of wildlife specimens being detained by the Service while taxonomic identification is taking place. The commenter recommended bonded release as a remedy for this problem. The Service agrees that such concerns when legitimate would be valid grounds for the use of bonded release. When contemplating bonded release of an item, several factors are considered by the Service. Generally bonded release will not be allowed in situations where the Service would not have reasonable assurance that the property released is the same property to be returned for forfeiture or other proceeding. In addition bonded release is only allowed when possession of the property by the owner will not violate or frustrate the intended purpose or policy of applicable law or regulation. The release of an item under bond to an importer or owner, for example, is not allowed, when the taxonomic identification of an item is still in question for any release would be a bar to the necessary identification of the item. The Service intends for the provisions governing the bonded release to be narrowly construed. The Service has made efforts to ensure that its requirements for the possession of forfeitable property are adequate to ensure safekeeping and in the best interest of compliance.

One commenter expressed concern over the Service's practice of "detaining" wildlife for identification. The commenter specifically admonished the Service for detaining shipments, when accompanying documentation reveals the correct taxon, and the movement of that specimen in commerce would not be illegal. The commenter further characterized such detention to a seizure without warrant. The Service has carefully considered the views of the commenter and disagrees with the prior characterization of the detention of shipments. Service personnel are trained to check declarations and other required documentation to determine when items being declared do not reflect what is being imported or exported.

The Service is authorized under the Endangered Species Act, the Lacey Act, the Marine Mammal Protection Act, and the Wild Bird Conservation Act, to detain for inspection and seize without warrant, wildlife and wildlife products imported into or exported from the United States contrary to these laws. The Service regards such detentions as a "refusal of clearance" of the wildlife until certain necessary matters pertaining to the import or export of the item are satisfactorily resolved. Generally searches of persons or property will ordinarily require as a standard, a showing of "probable cause". In situations involving the international border or its functional equivalent, however, probable cause is ordinarily not required to detain and inspect when such activity is accomplished in a fashion consistent with constitutional limitations and are made pursuant to existing statutory authorities. The rationale for this special case exemption to the usual constitutional restraints has been termed by the Federal courts as the "compelling" interest of the United States in maintaining control of its own borders. In general, the Service's authority to conduct inspections and the authority to refuse clearance of wildlife and wildlife items at designated ports or designated border crossings are based upon a "reasonable suspicion" standard. This standard is in keeping with the generally accepted practice used by all federal agencies when conducting inspections at the international border. The Service, therefore, is not required to show actual probable cause, or to obtain a "warrant", to inspect shipment or refuse entry thereof and detain wildlife products when such activities are done consistent with its established authority at an International Border or the functional equivalent thereof.

One commenter suggested that the Service should be responsible for the identification of wildlife specimens entering the United States. The Service has clearly stipulated in 50 CFR 14.53, that the burden of proof for identification lies with the owner, importer or consignee of the wildlife. The Service will identify wildlife in order to determine if a violation of the law has occurred. The importer, owner, or consignee of imported wildlife, or wildlife products, however, is required to establish the identity of wildlife being imported to the satisfaction of the Service.

One commenter expressed the opinion that in most cases documents submitted by importers and exporters indicating the taxonomic identity of the wildlife being imported or exported are correct. The Service has found through experience that such information is unfortunately often incorrect. Importers and exporters have in many instances submitted paperwork incorrectly declaring the wildlife being shipped, and have presented CITES permits which contained erroneous or false information. Although a majority of such imports and exports of wildlife are done correctly and in full compliance with the law, the Service occasionally deals with persons who intentionally misrepresent wildlife and forge documents or use falsified permits to circumvent the law. In order to remain diligent for criminal activity and provide an effective deterrent to such activity, the Service will not ordinarily accept documentary evidence merely at face value. The Service pursuant to its treaty obligation under CITES and a statutory obligation under the Lacey Act, Endangered Species Act, etc. is required to maintain a level of diligence in regards to the required documentation and, in such capacity, question the validity of documents that may be false and otherwise circumvent the purpose of the convention and domestic laws. It is important to note, that the movement in commerce of a particular wildlife specimen may in itself be illegal. The lawful movement of wildlife in commerce is dependent upon its taxonomic identification. The fact that an importer may, in good faith, believe his importations of wildlife to be legal, and therefore lawful in commerce, does not legitimize such importations. In order to carry out it's enforcement function properly, the Service cannot automatically make assumptions as to the status of wildlife shipments relative to the law. The Service requires that importers show, via Declaration, that a wildlife item(s) complies with the law. The Service, therefore, in the exercise of due diligence will routinely inspect such shipments to ensure compliance with applicable law.

Comments pertaining to 50 CFR 12.11

Notification of seizure

One commenter representing an organization, expressed dissatisfaction with the contents and procedures of the Service's notification of seizure. The commenter noted that, in his experience, the Service's Regions will differ on how the owner or consignee is notified of a seizure. The commenter also noted that owners or consignees are "merely informed" of seizures and the contemplation of forfeiture or civil penalty proceedings, and are not informed of procedures available to resolve the problem. The Service does not agree with this characterization, and would direct members of the interested public to Sections 12.11 and 12.23 of Title 50. Section 12.11 requires that the owner or consignee is personally notified of a seizure. This notice specifies the time, place, and reason for the seizure. Section 12.23, which also requires a Notice of Proposed Forfeiture contain specific reference to the provisions of the laws or regulations allegedly violated, and also states that any person desiring to claim the property must file a claim and bond. Service procedures for filing a claim and bond, filing a motion for stay, and filing a petition for remission, which allows the petitioner an opportunity to file a statement of facts and circumstances.

Another commenter noted that in his opinion the Service has not established procedures for resolution of ambiguities over species identification and documentation. The commenter also noted that owners or consignees of wildlife imports are not consulted regarding CITES document verification. In response to this comment it is the Service's policy that the importer, owner, or consignee of wildlife imports be vested with the responsibility for making a proper declaration of the wildlife to the Service upon importation. Ambiguities arising from the declaration would be grounds for refusal of clearance and/or seizure of the item in question. Matters involving ambiguities in documentation, e.g. the verification of CITES documents, are generally internal to the workings of the CITES convention and may involve official communique between the Government of the United States and foreign governments through the State Department. The Service is not obligated to consult with the owner or importer of wildlife items in discussions with foreign governments, when official documents meant to communicate information between governments are involved.

One commenter expressed the concern about the adequacy of due process and about any necessary involvement in administrative proceedings prior to civil or criminal trial. The Service notes, in response to the concerns expressed by the commenter, that 50 CFR Parts 11 and 12 contain specific procedures, which require the involvement of the owner. Nothing contained in these regulations, however, will restrict an individuals ability to produce evidence of any form in their defense, or restrict their access to administrative or judicial process. In the case of civil penalty assessment the violator (respondent) may undertake informal discussion with the Director in resolution of the proposed penalty, or in the case of proposed forfeiture may produce a statement of all facts and circumstances as authorized by § 12.24. The Service, however, is bound by the established procedures found in the Federal Rules of Criminal and Civil Procedure, Titles 18 and 28 of the United States Code, respectively.

One commenter expressed concern about not being informed as to the Service's determination of the identity of a species of wildlife whose identity is in question. The Service procedures established at Section 12.23(B) requires the Service to describe the property, as well as the specific laws or regulations violated. Rule 16 of the Federal Rules of Criminal Procedure and Rule 26 of the Federal Rules of Civil Procedure also require the release of this information to owners, importers, or consignees of imported wildlife.

Comments Pertaining to 50 CFR 12.24

Petition for Remission of forfeiture

One commenter recommended revision of this section due to a perceived dissatisfaction with the length of time the Service takes to affect forfeiture after the seizure of a wildlife item. The commenter also suggested that the Service should detain wildlife for a period of time that is no longer than that allowed by the various Circuit Courts of Appeal. The commenter also expressing the opinion that the Service has "egregiously" violated reasonable time limits as a matter of routine. The commenter further suggested that a remedy to the perceived problem is to require the Solicitor's Office to issue an order to delay any initiation of forfeiture proceedings, until after "the proceeding is finally disposed of by a written decision." The Service does not agree with the view expressed by the commenter and does not believe that the further delays that would be incurred by such additional requirements in forfeiture proceedings, would contribute in any meaningful way to the adequacy of the process.

The Service acknowledges that some clarification of the terminology of forfeiture is in order. Some confusion exists between the terms detention, refusal of clearance, and seizure. The "refusal of clearance" of wildlife is generally used by the Service to provide for time to verify permits or obtain positive identification of the wildlife in question. This process is in many ways analogous to "investigatory detention" which has been upheld by the courts as long as the reason for detention and length of detention are not unreasonable. It is essential to the work of the Service, that wildlife be properly identified to determine whether or not a violation of the law has in fact occurred. The outcome of this identification may eventually lead to an items forfeiture. Wildlife is, as a matter of policy, to be held no longer than necessary to determine identity or verify permits allowing entry. The Service, in carrying out this responsibility, will routinely work with foreign governments to verify permits and will often seek the advice of experts in various wildlife fields of study. Specialists in these fields are not always readily available, whether in the United States or abroad, and such permit verification or wildlife identification may take additional time. The Service, in such cases, will leave in effect a refusal of clearance of wildlife for a period of time no longer than that which is reasonable to ensure compliance with the law. Upon the completion of this process, the wildlife in question, is either seized, released, abandoned by the importer or owner, or re-exported.

The Service is of the view that the commenter may be confusing "detention" with the "refusal of clearance" of wildlife upon the importation of such wildlife, as stated in § 14.53. When the correct identity of wildlife has not been established by the importer or owner, or can not be established, the Service may refuse to clear the wildlife for entry into the United States. Refusal will occur when there is reasonable suspicion to believe that an item is not in compliance with U.S. laws or regulations. The Service is under no obligation to identify or "seize" (take custody of an item) simply because it has refused to allow the item into the United States. This may lead to

the perception that the item has been detained for a long period of time because the importer cannot take possession, when, in many cases, the item may be re-exported to the country of origin or abandoned. The Service agrees, that refusal to clear wildlife with no reasonable suspicion of wrongdoing, or when longer than necessary to ensure compliance with the law, is unacceptable.

The conditions for the seizure of wildlife are distinctly different from that of refusal of clearance and should be distinguished. In a seizure scenario, the Service will take actual custody of the item in question. The Service will generally seize wildlife in instances where an importer is either unable to provide the required documents, is unable to satisfy applicable Service requirements, or is in clear violation of applicable law. Wildlife parts or products may, therefore, be seized and held subject to eventual forfeiture. The Service has been charged with the responsibility for wildlife law enforcement and to thereby take such measures to detect the illegal importations and exportations of wildlife items. In many cases items of wildlife are not contraband "per se", and therefore, require additional identification to establish legality. Exigent circumstances have generally been held by the courts to exist at the border, where wildlife is being imported or exported, because once such items are released they are often unrecoverable. The importation of illegal wildlife into the U.S. is subject to prosecution as a criminal felony violation under certain conditions. The Service must balance its responsibilities in conservation law enforcement against the rights of property owners to fair and adequate legal process. The Service believes it can accomplish its conservation role effectively without adversely affecting the rights of individuals to fair and adequate process in law, and believes its procedures are a reasonable approach to seizure and forfeiture.

Comments Pertaining to 50 CFR 12.33

Disposal

One commenter from a scientific organization expressed concern about the Service's potential destruction of forfeited property that might have scientific value. The commenter recommended that a record be maintained of attempts to donate, sell, or transfer forfeited property with scientific value prior to its destruction. The Service strongly agrees with the concept of using scientific specimens rather than destroying them. The Service is of the view that adequate safeguards are already in place to ensure this does not occur, and refers the public to 50 CFR 12.33(a) and 12.36(a). Section 12.33 stipulates that the Director must attempt to dispose of any wildlife or plant by the order in which the disposal methods appear in the regulation. This part applies unless destruction is by court order. The options; return to the wild; use by the Service or transfer to another government agency; donation or loan; and Sale, all appear before destruction. Section 12.36 specifically authorizes the donation or loan of wildlife and plants for scientific purposes.

Comments Pertaining to 50 CFR 12.34

Return to the Wild

One commenter expressed concern about "the release of plant or wildlife species with broad or fragmented geographic ranges." The commenter was concerned that such species should not be released indiscriminately within the species range because of the possible introduction of deleterious genes or pathogens. The Service understands this concern and would note that this section includes the words "released to * * * suitable habitat." Suitable habitat would include areas where the possibility of introduction of pathogens or undesirable genes would not occur. One of the legal authorities under which the Service is authorized is Executive Order 11987, entitled, "Exotic Organisms." This Executive Order directs Federal agencies to restrict the introduction of exotic species into natural ecosystems of the Untied States. The intent of E.O. 11987 is clear and a species' return to the wild in the U.S. should be limited to suitable historic range. The service recommends consultation with biologists familiar with species of concern, prior to the release of any live wildlife.

Comments Pertaining to 50 CFR 12.35

Use by the Service or Transfer to Another Government Agency for Official Use

One commenter representing a scientific association recommended that scientific research should be added as one of the options for the use or transfer of forfeited property under this section. The commenter suggested that research be given first priority for the use or transfer of such property. The Service agrees that research is a legitimate use for appropriate forfeited items. The Service believes that the option to allow return to the wild of live forfeited specimens should, however, remain the number one option under this section. The Service believes that returning wildlife to the wild whenever possible is the option most consistent with the mission of the Service. Research is authorized under the current regulation as the number two option for use or transfer of forfeited items. The scientific research option appears as the number five option also, as "other scientific purpose."

Comments Pertaining to 50 CFR 12.36

Donation or Loan

One organization recommended revision of this section to include within its provisions, the "conservation and captive propagation" of live forfeited wildlife. the Service supports the premise raised by the commenter, but believes the present regulation adequately provides for such purposes. The concept of "conservation", although not always easily distinguished, nonetheless, underlies all of the Service's efforts with regard to the donation or loan of forfeited items. The Service, however, believes that it would be nearly impossible to list all of the authorized purposes that any particular forfeited item could be used for. The donation or loan of such property, as a basic rule, must be consistent with appropriate scientific, educational, or public display purposes. When the captive propagation of live wildlife is consistent with these purposes, and not for individual personal gain, nothing in the revised regulation would preclude it as a legitimate use for donated or loaned wildlife or plants.

Comments Pertaining to 50 CFR 12.51

Return Procedure

One organization commented on modification of this part to provide for the return of seized property within 30 days. The Service agrees that any unnecessary delay in the return of seized property is unwarranted. In general in cases which require the return of seized property, the Service has sought to ensure that the 30 day standard mentioned by the commenter is satisfactorily met. Under the current regulation the Service is required to promptly return property when the reason for seizure is not sustainable, either criminally or civilly.

Required Determination

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Felexibility Act, 5 U.S.C. 601 *et seq.*

This action is not expected to have significant taking implications, as per Executive Order 12630. This proposed rule does not contain any additional information collection requirements, beyond those approved under OMB approval Number 1018–0022, that would require the approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Part 12 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under Section 516 of the Department Manual. An Environmental Action Memorandum is on file at the U.S. Fish and Wildlife Service Office in Arlington, Virginia. The determination has been made pursuant to section 7 of the Endangered Species Act that the proposed revision of Part 12 will not effect federally listed species. These proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Author

The originators of this proposed rule are Law Enforcement Special Agent John M. Neal and Special Agent Jerome S. Smith of the Division of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia.

List of Subjects in 50 CFR Part 12

Administrative practice and procedure, Exports, Fish, Imports, Plants, Seizures and forfeitures, Surety bonds, Transportation, Wildlife.

Regulation Promulgation

For the Reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 12—SEIZURE AND FORFEITURE PROCEDURES [AMENDED]

1. The authority citation for Part 12 is revised to read as follows:

Authority: 16 U.S.C. 4222–4241; 4901–4916; 18 U.S.C. 42

2. Section 12.2 is amended by revising paragraphs (f) and (i), and adding a paragraph (k), to read as follows:

§ 12.2 Scope of regulations.

* * * * *

(f) The African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*;

* * * * *

(i) The Lacey Act, 18 U.S.C. 42;

* * * * *

(k) The Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

3. Section 12.3 is amended by revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 12.3 Definitions.

(a) * * *

(2) *"Disposal"* includes, but is not limited to, remission, return to the wild, use by the Service or transfer to another government agency for official use, donation or loan, sale, or destruction; and forfeited and/or abandoned wildlife transferred to the Fish and Wildlife National Forfeited and Abandoned Wildlife Repository.

* * * * *

(4) *"Solicitor"* means the Solicitor of the Department of the Interior and any person designated by the Solicitor to initiate and prosecute a civil penalty or administrative forfeiture proceeding.

* * * * *

§ 12.5 [Amended]

4. Section 12.5 is amended by removing the words "Special Agent in Charge", and by adding in their place "Assistant Regional Director—Law Enforcement."

5. Section 12.6 is amended by revising paragraph (a) to read as follows:

§ 12.6 Bonded release.

(a) Subject to the conditions set forth in paragraphs (b) and (c) of this section, and to such additional conditions as may be appropriate, the Service, in its discretion, may accept, cash, check, or certified bank check or other security (including, but not limited to, payment of the value as of the time and place of release) in place of any property seized under the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*, Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; Lacey Act, 18 U.S.C. 42, and 16 U.S.C. 3371 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j-1; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; or Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

* * * * *

6. Section 12.12 is revised to read as follows:

§ 12.12 Appraisement.

The Service shall determine the value of any property seized under any statute administered by the Service. If the seized property may lawfully be sold in the United States, its domestic value shall be determined in accordance with § 12.3. If the seized property may not lawfully be sold in the United States, its value may be determined by other reasonable means.

7. Section 12.22 is revised to read as follows:

§ 12.22 Civil actions to obtain forfeiture.

The Solicitor may request the Attorney General of the United States to file a civil action to obtain forfeiture of any property subject to forfeiture under any statute administered by the Service. If the Solicitor intends to assess a civil penalty, no forfeiture action under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, may be initiated until such civil penalty has been assessed; the administrative action to obtain forfeiture must be commenced within 30 days after such assessment. For the purposes of Section (3)(a) of the Lacey Act (16 U.S.C. 3372(a)), the importation of a marine mammal or a marine mammal product, as defined in 16 U.S.C. 1362, the importation of a migratory bird, part, nest, or egg, as regulated pursuant to 16 U.S.C. 703 *et seq.*, or the importation of any species of wildlife, as regulated pursuant to 18 U.S.C. 42, is deemed to be a transportation of wildlife.

8. Section 12.23 is amended by revising paragraphs (a), (b)(1)(A), (b)(1)(B), and (b)(2), (b)(4) introductory text, paragraphs (b)(4)(ii), and (c) to read as follows:

§ 12.23 Administrative forfeiture proceedings.

(a) *When authorized.* The Solicitor may obtain forfeiture of property under any authorizing statute administered by the Service in accordance with this section when the property is determined under 12.12 to have a value of not greater than $500,000, or, without regard to the value of the wildlife, when the wildlife being imported is determined to be prohibited.

(b) *Procedure*—

(1) * * *

(A) *Publication.* The notice will be published once a week for at least three successive weeks in a newspaper of general circulation in the locality where the property was seized. If the value of the seized Property as determined under § 12.12 does not exceed $2500, the notice may be published by posting, instead of newspaper publication, for at least three successive weeks in a conspicuous place accessible to the public at the Service's enforcement office, the U.S. District Court or the U.S. Customhouse nearest the place of seizure.

(B) *Contents.* Articles included in two or more seizures may be advertised as one unit. The notice must describe the property, including, in the case of motor

vehicles, the license, registration, motor, and serial numbers. The notice must state the time and place of seizure, as well as the reason therefor, and will specify the value of the property as determined under § 12.12. The notice will contain a specific reference to the provisions of the laws or regulations alleged to be violated and under which the property is subject to forfeiture. The notice will state that any person desiring to claim the property must file a claim and a bond in accordance with paragraph (b)(2) of this section, and will state that if a proper claim and bond are not received by the proper office within the time prescribed by such paragraph, the property is summarily forfeited to the United States and will be disposed of according to law. The notice will advise interested persons of their right to file a petition for remission of forfeiture with the Solicitor's office, in accordance with and within the time limits set forth in § 12.24. Such petition for remission may be filed in lieu of, or in addition to, the aforementioned claim and bond. The notice will further provide that if the claim and costs bond are not timely received, that all potential claimants are deemed to admit the truth of the allegations of the notice and the property is summarily forfeited to the United States.

(2) *Filing a claim and bond.* Upon issuance of the Notice of Proposed Forfeiture, any person claiming the seized property may file with the Solicitor's office indicated in the notice, a claim to the property and a non-refundable certified or bank check made payable to Clerk, United States District Court in the penal sum of $5,000, or ten per centum of the value of the claimed property, whichever is lower, but not less than $250. Any claim and bond must be received in such office within 30 days after the date of first publication or posting of the notice of proposed forfeiture. The claim will state the claimant's interest in the property. There will be endorsed on the bond a list or schedule in substantially the following form which must be signed by the claimant in the presence of the witnesses to the bond, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond, to wit:

_____

_____

The foregoing list is correct.

Claimant: _____

Attest: _____

[**Note:** The claim and bond referred to in this paragraph will not entitle the claimant or any other person to possession of the property. Such filing only stops the summary forfeiture proceeding.]

(3) * * *

(4) *Motion for stay.* A Motion for Stay will be considered only if the owners of the property are also charged with a criminal violation based upon the same illegal act. Upon issuance of the notice of proposed forfeiture, any person claiming the seized property may file with the Solicitor's regional or field office indicated in the notice a motion to stay administrative forfeiture proceedings. Any motion for stay must be filed within 30 days after the date of first publication or posting of the Notice of Proposed Forfeiture. Each motion must contain:

(i) * * *

(ii) The claimant's offer to pay, in advance, all reasonable costs anticipated to be incurred in the storage, care, and maintenance of the seized property for which administrative forfeiture is sought. Where a stay of administrative forfeiture proceedings would not injure or impair the rights of any third parties, and where the claimant has agreed to pay in advance, anticipated, reasonable storage costs associated with the granting of a stay, the Solicitor may, in his discretion, grant the motion for stay and specify reasonable and prudent conditions therefor, including but not limited to the duration of the stay, a description of the factors that would automatically terminate the stay, and any requirement for a bond (including amount) to secure the payment of storage and other maintenance costs.

* * * * *

(c) *Institution of forfeiture proceedings before completion of other administrative proceedings.* Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of penalty assessment or remission procedures.

9. Section 12.24 is amended by revising paragraphs (a), (b) introductory text, (c), and (e) to read as follows:

§ 12.24 Petition for remission of forfeiture.

(a) Any person who has an interest in any property utilized in unlawful taking and subject to forfeiture under statutes cited in section 12.2 of this Part or any person, who has incurred or is alleged to have incurred, a forfeiture of any such property, may file with the Solicitor or, when forfeiture proceedings have been brought in United States District Court, the Attorney General of the United States, a petition for remission of forfeiture.

(b) A petition filed with the Solicitor need not be in any particular form, but it must be received before disposal (See section 12.3) of the property has occurred and must contain the following: * * *

(c) The petition must be signed by the petitioner or the petitioner's attorney at law or representative. If the petitioner is a corporation, the petition must be signed by an authorized officer, supervisory employee, or attorney at law, and the corporate seal must be properly affixed to the signature.

* * * * *

(e) Upon receiving the petition, the Solicitor shall first decide if disposal of the property has occurred, then, if disposal has not occurred, whether or not to grant relief. In making a decision, the Solicitor shall consider the information submitted by the petitioner, as well as any other available information relating to the matter.

* * * * *

10. Section 12.25 is revised to read as follows:

§ 12.25 Transfers in settlement of civil penalty claims.

At the discretion of the Solicitor, an owner of wildlife or plants who may be liable for civil penalty under statutes cited in Section 12.2 of this Part, may be given an opportunity to completely or partially settle the civil penalty claim by transferring to the United States all right, title, and interest in any wildlife or plants that are subject to forfeiture. Such transfer may be accomplished by the owner's execution and return of a United States Customs Form 4607 or a similar compromise transfer of property instrument provided by the Service.

11. Section 12.26 is added to Subpart C to read as follows:

§ 12.26 Summary sale of perishable and other property.

Any live wildlife or plant or other seized property which the Director has determined is liable to perish, deteriorate, decay, waste, or is perishable and which can lawfully be sold, shall be advertised for sale and sold at public auction at the earliest possible date. The Director shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not notice of seizure and intent to forfeit. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims.

12. Section 12.33 is amended by revising paragraph (a) introductory text and by adding paragraph (e) to read as follows:

§ 12.33 Disposal.

(a) The Director shall dispose of any wildlife or plant forfeited or abandoned under the authority of this part, subject to the restrictions provided in this subpart, by one of the following means unless the item is the subject of a petition for remission of forfeiture under 12.24 of this part, or disposed of by court order:

* * * * *

(3) Transfer to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository.

* * * * *

(e) All forfeited and abandoned wildlife or plants which are transferred to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository shall be deemed disposed property for the purposes of this section.

Dated: April 13, 1995.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks.

Editorial Note: This document was received at the Office of the Federal Register on November 9, 1995.

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November 27, 1995

Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701, et al.
Lands Eligible for Remining; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 785, 816, and 817

RIN 1029–AB74

Lands Eligible for Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is issuing final rules at 30 CFR chapter VII implementing changes made to Title V of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA) by the Energy Policy Act of 1992. The final rules are intended to provide incentives for the remining and reclamation of previously mined and inadequately reclaimed lands eligible for expenditures under section 402(g)(4) or 404 of SMCRA.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Office of Surface Mining Reclamation and Enforcement, Room 110 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2561.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Rules adopted and Responses to Public Comments on Proposed Rules.
III. Procedural Matters.

I. Background

On October 24, 1992, the President signed into law the Energy Policy Act of 1992, Pub. L. 102–486. Section 2503 of the Energy Policy Act, Coal Remining, in part amended sections 404, 510, 515(b)(20), and 701 of SMCRA in order to provide the following incentives to encourage, in an environmentally-sound manner, the remining of lands eligible for expenditures under sections 402(g)(4) and 404 SMCRA: (1) The permittee of such remaining operations shall not be subject to permit blocking under section 510(c) of SMCRA for any violation resulting from an unanticipated event or condition occurring on the remaining site; and (2) The period of responsibility for successful revegetation for such remining operations is reduced to five years in the West and two years in the East.

The relevant portion of section 2503 provides as follows:

Section 510 is amended by adding the following new subsection at the thereof:

(e) MODIFICATION OF PROHIBITION—After the date of enactment of this subsection, the prohibition of subsection (c) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term "violation" has the same meaning as such term has under subsection (c). The authority of this section and section 515(b)(20)(B) shall terminate on September 30, 2004.

Section 515(b)(20) is amended to insert (A) after (20) and add the following new subparagraph at the end thereof:

(B) on lands eligible for remining assume the responsibility for successful revegetation for a period of two full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will be extended for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards.

Section 701 is amended by adding the following two new paragraphs:

(33) the term "unanticipated event or condition" as used in section 510(e) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit; and

(34) the term "lands eligible for remining" means those lands that would otherwise be eligible for expenditures under section 404 or under section 412(g)(4).

The purpose of section 2503 was set forth in the House of Representatives Report from the Committee on Interior and Insular Affairs on H.R. 776, the predecessor bill in the House of Representatives (H.R. Rep. No. 102–474, 102d Cong., 2d Sess. 85 (1992)) which contains the following discussion: "The (coal remining) provisions of this section seek to make coal available that otherwise would be bypassed by providing incentives for industry to extract and reprocess, in an environmentally sound manner, coal that remains in abandoned mine lands and refuse piles. Current law reclamation performance standards were devised to address surface coal mining on undisturbed lands; the unintended result is to discourage remining. Remining also serves to mitigate the health, safety, and environmental threats posed to coal field residents by augmenting the work done under the Abandoned Mine Reclamation Program."

To implement sections 510(e) and 515(b)(20)(B) of SMCRA, OSM proposed rules on June 2, 1994 (59 FR 28744) which would: (1) Revise 30 CFR 701.5, Definitions; 30 CFR 773.15, Review of Permit Applications; 30 CFR 816.116 and 817.116, Revegetation: Standards for Success; and (2) add a new 30 CFR 785.25, Lands Eligible for Remining.

Public comments were received until August 1, 1994. No public meetings nor hearings were requested or held. OSM received letters in response to the June 2, 1994, proposed rule from eight commenters representing industry, State regulatory authorities, Federal agencies, Environmental groups, and individual citizens. OSM has reviewed each comment carefully and has considered the commenters' suggestions and remarks in writing this final rule.

OSM previously implemented another remining provision of the Energy Policy Act dealing with AML eligibility under a separate rulemaking (59 FR 28136, May 31, 1994). A provision dealing with abandoned coal refuse sites is also being addressed under a separate rulemaking.

II. Rules Adopted and Responses to Public Comments on Proposed Rules

1. 30 CFR Part 701—Permanent Regulatory Program

Section 701.5, Definitions, is being amended by adding two terms—"lands eligible for remining" and "unanticipated event or condition"—both of which were defined in section 2503(c) of the Energy Policy Act.

a. Lands eligible for remining. The definition adopted for the term "lands eligible for remining" is the same as the proposal and the definition is section 701(34) of SMCRA. Under the final rule, "lands eligible for expenditures under sections 404 or 402(g)(4) of the Act. Thus, the following lands would be included under this definition: those lands which were mined by surface coal mining operations or otherwise affected by surface or underground mining operations and which were either (1) abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws; (2) abandoned or left in an inadequate reclamation status after August 3, 1977 but before State received primacy under SMCRA and for which available bond is insufficient to provide for adequate reclamation; or (3) completed being mined between August 4, 1977, and November 5, 1990, and remain unreclaimed due to the insolvency of a surety company occurring during that same period.

Many remining operations involve the surface mining or "daylighting" of underground workings. Depending on the extent that overlaying or adjacent surface lands are affected by the prior underground workings, e.g., through subsidence, those lands may or may not fall within section 701(34)'s definition of "lands eligible for remining," if, under the example above, the surface disturbances resulting from previous underground mining are so slight that the lands do not constitute "lands eligible for remining," the "daylighting" of the underground workings would then not qualify for the remining incentives provided by sections 510(e) and 515(b)(20)(B) and implemented by this rulemaking.

One commenter suggested that the definition of "lands eligible for remining" contain the phrase "under a permit issued prior to September 30, 2004." Although OSM has not made the suggested change to the definition, OSM agrees that Sections 510(e) and 515(b)(20)(B) of SMCRA apply only to permits issued before September 30, 2004. As explained below, this concept is reflected in 30 CFR 773.15(b)(4) and in 30 CFR 816.116 and 817.116.

b. Unanticipated event or condition. The definition adopted for "unanticipated event or condition" is similar to the proposal and consistent with the definition in section 701(33) of SMCRA. An "unanticipated event or condition" is defined in the final rule as an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit. Pursuant to final § 773.15(b)(4), an operator will not be permit blocked for any violation resulting from an unanticipated event or condition occurring during the term of such remining permit issued before September 30, 2004, or any renewals thereof. The rationale for the final rules' use of the term "arises from" in lieu of the term "encountered in" used in the statutory definition is discussed later under the heading "Phase-out of section 510(e) permit block exemption."

(i) Related to prior mining activity The phrase "related to prior mining" has been added to the final definition of "unanticipated event or condition" to qualify which events or conditions could give rise to violations subject to the § 773.15(b)(4) permit block exemption.

This change is made in response to several commenters, one of which asserted that the proposed definition of "unanticipated event or condition" was too broad to be of practical value and asked whether an event or condition "causally related" to the unreclaimed or previously mined status of the area covered by the remining permit would qualify as unantipated. A second commenter suggested that an unanticipated event or condition must arise from the previously disturbed nature of the site. A third commenter, citing the history associated with the development of the remining amendments of the Energy Policy Act, proposed that an unanticipated event or condition should embody any event or occurrence that arises from the previously disturbed nature of the site, including acid mine discharges, despite substantial adherence to the permit.

OSM agrees with these comments that only unanticipated events or conditions related to the previously disturbed nature of the site should qualify for the section 510(e) exemption. The addition of the qualifying phrase "related to prior mining activity" is consistent with Congressional intent to encourage remining by extending the permit block exemption of section 510(e) to the problem events or conditions occasioned by such prior mining operations. OSM does not believe, on the other hand, that Congress intended to exempt applicants from permit blocking for violations occurring on the remining site but resulting from conditions unrelated to previous mining activities. Applicants would thereby remain permit blocked for violations solely attributable to their own conduct.

An example of an event or condition which might arise during a remining operation but not related to the prior mining activity would be the mining of previously undisturbed toxic coal seams located below previously disturbed deposits.

An example of an event or condition which might arise during a remining operation and considered related to the prior mining activity would be the discovery of hazardous materials or substances buried in depressions or pits left at an abandoned site. Such an event or condition would be considered as related to a prior mining activity because without the previous mining the hazardous materials or hazardous substances would not have been buried at the site.[1]

OSM is broadly interpreting the qualifying phrase "related to prior mining" so as to afford some practical incentive to remining while also maintaining consistency with the provisions of the Energy Policy Act. Thus, for the purposes of this final rule, an event or condition can qualify as an "unanticipated" event or condition if it is related to prior mining at the site. One commenter asked if OSM meant only that acts of God could result in unanticipated events or conditions and requested some clarification in terms of examples. An act of God resulting in extreme hydrologic conditions might significantly vary from the permit's estimate and could reasonably qualify as one example of an unanticipated event or condition if the event or condition causing the violation is related to prior mining activity at the site.

(ii) Acid mine drainage. An industry commenter asserted that any acid mine drainage (AMD) which occurs despite substantial adherence to a permit should be included in the meaning of "unanticipated event or condition" and pointed to the legislative history of the remining legislation to further its argument. The commenter cited first to strong State and industry support for the definition of "unanticipated event or condition" in H.R. 4053 (1990) which it characterized as addressing the issue of AMD. The commenter then cites to State and industry opposition to the subsequent provisions of H.R. 1078 (1991) which would have explicitly excluded from the definition of "unanticipated event or condition" any event or condition involving more than a minimal amount of toxic overburden or pre-existing acid discharge. Industry concluded that because H.R. 4381 (1992) substantially carried forward the H.R. 4053 and 1078 definitions of "unanticipated event or condition" but deleted the objectionable H.R. 1078 exclusion for toxic overburden or pre-existing acid discharge, and that H.R. 776 (1992) incorporates that definition as the eventual Energy Policy Act definition, AMD should therefore be included within the meaning of "unanticipated event or condition.

OSM agrees with the commenter that the Energy Policy Act does not exclude AMD as a type of condition which may constitute an "unanticipated event or condition." On the other hand, although the Energy Policy Act does not include the AMD exclusion language of H.R. 1078, neither does the legislative history

[1] If hazardous materials or hazardous substances of any type are uncovered or released during remining, the operator must follow the requirements for notifying the National Response Center as required by the National Contingency Plan (40 CFR part 300). This would apply to the discovery or release, whether regulated under the statutory authority of the Toxic Substances Control Act (TSCA), the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). These laws are administered by the U.S. Environmental Protection Agency or State environmental agencies. Additional reporting and notification requirements may exist under State or local laws.

indicate that Congress intended for all AMD to be categorically included within the meaning of "unanticipated event or condition." Clearly the issues of AMD and the allowance to be given in remining to toxic overburden and pre-existing acid discharge were high profile and controversial among environmentalist, industry and regulatory supporters during the drafting of all the cited House Bills. The hearings on these Bills reflect a recognition that the definition of "unanticipated event or condition" later incorporated into the Energy Policy Act did not address or resolve the AMD issue. (See Testimony of Dave Rosenbaum, Dept. Commissioner, Kentucky Natural Resources and Environmental Protection Cabinet, H.R. 4053, 101–72, March 13, 1990). Therefore, OSM concludes that AMD should be treated like any other condition to be evaluated on a case-by-case basis to determine whether it constitutes an "unanticipated event or condition."

2. 30 CFR Part 773—Requirements for Permits and Permit Processing

Section 773.15, Review of Permit Applications, is being amended by adding two new paragraphs, (b)(4) and (c)(13). These paragraphs will generally correspond to proposed paragraphs (f) and (c)(13) of § 773.15.

(a) § 773.15(b)(4). Final § 773.15(b)(4) (proposed § 773.15(f)) implements section 510(e) of SMCRA which establishes an exemption from the permit blocking provisions of section 510(c) of SMCRA. Subsequent to October 24, 1992, the final rule exempts from the permit-block provisions of paragraph (b) of § 773.15 situations where an unabated violation occurring after that date is attributed to an unanticipated event or condition arising from a remining site under a permit issued before September 30, 2004, or any renewals thereof. In such cases, the person holding the remining permit would not be rendered ineligible for a new surface coal mining permit at another site simply because of the unabated violation at the remining site. Responsibility to abate the violation, however, is not affected by the final rule.

(i) § 773.15(b)(4)(i). Final § 773.15(b)(4) has been divided into two paragraphs (i) and (ii). Although paragraph (b)(4)(i) was originally proposed as § 773.15(f), OSM believes the permit block exemption related to unabated violations resulting from an unanticipated event or condition is more appropriately located in § 773.15(b) which deals with review of violations.

Phase-In of Section 510(e) Permit Block Exemption

Comments were received seeking clarification as to the rule's phase-in *i.e.*, when must violations have occurred and when must remining permits have been issued to qualify for the section 510(e)'s permit block exemption. In addition, OSM recently approved an amendment to the Kentucky regulatory program which substantially tracked section 510(e) of the Act (60 FR 33110, June 27, 1995). This amendment, Senate Bill 208, also focussed OSM on the need for further clarification of the proposed rule's section 510(e) permit block exemption as to when remining permits need to have been issued to have violations at the site qualify for that exemption.

By its own terms, the permit block exemption in section 510(e) of SMCRA applies to all section 510(c) determinations that occur subsequent to October 24, 1992. Thus, final § 773.15(b)(4)(i) includes the introductory phrase "Subsequent to October 24, 1992," as identifying the date after which a determination can be made as to the applicability of the exemption of § 773.15(b)(4).

In partial response to comments discussed below, the final rule's § 773.15(b)(4) permit block exemption will extend to unabated violations (1) occurring after section 510(e)'s October 24, 1992, enactment date; and (2) resulting from an unanticipated event or condition occurring under remining permits issued either before or after that same date. This clarification as to the intended reach of § 773.15(b)(4) is consistent with OSM's approval of the Kentucky State program amendment substantially tracking section 510(e)'s provisions.

One commenter representing several environmental associations stated that the goals of the October 24, 1992, amendments would be best served by limiting the application of the section 510(e) permit block exemption to violations that occur on a remined site after that date and under a remining permit issued in accordance with the provisions of the amended Act. (It also made similar comments on the Kentucky amendments.) In support of these positions, the commenter made a number of assertions. With regard to limiting the permit block exemption to violations that occur after October 24, 1992, the commenter asserted that Congress intended the remining provisions of the Energy Policy Act to be forward-looking in seeking to provide an incentive for future operations on previously mined and abandoned areas. In support thereof, it referenced the H.R. Rep. No. 102–474, at 85 (1992), as well as the existence of significant pre-Energy Policy Act mining of previously mined and abandoned areas. The commenter further asserted that Congress intended the section 510(e) permit block exemption to be narrowly interpreted and not used to excuse applicants who had been previously permit blocked because of pre-Energy Policy Act violations. It again referenced the House Report at 85.

This commenter also asserted that limiting the section 510(e) permit block exemption to violations occurring under a remining permit issued in accordance with the provisions of the amended Act would couple existing informational requirements in part 773 with those of proposed § 785.25 to provide a more comprehensive objective assessment of site conditions against which any claim of "unanticipated event" could be assessed.

Finally the commenter asserted that the Act's section 701(33) definition of the phrase "lands eligible for remining" implies a determination by the regulatory authority in advance of issuing a remining permit that the site would otherwise be eligible for AML expenditures.

OSM agrees that the plain language of the section 510(e) permit block exemption limits its application to violations that occurred on a remining site after the October 24, 1992, amendment date. Inclusion of the statutory phrase "(a)fter the date of enactment of this subsection," in section 510(e) of SMCRA evinces a clear Congressional intent that the provision be prospective from October 24, 1992, and relate to events occurring after that date. OSM also agrees with the commenter that the legislative history of the exemption supports such a limitation and that persons already permit-blocked under section 510(c) of SMCRA for violations occurring before October 24, 1992, could not become unblocked by enactment of section 510(e). Accordingly, the section 510(e) permit block exemption of final § 773.15(b)(4)(i) will be limited to violations occurring after October 24, 1992.

The incentive for future remining provided by the section 510(e) permit block exemption logically extends both to parties already conducting remining operations as of October 24, 1992, and those contemplating entirely new remining operations after that date. For the first group, section 510(e) provides some incentive to continue remining.

For the second group, section 510(e) provides an incentive to begin remining new properties.

OSM disagrees with the commenter's suggestion that the goals of the 1992 amendments would be best served by limiting the section 510(e) permit block exemption to post-October 24, 1992, violations occurring at a remining permit issued only in accordance with the provisions of the amended Act, *i.e.*, a § 785.25 permit. Although the language of section 510(e) and its legislative history limits the exemption to post-October 24, 1992, violations, neither the language of section 510(e) nor its legislative history requires that the permit be issued after October 24, 1992, or under § 785.25 or a State program equivalent.

While the commenter's suggestion of limiting the permit block exemption to § 785.25 permits would provide enhanced information on site conditions, there are practical considerations which would weigh against such a suggestion. For primacy States, limiting the permit block exemption to § 785.25 permits would further postpone the availability of the exemption until 1996 or 1997 because of the time normally needed to submit and gain approval of a state program amendment. The commenter's suggestion of limiting the permit block exemption to § 785.25 permits would, therefore, not accommodate the plain language of the Act and clear legislative intent that the remining amendments provide a timely incentive for the remining of previously abandoned mine lands.

The commenter's suggestion that the section 510(e) exemption be limited to § 785.25 permits would also conflict with its previously discussed position that the section 510(e) exemption be limited to post-October 24, 1992, violations occurring on remining sites. For the remining incentive of section 510(e) to apply to violations occurring immediately following the October 24, 1992, enactment date, the underlying remining permit would have had to have been issued prior to that date. Accordingly, OSM does not interpret section 510(e) as imposing a post-October 24, 1992, limitation on when permits must have been issued to qualify for the permit block exemption.

In addition, contrary to the commenter's assertion, the Act's section 701(33) definition for "lands eligible for remining" does not establish the requirement for a determination by the regulatory authority in advance of issuing a remining permit that the site would otherwise be eligible for AML expenditures. While final § 773.15(c)(13) will require a "lands eligible" finding before issuance of remining permits in the future under § 785.25, the determination of "lands eligible" for remining will also have to be made for existing permittees seeking to avail themselves under § 773.15(b)(4)(i) of the section 510(e) permit block exemption.

On the basis of the above discussion, the phase-in for the section 510(e) permit block exemption at § 773.15(b)(4)(i) will be tied to the date of violation but not to the date of permit issuance. Violations must have occurred after October 24, 1992, and resulted from an unanticipated event or condition arising from surface coal mining and reclamation operations on lands eligible for remining under a permit issued either before or after that date.

Phase-Out of Section 510(e) Permit Block Exemption

Final paragraph (b)(4)(i) does not contain the language of proposed paragraph (f) that the permit block prohibition of paragraph (b) shall not apply "(u)ntil September 30, 2004." In its place, final paragraph (b)(4)(i) provides that the permit block prohibitions of paragraph (b) shall not apply to "* * * any violation resulting from an unanticipated event or condition * * * under a permit, issued before September 30, 2004, or any renewal thereof * * *." Thus final § 773.15(b)(4)(i) provides that the permit block exemption will continue to be available for violations occurring on lands eligible for remining under a remining permit issued before September 30, 2004, or any renewals thereof, even if the § 772.15(b)(4) determination occurs after that date.

This change in the final regulatory text from the proposed rule implements the phase-out provision of section 510(e) and is made in response to comments received from industry and State regulatory authorities. These commenters questioned the apparent intent of the proposed rule language that the permit block exemption would continue only until September 30, 2004. The effect of such provision was seen as allowing a company to be permit blocked on October 1, 2004, and thereafter, for a violation occurring on an eligible remining site permitted before September 30, 2004, which had earlier been exempted from the permit block section. The industry commenter asserted that Congress could not have intended an anomalous result such that one violation would be excluded from causing a permit block and subsequently form the basis for causing a permit block. Viewing the whole of the language of section 510(e) and not limiting itself solely to the provision which provided that "(t)he authority of (that) section shall terminate on September 30, 2004," that commenter asserted that what Congress intended was to provide an exemption from the permit blocking provisions of section 510(c) for violations resulting from unanticipated events or conditions under permits issued prior to September 30, 2004, and not to provide such an exclusion on a temporary basis for violations occurring prior to September 30, 2004, but which exemption would suddenly disappear after September 30, 2004.

The commenter cited to the following language of section 510(e) as confirming this intent since it renders section 501(c) inapplicable to "any violation resulting from an unanticipated event of condition *at* a surface coal mining operation on lands eligible for remining *under a permit held by the person* * * *." (emphasis added by commenter).

The commenter reasoned that this language clearly ties the exemption to the date of issuance of the remining permit, not the violation. Accordingly, the commenter stated that the language of section 510(e) terminating the authority of the section on September 30, 2004, should be construed to foreclose the permit block exemption to violations under a permit issued subsequent to that date. In turn, the final regulatory rule language should clearly set forth that the exemption applies to any violation arising from an unanticipated event or condition at a remining operation under a permit issued prior to September 30, 2004.

While OSM does not view the discerning of Congressional intent as to the termination of authority provisions of section 510(e) to be as clear-cut as portrayed by the commenter, OSM agrees with the principal arguments set forth above. Viewing the permit blocking exemption of section 501(e) as a whole, the emphasis should not be on whether the violation occurred before September 30, 2004, but whether the remining permit was issued before authority to grant such exemption terminated on September 30, 2004. Congress could not have reasonably intended for the small violation a "now you are not permit blocked, now you are permit blocked" approach. Scant incentive for remining would be provided if the permit block exemption for violations at a remining site would be temporary and expire on September 30, 2004. OSM interprets the termination date, September 30, 2004,

as the last date upon which a remining permit may be issued for which violations resulting from an unanticipated event or condition may be excluded from future permit block determinations.

In support of this statutory interpretation, OSM notes that by 2004, an increasingly large proportion of remining permits will meet the standards of § 785.25. These permits' enhanced requirements for site condition information and identification of event/condition-specific mitigation measures will go far to ensure that the section 510(e) permit block exemption will not be abused. Interpreting the section 510(e) permit block exemption so as to tie its termination of authority provision to the date of issuance of the remining permit, not to the date of the violation or to the date of the section 510(c) determination, promotes a clear Congressional intent with respect to the remining amendments to SMCRA to provide, in an environmentally sound manner, a meaningful incentive for the remining of previously abandoned sites. H.R. Rep. No. 102–474, at 85 (1992).

Accordingly, final paragraph (b)(4)(i) provides that the exclusion will continue to be available for violations occurring on lands eligible for remining under a remining permit issued prior to September 30, 2004, and any renewals thereof.

Final paragraph (b)(4)(i) also includes the term "and any renewals thereof" to indicate that the permit block exemption will apply to unabated violations occurring under permits issued before September 30, 2004, and subsequently renewed. The baseline information from which a § 773.15(b)(4) determination will be made as to whether a violation results from an unanticipated event or condition also does not change if the violation occurs during the original permit term or its renewal. While the "and renewals thereof" provision is consistent with Congressional intent to provide a remining incentive for operations on lands eligible for remining, OSM does not anticipate many occurrences when a qualifying § 773.15(b)(4) violation would first occur during the permit renewal period. In most cases, the mining on lands eligible for remining will be accomplished well within the original 5-year permit term.

Final paragraph (b)(4)(i) uses the term "arises from" in lieu of the term "encountered at" used in the statutory definition of "unanticipated event or condition" indicating that a violation resulting from an unanticipated event or condition can arise from a remining operation and does not have to be encountered at that remining operation in order to qualify for the permit block exemption. For further discussion of when a violation may arise away from a remining operation but as a result of an unanticipated event or condition occurring at the remining operation, see a. (ii) *Abatement obligation continues.*

(ii) § 773.15(b)(4)(ii). Final § 773.15(b)(4)(ii) represents provisions taken from other parts of the proposed rule relocated in this paragraph. Final paragraph (b)(4)(ii) provides that events or conditions arising subsequent to permit issuance related to prior mining which were not identified in the permit issued under § 785.25 shall be presumed to constitute unanticipated events or conditions for the purposes of § 773.15(b). This provision is derived from proposed § 773.15(c)(13) and has been moved in the final rule to paragraph (b)(4)(ii) as proper part of the regulatory authority's § 773.15(b)(4) determination of whether events or conditions are unanticipated. The "may be presumed" language of proposed § 773.15(c)(13) was changed in the final rule to "shall be presumed" as discussed below in response to comments.

The final rule drops the proposed heading for paragraph (b)(4), "Lands eligible for remining" to be consistent with the format of other paragraphs.

Presumption of Unanticipated Event or Condition

OSM recognizes that without a reasonable degree of certainty as to their regulatory application, the remining provisions proposed as incentives for remining operations would not serve as an effective incentive for remining. Thus, certain changes from the proposed to the final rules reflect an intent to provide such certainty for remining operations. Most particularly is the change from the language of proposed § 773.15(c)(13) that events or conditions arising subsequent to permit issuance "may be presumed" to constitute unanticipated events or conditions to the language of final § 773.15(b)(4)(ii) that such events or conditions arising subsequent to permit issuances "shall be presumed" to constitute unanticipated events or conditions. Operators will be able to rely on the provision that once a § 785.25 permit has been issued, events or conditions not identified in the permit shall be presumed to constitute unanticipated events or conditions for the purposes of the permit block exemption of § 773.15(b). This is primarily predicated upon the operator performing a due diligence investigation to determine which events or conditions are reasonably anticipated and then identifying such events or conditions in the permit application. This presumption could be rebutted if a permit applicant fails to identify significant potential environmental or safety problems related to prior mining activity at the site which could have been reasonably anticipated to occur and were known to the applicant or should have been known to the applicant through the due diligence investigation required under § 785.25.

This change of language in final § 773.15(b)(4)(ii) to the words "shall be presumed" is not intended to diminish the substantial flexibility available to, and the responsibility of, a regulatory authority prior to permit issuance to make its own informed judgment as to which events or conditions should be properly identified in the permit application. Final § 785.25(b) requires an identification of potential environmental and safety problems which could be reasonably anticipated to occur at the site. The identification would be based on a due-diligence site-specific investigation. Under final § 773.15(c)(13), the regulatory authority is required to make a finding for § 785.25 permits that the permit application contains an identification of the particular environmental and safety problems which could reasonably be anticipated to occur at the site.

The Presumption for Permits Not Issued Under Section 785.25

As discussed above under the *Phase-in of Section 510(e) permit block exemption*, the permit block exemption of § 773.15(b)(4)(i) extends to permits in existence on October 24, 1992, and is not limited to permits solely issued under § 785.25. Permits for lands eligible for remining not originally issued under § 785.25 but subsequently revised and upgraded to satisfy the permit information and permit finding requirements of §§ 785.25 and 773.15(c)(13) would qualify for the § 773.15(b)(4)(ii) presumption.

Permits for lands eligible for remining not originally issued under § 785.25 and not subsequently revised to satisfy the permit information and permit finding requirements of §§ 785.25 and 773.15(c)(13) would not qualify for the § 773.15(b)(4)(ii) presumption. An applicant for a new permit in such circumstances would have the burden of establishing that any violation which arose at one of these non-§ 785.25 permits resulted from an unanticipated event or condition. OSM agrees with a commenter that it is likely to be more difficult to establish for these permits that violations resulted from unanticipated events or conditions than for future permits issued or revised in accordance with § 785.25 which will have identified reasonably anticipated problems and for which the § 773.15(b)(4)(ii) presumption applies.

Several comments to the proposed rule were received regarding application of the "unanticipated event or condition" language. One industry group asserted that events or conditions should be considered unanticipated for the purposes of the section 510(e) exemption if the operator substantially adheres to its operation and reclamation plans. The industry commenter stated that this was Congress' initial understanding of such events or conditions and cited statements made by Rep. Rahall both in introducing H.R. 4053 (101st Cong., 1990), an early predecessor to the Energy Policy Act, and later in hearings on that bill. Rep. Rahall is quoted as stating that H.R. 4053's provision were intended to free a qualified operator from responsibility to address an event or condition encountered during a remining operation that was not originally anticipated under an approved reclamation plan. Furthermore, the H.R. 4053 provisions were stated as intending to provide the regulatory authority with some "wiggle room" as to what constitutes an unanticipated event or condition.

OSM agrees with the commenter's position but not for the reasons asserted. OSM agrees that where a permit applicant diligently conducted an investigation to identify conditions that are reasonably anticipated, and references such conditions in the permit application, the operator should be able to have a degree of comfort that he will not be permit blocked for violations resulting from non-identified conditions which occur despite compliance with the operation and reclamation plans. This is the presumption set forth in § 773.15(4)(ii). A permit not predicated upon such complete information, however, will not be entitled to the presumption.

OSM does not agree with the commenter that the legislative history of the Energy Policy Act mandates that an event or condition that occurs despite an operator's adherence to its operations and reclamation plans should always constitute an "unanticipated event or condition" for the purposes of the section 510(e) exemption. Rep. Rahall's referenced introduction to H.R. 4053 would have tied reduced operator liability to full compliance with the reclamation plan but only with regard to providing operators a date-certain release of their reclamation bond. While earlier H.R. 2791 (101st Cong., 1989) did contain specific provisions terminating (all) operator liability for compliance with all the requirements of the permit and reclamation plan, such provisions were not carried forward to H.R. 4053 (1990), H.R. 1078 (102nd Cong., 1991), H.R. 4381 (102nd Cong., 1992), H.R. 776 (102nd Cong., 1992), or to the Energy Policy Act of 1992.

Penalties To Be Assessed

One commenter suggested that OSM has discretion not to require a civil penalty for violations tied to unanticipated events or conditions. The commenter further suggested that OSM should adopt a policy whereby civil penalties are not assessed for violations arising from unanticipated events or conditions. OSM finds no basis in the Energy Policy Act or its legislative history to support either suggestion.

Delinquencies Not Covered by Exemption

In the preamble to the proposed rule OSM posed the question of whether the nonpayment of delinquent penalties assessed after a notice of violation or a failure-to-abate cessation order based on an "on the ground" violation resulting from an unanticipated event or condition should be covered by the Energy Policy Act permit block exemption. OSM stated in the proposed rule that it intended that such delinquencies, which are violations themselves, would be covered by the exemption if they were construed as "resulting from an unanticipated event or condition at a surface coal mining operation." OSM sought comments on this issue but no comments were received.

Upon consideration, OSM concludes that the non-payment of delinquent civil penalties assessed because of an unabated violation resulting from an unanticipated event or condition should not be construed as resulting from the underlying unanticipated event or condition. OSM has reached this conclusion because non-payment of penalties is a violation solely within an operator's control and is independent of the underlying on-the-ground violation caused by the unanticipated event or condition. This construction of the permit block exemption will still afford substantial incentive for remining while limiting the exemption to unabated violations resulting from events or conditions which could not reasonably have been anticipated at the time of the remining permit's issuance.

Abatement Obligation Continues

Another commenter asked whether an operator cited for a violation related to an unanticipated event or condition occurring on land eligible for remining would have an obligation to reclaim or resolve such violation even though the operator would not be permit blocked because of it. Nothing in the Energy Policy Act nor this final rulemaking insulates the operator from his existing responsibilities to abate his violations whether or not they stem from anticipated or unanticipated events or conditions. Neither is that operator insulated from other enforcement actions stemming from these unabated violations.

A third commenter questioned particular preamble discussion in the proposed rule and asked that the final rule clarify that a violation occurring off the remining site that results directly from an unanticipated event or condition occurring on the remining site is also subject to the permit-block exemption. The commenter correctly noted that the Energy Policy Act requires only that the unanticipated event or condition, not necessarily the violation itself, be at a surface coal mining operation on lands eligible for remining. In response to this comment and consistent with substantial preamble discussion in the proposed rule and as discussed elsewhere in this final preamble, OSM confirms that a violation that occurs off-site but as a direct result of an unanticipated event or condition occurring on the remining site is also covered by the § 773.15(b)(4) permit block exemption.

As discussed in the proposed rule, if a mining operator on a previously undisturbed site contributes to a violation occurring on that site but originating from an unanticipated event or condition on an adjacent or nearby remining operation, and if the operator of the previously undisturbed site did not abate the violation, he would be permit blocked. On the other hand, if the operator of the previously undisturbed site did not contribute to the unabated violation occurring on his site, he would not be permit blocked.

OSM's proposed rule sought comments on this and other possible examples of interplay between remining operations and adjacent operations which needed to be explained in the final rulemaking. Two commenters responded. The first stressed that the operator of a previously undisturbed site should not be held responsible for any condition on his own site that originated from a nearby remining operation, whether the originating event

or condition is anticipated or not. OSM agrees that the liability of operators for events or conditions originating on a nearby remining site should not be a function of whether or not the originating event or condition was anticipated. As discussed above, an operator of a previously undisturbed site would be responsible for events or conditions on his site that originated from a nearby site only if his operation contributed to that event or condition.

The same commenter asserted that operators should not be held responsible for correcting conditions that are caused by or stem from existing abandoned mine lands. SMCRA, as amended by the Energy Policy Act, provides, under restricted circumstances, for an exemption to the permit block provisions of section 510(c) and for reduced periods of responsibility for successful revegetation. These amended SMCRA sections (510(e) and 515(b)(20)(B)) do not, however, provide exemption from other existing regulatory standards as the commenter would suggest. OSM's position on this issue is also consistent with the second commenter who correctly noted that an operator is responsible for meeting effluent limits where runoff from other sites is commingled with runoff from his own site.

c. Section 773.15(c)(13). A new final § 773.15(c)(13) will require the regulatory authority to make three findings in order to issue permits under new 30 CFR 785.25: (1) The permit application contains lands eligible for remining; (2) The permit application identifies potential environmental and safety problems reasonably anticipated to occur at the site; and (3) The permit application contains mitigation plans to address the identified potential environmental and safety problems in order to ensure that the required reclamation can be accomplished.

(i) Comparison of proposed and final § 773.15(c)(13). Final § 773.15(c)(13) differs from proposed paragraph (c)(13) in the following ways: Final paragraph (c)(13) does not contain the references to parts 779, 780, 783, and 784 found in the proposal. These parts are included implicitly in the phrase "Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations" contained in proposed and final § 785.25(b). The proposed reference to these Parts at § 773.15(c)(13) was therefore duplicative of § 785.25 provisions. The final rule also does not contain the proposed requirement that the regulatory authority set a threshold beyond which conditions or events arising subsequent to the issuance of the remining permit may be presumed to constitute unanticipated events or conditions for the purposes of § 773.15(f). As will be discussed later under the analysis for final rule § 785.25, the majority of the environmental, industry, and regulatory commenters strongly opposed the proposed threshold. In lieu of requiring the regulatory authority to set some threshold, OSM will instead at paragraph (c)(13)(ii) require the regulatory authority to make a permit finding, based on permit information required in new § 785.25(b)(1), that the application identifies the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site.

Final § 773.15(c)(13)(iii) requires the regulatory authority to make a finding based on the permit information required in new § 785.25(b)(2) that the application contains sufficient mitigation plans for each of the previously identified environmental or safety problems to ensure that the required reclamation can be accomplished. This required finding as to the sufficiency of the mitigation plans is expected to increase the likelihood that the targeted environmental or safety problems will be fully reclaimed by the operator. Such reclamation would not require a subsequent draw on the Abandoned Mine Reclamation funds and thus could extend the reach of these limited monies.

3. 30 CFR Part 785—Requirements for Permits for Special Categories of Mining

The final rule adds a new 30 CFR 785.25, Lands eligible for remining.

Final § 785.25 (a) identifies this section as containing the permitting requirements necessary for the regulatory authority to make a § 773.15(b)(4) determination. Paragraph (a) also requires that any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with the provisions in paragraphs (b) and (c).

Final § 785.25(b) prescribes that a § 785.25 permit application comply with all applicable 30 CFR subchapter G permitting requirements for surface coal mining and reclamation operations. Paragraph (b)(1) requires that the application identify potential environmental and safety problems at the proposed site related to past mining which could be reasonably anticipated to occur based on all available data, including visual observations at the site, a record review of past mining at the site, and sampling tailored to current site conditions. Paragraph (b)(2) requires that the application describe the mitigative measures which will be taken to ensure that the requisite reclamation of the previously identified environmental and safety problems can be achieved.

Final § 785.25(c) provides that the requirements of this section shall not apply after September 30, 2004.

(i) Comparison of proposed and final § 785.25. The final rule differs from proposed § 785.25 in the following ways: First, the language of proposed paragraph (a) applying this section to any person who conducts or intends to conduct a surface coal mining operation on lands eligible for remining has been replaced in final paragraph (a)(1) with more direct language obligating such persons to comply with this section's requirements. Final paragraph (a)(2) also includes new language to reflect the rule's reorganization from one in which the regulatory authority's section 510(e) permit block exemption determination was based on a threshold set by that authority in proposed § 773.15(c)(13) to one in which the permit block exemption determination is based foundationally on the site condition information contained in a § 785.25 permit application and the permit finding requirements of § 773.15(c)(13).

Reasonably Anticipated Problems

The proposed § 785.25(b)(1) requirement for an identification of all potential environmental and safety problems associated with the site has, in response to comments, been eliminated in favor of the final § 785.25(b)(1) which requires identification of all reasonably anticipated environmental and safety problems which might occur at the site. Proposed paragraph (b)(1) would have required an open-ended quantitative risk analysis. From the data gained from this analysis and the data provided under other specific permitting sections, the regulatory authority would have, under proposed § 773.15(c)(13), set a threshold beyond which subsequent conditions or events may be presumed to be unanticipated for the purposes of the section 510(e) permit block exemption.

Final § 785.25(b)(1) requires a due-diligence investigation by the applicant tailored to each remining site from which the applicant is expected to generate a list of environmental and safety problems related to past mining which could be reasonably anticipated to occur at the site. The due-diligence investigation requires a review of all available data including visual observations, a review of records

associated with past mining, and necessary environmental sampling. The list of problems will be the basis of the regulatory authority's finding in final § 773.15(c)(13) and any subsequent § 773.15(b)(4) permit block exemption determination.

Although the proposed rule's risk analysis/threshold approach may have proven to be the most protective of the environment in its determination of anticipated events or conditions, OSM's preamble to the proposed rule reflected the agency's reservation as to the practicability of its implementation. These reservations were confirmed by the weight of comment response.

Two commenters provided qualified endorsement of the proposed risk analysis/threshold approach. The first commenter supported that approach because it required consideration of the previous disturbed character of the land, which was felt to be lacking under existing regulations. In suggesting an alternative expression of probability, the commenter was, however, careful to exclude from consideration events or conditions which might be deemed highly unlikely to occur.

The second commenter was concerned that the proposed requirement to establish maximum impacts would dramatically increase the risk of permit block to the point where remining would not occur and could limit the flexibility of regulators to account for site-specific conditions. This commenter felt that restructuring the proposed rule's threshold should be based instead on considerations of events or conditions that could be "reasonably foreseen based on available information" and allowing for the use of "best professional judgement by the applicant and regulator" would significantly improve the proposed rule's ability to meet the intent of the Energy Policy Act to provide specific incentives for remining.

Three commenters, including environmental and industry associations, strongly opposed the risk analysis/threshold approach of proposed §§ 785.25(b)(1) and 773.15(c)(13). They characterized its components—the probability and maximum degree of impact analyses, the identification of all potential problems, and the setting of a threshold—all to be unrealistic, too costly and time-consuming, an invitation to litigation, and lacking readily-available supporting technical methodology for conducting the requisite undertakings. One of these commenters questioned the statutory basis for the proposal's reliance on the aforementioned component parts as creating an all-inclusive term seen as expanding the limited standards set by Congress for the term "unanticipated event or condition."

All three commenters represented that existing regulatory permitting requirements provided sound basis upon which to assess and characterize pre-mining site conditions. The commenter representing the industry association suggested that a "good faith" listing of potential problems could be made on the basis of such baseline information. The whole of the industry's comment seemed to indicate that this information must necessarily include sound site-specific data on hydrology, soils, geology, etc.

The commenter representing the environmental association also submitted that, based on visual inspection and proper sampling tailored to the site and a record review of prior mining at the site, potential problems could be reasonably anticipated. Such site-specific investigations were characterized as necessary for establishing a comprehensive, objective assessment of site conditions from which a reclamation plan could be developed and against which any later claims of "unanticipated event" could, in turn, be assessed.

In response to the objections posed by these commenters to the risk analysis/threshold approach of the proposed rule, the final rule will reflect many of the commenters' suggestions for an alternative approach for determining when an event or condition is unanticipated. Final § 785.25(b)(1) will require site-specific development of baseline data based on visual inspection, environmental sampling, and a review of records of past mining to identify potential problems related to prior mining activity at the site which could reasonably be anticipated to occur. A requirement for these site-specific investigations could be construed to exist already as part of the permanent program regulations. OSM believes, however, that the potential for environmental problems occurring is particularly high at remining sites. Therefore, these investigations have sufficient importance that they should be expressly required by rule as preconditions to all § 785.25 remining operations.

OSM submits that the final rule's approach of identifying "reasonably anticipated" potential problems will be as effective as the proposed rule's approach of identifying (all) potential problems in providing a level of protection commensurate with a reasonable expectation that certain environmental and safety problems might occur. The final rule's reliance upon more of reasonably anticipated standard for identifying potential problems will also substantially reduce the information gathering burden associated with the analyses that would have been required under the proposed rule.

Degree of Variance from Anticipated Problem

OSM intends that the final § 785.25(b)(1) identification of potential problems reasonably anticipated to occur will extend not only to an identification of the *type* of such problems but also the *degree* of such problems, *e.g.*, that AMD is anticipated at a rate of 150 gallons per minute (gpm).

The allowable degree of variance from an anticipated problem is an issue indirectly raised by associations representing both environmental and industry interests. The commenter representing the environmental association opposed the risk analyses required under the proposed rule. This commenter asserted that with adequate data collection, potential problems can be reasonably anticipated and there should be very few instances where an "unanticipated" event or condition occurs.

Such statement suggests, for instance, that if any AMD is identified as a potential problem, then the eventual amount or degree of AMD experienced is immaterial for the purposes of qualifying for the section 510(e) permit block exemption. All such experienced AMD, however large the amount, would be considered anticipated and the operator would not qualify for the exemption.

The industry association commenter also opposed the risk analyses required under the proposed rule, but addressed the issue of degree of unanticipated problem somewhat differently. This commenter focussed on the difficulties in accurately predicting the likelihood of potential problems occurring and the associated maximum degree of impact. Even with good baseline data, there appeared to be too many variables to accurately assess a potential problem's maximum degree of impact. This commenter's solution was for the applicant to provide a list of potential problems that it could in "good faith" identify. Any problem that then arose from the previous disturbed nature of the site, including AMD, despite the operator's substantial adherence to the permit, would be considered to be unanticipated.

Such statement suggests that if any AMD is identified as a potential

problem and it occurs despite the operator's substantial adhereance to its operation and reclamation plans, the actual amount or degree of the post-treatment problem is immaterial for the purposes of qualifying for the section 510(e) permit block exemption. All such AMD, however small the amount, would be considered unanticipated and the operator would qualify for the exemption.

OSM rejects both environmental and industry comments regarding the degree of problem anticipated and experienced at the remining site. Because the AMD problem is recognized as the largest deterrant to remining, and some AMD can be anticipated from many remining sites, the environmental approach would substantially narrow the remining inceptive which OSM believes Congress intended in providing the section 510(e) exemption. Conversely, the industry approach would substantially broaden the incentive beyond which OSM believes Congress intended for this exemption.

The final rule seeks to implement the "(reasonably) anticipated event or condition" language of section 510(e). The rule's reliance upon the permit information and permit finding requirements of §§ 785.25 and 773.15(c)(13) maps a middle course between the environmental and industry approaches and provides a flexibility which accounts for the realities of remining operations where environmental and safety problems may reasonably be anticipated only in terms of degrees or relative amounts.

Under the final rule it falls to the regulatory authority to determine whether the degree of problems experienced in excess of that which was originally anticipated and identified in the permit would qualify as unanticipated for the purposes of the section 510(e) exemption. For example, if on the basis of available baseline information required under existing permit application rules and the site-specific investigations required by new § 785.25, the operation and reclamation plans reasonably anticipate an AMD discharge of 150 gpm to occur with mitigation plans set forth to handle that amount, a later occurence of a discharge of 1500 gpm may reasonably be said to have not been contemplated by those plans and, therefore, qualifies as an unanticipated event or condition for the purposes of the § 773.15(b)(4) (section 510(e)) exemption. This fact-specific inquiry would be made by the regulatory authority on a case-by-case basis. Regardless of the level of discharge, the operator would, however, be responsible for abating any violation related to the discharge and providing appropriate treatment.

There can be no hard and fast rules for what degree of variance from the permit estimate reasonably qualifies as an unanticipated event or condition. The final rule recognizes that each site has its unique characteristics and must be investigated accordingly. The final decision as to whether an event or condition was unanticipated will be made by the regulatory authority conducting the § 773.15(b) permit review.

Required Mitigation Measures

Final § 785.25 differs from the proposed rule in that paragraph (b)(2) requires a description of the mitigation measures which will be taken to ensure that the reclamation required by the applicable requirements of the regulatory program can be met rather than the description required by proposed paragraph (b)(2) of how such measures will meet applicable performance standards. This change focuses the required description on ensuring that the applicant is prepared to reclaim the reasonably anticipated potential environmental and safety problems identified in paragraph (b)(1).

Phase-Out of Section 785.25 Requirements

Final § 785.25 also differs from the proposal in that a new paragraph (c) has been added providing that the requirements of that section shall not apply after September 30, 2004. The effect of this provision will be that no § 785.25 remining permits will be issued after September 30, 2004. This is consistent with OSM's interpretation of the Energy Policy Act amendments to SMCRA as allowing violations resulting from an unanticipated event or condition arising on lands eligible for remining under a permit issued before September 30, 2004, and any renewals thereof, to be eligible for the permit block exemption of section 510(e).

4. 30 CFR Part 816—Permanent Program Performance Standards-Surface Mining Activities and Part 817—Permanent Program Performance Standards-Underground Mining Activities

The final rule amends paragraphs (c)(2) and (c)(3) of §§ 816.116 and 817.116, Revegetation: Standards for Success, by adding paragraphs (c)(2)(ii) and (c)(3)(ii) which implement section 515(b)(20)(B) of SMCRA. Paragraph (c)(2) deals with areas receiving more than 26.0 inches of average annual precipitation. Final paragraph (c)(2)(i) is identical to former paragraph (c)(2), with the addition of a reference to the exception to the regular five-year revegetation responsibility period provided at final paragraph (c)(2)(ii) for lands eligible for remining included in permits issued before September 30, 2004, and any renewals thereof. Final paragraph (c)(2)(ii) reduces the revegetation responsibility period to two years for lands eligible for remining included in such permits. Final paragraph (c)(2)(ii) also provides that to the extent that the success standards for certain lands previously disturbed by mining are established by §§ 816/817.116(b), the lands shall equal or exceed those standards during the growing season of the last year of the responsibility period. Because OSM anticipates that in most cases the post-mining land use for lands eligible for remining will be as specified in paragraph (b)(5), final paragraph (c)(2)(ii) merely includes the paragraph (b)(5) success standards. This does not preclude the regulatory authority from prescribing paragraph (c)(2)(ii) two-year success standards when the post-mining lands use is grazing, crop, or pastureland.

Final paragraph (c)(3) relates to areas of less than 26.0 inches of annual average precipitation and incorporates language similar to paragraph (c)(2) except that the period of responsibility has been reduced from ten years to five years.

The changes in these periods of responsibility for revegetation are mandated by section 515(b)(20)(B) of SMCRA as amended by section 2503(b) of the Energy Policy Act.

a. Comparison of proposed and final §§ 816.116 and 817.116. The format of the proposed rule apparently created some confusion for commenters with respect to distinguishing between the responsibility periods for revegetation and success standards for revegetation intended by the proposed rule for lands eligible for remining. The final rule seeks to clarify this situation for lands eligible for remining by placing the requirements for both responsibility periods for revegetation and success standards for revegetation in one paragraph, either (c)(2)(ii) for areas of more than 26.0 inches of average annual precipitation or (c)(3)(ii) for areas of 26.0 inches or less average annual precipitation.

Each of these paragraphs also contain the statement that if the success standards are established by paragraph (b)(5), then the lands eligible for remining shall equal or exceed these standards during the growing season of the last year of the responsibility period (paragraph (c)(2)(ii)) or of the last two consecutive years of the responsibility period (paragraph (c)(3)(ii)). This reformatting change should make clear that the final rule is not intended to vary the success standards for revegetation of the existing rules.

Phase-In for Reduced Revegetation Responsibility Periods

Final §§ 816/817.116 (c)(2)(ii) and (c)(3)(ii) tie the reduced revegetation responsibility periods for lands eligible for remining to permits issued before September 30, 2004, and any renewals thereof. Because the statutory language of section 515(b)(20)(B) does not contain the triggering language of section 510(e): "[a]fter the date of enactment of this subsection," OSM is interpreting final §§ 816/817.116(c)(2)(ii) and (c)(3)(ii) as requiring existing permits to obtain a permit revision to qualify for the rule's reduced revegetation responsibility periods. This permit revision would require a § 773.13(c)(13)(i) finding by the regulatory authority that the permit covers lands eligible for remining. Permits issued under new § 785.25 would also require a similar § 773.13(c)(13)(i) finding. Whether for existing permits or those issued under § 785.25, the reduced revegetation responsibility periods would apply only to lands within the permit found to be eligible for remining.

OSM is aware that, for existing operations on lands eligible for remining which have ceased mining and have already begun reclamation, the above interpretation of final §§ 816/817.116 would allow for reduced revegetation responsibility periods without operating as an incentive for future remining. This interpretation is, however, permissible under the language of section 515(b)(20)(B), whose only qualification for the reduced revegetation responsibility periods is that the affected land be eligible for remining, and is structurally consistent with OSM's implementation of the Energy Policy Act's other remining provision at section 510(e) (§ 773.15.(b)(4)(i)).

Phase-Out for Reduced Revegetation Responsibility Periods

Because final §§ 816/817.116(c)(2)(ii) and (c)(3)(ii) tie the reduced revegetation responsibility periods to remining permits issued before September 30, 2004, or any renewals thereof, the reduced revegetation responsibility provisions will not cease to be operative on September 30, 2004, for permits issued before that date as would have been the case under the proposed rule. Under the final rule, as long as the permit was issued before September 30, 2004, the reduced revegetation responsibility periods could extend beyond that date through the prescribed duration of the remining permit or any renewals thereof.

This change was made in response to commenters who recommended that the period of responsibility should apply to any remining permit issued prior to September 30, 2004, even if the mining and/or period of responsibility extended past that date.

Both the reduced revegetation responsibility period provisions of section 515(b)(20)(B) and the permit block exemption provisions of section 510(e) are tied to lands eligible for remining. The same provision in section 510(e) terminates the authority for both sections on September 30, 2004. This termination provision suggests that Congress intended sections 510(e) and 515(b)(20)(B) to operate in tandem, providing structurally consistent incentives for remining operations on lands eligible for remining.

Interpreting the phase-out provisions of section 515(b)(20)(B) as ending the reduced responsibility periods on September 30, 2004, would, for remining operations existing on that date, render the shortened responsibility period meaningless. A reduced two or five-year period which runs past September 30, 2004, would be transformed on October 1, 2004, into a five and ten-year period. Thus no relief would be afforded operations who would otherwise rely upon that statutory provision. Such an interpretation would, particularly for potential remining operations in the arid West and less so for those in the East, provide severely limited incentive for remining. For instance, assuming one year would be spent permit processing, one-half a year for preparing the site, one and one-half years for actual remining, seven years to satisfy the five-year responsibility period resulting in bond release, a Western operator would then have had to have begun the permitting process in September of 1994 to have availed himself of a section 515(b)(20)(B) incentive if that incentive ended on September 30, 2004. If this hypothetical remining schedule were in any way delayed, the operator would run the risk of exceeding the 2004 barrier and being held to the standard ten-year responsibility period.

Rather than such an interpretation, OSM interprets consistently the permit block exemption of section 510(e) and the reduced responsibility provisions of section 515(b)(20)(B) by tying both to a remining permit issued before September 30, 2004, or any renewals thereof. In other words, the reduced responsibility period can extend beyond that date if the permit is issued before September 30, 2004.

One commenter correctly noted that the Energy Policy Act amendments to section 515(b)(20) "abridged the duration of the period of responsibility, but did not alter the provisions relating to demonstrating achievement of the revegetation standards." On the other hand, several commenters suggested that OSM incorrectly interpreted the requirements of the Energy Policy Act in the proposal with regard to what the commenters referred to as "success standards" for revegetation. Another commenter asked whether "both ground cover and productivity must meet standards for both years of the two-year maintenance period * * *."

In response to both groups of comments, OSM stresses that the Energy Policy Act only reduces the "periods of responsibility" for revegetation from five to two years for areas of more than 26.0 inches of average annual precipitation and from ten to five years for areas of 26.0 inches or less average annual precipitation. The Energy Policy Act amendments to SMCRA do not prescribe any changes to revegetation standards, success standards, or productivity standards. All of these standards are unaffected by both the proposed and final rule. Thus, in the proposal as well as the final rule, OSM has adopted the success standards of the existing rules. OSM recognizes that the success standard applicable to remining sites will likely be that of existing 30 CFR 816.116(b)(5) and 817.116(b)(5).

Several commenters noted two editorial problems at §§ 816/817.116(c)(2) of the proposal: (1) Remining was misspelled; and (2) The word "not" was inadvertently omitted. The text has been corrected to read "In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than: * * * (ii) Two full years for lands eligible for remining * * *."

5. Other Comments

One commenter stated that parts 816 and 817 should require that rivers and streams within 20 miles of a remining site be capable of sustaining fish populations and that wetlands destroyed during remining must be replaced and added to. These comments go well beyond the proposed rule and are not accepted.

Two commenters recommended that the final rule provide for a date-certain bond release. One commenter stated that for operators with previous

reclamation success on remined lands there would be little additional risk for bond releases tied to time versus bond releases tied to success standards. The other commenter stated that H.R. 4053, a predecessor to the Energy Policy Act, contained language relating to "date-certain release of an operator's bond" and this language established requisite Congressional intent in the Energy Policy Act for a date-certain bond release. This language was not, however, carried forward into H.R. 4381 (1992), H.R. 776 (1992), or the Energy Policy Act. No provisions in the Energy Policy Act can be construed to authorize a date-certain bond release and OSM rejects this recommendation.

One commenter recommended that adoption of final rules should be delayed until all aspects of incentives dealing with abandoned coal refuse sites have been worked out. The incentives and requirements for removal and/or reprocessing of material at abandoned coal refuse sites are mandated by section 2503(e) of the Energy Policy Act and are being developed under a separate rulemaking. The statutory authority and the subject matter for both the coal refuse and the current rulemaking are sufficiently distinct and independent of each other so that there is no need nor advantage gained by delaying this rule until resolution of all coal refuse issues.

Another commenter suggested the use of negotiated compliance schedules to address abatement of unanticipated events prior to issuing a violation. This suggested procedure was not included in the proposal and, therefore, is beyond the scope of this rulemaking.

Several commenters recommended inclusion in the final rule of additional incentives which they felt would encourage remining. The commenters provided no legal basis for the following recommendations: (1) Creating minimum requirements for information on environmental resources. This is based on the commenter's assertion that remining operations are intended to mitigate or correct adverse effects of mining while operations on previously undisturbed areas are intended to prevent adverse effects; (2) Promulgating a new standard that would encourage the most environmentally effective use of spoil as opposed to current standards which require spoil to be used for highwall elimination as a first priority; (3) Providing a bonding advantage for remining operations; (4) Reducing the potential for bond forfeiture resulting from unanticipated events or conditions by allowing the AML program and not the operator to be responsible for final abatement of preexisting conditions. OSM does not accept these comments. The recommended incentives were not included in the proposal and are beyond the scope of this rulemaking.

III. Procedural Matters

Federal Poperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq* and assigned clearance numbers 1029–0040 and 1029–0041.

Executive Order 12778; Civil Justice Reform Certification

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this final rule. Additional remarks follow concerning individual elements of the Executive Order;

A. What is the preemptive effect, if any, to be given to the regulation?

The rule would have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's rules. Ordinarily, any State law that is inconsistent with, or that would preclude implementation of a new Federal rule, would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. However, any State law which provides for more stringent land use and environmental controls and regulation of coal exploration and surface mining and reclamation operations than do the provisions of the Act and any rules issued pursuant thereto, shall not be construed as inconsistent with those rules. Because the current amendments to SMCRA contained in the Energy Policy Act are intended to ease certain requirements of the Act, these rules will not preempt more stringent State laws.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA, as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule implements portions of the Energy Policy Act that were effective on October 24, 1992. Although this rule may be considered retroactive to the extent it covers actions occurring October 24, 1992, the Energy Policy Act requires such effects. OSM also recognizes that the rule may allow revisions to existing permits to change revegetation responsibility periods. This impact was explained above.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Regulatory Flexibility Act

The Department of the Interior has determined that the final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This determination is based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign/based enterprises in domestic or export markets.

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) of this final rule and has made a finding that it will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the OSM Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC.

Author

The principal author of this final rule is: Douglas J. Growitz, P.G., Hydrologist, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, Room 110 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202–208–2561.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Port 773

Administrative practice and procedure, Surface mining, Underground mining.

30 CFR Port 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: October 11, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR parts 701, 773, 785, 816 and 817 are amended as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and Pub. L. 102–486.

2. Section 701.5 is amended by adding alphabetically definitions of "lands eligible for remining" and "unanticipated event or condition" as follows:

§ 701.5 Definitions.

* * * * *

Lands eligible for remining means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act.

* * * * *

Unanticipated event or condition, as used in § 773.15 of this chapter, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit.

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

3. The authority citation for part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, Pub. L. 100–34; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*; 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq.*; and Pub. L. 102–486.

4. Section 773.15 is amended by adding new paragraphs (b)(4) and (c)(13) to read as follows:

§ 773.15 Review of permit applications.

(b) * * *

(4)(i) Subsequent to October 24, 1992, the prohibitions of paragraph (b) of this section regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(*1*) Issued before September 30, 2004, or any renewals thereof; and

(*2*) Held by the person making application for the new permit.

(ii) For permits issued under § 785.25 of this chapter, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:

(A) Arose after permit issuance;

(B) Was related to prior mining; and

(C) Was not identified in the permit.

(c) * * *

(13) For permits to be issued under § 785.25 of this chapter, the permit application must contain:

(i) Lands eligible for remining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and Pub. L. 102–486.

6. Section 785.25 is added to read as follows:

§ 785.25 Lands eligible for remining.

(a) This section contains permitting requirements to implement § 77? 15(b)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall—

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred to in paragraph (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this section shall not apply after September 30, 2004.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

7. The authority citation for part 816 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; sec 115 of Pub. L. 98–146, 30 U.S.C. 1257; Pub. L. 100–34; and Pub. L. 102–486.

8. Section 816.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 816.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(i) Five full years, except as provided in paragraph (c)(2)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(i) Ten full years, except as provided in paragraph (c)(3)(ii) below. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

9. The authority citation for part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; Pub. L. 100–34; and Pub. L. 102–486.

10. Section 817.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 817.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(i) Five full years, except as provided in paragraph (c)(2)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(i) Ten full years, except as provided in paragraph (c)(3)(ii) of this section. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

[FR Doc. 95–28862 Filed 11–24–95; 8:45 am]
BILLING CODE 4310–05–M

federal register

Monday
November 27, 1995

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 1
Definitions of Special Use Airspace; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. 25767; Notice No. 95–16]

RIN 2120–AF92

Definitions of Special Use Airspace

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Federal Aviation Regulations by adding the definitions of the various forms of special use airspace. Several categories of special use airspace currently are defined other than in the Regulations. This proposed action is needed to consolidate and define those categories in a single part, including the definitions of warning area and non-regulatory warning area found in Special Federal Aviation Regulation (SFAR) No. 53.

DATES: Comments must be received on or before December 27, 1995.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 25767, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: mprmcmts@mail.hq.faa.gov. Comments delivered must be marked Docket No. 25767. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the rule making process by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before acting on this proposed rulemaking. The proposals contained in this notice may be changed considering comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25767. The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed in a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA has determined that for purposes of clarification and conformity, it would be appropriate to include in part 1, Definitions and Abbreviations, the definitions of all categories of special use airspace. Special use airspace is defined in 14 CFR Section 73.3(a) as airspace of defined dimensions wherein activities must be confined because of their nature, ow wherein limitations are imposed upon aircraft operations that are not a part of those activities, or both. With the exception of "warning area," the definitions proposed are the same definitions provided for these categories of airspace in the Aeronautical Information Manual and in FAA Order 7400.2, Procedures for Handling Airspace Matters. The codification of these currently accepted definitions into part 1 does not in any way affect the provisions that apply to these areas that are contained in parts 73 and 91. Nor does the inclusion of the definitions in part 1 impose any new operating restrictions.

In addition, this notice proposes to redefine the term "warning area," by consolidating the definitions of "warning area" and "non-regulatory warning area" found in SFAR 53 and codify that term in part 1. Warning areas are defined in SFAR 53 as airspace of defined dimensions, extending from 3 to 12 nautical miles from the coast of this United States, which contain activity that may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. The FAA proposes to consolidate this definition with the definition of non-regulatory warning area found in SFAR 53. A non-regulatory warning area is an airspace of defined dimensions designated over *international* waters that contains activity which may be hazardous to nonparticipating aircraft. The FAA believes that combining the definition of warning area with the definition of a non-regulatory warning area into a single definition is appropriate since the procedures that apply to these two areas are the same.

Presidential Proclamation No. 5928, issued on December 27, 1988, extended the sovereignty of the United States, for international purposes, over the territorial seas from 3 to 12 nautical miles from the coast of the United States (including its territories). Prior to Presidential Proclamation No. 5928, warning areas were only designated in international waters. SFAR 53, promulgated in response to Proclamation No. 5928, designated warning areas in domestic airspace. This proposal would define a warning area as an area of airspace of defined dimension, extending from 3 nautical miles outward from the coast of the United States, that contains activity which may be hazardous to nonparticipating aircraft.

This proposal would not alter any of the existing warning areas. The FAA does not envision any future additional warning areas or enlargement of the existing warning areas in domestic airspace. If new airspace areas are needed in domestic airspace, the FAA will work with the proponent to establish the appropriate domestic special use airspace, i.e. military operations are (MOA), Restricted area, or Prohibited area.

The Proposal

The FAA is proposing to amend 14 CFR part 1, Definitions and Abbreviations, to include the definitions of all types of special use airspace.

Except for "warning areas," the proposed definitions are the same definitions of the categories of special use airspace found in the Aeronautical Information Manual and FAA Order 7400.2, Procedures for Handling Airspace Matters and are familiar to and accepted by the flying community. The inclusion of these definitions in part 1 does not affect any provision currently contained in parts 73 and 91. Further, the inclusion of these definitions does not add any requirement or operating restriction to these categories of special use airspace. This proposal also codifies the definition of warning area. As noted above, the proposed definition of warning area would consolidate the definitions in SFAR 53 into a single definition of a warning area that applies to domestic airspace located from 3 to 12 nautical miles from the U.S. coast, as well as international airspace beyond the 12 nautical mile boundary from the coast.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation organization Standards and Recommended Practices (SARP) to the maximum extent practicable. A difference will be filed with the International Civil Aviation Organization.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed regulation.

Regulatory Evaluation

This proposed regulation does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This proposed regulation merely adds a section of currently accepted definitions in 14 CFR part 1 without making any substantive revision to parts 73 and 91. Accordingly, because the costs of the rule are minimal or non-existent, a formal regulatory evaluation has not been prepared. Nevertheless, the FAA seeks comments from the public on any possible economic impact of this notice.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have a significant economic impact on a substantial number of small entities.

The proposed regulation will not alter the provision of air traffic control (ATC) services, nor will it have an impact on ATC system users. Hence, the proposed regulation will not impose a significant cost on a substantial number of small entities.

Federalism Implications

The proposed regulation set forth herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Trade Impact Assessment

The proposal would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States. This proposal would not impose costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage would not be incurred by either U.S. operators abroad or foreign operators in the United States.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this proposed regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposed regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An Initial Regulatory Flexibility Determination and International Impact Assessment are set out above. Because the economic impact of this proposal are minimal or non-existent, no formal regulatory evaluation has been prepared.

List of Subjects in 14 CFR Part 1

Air transportation, Federal Aviation Administration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 1 as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 1.1 is amended by adding the following definitions to read as follows:

* * * * *

§ 1.1 General definitions.

* * * * *

Alert Area. An alert area is established to inform pilots of a specific area wherein a high volume of pilot training or an unusual type of aeronautical activity is conducted.

* * * * *

Controlled Firing Area. A controlled firing area is established to contain activities, which if not conducted in a controlled environment, would be hazardous to nonparticipating aircraft.

* * * * *

Military Operations Area. A military operations area (MOA) is airspace established outside Class A airspace to separate or segregate certain nonhazardous military activities from IFR traffic and to identify for VFR traffic where these activities are conducted.

* * * * *

Prohibited Area. A prohibited area is airspace designated under part 73 within which no person may operate an aircraft without the permission of the using agency.

* * * * *

Restricted Area. A restricted area is airspace designated under Part 73 within which the flight of aircraft, while not wholly prohibited, is subject to restriction.

* * * * *

Warning Area. A warning area is airspace of defined dimensions, extending from 3 nautical miles outward from the coast of the United States, that contains activity that may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. A warning area may be located over domestic or international waters or both.

* * * * *

Issued in Washington, DC on November 20, 1995.

Harold W. Becker,

Acting Program Director for Air Traffic Rules and Procedures.

[FR Doc. 95–28844 Filed 11–24–95; 8:45 am]

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3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

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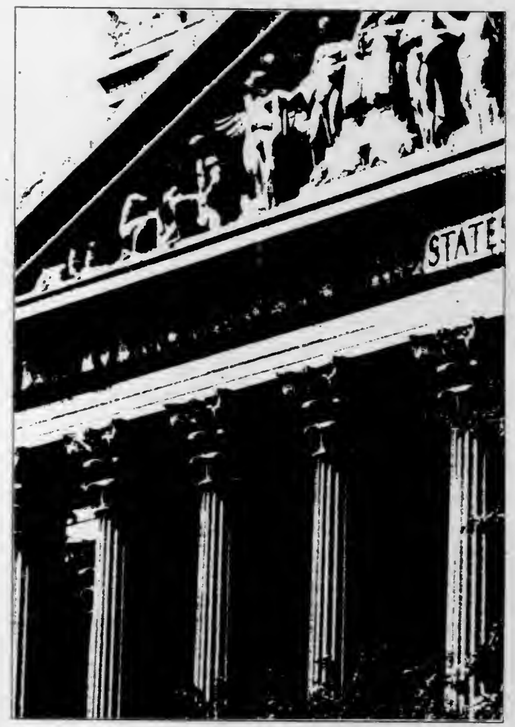
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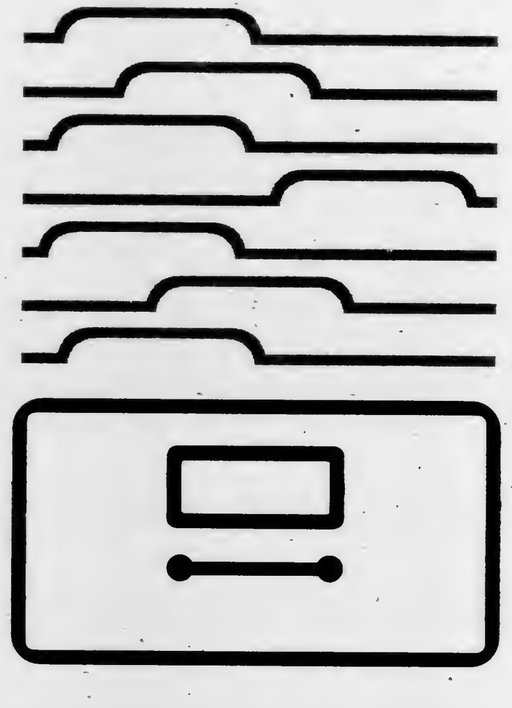
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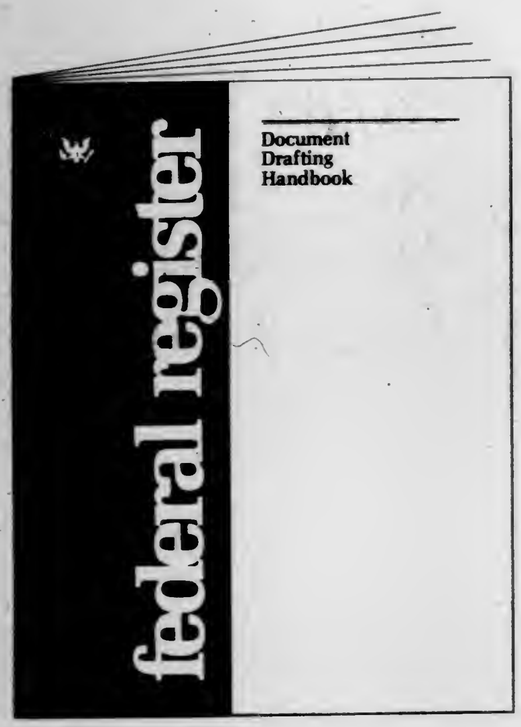
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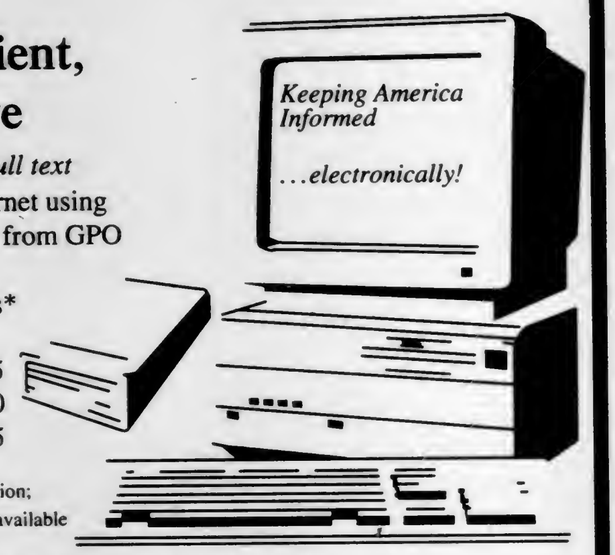
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